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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209–AA07

Executive Agency Ethics Training Programs; Amendments

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; amendments.

SUMMARY: The Office of Government Ethics is issuing a final rule amending subpart G of 5 CFR part 2638 on Executive Agency Ethics Training Programs, which was published as a final rule last April. The Office of Government Ethics could not then include references in the training regulation to other rules that were not issued as final or interim at that time. The publication of the Standards of Ethical Conduct for Employees of the Executive Branch as a final rule and of the interim rule on Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture since then allows OGE to include references to these regulations within subpart G of this part. Moreover, in order to allow agencies sufficient time to complete the initial ethics orientation with the new standards, OGE is also extending the deadline for completion of the initial ethics orientation until February 3, 1993.

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Stuart C. Gilman or John C. Condray, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: In accordance with section 301 of Executive Order 12674 of April 12, 1989, as amended by Executive Order 12731 of October 17, 1990, and consistent with its authority under the Ethics in Government Act, as amended, the Office of Government Ethics published the training regulation, subpart G of 5 CFR part 2638, as a final rule on April 7, 1992 (57 FR 11886–11891, as corrected at 57 FR 15219 (April 27, 1992)). As stated in the preamble to the final rule, procedures of the Office of the Federal Register prevent a final regulation from cross-referencing other regulations until the other regulations have also been published as final or interim rules. Although OGE would have liked to have cross-referenced both the new standards and the financial disclosure regulations in this training regulation when it was published last April, the decision was made to publish this regulation before the standards were finalized in order to allow executive branch agencies as much time as possible to plan their training programs. The April final rule preamble to this subpart G regulation indicated that, once the standards and the financial disclosure regulations were published in final or interim form, OGE would amend this regulation to cross-reference those regulations. As it turned out, in fact, OGE ended up separately publishing the financial disclosure regulation (57 FR 11800–11830) on April 7, 1992, the same day the training regulation was published. The financial disclosure regulation was subsequently corrected at 57 FR 21854–21855 (May 22, 1992). In addition, on August 7, 1992, OGE published the final Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006–35067, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 52583 (November 4, 1992)). The Office of Government Ethics is therefore amending subpart G so that it cross-references both these regulations. As explained last April, because of the central importance of the new standards issued under Executive Order 12674, as amended, to employees' understanding of their ethical obligations, § 2638.703(a) of the training regulation is being revised to specifically include the standards, together with any supplemental regulation thereto of the concerned agency, among the items that must be provided as part of the initial ethics orientation. Section 2638.704(c) is also being revised; it will now include the standards (and any agency supplement regulation) as part of the minimum content of an agency's annual ethics training for covered employees. As stated in the April final rule preamble to this subpart G, the minimum content requirement does not require rote repetition each year of familiar material; inclusion of the standards is meant to be the starting point for annual training, not its sum total. A cross-reference to the financial disclosure regulation (and any agency supplement) is also being added to the definition of employees who are covered by the annual agency ethics training requirement, at § 2638.704(b)(4).

When OGE published subpart G of part 2638 last April, the deadline for agencies to complete the initial ethics orientation was January 2, 1993. At that time, it was expected that the standards would be published within the next three months, and that the January 2, 1993 timetable would give agencies six months to complete the orientation from the time of the publication of the standards as a final rule. The Office of Government Ethics indicated at that time that OGE would amend this requirement, contained in § 2638.703(a), if the publication date of the standards were delayed. Because the standards were published on August 7, four months after the April publication of the training regulation, OGE is extending the deadline for completion of the initial ethics orientation to February 3, 1993. This date will give agencies 180 days from the publication of the standards to complete the initial ethics orientation for current employees; it will also coincide with the effective date of the new executive branch standards.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these amendments to the training regulation concern matters of agency organization, practice and procedure and because it is important to the working of executive branch agency ethics training programs that these revisions to the regulation go into effect as soon as possible. Further, these amendments reflect the changes OGE indicated it would make as previously announced when the final

rule was published in the **Federal Register** last April.

Executive Order 12291

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to this regulation because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: November 18, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2638 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2638—[AMENDED]

1. The authority citation for 5 CFR part 2638 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

SUBPART G—EXECUTIVE REGENCY ETHICS TRAINING PROGRAM

2. Section 2638.703 is amended by revising paragraphs (a) and (b) to read as follows:

§ 2638.703 Initial agency ethics orientation.

(a) Each agency employee shall, on or before February 3, 1993, be provided:

(1) A copy of part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989, as amended Executive Order 12731, 3 CFR, 1990 Comp., p. 306;

(2) A copy of part 2635 of this chapter, Standards of Ethical Conduct for Employees of the Executive Branch, and any supplemental regulation of the concerned agency;

(3) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and

(4) A minimum of one hour of official duty time for the purpose of permitting the employee to review the written materials furnished pursuant to this section. If the agency provides an ethics training course during official duty time, including annual ethics training provided under § 2638.704, or a nominee or other new entrant receives ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in training.

(b) Each new agency employee who enters on duty after May 7, 1992, shall, within 90 days of the date of his or her entrance on duty, or on or before February 3, 1993, whichever is later, be provided with the materials and time specified in paragraph (a) of this section.

* * * * *

3. Section 2638.704 is amended by revising paragraphs (b)(4) and (c)(1) to read as follows:

§ 2638.704 Annual agency ethics training.

* * * * *

(b) * * *

(4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart I of part 2634 of this chapter and any supplemental regulation or addendum of the concerned agency;

* * * * *

(c) * * *

(1) A review of the employees' responsibilities under part I of Executive Order 12674, as amended, and the Standards of Ethical Conduct for Employees of the Executive Branch, part 2635 of this chapter, together with any agency's supplemental regulation. This review shall include examples that relate specifically to agency programs and operations and any ethics-related, agency-specific statute or regulatory restrictions of the particular agency; and

* * * * *

[FR Doc. 92-29939 Filed 12-9-92; 8:45 am]

BILLING CODE 6345-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 807, 814, 860, 861, and 895

[Docket No. 92N-0007]

Medical Devices; Procedures for Premarket Notification, Premarket Approval, Classification, Performance Standards Establishment, Banning Devices, and Availability of Regulatory Hearings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the medical device regulations governing procedures for premarket notification, premarket approval, classification, performance standards development, banning devices, and availability of regulatory hearings to conform these procedures to applicable provisions of the Safe Medical Devices Act of 1990 (the SMDA).

Its publication promotes clarity and certainty to regulated industry and thus fosters economic growth by correcting the provisions in FDA's existing regulations to conform them to the now-governing statutory provisions.

EFFECTIVE DATE: January 11, 1993.

ADDRESSES: Submit written comments and information to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. General

The SMDA (Pub. L. 101-629) prescribes changes to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301-394), as amended, that improve the regulation of medical devices and strengthen the Medical Device Amendments of 1976 which established a comprehensive framework for the regulation of medical devices. This rule implements certain amendments by the SMDA to sections 510, 513, 514, 515, and 516 of the act (21 U.S.C. 360, 360c, 360d, 360e, and 360f) by amending FDA's existing regulations under these sections. These

sections contain requirements for premarket notification, premarket approval, classification of medical devices, procedures for developing performance standards for medical devices, and procedures for banning devices. This rule also conforms FDA's lists of actions subject to regulatory hearings to conform them to the SMDA.

A. Amendments to 21 CFR Part 807—Establishment Registration and Device Listing for Manufacturers of Devices

New § 807.100 *FDA action on premarket notification* is being added to describe FDA's procedure for reviewing premarket notifications submitted pursuant to section 510(k) of the act and the criteria that will be applied in determining whether a device is substantially equivalent to a predicate device. These criteria were set forth in section 12 of the SMDA. Section 807.100 provides that a device will be found substantially equivalent to a predicate device if the device has the same intended use and technological characteristics as the predicate or, if it has different technological characteristics, the device does not raise different questions of safety and effectiveness than the predicate device and the performance data demonstrate equivalence.

This section also codifies in § 807.100 the requirement in section 12 of the SMDA that a device for which a premarket notification is pending may not be marketed until the applicant receives an order from FDA declaring the device to be substantially equivalent.

B. Amendment to 21 CFR Part 814—Premarket Approval of Medical Devices

Section 814.44 *Procedures for review of a PMA* (21 CFR 814.44) has been amended to incorporate the provisions in section 18 of the SMDA, which grant FDA discretion to determine whether or not to refer a premarket approval application (PMA) to an advisory panel when FDA finds that the information in the application substantially duplicates information which has previously been reviewed by a panel.

C. Amendments to 21 CFR Part 860—Medical Device Classification Procedures

Section 860.3 *Definitions* (21 CFR 860.3) has been amended to incorporate the new definition of class II from section 5 of the SMDA. Previously, a class II device was one for which class I controls were insufficient but for which a performance standard could be developed to provide reasonable assurance of safety and effectiveness. Under the SMDA, class II is no longer limited to devices for which a performance standard could be developed to provide reasonable assurance of safety and effectiveness. Class II devices are now defined as devices which may be regulated by "special controls." Special controls include, in addition to performance standards, controls such as postmarket surveillance, patient registries, guidelines, recommendations, and other appropriate actions deemed necessary by FDA. The agency will identify specific special controls that it determines are necessary to provide adequate assurance of safety and effectiveness for class II devices that are life-supporting or life-sustaining. Because class II devices are no longer exclusively regulated by performance standards, the definitions of class I and class III, which referred to "performance standards," also have been revised to reflect the new definition of a class II device.

Section 860.84 *Classification procedures for "old devices"* has been amended to permit the use of special controls, and not performance standards alone, in regulating class II devices.

Section 860.120 *General* allows FDA to initiate reclassification of a device classified into class III under sections 513(f) and 520(l) of the act (21 U.S.C. 360c(f) and 360j(l)) as provided in the SMDA.

Section 860.130 *General procedures under section 513(e) of the act* allows the Commissioner of Food and Drugs (the Commissioner) to initiate reclassification of a device from class III into class II or class I under section 513(e) of the act as amended by the SMDA if the agency determines that the controls provided for those classes provide reasonable assurance of the safety and effectiveness of the device.

Section 860.134 *Procedures for "new devices" under section 513(f) of the act and reclassification of certain devices* has been amended to codify FDA's discretionary authority, under section 18 of the SMDA, to refer reclassification petitions containing no deficiencies to classification panels for further review and recommendation.

D. Amendments to 21 CFR Part 861—Procedures for Performance Standards Development

Part 861 has been amended to incorporate the concept of special controls for class II devices and simplify the procedures for establishing performance standards for medical devices, as provided in the SMDA.

Section 861.1 *Purpose and scope* (21 CFR 861.1) is amended to provide that FDA may determine that a performance standard is an appropriate special control to provide reasonable assurance of the safety and effectiveness of the device.

Section 861.20 *Summary of standards establishment process* has been amended to change the requirement of publishing separate consecutive notices in the Federal Register to: (1) Request reclassification of a device, and (2) invite persons to submit existing standards as a proposed standard prior to initiating development of a performance standard. The amendment provides that FDA will publish a single notice of proposed rulemaking for the establishment, amendment, or revocation of a performance standard for a device. That notice will include appropriate justification for the proposed action, and will invite the public to submit requests for changes in classification or to submit existing performance standards for consideration. If, in response to the notice, FDA receives a request to change the classification of the device, FDA will not publish an order in the Federal Register, but will consult with the appropriate panel under § 860.125, and either deny the request or initiate a change in classification. The heading and text of § 861.20 are revised to reflect the "establishment" rather than "development" process for a performance standard.

Section 861.22 *Invitation for a standard* has been removed. FDA will determine the necessity of and appropriate method for development of a performance standard and will publish a notice in the Federal Register when this option is exercised. Sections 861.26, 861.28, and 861.32, which described the requirements for offers and acceptance of offers to develop a performance standard, have been removed, as has been the portion of § 861.30 that referred to offers to develop standards.

Section 861.36 *Effective dates* has been amended to allow FDA to declare a proposed regulation amending a standard to be effective upon publication without a prior formal hearing if the agency determines that doing so is in the interest of the public health. An amendment to § 861.38 *Standards advisory committees* allows FDA to determine whether or not a citizen petition, submitted in response to a proposed regulation to establish, amend, or revoke a performance standard, demonstrates good cause sufficient to justify referral of the

proposed action to an advisory committee.

E. Amendments to 21 CFR Part 895—Banned Devices

Section 895.20 *General* (21 CFR 895.20) and § 895.21 *Procedures for banning a device* have been amended to allow the Commissioner the option to initiate a proceeding to ban a device, based upon available data and information, without first consulting with a device panel and providing an opportunity for an informal hearing, as provided in section 18(d) of the SMDA.

Section 895.30 *Special effective date* has been amended as provided in the SMDA to allow the Commissioner to issue a proposed regulation banning a device, effective upon publication in the **Federal Register**, without providing an opportunity for an informal hearing under 21 CFR part 16 if the Commissioner finds that continued marketing of the device presents a substantial deception or an unreasonable and substantial risk of illness or injury.

F. Amendments to 21 CFR Part 16—Regulatory Hearing Before the Food and Drug Administration

FDA is revising the list of proceedings subject to part 16 (21 CFR part 16) found in § 16.1(b)(1), to conform the list to the SMDA. In the **Federal Register** of August 20, 1976 (41 FR 35282 at 35289), FDA interpreted the "informal hearing" provision of the Medical Device Amendments of 1976 as the "functional equivalent of FDA's regulatory hearing" (see part 16). Two provisions of the SMDA that increased FDA's postmarket control authority included opportunities for an informal hearing. Section 515(e)(3) of the act as amended by the SMDA authorizes FDA to temporarily suspend approval of a PMA if, after opportunity for an informal hearing, the agency determines that there is a reasonable probability that the continued distribution of a device under an approved application would cause serious, adverse health consequences or death. New section 518(e) of the act (21 U.S.C. 360h(e)) as amended by the SMDA authorizes FDA to issue a cease distribution and notification order and to amend the order to require a recall of a medical device intended for human use if, after opportunity for an informal nearing, the agency determines that there is a reasonable probability that the device would cause serious, adverse health consequences or death.

Therefore, FDA is amending § 16.1(b)(1) by adding sections 515(e)(3) and 518(e) of the act to the list of statutory provisions for which regulatory hearings under part 16 are available. When FDA issues separate regulations on procedures for temporary suspension of approval of a PMA or mandatory device recalls, the agency may modify the applicability of certain provisions to those specific procedures in part 16 to the extent needed to take into account statutory or other timeframes.

FDA is also deleting the statement in § 16.1(b)(1) which states that the part 16 procedures apply to "Section 514(g)(4)(B) of the act relating to an action to make a device performance standard effective upon publication." The SMDA amended section 514 of the act by redesignating subsection (g) as subsection (b) and by deleting the phrase "after affording all interested persons an opportunity for an informal hearing."

Similarly, FDA is deleting the statement in § 16.1(b)(1) which states that the part 16 procedures apply to "Section 520(l)(2) of the act relating to approval or denial of a petition to reclassify a class III devices that FDA previously had regarded as a new drug (see § 860.136)." The SMDA amended section 520(l)(2) of the act by deleting "and after affording the petitioner an opportunity for an informal hearing."

In addition, FDA is revising § 16.5 *Inapplicability and limited applicability*, to clarify that, although part 16 generally does not apply to recalls, this part, as a result of the SMDA, does apply to mandatory recalls of medical devices intended for human use.

II. Notice and Comment

This rule contains no new substantive provisions, but rather simply incorporates applicable requirements of the SMDA into existing medical device regulations. The Commissioner of Food and Drugs therefore finds good cause for issuing this rule without notice and comment because such a procedure is unnecessary, and delay in correcting agency regulations that no longer reflect the governing statutory provisions would be contrary to the public interest (5 U.S.C. 553(b)(3)(B)). In addition, because this rule pertains to agency procedure, it is exempt from the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)). The agency is, nevertheless, inviting comments on the rule under § 10.40(e)(1) (21 CFR 10.40(e)(1)) of its regulations.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency has examined the economic impact of this rule and has determined that it does not require a regulatory impact analysis as specified in Executive Order 12291. The rule merely codifies applicable statutory requirements imposed by the SMDA. FDA believes that the cost imposed by these requirements is minimal. Therefore, the agency concludes that the rule is not a major rule as defined in Executive Order 12291. This final rule, published without a proposed rule, is exempt from the Regulatory Flexibility Act (Pub. L. 96–354). The rule does not impose any paperwork requirements.

V. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments will be considered to determine whether to amend or revoke this rule. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

21 CFR Part 861

Administrative practice and procedure, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 16, 807, 814, 860, 861, and 895 are amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 28 U.S.C. 2112.

2. Section 16.1 is amended by revising paragraph (b)(1) to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(1) Statutory provisions:

Section 304(g) of the act relating to the administrative detention of devices (see § 800.55(g) of this chapter).

Section 515(e)(1) of the act relating to the proposed withdrawal of approval of a device premarket approval application.

Section 515(e)(3) of the act relating to the temporary suspension of approval of a premarket approval application.

Section 515(f)(6) of the act relating to a proposed order revoking a device product development protocol or declaring a protocol not completed.

Section 515(f)(7) of the act relating to revocation of a notice of completion of a product development protocol.

Section 516 of the act relating to a proposed banned device regulations (see § 895.21(d) of this chapter).

Section 518(b) of the act relating to a determination that a device is subject to a repair, replacement, or refund order or that a correction plan, or revised correction plan, submitted by a manufacturer, importer, or distributor is inadequate.

Section 518(e) of the act relating to a cease distribution and notification order or mandatory recall order concerning a medical device for human use.

Section 520(f)(2)(D) of the act relating to exemptions or variances from device current good manufacturing practice requirements (see § 820.1(d)).

Section 520(g)(4) and (g)(5) of the act relating to disapproval and withdrawal of approval of an application from an investigational device exemption (see §§ 812.19(c), 812.30(c), 813.30(d), and 813.35(c) of this chapter).

* * * * *

3. Section 16.5 is amended by revising paragraph (a)(3) to read as follows:

§ 16.5 Inapplicability and limited applicability.

(a) * * *

(3) Factory inspections, recalls (except mandatory recalls of medical devices intended for human use), regulatory letters, and similar compliance activities related to law enforcement.

* * * * *

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS OF DEVICES

4. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 371, 374).

5. New § 807.100 is added to subpart E to read as follows:

§ 807.100 FDA action on a premarket notification.

(a) After review of a premarket notification, FDA will:

(1) Issue an order declaring the device to be substantially equivalent to a legally marketed predicate device;

(2) Issue an order declaring the device to be not substantially equivalent to any legally marketed predicate device;

(3) Request additional information; or

(4) Advise the applicant that the premarket notification is not required.

Until the applicant receives an order declaring a device substantially equivalent, the applicant may not proceed to market the device.

(b) FDA will determine that a device is substantially equivalent to a predicate device using the following criteria:

(1) The device has the same intended use as the predicate device; and

(2) The device:

(i) Has the same technological characteristics as the predicate device; or

(ii)(A) Has different technological characteristics, such as a significant change in the materials, design, energy source, or other features of the device from those of the predicate device;

(B) The data submitted establishes that the device is substantially equivalent to the predicate device and contains information, including clinical data if deemed necessary by the Commissioner, that demonstrates that the device is as safe and as effective as a legally marketed device; and

(C) Does not raise different questions of safety and effectiveness than the predicate device.

(3) The predicate device has not been removed from the market at the initiative of the Commissioner of Food and Drugs or has not been determined to be misbranded or adulterated by a judicial order.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

6. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 706, 708, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379, 381).

7. Section 814.44 is amended by revising paragraph (a) to read as follows:

§ 814.44 Procedures for review of a PMA.

(a) FDA will begin substantive review of a PMA after the PMA is accepted for filing under § 814.42. FDA may refer the PMA to a panel on its own initiative, and will do so upon request of an applicant, unless FDA determines that the application substantially duplicates information previously reviewed by a panel. If FDA refers an application to a panel, FDA will forward the PMA, or relevant portions thereof, to each member of the appropriate FDA panel for review. During the review process, FDA may communicate with the applicant as set forth under § 814.37(b), or with a panel to respond to questions that may be posed by panel members or to provide additional information to the panel. FDA will maintain a record of all communications with the applicant and with the panel.

* * * * *

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

8. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: Secs. 513, 514, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374).

9. Section 860.3 is amended in paragraph (c)(1) by removing the phrase "a performance standard to provide such assurance, but which" and adding in its place "special controls to provide such assurance, but the device", and by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 860.3 Definitions.

* * * * *

(c) * * *

(2) *Class II* means the class of devices that is or eventually will be subject to special controls. A device is in class II if general controls alone are insufficient to provide reasonable assurance of its safety and effectiveness and there is sufficient information to establish special controls, including the

promulgation of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines (including guidelines for the submission of clinical data in premarket notification submissions in accordance with section 510(k) of the act), recommendations, and other appropriate actions as the Commissioner deems necessary to provide such assurance. For a device that is purported or represented to be for use in supporting or sustaining human life, the Commissioner shall examine and identify the special controls, if any, that are necessary to provide adequate assurance of safety and effectiveness and describe how such controls provide such assurance.

(3) *Class III* means the class of devices for which premarket approval is or will be required in accordance with section 515 of the act. A device is in class III if insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of its safety and effectiveness or that application of special controls described in paragraph (c)(2) of this section would provide such assurance and if, in addition, the device is life-supporting or life-sustaining, or for a use which is of substantial importance in preventing impairment of human health, or if the device presents a potential unreasonable risk of illness or injury.

* * * * *

§ 860.84 [Amended]

10. Section 860.84 *Classification procedures for "old devices"* is amended in paragraph (a) by removing the parenthetical phrase "(performance standards)" and adding in its place "(special controls)".

11. Section 860.120 is amended in paragraph (c) by adding a sentence at the end of the paragraph to read as follows:

§ 860.120 General.

* * * * *

(c) * * * The Commissioner may initiate the reclassification of a device classified into class III under sections 513(f) and 520(l) of the act.

* * * * *

12. Section 860.130 is amended in paragraphs (e) and (f) by removing the words "performance standard" and adding in their place "special control", by redesignating paragraphs (c) through (f) as paragraphs (d) through (g), and by adding a new paragraph (c) to read as follows:

§ 860.130 General procedures under section 513(a) of the act.

* * * * *

(c) By regulation promulgated under this section, the Commissioner may change the classification from class III into:

(1) Class II if the Commissioner determines that special controls in addition to general controls would provide reasonable assurance of the safety and effectiveness of the device and there is sufficient information to establish special controls to provide assurance; or

(2) Class I if the Commissioner determines that general controls would provide reasonable assurance of the safety and effectiveness of the device.

* * * * *

13. Section 860.134 is amended by revising the section heading, the introductory text of paragraph (a), and paragraph (b)(3) to read as follows:

§ 860.134 Procedures for "new devices" under section 513(f) of the act and reclassification of certain devices.

(a) Section 513(f)(2) of the act applies to proceedings for reclassification of a device currently in class III by operation of section 513(f)(1) of the act. This category includes any device that is to be first introduced or delivered for introduction into interstate commerce for commercial distribution after May 28, 1976, unless:

* * * * *

(b) * * *

(3) After determining that the petition contains no deficiencies precluding a decision on it, the Commissioner may for good cause shown refer the petition to the appropriate classification panel for its review and recommendation whether to approve or deny the petition.

* * * * *

PART 861—PROCEDURES FOR PERFORMANCE STANDARDS DEVELOPMENT

14. The authority citation for 21 CFR part 861 is revised to read as follows:

Authority: Secs. 501, 502, 513, 514, 530–542, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360c, 360d, 360gg–360ss, 371, 374); secs. 351, 361 of the Public Health Service Act (42 U.S.C. 262, 264).

15. Section 861.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 861.1 Purpose and scope.

(a) This part implements section 514 of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the establishment, amendment, and revocation of performance standards applicable to devices intended for human use.

(b) The Food and Drug Administration may determine that a performance standard, as described under special controls for class II devices in § 860.7(b) of this chapter, is necessary to provide reasonable assurance of the safety and effectiveness of the device. Performance standards may be established for:

(1) A class II device;

(2) A class III device which, upon the effective date of the standard, is reclassified into class II; and

(3) A class III device, as a condition to premarket approval under section 515 of the act, to reduce or eliminate a risk or risks associated with such device.

* * * * *

16. Section 861.20 is revised to read as follows:

§ 861.20 Summary of standards establishment process.

The procedure by which a performance standard for a device may be established, amended, or revoked is as follows:

(a) The Food and Drug Administration (FDA) will publish in the **Federal Register** a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a device.

(1) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a device will:

(i) Set forth a finding, with supporting justification, that the performance standard is appropriate and necessary to provide reasonable assurance of the safety and effectiveness of the device;

(ii) Set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate;

(iii) Invite interested persons to submit to the Food and Drug Administration, within 30 days of the publication of the notice, requests for changes in the classification of the device pursuant to § 860.132 of this chapter, based on new information relevant to the classification; and

(iv) Invite interested persons to submit an existing performance standard for the device, including a draft or proposed performance standard, for consideration by the Commissioner of Food and Drugs.

(2) A notice of proposed rulemaking for the revocation of a performance standard will set forth a finding, with supporting justification, that the performance standard is no longer

necessary to provide reasonable assurance of the safety and effectiveness of a device.

(b) A notice under this section will provide for a comment period of not less than 60 days.

(c) If, after publication of a notice under paragraph (a) of this section, FDA receives a request to change the classification of the device, FDA will, within 60 days of the publication of the notice and after consultation with the appropriate panel under § 860.125 of this chapter, either deny the request or give notice of its intent to initiate a change in the classification under § 860.130.

(d) If FDA initiates a rulemaking proceeding under paragraph (a) of this section, FDA will:

(1) Complete the proceeding and establish the performance standard for the device in accordance with this part and § 10.40 of this chapter; or

(2) Terminate the proceeding by publishing in the **Federal Register** a notice announcing such termination and the reasons therefor and, unless the proceeding is terminated because the device is a banned device, initiate a proceeding in accordance with section 513(e) of the act to reclassify the device; or

(3) Take other appropriate action.

§ 861.22 [Removed]

17. Section 861.22 *Invitation for a standard* is removed from subpart B.

18. Section 861.24 is amended by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 861.24 Existing standard as a proposed standard.

(a) The Food and Drug Administration may accept an existing standard or a proposed or draft standard if it includes:

* * * * *

(b) The Food and Drug Administration will publish a notice in the **Federal Register** stating either that it has accepted, or accepted with modification, as a proposed standard, an existing standard or one that has been developed, or that an existing standard is not acceptable, together with the reasons therefor.

§ 861.26 [Removed]

19. Section 861.26 *Offer to develop a proposed standard* is removed from subpart B.

§ 861.28 [Removed]

20. Section 861.28 *Acceptance of offer to develop a standard* is removed from subpart B.

21. Section 861.30 is revised to read as follows:

§ 861.30 Development of standards.

The Food and Drug Administration (FDA), while engaged in the development of a proposed standard under this section will:

(a) Support its proposed performance standard by such test data or other documents or materials as may reasonably be required;

(b) Provide interested persons an opportunity to participate in the development of the standard by accepting comments and, where appropriate, holding public meetings on issues relating to development of the standard. Notice of the opportunity to participate in the development of the standard will be furnished in a manner reasonably calculated to reach the majority of persons interested in the development of the standard. This requirement shall be satisfied by publishing such a notice in the **Federal Register**. Whenever it is appropriate, FDA will use the **Federal Register** to make announcements about the standard development process of standard developers other than Federal agencies.

(c) Maintain records disclosing the course of development of the proposed standard, the comments and other information submitted by a person in connection with such development (including comments and information regarding the need for a standard), and such other information as may be required to evaluate the standard.

§ 861.32 [Removed]

22. Section 861.32 *Contribution by the Food and Drug Administration to the costs of developing a proposed standard* is removed from subpart B.

§ 861.36 [Amended]

23. Section 861.36 *Effective dates* is amended in paragraph (c) by removing the words ", after affording interested persons an opportunity for an informal hearing conducted in accordance with Part 16 of this chapter,".

24. Section 861.38 is amended by revising paragraph (b)(2) to read as follows:

§ 861.38 Standards advisory committees.

* * * * *

(b) * * *

(2) Requested by an interested person, in the form of a citizen petition in accordance with § 10.30 of this chapter, which is made within the period provided for comment on the proposed regulation and which demonstrates good cause for referral.

* * * * *

PART 895—BANNED DEVICES

25. The authority citation for 21 CFR part 895 continues to read as follows:

Authority: Secs. 502, 516, 518, 519, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360f, 360h, 360i, 371).

§ 895.20 [Amended]

26. Section 895.20 *General* is amended by removing the words "and after consultation with the appropriate device panel,".

27. Section 895.21 is amended by revising paragraphs (b), (d)(4), and (d)(8) to read as follows:

§ 895.21 Procedures for banning a device.

* * * * *

(b) Before initiating a proceeding to make a device a banned device, the Commissioner of Food and Drugs (the Commissioner) may consult with the panel established under section 513 of the act that has expertise with respect to the type of device under consideration. The consultation with the panel may occur at a regular or specially scheduled panel meeting or may be accomplished by correspondence or telephone conversation with panel members. The Commissioner may request that the panel submit in writing any advice on the device under consideration. The Commissioner will record in written memoranda any oral communications with a panel or its members.

* * * * *

(d) * * *

(4) The consultation with the panel, if any, under paragraph (b) of this section.

* * * * *

(8) Any other data and information that the Commissioner believes are pertinent to the proceeding. The notice will afford all interested persons an opportunity to submit written comments within 30 days after the date of publication of the proposed regulation. All nonconfidential information upon which the proposed finding is based, including the recommendations of the panel, will be available for public review in the Dockets Management Branch, Food and Drug Administration.

* * * * *

§ 895.30 [Amended]

28. Section 895.30 *Special effective date* is amended in paragraph (c) by removing the words "and will provide an opportunity for an informal hearing in accordance with Part 16 of this

chapter", and in paragraph (d) by removing the words "the hearing, if any, and after".

Dated: December 1, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-29918 Filed 12-9-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 170

[CGD 89-037]

RIN 2115-AD33

Stability Design and Operational Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: The Coast Guard announces a delay of the effective date of 46 CFR 170.210 in the stability design and operational regulations published on September 11, 1992 at 57 FR 41812. These regulations become effective on December 10, 1992. The effective date of this section is being delayed indefinitely to allow further investigation of the costs associated with the performance of the periodic lightweight survey requirements in 46 CFR 170.210.

EFFECTIVE DATE: As of December 10, 1992, the effective date of 46 CFR 170.210 in the final rule published at 57 FR 41812 is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Ms. P.L. Carrigan, Marine Technical and Hazardous Materials Division, (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this notice are Ms. Patricia L. Carrigan, Project Manager, Office of Marine Safety, Security and Environmental Protection and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On February 13, 1990, the Coast Guard published a notice of proposed rulemaking entitled Stability Design and Operational Regulations in the **Federal Register** (55 FR 5120).

During the NPRM 60-day comment period, the Coast Guard received 28 letters commenting on the proposal. A public hearing was requested in only one of the comment letters and the Coast Guard decided that a public hearing was not necessary because the concerns addressed in this letter were resolved in the final rule. Only four of the 28 letters received included comments on specific costs associated with performance of the proposed periodic lightweight surveys. Two of the cost estimates were associated with small passenger vessels, one addressed offshore supply vessels and the final one addressed an ocean-going cargo ship. Where applicable, the economic assessment for the proposal was adjusted in answer to these comments.

On September 11, 1992, the Coast Guard published a final rule entitled Stability Design and Operational Regulations in the **Federal Register** (57 FR 41812).

Reason for Delay of Effective Date

Following publication of the final rule, five letters have been sent to the Coast Guard questioning the cost and applicability of the periodic lightweight surveys in 46 CFR 170.210 to mobile offshore drilling units (MODUs) and small passenger vessels. These issues, as related to MODUs, were again raised during the National Offshore Safety Advisory Committee meeting on December 1, 1992, at New Orleans, LA.

As a result of the information received, the Coast Guard has decided to delay the effective date of 46 CFR 170.210. A notice to request the submission of specific information and comments on the issues will be published in the **Federal Register** in the near future. After further investigation of this issue, the Coast Guard expects to publish either a supplemental notice of proposed rulemaking or a new effective date for this section.

Dated: December 8, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

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National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-9; Notice 6]

RIN 2127-AA12

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final rule.

SUMMARY: This notice requires that trailers which have an overall width of 80 inches or more and a GVWR of more than 10,000 pounds, except trailers manufactured exclusively for use as offices or dwellings, be equipped on the sides and rear with means for increasing their conspicuity. This will enhance the likelihood of their detection at night and under other conditions of reduced visibility. Trailer manufacturers will be given a choice of installing either retroreflective sheeting or reflex reflectors. Under the rule, manufacturers of retroreflective sheeting or reflectors will certify compliance of their product with Standard No. 108, whether for use as original or as replacement equipment. NHTSA estimates that the incidence of accidents involving trailers struck in the side or rear by other vehicles could be reduced 15 percent by enhancing conspicuity as required by this rule.

DATES: The effective date for the final rule is December 1, 1993. Petitions for reconsideration of the rule must be received not later than 30 days after the rule is published in the **Federal Register.**

ADDRESSES: Petitions for reconsideration should refer to Docket 80-9; Notice 6, and be submitted to: Administrator, Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202-366-6346).

SUPPLEMENTARY INFORMATION: On December 4, 1991, NHTSA published a notice of proposed rulemaking (NPRM) addressed to making large trailers more visible on the road (56 FR 63474). The NPRM represented a tentative and partial solution to a safety problem that has concerned NHTSA for some years: The need to reduce the incidence and severity of collisions with large trailers during conditions of darkness or reduced visibility. As early as May 27, 1980, the agency showed its interest in enhanced conspicuity as a possible solution. NHTSA issued an ANPRM (45 FR 35405) requesting comments on methods to reduce such collisions by improving the conspicuity of large commercial vehicles. Forty-two comments were received, most of which favored the concept.

NHTSA Fleet Study

Between 1980 and 1985, the agency conducted a fleet study in which retroreflective material was placed on truck-van trailer combinations in a manner designed to increase their

conspicuity. The treatment of trailers consisted of outlining the rear perimeter, and delineating the lower side. No reflectorized mud flaps were used. The contractor concluded that truck-trailer combinations equipped with this material were involved in 15 percent fewer crashes (in which a trailer was struck in the side or rear) than combinations lacking the material.

1987 Request for Comments

The agency published a Notice of Request for Comments on September 18, 1987 (52 FR 35345) concerning the use of reflective material to increase the conspicuity of large trucks and trailers. The Notice recited the results of the fleet study and sought comments on the test results as well as the experiences others may have had with the use of reflective material to enhance conspicuity. Thirty-seven comments were received, most agreeing that an effectiveness of 15 percent could be expected when all large vehicles were so equipped with reflective material.

The Motor Carrier Safety Act of 1990

In response to the NHTSA fleet study, Congress included in the Motor Carrier Safety Act of 1990 (Sec. 15, Pub. L. 101–500) a provision directing the Secretary of Transportation "to initiate a rulemaking proceeding on the need to adopt methods for making trucks or any category of trucks more visible to motorists * * *" not later than February 3, 1991, and to complete the rulemaking proceeding not later than November 3, 1992.

The 1991 NPRM

NHTSA regards its 1991 NPRM, which is part of a rulemaking proceeding begun before the enactment of the Motor Carrier Safety Act of 1990, as responsive to the directive in that Act, and this notice as the completion of the rulemaking proceeding mandated by Congress. Under the NPRM, heavy trailers would be required to be equipped with means for increasing their conspicuity because the agency tentatively concluded that this would be an effective method to reduce the incidence and severity of these crashes. The proposal did not apply to large trucks without trailers, since NHTSA's FARS (Fatal Accident Reporting System) accident data for 1989 indicated a much lower rate of conspicuity-related accidents for large trucks alone than for large truck-trailer combinations. The reader is referred to the NPRM for a further discussion of the data.

Eighty-three comments were received in response to the NPRM, representing the views of manufacturers of vehicles, lamps, reflectors, and retroreflective sheeting; commercial and private fleet operators; the Teamsters union; States; insurance companies; and citizens. A Summary of Comments has been prepared and is available for inspection in the docket. Details of the NPRM, issues raised by the comments, and NHTSA's responses are discussed below. NHTSA has incorporated recommendations on modifications to the proposed retroreflective brightness values in a Supplementary Notice of Proposed Rulemaking (SNPRM) that is being prepared for publication. The SNPRM will also incorporate proposals regarding substitution of the retroreflective materials required by this notice for existing reflex reflectors.

Effectiveness of Conspicuity Treatment

There was near unanimity among the commenters that a retroreflective conspicuity treatment would prevent accidents and save lives. Most of the comments were directed towards the details of implementing conspicuity treatment rather than questioning its efficacy. The only commenter who questioned the possible effectiveness was UPS, principally because neither it nor its insurers were aware of any data concerning conspicuity-related accidents.

However, other commenters reported specific data on conspicuity-related accidents and their experiences with retroreflective treatments. American Inter-Fidelity Exchange, an insurer, began in August 1990 to require 3M diamond grade material on all insured platform trailers. In the 17-month period before August 1990, it had $2 million in claims with injuries and fatalities in conspicuity-related accidents. In the 18-month period subsequent to July 1990, it experienced no costs, no fatalities and few injuries in conspicuity-related accidents. The insured fleet numbered 3,500 flat bed trailers, and the miles traveled totalled 3.5 million. Landstar commented that it had retrofitted 6,500 trailers of a fleet of 9,000, and had experienced a 50 percent reduction in underride accidents, and a 90 percent reduction in the cost of an average underride accident claim. American Trucking Associations (ATA) reported on a program to assess the effectiveness of detectability where a conspicuity treatment was applied to 11,000 trailers. It found that the fleet experienced no conspicuity-related accidents in the year since the first application. The effectiveness of conspicuity treatment in daytime remains subject to question. While the agency is not assuming that there is a daytime benefit, it believes that the overall effectiveness of retroreflective conspicuity treatment is clearly demonstrated by the experience of these commenters.

Types of Trailers To Be Regulated

Since the various types of trailers differ from one another in their configuration, NHTSA tentatively concluded that the method of compliance that may be appropriate for one type may not be for another. For example, van-type trailers have distinct rectangular side and rear perimeters to which conspicuity enhancing materials could be easily applied, while tank-type, platform trailers, or others do not. In order to ensure that the requirements would be practicable for each type of trailer to which they apply, the agency developed and proposed definitions for four types of trailers: "Dump," "Flatbed," "Tank," and "Van." The requirements proposed for these types differed somewhat based on the differences in their configurations. Noting that these trailer types account for 95 percent of the miles traveled by heavy commercial trailers, NHTSA sought comment on whether, for the sake of practicability, the remaining 5 percent of trailers (those not fitting any of the four proposed definitions) should be excluded from compliance with the conspicuity treatment requirements. Additionally, NHTSA sought comment on the practicability of applying conspicuity treatment to car carriers, heavy haulers, and intermodal trailers.

Twenty-four general commenters wanted the final rule to include all commercial trailers without exceptions. They argued that it is preferable to allow sufficient latitude in the spacing and location of reflective materials that would facilitate compliance by all trailer types, than to exclude some specific type on the basis of practicability.

However, a number of other commenters requested that specific trailer types be excluded from the final rule. These trailer types were container chassis, automobile transporter, side-loading beverage, garbage, shiny aluminum, stainless van, and house and recreational.

NHTSA considered each of these trailer types. Container chassis trailers, and garbage trailers designed for carrying containers are motor vehicles, for purposes of the lighting standards of NHTSA and the Federal Highway Administration (FHWA). The sides of these types of trailers are easily visible, even if low. Thus, the agency sees no reason to exclude container chassis trailers or garbage container trailers from the final rule. Similarly,

reflectorization of frame members appears to be a practical solution for trailers with bodies routinely covered by tarps, such as some platform trailers.

Some commenters called for marking of containers because a container mounted on a container chassis resembles a van trailer. However, a commenter representing the container industry pointed out that the marking of containers is subject to international treaty and that containers equipped with conspicuity material would be illegal to transport in some countries. Accordingly, NHTSA has chosen not to require marking of containers.

Commenters recommending an exclusion for car transporters pointed out that the transporter side rails may be lower than 15 inches and that the vehicles transported are equipped with side and rear reflex reflectors. However, the reflectors on cars being transported on the carrier would not provide the trailer with either a recognizable pattern or a sufficient return of light to satisfy the intent of the rule. NHTSA has chosen to allow greater flexibility in the minimum mounting height of retroreflective materials so that the side rails of such vehicles may be equipped with conspicuity materials, if there is no practical alternative.

With respect to side loading beverage trailers, the rationale for exclusion appears to be based on the need to mount retroreflective materials low enough to clear the doors. NHTSA believes that the minimum mounting height adopted by this rule will be low enough to clear the doors, but, in any event, neither the NPRM nor the final rule prohibit application of conspicuity treatment to doors.

Finally, the agency has considered the request to exclude travel and house trailers. NHTSA long ago relinquished jurisdiction over mobile homes as trailers to the Department of Housing and Urban Development. However, the agency does regulate travel trailers. They are low mileage vehicles that are generally parked off-road at night, either on private property or trailer parks. NHTSA has concluded that to exclude this type of large trailer from the conspicuity requirement would not have an adverse effect upon safety. Accordingly, S5.7 will specify that the rule applies to all large trailers except those that are designed exclusively for living or office use.

The National Marine Manufacturers Association commented that it does not consider its small-boat industry to be affected by this rulemaking action because boats weighing 10,000 pounds or more are normally carried by commercial rather than recreational trailers. This is not always the case. Boats weighing less than 10,000 pounds may be carried by recreational trailers with GVWRs over 10,000 pounds. Any boat trailer whose GVWR exceeds 10,000 pounds will be subject to this rule, whether the trailer is commercial or recreational.

There were also recommendations that trucks and truck tractors be required to have conspicuity treatments. NHTSA restricted the NPRM to trailers to assure its cost effectiveness, because it appeared that the vast majority of fatal accidents in which trucks are struck at night involve tractor trailer combinations. The argument for including truck tractors is that they are not required to be equipped with rear mounted turn signals or rear identification lamps, and their tail/stop lamps are closer together than on other vehicles. Hence, from the rear at least, they are not a conspicuous presence on the road at night. Preliminary information available from FARS and General Estimates System (GES) indicate that there is a far higher accident involvement rate at night for tractors than for trucks. The foregoing suggests that a rear conspicuity treatment for truck tractors may provide safety benefits. The agency is considering the issue for possible inclusion in a future rulemaking.

Manufacturer Choice of Type of Retroreflective Materials

NHTSA tentatively decided in the NPRM that manufacturers of heavy trailers should be required to equip them with one of two proposed types of retroreflective materials. Compliance would be achieved using either retroreflective sheeting, or an array of reflex reflectors which reflects the same amount of light as the retroreflective sheeting. Commenters supported the option. As explained below, the final rule allows manufacturers the choice of using retroreflective sheeting or reflex reflectors.

Performance and Location of Retroreflective Materials

NHTSA proposed, as alternatives, two sets of requirements regarding pattern, color and location for placing retroreflective sheeting on the side and rear of trailers. One alternative was the pattern tested in the fleet study, and the other was a modification of the pattern that was expected to increase visibility of the trailer side. Each alternative used about the same amount of retroreflective sheeting, so that cost was not an issue. However, the second alternative distributed it in a way that was more generally applicable to all trailers, avoided setting higher standards for van trailers, and promoted uniformity of appearance. Under either alternative, the material would not be required to be affixed to discontinuous surfaces on the trailer body, and on items such as door hinges, and lamp bodies. While the agency proposed two specific configurations of conspicuity treatment, it specifically sought comment on whether variations of these alternatives would be more appropriate for a final rule, or whether there were other patterns more appropriate for conspicuity that should be proposed before a final rule was adopted. NHTSA also asked that commenters discuss the cost-effectiveness of each pattern, and provide support for their comments. The agency anticipated that the final rule would specify only one pattern, and not allow alternative treatments. Associated issues on which NHTSA requested comment were the appropriate level of retroreflective performance of the sheeting, the appropriate amount of sheeting used, whether the sheeting should be patterned, and the appropriate location of the sheeting, with respect to each of the alternatives.

Configuration of Retroreflective Sheeting

For its proposed Alternative 1, the agency chose a variation of the scheme used in the NHTSA fleet study. Alternative 1 consisted of a 2-inch wide strip of retroreflective tape in alternating red and white rectangles delineating the lower side rails and outlining the rear perimeter of the trailer. The white rectangles would be 7 to 9 inches long, and the adjacent red rectangles would be 2 to 4 inches longer than the white rectangles. The material would be installed on the perimeter of the rear of van trailers, and on as much of the rear perimeter of other trailers as practicable. The material would also be installed horizontally on each side to indicate the length of the trailer. The length of the material mounted on the side inclusive of interruptions for discontinuous surfaces would be within 3 feet of the full length of the trailer. Allowing for interruptions due to trailer design, the total length of the individual horizontal strips provided would not be less than 85 percent of the length of the material were there no interruptions. The mounting height of the horizontal side strips would be restricted to the same height as other retroreflective devices currently required by Standard No. 108; the center would be not less than 15 inches above the road surface; and the upper edge not more than 60 inches above it. In the NPRM, NHTSA noted

that, because of their configuration, van trailers can best benefit from this type of treatment. The large, flat surfaces of van trailers give the observer a better basis for judgment of size, shape, and distance compared with a flat bed trailer having only a thin side or rear frame.

Alternative 2 redistributed the conspicuity materials by placing more on the sides of the trailers and using only a partial outline on the rear. In NHTSA's view, this approach would provide better depth perception to the drivers of vehicles approaching the trailer from the sides and create a more standardized treatment across trailer categories without requiring the use of more conspicuity materials. In addition, this approach would avoid "penalizing" van trailers which, because of their large and flat surfaces, would require, under Alternative 1, a greater use of reflective materials than other trailer types. Alternative 2 would provide slightly better side recognition distance than Alternative 1, and identical rear recognition distance, as demonstrated by laboratory and field results from an ongoing University of Michigan Transportation Research Institute (UMTRI) research for NHTSA (Contract No. DTNH22–90–C–07017). Under both Alternative 1 and Alternative 2, red and white material would be required to be installed horizontally on each side to indicate the length of the trailer. However, on the rear, the only red and white material required by Alternative 2 would be at the base of the perimeter, rather than the entire perimeter as required by Alternative 1. In addition, Alternative 2 would require two vertical white strips 12 inches high and 2 inches wide, to indicate the width of the trailer, located within 12 inches of its full width. Similarly, two vertical white strips would be located on the side, as close to the front and rear as practicable, to indicate the full length of the trailer. In addition, the upper corners of the rear and both sides would be required to be marked with two intersecting pieces of white reflective sheeting, each 12 inches by 2 inches. On the rectangular sides and rear of a van trailer, the white strips, along with the red and white base strips, would mark the bottom and four corners of the sides and rear. However, under Alternative 2, the white strips could also be applied to trailers of irregular shape because they would not be required to form a continuous perimeter. White strips of sheeting would also be added to the vertical members of the rear underride protection equipment. Finally, white sheeting 36 inches long and not less than 2 inches high would be installed horizontally at the top center of the trailer sides.

After consideration of the comments, and for the reasons set forth below, NHTSA has decided to adopt the side conspicuity configuration of Alternative 1, and a rear conspicuity configuration similar to Alternative 2.

Alternative 1 was preferred by the U.S. Postal Service and Peterson Manufacturing. Alternative 2 was the choice of the National Private Truck Council, Idaho State Police, National Automobile Dealers Association, New Jersey Motor Vehicle Administration, Minnesota Department of Transportation, Wolf Technical Services, Dr. Rudolf Mortimer, Insurance Institute for Highway Safety, and Advocates for Highway & Auto Safety. Other commenters suggested combining elements of the two Alternatives. Many commenters desired discontinuous side striping to reduce material expense, to accommodate irregular surfaces and to simplify repair.

NHTSA believes that an effective configuration must identify the vehicle unambiguously as a trailer, and allow an estimate of its size and the closing distance to it. Given the decision to include all large trailers (except house trailers), practicability concerns require that the rule have enough flexibility to be applied to all trailers. The reduced detail of a more flexible rule creates a greater dependence on the common sense of trailer manufacturers to use materials in an effective way. The present widespread voluntary use of conspicuity materials well adapted to the structures of various types of trailers gives the agency confidence that a more flexible rule will be effective.

It is for this reason that NHTSA has chosen the side conspicuity treatment of Alternative 1 and a rear treatment similar to Alternative 2. The use of broken side stripes, with at least 50 percent of the length of the trailer covered, will make it practicable for ribbed trailers, and trailers with sides partially obscured by equipment, to conform. Under the rule, the distribution of spaces and material must be as uniform as practicable and indicate the full length and width of the trailer, but they may be arranged to fit the structure of the trailer. The colors must be placed in alternating sequence with no more than two-thirds of the material in one color.

Flexibility in the vertical location of stripes is necessary to allow lowboys, car carriers, and some tank trailers to comply. In order to promote uniformity without excluding trailer types, the stripes should be located for maximum visibility, thus the rule requires that they be as close as practicable to 4 feet above the road surface (the lower edge of the body of the great majority of trailers is about 4 feet above the road). Material may be placed on trailer doors. NHTSA recognizes that the location for maximum visibility on certain trailers may be the trailer frame.

The rear treatment of Alternative 2 is a good basis for a universal requirement. However, the treatment element for the underride device was the subject of both positive and negative comment. Objections were based on the potential for frequent damage that would cause trailers in use to fail inspections by the FHWA. NHTSA has observed that the horizontal bar of the underride device is less subject to docking impacts than the vertical bars because it is below most dock surfaces (and under a NHTSA proposal would be even lower). Therefore, the final rule requires retroreflective material to be applied to the horizontal device, instead of the vertical ones as proposed. NHTSA believes that the original conspicuity material should have a long useful life on a large number of trailers, especially if it is applied to a recessed surface. However, NHTSA recognizes that routine damage, as a practical matter, may be unavoidable for some trailers as a consequence of their particular use. Therefore, the FHWA will consider the exclusion of conspicuity treatment from the rear underride device in any future rulemaking concerning trailer conspicuity requirements for vehicles subject to 49 CFR part 393 *Parts and Accessories Necessary for Safe Operation*, and 49 CFR part 396 *Inspection and Maintenance*.

The rule requires conspicuity treatment of the upper corners where they exist. For example, platform trailers are required by the Motor Carrier Safety regulations (49 CFR 393.106) to have a front bulkhead, which can carry the upper corner treatment. The rear stripe of material will be continuous across the rear. To harmonize with Motor Carrier Safety regulations (49 CFR 323.26), a 3-inch spacing between white material and rear lamps is required (but red material may be used adjacent to lamps to create a full width stripe).

The UMTRI study specifically supports the rear treatment of Alternative 2 that has been chosen (see Figure 6.1(B) of its research report as cited in the NPRM). UMTRI found comparable detection distances between vehicles using a partial and a full rear outline, and recommended the partial outline as adequate for the task.

Although NHTSA's standards cannot apply to vehicles in use, NHTSA believes that the safety benefits of

conspicuity treatment are so demonstrable that fleet owners will wish to retrofit their trailers with conspicuity treatment. NHTSA recommends that they employ a treatment that corresponds with the requirements of the final rule. Several commenters believe that retrofit would be encouraged if NHTSA allowed two 1-inch strips of material as an alternative to one 2-inch strip. The final rule affords the manufacturer this option.

Performance of Retroreflective Sheeting

The NPRM proposed a set of tests to evaluate retroreflective sheeting. These tests would be conducted in accordance with ASTM D 4956–90, *Standard Specification for Retroreflective Sheeting for Traffic Control*. The ASTM Specification was chosen because NHTSA understood it to be the Specification that manufacturers of retroreflective sheeting were following as their current manufacturing practice. The tests that NHTSA proposed addressed retroreflective photometric performance, flexibility, adhesion, impact resistance, accelerated weathering, shrinkage, resistance to fungus, and specular gloss. Commenters were also asked to discuss the use of 2-inch-wide white material of a minimum 250 candela lux/square meter (for entrance angles of light up to 30 degrees) as compared with wider, but lower performance material or narrower, higher performance material. The notice proposed that material meeting the performance requirements (other than reflectivity) for Type V, defined as a super-high-intensity retroreflective sheeting, be used to enhance the conspicuity of trailers. It proposed minimum requirements for coefficients of retroreflective intensity from research in progress by UMTRI that were lower than those specified by ASTM for Type V material. The proposed values were shown to be adequate, and more closely represented the material fleet tested during the Vector study.

A principal issue that was raised by the comments was the brightness of the retroreflective material. Brightness is expressed in "specific intensity per unit area" or "SIA". SIA is specified at observation angles of 0.2 degree and 0.5 degree, and light entrance angles of –4 degrees and 30 degrees in both the ASTM specification and the NPRM. The NPRM required the same minimum performance at both entrance angles, a specification intended to simulate a viewing distance of 740 feet to a trailer angled at 30 degrees with respect to an approaching vehicle. Although commercially available retroreflective material easily exceeds the proposed minimum performance at –4 degrees, the lesser values proposed and adopted for that angle adequately meet the need for motor vehicle safety.

There were three questions raised about the brightness of the material: Whether the higher specification of the ASTM should be adopted; whether a system of wider stripes of material of lower brightness should be allowed; and whether a brightness should be specified at an entrance angle greater than 30 degrees.

Insurance Institute of Highway Safety (IIHS), Advocates for Highway & Auto Safety (Advocates), Reflexite, and Transportation Safety Equipment Institute (TSEI) supported the ASTM specification. IIHS justified its comment by pointing out that the UMTRI study measured sight distances in good weather using subjects in a car with clean headlamps and windshield. For this reason, the proposed material brightness should be increased to account for weather and car conditions. NHTSA disagrees with this argument. The values for brightness proposed are actually four times greater than the minimum brightness that UMTRI measured as adequate under good conditions specifically to accommodate weather, dirt, and other deleterious effects. Accordingly, NHTSA has decided not to adopt the higher ASTM specification.

UMTRI also indicated that wider stripes of lower performance material would be as effective as the proposed material as long as the amount of light reflected is preserved. Stimsonite and 3M recommended that the final rule allow wider material with equal specific intensity per linear foot as the proposed 2-inch material. Therefore, in the final rule, NHTSA is also allowing 3-inch and 4-inch wide materials as options. The three materials will be known respectively as DOT–C2, DOT–C3, and DOT–C4. These materials are believed to have the equivalent specific intensity per linear foot as those proposed and adopted for the 2-inch material. Figure 29 as adopted contains the SIA values for DOT–C3 and DOT–C4 materials at the same observation and entrance angles as the DOT–C2 materials.

Several commenters voiced a need for values at an entrance angle of 45 degrees, and NHTSA tentatively concurs. However, since the agency neither proposed a particular value nor even raised the general issue of a value for that entrance angle, NHTSA has included a proposed value in the SNPRM that NHTSA is issuing simultaneously with the final rule. It also proposes that the SIA value of 10 adopted for DOT–C2 red material at the 0.5 degree observation angle and entrance angles of –4 degrees and 30 degrees be increased from 10 to 15 in order to be more consistent with the performance specified at an observation angle of 0.2 degree.

The Rulemaking Analysis section of the NPRM stated that the average life of a trailer was believed to be 14 years, and that one application of the material should be sufficient for the life of a trailer. Yellow Freight and Anya Carrol disagreed. One cited the effects of chipping by stones, scrapes by tree limbs and by cleaning brushes. The other commented that loss of brightness will occur in the absence of frequent cleaning of the materials.

UMTRI investigated material that had been installed on fleets for at least 10 years, and found a moderate loss of brightness due to age, and a larger loss when the material was dirty. Material manufacturers routinely guarantee the retention of at least 50 percent of their original brightness for 7 years, while agreeing with UMTRI that the service life is much longer. NHTSA's proposed SIA values took into account the effect of age and dirt. Further, the agency made an effort to use industry standards in the belief that those standards represented the best engineering solutions of suppliers to the actual requirements of users. Thus, no change to the proposal is needed in response to considerations of durability or life of retroreflective materials. Further, as noted later, the FHWA will consider maintenance of the conspicuity treatment in any future rulemaking to adopt the conspicuity requirements in the Federal Motor Carrier Safety Regulations.

Comments on Dimensions and Color of Retroreflective Sheeting

With respect to retroreflective materials, NHTSA requested views on the proposed length and width of the red and white segments. NHTSA noted that it was not proposing to allow corporate logos as a substitute for the conspicuity materials. Typically, logos consist of material of low brightness, and they are not applied to the perimeters of a vehicle but are centered on the sides and rear. Logos may be used to supplement the conspicuity-enhancing materials that would be required, however.

With respect to the requirements of Alternative 1 and Alternative 2 regarding pattern, color and location, the agency sought comments on the likely relative effectiveness of each on van trailers, and on trailers other than van trailers.

With respect to Alternative 2, NHTSA asked for views on whether it would improve or detract from the side conspicuity of trailers as compared with Alternative 1, and whether the 12-inch long segments of white material contemplated should be increased to 18 inches (NHTSA estimated this would increase compliance costs about 8 percent).

NHTSA was also interested in comments on how to improve the conspicuity of platform trailers, and on the desirability of standardizing to the maximum extent possible the treatment of all trailers.

Very few commenters supported a red and white alternating combination pattern. ATA, Transamerica Leasing, and Robert Crail advocated white only; Motor Vehicle Manufacturers Association (MVMA) opposed white material on the rear as a violation of State laws and a source of possible masking of taillamps. Truck Trailer Manufacturing Association (TTMA), and United Parcel Service (UPS) opposed red on the sides. Rudolf Mortimer recommended red on the rear and yellow on the sides, while New Jersey suggested a side treatment of yellow and white.

The final rule requires only a single stripe of material on the side, and not a perimeter outline. Under this circumstance, the agency does not consider stripes of yellow or white, used alone or combined in alternating segments, as sufficiently distinct from common highway lane markings. Red and white were the colors used in the UMTRI study. NHTSA is confident that the public will quickly learn to associate the red/white stripe with trailers, and that the intuitive association of red with danger will reinforce the learning. Addressing MVMA's comment on the potential masking of stop and turn signal lamps by white retroreflective material, the rule requires a minimum spacing of three inches between white material and adjacent red lamps. This is an existing requirement of the Motor Carrier Safety Regulations of the FHWA. Data available to NHTSA does not indicate that the presence of red retroreflective material adjacent to a red lamp affects the perceptibility of the lamp.

UMTRI found that red and white segments of equal length (about 12 inches) were most effective in connoting dangers to viewers. The NPRM specified a somewhat different design in which the red segments were longer (11 to 12 inches) than the white (7 to 8 inches); this was based on the length of presently available commercial products. In the final rule, the specification for both segments is changed to 12±6 inches to accommodate both the UMTRI study and commercially available products, as well as to afford flexibility to the trailer manufacturer.

NHTSA understands that New Jersey presently requires retrofit of the sides of 53-foot trailers for the rearmost 5 feet in yellow and white material, and prohibits red and white material. As noted earlier, Standard No. 108 has no retroactive effect on trailers in use. However, under the preemption clause (15 U.S.C. 1392(d)), the new vehicle specifications of Standard No. 108 must be recognized by the States, and New Jersey will be unable to prohibit red and white material on the sides of large trailers manufactured on and after the effective date of this final rule. NHTSA therefore encourages New Jersey to review its requirement with a view towards allowing red and white material for retrofit, and thereby promoting uniformity of conspicuity treatment.

Reflex Reflectors

The NPRM proposed that a manufacturer have the choice of installing a system of reflex reflectors instead of retroreflective sheeting. Reflex reflectors that conform to SAE Standard J594f Reflex Reflectors, January 1977 (the current requirement in Standard No. 108), are rated in terms of the absolute amount of light reflected in proportion to the illumination striking them. The size of the reflector and the brightness of the material may be balanced to achieve the specified amount of reflected light. Retroreflective sheeting, however, is rated in terms of the reflected light per unit area, in proportion to the illumination. Typically, three reflex reflectors (either white or red, and independent of their size and shape) would provide the same reflected light as one foot of 2-inch DOT–C2 reflective sheeting of the same color. The array of reflectors that the agency believed equivalent to the proposed alternating white/red retroreflective material scheme was a group of two white reflectors alternating with a group of three red reflectors, the center of each reflector in a group being approximately 4 inches from the center of the next one in that group. For the elements of Alternative 2 that are all white, if the reflex reflector performance were as above, three white reflectors per foot would likely suffice. Although these reflectors would be required to conform to SAE J594f, they would also be required to meet the additional performance requirement of providing very high reflectivity over a range of entrance angles of light from 30 degrees left to 30 degrees right. The additional requirement ensured that the array of reflex reflectors would deliver the same minimum performance as the retroreflective sheeting. Reflex reflectors molded in bars, resembling the sheeting material, but narrower, were an obvious means of implementation to NHTSA. For a multiple-reflector bar, each segment conforming to SAE J594f would be labeled in order to indicate the number of reflectors per length of bar. NHTSA requested comments on this option, its likely relative effectiveness as an alternative to the use of retroreflective sheeting, and the likelihood of daytime conspicuity enhancement compared with that of sheeting.

Landstar and Wolf Technical Services argued that reflectors are more prone to damage than sheeting. Advocates claimed that the proposed array would be less bright than sheeting, while Grote argued exactly the opposite. NHTSA disagrees with Grote and Advocates. The agency's figures show for both sheeting and reflectors a value of 3.87 cd/lux per foot of white treatment. Grote mistakenly assumed that the values were based upon equal areas rather than on equal light return.

NHTSA recognizes that standards and durability differ between sheeting and reflectors, but it also recognizes that both products are apparently capable of providing the minimum safety performance necessary for vehicle conspicuity. The final rule allows the option as proposed, with a slight modification in the spacing requirement to allow arrays a range of alternating color lengths analogous to that permitted for sheeting, and to eliminate the minimum spacing because there is no corresponding maximum brightness for sheeting material. Further, as already noted, the Federal Highway Administration will conduct a separate rulemaking to address concerns about the maintenance of the conspicuity treatment required by this rulemaking.

Combination Conspicuity Systems

Because the retroreflective capabilities of the sheeting and reflectors specified by this standard are deemed equivalent, there appears to be no discernible reason why reflex reflectors meeting the new requirements may not be installed in lieu of retroreflective sheeting at any required location on the side or on the rear, should practicality or other conditions so dictate. Allowance of combination conspicuity systems will afford greater flexibility in complying with this rule.

Certification of Compliance of Retroreflective Materials

The responsibility for compliance with the performance requirements of the retroreflective sheeting or reflex reflectors used to comply with the conspicuity requirements rests upon the manufacturers of the sheeting or reflectors. Thus, manufacturers who are providing these materials to the trailer manufacturing industry and to replacement parts outlets will have to certify compliance with Standard No. 108, whether the materials are intended for use as original or replacement equipment. Such manufacturers must also file information in accordance with 49 CFR part 566, *Manufacturer Identification*, if they have not done so before.

Certification of the retroreflective materials will be mandatory. For the retroreflective sheeting, it will consist of the characters "DOT–C2", "DOT–C3", or "DOT–C4" to distinguish the materials from those conforming to Federal Specification L–S–300, September 7, 1965, which is presently permitted by paragraph S5.1.1.4.as an allowable alternative for side reflex reflectors. These reflectors may be marked "DOT" as an indication that they meet this earlier version of L–S–300. However, it should be noted that they may not meet ASTM D 4956–90, nor the conspicuity requirements of the final rule.

Each reflex reflector installed for the purpose of compliance with the conspicuity requirements will also be required to be marked with the letters DOT–C as a certification of compliance with the conspicuity requirements (reflectors conforming only to SAE J594f would continue to be marked DOT if their manufacturer chose that method of certification).

The spacing of the certification on retroreflective materials occasioned some comment. With respect to strips of all-white material, NHTSA proposed to require the DOT–C symbol to appear not less than every 12 inches. With respect to strips of alternating red and white material, the agency proposed that the DOT–C symbol appear on each red segment and each white segment. However, NHTSA requested comments on an alternative such as one requiring that the DOT–C symbol appear on one color alone, with a paragraph added to Standard No. 108 specifying that such certification shall also be a certification of the materials adjacent to it that are of a different color. NHTSA requested comments on whether individual segment marking would be practicable, or whether other methods may be used that have the desired legal result for certification of materials. In the view of the commenters, the NPRM's alternative suggestion of certification once per color cycle appeared to be the most reasonable solution. NHTSA is adopting this recommendation for materials of alternating colors. With respect to the white material used to mark the upper rear corners, certification will appear at least once every 12 inches.

Possible Elimination of Other Lighting Equipment

Some commenters believe that existing requirements for lamps and reflectors on large trailers should be modified when the conspicuity rule becomes effective. UPS suggested eliminating clearance lamps. TTMA argued that identification lamps and reflectors will no longer be needed. The American Petroleum Institute and ATA went further, recommending in addition to these, the elimination of all marker lamps. On the other hand, Grote and Trucklite opposed the elimination of any of the present lighting and reflecting equipment.

The agency is opposed to the elimination of any lamps, since the conspicuity treatment is intended to be a passive augmentation of the existing active lighting equipment. Safety depends on lamps being present and functioning in poor weather conditions, or when the transfer is dirtier than normal, conditions that work against the full effectiveness of reflected light.

However, rear and side reflex reflectors that are mounted at the same height as the conspicuity stripes could be considered redundant, even though amber side reflectors would be replaced with red and white conspicuity treatment. The agency is pursuing this matter further through the SNPRM that is being prepared for publication.

Shift to Expression of Measurements in Metric System Units

In implementation of the Department's policy to use the metric system where possible in rulemakings, the values that were proposed conventionally in the NPRM are adopted using metric units. For example, the strip of material whose width was 2 inches in the NPRM becomes one whose width is 50 mm in the final rule. This shift will result temporarily in Standard No. 108 using the conventional system of measurement in one section, and the metric system in another. However, eventually Standard No. 108 will be converted entirely to metric expression, in accordance with a NHTSA timetable.

Associated Rulemaking: Rear Underride Protection

The agency is also seeking to reduce the severity of accidents in which vehicles strike the rear ends of trailers through rulemaking regarding rear underride protection. To the extent that the number and severity of rear end crashes would be mitigated by enhancing conspicuity, the benefits of a rear underride rule might be lessened. Interested persons were advised to be aware of the relatedness of these two rulemaking actions in preparing their comments on each.

Related Rulemaking: Federal Highway Administration

The FHWA has worked with NHTSA to ensure that its standards are compatible with the Federal motor vehicle safety standards wherever possible. As part of this effort, the FHWA will continue to adopt the appropriate sections of NHTSA's standards into the Federal Motor Carrier Safety Regulations (FMCSRs). If amendments to 49 CFR parts 393, *Parts and Accessories Necessary for Safe Operation*, and 396, *Inspection Repair and Maintenance*, of the FMCSRs are necessary to ensure the continued presence and proper performance of conspicuity enhancements on large trailers, the FHWA will address the issue in a separate rulemaking.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Effective Date

Because of the relatively simple efforts that would be necessary to comply with the conspicuity requirements, and the fact that trailers are not modified on a model year basis, the agency proposed an effective date of the final rule that would be 12 months after publication of the final rule. Accordingly, the effective date of the final rule is December 1, 1993.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that although it is not major within the meaning of Executive Order 12291 "Federal Regulation," it is significant under Department of Transportation regulatory policies and procedures because it involves a matter of substantial Congressional and public interest. The rulemaking will not have an effect upon the economy in excess of $100 million a year. NHTSA estimates that the cost to equip all new trailers manufactured in a calendar year will be $17.3 million. This estimate will not be affected by the proportion of manufacturers which choose sheeting material versus reflex reflectors molded in bars as their means of compliance. The agency further estimates that once all trailers within the affected categories of trailers comply with the new requirements, 2,113 accidents will be prevented and 9,052 others will be mitigated annually. The resulting reduction in property damage will be $41.75 million. Thus, the cost of the conspicuity system will be offset by the savings in property damage alone. However, the expected prevention of injuries and fatalities is the reason that NHTSA is acting to improve the visibility of large trailers.

NHTSA estimates that the life of the average trailer is 14 years. Agency research indicates that the original application of conspicuity materials can be expected to perform during the entire life of the trailer. NHTSA has no studies allowing it to quantify a reduction in fatalities and injuries that would be expected from use of conspicuity material. However, it is reasonable to expect prevention of some 80 fatalities and 1,315 injuries if they were reduced in proportion to the expected reduction in accidents. There is no cost assigned to preventing those fatalities and injuries because the reduction of property damage alone is expected to exceed the cost of conspicuity materials and labor. The costs and benefits are calculated in 1992 dollars. A Regulatory Evaluation has been prepared and is available for examination by the public in the docket.

Regulatory Flexibility Act

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic effect upon a substantial number of small entities. Although trailer manufacturers are generally small businesses within the meaning of the Regulatory Flexibility Act, the cost impact of complying with the regulation will not be significant. The agency estimates that compliance costs to the trailer buyer will average $102 per trailer to the consumer. As for manufacturers of retroreflective materials and reflex reflectors, NHTSA notes that retroreflective materials that conform to ASTM D 4956–90 Type V are presently being manufactured, and that the cost to add DOT certification symbols should be only about $.11 a trailer. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new trailers equipped with conspicuity treatment will not, as already noted above, be more than minimally impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment. Retroreflective material is non-toxic in nature. Further, the rule will not have an effect upon fuel consumption.

Paperwork Reduction Act

The labeling requirements associated with this rule have been submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. *Administration:* National Highway Traffic Safety Administration; Title: Labeling of reflective material for trailer conspicuity; *Need for Information:* Identification of reflective material as conforming to requirements; *Anticipated Use of Information:* Routine trailer inspection by Federal Highway Administration; *Frequency:* On occasion; *Burden Estimate:* 200 hours; *Respondents:* 2; FORM(S): None; *Average Burden Hours per Respondent:* 100; for further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

§ 571.108 [Amended]

a. Section 571.108 is amended as follows:

2. Section S3 *Application* is revised to read:

S3 *Application.* This standard applies to:

(a) Passenger cars, multipurpose passenger vehicles, trucks, buses, trailers (except pole trailers and trailer converter dollies), and motorcycles;

(b) Retroreflective sheeting and reflex reflectors manufactured to conform to S5.7 of this standard; and

(c) Lamps, reflective devices, and associated equipment for replacement of like equipment on vehicles to which this standard applies.

3. Sections S5.7, S5.7.1 and S5.7.2 are redesignated S5.8, S5.8.1 and S5.8.2, and a new section S5.7 is added to read:

S5.7 *Conspicuity Systems.* Each trailer of 80 or more inches overall width, and with a GVWR over 10,000 lbs., manufactured on or after December 1, 1993, except a trailer designed exclusively for living or office use, shall be equipped with either retroreflective sheeting that meets the requirements of S5.7.1, reflex reflectors that meet the requirements of S5.7.2, or a combination of retroreflective sheeting and reflex reflectors that meet the requirement of S5.7.3.

S5.7.1 *Retroreflective sheeting.* Each trailer to which S5.7 applies that does not conform to S5.7.2 or S5.7.3 shall be equipped with retroreflective sheeting that conforms to the requirements specified in S5.7.1.1 through S5.7.1.5.

S5.7.1.1 *Construction.* Retroreflective sheeting shall consist of a smooth, flat, transparent exterior film with retroeflective elements embedded or suspended beneath the film so as to form a non-exposed retroreflective optical system.

S5.7.1.2 *Performance requirements.* Retroreflective sheeting shall meet the requirements of ASTM D 4956–90, *Standard Specification for Retroreflective Sheeting for Traffic Control,* for Type V Sheeting, except for the photometric requirements, and shall meet the minimum photometric

performance requirements specified in Figure 29.

S5.7.1.3 *Sheeting pattern, dimensions, and relative coefficients of retroreflection.*

(a) Retroreflective sheeting shall be applied in a pattern of alternating white and red color segments to the side and rear of each trailer, and in white to the upper rear corners of each trailer, in the locations specified in S5.7.1.4, and illustrated in Figure 30.

(b) Except for a segment that is trimmed to clear obstructions, or lengthened to provide red sheeting near red lamps, each white or red segment shall have a length of 300 mm ± 150 mm.

(c) Neither white nor red sheeting shall represent more than two thirds of the aggregate of any continuous strip marking the width of a trailer, or any continuous or broken strip marking its length.

(d) Retroreflective sheeting shall have a width of 50 mm (Grade DOT–C2), 75 mm (Grade DOT–C3), or 100 mm (Grade DOT–C4).

(e) The coefficients for retroreflection of each segment of red or white sheeting shall be not less than the minimum values specified in Figure 29 of this standard for grades DOT–C2, DOT–C3, and DOT–C4.

S5.7.1.4 *Location.* (a) Retroreflective sheeting shall be applied to each trailer on the side and rear as specified below, but need not be applied to discontinuous surfaces such as outside ribs, stake post pickets on platform trailers, and external protruding beams, or to items of equipment such as door hinges and lamp bodies.

(b) The edge of white sheeting shall not be located closer than 75 mm to the edge of the luminous lens area of any lamp that is required by this standard.

(c) The edge of red sheeting shall not be located closer than 75 mm to the edge of the luminous lens area of any amber lamp that is required by this standard.

S5.7.1.4.1 *Rear.* Retroreflective sheeting shall be applied to the rear of each trailer as follows:

(a) Element 1: A horizontal strip of sheeting in alternating colors across the full width of the trailer as close to the extreme edges as practicable, and as close as practicable to 1.25 meters above the road surface.

(b) Element 2: Two pairs of white strips of sheeting, each pair consisting of strips 300 mm long of grade DOT–C2 (50 mm wide), DOT–C3 (75 mm wide), or DOT–C4 (100 mm wide), applied horizontally and vertically to the right and left upper contours of the body, as viewed from the rear, as close to the top of the trailer and as far apart as practicable.

(c) Element 3: A strip of sheeting in alternating colors across the full width of the horizontal member of the rear underride protection device.

S5.7.1.4.2 *Side.* Retroreflective sheeting shall be applied to each side of a trailer as follows:

(a) A horizontal strip of sheeting in alternating colors, originating and terminating as close to the front and rear ends as practicable, and as close as practicable to 1.25 m above the road surface except that, at the location chosen, the strip shall not be obscured in whole or in part by other motor vehicle equipment or trailer cargo. The strip need not be continuous as long as not less than half of the length of the trailer is covered and the spaces are distributed as evenly as practicable.

(b) If necessary to clear rivet heads or other similar obstructions, grade DOT–C2 retroreflective sheeting may be separated into two 25 mm wide strips of the same length and color, separated by a space of not more than 25 mm, and used in place of the retroreflective sheeting that would otherwise be applied.

S5.7.1.5 *Certification.* The letters DOT–C2, DOT–C3, or DOT–C4, as appropriate, constituting a certification that the retroreflective sheeting conforms to the requirements of S5.7.1.2, shall appear at least once on the exposed surface of each white or red segment of retroreflective sheeting, and at least once every 300 mm on retroreflective sheeting that is white only. The characters shall be not less than 3 mm high, and shall be permanently stamped, etched, molded, or printed in indelible ink.

S5.7.2 *Reflex Reflectors.* Each trailer to which S5.7 applies that does not conform to S5.7.1 or S5.7.3 shall be equipped with reflex reflectors in accordance with this section.

S5.7.2.1 (a) Each reflex reflector shall conform to SAE Standard J594f, *Reflex Reflectors*, January 1977.

(b) Each red reflex reflector shall also provide, at an observation angle of 0.2 degree, not less than 310 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree.

(c) Each white reflex reflector shall also provide, at an observation angle of 0.2 degree, not less than 1290 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree.

S5.7.2.2 Reflex reflectors shall be installed and located as specified below:

(a) In the same locations and in the same length in which retroreflective sheeting is required by S5.7.1.4 to be applied in alternating colors, reflex reflectors shall be installed in a repetitive pattern of two or three white reflex reflectors alternating with two or three red reflex reflectors, with the center of each reflector not more than 100 mm from the center of each adjacent reflector.

(b) In the same locations and in the same length in which white retroreflective sheeting is required by S5.7.1.4 to be installed, white reflex reflectors shall be installed, with the center of each white reflex reflector not more than 100 mm from the center of each adjacent reflector.

S5.7.2.3 *Certification.* The exposed surface of each reflex reflector shall be marked with the letters DOT–C which constitutes a certification that the reflector conforms to all applicable requirements of § 571.108 of this part. The certification shall be not less than 3 mm high, and permanently stamped, etched, molded or printed in indelible ink.

S5.7.3 *Combination of sheeting and reflectors.* Each trailer to which S5.7 applies that does not conform to S5.7.1 or S5.7.2, shall be equipped with retroreflective materials that meet the requirements of S5.7.1 except that reflex reflectors that meet the requirements of S5.7.2.1, and that are installed in accordance with S5.7.2.2, may be used instead of any corresponding element of retroreflective sheeting located as required by S5.7.1.4.

4. Table I is amended by adding the following at the end thereof:

Item	Multipurpose passenger vehicles, trucks, and buses	Trailers	Applicable SAE standards
•	•	•	•
Conspicuity	See S5.7	See S5.7	See S5.7

5. Table II is amended by adding the following after the requirements for "Intermediate side reflex reflectors":

Item	Multipurpose passenger vehicles, trucks, and buses	Trailers	Height above road surface
•	•	•	•
Conspicuity	See S5.7	See S5.7	See S5.7
•	•	•	•

6. Figure 29 is added as follows:

FIGURE 29—MINIMUM PHOTOMETRIC PERFORMANCE OF RETROREFLECTIVE SHEETING (CANDELA/LUX/SQUARE METER)

Entrance angle	Observation angle				Grade
	0.2 Degree		0.5 Degree		
	White	Red	White	Red	
-4 degrees	250	60	65	10	DOT-C2
30 degrees	250	60	65	10	DOT-C2
-4 degrees	165	40	43	10	DOT-C3
30 degrees	165	40	43	10	DOT-C3
-4 degrees	125	30	33	8	DOT-C4
30 degrees	125	30	33	8	DOT-C4

7. Figure 30 is added as follows:

BILLING CODE 4910-59-M

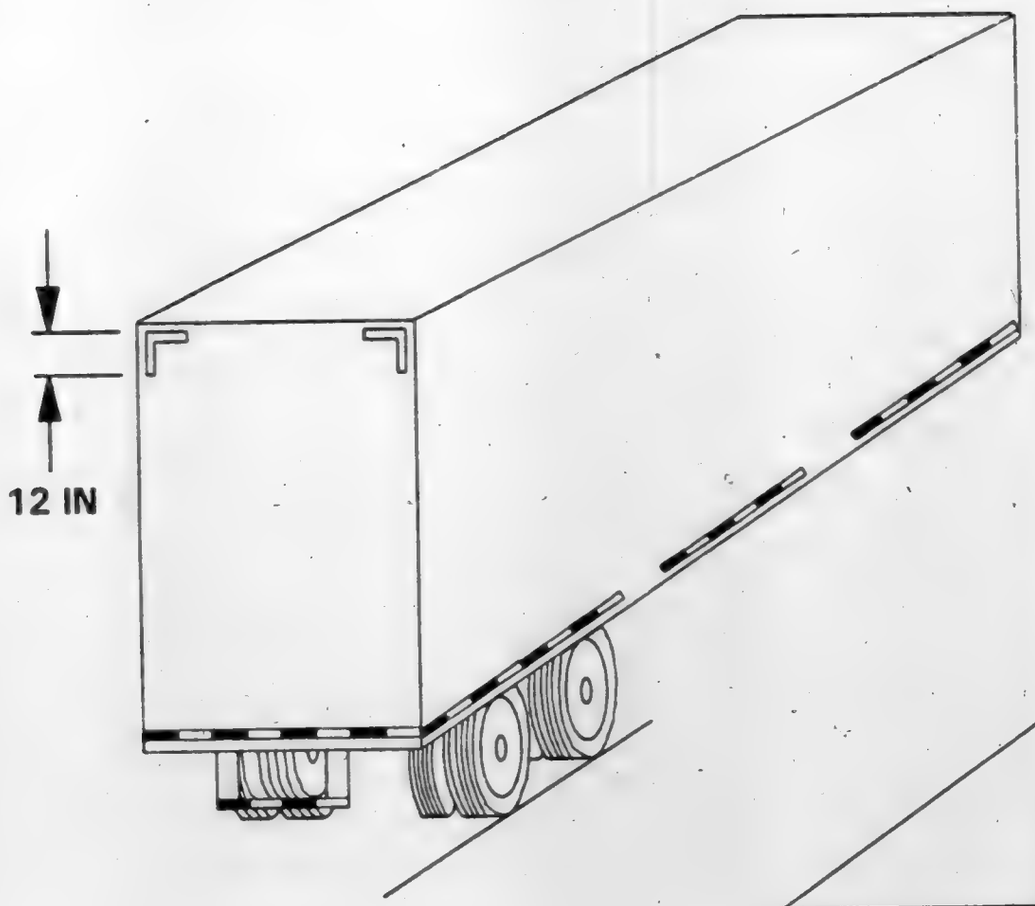

VAN

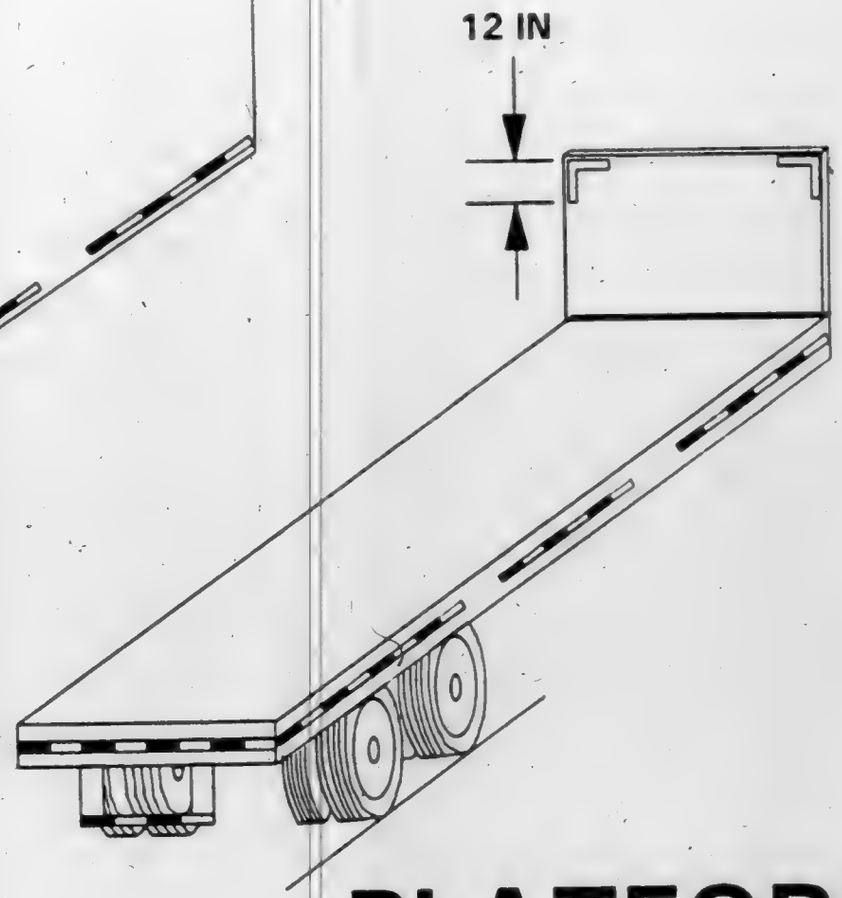

PLATFORM

Figure 30 Typical Trailer Conspicuity Treatments

BILLING CODE 4910-59-C

Issued on: December 3, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92-29800 Filed 12-9-92; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 57, No. 238
Thursday, December 10, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO–225–A45; DA–92–10]

Milk in the Southern Michigan Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider an industry proposal to amend the pricing provisions of the Southern Michigan Federal milk marketing order. The proposal would accommodate a multiple component pricing plan using values for protein and butterfat to adjust the value of milk used in Class II and Class III products and payments to producers. Protein prices to handlers and producers would be adjusted for somatic cell count levels.

DATES: The hearing will convene at 9 a.m. on February 17, 1993.

ADDRESSES: The hearing will be held at the Hyatt Regency Hotel, 18600 Michigan Avenue, Dearborn, Michigan 48126–9987, (313) 593–1234.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2189.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Hyatt Regency Hotel, 18600 Michigan Avenue, Dearborn, Michigan 48126–9987, (313) 593–1234 beginning at 9 a.m. local time, on February 17, 1993, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

In this regard, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposals to be considered at the hearing.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed on connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1040

Milk marketing orders.

The authority citation for 7 CFR part 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1040—[AMENDED]

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Michigan Milk Producers Association

Proposal No. 1

Amend the following provisions of the Southern Michigan milk marketing order to accommodate a multiple component pricing plan by revising the following provisions to read as follows:

§ 1040.30 Reports of receipts and utilization.

(a) Each handler shall report the quantities, average monthly somatic cell count, butterfat and protein content of milk in:

(i) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(ii) Receipts of milk from handlers described in § 1040.9(c);

(iii) Receipts of bulk fluid milk products and bulk fluid cream products from other pool plants;

(iv) Receipts of other source milk;

(v) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1040.40(b)(1); and

(vi) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) Each handler described in § 1040.9(b) and (c) shall report:

(i) The quantities, butterfat and protein content, and average monthly somatic cell count of milk received from producers.

(ii) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk and milk products in such manner as the market administrator may prescribe.

§ 1040.31 Payroll reports.

(a) * * *

(2) The total pounds of milk, protein and butterfat content received from such producer;

(3) The monthly average somatic cell count of milk for each such producer;

(4) The prices per pound, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1040.76(b) shall report for each diary farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1040.50 Class and component prices.

Subject to the provisions of § 1040.52, the class and component prices for the month per hundredweight or per pound shall be as follows:

(a) *Class I differential price.* The Class I differential price shall be the difference between the Class I price and the basic formula price for the current month. The Class I price shall be the basic formula price for the second preceding month plus $1.75.

(b) *Class II differential price.* The Class II differential price shall be the difference between the Class II price calculated by the Director of the Dairy Division for the current month and the basic formula price for the current month.

The Class II price shall be the basic Class II formula price computed pursuant to § 1040.51(a) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraph (b)(1) and (b)(2) of this section was less than the basic formula price for the second preceding month.

(c) *Skim milk price.* The skim milk price per hundredweight shall be the current month's basic formula price adjusted to remove the value of 3.5 percent butterfat and rounded to the nearest whole cent. Such adjustment shall be computed by multiplying the butterfat differential pursuant to § 1040.74 by 35 and subtracting the result from the basic formula price.

(d) *Butterfat price.* The butterfat price per pound shall be a figure computed as follows:

(i) Multiply the butterfat differential pursuant to § 1040.74 by 10.

(ii) Divide the value obtained from the calculations of paragraph (c) of this section by 100; and

(iii) Add to the resulting amount from (d)(ii) to the butterfat differential computed in paragraph (d)(i) of this section. The sum thereof shall be the price per pound of all producer butterfat for the month.

(e) *Milk protein price.* The price per pound of protein will be computed as follows:

(i) Divide the skim milk price calculated pursuant to paragraph (c) of this section by the average protein content of the manufacturing grade milk used to establish the current month's basic formula price.

(f) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1040.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before the fifth day of each month:

(a)(i) The Class I price for the next month.

(ii) The Class III price for the preceding month.

(iii) The price for butterfat, protein, and skim milk for the current month computed pursuant to § 1040.50(c), (d) and (e).

(b) On or before the 15th day of each month, the Class II price for the next month calculated pursuant to § 1040.50(b). § 1040.60 Computation of handler's obligation to the pool.

The market administrator shall compute an obligation to the pool each month for each handler with respect to each of his pool plants and for each handler described in § 1040.9(b) and (c) by adding the following values:

(a) The pounds of producer milk and producer milk received pursuant to § 1040.43(d) which is allocated to Class I pursuant to § 1040.44 multiplied by the Class I differential price adjusted pursuant to § 1040.52.

(b) The pounds of producer milk and producer milk received pursuant to § 1040.43(d) which is allocated to Class II pursuant to § 1040.44 multiplied by the Class II differential price.

(c) The skim pounds contained in producer milk and producer milk received pursuant to § 1040.43(d) which is allocated to Class I pursuant to § 1040.44 multiplied by the skim milk price.

(d) The butterfat pounds contained in producer milk and producer milk received pursuant to § 1040.43(d) allocated to all classes multiplied by the butterfat price.

(e) The protein pounds contained in producer milk and producer milk received pursuant to § 1040.43(d) which is allocated to Class II and Class III pursuant to § 1040.44 multiplied by the milk protein price.

(f) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1040.44(a)(14) and the corresponding

step of § 1040.44(b) and the value of the protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1040.44(a)(14), by multiplying the skim pounds by the percentage of protein in the handler's receipts of producer skim milk as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(14) and the corresponding step of § 1040.44(b), multiplied by the Class I differential price adjusted for location, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1040.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from class I pursuant to § 1040.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1040.44(a)(14) and the corresponding step of § 1040.44(b) multiplied by the Class II price differential, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1040.44(a)(14) multiplied by the milk protein price, plus the pounds of butterfat subtracted from class II pursuant to § 1040.44(b)(14) multiplied by the butterfat price;

(3) The protein pounds in skim milk subtracted from Class III pursuant to § 1040.44(a)(14) multiplied by the milk protein price, plus the butterfat pounds subtracted from Class III pursuant to § 1040.44(b)(14) multiplied by the butterfat price;

(g) The value of the product pounds, skim milk and butterfat submitted from Class I or Class II pursuant to § 1040.44(a)(9) and the corresponding step of § 1040.44(b), and the value of the protein associated with the skim milk subtracted from Class II pursuant to § 1040.44(a)(9), by multiplying those skim pounds by the percentage of protein in the handler's receipts of producer skim milk as follows:

(1) The value of product pounds, skim milk and butterfat subtracted from Class II pursuant to § 1040.44(a)(9) and the corresponding step of § 1040.44(b) multiplied by the sum of the current month's Class I price differential adjusted for location, skim milk price and butterfat price, less the previous month's protein and butterfat prices;

(2) The value of hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1040.44(a)(9) and the corresponding step of § 1040.44(b) multiplied by the current month's Class II price differential plus the protein and butterfat value, less the Class III value of the milk at the previous month's protein and butterfat value;

(h) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(7) (i) through (iv), and the corresponding steps of § 1040.44(b), excluding receipts of bulk fluid cream products from another order plant multiplied by the current month's Class I price differential, adjusted for location;

(i) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(7) (v) and (vi) and the corresponding steps of § 1040.44(b) multiplied by the difference between the current month's Class I and Class II prices adjusted for the location of the transferor plants;

(j) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(11) and the corresponding step of § 1040.44(b) multiplied by the current month's Class I price differential applicable at the location of the nearest unregulated supply plant for which an equivalent volume was received, excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated by a Federal Order is classified and priced as Class I and is not used as an offset for any other payment obligation under any order.

§ 1040.61 Computation of weighted average differential price.

For each month, the market administrator shall compute the weighted average differential value of all milk received from producers by:

(a) Combining into one total all values computed pursuant to § 1040.60, paragraphs (a) and (b) and (f) through (j) for all handlers who filed the reports prescribed by § 1040.30 for the month and who made the payments pursuant to § 1040.71 for the preceding month;

(b) Add the aggregate of the values of the location adjustment computed pursuant to § 1040.75(a)(i);

(c) Add an amount not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is calculated pursuant to § 1040.60(j);

(e) Subtract not less than 6 nor more than 7 cents per hundredweight. The result shall be the weighted average differential price.

§ 1040.62 Computation of producer protein price.

The protein price to be paid to all producers for the pounds of protein contained in their milk shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to § 1040.60, paragraphs (c) and (e), for all handlers who filed the reports prescribed by § 1040.30 for the month and who made payments pursuant to § 1040.71 for the preceding month;

(b) Divide the resulting amount by total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the producer protein price.

§ 1040.63 Uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price calculated pursuant to § 1040.61 to the Class III price for the current month.

§ 1040.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the weighted average differential price calculated pursuant to § 1040.61, the producer protein price calculated pursuant to § 1040.62 and the uniform price calculated pursuant to § 1040.63.

§ 1040.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1040.61 and adjusted pursuant to § 1040.75 multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1040.62 multiplied by the total pounds of protein received from the producer.

(c) The butterfat price computed pursuant to § 1040.50(d) multiplied by the total pounds of butterfat received from the producer.

§ 1040.66 Computation of somatic cell count adjustment.

(a) The producer protein price shall be adjusted for the monthly average somatic cell count. The adjustment shall be the result of the multiplication of a yield factor and the monthly average cheese price which is then divided by the protein test pursuant to § 1040.50(e).

(b) The yield factors shall be:

0–100,000 scc	.25
100,001–200,000 scc	.15
200,001–300,000 scc	.10
300,001–500,000 scc	0
500,001–600,000 scc	–.05
600,001–700,000 scc	–.10
700,001–800,000 scc	–.15
800,001–900,000 scc	–.25
900,001+scc	–.40

(c) If no monthly average somatic cell count is available, no adjustment of the producer protein price shall be made.

(d) For purposes of this section, the cheese price shall be the monthly average price for 40 pound blocks of cheese traded on the National Cheese Exchange in Green Bay, Wisconsin.

§ 1040.71 Payments to the producer settlement fund.

(a) On or before the 13th day after the end of each month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1)(i) The total obligation of the handler for such month as determined pursuant to § 1040.60; or

(ii) In the case of a cooperative association which is a handler, the value, at the uniform price, of milk delivered to other handlers pursuant to § 1040.43(d).

(2) The sum of:

(i) The value of such handler's receipts of producer milk as specified in § 1040.65 excluding any applicable location adjustment pursuant to § 1040.75(a)(3); and

(ii) The value at the uniform price, computed pursuant to § 1040.63, applicable at the location of the plant from which other source milk is received and the value of which is computed pursuant to § 1040.60(j).

§ 1040.73 Payments to producers and to cooperative associations.

(a) Except as provided by paragraph (b) of this section, on or before the 15th day of each month, each handler (except a cooperative association) shall pay each producer for milk received from him during the preceding month, not less than the sum of money computed pursuant to §§ 1040.65 and 1040.66, less the payment pursuant to paragraph (d) of this section and any proper deductions authorized by the producer.

* * *

(b) * * *

(1) * * *

(ii) The total pounds of butterfat and protein contained in such milk and the average somatic cell count;

(c) On or before the 13th day after the end of each month, each handler shall pay a cooperative association, which is a handler with respect to milk received by him from a pool plant operated by such cooperative association, or by bulk tank delivery pursuant to § 1040.9(c), an amount not less than the value computed using the applicable weighted average differential price and component prices adjusted for the location of the transferee plant and average somatic cell count, multiplied by the total hundredweight of milk and pounds of butterfat and protein received by such handler from the cooperative association.

* * * * *

Proposal No. 2

Amend § 1040.85 by increasing the maximum allowable assessment for administration of the order from 2 to 4¢ per cwt.

Proposal No. 3

Amend § 1040.86 by increasing the maximum allowable deduction from producers for whom the market administrator performs marketing services from 5 to 7¢ per cwt.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 4

Make such changes as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator, Marvin A. Baumer, USDA—AMS—Dairy Division, 2684 W. Eleven Mile Road, Berkley, MI 48072, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Southern Michigan Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: December 3, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–29968 Filed 12–9–92; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ASO–19]

Proposed Revision of Control Zone and Transition Area, Dyersburg, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Dyersburg, TN Control Zone and Transition Area. A new standard instrument approach procedure (SIAP) has been developed to serve Runway 4 at the Dyersburg Municipal Airport based on the Dyersburg Non-directional Radio Beacon (NDB). This action would eliminate an arrival area extension to the control zone west of the airport which is no longer required while adding an arrival extension southwest of the airport for the planned NDB SIAP. Also, this proposal would enlarge the existing transition area in vicinity of the airport for instrument flight rules (IFR) aeronautical operations.

DATES: Comments must be received on or before January 28, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92–ASO–19, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: A.P. Smith, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ASO–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Dyersburg, TN Control Zone and Transition Area. An NDB SIAP has been developed to serve Runway 4 at the Dyersburg Municipal Airport. This action would eliminate an arrival area extension to the control zone west of the airport which is no longer required while adding an arrival extension southwest of the airport to provide controlled airspace for the new NDB SIAP. Additionally, the transition area would be enlarged in vicinity of the airport to better contain IFR aeronautical operations. Control Zones and Transition areas are published in §§ 71.171 and 71.181, respectively, of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The coordinates for this airspace docket are based on North American Datum 83. The control zone and transition area listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ASO TN CZ Dyersburg, TN

Dyersburg Municipal Airport, TN
(lat. 35°59'55" N, long. 89°24'22" W).

Dyersburg NDB (lat. 35°59'42" N, long. 89°24'21" W).

Within a 4.1-mile radius of Dyersburg Municipal Airport and within 2.5 miles each side of the Dyersburg NDB 231° bearing, extending from the 4.1-mile radius to 7 miles southwest of the NDB. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Section 71.181 Designation of Transition Areas

* * * * *

ASO TN TA Dyersburg, TN

Dyersburg Municipal Airport, TN
(lat. 35°59'55" N, long. 89°24'22" W).

Dyersburg VORTAC (lat. 36°01'07" N, long. 89°19'04" W).

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Dyersburg Municipal Airport and within 3.1 miles each side of the Dyersburg VORTAC 078° radial, extending from the 7-mile radius to 7 miles east of the VORTAC; excluding that airspace within the Dyersburg, TN Control Zone during the specific dates and times it is effective.

* * * * *

Issued in East Point, Georgia, on November 9, 1992.

James G. Walters,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 92–29092 Filed 12–9–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 34

Regulation of Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule, extension of comment period.

SUMMARY: On November 12, 1992, the Commodity Futures Trading Commission ("Commission") published in the Federal Register a notice of proposed rulemaking that would amend 17 CFR part 34 of the Commission's regulations 57 (FR 53618). These rules would exempt from CFTC regulation certain "hybrid" instruments that combine features similar to those of commodity option or futures contracts

with debt, depository or preferred equity interests. The comment period on the proposed rule is scheduled to expire on December 14, 1992.

The Commission has received a request for an extension of the comment period on behalf of three contract markets. In order to ensure that all interested parties have an opportunity to submit meaningful comments, the Commission has determined to extend the comment period.

DATES: Comments must be submitted by December 28, 1992.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to "Regulation of Hybrid Instruments."

FOR FURTHER INFORMATION CONTACT: Gregory J. Kusserk, Industry Economist, or Barry Schachter, Financial Economist, Division of Economic Analysis. Telephone (202) 254-6990.

Issued in Washington, DC this 4th day of December, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-29924 Filed 12-9-92; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 35

Exemption for Certain Swap Agreements

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 12, 1992, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a notice of proposed rulemaking relating to a proposed exemption from the Commodity Exchange Act for certain swap agreements. 57 FR 53627. The applicable comment period expires on December 14, 1992. The Commission has received a request for an extension of the comment period on behalf of three contract markets. In order to ensure that all interested parties have an adequate opportunity to submit meaningful comments, the Commission has determined to extend the comment period.

DATES: Written comments must be received by the Commission by the close of business on December 28, 1992.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to rules to exempt certain swap agreements.

FOR FURTHER INFORMATION CONTACT: Joanne T. Medero, General Counsel, Pat G. Nicolette, Deputy General Counsel, or David R. Merrill, Deputy General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K St., NW., Washington, DC 20581. Telephone: (202) 254-9880.

Issued in Washington, DC, this 4th day of December, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-29925 Filed 12-9-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[EE-12-92]

RIN 1545-AQ61

Interest-Free Adjustments of Underpayments of Employment Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations on interest-free adjustments of underpayments of certain employment taxes. The existing regulations allow an interest-free adjustment only if a return is filed before the underpayment of tax is ascertained. The proposed amendments extend the existing rules to employers who did not file a return and pay the tax solely because they improperly failed to treat one or more individuals as employees. The proposed amendments will provide the public with guidance necessary to comply with the law. The proposed amendments will affect taxpayers who did not file certain employment tax returns and pay the tax solely because they improperly failed to treat one or more individuals as employees.

DATES: Written comments must be received by February 8, 1993. Requests to speak (with outlines of oral comments) at a public hearing scheduled for February 24, 1993, at 10 a.m., must be received by February 3, 1993.

ADDRESSES: Send all submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC: CORP:T:R (EE-12-92), Washington, DC 20044.

The hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at (202) 622-6060 concerning the regulations; Michael Slaughter at (202) 622-6803 concerning the hearing (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Overview

This document contains proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 6205 of the Internal Revenue Code (Code). These amendments are proposed to clarify the regulation under section 6205 and are to be issued under the authority of sections 6205 and 7805

Under section 6205(a)(1) of the Code, if less than the correct amount of tax imposed under the Federal Insurance Contributions Act (FICA), the Railroad Retirement Tax Act (RRTA), or the income tax withholding provisions is paid with respect to any payment of wages or compensation, proper adjustments of both the tax and the deductible amount must be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

The existing regulations describe the interest-free adjustment procedure only for situations in which a return is filed before the error is ascertained. Section 6205 of the Code applies primarily to Form 941, Employer's Quarterly Federal Tax Return, and Form CT-1, Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return. Section 6205 also applies to other returns in the Form 941 family, such as Form 942, Employer's Quarterly Tax Return for Household Employees, Form 943, Employer's Annual Tax Return for Agricultural Employees. (Forms 941, 942, and 943 are used to report income tax withheld and FICA taxes; Form CT-1 is used to report RRTA taxes.)

The following scenario describes the typical operation of the interest-free adjustment procedure. An employer filed a Form 941 on July 31 for the second quarter of the year. The employer inadvertently failed to report $5,000 of an employee's wages. On October 20, while preparing Form 941 for the third quarter, the employer discovers the error. The procedures permit the employer to avoid interest on the tax on the $5,000 if the employer both corrects the error and pays the tax on or before the last day permitted for filing a return for the quarter in which

the error was discovered, in this scenario, January 31. The employer corrects the error by making an adjustment on line 9 of Form 941 for either the third quarter, which the employer is currently preparing, or the fourth quarter and attaching Form 941c, Supporting Statement to Correct Information. Currently, outside of the examination procedures, no other procedure exists for granting an interest-free adjustment.

The existing regulations also deal with the situation in which an employer discovers, before filing a return, that the employer failed to withhold income tax or the employee portion of the FICA taxes. Under the regulations, in this instance, the reporting and payment by the employer of the correct amount of tax do not qualify for an interest-free adjustment. Of course, in this instance, generally no interest is due because interest on the **under**payment of income and FICA taxes **required** to be withheld by an employer does not begin to run until the due date of the return for the period in which the withholding was required.

The existing regulations do not consider situations in which the employer failed to file a return solely because the employer erroneously believed that the employer had no employees. The proposed regulations deal with the situation in which the employer did not file Form 941 or Form CT–1 because the employer believed that individuals who performed services for the employer were performing services as independent contractors and not as employees. In this situation, the employer who filed no employment tax returns subsequently ascertains, pursuant to an examination, a private letter ruling, or otherwise, that the individuals should have been classified as employees and returns should have been filed. No procedure currently exists for avoiding interest in this circumstance.

Accordingly, the proposed amendments would add language to clarify that a payment can be made without interest in certain situations in which the error is ascertained before the appropriate return is filed. Procedurally, the employer would file an original return (either Form 941 or Form CT–1) for each period for which the employer erroneously failed to file a return. Employers would be instructed to write "Misclassified Employees" in the top margin of each return.

The proposed amendments would also allow an interest-free adjustment of amounts paid or assessed under section 3509 of the Code, which also pertains to situations in which an employer failed to treat an individual as an employee.

In addition to the new language pertaining to employers who failed to treat individuals as employees, the proposed regulations revise the existing regulations regarding errors ascertained both before and after a return is filed. The revised language is not intended to change the existing provisions; rather, it is intended to clarify and up-date the existing provisions. For instance, the Service currently has no procedure that would permit an employer to correct an underpayment by reporting the additional amount on a supplemental return. Therefore, all references to supplemental returns have been deleted. Also, where the rules pertaining to income tax withholding are intended to be the same as the rules pertaining to the FICA and the RRTA, language has been revised and added to remove any implication that the rules differ.

The proposed amendments are intended to apply to situations in which no return was filed solely because the employer improperly failed to treat its workers as employees and to situations in which the employer is assessed or pays an amount under section 3509. The proposed amendments also clarify that the income tax withholding rules apply only if the error is ascertained in the year in which the wages are paid and make other clarifying and conforming changes.

Reliance on These Proposed Regulations

Taxpayers may rely on these proposed amendments for guidance pending the issuance of final regulations. These amendments will generally be effective with respect to errors ascertained after December 31, 1991. If future regulations are more restrictive, such guidance will be applied without retroactive effect.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. The collection of information requirements contained in sections 31.6205–1(a)(3) and 31.6205–1(b)(3)(iii) of these proposed regulations are unchanged from those contained in sections 31.6205–1(a)(3) and 31.6205–1(b)(2)(iii) of the existing final regulations and have been approved by the Office of Management and Budget (OMB) under control number 1545–0029.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Wednesday, February 24, 1993, at 10 a.m., in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) will apply to the public hearing.

Persons who have submitted written comments by February 8, 1993, and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than February 3, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto. Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 31 are as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.6205–1 is amended by revising paragraphs (a)(3), (b) and (c), and adding paragraph (d) to read as follows:

§ 31.6205–1 Adjustments of underpayments.

(a) * * *

(3) Every return on which an underpayment is corrected pursuant to this section must have securely attached as a part thereof a statement explaining the correction, designating the return period in which the error was ascertained and the return period to which the error relates, and setting forth such other information as may be required by the regulations in this subpart and by the instructions relating to the return.

* * * * *

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Error ascertained before return is filed.* If an employer fails to collect any employee tax or collects less than the correct amount of employee tax from an employee with respect to wages, as defined in the Federal Insurance Contributions Act (FICA), or compensation, as defined in the Railroad Retirement Tax Act (RRTA), paid to the employee in any return period, and ascertains the error before filing the return on which the employee tax is required to be reported, the employer shall nevertheless report on the return and pay to the Internal Revenue Service the correct amount of the employee tax. The reporting and payment by the employer of the correct amount of the tax in accordance with this paragraph (b)(1) is not an adjustment within the meaning of this section. The following example illustrates the provisions of this paragraph (b)(1). On July 10, when *X* was preparing its employment tax return for the second quarter of the calendar year, *X* realized that it had failed to withhold sufficient tax under the FICA. When *X* files its return on July 31, *X* must report on its return and pay the correct amount of tax. There is no adjustment within the meaning of section 6205, because *X* reported on its return and paid to the Service the correct amount of tax.

(2) *Return not filed because of failure to treat individual as employee*—(i) *In general.* If an employer fails to file a return for a period solely because the employer improperly failed to treat any individuals as employees for the period (and, therefore, failed to pay any employer or employee tax under the FICA or the RRTA with respect to any payments to the employees), the employer shall nevertheless file a return for the period and report on the return and pay to the Service the correct amount of tax. The reporting and payment by the employer of the correct amount of tax for the period is an adjustment within the meaning of this section only if the return is filed and the tax is paid no later than the due date of a like return for the return period in which the error (i.e., nonpayment) was ascertained.

(ii) *Transitional rule for 1992.* For errors described in paragraph (b)(2)(i) of this section that are ascertained in 1992, the reporting and payment by the employer of the correct amount of the tax is an adjustment within the meaning of this section only if the return on which the underpayment is reported is filed on or before the due date of a return required to be filed for the period ending December 31, 1992.

(iii) *Effective date of paragraph (b)(2) of this section.* This paragraph (b)(2) is effective for errors ascertained after December 31, 1991.

(iv) *Examples.* The following examples illustrate this paragraph (b)(2):

Example 1. X improperly failed to treat *A* as an employee for 1991 and 1992. *X* had no other employees. Therefore, *X* did not pay any employer or employee tax under the FICA and did not file returns reporting the tax with respect to the wages *X* paid to *A*. *X* ascertained the error on August 20, 1992. With respect to the wages paid for periods before the error was ascertained, if, on or before February 1, 1993 (the due date of a return required to be filed for the period ending December 31, 1992), *X* both files the appropriate quarterly returns reporting the employer and employee tax and pays the tax, the reporting and payment is an interest-free adjustment for each quarter. If *X* files any of the quarterly returns after February 1, 1993, or pays the tax due on any of the quarterly returns after February 1, 1993, the reporting and payment is not an adjustment for that quarter (or quarters) within the meaning of this section. For rules relating to taxes on wages paid during the quarter in which the error was ascertained but before the date on which the error was ascertained (wages paid from July 1, 1992, to August 19, 1992, inclusive), see paragraph (b)(1) of this section.

Example 2. The facts are the same as in *Example 1*, except that *X* ascertains the error on January 20, 1993. With respect to the wages paid during 1992, if, on or before April 30, 1993 (the due date of a return required to be filed for the quarter in which the error was ascertained), *X* both files the appropriate quarterly returns reporting the employer and employee tax and pays the tax, the reporting and payment is an interest-free adjustment for each quarter. If *X* files any of the quarterly returns after April 30, 1993, or pays the tax due on any of the quarterly returns after April 30, 1993, the reporting and payment is not an adjustment for that quarter (or quarters) within the meaning of this section. For rules relating to taxes on wages paid during the quarter in which the error was ascertained but before the date on which the error was ascertained (wages paid from January 1, 1993, to January 19, 1993, inclusive), see paragraph (b)(1) of this section.

Example 3. R improperly failed to treat *A* as an employee for 1992 and 1993. *R* had no other employees during either year. Therefore, *R* did not pay any employer or employee tax under the RRTA and did not file returns reporting the tax with respect to the wages *R* paid to *A*. *R* ascertained the error on May 20, 1993, after *R* and *A* had terminated their relationship. With respect to the wages paid during 1992 and 1993, if, on or before February 28, 1994 (the due date of a return required to be filed for the period in which the error was ascertained), *R* files annual returns for 1992 and 1993 reporting the employer and employee tax and *R* pays the tax, the reporting and payment is an interest-free adjustment for each year. If *R* files either annual return after February 28, 1994, or pays the tax due on either annual return after February 28, 1994, the reporting and payment is not an adjustment for that year (or years) within the meaning of this section.

(3) *Error ascertained after return is filed*—(i) *In general.* If a return is filed, and if no employee tax, no employer tax, or less than the correct amount of either tax with respect to any payment to an employee of wages, as defined in the FICA, or compensation, as defined in the RRTA, is reported on the return and paid to the Service, the employer shall report the amount of the underpayment as an adjustment on a return filed on or before the day on which the return is required to be filed for the return period in which the error is ascertained. The amount of each underpayment reported as an adjustment shall be paid to the Service, without interest, no later than the date on which the return reporting the adjustment is required to be filed. If an adjustment is properly and timely reported, but the amount of the underpayment is not paid when due, interest will accrue from the due date of the return on which the adjustment is reported. See section 6601.

(ii) *Adjustment not reported timely.* If a return is filed, and if no employee tax, no employer tax, or less than the correct amount of either tax with respect to a payment to an employee of wages or compensation is reported on the return and paid to the Service, and the underpayment is not reported as an adjustment within the time prescribed by paragraph (b)(3)(i) of this section, the employer shall report the amount of the underpayment as an adjustment on the employer's next return. For interest accruing on amounts so reported, see section 6601.

(iii) *Amount reported on incorrect return.* If a return relating to tax under the FICA is filed although a return relating to tax under the RRTA was required to be filed, or vice versa, and if the amount reported on the return filed and paid to the Service was less than the amount that should have been reported on the return required to be filed, and the employer shall report the amount of the underpayment as an adjustment on an original return for the correct tax for the return period in which the payment of wages or compensation was made, accompanied by an explanation of the adjustment being reported. The reporting of the underpayment as an adjustment on an original return is an adjustment within the meaning of this section only if the return is filed on or before the day on which the return is required to be filed for the return period in which the error was ascertained. The amount of each underpayment reported as an adjustment on an original return shall be paid to the Service, without interest, no later than the date on which the return reporting the adjustment is required to be filed. If an adjustment is properly timely reported on an original return, but the amount of the underpayment is not timely paid, interest will accrue from the due date of the return on which the adjustment is reported. See section 6601.

(4) *Deductions from employee.* If an employer collects no employee tax or less than the correct amount of employee tax from an employee with respect to a payment of wages, as defined in the FICA, or compensation, as defined in the RRTA, the employer shall collect the amount of the undercollection by deducting the amount from remuneration of the employee, if the employee is under the employer's control when the error is ascertained. The employer may make deductions even if the remuneration, for any reason, is not wages or compensation. The employer shall report and pay the amount of an undercollection as provided in paragraph (b)(1), (2), or (3) of this section, whether or not the employer corrects the undercollection by deducting the amount from remuneration of the employee. If the employer fails to deduct the amount, the employee's obligation to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If any employer makes an erroneous collection of employee tax from two or more employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of employee tax from one employee may not be used to offset an undercollection of employee tax from another employee.

(c) *Income tax required to be withheld from wages.* This paragraph applies only if the error is ascertained in the calendar year in which the wages are paid. No adjustment of income tax withholding is permitted to be made after the calendar year in which the wages are paid.

(1) *Error ascertained before return is filed.* If an employer fails to collect any income tax, or collects less than the correct amount of income tax, required under section 3402 to be withheld from wages, from an employee with respect to wages paid to the employee in any return period, and ascertains the error before filing the return on which the income tax is required to be reported, the employer shall nevertheless report on the return and pay to the Service the correct amount of the tax required to be withheld. The reporting and payment by the employer of the correct amount of the tax in accordance with this paragraph (c)(1) is not an adjustment within the meaning of this section. The following example illustrates the provisions of this paragraph (c)(1). On July 10, when *Y* was preparing its employment tax return for the second quarter of the calendar year, *Y* realized that it had failed to withhold sufficient income tax. When *Y* files its return on July 31, *Y* must report on its return and pay the correct amount of tax. There is no adjustment within the meaning of section 6205, because *Y* reported on its return and paid to the Service the correct amount of tax.

(2) *Return not filed because of failure to treat individual as employee*—(i) *In general.* If an employer fails to file a return for a period solely because the employer improperly failed to treat any individuals as employees for the period (and, therefore, failed to pay any income tax required under section 3402 to be withheld from wages paid to employees), the employer shall nevertheless file a return for the period and report on the return and pay to the Service the correct amount of tax. The reporting and payment by the employer of the correct amount of tax for the period is an adjustment within the meaning of this section only if the return is filed and the tax is paid no later than the due date of a like return for the return period in which the error (i.e., nonpayment) was ascertained.

(ii) *Transitional rule for 1992.* For errors described in paragraph (c)(2)(i) of this section that are ascertained in 1992 with respect to wages paid in 1992, the reporting and payment by the employer of the correct amount of the tax is an adjustment within the meaning of this section only if the return on which the underpayment is reported is filed on or before February 1, 1993 (the due date of a return required to be filed for the period ending December 31, 1992).

(iii) *Effective date of paragraph (c)(2) of this section.* This paragraph (c)(2) is effective for errors ascertained after December 31, 1991.

(iv) *Examples.* The following examples illustrate this paragraph (c)(2):

Example 1. Y improperly failed to treat *A* as an employee for 1991 and 1992. *Y* had no other employees. Therefore, *Y* did not pay any income tax required under section 3402 to be withheld from wages paid to an employee and did not file returns reporting the tax with respect to the wages *Y* paid to *A*. *Y* ascertained the error on August 20, 1992. The principles of this paragraph (c)(2) do not apply with respect to the wages paid during 1991, because the error was not ascertained on or before the last day of the calendar year in which the wages were paid. With respect to the wages paid for the two quarters during 1992 before the error was ascertained, if, on or before February 1, 1993 (the due date of a return required to be filed for the quarter ending December 31, 1992), *Y* both files the appropriate quarterly returns reporting the withheld income tax and pays the tax, the reporting and payment is an interest-free adjustment for each quarter. For rules relating to taxes on wages paid during the quarter in which the error was ascertained but before the date on which the error was ascertained (wages paid from July 1, 1992, to August 19, 1992, inclusive), see paragraph (c)(1) of this section.

Example 2. The facts are the same as in *Example 1*, except that *Y* discovers the error on January 20, 1993. The principles of this paragraph (c)(2) do not apply with respect to the wages paid during 1991 and 1992, because the error was not ascertained on or before the last day of the calendar year in which the wages were paid. For rules relating to taxes on wages paid during the quarter in which the error was ascertained but before the date on which the error was ascertained (wages paid from January 1, 1993, to January 19, 1993, inclusive), see paragraph (c)(1) of this section.

(3) *Error ascertained after return is filed*—(i) *In general.* If a return is filed for a return period, and if no income tax, or less than the correct amount of

income tax, required under section 3402 to be withheld from wages paid to an employee, is reported on the return and paid to the Service, the employer shall report the amount of the underpayment as an adjustment on a return for any subsequent return period in the calendar year in which the wages were paid. The reporting by the employer of the correct amount is an adjustment within the meaning of this section only if the return on which the underpayment is reported is filed on or before the due date of the return required to be filed for the period in which the error was ascertained (but no later than the due date of the return for the fourth quarter of the calendar year in which the error was ascertained).

(ii) *Adjustment not reported timely.* If a return is filed for a return period, and if no income tax or less than the correct amount of income tax, required under section 3402 to be withheld from wages paid to an employee, is reported on the return and paid to the Service, and the underpayment is not reported as an adjustment within the time prescribed by paragraph (c)(3)(i) of this section, the employer shall report the amount of the underpayment on the employer's next return (but no later than the due date of the return for the fourth quarter of the calendar year in which the error was ascertained).

(4) *Payment of amounts reported as underpayments*—(i) See § 31.3402(d)–1 for provisions relating to the employer's liability for an underpayment of tax where the employer is unable to show that the income tax against which the tax under section 3402 may be credited has been paid.

(ii) Except as provided in § 31.3402(d)–1, any amount reported as an adjustment within the meaning of this paragraph (c) shall be paid to the Service, without interest, at the time fixed for reporting the adjustment.

(iii) For interest accruing on amounts not paid when due, see section 6601.

(5) *Deductions from employee.* If an employer collects no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages, from an employee with respect to wages paid to the employee in a calendar year, the employer shall collect the amount of the undercollection on or before the last day of the year by deducting the amount from remuneration of the employee, if the employee is under the employer's control when the error is ascertained. The employer may make deductions even if the remuneration, for any reason, is not wages. If the employer ascertains the error in the same calendar year, the employer shall report and pay the amount of the undercollection as provided in paragraph (c)(1), (2), or (3) of this section, whether or not the employer corrects the undercollection by deducting the amount from remuneration of the employee. If the employer fails to deduct the amount, the employee's obligation to the employer with respect to the undercollection is a matter for settlement between the employee and the employer within the calendar year. If any employer makes an erroneous collection of income tax from two or more employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of income tax from one employee may not be used to offset an undercollection of income tax from another employee. For provisions relating to the employer's liability for the tax, whether or not the employer collects it from the employee, see § 31.3403–1.

(d) *Amounts paid or assessed under section 3509.* Any amount paid or assessed under section 3509 is an adjustment without interest within the meaning of this section.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–29484 Filed 12–9–92; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA15

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Reimbursement of Providers, Claims Filing, and Participating Provider Program

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This document proposes to implement provisions of the Department of Defense Appropriations Act, 1993, section 9011, which limits increases in maximum allowable payments to physicians and other individual professional providers (including clinical laboratories), authorizes reductions in such amounts for overpriced procedures, and establishes limits on balance billing by providers. It also implements a provision of the National Defense Authorization Act for Fiscal Year 1992 that requires providers to file claims on behalf of CHAMPUS beneficiaries, builds into the CHAMPUS Regulation provisions that have been in effect for several years regarding the Participating Provider Program, and implements a new approach for CHAMPUS reimbursement of ambulatory surgery centers.

DATES: Comments must be received by January 11, 1993.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900. For copies of the **Federal Register** containing this final rule, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $4.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Congressional Action

The Department of Defense Appropriations Act, 1993, Public Law 102–396, section 9011, that was signed on October 6, 1992 provides that none of the funds contained in this Act available for the Civilian Health and Medical Program of the Uniformed Services shall be available for payments to physicians and other authorized individual health care providers in excess of the amounts allowed in Fiscal Year 1992 for similar services, except that: (a) For services for which the Secretary of Defense determines an increase is justified by economic circumstances, the allowable amounts may be increased in accordance with appropriate economic index data similar to that used pursuant to title XVIII of the Social Security Act; and (b) for services the Secretary determines are overpriced based on allowable payments under title XVIII of the Social Security Act, the allowable amounts shall be reduced by not more than 15 percent (except that the reduction may be waived if the Secretary determines that it would impair adequate access to health care services for beneficiaries). The Secretary shall solicit public comment prior to promulgating regulations to implement this section. Such regulations shall include a limitation similar to that used

under title XVIII of the Social Security Act, on the extent to which a provider may bill a beneficiary an actual charge in excess of the allowable amount.

Section 9011 provides Congressional direction to reduce CHAMPUS payment limits for professional services towards the Medicare limits for similar services, and to proceed gradually by reducing each CHAMPUS payment limit by no more than 15 percent per year. Additionally, the provision requires that special consideration be given to beneficiary access to health care services as reductions in payment limits are undertaken. Lastly, limitations (similar to Medicare limitations) on balance billing of beneficiaries by nonparticipating providers are authorized.

The National Defense Authorization Act for Fiscal Year 1992, Public Law 102–190, section 716, added a new section 1106 to title 10 United States Code, "Submittal of Claims Under CHAMPUS". This section requires that each provider of services under CHAMPUS must submit claims on behalf of beneficiaries, provides authority to waive the claims filing requirement in cases where access may be impaired, and limits the period during which claims may be filed to one year following the date of service.

Another statutory provision pertinent to this proposed rule is 10 U.S.C. 1079(j)(2)(A), which allows CHAMPUS to reimburse institutional providers "to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under" Medicare. This authority was used in implementing the CHAMPUS DRG-Based Payment System in 1987, and other CHAMPUS reimbursement approaches for institutional providers. In this proposed rule, the authority is applied to another type of institutional provider, ambulatory surgery centers.

B. The Need for Reform of CHAMPUS Payment Methods

Over the past several years, at the direction of Congress, growth in CHAMPUS payment limits for physicians and other individual professional health care providers has been constrained, and late in 1991, reductions in payment limits for certain overpriced procedures were undertaken. Despite these measures, CHAMPUS professional payment limits remain about 43 percent higher than Medicare payment limits. Medicare is by far the largest payor for health services in the country, and as such its payment methodologies are carefully developed by the Executive Branch and Congress and subject to intense scrutiny by the public and by providers of health services. The product of this intensive activity represents the Federal government's best judgment on what constitutes a reasonable and appropriate payment method.

CHAMPUS, being structurally similar to Medicare and a considerably smaller program, neither attracts nor requires the same degree of attention in development of reimbursement methods. Thus, Congress has followed the prudent course of directing that CHAMPUS adopt or adapt Medicare reimbursement approaches when appropriate. In the case of payments to physicians and other individual providers, Congress directed in the Department of Defense Appropriation Act, 1993 that CHAMPUS payment limits be measured against Medicare payment limits to identify CHAMPUS payment limits that are too high; and those overpriced procedures be gradually reduced, without impairing adequate access to care. This proposed rule moves not only to implement a requirement of law, but also to advance an important policy objective. Requirements have been established for major reductions in the Defense Department budget, creating a need to at least moderate the rate of growth in DoD's health care budget. After years of study and deliberation, reasonable payment levels have been established by law for providers under the government's primary health care program, Medicare. CHAMPUS payments in excess of those reasonable levels are presumptively unnecessary and undesirable. Thus it is an important policy objective for DoD to undertake a gradual transition, without impairing access, to these fair and reasonable levels.

This policy objective is also advanced by the provisions of this proposed rule regarding payments for ambulatory surgery centers. CHAMPUS payment reforms for most inpatient hospital care, for most inpatient mental health care, and for physician reimbursements have shifted the basis away from billed charges and toward reimbursement based on the costs of providing services. One of the last remaining circumstances in which CHAMPUS reimburses care on the basis of billed charges is for ambulatory surgery centers. This proposed rule establishes a new approach featuring prospectively-determined pricing for ambulatory surgery center services.

For the most part, CHAMPUS pays for health care services on the basis of claims submitted after services are rendered, similar to the approach used by Medicare and throughout the health care industry. Medicare requires providers to file claims on behalf of beneficiaries, which increases efficiency of claims processing, because claims are more accurate and complete, and reduces paperwork burdens for beneficiaries. This proposed rule implements a statutory requirement in the National Defense Authorization Act for Fiscal Year 1992 that establishes a general obligation for both institutional and individual providers also to file CHAMPUS claims on behalf of beneficiaries.

C. Adapting the Medicare Fee Schedule Approach to CHAMPUS

In January 1992, Medicare implemented a new fee schedule for physician payments, based on a resource-based relative value scale (RBRVS). Rather than basing allowable payments for health care services on the historical charges submitted by providers, the approach uses the relative resource requirements of procedures as the basis for allowable payments. Each service is reimbursed based on its value, which is the sum of relative value units representing physician work, practice expenses, and the cost of professional liability insurance. Nationally uniform relative values are adjusted to localities according to published geographic practice cost indices, and a national conversion factor is used to convert total relative value units into dollar payment levels. Medicare is in transition from its former historical-charge-based payment approach to the Medicare Fee Schedule, with decreases in payment amounts limited to fifteen percent per year after 1992; the new approach will be fully implemented by fiscal year 1996.

The Medicare Fee Schedule is the culmination of long-term efforts to achieve a rational payment system for physicians, involving experts from inside and outside the government. A research team led by William Hsiao, PhD., of the Harvard University School of Public Health, produced a series of seminal reports on development and application of resource-based relative value scales for physician services. Additional substantial contributions to the development of the Medicare Fee Schedule were made by the Federally-sponsored Physician Payment Review Commission, the Urban Institute, and the Center for Health Economics Research. Thorough consideration of the theoretical and practical effects of implementing the Fee Schedule preceded its introduction in 1992.

In examining the Medicare Fee Schedule payment approach, we are encouraged that evidence to date

indicates that it will provide a reasonable basis for determining appropriate CHAMPUS payment limits, if we proceed prudently. Among the points that encourage us, monitoring of the Medicare system to date has uncovered no systematic evidence that implementation of the new approach has reduced access to care for Medicare beneficiaries. On the contrary, preliminary results of a Louis Harris & Associates poll commissioned by the Physician Payment Review Commission (PPRC) indicate that 92 percent of doctors with substantial Medicare practices still accept new Medicare patients. Further, of the eight percent that do not, most also had not done so the prior year, before the new payment system was implemented. The poll also indicated no significant shift in Medicare assignment rates. In addition to the poll, an initial PPRC study found access problems in only three limited geographical areas of the country, as evidenced by beneficiary access complaints to State Agencies on Aging, Congressional offices, HCFA carriers, and American Association of Retired Persons offices. Even in these three areas, it could not be ascertained that the new Medicare payment policies were the cause of the access problems.

The early experience of Medicare following implementation of the Medicare Fee Schedule mirrors the experience of CHAMPUS over the past several years. Although growth in CHAMPUS prevailing charge limits for physicians and other individual professional providers was constrained beginning in 1989, no adverse impact on access, as indicated by provider participation rates, has been observed. On the contrary, there has been a steady increase in the percentage of claims on which providers accept the CHAMPUS allowable amount as full payment—this "participation rate" was 67.8 percent in the first quarter of 1989, and rose to 81.8 percent by the second quarter of 1992. This suggests that the revisions to CHAMPUS payment policy to date have not adversely affected beneficiary access to care.

The fundamental soundness of the Medicare approach, the early indications that it is having minimal adverse effects, and recent CHAMPUS experience all suggest that adapting it to CHAMPUS can be accomplished without creating access problems, if we proceed carefully. Accordingly, we propose to phase in payment reductions, in line with Congressional guidance, and to provide ongoing controls on access to care. These protections will be based on analysis of data from each locality to provide maximum protection, and will include a special "fail-safe" mechanism in the form of a new provision for petitioning for relief in special circumstances. In addition, new emphasis will be placed on the Participating Provider Program, which will provide beneficiaries with increased access to providers who accept the CHAMPUS maximum allowable charge as full payment. Finally, new limits on balance billing by providers who do not accept assignment will provide an additional measure of financial protection for beneficiaries.

II. Provisions of the Proposed Rule

A. Payments to Physicians and Other Authorized Individual Professional Providers (revisions to § 199.14(g))

Pursuant to the Fiscal Year 1991 Department of Defense Appropriations Act, Public Law 101–511, section 8012, CHAMPUS published a final rule on September 6, 1991 (56 FR 44001), which established a process for identifying "overpriced procedures" and reducing the CHAMPUS maximum allowable charges for such procedures. Procedures targeted for reduction were those which exceeded 1.5 times the Medicare Fee Schedule amount. This target was based on a comparison of existing CHAMPUS payment limits to the new Medicare amounts. In the aggregate, CHAMPUS payment limits were about 1.5 times the Medicare amounts.

This proposed rule establishes a new standard for determining overpriced procedures for CHAMPUS, based on the Department of Defense Appropriations Act, 1993, section 9011. The new standard of comparison is the fully-phased-in Medicare Fee Schedule amount under Medicare. Thus, under the proposed rule, for procedures for which the CHAMPUS maximum allowable charge is above the fully phased in Medicare Fee Schedule amount, the CHAMPUS level will be reduced, unless the reduction is waived because of access considerations. The reduction will not exceed 15 percent, nor result in a CHAMPUS level below the Medicare level.

Simultaneous with implementing its reductions for overpriced procedures based on the FY 1991 statute, CHAMPUS implemented a process for determining prevailing charges on a national basis, with local economic adjustments (similar to the approach used by Medicare). This system replaced state-by-state prevailing charges with more precise locality-based maximum allowable charges. We have received sporadic reports of localities where the combined effect of the "overpriced procedure" reductions and the shift from state-based to locality-based payment limits was to reduce payments for some procedures by more than fifteen percent in some localities.

To respond to these concerns, the proposed rule establishes limitations on reductions in maximum allowable charges for localities. For any procedure with more than 50 annual claims in a locality, the cumulative reduction cannot exceed 15 percent per year in the locality. We propose to use the threshold of 50 claims per year involving that specific procedure in that locality to assure the statistical validity of the calculations and the practical relevance of this special step.

In order to protect beneficiaries and avoid impairing access to care, the proposed rule includes two separate mechanisms to assure adequate access to care. The first of these is an objective, statistical test; the second is a flexible method that will allow a case-by-case judgment of any special factors in any locality.

Under the first procedure, we will monitor the amount of balance billing of beneficiaries for all specific procedures (other than very infrequent procedures) in all localities. Balance billing refers to a provider billing a beneficiary for any amount above the CHAMPUS payment rate (not counting normal deductibles and cost sharing amounts). Again, we propose a threshold of 50 claims per year in a locality involving the particular procedure to assure the statistical validity of the test. In any case in which a reduction of the CHAMPUS payment level would have taken place based on the comparison to the Medicare level, the reduction will be waived if in the previous year the number of claims on which there was balance billing reaches 50 percent of all claims in that locality involving that procedure. In other words, as long as most claims for a procedure in a locality have no balance billing, we will have a basis to be reassured that beneficiaries have access to that procedure from providers who will accept the CHAMPUS payment level as payment in full. If the balance billing rate hits 50 percent, we would waive the reduction in payment amount to assure that access is not impaired. Our current expectation is that this will occur infrequently, but we propose this safeguard to assure both that we are fair to providers and that beneficiary access is not impaired.

Recognizing that no statistical test can take account of all possible circumstances, the proposed rule provides a second mechanism to assure adequate beneficiary access to care. This is to allow a waiver of a payment level reduction based on a determination by

the Director, OCHAMPUS that the reduction would impair access. This determination could be based on any relevant evidence, and can be made by the Director, OCHAMPUS on the Director's own initiative, or based on a petition from providers and beneficiaries for such a determination. Again, we expect that this mechanism will not be frequently needed, but it is incorporated into the proposed rule as a fail-safe method to assure adequate access.

B. Limitations on Balance Billing (§ 199.14(g)(1)(i)(D))

The Department of Defense Appropriations Act, 1993, section 9011 also directs that CHAMPUS include a limitation, similar to that under Medicare, on the extent to which a provider may bill a beneficiary an actual charge in excess of the allowable amount. This limitation on balance billing provides financial protection for beneficiaries by preventing excessively high billing by providers. The proposed rule established the CHAMPUS balance billing limit as the same percentage as that used in Medicare: 115 percent of the allowable charge. Failure by a provider to comply with this requirement is a basis for exclusion from the program. In order to provide flexibility to continue CHAMPUS benefits in special circumstances in which a beneficiary might feel strongly about using a particular provider, notwithstanding high fees, the proposed rule states that the limitation may be waived on a case-by-case basis if requested by a CHAMPUS beneficiary.

C. Filing of Claims by Providers (§ 199.6(a)(11))

The proposed rule implements a provision of the National Defense Authorization Act for Fiscal Year 1992 that requires providers to file claims on behalf of CHAMPUS beneficiaries and limits the claims filing period to one year following the date of service. Pursuant to 10 U.S.C. section 1106, the proposed rule generally requires all institutional and individual providers to file claims on behalf of beneficiaries. This requirement was modeled after a similar Medicare requirement. See S. Rept. No. 102–113, 92d Cong., 1st Sess., p. 232 (Senate Armed Services Committee). The proposed rule allows exceptions in certain circumstances. Blanket waivers of the requirement are established for providers outside the United States and Puerto Rico, and in double coverage cases. Waivers for particular categories of care in particular localities where the enforcement of the requirement would impair access may be granted through a determination by the Director, OCHAMPUS. A special petition process is established, similar to that established for waivers of CHAMPUS maximum allowable charge reductions.

We propose to implement the claims filing requirement in a manner similar to Medicare. This includes a prohibition on a provider imposing any administrative charge relating to the claim filing requirement and authority to reduce allowable payment amounts by ten percent (which may not be balance billed to the patient) for providers who fail to comply with the requirement or obtain a waiver.

The general deadline for filing claims of one year from the date the services were provided, established by the National Defense Authorization Act for Fiscal Year 1992, now appears at 10 U.S.C. section 1106. This is a change from current practice, which allows a claim to be filed up until the end of the calendar year following the year in which the services were provided. This new deadline, like the new provider claim filing requirements, is subject to waiver when necessary to ensure adequate access to health care services. This issue is addressed in proposed § 199.7(d).

D. Participating Provider Program (§ 199.6(a)(8)(iii))

Historically, individual providers have determined participation in CHAMPUS on a claim-by-claim basis. The proposed rule builds into the CHAMPUS regulation provisions that have been in effect for several years regarding the Participating Provider Program, in which providers may sign agreements to participate on all claims, agreeing to accept the CHAMPUS-determined allowable amount as payment in full for the service provided. This Participating Provider Program establishes a basic relationship among providers, CHAMPUS beneficiaries, and CHAMPUS. As such, it may be a building block for more extensive programs, entailing discounts, preferred provider arrangements, or other additional provisions to enhance services for CHAMPUS beneficiaries. The Participating Provider Program offers benefits to beneficiaries, in that they can be assured access to providers who will not balance the bill, and for providers, in that CHAMPUS beneficiaries will tend to seek out Participating Providers.

Beneficiaries will be assisted in locating Participating Providers by several resources. First, Health Benefits Advisors in military treatment facilities will have lists of Participating Providers. In many cases, this service will be supplemented by a Health Care Finder, often a telephone service center to aid beneficiaries. CHAMPUS Contractors will compile lists of Participating Providers to support this activity.

A significant incentive for providers to join the Participating Provider Program will be implemented in 1994. Similar to Medicare, CHAMPUS will institute a 5 percent differential for nonparticipating providers, so that their reimbursement will be only 95 percent of the rate allowable for Participating Providers. Coupled with the potential for increased volume of CHAMPUS business for Participating Providers, the differential will provide a strong basis for providers to join the program.

E. Ambulatory Surgery Center Reimbursement (§ 199.14(d))

The proposed rule addresses one of the last remaining circumstances in which CHAMPUS reimburses care on the basis of billed charges. Payment reforms have previously been adopted for most hospital care, for most inpatient mental health services and for physician reimbursements. Proposed § 199.14(d) puts into effect a prospective payment approach to reimbursement for facility charges for freestanding and hospital-based ambulatory surgery centers. This is being done under the authority of 10 U.S.C. section 1079(j)(2), which authorizes CHAMPUS to pay all institutional facility providers under payment methods similar to those implemented under Medicare. The proposed CHAMPUS system would establish nine group payment rates covering most ambulatory surgery cases. There will be two sets of these group payment rates, one for freestanding ambulatory surgical centers and one for hospital-based centers, each calculated with reference to the appropriate cost-to-charge ratio for that type of center.

In addition, proposed § 199.4(f)(3)(iii)(B) would establish for retirees, their dependents and survivors similar cost-sharing rules for ambulatory surgery cases as currently exist for hospital care covered by the DRG-based payment system. Under the proposed rule, these beneficiaries would pay the lesser of: 25% of the applicable group payment rate; or 25% of the billed charges. In most cases, 25% of the group rate under the new payment method will be less, but because there is some variation within a group, 25% of billed charges could be less in some cases. The rule would assure that the beneficiaries get the benefit of the new system when it is more advantageous, but will never be disadvantaged by it. Finally, it is

noted that this special cost-sharing rule does not apply to dependents of active duty, who are not required to pay a percentage cost share for ambulatory surgery. Rather, they pay the same nominal fee as is charged for inpatient care.

III. Regulatory Procedures

This is a proposed rule. Public comments are invited. All comments will be considered. A discussion of the major issues revised by public comments will be included with issuance of the final rule, anticipated approximately 30 days after the end of the comment period.

Executive Order 12291 requires that a regulatory impact analysis be performed for any major rule. A "major rule" is defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a major rule under the provisions of Executive Order 12291, because it will not have an impact on the economy of more than $100 million. This proposed rule would not have a significant impact on a substantial number of small entities.

This proposed rule imposes no additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1079, 1086.

2. Section 199.2(b) is proposed to be amended by adding in alphabetical order new definitions for "Assistant Secretary of Defense (Health Affairs)", "balance billing", and Director, OCHAMPUS", and by revising the definition of "participating provider", as follows:

§ 199.2 Definitions.

* * * * *

Assistant Secretary of Defense (Health Affairs). An authority of the Assistant Secretary of Defense (Health Affairs) includes any person designated by the Assistant Secretary to exercise the authority involved.

* * * * *

Balance billing. A provider seeking any payment, other than any payment relating to applicable deductible and cost sharing amounts, from a beneficiary for CHAMPUS covered services for any amount in excess of the applicable CHAMPUS allowable cost or charge.

* * * * *

Director, OCHAMPUS. An authority of the Director, OCHAMPUS includes any person designated by the Director, OCHAMPUS to exercise the authority involved.

* * * * *

Participating provider. A hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider that furnished services or supplies to a CHAMPUS beneficiary and that submits a CHAMPUS claim form and accepts assignment of the CHAMPUS-determined allowable cost or charge as the total payment (even though less than the actual charge), whether paid for fully by the CHAMPUS allowance or requiring cost-sharing by the beneficiary (or sponsor). See § 199.6(a)(8) for more information on the Participating Provider Program.

* * * * *

3. Section 199.4 is proposed to be amended by redesignating the text of paragraph (f)(3)(iii) as paragraph (f)(3)(iii)(A), by adding a heading for newly designated paragraph (f)(3)(iii)(A), by adding a new paragraph (f)(3)(iii)(B), and by revising paragraph (f)(6)(i), as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) *Beneficiary or sponsor liability*

* * * * *

(3) *Retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees.* * * *

(iii) *Outpatient cost-sharing.*

(A) *For services other than ambulatory surgery center services.*

* * *

(B) *For services subject to the ambulatory surgery payment method.* For services provided by freestanding or hospital based ambulatory surgery centers and subject to the payment method set forth in § 199.14(d), the cost share shall be the lesser of: 25% of the payment amount provided pursuant to § 199.14(d); or 25% of the center's billed charges.

* * * * *

(6) *Amounts over CHAMPUS-determined allowable costs or charges.*

* * *

(i) *Participating Providers.* There are several circumstances under which institutional and individual providers may be Participating Providers, either on a mandatory basis or a voluntary basis. See § 199.6(a)(8). A Participating Provider, whether participating for all claims or on a claim-by-claim basis, must accept the CHAMPUS-determined allowable amount as payment in full for the medical services or supplies provided, and to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing amount paid by or on behalf of the beneficiary as payment in full for the covered medical services or supplies. Therefore, when costs or charges are submitted on a participating basis, the patient is not obligated to pay any amounts disallowed as being over the CHAMPUS-determined allowable cost or charge for authorized services or supplies.

* * * * *

4. Section 199.6 is proposed to be amended by revising paragraph (a)(8), and by adding new paragraphs (a)(11) and (a)(12), as follows:

§ 199.6 Authorized providers.

(a) *General.* * * *

(8) *Participating Providers.*

(i) *In general.* A Participating Provider is an individual or institutional provider that has agreed to accept the CHAMPUS-determined allowable amount as payment in full for the medical services and supplies provided to the CHAMPUS beneficiary, and has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost sharing and deductible amounts paid by, or on behalf of, the beneficiary as full payment for the covered medical services or supplies. In addition, Participating Providers submit the appropriate claims forms to the appropriate CHAMPUS contractor on behalf of the beneficiary. There are several circumstances under which providers are Participating Providers.

(ii) *Mandatory participation.* Medicare-participating hospitals are required by law to be Participating Providers on all inpatient claims under CHAMPUS. Hospitals that are not Medicare-participating providers but are subject to the CHAMPUS DRG-based payment system or the CHAMPUS mental health payment system (see § 199.14(a)), must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS.

(iii) *Participating Provider Program.* (A) *In general.* An institutional provider not required to participate pursuant to paragraph (a)(8)(ii) of this section and any individual provider may become a Participating Provider by signing a Participating Provider agreement. In such an agreement, the provider agrees that all CHAMPUS claims filed during the time period covered by the agreement will be on a participating basis.

(B) *Agreement required.* Under the Participating Provider Program, the provider must sign an agreement or memorandum of understanding under which the provider agrees to become a Participating Provider. Such an agreement may be with the nearby military treatment facility, a CHAMPUS contractor, or other authorized official. Such agreement may include other provisions pertaining to the Participating Provider Program. The Director, OCHAMPUS shall establish a standard model agreement and other procedures to promote uniformity in the administration of the Participating Provider Program.

(C) *Relationship to other activities.* Participating Provider agreements may include other provisions, such as provisions regarding discounts (see § 199.14(i)) or other provisions in connection with the delivery and financing of health care services, as authorized by this part or other DoD Directives or Instructions. Participating Provider agreement provisions may also be incorporated into other types of agreements, such as preferred provider arrangements where such arrangements are established under CHAMPUS.

(iv) *Claim-by-claim participation.* Institutional and individual providers that are not participating providers pursuant to paragraphs (a)(8) (ii) or (iii) of this section may elect to participate on a claim-by-claim basis. They may do so by signing the appropriate space on the claims form and submitting it to the appropriate CHAMPUS contractor on behalf of the beneficiary.

* * * * *

(11) *Submittal of claims by provider required*—(i) *General rule.* Unless waived pursuant to paragraph (a)(11)(ii) of this section, every CHAMPUS-authorized institutional and individual provider is required to submit CHAMPUS claims to the appropriate CHAMPUS contractor on behalf of the beneficiary for all services and supplies. In addition, the provider may not impose any charge relating to completing and submitting the applicable claim form (or any other related information). (Although CHAMPUS encourages provider participation, paragraph (a)(11) of this section requires only the submission of claim forms by providers on behalf of beneficiaries; it does not require that providers accept assignment of beneficiaries' claims or become Participating Providers.)

(ii) *Waiver of claims submission requirement.* The requirement that providers submit claims on behalf of beneficiaries may be waived in the following circumstances:

(A) *General requirement for waiver.* The requirement that providers submit claims on behalf of beneficiaries may be waived by the Director, OCHAMPUS when the Director determines that the waiver is necessary in order to ensure adequate access for CHAMPUS beneficiaries to health care services. However, the requirement may not be waived for Participating Providers (see paragraph (a)(8) of this section).

(B) *Blanket waiver for providers outside the United States.* The requirement that providers submit claims is waived with respect to providers outside the United States (the United States includes Puerto Rico for this purpose).

(C) *Blanket waiver in double coverage cases.* The requirement that providers submit claims is waived in cases in which another insurance plan or program provides primary coverage for the services.

(D) *Waivers for particular categories of care.* The Director, OCHAMPUS may waive the requirement that providers submit claims if the Director determines that available evidence clearly shows that the requirement would impair adequate access. For this purpose, such evidence may include consideration of the number of providers in the locality who provide the affected services, the number of such providers who are CHAMPUS Participating Providers, the number of CHAMPUS beneficiaries in the area, and other relevant factors. Providers or beneficiaries in a locality may submit to the Director, OCHAMPUS a petition, together with appropriate documentation regarding relevant factors, for a determination that adequate access would be impaired. The Director, OCHAMPUS will consider and respond to all such petitions. The Director, OCHAMPUS may establish procedures for handling such petitions.

(E) *Case-by-case waivers.* On a case-by-case basis, the Director, OCHAMPUS may waive the provider's obligation to submit that claim if the Director determines that a waiver in that case is necessary in order to ensure adequate access for CHAMPUS beneficiaries to the health care services involved. Such case-by-case waivers may be requested by providers or beneficiaries pursuant to procedures established by the Director.

(iii) *Remedies for noncompliance.* (A) In any case in which a provider fails to submit a claim, or charges an administrative fee for filing a claim, in violation of the requirements of paragraph (a)(11) of this section, the amount that would otherwise be allowable for the claim shall be reduced by ten percent, unless the reduction is waived by the Director, OCHAMPUS based on special circumstances. The amount disallowed by such a reduction may not be billed to the patient (or the patient's sponsor or family).

(B) Repeated failures by a provider to comply with the requirements of paragraph (a)(11) of this section shall be grounds for exclusion from the program.

(12) *Balance billing limits.*

(i) *In general.* Individual providers who are not Participating Providers may not balance bill a beneficiary an amount which exceeds the applicable balance billing limit. The balance billing limit shall be the same percentage as the Medicare limiting charge percentage for nonparticipating physicians.

(ii) *Waiver.* The balance billing limit may be waived by the Director, OCHAMPUS on a case-by-case basis if requested by a CHAMPUS beneficiary.

(iii) *Compliance.* Failure to comply with the balance billing limit is a basis for exclusion from the program.

* * * * *

5. Section 199.7 is proposed to be amended by revising the introductory text of paragraph (d), paragraphs (d)(1), (d)(2)(i)(D), and (d)(2)(i)(E), as follows:

§ 199.7 Claims submission, review, and payment.

* * * * *

(d) *Claims filing deadline.* To be considered for benefits, all claims submitted for benefits must, except as provided in paragraph (d)(2) of this section, be filed with the appropriate CHAMPUS contractor no later than one year after the services are provided. Unless the requirement is waived, failure to file a claim within this deadline waives all rights to benefits for such services or supplies.

(1) *Claims returned for additional information.* When a claim is submitted initially within the claim filing time limit, but is returned in whole or in part for additional information to be considered for benefits, the returned claim, along with the requested information, must be resubmitted and received by the appropriate CHAMPUS contractor no later than the later of:

(i) One year after the services are provided; or

(ii) 90 days from the date the claim was returned to the provider or beneficiary.

(2) *Exception to claims filing deadline.*

* * * * *

(i) *Types of exception.*

* * * * *

(D) *Delays by other health insurance.* When not attributable to the beneficiary, delays in adjudication by other health insurance companies when double coverage coordination is required before the CHAMPUS benefit determination.

(E) *Other waiver authority.* The Director, OCHAMPUS may waive the claims filing deadline in other circumstances in which the Director determines that the waiver is necessary in order to ensure adequate access for CHAMPUS beneficiaries to health care services.

* * * * *

6. Section 199.14 is proposed to be amended by revising paragraph (d), by revising paragraphs (g)(1)(i), (g)(1)(ii)(A), (g)(1)(iii) introductory text, (g)(1)(iii)(A)(*1*), (g)(1)(iii)(B)(*1*), and (g)(1)(iv), by redesignating paragraph (g)(1)(viii) as paragraph (g)(1)(x) and revising newly redesignated paragraph (g)(1)(x), and by adding a new paragraph (g)(1)(viii), as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(d) *Payment of institutional facility costs for ambulatory surgery.*

(1) *In general.* CHAMPUS pays institutional facility costs for ambulatory surgery on the basis of prospectively determined amounts, as provided in paragraph (d) of this section. This payment method is similar to that used by the Medicare program for ambulatory surgical centers. This paragraph applies to payment for institutional charges for ambulatory surgery provided in hospitals and freestanding ambulatory surgical centers. It does not apply to professional services.

(2) *Payment in full.* The payment provided for under this paragraph is the payment in full for services covered by this paragraph. Facilities may not charge beneficiaries for amounts, if any, in excess of the payment amounts determined pursuant to this paragraph.

(3) *Calculation of standard payment rates.* Standard payment rates are calculated for groups of procedures under the following steps:

(i) *Step 1: Calculate a median standardized charge for each procedure.* For each ambulatory surgery procedure, a median standardized charge will be calculated on the basis of all ambulatory surgery charges nationally under CHAMPUS during a recent one-year base period. The steps in this calculation include calculating a per procedure charge for each facility, updating to 1992 by the Medicare inpatient hospital market basket rate, standardizing for local labor costs by reference to the same wage index and labor/non-labor-related cost ratio as applies to the facility under Medicare, weighting of each facility's per procedure standardized charge by the number of times each procedure was performed by the facility, and the determination of the per procedure median standardized charge for all facilities.

(ii) *Step 2: Apply cost-to-charge ratios.* The median standardized charge for each procedure will be multiplied by the Medicare cost-to-charge ratio for freestanding ambulatory surgery centers (FASCs) and the Medicare cost-to-charge ratio for hospital-based ambulatory surgery centers (HASCs), producing two sets of median standardized costs per procedure.

(iii) *Step 3: Grouping procedures.* For both the FASC and HASC sets of median standardized costs per procedure, procedures will then be grouped by their median per procedure cost using fixed dollar intervals, starting with $0 to $299 for group 1 and ending with $1,000 and above for the last group, with intermediate groups set on the basis of $100 fixed intervals. This will result in two sets of nine groups, one set of groups for FASCs and the other set of groups for HASCs.

(iv) *Step 4: Adjustments to groups.* The Director, OCHAMPUS may make adjustments to the groupings resulting from step 3 to account for any ambulatory surgery procedures for which there was insufficient data to allow a grouping or to correct for any anomalies resulting from data or statistical factors or other special factors that fairness requires be specially recognized. In making any such adjustments, the Director may take into consideration the placing of particular procedures in the ambulatory surgery groups under Medicare.

(v) *Step 5: Standard payment amount per group.* For both the FASC and HASC sets of groups, the standard payment amount for each group will be the median per procedure cost for the procedures in that group.

(vi) *Step 6: Actual payments.* Actual payment for a procedure will be the standard payment amount for the group which covers that procedure in that type of facility, adjusted for local labor costs by reference to the same labor/non-labor-related cost ratio and hospital wage index as used for Medicare.

(4) *Multiple procedures.* In cases in which authorized multiple procedures are performed during the same operative session, payment shall be based on 100 percent of the payment amount for procedure with the highest ASC payment amount, plus, for each other procedure performed during the session, 50 percent of its payment amount.

(5) *Annual updates.* The standard payment amounts will be updated annually by the same update factor as is used in the Medicare annual updates for ambulatory surgery center payments.

* * * * *

(g) *Reimbursement of individual health-care professionals and other non-institutional health-care providers.*

* * *

(1) *Allowable charge method.*

(i) *Introduction.*

(A) *In general.* The allowable charge method is the preferred and primary method for reimbursement of individual health care professionals and other non-institutional health care providers (covered by 10 U.S.C. 1079(h)(1)). The allowable charge for authorized care shall be the lowest of the billed charge, the prevailing charge level or the appropriate charge level.

(B) *CHAMPUS Maximum Allowable Charge.* Beginning in calendar year 1992, prevailing charge levels and appropriate charge levels will be calculated on a national level. There will then be calculated a national CHAMPUS Maximum Allowable Charge (CMAC) level for each procedure, which shall be the lesser of the national prevailing charge level or the national appropriate charge level. The national CMAC will then be adjusted for localities in accordance with paragraph (g)(1)(iv) of this section.

(C) *Differential for Participating Providers.* Beginning in calendar year 1994, there shall be a differential in national and local CMACs based on whether the provider is a participating provider or a nonparticipating provider. The differential shall be calculated so that the CMAC for nonparticipating providers is 95% of the CMAC for participating providers. To assure the effectiveness of the several phase-in and waiver provisions set forth in paragraphs (g)(1)(iii) and (g)(1)(iv) of this section, beginning in calendar year 1994, there will first be calculated the national and local CMACs for nonparticipating providers. For purposes of this calculation, the identification of overpriced procedures called for in paragraph (g)(1)(iii)(A) of this section and the calculation of

appropriate charge levels for such overpriced procedures called for in paragraph (g)(1)(iv)(B) of this section shall use as the Medicare fee component of the comparisons and calculations the fee level applicable to Medicare nonparticipating providers, which is 95% of the basic fee level. After nonparticipating provider local CMACs are calculated (including consideration of special phase-in rules and waiver rules in paragraph (g)(1)(iv) of this section), participating provider local CMACs will be calculated so that nonparticipating provider local CMACs are 95% of participating provider local CMACs. (For more information on the Participating Provider Program, see § 199.6(a)(8)).

(D) *Limits on balance billing by nonparticipating providers.* Nonparticipating providers may not balance bill a beneficiary an amount which exceeds the applicable balance billing limit. The balance billing limit shall be the same percentage as the Medicare limiting charge percentage for nonparticipating physicians. The balance billing limit may be waived by the Director, OCHAMPUS on a case-by-case basis if requested by the CHAMPUS beneficiary (or sponsor) involved.

(ii) *Prevailing charge level.*

(A) Beginning in calendar year 1992, the prevailing charge level shall be calculated on a national basis.

* * * * *

(iii) *Appropriate charge level.* Beginning in calendar year 1992, the appropriate charge level shall be calculated on a national basis. The appropriate charge level for each procedure is the product of the following two-step process.

(A) *Step 1: Procedures classified.*

* * *

(*1*) *Overpriced procedures.* These are the procedures for which the prior year's national appropriate charge level or national prevailing charge level, whichever is less, exceeds the fully phased-in Medicare fee. For any particular procedure for which comparable Medicare fee and CHAMPUS data are unavailable, but for which alternative data are available that the Director, OCHAMPUS (or designee) determines provide a reasonable approximation of relative value or price, the comparison may be based on such alternative data.

* * * * *

(B) *Step 2: Calculating appropriate charge levels.* * * *

(*1*) For overpriced procedures, the prior year's appropriate charge level for each procedure shall be reduced by the lesser of the percentage by which it exceeds the Medicare fee or fifteen percent.

* * * * *

(iv) *Calculating CHAMPUS Maximum Allowable Charge Levels for Localities.*

(A) *In general.* The national CHAMPUS Maximum Allowable Charge level for each procedure will be adjusted for localities using the same (or similar) geographical areas and the same geographic adjustment factors as are used for determining allowable charges under Medicare.

(B) *Special locality-based phase-in provision.*

(*1*) *In general.* Beginning with the recalculation of appropriate charge levels for calendar year 1993, the appropriate charge level in a locality will not be less than 72.25% of the appropriate charge level in effect for that locality on December 31, 1991. For recalculations of appropriate charge levels for calendar years after 1993, the appropriate charge level in a locality will not be less than 85% of the appropriate charge level in effect for that locality at the end of the prior calendar year.

(*2*) *Exception.* The special locality-based phase-in provision established by paragraph (g)(1)(iv)(B)(*1*) of this section shall not be applicable in the case of any procedure code for which there were not CHAMPUS claims in the locality accounting for at least 50 services.

(C) *Special locality-based waivers of reductions to assure adequate access to care.* Beginning with the recalculation of appropriate charge levels for calendar year 1993, in the case of any procedure classified as an overpriced procedure pursuant to paragraph (g)(1)(iii)(A)(*1*) of this section, a reduction in the appropriate charge level in a locality below the level in effect at the end of the previous calendar year that would otherwise occur pursuant to paragraphs (g)(1)(iii) and (g)(1)(iv) of this section may be waived pursuant to paragraph (g)(1)(iii)(C) of this section.

(*1*) *Waiver based on balanced billing rates.* Except as provided in paragraph (g)(1)(iv)(C)(*2*) of this section such a reduction will be waived if there has been excessive balance billing in the locality for the procedure involved. For this purpose, the extent of balance billing will be determined based on a review of all services under the procedure code involved in the prior year (or most recent period for which data are available). If the number of services for which balance billing was not required was less that 50 percent of all services provided, the Director will determine that there was excessive balance billing with respect to that procedure in that locality and will waive the reduction in the CMAC that would otherwise occur.

(*2*) *Exception.* As an exception to the paragraph (g)(1)(iv)(C)(*1*) of this section, the waiver required by that paragraph shall not be applicable in the case of any procedure code for which there was not CHAMPUS claims in the locality accounting for at least 50 services. A waiver may, however, be granted in such cases pursuant to paragraph (g)(1)(iv)(C)(*3*) of this section.

(*3*) *Waiver based on other evidence that adequate access to care would be impaired.* The Director, OCHAMPUS may have a reduction that would otherwise occur if the Director determines that available evidence clearly shows that the reduction would impair adequate access. For this purpose, such evidence may include consideration of the number of providers in the locality who provide the affected services, the number of such providers who are CHAMPUS Participating Providers, the number of CHAMPUS beneficiaries in the area, and other relevant factors. Providers or beneficiaries in a locality may submit to the Director, OCHAMPUS a petition, together with appropriate documentation regarding relevant factors, for a determination that adequate access would be impaired. The Director, OCHAMPUS will consider and respond to all such petitions. The Director, OCHAMPUS may establish procedures for handling such petitions.

* * * * *

(viii) *Clinical laboratory services.* The allowable charge for clinical diagnostic laboratory test services shall be calculated in the same manner as allowable charges for other individual health care providers are calculated pursuant to paragraphs (g)(1)(i) through (g)(1)(iv) of this section, with the following exceptions and clarifications.

(A) The calculation and national prevailing charge levels, national appropriate charge levels and national CMACs for laboratory service shall begin in calendar year 1993. For purposes of the 1993 calculation, the prior year's national appropriate charge level or national prevailing charge level shall be the level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services during the period July 1, 1991 through June 30, 1992 (referred to in this paragraph (g)(1)(viii) of this section as the "base period").

(B) For purposes of comparison to Medicare allowable payment amounts pursuant to paragraph (g)(1)(iii) of this

section, the Medicare national laboratory payment limitation amounts shall be used.

(C) For purposes of establishing laboratory service local CMACs pursuant to paragraph (g)(1)(iv) of this section, the adjustment factor shall equal the ratio of the local average charge (standardized for the distribution of clinical laboratory services) to the national average charge for all clinical laboratory services during the base period.

(D) For purposes of a special locality-based phase-in provision similar to that established by paragraph (g)(1)(iv)(B) of this section, the appropriate charge level in a locality will not be less than 85% of the appropriate charge level in effect for that locality during the base period.

* * * * *

(x) A charge that exceeds the CHAMPUS Maximum Allowable Charge can be determined to be allowable only when unusual circumstances or medical complications justify the higher charge. The allowable charge may not exceed the billed charge under any circumstances.

Dated: December 7, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-30040 Filed 12-9-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF36

Veterans' Education; Increase in Rates Payable in the Educational Test Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent. The regulations dealing with these rates are adjusted accordingly.

DATES: Comments must be received on or before January 11, 1993. Comments will be available for public inspection until January 21, 1993.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until January 21, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education and determined that these costs increased during the 1989-90 school year by 6 percent. This proposal adjusts 38 CFR 21.5820 and 21.5822 so that all rates which appear in them are based on an annual limit on educational assistance of $1969, and monthly payment of subsistence allowance for full-time students of $491.

It is proposed to make these increases effective October 1, 1990. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretive rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1990. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

VA (Department of Veterans Affairs) and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 18, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 17, 1992.

Robert M. Alexander,

Lieutenant General, USAF Deputy Assistant Secretary (Military Manpower & Personnel Policy) U.S. Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart H is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H continues to read as follows:

Authority: 10 U.S.C. Ch. 107; Pub. 96-342.

2. In § 21.5820 paragraphs (b) introductory text, (b)(1)(ii) (A), (B) and (C) and (b)(2)(ii) (A), (B) and (C) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of educational assistance.* The amount of educational assistance may not exceed $1969 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $218.78 for a full-time student or by $109.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $7.29 for a full-time student or by $3.64 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 2¢ for a full-time student and decreased by 1¢ for a part-time student; and

(Authority: 10 U.S.C. 2143)

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $218.78 for a full-time student or by $109.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $7.29 for a full-time student or by $3.64 for a part-time student; and

(Authority: 10 U.S.C. 2143)

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 2¢ for a full-time student and decreased by 1¢ for a part-time student; and

(Authority: 10 U.S.C. 2143)

* * * * *

3. In § 21.5822 paragraphs (b)(1) (i) and (ii), (b)(2) (i) and (ii) are revised to read as follows.

§ 21.5822 Subsistence allowance.

* * * * *

(b) Amount of subsistence allowance.

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $491 per month adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $245.50 per month.

(Authority: 10 U.S.C. 2144)

* * * * *

(2) * * *

(i) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $491 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $245.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C. 2144)

* * * * *

[FR Doc. 92-29183 Filed 12-9-92; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 92-77 FCC No. 92-465]

Billed Party Preference for 0+ InterLATA Calls

AGENCY: Federal Communications Commission.

ACTION: Request for supplemental comment.

SUMMARY: This action invites supplemental comment to assist the Commission in determining methods for compensating operator service providers who receive 0+ dialed proprietary card calls and who wish to transfer those calls to the card issuer for completion.

DATES: Comments must be filed on or before December 14, 1992, and reply comments on or before January 6, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin, 202-632-6917.

SUPPLEMENTARY INFORMATION: On October 8, 1992 the Commission adopted a Report and Order and Request for Supplemental Comment (Report and Order in CC Docket 92-77, Phase I, FCC No. 92-465, released November 6, 1992. In the Report and Order, the Commission reviewed certain interexchange carrier (IXC) calling card practices in the first phase of its "billed party preference" (BPP) proceeding. In Phase I, the Commission considered the need to take immediate action in response to alleged competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access, pending its consideration of the costs and benefits of a BPP-routing methodology for 0+ dialed InterLATA calls. This Order seeks supplemental comment on possible methods for compensating operator service providers who continue to receive 0+ dialed proprietary card calls and who wish to transfer those calls to the card issuer for completion. The Order specifically seeks comment on how this transfer service is to be defined and provided, the network interconnection arrangements the service would require and related matters. The full text of the Commission's Order is available for public inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, suite 640, 1990 M Street, NW., Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-29928 Filed 12-9-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217, 220

[FRA Docket No. RSOR-12; Notice No. 2]

RIN 2130-AA76

Railroad Operating Rules and Radio Standards and Procedures; Hearing and Extension of Comment Period

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: FRA announces a public hearing to consider issues regarding its proposal to remove requirements that railroads file their operating rules, radio rules, and other related documents with FRA and to substitute requirements that railroads maintain records of such documents and make them available to FRA representatives during regular business hours (57 FR 47603, October 19, 1992). This public hearing is necessitated by a request from an interested party that FRA provide an opportunity for oral comment in order to address these issues. The hearing will be held on December 14, 1992, in Washington, DC. FRA is also extending the NPRM comment period on this proposed rule from November 20, 1992 to December 21, 1992 in order to accommodate the public hearing and comments in response to issues raised at that hearing.

DATES: (1) Written comments must be received no later than December 21, 1992. Comments received after that date will be considered to the extent possible

without incurring additional expense or delay.

(2) The public hearing will held at 10 a.m. on December 14, 1992. Any person wishing to present oral testimony at the hearing is requested to notify the Docket Clerk at least five working days prior to the date of the hearing, by telephone or mail, and to submit three copies of the oral statement that he or she intends to make at the hearing.

ADDRESSES: (1) Written comments: Address written comments to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Comments should identify the docket number and must be submitted in triplicate. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard. The docket is in room 8201 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Written comments may be reviewed, both before and after the closing date for comments, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

(2) Public hearing: A public hearing will be held in room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to testify at the hearing should notify the Docket Clerk by telephone at (202) 366–0628 or by writing to the Docket Clerk at the address above and should provide to the Docket Clerk three copies of the oral statement that he or she intends to make at the hearing no later than one day prior to the hearing.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366–0635) or James T. Schultz, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366–9178).

SUPPLEMENTARY INFORMATION: On October 19, 1992, FRA published a Notice of Proposed Rulemaking (NPRM) to amend its Railroad Operating Rules (49 CFR part 217) and Radio Standards and Procedures (49 CFR part 220). 57 FR 47,603 (1992). FRA proposed removing the requirement that railroads file their respective operating rules, radio rules, and other related documents with FRA in Washington, DC and substituting the requirement that railroads retain these records and make them available upon request for inspection by FRA personnel during regular business hours.

At the time the NPRM was published, FRA regarded the amendments proposed as minor procedural changes aimed at reducing the paperwork and mailing burden borne by the railroads. No substantive revisions are proposed in the NPRM, and it is assumed that most railroads already maintain copies of these documents. Therefore, in the interest of expediting the release of this rule in final, FRA elected to solicit written comments to the proposed rule while retaining the option to conduct a public hearing for oral comment upon the request by a member of the regulated community. An interested party has submitted such a request. Accordingly, FRA encourages all interested persons to attend and participate in the public hearing concerning the proposed amendments to the Railroad Operating Rules and Radio Standards and Procedures.

Please note that any person wishing to participate in the public hearing is requested to notify the Docket Clerk at the address and telephone number provided above so that FRA may arrange to accommodate all interested persons. Notice should be provided at least five working days prior to the date of the hearing.

In order to provide an opportunity for further public comment preceding and subsequent to the public hearing, FRA is extending the comment period in this docket through December 21, 1992.

Issued in Washington, DC on December 4, 1992.

Gilbert E. Carmichael,

Administrator, Federal Railroad Administration.

[FR Doc. 92–29974 Filed 12–9–92; 8.45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 77]

RIN 2127–AE19

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to require the use of the Hybrid III test dummy for all compliance testing under Standard No. 208. At present, vehicle manufacturers are permitted to choose either the Hybrid III or the older Hybrid II test dummy for the certification of their vehicles under Standard No. 208. A requirement specifying the use of a single type of test dummy will permit greater comparability of test results among vehicles produced by different manufacturers, particularly those that now use different dummy types.

NHTSA has chosen to propose the Hybrid III test dummy as the single type of test dummy because the Hybrid III appears to be more representative of human responses in frontal crashes and because the Hybrid III allows the assessment of more types of potential injuries. Mandating the use of the Hybrid III test dummy will help ensure that all new vehicles are designed with the benefit of the most human-like test dummy available.

DATES: Comments on this proposal must be received by NHTSA no later than February 8, 1993. If adopted in a final rule, these proposed requirements would become effective on September 1, 1996.

ADDRESSES: Comments should refer to the docket and notice number shown at the top of this proposal, and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. The docket section is open to the public from 9:30 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Office of Vehicle Safety Standards, NRM–10, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Backaitis can be reached by telephone at (202) 366–4912.

SUPPLEMENTARY INFORMATION:

Related Proposal

Elsewhere in the Proposed Rules section of today's edition of the **Federal Register**, NHTSA has published a proposal to substitute a neck injury criterion for the head injury criterion in all Standard No. 208 compliance tests during which the test dummy's head does not contact any vehicle surface other than the belt system. That proposal is closely related to this notice, because higher non-contact HIC's are obtained in identical crash environments with the Hybrid III dummy and its more flexible neck than with the older Hybrid II dummy and its stiffer, less human-like neck. Accordingly, it would be helpful if commenters would review and consider both this notice and that proposal as they prepare their comments on this notice.

Background

At present, Standard No. 208, Occupant Crash Protection (49 CFR 571.208) gives vehicle manufacturers the choice of using either of two dummy types in tests for compliance with the standard. One of the types is the older Hybrid II dummy. Specifications for the

Hybrid II test dummy have been incorporated in subpart B of 49 CFR part 572 since August 1, 1973. The Hybrid II test dummy represents the state of the art of human simulation of the early 1970's. It has been used in NHTSA compliance testing since that time.

For more than a decade, the Hybrid II test dummy was the only test dummy specified in NHTSA's regulations for use in Standard No. 208 compliance testing. However, on July 25, 1986 (51 FR 26688), NHTSA published a final rule allowing the use of a second type of test dummy in Standard No. 208 compliance testing. This newer test dummy was the Hybrid III test dummy, and the specifications for it appear in subpart E of 49 CFR part 572. The Hybrid III test dummy represents the state of the art of human simulation of the early 1980's, which, not surprisingly, represents an advance over the state of the art in the early 1970's. Among other noteworthy advances, the Hybrid III has a more humanlike seated posture, head, neck, chest, and lumbar spine designs that meet biofidelic impact response requirements, and the capability of monitoring almost four times as many injury-indicating parameters as compared with the Hybrid II dummy.

In the July 25, 1986 rule adopting the Hybrid III test dummy, the agency found that the two types of test dummies were essentially equivalent; i.e., when both types of test dummies were tested in identical vehicles that provided occupant protection with either safety belts or air bags, only minimal differences in test results were shown between the two types of dummies. The importance of equivalence is that vehicles which pass or fail Standard No. 208 using one type of dummy will achieve essentially the same result using the other type of dummy. Based on this finding of equivalence, the agency permitted the manufacturers to specify either type of dummy for Standard No. 208 compliance testing.

However, the agency prefers to specify that a single type of test dummy be used in compliance testing. This allows for better comparability of test results between vehicles, especially vehicles produced by different manufacturers, eliminates potential confusion on the part of test facilities and the public, and avoids needless costs by permitting dummy manufacturers and users to produce and purchase a single type of frontal crash test dummy.

Balanced against the agency's desire to have a single type of test dummy in compliance testing was the agency's desire to avoid imposing unnecessary costs on the vehicle manufacturers. When the agency changed the compliance test procedures in 1986 to replace the test dummy that had been specified for more than a decade (the Hybrid II) with a newer test dummy (the Hybrid III), the agency had to allow vehicle manufacturers sufficient time to respond to this change. That is, vehicle manufacturers had developed a data bank of crash test results for their vehicles using the older Hybrid II test dummy. This data bank is used in product development. It allows manufacturers to see the effect of modifications to features such as the crash pulse, interior design, or restraint system on the crash test results for current vehicle designs, using a particular type of test dummy. The vehicle manufacturers can then use this information as a general guide in designing future vehicles. However, should NHTSA adopt the newer Hybrid III dummy as the only type of dummy to be used in Standard No. 208 compliance testing, the data bank of Hybrid II crash test results becomes less valuable. Those manufacturers whose data bank consists primarily of Hybrid II results will need time to develop a new data bank of testing using the Hybrid III dummy.

Manufacturers currently using the Hybrid II test dummy could immediately change over to the use of the Hybrid III dummy for their long term projects, such as specific product development testing and general safety testing. Any differences in test results that show up as a result of using the different test dummy in these long term projects can be accommodated in the long term as a normal part of new product development, with little or no additional cost.

Such would not be the case, however, for short term projects, such as vehicles currently in production or planned to be introduced in the next model year or two that were developed based on the Hybrid II test dummy. At this time, the Hybrid III dummy is being used to certify vehicles produced by Chrysler, GM, Isuzu, Mitsubishi, Suzuki, Toyota, and Volvo. All other current vehicles are certified based on the Hybrid II dummy, although Ford has indicated that it plans to switch from the Hybrid II to the Hybrid III dummy for the design and development of its future passenger cars and subsequent certification testing for those cars. For those vehicles developed and certified using the Hybrid II dummy, a change in test dummies would require verification of continued compliance with Standard No. 208. In some cases, the change in test dummies could necessitate redesign of some of these vehicles to ensure continuing compliance. Any such redesign would have very high costs because of the short timeframe that would be available and the need to modify production techniques that are already in place.

NHTSA addressed this situation in the July 1986 final rule for the Hybrid III dummy by permitting the use of either test dummy in compliance testing for five years after publication of the final rule. At the end of that five year transition period, i.e., September 1, 1991, all compliance testing would be conducted only with the Hybrid III test dummy. NHTSA anticipated that all the vehicle manufacturers would immediately switch to the use of the Hybrid III test dummy for their product development testing and general safety testing as of July 1986. If this had been the case, all of today's production vehicles would have been developed using that dummy, and the costs of mandating the Hybrid III for compliance testing of those vehicles would have been minimal. However, this has not been the case.

Response to Petitions for Reconsideration of 1986 Rule

A number of parties filed petitions for reconsideration of the July 1986 rule mandating the exclusive use of the Hybrid III test dummy for Standard No. 208 compliance testing. These petitioners were generally concerned about the two inch chest deflection limit that was established for the Hybrid III dummy when used at any seating position equipped with any occupant protection system other than an air bag. NHTSA responded to these petitions in a March 17, 1988 rule (53 FR 8755). In that rule, the agency announced its concurrence with the petitioners' assertion that the available data were insufficient to adequately support the safety need for a two inch chest deflection limit for positions equipped with safety belts. Thus, in response to these petitions, the agency amended Standard No. 208 to establish a three inch limit on chest deflection for the Hybrid III dummy in seating positions equipped with either air bags or safety belts.

As an adjunct to this amendment to the chest deflection limit for the Hybrid III test dummy, the agency suspended the September 1, 1991 mandatory use date for he Hybrid III test dummy. The effect of this suspension was to permit vehicle manufacturers an indefinite continuation of the option to specify the use of either the Hybrid II or III test dummy in their Standard No. 208 certification testing and associated

compliance testing by the agency. NHTSA indicated that the reason for the suspension of the mandatory use date was to allow the agency to further explore the issue of the appropriate chest deflection limit to specify for the Hybrid III test dummy. See 53 FR 8755, at 8760–61; March 17, 1988.

Activities After the Response to the Petitions for Reconsideration

NHTSA promptly undertook a series of research activities designed to gather additional information on the subject of chest deflection as measured by the Hybrid III test dummy. Additionally, a number of sources outside the agency have provided NHTSA with test results pertaining to the subject of chest deflection. These sources include General Motors, Mercedes-Benz, Toyota, INRETS (a French government research and development group), and the Motor Industry Research Association (a British group). Copies of the testing and reseach reports describing the testing and research that have become available since March 1988, when NHTSA responded to the petitions for reconsideration, are available in NHTSA Docket No. 74–14; Notice 66. Interested persons are advised to examine those materials for more details on the results of the agency's testing and the testing conducted by other entities.

These activities and test results have indicated that any effort to establish a chest deflection limit of less than the currently-specified three inches will have to be supported by long-term research efforts. If the agency continues to follow the course of action announced in the 1988 response to the petitions for reconsideration, NHTSA would continue to link the mandatory use of the Hybrid III test dummy to the agency's efforts to establish a chest deflection limit at a level below three inches. Such a link would mean that mandatory use of the Hybrid III would be indefinitely postponed, at least until the long-term research on chest deflection has been completed and evaluated. However, the agency has tentatively concluded that an indefinite postponement of the exclusive use of the Hybrid III test dummy is not justified and not in the public interest for the reasons set forth below.

Proposal to Require Use of the Hybrid III Dummy in Standard No. 208 Compliance Testing

The optional use of either the Hybrid II or III test dummy for Standard No. 208 compliance testing has reconfirmed the agency's general preference for a single type of test dummy. As between the two types of test dummies, the Hybrid III test dummy exhibits responses that are consistently more human-like than those of the older Hybrid II test dummy. Using test dummies with enhanced biofidelity in NHTSA's compliance testing should provide a better evaluation of how well the vehicles will protect occupants while in use on the roads. This enhanced evaluation of occupant protection should, in turn, result in vehicles that offer better occupant protection. Thus, the interest in motor vehicle safety would appear better served by mandating the exclusive use of the Hybrid III test dummy in NHTSA compliance testing under Standard No. 208.

The desirability of specifying a single test dummy for Standard No. 208 compliance testing at this time has led the agency to reexamine the link it established between the mandatory use of the Hybrid III test dummy and the efforts to reduce the maximum permissible chest deflection to a level below the current three inches. If that link is not necessary, the agency would strongly prefer to designate the Hybrid III test dummy at this time as the sole dummy type for use in Standard No. 208 testing.

One important question is whether a chest deflection limit for the Hybrid III test dummy should be set at some level below three inches. At this time, the agency does not believe it is necessary to set the chest deflection limit for the Hybrid III at some lower level in order to realize benefits from the exclusive use of the Hybrid III dummy. The currently available data suggest that the three inch chest deflection limit is a practicable limit for assessing the effectiveness of both safety belts and air bags. A recently published SAE paper ("Hybrid III Sternal Deflection Associated with Thoracic Injury Severities of Occupants Restrained with Force Limiting Shoulder Belts," H. Mertz, J. Horsch, G. Horn, and R. Lowne, SAE 910812) documents how chest deflection, measured with the current single point deflection measurement system, correlates closely with injuries to belted occupants in real world crashes. That paper also shows that the load measured on the shoulder belt and the chest deflection have a very strong correlation. In other words, while the current chest deflection measurement technique and specific deflection limit may not be perfect simulations, they are good enough to correspond with both real world events and measurements during laboratory crash testing.

NHTSA's tentative conclusions about the current technique for measuring chest deflection and the current three inch chest deflection limit for the Hybrid III dummy should not be misunderstood. The agency acknowledges that the current chest deflection measurement system for the Hybrid III dummy is not a perfect indicant of thoracic injury risk to humans. The agency is currently investigating advanced chest deflection monitoring systems that could provide a better assessment of the risk of injury to the entire thoracic region, and will continue to do so. The agency will also continue to evaluate all available biomechanical data to better understand the mechanisms of thoracic injuries and to explore improved interpretation of chest deflection measurements as they relate to occupant injury potential. However, the agency believes that the current chest deflection measurement system is sufficiently reliable, repeatable, and practicable to meet all statutory criteria.

The agency wants to minimize any costs to manufacturers that would be associated with a new requirement specifying the Hybrid III as the exclusive test dummy for use in Standard No. 208 compliance testing, just as NHTSA wanted to minimize costs in the 1986 final rule that initially mandated the use of the Hybrid III test dummy. NHTSA sought to achieve this end in the 1986 final rule by providing a five year leadtime period during which either the Hybrid II or III test dummies could be used for compliance testing and then mandating the exclusive use of the Hybrid III dummy after the expiration of the five year period. The agency is proposing to adopt a similar leadtime period for mandatory use of the Hybrid III in this rule, by proposing that the mandatory use begin for vehicles manufactured on or after September 1, 1996.

This leadtime period was chosen to correspond with vehicle redesign cycles. The period up to September 1, 1996 will allow manufacturers that have developed and certified vehicles using the Hybrid II dummy to avoid the need to recertify using the Hybrid III dummy before the vehicles are redesigned on the normal product design and modification cycle. Substituting the Hybrid III dummy for the previously used Hybrid II dummy at the time of the normal redesign will not impose any additional testing costs or certification burdens on the vehicle manufacturers.

This proposed leadtime is slightly less than the five year leadtime period that was proposed previously for mandatory use of the Hybrid III dummy. The shorter leadtime proposed in this notice reflects the fact that the Hybrid III is a

better known dummy at this time than was the case in 1986, even for those manufacturers that have used the Hybrid II to develop and certify their vehicles.

Further, there is no compelling safety reason to specify the exclusive use of the Hybrid III dummy earlier than September 1, 1996. An earlier exclusive use of the Hybrid III dummy would not usher in earlier use of new safety equipment, nor would it lead to safety improvements being made earlier. Because of the absence of safety benefits and the potential for needless costs, NHTSA has tentatively concluded that there is good cause for proposing an effective date of September 1, 1996.

Manufacturers can further minimize costs by substituting the Hybrid III for the Hybrid II in any general agency research or other projects in which they are currently using the Hybrid II as a human surrogate. Of course, NHTSA has no authority to require the use of any type of dummy by manufacturers in any of their testing. However, the use of the Hybrid III for general safety research would give manufacturers more accurate indications of how their cars would fare in NHTSA's compliance testing using the Hybrid III dummy.

Another incentive for manufacturers to switch over to the use of the Hybrid III dummy in their testing generally is that vehicle manufacturers generally prefer to use the same test dummy as the agency uses for its research testing. Use of the same type of test dummy allows the manufacturers to better compare and evaluate their research and development test results with the agency's research and development test results. NHTSA has been using and will continue to use primarily the Hybrid III test dummy for its research projects on frontal crashes.

The public is asked to address the tentative agency conclusions regarding the desirability of specifying the Hybrid III as the only test dummy for use in Standard No. 208 compliance testing by the agency. Those commenters that disagree with these tentative conclusions are asked to provide specific details and quantified cost estimates to support and explain their disagreements. The agency also invites dummy manufacturers to comment and provide information about any minor technical changes that may be needed in the specifications for the Hybrid III dummy, because specified materials or measuring devices might not be any more commercially available or might have been modified, for instance. If any minor technical changes are requested in a comment, the commenter should document as thoroughly as possible the basis for the asserted need and also provide information on how the requested change would affect the impact response of the dummy.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts that would be associated with this proposal if it were adopted as a final rule. Based on that consideration, the agency has determined that this proposal is neither "major," within the meaning of Executive Order 12291, nor "significant," within the meaning of the Department of Transportation's regulatory policies and procedures. As explained above, the agency is proposing an effective date of September 1, 1996, so that manufacturers currently using the Hybrid II dummy to develop and certify some of their vehicles can switch to the use of the Hybrid III dummy as part of the normal design cycle. Since manufacturers have been switching to the use of the Hybrid III dummy in any case, this proposal should accelerate existing trends without imposing additional costs. It may be necessary for manufacturers that have been using the Hybrid II dummy to acquire new accelerometers for use in the Hybrid III dummy. Considering that accelerometers have a shelf life of well over five years, the cost increment per dummy for new accelerometers would be only $3,000 to $3,500. The agency believes these negligible costs would be the only costs associated with a final rule adopting this proposal. Accordingly, a full regulatory evaluation has not been prepared.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities. The choice of frontal crash dummy for use in vehicle certification and design affects motor vehicle manufacturers, few of which are small entities. As described above, there would be no significant economic impact on those vehicle manufacturers that are small entities. Further, since no price increases should be associated with this proposal, small organizations and small governmental entities should not be affected in their capacity as purchasers of new vehicles if this proposal were adopted in a final rule.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have a significant impact on the quality of human life.

Executive Order 12612 (Federalism)

Finally, the agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 to read as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

1a. Section 571.208 would be amended as follows:

2. S5 of Standard No. 208 would be amended by using existing S5.1 through S5.3, inclusive, to read as follows:

S5. *Occupant crash protection requirements.*

S5.1 *Frontal barrier crash test.* Impact a vehicle traveling longitudinally forward at any speed, up to and including 30 mph, into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle under the applicable conditions of S8. The test dummy specified in S8.1.8 placed at each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2, S6.3, S6.4, and S6.5 of this standard.

S5.2 *Lateral moving barrier crash test.* Impact a vehicle laterally on either side by a barrier moving at 20 mph under the applicable conditions of S8. The test dummy specified in S8.1.8 positioned in the front outboard designated seating position adjacent to the impacted side shall meet the injury criteria of S6.2 and S6.3 of this standard.

S5.3 *Rollover.* Subject a vehicle to a rollover test in either lateral direction at 30 mph under the applicable conditions of S8 of this standard with a test dummy specified in S8.1.8 placed in the front outboard designated seating position on the vehicle's lower side as mounted on the test platform. The test dummy shall meet the injury criteria of S6.1 of this standard.

* * * * *

3. S6 of Standard No. 208 would be amended by removing existing S6.1 through S6.1.4, inclusive, and redesignating existing S6.2 through S6.2.5, inclusive, as S6.1. through S6.1.5.

4. S7 of Standard No. 208 would be amended by revising S7.1.3 and S7.4.3 through S7.4.5, inclusive, to read as follows:

S7. *Seat belt assembly requirements.*

* * * * *

S7.1.3 The weights and dimensions of the vehicle occupants referred to in this standard are as follows:

S7.1.3.—THE WEIGHTS AND DIMENSIONS OF THE VEHICLE OCCUPANTS REFERRED TO IN THIS STANDARD ARE AS FOLLOWS:

	50th-percentile 6-year old child	5th-percentile adult female	50th-percentile adult male	95th-percentile adult male
Weight	47.3 lbs.	102 lbs.	172.30 lbs. ± 2.40.	215 lbs.
Erect sitting height	25.4 in.	30.9 in.	34.8 in. ± .2	38 in.
Hip breadth (sitting)	8.4 in.	12.8 in.	14.7 in. ± .7	16.5 in.
Hip circumference (sitting)	23.9 in.	36.4 in.	41 in. ± 1.0	47.2 in.
Waist circumference (sitting)	20.8 in.	23.6 in.	33.5 in. ± .8	42.5 in.
Chest depth		7.5 in.	8.7 in. ± .8	10.5 in.
Chest circumference:				
(nipple)		30.5 in.		
(upper)		29.8 in.	38.8 in. ± .6	4.45 in.
(lower)		26.6 in.		

* * * * *

S7.4.3 *Belt contact force.* Except for manual or automatic seat belt assemblies that incorporate a webbing tension-relieving device, the upper torso webbing of any seat belt assembly shall not exert more than 0.7 pounds of contact force when measured normal to and one inch from the chest of an anthropomorphic test dummy, positioned in accordance with S10 of this standard in the seating position for which that seat belt assembly is provided, at the point where the centerline of the torso belt crosses the midsagittal line of the dummy's chest.

S7.4.4 *Latchplate access.* Any seat belt assembly latchplate that is located outboard of a front outboard seating position in accordance with S4.1.2 shall also be located within the outboard reach envelope of either the outboard arm or the inboard arm described in S10.7 and Figure 3 of this standard, when the latchplate is in its normal stowed position and any adjustable anchorages are adjusted to the manufacturer's nominal design position for a 50th percentile adult male occupant. There shall be sufficient clearance between the vehicle seat and the side of the vehicle interior to allow the test block defined in Figure 4 of this standard unhindered transit to the latchplate or buckle.

S7.4.5 *Retraction.* When tested under the conditions of S8.1.2 and S8.1.3, with anthropomorphic dummies whose arms have been removed and which are positioned in accordance with S10 of this standard in the front outboard seating positions and restrained by the belt systems for those positions, the torso and lap belt webbing of any of those seat belt systems shall automatically retract to a stowed position either when the adjacent vehicle door is in the open position and

the seat belt latchplate is released, or, at the option of the manufacturer, when the latchplate is released. That stowed position shall prevent any part of the webbing or hardware from being pinched when the adjacent vehicle door is closed. A belt system with a tension-relieving device in an open-bodied vehicle with no doors shall fully retract when the tension-relieving device is deactivated. For the purposes of these retraction requirements, outboard armrests, which are capable of being stowed, on vehicle seats shall be placed in their stowed position.

* * * * *

5. S8 of Standard No. 208 would be amended by revising S8.1.8 through S8.1.12.2, inclusive, to read as follows:

S8. *Test conditions.*

* * * * *

S8.1.8 The anthropomorphic test dummies used for evaluation of occupant protection systems manufactured pursuant to applicable portions of S4.1.2, S4.1.3, and S4.1.4 of this standard shall conform to the requirements of subpart E of part 572 of this chapter.

S8.1.9 Each test dummy is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants specified in drawings 78051–292 and 78051–293 incorporated by reference in part 572, subpart E of this chapter, respectively or their equivalents. A size 11EE shoe specified in drawings 78051–294 (left) and 78051–295 (right) incorporated by reference in Part 572, Subpart E of this chapter, or their equivalents is placed on each foot of the test dummy.

S8.1.10 Limb joints are set at 1g, barely restraining the weight of the limb when extended horizontally. Leg joints are adjusted with the torso in the supine position.

S8.1.11 Instrumentation does not affect the motion of the dummies during impact or rollover.

S8.1.12 The stabilized test temperature of the test dummy is at any temperature level between 69 degrees F and 72 degrees F, inclusive.

* * * * *

6. Standard No. 208 would be amended by removing existing S10 through S11.9, inclusive, and adding a new S10 through S10.9, to read as follows:

S10. *Test dummy positioning procedures.*

S10.1 *Head.* The transverse instrumentation platform of the head shall be level within ½ degree. To level the head of the test dummy, the following sequences must be followed. First, adjust the position of the H point within the limits set forth in S10.4.2.1 to level the transverse instrumentation platform of the head of the test dummy. If the transverse instrumentation platform of the head is still not level, then adjust the pelvic angle of the test dummy within the limits specified in S10.4.2.2 of this standard. If the transverse instrumentation platform of the head is still not level, then adjust the neck bracket of the dummy the minimum amount necessary from the non-adjusted "0" setting to ensure that the transverse instrumentation platform of the head is horizontal within ½ degree. The test dummy shall remain within the limits specified in S10.4.2.1 and S10.4.2.2 after any adjustment of the neck bracket.

S10.2 *Upper Arms.*

S10.2.1 The driver's upper arms shall be adjacent to the torso within the centerlines as close to a vertical plane as possible.

S10.2.2 The passenger's upper arms shall be in contact with the seat back and the sides of the torso.

S10.3 *Hands.*

S10.3.1 The palms of the driver test dummy shall be in contact with the outer part of the steering wheel rim at the rim's horizontal centerline. The thumbs shall be over the steering wheel rim and shall be lightly taped to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 2 pounds and not more than 5 pounds, the tape shall release the hand from the steering wheel rim.

S10.3.2 The palms of the passenger test dummy shall be in contact with the outside of the thigh. The little finger shall be in contact with the seat cushion.

S10.4 *Torso.*

S10.4.1 *Upper Torso.*

S10.4.1.1 In vehicles equipped with bench seats, the upper torso of the driver and passenger test dummies shall rest against the seat back. The midsagittal plane of the driver dummy shall be vertical and parallel to the vehicle's longitudinal centerline, and pass through the center of the steering wheel rim. The midsagittal plane of the passenger dummy shall be vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the driver dummy.

S10.4.1.2 In vehicles equipped with bucket seats, the upper torso of the driver and passenger test dummies shall rest against the seat back. The midsagittal plane of the driver and the passenger dummy shall be vertical and shall coincide with the longitudinal centerline of the bucket seat.

S10.4.2 *Lower Torso.*

S10.4.2.1 *Hi-point.* The H-points of the driver and passenger test dummies shall coincide within ½ inch in the vertical dimension and ½ inch in the horizontal dimension of a point ¼ inch below the position of the H-point determined by using the equipment and procedures specified in SAE J826 (APR 1980) except that the length of the lower leg and thigh segments of the H-point machine shall be adjusted to 16.3 and 15.8 inches, respectively, instead of the 50th percentile values specified in Table 1 of SAE J826.

S10.4.2.2 *Pelvic angle.* As determined using the pelvic angle gage (GM drawing 78051–532, incorporated by reference in Part 572, Subpart E of this chapter) which is inserted into the H-point gaging hole of the dummy, the angle measured from the horizontal on the three inch flat surface of the gage shall be 22½ degrees plus or minus 2½ degrees.

S10.5 *Legs.* The upper legs of the driver and passenger test dummies shall rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces shall be 10.6 inches. To the extent practicable, the left leg of the driver dummy and both legs of the passenger dummy shall be in vertical longitudinal planes. To the extent practicable, the right leg of the driver dummy shall be in a vertical plane. Final adjustment to accommodate the placement of feet in accordance with S10.6 for various passenger compartment configurations is permitted.

S10.6 *Feet.*

S10.6.1 *Driver's position.*

S10.6.1.1 Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor plan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the lower leg and place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan.

S10.6.1.2 Place the left foot on the toeboard with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toeboard and the floor pan and not on the wheelwell projection. If the foot cannot be positioned on the toeboard, set it initially perpendicular to the lower leg and place it as far forward as possible with the heel resting on the floor pan. If necessary to avoid contact with the

vehicle's brake or clutch pedal, rotate the test dummy's left foot about the lower leg. If there is still pedal interference, rotate the left leg outboard about the hip the minimum distance necessary to avoid the pedal interference. For vehicles with a foot rest that does not elevate the left foot above the level of the right foot, place the left foot on the foot rest so that the upper and lower leg centerlines fall in a vertical plane.

S10.6.2 *Passenger's position.*

S10.6.2.1 *Vehicles with a flat floor pan/toeboard.* Place the right and left feet on the vehicle's toeboard with the heels resting on the floor pan as close as possible to the intersection point with the toeboard. If the feet cannot be placed flat on the toeboard, set them perpendicular to the lower leg centerlines and place them as far forward as possible with the heels resting on the floor pan.

S10.6.2.2 *Vehicles with wheelhouse projections in passenger compartment.* Place the right and left feet in the well of the floor pan/toeboard and not on the wheelhouse projection. If the feet cannot be placed flat on the toeboard, initially set them perpendicular to the lower leg centerlines and then place them as far forward as possible with the heels resting on the floor pan.

S10.7 *Test dummy positioning for latchplate access.* The reach envelopes specified in S7.4.4 of this standard are obtained by positioning a test dummy in the driver's or passenger's seating position and adjusting that seating position to its forwardmost adjustment position. Attach the lines for the inboard and outboard arms to the test dummy as described in Figure 3 of this standard. Extend each line backward and outboard to generate the compliance arcs of the outboard reach envelope of the test dummy's arms.

S10.8 *Test dummy positioning for belt contact force.* To determine compliance with S7.4.3 of this standard, position the test dummy in the vehicle in accordance with S10.1 through S10.6 of this standard and adjust the seating position in accordance with S8.1.2 and S8.1.3 of this standard. Pull the belt webbing three inches from the test dummy's chest and release until the webbing is within one inch of the test dummy's chest and measure the belt contact force.

S10.9 *Manual belt adjustment for dynamic testing.* With the test dummy positioned in accordance with S10.1 through S10.6 of this standard and the seating position adjusted in accordance with S8.1.2 and S8.1.3 of this standard, place the Type 2 manual belt around the test dummy and fasten the latch. Remove all slack from the lap belt portion. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this four times. Apply a 2 to 4 pound tension load to the lap belt. If the belt system is equipped with a tension-relieving device, introduce the maximum amount of slack into the upper torso belt that is recommended by the vehicle manufacturer in the vehicle's owner's manual. If the belt system is not equipped with a tension-relieving device, allow the excess webbing in the upper torso belt to be retracted by the retractive force of the retractor.

* * * * *

7. Figure 3a for Standard No. 208 would be removed and Figure 3b would be redesignated Figure 3, to appear as follows:

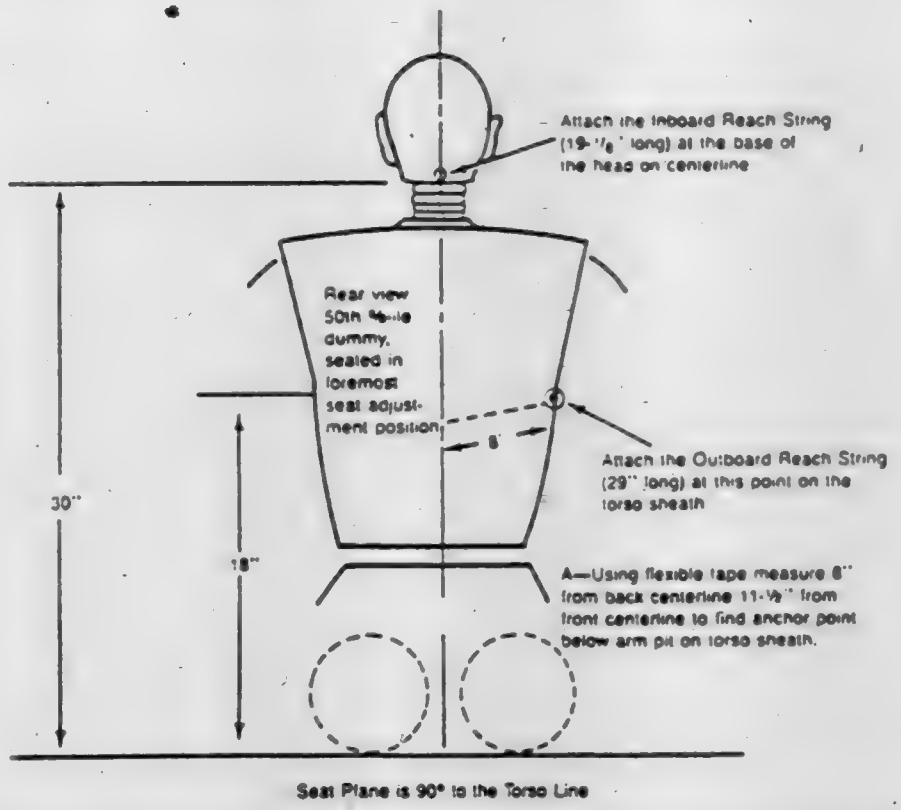

Figure 3 Location of Anchoring Points for Latchplate Reach Limiting Chains or Strings to Test for Latchplate Accessibility Using Subpart E Test Device.

Issued on December 3, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-29798 Filed 12-9-92; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Parts 571 and 572

[Docket No. 74-14; Notice 76]

RIN 2127-AE34

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the injury criteria used to determine compliance with the occupant crash protection standard. One of the specified injury criteria is the *H*ead *I*njury *C*riterion, or HIC, which, as its name implies, was developed to assess the likelihood of head injuries. At present, one calculates a HIC in all crashes and the calculated HIC must be 1,000 or less. However, the available evidence indicates that belted occupants in frontal collisions are not at risk for a serious head injury when their heads do not contact any vehicle surface or component (identified as "non-contact crashes" throughout the rest of this document), but may be at risk for neck injury in those non-contact crashes.

In recognition of these differing risks, this notice proposes to substitute a neck injury criterion for the HIC in non-contact crashes. NHTSA believes that the new neck injury criterion will more accurately and more directly assess the likelihood of neck injuries in head non-contact crashes, instead of relying on HIC as an indirect indicator of potential injury risk. By substituting a neck injury criterion for HIC in non-contact crashes, the agency can ensure that its compliance tests more accurately assess a vehicle's ability to protect against injury to the cervical spine which could potentially occur to a belt-restrained occupant in those non-contact crashes.

DATES: *Comment closing date:* Comments on this notice must be received by NHTSA not later than February 8, 1993.

Proposed effective date: If adopted in a final rule, this substitution of a neck injury criterion for HIC in non-contact crashes would become effective on September 1 of the calendar year after the publication of the final rule. Vehicles manufactured before that date would be permitted, at the manufacturer's option, to comply with the neck injury criterion instead of calculating HIC in non-contact crashes.

ADDRESS: Comments should refer to the docket and notice numbers set forth in the heading of this notice and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. The Docket Section is open to the public from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Office of Vehicle Safety Standards, NRM-10, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Backaitis can be reached by telephone at (202) 366-4912.

SUPPLEMENTARY INFORMATION:

Related Proposal

Elsewhere in the Proposed Rules section of today's edition of the **Federal Register**, NHTSA has published a proposal to require the use of the Hybrid III test dummy in all Standard No. 208 compliance testing. That proposal is closely related to this notice, because higher non-contract HIC's are measured with the Hybrid III dummy and its more flexible neck than are measured with the older Hybrid II dummy and its stiffer neck. Accordingly, it would be helpful if commenters would review and consider both this notice and that proposal as they prepare their comments on this notice.

Background

Standard No. 208, Occupant Crash Protection (49 CFR 571.208) is intended to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries. One of the means specified in the standard for achieving these ends in dynamic testing of vehicles. During dynamic testing, the vehicle must comply with specified injury criteria, as measured on a test dummy, when tested by this agency in a 30 miles per hour barrier crash test.

One of the specified injury criteria is the Head Injury Criterion, or HIC, which is currently calculated in all frontal crashes according to a specified formula and which may not exceed 1,000. The HIC was an outgrowth of the Gadd Severity Index, which in turn was developed from the Wayne State Tolerance Curve (WSTC). The WSTC was derived from a variety of experiments in which head-related injuries were produced by contact and non-contact events. Data on contact injuries from heads directly impacting rigid surfaces were used to develop that part of the WSTC curve dealing with the relationship between short duration, high magnitude accelerations and potential injuries. Susceptibility to non-contact head injuries were derived from high speed sled tests of human volunteers and also of animals. In these sled tests, the occupants were restrained by lap/shoulder belts. The data from these sled tests were used to develop that part of the Wayne State Tolerance Curve (WSTC) dealing with long duration, low magnitude accelerations and potential injuries.

Contact-based injuries, i.e., short duration, high magnitude accelerations, made up most of the data points that defined the WSTC. Although this does not mean that the curve cannot be used over its entire range for forecasting the threshold of injury, it does mean that the confidence in the forecast is much higher for those regions in which the data points provide a very clear definition of the curve, as is the case for direct contacts with short impact time durations. The confidence level is correspondingly lower for forecasts based upon those portions of the curve which are made up of only a few data points, which portions correspond to non-contact events.

Previous Rulemaking Actions Addressing HIC in Non-Contact Situations

Because of the substantially greater confidence in HIC's ability to predict injury thresholds in contact situations, the agency has previously examined whether HIC should be retained in non-contact situations. NHTSA first proposed to use HIC as an injury criterion in Standard No. 208 in a notice published March 16, 1972 (37 FR 5507). The agency proposed that HIC would be calculated over the entire crash duration and cover both contact and non-contact events. Several vehicle manufacturers commented that HIC should not be used in Standard No. 208, for several reasons. First, the manufacturers suggested that there were practicability concerns. That is, many of the existing safety belt systems either did not comply or only marginally complied with the proposed HIC injury criterion. Second, the manufacturers questioned the safety

need for the proposed HIC. This argument was that much of the head acceleration included in HIC calculations is attributable to the non-contact forces which the head experiences as it moves forward without striking anything in the vehicle. Real world crash data, it was argued, did not indicate that this type of head movement by lap/shoulder belted occupants in a crash was a serious injury-producing factor.

In the final rule initially adopting HIC in Standard No. 208, the agency stated, "The NHTSA recognizes the uncertainty concerning the significance of head movement by a shoulder-belted occupant whose head does not strike the forward part of the vehicle, although it considers the present evidence too scanty to be conclusive in either direction." 37 FR 12392; June 23, 1972. As a result, and because of the leadtime needed for vehicle manufacturers to achieve compliance, the agency temporarily amended Standard No. 208 to modify the HIC calculation method for vehicles manufactured before August 15, 1975. Under the terms of this amendment, for the purposes of calculating HIC for belted test dummies, the measurement of head acceleration would begin only at the moment at which the head struck some part of the vehicle other than the safety belt system. Vehicles manufactured on or after August 15, 1975 were to have the HIC calculated over the entire duration of the crash.

NHTSA then reexamined the subject of HIC in non-contact crashes in the wake of the 1984 reinstatement of the automatic crash protection requirements for passenger cars. In a notice published on April 12, 1985, NHTSA proposed two alternative methods to reduce the probability of injuries in non-contact crashes (50 FR 14589). The first alternative was to continue HIC calculations in contact crashes, but not in non-contact crashes. In non-contact crashes, new neck injury criteria would be calculated. If the older Hybrid II test dummy were involved in a non-contact crash, the triaxial accelerometer already mounted in the dummy's head would be used to measure the acceleration experienced by the dummy's head during the non-contact crash. Based on NHTSA's sled testing, the agency had determined that "in non-contact situations there is an excellent correlation between the forces directly measured on the neck and the inertial accelerations of the test dummy's head. This is because non-contact forces in the head (i.e., acceleration) can only be transmitted through the neck." 50 FR 14591–14592; April 12, 1985. If the newer Hybrid III test dummy were involved in a non-contact crash, the agency proposed to use the instrumentation mounted in the Hybrid III dummy's neck to measure directly the shear and tension forces in the dummy's neck.

The second alternative was to calculate a HIC in both contact and non-contact situations, but limit the calculation to a specified time interval. In 1985, HIC was calculated for the entire crash duration. However, vehicle manufacturers had argued that HIC was not appropriate in long duration accelerations, which correspond to non-contact events or low magnitude contacts. As explained above, the agency agrees that the confidence level is correspondingly lower for injury forecasts from HIC calculations that are based upon those portions of the WSTC which are made up of only a few data points, which portions correspond to non-contact events or low magnitude contacts. Accordingly, this second alternative proposed to change the HIC calculation so that it would be limited to any 36 millisecond interval during the crash.

After considering the comments on this proposal, the agency decided to adopt the second proposed alternative, i.e., limit the HIC calculation to any 36 millisecond interval during the crash. The agency explained in its October 17, 1986 final rule (51 FR 37028) its reasons for not adopting the proposal to substitute neck injury for HIC in non-contact crashes:

> Almost all of the commenters opposed the use of the first proposed alternative. The commenters uniformly noted that there is no current technique that can accurately and reliably identify whether and exactly when head contact has or has not occurred during a crash test in all situations. The agency agrees that, in the absence of such a method to determine the occurrence and duration of head contact, the first alternative is not appropriate. 51 FR 37030.

In response to the second proposed alternative, vehicle manufacturers uniformly supported the concept of limiting the time interval from which HIC is calculated, but many felt that the appropriate limit should be 15 to 17 milliseconds instead of the proposed 36 milliseconds. This shorter time limit would effectively raise the limit on average head accelerations to 80–85 g's, as compared to the 60 g average limit that results from the 36 millisecond HIC limit. NHTSA rejected the requested 15 to 17 millisecond limit. This rejection was based on both the fact that the higher average head accelerations allowed by the shorter limit might not have ensured protection for a wide range of the population and the fact that the shorter limit would have substantially reduced the values calculated for the HIC in NHTSA testing. See 51 FR 37031; October 17, 1986.

On April 23, 1991, NHTSA published a notice terminating rulemaking regarding the neck injury criteria and other additional injury criteria for the Hybrid III dummy (56 FR 18561). The agency explained its decision as follows:

> Research conducted to date by the agency, regarding the development of data needed to support this rulemaking, has not yielded adequate information to initiate further rulemaking. The findings indicate that existing technology to assess injury in the areas of facial laceration, neck injuries, and knee-tibia injuries, while appropriate for research and subjective comparison purposes, is still short to being useful for compliance application. In some instances, correlations between the dummy measurements and the injury mechanisms, as well as the risk of injury, are still to be established. In addition, the agency has not noted or been advised of technical progress in the private sector that would facilitate the development of additional rulemaking. 56 FR 18562.

Ford's petition for rulemaking:

Ford Motor Company (Ford) filed a petition for rulemaking on March 26, 1991, asking for modifications to the Hybrid III test dummy and the injury criteria used with the Hybrid III test dummy. Ford's three requested changes were as follows:

1. Ford asked that a neck shield be added to the Hybrid III test dummy. Ford claimed that abnormal head motions can sometimes result with the Hybrid III dummy when an inflating air bag gets caught between the various disks of the neck assembly, or gets caught between the neck assembly and chin of the Hybrid III head. According to Ford, this phenomenon causes the Hybrid III head and neck to behave erratically, resulting in unpredictable head acceleration and neck load cell measurements. Ford suggested that this problem could be eliminated if a foam neck shield were added to the Hydrid III dummy.

2. Ford alleged that the Hybrid III ankle is not sufficiently human-like. The human ankle can rotate the foot toward the tibia an average maximum of 44°, while the Hybrid III ankle can rotate only a maximum of 30°. According to Ford, this shortcoming of the Hybrid III ankle causes unrealistically high crash forces to be transferred through the lower leg and knee to the femur. Ford suggested that this shortcoming would be eliminated if

the Hybrid III ankle joint were modified to allow an additional 15° of flexion.

3. Ford asked that HIC for Hybrid III dummies be calculated using a 15 millisecond limit. According to Ford, this would make the level of the HIC's calculated using the Hybrid III dummy equivalent to the level of the HIC's calculated using the Hybrid II dummy with a 36 millisecond limit on the HIC calculation. Ford said that its assertion of equivalence was based on the fact that the HIC responses of the Hybrid III dummy are consistently higher in tests that do not involve head contact. Ford suggested that the higher HIC's are due to a faster head whipping by the Hybrid III dummy's more flexible neck. Ford argued that adopting the 15 millisecond limit for HIC calculations with the Hybrid III dummy would not reduce significantly HIC readings in cases of contacts with hard surfaces (in which cases Ford concedes the HIC is a valid predictor of injury risk), but it would reduce HIC readings in non-contact cases. Ford argued that the lowering of HIC readings for non-contact cases would be more indicative of actual injury risk in such crashes.

Agency Response to Ford's Petition

(a) Neck Shield and Ankle Flexion Issues

The data and analyses Ford submitted with its petition on these two issues suggest that both these modifications may be appropriate for the Hybrid III dummy. The other information that is currently available, both from NHTSA's own quick investigation and from other sources, do not appear to corroborate Ford's data and analyses of these issues. However, NHTSA has concluded that Ford's data and analyses raise matters that the agency should investigate more carefully. This investigation will allow the agency to determine conclusively if Ford's allegations are correct and, if so, what means should be proposed to correct those problems. Accordingly, NHTSA granted Ford's petition on these two issues in a letter dated August 30, 1991.

The public is invited specifically to provide NHTSA with their views and comments on the neck shield and ankle flexion issues raised in Ford's petition, as well as specific details for the design of the neck shield and ankle modification they are addressing and any test results that are available. Based on any such information and NHTSA's own investigation, the agency will then make a decision about whether it should issue a proposal regarding these matters.

(b) 15 Millisecond Limit for HIC Calculations

NHTSA has carefully reexamined this issue in response to Ford's petition. An across the board use of a 15 millisecond limit, instead of the current 36 millisecond limit, for calculating HIC would reduce the HIC obtained in nearly all crash tests. For instance, NHTSA recalculated the HIC's that would be obtained in all of its 35 miles per hour barrier crash tests in the New Car Assessment Program (NCAP) that used the Hybrid III test dummy, substituting a 15 millisecond limit for the 36 millisecond limit. With the 15 millisecond limit, all driver HIC's were below 1,000 and the passenger HIC's were reduced from 10 to 40 percent. Furthermore, the decrease to the 15 millisecond limit would allow 16 percent more vehicles to show HIC's of 1,000 or less at the passenger position for those cases in which a Hybrid III dummy is restrained by a safety belt and experiences head contact during a crash. Thus, the 15 millisecond limit would substantially reduce the calculated HIC in both contact and non-contact situations.

Such a reduction is not necessarily inappropriate. If head contacts that exceed 15 milliseconds and head non-contacts present no potential head injury hazard, the protection afforded against head injuries would not be lessened by reducing the calculated HIC in the manner requested by Ford. The relevant question then is whether this reduction in calculated HIC for contacts that last longer than 15 milliseconds and for non-contact situations would lessen the protection provided against head injuries.

Contacts in frontal crash tests that last longer than 15 milliseconds may occur when the dummy's head strikes a soft or padded surface. When a dummy head hits a rigid unpadded structure made of steel, for instance, the dummy head strikes the rigid surface, which does not yield or absorb much of the head's energy, and the head rebounds very quickly after the strike, resulting in a very short duration impact, generally less than 15 milliseconds. When the dummy head hits a soft or padded surface, the soft or padded surface slows down the head's momentum and absorbs some of the head's energy before the head stops travelling into the surface. This "ride down" of the head by the soft or padded surface means that the head contact with the surface lasts for a substantially longer period of time than a head contacting a rigid surface. Accordingly, the focus of this inquiry becomes whether a reduction in calculated HIC for head contacts into soft or padded surfaces would lessen the protection provided against head injuries.

NHTSA does not believe that impacts into soft or padded vehicle surfaces are always safe. The agency agrees with Ford that it is generally safer to hit a soft or padded surface than a rigid surface. However, because soft or padded surfaces have many different impact response characteristics, the effectiveness of soft or padded surfaces in controlling and mitigating injury varies. Such a surface's effectiveness in controlling and mitigating injuries also varies according to the geometry and thickness of the padding, as can be noted from widely varying contact durations. In addition, the vehicle design has a great influence on the effectiveness of the soft or padded surface by controlling the initial velocity of the head when it contacts the soft or padded surface.

The current HIC calculation over a 36 millisecond period takes into account the initial velocity of the head at the instant it strikes a surface, as well as the impact response characteristics of a soft or padded surface during head contact. Because the HIC calculation takes these factors into account, and because the safety performance of soft or padded surfaces can vary considerably, as explained above, manufacturers must design their vehicle interiors so that the soft or added surfaces will offer consistently beneficial impact responses (and safety protection) in the event of a head impact in a crash. For example, existing soft or padded surfaces, such as steering wheel rims and hubs, the upper surfaces of instrument panels, and deploying air bags are manufactured so that the vehicle can comply with the HIC calculated over a time period not exceeding 36 milliseconds.

An amendment that effectively minimized the consideration of the safety performance of soft or padded surfaces, including deploying air bags, from the HIC calculation would signal vehicle manufacturers that they need to be less concerned with the impact response characteristics of impacted surfaces in their vehicles. If vehicle manufacturers were to devote less effort to controlling the impact responses of the soft or padded surfaces in the vehicle, the safety protection provided against head injuries in those vehicles would be lessened. Because of this, the agency denies Ford's request to limit the HIC calculation to a 15 millisecond period in contact situations.

The agency next examined the issue of crashes in which the test dummy's head did not contact any vehicle system

or component. Again, the agency began by considering whether limiting the HIC calculation to a 15 millisecond period in non-contact crashes would lessen the safety protection provided against head injuries. To answer this question, NHTSA examined data from the National Accident Sampling System (NASS). NASS weighted data for the three year period from 1988 to 1990 showed that there were a total of 302,588 head and neck injuries in car crashes with belted occupants that did not involve head contacts. (Weighted data means an estimate of national injuries and fatalities based on projections derived from scientifically sampled crashes collected by the NASS Primary Sampling Units in selected areas of the United States.) Of these, 299,619 occupants sustained neck injuries and the remaining 2,969 were head injuries. These data were then further broken down to examine injuries to belted occupants in frontal crashes only. This further breakdown showed that belted occupants in head non-contact frontal crashes experienced a total of 111,311 neck injuries and 221 head injuries, for a total of 111,532 head and neck injuries. None of the 221 head injuries was a serious injury; that is, none of them exceeded AIS 1 on the Abbreviated Injury Scale. There were 1,363 neck injuries that were moderate to serious; that is, these injuries were AIS 2 or greater. Based on these data, it appears that serious head injuries of belted occupants in head non-contact frontal collisions are nil, while moderate to serious neck injuries constitute about 1.3 percent of all head and neck injuries for those crash conditions.

As explained previously, HIC was developed to assess the risk of head injury in a given impact. The above-described examination of the NASS data appears to show that occupants are not at risk for head injuries in non-contact frontal crashes. Accordingly, the issue of whether HIC should be calculated over a 15 or 36 millisecond period in non-contact crashes seems of lesser importance than the issue of whether HIC should be calculated at all in non-contact frontal crashes.

NHTSA has tentatively concluded that non-contact crashes present a risk of neck, not head, injury. NHTSA has also tentatively concluded that it can now assess more directly the risk of neck injury by means of a new neck injury criterion. Since HIC calculations in non-contact crashes are a surrogate assessment of the risk of neck injury in non-contact crashes, and the surrogate would no longer be necessary if there were a more direct assessment of the risk of neck injury, no apparent purpose is served by retaining the HIC calculation for non-contact crashes. Therefore, this notice proposes to substitute a new neck injury criterion for HIC in non-contact crashes.

Details of New Injury Criterion

1. How Would Forces on the Neck Be Measured?

In the April 12, 1985 proposal to substitute a neck injury criterion for HIC in non-contact crashes, NHTSA identified two distinct ways that forces on the neck could be measured. One way, which could be done only for the newer Hybrid III test dummy, was to use the additional instrumentation (a load cell) mounted in the Hybrid III dummy's neck to measure directly the shear and tension forces experienced in the dummy's neck, as well as the compression loading and the bending moments. However, while the neck load cell measurement of tension loads was found perfectly satisfactory and repeatable, the remaining measurements for compression loading and bending moments in flexion and extension proved to be insufficiently reliable and repeatable for use in compliance testing. A review of what was needed to address these measurement problems, and also to understand how injury outcome could be affected by the neck experiencing more than one injury mechanism during head contact, showed that considerably more research work is needed to resolve these questions. Hence, NHTSA terminated rulemaking on neck load cell measurements and associated injury criteria in the April 23, 1991 notice.

The other way, which was proposed only for use with the older Hybrid II test dummy, was to measure the peak acceleration of the dummy's head in the direction from the base of the skull to the top of the head. This acceleration could only be transmitted to the head through the neck. Hence, a measurement of peak acceleration in the head could be translated to peak tension loads on the neck. While this measurement would not consider as many different forces as the six axis load cell in the neck of the Hybrid III, and is less technologically sophisticated, it was found to be closely correlated to forces measured by the tension load cell in the neck. Thus, the potential for neck injury in head non-contact events can be assessed with the Hybrid II dummy by using the existing accelerometer in the dummy's head, instead of adding new instrumentation. Measurement of acceleration of a head in free-flight in a single plane and without the impact of a head contact was found to be more repeatable than measurements of accelerations in more than one direction or of bending moments of the neck.

In the April 12, 1985 notice that initially proposed substituting neck injury criteria for HIC in non-contact crashes, the agency proposed to measure both this acceleration and the shear forces (i.e., acceleration of the head in longitudinal fore and aft directions). However, NHTSA is not again proposing to measure the shear forces in this notice, because the available test data show that, in non-contact crashes, the primary forces acting on the neck of a belt-restrained occupant are produced by the curvilinear motion of the head relative to the thoracic spine. This curvilinear motion of the head generates a tension force in the neck. This tension force can be easily explained by the laws of physics and can be readily documented using measuring instruments.

The situation is much different for shear forces. NHTSA cannot say that belt-restrained occupants will not experience shear forces on the neck in non-contact crashes. However, the extent to which shear forces cause or exacerbate neck injuries in non-contact crashes is neither well understood nor accessible by current in-vitro or in-vivo technology on human test subjects. With the exception of neck tension forces that can be measured without any complications, the measurements of other forces and moments on the neck and their correlation to injury risk require further research and development of biomechanical knowledge. The need for such additional information and knowledge led the agency to state in the April 23, 1991 termination of rulemaking that it will require considerable additional time and research effort to develop these additional injury criteria for the neck.

That April 23, 1991 termination notice should not be read as suggesting that there is some question about the reliability of measuring tension loading on the neck, in the form of head acceleration in the inferior-superior direction (z-axis). Indeed, the same accelerometer in the head that currently contributes data to calculate HIC would be used to measure the forces on the Hybrid II dummy neck under this proposal.

Similarly, the April 23, 1991 termination notice should not be misinterpreted as suggesting that there is some question about the reliability of direct measurement in the neck of the tension forces. As explained above, the tension forces are well understood and

readily documented, unlike the other forces that can be measured by the Hybrid III neck. NHTSA believes that the control of neck tension forces by means of the proposed limit set forth in this rule would provide a considerable advancement in the understanding of how to control neck injuries for belt-restrained occupants in non-contact situations.

After considering these factors, NHTSA has decided to propose two methods for measuring forces on the neck, depending on the type of dummy used. The first method would be used with the Hybrid II test dummy. This method would use the accelerometer mounted in the dummy's head to measure head acceleration in the direction from the base of the skull to the top of the head. The second method would be used only with the Hybrid III test dummy. This method would use a load cell mounted in the Hybrid III dummy's neck to directly measure the tension loads in the neck. Either one of these measurements would remove HIC as an injury criterion in all non-contact crashes, and replace it with the appropriate neck injury criterion.

If this proposal were to be adopted as a final rule, the agency would require neck loading measurements to be used exclusively as an injury criterion in all non-contact crashes for vehicles manufactured on or after September of the calendar year following the calendar year in which the final rule was published. For vehicles manufactured on or after that date, HIC measurements would no longer apply as an injury criterion in head non-contact crashes. Manufacturers would be permitted to use the applicable neck injury criterion instead of HIC in vehicles manufactured before the mandatory use date, at the manufacturer's option.

2. What Limit Would be Established for Neck Injury Assessment?

In the April 12, 1985 proposal on neck injury criteria, NHTSA proposed to establish a limit of 66 g's on head acceleration from the base of the skull to the top of the head. This value was derived from a neck force corridor suggested by GM for use with the Hybrid III dummy. The GM corridor included a maximum tension force on the neck of 742 pounds. At that time, NHTSA divided this 742 pounds by the static weight of the head and part of the neck, which is 11.2 pounds, to arrive at the 66 g's acceleration limit (742/11.2 = 66). The latest biomechanical data (J. Gavin Howe, *et al.*, "Development of a Featureless Free-Motion Head Form," SAE #912909, Proceedings, 35th Stapp Car Crash Conference, P–251, November 1991 (Society of Automotive Engineers, Warrendale, Pa.), however, indicate that the average human head has a dynamic mass of approximately 9.9 pounds. The 742 pound maximum force divided by the dynamic mass of the head (9.9 pounds) yields an acceleration limit of 74.9 g's. The agency has rounded this to 75 g's, and is proposing that as the limit on measured acceleration in the head in the direction from the base of the skull to the top of the head in non-contact crashes.

For those that choose to directly measure forces in the Hybrid III dummy's neck, the agency is proposing a 742 pound load limit. This proposed limit was suggested by GM, as a threshold to significant neck injury based on a test series conducted by Volvo, for use with the Hybrid III dummy. The tension forces in the neck would be measured by a load cell in the neck of the Hybrid III dummy that is mounted at the dummy's head-neck juncture, and that is oriented to sense loading in the inferior-superior direction. By loading in the inferior-superior direction, NHTSA means a tension force in the neck pulling the base of the skull away from the base of the neck. The agency is not referring to compression loading (pushing the head toward the torso) or any other directional loading that may be experienced in the dummy's neck.

3. How Would One Determine if the Crash Involved Head Contact?

Between 1985 and 1991, NHTSA has used a chalk transfer method to determine if there has been head contact in the several hundred Standard No. 208 compliance tests and NCAP tests that have been conducted. In those several hundred tests, NHTSA has never had any difficulty in identifying either the presence or absence of head contact, nor have any disputes arisen with vehicle manufacturers regarding the agency's conclusion with respect to the occurrence or non-occurrence of head contact. NHTSA is proposing to use the chalk transfer method to determine whether there has been head contact for the purposes of Standard No. 208.

This chalk transfer method would require that the front halves of both the driver and passenger dummies' head surface (i.e., above the horizontal line that passes through the center of gravity of the head and forward of the lateral line that passes through the center of gravity of the head) be "painted" with a colored chalk and water solution. The solution used by NHTSA is made by mixing powdered chalk and water in approximately a 2:1 ratio by volume. There is, however, no magic to this particular ratio. The resulting chalk and water slurry must result in a sufficiently dense paint to assure visible transfer of color from the dummy's head to the vehicle's interior surfaces if there is contact. NHTSA has found the 2:1 mixture of chalk to water achieves this goal. However, if a commercially prepared mix recommended a different ratio, the agency would abide by the seller's instructions for the mix, provided that the resulting solution was capable of producing the desired "paint transfer effect."

Each dummy's head would be painted with a distinctly different color chalk slurry to ensure proper identification of which dummy's head made contact with the vehicle. For instance, a typical combination would be to use blue for the driver dummy and red for the passenger dummy.

Current NHTSA practice is to paint the dummy face with a different color than the top of the head to permit a determination of which part of the dummy's head contacted the vehicle interior surface. The face is painted from the tip of the nose back to approximately the center of the head target (roughly where the human ears are) and the top of the dummy head is painted down to the center of the head target both front and back. When NHTSA does this, a typical setup would be to paint the driver dummy's face blue and the top of that dummy's head yellow, while the passenger dummy's face would be painted red and the top of that dummy's head would be painted green. NHTSA is not proposing to require separate painting of the face and top of head of each test dummy during compliance testing. This discussion is simply intended to alert the public of the agency's current practice and to seek comments on this practice.

The dummy's head would be painted with this chalk and water slurry after the dummy has been positioned in the vehicle and the necessary electrical connections have been made. This timing is proposed to eliminate the possibility of accidental paint abrasions during the installation and positioning of the dummy in the vehicle for the test. The agency is also proposing to require that the chalk and water slurry be permitted to dry for at least five minutes before proceeding with the crash test. This drying will reduce the occurrence of chalk splattering onto the vehicle surfaces as a result of the crash forces.

One would determine whether there had been a head contact with the vehicle's interior surfaces according to the following procedure. For all vehicle interior surfaces other than glazing, one would examine each test dummy's head

after the crash test has been conducted. When the dummy's head contacts an interior surface, some removal or disturbance of the chalk occurs, with the resulting smudging or smearing generally appearing as a "rubbed-off" "bruising" mark. If there is no removal or disturbance of the chalk on the dummy's head, the crash would be considered a non-contact crash for that dummy.

If there is a removal or disturbance of the chalk on the dummy's head, one would next examine the vehicle interior surfaces forward of the dummy's original head position to see if there was evidence of chalk transfer from the head onto the impacted interior surface. Indications of head contacts at or behind the original position of the dummy's head would not be considered as "contacts." Such contacts are associated primarily with the rebound of the occupant and are not the source of serious head injury. The chalk transfer onto the impacted surface from a head contact generally has a "rubbed-on" appearance. If there has been some removal or disturbance of the chalk solution on the dummy's head, such as smudging or smearing, and a vehicle interior surface is marked with chalk that corresponds to the mark on the dummy's head, NHTSA would treat the crash as one involving head contact and calculate a HIC for the dummy, just as is now the case. If, however, there is no chalk transfer onto a vehicle interior surface, the crash would be considered as one that did not involve head contact, even if there has been some removal or disturbance of the chalk on the dummy's head. As proposed above, a neck injury criterion would be substituted for a HIC calculation in non-contact crashes.

The only exception to this proposed procedure would be for glazing. There are instances when chalk does not adhere to glass. Because of this unique interaction of chalk and glass, the proposed procedure could improperly characterize a crash in which the dummy head contacts the windshield as a non-contact crash. Therefore, the agency is proposing one minor exception to determine if there was head contact with the vehicle glazing. As with all other interior surfaces, the dummy would be inspected after the crash test to see if there is some removal or disturbance of the dried chalk on the dummy's head. If there is no removal or disturbance, the crash will be treated as a non-contact crash.

If there were a removal or disturbance of the chalk on the dummy's head, one would again examine the vehicle interior surfaces, including the glazing, to see if there was evidence of chalk transfer from the head onto the impacted interior surface. If there has been some removal or disturbance of the chalk solution on the dummy's head, such as smudging or smearing, and the glazing is marked with chalk that corresponds to the mark on the dummy's head, NHTSA would treat the crash as one involving head contact.

If, however, there were no chalk transfer onto the vehicle glazing, but the dummy head showed some removal or disturbance of the chalk, NHTSA would conduct an additional step to see if there had been head contact with the vehicle glazing. This additional step would consist of an analysis of the high speed film that is used to gather visual evidence of the crash. The agency would review that film to see if it showed clearly and unquestionably that the dummy's head had struck the vehicle glazing. If it did, the crash would be treated as one involving head contact by that dummy. If the high speed film analysis suggests that there may have been head contact with the glazing, but does not provide incontrovertible evidence of such contact, the crash would be treated as one that did not involve head contact by that dummy. NHTSA would like to emphasize that this high speed film analysis would only be used to check if there was head contact with the glazing, not with any other vehicle interior surface.

NHTSA acknowledges that commenters to the 1985 proposal to substitute neck injury criteria for HIC generally stated that there was then no current technique that could accurately and reliably identify whether and exactly when head contact has or has not occurred during a crash test in all situations. However, NHTSA understands those comments to be addressing the difficulties of determining both the occurrence and the duration of head contact, not just the determination of the occurrence of head contact. One can see the NHTSA's 1985 proposal was focused on determining both the existence and duration of head contact by examining the means that were suggested as possible ways for determining head contact. The 1985 preamble included the following discussion at 50 FR 14592 (April 12, 1985):

> At present, there are several methods available for the establishment of *head contact durations*, but there are still questions about their levels of consistency and accuracy. Measurement technologies consist of the following major groups: photographic, electrical contact switches, electrical strain or pressure transducers, and other (such as laser, chemical, etc.). (Emphasis added)

Obviously, chalk, paint, lipstick, and other transfer mediums were available in 1985, but they were not discussed in the preamble. On the other hand, one can determine head contact by simpler means than lasers or sophisticated electronics, which were identified in the 1985 preamble. NHTSA believes the comments questioning the reliability of available technologies were addressing primarily the reliability of the measurements of the duration of head contacts, not the occurrence or non-occurrence of head contact.

In this notice, NHTSA is not proposing to measure the duration of head contacts. Instead, the agency is proposing to make a simple contact/no contact determination in each compliance test. NHTSA believes that this determination can be made by using a transfer medium (chalk, in this case) applied to the test dummy's head. If that transfer medium appears on any vehicle surface or component after the crash test, or any transfer medium appears on the dummy's femur and/or knees, the obvious inference will be that the head made a contact impact.

The public is invited to comment on this approach. If any commenter believes there are serious questions about the reliability of using a chalk solution as a transfer medium to establish the occurrence of head contact, the commenter is asked to provide a specific explanation of the perceived reliability problems. If a commenter suggests an alternate means to establish the occurrence or non-occurrence of head contact, the commenter is asked to provide all available evidence to show that this alternate means would be more effective than the proposed chalk transfer method.

NHTSA would like to note that it is not proposing to consider dummy chin to chest contacts as head impacts for the purposes of this proposal. This is a purely abstract concern at this time, because no chin to chest contacts have been observed in NHTSA's compliance testing under Standard No. 208. Such contacts have, however, occasionally been observed in the 35 miles per hour crashes conducted in NHTSA's New Car Assessment Program (NCAP). If a chin to chest contact should even occur in a Standard No. 208 compliance test, however, and this proposal were adopted in a final rule, NHTSA would not treat the chin to chest contact as a head contact. The limited data, primarily cadaver testing, which are available on these chin to chest contacts do not indicate that head injury is a

likely result. Instead, the limited data indicate that, if trauma were to occur at all, it most likely would be a neck injury. Accordingly, NHTSA is proposing to use the proposed neck injury criteria if there are any chin to chest contacts, to allow the agency to more accurately evaluate the protection afforded against the likelihood of neck injuries, instead of focusing on the likelihood of head injuries.

For the purposes of this proposal, a contact with any vehicle surface or component other than the belt system would mean that a HIC would be calculated for that test dummy. An air bag is not a belt system. Thus, if the test dummy's head contacts an air bag, the HIC and not the neck injury criterion would be the applicable injury criterion. The agency is treating a contact with an air bag differently than a contact with a belt system because, in most instances, the air bag exposes the occupant to additional impact energy. While a safety belt system does not itself interfere with the free flight of the occupant's head during a crash, such is not the case with an air bag system. An air bag always intercepts the free flight of the head and provides a more rapid acceleration of the head during the initial loading period than is experienced by an occupant restrained by a belt system. The magnitude of the impact velocity of the head into the air bag depends upon whether the impact occurs with a fully deployed or still-deploying air bag. In the latter case, the head could experience a much larger differential velocity, analogous to a belted occupant's head hitting a padded surface, such a steering wheel hub, padded instrument panel, etc.

The dummy's head striking the dummy's knee(s) would also be considered as a head contact situation, and the HIC would be the applicable injury criterion. These head-to-knee contacts indicate, the NHTSA's view, either an improperly operating restraint system that permits excessive upper torso flexion with respect to the lower half of the body or an intrusion of the floor or instrument panel that is raising the lower legs and knees excessively toward the descending head. The problem of head-to-knee contacts has occurred primarily in NCAP tests, not in the Standard No. 208 compliance tests, and the agency expects head-to-knee contacts to vanish as the fleet becomes 100 percent equipped with air bags.

In conjunction with the use of the load cell in the neck of the Hybrid III dummy to measure tension loads, the agency is proposing to update the Society of Automotive Engineers (SAE) Practice to which the individual data channels in the Hybrid III dummy must conform. At this time, § 572.36(i) specifies that the individual data channels must conform with the June 1980 version of SAE Recommended Practice J211, "Instrumentation for Impact Tests." This notice proposes to update this reference to the June 1988 version of SAE J211, with the exception of the data for the neck load cell channel. The agency is proposing that the data of the neck load channel conform to channel frequency class (CFC) 600 instead of the SAE recommended 1000. NHTSA is proposing this lower CFC based on its tentative conclusion that the neck load cell will not contain high frequency data in the absence of head contact (the only instance in which NHTSA is proposing to use neck load cell data) and that the 1000 CFC filter would provide information beyond that which is needed for this proposed measurement. Commenters are invited to address this modification of the SAE recommendation and to address the issue of whether further reductions of the CFC requirements for this data channel would be appropriate since it will be used only in the absence of head contact.

The agency is also proposing to update some of the materials incorporated by reference for the Hybrid III test dummy. Specifically, the drawing of the head assembly (Drawing 78051–61), the transducer mounting instructions (Drawing 79051–63), and the assembly instructions (Drawing 78051–218), all of which are incorporated by reference in Part 572, now all show the use of a three-axis neck transducer, with optional use of a six-axis neck transducer, called the C–1709. However, the six-axis transducer is the most frequently used transducer for current tests involving the Hybrid III test dummy. With the proposed introduction of neck injury criterion, NHTSA believes it is appropriate to propose revising these drawings to show the use of the six-axis C–1709 neck transducer in the Hybrid III dummy, and permitting optional use of the currently-specified three-axis neck transducer.

This proposed rule would not have any retroactive effect. However, as noted at the beginning of this notice, the agency is proposing to allow manufacturers to voluntarily choose to being complying with these requirements before the mandatory effective date. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Safety Act (15 U.S.C. 1392) sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts that would be associated with this proposal if it were adopted as a final rule. Based on that consideration, NHTSA has determined that this proposal is neither "major," within the meaning of Executive Order 12291, nor "significant," within the meaning of the Department of Transportation's regulatory policies and procedures. Substituting a neck tension criterion for HIC in non-contact crashes will not require any modifications to the test dummies, the existing instrumentation, and the measurements, except that the test dummy heads must now be covered with chalk and the test facility must note whether a chalk transfer from the dummy head has taken place. This will not impose any substantial costs, require any greater technical skills, or necessitate changes to existing procedures.

As explained above, the changes from HIC to neck tension injury criterion in non-contact crashes would also not have any substantial impact on safety. Accident data indicate that no serious head injuries occur in non-contact crashes, so a decision to no longer calculate HIC in non-contact crashes would not allow a possibility of an increased risk of head injuries. Further replacing HIC, a surrogate measure of neck injury risk, with the new neck tension criterion, potentially an even better measure of that injury risk, should not significantly reduce the risk of neck injuries. This is because serious neck injury is a relatively infrequent occurrence in non-contact crashes. Thus, substituting the neck tension criterion for HIC should neither degrade nor substantially benefit occupant safety. Accordingly, a full regulatory evaluation has not been prepared for this proposal.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under

the Regulatory Flexibility Act. I hereby certify that this proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities. For the reasons stated above, the substitution of one injury criterion for another in non-contact crashes would not result in any significant economic impact on those vehicle manufacturers that are small entities. Further, since no cost changes should be associated with this proposal, small organizations and small governmental entities should not be affected in their capacity as purchasers of new vehicles if this proposal were adopted in a final rule.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have a significant impact on the quality of human life.

Executive Order 12612 (Federalism)

Finally, the agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 and part 572 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S6 through S6.2.5 of Standard No. 208 would be revised and a new S6.3 through S6.3.3.2(c) would be added to § 571.208, Standard No. 208, to read as follows:

S6. *Injury criteria.*

S6.1 *Injury criteria for the Part 572, Subpart B, Test dummy.*

S6.1.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S6.1.2 The chalk transfer method described in S6.3 of this standard shall be used to determine if there is head contact with any part of the vehicle other than the belt system and/or head contact with the test dummy's knee.

S6.1.2.1 When there is evidence of head contact with any part of the vehicle other than the belt system or head contact with the test dummy's knee, as determined in accordance with S6.3, the resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_4 - t_1)}\int_{t_1}^{t_4} a\,dt\right]^{2.5}(t_4 - t_1)$$

shall not exceed 1,000, where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity) and t_1 and t_2 are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

S6.1.2.2 When there is no evidence of head contact with any part of the vehicle in front of the original dummy head position, other than the belt system, or of head contact with the dummy's femur and/or knee, as determined in accordance with S6.3, the resultant acceleration measured at the center of gravity of the head shall not exceed 75 g, except for intervals whose cumulative duration is not more than 3 milliseconds, when measured by the accelerometer whose sensitive axis is oriented to record inferior-superior accelerations.

S6.1.3 The resultant acceleration at the center of gravity of the upper thorax shall not exceed 60 g, except for intervals whose cumulative duration is not more than 3 milliseconds.

S6.1.4 The compressive force transmitted axially through each upper leg shall not exceed 2,250 pounds.

S6.2 *Injury Criteria for the Part 572, Subpart E, Test Dummy.*

S6.2.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S6.2.2 The chalk transfer method described in S6.3 of this standard shall be used to determine if there is head contact with any part of the vehicle other than the belt system and/or head contact with the dummy's knee.

S6.2.2.1 When there is evidence of head contact with any part of the vehicle other than the belt system and/or head contact with the dummy's knee, as determined in accordance with S6.3, the resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_4 - t_1)}\int_{t_1}^{t_4} a\,dt\right]^{2.5}(t_4 - t_1)$$

shall not exceed 1,000, where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity) and t_1 and t_2 are any two points

in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

S6.2.2.2 When there is no evidence of head contact with any part of the vehicle in front of the original dummy head position, other than the belt system, or of head contact with the dummy's femur and/or knee, as determined in accordance with S6.3, the neck injury measurements shall not exceed 742 pounds of tension force in the inferior-superior direction when measured by a neck transducer having the dimensions, response characteristics, and sensitive axis locations shown for transducer C–1709, as shown in the listing of Optional Hybrid III Dummy Transducers, dated April 22, 1986, incorporated by reference in part 572 of this chapter, which is mounted for testing as shown in drawing 79051–63, revision W, incorporated by reference in Part 572 of this chapter, in the neck assembly shown in drawing 78051–218, revision R, incorporated by reference in Part 572 of this chapter.

S6.2.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing 78051–218, revision R, incorporated by reference in Part 572 of this chapter, shall not exceed 60 g, except for intervals whose cumulative duration is not more than 3 milliseconds.

S6.2.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing 78051–317, revision A, incorporated by reference in Part 572 of this chapter, shall not exceed three inches.

S6.2.5 The compressive force transmitted axially through each upper leg shall not exceed 2,250 pounds.

S6.3 *Chalk transfer method for determining head contact.*

S6.3.1 After making the vehicle adjustments specified in S8.1 of this standard and positioning the test dummies in accordance with S10 or S11 of this standard, each dummy's head shall be painted with a chalk-water slurry of adequate density to assure visible transfer of color upon impact with the vehicle's interior surfaces. The paint shall be applied to the top part of the dummy's head above the horizontal plane that passes through the center of gravity of the dummy's head and to the front part of the dummy's head in front of the vertical transverse lateral plane that passes through the center of gravity of the dummy's head. For identification purposes, the head of the test dummy at the driver's position shall be painted with a color that is readily distinguishable from the color used on the head of the test dummy at the passenger's position.

S6.3.2 The painted surfaces shall be permitted to dry for at least five minutes after application of the chalk-water slurry before the start of the crash test.

S6.3.3 *Determining Head Contact.*

S6.3.3.1 The determination of whether there was head contact with any vehicle interior surface other than the glazing or with the dummy's knee shall be made as follows:

(a) Following the crash, examine each test dummy's head to see if there has been some removal or disturbance, such as smudging or smearing, of the dried chalk on the dummy's head. If there is no such removal or disturbance of the dried chalk, the crash shall be treated as one that did not involve any head contact by that dummy.

(b) If there is evidence of removal or disturbance of the dried chalk on a dummy's head, examine all vehicle interior surfaces forward of the dummy's original head position and the dummy's femurs and knees to see if chalk of the same color that was removed or disturbed on the dummy's head has been transferred to any vehicle interior surface or the dummy's femur or knee. When there is a transfer of chalk onto a vehicle interior surface or a dummy's femur or knee and the transferred chalk is the same color as was removed or disturbed on a dummy's head, the crash shall be treated as one that involved head contact by that dummy. If there is no chalk transfer onto a vehicle interior surface or dummy's femur or knee of the same color chalk as was removed or disturbed on the dummy's head, the crash shall be treated as one that did not involve head contact by that dummy.

S6.3.3.2 The determination of whether there was head contact with vehicle glazing shall be made as follows:

(a) Following the crash, examine each test dummy's head to see if there has been some removal or disturbance, such as smudging or smearing, of the dried chalk on the dummy's head. If there is no such removal or disturbance of the dried chalk, the crash shall be treated as one that did not involve any head contact by that dummy with the vehicle glazing.

(b) If there is evidence of removal or disturbance of the dried chalk on a dummy's head, examine the vehicle glazing to see if chalk of the same color that was removed or disturbed on the dummy's head has been transferred to the glazing. When there is a transfer of chalk onto the vehicle glazing and the transferred chalk is the same color as was removed or disturbed on a dummy's head, the crash shall be treated as one that involved head contact by that dummy.

(c) If there is no chalk transfer onto the vehicle glazing of the same color chalk as was removed or disturbed on the dummy's head, and there is no visible chalk transfer onto any other vehicle interior surface or the dummy's femur or knee, analyze the high speed film used to record the crash test to see if it shows clear and unquestionable evidence of dummy head contact with the vehicle glazing. If there is such clear and unquestionable evidence, the crash shall be treated as one that involved head contact by that dummy. If there is no such clear and unquestionable evidence recorded on the high speed film, the crash shall be treated as one that did not involve head contact by that dummy.

PART 572—[AMENDED]

3. The authority citation for part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

4. Section 572.36(i) would be revised to read as follows:

§ 572.36 Test conditions and instrumentation.

* * * * *

(i) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part are recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211, JUN 1988, "Instrumentation for Impact Tests," with channel classes as follows:

(1) Head acceleration—Class 1000
(2) Neck force—Class 600
(3) Neck pendulum acceleration—Class 60
(4) Thorax and thorax pendulum acceleration—Class 180
(5) Thorax deflection—Class 180
(6) Knee pendulum acceleration—Class 600
(7) Femur force—Class 600

* * * * *

5. The complete head assembly for the Hybrid III dummy, shown in Drawing No. 78051–61, the transducer mounting instructions, shown in Drawing No. 79051–63, and the assembly instructions shown in Drawing No. 78051–218, all of which are incorporated by reference in part 572, would all be revised to show the use of the six-axis C–1709 neck transducer in the Hybrid III dummy, with optional use of the three axis neck transducer shown in Drawing No. 83–5001–008.

Issued on December 3, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-29799 Filed 12-9-92; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 57, No. 238
Thursday, December 10, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-183-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organism under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date Issued	Organisms	Field test location
92-174-02	Pioneer Hi-Bred International, Incorporated	11-03-92	Corn plants genetically engineered to express the coat protein genes of maize dwarf mosaic virus strain A (MDMV-A), maize chlorotic mottle virus (MCMV), or maize chlorotic dwarf virus (MCDV) for resistance to these viruses.	Hawaii, Puerto Rico.
92-191-01	U.S. Department of Agriculture, Agricultural Research Service	11-09-92	Prune plum trees genetically engineered to express the coat protein gene from papaya ringspot virus (PRV) for resistance to plum pox virus.	West Virginia.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 7th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30037 Filed 12-9-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-185-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-230-01	Pioneer Hi-Bred International, Incorporated	11/10/92	Soybean plants genetically engineered to express the coat protein gene from soybean mosaic virus (SMV) for resistance to SMV.	Puerto Rico.
92-212-01	Pioneer Hi-Bred International, Incorporated	11/16/92	Corn plants genetically engineered to express the marker genes phosphinothricin acetyl translecase (PAT) and beta-glucuronidase (GUS) and a gene for male sterility.	Hawaii.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 7th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30038 Filed 12-9-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-186-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340,

"Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-318-01, renewal of permit 91-022-01, issued on 05-21-92.	Pioneer Hi-Bred International, Incorporated.	11-13-92	Soybean plants genetically engineered to express a methionine-rich seed storage protein gene from Brazil nut.	Illinois, Iowa, Missouri, Ohio.
92-318-02	Pioneer Hi-Bred International, Incorporated.	11-13-92	Corn plants genetically engineered to express male sterility and a visual marker gene.	Iowa.
92-322-01, renewal of permit 91-352-02, issued on 04-15-92.	Pioneer Hi-Bred International, Incorporated.	11-17-92	Alfalfa plants genetically engineered to express the coat protein gene of the alfalfa mosaic virus (AMV) for resistance to AMV.	Washington.

Done in Washington, DC, this 7th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30039 Filed 12-9-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Mount St. Helens National Volcanic Monument Scientific Advisory Board Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9 a.m., on January 21, 1993, in the National Volcanic Monument Visitor Center, 3029 Spirit Lake Highway, Castle Rock, Washington 98611, to receive information on and discuss the following:

1. Johnston Ridge Road and Observatory—Utilities and Access.
2. Coldwater Ridge Complex-Management and Resource Protection.
3. Mt. Margaret Backcountry Management Plan.
4. Open discussion on relevant topics.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack. K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, 206-750-5000. Written statements may be filed with the Board before or after the meeting.

Dated: December 3, 1992.

Nancy Graybeal,

Acting Regional Forester.

[FR Doc. 92-29979 Filed 12-5-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Chipmunk Salvage Timber Sale

AGENCY: USDA, Forest Service.

ACTION: Notification that a timber salvage project designed to recover fire damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: During the spring of 1992, severe winds caused a prescribed burn to escape fire lines and burn through approximately 80 acres of timber. In August 1992, the Priest Lake Ranger District proposed a salvage timber sale project to recover damaged sawtimber in the affected area and reforest the site. The District Ranger has determined through an environmental analysis documented in the Chipmunk Salvage Timber Sale Decision Memo (DM) and Project File that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and to allow for rapid reforestation of the site.

EFFECTIVE DATE: Effective on December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Charles E. Harris; Acting District Ranger; Priest Lake Ranger District; Idaho Panhandle National Forests; HCR 5, Box 207; Priest River, ID 83856.

SUPPLEMENTARY INFORMATION: During the spring of 1992, severe winds caused a prescribed burn to escape fire lines and burn through approximately 80 acres of timber located approximately four miles south of Priest Lake, Idaho, in Bonner County. Approximately 95 percent of the trees within the burned area were killed. The fire-killed timber is located within lands designated as suitable for timber management and assigned to Management Area 4 (Idaho Panhandle Forest Plan, August 1987). In August 1992, the Priest Lake District Ranger of the Idaho Panhandle National Forests proposed a salvage timber sale project to recover damaged sawtimber in the affected area and reforest the site. This proposal was designed to meet the following needs: (a) Contribute to a continuing supply of timber for industry by salvaging merchantable timber products; (b) rapidly reforest timber stands with desirable native tree species; and (c) reduce future wildfire hazards by reducing fuel loadings.

An interdisciplinary team (IDT) was convened, and scoping began in August 1992. From these scoping efforts, environmental issues were identified and served as the basis for the analysis conducted by the IDT. Measures which are to be used to mitigate the effects of the proposed action were developed and incorporated into the project design. The District Ranger determined through the environmental analysis documented in the DM and Project File to proceed with implementation of the proposed action. The selected alternative would salvage 40 MBF of dead and damaged timber from approximately 80 acres. All salvage areas are accessible from existing roads. No road construction or reconstruction is planned for this sale.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to recover merchantable sawtimber before it deteriorates and removal becomes infeasible, to rapidly reforest timber stands with desirable tree species, and to reduce the potential for future wildfires. To expedite implementation of this decision, procedures outlined in 36 CFR part 217(a)(11) are being

followed. Under this regulation, the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena when the Regional Forester * * * determines and gives notice in the Federal Register that good causes exists to exempt such decisions from review under this part.

Based on information from the District Ranger's Decision Memo for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: December 3, 1992.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-29826 Filed 12-9-92; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Yuma Mesa Watershed, AZ

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Supplemental Plan for the Yuma Mesa Watershed, Yuma County, Arizona.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Soil Conservation Service, 201 East Indianola Ave., suite 200, Phoenix, AZ 85012, telephone (602) 640-2248.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the supplement will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this supplement.

On September 1, 1987, the Soil Conservation Service authorized Public Law 83-566 assistance to install works of improvement in the Yuma Mesa Watershed. A slow agricultural economy and objections to federal specifications on some practices have caused local producers to refrain from entering into binding long-term contracts. By 1992, eighty-five percent of the planned measures should have been installed. To date, however, less than two percent of the planned measures have been installed. In March 1991, the Sponsors submitted a request to terminate future project activities and terminate the Yuma Mesa Watershed Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Michael E. Sullivan, Assistant State Conservationist for Water Resources.

No administrative action or implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 3, 1992.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 92-30013 Filed 12-9-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 606]

Resolution and Order Approving the Application of the Yakima Air Terminal Board for a Foreign-Trade Zone in Yakima, WA

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Yakima Air Terminal Board, filed with the Foreign-Trade Zones Board (the Board) on October 28, 1991, requesting a grant of authority to establish a general-purpose foreign-trade zone in Yakima, Washington, at the Yakima Air Terminal Complex, a Customs user fee port facility, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790-50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority; Establishment of a Foreign-Trade Zone, Yakima, WA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Yakima Air Terminal Board (the Grantee), has made application (filed 10-28-91, FTZ Docket 68-91, 56 FR 57316, 11-8-91) to the Board, requesting the establishment of a foreign-trade zone at the Yakima Air Terminal, Yakima, Washington, which has been designated a Customs user fee port facility;

Whereas, notice of said application has been given in the Federal Register and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 188, at the sites described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), including § 400.28.

Signed at Washington, DC, this 30th day of November 1992.

Foreign-Trade Zones Board.

Barbara H. Franklin,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-30048 Filed 12-9-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-351-037]

Cotton Yarn From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on cotton yarn from Brazil. We preliminarily determine the net subsidy to be 0.19 percent *ad valorem* for all firms for the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1992, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 7910) of the countervailing duty order on cotton yarn from Brazil (42 FR 14089; March 15, 1977) for the period January 1, 1991 through December 31, 1991. On March 31, 1992, the Government of Brazil requested an administrative review for that period. We initiated the review on April 13, 1992 (57 FR 12797). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published in the **Federal Register** on January 14, 1992 (57 FR 1454).

Scope of Review

Imports covered by this review are shipments of Brazilian yarn, carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, six programs and the following ten producers/exporters of cotton yarn from Brazil: Cia Industrial e Agricola Boyes, Companhia Brasileira de Fiacao, Companhia Jauense Industrial, Filobel S.A.—Industrias Texteis do Brasil, Fiacao Nordeste do Brasil S.A.—Finobrasa, Fiacao e Tecelagem Kanedo do Brasil S.A., Minasa Trading Internacional S.A., Nisshinbo do Brasil Industria Textil Ltda., Toyobo do Brasil Industria Textil, and Unitika do Brasil Industria Textil Ltda.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the subsidy rates of the ten companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of the subject merchandise to the United States. Because the overall weighted-average country-wide rate was *de minimis*, as defined by 19 CFR 355.7, we did not proceed any further in our analysis.

Analysis of Programs

(1) Reductions of Taxes and Import Duties Through BEFIEX

The Commission for the Granting of Fiscal Benefits to Special Export Programs (BEFIEX) allows Brazilian exporters, in exchange for export commitments, to take advantage of several types of benefits, such as import duty reductions and accelerated depreciation for machinery used in the production of exports. Because this program provides tax reductions that are limited to exporters, we preliminarily determine that it is countervailable. Brazilian Law 8.032 of April 12, 1990 eliminated this program for new projects. However, the Department has determined that residual benefits may continue due to outstanding BEFIEX contracts.

Five cotton yarn exporters received import duty/tax reductions by virtue of their BEFIEX contracts during the review period.

To calculate the benefit, we divided the amount of each firm's import duty reductions received in 1991 by that firm's total exports in 1991. We then weight-averaged the benefits by each respondent's share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit to be 0.18 percent *ad valorem* for all firms.

(2) Sudene

According to Brazilian Law Number 4239 of June 27, 1963, as amended, and under Decree Number 64214 of March 18, 1969, as amended, companies located in the Northeast of Brazil are eligible for exemption from income tax for production attributable to SUDENE-approved projects. The intent of this program is to encourage development of this region of Brazil.

Because this exemption is only available to companies located in a specific region of Brazil, we find this to be a countervailable domestic subsidy.

One cotton yarn exporter is located in the Northeast of Brazil and received a tax exemption for production attributable to its SUDENE-approved projects. The amount of the tax exemption due to this program can be found on a company's tax return denominated in BTN. The benefit is equal to the amount of the exemption.

We divided the benefit received by the company by its total sales in order to calculate the company's *ad valorem* subsidy. The individual benefits for each company were weight-averaged by the company's share of total exports of the subject merchandise to the United States. On this basis, we determine the benefit from this program to be 0.01 percent *ad valorem* for all firms.

(3) Other Programs

We also examined the following programs and preliminarily determine that the respondents did not use them during the review period:

A. Income Tax Exemption for Export Earnings,

B. CACEX Preferential Working Capital Financing for Exports,

C. Preferential Export Financing under CIC-OPCRE of the Banco do Brasil,

D. Preferential Financing for Industrial Enterprises by the Banco do Brazil (FST and EGF loans).

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.19 percent *ad valorem* for all firms for the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

Therefore, as provided for by section 751(a)(1) of the Act, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Brazil exported on or after January 1, 1991, and on or before December 31, 1991.

The Department also intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of this merchandise from Brazil entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held within seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 4, 1992.

Rolf Th. Lundburg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-30051 Filed 12-9-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-818]

Initiation of Anticircumvention Inquiry on Antidumping Duty Order on Personal Word Processors From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of initiation of anticircumvention inquiry.

SUMMARY: On the basis of a petition filed with the Department of Commerce (the Department) by Smith Corona Corporation, we are initiating an anticircumvention inquiry to determine whether producers of personal word processors (PWPs) are circumventing the antidumping duty order on PWPs from Japan issued August 28, 1991 (56 FR 42593).

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner or Thomas O. Barlow, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230; Telephone (202) 482-4851.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1992, the Department received a petition filed by Smith Corona Corporation (SMC), requesting an investigation to determine whether imports of certain word processor parts and components by Brother Industries (USA), Inc. (Brother), are circumventing the antidumping duty order on PWPs from Japan, in accordance with section 781(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1677j(a)) (the Act). SMC alleges that Brother is circumventing the antidumping duty order on PWPs by importing parts and components from Japan and third countries, and assembling them into finished PWPs for sale in the U.S. market.

Scope of Order

The products covered by the order subject to this anticircumvention inquiry are personal word processors (PWPs) from Japan as defined in the Department's antidumping duty order on personal word processors from Japan (56 FR 42593, August 28, 1991), as amended (57 FR 37770, August 20, 1992).

Initiation of Anticircumvention Proceeding

Section 781(a)(1) of the Act authorizes the Department to include merchandise within the scope of an existing antidumping duty order if: (1) The merchandise sold in the United States is of the same class or kind as merchandise that is the subject of an antidumping duty order; (2) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; and (3) the difference between the value of such merchandise sold in the United States and the value of the imported parts and components is small. In reaching a determination on whether to include the product within the scope of an existing antidumping duty order, section 781(a)(2) of the Tariff Act directs the Department to consider such factors as: (1) The pattern of trade; (2) whether the manufacturer or exporter is related to the entity that assembled or completed the merchandise sold in the United States; and (3) whether imports of the parts or components from the country with respect to which the antidumping duty order applies have increased after issuance of that order.

In accordance with section 781(a) and 19 CFR 353.29(b) and (e), we are initiating an anticircumvention inquiry on the antidumping duty order on PWPs from Japan (case number A-588-818). We intend to complete this inquiry within six months unless extraordinary complications arise.

We intend to notify the International Trade Commission (ITC) in the event of an affirmative preliminary determination of circumvention, in accordance with 19 CFR 353.29(d)(7)(i). Should consultation with the ITC be necessary, the post-preliminary determination schedule will be postponed by 60 days.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 353.29(j)(2), the Department will instruct the U.S. Customs Service to suspend liquidation in the event of an affirmative preliminary determination of circumvention.

This notice is issued pursuant to section 781(a) of the Act (19 U.S.C. 1677j(a)).

Dated: December 4, 1992

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-30047 Filed 12-9-92; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Mobile, AL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is $169,125 in Federal funds and a minimum of $29,846 in non-Federal (cost-sharing) contributions. This federal amount includes $4,125 for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from May 1, 1993 to April 30, 1994. The MBDC will operate in the *Mobile, Alabama* geographic service area.

The award number for this MBDC will be *04-10-93007-01*.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000. False information on the application can be grounds for denying or terminating funding.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performing ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MDBA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements, satisfactory to the Department of Commerce, are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a pre-condition for receiving Federal grant or cooperative agreement awards.

15 CFR part 28, is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant or cooperative agreement. Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for submitting an application is January 18, 1993. Applications must be postmarked on or before January 18, 1993. Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business

Development Agency, 401 West Peachtree Street NW., suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference to assist all interested applicants will be held on January 4, 1993, 9:00 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., room 1715, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: Carlton L. Eccles, Regional Director of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development)

Robert M. Henderson,

Acting Regional Director

[FR Doc. 92–29996 Filed 12–9–92; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 921195–2295]

Voluntary Product Standard PS 2–92; "Performance Standard for Wood-Based Structural-Use Panels"

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Approval of Voluntary Product Standard PS 92–92 "Performance Standard for Wood-Based Structural-Use Panels".

SUMMARY: The National Institute of Standards and Technology (NIST) announced in the **Federal Register** on April 8, 1992 (57 FR 11938), that it was circulating for review and comment proposed Voluntary Product Standard TS 234 "Performance Standard for Wood-Based Structural-Use Panels," in accordance with the provisions of 10.6 of Department "Procedures for the Development of Voluntary Product Standards" (15 CFR part 10, as amended; 51 FR 22497 dated June 20, 1986).

Public response to the proposed standard indicated consensus among producers, distributors, users, and consumers in accordance with the Department procedures, and the standard was approved for publication as Voluntary Product Standard PS 2–92, effective August 27, 1992. The standard covers performance requirements for a variety of structural panels including plywood, waferboard, oriented strand board, structural particleboard, and composite panels.

For further information or for copies of PS 2–92, contact Barbara Meigs, Standards Management Program, Office of Standards Services, NIST, A 625, Building 101, Gaithersburg, MD 20899, telephone 301–975–4025, FAX 301–963–2871.

Dated: December 4, 1992.

John W. Lyons,

Director.

[FR Doc. 92–30050 Filed 12–9–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P510A).

Notice is hereby given that The Shoshone-Bannock Tribes have applied in due form for a Permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to conduct scientific research involving Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*). No other listed species will be directly or incidentally affected. In the course of the research, up to 2,000 juveniles will be captured, PIT tagged, and released, and up to 2,300 juveniles will be observed and counted by snorkelers. These numbers are requested for each year for a duration of 15 years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant, and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Avenue, room 620, Portland, OR 97232 (503/230–5400).

Dated: December 2, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–29930 Filed 12–9–92; 8:45 am]

BILLING CODE 3510–22–M

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of an application for experimental fishing permit.

SUMMARY: NMFS announces receipt of an application for an experimental fishing permit (EFP) to harvest arrowtooth flounder in the Gulf of Alaska during January 3–20, 1993, and during May 1–31, 1993. If awarded, this permit would be used to harvest arrowtooth flounder and allow experiments directed at surimi production. Issuance of experimental fishing permits is authorized by the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and its implementing regulations.

ADDRESSES: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Grave

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, NMFS (907–586–7230).

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR part 672 specify that EFPs may be issued to authorize fishing that otherwise would be prohibited by the FMP and regulations. The procedures for issuing permits are contained in the regulations at § 672.6

An EFP application has been accepted for review and copies have been forwarded to the North Pacific Fishery

Management Council (Council). The Council intends to review the application at its December 8–13, 1992, meeting, which will be held at the Hilton Hotel, Anchorage, Alaska, under Council agenda item D–3–b.

The applicant proposes to harvest a limited amount of arrowtooth flounder for purposes of producing market-grade surimi for product development and test marketing by surimi analog producers elsewhere in the United States. Vessels harvesting arrowtooth flounder will carry a NMFS-certified observer at all times with costs paid for by vessels fishing for the applicant. Other information regarding project design, deposition of fish harvested, and other information is contained in the application. A copy of the application is available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: December 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–29942 Filed 12–4–92; 3:14 pm]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification No. 1 to permit No. 767 (P263B).

SUMMARY: On March 4, 1992, notice was published in the **Federal Register** (57 FR 7735) that Permit No. 767 had been issued to Ms. Janice Straley, P.O. Box 273, Sitka, Alaska 99835.

Notice is hereby given that on December 3, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the Regulations Governing Endangered Fish and Wildlife (50 CFR Parts 217–222), the National Marine Fisheries Service modified Permit No. 767 to extend the effective date through March 31, 1993.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, 9109 Mendenhall Mall Rd. Suite 6, Juneau, AK 99802 (907/586–7221).

Dated: December 3, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–29982 Filed 12–9–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of permit modification (P481A).

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 751 issued to Dr. Thomas J. Ford, Jr., 209 Harvard Street, Brookline, MA 02146, on October 16, 1991, to import from South Australia, tissue samples from a dead stranded pygmy right whale (*Caperea marginata*) for scientific purposes. This Permit is modified to extend the date of expiration through December 31, 1993. This modification becomes effective upon publication in the **Federal Register.**

Documents submitted in connection with this Permit, as modified, are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Dated: December 3, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–29981 Filed 12–9–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0091]

Clearance Request for Anti-Kickback Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0091).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Anti-Kickback Procedures.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51–58). Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of section 3 of the Act may have occurred, they are required to report the possible violation in writing to the contracting agency or the Department of Justice. The information is used to determine if any violations of section 3 of the Act have occurred.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,500; responses per respondent, 1; total annual responses, 2,500; preparation hours per response, 1; and total response burden hours, 2,500.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037,

Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

Dated: December 4, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30017 Filed 12–9–92; 8:45 am]

BILLING CODE 6820-34-M

Public Information Collection Requirement Submitted to OMB for Review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Soldier Deployment and Military Family Separation Stress During Operation Desert Shield/Storm: The Army Individual Ready Reserve

Type of Request: New Collection

Average Burden Hours/Minutes Per Response: 30 minutes

Responses Per Respondent: 1

Number of Respondents: 7,918

Annual Burden Hours: 3,959

Annual Responses: 7,918

Needs and Uses: The Army has a need for information on the psychosocial consequences of rapid mobilization and demobilization of all components of the Army and their families. This problem is being studied by the Department of Military Psychiatry of the Walter Reed Army Institute of Research. Reserve and active Army component studies are underway. The segment of the study on psychosocial and unit cohesion related aspects of OSD/S on Individual Ready Reservists (IRR's) has not yet been undertaken. This study surveys the IRR's and their spouses.

Affected Public: Individuals or households

Frequency: One time

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 4, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30042 Filed 12–9–92, 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Overseas Dependents Schools National Advisory Panel on the Education of Dependents With Disabilities

ACTION: Notice of meeting.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Overseas Dependents Schools National Advisory Panel on the Education of Dependents with Disabilities (hereinafter referred to as the National Advisory Panel) will meet on December 14–17, 1992, at the Office of Dependents Schools, 1225 Jefferson Davis Highway, suite 1500, Crystal Gateway 2, Arlington, Virginia 22202.

This notice sets forth the schedule and proposed agenda of the meeting of the National Advisory Panel and describes its functions. The meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the Office of Dependents Schools special education coordinator. Less than 15 days notice is being given because of unusual difficulties encountered in coordinating the schedules of several overseas members having to travel to the meeting site and be available for this urgent meeting.

The National Advisory Panel was established under the authority of section 613 of the Education for All Handicapped Children Act of 1975 (20 U S.C. 1401, Pub. L. 94–142). The Panel is directed to: (1) Review information regarding improvements in services provided to students with disabilities in Department of Defense Dependents Schools (DoDDS); (2) receive and consider the views of various parents, students, individuals with disabilities, and professional groups; (3) review the findings of fact and decision of each impartial due process hearing; (4) assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (5) make recommendations based on program and operational information for changes in the budget, organization, and general management of the special education program, and in policy and procedures; (6) comment publicly on rules or standards regarding the education of children; and (7) submit an annual report of its activities and suggestions to the Director, DoDDS by July 31 of each year. The Panel will review the following areas: Quality Indicators for special education program, preschool plans for young children with disabilities, special education transition program, Individuals with Disabilities Amendments (IDEA), inservice training and medical related services.

For additional information regarding the National Advisory Panel, contact: Mrs. Trudy Paul, Special Education Coordinator, Office of Dependents Schools, 1225 Jefferson Davis Highway, suite 500, Arlington, Virginia 22202, telephone: 703–746–7867.

Dated: December 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30041 Filed 12–9–92; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Panel on Streamlining and Codifying Acquisition Laws; Meeting

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on December 9, 1992, at the Defense Systems Management College, Building 184, Fort Belvoir, VA. The panel will meet in special session to come to closure on the following final issues:

Panel position on the Brooks Act.

Panel position on technical data.

The need to reconsider the decision on 10 U.S.C. 2410.

Competitive prototyping.

Penalties associated with 10 U.S.C. 2324

Fiscal laws.

We apologize for the shortness of notice. The aforementioned issues arose as the panel members, task force, and editorial staff were finalizing the panel report. The Panel Chairman, RADM Vincent, made the determination that he issues involved were significant enough to require an open panel meeting prior to the submission of the final report for SECDEF review and comment on December 15, 1992.

For further information contact Major Jean Kopala at (703) 355–2665.

Dated: December 7, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30130 Filed 12–8–92; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 5, 1993; Tuesday, January 12, 1993; Tuesday, January 19, 1993; and Tuesday, January 26, 1993, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: December 4, 1992.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30043 Filed 12–9–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Mobility Mission Panel will meet on 22 Jan 1993 from 8 a.m. to 5 p.m. at Scott AFB, IL.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Mobility Mission. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30020 Filed 12–9–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Intent To Prepare a Draft Supplement (DSEIS) to the Final Integrated Feasibility Report and Environmental Impact Statement on the Central and Southern Florida Project, Environmental Restoration of the Kissimmee River, FL, Addressing the Kissimmee River Headwaters Revitalization in Osceola County, FL

AGENCY: U.S Army Corps of Engineers, DoD

ACTION: Notice of intent.

SUMMARY: A study of the modification of the Kissimmee River Project headwaters is authorized for the ecosystem restoration of the Kissimmee River, Florida. The study action is necessary to restore historical flows to the Kissimmee River Lower Basin while optimizing fish and wildlife habitat in the Upper Basin.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be answered by Dr. Gerald Atmar, U.S. Engineer District, P.O Box 4970, Jacksonville, Florida 32232–0019; telephone 904/232–2615.

SUPPLEMENTARY INFORMATION: The study, named the Headwaters Revitalization Study, was addressed generically by an integrated feasibility report and final Environmental Impact Statement filed with the U.S. Environmental Protection Agency, January 17, 1992 (57 FR 2093). The present study is to formulate a plan to optimize environmental improvements to the Upper Kissimmee Basin while reestablishing discharges to the Lower Basin that are necessary to restore the ecological integrity of the Kissimmee River.

Increasing the levels of Lakes Kissimmee, Cypress and Hatchineha is under study. A preliminary proposal is to increase the controlled upper water level from 52.5 to 54.0 feet NGVD, with the lower level remaining at 48.5 feet NGVD Additionally, the schedule would be zoned to provide discharges based on season and water levels. The revised schedule would seasonally reflood land between elevations 52.5 and 54.0 feet in the Upper Basin.

The revised schedule is expected to increase seasonal water storage capacity by 100,000 acre-feet, according to studies by the SFWMD, and to provide for greater, and more natural fluctuations of water levels in the lakes. Additionally, the studied regulation schedule is expected to provide capability to simulate the historic seasonal flow from Lake Kissimmee to the Lower Basin. This capability is a prerequisite for successful restoration of the Lower Basin ecosystem.

Alternative plans consist of "no action", i.e., leaving the exiting Upper Basin works in place and operational with the present schedules, and combinations of the following:

Different modifications of the Upper Chain of Lakes regulation schedules, C–34, C–35, C–36 and C–37 enlargement, and

Acquisition of real estate interests to acquire rights to reflood land below elevation 54.0 feet

The study will address the effects of higher water levels on private property, agricultural and commercial interests, public works, cultural resources, including historical structures, recreation, aesthetics, water quality, and fish and wildlife in the Upper Basin and effects on the Kissimmee River Restoration Plan Tributary lakes Rosalie, Riger and Jackson may be affected by the studied change, and effects on these lakes will also be considered

Scoping for this study was started with a letter dated July 16, 1992, to all known interested parties, based on responses to the integrated feasibility

report and final EIS cited above. The letter described the studied action and reasonable alternatives conceived at that time. The public and affected state and Federal agencies will be further involved in scoping through workshops to obtain information and concerns from agencies and the public and to share planning concepts and procedures. The workshops have not been scheduled, but will be announced through mailings and public media notices. Additionally, a series of public hearings will be scheduled after circulation of the draft report and EIS and before completion of the final report and EIS

The study is being conducted with the participation of the South Florida Water Management District (local sponsor), and the U.S. Fish and Wildlife Service, the Florida Game and Fresh Water Fish Commission, Florida Department of Natural Resources, and Florida Department of Environmental Regulation. The U.S. Department of Agriculture Soil Conservation Service has met with planners and expressed concerns over the potential seasonal loss of wetland pasturage and the effect on water quality and fish and wildlife habitat. Further participation is invited from affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

The Project Modification Report and DEIS are scheduled for availability to the public in October 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-29939 Filed 12-9-92; 8:45 am]

BILLING CODE 3710-AJ-M

Military Personal Property Symposium; Open Meeting

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice of open meeting, Military Personal Property Symposium.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and AR 1 5-1, Committee Management, announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 28 January 1993 at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and the free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DoD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: ATPP-M, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 31 December 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-29933 Filed 12-9-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army, Corps of Engineers.

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Expansion of Barney Reservoir, Washington and Yamhill Counties, OR

AGENCY. U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent

SUMMARY. The proposed action is the issuance of a Department of the Army permit under section 404 of the Clean Water Act of 1977, as amended, for the raising of Barney Dam and the expansion of Barney Reservoir, located on the North Fork Trask River, Washington and Yamhill Counties, Oregon. The Joint Water Commission is the applicant proposing this action for the purpose of increasing the municipal and industrial water supply of Washington County. The increased water supply would also provide water quality benefits to the Tualatin River.

FOR FURTHER INFORMATION CONTACT. Questions about the proposed action and DEIS can be answered by David Kurkoski, telephone (503) 326-6094, Portland District, U.S. Army Corps of Engineers, Regulatory and Environmental Resources Branch, P.O. Box 2946, Portland, Oregon 97208-2946.

SUPPLEMENTARY INFORMATION: The Joint Water Commission in Washington County, Oregon is planning to apply to the Portland District, U.S. Army Corps of Engineers for a Department of the Army Permit under section 404 of the Clean Water Act of 1977, as amended. The proposed action is to raise the existing Barney Dam by 50 feet to increase the storage capacity of the reservoir from the existing 4,000 acre-feet to 20,000 acre-feet. The purpose of the proposed action is to provide an increased municipal and industrial water supply to Washington County. In addition, the increased water supply would provide water quality benefits to the Tualatin River through flow augmentation to support beneficial uses. Barney Dam is an earthfill dam on the North Fork Trask River in Washington County, Oregon, built in 1972 by the City of Hillsboro. It was originally designed for expansion to create a 20,000 acre-foot reservoir in up to four stages of development. Water released from Barney Reservoir is carried by pipeline to the Tualatin River drainage. Prior to initial construction, water rights for the 20,000 acre-foot reservoir were received by the City of Hillsboro from the State of Oregon.

Barney Reservoir is owned by the Cities of Hillsboro and Forest Grove and operated by the City of Hillsboro for municipal and industrial water use purposes. The reservoir expansion will be a joint project of the City of Hillsboro, the City of Forest Grove, and the City of Beaverton (through an existing intergovernmental agreement that formed the Joint Water Commission), and the Tualatin Valley Water District for municipal and industrial uses. The Unified Sewerage Agency will participate as a partial sponsor for water use for flow augmentation in the Tualatin River.

The alternatives to be considered in the DEIS are:

- The proposed 50-foot dam raise using rockfill material.
- The proposed 50-foot dam raise using alternative materials such as roller-compacted concrete.
- Construct a new dam at an alternative site approximately ¼ mile downstream from the existing dam.
- Development of other water supplies to meet the project objectives.
- No action.

The scoping process will commence in November 1992 with the issuance of a scoping letter. Federal, state and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the significant issues relating to the potential effects of the alternatives. Potentially significant issues to be addressed in the DEIS include: Effects of the project on wetlands and vegetation, wildlife habitat and populations and fisheries in the Trask and Tualatin Rivers. Other environmental review and consultation requirements which will be addressed in conjunction with the DEIS include:

(1) Clean Water Act of 1977, as amended;

(2) Fish and Wildlife Coordination Act;

(3) Coastal Zone Management Act of 1972, as amended;

(4) Endangered Species Act of 1973, as amended;

(5) Cultural Resources Acts;

(6) Executive Order 11988, Floodplain Management;

(7) Executive Order 11990, Protection of Wetlands.

A formal scoping meeting has not been scheduled. The applicant has scheduled public meetings in Washington, Yamhill and Tillamook Counties to provide more information on the scope of studies to be accomplished for this DEIS, to assist interested parties in developing their scoping comments. These meetings will be held at the following locations:

Tillamook: Time and location to be determined;

Gaston: 8 December 1992, 7 p.m., Gaston Fire Hall;

Hillsboro: 9 December 1992, 7 p.m., Washington County Public Services Building, Room 140.

The DEIS is scheduled to be made available to the public in July 1993.

Richard E. Dadisman,

Major, Corps of Engineers, Acting Commander.

[FR Doc. 92-29932 Filed 12-9-92; 8:45 am]

BILLING CODE 3710-AR-M

Department of the Navy

Privacy Act of 1974; Amend and Delete Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend and delete record systems.

SUMMARY: The Department of the Navy proposes to amend four and delete one existing systems of records to its inventory of systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on January 11, 1993, unless comments are received that would result in a contrary determination. The deletion is effective December 10, 1993.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614-2004 or DSN 224-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, April 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, June 3, 1986
51 FR 30377, August 26, 1986
51 FR 30393, August 26, 1986
51 FR 45931, December 23, 1986
52 FR 2147, January 20, 1987
52 FR 2149, January 20, 1987
52 FR 8500, March 18, 1987
52 FR 15530, April 29, 1987
52 FR 22671, June 15, 1987
52 FR 45846, December 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, June 8, 1988
53 FR 25363, July 6, 1988
53 FR 39499, October 7, 1988
53 FR 41224, October 20, 1988
54 FR 8322, February 28, 1989
54 FR 14378, April 11, 1989
54 FR 32682, August 9, 1989
54 FR 40160, September 29, 1989
54 FR 41495, October 10, 1989
54 FR 43453, October 25, 1989
54 FR 45781, October 31, 1989
54 FR 48131, November 21, 1989
54 FR 51784, December 18, 1989
54 FR 52976, December 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, September 14, 1990
55 FR 42758, October 23, 1990
55 FR 47508, November 14, 1990
55 FR 48678, November 21, 1990
55 FR 53167, December 27, 1991
56 FR 424, January 4, 1991
56 FR 12721, March 27, 1991
56 FR 27503, June 14, 1991
55 FR 28144, June 19, 1991
56 FR 31394, July 10, 1991 (DOD Updated Indexes)
56 FR 40877, August 16, 1991
56 FR 46167, September 10, 1991
56 FR 59217, November 25, 1991
56 FR 63503, December 4, 1991
57 FR 2719, January 23, 1992
57 FR 2726, January 23, 1992
57 FR 2898, January 24, 1992
57 FR 5430, February 14, 1992
57 FR 9246, March 17, 1992
57 FR 12914, April 14, 1992
57 FR 14698, April 22, 1992
57 FR 18472, April 30, 1992
57 FR 26422, June 10, 1992
57 FR 26821, June 16, 1992
57 FR 28499, June 25, 1992
57 FR 28502, June 25, 1992
57 FR 31700, July 17, 1992
57 FR 33326, July 28, 1992
57 FR 34127, August 3, 1992
57 FR 37791, August 20, 1992
57 FR 42741, September 16, 1992
57 FR 46153, October 7, 1992

The Department of the Navy is also correcting an error made when the system of records notice for N05300-3, amended on September 29, 1989, at 54 FR 40167, stated that the system was not exempt. The exemption rule for this system was established prior to 1985 and continues to be accurate.

The amendments and the deletion are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: December 3, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION
N05300-7

SYSTEM NAME: Bases and Stations Information System, (BASIS)(54 FR 14380, April 11, 1989).

Reason: Information is contained in the Navy Privacy Act System of Records N05300-2, Administrative Personnel Management System, therefore, N05300-7 is no long needed.

AMENDMENTS
N05300-2

SYSTEM NAME:

Administrative Personnel Management System, (54 FR 40166, September 29, 1989).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 20, after "veterans preference" add "postal address; location of dependents and next of kin and their addresses;".

In line 24, after "line", add "safety,".

* * * * *

PURPOSE(S):

In line 8, after "access control," add "record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards;".

* * * * *

STORAGE:

In line one, delete "punched cards".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed."

* * * * *

N05300-2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Included in this notice are those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence/records concerning personnel identification, location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, access to secure spaces and issuance of keys, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs; grade and series or rank/rate; retirement category; awards; biographical data; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual aid association memberships; union memberships; qualifications; computerized modules used to track personnel data; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To manage, supervise, and administer programs for all Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

File folders, card files, magnetic tape, magnetic disc.

RETRIEVABILITY:

Name, Social Security Number, case number, organization, work center and/or job order.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need to know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Normally retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official

travel orders, educational institutions, applications, duty officer, investigations, OPM officials, and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05300–3

SYSTEM NAME:

Faculty Professional Files (54 FR 40167, September 29, 1989).

CHANGES:

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701. For additional information contact the system manager."

* * * * *

N05300–3

SYSTEM NAME:

Faculty Professional Files.

SYSTEM LOCATION:

Superintendent, Naval Postgraduate School, Monterey, CA 93943–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Faculty personnel employed by the Naval Postgraduate School and individuals applying for positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Faculty academic promotion/tenure case evaluation files and faculty professional status and accomplishment file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

Promotion/tenure case evaluation files are used by Department Chairmen, Deans, and the Superintendent to determine the ranking, promotion tenure reappointment and evaluation of faculty personnel. Faculty professional status and accomplishment files constitute official record of employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

During working hours, records are secured within locked file drawers within departmental offices to which only authorized personnel have access. After working hours, records are kept within locked file drawers within secured offices located within a locked building which is part of a naval facility to which entry is restricted.

RETENTION AND DISPOSAL:

Faculty academic promotion/tenure case evaluation files are destroyed upon personnel action completion. Faculty professional status and accomplishment files are retained in a permanent file.

SYSTEM MANAGER(S) AND ADDRESS:

Provost, Naval Postgraduate School (Code 01), Monterey, CA 93943–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Provost, Naval Postgraduate School (Code 01), Monterey, CA 93943–5100.

Requests should contain full name and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves in this system of records should address written inquiries to the Provost, Naval Postgraduate School (Code 01), Monterey, CA 93943–5100

Requests should contain full name and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from previous employers, educational background, correspondence, peer evaluations, supervisory evaluations and student evaluations of teaching.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U S C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701. For additional information contact the system manager.

N05350–1

SYSTEM NAME:

Navy Personnel Rehabilitation Support System (51 FR 18151, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Navy Drug and Alcohol Program System."

SYSTEM LOCATION:

Delete entry and replace with "Primary System-Bureau of Naval Personnel (Pers 63), Navy Department, Washington, DC 20370–5630

Decentralized segments-Navy Alcohol Rehabilitation Centers, Navy Alcohol Rehabilitation Departments in Naval Hospitals, Counseling and Assistance Centers, Navy Alcohol and Drug Safety Action Program Offices, Navy Drug Screening Laboratories, Bureau of Naval Personnel Detachment (Drug and Alcohol Program Management Activity), and local activities to which an individual is assigned. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Washington, DC 20370–5630."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Navy personnel (officers and enlisted) who have been identified as drug or alcohol abusers and who are subsequently screened or referred for remedial education, outpatient counseling, or residential rehabilitation; counselors, counselor interns, and counselor applicants; Navy personnel who attend the Navy Alcohol and Drug Safety Action Program for preventive education; dependents and civilians, where authorized, who participate in preventive and remedial education programs, outpatient counseling, and residential rehabilitation; and officer, enlisted, and civilian staff members of facilities providing drug and alcohol education, screening, counseling, rehabilitation, and drug testing."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Documentation containing demographic data, screening and assessment information, progress notes, medical and laboratory data, narrative summaries of treatment, aftercare plans, and other information pertaining to a member's participation in substance abuse education, counseling, and rehabilitation programs."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U S C. 301, Departmental Regulations; 10 U S.C. para 1090; 42 U S C. 290dd–3 and 290ee–3; and E.O 9397."

PURPOSE(S):

Delete entry and replace with "To train, educate, identify, screen, counsel, rehabilitate, and monitor the progress of individuals in drug and alcohol abuse programs.

Information is used to screen and evaluate certified counselors, counselor interns, and counselor applicants throughout the course of their duties."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In order to comply with the provisions of 42 U.S.C. 290dd–3 and 290ee–3, the Department of the Navy 'Blanket Routine Uses' do not apply to this system of records.

Specifically, records of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention, education, training, treatment, rehabilitation, or research which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records, except to the individual to whom the record pertains.

The content of any record may be disclosed in accordance with prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under such prescribed regulations.

Information from records may be released without the member's consent in the following situations:

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel for the purpose of conducting scientific research, management audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose patient identities in any manner.

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good case therefore In accessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosures.

The above prohibitions do not apply to any interchange of records within the Armed Forces or within those components of the Department of Veterans Affairs furnishing health care to veterans or between such components and the Armed Forces."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Delete entry and replace with "Automated records may be stored on computer disks (both hard drive and floppy), magnetic tapes, and drums.

Manual records may be stored in paper file folders, computer printouts, microfiche, or microfilm."

RETRIEVABILITY:

Delete entry and replace with 'Name and Social Security Number."

SAFEGUARDS:

In lines one and two, delete the phrase "and punched card processing"

RETENTION AND DISPOSAL:

Delete entry and replace with "Manual records are maintained for two years and then destroyed Automated records are maintained indefinitely."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief of Naval Personnel (Pers 63), Navy Department, Washington, DC 20370–5630."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Washington, DC 20370–5630 or to the naval activity providing treatment. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Washington, DC 20370–5630.

The letter should contain full name, Social Security Number, rank/rate, military status, and signature of the requester. The individual may visit the Bureau of Naval Personnel, Arlington Annex, Federal Office Building 2, Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Washington, DC 20370–5630 or to the naval activity providing treatment. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Washington, DC 20370–5630.

The letter should contain full name, Social Security Number, rank/rate, military status, and signature of the requester. The individual may visit the Bureau of Naval Personnel, Arlington Annex, Federal Office Building 2, Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211 5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "DOD/DON officials; notes and documents from Service Jackets and Medical

Records; and general correspondence concerning the individual."

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N05350–1

SYSTEM NAME:

Navy Drug and Alcohol Program System.

SYSTEM LOCATION:

Primary System-Bureau of Naval Personnel (Pers 63), Navy Department, Washington, DC 20370–5630.

Decentralized segments-Navy Alcohol Rehabilitation Centers, Navy Alcohol Rehabilitation Departments in Naval Hospitals, Counseling and Assistance Centers, Navy Alcohol and Drug Safety Action Program Offices, Navy Drug Screening Laboratories, Bureau of Naval Personnel Detachment (Drug and Alcohol Program Management Activity), and local activities to which an individual is assigned. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Washington, DC 20370–5630.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy personnel (officers and enlisted) who have been identified as drug or alcohol abusers and who are subsequently screened or referred for remedial education, outpatient counseling, or residential rehabilitation; counselors, counselor interns, and counselor applicants; Navy personnel who attend the Navy Alcohol and Drug Safety Action Program for preventive education; dependents and civilians, where authorized, who participate in preventive and remedial education programs, outpatient counseling, and residential rehabilitation; and officer, enlisted, and civilian staff members of facilities providing drug and alcohol education, screening, counseling, rehabilitation, and drug testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation containing demographic data, screening and assessment information, progress notes, medical and laboratory data, narrative summaries of treatment, aftercare plans, and other information pertaining to a member's participation in substance abuse education, counseling, and rehabilitation programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S C. 301, Departmental Regulations; 10 U.S.C. para 1090; 42 U.S C. 290dd–3 and 290ee–3; and E O. 9397.

PURPOSE(S):

To train, educate, identify, screen, counsel, rehabilitate, and monitor the progress of individuals in drug and alcohol abuse programs.

Information is used to screen and evaluate the certified counselors, counselor interns, and counselor applicants throughout the course of their duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In order to comply with the provisions of 42 U.S.C. 290dd–3 and 290ee–3, the Department of the Navy 'Blanket Routine Uses' do not apply to this system of records.

Specifically, records of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention, education, training, treatment, rehabilitation, or research which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records, except to the individual to whom the record pertains.

The content of any record may be disclosed in accordance with prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under such prescribed regulations.

Information from records may be released without the member's consent in the following situations:

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel for the purpose of conducting scientific research, management audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose patient identities in any manner.

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good case therefore. In accessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services: Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosures.

The above prohibitions do not apply to any interchange of records within the Armed Forces or within those components of the Department of Veterans Affairs furnishing health care to veterans or between such components and the Armed Forces.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Automated records may be stored on computer disks (both hard drive and floppy), magnetic tapes, and drums.

Manual records may be stored in paper file folders, computer printouts, microfiche, or microfilm.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Manual records are maintained for two years and then destroyed. Automated records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 63), Navy Department, Washington, DC 20370–5630

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Washington, DC 20370–5630 or to the naval activity providing treatment. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Washington, DC 20370–5630.

The letter should contain full name, Social Security Number, rank/rate, military status, and signature of the requester. The individual may visit the Bureau of Naval Personnel, Arlington Annex, Federal Office Building 2, Room 1066, Washington, DC for assistance

with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Washington, DC 20370–5630 or to the naval activity providing treatment. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Washington, DC 20370–5630.

The letter should contain full name, Social Security Number, rank/rate, military status, and signature of the requester. The individual may visit the Bureau of Naval Personnel, Arlington Annex, Federal Office Building 2, Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DOD/DON officials; notes and documents from Service Jackets and Medical Records; and general correspondence concerning the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05520–4

SYSTEM NAME:

NIS Investigative Files System (51 FR 18158, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Primary System-Naval Investigative Service Command, Washington, DC 20388–5000.

Decentralized Segments - Naval Investigative Service Regional Offices retain copies of certain portions of some investigative files and related documentation for up to one year. Naval Investigative Service Resident Agencies retain copies of investigative reports during pendency and for one year thereafter. They also retain evidence custody cards on persons from whom evidence was seized. The number and location of these Resident Agencies are subject to change in order to meet the requirements of the Department of the Navy.

Naval Investigative Service Command Regional Forensic Laboratories retain records of lab analysis of evidence submitted for law enforcement purposes.

Consolidated Evidence Facilities maintain evidence inventory records.

Current locations of NIS decentralized segments may be obtained from the Commander, Naval Investigative Service Command, Washington, DC 20388–5000."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Persons in the following categories who require access to classified defense information prior to August 1972:

Active and inactive members of the naval service, civilian personnel employed by the Department of the Navy (DON), industrial and contractor personnel civilian personnel being considered for sensitive positions, boards, conferences, etc.

Civilian personnel who worked or resided overseas, Red Cross personnel. Civilian and military personnel accused, suspected, or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the DON; civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a DON installation, facility or ship; civilian or military personnel who are subjects, co-subjects, and victims in law enforcement and investigative cases in which law enforcement and investigative authorities (Federal, state, and local) have requested laboratory analysis of submitted evidence for law enforcement purposes; civilian and military personnel upon whom evidence is stored at a Consolidated Evidence Facility; civilian or military personnel involved in the loss, compromise, or unauthorized disclosure of classified material/information; civilian and military personnel who were of counterintelligence interest to the DON."

CATEGORIES OF RECORDS IN THE SYSTEM:

Official Reports of Investigation (ROI) prepared by NIS or other federal, state, local or foreign law enforcement or investigative body. NIS operations reports (NORs) and their predecessor NIS information reports (NIRs). NORs and NIRs document information received by NIS which is of interest to the naval services or other law enforcement or investigative bodies. The information may be of criminal, counterintelligence, or general investigative interest.

General Reports (GEN). Although no longer used as such, the investigative purpose of the GEN was to report the results of pre-employment inquiries on applicants for positions as special agents with NIS. The official ROI is now used for this purpose.

Action Lead Sheets (ALS's), investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

Polygraph Data. A listing of persons who submitted to polygraph examination by NIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner.

Case Control and Management documents which serve as the basis for controlling and guiding the investigative activity. Records identifying confidential sources and contacts with them. Index to persons reported by "Name Only".

Regional Laboratory Report Records. Records reporting and documenting laboratory analysis of submitted evidence.Consolidated Evidence Inventory Records. Reporting and documenting evidence analyzed, stowed, transferred, or destroyed.Wiretap Data Records. Automated listing of persons who were subjects of wiretapping or eavesdropping operations.

Case Control and Narcotics Data Records. Automated records used only for statistical purposes in accounting for productivity, manhour expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

Screening Board Reports. These reports set forth the results of oral examination of applicants for a position as a Special Agent with NIS."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301 and 10 U.S.C. 5013, Departmental Regulations; 44 U.S.C. 3101; 47 U.S.C. 605; Executive Memorandum of June 26, 1939, Investigations of Espionage,

Counterespionage and Sabotage Matters; DOD Directive 5210.8, Policy on Investigation and Clearance of DOD Personnel for Access to Defense Information; DOD Directive 5200.24, Telephone Interception and Eavesdropping; DOD Dir 5200.26, Defense Investigative Program; DOD Dir 5200.27, Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense; Secretary of the Navy Instruction 3820.2D, Investigative and Counterintelligence Collection and Retention Guidelines Pertaining to the Department of the Navy; Secretary of the Navy Instruction 5520.3, Criminal and Security Investigations and Related Activities Within the Department of the Navy; E.O. 9397; and E.O. 12036, United States Intelligence Activities."

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraph four and replace with "To other investigative units (federal, state, or local) for whom the investigation was conducted, or who are engaged in regulatory, criminal investigative and intelligence activities; to defense counsel in the course of acquiring information."

Delete paragraph five.

* * * * *

STORAGE:

Delete entry and replace with "Paper and automated records."

RETRIEVABILITY:

Delete entry and replace with "NIS permanent files are filed by terminal digit number. In order to locate the file it is necessary to query the Defense Central Index of Investigations (DCII) computer using the name of the subject and at least one other personal identifier such as date of birth, place of birth, or Social Security Number. Files may also be retrieved by a case control number assigned at the time the investigation is initiated. Copies of the files in the NISROs and Resident Agencies are retrieved by name. Consolidated Evidence Facility and Regional Forensic Lab information is retrieved by name, case control number, submitting agency log number, log numbers, or lab numbers."

SAFEGUARDS:

Delete entry and replace with "NIS investigative files (permanent and temporary) are maintained and stored in open shelves and filing cabinets located in secured areas accessible only to authorized personnel. Controls have been established to restrict computer output to only authorized users at all system locations. Computer records are kept in secure continually manned areas and are accessible only to authorized computer operators. Dated files are retired to the Washington National Records Center where retrieval is restricted to NIS authorized personnel."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Naval Investigative Service Command, Washington, DC 20388–5000 has ultimate responsibility for all NIS file holdings. Management of NIS permanent files is the direct responsibility of the Head, Administration Department. Regional directors are responsible for files retained in their NISRO subordinate resident agencies."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000.

Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth, or Social Security Number. Persons submitting written requests must properly establish their identity to the satisfaction of the NIS. This can be accomplished by either submitting a notarized signature or providing an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct." Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject of the record."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000.

Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth and Social Security Number. Persons submitting written requests must properly establish their identity to the satisfaction of the NIS. This can be accomplished by either submitting a notarized signature or providing an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct."

Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject of the record."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individuals concerned, other records of the activity, investigators and witnesses."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) and (k)(1), (k)(3), (k)(4), (k)(5), and (k)(6), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701. For additional information contact the system manager."

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N05520–4

SYSTEM NAME:

NIS Investigative Files System.

SYSTEM LOCATION:

Primary System-Naval Investigative Service Command, Washington, DC 20388–5000.

Decentralized Segments - Naval Investigative Service Regional Offices retain copies of certain portions of some investigative files and related documentation for up to one year. Naval Investigative Service Resident Agencies retain copies of investigative reports during pendency and for one year thereafter. They also retain evidence custody cards on persons from whom evidence was seized. The number and location of these Resident Agencies are subject to change in order to meet the requirements of the Department of the Navy.

Naval Investigative Service Command Regional Forensic Laboratories retain records of lab analysis of evidence submitted for law enforcement purposes.

Consolidated Evidence Facilities maintain evidence inventory records.

Current locations of NIS decentralized segments may be obtained from the Commander, Naval Investigative Service Command, Washington, DC 20388–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in the following categories who require access to classified defense information prior to August 1972:

Active and inactive members of the naval service, civilian personnel employed by the Department of the Navy (DON), industrial and contractor personnel, civilian personnel being considered for sensitive positions, boards, conferences, etc. Civilian personnel who worked or resided overseas, Red Cross personnel. Civilian and military personnel accused, suspected, or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the DON; civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a DON installation, facility or ship; civilian or military personnel who are subjects, co-subjects and victims in law enforcement and investigative cases in which law enforcement and investigative authorities (Federal, state, and local) have requested laboratory analysis of submitted evidence for law enforcement purposes; civilian and military personnel upon whom evidence is stored at a Consolidated Evidence Facility; civilian or military personnel involved in the loss, compromise, or unauthorized disclosure of classified material/information; civilian and military personnel who were of counterintelligence interest to the DON.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official Reports of Investigation (ROI) prepared by NIS or other federal, state, local or foreign law enforcement or investigative body. NIS operations reports (NORs) and their predecessor NIS information reports (NIRs). NORs and NIRs document information received by NIS which is of interest to the naval services or other law enforcement or investigative bodies. The information may be of criminal, counterintelligence, or general investigative interest. General Reports (GEN). Although no longer used as such, the investigative purpose of the GEN was to report the results of pre-employment inquiries on applicants for positions as special agents with NIS. The official ROI is now used for this purpose.

Action Lead Sheets (ALS's), investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

Polygraph Data. A listing of persons who submitted to polygraph examination by NIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner.

Case Control and Management documents which serve as the basis for controlling and guiding the investigative activity. Records identifying confidential sources and contacts with them. Index to persons reported by "Name Only".

Regional Laboratory Report Records. Records reporting and documenting laboratory analysis of submitted evidence.

Consolidated Evidence Inventory Records. Reporting and documenting evidence analyzed, stowed, transferred, or destroyed.Wiretap Data Records. Automated listing of persons who were subjects of wiretapping or eavesdropping operations.

Case Control and Narcotics Data Records. Automated records used only for statistical purposes in accounting for productivity, manhour expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

Screening Board Reports. These reports set forth the results of oral examination of applicants for a position as a Special Agent with NIS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 10 U.S.C. 5013, Departmental Regulations; 44 U.S.C. 3101; 47 U.S.C. 605; Executive Memorandum of June 26, 1939, Investigations of Espionage, Counterespionage and Sabotage Matters; DOD Directive 5210.8, Policy on Investigation and Clearance of DOD Personnel for Access to Defense Information; DOD Directive 5200.24, Telephone Interception and Eavesdropping; DOD Directive 5200.26, Defense Investigative Program; DOD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense; Secretary of the Navy Instruction 3820.2D, Investigative and Counterintelligence Collection and Retention Guidelines Pertaining to the Department of the Navy; Secretary of the Navy Instruction 5520.3, Criminal and Security Investigations and Related Activities Within the Department of the Navy; E.O. 9297; and E.O. 12036, United States Intelligence Activities.

PURPOSE(S):

The information in this system is (was) collected to meet the investigative, counterintelligence, and security responsibilities of the DON. This includes personnel security, internal security, criminal, and other law enforcement matters all of which are essential to the effective operation of the Department. The records in this system are used to make determinations of: suitability for access or continued access to classified information; suitability for employment or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; insurance claims including workmen's compensation; provide protective services under the DOD Distinguished Visitor Protection Program and to assist the U.S. Secret Service in meeting its responsibilities; used for public affairs or publicity purposes such as wanted persons, etc; referral of matters under their cognizance to federal, state or local law enforcement authorities including criminal prosecution, civil court action or regulatory order; advising higher authorities and naval commands of the important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; input into the Defense Central Index of Investigations (DCII).

Users of the records in this system include NIS employees who require access for operational, administrative, or supervisory purposes; DOD criminal investigative and intelligence units; DOD components making suitability determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To law enforcement or investigatory authorities for law enforcement purposes.

To federal intelligence/counterintelligence agencies of matters under their purview.

To foreign government organizations of criminal and counterintelligence information necessary for the prosecution of justice, or for mutual security and protection.

To other investigative units (federal, state, or local) for whom the investigation was conducted, or who are engaged in regulatory, criminal

investigative and intelligence activities; to defense counsel in the course of acquiring information.

To officials and employees of the National Archives for historical purposes.

To commercial insurance companies in those instances in which they have a legitimate interest in the results of the investigation, but only to that extent and provided an unwarranted invasion of privacy is not involved.

To victims of crimes to the extent necessary to pursue civil and criminal remedies.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

NIS permanent files are filed by terminal digit number. In order to locate the file it is necessary to query the Defense Central Index of Investigations (DCII) computer using the name of the subject and at least one other personal identifier such as date of birth, place of birth, or Social Security Number. Files may also be retrieved by a case control number assigned at the time the investigation is initiated. Copies of the files in the NISROs and Resident Agencies are retrieved by name. Consolidated Evidence Facility and Regional Forensic Lab information is retrieved by name, case control number, submitting agency log number, log numbers, or lab numbers.

SAFEGUARDS:

NIS investigative files (permanent and temporary) are maintained and stored in open shelves and filing cabinets located in secured areas accessible only to authorized personnel. Controls have been established to restrict computer output to only authorized users at all system locations. Computer records are kept in secure continually manned areas and are accessible only to authorized computer operators. Dated files are retired to the Washington National Records Center where retrieval is restricted to NIS authorized personnel.

RETENTION AND DISPOSAL:

Retention of completed NIS investigative files on Personnel Security Investigations (PSI's) is authorized for 15 years unless adverse information is developed, in which case they may be retained for 25 years. PSI files on persons considered for affiliation with DOD will be destroyed within one year if the affiliation is not consummated.

Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment.

Criminal files are retained for 25 years. Major investigations of a counterintelligence/security nature, of espionage or sabotage, may be retained permanently.

Investigations to have possible historical value may be offered to the National Archives for continued retention. Counterintelligence records on persons not affiliated with DOD must be destroyed within 90 days or one year under criteria set forth in DOD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy.

Decentralized consolidated evidence files and decentralized laboratory report files are destroyed after 5 years unless circumstances require longer retention.

Files retained in the NISRO's and resident agencies are temporary and are destroyed after 90 days or one year, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Investigative Service Command, Washington, DC 20388–5000 has ultimate responsibility for all NIS file holdings. Management of NIS permanent files is the direct responsibility of the Head, Administration Department. Regional directors are responsible for files retained in their NISRO subordinate resident agencies.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000. Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth, or Social Security Number. Persons submitting written requests must properly establish their identity to the satisfaction of the NIS. This can be accomplished by either submitting a notarized signature or providing an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct." Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject of the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000. Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth and Social Security Number. Persons submitting written requests must properly establish their identity to the satisfaction of the NIS. This can be accomplished by either submitting a notarized signature or providing an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct."

Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject of the record.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals concerned, other records of the activity, investigators and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) and (k)(1), (k)(3), (k)(4), (k)(5), and (k)(6), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701. For additional information, contact the system manager.

[FR Doc. 92–30044 Filed 12–09–92; 8:45 am]
BILLING CODE 3810–01–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.028A]

Regional Resource and Federal Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To support the establishment and operation of Regional

Resource Centers that provide consultation, technical assistance, and training to State educational agencies, and through those State educational agencies, to local educational agencies and to other appropriate public agencies providing special education and related services and early intervention services. The purpose of this assistance is to aid these agencies in providing early intervention, special education, and related services to infants, toddlers, children, and youth with disabilities and their families.

The priority for this program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities through improved services and better trained service providers.

Eligible Applicants: Institutions of higher education, private nonprofit organizations, State educational agencies, public agencies, or combinations of these agencies and institutions, such as combinations including one or more local educational agencies within particular regions of the United States.

Note: The Department is not bound by any estimates in this notice.

Applications Available: December 14, 1992.

Deadline for Transmittal of Applications: February 5, 1993.

Deadline of Intergovernmental Review: April 8, 1993.

Available Funds: $6,778,000.

Estimated Range of Awards: $850,000–1,410,800.

Estimated Size of Awards: $1,130,000.

Estimated Number of Awards: 6.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 305.

Priority: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Regional Resource Centers

This priority supports six Regional Resource Centers (RRC) as described in 34 CFR 305.10.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1: Projects that assist States in identifying and addressing current issues, such as (1) meeting the needs of a diverse group of students with disabilities including minority and medically fragile children, (2) the retention and recruitment of special education personnel, and (3) improving the outcomes for students with disabilities as they make the transition from school to the work place, e.g., employment and independent living.

Invitational Priority 2: Projects that propose to network with other Regional Resource Centers, technical assistance providers, clearinghouses, and dissemination projects regarding sound educational practices and that address the needs of States in the region.

FOR APPLICATIONS OR INFORMATION CONTACT: Marie Roane, U.S. Department of Education, 400 Maryland Avenue SW., room 4623, Switzer Building, Washington, DC 20202–2644. Telephone (202) 205–8451. Deaf and hearing impaired individuals may call (202) 205–8170 for TDD services.

Program Authority: 20 U.S.C. 1421

Dated: December 4, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–29967 Filed 12–9–92; 8:45 am]

BILLING CODE 4000–01–M

National Education Goals Panel; Amendment

AGENCY: National Education Goals Panel; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the meeting of the National Education Goals Panel scheduled for December 18, 1992 at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC, as published in the **Federal Register** on Monday, November 23, 1992, Vol. 57, No. 226, page 54978. The time of the meeting is rescheduled to begin at 1 p.m. and end at 4 p.m.

FOR FURTHER INFORMATION CONTACT: Laura Lancaster, Public Information Officer, 1850 M Street, NW., suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

Dated: December 4, 1992.

Lanny Griffith,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 92–30027 Filed 12–9–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Noncompetitive Grant

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive grant.

SUMMARY: The DOE announces that it plans to award a grant to the Georgia Emergency Management Agency (GEMA), P.O. Box 18055, Atlanta, Georgia 30316–0055, to support emergency planning and response and environmental monitoring activities in the State of Georgia as related to the DOE's Savannah River Site (SRS). The grant will cover a five-year period with estimated DOE support of $3,209,330 for the period. Funds of $956,650 will be provided for the first budget period. Pursuant to § 600.7(6)(2)(i)(C) of the DOE Assistance Regulations (10 CFR part 600), DOE has determined that a noncompetitive award is appropriate since the applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, U.S. Department of Energy, Savannah River Field Office, Contracts Division, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

SUPPLEMENTARY INFORMATION: The State of Georgia will maintain and enhance the emergency planning and response and environmental monitoring capabilities to assure the citizens of Georgia that their health, safety and environment are being protected through existing DOE programs and vigorous independent monitoring and oversight by Georgia officials. Activities will include: Develop and maintain effective radiological and hazardous material emergency preparedness capabilities for responding to an emergency at the SRS; coordinate state and local emergency plans and procedures development, training, and public awareness programs and emergency response exercise participation; and coordinate and oversee environmental analysis and monitoring programs and activities in the vicinity of the SRS (surface, ground

and drinking water, air, crops, milk, soil and vegetation).

GEMA is the qualified State regulatory agency to perform the functions covered under this grant. In addition, the Environmental Protection Division of the Georgia Department of Natural Resources, the primary State agency for radiological monitoring and emergency response, will conduct activities under this grant through a contractual arrangement with GEMA.

DOE has determined that this award to GEMA on a noncompetitive basis is appropriate.

Issued in Aiken, South Carolina, on December 1, 1992.

Robert E. Lynch,

Head of the Contracting Activity Designee, DOE Savannah River Field Office.

[FR Doc. 92-30036 Filed 12-9-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP92-237-002 and 003]

Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

December 4, 1992.

Take notice that on December 1, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, the following tariff sheets with a proposed effective date of April 1, 1993:

Sub. 36th Revised Sheet No. 4

Alabama-Tennessee states that this filing is being made to comply with the Commission's October 30, 1992 "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, and Establishing Hearing" ("Order"), 61 FERC ¶ 61,164 (1992), in which Alabama-Tennessee was directed, *inter alia*, to refile its rates for its Rate Schedule G and SG sales services based on projected units of service under these rate schedules and to file revised purchased gas adjustment demand allocation factors and revised rates which reflect current levels of jurisdictional services.

Alabama-Tennessee has requested such waivers of the Commission's Regulations that may be necessary to permit these tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of its tariff filing have been mailed to all of its jurisdictional customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29945 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT93-15-000]

Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

December 4, 1992.

Take notice that on December 1, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of December 1, 1992:

Third Revised Sheet No. 99
Third Revised Sheet No. 100

Alabama-Tennessee states that this filing reflects the information required under § 154.41 of the Commission's Regulations, 18 CFR 154.41 (1992), in connection with the recent realignment of services effectuated by certain jurisdictional resale customers of Alabama-Tennessee. In addition, Alabama-Tennessee has made corrections to certain other incidental typographical errors that are reflected on the tariff sheets currently in effect which this filing would supercede.

Alabama-Tennessee has requested such waivers of the Commission's Regulations that may be necessary to permit these tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of its tariff filing have been mailed to all of its jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 or rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 or 385.214. All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29946 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-39-000]

ANR Pipeline Co., Proposed Changes in FERC Gas Tariff

December 4, 1992.

Take notice that on December 1, 1992, pursuant to section 4 of the Natural Gas Act and part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations thereunder, ANR Pipeline Company ("ANR") tendered for filing with the Commission Ninth Revised Sheet No. 570 of its FERC Gas Tariff, Original Volume No. 2 with a proposed effective date of January 1, 1993.

ANR states that the purpose of the instant filing is to reflect an increase from $267,912 to $269,695 in the monthly charge paid by the High Island Offshore System ("HIOS") to ANR pursuant Rate Schedule X-64 under Original Volume No. 2 of ANR's F.E.R.C. Gas Tariff. Rate Schedule X-64 is a Service Agreement dated August 4, 1977 between ANR and HIOS. Under the terms of this Service Agreement, which was approved by Commission Order issued July 6, 1978 at Docket No. CP78-134, ANR provides certain gas measurement, dehydration and related services for HIOS for the Grand Chenier, Louisiana facility. In addition, within this filing ANR is proposing that the Rate Schedule X-64 tariff language requiring an annual redetermination filing by ANR before the Commission to justify and adjust the monthly charge to HIOS be eliminated. ANR believes that good cause exists for the Commission to authorize the implementation of this proposed change.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before

December 11, 1992 appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29947 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–45–002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 4, 1992.

Take notice that on December 1, 1992, ANR Pipeline Company ("ANR") tendered for filing with the Federal Energy Regulatory Commission ("Commission") Substitute Eighth Revised Sheet No. 570 under Rate Schedule X–64 of Original Volume No. 2 of its FERC Gas Tariff to be effective for refund purposes for the period January 1, 1992 through December 31, 1992.

ANR states that this compliance filing is being made to reduce the monthly charge under Rate Schedule X–64 to reflect ANR's Offer of Settlement approved by the Commission in a Letter Order dated October 26, 1992 in Docket No. RP92–45–001. The reduction to the monthly charge is in accordance with the Commission's Letter Orders dated December 31, 1991 and October 26, 1992 in Docket Nos. RP92–45–000 and RP92–45–001, respectively.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29948 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. TQ93–2–31–000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

December 4, 1992.

Take notice that on December 1, 1992, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing six copies of the following revised tariff sheets to become effective January 1, 1993;

Rate Schedule No. X-26

Original Volume No. 3
Twenty First Revised Sheet No. 185.1

Rate Schedule No. G–2

Second Revised Volume No. 1
Sixteenth Revised Sheet No. 11

Rate Schedule No. CD

Second Revised Volume No. 1
Sixteenth Revised Sheet No. 16

AER states that the tariff sheets reflect AER's third party quarterly PGA filing made subsequent to its annual PGA effective April 1, 1992 under the Commission's Order Nos. 483 and 483–A.

AER states that the proposed changes reflect an increase in AER's system cost of $2,702.628 and would increase its revenue from jurisdictional sales and service under Rate Schedule G–2 by $2,105 for the PGA of January, February and March, 1993 as adjusted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29949 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–42–000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

December 4, 1992.

Take notice that on December 2, 1992, Colorado Interstate Gas Company ("CIG"), Post Office Box 1087, Colorado Springs, Colorado 80944, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 3:

Second Revised Sheet No. 76
Second Revised Sheet No. 77
Original Sheet No. 77A
Original Sheet No. 77B
Original Sheet No. 77C
Original Sheet No. 77D
Original Sheet No. 77E
Original Sheet No. 77F
Original Sheet No. 77G
Original Sheet No. 77H
Third Revised Sheet No. 78

In general, these sheets revise the General Terms and Conditions of CIG's Volume No. 3 Tariff provisions for dealing with current and future transportation imbalances, on an interim basis until October 1, 1993, or such other date on which the Commission approves CIG's restructuring of services under Order No. 636. Specifically, the tariff is revised to eliminate CIG's current provisions for assessing balancing charges and penalties, and replaces those provisions with new methods for clearing imbalances including in-kind volume paybacks, Imbalance Transfers, Imbalance Swaps, and Cash Out procedures.

CIG states that acceptance of its proposal will allow it to implement a more effective and timely method, than is currently in place on CIG's system, for dealing with transportation imbalances. Further, CIG states that this method will provide the speed and efficiency which is needed to ensure that current imbalances on CIG's system are fully resolved prior to the full restructuring of CIG's services under Order No. 636, anticipated to take place on October 1, 1993. Accordingly, CIG believes that these tariff provisions will significantly ease the transition that CIG and the public served by CIG must make from doing business in the traditional manner to the way of doing business prescribed by Order No. 636.

CIG has requested that the Commission accept this filing, to become effective on January 1, 1993.

CIG states that copies of its filing were served on all holders of its FERC Gas Tariff, Original Volume No. 3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29950 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP93-38-000 and TM93-2-33-000]

El Paso Natural Gas Co.; Tariff Filing

December 4, 1992.

Take notice that on December 1, 1992, El Paso Natural Gas Company ("El Paso"), gave notice, pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariffs, First Revised Volume No. 1-A and Second Revised Volume No. 1 to implement Gas Research Institute's ("GRI") interim funding mechanism to become effective January 1, 1993.

El Paso states that the currently effective GRI volumetric surcharge of 1.47 cents per dth remains unchanged from last year; however, commencing January 1, 1993, such volumetric surcharge will be the first rate increment to be discounted in the event El Paso discounts its commodity/usage rates. In addition, commencing January 1, 1993, the Commission has authorized an 8 cents per dth per month uniform reservation surcharge which will be applicable to firm Shipper's Transportation Contract Demand or Billing Determinant. With respect to transactions involving discounted reservation charges, El Paso's total annual 1993 GRI funding responsibility related to such transactions, shall be limited to ten percent of its total 1991 GRI contribution.

El Paso also states that it has submitted for filing tariff sheets to reflect the removal from its Second Revised Volume No. 1 Tariff of Section 20, Gas Research Institute General Research, Development and Demonstration Funding Unit Adjustment Provision and Section 23, Annual Charge Adjustment Provision ("ACA"), contained in the General Terms and Conditions of said tariff. Inasmuch as the GRI and ACA surcharges are only applicable to transportation services, the removal of Sections 20 and 23 alleviates any change of double recovery of the GRI and ACA surcharges.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective January 1, 1993.

El Paso states that copies of the filing were served upon El Paso's interstate pipeline system transportation and sales customers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29951 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[TM93-2-24-001]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

December 4, 1992.

Take notice that Equitrans, Inc. ("Equitrans"), on December 2, 1992, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following substitute tariff sheet to its FERC Gas Tariff, Original Volume No. 1, to replace the previously filed herein on November 30, 1992:

Substitute Forty-Second Revised Sheet No. 10

The proposed tariff sheet is intended to reflect the Commission's 1993 Gas Research Institute (GRI) funding unit from customers. The 1993 GRI unit surcharge approved by the Commission is $0.0800 per dekatherm (dth) per month demand surcharge and $0.0147 per dth commodity surcharge pursuant to Order No. 378.

The reason for submitting the substitute sheet is to reflect the rate revision contained in Equitrans' December 2, 1992, Interim Purchased Gas Adjustment filing in Docket No.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained in the filing noticed herein to become effective January 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29952 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP93-41-000 and RP92-179-002]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 4, 1992.

Take notice that on December 1, 1992 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, to become effective January 1, 1993:

Thirty-Fifth Revised Sheet No. 8
Twelfth Revised Sheet No. 8A
Tenth Revised Sheet No. 8B

FGT states that section 25 of its tariff contains language that establishes a mechanism to permit recovery of transitional costs via a volumetric surcharge. The instant filing includes certain transitional costs included in the TCR Account as of September 30, 1992, and reflects a TCR surcharge for the six months commencing January 1, 1993.

FGT states that the filing reflects the addition of approximately $67.2 million in payments made to producer suppliers

to buy out of or otherwise reform FGT's existing supply portfolio. FGT further states that the buy-out and buy-down costs can be classified into two categories. The first category includes $2.4 million of costs incurred in the period from May, 1992 through September, 1992, of which $1.8 million has been included for recovery. The second portion of the filing includes costs for which FGT had previously sought the authority to defer recovery, pending the opportunity to demonstrate that such costs were more properly includable in an Order No. 636 gas supply realignment mechanism. By order issued June 30, 1992, the Commission denied the requested waiver and deferral, and required FGT to include such costs in its existing TCR mechanism. On October 5, 1992 the Commission denied the request for stay and rehearing. FGT states that pursuant to the Commission's orders in Docket No. RP92–179, the filing also reflects $76.3 million of costs which it has not included in previous transitional cost filings, of which $65.4 million has been included for recovery.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29953 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–110–000]

Iroquois Gas Transmission System, L.P.; Proposed Changes to FERC Gas Tariff

December 4, 1992.

Take notice that Iroquois Gas Transmission System, L.P. ("Iroquois") on December 1, 1992 tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective January 1, 1993.

Original Volume No. 1

Fifth Revised Sheet No. 4

Iroquois states that the above tariff sheets were filed to reflect a GRI Charge Adjustment of 8.0¢ per dth of monthly demand and 1.47¢ per dth of non-discounted commodity pursuant to the Commission's Order of August 28, 1992 in Docket No. RP92–133–000 approving the Gas Research Institute's 1993 interim funding mechanism.

Iroquois requested that the above tariff sheets become effective January 1, 1993 to coincide with the effective date of the new GRI funding mechanism per the Commission's Order in RP92–133–000 and Iroquois' initiation as a GRI member pipeline.

Iroquois states that copies of the filing were served on Iroquois's jurisdictional customers, interested State regulatory commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such petitions or protests should be filed on or before December 11, 1992.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29954 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–46–000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

December 4, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on December 2, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) Fifth Revised Sheet No. 44 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective January 1, 1993.

Kentucky West states the revised tariff sheet amends its Gas Research Institute (GRI) funding charge to place in effect on January 1, 1993, the new Gas Research Institute funding unit of $.0147 per dth on all applicable nondiscounted commodity units and nondiscounted one-part rates for transportation service, including those associated with the bundled sales transactions. Additionally, there will be an $0.08 per dth per month demand or reservation surcharge on all firm sales or transportation entitlements. This funding unit was approved by the FERC in Opinion No. 378, issued on November 16, 1992, under Docket No. RP92–133–001.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in Kentucky West Virginia Gas Co. v. FERC, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 285.214 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29957 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93–3–46–000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

December 4, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on December 1, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Out-of-Cycle PGA filing, which includes Forty-Third Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective December 1, 1992. The revised tariff sheet reflects a current increase of $0.2056 per dth in the average cost of purchased gas resulting

in a Weighted Average Cost of Gas of $2.2974 per dth.

Kentucky West states that effective December 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.3100 per dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Pursuant to § 154.51 of the Commission's regulations, Kentucky West requests waiver of the thirty day notice requirement to permit the tariff sheet attached hereto to become effective on December 1, 1992. In addition, Kentucky West requests waiver of § 154.304 of the Commission's regulations and any other provisions of the Commission's regulations necessary to permit the attached tariff sheet to become effective on December 1, 1992.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29958 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-3-16-000; TM93-3-16-000, and TA93-2-16-001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1992.

Take notice that on November 27, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on January 1, 1993:

(A) Sub Twenty-Seventh Revised Sheet No. 5

(B) Seventh Revised Sheet No. 6

National states that the filing is made to implement (a) an Update to Annual Purchased Gas Adjustment ("PGA") rate change, and (b) Gas Research Institute ("GRI") surcharges to National's sales, transportation and storage customers as approved by the Commission at Docket No. RP92-133-000 (Phase I). National's revised demand and commodity rates are $10.97 per Dt and 286.05 cents per Dt respectively.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29955 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP93-5-003 and 004]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 4, 1992.

Take Notice that on November 30, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets

Second Revised Volume No. 1

Substitute Twenty-first Revised Sheet No. 10
Substitute Twentieth Revised Sheet No. 11
Second Substitute Fifteenth Revised Sheet No. 13

First Revised Volume No. 1-A

Substitute Sixteenth Revised Sheet No. 201

Northwest states that the purpose of this filing is to comply with the Commission's October 30, 1992 "Order Rejecting Tariff Sheets, Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions, Establishing Hearing Procedures" (i) to refile interruptible transportation rates to reflect the project level of interruptible throughout and costs allocated to interruptible transportation service; (ii) provide a cost mitigation study, (iii) provide justification for rolled-in rates, and (iv) refile its request for waiver of the Commission's PGA regulations. Northwest has challenged portions of the Commission's October 30 Order requiring that it make this filing. Northwest reserves the right and gives notice that it will refile any tariff sheets and rates Docket No. RP93-5-003 and 004 for affected periods, should Northwest ultimately be successful on its request for rehearing.

Northwest states that a copy of this filing has been served on all jurisdictional customers, state regulatory commissions in its market area, as well as all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29956 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-2-7-000 and TM93-2-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 4, 1992.

Take notice that on November 30, 1992, Southern Natural Gas Company ("Southern") tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Second Revised One Hundred Twenty-Fourth Revised Sheet No. 4A
Second Revised Thirty-Seventh Revised Sheet No. 4B
Second Revised Forty-Third Revised Sheet No. 4J
Fourth Revised Sheet No. 30N
First Revised Sheet No. 30Z.08
Fourth Revised Sheet No. 45I

Southern states that the proposed tariff sheets are being filed with proposed effective date of January 1, 1993. The aforesaid tariff sheets reflect an increase of $.18 per Mcf at 1,000 Btu in the commodity component of Southern's rates from its last scheduled PGA filing in Docket No. TQ93-1-7-000 as a result of projected changes in Southern's cost of purchased gas. Additionally, the aforesaid tariff sheets implement the Gas Research Institute's ("GRI") revised surcharges for 1993 of 1.47¢ commodity GRI Adjustment Charge and $.08 demand GRI Adjustment Charge.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29959 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-203-000 and RP92-132-000]

Tennessee Gas Pipeline Co.; Information Settlement Conference

December 3, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on December 18, 1992, at 9:30 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring a possible settlement of the above-referenced dockets.

Any party as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208-0743, or Dennis H. Melvin at (202) 208-0042.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29844 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP93-37-000 and TM93-2-9-000]

Tennessee Gas Pipeline Co.; Rate Change Pursuant to Tariff Adjustment Provisions

December 4, 1992.

Take notice that on December 1, 1992, Tennessee Gas Pipeline Company (Tennessee) is filing the revised tariff sheets to (i) change its GRI funding method under Article XXVII and (ii) revise its recovery of take-or-pay and contract reformation costs pursuant to Article XXX of the General Terms and Conditions of Volume One of its FERC Gas Tariff. Tennessee is also revising the billing provisions of the General Terms and Conditions to limit billing adjustments to twelve months following the production month to which the original billing applied. Tennessee states that the following changes are proposed to be effective January 1, 1993:

Fourth Revised Volume No. 1

Second Revised Sheet No. 20
Second Revised Sheet No. 20A
Second Revised Sheet No. 24
Second Revised Sheet No. 24A
Second Revised Sheet No. 26
Second Revised Sheet No. 26A
Second Revised Sheet No. 29
Second Revised Sheet No. 29A
Fifth Revised Sheet No. 30
First Revised Sheet No. 30A
First Revised Sheet No. 30C
First Revised Sheet No. 30D
First Revised Sheet No. 38
Second Revised Sheet No. 39
First Revised Sheet No. 40
First Revised Sheet No. 41
First Revised Sheet No. 42
First Revised Sheet No. 290
First Revised Sheet No. 331
First Revised Sheet No. 332

Original Volume No. 2

29th Revised Sheet No. 5
4th Revised Sheet No. 5A
27th Revised Sheet No. 6
3rd Revised Sheet No. 6A
11th Revised Sheet No. 7
3rd Revised Sheet No. 7A
12th Revised Sheet No. 8
3rd Revised Sheet No. 8A
15th Revised Sheet No. 9
7th Revised Sheet No. 9A
15th Revised Sheet No. 10
2nd Revised Sheet No. 10A

Tennessee states that the purpose of the revisions to Sheet Nos. 38-42 is to adjust Tennessee's transition cost demand surcharge effective January 1, 1993 to reflect the recovery of an additional $2 million, including interest, of new demand costs. The additional costs of $4,789,094 have been allocated under an equitable sharing formula of 50% absorption—41.8% demand—8.2% volumetric in conformance with the Stipulation and Agreement approved by Order of the Commission on June 25, 1992, in docket Nos. RP86-119 *et al.* The resulting revised demand surcharges are shown on the revised sheets; the volumetric charges remain constant.

Tennessee states that the purpose of Sheet Nos. 331.332 is to amend Tennessee's GRI funding mechanism pursuant to the Commission's order on August 28, 1992, in Docket No. RP92-133. The revisions establish a demand surcharge of $0.08 per dth applicable to firm sales and non-discounted throughput. Sheet Nos. 20, 20A, 24, 24A, 26, 26A, 29, 29A, 30, 30A-D reflect the new demand surcharge. The demand and commodity surcharges have been added to rate schedules FSST-E, FSST-NE, SST-E, and SST-NE since third party gas can be transported under these schedules.

Tennessee states that copies of the filing are being mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1992.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29960 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 2, 1992 tendered for filing as part of its FERC Gas Tariff, six copies of tariff sheets listed on Appendix A attached to the filing.

The proposed effective date of these revised tariff sheets is February 1, 1993.

Texas Eastern states that the tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment, and section 26, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's regular annual PGA filing to be effective February 1, 1993 pursuant to 18 CFR 154.305. Texas Eastern states that in compliance with Section 154.305(a)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format prescribed by FERC Form No. 542-PGA (Revised) and FERC's Notice of Criteria for Accepting Electronic PGA Filings dated April 12, 1991.

Texas Eastern states that the PGA changes proposed in this filing consist of Current Adjustments and Surcharge Adjustments as follows for the components of Texas Eastern's sales rates:

Rate component	Current adjustment	Surcharge adjustment
Demand	$0.050/dth	$0.176/dth
Commodity	($0.5247)/dth	$0.1103/dth

Texas Eastern states that these current adjustments represent the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's November 1, 1992 quarterly filing in Docket No. TQ93-2-17. The Surcharge Adjustments are designed to amortize the Current Deferral Subaccount Balance in Account 191 as of September 30, 1992 over the 12-month period beginning February 1, 1993.

Texas Eastern states that the filing also constitutes Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to Section 26. These changes in rates for Sales and Transportation services are based upon the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning February 1, 1993 and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of October 31, 1992.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commision's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29963 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-18-000]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

December 4, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on December 1, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-fifth Revised Sheet No. 10
Sixty-fourth Revised Sheet No. 10A
Forty-sixth Revised Sheet No. 11
Thirty-sixth Revised Sheet No. 11A
Thirty-fifth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in projected purchased gas costs and the unrecovered purchased gas cost surcharge pursuant to the Annual PGA provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective February 1, 1993. Texas Gas further states that the proposed tariff sheets reflect a current commodity rate increase of $.1102 per MMBtu from the rates set forth in the Out-of-Cycle PGA filed November 25, 1992 (Docket No. TQ93-3-18), and an increase of $.3092 per MMBtu in the Unrecovered Purchased Gas Cost surcharge. The D-1 demand rates increases by $.01 per MMBtu and the SGN Standby rates increase by $.0007 to $.0010. No changes in the D-2 demand rates are proposed in the instant filing.

Texas Gas states that copies of the filing are being mailed to all of Texas Gas's jurisdictional sales customers an interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29964 Filed 12-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-5-29-000]

Transcontinental Gas Pipe Line Tariff Filing

December 4, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) on December 1, 1992 tendered for filing Fifth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1, proposed to be effective January 1, 1993.

TGPL states that the purpose of the filing is to reflect in TGPL's rates commencing January 1, 1993 the GRI demand/reservation surcharge of $0.08 per Mcf (or dt) per month, and the GRI volumetric surcharge of 1.47¢ per dt (1.51¢ per Mcf) which TGPL is

authorized to collect pursuant to the Commission's August 28 Order and section 24 of the General Terms and Conditions of TGPL's Volume No. 1 Tariff. As indicated on the tariff sheet submitted herein, the applicability of such GRI surcharges are subject to certain limitations with regard to selectively discounted transportation transactions.

TGPL served copies of the filing to its customers and interested State Commissions. In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commissions's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29961 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–165–008]

Trunkline Gas Co.; Proposed Changes In FERC Gas Tariff

December 4, 1992.

Take notice that Trunkline Gas Company (Trunkline) on December 1, 1992 tendered for filing substitute tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2 listed on Appendices A and B attached to the filing.

Trunkline proposes that these revised tariff sheets become effective November 1, 1992.

Trunkline states that these substitute tariff sheets are being filed to reflect the corrected ACA unit charge rate as filed by Trunkline on October 14, 1992 and accepted by Letter Order issued November 6, 1992 to be effective October 1, 1992.

Trunkline states that a copy of this filing is being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29962 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–1–35–000]

West Texas Gas, Inc.; Filing

December 4, 1992.

Take notice that on December 2, 1992, West Texas Gas, Inc. ("WTG") filed Fourth Revised Sheet No. 4 to its FERC Gas Tariff, Revised Volume No. 1, proposed to be effective January 1, 1993. Second Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that hard copies of its filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29965 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket RP93–40–000]

Western Gas Interstate Co.; Change in Rates

December 4, 1992.

Take notice that on December 1, 1992, Western Gas Interstate Company ("Western"), pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's Regulations thereunder, tendered for filing proposed changes to its FERC Gas Tariff to be effective January 1, 1993.

Western states that the rates and charges filed in this proceeding are based on the overall cost of service for the test period consisting of actual experience for the twelve months ending September 30, 1992, adjusted for known and measurable changes through June 30, 1992.

Western states that, following a Commission decision, its cost allocation has changed from previous rate cases because costs are now allocated to the jurisdictional portion of Western's Del Norte export facilities, which were not part of Western's jurisdictional system in its previous rate cases. In addition, Western has adopted the Straight Fixed Variable methodology of cost allocation, in accordance with the Commission's Order Nos. 636 and 636–A.

Any person desiring to be heard or to protest Western's filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before December 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29966 Filed 12–9–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92-22-NG]

AG-Energy, L.P. Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting AG-ENERGY, L.P. an authorization to import from Canada up to 17,500 Mcf of natural gas per day and a total of up to 95.8 Bcf, over a maximum term of sixteen years and two months beginning on or about September 1, 1993, and ending no later than October 31, 2009, for use at a 79 megawatt cogeneration facility to be built in Ogdensburg, New York.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F 056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 4, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-30035 Filed 12-9-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-47-NG]

New York State Electric and Gas Corp.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting New York State Electric and Gas Corporation long-term authorization to import from ProGas Limited up to 9,000 Mcf per day of Canadian natural gas for a term beginning on the date of the first delivery and ending on October 31 of the twelfth year of its gas purchase agreement.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 3, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-30031 Filed 12-9-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed the Week of November 6 Through November 13, 1992

During the week of November 6 through November 13, 1992, the appeal and applications for other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	Name and location of applicant	Case No.	Type of submission
11/09/92	Texaco/Lilburn Texaco, Atlantic Beach, FL	RR321-120	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF321-9202) issued to Lilburn Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
11/10/92	Arco/Dave Butts Arco, Seward, Alaska	RR304-52	Request for Modification/Rescission in the Arco Refund Proceeding. If granted: The May 14, 1992 Decision and Order (Case No. RF304-10267 issued to Dave Butts Arco would be modified regarding the firm's application for refund submitted in the Arco Refund Proceeding.
11/13/92	OXY USA, Inc., Washington, DC	LFA-0248	Appeal of an Information Request Denial. If granted: The October 13 and October 29, 1992 Freedom of Information Request Denials issued by the Economic Regulatory Administration would be rescinded, and OXY USA, Inc. would receive access to documents concerning agency enforcement proceedings against OXY USA, Inc. and other DOE information.

REFUND APPLICATIONS RECEIVED

[Week of November 6 to November 13, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/10/92	Vickers/Kansas	RQ1-585
11/13/92	Amoco II/Indiana	RQ251-586
11/09/92	Young Oil Co., Inc	RF340-176
11/09/92	"T" Paul Landry Canal Service Station	RF346-1
11/09/92	Maple St. Canal	RF346-2
11/09/92	Marrou Canal Center	RF346-3
11/09/92	Grand Caillou Canal	RF346-4
11/06/92 thru 11/13/92	Texaco Oil Refund Applications Received	RF321-19393 thru RF321-19432
11/06/92 thru 11/13/92	Gulf Oil Refund Applications Received	RF300-20674 thru RF300-20691

REFUND APPLICATIONS RECEIVED—Continued
[Week of November 6 to November 13, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/06/92 thru 11/13/92	Crude Oil Refund Applications Received	RF272-93950 thru RF272-93962
11/06/92 thru 11/13/92	Atlantic Richfield Refund Applications Received	RF304-13370 thru RF304-13380

[FR Doc. 92-30034 Filed 12-9-92; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed the Week of November 13 Through November 20, 1992

During the Week of November 13 through November 20, 1992, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may filed written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of November 13 through November 20, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 15,1992	Gulf/Litn Super Market, Atlantic Beach, FL	RR300-210	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300-13609) issued to Litn Super Market would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Nov. 2, 1992	Gulf/123 Quick Mart, Atlantic Beach, FL	RR300-211	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 25, 1991 Dismissal Letter (Case No. RF300-11803) issued to 123 Quick Mart would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Nov. 17, 1992	Public Utility District No. 2 of Grant County, WA, Ephrata, WA.	LFA-0249	Appeal of an information request denial. If granted: The October 16, 1992 Freedom of Information request denial issued by the DOE's Richland Field Office would be rescinded, and Public Utility District No. 2 of Grant County, WA would receive access to DOE information.
Nov. 18, 1992	Preston Gates Ellis & Rouvelas Meeds, Washington, DC.	LFA-250	Appeal of an Information Request Denial. If granted: The October 15, 1992 Freedom of Information Request Denial issued by the DOE's Savannah River Field Office would be rescinded, and Preston Gates Ellis & Rouvelas Meeds would receive access to a complete request of all proposals submitted by PRC-Environmental Management, Inc. in response to US DOE Proposal DE-RP09-92SSR18258.
Nov. 20, 1992	Texaco/Gay Meadows Texaco, Memphis, TN	RR321-121	Request for modification/rescission in the Texaco refund proceeding. If granted: The March 17, 1992 Decision and Order (Case No. RF321-18507) issued to Gay Meadows Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED
[Week of November 13 to November 20, 1992]

Date	Name of firm	Case number
11/13/92 thru 11/20/92	Texaco oil refund, applications received	RF321-19433 thru RF321-19453
11/13/92 thru 11/20/92	Gulf oil refund, applications received	RF300-20692 thru RF300-20713
11/13/92 thru 11/20/92	Atlantic Richfield, applications received	RF304-13381 thru RF304-13399
11/16/92	Bock Company	RF272-93963
11/16/92	Chesterfield County	RC272-164
11/16/92	East Ebey Canal	RF346-5
11/16/92	Sugarland Canal Service Station	RF346-6
11/16/92	Port Barre Canal	RF346-7
11/16/92	Field and McGrady Special	RF340-177
11/16/92	Defense Fuel Supply Center	RF333-31

[FR Doc. 92-30033 Filed 12-9-92; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals Week of October 12 Through October 16, 1992

During the week of October 12 through October 16, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Commonwealth of Pennsylvania, 10/14/92, RF272–67007

The DOE issued a Decision and Order granting an Application for Refund filed by the Commonwealth of Pennsylvania in the Subpart V crude oil special refund proceeding. The Application was based upon purchases of petroleum products by a number of state entities, specified in the Decision and Order, during the crude oil price control period. The Application did not include any purchases made by any counties, municipalities, or school districts. The total refund granted to the Commonwealth of Pennsylvania was $398,192.

FMC Corporation, 10/16/92, RF272–21816, RD272–21816

The DOE issued a Decision and Order granting a Subpart V crude oil overcharge Refund to FMC Corporation (FMC) an end-user which used refined petroleum products in the production of chemicals and machinery. A group of twenty-eight States and two Territories filed objections and a Motion for Discovery with respect to this Application, attempting to rebut the end-user presumption of injury. The DOE found that the end-user presumption was applicable and that the Motion for Discovery should be denied. The DOE further determined that Aromatic 150 was an eligible product in this proceeding. The DOE determined that FMC should receive a refund of $469,646.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Brewer Brothers Oil & LP Gas, Inc..	RF304–3589	10/13/92
Chester Allen Ingram.	RR272–90	10/14/92
City of Springfield et al.	RF272–83318	10/16/92
City of Trenton	RF272–82715	10/13/92
Clark Oil & Refining Corp./ Clark Super 100, Donald Hayes et al.	RF342–88	10/13/92
Cumberland County Public Schools.	RF272–83300	10/16/92
Salem Central School District.	RF272–83462	10/16/92
Danbury School District.	RF272–80881	10/16/92
East Cleveland City School District.	RF272–81227	10/14/92
Grand Valley Community School.	RF272–81283	10/14/92
Gulf Oil Corp./ Log Cabin Bait & Tackle et al.	RF300–16009	10/14/92
Lee County, Arkansas et al.	RF272–85721	10/16/92
Murphy Oil Corporation/ Terrell Bait Shop et al.	RF309–1238	10/14/92
Phoenix-Talent School District 004 et al.	RF272–81214	10/14/92
Shell Oil Company/Dan's 36th Shell et al.	RF315–8226	10/14/92
Sunrise School District R–IX et al.	RF272–79700	10/14/92
Texaco Inc./ Jolly Jim's Texaco et al.	RF321–8696	10/14/92
Tri-Village Local School District et al.	RF272–79801	10/14/92
Village of Hazel Crest.	RF272–83443	10/16/92
Wyoming County School District et al.	RF272–80805	10/16/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Christmas Gulf	RF300–20475
Dorchester County Career School	RF300–16967
Harvey County, KS	RF272–85160
Jim's West Seattle Texaco	RF321–2796
Ledford Gulf	RF300–18442
Providence Journal Co	RF272–92606
St. John Nepomuk Church	RF272–92730
Tench's Boulevard Texaco	RF321–12803
W.E. Pittman Tire Store	RF300–20148
Western Auto Supply Co	RF272–92699

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 100 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–30032 Filed 12–9–92; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 92–464]

fONOROLA Corporation and EMI Communications Corporation to Resell International Private Lines Between the United States and Canada

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 8, 1992, the FCC adopted a Memorandum Opinion, Order and Certification in which it made the determination, pursuant to the FCC's International Resale Order, that Canada affords resale opportunities equivalent to those available under U.S. law. Furthermore, the FCC authorized both fONOROLA Corporation and EMI Communications Corporation to resell international private lines between the United States and Canada, subject to certain operating and reporting conditions. The FCC also promulgated two operating conditions of general applicability to future authorizations for the resale of international private lines between the United States and Canada.

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Warren, Attorney, Common Carrier Bureau, (202) 632–3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Order, Opinion and Certification regarding the resale of international private lines between the United States and Canada. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M St., NW., Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., Washington, DC 20036.

Summary of Memorandum Order, Opinion and Certification

In this Memorandum Order, Opinion and Certification, the FCC finds, pursuant to the International Resale Order, that Canada affords international private line resale opportunities equivalent to those available under U.S. law. Having so found, the FCC certified that the present and future public convenience and necessity require the provision of resale of international private line services between the United States and Canada. Accordingly, the FCC authorized two U.S. carriers, fONOROLA Corporation and EMI

Communications Corporation, to resell international private lines for switched services between the United States and Canada, subject to certain operating and reporting conditions. In particular, the FCC adopted two operating conditions applicable to these and all future authorizations. First, the FCC conditioned these authorizations, and will condition all future international private line resale authorizations for service between the United States and Canada, upon the traffic carried over the resold international private lines being only U.S.-Canada traffic, that is, traffic originating in Canada and terminating in the United States or traffic originating in the United States and terminating in Canada. Second, the FCC conditioned these authorizations, and will condition all such future authorizations, upon the applicants and certain related persons or companies being subject to a "no exclusive arrangements" condition with regard to the handling or interchanging traffic to or from the United States, its territories or possessions.

Ordering Clauses

Accordingly, *it is certified* that the present and future public convenience and necessity require the provision of resale of international private line services between the United States and Canada.

It is further ordered that these authorizations, and all such future authorizations, for the resale of international private lines for switched services between the United States and Canada shall be conditioned as set forth above.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-30062 Filed 12-9-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before February 8, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: New collection.

Title: Emergency Management Exercise Reporting System.

Abstract: The Emergency Management Exercise Reporting System is the means by which FEMA intends to collect data to

(1) Validate the effectiveness of Agency programs at the State and local level;

(2) Determine whether program changes are being appropriately implemented at the State and local levels;

(3) Evaluate the preparedness capability of State and local governments to respond to and recover from emergencies of all sizes, regardless of cause;

(4) Identify those corrective actions that require additional focus on the part of FEMA (e.g., planning, training, equipment, facilities, or personnel) for short- and long-term planning;

(5) Respond to information on emergency management readiness; and

(6) Provide annual summary data on State and local emergency management exercises nationwide that can be used for improved exercise design and evaluation techniques; and request exercise credit for actual response operations in Presidentially declared or undeclared disasters to satisfy the emergency management exercise requirement under the Comprehensive Cooperative Agreement (CCA).

The Emergency Management Exercise Reporting System is an annual exercise/training reporting requirement contained in each CCA. The new EMERS consolidates and replaces the following collections: FEMA Form 90-2, Disaster Response Questionnaire, and its automated system CENSUS (OMB No. 3067-0188); FEMA Form 95-16, State and Local Exercise Data, and its automated system XDATA (OMB No. 3067-0189); and the State/Regional Summary Evaluation Form (SRSEF).

The reporting requirement applies to both those local jurisdictions which have conducted an exercise and those which are affected by a Presidential declaration of a major disaster. The completed form (attachment A) and instructions (attachment B) will be used by local jurisdictions to submit data to the States. States will in turn input the data into the EMERS automated system for transmittal to the FEMA regional offices. FEMA will then forward the data to the Headquarters program office.

FEMA will train State Training Officers and Exercise Training Officers in 16 States within FEMA Regions 1, 8, and 10 and pilot test EMERS from February 1993 to June 1993. FEMA expects to implement EMERS October 1, 1993.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: Training—1,792 hours (Regions 1,8,10 512—hours; Regions 2,3,4,5,6,7,9—1,280 hours). Pilot—458 hours (Locals—375 hours; States—83 hours). Full Implementation—2,931 hours (Locals—2,400 hours; States—531 hours). Total 5,181 hours.

Number of Respondents: Training—112 (Regions 1,8,10—32; Regions 2,3,4,5,6,7,9—80 hours). Pilot 516—(Locals—500; States—16). Full Implementation—3,240 (Locals 3,200; States 40). Total 3,812 respondents.

Estimated Average Burden Time per Response: Training—16 hours; Pilot—55 minutes; Full Implementation—55 minutes.

Frequency of Response: Other: Locals—Data will be submitted at the conclusion of exercises or actual occurrences. States—Data may be submitted on a quarterly basis consistent with a schedule established in the annual Comprehensive Cooperative Agreement but the schedules can be revised quickly in relation to on-going activity.

Dated: November 30, 1992.

Weymouth Tini,

Acting Director, Office of Administrative Support.

BILLING CODE 6718-01-M

Attachment A

FEDERAL EMERGENCY MANAGEMENT AGENCY

EMERGENCY MANAGEMENT EXERCISE REPORTING SYSTEM

O.M.B. No.
Expires

Paperwork Burden Disclosure Notice

"Public reporting burden for this form is estimated to average 45 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding the burden estimate or any aspect of the collection, including suggestions for reducing the burden, to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, S.W., Washington, DC 20472; and to the Office of Management and Budget, Paperwork Reduction Project (3067-), Washington, DC 20503".

PART I - GENERAL INFORMATION

1 FY	2 QUARTER	3 JURISDICTION	4 EMA FUNDED JURISDICTON ☐ Yes ☐ No	5. STATE	6 STATE REGION

7 TYPE OF EVENT

EXERCISE
- ☐ Tabletop
- ☐ Functional
- ☐ Fullscale

☐ Actual Occurrence

Exercise credit is being requested at the
☐ Fullscale ☐ Functional level

Presidentially Declared?
☐ YES ☐ NO

8 FOCUS ON
- ☐ Response
- ☐ Recovery

9 DATES OF EXERCISE EVENT (Month/Day/Year)

Begin: ___ / ___ / ___

End: ___ / ___ / ___

10. HAZARD SCENARIO

Please enter **only one (1) P** for the *Primary* hazard and **one (1) or more S's** for *Secondary* type(s) of hazard(s)

NATURAL HAZARDS

___ Avalanche
___ Dam Failure
___ Drought
___ Earthquake
___ Flood
___ Hurricane
___ Landslide
___ Subsidence
___ Tornado
___ Tsunami
___ Volcano
___ Wild Fire
___ Winter Storm

NATIONAL SECURITY

___ Chemical/Biological
___ Civil Disorder
___ Conventional Attack
___ Increased Readiness
___ Low-IntensityConflict
___ Nuclear Attack
___ Terrorism

TECHNOLOGICAL/MAN-MADE HAZARDS

___ Dam Failure
___ Hazardous Materials-Fixed Facility
___ Hazardous Materials-Transportation
___ Power Failure
___ Radiological-Fixed Facility
___ Radiological-Transportation
___ Structural Fires
___ Transportation Accidents Air/Rail/Highway/Water

11. INDICATE NUMBER OF PARTICIPANTS IN EACH CATEGORY *(Other categories you wish to include should be shown in PART IV. STATE & LOCAL COMMENTS AND SIGNATURE. Please provide item number with details.)*

NATURAL HAZARDS

___ Appointed Officials
___ Civil Air Patrol
___ Communications
___ Elected Officials
___ Emergency Management
___ Fire
___ Health & Medical
___ Human Services
___ Law Enforcement
___ Military

NATIONAL SECURITY

___ Mobilization Augment.
___ Private Industry
___ Public Information
___ Public Participants
___ Public Works
___ Radiological
___ School Personnel
___ Utilities
___ Volunteer Agencies

PART II - FUNCTIONS TESTED

EMERGENCY FUNCTIONS	EVENT RESULTS (Circle) S-Satisfactory NI-Needs Improvement	CORRECTIVE ACTION REQUIREMENT(S) (Check to show that a corrective action is required)				
		Planning	Training	Personnel	Equipment	Facilities
1. ALERT NOTIFICATION						
Response/Recovery Personnel	S NI					
2. COMMUNICATIONS						
Telephone	S NI					
Radio	S NI					
Amateur Radio	S NI					

PART II - continued on the next page.

PART II - FUNCTIONS TESTED *(continued)*							
EMERGENCY FUNCTIONS	**EVENT RESULTS** *(Circle)* S Satisfactory NI Needs Improvement		**CORRECTIVE ACTION REQUIREMENT(S)** *(Check to show that a corrective action is required)*				
			Planning	Training	Personnel	Equipment	Facilities
3. COORDINATION & CONTROL							
Incident Command System	S	NI					
EOC Operations							
Direction & Control	S	NI					
EOC Facility	S	NI					
Emergency Power	S	NI					
Inter-agency Communications	S	NI					
Message Handling	S	NI					
Mutual Aid							
Personnel from Other Sites	S	NI					
Equipment from Other Sites	S	NI					
Effectiveness of Coordination							
Officials	S	NI					
EOC Staff	S	NI					
Emergency Support Services	S	NI					
Other Response/Recovery Personnel	S	NI					
4. EMERGENCY PUBLIC INFORMATION EFFECTIVENESS							
Prior to onset of the emergency	S	NI					
During the emergency	S	NI					
Immediate post-emergency period	S	NI					
Centralized public information activities *(e.g., Joint Information Center)*	S	NI					
De-centralized public information activities *(e.g., operating from different sites)*	S	NI					
5. DAMAGE ASSESSMENT							
Private Sector	S	NI					
Public Sector	S	NI					
6. HEALTH & MEDICAL							
Emergency Medical Services	S	NI					
Environmental & Public Health	S	NI					
Mass Casualty	S	NI					
Medical Facilities	S	NI					
Radiological	S	NI					

PART II - continued on the next page

PART II - FUNCTIONS TESTED *(continued)*							
EMERGENCY FUNCTIONS	EVENT RESULTS (Circle) S Satisfactory NI Needs Improvement		CORRECTIVE ACTION REQUIREMENT(S) (Check to show that a corrective action is required)				
			Planning	Training	Personnel	Equipment	Facilities
7. INDIVIDUAL/FAMILY ASSISTANCE							
Effectiveness of Evacuation							
Facilities	S	NI					
Shelters	S	NI					
Evacuation Mgmt. (by St./Loc. officials)	S	NI					
Emergency Food/Water/Clothing	S	NI					
8. PUBLIC SAFETY							
Law Enforcement	S	NI					
Fire	S	NI					
Search & Rescue	S	NI					
Evacuation (e.g., traffic control)	S	NI					
9. PUBLIC WORKS							
Repairs, construction, & support	S	NI					
Transportation	S	NI					
10. RESOURCE MANAGEMENT							
Elected/appointed official Support	S	NI					
Personnel trained in emergency response	S	NI					
Personnel familiar with EOP	S	NI					
Equipment availability	S	NI					
11. WARNING							
Warning (from local EOC or Command Center)	S	NI					
Outdoor Siren	S	NI					
Emergency Broadcast System	S	NI					
Radio/TV Stations	S	NI					
12. EFFECTIVENESS OF WARNING							
The public	S	NI					
Special needs population	S	NI					

PART III- ACTUAL OCCURENCE DATA						
The following information is to be provided when requesting exercise credit for an actual disaster occurrence.	# Fatalities	# Injured	Number Evacuated	Number Sheltered	Est. Public Damage*	Est. Private Damage*
* Do not answer this question for Presidential declarations; FEMA will obtain the information from its own records.						

PART IV - STATE & LOCAL COMMENTS & SIGNATURES

COMMENTS: *(Add additional pages as necessary. Include at the beginning of your comments, the Block Number of the Emergency Fucntion you indicated needs improvement and the following codes for the corrrective actions checked.*
P = Planning; T = Training; P = Personnel; E = Equipment; F = Facilities.

PREPARED BY *(Signature)*	TITLE	DATE

STATE EXERCISE TRAINING OFFICER *(Signature)*	DATE

PART V - REGIONAL REVIEW

The actions taken during the actual disaster occurrence qualify for exercise credit ☐ Concur ☐ Nonconcur

Exercise credit is provided at the ☐ Full Scale ☐ Functional level

If there is a nonconcurrence or change in the level of exercise credit approved, detail will be provided in Part IV State & Local Comments & Signatures above.

REGIONAL DIRECTOR *(Signature)*	DATE

Attachment B

INSTRUCTIONS FOR COMPLETING

THE EMERGENCY MANAGEMENT EXERCISE REPORTING SYSTEM FORM

BACKGROUND: The Emergency Management Exercise Reporting System (EMERS) replaces the:

- o State/Regional Summary Evaluation Form (SRSEF);
- o FEMA Form 95-16, Exercise Data collection form;
- o Automated Exercise Data (XDATA) system; and
- o FEMA Form 90-2, the Disaster Response Questionnaire (DRQ).

The purpose of the new form is to reduce the amount of reporting forms/systems required for the exercise and training programs while ensuring that the data collected meets the needs of Federal, State and local exercise/training personnel.

The data provided on this form will be used to (1) track annual accomplishments against the 4-year exercise cycle; (2) identify the type of hazard, objectives, scope, and number of participants for each exercise; (3) serve as a means of requesting exercise credit for actual occurrences; and (4) highlight for local, State and Federal emergency management trainers, planners and exercise personnel those areas where corrective actions need to be taken, including planning, training, personnel, equipment and/or facilities.

The instructions are designed to assist you in completing the information requested for each block on the new form. If you are a local official and need assistance or have any questions regarding the form, please contact your State Exercise Training Officer.

PART I. GENERAL INFORMATION

1. *FY (Fiscal Year)*: Please enter the *current* fiscal year. A *current* Federal Fiscal Year begins on **October 1** and ends with **September 30** of the following year (*for example, FY 1993 runs from October 1, 1992 - September 30, 1993.*)

2. *QUARTER*: Please enter either a **1, 2, 3** or **4** to indicate the first, second, third or fourth quarter of the *current* Federal fiscal year for which you are reporting. The following is a listing of the months which comprise each quarter:

Quarter	Months
1	*October - December*
2	*January - March*
3	*April - June*

4 *July - September*

3. ***JURISDICTION***: Enter the name of your county, city, township or other political subdivision.

4. ***EMA-FUNDED JURISDICTION***: Check (√) ***Yes*** if your jurisdiction is a participant in the **Emergency Management Assistance (EMA)** program or ***No*** if it is not.

5. ***STATE***: Enter the 2 character abbreviation for your State.

6. ***STATE REGION***: This block is intended to reflect ***State-defined*** areas, regions, administrative subdivisions, etc., that may be used by the State for day-to-day management. If a ***State*** does **NOT** use such subdivisions, leave blank.

7. *TYPE OF EVENT*: The purpose of this section is to determine whether your jurisdiction conducted an **exercise** or was involved in an **actual occurrence** for which exercise credit is being requested. If it was an exercise, please indicate with a check mark (√) whether it was a *tabletop, functional or full scale exercise* (definitions listed below). If your jurisdiction was involved in an actual occurrence (definition listed below) for which exercise credit is being requested, please place a check mark (√) by actual occurrence.
Please indicate with a check (√) whether approval is requested for Full Scale or Functional level exercise.

Check **Yes** if the actual occurrence is a Presidentially declared disaster or **No** if it is not.
Listed below are definitions of the three major exercise types:

TABLETOP EXERCISE: An activity in which elected or appointed officials and key staff with emergency management responsibilities are gathered together informally to discuss various **simulated** emergency situations. A tabletop exercise is designed to elicit constructive discussion by the participants without time constraints as they examine and then attempt to solve problems based on existing Emergency Operations Plans. The intent of a *tabletop* is to allow participants to evaluate plans and procedures and to resolve questions of coordination, assignment of responsibilities, interaction between agencies, etc., in a non-threatening format and under minimum stress. A tabletop exercise usually lasts from 2-4 hours, but may be longer depending on the issues to be addressed.

FUNCTIONAL EXERCISE: A ***functional*** exercise is designed to focus on testing, under simulated conditions, the policies, procedures, roles and responsibilities of individual or multiple emergency functions either before, during or after

any emergency period. (Specific functions are contained in *Civil Preparedness Guide 1-8, Guide for the Development of State and Local Emergency Operations Plans* and include, at a minimum, **Direction and Control, Communications, Warning, Emergency Public Information, Evacuation, Reception and Care, In-Place Protective Shelter, Health and Medical, Law Enforcement, Public Works, Fire and Rescue, Radiological Protection, Human Services and Resource Management**).) A functional exercise is larger than a tabletop -- it involves activities that are usually performed in some type of operating center, the field or a combination of both in which time constraints are applied. Functional exercises normally run for 2-8 hours and are followed by an evaluation or critique.

FULL SCALE EXERCISE: A *full scale* exercise is designed to evaluate the operational capability of emergency management systems in an interactive manner over a substantial period of time, *i.e.*, usually one or more days. It involves the testing of a major portion of the basic elements of Emergency Operations Plans and organizations in a highly stressful environment in order to more closely simulate actual response conditions. This type of exercise includes mobilization and actual movement of emergency personnel and resources required to demonstrate coordination and responsibilities. The Emergency Operating Center is activated and field command posts may be established.

ACTUAL OCCURRENCE: An actual occurrence is defined as any natural, technological or national security event which has happened in your jurisdiction for which a coordinated emergency response or recovery operation was required. This includes both large-scale events that have resulted in a Presidential declaration of an *emergency* or a *major disaster* and those occurrences of a lesser magnitude which required significant State and/or local response and recovery activities.

8. *FOCUS ON*: Regardless of whether your activity was an exercise or an actual occurrence, place a check mark (√) to denote whether the focus of the event was on **response** or **recovery** activities (definitions follow).

RESPONSE: A *response* exercise focuses on those ***critical and immediate*** measures required to save lives and protect property in an emergency. Such measures may include, but are not limited to, emergency medical services, emergency debris clearance, restoration of electricity and communications, evacuation and shelter, public information, reception and care or restoration of critical public services. Response activities for small-scale disasters could be only a matter of hours or a day -- for large-scale disasters (*e.g.*, Hurricane

Andrew), response activities could involve days or more than a week. In instances where supplementary Federal assistance is required, Federal agency activities would be coordinated under the ***Federal Response Plan***, which describes the basic mechanisms by which the Federal government will mobilize resources and conduct activities to **augment** State and local response efforts.

RECOVERY: A *recovery* exercise is defined as focusing on those **non-critical, longer- term** activities required to restore a community as closely as possible to its original condition. Recovery differs from response in that response activities are related to **immediate, critical functions to save lives and protect property** -- recovery activities may take weeks or months to complete. Recovery activities may include, but are not limited to, the restoration of public facilities, streets, roads and bridges, debris clearance from public and private property or temporary housing.

9. ***DATES OF EXERCISE/EVENT***: Please enter the timeframe during which your exercise or actual event occurred. Show the dates in month/day/year (06/17/92 or 10/11/92) format and include both the beginning and ending dates. *Do not include pre-exercise briefings or training sessions or post-conference critiques as part of the exercise -- the information should be limited to the actual dates during which participants actually played in an exercise.*

10. ***HAZARD SCENARIO***: Please indicate **one and only one** item as the **PRIMARY** hazard for which an exercise was conducted or an actual event for which exercise credit is being requested. However, more than one **SECONDARY** event may be selected. For example, a jurisdiction may suffer a hurricane as a primary event; secondary events could include a dam failure, a hazardous materials transportation incident and landslides; a terrorist attack could involve a radiological incident at a fixed facility.

11. ***NUMBER OF PARTICIPANTS IN EACH CATEGORY***: Please indicate the number of personnel in each category that participated in either the exercise or the actual event. In order to maintain a more concise listing, the categories listed frequently include more than one type of response function, *i.e., Law Enforcement* could include local and State police, the Sheriff's department, highway patrol, etc.

PART II. FUNCTIONS TESTED

1. ***EMERGENCY FUNCTIONS***: Please indicate for each emergency function tested, whether the results where satisfactory or needs improvement. Circle *S* for ***Satisfactory*** or ***NI*** for ***Needs***

Improvement.

Place a check mark (√) under each area (Planning, Training, Personnel, Equipment, Facilities) where corrective actions need to be taken.

PART III. ACTUAL OCCURRENCE DATA

1. *EXERCISE CREDIT*: If exercise credit is requested for an actual occurrence and a Presidential declaration is not declared, please provide the number of fatalities, injured, evacuated, sheltered, and the dollar values of the estimated damage to public and private property.

PART IV. STATE AND LOCAL COMMENTS AND SIGNATURES

1. *NARRATIVE*: Please provide a short discussion of the corrective actions you feel should be taken. Use the Block Number of the Emergency Function which needs improvement and the following codes for the corrective actions checked: *P = Planning; T = Training; PE = Personnel; E = Equipment; F = Facilities.*

For example, assume Planning and Training were checked as corrective actions for emergency function 12, Effectiveness of Warning. Comments about these areas are to be shown in the following format:

> 12P: The community has a large population of elderly people. No special considerations were made for them. The Emergency Operations Plan needs to be revised to address this issue.
>
> 12T: Response personnel need training on needs of elderly people during an evacuation because of problems encountered in responding to the needs of elderly people during the exercise.

This section can also be used to provide **brief and concise** comments to the State, Regional or Headquarters program managers. Information could include innovative methods tried in either the exercise or actual response operation, improvements in interaction between various agencies, or improved means of locating and transporting critically needed materials.

2. *SIGNATURES*: Please sign and date the form.

6

PART V. REGIONAL REVIEW

If exercise credit is requested, your FEMA Regional Office will review the request and complete the information on exercise credit. A copy of the form showing this information, will be sent to your State Emergency Management Office. The State Emergency Management Office will in turn contact you as to what should be done with this information.

[FR Doc. 92-30026 Filed 12-9-92; 8:45 am]
BILLING CODE 6718-01-C

[FEMA–968–DR]

Mississippi; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–968–DR), dated November 25, 1992, and related determinations.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi, dated November 25, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 25, 1992:

The counties of Amite, Copiah, and Wilkinson for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–30024 Filed 12–9–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–968–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: November 25, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–968–DR), dated November 25, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 25, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows.

I have determined that the damage in certain areas of the State of Mississippi, resulting from tornadoes, high winds, and severe storms on November 21–22, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ihor Husar of the Federal Emergency Management Agency

to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

The counties of Attala, Chickasaw, Choctaw, Covington, Jasper, Jefferson Davis, Kemper, Lauderdale, Leake, Lincoln, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, and Webster for Individual Assistance.

The counties of Rankin, Smith, Jefferson Davis, Covington, and Jasper for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-30025 Filed 12-9-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Docket No. 92-52]

Wilfredo Garcia a/k/a Willie "Bill" Allen et al.; Order of Investigation and Hearing

In the matter of Virginia "Gina" Scalabrino a/k/a Virginia "Gigi" Allen; and ABU W. Garcia Forwarding, Inc. d/b/a ABU W. Garcia, Auto Transporters Keystone Ltd., World Express Shipping, World Express Shippers, A 1 Shipping Solutions, American Keystone Transport, and Calif-Pen Transporters.

Wilfredo Garcia a/k/a Willie "Bill" Allen ("Garcia") is believed to be the principal behind each of the companies identified in the above caption. Virginia "Gina" Scalabrino, a/k/a Virginia "Gigi" Allen is believed to be Garcia's wife and business associate.

It appears that ABU W. Garcia Forwarding, Inc. ("ABU W. Garcia"), a Pennsylvania corporation d/b/a Auto Transporters keystone Ltd. ("Keystone"), issued bills of lading and other shipping documents for shipments from various points or ports in the United States to foreign ports. It appears that Garcia also advertised an ocean transportation service in yellow page directories in several U.S. cities under the company names of ABU W. Garcia and Keystone as well as under the pseudonyms of World Express Shipping, World Express Shippers, A 1 Shipping Solutions, American Keystone Transport, and Calif-Pen Transporters. It further appears that Garcia and his companies booked or arranged for space for shipments with steamship lines. Neither Garcia, nor any of the entities or individuals named herein, filed with the Federal Maritime Commission ("Commission" or "FMC") a tariff for the transportation services offered by Garcia, filed with the FMC evidence of a bond required of non-vessel-operating common carriers ("NVOCC") or received a license from the FMC to provide ocean freight forwarder services.

The Commission has received complaints from shippers to the effect that Garcia engaged in a pattern of practice by which Garcia collected monies for transportation services, but either never transported the cargo to the overseas destination as contracted or, in instances when cargo was transported overseas, did not pay the ocean freight to the steamship line. Shippers were required to make additional payments to have the cargo transported or to obtain release of the cargo. Shippers did not receive refunds of monies previously paid to Garcia.

Therefore, it appears that between March 27, 1991 and October 1992, respondents, individually or in conjunction with each other, operated as an untariffed and unbonded NVOCC from ports or points in the United States to foreign ports in violation of sections 8(a)(1) and 23(a) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1707(a)(1) and 46 U.S.C. app. 1720(a), and acted as an unlicensed ocean freight forwarder in violation of section 19(a) of the 1984 Act, 46 U.S.C. app. 1718(a).

In addition, the activities of Garcia and his companies also may be in violation of the following provisions of the 1984 Act: (1) section 10(a)(1), 46 U.S.C. app. 1709(a)(1), for attempting to obtain ocean transportation for less than applicable rates; (2) section 10(b)(6)(E), 46 U.S.C. app. 1709(b)(6)(E), for engaging in unfair practices in the matter of the adjustment and settlement of claims; and (3) section 10(d)(1), 46 U.S.C. app. 1709(d)(1), for failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. It is believed that these apparent unlawful activities continue.

Now therefore, it is Ordered, That pursuant to sections 10, 11 and 13 of the 1984 Act, 46 U.S.C. app. 1709, 1710 and 1712, an investigation is hereby instituted to determine:

(1) Whether any of the respondents, individually or in conjunction with each other, violated the following sections of the 1984 Act: (1) Section 8(a)(1), by operating as an NVOCC in the foreign commerce of the United States without having a tariff on file with the Commission; (b) section 10(a)(1), for attempting to obtain ocean transportation at less than applicable tariff rates; (c) section 10(b)(6)(E), for engaging in unfair practices in the matter of the adjustment and settlement of claims; (d) section 10(d)(1), for failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; (e) section 19(a), for acting as an ocean freight forwarder without a license issued by the FMC; and (f) section 23(a), for operating as an NVOCC without furnishing the requisite bond to the FMC;

(2) Whether, in the event violations of sections 8(a)(1), 10(a)(1), 10(b)(6)(E), 10(d)(1), 19(a) and 23(a) of the 1984 Act are found, civil penalties should be assessed and, if so, the amount of such penalties; and

(3) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further Ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further Ordered, That Wilfredo Garcia a/k/a Willie "Bill" Allen; Virginia "Gina" Scalabrino a/k/a Virginia "Gigi" Allen; and ABU W. Garcia Forwarding, Inc. d/b/a/ ABU W. Garcia, Auto Transporters Keystone Ltd., World Express Shipping, World Express Shippers, A 1 Shipping Solutions, American Keystone Transport, and Calif-Pen Transporters are designated respondents in this proceeding;

It is further Ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further Ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further Ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further Ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further Ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is Further Ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by December 3, 1993, and the final decision of the Commission shall be issued by April 4, 1994.

Joseph C. Polking,

Secretary.

Appendix II

Addresses of Respondents

1. Wilfredo Garcia a/k/a Willie "Bill" Allen, (H) 695 Marlock Court, Milford, PA 18337 or (B) Routes 6 and 209, HC Box 600, Milford, PA 18337
2. Virginia Scalabrino a/k/a Virginia Allen, 695 Marlock Court, Milford, PA 18337
3. ABU W. Garcia Forwarding, Inc., Route 6 and 209, HC Box 600, Milford, PA 18337
4. Auto Transporters Keystone Ltd., Route 6 and 209, HC Box 600, Milford, PA 18337 or P.O. Box 1103, Milford, PA 18337
5. World Express Shipping, c/o Wilfredo Garcia a/k/a Willie "Bill" Allen, (H) 695 Marlock Court, Milford, PA 18337 or (B) Routes 6 and 209, HC Box 600, Milford, PA 18337
6. World Express Shippers, c/o Wilfredo Garcia a/k/a Willie "Bill" Allen, (H) 695 Marlock Court, Milford, PA 18337 or (B) Routes 6 and 209, HC Box 600, Milford, PA 18337
7. A 1 Shipping Solutions, c/o Wilfredo Garcia a/k/a Willie "Bill" Allen, (H) 695 Marlock Court, Milford, PA 18337 or (B) Routes 6 and 209, HC Box 600, Milford, PA 18337
8. American Keystone Transport, c/o Wilfredo Garcia a/k/a Willie "Bill" Allen, (H) 695 Marlock Court, Milford, PA 18337 or (B) Routes 6 and 209, HC Box 600, Milford, PA 18337
9. Calif-Pen Transporters, c/o Wilfredo Garcia a/k/a Willie "Bill" Allen, (H) 695 Marlock Court, Milford, PA 18337 or (B) Routes 6 and 209, HC Box 600, Milford, PA 18337

[FR Doc. 92-29989 Filed 12-9-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft fiscal year 1993 program guideline/application solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 1993 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public and obtain public comments. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATES: Comments are due on or before January 8, 1993.

ADDRESSES: Send comments to: Peter Regner, Director, Labor-Management Grants and Projects, FMCS 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter Regner, (202) 653-5320.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees—FY 1993

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 1993 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the forementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1993, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.). In addition, $56,000 will be reserved for a continuation grant to the State and Local Government Labor-Management Committee for support of the Seventh National Labor-Management Conference in June 1994.

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses WHY the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail WHAT the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as résumés for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1993 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the applicant's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. Union letters should be submitted on union letterhead.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has been given an allocation of $749,000 for this program. Of this amount, $588,000 will be allocated for new submissions, up to $105,000 for the continuation of selected FY91 grantees to September 1993, and $56,000 for support of the Seventh National Labor-Management Conference. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least one award will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least one outstanding application exists in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

FMCS reserves the right to retain up to 10 percent of the FY93 appropriation to contract for program support purposes (such as evaluation) other than administration. This may alter the specific amounts available for new or continuation grants.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees

(i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at a 50 percent cash match ratio. The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at a 50 percent cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY93 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by both a labor and management representative and be postmarked no later than June 5, 1993. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants and Projects, 2100 K Street NW., Washington, DC 20427. FMCS will not consider videotaped submissions or attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grants and Projects, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY93 grant applicants will be notified of results and all grant awards will be made before September 30, 1993. Applications submitted after the June 5 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants and Projects.

H. Application Development Training

In FY93, FMCS will offer a free half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on February 10, 1993. Individuals interested in attending the session should contact FMCS to reserve a space and receive additional information. See Section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grants and Projects, 2100 K Street NW., Washington, DC 20427; or by calling (202) 653–5320.

Bernard E. DeLury,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 92–29938 Filed 12–9–92; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Fourth Financial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased

competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Fourth Financial Corporation, Wichita, Kansas; to engage *de novo* through its subsidiary, Bank IV Community Development Corporation, in projects designed primarily to promote community welfare such as the economic rehabilitation of and development of low-income areas by providing housing, services, or jobs for residents pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Hawaiian, Inc., Honolulu, Hawaii; to engage *de novo* through its subsidiary, First Hawaiian Creditcorp, Inc., Honolulu, Hawaii, in industrial banking pursuant to § 225.25(b)(2) and through First Hawaiian Leasing, Inc., Honolulu, Hawaii, in leasing personal and real property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the United States, including its overseas territories, including, but not limited to Guam, and the Pacific commonwealth nations, including, but not limited to the Commonwealth of the Northern Mariana Islands.

Board of Governors of the Federal Reserve System, December 4, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–29997 Filed 12–9–92; 8:45 am]

BILLING CODE 6210–01–F

SBL Capital Bank Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 4, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. SBL Capital Bank Shares, Inc., Lodi, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Lodi, Lodi, Wisconsin.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens Bancshares Company, Chillicothe, Missouri; to acquire 100 percent of the voting shares of Blackwater Bancshares, Inc., Glendale, Arizona, and thereby indirectly acquire First Stock Bank, Blackwater, Missouri.

Board of Governors of the Federal Reserve System, December 4, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–29998 Filed 12–9–92; 8:45 am]

BILLING CODE 6210–01–F

LeRoy Trofholz; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. LeRoy Trofholz, Schuyler, Nebraska; to acquire 50 percent of the voting shares of Valley Bank Shares, Inc., Schuyler, Nebraska, and thereby indirectly acquire First Nebraska Bank, Schuyler, Nebraska.

Board of Governors of the Federal Reserve System, December 4, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–29999 Filed 12–9–92; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–62]

Public Health Advisory Procedures

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the procedures ATSDR will use in preparing a public health advisory. The public is invited to comment on the procedures used in issuing a public health advisory.

DATES: Comments must be received by January 11, 1993.

ADDRESSES: Written comments in response to this notice should bear the docket control number ATSDR–62, and should be submitted to: C. Harold Emmett, P.E., Chief, Emergency Response and Consultation Branch, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–57, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: C. Harold Emmett, ATSDR; telephone (404) 630–6360.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)), requires ATSDR, as the lead agency within the PHS, to notify the Administrator of the Environmental Protection Agency (EPA) of a release or threatened release of a hazardous substance that may pose a serious threat to human health or the environment or that an exposure or physical condition presents a significant risk to human health. The public health advisory officially provides such notification. ATSDR also notifies the appropriate EPA regional office, the state health department, and the public.

Definition

A public health advisory is a statement by ATSDR containing a finding that a release of a hazardous substance poses a significant risk to human health and recommending measures to be taken to reduce exposure and eliminate or substantially mitigate the significant risk to human health. It may also address a physical condition which poses a significant risk to human health. (Release is further defined in 42 U.S.C. 9601 (22).)

Public health advisories address the human health risks posed by chemical and/or physical hazards found at a site. Specifically, an ATSDR public health advisory addresses the hazardous substances at a site and their concentrations in the various environmental media; the fate and transport of those materials as they move through the environment; the size and susceptibility of the population; the likelihood of exposure of the population; and the plausible health outcomes of such an exposure.

Rationale for Developing Public Health Advisories

ATSDR may issue a public health advisory based on the findings of a public health assessment, health consultation, health study, or other public health action. ATSDR may also be requested by EPA, other Federal agencies, states, or citizens to evaluate data and information on a release to determine if a public health advisory is warranted.

ATSDR determines what health actions need to be undertaken. Traditionally, these public health actions include health studies, professional and community health education, health surveillance, and exposure registries. The actions are often carried out in cooperation with state health departments.

Who Prepares Public Health Advisories

The preparation of public health advisories is an ATSDR responsibility, which is carried out by the Division of Health Assessment and Consultation (DHAC). Preliminary work, such as data gathering, may be accomplished by any division or branch within ATSDR. The final preparation of the public health advisory is the responsibility of the Emergency Response and Consultation Branch (ERCB) of DHAC.

Criteria for Developing Public Health Advisories

A public health advisory may be issued for sites where a release or a threatened release of hazardous substances may pose a serious threat to human health or the environment or where an exposure or physical condition poses a significant risk to human health. The following criteria are used to define such a threat. These criteria are not intended to limit ATSDR's discretion under CERCLA in issuing public health advisories or in determining other appropriate responses to human health threats at a particular site.

1. Hazardous materials on site are known to be toxic to human health, or physical conditions exist that pose a significant threat to public health; and
2. An established or plausible exposure pathway exists between the contaminant and the nearby human population; and
3. People are being or could be exposed to hazardous substances at levels that pose an urgent public health hazard or a public health hazard. (An urgent public health hazard exists when exposures exceed an ATSDR acute or intermediate Minimal Risk Level (MRL) or other comparable value. A public health hazard exists when exposures exceed a chronic MRL or other comparable value. For radiological contamination, external gamma radiation levels exist that, on an annual basis, exceed current recommendations of national or international radiation protection organizations); and
4. No immediate remediation or removal is planned; and
5. The public health advisory is ATSDR's best option for ensuring a rapid response.

Format of Public Health Advisories

To ensure that a public health advisory (1) adequately addresses site conditions, (2) contains a complete discussion of the health implications of those conditions, and (3) includes conclusions, recommendations, and public health actions for protecting the nearby population, the following format is used:

Introduction (Statement of Purpose)

This section states the purpose of issuing a public health advisory, provides information on how ATSDR became aware of the site or situation, states the problem, and states the major recommendations and public health actions.

Background

The background section provides a brief site history and actions that have taken place at the site, gives the sources of information used in preparing the public health advisory, and describes the contact(s) made with local and state officials.

Basis for the Public Health Advisory

This section describes why the public health advisory was issued. It evaluates the site in terms of the criteria used for issuing a public health advisory. It describes the existence and extent of health hazards and discusses the potential outcome of continued exposure to those chemicals or conditions. The presentation is scientific, is supported by appropriately cited references, and focuses on health-based discussions.

Conclusions

This section provides conclusions based on facts outlined in the previous sections of the public health advisory.

The conclusions present the most important findings of the report in such a manner that the focus of the public health advisory is on the site's most critical health issues.

Recommendations and Proposed Actions

This section describes actions that ATSDR believes to be necessary in order to protect public health and prevent exposure to toxic materials and resulting adverse health effects. The recommendations follow directly from

the conclusions and include any health actions proposed by the ATSDR Health Activities Recommendation Panel (HARP).

References

This section lists all data packages and all technical and health information sources cited in the public health advisory.

Time Frame for Issuing a Public Health Advisory

Time is critical when preparing a public health advisory. A public health advisory is issued because there are indications of an immediate, adverse health impact on a nearby population. An advisory is initiated upon the approval of the Director of DHAC. The initial draft should be completed within 5 working days of being assigned, and the review of the first draft should be completed within 2 working days after the draft is completed. The initial draft is reviewed by the Section Chief, the Branch Chief, the Assistant Director for Public Health Practice, and the Division Director of DHAC. A draft is provided to the chairperson of the HARP at the time a draft document is sent to the Division Director.

The HARP is convened on an emergency basis to determine follow-up health actions. The HARP recommendations are included in the draft document sent to the Assistant Administrator.

After the Division Director approves the draft public health advisory, it is sent to the Assistant Administrator for review. A brief summary of the site background with a statement outlining ATSDR's recommendations is provided to the ATSDR office of Policy and External Affairs (OPEA). A "developmental draft" is sent to the Office of General Counsel (OGC) for assistance with the document. Comments on the drafts from the Office of the Assistant Administrator (OAA) and OGC are returned to the Director, DHAC. Draft public health advisories for sites managed by other Federal agencies are provided to the ATSDR Office of Federal Programs for review and comment before being released from the Agency. DHAC makes appropriate changes and a revised draft is sent through the ATSDR Regional Representative to the EPA regional office for comments. The Regional Representative also makes copies of the draft available to other Federal, state, and local agencies involved with the site.

The ATSDR Emergency Response and Consultation Branch provides EPA headquarters with a draft so that the EPA Administrator is aware that the public health advisory is being prepared. It is expected that the review by EPA and the appropriate state will take no more than 5 working days. DHAC receives comments through the Regional Representative, makes revisions to the document, and submits a draft to the Deputy Administrator of ATSDR through the OAA for review and comments. The final revised public health advisory is then submitted for approval to the ATSDR Administrator through the OAA.

The ATSDR Administrator sends the final public health advisory to the EPA Administrator.

The ATSDR Assistant Administrator sends copies of the final public health advisory to the EPA Regional Administrator and the principal state health official. The ATSDR Regional Representative provides copies to other agencies and individuals as appropriate. ERCB provides a copy of the final public health advisory to the ATSDR Washington, DC, office for distribution to appropriate congressional staff. ERCB also provides a final copy to OPEA for distribution to the media.

Standard Statements

Standard statements in all public health advisories will:

1. Identify the data and information reviewed or analyzed in development of the public health advisory.
2. State that the interpretation, advice, and recommendations provided are based on the data and information referenced.
3. State that the conclusions, recommendations, and public health actions are site-specific and should not automatically be considered applicable to any other situation.
4. Commit to a review of additional data or to respond to additional requests.

Record Keeping

Files containing public health advisory documentation are kept by ERCB while the public health advisory is being developed.

When the advisory is complete, the file is sent to and maintained by the Records and Information Management Branch (RIMB), DHAC. All confidential medical information is handled in accordance with ATSDR policy.

Upon completion of the public health advisory, the author of the public health advisory abstracts data and information for the Hazardous Substances Data Management System (HAZDAT). Those abstracts are sent to RIMB, which is responsible for entering the data into the HAZDAT system. RIMB also tabulates and reports the number of public health advisories completed each quarter

Consistency

A public health advisory is scientifically and programmatically compatible with other Agency documents and with Agency policy. The prospective review of the public health advisories includes reviews by the ERCB section and branch chiefs, the Assistant Director for Public Health Practice, and the Director, DHAC, to assess consistency, scientific quality, policy implications, and appropriateness. As stated previously, the ATSDR Health Activities Recommendations Panel also reviews the draft public health advisory before it is issued. The ATSDR Science Forum reviews of all public health advisories after they are issued to further ensure scientific consistency and to determine policy issues. The Director of DHAC is responsible for providing the public health advisories to the Science Forum.

External Review of Draft Health Advisories

The contents of draft public health advisories should be discussed with appropriate Federal, state, and local agencies during their development to ensure the completeness of the advisories if those agencies can ensure that such information will be treated as confidential and privileged.

Public Comment

Because of their time-critical nature, public health advisories are not issued for public comment before their final release.

Follow-up on Recommendations

ATSDR monitors recommendations identified in the public health advisory as requiring some immediate action on the part of another agency or entity to determine if they have been acted upon. DHAC coordinates with other programs that are responsible for conducting or arranging such follow-up. Recommendations requiring immediate follow-up include those that would alleviate an immediate threat to human health or those that request further information to assist ATSDR in characterizing an immediate public health threat at a site or event. ATSDR evaluates the effectiveness of the advice and recommendations in the public health advisory through its follow-up. The reasons that recommendations are not being followed will be determined. ATSDR's evaluation includes information on the numbers and types of persons affected and, when feasible,

specific information on health and economic impact.

Dated: December 4, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-29980 Filed 12-9-92; 8:45 am]

BILLING CODE 4160-70-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Medicare SELECT program, HHS/HCFA/ORD No. 09-70-0058." We have provided background information about the proposed system in the "**SUPPLEMENTARY INFORMATION**" section below. Although the Privacy Act requires only that the "Routine Uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See "**DATES**" section for comment period.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on December 1, 1992. Comments on the routine use portion of this notice must be received by January 11, 1993. The new system of records will become effective February 8, 1993, unless HCFA receives comments which would necessitate alterations to the system.

ADDRESSES: The public should address comments to Richard DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, HCFA, Room 2-H-4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Rose Hatten, Division of Health Systems and Special Studies, Office of Demonstrations and Evaluations, Office of Research and Demonstrations, HCFA, Room 2306, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. Her telephone number is (410) 966-6830.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 4358(d) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. The purpose of this system of records is to provide data necessary to evaluate the Medicare SELECT program. Medicare SELECT is a Medicare supplemental insurance policy under which full supplemental benefits generally are paid only when covered services are supplied by providers in the insurer's managed care network.

HCFA will award a contract for an independent evaluation of the Medicare SELECT program. As part of the evaluation effort, the contractor will use individually identifiable data to analyze the effects of the sale of Medicare SELECT policies on beneficiaries' health care costs, selection of health care providers, and use of health care services. Consequently, the evaluation contractor will establish a system of records that includes individually identifiable data for these purposes.

Under current legislation, approved Medicare SELECT policies may be sold in 15 States for 3 years beginning January 1, 1992. Until December 31, 1994, sales of approved Medicare SELECT policies are permitted in Alabama, Arizona, California, Florida, Indiana, Kentucky, Michigan, Minnesota, Missouri, North Dakota, Ohio, Oregon, Texas, Washington, and Wisconsin. It is anticipated that the independent evaluation will be performed during the period from October 1, 1992 through September 30, 1995. The system of records is expected to include data on the number and type of services used by Medicare SELECT policyholders and comparison group members and their experiences in accessing health care, both during and prior to the 3-year period of policy sales. These data will come from Medicare SELECT insurance policies sold to participants, utilization data systems maintained by providers who serve the covered population and comparison group members, a survey of demonstration participants and control group members, and HCFA claims and administrative data.

Samples to conduct analyses will be selected from Medicare SELECT policyholders and individuals from comparison groups. In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal or property rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for what is known as "routine use"—that is, disclosure without consent for purposes that are compatible with the purposes for which we collected the information. The establishment of routine uses does not mandate HCFA to release records with identifiers. In fact, HCFA is extremely cautious when releasing records. The proposed routine uses in the new system meet the compatibility criteria because claims data and other personally identifiable information are submitted to HCFA not only for the purpose of claims processing, but also, implicitly, for the administration and evaluation of the Medicare program. The congressionally mandated study, for which we are responsible, is an application of HCFA's continuing obligation to administer and evaluate the Medicare program. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy or other personal or property rights of individuals.

Dated: November 18, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

09-70-0058

SYSTEM NAME:

Evaluation of the Medicare SELECT Program, HHS/HCFA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system will be maintained by an evaluation contractor to be selected by HCFA. Contact the system manager for the location of the contractor. The system, or portions of the system, may also be transferred to the Health Care Financing Administration Data Center for processing and storage. The Data Center is located at the Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207-5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare enrollees who reside in Alabama, Arizona, California, Florida, Indiana, Kentucky, Michigan, Minnesota, Missouri, North Dakota, Ohio, Oregon, Texas, Washington, and Wisconsin who purchase Medicare SELECT policies and individuals selected as comparison group members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information concerning individuals' names, Social Security numbers, demographic characteristics (e.g., age, sex), supplemental health insurance coverage, utilization and cost of health care services, and selection of health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4358(d) of the Omnibus Budget Reconciliation Act of 1990, Public law 101–508 (42 U.S.C. 139522 note).

PURPOSE(S):

To provide data necessary to analyze the impact of Medicare SELECT policies on participants' use and cost of services, and selection of providers of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to the following:

1. The evaluation contractor, to be selected by HCFA, who will use this information to analyze the impacts of the Medicare SELECT policies.

2. A congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. The Department of Health and Human Services (HHS), or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components)

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that each disclosure is compatible with the purpose for which the records were collected.

Note: Personally identifiable information is submitted to HCFA not only for claims processing, but also for the necessary administration of the Medicare and Medicaid programs. Studies and evaluations are a necessary part of the administration of these programs, as is, occasionally, the defense of litigation brought against the Government. It is necessary to include such a routine use in HCFA's systems of records because agencies such as ours occasionally have a legitimate need to provide documents to a court, or to the Justice Department in its role as attorney for agencies in litigation. The need to disclose can arise suddenly, and cannot be predicted in advance. Because it is not feasible to obtain the individual's consent to the disclosure for a variety of reasons, we include this routine use in our systems.

4. A contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system, or for developing, modifying, and/or manipulating automated data processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

5. An individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient to: (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Makes no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Information will be retrieved by the beneficiary's name, Social Security number, and Health Insurance Claim number:

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the contractor will initiate ADP system security procedures required by HHS *Information Resources Manual* (e.g., use of passwords) and the National Institute of Standards and Technology Federal Information Processing Standards and HCFA's Automated Information Systems Guide, HCFA g:0805–1, "Systems Security Policies." Similar safeguards will be provided to any records transferred to HCFA central office.

RETENTION AND DISPOSAL:

Paper copies of data collection forms and magnetic tapes (or equivalent media) with identifiers will be retained in secure storage areas. Records will be retained for 2 years after the termination of the evaluation contract. The disposal techniques of degaussing will be used to strip magnetic tape (or equivalent media) of identifying names and numbers. Paper copies of records will be destroyed at this time.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows

Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

NOTIFICATON PROCEDURE:

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name and Social Security number or Health Insurance Claim number of the record for which an inquiry or request is made.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should reasonably specify the record contents being sought. These procedures are in accordance with Department Regulations, 45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURE:

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting the record (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Department regulations, 45 CFR 5b.7.

Note: Notification, record access, and contesting record procedures apply only to the subject individual.

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system are expected to include the following: Medicare SELECT insurance policies sold to participants; utilization data systems maintained by providers who serve the covered population and comparison group members; a survey of demonstration participants and control group members; and HCFA claims and administrative data.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92–30022 Filed 12–9–92; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Advisory Council, Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1993:

Name: Advisory Committee on Infant Mortality.

Date and Time: January 14–15, 1993, 8:30 a.m.

Place: Dupont Ballroom, Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Committee provides advise and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start Initiative and other recommendations of the Domestic Policy Council, and infant mortality objectives from Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.

Agenda: Topics that will be discussed include: Presentation on the PHS Interagency Committee on Infant Mortality analysis of FY 1993 and review of FY 1994 recommendations. Subcommittees will convene.

Anyone requiring information regarding the Committee should contact Mr. Ronald Carlson, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2460.

Persons interested in attending any portion of the meeting should contact Ms. Kyungeun Carol Han, Public Health Analyst, Office of Planning, Evaluation and Legislation, Health Resources and Services Administration, Telephone (301) 443–2204.

Agenda Items are subject to change as priorities dictate.

Dated: December 4, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–29922 Filed 12–9–92; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement and Proposed Funding Priority and Special Considerations for Grants for Geriatric Education Centers

The Health Resources and Services Administration (HRSA) announces the acceptance of applications for fiscal year (FY) 1993, Grants for Geriatric Education Centers under the authority of section 777(a) of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed funding priority and special considerations.

Approximately $5,500,000 will be available in FY 1993 for this program. Total continuation support recommended is $3,900,000. It is anticipated that approximately $1,600,000 will be available to support 5 to 6 competing awards averaging $225,000 for single institution applicants and $275,000 for consortia of three or more institutions.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1992, HRSA reviewed 25 applications for Grants for Geriatric Education Centers. Of those applications, 56 percent were approved and 44 percent were not recommended for further consideration. Eight projects, or 32 percent of the applications received, were funded. In FY 1991, HRSA reviewed 32 applications for Grants for Geriatric Education Centers. Of those applications, 56 percent were approved and 44 percent were not recommended for further consideration. Eight projects, or 25 percent of the applications received, were funded.

Eligibility

Section 777(a) of the PHS Act authorizes the award of grants to accredited health professions schools as defined by section 737(a)(3), or programs for the training of physician assistants as defined by section 799(3), or schools of allied health as defined in section 799(4), or schools of nursing as defined by section 853(2).

Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

To receive support, applicants must meet the requirements of regulations as set forth in 42 CFR part 57, subpart 00. The initial period of Federal support should not exceed 3 years. Projects may recompete for an additional 3 years.

Grants may be awarded to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), are established to facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, and prevention of disease, disability, and other health problems of the aged. Health professionals include physicians, osteopathic physicians, dentists, optometrists, podiatrists,

pharmacists, nurses, nurse practitioners, physician assistants, chiropractors, clinical psychologists, health administrators, and allied health professionals.

Projects supported under these grants may address any combination of the statutory purposes listed below:

(a) Improve the training of health professionals in geriatrics;

(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(c) Expand and strengthen instruction in methods of such treatment;

(d) Support the training and retraining of faculty to provide such instruction;

(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and

(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in a variety of ways, emphasizing multidisciplinary, as well as discipline-specific approaches to the development of geriatric education resources. For example:

- Health professions schools within a single academic health center, or a consortium of several educational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic area defined by the applicant.

- Educational institutions that have limited geriatric education resources and which traditionally have had linkages to a geographic area where substantial geriatric education needs exist, may seek to establish a geriatric education center. Such a center could be designed to enhance and expand the capability of collaborating professional schools to provide geriatric education resources in the geographic area in need.

- Projects may support the development of Geriatric Education Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000. (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The following criteria will be considered in the review of applications:

(1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.4004;

(2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served;

(3) The ability of the project to achieve the project objectives within the proposed geographic area;

(4) The adequacy of educational facilities and clinical training settings to accomplish objectives;

(5) The adequacy of organizational arrangements involving professional schools and other organizations necessary to carry out the project;

(6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;

(7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner, and;

(8) The potential of the project to continue on a self-sustaining basis.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

The following funding preference will be used in FY 1993. This funding preference was implemented in FY 1989 after public comment (54 FR 3685, dated January 25, 1989).

Established Funding Preference

In determining the order of funding of competing applications which have been recommended for approval, a funding preference will be given to approved applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine.

Proposed Funding Priority

A funding priority will be given to applications that demonstrate linkages for the purpose of training educators or practitioners who serve minority or low-income elderly. Eligible training sites include Area Health Education Center, community and migrant health centers, community mental health centers, Native American clinics, Native Hawaiian clinics, state or local health departments, public health clinics, rural hospitals and clinics, and home health agencies and longterm care facilities that accept Medicaid patients. This priority is consistent with a HRSA strategy to improve the geriatric expertise of health professionals who serve minority and low-income elders at risk of poor health outcomes.

Applicants must identify the training facility to be utilized, the number and type of trainees, and the nature and length of the training experience. A letter of agreement that demonstrates an understanding of and commitment to the proposed training activity must be included for each facility.

Proposed Special Considerations

Special consideration will be given to the extent to which applicants enroll educators and practitioners from underserved areas, for example, rural areas. This special consideration is intended to foster improved geriatric health care in rural and other underserved areas because health

professionals who come from such areas are more likely to return there upon completion of training to teach and provide needed health services.

Special consideration will also be given to programs that provide training and continuing education to health care professionals (including allied health professionals) in the delivery of health and long-term care services to persons with Alzheimer's disease. Alzheimer's disease represents one of the most significant medical and social problems of aging. This special consideration encourages activities designed to improve the qualifications of health care professionals who work directly with Alzheimer's Disease patients and families, and who oversee the care provided by formal and informal caregivers.

Additional Information

Interested persons are invited to comment on the proposed funding priority and special considerations. The comment period is 30 days. All comments received on or before January 8, 1993 will be considered before the final funding priority and special considerations are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding priority and special considerations will be applied. Written comments should be addressed to: Neil Sampson, M.P.H., Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for grant application materials and questions regarding grants policy and business management issues should be directed to: Ms. Jacquelyn Whitaker (D–31), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Ms. Anne Kahl, Geriatric Initiatives Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–103, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6887.

The standard application from PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is January 11, 1993. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Geriatric Education Centers, is listed at 93.969 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: December 4, 1992.

John H. Kelso,

Acting Administrator.

[FR Doc. 92–29923 Filed 12–9–92; 8:45 am]

BILLING CODE 4160–15–M

Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Advisory Commission on Childhood Vaccines

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Dated: December 4, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–29921 Filed 12–9–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of the Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 25–26, 1993, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on January 25 from 9 a.m. to 5 p.m. and on January 26 from 8 a.m. to adjournment. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases; National Heart, Lung, and Blood Institute; room 318, Federal Building, Bethesda, Maryland 20892, (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: December 3, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–29976 Filed 12–9–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Biology-Immunology Contracts Review Committee (Subcommittees C)

Pursuant to Public Law 92–463, notice is hereby given of a meeting of Subcommittee C, of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, December 16, 17 and 18, 1992, at the Bethesda Ramada, Executive Board Room, room 229, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on December 16 from 8:30 to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 16 from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301/496–5708, will provide summaries of the meeting and rosters of committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Subcommittee C, 5333 Westbard Avenue, room 805, Bethesda, Maryland 20892, Tel. 301/496–7575, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30091 Filed 12–9–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on WHO MONICA Contract (Telephone Conference Call).

Scientific Review Administrator: Anthony M. Coelho, Ph.D.

Telephone Number: 301–496–8818.

Dates of Meeting: December 16, 1992.

Place of Meeting: 5333 Westbard Avenue, Room 557, Bethesda, MD 20892.

Time of Meeting: 2 p.m.

Reason for Closure: To review contract proposals.

Name of Panel: NHLBI SEP on Institutional National Research Service Awards (T32) (Telephone Conference Call).

Scientific Review Administrator: Kathryn W. Ballard, Ph. D.

Telephone Number: 301–496–7361.

Dates of Meeting: December 17, 1992.

Place of Meeting: 5333 Westbard Avenue, Room 550, Bethesda, MD 20892.

Time of Meeting: 2 p.m.

Reason for Closure: To review grant applications.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30092 Filed 12–9–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2,4-Diaminophenol Dihydrochloride

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 2,4-diaminophenol dihydrochloride, used as a color accelerator in photographic developers and in photographic bleaching baths. It is also used as an intermediate in the manufacture of certain dyes for animal fur.

Two-year toxicology and carcinogenesis studies were conducted by administering 2,4-diaminophenol dihydrochloride in corn oil by gavage to groups of 60 male and 60 female F344/N rats and 60 B6C3F1 mice of each sex. Rats received doses of 0, 12.5 or 25 mg/kg; mice received doses of 0, 19 or 38 mg/kg.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity* of 2,4-diaminophenol dihydrochloride in male or female F344/N rats that received 12.5 or 25 mg/kg. There was some evidence of carcinogenic activity of 2,4-diaminophenol dihydrochloride in male B6C3F1 mice based on increased incidences of renal tubule adenomas; there was no evidence of carcinogenic activity of 2,4-diaminophenol dihydrochloride in female B6C3F1 mice that received 19 or 38 mg/kg.

Administration of 2,4-diaminophenol dihydrochloride to rats was associated with increased severity of nephropathy in males and females, increased incidence of nephropathy in females, and focal renal tubule hyperplasia in males and females. In mice, chemical exposure was associated with renal tubule necrosis and regeneration in males and females and forestomach acanthosis in males.

The staff scientist for this study is Dr. Richard D. Irwin. Questions or comments about the contents of this Technical Report should be directed to Dr. Irwin at P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3340.

Copies of Toxicology and Carcinogenesis Studies of 2,4-Diaminophenol Dihydrochloride in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 401) are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; telephone (703) 487–4650. The order number is PB 93–117919.

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), and one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: December 4, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92-29977 Filed 12-9-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-070-0-4410-13-241A]

Grand Junction District Advisory Council, CO; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Grand Junction District Advisory Council will meet on Tuesday, January 12, 1992. The meeting will convene at 9 a.m. in the conference room at the Bureau of Land Management Office, 50629 Hwy 6 & 24, Glenwood Springs, Colorado 6.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include (1) Introduction, (2) Briefing on duties of Rangers and interactions with county law enforcement, (3) Ruby Canyon Update, (4) Report on minerals in Rabbit Valley and Ruby Canyon, (5) Update on Hawxhurst Land Exchange, (6) King Mountain Land Exchange Update, (7) Volunteer Recruitment, (8) Glenwood Springs Resource Area Travel Management Plan process update, (9) Any new issue updates for board members, and (10) Public Comment Period.

The meeting is open to the public. Interested persons may make oral statements to the Council between 2:30 and 3 p.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506 by January 5, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Council meeting will be available for public inspection in the District Office thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, District Manager, Grand Junction District Office, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506, phone (303) 244-3000.

Tim Hartzell,

District Manager.

[FR Doc. 92-30019 Filed 12-9-92; 8:45 am]

BILLING CODE 4310-84-M

[WY-040-03-4410-01]

Rock Springs District Advisory Council, WY; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Advisory Council.

DATES: January 8, 1993, 9 a.m. until 4:30 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming, 82901.

FOR FURTHER INFORMATION CONTACT: Gene Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming, 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will be limited to:

1. Introduction and opening remarks.
2. Review minutes of the last meeting.
3. Election of officers.
4. The Green River Resource Management Plan.
5. Public Comment Period.

The meeting is open to the public. Interested persons may make oral statements to the Council between 3 and 4 p.m. on January 8, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by January 6.

John S. McKee,

Associate District Manager.

[FR Doc. 92-30018 Filed 12-9-92; 8:45 am]

BILLING CODE 4310-22-M

[OR-020-02-4410-08; G3-062]

Record of Decision and Rangeland Program Summary and Notice of Off-Road Vehicle and Outstanding Natural Area/Research Natural Area/Area of Critical Environmental Concern Designations for the Three Rivers Resource Management Plan; Burns District, Oregon; Correction.

AGENCY: Bureau of Land Management, DOI.

ACTION: Correction.

SUMMARY: In notice document 92-25230 beginning on page 47669 in the issue of Monday, October 19, 1992, make the following corrections:

On page 47670 in the second column, under the heading "Forestry and Woodlands," an additional decision is added which reads:

• Meet public demands for miner forest products such as fuel wood, posts, poles, Christmas trees, vegetal materials, etc., consistent with other resource objectives.

On page 47671 in the first column, the heading "Fish" should be corrected to read "Fire."

Dated: December 1, 1992.

Donald R. Cain,

Associate District Manager.

[FR Doc. 92-30010 Filed 12-9-92; 8:45 am]

BILLING CODE 4310-33-M

[UT-050-4210-05; U-60631]

Realty Action

AGENCY: Bureau of Land Management, Richfield District, Interior.

ACTION: Notice of realty action U-60631; noncompetitive sale of public lands in Garfield County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local use planning decisions based upon public input, resource considerations, regulations and Bureau policies, has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct sale) procedures (43 CFR 2711.3-3(a)(1)). Sale will be at no less than the appraised fair market value of $1000.00.

Salt Lake Meridian, Utah

T.37 S., R.11 E.,
Sec. 6, NW¼SE¼.
The described land aggregates 40 acres.

The land is being offered as a direct sale to Garfield County, Utah, in accordance with 43 CFR 2711.3-3(a)(1). Garfield County proposes to use the land for a solid waste disposal site. The parcel will be offered for sale to Garfield County not less than sixty (60) days after the date of publication of this notice.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a State or State instrumentality authorized to hold property; or a corporation authorized to hold property; or a corporation authorized to own real estate.

Bid Standards

The Bureau of Land Management (BLM) reserves the right to accept or reject any and all offers, or withdraw the

land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Publication of this notice in the **Federal Register** constitutes notice to the grazing permittees of the Rockies Allotment that their grazing leases may be directly affected by this action. Specifically, the permitted Animal Unit Months (AUMs) will not be reduced because of this sale, but the land (acreage) will have to be excluded from the allotment effective upon issuance of the patent.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The Terms and Conditions Applicable to the Sale Area:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove minerals. A more detailed description of this reservation, which will be incorporated in the patient document, is available for review at the Richfield District Office and the Henry Mountain Resource Area Office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record.

DATES: On or before January 25, 1993, interested parties may submit comments to the Richfield District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands, the terms and conditions of the sales, and the bidding instructions may be obtained from Roy Edmonds, 150 East 900 North, Richfield, Utah 84701, (801) 896–8221.

Dated: December 2, 1992.

Jerry Goodman,

District Manager.

[FR Doc. 92–30012 Filed 12–9–92; 8:45 am]

BILLING CODE 4310–DQ–M

[CO–942–93–4730–12]

Colorado; Filing of Plats of Survey

December 2, 1992

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 am., December 2, 1992.

The plat representing the dependent resurvey of portions of certain mineral claims in the northwest ¼ of section 28, T. 3 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 695, was accepted June 30, 1992.

This plat, in two sheets, representing the dependent resurvey of portions of the subdivisional line between sections 5 and 8 and of the subdivision of section 5, the subdivision of section 5 and the informative traverse of certain sand and gravel pits in section 5, T. 1 N., R. 102 W., Sixth Principal Meridian, Colorado, Group No. 1009, was accepted August 17, 1992.

The plat representing the metes-and-bounds survey in section 2, T. 44 N., R. 7 E., New Mexico Principal Meridian, Colorado, Group No. 1018, was accepted August 7, 1992.

The plat representing the dependent resurveying of a portion of the subdivisional lines, the subdivision of section 34, and a metes-and-bounds survey in section 34, T. 45 N., R. 7 E, New Mexico Principal Meridian, Colorado, Group No. 1018, was accepted August 7, 1992.

The supplemental plat showing a subdivision of original lots 4, 5, and 12 in section 15, T. 13 S., R. 92 W., Sixth Principal Meridian, Colorado, was accepted August 5, 1992.

These surveys were executed to meet certain administrative needs of this Bureau.

The supplemental plat correcting the lotting error in the NE¼ of section 27, T. 34 N., R. 11 W., New Mexico Principal Meridian, Colorado, was accepted August 7, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation and the Bureau of Indian Affairs.

The plat representing the dependent resurvey of portions of the east and north boundaries, subdivisional lines, and certain mineral claims, a metes-and-bounds survey of portions of certain lots in section 11, and the subdivision of section 11, T. 13 S., R. 83 W., Sixth Principal Meridian, Colorado, Group No. 983, was accepted September 18, 1992.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional line between section 18 and 19 and the original meander line of the left bank of the Colorado River through section 18, the survey of a portion of the subdivision of section 18, the meanders of a portion of the present left bank of the Colorado River, and the accretion of certain public land lots in section 18, T. 1 N., R. 2 W., Ute Meridian, Colorado, Group No. 886, was accepted August 18, 1992.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 13, 14, and 15, T. 1 N., R. 3 W., Ute Meridian, Colorado, Group No. 886 was approved August 18, 1992.

The plat representing the dependent resurvey of a portion of the Eleventh Standard Parallel North through a portion of Ranges 11 and 12 West, a portion of the west boundary and the subdivisional lines, and the subdivision of certain sections, T. 44 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 928, was accepted June 30, 1992.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 92–30016 Filed 12–9–92; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Notice of Record of Decision and Statement of Findings on the Environmental Impact Statement for the Chincoteague National Wildlife Refuge Master Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the United States Fish and Wildlife Service ("Service") issues this Record of Decision and Statement of Findings upon consideration of the Final Environmental Impact Statement (FEIS) for the Chincoteague National Wildlife Refuge Master Plan.

The Service has evaluated and considered the alternatives for the long-range management and development of the Chincoteague National Wildlife Refuge as presented in the FEIS and has reviewed and considered public and

agency comments. Based on that evaluation and review, the Service has selected the Proposed Action Alternative as described in the FEIS for implementation. This determination was based on a thorough analysis of the environmental, social, economic, and similar considerations.

Background

This action is designed to give overall guidance for the protection, use, and development of Chincoteague National Wildlife Refuge (CNWR) during the next ten to twenty years. Chincoteague National Wildlife Refuge was established in 1943 for use as an inviolate sanctuary, or for any other management purposes, for migratory birds. At the time of the original acquisition, primary recognition was given to southern Assateague Island's value as important habitat for migrating and wintering greater snow geese. While the refuge continues to provide important waterfowl habitat, the management emphasis has expanded over the years to address a variety of other wildlife needs. Today, Chincoteague NWR supports breeding populations of the endangered Delmarva Peninsula fox squirrel and threatened piping plover. In addition the refuge has supported a resident pair of peregrine falcons, also an endangered species, since 1982, and hundreds of peregrine falcons stop on the refuge during migration. The refuge is also one of the top five shorebird migratory staging areas in the United States, east of the Rocky Mountains. However, the refuge also provides an important educational and recreational resource for people attracted to the beautiful beach and excellent wildlife viewing opportunities. Visitation has increased sharply since construction of the bridge from Chincoteague Island in 1963 and inclusion of refuge lands within Assateague Island National Seashore (AINS) in 1965. According to refuge records, public use has grown from an estimated 100,000 visits in 1963 to more than 1.5 million visits in 1987, ascribing to Chincoteague NWR the third highest number of visits of any national wildlife refuge in the country. The primary impetus for master planning of Chincoteague NWR at this particular time comes from a growing need to balance high visitation with protection and enhancement of wildlife populations that depend on refuge habitat. The situation must be viewed in the broad context of regional and national trends in loss of wildlife habitat and demand for recreational and economic opportunities.

The Selected Alternative

The selected alternative is the Proposed Action as described in the FEIS. Management proposals regarding wildlife species and their habitat include: Acquiring important wildlife habitat in the refuge vicinity; managing refuge forests to establish and maintain endangered Delmarva Peninsula fox squirrel habitat and habitat diversity; protecting nesting and feeding piping plovers, a threatened species, and other shorebirds by intensifying predator control and continuing/expanding closures; enhancing freshwater wetland habitat on the refuge by improving water capabilities in the impoundments; maintaining existing biodiversity present on the refuge; and maintaining better control of the Chincoteague ponies. The public use and facilities management actions include: emphasizing wildlife oriented recreational and educational opportunities; continuing the deer and waterbird hunting programs; managing off-road vehicle access to protect the piping plover; retaining the current beach general recreation zone; establishing a maximum beach use capacity; continuing private vehicle beach access as long as beach parking areas remain; allowing NPS to maintain existing parking at the beach as long as the land base remains; coordinating with NPS and the Chincoteague community in identifying a suitable off-site parking area; implementing a system to eliminate traffic backups at the beach; and developing a FWS headquarters/visitor center on a geologically stable portion of the island.

Other Alternatives Considered

Besides the proposed action, the major alternatives under consideration that were analyzed and evaluated during planning include the following:

1. The No Action alternative describes current management activities, assuming that these will continue over the next ten to twenty years. A description of this course of no significant new action provides a reference point to compare and evaluate environmental consequences associated with the other alternative plans. Although significant steps are presently being undertaken to manage and protect wildlife, the overall, environmental effects of taking No Action may result in reduced wildlife habitat quality and reduced wildlife reproduction. Inadequate visitor facilities and public use regulation mechanisms will continue to compromise wildlife oriented experiences, and may degrade wildlife habitat or otherwise jeopardize wildlife production.

2. The Wildlife Management alternative emphasizes wildlife protection and gives full consideration to actively managing refuge habitats and public uses for maximum wildlife benefit. Public use has lower priority, although programs that do not require a large outlay of funding or necessitate construction of nonwildlife oriented facilities on the refuge are proposed. Habitat and wildlife production benefits from implementation of the natural resource management proposals in this alternative will exceed those described for the Proposed Action alternative, as certain public access is confined to seasonal shuttle access and habitat management programs and wildlife studies efforts are increased. Public use management consequences reflect reduced recreation opportunities, including less wildlife observation opportunities.

3. The Public Use alternative emphasizes visitor accommodation. The major objectives to protect and perpetuate the ecosystem and wildlife populations are met. Many proposed management efforts are directed towards educational, interpretive, and wildlife oriented public recreation programs. The intent is to promote public awareness and enjoyment of the refuge. Improved interpretive and educational opportunities will increase the awareness of refuge visitors about wildlife and habitat issues. However, habitat degradation and wildlife disturbance will result from increased public access to Toms Cove Hook, the White Hills, and northern refuge areas, possibly reducing wildlife presence and reproduction. These actions may, in turn, reduce the quality of wildlife oriented public use experiences.

Minimization of Impacts

Possible project impacts, public concerns, and methods to be used to mitigate those impacts and concerns are addressed in the FEIS; the major impacts and concerns are listed here. Habitat disturbance, which will result from the construction of a Visitor Center/Headquarters, will be minimized by constructing in an already disturbed site, other sites will be restored to natural habitat, and siting the facility will be conducted to use as little habitat as possible. Possible public disturbance to wildlife and habitat will be lessen by only allowing certain uses, using time restrictions, redirecting use to less sensitive areas, and using closures. A visitor cap on beach use will allow for controlled growth to allow for economic growth in the community but will also

lessen impacts to the resources. Concern that future beach parking would lead to further loss of habitat on the refuge was alleviated for future parking. Impacts of off road vehicle use on the refuge were lessen by changing this entrance, maintaining a corridor, and planning to add further restrictions if needed to protect threatened species. The impacts of traffic backups at the beach were reduced by identifying a means to eliminate these backups. The concern of pony impacts to the habitat were minimized through better containment and fire company coordination. By directing the forest management program with research and test plots, the concern for impacts to the forest resources was lessened. Concern about artificially manipulating the sand dunes was minimized by maintaining them only in selected locations and by improving drainage of impoundments so as to reduce this maintenance need. The possible impacts from deep well pumping were mitigated by calling for research and a monitoring program.

Findings and Decision

Having reviewed and considered the FEIS for the Chincoteague National Wildlife Refuge Master Plan and the public comments thereon, the Service finds as follows:

1. The requirements of NEPA and their implementing regulations have been satisfied, and

2. Statutory authority for the Service to fund (implement) this project exists, and

3. The Proposed Action Alternative represents the best balance between the Service's goals and objectives and the public's concerns identified throughout the public participation process, and

4. Consistent with social, economic, and other essential considerations form among the reasonable alternatives thereto, the Proposed Action Alternative is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the FEIS, and

5. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the FEIS process will be minimized or avoided by incorporating as conditions to this decision mitigative measures.

Having made the above findings, the Service has decided to proceed, as funding permits, with implementation of the Proposed Action Alternative. The decision to implement this alternative is subject to the following conditions that will further minimize or avoid the environmental impacts and public concerns identified during the environmental review process:

A. All activities involving physical alteration of land will be subjected to all regulatory requirements and approvals including necessary permits will be obtained or satisfied prior to construction.

B. Mitigation measures such as erosion control, timing of construction, seeding, and other conservation measures will be strictly adhered to in all construction-related activities that may be implemented as part of this project and shall be incorporated into any permits that may be issued for these activities.

This statement of Findings/Record of Decision will serve as the written facts and conclusions relied upon in reaching this decision.

Nancy M. Kaufman,

Acting Regional Director.

[FR Doc. 92-30015 Filed 12-8-92; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Umetco Minerals Corp.; Receipt of Exploration Records

AGENCY: U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from Umetco Minerals Corporation exploration records for tungsten. These records can be used to assist in regional mineral resource assessments.

DATES: This notice is effective immediately.

ADDRESSES: Material in the records is available to the public upon request at the following location: U.S. Geological Survey, Branch of Central Mineral Resources, Denver Federal Center, Bldg. 25, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. James Elliott of the U.S. Geological Survey, Branch of Central Mineral Resources, at the address given above; telephone (303) 236-5650.

B.A. Morgan,

Chief Geologist.

[FR Doc. 92-30014 Filed 12-8-92; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32187]

Canadian National Railway Company—Trackage Rights Exemption—St. Clair Tunnel Co.; Exemption

St. Clair Tunnel Company (SCTC) has agreed to grant overhead and local trackage rights to Canadian National Railway Company (CN),[1] between milepost 1.73 at the United States-Canada Boundary line and milepost 2.70 at the east line of 16th Street in Port Huron, MI. The transaction will be consummated upon receipt of approval from the appropriate regulatory agencies in the U.S. and Canada.[2]

This grant of trackage rights is one of a series of transactions that will facilitate the construction of a new tunnel to replace the existing railroad tunnel which crosses under the St. Clair River, between Sarnia, Ontario and Port Huron, MI.[3]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street, NW., suite 700, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc., 6 I.C.C.2d 799 (1990).

Dated: December 4, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 92-30007 Filed 12-9-92; 8:45 am]

BILLING CODE 7035-01-M

[1] SCTC is a wholly owned subsidiary of CN.

[2] This proceeding is related to the notice of exemption in Finance Docket No. 32180, St. Clair Tunnel Company—Acquisition Exemption—Canadian National Railway Company, filed November 13, 1992.

[3] Notices of exemptions were served August 4, 1992, in Finance Docket No. 32115, Grand Trunk Western Railroad Company—Trackage Rights Exemption—St. Clair Tunnel Company, Finance Docket No. 32116, St. Clair Tunnel Company—Acquistion Exemption—Grand Trunk Western Railroad Company, and Finance Docket No. 32117, Canadian National Railway Company—Continuance in Control Exemption—St. Clair Tunnel Company.

[Finance Docket No. 32196]

St. Clair Tunnel Company—Acquisition Exemption—Canadian National Railway Company; Exemption

St. Clair Tunnel Company (SCTC),[1] filed a notice of exemption to acquire CN's St. Clair Subdivision between milepost 1.73 at the United States-Canada Boundary line and milepost 2.70 at the east line of 16th Street in Port Huron, MI.[2]

This transaction is one of a series of transactions involving the relocation of the existing railroad tunnel which crosses under the St. Clair River, between Sarnia, Ontario and Port Huron, MI.[3]

This transaction is filed under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street NW., suite 700, Washington, DC 20006.

Decided: December 4, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-30006 Filed 12-9-92; 8:45 am]

BILLING CODE 7035-01-M

[1] SCTC is a wholly owned subsidiary of the Canadian National Railway Company (CN). CN has requested authority from the National Transportation Agency of Canada to transfer 1.19 miles of tunnel and approach track on the Canadian side of the border to SCTC.

[2] This proceeding is related to the notice of exemption in Finance Docket No. 32197, Canadian National Railway Company—Trackage Rights Exemption—St. Clair Tunnel Company, filed November 13, 1992.

[3] Notices of exemptions were served August 4, 1992, in Finance Docket No. 32115, Grand Trunk Western Railroad Company—Trackage Rights Exemption—St. Clair Tunnel Company, Finance Docket No. 32116, St. Clair Tunnel Company—Acquisition Exemption—Grand Trunk Western Railroad Company, and Finance Docket No. 32117, Canadian National Railway Company—Continuance in Control Exemption—St. Clair Tunnel Company.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States, et al.* versus *ABC Industries, et al.*, Civil Action No. 4:92 CV 163, was lodged on November 25, 1992, with the United States District Court for the Western District of Michigan.

The ABC Complaint, which would be resolved entirely under the proposed settlement, asserts claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq. The Complaint and proposed settlement address the Superfund NPL Site ("Site") known as the Verona Well Field, located in Battle Creek, Michigan. The State of Michigan is a co-plaintiff in ABC and has alleged state law claims under the Michigan Environmental Response Act ("MERA"), which is Michigan's CERCLA analog.

The proposed decree would resolve the State claims on substantially the same basis as settlement terms resolving the federal aspects of ABC, which are summarized below.

U.S. EPA has determined each ABC defendant to be a *de minimis* contributor of hazardous substances to the Site. The settlement embodied by the proposed consent decree, if entered by the Court and complied with by the *ABC* defendants, will resolve the liability of each settling defendant to the United States under CERCLA for all matters addressed in the consent decree, including incurrence of response costs at the Site, both past and future, and including but not limited to the cutoff of contribution claims asserted against these settling defendants by any other party potentially responsible for the Site under CERCLA.

In return for this protection, each settling defendant must pay what EPA has determined to be the settlor's fair share of past costs, as well as the settlor's share of estimated future costs of response at the Site. Finally, to account for the possibilities such as response cost overruns on remedies already underway at the Site or the need to implement additional remedies, each settling defendant also will pay a cash premium above and beyond the settlor's fair share of past costs and predicted costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* versus *ABC Industries, et al.*, DOJ Ref. #90-11-3-626B.

The proposed consent decree may be examined at the Office of the United States Attorney, 399 Federal Building Grand Rapids, MI 49503; the Region 5 Office of the Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the case referenced above and enclose a check in the amount of $27.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-29935 Filed 12-9-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 25, 1992, a proposed Consent Decree in *United States* v. *Nabisco, Inc.*, Civil Action No. 92-4959, was lodged with the United States District Court for the District of New Jersey. The proposed Consent Decree settles the United States' claims that the defendant had violated the Clean Air Act.

Under the terms of the Consent Decree the settling defendant will pay $358,000 in civil penalties, install pollution control equipment, and test such equipment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nabisco, Inc.*, D.O.J. Ref. 90-5-2-1-1635.

The proposed Consent Decree may be examined at the Office of the United

States Attorney, Civil Division, 970 Broad Street, Newark, New Jersey 07102; the Office of the United States Environmental Protection Agency, Region II, 26 Federal Plaza, NY, NY 10278; and at the Consent Decree Library, Environmental Enforcement Section, 601 Pennsylvania Avenue NW., Washington, DC 20044, (202 347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, Environmental Enforcement Section, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page—reproduction cost) made payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–29936 Filed 12–9–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

Notice is hereby given that a proposed Consent Decree in *United States* v. *Winnebago Reclamation Service, Inc., et al.* among the United States and 20 defendants was lodged on November 25, 1992 with the United States District Court for the Northern District of Illinois. In this action, the United States on behalf of the United States Environmental Protection Agency sought, *inter alia*, injunctive relief and recovery of response costs under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, in connection with the Pagel's Pit Site in Winnebago County, south of Rockford, Illinois. The proposed Consent Decree requires, *inter alia*, (1) implementation of the remedial actions selected by EPA for the Pagel's Pit Site as described in the Consent Decree; (2) payment to the United States of $492,000 in past response costs; and (3) payment of the United States' future costs of overseeing the implementation of remedial action. Pursuant to 42 U.S.C. 9622(g), the Decree also contains a de minimis settlement with a limited reopener with nineteen of the defendants.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Winnebago Reclamation Service, Inc.*, D.J. Ref. No. 90–11–3–712. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 211 S. Court, room 212, Rockford, Illinois 61101; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $57.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 92–29937 Filed 12–9–92; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92–76)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Flight Controls and Guidance

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on flight controls and guidance.

DATES: January 6, 1992, 8 a.m. to 5 p.m.; January 7, 1992, 8 a.m. to 5 p.m.; and January 8, 1992, 8 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Facility, Conference Room 1, Building 4800, Edwards, CA 93523.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Szalai, National Aeronautics and Space Administration, Dryden Flight Research Facility, Edwards, CA 94035, 805/258–3118.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. the agenda for the meeting is as follows:

—Control Science Review
—Flight Crucial Systems
—Review of Dryden Programs

Dated: December 4, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–30060 Filed 12–9–92; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by January 8, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, Attn: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Retrospective Yearbook, Presidential Awardees for Excellence in Science and Mathematics, 1983–1993.

Affected Public: Individuals.

Respondents/Reporting Burden: 1,400 respondents; 15 minutes each respondent.

Abstract: The purpose of this data collection effort is to gather information from award winners for a Yearbook to commemorate a decade of operation of the Presidential Awards for Excellence in Science and Mathematics Teaching Program by the National Science Foundation.

Dated: December 7, 1992.

Herman G. Fleming,

Reports Clearance Officer.

A Special Message for Presidential Award Winners

Dear Presidential Award Winner: This is a special year for the Presidential Awards for Excellence in Science and Mathematics Teaching Program. We are celebrating our first decade of honoring the very best teachers in science and mathematics.

As part of our celebration the National Science Foundation has asked Booz-Allen and Hamilton to help them produce a yearbook showcasing the program and all its awardees. The yearbook will also contain some basic information about each awardee—Name, school, state, award year,

discipline, and teaching level. This information will help others in need to assistance or expert advice locate a Presidential Awardee who can help.

To do this we need your help. Please:

- Send us a small black and white snapshot that we can use to picture you along with the others in "your class."
- Sign the permission line below, allowing us to include information on you in the yearbook.
- Share your thoughts with us by responding to three short questions.

Please return your answers, your signed permission, and your picture in the enclosed envelope, marked "Presidential Awardees." We hope that all of you will help us out with this project. Please be assured, however, that should you decline to participate, there will be no negative consequences.

Thank you in advance for all your support. We look forward to hearing from you.

I give my permission to the National Science Foundation to include my name, school, state award year, discipline, and teaching level in a yearbook commemorating a decade of the Presidential Awards Program.

Signature

Date

[FR Doc. 92-30023 Filed 12-9-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Atmospheric Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review the 5-year University Corporation for Atmospheric Research (UCAR) proposal for the operation and management of the National Center for Atmospheric Research (NCAR), and the report of the NSF Panel to evaluate UCAR's response to the review issues. The meeting will also update the current Atmospheric Sciences Long-Range Plan. Because the proposal and associated documents being reviewed include privileged intellectual property and information of a proprietary or confidential nature, including information concerning individuals, this part of the meeting is closed to the public. These matters fall under exemptions (4) and (6) of 5 U.S.C., 552b(c), Government in the Sunshine Act.

Name: Advisory Committee on Atmospheric Sciences

Date & Time: January 11, 1993, 9 a.m. to 5 p.m. (Closed); January 12, 1993, 9 a.m. to 3 p.m. (Open); January 12, 1993, 3 p.m. to 5 p.m. (Closed); January 13, 1993, 9 a.m. to 12 p.m. (Open)

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Part open.

Contact: Dr. Carol A. Roberts, Acting Division Director, Division of Atmospheric Sciences, Washington, DC (202) 357-9874.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Review and evaluate the UCAR 5-year proposal for operation and management of the National Center for Atmospheric Research and the report of the NSF Panel; to discuss the Long-Range Planning for the Division of Atmospheric Sciences.

Agenda:

Closed: January 11, 1993, 9 a.m. to 3 p.m.—UCAR Proposal Review.

Open: January 12, 1993, 9 a.m. to 3 p.m.—Long-Range Planning.

Closed: January 12, 1993, 3 p.m. to 5 p.m.—Continuation of UCAR Proposal Review.

Open: January 13, 1993, 9 a.m. to 12 p.m.—Continuation of Long-Range Planning.

Dated: December 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-29986 Filed 12-9-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: January 8, 1993; 8 a.m.-5 p.m.

Place: Conference Room # 536, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, Division of Earth Sciences, room 602, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357-7356.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowship Applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-29987 Filed 12-9-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mechanical and Structural Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following four meetings:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: January 7, 1993; 9 a.m. to 5 p.m.

Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Surface Engineering and Tribology, Telephone: (202) 357-9542.

Date and Time: January 14-15, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. John Scalzi, Program Director, Large Structural and Building Systems, Telephone: (202) 357-9542.

Date and Time: January 14-15, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Ken P. Chong, Program Director, Structural Systems and Building Processes, Telephone: (202) 357-9542.

Date and Time: January 25-26, 1993; 8:30 a.m. to 5 p.m.

Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Mehmet Tumay, Program Director, Geomechanical, Geotechnical, and Geo-Environmental Systems, Telephone: (202) 357-9542.

Types of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Surface Engineering and Tribology proposals and Structures, Geomechanics and Building Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-29984 Filed 12-9-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-

463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Nuclear Physics (PHY).

Dates and Times: The list of Nuclear Physics Site Visits follows:

1. Princeton University, Cyclotron Laboratory, Seminar Room, Princeton, NJ 08544—1/15/93, 9 a.m.–5 p.m.
2. University of Pennsylvania, Department of Physics, Tandem Laboratory, Seminar Room, Philadelphia, PA 19104—1/16/93, 9 a.m.–5 p.m.
3. Florida State University, Department of Physics, Tandem Laboratory, Seminar Room, Tallahassee, FL 32306—1/18/93, 9 a.m.–5 p.m.
4. University of Wisconsin, Department of Physics, Seminar Room, Madison, WI 53706—1/21/93, 11 a.m.–7 p.m.
5. California Institute of Technology, Kellogg Laboratory, Seminar Room, Pasadena, CA 91125—1/23/93, 9 a.m.–5 p.m.
6. State University of New York, at Stony Brook, Department of Physics, Seminar Room, Stony Brook, NY 11974—2/2/93, 9 a.m.–5 p.m.
7. University of Rochester, Nuclear Structure Research Laboratory, Seminar Room, Rochester, NY 14627—2/3/93, 12 p.m.–5 p.m.; 2/4/93, 9 a.m.–5 p.m.
8. Notre Dame University, Department of Physics, Seminar Room, Notre Dame, IN 46556—2/5/93, 9 a.m.–5 p.m.; 2/6/93, 9 a.m.–5 p.m.

Types of Meetings: Closed.

Contact Person: Dr. Harold C. Britt, Program Director, Nuclear Physics Program, Division of Physics, room 341, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7992.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To perform a site visit, examine proposals, reviewer's evaluations and make recommendations for new and renewal awards for Nuclear Physics in FY 1993 competition.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: December 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–29985 Filed 12–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date: January 5–7, 1993.

Place: Room 543, National Science Foundation, 1800 G St. NW., Washington, DC.

Type of Meeting: Part-Open.

Contact Person: Dr. Harold Britt, Program Director, Nuclear Physics, rm. 341, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: 202–357–7993.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: 1/5 and 1/6—9 a.m.–12 p.m. and 2:30–5:30 p.m.; Overview presentations from eight NSF supported University Accelerator Facilities; Closed session 1/5 and 1/6—8:30–9 a.m.; 12–2 p.m. 5:30–8 p.m.; 1/7—8:30 a.m.–3 p.m.

To review and evaluate Accelerator Laboratory Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–29988 Filed 12–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: January 11, 1993; 8:30 a.m. to 5 p.m.

Place: Room 540B, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Julie M. Palais, Program Director, Division of Polar Programs, Room 620, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–7894.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Arctic glaciology research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–29983 Filed 12–9–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 49th meeting on Thursday and Friday, December 17 and 18, 1992, 8:30 a.m. until 6 p.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on Wednesday, November 25, 1992 (57 FR 55574).

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

A. Discuss items of priority for ACNW consideration during 1993.

B. Hear an information briefing on the NRC staff's evaluation of DOE's requested resolution of site characterization analysis objection #1.

C. Hear an information briefing on the results of geological cross-section balancing activities.

D. Hear a briefing from the ACNW Working Group Chairman on the Performance Assessment Working Group meeting of December 16, 1992.

E. Discuss a report to the Director of NMSS concerning ACNW interests.

F. Continue to prepare a Committee report on the impact of long-range climate change in the Southern Great Basin.

G. Hear a briefing on a recent DOE workshop concerned with the use of expert judgment in high level waste licensing.

H. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Use of still, motion picture, and

television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: December 4, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–29926 Filed 12–9–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp., (Nine Mile Point Nuclear Station Unit No. 1); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated October 27, 1992, Ben L. Ridings (Petitioner) filed a "Petition for Emergency Enforcement Action and Request for Public Hearing" (Petition) regarding Nine Mile Point Nuclear Station Unit No. 1 (NMP–1) with the Nuclear Regulatory Commission. The Petition, which has been referred to me for consideration as a petition under 10 CFR 2.206, requests. that the Nuclear Regulatory Commission immediately order Niagara Mohawk Power Corporation (NMPC) to cease power operation of NMP–1 and place the reactor in a cold shutdown condition. The Petition seeks relief on the basis of allegations that:

(1) NMP–1 does not meet NRC requirements for an engineered safety feature system (ESFS) grade high-pressure coolant injection (HPCI) system,

(2) 45 percent of the containment isolation valves have administrative deficiencies, and

(3) NMPC, NMPC's quality assurance group and the NRC have reviewed these safety concerns, and contrary to any practical justification, have remained silent.

With respect to the lack of an ESFS grade HPCI system, the Petitioner had two concerns: First, the Petitioner stated that the feedwater system, which can operate in an HPCI mode, is not an acceptable alternative system because it does not have a backup electrical power supply provided by an onsite emergency diesel generator; second, the Petitioner was concerned about using the feedwater system in a HPCI mode because some 44 out of 47 values in the feedwater injection flow path are not included in the NMP–1 Inservice Test Program for pumps and valves.

For the reasons stated in a letter to the Petitioner dated December 4, 1992, Petitioner's request for immediate action was denied. Petitioner's request is being treated in accordance with 10 CFR 2.206 of the Commission's regulations. The NRC will take appropriate action on this request within a reasonable time.

A copy of the Petition is available for inspection and copying for a fee in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 4th day of December 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92–29994 Filed 12–9–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 160 to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to delete the auto-start logic of the Containment Spray System (CSS) by plant modifications to be performed in the 14R refueling outage. In order to achieve this, revisions were necessary to Technical Specifications 3.1 and 3.4 Bases sections; deletion of the instrumentation requirements of Table 3.1–1 Section E; deletion of Containment Spray System from Table 4.1.2 (which lists surveillance test frequencies for Automatic Trip Systems); and deletion of the surveillance requirement for Technical Specification 4.4.C.2 for auto-start actuation test.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 12, 1992 (57 FR 8785). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (57 FR 47125).

For further details with respect to the action see (1) the application for amendment dated February 19, 1992, (2) Amendment No. 160 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 4th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–29995 Filed 12–9–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia.

The proposed amendment would revise the Technical Specifications to establish operating requirements for the recirculation mode transfer (RMT) function and include the following:

(1) Limiting Conditions for Operation, Action Statements, and Surveillance Requirements for the RMT function,

(2) Deletion of refueling water storage tank maximum volume requirements and clarification of refueling water storage tank water temperature requirements, and

(3) Administrative changes to provide consistency throughout.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 11, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.91.

For further details with respect to this action, see the application for amendment dated August 7, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 4th day of December 1992.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–29992 Filed 12–9–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–32 and DRP–37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia.

The proposed amendment would revise the Technical Specifications (TS) to allow one of two service water flow paths to the main control and emergency switchgear rooms air conditioning condensers to be removed from service for system maintenance. This is accomplished by specifying an Action Statement for operable service water flow paths to the main control and emergency switchgear rooms air conditioning condensers governed by TS 3.14.C. A limiting Condition for Operation (LCO) permitting one train to be out of service for 24 hours prior to HOT SHUTDOWN and an additional 48 hours prior to COLD SHUTDOWN will be used in lieu of the requirements of TS 3.0.1.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 11, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Swen Library, College of William and Mary, Williamsburg, Virginia 23815. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer to the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 10, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 4th day of December 1992.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–29993 Filed 12–9–92; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1993, shall be at the rate of 31 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1993, 33.9 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.1 percent of the taxes collected under sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 3, 1992.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92–30011 Filed 12–9–92; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

December 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Intercapital Income Securities, Inc.
Common Stock, $1.00 Par value (File No. 7–9718)
Intercapital Insured Municipal Bond Trust
Common Stock, $.01 Par Value (File No. 7–9719)
International Recovery Corp.
Common Stock, $.01 Par Value (File No. 7–9720)
Ionics, Inc.
Common Stock, $1.00 Par Value (File No. 7–9721)
Irish Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9722)
James River Corp. of Virginia
$3.375 Cum. Conv. Exch. Pfd., Ser. K, $10.00 Par Value (File No. 7–9723)
James River Corp. of Virginia
Depositary Shares, No Par Value (File No. 7–9724)
Jersey Central Power & Light
4% Cum. Pfd. Ser. $100.00 Par Value (File No. 7–9725)
Jersey Central Power & Light
8% Cum. Pfd. Ser. $100.00 Par Value (File No. 7–9726)
Jersey Central Power & Light
8.12% Cum. Pfd. Ser. $100.00 Par Value (File No. 7–9727)
Jersey Central Power & Light
7.88% Cum. Pfd., Ser. E $100.00 Par Value (File No. 7–9728)
Jersey Central Power & Light
8.75% Cum. Pfd., Ser. H $25.00 Par Value (File No. 7–9729)
John Hancock Investors Trust
Capital Stock, $1.00 Par Value (File No. 7–9730)
Kaneb Pipeline Partners, L.P.
Sr. Pfd. Units No Par Value (File No. 7–9731)
Katy Industries, Inc.
Common Stock, $5.00 Par Value (File No. 7–9732)
Kemper Corp.
Common Stock, $5.00 Par Value (File No. 7–9733)
Keystone Consolidated Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–9734)
LaQuinta Motor Inns, L.P.
Common Stock, No Par Value (File No. 7–9735)
Lincoln National Income Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–9736)
Litton Industries, Inc.
$2.00 Cum. Conv. Pfd., Ser. B, $5.00 Par Value (File No. 7–9737)
Lomas & Nettleton Mortgage Investors
Shares of Beneficial Interest, No Par Value (File No. 7–9738)
Long Island Lighting Co.
8 ½% Pfd., Ser. J $100.00 Par Value (File No. 7–9739)
Long Island Lighting Co.
5% Pfd., Ser. B $100.00 Par Value (File No. 7–9740)
Long Island Lighting Co.
4.35% Pfd., Ser. E $100.00 Par Value (File No. 7–9741)
Long Island Lighting Co.
5¾% Pfd., Ser. I $100.00 Par Value (File No. 7–9742)
Long Island Lighting Co.
8.30% Pfd., Ser. K $100.00 Par Value (File No. 7–9743)
Long Island Lighting Co.
$2.47 Pfd., Ser. O $25.00 Par Value (File No. 7–9744)
Long Island Lighting Co.
$2.43 Pfd., Ser. P $25.00 Par Value (File No. 7–9745)
Long Island Lighting Co.
$2.35 Pfd., Ser. Z $25.00 Par Value (File No. 7–9746)
Long Island Lighting Co.
$9.80 Pfd., Ser. S $100.00 Par Value (File No. 7–9747)
Longview Fibre Co.
Common Stock. $7.50 Par Value (File No. 7–9748)
LTV Corp.
$5.00 Cum. Pfd., Ser. A $5.00 Par Value (File No. 7–9749)
LVI Group, Inc.
Common Stock, No Par Value (File No. 7–9750)
Lukens, Inc.
Common Stock, $.01 Par Value (File No. 7–9751)
Luxottica Group S.P.A.
American Depositary Receipts, No Par Value (File No. 7–9752)
Magnetek, Inc.
Common Stock, $.01 Par Value (File No. 7–9753)
Major Group, Inc.
Common Stock, $.20 Par Value (File No. 7–9754)
Malaysia Fund, Inc.

Common Stock, $.01 Par Value (File No. 7–9755)
Manhattan National Corp.
Common Stock, $2.00 Par Value (File No. 7–9756)
Marine Midland Banks, Inc.
Adj. Rte. Cum. Ser. A Pfd. $1.00 Par Value (File No. 7–9757)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 28, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–29943 Filed 12–9–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31558; File No. SR–NASD–92–14]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Use of Negative Response Letters in Certain Bulk Exchanges of Money Market Funds

December 3, 1992.

On September 10, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 thereunder.[3] The proposal amends the NASD's Rules of Fair Practice to exempt the use of negative response letters in connection with the bulk exchange of money market mutual funds in certain situations.

Notice of the proposed rule change, together with its terms of substance, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31360, October 27, 1992) and by publication in the **Federal Register** (57 FR 49733, November 3, 1992). One comment was received, which expressed support for the proposal. This order approves the proposed rule change.

The rule change approved herein amends Article III, section 15 of the NASD Rules of Fair Practice to create an exemption for the use of negative response letters in connection with bulk exchanges of money market mutual funds, provided that the bulk exchanges are effected at net asset value and are limited to mergers and acquisitions of funds, a change of clearing members, or an exchange of funds used in sweep accounts. In addition, such negative response letters will be subject to the following requirements: (1) The negative response letter must include a tabular comparison of the nature and amount of fees charged by each fund; (2) the negative response letter must include a comparative description of the investment objective of each fund; (3) a prospectus of the fund to be purchased must accompany the negative response letter; and, (4) the negative response feature may not be activated until at least 30 days after the date on which the letter was mailed.

Article III, section 15 requires written authority from a customer before a member or registered representative can exercise discretion in the customer's account. In NASD Notice to Members 91–39 (June 1991), the NASD reminded members that the use of negative response letters, which permit the automatic execution of a recommendation in such letters if a customer does not respond to the letter by a specific date, would violate the provisions of Article III, section 15. Following the distribution of Notice to Members 91–39, the NASD received requests from members that it consider amending Article III, section 15 to exempt the use of negative response letters in connection with the bulk exchange of money market mutual funds in certain situations. The first situation involves the use of a negative response letter to effect the bulk exchange of money market mutual funds resulting from the merger or acquisition of a currently used money market fund. The second situation involves the use of a negative response letter to effect the bulk exchange of money market mutual funds necessitated by the member's change of its respective clearing member and the money market mutual fund which such clearing member utilizes. The third situation involves the use of a negative response letter to effect the bulk exchange of money market mutual funds when a member wishes to utilize a different fund from that which is being used currently as the investment vehicle for a sweep account. In such customer accounts, the balances resulting from securities transactions are automatically invested in money market funds for the benefit of the customer.

The NASD believes that the use of negative response letters in connection with the above-described situations should be exempted from the provisions of Article III, section 15 because investment performance is not the primary reason for the fund exchange, and alternative administrative procedures can be extraordinarily burdensome. The NASD believes that the above-described situations are not usually related to the enhancement of the account's financial performance. Abuses of discretion and overreaching, which Article III, section 15 addresses, are therefore unlikely to occur in the three above-described bulk fund exchanges. The NASD also recognizes that it is often necessary to notify hundreds and, sometimes, several thousand money market mutual fund shareowners of an impending money market fund exchange. It may be an extremely difficult, if not impossible, administrative task to contact each of the customers who have failed to respond, and to solicit their approval of the fund exchange. At best, such an individual contact and approval process results in considerable time delays and added cost in effecting the fund exchange.

The NASD believes, however, that additional disclosure and timing requirements are appropriate in connection with the proposed exemptions to Article III, section 15 for the protection of investors because such exchanges involve the redemption of one security and the purchase of another. Accordingly, the rule change further provides that (i) the negative response letter include a tabular comparison of the nature and amount of fees charged by each fund; (ii) the negative response letter include a

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[1] This filing was originally submitted on April 30, 1992. On August 5, 1992, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 reported the results of a member vote on the proposed rule change, which was published for member vote in NASD Notice to Members 92–25 (May 1992). The results of the member vote were as follows: 1890 voting in favor, 133 opposed, and 19 not voting, out of 2042 ballots received. The NASD filed Amendment No. 2 to the proposed rule change on September 10, 1992, which completely replaced the original rule filing.

[2] 15 U.S.C. 78s(b)(1)(1988).

[3] 17 CFR 240.19b–4 (1992).

comparative description of the investment objective of each fund; (iii) a prospectus of the fund to be purchased accompany the negative response letter; and (iv) the negative response feature not be activated until at least 30 days after the date on which the letter was mailed.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[4] Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." The Commission believes that the proposed exemption for the use of negative response letters in connection with certain bulk exchanges of money market mutual funds is consistent with the provisions of section 15A(b)(6) because it will eliminate an obstacle to the timely and efficient execution of such bulk exchanges without compromising investor protections, and therefore, will benefit customers and members alike. For this reason, and for the reasons stated above, the Commission believes that the proposed rule change satisfies the requirements of section 15A(b)(6) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-29944 Filed 12-9-92; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78o-3 (1988).

[5] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-31561; File No. SR-NASD-92-45]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Rules for Quotations and Transaction Reporting for High Yield Securities Including Bonds Quoted in the Fixed Income Pricing System

December 4, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 10, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing regulatory requirements for members that participate in the high yield fixed income securities market. The proposed trade reporting rules will require members to report transactions in all high yield bonds traded over-the-counter to the NASD for regulatory purposes, and will also require real-time trade reporting for securities included in the Fixed Income Pricing System ("FIPS"). FIPS has been developed to facilitate the collection, processing and dissemination of real-time, firm quotations for 30 to 50 of the most liquid bonds in the top tier of high yield fixed income securities. FIPS also provides for hourly dissemination of high/low trading ranges and accumulated volume in each bond quoted in the system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background

In September 1991, the SEC's Division of Market Regulation released to Congress the Report on Transparency in the Market for High-Yield Debt Securities[1] which found that "a substantial improvement in the transparency of the high-yield debt market is both necessary and desirable." In that report, the Division concluded that developing a quotation and transaction reporting system for the most liquid high yield bonds would increase transparency and improve surveillance efforts in the high yield bond markets. At the same time, the Division recognized that increasing transparency in a market that is relatively illiquid could have significant costs in terms of dealer participation in such a market. Thus, the Division focussed its comments on efforts to increase transparency in the 40 to-50 most actively traded securities.

Following release of the Division's report, the Chairman of the SEC requested that the high yield bond trading community formulate proposals to implement the Division's suggestions for increased transparency and surveillance of the market. In February 1992, the NASD's Ad Hoc Committee on Transparency in the High Yield Market ("Committee") prepared a "White Paper" which articulated its concerns about the negative effect of increased transparency on the liquidity in the high yield market. Nevertheless, the Committee submitted a proposal to the Commission[2] that included these specific recommendations:

(1) Hourly batch reporting of top tier trading ranges and volume for public dissemination,

(2) Display of firm quotations in top tier bonds, and

(3) Periodic or end-of-day reporting of individual transaction data for all high-yield securities for surveillance purposes.

The Committee further recommended that, in conjunction with the NASD, it assume responsibility for establishing and maintaining on a current basis the list of designated top tier securities.

[1] See, letter from Richard C. Breeden, Chairman, SEC to the Honorable Donald W. Riegle, Jr., Chairman, Senate Committee on Banking, Housing and Urban Affairs (Sept. 6, 1991).

[2] An earlier report was submitted to the SEC in January 1992 that recommended transaction reporting but failed to recommend implementation of a quotation or trading system for high yield bonds.

The NASD is submitting this rule proposal to create a regulatory framework for: (1) Transaction reporting for surveillance purposes and (2) increased transparency through live, firm quotations and hourly dissemination of transaction information including high and low trading ranges and volume in the high yield securities quoted in FIPS.[3]

2. The Fixed Income Pricing Systems for Quotations in High Yield Debt Securities

A. Designation of securities quoted in the fixed income pricing system. As the SEC report recognized, trading in high-yield securities comprises activity in several different market segments or tiers, and the most important distinction between the top tier and the lower two tiers is the frequency of trading or liquidity in the issues. Accordingly, high yield bonds will be selected for inclusions in FIPS from the most liquid tier of high yield bonds. Unlike listing qualifications in the Nasdaq market, issuers will not make listing applications; rather, trading characteristics of outstanding issues will determine whether the bonds warrant inclusion in the FIPS quotation system. To accomplish the selection of bonds for the system, the NASD has established an advisory committee that is a subcommittee of the NASD's Fixed Income Committee. In conjunction with the advisory committee, the NASD will develop a list of top tier securities based on the following factors: volume, price, name recognition of the issue, research following, and representation from diverse industry groups. Within one year, the list of FIPS securities will be composed of no less than 50 bonds, but in order to permit the addition of significant new issues during that period, the initial list will be composed of approximately 30 bonds. In addition, the NASD will establish a minimum number of outstanding bonds in the issue for including a security in FIPS and require at least two dealers in each FIPS issue. After the first year of operation, the NASD will propose more quantitative standards for both the listing and delisting of FIPS bonds.

The high yield bonds quoted in FIPS may be immediately withdrawn from the system if the bonds have matured, been called, been upgraded (rated higher than BB+) or been downgraded to an extent that their trading characteristics no longer warrant inclusion in the system. In addition, the NASD and the advisory committee will conduct periodic reviews of the securities quoted in FIPS to recommend changes as warranted, utilizing the criteria discussed above relating to volume and depth in the security. Participants in the system will be notified of any deletion of a FIPS bond from the quote system through the FIPS "News" frame, these procedures should provide participants with notice of orderly additions and deletions from the system. The NASD anticipates that the list of FIPS securities will grow to 50 bonds within the first year of operation.

The processing of bonds in any automated environment mandates development and use of a unique identifier for each bond issue. Multiple bonds with the same or similar due dates and interest rates may be issued by a corporation for different purposes over a period of time. This is in contrast to a corporation's issuance of common or preferred stock in the equity marketplace. Due to the multiplicity of issues and potential for confusion, the NASD will assign a unique identifier to each bond that will be quoted in FIPS and trade reported to the NASD. The identifiers will be configured as mnemonics that relate to the issuer and the specific bond series and will be available on-line to subscribers in FIPS and also in a hard copy publication from the NASD.

B. Quotation requirements for the fixed income pricing system. Members holding themselves out regularly as brokers or dealers in high yield bonds quoted in the system will be required to participate in FIPS and transmit their quotations to the system for dissemination to the public. Dealer quotes may be one-sided or two-sided, but must be continuous and firm to all members submitting offers to trade at the quoted prices and sizes. (Firm quote exceptions for dealers updating their quotations or executing at trade parallel those in place for equity securities.) Quotations submitted by members must reflect a minimum size of 100 bonds ($100,000 par value) and be in increments of 1/8 percentage points. Participants may trade at prices other than those quoted, but all quotes must be reasonably related to the prices at which those executions occur. Because there are no requirements for the submission of two-sided quotations, there will not be any need at the outset for excess spread parameters.

Registered dealers may enter quotes directly into FIPS or may use a registered broker's broker. Dealer quotations entered directly will be identified as much in FIPS; dealer quotations entered through a broker's broker will appear on the FIPS screen as the broker's quotes and the dealer's identity will remain anonymous to other participants and the public. Each individual dealer will be able to use FIPS to see its own quote reflected in the broker's quote, however. For example, if a broker received two dealer quotes for 100 bonds each, priced at 98, the FIPS system would reflect a single quote of 200 bonds at 98 from the broker. Both for the FIPS dealers would be able to "pierce" that broker quote however, and see that 100 bonds reflected their own quote and the other 100 bonds was from another unidentified dealer. The NASD's Market Operations and Surveillance departments will, or course, be able to see each individual dealer quotation.

Because high yield bonds are frequently issued publicly held corporations for which equity securities may be traded in the Nasdaq or exchange markets, the NASD will institute quotation halt procedures in FIPS bonds when the related equities have been halted, or when news has been disseminated by the issuer or other information regarding the issuer comes to light that may affect trading in the bonds. Participants will be alerted to quotation halts via the FIPS News frame and the NASD will withdraw all broker and dealer quotations from the FIPS screen at the commencement of the halt. Similarly, the NASD will notify participants when quoting may resume and allow a short period of time for participants to reenter their quotations into FIPS.

Members will be able to view FIPS quotations through a FIPS terminal, and quotations will be disseminated to non-members through securities information processors, or vendors, so that they will be generally available to investors. The operating hours of the quotation system have been established at 9:30 a.m. to 4 p.m. eastern time, to mirror the equity market hours.

Although the predominant volume of trading in high yield bonds is negotiated over the telephone, the NASD is developing a supplemental trading capability in FIPS that will permit screen-based order entry and negotiation of orders, similar to the SelectNet service available to members trading Nasdaq securities. Members will be able to broadcast orders to all participants quoting a FIPS security in the system or will be able to direct an order to a single dealer or broker. Orders may be timed to expire after three minutes or may be designated as day orders or good-til-canceled orders. The system will permit negotiation of the terms of the order, subject to the

[3] The NASD will also submit rule proposals for service charges for participants and subscribers to the FIPS service.

directions and limitation of the entering member (e.g., all or none) and will permit straight acceptance and execution of the order. Members executing trades through FIPS will not be required to report these trades separately, as the details of the transactions will have already been captured by the system.

3. Reporting Transactions in High Yield Bonds

The NASD believes that reporting transactions in high yield bonds facilitates two critical market functions—regulatory surveillance of the activity in the market and public dissemination of prices at which transactions have actually occurred. As discussed in more detail below, with integrated quotation and transaction information, the NASD will implement automated surveillance procedures and will enhance the on-site examination programs currently in place.

With regard to public dissemination of transaction information, the NASD concurs with the SEC and the Ad Hoc Committee's views that the benefits of transparency must not increase the financial risks to participants in the marketplace to the extent that they are no longer willing or able to absorb risk, commit capital or provide liquidity to the market. In the high yield bond markets, dealer risk can only be managed through fundamental research on the issuer. Unlike the market for government bonds or investment-grade securities, traders in less active high yield securities will not take a position or consequence without a detailed understanding of the credit risk and the debtor's vulnerability to changing economic and business conditions. A dealer's decision to provide liquidity to a seller requires a substantial time commitment, the maintenance of extensive analytical research capabilities and relatively high capital costs. Accordingly, the NASD worked with the Ad Hoc Committee to devise a meaningful mechanism that would provide for public dissemination of transactional data without diminishing liquidity in the market: to require trade reporting of transactions in FIPS securities within five minutes after execution and to disseminate hourly calculations of high and low trading price ranges as well as accumulated volume statistics. This summary information will minimize both the degree to which vulnerable dealer positions will be exposed and the number of sensitive proprietary judgments about the credit worthiness of particular issues that may be revealed. Hence the costs in reduced liquidity would be far less significant than under a real-time reporting and dissemination system. At the same time, the summary information disseminated should significantly increase the ability of investors to monitor market movements and the quality of executions received in high yield bonds quoted in FIPS.

A. Trade reporting procedures. Members will be required to submit trade reports on all transactions in FIPS securities (those top tier securities quoted in FIPS) within five minutes after an execution. Members' reporting obligations are as follows:

(A) In transactions between a FIPS dealer and a FIPS broker, the FIPS broker shall be required to report;

(B) In transactions between two FIPS dealers, the dealer representing the sell side shall be required to report;

(C) In transactions between a FIPS participant and a member of the Association that is not a FIPS authorized participant, the FIPS participant shall be required to report;

(D) In transactions between two members of the Association that are not authorized FIPS participants, the sell side shall be required to report; and

(E) In transactions between a member and a non-member (i.e., a customer) the member shall be required to report.

In addition, each trade report must contain the following information:

(A) Bond identification symbol assigned by the Association;

(B) Number of bonds or par value of entire order;

(C) Unit price, excluding commissions, mark-ups or mark-downs;

(D) Time of execution (if the trade report is submitted more than three minutes after execution);

(E) Contra side, if a broker or dealer, and if the contra side includes more than one party, the member shall report each contra side individually, with the number of bonds (or par value), unit price, and time of execution associated with each contra side trade. Transactions between a FIP participant and a customer shall indicate the contra side as such.

(F) A symbol indicating whether the trade is as principal, riskless principal or agent;

(G) A symbol indicating whether the transaction is a buy, sell or cross; and

(H) The settlement date if the trade is other than regular way settlement.

In addition, members will be required to report information on all other transactions in high yield bonds to the NASD for surveillance purposes. Trade reporting for non-FIPS securities may be accomplished any time during the trading day, but in any event by 5 p.m. eastern time of trade date, and must include the time of execution on the report. The other trade reporting requirements and information to be submitted to the NASD are identical to those required for FIPS securities. Finally, once the FIPS order execution functions are implemented, trades executed through FIPS will automatically be captured, batched with other trade reports and disseminated hourly to the public.

4. Surveillance of the Market

The NASD concurs with the Commission's expressed views that the institution of automated surveillance in the corporate bond area is both necessary and appropriate for protection of the investing public. The proposed surveillance system for high yield debt securities will provide the NASD's Market Surveillance department with the ability to conduct reviews over the high yield market by allowing bond data to be downloaded from the FIPS processor to Market Surveillance systems. Market Surveillance will use quotation and transactional data to monitor for insider trading, failure to report the required trade information during the appropriate time frames, adjusted trading and backing away. In addition, the data will serve to form the basis of on-site examinations for violations of the NASD's mark-up policy and reviews of agency commissions, analysis of best execution, market manipulation through domination and control, and review of net capital.

5. FIPS System Functionality

FIPS is comprised of two primary components—the host application or server operated by the NASD or its subsidiaries and the workstation application operated by the member firm. In the server component of FIPS, application-specific processing such as logon/logoff, security validation and entitlement, business function, database servers, and administrative and operational controls will be implemented. The FIPS host application is responsible for processing transactions sent by workstations such as quotations and quote updates, distributing data to the workstations, and accepting trade reports. Data distributed to workstations may be in response to a specific transaction request or may be a piece of information distributed to all attached workstations. The host system will accept data from the local area network based workstations and will also accept transaction reports from member firm in-house trading system via computer-

to-computer interface (CTCI) link to the host.

In the FIPS workstation application, functions such as the Graphical User Interface (which allows users to configure the information display to meet their own individual work environment), screen formatting, screen navigation, and first level editing will be implemented. The FIPS workstation application can be configured via a user profile to display quotes on only those bonds that the trader wishes to follow. When new information is transmitted to FIPS, such as adding a new quote or updating an existing quote, the change is immediately sent to all relevant FIPS terminals. While the FIPS host application broadcasts all changes to the terminals, the FIPS workstation application will only display those changes pertinent to the user profile. In other words, information filtering is handled at the workstation level and not at the host. Any relevant screens will be updated dynamically when the information is broadcast by the FIPS host. The workstation will also have a local file database to store frequently accessed data, thus reducing communications overhead to the NASD host.

For members that operate their own automated trading systems, FIPS will accommodate the firm's existing in-house environment through CTCI linkages. All quotes and quote updates will be communicated through the FIPS workstation application to the FIPS host. Trade reports, on the other hand, can be communicated through the firm's host system through a CTCI link into the NASD's equity systems.

Two FIPS host systems will be maintained—the primary system in Trumbull, Connecticut and the backup or redundant system in Rockville, Maryland. In the event of a failure of the primary system, the redundant site will assume the FIPS processing functions. Security will be provided at the host application level through user IDs and passwords.

FIPS will facilitate reporting of the top tier trades hourly and provide end-of-day reporting for all bonds; provide for dealer and broker screens tailored to each use; provide leased line and dial-up connections; allow members to use their existing equity CTCI lines for trade reporting; and provide interfaces with member in-homes trading systems.

The NASD will make FIPS quotation and summary transaction information available to investors and the public through securities information processors. The data feeds to these vendors will include dealer and broker quotations on the FIPS bonds as well as aggregate transaction information including hourly summaries and daily summaries of high and low execution prices and accumulated volume in the FIPS securities.

The NASD believes the proposed rule change is consistent with sections 11A and 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system." Section 11A(a)(1)(C)(iii) states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. FIPS will increase transparency in the high yield market by providing participants and investors with real-time, firm quotations in the most liquid bonds, and will facilitate surveillance of the market with real-time trade reporting requirements pertaining to FIPS securities and end-of-day trade reporting requirements for all other OTC transactions in high yield bonds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. However, the NASD worked with the Ad Hoc Committee on Transparency in the High Yield Market and with the NASD Fixed Income Committee in developing these rules and procedures.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92-30004 Filed 12-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31546; File No. SR-OCC-92-36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corp. Relating to a Modification of OCC's Fees

December 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 12, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been preparedby the self-

[1] 15 U.S.C. 78s(b)(1).

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify OCC's schedule of fees for its Direct Data Service and its Clearing Management and Control System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify OCC's fee schedule for its Direct Data Service ("DDS") and its Clearing Management and Control System ("C/MACS") to more closely reflect the actual cost of providing such services to individual Clearing Members.

DDS is a fast, convenient means for Clearing Members with data processing facilities to receive data processed by OCC. The Clearing Member may choose to receive, on a subscription basis, all data relating to its daily activity, or may select the specific data types required by its data processing systems. DDS transmits OCC's nightly processing data to Clearing Members via OCC's dial-up network or via a leased line network.

C/MACS is an on-line system which allows Clearing Members to submit post-trade activity directly to OCC and includes editing, inquiry and audit controls. C/MACS data entry capabilities include the submission of exercise notices, position adjustments, transfers of accounts, Clearing Member Trade Assignment Agreement (CMTA) transfers, unmatched transfers and spreads. Like DDS, C/MACS may be accessed via a dial-up network or a leased line network. Subscription to C/MACS is an OCC mandated requirement of membership.

OCC's current fee schedule charges a monthly rate for leased line DDS, dial-up DDS, leased line C/MACS, and dial-up C/MACS. A reduced fee is charged to those Members that subscribe to both DDS and C/MACS since some of the same equipment is used. The current fee schedule does not take into consideration the location of the subscribing Clearing Member or the communication speed of the leased line or dial-up network.

OCC is proposing to modify the current fee schedule for several reasons. First, OCC's communications network has greatly expanded beyond the cities to the suburbs, and regionally across the country, resulting in higher communication costs in some areas and lower costs in others. Accordingly, the proposed fee schedule would reflect the actual cost of providing the ancillary service to Clearing Members in a particular location. Second, the communication speed of the particular leased line or dial-up line used by the Clearing Member impacts the actual cost of delivery. Accordingly, the proposed fee schedule would take into account the communication speed of the particular network line being used.

Structurally, the proposed fee schedule would consist of a base charge dependent upon communications speed, a line charge based upon speed and member location, and a subscription fee based on services used. OCC believes that the proposed fee schedule would encourage certain Clearing Members to upgrade their ancillary services, resulting in more efficient operations for both the Member and OCC. The proposed fee schedule would become effective January 1, 1993.

For example, under the existing fee schedule, the OCC charges each Clearing Member a flat rate of $1,570 a month for DDS. Under the proposed fees, a Clearing Member located in Chicago would pay from $804 to $1,899 a month for DDS depending upon the communications speed of the leased line or dial-up line. For the same service, a Clearing Member located in New Jersey would pay from $1,112 to $2,084 a month.

Finally, OCC has determined that it is now necessary to begin charging Clearing Members for the use of its Express Bundling service, a report transmission service. Previously, Clearing Members were not able to print entire reports from their terminal. As a result, in order for Clearing Members to obtain hard copies of a report, the OCC was required to transmit the entire report directly to the Clearing Member's printer via the Express Bundling service. Clearing Members are now able to print entire reports from their own terminal. The OCC has therefore determined that clearing Members who wish to continue to use the Express Bundling service must pay for the actual cost incurred. Accordingly, the proposed fee schedule includes the new charge for the Express Bundling service.

The proposed rule change is consistent with the requirements of section 17A of the Securities Exchange Act of 1934, as amended ("Act"), because it promotes new data processing and communication techniques, thereby creating the opportunity for more efficient, effective and safe procedures for clearance and settlement, and because it allocates reasonable fees in an equitable manner among OCC's Clearing Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4 because the proposed rule change establishes or changes a due, fee, or other charge imposed by OCC. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to File No. SR–OCC–92–36 and should be submitted by December 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30003 Filed 12–9–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1733]

Ad Hoc U.S. Task Group 12/4 of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that Ad Hoc U.S. Task Group 12/4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting January 27, 1993 at the Federal Communications Commission, 2000 L Street, NW., Washington, DC in room 258 from 9:30 a.m. to noon.

CCIR Study Group 12 deals with matters concerning inter-service sharing and compatibility. Task Group 12/4 was recently established to study frequency sharing criteria within the range 1 to 3 GHz.

The objectives of the meeting on January 27 are to:

—Identify the relevant frequency bands for the sharing study;
—Identify the sharing combinations that need to be studied;
—Identify and review existing relevant sharing studies within each Study Group;
—Identify areas which need further study; and
—Establish a work program.

The first meeting of Task Group 12/4 is scheduled for 19–23 April 1993 in Geneva.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Harry Ng, Federal Communications Commission, (202) 634–1834.

Dated: December 4, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92–30021 Filed 12–9–92; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–067]

New York Harbor Traffic Management Advisory Committee; Applicants for Appointment

AGENCY: Coast Guard, DOT.
ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the New York Harbor Traffic Management Advisory Committee (NYHTMAC). The mission of the committee is to provide consultation and advice on a wide range of issues. It provides local expertise on such matters as vessel traffic in New York Harbor, anchorages, communications, and advice on a wide range of matters regarding all facets of navigation safety and other related topics dealing with waterways traffic management. The New York Harbor Management Advisory Committee operates in the public interest and addresses those duties imposed on the Coast Guard by law.

The advisory committee shall be composed of no fewer than 12 members from Federal, State and local government, the marine industry, port and harbor authorities, environmental groups, and other interested parties who will be appointed by the Secretary of Transportation upon recommendation by the Commander, First Coast Guard District and the Commandant for terms not to exceed the expiration date of the charter.

The duration of this committee is continuous with a charter renewal required every two (2) years. Appointments to the committee are for the two (2) year life of the charter and candidates for appointment shall apply prior to charter expiration. The present charter expires on September 13, 1993.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

DATES: Requests for applications should be received no later than April 30, 1993.

ADDRESSES: Persons interested in applying or further information should write to: Commanding Officer, Vessel Traffic Service New York, Building 108, First Floor, Governors Island, NY 10004, Attn: NYHTMAC Executive Secretary, or contact, Lieutenant Commander Paul Benvenuto, USCG, NYHTMAC Executive Secretary at (212) 668–7429.

Dated: November 23, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port New York, NYHTMAC Executive Director.

[FR Doc. 92–30056 Filed 12–9–92; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–92–30]

Houston/Galveston Navigation Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II) notice is hereby given of the thirtieth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 28, 1993, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittee and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M. M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street,

New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: December 7, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92–30053 Filed 12–9–92; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–92–31]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 7, 1993, in the offices of the West Gulf Maritime Association, 1717 East Loop, suite 200, Houston, Texas. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: December 7, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92–30054 Filed 12–9–92; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–92–32]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 7, 1993, in the offices of the West Gulf Maritime Association, 1717 East Loop, suite 200, Houston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: December 7, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92–30055 Filed 12–9–92; 8:45 am]

BILLING CODE 4910–14–M

[CGD92–068]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on January 13, 1993, in the South Conference Room "B", 34th floor, One World Trade Center, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York harbor.
4. Update on Vessel Traffic Service.
5. Update on Coast Guard regulatory initiatives: Bridge-to-Bridge Act.
6. Bayonne Bridge lighting/clearances.
7. 40 foot channel through the Kill Van Kull and Newark Bay.
8. "P.O.R.T.S." update.
9. Tidal Gauges.
10. Topics from the floor.
11. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.P. Benvenuto, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 108, Governors Island, New York, NY 10004–5070; or by calling (212) 668–7429.

Dated: 23 November 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port New York, NYHTMAC Executive Director.

[FR Doc. 92–30052 Filed 12–9–92; 8:45 am]

BILLING CODE 4910–14–M

Federal Transit Administration

Environmental Impact Statement on Transit Improvements in Austin, TX

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Capital Metropolitan Transportation Authority (Capital Metro) intend to resume the preparation of an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), for transportation improvements in the Northwest/North Central Corridor of Austin. A previous effort by FTA (formerly the Urban Mass Transit Administration) and Capital Metro to complete an EIS for transit

improvements in the corridor became inactive in 1989 when Capital Metro chose to pursue additional alternatives. The resumption of the EIS process is based on the identification of new alternatives.

The EIS is being prepared in conformance with 40 CFR parts 1500–1508, Council on Environmental Quality, "Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act;" and 49 CFR part 622, Federal Transit Administration, "Environmental Impact and Related Procedures." In addition to fixed guideway or rail transit alternatives, the EIS will evaluate the No-Build and Transportation System Management (TSM) alternatives, and any additional alternatives which result from the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, and local agencies and through a public meeting.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Capital Metro by February 2, 1993. *Scoping Meeting:* A public scoping meeting will be held on Tuesday, January 19, 1993 at 6 p.m. at the Austin Public Library. Interested persons may view exhibits describing the corridor beginning one hour before the meeting. See **ADDRESSES** below.

ADDRESSES: *Written comments* on the project scope should be sent to Jim Robertson, Project Manager, Capital Metro, 2910 East Fifth Street, Austin, Texas 78702, (512) 389–7444. Scoping materials may be requested from Capital Metro at the phone number listed. The *scoping meeting* will be held at the following location: Austin Public Library, 4th Floor Auditorium, 800 Guadalupe, Austin, Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Peggey Crist, Transportation Program Specialist, Federal Transit Administration, Region 6, (817) 334–3787.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and Capital Metro invite interested individuals, organizations and federal, state and local agencies to a public scoping meeting to be held on January 19, 1993 at the time and location indicated under **DATES** and **ADDRESSES** (above), to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives.

An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program and the preliminary project schedule has been mailed to affected federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contacting Jim Robertson at the address above or by calling him at (512) 389–7444. Scoping comments may be made verbally at the public scoping meeting or in writing. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives.

Scoping should not indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on a mailing list to receive further information as the project develops, contact Mr. Jim Robertson as previously described.

II. Description of Study Area and Project Need

The Northwest/North Central corridor is a major travel corridor which includes the Central Business District, the State Capitol Complex and the University of Texas (UT) campus as well as several major activity/employment centers. Major transportation facilities in this corridor include U.S. 183, IH–35, Loop 1 (MoPac Boulevard), Lamar Boulevard and Guadalupe Street. The Central Business District, State Capitol Complex and UT are the three major transit generators in the region.

The Northwest/North Central Corridor was studied under the previous EIS effort. Work completed as part of that previous effort will be updated and incorporated into the current DEIS.

Transit improvements in the Northwest/North Central Corridor are intended to improve transportation capacity, transit quality and accessibility in the corridor. The project should benefit regional air quality by providing an improved alternative to single occupancy automobile trips.

III. Alternatives

Transportation alternatives previously considered were the following

A—No Build.

B—Expanded All-Bus System with Low Cost Improvements (Transportation System Management).

C—Busway, Ranch-to-Market (RM) 620 to Martin Luther King Boulevard, using U.S. 183, Braker Lane, Austin & Northwestern Railroad Right-of-Way and IH–35, with a Subalignment on Lamar Boulevard.

D—Light Rail Transit, RM 620 to Central Area via Braker Lane, Lamar Boulevard and Guadalupe Street, with Central Loop and Palmer Auditorium Subalignments.

E—Light Rail Transit, RM 620 to Central Area via Austin & Northwestern Railroad Right-of-Way through East Austin and into downtown via 3rd and 4th Streets, with Central Loop and Palmer Auditorium Subalignments.

When the previous study drew to a close in 1989, Capital Metro opted to pursue the expansion of the existing bus route network and deferred and/or ceased further development of the other alternatives. In 1991, a new Light Rail Transit alternative in the Northwest/North Central Corridor was identified for study.

Transportation alternatives proposed for consideration in the current Northwest/North Central Corridor DEIS are the following:

(1) A No-Build option, which involves no change to transportation services or facilities in the corridor beyond already committed projects;

(2) A Transportation System Management (TSM) approach, which represents the optimum bus service improvements that can be made without construction of a fixed guideway or exclusive busway; and

(3) A Light Rail Transit alternative, following the Austin & Northwestern Railroad (AU&NW) right-of-way from Parmer Lane at MoPac Boulevard to Lamar Boulevard, Lamar Boulevard to Guadalupe, Guadalupe to Martin Luther King Boulevard, and then through the State Capitol Complex and CBD areas using Lavaca Street and 4th Street; an eastern leg follows along 4th Street to east of IH–35 and transitions back to the AU&NW right-of-way along 5th Street to Pleasant Valley Road. An alternative subalignment using Congress Avenue exists for the downtown area. Another alternative subalignment, between Lamar and U.S. 183, follow U.S. 183 and North Lamar Boulevard instead of the AU&NW Railroad right-of-way.

These alternatives have been selected based on the results of previous planning efforts in the corridor area. Other alternatives may emerge during the scoping process.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and Capital Metro plan to evaluate all significant social, economic, and environmental impacts of these and other alternatives and publish findings

in the DEIS. Among the primary issues are:

- Transportation service, including future capacity of the corridor, transit cost, transit service, patronage change, and effect on traffic movement and parking;
- Transit financial implications;
- The impact of the proposed alternatives on strengthening the urbanized core of Austin;
- Local and regional economic impacts;
- Community impacts, including land use, neighborhood compatibility, and safety;
- Cultural impacts, including the effects on historic, archaeological and park resources;
- Natural resource impacts, including air quality, noise and vibration; water resources and quality. The proposed impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed impact evaluation criteria will take into account both positive and negative impacts, direct and indirect impacts, and site-specific and corridor-wide impacts. Evaluation criteria will be consistent with the applicable federal, state, and local standards, criteria, regulations, and policies. Mitigation (reduction) measures will be explored for any adverse impacts that are identified as part of the analysis.

V. FTA Procedures

In accordance with the Federal Transit Act, as amended, and FTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering, the next step in project planning. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, Capital Metro will select a locally preferred alternative and seek approval from the FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: December 7, 1992.

Wilbur E. Hare,

Regional Administrator.

[FR Doc. 92-30046 Filed 12-9-92; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 4, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0115
Form Number: ATF 5220.4
Type of Review: Extension
Title: Monthly Report—Export Warehouse Proprietor
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor handling receipts, dispositions and onhand quantities. ATF F 5220.4 is used for product accountability and is examined by regional office personnel.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 206
Estimated Burden Hours Per Respondent: 48 minutes
Frequency of Response: Monthly
Estimated Total Reporting Burden: 2,002 hours
OMB Number: 1512-0461
Form Number: ATF REC 5110/11
Type of Review: Extension
Title: Marks and Labels on Containers of Distilled Spirits
Description: The marking, branding and labeling of containers of spirits by distilled spirits plants provide the data to identify, trace and quantify the spirits.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 279
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: Other
Estimated Total Reporting Burden: 279 hours
Clearance Officer: Robert N. Hogarth, (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-30009 Filed 12-9-92; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

December 4, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0834
Form Number: None
Type of Review: Extension
Title: Regulations Under Tax Conventions—Ireland
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 80
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 20 hours
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-30008 Filed 12-9-92; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Chiefly Feasts: The Enduring Kwakiutl Potlatch" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Houston Museum of Natural Sciences, Houston, Texas, from on or about January 29, 1993 to on or about September 5, 1993, the National Museum of Natural History, Smithsonian Institution, Washington, DC, from on or about September 15, 1993 to on or about July 18, 1994, and the Seattle Art Museum, Seattle, Washington, from on or about May 4, 1994 to on or about October 23, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: December 4, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-30045 Filed 12-9-92; 8:45 am]

BILLING CODE 8230-01-M

Summer Institute in the American Political System for Foreign University Educators

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications to conduct a six week graduate level summer institute (including an integrated follow-on tour) in the American political system for approximately 18 foreign university educators (primarily members of law, government, political science and foreign relations faculties) who are either currently teaching about some aspect of the American political system or are planning to do so. Participants will be selected by the United States Information Service (USIS) posts overseas and will have high-level fluency in English. USIA is asking for detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that demonstrate an acknowledged reputation in the relevant subdisciplines of political science and expertise in conducting graduate level programs for foreign educators.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time, on Friday, January 22, 1993. Faxed documents will not be accepted, nor will documents post-marked January 22, 1993 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. In order to allow adequate preparation time, grants should begin by April 2, 1993. Approximate institute program dates should be July 2 to August 12, 1993. Participants will be scheduled to arrive in the U.S. on or about July 1, and depart on August 13, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Summer Institute in the American Political System for Foreign University Educators, Office of Grants Management, E/XE, 301 4th Street SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations or institutions should contact William C. Jones at the U.S. Information Agency, Division for the Study of the U.S., E/AAS, room 256, 301 4th Street SW., Washington, DC 20547, telephone: (202) 619-4557, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget information.

SUPPLEMENTARY INFORMATION: The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must "maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life," and must "maintain their scholarly integrity and shall meet the highest standards of academic excellence * * *".

Overview

The summer institute in the American political system aims to provide approximately 18 foreign university educators with opportunities to improve teaching about the U.S. by enriching their knowledge of the foundations, development, and current functioning of the American political system by working with distinguished scholars and by undertaking individual projects (for example, intensive reading, scholarly research, or writing) of their own choosing.

Guidelines

Eligibility

Accredited colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations which demonstrate an acknowledged reputation in the relevant subdisciplines of political science and expertise in conducting graduate level programs for foreign educators are eligible to apply. Proposals from consortia may be submitted by a member institution with documented authority to represent all members.

Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director, or one of the key program staff responsible for the academic program, must have an advanced degree in political science. University staff escorts traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Objectives

The objective of the institute is to provide foreign university teachers with opportunities to improve teaching about the U.S. by enriching their knowledge of the foundations, development, and current functioning of the U.S. political system.

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

Audience

The program should be designed for approximately 18 experienced university-level educators who are currently teaching some aspect of the American political system or plan to do so. Institute participants will come primarily from faculties of law, political science, government and international relations. Participants will be selected by United States Information Service (USIS) posts worldwide and will have a high-level fluency in English. Although some participants may have visited the U.S. previously, an initial orientation to the U.S. and the American campus should be an integral part of the institute and should be held at the beginning of the program.

Program Design

The institute should be specially designed for experienced foreign university-level educators and should not duplicate courses normally given by graduate departments for American graduate degree candidates. Although it is important that the topics and readings of the institute be clearly organized, the institute should not be structured like a lecture course or a graduate seminar. Rather, it should facilitate the development of a collegial atmosphere in which institute faculty and participants discuss relevant texts, issues, and concepts. Total program length is six weeks with a minimum of five weeks devoted to the academic component at the host institution. The last week of the seminar should provide an escorted tour which includes three-to-four program days in Washington, DC to reinforce the academic content of the institute. A visit to one more additional site for scholarly purposes is optional.

Academic and Tour Components

The institute is offered for foreign university educators in the fields of law, political science, government, and international relations who want to deepen and revitalize their understanding of the foundations, development, and current functioning of the U.S. political system. It is important that the academic program be clearly organized, and that its organization be broad enough to accommodate the diverse backgrounds of its participants. The institute should begin with an orientation to the U.S. and the American campus. During the course of the institute, participants should be encouraged to engage in individual scholarly and/or curriculum projects. The institution which conducts the program should be prepared to offer the level of scholarly resources and professional assistance necessary to give adequate support to such projects. It should also offer participants an overview of the state of the discipline of political science in the United States, and familiarize them with scholarly and institutional contacts and bibliographic information which will be useful to them for follow-up activities.

The tour component of the institute should be planned, arranged, and conducted by the program director and principal project staff and should be seen as an integral part of the program, complementing and reinforcing the academic component. It must include three-to-four program days in Washington, DC, and may include a visit to one more site. Either the Washington program or the program at an optional third site should include visits to think tanks and archives, and should be structured so that participants are given a chance to pursue separate professional interests. Programming in Washington should include a half-day wrap-up session at the United States Information Agency. The grantee institution should consult closely with USIA in planning the Washington itinerary. Details of the academic and tour programs may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

Proposed Budget: Applicants must submit a comprehensive line item budget for which specific details are available in the application packet. The total USIA-funded budget must not exceed $128,000. USIA-funded administrative costs as defined in the application packet must not exceed $42,500. Applications requesting more than $42,500 for administrative costs, and/or more than $128,000 for total institute costs to USIA, or that do not allocate these costs consistent with the budget instructions will not be considered. Organizations submitting proposals are urged to cost share program and administrative expenses to the greatest degree possible. Participant international travel costs will be covered by USIA, and should not be included in the budget submission.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be reviewed competitively according to the following criteria:

1. Overall quality.

A. The content, significance, definition, organization and academic rigor of the proposed program (including the follow-on tour) and its appropriateness to program objectives.

B. Evidence of careful planning.

C. The program or project should be representative of current expert knowledge in the field, and should be consistent with the requirements of the Bureau's legislative charter, meeting the highest professional qualitative standards of achievement.

2. Institutional capacity. Adequacy of proposed resources, including faculty, library and other research and scholarly resources; housing availability, and other institutional support important to a collegial setting, should be adequate and appropriate to achieve the program goals.

3. Experience of professionals and staff assigned to the program with foreign educators; institution's track record with international exchange programs.

4. Evaluation and follow-up.

A. Adequacy of plan for an evaluation at the conclusion of the institute by the grantee institution.

B. Adequacy of provisions made for "multiplier effect," i.e., future follow-up and networking between grantees and appropriate U.S. scholarly organizations and institutions.

5. Evidence of strong on-site administrative and managerial capabilities (with specific discussion of how managerial and logistical arrangements will be undertaken).

6. Availability of local and state resources for the orientation, institute, and follow-on tour.

7. Cost effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should be considered.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 30, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 3, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-29773 Filed 12-9-92; 8:45 am]

BILLING CODE 8230-01-M

Summer Institute in American Studies (Focus on Twentieth Century American Literature) for Foreign University Educators

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications to conduct a six week graduate level summer institute (including an integrated follow-on tour) in American studies with a special focus on twentieth century American literature for approximately 18 foreign university educators (primarily members of language and literature departments who teach American literature or American studies). Participants will be selected by United States information Service (USIS) posts overseas and will have high-level fluency in English. USIA is asking for detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that demonstrate an acknowledged reputation in the disciplines of American studies and in American literature and expertise in conducting graduate level programs for foreign educators.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m.Washington, DC time, on Friday, January 22, 1993. Faxed documents will not be accepted, nor will documents post-marked January 22, 1993 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. In order to assure adequate preparation time, grants should begin by April 2, 1993. Approximate institute program dates should be July 2 to August 12, 1993. Participants will be scheduled to arrive in the U.S. on or about July 1, and depart on August 13, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Summer Institute in American Studies (focus on twentieth century American literature) for Foreign University Educators, Office of Grants Management, E/XE, 301 4th Street, SW., room 336, Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations or institutions should contact William C. Jones at the U.S. Information Agency, Division for the Study of the U.S., E/AAS, room 256, 301 4th St. SW., Washington, DC 20547, telephone: (202) 619-4557, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget information.

SUPPLEMENTARY INFORMATION: The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must "maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life," and must "maintain their scholarly integrity and shall meet the highest standards of academic excellence * * *".

Overview

The summer institute aims to provide approximately 18 foreign university teachers with opportunities to broaden the cultural and historical base of courses they teach in American studies and American literature by enriching their knowledge of multidisciplinary approaches to the study of American literature and society, using the example of twentieth century American literature, by working with distinguished scholars, and by undertaking individual projects (for example, intensive reading, scholarly research, or writing) of their own choosing.

Guidelines

Eligibility

Accredited colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations which demonstrate an acknowledged reputation in the disciplines of American studies and in American literature and expertise in conducting graduate level programs for foreign educators are eligible to apply.

Proposals from consortia may be submitted by a member institution with documented authority to represent all members. Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director, or one of the key program staff responsible for the academic program, must have an advanced degree in either American literature or American studies. University staff escorts traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Objectives

The objective of the institute is to provide foreign university educators with opportunities to broaden the cultural and historical base of courses they teach in American studies and literature by enriching their knowledge of multidisciplinary approaches to the study of American literature and society, and by strengthening their knowledge of twentieth century American literature.

Audience

The program should be designed for 18 experienced university-level foreign educators who are currently teaching American studies or American literature, or who plan to do so. Institute participants will come primarily from language and literature departments or from American studies departments with a strong American literature component. Participants will be selected by United States Information Service (USIS) posts worldwide and will have high-level fluency in English. Although some participants may have visited the U.S. previously, an initial orientation to the U.S. and the American campus should be an integral part of the institute and should be held at the beginning of the program.

Program Design

The institute should be especially designed for experienced foreign university-level educators and should not duplicate courses normally given by graduate departments for American

graduate degree candidates. Although it is important that the topics and readings of the institute be clearly organized, the institute should not be structured like a lecture course or a graduate seminar. Rather, it should facilitate the development of a collegial atmosphere in which institute faculty and participants discuss relevant texts, issues, and concepts. Total institute length is six weeks with at least a four week academic component. The program should include an approximately two-week escorted tour of two regions of the United States and Washington, DC designed to reinforce the academic content of the institute by providing additional institutional contact and exposure to relevant historical sites, libraries, archives, etc. The tour should end in Washington, DC.

Academic and Tour Components

The institute is offered for foreign university educators in the fields of American studies and American literature who want to to broaden the cultural and historical base of courses they teach in American studies and literature, and enrich their teaching through a knowledge of multidisciplinary approaches to the study of American literature and society. The academic program should briefly discuss major American studies principles and approaches, particularly those which apply to the use of literature as texts in the study of American culture and society. The institute should then focus on a few key twentieth century American literary texts. It is important that the academic program be clearly organized, and that its organization be broad enough to accommodate the diverse backgrounds of its participants. The institute should begin with an orientation to the U.S. and the American campus. During the course of the institute, participants should be encouraged to engage in individual scholarly and/or curriculum projects. The institution which conducts the program should be prepared to offer the level of scholarly resources and professional assistance necessary to give adequate support to such projects. It should also familiarize participants with scholarly and institutional contacts and bibliographic information which will be useful to them for follow-up activities.

The tour component of the institute should be planned, arranged, and conducted by the program director and principal project staff and should be seen as an integral part of the program, complementing and reinforcing the academic component by providing exposure to a range of sites including archives, libraries, state and local historical societies, etc. The proposal should indicate the tour sites, which should not exceed two regions in addition to a visit to Washington, D.C. at the end of the tour. Programming in Washington should include a half-day wrap-up session at the United States Information Agency. Grantee institution should consult closely with USIA in planning the Washington itinerary. Details of the academic and tour components may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

Proposed Budget

Applicants must submit a comprehensive line item budget for which specific details are available in the application packet. The total USIA-funded budget must not exceed $136,000. USIA-funded administrative costs as defined in the application packet must not exceed $42,500. Applications requesting more than $42,500 for administrative costs, and/or more than $136,000 for total institute costs to USIA, or that do not allocate these costs consistent with the budget instructions will not be considered. Organizations submitting proposals are urged to cost share program and administrative expenses to the greatest degree possible. Participant international travel costs will be covered by USIA, and should not be included in the budget submission.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be reviewed competitively according to the following criteria:

1. Overall quality.

A. The content, significance, definition, organization and academic rigor of the proposed program (including the follow-on tour) and its appropriateness to program objectives.

B. Evidence of careful planning.

C. The program or project should be representative of current expert knowledge in the field, and should be consistent with the requirements of the Bureau's legislative charter, meeting the highest professional qualitative standards of achievement.

2. Institutional capacity. Adequacy of proposed resources, including faculty, library and other research and scholarly resources; housing availability, and other institutional support important to a collegial setting, should be adequate and appropriate to achieve the program goals.

3. Experience of professionals and staff assigned to the program with foreign educators; institution's track record with international exchange programs.

4. Evaluation and follow-up.

A. Adequacy of plan for an evaluation at the conclusion of the institute by the grantee institution.

B. Adequacy of provisions made for "multiplier effect," *i.e.*, future follow-up and networking between grantees and appropriate U.S. scholarly organizations and institutions.

5. Evidence of strong on-site administrative and managerial capabilities (with specific discussion of how managerial and logistical arrangements will be undertaken).

6. Availability of local and state resources for the orientation, institute, and follow-on tour.

7. Cost effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should be considered.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 30, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 3, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-29772 Filed 12-9-92; 8:45 am]

BILLING CODE 12-19-92

Freedom Support Act—Secondary School Exchange Initiative for Academic Year Programs

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of youth between the ages of 15 and 18½ years of age with the twelve Newly Independent States (NIS) of the former Soviet Union. These exchanges represent part of the activities of the Secondary School Exchange Initiative as included in the Freedom Support Act and are subject to the availability of funding for the Fiscal Year 1993 program.

This is a request for proposals for components of the academic year program (inbound) and for the semester and year outbound program. Requests for proposals in support of other programs under the aegis of the Freedom Support Act are being published separately.

DATES: Deadline for proposals: All copies of proposals for grants under this request must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, January 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on January 15 but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadlines. Grant funding should be available after April 1, 1993 in support of projects that will require implementation by June.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: F.S.A.—Academic Program Youth Exchange, Office of Grants Management, E/XE, 301 4th Street SW., rm. 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact David Dallas, Youth Programs Division, E/P, room 357, (202) 619-6299; FAX (202) 619-5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overall authority for these exchanges is contained in the Freedom Support Act (Pub. L. 102-391).

Overview

Grant funding is intended to promote the exchange of young people, from 15 to 18½, years of age between the U.S. and Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan (NIS). The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values and information.

Three different program designs will be utilized for this program which include: (A) An academic year program, (B) A school-to-school linkage program, and (C) Short-term exchanges program. This request contains information on the Category A program. Information on Categories B and C appears in separate RFP's. Additionally, guidelines are provided for outbound semester and year programs. This RFP deals only with the academic year program. Other RFP's will be published soliciting proposals for the other two programs.

Guidelines for Inbound Academic Program

Purpose

To place pre-selected high school students from NIS countries in the U.S. to study and live for up to one academic year. To place the students in qualified host families and welcoming schools. To enable participants to have program enhancements that give them a broader view of the society and culture of the U.S.

The administration of this program has been divided into three parts—1. Recruitment, selection, pre-departure logistics and orientation; 2. Washington DC enhancement program; 3. Placement, supervision and program enhancements during the school year, which may include providing intensive English training for some participants. The selection of organizations to administer the recruitment and selection process is being conducted separately. The RFP soliciting organizations to administer the Washington DC enhancement program will be published separately. Organizations are, therefore, invited to submit proposals only for part 3 in response to this RFP.

Note: Organizations submitting proposals for Placement should bear in mind that the Washington DC enhancement program (Part 2), will be conducted during the months of January and February for students placed east of the Mississippi River as their mid-year program; and, at the end of the academic year (June/July, 1994) for students placed west of the Mississippi River.

3. *Placement*—Organizations may bid on no fewer than 20 slots. There is no maximum number of placement slots.

Placements will be for one full academic year. It is anticipated that 20 to 30 organizations will be funded to provide placement for approximately 1,500 students.

Placements will be spread all across the U.S., but organizations are expected to place participants in "clusters" of up to 30 who will live within a two-hour radius of each other (via car). The purpose of clustering is to facilitate periodic gatherings for ongoing orientation, excursions and cultural programming, as well as supervision and feedback.

The organization should provide: A monthly get-together of the "cluster" for special programming and a 3-day end-of-program gathering for re-entry training and debriefing prior to departure. All students will have a mid-year regional program. As described above, for students east of the Mississippi River this will be held in Washington DC and conducted by a separate organization. Placement organizations should plan a mid-year program for students west of the Mississippi, preferably in conjunction with other placement organizations in a given region.

Organizational responsibilities include arrival orientation in the local district or region and all placement in schools and host families. Practices and procedures must meet the requirements of J-visa regulations for secondary school exchange visitor sponsors.

All organizations bidding on placement must include a provision for those students in need of intensive English training. It is anticipated that approximately 500 participants will require some remedial training in English before commencing the school year. Three weeks of intensive instruction should suffice for this

purpose. It is estimated that the cost per capita will be $1,500 for language training. Airfare to and from the language training site will be paid under the separate grants to the organizations administering recruitment and selection. Individual placement organizations will not know until the finalists are assigned how many of their students will need intensive English training.

Program Description for English Training: Students will arrive in the United States on or about July 25 and will travel immediately to the training sites for 3 weeks of English instruction. The administering organization should include material on American society and culture, but the focus should be on raising the students' reading, comprehension and speaking skills in preparation for entering American schools.

Guidelines for Outbound Academic Program

Purpose

To provide opportunities for American high school students or immediate graduates to study in NIS countries for a semester or an academic year at the secondary or preparatory level. The length of stay may be no less than four months. $200,000 is available for this program. It is anticipated that this is sufficient to partially sponsor up to 100 students, depending on the level of cost-sharing.

There is no prescribed formula for this aspect of the program. Grantee organizations, working with their NIS partners, will: Recruit and select students using their own criteria; arrange for their placement in NIS schools; select and orient host families; make all travel and logistical arrangements; conduct orientation sessions; conduct reentry and debriefing sessions; supervise students, solve problems, and provide counseling as needed; develop a mechanism for the transfer of academic credit and/or the certification of school attendance; and evaluate the program's success.

Organizations may submit proposals solely for an outbound program or may include this as a component of their proposals for any other program in this initiative. Both private not-for-profit organizations and public educational institutions (including secondary schools, school districts and state education agencies) are eligible.

Budget

The organization must submit a comprehensive line item budget. Details are available in the application packet. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director of Educational and Cultural Affairs. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, rigor and relevance to Agency mission and adherence to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Value to U.S.-Partner Country Relations

Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact and significance in the partner country(ies).

5. Cost Effectiveness

The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Track Record/Ability

Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential new applicants.

8. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for evaluation by the grantee institution.

10. Geographic Diversity

The Agency will seek to provide geographic diversity within the NIS and the U.S. through this program.

11. Organizational Restrictions

The Agency will need to consider any restrictions an organization may have on their ability to accept students for the placement program. If no restrictions are mentioned and explained in the proposal, the organization is obligated to accept any participant assigned by the Agency.

12. Organizational Standing

An organization submitting a proposal should be in good standing with USIA and the Council on Standards for International Educational Travel. Organizations submitting proposals for placement should have a minimum of four years experience in youth exchanges.

13. English Training

The organization submitting proposals for placement must ensure high quality English training for participants whether the program is conducted by the organization or subcontracted. Particulars of English training must be fully described in the proposal.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by

the Agency that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 3, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-29972 Filed 12-9-92; 8:45 am]

BILLING CODE 8230-01-M

Freedom Support Act—Secondary School Exchange Initiative for Short Term Projects

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of youth between the ages of 15 and 18½ years of age with the twelve Newly Independent States (NIS) of the former Soviet Union. These exchanges represent part of the activities of the Secondary School Student Exchange Initiative as included in the Freedom Support Act and are subject to the availability of funding for the Fiscal Year 1993 program.

This is a request for proposals for short term thematic exchanges. Requests for proposals in support of other programs under the aegis of the Freedom Support Act are being published separately.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington DC on Friday, January 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on January 15 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin May 1. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline. Grant funding will be available after April 1, 1993. Projects may not begin before May 1, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: F.S.A.—Short-Term Youth Projects, Office of Grants Management, E/XE, 301 4th Street SW., rm. 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact David Dallas, Youth Programs Division, E/P, room 357, (202) 619-6299; FAX (202) 619-5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overall authority for these exchanges is contained in the Freedom Support Act (Pub. L. 102-391).

Overview

Grant funding is intended to promote the exchange of secondary school students, from 15 to 18½ years of age, between the U.S. and Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values and information.

Three different program designs will be utilized for this program which include: (A) An academic year program, (B) A school-to-school linkage program, and (C) Short-term exchanges program. This RFP deals with the short term exchange program. Other RFP's will be published soliciting proposals for the other two programs.

Guidelines for Short-Term Exchanges

Grants will be awarded to support programs for 3 to 6 week duration. Programs should have a thematic focus. Eligible foci may include, but are not limited to: The arts (theater, dance, music, fine arts, literature, folklore, and film/video); language and culture; science, technology, and mathematics; conservation and the environment; journalism; historic preservation; social, political, and economic issues; agriculture; business administration/management (including enterprise promotion); and homestay programs under the title, "the American Community Experience," which should include local programming in such areas as State and municipal government, regional culture, etc.

A minimum of ten students each from both the U.S. and the NIS must be exchanged through the program. One-for-one reciprocity is not a requirement, but is encouraged. Proposals should provide detailed information on the activities in both the U.S. and the partner country. Proposals should provide written evidence that the U.S. organization has the commitment of a counterpart organization in the partner country willing and able to engage in the proposed activities. In most cases, the counterpart organization should assume responsibility for the local costs of hosting the American participants in the reciprocal portion of the program. Homestays are desirable. The minimum stay in country for all programs is 3 weeks.

Projects requesting support for tours of performing arts groups or sports teams are eligible only if the primary purpose of the program is mutual education and there is extensive structured interaction between international participants and their hosts. Tours of performing arts groups or sports groups where the primary activity is performance or competition will not be eligible. Outdoor camping projects must have a thematic focus. They must include details for measuring performance/achievement of the participants.

Unless there are extenuating circumstances, programs should maintain a ratio of not more than one adult per every ten youth. The exchange program may also include excursions, social and cultural activities, and opportunities to experience community life. It is very desirable for each group of NIS students to have a segment of their program in Washington, DC or a state capital.

Grantee organizations are responsible for developing a sustainable partnership with an organization or agency of government in the NIS; designing the components of the exchange; managing all travel arrangements, logistics, insurance coverage, visas, etc.; training of adult escorts; disbursing and accounting for grant funds.

Budget

Approximately $2,000,000 will be available for grants under this program.

The organization must submit a comprehensive line item budget. Details are available in the application packet. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director of Educational and Cultural Affairs.

Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria

Technically eligible applications will be competively reviewed according to the following criteria:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, rigor and relevance to Agency mission and adherence to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Value to U.S.-Partner Country Relations

Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact and significance in the partner country(ies).

5. Cost Effectiveness

The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Track Record/Ability

Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for evaluation by the grantee institution.

10. Selection Process

Proposals should provide detailed criteria for selection of student participants.

11. Geographic Diversity

The Agency will seek to provide geographic diversity within the NIS and the U.S. through this program.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 3, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-29973 Filed 12-9-92; 8:45 am]

BILLING CODE 8230-01-M

Freedom Support Act—Secondary School Exchange Initiative for School to School Linkages

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit, private organizations and public institutions to conduct exchanges of youth between the ages of 15 and 18½ years of age with the twelve Newly Independent States (NIS) of the former Soviet Union. These exchanges represent part of the activities of the Secondary School Exchange Initiative as included in the Freedom Support Act and are subject to the availability of funding for the Fiscal Year 1993 program.

This is a request for proposals for short-term reciprocal exchanges based on multiple school linkages. Requests for proposals in support of other programs under the aegis of the Freedom Support Act are being published separately.

DATES: Deadline for proposals: All copies of proposals for grants under this request must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Thursday, January 21, 1993. Faxed documents will not be accepted, nor will documents postmarked on January 21 but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadlines. Grant funding will be available after May 1, 1993. Projects may not begin prior to May 1, 1993.

ADDRESSES: The original and 14 copies of the application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: F.S.A.—School-to-School Youth Exchanges, Office of Grants Management, E/XE, 301 4th Street SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact David Dallas, Youth Programs Division, E/P, room 357, (202) 619-6299; FAX (202) 619-5311, to request detailed application packets, which include award criteria additional

to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overall authority for these exchanges is contained in the Freedom Support Act (Pub. L. 102–391).

Overview

Grant funding is intended to promote the exchange of young people, from 15 to 18½ years of age, between the U.S. and Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values and information.

Grants are awarded to expand or enhance existing exchange programs or to encourage the development of new exchanges. Programs may involve the U.S. organization in a partnership with organizations in one or more countries. The minimum length of stay in country for any project is three weeks.

Three different grant program designs will be utilized for this program which include: (A) An academic year program, (B) A school-to-school linkage program, and (C) Short-term exchanges program. This RFP deals only with the school-to-school linkage program. Other RFP's will be published soliciting proposals for the other two programs.

Guidelines for School to School Linkages

Purpose

To link a network of American secondary schools with a network of schools in one or more NIS countries as the basis for short-term reciprocal, one-for-one exchanges involving 3 to 4 weeks stays in the hosts country.

$3.6 million is available for exchanges under this category of which $2.4 million is for support of inbound groups and up to $1.2 million for support of outbound American groups. Exchanges funded under this grant must take place before September 1994.

Each network should consist of a minimum of 10 schools (five pairs). These may be schools with common features or interests (e.g., teach Russian/English as a foreign language, are math & science magnet schools), or they may be schools in a finite system (e.g., a local school district, county or state). They may be schools in communities that are affiliated with communities in NIS countries under an umbrella organization.

Schools may have not yet been paired or they may already be linked by computers or have developed ties through correspondence. Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for their linkage apart from the availability of grant funds. Partnered schools should engage in regular communication throughout the year and carry on such activities as joint research projects, pen pal exchanges, video exchanges, etc.

USIA grants under this initiative will support exchanges of students and accompanying escorts between the linked US and NIS schools. The minimum stay in country is 3 weeks. These exchanges should be designed to enable varying numbers of students and accompanying adults to live with host families while at their host school, preferably while school is in session. The goal is for each school to send a group and host a group each year, but variations in this model will be entertained. Full reciprocity is desirable but not a requirement. The exchange program may also include excursions, social and cultural activities, and opportunities to experience community life. It is considered desirable for each group of NIS students to have a program in Washington, DC. If such a program is not feasible, the NIS students should have a program in the state capital of their host school.

The American organization is responsible for recruiting and selecting a minimum of 5 American schools, forming a partnership with an organization or agency of government in the NIS responsible for a network of partner schools and linking the US and NIS schools. In addition, the American organization will design the overall plan and criteria for the exchanges; manage all travel arrangements, logistics, visas, etc.; and, conduct training seminars for escorts.

Budget

The organization must submit a comprehensive line item budget. Details are available in the application packet. Grant awards to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director of Educational and Cultural Affairs. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, rigor and relevance to Agency mission and adherence to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Value to U.S.-Partner Country Relations

Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact and significance in the partner country(ies).

5. Cost Effectiveness

The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Track Record/Ability

Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG).

The Agency will consider the past performance of prior grantees and the demonstrated potential new applicants.

8. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for evaluation by the grantee institution.

10. Selection Process

Proposals should provide detailed criteria for selection of student participants.

11. Geographic Diversity

The Agency will seek to provide geographic diversity within the NIS and the U.S. through this program.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 3, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-29971 Filed 12-9-92; 8:45 am]

BILLING CODE 8230-01-M

International Creative Arts Exchanges for Public and Private Non-Profit Organizations

AGENCY: United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The Creative Arts Exchanges Division (E/DE), Office of Arts America, Bureau of Educational and Cultural Affairs, announces a discretionary grants program for private, non-profit organizations in support of projects that link their international exchange interests with counterpart institutions/groups in other countries in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquires to the Office or submitting their proposals.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, February 26, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 26, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through February 26, 1993, for projects whose activities will begin between July 1, 1993, and December 31, 1993.

For projects that would begin after December 31, 1993, competition details will be announced in the **Federal Register** on or about June 1, 1993. Inquires concerning technical requirements are welcome prior to submission of applications.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: E/DE Discretionary Grant Competition, Office of Grants Management (E/XE), room 336, 301 4th Street, SW. Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations/institutions must contact the Creative Arts Exchange Division (E/DE), Office of Arts America, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619-5319, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: The Creative Arts Exchanges Division (E/DE), Office of Arts America of the United States Information Agency announces a program to encourage, through limited awards to non-profit institutions, increased private sector commitment to and involvement in international exchanges. Awarding of any and all grants is contingent upon the availability of funds.

E/DE works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' cultural and artistic traditions. The Office supports international projects in the United States or overseas involving artistic creators, leaders or potential leaders in the following fields and professions: Leaders of cultural institutions/organizations, composers, choreographers, playwrights/dramaturgs/theatrical set, costume, lighting designers, writers/poets, visual artists, architects, folk artists, craftpersons and folklorists, museum professionals.

E/DE particularly seeks cooperative projects with organizations having broad outreach and networking capabilities into American arts activities nationwide. These projects should work through U.S. Information Service (USIS) posts worldwide to carry out activities supportive of the USIA mission, goals and objectives. USIS posts' role in such projects should be substantive and integral more than purely facilitative. In this regard, E/DE projects support USIS posts by providing: (a) Vehicles for professional interaction between arts/museum communities in the United States and other countries; (b) vehicles for creating ongoing institutional linkages between American arts/museum organizations and their counterparts in other countries; and (c) vehicles for USIS officers to use for substantive contacts with key members/groups in their arts constituencies.

Projects supported under the terms of E/DE grants share the following features:

1. Projects must include an international exchange of persons component involving cultural leaders and commentators, critics, administrators and professionals in the professional fields in which the division operates (see above).

2. The office accords priority consideration to projects potentially leading to institutional linkages between American organizations and their counterparts in other countries.

3. Projects may operate either to or from the United States, preferably in both directions.

4. E/DE projects taking place in the United States operate as competitions in which participating USIS posts retain exclusive nomination prerogative of candidates for awards, while the American arts organizations retain selection prerogative of award-winners.

Awards consist of travel and per diem expenses to attend the event or participate in the activity partially funded under the terms of the E/DE grant.

5. Projects to send American professionals to other countries must include assurances of quality, fairness and balance in the selection of participants. Such proposed projects must demonstrate their support of USIS posts' goals and objectives in the countries in which they are to operate. E/DE will consider proposals for activities in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

6. Pursuant to the Bureau of Cultural and Educational Affairs' authorizing legislation, "Programs must maintain a non-political character, should be balanced and representative of the diversity of American political, social and cultural life."

7. The Creative Arts Exchanges Division (E/DE), Office of Arts America requires a minimum of 33% co-funding with grantee organizations in all projects.

8. Funding assistance is limited to participant travel and per diem requirements with modest contributions to defray administrative costs which cannot exceed 20% of the total amount requested from USIA.

9. Organizations with less than four years' experience in conducting international exchange programs are limited to $60,000 of USIA support, and their budget submissions should not exceed this amount.

10. Grant proposals cannot exceed $150,000 in the amount requested from the USIA.

Additional Guidance

The Creative Arts Division, Office of Arts America offers the following additional guidance to prospective applicants:

1. The Office of Arts America encourages project proposals involving more than one country. However, single-country projects that are clearly defined and demonstrate the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals are subject to review and comment by the USIS posts in the relevant countries.

3. Proposed programs should clearly identify foreign counterpart organizations and provide evidence of the organizations' participation.

4. Proposals centering on arts presenters/administrators should consist of exchanges involving these professionals exclusively. E/DE cannot under its guidelines fund performing arts productions or tours, film or video production and/or festivals, independently-operating international competitions, community-level arts presentations or festivals for general audiences, the production or presentation of visual arts exhibits, or projects in the fields of historical/cultural conservation/preservation (see Program Exclusions, point 5, below).

5. The Bureau is the major supporter of the American Association of Museums (AAM) International Partnerships Among Museums (IPAM) program. Museums interested in international projects should address queries to the Office of International Programs, American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005; telephone: (202) 289–1818; FAX: (202) 289–6578. The Office will not accept direct applications from museums for international projects (see Program Exclusions, point 5, below).

Program Exclusions

1. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; e.g., clerical work, mechanical/electronic maintenance, etc., and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a technical subject which enhances mechanical, narrowly technical, or semi-skilled capabilities) are ineligible for support.

2. Scholarship programs or proposals for long-term (a semester or more) academic studies or training are ineligible for support.

3. E/DE does not support speaking tours, conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience).

4. Office of Arts America grants are not given to support research projects, research for project development purposes, youth or youth-related activities (participants' age under 25), publications funding, or student and/or teacher/faculty exchanges, or projects for the exchange of amateurs or semi-professionals.

5. The Office does not accept proposals for the support of performing arts productions or tours, film or video production and/or festivals, independently-operating international competitions, community-level arts presentations or festivals for general audiences, the production or presentation of visual arts exhibits, museum projects except for those under the AAM/IPAM program (see *Additional Guidance*, point 5 above), or projects in the fields of historical/cultural conservation/preservation.

6. USIA is a major yearly supporter of Sister Cities International (SCI). USIA has agreed to fund administrative expenses of the SCI national office but will not fund projects arising from sister city relationships once they are established.

Funding and Budget Requirements for All Submissions

Cost-Sharing

The Creative Arts Exchanges Division (E/DE), Office of Arts America requires co-funding with grantees in all projects. Proposals with cost sharing of less than 33 percent of the total project cost will be considered ineligible. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects.

Administrative Costs Limitation

Funding assistance is limited to participant travel and per diem requirements with modest contributions to defray administrative costs, which may not exceed 20 percent of the total funds requested. The grantee institution may wish to cost-share any of these expenses. Administrative costs are defined as salaries, benefits and other direct and indirect costs incurred. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate USIA geographic area offices, and the Bureau budget and contract offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the

Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Institution Reputation/Ability/ Evaluations:*

Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider past performance of prior grantees and the demonstrated potential of new applicants.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. *Program Planning:* Detailed agenda and relevant work plan/project timeline should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area should be evident.

7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be as low as possible and shall not exceed 20% of the total funds requested. All other items should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Proposals with cost sharing of less than 33 percent of the total project cost will be considered ineligible.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA supported programs are not isolated events. USIA will seek evidence of plans for activities supportive of long-term institutional ties.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Technical Requirements

Proposals can only be accepted for review when they are fully in accord with the terms of this RFP, as well as with requirements stipulated in the application package.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 3, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92–29771 Filed 12–9–92; 8:45 am]

BILLING CODE 8230–01–M

Summer Institutes for the Study of the U.S. for Secondary School Educators

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications for four institutions, each to conduct a six-week graduate level, multidisciplinary summer institute and integrated follow-on tour for the study of the U.S. for foreign secondary school educators (teacher trainers, curriculum developers, education ministry officials and textbook writers) of English language, American literature, government, history and/or geography who have broad responsibility for curriculum design and improvement. The institutes should offer graduate-level programs aimed at improving the participants' understanding of the U.S. in the context of the study of one of the following areas: (1) U.S. history [institute A]; (2) the American political system [institute B]; (3) twentieth century American literature [institute C]; (4) interdisciplinary/ multidisciplinary American studies [institute D]. Each institute will have approximately 30 participants. Institutes are conducted entirely in English. Participants will be selected by United States Information Service (USIS) posts and Fulbright Commissions overseas and will have high-level fluency in English. USIA is asking for detailed proposals from colleges, universities, consortia of universities, and other not-for-profit educational/academic organizations which demonstrate an acknowledged reputation in fields concerned with the study of the U.S. and expertise in conducting graduate level programs for foreign educators. The Agency expects to award four grants in support of the program. Since each of the four institutes will stress a different study of the U.S. field, applicants must indicate which of the four fields will be emphasized.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC. time, on Friday, January 22, 1993. Faxed documents will not be accepted, nor will documents post-marked January 22, 1993 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. In order to assure adequate preparation time, grants should begin by April 2, 1993. Approximate institute program dates should be June 26 to August 6, 1993. Participants will be scheduled to arrive in the U.S. on or about June 25, and depart on August 7, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Summer Institutes for the Study of the U.S. for Secondary School Educators, Office of Grants Management, E/XE, 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations or institutions should contact William C. Jones at the U.S. Information Agency, Division for the Study of the U.S., E/AAS, room 256, 301 4th St. SW., Washington, DC 20547, telephone: (202) 619–4557, to request detailed application packets, which include award criteria additional to this

announcement, all necessary forms, and guidelines for preparing proposals, including specific budget information.

SUPPLEMENTARY INFORMATION: The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must "maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life," and must "maintain their scholarly integrity and shall meet the highest standards of academic excellence * * *".

Overview

Summer institutes aim to provide a deeper understanding of U.S. culture and civilization for foreign secondary school educators who are concerned professionally with teaching about the U.S. Institutes will assist participants through study of American culture, society and institutions and by providing opportunities for research in support of their curricular goals.

Guidelines

Eligibility

Accredited colleges, universities, consortia of universities, and other not-for-profit educational organizations which demonstrate an acknowledged reputation in fields concerned with the study of the U.S. and expertise in conducting graduate level programs for foreign educators are eligible to apply. Institutions must have a minimum of four years' experience in conducting international exchange programs. Proposals from consortia may be submitted by a member institution with documented authority to represent all members. The project director, or one of the key program staff responsible for the academic program, must have an advanced degree in a field related to the study of the U.S., preferably in the institute's field of emphasis. University staff escorts traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Objectives

The objective of the institutes is to support and encourage the efforts of educators in other countries to improve the quality of teaching about American society and culture at the secondary and teaching training levels by focussing on specific U.S. studies needs and interests. While each of the four institutes should offer a broad overview of U.S. institutions, society and culture, each will also focus on one specific discipline: U.S. history, the U.S. political system, twentieth century American literature, or interdisciplinary/multidisciplinary American studies.

Audience

The program should be designed for approximately 30 highly motivated teacher trainers, curriculum developers, textbook writers, ministry officials and senior secondary level classroom teachers with added "multiplier" responsibilities whose professional assignments require significant knowledge of American civilization and culture. Participants' fields of U.S. studies specialization will be primarily in language, literature, government, history and geography. Participants will be selected by United States Information Service (USIS) posts and Fulbright Commissions worldwide and will have high-level fluency in English. They will be assigned to the institutes by USIA. Although some participants may have visited the U.S. previously, an initial orientation to the U.S. and the American campus should be an integral part of the institute and should be held at the beginning of the program.

Program Design

The applicant is asked to design a two-part program of approximately six weeks duration:

(a) A minimum four-week academic program at a college, university, or other institution of higher learning;

(b) An escorted tour of two other regions of the United States designed to reinforce the academic content of the institute. In addition, the tour should end in Washington, DC.

The academic component of the program must be at least four weeks long; however, the tour component of the program may be less than two weeks.

Academic and Tour Components

Each institute should offer a graduate-level academic program aimed at improving the participants' understanding of the U.S. in the context of the study of one of the following areas: (1) U.S. history [institute A]; (2) the American political system [institute B]; (3) twentieth century American literature [institute C]; (4) multidisciplinary/interdisciplinary American studies [institute D]. Two weeks of the academic portion of the institute should be devoted to providing a broad overview of the diversity, complexity and unity of American life and institutions in a historical and cultural context; the remaining half of the academic program should be devoted to the area selected for emphasis.

The academic program should be specially designed for experienced foreign secondary educators and teacher trainers and should not duplicate courses normally given by graduate departments for American graduate degree candidates. Although it is important that the topics and readings of the institute be clearly organized, the institute should not be structured like a lecture course or a graduate seminar. Rather, it should facilitate the development of a collegial atmosphere in which institute faculty and participants discuss relevant texts, issues, and concepts; and it should provide time for individual research. Proposals should include detailed syllabi with specific topical readings required for each academic unit, accompanied by complete proposed required reading lists and appropriate selected bibliographies.

In addition to substantive presentations and discussions about American society, institutes should provide opportunities for research in support of participants' curricular goals. Participants should be given access to scholarly and bibliographic collections and other materials, as well as adequate professional assistance by institute personnel. Institutes should also familiarize participants with scholarly and institutional contacts which will be useful to them for follow-up activities.

The tour component of the institutes should be planned, arranged, and conducted by the program director and principal project staff and should be seen as an integral part of the program, complementing and reinforcing the academic component. The proposal should indicate the tour sites, which should not exceed two regions in addition to a three-to-four day visit to Washington, DC at the end of the tour. Programming in Washington should include a half-day briefing session at the United States Information Agency. Grantee institutions should consult closely with USIA in planning the Washington itinerary. Details of the academic and tour programs may be modified in consultation with the Branch for the Study of the U.S. following the grant award.

Proposed Budget: Applicants must submit a comprehensive line item budget for which specific details are available in the application packet. The total USIA-funded budget must not

exceed $192,500. USIA-funded administrative costs as defined in the application packet must not exceed $45,000. Applications requesting more than $45,000 for administrative costs, and/or more than $192,500 for total institute costs to USIA, or that do not allocate these costs consistent with the budget instructions will not be considered. Organizations submitting proposals are urged to cost share program and administrative expenses to the greatest degree possible. Participant international travel costs will be covered by USIA.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be reviewed competitively according to the following criteria:

1. Overall quality.

A. The content, significance, definition, organization and academic rigor of the proposed program (including the follow-on tour) and its appropriateness to program objectives.

B. Evidence of careful planning.

C. The program or project should be representative of current expert knowledge in the field, and should be consistent with the requirements of the Bureau's legislative charter, meeting the highest professional qualitative standards of achievement.

2. Institutional capacity. Adequacy of proposed resources, including faculty, library and other research and scholarly resources; housing availability, and other institutional support important to a collegial setting, should be adequate and appropriate to achieve the program goals.

3. Experience of professionals and staff assigned to the program with foreign educators; institution's track record with international exchange programs.

4. Evaluation and follow-up.

A. Adequacy of plan for an evaluation at the conclusion of the institute by the grantee institution.

B. Adequacy of provisions made for "multiplier effect," *i.e.*, future follow-up and networking between grantees and appropriate U.S. scholarly organizations and institutions.

5. Evidence of strong on-site administrative and managerial capabilities (with specific discussion of how managerial and logistical arrangements will be undertaken).

6. Availability of local and state resources for the orientation, institute, and follow-on tour.

7. Cost effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should be maximized.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 30, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 3, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-29774 Filed 12-9-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Percentage To Determine Net Value

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) loan guaranty program concerning the percentage to be used in determining whether the Secretary will accept conveyance of a foreclosed property. The new percentage is 14.16 percent.

EFFECTIVE DATE: The new percentage is effective October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (202) 233-3668.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, et seq. The formulas for determining whether VA will offer the lender an election to convey the property to VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, administration and resale. Each year VA reviews the average operating expenses incurred for properties acquired under 38 CFR 36.4320 which were sold during the preceding three fiscal years and the average administrative cost to the government associated with the property management activity. Administrative cost is based on the average holding time for properties sold during the preceding fiscal year. Property improvement expenses are estimated on an individual case basis at the time the net value is estimated. Public Law 102-389, the Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act for Fiscal Year 1993, approved October 6, 1992, requires a change to the net value formula this year to include an item which was not included in prior years. For Fiscal Year 1993, VA must also include in the net value calculation an amount equal to the gain or loss experienced by VA on the resale of acquired properties.

VA annually updates the "net value" percentage and publishes a notice of the new percentage in the **Federal Register**. For Fiscal Year 1992, the percentage was 10.94 percent. For Fiscal Year 1993, the percentage will be 14.16 percent, based upon the operating expenses incurred, exclusive of estimated property improvement expenses which are accounted for separately in each case, for Fiscal Years 1990, 1991, and 1992, and property resale experience for

Fiscal Year 1992. This new percentage can be broken down as 3.04 percent attributable to resale experience and 11.12 percent to the other enumerated expenses. Accordingly, VA will subtract 14.16 percent from the fair market value of the property to be foreclosed in order to arrive at the "net value" of the property to VA. This new percentage will be used in "net value" calculations made by VA on and after October 9, 1992.

Approved: November 19, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

[FR Doc. 92-29794 Filed 12-9-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 238
Thursday, December 10, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92–29512

PREVIOUSLY ANNOUNCED DATES AND TIMES: Tuesday, December 8, 1992, 10:00 a.m., meeting closed to the public.

This meeting has been cancelled.

DATE AND TIME: Tuesday, December 15, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Election of Chairman
Election of Vice Chairman
Administrative Matters

DATE AND TIME: Tuesday, December 15, 1992, will convene after the open meeting.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

MATTER BEFORE THE COMMISSION:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Report on Priortization
Internal personnel rules and procedures or matters affecting a particular employee

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 92–30192 Filed 12–8–92; 3:34 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 11:00 a.m., Tuesday and Wednesday, November 24 and 25, 1992.

PLACE: Second Floor Conference Room, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The meetings were closed to the public.

MATTERS TO BE CONSIDERED: The Board considered the following:

Adjustment of October House Price Data used in the calculation of conforming loan limits of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

The above matters are exempt under one or more of section 552b(c)(9)(A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Deputy Executive Director.

[FR Doc. 92–30100 Filed 12–8–92; 8:56 am]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 11:00 a.m., Monday, November 30, 1992.

PLACE: Second Floor Conference Room, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The meeting was closed to the public.

MATTERS TO BE CONSIDERED: The Board considered the following:

Adjustment of October House-Price Data used in the calculation of conforming loan limits of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

The above matters are exempt under one or more of section 552b(c)(9)(A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Deputy Executive Director.

[FR Doc. 92–30101 Filed 12–8–92; 8:56 am]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATES:

9:30 a.m., Tuesday, December 15, 1992
10:00 a.m., Wednesday, December 16, 1992

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting on Tuesday, December 15, 1992, will be closed to the public. The entire meeting on Wednesday, December 16, 1992, will be open to the public.

MATTERS TO BE CONSIDERED:

PORTIONS CLOSED TO THE PUBLIC: The meeting on Tuesday, December 15, will be closed to the public. The Board will consider the following:

1. Approval of the November Board Minutes
2. 1993 FHLBank System Budget
3. 1993 Presidents' Compensation
4. Office of Finance First Quarter, 1993 Debt Issuance Authorization
5. Strategic Plan
   A. Part Two Update
   B. GSE Studies
6. Examinations, 1993
   A. Asset Classification Update
   B. Strategic Plan for Examinations of the Federal Home Loan Banks, 1993
7. FHLBank of Dallas Special Investment Authority Modification Request
8. FHLBank System Retained Earnings Policy
9. Office of Inspector General's Semi-Annual Update
10. Board Management Issues

PORTIONS OPEN TO THE PUBLIC: The meeting on Wednesday, December 16, will be open to the public. The Board will consider the following:

1. Monthly Reports
   A. Financial Report
   B. Membership Report
2. Housing Finance Directorate
   A. AHP Activity Update
   B. Approval of AHP Applications
3. FHLBank System Appointive Directors Confirmation
4. Advances Regulation—Final Rule
5. Office of Strategic Planning
   • Plan Update

The above matters are exempt under one or more of sections 552b(c) (2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary of the Board, (202) 408–2837.

Philip L. Conover,

Deputy Executive Director.

[FR Doc. 92–30102 Filed 12–8–92; 8:56 am]

BILLING CODE 6725–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., December 21, 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Survey of Federal Retirement

Thrift Saving Plan Inactive Accounts and Proposed Abandoned Account Policies at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

4. Review of Hewitt Associates "Defined Contribution Outsourcing Feasibility Study."

5. Ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabusso, Director, Office of External Affairs, (202) 523–5660.

Dated: December 8, 1992.

Francis X. Cavanaugh,

Federal Retirement Thrift Investment Board.

[FR Doc. 92–30099 Filed 12–7–92; 4:50 pm]

BILLING CODE 6760–01–M

Corrections

Federal Register
Vol. 57, No. 238
Thursday, December 10, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 145

[Docket No. 026–2]

National Poultry Improvement Plan and Auxiliary Provisions

Correction

In rule document 92–29461 beginning on page 57338 in the issue of Friday, December 4, 1992, make the following correction:

§ 145.42 [Corrected]

On page 57341, in the third column, in amendatory instruction 12 to § 145.42, in the first line, "147.42" should read "145.42".

BILLING CODE 1505–01–D

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37 CFR Part 304

[Docket No. 92–2–PBRA]

1992 Adjustment of the Public Broadcasting Royalty Rates and Terms

Correction

In proposed rule document 92–28563 beginning on page 55494 in the issue of Wednesday, November 25, 1992, make the following corrections:

1. On page 55495, in the third column, in the second full paragraph, in the seventh line, "37 CFR 304.104" should read "37 CFR 304.10"; and in the third line from the bottom of the same paragraph, insert "(" before "1991)".

2. On page 55496, in the third column, in the last paragraph, in the third line, remove "the" the first time it appears.

3. On page 55497, in the 1st column, in the 36th line, "photograph" should read "photography".

§ 304.5 [Corrected]

4. On page 55498, in the first column, in § 304.5(e), in the first line, "The" should read "A".

§ 304.7 [Corrected]

5. On the same page, in the third column, in § 304.7(b)(1), the second paragraph designated "(ii) In the event * * *" should be designated "(iii) In the event * * *".

6. On page 55499, in the second column, in § 304.7(e)(1), in the ninth line from the bottom, "prepared" was misspelled.

BILLING CODE 1505–01–D

federal register

Thursday
December 10, 1992

Part II

Office of Personnel Management

5 CFR Part 591

Cost-of-Living Allowances (Nonforeign Areas) and Report on 1991/1992 Determination Surveys; Proposed Rule and Notice

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AF13

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: OPM proposes to increase certain cost-of-living allowance (COLA) rates paid to General Schedule, Postal Service, and selected other Federal employees in several nonforeign areas—namely, Guam, the Commonwealth of the Northern Mariana Islands, parts of Hawaii, and part of the Virgin Islands. The proposed adjustments are based on living cost surveys conducted during the summer of 1991 and the winter of 1992. The surveys were conducted by Runzheimer International for OPM under contract.

OPM proposes to adjust only those rates that would increase. Rates that would otherwise decrease will remain unchanged as required by a general provision in the Treasury, Postal Service, and General Government Appropriations Act of 1992. Without this general provision, a total of 10 rates in 7 allowance areas would decrease.

As background to the proposed rate adjustments, OPM is publishing a separate **Federal Register** notice immediately following this proposed rulemaking.

DATES: Comments must be received on or before February 8, 1993.

ADDRESSES: Send or deliver comments to Phyllis G. Foley, COLA Program Manager, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H38, 1990 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, (202) 606–3710.

SUPPLEMENTARY INFORMATION: The proposed increases in COLA rates are summarized in the table below:

PROPOSED INCREASES IN COLA RATES

Allowance area/category	Current rate	Proposed rate
City and County of Honolulu, Hawaii:		
Commissary/exchange	12.5	15.0
County of Maui and County of Kalawao, Hawaii:		
All employees	20.0	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands:		
Local pricing	12.5	15.0
Commissary/exchange	0.0	7.5
St. Thomas and St. Jonn, the Virgin Islands:		
All employees	12.5	15.0

It should be noted that OPM published final regulations in the **Federal Register** of December 9, 1992 that expand the Guam allowance area to include the Commonwealth of the Northern Mariana Islands.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM proposes to amend 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Appendix A of subpart B is revised to read as follows:

Appendix A of Subpart B—Places and Rates at Which Allowances Shall be Paid

This appendix lists the places where a cost-of-living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	Authorized allowance rate (Percent)
State of Alaska:	
City of Anchorage and 50 mile radius by road:	
Local retail	25.0
Commissary/exchange	17.5
City of Fairbanks and 50 mile radius by road:	
Local retail	25.0
Commissary/exchange	20.0
City of Juneau and 50 mile radius by road:	
Local retail	25.0
Commissary/exchange	25.0
Rest of the State:	
All employees	25.0
State of Hawaii:	
City and County of Honolulu:	
Local retail	22.5
Commissary/exchange	15.0
County of Hawaii:	
All employees	15.0
County of Kauai:	
Local retail	17.5
Commissary/exchange	17.5
County of Maui and County of Kalawao:	
All employees	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands:	
All locations:	
Local retail	15.0
Commissary/exchange	7.5
Commonwealth of Puerto Rico:	
All locations:	
Local retail	10.0
Commissary/exchange	0.0
The Virgin Islands:	
St. Croix:	
All employees	12.5
St. Thomas and St. John:	
All employees	15.0

Definitions of Allowance Categories

The following definitions of the allowance categories identified in the tables in this appendix shall be used to determine employee eligibility for the appropriate allowance rate:

Allowance category	Definition
Local Retail	This category includes those employees who purchase goods and services from private retail establishments.
Commissary/Exchange.	This category includes those employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

Note: Eligibility for access for military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will have an identification card that authorizes access to such facilities. Possession of such an identification card—i.e., one issued by reason of his or her

Federal civilian employment—is sufficient evidence that the employee uses the facilities.

[FR Doc. 92–29639 Filed 12–9–92; 8:45 am]
BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Report on 1991/1992 Surveys Used To Determine Cost-of-Living Allowances in Nonforeign Areas

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC Area, June 1992, prepared by Runzheimer International under Government contract OPM–90–0705. This report provides the basis for the increases in certain cost-of-living allowances (COLA's) being proposed by OPM in the proposed rulemaking immediately preceding this notice.

DATES: Consistent with the deadline on comments for the proposed rulemaking immediately preceding this notice, OPM requests that comments on the report be submitted on or before February 8, 1993.

ADDRESSES: Send or deliver comments to Phyllis G. Foley, COLA Program Manager, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H38, 1990 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, (202) 606–3710.

SUPPLEMENTARY INFORMATION: Under 5 CFR 591.206(c), COLA survey summaries must be published in the **Federal Register**. Accordingly, OPM is publishing the complete Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC Area, June 1992, produced by Runzheimer International. The Runzheimer report describes the surveys that were conducted for OPM in the summer of 1991 in Hawaii, Guam, Puerto Rico, and the Virgin Islands and in the winter of 1992 in Alaska. It also explains in detail methodologies, calculations, and findings.

1. COLA Survey Findings

Based on its 1991/1992 living cost surveys, Runzheimer computed index values of relative living costs in allowance areas using an index scale where the living costs of the Washington, DC, area are set at 100. (See the Executive Summary of the June 1992 Runzheimer report accompanying this notice.) OPM notes that the 1991/1992 surveys continue to show that current COLA rates are above the levels otherwise warranted in most allowance areas. However, the Treasury, Postal Service, and General Government Appropriations Act of 1992 (Pub. L. 102–141) bars any reduction in COLA rates through December 31, 1995. Thus, the only rate adjustments to be made are rate increases, as described in the proposed rulemaking immediately preceding this notice.

2. Comments Received and Changes Made to the COLA Surveys

In preparing for these surveys, OPM instructed Runzheimer to make several changes in the items and communities surveyed. These changes took into consideration many of the comments that OPM received from employees on the earlier 1990 Runzheimer report, which OPM published in the **Federal Register** on February 26, 1991 (56 FR 7902). That report dealt with allowance area living cost surveys conducted by Runzheimer in the summer of 1990, which were the first surveys conducted using the new methodology OPM adopted as a result of earlier litigation. OPM received approximately 7,000 comments on the 1990 Runzheimer report. These comments are summarized and evaluated below.

General Comments

Most of the commenters were Federal employees, and most were concerned about the impact of deep reductions in COLA rates. They cited various financial commitments, such as home purchase, that were made assuming COLA rates would be relatively stable.

As already noted, the Treasury, Postal Service, and General Government Appropriations Act of 1992 (Pub. L. 102–141) prohibits OPM from reducing COLA rates through December 31, 1995. Furthermore, if OPM once again were authorized to reduce COLA rates, it has authority under Executive Order 10000 and 5 CFR 591.211 to reduce COLA rates gradually when the decrease is due to changes in the methodology used to determine living costs. OPM's philosophy is to be very deliberate in making any adjustments to COLA rates.

Many commenters believed significant reductions would cause recruitment and retention problems. OPM is concerned about the potential impact of COLA changes on the Government's ability to recruit and retain a well-qualified workforce. OPM notes, however, that the Government has several effective pay authorities designed to meet recruitment and retention problems.

Many commenters thought that significant reductions would have an adverse effect on the local economy of the allowance area. OPM's deliberate approach and the authority to implement substantial reductions gradually should minimize the impact any future COLA reductions might have on the local economy.

A large number of commenters stated that the survey was conducted during unusual periods in the local economy. Several examples were offered. Many people noted that the Alaska economy was in recession during the survey and that the survey results reflected these atypical conditions. Residents of the Virgin Islands noted the destruction caused by Hurricane Hugo and its impact on the local economy. Other commenters stated that the Gulf crisis had affected prices, particularly gas and oil prices.

OPM recognizes that local economies are affected by unique conditions. For example, the 1990 Runzheimer report noted that the destruction caused by Hugo was still evident in the Virgin Islands and that it had created housing shortages that complicated data collection.

OPM believes that as more surveys are conducted, a base of information will develop that will enable the comparison of survey results from one year to the next. Indications of trends in local economic conditions will emerge. As we better understand these trends, we may find ways in which such changes can be taken into consideration in determining COLA rates, if appropriate.

Over one hundred commenters suggested that pay be set according to local prevailing salaries rather than according to living costs. Many of these people noted that Federal blue-collar employees covered by the Federal Wage System did not receive COLA but rather had pay set according to local prevailing rates.

OPM believes that serious consideration should be given to alternatives to COLA, and locality pay may be a particularly viable alternative.

Many commenters asked that OPM involve employees in the survey process. OPM agrees that employee involvement is desirable. To this end, we will survey Federal employees in the near future to gather data on their housing costs and living patterns. The survey will ask where employees live, what type of home they have, whether they rent or own, what their rental or mortgage payment is, and other questions related to housing. The survey also will ask employees other questions related to shopping, commuting, transportation, medical care, and education.

The employee survey is planned as a one-time survey to obtain information that will be used to improve the COLA methodology. The results of the survey will not be used directly to adjust COLA

rates, but rather to improve, refine, and validate the living cost model.

Some commenters found the report too complex and lengthy. Others asked that more information be provided. At OPM's request, Runzheimer strived to strike a balance between providing a report that was too technical and one that was overly simplistic. On the basis of the comments we received overall, OPM believes that a proper balance was achieved.

Some commenters inquired about the statistical validity of the survey. They suggested that Runzheimer explain how the sample was drawn and report additional statistics, such as the standard deviation.

Runzheimer used a type of stratified sampling to obtain prices. Communities were selected to represent places where Federal employees and other persons with incomes similar to Federal employees were apt to live. Within these communities, major outlets were identified and surveyed on a random basis. In many cases, universe surveys were conducted because there were so few major outlets within the community.

Additional statistics could be computed concerning the survey results. However, including this information in the report would make the report longer and more complex—something OPM wishes to avoid.

One commenter criticized OPM for delegating to Runzheimer the authority to implement OPM regulations. OPM did not delegate such authority. OPM worked closely with Runzheimer to implement the regulations. Runzheimer expertise and advice was invaluable, but OPM retained all decision-making authority.

This commenter also stated that COLA rates should include an additional 5 percentage points in consideration of "non-monetary" costs. As OPM stated in the **Federal Register** notice of January 16, 1990, (56 FR 1372), OPM does not believe that adding 5 percent to the calculated allowance rates based on conjecture would be consistent with the requirements of Executive Order 10,000.

Several commenters stated that OPM should publish all of the survey data (e.g., basic price data, outlet identification or specific data sources) in the report. OPM disagrees for two reasons. First, we are concerned about integrity of the COLA program and future surveys. Making public all information would seriously undermine our ability to conduct surveys in the future. Second, publishing this volume of information is not practical and would make the report far too complex.

It should be noted, however, that OPM provided additional information to those who requested it. This information included the regression results used to develop the model and a detailed summary of prices collected. OPM will continue to make such information available upon request in the future.

Comments on the Overall Living Cost Model

Over one thousand commenters stated that Washington, DC, should not be the base area for comparisons of living costs. The use of this area is required by law, i.e., section 5941 of title 5, United States Code.

Some commenters found that the distinctions between the Part I and Part II methodologies confusing. The Part I methodology incorporated minor changes Runzheimer made concerning the survey methodology. The part II methodology conformed precisely with OPM's regulations. OPM asked Runzheimer to show the results of both methodologies (i.e. Part I and Part II) in its 1990 report so that the methodologies could be compared.

In the June 1992 report being published with this notice, Runzheimer used, at OPM's request, only the methodology prescribed in regulation (i.e., the Part II methodology). This has simplified this year's report and should reduce confusion.

Many commenters noted that Runzheimer surveyed Anchorage, Fairbanks, and Juneau, Alaska, but not other areas in Alaska. They asked how COLA rates would be set for these other areas.

In the winter 1992 survey, OPM asked Runzheimer to survey Nome, Alaska (in addition to the other three cities) to represent other areas in Alaska. Nome was selected because of its remote location, relative population size, and number of Federal employees in the area. The June 1992 report provides the results of the Nome living cost survey.

Many commenters were confused about the purpose of the survey of commissaries and exchanges. They believed that the data collected at these facilities were used to set all COLA rates. This was not the case.

As prescribed by § 591.207 of title 5, Code of Federal Regulations, the commissary and exchange data were used to determine COLA rates only for employees who have unlimited access to commissaries and exchanges by virtue of the Federal civilian employment. Few Federal employees have such access.

Many commenters from Alaska stated that the survey was conducted during the wrong time of year. They stated that prices were at their lowest during August and September and that a survey conducted during the winter months would be more appropriate.

OPM changed the timing of the Alaska surveys from the summer months to the winter months. The latest Alaska surveys were conducted in February 1992.

Over 700 commenters, particularly those from Puerto Rico, pointed out that COLA is taxable in many allowance areas. For example, both the State of Hawaii and the Commonwealth of Puerto Rico tax COLA. Many commenters believed that such tax should be included in the COLA survey.

Among the recommendations Runzheimer makes in its June 1992 report is a recommendation to include income taxes. In light of this recommendation and the significant number of comments we received regarding income taxes, OPM plans to research the issue further in the coming year.

Many commenters stated that the representative salary levels selected for the model were too low and not representative of the total family incomes of typical Federal employees.

OPM directed Runzheimer to select dollar amounts that reflected typical Federal salaries, *not* total income levels. We believed this to be appropriate because COLA is paid on the basis of Federal pay, not total family income. OPM realizes, however, that it also may be appropriate to analyze living costs using average household income. One of the questions OPM will ask on the forthcoming employee survey deals with total family income. OPM will reassess the model after analyzing the results of the employee survey.

One commenter stated that Runzheimer's use of three income levels at which living costs were measured was not justified in light of the cost and complexity this added. The use of three income levels conformed with the requirement in 5 CFR 591.205(b)(1) that living costs be measured at several income levels. OPM agrees, however, that it may be desirable to simplify the model and will give this matter further study.

Many comments, particularly from Puerto Rico and Alaska, stated that the family size (2.6 persons) reflected in the COLA model was too small. That family size is the average of all families nationwide that participated in the Bureau of Labor Statistic's (BLS) 1988 Consumer Expenditure Survey (CES). Runzheimer used the CES to determine the component, category, and item weights.

OPM regulations (5 CFR 591.205(b)(1)) require the use of consumer expenditure data at several income levels for a standard family size. This family size should reflect that typical of all areas, including the Washington, DC, area and, therefore, we believe that use of the average family size derived from the CES is appropriate. However, we will reexamine this issue after analyzing the results of the upcoming employee survey.

Many commenters stated that the use of the nationwide CES data was inappropriate. Some cited newspaper and magazine articles that indicated that consumers in some allowance areas allocate their incomes differently compared with average U.S. consumers.

Consumer expenditure patterns differ among areas. Neither Runzheimer nor OPM, however, know of a published source of comprehensive consumer expenditure data, cross tabulated by geographic area and income level, that is the type required for the COLA model by 5 CFR 591.205(b)(1). BLS publishes CES data for selected major metropolitan areas, including Anchorage, Honolulu, and Washington, DC; but these data are not available by type of expenditure and income level. Furthermore, BLS does not publish data for any of the other cities or metropolitan areas in the other allowance areas.

Several commenters noted that Runzheimer said it used the Laspreyes methodology for calculating indexes. The commenters correctly pointed out that the Laspreyes method uses base weights and that Runzheimer did not use the Washington, DC, area CES data as weights.

The characterization of the indexes as "Laspreyes indexes" may have been technically inappropriate. However, both OPM and Runzheimer believe that the use of national CES data as weights does not invalidate price comparisons. More significantly, as noted above, there are no detailed CES data for the DC area. Therefore, a pure application of the Laspreyes method was not possible.

A few commenters recommended that OPM use other indexing methods. The Paasche Index and Fisher's Ideal Index were two suggested. In terms of the COLA program, the Paasche method is identical to the Laspreyes method except that Paasche would use allowance area weights and Laspreyes would use base area (ideally, Washington, DC, area) weights. Fisher's Ideal Index is based on the geometric mean of the Laspreyes and Paasche indexes. However, because CES data are not available for each allowance area by income level, it is not possible to apply either the Paasche or the Fisher's Ideal indexes.

Several commenters asked about the edits Runzheimer used and how these edits affected the indices. Data edits are a common part of survey analyses. The main purpose is to ensure the integrity of the survey and to spot data that should be double checked. Runzheimer applied this type of edit; but because Runzheimer uses professional data collectors, few edits were required.

Several commenters asked why Runzheimer surveyed more locations in the Washington, DC, area than in any of the allowance areas. The Washington, DC, metropolitan area is larger, in population terms, than any of the allowance areas. Therefore, to adequately measure living costs in the DC area, Runzheimer had to collect more data.

Some commenters from Puerto Rico questioned the survey of Mayaguez. A few commenters thought Ponce should be surveyed instead of Mayaguez. Others stated that the geographic weights used to combine survey data were inappropriate.

The weights Runzheimer used in its 1990 survey were based on OPM's analyses of the distribution of Federal employees by duty station in Puerto Rico. OPM found that approximately 70 percent of the employees worked in the greater San Juan-Caguas metropolitan area and that 30 percent were west of that area. Although Federal employment was widely dispersed on the western end of the island, OPM's statistics indicated that more employees worked closer to the Mayaguez area than the Ponce area. Therefore, OPM asked Runzheimer to survey both San Juan and Mayaguez and apply the weights (70 and 30 respectively) to the data collected. The same weighting formula was used in the 1991 survey.

Comments on the Goods and Services Component

Many commenters believed that Runzheimer surveyed the wrong goods and services or should have surveyed more goods and services. Most of the items suggested were of regional importance. For example, commenters in Alaska recommended the survey of parkas, snow blowers, and other items common in cold climates. To the extent practicable, OPM has revised the survey to include many of the items suggested. In Alaska, for instance, several new items were added to the survey, including snow blowers, boots, and parkas.

A large number of commenters cited the lack of locally available goods and services, and many commenters said that they had to purchase items by catalog. At OPM's request, Runzheimer increased the number of items priced via catalog in the summer 1991 and winter 1992 surveys. Catalog pricing took into consideration the additional costs of shipping and excise taxes where applicable. This type of pricing proved effective for certain types of items, particularly in the less populated areas; and OPM plans to consider making greater use of catalog pricing in the future.

Some commenters believed that OPM should include the cost of items commonly purchased in the allowance area but not include the cost of that item if it is not commonly purchased in the Washington, DC, area. Snowmobiles might be an example of this type of item.

Under 5 CFR 591.205(b)(1)(i), exact brands and models are priced in each location whenever possible. This provision was adopted in consideration of the settlement of *Hector Arana, et al., v. the United States.* These regulations do not allow the survey of an item in an allowance area and the omission of that item in the reference area survey.

Apparently, many commenters were unaware of some of the items included in the survey. Several asked that OPM add goods or services that were already part of the survey. The most common example was child care. Nearly 500 commenters asked that OPM survey day care costs.

In the 1990 survey and again in 1991/1992 survey, Runzheimer priced the cost of full-time (8 hours per day, 5 days a week) day care, as well as baby sitting services. A complete description of each item surveyed was published in Appendix 5 of the 1990 report (see 56 FR 7934–7937). Appendix 2 of the June 1992 report contains a complete description of the items surveyed in 1991 and 1992.

Over 300 commenters stated that OPM should have considered college and university education costs; and nearly 1,000 commenters, mainly from Puerto Rico, believed OPM should have considered the cost of private education in grades K through 12. At OPM's direction, Runzheimer did not survey the costs of K–12 or college education because educational usage and opportunities vary significantly among locations. As part of a separate research project, OPM asked Runzheimer to research the availability and cost of these types of educational opportunities in the allowance areas and in the Washington, DC, area. OPM is currently analyzing the results of Runzheimer's research.

Comments on the Housing Component

Approximately one-fourth of the commenters thought that OPM should survey Federal employees to obtain their housing costs in a manner similar to that used under the COLA program in the 1970's and 1980's. OPM believes that the current process, which uses quantity and quality specific comparisons, more closely conforms with the intent of the settlement of *Arana* v. *United States*. As noted earlier, however, OPM plans to survey Federal employees on a one-time basis to obtain information on their housing and living patterns. OPM will use the results of this survey to make improvements to the living cost surveys and methodology as appropriate.

A large number of commenters from Alaska stated that they had purchased or refinanced their homes when housing values were relatively high but that since that time housing values had decreased. They felt that the survey did not reflect their costs because the survey covered only current home sales.

OPM is aware that home values in Alaska have changed markedly over the past decade. In 1990, we asked Runzheimer to collect housing data as of 1984 as well as the then current housing data. In the summer 1991 and winter 1992 surveys, we asked Runzheimer to collect historical data on all of the years between 1984 and 1990, as well as current data. The historical data are included in Appendix 9 of the June 1992 Runzheimer report.

As noted in both the 1990 report and the June 1992 report, neither OPM nor Runzheimer has data on home tenure that allows us to use the historical housing information. Home tenure, however, is one of the questions OPM is asking Federal employees in the forthcoming employee survey. OPM plans to analyze the feasibility of using the results of the employee survey to weight the historical housing data and include it with current housing data in future COLA analyses.

Several commenters believed that Runzheimer chose inappropriate living communities in which to survey housing costs. Paradise Park, which is located in Hawaii County, Hawaii, was cited frequently as an example of an inappropriate community. Additional examples were cited in several other allowance areas.

In response to these comments, OPM asked Runzheimer to research new communities in several allowance areas and several changes were made. For example, Paradise Park was dropped from the survey and Kailua Kona was added. Runzheimer discusses the research and changes in section 4.2.3 of the June 1992 report. As Runzheimer recommends, OPM will revisit the issue of community selection after analyzing the results of the forthcoming employee survey.

Many commenters from Hawaii also were concerned that Runzheimer may have obtained housing costs for leasehold sales instead of fee simple sales. A leasehold sale is one in which the homeowner does not own the land but rather leases it from the landowner. Runzheimer surveyed only fee simple sales in Hawaii. Leasehold sales were not included.

Another housing issue frequently mentioned was the high cost of home maintenance due to tropical storms and salt air or severe cold. At OPM's direction, Runzheimer also researched home maintenance issues and made selected changes to the survey. The research and changes are discussed in section 4.2.4.4 of the Runzheimer report. In addition, OPM has included in the employee survey several questions dealing with home maintenance and will further review this issue after the results of the employee survey have been analyzed.

A large number of commenters, particularly those from Alaska, noted the high cost of utilities in the allowance areas. Since the 1990 survey of Alaska was conducted during the summer, many commenters apparently believed that Runzheimer obtained only the utility usage for those months. This is not the case.

In each allowance area and in the Washington, DC, area, Runzheimer contacted utility companies and fuel oil dealers to obtain the annual utility costs. This took into consideration seasonal differences in rates and consumption. Thus, although the survey was conducted during the summer, the utility costs reflected both summer and winter usage and rates.

Many commenters noted that real estate taxes were high in their areas. In each area, Runzheimer surveyed real estate taxes and included these costs as part of the housing component costs.

Comments on the Transportation Component

Many commenters stated that rough terrain, salt air, and/or harsh weather increased automobile maintenance costs in the allowance areas and caused cars to depreciate faster. Commenters also noted that cold weather and rugged terrain reduced gas mileage.

In 1991, at OPM's request, Runzheimer researched the maintenance and fuel economy issues. Indeed, Runzheimer found that some items, such as constant velocity joint boots, need more frequent replacement in some of the allowance areas. Runzheimer also found that gas mileage also was affected by climate, particularly by cold weather. At OPM's direction, Runzheimer took many of these factors into consideration in calculating the indices shown in the June 1992 report. OPM also plans to ask Federal employees about their transportation costs in the forthcoming employee survey.

Many commenters from Puerto Rico noted that the excise tax on cars and many other items was very high in that area. Other commenters, particularly in Alaska, noted that they paid vehicle registration fees.

In surveying the cost of items, Runzheimer priced the final cost to the consumer. This cost included any excise tax or sales taxes paid directly or indirectly. In determining transportation costs, Runzheimer also included the cost of personal property taxes and vehicle registration fees in those areas that assess such taxes and fees.

Over a thousand commenters stated that municipal public transportation was not available in their area or not comparable with municipal public transportation in the Washington, DC, area. Many examples were offered. Some commenters stated that the systems in their areas provided only limited service. Others stated that their municipal systems were unreliable.

After researching issues concerning municipal public transportation systems in each allowance area, OPM decided to drop the survey of municipal public transportation. Runzheimer did not include it in the June 1992 report.

Over fifteen hundred commenters noted that Runzheimer did not survey air transportation costs. Many of the commenters stated that air travel was the only practical means of transportation outside their immediate area.

In light of these comments, OPM directed Runzheimer this year to price the cost of air travel from each allowance area and the Washington, DC, area to a common point (Los Angeles) within the contiguous 48 States. OPM will also ask employees about their travel in the upcoming Federal employee survey.

Comments on Miscellaneous Component

By regulation, the Miscellaneous Component is comprised of health care, gifts, contributions, savings and investments, retirement, and life insurance. Nearly all of the comments

OPM received on this component were related to health care.

Many commenters cited the high cost of medical care and the need to travel to other areas to obtain medical treatment. Runzheimer surveyed several typical medical items and services, and the costs of these items were included in the determining of relative living costs. OPM realizes, however, that some types of medical treatment are not available in every allowance area and that the living cost model does not take into consideration the additional costs that a small portion of the Federal population incurs in obtaining medical services outside the area.

Therefore, as with the educational opportunities issues, OPM contracted with Runzheimer to research the availability and cost of medical procedures in each of the allowance areas and in the Washington, DC, area. As part of this study, Runzheimer took into consideration the cost of air travel, lodging, and meals for the patient and a companion in computing the cost of medical treatment that can only be obtained outside an area. OPM is currently analyzing the results of Runzheimer's research. OPM is also asking Federal employees about medical expenses and related travel in the forthcoming employee survey.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC Area

June 1992.

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Executive Summary

This report is the second living-cost comparison study produced by Runzheimer International for the Office of Personnel Management (OPM) under contract OPM–90–0705. The OPM contract required Runzheimer to:

(1) Survey living costs in twelve (allowance) areas and the Washington, DC, area, and

(2) Compare living costs between the areas and the DC area.

To determine living costs in the identified areas and build this report, Runzheimer researched over 3,000 outlets and gathered more than 8,500 price quotes.

For ease of interpreting the research results, we display the outcome of the comparisons as living-cost indexes in the table below. In addition, the table shows living-cost indexes for federal employees who have unlimited access to commissary and exchange facilities by virtue of their employment.

FINAL COST COMPARISON INDEXES

Allowance area	Local pricing	Commissary and exchange
Anchorage, Alaska	104.53	101.44
Fairbanks, Alaska	106.96	104.19
Juneau, Alaska	108.01	NA
Other Areas in Alaska*	125.90	NA
Guam	114.10	107.01

FINAL COST COMPARISON INDEXES—Continued

Allowance area	Local pricing	Commissary and exchange
City & Cnty of Honolulu, Hawaii	118.98	113.98
Hawaii Cnty, Hawaii	112.26	NA
Kauai Cnty, Hawaii	117.38	NA
Maui Cnty, Hawaii	121.82	NA
Puerto Rico	100.10	99.57
St. Croix, Virgin Islands	107.94	NA
St. Thomas, Virgin Islands	114.25	NA

*As represented by Nome, AK.
NA = Not Applicable.

In response to comments OPM received on the 1990 living-cost report, OPM asked Runzheimer to make several changes to the surveys and the survey process. One significant change was the timing of the Alaska surveys, which were conducted in the winter—February 1992—rather than the summer, when the 1990 data were gathered. Runzheimer surveyed all other areas in the late summer of 1991. To ensure that price comparisons with the Washington, DC, area correlated in terms of seasonal timing, Runzheimer surveyed it during both seasons. Consequently, this report describes the results of the 1991 summer surveys and the 1992 winter surveys.

Other survey changes requested by OPM include:

- New living communities for Hawaii and Puerto Rico;
- New items for pricing, including air travel costs, catalog sales, and more fresh meats, fruits and vegetables.

We discuss the community and item changes in appropriate sections throughout this report.

Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC, Area

1. Introduction

1.1 Report Objectives

This comprehensive report culminates the data-gathering and research work conducted in 1991 and 1992 as required by Task 2 of contract OPM–90–0705 between the Office of Personnel Management (OPM) and Runzheimer International. The report details the findings of Runzheimer International's research and analysis of over 3,000 outlets and more than 8,500 price quotes to determine living-cost comparisons between selected areas and the Washington, DC, area.

Task 1 under the contract was to work with OPM to design a model to estimate comparative living costs among the respective areas. On February 26, 1991, OPM published in the **Federal Register** the model and the results of the first living-cost surveys conducted under that model. However, as this report will show, Runzheimer and OPM continue to refine and improve technical aspects of the research and analysis process.

Some readers may note similarities between this year's and last year's reports. Although Runzheimer and OPM added and changed many priced items and, in some cases, the communities surveyed, the basic approach continues to conform with OPM regulations. Therefore, the basic methodology remains unchanged from the first study and report.

Rather than assume readers' familiarity with last year's report, Runzheimer chose to present a complete, free-standing report. Consequently, we not only describe changes made to the survey and the results obtained but also repeat the explanation of the living-cost model and survey from last year's report.

As noted above, Task 2 of the contract required collection and analysis of cost data specified in the economic model developed by Runzheimer, in consultation with OPM.

The analyses show the comparative cost differences between the listed allowance areas and the Washington, DC, area:

1. Anchorage, Alaska
2. Fairbanks, Alaska
3. Juneau, Alaska
4. Other Areas in Alaska (as represented by Nome, Alaska)
5. Guam
6. City and County of Honolulu, Hawaii
7. Hawaii County, Hawaii
8. Kauai County, Hawaii
9. Maui County, Hawaii
10. Puerto Rico
11. St. Croix, Virgin Islands
12. St. Thomas, Virgin Islands

By law, Washington, DC, is the base or "reference" area for the nonforeign area COLA program.

Under OPM regulations, federal employees who have unlimited access to commissaries and post exchanges due to their civilian employment by the government may be paid at a different allowance rate than other federal employees. This regulation does not apply to federal employees who have access for other reasons—e.g., being married to active or retired military personnel.

Task 2 of the OPM contract also required Runzheimer International to calculate comparative living costs in the areas listed below and the Washington, DC, area for federal employees who have access to military commissaries and post exchanges.

1. Anchorage, AK
2. Fairbanks AK
3. Guam
4. City and County of Honolulu, HI
5. Puerto Rico

1.2 Other Reports under Separate Cover

In February 1991, OPM published in the **Federal Register** Runzheimer's 1990 report, which fulfilled contractual requirements to that point. In response to comments received following publication, OPM contracted with Runzheimer to a) undertake additional special research and b) develop two questionnaires for a survey of federal employees.

The special research projects focused on the availability and cost of:

- Medical services in the allowance areas and in the Washington, DC area;
- College and university education in the allowance areas and in the DC area; and
- K through 12 public and private education in Puerto Rico and in the DC area.

The reports on these research projects can be found under separate cover.

Also contained in a separate report is an analysis of the statistical and procedural considerations involved in the survey of federal employees' living patterns and housing costs. Bound with the report are two camera-ready questionnaires, which OPM has chosen to administer as one, combined questionnaire. Both Runzheimer and OPM believe that demographic and expenditure data obtained from federal employees will assist in evaluating and improving the procedures used to set COLAs.

1.3 Historical Housing Data

In 1990, Runzheimer collected both current and 1984 housing data in each allowance area and in the Washington, DC area, as required by contract. In 1991 and 1992, at OPM's request, Runzheimer expanded the housing database by researching and adding data for 1985, 1986, 1987, 1988, and 1989, as well as current housing data and historical mortgage interest rates. These data can be found in Appendix 9.

Because neither OPM nor Runzheimer has suitable home-tenure information to enable meaningful and reliable combining and application of the data in the COLA model, OPM instructed Runzheimer not to use the historical housing data in computing the indexes. OPM plans to analyze the feasibility and appropriateness of using information provided by federal employees in the forthcoming survey to blend the historical housing data with current housing data.

1.4 Changes in This Year's Survey

As noted earlier, Runzheimer and OPM added and changed many items for pricing. To enhance this year's analysis, Runzheimer and OPM also included additional communities to survey. Some new items added to the survey include air travel, catalog sales, and more fresh meats, fruits and vegetables. New communities were included in Hawaii, Guam, and Puerto Rico. We discuss these changes where applicable in the report and in Appendix 3.

1.5 Project Time Schedule

The Office of Personnel Management awarded contract OPM–90–0705 to Runzheimer International on June 6, 1990. The original contract scheduled completion of all work and documentation for the second option year by no later than November 22, 1991.

Because of comments OPM received on the 1990 living-cost surveys from Members of Congress, federal agencies, employees, and employee representatives, OPM changed the timing of the Alaska living-cost surveys from the summer to the winter months. February was selected as the most appropriate month for the survey because the timing avoided price variations that might occur during the holiday seasons. The other allowance areas, referred to in this report as the "tropical allowance areas," were again surveyed during the summer months.

Because of the timing change for the Alaska survey, OPM requested that the contract deadline be moved, and Runzheimer agreed. The due date for the final report containing both tropical and Alaskan-area survey results was set for June 8, 1992. After its review of the draft report, OPM asked Runzheimer to make additional calculations related to public transportation. (See section 5.1.) This resulted in the change of the report due date to June 17, 1992.

1.6 Pricing Period

Runzheimer collected data for the tropical allowance areas (and the Washington, DC, area) in August, September, and October of 1991, pricing most items during September. In August, our research associates priced durable goods, such as cars, and, in October, items such as homeowners insurance, which depend on the pricing of other items (i.e., housing).

Runzheimer collected price data for the Alaskan allowance areas (and, again, the Washington, DC, area) in February 1992. As with the summer surveys, however, our research associates collected price data for items dependent upon the pricing of other items slightly later (i.e., in March 1992).

1.7 Living Cost Components

In accordance with federal regulations, expense components Runzheimer costed to develop analyses, comparisons, and the report were:

1. Housing and Housing Related Expenses
2. Transportation
3. Consumption Goods and Services
4. Miscellaneous Expenses

Runzheimer factored sales, excise and property taxes into the analysis where applicable. However, in keeping with last year's report, we did not factor federal, state and local income taxes into the analysis. Because income taxes significantly affect living-cost analyses, Runzheimer suggests that OPM consider researching the inclusion of income taxes in the future.

Educational opportunities vary significantly among locations in terms of availability, quality, and other factors. Runzheimer analysts and OPM officials agreed that, without additional information, attempts to measure cost differences in education in the selected areas would be highly subjective or would not add to the integrity of the model. Consequently, Runzheimer undertook the special educational study mentioned in section 1.2. OPM and Runzheimer are evaluating the results of that research and analysis. In addition, OPM plans to ask federal employees about education costs and choices in the forthcoming employee survey.

2. Overall Model

2.1 Measurement of Living-Cost Differences

The most common and most widely accepted way to measure the living-cost differences between and among locations is to select representative items that people purchase in these locations and to calculate the respective cost differences, combining them according to their importance to one another (as measured by relative percentage of expense). Runzheimer applied this fundamental methodology to compare the living costs in each of the allowance areas with the living costs in the Washington, DC area.

To move from this basic concept to computing comparative living costs between each allowance area and the Washington, DC area, Runzheimer followed five main processes or steps:

Step 1 Identify the segment of the population for which this analysis is being targeted (i.e., the target population).

Step 2 Determine how these people spend their money.

Step 3 Select items to represent the expense categories for which these people spend their money.

Step 4 Conduct pricing surveys of the selected items in each area.

Step 5 Analyze cost ratios for the selected items and aggregate them according to the relative importance of each item.

2.1.1 Target Population: Federal Employees

Runzheimer's living-cost model measures living-cost differences for non-military federal employees having annual base salaries between $10,000 and $80,000, the salary range of the 1990 General Schedule of the Federal Government. Because living-cost differences may vary depending on an employee's income level, Runzheimer designed its analytical model to identify living costs at three income levels.

To determine the income levels that most accurately represent the federal employee population for the 1991 analysis and report, Runzheimer used the salary distribution of all General Schedule employees as of March 31, 1990, which OPM supplied. After analyzing the array of salary data, Runzheimer picked the midpoints of the lower, middle and upper thirds of the distribution as its three income levels ($18,000, $28,400 and $45,200 respectively).

Runzheimer recognizes that it applied the same income levels for this report as it did for the first. We acknowledge that one might obtain slightly different results by using current salary distributions. However, use of a new or different distribution would affect the weights employed to combine expenditures and calculate the indexes. Both Runzheimer and OPM believe that it is necessary to mitigate this effect. Therefore, neither the employment weights, derived from the salary distributions, nor the Consumer Expenditure Survey (CES) weights, described in 2.1.2 below, were changed for this year's analyses.

Runzheimer believes that, over time, new weights should be incorporated into the computational process. The timing of such changes should be balanced against the need to stabilize results so that indexes do not fluctuate from changes in weights rather than changes in relative prices. In the future, for example, OPM may wish to use total family income, derived from the proposed federal employee survey, in place of federal salaries, which are currently used to determine income levels and employment weights. If OPM

introduces this change, the shift should occur gradually.

2.1.2 Determination of Expenditure Patterns

2.1.2.1 *Source of Expenditure Data.* Conforming with last year's process, Runzheimer used the "prepub" statistical reports from the 1988 CES dated February 13, 1990 (see Appendix 1) as the basis for weighting expenditure patterns. For the reasons discussed above (see section 2.1.1), Runzheimer and OPM decided not to alter these weights. However, Runzheimer recommends that OPM implement a system to enable gradual introduction of changes in CES weights.

2.1.2.2 *Income Level Adjustments.* Because the CES reflected 1988 expenditure levels, Runzheimer adjusted the three 1990 incomes to 1988 levels before beginning the expenditure analysis. To calculate estimated 1988 income levels, Runzheimer used the average percentage salary increases of federal employees for the two-year period in question as supplied by OPM officials (4.1% increase 1988–89 and 3.6% increase 1989–90, resulting in a 7.85% two-year increase). This adjustment reduced the 1990 income levels to estimated 1988 levels of $16,700, $26,300, and $41,900.

2.1.2.3 *Family Size Considerations.* A family size of 2.6 was inherent in the weighting scheme Runzheimer employed to price all allowance areas. Derived from CES research, the number represented an average for the nation.

2.1.2.4 *Analysis of the 1988 Consumer Expenditure Survey.* From the 1988 CES, Runzheimer used the statistical report entitled "Table 2. Income before Taxes," which listed average expenses for families earning similar incomes, organized into eight income ranges. Runzheimer analyzed these data to develop typical spending patterns for the three income profiles identified in 2.1.2.2. (The table below displays the results of the analysis.)

Seven income ranges closely matched these three income profiles:

$10,000 to $14,999
$15,000 to $19,999
$20,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 and over
All respondents combined

The 1988 CES grouped expenses into small, logical families of items. For example, the report divided money spent by families on beef into four groups: Ground beef, roast, steak and other beef. The steak and roast groupings were further separated into small clusters of items (e.g., sirloin and round steak, chuck and round roast).

Drawing on this survey of expenditure data, Runzheimer sorted the item groupings into the four main cost components specified in the OPM regulations: Consumption goods and services, transportation, housing, and miscellaneous expenses. Runzheimer observed that families in the lower income ranges spent more of their money, as a percentage of total expenses, on goods and services and housing than families in higher income ranges. Also, families spent approximately the same percentage of their total expenses on transportation, regardless of income. Consequently, the miscellaneous component—which includes such things as medical-care expenses, contributions, gifts to non-family members, pension funds, long-term savings and investments, and life insurance premiums,—increased as a percentage of total expenses as income increased.

To develop accurate and defensible weighting patterns for the three income levels, Runzheimer performed linear regression analysis on the selected 1988 CES data. Listed below are the results of Runzheimer's analysis for the income ranges listed on the preceding page:

COMPONENT EXPENSES EXPRESSED AS A PERCENTAGE OF TOTAL EXPENSES

Income level 1991	Income level 1988 (est.)	Goods & services	Housing	Transpor-tation	Misc.	Total
$18,000	$16,700	39.59	24.35	20.76	15.30	100.00
$28,400	26,300	39.15	23.48	20.33	17.04	100.00
$45,200	41,900	38.74	22.66	19.94	18.66	100.00

Runzheimer further sorted goods and services into ten categories and used linear regression techniques to provide accurate ratios of renters to homeowners at each income level. Statistics on these component groupings appear later in this report.

2.2 General Formulae and Applications

An "index" is a mathematical way of comparing one price (or set of data) to another. For example, if a price index for a can of green beans is 110, that means that a can of green beans costs 10% more in the pricing area (i.e., allowance area) than in the reference area (i.e., the Washington, DC, area).

Runzheimer computed indexes for hundreds of items. To combine these indexes, Runzheimer applied weights from the CES that reflected the relative amount consumers normally spend on the items. For example, the price of a can of green beans has a lower weight than the price of a pound of apples because, according to the CES, people generally spend more on apples than canned green beans.

Runzheimer employed an indexing methodology known as Laspeyres to derive total cost indexes for each of three income levels and for each costed location. As applied to living-cost research, the Laspeyres index reflects the expenditure patterns of the people in the reference area (i.e., the Washington, DC, area) to weight the prices. Because detailed CES data by income level are not published for the Washington, DC area, Runzheimer used nationwide CES data to compute weights. Consequently, Runzheimer did not technically apply the Laspeyres index methodology in its pure form. Nevertheless, Runzheimer firmly believes that this nuance does not invalidate the price comparisons presented in this report.

As described in the example above and in greater detail in sections 3.1 and 6.2, Runzheimer applied the Laspeyres methodology to compute price indexes for the Goods and Services and the Miscellaneous Expenses components. For the Transportation and the Housing components, Runzheimer used a combination of a cost-build-up approach and the Laspeyres methodology to compute component indexes. We describe this dual process for Housing and Transportation in further detail in sections 4.5 and 5.4 respectively.

In conformance with § 591.205(c) of title 5 of the Code of Federal Regulations, Runzheimer followed a five-step process to derive the overall total indexes for each allowance area. First, Runzheimer used the CES data and the income levels described in

section 2.1.2.4 above to derive for each income level the amount of money consumers typically spend on each component. These amounts appear in the table below and in Appendix 13.

TYPICAL CONSUMER EXPENDITURES BY INCOME LEVEL AND COMPONENT

Income level	Goods & services	Housing	Transportation	Misc.	Total
Lower	$7,126	$4,383	$3,737	$2,754	$18,000
Middle	11,119	6,668	5,774	4,839	28,400
Upper	17,510	10,242	9,013	8,434	45,200

Note: Values may not total because of rounding.

Second, for each allowance area, Runzheimer multiplied the values above by the component indexes for the allowance area. Because the Housing component consisted of two indexes (one for owners and another for renters), we produced two sets of total relative costs—one for owners and another for renters.

Third, for each allowance area and income level, Runzheimer combined the total relative costs for homeowners and renters using the proportion of homeowners and renters as identified in the CES to weight the costs. (See section 4.2.1.) This produced an overall, average, relative living cost at each income level in each allowance area.

Fourth, for each allowance area, the overall, average relative costs by income level were combined using Federal employment weights based on the employment at each income level in the allowance area. Applying the same allowance-area employment weights, Runzheimer computed an overall, average cost for the reference area.

The last step was to divide the overall, average relative cost for the allowance area by the overall, average cost for the reference area to produce the final index. (See Appendix 13 for the calculations for each index.)

2.3 Data Collection Process

As noted earlier, Runzheimer obtained price information on over 8,500 items from over 3,000 outlets. To accomplish this important research effort, we selected the most efficient and effective information-gathering approaches possible. This section describes the various approaches.

2.3.1 In-house Research Staff

Runzheimer research personnel at its corporate headquarters in Rochester, Wisconsin, played a major role in all data collection activities. These professionals:

- Contacted manufacturers, trade associations, governmental agencies, and retail establishments to identify suitable items to price;
- Contacted professionals in the real estate business in each of the costed locations to obtain general information as well as specific rental rates and home market values;
- Conducted pricing surveys on site and by telephone for many items;
- Served as a vital liaison for field researchers;
- Performed hundreds of quality control checks once the data had been collected (these checks often involved verification of the survey data through telephone calls as well as comparing current data-gathering results with those from the 1990 survey); and
- Analyzed and computed the category, component and total comparative cost indexes.

2.3.2 Field Researchers—"Research Associates"

Collection of most price data was best accomplished through personal visits to retail outlets (e.g., grocery, clothing, furniture). For these activities, Runzheimer hired residents of each allowance area as independent contractors ("research associates"). For years, when measuring living costs for its clients, Runzheimer has applied this approach to data collection in over 80 countries worldwide.

For this project, Runzheimer supplemented its existing research-associate network to cover each of the allowance areas and the Washington, DC area adequately. To avoid any real or perceived conflicts of interest, Runzheimer did not hire persons as research associates who were either employees of the federal government, or who had immediate family who were employees of the federal government.

2.3.3 On-site Visits by Runzheimer Research Personnel

Full-time Runzheimer research professionals travelled to selected allowance areas to supervise data-collection activities and perform various quality-control checks on the data as necessary. Each such visit took place during the pricing period.

The researchers visited living communities within the allowance areas to look at housing accommodations personally and to talk with local real estate professionals. They also visited numerous retail outlets to verify item quality, selection and price levels in general.

In addition, these researchers met with Runzheimer's research associate(s) to answer any data-collection questions and to provide any additional training and instruction as necessary.

2.4 Editing and Quality Control Procedures

Runzheimer's extensive experience in measuring living-cost differences enabled us to establish editing and quality-control procedures at all stages of collecting and analyzing data. All data provided by research associates were manually reviewed by analysts prior to being entered into Runzheimer's computer system. Data elements were subsequently checked through software programs.

Federal regulations in § 591.205(b)(1)(i), title 5, Code of Federal Regulations, state that, "Whenever possible, exact brands and models are priced in each location." Every effort was made to satisfy this objective. (See section 3.3 for a discussion of brand and model selection.) Nevertheless, in a number of the allowance areas, the exact brands and models were either not readily available or not available at all. In these instances, editing decisions and substitution were needed.

Runzheimer defines "editing" as the removal and/or replacement of a price quote based on consistent and logical criteria. In all areas, Runzheimer was concerned that items of lesser (or greater) quality then the item specified might inadvertently be included in the analysis and bias the results. Therefore, any price quote that varied significantly from other price quotes for the item was flagged, verified, and, if necessary, eliminated from the analysis.

For example, Runzheimer's review of the prices for women's clothes collected

in the Virgin Islands revealed artificially low prices for dresses. Upon investigation, we found that less expensive sundresses had been priced because they were popular and abundant. We "threw out" the lower prices derived from these dresses and substituted prices for "dresses that could be worn in the office" to allow a more reasonable item comparison between the allowance-area prices and those in the Washington, DC area.

Removing an item from a location analysis causes redistribution of its weight to other items in its subcategory (or category when no subcategory exists). Consequently, whenever possible, Runzheimer avoided removing an unpriced item from a location analysis. When the review process unearthed a missing price for an item, Runzheimer resurveyed to obtain a price wherever possible.

2.5 Pricing Surveys in Puerto Rico

Through federal employment distribution data provided by OPM, Runzheimer determined that 70% of the non-military federal personnel employed in Puerto Rico work at facilities within 10 miles of the city of San Juan. The remaining 30% was distributed throughout Puerto Rico without a particular concentration. However, most of these remaining employees generally appeared to live closer to Mayaguez than any other large Puerto Rican city. Therefore, with OPM'S approval, Runzheimer surveyed Mayaguez in addition to San Juan. To combine the prices from both cities, Runzheimer used a 70% San Juan, 30% Mayaguez weighting.

2.6 Pricing Surveys in Hawaii County

OPM provided similar employment data for Hawaii County. Federal employment distribution data revealed that 80% of the non-military federal personnel work in the Hilo area, and the remaining 20% in the Kailua Kona area. Thus, to combine prices from both cities, Runzheimer used an 80% Hilo, 20% Kailua Kona weighting.

2.7 Surveying the Washington, DC, Area

OPM defined the Washington, DC, area in the federal regulations as the Washington DC–MD–VA Metropolitan Statistical Area. Because federal employees who work in this area reside in Virginia, in Maryland, and in the District of Columbia, Runzheimer selected retail outlets and living communities from all three. Runzheimer's model gave equal weight to the average prices in each geographic area.

Because of the size and diversity of the Washington, DC, area, Runzheimer conducted substantially more pricing surveys there than in other areas. For the goods and services component, Runzheimer generally surveyed to obtain six times as many price quotes in the Washington, DC, area as in the typical allowance area. For the housing, transportation and miscellaneous expense components, data collection was generally triple that of the typical allowance area.

3. Consumption Goods and Services

3.1 Component Overview

Based on the CES data, the goods and services component consisted of ten categories of family expense:

Food at Home
Food Away from Home
Tobacco
Alcohol
Furnishings & Household Operations
Clothing
Domestic Services
Professional Services
Personal Care
Recreation

To aid in quality control and analysis of future pricings, Runzheimer further subdivided four of the largest categories—food at home, furnishings and household operations, clothing, and recreation—into subcategories. Specific examples of products and services from these four subdivided categories can be found below. These examples only represent a minor portion of the total number of items (products and services) Runzheimer priced within each subdivided category.

EXAMPLES OF SUBCATEGORIES AND ITEMS SURVEYED IN THE FOUR MAJOR GOODS AND SERVICES CATEGORIES

Goods and services category	Subcategories and items surveyed (examples)
Food at Home.	Meats—Pork Chops, Whole Chicken, Ground Beef.
	Dairy—Milk, Cheddar Cheese.
	Cereals & Breads—Cookies, Spaghetti, Cake.
	Fruits & Vegetables—Apples, Frozen Peas, Fresh Oranges.
	Groceries—Coffee, Ketchup, Margarine.
Furnishings and Household Operations.	Services—Moving, Appliance Repair.
	Supplies—Toilet Tissue, Laundry Soap.
	Household Textiles—Bath Towel.
	Furniture—Living Room Chair.
	Major Appliances—Kitchen Range, Refrigerator.
	Housewares & Small Appliance—Two-slice Toaster.
	Misc. Household Eqpt.—Hammer, Electric Drill, Snow Blower[1], Lawn Trimmer[2].
Clothing	Men's and Boy's—Boy's Jeans, Man's Jeans, Man's Parka[1].
	Women's and Girl's—Woman's Slacks, Girl's Blouse, Girl's Jeans.
	Infant's—Disposable Diapers.
	Footwear—Man's Shoes.
	Apparel Products and Services—Coin Laundry.
Recreation	Fees and Admissions—Bowling, Golf[2], Downhill Skiing[1].
	TV, Radio and Eqpt.—Video Rental.
	Pets—Pet Food.
	Entertainment—All Terrain Vehicle[1], Board Game.
	Reading—Magazine.

[1] Priced in Alaska and Washington, D.C., areas only.
[2] Priced in tropical areas and Washington, D.C., area only.

From its ten categories of expense (which include the four subdivided categories above), Runzheimer selected a marketbasket of items on which to base its goods and services analysis. A "marketbasket" is a selected group of products and services that represent hundreds or even thousands of other items. Pricing every item available to consumers in a given locale would be impossible and inefficient.

Runzheimer selected typically purchased items and weighted these according to their relative importance in terms of consumer expenditure patterns. Each marketbasket item represented a specific group of related expense items. Using CES data, we determined the relative importance (weight) of each item. We compared the average price of each marketbasket item in each allowance area with the average price in the Washington, DC, area. The price differences (expressed as indexes) were aggregated based on the item, subcategory and category weightings, resulting in a total goods and services component index at each income level. Marketbaskets were slightly different among allowance areas to reflect regional purchasing patterns more closely.

However, goods and services price comparisons between an allowance area and the Washington, DC, area always used the same marketbasket. Therefore, while it may not be appropriate to compare living costs among allowance areas, all comparisons between an allowance area and the DC area are valid.

OPM directed Runzheimer to include catalog pricing and reflect applicable shipping costs for selected items. As Runzheimer identified items either unavailable or difficult to find in each area, we compiled a list of five catalog items to survey. Runzheimer researchers

then priced the selected items for the area survey. (See Appendix 3 for a description of these items.)

In each allowance area (except Puerto Rico and Hawaii County), Runzheimer requested three price quotes for each item (and sometimes more than three) from the local economy—one from each of three different outlets. In Puerto Rico, Runzheimer doubled the sample size by obtaining three price quotes for each item in both the San Juan and Mayaguez areas. Likewise in Hawaii County, Runzheimer doubled the sample size by obtaining three price quotes for each item in both Hilo and Kailua Kona. (See Appendix 2 for a complete description of marketbasket items.)

3.2 Marketbasket Research

3.2.1 Expenditure Research—Category Weightings

Runzheimer tabulated the expense data from the 1988 Consumer Expenditure Survey according to the ten categories of goods and services. As in the component analysis, Runzheimer used the expense data from the seven most appropriate income ranges as input into a linear regression analysis. From that analysis, Runzheimer calculated the category weightings for each income level as listed below:

CATEGORY WEIGHTINGS EXPRESSED AS A PERCENTAGE

Category	Lower	Middle	Upper
Food at Home	25.52	22.38	19.35
Food Away from Home	15.95	16.09	16.23
Tobacco	3.13	2.54	1.96
Alcohol	2.92	2.79	2.67
Furnishings & Hsld. Op	14.35	15.95	17.49
Clothing	14.24	14.93	15.59
Domestic Service	1.78	1.79	1.81
Professional Services	5.77	5.84	5.91
Personal Care	3.57	3.47	3.38
Recreation	12.77	14.22	15.61
Totals	100.00	100.00	100.00

3.2.2 Expenditure Research—Subcategory and Item Weightings

Runzheimer also drew upon the expense data from the 1988 CES to determine proper subcategory and item weightings and to identify marketbasket items. Logical groupings of family expenditures provided the basis for subcategory and item weights. Unlike category weightings, which vary by income level, subcategory and item weighting are computed from national aggregate expenditures only (i.e., all three income levels used the same set of subcategory and item weightings) as this approach is most common in similar public and private sector cost-of-living analyses.

Runzheimer's expenditure research process included procedures to ensure that no marketbasket item had an overwhelmingly large or insignificantly small item weighting.

3.3 Marketbasket Item Specifications

From each logical expense grouping, Runzheimer selected one or more marketbasket items to represent all items in the grouping. When selecting specific items for the marketbasket, Runzheimer worked to satisfy these three criteria:

- Items should be readily available in all locations if possible or should be items of local significance (e.g., snow blower).
- Item price levels should logically represent the price levels of unselected items in the "logical grouping."
- Items should have the same or nearly the same application in all locations.

Appendix 2 lists Runzheimer's marketbasket items. Once an item was selected, Runzheimer's research analysts identified the specific brand and/or model/size of each item available in all (or most) locations. This involved contacting manufacturers, trade associations, retail establishments, etc. For some items, isolating specifications was quite straightforward because of their nature (e.g., bread, sirloin steak, nonprescription pain reliever). Changes from the 1990 to the current items selected for pricing in the Goods and Services or Miscellaneous categories have been identified in Appendix 3, along with explanation for the changes.

3.3.1 Exchange and Commissary Expenditure Research

Runzheimer used the same marketbasket items to price commissaries and exchanges as used for the local pricings. We obtained one price quote for marketbasket items found in these facilities. Runzheimer did not, however, gather data on other military facility services (e.g., barber shop, movie theater, golf course, doctor, dentist).

Runzheimer did not assume that people with access to military facilities made all purchases in these facilities. Instead, we used OPM's 1980 Living Pattern Surveys of federal employees to determine the percentage of purchases that families typically make in military facilities versus local outlets. For example, as the following table shows, in Fairbanks, 61.3% of Food at Home is purchased at a PX or commisssary. These percentages were used to aggregate the local and commissary/exchange prices into one set of appropriate, blended prices. (The blended prices were compared to the local prices in the Washington, DC, area just as each allowance area's local prices were.)

PERCENTAGES OF PURCHASES MADE AT PX/COMMISSARIES

Category	Allowance area				
	Fairbanks	Anchorage	Guam	Honolulu	San Juan
Food at Home	61.3	66.2	70.0	52.7	29.1
Food Away	81.0	71.0	64.0	84.0	65.0
Tobacco	53.0	47.0	76.0	73.0	64.0
Alcohol	46.2	44.3	64.5	44.2	32.7
Furniture and Household Op	17.3	18.3	43.7	34.0	10.7
Clothing					
Domestic Service					
Professional Services					
Personal Care	59.5	36.0	49.3	33.3	7.3
Recreation	49.7	33.7	49.7	32.7	15.7

3.4 Goods and Services Data Collection Procedures

3.4.1 Data Collection Materials

Runzheimer collected data with OMB-approved data collection materials (see Appendix 5). All Runzheimer-developed worksheets conformed to the OMB approved materials.

3.4.2 Outlet Selection

Proper outlet selection is crucial to measuring living-cost differences accurately because misjudgment can seriously affect survey results. Runzheimer paid particular attention to choosing appropriate outlets, focusing on three key guidelines to ensure proper outlet selection.

First, for areas that had numerous outlets from which to choose, Runzheimer identified targets in several different geographic areas. For example, in the Washington, DC, area, Runzheimer selected outlets in and around six different geographic areas: that is, two areas in Virginia, two in Maryland and two in the District of Columbia.

Runzheimer's second guideline was that for any one marketbasket item, all outlets be similar in type. For example, Runzheimer surveyed two of the three food items in full-service grocery stores and the third food item in a warehouse-type grocery store in all locations. Gathering prices from all convenience stores in one location and all grocery stores in another would have distorted price comparisons.

The last guideline involved the diversity of outlets in Runzheimer's sample. We believed that pricing different items in different types of outlets more accurately portrayed living-cost differences. For example, for efficiency, Runzheimer could have priced all clothing items in department stores. However, to incorporate price levels at other types of outlets that sell clothing items, whenever possible, Runzheimer surveyed some items in men's and women's clothing stores, some items in department stores, other items in shoe stores and still other items in discount department stores.

Runzheimer's research analysts selected outlets by combining their own expertise with these resources:

- Personal experience of Runzheimer on-site research associates and travelling researchers;
- Informal telephone interviews with knowledgeable residents in each area;
- Yellow pages sections of area telephone books; and
- Area chambers of commerce and information bureaus.

With new businesses constantly appearing (and old ones disappearing), outlet selection will be an ongoing process. Also, one can expect a portion of outlets to refuse to participate every year. Therefore, updating Runzheimer's outlet sample is a necessary and important part of each pricing survey.

3.5 Inclusion of Sales and Excise Taxes

For all items subject to sales tax, the appropriate amount of tax was added prior to analysis. Runzheimer also included all applicable sales, property and excise taxes to items that were part of other living-cost components. For example, automobile purchase costs in Puerto Rico include an excise tax based upon vehicle type and dealer's acquisition cost. Runzheimer included this tax in computing the total purchase price of a vehicle in Puerto Rico. (See section 5, Transportation.)

Runzheimer gathered applicable information on taxes by contacting appropriate sources of information in the allowance areas, such as the Excise Tax Officer of the St. Thomas Bureau of Internal Revenue. Runzheimer also drew upon appropriate tax publications, such as the State of Maryland's *Sales and Use Tax Laws and Regulations*, the "General Excise Tax Law" (Chapter 237) of the *Hawaii Tax Reports*, and the *Uniform Sales Tax*, "Ordinance Section 69.05," of the City/Borough of Juneau.

3.6 Goods and Services Survey Results

In section 2.2 of this report, Runzheimer presented a detailed explanation of the economic model used to analyze the price data. As it applies to goods and services, the approach involved comparing the average prices of marketbasket items in each allowance area with those in the Washington, DC, area. The resulting price ratios were aggregated into subcategory and then category indexes using the expenditure weightings derived from the 1988 CES.

Appendix 4 contains tables showing the ten category indexes, the three weighting patterns, and the three total consumption goods and services indexes for each allowance area. The Washington, DC, area does not require a table because it is, by definition, "the reference location" where all category and component indexes equal an index of 100.

4. Housing

4.1 Component Overview

The housing component consists of expenses related to owning or renting a dwelling. These include mortgage or rent payments, utilities, real estate taxes, homeowner's or renter's insurance, home maintenance and telephone.

At each of the three income levels, Runzheimer measured annual housing costs under the two main housing categories: home ownership and rental.

4.2 Housing Model

4.2.1 Expenditure Research

Section 2.1.2.4 describes how Runzheimer analyzed the 1988 CES to identify the portion of expenses attributable to each of the four components. Runzheimer also used this survey to determine the national average ratio of families who own, as opposed to rent, their residences. Using the expense data from the seven most appropriate income ranges as input into a linear regression analysis, Runzheimer calculated own and rent weights as listed in the following table:

OWN/RENT WEIGHTINGS
(In percent)

Category	Income levels		
	Lower	Middle	Upper
Homeowner[1] ..	37.10	46.91	62.86
Renter	62.90	53.09	37.14
Totals	100.00	100.00	100.00

[1] With mortgage.

Runzheimer excluded expenditure data for homeowning families without a mortgage because they were not typical of homeowners in the base area or in the allowance areas with the largest concentrations of federal employees.

The 1988 CES was also used to identify which home-maintenance items to price and to establish the relative importance of those items.

4.2.2 Development of Housing Profiles

To compare housing costs accurately in all locations, Runzheimer constructed a model to measure housing costs under six different circumstances; that is, we identified six typical housing profiles and reasonably and logically matched these profiles to three income levels, as shown in the table below. Runzheimer used these standard profiles in all areas to measure equivalent housing units.

HOUSING PROFILES

Income level	Renter profile	Owner profile
Lower	1 bedroom .	800—900—1200 sq. ft.,[1] 4–2–1[2]
Middle	2 bedrooms	1000—1300—1600 sq. ft., 5–3–1.5
Upper	3 bedrooms	1400—1700—2300 sq. ft., 7–3–2

[1] Defined as minimum, reference, and maximum-size housing in square feet.

[3] Secondary criteria, not available in all areas, defined as "Total rooms—Bedrooms—Baths." Total rooms excludes bathrooms, hallways, entrance areas and closets but includes bedrooms, living room, family room, kitchen, formal dining room and den/study. The secondary criteria were used whenever possible to reduce the amount of overlap among the income profiles.

In the original model, Runzheimer developed a more stringent definition for each housing profile. These definitions were found to be too restrictive, particularly in the smaller areas, and if the definitions were applied rigorously, very few sales or rental data could be obtained. In the 1991 and 1992 surveys, Runzheimer modified the profile definitions to improve the amount of data that could be used while keeping to OPM's requirement that the costs for similar housing be compared between the allowance areas and the Washington, DC, area.

4.2.3 Living Community Selection

Except as noted below, Runzheimer surveyed the same living communities this year as it did last year. In selecting communities last year, Runzheimer used information received from real estate sources to designate communities as "appropriate" for lower, middle and/or upper income profiles, or not appropriate at all. Usual reasons why a community might be deemed "inappropriate" were if the typical housing accommodations were either too poor in quality or too luxurious or if not enough homes were being bought and sold or rented to establish accurate, average price levels. Although real estate contacts generally did not know average salary levels of typical residents, most were able to compare communities and judge whether one was more "upscale" than another based on residents' various occupations and other qualitative factors.

Runzheimer contacted real estate brokers, residential appraisers and other knowledgeable real estate professionals in each area to obtain information on the predominant age(s), size(s) and type(s) of housing in various communities and housing subdivisions. When available and appropriate, Runzheimer identified at least six communities (two at each income level) in each allowance area. However, this goal was not achievable in many of the smaller allowance areas. For the Washington, DC, area, Runzheimer selected at least nine communities (three at each income level) in which to gather renter and homeowner data.

This year, in light of the comments OPM received on Runzheimer's 1990 report of living-cost comparisons, OPM asked Runzheimer to study and report on the advisability of adding several additional communities to the living-cost surveys. After considerable research, Runzheimer and OPM made the following changes:

1. For the San Juan, Puerto Rico, homeowner pricing at the middle income level, the community of Toa Baja was dropped and the VA Hospital area was chosen as a replacement.
2. In Hawaii County, Paradise Park was dropped for homeowner pricing at the lower and middle income levels and replaced by Hilo. The Kailua Kona area was added for homeowner and renter pricing at all three income levels.
3. In Honolulu, for homeowner pricing at the high income level, the community of Kaneohe was dropped and Kailua was added.

At OPM's request, Runzheimer also investigated the appropriateness of using Eagle River, Alaska, as a substitute community for North or South Anchorage. Runzheimer determined through data analysis and on-site observation that Eagle River was not any more suitable for pricing than North or South Anchorage. Therefore, the Anchorage survey did not include Eagle River.

For homeowner pricing at the High income level in Guam, Runzheimer recommended replacing the community of Jonestown with the community of Dededo, which was a more affordable market. The 1991 sales data from Jonestown reported prices for 1,700 square-foot homes (the house size used for the upper income group) in excess of $400,000, nearly twice the average sales price reported in the 1990 survey. Runzheimer contacted local real estate professionals to investigate this dramatic price shift. As a whole, these professionals viewed the Jonestown market for single-family, detached homes as relatively exclusive and in excess of the upper income range used for the OPM study. Subsequent to these conversations, Runzheimer sent one of its most experienced central office research specialists to Guam to observe the housing situation first-hand. This researcher confirmed the opinions reported by the local real estate professionals and determined that Dededo was a more appropriate community to survey.

Runzheimer believes that the forthcoming employee survey data could provide valuable information for determining which communities to survey. Runzheimer recommends that OPM consider revisiting community selection after the results of the employee survey have been analyzed.

A table of living communities used for pricing can be found in Appendix 6.

4.2.4 Identification and Quantification of Housing-Related Expenses

From the 1988 CES, Runzheimer identified and categorized housing-related expense items into one of five groups:

- Utilities,
- Real estate taxes,
- Owners/renters insurance,
- Maintenance, and
- Telephone.

4.2.4.1 *Utilities.* For this study, Runzheimer classified electric, heat (oil or gas), water and sewer as utilities. Although most utility companies had ready access to current charges per unit of consumption and average consumption patterns for all households, very few (if any) separated consumption patterns by number of family members in a household or by size/type of accommodation.

Runzheimer focused on average annual consumption experience per household, gathering this information from utility companies serving each allowance area and the Washington, DC, area. Combining this consumption data with current utility rates, Runzheimer computed average annual utility costs for each of electric, gas or oil (whichever Runzheimer found to be more widely used, if used at all), water and sewer. Runzheimer then assigned this average consumption pattern to the homeowner profile at the middle income level.

Because some utility costs vary by size of house and yard, Runzheimer calculated a multiplier consistent with the standard home sizes to arrive at utility rates for the other five profiles. The table below shows the standard sizes and utility factors for each profile. The standard sizes roughly equate to the reference size of each profile. The formula to calculate each multiplier was:

Multiplier=1+(.5×(Standard square feet−1300)/1300)

The resulting utility multipliers are listed below:

Utility multipliers

Income level	Renter profile		Owner profile	
	Sq. ft.	Multiplier	Sq. ft.	Multiplier
Lower	600	.73	900	.85
Middle	900	.85	1,300	1.00
Upper	1,100	.92	1,700	1.15

4.2.4.2 *Real Estate Taxes.* Real estate tax formulas do not always translate directly into actual taxes paid by typical property owners. And, in some cases, formulas are applied in such a way as to make it nearly impossible to recreate accurate tax rates.

For this study, Runzheimer contacted the city assessor in each area to obtain real estate tax information for the homeowner living communities. Runzheimer encountered some very confusing real estate tax information. For example, last year Runzheimer found that taxes in San Juan were assessed based on the value of the home as of 1957. Homes built after 1957 were either "adjusted" back to the 1957 time frame or assessed in some other fashion.

As was done last year, Runzheimer checked the calculated real estate tax amounts by checking actual taxes paid by property owners. Whenever Runzheimer was not able to reconcile the formulas with actual taxes paid, we gathered sufficient data on actual taxes paid to develop an average ratio for taxes paid to current home values. This ratio was then applied to the average home value in that community to obtain an average real estate tax amount for the desired homeowner profile.

4.2.4.3 *Owners/Renters Insurance.* Runzheimer gathered insurance-rate information for the allowance areas for both renter and homeowner profiles. Just as last year, these rates represented coverage for structure and contents for homeowners but contents only for renters. In addition to gathering insurance rate data, Runzheimer (at OPM's request) expanded its contact with local insurance agents to investigate the prevalence of additional homeowner/renter coverages for floods and earthquakes. Runzheimer estimates from its research that insurance coverages for such disasters were purchased by less than 10% of the populace in the Alaskan or tropical allowance areas. Therefore, Runzheimer did not consider these additional riders.

Runzheimer notes that the proposed federal employee survey will obtain information on employee purchases of these additional riders. Therefore, OPM may wish to revisit this issue after completing its analysis of the survey results.

4.2.4.4 *Maintenance.* Many factors were involved in measuring the cost of maintaining a home, including area climate, architecture and building materials, and the cost of maintenance materials and labor. This year, in consultation with OPM, Runzheimer added the following items to enhance the pricing for household maintenance commodities: Fire extinguisher, bathroom caulking and kitchen faucet. Pest control service was priced in every allowance area except Nome, Alaska, where sources indicated it wasn't necessary.

Additionally, this year, OPM instructed Runzheimer to conduct special research in Alaskan allowance areas to determine the frequency with which residents must purchase services necessitated by winter weather conditions. Runzheimer contacted service providers in each Alaskan allowance area performing the following functions:

- Furnace service,
- Service for frozen pipes and sewers,
- Roof cleaning and replacement,
- Septic tank pumping and replacement,
- Repairs for frost heave damage,
- Painting and weatherstripping,
- Snow removal from roofs, driveways and access roads,
- Basement service for excessive moisture, and
- Sales of backup generators.

Runzheimer's research revealed that only two of the aforementioned services are utilized annually in Alaska: Snow removal, which, according to Runzheimer's sources, most residents perform themselves, and furnace service (check). The incidence of backup generators was reported to be less than 5% of the households in each Alaskan allowance area. Therefore, Runzheimer did not include any of these additional items in the Alaska living-cost surveys.

However, as noted in the discussion of insurance (above), the proposed federal employee survey asks questions about home maintenance. Runzheimer recommends that OPM review issues relating to home maintenance after the results of the employee survey have been analyzed.

Runzheimer developed maintenance costs based on the cost of maintenance materials and labor rates in each area. Runzheimer's approach to maintenance was the same as the approach to goods and services, as explained below.

Runzheimer used expenditure data from the 1988 CES to identify the national average home-maintenance expense, the maintenance items to survey, and the appropriate item weighting. For renters (since most if not all maintenance items were included in rent), maintenance costs for the three renter profiles were not included.

To compute home-maintenance cost differences between each allowance area and the Washington, DC, area for the homeowner profiles, Runzheimer obtained prices for selected building materials and labor rates for maintenance work to measure this small but noteworthy element of home ownership. Next, to establish reference-location maintenance expense, Runzheimer assigned the national average expense per household to the middle-income homeowner profile.

Logically, maintenance costs for larger homes would be greater than costs for middle-sized homes, while costs for smaller homes would be less. Therefore, in this study, Runzheimer applied the same homeowner multipliers used in the utilities model for the lower and upper income profiles (.85 and 1.15 respectively) to recognize differences in maintenance costs due to house size.

4.2.4.5 *Telephone.* Telephone expenses consisted of local service charges, possible additional charges for local calls, and charges for any long distance calls. To measure estimated expenses for local service and local calls, where available, Runzheimer surveyed the cost of touch-tone service with unlimited calling. (In Mayaguez, 120 local calls per month was used because unlimited calling was not available.)

To estimate long distance charges in all areas, Runzheimer surveyed the cost of three ten-minute direct dial calls per month to large U.S. mainland cities (i.e., Los Angeles, Chicago, and New York City). Last year, Runzheimer obtained charges for the evening rate. This year, at OPM's request, Runzheimer measured the price of a call placed in the survey area at the time of day necessary to be received in the respective city at 8 p.m.

local time. In many areas, this resulted in pricing a combination of daytime and evening-rate calls.

4.3 Housing Data Collection Procedures

4.3.1 Homeowner Data Collection

In the homeowner data-gathering phase, Runzheimer obtained sale prices of homes (called "comparable sales") that sold in 1991 that matched the housing profiles in that area. In the communities that were identified (see section 4.2.3), Runzheimer tried to obtain all of the recent comparable sales that matched the housing profiles. As was done last year, Runzheimer contacted knowledgeable and helpful real estate professionals in each location and/or used national real estate subscription and listing services.

The amount of data obtained depended on the number of home sales in the community and the availability of square footage and other information. This in turn is dependent on the size of the community, the economic conditions, the quality and quantity of the realty data available, and the willingness and ability of local realty professionals and assessor offices to provide data. In Anchorage, for example, Runzheimer was able to obtain 60 comparable sales at the middle income level because the area is relatively large, the real estate market was active, and data on home size and type were available. In St. Croix and Guam, on the other hand, Runzheimer found that the realty market was relatively small, sales were slow, and data were limited. Additional data-collection issues relating to the Virgin Islands are discussed in greater detail below.

Just as last year, Runzheimer research personnel traveled to profiled communities to observe first hand the comparability of homes in one area versus another and whether individual housing units were appropriate for the profiled income levels.

This year, when comparing current data with that gathered for the initial living-cost report, Runzheimer noticed an anomaly in home-market value pricing for Mayaguez, Puerto Rico, between 1990 and 1991. Although the housing market did not experience a downturn in value between pricings, Runzheimer's research yielded a price drop at all three income profiles. After closer examination, Runzheimer housing analysts discovered polarized home-price data from Mayaguez in 1990.

In 1990, two individual data sources had provided home-sale data to Runzheimer from segments of the Mayaguez market that differed markedly in price and quality.

These data were then averaged to produce Mayaguez housing values.

In 1991, a Runzheimer representative travelled to Mayaguez and conducted additional interviews with local real estate professionals and discovered (not surprisingly) that the high values came from more exclusive homes and thus were inappropriate to include with the Mayaguez sample. Accordingly, Runzheimer did not incorporate prices from the data source who had supplied the inappropriate data. The result was an apparent drop in value, due, however, to absence of the prices for the exclusive homes, not to actual market experience. In future pricings, Runzheimer will visit Mayaguez again to ensure that appropriate homes are priced.

Aside from Mayaguez, Runzheimer had concerns about the adequacy of housing data from the Virgin Islands of St. Thomas and St. Croix. Just as it had found in developing the 1990 report for OPM, Runzheimer again found that the Virgin Islands had two distinct housing markets—one relatively exclusive market for affluent retirees and tourists and another, more affordable market for working-class residents. Runzheimer gathered data from both markets in an attempt to get a true picture of housing costs in the Virgin Islands.

Another recurring obstacle to measuring home prices in the Virgin Islands was the difficulty of obtaining data on both housing markets from local realtors and appraisers. Runzheimer found that realtors generally did not monitor the smaller, less profitable working-class market. Therefore, Runzheimer relied on information from the local assessor's office. Though this proved difficult and time-consuming to gather, Runzheimer believes it was able to obtain better information this year than it had in the previous survey.

Runzheimer noted that many of the homes in St. Thomas and St. Croix have basement apartments. Although these rental units could generate income that would offset relatively high mortgage payments, Runzheimer did not attempt to impute an income stream for these units.

Hurricane Hugo was a factor that mainly affected the rental market in the Virgin Islands. Although the physical effects of Hurricane Hugo are not evident as they were in 1990, the rental market is still limited due to the destruction caused by the hurricane. Until the stock of rental units is built-up, the rental market will remain very tight; which affects availability, price, and quality.

4.3.2 Historical Homeowner Data Collection

OPM requested Runzheimer to obtain information on the appreciation/depreciation of homes in each allowance area for 1985 through 1989. (Historical housing data are provided in Appendix 9.) For the majority of the years analyzed, Runzheimer was able to obtain actual historical home sales data in all locations except Mayaguez, St. Thomas, St. Croix, Nome, and the Maryland and Virginia suburbs of Washington, DC. In the four allowance areas, Runzheimer contacted local real estate professionals who advanced their opinions and observations regarding home-value trends in their area.

The historical housing information did not influence the final results, which were based only on recent comparable sales. Neither Runzheimer nor OPM has sufficient information to weight the historical housing data to represent the typical tenure of homeowners. Rather than subjectively assign equal or varied weights to each year's data, OPM chose to wait until the results of the forthcoming employee survey are analyzed and, if appropriate, use that information to weight the historical housing data. Runzheimer agrees with this decision.

4.3.3 Renter Data Collection

In some cases, the same realtors and brokers who assisted in our profiling phase were very active in the rental markets as well. When this occurred, Runzheimer obtained current rental rates and fees for our profiled apartments, townhouses and houses from these sources.

Runzheimer also contacted rental management firms that operated apartment complexes matching the profile specifications. In large metropolitan areas, such as the Washington, DC, area where rental complexes abound, our housing analysts conducted telephone surveys to obtain current rental information.

4.4 Housing Analysis

4.4.1 Homeowner Data Analysis

One of the most important factors relating to the price of a home is the number of square feet of living space. For each income profile in each allowance area and the Washington, DC, area, Runzheimer computed that average price per square foot for the comparables. Except as noted below, Runzheimer used this value times the reference square footage for the profile

to determine the average home value for the profile.

As discussed in part in section 4.3.1 above, Runzheimer experienced difficulties in obtaining housing data in some areas. For example, despite several efforts to obtain more detailed information from various sources, Runzheimer was able to obtain very few comparable sales with square footage information for home sales in the Maryland suburbs of Washington, DC. Neither Runzheimer nor OPM believed it was desirable to remove the influence of Maryland housing data from the survey, but the date were insufficient to determine accurately housing prices at the profile reference sizes.

Therefore, with OPM's concurrence, Runzheimer adjusted the 1990 Maryland prices by the overall change in the housing prices for the District of Columbia and the Virginia suburbs of Washington, DC. Both Runzheimer and OPM believe that the real estate markets in the DC area are interrelated and that prices generally move in tandem.

Similar adjustments were required for some profiles in other areas. For instance, when data at one income profile were sparse and the results appeared incongruous with the market trends at the other profiles, Runzheimer adjusted the previous year's data by the rate of increase observed in the profiles with adequate comparable sales data. These adjustments were made only when the current comparable sales data were unreliable. Runzheimer then applied objective criteria developed by OPM.

Once an average price was determined for the reference size home at each profile in each area, Runzheimer calculated the annual mortgage payment (principle plus interest) for each profile home. To obtain current mortgage interest rates in each area, Runzheimer contacted real estate professional and lending institutions. Runzheimer used this information to compute the payment for a typical 30-year mortgage, 20% down, 80% financed.

4.4.2. Rental Data Analysis

For each area and at each income profile, Runzheimer calculated the arithmetic average of the monthly rental rates that matched the rental housing profiles. As with the homeowner data, however, the rental data at some profiles in selected areas were sparse and produced results inconsistent with the rental price trends at the other profile levels. When this occurred, Runzheimer generally used the rate of change in the profiles with adequate rental data to adjust the 1990 rental average for the profile. Just as was done with the homeowner data, these adjustments were made only when the current rental data were unreliable. In such cases, Runzheimer used objective criteria developed by OPM.

The monthly rental averages determined above were multiplied by 12 to compute the annual rental housing costs.

4.4.3 Analysis of Housing-Related Expenses.

Because section 4.2.4 covers the identification and quantification of housing-related expenses, these topics are not repeated here.

However, it should be noted that Runzheimer incorporated home sale prices from this study into the calculations of real estate taxes and homeowner's insurance, which depend upon the value of the home.

4.5 Housing Survey Results

In the above sections, Runzheimer describes how it measured the costs for utilities, real estate taxes, insurance, maintenance, telephone, rents, and homeowner mortgages. Appendix 7 shows the cost of each of these items, for renters and homeowners separately, in each allowance area and in the Washington, DC, area. For the Puerto Rico and Hawaii County allowance areas, the costs are shown separately for Mayaguez and San Juan and Hilo and Kailua Kona respectively.

Appendix 8 compares the total cost of these items in each allowance area with the total cost of the same items in the Washington, DC, area. Again, there are separate comparisons for renters and homeowners. Also, for the Puerto Rico and Hawaii County allowance areas, separate tables show the composite costs weighted by the respective federal employment distributions. (See sections 2.5 and 2.6 for discussion of employment weighting in these two allowance areas.)

The final housing-cost comparisons take the form of indexes that are used in Appendix 13 to derive the total, overall index for owners and renters. (Refer to section 2.2 for a discussion of the general formulae and how the component indexes are combined.)

4.6 Future Considerations

Runzheimer believes that the housing analyses are accurate and appropriate for the samplings and methodologies employed. OPM has reviewed these analyses and finds them in full conformance with regulations. This does not mean, however, that improvements cannot be made. In Maryland, for example, Runzheimer will change its strategy for housing-data collection in the next round of living-cost surveys in an attempt to obtain more information on square footage and room count. Runzheimer is currently discussing with OPM this and other issues related to housing-data collection.

Also, Runzheimer notes that the proposed federal employee survey should provide extensive and invaluable data on actual employee housing patterns and costs. The survey will provide information on where employees live, whether they rent or own their homes, when they purchased their homes, what their homes are like, and so on. This information will enable OPM to review, verify, and improve the living-cost model. Runzheimer encourages federal employees to participate fully in this important survey.

5. Transportation

5.1 Component Overview

The transportation component consisted of expenses related to private and public transportation. The private transportation category contained expenses related to owning and operating a car in each area. The public transportation category focused on the cost of air fares from each location to a common point within the contiguous 48 states.

Last year, Runzheimer surveyed the cost of municipal transportation (fares for vans, buses, or trains) to determine the cost of public transportation. This year, at OPM's request, Runzheimer provided OPM with detailed information on the availability and type of public transportation in the allowance areas. Upon review of these materials, OPM decided to discontinue the survey of municipal transportation because the systems in most allowance areas were not comparable to those in the Washington, DC, area. Runzheimer supports this decision. In place of municipal transportation, OPM asked Runzheimer to survey the cost of air transportation.

As was done last year, Runzheimer used national average expenditure data to combine the private and public transportation relative cost differences between each allowance area and the Washington, DC, area to arrive at a total transportation component index. (See section 5.4.)

5.2 Private Transportation Methodology

Runzheimer determined that an accurate and reasonable approach to measure transportation costs was to select and analyze three commonly

driven vehicles (a domestic auto, an import auto and a truck) in all areas.

New vehicles were the basis for developing the transportation-cost calculations. Although Runzheimer could have developed costs from the premise that "identical" used vehicles would be purchased from auto dealers in each location, Runzheimer believed that costing new vehicles reduced the potential for inconsistencies due to value judgements concerning used vehicles.

5.2.1 Vehicle Selection and Pricing

As mentioned above, Runzheimer selected and priced a domestic auto, an import auto, and a truck as the basic vehicle types to cost in all locations. We based our selection of these vehicle types on their popularity in the United States as demonstrated by owner registration data.

To select a specific make and model within each vehicle type, Runzheimer identified the top-selling models in each car class. For these models, Runzheimer's research associates collected new vehicle prices. At each auto dealership in the sample, Runzheimer recorded the suggested retail prices of the three vehicles plus any additional charges, such as shipping, excise tax, dealer prep, and additional dealer markup. Runzheimer used these suggested retail prices (and not negotiated prices) in the analysis.

The three vehicles selected for analysis were:

Domestic Vehicle—Ford Taurus GL 4 door sedan 2.5L 4 cyl

Truck—Chevrolet S10 Blazer 4X4 2 door 4.3L 6 cyl

Import Vehicle—Honda Civic DX 4 door sedan 1.5L 4 cyl

The Honda Civic was not available in Guam (because Hondas in Guam were shipped from Japan and the Civic was not manufactured in Japan in 1991). However, Runzheimer estimated annual costs for the Civic in Guam based on prices of other, available Honda models. Runzheimer priced 1991 models in the summer survey and 1992 models in the winter survey.

All vehicles were equipped with standard options, such as automatic transmission, AM/FM stereo radio and air conditioning. This year, at OPM's request, Runzheimer also priced snow tires, engine-block heaters, and heavy-duty batteries in all of the Alaskan locations. (At OPM's request, Runzheimer conducted a study relating to tires. See section 5.2.5.)

Car dealers in the Washington, DC, area did not recommend vehicle rustproofing. However, it was suggested or recommended in allowance areas. Therefore, we included rustproofing as an add-on "option" in allowance areas, but not in the Washington, DC, area.

5.2.2 Vehicle Trade Cycle

Calculating the cost to own and operate a vehicle requires that two important factors be determined: miles driven and time period of ownership. In the automobile industry, these two factors are known collectively as a vehicle's "trade cycle." The trade cycle is stated as a length of time either in months or years, and the total number of miles driven in that time period (e.g., four-year, 60,000-mile trade cycle). This information is required to compute annual costs related to fuel, oil, tires, maintenance and depreciation.

Conforming with the previous living-cost report, Runzheimer used a four-year 60,000-mile trade cycle in all areas based upon the following information:

- The Internal Revenue Service has used this trade cycle for many years to compute the allowable cents-per-mile reimbursement rate for persons who drive their personal vehicle for business purposes.
- The four-year time period coincides with the typical length of a vehicle loan.
- U.S. Department of Energy statistics for 1988 show that the U.S. average for number of vehicle miles driven was: 18,595 per household and 10,246 miles per vehicle.

Runzheimer has been unable to find conclusive statistics on average annual miles driven per vehicle in any allowance area. In 1991, Runzheimer contacted car dealers to obtain their observations on average odometer mileage on trade-in vehicles and informally asked other residents of each area for their opinions.

From the opinions gathered, we concluded that, in most cases, the average annual miles driven in allowance locations appeared to be less than or equal to 15,000. In the Washington DC, area, the opinions of those contacted indicated an average annual mileage of 15,000 or more. Therefore, without definitive statistics to prove otherwise, Runzheimer set a standard—used last year as this year—of 15,000 miles per year, which results in a four-year, 60,000-mile trade cycle.

Runzheimer notes that the number of miles driven annually is one of the questions OPM is asking on the proposed federal employee survey. Runzheimer recommends that OPM revisit the issue of annual mileage after analyzing the results of the employee survey.

5.2.3 Fuel Performance and Type

To establish average fuel-performance ratings, Runzheimer selected the "city driving" figures published by the Environmental Protection Agency (EPA). Runzheimer chose the "city" instead of "highway" figures because all locations contained considerable stop-and-go driving patterns. All vehicles included in this study used regular unleaded fuel. Runzheimer obtained self-service cash prices, and substituted full-service when self-service was not available.

This year, at OPM's request, Runzheimer expanded its research on fuel-performance factors in all of the allowance areas and in the Washington DC, area. Specifically, we included in our analysis the factors of temperature, road surface, and gradient to arrive at fuel-performance adjustment percentages in each allowance area.

5.2.3.1 *Impact of Temperature upon Fuel Performance.* Runzheimer consulted two published sources to perform this analysis: *Passenger Car Fuel Economy: EPA and Road* and *The Weather Almanac* (Ruffner & Blair). Miles-per-gallon performance varies by ambient temperature. The lower the temperature, the fewer miles-per-gallon and vice versa. In the EPA study, the temperature at which no adjustments to fuel performance occurs is 77°F. Below that temperature, miles-per-gallon achieved drops; above 77°, miles-per-gallon achieved improves. To measure the effect of temperature on miles-per-gallon for each allowance area, Runzheimer researched average monthly temperatures as reported in *The Weather Almanac.*

In each location and for each month, Runzheimer assigned the appropriate shortfall factor from the EPA study based on the average monthly temperature for each given location. For example, if the average monthly temperature was 35°, the shortfall in miles-per-gallon would be 0.876. After assigning factors to each month, Runzheimer averaged the twelve factors for each location. The results of these calculations are shown in section 5.2.3.4.

5.2.3.2 *Impact of Road Surface upon Fuel Performance.* For its analysis, Runzheimer assumed that federally controlled roadways are typically composed of concrete and/or high-load asphalt and that locally controlled roadways are typically composed of low-load asphalt. EPA's research indicates that cars are generally more fuel-efficient on the firmer, high-load surfaces than on the softer, low-load surfaces.

Although traffic patterns and road usage certainly vary among areas, Runzheimer could find no relevant studies of these issues. Therefore, Runzheimer assumed that federally controlled roadways generally support twice the traffic of locally controlled roadways on the premise that federally controlled roads typically have twice the lanes of locally controlled roads.

In each allowance area, Runzheimer researched the total mileage falling into either the federal or local categories. For example, Hawaii contains 1,456 miles of federally controlled roads and 2,606 miles of locally controlled roads. The number-of-lanes assumption allowed Runzheimer to increase federal road mileage by a factor of two.

Runzheimer applied the average low-load asphalt factor of 0.94 (which reflects dry, wet, and snowy conditions) to the local mileage percentage and the average concrete and/or high-load asphalt factor of 0.97 to the federal mileage percentage to create a weighted average factor for each area. These weighted factors ranged from 0.96 to 0.98, depending on the area. The Washington, DC, area was assigned a factor of 1.00 on the premise that the vast majority of traffic in that area travels on dry, high-load surfaces. (See section 5.2.3.4. for application of this factor in estimating overall miles-per-gallon.)

5.2.3.3 *Impact of Gradient upon Fuel Performance.* Runzheimer consulted EPA's *Passenger Car Fuel Economy: EPA and Road* to determine the effect of local topography (i.e., gradient) upon fuel efficiency. EPA provides mileage factors based upon various gradients ranging from less than 0.5% (essentially flat) to greater than 6% (steep).

Runzheimer reviewed the topographic features of each area and found a wide range of road conditions. However, Runzheimer was unable to find information on the types of terrain drivers typically encounter in each area or the number of miles drivers travel in each type of terrain.

Lacking such information, Runzheimer assumed that drivers in the allowance areas generally travel roads having approximately the same gradients that are found on average in the United States. Applying the information from EPA's research, Runzheimer computed a fuel-performance factor of 0.981 for this type of driving. This factor was assigned to each allowance area. Runzheimer assigned a factor of 1.00 to the Washington, DC, area on the premise that the vast majority of traffic in that area travels on major freeways and highways having less than a 3.0% grade. (See section 5.2.3.4 for application of this factor in estimating overall fuel efficiency.)

5.2.3.4 *Overall Impact upon Fuel Performance.* Runzheimer applied the results of the analyses described above to "localize" or make geographically sensitive adjustments to the EPA average ratings and establish reasonable fuel-performance ratings for each allowance area.

In the table below, the factor 1.00 means that no adjustment to EPA fuel performance is appropriate. A factor of less than 1.00 means that the estimated gasoline mileage in the area is less than the EPA average. For example, the total adjustment factor for Fairbanks/Nome is 0.80. This means that the estimated gasoline mileage in Fairbanks and Nome is 80% of the EPA estimated average. Note that the adjustment factor for Washington, DC, area (0.94) indicates that average gasoline mileage in that area is below the EPA estimate.

SUMMARY OF FUEL-PERFORMANCE ADJUSTMENTS

Location	Temperature	Road surface	Gradient	Total
Guam	0.99	0.98	0.98	0.95
Hawaii	0.99	0.98	0.98	0.95
Puerto Rico	1.01	0.98	0.98	0.97
Virgin Islands	1.01	0.98	0.98	0.97
Washington, D.C.	0.94	1.00	1.00	0.94
Anchorage	0.88	0.96	0.98	0.83
Fairbanks/Nome	0.85	0.96	0.98	0.80
Juneau	0.89	0.96	0.98	0.84

Note: These adjustments compound. That is, the Total adjustment is the result of multiplying the three individual factors together for each location/area.

5.2.4 Vehicle Maintenance

With OPM's concurrence, Runzheimer selected the 6 most common maintenance service/repair jobs performed on vehicles as the basis for vehicle maintenance analysis:

- Tune-up,
- Oil change,
- Automatic transmission fluid change,
- Flush/fill coolant,
- Muffler installation, and
- CV joint boot.

The recommended frequency of performing each of these jobs was combined with the prices charged by local dealers and service stations to compute an estimated annual maintenance expense.

This year, OPM directed Runzheimer to research the appropriateness of additional maintenance requirements for vehicle ownership in the Alaskan allowance areas. Specifically, Runzheimer researched three additional maintenance items:

- Windshield damage,
- Winterization, and
- CV joint boots

Runzheimer contacted auto service managers, local service managers, service advisors, and mechanics to obtain this information.

Runzheimer found a wide range of opinions regarding windshield repair and replacement. Although damage apparently occurs more frequently to windshields in Alaska than in the Washington, DC, area (in part due to the prevalence of graveled roads in Alaska), Runzheimer was able to obtain only subjective information on how frequently windshields were repaired or replaced and what portion of the expenses was paid by insurance companies. OPM viewed Runzheimer's research results as inconclusive and as such, instructed Runzheimer not to price this item.

Runzheimer's research on winterization requirements revealed that while some procedures differ from those found in warmer climates, i.e., greater ratio of antifreeze to water mix, no additional measures are taken in any Alaskan allowance areas to winterize a vehicle. Thus, at Runzheimer's recommendation, OPM elected not to price this item as well.

On the other hand, Runzheimer's research of CV joint boot replacement revealed varying replacement cycles between Alaskan allowance areas: Anchorage—every 45,000 miles (3

years), Fairbanks—every 15,000 miles (1 year), Juneau—every 45,000 miles (3 years) and Nome—every 30,000 miles (2 years). The cost of replacement for all three vehicle types was factored into the indexes based upon the life cycle of the replacement. For example, 100% of the cost was included for Fairbanks because research indicated annual replacement was the norm. Only 50% of the cost was included for Nome where research indicated biennial replacement.

5.2.5 Tires

In 1991, Runzheimer investigated why tires might wear out sooner in one area over another. Runzheimer contacted tire manufacturers, transportation agencies (road conditions and composition varied in different areas), and retail tire dealers. The research revealed that various factors (e.g., road quality/state of repair, road composition) caused tread life (the average number of miles a tire is expected to last) to be less in allowance areas than in the Washington, DC, area. Based on these findings (some of which were quantitative), Runzheimer based tire expenses on a 40,000-mile tread-life in allowance areas, and a 55,000-mile tread-life in the Washington, DC, area.

This year, OPM directed Runzheimer to research the prevalence of snow and studded tires and, if appropriate, to determine the cost to purchase and install studs on a vehicle in each Alaskan allowance area. Runzheimer contacted tire companies and local service centers to gather this information. Runzheimer's research indicated that four extra snow tires, with studs, would be required for all three vehicles in Anchorage, Fairbanks, and Juneau. For Nome, Runzheimer's research revealed that mud and snow tires would be appropriate for the S10 Blazer but not the other two vehicles because all-season radials were reported to be the norm: (Most of the driving in Nome occurs within a very confined area). Therefore, Runzheimer surveyed the cost of extra wheels, extra tires, and installing studs for all vehicles in Anchorage, Fairbanks, and Juneau and for the S10 Blazer only in Nome.

5.2.6 License and Registration Fees, and Miscellaneous Tax

Runzheimer obtained information regarding appropriate license and registration fees, and miscellaneous taxes (i.e., personal property tax and motor vehicle registration tax) from each area. One-time fees and miscellaneous taxes were divided equally over each vehicle's four-year trade cycle. Sales and excise taxes were included in the purchase price of each vehicle (see section 5.2.7.). Ongoing fees and taxes were included as part of the annual costs.

5.2.7 Depreciation

From Runzheimer's experience, the single largest annual expense related to owning and operating newer vehicles is vehicle depreciation, the lost value of the vehicle as it ages and is driven. To calculate the trade cycle of a vehicle, and the residual value of the used vehicle when it is traded or sold, Runzheimer divides the difference between the purchase price and the residual value by the number of years the vehicle is owned to compute the average annual depreciation.

In the depreciation equation, Runzheimer used suggested retail prices, plus any additional charges, such as shipping, excise tax, dealer prep, and additional dealer markup. (Runzheimer did not believe that negotiated prices could be collected on an equitable basis.) As discussed earlier, the trade cycle was determined to be four years, 60,000 miles. Runzheimer research indicated that residual values were the same in all areas except Fairbanks and Nome. This research effort is explained below.

Runzheimer was aware that several firms and associations tracked and published weekly or monthly used-car and used-truck wholesale auction prices. Some firms even published projections of the future value of today's new vehicles. Most publications provided several residual values for each vehicle, depending on its condition at the time of trade-in (e.g., clean, average, rough). Several common publications of this type were *Black Book, Kelley Blue Book, Automotive Market Report,* and *NADA* (National Automobile Dealers Association). Unfortunately, these sources only tracked auction prices for vehicles sold in the contiguous 48 states and then published broad-based average residual values for each vehicle.

To get specific information from sources knowledgeable about the used vehicle markets in allowance areas, Runzheimer contacted auto dealers and financial institutions in these areas. Most of the sources with whom Runzheimer spoke said that they used the above-mentioned publications as guides, just as dealers and financial institutions across the United States used them.

Except for Fairbanks and Nome, Runzheimer found no conclusive evidence that used vehicles in allowance areas were (on average) worth more or less than used vehicles in the Washington, D.C., area. Therefore, we reported the same used vehicle prices in all areas (except Fairbanks and Nome). An appropriate and logical source for these values was the *Black Book Official Finance/Lease Guide* for 1990 vehicles. For Fairbanks and Nome, Runzheimer used 90% of the *Black Book* projected residual values to reflect rougher conditions.

It should be noted for clarification that identical residual values did not translate into identical depreciation amounts in all locations. Depreciation amounts were higher in allowance areas than in the Washington, DC, area because new vehicle prices in all allowance areas were higher. For example, new vehicle prices in Anchorage were closest to Washington, DC, prices, averaging 6% more, while prices in Puerto Rico were the highest, averaging 39% more than Washington, DC, prices.

5.2.8 Finance Expense

Runzheimer included the average annual cost of financing a vehicle in the total cost of private transportation. Runzheimer surveyed financial institutions in each area for their auto-loan interest rates using a 48-month loan length with 80% financing as the basis in all locations.

5.2.9 Vehicle Insurance

Runzheimer measured the cost of auto insurance in each location. To determine the type of coverage to price, Runzheimer contacted insurance agents in each area to obtain information on the typical policy. Listed below is the most common coverage—surveyed in Alaska, Hawaii, and the Washington, DC, area.

Bodily Injury—$50,000/$100,000
Property Damage—$25,000
Medical—$5,000
Uninsured Motorist—$50,000/$100,000
Comprehensive—$100 Deductible
Collision—$250 Deductible

Runzheimer found that insurance coverage differed somewhat in Guam, Puerto Rico, and the Virgin Islands. Therefore, the coverage surveyed in these areas varied slightly from that listed above.

In 1990, Runzheimer identified the most "popular" automobile insurance companies by analyzing market-share reports compiled by an industry rating bureau. The policy described above was then priced again this year for each location. Two or three price quotes were obtained for each area and averaged together to produce the final number for this component in each allowance area.

5.3 Public Transportation Methodology

Responding to comments received last year on the publication in the **Federal Register** of Runzheimer's 1990 report, OPM asked Runzheimer to survey the cost of air fares as they relate to recreational travel. Runzheimer used the Apollo reservation system to price the lowest available round-trip air fare from each allowance area and the Washington, DC, area to Los Angeles, California. Los Angeles was selected because it is a common point approximately equidistant from most of the allowance areas and the Washington, DC, area. The cost of the trip from each allowance area to Los Angeles was compared with the cost of the trip from the Washington, DC, area to Los Angeles to compute the public transportation category indexes. (See Appendix 11.)

5.4 Transportation Survey Results

As described in section 5.2 above, Runzheimer measured the costs for gasoline, maintenance, tires, taxes, licensing, depreciation, finance, and insurance for three types of automobiles in each allowance area and in the Washington, DC, area to determine typical private transportation costs. Appendix 10 shows the cost of each of these items in each area. As with the housing costs, private transportation costs for the Puerto Rico and Hawaii County allowance areas are shown separately for Mayaguez and San Juan, Puerto Rico, and Hilo, and Kailua Kona, Hawaii, respectively. These data are combined to produce composite costs for each allowance area using the respective federal employment distributions. (See sections 2.5 and 2.6 for a discussion of employment weighting in these two areas.)

As described in section 5.3 above, Runzheimer also measured the cost of recreational air travel from each allowance area and from the Washington, DC, area to a common point within the contiguous 48 states. Appendix 11 shows the cost of these air fares and their relationship to the cost for the Washington, DC, area. Again, there are separate calculations for the sub-areas in the Puerto Rico and Hawaii County allowance areas.

Appendix 10 compares the total cost of the private transportation items for each vehicle in each allowance area with the total cost of the same items in the Washington, DC, area. Appendix 10 also shows how the private and public transportation indexes were combined using expenditure weights derived from the CES data to produce final transportation indexes.

The final transportation indexes are used in Appendix 13 to derive the total overall index. (Refer to section 2.2 for a discussion of the general formulae and how the component indexes are combined.)

6. Miscellaneous Expenses

6.1 Component Overview

The miscellaneous expense component consists primarily of four unrelated groups of expenses:

- Medical care,
- Contributions (including gifts to non-family members),
- Personal insurance, and
- Savings and investments (including pensions).

Runzheimer believed that certain expense items in this component should not be measured in such a way as to reflect living-cost differences between locations. For example, Runzheimer considered contributions to be a personal choice and included in all locations as a constant amount. Through research into all of the expenses of this component, Runzheimer determined that expenses related to personal insurance, savings and investments, and pensions should be held constant as well, for reasons discussed in section 6.2.2.

To measure the miscellaneous component expenses, Runzheimer constructed a pricing methodology similar to the one used in the goods and services component. Runzheimer selected representative items for medical care, priced them in all areas, and then computed a miscellaneous component index based on the relative importance of costed items/categories held constant.

6.2 Miscellaneous Expense Model

6.2.1 Expenditure Research

From the 1988 CES, Runzheimer tabulated the miscellaneous expense data into logical expense groupings and then determined appropriate item weighting. The table on the following page lists the professional services that Runzheimer selected to price and their weightings:

MISCELLANEOUS EXPENSE CATEGORIES AND WEIGHTINGS

Categories	Income level (percent)		
	Lower	Middle	Upper
Medical Care	43.41	31.56	22.40
Contributions (including gifts)*	12.38	14.90	16.85
Personal Insurance & Pensions*	44.21	53.54	60.75
Totals	100.00	100.00	100.00

*Held constant.

6.2.2 Miscellaneous Expense Methodology

As stated in section 2.2, Runzheimer used the Laspeyres indexing methodology to compute the miscellaneous expense component index. For groups of items held constant, the model assumed a price ratio between the allowance area and the Washington, DC, area equal to 100.00%.

Runzheimer defined "savings and investments" as the portion of a family's budget that was targeted for long-term financial security. Money stored in a savings or investment vehicle for future expenditures (of goods and services, housing, or transportation) was accounted for in the other component weightings. Based on this reasoning, within the miscellaneous expense component, Runzheimer equated long-term savings and investments with money spent on pensions and other retirement vehicles.

In section 6.1, we noted that expenses related to personal insurance were held constant for all locations. Runzheimer came to this conclusion after contacting life insurance companies and OPM officials in 1990. The life insurance companies contacted indicated that policies written (and premiums charged) to persons within the United States and its territories did not vary due to location. Runzheimer's research and discussions with OPM officials also indicated that, in general, federal employees in all areas received similar or identical benefits packages—any variations were due to personal preference. Therefore, Runzheimer believed, and OPM concurred, that holding these types of expenses constant was appropriate.

6.3 Miscellaneous Expense Data Collection Procedures

Medical care items were surveyed consistent with the approach used in the goods and services component. For quality-control purposes, Runzheimer used its in-house research staff to conduct much of this survey. Medical care item prices were gathered as part of the goods and services pricing.

The following medical-care items were surveyed in each allowance area and in the Washington, DC area:

- Nonprescription pain reliever
- Prescription drugs
- Vision check
- Dental service
- Doctor visit
- Hospital room
- Health insurance

Runzheimer computed a price index for each item in each allowance area by comparing the local average price with the Washington, DC average price. These indexes were combined using weights derived from the CES to compute a Medical Care composite category index for the allowance area.

For areas in which employees may have purchasing privileges at commissaries and exchanges, Runzheimer computed separate Medical Care indices using the weighting factors below. As with the commissary/exchange factors used in the Goods and Services component, these factors were based on the results of OPM's 1980 Living Pattern Surveys of federal employees.

PX/COMMISSARY SPENDING PATTERNS (PERCENTAGE)

Category	Allowance Area				
	Fairbanks	Anchorage	Guam	Honolulu	San Juan
Medical Care	72.3	66.3	59.0	46.3	9.3
Cash Contribution	0.0	0.0	0.0	0.0	0.0
Personal Ins./Pension	0.0	0.0	0.0	0.0	0.0

The only medical item priced at commissaries and exchanges was the nonprescription pain reliever. Therefore, the difference between the local retail and commissary/exchange Medical Care indexes is very small.

As with other components, Runzheimer notes that the pending federal employee survey will obtain information on medical services. OPM may wish to review the composition of the Medical Care component after the analyses of the employee survey results are complete.

6.4 Miscellaneous Expense Survey Results

Appendix 12 contains the results of our data collection and index calculations. The reader will note that the relatively large weighting for personal insurance/pensions and cash contribution, which are held constant, significantly dampens the effect of the cost differences between the allowance areas and the Washington, DC area.

Section 2.2 describes how the Miscellaneous component indexes are combined with the other component indexes to derive the final index for each area.

7. Final Results

7.1 Component and Total Comparative Cost Indexes and Amounts

The components and weightings and indexes, and the total comparative cost indexes, appear below. Appendix 13 shows how each index was derived from the various component indexes.

FINAL COST COMPARISON INDEXES

Allowance area	Local pricing	Commissary & exchange
Anchorage, Alaska	104.53	101.44
Fairbanks, Alaska	106.96	104.19

FINAL COST COMPARISON INDEXES—Continued

Allowance area	Local pricing	Commissary & exchange
Juneau, Alaska	108.01	NA
Other Areas in Alaska*	125.90	NA
Guam	114.10	107.01
City & Cnty of Honolulu, Hawaii	118.96	113.98
Hawaii Cnty, Hawaii	112.26	NA
Kauai Cnty, Hawaii	117.38	NA
Maui Cnty, Hawaii	121.82	NA
Puerto Rico	100.10	99.57
St. Croix, Virgin Islands	107.94	NA
St. Thomas, Virgin Islands	114.25	NA

*As represented by Nome, AK.
NA=Not Applicable.

7.2 General Comments

Runzheimer has attempted to bring fairness and accuracy to the results of this study. The scope of this engagement has become more comprehensive by virtue of the special research projects, seasonal pricings, expanded marketbasket pricings, employee questionnaire development and other enhancements mentioned throughout this text.

Runzheimer believes that living cost research is a dynamic process, not a static one, and that continued interaction with OPM will aid the process and improve accuracy.

7.3 Recommendations

Scattered throughout this report, Runzheimer identified several opportunities for improving the quality of the survey instruments and the survey process. For ease of reference, we summarize them here and provide additional recommendations.

1. *Federal Employee Survey:* Runzheimer urges OPM to finalize the questionnaires prepared by Runzheimer and conduct the survey of federal employee housing and living patterns as soon as possible. Throughout this report, the reader will have noted the importance of this invaluable research in refining living-cost comparisons in the future. Runzheimer encourages federal employees to participate in this vital survey.

2. *Income Taxes:* Income taxes significantly affect living-cost analyses. Consequently, Runzheimer believes that OPM should consider researching the inclusion of income taxes in the future.

3. *Salary Levels and Employment Distributions:* Runzheimer recognizes that it applied the same salary levels and federal employment weights in this report as it did in the first. We believe, however, that new salaries and weights should be incorporated into the computational process over time. The timing of such changes should be balanced against the need to stabilize results so that the indexes do not fluctuate due to changes in weights rather than changes in relative prices.

4. *Consumer Expenditure Survey Data:* Conforming with last year's process, Runzheimer used the Bureau of Labor Statistics' "prepub" statistical reports from the 1988 Consumer Expenditure Survey (CES). Runzheimer recommends, however, that OPM implement a system to enable gradual introduction into the model of changes as reflected by the CES results.

5. *Catalog Pricing:* Runzheimer found that obtaining prices of selected items through catalog sales was effective and appropriate, particularly in the smaller areas. OPM may wish to broaden the use of catalog pricing in these areas and for items where comparable brands are not widely available.

6. *Housing Data:* Runzheimer believes there is a need to obtain better housing data in several locations. How this can be accomplished within the cost

limitations of the current contract is an issue Runzheimer needs to discuss further with OPM.

7. *Community Selection:* Runzheimer believes that the forthcoming federal employee survey could provide valuable information for determining which communities to survey in each area. Runzheimer recommends that OPM revisit community selection after the results of the employee survey have been analyzed.

8. *Renter and Homeowner Insurance:* At OPM's request, Runzheimer researched the purchase of special insurance riders by renters and homeowners. The research suggested that these additional riders are not common. However, Runzheimer recommends that OPM review the issue of insurance coverage after the results of the employee survey have been analyzed.

9. *Home Maintenance Items:* Runzheimer conducted special research for OPM on home maintenance items necessitated by winter conditions in Alaska. The research suggested that no changes were required in the housing model. As with insurance, however, Runzheimer recommends that OPM re-examine home maintenance requirements in all of the allowance areas after the results of the employee survey have been analyzed.

10. *Historical Housing Data:* Between the data collected during the 1990 survey and that collected in the current survey, OPM now has housing data for the period from 1984 through 1991. Unfortunately, neither Runzheimer nor OPM has sufficient information concerning home tenure to weight these data and analyze them objectively. Runzheimer notes that the employee survey will ask about home tenure, and we recommend that OPM consider using information from the employee survey, if appropriate, to analyze the historical housing data.

11. *Annual Miles Driven:* Runzheimer has been unable to find conclusive statistics on average annual miles driven per vehicle in any allowance area or the Washington, DC, area. Again, we note that the number of miles driven annually is one of the questions on the employee survey, and we recommend that OPM revisit the issue of annual mileage after analyzing the survey results.

12. *Continued Involvement:* Runzheimer encourages OPM to continue to be fully involved in the day-to-day research and survey operations. We believe that close cooperation between Runzheimer and OPM improves the living-cost comparisons by ensuring data integrity and conformance with OPM regulations.

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Number of consumer units (in thousands)	81,354	9,433	8,219	14,586	10,901	7,198	12,209
Number of sample interviews	30,900	3,500	3,107	5,496	4,119	2,849	4,983
Consumer unit characteristics:							
Income before taxes[1]	$28,540	$12,320	$17,373	$24,591	$34,375	$44,331	$74,234
Income after taxes[1]	26,149	11,892	16,345	22,963	31,660	40,100	66,345
Average number of persons in consumer unit	2.6	2.2	2.5	2.7	2.9	3.2	3.1
Age of reference person	46.9	50.1	46.5	44.7	43.2	42.3	45.3
Average number in consumer unit:							
Earners	1.4	0.9	1.2	1.5	1.8	2.0	2.1
Vehicles	2.0	1.4	1.9	2.2	2.6	2.7	3.1
Children under 18	0.7	0.6	0.7	0.7	0.9	1.0	0.8
Persons 65 and over	0.3	0.5	0.4	0.3	0.2	0.1	0.1
Percent distribution:							
Male	66	57	64	71	78	82	87
Female	34	43	36	29	22	18	13
Homeowner with mortgage	38	15	26	36	52	64	76
Homeowner without-mortgage	24	32	26	25	18	14	14
Renter	39	53	47	39	30	21	11
Black	11	12	10	10	5	6	4
White and other	89	88	90	90	95	94	96
Elementary (1–8)	11	17	12	8	5	2	3
High school (9–12)	44	51	54	48	42	40	24
College	44	31	34	44	53	58	73
Never attended and other	1	1	1	0	0	0	0
At least one vehicle owned	86	84	91	95	96	97	97
Average annual expenditures	26,389.07	16,788.64	19,558.35	24,886.36	31,659.60	37,562.00	52,320.19
Food	3,804.39	2,777.33	3,194.53	3,765.02	4,587.49	5,281.61	6,296.11
Food at home	2,176.94	1,809.23	1,954.49	2,174.01	2,556.74	2,906.55	3,109.86
*Cereals and bakery products	317.03	266.20	274.62	320.55	375.38	417.06	450.19
*Cereals and cereal products	111.15	101.45	100.46	111.31	134.59	145.71	138.66
*Flour	4.83	6.43	4.59	4.99	5.06	4.15	4.17
*Prepared flour mixes	9.88	9.30	9.21	10.32	11.92	14.72	12.18
*Ready-to-eat and cooked cereals	73.49	65.38	65.31	72.80	89.56	96.06	92.85
*Rice	7.96	8.00	6.06	7.95	9.66	9.48	10.14
*Pasta, cornmeal and other cereals	14.97	12.33	15.29	15.24	18.39	19.30	19.34
*Bakery products	205.88	164.75	174.16	209.23	240.80	271.35	311.53
*Bread	65.72	58.48	61.24	68.58	72.19	78.50	86.03
*White bread	35.48	32.79	33.61	36.12	39.98	39.46	42.54
*Bread, other than white	30.24	25.69	27.63	30.46	32.21	39.05	43.49
*Crackers and cookies	51.76	41.43	42.92	53.39	60.40	75.75	77.18
*Cookies	32.19	24.30	27.96	33.01	35.93	47.99	49.96
*Crackers	19.57	17.13	14.94	20.38	24.46	27.76	27.21
*Frozen and refrigerated bakery products	13.55	10.10	10.54	13.12	15.29	17.64	24.89

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Other bakery products	74.84	54.74	59.46	74.14	92.92	99.46	123.44
*Biscuits and rolls	26.62	18.31	20.95	27.08	30.87	38.69	45.14
*Cakes and cupcakes	20.31	13.30	15.37	21.50	26.94	26.92	31.29
*Bread and cracker products	2.82	2.70	2.40	2.36	3.73	4.07	4.89
*Sweetrolls, coffee cakes, doughnuts	19.60	15.04	15.68	18.44	23.22	23.31	33.90
*Pies, tarts, turnovers	5.48	5.38	5.07	4.76	8.16	6.48	8.22
*Meats, poultry, fish and eggs	560.01	477.38	555.07	541.91	635.94	699.55	812.35
*Beef	183.66	152.35	204.56	185.96	215.42	225.57	263.75
*Ground beef	79.09	71.32	84.22	79.31	96.47	91.12	101.79
*Roast	33.40	28.09	34.54	34.19	35.85	40.13	50.81
*Chuck roast	13.23	11.36	14.43	13.12	16.66	14.71	17.87
*Round roast	9.13	7.79	10.19	8.42	8.80	15.67	13.71
*Other roast	11.04	8.93	9.92	12.65	10.38	9.75	19.23
*Steak	59.01	41.47	71.43	61.32	70.25	77.08	93.67
*Round steak	11.62	11.60	16.74	13.83	12.33	11.66	13.85
*Sirloin steak	12.96	8.51	11.79	12.72	14.53	20.48	24.43
*Other steak	34.42	21.36	42.90	34.77	43.40	44.94	55.39
*Other beef	12.17	11.47	14.37	11.14	12.84	17.24	17.48
*Pork	114.19	104.51	108.16	108.24	132.60	131.31	157.61
*Bacon	20.23	24.20	17.48	18.44	23.15	18.48	25.09
*Pork chops	27.10	19.23	28.84	25.14	36.30	28.37	34.33
*Ham	27.43	25.79	27.94	28.11	31.54	35.35	39.08
*Ham, not canned	24.47	21.68	25.11	26.25	28.62	29.58	36.43
*Canned ham	2.96	4.10	2.83	1.86	2.92	5.77	2.65
*Sausage	16.60	14.09	17.07	13.98	17.67	22.46	23.28
*Other pork	22.83	21.21	16.84	22.58	23.95	26.65	35.83
*Other meats	83.61	71.60	75.58	79.96	96.96	113.62	118.21
*Frankfurters	17.37	15.97	17.17	17.77	19.56	21.76	22.58
*Lunch meats (cold cuts)	58.86	49.13	49.48	56.28	71.83	80.88	86.21
*Bologna, liverwurst, salami	19.11	17.97	16.54	19.36	22.06	23.99	25.51
*Other lunchmeats	39.76	31.16	32.94	36.92	49.77	56.89	60.70
*Lamb, organ meats and others	7.36	6.51	8.93	5.91	7.58	10.96	9.42
*Lamb and organ meats	6.17	5.97	5.33	4.82	7.57	8.63	8.50
*Mutton, goat and game	1.19	0.54	3.60	1.10	0.01	2.36	0.92
*Poultry	85.49	69.40	81.53	82.16	85.67	111.40	133.20
*Fresh and frozen chickens	66.41	55.25	66.61	65.26	66.71	81.88	96.35
*Fresh whole chicken	17.24	17.03	17.44	20.11	14.32	16.24	23.38
*Fresh and frozen chicken parts	49.17	38.22	49.18	45.15	52.39	65.64	72.97
*Other poultry, incl whole frzn chickens	19.08	14.15	14.91	16.91	18.96	29.52	36.85
*Fish and seafood	65.24	50.44	57.57	56.89	74.24	86.03	109.89
*Canned fish and seafood	17.95	14.01	15.77	16.67	23.21	21.96	26.53
*Fresh and frozen shellfish	14.98	5.89	17.35	14.09	15.81	18.33	32.78
*Fresh and frozen finfish	32.31	30.53	24.45	26.13	35.23	45.74	50.59
*Eggs	27.83	29.08	27.68	28.69	29.02	31.61	29.68
*Dairy products	277.91	237.49	246.39	287.05	337.97	365.06	383.11
*Fresh milk and cream	134.41	132.08	125.44	135.91	160.12	158.15	168.53
*Whole milk	52.12	56.46	57.48	57.54	55.58	44.53	55.37
*Other milk and cream	82.29	73.61	67.97	78.37	104.54	113.61	113.17
*Other dairy products	143.50	105.41	120.95	151.15	177.85	206.92	214.57
*Butter	8.89	8.28	8.17	8.63	9.20	12.22	13.04
*Cheese	79.01	54.41	69.16	83.03	98.96	111.72	119.06
*Ice cream and related products	41.68	31.02	33.95	46.55	53.10	60.05	61.85
*Miscellaneous dairy products	13.93	11.70	9.67	12.93	16.57	22.93	20.60
*Fruits and vegetables	376.38	327.70	335.02	366.35	441.76	487.04	526.17
*Fresh fruits	120.96	102.64	104.99	116.33	148.47	156.62	172.21
*Apples	21.57	16.83	17.80	21.56	26.58	28.77	29.44
*Bananas	20.65	19.42	19.04	21.64	24.06	22.66	27.22
*Oranges	10.98	9.36	9.43	9.37	15.38	16.47	14.72
*Other fresh fruits	67.78	57.02	58.71	63.75	82.45	88.72	100.83
*Fresh vegetables	110.67	101.90	100.87	106.30	124.19	123.40	158.76
*Potatoes	16.61	13.93	17.56	15.59	19.18	20.55	22.24
*Lettuce	13.73	11.36	11.61	12.80	16.85	16.95	20.85
*Tomatoes	14.87	13.49	14.08	14.64	17.94	16.43	19.74
*Other fresh vegetables	65.47	63.12	57.63	63.28	70.21	69.47	95.93
*Processed fruits	86.81	75.04	80.64	82.22	96.04	126.19	121.27
*Frozen fruits and fruit juices	19.59	17.95	18.61	18.42	22.98	32.00	28.71
*Frozen orange juice	14.43	13.60	13.91	14.55	14.89	21.97	20.86
*Other frozen fruits and juices	5.16	4.35	4.70	3.87	8.10	10.03	7.83
*Canned and dried fruits	21.22	18.05	18.46	20.85	24.80	32.50	26.30
*Fresh, canned or bottled fruit juices	46.00	39.04	43.58	42.95	50.26	61.68	66.26
*Processed vegetables	57.92	48.13	48.52	61.49	71.05	80.82	73.92
*Frozen vegetables	21.30	13.63	16.57	23.19	27.40	32.62	31.07
*Canned and dried vegetables and juices	36.62	34.50	31.95	38.30	43.65	48.21	42.85
*Canned beans	6.64	5.41	6.00	6.98	7.85	9.98	7.27
*Canned corn	4.21	2.91	3.86	4.70	4.31	6.10	4.37
*Other canned and dried veg., & juices	25.77	26.17	22.09	26.62	31.49	32.12	31.21

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Other food at home	645.61	500.46	543.39	658.15	765.69	937.83	938.05
*Sugar and other sweets	80.66	65.44	64.53	82.49	97.73	122.23	111.61
*Candy and chewing gum	45.41	32.09	31.13	46.37	55.74	75.32	71.53
*Sugar	17.07	18.57	17.60	17.61	18.27	17.57	16.01
*Artificial sweeteners	2.36	1.56	2.44	2.90	1.78	3.70	2.68
*Jams, preserves, other sweets	15.82	13.22	13.36	15.82	21.94	25.64	21.39
*Fats and oils	56.65	48.51	45.63	59.62	69.18	76.24	70.54
*Margarine	11.96	10.65	9.89	12.19	14.51	15.78	15.49
*Other fats, oils, and salad dressing	31.66	26.57	26.33	32.32	37.90	45.04	38.56
*Nondairy cream and imitation milk	4.49	4.53	3.64	4.91	4.72	5.00	4.89
*Peanut butter	8.54	6.75	5.77	10.20	12.05	10.42	11.57
*Miscellaneous foods	272.98	209.21	230.18	278.73	325.17	410.76	393.38
*Frozen prepared foods	46.13	34.31	44.35	47.46	54.67	69.97	66.80
*Frozen meals	16.76	14.44	19.43	16.05	23.09	21.11	23.97
*Other frozen prepared foods	29.39	19.87	24.92	31.41	31.78	48.86	42.82
*Canned and packaged soups	21.41	17.65	16.96	21.06	24.10	35.62	26.50
*Potato chips, nuts, and other snacks	59.78	41.00	37.67	64.36	71.49	95.82	100.20
*Potato chips and other snacks	46.79	30.06	31.54	53.75	55.18	74.06	77.26
*Nuts	12.99	10.94	6.13	10.61	16.31	21.76	22.94
*Condiments and seasonsings	61.52	49.20	56.11	58.41	77.90	82.89	92.16
*Salt, spices, other seasonings	12.31	10.17	11.24	11.99	14.15	14.15	20.09
*Olives, pickles, relishes	7.62	5.36	8.73	7.01	9.48	10.54	10.59
*Sauces and gravies	31.62	25.10	26.76	29.73	42.60	43.35	46.67
*Baking needs and misc. products	9.97	8.58	9.38	9.67	11.67	14.85	14.61
*Other canned/packaged prepared foods	84.14	67.05	75.08	87.44	96.82	126.46	105.73
*Salads and desserts	13.23	11.82	12.59	11.96	17.20	18.07	18.37
*Baby food	16.25	10.38	15.03	16.91	19.52	26.99	12.93
*Miscellaneous prepared foods	54.66	44.85	47.47	58.57	60.10	81.41	74.43
*Nonalcoholic beverages	204.37	164.51	186.49	210.29	233.06	283.11	287.11
*Cola	92.19	66.57	88.15	99.91	101.56	140.51	123.90
*Other carbonated drinks	32.62	23.55	29.15	28.70	40.86	43.90	53.99
*Coffee	40.93	38.84	38.48	38.15	43.16	47.73	54.95
*Roasted coffee	25.27	22.96	23.27	24.63	26.36	31.15	34.98
*Instant and freeze dried coffee	15.66	15.87	15.21	13.52	16.81	16.58	19.98
*Non-carbonated fruit flavored drinks	16.30	12.30	11.92	21.28	20.62	24.65	21.32
*Tea	11.18	10.67	8.25	11.36	13.49	15.33	13.42
*Other non-alcoholic beverages	11.15	12.58	10.54	10.90	13.06	10.98	19.52
*Food prepared by cu on out of town trips	30.94	12.80	16.56	27.01	40.55	45.49	75.42
*Food away from home	1,627.45	968.10	1,240.03	1,591.02	2,030.75	2,375.06	3,186.24
*Meals at restaurants, carry-outs & other	1,275.77	799.32	1,039.21	1,294.24	1,591.66	1,870.30	2,351.22
*Lunch	499.88	277.04	407.25	514.76	619.15	709.45	956.78
*Dinner	549.30	339.39	440.28	550.06	662.77	822.65	1,057.00
*Snacks and non alcoholic beverage	142.56	105.40	121.94	145.83	190.00	225.33	207.78
*Breakfast and brunch	84.04	77.48	69.75	83.59	119.74	112.87	129.66
*Board (including at school)	43.62	6.74	7.89	27.65	36.46	39.33	153.00
*Catered affairs	41.27	7.39	5.78	34.97	50.79	47.01	142.76
*Food on out of town trips	195.31	93.30	115.14	165.61	254.20	300.02	451.05
*School lunches	42.24	20.43	26.30	41.51	67.39	84.77	70.55
*Meals as pay	29.24	40.92	45.71	27.04	30.27	33.64	17.65
Alcoholic beverages	281.70	182.87	235.22	290.56	343.77	352.96	506.47
*At home	148.36	107.27	126.68	152.37	189.69	178.29	246.36
*Beer and ale	89.05	72.34	77.77	95.86	108.21	102.60	126.68
*Whiskey	12.73	12.89	5.93	13.17	16.76	13.43	21.68
*Wine	32.15	13.69	26.16	31.70	40.94	46.86	70.20
*Other alcoholic beverages	14.43	8.35	16.82	11.65	23.78	15.38	27.80
Away from home	133.34	75.61	108.54	138.19	154.08	174.67	260.11
*Beer and ale	37.50	20.21	32.77	39.59	40.20	53.06	62.61
*Wine	18.54	12.05	15.72	19.17	18.68	24.52	38.32
*Other alcoholic beverages	58.12	36.45	50.81	60.89	71.66	67.59	113.53
Alcoholic beverages purchased on trips	19.17	6.90	9.24	18.54	23.54	29.50	45.66
Housing	8,069.13	5,495.09	5,946.80	7,511.85	9,260.40	10,608.79	15,719.12
Shelter	4,470.25	3,043.10	3,139.50	4,124.86	5,049.86	5,901.40	8,909.44
Owned dwellings	2,554.04	961.15	1,151.03	1,976.74	2,970.57	4,060.42	6,925.93
Mortgage interest	1,560.48	318.45	520.13	1,051.78	1,925.39	2,783.87	4,724.67
Mortgage interest and charges	1,560.38	318.45	520.13	1,051.78	1,925.39	2,783.87	4,724.01
Prepayment penalty charges (own home)	0.10	0.00	0.00	0.00	0.00	0.00	0.66
Property taxes	496.08	316.48	301.71	417.03	599.30	643.81	1,125.91
Maintenance, repairs, insurance, other expenses	497.48	326.23	329.20	507.92	445.87	632.74	1,075.35
Homeowners and related insurance	151.74	102.72	105.11	139.48	163.01	200.84	313.16
Fire and extended coverage	4.98	3.14	4.17	8.42	3.90	7.28	4.94
Homeowners insurance	146.76	99.58	100.94	131.06	159.11	193.56	308.22
Ground rent	26.88	26.40	38.12	35.13	23.96	14.38	12.57
Maintenance and repair service	252.68	166.84	159.60	260.79	187.82	293.13	607.16
Painting and papering	52.01	34.57	12.75	55.29	21.09	49.82	144.99
Plumbing and water heating	23.06	12.17	16.84	22.72	17.23	32.94	55.39
Heat, a/c, electrical work	42.03	40.31	20.85	28.44	44.68	61.59	90.02

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Roofing and gutters	46.96	21.78	51.88	49.75	40.70	55.18	111.23
Other repair/maintenance service	78.78	53.15	53.69	101.29	54.90	85.14	164.91
Repair & replace hard surface flooring	8.14	4.68	2.92	2.48	7.98	6.77	33.94
Repair of built-in appliances	1.68	0.16	0.68	0.85	1.24	1.69	6.68
Maintenance/repair commod	65.41	28.29	25.78	71.76	70.93	122.37	141.50
Paints, wallpaper and supplies	17.47	6.93	5.76	14.64	18.25	33.17	45.07
Tools and equipment for painting and wallpapering	1.88	0.74	0.62	1.57	1.96	3.56	4.84
Plumbing supplies and equipment	5.65	2.25	3.48	6.92	6.24	11.04	11.40
Electrical supplies, heat/cool, equipment	3.78	0.62	4.14	3.32	4.94	2.21	10.24
Materials for hard surface floor, repair and replace	1.85	0.82	0.03	1.32	0.66	5.63	5.85
Material and equipment for roof/gutters	5.18	3.60	3.34	8.46	4.25	3.31	5.16
Materials for plaster, panel, siding, windows, doors, screens, awnings	11.08	9.36	4.91	12.62	12.57	15.49	23.43
Materials for patio, walk, fence, drive, masonry, brick, and stucco work	2.12	0.28	0.61	6.99	0.71	2.30	3.03
Materials for landscaping maintenance	2.52	0.09	0.00	7.40	2.38	2.17	4.45
Miscellaneous supplies/equipment	13.89	3.60	2.89	8.52	18.98	43.49	28.02
Materials for insulation, other maintenance/repair	7.87	3.60	2.36	6.16	10.04	14.88	18.16
Materials to finish basement, remodel rms or build patios, walks, etc (maint., rep., repl.) (own prop)	6.02	0.00	0.53	2.36	8.95	28.61	9.86
Property management and security	0.74	1.98	0.53	0.72	0.13	1.95	0.79
Property management	0.64	1.88	0.24	0.60	0.12	1.95	0.62
Management and upkeep serv for security	0.10	0.10	0.28	0.13	0.01	0.00	0.18
Parking	0.04	0.00	0.06	0.03	0.00	0.07	0.17
Rented dwellings	1,469.41	1,753.31	1,777.24	1,804.99	1,563.71	1,248.94	825.42
Rent	1,428.30	1,708.38	1,718.30	1,762.19	1,521.88	1,216.05	785.55
Rent as pay	17.34	25.29	32.67	15.87	14.30	0.70	9.59
Maintenance, insurance and other expenses	23.78	19.63	26.27	26.92	27.53	32.19	30.29
Tenant's insurance	8.68	4.34	9.22	9.27	12.89	10.61	10.03
Maintenance and repair services	9.01	10.32	13.18	11.46	9.64	6.78	12.67
Repair or maintenance service	8.62	10.32	13.18	11.46	9.50	5.20	11.94
Materials for dwelling under construction and additions	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Repair & replace hard surface flooring	0.36	0.00	0.00	0.00	0.00	1.58	0.69
Repair of built-in appliances	0.03	0.00	0.00	0.00	0.14	0.00	0.05
Maintenance and repair comm	6.07	4.97	3.87	6.19	5.00	14.80	7.59
Paint, wallpaper, and supplies	1.19	0.85	1.39	1.12	2.22	1.63	1.10
Tools and equipment for painting and wallpapering	0.13	0.09	0.15	0.12	0.24	0.18	0.12
Materials for plast., panels, roofing, gutters, etc	0.66	1.43	0.34	0.94	0.69	0.81	0.56
Materials for patio, walk, fence, driveway, masonry, brick & stucco work	0.02	0.06	0.00	0.01	0.00	0.06	0.02
Plumbing supplies and equipment	0.38	0.23	0.53	0.75	0.25	0.20	0.17
Electrical supplies, heat/cool. equip	0.92	0.10	0.18	0.03	0.11	8.91	0.01
Miscellaneous supplies/equipment	1.84	2.07	0.79	2.69	1.06	1.80	3.41
Materials for insulation, other maintenance and repair	0.56	0.51	0.73	0.49	0.56	0.67	0.72
Termite/pest control (cap. improvement) (renter)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Materials for additions, finish basements, remodeling rooms	1.06	1.44	0.07	1.89	0.26	0.24	2.69
Construction mtls jobs not started	0.18	0.12	0.00	0.31	0.26	0.89	0.00
Materials for hard surface flooring	0.14	0.00	0.46	0.26	0.00	0.52	0.00
Materials for landscape maintenance	0.76	0.14	0.03	0.27	0.42	0.68	2.21
Other lodging	446.79	328.64	211.23	343.13	515.57	592.04	1158.09
Owned vacation homes	78.26	147.93	26.59	48.70	89.46	52.59	199.82
Prepayment penalty charges (own vac)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mortgage interest	48.65	124.50	5.47	31.06	51.05	23.57	117.74
Property taxes	16.90	12.09	14.93	9.58	21.13	16.99	45.43
Maintenance, insurance other expenses	12.71	11.34	6.19	8.06	17.28	12.03	36.65
Homeowners and related insurance	3.07	1.77	1.42	2.32	2.69	1.79	10.56
Homeowners insurance	3.04	1.54	1.42	2.32	2.69	1.79	10.51
Fire/extended coverage	0.03	0.22	0.00	0.00	0.00	0.00	0.05
Ground rent	3.33	0.90	3.95	1.64	6.88	1.26	9.64
Maintenance/repair services	5.52	8.06	0.71	3.83	6.37	8.30	14.44
Repair/remodeling (service)	5.52	8.06	0.71	3.83	6.37	8.30	14.44
Repair and replace hard surface floor	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Maintenance/repair comm	0.39	0.61	0.11	0.28	0.11	0.23	0.70
Paints, wallpaper, supplies	0.08	0.19	0.08	0.00	0.03	0.08	0.29
Tools/equipment for painting and wallpapering	0.01	0.02	0.01	0.00	0.00	0.01	0.03
Materials for plastering, panels, roofing, gutters, dnspouts, siding, wdows, drs., screens, and awnings	0.05	0.00	0.00	0.02	0.00	0.03	0.32
Materials for patio, walk, fence, drive, masonry, brick, stucco	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Plumbing supplies/equipment	0.02	0.04	0.00	0.00	0.03	0.07	0.05
Electrical supplies, heat./cool equip	0.01	0.00	0.00	0.01	0.04	0.00	0.00
Miscellaneous supplies/equipment	0.01	0.00	0.05	0.02	0.00	0.04	0.00
Materials for insulation/other maint./repair	0.01	0.00	0.05	0.00	0.00	0.04	0.00
Materials for finishing basements remodeling rooms	0.00	0.00	0.00	0.02	0.00	0.00	0.00
Materials for hard surface floor	0.20	0.35	0.00	0.23	0.00	0.00	0.00

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Materials for landscaping maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Property management and security	0.40	0.00	0.00	0.00	1.23	0.44	1.30
Property management	0.40	0.00	0.00	0.00	1.23	0.44	1.30
Management and upkeep serv for securit	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Parking	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses for other properties	154.47	101.84	74.84	137.28	169.04	223.95	390.55
Housing while attending school	35.48	3.69	3.44	17.58	30.76	35.15	118.12
Lodging while out of town	178.58	75.19	106.36	139.57	226.31	280.35	449.60
Utilities, fuels and public services	1,726.29	1,412.79	1,542.51	1,711.07	1,924.66	2,089.22	2,593.19
Natural gas	232.22	212.96	214.65	215.34	246.66	276.67	354.61
Util.—Natural gas (renter)	50.85	73.43	66.38	52.66	45.66	34.00	19.84
Util.—Natural gas (own home)	180.07	139.37	147.88	161.65	200.36	242.17	329.43
Util.—Natural gas (own vac.)	1.22	0.16	0.30	0.97	0.49	0.50	5.32
Util.—Natural gas (rented vac.)	0.08	0.00	0.09	0.05	0.15	0.00	0.02
Electricity	700.08	578.32	608.01	695.11	801.49	859.67	1048.84
Electricity (renter)	169.94	222.94	196.59	197.41	178.88	122.29	74.86
Electricity (own home)	524.87	350.24	408.24	493.70	618.75	733.65	957.87
Electricity (own vac.)	5.03	4.75	2.86	3.92	3.40	3.70	15.87
Electricity (rented vac.)	0.25	0.39	0.32	0.09	0.45	0.02	0.25
Fuel oil and other fuels	94.02	76.70	81.76	99.42	92.78	114.59	128.02
Fuel oil	55.60	38.88	47.89	54.62	53.00	82.53	89.36
Fuel oil (renter)	5.21	5.93	6.49	5.91	6.38	3.26	4.78
Fuel oil (own home)	49.96	32.34	41.40	48.50	46.57	79.27	82.69
Fuel oil (own vac.)	0.38	0.59	0.00	0.21	0.05	0.00	1.69
Fuel oil (rented vac.)	0.06	0.00	0.00	0.00	0.00	0.00	0.00
Coal	3.50	6.85	0.57	6.20	3.64	5.23	0.33
Coal (renter)	0.55	1.20	0.20	0.94	0.98	0.00	0.00
Coal (own home)	2.95	5.66	0.37	5.26	2.66	5.23	0.33
Coal (own vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Coal (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Bottled gas	24.48	22.49	23.52	28.34	23.75	17.90	23.47
Gas, bottled/tank (renter)	3.78	5.78	4.73	2.54	3.06	0.69	2.10
Gas, bottled/tank (own home)	18.58	15.77	17.30	24.49	19.10	12.94	15.42
Gas, bottled/tank (own vac.)	2.12	0.93	1.49	1.31	1.59	4.26	5.94
Gas, bottled/tank (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Wood and other fuels	10.43	8.49	9.77	10.26	12.38	8.93	14.87
Wood/other fuels (renter)	1.31	2.07	1.19	1.35	0.64	0.21	1.33
Wood/other fuels (own home)	9.05	6.42	8.57	8.71	11.74	8.64	13.42
Wood/other fuels (own vac.)	0.06	0.00	0.00	0.20	0.00	0.08	0.13
Wood/other fuels (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Telephone	528.79	425.98	507.41	539.06	590.21	601.80	769.38
Water and other public services	171.19	118.83	130.68	162.14	193.53	236.49	292.34
Water/sewerage maintenance	131.02	91.41	99.79	124.06	150.67	178.26	222.63
Water/sewer maintenance (renter)	18.53	20.04	17.05	22.99	18.20	15.51	8.91
Water/sewer maintenance (own home)	111.57	69.24	82.52	100.46	131.51	161.47	212.17
Water/sewer maintenance (own vac.)	0.83	1.83	0.22	0.52	0.96	1.29	1.43
Water/sewer maintenance (rented vac.)	0.09	0.30	0.00	0.08	0.00	0.00	0.13
Trash/garbage collection	38.67	26.89	29.90	37.16	40.93	55.27	65.76
Trash/garb. collection (renter)	5.28	5.02	4.95	7.21	4.98	5.00	2.97
Trash/garb. collection (own home)	33.31	21.88	24.79	29.91	35.69	50.26	62.64
Trash/garb. collection (own vac.)	0.08	0.00	0.16	0.04	0.25	0.00	0.15
Trash/garb. collection (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Septic tank cleaning	1.50	0.52	0.98	0.92	1.94	2.96	3.95
Septic tank cleaning (renter)	0.01	0.00	0.00	0.00	0.10	0.00	0.00
Septic tank cleaning (own home)	1.48	0.52	0.98	0.91	1.84	2.96	3.95
Septic tank cleaning (own vac.)	0.00	0.00	0.00	0.01	0.00	0.00	0.00
Septic tank cleaning (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Household operations	387.45	200.78	222.83	310.21	448.86	530.72	955.30
Personal services	176.53	82.78	119.28	166.06	275.08	311.41	321.27
Babysitting	74.62	42.11	58.03	85.19	133.19	114.65	115.47
Care for elderly, invalids, handicapped, etc	11.66	3.93	0.55	4.58	1.46	0.47	24.66
Day care centers, nursery/preschools	90.25	36.75	60.69	76.28	140.43	196.28	181.13
Other household expenses	210.92	118.00	103.56	144.16	173.78	219.31	634.03
Housekeeping services	67.76	36.72	22.44	28.84	41.53	50.94	269.17
Gardening, lawn care service	49.60	27.27	22.88	30.40	31.13	53.69	159.01
Water softening service	2.81	2.73	0.76	2.19	2.95	4.10	7.63
Household laundry/dry cleaning, sent out (non-clothing) not coin-operated	1.63	1.04	0.41	1.66	2.63	2.53	3.39
Coin-operated household laundry/dry cleaning (non-cloth)	4.78	5.92	5.63	5.41	4.47	6.09	2.27
Other home services	17.86	4.29	9.02	12.39	13.96	13.96	60.11
Termite/pest control products	0.20	0.05	0.09	0.09	0.25	0.12	0.21
Moving, storage, freight express	26.46	10.87	10.32	23.78	32.08	46.84	56.17
Applicance repair, incl. service center	16.44	9.82	17.88	18.93	20.85	17.46	25.57
Reupholstering/furniture repair	13.85	10.37	5.31	13.68	15.55	11.69	32.30

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Repairs/ rentals of lawn/garden equipment hand/power tools/other household equip	5.92	4.16	4.59	4.90	6.20	9.08	13.36
Appliance rental	2.08	4.33	2.47	1.01	1.16	0.52	0.54
Rental of office equipment for non-business use	0.17	0.02	0.27	0.04	0.01	0.57	0.46
*Repair of miscellaneous household equipment and furnishings	0.48	0.00	1.32	0.19	0.02	0.94	0.59
Rental and installation of dishwashers, range hoods, and garbage disposals	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Housekeeping supplies	382.82	286.29	321.58	383.43	451.24	475.45	670.22
Laundry and cleaning supplies	106.44	80.48	104.37	109.27	131.66	129.47	162.63
*Soaps and detergents	62.10	47.30	60.50	63.11	78.35	77.19	89.28
*Other laundry cleaning products	44.33	33.16	43.87	46.16	53.30	52.28	73.35
*Other household products	157.48	125.55	115.86	149.94	183.61	201.65	316.09
*Cleansing and toilet tissue, paper towels and napkins	52.12	42.88	45.37	51.88	64.86	67.41	80.71
*Miscellaneous household products	67.89	47.17	44.38	58.26	85.63	108.96	139.90
*Lawn and garden supplies	37.47	35.50	26.12	39.79	33.12	25.27	95.48
*Postage and stationery	118.89	80.28	101.35	124.23	135.97	144.33	191.50
*Stationary, stationery supplies, giftwrap	54.40	30.49	36.05	45.35	55.09	74.49	105.20
*Postage	64.49	49.79	65.30	78.88	80.87	69.84	86.30
Housefurnishings and equipment	1102.32	552.14	720.38	982.28	1385.76	1612.00	2590.97
Household textiles	97.11	50.30	81.09	96.28	104.56	122.28	220.32
*Bathroom linens	13.69	5.45	19.92	9.71	18.83	13.05	30.80
*Bedroom linens	38.11	28.28	35.77	36.81	33.56	50.47	77.56
*Kitchen and dining room linens	5.74	4.52	2.63	4.03	6.56	7.12	15.73
Curtains and draperies	26.56	5.34	12.12	28.90	26.44	39.44	71.25
Slipcovers, decorative pillows	1.84	0.66	2.26	1.33	2.64	1.28	3.18
*Sewing materials for slipcovers, curtains other sewing matrials for home use	10.32	4.80	7.95	14.65	15.39	9.43	19.15
Other linens	1.05	1.25	0.43	0.84	1.13	1.50	2.65
Furniture	319.44	139.36	204.72	261.90	378.37	433.38	861.57
Mattress and springs	41.86	18.62	32.81	39.28	57.01	62.91	93.05
Other bedroom furniture	39.75	13.71	29.56	22.68	52.21	62.05	107.77
Sofas	65.44	37.30	40.98	58.54	83.34	108.08	144.37
Living room chairs	35.91	24.89	27.22	40.43	31.79	44.77	80.20
Living room tables	20.16	6.73	15.46	15.21	26.54	27.03	50.94
Kitchen/dining room furniture	58.64	14.86	34.82	22.79	61.09	56.39	226.46
Infants' furniture	7.01	2.15	5.04	4.57	8.94	14.79	16.63
Outdoor furniture	12.57	1.62	3.51	12.51	10.65	19.59	41.43
Occasional furniture	38.12	19.48	15.32	45.67	46.80	37.77	100.73
Floor coverings	70.23	18.41	29.79	74.77	110.80	113.46	184.89
Wall-to-wall carpet (renter)	2.41	5.97	2.25	2.15	3.66	2.30	0.40
Wall-to-wall carpet, installed (renter)	1.73	5.73	1.18	0.70	3.14	1.74	0.11
Wall-to-wall carpet, not installed carpet squares (renter)	0.66	0.24	1.07	1.45	0.72	0.56	0.28
Wall-to-wall carpet (replacement) (own home)	42.57	7.66	22.82	47.02	42.12	67.79	119.96
Wall-to-wall carpet, not installed (replacement), carpet squares (own home)	3.04	0.00	1.67	2.54	5.12	1.77	10.38
Wall-to-wall carpet, installed (replacement) (own home)	39.53	7.66	21.16	44.48	37.00	66.02	109.58
*Room size rugs and other floor covering, non-permanent	25.25	4.58	4.71	25.60	64.82	43.36	44.54
Major appliances	172.90	107.05	138.91	169.54	213.06	240.59	326.70
Dishwashers (built-in), garbage disposals, range hoods (renter)	0.24	0.14	0.00	0.13	0.00	1.78	0.28
Dishwashers (built-in), garbage disposals range hoods (own home)	10.05	2.93	6.48	9.60	10.34	17.42	24.58
Refrigerators/freezers (renter)	11.18	9.98	16.09	15.96	17.11	7.86	6.21
Refrigerators/freezers (own home)	39.29	12.75	24.85	37.05	50.93	48.84	96.50
Washing machines (renter)	6.56	8.33	5.97	6.26	7.85	5.99	7.42
Washing machines (own home)	17.96	6.84	12.50	16.47	23.46	26.73	32.83
Clothes dryers (renter)	4.18	5.20	4.27	2.33	5.33	9.24	4.43
Clothes dryers (own home)	10.35	3.96	8.24	9.93	13.04	22.44	17.97
Cooking stoves/ovens (renter)	2.87	3.80	0.69	4.28	8.30	2.05	0.50
Cooking stoves/ovens (own home)	19.55	8.87	11.48	14.47	26.94	30.02	47.04
Microwave ovens (renter)	4.47	6.49	6.79	5.39	5.42	6.13	1.75
Microwave ovens (own home)	9.81	3.73	7.84	9.58	13.37	11.76	23.72
Portable dishwasher (renter)	0.31	0.00	2.28	0.26	0.23	0.00	0.00
Portable dishwasher (own home)	1.33	1.60	0.00	0.96	0.00	3.87	4.10
Window air conditioners (renter)	2.43	2.03	1.99	4.99	0.60	0.52	0.54
Window air conditioners (own home)	8.23	8.15	6.37	5.72	8.06	3.73	17.42
Electric floor cleaning equipment	14.62	9.85	9.39	19.58	17.20	17.77	25.74
Sewing machines	6.08	4.29	9.26	6.21	2.84	8.29	13.83
*Miscellaneous household appliances	3.39	6.12	2.43	0.39	2.08	16.15	3.82
Small appliances, misc. housewares	60.51	39.82	37.60	46.50	71.00	77.96	148.46
Housewares	39.14	25.14	21.57	26.52	45.46	47.51	105.70
Plastic dinnerware	1.83	1.66	0.75	1.96	1.66	3.77	3.11
China and other dinnerware	10.31	5.50	4.06	7.51	16.10	15.23	23.76

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Flatware	3.44	1.31	1.62	3.30	2.32	3.40	11.15
*Glassware	9.79	2.40	3.19	4.54	11.70	8.13	36.70
*Silver serving pieces	0.27	1.17	0.01	0.03	0.05	1.04	0.11
Other serving pieces	1.36	0.72	1.22	1.19	1.11	1.49	3.23
*Nonelectric cookware	12.14	12.16	10.73	7.98	12.53	13.45	27.64
Small appliances	21.37	14.69	16.03	19.98	25.54	30.44	42.76
Small electric kitchen appliances	14.17	9.18	8.45	13.81	17.74	21.71	29.49
Portable heating/cooling equipment	7.20	5.50	7.58	6.17	7.80	8.73	13.26
Miscellaneous household equipment	382.11	197.19	228.27	333.29	507.95	624.34	867.02
Window coverings	13.72	6.79	5.05	11.17	14.42	17.90	42.34
*Infants' equipment	3.77	2.50	0.85	4.72	3.47	2.68	11.27
*Laundry and cleaning equip	8.52	3.29	10.67	6.53	12.57	7.17	20.96
Outdoor equipment	4.73	0.95	2.82	5.19	5.02	9.89	10.42
Clocks	5.46	1.68	10.69	4.27	3.57	7.24	10.26
*Lamps and Lighting fixtures	28.40	48.71	9.81	21.24	50.72	42.07	46.18
*Other household decorative items	80.30	34.55	27.19	64.72	147.93	129.25	186.25
*Telephones and accessories	7.25	2.85	1.81	8.51	6.18	4.09	23.72
Lawn and garden equipment	49.12	12.59	51.04	40.12	60.06	100.17	92.96
Power tools	14.39	4.43	4.76	19.44	15.74	26.15	31.17
*Small misc. furnishings	3.39	0.04	0.00	1.23	19.77	2.50	3.08
*Hand tools	13.67	3.23	6.51	12.61	23.57	42.42	18.17
*Indoor plants, fresh flowers	41.42	25.97	31.91	24.78	34.12	74.01	110.67
*Closet and storage items	4.62	0.89	0.73	1.25	4.26	4.50	18.01
Furniture rental	3.02	2.83	3.13	2.49	1.73	2.14	3.24
Luggage	8.72	1.79	6.85	6.02	9.30	14.24	23.99
Computers for home use	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Telephone answering devices	4.23	1.77	3.22	3.95	3.81	8.37	8.57
Calculators	1.99	1.30	1.24	1.72	2.23	3.74	3.12
Business equipment for home use	6.20	1.88	3.84	5.13	9.35	7.42	15.40
*Other hardware	6.95	3.22	6.91	8.51	5.72	7.15	18.71
Smoke alarms (own home)	0.54	0.04	1.50	0.53	0.90	0.64	0.55
Smoke alarms (renter)	0.15	0.00	0.05	0.23	0.06	0.02	0.61
Smoke alarms (own vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other household appliances (own home)	4.25	3.99	1.52	4.45	2.27	7.43	9.60
Other household appliances (renter)	1.35	2.61	4.35	2.07	0.54	0.68	0.12
*Miscellaneous household equipment and part	18.73	14.19	7.56	20.24	27.91	25.99	37.99
Apparel and services	1,537.27	886.12	1,085.66	1,406.15	1,847.24	2,396.00	3,154.03
Men and boys	400.67	196.95	260.75	349.53	429.04	666.47	943.93
Men, 16 and over	318.80	142.16	202.12	271.44	340.48	533.15	772.68
Men's suits	41.20	15.86	13.23	30.69	36.93	63.99	133.12
Men's sportcoats	15.57	3.80	5.33	7.90	17.97	25.65	53.04
Men's coats and jackets	29.30	8.90	10.79	22.27	26.54	54.07	86.61
*Men's underwear	9.72	9.49	9.05	7.71	13.05	10.40	17.16
*Men's hosiery	10.34	8.58	9.08	9.30	11.24	20.53	17.50
*Men's nightwear	2.89	1.31	0.88	4.49	4.01	1.80	6.37
*Men's accessories	22.88	10.30	14.64	15.23	20.45	47.19	56.32
Men's sweaters and vests	17.65	7.09	7.08	13.16	16.88	25.26	50.07
Men's active sportswear	12.10	4.80	5.65	11.75	13.46	18.24	29.17
*Men's shirts	74.17	45.37	55.60	68.02	88.29	133.41	139.09
*Men's pants	70.76	22.61	60.87	65.68	75.41	105.22	163.08
*Men's shorts/short sets	8.29	2.05	6.73	12.56	9.31	20.61	12.89
Men's uniforms	3.16	1.22	2.88	2.05	4.00	6.58	6.18
Men's other clothing	0.77	0.80	0.31	0.62	0.95	0.18	2.09
Boys', 2 to 15	81.86	54.79	58.63	78.09	88.56	133.33	171.25
*Boys' coats and jackets	9.48	1.51	13.68	10.54	5.87	10.64	23.83
Boys' sweaters	3.73	2.44	2.14	2.37	5.37	3.86	8.97
*Boys' shirts	20.55	11.99	14.46	15.76	26.30	45.42	39.42
*Boys' underwear	1.55	0.53	0.89	1.61	4.81	1.15	2.25
*Boys' nightwear	2.79	2.28	1.04	4.28	3.30	6.20	2.71
*Boys' hosiery	3.99	4.43	3.84	4.63	3.97	2.81	7.29
*Boys' accessories	2.77	0.27	1.74	1.61	1.39	6.89	7.66
*Boys' suits, sportcoats, vests	3.00	1.85	0.38	2.93	1.45	11.49	6.29
*Boys' pants	24.70	25.03	16.95	26.51	23.64	25.99	53.32
*Boys' shorts, short sets	3.91	1.70	0.58	3.69	5.66	8.08	6.96
Boys' uniforms/active sportswear	5.10	2.59	2.69	3.84	6.38	10.48	11.92
Boys' other clothing	0.29	0.17	0.22	0.31	0.43	.032	0.63
Women and girls	606.90	353.66	425.05	550.45	771.19	950.02	1,190.33
Women, 16 and over	509.83	281.24	376.82	458.04	648.56	773.35	992.62
*Women's coats and jackets	33.49	9.89	12.77	21.91	41.71	80.18	66.72
*Women's dresses	83.27	47.32	56.32	65.67	81.62	111.38	185.83
*Women's sportcoats, tail.jkts	0.84	0.19	0.68	0.04	0.11	2.69	1.44
*Women's vests and sweaters	36.74	23.54	35.67	42.26	36.17	62.71	63.75
*Women's shirts, tops, blouses	85.55	43.28	80.86	72.57	113.40	126.51	156.36
*Women's skirts	29.28	17.84	18.33	25.37	22.72	59.17	65.45
*Women's pants	66.85	33.21	51.28	64.99	108.85	94.87	107.29
*Women's shorts, shorts sets	14.23	10.23	11.73	11.30	21.45	27.91	22.87

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Women's active sportswear	23.13	13.05	13.34	24.37	46.07	37.59	33.33
*Women's sleepwear	22.57	14.66	22.62	23.09	28.70	16.87	49.94
*Women's undergarments	24.38	16.17	21.05	21.01	35.71	28.83	45.68
*Women's hosiery	25.85	17.40	22.30	25.51	32.18	34.56	46.47
Women's suits	28.04	14.06	9.24	24.03	36.52	32.30	75.08
*Women's accessories	34.46	20.38	20.56	32.04	43.27	54.45	72.36
*Women's uniforms	1.15	0.01	0.06	3.88	1.06	3.32	0.05
*Women's other clothing	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Girls, 2 to 15	99.08	72.42	48.23	92.41	122.63	176.67	197.71
*Girls' coats and jackets	7.95	4.80	3.68	10.81	8.51	12.90	13.03
*Girls' dresses, suits	12.02	7.84	8.53	10.60	14.15	20.78	24.03
*Girls' shirts/blouses/sweater	30.19	20.94	4.47	28.93	36.40	55.73	67.22
*Girls' skirts, pants	16.37	11.46	12.37	15.81	23.92	24.70	27.91
*Girls' shorts, shorts sets	6.41	4.52	5.81	7.25	7.10	12.03	9.62
*Girls' active sportswear	9.32	9.69	3.04	6.23	9.77	22.73	19.94
*Girls' underwear and sleepwear	5.92	4.52	4.77	5.32	8.10	8.51	11.05
*Girls' hosiery	4.88	3.68	3.11	3.94	7.41	11.90	6.67
*Girls' accessories	4.08	4.34	2.19	2.18	3.59	5.04	12.81
*Girls' uniforms	1.46	0.39	0.23	0.81	2.79	1.17	4.59
*Girls' other clothing	0.48	0.25	0.06	0.53	0.67	1.19	0.84
Children under 2	63.60	41.35	40.49	68.75	96.77	104.17	95.15
Infant coat/jacket/snowsuit 9b	3.02	1.59	2.64	2.53	5.41	3.43	4.94
Infant coat/jacket/snowsuit 9a	0.15	0.00	0.04	0.17	0.25	0.35	0.24
Infant dresses/outerwear 9b	14.57	9.48	10.69	16.01	19.55	21.14	25.84
Infant dresses/outerwear 9a	0.41	0.43	0.21	0.34	0.66	0.50	0.79
*Infants' underwear	36.68	25.00	21.97	40.50	58.19	65.47	47.23
Infant nightwear/loungewear 9b	3.13	2.02	1.45	3.83	4.73	4.36	5.20
Infant nightwear/loungewear 9a	0.06	0.01	0.00	0.10	0.07	0.12	0.12
Infant other clothing	2.10	1.42	1.31	1.57	2.80	3.21	4.66
Infant accessories 9b	3.06	1.25	1.81	3.48	4.31	4.82	5.33
Infant accessories 9a	0.00	0.00	0.00	0.01	0.02	0.01	0.00
Infant hosiery	0.41	0.17	0.37	0.22	0.76	0.76	0.80
*Footwear	204.13	141.42	205.46	203.00	253.61	332.12	299.98
*Men's, footwear	62.95	41.07	76.93	78.61	78.10	109.06	72.77
*Boys', footwear	18.19	16.18	9.58	16.18	30.82	14.64	32.55
*Women's footwear	104.54	64.84	110.99	97.66	124.35	156.11	162.71
*Girls' footwear	18.46	19.33	7.97	10.56	20.33	52.31	31.94
Other apparel products and services	259.97	152.73	153.92	234.41	296.64	343.22	624.63
Material for making clothes	8.12	6.03	5.93	9.10	8.26	10.87	15.93
Sewing patterns and notions	2.15	1.44	1.04	2.22	2.75	2.87	3.65
Watches	21.65	13.67	15.33	17.82	29.45	32.67	45.59
Jewelry	110.35	54.93	47.33	94.40	127.09	153.93	318.74
Shoe repair, other shoe service	3.46	1.31	2.01	3.19	4.34	4.75	8.11
Coin-operated apparel laundry/dry clean	34.25	43.52	46.88	41.09	28.11	27.33	12.67
Apparel alteration and repair	6.05	3.29	2.54	4.69	6.48	6.95	16.68
Clothing rental	4.77	2.58	2.20	7.80	5.77	4.83	8.96
Watch and jewelry repair	5.72	2.66	3.10	5.51	8.94	10.91	10.88
Apparel laundry/dry clean not coin operated	62.72	23.14	27.47	47.83	74.68	86.84	181.00
Clothing storage	0.75	0.19	0.10	0.77	0.78	1.26	2.42
Transportation	5,140.21	3,127.01	3,840.91	5,302.92	6,704.50	7,779.21	9,714.71
Vehicle purchases (net outlay)	2,388.19	1,413.38	1,745.63	2,485.58	3,248.39	3,839.91	4,573.46
Cars and trucks, new	1,391.73	565.06	984.79	1,223.08	1,894.51	2,685.18	3,007.38
New cars	991.60	472.12	675.40	782.66	1,565.37	1,777.93	2,163.34
New trucks	400.13	92.94	309.39	440.42	329.13	907.25	844.04
Cars and trucks, used	971.12	831.68	750.44	1,221.87	1,330.29	1,132.30	1,504.86
Used cars	754.27	641.07	616.47	863.43	974.26	926.36	1,287.37
Used trucks	216.85	190.61	133.97	358.44	356.03	205.94	217.49
Other vehicles	25.34	16.65	10.40	40.63	23.59	22.43	61.22
New motorcycles	5.21	0.00	0.00	15.11	0.00	0.55	15.23
New aircraft	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Used motorcycles	15.86	16.65	10.40	25.53	23.59	21.88	17.57
Used aircraft	4.27	0.00	0.00	0.00	0.00	0.00	28.42
Gasoline and motor oil	933.90	639.11	801.58	974.84	1,189.53	1,328.42	1,459.88
Gasoline	812.03	563.62	700.74	860.76	1,037.67	1,152.21	1,237.62
Diesel fuel	12.01	5.55	5.31	7.50	16.98	13.33	35.10
Gasoline on out-of-town trips	96.47	58.26	82.01	92.50	118.25	145.52	171.41
*Gasahol	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Motor oil	12.55	10.76	12.86	13.24	15.80	16.23	14.25
Motor oil on out-of-town trips	0.85	0.91	0.66	0.83	0.82	1.13	1.49
Other vehicle expenses	1,552.56	922.69	1,137.30	1,603.36	1,972.84	2,290.12	3,046.42
Vehicle finance charges	284.70	107.09	172.61	293.49	397.69	485.81	611.95
Automobile finance charges	196.25	83.07	140.63	200.40	275.36	306.48	412.11
Truck finance charges	71.94	21.29	29.70	77.35	107.00	155.35	144.14
Motorcycle and plane finance charges	1.67	0.12	0.39	1.51	3.20	4.92	2.34
Other vehicle finance charges	14.85	2.61	1.89	14.24	12.13	19.06	53.37
Maintenance and repairs	568.66	405.19	449.94	610.06	656.51	783.55	1,056.81

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Coolant/additives/brakes, trans fluids	7.15	5.91	7.62	7.65	8.94	9.47	8.01
Tires	86.22	55.96	70.42	84.47	115.02	134.28	144.92
*Parts/equip/accessories	86.80	99.08	46.21	92.07	110.88	99.54	169.51
*Vehicle products	3.92	2.28	2.52	4.57	6.07	5.55	7.35
*Misc. auto repair/servicing	17.18	9.56	10.82	27.74	18.43	28.65	24.67
Body work	34.71	22.67	29.98	36.37	32.79	33.62	84.44
Clutch, transmission repair	34.54	16.04	32.54	41.79	43.59	42.06	61.22
Drive train repair	7.58	1.64	4.70	12.07	6.41	10.31	16.45
Brake work	33.05	19.72	23.74	32.66	38.01	46.21	61.30
Steering repair	11.64	7.18	10.27	12.11	10.17	23.19	18.63
Cooling system repair	22.87	17.79	23.71	21.86	24.60	31.59	42.28
Motor tune-up	40.07	26.28	29.50	35.56	42.71	54.54	81.82
Lubrication, oil change	24.67	17.90	21.17	24.21	30.86	32.99	46.55
Front end alignment, wheel balance	9.30	4.12	8.02	9.91	12.59	11.66	18.51
Shock absorber replacement	6.01	2.55	3.04	7.11	5.80	7.10	15.43
Brake adjustment	4.75	1.22	3.57	4.86	5.29	6.43	11.02
*Gas tank repair, replacement	0.09	0.00	0.01	0.01	0.01	0.02	0.052
Minor repair/serv out-of-town trip	1.92	0.42	0.77	2.78	1.01	5.41	2.84
Repair tires and other repair work	29.23	18.16	24.27	31.48	33.58	43.78	48.81
Exhaust system repair	14.55	6.71	18.06	16.15	16.86	22.09	19.92
Electrical system repair	20.35	12.22	15.61	22.14	19.66	34.50	34.88
Motor repair/replacement	63.53	51.77	55.00	71.06	62.61	82.11	112.89
Auto repair service policy	8.54	6.01	8.38	9.44	10.51	16.46	14.61
Vehicle insurance	515.06	314.32	409.50	544.70	666.71	728.25	958.57
Vehicle rental licenses and other charges	184.14	96.11	105.26	155.11	252.94	292.51	420.08
Leased and rented vehicles	68.54	25.20	27.47	42.79	96.33	124.51	195.33
Auto rental	44.36	19.82	22.04	28.67	65.00	90.57	110.70
Auto rental, out-of-town trips	6.78	4.07	3.64	4.97	5.28	15.25	18.62
Truck rental	12.51	0.54	1.21	6.70	22.25	13.41	45.18
Truck rental, out-of-town trip	3.99	0.77	0.23	1.77	2.33	4.78	17.45
Motorcycle rental	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Aircraft rental	0.47	0.00	0.00	0.09	1.45	0.26	1.54
Motorcycle rental out-of-town	0.04	0.00	0.00	0.00	0.00	0.00	0.26
Aircraft rental/out-of-town trips	0.40	0.00	0.35	0.59	0.01	0.22	1.58
State/local registration	67.04	45.21	49.91	70.39	96.23	99.31	112.03
Drivers license	6.59	5.47	6.43	6.62	9.23	7.71	9.58
Vehicle inspection	6.33	5.13	4.52	6.17	8.61	9.70	9.56
Parking fees	20.50	8.41	7.38	14.30	23.35	30.90	59.74
*Tolls	5.96	0.92	2.04	6.67	6.82	7.92	18.48
Tolls on out-of-town trips	4.12	1.80	2.31	3.79	5.39	6.29	9.05
Towing charges	5.05	3.97	5.21	4.38	6.97	6.18	6.32
Public transportation	265.56	151.82	156.40	239.14	293.73	320.76	634.96
Airline fares	176.01	79.22	89.55	158.79	193.56	232.90	471.55
Intercity bus fares	14.30	11.67	7.13	12.41	27.86	10.82	14.74
Intracity mass transit fares	41.07	44.70	42.94	38.53	32.98	34.12	64.33
Local transportation, out-of-town trips	0.54	0.20	0.15	0.50	0.65	1.04	1.21
Taxi fares on trips	4.86	1.76	1.32	4.47	5.86	9.39	10.86
Taxi fares	5.89	5.76	5.59	6.42	8.41	3.74	7.36
Intercity train fares	9.04	3.31	6.07	8.18	4.87	14.49	22.78
Ship fares	13.00	4.30	3.37	9.46	19.05	12.55	39.62
School bus	0.86	0.91	0.29	0.38	0.49	1.70	2.48
Health care	1,282.43	1,365.50	1,299.71	1,328.49	1,367.25	1,531.77	1,566.44
Health insurance	473.36	480.42	474.00	537.14	475.48	543.90	618.80
Commercial health insurance	165.28	118.03	170.96	208.24	195.72	256.42	207.76
Blue Cross/Blue Shield	116.52	120.47	102.86	127.18	114.09	111.37	146.61
Health maintenance plans (HMO's)	48.48	27.40	44.11	57.95	67.51	84.53	66.81
Medicare payments	78.60	130.67	101.55	71.71	41.13	31.51	32.52
Commercial medicare supplements and other health insurance	64.48	83.66	54.53	72.07	57.02	61.07	85.10
Medical services	512.73	587.65	540.82	487.31	551.59	676.69	701.33
Physician's services	149.19	147.96	158.15	160.54	202.90	205.76	154.17
Dental services	150.89	111.17	96.11	150.62	192.81	211.77	291.66
Eye care services	22.70	25.67	11.56	24.89	24.45	24.55	37.32
Service by other than physicians	22.62	11.11	10.65	32.64	33.87	28.23	37.72
Lab test, x rays	26.78	23.57	29.34	26.95	25.75	28.61	43.93
Nurse, therapy/miscellaneous medical service	4.21	1.24	-3.70	1.59	1.80	1.01	20.02
Hospital room	54.96	72.02	71.99	50.56	28.43	96.80	82.57
Hospital services other than room	26.61	57.38	52.02	28.85	22.89	39.94	-0.69
Care in convalescent or nursing home	40.86	129.58	105.34	4.48	2.60	18.57	14.65
*Repair of medical equipment	0.05	0.00	0.00	0.00	0.00	0.00	0.00
Other medical care services	13.86	7.94	9.35	6.19	16.09	22.77	20.00
Drugs	225.28	255.13	228.07	243.50	250.24	216.93	231.03
*Non-prescription drugs	65.79	71.19	57.80	74.26	86.34	75.99	72.99
Prescription drugs	159.49	183.94	170.27	169.24	163.91	140.94	158.04
Medical supplies	71.06	62.30	56.83	80.54	89.93	94.24	117.28
Eyeglasses	45.18	38.08	36.80	44.92	56.67	64.90	76.60

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Topicals and dressing	14.40	11.82	10.29	11.38	19.22	24.24	25.72
Medical equipment for general use	5.29	4.78	4.32	1.83	4.67	4.14	5.12
Supportive/conval med. equip	5.70	7.46	4.81	2.02	8.91	0.65	9.30
Rental of medical equipment	0.50	0.16	0.61	0.38	0.47	0.31	0.55
*Hearing aids	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Entertainment	1,348.90	802.34	856.00	1,191.35	1,510.43	1,994.64	3,148.34
Fees and admissions	351.99	139.16	185.75	309.51	419.64	525.52	879.59
Recreation expenses, out of town trips	17.85	6.68	9.72	19.86	20.46	28.40	38.78
Club membership dues and fees	78.68	31.73	44.57	57.91	79.31	90.82	230.17
Fees for participant sports	46.90	22.19	29.18	46.82	63.52	88.77	102.29
Participant sports out-of-town trips	18.96	5.94	9.50	15.44	23.16	34.10	44.73
Movie, theater, opera, ballet	61.06	29.29	33.53	50.31	70.94	82.33	149.40
Movie, oth admissions out-of-town	25.91	9.78	14.04	28.74	35.89	37.17	52.04
Admission to sporting events	19.63	7.38	9.75	17.81	18.39	41.10	46.63
Admission to sports events out-of-town	25.91	9.78	14.04	28.74	35.89	37.17	52.04
Fees for recreational lessons	41.23	9.71	11.70	24.00	51.63	77.27	124.72
Oth ent serv, out-of-town trip	17.85	6.68	9.72	19.86	20.46	28.40	38.78
Television, radios and sound equipment	422.50	298.54	322.08	416.12	493.78	576.29	788.05
Televisions	295.95	228.52	244.28	299.91	344.82	398.08	509.85
Community antenna or cable TV	137.94	110.11	118.89	142.36	161.32	184.08	218.51
*Black and white TV	2.84	0.65	0.00	1.95	0.00	0.00	16.41
Color TV—console	23.60	16.77	20.77	28.58	27.00	24.27	31.30
Color TV—portable/table model	43.50	36.42	37.50	48.29	39.51	54.93	71.38
Vcr's/video disc players	47.70	38.08	36.49	41.57	69.42	66.10	95.51
Video cassettes/tapes/discs	13.44	8.31	8.72	11.97	18.39	21.56	28.99
Video games hardware/software	14.66	5.40	7.91	16.27	17.25	31.40	29.94
Repair of tv/radio/sound equipment	10.43	8.54	11.52	8.32	10.43	15.74	17.75
Rental of televisions	1.61	4.24	2.48	0.57	1.49	0.00	0.04
Radios, sound equipment	126.55	68.03	77.80	116.21	148.96	178.21	278.21
*Radios	4.84	1.81	1.57	3.99	7.25	8.26	11.80
*Phonographs	0.53	0.00	0.00	0.00	0.00	0.40	3.36
*Tape recorders and players	10.50	7.02	7.43	0.51	0.96	9.12	27.49
Sound components/component systems	28.64	22.73	17.34	35.08	23.87	45.24	62.93
*Misc sound equipment	0.16	0.55	0.09	0.00	0.24	0.00	0.35
*Sound equip accessories	4.29	1.46	1.12	12.72	4.33	1.68	6.77
Record/tape club	4.17	2.18	4.62	3.63	7.45	6.14	5.91
Records, tapes, needles, styli	25.86	14.32	15.10	20.10	29.81	39.90	57.19
Rental of vcr/radio/sound equip	1.59	0.70	1.56	1.98	1.54	0.39	1.40
Musical instruments/accessories	20.58	3.32	12.63	13.86	37.81	24.77	53.28
Rent/repair music instruments	2.12	0.30	1.16	1.62	1.96	4.09	5.25
Rental of video cass./tapes/discs/films	23.27	13.65	15.18	22.74	33.76	38.22	42.49
Pets, toys and playground equip	242.26	134.73	182.82	234.32	336.90	354.45	457.26
Pets	136.31	77.25	119.89	125.55	183.79	180.80	259.08
*Pet food	66.61	53.55	46.56	63.13	93.51	83.41	108.50
*Pet—purch/supplies/medicine	25.23	5.71	43.99	24.37	29.83	28.53	49.96
Pet services	10.64	4.26	4.40	9.06	14.74	19.11	26.24
Vet services	33.84	13.73	24.94	28.99	45.71	49.75	74.38
Toys, games, hobbies, and tricycles	102.96	57.26	62.55	107.09	149.80	167.96	187.24
Playground equipment	2.98	0.22	0.38	1.69	3.31	5.69	10.94
Other entertainment supplies, equip., serv	322.16	231.90	165.38	231.39	260.12	538.39	1,023.44
Unmotor. boats and trailers	24.02	2.29	0.00	22.31	7.09	46.24	96.99
Boats w/o motor/boat trailers	18.32	1.83	0.00	18.35	4.76	33.83	73.57
Trailer/other attachable campers	5.70	0.46	0.00	3.96	2.34	12.41	23.42
Powered sports vehicles	137.44	168.02	56.37	51.83	40.89	217.35	510.44
Motorized camper coach/other vehicles	38.79	83.50	11.55	1.65	28.53	22.53	134.38
Purchase of boat with motor	98.65	84.52	44.82	50.19	12.36	194.81	376.06
Rental of sports vehicles	2.33	0.00	1.06	1.43	1.14	3.90	8.13
Rental non-camper trailer	0.06	0.00	0.00	0.23	0.02	0.00	0.09
Boat/trailer rent out-of-town	0.94	0.00	0.50	0.02	0.69	3.17	1.94
Rental camper/oth vehicles on trips	0.58	0.00	0.52	0.30	0.24	0.57	2.51
Rent of boat	0.23	0.00	0.04	0.00	0.00	0.16	1.42
Rental of campers oth r. v	0.52	0.00	0.00	0.87	0.19	0.00	2.17
Outboard motors	1.28	1.43	1.35	0.11	0.51	0.22	5.79
Docking/landing fees	5.33	0.17	2.51	3.30	3.12	5.73	20.20
Sports equipment	86.67	27.99	52.35	82.59	113.75	136.51	211.99
Athletic gear/game tables/ex. equip	34.86	9.06	26.36	33.84	38.39	61.59	85.92
Bicycles	12.28	5.80	6.60	12.50	17.62	20.21	23.55
Camping equipment	3.26	1.35	1.33	1.45	4.94	4.43	9.21
Hunting and Fishing equipment	15.91	5.09	11.57	15.40	22.84	24.90	36.25
Winter sport equipment	4.86	0.94	2.24	3.99	5.69	3.92	16.95
Water sport and misc. sport equipment	13.20	3.66	4.03	12.31	22.46	17.71	34.87
Rental/repair of misc sports equipment	2.31	2.09	0.22	3.09	1.80	3.76	5.25
Photographic equipment and supplies	69.61	28.16	48.35	67.08	83.07	119.31	157.10
Film	19.96	9.29	13.73	20.05	22.90	32.26	43.61
*Other photographic supplies	0.64	2.38	1.01	0.26	0.15	0.24	1.17
Film processing	25.21	10.72	15.21	23.97	28.28	41.48	59.82

APPENDIX 1—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units. Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990 in dollars and percent						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Rent/repair photo equipment	0.24	0.05	0.42	0.30	0.27	0.34	0.47
Photographic equipment	15.43	5.16	7.28	13.04	20.47	25.46	40.91
*Photographer fees	8.12	0.56	10.71	9.45	11.00	19.51	11.12
*Fireworks	0.51	0.99	0.26	0.00	0.00	0.00	2.37
*Souvenirs	0.44	0.00	0.00	0.00	0.49	0.38	2.16
*Visual goods	0.76	0.00	0.00	0.42	0.67	0.00	3.83
*Pinball, electronic video games	3.78	2.87	3.11	2.34	9.38	8.74	4.45
Personal care products and services	345.68	249.04	282.21	324.70	420.30	478.79	651.43
Personal care products	179.05	136.69	166.87	169.79	196.77	245.49	335.33
*Hair care products	40.57	34.79	36.67	37.36	41.43	56.30	77.75
*Non-elec articles for the hair	4.26	3.55	2.84	5.57	4.31	6.79	8.37
Wigs and hairpieces	1.07	0.47	0.91	0.59	1.50	0.34	2.71
*Oral hygiene products, articles	18.16	13.60	18.18	16.69	22.18	22.44	29.63
*Shaving needs	8.49	8.31	12.14	8.22	8.09	11.31	13.16
*Cosmetic, perfume, bath prep	77.63	55.67	73.62	72.41	90.11	102.03	148.23
*Deodorant, feminine hygiene, misc. pers car	23.52	17.79	19.75	23.84	22.08	36.47	43.65
Electric personal care appliances	5.35	2.51	2.95	4.92	8.07	7.80	11.83
Personal care services	166.63	112.35	115.34	154.91	221.54	233.30	316.10
*Personal care services/females	89.35	61.33	58.80	83.46	127.40	112.04	174.08
Personal care services/males	77.12	50.83	56.42	71.27	93.93	120.95	141.78
Repair of personal care appliances	0.16	0.19	0.11	0.18	0.21	0.31	0.24
Reading	152.49	93.38	113.87	142.11	185.46	229.92	287.41
Newspapers	63.99	47.96	53.05	63.85	72.82	84.18	105.97
Magazines	38.92	21.42	31.03	36.54	45.36	65.91	71.63
*Newsletters	0.04	0.00	0.00	0.00	0.00	0.42	0.00
Books thru book clubs	10.63	6.87	8.72	8.86	15.44	18.33	21.60
Books not thru book clubs	35.24	16.73	20.13	28.28	46.03	54.12	79.39
Encylopedia and oth sets of refer books	3.67	0.40	0.96	2.57	3.81	6.97	6.81
Education	324.43	187.02	118.84	190.35	322.81	349.24	836.73
Sch books, supp for day care, nursey, oth	2.52	1.44	1.58	1.30	6.04	2.25	4.76
College tuition	176.75	91.59	47.50	99.69	186.76	125.89	458.90
Elementary/high school tuition	83.20	6.10	10.62	25.10	34.39	97.91	204.78
Other school tuition	15.29	8.32	17.55	9.00	13.94	21.58	31.48
Oth school expenses incl rentals	15.78	14.42	10.07	10.77	13.45	22.64	33.02
Sch bks/supplies for college	26.56	25.25	17.75	16.63	24.53	16.65	41.08
Sch bks/supp for elem/high sch	6.23	5.70	3.25	5.64	7.82	9.59	11.28
*School supplies, etc.—unspecified	26.10	34.20	10.53	22.22	36.87	52.73	50.44
Tobacco products and smoking supplies	242.33	221.48	250.05	262.82	292.87	249.43	270.28
Cigarettes	224.61	197.67	235.29	244.22	273.20	230.82	251.80
Other tobacco products	15.28	15.85	13.94	16.00	17.99	17.73	17.12
*Smoking accessories	2.44	7.96	0.82	2.60	1.69	0.88	1.37
*Marijuana	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Miscellaneous	597.58	345.77	474.63	553.17	769.62	811.02	1182.12
*Miscellaneous fees, parimutuel losses	38.61	20.23	56.87	26.40	62.29	47.69	76.50
Legal fees	104.50	81.84	49.27	109.06	133.34	62.67	255.98
Funeral expenses	49.32	44.70	82.98	57.05	13.57	49.05	18.62
Safety deposit box rental	5.69	4.05	3.61	5.05	5.86	6.20	12.59
Checking accounts, oth bank services	25.19	16.23	26.64	28.95	33.62	38.14	31.99
Cemetery lots or vaults	17.66	14.30	25.91	12.86	13.74	12.52	18.29
Accounting fees	39.87	18.96	20.72	33.62	52.32	47.89	93.19
*Miscellaneous personal services	23.02	14.53	16.61	12.43	39.32	40.69	47.86
Finance chgs. excl. mortgage veh	203.45	89.63	149.53	217.35	284.11	321.25	408.61
Occupational expenses	90.26	41.30	42.48	50.40	131.46	184.94	218.49
Cash contributions	730.19	352.83	486.72	529.28	781.16	956.30	2102.92
Cash contri non-CU memb, inclu alimony and students at college (Sec 22)	179.06	64.23	108.84	127.13	209.98	235.99	549.04
Gifts non-CU members	149.99	70.48	52.77	109.45	161.57	162.57	485.66
Contributions to charities	69.16	13.23	38.96	32.84	65.78	99.80	244.53
Contributions to church	295.54	197.57	276.14	242.30	322.49	423.81	661.17
Contributions to educa. organizations	17.97	1.07	2.76	2.95	12.56	12.48	89.44
Political contributions	7.29	0.89	1.75	2.38	6.73	10.74	30.62
Other contributions	11.18	5.37	5.50	12.23	2.05	10.90	42.27
Personal insurance and pensions	2532.36	682.85	1373.19	2097.59	3286.30	4542.32	6683.08
Life and other personal insurance	324.17	137.92	280.62	301.69	354.87	494.30	729.64
Life/endow/annuit/oth pers ins	312.04	132.62	275.54	290.33	342.68	466.16	704.02
Other non-health insurance	12.13	5.30	5.08	11.36	12.19	28.13	25.62
Retirement, pensions, social security	2208.19	544.93	1092.57	1795.89	2911.44	4048.02	6153.42
Deduction for government retirement	65.36	4.36	25.17	48.33	82.39	119.99	211.42
Deductions for railroad retirement	6.23	0.00	1.33	0.24	19.12	16.29	13.24
Deductions for private pensions	156.10	11.73	39.55	84.29	160.96	328.55	564.77
Deductions for self-employment IRA's and Keogh plans	297.28	36.24	78.45	181.68	333.32	494.25	1049.52
Deductions for social security	1683.21	492.58	948.07	1481.16	2315.63	3068.94	4314.48

[1]Components of income and taxes are derived from "Complete income reporters" only; see glossary.

Appendix 2—Goods & Services Component

Food at Home	
Ground Beef	Price per LB of regular ground beef. Average size package. Loose, pre-packaged. DO NOT PRICE LEAN.
Sirloin Steak	Price per LB. Average size package. 1st choice: Flat bone. 2nd choice: Round bone.
Round steak, bone in	Price per LB. Average size package. 1st choice: Top round steak. 2nd choice: Eye round steak.
Chuck Roast, bone in	Price per LB. Average size package. 1st choice: Arm pot roast. 2nd choice: Eye roast.
Round Roast, boneless	Price per LB. Average size package. 1st choice: Top round roast. 2nd choice: Tip roast.
Port Chops, bone in	Price per LB. Average size package. 1st choice: Center cut, loin rib chops. 2nd choice: Loin chops.
Bacon, sliced	Price for 16 OZ (1 LB) package *Oscar Mayer* regular sliced bacon.
Chicken, Whole	Price per LB of 1 whole chicken. If whole not available, price a whole chicken, cut-up.
Fish Filet, frozen	Price per LB of frozen fish filet. 1st choice: Cod. 2nd choice: Pollock.
Tuna, canned	Price for 6.5 OZ can, packed in water. (Not fancy style.) 1st choice: *Star Kist*, chunk light. 2nd choice: Chicken of the Sea, chunk light.
Lunch meat	Price for 8 OZ pkg., *Oscar Mayer*. 1st choice: bologna. 2nd choice: cotto salami or all-beef bologna.
Ham, canned	Price for 3 LB tin of canned ham. 1st choice: Hormel. 2nd choice: Dubuque.
Frankfurters	Price for 16 OZ (1 LB) package, *Oscar Mayer* all beef frankfurters.
Eggs, large	Price for one dozen.
Fish, fresh	Price per LB of a commonly purchased fresh fish. PLEASE INDICATE TYPE OF FISH PRICED IN THE COMMENT SECTION.
Milk, 2%	Price for one gallon (128 FL OZ), 2%. Lowest priced store brand.
Cheddar Cheese	Price per LB of mild cheddar, store brand.
Ice Cream	Price for ½ gallon vanilla flavored ice cream. DO NOT PRICE ICE MILK. 1st choice: Store Brand. 2nd choice: Lowest Price Name Brand.
Bread, white	Price for 16 OZ loaf of sliced, white bread. 1st choice; Store brand bread. 2nd choice: Lowest priced name brand, white bread.
Spaghetti, dry	Price for 16 OZ box or bag of spaghetti. 1st choice: Creamettes. 2nd choice: Muehler's. 3rd choice: Golden Grain. 4th choice: American Beauty.
Cereal	Price for 18 OZ package of *Kellogg's Corn Flakes*.
Cookies	Price for 16 OZ package of *Nabisco Oreo Cookies*.
Refrigerated Biscuits	Price for 7.5 OZ (212 G) tube *Pillsbury* Biscuits. 1st choice: 10 Buttermilk biscuits. 2nd choice: 10 Country biscuits.
Hamburger Buns	Price for 12 OZ (340 G) package of 8 sliced enriched white hamburger buns. 1st choice: Store brand, buns. 2nd choice: Lowest priced name brand, buns.
Cake	Price for one frosted undecorated, 9-inch chocolate two-layer cake.
Apples, fresh	Price per LB of Red Delicous apples. If apples are priced by the bag, report the price and weight of the bag—use the store's scale if necessary.
Bananas, fresh	Price per LB. If bananas are priced by the bunch, report the price and weight of the bunch-use the store's scale if necessary.
Tomatoes, fresh	Price per LB. Price medium-size tomatoes if possible.
Potatoes	Price for 10 LB bag of lowest priced potatoes. If 10 LB bag is not available, substitute nearest size sack.
Frozen Orange Juice	Price for 12 FL OZ (makes 48 FL OZ) can of frozen orange juice concentrate-store brand.
Tomato Juice	Price for 46 FL OZ can of tomato juice. 1st choice: *Libby's*. 2nd choice: *Campbell's*.
Peaches, canned	Price for 29 OZ can of *Del Monte* yellow cling peaches.
Peas, frozen	Price for 16 OZ pkg. of *Green Giant* frozen peas. DO NOT PRICE PEAS WITH SAUCE.
Green Beans, canned	Price for 16 OZ can of cut *Del Monte* green beans.

Appendix 2—Goods & Services Component—Continued

Oranges, fresh	Price per LB. If oranges are priced by the bag or by the orange, report the price and *weigh a bag*—using the store's scale if possible. Price navel medium-size oranges if possible.
Lettuce, fresh	Price for 1 head of lettuce. If lettuce is priced by weight, report the *price* and also report the weight.
Celery, fresh	Price for 1 bunch of celery. DO NOT PRICE CELERY HEARTS.
Fruit Drink	Price for 46 FL OZ can. 1st choice: *HI–C*, regular. 2nd choice: *Hawaiian Punch*.
Soft Drink	Price of 2 L (liter) plastic bottle. 1st choice: *Coca-Cola*. 2nd choice: *Pepsi*.
Coffee, ground	Price for 13 OZ can of *Folgers Drip Grind*.
Canned Soup	Price for one can *Campbell's* soup. 1st choice: Vegetable 10½ OZ. 2nd choice: Chicken Noodle 10¾ OZ.
Snack Food	Price for 16 OZ bag or box of potato chips. 1st choice: store brand potato chips. 2nd choice: lowest priced name brand potato chips.
Salt	Price for 26 OZ box of iodized salt. 1st choice: *Morton*. 2nd choice: *Ivory*. 3rd choice: *Private Label*.
Ketchup	Price for 14 OZ bottle of *Heinz* ketchup.
Cooking Oil	Price for 48 FL OZ bottle. 1st choice: *Crisco*. 2nd choice: *Wesson*.
Margarine	Price for 1 LB, four sticks. 1st choice: *Blue Bonnet*. 2nd choice: *Parkay*.
Frozen Dinner	Price for 11.5 OZ (326 G) *Swanson*—Turkey, whipped potatoes, peas, and fruit compote, frozen dinner.
Jello Gelatin	Price for 3 OZ box of *Jello Gelatin* dessert.
Baby Food	Price for one 4.5 OZ jar of *Gerber* strained vegetable or fruit.
Candy Bar	Price for one 2.07 OZ *Snickers* candy bar. If not available, price most popular brand of same size.
Sugar, granulated	Price for 5 LB bag of granulated cane or beet sugar, lowest price available. Do not price generic sugar.
Bottled Water	Price for one gallon (128 FL OZ) bottled drinking water. DO NOT PRICE SPARKLING OR DISTILLED WATER.
Food Away From Home	
Breakfast	Price for typical breakfast, such as, bacon and 2 eggs or waffles, coffee and juice. Report percentages added for tax, tip and service charge.
Lunch	Price for typical lunch, such as, chef's salad or cheeseburger platter and small soft drink. Report percentages added for tax, tip and service charge.
Dinner	Price for typical dinner, such as, New York strip or seafood platter and coffee. Report percentages added for tax, tip and service charge.
Fast Food Lunch/Dinner	Average price of a meal at a fast food establishment. Price for typical meal, such as, Big Mac or Whopper, medium french fries and medium coke.
Ice Cream Cone	Price for regular (one scoop) vanilla ice cream cone.
Tobacco	
Cigarettes, king size	Price for 1 carton (200 cigarettes) of *Winston* filter—kings soft pack. DO NOT INCLUDE SALES TAX.
Alcohol	
Beer at Home	Price for a six-pack of 12 OZ cans of *Budweiser*. DO NOT PRICE REFRIGERATED BEER.
Wine at Home	Price for 750 ML of *Gallo* chablis blanc.
Beer Away	Price for glass of Budweiser/Miller Lite Beer. List percent for tax.
Wine Away	Price for house white wine. List percent for tax.
Furnishings Household Operations	
Appliance Repair	Price to replace oven thermostat control for charge and parts cost. Part Number #4704P029–60.
Housekeeping Services	Price per hour for bi-weekly cleaning. House approximately 2,000 sq. ft. Family size 4. If hourly rate not available, please complete items in the Comment Section. Services include the following: Bathroom(s)—Sanitize walls, floor, counter tops, bathtub, stool. Kitchen—Sanitize walls, floor, counter tops, cabinets, appliances. Living Room & Dining Room—Dust, polish furniture and vacuum. Bedrooms—Dust, polish furniture and vacuum. If other services are included, please note.

Appendix 2—Goods & Services Component—Continued

Moving	Price per hour for a within-city move, two men with enclosed van. Include any van rental fees.
Toilet Tissue	Price for a 4-roll pack. 1st choice: *Cottonelle.* 2nd choice: *Northern.*
Pen	Price for a *Bic* round stic medium pen. DO NOT PRICE MULTI-PACK.
Postage	Price for First Class postage for a letter.
Laundry Soap	Price for 64 FL OZ of liquid household laundry detergent. 1st choice: *Tide.* 2nd choice: *Wisk.*
Potting Soil	Price for one 20 LB bag of *Hyponex* all-purpose potting soil.
Bed Sheet Set	Price for one set queen-size no-iron cotton & Polyester percale sheets (180 thread count). One set consists of one fitted sheet, one flat sheet and two pillowcases.
Bath Towel	Price for a 27×50 inch *Fieldcrest* Royal Classic bath towel.
Living Room Chair	Price for a recliner chair, swivel rocker or wall saver. Button backed with base construction of 15 zigzag springs. 1st choice: *Lane.* 2nd choice: *Lazy Boy.* DO NOT PRICE SPECIAL ORDER FABRIC.
Bedroom Group	Price for nightstand, headboard, 5-drawer chest, triple dresser with mirror. Solid wood top, front, mirror frame and headboard. Veneer sides. Drawer construction should have French dovetail or English dovetail joints and dust plate. Please refer to *Research Guidelines* for further information.
Dining Room Table	Price for table with center pedestal and four standard double rung chairs. Table should have veneer top and double runners for leaves with both portions of the table movable.
Washing Machine	Price for large capacity washing machine with infinite load selection, 4 water temperatures, 3 wash cycles (regular, permanent press & knits/delicate), porcelain enamel top, lid & basket, self-clean lint filter, fabric softener & bleach dispenser and self-leveling rear legs. 1st choice: *Maytag* Model #A7500. 2nd choice: *General Electric* Model #WWA7678M. 3rd choice: *Whirlpool* Model #LA5300XT.
Kitchen Range	Price for 30-inch electric range with porcelain enameled cooktop, removable coil surface elements with crome reflector bowls, rotary clock and timer, over light, multi-pane oven window, storage drawer, standard cleaning oven with two oven racks and a porcelain enamel broiler pan and insert. 1st choice: *Maytag* Model #CRE305. 2nd choice: *General Electric* Model #JBC26P. 3rd choice: *Whirlpool* Model #RF3105XX. 4th choice: *Kenmore* Model #91691N.
Refrigerator	Price for no-frost 18.5 cubic ft. refrigerator with reversible doors and energy-saver switch, 4 split glass shelves, fixed glass crisper shelf with 2 sealed/moisture controlled crisper drawers, double wall meat drawer. Door contains 2 covered dairy compartments, 1 deep fixed bin, 4 deep adjustable bins. Freezer has 2 adjustable wire shelves, 2 deep fixed door bins, 4 ice trays and 1 ice storage bin. 1st choice: *Maytag* Model #RTD19A. 2nd choice: *General Electric* Model #TBX19ZP. 3rd choice: *Whirlpool* Model #ET20DKXXN. 4th choice: *Amana* Model #TX20QB.
Vacuum	Price for *Eureka* upright Model #2034. "The Boss" 6.5 amps, 120 volts, with extra suction power, height adjustment, edge cleaner, regular bag and 20-foot cord.
Two-slice Toaster	Price for Proctor-Silex two-slice toaster; chrome body, wide slot with pastry defrost setting. 1st choice: Model #T620B. 2nd choice: Model #T204B.
Two Quart Casserole	Price for *Corning-Ware* 2 QT casserole dish with cover, simple pattern.
China	Price for *Corelle,* simple-edged pattern tableware set. Set consists of 16 pieces, 4 dinner plates, 4 dessert plates, 4 salad bowls and 4 mugs. 1st choice: *Design Images.* 2nd choice: *Natural Images.*
Electric Drill	Price for *Black & Decker* ⅓ horsepower ⅜ inch variable speed, reversible electric drill with cord. 1st choice: Model #7144. 2nd choice: Model #7190. 3rd choice: Model #7193.
Lawn Trimmer	Price for gas powered *Weed Eater* brand lawn trimmer.
Red Roses, Fresh Cut	Price for one dozen long stemmed, fresh cut red roses.
Hammer	Price for *Stanley* Model #51616. 16 oz head claw hammer, wood handle, high carbon steel head, black finish. Overall length 13¼".
Window Shade	Price 37½ inch wide window shade.
Bath Rug	Price for a 24×36 inch solid color, oblong bathmat.
Snow Blower	Price for 8 hp two-stage gas snow thrower with rubber tracks, 6 forward, 2 reverse speeds and adjustable snow chute.

Appendix 2—Goods & Services Component—Continued

Clothing	
Man's Suit	Price for two-piece single-breasted business suit of the type generally worn to the office. Conservatively colored and styled with a fabric blend of 45% wool and 55% polyester.
Man's Jeans	Price of *Levi's* jeans. 1st choice: #501. 2nd choice: #505 (zipper not buttonfly).
Man's Dress Shirt	Price for white or solid color, long sleeve, button cuff, plain collar dress shirt, approximately 35% cotton, 65% polyester. A dress shirt will have exact collar and sleeve sizes. Example: 15½ collar, 34 sleeve. Possible brands: *Arrow, Van Heusen.*
Man's Jacket	Price for unlined *Levi's* jean jacket. Cotton denim with button front, two chest pockets and two side pockets.
Boy's Jeans	Price of *Levi's* jeans (size 7–14) 1st choice: #501. 2nd choice: #506.
Boy's Shirt	Price for screen-printed t-shirt commonly worn by boys ages 8 through 10 years (size 7–14). Pullover with crew neck, short sleeves and polyester/cotton blend. Possible brand: *Ocean Pacific.*
Man's Parka	Price for cotton/polyester blend with fiber fill and nylon lining, two-way front zipper, two front pockets, detachable hood and velcro closing on sleeves.
Man's Insulated Underwear	Price for white light weight, crew neck thermal underwear top of cotton and polyester. Possible brands: *J.E. Morgan, Hanes.*
Woman's Dress	Price for a long sleeve shirt waist dress appropriate for office attire. Exclude any unusual ornamentation. The dress should be blend of cotton and polyester. Possible brands: *Sabina, Wrapper.*
Woman's Blouse	Price of 100% polyester, white, long sleeve, button front blouse with minimum trim. Possible brands: *Wrapper; Girls, Girls, Girls.*
Woman's Slacks	Price for the type (materials and styles) most commonly used for office wear. Possible brand: *Don Kenny.*
Woman's Sweater	Price for 100% cotton, crew neck sweater with rib knit cuffs and bottom. Exclude any unusual ornamentation or patterns. Possible brand: *Lucia.*
Woman's Jacket	Price for unlined windbreaker.
Woman's Accessories	Price for split-grain, cowhide leather, *Amity* checkbook clutch wallet.
Girl's Dress	Price of cotton blend long-sleeve dress appropriate for school. Exclude extra ornamentation. For girls ages 8 through 10 (size 7–14). Possible brand: *Carter's.*
Girl's Jeans	Price of *Levi's* #902 basic relaxed taper jean, two back pockets and two front pockets. For girls ages 8 through 10 years (size 7–14).
Girl's Blouse	Price of cotton blend, white or solid color, long sleeve, button front blouse. For girls ages 8 through 10 years (size 7–14). Possible brand: *This Side Up.*
Woman's Parka	Price for nylon parka with goose down filling, two-way front zipper, two front pockets, detachable hood and velcro closing on sleeves.
Infant's Sleeper	Price for one-piece sleeping garment with legs, covering the body including the feet. Possible brands: *Gerber, Playskool.*
Disposable Diaper	Price for 60 count package *Ultra Pampers*, small (6–14 LBS).
Man's Shoes	Price of 100% leather wing tips. Possible brands: *Bostonian, Johnson and Murphey.*
Woman's Shoes	Price for woman's pump style shoes with enclosed heel and toe, leather uppers and the rest of manmade materials. Heel height should be approximately two inches. Possible brands: *9 West, Candies.*
Man's Boots	Price for 8 inch waterproof, insulated leather boot with Cambrelle lining. Possible brands: *Timberland, Herman.*
Woman's Boots	Price for calf height, pile lined, urethane upper boot with 1 inch heel. Possible brand: *Naturalizer.*
Jewelry	Price for one pair 6mm 14K gold ball earrings for pierced ears.
Coin Laundry	Price for one load of laundry using a regular size, top loading commercial washing machine. DO NOT INCLUDE COST OF DRYING.
Dry Clean Man's Suit	Price to dry clean a man's 2-piece business suit of typical fabric.
Domestic Service	
Day-Care	Price for one *month* of day-care for a three-year-old child (5 days a week, about 8 hours per day). If monthly rate is not available, price per week.
Babysitter, per hour	Average hourly rate for one child, age four years, evening, before midnight. (Teenager in your home.) DO NOT PRICE BABYSITTING SERVICE. Special Instructions: If typical for your area, you may wish to obtain quotes from friends/acquaintances in your area who use teenage babysitters.
Professional Services	
Legal Services	Hourly rate for general counsel.
Accounting Services	Price average rate to complete tax Form 1040 and Schedule A including state schedules.

Appendix 2—Goods & Services Component—Continued

Personal Care	
Woman's Cut and Styled Blow Dry	"Regular service" price for a woman's cut and styled blow dry. Include wash. NO CURLING IRON IF EXTRA CHARGE.
Man's Haircut	Price of a man's typical haircut. Do *not* include wash.
Lipstick	Price for one tube of *Revlon* (Moondrops) lipstick.
Shampoo	Price for 15 FL OZ bottle of *Revlon Flex* shampoo for normal hair.
Recreation	
Bowling	Price for 1 game of open (or non-league) bowling on Saturday night. Exclude cost of shoe rental.
Golf	Price for 18 holes of golf on a weekend. If only 9 hole rate is available, report twice the price. If only daily rate is available (unlimited number of holes), report the Saturday or Sunday rate.
Movie Theater	Typical adult price for regular length evening film. Report weekend evening price if different from weekday.
Health Club	Price for regular individual membership for 1 year for existing member. Do not include any initial fees assessed only to new members. If yearly rate is not avaiable, price per month.
Piano Lessons	Price for private lesson for a beginner one-half hour in length.
Downhill Skiing	Price for one lift ticket on Saturday.
Roller Skating	Price for one session of open skating on Saturday night. Include the cost of skate rental.
Video Rental	Price to rent one video tape of recently released movie, Saturday night (1 day) rate. Non-member fee.
Video Recorder	Price for *Zenith* model #VRG75 VHS video recorder. Two video heads, quartz tuner, 155 channel cable ready with remote control. One year 8-event timer programming, auto timer activation, auto channel search, instant record/standby, 3 second power backup and picture search lock.
Audio Cassette	Regular price for a current best-selling audio cassette. NOT SALE PRICE. DO NOT PRICE DOUBLE TAPE. Example: *Spellbound* by Paula Abdul, *Extremely Live* by Vanilla Ice. Please put title in Comment Section.
Compact Disc Player	Price for basic CD player for one disc with oversampling digital filter and basic infrared wireless remote. 1st choice: *Sony* Model #CDP270. 2nd choice: *Technics* Model #P370.
Color Television	Price for *Zenith* model #SG2019W Sentry 2 color TV. 20" table model with Chroma Color Contrast picture tube, 178 channel capability, electronic tuning, auto channel switch, HRC/ICC search, Keyboard Channel Selection, TV/VCR remote control, phase lock loop/AFC, on-screen channel/time and menus, flashback, sleep timer, 13.5" oval speaker and video filter.
Basic Cable Service	Price for one month of basic cable channel TV. DO NOT INCLUDE HOOKUP CHARGES OR PREMIUM CHANNELS.
Veterinary Services	Typical fee for general office visit for a rabies inoculation for a small dog. Include the cost of the office visit.
Pet Food	Price for 6 OZ can of cat food. 1st choice: *9 Lives*. 2nd choice: *Whiskas*.
Film Developing	Price to process and print 35 millimeter, 24 exposure, 100 ASA color. SINGLE PRINTS ONLY PLEASE.
Camera Film	Price for 35 millimeter, 24 exposure, 100 ASA.
Tennis Balls	Price for can of three heavy-duty felt, yellow.
Board Game	Price for Monopoly board game by *Parker Brothers*. DO NOT PRICE DELUXE EDITION.
All Terrain Vehicle	Price for *Honda* 250X—2 wheel drive all terrain vehicle.
Book	Price for top ten best selling paperback book.
Magazine	Price for a single copy of Time magazine.
Local Newspaper	Price for a single copy of the most common DAILY newspaper distributed in the area. Report the name of the newspaper in the "comment" section.
Miscellaneous Expense Component	
Pain Reliever	Price for 100 tablets of extra-strength *Tylenol*. DO NOT PRICE CAPLETS OR GELCAPS.
Tetracycline, prescription	Price for 40 capsules of tetracycline, 250 milligram strength. Report price for most common national brand sold.
Optometrist, office visit	Typical fee for visual analysis including tonometry, refraction and glaucoma screening.
Dentist, clean and check teeth	Charge for x-rays, exam and prophylaxis (light scaling and polishing) or "cleaning of teeth" without special treatment of gums or teeth. DO NOT PRICE INITIAL VISIT.
Doctor, office visit	Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is needed. Do *not* include the charge for a regular physical examination, injections, medication or lab tests (routine brief visit). Price General Practitioner, DO NOT PRICE SPECIALIST.
Hospital Room	Daily charge for a private room. Include food and routine care. *Exclude* cost of operating room, surgery, medicine and lab fees.

Appendix 2—Goods & Services Component—Continued

Housing-Related Component

Bathroom Caulking	Please price an 8-ounce tube of white bathroom caulking, most popular brand.
Computation of Electric Bill	Obtain percent of customers using as primary heating source. Average consumption. Customer service charge (single phase service). Cost for first KWH. Cost for over first KWH. Other items included on bill. Comments.
Computation of Gas Bill	Obtain percent of customers using as primary heating source. Average consumption. Average cost per Sq. Ft. Customer service charge. Cost for first Cu. Ft. Cost for over first Cu. Ft. Other items included on bill. Comments.
Computation of Water Bill	Obtain average consumption. Customer service charge. Cost for first _____Gallons. Cost for over _____Gallons. Other items included on bill. Comments.
Electrical Outlet	Please price a 2-plug grounded electrical outlet. Medium priced.
Electrical Work	Price to add circuit breaker for dishwasher. Cut ¾ inch hole in wooden floor for cable. Connect dishwasher directly to power box (power box is easy to reach). EXCLUDE COST OF MATERIALS.
Fire Extinguisher	Please price a fire extinguisher with a UL rating of 10BC, 2.5 pound size. Suggested brand: Kidde
Interior Painting	Price to paint 12′ 14′ living room with 8′ ceilings. Walls are plaster or drywall in good repair. Two standard sized sash windows, one picture window, one standard wood door. Rooms have simple wood baseboards, and trim. Existing paint is latex, flat white, smooth finish, about three years old. Trim paint is latex, white, gloss enamel, about three years old. Walls and trim require no surface preparation. Exclude cost of materials. Obtain labor rate per hour, flat charge if any, and estimated time to complete job.
Latex Interior Paint	Please price one gallon white, interior flat latex paint. Price a national brand with one coat coverage. Possible brands: *Dutch Boy, Glidden.*
Pest Control	Price for basic pest control maintenance. Total quarterly price. Price follow-up maintenance only, *not* the initial application.
Unclog Drain	Price to unclog kitchen sink drain by mechanical means (snake, auger, etc.). EXCLUDE DISASSEMBLY OF PIPES. Obtain labor rate per hour, flat charge if any, and estimated time to complete job.
Kitchen Faucet	Price a Peerless single control chrome-plated faucet *with* spray. Faucet is solid brass and stainless steel quality construction with copper waterways, washerless design and triple chrome plating. Warrantied for as long as the home is owned.
Household Insurance	Homeowner insurance. For each living community surveyed based on income level, provide owner housing profile and insurance cost (semiannual or other). Assume HO–5 coverage. Renter insurance. For each living community surveyed based on income level, provide renter housing profile and insurance cost (semiannual or other). Assume HO-4 coverage.
Telephone Service	Obtain monthly cost for unmeasured service, for touch-tone service, and for tax.
Long Distance Telephone	Price the cost of a 10 minute call, received on a weekday, at each location at 8:00 p.m. (local time); direct dial from the location being surveyed to each of the following cities; New York, Chicago and Los Angeles. Include any federal, state, local or excise tax that is applicable.

Appendix 2—Goods & Services Component—Continued

Homeowners

The profiles for each of the home sizes costed are as follows:
Low—900 (Sq. Ft.).
Mid—1,300 (Sq. Ft.).
High—1,700 (Sq. Ft.).
The worksheet components for data collection are as follows:
(1) Address.
(2) Selling Price.
(3) Sale Date.
(4) Age.
(5) Room Count (broken down into bedrooms and baths).
(6) Square Footage.
(7) Price Per Square Foot.
Information was collected through various sources—Realtors, Appraisers, MLS data and assessors' offices.

Data Collection for Aged Mortgages

The worksheet components for data collection for aged mortgages are as follows:
(1) Address.
(5) Selling Price.
(3) Sale Date.
(4) Age.
(5) Room Count (broken down into bedrooms and baths).
(6) Square Footage.
(7) Price Per Square Foot.

Transportation Component

Vehicles	1991 Honda Civic DX four door sedan, 1.5 Liter 4 Cylinder (1992 model of Alaska pricing). 1991 Ford Taurus CL four door sedan, 3.0 Liter 6 Cylinder (1992 model for Alaska pricing). 1991 Chevrolet S10 Blazer Two Door, four wheel drive, 4.3 Liter 6 Cylinder (1992 model for Alaska pricing).
Base price	Obtain the base price (Manufacturer's Suggested Retail Price) for each vehicle.
Options	For each vehicle, price the following options: air conditioning, AM/FM stereo radio, power steering, tinted glass, power disc brakes, engine block heater (Alaska only), heavy-duty battery (Alaska only), studded snow tires (Alaska only), rustproof/undercoating and other options.
Fees	For each vehicle, price the following options: destination charge, shipping charge, dealer markup and other one-time fees.
Taxes	For each vehicle, price the following taxes: excise tax, import/customs tax, use tax, sales tax and other one-time taxes.
Specifications	For each vehicle, obtain the following information, length, wheelbase, tires, curb weight, horsepower, fuel type and fuel performance (mpg).
Depreciation	For each vehicle, compute the residual value after 12, 24, 36 and 48 months respectively.
Gasoline	For each station name/brand, price regular unleaded self-service and regular unleaded full-service.
Vehicle Maintenance	For each vehicle, price a tune up, an oil change, an automatic transmission fluid change, a coolant-flush/fill, a muffler/tail pipe and CV joint boot replacements (Alaska only).
Tires	Price a P175/70R13, Eagle GT+4, #111–895–234 for the Honda Civic. Price a P205/70R14, Eagle GT+4, #111–135–244 for the Ford Taurus L. Price a P205/R15, Eagle GT+4, #111–707–486 for the Chevrolet S10 Blazer. In Guam, Goodyear tires were unavailable, used the average of two comparable brands.
License and Registration	For each vehicle, price title fee, passenger vehicle registration fees, plate fees, inspection fees, administration/clerical/other fees, and local added fees. Specify if one-time or annual. List any exceptions if the Blazer is not registered as a passenger vehicle.
Miscellaneous Tax	For each vehicle, price miscellaneous tax. Tell how rate is determined, give formula for new vehicle purchase, give formula for subsequent year (2 to 5) and explain billing.
Autombile Finance	Obtain the rate for a 4 year loan based on a down payment of 20 percent. Assume the loan applicant is a current bank customer who will make payments by cash/check and not by automatic deduction from the account.
Autombile Insurance	For each vehicle, price insurance coverage identified below. Assume that vehicles are used in commuting 15 miles/day, 12,000 miles/year and that the driver is a 35-year-old married male with no accidents or violations in the last 5 years. When there is a geographic difference, obtain rates for two different living communities. Include related expense fees and taxes.
Round-Trip Airfare	Price for lowest cost round trip ticket to Los Angeles. Disregard restrictions.

APPENDIX 3—Goods and Services/ Miscellaneous Pricing Changes

Listed below are changes we made to the September 1991 OPM pricing for Goods & Services and Miscellaneous Components. In addition, per OPM's request, Runzheimer verified that each pricing area included one warehouse grocery store if one was available in the area. The changes can also be seen by comparing 1990 pricing materials to 1991 pricing materials.

The following items were added to the Marketbasket at the request of OPM: fresh fish, fresh oranges, fresh lettuce, fresh celery, insulated underwear and all-terrain vehicle.

The following items were priced by catalog: Man's suit, man's jacket, woman's jacket, man's parka, woman's parka, window shade and lawn trimmer. This change was made to accommodate a request by OPM to price items by catalog.

The type of outlet priced was changed for the following items to better reflect availability.

Item	From	To
Two-Quart Casserole	Department Store	Hardware Store.
China	Hardware Store	Department Store.
Vacuum	Hardware Store	Department Store.
Pen	Pharmacy	Discount Store.

Brand names or "variety" were added to the following items: OPM requested Runzheimer specifically add brand names to the following items as a quality check: apples, cigarettes, man's dress shirt, boy's jeans, boy's shirt, woman's dress, woman's blouse, woman's slacks, woman's sweater, girl's dress, girl's blouse, infant's sleeper and woman's shoes.

Additional brand or model choices were added to the following items to ensure accurate substitutions: Spaghetti, washing machine, kitchen range, refrigerator, appliance repair and toaster.

Size or number of units priced was changed on the following items to better reflect availability: White bread, cereal, snack food, tetracycline and frozen peas.

Brands and/or descriptions were changed or enhanced on the following items to better reflect availability: Man's shoes, ground beef, frozen peas, pain reliever, cake, magazine, jewelry, pen, hospital room, dentist visit, bedroom group and audio cassette.

The following item was changed because of quality variance between locations:

New Item	Previous Item
Canned Ham	Pre-Cooked Ham.

The following item was changed because of a lack of availability between locations:

New Item	Previous Item
Potting Soil	Lawn Fertilizer.

APPENDIX 4.—CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Anchorage, AK., Date Prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food at Home	118.96	25.52	30.36	22.38	26.62	19.35	23.02
2. Food Away From Home	100.81	15.95	16.08	16.09	16.22	16.23	16.36
3. Tobacco	120.87	3.13	3.78	2.54	3.07	1.96	2.37
4. Alcohol	106.27	2.92	3.10	2.79	2.96	2.67	2.84
5. Furnishings & Hsld Op	110.56	14.35	15.87	15.95	17.63	17.49	19.34
6. Clothing	102.19	14.24	14.55	14.93	15.26	15.59	15.93
7. Domestic Services	82.30	1.78	1.46	1.79	1.47	1.81	1.49
8. Professional Services	102.33	5.77	5.90	5.84	5.98	5.91	6.05
9. Personal Care	107.00	3.57	3.82	3.47	3.71	3.38	3.62
10. Recreation	116.16	12.77	14.83	14.22	16.52	15.61	18.13
Total weights		100.00		100.00		100.00	
Total indexes			109.75		109.44		109.15

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Fairbanks, AK—Date Prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food at Home	118.22	25.52	30.17	22.38	26.46	19.35	22.88
2. Food Away From Home	100.43	15.95	16.02	16.09	16.16	16.23	16.30
3. Tobacco	111.57	3.13	3.49	2.54	2.83	1.96	2.19
4. Alcohol	119.54	2.92	3.49	2.79	3.34	2.67	3.19
5. Furnishings & Hsld Op	102.59	14.35	14.72	15.95	16.36	17.49	17.94
6. Clothing	102.11	14.24	14.54	14.93	15.25	15.59	15.92
7. Domestic Services	69.81	1.78	1.24	1.79	1.25	1.81	1.26
8. Professional Services	86.27	5.77	4.98	5.84	5.04	5.91	5.10
9. Personal Care	101.02	3.57	3.61	3.47	3.51	3.38	3.41
10. Recreation	115.79	12.77	14.79	14.22	16.47	15.61	18.07

CONSUMPTION GOODS & SERVICES ANALYSIS—Continued

[Location: Fairbanks, AK—Date Prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total weights		100.00		100.00		100.00	
Total indexes			107.05		106.67		106.26

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Juneau, AK., Date Prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	128.83	25.52	32.88	22.38	28.83	19.35	24.93
2. Food Away From Home	106.59	15.95	17.00	16.09	17.15	16.23	17.30
3. Tobacco	126.99	3.13	3.97	2.54	3.23	1.96	2.49
4. Alcohol	126.19	2.92	3.68	2.79	3.49	2.67	3.34
5. Furnishings & Hsld Op	121.90	14.35	17.48	15.95	19.44	17.49	21.32
6. Clothing	98.44	14.24	13.73	14.93	14.40	15.59	15.03
7. Domestic Services	71.36	1.78	1.27	1.79	1.28	1.81	1.29
8. Professional Services	85.59	5.77	4.94	5.84	5.00	5.91	5.06
9. Personal Care	121.99	3.57	4.36	3.47	4.23	3.38	4.12
10. Recreation	105.62	12.77	13.49	14.22	15.02	15.61	16.49
Total weights		100.00		100.00		100.00	
Total indexes			112.79		112.07		111.37

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Nome, AK, Date prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtot	weights	subtot	weights	subtot
1. Food At Home	192.34	25.52	49.09	22.38	43.05	19.35	37.22
2. Food Away From Home	110.26	15.95	17.59	16.09	17.74	16.23	17.90
3. Tobacco	138.89	3.13	4.34	2.54	3.52	1.96	2.72
4. Alcohol	136.52	2.92	3.99	2.79	3.81	2.67	3.65
5. Furnishings & Hsld Op	120.58	14.35	17.30	15.95	19.23	17.49	21.09
6. Clothing	101.44	14.24	14.45	14.93	15.14	15.59	15.81
7. Domestic Services	136.04	1.78	2.42	1.79	2.44	1.81	2.46
8. Professional Services	89.19	5.77	5.15	5.84	5.21	5.91	5.27
9. Personal Care	112.51	3.57	4.02	3.47	3.90	3.38	3.80
10. Recreation	157.34	12.77	20.09	14.22	22.37	15.61	24.56
Total weights		100.00		100.00		100.00	
Total indexes			[1]138.44		[2]136.41		[3]134.48

[1] Lower index.
[2] Middle index.
[3] Upper index.

CONSUMPTION GOODS & Services Analysis

[Location: Honolulu, HI., Date Prepared: 08–June–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtot	weights	subtot	weights	subtot
1. Food at home	138.07	25.52	35.24	22.38	30.90	19.35	26.72
2. Food away from home	109.28	15.95	17.43	16.09	17.58	16.23	17.74
3. Tobacco	117.86	3.13	3.69	2.54	3.00	1.96	2.31
4. Alcohol	105.96	2.92	3.09	2.79	2.96	2.67	2.83
5. Furnishings & hsld op	102.30	14.35	14.68	15.95	16.32	17.49	17.89
6. Clothing	102.30	14.24	14.57	14.93	15.27	15.59	15.95
7. Domestic services	70.53	1.78	1.26	1.79	1.26	1.81	1.28
8. Professional services	102.21	5.77	5.90	5.84	5.97	5.91	6.04
9. Personal care	100.89	3.57	3.60	3.47	3.50	3.38	3.41
10. Recreation	105.90	12.77	13.52	14.22	15.06	15.61	16.53
Total weights		100.0		100.00		100.0	
Total indexes			112.96		111.82		110.70

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Hilo, HI, Date prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtot	weights	subtot	weights	subtot
1. Food at home	136.36	25.52	34.80	22.38	30.52	19.35	26.39
2. Food away from home	96.26	15.95	15.35	16.09	15.49	16.23	15.62
3. Tobacco	114.56	3.13	3.59	2.54	2.91	1.96	2.25
4. Alcohol	111.47	2.92	3.25	2.79	3.11	2.67	2.98
5. Furnishings & hsld op	115.43	14.35	16.56	15.95	18.41	17.49	20.19
6. Clothing	112.13	14.24	15.97	14.93	16.74	15.59	17.48
7 Domestic services	83.90	1.78	1.14	1.79	1.14	1.81	1.16
8. Professional services	74.81	5.77	4.32	5.84	4.37	5.91	4.42
9. Personal care	96.96	3.57	3.46	3.47	3.36	3.36	3.26
10. Recreation	105.83	12.77	13.51	14.22	15.05	15.61	16.52
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	[1]111.95	.....	[2]111.10	.....	[3]110.29

[1] Lower index.
[2] Middle index.
[3] Upper index.

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Kailua Kona, HI, Date prepared: 09–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtot	weights	subtot	weights	subtot
1. Food at home	135.39	25.52	34.55	22.38	30.30	19.35	26.20
2. Food away from home	112.94	15.95	18.01	16.09	18.17	16.23	18.33
3. Tobacco	119.94	3.13	3.75	2.54	3.05	1.96	2.35
4. Alcohol	109.50	2.92	3.20	2.79	3.06	2.67	2.92
5. Furnishings & hsld op	115.27	14.35	16.54	15.95	18.39	17.49	20.16
6. Clothing	104.87	14.24	14.93	14.93	15.66	15.59	16.35
7. Domestic services	87.69	1.78	1.56	1.79	1.57	1.81	1.59
8. Professional services	101.26	5.77	5.84	5.84	5.91	5.91	5.98
9. Personal care	100.89	3.57	3.60	3.47	3.50	3.38	3.41
10 Recreation	110.22	12.77	14.08	14.22	15.67	15.61	17.21
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	[1]116.06	.....	[2]115.28	.....	[3]114.50

[1] Lower index.
[2] Middle index.
[3] Upper index.

CONSUMPTION GOODS & SERVICES COST ANALYSIS—HAWAII COUNTY COMPOSITE

[Date Prepared: 09–Jun–92]

Location	Weights	Total indexes		
		Lower income	Middle income	Upper income
Hilo, HI	80.00	111.95	111.10	110.29
Kailua Kona, HI	20.00	116.06	115.28	114.50
Total weight	100.00	.....	.....	.....
Composite indexes	.....	112.77	111.94	111.13

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Kauai County, HI—Date Prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtot	weights	subtot	weights	subtot
1. Food at home	150.40	25.52	38.38	22.38	33.66	19.35	29.10
2. Food away from home	114.19	15.95	18.21	16.09	18.37	16.23	18.53
3. Tobacco	124.64	3.13	3.90	2.54	3.17	1.96	2.44
4. Alcohol	107.68	2.92	3.14	2.79	3.00	2.67	2.88
5. Furnishings & hsld op	109.41	14.35	15.70	15.95	17.45	17.49	19.14
6. Clothing	102.48	14.24	14.59	14.93	15.30	15.59	15.98
7. Domestic services	76.49	1.78	1.36	1.79	1.37	1.81	1.38
8. Professional services	95.74	5.77	5.52	5.84	5.59	5.91	5.66
9. Personal care	101.11	3.57	3.61	3.47	3.51	3.38	3.42
10. Recreation	107.01	12.77	13.67	14.22	15.22	15.61	16.70
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	118.08	.....	116.64	.....	115.23

CONSUMPTION GOODS & SERVICES ANALYSIS
[Location: Maui County, HI., Date Prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtotal	weights	subtotal	weights	subtotal
1. Food at Home	154.30	25.52	39.38	22.38	34.53	19.35	29.86
2. Food Away From Home	113.64	15.95	18.13	16.09	18.28	16.23	18.44
3. Tobacco	120.33	3.13	3.77	2.54	3.06	1.96	2.36
4. Alcohol	103.25	2.92	3.01	2.79	2.88	2.67	2.76
5. Furnishings & Hsld Op	114.18	14.35	16.38	15.95	18.21	17.49	19.97
6. Clothing	101.65	14.24	14.47	14.93	15.18	15.59	15.85
7. Domestic Services	82.13	1.78	1.46	1.79	1.47	1.81	1.49
8. Professional Services	106.70	5.77	6.16	5.84	6.23	5.91	6.31
9. Personal Care	106.96	3.57	3.82	3.47	3.71	3.38	3.62
10. Recreation	115.18	12.77	14.71	14.22	16.38	15.61	17.98
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	121.29	.....	119.93	.....	118.64

CONSUMPTION GOODS & Services Analysis
[Location: Guam, Date Prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtot	weights	subtot	weights	subtot
1. Food at home	146.41	25.52	37.36	22.38	32.77	19.35	28.33
2. Food away from home	106.34	15.95	16.96	16.09	17.11	16.23	17.26
3. Tobacco	83.61	3.13	2.62	2.54	2.12	1.96	1.64
4. Alcohol	87.95	2.92	2.57	2.79	2.45	2.67	2.35
5. Furnishings & hsld op	135.43	14.35	19.43	15.95	21.60	17.49	23.69
6. Clothing	93.07	14.24	13.25	14.93	13.90	15.59	14.51
7. Domestic services	104.96	1.78	1.87	1.79	1.88	1.81	1.90
8. Professional services	95.48	5.77	5.51	5.84	5.58	5.91	5.64
9. Personal care	104.46	3.57	3.73	3.47	3.62	3.38	3.53
10. Recreation	122.96	12.77	15.70	14.22	17.48	15.61	19.19
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	119.00	.....	118.51	.....	118.04

CONSUMPTION GOODS & SERVICES ANALYSIS
[Location: Mayaguez, PR., Dated Prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtot	Weights	Subtot	Weights	Subtot
1. Food At Home	103.12	25.52	26.32	22.38	23.08	19.35	19.95
2. Food Away From Home	99.42	15.95	15.86	16.09	16.00	16.23	16.14
3. Tobacco	105.10	3.13	3.29	2.54	2.67	1.96	2.06
4. Alcohol	96.00	2.92	2.80	2.79	2.68	2.67	2.56
5. Furnishings & Hsld Op	82.44	14.35	11.83	15.95	13.15	17.49	14.42
6. Clothing	90.36	14.24	12.87	14.93	13.49	15.59	14.09
7. Domestic Services	50.98	1.78	0.91	1.79	0.91	1.81	0.92
8. Professional Services	46.61	5.77	2.69	5.84	2.72	5.91	2.75
9. Personal Care	67.04	3.57	2.39	3.47	2.33	3.38	2.27
10. Recreation	90.52	12.77	11.56	14.22	12.87	15.61	14.13
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	90.52	.....	89.90	.....	89.29

CONSUMPTION GOODS & SERVICES ANALYSIS
[Location: San Juan, PR—Date prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food at home	110.18	25.52	28.12	22.38	24.66	19.35	21.32
2. Food away from home	102.67	15.95	16.38	16.09	16.52	16.23	16.66
3. Tobacco	103.58	3.13	3.24	2.54	2.63	1.96	2.03
4. Alcohol	104.81	2.92	3.06	2.79	2.92	2.67	2.80
5. Furnishings & hsld op	84.11	14.35	12.07	15.95	13.42	17.49	14.71
6. Clothing	93.15	14.24	13.26	14.93	13.91	15.59	14.52
7. Domestic services	67.70	1.78	1.21	1.79	1.21	1.81	1.23
8. Professional services	68.44	5.77	3.95	5.84	4.00	5.91	4.04
9. Personal care	74.92	3.57	2.67	3.47	2.60	3.38	2.53
10. Recreation	95.16	12.77	12.15	14.22	13.53	15.61	14.86

CONSUMPTION GOODS & SERVICES ANALYSIS—Continued

[Location: San Juan, PR—Date prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	96.11	.....	95.40	.....	94.69

CONSUMPTION GOODS & SERVICES COST ANALYSIS—PUERTO RICO COMPOSITE

[Date prepared: 08–Jun–92]

Location	Weights	Total indexes		
		Lower income	Middle income	Upper income
San Juan, PR	70.00	96.11	95.40	94.69
Mayaguez, PR	30.00	90.52	89.90	89.29
Total weight	100.00	.....	.....	.....
Composite indexes	.....	94.43	93.75	93.07

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: St. Croix, VI, Date prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtot	weights	subtot	weights	subtot
1. Food at home	133.43	25.52	34.05	22.38	29.86	19.35	25.82
2. Food away from home	105.13	15.95	16.77	16.09	16.92	16.23	17.06
3. Tobacco	81.80	3.13	2.56	2.54	2.08	1.96	1.60
4. Alcohol	104.89	2.92	3.06	2.79	2.93	2.67	2.80
5. Furnishings & hsld op	97.06	14.35	13.93	15.95	15.48	17.49	16.98
6. Clothing	79.17	14.24	11.27	14.93	11.82	15.59	12.34
7. Domestic services	69.96	1.78	1.25	1.79	1.25	1.81	1.27
8. Professional services	99.06	5.77	5.72	5.84	5.79	5.91	5.85
9. Personal care	99.18	3.57	3.54	3.47	3.44	3.38	3.35
10. Recreation	111.18	12.77	14.20	14.22	15.81	15.61	17.36
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	[1] 106.35	.....	[2] 105.38	.....	[3] 104.43

[1] Lower index.
[2] Middle index.
[3] Upper index.

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: St. Thomas, VI—Date prepared: 08–Jun–92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtot	Weights	Subtot	Weights	Subtot
1. Food At Home	142.57	25.52	36.38	22.38	31.91	19.35	27.59
2. Food Away From Home	109.31	15.95	17.43	16.09	17.59	16.23	17.74
3. Tobacco	87.16	3.13	2.73	2.54	2.21	1.96	1.71
4. Alcohol	107.80	2.92	3.15	2.79	3.01	2.67	2.88
5. Furnishings & Hsld Op	100.35	14.35	14.40	15.95	16.01	17.49	17.55
6. Clothing	83.43	14.24	11.88	14.93	12.46	15.59	13.01
7. Domestic Services	81.94	1.78	1.46	1.79	1.47	1.81	1.48
8. Professional Services	96.97	5.77	5.60	5.84	5.66	5.91	5.73
9. Personal Care	110.30	3.57	3.94	3.47	3.83	3.38	3.73
10. Recreation	113.31	12.77	14.47	14.22	16.11	15.61	17.69
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	111.44	.....	110.26	.....	109.11

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Anchorage Blend*, AK—Date prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtot	Weights	Subtot	Weights	Subtot
1. Food At Home	103.84	25.52	26.50	22.38	23.24	19.35	20.09
2. Food Away From Home	100.81	15.95	16.06	16.09	16.22	16.23	16.36
3. Tobacco	81.80	3.13	2.56	2.54	2.08	1.96	1.60
4. Alcohol	106.27	2.92	3.10	2.79	2.96	2.67	2.84
5. Furnishings & Hsld Op	99.56	14.35	14.29	15.95	15.88	17.49	17.41
6. Clothing	95.41	14.24	13.59	14.93	14.24	15.59	14.87

CONSUMPTION GOODS & SERVICES ANALYSIS—Continued

[Location: Anchorage Blend*, AK—Date prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtot	Weights	Subtot	Weights	Subtot
7. Domestic Services	82.30	1.78	1.46	1.79	1.47	1.81	1.49
8. Professional Services	102.33	5.77	5.90	5.84	5.98	5.91	6.05
9. Personal Care	104.37	3.57	3.73	3.47	3.62	3.38	3.53
10. Recreation	111.42	12.77	14.23	14.22	15.84	15.61	17.39
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	101.44	.....	101.53	.....	101.63

*Local retail and commissary/exchange

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Fairbanks Blend*, AK—Date prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtot	Weights	Subtot	Weights	Subtot
1. Food at Home	105.29	25.52	26.87	22.38	23.56	19.35	20.37
2. Food Away From Home	100.43	15.95	16.02	16.09	16.16	16.23	16.30
3. Tobacco	76.51	3.13	2.39	2.54	1.94	1.96	1.50
4. Alcohol	119.54	2.92	3.49	2.79	3.34	2.67	3.19
5. Furnishings & Hsld Op	94.54	14.35	13.57	15.95	15.08	17.49	16.54
6. Clothing	91.63	14.24	13.05	14.93	13.68	15.59	14.29
7. Domestic Services	69.81	1.78	1.24	1.79	1.25	1.81	1.26
8. Professional Services	86.27	5.77	4.98	5.84	5.04	5.91	5.10
9. Personal Care	98.19	3.57	3.51	3.47	3.41	3.38	3.32
10. Recreation	112.96	12.77	14.42	14.22	16.06	15.61	17.63
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	99.54	.....	99.52	.....	99.50

*Local retail and commissionary/exchange.

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Guam Blend*—Date Prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		weights	subtot	weights	subtot	weights	subtot
1. Food at home	104.27	25.52	26.61	22.38	23.34	19.35	20.18
2. Food away from home	106.34	15.95	16.96	16.09	17.11	16.23	17.26
3. Tobacco	55.83	3.13	1.75	2.54	1.42	1.96	1.09
4. Alcohol	80.02	2.92	2.34	2.79	2.23	2.67	2.14
5. Furnishing & hsld op	109.74	14.35	15.75	15.95	17.50	17.49	19.19
6. Clothing	83.85	14.24	11.94	14.93	12.52	15.59	13.07
7. Domestic services	104.96	1.78	1.87	1.79	1.88	1.81	1.90
8. Professional services	95.48	5.77	5.51	5.84	5.58	5.91	5.64
9. Personal care	80.80	3.57	2.88	3.47	2.80	3.38	2.73
10. Recreation	115.79	12.77	14.79	14.22	16.47	15.61	18.07
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	[1]100.40	.....	[2]100.85	.....	[3]101.27

*Local retail and commissionary/exchange.
[1] Lower index.
[2] Middle index.
[3] Upper index.

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Honolulu Blend*, HI—Date Prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food at home	110.33	25.52	28.16	22.38	24.69	19.35	21.35
2. Food away from home	109.28	15.95	17.43	16.09	17.58	16.23	17.74
3. Tobacco	73.28	3.13	2.29	2.54	1.86	1.96	1.44
4. Alcohol	102.37	2.92	2.99	2.79	2.86	2.67	2.73
5. Furnishings & hsld op	89.02	14.35	12.77	15.95	14.20	17.49	15.57
6. Clothing	90.75	14.24	12.92	14.93	13.55	15.59	14.15
7. Domestic services	70.53	1.78	1.26	1.79	1.26	1.81	1.28
8. Professional services	102.21	5.77	5.90	5.84	5.97	5.91	6.04
9. Personal care	88.50	3.57	3.16	3.47	3.07	3.38	2.99
10. Recreation	98.85	12.77	12.62	14.22	14.06	15.61	15.43

CONSUMPTION GOODS & SERVICES ANALYSIS—Continued

[Location: Honolulu Blend*, HI—Date Prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	99.50	.....	99.10	.....	98.72

*Local retail and commissary/exchange.

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: San Juan Blend*, PR—Date Prepared: 08-Jun-92]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtot	Weights	Subtot	Weights	Subtot
1 Food at home	103.51	25.52	26.42	22.36	23.17	19.35	20.03
2. Food away from home	102.67	15.95	16.38	16.09	16.52	16.23	16.66
3. Tobacco	79.68	3.13	2.49	2.54	2.02	1.96	1.56
4. Alcohol	104.81	2.92	3.06	2.79	2.92	2.67	2.80
5. Furnishings & hsld op	82.49	14.35	11.84	15.95	13.16	17.49	14.43
6. Clothing	91.50	14.24	13.03	14.93	13.66	15.59	14.26
7. Domestic services	67.70	1.78	1.21	1.79	1.21	1.81	1.23
8. Professional services	68.44	5.77	3.95	5.84	4.00	5.91	4.04
9. Personal care	74.98	3.57	2.68	3.47	2.60	3.38	2.53
10. Recreation	92.78	12.77	11.85	14.22	13.19	15.61	14.48
Total weights	.....	100.00	.....	100.00	.....	100.00	.....
Total indexes	.....	.....	92.91	.....	92.45	.....	92.02

*Local Retail and Commissary/Exchange.

Appendix 5—Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures

Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

Purpose. The Federal Government pays Cost-of-Living Allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing costs of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington, DC area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program.

Data Collection. OPM, or its representatives, conducts annual Price Surveys to determine living cost differences. Local governments, retail outlets, realty firms, and businesses providing professional and other services to be surveyed are identified through the use of full-scale Background Surveys, conducted approximately once every five years. Participation in the Price Surveys is voluntary. Data are collected by telephone and/or personal interview.

Wherever practical and appropriate, the price of each good or service is obtained from at least three outlets in each allowance area and at least six outlets in the reference area (i.e., the Washington, DC, area). Realty data may be obtained from one or multiple sources, as appropriate.

Confidentiality. All data collected are used only for the purposes described above. The Government pledges to hold all micro or "raw" data collected in confidence. Names of participating businesses and institutions may be released. Names of individuals are not released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

Public Burden Information. Public burden reporting for this collection of information is estimated to vary from 1 to 20 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, NW., room 6410, Washington, DC 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206–0199), Washington, DC 20503.

Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures

Interview Guidelines

Three types of information are collected in price surveys: price of goods and services, rental prices and related information, and home owner prices and related information. The following are the typical interview questions used to collect these data.

Price Information Collection

1. What is the regular (non-sale) price of _____(a specific item or service)?

Examples of items include, but are not limited to:

Chuck Roast, Bone In.
Price per pound. Average size package (e.g., not a 'family' or 'bonus' pack).
1st Choice: Arm pot roast.
2nd Choice: Eye roast.

Peas, Frozen.
Price for 10 ounce package.
1st Choice: Bird's Eye.
2nd Choice: Major brand of equivalent quality.

Men's Jeans.
Price for one pair of blue jeans.
1st Choice: Levi's #501 jeans.
2nd Choice: Equivalent quality jeans.

Automobile, New.
'Sticker' price of current year model Honda Civic DX, four door sedan, 1.5 liter, four cylinder engine. (Price options, fees, financing, and taxes separately.)

Example of services include, but are not limited to:

Restaurant Service.
Price of seafood platter—mixed seafood (e.g., not 'steak and lobster' or 'crab leg' platter). If salad and side dish not included with entree, price house salad and baked potato or order of french fries. Include price of coffee, tax, and 15 percent tip.

Film Developing.
Price to process and print 35 millimeter, 24 exposure, 100 ASA color roll film. Single prints only, standard size and finish.

Doctor, Office Visit.
Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is all that is needed. Do not include the charge for a complete physical examination, injections, medication, laboratory tests, or similar services.

Oil Change.
Price of a regular oil change including oil and filter for a current year model Honda Civic DX sedan, 1.5 liter, 4 cylinder engine.

2. Prices of many of the items can be obtained "off-the-shelf" without assistance. Occasionally, when a specific item is not available, assistance from sales or other personnel may be required to identify and

price substitution items of comparable quality and quantity.

3. Prices of most services are obtained by telephone or personal interview. A few services are priced with little or no assistance. For example, prices may be obtainable from a displayed price schedule, list, or menu.

Housing Component—Rental Information Collection

1. Describe the location, size, layout, number and types or rooms, and square footage of your rental units.

2. Are they apartments, duplexes, town houses, detached houses, or other types of units? Describe.

3. Are there additional amenities (e.g., pool, sauna, tennis courts, gym)? If so, describe.

4. What is the monthly rent? What is the amount of the security deposit (if any)? What other kinds of fees or assessments are there?

5. Are utilities included? Which ones? If you can, please provide information on average monthly or annual costs of utilities paid by tenants.

6. Are term leases usually required? What are the conditions and penalties associated with the lease?

7. Are there any special restrictions or other factors we should know about (e.g., seasonal tourist trade)?

Housing Component—Information Collection for Comparable Sales

1. Describe the location, size, layout, number and types or rooms, and square footage of some your recent home sales.

2. Were they condominiums, duplexes, town houses, detached houses, or other types of dwellings? Describe.

3. Were there any atypical characteristics (e.g., extra large lot sizes, beach front, desirable/undesirable locations)?

4. Are there additional amenities provided by the developer, homeowners association, or similar community group (e.g., pool, sauna, tennis courts, gym)? If so, describe facilities and charges.

5. What was the selling price and date of sale?

6. What are the real estate taxes?

7. Do you have any data on utilities relating to those homes?

8. In the past year or so, what has been the average appreciation rate of property in this community? Looking back over the past six years, has this rate changed? How?

9. Describe current market conditions (e.g., soft, booming, so-so). How has this affected housing prices? Describe the housing market over the past six years.

10. Are there any special considerations or other factors we should know about (e.g., retirement/tourist trade) that might affect the housing market in this community?

BILLING CODE 6325-01-M

Nonforeign Area Cost-of Living
Price Information Collection

Survey Date: _____ Allowance Area: _____

Survey Item: _____

Description:

Outlet	Price	Quantity	Comments

Remarks:

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OMB Approved
OMB No. 3206-0199
Expires June 30, 1994

Nonforeign Area Cost-of-Living
Housing Component - Information Collection for Comparable Sales

Location: _____ Community: _____ Collection Date: _____

Address	Selling Price	Sale Date	Room Count			Square Feet	Price/ Sq Foot	Taxes	Other
			Total	Bed	Bath				

Appreciation Rate:

Current Market Conditions:

Remarks:

OMB Approved
OMB No. 3206-0199
Expires June 30, 1994

BILLING CODE 6325-01-C

Nonforeign Area Cost-of-Living
Housing Component - Rental Information Collection

Location: _____ Community: _____ Date: _____

Complex Address Phone #	Rental Type	Bedroom Count	Monthly Rent	Total Room Count	Square Feet	Security Deposit	Utilities	Monthly Heating Cost	Amenities	Restrictions	Total Units	Other

Remarks:

OMB Approved
OMB No. 3206-0199
Expires June 30, 1994

Nonforeign Area Cost-Of-Living Allowances Background Survey Data Collection Procedures

Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

Purpose. The Federal Government pays Cost-Of-Living-Allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing costs of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington, DC, area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program. OPM, or its representative, conducts annual surveys to determine living cost differences. OPM conducts full-scale Background Surveys approximately once every five years to review the appropriateness of items, services, and businesses covered in the annual Price surveys. Elements of the Background Survey may be repeated annually on a limited basis as part of the maintenance of and preparation for the annual Price Surveys.

OPM uses the Background Survey to identify the services, items, quantities, outlets, and locations that will be surveyed to collect living cost data within the allowance areas and the Washington, DC, area. The Background Survey also is used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs.

Data Collection. Full-scale Background Surveys are conducted approximately once every five years. OPM identifies major manufacturers, local governments, retail outlets, realty firms, and businesses providing professional services to be surveyed on the basis of business volume and local prominence. Participation is voluntary. Data are collected by telephone and/or personal interview.

Confidentiality. All data collected are used only for the purposes described above. The Government pledges to hold all micro or "raw" data collected in confidence. Names of participating businesses and institutions may be released. Names of individuals are not released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

Public Burden Information. Public burden reporting for this collection of information is estimated to vary from 5 minutes to 30 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, NW., room CHP 500, Washington, DC, 20415 and to the Office of Management and Budget, Paperwork Reduction Project (3206–0199), Washington, DC, 20503.

Nonforeign Area Cost-of-Living Allowances Background Survey Data Collection Procedures

Interview Guidelines

Seven types of information are collected in background surveys. Information is collected on products and services, outlet availability and usage, transportation, local taxes and fees, mortgage, real estate, and other topics related to the measurement of living costs (e.g., specialized information from local chambers of commerce, colleges, and universities). The following are the typical interview questions used to collect these data.

Product or Service Information

1. As a major manufacturer/supplier of _____(a specific product or service, e.g., women's apparel), please identify your items/services that are most popular (e.g., your 'volume sellers').
2. Which of these items are apt to be readily available in the following geographic locations: Alaska (i.e., Anchorage, Fairbanks, and Juneau); Hawaii; Guam; Puerto Rico; the Virgin Islands; and Washington, DC, and suburbs?
3. If the items or services are not universally available, are there other items or services that are of similar function, quality, quantity, size, and type that can be substituted?
4. Is there anything else we should know about your product or service? Are there recommendations you wish to make that would help us in our data collection?

Outlet Availability and Usage (Retail)

1. What is your product or service? What is the address(es) of your establishment(s)? If you have multiple locations, which locations have the greatest sales volumes (i.e., are most utilized by consumers)?
2. What are your store/office hours? Do these vary by location?
3. Is your full line of products or services available at all locations?
4. Is there anything else we should know about your outlet(s) or recommendations you wish to make?

Transportation Information—Private and Public Services

1. What type of transportation services do you provide (e.g., taxi, bus, subway)?
2. What geographic areas do you service? Which routes are 'typical' or most heavily utilized?
3. What is your rate structure? Does it vary by time of day or season?
4. Is there anything else we should know about transportation usage and services in your area? Are there recommendations you wish to make about our data collection?

Transportation Information—Private Use and Maintenance

1. What types of driving are most common in your area? What is the annual distance driven?
2. What types of roads and highways are common in your area? What are the road surfaces and conditions?
3. Are there unusual climatic or other factors that affect the fuel economy, maintenance, and depreciation of vehicles?
4. Is there anything else we should know about private transportation usage and maintenance in your area? Are there suggestions or recommendations you wish to make?

Local Taxes and Fees

1. What types of taxes, licenses, or fees does your State, territory, or local jurisdiction levy on real estate; personal property; sales (including sales of property); automobiles; utilities; or other goods, services, or transactions?
2. Who levies these taxes, licenses or fees (i.e., State, territory, county, city, other jurisdiction)?
3. What are the rates or schedules for these? How often and when are they levied? Do the rates/schedules vary by location, season, or other factors?
4. Is there anything else we should know about taxes and fees in your area? Are there suggestions or recommendations you wish to make?

Mortgage Information

1. What forms of home financing are most common in _____(the allowance area or Washington DC metropolitan area)? (Do not include second mortgages.)
2. What are the typical conditions and limitations on loans?
3. What is the typical amount(s) of down payment required? What are the terms and rates?
4. Are there special subsidies or other practices that influence home financing in your area?
5. Looking back 6 years, what types of changes have occurred that affect home financing?
6. Is there anything else we should know about home financing in your area? Are there suggestions or recommendations you wish to make that would help us in our data collection?

Real Estate Information

1. What is the availability of housing in _____(the allowance area or Washington DC metropolitan area)? Of principal interest is housing for typical salary and wage earners (as distinguished from retirees, tourists, or other special groups) for persons with low, moderate, and high incomes.
2. Describe the communities within your area in which persons _____(specify occupation/income characteristics) typically live. If appropriate, identify separate communities for renters and home owners. Where are these communities located relative to the major Federal activities in the area?
3. Describe the type of housing (e.g., apartment, condominium, town house, detached house).
4. For each type of housing, what are the usual number of rooms, bedrooms, baths, total square footage, lot size, type of construction, and similar characteristics?
5. What types of utilities are available and typically used in these communities: sewer, water, natural gas, electricity, other?

6. Are there any unusual factors that might affect maintenance requirements in your area?

7. Looking back six years, describe the changes that significantly affected the housing market (both rental and owner markets).

8. Is there anything else we should know about the housing market in your area? Are there suggestions or recommendations you wish to make concerning our data collection?

Other Types of Information

Occasionally, it is necessary to collect information from colleges, universities, chambers of commerce, trade associations, and other groups on specific subjects relating to the analysis of living costs. For example, a university known to be involved in home energy research may be contacted to determine whether there are consumption data by region or allowance area that could have application in the COLA program.

When such data are collected, the purpose and basic structure of the interview will follow the patterns shown above. The substance, however will vary with the subject matter.

BILLING CODE 6325-01-M

Nonforeign Area Cost-of-Living
Background Survey Information Collection

Contact Date: _____ Allowance Area: _____

Contact
Name:
Address:
Phone #:

Purpose of Contact	
Product/Service Info.	
Outlet Availability/Usage	
Transportation Info.	
Local Taxes and Fees	
Mortgage Information	
Real Estate Information	
Other: (specify)	

Findings:

Remarks:

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OMB No. 3206-0199
Expires June 30, 1994

BILLING CODE 6325-01-C

Appendix 6—1991 OPM Living Community Selection

Location	Type	Low	Middle	High
Honolulu	Homeowner	Waianae	Kaneohe	Mililani Town.
		Wahiawa	Pearl City	Kailua.
	Renter	Waianae	Wahiawa	Mililani Town.
		Makiki	Kaneohe	Aiea.
Hawaii Co:				
Hilo	Homeowner	Hilo	Hilo	Hilo.
	Renter	Hilo	Hilo	Hilo.
Kailua Kona	Homeowner	Kailua Kona	Kailua Kona	Kailua Kona.
	Renter	Kailua Kona	Kailua Kona	Kailua Kona.
Maui Co.	Homeowner	Wailuku	Lahaina	Lahaina.
		Kahului	Kihei	
	Renter	Wailuku	Kahului	Lahaina.
		Kahului	Wailuku	Kihei.
			Lahaina	
Kaual Co.	Homeowner	Lihue	Lihue	Princeville.
		Kapaa	Kapaa	Kalaheo.
	Renter	Lihue	Lihue	Princeville.
		Hanamaulu	Kapaa	Poipu.
		Hanapepe	Wailua	
Guam	Homeowner	Dededo	Dededo	Barrigada Heights.
			Yigo	Dededo.
	Renter	Agana	Agana	Jonestown.
		Agat/Santa Rita.	Yigo	Pago Bay.
San Juan, PR	Homeowner	Carolina	Carolina	Guaynabo.
		Bayamon	VA Hospital area.	Hato Rey.
	Renter	Carolina	Old San Juan	Old San Juan.
		Isla Verde	Isla Verde	Condado.
Mayaguez, PR	Homeowner	Alturas	Alturas	Miradero.
			Sultana	Sultana.
	Renter	Mayaguez Terr..	Alturas	Miradero.
			Sultana	
St. Thomas VI	Homeowner	Charlotte Amalie.	Charlotte Amalie.	Charlotte Amalie
	Renter	Charlotte Amalie.	Charlotte Amalie.	Charlotte Amalie.
St. Croix VI	Homeowner	West End	Frederiksted area.	Frederiksted.
	Renter	West End	Frederiksted area.	Christiansted.
Washington, DC	Homeowner	Northeast DC ..	Northeast DC ..	** Northwest DC.
	Renter	Northeast DC ..	Northeast DC ..	** Northwest DC.
Washington, DC–Maryland	Homeowner	Suitland	Gaithersburg ...	Rockville.
	Renter	Capitol Heights	Germantown ...	Rockville.
Washington, DC–Virginia	Homeowner	Woodbridge	Dale City	Springfield.
	Renter	Woodbridge	Fairfax/Falls Church.	Alexandria.
Anchorage	Homeowner	North Anchorage.	North Anchorage.	South Anchorage.
	Renter	North Anchorage.	North Anchorage.	South Anchorage.
Fairbanks	Homeowner	South Fairbanks.	Fairbanks	Foothills.
	Renter	Fairbanks	Fairbanks	Fairbanks.
Juneau	Homeowner	Mendenhall Valley.	Mendenhall Valley.	Mendenhall Valley.
	Renter	West Juneau ..	West Juneau ..	West Juneau.
Nome	Homeowner	Nome	Nome	Nome.
	Renter	Nome	Nome	Nome.

** Northwest DC excludes Georgetown, but includes Dupont Circle, Cleveland Park and Adams Morgan.

Appendix 7.—Housing Cost Analysis

[Location: Anchorage, AK—Date Prepared: 11–Jun–92—Winter 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$269	.....	$316	.....	$363	.....
Insurance	332	$165	350	$165	377	$182
Utilities	2,128	1,876	2,443	2,128	2,758	2,275

APPENDIX 7.—HOUSING COST ANALYSIS—Continued

[Location: Anchorage, AK—Date Prepared: 11–Jun–92—Winter 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Real Estate Taxes	1,114	.....	1,843	.....	1,496	.....
Housing	5,075	5,966	7,431	6,912	10,766	12,684
Total Annual Cost	8,918	8,029	12,183	9,205	15,762	15,141

HOUSING COST ANALYSIS

[Location: Fairbanks, AK—Date Prepared: 04–Jul–92—Winter 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	330	.....	388	.....	446	.....
Insurance	394	176	334	166	377	198
Utilities	3140	2737	3645	3140	4149	3376
Real Estate Taxes	902	.....	1497	.....	1976	.....
Housing	5473	5076	7833	6444	10582	12060
Total annual cost	10239	7989	13697	9750	17530	15634

HOUSING COST ANALYSIS

[Location: Juneau, AK—Date prepared: 12–Jun–92—Winter 1992 Survey]

Category	Annual Costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	308	.....	362	.....	416	.....
Insurance	255	126	276	126	313	146
Utilities	2595	2267	3005	2595	3415	2786
Real Estate Taxes	1150	.....	1523	.....	1910	.....
Housing	6911	7620	8837	9648	11301	12504
Total annual cost	11219	10013	14003	12369	17355	15436

HOUSING COST ANALYSIS

[Location: Nome, AK—Date Prepared: 04–Jul–92—Winter 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$367	.....	$455	.....	$523	.....
Insurance	456	$240	464	$240	859	$300
Utilities	3,799	3,302	4,420	3,799	5,041	4,089
Real estate taxes	775	.....	1,063	.....	1,334	.....
Housing	5,492	7,200	7,531	9,528	9,455	13,728
Total annual cost	10,909	10,742	13,933	13,567	17,012	18,117

HOUSING COST ANALYSIS

[Location: Honolulu, HI—Date Prepared: 15–Jun–92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$326	.....	$384	.....	$442	.....
Insurance	257	$200	334	$200	384	$215
Utilities	971	866	1,078	971	1,184	1,021
Real Estate Taxes	596	.....	977	.....	1,197	.....
Housing	16,169	8,856	24,268	11,052	28,947	15,972
Total annual cost	18,319	9,942	27,041	12,223	32,154	17,208

HOUSING COST ANALYSIS

[Location: Hilo, HI—Date Prepared: 10-Oct-92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	322	.....	379	.....	436	.....
Insurance	260	234	310	253	405	290
Utilities	1240	1115	1397	1240	1553	1313
Real Estate Taxes	694	.....	585	.....	1056	.....
Housing	10474	7500	14114	9960	15934	13728
Total annual cost	13010	8849	16785	11453	19384	15331

HOUSING COST ANALYSIS

[Location: Kailua Kona, HI—Date prepared: 15-Jun-92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	297	.....	349	.....	401	.....
Insurance	305	266	345	266	470	372
Utilities	1240	1115	1397	1240	1553	1313
Real Estate Taxes	604	.....	1274	.....	1573	.....
Housing	12097	9456	15949	11928	20069	15504
Total annual cost	14743	10837	19314	13434	24056	17189

HOUSING COST ANALYSIS—HAWAII COUNTY COMPOSITE

[Summer 1991 Survey—Date Prepared: 10-Oct-92]

Location	Weights	Annual Costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Hilo, HI	80.00	$13,010	$8,849	$16,785	$11,453	$19,384	$15,331
Kailua Kona, HI	20.00	14,743	10,837	19,314	13,434	24,056	17,189
Total weight	100.00	.....	.....	.....	.....	.....	.....
Hawaii County, HI, cost	.....	13,357	9,247	17,291	11,849	20,318	15,703

HOUSING COST ANALYSIS

[Location: Kauai County, HI—Date prepared: 15-Jun-92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	224	.....	264	.....	304	.....
Insurance	243	233	285	233	352	263
Utilities	1164	1049	1309	1164	1453	1232
Real Estate Taxes	502	.....	703	.....	923	.....
Housing	13617	9600	17957	12408	22714	17206
Total annual cost	15750	10882	20518	13805	25746	18703

HOUSING COST ANALYSIS

[Location: Maui County, HI—Date prepared: 15-Jun-92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	263	.....	309	.....	355	.....
Insurance	170	195	240	195	317	260
Utilities	1381	1235	1584	1381	1746	1466
Real Estate Taxes	597	.....	838	.....	1090	.....
Housing	16454	8496	21831	12648	27455	16296
Total annual cost	18865	9926	24782	14224	30963	18022

Housing Cost Analysis

[Location: Guam—Date prepared: 11-Jun-92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	344	.....	405	.....	486	.....
Insurance	1042	58	1424	116	2714	232
Utilities	2362	2120	2855	2362	2947	2469
Real Estate Taxes	229	.....	281	.....	538	.....
Housing	9662	6672	12001	10080	22673	18030
Total annual cost	13639	8850	16766	12558	29578	20731

Housing Cost Analysis

[Location: San Juan, PR—Date prepared: 04-Jul-92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	180	.....	212	.....	266	.....
Insurance	408	80	513	116	810	191
Utilities	864	791	855	864	1046	956
Real Estate Taxes	397	.....	481	.....	677	.....
Housing	6224	6744	7658	12936	10777	22572
Total annual cost	8173	7615	9919	13916	13564	23669

Housing Cost Analysis

[Location: Mayaguez, PR—Date prepared: 12-Jun-92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$139	.....	$184	.....	$189	.....
Insurance	456	$99	698	$454	1,172	$220
Utilities	832	759	923	832	1,014	874
Real Estate Taxes	0	.....	227	.....	249	.....
Housing	4,400	5,484	7,050	6,672	10,258	9,300
Total Annual Cost	5,826	6,341	9,052	7,958	12,882	10,394

Housing Cost Analysis—Puerto Rico Composite

[Summer 1991 Survey—Date prepared: 04-Jul-92]

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
San Juan, PR	70.00	8,173	7,015	9,919	13,916	13,564	23,669
Mayaguez, PR	30.00	5,826	6,341	9,052	7,958	12,882	10,394
Total weight	100.00	.....	.....	.....	.....	.....	.....
Puerto Rico cost	.....	7,469	7,233	9,659	12,129	13,352	19,687

Housing Cost Analysis

[Location: St Croix, VI—Date prepared: 12-Jun-92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	249	.....	293	.....	337	.....
Insurance	709	221	990	369	1446	571
Utilities	1617	1616	2069	1617	2321	1935
Real estate taxes	269	.....	369	.....	787	.....
Housing	7336	7656	8580	12366	16130	15996
Total annual cost	10362	9493	13181	14602	21031	18502

HOUSING COST ANALYSIS

[Location: St Thomas, VI—Date prepared: 12–Jun–92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	222	.....	261	.....	300	.....
Insurance	900	293	886	515	1632	745
Utilities	1817	1616	2069	1817	2321	1935
Real Estate Taxes	479	.....	761	.....	819	.....
Housing	10917	8360	15545	13428	18134	16440
Total annual cost	14335	11269	19522	15760	23306	19120

HOUSING COST ANALYSIS

[Location: Washington DC—Date prepared: 12–Jun–92—Summer 1991 Survey]

Category	Annual Costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	298	.....	350	.....	403	.....
Insurance	417	121	512	121	721	144
Utilities	2101	1848	2417	2101	2733	2248
Real Estate Taxes	559	.....	1070	.....	1986	.....
Housing	6966	6984	11175	8268	18710	19440
Total annual cost	10341	8953	15524	10490	24553	21832

HOUSING COST ANALYSIS

[Location: Washington DC, MD—Date prepared: 04–Jul–92—Summer 1991 Survey]

Category	Annual Costs					
	Lower Income		Middle Income		Upper Income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$293	.....	$345	.....	$397	.....
Insurance	280	$102	256	$102	293	$112
Utilities	2,279	2,006	2,621	2,279	2,962	2,439
Real Estate Taxes	1,283	.....	1,606	.....	2,233	.....
Housing	6,860	6,792	10,623	8,892	12,640	12,900
Total annual cost	10,995	8,900	15,453	11,273	18,525	15,451

HOUSING COST ANALYSIS

[Location: Washington DC, VA—Date prepared: 11–Jun–92—Summer 1991 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	282	.....	332	.....	382	.....
Insurance	221	120	220	120	346	136
Utilities	2278	2000	2625	2278	2972	2440
Real Estate Taxes	1372	.....	1658	.....	2424	.....
Housing		6708	6738	9156	14024	13800
Total annual cost		8828	13573	11554	20148	16378

HOUSING COST ANALYSIS.—WASHINGTON DC COMPOSITE

[Summer 1991 Survey—Date Prepared: 04–Jul–92]

Location	Weights	Annual costs					
		Lower Income		Middle Income		Upper Income	
		Owner	Renter	Owner	Renter	Owner	Renter
Washington DC, DC	33.34	$10,341	$8,953	$15,524	$10,490	$24,553	$21,832
Washington DC, MD	33.33	10,995	8,900	15,453	11,273	18,525	15,451
Washington DC, VA	33.33	11,778	8,828	13,573	11,554	20,148	16,378

HOUSING COST ANALYSIS.—WASHINGTON DC COMPOSITE—Continued

[Summer 1991 Survey—Date Prepared: 04-Jul-92]

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Total weight	100.00	.....	.....	.....	.....	.....	.....
Composite cost	.....	11,038	8,894	14,850	11,106	21,076	17,887

HOUSING COST ANALYSIS

[Location: Washington, DC—Date prepared: 12-Jun-92—Winter 1992 Survey

Category	Annual costs					
	Lower income		Middle income		Upper income	
	owner	renter	owner	renter	owner	renter
Maintenance	$279	.....	$328	.....	$377	.....
Insurance	299	$133	467	$133	761	$156
Utilities	1,767	1,560	2,026	1,767	2,285	1,888
Real estate taxes	559	.....	1,070	.....	1,986	.....
Housing	7,266	6,660	11,657	8,352	19,515	20,856
Total annual cost	10,170	8,353	15,548	10,252	24,924	22,900

HOUSING COST ANALYSIS

[Location: Washington DC, MD—Date prepared: 12-Jun-92—Winter 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	264	.....	310	.....	357	.....
Insurance	260	130	236	130	272	130
Utilities	2116	1868	2429	2116	2742	2262
Real estate taxes	1283	.....	1621	.....	2216	.....
Housing	7259	6720	11241	8988	13032	12828
Total annual cost	11182	8716	15837	11234	18619	15220

HOUSING COST ANALYSIS

[Location: Washington DC, VA—Date prepared: 11-Jun-92—Winter 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	331	.....	389	.....	447	.....
Insurance	230	136	253	136	337	146
Utilities	2130	1874	2449	2130	2769	2279
Real Estate Taxes	1403	.....	1727	.....	2443	.....
Housing	8273	6516	9339	9396	14707	13704
Total annual cost	12367	8526	14157	11662	20703	16129

HOUSING COST ANALYSIS—WASHINGTON DC COMPOSITE

[Winter 1992 Survey—Date prepared: 11-Jun-92]

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Washington, DC, DC	33.34	10170	8353	15548	10252	24924	22900
Washington, DC, MD	33.33	11182	8716	15837	11234	18619	15220
Washington, DC, VA	33.33	12367	8526	14157	11662	20703	16129
Total Weight	100.00	.....	.....	.....	.....	.....	.....
Composite Cost	.....	11240	8532	15181	11049	21416	18083

APPENDIX 8.—HOUSING ANALYSIS

[Location: Anchorage, AK—Date prepared: 11–Jun–92—Winter 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower Income	8918	11240	79.34	8029	8532	94.10
Middle Income	12183	15181	80.25	9205	11049	83.31
Upper Income	15782	21416	73.60	15141	18083	83.73

HOUSING ANALYSIS

[Location: Fairbanks, AK—Date prepared: 04–July–92—Winter 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower Income	10239	11240	91.09	7969	8532	93.64
Middle Income	13697	15181	90.22	9750	11049	88.24
Upper Income	17530	21416	81.85	15634	18083	86.46

HOUSING ANALYSIS

[Location: Juneau, AK—Date Prepared: 11–Jun–92—Winter 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower Income	$11,219	$11,240	99.81	$10,013	$8,532	117.36
Middle Income	14,003	15,181	92.24	12,369	11,049	111.95
Upper Income	17,355	21,416	81.04	15,436	18,083	85.36

HOUSING ANALYSIS

[Location: Nome, AK—Date prepared: 04–Jul–92—Winter 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower Income	10909	11240	97.06	10742	8532	125.90
Middle Income	13933	15181	91.78	13567	11049	122.79
Upper Income	17012	21416	79.44	18117	18083	100.19

HOUSING ANALYSIS

[Location: Honolulu, HI—Date prepared: 04–Jul–92—Summer 1991 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower Income	18319	11038	165.96	9942	8894	111.78
Middle Income	27041	14850	182.09	12223	11106	110.06
Upper Income	32154	21076	152.56	17208	17867	96.20

HOUSING ANALYSIS

[Location: Hawaii County, HI—Date prepared: 10–Oct–91—Summer 1991 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower Income	13357	11038	121.01	9247	8894	103.97
Middle Income	17291	14850	116.44	11849	11106	106.69
Upper Income	20318	21076	96.40	15703	17867	87.79

HOUSING ANALYSIS

[Location: Kauai County, HI—Date prepared: 04–Jul–92—Summer 1991 survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	$15,750	$11,038	142.69	$10,882	$8,894	122.35
Middle income	20,518	14,850	138.17	13,805	11,106	124.30
Upper income	25,748	21,076	122.16	18,703	17,887	104.56

HOUSING ANALYSIS

[Location: Maui County, HI—Date Prepared: 04–Jul–92—Summer 1991 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	$18,865	$11,038	170.91	$9,926	$8,894	111.60
Middle income	24,782	14,850	166.88	14,224	11,106	128.07
Upper income	30,983	21,076	146.91	18,022	17,887	100.75

HOUSING ANALYSIS

[Location: Guam—Date prepared 04–Jul–92—Summer 1991 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	$13,639	$11,038	$123.56	$8,859	$8,894	$99.61
Middle income	16,766	14,850	112.90	12,558	11,106	113.07
Upper income	29,578	21,076	140.34	20,731	17,887	115.90

HOUSING ANALYSIS

[Location: Puerto Rico—Date prepared: 04–Jul–92—Summer 1991 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	7469	11038	67.67	7233	8894	81.32
Middle income	9659	14850	65.04	12129	11106	109.21
Upper income	13352	21076	63.35	19687	17887	110.06

HOUSING ANALYSIS

[Location: St. Croix, VI—Date prepared: 04–Jul–92—Summer 1991 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	$10,362	$11,038	93.88	$9,493	$8,894	106.73
Middle income	13,161	14,850	88.63	14,602	11,106	131.48
Upper income	21,031	21,076	99.79	18,502	17,887	103.44

HOUSING ANALYSIS

[Location: St. Thomas, VI—Date prepared: 04–Jul–92—Summer 1991 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	14335	11038	129.87	11269	8894	126.70
Middle income	19522	14850	131.46	15760	11106	141.91
Upper income	23306	21076	110.58	19120	17887	106.89

Appendix 9

HISTORICAL HOUSING VALUES ANALYSIS

	8506	8606	8706	8806	8906	9006	9106	Average
Home market values								
Washington DC, DC:								
Lower	58996	64778	70543	76327	82128	87877	88200	75550
		9.8%	8.9%	8.2%	7.6%	7.0%	0.4%	
Middle	90194	99213	113015	126817	140619	140974	141500	121762
		10.0%	13.9%	12.2%	10.9%	0.3%	0.4%	
Upper	160600	173448	187324	202310	218495	235975	236900	202150
		8.0%	8.0%	8.0%	8.0%	8.0%	0.4%	
Washington DC, MD:								
Lower	54572	60029	66032	73295	81357	89493	90835	73659
		10.0%	10.0%	11.0%	11.0%	10.0%	1.5%	
Middle	84505	92955	102250	113498	125983	138581	141768	114220
		10.0%	10.0%	11.0%	11.0%	10.0%	2.3%	
Upper	100545	110600	121660	135043	149898	164888	166042	135525
		10.0%	10.0%	11.0%	11.0%	10.0%	0.7%	
Washington DC, VA:								
Lower	65608	70857	76526	83413	90086	97293	99823	83372
		8.0%	8.0%	9.0%	8.0%	8.0%	2.6%	
Middle	74031	79954	86350	94122	101652	109784	114400	94328
		8.0%	8.0%	9.0%	8.0%	8.0%	4.2%	
Upper	122748	132568	143173	156059	168544	182028	183600	155531
		8.0%	8.0%	9.0%	8.0%	8.0%	0.9%	
Guam:								
Lower	59421	65363	74941	84271	93709	103174	113491	84896
		10.0%	14.5%	12.6%	11.2%	10.1%	10.0%	
Middle	72445	79689	91802	103920	116079	128151	140966	104722
		10.0%	15.2%	13.2%	11.7%	10.4%	10.0%	
Upper	154895	170384	188786	207287	225735	244245	268670	208572
		10.0%	10.8%	9.8%	8.9%	8.2%	10.0%	
Honolulu, HI:								
Lower	86657	97229	107837	118445	154366	216113	207000	141092
		12.2%	10.9%	9.8%	30.3%	40.0%	-4.2%	
Middle	110500	134257	158027	181797	239426	335197	310700	289986
		21.5%	17.7%	15.0%	31.7%	40.0%	-7.3%	
Upper	118220	154513	190786	227059	263331	379283	370600	243399
		30.7%	23.5%	19.0%	16.0%	44.0%	-2.3%	
Hilo, HI:								
Lower	41496	50459	59435	68410	77386	121688	134100	78996
		21.6%	17.8%	15.1%	13.1%	57.2%	10.2%	
Middle	61798	71995	82183	92371	102559	108821	180700	100061
		16.5%	14.2%	12.4%	11.0%	6.1%	66.1%	
Upper	89463	97783	106098	114412	122727	164283	204000	128395
		9.3%	8.5%	7.8%	7.3%	33.9%	24.2%	
Kailua Kona, HI:								
Lower	65336	77097	88880	100662	112444	134609	154800	104833
		18.0%	15.3%	13.3%	11.7%	19.7%	15.0%	
Middle	92833	107594	122387	137180	151973	189900	204100	143710
		15.9%	13.7%	12.1%	10.8%	25.0%	7.5%	
Upper	99504	119902	140297	160692	181087	225100	256700	169040
		20.5%	17.0%	14.5%	12.7%	24.3%	14.0%	
Kauai County, HI:								
Lower	55280	68105	78576	91048	103516	177351	174336	106687
		23.2%	15.4%	15.9%	13.7%	71.3%	-1.7%	
Middle	69756	88032	106294	124556	142818	233846	229900	142172
		26.2%	20.7%	17.2%	14.7%	63.7%	-1.7%	
Upper	95904	105494	121318	145581	177900	295654	290800	176122
		10.0%	15.0%	20.0%	22.2%	66.3%	-1.7%	
Maui County, HI:								
Lower	83407	91748	100293	121107	151384	174092	210651	133240
		10.0%	9.3%	20.8%	25.0%	15.0%	21.0%	
Middle	110670	121737	133911	160893	200866	230996	279500	176810
		10.0%	10.0%	20.0%	25.0%	15.0%	21.0%	
Upper	139174	153091	168401	202081	252601	290491	351494	222476
		10.0%	10.0%	20.0%	25.0%	15.0%	21.0%	
San Juan, PR:								
Lower	52638	56323	60266	64485	70934	78027	82800	66496
		7.0%	7.0%	7.0%	10.0%	10.0%	6.1%	
Middle	64476	68989	73818	78985	86884	95572	110500	82746
		7.0%	7.0%	7.0%	10.0%	10.0%	15.6%	
Upper	93324	99857	106847	114326	122329	134562	141100	116049
		7.0%	7.0%	7.0%	7.0%	10.0%	4.9%	
Mayaguez, PR:								
Lower	38650	42515	47616	53807	57035	60457	57600	51097
		10.0%	12.0%	13.0%	6.0%	6.0%	-4.7%	
Middle	54110	59521	66663	75329	79849	84640	82300	73202
		10.0%	12.0%	13.0%	6.0%	6.0%	9.1%	
Upper	82465	90711	101597	114804	121693	128994	134300	110652

HISTORICAL HOUSING VALUES ANALYSIS—Continued

	8506	8606	8706	8806	8906	9006	9106	Average
		10.0%	12.0%	13.0%	6.0%	6.0%	4.1%	
St. Croix, VI:								
Lower	47893	48995	54140	66051	64730	80912	85281	64000
		2.3%	10.5%	22.0%	-2.0%	25.0%	5.4%	
Middle	62084	63491	70157	85592	83880	104850	110500	82933
		2.3%	10.5%	22.0%	-2.0%	25.0%	5.4%	
Upper	105308	107730	119042	145231	142326	177908	187500	140721
		2.3%	10.5%	22.0%	-2.0%	25.0%	5.4%	
St. Thomas, VI:								
Lower	77330	92023	103617	12129	126943	122500	126900	110063
		19.0%	12.6%	16.9%	4.8%	-3.5%	3.6%	
Middle	97846	116437	131108	153265	160622	155000	160700	142140
		19.0%	12.6%	16.9%	4.8%	-3.5%	16.6%	
Upper	116784	138973	156484	182929	191710	185000	210800	168954
		19.0%	12.6%	16.9%	4.8%	-3.5%	13.9%	
	8502	8602	8702	8802	8902	9002	9102	Average
Anchorage, AK:								
Lower	95004	87974	81024	74218	67538	60784	62000	75506
		-7.4%	-7.9%	-8.4%	-9.0%	-10.0%	2.0%	
Middle	124840	116993	109147	101300	93454	87071	91458	103466
		-6.3%	-6.7%	-7.2%	-7.7%	-6.8%	5.0%	
Upper	156302	143284	130227	117190	112532	114783	13200	129474
		-8.3%	-9.1%	-10.0%	-4.0%	2.0%	15.0%	
Fairbanks, AK:								
Lower	86124	78982	71839	64696	57553	50604	55591	66484
		-8.3%	-9.0%	-9.9%	-11.0%	-12.1%	9.9%	
Middle	107493	102726	97958	93191	88424	83619	92817	95175
		-4.4%	-4.6%	-4.9%	-5.1%	-5.4%	11.0%	
Upper	148566	140199	131833	123467	115101	107143	120000	126616
		-5.6%	-6.0%	-6.3%	-6.8%	-6.9%	12.0%	
Nome, AK:								
Lower	86836	84057	81367	78763	76243	73803	71441	78930
		-3.2%	-3.2%	-3.2%	-3.2%	-3.2%	-3.2%	
Middle	114834	111159	107602	104159	100826	97600	94477	104380
		-3.2%	-3.2%	-3.2%	-3.2%	-3.2%	-3.2%	
Upper	138156	133735	129455	125312	121302	117420	113663	125578
		-3.2%	-3.2%	-3.2%	-3.2%	-3.2%	-3.2%	
Juneau, AK:								
Lower	97228	90811	83909	76441	68797	78429	82350	82566
		-6.6%	-7.6%	-8.9%	-10.0%	14.0%	5.0%	
Middle	112929	107283	100846	93787	86284	99227	109150	101358
		-5.0%	-6.0%	-7.0%	-8.0%	15.0%	10.0%	
Upper	132687	127114	120885	113874	106131	123324	136890	122986
		-4.2%	-4.9%	-5.8%	-6.8%	16.2%	11.0%	
Average Annual Costs								
Washington DC, DC:								
Lower	5075	5573	6069	6703	6702	7326	6966	6345
Middle	7759	8535	9722	11136	11474	11752	11175	10222
Upper	13816	14921	16115	17786	17829	19871	18710	16975
Washington DC, MD:								
Lower	4695	5164	5622	6371	6854	7460	6860	6147
Middle	7270	7997	8705	9865	10614	11552	10707	9530
Upper	8649	9514	10358	11738	12628	13745	12540	11310
Washington DC, VA:								
Lower	5644	6096	6515	7325	7272	8197	7625	6953
Middle	6369	6878	7351	8265	8206	9249	8738	7865
Upper	10559	11404	12189	13704	13605	15335	14024	12974
Guam:								
Lower	5112	5623	6505	7704	8145	9060	9662	7402
Middle	6232	6855	7979	9501	10089	11254	12001	9130
Upper	13325	14657	16409	18951	19621	21448	22873	18183
Honolulu, HI:								
Lower	7455	8364	9373	10829	13556	18591	16169	12048
Middle	9506	11550	13736	16620	21025	28836	24268	17934
Upper	10170	13292	16583	20758	23124	32628	28947	20786
Hilo, HI:								
Lower	3570	4341	5166	6254	6796	10468	10474	6724
Middle	5316	6193	7143	8445	9006	9361	14114	8511
Upper	7696	8412	9222	10460	10777	14133	15934	10948
Kailua Kona, HI:								
Lower	5621	6632	7725	9203	9874	11580	12091	8961
Middle	7986	9256	10638	12541	13346	16336	15942	12292
Upper	8560	10315	12194	14691	15902	19364	20051	14440
Kauai County, HI:								
Lower	4756	5859	6830	8324	9090	15257	13617	9105
Middle	6001	7573	9239	11387	12542	20117	17957	12117
Upper	8250	9075	10545	13309	15622	25451	22714	14995

HISTORICAL HOUSING VALUES ANALYSIS—Continued

	8506	8606	8706	8806	8906	9006	9106	Average
Maui County, HI:								
Lower	7175	7883	8717	11072	13294	14976	16454	11369
Middle	9520	10473	11639	14691	17639	19872	21831	15095
Upper	11973	13170	14637	18475	22182	24990	27455	18983
San Juan, PR:								
Lower	4528	4845	5348	5837	6166	6782	6324	5690
Middle	5547	5935	6549	7150	7552	8307	8440	7069
Upper	8028	8590	9479	10348	10833	11696	10777	9936
Mayaguez, PR:								
Lower	3325	3657	4224	4870	4957	5255	4400	4384
Middle	4655	5120	5914	6819	6940	7357	7050	6265
Upper	7094	7803	9013	10392	10577	11212	10258	9478
St. Croix, VI:								
Lower	4120	4215	5348	6522	6273	7544	7336	5908
Middle	5339	5462	6928	8452	8128	9776	9506	7656
Upper	9059	9268	11755	14341	13792	16588	16130	12990
St. Thomas, VI:								
Lower	6652	7916	10232	11961	12301	11422	10917	10200
Middle	8417	10017	12946	15134	15565	14452	15545	13154
Upper	10046	11955	15452	18064	18577	17250	18134	15640

	8502	8602	8702	8802	8902	9002	9102	Average
Anchorage, AK:								
Lower	8600	7412	6470	6517	6236	5229	5223	6527
Middle	11300	9856	8715	8896	8629	7490	7705	8942
Upper	14148	12071	10398	10291	10390	9874	11121	11185
Fairbanks, AK:								
Lower	7796	6654	5736	5681	5314	4353	4683	5745
Middle	9730	8654	7822	8184	8164	7193	7820	8224
Upper	13448	11811	10527	10842	10627	9217	10110	10940
Nome, AK:								
Lower	7860	7082	6497	6917	7040	6349	6019	6823
Middle	10394	9365	8592	9147	9309	8396	7959	9023
Upper	12506	11267	10337	11004	11200	10101	9576	10856
Juneau, AK:								
Lower	8601	7651	6700	6713	6352	6747	6938	7129
Middle	10222	9038	8052	8236	7967	8536	9196	8750
Upper	12010	10709	9652	10000	9799	10609	11533	10616
Mortgage Interest Rates								
Washington DC, DC	0.1025	0.1025	0.1025	0.1050	0.0963	0.0988	0.0925	
Washington DC, MD	0.1025	0.1025	0.1013	0.1038	0.1000	0.0988	0.0875	
Washington DC, VA	0.1025	0.1025	0.1013	0.1050	0.0950	0.1000	0.0888	
Guam	0.1025	0.1025	0.1038	0.1100	0.1038	0.1050	0.1013	
Honolulu, HI	0.1025	0.1025	0.1038	0.1100	0.1050	0.1025	0.0913	
Hilo, HI	0.1025	0.1025	0.1038	0.1100	0.1050	0.1025	0.0913	
Kailua Kona, HI	0.1025	0.1025	0.1038	0.1100	0.1050	0.1025	0.0913	
Kauai County, HI	0.1025	0.1025	0.1038	0.1100	0.1050	0.1025	0.0913	
Maui County, HI	0.1025	0.1025	0.1038	0.1100	0.1050	0.1025	0.0913	
San Juan, PR	0.1025	0.1025	0.1063	0.1088	0.1038	0.1038	0.0888	
Mayaguez, PR	0.1025	0.1025	0.1063	0.1088	0.1038	0.1038	0.0888	
St. Croix, VI	0.1025	0.1025	0.1200	0.1200	0.1175	0.1125	0.1025	
St. Thomas, VI	0.1025	0.1025	0.1200	0.1200	0.1175	0.1125	0.1025	

	8502	8602	8702	8802	8902	9002	9102	
Anchorage, AK	0.1088	0.1000	0.0938	0.1050	0.1113	0.1025	0.1000	
Fairbanks, AK	0.1088	0.1000	0.0938	0.1050	0.1113	0.1025	0.1000	
Nome, AK	0.1088	0.1000	0.0938	0.1050	0.1113	0.1025	0.1000	
Juneau, AK	0.1088	0.1000	0.0938	0.1050	0.1113	0.1025	0.1000	

APPENDIX 10.—PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Anchorage, AK—Date prepared: 03-Apr-92]

Category	Annual costs		
	Honda Civic 1.5L4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr.
Fuel	630	945	1181
Maintenance/Oil	733	812	904
Tires	118	151	145
License & Registration	72	72	72
Miscellaneous Tax	60	60	60
Depreciation	3175	3520	3881
Finance Expense	724	834	931

APPENDIX 10.—PRIVATE TRANSPORTATION COST ANALYSIS—Continued

[Location: Anchorage, AK—Date prepared: 03-Apr-92]

Category	Annual costs		
	Honda Civic 1.5L4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr.
Insurance	823	856	1034
Total annual cost	6335	7050	7708

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Fairbanks, AK—Date prepared: 03-Apr-92]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 Dr
Fuel	$723	$1,095	$1,356
Maintenance/oil	785	611	791
Tires	148	192	208
License & registration	72	72	72
Miscellaneous tax	0	0	0
Depreciation	3,256	3,642	3,864
Finance expense	785	907	1,017
Insurance	858	941	1,131
Total annual cost	6,910	7,460	8,439

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Juneau, AK—Date prepared: 06-Apr-92]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	926	1388	1735
Maintenance/Oil	636	803	981
Tires	129	132	143
License & Registration	72	72	72
Miscellaneous Tax	0	0	0
Depreciation	3232	3958	3736
Finance Expense	747	855	988
Insurance	628	845	751
Total annual cost	6372	7253	8526

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Nome, AK—Date prepared: 03-Apr-92]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	1283	1925	2406
Maintenance/Oil	623	595	662
Tires	115	133	175
License & Registration	39	39	39
Miscellaneous Tax	0	0	0
Depreciation	3837	4336	4791
Finance Expense	834	987	1111
Insurance	837	897	1071
Total annual cost	7568	8892	10295

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Honolulu, HI—Date prepared: 19–Nov–91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	837	1172	1379
Maintenance/Oil	396	421	625
Tires	181	222	222
License & Registration	79	94	103
Miscellaneous Tax	0	0	0
Depreciation	3098	3592	4020
Finance Expense	848	1068	1245
Insurance	1259	1325	1454
Total annual cost	6798	7894	9048

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Hilo, HI—Date prepared: 19–Nov–91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	923	1292	1520
Maintenance/Oil	501	522	686
Tires	181	222	222
License & Registration	62	71	76
Miscellaneous Tax	0	0	0
Depreciation	3098	3618	4020
Finance Expense	909	1030	1193
Insurance	1240	1307	1397
Total annual cost	6914	8062	9114

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Kailua Kona, HI—Date prepared: 19–Nov–91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	$982	$1,374	$1,617
Maintenance/Oil	440	506	733
Tires	181	222	222
License and Registration	62	71	76
Miscellaneous Tax	0	0	0
Depreciation	3,098	3,618	4,020
Finance Expense	942	1,067	1,236
Insurance	1,240	1,307	1,397
Total annual cost	6,945	8,165	9,301

PRIVATE TRANSPORTATION COST ANALYSIS—HAWAII COUNTY COMPOSITE
[Date prepared: 21–Nov–91]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Hilo, HI	80.00	6914	8062	9114
Kailua Kona, HI	20.00	6945	8165	9301
Total Weight	100.00	.....	.....	.....
Composite Cost	.....	6920	8083	9151

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Kauai County, HI—Date prepared: 19-Nov-91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	$893	$1,251	$1,471
Maintenance/Oil	430	437	564
Tires	181	222	222
License & Registration	67	78	85
Miscellaneous Tax	0	0	0
Depreciation	3,098	3,618	4,029
Finance Expense	866	1,015	1,176
Insurance	966	1,015	1,115
Total annual cost	6,531	7,636	8,650

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Maui County, HI—Date prepared: 19-Nov-91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	879	1230	1447
Maintenance/Oil	395	519	655
Tires	181	222	222
License & Registration	68	78	85
Miscellaneous Tax	0	0	0
Depreciation	3098	3618	4029
Finance Expense	955	1082	1253
Insurance	1158	1214	1331
Total annual cost	6734	7963	9013

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Guam—Date prepared: 19-Nov-91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	$771	$1,079	$1,270
Maintenance/Oil	358	513	587
Tires	96	179	149
License and Registration	28	32	32
Miscellaneous Tax	0	0	0
Depreciation	2,551	3,199	3,445
Finance Expense	880	1,047	1,191
Insurance	668	838	841
Total annual cost	5,352	6,887	7,615

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: San Juan, PR—Date prepared: 19-Nov-91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	653	914	1075
Maintenance/Oil	235	322	416
Tires	129	144	161
License & Registration	82	82	82
Miscellaneous Tax	0	0	0
Depreciation	3663	5288	5789
Finance Expense	1100	1482	1683
Insurance	741	797	870
Total annual cost	6603	9009	10076

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Mayaguez, PR—Date prepared: 21-Nov-91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	683	956	1124
Maintenance/Oil	333	249	254
Tires	129	144	161
License & Registration	82	82	82
Miscellaneous Tax	0	0	0
Depreciation	3663	5268	5789
Finance Expense	1122	1512	1718
Insurance	729	787	860
Total annual cost	6741	8998	9988

PRIVATE TRANSPORTATION COST ANALYSIS—PUERTO RICO COMPOSITE

[Date prepared: 21-Nov-91]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
San Juan, PR	70.00	6803	9009	10076
Mayaguez, PR	30.00	6741	8998	9988
Total Weight	100.00			
Composite Cost		6844	9006	10050

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: St Croix, VI—Date prepared: 19-Nov-91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	733	1026	1207
Maintenance/Oil	335	456	518
Tires	129	144	161
License & Registration	39	48	48
Miscellaneous Tax	0	0	0
Depreciation	2791	3440	3723
Finance Expense	896	1065	1201
Insurance	1333	1556	1811
Total annual cost	6256	7725	8669

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Guam—Date prepared: 19-Nov-91

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2DR
Fuel	771	1079	1270
Maintenance/Oil	358	513	587
Tires	96	179	149
License & Registration	28	32	32
Miscellaneous Tax	0	0	0
Depreciation	2551	3199	3445
Finance Expense	890	1047	1191
Insurance	668	838	941
Total annual cost	5352	6887	7615

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: San Juan, PR—Date prepared: 19–Nov–91]

Category	Annual Costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	$653	$914	$1,075
Mainenance/oil	235	322	416
Tires	129	144	161
License & registration	82	82	82
Miscellaneous tax	0	0	0
Depreciation	3,663	5,268	5,789
Finance expense	1,100	1,462	1,683
Insurance	741	797	870
Total annual cost	6,603	9,009	10,076

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Mayaguez, PR—Date prepared: 21–Nov–91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	663	956	1124
Maintenance/Oil	333	249	254
Tires	129	144	161
License & Registration	82	82	82
Miscellaneous Tax	0	0	0
Depreciation	3663	5268	5789
Finance Expense	1122	1512	1718
Insurance	729	787	860
Total annual cost	6741	8998	9988

PRIVATE TRANSPORTATION COST ANALYSIS—PUERTO RICO COMPOSITE
[Date prepared: 21–Nov–91]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
San Juan, PR	70.00	6603	9009	10076
Mayaguez, PR	30.00	6741	8998	9988
Total Weight	100.00			
Composite Cost		6644	9006	10050

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: St. Croix, VI—Date prepared: 19–Nov–91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4 WD 2 Dr
Fuel	733	1026	1207
Maintenance/Oil	335	456	516
Tires	129	144	161
License & Registration	39	48	48
Miscellaneous Tax	0	0	0
Depreciation	2791	3440	3723
Finance Expense	896	1055	1201
Insurance	1333	1556	1811
Total annual cost	6256	7725	8669

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: St. Thomas, VI—Date prepared: 19-Nov-91]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4 WD 2 Dr
Fuel	517	1144	1345
Maintenance/Oil	467	452	486
Tires	129	144	161
License & Registration	39	46	46
Miscellaneous Tax	0	0	0
Depreciation	2791	3440	3723
Finance Expense	823	969	1104
Insurance	1072	1173	1550
Total annual cost	6136	7370	8417

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC,DC—Date prepared: 19-Nov-91—Summer 1991 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	850	910	1071
Maintenance/Oil	250	313	400
Tires	114	140	140
License & Registration	74	74	74
Miscellaneous Tax	0	0	0
Depreciation	2429	3116	3400
Finance Expense	662	799	918
Insurance	1062	1039	1225
Total annual cost	5241	6393	7228

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, MD—Date prepared: 19-Nov-91—Summer 1991 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2Dr
Fuel	665	930	1094
Maintenance/Oil	235	313	327
Tires	113	138	138
License & Registration	35	35	35
Miscellaneous Tax	0	0	0
Depreciation	2398	3078	3352
Finance Expense	801	725	833
Insurance	814	899	930
Total annual cost	4859	6118	6709

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington DC, VA—Date prepared: 19-Nov-91—Summer 1991 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	$666	$833	$1097
Maintenance/Oil	240	347	308
Tires	112	138	138
License and Registration	65	65	65
Miscellaneous Tax	239	244	294
Depreciation	2,331	2,999	3,262
Finance Expense	645	779	895
Insurance	586	642	704
Total annual cost	4,884	6,147	6,763

PRIVATE TRANSPORTATION COST ANALYSIS—WASHINGTON DC COMPOSITE

[Summer 1991 Survey—Date prepared: 19-Nov-91]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4 WD 2 Dr
Washington DC, DC	33.34	$5,241	$6,393	$7,228
Washington DC, MD	33.33	4,859	6,118	6,709
Washington DC, VA	33.33	4,884	6,147	6,763
Total Weight	100.00	.....	.....	.....
Composite Cost	.....	4,995	6,219	6,900

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington DC, DC—Date prepared: 03-Apr-92—Winter 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2Dr
Fuel	$614	$922	$1,152
Maintenance/Oil	357	375	409
Tires	114	140	140
License and Registration	74	74	74
Miscellaneous Tax	0	0	0
Depreciation	2,676	3,246	3,442
Finance Expense	606	748	846
Insurance	837	970	1154
Total annual cost	5,278	6,475	7,217

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, MD—Date prepared: 03-Apr-92—Winter 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	$612	$918	$1,148
Maintenance/Oil	354	346	368
Tires	113	138	138
License & Registration	35	35	35
Miscellaneous Tax	0	0	0
Depreciation	2,661	3,204	3,394
Finance Expense	512	628	711
Insurance	812	933	1,102
Total annual cost	5,099	6,202	6,896

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, VA—Date prepared: 03-Apr-92—Winter 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	603	905	1131
Maintenance/Oil	323	375	357
Tires	112	138	138
License & Registration	65	65	65
Miscellaneous Tax	255	301	344
Depreciation	2592	3118	3297
Finance Expense	556	682	772
Insurance	567	619	694
Total annual cost	5073	6203	6798

APPENDIX 11—PUBLIC TRANSPORTATION COST ANALYSIS SUMMARY PROGRAM
[Date prepared: 01–JUN–92]

Location	Public transportation cost	Total cost DC area	Index
Anchorage, AK.	1271	677	187.74
Fairbanks, AK.	1444	677	213.29
Juneau, AK	944	677	139.44
Nome, AK	1468	677	216.84
Guam	1001	558	179.39
Honolulu, HI	336	558	60.57
Hawaii County, HI	339	558	60.75
Kauai County, HI ..	339	558	60.75
Maui County, HI ...	339	558	60.75
Puerto Rico	579	558	103.76

APPENDIX 11—PUBLIC TRANSPORTATION COST ANALYSIS SUMMARY PROGRAM—Continued
[Date prepared: 01–JUN–92]

Location	Public transportation cost	Total cost DC area	Index
St Croix, VI	626	558	112.19
St Thomas, VI	626	558	112.19

PUBLIC TRANSPORTATION COMPOSITES
[Date prepared: 01–JUN–92]

Location	Weights	Cost
San Juan, PR	70.00	556

PUBLIC TRANSPORTATION COMPOSITES—Continued
[Date prepared: 01–JUN–92]

Location	Weights	Cost
Mayaguez, PR	30.00	634
Total weight	100.00	.....
Puerto Rico cost	.....	579
Hilo, HI	60.00	339
Kailua Kona, HI	20.00	339
Total weight	100.00	.....
Hawaii County, HI cost	.....	339

TRANSPORTATION ANALYSIS
[Location: Anchorage, AK—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$8,335	$5,150	123.01
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,050	6,293	112.03
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	7,708	6,970	110.59
Average Index	.....	.....	115.21

TRANSPORTATION SUMMARY

Category	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	115.21	94.80	109.22	94.32	108.67	93.55	107.78
Public Transportation	187.74	5.20	9.76	5.68	10.66	6.45	12.11
Total Weights	.....	100.00	.....	100.00	.....	100.00	
Total Indexes	.....	.....	118.98	.....	119.33	.....	119.89

TRANSPORTATION ANALYSIS
[Location: Fairbanks, AK—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$8,810	$5,150	128.35
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,450	6,293	118.39
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	8,439	6,970	121.08
Average Index	.....	.....	122.61

TRANSPORTATION SUMMARY

Category	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	122.61	94.80	116.23	94.32	115.65	93.55	114.70
Public Transportation	213.29	5.20	11.09	5.68	12.11	6.45	13.76
Total Weights	.....	100.00	.....	100.00	.....	100.00	
Total Indexes	.....	.....	127.32	.....	127.76	.....	128.46

TRANSPORTATION ANALYSIS
[Location: Juneau, AK—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,372	$5,150	123.73
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,253	6,293	115.28
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	8,058	6,970	115.61
Average Index	.....	.....	118.20

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	118.20	94.80	112.05	94.32	111.49	93.55	110.58
Public Transportation	139.44	5.20	7.25	5.68	7.92	6.45	8.99
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	119.30	.....	119.41	.....	119.57

TRANSPORTATION ANALYSIS

[Location: Nome, AK—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$7,568	$5,150	146.95
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	8,892	6,293	141.30
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	10,255	6,970	147.13
Average Index	.....	.....	145.13

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	145.13	94.80	137.58	94.32	136.89	93.55	135.77
Public Transportation	216.94	5.20	11.28	5.68	12.32	6.45	13.99
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	148.86	.....	149.21	.....	149.76

TRANSPORTATION ANALYSIS

[Location: Guam—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$5,352	$4,995	107.15
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	6,867	6,219	110.74
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	7,615	6,900	110.36
Average Index	.....	.....	109.42

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	109.42	94.80	103.73	94.32	103.20	93.55	102.36
Public Transportation	179.39	5.20	9.33	5.68	10.19	6.45	11.57
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	113.06	.....	113.39	.....	113.93

TRANSPORTATION ANALYSIS

[Location: Honolulu, HI—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,798	$4,995	136.10
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,894	6,219	126.93
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	9,046	6,900	131.13
Average Index	.....	.....	131.39

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	131.39	94.80	124.56	94.32	123.93	93.55	122.92
Public Transportation	60.57	5.20	3.15	5.68	3.44	6.45	3.91

TRANSPORTATION SUMMARY—Continued

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Weights		100.00		100.00		100.00	
Total Indexes			127.71		127.37		126.83

TRANSPORTATION ANALYSIS

[Location: Hawaii County, HI—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,920	$4,995	138.54
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	8,083	6,219	129.97
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	9,151	6,900	132.62
Average Index			133.71

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	133.71	94.80	126.76	94.32	126.12	93.55	125.09
Public Transportation	60.75	5.20	3.16	5.68	3.45	6.45	3.92
Total Weights		100.00		100.00		100.00	
Total Indexes			129.92		129.57		129.01

TRANSPORTATION ANALYSIS

[Location: Kauai County, HI—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,531	$4,995	130.75
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,636	6,219	122.79
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	8,650	6,900	125.36
Average Index			126.30

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	126.30	94.80	119.73	94.32	119.13	93.55	118.15
Public Transportation	60.75	5.20	3.16	5.68	3.45	6.45	3.92
Total Weights		100.00		100.00		100.00	
Total Indexes			122.89		122.58		122.07

TRANSPORTATION ANALYSIS

[Location: Maui County, HI—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,734	$4,995	134.81
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,963	6,219	128.04
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	9,013	6,900	130.62
Average Index			131.16

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	131.16	94.80	124.34	94.32	123.71	93.55	122.70
Public Transportation	60.75	5.20	3.16	5.68	3.45	6.45	3.92
Total Weights		100.00		100.00		100.00	
Total Indexes			127.50		127.16		126.62

TRANSPORTATION ANALYSIS

[Location: Puerto Rico—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$8,844	$4,995	133.01
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	9,006	6,219	144.81
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	10,050	6,900	145.85
Average Index			141.16

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	141.16	94.80	133.82	94.32	133.14	93.55	132.06
Public Transportation	103.76	5.20	5.40	5.68	5.89	6.45	6.69
Total Weights		100.00		100.00		100.00	
Total Indexes			139.22		139.03		138.75

TRANSPORTATION ANALYSIS

[Location: St. Croix, VI—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,256	$4,995	125.25
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,725	6,219	124.22
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	8,669	6,900	125.64
Average Index			125.04

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	125.04	94.80	118.54	94.32	117.94	93.55	116.97
Public Transportation	112.19	5.20	5.83	5.68	6.37	6.45	7.24
Total Weights		100.00		100.00		100.00	
Total Indexes			124.37		124.31		124.21

TRANSPORTATION ANALYSIS

[Location: St. Thomas, VI—Date prepared: June 2, 1992]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,138	$4,995	122.88
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,370	6,219	118.51
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	8,417	6,900	121.99
Average Index			121.13

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	121.13	94.80	114.83	94.32	114.25	93.55	113.32
Public Transportation	112.19	5.20	5.83	5.68	6.37	6.45	7.24
Total Weights		100.00		100.00		100.00	
Total Indexes			120.66		120.62		120.56

APPENDIX 12—MISCELLANEOUS EXPENSE ANALYSIS

[Location: Anchorage, AK—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						128.06
Nonprescription Pain Reliever	7.1433	6.8767	1.0388	5.0	5.19	
Tetracycline	7.1900	4.5844	1.5684	12.0	18.82	
Vision Check	72.3333	51.9444	1.3925	6.0	8.36	

APPENDIX 12—MISCELLANEOUS EXPENSE ANALYSIS—Continued

[Location: Anchorage, AK—Date Prepared: 08-Jun-92—Category Index Development]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Dental Service	134.6667	68.6667	1.9612	17.0	33.34	.....
Doctor Visit	52.5000	55.2222	0.9507	17.0	16.16	.....
Hospital Room	517.5000	337.8333	1.5318	6.0	9.19	.....
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	.....

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	126.06	43.41	55.59	31.56	40.42	22.40	28.69
2. Cash Contributions	100.0	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	112.18	.....	108.86	.....	106.29

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Fairbanks, AK—Date Prepared: 08-Jun-92—Category Index Development]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical care	.....	.....	.....	.....	.....	130.15
Nonprescription Pain Reliever	7.1233	6.8767	1.0359	5.0	5.18	
Tetracycline	5.5467	4.5844	1.2099	12.0	14.52	
Vision Check	70.3330	51.9444	1.3540	6.0	8.12	
Dental Service	154.6667	68.6667	2.2524	17.0	38.29	
Doctor Visit	59.0000	55.2222	1.0684	17.0	18.16	
Hospital Room	500.0000	337.8333	1.4800	6.0	8.88	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	130.15	43.41	56.50	31.56	41.08	22.40	29.15
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	113.09	.....	109.52	.....	106.75

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Juneau, AK—Date Prepared: 08-Jun-92—Category Index Development]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical care	.....	.....	.....	.....	.....	129.84
Nonprescription Pain Reliever	10.8900	6.8767	1.5836	5.0	7.92	.....
Tetracycline	6.2133	4.5844	1.3553	12.0	16.26	.....
Vision Check	88.3333	51.9444	1.7005	6.0	10.20	.....
Dental Service	139.0000	68.6667	2.0243	17.0	34.41	.....
Doctor Visit	44.6667	55.2222	0.8089	17.0	13.75	.....
Hospital Room	580.0000	337.8333	1.7168	6.0	10.30	.....
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	.....

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	129.84	43.41	56.36	31.56	40.98	22.40	29.08
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Weights		100.00		100.00		100.00	
Total Indexes			112.95		109.42		106.68

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Nome, AK—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						160.9
Nonprescription Pain Reliever	12.6367	6.8767	1.8667	5.0	9.33	
Tetracycline	10.0000	4.5844	2.1813	12.0	26.18	
Vision Check	136.2000	51.9444	2.6028	6.0	15.62	
Dental Service	119.6000	68.6667	1.7417	17.0	29.61	
Doctor Visit	86.8400	55.2222	1.5726	17.0	26.73	
Hospital Room	925.0000	337.8333	2.7380	6.0	16.43	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	160.90	43.41	69.85	31.56	50.78	22.40	36.04
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			126.44		119.22		113.64

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Honolulu, HI—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical care						111.8
Nonprescription Pain Reliever	10.2533	7.4089	1.3839	5.0	6.92	
Tetracycline	4.7100	4.9033	0.9606	12.0	11.53	
Vision Check	52.3450	42.8055	1.2229	6.0	7.34	
Dental Service	139.1000	82.1445	1.6934	17.0	28.79	
Doctor Visit	39.9550	52.0333	0.7679	17.0	13.05	
Hospital Room	450.0000	376.5277	1.1951	6.0	7.17	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	111.80	43.41	48.53	31.56	35.28	22.40	25.04
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			105.12		103.72		102.64

MISCELLANEOUS EXPENSE ANALYSIS

[Location Hilo, HI—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical care						111.97
Nonprescription Pain Reliever	9.8433	7.4089	1.3286	5.0	6.64	
Tetracycline	4.7950	4.9033	0.9779	12.0	11.73	
Vision Check	60.6233	42.8055	1.4163	6.0	8.50	
Dental Service	102.4300	82.1445	1.2469	17.0	21.20	

MISCELLANEOUS EXPENSE ANALYSIS—Continued

[Location Hilo, HI—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Doctor Visit	51.2567	52.0333	0.9851	17.0	16.75	
Hospital Room	637.0000	376.5277	1.6918	6.0	10.15	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

[Total Index Development]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	111.97	43.41	48.61	31.56	35.34	22.40	25.08
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			105.20		103.78		102.68

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Kailua Kona, HI—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						121.46
Nonprescription Pain Reliever	9.3600	7.4089	1.2633	5.0	6.32	
Tetracycline	5.1800	4.9033	1.0564	12.0	12.68	
Vision Check	108.3900	42.8055	2.5322	6.0	15.19	
Dental Service	131.7700	82.1445	1.6041	17.0	27.27	
Doctor Visit	52.0833	52.0333	1.0010	17.0	17.02	
Hospital Room	375.0000	376.5277	0.9959	6.0	5.98	
Health Insurance	1.0000	1.0000	1.0000	37.0	27.00	

[Total Index Development]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	121.46	43.41	52.73	31.56	38.33	22.40	27.21
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			109.32		106.77		104.81

MISCELLANEOUS EXPENSE ANALYSIS HAWAII COUNTY COMPOSITE

[Date Prepared: 08–June–92]

Location	Weights	Total Indexes		
		Lower income	Middle income	Upper income
Hilo, HI	80.00	105.20	103.78	102.68
Kailua Kona, HI	20.00	109.32	106.77	104.81
Total Weight	100.00			
Composite Indexes		106.02	104.36	103.11

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Kauai County, HI—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical care						120.18
Nonprescription Pain Reliever	10.7833	7.4089	1.4555	5.0	7.28	
Tetracycline	5.4633	4.9033	1.1142	12.0	13.37	
Vision Check	62.1567	42.8055	1.4521	6.0	8.71	
Dental Service	137.2400	82.1445	1.6707	17.0	28.40	
Doctor Visit	56.2500	52.0333	1.0810	17.0	18.38	

MISCELLANEOUS EXPENSE ANALYSIS—Continued

[Location: Kauai County, HI—Date Prepared: 08-Jun-92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Hospital Room	441.5000	376.5277	1.1726	6.0	7.04	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

[Total Index Development]

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	120.18	43.41	52.17	31.56	37.93	22.40	26.92
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			108.76		106.37		104.52

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Maui County, HI—Date Prepared: 08-Jun-92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
						107.92
Medical care	10.0267	7.4089	1.3533	5.0	6.77	
Nonprescription Pain Reliever	4.8967	4.9033	0.9987	12.0	11.98	
Tetracycline	55.5533	42.8055	1.2978	6.0	7.79	
Vision Check	115.5967	82.1445	1.4072	17.0	23.92	
Dental Service	43.0600	52.0333	0.8275	17.0	14.07	
Doctor Visit	401.0400	376.5277	1.0651	6.0	6.39	
Hospital Room	1.0000	1.0000	1.0000	37.0	37.00	
Health Insurance						

[Total Index Development]

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	107.92	43.41	46.85	31.56	34.06	22.40	24.17
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total Indexes			103.44		102.50		101.77

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Guam—Date Prepared: 08-June-92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
						102.81
Medical Care	14.5167	7.4089	1.9594	5.0	9.80	
Nonprescription Pain Reliever	5.0000	4.9033	1.0197	12.0	12.24	
Tetracycline	21.6667	42.8055	0.5062	6.0	3.04	
Vision Check	131.6667	82.1445	1.6029	17.0	27.25	
Dental Service	31.0000	52.0333	0.5958	17.0	10.13	
Doctor	210.2900	376.5277	0.5585	6.0	3.35	
Hospital Room	1.0000	1.0000	1.0000	37.0	37.00	
Health Insurance						

[Total Index Development]

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1 Medical Care	102.81	43.41	44.63	31.56	32.45	22.40	23.03
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75

[Total Index Development]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Weights		100.00		100.00		100.00	
Total Indexes			101.22		100.89		100.63

Miscellaneous Expense Analysis

[Location: Mayaguez, PR—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						74.82
Nonprescription Pain Reliever	7.3800	7.4089	0.9961	5.0	4.98	
Tetracycline	4.0000	4.9033	0.8158	12.0	9.79	
Vision Check	25.0000	42.8055	0.5840	6.0	3.50	
Dental Service	47.5000	82.1445	0.5782	17.0	9.83	
Doctor Visit	20.0000	52.0333	0.3844	17.0	6.53	
Hospital Room	200.0000	376.5277	0.5312	6.0	3.19	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

[Total Index Development]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	74.82	43.41	32.48	31.56	23.61	22.40	16.76
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			89.07		92.05		94.36

Miscellaneous Expense Analysis

[Location: San Juan, PR—Date Prepared: 08–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						76.92
Nonprescription Pain Reliever	7.6933	7.4089	1.0384	5.0	5.19	
Tetracycline	4.0000	4.9033	0.8158	12.0	9.79	
Vision Check	30.0000	42.8055	0.7008	6.0	4.20	
Dental Service	46.6667	82.1445	0.5681	17.0	9.66	
Doctor Visit	25.0000	52.0333	0.4805	17.0	8.17	
Hospital Room	182.5000	376.5277	0.4847	6.0	2.91	
Health Insurance	1.0000	1.0000	1.000	37.0	37.00	

[Total Index Development]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	76.92	43.41	33.39	31.56	24.28	22.40	17.23
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			89.98		92.72		94.83

Miscellaneous Expense Analysis—Puerto Rico Composite

[Date prepared: 08–Jun–92]

Location	Weights	Total Indexes		
		Lower income	Middle income	Upper income
San Juan, PR	70.00	89.98	92.72	94.83
Mayaguez, PR	30.00	89.07	92.05	94.36

MISCELLANEOUS EXPENSE ANALYSIS—PUERTO RICO COMPOSITE—Continued

[Date prepared: 08-Jun-92]

Location	Weights	Total Indexes		
		Lower Income	Middle Income	Upper Income
Total Weight	100.00			
Composite Indexes		89.71	92.52	94.69

MISCELLANEOUS EXPENSE ANALYSIS

[Location: St. Croix, VI—Date Prepared: 08-Jan-92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						89.39
Nonprescription Pain Reliever	9.5800	7.4069	1.2944	5.0	6.47	
Tetracycline	4.5667	4.9033	0.9314	12.0	11.18	
Vision Check	40.0000	42.8055	0.9345	6.0	5.61	
Dental Service	61.6870	82.1445	0.7507	17.0	12.76	
Doctor Visit	35.0000	52.0333	0.6726	17.0	11.43	
Hospital Room	310.0000	376.5277	0.8233	6.0	4.94	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1 Medical Care	89.39	43.41	38.80	31.56	28.21	22.40	20.02
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			95.39		96.95		97.62

MISCELLANEOUS EXPENSE ANALYSIS

[Location: St. Thomas, VI—Date Prepared: 08-Jun-92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						102.29
Nonprescription Pain Reliever	9.7400	7.4089	1.3146	5.0	6.57	
Tetracycline	9.3000	4.9033	1.8967	12.0	22.76	
Vision Check	40.0000	42.8055	0.9345	6.0	5.61	
Dental Service	56.0000	82.1445	0.6817	17.0	11.59	
Doctor Visit	46.6667	52.0333	0.8969	17.0	15.25	
Hospital Room	220.0000	376.5277	0.5843	6.0	3.51	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	102.29	43.41	44.40	31.56	32.28	22.40	22.91
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			100.99		100.72		100.51

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Anchorage Blend*, AK—Date Prepared: 09-Jun-92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtot	Index
Medical Care						126.97
Nonprescription Pain Reliever	5.6370	6.8767	0.8197	5.0	4.10	
Tetracycline	7.1900	4.5844	1.5684	12.0	18.82	
Vision Check	72.3330	51.9444	1.3925	6.0	8.36	
Dental Service	134.6667	68.6667	1.9612	17.0	33.34	
Doctor Visit	52.5000	55.2222	0.9507	17.0	16.16	

MISCELLANEOUS EXPENSE ANALYSIS—Continued

[Location: Anchorage Blend*, AK—Date Prepared: 09–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtot	Index
Hospital Room	517.5000	337.8333	1.5318	6.0	9.19	.....
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	.....

*Local retail and commissary/exchange

[Total Index Development]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	126.97	43.41	55.12	31.56	40.07	22.40	28.44
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	111.71	.....	108.51	.....	106.04

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Fairbanks Blend*, AK—Date Prepared: 09–Jun–92—Category Index Development]

Category Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care	.....	.....	.....	.....	.....	130.1
Nonprescription Pain Reliever	7.0508	6.8767	1.0253	5.0	5.13	.....
Tetracycline	5.5467	4.5844	1.2099	12.0	14.52	.....
Vision Check	70.3330	51.9444	1.3540	6.0	8.12	.....
Dental Service	154.6667	68.6667	2.2524	17.0	38.29	.....
Doctor Visit	59.0000	55.2222	1.0684	17.0	18.16	.....
Hospital Room	500.0000	337.8333	1.4800	6.0	8.88	.....
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	.....

*Local retail and commissary/exchange

[Total Index Development]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	130.10	43.41	56.48	31.56	41.06	22.40	29.14
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	113.07	.....	109.50	.....	106.74

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Guam Blend*—Date Prepared: 09–Jun–92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care	.....	.....	.....	.....	.....	100.05
Nonprescription Pain Reliever	10.4346	7.4089	1.4084	5.0	7.04	.....
Tetracycline	5.0000	4.9033	1.0197	12.0	12.24	.....
Vision Check	21.6667	42.6055	0.5082	6.0	3.04	.....
Dental Service	131.6667	82.1445	1.6029	17.0	27.25	.....
Doctor Visit	31.0000	52.0333	0.5958	17.0	10.13	.....
Hospital Room	210.2900	376.5277	0.5585	6.0	3.35	.....
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	.....

*Local retail and commissary/exchange

[Total Index Development]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	100.05	43.41	43.43	31.56	31.58	22.40	22.41
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes	.....	.....	100.02	.....	100.02	.....	100.01

Miscellaneous Expense Analysis

[Location: Honolulu Blend", HI—Date Prepared: 09-Jun-92—Category Index Development]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
						110.61
Medical Care	8.4877	7.4089	1.1456	5.0	5.73	
Nonprescription Pain Reliever	4.7100	4.9033	0.9606	12.0	11.53	
Tetracycline	52.3450	42.8055	1.2229	6.0	7.34	
Vision Check	139.1000	82.1445	1.6934	17.0	28.79	
Dental Service	39.9550	52.0333	0.7679	17.0	13.05	
Doctor Visit	450.0000	376.5277	1.1951	6.0	7.17	
Hospital Room	1.0000	1.0000	1.0000	37.0	37.00	
Health Insurance						

*Local Retail and Commissary/Exchange.

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	110.61	43.41	48.02	31.56	34.91	22.40	24.78
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			104.61		103.35		102.39

Miscellaneous Expense Analysis

[Location: San Juan Blend", PR—Date Prepared 09-Jun-92—Category Index Development]

Category/Item	Price	Price DC area	Radio	Weights	Subtotal	Index
						75.09
Medical Care	5.8629	7.4089	0.7913	5.0	3.96	
Nonprescription Pain Reliever	4.0000	4.9033	0.8158	12.0	9.79	
Tetracycline	30.0000	42.8055	0.7008	6.0	4.20	
Vision Check	46.6667	82.1445	0.5681	17.0	9.66	
Dental Service	25.0000	52.0333	0.4805	17.0	8.17	
Doctor Visit	182.5000	376.5277	0.4847	6.0	2.91	
Hospital Room	1.0000	1.0000	1.000	37.0	37.00	
Health Insurance						

*Local Retail and Commissary/Exchange.

[Total Index Development]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	75.09	43.41	32.86	31.56	23.89	22.40	16.95
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes			89.45		92.33		94.55

Appendix 13.—Component Expenditure Amounts

[Date Prepared: 14-Oct-92]

Incomes	Indexes					Amounts				
	CG&S	Own	Rent	TRN	Misc.	CG&S	Own	Rent	TRN	Misc.
Reference Wts/Amts:										
$18,000	39.59	24.35	24.35	20.76	15.30	$7,126	$4,383	$4,383	$3,737	$2,754
$26,400	39.15	23.48	23.48	20.33	17.04	11,119	6,668	6,668	5,774	4,839
$45,200	38.74	22.66	22.66	19.94	18.68	17,510	10,242	10,242	9,013	8,434
Location										
Anchorage, AK:										
Lower	109.75	79.34	94.10	116.96	112.18	7,821	3,477	4,124	4,448	3,089
Middle	109.44	80.25	83.31	119.33	108.86	12,169	5,351	5,555	6,890	5,268
Upper	109.15	73.60	83.73	119.89	106.29	19,112	7,538	8,576	10,806	8,984
Fairbanks, AK:										
Lower	107.05	91.09	93.64	127.32	113.09	7,628	3,992	4,104	4,758	3,114
Middle	106.67	90.22	88.24	127.76	109.52	11,861	6,016	5,884	7,377	5,300
Upper	106.26	81.85	86.46	128.46	106.75	18,606	8,383	8,855	11,578	8,003
Juneau, AK:										
Lower	112.79	99.81	117.36	119.30	112.95	8,037	4,375	5,144	4,468	3,111

APPENDIX 13.—COMPONENT EXPENDITURE AMOUNTS—Continued

[Date Prepared: 14-Oct-92]

Incomes	Indexes					Amounts				
	CG&S	Own	Rent	TRN	Misc.	CG&S	Own	Rent	TRN	Misc.
Middle	112.07	92.24	111.95	119.41	109.42	12,461	8,151	7,465	8,895	5,295
Upper	111.37	81.04	85.36	119.57	106.66	19,501	8,300	8,743	10,777	8,997
Nome, AK:										
Lower	138.44	97.06	125.90	148.86	126.44	9,865	4,254	5,518	5,563	3,482
Middle	136.41	91.78	122.79	149.21	119.22	15,167	6,120	8,188	8,615	5,769
Upper	134.48	79.44	100.19	149.76	113.64	23,547	8,136	10,261	13,498	9,584
Guam:										
Lower	119.00	123.56	99.61	113.06	101.22	8,480	5,416	4,386	4,225	2,788
Middle	118.51	112.90	113.07	113.39	100.89	13,177	7,528	7,540	8,547	4,882
Upper	118.04	140.34	115.90	113.93	100.63	20,669	14,374	11,870	10,269	8,487
Honolulu, HI (City and County):										
Lower	112.98	165.96	111.78	127.71	105.12	8,051	7,274	4,899	4,773	2,895
Middle	111.82	182.09	110.06	127.37	103.72	12,433	12,142	7,339	7,354	5,019
Upper	110.70	152.56	96.20	126.83	102.64	19,384	15,625	9,853	11,431	8,657
Hawaii County, HI:										
Lower	112.77	121.01	103.97	129.92	106.02	8,036	5,304	4,557	4,855	2,920
Middle	111.94	116.44	106.69	129.57	104.36	12,447	7,764	7,114	7,481	5,051
Upper	111.13	96.40	87.79	129.01	103.11	19,459	9,873	8,991	11,628	8,696
Kauai County, HI:										
Lower	118.08	142.69	122.35	122.89	108.76	8,414	6,254	5,363	4,592	2,995
Middle	116.84	138.17	124.30	122.58	106.37	12,969	9,213	8,288	7,078	5,147
Upper	115.23	122.16	104.56	122.07	104.52	20,177	12,512	10,709	11,002	8,815
Maui County, HI:										
Lower	121.29	170.91	111.80	127.50	103.44	8,643	7,491	4,891	4,765	2,849
Middle	119.93	166.88	128.07	127.16	102.50	13,335	11,128	8,540	7,342	4,960
Upper	118.64	146.91	100.75	126.62	101.77	20,774	15,047	10,319	11,412	8,583
Puerto Rico:										
Lower	94.43	67.67	81.32	139.22	89.71	6,729	2,966	3,564	5,203	2,471
Middle	93.75	65.04	109.21	139.03	92.52	10,424	4,337	7,282	8,028	4,477
Upper	93.07	63.35	110.06	138.75	94.69	16,297	6,488	11,272	12,506	7,986
St Croix, VI:										
Lower	106.35	93.88	106.73	124.37	95.39	7,579	4,115	4,678	4,648	2,627
Middle	105.38	88.63	131.48	124.31	96.65	11,717	5,910	8,767	7,178	4,677
Upper	104.43	99.79	103.44	124.21	97.62	18,286	10,220	10,594	11,195	8,233
St Thomas, VI:										
Lower	111.44	129.87	126.70	120.66	100.99	7,941	5,692	5,553	4,509	2,781
Middle	110.26	131.46	141.91	120.62	100.72	12,260	8,766	9,463	6,965	4,874
Upper	109.11	110.58	106.89	120.56	100.51	19,105	11,326	10,948	10,866	8,477

(Incorporating Military Prices)

Reference Wts/Amts:										
$18,000	39.59	24.35	24.35	20.76	15.30	7,126	4,383	4,383	3,737	2,754
$26,400	39.15	23.48	23.48	20.33	17.04	11,119	6,668	6,668	5,774	4,839
$45,200	38.74	22.66	22.66	19.94	16.66	17,510	10,242	10,242	9,013	8,434
Location										
Anchorage, AK (MIL):										
Lower	101.44	79.34	94.10	118.98	111.71	7,229	3,477	4,124	4,446	3,076
Middle	101.53	80.25	83.31	119.33	108.51	11,289	5,351	5,555	6,890	5,251
Upper	101.63	73.60	83.73	119.69	106.04	17,795	7,538	8,576	10,806	8,943
Fairbanks, AK (MIL):										
Lower	99.54	91.09	93.64	127.32	113.07	7,093	3,992	4,104	4,758	3,114
Middle	99.52	90.22	88.24	127.76	109.50	11,066	6,016	5,884	7,377	5,299
Upper	99.50	81.85	86.46	128.46	106.74	17,422	8,383	8,655	11,578	9,002
Guam, (MIL):										
Lower	100.40	123.56	99.61	113.06	100.02	7,155	5,416	4,386	4,225	2,755
Middle	100.85	112.90	113.07	113.39	100.02	11,214	7,528	7,540	8,547	4,840
Upper	101.27	140.34	115.90	113.93	100.01	17,732	14,374	11,870	10,269	8,435
Honolulu, HI (city and county) (MIL):										
Lower	99.50	165.96	111.78	127.71	104.61	7,090	7,274	4,899	4,773	2,881
Middle	99.10	182.09	110.06	127.37	103.35	11,019	12,142	7,339	7,354	5,001
Upper	98.72	152.56	96.20	126.83	102.39	17,286	15,625	9,853	11,431	8,635
Puerto Rico (MIL):										
Lower	92.91	67.67	81.32	139.22	89.45	6,621	2,966	3,564	5,203	2,463
Middle	92.45	65.04	109.21	139.03	92.33	10,260	4,337	7,282	8,028	4,468
Upper	92.02	63.35	110.06	138.75	94.55	16,113	6,488	11,272	12,506	7,974

TOTAL COMPARATIVE COST INDEXES

[Date Prepared: 14-OCT-92]

Inc	Income wghts	Own	Rent	Total	Wdc	Index
Lower	18,000	37.10	62.90			
Middle	28,400	46.91	53.09			
Upper	45,200	82.86	37.14			
Location						
Anchorage, AK:						
Lower	29.0	18,833	19,480	19,240	18,000	
Middle	35.2	29,678	29,882	29,786	28,400	
Upper	35.8	46,420	47,458	46,806	45,200	
	100.0			32,821	31,398	104.53
Fairbanks, AK:						
Lower	35.1	19,492	19,604	19,562	18,000	
Middle	39.8	30,554	30,422	30,484	28,400	
Upper	25.1	47,570	48,042	47,745	45,200	
	100.0			30,983	28,966	106.96
Juneau, AK:						
Lower	22.3	19,961	20,750	20,465	18,000	
Middle	32.2	30,802	32,116	31,500	28,400	
Upper	45.5	47,575	48,018	47,740	45,200	
	100.0			36,428	33,725	108.01
Nome, AK:						
Lower	22.3	23,164	24,428	23,959	18,000	
Middle	32.2	35,671	37,739	36,769	28,400	
Upper	45.5	54,765	56,890	55,554	45,200	
	100.0			42,460	33,725	125.90
Guam:						
Lower	50.6	20,909	19,859	20,249	18,000	
Middle	31.6	32,134	32,146	32,140	28,400	
Upper	17.8	53,799	51,295	52,869	45,200	
	100.0			29,813	26,128	114.10
Honolulu, HI (city and county):						
Lower	38.6	22,993	20,618	21,499	18,000	
Middle	32.7	36,948	32,145	34,398	28,400	
Upper	28.7	55,097	49,325	52,953	45,200	
	100.0			34,744	29,207	118.96
Hawaii County, HI:						
Lower	35.3	21,115	20,368	20,645	18,000	
Middle	39.4	32,743	32,093	32,398	28,400	
Upper	25.3	49,656	48,774	49,328	45,200	
	100.0			32,532	28,979	112.26
Kauai County, HI:						
Lower	23.4	22,255	21,364	21,695	18,000	
Middle	44.5	34,407	33,482	33,916	28,400	
Upper	32.1	52,506	50,703	51,836	45,200	
	100.0			36,809	31,359	117.38
Maui County, HI:						
Lower	21.0	23,748	21,148	22,113	18,000	
Middle	41.9	36,765	34,177	35,391	28,400	
Upper	37.1	55,816	51,088	54,060	45,200	
	100.0			39,529	32,449	121.82
Puerto Rico:						
Lower	42.1	17,369	17,967	17,745	18,000	
Middle	38.0	27,266	30,211	28,830	28,400	
Upper	19.9	43,277	48,061	45,054	45,200	
	100.0			27,392	27,365	100.10
St Croix, VI:						
Lower	55.0	18,969	19,532	19,323	18,000	
Middle	35.9	29,482	32,339	30,999	28,400	
Upper	9.1	47,934	48,306	48,073	45,200	
	100.0			26,131	24,209	107.94
St Thomas, VI:						
Lower	44.8	20,923	20,784	20,836	18,000	
Middle	35.3	32,865	33,562	33,235	28,400	
Upper	19.9	49,774	49,396	49,634	45,200	
	100.0			30,944	27,084	114.25
Anchorage, AK (mil):						
Lower	29.0	18,228	18,875	18,635	18,000	
Middle	35.2	28,781	28,985	28,889	28,400	
Upper	35.8	45,082	46,120	45,468	45,200	
	100.0			31,851	31,398	101.44
Fairbanks, AK (mil):						
Lower	35.1	18,957	19,069	19,027	18,000	
Middle	39.8	29,758	29,628	29,688	28,400	
Upper	25.1	46,365	46,857	46,560	45,200	

TOTAL COMPARATIVE COST INDEXES—Continued

[Date Prepared: 14–OCT–92]

Inc	Income wghts	Own	Rent	Total	Wdc	Index
	100.0	.....	.....	30,181	28,986	104.19
Guam (mil):						
Lower	50.6	19,551	18,501	18,891	18,000	.....
Middle	31.6	30,129	30,141	30,135	28,400	.....
Upper	17.8	50,810	48,306	49,880	45,200	.....
	100.0	.....	.....	27,960	26,128	107.01
Honolulu, HI (city and county) (mil):						
Lower	38.6	22,018	19,643	20,524	18,000	.....
Middle	32.7	35,516	30,713	32,966	28,400	.....
Upper	28.7	52,977	47,205	50,833	45,200	.....
	100.0	.....	.....	33,291	29,207	113.98
Puerto Rico (mil):						
Lower	42.1	17253	17,851	17,629	18,000	.....
Middle	38.0	27,113	30,058	28,677	28,400	.....
Upper	19.9	43,081	47,865	44,858	45,200	.....
	100.0	.....	.....	27,246	27,365	99.57

[FR Doc. 92–29639 Filed 12–9–92; 8:45 am]

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December 10, 1992

Part III

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Refrigerant Recycling; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4542-8]

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: In this document, EPA proposes regulations under section 608 of the Clean Air Act (the Act) that would establish a recycling program for ozone depleting refrigerants recovered during the servicing and disposal of air conditioning or refrigeration equipment. The proposed regulations would require persons servicing air conditioning and refrigeration equipment to observe certain service practices that reduce refrigerant emissions and would establish equipment and off-site reclaimer certification programs. In addition, EPA would require that ozone depleting compounds contained "in bulk" in appliances be removed prior to disposal of the appliances, and that all air conditioning and refrigeration equipment, except for small appliances and room air conditioners, be provided with a servicing aperture that would facilitate recovery of the refrigerant. These proposed regulations should significantly reduce emissions of ozone depleting refrigerants and therefore aid U.S. and global efforts to minimize damage to the ozone layer.

DATES: Written comments on the proposed rule must be received on or before January 22, 1993. A public hearing is scheduled for December 23, 1992 in the EPA Auditorium, located at 401 M St., SW., Washington, DC.

ADDRESSES: Comments should be submitted in duplicate to the attention of Air Docket No. A-92-01 at: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Public Docket is located in room M-1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Debbie Ottinger, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington DC 20460. (202) 233-9200.

The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information on weekdays from 10:00 to 4:00, Eastern Time.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
- A. Ozone Depletion
- B. Montreal Protocol and EPA's Implementing Regulations
- C. Excise Tax
- D. London Amendments to the Protocol
- E. Advance Notice of Proposed Rulemaking Regarding Recycling
- F. Clean Air Act Amendments of 1990

II. Section 608 of the Clean Air Act

III. Today's Proposed Rule
- A. Equipment Affected
- B. Factors Considered in the Development of this Proposal
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- D. Public Participation
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- F. Required Practices
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  2. Standards for recovery machines intended for use with small appliances
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  5. Testing of recycling and recovery equipment intended for use on small appliances
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I. Background

A. Ozone Depletion

The stratospheric ozone layer protects the earth from the penetration of harmful ultraviolet (UV-B) radiation. On the basis of scientific evidence, a national and international consensus exists that certain man-made halocarbons, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform, must be restricted because of the risk of depletion of the stratospheric ozone layer through the release of chlorine and bromine. To the extent depletion occurs, penetration of UV-B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants including crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

The original theory linking CFCs to ozone depletion was first proposed in 1974. Since then, the scientific community has made remarkable advances in understanding atmospheric processes affecting stratospheric ozone science. Model predictions in the late 1980s suggested that continued use of CFCs would lead to substantial ozone depletion in the middle of the next century. Despite the sophistication of these models, scientists did not predict the extent of the decrease in stratospheric ozone over Antarctica that was first reported in 1985. This seasonal loss of ozone over the south pole became known as the "Antarctic Ozone hole".

More recent studies have continued to deepen concern over stratospheric ozone loss. In 1988, the results of an international assessment of ozone trends were published in the Executive Summary of the Ozone Trends Panel Report. In addition to the ozone hole, this report stated that analysis of total-column ozone data showed measurable downward trends from 1969 to 1988 of 3 to 5 percent in the northern hemisphere in the winter. In early 1991, new scientific evidence from satellite data indicated a year-round loss of stratospheric ozone over the northern mid-latitudes during the past decade of 3 to 5 percent. This amount is 2 times

greater than past studies suggested and has raised the concern that ozone depletion appears to be occurring faster than theoretical models had predicted. A scientific assessment published in October, 1991 showed for the first time stratospheric ozone depletion in summertime over the continental United States. Most recently, analyses of atmospheric chemistry in the northern hemisphere have indicated that an ozone hole similar to the one in the antarctic could appear in the arctic. These analyses also imply that ozone depletion at the northern mid-latitudes could accelerate.

A more detailed discussion of the background of the ozone depletion problem, the scientific evidence regarding the issue, and the health and environmental effects of ozone depletion can be found at 56 FR 49548 (September 30, 1991).

B. Montreal Protocol and EPA's Implementing Regulations

In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol). As originally drafted, the Protocol called for production and consumption of certain CFCs (CFC–11, 12, 113, 114, 115) and halons (Halon–1211, –1301 and –2402) to be frozen at 1986 levels beginning July 1, 1989, and January 1, 1992, respectively, and for the CFCs to be reduced to 50 percent of 1986 levels by 1998. To date, 76 nations representing well over 90% of the world's production capacity for CFCs and halons have signed the Montreal Protocol. EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradeable allowances. EPA apportioned the allowances to producers and importers of ozone depleting substances (controlled substances) based on their 1986 level of production and importation. It then reduced the allowances for the controlled substances according to the schedule specified in the Protocol. (See 56 FR 49548 (September 30, 1991) for a more detailed discussion of the Protocol and EPA's regulations to implement the phaseout of ozone-depleting substances.)

C. Excise Tax

As part of the Omnibus Budget Reconciliation Act of 1989, the U.S. Congress levied an excise tax on the sale of CFCs and other chemicals that deplete the ozone layer, with specific exemptions for exports and recycling. The tax has operated as a complement to EPA's regulations limiting production and consumption by increasing the costs of using virgin controlled substances. As a result of the tax, there is an added incentive for industry to shift away from controlled substances and to increase recycling activities. The tax has also stimulated the market for alternative chemicals and processes. The original excise tax was amended in 1991 to include methyl chloroform, carbon tetrachloride and other CFCs regulated by the amended Montreal Protocol and title VI of the Clean Air Act.

D. London Amendments to the Protocol

Since the signing of the Protocol in 1987, additional scientific evidence became available indicating that depletion of the stratospheric ozone layer was occurring more quickly than had been anticipated. In response to this evidence (i.e. the 1988 Ozone Trends Panel Report), the Parties to the Protocol at their meeting in London in June 1990 amended the Protocol schedule for CFCs and halons to require a complete phaseout by January 1, 2000. Methyl chloroform and carbon tetrachloride were added to the list of ozone depleting substances, with carbon tetrachloride phased out by January 1, 2000 and methyl chloroform phased out by January 1, 2005.

The parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbons (HCFCs). HCFCs have been identified as interim substitutes for CFCs because they add much less chlorine to the stratosphere than fully halogenated CFCs. The Parties were concerned, however, that rapid growth in the amount of use of these chemicals over time would still pose a threat to the ozone layer. As a result, the resolution calls for the phaseout of HCFCs by 2020 if feasible and no later than 2040 in any case.

E. Advance Notice of Proposed Rulemaking Regarding Recycling

On May 1, 1990, EPA published an advance notice of proposed rulemaking (ANPRM, 55 FR 18256) addressing issues related to the development of a national CFC recycling program. This notice emphasized that recycling is important because it would allow the continued use of equipment requiring CFCs for service past the year in which CFC production is phased out, thereby eliminating or deferring the cost of early retirement or retrofit of such equipment. The Agency continues to believe that the continued use of these substances in existing equipment that recycling would allow can serve as a useful bridge to alternative products while minimizing disruption of the current capital stock of equipment.

The ANPRM asked for comment on the feasibility of recycling in various CFC end uses and also asked for comment on methods, such as a deposit/refund system, that could be employed to encourage recycling. The Agency received 110 public comment letters in response to the ANPRM. In general, most commenters recognized the need for recycling to be established to help efforts to protect the ozone layer and to provide a source of refrigerant to service existing capital equipment after the phaseout of CFC production is complete.

F. Clean Air Act Amendments of 1990

The Clean Air Act Amendments of 1990, signed November 15, 1990, include requirements for controlling ozone-depleting substances that are generally consistent with, but in some cases more stringent than those contained in the Montreal Protocol as revised in 1990. For the substances covered by the revised Protocol's control measures, title VI of the Act calls for a phaseout of CFCs by January 1, 2000 with deeper interim reductions and, in the case of methyl chloroform, an earlier phase out date (2002 instead of 2005). For the HCFCs, title VI requires use restrictions, a production freeze in 2015 and a phaseout in 2050. EPA issued a temporary final rule on March 6, 1991 implementing the production and consumption limits contained in the Act for calendar year 1991. (See 56 FR 9518.) The Agency published proposed regulations for 1992 and beyond on September 30, 1991 (See 56 FR 49548).

In addition to the phaseout of ozone depleting substances, title VI includes a variety of other provisions intended to reduce emissions of ozone-depleting substances. Section 608, the foundation for the regulations proposed today, provides for EPA to promulgate regulations to achieve the "lowest achievable level" of emissions of ozone-depleting substances and to maximize recycling of such substances. Section 608 also bans the knowing venting of ozone-depleting substances during the maintenance, service, repair, or disposal of appliances and industrial process refrigeration. Section 609 establishes a specific program requiring the recovery and recycling of refrigerant used in motor vehicle air conditioners, specifically requires training and certification of technicians, and restricts the sale of small containers of CFCs. Other title VI sections call for mandatory labelling, a ban on nonessential products, and a program to review the safety of alternatives to class I and class II substances.

II. Section 608 of the Clean Air Act

Section 608 of the Clean Air Act, as amended in 1990, provides the legal basis for this rulemaking. It requires EPA to establish a comprehensive program to limit emissions of ozone depleting substances during their use and disposal.

Section 608 is divided into three subsections. In brief, the first requires regulations to reduce the use and emission of class I substances (CFCs, halons, carbon tetrachloride, and methyl chloroform) and class II substances (HCFCs) to the lowest achievable level, and to maximize the recycling of such substances. The second subsection requires that the regulations promulgated pursuant to subsection (a) contain requirements concerning the safe disposal of class I and class II substances. Finally, the third subsection establishes self-effectuating prohibitions on the venting into the environment of class I or class II substances, and eventually their substitutes, during servicing and disposal of air conditioning or refrigeration equipment.

In particular, subsection (a) of section 608 requires EPA to promulgate regulations "establishing standards and requirements regarding the use and disposal" of both class I substances and class II substances. The regulations required are to "reduce the use and emission of such substances to the lowest achievable level" and are to "maximize the recapture and recycling of such substances." Subsection (a) calls for EPA to promulgate such regulations with respect to "the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration" by January 1, 1992. (Appliance is defined by section 601(1) as "any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer." EPA believes that motor vehicle air conditioners (MVACs) are included within the scope of the term "appliance" but that the servicing regulations promulgated pursuant to section 609 of the Act eliminate the need to promulgate servicing regulations for MVACs under section 608. MVACs, however, will be subject to disposal regulations proposed today under section 608.) These regulations were to become effective by July 1, 1992. Paragraph (2) of subsection (a) expands the scope of the recycling and emission reduction regulations by requiring EPA to promulgate additional regulations by November 15, 1994, that establish standards and requirements regarding the use and disposal of both class I and class II substance not covered by the initial set of regulations, i.e., all other uses of class I and class II substances. These regulations are to go into effect not later than 12 months after their promulgation. Subsection (a) further provides that the regulations promulgated pursuant to it may include requirements to use alternative substances, to minimize the use of class I or class II substances, or to promote the use of safe alternatives to class I and class II substances.

Subsection (b) of section 608 requires that the regulations under section 608(a) establish standards and requirements for the safe disposal of class I and class II substances. These are to include (1) requirements that such substances contained "in bulk in appliances, machines, or other goods" be removed prior to the disposal of such items or their delivery for recycling; (2) requirements that "any appliance, machine or other good containing a class I or class II substance in bulk" be "equipped with a servicing aperture or an equally effective design feature which will facilitate the recapture of such substance;" and (3) requirements that products in which a class I or class II substance is an "inherent element" be disposed of "in a manner that reduces, to the maximum extent practicable, the release of such substance into the environment."

The provisions of subsections (a) and (b) ultimately (by November, 1994) apply to all uses of class I and class II substances, including air conditioning and refrigeration, solvents, foam blowing, and fire control. However, these subsections focus first on the use and disposal of refrigerants during the service, repair, or disposal of air conditioning or refrigeration equipment.

Refrigerants also receive special emphasis in subsection (c) of section 608, which provides in paragraph (1) that, effective July 1, 1992, it is "unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of" class I or class II refrigerants in a manner that "permits such substances to enter the environment." Certain de minimis releases are exempted from this self-effectuating prohibition. As discussed below in section III. D, EPA is proposing that, once the requirements of the regulations proposed today go into effect, "de minimis releases" be interpreted to mean releases that occur when the recycling and recovery requirements of this regulation are followed. Section 608(c)(2) extends the prohibition on venting to substances that are substitutes for class I and class II refrigerants effective November 15, 1995, unless the Administrator determines that such venting or releases do not pose a threat to the environment. The Agency notes that since MVACs are covered by the term "appliance," the servicing and disposal of MVACs is subject to the prohibition on venting.

Today's notice, proposing refrigerant recycling and safe disposal requirements, is a major step in the implementation of section 608. EPA research indicates that in all air conditioning or refrigeration sectors, emissions during servicing and disposal of equipment account for between 50 and 94 percent of total emissions during the life cycle of the equipment (Regulatory Impact Analysis: the National Recycling and Emission Reduction Program, (RIA)). The recovery and recycling requirements proposed today should sharply reduce emissions during servicing and disposal, bringing total potential emissions from 41,000 metric tons per year to approximately 15,000 metric tons per year (RIA). (These figures are weighted by ozone depletion potential; unweighted figures are higher). In those sectors where leakage during use accounts for a significant percentage of total emissions, EPA will evaluate the need to establish standards to minimize emissions during this life cycle stage. Finally, EPA will evaluate the need to regulate non-refrigerant applications of class I and class II compounds under section 608. These regulations may include requirements for emission-reducing engineering controls and work practices and/or requirements to use alternative substances in those uses for which substitutes exist. In determining whether or not to take further action under section 608, EPA will consider the incremental costs and benefits of such action.

III. Today's Proposed Rule

A. Equipment Affected

Today's proposed rule applies to the servicing and disposal of most air conditioning and refrigeration equipment, including household air conditioners and refrigerators, commercial air conditioners and chillers, commercial refrigeration, industrial process refrigeration, refrigerated transport, and air conditioning in vehicles not covered by EPA's regulations under section 609 of the Clean Air Act (which apply to the service of motor vehicle air

conditioners, or MVACs). The proposed rule also applies to the disposal of MVACs. Following is a description of the major categories of equipment that will be affected by the rule:

Household Refrigeration. This category consists of refrigerators and freezers intended primarily for household use, though they may be used outside the home (e.g., in an office). In terms of the number of units currently in operation, this is the largest sector affected by this rule, with an estimated 159 million units. The amount of refrigerant (charge) in each of these units, however, is quite small relative to the charge in equipment in other sectors, ranging from six ounces to approximately one pound of CFC–12. The quantity of refrigerant in this sector that is available for recycling at servicing and disposal is estimated to be approximately 6,000 metric tons per year. (This and other estimates in this section are based on figures from 1990.) This makes up approximately 17% of the total available from the sectors affected by this rule when these quantities are weighted by the ozone depletion potentials (or ODPs) of the refrigerants. Because servicing is relatively rare in this sector, approximately 90% of this 17% would be recovered at disposal.

Other Refrigerated Appliances. Other refrigerated appliances include dehumidifiers, vending machines, ice makers, and water coolers. These equipment types have charge sizes and service characteristics similar to those in the Household Refrigeration sector. The total number of units of these types in current operation is approximately 43 million units. The quantity of refrigerant in this sector that is estimated to be available for recycling at servicing and disposal is 700 metric tons per year, which makes up approximately two percent of the total available from the sectors affected by this rule.

Residential Air Conditioning This sector includes window units, packaged terminal air conditioners, central air conditioners, light commercial air conditioners, and heat pumps. There are approximately 133 million units in this sector, making it the second largest. The residential air conditioning sector is similar to the household refrigeration and other appliances sectors because the equipment stock is large, the equipment is infrequently serviced, and charge sizes are small (4–7 pounds). The quantity of refrigerant in this sector that is available for recycling at servicing and disposal is estimated to be 1600 metric tons per year (when weighted by the ozone-depletion potential of the refrigerant), which makes up approximately five percent of the total available from the sectors affected by this rule. This figure is lower than that for household refrigeration because residential and light commercial air conditioning relies exclusively upon HCFC–22, which has approximately five percent of the ozone-depletion potential of CFC–12.

Transport Refrigeration. The Transport Refrigeration sector consists of refrigerated ship holds, truck trailers, railway freight cars, and other shipping containers. With only approximately one million transport refrigeration units currently in use, this sector is relatively small. Trailers, railway cars, and shipping containers are commonly charged with CFC–12. Ship holds, on the other hand, rely on HCFC–22 and ammonia. The average charge size in this sector is approximately 18 pounds, which is relatively small compared to all but household sectors. The quantity of refrigerant in this sector that is estimated to be available for recycling at servicing and disposal is 1900 metric tons per year, which makes up approximately five percent of the total available from the sectors affected by this rule. Unlike equipment in the household sectors, equipment in the transport refrigeration sector is usually serviced every year. Thus, refrigerant recovered and recycled at servicing would account for approximately 25% of the total recovered and recycled in this sector.

Retail Food. The retail food sector includes refrigerated equipment found in supermarkets, convenience stores, restaurants, and other food service establishments. The equipment includes small reach-in refrigerators and freezers, refrigerated display cases, walk-in coolers and freezers, as well as large parallel systems. Convenience stores and restaurants typically use stand-alone refrigerators, freezers, and walk-in coolers. In contrast, supermarkets usually employ large parallel systems, which connect many display cases to a central condensing unit by means of extensive refrigerant piping. Because the piping required to connect all of the cases may be miles long, these systems can contain charges of over 500 pounds. Charges are typically CFC–12, CFC–502, or HCFC–22. The estimated total stock of retail food equipment is approximately 2.5 million units. The quantity of refrigerant in this sector that is estimated to be available for recycling at servicing and disposal is 9,000 metric tons per year, which makes up approximately 26% of the total available from the sectors affected by this rule.

Because of the large charge sizes and frequency of servicing in the retail food sector, EPA believes that recycling in the sector is already widespread.

Cold Storage Warehouses. Cold storage warehouses are used to store meat, produce, dairy products, and other perishable goods. There are approximately 665 million cubic feet of refrigerated space in cold storage warehouses throughout the United States. This sector is similar to the retail food sector, but its equipment is serviced even more frequently (up to four times each year) and can be charged even more frequently (up to four times each year) and can be charged with even greater quantities of refrigerant. The quantity of refrigerant in this sector that is estimated to be available for recycling at servicing and disposal is 80 metric tons per year, which makes up less than one percent of the total available from the sectors affected by this rule. As in the retail food sector, EPA believes that recycling is already widespread in this sector.

Commercial Comfort Air Conditioning. Chillers are used to regulate the temperature and humidity in offices, hotels, shopping centers, and other large buildings. There are approximately 167,000 units currently installed, making this sector the smallest one affected by the recycling rule in terms of stock size.

There are three major types of chillers: Centrifugal, reciprocating, and screw. Each of these is named for the type of compressor employed. Centrifugal chillers, used to cool areas ranging from 30,000 to 600,000 square feet, are generally the largest and can be charged with up to 900 kg (about 2000 pounds) of refrigerant. These chillers may use CFC–11, CFC–12, CFC–500, or HCFC–22. (Recently, centrigual chillers utilizing HCFC–123 have been introduced to the market; however, these new chillers currently have a very small fraction of the market and are therefore not included in this analysis.) Reciprocating chillers, used to cool areas of less than 30,000 feet, are generally the smallest and typically contain charges of about 160 pounds of CFC–12 or HCFC–22. Screw chillers are used to cool areas from 30,000 to 100,000 square feet and are charged with about 500 pounds of HCFC–22. All of the systems are serviced frequently. The quantity of refrigerant in this sector that is available for recycling at servicing and disposal is estimated to be 5200 metric tons per year, which makes up approximately 14% of the total available from the sectors affected by this rule.

Chillers are long-lasting relative to most air conditioning and refrigeration equipment. Most will last over 20 years

and some will last 30 years or more. EPA believes that recovery and recycling is already common in the chiller sector due to the large charges of refrigerant involved.

Industrial Process Refrigeration

The industrial process refrigeration sector includes industrial ice machines and ice rinks, as well as many complex, customized systems used in the chemical, pharmaceutical, petrochemical, and manufacturing industries. Equipment in this sector is often critical to the continuous production of valuable materials. As a result, industrial process equipment is usually designed, manufactured, and installed with special care to minimize down-time for servicing and repair.

This sector uses a variety of refigerants, including CFC–11, CFC–12, CFC–500, CFC–502, and HCFC–22. Charge sizes can be very large, ranging from 750–3000 lbs for ice rinks, and rising as high as 20,000 lbs for built-up centrifugal units. The quantity of refrigerant in this sector that is available for recycling at servicing and disposal is estimated to be 2000 metric tons per year, which makes up approximately six percent of the total available from the sectors affected by this rule. Due to the high reliability of industrial process equipment, servicing is uncommon, and most recovery will occur at disposal. EPA believes that recycling is already common in this sector.

Motor Vehicle Air Conditioners (MVACs)

Motor vehicle air conditioners (MVACs) include air conditioners in automobiles and trucks. These recycling regulations only affect the disposal of MVACs, because the servicing of MVACs is covered by regulations implementing section 609 of the Clean Air Act Amendments. Nevertheless, with approximately 119 million MVACs currently on the road, this sector is one of the largest sectors affected by the recycling rule. Most MVACs used CFC–12, but some now use HFC–134a.

MVACs have the highest leakage rates of refrigerant charges of any equipment type affected by the Recycling Rule. Only 40 percent of all MVACs still contain a refrigerant charge at disposal. The original charge, moreover, is small (two to four pounds). However, the quantity of refrigerant in this sector that is available for recycling at disposal is estimated to be 9000 metric tons per year, which makes up approximately 25% of the total available from the sectors affected by this rule.

Comfort Cooling in Vehicles Other Than Trucks and Automobiles

Although the servicing of MVACs is covered by regulations implementing section 609 of the Act, the servicing (and disposal) of air conditioners in other vehicles, such as trains, airplanes, ships, buses, construction equipment, and farm vehicles would be covered by these recycling regulations. Due to the lack of data available on the cooling systems used in these applications, these uses were not analyzed. However, the quantity of refrigerant available for recycling from this sector is expected to comprise only a small fraction of the total available from the sectors affected by this rule.

B. Factors Considered in the Development of this Proposal

Section 608 of the Clean Air Act provides the statutory basis for the standards and requirements contained in these proposed regulations. The statutory standards against which the regulations concerning the use and disposal of ozone-depleting substances are to be measured is whether they "reduce the use and emission of such substances to the lowest achievable level" and "maximize the recapture and recycling of such substances." EPA believes that, in the context of recycling, these standards are complementary, i.e., that maximizing recycling will also mean reducing the use and emission of these substances to the lowest achievable level. EPA also believes that these standards bear a relationship to the de minimis releases permitted notwithstanding the general prohibition on venting or other releases contained in section 608(c). In other words, emissions that occur while complying with EPA's recovery and recycling requirements, which achieve the lowest achievable level of emissions, will only be de minimis releases.

In applying the statutory standards concerning use, emissions, and recycling, EPA is taking into account both technological and economic factors. The phrases "lowest achievable level" and "maximize recycling" are not defined in the Act. EPA does not believe that these standards are solely technological in nature, but rather contemplate a role for economic factors in determining the lowest "achievable" level of emissions and maximum amount of recycling. EPA notes that section 608(a)(3) specifically refers to the use of safe alternatives pursuant to section 612, which sets out the policy that "to the maximum extent practicable, class I and class II substances shall be replaced" by other chemicals, products, or manufacturing processes. Terminology such as "maximum extent practicable" allows for the consideration of economic factors. EPA also notes that in other provisions of the Clean Air Act, similar terms have been used that contemplate the incorporation of cost and economic factors. See, e.g., section 202(a)(3)(A)(i) (providing for emissions standards for heavy-duty vehicles that "reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available * * * giving appropriate consideration to cost, energy, and safety factors"); section 213(a)(3) (using similar language in the context of emission standards for non-road engines). Thus, in EPA's view, there is nothing inherent in the use of the terms "achievable" or "maximize" that precludes the consideration of economic factors.

Furthermore, this view is consistent with the legislative history of section 608. In a statement made on the floor of the House of Representatives shortly before passage of the Clean Air Act Amendments of 1990, Representative Ralph Hall stated that: "In promulgating regulations [under section 608] the Administrator shall take into account the extent to which emissions reductions can be achieved, the costs and benefits of implementing available controls, and the time before which certain uses may no longer rely on the covered substances." (Cong. Rec. H 12907 (Oct. 26, 1990).) See also statement of Rep. Walgren (Cong. Rec. 12937 (Oct. 26, 1990).)

The stringency of the regulations promulgated to implement these standards will also be affected by the amount of leadtime between their date of promulgation and their effective date. The longer the leadtime, the more time there will be for technological innovations and development to occur, thereby permitting the establishment of more stringent standards. Conversely, shorter leadtimes necessitate standards based more on the degree of emission control and performance achievable by equipment already available or equipment that will be available in the near future. With respect to the present set of regulations, the leadtime is necessarily short as section 608(a)(1) provides for an effective date of July 1, 1992, for the regulations covering the use and disposal of class I substances used in appliances and industrial process refrigeration. (This date also coincides with the effective date of the venting prohibition contained in section 608(c) for releases of class I and class II refrigerants from appliances and

industrial process refrigeration.) Moreover, for regulations authorized by section 608(a)(2), the initial effective date must be within 12 months of promulgation.

EPA has considered these factors in developing these regulations, and the Agency believes that it has designed a program that will achieve the lowest achievable level of emissions and maximize recycling, taking into account in an appropriate manner the technology available, costs, benefits, and the leadtimes involved. Through extensive discussions with industry representatives and environmental organizations, EPA has attempted to identify significant emissions and methods for controlling them during the repair, service, and disposal of air conditioning or refrigeration equipment. In many cases, the proposed requirements would mandate activity already being undertaken by standard-setting and equipment certification organizations in the heating, ventilation, air conditioning, and refrigeration (HVAC/R) sector. They are also very similar to the steps being taken to recycle refrigerant in MVACs, an area where recycling has been successfully implemented.

EPA has attempted to develop a regulatory program that accommodates the wide variety of sizes and types of equipment subject to this regulation. In setting its efficiency standards for recycling and recovery equipment, EPA has considered among other factors both the charge size and frequency of servicing for different types of equipment. In general, as charge size and frequency of servicing increase, potential emissions increase, and higher recovery efficiencies are justified. For instance, the household refrigeration and other refrigerated appliances categories that combine to make up the "small appliances" category in today's proposed rule have tiny charges and are serviced infrequently. Under today's proposed rule, recovery equipment in this category would be subject to a standard that requires recovery of between 80 and 90% of the refrigerant (depending upon whether or not the compressor of the small appliance is operational). On the other hand, equipment containing more than 50 lbs of charge would be subject to a standard that requires recovery of over 99% of the refrigerant. Equipment standards are discussed in detail in section III.F.

EPA has also considered typical methods of disposal in developing these regulations. Under this proposal, equipment that is typically dismantled on-site before disposal (retail food refrigeration, cold storage warehouse refrigeration, chillers, and industrial process refrigeration) must have the refrigerant removed and recovered in accordance with EPA's proposed requirements for servicing. For these types of equipment, the persons who perform servicing usually also perform disposal. This is generally not the case, however, for smaller items such as household refrigerators and freezers, room air conditioners, and motor vehicle air conditioners. This equipment is disposed of by consumers and generally enters the waste stream with the charge intact. EPA is proposing special safe disposal requirements for this equipment, which would make the final person in the disposal chain (e.g., a scrap metal recycler) responsible for ensuring that refrigerant has been recovered from equipment before the final disposal of the equipment. Equipment covered by these requirements also includes dehumidifiers, water coolers, and other relatively portable equipment in addition to household refrigerators and freezers and MVACs. EPA's safe disposal program is discussed in detail in section III.L.

Although EPA is not expressly required to include class II substances in the recycling regulations to become effective on July 1, 1992, EPA is proposing to include class II substances in today's proposed rule for a number of reasons. First, the prohibition on venting that became effective on July 1 covers both class I and class II substances, and EPA considers it desirable to provide a clear, consistent framework for fully implementing the prohibition on venting for all refrigerants. The agency believes that this framework will minimize confusion and maximize compliance with the prohibition. Second, the goals of this regulation, to minimize refrigerant emissions and to help ensure that a supply of high-quality refrigerant is available to service equipment in the future, apply to both class I and class II refrigerants. Without specific requirements, recycling may proceed improperly, leading to excessive HCFC emissions, contamination of refrigerant, and damage to equipment. Third, most technicians routinely work with both types of refrigerants and therefore would need the equipment to handle refrigerants in accordance with the rule even if class II substances were not included. Industry representatives on the STOPAC Subcommittee for Recycling agreed with this rationale and with the inclusion of class II substances in the regulation. While EPA's Regulatory Impact Analysis (RIA) does not now explicitly calculate the incremental net benefits of addressing class II substances in this regulation (as opposed to in a regulation to be promulgated by November, 1994), the final RIA will address this issue. EPA requests comment on the costs and benefits of including class II substances in the regulation.

C. Overview of Proposed Requirements

EPA's proposal has three main elements, which, taken together, satisfy the criteria of section 608 concerning recycling, emissions reduction, and disposal. First, the Agency would require technicians servicing and disposing of air conditioning and refrigeration equipment to observe certain service practices that reduce refrigerant emissions. Second, EPA would establish equipment and reclaimer certification programs. These would have the goals of verifying (1) that all recycling or recovery equipment sold was capable of minimizing emissions and (2) that reclaimed refrigerant on the market was of known and acceptable quality to avoid equipment failures from contaminated refrigerant. Third, to implement the safe disposal requirements of section 608, EPA would require that ozone depleting refrigerants in appliances, machines, and other goods be removed from those items prior to their disposal, and that all air conditioning and refrigeration equipment except for small appliances and room air conditioners be provided with a servicing aperture that would facilitate recovery of the refrigerant. In addition to the three main elements of its proposal, EPA is requesting comment on the need for EPA involvement in technician education.

In order to allow the regulated community sufficient time to come into compliance with the certification requirements, EPA proposes to phase them in over a period of twelve months. In addition, the Agency proposes to "grandfather in" equipment meeting certain minimum requirements set forth in Section III. These grandfathering provisions are intended to encourage the regulated community to begin recycling as soon as possible using available equipment rather than delaying action until certified equipment is available.

Section 608(a) of the Act specifies an initial effective date for these regulations of July 1, 1992. EPA recognizes that, due to the fact that these regulations have not been proposed until today, a July 1, 1992 effective date is not possible for most portions of them. For certain portions of them, however, a July 1, 1992, effective

date would still be possible, albeit retroactively. EPA believes that a July 1, 1992 effective date is appropriate for the provision of the proposed regulations prohibiting the venting of refrigerants because the prohibition on venting contained in section 608(c) of the Act is self-effectuating and went into effect on July 1, 1992, notwithstanding the lack of final regulations under section 608. For other portions of the regulations, EPA is proposing various effective dates in order to allow sufficient lead time for the affected industry to comply. EPA requests comment on what the appropriate effective dates would be for the different provisions of the regulations, taking into account the amount of leadtime necessary to comply with these new regulatory requirements and the proposed grandfathering provisions. EPA also requests comment on the feasibility and implications of adopting a retroactive effective date in the final regulations.

D. Public Participation

EPA has worked extensively with outside groups in developing this proposal. In particular, the Agency has established and has met repeatedly with the Subcommittee for Recycling and Emissions Reduction of EPA's Stratospheric Ozone Protection Advisory Committee (STOPAC). The STOPAC is a Federal Advisory Committee chartered in 1989 under the Federal Advisory Committee Act, 5 U.S.C. App. section 9(c), to provide independent counsel to EPA on specific issues affecting the international negotiations and domestic implementation of the Montreal Protocol. Since the enactment of the Clean Air Act Amendments in 1990, the STOPAC has also provided advice on the implementation of Title VI of this legislation. The Subcommittee for Recycling has over 50 members representing air conditioning and refrigeration equipment manufacturers, wholesalers, services, and users, manufacturers of recycling and recovery equipment, refrigerant manufacturers and reclaimers, educational organizations, state and local governments, and environmentalists. To date, EPA has met with members of the Subcommittee six times: The Subcommittee as a whole has met twice, and smaller groups have met to discuss equipment certification, technician certification, reclaimer certification and safe disposal. Summaries of these meetings are available in the public docket for this rulemaking.

EPA has also worked with the air conditioning and refrigeration industry's primary standards-setting organizations, the Air Conditioning and Refrigeration Institute (ARI) and the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. (ASHRAE), in developing its proposal. Wherever appropriate, EPA has incorporated standards and guidelines from these organizations into the proposed rule. Examples of incorporated standards include the ARI Standard 700–1988, Specifications for Fluorocarbon Refrigerants, (Appendix A to the proposed regulations), and the ARI Standard 740–1991, Performance of Refrigerant Recovery, Recycling, and/or Reclaim Equipment, (Appendix B to the proposed regulations). EPA has also considered the ASHRAE Guideline 3, Reducing Emission of Fully Halogenated Chlorofluorocarbon (CFC) Refrigerants in Refrigeration and Air-Conditioning Equipment and Applications, in developing its proposed rule.

In addition to convening the Subcommittee for Recycling, EPA has met with various industry representatives to gather data on refrigerant emissions, to better understand current industry practices, and to discuss a range of technical issues. The data on refrigerant emissions were used to update EPA's vintaging analysis, which analyzes emissions by equipment type and life cycle stage (e.g., manufacturing, use, servicing, or disposal). This analysis has been used to calculate the potential costs and benefits of this rule and to identify opportunities for further emissions reductions. The data used in the analysis is presented in the Regulatory Impact Analysis (RIA) for this proposal, also available in the public docket. Industry groups that have provided or commented on data include appliance manufacturers, chiller manufacturers and services, industrial process refrigeration manufacturers and users, commercial refrigeration manufacturers and users, refrigerated transport manufacturers, servicers and users, and manufacturers and users of comfort air cooling systems for commercial vehicles.

E. Definitions and Interpretations

Active Recovery Device

Recovery devices used with refrigerators and freezers and other small appliances can be divided into two main types: Active and passive. While active equipment has its own compressor to pump refrigerant out of the refrigerator system, passive equipment relies solely upon the compressor in the small appliance and/or the pressure of the refrigerant in the appliance to recover the refrigerant. EPA proposes to define these two types of equipment accordingly. The distinction is important because active and passive recovery devices differ in their recovery efficiencies and other performance characteristics, and EPA is proposing different certification standards for them.

Appliance

The Act defines "appliance" as "any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer." In today's proposed rule, EPA is proposing that this language also be used in the regulatory definition of appliance.

EPA interprets the Act's definition of appliance to include all the sectors of air conditioning and refrigeration equipment described under section III.A. above, including household refrigerators and freezers (which may be used outside the home), other refrigerated appliances, residential and light commercial air conditioning, transport refrigeration, retail food refrigeration, cold storage warehouses, commercial comfort air conditioning, motor vehicle air conditioners, comfort cooling in vehicles not covered under section 609, and industrial process refrigeration. (In sections 608(a) and 608(c) the Act refers specifically to "industrial process refrigeration," a term that is not defined. EPA believes that all refrigeration equipment categorized as industrial process refrigeration in section III.A. above also falls within the broad statutory definition of "appliance.")

The Act's definition of "appliance" has one minor limitation: The reference to the use of devices for "household or commercial purposes." While these purposes encompass virtually all uses of devices containing and using refrigerants, EPA does not believe that they encompass devices containing and using refrigerants that are designed for and used solely in a military application. Thus, the Act's definition of appliance does not appear to include, for example, a refrigeration unit designed only for and used only in a nuclear submarine. If, however, the refrigeration equipment used in a military application is identical to equipment used in a commercial application, then it is covered by the Act's definition. For example, a room air conditioner used on a military base is still considered an appliance even through the use of that particular piece of equipment may not be for commercial

or household purposes. Similarly, although a refrigerator in some other government facility is not used for household or commercial purposes, that refrigerator is still considered an appliance because that identical kind of equipment is used for household or commercial purposes in other contexts.

This interpretation is consistent with section 118 of the Act, which provides that "[e]ach department, agency, instrumentality of executive, legislative, and judicial branches of the Federal Government * * * shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any non governmental entity." Section 618 of the Act explicitly provides that the requirements of Title VI concerning the protection of the stratospheric ozone layer "shall be treated as requirements for the control and abatement of air pollution within the meaning of section 118."

Although EPA believes that equipment designed and used exclusively for military purposes falls outside the definition of "appliance," EPA believes that it has the authority under section 608(a)(2) to regulate the use and emissions of refrigerant from such equipment. EPA requests comment on whether it should pursue such regulation.

Approved Equipment Testing Organization

EPA proposes to define Approved Equipment Testing Organization as any organization which has applied for and received approval from EPA to test recycling and recovery equipment.

Certified Refrigerant Recycling Equipment

EPA proposes to define Certified Refrigerant Recycling Equipment as equipment certified by an approved testing organization to meet EPA's final standards or equipment purchased before [6 months after publication of the final rule] that meets EPA's standards for grandfathered equipment.

High pressure Appliance

Because the physical properties of high, very high, intermediate, and low pressure refrigerants differ, EPA proposes to establish somewhat different requirements for technicians and equipment servicing high, very high, intermediate, and low pressure appliances. EPA proposes to define high-pressure appliances as appliances that uses a refrigerant with a boiling point between −50 and 0 degrees Centigrade at atmospheric pressure (29.9 inches Hg). This definition would include equipment using CFCs 12, 500, and 502, and HCFC 22.

Intermediate-pressure Appliance

EPA proposes to define intermediate-pressure appliances as appliances that use a refrigerant with a boiling point between 0 and 10 degrees Centigrade at atmospheric pressure (29.9 inches Hg). This definition would include appliances using CFC–114 and possibly blends of CFC–114 and other refrigerants.

Low Loss Fitting

EPA is proposing to require that recovery or recycling machines manufactured after [6 months after publication of the final rule], possess low loss fittings or positive shutoff devices. EPA proposes to define low loss fitting as any device that is intended to establish a connection between hoses, air conditioning and refrigeration equipment, or recovery or recycling machines and that is designed to close automatically when disconnected, minimizing the release of refrigerant from hoses, air conditioning or refrigeration equipment, and recovery or recycling machines.

Low-pressure Appliance

EPA proposes to define low-pressure appliances as appliances that use a refrigerant with a boiling point above 10 degrees Centigrade at atmospheric pressure (29.9 inches Hg). This definition would include appliances using CFCs 11 and 113, and HCFC 123.

Passive Recovery Device

As discussed above in the explanation of the term "active recovery device," EPA proposes to define a passive recovery device as a device that relies solely upon the compressor in a small appliance and/or upon the pressure of the refrigerant inside a small appliance to remove the refrigerant into an external container.

Person

EPA is proposing to require that refrigerant transferred between air conditioning or refrigeration equipment owned by different persons must be fully reclaimed. EPA proposes to define person as any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof. This is identical to the definition used in the regulations concerning the production and consumption of ozone-depleting substances (40 CFR 82.3(r)).

Process Stub

EPA is proposing to require that small appliances and room air conditioners sold after July 1, 1993, be provided with a process stub to facilitate removal of the refrigerant at servicing. The Agency is proposing to define process stub as a length of tubing that provides access to the refrigerant inside a small appliance or room air conditioner and that can be resealed at the conclusion of repair or service.

Reclaim

EPA is proposing to adopt a slightly modified form of ASHRAE's definition of "reclaim." According to ASHRAE, to reclaim refrigerant is to:

> Reprocess refrigerant to new product specifications by means which may include distillation. Will require chemical analysis of the refrigerant to determine that appropriate product specifications are met. This term usually implies the use of processes or procedures available only at a reprocessing or manufacturing facility.

EPA is refining this definition to refer specifically to the ARI Standard 700–1988, Specifications for Fluorocarbon Refrigerants (included as Appendix A to the proposed rule) for the "New product specifications" and also for the appropriate type of chemical analysis to ensure that these specifications are met. For the Agency's purposes, the most important part of the definition of reclaim is the requirement to chemically analyze the final product to verify purity. Without such analysis and verification, the Agency will not consider refrigerant to have been reclaimed.

Recover

EPA also proposes to adopt ASHRAE's definition of "recover:" to remove refrigerant in any condition from a system without necessarily testing or processing it in any way.

Recycle

Although the Act's usage of the term "recycle" is very broad, encompassing, for instance, the term "reclaim" as defined above, EPA proposes to define the term more narrowly in its regulations. Once again, EPA is proposing to adopt ASHRAE's definition, with minor changes. ASHRAE states that to recycle is to:

> Clean refrigerant for reuse by oil separation and single or multiple passes through devices, such as replaceable core filter-driers, which reduce moisture, acidity and

particulate matter. This term usually applies to procedures implemented at the field job site or at a local service shop.

The key difference between "recycle" and "reclaim" is that the former does not involve chemical analysis of the product. Recycling essentially encompasses all types of treatment of refrigerant that do not involve such chemical analysis. As explained in a later section of this notice, EPA is proposing to require that all refrigerant changing hands must be fully reclaimed, implying that the vast majority of recycling will take place on site as opposed to at a local service shop.

Small Appliance

EPA is proposing to define as "small appliance" air conditioning or refrigeration equipment containing less than one pound of charge during normal operation. Equipment containing less than one pound of charge includes household refrigerators, household freezers, dehumidifiers, vending machines, and water coolers. EPA is also proposing special servicing and safe disposal requirements for these items. EPA requests comment on using the one-pound quantity to define them.

Technician

EPA is proposing a number of requirements that apply to technicians. EPA proposes to define technician as any person who performs maintenance, service, or repair to air conditioning or refrigeration equipment that could reasonably be expected to release CFCs or HCFCs into the atmosphere, e.g., installers, contractor employees, in-house service personnel, and in some cases, owners. Technician also means any person disposing of air conditioning or refrigeration equipment except for small appliances.

Very High Pressure Equipment

EPA proposes to define very-high pressure equipment as air conditioning and refrigeration equipment that uses a refrigerant with a boiling point below 50 degrees Centigrade at atmospheric pressure. This definition would include equipment using refrigerants 13 and 503.

F. Required Practices

EPA is proposing to require persons servicing or disposing of air conditioning and refrigeration equipment to observe certain service practices that minimize emissions of ozone depleting refrigerants. The most fundamental of these practices is the requirement to recover refrigerant rather than vent it to the atmosphere. As noted above, the knowing venting of class I or class II refrigerant during servicing or disposal (except for de minimis releases that accompany a good faith effort to recycle) is expressly prohibited by section 608(c) of the Act after July 1, 1992.

EPA proposes to define venting as any release to the environment of a class I or class II substance that takes place with the knowledge of the technician during the maintenance, servicing, repairing, or disposal of air conditioning or refrigeration equipment. De minimis releases, as discussed below, are not considered venting.

As noted above, section 608(c)(1) of the CAA prohibits the knowing venting of class I and class II substances from appliances or industrial process refrigeration during servicing and disposal. However, that section exempts "de minimis" releases associated with good faith attempts to recapture and recycle or safely dispose of these substances from the prohibition. In their statement prior to the passage of the Clean Air Act Amendments of 1990, the Senate managers explained that, "The exception is included to account for the fact that in the course of properly using recapture and recycling equipment, it may not be possible to prevent some small amount of leakage." (Congressional Record S16948 (October 26, 1990)). From this statement and the statutory text, EPA considers it appropriate to conclude that emissions accompanying the proper use of recapture and recycling equipment would generally be considered "de minimis." EPA therefore proposes to define as "de minimis" those emissions that take place at servicing and disposal when:

(i) The required practices set forth in § 82.158 of this proposed regulation are observed and when recovery or recycling machines that meet the requirements set forth in § 82.158 of this proposed regulation are used, or

(ii) The requirements of the MVAC regulation (40 CFR part 82 subpart B) are observed.

Such emissions represent the lowest achievable level of emissions, but because the requirements for recovery and recycling machines would vary somewhat from sector to sector and because the charge sizes involved vary considerably from sector to sector, the quantities considered de minimis would also vary from sector to sector.

1. *Evacuation of air conditioning and refrigeration equipment.* EPA proposes that before air conditioning and refrigeration equipment is opened for maintenance, service, or repair, the refrigerant in either the entire system or the part to be serviced (if the latter can be isolated) must be transferred to a system receiver (a component of the system that is designed to hold excess refrigerant charge and that can be used to hold the charge during servicing or repair) or to a certified recycling or recovery machine. The same requirements would apply to equipment that is to be disposed of, except for small appliances, room air conditioners, and MVACs, whose disposal is covered by Section III.L below. In order to ensure that the maximum amount of refrigerant possible is captured rather than released, EPA is proposing to require that air conditioning and refrigeration equipment be evacuated to or below specified levels of vacuum. The Agency has considered a number of factors in developing these levels, including the technical capabilities, ease of use, and costs of recycling and recovery equipment, the possible impact of evacuation on the air conditioning and refrigeration equipment, the servicing times that would be unnecessary to achieve different vacuums, and the amounts of refrigerant that would be released under different evacuation requirements and their predicted impact on the ozone layer (and indirectly, on human health and the environment). Characteristics of recycling and recovery equipment are discussed in more detail in section III.G; servicing times and the possible impact of evacuation on air conditioning and refrigeration equipment are discussed in section a. below.

The required level of evacuation would vary depending upon the type of equipment to be serviced or disposed of and the date of manufacture of the recovery or recycling machine (i.e., whether it met certification requirements for new equipment or had been grandfathered). For small appliances, the requirements would also vary depending on the capacities of the recovery system used under the circumstances (e.g., with an operating vs. a nonoperating refrigerator compressor).

a. Evacuation requirements for air conditioning and refrigeration equipment besides small appliances. When recovery and recycling machines manufactured or imported after [6 months after publication of the final rule], are employed for recovery, EPA is proposing to require evacuation to 0 inches of vacuum, 10 inches of vacuum, 20 inches of vacuum, 25 inches of vacuum, or 29 inches of vacuum, depending on the size and type of air conditioning or refrigeration equipment being serviced. If grandfathered recovery or recycling devices are used, EPA proposes to require evacuation to 0

inches of vacuum in very high pressure systems, 4 inches of vacuum in high pressure systems, and 25 inches of vacuum in low pressure systems and in systems utilizing CFC 114, because the grandfathered equipment may not be capable of achieving higher levels (see Section III.G.). The table below lists requirements for evacuation (pressure readings) for each type of air conditioning and refrigeration equipment and for certified and grandfathered recovery and recycling machines.

TABLE 1.—REQUIRED LEVELS OF EVACUATION FOR AIR CONDITIONING OR REFRIGERATION EQUIPMENT EXCEPT FOR SMALL APPLIANCES

Type of air conditioning or refrigeration equipment	Inches of Vacuum	
	Using recovery or recycling equipment manufactured before [6 mos. after publication of final rule]	Using recovery or recycling equipment manufactured on or after [6 mos. after publication of final rule]
High pressure equipment with a charge of less than 50 pounds ...	4	10
High pressure equipment with a charge of more than 50 pounds ...	4	20
Very high pressure equipment	0	0
Intermediate pressure equipment	25	25
Low pressure equipment	25	25 mm Hg*

*Pressures below 25 inches of vacuum are typically measured in millimeters (mm) or microns (μ) of mercury absolute rather than in inches of mercury vacuum. At standard sea-level atmospheric pressure (29.9 inches of mercury absolute), 25 mm of mercury absolute is approximately equal to one inch of mercury absolute or 29 inches of mercury vacuum. EPA proposes to use the absolute rather than relative measure here not only because this is the standard industry practice but because 29 inches of vacuum cannot physically be attained in areas where atmospheric pressure typically falls very near or below 29 inches of mercury absolute (e.g., areas at high elevation, such as Denver, Colorado).

i. Impact of vacuums on high-pressure air conditioning or refrigeration equipment. Some industry representatives on the STOPAC Subcommittee expressed concern that drawing vacuums on high-pressure equipment could have two adverse effects: (1) If air conditioning or refrigeration equipment is leaky, drawing a vacuum on the equipment may pull air and moisture into the equipment and from there into the recycling or recovery device, contaminating refrigerant and in some instances, limiting the depth of vacuum that can be achieved; and (2) when air conditioning and refrigeration equipment is opened for service after a vacuum has been drawn, air and moisture are drawn into the system in greater amounts than they are if the interior of the system is at atmospheric pressure. If these contaminants are not removed from the system, they can corrode equipment and cause it to fail.

As discussed below in section III.F.1.d., the Agency has attempted to provide for situations involving leaky equipment. Influxes of air and moisture caused by opening a system whose interior pressure is lower than atmospheric pressure may be addressed in two ways, according to industry sources. First, such influxes may be prevented by breaking the vacuum with dry nitrogen. This method, however, requires technicians to carry heavy nitrogen cylinders, a procedure that may be impractical for servicing equipment located on rooftops or other difficult to reach areas. Second, air and moisture may be removed from a system by drawing a second, deeper vacuum on the system after it is repaired. However, although drawing a second vacuum is standard industry practice, the time involved in drawing a deep vacuum discourages many technicians from achieving a vacuum deep enough to remove all the air and moisture that may have entered the system. Thus, a number of service companies recommend that their technicians evacuate high pressure systems only to atmospheric pressure, minimizing the intrusion of air and moisture.

EPA requests comment on the option of requiring technicians who service small high pressure systems, particularly those utilizing HCFC–22, to evacuate these systems only to atmospheric pressure. As is discussed further in section III.G. below, the Agency is generally willing to consider less stringent standards for equipment utilizing HCFC–22 because HCFC–22 has approximately five percent of the ozone depletion potential of CFCs 11 and 12. However, EPA believes strongly that larger systems and systems utilizing high-pressure refrigerants besides HCFC–22 should be evacuated to levels below atmospheric pressure. Large systems utilizing CFC–12 in particular may still contain several pounds of refrigerant at atmospheric pressure; for instance, a bank of compressors in a grocery store with a charge of 500 pounds of CFC–12 (a common quantity) will contain over 10 pounds of refrigerant at atmospheric pressure. For these and similar systems, EPA believes the quantity of refrigerant recovered by pulling a deeper vacuum justifies the extra labor required either to break the vacuum with nitrogen or to pull a second vacuum deep enough to remove all the air and moisture that may enter a system below atmospheric pressure. The Agency requests comment on this rationale and on the levels of vacuum proposed above.

ii. Servicing Times. EPA has also considered the amount of time technicians would have to spend on the job in order to achieve certain vacuums. Each additional unit of vacuum takes longer than the preceding one to achieve. Hence, a recovery or recycling machine that can achieve a 10 inch vacuum in a system in 15 minutes may require another 15 minutes to reach 12 inches, then another 15 minutes to reach 13 inches, etc. However, EPA discussions with industry indicate that in general, the vacuums specified above can either be achieved within a reasonable time period while the technician is on the job or overnight. (Evacuations of large systems are often performed overnight.) EPA requests comment on this finding.

b. Evacuation requirements for small appliances. For reasons discussed further in section EPA's proposed evacuation requirements for small appliances would depend upon whether an active recovery device (with a pump) or a passive recovery device (without a pump) were employed for refrigerant recovery.

Technicians using active recovery devices to recover refrigerant would be required to reduce system pressure to one atmosphere (0 psig) (equivalent to 90% capture of refrigerant at 70 F) in the sealed system. Because the recovery efficiency of passive recovery device is less dependent on a pressure reading than on a specific procedure, technicians using passive systems would be required to adhere to the servicing procedure certified for that recovery system. Certification of passive recovery devices and recovery procedures are discussed in more detail in section III.G.

c. Removal of entrained refrigerant from oil. In some cases, significant amounts of oil are left behind in a system after refrigerant has been recovered. In these cases, simply drawing the vacuums specified in table 1 above may not recover a high percentage of the refrigerant, because a large percentage of the refrigerant in a system may be entrained in the compressor oil. For instance, at 80 degrees F and atmospheric pressure, 50% of the volume of oil in a low pressure chiller is typically made up of refrigerant. EPA has two concerns regarding oil contaminated with refrigerant: (1) The refrigerant may be released once the system is opened and

the oil is exposed to the air, and (2) the eventual combustion of the oil (a common method of disposal) may create toxic compounds. The latter concern has led EPA to classify oil containing certain concentrations of CFCs or HCFCs as an off-specification fuel under its RCRA regulations. (Classification of oil as an off-specification fuel is discussed in more detail in section III.E.3.) The Agency has similar concerns regarding oil removed from the compressor during an oil change.

There are a number of methods for recovering refrigerant entrained in oil The ASHRAE Guideline 3 mentions two, recommending:

> When removing oil from the compressor, it is recommended that the crankcase be pumped down to atmospheric pressure to remove dissolved refrigerant prior to exposing the oil to the atmosphere. Refrigerant in solution may be further reduced by use of crankcase heaters (ASHRAE Guideline 3–1990, p. 7).

The Trane company has determined that through the use of heat and vacuum, refrigerant concentrations in centrifugal chiller oil can be reduced to one percent or lower.

Recent discussions with industry representatives indicate that these methods can be time-consuming and therefore costly. For instance, if a heat pump or air conditioner is not operational, it can take up to 24 hours for a crankcase heater to warm up fully, and the Trane method for removing low-pressure refrigerant from oil can take several days. In addition, the equipment necessary for transporting the oil and extracting the refrigerant can be cumbersome.

EPA requests comment on the potential of oil in the various industry sectors to emit CFCs and HCFCs during or after servicing, and on whether it would be appropriate to require technicians to follow procedures to extract refrigerant from oil before exposing the oil to the atmosphere or disposing of the oil. Are there methods for removing most if not all of the refrigerant that can be implemented relatively quickly? When would such methods be applied? Should they be required even for operations such as oil sampling, which involve withdrawing only a small fraction of the oil in a system? Are any of the current methods for removing refrigerant from oil powerful enough to reduce refrigerant concentrations below the levels that trigger designation as an off-specification fuel (4,000 ppm)? If so, even a somewhat complicated refrigerant recovery procedure may be preferable to generation of material that is difficult to dispose of.

EPA could require that refrigerant be extracted from oil when ease of recovery, high oil volumes, and/or high refrigerant concentrations made the effort worthwhile. One relatively simple approach would be to require technicians to hold the system at a vacuum for a period of time that would vary depending upon the type and size of equipment. As refrigerant evaporated out of the oil, the system pressure would rise. The technician would then be required to pump the system back down to the specified vacuum before opening the system for service. (Adding heat to the system could expedite this process.) Such a requirement would have the additional benefit of permitting any remaining liquid refrigerant in the system to evaporate and be recovered.

d. Evacuation of leaky equipment. Industry representatives on the STOPAC Subcommittee of recycling noted that in some cases, large leaks made it impossible to draw a deep vacuum on high-pressure air conditioning or refrigeration equipment. In such cases, EPA proposes to allow high pressure equipment to be evacuated to 0 psig (atmospheric pressure) instead of to the levels above. A large leak would be defined as one that lowers the pressure of a high pressure system to less than two atmospheres (60 inches of mercury absolute). Industry members stated that leaks smaller than this would not prevent evaluation to the level specified in Table 1 (Memorandum from Deborah Ottinger to the Record, "Meeting Between EPA and ASHRAE Representatives," November 19, 1992). EPA requests comment on this proposal.

2. *Leak Repair.* Although EPA will consider developing comprehensive regulations to reduce refrigerant leakage during equipment use in the next phase of rulemaking under section 608, the Agency requests comment on whether it should include in this rule a requirement to repair substantial leaks. Such a provision could require technicians servicing equipment that leaks more than 35% of its charge per year to find and repair the leak within some period of time, perhaps 30 days after the leak's discovery. While technicians would not be required to inspect for leaks outside of their normal servicing procedures, they would be required to repair leaks that they become aware of during such procedures (e.g., by noting that the charge was low by 35% or more). This provision would be an emergency, stop-gap measure to ensure that technicians repaired large leaks instead of repeatedly "topping off" systems with new refrigerant. A number of industry representatives have stated that the latter practice remains common, despite the increasing cost of refrigerant.

The Agency is suggesting the 35% figure because research on emissions from equipment in different sectors shows that this is five percentage points above the typical annual leak rate in the most leak-prone sectors. Rather than adopt a standard based on the annual leak rates in the leakiest sectors, however, EPA could establish different criteria for different sectors. For example, technicians would be required to repair leaks in chillers if they released more than 15% of the charge annually (chillers typically leak 10% of their charge per year), but they would not have to repair leaks in the retail food sector unless they released more than 35% of the total charge annually (refrigeration in the retail food sector typically leaks 30% of the charge per year). By using the typical leak rate of a given sector as a bench mark, the Agency is assuming that it represents an industry standard for the amount of leakage from normally maintained and operated equipment. Leaks that are significantly higher than this benchmark should be worth repairing according to most service technicians in the sector. While this approach falls short of establishing a lowest achievable level of emissions to the extent that typical industry practice falls short of that level, it would reduce leaks until needed additional analysis can be performed and regulations establishing lowest achievable levels of emissions during operation of equipment are promulgated.

3. *Disposition of Recovered Refrigerant.* EPA proposes to allow technicians considerable flexibility in the disposition of recovered refrigerant. The one restriction (besides the prohibition on venting) that EPA proposes to impose is that refrigerant transferred between equipment owned by different persons must be reclaimed. As discussed above in the Definitions Section, "reclaimed" means that the refrigerant is cleaned to the ARI 700–1988 standard of purity (Appendix A) and is chemically analyzed to verify that it meets this standard. (Technically, the refrigerant need not be reprocessed if chemical analysis shows that it already meets the ARI 700 standard of purity; however, this is seldom expected to be the case.) EPA proposes to implement this restriction by prohibiting the sale or offering for sale of class I and class II refrigerants that do not meet the ARI 700 Standard. In this requirement, EPA would codify the industry recommendation for refrigerant moved off-site. In fact, the requirement would apply the standard of purity set forth in

ARI 700 somewhat less restrictively than ARI itself, which states that the standard is intended for refrigerant transferred between any two pieces of equipment, even if they are owned by the same person. Under this proposed regulation, refrigerant moved between equipment owned by the same person, corporation, or governmental entity would not need to be either tested or treated. Thus, for instance, grocery store chains could move refrigerant from equipment in one store to equipment in another without treating it.

EPA proposes to focus on changes in ownership of refrigerant because such transfers introduce uncertainties into the marketplace regarding the purity of the refrigerant. Manufacturers of air conditioning and refrigeration equipment on the STOPAC Subcommittee for Recycling states that unless used refrigerant were chemically analyzed, there was a significant risk of contaminated or mixed refrigerant entering the market and ultimately damaging equipment on a large scale. Refrigerant reclaimers have reported finding a wide range of contaminants in used refrigerants delivered to them. Many of these contaminants (including other refrigerants) are not removed by standard recycling machines. EPA is concerned not only with the damage that contaminated refrigerant could cause, but with the reduction of consumer confidence in the quality of recycled refrigerant that might result. Slackened demand could lead to the stockpiling (and ultimately, the venting) of unwanted used refrigerant.

When refrigerant is moved from one piece of equipment to another but ownership does not change, the risks to equipment are still present, but a single owner is in the position to evaluate those risks and they do not present a problem for a market in which other consumers are purchasing the used refrigerant.

EPA is particularly concerned that, in the absence of a requirement to reclaim refrigerant before selling it to a new owner, these recycling requirements could encourage the development of "recycling centers" that accepted used refrigerant from a wide variety of sources without analyzing it. In such cases, uncertainty regarding the origin and purity of the refrigerant would be compounded by the participation of an intermediate party. In addition, if a recycler unknowingly mixed contaminated refrigerant into a larger batch, the potential for harm would be multiplied accordingly. Consolidation of batches also increases the likelihood of mixing different refrigerants. In either of these cases, the recycled refrigerant would be rendered unusable, making its release (either through damage to equipment or deliberate venting) far more likely. EPA requests comment on the likelihood that without regulation, recycling centers would arise and lead to the release of refrigerants into the environment.

EPA recognizes that private parties will continue to face strong incentives to ensure adequate refrigerant purity in the absence of any federal regulation. Purchasers of refrigerant have always had the incentive to ensure refrigerant purity; yet with the expected increase in refrigerant recycling, the cost of ensuring purity might increase. The risks by contaminated refrigerant may consist of damage to private property, specifically, potential harm to equipment caused by moisture-, acid-, or oil-contaminated refrigerant, decreases in equipment operating efficiency caused by mixed refrigerant, and loss of refrigerant caused by system rupture or irreversible contamination (e.g., mixture of CFC–12 and HCFC–22). These types of risks impose potential costs upon the private parties that would purchase reclaimed refrigerant, and so these parties would be expected to take steps to ensure purity to a level adequate for the intended use. Equipment owners, for example, could undertake a range of actions to ensure adequate refrigerant purity: Purchase used refrigerants only from reputable suppliers or technicians, insist upon contract provisions specifying technician or supplier guarantees to repair any equipment damaged by contaminated refrigerant, insist that used refrigerant meet some purity standard less stringent than ARI 700, or only use refrigerant that is fully certified to meet ARI 700.

The degree to which the purchasers of used refrigerant would undertake these actions will depend upon their awareness of the risks posed by contaminated or mixed refrigerants. Because the potential damage to equipment might only occur after months or years of operation, consumer awareness of the risks could trail actual equipment damage. This problem of inadequate information could, however, be addressed through EPA and industry efforts to educate potential consumers of refrigerants. EPA solicits public comment on the adequacy of the private party actions described above and potential EPA and industry educational efforts in minimizing the harm that may result from damage to private equipment from contaminated or mixed refrigerants.

Some members of the STOPAC subcommittee for recycling suggested that EPA address cross-contamination concerns through a less stringent requirement than requiring reclamation of all refrigerant transferred between owners. One alternative would be to require reclamation only when refrigerant was moved between equipment of different types. Such a restriction would allow contractors servicing a single type of equipment to consolidate and transport the refrigerant to their shops for "off-site" recycling. The contractors could then sell the refrigerant to other customers using the same type of equipment, but sales of recycled refrigerant to anyone but end-users would be prohibited. This requirement would be especially advantageous for contractors who service small equipment, for instance, home unitary air conditioners (central air conditioning units) utilizing HCFC–22. While recycling machines are capable of processing 50 pounds of refrigerant at once, the charge in home unitary air conditioners ranges between four and seven pounds. Thus, allowing contractors to consolidate refrigerant would permit them to use their recycling machines more efficiently than they could if they were required to process each owner's refrigerant separately. Moreover, because 1–2 pounds of refrigerant is usually left behind in recycling equipment after each job is complete, substantial mixing occurs even with on-site recycling. The purity gained by allowing only on-site recycling may therefore not justify the additional expense that this option entails.

However, although transfers of refrigerant between similar pieces of equipment are less likely to lead to cross-contamination than transfers between different types of equipment, EPA has several concerns about this option. First, if limited off-site recycling is permitted, it may be difficult to distinguish between legitimate and illegal use of the recycling machines. Recycling centers selling refrigerant to walk-in customers may find it easy to masquerade as contractors recycling refrigerant only to recharge their customer's equipment. Second, defining "types" of equipment within which transfers of refrigerant could proceed may present problems. Should distinctions be based on size, possession of hermetic vs. open-drive compressors, or some other characteristic? Third, there is no industry standard for the ability of recycling machines to clean refrigerant. While the ARI 740 Standard for Recycling Equipment includes a test for cleaning ability, it does not set any minimum level of performance in this

area. Thus, there is currently no guarantee that an individual recycling machine is capable of removing even those contaminants, such as acid and water, that recycling machines are theoretically capable of removing. In the future a "clean-up" standard may be developed; with EPA's encouragement, ARI has taken preliminary steps in this direction. If and when such a standard is developed, EPA will view off-site recycling with more confidence.

EPA requests comment on the option of permitting limited off-site recycling. Could the Agency design its program in such a way as to prevent the development of "Recycling centers" that do not analyze the refrigerant they sell? How? What criteria would EPA use to distinguish between equipment types? Finally, should even limited off-site recycling be permitted in the absence of a "clean-up" standard for recycling equipment?

Some members of the STOPAC argued that EPA should allow sales of recycled (as opposed to reclaimed and therefore, chemically analyzed) refrigerant as long as the refrigerant is labelled as such. However, since the label would only indicate that the refrigerant had been used, not what its chemical contents were, EPA does not believe that a labelling requirement would sufficiently inform the purchaser of refrigerant of the risks associated with its use. This rule will dramatically increase the volume of used refrigerant on the market, and many purchasers will not be familiar with the hazards that may be associated with used refrigerants that have not been analyzed, e.g., residuals from hermetic motor burnouts, improper identification, incompatibility of lubricants, etc. Thus, EPA believes that the integrity of the market for used refrigerant is best served by requiring that the purity of the refrigerant be chemically verified before refrigerant is sold to a new owner.

Refrigerant that is not sold to a new owner would not have to meet any standard of purity under section 608. When refrigerant is returned to the equipment from which it is removed, it is frequently not necessary either to test or to treat the refrigerant. ASHRAE Guideline 3–1990 states, "refrigerant withdrawn from equipment so that routine service or major overhaul can be performed can usually be returned to the equipment without reprocessing," and this guidance was confirmed by several members of the STOPAC Subcommittee for Recycling. As long as recovered refrigerant does not change hands, therefore, EPA considers it reasonable to leave treatment to the discretion of the service technician.

4. *RCRA Regulations Regarding the Management of CFCs and CFC-Contaminated Wastes.* This section is intended to give an overview of EPA's hazardous waste regulations as they affect refrigerant recovery, recycling, and reclamation. Throughout this section the terms recovery, recycling, and reclamation are used as defined previously in section III.D. of today's proposed rule and not as defined in the Resource Conservation and Recovery Act (RCRA).[1] The regulations described in this section are not part of this rulemaking. Individuals with questions regarding them should call the RCRA Hotline at 1–800–424–9346 or 701–920–9810.

a. Refrigerants. Due to a previous rulemaking (see 56 FR 5910, February 13, 1991) and the July 28, 1989, **Federal Register** notice clarifying the applicability of RCRA Subtitle C regulations to CFC refrigerants (54 FR 31335), used CFC refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle are not hazardous wastes provided the refrigerant is recycled or reclaimed for further use. If these CFCs are not recycled or reclaimed, it is the generator's responsibility to test the waste or apply knowledge of the waste to determine whether the waste exhibits a characteristic of hazardous waste (see 40 CFR Part 262 for standards applicable to generators of hazardous waste, especially 40 CFR 262.11, "Hazardous waste determination"). In the July 28, 1989, notice, EPA concluded that, in circumstances where something outside the realm of normal practice may cause a CFC refrigerant to exhibit a characteristic (e.g., compressor burnout), generators may need to determine, using testing or knowledge, whether the waste is hazardous. EPA was concerned that CFCs may break down at high compressor temperatures, forming hydrochloric acid, and may exhibit the characteristic of corrosivity. If the spent refrigerant is mixed with a listed or characteristic hazardous waste (e.g., degreasing fluid or solvent), then the mixture may also be hazardous.

b. *Byproducts of Refrigerant Recovery and Recycling.* Two of the byproducts of refrigerant recovery and recyling may be hazardous waste: Used oil and used replaceable core filter driers. Generators of single and multiple pass through devices such as replaceable core filter-driers are subject to the RCRA hazardous waste determination requirement (40 CFR 262.11). If the generator determines that the spent pass through device is a hazardous waste, then it must be managed in accordance with RCRA Subtitle C requirements.

As part of the CFC recycling process, used oil is separated from the CFCs. Used oils that are removed from refrigeration units and that are contaminated with CFCs are exempt from the rebuttable presumption of mixing with hazardous waste. The rebuttable presumption of mixing, however, applies to used oil contaminated with CFCs that have been mixed with used oil from processes other than refrigeration units. (See 40 CFR 279.10(b)(ii)(B) and 40 CFR 279.44(c)(2). Thus, generators of used oil that is contaminated with CFCs from refrigeration units may wish to keep this oil separate from other used oil and retain records documenting the source of the oil. (Such recordkeeping, however, is not required.)

Used oil separated from CFCs during refrigerant recycling is subject to the newly finalized part 279 requirements for recycled used oil management standards (57 FR 41566, September 10, 1992). If used oil is destined for disposal, the generator has the responsibility to test or apply knowledge to determine whether the used oil exhibits one or more of the characteristics of hazardous waste. (See 40 CFR part 279, subpart I, Standards for use as a Dust Suppressant and Disposal of Used Oil.)

Used oils that remain after the CFC recovery step and that are recycled are subject to 40 CFR part 279 requirements as applicable. Under RCRA subtitle C regulations, used oil that is recycled by being burned for energy recovery is subject to 40 CFR part 266, subparts E and H. The 40 CFR part 266, subpart E requirements are included in new part 279 of 40 CFR. (See 40 CFR part 279, subparts B, G, and H.)

(1) Used Oil Fuel Specifications. Used oil that fails to meet used oil fuel specifications in the new 40 CFR 279.11 and 279.60(c) (current 40 CFR 266.40(e)[2]) may be burned only in

[1] As stated in RCRA regulations, material is "recycled" if it is used, reused, or reclaimed (40 CFR 261.1(c)(7). A material is "used or reused" if it is either employed as an ingredient (including use as an intermediate) in an industrial process to make a product or employed in a particular function or application as an effective substitute for a commercial product (40 CFR 261.1(c)(5)). A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated (40 CFR 261.1(c)(4)).

[2] Used oil that exceeds any of the following specification levels is considered to be "off-

industrial boilers and furnaces, as defined in 40 CFR 261.10 and 266.41(b). Under the new 40 CFR 279.63(b) (current 40 CFR 266.40)c)), used oil to be burned for energy recovery that contains more than 1,000 ppm of total halogens is presumed to be hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR part 261, subpart D (e.g., F001, which includes chlorinated fluorocarbons used as solvents). Used oil that contains greater than 1,000 ppm total halogens for which the presumption cannot be rebutted or used oil for which the generator chooses not to rebut the presumption is subject to regulation under subpart H of 40 CFR part 266, Hazardous Waste Burned in Boilers and Industrial Furnaces. The presumption may be rebutted by showing that the used oil does not contain concentrations in excess of 1,000 ppm of halogenated hazardous constituents listed in 40 CFR part 261, appendix VIII or that the constituents are only hazardous waste generated by conditionally exempt small quantity generators subject to 40 CFR 261.5.

Appendix VIII of 40 CFR part 261 identifies CFCs used as solvents as a hazardous constituent. Thus, a chemical analysis may indicate that used oil containing a spent CFC (in concentrations exceeding 1,000 ppm) used as a refrigerant (rather than as a solvent), is a hazardous waste under the rebuttable presumption at 40 CFR 279.11 and 279.60(c), (current 40 CFR 266.40(e)) when, in fact, the CFCs are not derived from a listed hazardous waste. Demonstrating that the CFCs in the used oil result from a refrigerant use rather than from mixture with a listed hazardous waste may rebut the presumption. Once used oil from refrigeration units is mixed with used oil from other sources, one way to rebut the presumption could be to maintain records of chemical analysis for each generated wastestream, although EPA does not require this chemical analysis and recordkeeping. Then, non-refrigerant wastestreams containing CFCs could be eliminated from acceptance for commingling with used oil destined for burning for energy recovery as a used oil fuel.

(2) Used Oil Fired Space Heaters. As discussed in 40 CFR 278.23 (a) and 40 CFR 279.62 (a) and (b) (current 40 CFR 266.44(b)), owners and operators of used oil-fired space heaters that burn used oil fuel under the provisions of § 266.41(b)(2) are exempt from notification requirements of Section 3010 of RCRA. Off-specification used oil fuel may be burned for energy recovery in used oil-fired space heaters provided that: the heater burns only used oil that the owner or operator generates or used oil received from do-it-yourself oil changers who generate used oil as household waste; the heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and the combustion gases from the heater are vented to the ambient air. For example, the generator could be the owner of the refrigeration equipment as well as the service person or company who, in servicing the equipment, collects the used oil. Then, the service person or company may burn the used oil provided that the owner or operator can successfully rebut the presumption at 40 CFR 279.66(a) (current 40 CFR 266.40(c)).

c. Refrigerant Reclamation. Used oil separated from CFCs during reclamation is managed in the same manner as used oil separated from CFCs during recycling (see Refrigerant Recycling section). The generator has the responsibility to determine whether residuals (including used oil) generated during reclamation are hazardous. If the residuals consist of a mixture of CFCs, used as refrigerants, and other solvents listed in 40 CFR part 261, subpart D, then the residuals from CFC reclamation would be a listed hazardous waste (see 40 CFR 261.3(a)(2)(iii)). If the residuals from CFC reclamation exhibit one or more of the characteristics of hazardous waste, then the residuals are a characteristic hazardous waste (see 40 CFR part 261, subpart C).

d. Used Refrigerant Oil. Thus far, this portion of the preamble has provided an overview of RCRA regulations with respect to refrigerant CFCs that have been recovered or will be recycled or reclaimed. Used oils, drained from refrigeration units, will be subject to the same regulations discussed above for used oils separated from CFCs during recycling and reclamation. For an additional discussion of regulations applicable to used oil and used oil filters, see 57 FR 21524, May 20, 1992.

5. Handling Multiple Refrigerants in Recycling and Recovery Equipment. Under ordinary circumstances, one to two pounds of refrigerant may be left behind in a recycling or recovery device after the device is discharged back into the original equipment or into another container. Unless it is removed from the recovery or recycling machine using special methods, this refrigerant will contaminate the next batch of refrigerant recovered by the machine. If the first and second refrigerants are different (e.g., HCFC–22 and CFC–12), this mixture will become unusable, and will have to be disposed of.

EPA requests comment on whether or not it should require technicians to remove residual refrigerant from recycling and recovery machines when these machines are switched between refrigerants. Methods that may be used to remove residual refrigerant include evacuation using a second recovery device, heating the condenser of the recovery or recycling machine using a heat gun, or cooling the container (and/or tubing to it) to which the recovery or recycling machine is evacuated. Another option that would prevent mixture of refrigerants would be to require separate condensers for each refrigerant on recovery or recycling machines intended for use with multiple refrigerants. This, however, would increase the cost of the recovery or recycling machines. EPA requests comment on the effectiveness and practicality of procedures for evacuating refrigerants from recycling and recovery devices.

G. Certification of Recycling and Recovery Equipment

In order to ensure that recycling and recovery equipment on the market is capable of limiting emissions of CFCs and HCFCs, EPA is proposing that recovery and recycling equipment manufactured or imported on or after [6 months after publication of the final rule], be tested and certified by an EPA-approved laboratory or organization. The Agency proposes to require verification of performance in two areas that affect total recovery efficiency: (1) Vapor recovery efficiency and (2) efficiency of noncondensable purge devices on recycling machines. In addition, EPA is proposing to require that equipment and hoses be fitted with shutoff valves or low-loss fittings.

In addition to the initial testing, manufacturers would have to have their equipment models tested or inspected at least once every three years to ensure that no changes had been made to the design that might prevent the equipment from meeting EPA requirements. Such "follow-up" programs are standard in equipment testing programs throughout industry. Manufacturers and importers would also have to place a label on each piece of certified equipment indicating that it is certified and showing which organization tested and certified it. This label would inform both consumers (technicians) and EPA enforcement personnel that the equipment met EPA standards.

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specification" used oil under 40 CFR 266.40(e): Arsenic—5 ppm, Cadmium—2 ppm, Chromium—10 ppm, Lead—100 ppm, Flash Point—100°F minimum, Total Halogens—4000 ppm.

1. Standards for Recovery and Recycling Machines Intended for Use With Air Conditioning and Refrigeration Equipment Except Small Appliances

a. *Recovery efficiency.* In developing proposed levels of evacuation, EPA has considered the technical capabilities, ease of use, and costs of recycling and recovery equipment, the servicing times that would be necessary to achieve different vacuums, and the amounts of refrigerant that would be released under different evacuation requirements and their predicted impact on the ozone layer (and therefore, on human health and the environment). The Agency has attempted to evaluate these factors in both the short and the long term, considering the capabilities of both existing and possible future equipment. Often the factors are interrelated; for instance, more powerful recovery and recycling machines are often more expensive, but they also reduce the time that the technician must spend evacuating the system.

The relationship between the depth of vacuum drawn and the percentage of refrigerant that is recovered by recycling or recovery equipment varies from refrigerant to refrigerant. For HCFC–22, a vacuum of approximately 9 inches of mercury must be drawn in order to recover 99 percent of the refrigerant in the system. For CFC–12, vacuum of approximately 17 inches must be drawn to recover 99 percent of the refrigerant. For low-pressure refrigerants, such as CFC–11 and HCFC–123, much deeper vacuums must be drawn in order to achieve 99 percent recovery; for instance, a vacuum of 28 inches must be achieved in order to recover 99 percent of the CFC–11 in a system.

EPA surveyed manufacturers of recovery and recycling machines in order to ascertain the technical capabilities, prices, and availability of the equipment. Recycling and recovery machines can be divided into six major categories, depending upon the type of air conditioning or refrigeration equipment that they are intended to service. These categories include recovery or recycling machines intended to service: (1) Small appliances (discussed in section III.F.2 below), (2) high-pressure equipment with a charge of less than 50 pounds (e.g., residential and light commercial air conditioning), (3) high-pressure equipment with a charge of more than 50 pounds, (4) intermediate pressure equipment, (5) low-pressure equipment and (6) very high pressure equipment. Each of these categories varies in price and ability to draw vacuum. In addition, portability is of steadily lessening importance as one moves from the first to the fifth categories.

EPA's survey indicated that currently available recovery and recycling machines intended for use with small high-pressure equipment are capable of drawing vacuums of between 9.9 and 29.8 inches of Hg vacuum. The more efficient equipment appears to be competitively priced; while models drawing approximately 10 inches of mercury ranged in price between $4,180 and $17,493, models drawing over 29 inches of mercury ranged in price between $1,316 and $6,700 (RIA). (The price of recovery and recycling machines appears to depend more on recovery rates, capacity, and number of refrigerants handled than on recovery efficiency.)

However, the survey showed that the more efficient equipment probably could not be available in large quantities by the time the equipment certification requirements become effective. This result has been confirmed by a number of representatives of industry on the STOPAC Subcommittee for Recycling, who have stated that most models of recovery and recycling machines currently on the market are incapable of drawing more than 10 inches of vacuum without risking damage to the machine's compressor. According to these representatives, the relatively light, small recovery and recycling machines intended for use with small high pressure systems usually have hermetic compressors, which tend to overheat when drawing deep vacuums. This equipment also has difficulty working against the large difference in pressures (compression ratio) that must be overcome in order to achieve deeper vacuums. Thus, EPA is proposing to require that recovery or recycling machines intended for use with small high-pressure systems are able to draw a 10-inch vacuum.

Some industry representatives have stated that most recovery or recycling machines currently available would have difficulty drawing more than a 4-inch vacuum on equipment using HCFC–22, because compression ratios at deeper vacuums become quite large for HCFC–22. The Agency requests comment on the alternative of requiring recovery or recycling machines intended for use with small systems using HCFC–22 to draw a 4-inch vacuum. EPA is willing to consider a less stringent standard for recycling and recovery machines used with small systems utilizing HCFC–22 not only because of technical limitations but because HCFC–22 has only approximately five percent of the ozone-depletion potential of CFC–11 and CFC–12.

If more efficient equipment becomes widely available, EPA may evaluate the need for a higher standard for small, high-pressure equipment in the more distant future. EPA requests comment on the possible future availability of portable, cost-effective recovery and recycling machines able to draw more than 10 inches of vacuum and the costs of requiring such equipment. Not only does EPA's survey indicates that the technology exists, but some industry members have stated that recovery and recycling machines utilizing open-drive, two-stage compressors would be able to achieve deep vacuums without significantly compromising portability or increasing cost.

Recovery and recycling machines used to evacuate larger high-pressure systems are capable of drawing vacuums of between 15 and 29 inches, according to EPA's survey. These machines are typically larger and more powerful than machines used with residential equipment because larger charge sizes necessitate both higher recovery rates and higher recovery efficiencies. In addition, portability is of somewhat less importance for large commercial than for residential applications because technicians in large commercial applications are less likely to have to carry recycling and recovery equipment up ladders and through narrow doorways. Because EPA's survey indicated that the majority of equipment currently available in this application draws vacuums closer to 20 inches than to 29 inches, EPA is proposing to require equipment in this application to draw a vacuum of 20 inches. EPA requests comment on this proposal and on the current and future availability of recovery or recycling machines intended for use with large high pressure equipment that can draw vacuums of more than 20 inches. As with recovery and recycling machines intended for use with smaller equipment, EPA may consider setting a stricter standard for recovery and recycling machines used with large equipment in the future.

EPA's survey indicated that recovery and recycling machines used to service low-pressure centrifugal chillers are capable of drawing vacuums between 25.5 and 29.8 inches. The survey examined equipment in the two most common capacities for this application, 1,600 pounds and 3,400 pounds. For both the 1,600 and 3,400 pound capacities, the most efficient equipment is somewhat more expensive than the least efficient equipment; however, in both cases it possesses other features

besides high efficiency that are probably important to price (e.g., a high horsepower motor and a high recovery rate). More important, the social costs avoided by using the more efficient equipment (i.e., the damage to human health and the environment that would be caused by refrigerant released by the less efficient equipment) outweigh the price difference (Regulatory Impact Analysis). Thus, EPA is proposing to require that recovery or recycling machines intended for use with low pressure equipment reduce the system pressure to 25 mm of Hg (generally equivalent to a vacuum of 29 inches). EPA requests comment on this proposed level of evacuation.

EPA considered defining low-pressure equipment to include equipment utilizing CFC-114, but the physical characteristics and special applications of this refrigerant appear to justify a separate classification, "intermediate pressure equipment." CFC-114 has a vapor pressure between those of low-pressure refrigerants and those of high-pressure refrigerants. At a given level of evacuation, therefore, a higher percentage of 114 is recovered than would be recovered of CFC 11. Evacuation to 25 inches of Hg vacuum represents recovery of over 99% of the refrigerant in a 114 chiller. EPA is therefore proposing that CFC–114 and other intermediate pressure refrigerants (e.g., blends of CFCs–114 and –12) be evacuated to 25 inches of vacuum. The Agency requests comment on this proposal.

The requirements described above for high-pressure equipment would apply to equipment utilizing refrigerants 12, 22, 500, and 502. Refrigerants 13 and 503 are used in very low temperature applications and have very high pressures at ambient temperatures (e.g., 500 psia at 75 degrees F). Evacuating these refrigerants to the vacuums proposed for high pressure refrigerants would require recycling and recovery equipment to work against very high compression ratios, and over 99% of a very high pressure refrigerant can be recovered by evacuating it to atmospheric pressure. Thus, the standards and equipment appropriate for the recovery and recycling of the high pressure refrigerants are not appropriate for very high pressure refrigerants. ARI has recommended that EPA require evacuation of R–13 and 503 to atmospheric pressure (At 75 degrees F), and EPA is proposing to adopt this recommendation. ARI has also noted that an especially strong recovery container will be needed to recover these very high pressure refrigerants. EPA requests comment on the procedures, equipment, and level of evacuation appropriate for recovering or recycling very high pressure refrigerants.

Following is a table listing the evacuation levels that must be achieved by the various types of recovery and recycling equipment.

TABLE 2.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING MACHINES INTENDED FOR USE WITH AIR CONDITIONING OR REFRIGERATION EQUIPMENT

[Except for Small Appliances]
[Manufactured on or after (6 months after publication of the final rule)]

Type of air conditioning or refrigeration equipment with which recovery or recycling machine is intended to be used	Inches of vacuum
High Pressure Equipment with a Charge of Less than 50 Pounds.	10
High Pressure Equipment with a Charge of More than 50 Pounds.	20
Very High Pressure Equipment	0
Intermediate Pressure Equipment	25
Low-pressure Equipment	25 mm Hg

A few types of recycling and recovery equipment do not use an on-board compressor to remove refrigerant from the air conditioning or refrigeration equipment. One model that has been brought to EPA's attention relies on the system compressor to evacuate the refrigerant, similar to the passive recovery devices used to evacuate refrigerators and freezers (discussed below). Another model uses an inert gas to push refrigerant out of the system and into the recovery device. EPA requests comment on how to evaluate the recovery efficiency of these two and other possible devices.

The Agency is concerned that it would not be possible to ensure the performance of the first type of equipment because that performance would depend upon the system compressor, which would vary from job to job. The worst case would arise when the system compressor was not operating at all, in which case the efficiency of the equipment would probably be quite low. Although the technician in such a situation could theoretically return to his shop to pick up a recovery or recycling machine with an on-board compressor, EPA is concerned that this process would prove too time-consuming to depend upon in practice. EPA requests comment on these issues.

Because the second type of equipment does not depend upon any external equipment during the recovery process, it should be possible to use laboratory tests to gauge its recovery efficiency in the field. One method of measuring the efficiency might be to use a mass-balance approach, weighing the recovery equipment and the air conditioning or refrigeration equipment before and after the recovery procedure and subtracting the mass of the introduced inert gas. Such a method would require that the refrigerant be distinguishable from the inert gas. EPA could approve the equipment if it achieved at least the recovery efficiency of comparable compressor-bearing equipment (between 98.5–99.5%). Although EPA is not proposing this method at this time, the Agency requests comment on this method of ensuring the recovery efficiency of this and other types of recovery or recycling equipment.

b. *Refrigerant recovery rates.* Some representatives of industry on the STOPAC Subcommittee for Recycling have encouraged EPA to set minimum standards for liquid and vapor recovery rates, arguing that technicians will be less tempted to interrupt a swift recovery than a slow one (Letter from Bruce Siebert, the Trane Company, to Deborah Ottinger, Office of Air and Radiation, August 14, 1991). EPA is not proposing minimum recovery rates as a lead option in today's proposed rule. The Agency believes that, given the proposed requirements for evacuation and the growing value of refrigerant, contractors and technicians have sufficient incentive to purchase equipment with recovery rates adequate for their needs. However, EPA requests comment on the need for minimum recovery rates and on what those recovery rates might be for different types of air conditioning and refrigeration equipment.

c. *Low loss fittings.* Low loss fittings or positive shutoff connections prevent refrigerant from escaping from hoses and equipment during connection and disconnection of recovery and recycling machines. EPA analysis indicates that shutoff valves for both high-pressure and low-pressure systems are cost-effective, and in the case of low-pressure systems, actually save the user money (RIA). EPA is therefore proposing to require that hoses on recovery and recycling machines be equipped with low loss fittings. EPA requests comment on this proposal.

d. *Purge loss.* Most recycling machines (but not recovery machines) are equipped with air purge devices, which vent air and other noncondensable contaminants from refrigerant. Because some refrigerant tends to vaporize and mix with the air, some refrigerant also escapes during the purging process. EPA is proposing to limit the quantity of refrigerant that

could be allowed to escape during purging to 5% of the quantity being recycled (under the conditions of the ARI 740 test for recovery and recycling machines). Preliminary EPA analysis indicates that this is probably the most demanding standard that most existing recycling machines can meet (RIA). However, some industry representatives have stated that competitively priced machines are capable of meeting a higher standard, perhaps 3%. Because even 2% of a large charge can be a significant amount (2% of a thousand-pound charge is 20 pounds), EPA is considering a 3% (or still lower) limit as an alternative. Another alternative would be to require gradually higher standards over time, beginning with 5%, and decreasing that quantity by one percent per year until a level of two or three percent is achieved. EPA requests comment on the current and future availability, technical capacities, and costs of more efficient purge devices for recycling machines and on the appropriate limits for percentage of refrigerant released during the air purging process.

e. *Volume-sensitive Shut-off.* Some members of the STOPAC Subcommittee for Recycling have recommended that EPA include a requirement that storage cylinders on recycling and recovery equipment be equipped with a switch that would automatically stop the recovery operation when 80% of the available volume in the storage section contains liquid refrigerant at 70 degrees F. This is a safety feature that would prevent overfilling of storage vessels; filling beyond the recommended maximum level of 80% can lead to explosion of the cylinder when its temperature rises to levels common in storage areas during the summer. EPA is not proposing to make possession of such a device a requirement for equipment certification in its lead option, but the Agency requests comment on this option. The Agency specifically requests comment on the cost and reliability of volume-sensitive switches.

2. Standards for Recovery Machines Intended for Use With Small Appliances

a. *Recovery efficiency.* EPA is proposing somewhat less stringent recovery efficiency standards for household refrigerators, household freezers, and other small appliances containing less than one pound of refrigerant, such as vending machines, dehumidifiers, and water coolers. In this sector charge sizes are small and servicing is rare, making total emissions during servicing low relative to those in other sectors. High recovery efficiencies in the home refrigerator sector are accordingly less likely to justify the cost of highly efficient recovery equipment. In many cases, service shops perform service requiring entrance into a sealed system of a refrigerator only once or twice a year. For these shops, investment in a several thousand dollar recovery machine with a 99% total efficiency rather than a recovery system costing hundreds of dollars (or less) with a 90% efficiency would avoid the emissions of less than two ounces of refrigerant per year, or less than ten ounces of refrigerant over the five year lifetime of typical recovery equipment. EPA does not believe that the environmental impact of these emissions would justify the expense of the more efficient machine.

There are several different recovery devices designed specifically for use with household refrigerators and freezers. These designs can be divided into two main types: active and passive. Active equipment, like most recovery equipment intended for use on larger systems, has its own compressor to pump refrigerant out of the refrigerator system. Passive equipment relies upon the compressor in the refrigerator and/or the pressure of the refrigerant to recover the refrigerant. Passive equipment usually requires a smaller capital investment than active equipment, but it is also usually less efficient. While a pump can consistently deliver efficiencies above 90%, passive technologies generally have efficiencies of approximately 90% when they are used with an operating refrigerator compressor, and between 60–80% when they are used with a non-operating compressor.

EPA has analyzed the cost-effectiveness of four different recovery systems, one active and three passive (RIA). These are the GE Pump (active), and the Whirlpool Bag, the Amana Carbon Adsorption System, and the chilled cylinder (passive). EPA investigated both the private and social costs of each system, considering equipment costs (both capital and operating), technician time, and equipment efficiencies. Private and social costs are expressed respectively in $/job and $/kg of CFC recovered. For most of the recovery technologies, these costs decline as the number of jobs a shop performs per year rises, because fixed capital costs are spread out over a larger volume.

EPA's analysis shows that for shops performing less than 20 jobs per year, passive technologies are the most cost-effective from both private and social perspectives. On the other hand, for shops performing more than 50 jobs per year, the active technology is the most cost effective from both perspectives. This is because one-time capital costs make up a relatively large percentage of total costs for the pump, and these capital costs do not increase with the number of jobs. Because efficiency is a factor in determining social costs, the more efficient pump is the also most cost-effective from a social perspective for shops performing between 20 and 50 jobs per year. For a private perspective, passive technologies are less expensive in this range, but only marginally so. For instance, the least expensive technology for shops performing 20 jobs per year (the Whirlpool Bag) was estimated to cost approximately $11.00 per job, while the GE pump was estimated to cost approximately $14.00 per job.

This analysis suggests that more efficient active systems should be mandated for shops servicing more than 20 systems a year. However, this result is sensitive to initial assumptions regarding (1) the efficiency of the equipment, which, especially for passive systems, can vary considerably depending upon the conscientiousness of the technician, (2) the price of the equipment, which is likely to change, (3) servicing times, which may vary considerably between technologies (EPA's analysis assumed that servicing times were roughly equal for all systems but the chilled cylinder), and (4) the utilization rate of the equipment, which may vary according to not only the number of jobs a shop performs per year but the ability of each shop's personnel, trucks, and other equipment to specialize in sealed system service. Relatively small changes in any of these parameters could alter the outcome of the analysis, and the most likely changes in the last two parameters would tend to reverse the conclusions. Thus, EPA is proposing to allow shops servicing small appliances to use either active or passive recovery devices, as long as those devices meets the minimum standards set forth in the paragraph below, and as long as the technician adheres to the servicing procedures specified for that equipment. However, EPA requests comment on the option of requiring that shops performing service on more than 20 (or some other appropriate figure) sealed systems per year use a pump rather than one of the passive systems to recover refrigerant. EPA also requests comment on the proposed one-pound limitation, on this analysis, and on the other regulatory options presented here.

EPA is proposing that minimum standards for total recovery efficiency for passive systems be set at 90% when

used with an operating refrigerator compressor and 80% when used with a nonoperating refrigerator compressor. As noted previously, passive equipment is generally capable of meeting these standards. The conditions under which the recovery device achieves these efficiencies in the test situation must reflect those that can be realistically implemented in the field.

EPA has some special concerns regarding carbon adsorption as a recovery technology. EPA's information indicates that it is difficult to recover adsorbed CFCs in a form suitable for reclamation, implying that adsorbed CFCs may seldom be recovered or reused. If CFCs remain bound to the carbon, they do not pose any immediate environmental concerns, but they are no longer available to a market where they will soon be in great demand. If CFCs escape from the carbon over time, they also pose an environmental threat. In either of these cases, the value of the adsorbed CFCs is considerably less than that of CFCs that are recovered in a manner that allows them to be reclaimed, indicating that carbon adsorption should be discouraged. EPA requests comment on the practicality of reclaiming adsorbed CFCs, on the fate of adsorbed CFCs that are not recovered and reclaimed, and on whether carbon adsorption should be permitted as a recovery technology.

3. Possible Standards for Recycling and Recovery Machines Used With Equipment Identical to MVACs

Some of the air conditioners that would be covered by this proposed rule are identical to MVACs, but they are not covered by the MVACs rule under section 609 of the Act because they are used in vehicles that are not defined as "motor vehicles." These air conditioners include many systems used in boats, airplanes, construction equipment, and farm vehicles. Like MVACs in cars and trucks, these air conditioners typically contain two to three pounds of CFC–12 and use open-drive compressors to cool the passenger compartments of vehicles. As currently written, today's proposed rule would apply the standards discussed above for recovery and recycling equipment used with small high pressure systems to recovery and recycling equipment used with these MVAC-type air conditioners. EPA believes, however, that the standards for recycling and recovery equipment that EPA has adopted in its section 609 regulations (57 FR 31241, July 14, 1992) could be applied instead to recycling and recovery equipment used with MVAC-type air conditioners. EPA believes that the regulations under section 609, which are discussed in 57 FR 31241, satisfy the statutory standards of section 608 regarding the maximization of recycling and reduction of emissions. Were EPA to adopt these standards (and the accompanying certification program) in its section 608 regulations, manufacturers of equipment that is intended specifically for use with MVAC-type air conditioners and that is certified under the section 609 regulations would not have to recertify that equipment under the ARI Standard 740 in order to market it for use with MVAC-type equipment covered by section 608. In other respects, the servicing of MVAC-type equipment in vehicles that are not defined as "motor vehicles" would be covered by these regulations rather than EPA's section 609 regulations. EPA requests comment on this alternative.

4. Testing of Recycling and Recovery Equipment Intended for Use on Air Conditioning and Refrigeration Equipment Except Small Appliances

EPA is proposing to require testing of recovery and recycling equipment for the above performance characteristics by a third party approved by EPA. At present, EPA is aware of two major equipment testing programs underway: The ARI certification program under ARI Standard 740 (Appendix B to the proposed regulations) and the Underwriters Laboratories (UL) program under ARI Standard 740 and UL 1963 (not to be confused with UL's program for testing recycling and recovery equipment intended for use with MVACs under UL 1963). EPA is proposing a modified version of these programs as the one that approved recovery and recycling equipment testing organizations would have to use. The ARI and UL programs use a laboratory test protocol to measure the performance of equipment in a number of different areas, including vapor recovery efficiency, purge loss, liquid recovery rate, vapor recovery rate, and ability to clean refrigerant (in recycling machines). Except in the area of purge loss, where refrigerant emissions are limited to 5% of the total charge, no maximum or minimum performance requirements need to be met for equipment to be certified under ARI's current program. Under the modified program proposed by EPA, equipment would be certified only if it could achieve the vacuums specified, limited purge losses to 5% (or other percentage that EPA adopted in the final rule), and was equipped with positive shut-off fittings.

ARI and UL test one unit of each make and model to verify performance initially. Both programs also take measures to verify that equipment manufactured over the long term continues to perform as rated. Each year, ARI tests one unit each of one third of the models certified under its program. This means that over a three-year period, ARI tests a sample of each make and model that it certifies. UL conducts periodic inspections of equipment at manufacturing facilities to ensure that models have not undergone design changes that may affect their performance.

Following these industry precedents, EPA's proposed program would require manufacturers to have equipment testing organizations test one unit of each make and model initially and then conduct periodic retests or inspections (at least once every three years) to ensure the continued performance of each model line. (Equipment certified under the ARI or UL programs prior to promulgation of the final rule would not have to be retested in order to be initially certified under the rule if the first set of tests demonstrated that the equipment met EPA requirements.)

If previously certified equipment failed a follow-up test or inspection, the approved equipment testing organization would be required to inform EPA of this fact, and the certification for that equipment would be revoked or suspended after allowing the manufacturer an opportunity to respond. In general, EPA has the authority to revoke or suspend any certification granted under the provisions of section 608. If the Agency determines that a person or entity has violated the regulations, or if the Agency has knowledge that a person or entity is incapable of fulfilling the requirements of the regulation the Agency would revoke or suspend any certification previously granted. In the case of minor violations, the Agency may act to suspend certification for a given period of time. However, in the case of serious or repeat violations, the Agency may determine that revocation of certification is warranted. In the event of a revocation of certification, the affected model of recycling or recovery equipment could no longer be manufactured, and the affected technician, owner of recycling or recovery equipment, or reclaimer could no longer do business.

In addition to ARI and UL, other testing organizations have indicated an interest in setting up their own programs to certify performance to EPA's specifications. EPA would be willing to approve any equipment

certification program that can demonstrate that it (1) possesses thorough knowledge of the standards as they appear in § 82.158 and ARI–740–1988 (Appendix B), (2) possesses the equipment described in ARI–740–1988 to test performance in the areas of concern, (3) possesses expertise in equipment testing, (4) has developed a program to verify the performance of certified recycling or recovery equipment manufactured over the long term, including either retests of equipment or inspections of equipment at manufacturing facilities, and (5) is not financially or otherwise interested in the outcome of the testing. Organizations seeking approval to be equipment certifiers should contact EPA.

In addition to the requirements above, equipment testing organizations would be required to submit lists of approved equipment to EPA annually. They would also be required to inform EPA within 30 days of the certification of a new model of equipment or of the failure of a previously certified model of equipment.

EPA is proposing third-party certification because it represents the most reliable method of obtaining an accurate and objective evaluation of equipment performance. Third-party certification is more likely than self-certification to yield consistent results across brands, and third-party certifiers have the opportunity to refine their test methods. Third-party certification is also likely to be reasonably priced; given the array of respected testing organizations that have expressed an interest in certifying recovery and recycling machines, EPA expects the certification market to be competitive.

EPA has considered two other options for implementing its equipment performance requirements. One option would be to require manufacturers to test their own equipment according to ARI Standard 740 or another EPA-approved testing protocol. Like third-party certification, this self-certification would have to statistically verify the performance of equipment manufactured over the long term. Manufacturers would retain the option of having their equipment certified by a third party if this were more cost-effective or attractive for some other reason. Self-certification could save manufacturers money in some cases (though the need to develop and maintain laboratory facilities would seem to put this option out of reach of all but the largest companies). However, EPA is not proposing self-certification as its lead option because third-party certification offers a more objective and still practical alternative. EPA requests comment on the option of self-certification by equipment manufacturers.

Another option would be to eliminate pre-market testing programs altogether but to hold manufacturers and contractors legally responsible if inspections show that recovery and recycling machines are not performing to EPA specifications. The chief attraction of this option is that it eliminates the costs of equipment testing, lowering manufacturers' prices and enabling technicians to cut costs further by building their own equipment. However, it does so at the considerable risk of allowing inadequate and/or leaky equipment onto the market. EPA requests comment on the no-certification option.

In order to inform practical purchasers of the certification status of recovery or recycling equipment, EPA proposes to maintain a list of approved equipment that will be made available to interested persons.

5. Testing of Recycling and Recovery Equipment Intended for Use on Small Appliances

The ARI 740 test method, which is designed to simulate recovery from larger air conditioning and refrigeration equipment, is not applicable to most of the technologies (both passive and active) that have been developed for recovering CFCs from small appliances. This is because the mixing chamber intended to simulate the refrigeration system in ARI 740 is much larger than the systems on small appliances and therefore could be only partially evacuated by systems that could fully evacuate a small appliance. Thus, if recovery and recycling machines intended for use on small appliances are to be evaluated, a different test method must be devised.

The main purpose of this test method would be to provide an accurate measure of the recovery efficiency of both passive and active recovery devices in conjunction with both operating and nonoperating refrigerator compressors. General Electric has developed such a method, which could calculate the percentage of a known charge of CFC refrigerant removed and captured from a test stand refrigeration system and delivered to a container suitable for shipment to a CFC reclaimer. The test involves weighing the test stand, the recovery device, and the shipping containers before and after recovery. Each recovery system would be tested following the manufacturer's written directions for use of that system in the field. (In this sense, recovery procedures would be certified along with recovery equipment, and failure to observe these procedures in the field would constitute a violation of this regulation.) EPA is proposing to adopt this test method as appendix C to this proposed rule. EPA requests comment on the accuracy and reliability of this method.

As would be the case for recovery and recycling machines intended for use with other air conditioning and refrigeration equipment, recovery devices intended for refrigerators would be certified by a third party. An organization interested in becoming an EPA-approved certifier would have to demonstrate that it (1) consistently followed appendix C to test performance in the area of concern, recovery efficiency, (2) possessed the facilities to verify the performance of long-term production, and (3) was not financially or otherwise interested in the outcome of the testing. Organizations seeking approval to be equipment certifiers are encouraged to contact EPA as soon as possible. The Agency requests comment on this option.

6. Effective Dates and Granfathering Provisions.

EPA is proposing that, while manufacturers would begin to certify recovery and recycling equipment to the new standards as of July 1, 1992, the statutory effective date, manufacturers will have until [6 months after publication of the final rule], to certify all of their equipment to the new standards. Based on EPA's analysis of the manufacturer's capabilities to produce such equipment, EPA believes that this lead time is sufficient. EPA requests comment on making certification mandatory for all equipment manufactured six months after publication of the final rule.

EPA also proposes to "grandfather" recycling and recovery equipment sold before [6 months after publication of the final rule], it meets certain minimum requirements. Equipment intended for use with high-pressure refrigerants (except for refrigerants in small appliances) would have to be able to evacuate systems to four inches of vacuum; equipment intended for use with low-pressure refrigerants would have to be able to evacuate systems to 25 inches. (Equipment intended for use with very high pressure refrigerants would have to be able to evacuate systems to 0 inches of vacuum, or atmospheric pressure, as in the proposed requirements effective after [6 months after publication of the final rule]). Depending upon the refrigerant, these evacuation levels are equivalent to

total recovery efficiencies of between 97 and 99 percent. EPA's surveys of equipment manufacturers indicate that most recycling and recovery equipment in use is capable of achieving, but not exceeding, these levels. Although owners of recovery and recycling equipment purchased before [6 months after publication of the final rule], would not have to certify their equipment, EPA reserves the right to test the equipment using a pressure gauge.

TABLE 3.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING MACHINES INTENDED FOR USE WITH AIR CONDITIONING OR REFRIGERATION EQUIPMENT

[Except for Small Appliances]

Manufactured Before [6 Months After Publication of the Final Rule]

Type of air conditioning or refrigeration equipment with which recovery or recycling machine is intended to be used	Inches of vacuum
High Pressure Equipment with a Charge of Less than 50 Pounds	4
High Pressure Equipment with a Charge of More than 50 Pounds	4
Very High Pressure Equipment	0
Intermediate Pressure Equipment	25
Low-pressure Equipment	25

Recovery devices intended for use with small appliances would have to be able to recover 80% of the refrigerant in the small appliance in order to be grandfathered. This standard would apply to both active and passive devices. As above, EPA reserves the right to verify performance of grandfathered recovery devices, in this case using the test protocol set forth in appendix C.

EPA is proposing to grandfather equipment for two reasons. First, the Agency does not wish to penalize those who have taken the initiative to begin recycling before it is required by law. Second, EPA recognizes that certified equipment will probably not be available for all those interested in purchasing it until after the July 1, 1992 prohibition on venting goes into effect. Thus, requiring technicians to purchase certified equipment in addition to equipment that they purchase to meet the prohibition on venting would impose an unfair burden on those who made a good-faith effort to comply with the prohibition and, in fact, would tend to delay purchase of recovery and recycling equipment. EPA's analysis indicates that the benefits of beginning to recycle a few months sooner outweigh small differences in the efficiency of recycling and recovery equipment over the typical five-year lifetime of the equipment. For instance, if a technician began using recovery equipment with a capture efficiency of 97 percent in April, 1992, his refrigerant emissions between April of 1992 and April of 1997 would be half as great than they would be if he waited until July, 1992 to purchase recovery equipment with a capture efficiency of 99 percent. (See "Analysis of Benefits of Early Purchase of Recycling or Recovery Equipment" in the public docket.)

One additional requirement that EPA is considering for grandfathered equipment is possession of low-loss fittings. EPA requests comment on whether most equipment currently in use is equipped with low-loss fittings and on the cost of retrofitting equipment with such fittings.

Because the environmental benefits of using grandfathered as opposed to certified recovery or recycling equipment decrease and ultimately become environmental costs if the equipment is used much longer than five years, EPA is considering the option of requiring that grandfathered equipment be retired on or before July 1, 1997. After that date, all technicians would have to use equipment that had been tested by an approved equipment testing organization to meet the stricter requirements that go into effect on [6 months after publication of the final rule]. Manufacturers of recycling and recovery equipment indicate that most recycling and recovery machines will wear out in approximately five years in any event. EPA requests comment on this option. EPA also requests comment on its grandfathering proposal generally.

H. EPA Promotion of Service Technician Competence

EPA considers an educated technician workforce to be important to a successful recycling and recovery program. Proper education can reduce refrigerant emissions during equipment servicing and disposal in two ways. First, technicians aware of legal requirements and of the environmental impact of CFC and HCFC emissions are more likely to recycle, and second, technicians aware of correct recycling techniques are more likely to recycle properly, avoiding unnecessary refrigerant emissions. EPA recognizes that technicians and their employers have strong private incentives to obtain proper education and training, including increased productivity and conservation of (valuable) refrigerant, and decreased likelihood of equipment damage, refrigerant contamination, and legal penalties. However, EPA is asking for comment on whether it should promote, assist, or require demonstration of competence of technicians in refrigerant recycling and recovery.

The air conditioning and refrigeration industry has affirmed the value of training in reducing refrigerant emissions. The ASHRAE Guideline 2, Reducing Emission of Fully Chlorofluorocarbon (CFC) Refrigerants in Refrigeration and Air-Conditioning Equipment and Applications, states, "training of operators and mechanics is the first line of defense for minimizing refrigerant loss," and notes, " for service technicians, the required practices are of such significant importance that persons in these segments of the industry should have some additional education, training, or both." Members of the STOPAC Subcommittee on Recycling have repeatedly emphasized the importance of training to an effective recycling program. In response to these concerns, a number of industry, organizations have already established training programs in refrigerant recycling and recovery.

EPA's research indicates that the majority of technicians servicing air conditioning and refrigeration equipment today have little experience working with recovery and recycling equipment. Although recycling has been common for several years in sectors with large charge sizes, such as chillers and industrial process refrigeration, most technicians in the household refrigeration and household air conditioning sectors had not recycled CFCs or HCFCs until very recently, when the venting prohibition went into effect. The total quantity of refrigerant that can potentially be recycled in these sectors represents 25% of the total of the sectors in this rule. For technicians in these sectors, technician education is important because it informs them of the legal requirements of the venting prohibition and of these regulations and introduces them to appropriate procedures for recycling and recovery. These procedures include connecting recycling and recovery equipment correctly, avoiding mixture and subsequent release of refrigerants, storing refrigerant safely, and choosing effective leak-testing methodologies.

In addition to its environmental benefits, proper technician education in recycling and recovery has a number of private benefits for technicians, contractors, and/or equipment owners. It encourages conservation of refrigerant, a valuable and increasingly scarce material, and it helps to protect air conditioning and refrigeration equipment by reducing improper servicing techniques and refrigerant contamination. It is also likely to increase technicians' speed and

productivity. Moreover, training in legal requirements and safe handling of refrigerants may reduce costs from fines and on-the-job injury. Finally, less tangible but essential to firms with a high public profile, proper technician education can enhance the image of a firm as a professional and environmentally responsible organization.

EPA has not conducted an independent study of the benefits and costs of technician training; however, the Program Director for the CFC recovery and recycling education program at Ferris State University, a leading national vocational technical university, noted that thorough training can result in significant private savings. Specifically, Ferris State estimated training can:

- Save 30–50% of the time needed for each job over initial jobs by familiarizing technicians with appropriate procedures for use and maintenance of equipment in one structured course;
- Improve productivity by one hour per service job over the long term;
- Improve leak detection work, by choosing the appropriate method (halogen, halide, etc.), eliminating waste and 2 to 3 hours per job;
- Avoid improper piping/soldering techniques (trained technician would be less likely to create hazardous conditions resulting in a loss of refrigerant and the time required to remedy the problem);
- Preserve HVAC/R and recovery/recycling operating capacity by training technicians in the proper procedures for avoiding mixing refrigerants (in a typical residential system containing 3 lbs of refrigerant, mixing would result in one hour of lost labor, refrigerant loss, and the cost of distillation and/or destruction of a trial mixture @ $3.00/lb (current estimated price), leading to costs of at least $70–80 each time refrigerants were erroneously mixed;
- Preserve equipment by training in proper oil application (using inappropriate oils would require that a technician flush out the system, requiring 8 to 10 hours of work and $460 to $560 in costs for a residential system).

Thus, there are significant incentives for private entities to ensure that technicians are properly educated in refrigerant recycling and recovery. A number of organizations have begun to respond to these incentives by establishing and/or participating in private training programs. Many of these organizations are nationally known manufacturers of equipment that employ or license technicians to service equipment under warranty; others are independent training organizations such as vocational schools and industry trade organizations. Organizations that have developed training programs in refrigerant recycling and recovery include the Trane Company, York, Lennox, the Air Conditioning Contractors of America (ACCA, with Ferris University), the Refrigeration Service Engineers Society (RSES), and the United Association of Plumbers and Pipefitters (UA). These groups are part of an extensive industry training infrastructure; ARI estimates that there are approximately 1,200 training programs for HVAC/R technicians in the U.S. A large number of these programs have begun to train their students in proper methods for refrigerant conservation, including recovery and recycling, and ARI itself has incorporated a unit on environmental safety principles into its curriculum guide for HVACR instructors.

EPA is not proposing a mandatory training or certification requirement as its lead option. However, as discussed in section d. below, the Agency is requesting comment on this option. In the absence of a mandatory program, the Agency believes that it may play an important role through a voluntary program that recognizes those who provide and participate in training that meets certain minimum standards. Thus, the Agency plans to establish a voluntary certification program whereby private sector certification programs could request EPA review and approval based on the minimum qualifications described below.

The core elements EPA is considering for its voluntary certification program include the following:

1. *Curriculum or Test Content.* Certification tests should include certain basic elements, such as the environmental impact of CFCs and HCFCs, safety guidelines regarding their handling, legal requirements regarding their use and disposal, and appropriate techniques of recycling and recovery. Because different recycling and recovery techniques are appropriate for different types of air conditioning and refrigeration equipment, EPA is considering a program with four types of certification: one for technicians servicing small appliances with a charge of less than one pound (refigerators, freezers, dehumidifiers, etc.), one for technicians servicing high-pressure equipment with a charge between 1 pound and 50 pounds, one for technicians servicing high-pressure equipment with a charge of more than 50 pounds, and one for technicians servicing low-pressure equipment. EPA requests comment on this approach.

2. *Administration.* a. *Test Development.* EPA requests comment on two options for defining minimum test requirements. Under the first option, EPA would work with industry representatives to develop a bank of test questions. Approved technician certification programs would then assemble tests by choosing subsets of the questions (e.g., 50 from 200 total). Used the second option, each organization interested in becoming an EPA-approved certifier would develop a test (or tests) that covered the required material and would submit the test along with its administrative information to EPA for approval.

b. *Technician Certification Program Approval.* Organizations seeking to participate in EPA's voluntary certification program would arrange for the administration of tests under controlled conditions, collect and objectively grade tests, issue certificates and keep records of certification. In order to qualify for EPA's voluntary program, the organization would have to demonstrate to EPA that it met the criteria outlined below. If EPA approved the organization, its name would be added to a list of EPA-approved certifying organizations that would be published regularly.

Although any organization would be able to apply to become an approved certifier, EPA plans to give priority in its review process to national organizations able to reach large numbers of people. Any group, such as a union shop or vocational school, could perform training. The Agency encourages smaller training organizations to develop their own training programs but to obtain tests from national groups, setting up an infrastructure similar to that used for administering other standardized tests.

i. *Test Preparation, Grading and Evaluation.* Private organizations seeking EPA approval of their technician certification programs would have to be able to demonstrate the ability to generate, track, and grade tests. In order to minimize cheating and ensure objective grading, EPA would require certification organizations to produce multiple versions of examinations and to ensure that tests are graded by an entity or individual who receives no benefit from the outcome of the testing. Some industry representatives have suggested that EPA require certifiers to possess that evaluation software and automated grading equipment; EPA requests comment on whether such requirements are necessary.

ii. *Proctoring.* EPA believes that proctoring would be appropriate for testing of technicians working on all but the smallest equipment (e.g., small appliances with less than one pound of refrigerant). Certifying organizations would be required to designate at least one proctor registered and approved by the program for each testing event. The proctor would have to take measures to verify the identity of technicians taking tests and to ensure that tests are completed honestly by each technician. The proctor could not receive any benefit from the outcome of the testing other than a fee for proctoring.

For technicians servicing small appliances, mail-in tests similar to those permitted under the MVACs program could be administered. EPA requests comment on its proctoring requirements and on its plan to exempt technicians servicing small appliances from those requirements.

iii. *Test Security.* To qualify for EPA's voluntary certification program, an organization would also have to demonstrate the ability to ensure the confidentiality and security of the test.

iv. *Proof of Certification.* Finally, to obtain EPA's approval for the voluntary program, certifying organizations would be required to issue some type of proof that a technician had successfully passed the relevant levels in an EPA-approved test. Such proof would enable technicians to prove and employers or customers to verify certification.

EPA would reserve the right to revoke certification privileges if an organization failed to meet any of the other requirements for approval as a certifier.

c. *Grandfathering.* As mentioned above, some organizations have already begun to train, test, and unofficially "certify" technicians. Under its planned voluntary program, EPA will endeavor to establish guidelines that allow grandfathering of program participants at the request of the testing organization so long as the organization obtains approval of its program and supplies past participants with any supplementary materials needed to bring their training into conformance with final requirements.

3. *Possible Need for Mandatory Certification.* EPA is concerned that in some cases, private incentives may not be sufficient to bring about the socially desirable level of training of technicians. In evaluating whether a requirement for mandatory training is necessary, it is appropriate to compare the anticipated costs of such a requirement with its anticipated benefits, remembering that some training will occur without a requirement. The costs of a training or testing requirement include the lost time as well as the instruction and testing costs of those who would not have pursued training or testing without the requirement. The benefits of a training or testing requirement include the private benefits (cited above) that accrue to those who would not have pursued training or testing without the requirement, and the net public benefits that result from increased or more effective compliance with recycling requirements. These public benefits consist chiefly of avoided damage to human health and the environment (e.g., avoided cataracts and skin cancers), less the costs of recycling and recovery (e.g., recycling equipment and labor). If a training requirement would bring about an increase in compliance whose net benefits outweighed the costs of the requirement, then it should be required.

The value of recovered refrigerant on the market is a clear and immediate private incentive to recover and recycle. However, even this incentive is not likely by itself to be sufficient to achieve the socially desirable levels of recycling and training. First, particularly in the short run, some technicians will not be aware that there are techniques that can cost-effectively increase the efficiency of recycling. Thus, they will neither seek training in these techniques nor recapture enough refrigerant to realize the full potential private profits of refrigerant recovery. Second, although the price of refrigerant is rising, that price still does not reflect the full social cost (i.e., damage to human health and the environment) associated with refrigerant release. Thus, if the private benefits of refrigerant recovery are limited to the value of the refrigerant, those benefits fall short of the social benefits of recovering refrigerant, and technicians will not be willing to spend as much to capture refrigerant as it will cost society to release it. Technicians, therefore, are not likely to capture the socially desirable quantity of refrigerant without some type of additional incentive (e.g., regulation). Where charge sizes are large enough to make recovery cost-effective from a private perspective, recovery will be less than socially optimal, and where charge sizes are too small to make recovery cost effective from a private perspective, recovery will not occur at all.

As discussed above, however, the value of recovered refrigerant is not the only private incentive to recycle or to obtain training. Other private incentives include avoidance of fines for breaking the law, avoidance of damage to equipment, avoidance of injury, avoidance of damage to the environment (to some extent), and avoidance of negative publicity (or desire for positive publicity). The importance of the legal incentive depends upon knowledge of legal requirements, the perceived likelihood of enforcement action in the event of a violation, and the perceived likely severity of that action. EPA's experience with implementing the venting prohibition has shown that legal requirements and enforcement efforts are both frequently misinterpreted to be more lax than they are, a misimpression that certification could correct. Although the Agency is engaged in an extensive outreach effort to clarify the current and possible future requirements of section 608, this may or may not be sufficient to inform the regulated community fully of its responsibilities and potential liabilities under the law.

Avoiding injury or damage to equipment can be powerful private incentives for training. Once again, however, their effectiveness depends upon perceived risk. Because recycling is a new activity in some of the most populous sectors, many technicians and their employers may not be aware of the risks of overfilling recovery cylinders (explosion) or of mixing the refrigerants in them (equipment damage). Thus, they may not seek training intended to help them to avoid these risks. At the same time, the nature of these risks makes training essential; because the consequences of overfilling cylinders and mixing refrigerants seldom appear immediately, a great deal of damage can be done by the time there is any sign of it to discourage repetition of the error.

The relationship between action and consequence is even less direct for the impact of refrigerant release on the environment. To the extent that a technician perceives that environmental change affects himself and his family, environmental concerns can also become private incentives. Unfortunately, the negative effect of CFCs and HCFCs is a relatively difficult environmental concept to convey. Unlike many other pollutants, refrigerants neither smell nor look unpleasant; indeed, stratospheric ozone, its depleters, and ultraviolet radiation are all invisible. The health and environmental impacts of ozone depletion, such as skin cancer and cataracts, manifest themselves only slowly, and the greatest expected impacts lie decades in the future. While EPA and other Federal agencies are involved in a massive effort to convey the risks of refrigerant release and ozone depletion, pamphlets and advertisements alone do not guarantee that this information is being absorbed

and retained by all or even most technicians.

Related to all of the above incentives is the incentive of public image. For instance, to the extent that a company (or technician) underestimates the probability of enforcement or equipment damage in the event of negligent recycling, it underestimates the impact of these consequences on its reputation. However, the importance of public image as an incentive probably varies with the visibility of the firm. Positive or negative publicity is more likely to occur when a company's name is well-known in the first place, and larger companies have more resources to devote to maintaining a reputation. For a two-man company that operates marginally and that relies upon a clientele for whom price is paramount, a positive public image may simply not yield enough immediate benefits to justify the costs of recycling or training.

As the above discussion shows, the effectiveness of these incentives depends upon the extent to which they are perceived as costs or benefits by technicians or their employers. That, in turn, depends upon the information that the technicians and employers already possess and upon the priorities of the firm. Because they have fewer resources to begin with, small firms and in-house technicians are likely to devote fewer resources to monitoring industry trends and requirements than large manufacturing or service firms. Thus, they may be relatively isolated and poorly informed. As a consequence, some smaller firms may not surpass the critical informational threshold that enables them to perceive the benefits of recycling and training without intervention.

The training programs in recycling of which EPA has become aware have generally been developed by large manufacturers and by national educational and trade associations. The participation of technicians from smaller companies in these programs is difficult to estimate. However, many of the industry representatives of the STOPAC Subcommittee for Recycling expressed concern that without a mandatory certification requirement, many technicians working in-house or for small service firms would neither receive appropriate training nor comply with these regulations. The Trane Company estimated that only 35 to 55 percent of these technicians would comply with recycling requirements if certification were not required. Trane also estimated that at present, between 50 and 70 percent of the air conditioning servicing industry is not sufficiently trained. Moreover, although numerous training programs have arisen over the last year to address refrigerant recycling, it could be argued that many of these programs have arisen in anticipation of an EPA requirement for technician certification, especially since the MVACs regulation under section 609 of the Act has such a requirement. If EPA does not pursue a training requirement, participation in these programs may decline.

EPA requests comment on whether mandatory certification of technicians is necessary or desirable. A mandatory certification program could be very similar in form to the voluntary program described above. In addition, EPA could restrict sales of refrigerant to certified technicians in order to encourage full participation in training programs and ensure that only qualified individuals handled refrigerant. (Alternatively, a sales restriction could be tied to some other qualification, such as state or local licensing or an employer ID number.)

I. Certification by Owners of Recycling or Recovery Equipment

EPA is proposing to require owners of recycling or recovery equipment, including contractors and other business entities responsible for air conditioning and refrigeration equipment servicing (such as building owners with in-house service personnel), to submit a signed statement to the nearest EPA Regional office by [90 days after publication of the final rule], that they possess sufficient certified recovery and recycling equipment to perform on-site recycling or recovery. In addition to the name and address of the contractor, the statement would have to include the manufacturer, date of purchase, model number, and serial number of the equipment. EPA anticipates that forms for this certification will be frequently provided by equipment manufacturers.

In addition to the self-certification outlined above, EPA has considered several options for administering equipment owner certification. One option would be direct certification by EPA, which would require the equipment owner to submit substantiating documentation of equipment certification. EPA would then mail a certificate to the equipment owner. While this option might result in somewhat greater assurance of compliance with the regulations, the Agency is not proposing this option because the large number of equipment owners and other business entities that would have to be reviewed and sent certificates make it impractical. (Estimates of the number of contractors in the U.S. range from 22,000 to 45,000.) Another, similar option would be to require the equipment owner to submit such documentation to an approved third-party certifier, but EPA is not aware of any potentially interested organizations. Thus, although EPA recognizes that self-certification is not the most reliable method for insuring equipment owner compliance with these regulations, other methods do not appear practical. EPA believes that its proposed approach, involving a signed statement, will nonetheless provide a useful mechanism for increasing compliance with these rules.

J. Certification of Reclaimers

In order to provide some assurance of the quality of reclaimed refrigerant on the market, EPA proposes to certify reclaimers. Similar to the proposed certification of recycling and recovery equipment owners, reclaimer certification would involve a signed statement from the reclaimer stating that it (1) returns refrigerant to at least the standard of purity set forth in the ARI Standard 700, (2) verifies this purity using the methods set forth in ARI Standard 700, (3) disposes of wastes from the reclamation process proposed in accordance with applicable laws and regulations. In order to limit potential emissions during reclamation, reclaimers could release no more than 1.5 percent of the refrigerant during the reclamation process.

These proposed requirements have emerged from meetings with reclaimers and other interested parties. As discussed in section III, the ARI 700 standard is a purity standard set by the Air Conditioning and Refrigeration Institute to ensure that refrigerant is free of contaminants that can damage air conditioning and refrigeration equipment. The requirement to dispose of wastes properly is important because in some instances, the reclamation process can generate hazardous wastes.

Reclaimers on the STOPAC Subcommittee for recycling estimated that releases during a well-controlled reclamation process range between one and two percent of the quantity of refrigerant received by the reclaimer. One reclaimer measured these losses and found them to be 1.2 percent of original quantity. According to reclaimers on the STOPAC, most releases take place during transfers of refrigerant between shipping containers and reclamation devices. Typically, reclamation itself takes place in a closed loop; refrigerant is not exposed to the atmosphere. Emissions that occur during this process result from sampling of refrigerant for purposes of analysis and from purging of noncondensables

(air and other gases with a boiling point lower than that of refrigerant). Both types of releases are likely to be small; typically, samples consist of 50 grams of refrigerant, and purging of noncondensables takes place through a cold trap that recondenses and traps most of the refrigerant mixed with the air. Although emissions from reclamation devices have not been quantified precisely, two reclaimers on the STOPAC subcommittee stated that they fall well under one percent of the quantity of refrigerant that enters the reclamation process. Based on this information EPA is proposing to limit emissions from reclaiming facilities to 1.5 percent of the refrigerant received by them. The Agency estimates that approximately one percent of the refrigerant would be released during transfers of refrigerant to and from reclamation devices, and approximately one-half of one percent would be released during the reclamation process itself. EPA requests comment on its proposal to limit emissions from reclaimers to 1.5 percent of the refrigerant received by them and on its supporting analysis.

In addition to the signed statement, the reclaimer would have to submit its name and address and a list of the equipment it employed to analyze the refrigerant. Reclaimers would also be required to maintain records of the names and addresses of persons sending them material for reclamation and the quantity of the material (the combined mass of refrigerant and contaminants) sent to them. On an annual basis, reclaimers would be required to keep records of the mass of material sent to them, the mass of refrigerant reclaimed, and the mass of waste products. These records are required to ensure that refrigerant releases are minimized during the reclamation process. Based on discussions with reclaimers, EPA believes that most reclaimers already keep such records. The Agency requests comment on this conclusion. If some of the proposed records are not typically kept already, EPA requests comment on the burden that the proposed additional recordkeeping would entail. EPA also requests comment on its proposed requirements for reclaimer certification in general.

EPA is considering another option for administering reclaimer certification: site inspections and/or sampling of refrigerant by EPA-approved parties. Such a third-party certification would be more reliable than the self-certification proposed above. At this time, no potential third-party certifier has established a reclaimer certification program; however, ARI has begun to develop one. EPA applauds and encourages these efforts, and in the future, could replace its reclaimer self-certification program with a requirement that reclaimers be certified by an approved third-party certifier, such as ARI. EPA requests comment on this alternative.

K. Recordkeeping Requirements

EPA has proposed the following recordkeeping requirements:

1. Equipment Certification Programs. EPA is proposing to require equipment certification programs to maintain records of equipment testing and performance in addition to a list of equipment that meets EPA requirements.

2. Wholesalers. Wholesalers would be required to maintain the usual business records of their refrigerant transactions, including the name of the buyer and the quantity sold.

3. Reclaimers. As discussed in section III.I, reclaimers would be required to maintain records of the names and addresses of persons sending them material for reclamation and the quantity of the material (the combined mass of refrigerant and contaminants) sent to them.

On an annual basis, reclaimers would be required to keep records of the mass of material sent to them, the mass of refrigerant reclaimed, and the mass of waste products. These records are required to ensure that refrigerant releases are minimized during the reclamation process. Based on discussions with reclaimers, EPA believes that most reclaimers already keep such records. Information on the material sent to the reclaimer, the mass of refrigerant reclaimed, and the mass of waste products would have to be reported annually.

4. Equipment Owners. Aside from equipment owner certification, EPA is not proposing any recordkeeping or reporting requirements for technicians or contractors in its lead option. However, the Agency requests comment on the need for and burden of three possible additional recordkeeping requirements.

The first would require persons servicing or disposing of air conditioning and refrigeration equipment to keep invoices of service calls, including information on the quantity of refrigerant sold, the type of equipment serviced, the procedure performed, the date, and the name, address, and telephone number of the equipment owner and the name of the technician who performed the service. This information could be useful in monitoring compliance with and enforcing the rule. However, because EPA believes that invoices already contain most of this information and are already kept for tax purposes, the Agency does not consider a special recordkeeping requirement necessary. Moreover, it is not clear that such a requirement would enable EPA inspectors to identify (1) service technicians who make no effort to recover or recycle or (2) service technicians who fail to fully recover or recycle refrigerant in accordance with these regulations. The one piece of information that may not always be included on invoices already is identification of the procedure performed. Identification of the procedure performed may be important because it may enable EPA inspectors to determine whether a procedure necessitated entrance into the air conditioning or refrigeration system. EPA requests comment on the usefulness of this information and the other information discussed above to EPA's compliance monitoring and enforcement efforts. EPA also requests comment on the extent to which invoices currently contain all of the above information and on the burden that a special recordkeeping requirement would entail.

The second recordkeeping provision would require service establishments to keep records of the quantity of refrigerant that is sent off-site for reclamation. If the service establishment acquires recover only equipment, the refrigerant must be reclaimed off-site. Records of the quantity sent off-site and the name and address of the reclamation facility would help EPA to verify that the refrigerant is reclaimed at an off-site reclamation facility and not vented to the atmosphere. However, EPA believes that service establishments are already likely to keep records of the quantity of refrigerant sent off-site for reclamation because used refrigerant is a valuable material. In addition, EPA is proposing to require reclaimers to keep records of material received. EPA requests comment on the usefulness of a requirement that service establishments keep records of the quantity of refrigerant sent for reclamation and on the incremental burden that such a recordkeeping requirement would involve.

The third provision would require businesses to maintain a record of the amount of refrigerant purchased and consumed each month. Together with the invoices and reclamation records, these records would help EPA to monitor the amount of refrigerant that is being lost the atmosphere (either through leakage during use or venting

during servicing) by the equipment serviced. A large quantity is unlikely to be accounted for by leakage alone. Once again, however, EPA believes that businesses already keep such records, and wholesalers would be required to keep records of the names and addresses of persons purchasing refrigerant and the quantity of refrigerant sold.

In sum, EPA is not proposing that these records be kept because EPA has not determined that the utility of the information would outweigh the burden of keeping it. In general, EPA requests comment on the usefulness of the above records to enforcement and compliance monitoring efforts, on the extent to which these records are already kept, and on the burden that these records would impose if they are not already kept. All business entities servicing, repairing or disposing of appliances must allow an authorized EPA representative entry onto the premises to inspect for compliance with these regulations.

L. Safe Disposal Program

1. Background

In the ANPRM published May 1, 1991 (55 FR 18256), the Agency requested comment on the feasibility of requiring recovery of ozone depleting substances from equipment at disposal. The Agency distinguished between the type of equipment that enters the waste stream with its refrigerant charge intact (refrigerators, home air conditioners, or automobiles) and equipment that typically is partially dismantled on-site by service technicians (large chillers, industrial process equipment). The Agency was concerned that disposal technicians (landfill operators, waste haulers) may be more difficult to monitor and less familiar with the needs and requirements of a recycling program than service technicians. The Agency also stated that recovery of refrigerant from obsolete equipment may provide a significant source of used refrigerant that could be re-used to service existing capital equipment.

Several comments on the ANPRM supported the idea of recovering these compounds. One commenter suggested appliance manufacturers incorporate recovery procedures that could be used when their technicians install new equipment and replace old equipment. A technician licensing or certification system coupled with a certification procedure to scrap processors was suggested by two commenters. Several commenters supported requiring the removal of CFCs from junked automobiles, although the state of New Jersey suggested that the financial feasibility of requirements on disposers be considered when designing the program.

On July 14, 1992 (57 FR 31242), the Agency published a final rule establishing requirements under section 609 of the Act for the servicing of motor vehicle air conditioners. In that notice, the Agency stated that the definition of service of motor vehicles did not extend to the removal of refrigerant from junked automobiles and that the Agency would develop requirements for removal of refrigerant under section 608 requirements. As noted in section III.a., the quantity of refrigerant in motor vehicle air conditioners junked each year is estimated to be 9000 metric tons, which makes up approximately 25 percent of the total quantity of refrigerant that is currently or could be recycled in all the sectors affected by this rule.

2. Scope

The proposed regulations in this section will focus upon the safe disposal of class I and class II refrigerants from equipment that enters the waste stream with the charge intact, i.e., equipment containing class I and class II refrigerant "in bulk." The Agency understands that the equipment that enters the waste stream with the charge of class I or class II refrigerant intact includes household refrigerators and freezers, MVACs, room air conditioners, dehumidifiers, water coolers, and some other relatively portable equipment. For all other refrigeration and air conditioning equipment, the refrigerant must be removed before dismantling of the equipment in accordance with the requirements concerning servicing discussed earlier.

Section 608(b)(3) states that the Agency is to develop requirements "that any product in which a class I or class II substance is incorporated so as to constitute an inherent element of such product shall be disposed of in a manner that reduces, to the maximum extent practicable, the release of such substances to the environment. If the Administrator determines that the application of this paragraph to any product would result in producing only insignificant environmental benefits, the Administrator shall include in such regulations an exception for such product." The Agency is aware that ozone depleting substances are present as an inherent element in the insulation foam used in buildings and appliances. At this time, however, EPA is not proposing requirements for either foam insulation used in buildings or insulation used in appliances.

With respect to foam that is an inherent element in buildings, EPA believes that such regulations are not required by section 608 of the Act at this time. In as much as the section 608(b) regulations are simply part of the section 608(a) regulations, they are subject to the deadlines contained in section 608(a). As section 608(a) requires only that regulations concerning appliances and industrial process refrigeration be promulgated at this time, it does not require regulations concerning the disposal of foam insulation that is an inherent element of buildings (which are neither appliances nor industrial process refrigeration). Furthermore, removing building insulation during the process of demolition is difficult and exceptionally resource intensive. The long average lifetime of buildings and the slow release of the CFCs throughout the lifetime of the insulation results in possible retrieval of only residual amounts of CFC. The Agency is not aware of any existing or developmental technology to remove CFCs from building insulation even if the insulation could effectively be removed. Consequently, even if building insulation were within the scope of the regulations at this time, EPA would not propose regulations requiring its removal because its removal is not currently practicable.

With respect to foam insulation in appliances, which are items covered by the subsection in section 608(a) requiring the regulations proposed today, the Agency is aware that the amount of ozone depleting substances that could be recovered from insulation in appliances may be generally equivalent to the amount of refrigerant in the equipment. For example, the Agency estimates that in 1990, over 10 million appliances entered the waste stream and approximately 1.21 to 2.93 MKg of CFC–11 in insulation could be recoverable, as compared to .4 to 2.0 Mkg of available CFC–12 refrigerant (these figures represent 0.6 to 1.9 percent of the total weighted CFR emissions in the U.S. in 1990). There are, however, significant technical and practical problems in attempting to retrieve CFC–11 from foam. The Agency is aware of the development and limited use of CFR–11 foam retrieval technology for appliances in Germany. However, this technology is prohibitively expensive ($1.5 million per retrieval machine) for widespread use in this country. As a consequence, the Agency does not believe the retrieval of CFCs from foam insulation in appliances is practicable at this time and, therefore,

the Agency is not proposing any regulations today. The Agency, however, will continue to monitor the development of technology in this area. The Agency requests comment on the need and feasibility of retrieving CFCs from insulation.

3. Regulatory Approach

Traditionally, state and municipal authorities have designed and implemented waste management programs, including disposal and recycling systems for used appliances and motor vehicles. The EPA would like to develop regulations to insure that the maximum amount of ozone depleting compounds are recovered before recycling or disposal of the used equipment by building on the waste disposal networks that currently exist. The Agency feels that regulatory flexibility in this area is essential for the success of the Safe Disposal Program. Thus, EPA is proposing a general requirement that refrigerant be recovered before disposal of equipment, but is not placing a requirement solely on one specific entity in the disposal chain. While the proposed regulations require refrigerant to be recovered prior to disposal, they contemplate that the entities that would be required at disposal may differ in different situations. Ultimately, however, it would be the responsibility of the final link in the chain to assure that the refrigerant has been removed.

The proposed regulations would also establish minimum program criteria to ensure that ozone depleting substances are not released during the disposal process. State and local governments may establish more stringent requirements than the federal program, if they wish.

4. Entities Covered

The nature of the waste disposal industry is such that a product is often handled by several different entities before reaching the final stage of disposal. Once a consumer has decided to dispose of an appliance or motor vehicle, the product enters the waste stream through a variety of collection systems. Often, municipal governments contract with waste haulers or companies to have appliances collected from residences. For appliances, the collectors bring the items to a storage facility such as a municipal landfill or waste transfer station. The declining space available at municipal landfills has caused most landfills to separate large white goods such as appliances from the landfill disposal stream. Many landfills may remove the capacitors from refrigerators or have them removed by a contractor or intermediate processor because of the concern for PCB contamination. The Agency believes that the entities which remove the capacitors could remove the refrigerant efficiently. Intermediate processors include appliance recycling firms and some municipal transfer stations.

For motor vehicles, the collectors often bring the machines to an intermediate processor where the valuable parts are salvaged. The Agency anticipates that these intermediate processors will remove the majority of ozone depleting substances from motor vehicles.

After all the useful parts are removed from an appliance or a motor vehicle by an intermediate processor, the remaining material is sold to a scrap recycling facility. Typically, a scrap recycler shreds and compacts the items. If the items still contain ozone depleting chemicals, then the shredding process will result in the venting of these compounds to the atmosphere.

Because of the variability in the disposal routes of these goods, the Agency considered the option of requiring recovery to occur without identifying the specific entities that would be held accountable for refrigerant recovery. From both a compliance and an enforcement perspective, however, not identifying any responsible party would create confusion and would not foster the recovery of ozone depleting substances.

Alternately, the Agency also considered the option of determining the specific entities that would be held responsible for recovery of refrigerant from specific types of equipment. For example, EPA could require that specific types of intermediate processors be held responsible for recovering refrigerant from refrigerators. While determining the specific entities would enhance the clarity of the Safe Disposal Program, the existing diversity of state and municipal waste disposal programs would mean that placing responsibility on certain links in the chain would disrupt existing practices in many instances. Also, specific requirements may result in inefficiency if a certain entity is required to remove refrigerant due to Federal requirements, while local circumstances result in more efficient refrigerant removal being possible by another entity in the waste disposal chain.

The Agency proposes today a program that accommodates the flexibility that is required due to the diversity of the disposal sector but nevertheless identifies the final link in the chain as the entity ultimately responsible for assuring that refrigerant has been removed. In this system the final processor of the motor vehicle or appliance (e.g., the scrap recycler) would be ultimately responsible for the removal of refrigerant. If these ultimate processors choose not to remove refrigerant or are unable to remove refrigerant because of the condition of the goods when they receive it (i.e., flattened automobiles), the processor would require that all appliances, machines and goods it accepts have already had refrigerant removed. Suppliers of the goods to the final processors would then remove the refrigerant or undertake the responsibility to assure that refrigerant is removed by an entity that precedes it in the disposal chain. Examples of suppliers that may be interested in removing the refrigerant include municipalities delivering appliances for recycling, automotive dismantlers salvaging valuable parts from automobiles, or large appliance dealers that remove used appliances when installing new appliances. The goal of this system is to provide the flexibility needed to permit the removal of refrigerant by the entity in the disposal chain that can accomplish the removal most efficiently.

The Agency wishes to stress that refrigerant is a valuable commodity and retrieving it from used goods and machines, if done efficiently, may be an economically profitable opportunity. As the venting of refrigerant during the disposal process and the sale of used refrigerant that is not reclaimed are prohibited, whomever recovers the refrigerant will need to sell the recovered refrigerant. Refrigerant should be sold to reclamation facilities to be purified to the ARI–700 purity level required before resale for use in refrigeration equipment. As the price for used refrigerant will only increase overtime due to the decreasing suppliers of new CFCs, the Agency believes that entities involved in disposal activities will have ample incentive to undertake CFC recovery activities.

5. Registration of Entities.

In order to assure compliance with the requirement that refrigerant recovery occurs before the ultimate disposal of appliances and motor vehicles, the Agency considered several options for the registration or establishments that perform the refrigerant removal activity. The first option considered would require no registration or certification of establishments performing the activity to the EPA. This option would provide no information about whether or not the activities are occurring, and no

identification of the entities undertaking the activities so that the Agency would more readily track compliance.

A one-time equipment registration system similar to the contractor certification system proposed for the servicing requirements was considered as a second option. This registration would generate the information on the entities performing recovery and the type of equipment they initially use.

Finally, the Agency considered an annual registration requirement similar to the business registration or licensing requirements that currently exist in many states. The annual requirement would include only equipment information and an estimate of the amount of refrigerant recovered in the previous year by establishments that perform refrigerant removal. If a state already required this information as part of annual licensing requirements that it had established for the types of entities that undertake disposal activities, such as scrap metal recyclers, landfill operators, or waste haulers, or as part of its own safe disposal program, EPA would not require separate reporting from entities in that state, but it would instead collect the information from the state programs. The third option would provide information to the Agency on the entities recovering CFCs and the amounts recovered. Such annual reporting for the disposal sector might be unduly burdensome, especially when compared to the one-time registration proposed for the servicing sector.

The Agency believes that the second option, requiring one time reporting to the Agency, is adequate for compliance purposes and does not place an undue burden on the disposal sector. When combined with the annual reporting by reclamation facilities on the amounts of refrigerant they purchase from service establishments and salvagers (section III.K.), the Agency will have adequate information on the volumes of refrigerant being recovered.

6. Certification to Final Processors

If the establishment responsible for the ultimate disposal of the equipment chooses not to remove refrigerant or is unable to remove it (for example, many scrap recyclers only receive crushed cars), the Agency proposes the option of a certification procedure between the final processor and the suppliers of the goods or machines stating that the ozone depleting chemical have been properly removed. The certification may be combined with a symbol or mark made on each piece of equipment that has had the refrigerant removed by the supplier. The Agency believes that this certification allows the final processors to continue to accept goods and machines for scrap recycling while assuring that their suppliers have removed refrigerant. The Agency is aware that this type of certification already exists in other contexts where scrap recyclers refuse to accept an appliance unless they also receive a certification that the appliance does not contain a capacitor. The certification would not be sent to the Agency.

The elements of the certification could vary based on the individual establishments involved. However, the Agency proposes that the final processors require suppliers to give the name and address of the person who recovered the refrigerant and the date refrigerant was recovered. The Agency suggests that final processors require marks indicating that each good or machine had been processed. The final processors should periodically inspect goods or machines to assure the supplier's certification has been made in good faith.

As in the case of the final processor that chooses not to remove refrigerant, the supplier to the final processor does not have to remove the refrigerant but the company must then assure, through an accompanying certification, that refrigerant has been removed earlier in the disposal chain.

7. Technician Training

The level of expertise required for recycling and recovery in the disposal sector may not be as high as that required in the servicing sector. The salvaging sector differs from servicing in that the technicians do not reintroduce refrigerant to equipment. While the concepts of recycling refrigerant and the purity standards that are appropriate for equipment are of vital importance to maintaining equipment, they are not necessary for the disposal of equipment. The disposal sector also differs from the servicing sector in that no trade associations or groups exist which represent the wide variety of technicians that may perform the refrigerant removal activity. The technicians involved in the removal of refrigerant may only perform this activity occasionally. Thus, training resources may not be as available to the disposal sector as they are to the servicing sector.

The Agency believes that the most appropriate training method for technicians in this case may be guidance documents developed by the Agency with the assistance of industry groups familiar with the methods of removing refrigerant from appliances and motor vehicles. This guidance would contain information on the environmental consequences of releasing refrigerant, refrigerant salvage techniques, the importance of not mixing different refrigerants, and the importance of selling the recovered substance to reclamation facilities for purification before reuse. Successful refrigerant removal programs that already exist could be profiled as examples of how municipal governments and others could implement programs. The Agency would distribute the documents, as would scrap metal recyclers and other processors who do not remove refrigerant themselves. Municipal governments would be both a target for the guidance document and a distributor of the document in their areas. EPA has had initial discussions with trade groups such as the Automobile Dismantlers Recycling Association (ADRA) and the Association of Home Appliance Manufacturers (AHAM) concerning the development of guidance documents. The Agency believes that a guidance document provided through the scrap metal recyclers will raise the awareness of the financial and environmental benefits of recovering ozone depleting substances and the guidance document can accommodate the variety of affected entities.

8. Performance Standards for Recovery Equipment

When developing options for the equipment that must be used in recovering refrigerant at disposal, the Agency considered extending the recovery equipment certification program for the servicing sector (see section III.G.1). The Agency is aware that the equipment that is currently available has been developed for the servicing sector and as a result, may not be appropriate for salvage. This is because, unlike the servicing sector, operations in the disposal sector frequently involve the evacuation of several pieces of equipment simultaneously. Moreover, entities involved in disposal are more likely than those involved in servicing to build equipment suitable for their specific circumstances. The Agency has knowledge of one firm, The Appliance Recycling Centers of America (ARCA), that has built equipment capable of retrieving refrigerant from ten appliances at one time and this allows the company to perform its salvage operations quickly and efficiently.

In order to provide assurance that recovery equipment used in disposal activities achieves a satisfactory level of performance without imposing a certification requirement unsuitable for

this sector, the Agency proposes to require that the equipment used to recover refrigerant from appliances and motor vehicles meet the same performance standards as those required for servicing equipment, except that passive systems would not be necessarily permitted for use with appliances at disposal. EPA is not, however, proposing to require certification of that equipment. This proposal allows individuals to develop their own equipment while setting requirements for the efficiency the Agency expects the equipment to meet. Any equipment intended for sale for use in salvaging operations must meet the efficiency standards and the Agency recommends independent laboratory tests to assure that the equipment complies with industry safety standards. These tests would be the same as those for equipment intended for service.

While the efficiency standard for appliances does allow for servicing use of passive equipment, (defined as equipment that does not use a compressor and is not itself capable of creating a vacuum), the standards proposed for recovery equipment under the safe disposal program do not include passive systems. The Agency does not believe that passive equipment has a large role for salvage because of the increased time needed to recover the substance. In addition, EPA is concerned that passive recovery would generally be less efficient at disposal than at servicing for two reasons. First, EPA believes that the compressors of refrigerators (and other small appliances) that are disposed of are generally less likely to be functioning than the compressors of refrigerators that are serviced (if only because it may be difficult to connect each disposed refrigerator to a power source), and passive recovery without a functioning refrigerator compressor is significantly less efficient than passive recovery with a functioning compressor. Second, recovery at disposal is far more likely than recovery at servicing to take place in low ambient temperatures, which could particularly affect passive systems relying solely on system pressure for their effectiveness (discussed below). However, EPA is also concerned that a requirement to use only active equipment for refrigerator disposal may make compliance more difficult and therefore less likely in some instances. The Agency requests comment on these concerns and on its proposal not to allow use of passive systems at disposal of small appliances.

An individual who tests refrigerant recovery methodologies under different conditions in Massachusetts reported to EPA that refrigerant recovery from systems using R–12 drops off sharply when the ambient temperature falls below 60 degrees F. At 32 degrees, typical recovery machines can recover only ten percent of the refrigerant, and at 0 degrees F, recovery efficiency drops essentially to 0. Thus, unless systems are heated, outdoor recovery during the winter months in most of the U.S. will recover only a tiny percentage of the refrigerant in the system. Methods that could raise recovery efficiency include applying heat to the system while it is outdoors or moving the system (e.g., the refrigerator) into a building whose ambient temperature is 60 degrees or more and allowing the system to come to temperature over some period of time (e.g., 24 hours). EPS requests comment on the practicality of these and other possible methods and on whether the Agency should prescribe one or more of these methods to guarantee 90 percent refrigerant recovery from disposing appliances during winter months.

M. Servicing Apertures

Section 608(b)(2) of the Act directs EPA to promulgate regulations requiring that any "appliance, machine, or other good containing a class I or class II substance in bulk shall not be manufactured, sold, or distributed in interstate commerce or offered for sale or distribution in interstate commerce unless it is equipped with a servicing aperture or an equally effective design feature" to facilitate removal of refrigerant at servicing and disposal. In today's notice, EPA is proposing to require that all air conditioning and refrigeration equipment containing more than one pound of refrigerant and manufactured after [6 months after publication of the final rule] be provided with a servicing aperture. All equipment containing less than one pound of refrigerant (e.g., household refrigerators and water coolers) and manufactured after [6 months after publication of the final rule] would have to be provided with the "equally effective design feature" of a process stub or "pigtail" from which refrigerant can be removed using a puncture valve.

Information from industry representatives on the STOPAC Subcommittee indicates that most if not all air conditioning and refrigeration equipment with more than one pound of charge is already provided with a servicing aperture. Similarly, refrigerators and other appliances containing less than one pound of refrigerant are already generally provided with stubs for refrigerant recovery. EPA expects that manufacturers will incorporate the required features of any other equipment by [6 months after publication of the final rule].

EPA considered requiring that refrigerators and other small appliances be equipped with a servicing aperture; however, an analysis submitted by appliance manufacturers indicated that the aperture and additional solder joints that would have to be installed along with it would significantly increase the likelihood of refrigerant leakage, canceling out any benefits gained by making the system slightly more accessible at servicing. (At present, both leaks and repairs requiring entrance into the sealed system are quite rare.) Moreover, in recognition of the unique situation posed by small appliances, ASHRAE recommends against installing servicing valves on refrigerators in its Guideline 3. The importance of minimizing potential leak points in small appliances is also supported by the current practice for removing refrigerant from them. This involves puncturing a specially designed protruding stub with a valve that attaches temporarily, facilitating refrigerant recovery and recharging. Instead of leaving the valve for potential future use after repairs are complete, the servicer removes the valve and reseals the system using a brazing torch. The servicing aperture analysis and supporting comments are available in the public docket (AHAM, July 2, 1991). EPA requests comment on this analysis and on its proposal to consider servicing stubs an "equally effective design feature."

Some industry representatives have noted that the present design and location of servicing apertures frequently makes recovery of refrigerant unnecessarily complicated. For instance, although the fastest method of recovering refrigerant is to remove as much as possible in the liquid state, the common location of servicing apertures at the compressor either prevents this or necessitates entry into the system at another point (e.g., the condenser outlet). An inconvenient design feature of many servicing apertures is the presence of a schrader valve, which must be removed before recovery begins or it will considerably slow the process.

EPA is considering requiring that servicing apertures be designed and located to maximize the ease of recovery. This might involve requiring the installation of servicing apertures at both the evaporator and the condenser outlet (or the lowest point on the system) and/or prohibiting the installation of schrader valves. EPA requests comment on these options.

N. Possible Exemption From Regulatory Requirements for Refrigerant Uses for Which No High-Efficiency Recovery Technology Exists

Over the past several months, EPA has been contacted by individuals servicing specialized air conditioning and refrigeration equipment who state that no high-efficiency recovery technology exists for the equipment that they service. For instance, one technician states that he repairs very high pressure refrigeration equipment used in quarantined laboratories and on hospital ships. According to this technician, the only active recovery device developed for use with very high pressure refrigerants requires the use of an air compressor that is too large to be moved into these areas. At the same time, it is impossible to remove equipment from these areas to be repaired in the technician's shop.

In order to avoid violating the prohibition on venting, the technician could use a passive technology (evacuated cylinders) to recover the refrigerant. EPA calculated that three evacuated, chilled, 45-pound cylinders are sufficient to capture approximately 87 percent of a 15 pound charge of R–503. However, the quantity of refrigerant that can be captured by each cylinder drops sharply after the third cylinder; a fourth cylinder captures approximately an additional nine percent of the refrigerant, a fifth, three percent, and a sixth, one percent. Achieving 99 percent efficiency, therefore, would add considerably to the time and difficulty of the job and may not be worthwhile. Moreover, as currently proposed, the certification program for recycling and recovery equipment used on systems with more than one pound of refrigerant precludes the use of passive equipment. Thus, although the technician could comply with the prohibition on venting, he would not be able to comply with the rule as proposed.

For refrigerant uses for which no high-efficiency recovery technology exists or is applicable, EPA believes that it may be appropriate to grant very limited exemptions to its regulatory requirements. In general, EPA believes that at least a passive recovery technology will be available for these refrigerant uses. However, the Agency could also consider granting exemptions to the prohibition on venting if no recovery technology at all was applicable to a certain refrigerant use.

The Agency could establish a procedure that would require individuals seeking exemptions to demonstrate that no high-efficiency technology (or no technology at all) was available to recover refrigerant from the equipment that they owned or serviced and that no existing high-efficiency technology could be adapted to this purpose. The burden of proof would lie on the person seeking the exemption. The Agency would also require information regarding the total quantity of refrigerant that would be released annually if an exemption were granted, including information on typical equipment charge sizes and total stock. Upon receipt of all required information, EPA would make its decision, considering the availability of technology and the quantity of refrigerant to be released. Exemptions might also be granted only for a limited period of time, subject to the continuing unavailability of a recovery technology.

EPA requests comment on the need for such an exemption procedure, on the general structure of the procedure described here, and on the Agency's legal authority to establish such a procedure. In particular, EPA requests comment on whether exemptions from the prohibition on venting would fall within the *de minimis* exemption provided in section 608(c) for de minimis releases associated with good faith attempts to recapture and recycle refrigerants or whether EPA could grant such exemptions pursuant to its general authority to exempt *de minimis* situations from statutory commands. See *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979).

IV. Possible Future Rulemakings To Implement Section 608

EPA has focused in this proposal on requirements concerning refrigerant recycling and recovery during servicing and disposal because of the significant near-term potential for emission reductions from improved servicing and disposal practices. However, as discussed earlier, the scope of section 608 extends beyond the servicing and disposal of equipment to encompass all life cycle stages, including manufacture and use.

In developing additional regulations aimed at achieving the "lowest achievable level" of emissions, the Agency will consider actions that facilitate an orderly transition out of first, class I compounds and then, class II compounds, consistent with achieving the goal of reducing emissions to the lowest achievable level. The Agency will examine the necessity of these regulations and, if necessary, will develop these regulations taking into account its on-going regulatory program (accelerated phaseout, nonessential product bans, recycling and recovery, and warning labels, and the safe alternatives program), the impact of the current excise tax on the use of these chemicals, and the incremental costs and benefits of regulations. (The President called for accelerating the phaseout of ozone-depleting compounds to the year 1996, and the Agency has developed a proposal that will end the production of these chemicals by the end of 1995. This proposal will appear in the **Federal Register** shortly.)

EPA is considering in the near-term using section 608 to address a number of potential problems that could slow transition away from class I substances used in refrigeration and air conditioning applications. Potential actions related to other class I applications and all class II substances are not required until November 1994 and therefore will be discussed in a notice EPA will publish at a later date. These additional regulations will be reviewed in light of the accelerated phaseout. A number of these issues have been raised during discussions held at past meetings of EPA's Stratospheric Ozone Protection Advisory Committee.

Additional near-term regulations under section 608 might be useful in the following contexts: (a) To expedite the transition from equipment that now uses class I substance as its refrigerant to new equipment that does not rely on class I substances; (b) to reduce emissions from existing refrigeration equipment that uses a class I substance; (c) to encourage timely retrofitting of existing equipment; and (d) to establish engineering controls to ensure that multiple refrigerants introduced into the marketplace to service existing equipment are not mixed. The following sections describe the rationale behind these possible actions and the sectors that might be affected.

a. New Equipment Phase-out Dates

In some applications, equipment that uses CFC alternatives may now or will soon be available but may be more expensive or require the use of higher priced alternatives. EPA expects that firms will continue to buy the equipment that uses the class I substance instead of the alternative as long as the alternative is more expensive.

To give a more concrete example of the above situation, EPA is aware that some equipment being sold today has been designed to use both CFCs and an HCFC or HFC alternative. However, because the price of CFCs (including the excise tax) is still considerably below the price of the alternatives, firms are continuing to use the CFCs to operate this equipment.

Section 608(a)(3) gives EPA the authority to "minimize use of class I or class II substances" and to require "use [of] alternative substances." EPA is considering proposing a rule under section 608 stating that the use of certain alternatives that have become available in the marketplace constitutes the "lowest achievable level" of emissions. Such a rule could prohibit the continued sale of equipment that requires a class I refrigerant and/or prohibit the use of a class I refrigerant in equipment that is compatible with an alternative. EPA is especially interested in whether a requirement to use alternatives should be used in the case of commercial and industrial air conditioning and chiller equipment. The Agency will consider both the costs and benefits of replacing class I refrigerants in specific uses before undertaking regulation. As noted above, EPA will also consider the effects of its ongoing regulatory program (including the latest phaseout schedule) and the latest excise tax in deciding whether further regulation is necessary.

b. Near-Term Emission Reduction Controls

EPA is also concerned about specific refrigeration and air conditioning applications where emissions of class I substances represent a significant source of total emissions for that sector. Commercial chillers and commercial refrigeration are two such sectors where technologies exist and service practices can be modified that would substantially reduce total emissions, thereby satisfying the requirements of section 608 to reduce emissions in these sectors to their "lowest achievable level." To some extent, the rising price of class I substances (driven both by the diminishing supply and by the increasing excise tax) will encourage equipment owners to undertake conservation measures without further regulations. However, actions to reduce emissions in these areas under section 608 could achieve important additional near-term reductions in emissions and also substantially reduce emissions over the longer-term. This would have economic as well as environmental benefits, postponing the retirement of existing equipment by conserving the limited supply of refrigerant.

In the case of commercial centrifugal chillers, the average refrigerant charge has been estimated to be 1250 pounds of CFC-11. Approximately 80,000 units are currently in use in the United States. Average emissions from a chiller have been estimated to be 24 percent of the charge per year, or roughly 312 pounds per year. Of this amount, EPA estimates that 15 percent or close to 50 pounds per year are emitted when non-condensable gases are purged from the system. (In all existing systems, CFC-11 is purged from the system along with the non-condensable gas.) With the addition of equipment that captures the CFCs from the outflow during the purge or reduces the amount of CFCs released as part of the purge, CFC losses from this source can be reduced by 95–99 percent. This equipment is now commercially available and in use.

Another source of emissions from chillers occurs during system start-up. During the system down-time, usually in winter months, air infiltrates the system. Upon start-up, it is necessary to vent the air. If this purge is performed improperly, large quantities of refrigerant can be released that can amount to as much as 25 percent of total annual emissions from this source. Equipment is now available that keeps the chillers pressurized during the time they are inactive and therefore eliminates the infiltration of air and the need to purge the system. Used in combination, both a more efficient purge and elimination of infiltration of non-condensable gases during down-time could achieve significant reductions in total emissions and demand for servicing chillers.

Commercial refrigeration (e.g., refrigeration units in supermarkets) is a second use application where emissions from existing capital equipment is significant. Supermarket systems are extremely susceptible to leaks, with losses of 30% of their charge annually not uncommon. One reason that leaks occur at this high rate is because refrigerant is typically piped around the store from the equipment room to the display cases. This requires long refrigerant lines with many valves and joints throughout the store. To reduce emissions during system use, the Agency will need to evaluate the costs and potential benefits of requiring leak detection equipment and other engineering means to reduce the leaks from fitting and pipe connections. In addition, improvements in servicing procedures can also have a large impact in reducing emissions in this sector and therefore future demand to service existing capital equipment.

EPA is seeking comments on the potential costs and benefits of requiring some or all of the above actions to reduce emissions from this sector.

c. Refrigeration and Air Conditioning Equipment Retrofit

The possible need to retrofit existing equipment to utilize an alternative refrigerant is another area where actions under section 608 may be required in order to ensure an orderly phase-out of class I substances consistent with achieving the lowest achievable level of emissions. Operators of existing capital equipment that requires a class I substance for servicing (e.g., chillers, commercial refrigeration, car air conditioners, etc.) will face a number of choices for servicing their equipment following the date of a production phase-out. They can either rely on class I substances that are made available from recycling or recovery at disposal, take steps to reduce emissions and therefore servicing needs of their existing equipment, retrofit their existing equipment to use an alternative, or replace their equipment with new equipment that utilizes an alternative. The choice (or combinations) among these options will depend on a number of factors, including the expected useful life of the capital equipment, the costs and benefits of steps to reduce emissions, the costs of retrofit options, and the price and continued availability of the class I substance.

If the existing equipment has a long expected useful life and can be made compatible with an alternative refrigerant through relatively minor modifications, then retrofitting the equipment may be the most economical method of adjusting to the phaseout. However, like equipment purchasing decisions, decisions on when to retrofit will be heavily influenced by the relative prices of the class I refrigerant and its alternative. As long as the alternative is more expensive than the CFC, there will be a disincentive to retrofit. Since the availability of a retrofit could qualify as a "lowest achievable level" of emissions under section 608, EPA will consider whether to utilize this section to accelerate retrofit of some types of equipment, reducing CFC emissions.

This requirement may have applicability in the following areas: the retrofit of CFC-11 centrifugal chillers to utilize HCFC-123 where exposure limits can be satisfied; the retrofit of CFC-12 auto air conditioners to use HFC-134a or an HCFC/HFC blend (e.g., HCFC-22, HFC-152a and HCFC-124); and the conversion of CFC-12 commercial refrigeration to use HCFC-22. EPA is seeking comment on the need for such a rule and whether it should apply to any or all of these applications or others not described in this notice.

d. Requirements for Use of a Service Refrigerant

Another issue that has been raised concerns potential problems with the use of alternative refrigerants either to

service equipment as a near "drop-in" (an alternative refrigerant that could be used in HVAC/R equipment with only minor modifications) or to service equipment that has undergone a retrofit. As class I substances are phased out, the requirements to service existing equipment with a non-class I alternative has led many companies to begin examining a wide range of "service refrigerants." EPA wants to encourage the development of alternatives that can be used to service existing equipment and intends to work closely with the affected industries to take steps to minimize any potential adverse effects of such alternatives.

In particular, concerns have been raised that in some cases an alternative for the service market may directly result in increased emissions of class I substances by interfering or disrupting recycling or recovery efforts. Furthermore, if appropriate safeguards are not taken, the mixing of different refrigerants could damage or destroy recycling or capital equipment, thereby resulting in release of refrigerant and substantial private economic losses. This would undermine the effectiveness of recycling efforts. As a result, unless proper safeguards are taken, the use of this "service refrigerant" could interfere with achieving the "lowest achievable level" of emissions and EPA could consider taking action under section 608 to ensure that appropriate measures are taken that allow for the effective use of any service refrigerant. EPA could also consider taking action under section 612 (safe alternatives) and under section 609 (motor vehicle recycling) to minimize or avoid any harmful environmental and economic impacts that could occur from the introduction of an alternative to servicing existing equipment that increases the risk of refrigerant release and subsequent environmental damage.

EPA requests comment on the need to regulate servicing refrigerants to minimize emissions, the potential costs and benefits of such a regulation, and the use of section 608 as the basis for such a regulation.

V. Summary of Supporting Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires the preparation of a regulatory impact analysis (RIA) for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The annualized costs for this proposal, $71 million, fall under $100 million. Therefore, the Agency has determined that this regulation does not meet the definition of a major rule under E.O. 12291. Nonetheless, due to the proximity of the costs of this rule to the $100 million threshold, the Agency has fulfilled the requirements of E.O. 12291 and prepared an RIA to assess the impact of the regulation (see Regulatory Impact Analysis: The National Recycling and Emission Reduction Program, April 8, 1992) which is available for review in the public docket for this rulemaking. This analysis is summarized below.

1. Baseline.

Since these regulations are being promulgated in addition to other regulations that affect the use of CFCs and HCFCs, the baseline for this analysis must reflect the state of affairs after the implementation of previous rules and before the implementation of the proposed rule. Two provisions of the Clean Air Act that must be considered when defining the baseline for these regulations are the phaseout of CFCs required by section 604 of the Act and the prohibition on venting contained in section 608(c), which is self-effectuating. For the purposes of the analysis, two variables were chosen to describe the effects of these provisions: the percentage of the market in which recycling and recovery would occur as a result of the provision (referred to as either market penetration or compliance); and the average recapture efficiency of the recycling or recovery methods that would be employed.

The CFC Phaseout has two important effects for the baseline: it affects the quantities of CFCs and HCFCs that need to be recycled and it makes recycling cost-effective for owners of equipment in certain sectors. As the CFC Phaseout restricts the supply of CFCs, their prices will rise. As a result, substitute chemicals will replace CFCs in new equipment and it will become less expensive to recycle the CFCs in existing equipment than to buy virgin CFCs to replace them. Sectors in which recycling is likely to occur under the phaseout include retail food, cold storage, chillers, and industrial process refrigeration. In this analysis, both market penetration and efficiency of equipment are expected to reach about 95% in these sectors under the phaseout. Various market inefficiencies and information shortfalls are assumed to prevent 100% market penetration; for instance, not recognizing the long-term economic benefits of recycling, some technicians may choose not to invest in recycling and recovery equipment. A recovery efficiency of ninety-five percent is assumed to be the level that is most cost-effective from a private (as opposed to a social) perspective.

The self-effectuating prohibition on venting required by section 608(c) can be considered a minimal requirement to recycle because chemicals must be recycled, or at least stored, if they cannot be vented. However, because the prohibition on venting does not in itself contain standards, maximum recovery efficiency and full compliance would not be expected under the prohibition alone. The likely rates or compliance in the household refrigeration, residential air conditioning, and transport refrigeration sectors would be estimated to reach approximately 80% under the prohibition alone, and efficiencies are estimated to range between 75 and 95% for these sectors.

Under the requirements of this recycling rule, recovery efficiencies are expected to range between 95 and 99%, depending upon the equipment requirements for each sector. Rates of compliance are expected to range between 95 and 99 percent in some sectors, and between 80 and 99 percent in others. EPA has calculated a range of costs and benefits for the rule depending upon the extent to which the rate of compliance rises relative to that under the venting prohibition. The lower bound costs and benefits assume that compliance rates remain the same as under the venting prohibition; the upper bound costs and benefits assume that compliance rates rise to 99%.

2. Costs

The costs of the phaseout and the prohibition on venting consist of the cost of the additional labor required to recycle or recover, the capital and operating costs of recovery and recycling equipment, and refrigerant storage costs. EPA estimates that the prohibition on venting will cost a total of approximately $4.8 billion over the 25-year period of the analysis. The costs of the recycling rule consist of the costs of certifying recycling and recovery equipment, recordkeeping costs, and refrigerant storage costs. To the extent that the recycling rule increases recycling rates, its costs also consist of the labor, capital, operating, and refrigerant storage costs associated with the increased recycling. If the recycling

rule is not assumed to increase recycling rates, its cost is estimated to be $29 million over the 25-year period of the analysis. If the rule is assumed to increase recycling rates, its cost is estimated to be $1.4 billion over the 25-year period.

3. Benefits

The benefits of the three provisions discussed above consist of the avoided damage to human health and the environment that would have occurred if, without regulation, ozone-depleting refrigerants had been released rather than recaptured. EPA's calculation of benefits includes the following: (1) Reduction in the incidence of melanoma and non-melanoma skin cancer cases and fatalities, (2) reduction in the incidence of cataract cases, (3) increases in the value of crops harvested due to reductions in both direct UV effects and indirect effects from tropospheric (ground-based) ozone, (4) increases in the value of fish harvested due to decreased levels of damaging UV radiation, and (5) decreased costs in protecting polymer products.

Emissions of ozone-depleting refrigerants drop when recycling rates or recycling efficiencies increase. Under the prohibition on venting, recycling rates are assumed to increase because recycling begins in the household refrigeration, residential air conditioning, and transport refrigeration sectors. Under the recycling rule, recycling efficiencies are assumed to increase because certification of recycling and recovery equipment increases the average efficiency of this equipment. In addition, recycling rates may increase under the recycling rule, decreasing emissions still further.

EPA estimates that the prohibition on venting alone will result in benefits that could be valued between $5.2 and $14.2 billion, depending upon whether each life saved is valued at $3 or $12 million. The additional benefits of the recycling rule range between $1 billion and $4 billion (depending upon recycling rates) if each life saved is valued at $3 million, and between $4 billion and $18 billion if each life saved is valued at $12 million.

These estimates of costs and benefits are based upon a discount rate of two percent for costs and benefits. EPA is revising the RIA to take into account a number of issues, including the possibility of using alternative discount rates for costs and benefits. The revised RIA will be available in the public docket.

B. Regulatory Flexibility Analysis

1. Purpose

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency has performed an initial regulatory flexibility analysis and determined that this regulation is unlikely to have a significant impact on a substantial number of small businesses. The analysis is found in appendix A in the Regulatory Impact Analysis: The National Recycling and Emission Reduction Program and is available for review in the docket. The methodology and results of the analysis are presented below.

2. Methodology

To examine the impacts on small businesses, EPA characterized the regulated community by identifying the SIC codes that would be involved in the disposal of motor vehicle air conditioners and in the servicing, repair, and disposal of small appliances, residential air conditioning, and transport refrigeration. Firms in these sectors were divided into six segments: Appliance repair shops, air conditioning contractors, refrigerated transport service dealers, scrap yards and intermediate processors, automobile dismantlers, and autowreckers. Impacts on the retail food, cold storage, chiller, and industrial process sectors were not analyzed because refrigerant recycling and recovery is cost-effective from a private perspective in these sectors. For these sectors, the private costs associated with recycling and recovery are negligible or negative. In addition, two other sectors were excluded from the analysis: Vocational schools and municipal solid waste facilities. Data on vocational schools are scarce, and the proposed regulations, which affect only one aspect of vocational training, are not likely to have any significant impact on vocational schools. Similarly, the regulations are not likely to have a significant impact on municipal solid waste facilities because these facilities generally do not accept white goods such as refrigerators, freezers, and room air conditioners.

There was a disparity between the EPA and the Census Bureau estimates of the number of establishments in each of the six affected industry segments. In some areas, such as the appliance repair segment, the number of establishments estimated by EPA exceeded the number allocated to the corresponding SIC category. In others, such as the air conditioning contractor segment, EPA estimates fell below Census numbers for the corresponding SIC. The disparities in each category were largely a matter of definition. Because the Census Bureau assigns a business to a given SIC code based on the source of the majority of its sales receipts, an SIC code may not include many businesses that do only some work in the area of concern. At the same time, some SIC codes may prove overly inclusive, such as SIC 1711, "Plumbing, Heating, and Air Conditioning Contractors," which includes some establishments engaged only in plumbing work and not in the service or disposal of air conditioning equipment. In choosing the SIC codes that corresponded to segments of the potential regulated community, EPA's analysis focussed primarily on ensuring that each sector of the potential regulated community had a corresponding SIC code that accurately represented its structure. The fraction of businesses that would be defined as small (under the Small Business Act, or SBA) among the establishments identified by EPA in each segment was then assumed to be the same as the fraction of businesses that would be defined as small among those in the comparable SIC category.

After determining the number of entities in each industry segment that would be classified as small, the Agency examined the compliance costs initially incurred by firms and the extent to which these costs could be passed on to consumers. EPA then performed impact tests using sales, profits, and cash flow measures.

The costs incurred by a firm as a result of the proposed rule include the following elements: Labor costs, operating costs, capital costs, certification costs, and the avoided costs of purchasing virgin refrigerant. To estimate these costs, EPA used data on the quantity of air conditioning or refrigeration equipment in each of the affected sectors and on the frequency of service and disposal in each sector. EPA then divided affected businesses into those with under $1 million annual sales and those with over $1 million annual sales. This distinction is important because larger firms perform more service and disposal jobs than smaller firms and therefore incur higher

labor and operating costs. (The distinction bears no direct relationship to the SBA definition of small business.) Annual direct compliance costs per business ranged between $624 for small appliance repair shops and $36,932 for large autowreckers.

Under certain conditions, some portion of regulatory costs will be passed on to consumers. Since the proposed rule meets these conditions, businesses will not bear all regulatory costs. (For a complete discussion of regulatory costs incidence, please see appendix A to the RIA.) Microeconomic theory suggests that the ratio between the elasticity of demand for a good and the elasticity of supply for that good is roughly equivalent to the ratio between the producers' share of regulatory costs and the consumers' share of regulatory costs. The extent to which regulatory costs may be passed on to consumers, therefore, depends upon the relationship between the elasticity of demand and the elasticity of supply for the good in question. The elasticities of demand and supply are a measure of how demand for a good and supply of a good change in response to changes in price.

Although the factors that determine supply and demand elasticity can be complex, certain forces frequently play an important role in determining the character of supply and demand elasticity for a good. Generally, demand for a good will decrease when the price rises because consumers will choose to purchase substitutes for the good. However, if substitutes are nonexistent or expensive, consumers will have fewer alternatives to purchasing the original good, and demand will change very little. In this case, the demand elasticity for the good is low. Supply of a good will usually decrease when the price falls because it becomes less profitable to produce the good. However, if it is expensive to change the supply of the good (e.g., requires the retirement of valuable capital equipment), producers will have fewer alternatives to producing the good, and supply will change relatively little. In this case, the supply elasticity of the good is low.

When the demand elasticity for a good is low and the supply elasticity for the good is high, the majority of regulatory costs will likely be borne by consumers. EPA developed elasticity estimates for each segment of the regulated community. Demand elasticity estimates for the specific goods in question were not available. As a result, the Agency used estimates of demand elasticity in closely related industries as proxies for actual elasticity estimates. Since no estimates of supply elasticity were available, the Agency developed quantitative estimates of supply elasticity based on its understanding of the various segments of the regulated community.

EPA's analysis showed that demand was likely to be inelastic in all affected industry segments. For instance, demand for household appliance service is unlikely to fall significantly in response to a rise in price because (1) equipment such as the household refrigerator renders a service that is vital to most consumers, and (2) the few substitutes to appliance repair, such as purchase of a new appliance, are often expensive and impracticable. The situation is similar in the other service segments. In the disposal segments, demand is likely to be inelastic because consumers have few alternatives to disposing of appliances when these items are retired, and auto dismantlers and wreckers (who play the role of consumer in this transaction) have few substitutes for junked automobiles in their operations.

Elasticities of supply varied somewhat more. The appliance and residential air conditioning repair segments are likely to have high supply elasticities because entering these businesses requires a relatively low capital investment and moving into related areas (e.g., heating) is relatively easy. On the other hand, the supply elasticity of refrigerated transport service is lower because refrigerated transport service is highly specialized and entry into the industry entails substantial capital investment. Scrap yards and intermediate processors are likely to respond readily to price changes because they have a large degree of flexibility with regard to which type of appliances they choose to accept. Supplies of junked automobiles, however, are unlikely to change significantly in response to the prices offered for them.

Based on these estimates, EPA calculates that firms will bear between four percent (for scrap yards and intermediate processors) and 25 percent (for refrigerated transport service dealers) of the compliance costs associated with the proposed rule. Annual compliance costs borne by firms range between $39 for small appliance repair shops and $6,987 for large auto dismantlers. (Again, the term "large" is used here to refer to a large small business.)

To evaluate the significance of these costs, EPA performed impact tests using sales, profits, and cash flow measures. Existing EPA guidelines suggest that significant economic impacts on small businesses occur when any one of the following three criteria are satisfied (Environmental Protection Agency, Office of Policy, Planning, and Evaluation, Guidelines for Complying with the Regulatory Flexibility Act, Draft Document dated January 18, 1991.):

- Annual compliance costs exceed one percent of sales;
- Annual compliance costs exceed 10 percent of profits; or
- Annual debt-financed capital compliance costs exceed 20 percent of current cash flow.

These criteria make up a screening test used to assess initially the impacts likely to result from a proposed regulation. Should a "substantial number" of small business, defined as over 20 percent of affected small business, satisfy any of the criteria outlined above, EPA guidelines require that more detailed economic analysis be performed.

Many small establishments failed the profits and cash flow tests (that is, profits and cash flow were negative) before imposition of the regulation. These were thus determined to be in poor financial condition under the baseline and their continued failure of these tests was not attributed to the proposed rule. Any small entities not in poor financial condition under the baseline that failed any of the tests above were assumed to incur a significant impact under the proposed rule.

EPA's analysis showed that the proposed rule will have a significant impact on 16 percent of the affected small businesses. These small businesses may respond in a number of ways. They may (1) close as a result of the costs imposed by regulation, (2) avoid the costs imposed by the regulation by ceasing work on refrigeration and air conditioning equipment while continuing to provide other types of service, or (3) continue to service or dispose of affected equipment while incurring increased cost.

Available census and financial data suggest that most of the 16 percent will continue to service or dispose of affected equipment. EPA estimates that annual compliance costs borne by firms as a result of the proposed rule will actually exceed annual profits for approximately 2,500 small businesses. These 2,500 establishments comprise approximately 3 percent of all small businesses in the regulated community. Firms that incur annual compliance costs in excess of annual profits may be forced out of business or, alternatively, may elect to discontinue work that involves refrigeration or air

conditioning equipment. Firms whose annual compliance costs fall below their annual profits are likely to stay in business.

Where possible, EPA has attempted to minimize the economic impact of this regulation on small businesses. For instance, EPA is proposing less stringent standards for the recovery of refrigerant from small appliances, which are frequently repaired by one- or two-man service shops. These standards would permit the use of relatively inexpensive, passive, recovery devices. In addition, EPA is proposing fewer requirements and a more flexible program for the disposal of small appliances, room air conditioners, and MVACs because the industries that dispose of these items are unusually decentralized.

Moreover, this analysis probably overstated the potential impacts of regulation for two reasons. First, it estimated the combined impacts of both the section 608 recycling rule and the self-effectuating prohibition on venting. EPA estimates that for the residential air conditioning and household appliance sectors, 80 percent of recovery jobs can be attributed to the prohibition on venting, and for transport refrigeration, 50 percent of recovery jobs can be attributed to the prohibition. If this analysis had examined only the incremental impacts due to the recycling rule, the estimate of the percentage of small businesses affected significantly would have been reduced accordingly. Second, this analysis examined each industry segment in isolation, failing to account for interactions between competing industry sectors (e.g., service vs. disposal of appliance) that would tend to decrease costs borne by firms. Thus, the Agency certifies that this regulation will not have an impact on a significant number of small entities, pursuant to 5 U.S.C. 605(b).

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20460 or by calling (202) 260–2740.

Public reporting burden for this collection of information is estimated to vary from 1 to 40 hours per response with an average of 2.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch; EPA; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: November 30, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 82, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. Authority: The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Part 82 is amended by adding subpart F to read as follows:

Subpart F—Recycling and Emissions Reduction

Sec.

82.150 Purpose and scope.
82.152 Definitions.
82.154 Prohibitions.
82.156 Required practices.
82.158 Standards for recycling and recovery equipment.
82.160 Approved equipment testing organizations.
82.162 Certification by owners of recovery and recycling equipment.
82.164 Reclaimer certification.
82.166 Reporting and recordkeeping requirements.

Appendix A to Subpart F—Specifications for Fluorocarbon Refrigerants

Appendix B to Subpart F—Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment

Appendix C to Subpart F—Method for Testing Recovery Devices for Use With Small Appliances

Subpart F—Recycling and Emissions Reduction

§ 82.150 Purpose and scope.

(a) The purpose of this subpart is to reduce emissions of class I and class II refrigerants to the lowest achievable level at the service, maintenance, repair, and disposal of appliances in accordance with section 608 of the Clean Air Act.

(b) This subpart applies to any person servicing, maintaining, repairing or disposing of appliances except for persons servicing motor vehicle air conditioners. This subpart also applies to the disposal of motor vehicle air conditioners.

§ 82.152 Definitions.

(a) *Active Recovery Device* means a device that uses its own pump or compressor to pump refrigerant out of an appliance and into an external container.

(b) *Appliance* means any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(c) *Approved Equipment Testing Organization* means any organization which has applied for and received approval from the Administrator pursuant to § 82.160.

(d) *Certified Refrigerant Recovery or Recycling Equipment* means equipment certified by an approved equipment testing organization to meet the standards in § 82.158 (b) or (d) or equipment manufactured before [6 months after publication of the final rule] that meets the standards in § 82.158 (c) or (e).

(e) *Disposal* means:

(1) The discharge, deposit, dumping or placing of any discarded appliance into or on any land or water;

(2) The disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; or

(3) The disassembly of any appliance for reuse of its component parts.

(f) *High Pressure Appliance* means an appliance that uses a refrigerant with a boiling point between –50 and 0 degrees Centigrade at atmospheric pressure (29.9 inches of mercury). This definition includes but is not limited to appliances using refrigerants 12, 22, 500, or 502.

(g) *Intermediate Pressure Appliance* means an appliance that uses a refrigerant with a boiling point between 0 to 10 degrees Centigrade at atmospheric pressure (29.9 inches of mercury). This definition includes but is

not limited to appliances using CFC–114.

(h) *Low loss fitting* means any device that is intended to establish a connection between hoses, appliances, or recovery or recycling machines and that is designed to close automatically when disconnected, minimizing the release of refrigerant from hoses, appliances, and recovery or recycling machines.

(i) *Low Pressure Appliance* means an appliance that uses a refrigerant with a boiling point above 10 degrees Centigrade at atmospheric pressure (29.9 inches of mercury). This definition includes but is not limited to equipment utilizing refrigerants 11, 113, and 123.

(j) *Motor Vehicle Air Conditioner (MVAC)* means any motor vehicle air conditioner as defined in 40 CFR part 82 subpart B.

(k) *Opening an appliance* means any service, maintenance, or repair on an appliance that could be reasonably expected to release refrigerant from the appliance to the atmosphere unless the refrigerant were previously recovered from the appliance.

(l) *Passive Recovery Device* means a device that relies solely upon the compressor in a small appliance and/or upon the pressure of the refrigerant inside a small appliance to remove the refrigerant into an external container.

(m) *Person* means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.

(n) *Process stub* means a length of tubing that provides access to the refrigerant inside a small appliance or room air conditioner and that can be resealed at the conclusion of repair or service.

(o) *Reclaim refrigerant* means to reprocess refrigerant to at least the purity specified in the ARI Standard 700–1988, Specifications for Fluorocarbon Refrigerants (Appendix A to 40 CFR part 82, subpart F) and to verify this purity using the analytical methodology prescribed in the ARI Standard 700–1988. In general, reclamation involves the use of processes or procedures available only at a reprocessing or manufacturing facility.

(p) *Recover refrigerant* means to remove refrigerant in any condition from an appliance without necessarily testing or processing it in any way.

(q) *Recycle refrigerant* means to extract refrigerant from an appliance and clean refrigerant for reuse without meeting all of the requirements for reclamation. In general, recycled refrigerant is refrigerant that is cleaned using oil separation and single or multiple passes through devices, such as replaceable core filter-driers, which reduce moisture, acidity, and particulate matter. These procedures are usually implemented at the field job site.

(r) *Small appliance,* means any appliance containing one pound of refrigerant or less during normal operation, including but not limited to household refrigerators, household freezers, dehumidifiers, vending machines, or water coolers.

(s) *Technician* means any person who performs maintenance, service, or repair that could reasonably be expected to release class I or class II, substances from appliances into the atmosphere, including but not limited to installers, contractor employees, in-house service personnel, and in some cases, owners. Technician also means any person disposing of appliances except for small appliances and room air conditioners.

(t) *Very High Pressure Appliance* means an appliance that uses a refrigerant with a boiling point below –50 degrees Centigrade at atmospheric pressure (29.9 inches of mercury). This definition includes but is not limited to equipment utilizing refrigerants 13 and 503.

§ 82.154 Prohibitions.

(a) Effective July 1, 1992, no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any class I or class II substance used as refrigerant in such equipment. De minimis releases associated with good faith attempts to recycle or recover refrigerants are not subject to this prohibition. Releases shall be considered de minimis if they occur when:

(1) The required practices set forth in § 82.156 are observed and recovery or recycling machines that meet the requirements set forth in § 82.158 are used, or

(2) The requirements set forth in 40 CFR Part 82, subpart B are observed.

The knowing release of refrigerant subsequent to its recovery from an appliance shall be considered a violation of this prohibition.

(b) Effective [30 days after publication of the final rule], no person may open appliances except MVACs for maintenance, service, or repair, and no person may dispose of appliances except for small appliances, room air conditioners, and MVACs:

(1) Without observing the required practices set forth in § 82.156; and

(2) Without using equipment that is certified for that type of appliance pursuant to § 82.158.

(c) Effective [6 months after publication of the final rule], no person may manufacture or import recycling or recovery equipment for use during the maintenance, service, or repair of appliances except MVACs, and no person may manufacture or import recycling or recovery equipment for use during the disposal of appliances except small appliances, room air conditioners, and MVACs, unless the equipment is certified pursuant to § 82.158 (b) or (d).

(d) Effective [6 months after publication of the final rule], no person shall alter the design of certified refrigerant recycling or recovery equipment in a way that would affect the equipment's ability to meet the certification standards set forth in § 82.158 without resubmitting the altered design for certification testing.

(e) Effective [90 days after publication of the final rule], no person may open appliances except MVACs for maintenance, service, or repair, and no person may dispose of appliances except for small appliances, room air conditioners, and MVACs, unless such person has certified to the Administrator pursuant to § 82.164 that such person has acquired, and is properly using, certified recovery or recycling equipment.

(f) Effective [90 days after publication of the final rule], no person may recover refrigerant from small appliances, room air conditioners, and MVACs for purposes of disposal of these appliances unless such person has certified to the Administrator pursuant to § 82.164 that such person has acquired, and is properly using, recovery equipment that meets the standards set forth in § 82.158 (i) and/or (j), as applicable.

(g) Effective [30 days after publication of the final rule], no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless the class I or class II substance has been analyzed using the methods set forth in ARI 700–1988, Specifications for Fluorocarbon Refrigerants, and has been found to meet the standard of purity set forth in the same standard.

(h) Effective [90 days after publication of the final rule], no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless the refrigerant has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.166.

(i) Effective [30 days after publication of the final rule], no person reclaiming

refrigerant may release more than 1.5% of the refrigerant received by them.

(j) Effective [six months after publication of the final rule], no person may sell or distribute, or offer for sale or distribution, any appliances, except small appliances and room air conditioners unless such equipment is equipped with a servicing aperture to facilitate the removal of refrigerant at servicing and disposal.

(k) Effective [six months after publication of the final rule], no person may sell or distribute, or offer for sale or distribution, any small appliance or room air conditioner unless such equipment is equipped with a process stub to facilitate the removal of refrigerant at servicing and disposal.

(l) Effective [30 days after publication of the final rule], no person may dispose of small appliances, room air conditioners, and MVACs without removing the refrigerant before they are disposed of, unless the refrigerant has been removed previously.

§ 82.156 Required practices.

(a) Effective [30 days after publication of the final rule], all persons opening appliances for maintenance, service, or repair must evacuate the refrigerant in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver or a recovery or recycling machine certified pursuant to § 82.158. All persons disposing of appliances except for small appliances, room air conditioners, and MVACs must evacuate the refrigerant in the entire unit to a recovery or recycling machine certified pursuant to § 82.158.

(1) Persons opening appliances except for small appliances and MVACs for maintenance, service, or repair, and persons disposing of appliances except for small appliances, room air conditioners, and MVACs, must evacuate to the levels in Table 1, which depend upon the date of manufacture of the recovery or recycling machine and the type of appliance being evacuated.

TABLE 1.—REQUIRED LEVELS OF EVACUATION FOR APPLIANCES EXCEPT FOR SMALL APPLIANCES

Type of appliance	Inches of Hg vacuum	
	Using recovery or recycling equipment manufactured or imported before [six months after publication of the final rule]	Using recovery or recycling equipment manufactured or imported on or after [six months after publication of the final rule]
High pressure equipment with a charge of less than 50 pounds	4	10
High pressure equipment with a charge of more than 50 pounds	4	20
Very high pressure equipment	0	0
Intermediate pressure equipment	25	25
Low pressure equipment	25	25 mm Hg absolute

(2) Persons opening small appliances for maintenance, service, or repair must evacuate the refrigerant from these systems using a certified recovery device in accordance with the manufacturer's directions.

(b) The evacuation requirements in § 82.156(a) apply to leaking appliances except for high pressure appliances that contain a leak large enough to have reduced the equipment pressure to two atmospheres or less. In this case, the equipment must be evacuated to 0 psig.

(c) All recovery or recycling equipment shall be used in accordance with the manufacturer's directions.

(d) Effective [30 days after publication of the final rule], persons selling or offering for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant must analyze the class I or class II substance using the methods set forth in ARI 700–1988, Specifications for Fluorocarbon Refrigerants, and verify that the class I or class II substance meets the standard of purity set forth in the same standard.

(e) Refrigerant may be returned to the equipment from which it is recovered or to other equipment owned by the same person without being recycled or reclaimed.

(f) Effective [30 days after publication of the final rule], persons disposing of small appliances, room air conditioning, or MVACs must either:

(1) recover any remaining refrigerant from the appliance in accordance with paragraph (g) or (h) of this section, as applicable; or

(2) verify that the refrigerant has been evacuated from the appliance previously. Such verification must include a signed statement from the person from whom the appliance is obtained that all refrigerant that had not leaked previously has been recovered from the appliance in accordance with paragraph (g) or (h) below, as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. The signed statement does not relieve the disposer of responsibility for recovering any refrigerant that remains in the appliance.

(g) All persons recovering refrigerant from MVACs for purposes of disposal of these appliances must reduce the system pressure to or below 102 mm of mercury vacuum, using equipment that meets the standards set forth in § 82.158(j).

(h) All persons recovering the refrigerant from small appliances and room air conditioners for purposes of disposal of these appliances must recover at least 90% of the refrigerant in the system, using equipment that meets the standards set forth in § 82.158(k).

§ 82.158 Standards for recycling and recovery equipment.

(a) Effective July 1, 1992, all manufacturers and importers of recycling and recovery equipment intended for use during the maintenance, service, or repair of appliances except MVACs or during the disposal of appliances except small appliances, room air conditioners, and MVACs shall begin to have such equipment certified by an approved equipment testing organization to meet the applicable requirement in paragraph (b) or (d) of this section. All recycling and recovery equipment manufactured or imported on or after [6 months after publication of the final rule] must be certified to meet these requirements.

(b) Equipment manufactured or imported on or after [6 months after publication of the final rule] for use during the maintenance, service, or repair of appliances except small appliances and MVACs or during the disposal of appliances except small appliances, room air conditioners, and MVACs must be certified by an approved equipment testing organization to meet the following requirements:

(1) In order to be certified, the equipment must be capable of achieving the level of evacuation specified in Table 2 below under the conditions of the ARI Standard 740–1991, Performance of Refrigerant Recovery,

Recycling and/or Reclaim Equipment (ARI 740–1991) (Appendix B to this subpart):

TABLE 2.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING MACHINES INTENDED FOR USE WITH APPLIANCES (EXCEPT FOR SMALL APPLIANCES) MANUFACTURED ON OR AFTER [6 MONTHS AFTER PUBLICATION OF THE FINAL RULE]

Type of appliance with which recovery or recycling machine is intended to be used	Inches of Hg vacuum
High Pressure Equipment with a Charge of Less than 50 Pounds	10
High Pressure Equipment with a Charge of More than 50 Pounds	20
Very High Pressure Equipment	0
Intermediate Pressure Equipment	25
Low-pressure Equipment	25 mm Hg absolute

The vacuums specified in inches of Hg vacuum must be achieved relative to an atmospheric pressure of 29.9 inches of Hg.

(2) The equipment must meet the minimum requirements for ARI certification under ARI 740–1991.

(3) The equipment must be equipped with positive shutoff connections on all hoses.

(4) If the equipment is equipped with a noncondensables purge device, the equipment must not release more than five percent of the quantity of refrigerant being recycled through noncondensables purging under the conditions of ARI 740–1991.

(c) Equipment manufactured or imported before [6 months after publication of the final rule] for use during the maintenance, service, or repair of appliances except small appliances and MVACs or during the disposal of appliances except small appliances, room air conditioners, and MVACs will be considered certified if it is capable of achieving the level of evacuation specified in Table 3 below when tested using a properly calibrated pressure gauge:

TABLE 3.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING MACHINES INTENDED FOR USE WITH APPLIANCES (EXCEPT FOR SMALL APPLIANCES) MANUFACTURED BEFORE [6 MONTHS AFTER PUBLICATION OF THE FINAL RULE]

Type of appliance with which recovery or recycling machine is intended to be used	Inches of Hg vacuum
High Pressure Equipment with a Charge of Less than 50 Pounds	4
High Pressure Equipment with a Charge of More than 50 Pounds	4
Very High Pressure Equipment	0

TABLE 3.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING MACHINES INTENDED FOR USE WITH APPLIANCES (EXCEPT FOR SMALL APPLIANCES) MANUFACTURED BEFORE [6 MONTHS AFTER PUBLICATION OF THE FINAL RULE]—Continued

Type of appliance with which recovery or recycling machine is intended to be used	Inches of Hg vacuum
Intermediate Pressure Equipment	25
Low-pressure Equipment	25

(d) Equipment manufactured or imported after [6 months after publication of the final rule] for use during the maintenance, service, or repair of small appliances must be certified by an approved equipment testing organization to meet the following requirements when used in accordance with the manufacturer's instructions under the conditions of appendix C of this subpart, Proposed Method for Testing Recovery Devices for Use with Small Appliances:

(1) Active equipment must be capable of recovering 90% of the refrigerant in the test stand whether or not the compressor of the test stand is operating.

(2) Passive equipment must be capable of recovering 90% of the refrigerant in the test stand when the compressor of the test stand is operating and 80% of the refrigerant when the compressor of the test stand is not operating.

(e) Equipment manufactured or imported before [6 months after publication of the final rule] for use with small appliances will be considered certified if it is capable of recovering 80% of the refrigerant in the system, whether or not the compressor of the test stand is operating, when used in accordance with the manufacturer's instructions under the conditions of appendix C of this subpart, Proposed Method for Testing Recovery Devices for Use with Small Appliances.

(f) Manufacturers and importers of equipment certified under paragraphs (b) and (d) of this section must place a label on each piece of equipment stating the following:

THIS EQUIPMENT HAS BEEN CERTIFIED BY [APPROVED EQUIPMENT TESTING ORGANIZATION] TO MEET EPA'S MINIMUM REQUIREMENTS FOR RECYCLING OR RECOVERY EQUIPMENT INTENDED FOR USE WITH [APPROPRIATE CATEGORY OF APPLIANCE].

The label shall also show the date of manufacture. The label shall be affixed in a readily visible or accessible location, be made of a material expected to last the lifetime of the equipment, present required information in a manner so that it is likely to remain legible for the lifetime of the equipment, and be affixed in such a manner that it cannot be removed from the equipment without damage to the label.

(g) The Administrator will maintain a list of equipment certified pursuant to paragraphs (b) and (d) of this section by manufacturer and model. Persons interested in obtaining a copy of the list should send written inquiries to the address in § 82.160 (a) of this subpart.

(h) Manufacturers or importers of recycling or recovery equipment must periodically have approved equipment testing organizations conduct either;

(1) Retests of certified recycling or recovery equipment; or

(2) Inspections of recycling or recovery equipment at manufacturing facilities to ensure that each equipment model line that has been certified under this section continues to meet the certification criteria. Such retests or inspections must be conducted at least once every three years after the equipment is first certified.

(i) An equipment model line that has been certified under this section may have its certification revoked if it is subsequently determined to fail to meet the certification criteria. In such cases, the Administrator or his designated representative shall give notice to the manufacturer or importer setting forth the basis for his determination. The manufacturer or importer shall have 90 days from receipt of the notice to request in writing reconsideration of the determination. The administrator or his designated representative shall respond to this request within 60 days.

(j) Equipment used to evacuate refrigerant from MVACs before they are disposed of must be capable of reducing the system pressure to 102 mm of mercury vacuum under the conditions of the SAE Standard, SAE J1990 (Appendix A to 40 CFR Part 82, Subpart B).

(k) Equipment used to evacuate refrigerant from small appliances and room air conditioners before they are disposed of must be capable of removing 90% of the refrigerant, whether or not the compressor of the test stand is operating, when used in accordance with the manufacturer's instructions under the conditions of appendix C to this subpart, Proposed Method for Testing Recovery Devices for Use with Small Appliances.

§ 82.160 Approved equipment testing organizations.

(a) Any equipment testing organization may apply for approval by the Administrator to certify equipment

pursuant to the standards in § 82.158 and appendices B and C of this subpart. The application shall be sent to:

§ 608 Recycling Program Manager, Stratospheric Ozone Protection Branch, ANR–445, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

(b) Applications for approval must include written information verifying the following:

(1) The list of equipment present at the organization that will be used for equipment testing.

(2) Expertise in equipment testing and the technical experience of the organization's personnel.

(3) Thorough knowledge of the standards as they appear in § 82.158 and appendices B and/or C (as applicable) of this subpart.

(4) The organization must describe its program for verifying the performance of certified recycling and recovery equipment manufactured over the long term, specifying whether retests of equipment or inspections of equipment at manufacturing facilities will be used.

(5) The organization must have no conflict of interest and receive no direct or indirect financial benefit from the outcome of certification testing.

(6) The organization must agree to allow the Administrator access to records and personnel to verify the information contained in the application.

(c) If approval is denied under this section, the Administrator or his designated representative shall give written notice to the organization setting forth the basis for his determination.

(d) If at any time an approved testing organization is found to be conducting certification tests for the purposes of this subpart in a manner not consistent with the representations made in its application for approval under this section, the Administrator reserves the right to revoke approval. In such cases, the Administrator or his designated representative shall give notice to the organization setting forth the basis for his determination. The organization shall have 90 days from receipt of the notice to request in writing reconsideration of the determination. The Administrator or his designated representative shall respond to this request within 60 days.

§ 82.162 Certification by owners of recovery and recycling equipment.

(a) No later than [90 days after publication of the final rule], persons maintaining, servicing, or repairing appliances except for MVACs, and persons disposing of appliances except for small appliances, room air conditioners, and MVACs must certify to the Administrator that such person has acquired, and is properly using, certified recovery or recycling equipment. The owner or lessee of the recovery or recycling equipment may perform this certification for his or her employees. Certification shall take the form of a statement signed by the owner of the equipment or another responsible officer and setting forth:

(1) The name and address of the purchaser of the equipment;

(2) The name and address of the establishment where each piece of equipment is or will be located;

(3) The manufacturer name and model number, the date of manufacture, and the serial number of the equipment; and

(4) The certification must also include a statement that the equipment will be properly used in servicing or disposing of appliances and that the information given is true and correct.

(i) Owners or lessees of recycling or recovery equipment having their places of business in: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region I, Mail Code APC, JFK Federal Building, One Congress Street, Boston, MA 02203.

(ii) Owners or lessees of recycling or recovery equipment having their places of business in: New York, New Jersey, Puerto Rico, Virgin Islands; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 5000, New York, NY 10278.

(iii) Owners or lessees of recycling or recovery equipment having their places of business in: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region III, Mail Code 3AT21, 841 Chestnut Building, Philadelphia, PA 19107.

(iv) Owners or lessees of recycling or recovery equipment having their places of business in: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region IV, 345 Courtland Street, NE, Mail Code APT–AE, Atlanta, GA 30365.

(v) Owners or lessees of recycling or recovery equipment having their places of business in: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region V, Mail Code AT18J, 77 W. Jackson Blvd., Chicago, IL 60604–3507.

(vi) Owners or lessees of recycling or recovery equipment having their places of business in: Arkansas, Louisiana, New Mexico, Oklahoma, Texas; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region VI, Mail Code 6T–AG, First Interstate Tower at Fountain Place, 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733.

(vii) Owners or lessees of recycling or recovery equipment having their places of business in: Iowa, Kansas, Missouri, Nebraska; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region VII, Mail Code ARTX/ARBR, 726 Minnesota Ave., Kansas City, KS 66101.

(viii) Owners or lessees of recycling or recovery equipment having their places of business in: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region VIII, Mail Code 8AT–AP, 999 18th Street, Suite 500, Denver, CO 80202–2405.

(ix) Owners or lessees of recycling or recovery equipment having their places of business in: American Samoa, Arizona, California, Guam, Hawaii, Nevada; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region IX, Mail Code A–3, 75 Hawthorne Street, San Francisco, CA 94105.

(x) Owners or lessees of recycling or recovery equipment having their places of business in: Alaska, Idaho, Oregon, Washington; must send their certifications to: CAA § 608 Enforcement Contact, EPA Region X, Mail Code AT–082, 1200 Sixth Ave., Seattle, WA 98101.

(b) Certificates under paragraph (a) of this section are not transferable. In the event of a change of ownership of an entity that maintains, services, or repairs appliances except MVACs, or that disposes of appliances except small appliances, room air conditioners, and MVACs, the new owner of the entity shall certify within 30 days of the change of ownership pursuant to paragraph (a) of this section.

(c) No later than [90 days after publication of the final rule], persons recovering refrigerant from small appliances, room air conditioners, and MVACs for purposes of disposal of these appliances must certify to the Administrator that such person has acquired, and is properly using, recovery equipment that meets the standards set forth in § 82.158(i) and/or (j), as applicable. The owner or lessee of the recovery or recycling equipment may perform this certification for his or her employees. Certification shall take

the form of a statement signed by the owner of the equipment or another responsible officer and setting forth:

(1) The name and address of the purchaser of the equipment,

(2) The name and address of the establishment where each piece of equipment is or will be located, and

(3) The manufacturer name and model number, the date of manufacture, and the serial number of the equipment.

(4) The certification must also include a statement that the equipment will be properly used in recovering refrigerant from appliances and that the information given is true and correct. The certification shall be sent to the appropriate address in paragraph (a).

(d) Failure to abide by any of the provisions of this subpart may result in revocation or suspension of certification under paragraphs (a) or (c) of this section.

§ 82.164 Reclaimer certification.

Effective [90 days after publication of the final rule], persons processing used refrigerant for sale to a new owner must certify to the Administrator that such person will.

(a) Return refrigerant to at least the standard of purity set forth in ARI Standard 700–1988, Specifications for Fluorocarbon Refrigerants,

(b) Verify this purity using the methods set forth in ARI Standard 700–1988,

(c) Release no more than 1.5% of the refrigerant during the reclamation process, and

(d) Dispose of wastes from the reclamation process in accordance with all applicable laws and regulations. The data elements for certification are as follows:

(1) The name and address of the reclaimer;

(2) A list of equipment used to reprocess and to analyze the refrigerant; and

(3) The owner or a responsible officer of the reclaimer must sign the certification stating that the refrigerant will be returned to at least the standard of purity set forth in ARI Standard 700–1988, Specifications for Fluorocarbon Refrigerants, that the purity of the refrigerant will be verified using the methods set forth in ARI Standard 700–1988, that no more than 1.5% of the refrigerant will be released during the reclamation process, that wastes from the reclamation process will be properly disposed of, and that the information given is true and correct. The certification should be sent to the following address: § 608 Recycling Program Manager, Stratospheric Ozone Protection Branch (ANR–445), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(e) Certificates are not transferable. In the event of a change in ownership of an entity which reclaims refrigerant, the new owner of the entity shall certify within 30 days of the change of ownership pursuant to this section.

(f) Failure to abide by any of the provisions of this subpart may result in revocation or suspension of the certification of the reclaimer.

§ 82.166 Reporting and recordkeeping requirements.

(a) All persons who sell or distribute any class I or class II substance for use as a refrigerant must retain invoices that indicate the name of the purchaser, the date of sale, and the quantity of refrigerant purchased.

(b) Approved equipment testing organizations must maintain records of equipment testing and performance and a list of equipment that meets EPA requirements. A list of all certified equipment shall be submitted to EPA annually, beginning [60 days after publication of the final rule].

(c) Approved equipment testing organizations shall submit to EPA within 30 days of the certification of a new model line of recyling or recovery equipment the name of the manufacturer and the name and/or serial number of the model line.

(d) Approved equipment testing organizations shall notify EPA if retests of equipment or inspections of manufacturing facilities conducted pursuant to § 82.158(h) show that a previously certified model line fails to meet EPA requirements. Such notification must be received within thirty days of the retest or inspection.

(e) Reclaimers must maintain records of the names and addresses of persons sending them material for reclamation and the quantity of the material (the combined mass of refrigerant and contaminants) sent to them for reclamation. Such records shall be maintained on a transactional basis.

(f) Reclaimers must maintain records of the quantity of material sent to them for reclamation, the mass of refrigerant reclaimed, and the mass of waste products. Reclaimers must report this information to the Administrator annually within 30 days of the end of the calendar year.

(g) Persons disposing of small appliances, room air conditioners, and MVACs must maintain copies of signed statements obtained pursuant to § 82.156(f)(ii).

(h) All records required to be maintained pursuant to this section must be kept for a minimum of three years unless otherwise indicated. Entities that dispose of appliances must keep these records on-site.

Appendix A to Subpart F—Specification for Fluorocarbon Refrigerants

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 700—88:

Section 1. Purpose

1.1 *Purpose.* The purpose of this standard is to enable users to evaluate and accept/reject refrigerants regardless of source (new, reclaimed and/or repackaged) for use in new and existing refrigerating and air conditioning products within the scope of this standard includes all appliances defined in § 82.152(b).

1.1.1 This standard is intended for the guidance of the industry, including manufacturers, refrigerant reclaimers, repackagers, distributors, installers, servicemen, contractors and for consumers.

1.2 *Review and Amendment.* This standard is subject to review and amendment as the technology advances.

Section 2. Scope

2.1 *Scope.* This standard defines and classifies refrigerant contaminants primarily based on standard and generally available test methods and specifies acceptable levels of contaminants (purity requirements) for various fluorocarbon refrigerants regardless of source. These refrigerants are: R11; R12; R13; R22; R113; R114; R500; R502 and R503 as referenced in the ANSI/ASHRAE Standard "Number Designation of Refrigerants" (American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., Standard 34–78).

Section 3. Definitions

3.1 *"Shall", "Should", "Recommended",* or *"It is Recommended".* "Shall", "should", "recommended", or "it is recommended" shall be interpreted as follows:

3.1.1 *Shall.* Where "shall" or "shall not" is used for a provision specified, that provision is mandatory if compliance with the standard is claimed.

3.1.2 *Should, Recommended,* or *It is Recommended.* "Should", "recommended", or "it is recommended" is used to indicate provisions which are not mandatory but which are desirable as good practice.

Section 4. Characterization of Refrigerants and Contaminants

4.1 Characterization of refrigerants and contaminants addressed are listed in the following general classifications:

4.1.1 *Characterization*
- a. Boiling point
- b. Boiling point range

4.1.2 *Contaminants*
- a. Water
- b. Chloride ion
- c. Acidity
- d. High boiling residue
- e. Particulates/solids
- f. Non-condensables
- g. Other refrigerants

Section 5. Sampling, Test Methods and Maximum Permissible Contaminant Levels

5.1 The recommended referee test methods for the various contaminants are given in the following paragraphs. If alternate test methods are employed, the user must be able to demonstrate that they produce results equivalent to the specified referee method.

5.2 *Refrigerant Sampling.*

5.2.1 Special precautions should be taken to assure that representative samples are obtained for analysis. Sampling shall be done by trained laboratory personnel following accepted sampling and safety procedures.

5.2.2 *Gas Phase Sample.* A gas phase sample shall be obtained for determining the non-condensables by connecting the sample cylinder to an evacuated gas sampling bulb by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling bulb. Since non-condensable gases, if present, will concentrate in the vapor phase of the refrigerant, care must be exercised to eliminate introduction of air during the sample transfer. Purging is not an acceptable procedure for a gas phase sample since it may introduce a foreign product. Since R11 and R113 have normal boiling points at or above room temperature, noncondensable determination is not required for these refrigerants.

5.2.3 *Liquid Phase Sample.* A liquid phase sample, which may be obtained as follows, is required for all tests listed in this standard, except the test for non-condensables. Place an empty sample cylinder with the valve opened in an oven at 230°F [110°C] for one hour. Remove it from the oven while hot, immediately connect to an evacuation system and evacuate to less than 1 mm. mercury (1000 microns). Close the valve and allow it to cool.

5.2.3.1 The valve and lines from the unit to be sampled shall be clean and dry. Connect the line to the sample cylinder loosely. Purge through the loose connection. Make the connection tight at the end of the purge period. Take the sample as a liquid by chilling the sample cylinder slightly. Do not load the cylinder over 80 percent full at room temperature. This can be accomplished by weighing the empty cylinder and then the cylinder with refrigerant. The cylinder must not become completely full of liquid below 130°F (54.4°C). When the desired amount of refrigerant has been collected, close the valve(s) and disconnect the sample cylinder immediately.

5.2.3.2 Check the sample cylinder for leaks and record the gross weight.

5.3 *Refrigerant Boiling Point and Boiling Range.*

5.3.1 The test method shall be that described in the Federal Specification for "Fluorocarbon Refrigerants" BB–F–1421 B dated March 5, 1982, section 4.4.3.

5.3.2 The required values for boiling point and boiling point range are given in Table 1, "Physical Properties of Fluorocarbon Refrigerants and Maximum Contaminant Levels."

5.3.3 Gas chromatography (GC) is an acceptable alternate test method which can be used to characterize refrigerants. This is done by comparison to be known standards. Listed below are some readily available GC methods.

ALTERNATE GAS CHROMATOGRAPHY TEST METHODS

[See Appendix A for titles and sources]

Refrigerant	ICI	Dupont	Allied
R11	RSV/ALAB/CM3 and RSV/ALAB/CM4	F3205.165.01CW	G–11–7A
R12	RSV/ALAB/CM5	F3227.165.01CW(P)	G–12–7A
R13	RSV/ALAB/CM20	F3275.165.01CC(P)	—
R22	RSV/ALAB/CM8	F3290.165.01LV(P)	G–22–7A
R113	RSV/ALAB/CM6	F3297.165.01CC	GSVD–1A
R114	RSV/ALAB/CM21	F3306.165.01CC(P)	G–114–7A
R500	RSV/ALAB/CM5	F3327.165.01CW(P)	G–500–7A
R502	RSV/ALAB/CM8	F3333.165.01CC	G–502–7A
R503	RSV/ALAB/CM20	F3337.165.01CW(P)	G–503–7A

Note: Equivalent laboratory test methods may be available from other producers of these refrigerants.

5.4 Water Content

5.4.1 The Karl Fischer Test Method shall be used for determining the water content of refrigerant. This method is described in ASTM Standard for "Water In Gases Using Karl Fisher Reagent" E700–79, reapproved 1984 (American Society for Testing Materials, Philadelphia, PA). This method can be used for refrigerants that are either a liquid or a gas at room temperature, including Refrigerants 11 and 113. For all refrigerants, the sample for water analysis shall be taken from the liquid phase of the container to be tested. Proper operation of the analytical method requires special equipment and an experienced operator. The precision of the results is excellent if proper sampling and handling procedures are followed. Refrigerants containing a colored dye can be successfully analyzed for water using this method.

5.4.2 Water is a harmful contaminant in refrigerants because it causes freeze up, corrosion and promotes unfavorable chemical breakdown. The refrigerants covered in this standard shall have a maximum water content of 10 parts per million (ppm) by weight.

5.5 *Chloride Ions.* The refrigerant shall be tested for chlorides as an indication of the presence of hydrochloric or similar acids.

5.5.1 The test method shall be that described in the Federal Specification for "Fluorocarbon Refrigerants," BB–F–1421B, dated March 5, 1982, (U.S. General Services Administration) section 4.4.4 (silver nitrate reagent). This simple will detect HC1 and other halogens and requires only a 5 ml sample. The test will show noticeable turbidity at equivalent HC1 levels of about 25 ppm by weight or higher.

5.5.2 The results of the test shall not exhibit any sign of turbidity. Report the results as "pass" or "fail."

5.6 Acidity

5.6.1 The acidity test uses the titration principle to detect any compound that ionizes as an acid. The test requires about a 100 to 120 gram sample and has a lower detection limit of 0.1 ppm by weight.

5.6.2 The test method shall be per Allied approved analytical procedure "Determination of Acidity in Genetron® and Genesolve® Fluorocarbons," GP–GEN–2A (used by permission of Allied-Signal, Inc., Columbia Road and Park Avenue. P.O. Box 1139R, Morristown, New Jersey 07960), or DuPont procedure, "The Determination of Acid Number—Visual Titrimetric Procedure," FPL–3–1974 (used by permission of Freon Products Division E.I. duPont de Nemours and Co., Inc., Brandywine Building 13237, Wilmington Delaware 19898).

5.6.3 The maximum permissible acidity is 1 ppm by weight.

5.7 High Boiling Residue

5.7.1 High boiling residue will be determined by measuring the residue after evaporation of a standard volume of refrigerant at a temperature 50°F [10.0°C], above the boiling point of the sample using a Goetz tube as specified in the Federal Specification for "Fluorocarbon Refrigerants," BB–F–1421B, dated March 5, 1982. Oils and organic acids will be captured by this method.

5.7.2 The value for high boiling residue shall be expressed as a percentage by volume and shall not exceed the maximum percent specified in Table 1.

5.8 Particulates/Solids

5.8.1 During the Boiling Range test, a measured amount of sample is evaporated from a Goetz bulb under controlled

temperature conditions. The particulates/solids shall be determined by visual examination of the empty Goetz bulb after the sample has evaporated completely. Presence of dirt, rust or other particulate contamination is reported as "fail."

5.8.2 For details of the above test method, refer to the DuPont method for "Determination of Boiling Range, Residue, Particulates" F3200.037.01CW(P) (used by permission of Freon Products Division, E.I. duPont de Nemours and Co., Inc.).

5.9 Non-Condensables

5.9.1 Non-condensable gases consist primarily of air accumulated in the vapor phase of refrigerant-containing tanks. The solubility of air in the refrigerants liquid phase is extremely low and air is not significant as a liquid phase contaminant. The presence of non-condensable gases may reflect poor quality control in transferring refrigerants to storage tanks and cylinders.

5.9.2 The test method shall be that described in the Federal Specification for "Fluorocarbon Refrigerants," BB–F–1421B, dated March 5, 1982, section 4.4.2 (perchloroethylene method). Gas Chromatography, as described in 5.3.3 is an acceptable alternate test method.

5.9.3 The maximum level of non-condensable in the vapor phase of a refrigerant in a container shall not exceed 1.5 percent by volume.

5.10 Other Refrigerants

5.10.1 The amount of other refrigerants in the subject refrigerant shall be determined by one of the gas chromatographic methods described in 5.3.3 for the appropriate refrigerant.

5.10.2 The subject refrigerant shall not contain more than 0.5 percent by weight of other refrigerants (see Table 1).

Section 6. Reporting procedure

6.1 The source (manufacturer, reclaimer or repackager) of the packaged refrigerant should be identified. The fluorocarbon refrigerant shall be identified by its accepted refrigerant number and/or its chemical name. Maximum permissible levels of contaminants are shown in Table 1. Test results shall be tabulated in a like manner.

Section 7. Voluntary Conformance

7.1 *Voluntary Conformance.* Conformance to this standard is voluntary. However, any refrigerant specified as meeting these requirements shall meet all of the requirements given in this standard.

TABLE 1.—PHYSICAL PROPERTIES OF FLUOROCARBON REFRIGERANTS AND MAXIMUM CONTAMINANT LEVELS

	Refrigerants								
	R11	R12	R13	R22	R113	R114	R500	R502	R503
PHYSICAL PROPERTIES:									
Boiling point	74.9	–21.6	–114.6	–41.4	117.6	38.8	–28.3	–49.8	–127.6
F @ 29.92 in. Hg	[23.8]	[–29.8]	[–81.4]	[–40.8]	[47.6]	[3.8]	[–33.5]	[–45.4]	[–88.7]
Boiling range °F for 5% to 85% by volume distilled	0.5	0.5	0.9	0.5	0.5	0.5	0.9	0.9	0.9
VAPOR PHASE CONTAMINANTS:									
Air and other non-condensables (in filled container) Max. % by volume	.....	1.5	1.5	1.5	.....	1.5	1.5	1.5	1.5
LIQUID PHASE CONTAMINANTS:									
Water—ppm by weight	10	10	10	10	10	10	10	10	10
Chloride ion—no turbidity to pass by test	pass	pass	pass	pass	pass	pass	pass	pass	pass
Acidity—Max. ppm by weight	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
High boiling residues—Max. % by volume	0.01	0.01	0.05	0.01	0.03	0.01	0.05	0.01	0.01
Particulates/Solids—visually clean to pass	pass	pass	pass	pass	pass	pass	pass	pass	pass
Other refrigerants—Max. % by weight	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

Attachment 1 to Appendix A to Subpart F

Titles and Sources of Alternate Gas Chromatography Test Methods

ICI: General Chemical Business, ICI Chemicals and Polymer Ltd., P.O. Box 13, The Heath, Runcorn Cheshire, England WA74QF

Methods for the Analysis of "Arctons," MD1400/32 "Organic Impurities by Gas Chromatography"

Refrigerant	Method Number	Title
R11	RSV/ALAB/CM3 and RSV/ALAB/CM4	Arcton 11.
R12	RSV/ALAB/CM5	Arcton 12.
R13	RSV/ALAB/CM20	——
R22	RSV/ALAB/CM6	Arcton 22.
R113	RSV/ALAB/CM6	Arcton 113.
R114	RSV/ALAB/CM21	Arcton 114.
R500	RSV/ALAB/CM5	——
R502	RSV/ALAB/CM6	——
R503	RSV/ALAB/CM20	——

(Note: Used with permission of the source.)

DuPont: Freon Products Division, E.I. duPont de Nemours and Co., Inc., 1007 Market Street, Wilmington, Delaware 19898

Refrigerant	Method Number	Title
R11	F3205.165.01CW	Determination of Purity by Gas Chromatography "Freon" 11 Fluorocarbon.
R12	F3227.165.01CW(P)	"Freon" 12 Determination of Purity.
R13	F3275.165.01CC(P)	Determination of Composition "Freon" 13 Fluorocarbon.
R22	F3290.165.01LV(P)	"Freon" 22 Determination of Purity by Gas Chromatography.
R113	F3297.165.01CC	"Freon" 113 Determination of Purity by Gas Chromatography.
R114	F3305.165.01CC(P)	"Freon" 114 Fluorocarbon—Determination of Composition.
R500	F3327.165.01CW(P)	"Freon" 500 Determination of Composition by Gas Chromatography.
R502	F3333.165.01CC	"Freon" 502 Determination of Composition by Gas Chromatography.
R503	F3337.165.01CW(P)	"Freon" 503 Determination of Composition.

(Note: Used with permission of the source.)

Allied: Allied-Signal, Inc., Engineered Material Sector, P.O. Box 1139R, Morristown, New Jersey 07960

Refrigerant	Method Number	Title
R11	G–11–7A	Determination of Genetron® 11 Fluorocarbon (Assay) Fluorocarbon 12, Carbon Tetrachloride, and Non-Specified Fluorocarbons in Genetron® 11 Fluorcarbon.
R12	G–12–7A	Determination of Genetron® 12 Fluorocarbon (Assay), Fluorocarbons 11, 13, 22 and Non-Specified Fluorocarbons in Genetron® 12 Fluorocarbons.
R13	——	——
R22	G–22–7A	Determination of Genetron® 22 Fluorocarbons (Assay), Fluorocarbons 12, 21, 23 and Non-Specified Fluorocarbons in Genetron® 22 Fluorocarbons.
R113	GSVD–1A	Determination of Genesolv® D (Assay), Fluorocarbons 112, 114, 122, 123 and 1112a in Genesolv® D.
R114	G–114–7A	Determination of Genetron® 114 Fluorocarbon (Assay), Fluorocarbons 113, 115, 123, and Non-Specified Fluorocarbons in Genetron® 114 Fluorocarbon.
R500	G–500–7A	Determination of Fluorocarbon 12, Fluorocarbon 152a and Non-Specified Fluorocarbons in Genetron® 500 Fluorocarbon.

Refrigerant	Method Number	Title
R502	G–502–7A	Determination of Fluorocarbon 22 and Fluorocarbon 115, and Non-Specified Fluorocarbons in Genetron® 502 Fluorocarbon.
R503	G–503–7A	Determination of Fluorocarbon 13, 23, 12, 22 and Non-Specified Fluorocarbons in Genetron® 503 Fluorocarbon.

(Note: Used with permission of the source.)

Bibliography

For additional information on subjects or tests described in this Standard see:

1. ASHRAE Handbook *Refrigeration 1986*, Chapter 7, "Moisture and Other Contaminant Control in Refrigeration Systems." American Society for Heating, Refrigeration and Air Conditioning Engineers, Inc., Atlanta, GA 30329.

2. ASTM Standard Designation D3401–76, Standard Test Method for "Water in Halogenated Organic Solvents and Their Admixtures" American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

3. ASTM Standard D1533–83, "Water in Insulating Liquid (Karl Fischer Reaction Method)." American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

4. ASTM Standard 2989–74 (reapproved 1981), Standard Test Method for "Acidity—Alkalinity of Halogenated Organic Solvents and Their Admixtures." American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

5. DuPont Technical Bulletin B–8, "Quality Specifications and Methods of Analysis for the 'Freon' Fluorocarbon Refrigerants." Freon Products Division, E.I. duPont de Nemours and Co., Inc.

6. Parmelee, H.M. "Solubility of Air in Freon-12 and Freon-22" Refrigeration Engineering, June 1951 page 573.

7. Wojtkowski, E.F. "System Contamination and Cleanups," ASHRAE Journal, June, 1964 page 49.

Appendix B to Subpart F—Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 740–91.

Section 1. Purpose

1.1 *Purpose.* The purpose of this standard is to establish methods of testing for rating and evaluating performance of refrigerant recovery, recycle, and/or reclaim equipment (herein referred to as equipment) for contaminant or purity levels, capacity, speed, and purge loss to minimize emission into the atmosphere of designated refrigerants.

1.1.1 This standard is intended for the guidance of the industry, including manufacturers, refrigerant reclaimers, repackagers, distributors, installers, servicemen, contractors and for consumers.

1.2 This standard is subject to review and amendment as the technology advances.

Section 2. Scope

2.1 *Scope.* This standard defines the test apparatus, test mixtures, sampling and analysis techniques that will be used to determine the performance ratings of recovery, recycling, and/or reclaim equipment for various refrigerants. It is not intended to guide the industry in defining required levels of contaminants of recycled/reclaim refrigerants used in various applications. These refrigerants are R 11: R 12; R 13; R 22; R 113; R 114; R 500; R 502; and R 503 as referenced in the ANSI/ASHRAE Standard "Number Designation of Refrigerants" (American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., Standard 34–89).

Section 3. Definitions

3.1 *Recovered fluorocarbon refrigerant.* Refrigerant that has been removed from a system for the purpose of storage, recycling, reclamation or transportation.

3.2 *Recover.* To remove refrigerant in any condition from a system and store it in an external container without necessarily testing or processing it in any way.

3.3 *Recycle.* To reduce contaminants in used refrigerant by oil separation and single or multiple passes through devices which reduce moisture, acidity and particulate matter, such as replaceable core filter-driers. This term usually applies to procedures implemented at the field job site or at a local service shop.

3.4 *Reclaim.* To reprocess refrigerant to new product specifications, by means which may include distillation. Chemical analysis of the refrigerant will be required to determine that appropriate product specifications are met. This term usually implies the use of processes or procedures available only at a reprocessing or manufacturing facility.

3.5 *Standard Contaminated Refrigerant Sample.* A mixture of pure refrigerant and specified quantities of identified contaminants which are representative of field obtained used refrigerant samples and which constitute the mixture to be processed by the equipment under test.

3.6 *Motor Burnout* is the final result of hermetic insulation failure during which high temperatures and arc discharges produce large amounts of carbonaceous sludge, acid, water and other contaminants, and some deterioration of the refrigerant and oil. This can normally be detected by a characteristic burnt smell, and by an acid level in the oil exceeding 0.05 acid number [milligrams KOH per gram refrigerant].

3.7 *"Shall," "Should," "Recommended," or "It is Recommended."* "Shall," "should," "recommended," or "it is recommended" shall be interpreted as follows:

3.7.1 *Shall.* Where "shall" or "shall not" is used for a provision specified, that provision is mandatory if compliance with the standard is claimed.

3.7.2 *Should, Recommended, or It is Recommended* . "Should," "recommended," or "it is recommended" is used to indicate provisions which are not mandatory but which are desirable as good practice.

Section 4. General Equipment Requirements

4.1 The equipment manufacturer shall provide operating instructions, necessary maintenance procedures, and source information for replacement parts and repair.

4.2. The equipment shall reliably indicate when the filter/drier(s) needs replacement if this method is used.

4.3 The equipment shall either automatically purge non-condensables if the acceptable level is exceeded or alert the operator that the non-condensable level has been exceeded.

4.3.1 The equipment's refrigerant loss due to non-condensable purging shall not exceed 5% by weight of total recovered refrigerant. (See Section 9.4)

4.4 Internal hose assemblies shall not exceed a permeation rate of 12 pounds mass per square foot [5.8g/cm^2] of internal surface per year at a temperature of 120 °F [48.8 °C] for any designated refrigerant.

TABLE 1.—STANDARD CONTAMINATED REFRIGERANT SAMPLE

	R11	R12	R13	R22	R113	R114	R500	R502	R503
Moisture Content:									
PPM by Weight of Pure Refrigerant	100	80	30	200	100	85	200	200	30
Particulate Content:									
PPM by Weight of Pure Refrigerant (Characterized by [1])	80	80	80	80	80	80	80	80	80
Acid Content:									
PPM by Weight of Pure Refrigerant—mg KOH per kg Refrig. (Characterized by [2])	500	100	N/A	500	400	200	100	100	N/A
Mineral Oil Content:									
% by Weight of Pure Refrigerant	20	5	N/A	5	20	20	5	5	N/A
Viscosity (SUS)	300	150	300	300	300	300	150	150	300

TABLE 1.—STANDARD CONTAMINATED REFRIGERANT SAMPLE—Continued

	R11	R12	R13	R22	R113	R114	R500	R502	R503
Non Condensable Gases Air Content (% Volume)	N/A	3	3	3	N/A	3	3	3	3

[1] Particulate content shall consist of inert material and shall comply with particulate requirements in ASHRAE Standard 63.2, "Method of Testing the Filtration Capacity of Refrigerant Liquid Line Filters and Free Driers."
[2] Acid consists of 50% oleic and 40% hydrochloric acid on a total acid number basis.

4.5 The equipment shall be capable of operation to the specifications in ambient temperatures of 50 °F to 104 °F [10°C to 40°C].

4.5.1 Equipment specified to operate within a controlled temperature range will be evaluated only within that range.

4.6 *Exemptions:*

4.6.1 Equipment intended for a single professional operator and backed by chemical analysis shall be exempt from sections 4.1, 4.2, and 4.3 but not 4.3.1.

4.6.2 Equipment intended for recovery only shall be exempt from sections 4.2 and 4.3.

Section 5. Contaminated Refrigerants

5.1 The standard contaminated refrigerant sample shall have the contents as specified in Table 1

Section 6. Apparatus

6.1 The apparatus as shown in Figure 1, consists of a 3 cubic ft. [0.085 m^3] mixing chamber with a conical-shaped bottom although a larger mixing chamber is permissible. The outlet at the bottom of the cone and all restrictions and valves for liquid and vapor refrigerant lines in the test apparatus shall be a minimum of 0.375 in. [9.5 mm] inside diameter or equivalent. The mixing chamber would contain various ports for receiving liquid refrigerant, oil, and contaminants as required. A recirculating line connected from the bottom outlet through a recirculating pump and then to a top vapor port would provide for stirring of the mixture. Isolation valves may be required for the pump.

6.2 For liquid refrigerant feed, the liquid valve would be opened. For vapor refrigerant feed, the vapor valve would be opened and refrigerant would pass through an evaporator coil. Flow would be controlled by a thermostatic expansion valve to create 5 F [2.8°C] superheat. The evaporator coil must either be sized large enough to handle the largest system or be sized for each system as required.

6.3 An alternative method for vapor refrigerant feed would be to pass through a boiler and then an automatic pressure regulating valve set at refrigerant saturation pressure at 75 °F ± 2 °F [23.9° C ± 1.1 °C].

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Figure 1
Liquid & Vapor Feed Apparatus

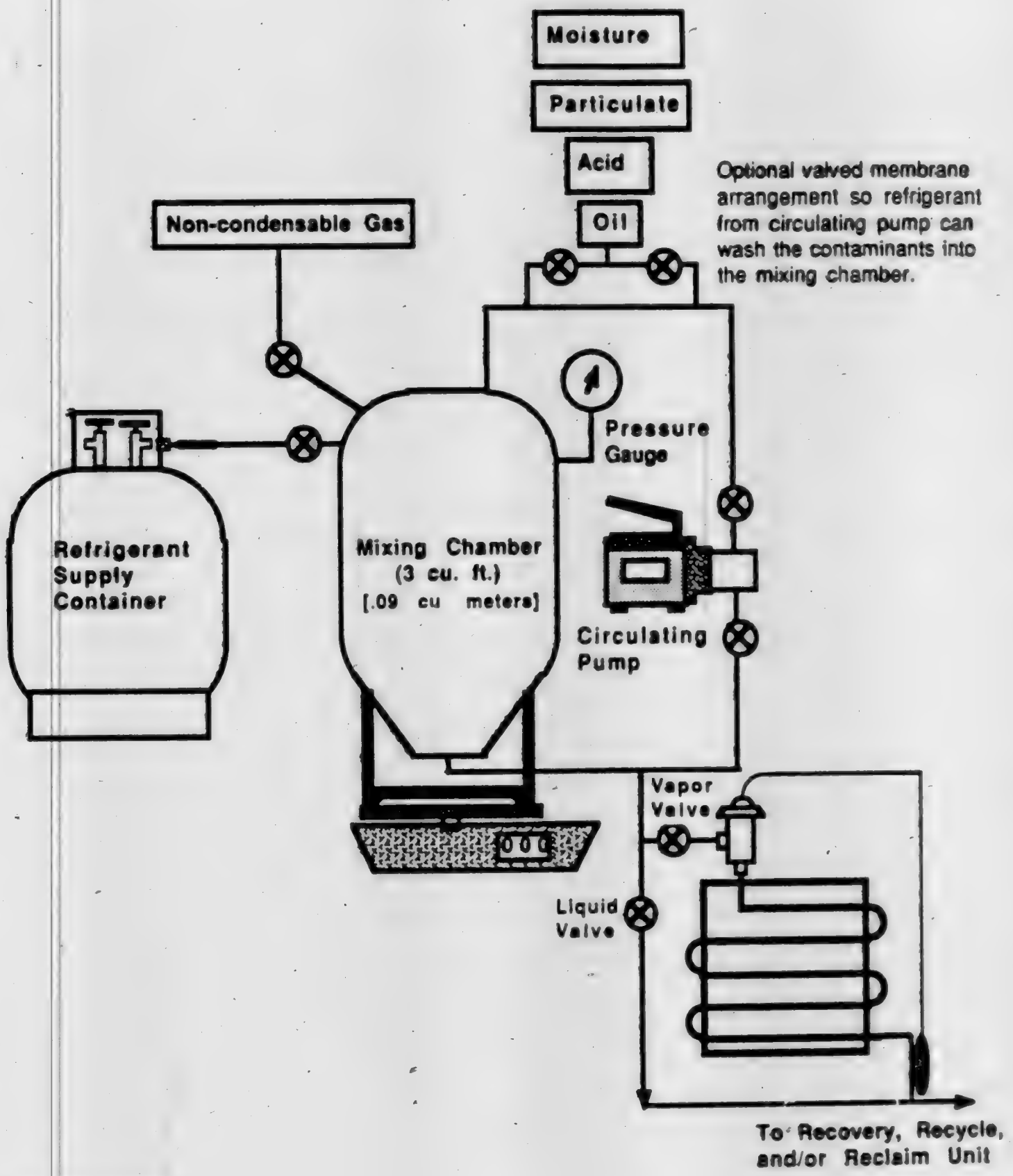

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Section 7. Performance Testing

7.1 Contaminants removal and performance testing shall be conducted at 75 °F ± 2 °F [23.9 °C ± 1.1°C].

7.1.1 Equipment shall be prepared for operation per the instruction manual.

7.1.2 The contaminated sample batch shall consist of not less than the sum of the amounts required to complete steps 7.1.2.2 and 7.1.2.3 below.

7.1.2.1 A liquid sample will be drawn from the mixing chamber prior to starting the test to assure quality control of the mixing process.

7.1.2.2 Vapor refrigerant feed testing, if elected, shall be processed first. After the equipment reaches stabilized conditions of condensing temperature and/or storage tank pressure, the vapor feed recovery rate shall be measured. One method is to start measuring the vapor flow rate when 85% of refrigerant remains in the mixing chamber and continue for a period of 2 minutes. If liquid feed is not elected, complete Step 7.1.2.3.1.

7.1.2.3 Liquid refrigerant feed testing, if elected, shall be processed. After the equipment reaches stabilized conditions, the liquid feed recovery rate shall be measured. One method would be to wait 1 minute after starting liquid feed and continue for a period of 2 minutes.

7.1.2.3.1 The liquid refrigerant feed test (vapor feed if vapor feed only is selected) shall continue until all the liquid is gone and the equipment shuts down per automatic means or operating instructions. The liquid (or vapor) valve of the apparatus shall be closed and the mixing chamber pressure recorded after 1 minute.

7.1.3 Recycle or reclaim as called for in the equipment operating instructions. Determine processing rate by appropriate means.

7.1.4 Repeat steps 7.1.2.1, 7.1.2.2 (alternately if both elected), and 7.1.3 until equipment indicator(s) show need to change filter(s).

7.1.4.1 For equipment with multiple pass recirculating filter system, change filter(s) and complete recycle or reclaim. Analyze previous batch and current batch after completion of recycle or reclaim.

7.1.4.2 For equipment with single pass filter system, analyze the current batch portion in the storage container.

7.1.5 Refrigerant loss due to the equipment's non-condensable gas purge shall be determined by appropriate means. (See Section 9.4)

7.1.6 Equipment intended for recovery only shall be exempt from Section 7.1.4.

Section 8. Sampling and Chemical Analysis Methods

8.1 The recommended referee test methods for the various contaminants are given in the following paragraphs. If alternate test methods are employed, the user must be able to demonstrate that they produce results equivalent to the specified referee method.

8.2 *Refrigerant Sampling.*

8.2.1 Special precautions should be taken to assure that representative samples are obtained for analysis. Sampling shall be done by trained laboratory personnel following accepted sampling procedures. The stainless steel test cylinder (approximately 30.5 cu. inches [500 ml] capacity with valves at each end) shall be prepared as follows for obtaining gas and liquid phase samples.

a. Clean test cylinder (with valves) with 0.16–0.67 oz [5–20 ml] portions of reagent grade 1.1.1—trichloroethane or suitable solvents.

b. Blow out test cylinder with dry nitrogen containing not more than 3 PPM of water.

c. With valves open, place test cylinder and connecting tubing in oven at approximately 230 F [110 °C] for one hour.

d. When heated, connect clean copper tubing to storage container and test cylinder. Connect immediately to an evacuation system and evacuate to less than 1 mm mercury [0.133 kPa] (1000 microns).

8.2.2 *Gas Phase Sample.* A gas phase sample shall be obtained for determining the non-condensables. The sample content shall be the minimum required for analysis. Since R 11 and R 113 have normal boiling points at or above room temperature, non-condensable determination is not required for these refrigerants.

8.2.3 *Liquid Phase Sample.* A liquid phase sample is required for all tests listed in this standard, except the test for non-condensables. Do not load the cylinder over 80 percent full at room temperature. This can be accomplished by weighing the empty cylinder and then the cylinder with refrigerant. The cylinder must not become completely full of liquid below 130 F [54.4 °C]. When the desired amount of refrigerant has been collected, close the valve(s) and disconnect the sample cylinder immediately.

8.2.3.1 Check the sample cylinder for leaks and record the gross weight.

8.3 *Water Content.*

8.3.1 A liquid refrigerant sample is required. The Karl Fischer Analytical Test Method may be used for determining the water content of refrigerant. This method is described in ASTM standard for "Water In Gases Using Karl Fischer Reagent" E700–79, reapproved 1984 (American Society for Testing Materials, Philadelphia, PA). This method can be used for refrigerants that are either a liquid or a gas at room temperature, including refrigerants R 11 and R 113. An alternate method, Quantitative Determination of Moisture by Karl Fischer Coulometer Titration, may be used. Refrigerants that are a gas at room temperatures with weighed amounts from 1.07 oz to 4.64 oz [30 to 130 grams], of liquid refrigerant shall be allowed to vaporize, and be introduced directly into the anolyte of a Karl Fischer Coulometer.

Refrigerants that are liquid at room temperature with weighed amounts from 1.07 oz to 4.64 oz [30 to 130 grams] of liquid are to be introduced directly into the anolyte of a Karl Fischer Coulometer. For all refrigerants the sample for water analysis shall be taken from the liquid phase of the container to be tested Proper operation of the analytical and instrumental method requires special equipment, Karl Fischer Reagents, solvents, and an experienced operator. The precision of the results is excellent if proper sampling and handling procedures are followed. Refrigerants containing a colored dye can be successfully analyzed for water using this method.

8.3.2 Water is a harmful contaminant in refrigerants because it causes freeze up, corrosion and promotes unfavorable chemical breakdown. Report the moisture level in parts per million by weight if sample is required.

8.4 *Chloride Ions.* The refrigerant shall be tested for chloride as an indication of the presence of hydrochloride or similar acids.

8.4.1 The test method shall be that described in the Federal Specification for "Fluorocarbon Refrigerants," BB–F–1421B, dated March 5, 1982, (U.S. General Services Administration) section 4.4.4 (silver nitrate reagent). This simple test will detect Cl^- and other halogens and requires only a 0.16 oz [5 ml] sample. The test will show noticeable turbidity at equivalent halogen levels of about 25 ppm by weight [milligram KOH per Kilogram].

8.4.2 The results of the test shall not exhibit any sign of turbidity. Report the results as "pass" or "fail."

8.5 *Acidity.*

8.5.1 The acidity test uses the titration principle to detect any compound that ionizes as an acid. The test requires about 0.220 lbs. [100 grams] to 0.265 lbs. [120 grams] sample and has a lower detection limit of 0.1 ppm [milligram KOH per Kilogram] by weight.

8.5.2 The test method shall be per Allied approved analytical procedure "Determination of Acidity in Genetron® and Genesolv® Fluorocarbons," *GP–GEN–2A (used by permission of Allied-Signal, Inc., Columbia Road and Park Avenue, P.O. Box 1139R, Morristown, New Jersey 07960).*

8.5.3 Report the acidity in ppm by weight [milligram KOH per Kilogram].

8.6 *High Boiling Residue.*

8.6.1 High boiling residue will be determined by measuring the residue after evaporation of a standard volume of refrigerant at a temperature 50 F [10.0°C], above the boiling point of the sample. A Goetz tube as specified in the Federal Specification for "Fluorocarbon Refrigerants," BB–F–1421B dated March 5, 1982 may be used. Oils and organic acids will be captured by this method.

8.6.2 The value for high boiling residue shall be expressed as a percentage by volume.

8.7 *Particulates/Solids.*

8.7.1 A liquid refrigerant sample is required. During the Boiling Range test, a measured amount of sample is evaporated from a Goetz bulb under temperature conditions. The particulates/solids shall be determined by visual examination of the empty Goetz bulb after the sample has evaporated completely. Presence of dirt, rust or other particulate contamination is reported as "fail."

8.7.2 For details of the above test method, refer to the E. I. du Pont de Nemours method for "Determination of Boiling Range, Residue, Particulates" F3200.037.01CW(P) (used by permission of Freon Products Division, E.I. du Pont de Nemours and Co., Inc.).

8.8 *Non-Condensables.*

8.8.1 A vapor refrigerant sample is required. Non-condensable gases consist primarily of air accumulated in the vapor phase of refrigerant containing tanks. The

solubility of air in the refrigerants liquid phase is extremely low and air is not significant as a liquid phase contaminant. The presence of non-condensable gases may reflect poor quality control in transferring refrigerants to storage tanks and cylinders.

8.8.2 Known volumes of refrigerant vapors are to be injected for separation and analysis by means of gas chromatograph. A Parapak Q column at 266 F [130°C] and a hot wire detector are to be used for the analysis.

8.8.2.1 The Federal Specification for "Fluorocarbon Refrigerants," BB–F–1421B, dated March 5, 1982, section 4.4.2 (perchloroethylene method) is an acceptable alternate test method.

8.8.3 Report the level of non-condensables as percent by volume.

Section 9. Performance Calculation and Rating

9.1 The liquid refrigerant recovery rate shall be expressed in lbs. per minute [k/m] and measured by weight change at the mixing chamber (see Figure 1) divided by elapsed time to an accuracy within .02 lbs/min. [0.008 k/m].

9.2 The vapor refrigerant recovery rate shall be expressed in lbs. per minute [k/m] and measured by weight change at the mixing chamber (see Figure 1) divided by elapsed time to an accuracy within .02 lbs/min. [0.008 k/m].

9.3 The recycling rate shall be expressed in lbs. per minute [k/m] of flow and shall be as per ASHRAE 41.7–84 "Procedure for Fluid Measurement of Gases" or ASHRAE 41.8–89 "Standard Method of Flow of Fluids—liquids." If no separate recycling loop is used, the rate shall be the higher of the vapor refrigerant recovery rate or the liquid refrigerant recovery rate.

9.4 Refrigerant loss due to non-condensable purging shall be less than 5%. This rating shall be expressed as passed if less than 5%.

This calculation will be based upon net loss of non-condensables and refrigerant due to the purge divided by the initial net content. The net loss shall be determined by weighing before and after the purge, by collecting the purged gases, or an equivalent method.

9.5 The vapor recovery efficiency shall be expressed in percent and shall be calculated as follows:

E=vapor recovery efficiency (percent)
Psat=refrigerant saturation pressure at 75 F (psia) [23.9 °C, kPa]
P=mixing chamber pressure (psia) [kPa] determined in 7.1.2.3.1
E=100. (Psat–P)/Psat

9.6 The contaminant levels remaining after testing shall be published as follows:

Moisture content, PPM by weight
Chloride ions, PPM by weight
Acidity, PPM by weight
High boiling residue, percentage by volume
Particulates/solid, visual examination
Non-condensables, % by volume

Section 10. Tolerances

10.1 Any machine tested shall produce contaminant levels not higher than the published ratings. The liquid refrigerant recovery rate, vapor refrigerant recovery rate, vapor recovery efficiency and recycle rate shall not be less than the published ratings.

Section 11. Product Labelling

11.1 Type of equipment: [Recovery, Recovery/Recycle, Recovery/Reclaim, Recycle, or Reclaim].

11.2 Designated refrigerants and the following as applicable for each:

11.2.1 Liquid refrigerant recovery rate
11.2.2 Vapor refrigerant recovery rate
11.2.3 Vapor recovery efficiency
11.2.4 Recycle rate

Section 12. Voluntary Conformance

12.1 *Conformance.* While conformance with this standard is voluntary, conformance shall not be claimed or implied for products or equipment within its Purpose (Section 1) and Scope (Section 2) unless such claims meet all of the requirements of the standard.

Appendix C to Subpart F—Method for Testing Recovery Devices for Use With Small Appliances

Refrigerators and Freezers

The following test procedure is utilized to evaluate the efficiency of equipment designed to recover CFC refrigerants from household refrigerators and freezers when service of those appliances requires entry into the sealed refrigeration system. This procedure is designed to calculate on a weight or mass basis the percentage of a known charge of CFC refrigerant removed and captured from a test stand refrigeration system and delivered to a container suitable for shipment to a CFC reclaimer. The test stand refrigeration system required for this procedure is constructed with standard equipment utilized in currently produced household refrigerator and freezer products. The procedure also accounts for compressor oils that might be added to the recovered refrigerant by the test stand compressor or any compressor used in the recovery system.

I. Test Stand

Test stands are constructed in accordance with the following standards.

1. Evaporator—5/16 in. outside dia. with 30 cu. in. volume
2. Condenser—¼ in. outside dia. with 20 cu. in. volume.
3. Suction line capillary heat exchanger—appropriate for compressor used.
4. High side case compressor which can operate with an approximate 9 oz. R 12 charge, or
5. Low side case compressor that can operate with an appropriate 6 oz. R 12 charge.

II. Test Conditions

Tests are to be conducted at 75 degrees F, plus or minus 2 degrees F (23.9 °C± 1.1 °C). Separate tests are conducted on both high side case compressor stands and low side case compressor stands. Separate tests are also conducted with the test stand compressor running during the recovery operation, and without the test stand compressor running during the recovery operation, to calculate the system's recovery efficiency under either condition.

These tests are to be performed using a representative model of all equipment used in the recovery system to deliver recovered refrigerant to a container suitable for shipment to a CFC reclaimer. The test stands are to be equipped with access valves located at the points where the recovery system vendor's operating instructions indicate that a piercing saddle valve should be connected to perform the recovery operation. Piercing saddle valves are not used in the test because of the numerous recovery operations that must be run on a test stand.

A series of ten (10) recovery operations are to be performed for each compressor scenario. There are four (4) compressor scenarios to be tested. These are a high side case compressor in working condition; a high side case compressor in nonworking condition; a low side case compressor in working condition; and a low side case compressor in nonworking condition. Recovery efficiencies calculated for the two working compressor scenarios are to be averaged to report a working compressor performance. The two nonworking compressor efficiencies are also to be averaged to report a nonworking compressor performance.

If large scale equipment is required in the system to deliver recovered CFC to a reclaimer (eg. carbon desorption equipment) and it is not possible to have that equipment evaluated under this procedure, the system's vendor shall obtain engineering data on the performance of that large scale equipment that will reasonably demonstrate the percentage CFC lost when processed by that equipment. That data will be supplied to any person required to evaluate the performance of those systems. The following procedure will also be modified as needed to determine the weight of R–12 recovered from a test stand and delivered to a container for shipment to the large process equipment for further processing, and to subtract any oil contamination included in that weight.

Weighing steps are conducted with precision and accuracy of plus or minus 0.1 gram.

The following are definitions of symbols used in the test procedure.

"TSO" means an original test stand weight.
"TSC" means a charged test stand weight.
"TSF" means a final test stand weight.
"SCO" means the original or empty weight of shipping containers.
"SCF" means the final or full weight of shipping containers.
"RSO" means the original weight of a recovery/transfer system.
"RSF" means the final weight of a recovery/transfer system.
"OPL" means the weight of oil purged from any recovery or transfer device.

III. Test Procedure

1. Evacuate the test stand to 20 microns vacuum for 24 hours.
2. Weigh the test stand (TSO)
3. If this is the first of the ten (10) recovery operations being performed for a compressor scenario, then weigh all devices containing oil (*i.e.* devices containing compressors) used in the recovery system to deliver recovered R–12 to a container suitable for shipment or delivery to a CFC reclaimer (RSO).
4. Weigh the final shipping containers (SCO). These must be the type of container

that will be used to ship or otherwise deliver recovered refrigerant to a CFC reclaimer. Weigh enough containers to hold refrigerant recovered during ten (10) recovery operations.

5. Charge the test stand with an appropriate R–12 charge (either 6 oz. or 9 oz.).

6. Run the test stand for four (4) hours with 100% run time.

7. Turn off the test stand for twelve (12) hours. During this period evaporate all condensation that has collected on the test stand during step 6.

8. Weigh the test stand (TSC).

9. Recover R–12 from the test stand and perform all operations needed to transfer the recovered refrigerant to one of the shipping containers weighed in step 4. All recovery and transfer operations are to be performed in accordance with the operating instructions provided by the system's vendor. The compressor in the test stand is to remain off or be turned on during the recovery operation depending on whether the test is for a nonworking or working compressor performance evaluation. If the system allows for multiple recovery operations to be performed before transferring recovered refrigerant to a shipping container, do not transfer recovered refrigerant to the shipping container until either the maximum number of recovery operations allowed have been performed or the last of the ten (10) recovery operations has been performed.

10. Perform any oil purge operation needed to properly maintain the devices used for recovery or transfer operations capturing the oil purged during the operation. Weigh the oil captured during the oil purge operation (OPL).

11. Evacuate the test stand to 20 microns vacuum for 24 hours.

12. Weigh the test stand (TSF).

13. Add compressor oil if needed to maintain the compressor in the test stand. (If oil is added, evacuate the test stand again to 20 microns for 24 hours.)

14. Return to step 2 unless ten (10) recovery operations have been performed.

15. Weigh all final shipping containers that received recovered refrigerant (SCF).

16. Weigh the equipment weighed in step three (3) above (RSF).

IV. Calculations

CFC Recoverable equals the summation of charged test stand weights minus original test stand weights.

$$\text{CFC Recoverable} = \sum_{i=1}^{10} (TSC_i - TSO_i)$$

CFC Recovered equals the final weight of shipping containers minus the initial weight of final shipping containers, minus the summation of (original test stand weights minus final test stand weights), plus final recovery system weight, minus original recovery system weight, plus the weight of any oil purged from recovery or transfer devices.

$$\text{CFC Recovered} = \sum_{i=1}^{n} (SCF_i - SCO_i) - \sum_{j=1}^{10} (TSO_j - TSF_j) + RSF - RSO + OPL$$

n=number of shipping containers used.

Recovery Efficiency equals CFC Recovered divided by CFC Recoverable times 100%.

$$\text{Recovery Efficiency} = \frac{\text{CFC Recovered}}{\text{CFC Recoverable}} \times 100\%$$

Where the recovery system utilizes multiple recovery operations (*e.g.*, additional CFC removal from a compressor after the compressor is returned to a service shop), tests must include all such recovery operations. Some recovery and transfer devices retain CFC refrigerant within the device at all times (*i.e.*, dissolved in the compressor oil of the recovery device). When devices of this nature are being evaluated by this test procedure, they should first have been used in enough recovery or transfer operations to make sure the device will not retain portions of the refrigerant handled by that device during the test procedure.

BILLING CODE 6560–50–M

OMB Number XXXX-XXXX
Expiration Date XX/XX/XX

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) REFRIGERANT RECOVERY OR RECYCLING DEVICE ACQUISITION CERTIFICATION FORM

EPA regulations require establishments that service refrigeration or air conditioning equipment to certify [90 days after publication of the final rule] that they have acquired refrigerant recovery or recycling devices that meet EPA standards for such devices. To certify that you have acquired equipment, please complete this form according to the instructions and mail it to the appropriate EPA Regional Office. Both the instructions and mailing address can be found on the reverse side of this form.

PART 1: NAME, PHONE NUMBER, AND ADDRESS

Name of Establishment	Street
(Area Code) Telephone Number	City / State / Zip Code

PART 2: DEVICE IDENTIFICATION

Name of Device(s) Manufacturer	Model Number	Year	Serial Number (if any)
1.			
2.			
3.			
4.			
5.			
6.			
7.			

PART 3: SIGNATURE

I certify that the establishment named in Part 1 has acquired the refrigerant recovery or recycling device(s) listed in Part 2 and that the information given is true and correct.

Signature of Owner/Responsible Officer	Date	Name (Please Print)	Title

PART 4: PASSIVE DEVICE CERTIFICATION

I certify that the passive device(s) listed in Part 2 are intended only for use on equipment that contains less than one pound of refrigerant.

Signature of Owner/Responsible Officer	Date	Name (Please Print)	Title

Public reporting burden for this collection of information is estimated to vary from 20 to 60 minutes per response with an average of 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M St., S.W. (PM 223Y), Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." DO NOT SEND THIS FORM TO THE ABOVE ADDRESSES. ONLY SEND COMMENTS TO THESE ADDRESSES.

BILLING CODE 6560-50-C

Instructions

Part 1: Please provide the name, address, and telephone number of the establishment where the refrigerant recovery or recycling device(s) is (are) located. Please complete one form for each location.

Part 2: For each recovery or recycling device acquired and intended to be used, please list the name of the manufacturer of the device, its model number, and (if applicable) its serial number. If more than 7 devices have been acquired, please fill out an additional form and attach it to this one.

Part 3: This form must be signed by either the owner of the establishment or another responsible officer. The person who signs is certifying that the establishment has acquired the equipment and that the information provided is true and correct.

Part 4: If one or more of the devices listed in part 2 is a passive device, the owner of the establishment or another responsible officer must also sign the statement in part 4. A passive device is defined as a device that relies solely on the compressor and/or the pressure of the refrigerant in the refrigeration or air conditioning equipment to remove the refrigerant into an external container. The person who signs is certifying that the device(s) is (are) intended for the recovery of refrigerant from refrigeration or air conditioning equipment that contains less than one pound of refrigerant.

Please send this form to the EPA Regional Office responsible for the state or territory in which the establishment is located.

EPA Regional Offices

CAA 608 Enforcement Contact: EPA Region I, Mail Code APC, JFK Federal Building, One Congress Street, Boston, MA 02203	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
CAA 608 Enforcement Contact: EPA Region II, Jacob K. Javits Federal Building, Room 5000, 26 Federal Plaza, New York, NY 10278	New York, New Jersey, Puerto Rico, Virgin Islands.
CAA 608 Enforcement Contact: EPA Region III, Mail Code 3AT21, 841 Chestnut Building, Philadelphia, PA 19107	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
CAA 608 Enforcement Contact: EPA Region IV, Mail Code APT–AE, 345 Courtland Street, NE, Atlanta, GA 30365	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
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[FR Doc. 92–29538 Filed 12–9–92; 8:45 am]

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federal register

Thursday
December 10, 1992

Part IV

The President

Proclamation 6513—Human Rights Day, Bill of Rights Day, and Human Rights Week, 1992

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Presidential Documents

Title 3—

The President

Proclamation 6513 of December 8, 1992

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1992

By the President of the United States of America

A Proclamation

This week, as we commemorate the ratification of our Bill of Rights on December 15, 1791, we not only give thanks for our Nation's enduring legacy of liberty under law but also celebrate its role in promoting human rights around the world.

Our Bill of Rights guarantees, among other basic liberties, freedom of religion, speech, and the press. It affirms the right of the people to keep and bear arms; ensures that no person shall be deprived of life, liberty, or property without due process of law; and guarantees the right of citizens to be secure against unreasonable searches and seizure of their persons, houses, papers, and effects. The Bill of Rights also establishes fundamental rules of fairness in our Nation's judicial system, including the right to trial by jury, assistance of counsel, and freedom from cruel and unusual punishment. Finally, the Bill of Rights reserves to the States respectively, or to the people, those powers that are not delegated to the Federal Government by the Constitution.

Seventeen additional amendments have been added to our Constitution over the past 200 years, but the Bill of Rights has remained a shining symbol of our liberty—a standard against which we measure the legitimacy of American laws and institutions.

Over time, the Bill of Rights has proved to be a cornerstone as well: today we recognize that great document as the foundation of more recent charters of liberty, including the Universal Declaration of Human Rights, which was adopted by the General Assembly of the United Nations on December 10, 1948. Recognizing that respect for "the inherent dignity and . . . the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world," signers of the Declaration affirmed that "everyone has the right to life, liberty, and the security of person." Signers likewise stated that "all are equal before the law and are entitled without any discrimination to equal protection of the law." They agreed to respect freedom of thought, conscience, and religion for all, without regard to race, nationality, gender, or belief, and declared that "everyone has the right to take part in the government of his country, directly or through freely chosen representatives." These principles were affirmed again in 1975, when the United States, Canada, and 33 European nations joined together in signing the Helsinki Final Act of the Conference on Security and Cooperation in Europe.

While we have made great progress toward the goals set forth at Helsinki and reaffirmed at subsequent CSCE meetings in Copenhagen, Geneva, and Moscow, we know that there is still much work to do in promoting the peaceful resolution of conflicts, the establishment of stable, democratic institutions of government, and universal compliance with international human rights agreements. When he proposed a Bill of Rights to our Constitution in 1789, James Madison sagely noted that such a document would strengthen democracy by preventing a tyranny of the majority, in which the will of a larger number of citizens might be levelled against the rights of the

few. The resurgence of ethnic violence and bitter nationalist rivalries has underscored the urgency of protecting the rights of minorities. As it has done consistently in the past, the United States calls on all signatories to the Helsinki Final Act and the Universal Declaration of Human Rights to fulfill their solemn commitment to protect the rights of individuals, without regard to race, nationality, or creed.

Recognizing that egregious human rights violations continue not only in regions encompassed within the CSCE but also in other regions of the world, the United States also denounces any attempts to dilute or distort human rights agreements through the claim of particular socioeconomic circumstances or religious and cultural traditions. Having fought so long for recognition of an international human rights standard, one rooted in fundamental standards of morality and justice, we will not condone that consensus being undermined by those who claim that their particular economic, social, or political contexts relieve them of their obligation to protect the rights of individuals. The upcoming World Conference on Human Rights, which is to be held in June 1993, will provide the United States with another opportunity to reaffirm the universality of human rights and the common duty of all governments to uphold them.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1992, as Human Rights Day and December 15, 1992, as Bill of Rights Day, and call on all Americans to observe the week beginning December 10, 1992, as Human Rights Week. I urge all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

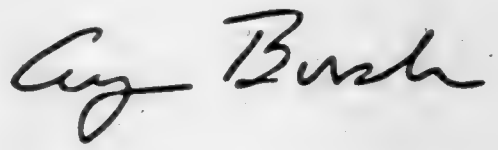

[FR Doc. 92-30254
Filed 12-9-92; 10:38 am]
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Thursday, December 10, 1992

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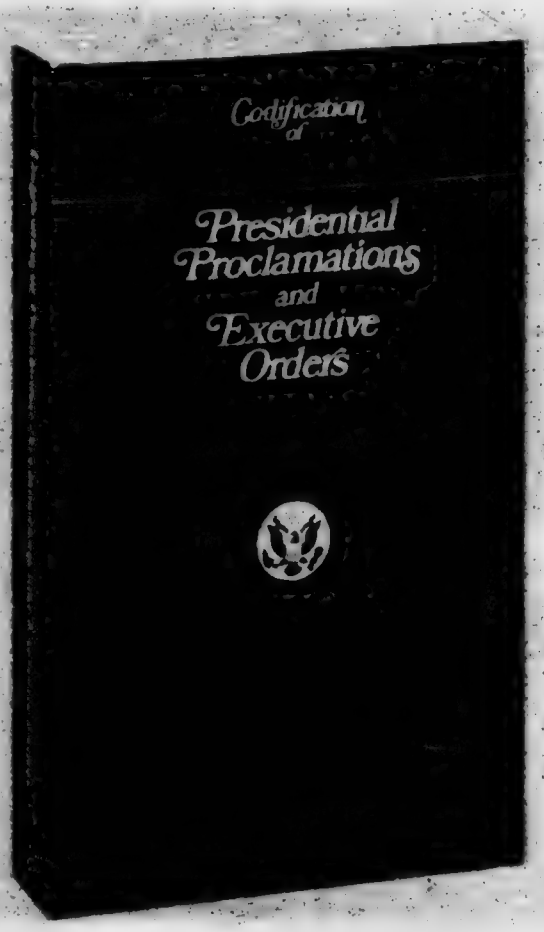

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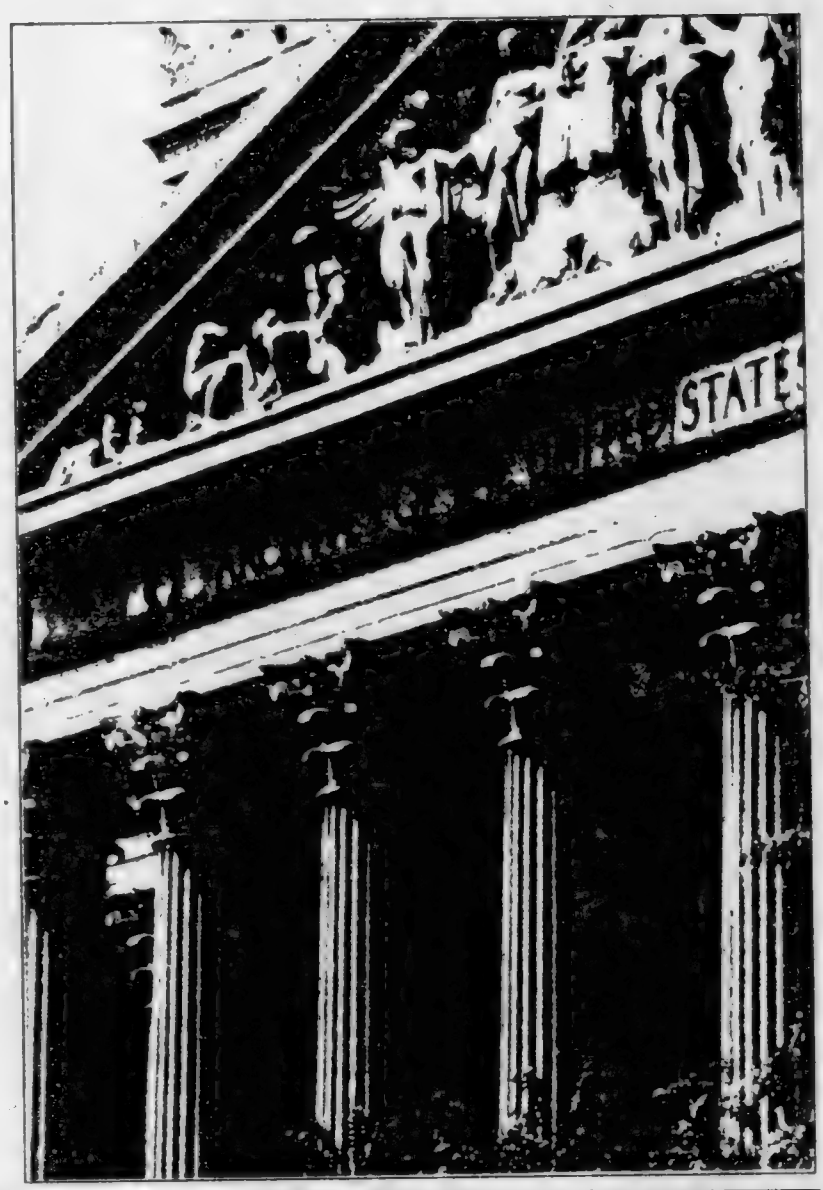

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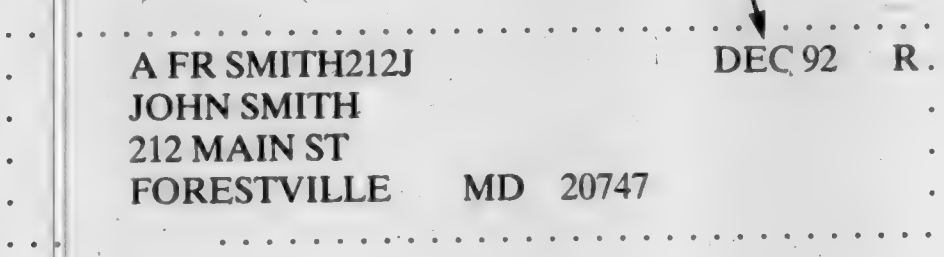

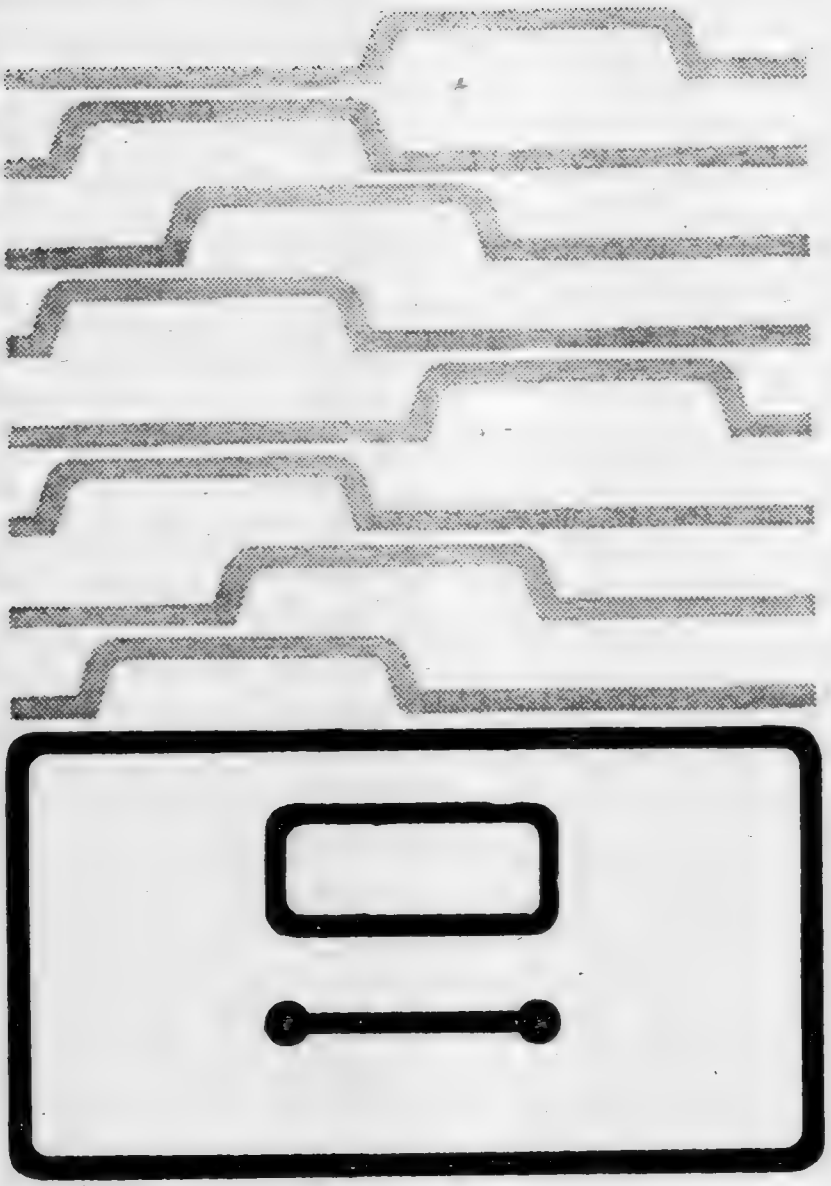

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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Vol. 57 No. 239

federal register

Friday
December 11, 1992

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Presidential Documents

Title 3—

The President

Proclamation 6514 of December 9, 1992

Religious Freedom Day, 1993

By the President of the United States of America

A Proclamation

We Americans have long cherished our identity as one Nation under God. To this day American law and institutions have been shaped by a view of man that recognizes the inherent rights and dignity of individuals. The Framers of our Government shared this view, and they never forgot the political and religious persecution that had forced their ancestors to flee Europe. Thus, it is not surprising that the first of all freedoms enumerated in our Bill of Rights is freedom of religion. The first amendment to our Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

As we reflect on our Constitution and Bill of Rights, we do well to acknowledge our debt to Thomas Jefferson and James Madison. These two men were instrumental in establishing the American tradition of religious liberty and tolerance. Thomas Jefferson articulated the idea of religious liberty in his 1777 draft Bill for Establishing Religious Freedom in Virginia. In that bill, he wrote:

> . . . all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise . . . affect their civil capacities.

James Madison later introduced and championed this bill in the Virginia House of Delegates, where it passed in 1786. Following the Federal Constitutional Convention of 1787, James Madison led the way in drafting our Bill of Rights.

The religious freedom that James Madison and Thomas Jefferson helped to secure for us has been integral to the preservation and development of the United States. Over the years the exercise of our religious freedom has been instrumental in preserving the faith and the traditional values that are this Nation's greatest strengths. Moreover, the free exercise of religion goes hand in hand with the preservation of our other rights. As Thomas Jefferson noted, the first amendment "guard[s] in the same sentence, and under the same words, the freedom of religion, of speech, and of the press; insomuch as that whatever violates either throws down the sanctuary which covers the others." That sanctuary is the spirit of life, liberty, truth, and justice.

In that spirit, the United States has continued to champion religious liberty and tolerance around the world. We decry as reprehensible the persecution of ethnic and religious minorities, and we likewise condemn the resurgence of anti-Semitism and other forms of religious bigotry. The United States calls on all nations to respect the fundamental rights of individuals, in accordance with international human rights agreements and in recognition of the direct and inexorable relationship between freedom and justice and the achievement of lasting peace in the world.

The Congress, by House Joint Resolution 457, has designated January 16, 1993, as "Religious Freedom Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim January 16, 1993, as Religious Freedom Day. I urge all Americans to observe this day with appropriate ceremonies and activities in their homes, schools, and places of worship as an expression of our gratitude for the blessings of liberty and as a sign of our resolve to protect and preserve them.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-30339
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Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASO-9]

Alteration of Control Zone, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Orlando, FL Control Zone by adding and deleting arrival area extensions. A VOR/DME standard instrument approach procedure (SIAP) has been developed to serve Runway 7 at the Orlando Executive Airport. The VOR Runway 13 SIAP has been cancelled. This action adds an arrival area extension west of the airport to provide additional controlled airspace for instrument flight rules (IFR) aircraft executing the VOR/DME Runway 7 SIAP. This action eliminates the existing Runway 13 arrival area extension northwest of the airport. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83.

EFFECTIVE DATE: 0901 U.T.C., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On August 14, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the Orlando, FL Control Zone (57 FR 36617). That notice proposed to add an arrival area extension west of the Orlando Executive Airport to provide controlled airspace for IFR aircraft executing a recently developed instrument approach procedure (SIAP) to Runway 7. That notice stated that when the VOR/DME Runway 7 SIAP was established, the Runway 13 VOR/DME SIAP would be cancelled. In the absence of an instrument approach procedure to Runway 13, the arrival area extension north of the airport would no longer be required and would be eliminated. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Aircraft Owners and Pilots Association (AOPA) objected to the proposed cancellation of the VOR Runway 13 SIAP. However, our analysis revealed the VOR Runway 13 SIAP is used primarily by visual flight rules (VFR) aircraft executing practice instrument approaches. The new VOR/DME SIAP to Runway 7 will continue to provide VFR aircraft with an opportunity to practice instrument approaches to lower minimums than presently afforded. This amendment is the same as that proposed in the notice. Control Zones are published in Section 71.171 of FAA Order 7400.7A dated November 2, and November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The coordinates for this airspace docket are based on North American Datum 83. The Control Zone listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the Orlando, FL Control Zone. This action adds an arrival area extension west of the Orlando Executive Airport to provide controlled airspace for IFR aircraft executing a recently developed VOR/DME SIAP to Runway 7. The existing VOR/DME SIAP to Runway 13 has been cancelled, thus eliminating the need for the existing arrival area extension north of the airport. This action eliminates the north arrival area extension.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control Zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ASO FL CZ Orlando, FL [Amended]

Orlando Executive Airport, FL (lat. 28°32'44" N, long. 81°19'58" W)
Orlando VORTAC (lat. 28°32'34" N, long. 81°20'06" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4-mile radius of Orlando Executive Airport and within 3.6 miles each side of the Orlando VORTAC 254° radial extending from the 4-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL Terminal Control Area (TCA).

* * * * *

Issued in East Point, Georgia, on October 8, 1992.

Don Cass,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 92-29887 Filed 12-10-92; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27060; Amdt. No. 1522]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 lists separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on December 4, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking

Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
11/24/92	VA	Winchester	Winchester Regional	FDC 2/7100	LOC Rwy 32 Amdt 3.
11/24/92	VA	Winchester	Winchester Regional	FDC 2/7101	VOR/DME–A Amdt 3.
11/25/92	AR	Harrison	Boone County	FDC 2/7107	VOR–A Amdt 12.
11/25/92	AR	Harrison	Boone County	FDC 2/7108	LOC/DME Rwy 36 Amdt 6.
11/25/92	AR	Harrison	Boone County	FDC 2/7109	NDB Rwy 18 Amdt 5.
11/25/92	AR	Harrison	Boone County	FDC 2/7110	NDB–B Orig.
11/27/92	ME	Sanford	Sanford Muni	FDC 2/7120	NDB Rwy 7 Orig.
11/27/92	ME	Sanford	Sanford Muni	FDC 2/7120	VOR Rwy 7 Amdt 3.
11/30/92	MA	Hyannis	Barnstable Muni-Boardman/Polando Field	FDC 2/7145	IFR Departure Procedure. This Corrects FDC 2/6821 in TL 92–25.
12/01/92	NC	New Bern	Craven County Regional	FDC 2/7177	VOR Rwy 4 Amdt 3.
12/01/92	NC	New Bern	Craven County Regional	FDC 2/7178	VOR Rwy 22 Amdt 1.

NFDC Transmittal Letter Attachment

Harrison

Boone County
Arkansas
VOR–A AMDT 12...
Effective: 11/25/92

FDC 2/7107/HRO/ FI/P Boone County, Harrison, AR. VOR–A AMDT 12...ALTN mins standard. Remove Fayetteville ALSTG mins. remove note... Obtain LCL ALSTG on CTAF, if not RCVD use Fayetteville ALSTG. This becomes VOR–A AMDT 12A.

Harrison

Boone County
Arkansas
LOC/DME RWY 36 AMDT 6...
Effective: 11/25/92

FDC 2/7108/HRO/ FI/P Boone County, Harrison, AR. LOC/DME RWY 36 AMDT 6...ALTN mins standard. Add note... ALTN mins NA when HRO FSS CLSD. Remove Fayetteville ALSTG mins. Remove note... Obtain LCL ALSTG on CTAF, if not RCVD use Fayetteville ALSTG. This becomes LOC/DME RWY 36 AMDT 6A.

Harrison

Boone County
Arkansas
NDB RWY 18 AMDT 5...
Effective: 11/25/92

FDC 2/7109/HRO/ FI/P Boone County, Harrison, AR. NDB RWY 18 AMDT 5...ALTN mins standard. Add note... ALTN mins NA when HRO FSS CLSD. Remove Fayetteville ALSTG mins. Remove note... Obtain LCL ALSTG on CTAF, if not RCVD use Fayetteville ALSTG. This becomes NDB RWY 18 AMDT 5A.

Harrison

Boone County
Arkansas
NDB–B ORIG...
Effective: 11/25/92

FDC 2/7110/HRO/ FI/P Boone County, Harrison, AR. NDB–B ORIG...ALTN mins standard. Add note... ALTN mins NA when HRO FSS CLSD. Remove Fayetteville ALSTG mins. Remove note... Obtain LCL ALSTG on CTAF, if not RCVD use Fayetteville ALSTG. This becomes NDB–B ORIG A.

Hyannis

Barnstable Muni-Boardman/Polando Field
Massachusetts
IFR DEPARTURE PROCEDURE...
THIS CORRECTS FDC 2/6821 IN TL 92–25.
Effective: 11/30/92

FDC 2/7145/HYA/ FI/P Barnstable Muni-Boardman/Polando Field, Hyannis, MA. IFR Departure procedure... RWY 33 climb runway heading to 700 before proceeding on course (departure obstacle... 551 Tower 414120N/0702048W). Delete take off minimums... RWY 33 300–1 or STD with min climb of 240 feet per NM to 300. Reason... the 495' TWR was increased to 551'. This is departure procedures/takeoff minimums AMDT 2A.

Sanford

Sanford Muni
Maine
VOR RWY 7 AMDT 3...
Effective: 11/27/92

FDC 2/7120/SFM/ FI/P Sanford Muni, Sanford, ME. VOR RWY 7 AMDT 3...Delete altimeter setting note. This is VOR RWY 7 AMDT 3A.

Sanford

Sanford Muni
Maine
NDB RWY 7 ORIG...
Effective: 11/27/92

FDC 2/7120/SFM/ FI/P Sanford Muni, Sanford, ME. NDB RWY 7 Orig...Delete altimeter setting note. This is NDB RWY 7 ORIG–A.

New Bern

Craven County Regional
North Carolina
VOR RWY 4 AMDT 3...
Effective: 12/01/92

FDC 2/7177/EWN/ FI/P Craven County Regional, New Bern, NC. VOR RWY 4 ADMT 3...MSA 25 NM EWN VOR/DME 3100. This becomes VOR RWY 4 ADMT 3A.

New Bern

Craven County Regional
North Carolina
VOR RWY 22 AMDT 1...
Effective: 12/01/92

FDC 2/7178/EWN/ FI/P Craven County Regional, New Bern, NC. VOR RWY 22 AMDT 1...MSA 25 NM EWN VOR/DME 3100. This becomes VOR RWY 22 AMDT 1A.

Winchester

Winchester Regional
Virginia
LOC RWY 32 AMDT 3...
Effective: 11/24/92

FDC 2/7100/W16/ FI/P Winchester Regional, Winchester, VA. LOC RWY 32 AMDT 3...CIRCLING... CAT A HAA 433, B MDA/HAA 1260/533 VIS 1½, C HAA 533. APRT EL 727'. This becomes LOC RWY 32 AMDT 3A.

Winchester

Winchester Regional
Virginia
VOR/DME–A AMDT 3...
Effective: 11/24/92

FDC 2/7101/W16/ FI/P Winchester Regional, Winchester, VA. VOR/DME–A AMDT 3...CIRCLING... CAT A HAA 473, B MDA/HAA 1260/533 VIS 1½, C HAA 533. APRT EL 727. This becomes VOR/DME–A AMDT 3A.

[FR Doc. 92–30121 Filed 12–10–92; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27079; Amdt. No. 1521]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:
1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on December 4, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective February 4, 1993*

Nome, AK, Nome VOR/DME RWY 9, Orig.
Tucson, AZ, Tucson Intl, VOR/DME or TACAN RWY 11L, Amdt. 1, CANCELLED
Tucson, AZ, Tucson Intl, VOR or TACAN RWY 11L, Orig.
Tucson, AZ, Tucson Intl, VOR/DME or TACAN RWY 29R, Amdt. 2
Tucson, AZ, Tucson Intl, LOC/DME BC RWY 29R, Amdt. 7
Tucson, AZ, Tucson Intl, ILS RWY 11L, Amdt. 11
Brawley, CA Brawley Muni, VOR/DME–B, Amdt. 1
Los Angeles, CA, Los Angeles Intl, ILS RWY 6L, Amdt. 8
Los Angeles, CA, Los Angeles Intl, ILS RWY 24L, Amdt. 21
South Bend, IN, Michiana Regional, ILS RWY 9, Amdt. 8
Mason, MI, Mason Jewett Field, VOR–A, Amdt. 2
Sturgis, MI, Kirsch Muni, NDB RWY 18, Amdt. 4
Sturgis, MI, Kirsch Muni, NDB RWY 24, Amdt. 9
Shelby, MT, Shelby, NDB RWY 23, Amdt. 6
Woodward, OK, West Woodward, VOR/DME–A, Amdt. 6
Woodward, OK, West Woodward, NDB RWY 17, Amdt. 3
Omak, WA, Omak, NDB, Amdt. 1, CANCELLED
Renton, WA, Renton Muni, RNAV RWY 33, Amdt. 4, CANCELLED

* * * *Effective January 7, 1993*

Venice, LA, Garden Island Bay Seaplane Base, NDB–A, Amdt. 3, CANCELLED
Venice, LA, Tiger Pass Seaplane Base, NDG–A, Orig.
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS RWY 22, Amdt. 3

* * * *Effective November 19, 1992*

Rock Hill, SC, Rock Hill Municipal/Bryant Field, VOR/DME–B, Amdt. 5

[FR Doc. 92–30122 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Rule Amendments Concerning Delegated Authority of Commission Staff to Approve Contract Market Rule Proposals on Behalf of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule amendments.

SUMMARY: The Commodity Futures Trading Commission is amending its Regulation to delegate to its staff broader authority to approve contract market rule proposals on behalf of the Commission. The regulation, as amended, provides designated Commission staff with the authority to approve on the Commisssion's behalf proposed rule amendments that relate to, but do not materially change, Exchange rules of certain specified types. The regulation further delegates authority to designated Commission staff to approve Exchange proposals submitted under Commission Regulation 5.2 to recommence trading in a dormant contract. The regulation, as amended also expands slightly several other existing areas of delegated authority.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Patterson, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Pursuant to section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12), the Commission must approve all contract market rules that relate to contract terms and conditions. The Commission has delegated certain aspects of its rule approval authority to the Directors of its Divisions of Economic Analysis ("EA") and Trading and Markets ("T&M"). This delegated authority is set forth in existing Regulation 1.41b. Paragraph (a) of Regulation 1.41b currently permits the Directors of EA and T&M, or their delegees, to approve, with the concurrence of the General Counsel, contract market rules that relate to terms and conditions and that:

(1) Do not materially change the quantity, quality, or other delivery specifications, procedures or obligations under a contract designated for trading by the Commission * * *; or

(2) Reflect routine modifications that are expressly required or anticipated by the specific terms of a contract market rule * * *; or

(4) Are substantially identical to a rule of another contract market which has been approved previously by the Commission pursuant to section 5a(12) of the Act; or

(5) Are consistent with a specific, stated policy, or interpretation of the Commission.[1]

Prior to the promulgation of Regulation 1.41b, the Commission directly approved each contract market rule related to terms and conditions, no matter how minor the rule change. The Commission found this procedure to be unnecessarily inflexible. Accordingly, in 1983, the Commission adopted Regulation 1.41b, which initially delegated to the Division Directors the authority to approve rules falling into categories (1) and (2) of current Regulation 1.41b. 48 FR 49003 (October 24, 1983). Because the Commission had good experience with the use of this initial, limited delegated authority, in July of 1985, it extended the Directors' authority to encompass rule changes falling within categories (4) and (5) of the current regulation. The Commission's experience with this expanded delegation, too, has been positive. The delegation of authority had benefitted the exchanges through more expeditious review of those rule proposals that meet the requirements of the regulation.

The categories of rules permitted to be handled under delegated authority have proved to be fairly narrow, however, and sometimes have necessitated direct

[1] A fifth category, paragraph (3) of the rule, which related to option expirations under the Commission's option pilot program, was deleted in 1987, concurrent with termination of the pilot program. 52 FR 777 (January 9, 1987).

Commission action on minor and/or non-controversial rule proposals. For example, existing category (2) permits delegated authority treatment only for rule changes reflecting routine modifications that are expressly required or anticipated by the specific terms of a contract market rule. This language would require direct Commission approval of rule amendments anticipated by, but not explicitly provided for in, the terms of an exchange rule. Similarly, because the delegation of authority is limited to approval of rules related to contract terms and conditions, any rule change submitted pursuant to Regulation 1.41(b) that does not relate to contract terms and conditions must be sent to the Commission for its approval.[2]

After nearly a decade's experience with Regulation 1.41b, the Commission has come to believe that it is appropriate to expand its staff's delegated authority. The Commission believes that broadening the scope of Commission staff delegated authority will promote timely processing of exchange rule proposals.

Revised Paragraph (a)

Accordingly, the Commission is adopting a number of amendments to paragraph (a) of Regulation 1.41b. In particular, the Commission is deleting from paragraph (a) the phrase "terms and conditions" in order to permit certain rules that do not affect contract terms and conditions, but that are submitted by an exchange pursuant to Regulation 1.41(b), to be handled pursuant to delegated authority. Further, the Commission is revising certain of the delegated authority categories, as detailed below. Thus, under the amended paragraph, the Director of EA and the Director of T&M have delegated authority to approve, with the concurrence of the General Counsel, any contract market rule falling within one of the stated categories, whether or not it concerns contract terms and conditions.[3]

Revised Subparagraph (1)

The Commission has identified a number of rule types that generally do not fall within the existing Regulation 1.41b categories, but that the Commission believes would be appropriately handled under delegated authority. In order to expedite processing of such types of rules, the Commission is amending subparagraph (1) of paragraph (a) of Regulation 1.41b. Subparagraph (1) currently allows for delegated approval of certain rule changes that "do not materially change" certain contract terms and conditions. The Commission is now amending this subparagraph by applying the subparagraph (1) "materiality" test to additional types of rules. The revised regulation would encompass rules that relate to daily settlement prices, clearing position limits, procedures for contract market governance, procedures for transfer trades, trading hours, minimum price fluctuations, and maximum price limit and trading suspension provisions.[4] Thus, any rule of a type listed in revised subparagraph (1) could be approved by the Director of T&M or EA if it did not constitute a material change to the rule.

Revised Subparagraph (2)

As noted above, existing subparagraph (2) permits delegated authority treatment only for rule changes reflecting routine modifications expressly required or anticipated by the specific terms of a contract market rule. The Commission believes that the language of this subparagraph is unnecessarily narrow, so that, for example, the Commission is required to approve directly proposed rule amendments anticipated by, but not explicitly provided for in, the terms of an exchange rule. Accordingly, the Commission is deleting from subparagraph (2) the modifiers "expressly" and "specific" to permit a somewhat broader range of rule changes to be handled pursuant to this provision. The Commission also is deleting from the existing text the parenthetical examples, as the types of rule changes listed in the parenthetical could be handled pursuant to revised subparagraph (1) or the Commission's expedited procedures under paragraphs (k) and (l) of Commission Regulation 1.41.

Revised Subparagraph (4)

Subparagraph (4) currently permits delegated authority treatment for rules that are substantially identical to a rule of another contract market previously approved by the Commission. The Commission notes that the language of this subparagraph may be read quite narrowly. For example, existing subparagraph (4), read strictly, would not permit the use of this category for a rule that was in substance the same as, but contained no language identical to, another contract market rule. The existing language also may be read to foreclose delegated authority treatment for rules substantially identical to a previously-approved rule of the same contract market. The Commission did not intend that the provision be so narrowly read. In adopting subparagraph (4), the Commission stated that the category "includes rules submitted by various contract markets which may be similar because of Commission requirements or because of the similarity between certain contracts." 50 FR 30140. In order to make clearer the intended application of subparagraph (4), the Commission is amending the provision to encompass rules that are in substance the same as a rule of the same or another contract market previously approved by the Commission. The Commission believes that these revisions more accurately reflect its intentions in drafting the subparagraph.

New Paragraph (b)

In addition to the foregoing amendments to Regulation 1.41b, the Commission is creating a new paragraph (b) delegating to the Director of EA the authority to approve under the procedure set out in Commission Regulation 5.2, with the concurrence of the General Counsel, all proposals to list additional trading months or expirations or otherwise recommence trading in a contract that is dormant within the meaning of Commission Regulation 5.2.[5] The Commission's experience with Regulation 5.2 proposals to recommence trading in dormant contracts indicates that, in most instances, they are routine in nature. The proposals generally have no substantive effect on economic or

[2] On occasion, exchanges submit rules pursuant to Regulation 1.41(b) that do not affect contract terms and conditions, even though such rules do not require prior Commission approval and could therefore be handled under Regulation 1.41(c).

[3] Of course, the relevant Director would retain the option of sending to the Commission for its review any exchange rule proposal eligible for handling under delegated authority, but which the Director believed would more appropriately be considered by the Commission. (See existing paragraph (b) of Regulation 1.41b.) In addition, the Commission would retain the right to exercise directly the authority delegated to its staff under the revised regulation. (See existing paragraph (c) of Regulation 1.41b.)

[4] Not all of these rule types would be considered "terms and conditions" within the meaning of Regulation 1.41(a)(2). As noted above, the Commission is deleting the reference to "terms and conditions" in order to permit these and other types of rules that are not "terms and conditions" to be handled pursuant to delegated authority.

[5] Commission Regulation 5.2 defines a dormant contract as any commodity futures or option contract market (1) in which no trading has occurred in any futures or option expiration for a period of six complete calendar months or (2) which has been certified by a board of trade as a dormant contract market. Regulation 5.2 provides further that a contract market may not be considered dormant until the end of 60 calendar months following designation or Commission approval of a proposal to recommence trading pursuant to Commission Regulation 5.2.

other characteristics. Of course, if in connection with a proposal to recommence trading in a contract, an Exchange sought to alter substantially the economic characteristics of the contract, the proposal would be sent to the full Commission for its consideration.[6]

The Commission believes that broadening the scope of the Commission staff's delegated authority in this manner will avoid inefficient use of the Commission's time and resources. This revision also will allow for more timely processing of Exchange proposals to reactivate trading in dormant contracts.

Related Amendments

The revision of existing paragraph (a) and the creation of new paragraph (b) necessitate two additional amendments to Regulation 1.41b. First, the Commission is renumbering existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively. Second, the Commission is amending new paragraph (c), pursuant to which the Division Directors retain the right to send any matter appropriate for handling under delegated authority to the Commission, to reflect the creation of new paragraph (b).

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting rules, consider their impact on small businesses. The rule amendments to Regulation 1.41b relate only to internal procedures of the Commission and will have no impact on small businesses. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. The amendments to Regulation 1.41b do not involve a collection of information as defined by the PRA, 44 U.S.C. 3502(4).

[6] As with rule proposals handled under paragraph (a) of Regulation 1.41b, the Director of EA would retain the option of sending any Regulation 5.2 submission to the Commission.

C. Notice and Comment

Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations. Section 553(b) sets forth an exception, however, for rules of agency organization, procedure, or practice. The Commission has determined that, because these amendments delegate the Commission's authority to approve certain proposed contract market rules, they relate to Commission procedure and, therefore, notice and comment is not required.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract market rules, Delegated authority, Rule review procedures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 5a and 8a thereof, 7 U.S.C. 7a and 12a, the Commission hereby amends part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 8, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 19, 21, 23, and 24.

2. Regulation 1.41b is revised to read as follows:

§ 1.41b Delegation of authority to the Director of the Division of Trading and Markets and Director of the Division of Economic Analysis.

(a) The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis, with the concurrence of the General Counsel or his or her delegee, to be exercised by either of such Directors or by such other employee or employees of the Commission under the supervision of such Directors as may be designated from time to time by the Directors, the authority to approve, pursuant to section 5a(12) of the Act and § 1.41(b), contract market rules that:

(1) Relate to, but do not materially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under a contract designated for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for contract market governance; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

(2) Reflect routine modifications that are required or anticipated by the terms of a contract market rule;

(3) [Reserved]

(4) Are in substance the same as a rule of the same or another contract market which has been approved previously by the Commission pursuant to section 5a(12) of the Act; or

(5) Are consistent with a specific, stated policy or interpretation of the Commission.

(b) The Commission hereby delegates, until the Commission orders otherwise, the Director of the Division of Economic Analysis, with the concurrence of the General Counsel or his or her delegee, to be exercised by such Director or by such other employee or employees of the Commission under the supervision of such Director as may be designated from time to time by the Director, the authority to approve, pursuant to sections 5a(12) of the Act and § 1.41(b), contract market proposals, submitted pursuant to § 5.2, to list additional trading months or expirations for, or to otherwise recommence trading in, a contract that is dormant within the meaning of § 5.2.

(c) The Director of the Division of Trading and Markets or the Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) or (b) of this section.

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis under this section.

Issued in Washington, DC on December 7, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–30072 Filed 12–10–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 92–115]

Rulings concerning marking of Toy, Imitation, and Look-Alike Firearms

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Administrative ruling; General Notice.

SUMMARY: Notice is hereby given that Customs will no longer issue prospective ruling letters concerning the Department of Commerce's marking requirements applicable to toy, imitation, and look-alike firearms imported into the U.S., as decisions regarding this subject matter fall under the jurisdiction of the Department of Commerce.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Timothy P. Trainer, Intellectual Property Rights Branch (202) 482–6960.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Federal Energy Management Improvement Act of 1988 (Pub. L. 100–615, codified at 15 U.S.C. 5001), provides, in part, that it shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce. Thus, the Department of Commerce is the agency charged with promulgating certain marking requirements applicable to toy, imitation, and look-alike firearms. See, *Wagner Seed Company, Inc.*, v *Bush*, 946 F.2d 918 (D.C.C. 1991), *cert. denied*. Part 1150 of the Commerce and Foreign Trade Regulations (15 CFR part 1150) implements the Department of Commerce's marking requirements and exceptions under 15 U.S.C. 5001.

The U.S. Customs Service serves as the principle border enforcement agency of the U.S. Government regarding the entry of merchandise into the United States, with responsibilities including insuring that merchandise entered is properly marked as required by other government administrative agencies charged with marking responsibilities. However, this enforcement function does not include the issuance of prospective ruling letters concerning other agency's regulations, under the provisions of part 177, Customs Regulations (19 CFR part 177), which provides for the issuance of certain administrative rulings. Although some rulings have been issued in the past pursuant to importer's requests, it is Customs' position that the appropriate authority to interpret Commerce's regulations concerning acceptable markings on this merchandise is the Department of Commerce. Thus, although Customs responsibilities include preventing the entry into the United States of any imported toy, look-alike, or imitation firearm that is not marked in accordance with the Secretary of Commerce's marking requirements, Customs does not believe that its responsibilities include interpreting the meaning of the Department of Commerce's statutory authority to determine what constitutes acceptable marking regarding toy, imitation, and look-alike firearms.

Accordingly, since the Department of Commerce is the proper administrative agency to interpret its own regulations, Customs will no longer issue prospective rulings under part 177 of its regulations concerning the Department of Commerce's marking requirements applicable to imported toy, imitation, and look-alike firearms.

Approved: December 3, 1992.

Samuel H. Banks,

Assistant Commissioner Commercial Operations.

[FR Doc. 92–30061 Filed 12–10–92; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 8450]

RIN 1545–AN92

Certain Publicly Traded Partnerships Treated as Corporations—Transition Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations describing when a publicly traded partnership adds a "substantial new line of business," thus forfeiting the partnership status preserved for "existing partnerships" by the transition rule applicable to section 7704 of the Internal Revenue Code (Code). Section 10211 of the Revenue Act of 1987 added section 7704 of the Code. These regulations provide the public with guidance needed to comply with the transition rules of section 7704.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ann Veninga at 202–622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1991, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking (56 FR 67557) amending the Income Tax Regulations (26 CFR parts 1 and 301) under section 7704 of the Internal Revenue Code (Code). These amendments were intended to implement section 7704 as added by section 10211 of the Revenue Act of 1987, Public Law No. 100–203, 101 Stat. 1330–382, 1330–403 *et seq.* (the 1987 Act). Section 7704 generally treats publicly traded partnerships as corporations for Federal tax purposes and is generally effective for taxable years beginning after December 31, 1987. Section 10211(c)(2) of the 1987 Act, however, exempts "existing partnerships" from the effect of section 7704 until partnership taxable years beginning after December 31, 1997.

Under section 10211(c)(2)(B) of the 1987 Act, a partnership otherwise qualifying as an existing partnership will cease to be an existing partnership as of the first day after December 17, 1987, on which there has been an addition of a "substantial new line of business" with respect to the partnership. Notice 88–75, 1988–2 C.B. 386, addressed this provision in part.

On December 31, 1991, the Internal Revenue Service issued a notice of proposed rulemaking that provides rules defining "existing partnership," "substantial," and "new line of business." Comments responding to the notice of proposed rulemaking were received, but a public hearing on the notice of proposed rulemaking was not requested and was not held. After analyzing the comments, the Service adopts the proposed regulations as revised by this Treasury decision. The Internal Revenue invites requests for rulings on the question of when a new activity is a "new line of business".

Explanation of Provisions

General Rules

The final regulations provide that the term "existing partnership" means any partnership if the partnership was a publicly traded partnership (within the meaning of section 7704(b)) on December 17, 1987, or a registration statement indicating that the partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission (SEC) with respect to the partnership on

or before December 17, 1987, or with respect to the partnership, an application was filed with a state regulatory commission on or before December 17, 1987, seeking permission to restructure a portion of a corporation as a publicly traded partnership.

The final regulations provide that a partnership will not qualify as an existing partnership after a new line of business is substantial. A new line of business is substantial as of the earlier of the taxable year in which the partnership derives more than 15 percent of its gross income from that line of business or the taxable year in which the partnership directly uses in that line of business more than 15 percent (by value) of its total assets. If a substantial new line of business is added during the taxable year (*e.g.*, by acquisition), the line of business is treated as substantial as of the date it is added; otherwise a substantial new line of business is treated as substantial as of the first day of the taxable year in which it becomes substantial.

The final regulations treat a new line of business as any business activity of the partnership not closely related to a pre-existing business of the partnership to the extent that the activity generates income other than qualifying income within the meaning of section 7704 and the regulations thereunder. A business activity is a pre-existing business of the partnership if the partnership was actively engaged in the activity on or before December 17, 1987, or if the partnership is actively engaged in the business activity that was specifically described as a proposed business activity of the partnership in a registration statement or amendment thereto filed on behalf of the partnership with the SEC on or before December 17, 1987.

Definition of Closely Related

The final regulations emphasize that facts and circumstances will determine whether a new business activity is closely related to a pre-existing business of the partnership. Some of the factors that establish that a new business activity is closely related to a pre-existing business of the partnership are similarities between the businesses' products, class of customers, location, operating assets, licensing authorities and inclusion under the same four-digit SIC Codes.

Comments suggested that the four-digit SIC Codes be used as a safe harbor for determining whether a business activity is a new line of business. Under this approach, any new activity by a pre-existing business that would fall within the same four-digit SIC Code of the pre-existing business could be presumptively considered an expansion of the prior business rather than a new line of business.

The final regulations do not adopt this suggestion because some four-digit SIC Codes contain businesses that do not appear to be closely related. On the other hand, a review of SIC Codes has identified certain four-digit SIC Codes in which all businesses do appear to be closely related. The Service intends to issue a revenue procedure providing that all businesses under certain four-digit SIC Codes will be considered closely related lines of business under the regulations. No safe harbor will exist for lines of business within SIC Codes not identified by the revenue procedure. The closely related standard for these businesses will be subject to the general facts and circumstances test.

Activities Conducted Through Other Entities

The proposed regulations state generally that an activity conducted by a corporation controlled by an existing partnership is not deemed to be an activity of the existing partnership for purposes of determining when an existing partnership has added a new line of business. However, such an activity will be deemed to be an activity of the existing partnership if more than 10 percent of the gross income that the existing partnership derives from the corporation during the taxable year is section 7704(d) of the Code qualifying income that is recharacterized as nonqualifying income under these regulations. Such income will be recharacterized as nonqualifying income if it is deductible by the controlled corporation.

Comments advise that the 10 percent test is overly restrictive because, in a particular year, an existing partnership might receive little or no dividend income from its subsidiary due to either the cash flow needs of the subsidiary or a lack of earnings and profits in the subsidiary. In such a case, the payment of even a nominal amount of interest by the subsidiary could cause an existing partnership to fail the 10 percent test.

In response to the problem of unanticipated shifts in dividend income, a facts and circumstances test will replace the 10 percent test for determining when an activity conducted by a corporation controlled by an existing partnership is deemed to be an activity of the existing partnership for purposes of determining when an existing partnership has added a new line of business. The 10 percent test, which first appeared as a safe harbor in Notice 88–75, 1988–2 C.B. 386, but was made a general rule in the proposed regulation, will again be a safe harbor.

The proposed regulations provide, as discussed above, that an existing partnership may be deemed engaged in the activities of a corporation controlled by the existing partnership under certain circumstances. Section 304(c) of the Code applies to determine whether an existing partnership controls a corporation. The stock attribution rules of section 318 are used in determining whether control exists within the meaning of section 304(c). These rules attribute ownership of stock from a partner to an existing partnership without regard to the percentage interest of the partner in the existing partnership. As a result, under the proposed regulations an existing partnership is deemed to be in control of every corporation in which any partner holds a 50 percent or greater interest.

Comments suggested that applying section 304(c) of the Code without modification is inappropriate because it applies to all partners of an existing partnership, no matter how small their interests in the partnership. An existing partnership may not be able to identify the names or the holdings of its minor partners and, therefore, might unwittingly trigger the provision.

In response to this suggestion, the final regulations adopt a *de minimis* rule that attributes stock ownership from a partner to an existing partnership only if the partner owns by value, directly or indirectly, five percent or more of the partnership interests of the existing partnership. The *de minimis* rule will not apply if a principal purpose of the arrangement is to avoid tax at the corporate level.

The proposed and final regulations state that an activity conducted by a partnership in which an existing partnership holds an interest (directly or through another partnership) will be considered an activity of the existing partnership.

The proposed and final regulations provide that section 7704(a) does not apply to existing partnerships if these partnerships meet the gross income requirements of paragraphs (c) (1) and (2) of section 7704.

Exceptions to the General Rule

The proposed and final regulations provide that in determining whether a partnership is an existing partnership for purposes of section 7704, the termination of the partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits, the issuance of additional

partnership units, and dropping a line of business are not events that in themselves terminate the status of existing partnerships.

Dates

These regulations are effective for taxable years beginning after December 31, 1991. Section 7704 and the rules under Notice 88–75 generally apply to taxable years beginning after December 31, 1987. No inference is intended concerning the interpretation of Section 10211(c)(2) of the 1987 Act prior to the effective date of these regulations. Taxpayers may rely on these regulations prior to the effective date.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ann Veninga, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participation in their development.

List of Subjects

26 CFR Part 1, §§ 1.7001–1 Through 1.7704–2

Bonds, Closing agreement, Compromises, Crimes, Definitions, Discovery of liability, Employment taxes, Enforcement of title, Estate taxes, Excise taxes, Forfeiture, Gift taxes, Income taxes, Judicial proceedings, Licensing and registration, Miscellaneous provisions, Other offenses, Penalties, Publicly traded partnerships, Taxes.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.7704–2 is added to read as follows:

§ 1.7704–2 Transition provisions.

(a) *Transition rule.*—(1) *Statutory dates.* Section 7704 generally applies to taxable years beginning after December 31, 1987. In the case of an existing partnership, however, section 7704 and the regulations thereunder apply to taxable years beginning after December 31, 1997.

(2) *Effective date of regulations.* These regulations are effective for taxable years beginning after December 31, 1991.

(b) *Existing partnership*—(1) *In general.* For purposes of § 1.7704–2, the term "existing partnership" means any partnership if—

(i) The partnership was a publicly traded partnership (within the meaning of section 7704(b)) on December 17, 1987;

(ii) A registration statement indicating that the partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission (SEC) with respect to the partnership on or before December 17, 1987; or

(iii) With respect to the partnership, an application was filed with a state regulatory commission on or before December 17, 1987, seeking permission to restructure a portion of a corporation as a publicly traded partnership.

(2) *Changed status of an existing partnership.* A partnership will not qualify as an existing partnership after a new line of business is substantial.

(c) *Substantial*—(1) *In general.* A new line of business is substantial as of the earlier of—

(i) The taxable year in which the partnership derives more than 15 percent of its gross income from that line of business; or

(ii) The taxable year in which the partnership directly uses in that line of business more than 15 percent (by value) of its total assets.

(2) *Timing rule.* If a substantial new line of business is added during the taxable year (*e.g.*, by acquisition), the line of business is treated as substantial as of the date it is added; otherwise a substantial new line of business is treated as substantial as of the first day of the taxable year in which it becomes substantial.

(d) *New line of business*—(1) *In general.* A new line of business is any business activity of the partnership not closely related to a pre-existing business of the partnership to the extent that the activity generates income other than "qualifying income" within the meaning of section 7704 and the regulations thereunder.

(2) *Pre-existing business.* A business activity is a pre-existing business of the partnership if—

(i) The partnership was actively engaged in the activity on or before December 17, 1987; or

(ii) The partnership is actively engaged in the business activity that was specifically described as a proposed business activity of the partnership in a registration statement or amendment thereto filed on behalf of the partnership with the SEC on or before December 17, 1987. For this purpose, a specific description does not include a general grant of authority to conduct any business.

(3) *Closely related.* All of the facts and circumstances will determine whether a new business activity is closely related to a pre-existing business of the partnership. The following factors, among others, will help to establish that a new business activity is closely related to a pre-existing business of the partnership and therefore is not a new line of business:

(i) The activity provides products or services very similar to the products or services provided by the pre-existing business.

(ii) The activity markets products and services to the same class of customers as that of the pre-existing business.

(iii) The activity is of a type that is normally conducted in the same business location as the pre-existing business.

(iv) The activity requires the use of similar operating assets as those used in the pre-existing business.

(v) The activity's economic success depends on the success of the pre-existing business.

(vi) The activity is of a type that would normally be treated as a unit with the pre-existing business in the business' accounting records.

(vii) If the activity and the pre-existing business are regulated or licensed, they are regulated or licensed

by the same or similar governmental authority.

(viii) The United States Bureau of the Census assigns the activity the same four-digit Industry Number Standard Identification Code (Industry SIC Code) as the pre-existing business. Such codes are set forth in the Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, prepared, and from time to time revised, by the Statistical Policy Division of the United States Office of Management and Budget. For example, if a partnership's pre-existing business is manufacturing steam turbines and then the partnership begins an activity manufacturing hydraulic turbines, both activities would be assigned the same Industry SIC Code, 3511—Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units. In the case of a pre-existing business or activity that is listed under the Industry SIC Code, 9999—Nonclassifiable Establishments—or under a miscellaneous category (e.g., most Industry SIC Codes ending in a "9" are miscellaneous categories), the similarity of the SIC Codes is ignored as a factor in determining whether the activity is closely related to the pre-existing business. The dissimilarity of the SIC Codes is considered in determining whether the business activity is closely related to the pre-existing line of business.

(e) *Activities conducted through controlled corporations*—(1) *In general.* An activity conducted by a corporation controlled by an existing partnership may be treated as an activity of the existing partnership if the effect of the arrangement is to permit the partnership to engage in an activity the income from which is not subject to a corporate-level tax and which would be a new line of business if conducted directly by the partnership. This determination is based upon all facts and circumstances.

(2) *Safe harbor*—(i) *In general.* This paragraph (e)(2) provides a safe harbor for activities of a corporation controlled by an existing partnership. An activity conducted by a corporation controlled by an existing partnership is not deemed to be an activity of the partnership for purposes of determining whether an existing partnership has added a new line of business if no more than 10% of the gross income that the partnership derives from the corporation during the taxable year is section 7704(d) qualifying income that is recharacterized as nonqualifying income under paragraphs (e)(2) (ii) and (iii) of this section. The Internal Revenue Service will not presume that an activity conducted through a corporation controlled by an existing partnership is an activity of the partnership solely because the partnership fails to satisfy the requirements of this paragraph (e)(2)(i).

(ii) *Recharacterization of qualifying income.* Gross income received by a partnership from a controlled corporation that would be qualifying income under section 7704(d) is subject to recharacterization as nonqualifying income if the amount is deductible in computing the income of the controlled corporation.

(iii) *Extent of recharacterization.* The amount of income described in paragraph (e)(2)(ii) of this section that is recharacterized as nonqualifying income is—

(A) The amount described in paragraph (e)(2)(ii) of this section; multiplied by

(B) The controlled corporation's taxable income (determined without regard to deductions for amounts paid to the partnership) that would not be qualifying income within the meaning of section 7704(d) if earned directly by the partnership; divided by

(C) The controlled corporation's taxable income (determined without regard to deductions for amounts paid to the partnership).

(3) *Control.* For purposes of paragraphs (e) (1) and (2) of this section, control of a corporation is determined generally under the rules of section 304(c). However, the application of section 304(c) is modified to apply only to partners who own five percent or more by value (directly or indirectly) of the existing partnership unless a principal purpose of the arrangement is to avoid tax at the corporate level.

(4) *Example.* The following example illustrates the application of the this paragraph (e):

Example. (i) PTP, an existing partnership, acquired all the stock of X corporation on January 1, 1993. During PTP's 1993 taxable year it received $185,000 of dividends and $15,000 of interest from X. Determined without regard to interest paid to PTP, X's taxable income during that period was $500,000 none of which was "qualifying income" within the meaning of section 7704 and the regulations thereunder. In computing the income of X, the $15,000 of interest paid to PTP is deductible.

(ii) Under paragraph (e)(2)(ii) of section, all $15,000 of PTP's interest income was nonqualifying income ($15,000 x 500,000/500,000). Under paragraph (e)(2) of this section, however, the activities of X will not be considered to be activities of PTP for the 1993 taxable year because no more than 10 percent of the gross income that PTP derived from X would be treated as other than qualifying income (15,000/200,000=7.5%).

(f) *Activities conducted through tiered partnerships.* An activity conducted by a partnership in which an existing partnership holds an interest (directly or through another partnership) will be considered an activity of the existing partnership.

(g) *Exceptions*—(1) *Coordination with gross income requirements of section 7704(c)(2).* A partnership that is either an existing partnership as of December 31, 1997, or an existing partnership that ceases to qualify as an existing partnership is subject to section 7704 and the regulations thereunder. Section 7704(a) does not apply to these partnerships, however, if these partnerships meet the gross income requirements of paragraphs (c) (1) and (2) of section 7704. For purposes of applying section 7704(c) (1) and (2) to these partnerships, the only taxable years that must be tested are those beginning on and after the earlier of—

(i) January 1, 1998; or

(ii) The day on which the partnership ceases to qualify as an existing partnership because of the addition of a new line of business; or

(iii) The first day of the first taxable year in which a new line of business becomes substantial (if the new line of business becomes substantial after the year in which it is added).

(2) *Specific exceptions.* In determining whether a partnership is an existing partnership for purposes of section 7704, the following events do not in themselves terminate the status of existing partnerships—

(i) Termination of the partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits;

(ii) Issuance of additional partnership units; and

(iii) Dropping a line of business. This event, however, could affect an existing partnership's status indirectly. For example, dropping one line of business could change the composition of the partnership's gross income. The change in composition could make a new line of business "substantial," under paragraph (c) of this section, and terminate the partnership's status. See paragraph (b)(2) of this section.

(h) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated citrus groves. On March 1, 1993, PTP purchased a processing business involving frozen citrus products. In the partnership's 1993 taxable year, the partnership directly used in the processing business more than 15 percent (by value) of its total assets.

(ii) The citrus grove activities provide different products from the processing

activities, are marketed to customers different from the customers of the processing activities, require different types of operating assets, are not commonly conducted at the same location, are not commonly treated as a unit in accounting records, do not depend upon one another for economic success, and do not have the same Industry SIC Code. Under the facts and circumstances, the processing business is not closely related to the citrus grove operation and is a new line of business under paragraph (d)(1) of this section.

(iii) The assets of the partnership used in the new line of business are substantial under paragraph (c)(2) of this section. Because PTP added a substantial new line of business after December 17, 1987, paragraph (b)(2) of this section terminates PTP's status as an existing partnership on March 1, 1993.

Example 2. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated retirement centers that serve the elderly. Each center contains three sections—

(A) A residential section, which includes suites of rooms, dining facilities, lounges, and gamerooms;

(B) An assisted-living section, which provides laundry and housekeeping services, health monitoring, and emergency care; and

(C) A nursing section, which provides private and semiprivate rooms, dining facilities, examination and treatment rooms, drugs, medical equipment, and physical, speech, and occupational therapy.

(ii) The business activities of each section constitute pre-existing businesses of PTP under paragraph (d)(2) of this section, because PTP was actively engaged in the activities on or before December 17, 1987.

(iii) The nursing sections primarily furnish health care. They employ nurses and therapists, are subject to federal, state, and local licensing requirements, and may change certain costs to government programs like Medicare and Medicaid.

(iv) In 1993, PTP acquired new nursing homes that treat inpatient adults of all ages. The nursing homes provide private and semiprivate rooms, dining facilities, examination and treatment rooms, drugs, medical equipment, and physical, speech, and occupational therapy. The nursing homes primarily furnish health care. They employ nurses and therapists, are subject to federal, state, and local licensing requirements, and may charge certain costs to government programs like Medicare and Medicaid.

(v) PTP's new nursing homes and old nursing sections provide very similar services, market to very similar customers, use similar types of property and personnel, and are licensed by the same regulatory agencies. The nursing homes and old nursing sections have the same Industry SIC Code. Under these facts and circumstances, the new nursing homes are closely related to a pre-existing business of the partnership. Accordingly, under paragraph (d)(1) of this section, the acquisition of the new nursing homes is not the addition of a new line of business.

(vi) PTP was a publicly traded partnership on December 17 1987, and was an existing partnership under paragraph (b)(1)(i) of this section. Because PTP has added no substantial new line of business after December 17, 1987, paragraph (b)(2) of this section does not terminate PTP's status as an existing partnership.

Example 3. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated cable television systems in the northeastern United States. PTP's registration statement described as its proposed business activities the ownership and operation of cable television systems, any ancillary operations, and any business permitted by the laws of the state in which PTP was formed.

(ii) PTP's cable systems include cables strung along telephone lines, converter boxes in subscribers' homes, other types of cable equipment, satellite dishes that receive programs broadcast by various television networks, and channels that carry public service announcements of local interest. Subscribers pay the systems a fee for the right to receive both the local announcements and the network signals relayed through the cables. Those fees constitute PTP's primary revenue. The systems operate under franchise agreements negotiated with each municipality in which they do business.

(iii) On September 1, 1993, PTP purchased a television station in the northwestern United States. The station owns broadcasting facilities, satellite dishes that receive programs broadcast by the station's network, and a studio that produces programs of interest to the area that receives the station's broadcasts. Fees from advertisers constitute the station's primary revenue. The station operates under a license from the Federal Communications Commission.

(iv) In the partnership's 1993 taxable year, the station generated less than 15 percent of PTP's gross income and constituted less than 15 percent of its total assets (by value). In PTP's 1994 taxable year, the station generated more than 15 percent of PTP's gross income.

(v) The cable systems relay signals through cables to subscribers and earn revenue from subscriber fees; the station broadcasts signals to the general public and earns revenue by selling air time for commercials. Despite certain similarities, the two types of activities generally require different operating assets and earn income from different sources. They are regulated by different agencies. They are not commonly conducted at the same location and do not generally depend upon one another for their economic success. They have different Industry SIC Codes. Under the facts and circumstances, the television station activities are not closely related to PTP's pre-existing business, the cable system activities.

(vi) As of December 17, 1987, PTP did not own and operate any television station. PTP's registration statement specifically described as its proposed business activities only the ownership and operation of cable television systems and any ancillary operations. For purposes of paragraph (d)(2) of this section, a specific description does not include PTP's general authority to carry on any business permitted by the state of its formation. Therefore, the television station line of business was not specifically described as a proposed business activity of PTP in its registration statement. PTP's acquisition of the television station business activity constitutes a new line of business under paragraph (d)(1) of this section.

(vii) PTP was a publicly traded partnership on December 17, 1987, and was an existing partnership under paragraph (b)(1)(i) of this section. PTP added a new line of business in 1993, but that line of business was not substantial under paragraph (c) of this section, and thus PTP remained an existing partnership for its 1993 taxable year. In 1994, the new line of business became substantial because it generated more than 15 percent of PTP's gross income. Paragraph (b)(2) of this section therefore terminates PTP's existing partnership status as of January 1, 1994, the first day of the first taxable year beginning after December 31, 1987, in which PTP's new line of business became substantial.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 4. A new § 301.7704–2 is added to read as follows:

§ 301.7704–2 Transition provisions.

See the regulations under section 7704 contained in part 1 of this chapter for a definition of the "substantial new line of business" that an "existing" publicly traded partnership cannot enter without forfeiting its partnership status under the transition provisions applicable to section 7704.

Dated: October 21, 1992.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR 92–29483 Filed 12–10–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–74]

Drawbridge Operation Regulations; Matlacha Pass, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Lee County, the bridge owner, the Coast Guard is changing the regulations of the SR78 drawbridge over Matlacha Pass, mile 6.0, between the mainland and Little Pine Island, Fort Myers, Lee County, Florida, by permitting the number of openings to be limited during certain periods.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Regulatory History

On August 31, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 92–20749). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal from 8 a.m. to 7 p.m. From 7 p.m. to 8 a.m., the draw need not be opened for the passage of vessels. Lee County has requested that the bridge open only on signal from 8 a.m. to 10 a.m. and from 3 p.m. to 7 p.m., Monday through Saturday and on Sundays, from 7 a.m. to 12 noon and from 3 p.m. to 7 p.m. The purpose of this proposal is to ease the financial burden on Lee county for a full time tender at the drawbridge. In view of the low number of openings of this drawbridge, the reduced periods of operation would still meet the reasonable needs of navigation.

Discussion of Comments and Changes

One letter was received from the National Marine Fisheries Service stating they had no objection to the proposed change in operating regulations.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule is written to accommodate the schedules of local commercial fishing vessels that normally transit the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the proposed rule considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.303 is revised to read as follows:

§ 117.303 Matlacha Pass.

The draw of the SR78 bridge, mile 6.0 at Fort Myers, shall open on signal from 8 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. Monday through Saturday. On Sundays the draw shall open on signal from 7 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. At all other times, the draw need not be opened for the passage of vessels.

Dated: December 2, 1992.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92–30155 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Golden Gate National Recreation Area Designated Bicycle Routes

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking designates certain routes within the undeveloped area of Golden Gate as open to bicycle use, and regulates bicycle use in these areas. This designation is necessary because bicycle use has been determined by the Superintendent to be a desirable recreational use of certain areas of the park and because such use is consistent with the protection of the park's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Gil Soper, Chief Ranger, Golden Gate National Recreation Area, San Francisco, CA 94123, Telephone: (415) 556–4283.

SUPPLEMENTARY INFORMATION:

Background

The purpose of these special regulations is to designate certain trails within Golden Gate as open for bicycle use, pursuant to 36 CFR 4.30. On April 2, 1987, the National Park Service published revised regulations in the **Federal Register** amending 36 CFR part 4 which, among other things, prohibits bicycle use except on park roads, in parking areas and on routes designated for bicycle use (52 FR 10670). These regulations, at 36 CFR 4.30, require that such designation be made only after "a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources" (36 CFR 4.30(a)). The regulations further require that, except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations. The National Park Service proposed a rule in the **Federal**

Register on January 29, 1992 (57 FR 3392).

Prior to the development and publication of the proposed rules, extensive consultation was initiated with bicyclists, equestrians, hikers, and environmental groups. As a result, a "Marin Trail Use Designation Environmental Assessment," "Staff Report", and "Supplemental Environmental Assessment and Finding of No Significant Impact" were prepared to consider four alternatives for bicycle use of park trails. The result was the development of a "Trail Use Designation Plan" (Plan). In developing the Plan, the park held four public hearings over a three year period through the Golden Gate Advisory Commission, as well as three user group workshops and numerous consultations with interested groups and individuals, and considered over 700 written and verbal comments. The final Plan recommends that certain trails be designated for hiker use only; certain other trails for equestrian and hiker use; certain other trails for bicycle and hiker use; and certain trails for multiple use. Consideration was given to environmental factors, safety, visitor use patterns, management considerations, and special park values.

Based on these actions, 46.9 miles of park trails are currently designated for bicycle use. All have adequate width and visibility for passing, or can be improved and/or adequately maintained for bicycle use. The following listed trails or sections of trails are designated as open to bicycle use:

—Kirby Cove Road, between Conzelman Road and Kirby Cove Campground.
—Coastal/Slacker Road between McCullogh Road and Slacker Hill.
—Coastal Trail between Conzelman Road at McCullogh Road and the Fort Barry Rifle Range at Bunker Road.
—Coastal Trail between Rodeo Beach parking area and Hill 88.
—Coastal Trail between Tennessee Valley Trail and Coyote Ridge Trail.
—Coyote Ridge Trail between the Coastal Trail and Miwok Trail.
—Coyote Ridge Trail between Fox Trail and the Coastal Trail at the Hack Site.
—Coastal Trail between Coyote Ridge Trail at the Hack Site and Muir Beach.
—Miwok Trail between Rodeo Lagoon and Old Springs Trail.
—Old Springs Trail between Miwok Trail and Miwok Stable.
—Miwok Trail between Miwok Stable and Highway 1.
—Tennessee Valley Trail between Tennessee Beach and Tennessee Valley Road parking area.
—Bobcat Trail between Miwok Trail and Marincello Road.
—Alta Avenue between Wolf Back Ridge Road and Marin City.
—Hawk Camp Trail between Bobcat Trail and Hawk Camp.
—Rodeo Avenue between US Highway 101 and Alta Avenue.
—Marincello Road between Tennessee Valley Parking Area and Bobcat Trail.
—Haypress Road between Tennessee Valley Road and Haypress campground.
—Smith Road between Marinview and Miwok Trail.
—Bay Trail between Golden Gate Bridge and Sausalito.
—Oakwood Valley Road between Tennessee Valley Road and Oakwood Valley Pond. (Does not include Oakwood Valley Trail between Pond and Alta Avenue)
—Diaz Ridge Trail between Mt. Tamalpais State Park boundary and Highway 1 near Muir Beach.
—Deer Park Fire Road between Frank's Valley Road and Coastal Trail near Pan Toll (Major portion is in Mt. Tamalpais State Park.)
—Willow Camp Fire Road between Stinson Beach and Ridgecrest Boulevard. (Major Portion is in Mt. Tamalpais State Park.)
—Bolinas Ridge Trail between Bolinas-Fairfax Road and Sir Francis Drake Highway near Olema.
—McCurdy Trail between Highway 1 and Bolinas Ridge Trail.
—Randall Trail between Highway 1 and Bolinas Ridge Trail.
—Shafter Trail between Bolinas Ridge Trail and Shafter Bridge. (Portion is in Samuel P. Taylor State Park.)

The Trail Use Designation Plan requires the monitoring and management of these trails in such manner as to ensure that designation for bicycle use will not adversely impact other park users or the environment. An erosion assessment survey prepared in concert with the Plan will guide the reconstruction, maintenance and use of this trail system over the next several years.

Because the plan is dynamic and subject to change as trails maintenance and construction activities occur, specific trails or routes are not listed in the regulation text. Any additional trails other than those mentioned in this preamble may be designated by the Superintendent in writing after holding public meetings through the Golden Gate Advisory Commission, by marking on maps which will be available in the office of the Superintendent and other places convenient to the public, and through the posting of trails which are open to bicycle use. Further, the authority of the Superintendent to "impose public use limits, or close all or a portion" of a designated trail according to the criteria in 36 CFR 1.5 is not restricted by this final regulation.

The Superintendent has made a determination in writing that these routes proposed for designation as bicycle routes are consistent with the protection of Golden Gate's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources, as required in § 4.30(b) of title 36, Code of Federal Regulations.

Summary of Public Comments and Responses

During the sixty day public comment period provided with the proposed regulations, a total of 301 written comments were received, including 14 from organizations. In support of the regulation, were 147 letters, including 7 advocating stricter controls on bicycle use of park trails. Advocating greater access for bicycles on park trails, and not in support of the regulation were 154 letters, including 27 photocopied responses. A summary of these comments and responses follows.

General Comments

Summary of Comments in Favor of the Regulation

Approximately 49% (147) of the respondents expressed support of the proposed regulation. Of these, 40 commenters specifically identified themselves as hikers. Ten of these indicated that they were cyclists as well as hikers. Seven of the commenters identified themselves as equestrians. Seven letters (including 2 from organizations—The Marin Horse Council and the Tamalpais Conservation Club) indicated a strong preference for more strict limitations for bicycle use than the regulation provides, but voiced a willingness to accept the compromise. Four respondents complained that no bicycle-free loops were provided under the proposal and 2 letters advocated a total ban on bicycles on all park trails.

Thirty-five of the support letters specifically noted the inappropriateness of bicycles on single-track trails. Twenty complained that bicycles detracted from the quality of their park experience. Fourteen reported having had close calls or accidents with bicycles. Fifteen letters attributed observed erosion problems and creation of social trails to bicycles. Thirteen made a strong plea for strict enforcement of bicycle regulations.

Summary of Comments Opposed to the Regulation

Comments generally opposed to the regulation and supportive of more access for bicycles were received from 154 respondents. The main areas of concern are specifically addressed below:

Comment: Bicycles do not create any unacceptable impact to part resources. Approximately 13 letters asserted that bicyclists should have greater access to park trails than is proposed under the regulation because studies to date have not found that bicycles create more damage to park resources than other users.

Response: The decision to allow bicycles on 64% of Golden Gate's Marin trails acknowledges that their impact in most cases is acceptable or can be mitigated. Trail improvements to correct drainage and erosion problems are proposed to reduce the impact of bicycles in wet conditions and on trails with preexisting drainage and/or erosion problems. Golden Gate has included mitigation for continued bicycle use on problem trails in the Trail Use Designation Environmental documents, consisting of trail closures during wet conditions and an ongoing program of trail improvements to eliminate the underlying problems and improve trails where they are not in a condition appropriate for year round bicycle use. The decision to exclude bicycles from certain trails is based on a number of considerations, including the need for hikers and equestrians to have bicycle free trails.

Comment: The Bay Area Ridge Trail will be closed to bicycles under the proposed regulation. Sixteen letters included comments regarding the closure of segments of the Bay Area Ridge Trail to bicycle use.

Response: This issue was addressed in the Trail Use Designation EA/FONSI, which noted that although a single alignment is preferred for the Bay Area Ridge Trail, Ridge Trail guidelines acknowledge that there will be cases where different routes within a 1-mile corridor are designated for different users. All user groups will be accommodated on a Ridge Trail alignment through Golden Gate. In some cases it will be a shared multiuse trail, and in others it will consist of separate routes for bicyclists and/or equestrians. This approach is acceptable to the Bay Area Ridge Trail Council.

Comment: The environmental assessment didn't consider the impact of trail closures on bicycles.

Response: The closure of park trails to bicycles is the result of a federal regulation which required an evaluation of bicycle use and a written determination prior to allowing bicycle use of park trails. The Trail Use Designation Environmental Assessment, Staff Report and Supplemental Environmental Assessment/Finding of No Significant Impact did acknowledge that there would be fewer trails available to bicyclists under each alternative and discussed impacts which would occur. Specifically addressed were the loss of single track trail experience, the reduced trail mileage available to bicyclists, the loss of certain views and loop trails and the increased use of park roads and multiple use trails which remain open to bicycles. Trail mileage available to bicyclists is clearly identified in the documents. Allowing continued use of trails during the evaluation process was a good faith effort by the National Park Service to respond to bicyclists' concerns, and clearly did not promise long term use of these trails.

Comment: Golden Gate is a recreation area and should maximize recreational uses. Approximately 54 letters included comments regarding the responsibility of Golden Gate to provide for the recreational demands of its users. Emphasizing the term "recreation" in the park name and legislation, many of these commenters stressed that bicycle use should be provided to the maximum extent.

Response: Golden Gate is an important National Park resource with outstanding significance, and as such is managed as a unit of the National Park System according to 16 U.S.C. 1a–1. Its inclusion in the Central California Coast International Biosphere Reserve, the 12 federally listed endangered species of plants and animals present in the park and the numerous historic structures and landscapes confirm this significance. In 1991 there were more than 17 million visitors to Golden Gate. More than 4 million visitors were in the Marin portions of the park. Providing for the recreational needs of this number of different users requires a balancing of preservation and enjoyment just as in any unit of the National Park System. Many recreational uses are excluded from Golden Gate (for example off-road vehicles and R.V. camping), or restricted to particular locations where they do not have unacceptable impacts (hangliding and boardsailing). The 147 letters in support of the regulation or preferring more restrictive regulations demonstrates that some restrictions to bicycle use of park trails are needed to preserve the recreation experience of other users.

Comment: The impact of the closure of "social" trails was not considered. Four letters objected to the closure of social trails or undesignated routes to bicycle use.

Response: The Trail Use Designation Supplemental Environmental Assessment included a discussion of trails which are not part of the designated trail system. This document noted that the process or evaluating trails for bicycle use has been limited to the existing designated trail system, with few exceptions. Other trails are either abandoned roads or social trails (trails which are casually developed by users as shortcuts or detours). Undesignated trails are not signed, mapped, or maintained for use. Golden Gate has an ongoing program to close undesignated trails through signing, barriers and restoration of vegetation. These trails are closed to all users. Allowing social trails to proliferate and become permanent features of the landscape would result in a permanent loss of park resources.

Comment: No scientific or factual studies were used in the trail designation process. Seventeen letters criticized the process for not including scientific studies on which to base decisions.

Response: Throughout the process of evaluating the trails for bicycle use, the park staff has been in a dialogue with other land managers and organized bicycle groups. Existing literature and pertinent studies were solicited and utilized to assist in decision making. Existing studies of the social and environmental impact of bicycles, and alternative management techniques were consulted in making the designations. A trail data base for Golden Gate was compiled in 1987, and an Erosion Rehabilitation Plan was completed by the National Park Service in 1990 to determine impacts of use and corrective measures required to accommodate year round trail use. The adopted mitigation measures incorporated information from these studies, including a commitment to improved and modified trail maintenance and construction to accommodate bicycles and to education efforts to reduce conflicts between trail users.

Comment: Additional trails should be designated for bicycles. Several letters advocated adding key trails for bicycle use, most citing the following trails: New Coastal/SCA Trail, Wolf Ridge Trail, Green Gulch Trail and Oakwood Valley Trail.

Response: These trails are discussed in greater detail in the Marin Trail Use Designation Environmental Assessment,

Staff Report and Supplemental Environmental Assessment and Finding of No Significant Impact. Of the 73.1 miles of trail considered in this process, only 26.8 will be off-limits to bicycles. A summary of the considerations for each of the above-mentioned trails is included here.

New Coastal/SCA: This link includes 1.8 miles of narrow trail crossing steep hillsides. Trail width varies from 18–36". The steep hillside above and below the trail, the narrowness of the trail, and the presence of poison oak in places make passing difficult. Several switchbacks on the New Coastal Trail are difficult to safely negotiate with a bicycle. The New Coastal Trail was constructed in 1989 following an environmental document which included a condition that it would be for hikers only, in order to minimize width and impact of the construction. The trail crosses through endangered species habitat, containing the host plant for the endangered Mission Blue butterfly. Both are found along the trail. Due to trampling of the host plant for this endangered species along these trails, they have been closed since January, 1991. A condition of their reopening, which resulted from formal consultation with U.S. Fish and Wildlife Service Endangered Species Office, is that horses and bicyclists be excluded, to eliminate the potential for off trail travel and trampling of vegetation. The SCA Trail was constructed in 1986, and was intended for hikers only due to its narrow width. These trails provide a bicycle-free alternative for hikers and avoid potential conflicts of multiple use on narrow trails.

Oakwood Valley Trail: (0.3 mile) This segment is extremely steep, requiring a series of stair step retaining structures which the average cyclist cannot negotiate. Trail tread is narrow and wet in places and subject to erosion which would be aggravated by bicycle use. The narrow box canyon which this trail traverses offers few options for trail improvements to accommodate bicyclists. This segment provides a bicycle-free experience for hikers.

Wolf Ridge Trail: (0.7 mile) This trail is steep and narrow in places, especially where native vegetation has grown over the former road bed on which the trail was constructed. Trail widening is not recommended due to the impact on the adjacent native plant community. This trail is part of the only bicycle free loop for hikers in the Marin Headlands.

Green Gulch Trail: (2 miles) The lower portion of this trail is on private property. The owner of the property does not agree to bicycle access on the present alignment due to safety and privacy concerns. Park staff is working with the land owner to reroute the trail to avoid conflicts and allow for future bicycle access. As presently designated, this trail provides the only bicycle free alternative for equestrians and hikers between Coyote Ridge and Muir Beach. Alternative access for cyclists in this area is provided on two other trails.

Comment: Cyclists are the largest user group. Sixty of the respondents opined that cyclists represent the most numerous user group in the park and that the planning process was deficient in the lack of a user survey to confirm their contention.

Response: NPS staff have acknowledged the high and increasing numbers of cyclists in the park. The regulation as written represents a balanced response to all users, offering a significant opportunity to cyclists while respecting the documented need for separation from cyclists expressed by hikers and equestrians, especially on narrow trails, regardless of whether bicyclists equal or surpass other trail users in number.

Comment: The variety and quality of cyclists' experience will be diminished as a result of the proposed regulation. Many respondents writing in opposition to the regulation commented specifically on its negative effect on the bicycling experience in the area. Fifteen letters mentioned the importance of the "single-track experience" and its loss as a result of prohibiting bicycle use on the 1.8 mile stretch of the SCA/New Coastal Trail. Supplemental material attached to the formal response to the regulation by the Bicycle Trail Council of Marin included descriptions of this special aspect of mountain biking.

Response: Compared with the present unrestricted bicycle use of the park, the proposed regulation will certainly diminish the options of cyclists accustomed to this freedom. However, with access to over 64% of the park's designated trail system, experiences that will remain available to cyclists are numerous and varied. With the exception of the SCA/New Coastal trail, few distinct "places" in the park will be rendered inaccessible to bicyclists. As the most significant stretch of single-track trail in the park, the SCA/New Coastal segment clearly represents a major functional and aesthetic loss to cyclists. Although an alternate route providing through access in the Headlands will still be available, its use requires riding one mile of paved road. Loss of this route as well as several others of lesser importance also eliminates several popular loop rides, a fact also noted by fifteen respondents.

The Bicycle Trails Council of Marin recently defined single track trails as those not shared with management vehicles. Single track trails also include "foot paths" which can be as narrow as 18". Non-cyclists feel strongly that the narrow trails cannot safely accommodate bicycles. However, the desire of cyclists to use trails not shared with management vehicles is a legitimate one which is accommodated in the current regulation. There are more than 2 miles of trail designated for bicycle use which are not management roads. These include the Old Springs Trail (1.1 miles), a segment of the Miwok Trail north of Tennessee Valley (0.8 mile) and a portion of the Coastal Trail which bypasses a slide (0.3 mile). These trails are either wide enough presently to accommodate multiple use, or will be improved to accommodate such use. Other wider trails not needed for management use will be "downgraded" to provide a more aesthetic trail experience, while providing a width adequate for multiple use. Small scale trail maintenance machinery will allow for the maintenance of these trails at a narrower width.

Eleven respondents complained that the regulation would limit their access to ridge tops in the park. This comment refers primarily to the SCA trail but would also apply to a 0.6 mile stretch of the Wolf Ridge Trail, and a portion of the Miwok Trail. The majority of park trails that traverse ridgetops would be open to bicycles under the proposed regulation.

Comment: The proposed regulation will increase congestion on park trails. Twenty-three respondents complained that restricting bicyclists to certain trails would increase congestion on these routes.

Response: We agree that this will be a result of the proposed regulation. However, compared to the bicycle traffic on trails that occurs as a result of the increasing popularity of mountain bike riding, this is not expected to be significant. According to statistics compiled by the Bicycle Institute of America, mountain bike riders have increased nationwide from 200,000 in 1983 to 20 million in 1991. A 25% increase in mountain bike riders was estimated between 1991 and 1992 alone. Although there is no evidence to suggest that resulting bicycle traffic loads on park trails will have unacceptable impacts, other management actions may be necessary in the future to mitigate against multi-user conflicts.

Comment: Bicycles/bicyclists do not create conflicts or safety problems on park trails. Many respondents

expressing opposition to the regulation firmly denied that bicycles pose any user conflicts or safety problems on park trails. Apparently drawing from their own experiences and behavior as considerate and responsible riders, these individuals point out that there are no documented safety problems, that hikers and equestrians consistently react to them in a cordial manner.

Response: Notwithstanding the responsible user, bicycles are often perceived by other users as a disruptive influence on park trails. Although most of the few reported bicycle accidents in the park involve only single individuals, letters and reports from hikers and equestrians tell of many close calls and confrontational and unsettling experiences. The amount of bicycle-free trails provided under the regulation seems a modest and reasonable response to these concerns.

Comment: Allowing all trails to remain open to bicycles will reduce safety problems that result from use of roads open to motor vehicles. The Bicycle Trails Council of Marin and several other individuals raised this issue, maintaining that closure of trails to bicycles would require bicycles to use roads shared with motor vehicles and create a potential safety problem.

Response: Most accidents involving bicycles result in injury to the cyclist only, and do not generally affect other users. Since 1985 there have been 46 reported bicycle accidents on Marin Headlands public roads, and 52 on trails. Although most of the road accidents occurred on Conzelman Road, a route which provides access to Marin Headlands trails for bicycles, very few of these accidents were identified on the segment of road that leads to the nearest multiuse trail. This segment was recently widened to provide a safer shoulder to accommodate bicycles in the uphill direction. Many bicyclists on this segment of road have traveled over busy city streets, the Golden Gate Bridge, or other public roads to reach this point. An additional 1 mile of paved road travel is required before entering the trail system, as a result of the closure of the New Coastal Trail to bicycles. This narrow trail has been closed to all users since January 1991 with no detectable increase in bicycle accidents as a result.

Comment: Bicycling is a historic use of park trails that has been occurring for 20 years. Several commenters, including the Bicycle Trails Council of Marin, maintained that cycling has been a use of Golden Gate trails for 20 years, and as a "historic" use of the park should not be restricted.

Response: Golden Gate was established in 1972. There is no data to accurately account for the increasing numbers of bicycles on the park's trails and a response relies primarily on observations of park staff and other trail users. Bicycling on park trails in any noticeable numbers is a fairly recent occurrence. Although mountain bikes were invented in Marin County and used on State and National Park trails in this area for many years, mountain bikes were first mass produced in 1982–83. Prior to 1985, bicycles were rarely seen on park trails, with the exception of those that are paved. Since 1985, the number of bicycles observed on park trails has increased dramatically, with the increased availability and popularity of mountain bikes. This final regulation is a reasonable management action for bicycle and other trail uses.

Comment: The National Park Service can't enforce the regulation. Several commenters maintained that it will not be possible for the NPS to enforce the regulation.

Response: The regulation is fully enforceable. Just as with other rules, regulations and laws that are enforced by the National Park Service, a procedure will be developed to identify personnel and equipment as well as strategies on when, where and how the enforcement will be carried out. We are confident that the large majority of the users will abide by these regulations as they do with others.

Comment: Use other techniques to manage mountain bike use of the trails (education, uphill only, alternative days, better trail maintenance, temporary closures, permit system.)

Response: Golden Gate has adopted or plans to test some of these techniques. Interpretive/educational signs, maps and brochures are being developed to encourage user cooperation, safety and trail etiquette. Problem trails will be temporarily closed during wet conditions. Two new trail maintenance crews have been established to rehabilitate and better maintain trails. Allowing bicycles in the uphill-only direction is being considered for one trail. Other management techniques were considered in the Marin Trail Use Designation Environmental Assessment, but received little public support or would add substantially to the administrative responsibilities of staff without reducing the enforcement workload. This final regulation does not prohibit the use of these or other management tools.

Comment: Lights should be required only when needed. Two commenters objected to the requirement for a positive light source on bicycles, and to the requirement that it be visible from a certain distance.

Response: The requirement for lighting is only "during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise . . .". A bicycle falls under the vehicle code for light requirements which applies on NPS lands. This requirement is included in 36 CFR 4.30(d)(2) for which the Superintendent has no discretion.

Comment: Use unsafe operation rather than speed limits. Three commenters maintained that at times 15 mph is too fast for a given situation, and 5 mph can be too slow to safely ride.

Response: These are maximum limits. The regulation gives clear direction to the user regarding the maximum allowed speeds but does not relieve him/her from the responsibility for operating at lower speeds if conditions require. It also does not restrict the officer from issuing citations for unsafe operation.

Comment: The possession restriction is unfair because it keeps bicyclists from riding to picnic spots or overlooks. Five commenters objected to the restriction on possession of bicycles on trails closed to bicycle use.

Response: This restriction applies to "routes" and is intended to prevent bicyclists from using trails closed to bikes by carrying or walking their bikes on these trails. It does not restrict bicyclists from picnicking along trails open to them or from enjoying overlooks on trails open to bicycles.

Section Analysis

This final rule adds a new paragraph (c) to the existing regulations at 36 CFR 7.97, "Designated bicycle routes", specific to the use of bicycles. This new paragraph permits the use of bicycles in accordance with existing regulations at 36 CFR 4.30 and specifies specific regulations for bicycle use on designated routes in non-developed areas of Golden Gate National Recreation Area.

Paragraph (c)(1) designates, pursuant to 36 CFR 4.30(b), certain routes as open to bicycle use. These routes may include former military and ranch roads, and existing fire management roads as mentioned in the proposed rule. Such designated routes shall be identified by the posting of signs and by the identification on maps made available to the public.

Paragraph (c)(2) identifies maximum speed limits for bicycles on designated routes. These trails are not for the exclusive use of bicyclists, and are open to hikers and, in some areas, to horses.

Speed limits will assist in preventing conflicts with these users.

Paragraph (c)(3) prohibits the possession of a bicycle in all non-developed areas not designated as open to bicycle use. This prohibition is to discourage the pushing or carrying of bicycles into non-designated areas, thus facilitating the fair enforcement of these proposed regulations. This paragraph also requires the use of an activated white headlight between sunset and sunrise instead of only a white reflector, which is currently prescribed by section 4.30(d). Forward reflectors alone would not be safe on trails in non-developed areas where there is a lack of activated lights that make reflectors useful.

Drafting Information

The workgroup that developed this rule making is composed of Gil Soper, Chief Ranger Activities; Doug Nadeau, Chief, Resource Management and Planning; and Nancy Hornor, Environmental Specialist of Golden Gate National Recreation Area.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effort on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*).

In compliance with the National Environmental Policy Act (NEPA) an Environmental Assessment was prepared to review the impacts of this action. A Finding of No Significant Impact was signed on May 14, 1991.

In accordance with section 7 of the Endangered Species Act of 1973 formal consultation with the U.S. Fish and Wildlife Service was initiated for trails where use was impacting endangered species habitat. Bicycle use is not proposed for these trails.

The NPS has reviewed this rule as directed by Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights", to determine if this rule has "policies that have taking implications." The NPS has determined that this rule does not have takings implications because the regulations apply only to park lands, and open certain lands to bicycle users.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460bb–3, 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.97 is amended by adding paragraph (c) to read as follows:

§ 7.97 Golden Gate National Recreation Area.

* * * * *

(c) *Designated bicycle routes.* The use of a bicycle is permitted according to § 4.30 of this chapter and, in non-developed areas, as follows:

(1) Bicycle use is permitted on routes which have been designated by the Superintendent as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the superintendent and other places convenient to the public.

(2) Bicycle speed limits are as follows:

(i) 15 miles per hour: Upon all designated routes in Golden Gate National Recreation Area.

(ii) 5 miles per hour: On blind curves and when passing other trail users.

(3) The following are prohibited:

(i) The possession of a bicycle on routes not designated as open to bicycle use.

(ii) Operating a bicycle on designated bicycle routes between sunset and sunrise without exhibiting on the bicycle or on the operator an activated white light that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

Dated: November 13, 1992.

Jennifer A. Salisbury,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92–29916 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 406

[BPD–767–F]

Medicare Program; Technical Corrections to Hospital Insurance Eligibility and Entitlement Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule redesignates several sections of 42 CFR part 406, Hospital Insurance Eligibility and Entitlement. These redesignations were inadvertently omitted from amendments published on August 12, 1991, at 56 FR 38078.

EFFECTIVE DATE: These amendments are effective as of December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 690–6383.

SUPPLEMENTARY INFORMATION: On August 12, 1991, we published amendments to part 406 of the HCFA regulations. We amended the table of contents to redesignate several sections but failed to make the corresponding changes in the text. This rule corrects those omissions and makes the section numbers in the test consistent with the table of contents published on August 12, 1991. It also revises the table of contents to reflect changes that were included in the August 12 publication but do not appear in the October 1991 edition of the Code of Federal Regulations (CFR).

I. Information Collection Requirements

This rule contains no information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 381 et seq.)

II. Waiver of Proposed Rulemaking

This final rule makes purely technical corrections that preclude confusion but have no effect on the substance of the amended sections. Accordingly, we find that there is good cause to waive notice and opportunity for public comment as unnecessary. For the same reason, we waive the usual 30-day delay in the effective date.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any rule that is likely to have an annual impact of $100 million or more, cause a major increase in costs

or prices, or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required for this rule because it will have no economic impact.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that these rules will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR part 406 is amended as set forth below:

PART 406—[AMENDED]

A. The authority citation for part 406 continues to read as follows:

Authority: Secs. 202(t), 202(u), 226, 226A, 1102, 1818, and 1871 of the Social Security Act (42 U.S.C. 402(t), 402(u), 426, 426–1, 1302, 1395i–2, and 1395hh) and 3103 of Pub. L. 89–97 (42 U.S.C. 426a) unless otherwise noted.

B. The text of part 406 is amended as set forth below:

§ 406.24 [Redesignated as § 406.34]

1. Section 406.24 is redesignated as § 406.34.

§ 406.30 [Redesignated as § 406.50]

2. Section 406.30 is redesignated as § 406.50 in subpart D.

§ 406.31 [Redesignated as § 406.52]

3. Section 406.31 is redesignated as § 406.52 in subpart D.

§ 406.32 [Transferred and amended]

4. Section 406.32 is transferred to subpart C and paragraph (c) is amended to revise "§§ 406.23 and 406.24" to read "§§ 406.33 and 406.34".

§ 406.34 [Amended]

5. In redesignated § 406.34, in paragraph (a)(1), "§ 406.23(a) or (b)" is revised to read "§ 406.33 (a) or (b)", and in paragraph (b)(1), "§ 406.23(a)" is revised to read "§ 406.33(a)".

§ 406.38 [Transferred]

6. Section 406.38 is transferred to subpart C.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance.)

Dated: September 24, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: October 9, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–29561 Filed 12–10–92; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–156; RM–8021]

Radio Broadcasting Services; Knob Noster, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289C2 for Channel 289C3 at Knob Noster, Missouri, and modifies the construction permit for Station KXKX (FM) to specify operation on Channel 289C2 in response to a petition filed by Bick Broadcasting Company. See 57 FR 34092, August 3, 1992. The coordinates for Channel 289C3 are 38–46–28 and 93–37–34. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–156, adopted October 5, 1992, and released November 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 289C3 and adding Channel 289C2 at Knob Noster.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30065 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 803 and 852

RIN 2900–AF68

VA Acquisition Regulation: Improper Business Practices and Personal Conflicts of Interest

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is converting the proposed rule published in the **Federal Register** on August 20, 1992, at 57 FR 37759 to a final rule without further changes. The proposed rule established a requirement for the posting of the VA Inspector General (IG) Waste, Fraud, and Abuse Hotline poster in contractor facilities. Additionally, the coverage pertaining to the Procurement Integrity Act was deleted to eliminate coverage that is redundant or in conflict with coverage contained in the Federal Acquisition Regulation.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Sherry Patton, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–5001.

SUPPLEMENTARY INFORMATION:

I. Background

These revisions will require contractors to display the VA Inspector General (IG) Hotline Poster and encourage contractors to establish internal reporting mechanisms or programs that will encourage their employees to report instances of fraud or mismanagement. The requirement will apply to contractors who do not have a system already established for reporting improper business practices.

As a result of the changes enacted in the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Public Law 101–189, VA regulatory coverage pertaining to Procurement Integrity Act is redundant and in conflict with the coverage contained in the Federal Acquisition Regulation. VA regulatory coverage has been removed to eliminate the contradictory and redundant guidance. No comments were received from the public.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

This final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(2).

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these final regulations.

List of Subjects in 48 CFR Parts 803 and 852

Government procurement.

Approved: November 30, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

Proposed Rule Adopted as Final Rule Without Change

Accordingly, the proposed rule amending 48 CFR parts 803 and 852, which was published at 57 FR 37759 on August 20, 1992, is adopted as a final rule without change.

For the reasons set forth in the preamble, 48 CFR parts 803 and 852 are amended as set forth below:

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 803 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

803.104 [Removed]

2. Section 803.104 is removed.

3. Subpart 803.70, consisting of sections 803.7000, 803.7001, and 803.7002, is added to read as follows:

Subpart 803.70—Contractor Responsibility to Avoid Improper Business Practices

803.7000 Policy.

It is the Department of Veterans Affairs (VA) policy to contract with companies that conduct business with the highest degree of integrity and honesty. To demonstrate this commitment to integrity and honesty, contractors should have standards of conduct and internal control systems that are designed to promote such standards, to facilitate the timely discovery and disclosure of improper conduct in connection with Government contracts, and to assure that corrective measures are promptly instituted and carried out. For example, a contractor's system of management controls should provide for—

(a) A written code of business ethics and standards of conduct and an ethics training program for all employees;

(b) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(c) Disciplinary action for improper conduct;

(d) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(e) Internal and/or external audits as appropriate;

(f) Timely reporting to appropriate Government officials of any suspected or possible violations of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(g) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

803.7001 Display of VA hotline poster.

Contractors who are awarded a VA contract of—

(a) $500,000 or more for supplies or services, or

(b) $3 million or more for construction, and who have not established an internal reporting mechanism and program, as described in 803.7000(b), shall be required to display prominently in common work areas within business segments performing work under VA contracts, the VA hotline poster prepared by the VA Office of Inspector General.

803.7002 Contract clause.

The contracting officer shall insert the clause at 852.203–71, Display of VA hotline poster, in solicitations and contracts expected to equal or exceed the dollar thresholds established in 803.7001.

PART 852—[AMENDED]

4. The authority citation for part 852 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

5. Section 852.203–71 is added to read as follows:

852.203–71 Display of VA hotline poster.

As prescribed in 803.7002, insert the following clause:

Display of VA Hotline Poster

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently in common work areas within business segments performing work under VA contracts, VA Hotline posters prepared by the VA Office of the Inspector General.

(b) VA Hotline posters may be obtained from the VA Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043–4647.

(c) The Contractor need not comply with paragraph (a) above, if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of Clause)

[FR Doc. 92–30076 Filed 12–10–92; 8:45 am]

BILLING CODE 8320–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1805, 1806, 1807, 1809, 1815, 1817, 1827, 1828, 1833, 1835, 1837, 1839, 1842, 1845, 1849, 1852, 1853, and 1870

RIN 2700–AB25

[NASA FAR Supplement Directive 89–12]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Synopsis of Unsolicited Proposals; (2)

Phase III, SBIR Contracting; (3) Validity of Corporate Sureties, Treasury Circular 570; (4) Submission of Reports of Work by NASA Contractors; (5) Bonds and Bond-Related Forms—Nonconstruction Contractors; (6) Procurement Under the Training Act; (7) Acquisition of Federal Information Processing Resources; (8) Providing Government Facilities to Contractors; (9) Clarification of Draft RFP Policy; and (10) Revision of Clause at 1852.204–70, Report on NASA Subcontracts.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas J. Whelan, Deputy Director, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 358–0475.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700–0042.

List of Subjects in 48 CFR Parts 1801, 1804, 1805, 1806, 1807, 1809, 1815, 1817, 1827, 1828, 1833, 1835, 1837, 1839, 1842, 1845, 1849, 1852, 1853, and 1870

Government procurement.

Don G. Bush,

Assistant Administration for Procurement.

1. The authority citation for 48 CFR parts 1801, 1804, 1805, 1806, 1807, 1809, 1815, 1817, 1827, 1828, 1833, 1835, 1837, 1839, 1842, 1845, 1849, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1801 is amended as set forth below:

§ 1801.104–370 [Amended]

a. In section 1801.104–370, paragraph (e) and paragraph (f), the telephone number "453–1000" is revised to read "358–0000."

1801.370 [Amended]

b. In section 1801.370, paragraph (a)(1)(ii), the name "Nelson" is removed and the name "LaBeau" is added in its place in both occurrences.

c. In section 1801.370, paragraph (b), Consolidated Contact List, the name "LaBeau" is added and the name "Nelson" is removed.

PART 1804—ADMINISTRATIVE MATTERS

3. Part 1804 is amended as set forth below:

1804.170 [Amended]

a. In section 1804.170, paragraph (b), the citation "1832.705–270(b)" is revised to read "1831.205–70."

1804.202 [Amended]

b. In section 1804.202, paragraph (a), the zip code "21090" is revised to read "21090–2934."

1804.671–4 [Amended]

c. Section 1804.671–4, paragraph (ss) is revised to read as follows:

* * * * *

(ss) Item 40—SBIR award (1 position). Enter Code "N" (no) if the contract action is not in support of the Small Business Innovation Research (SBIR) Program (Pub. L. 97–219). Enter Code "1" if the contract action is related to a Phase I contract in support of the program. Enter Code "2" if the contract action is related to a Phase II contract in support of the program. Enter Code "3" for Phase III SBIR contracts.

* * * * *

1804.671–6 [Amended]

d. In section 1804.671–6, paragraph (d) is revised to read as follows:

* * * * *

(d) All NASA funded Phase I and Phase II awards under the Small Business Innovation Research (SBIR) Program shall be coded with PPC "HS". All Phase III SBIR awards and SBIR awards funded by Agencies other than NASA shall be coded with PPC "GF".

* * * * *

1804.671–7 [Amended]

e. In the introductory text of section 1804.671–7, the phrase "(located at the end of this subpart)" is added following the phrase "Table 180–4–1" and before the phrase "is the PPC matrix."

PART 1805—PUBLICIZING CONTRACT ACTIONS

4. Section 1805.202 is revised to read as follows:

§ 1805.202 Exceptions.

The phrase "proprietary information," as used at FAR 5.202(a)(8), means information (data) that constitutes a trade secret and/or information that is commercial or financial and confidential or privileged.

PART 1806—COMPETITION REQUIREMENTS

5. Section 1806.203 is added to read as follows:

§ 1806.203 Contracting under the SBIR program.

No separate justification or determination and finding is required under this part to limit competition to eligible contractors in connection with procurement conducted under any of the three phases of the Small Business Innovation Research (SBIR) program (see 15 U.S.C. 638(e)(4)).

PART 1807—ACQUISITION PLANNING

6. Part 1807 is amended as set forth below:

§ 1807.103 [Amended]

a. Section 1807.103, paragraphs (a)(1)(ii) (C) thru (G) are redesignated as (a)(1)(ii) (D) thru (H). Paragraph (a)(1)(i)(B) is redesignated as new paragraph (a)(1)(ii)(C) and a new paragraph (a)(1)(i)(B) is added and reserved.

b. Section 1807.103, paragraphs (b)(1)(ii)(B) (*3*) thru (*7*) are redesignated as (b)(1)(ii)(B) (*4*) thru (*8*). Paragraph (b)(1)(ii)(A)(*2*) is redesignated as new paragraph (b)(1)(ii)(B)(*3*) and a new paragraph (b)(1)(ii)(A)(*2*) is added and reserved.

§ 1807.7102 [Amended]

c. Section 1807.7102, paragraphs (b)(2) (iii) thru (vii) are redesignated as paragraphs (b)(2) (iv) thru (viii). Paragraph (b)(1)(ii) is redesignated as new paragraph (b)(2)(iii) and a new paragraph (b)(1)(ii) is added and reserved.

PART 1809—CONTRACTOR QUALIFICATIONS

7. Part 1809 is amended as set forth below:

a. Sections 1809.105 and 1809.105–1 are added to read as follows:

1809.105 Procedures.

1809.105–1 Obtaining information.

When a performance or payment security requirement is included in the solicitation and the offeror proposes a corporate surety, the contracting officer shall satisfy the requirements of FAR 28.202 by obtaining the most current information from the Department of Treasury *Circular 570 Bulletin Board*, FTS (202) 874–7214. Use communications software specifications:

Baud rate: 2400
Parity: None
No. of Data Bits: 8
No. of Stop Bits: 1
Duplex: Full

1809.507 [Amended]

b. Section 1809.507, is redesignated as section 1809.506.

c. In the newly redesignated section 1809.506, paragraph (a), the citation "FAR 9.507(a)" is revised to read "FAR 9.507–2(a)."

d. In the newly redesignated section 1809.506, paragraph (b), the citation "FAR 9.507 (c)(4)" is revised to read "FAR 9.506(c)."

1809.508–2 [Amended]

e. In section 1809.508–2, the citation "FAR 9.508" is revised to read "FAR 9.507–2."

PART 1815—CONTRACTING BY NEGOTIATION

1815.507 [Removed]

8. Section 1815.507 is removed in its entirety.

PART 1817—SPECIAL CONTRACTING METHODS

9. Part 1817 is amended as set forth below:

1817.7002–2 [Amended]

a. In section 1817.7002–2, "Block 9" is revised to read "Block 7."

1817.7002–3 [Amended]

b. In section 1817.7002–3, "Block 11" is revised to read "Block 9."

PART 1827—PATENTS, DATA, AND COPYRIGHTS

10. Part 1827 is amended as set forth below:

1827.406 [Amended]

a. In section 1827.406, paragraph (b)(1)(v) is revised to read as follows:

* * * * *

(v) Submission. The required numbers of copies of the reports specified in subdivisions (i) through (iii) shall, as defined in the clause at 1852.235–70, be submitted to the contracting officer technical representative (COTR) of the contract in the absence of other instructions from the requesting activity. In addition, a reproducible copy and a printed, or reproduced, copy of the reports shall be sent to the NASA Center for AeroSpace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090–2934.

* * * * *

1827.409 [Amended]

b. In section 1827.409, paragraph (i) is added to read as follows:

* * * * *

(i) In accordance with 1827.406(b)(1)(v), the contracting officer shall insert the clause 1852.235–70, Center for AeroSpace Information (November 1992), in all research and development contracts and in cost-reimbursement supply contracts involving research and development work which require the delivery of reports or data to CASI.

PART 1828—BONDS AND INSURANCE

11.–12. Part 1828 is amended as set forth below:

a. Section 1828.106–1 is revised to read as follows:

1828.106–1 Bonds and bond related forms.

When the contracting officer determines that performance or payment bonds are required from construction subcontractors under any non-construction contract (see 1828.102–1), the bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

b. Subpart 1828.2 is added to read as follows:

Subpart 1828.2 Sureties

1828.202 Acceptability of corporate sureties.

When the solicitation requires the submission of a performance or payment security and the offeror proposes a corporate surety, verification procedures required by FAR 28.202 shall be supplemented by following the procedures in 1809.105–1, Obtaining information.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

1831.205–70 [Amended]

12. In section 1831.205–70, the word "Incur-rence" is revised to read "Incurrence."

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.214 [Amended]

13. Section 1833.214 is redesignated as section 1833.215.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

14. Part 1835 is amended as set forth below:

1835.003–70 [Amended]

a. In section 1835.003–70, the section heading "Scientific and Technical Information Service" is revised to read "Center for AeroSpace Information."

b. In the last sentence of section 1835.003–70, "Scientific and Technical Information Service" is revised to read "Center for AeroSpace Information."

1835.070 [Amended]

c. In section 1835.070, paragraph (a), "Scientific and Technical Information Service" is revised to read "Center for AeroSpace Information."

PART 1837—SERVICE CONTRACTING

15. Subpart 1837.70 is added to read as follows:

Subpart 1837.70—Procurement of Training

Sec.
1837.7000 Scope of part.
1837.7001 General.
1837.7001–1 Purpose.
1837.7001–2 Training Act of 1958.
1837.7001–3 Competition in Contracting Act (CICA) of 1984.
1837.7001–4 Procedures.

Subpart 1837.70—Procurement of Training

1837.7000 Scope of part.

This part contains NASA-unique regulations, which have no clearly identifiable FAR counterpart, on the procurement of training.

1837.7001 General.

1837.7001–1 Purpose.

This subpart provides policy guidance on the appropriate balance between the use of CICA and the Training Act for the procurement of NASA's training requirements.

1837.7001–2 Training Act of 1958.

The Training Act of 1958 (5 U.S.C. 4101 et seq.) may be used for training

of NASA employees by, in, or through non-Government off-the-shelf training courses which are available to the public. These include established university catalog courses or commercial course offerings that are offered to the general public at catalog or market prices.

1837.7001–3 Competition in Contracting Act (CICA) of 1984.

The procurement of a new training course that must be developed to fulfill a specific NASA need should be conducted in accordance with CICA under the applicable provisions of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement (NFS).

1837.7001–4 Procedures.

(a) Installation training and procurement offices are encouraged to collaborate in selecting the type of instrument (see FAR and NFS parts 13 and 16) which is most efficient in effective procurement of training.

(b) Installations should develop internal procedures in consonance with the guidance contained herein.

PART 1839—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

16. Subpart 1839 is revised to read as follows:

Subpart 1839.70—NASA Procedures

Sec.
1839.7000 Scope of subpart.
1839.7001 Policy.
1839.7002 Applicability.
1839.7003 APRs from installations.
1839.7003–1 Responsibility.
1839.7003–2 FIRMR applicability and procurement authority certification.
1839.7003–3 GSA nonmandatory MAS contracts.
1839.7003–4 APR format.
1839.7003–5 APR submission.
1839.7003–6 DPA amendments.
1839.7004 FIP Resources Decision Document.
1839.7005 Coordination.
1839.7006 DPA transmittal.
1839.7007 Numbering provisions and clauses.

Subpart 1839.70—NASA Procedures

1839.7000 Scope of subpart.

This subpart prescribes the internal NASA procedures to be used by installations in obtaining General Services Administration (GSA) authorization to contract for Federal information processing (FIP) resources.

1839.7001 Policy.

(a) NASA policies and procedures on the acquisition of FIP resources are prescribed in NASA Handbook (NHB) 2410.1E, NASA Information Resources Management Handbook. See NFS 1804.470 regarding NASA policy on automated information security.

(b) The Designated Senior Official (DSO), the Associate Administrator for Management Systems and Facilities (Code J), has responsibility and accountability for interpreting, applying, and overseeing the implementation of the Federal Information Resources Management Regulations (FIRMR) within NASA. The DSO, with the concurrence of the Assistant Administrator for Procurement (Code H) and cognizant Institutional Program Office (IPO), has the responsibility for submitting agency procurement requests (APRs) to GSA to obtain delegations of procurement authority (DPAs) for FIP resources.

1839.7002 Applicability.

This subpart is applicable to all procurements of FIP resources.

1839.7003 APRs from installations.

1839.7003–1 Responsibility.

The acquisition of FIP resources is a shared responsibility of the requiring activity, the procurement officer, and the information resources management (IRM) organization.

(a) The installation's procurement officer is responsible for ensuring that the following actions are taken:

(1) Required documentation is uniquely identifiable, complete, adequate, severable, and readily available in files controlled by the contracting office.

(2) Timely submission of non-Trail Boss APRs to the cognizant IPO in accordance with 1839.7003–5.

(3) Initiating an APR for a revised DPA if events invalidate the existing DPA or require additional or modified authorization from GSA in accordance with 1839.7003–6.

(b) The contracting officer is responsible for the following actions:

(1) Determining FIRMR applicability in accordance with 1839.7003–2;

(2) Determining whether an APR should be initiated in accordance with 1839.7003–2;

(3) Ensuring that installation prescribed approvals have been obtained to allow initiation of the acquisition; and

(4) Conducting the acquisition in compliance with the DPA. This includes ensuring that solicitations are released, and contracts are executed and performed, consistent with the DPA.

(c) The Senior Installation IRM Official (SIIO) is responsible for submitting APRs to the cognizant IPO for acquisitions under the Trail Boss Program.

1839.7003–2 FIRMR applicability and procurement authority certification.

The contracting officer shall:

(a) Review the requirements and determine how the requirements will be satisfied, if FIP resources will be involved, and the categories and values of the FIP resources to be acquired or used. Each category of FIP resources (FIP equipment, FIP software, FIP services, FIP support services, and FIP related supplies) must be individually identified as accurately as possible (see FIRMR 201–4.001). FIP maintenance is considered a subset of FIP support services.

(b) Determine if the agency has authority to acquire the FIP resources by virtue of a specific agency or regulatory delegation, or if a specific acquisition delegation must be obtained. This requires comparing the requirements and individual FIP resources to the criteria and thresholds specified in FIRMR 201–20.305. NASA may contract for FIP resources without obtaining a specific acquisition delegation when the dollar value of any single category of FIP resources, including all optional quantities and periods over the life of the contract, does not exceed $2.5 million; except that the dollar value for a specific make and model specification or for requirements available from only one responsible source may not exceed $250,000.

(1) The term "FIP System" is not a separate category of FIP resources for purposes of making these determinations. If a FIP system is being acquired, its component resource categories (for example, FIP equipment, software, and so on) must be individually valued and compared to the appropriate thresholds to make the determination.

(2) If the dollar value of any individual type of FIP resource included in the basic contract, and in all modifications and optional quantities and periods over the life of the contract, exceeds the applicable dollar threshold for the regulatory or agency delegation authority, then a specific DPA is required and an APR must be prepared.

(3) If no category of FIP resources being acquired exceeds the dollar threshold, an APR is not required.

(4) FIP related supplies have an unlimited regulatory authority, without any dollar limitation, but a specific acquisition delegation may still be required for the acquisition if other categories of FIP resources are acquired which exceed the applicable thresholds.

(5) Assessments and determinations for acquisitions greater than $50,000 will be documented in the contract file with the following certification format:

(Format)

FIRMR Applicability and Procurement Authority Certification

Procurement Title: _____
Procurement Request Number: _____

The acquisition requirements have been reviewed and an assessment of the resources to be delivered or used in satisfying these requirements has been made. These resources have been characterized as either FIP or non-FIP resources. Based on FIRMR 201–1.002, including FIRMR bulletin A–1 and NHB 2410.1E, I determine that the subject procurement is_____/is not_____ subject to the FIRMR.

[Note: If the contract will involve information technologies determined to be not subject to the FIRMR (see FIRMR 201–1.002–2), explain the rationale in a separate attachment.]

If the acquisition is subject to the FIRMR, I certify that the thresholds in NFS 1839.7003–2(b) have been reviewed and that this procurement does_____/does not _____require a specific acquisition Delegation of Procurement Authority.

FIP Resources:

Equipment $ _____
Software _____
Services _____
Support Services _____
Related Supplies _____
Total FIP Resources $ _____
Non-FIP Resources $ _____
(Include incidental and embedded FIP Resources)
Total of All Resources $ _____
Contracting Officer: _____
Concurrence (if required) _____
(SIIO if $25 million or more)
(SIIO or designee if less than $25 million and required by installation procedures)

_____Attachment: Rationale for Non-Applicability of FIRMR to FIP Resources.

(End of format)

(6) The contracting officer shall provide an information copy of the FIRMR Applicability and Procurement Authority Certification through the cognizant IPO to Code JT for acquisitions $25 million or more.

(7) Assessments and determinations for acquisitions $50,000 or less will be documented in the contract file in accordance with local procedures.

(c) Although the contracting officer has authority to make decisions concerning the applicability of the FIRMR to NASA solicitations and contracts or modifications, in the event of a disagreement within the Installation as to the applicability of the FIRMR to a NASA solicitation or contract or modification, the SIIO has the authority to make final decisions.

1839.7003–3 GSA nonmandatory MAS contracts.

(a) Use of GSA nonmandatory multiple award schedule (MAS) contracts is a competitive procedure relative to FAR Part 6 when:

(1) The contracting officer has complied with FIRMR 201–39.803–3(a)(2) to consider a reasonable number of nonmandatory MAS contractors that can satisfy the functional requirements;

(2) The contracting officer has fully complied with FIRMR 201–39.803–3(b) regarding responses to any required synopsis; and

(3) The contract file is adequately documented that the delivery order placed to the selected nonmandatory MAS contractor represents the lowest overall cost to the Government.

(b) If the procedures in paragraph (a) are followed, even though the resultant order may be issued for a specific manufacturer's product by name and model number, this is not a procurement for a specific make or model requiring a Justification For Other Than Full and Open Competition (JOFOC); the exception in FIRMR 201–39.601–2 applies.

(c) Generally a "reasonable number" means consideration of at least two compliant nonmandatory MAS contractors. Prudence would suggest considering three or more compliant nonmandatory MAS contractors.

(d) A specification that attempts to describe salient characteristics is not in itself conclusive evidence of a full and open competitive environment. The decisive factor is whether a product other than a specific make or model can satisfy the requirements expressed in such a specification. For example, if the salient characteristics were repeated off of or were derived directly from a product specification, a new product release issuance, or similar data sheet of a specific make or model or brand name, the requirements are probably not described in other than specific make or model specifications. Salient characteristics so derived are likely to be product-specific performance characteristics or proprietary design specifications. This specification, although it includes salient functional or performance characteristics, does not provide for full and open competition.

(e) Use the $2 million threshold for obtaining a DPA when use of a GSA nonmandatory MAS contract is a competitive procedure relative to FAR part 6. Use the $200,000 threshold when use of a GSA nonmandatory MAS contract is a noncompetitive procedure relative to FAR part 6.

(f) A brand name specification is a specific make or model specification and if an acquisition requires a contractor to comply with either such specifications, the acquisition must be justified and approved in accordance with FAR 6.303 and 6.304.

1839.7003–4 APR format.

(a) FIRMR 201–20.305–3 requires NASA to prepare APRs as indicated by instructions in the FIRMR Bulletin series. APRs under the Trail Boss Program will be submitted in the format provided in FIRMR Bulletin C–7, entitled "Trail Boss Program," as modified by Enclosure C–5A of NHB 2410.1E. APRs for all other FIP resources, will be submitted in the format provided in FIRMR Bulletin C–5, entitled "Instructions for Preparing an Agency Procurement Request (APR)," as modified by Enclosure C–4B of NHB 2410.1E. Installations will augment these APRs with the following additional information:

(1) Include in "FIP Resources to be acquired" the maximum contract value that includes (i) all contract options and (ii) maximum quantities under indefinite-delivery types of contracts.

(2) Describe the non-FIP resources in APRs for requirements that include non-FIP resources.

(3) Include the APR attachments required by FIRMR Bulletin C–5 and a copy of the JOFOC, if applicable.

(4) Include, as required, the documentation listed in FIRMR Bulletin C–5, paragraph 7, Regulatory Compliance; the FIP Resources Decision Document (FRDD); and the procurement plan or minutes of the acquisition strategy meeting (ASM). (If Headquarters approval of the procurement plan or minutes of the ASM is not required, indicate in the APR transmittal letter the date installation approval was given and do not include the document in the APR transmission.)

(5) Identify the NASA point of contact for GSA.

(b) The following matrix is provided to help in deciding if a document is required by the APR under Regulatory Compliance:

Type of requirement	Documentation items										
	1	2	3	4	5	6	7	8	9	10	11
FIP equipment	R	R	A	S	P	P	P	C	C	C	T
FIP software	R	R	A	S	P	P	P	C	C	C	T
FIP services	R	R	A	S	P	N	P	C	C	C	T

Type of requirement	Documentation items										
	1	2	3	4	5	6	7	8	9	10	11
FIP support services	R	R	N	N	P	N	P	N	N	N	T
FIP related supplies	R	R	N	N	P	P	P	N	N	N	T

Documentation Items Legend

1. Requirements analysis (FRDD part 2).
2. Analysis of alternatives (FRDD part 3).
3. Determination to support hardware compatibility-limited requirements.
4. Conversion study (FRDD part 3).
5. Certified data to support a requirement available from only one responsible source (the JOFOC).
6. Certified data to support use of a specific make and model specification (the JOFOC).
7. Description of planned actions necessary to foster competition for subsequent acquisitions (the JOFOC).
8. Justification for more than one agency to provide switching facilities or services at building locations (FIRMR 201–20.305–1(a)(1)(i)).
9. Exception to the use of the FTS2000 mandatory network services (FIRMR 201–20.305–1(a)(1)(ii) and 201–24.101–1(b)).
10. Exception to the use of GSA mandatory local telecommunications services (FIRMR 201–20.305–1(a)(1)(ii) and 201–24.102(c)).
11. Trail Boss Charter and Statement of Qualification.

R=Required.
A=Required if there are compatibility limited requirements.
N=Not required.
P=Required unless full and open competition.
C=Required if telecommunications exceptions are sought.
S=Required if a conversion study must be performed for equipment, software, or services.
T=Required for a Trail Boss Acquisition.

1839.7003–5 APR submission.

(a) For non-Trail Boss acquisitions, the contracting officer shall forward the original of the APR submittal (the APR and all required documentation) to the cognizant IPO, with a transmittal letter (see NHB 2410.1E, Enclosure C–4A) signed by the procurement officer. Include a 3½" diskette, formatted for use on a DOS 3.3, or higher compatible, personal computer, that contains a WordPerfect 5.0 or 5.1 format of the APR.

(1) The transmittal letter should indicate the approval status of the JOFOC, and either when the procurement plan was approved or when the ASM was conducted and the minutes approved. The SIIO or designee will concur on the transmittal letter.

(2) The cognizant IPOs for this purpose are: The Office of Space Flight (Attn: Code MV) for Johnson Space Center, Kennedy Space Center, Marshall Space Flight Center, Stennis Space Center, and the Space Station Freedom Program Office; the Office of Aeronautics and Space Technology (Attn: Code RI) for Ames Research Center, Langley Research Center, and Lewis Research Center; and the Office of Space Science and Applications (Attn: Code SP) for Goddard Space Flight Center. For Headquarters acquisitions the Director, Headquarters Acquisition Division (Code HW), shall submit APR's directly to the Office of Management Systems and Facilities (Attn: Code JT) after concurrence by the SIIO in Code J.

(3) Concurrently, the contracting officer shall provide copies of the APR submission, including the transmittal letter, the APR, and all required documentation, to the Assistant Administrator for Procurement (Attn: Code HS) and the Associate Administrator for Management Systems and Facilities (Attn: Code JT).

(4) APR's should be submitted as soon as, but not before, the FRDD and other documentation (waivers, JOFOCs, procurement plans, or ASM minutes, as appropriate) have been completed and approved in final form within the Agency.

(b) For acquisitions under the Trail Boss Program, the SIIO shall forward the original of the APR submittal (the APR and all required documentation) to the cognizant IPO, with a diskette of the APR as specified in paragraph (a) of this section. The IPO is responsible for preparing the transmittal letter (see NHB 2410.1E, Enclosure C–4C) and forwarding the APR to Code JTD.

(c) Following receipt of the original APR from the IPO, Code JTD will further augment the APR to include the APR control number and the agency-authorized signature.

(d) The Chief, IRM Policy and Acquisition Management Office (Code JTD) signs APRs, including amendments, of less than $10 million; the Director, IRM Division (Code JT) signs APRs between $10 million and $100 million; and the Associate Administrator for Management Systems and Facilities (Code J) signs APRs $100 million or greater and all APRs for Trail Boss delegations. Code JTD is responsible for transmitting APRs to GSA.

(e) Allow a minimum of seven weeks for processing the APR and obtaining the DPA.

1839.7003–6 DPA amendments.

(a) The maximum possible cumulative dollar value of the contract(s) entered into by authority of a DPA may not exceed the value of the DPA granted by GSA. A DPA is granted on the basis of information contained in the APR. An amendment to a DPA must be obtained whenever any material change is expected from the basis on which the DPA was granted. This applies to any specific acquisition DPA, including a Trail Boss DPA. An APR shall be used to accomplish this.

(b) Amendments to a previously submitted or approved specific acquisition DPA should follow the same procedures and employ the same format as that required by the current FIRMR and NFS part 1839. For such an APR, provide only that information necessary to update the original APR and only such other information as needed to support the amendment. Explain why the amendment is necessary The existing documentation supporting the acquisition should be reviewed and certified by the procurement officer as to its timeliness. If this documentation is either not current or affected by the amendment, the documentation shall be revised. If an original document was submitted or requested by Headquarters or GSA, its revision shall be resubmitted with the APR.

(c) The following are reasons for submitting an APR to seek an amended DPA:

(1) Any substantial change in acquisition strategy.

(2) Slippages in the solicitation schedule that exceed 12 months and affect specifically the dates to release the solicitation, to receive bids or proposals, to complete the evaluations and select, and to make an award. Slippages less than 12 months should be identified to GSA during routine status reporting.

(3) Changes affecting the non-FIP resources that occur during the solicitation period or contract term if those changes will affect the FIP resources to such an extent that the DPA will require modification.

(4) Any increase in the total FIP resources, exceeding the delegated authority. This includes any in-scope changes that cause the total contract value to exceed the APR estimate upon which the DPA was granted, and also includes all new work modifications.

(d) Contracting officers should inform Code JTD of any expected decreases greater than 25 percent in the total FIP resources to be acquired on a DPA. Code JTD will determine whether GSA should be informed of such decreases.

1839.7004 FIP Resources Decision Document.

When NHB 2410.1E provides for approval of a FIP Resources Decision Document (FRDD) at the local level, the approved FRDD, including its enclosures and attachments, must be an enclosure to the APR. Unless the FRDD has previously been sent to Headquarters, the FRDD is submitted to Headquarters along with the APR.

1839.7005 Coordination.

(a) APRs are subject to comparison with acquisition plans and general review by Code HS, Code JTD, and the cognizant IPO before submission to GSA.

(b) Communications with GSA regarding APRs shall be through Code JTD, unless that office directs otherwise. Installations should refer any direct inquiries from GSA, with the exception of acquisitions under the Trail Boss Program, without comment, to Code JTD.

(c) NASA will not normally make presentations to GSA regarding APRs unless requested by GSA. Any exceptions are subject to coordination by Code HS, Code JTD, and the cognizant IPO.

1839.7006 DPA transmittal.

(a) GSA delegates its procurement authority to the DSO. The DSO must explicitly redelegate specific acquisition DPAs to the contracting organization, before the contracting officer has authority to either issue solicitations or obligate NASA. Delegation of regulatory and specific agency procurement authority will be handled in accordance with the Associate Administrator for Management Systems and Facilities (Code J) procedures.

(b) GSA's delegations of specific acquisition authority to NASA, with the exception of acquisitions under the Trail Boss Program, are transmitted to Code J or designee (Code JTD), and are redelegated to the appropriate procurement officer by transmitting the approved APR and the signed DPA with a cover letter containing additional instructions and guidance. A copy of this entire package shall be retained in the contract file.

(c) GSA's delegations of specific acquisition authority to NASA, for acquisitions under the Trail Boss Program, are transmitted to the Trail Boss, and are redelegated to the appropriate procurement officer by transmitting the approved APR and the signed DPA with a cover letter containing additional instructions and guidance. A copy of this entire package shall be retained in the contract file.

(d) DPAs may be contingent upon the contracting officer submitting supplementary information.

(1) Post delegation review activities that may be required include:

(i) Solicitation evaluation;

(ii) Semi-annual progress report;

(iii) Post-bid briefing;

(iv) Pre-award briefing;

(v) Report of contract information;

(vi) Annual review of contract status; and

(vii) Annual review of the complete information system.

(2) Pre-award and post-award reports, when required, shall be forwarded to Code JT, through the SIIO to the Senior Program IBM Official (SPIO), within 30 days of contract award or contract modification. Code JT will review the reports and obtain Code HS concurrence prior to submission to GSA.

(e) Pre-award and post-award reports include 6-Month Status Reports and Contract Award Reports.

(1) GSA requires a 6-Month Status Report on all specific acquisition DPA's for which a contract or modification has not been awarded. The contracting officer shall submit status reports to Code JT not later than May 15 and November 15 of each year. The contents of these reports are specified in the DPA.

(2) GSA requires a Contract Award Report within 30 days after award of a contract or modification issued pursuant to a specific acquisition DPA. The contracting officer shall submit Contract Award Reports to Code JT not later than 25 days after the award of a contract or modification. These reports include:

(i) the contract or modification number;

(ii) contract or modification award date; contracting officer's name and telephone number;

(iii) anticipated contract life (number of months or years);

(iv) estimated contract dollar value of each FIP resource category to be acquired under the contract during the life of the contract;

(v) start and completion dates for the following acquisition phases: Determination of Need and Requirements Analysis, Analysis of Alternatives, Solicitation Preparation and Issuance, Proposal Evaluation and Award.

(f) Code JTD requires an Annual Status Report on all extant contracts with specific acquisition DPA's. The contracting officer shall submit an Annual Status Report to Code JT not later than November 15 of each year. If a DPA was received, or a Contract Award Report filed during the reporting period, report only the status between the receipt of the DPA or submission of the Contract Award Report through the end of the reporting period. Subsequent Annual Status Reports shall be submitted throughout the life of the contract until contract closeout.

(1) The Annual Status Report includes:

(i) the contract number:

(ii) date the contract was terminated or completed;

(iii) information on the progress made in accomplishing mission program objectives and whether they are being achieved within projected milestones or schedule and costs—address objectives, milestones or schedule, and costs established in the baseline (see paragraph (f)(2) of this section) for the information system initiative;

(iv) information on whether it is necessary to make changes to baseline, program directives, program milestones and schedule, and program costs—address specific changes and the reasons for making the changes;

(v) a signed and dated copy of the revised baseline for the information system initiative to include the total dollar value of FIP resources acquired under the contract covered by this DPA.

(2) Baseline information required in the Annual Status Report includes:

(i) Baseline Date—"as of" date when the baseline is defined.

(ii) Brief Description—the name and brief description of complete major information system initiative and appropriate mission program(s).

(iii) Program Objectives—brief description of mission program objectives that depend on successful implementation of major information system initiative, in terms of specific benefits or improvements to mission effectiveness and service delivery.

(iv) Program Milestones/Schedule—brief description of major milestones and schedule for acquisition, operation, maintenance of complete major information system initiative for accomplishing program objectives. Milestone/schedule should be organized by life-cycle phases (Definition/ Analysis, Design, Development, Operation/ Maintenance) and within phases by fiscal year quarter.

(v) Program Costs—projected in-house and contract costs for complete major information system initiative through Operation/Maintenance, presented by fiscal year quarter. Actual costs for quarters ending before baseline date. Dollar value, by contract, of FIP resources sought under contract(s) covered by requested or related DPA supporting the information system initiative.

(vi) Agency Official's Signature—signature of agency official responsible for major information system initiative.

(3) In the event a baseline is not required by the DPA, use the APR and FRDD.

(g) Questions from either GSA or the installation regarding the DPA shall be referred to Code JTD.

1839.7007 Numbering provisions and clauses.

When adherence to the FIRMR results in the use of provisions or clauses not prescribed in the FAR or NFS, use the FIRMR number and FIRMR provision or clause title.

PART 1842—CONTRACT ADMINISTRATION

1842.202–70 [Amended]

17. In section 1842.202–70, paragraph (a)(6)(iii), the word "it" is revised to read "if."

PART 1845—GOVERNMENT PROPERTY

18. Part 1845 is amended as set forth below:

a. Section 1845.302–1, paragraph (a), is revised to read as follows:

1845.302–1 Policy.

(a) The procurement officer is designated to make determinations required under FAR 45.302–1(a)(4) on authorizing the use of Government facilities.

* * * * *

b. Section 1845.302–73 is added to read as follows:

1845.302–73 Determination and findings.

(a) Procedure. Determination and findings (D&F) required under FAR 45.302–1(a)(4) shall be prepared by the contracting officer and approved by the procurement officer. Prior to approval of the D&F by the procurement officer, concurrence must be obtained from the Director of Administration or equivalent, to ensure that the requiring activity and the installation supply and equipment management officer agree to the use of the Government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separate D&F is required before adding new types of items or significant changes in quantity. A separate D&F is also required before adding any new work to the contract that requires additional Government facilities.

(b) Format. A sample format follows:

(Format)

National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Decision To Provide Government Facilities

On the basis of the following findings and determinations, Government-owned facilities may be provided to [*insert the name of the contractor*] pursuant to the authority of FAR 45.302–1(a)(4).

Findings

1. The *[insert the name of the contracting activity]* and the contractor (have entered)/(proposed to enter) into Contract No. *[insert the contract number]*. (Include the following information: Type of contract, contract value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor has certified inability to acquire the facilities; or, even though the contractor is willing and financially able to acquire these facilities for its own account, the contractor has stated that time will not permit making arrangements to obtain timely delivery to meet NASA requirements. If timely delivery is the problem, state when the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Give a general description of the types of facilities to be provided and indicate the variation in quantities of items based on functional requirements. Explain how these facilities pertain to the scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under $10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.)

5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

Determination

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

Procurement Officer

Date

(End of format)

PART 1849—TERMINATION OF CONTRACTS

1849.110 [Amended]

19. In section 1849.110, the section heading "Negotiation memorandum" is revised to read "Settlement negotiation memorandum."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

20. Part 1852 is amended as set forth below:

1852.204–70 [Amended]

a. In the title of the clause, the date "AUG 1992" is revised to read "NOV 1992."

b. In paragraph (c) of the clause, the phrase "for performing this contract," is revised to read "for performing this contract (including facility leases),".

c. Section 1852.235–70 is revised to read as follows:

1852.235–70 Center for AeroSpace Information.

As prescribed in 1827.409(i) and 1835.070(a), insert the following clause:

Center for Aerospace Information (November 1992)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither

CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) When the contract otherwise requires the submission of monthly progress, quarterly progress, or final reports, as defined at 1827.406(b), the last page of such reports shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) When the contract requires the delivery of reports or data to CASI, a reproducible copy and a printed or reproduced copy of such reports or data shall be concurrently submitted to: Center for AeroSpace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090–2934.

(End of clause)

PART 1853—FORMS

1853.204–70 [Amended]

22. The section heading for section 1853.204–70 is revised to read "Section 1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 533M, 533P, 533Q, 667, 1098, 1356, 1611, 1612, 1651 and DD Form 1593).

PART 1870—NASA SUPPLEMENTARY REGULATIONS

23. In section 1870.303, Appendix I, Chapter 4, paragraph 401, 2.f. is revised to read as follows:

1870.303 Source Evaluation Board Procedures.

* * * * *

f. A draft RFP is an effective method of obtaining industry comment on our requirements and engendering industry goodwill. A draft RFP should be used whenever it is expected to be beneficial. The draft RFP should be complete and include all applicable sections, including Sections L and M. Where appropriate, the Statement of Work or specifications may be released in advanced of the draft RFP;

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for pollock by vessels using non-pelagic trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1992 secondary bycatch allowance of Pacific halibut for the pollock/Atka mackerel/"other species" fishery in the BSAI has been caught.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), December 8, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 secondary bycatch allowance of Pacific halibut to the pollock/Atka mackerel/"other species" fishery, which is defined at § 675.21(b)(4)(vi), was set at 1,692 metric tons (57 FR 43926, September 23, 1992).

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iv), that U.S. fishing vessels have caught the 1992 secondary bycatch allowance of Pacific halibut for the pollock/Atka mackerel/"other species" fishery. Therefore, NMFS is closing directed fishing for pollock by trawl vessels using non-pelagic trawl gear in the BSAI from 12 noon, A.l.t., December 8, 1992, until 12 midnight, A.l.t., December 31, 1992. Non-pelagic trawl gear is any trawl other than a pelagic trawl as defined in 50 CFR 675.2.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30156 Filed 12–8–92; 3:30 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 239
Friday, December 11, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

NRC Program for Elimination of Requirements Marginal to Safety; Public Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Rescheduling of Public Workshop.

SUMMARY: On November 24, 1992, a notice was published (57 FR 55156) announcing a public workshop on January 26–27, 1993 for the NRC Program for Elimination of Requirements Marginal to Safety. This workshop is being rescheduled to expand the scope and include other aspects of the staff plans to improve the efficiency of the regulatory process. A notice providing further details will be published in the near future.

DATES: The rescheduled dates of the public workshop will be published in the near future.

ADDRESSES: The location of the public workshop will be published in the near future.

FOR FURTHER INFORMATION CONTACT: Dr. Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Phone (301) 492–3730.

Dated at Rockville, Maryland, this 4th day of December 1992.

For the Nuclear Regulatory Commission.

Warren Minners,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 92–30127 Filed 12–10–92; 8:45 am]
BILLING CODE 7590–01–M

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC-Licensed Facilities; Workshops

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshops.

SUMMARY: The Nuclear Regulatory Commission (NRC) is preparing to initiate an enhanced participatory rulemaking on establishing the radiological criteria for the decommissioning of NRC-licensed facilities. The Commission intends to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the staff develops the draft proposed rule. The Commission plans to conduct a series of workshops to solicit commentary from affected interests on the fundamental approaches and issues that must be addressed in establishing the radiological criteria for decommissioning. The workshops will be held in various locations throughout the United States beginning in January, 1993 and will be open to the public.

DATES: The schedule for the workshops is as follows:

January 27 and 28, 1993—Chicago, IL
February 23 and 24, 1993—San Francisco, CA
March 12 and 13, 1993—Boston, MA
March 23 and 24, 1993—Dallas, TX
April 13 and 14, 1993—Philadelphia, PA
April 29 and 30, 1993—Atlanta, GA
May 6 and 7, 1993—Washington, DC (National Workshop)

As discussed later in this notice, the workshop discussions will focus on the issues and approaches identified in a Rulemaking Issues Paper prepared by the NRC staff. The Commission will accept written comments on the Rulemaking Issues Paper from the public, as well as from workshop participants. Written comments should be submitted by May 28, 1993.

ADDRESSES: Send written comments on the Rulemaking Issues Paper to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. The Rulemaking Issues Paper is available from Francis X. Cameron (See **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison and Waste Management, Office of the General Counsel, Washington, DC 20555, Telephone: 301–504–1642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to ensure the safe and timely decommissioning of nuclear facilities which it licenses and to provide guidance to licensees on how to plan for and prepare their sites for decommissioning. Once licensed activities have ceased, licensees are required to decommission their facilities so that their licenses may be terminated. This requires that the radioactivity in land, groundwater, buildings, and equipment resulting from the licensed operation be reduced to levels that allow the property to be released for unrestricted use. Licensees must then demonstrate that all facilities have been properly decontaminated and that radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

The types of nuclear fuel cycle facilities that will require decommissioning include nuclear power plants; non-power (research and test) reactors; fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations. In addition there are currently about 24,000 materials licensees. About one third of these are NRC licensees, while the remainder are licensed by Agreement States acting under the authority of the Atomic Energy Act, section 274. These licensees include universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. About 50% of NRC's 7,500 materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Decommissioning of these facilities should be relatively simple because there is usually little or no residual radioactive contamination. Of the remaining 50%, a small number (e.g. radioactive source manufacturers, radiopharmaceutical producers, and

radioactive ore processors) conduct operations that could produce substantial radioactive contamination in portions of the facility. These facilities, like the fuel cycle facilities identified above, must be decontaminated before they can be safely released for unrestricted use.

Several hundred NRC and Agreement State licenses are terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination. However, as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities that have been operating for a number of years will reach the end of their useful lives and be decommissioned. Therefore, both the number and complexity of facilities that will require decommissioning is expected to increase.

The Commission believes that there is a need to incorporate into its regulations radiological criteria for termination of licenses and release of land and structures for unrestricted use. The intent of this action would be to provide a clear and consistent regulatory basis for determining the extent to which lands and structures must be decontaminated before a site can be decommissioned. The Commission believes that inclusion of criteria in the regulations would result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future. A rulemaking effort would also provide an opportunity to reassess the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards and decommissioning experience obtained during the past 15 years.

The new criteria would apply to the decommissioning of power reactors, non-power reactors, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, independent spent fuel storage installations, and materials licenses. The criteria would apply to nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. The proposed criteria would not apply to uranium (other than source material) mines and mill tailings, high-level waste repositories, or low-level waste disposal facilities.

Until the new criteria are in place, the Commission intends to proceed with the decommissioning of nuclear facilities on a site-specific basis as the need arises considering existing criteria. Case and activity-specific risk decisions will continue to be made as necessary during the pendency of this process.

The Enhanced Participatory Rulemaking

The Commission believes it is desirable to provide for early and comprehensive input from affected interests on important public health and safety issues, such as the development of radiological criteria for decommissioning. Accordingly, the Commission is initiating an enhanced participatory rulemaking to establish these criteria. The objective of the rulemaking is to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the NRC staff develops the draft proposed rule. The NRC staff will consider this commentary in the development of the draft proposed rule, as well as document how these comments were considered in arriving at a regulatory approach. The Commission believes that this will be an effective method for illuminating the decisionmaking process on complex and controversial public health and safety issues. This approach will ensure that the important issues have been identified; will assist in identifying potential information gaps or implementation problems; and will facilitate the development of potential solutions to address the concerns that affected interests may have in regard to the rulemaking.

The early involvement of affected interests in the development of the draft proposed rule will be accomplished through a series of workshops. A workshop format was selected because it will provide representatives of the affected interests with an opportunity to discuss the rulemaking issues with one another and to question one another about their respective positions and concerns. Although the workshops are intended to foster a clearer understanding of the positions and concerns of the affected interests, as well as to identify areas of agreement and disagreement, it is not the intent of the workshop process to attempt to develop a consensus agreement on the rulemaking issues. In addition to the commentary from the workshop participants, the workshops will be open to the public and the public will be provided with the opportunity to comment on the rulemaking issues and the workshop discussions at discrete intervals during the workshops.

The normal process for conducting Commission rulemakings is NRC staff development of a draft proposed rule for Commission review and approval, publication of the proposed rule for public comment, consideration of the comments by the NRC staff, and preparation of a draft final rule for Commission approval. In the enhanced participatory rulemaking, not only will comments be solicited before the NRC staff prepares a draft proposed rule, but the mechanism for soliciting these early comments will also provide an opportunity for the affected interests and the NRC staff to discuss the issues with each other, rather than relying on the traditional one-to-one written correspondence with the NRC staff. After Commission review and approval of the draft proposed rule that is developed using the workshop commentary, the general process of issuing the proposed rule for public comment, NRC staff evaluation of comments, and preparation of a draft final rule for Commission approval, will occur.

Participants

In order to have a manageable discussion among the workshop participants, the number of participants in each workshop must be limited. Based on discussions with experts on workshop facilitation, the NRC staff believes that the optimum size of the workshop group is fifteen to twenty participants. Due to differing levels of interest in each region, the actual number of participants in any one workshop, as well as the number of participants that represent a particular interest in any one workshop, may vary. Invitations to attend the workshops will be extended by the NRC staff using several selection criteria. First, to ensure that the Commission has the benefit of the spectrum of viewpoints on the issues, the NRC staff is attempting to achieve the participation of the full range of interests that may be affected by the rulemaking. The NRC staff has identified several general interests that will be used to select specific workshop participants—state governments, local governments, tribal governments, Federal agencies, citizens groups, nuclear utilities, fuel cycle facilities, and non-fuel cycle facilities. In addition to these interests, the staff also plans to invite representatives from the contracting industry that performs decommissioning work and representatives from professional societies, such as the Health Physics Society and the American Nuclear Society. The NRC anticipates that most of the participants will be

representatives of organizations. However, it is also possible that there may be a few participants who, because of their expertise and influence, will participate without any organizational affiliation.

The second selection criterion is the ability of the participant to knowledgeably discuss the full range of rulemaking issues. The NRC staff wishes to ensure that the workshops will elicit informed discussions of options and approaches, and the rationale for those options and approaches, rather than simple statements of opinion. The NRC staff's identification of potential participants has been based on an evaluation of such factors as the extent of a potential participant's experience with a broad range of radiation protection issues and types of nuclear facilities, specific experience with the decommissioning issue, and the extent of a potential participant's substantive comment and participation on previous Commission regulatory or licensing actions.

The third criterion emphasizes participation from organizations within the region encompassed by the workshop. As much as practicable, those organizations that primarily operate within the region, as opposed to regional units of national organizations, will have priority in terms of participating in the corresponding regional workshops. Organizations with a national standing will be part of the "national" workshop to be held in Washington, DC.

Wherever possible, the NRC staff plans to arrange the participation of individual organizations in the workshops through national organizations such as the Organization of Agreement States, and the Conference of Radiation Control Program Directors (CRCPD). There will also be some flexibility to later include organizations who were not originally identified in the staff survey of potential participants. In order to provide the public with information on the types of organizations that may eventually participate in the workshops, the Commission has provided the following summary:

- State governments. The Organization of Agreement States and the CRCPD are willing to coordinate the participation of individual states in the regional workshops. The NRC staff has also notified the National Governor's Association, the Western Governors Association, the National Conference of State Legislatures, and the National Association of Attorneys General of the upcoming workshops.
- Local governments. The NRC staff has contacted the National Association of Counties and the county associations in each state to identify potential local government participants.
- Tribal governments. The NRC staff has contacted three national tribal organizations—Native Americans for a Clean Environment, the National Congress of American Indians, and the Council of Energy Resource Tribes—in regard to the participation of tribal Governments in the regional workshops.
- Citizens groups. The NRC staff has contacted several citizens groups at the national level in regard to their general interest in participating in the national workshop. The groups contacted include the Sierra Club, the Natural Resources Defense Council, the Nuclear Information Resource Service, Public Citizen, U.S. Public Interest Research Group, the League of Women Voters, the National Aububon Society, the Union of Concerned Scientists, and Physicians for Social Responsibility.

In regard to local and regional citizens groups, the NRC staff has had extensive discussions with the NRC regional personnel, state radiation protection control officials, and others, on potential citizen group participation at the regional level. Based on these discussions, the NRC staff has contacted a number of citizens groups about their potential interest in the enhanced participatory rulemaking.

- Nuclear utilities. The Nuclear Management and Resources Council (NUMARC) will coordinate the participation of utilities in the workshops.
- Fuel cycle facilities. The United States Council on Energy Awareness (USCEA) and the Fuel Cycle Facilities Forum will coordinate the participation of fuel cycle companies in the workshops.
- Non-fuel cycle facilities. The NRC staff has contacted a number of organizations in this category about potential participation in the workshops, including regional radioisotope users groups. The USCEA Committee on Radionuclides and Radiopharmaceuticals assisted in coordinating the participation of the members of these and other non-fuel cycle entities in the workshops. Participants will be drawn from radiopharmaceutical manufacturers, biomedical research radionuclide manufacturers, the medical profession, sealed source manufacturers, and the university research community.
- Decommissioning contractors. In order to ensure that information on decommissioning costs and methods are presented in the workshops, the NRC staff has contacted several of the companies that perform decommissioning work in regard to workshop participation.
- Federal agencies. The NRC staff has contacted several Federal agencies about participation in the workshops. The Environmental Protection Agency (EPA), because of its expertise and responsibilities, will not only participate in the workshops, but also has been consulted by the NRC staff on the development of the Rulemaking Issues Paper and will be consulted in the evaluation of the workshop comments. EPA has been very supportive of the Commission's enhanced participatory rulemaking and has already provided the NRC staff with assistance on this effort. EPA will be fully involved in the workshops and in providing comments to the NRC staff on the rulemaking issues. It is anticipated that the EPA will also later use the workshop commentary in the development of its regulatory approach for decommissioning. The Commission believes that this consultative approach with EPA will be an efficient way to utilize Federal resources in developing an effective and consistent federal approach to decommissioning standards.

The NRC staff has also had several discussions with the Department of Energy (DOE) about the enhanced participatory rulemaking process and potential DOE participation in the workshops. DOE has indicated a preliminary interest in participating in the national workshop. Although the Commission's decommissioning standards will generally not be directly applicable to DOE facilities, DOE possesses substantial expertise in the decommissioning area that will be a useful source of information in the national workshop. It should be noted that under the Formerly Utilized Site Remedial Action Program (FUSRAP), and in some other circumstances, DOE may take title to a licensee's or former licensee's site for cleanup and long term care, including monitoring. The NRC staff has also discussed the new rulemaking initiative with several other Federal agencies and interagency coordinating committees. The NRC staff anticipates that Federal agency participation will occur in the national workshop.

- Professional societies. The NRC staff has contacted the Health Physics Society, the American Nuclear Society, and other professional societies in regard to their potential interest in participating in the national workshop.

Workshop Location, Schedule, and Format

The Commission intends to conduct the workshops on a regional basis. Although, there will be one national workshop in Washington, DC, for organizations with a national focus, the rest of the workshops will be held at various locations throughout the United States. The national workshop is not intended to be a summary of the other workshops, and the NRC staff does not intend to give any greater weight to comments made during that workshop than to any other workshop. The regional framework will allow the Commission to hear from as many knowledgeable organizations at the local level as possible. These local organizations will bring a unique perspective to the discussion of the rulemaking issues, and the regional workshops will also give the NRC an opportunity to interact with organizations with which it has not previously had the opportunity to do so.

The existing NRC regional framework was used to select the workshop locations, with slight adjustments made to accommodate areas with a heightened interest in decommissioning activities, as well as to maximize participation in the workshops. Notification of the specific meeting locations in each of the cities that have been selected as a workshop site will be announced through publication in the **Federal Register** and letters to individual participants.

To assure that each workshop addresses the issues in a consistent manner, the workshops will have a common pre-defined scope and agenda focused on the Rulemaking Issues Paper discussed below. However, the workshop format will be sufficiently flexible to allow for the introduction of any additional issues that the participants may want to raise. At each workshop, the NRC staff will begin each discussion period with a brief overview of the rulemaking issues to be discussed and the remainder of the workshop will be devoted to a discussion of the issues by the participants. The workshop commentary will be transcribed and made available to participants and to the public.

Personnel from The Keystone Center, a nonprofit organization located in Keystone, Colorado, will serve as neutral facilitators for each workshop. The facilitators will chair the workshop sessions and ensure the participants are given an opportunity to express their viewpoints, assist participants in articulating their interests, ensure that participants are given the opportunity to question each other about their respective viewpoints, and assist in keeping the discussion moving at a pace that will allow all major issue areas to be addressed.

Rulemaking Issues Paper

The NRC staff has prepared a Rulemaking Issues Paper to be used as a focal point for the workshop discussions. This paper, which will be distributed to participants in advance of the workshop, sets forth in neutral terms the issues that must be addressed in the rulemaking, as well as background information on the nature and extent of the problem to be addressed. In framing the issues and approaches discussed in the Rulemaking Issues Paper, the NRC staff has attempted to anticipate the variety of views that exist on these approaches and issues. The paper will provide assistance to the participants as they prepare for the workshops, suggest the workshop agenda, and establish the level of technical discussion that can be expected at the workshops. The workshop discussions are intended to be used by the staff in developing the draft proposed rule. Prior to the workshops, no staff positions will be taken on the rulemaking approaches and issues identified in the Rulemaking Issues Paper. As noted earlier, to the extent the Rulemaking Issues Paper fails to identify a pertinent issue, this may be corrected at the workshop sessions.

The discussion of issues is divided into two parts. First are two primary issues dealing with: (1) The objectives for developing radiological criteria; and (2) application of practicality considerations. The objectives constitute the fundamental approach to the establishment of the radiological criteria, and the NRC staff has identified four distinct possibilities including: (1) Risk Limits, which is the establishment of limiting values about which the risks to the public are deemed unacceptable, but allows for criteria to be set below the limit using practicality considerations; (2) Risk Goals, where a goal is selected and practicality considerations are used to establish criteria as close to the goal as practical; (3) Best Effort, where the technology for decontamination considered to be the best available is applied; and (4) Return to Preexisting Background, where the decontamination would continue until the radiological conditions were the same as existed prior to the licensed activities.

Following the primary issues are several secondary issues that are related to the discussions of the primary issues, but which the NRC staff believe warrant separate presentations and discussions. These secondary issues include the time frame for dose calculation, the individuals or groups to be protected, the use of separate criteria for specific exposure pathways such as groundwater, the treatment of radon, and the treatment of previously buried materials.

The Rulemaking Issues Paper will be provided to each potential workshop participant. Additional copies will be available to members of the public in attendance at the workshop. Copies will also be available from the NRC staff contact identified above. In addition to the comments on the Rulemaking Issues Paper provided to the workshops, the Commission is also receptive to the submittal of written comments on the rulemaking issues, as noted under the heading "**DATES**".

Dated at Rockville, MD, this 2nd day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-29710 Filed 12-10-92; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 54

Standard Design Certification Rulemaking Procedures; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available to the public a paper, SECY 92-381 (November 10, 1992), prepared by the Office of the General Counsel (OGC) which provides final recommendations to the Commission on design certification rulemaking procedures for the initial design certification rulemaking.

ADDRESSES: Requests for copies of SECY 92-381 should be sent to Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of SECY 92-381 may be examined, along with comments received on the draft OGC paper (SECY-92-170), and the transcript of a July 20, 1992 workshop on design certification procedures, at the NRC Public Document Room at 2120 L Street, NW, (Lower Level), Washington, DC between the hours of 7:45 a.m. and 5:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, telephone: (301) 504–1639.

SUPPLEMENTARY INFORMATION: Under 10 CFR part 52, designs for nuclear power plants are to be certified through rulemaking, in which the public has an opportunity to submit written comments on the proposed design certification rule, as required by the Administrative Procedure Act (APA). However, part 52 goes beyond the requirements of the APA by providing the public an opportunity to request a hearing before an Atomic Safety and Licensing Board (Licensing Board) in the design certification rulemaking. Although hearings in NRC rulemakings are not unprecedented, *e.g.*, the rulemaking associated with proposed adoption of the Generic Environmental Statement on Mixed Oxide Fuel (GESMO), they have been extremely rare and *sui generis*, and therefore provide no compelling precedent on what procedures should be followed here.

To assist the Commission in preparing for the first design certification rulemaking proceeding, OGC prepared a draft paper, SECY 92–170 (May 8, 1992) which identified and analyzed issues relevant to establishing procedures to govern design certification rulemaking. SECY 92–170 was made public by the Commission (57 FR 24394; June 9, 1992), and a Commission meeting on the paper was held on June 1, 1992. Thereafter, in SECY 92–185 (May 19, 1992), OGC proposed holding a public workshop for the purpose of facilitating public discussion on the issues raised in SECY 92–170, and to obtain the comments of the public on those issues. Notice of the workshop was published in the **Federal Register** (57 FR 24394; June 9, 1992). A 30-day period following the workshop was provided for the public to submit written comments on SECY 92–170. The workshop was held on July 20, 1992. A transcript was kept of the workshop proceedings and placed in the Public Document Room. Approximately 46 persons outside of the NRC attended the workshop; an additional 8 persons requested copies of the SECY paper and workshop materials, but did not attend. Eleven written comments were received following the workshop.

After consideration of the panel discussions at the public workshop and the written comments received after the workshop, OGC has prepared SECY 92–381 which identifies and analyzes the issues relevant to design certification rulemaking procedures, and provides final recommendations to the Commission. Five principal issues on design certification rulemaking procedures were identified in SECY–92–170. SECY 92–381 now provides final recommendations on each of these issues, as described below.

The first issue is the scope of the Atomic Safety and Licensing Board's responsibilities in a design certification rulemaking hearing. OGC recommended preliminarily that the Licensing Board act as "limited magistrate" to compile a record on controverted issues and certify the record to the Commission for resolution. After consideration of written public comments and the discussions at the public workshop, OGC now recommends an approach similar to that of a "full magistrate." Under this approach, the Licensing Board would have the option of, but not be required to, prepare recommendations on controverted hearing issues.

The second issue is whether the Commission should apply *ex parte* and/or separation of function limitations to the Commission (and Licensing Board, as applicable) in the design certification rulemaking proceeding. OGC recommended preliminarily that where hearings are held in design certification rulemakings, that the Commission apply limited separation of functions. This would allow the Commission to obtain the advice and assistance of the staff members who participated in the review of the design certification application and any hearing, but that such communications would occur in a public process, *e.g.*, preparation of SECY papers in response to Commission SRMs, and public meetings between the Commission and the staff. In the absence of a hearing, the Commission could obtain the advice and assistance of the staff the same as in any ordinary rulemaking. In SECY 92–381, OGC continues to recommend this approach. OGC also recommends in SECY 92–381 that regardless of whether hearing requests are received, that *ex parte* limitations be followed from the time that an NPR is published, so that all Staff and Commission communications with persons outside the NRC on all substantive rulemaking matters (not just controverted issues) be docketed.

Third, SECY 92–170 discussed whether a threshold should be adopted by the Commission for a hearing request submitted by an interested member of the public in a design certification. OGC recommended preliminarily that a person requesting an informal hearing be required to: (a) Submit written comments in the written comment period; (b) submit the written presentations proposed to be included in the informal hearing; and (c) demonstrate that they, or persons they intend to retain to represent them in the informal hearing, have the qualifications to contribute significantly to the development of the hearing record on the controverted issues. OGC now recommends in SECY 92–381 that a person requesting an informal hearing need only: (a) Submit the written presentations proposed to be included in the informal hearing; and (b) demonstrate that they, or persons they intend to retain to represent them in the informal hearing, have the qualifications to contribute significantly to the development of the hearing record on the controverted issues. OGC no longer recommends the proposed third requirement for submission of written comments, since it is largely duplicative of the requirements to submit the written presentations. OGC also recommends that the Commission make clear that a person need not meet the test of an "expert witness" in order to satisfy the qualifications requirement. Rather, the person must demonstrate that, because of knowledge, experience, education or training, he or she can contribute significantly to the development of the record on the controverted issue.

The structure and timing of the hearing, including the time for filing informal hearing requests and requests for additional procedures, is the fourth area requiring Commission guidance. OGC recommended preliminarily that informal hearing requests be filed concurrently with the time for submitting written comments, which OGC preliminarily recommends be set normally at 90 days. If the Commission grants the informal hearing requests, OGC recommended preliminarily that parties be provided the opportunity to make oral presentations before the Licensing Board, and that the Licensing Board be permitted to ask questions at the oral hearing without any special finding by the Licensing Board. Requests for additional procedures or full formal hearings under 10 CFR part 2, subpart G, would normally be submitted at the time the outlines of the oral presentations are due, which OGC preliminarily recommended should be filed 30 days before the oral hearing. Thereafter, a special showing would have to be made for an untimely request for additional hearing procedures or a full formal hearing. As a result of additional consideration following the public comments, OGC now recommends that a 120-day period be provided for submitting written comments and requests for informal hearings. OGC also has changed its recommendation with respect to the

timing of requests for additional procedures or full formal hearing. OGC now recommends that parties should file their requests for additional procedures or a formal hearing at the conclusion of the oral phase of the hearing, with the exception of requests for discovery. Discovery requests would be filed with the Licensing Board within 15 days of the Commission's grant of an informal hearing. The Licensing Board would refer meritorious request to the Commission for final determination.

Finally, the use of, and access to, proprietary information in the design certification rulemaking was discussed in SECY 92–170. OGC recommended preliminarily that both "Tier 1" and "Tier 2" design certification information should not contain any proprietary information. In addition, OGC recommended preliminarily that access to proprietary information be provided following docketing of the design certification application, and that non-disclosure agreements be used in order to obtain access to proprietary information from the NRC's public document room (PDR). In SECY 92–381 OGC now proposes two alternatives for addressing the incorporation of proprietary information into a design certification rulemaking. The first alternative is that all important design information in Tiers 1 and 2 be non-proprietary, although proprietary information could be referenced as a basis for both tiers. The second alternative is to seek a formal opinion from the Office of the Federal Register on incorporation by reference of proprietary information into Tier 2. With respect to public access to proprietary information, OGC proposes three alternatives for Commission consideration. The first alternative would require potential commenters and parties in design certification hearing to seek access to proprietary information directly from the design certification applicant. Disputes over access would be resolved by the Commission or the Licensing Board, as appropriate. Access to proprietary information would await the initiation of the formal rulemaking proceeding (publication of an NPR). Access would be provided to all persons who would sign a non-disclosure statement. The second alternative would be the same as the first, except that the persons seeking access would have to provide an affidavit explaining why access to proprietary information is necessary to provide comments and shows that the person has the necessary expertise to use the information and contribute significantly to the rulemaking record. The final alternative would grant access only to parties in any rulemaking hearing which the commission authorizes. Access would be granted only to parties who can show that the proprietary information is relevant to the issues at the hearing, the non-proprietary information is insufficient to adequately address the issues in the hearing, and that the party seeking access has the necessary expertise to use the information and contribute significantly to the rulemaking record.

The Commission is making SECY 92–381 available to the public to enhance public awareness of the design certification rulemaking process. The Commission will establish the procedures to be followed in the first design certification rulemaking proceeding (excepted to be for the General Electric (GE) Advanced Boiling Water Reactor (ABWR)) in the notice of proposed rulemaking for that design certification.

Dated at Rockville, MD this 7th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–30124 Filed 12–10–92; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932 and 933

[No. 92–741]

Members of the Banks

AGENCY: Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board (Finance Board) proposes to revise in its entirety its current regulations concerning membership in the Federal Home Loan Bank System (FHLBank System) in response to changes made to the Federal Home Loan Bank Act (Bank Act) by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The proposed membership regulation clarifies membership eligibility requirements and procedures for applicants for membership in the FHLBank System. In addition, it clarifies access to noncredit services provided by the FHLBanks. The Finance Board also proposes to include in the revised regulations several sections of its existing regulations concerning the transfer of Federal Home Loan Bank (FHLBank) stock in consolidations and reorganizations of member institutions.

DATES: Comments must be submitted to the Finance Board by February 9, 1993.

ADDRESSES: Send comments to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, (202) 408–2930, Attorney-Advisor, Jon E. Boustany, (202) 408–2932, Attorney-Advisor, or Bruce W. McDougal, (202) 408–2505, Attorney-Advisor, Office of Legal and External Affairs, or Amy R. Maxwell, (202) 408–2882, Assistant Director, District Banks Directorate, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Pre-FIRREA Membership Procedures

Prior to the enactment of FIRREA (Pub. L. 101–73, 103 Stat. 183 (Aug. 9, 1989)), the FHLBank System was regulated by the former Federal Home Loan Bank Board (Bank Board). Because of the multiple roles of the Bank Board, the review and approval of FHLBank membership applications for Federally and state chartered savings associations was done simultaneously with the review and approval of applications for deposit insurance and applications for Federal charters. As a condition to obtaining deposit insurance from the Federal Savings and Loan Insurance Corporation (FSLIC) (now the Savings Association Insurance Fund (SAIF)), Federally and state chartered savings associations were required to become members of the FHLBank System. In addition, all Federally chartered savings associations were and are required to be members of the FHLBank System. Consequently, the former Bank Board concurrently approved an applicant's membership in the FHLBank System at the time it approved its FSLIC deposit insurance, and in the case of applicants for a Federal charter, its charter.

Insurance companies and state chartered savings banks insured by the Federal Deposit Insurance Corporation (FDIC) also were eligible but not required to join the FHLBank System. In contrast to FLSIC-insured savings associations, these voluntary members were subject to a different application process. The Bank Board delegated the authority to approve membership applications of eligible voluntary members to the Principal Supervisory Agents (PSAs) of the Bank Board, who were generally the FHLBank Presidents. See 12 U.S.C. 1437 (1989); see also 12 CFR 523.3–3 and 541.18 (1989). This

practice continued until the enactment of FIRREA.

B. Changes Made To Bank Act By FIRREA

FIRREA made several changes to the Bank Act, which resulted in changes to FHLBank membership rules and procedures. Section 702(a) of FIRREA created the Finance Board and transferred from the former Bank Board to the Finance Board the responsibility for the supervision and regulation of the twelve FHLBanks. 12 U.S.C. 1422a(a) (Supp. I 1989). The Bank Board's authority to charter Federal savings associations was transferred to the Office of Thrift Supervision (OTS). The Bank Board's authority to administer deposit insurance for savings associations was transferred to the FDIC.

Section 702 of FIRREA also amended the Bank Act to limit the Finance Board's ability to delegate its authority to the FHLBanks. *Id.* at 1422b. Specifically, section 2B(b)(1) of the Bank Act provides, in pertinent part, that in no event shall the Board delegate any function to any employee, administrative unit of any FHLBank, or joint office of the FHLBank System. The prohibition does not apply to the delegation of ministerial functions including issuing consolidated obligations pursuant to 12 U.S.C. 1431(b).

Accordingly, the Finance Board may delegate only ministerial, as opposed to discretionary, functions to the FHLBanks. A ministerial function of an agency is an action based on mandatory directives that leave no room for discretionary decisions. See *Berkovitz* v. *United States*, 486 U.S. 531 (1988). Since the current process of reviewing membership applications involves discretionary decisions by a reviewer, all membership applications since the enactment of FIRREA have been subject to approval by the Finance Board.

FIRREA also made significant changes to the membership eligibility criteria in section 4 of the Bank Act. 12 U.S.C. 1424. First, FIRREA permitted commercial banks and credit unions to become members for the first time. *Id.* at 1424(a). This change was in recognition of the fact that such institutions have demonstrated substantial commitment to providing credit for the purchase or construction of residential housing. See 135 Cong. Rec. S. 10206 (daily ed. Aug. 4, 1989) (statement of Sen. Riegle).

Second, FIRREA added the requirement that an insured depository institution have at least 10 percent of its total assets in residential mortgage loans in order to be eligible to become a member of an FHLBank. 12 U.S.C. 1424(a)(2)(A) (Supp. I 1989) (the "10 percent" requirement). This requirement was added to ensure that only applicants that demonstrate a significant commitment to residential mortgage lending acquire access to FHLBank System benefits. Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 424–25 (1989) (FIRREA Conference Report).

Section 2B(a)(1) of the Bank Act empowers the Finance Board, *inter alia*, to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of the Bank Act, including regulations on membership in the FHLBank System. 12 U.S.C. 1422b(a)(1) (Supp. I 1989). The Finance Board's current regulations on membership in the FHLBank System were originally promulgated by the former Bank Board at 12 CFR part 523. The Finance Board, pursuant to its authority in section 2B(a)(1) to administer the Bank Act, adopted and redesignated the former Bank Board's membership regulations at 12 CFR part 933. See 54 FR 36757 (Sept. 5, 1989). However, these regulations were designed to administer membership eligibility requirements that were contained in the Bank Act prior to FIRREA.

In order to address the significant changes that FIRREA has made to the membership eligibility criteria in the Bank Act, the Finance Board is proposing to revise its membership regulations in their entirety.

II. Analysis of Proposed Rulemaking

A. Membership Application Approval Process

Section 933.2 of the proposed rule sets forth the review and approval process for applications for membership in an FHLBank. Under § 933.2(d) of the proposed rule, membership in the FHLBank System would continue to be automatic for those members which are Federally chartered savings associations. Section 5(f) of the Home Owners' Loan Act (HOLA) makes membership in the FHLBank System automatic for all Federal savings associations or Federal savings banks upon receiving their Federal charters. 12 U.S.C. 1464(f) (Supp. I 1989). The Finance Board believes that the factors considered by the OTS when reviewing an application for a Federal charter are the same factors which would be considered by the Finance Board, and therefore that it is not necessary to require these institutions to file an additional application for membership with the Finance Board. Thus, upon receipt of its Federal charter, a Federal savings association or Federal savings bank would automatically become a member of the FHLBank of the district in which its principal place of business is located. No application for membership must be filed. In addition, under proposed §§ 933.2(d) and 933.7(b), such institutions would have 30 calendar days from receipt of their Federal charters to purchase stock in that FHLBank.

Under § 933.2(e) of the proposed rule, a member that converts to a different charter would automatically become a member on the effective date of such conversion, if the resulting institution continues to be an insured depository institution. (For a more detailed discussion of § 933.2(e), see the discussion below regarding Sasser amendment and Oakar amendment transactions).

Under proposed § 933.2(a), all other institutions seeking membership in an FHLBank are required to submit application forms to the FHLBank which satisfy Finance Board requirements. Under proposed § 933.2(b), the application is then sent to the Finance Board for approval.

Under § 933.4 of the proposed rule, a limited portion of the applications for membership may be approved by the board of directors of a FHLBank if all of the conditions set forth in policy guidelines established by the Finance Board are met. The board of directors of an FHLBank may further delegate the authority to approve applications to the President or other senior officers of the FHLBank.

B. Membership Eligibility Requirements

Section 4(a)(1) of the Bank Act, as amended, defines the types of financial institutions eligible to become members of the FHLBank System to include any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution. 12 U.S.C. 1424(a)(1) (Supp. I 1989). An eligible institution must meet the membership criteria of section 4 of the Bank Act in order to become a member of the FHLBank System. *Id.* at 1424. There are two separate sets of membership requirements in section 4 of the Bank Act which institutions must meet in order to become members of the FHLBank System. These are discussed in turn below.

The criteria set forth in section 4(a)(1) of the Bank Act apply to all applicants for membership in the FHLBank System. Section 4(a)(2) of the Bank Act

provides that the criteria set forth therein apply to "insured depository institutions." The Finance Board has supervisory authority over the FHLBanks, as well as the duty to ensure that the FHLBanks operate in a financially safe and sound manner, and carry out their housing finance mission consistent with safety and soundness. See 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (as amended). The Finance Board has determined that, pursuant to such authority, the section 4(a)(2) criteria shall, as a matter of policy, apply to insurance company applicants as well as insured depository institutions. The reasons for this determination, as well as requests for comments on specific issues it raises, are discussed more fully in C. below.

1. Section 4(a)(1). General Membership Requirements

Under the section 4(a)(1) membership requirements, an institution shall be eligible for FHLBank membership if:

(A) The institution is duly organized under the laws of any state or of the United States;

(B) The institution is subject to inspection and regulation under the banking laws, or under similar laws, of the state or of the United States; and

(C) The institution *makes* such *home mortgage loans* as, in the judgment of the Board, are *long-term* loans (the "makes" test).

12 U.S.C. 1424(a)(1) (A) through (C) (Supp. I 1989) (emphasis added).

While the requirements of paragraphs (A) and (B) are straightforward, there are three separate components of the "makes" test that must be defined (*i.e.*, "home mortgage loans," "long-term," and "makes"). The proposed rule expounds on each of these components.

a. Definition of home mortgage loans. A "home mortgage loan" is defined in the Bank Act as a loan made by a member upon the security of a home mortgage. *Id.* at 1422(5). A "home mortgage" is defined generally as a mortgage upon real estate upon which is located one or more homes or other dwelling units, all of which may be defined by the Board, and shall include, in addition to first mortgages, such classes of first liens as are commonly given to secure advances on real estate. *Id.* at 1422(6).

Based on the above statutory definitions, it is reasonable to conclude that a "home mortgage loan" is essentially a loan secured by a first mortgage on real property with one or more structures designed primarily for residential use. See also 75 Cong. Rec. 12609 (1932) (remarks of Rep. Hancock, stating that the term is defined to mean a first mortgage on residential real estate housing).

The Finance Board proposes in § 933.1(j) to define the term "home mortgage loan" as:

(1)(i) A loan, whether or not fully amortizing, which is secured by a mortgage, a deed of trust or other security agreement, or an interest in such a loan, which creates a first lien on one of the following interests in domestic real property:

(A) One-to-four family property or multifamily property, in fee simple;

(B) A leasehold on one-to-four family or multifamily property under a lease not less than 99 years which is renewable or under a lease having a period of not less than 50 years to run from the date the mortgage was executed;

(ii) The term home mortgage loan shall not include a loan secured by nonresidential real property, or combination business or farm property;

(2) A mortgage pass-through security which represents an undivided ownership interest in:

(i) loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (j)(1) of this section; or

(ii) securities which represent an undivided ownership interest in loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (j)(1) of this section; or

(3) Any loans which the Board in its discretion otherwise determines are home mortgage loans.

One-to-Four Family Property

Current Finance Board practice is to include loans secured by first mortgages on one-to-four family property as satisfying the statutory definition of "home mortgage loan" because they are traditional home loans secured by real estate upon which is located one or more dwelling units. The Finance Board proposes in § 933.1(r) to define the term "one-to-four family property" similarly to the definition found in the FDIC Report of Condition and Income (Call Report), with several exceptions. The term is defined specifically as follows:

(1) Real property containing one-to-four dwelling units, or real property containing more than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;

(2) Manufactured housing if (i) applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property, and (ii) the loan to purchase the manufactured housing is secured by that manufactured housing and such security interest is evidenced by a mortgage or other lien on real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

A "dwelling unit" is defined in proposed § 933.1(h) as a single, unified combination of rooms designed for residential use by one household. This proposed definition is intended to incorporate a single-family home, a residence in a building containing one-to-four units, and a residence in a multifamily building of five or more units.

Inclusion of manufactured housing loans secured by real estate under state law within the proposed definition of "home mortgage loan" would continue current Finance Board practice of including such loans as satisfying the "makes" test. A "manufactured housing loan" is defined in proposed § 933.1(n) by reference to the definition in the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(b). (See also 12 CFR 545.45.) The legislative history of FIRREA supports the inclusion of manufactured housing loans as satisfying the "makes" test where state law treats the collateral as real property. Specifically, the FIRREA Conference Report states that all references to housing in FIRREA are intended to include manufactured housing, but not temporary shelters such as recreational vehicles or campers which are designed to be moved frequently. See FIRREA Conference Report at 437.

As under the Call Report, loans secured by one-to-four family property would not include land development loans, which are loans secured by real estate made to finance land improvements preparatory to erecting structures, such as laying sewers, water pipes, etc. The proposed definition of "home mortgage loan" also does not include property securing "residential construction loans" (see proposed § 933.1(i)). Since land development and construction loans are generally not secured by property upon which is located one or more homes or dwelling units (which is required by the statutory definition of "home mortgage loan"), they are not included in the proposed definition of "home mortgage loan." In addition, these loans generally have terms to maturity of five years or less and, therefore, would not be "long-term," as required under the "makes" test. (See discussion of "long-term" below.)

The proposed definition of "one-to-four family property" varies from the Call Report definition in several

respects. First, the definition excludes vacant lots (or unimproved property) in established one-to-four family sections or in areas set aside primarily for one-to-four dwelling units. This would be a continuation of current Finance Board practice to exclude loans on unimproved property from satisfying the "makes" test because the statutory definition of "home mortgage loans" requires that the loans be secured by real estate upon which is located one or more dwelling units.

Second, unlike the Call Report definition, the proposed definition results in the exclusion of loans secured by junior liens on one-to-four family property (such as home equity loans) from satisfying the "makes" test. This is because the statutory definition of "home mortgage loans" requires that they be secured by first mortgages or liens. This would continue the current Finance Board practice of excluding such loans under the "makes" test.

Multifamily Property

Current Finance Board practice is to exclude loans secured by first mortgages on multifamily property from satisfying the "makes" requirement because they are not traditional one-to-four family loans. In contrast to one-to-four family properties, multifamily properties may be purchased for investment purposes, rather than for use as primary residences. In addition, multifamily properties may have a mixed use, *e.g.*, part residential, and part commercial.

However, the statutory definition of "home mortgage loans" can be interpreted to include multifamily loans that are secured by a first mortgage on real estate. The Finance Board believes that it is appropriate to expand the type of loans that meet the "makes" test to include this type of multifamily lending. This interpretation is consistent with the housing finance mission of the FHLBanks.

Accordingly, the Finance Board proposes in § 933.1(j) to include loans secured by a first mortgage on multifamily property within the definition of "home mortgage loan," and to define the term "multifamily property" in § 933.1(p) in a manner similar to the Call Report. "Multifamily property" is defined specifically as follows:

(1) Real property containing five or more dwelling units;

(2) Real property containing five or more dwelling units with commercial units combined, provided the property is primarily residential.

For the reasons discussed above, this definition follows the Call Report and current Finance Board practice and does not include land development loans, certain residential construction loans, and loans secured by vacant lots.

Mortgage Pass-Through Securities

As the term is used in proposed § 933.1(j)(2), a mortgage pass-through security represents an undivided ownership interest in one or more loans or in securities representing interests in loans. The holder of a mortgage pass-through security receives a *pro rata* share of the interest and principal repayments from the underlying pool of mortgage loans or mortgage-backed securities.

For purposes of the "makes" test, the Finance Board currently treats mortgage pass-through securities as if they were the mortgage loans underlying the securities. The Finance Board proposes to continue this approach. Therefore, "home mortgage loan" is defined in proposed § 933.1(j)(2) to include mortgage pass-through securities which represent an undivided ownership interest in one or more loans or securities representing an undivided ownership interest in loans, all of which loans independently satisfy the definition of "home mortgage loan" (*i.e.*, first mortgage loans, etc.) at the time of issuance of the security.

Collateralized mortgage obligations (CMOs) and other mortgage debt securities technically do not represent an ownership interest in the underlying pool of mortgage loans. Instead, they represent a debt obligation that is secured by the underlying mortgage loans. Although an argument can be made that mortgage debt securities should be included as home mortgage loans, because the secondary mortgage market generally does not make distinctions between mortgage pass-through securities and mortgage debt, the Finance Board has concluded that, for purposes of this proposed rule, a security must represent an ownership interest in home mortgage loans in order to satisfy the "makes" test. However, as discussed in 2.a. below, mortgage debt securities will continue to satisfy the "10 percent" requirement.

It should be noted that, if mortgage debt securities were included in the definition of home mortgage loans, members' minimum stock purchase requirements would be increased. This is because the stock purchase requirement is based on the member's "aggregate unpaid loan principal," which is defined in section 6(b)(4) of the Bank Act as home mortgage loans, home-purchase contracts, and similar obligations. 12 U.S.C. 1426(b)(4) (Supp. I 1989).

Other Loans

The proposed definition of "home mortgage loan" in § 933.1(j) also would include any loans which the Finance Board in its discretion otherwise determines are home mortgage loans. For example, the Finance Board could use this provision to determine on a case-by-case basis that other types of loans and new loan products can be used to satisfy the "makes" test.

The proposed definition of "home mortgage loan" follows current Finance Board practice in generally excluding loans secured by "nonresidential real property" (see proposed § 933.1(q)). The proposed rule defines "nonresidential real property" generally to include properties such as business and industrial properties, churches, dormitories, hotels, "homes" for the elderly, golf courses, hospitals, nursing homes and farm property not containing dwelling units. These categories of property are typically nonresidential in nature and generally are treated as nonresidential by the Federal banking agencies for financial reporting purposes. However, the proposed definition provides the Finance Board the discretion to determine, on a case-by-case basis, that specific properties are more residential than nonresidential in nature and that loans secured by a first mortgage on such properties should therefore be treated as "home mortgage loans" for purposes of satisfying the "makes" test.

In addition, the proposed definition generally excludes loans secured by real property that is not only used for residential purposes, but also for business or farm purposes and which is not considered primarily residential (combination business or farm property) (see proposed § 933.1(f)). Such property is predominantly commercial or agricultural in nature and generally is treated as such by the Federal banking agencies for financial reporting purposes. However, as discussed above, the proposed definition of "home mortgage loan" provides the Finance Board the discretion to determine, on a case-by-case basis, that specific combination loans are more residential than nonresidential in nature, and therefore may be treated as "home mortgage loans" under the "makes" test.

b. Long-term requirement. Section 4(a)(1)(C) of the Bank Act requires that an applicant for membership in the FHLBank System make such home mortgage loans as, in the judgment of the Board, are long-term loans. 12 U.S.C. 1424(a)(1)(C) (Supp. I 1989). At the time of enactment of the Bank Act, home mortgage loans generally consisted of

non-amortizing straight-line mortgage loans, which required repayment of the total outstanding principal at the end of the maturity period, usually three to five years. See 75 Cong. Rec. 12608 (June 10, 1932 (remarks of Rep. Hancock); see also 75 Cong. Rec. 12605 (June 10, 1932) (remarks of Rep. Overton) and 75 Cong. Rec. 14644 (July 6, 1932) (remarks of Sen. Copeland). The legislative history of the Bank Act indicates that Congress intended to create an alternative to such short-term non-amortized credit. *Id.* At the same time, in drafting this provision, Congress gave the Finance Board discretion in defining "long-term."

In defining "long-term," the Finance Board has weighed the legislative history against the reality of the marketplace today. The Finance Board proposes to define a "long-term home mortgage loan" in § 933.1(m) as a home mortgage loan with a term to maturity of greater than five years. Many financial institutions currently offer mortgage loans with maturities of three to 10 years, in lieu of or in addition to the traditional 15- or 30-year mortgage loan, in response to the demands and preferences of the institutions' customers. Most of these loans are balloon payment loans with maturities ranging from three to 10 years and payments amortized over 15, 25, or 30 years. Since they have reduced interest sensitivity and risk, these loans can be funded less expensively than a fully amortizing 30-year loan. Consequently, the loan often can be offered to customers at lower rates than the fully amortizing variety. The lower interest rate and the reduced principal payment resulting from a 30-year amortization schedule often enable customers to finance the purchase of homes in circumstances where fully amortizing 15- or 30-year loans are unsuitable to their needs. From the institution's standpoint, 5-, 7-, or 10-year non-fully amortizing loans present no incremental interest rate or funding risk, if they are properly funded.

Moreover, given the fact that most residential mortgage loans are refinanced (or repaid through the sale of the residence) in fewer than 10 years from origination, these types of loans actually reflect the realities of most customers' habits and actions. For borrowers who plan to stay in their homes fewer than 10 years, balloon payment loans may provide a lower-cost, fixed-rate alternative to a 15- or 30-year fixed-rate mortgage loan. These circumstances account in large part for the growing availability of these types of loans at financial institutions.

In view of the foregoing, inclusion of home mortgage loans with maturities of greater than five years among the categories of loans which qualify an institution for FHLBank membership recognizes marketplace realities, and further helps promote the availability of affordable home financing to customers consistent with the FHLBank System's basic mission. Home mortgage loans with maturities of five years or less, regardless of whether the loans fully amortize, generally represent too short a maturity to meet the intent and purpose of the Bank Act based on the legislative history of the Bank Act as discussed above. Finally, the greater-than-five-year standard for "long-term" also would be consistent with the definition of "long-term advance" set forth in the Finance Board's community support regulation, 12 CFR 936.1(n), 56 FR 58639 (Nov. 21, 1991), and § 935.1 of the Finance Board's proposed advances regulation, 57 FR 45338 (October 1, 1992).

Proposed § 933.1(m) defines a "long-term home mortgage loan" as "a home mortgage loan with a term to maturity of greater than five years, or any other home mortgage loan which the Board in its discretion determines is a long-term loan." The Finance Board may determine on a case-by-case basis in taking action on membership applications that certain loans with an original maturity of five years or less meet the "long-term" standard. For example, a mortgage with a term to maturity of five years or less that permits refinancing without requalification may be considered "long-term" despite being of shorter duration than otherwise permitted. This flexibility is built into the proposed rule in order to permit the Finance Board to respond to innovations in mortgage financing without requiring changes to the rule.

The proposed rule does not distinguish between fully amortizing loans and loans that are not fully amortizing. Changes in the mortgage marketplace over the past 60 years have greatly reduced the concerns which existed concerning mortgage loans which are not fully amortizing. In 1932, when the Bank Act was originally enacted, there was considerable concern regarding a borrower's ability to refinance a balloon payment. Today, mortgage financing is more readily obtainable, particularly if the borrower has over five years to secure that refinancing.

Therefore, the Finance Board proposes including within the definition of "long-term home mortgage loan" any home mortgage loan with a term to maturity of greater than five years, regardless of whether the loan is non-amortizing, not fully amortizing, or fully amortizing.

C. *Definition of "makes".* The Bank Act provides that an institution is eligible for FHLBank membership if it makes such home mortgage loans as, in the judgment of the Board, are long-term loans. 12 U.S.C. 1424(a)(1)(C) (Supp. I 1989). This provision is implemented in § 933.3(a)(3) of the proposed rule.

Both the Finance Board and its predecessor, the Bank Board, have interpreted "makes" to include both originating and purchasing qualifying loans, as well as mortgage-backed securities backed by qualifying loans. See Opin. Gen. Couns., Bank Board (Jan. 25, 1988). The Finance Board proposes to continue using this definition of "makes".

The proposed rule includes the assets of an institution's consolidated subsidiaries in the calculation of the "makes" test. This permits applicants that have chosen to use subsidiaries to originate or purchase home mortgage loans or mortgage-backed securities to include those assets in meeting the requirements for membership. The proposed rule defines a "consolidated subsidiary" in § 933.1(g) as a subsidiary of a member whose assets and liabilities are consolidated with those of the member for purposes of reports filed with the member's appropriate Federal banking agency. This definition is intended to reduce or eliminate the need for accounting adjustments on the part of the applicant or FHLBank staff, since it is based on the consolidation standards used by the applicant's appropriate Federal banking agency.

2. Section 4(a)(2). Membership Requirements

Section 933.3(a) (4) through (6) of the proposed rule implements the membership requirements set forth in section 4(a)(2) of the Bank Act. 12 U.S.C. 1424(a)(2). As noted above and discussed more fully below, the Finance Board proposes to apply these requirements to insurance company applicants as well as insured depository institutions. The proposed rule lists the requirements as follows:

(A) The institution has at least 10 percent of its total assets in residential mortgage loans;

(B) The institution's financial condition is such that advances may be safely made to such institution; and

(C) The character of the institution's management and its home-financing policy are consistent with sound and economical home financing.

The proposed rule defines "residential mortgage loans" as used in

the 10 percent requirement. See proposed § 933.1(s). In addition, the proposed rule allows an applicant to include the assets of its consolidated subsidiaries when calculating the 10 percent requirement, as is permitted in calculating home mortgage loans under the "makes" test.

a. *Residential mortgage loans.* The term "residential mortgage loans" is not defined in the Bank Act or current Finance Board regulations. However, the legislative history of FIRREA, which added the 10 percent requirement, provides some guidance on the types of loans Congress intended to include within the 10 percent requirement.

The legislative history of FIRREA indicates that the 10 percent requirement is a product of a compromise between the Senate and the House of Representatives. The compromise reduced the threshold percentage requirement from 60 percent of assets in "Qualified Thrift Investments" (QTIs) under the "Qualified Thrift Lender" (QTL) test in section 10(m) of the HOLA, 12 U.S.C. 1467a(m), to 10 percent of assets in "residential mortgage loans." It is thus reasonable to look, in part, for guidance at the types of loans (*i.e.*, QTIs) that qualify for the QTL test under the QTL regulation implementing section 10(m), 12 CFR part 563 (56 FR 31061 (July 9, 1991)), in determining the types of loans that satisfy the 10 percent requirement.

In contrast to the "makes" test, which requires that institutions make "long-term" home mortgage loans, section 4(a)(2)(A) of the Bank Act has no similar long-term requirement for residential mortgage loans. Therefore, there is no statutory requirement that the years to maturity and the amortization period for residential mortgage loans be defined for the 10 percent requirement.

One-to-Four Family, Multifamily, and Funded Residential Construction Loans

Explicit language in the legislative history indicates that 1–4 family, multifamily and funded residential construction loans are includable as "residential mortgage loans" for purposes of the 10 percent requirement. See FIRREA Conference Report at 428. Current Finance Board practice is to include such loans as satisfying the 10 percent requirement.

The Finance Board proposes to continue including such loans by defining the term "residential mortgage loans" in proposed § 933.1(s) to include: (1) Home mortgage loans (as defined in proposed § 933.1(j)); and (2) funded residential construction loans (as defined in proposed § 933.1(i)). See discussion above. As discussed earlier, "home mortgage loans" would be defined generally to include loans secured by first mortgages on one-to-four family property and multifamily property. A "funded residential construction loan" is defined in proposed § 933.1(i) as the portion disbursed to the borrower of a loan secured by real property made to finance the on-site construction of one-to-four or multifamily dwelling units.

Consistent with the proposed "makes" test and current Finance Board practice, land development loans which finance land improvements preparatory to erecting structures would not be includable under the 10 percent requirement. This is because, unlike residential construction loans, it is uncertain that the activities financed by land development loans will result in residential housing construction.

The proposed "residential mortgage loans" definition follows the proposed "makes" test and current Finance Board practice in excluding loans secured by nonresidential property (see proposed § 933.1(q)). While certain of these loans (*e.g.*, nursing homes, churches, schools, hospitals) are included in the limited category of QTIs subject to percentage restrictions under the QTL regulation, the Finance Board proposes to follow the Federal banking agencies which generally treat such loans for financial reporting purposes as nonresidential in nature. See 12 CFR 563.51(f)(vi) (D) and (E). However, as discussed above, the proposed definition provides the Finance Board with the discretion to determine, on a case-by-case basis, that specific loans may be more residential than nonresidential in nature, and therefore should be treated as "residential mortgage loans" for purposes of satisfying the 10 percent requirement.

The proposed definition of "residential mortgage loans" generally excludes combination business or farm property (see proposed § 933.1(f)), since this type of property is predominantly commercial or agricultural in nature and generally is treated as such by Federal banking agencies for financial reporting purposes, and excludes loans on vacant property. However, the Finance Board has the discretion to determine, on a case-by-case basis, that specific combination loans are more residential than nonresidential in nature, and therefore may be treated as "residential mortgage loans" under the 10 percent requirement.

Manufactured Housing Loans Not Secured by Real Estate

Although manufactured housing loans not secured by real estate may be treated by Federal banking agencies as consumer loans for some purposes, they are residential in nature, as residents often live in such housing on a full-time, permanent basis. Accordingly, the Finance Board proposes to include such loans in the proposed definition of "residential mortgage loans" as satisfying the 10 percent requirement. This would be a change from the current Finance Board practice of excluding such loans from satisfying the 10 percent requirement. Manufactured housing loans secured by real estate under state law are included in the definition of "home mortgage loans" and, therefore, also could be used to meet the 10 percent requirement.

Loans Secured by Junior Liens

Current Finance Board practice is to include loans secured by junior liens on one-to-four family or multifamily property in calculating the 10 percent requirement. These loans are secured by residential real property, and in contrast to the "makes" test, need not be secured by first mortgages or liens in order to be used to meet the 10 percent requirement. In addition, home equity loans are specifically included in the unlimited category of QTIs not subject to percentage restrictions under the QTL test. See 12 U.S.C. 1467a(m)(4)(C)(ii)(II); 12 CFR 563.51(f)(1)(ii). Loans secured by junior liens also appear to be included in the unlimited category of QTIs under the QTL regulation. See 12 CFR 563.51(f)(1)(i). Accordingly, the Finance Board proposes to continue including loans secured by junior liens on one-to-four family or multifamily property as satisfying the 10 percent requirement, by defining the term "residential mortgage loans" in § 933.1(s) to include these loans.

Residential Loans in Process

Residential loans in process are mortgage loan commitments under which the proceeds have not yet been disbursed to the borrower. For example, construction loans where the funds are not released until specific conditions are met are loans in process. *See* Thrift Financial Report, Schedule SC–280. Current Finance Board practice is to exclude residential loans in process from satisfying the 10 percent requirement. The proposed definition of "residential mortgage loans" continues this practice of excluding residential loans in process.

Consumer Loans

Consumer loans (*i.e.*, loans for personal, family, household or educational purposes) are included in the limited category of QTIs subject to

percentage restrictions under the QTL regulation. See 12 CFR 563.51(f)(1)(vi)(F). However, such loans are treated as nonresidential loans by the Federal banking agencies for financial reporting purposes. Current Finance Board practice is to exclude such loans from satisfying the 10 percent requirement.

The proposed definition of "residential mortgage loans" continues the Finance Board practice of excluding consumer loans, notwithstanding their QTL treatment, because of their nonresidential nature. As discussed above, however, manufactured housing loans would be included under the 10 percent requirement because of their residential purpose.

Mortgage-Backed Securities

As discussed above, there is a reasonable basis for looking at QTIs in determining what loans qualify as "residential mortgage loans" under the 10 percent requirement. QTIs include securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing. 12 U.S.C. 1467a(m)(4)(C)(ii)(III); 12 CFR 563.51(f)(1)(iii). Based on the QTI definition, the Finance Board proposes to include within the definition of "residential mortgage loans" not only mortgage pass-through securities, which also are included in the definition of "home mortgage loans" for purposes of the "makes" requirement, but mortgage debt securities as well.

Mortgage debt securities can consist of collateralized mortgage obligations (CMO), mortgage-backed bonds; stripped instruments such as interest-onlys trips (I/O) or principal-only strips (P/O), or CMO residuals. This list of securities is meant to be illustrative and not exhaustive of the types of investments which qualify as mortgage debt securities in the continually evolving secondary mortgage market. The proposed rule requires that mortgage pass-through and mortgage debt securities be entirely backed by assets which meet the definition of "residential mortgage loans" (*i.e.*, home mortgage loans, etc.) at the time of issuance of the security, in order to satisfy the definition of "residential mortgage loans" under the 10 percent requirement.

As discussed above under the "makes" test, CMOs and other mortgage debt securities do not represent an equity interest in the underlying mortgage loans. Under the proposed rule, the mortgage loans collateralizing a CMO could be counted as a "residential mortgage loan" by the institution issuing a CMO and the CMO could be counted as a "residential mortgage loan" by a different institution that owns the CMO for purposes of meeting the 10 percent requirement. In essence, the same mortgage assets could be used twice to meet the 10 percent requirement. The Finance Board is concerned about permitting these assets to be double counted, and specifically requests comment on whether CMOs and other mortgage debt securities should be included in the definition of "residential mortgage loans" under the 10 percent requirement.

Home Mortgage Loans Secured by Leaseholds

The definition of "residential mortgage loan" in proposed § 933.1(s) also includes home mortgage loans secured by leasehold interests, as defined in proposed § 933.1(j), except that the period of the lease term may be of any duration. These loans are included because they are residential in nature, and the duration of the lease term does not impact on the residential nature of such loans.

Other Loans

The proposed definition of "residential mortgage loan" in § 933.1(s) also includes any other loans which the Finance Board in its discretion otherwise determines are residential mortgage loans. The Finance Board could use this provision to determine on a case-by-case basis when it is reviewing and taking action on applications that other types of loans and new loan products satisfy the 10 percent requirement.

b. Financial condition. Section 4(a)(2)(B) of the Bank Act requires that, in order to be eligible for FHLBank membership, an insured depository institution's financial condition must be such that advances may be safely made to it. 12 U.S.C. 1424(a)(2)(B). Section 933.3(a)(5) of the proposed rule implements this requirement.

c. Character of management and home-financing policy. The Bank Act requires that the character of an insured depository institution's management and its home-financing policy be consistent with sound and economical home financing in order to be eligible for FHLBank membership. 12 U.S.C. 1424(a)(2)(C). Section 933.3(a)(6) of the proposed rule implements this requirement.

The Finance Board believes that an institution's commitment to and record of performance in meeting the credit needs of its entire community, including low- and moderate-income residents and neighborhoods, is an integral part of a sound home-financing policy. Currently, the Finance Board reviews Community Reinvestment Act (CRA) ratings of commercial bank and thrift applicants to evaluate their compliance with the home-financing policy requirement. The Finance Board specifically requests comment on the use of CRA ratings, or some other test or tests, for purposes of satisfying this requirement.

Currently, insurance company and credit union applicants are asked to provide evidence of their housing- and community-related activities for purposes of compliance with the home-financing policy requirement. Insurance companies and credit unions are not subject to the CRA and therefore do not receive such ratings. Thus, a comparable or alternative test is necessary to evaluate compliance of such applicants with this requirement. The Finance Board specifically requests comment on appropriate methods to determine compliance by such applications with the home-financing policy requirement.

C. Membership Eligibility Requirements for Insurance Companies

As noted earlier, section 4(a)(1) of the Bank Act, as amended, defines the types of financial institutions eligible to become members of the FHLBank System as follows: any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution. 12 U.S.C. 1424(a)(1) (Supp. I 1989). Insurance companies have been eligible to become members of the FHLbank System since the original enactment of the Bank Act in 1932. See 47 Stat. 726 (July 22, 1932).

Insurance company applications for membership currently are considered by the Finance Board on a case-by-case basis. The following section discusses the various statutory eligibility criteria applicable to insurance companies, and raises specific issues for which the Finance Board seeks public comment in determining what standards should apply to insurance companies.

1. Section 4(a)(1). Membership Requirements

In order to be eligible to become a FHLBank member, an insurance company applicant must meet the membership requirements set forth in subparagraphs (A) through (C) of paragraph 4(a)(1) of the Bank Act, 12 U.S.C. 1424(a)(1)(A)–(C), and proposed § 933.3(a) (1) through (3). These requirements are discussed further below.

a. The institution is duly organized under the laws of any State or of the United States. 12 U.S.C. 1424(a)(1)(A). This requirement is straightforward and presumably would be satisfied by all insurance company applicants. *See* proposed § 933.3(a)(1).

b. The institution is subject to inspection and regulation under the banking laws, or under similar laws, of any state or of the United States. 12 U.S.C. 1424(a)(1)(B). See proposed § 933.3(a)(2). All insurance companies are subject to inspection and regulation by state insurance departments in their state of incorporation, as well as by the states in which they are licensed to do business. State insurance laws are similar to Federal banking laws in that they require regulatory monitoring of compliance with minimum capital and reserve requirements, financial condition, asset valuation and compliance with various consumer related requirements. However, some states may require more rigorous inspection and regulation of insurance companies than other states, and some states may not conduct inspections of insurance companies at all or may not conduct on-site inspections. The Finance Board specifically requests comment on whether the degree of inspection and regulation imposed by a particular state should be a factor in determining whether an insurance company applicant satisfies the "inspection and regulation" requirement.

c. The institution makes such home mortgage loans as, in the judgment of the Finance Board, are long-term loans. Id. at 1424(a)(1)(C). Insurance company applicants would be subject to the same requirements under the "makes" test as are applicable to other depository institution applicants. *See* proposed § 933.3(a)(3). In other words, the types of loans and investments previously discussed which meet the definitions of "long-term" and "home mortgage loans" under proposed § 933.1 also would count towards satisfaction of the "makes" test for insurance company applicants. Thus, insurance company applicants could use mortage pass-through securities backed by qualifying long-term home mortgage loans (see definition of "home mortgage loan" in proposed § 933.1(j)), to meet the "makes" test. This would be a continuation of the Finance Board's current practice of including mortgage-backed securities towards satisfaction of the "makes" test. It would also permit an insurance company to become a member even if it did not originate mortgage loans.

2. Section 4(a)(2). Membership Requirements

Section 4(a)(2) of the Bank Act also establishes membership eligibility requirements, including the 10 percent requirement, which are applicable to an insured depository institution that is not a member on January 1, 1989. See 12 U.S.C. 1424(a)(2). The Finance Board proposes to apply all of these eligibility requirements to all applicants for membership, including insurance company applicants. See proposed § 933.3(a) (4) through (6).

The argument could be made that because an insurance company is not an "insured depository institution," as defined in section 2(12) of the Bank Act, see *id.* at 1422(12), it is not subject to the section 4(a)(2) requirements. Language in the legislative history of FIRREA (which added the 10 percent requirement) also suggests that Congress intended that the 10 percent requirement, (and possibly all of the second set of membership criteria in section 4(a)(2)), apply to insured depository institutions such as commercial banks and credit unions. See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. 222, 101st Cong., 1st Sess. 424–25 (1989); 135 Cong. Rec. S. 10206 (daily ed. Aug. 4, 1989) (statement of Sen. Riegle).

However, while section 4(a)(2) of the Bank Act refers to insured depository institutions, it does not provide that only such institutions are subject to the membership eligibility requirements set forth in that section. Under the Bank Act, the Finance Board's primary duty is to ensure that the FHLBanks operate in a financially safe and sound manner. In addition, to the extent consistent with its primary duty, the Finance Board is responsible for, *inter alia*, supervising the FHLBanks, and ensuring that the FHLBanks carry out their housing finance mission. See 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (as amended). Pursuant to these general powers, the Finance Board may determine, as a matter of policy, that some or all of the section 4(a)(2) membership eligibility requirements should apply to insurance company applicants. In addition, prior to the FIRREA amendment to the Bank Act, the financial condition, character of management and home-financing policy requirements were applicable to insurance companies, see 47 Stat. 726 (July 22, 1932), and it is not clear why such requirements should not continue to apply to insurance companies.

The Finance Board specifically requests comment on whether, as a threshold matter, any or all of the section 4(a)(2) eligibility requirements should not apply to insurance company applicants. In this regard, the Finance Board also requests comment on whether other provisions of the Bank Act applicable to approved FHLBank members, such as the requirement that long-term advances be used only for residential housing finance, the collateral requirements for advances, the QTL restrictions, or the community support requirements, sufficiently promote the FHLBanks' housing finance mission and safe and sound operation so as to justify not applying any or all of the section 4(a)(2) membership eligibility requirements to insurance company applicants. See 12 U.S.C. 1430(a), (e), (g). Each of the membership eligibility requirements set forth in section 4(a)(2) is discussed further below.

a. The institution has at least 10 percent of its total assets in residential mortgage loans. See id. at 1424(a)(2)(A). See proposed § 933.3(a)(4). The types of "residential mortgage loans" under proposed § 933.1(s) which would satisfy the test for insurance company applicants.

The Finance Board is aware that some large insurance companies may not be able to meet the 10 percent requirement because they are not primarily residential mortgage lenders. However, even though the insurance company fails the 10 percent requirement, it could be one of the largest mortgage originators in the state. In other words, the dollar amount of residential assets could be large, but when compared to the total assets of the company, such residential assets could constitute less than 10 percent of total assets. The Finance Board specifically requests comment on whether a different test that achieves the same objectives as the 10 percent requirement should apply to insurance company applicants, and if so, what that test should be.

b. The institution's financial condition is such that advances may be safely made to such institution. See 12 U.S.C. 1424(a)(2)(B). See proposed § 933.3(a)(5). Because each state examines and regulates insurance companies according to its own regulatory, examination, accounting and compliance standards, there is no single objective measurement of insurance company financial condition that can be applied to all insurance companies nationwide. For example, insurance companies do not receive CAMEL or MACRO ratings.

The Finance Board is in the process of gathering information on how various state insurance departments examine and rate the financial condition of

insurance companies. This information will be used to assist the Finance Board in establishing a standard or standards that the Finance Board can apply consistently to all insurance company applicants in determining whether the insurance company's financial condition is such that advances may be safely made to it. The Finance Board specifically requests comment on what standard or standards should be established under this membership eligibility requirement.

c. The character of the institution's management and its home-financing policy are consistent with sound and economical home financing. See 12 U.S.C. 1424(a)(2)(C). See proposed § 933.3(a)(6). A depository institution applicant's management can be evaluated, in part, by reviewing the management component of the CAMEL or MACRO rating in its regulatory examination. Insurance companies do not receive such ratings.

The Finance Board is in the process of gathering additional information on how various state insurance departments examine and rate the character of management of insurance companies. This information will assist the Finance Board in establishing a standard or standards that the Finance Board will apply consistently to all insurance company applicants in determining whether the character of the insurance company's management is consistent with sound and economical home financing.

As discussed more fully above, insurance companies do not receive CRA ratings which could otherwise be used to evaluate the companies' home-financing policies. Therefore, a comparable or alternative test is necessary to evaluate compliance of insurance company applicants with the home-financing policy requirement. The Finance Board specifically requests comment on appropriate methods to determine compliance by such applicants with the home-financing policy requirement.

d. One-year grace period. See 12 U.S.C. 1424(a)(2). Section 933.3(b) of the proposed rule applies to a member that has recently commenced business operations. Such a member is given one year from the date of commencing its initial business operations to meet the 10 percent requirement, as required by section 4(a)(2) of the Bank Act. Although section 4(a)(2) of the Bank Act by its terms applies to insured depository institutions, the Finance Board proposes to apply this section to insurance company members as well. The Finance Board specifically requests comment on this proposal.

D. Membership at Principal Place of Business

Under section 4(b) of the Bank Act, institutions eligible to become members may become members only of the FHLBank of the district in which their "principal place of business" is located, or of a FHLBank in an adjoining district if demanded by convenience and with the approval of the Finance Board. See 12 U.S.C. 1424(b) (Supp. I 1989). This requirement is implemented in § 933.5(a) of the proposed rule.

The Bank Act does not define the term "principal place of business." Section 933.5 of the Finance Board's existing regulations defines the term generally as the state in which the institution maintains its "principal office." See 12 CFR 933.5 (1992). The term "principal office" is not defined anywhere in the Finance Board's existing regulations that were transferred from the Bank Board. However, the Finance Board's regulations do define "principal place of business" as the state in which the member maintains its home office established as such in conformity with the laws under which the member is organized. See 12 CFR 931.24. This is essentially the same as the definition of "principal office" which was in the former Bank Board's regulations at the time the Bank Board's regulations were transferred to the Finance Board. See 12 CFR 561.7 (1989). The Finance Board has decided to continue to use this definition. Accordingly, proposed § 933.5(b) provides that unless otherwise designated, an institution's principal place of business will continue to be the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

The proposed rule also makes changes to the ability of a member to transfer its membership to a different FHLBank district. Prior to FIRREA, the PSAs of the FHLBanks had the authority to apply certain regulatory criteria in order to ascertain whether or not a member's charter accurately reflected its true principal place of business. See 12 CFR 523.3–2(c) (1989). The review was aimed at assuring the accessibility, validity and reliability of supervisory information.

The proposed rule eliminates the use of supervisory considerations in determining which FHLBank district is the district of the member's "principal place of business" because, after FIRREA, the FHLBanks no longer supervise their members. Under § 933.5(c) of the proposed rule, a member or an applicant for membership may request in writing that a state other than the state in which it maintains its home office be designated as its principal place of business. The board of directors of the Bank in the district where the institution maintains its home office shall designate within 90 days of receipt of such written request a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following factors are satisfied:

(1) At least 80 percent of the institution's accounting books, records or ledgers are maintained, located, or held in such state;

(2) A majority of meetings of the institution's board of directors and constituent committees are conducted in such state; and

(3) A majority of the institution's five highest paid officers have their place of employment located in such state.

However, under § 933.5(d) of the proposed rule, no designation done pursuant to § 933.5(c) may take effect until the FHLBank districts involved reach agreement on an orderly method of transfer of membership. If the FHLBanks fail to reach an agreement, the Finance Board determines the conditions of the transfer.

Under proposed § 933.5(f), if the board of directors of a FHLBank fails to make the designation requested by the member or applicant pursuant to proposed § 933.5(c), then the member or applicant can request in writing that the Finance Board make the designation.

The Finance Board specifically requests comment on whether the provisions on determination of principal place of business should allow members greater flexibility to move their membership to a different FHLBank district. The Finance Board recognizes that some members do business nationwide. It is therefore interested in comments as to how restrictive it should be in permitting transfers between FHLBank districts. What would be the advantages and disadvantages in having a less restrictive or more restrictive rule? What impact, if any, would a rule permitting members greater flexibility to transfer membership have on the FHLBank System?

E. Stock Requirements

1. Minimum Stock Purchase

Section 6(b) of the Bank Act requires all members to purchase FHLBank stock equal to one percent of the member's "aggregate unpaid loan principal," but not less than $500. 12 U.S.C. 1426(b) (Supp. I 1989). The term "aggregate

unpaid loan principal" is defined in proposed § 933.1(b) as the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home purchase contracts, and similar obligations. See 12 U.S.C. 1426(b)(4) (Supp. I 1989). The term "home mortgage loan" is defined in proposed § 933.1(j). See 12 U.S.C. 1422(5) (Supp. I 1989). In order to ensure that the FHLBanks are applying the definition uniformly, the Finance Board will issue guidelines to the FHLBanks setting forth the method to be used in making these calculations. The Finance Board intends to phase in the uniform guidelines over a period of time in order to mitigate any burden on the FHLBanks as they adjust their capital levels to comply with the new uniform guidelines.

Unlike insured depository institutions, insurance companies do not have standardized financial reporting forms which could be used to calculate their minimum stock purchase requirements. The Finance Board specifically requests comment on how the stock purchase requirement should be calculated for insurance companies.

In addition, section 10(e)(3) of the Bank Act requires each member to purchase FHLBank stock as if at least 30 percent of its assets were home mortgage loans. *Id.* at 1430(e)(3). If an institution's portfolio of home mortgage loans falls below 30 percent of its total assets, section 10(e)(3) requires it to compute its minimum stock purchase as if it has 30 percent of its total assets in home mortgage loans. Thus, a member is required to maintain FHLBank stock equal to at least one percent of 30 percent of its total assets.

Section 933.7(a) of the proposed rule implements the minimum stock purchase requirements in sections 6(b) and 10(e)(3) of the Bank Act. The stock requirements under these sections are mandatory minimum levels of stock a member must hold under the Bank Act.

2. Timing of Stock Purchase

Section 6(c) of the Bank Act establishes the point in the application process at which an applicant for membership in the FHLBank System is required to pay for its minimum stock purchase. 12 U.S.C. 1426(c) (Supp. I 1989). Section 6(c) provides generally, in pertinent part, that stock subscriptions shall be paid for at the time of application therefore, or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months. *Id.*

Section 933.7 of the Finance Board's existing regulations interprets section 6(c) to require an applicant to subscribe for stock when it submits an application for membership. 12 CFR 933.7 (1992). However, the regulation creates confusion as to when an applicant actually becomes a member. Section 2(4) of the Bank Act defines the term "member" as any institution which has subscribed for the stock of a FHLBank. 12 U.S.C. 1422(4) (Supp. I 1989). Thus, if an applicant subscribes for stock at the time it submits its application for membership with a FHLBank, the applicant meets the definition of a "member" under the Bank Act before the application has been approved.

Section 933.7(b) of the proposed rule, in conjunction with the proposed definition of "member" in § 933.1(o), provides that an applicant need not pay for stock until its application for membership in a FHLBank has been approved. Upon approval, the applicant has 30 calendar days in which to pay its minimum stock purchase. In the alternative, the applicant (at its election) may pay for the stock in installments. The first one-quarter installment must be paid within 30 calendar days, and a further sum of not less than one-fourth of the total amount payable shall be paid at the end of each succeeding period of four months until the total is paid. If the applicant fails to pay for its minimum stock purchase or its first quarterly installment within 30 calendar days of its approval for membership, the approval shall be rescinded and the applicant will be required to submit a new application for membership. The applicant may apply in writing to the Finance Board for an extension of time within which to purchase its minimum stock requirement. The Finance Board may approve such request not to exceed 30 days upon evidence of good cause. The stock purchase requirements for "Sasser amendment" and "Oakar amendment" transactions are discussed in paragraph 5, below.

An applicant may withdraw from consideration for membership at any point up until it purchases stock in a FHLBank. An applicant approved for membership becomes a member at the time it pays for its minimum stock requirement or pays for the first installment of its minimum stock requirement. Further, since the institution is deemed a member once it has purchased its first installment, it is entitled to the privileges of membership including the ability to obtain advances from its FHLBank. However, the institution's borrowing capacity would be limited by the advances-to-capital stock requirements in sections 10(c) and 10(e) of the Bank Act. See 12 U.S.C. 1430(c) and 1430(e). If it then fails to pay the remaining installments due on its minimum stock requirement, the Finance Board would have the discretion to remove the institution from membership pursuant to § 933.14 of the proposed rule.

3. Adjustments in Holdings

Section 933.9 of the proposed rule repeats the requirements of § 933.9 of the Finance Board's existing regulations regarding adjustments in minimum stock holdings, but also amends it to clarify that a FHLBank shall calculate a member's minimum stock holdings annually, using calendar year-end financial data provided by the member to the Bank each year, in accordance with proposed § 933.18(d).

4. Stock Holdings After the Consolidation of Members

a. Institutions in same district. The proposed rule redesignates § 932.5 of the Finance Board's existing regulations (12 CFR 932.5 (1992)) as paragraph (a) of § 933.11 of the proposed rule. Section 932.5 of the Finance Board's existing regulations governs the treatment of FHLBank stock in a consolidation of two or more members located in the same FHLBank district into one institution operating under the charter of one of the consolidating institutions. See 12 CFR 932.5 (1992). Under proposed § 933.11(a), the stock of the disappearing institution(s) may be redeemed as long as the consolidated institution holds the minimum amount of stock required under proposed § 933.7(a), based on the total assets and borrowings of the consolidated institution.

b. Institutions in different districts. The proposed rule adds new § 933.11(b), which governs the treatment of FHLBank stock in a consolidation of two member institutions located in different FHLBank districts into one institution operating under the charter of one of the consolidating institutions (interdistrict consolidation). In an interdistrict consolidation, the disappearing institution's membership terminates upon cancellation of its charter, except when more than 80 percent of the assets of the consolidated institution are derived from the disappearing institution. In such cases, the disappearing institution's membership shall continue and the membership of the other institution shall be terminated upon consummation of the consolidation. Although the consolidated institution would be a

member of a different FHLBank district, it could be required to hold the FHLBank stock of the FHLBank of which it is no longer a member for as long as that FHLBank requires that the stock be held as collateral securing any indebtedness to the FHLBank. Such indebtedness would be liquidated in an orderly manner as determined by the FHLBank. Upon the completion of such liquidation, the FHLBank shall redeem the stock in a manner prescribed in § 933.16 of this proposed rule and the consolidated institution would be paid for the redeemed stock.

The consolidated institution would be entitled to receive dividends on the stock of the FHLBank of which it is no longer a member, since holders of FHLBank stock share in dividend distributions without preference. See 12 U.S.C. 1426(g) (Supp. I 1989). However, the consolidated institution would not be allowed to vote such shares in an election of directors of the FHLBank, since the consolidated institution is not a member of that FHLBank. See 12 U.S.C. 1424(b) (Supp. I 1989). Further, the consolidated institution may not include the stock of the FHLBank of which it is no longer a member in its calculation of the number of votes it is allowed to cast in an election of directors of the FHLBank in which it is a member, since such stock represents an ownership interest in a different corporate entity. See *id.* at 1427(b).

5. Charter Conversion and Reorganization Transactions

The so-called "Sasser amendment" authorizes an SAIF-insured savings association to convert to a commercial bank or state chartered savings bank, but requires that the deposits of the resulting institution remain insured by the SAIF. 12 U.S.C. 1815(d)(2)(G) (1989) (Sasser amendment transactions). The insurance of these deposits may not be transferred from the SAIF to the Bank Insurance Fund (BIF) until after August 9, 1994. 12 U.S.C. 1815(d)(2)(A)(ii) (1989).

The so-called "Oakar amendment" authorizes a commercial bank or BIF-insured savings bank to merge with, consolidate with, or acquire the assets of, an SAIF-insured savings association. See Federal Deposit Insurance Corporation Improvement Act (FDICIA), Public Law 102–242, section 501, 105 Stat. 2236 (Dec. 19, 1991) (Oakar amendment transactions). The Oakar amendment institution must continue to pay premiums to SAIF on the deposits attributable to the former savings association unless the deposits are transferred to the BIF. As with Sasser amendment transactions, this cannot be done until after August 9, 1994.

The OTS currently conditions its approval of Sasser amendment and Oakar amendment transactions by requiring the resulting institution to retain the association's stock in the FHLBank System for as long as SAIF premiums are being assessed on the deposits transferred from the association, in accordance with the requirements of the Finance Board.[1] This condition has given rise to considerable legal and operational confusion in the FHLBank System as to the appropriate treatment of such institutions for purposes of FHLBank membership and stock holding requirements. The proposed rule establishes the rules for retention of such stock in Sasser amendment and Oakar amendment transactions.

a. Sasser amendment transactions. The proposed rule amends existing § 932.6 of the Finance Board's regulations and redesignates it as § 933.2(e). This redesignated section addresses the treatment (for purposes of membership and stock holding requirements) of a savings association member that has converted to another charter.

Under § 933.2(e) of the proposed rule, when a member savings association converts to a new charter and continues to be an insured depository institution, the resulting institution shall automatically become a member on the effective date of such conversion. See 12 U.S.C. 1815(d)(2)(A)(ii) (Supp. I 1989). This is because the newly chartered institution is identical to the former institution except for its form of charter. No application for membership thus would be required.

However, after converting its charter to that of a commercial bank or state savings bank, the institution may withdraw from membership in its FHLBank because it is not required by law to be a FHLBank member. While section 6(e) of the Bank Act prohibits Federal savings associations from withdrawing from FHLBank membership, there is no such statutory authority to prohibit commercial banks or state savings banks from withdrawing from membership. See 12 U.S.C. 1426(e) (Supp. I 1989). As with any other institution exiting the FHLBank System, the Sasser amendment institution must file with the Finance Board and its FHLBank a written notice six months before it withdraws. It would not be permitted to reacquire membership in any FHLBank for a period of 10 years. See 12 U.S.C. 1426(e) and (h) (Supp. I 1989), and proposed § 933.13(a).

Once the Sasser amendment institution terminates its membership in the FHLBank System, it may not continue to hold FHLBank stock since, under the Bank Act, only member institutions may own FHLBank stock. In such cases, the Sasser amendment institution would be required to repay all outstanding advances and its capital stock in the FHLBank would be redeemed. *See id.* at 1426(e). Such liquidation of advances and redemption of stock would be administered in accordance with § 933.16 of this proposed rule.

b. Oakar amendment transactions. The proposed rule amends existing § 932.4 of the Finance Board's regulations and redesignates it as § 933.12. This redesignated section addresses the membership and stock holding requirements of institutions that acquire members in an Oakar amendment transaction.

Under § 933.12 of the proposed rule, when an institution that is not a FHLBank member acquires FHLBank stock as a result of acquiring the assets of a member, the acquiring institution may not continue to hold the FHLBank stock unless it becomes a member of the FHLBank System. Under the proposed rule, the acquiring institution would have 60 calendar days after the effective date of the reorganization to notify the FHLBank that it intends to apply for membership. If such notification is given, and as long as an application is filed within 60 calendar days of such notification, the FHLBank may permit the acquiring institution to continue to hold any outstanding FHLBank advances and the FHLBank stock owned by the disappearing institution pending a determination on the membership application. If the acquiring institution fails to apply for FHLBank membership, or if its application is denied, it would be required to repay all outstanding advances to the FHLBank. Such advances shall be liquidated in an orderly manner as determined by the FHLBank. As the advances are liquidated, the FHLBank may redeem outstanding FHLBank stock on a *pro rata* basis. However, the institution's stock holdings shall not be reduced to an amount less than that required by sections 10(c) and 10(e) of the Bank Act,

[1] On August 18, 1992, the OTS issued a proposed rule which sets forth new procedures for Sasser amendment and Oakar amendment transactions when the resulting institution is not a savings association. See 57 F.R. 37112 (Aug. 18, 1992). Under OTS's proposed rule, the OTS would no longer issue orders approving such transactions. Instead, the resulting institution would be required simply to submit a notice to the OTS in the form of either a letter describing material information regarding the transaction, or a copy of a filing made with its primary regulator.

until all outstanding indebtedness to the FHLBank has been liquidated. 12 U.S.C. 1430(c), (e) (Supp. I 1989). Upon completion of such liquidation, the acquiring institution's FHLBank stock shall be redeemed in the manner prescribed in § 933.16 of this proposed rule. The acquiring institution would be entitled to receive dividends on outstanding stock acquired in the transaction, but would not be allowed to cast votes on such stock in an election of directors of the disappearing institution's FHLBank, unless the acquiring institution is approved for membership.

Unlike resulting institutions in Sasser amendment transactions, acquiring institutions in Oakar amendment transactions cannot automatically become members of the FHLBank System because they may not meet the FHLBank membership eligibility criteria. Under proposed § 933.12(c), in order to be a member of the FHLBank System (and, thus, to be able to hold stock in a FHLBank), an Oakar amendment institution must apply for membership in accordance with the requirements of § 933.2 of the proposed rule. The Oakar amendment institution shall become a member upon approval of its application for membership.

The Oakar amendment institution shall maintain the minimum amount of stock required under § 933.7(a) of the proposed rule, based on its total assets and borrowings after the reorganization. If the amount of stock acquired by the Oakar amendment institution is less than the amount required under § 933.7(a) of the proposed rule, the deficient amount of stock must be purchased within 30 calendar days of membership approval. At the election of the Oakar amendment institution, the deficient amount of stock may be purchased in installments. Not less than one-fourth of the total deficient amount payable must be paid within 30 calendar days of membership approval, and a further sum of not less than one-fourth of such total is paid at the end of each succeeding period of four months until the total is paid. The Oakar amendment institution may apply in writing to the Finance Board for an extension of time within which to purchase the deficient amount of stock. The Finance Board may approve such request not to exceed 30 days upon evidence of good cause.

The acquiring institution would not be subject to the 10-year moratorium on reacquiring FHLBank membership set forth in § 933.17 of this proposed rule if it applies for membership and is not approved or if it chooses not to become a FHLBank member. This is because the institution simply acquired FHLBank stock in a merger transaction and was never itself a member of the FHLBank System. *See* 12 U.S.C. 1426(h) (Supp. I 1989).

F. Withdrawal and Removal From Membership

1. Procedure for Withdrawal

The proposed rule redesignates § 933.32 of the Finance Board's existing regulation on voluntary withdrawal from membership as § 933.13. The proposed rule also revises that section to provide that a member that is eligible under applicable law to withdraw from FHLBank membership must provide the Finance Board and its FHLBank at least six months written notice of its intention to terminate its membership in conformance with section 6(e) of the Bank Act. 12 U.S.C. 1426(e) (Supp. I 1989). The proposed rule continues to allow a member to cancel its notice of withdrawal by providing to both the Finance Board and its FHLBank a written cancellation notice before the effective date to the withdrawal. After such cancellation of its notice of withdrawal, a member would need to provide an additional full six months written notice if it subsequently decides to withdraw.

2. Procedure for Removal

The proposed rule redesignates § 933.33 of the Finance Board's existing regulation on removal of institutions for membership as § 933.14. The proposed rule continues to set forth the statutory grounds contained in section 6(e) of the Bank Act, 12 U.S.C. 1426(e), for removing a member from membership, and adds an additional ground in proposed § 933.14(b)(4) pursuant to the Finance Board's general supervisory powers over the FHLBanks. A member may be removed from membership in a FHLBank if any of the following grounds exists:

(1) Failure to comply with any provision of the Bank Act or any Finance Board regulation;

(2) Insolvency (assets less than liabilities);

(3) Its management or home-financing policies are inconsistent with sound and economical home financing or the purposes of the Bank Act; or

(4) Any other condition of the member's operations that the Finance Board believes would jeopardize the safety and soundness of the FHLBank.

Under proposed § 933.14(a), if a FHLBank believes that any of these grounds exists for removing a member, it may submit a written request to the Finance Board recommending removal of such member and stating the grounds for such removal. If the Finance Board believes, upon recommendation of a FHLBank or otherwise, that any of the grounds for removal exists, and it determines that membership should be withdrawn, it must give the member at least 30 calendar days written notice of its intention to terminate the member's membership. Such notice shall state the grounds for removal and the time and place for a hearing on such removal action.

Section 933.33 of the Finance Board's existing regulations on removal from membership references the OTS' adjudicatory procedures for hearings (12 CFR part 509). The reference to the OTS' adjudicatory procedures was placed originally in § 933.33 (formerly 12 CFR 523.31 (1989)) by the former Bank Board. Section 933.14 of the proposed rule does not reference the OTS' adjudicatory procedures. Instead, the proposed rule states that hearings on removal of members from the FHLBank System shall be conducted in accordance with procedures established by the Finance Board.

3. Automatic Termination of Membership for Institutions Placed in Receivership

Section 933.15 of the proposed rule provides for the automatic termination of membership for institutions placed in receivership. The receiver may be required to maintain FHLBank stock for as long as the FHLBank requires as collateral securing any outstanding indebtedness to the FHLBank. Such indebtedness shall be liquidated in an orderly manner as determined by the FHLBank. As such indebtedness is liquidated, the FHLBank shall redeem the stock held by the receiver in the manner prescribed in § 933.16 of this proposed rule. The receiver shall be entitled to receive dividends on outstanding FHLBank stock of the institution placed in receivership in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of the Finance Board's regulations. The receiver may not cast votes on the FHLBank stock of the institution placed in receivership in an election of directors of such institution's Banks.

4. Orderly Liquidation of Advances and Redemption of Stock

The proposed rule adds § 933.16 to implement the requirements in section 6(e) of the Bank Act concerning the orderly liquidation of advances and subsequent redemption of FHLBank stock upon termination of an institution's membership in the FHLBank System. See 12 U.S.C. 1426(e)

(Supp. I 1989). Under the proposed rule, if an institution owes no outstanding indebtedness to its FHLBank upon termination of membership, the FHLBank is permitted to immediately redeem the institution's FHLBank stock. Further, proposed § 933.16 requires that the indebtedness of such institution to the FHLBank be liquidated in an orderly manner as determined by the FHLBank. Under § 933.16(a) of this proposed rule, such liquidation may be done with a *pro rata* redemption of outstanding FHLBank stock. However, the institution's stock holdings shall not be reduced to an amount less than that required by sections 10(c) and (10(e) of the Bank Act, until all outstanding indebtedness to the FHLBank has been liquidated. 12 U.S.C. 1430(c), (e) (Supp. I 1989). Upon completion of such liquidation, the institution's remaining FHLBank stock would be redeemed. The institution would receive a sum equal to the original amount it paid for such FHLBank stock. However, if at any time the Finance Board finds that the paid-in capital of a FHLBank is or is likely to be impaired as a result of losses in or depreciation of the assets held by the FHLBank, the FHLBank shall on the order of the Finance Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Finance Board.

5. Acquisition of Membership After Expiration of Period of Withdrawal

Section 6(h) of the Bank Act provides that an institution which withdraws from membership may acquire membership in any FHLBank only after the expiration of a period of 10 years thereafter. 12 U.S.C. 1426(h) (Supp. I 1989). There are two statutory exceptions to the moratorium on reacquiring membership: where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between Banks or in connection with obtaining a charter as a Federal saving association. *Id.* The proposed rule adds § 933.17 to implement this 10-year moratorium on reacquiring membership.

Under proposed § 933.7(b)(3), an applicant newly approved for membership that fails to purchase its minimum stock requirement or first quarterly installment thereof within the required 30-day period, is not a "member" as defined in proposed § 933.1(o). The institution therefore is not subject to the 10-year moratorium on reentry in the FHLBank System for withdrawals of "members" from the FHLBank System.

G. FHLBank Access to Information

The proposed rule revises §§ 933.18 and 933.22 of the Finance Board's existing regulations on reports and examinations to implement the changes made to section 22(b) of the Bank Act by FIRREA. Both sections, as revised, are combined as § 933.18 of the proposed rule. Specifically, proposed § 933.18 implements section 22(b) of the Bank Act, which requires as a condition precedent to FHLBank membership that a member be deemed:

(1) To consent to such examinations as the FHLBank or the Finance Board may require for purposes of FHLBank membership;

(2) To agree that reports of examinations by local, state, or Federal agencies or institutions may be furnished by such authorities to the FHLBank or the Finance Board upon request; and

(3) To agree to give the FHLBank or the Federal agency, upon request, such information as they may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of FHLBank members.

12 U.S.C. 1442(b) (Supp. I 1989).

In addition, § 933.18(d) of the proposed rule requires members to provide their FHLBank with their calendar year-end financial data each year, to allow the FHLBank to calculate the member's minimum stock purchase requirement. Section 933.18(e) of the proposed rule requires members to provide their FHLBank with a copy of the Call Report, Thrift Financial Report, or other appropriate reports of operation and condition within 20 calendar days of filing with the member's appropriate Federal banking agency. This will allow the FHLBank to monitor the member's credit quality and financial condition.

H. Institutions Eligible To Make Application To Become Members

In 1980, Congress expanded the scope of the FHLBanks' non-credit services through the enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA). *See* Pub. L. 96–221, 94 Stat. 132 (March 31, 1980). Specifically, section 311 of DIDMCA added section 11(e)(2) of the Bank Act to permit the FHLBanks, subject to such rules and regulations (including definitions of terms used in this paragraph) as the Finance Board may prescribe, to provide correspondent services to members and institutions which are eligible to make application to become members pursuant to section 4 of the Bank Act. 12 U.S.C. 1431(e)(2) (Supp. I 1989). The "eligible to make application" language is not defined anywhere in the Bank Act. However, section 11(e)(2) of the Bank Act contains explicit language which grants the Finance Board considerable discretion to define the terms used in that section, including the "eligible to make application" language.

Accordingly, the Finance Board proposes in § 933.1(k) to define "institutions which are eligible to make application to become members" for purposes of contracting for FHLBank correspondent services as "any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or any insured depository institution, regardless of whether the institution applies for or would be approved for membership." Under this definition, a non-member need not satisfy the membership eligibility criteria in section 4, namely the 10 percent requirement, but simply must come within one of the categories of institutions listed in section 4(a) as eligible to become a member of the FHLBank System.

In determining how to interpret the phrase "eligible to make application," the Finance Board looked at similar language in other sections of the Bank Act for guidance. For example, sections 4(a) (1) and (2), which list the membership eligibility criteria, use the language "eligible to become a member" and "may become a member," respectively, in delineating the criteria an applicant must meet in order to be eligible for FHLBank membership. 12 U.S.C. 1424(a) (1) and (2) (Supp. I 1989). Furthermore, section 6(f) provides generally that an FHLBank may permit the disposal of stock to another member, or to an institution eligible to become a member, but only to enable such an institution to become a member. *Id.* at 1426(f).

There is a clear distinction between "eligible to make application" in section 11(e)(2) and "eligible to become a member." The "eligible to make application" language suggests some lesser standard than actually being eligible to become a member.

The legislative history of section 11(e)(2) also supports the proposed definition of "institutions which are eligible to make application." In addition to granting the FHLBanks check processing and clearing powers, Congress granted similar authority in section 312 of the DIDMCA to the National Credit Union Administration's (NCUA's) Central Liquidation Facility to process checks and drafts for its member credit unions. Although sections 311 and 312 follow each other in the DIDMCA and confer similar powers, there is one significant difference between the two sections. Section 311

authorizes the FHLBanks to offer correspondent services to members and "institutions which are eligible to make application to become members." In contrast, section 312 confers on the NCUA's Central Liquidation Facility the authority to offer correspondent services to credit unions and other entities that are eligible to become a member of the Central Liquidation Facility. This is the only substantive difference between the two statutory provisions. To interpret these phrases in exactly the same manner would ignore the "to make application" language contained in section 311.

Further, the "eligible to make application" language is used in another context in the DIDMCA. Section 103 of the DIDMCA amended section 19(b) of the Federal Reserve Act and thereby expanded the types of institutions which are required to hold reserves against deposits. Reserves must be maintained against deposits held by financial institutions that meet the Federal Reserve Act's definition of "depository institution." Section 103 of the DIDMCA amended section 19(b) of the Federal Reserve Act to define the term "depository institution" as any insured bank, mutual savings bank, savings bank, credit union, savings and loan association, or any institution "eligible to make application" to become any of the foregoing. 94 Stat. 133, current version at 12 U.S.C. 461. The DIDMCA Conference Report states that the purpose of this language is to make reserve requirements applicable to all depository institutions. Joint Explanatory Statement of Congress, H.R. Rep. No. 842, 96th Cong., 2d Sess. 69 (1980).

On several occasions, the Board of Governors of the Federal Reserve System (Federal Reserve Board) has interpreted the "eligible to make application" language to apply the reserve requirements very broadly to any institution that is eligible to make application for deposit insurance, whether or not the institution meets the requirements for deposit insurance. See Board Ruling and Staff Opinions Interpreting Regulation D, Opinions 2–310, 2–310.1, 2–301.13, and 2–310.14, 3 Fed. Banking L. Rep. (CCH) ¶ 30,499G. In each case, the analysis focused on whether the institution is permitted under its chartering authority to apply for deposit insurance. Although several conditions must be met in order to actually obtain deposit insurance (*e.g.*, valid incorporation, an acceptable management staff, sound financial condition), the Federal Reserve Board did not consider such conditions when determining whether an institution is eligible to make application for deposit insurance and, thus, subject to reserve requirements under section 19(b).

In view of the foregoing, the Finance Board has concluded that for purposes of contracting for FHLBank correspondent services, the phrase "institutions which are eligible to make application to become members" in section 11(e)(2) of the Bank Act should be interpreted to mean all institutions listed in section 4(a) of the Bank Act, regardless of whether or not they have satisfied or would satisfy all of the requirements to actually obtain FHLBank membership.

III. Solicitation of Comments

The Finance Board solicits comments on all aspects of this proposed rule. The Finance Board is providing a 60-day comment period.

Regulatory Flexibility Act

The proposed rule largely implements statutory requirements applicable to institutions applying for membership in the FHLBank System, regardless of their size. The Finance Board is not at liberty to make adjustments to those statutory requirements to accommodate small entities. The proposed rule would not impose any new recordkeeping requirements and requires only minimal additional reporting at minimal cost for institutions applying for FHLBank membership. The proposed rule allows applicants for membership for the most part to demonstrate that they satisfy the requirements of the proposed rule by providing copies of reports already generated for other purposes. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities.

For these reasons, it is certified, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 605(b)), that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The title, description of need and use, and the respondent description for the information collection requirements are discussed in the SUPPLEMENTARY INFORMATION.

Any comments on the proposed information collection should be sent to Gary Waxman, Paperwork Reduction Project, OMB, room 3208, New Executive Office Building, Washington, DC 20503.

In accordance with 5 CFR 1320.15 and 1320.21, the following table discloses the estimated annual reporting burden for each collection of information in the proposed rule:

ESTIMATED ANNUAL REPORTING BURDEN

Description of information collected	Average number of respondents	×	Average number of responses per respondent	=	Total average responses	×	Average hours per response	=	Total average hours
1. Membership application	900		1		900		13.0		11,700.0
2. Stock calculation	3,300		1		3,300		0.6		1,980.0
3. Membership withdrawal	6		1		6		0.6		3.6
4. Principal place of business	6		1		6		3.5		21.0
Totals	4,212		1		4,212		*3.3		13,704.6

*Weighted average hours per response.

List of Subjects

12 CFR Part 932

Conflict of interests, Federal home loan banks.

12 CFR Part 933

Federal home loan banks, reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, subchapter B of the Code of Federal Regulations, as follows:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 continues to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 6–7, 47 Stat. 727, 736, as amended (12 U.S.C. 1426–1427); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101, *et seq.*).

§§ 932.2, 932.4, 932.5, 932.6, and 932.7 Removed.

2. In part 932, §§ 932.2, 932.4, 932.5, 932.6, and 932.7 are removed.

3. Part 933 is revised to read as follows:

PART 933—MEMBERS OF THE BANKS

Subpart A—Definitions

Sec.
933.1 Definitions.

Subpart B—Application For Membership

Sec.
933.2 Membership application approval process.
933.3 Membership eligibility requirements.
933.4 Delegation.
933.5 Determination of membership in a district.

Subpart C—Stock Requirements

Sec.
933.6 Par value and price of stock.
933.7 Stock purchase.
933.8 Issuance and form of stock.
933.9 Adjustments in holdings.
933.10 Excess stock.

Subpart D—Consolidations and Reorganizations Involving Members

Sec.
933.11 Consolidation of members.
933.12 Reorganizations involving nonmembers.

Subpart E—Withdrawal and Removal From Membership

Sec.
933.13 Procedure for withdrawal.
933.14 Procedure for removal.
933.15 Automatic termination of membership for institutions placed in receivership.
933.16 Orderly liquidation of advances and redemption of stock.
933.17 Acquisition of membership after expiration of period of withdrawal.

Subpart F—Bank Access to Information

Sec.
933.18 Reports and examinations.

Subpart G—Membership Insignia

Sec.
933.19 Official membership insignia.

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 4, as amended by secs. 701(b)(1), 704(a), 710(b)(1), 103 Stat. 412, 415, 418, (12 U.S.C. 1424); sec. 6, as amended by secs. 701(b)(1), 706, 710(b) (2), (3), 715, 103 Stat. 412, 416, 418, 421 (12 U.S.C. 1426); sec. 22, as amended by sec. 719, 103 Stat. 422 (12 U.S.C. 1442).

Subpart A—Definitions

§ 933.1 Definitions.

As used in this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

(b) *Aggregate unpaid loan principal* means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home purchase contracts, and similar obligations.

(c) *Appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and for federally insured credit unions shall mean the National Credit Union Administration.

(d) *Bank* means a Federal Home Loan Bank established under the authority of the Act.

(e) *Board* means the Federal Housing Finance Board established under the authority of the Act, its governing Board of Directors, or an official duly authorized to act on its behalf.

(f) *Combination business or farm property* means real property for which the total appraised value is attributable to residential, and business or farm uses.

(g) *Consolidated subsidiary* means a subsidiary of a member, whose assets and liabilities are consolidated with those of the member for purposes of reports filed with the member's appropriate Federal banking agency.

(h) *Dwelling unit* means a single, unified combination of rooms designed for residential use by one household.

(i) *Funded residential construction loan* means the portion disbursed to the borrower of a loan secured by real property made to finance the on-site construction of one-to-four or multifamily dwelling units.

(j) *Home mortgage loan* means:

(1)(i) A loan, whether or not fully amortizing, which is secured by a mortgage, a deed of trust or other security agreement, or an interest in such a loan, which creates a first lien on one of the following interests in domestic real property:

(A) One-to-four family property or multifamily property, in fee simple;

(B) A leasehold on one-to-four family property or multifamily property under a lease not less than 99 years which is renewable or under a lease having a period of not less than 50 years to run from the date the mortgage was executed;

(ii) The term home mortgage loan shall not include a loan secured by nonresidential real property, or combination business or farm property;

(2) A mortgage pass-through security which represents an undivided ownership interest in:

(i) Loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (j)(1) of this section; or

(ii) Securities which represent an undivided ownership interest in loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (j)(1) of this section; or

(3) Any loans which the Board in its discretion otherwise determines are home mortgage loans.

(k) *Institutions which are eligible to make application to become members* mean, for purposes of 12 U.S.C. 1431(e)(2)(A), any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or any insured depository institution, regardless of whether the institution applies for or would be approved for membership.

(l) *Insured depository institution* means an insured depository institution as defined in 12 U.S.C. 1422(12).

(m) *Long-term home mortgage loan* means a home mortgage loan with a term to maturity greater than five years, or any other home mortgage loan which the Board in its discretion determines is a long-term home mortgage loan.

(n) *Manufactured housing loan* means a loan that is secured by manufactured housing, as defined in the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

(o) *Member* means an institution that has been admitted to membership in a Bank and, pursuant to the requirements of § 933.7 of this part, has purchased capital stock in the Bank.

(p) *Multifamily property* means:

(1) Real property containing five or more dwelling units; or

(2) Real property containing five or more dwelling units with commercial units combined, provided the property is primarily residential.

(q) *Nonresidential real property* means real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, nursing homes, educational and charitable institutions, dormitories, clubs, lodges, association buildings, "homes" for elderly persons, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

(r) *One-to-four family property* means:

(1) Real property containing one-to-four dwelling units, or real property containing more than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;

(2) Manufactured housing if:

(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and

(ii) The loan to purchase the manufactured housing is secured by that manufactured housing and such security interest is evidenced by a mortgage or other lien on real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

(s) *Residential mortgage loan* means any one of the following types of domestic loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Manufactured housing loans whether or not defined by state laws as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family or multifamily property;

(5) Mortgage pass through securities representing an undivided ownership interest in:

(i) Loansall of which loans at the time of issuance of the security meet the requirements of paragraphs (s)(1) through (4) of this section; or

(ii) Securities representing an undivided ownership interest in loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (s)(1) through (4) of this section;

(6) Mortgage debt securities secured only by loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (s)(1) through (4) of this section;

(7) Home mortgage loans secured by leasehold interests, as defined in § 933.1(j) of this part, except that the period of the lease term may be for any duration; or

(8) Any loans which the Board in its discretion otherwise determines are residential mortgage loans.

(t) *State* means a State of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

Subpart B—Application for Membership

§ 933.2 Membership application approval process.

(a) *Application form.* An applicant for membership in a Bank shall submit to that Bank an application form which satisfies Board requirements.

(b) *Approval process.* All applications for membership shall be submitted to the Board for approval pursuant to the requirements of § 933.3 of this part, except as set forth in § 933.4 of this part.

(c) *Action on applications.* If an application is forwarded to the Board for action, the Board shall promptly notify the Bank after action is taken on the application. Upon receipt of notice of Board action, the Bank shall promptly inform the applicant of such action.

(d) *Automatic approval for Federal savings associations.* Upon receipt of a Federal savings association charter pursuant to section 5 of the Home Owners' Loan Act, a Federal savings association or Federal savings bank automatically becomes a member of the Bank of the district in which its principal place of business is located, and shall purchase stock in that Bank pursuant to § 933.7(b)(1) of this part. No application for membership must be filed.

(e) *Automatic approval for certain charter conversions.* A federally insured depository institution member that converts to a different charter shall automatically become a member on the effective date of such conversion, if the resulting institution continues to be an insured depository institution. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue. No application for membership must be filed.

§ 933.3 Membership eligibility requirements.

(a) *Eligibility requirements.* Any building and loan association, savings association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution, shall be eligible to become a member of a Bank if:

(1) The applicant is duly organized under the laws of any State or of the United States;

(2) The applicant is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States;

(3) The applicant (including its consolidated subsidiaries) originates or purchases long-term home mortgage loans;

(4) The applicant (including its consolidated subsidiaries) has at least 10 percent of its total assets in residential mortgage loans;

(5) The applicant has a financial condition such that advances may be safely made to such institution; and

(6) The applicant has character of management and a home-financing policy that are consistent with sound and economical home financing.

(b) *One-year grace period.* A member that has recently commenced business operations shall have until one year after commencing its initial business operations to meet the 10 percent residential mortgage loans requirement contained in paragraph (a)(4) of this section.

§ 933.4 Delegation.

(a) The Board hereby delegates to the board of directors of each Bank the authority to approve applications for membership that are filed by institutions eligible for membership in their Bank that meet all of the conditions set forth in policy guidelines established by the Board. The board of directors of each Bank may further delegate the authority to approve such applications to the President or other senior officers of the Bank.

(b) If the board of directors of a Bank approves an application pursuant to this section, the Bank shall notify the Board of its action within 10 calendar days of the Bank's approval. The Bank shall make monthly reports to the Board setting forth purchases (pursuant to § 933.7 of this part) by new members of their minimum stock requirement.

§ 933.5 Determination of membership in a district.

(a) *Eligibility.* (1) In general, an institution eligible to become a member of a Bank under the Act and this part may become a member of, and secure

advances only from, the Bank of the district in which the institution's principal place of business is located.

(2) An institution eligible to become a member may become a member of the Bank of a district adjoining such district if demanded by convenience and then only with the approval of the Board.

(b) *Principal place of business.* Except as designated in accordance with paragraphs (c) and (e) of this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* A member or an applicant for membership may request in writing that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following factors are satisfied:

(1) At least 80 percent of the institution's accounting books, records or ledgers are maintained, located, or held in such state;

(2) A majority of meetings of the institution's board of directors and constituent committees are conducted in such state; and

(3) A majority of the institution's five highest paid officers have their place of employment located in such state.

(d) *Transfer of membership by Bank board of directors.* (1) Written notice of a designation made pursuant to paragraph (c) of this section shall be sent to the Board and the institution.

(2) The notice shall include the designated principal place of business and the Bank district to which membership will be transferred.

(3) No transfer of membership made pursuant to paragraph (c) of this section shall take effect until the Bank districts involved reach agreement on a method of orderly transfer.

(4) In the event that the Banks fail to agree on a method of orderly transfer, the Board shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes including directorial representation under section 7(c) of the Act, 12 U.S.C. 1427(c), and § 932.11 of this chapter, but shall not be subject to the provisions on withdrawal or removal from membership set forth in section 6 of the Act, 12 U.S.C. 1426, or §§ 933.13, 933.14 and 933.16 of this part, including the moratorium on reacquiring Bank membership set forth in § 933.17 of this part.

(f) *Board designation.* If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c) of this section, then the member or applicant may request in writing that the Board make the designation.

Subpart C—Stock Requirements

§ 933.6 Par value and price of stock.

The capital stock of each Bank shall be sold at par, unless the Board has fixed a higher price.

§ 933.7 Stock purchase.

(a) *Minimum stock purchase.* (1) All members shall purchase and hold Bank stock in an amount at least equal to one percent of the member's aggregate unpaid loan principal, but not less than $500.

(2) If a member has less than 30 percent of its total assets in home mortgage loans, it shall purchase stock equal to one percent of 30 percent of its total assets.

(3) When calculating a member's minimum stock purchase requirement under this section, the Bank shall include the assets of the member's consolidated subsidiaries.

(4) A member's aggregate unpaid loan principal shall be calculated according to guidelines issued by the Board.

(b) *Timing of minimum stock purchase.* (1) Within 30 calendar days after an institution's application for membership is approved or an institution obtains a Federal savings association charter pursuant to section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464, the institution shall purchase its minimum stock requirement as set forth in paragraph (a) of this section.

(2) At the election of the newly admitted institution, the institution may purchase its minimum stock requirement in installments, provided that not less than one-fourth of the total amount payable shall be paid within 30 calendar days of the approval of membership, and that a further sum of not less than one-fourth of such total shall be paid at the end of each succeeding period of four months until the total is paid.

(3) An applicant approved for membership shall become a member at the time it pays for its minimum stock requirement or the first installment thereof. If the applicant fails to pay for its minimum stock requirement or its first installment within 30 calendar days of its approval for membership, such approval shall be rescinded and the applicant shall be required to submit a new application for membership.

(4) The Board may approve a written request from an applicant for an extension of time not to exceed 30 days within which to purchase its minimum stock requirement upon evidence of good cause.

§ 933.8 Issuance and form of stock.

(a) A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of stock purchased and paid for in full.

(b) If the member purchases stock in installments, the stock shall be issued in installments with the appropriate number of shares issued after each payment is made.

(c) Stock may be issued in certificated or uncertificated form at the discretion of the Bank.

(d) A Bank may convert all outstanding certificated stock to uncertificated form at its discretion.

§ 933.9 Adjustments in holdings.

(a) *Annual adjustment.* (1) A Bank shall calculate each member's required minimum stock holdings annually, using calendar year-end financial data provided by the member to the Bank each year, pursuant to § 933.18(d) of this part.

(2) The Bank shall increase or decrease the amount of stock that each member must hold to conform to section 6(b) of the Act, 12 U.S.C. 1426(b), and notify each member of the adjustment.

(b) *Redemption of excess shares.* (1) If the amount of stock that a member must hold is decreased, upon proper application of the member, the Bank may, in its discretion, retire such excess stock, and the Bank shall pay for each share upon surrender the value thereof determined pursuant to section 6(b)(3) of the Act, 12 U.S.C. 1426(b)(3), or, at its election, credit any part of such payment against the member's debt to the Bank.

(2) A Bank may require a member to give 30 calendar days written notice of its intention to apply, pursuant to this paragraph, to retire excess stock.

(3) A member's stock holdings shall not be reduced to an amount less than required by sections 10(c) and 10(e) of the Act, 12 U.S.C. 1430(c), (e).

§ 933.10 Excess stock.

Upon approval by a member's Bank, such member may purchase stock over the minimum amount required by sections 6(b) and 10(e)(3) of the Act, 12 U.S.C. 1426(b), 1430(e)(3), if the laws under which the member operates so permit.

Subpart D—Consolidations and Reorganizations Involving Members

§ 933.11 Consolidation of members.

(a) *Consolidation of institutions in same district.* Upon consolidation of two or more member institutions which are all members of the same Bank district into one institution operating under the charter of one of the consolidating institutions, the stock of the disappearing institution(s) may be redeemed, provided that the resulting institution holds the minimum amount of stock required pursuant to § 933.7(a) of this part; based on the total assets and borrowings of the consolidated institution.

(b) *Consolidation of institutions in different districts*—(1) *Termination of membership.* Upon consolidation of two member institutions located in different Bank districts into one institution operating under the charter of one of the consolidating institutions, the disappearing institution's membership shall be terminated upon cancellation of its charter, except that in the event that more than 80 percent of the assets of the consolidated institution are derived from assets of the disappearing institution, then the consolidated institution shall continue to be a member of the Bank to which the disappearing institution belongs and the membership of the other institution shall be terminated upon consummation of the consolidation.

(2) *Bank stock acquired in the consolidation.* The consolidated institution may continue to hold the stock of the Bank of which it is no longer a member only for as long as the Bank requires that the stock be held as collateral securing any outstanding indebtedness to the Bank for which the Bank does not demand immediate repayment.

(3) *Liquidation of disappearing institution's indebtedness to Bank.* The indebtedness owed to the Bank in which membership has been terminated shall be liquidated in an orderly manner as determined by the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment. As such indebtedness is liquidated, the stock shall be redeemed in the manner prescribed in § 933.16 of this part.

(4) *Dividends on acquired Bank stock.* The consolidated institution is entitled to receive dividends on its outstanding stock of the Bank of which it is no longer a member in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(5) *No voting rights on acquired Bank stock.* The consolidated institution may not cast votes on the stock acquired in the consolidation in an election of directors of the Bank of which it is no longer a member. The consolidated institution may not include the stock in its calculation of the number of votes it may cast in an election of directors of the Bank in which it is a member.

§ 933.12 Reorganizations involving nonmembers.

(a) *Termination of membership.* If a member is part of a reorganization that results in the transfer of all of the member's assets to an institution that is not a member, the Bank shall terminate its membership in accordance with § 933.16 of this part.

(b) *Notification of decision to seek membership.* If the acquiring institution notifies the Bank within 60 calendar days after the effective date of the reorganization that it intends to apply for membership, the Bank may permit the acquiring institution to continue to hold any outstanding Bank advances and stock pending a determination on the membership application.

(c)(1) *Application for membership required.* The acquiring institution must apply for membership pursuant to § 933.2 of this part within 60 calendar days of the notification required in paragraph (b) of this section. The acquiring institution shall become a member upon approval of its application for membership.

(2) *Outstanding advances and Bank stock.* If the application for membership is approved, then the Bank may permit the acquiring institution to assume the outstanding advances and may transfer the stock held by disappearing institution to the acquiring institution.

(3) *Minimum stock requirement.* (i) The acquiring institution shall maintain the minimum amount of stock required under § 933.7(a) of this part, based on the total assets and borrowings of the acquiring institution after the reorganization. If the amount of stock acquired by the acquiring institution is less than the amount of stock required to be held under § 933.7(a) of this part, the acquiring institution shall purchase the deficient amount of stock within 30 calendar days of the membership approval.

(ii) At the election of the acquiring institution, the deficient amount of stock may be purchased in installments, provided that not less than one-fourth of the total deficient amount payable shall be paid within 30 calendar days of the approval of membership, and that a further sum of not less than one-fourth of such total shall be paid at the end of each succeeding period of four months until the total is paid.

(iii) The Board may approve a written request from the acquiring institution for an extension of time not to exceed 30 days within which to purchase the deficient amount of stock upon evidence of good cause.

(d)(1) *Failure to obtain membership.* If the acquiring institution fails to apply for membership, or if the application for membership is denied, then any indebtedness to the Bank shall be liquidated in an orderly manner as determined by the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment. As such indebtedness is liquidated, the Bank may redeem outstanding Bank stock in the manner prescribed in § 933.16 of this part.

(2) *Dividends on acquired Bank stock.* The acquiring institution is entitled to receive dividends on outstanding stock of the disappearing member institution in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g) and § 932.3 of this chapter.

(3) *No voting rights on acquired Bank stock.* The acquiring institution may not cast votes on the stock acquired from the disappearing member institution in an election of directors of the disappearing member institution's Bank, unless the acquiring institution is approved for membership.

Subpart E—Withdrawal and Removal From Membership

§ 933.13 Procedure for withdrawal.

(a) Any member that is eligible under applicable law to withdraw from Bank membership may do so after providing the Board and its Bank at least six months written notice of the member's intention to terminate its membership.

(b) A member may cancel its notice of withdrawal by providing both the Board and its Bank written notice any time before the effective date of the withdrawal.

§ 933.14 Procedure for removal.

(a) *Removal.* If a Bank believes that any of the grounds for removal of a member contained in paragraph (b) of this section exists, it may submit a written request to the Board recommending removal of the member.

(1) The request shall state the grounds for removing the member.

(2) If the Board, in its sole discretion, believes that any of the grounds for removal of a member in paragraph (b) of this section exists, it may, after a hearing, remove the member from membership.

(b) *Grounds.* The following are grounds for removing a member from membership in a Bank:

(1) Failure to comply with any provision of the Act or any regulation of the Board adopted under the Act;

(2) The member is insolvent. A member is deemed insolvent if its assets are less than its liabilities;

(3) A member's management or home-financing policies are inconsistent with sound and economical home-financing or with the purposes of the Act; or

(4) Any other condition of a member's operations exists that the Board believes would jeopardize the safety and soundness of the member's Bank.

(c) *Procedure.* (1) If the Board believes any of the grounds set forth in paragraph (b) of this section exists, and it determines that membership should be withdrawn, it shall provide the member with at least 30 calendar days written notice of its intention to terminate the member's membership.

(2) Such notice shall be served as determined by the Board and shall state the grounds for such action and the time and place of a hearing at which the member may be heard.

(3) Such hearing shall be conducted in accordance with procedures established by the Board.

§ 933.15 Automatic termination of membership for institutions placed in receivership.

(a) *Automatic termination.* As of the effective date of being placed in receivership, an institution's Bank membership shall be automatically terminated.

(b) *Orderly liquidation of advances and redemption of stock.* Upon such termination of Bank membership, the indebtedness owed to the Bank by the institution placed in receivership shall be liquidated in an orderly manner as determined by the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment. As such indebtedness is liquidated, the Bank shall redeem outstanding Bank stock held by the receiver in the manner prescribed in § 933.16 of this part.

(c) *Dividends on Bank stock.* The receiver shall be entitled to receive dividends on outstanding Bank stock of the institution placed in receivership in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(d) *No voting rights on Bank stock.* The receiver may not cast votes on the Bank stock of the institution placed in receivership in an election of directors of such institution's Bank.

§ 933.16 Orderly liquidation of advances and redemption of stock.

(a) If an institution's membership in a Bank is terminated, the indebtedness of such institution to the Bank shall be liquidated in an orderly manner as determined by the Bank; provided that this section shall not require a Bank to call any such indebtedness prior to maturity of the advance, if so doing would be inconsistent with the Bank's safe and sound operation. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment. As such indebtedness is liquidated, the Bank may redeem outstanding Bank stock on a *pro rata* basis, provided that the institution's stock holding shall not be reduced to an amount less than that required by sections 10(c) and 10(e) of the Act, 12 U.S.C. 1430 (c), (e), until all outstanding indebtedness has been liquidated. Upon completion of such liquidation, such institution's remaining stock in the Bank shall be surrendered and canceled.

(b) Upon termination of membership, the Bank may immediately redeem an institution's stock in the Bank if the institution has no outstanding indebtedness to the Bank. The institution shall receive a sum equal to the original amount paid for the stock surrendered, except that if at any time the Board finds that the paid-in capital of a Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held by the Bank, the Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Board.

§ 933.17 Acquisition of membership after expiration of period of withdrawal.

An institution which withdraws from membership pursuant to § 933.13 of this part may acquire membership in a Bank only after the expiration of a period of 10 years thereafter, except:

(a) Where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between Banks pursuant to § 933.5 of this part; or

(b) In connection with obtaining a charter as a Federal savings association (as defined in 12 U.S.C. 1813), which automatically becomes a Bank member pursuant to § 933.2(d) of this part.

Subpart F—Bank Access to Information

§ 933.18 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or the Board may require for purposes of the Act;

(b) Agrees that reports of examinations by local, state or appropriate Federal agencies or institutions may be furnished by such authorities to the Bank or the Board upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of § 933.9(a) of this part; and

(e) Agrees to provide the Bank with copies of reports of condition and required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operation required to be filed.

Subpart G—Membership Insignia

§ 933.19 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words "Member Federal Home Loan Bank System."

By the Federal Housing Finance Board.

Dated: November 24, 1992.
Daniel F. Evans, Jr.,
Chairman.
[FR Doc. 92-29064 Filed 12-10-92; 8:45 am]
BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ANE-16]

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney PW4000 series engines, that currently requires switching the ENGINE ANTI ICE "ON" prior to every takeoff and keeping it "ON" for any flight operation below 15,000 feet, and placing a placard in the cockpit to make the crew aware of this requirement. This action would limit the requirements of the AD to those engines which are not equipped with an improved electronic engine control (EEC). This proposal is prompted by the development of new EEC software that provides for more cooling flow at lower idle speeds. The actions specified by the proposed AD are intended to prevent a high pressure compressor failure caused by excessive blade tip to airseal interference, that can result in total loss of engine thrust.

DATES: Comments must be received by January 11, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-16, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Product Support Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7084; fax (617) 270-2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ANE-16." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-16, 12 New England Executive Park, Burlington, Massachusetts 01803-5499.

Discussion

On February 15, 1991, the FAA issued AD 91-05-20, Amendment 39-6919 (56 FR 8707), applicable to Pratt & Whitney PW4000 series turbofan engines, to require switching the Engine Anti Ice "On" prior to every takeoff and keeping it "On" for any flight operation below 15,000 feet, and placing a placard in the cockpit to make the crew aware of this requirement. That action was prompted by five engine failures while undergoing production acceptance testing at the engine manufacturer's facilities and by two additional in-flight engine failures experienced during a specialized flight test program. All failed engines exhibited excessive HPC blade tip to airseal interference, resulting in substantial loss of outer airseal material from the ninth through fifteenth stages of the HPC. An investigation identified that HPC blade tip to airseal clearances were insufficient to ensure proper engine operation during rapid acceleration to takeoff power when that acceleration was preceded by several minutes of operation at takeoff power and minimum idle rotor speed, sequentially. At minimum rotor idle speed the compressor bore internal cooling flow was insufficient to provide the necessary compressor rotor thermal contraction. During rapid acceleration to takeoff power the blade tip to airseal clearances were insufficient to prevent excessive blade tip rubbing. For this reason, higher inflight engine idle rotor speeds were needed to assure proper HPC bore cooling airflow. Although no revenue service engine failures have been reported, the flight test failures confirm that certain inflight operating profiles can occur which produce excessive blade tip to airseal interference. That condition, if not corrected, could result in a high pressure compressor (HPC) failure caused by excessive blade tip to airseal interference, which can result in total loss of engine thrust.

Since the issuance of that AD, a new variable stator vane (VSV) control schedule has been developed that has been incorporated into improved electronic engine controls (EEC). This new VSV control schedule provides for adequate HPC secondary cooling flow without the need to maintain the idle speed at higher levels, as required by the current AD. This cooling airflow assures proper rotor thermal contraction which results in sufficient blade to airseal clearance, thus providing more margin during rapid engine acceleration to takeoff power from low rotational speeds. Engines equipped with the new VSV control schedule are no longer required to have the Engine Anti Ice "On" prior to every takeoff and kept "On" for any flight operation below 15,000 feet.

Operation with the Engine Anti Ice "On" precludes the engine from attaining inflight idle rotational speed below Approach Idle. Engine operation at a higher rotational speed burdens the operator with the cost of increased fuel consumption. Relieving operators of this requirement provides operational

advantages and cost savings while maintaining an acceptable level of safety.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–05–20 to limit the requirements of AD 91–05–20 to those engines that are not equipped with the improved EEC as identified by part numbers.

There are approximately 41 PW4000 series engines of the affected design that are installed on aircraft of U.S. registry. The FAA estimates that the proposed change will decrease fuel consumed by the affected engines by about 0.7%, or an estimated cost per year per engine of $52,500. Relieving operators of this burden will save approximately $2,152,500 per year in decreased fuel costs.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6919 (56 FR 8707, March 1, 1991) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 92–ANE–16. Supersedes AD 91–05–20, Amendment 39–6919.

Applicability: Pratt & Whitney Models PW4152, PW41456, and PW4158 model turbofan engines equipped with electronic engine control (EEC) Part Numbers 50D436, 50D791, 50D824, 51D037, and 51D053, installed on but not limited to Airbus A310 and Airbus A300 series aircraft.

Compliance: Required within 30 days after the effective date of this airworthiness directive (AD), unless accomplished previously.

To prevent a high pressure compressor failure that can be caused by excessive blade tip to airseal interference, which can result in total loss of engine thrust, accomplish the following:

(a) The Engine Anti Ice must be switched to "On" prior to takeoff and must be in the "On" position for any flight operation below 15,000 feet.

(b) Install placards in the cockpit of Airbus A310–300 and A300–600 aircraft, just above the Captain and the First Officer Primary Flight Displays, indicating the following: "BEFORE TAKE OFF, SET ENG. ANTI ICE ON. KEEP ENG. ANTI ICE ON FOR ANY OPERATION BELOW 15,000 FT."

Note: Further information on the placards may be obtained from Airbus Industrie Service Information Letter 72–001, Revision 1, dated September 18, 1990.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 19, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–30120 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–214–AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This proposal would require repetitive detailed visual inspections to detect cracks in the fatigue-sensitive area around the fasteners on the wing rear spar between ribs 1 and 2, and repair, if necessary. This proposal would also require modification of the outer wing rear spar forward face which, when accomplished, would constitute terminating action for the repetitive inspections. This proposal is prompted by results of fatigue testing of the center fuselage, which revealed cracks on the wing rear spar that spread around four fasteners in a fatigue-sensitive area. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing.

DATES: Comments must be received by February 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–214–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–214–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion:

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that during a fatigue test of the center fuselage on a Model A320 series airplane, damage was found on the wing rear spar after 103,126 simulated flights. Cracks were found that spread around four fasteners in a fatigue-sensitive area. If not detected and corrected, cracks in this area could propagate and form a long crack in the rear spar. This condition, if not corrected, could result in reduced structural integrity of the wing.

Airbus Industrie has issued Service Bulletin A320–57–1020, dated September 5, 1991, which describes procedures for repetitive detailed visual inspections to detect cracks in the fatigue-sensitive area around the fasteners on the wing rear spar between ribs 1 and 2. Airbus Industrie has also issued Service Bulletin A320–57–1021, dated September 5, 1991, which describes procedures for modification of the outer wing rear spar forward face between ribs 1 and 2. This modification involves cold working the bolt holes and installing medium interference fit bolts on the aft wing spar attachment. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 92–204–034(B) in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections to detect cracks in the fatigue-sensitive area around the fasteners on the wing rear spar between ribs 1 and 2, and repair, if necessary. The proposed AD would also require modification of the outer wing rear spar forward face which, when accomplished, would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $112 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $40,775 or $800 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92–NM–214–AD.

Applicability: Model A320 series airplanes; serial numbers 002 through 071, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 13,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracks in the left- and right-hand sides of the wing rear spar between ribs 1 and 2, in accordance with Airbus Industrie Service Bulletin A320–57–1020, dated September 5, 1991.

(1) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) If no cracks are found, repeat the inspection required by paragraph (a) of this

AD thereafter at intervals not to exceed 3,000 landings.

(b) Within 3 years after the effective date of this AD, modify the outer wing rear spar forward face between ribs 1 and 2, in accordance with Airbus Industrie Service Bulletin A320–57–1021, dated September 5, 1991.

(c) Accomplishment of the modification required by paragraph (b) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30178 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AGL–20]

Proposed Control Zone and Transition Area Modifications; Brookings, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the control zone and transition area near Brookings, SD, to accommodate a new ILS/DME RWY 30 instrument approach procedure to Brookings Municipal Airport, Brookings, SD. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before January 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 92–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon, Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone and transition area near Brookings, SD, to accommodate a new ILS/DME RWY 30 instrument approach procedure to Brookings Municipal Airport, Brookings, SD.

The development of the procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area that would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in § 71.171 of FAA order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Order. Transition areas are published in § 71.181 of FAA order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

AGL SD CZ Brookings, SD [Revised]
Brookings Municipal Airport, SD (lat. 44°18′15″ N, long. 96°48′58″ W)
Brookings VOR (lat. 44°18′12″ N, long. 96°48′54″ W)

That airspace extending upward from the surface within a 7 nautical mile radius of the Brookings Municipal Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Section 71.181 Designation of Transition Areas

AGL SD TA Brookings, SD [Revised]
Brookings Municipal Airport, SD (lat. 44°18′15″ N, long. 96°48′58″ W)
BARTT Outer Marker (lat. 44°14′20″ N, long. 96°42′06″ W)

That airspace extending upward from 700 feet above the surface within a 7 nautical mile radius of the Brookings Municipal Airport and within 4 nautical miles northeast and 8 nautical miles southwest of the 129° bearing from the BARTT outer marker extending from the outer marker to 16 nautical miles southeast of the outer marker, and within 8 nautical miles north and 4 nautical miles south of the 118° bearing from the airport to 16 nautical miles east of the airport, and within 8 nautical miles southwest and 4 nautical miles northeast of the 322° bearing from the airport extending from the airport to 16 nautical miles northwest of the airport, excluding that airspace within the Brookings, SD, Control Zone during the specific dates and times that it is effective.

* * * * *

Issued in Des Plaines, Illinois on October 26, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–30123 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

14 CFR Part 234

[Docket No. 48524; Notice No. 92–32]

RIN 2137–AB94

Amendments to the On-Time Disclosure Rule

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the on-time flight performance reporting requirements by (1) eliminating the exclusion of flights delayed or cancelled due to mechanical problems, (2) adding the aircraft tail number, wheels-up and wheels-down time for each flight reported, (3) adding several definitions, (4) clarifying the reporting requirement for a new flight, and (5) making some editorial changes.

DATES: Comments on the proposed rule must be received on or before January 11, 1993.

ADDRESSES: Comments should be directed to the Docket Clerk, Docket 48524, room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001. Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket 48524. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Jack Calloway, Office of Airline Statistics, DAI–10, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC, 20590 (202) 366–4387 or 366–4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1987, the Department issued a final rule (52 FR 34056) which required the largest U.S. air carriers to report their on-time performance for every domestic scheduled passenger flight operated to or from a reportable airport, with the exception of qualifying flights that were delayed 15 minutes or more or cancelled because of mechanical problems. A flight is considered on-time if it arrives less than 15 minutes after its published arrival time. The U.S. carriers covered by the reporting requirement are those generating at least 1 percent of the U.S. domestic scheduled-passenger revenues on a yearly basis. Reportable airports are those airports in the continguous 48 states generating at least 1 percent of the domestic scheduled-passenger enplanements on an annual basis. In practice, all reporting carriers are voluntarily submitting data for their entire domestic scheduled-passenger operations. The purpose of the rule was to reduce airline flight delays and consumer dissatisfaction with airline service by providing a persuasive market-based incentive for airlines to improve their quality of service and reliability of schedules. The reporting system developed for the administration of these reporting requirements is called the On-Time Flight Performance System.

Flights that were delayed 15 minutes or more or cancelled because of mechanical problems and which were reported to the Federal Aviation Administration (FAA) under 14 CFR 121.703 or 121.705, were excluded from the reporting requirements. Mechanical delays included delays on the flight on which the problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, for which the delay was attributed to the initial mechanical problem. However, flights delayed less than 15 minutes because of a mechanical problem were included in the on-time performance data.

In 1986–87, the Department conducted a year-long study on airline operating performance at eight of the country's largest airports. This study included all flights, even those delayed or cancelled because of mechanical problems, and it showed that only 40 to 50 percent of the flights arrived on-time. In September 1991, the on-time flight performance for the 31 largest airports

ranged from 79 to 92 percent. The 1991 figures are higher than the carrier's actual performance, since mechanical delays and cancellations (estimated to impact about 2 to 7 percent of all flights) are excluded. Nonetheless, there has been marked improvement in carrier on-time performance which has greatly benefited consumers.

The improvement can be attributed to, among other things, more realistic flight scheduling by the air carriers and improved traffic management by the FAA. The reporting requirements created an incentive for the carriers to adjust scheduled flight times and make other changes to improve schedule reliability. These actions reduced unrealistic scheduling resulting in improved on-time performance. In September 1987, the first month the on-time flight performance statistics were reported under 14 CFR 234, there were 150 nonstop flight segments that were late at least 80 percent of the time (Air Travel Consumer Report, issued November 1987). In March 1992, the number went down to 32 nonstop flight segments that were late at least 80 percent of the time (Air Travel Consumer Report, issued May 1992). While the occurrence of perpetually late flight segments has decreased, there is still room for improvement.

Inspector General Audit

The Department's Office of Inspector General (IG) audited the March 1989 on-time performance reports of Alaska, American, America West, Continental, Delta, Eastern, Northwest, Pan American, Southwest, Trans World, United, and USAir to determine their accuracy. The IG sampled 4,598 of the 383,501 carriers' reported flights, and found that the data were accurate in every case. However, there were problems with non-reported flight operations for all 12 reporting carriers. A non-reported flight operation was a flight which the carrier believed was excluded from the reporting requirements because the flight experienced a qualifying mechanical delay or cancellation or was a discontinued flight. Out of the 3,903 non-reported flights sampled by the IG, 1,005 reporting discrepancies were found (25.7 percent of total). Most of the reporting discrepancies were flights delayed because of mechanical problems but not reported to FAA under 14 CFR 121.703 or 121.705.

The IG concluded that the Research and Special Programs Administration (RSPA) relied too heavily on air carrier reporting. It determined that if all scheduled flights were reported including qualifying mechanicals, RSPA would have a complete data base for the carriers' on-time flight performance statistics. Currently, the Department must try to monitor mechanical delays and discontinued flights by matching each carrier's reported flights against the monthly Official Airline Guide tape of the carriers' schedules. The Department is presently unable to readily verify that the approximately 23,000 flights excluded from the reporting system each month for mechanical problems actually experienced a mechanical problem. From an information standpoint, it is preferable to track an actual record rather than to compute what is missing, and then try to assess why it is missing.

Regulatory Review

To reduce the burden of government regulations, the President requested that agencies review existing regulations ("Reducing Burden of Government Regulations" memorandum, dated January 28, 1992). As part of the Department's initiative, RSPA considered a request from FAA that RSPA expand the On-Time Flight Performance System to include: aircraft tail number, wheels-up time (the time the aircraft leaves the ground) and wheels-down time (the time the aircraft touches the ground) for each flight. This notice of proposed rulemaking is consistent with the criteria established by the President. The expected benefits to society clearly outweigh the costs. This proposal promotes the economic health of the airline industry by providing the FAA the needed information to reduce costly airline delays by more efficient use of the existing air network.

The addition of the data items would give the FAA valuable data for pinpointing airport delays. Wheels-up and wheels-down time used in conjunction with departure and arrival times (already reported by carriers) would tell the FAA the extent of ground delays. Elapsed flight time (computed from the wheels-up time and the wheels-down time) would reveal delays experienced in the air. The reporting of the aircraft tail number would allow the FAA to track an aircraft through the air network, which would enable the FAA to study the ripple effects of delays at hub airports. Data by aircraft type would tell the FAA the capacity impacted by air traffic delays and congestion.

With the additional data, the FAA would build a model to analyze air traffic delays. A safer environment for aircraft operations would result with the added information to accurately analyze the impact of airspace reconfigurations. The data also could be analyzed for airport design changes, new equipment purchases, the planning of new runways or airports based on current and projected airport delays, and traffic levels.

FAA has estimated that a mere 1 percent reduction in flight delays would produce a cost savings of $85 million to the public and industry. According to an FAA study, air traffic delays cost the public and the industry $8.5 billion in 1990.

New Reporting Requirements

Given the improvement in carrier on-time flight performance and the opportunity to make further improvements, RSPA proposes to maintain the current On-Time Flight Performance System with some modifications. We are proposing to require carriers to include mechanical delayed and cancelled flights in their submissions; and to add the aircraft tail number, wheels-up and wheels-down time for each flight reported. The proposed data are items which air carriers track for their internal use. The modifications in the reporting system would result in improved consumer information and give the FAA data it needs to improve the air traffic control system.

Mechanical delays and cancellations would now be included in each carrier's reported data, not as a separate category, providing the consumer with complete information concerning a carrier's performance. The intent of the on-time performance rule was to provide the consumer with information to make an informed decision on which flight or carrier to use. However, under the current reporting requirements, the delays and cancellations due to mechanical problems are not a part of the on-time performance information on which the consumer's decision is based. Carriers currently report their flight performance statistics based on some factors over which they normally have no control, such as weather. Yet, a factor (carrier maintenance) over which a carrier does have some control is not reported in the on-time performance statistics.

In the earlier notice of proposed rulemaking (52 FR 22046, June 10, 1987), the Department was concerned how the proposed disclosure, enforcement, and computer reservation system (CRS) displays alternatives might affect airline safety. The question was asked: "For example would such a rule put undue pressure on airline personnel to keep aircraft in service and meet flight schedules?" American Airlines responded (Docket 44827) that "it did not believe that on-time

disclosure would impinge on air carrier safety." It went on to say that "there is no economic reason to create a special category of excusable delays such as maintenance * * * carriers can control the quality of their maintenance by devotion of sufficient resources." On the other hand, Continental responded in the same docket that reporting mechanical delays and cancellations could be counterproductive to safety considerations. It stated that:

> Safety considerations frequently require maintenance delays. Safety is *promoted* by these delays. If consumers were to associate levels of maintenance delays with low levels of carrier performances, there might be an incentive unreasonably to expedite maintenance and possibly enlarge the safety risk.

No other carrier commented specifically on the safety question of reporting mechanical delays or cancellations; however, there was a common concern that setting on-time performance standards, which carriers would be required to meet, could compromise safety. Because of this concern, the Department did not adopt performance standards in the final rule.

The Department stated in the final rule:

> The data requirements will not adversely affect airline safety. The air carriers owe the highest duty to their passengers to provide safe air transportation. The regulation in no way seeks to interfere with that obligation (52 FR 34062, September 9, 1987).

The Department added a precautionary measure to the reporting requirements which stated:

> However, to avoid any possibility of penalizing carriers for their conscientiousness and concern for the safety of their passengers, we are providing that delays and cancellations caused by mechanical problems be excluded from the reported data (Ibid.).

Flight delays and cancellations caused by aircraft mechanical problems were, therefore, excluded from the On-Time Flight Performance System in order "not to create negative incentives or to compromise safety in any way." (Ibid.) However, after five years of experience with the On-Time Flight Performance System, do you believe that the mechanical delay and cancellation exclusions need to be continued as a precautionary measure?

The smallest reporting carrier reports approximately 8,000 domestic passenger flights per month, while the largest carrier reports approximately 80,000 a month. For the smallest carrier to increase its on-time performance a mere 1 percentage point, it would have to operate 80 flights that should have been delayed or cancelled for mechanical reasons. For the largest carrier the number goes up to 800 flights. Do you believe the incentive exists at either end of the spectrum, for a carrier to compromise safety for the sake of on-time performance statistics?

Even though the IG's audit found 1,005 reporting exceptions out of a sample of 3,903 nonreported flights, the IG concluded that the exceptions appear to be caused by confusion over interpretations of FAA and DOT regulations, rather than intentional misreporting by the air carriers to show better on-time performance. The IG also found that these 1,005 exceptions in the nonreported flight segments did not materially affect the on-time flight performance of any carrier.

Would carriers try to improve their on-time flight performance by taking safety risks which may violate safety rules and subject the carriers to fines or penalties by the FAA? Would the adverse publicity of safety violations be a sufficient deterrent to carriers? Air carriers owe the highest duty to provide safe air transportation. If we include mechanical delays and cancellations in the data base would we be interfering with this obligation?

To address Continental's concern that travelers may associate maintenance delays with low levels of carrier performance, creating an incentive for carriers to unreasonably expedite maintenance and possibly enlarging the safety risk, the proposal to include mechanical delays and cancellations in the On-Time Flight Performance System would treat all delays alike. The causes of flight delays would not be reported or identified. Therefore, consumers and DOT would not be able to compare air carriers' on-time flight performances on the basis of mechanical delays and cancellations.

Collecting data on all flights delayed or cancelled because of mechanical problems would increase the amount of data reported by carriers. However, at the same time, it would simplify and reduce carrier reporting burden. Carriers would not be required to determine which delays were cause by qualifying mechanical delays; and they would not be required to filter out the qualifying mechanical delays for reporting purposes. In the Department's 1987 regulatory evaluation of the rule which established On-Time Flight Performance System, it was estimated that excluding mechanical delays from the reporting system would double the cost of the monthly submissions from $185,000 to $370,000 for all reporting carriers. By including all mechanical delays or cancellations, the confusion between the on-time reporting requirements and the FAA's mechanical reporting requirements would be eliminated. The carriers would be filing more complete and accurate data; and consumers would have a more complete factual basis on which to make purchase decisions concerning air transportation.

The Department proposes to include all mechanical delays and cancellations in the On-Time Flight Performance System and to collect aircraft tail number, wheels-up time and wheels-down time. By adding three basic data items to an existing data base, DOT will be able to make more efficient use of its resources. This action will save the FAA the time, effort and expense of creating a new data base that is needed for the study of air traffic delays.

Any regulation considered by the Department must be evaluated in terms of the impact on safety. Commenters should address whether, and specifically how, the proposed change in the rule would affect airline operations in any way that would impinge on safety. For example, would such a rule change put undue pressure on airline personnel to keep aircraft in service and meet flight schedules? If an adverse impact is possible, how could such an effect be avoided?

Definitions

Since the airline service quality performance reporting went into effect, the Office of Airline Statistics has clarified the reporting instructions by issuing interpretations. Consistent with these interpretations RSPA is proposing to amend the regulations by adding several definitions. Specifically, RSPA is proposing to define cancelled or discontinued flight, diverted flight, extra-section flight, and wet-leased flight.

Cancelled Flights

A cancelled flight means a flight operation that was not operated, but was listed in a carrier's computer reservation system 7 days or less of the scheduled departure. A cancelled flight is a reportable flight and is counted as a late flight.

Discontinued Flights

A discontinued flight means a flight dropped from a carrier's computer reservation system more than 7 days before its scheduled departure. A discontinued flight is excluded from the on-time performance reporting system.

Diverted Flights

A diverted flight means a flight which is not operated in accordance with the carrier's published schedule. When

reporting statistics relating to a diverted flight, the original scheduled flight number and the original scheduled origin and destination airport codes are used. For example, a carrier has a published schedule of A to B to C. If the carrier were to actually fly an A to C operation, the correct reporting would show A to B as a diverted flight, and B to C as a cancelled flight.

Extra-Section Flights

An extra-section flight means a flight conducted as an integral part of scheduled service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on the regularly scheduled flight (see 14 CFR 241.03). For example, 180 passengers arrive to board a carrier's 9:00 scheduled flight. The aircraft has a seating capacity of 100. The carrier then rolls out a second aircraft to accommodate the other 80 passengers. The second flight is an extra-section flight, which is not reported under part 234.

Wet-Leased Flights

A wet-lease flight means a flight operated with a leased aircraft and crew. When a carrier fulfills its scheduled flights by a wet-lease arrangement, it shall report the flights as if the leased aircraft and crews were a part of its own fleet.

Clarification of Reporting Requirement

In the past, carriers have asked what is the effective date for reporting a new flight. Consistent with previous interpretations, we are proposing to clarify the regulations to state that a reporting carrier shall report the information for a new flight beginning with the first day of the new scheduled operation.

Waivers From Part 234 Reporting Requirements

Pursuant to § 234.12, the Secretary, or his or her delegate, may for good cause grant waiver from the reporting requirements of part 234.

In January 1992, the administration of airline service quality performance reporting was transferred to RSPA's Office of Airline Statistics from the Office of Secretary. The Administrator of RSPA has delegated authority from the Secretary to oversee the collection and dissemination of information on civil aeronautics (49 CFR 1.53(g)). In this NPRM, we propose to amend section 234.12 to clarify that the waivers from the rule will be granted or denied by the Administrator, Research and Special Programs Administration.

Editorial Changes

Since the original regulations were issued, the Office of Aviation Information Management was renamed the Office of Airline Statistics. Appropriate changes to the regulations are proposed to reflect this name change.

The appendix to the final rule implementing the On-Time Flight Performance System (52 FR 34056, dated September 9, 1987) lists the data items that the reporting carriers are required to report. Two of the data items listed in the appendix which carriers are reporting (difference in minutes between OAG and CRS scheduled arrival times, and difference in minutes between OAG and CRS scheduled departure times) were inadvertently omitted from § 234.4(a). We propose to include them in this section.

Rulemaking Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographical regions. Furthermore, this proposed rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. The objective of the proposed rule is to simplify the on-time reporting instructions, and to expand the data base to supply the FAA the necessary data to reduce air traffic delays and congestion.

This proposed rulemaking is considered significant under DOT's regulatory policies and procedures, because it involves an important Departmental policy concerning the reporting of flight delays and cancellations caused by mechanical problems. A draft regulatory evaluation has been prepared and placed in the rulemaking docket. There is a potential savings to the airline industry and to the general public of $85 million. This saving would be derived from the decrease in air traffic delays, resulting from FAA's more efficient management to air traffic. The FAA estimates that a mere 1 percent reduction in delays will produce a cost savings of $85 million to the public and industry. Air traffic delays cost the public and the industry $8.5 billion in 1990. The cost to the air carriers to add the three data items would be a one-time programming and testing cost of approximately $34,000, 10 carriers at $3,400 per carrier. Once the programming is in place, the annual cost to the carriers would be approximately $1,000 per carrier. By our calculations, the economic benefits to the industry, as well as to the consumer, far outweigh the cost of supplying the data. We also are proposing to eliminate the exclusion of flights delayed by mechanical problems in the carriers' on-time performance reports. While this action would require carriers to report more data, it would save the carriers from identifying the cause of the delays and filtering out the mechanical delays. The end result will be better consumer information, at a cost savings to the carriers of at least $204,000 based on 10 reporting carriers. This estimate is based on the cost estimated by the Department to exclude mechanical delays when the rule was adopted in 1987. We encourage air carriers to comment on these cost estimates.

Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined the proposed rulemaking does not pose the risk of a taking of constitutionally protected private property.

Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act (14 CFR 399.73). The amendments will affect only large certificated air carriers accounting for at least 1 percent of U.S. domestic passenger revenues (over $400 million annually).

carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act (14 CFR 399.73). The amendments will affect only large certificated air carriers accounting for at least 1 percent of U.S. domestic passenger revenues (over $400 million annually).

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being sent to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under OMB No: 2138–0041; Administration: Research and Special Programs Administration; Title: Airline Service Quality Performance Reports; Need for Information: Consumer Information Flight Data for Air Traffic Control; Proposed Use of Information: Consumer Publications and To build a Model for Studying Air Traffic Delays; Frequency: Monthly; Burden Estimate: 1,780; Average Burden Hours Per Respondent; 178. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001, (202) 366–4735 or Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2137–AB94 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Proposed Rule

Accordingly, RSPA proposes to amend Chapter II, 14 CFR part 234—Airline Service Quality Performance Reports as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for part 234 would continue to read as follows:

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. 553(e) and 14 CFR 302.38.

2. Section 234.2 "Definitions" would be amended by revising the definitions of "reportable flight" and "reporting carrier;" removing the definitions of "mechanical delay" and "mechanical cancellation;" and adding new definitions "cancelled flight", "discontinued flight", "diverted flight", "extra-section flight" and "wet-leased flight", in alphabetical order to read as follows:

§ 234.2 Definitions.

For the purpose of this part:

Cancelled flight means a flight operation that was not operated, but was listed in a carrier's computer reservation system within 7 days of the scheduled departure.

Discontinued flight means a flight dropped from a carrier's computer reservation system more than 7 days before its scheduled departure.

Diverted flight means a flight which is not operated in accordance with the carrier's published schedule. For example, a carrier has a published schedule of A to B to C. If the carrier were to actually fly an A to C operation, the A to B segment is a diverted flight, and the B to C segment is a cancelled flight.

Extra-section flight means a flight conducted as an integral part of scheduled service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on the regularly scheduled flight.

* * * * *

Reportable flight means any nonstop flight to or from any airport within the contiguous 48 states that account for at least 1 percent of domestic scheduled-passenger enplanements in the previous calendar year, as reported in the reports submitted to the Department pursuant to part 241 of this title. Qualifying airports will be specified periodically in accounting and reporting directives issued by the Offices of Airline Statistics (OAS).

Reporting carrier means an air carrier certificated under section 401 of the Federal Aviation Act of 1958 that accounted for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year, as reported in reports submitted to the Department pursuant to part 241 of this title. Reporting carriers will be identified periodically in accounting and reporting directives issued by OAS.

Wet-leased flight means a flight operated with a leased aircraft and crew.

3. Section 234.4 would be amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (e) and (f), respectively, and adding new paragraphs (c) and (d) to read as follows:

§ 234.4 Reporting of on-time performance.

(a) Each reporting carrier shall file RSPA Form 234 "On-Time Flight Performance Report" with OAS, on a monthly basis, setting forth the information for each of its reportable flights held out in the Official Airline Guide (OAG), in the computer reservations systems, or in other schedule publications. The reportable flights include, but are not limited to, cancelled flights, diverted flights, new flights and wet-leased flights. The report shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, OAS, and shall contain the following information:

(1) Carrier and flight number.

(2) Aircraft tail number.

(3) Origin and Destination airport codes.

(4) Published OAG departure and arrival times for each scheduled operation of the flight.

(5) CRS scheduled arrival and departure time for each scheduled operation of the flight.

(6) Actual departure and arrival time for each operation of the flight.

(7) Difference in minutes between OAG and CRS scheduled arrival times.

(8) Difference in minutes between OAG and CRS scheduled departure times.

(9) Actual wheels-up and wheels-down time for each operation of the flight.

(10) Date and day of week of scheduled flight operation.

(11) Scheduled elapsed time, according to CRS schedule.

(12) Actual elapsed time.

(13) Amount of departure delay, if any.

(14) Amount of arrival delay, if any.

(15) Amount of elapsed time difference, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the *original* scheduled flight number and the *original* scheduled origin and destination airport codes.

(c) A reporting carrier shall report the information specified in paragraph (a) of this section for a new flight beginning with the first day of the new scheduled operation.

(d) A reporting carrier shall not report the information specified in paragraph (a) of this section for any discontinued or extra-section flight.

* * * * *

4. Section 234.5 would be revised to read as follows:

§ 234.5 Form of reports.

Except where otherwise noted, all reports required by this part shall be filed with the OAS on ADP computer tape in the format specified in accounting and reporting directives issued by the Director, OAS, within 15 days of the end of the month for which data are reported.

5. Section 234.6 would be revised to read as follows:

§ 234.6 Baggage-handling statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with the carrier. The information shall be submitted to the Department within 15 days of the end of the month to which it applies and must be submitted with the transmittal letter accompanying the data for on-time performance in the form and manner set forth in the reporting directives issued by the Director, OAS.

6. Section 234.8 would be amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 234.8 Calculation of on-time performance codes.

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in accounting and reporting directives issued by the Director, OAS. The calculations shall be performed for each reportable flight, except those scheduled to operate three times or less during a month. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flights, or portion thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include discontinued or extra-section flights for which data are not reported to the Department.

* * * * *

7. Section 234.12 would be revised to read as follows:

§ 234.12 Waivers.

Any air carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Administrator, Research and Special Programs Administration may be granted for good cause shown. The requesting party shall state the basis for such a waiver.

Issued in Washington, DC on December 4, 1992.

Richard R. John,

Acting Associate Administrator for Research, Technology and Analysis, Research and Special Programs Administration.

[FR Doc. 92-29931 Filed 12-10-92; 8:45 am]

BILLING CODE 4910-62-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Past Performance Reporting

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On November 10, 1992, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on the efficacy of Commission rules relative to performance reporting and disclosure by commodity pool operators and commodity trading advisors. The original comment period expires on December 10, 1992. 57 FR 53457 (November 10, 1992). The Commission has received a request for an extension of the comment period. In order to ensure that all interested parties have an adequate opportunity to submit meaningful comments, the Commission has determined to extend the comment period for an additional 65 days.

DATES: Written comments must be received on or before February 16, 1993.

ADDRESSES: Comments should be sent to Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Attn: Secretariat. Reference should be made to the request for public comment on past performance reporting.

FOR FURTHER INFORMATION CONTACT: Paul Bjarnason, Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

Issued in Washington, DC on the 7th day of December, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-30140 Filed 12-10-92; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 150

Revision to Recordkeeping Requirements; Reopening of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On October 26, 1992, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice of Proposed Rulemaking relating to Commission recordkeeping requirements. 57 FR 48480. The applicable comment period expired on November 25, 1992. The Commission has received a request for an extension of the comment period. In light of the apparently widespread interest in the proposed revisions to these rules, and because it wishes to ensure that all interested parties have an adequate opportunity to submit informed comments, the Commission has determined to reopen the period for public comment.

DATES: The comment period will remain open through January 9, 1993.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to "Recordkeeping Requirements".

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Supervisory Statistician, (202) 254-3310.

Issued in Washington, DC, this 7th day of December, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-30071 Filed 12-10-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-709-86]

RIN 1545-AM70

Levy and Distraint

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulatory amendment regarding the authority to collect taxes by means of levy and distraint. The Technical and Miscellaneous Revenue

Act of 1988 (TAMRA), amended section 6331 of the Internal Revenue Code concerning the collection of tax by means of levy in several respects. The statute increased the 10 day requirement for notification of intention to levy to 30 days, required specific types of information to be included in the notice, and expanded the reasons for releasing a levy on salary or wages to include all the situations described in section 6343(a). TAMRA also placed restrictions on levies that are uneconomical or that are scheduled to be made on the day a person is required to appear in response to a summons issued for the purpose of collecting any underpayment of tax by that person. The proposed regulatory amendment reflects these changes. In addition, the proposed regulatory amendment changes the existing regulations with respect to levying on bank deposits to conform to section 6332(c), which was enacted by TAMRA. The proposed regulatory amendment also reflects two changes made by the Tax Equity and Fiscal Responsibility Act of 1982: Extending to "other property" of a taxpayer the requirement of notification of intention to levy that exists for a levy on salary or wages; and requiring that any mailing of that notice be done by certified or registered mail. Finally, several stylistic changes were made to clarify parts of the regulations that were not affected by the statutory changes.

DATES: Written comments and requests for a public hearing must be received by February 9, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL–709–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Susan B. Watson, 202–622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking contains proposed changes to §§ 301.6331–1 and 301–6331–2, to reflect amendments made to sections 6331 and 6332(c) of the Internal Revenue Code by section 349(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law No. 97–248, 96 Stat. 325 (TEFRA) as well as by sections 6236(a), (b) and (d) of the Technical and Miscellaneous Revenue Act of 1988, Public Law No. 100–647, 102 Stat. 3573 (TAMRA).

Explanation of Provisions

Some minor changes are proposed to § 301.6331–1. The first change relates to section 6332(c), which was enacted by section 6236(e)(1) of TAMRA and which provides that banks may not surrender funds to the Service until 21 days after a levy on those funds is served. Prop. reg. § 1.6331–1(a)(1) reflects this change by providing that a levy on a bank account applies not only to those funds on deposit at the time the levy is made, but also to any interest that accrues on those deposits during the 21 day waiting period. In addition, some conforming changes have been made to the jeopardy rules contained in § 301.6331–1(a)(2), and existing § 301.6331–2(c), which describes the continuing effect of a levy on salary or wages, has been moved to § 301.6331–1 to improve organization. This section also has been amended to provide that a continuous levy on salary or wages remains in effect until released for any of the reasons provided in section 6343(a). Previously such a levy was required to be released only if it was satisfied or if the period of limitations provided in section 6502 (and any period during which such period of limitations was suspended as provided by law) had lapsed. Finally, some minor clarifying changes also have been made to the section.

The changes made to § 301.6331–2 principally reflect the additional protections provided to taxpayers by the Taxpayer Bill of Rights contained in TAMRA. As proposed, § 301.6331–2(a)(1) now provides that the Service must notify a taxpayer of the Services's intent to levy at least 30 days (instead of 10 days) in advance. Also, this protection is being extended so that in addition to applying to salary and wages, it now applies to other property as well. In addition, if the notice is mailed, the Service must use certified or registered mail.

New § 301.6331–2(a)(2) provides that the notice to the taxpayer must contain a brief and non-technical description of (1) the statutory provisions and procedures relating to the levy and sale of property, (2) the administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals, (3) the alternatives available to taxpayers that could prevent levy on the property (including installment agreements), and (4) the statutory provisions and procedures relating to redemption of property and the release of liens on property. As under prior law, the requirement to give notice and the observance of a waiting period do not apply if the Service determines that the collection of tax is in jeopardy.

Proposed § 301.6331–2(b) reflects TAMRA's enactment of section 6331(f). Under section 6331(f), no levy may be made on property if the levy and sale expenses estimated by the Service exceed the estimated fair market value of the property. While section 6331(f) could be narrowly read to require an estimate to be made as the Service is about to seize property, there is no legislative history regarding this provision to suggest that Congress intended to impose such an unworkable approach. Accordingly, the proposed regulations adopt the more reasonable and practical approach. They require this estimate to be made either at the time of the seizure or within a reasonable period of time prior to the seizure. The estimates made within this time frame may be based upon earlier estimates and may be formal or informal.

Section 6331(f) and its legislative history do not indicate whether estimates are to be made on an aggregate basis or with respect to each individual item of property potentially subject to seizure. For practical reasons, the proposed regulations provide that the estimate of expenses and fair market value are to be made on an aggregate basis for all of the items to be seized pursuant to a particular levy. The proposed regulations also provide that no levy should be made on individual items of insignificant monetary value. This restriction does not limit, for example, the Service's ability to seize boxes of paper clips or other supplies owned by a business whose assets are to be levied upon.

In accordance with section 6331(g), which also was enacted by TAMRA, § 301.6331–2(c) of the proposed regulations generally precludes the Service from levying on the property of a taxpayer on the day the taxpayer (or an officer or employee of that taxpayer) is required to appear in response to a summons issued by the Service for the purpose of collecting any underpayment of tax by the taxpayer. The relevant date is not only the date established pursuant to section 7605 but also any date set by a court of competent jurisdiction if judicial enforcement of the summons is required.

Proposed Effective Dates

These regulations are proposed to be effective on December 10, 1992. The Service believes that prior to the effective date of these regulations, taxpayers are afforded the protections enacted by TAMRA by virtue of the provisions of the Internal Revenue Code, but the Service solicits comments as to whether these regulations should be retroactive.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel on Advocacy of the Small Business Administration for comment on their impact on small business.

Comments on Proposed Regulations

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Susan B. Watson, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6331–1 is amended as follows:

1. In paragraph (a)(1), following the eight sentence, a new sentence is added.
2. In the new tenth sentence of paragraph (a)(1), the language "§ 301.6331–2(c)" is removed and "§ 301.6331–1(b)(1)" is added in its place.
3. The new fourteenth sentence of paragraph (a)(1) is revised.
4. Paragraph (a)(2) is revised.
5. Paragraph (b) is amended by:
a. Redesignating paragraph (b) as (b)(2):
b. Adding a paragraph heading for new paragraph (b);
c. Adding a new paragraph (b)(1) heading and text.
6. New paragraph (d) is added.
7. The additions and revisions read as follows:

§ 301.6331–1 Levy and distraint.

(a) * * *

(1) * * * A levy on a bank reaches any interest that accrues on the taxpayer's balance under the terms of the bank's agreement with the depositor during the 21-day holding period provided for in section 6332(c). * * * Similarly, a levy on reaches property in the possession of the person levied upon at the time the levy is made together with interest that accrues during the 21-day holding period provided for in section 6332(c). * * *

(2) *Jeopardy cases.* If the district director finds that the collection of any tax is in jeopardy, he may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331(a), the 30-day period provided in section 6331(d) or the limitation on levy provided in section 6331(g)(1).

* * * * *

(b) *Continuing levies and successive seizures*—(1) *Continuing effect of levy on salary and wages.* A levy on salary or wages has continuous effect from the time the levy originally is made until the levy is released pursuant to section 6343. For this purpose, the term "salary or wages" includes compensation for services paid in the form of fees, commissions, bonuses, and similar items. They levy attaches to both salary or wages earned but not yet paid at the time of the levy, advances on salary or wages made subsequent to the date of the levy, and salary or wages earned and becoming payable subsequent to the date of the levy, until the levy is released pursuant to section 6343. In general, salaries or wages that are the subject of a continuing levy and are not exempt from levy under section 6334(a)(8) or (9), are to be paid to the district director, the director of the service center, or the director of the compliance center on the same date the payor would otherwise pay over the money to the taxpayer. For example, if an individual normally is paid on the Wednesday following the close of each work week, a levy make upon his or her employer on any Monday would apply to both wages due for the prior work week and wages for succeeding work weeks as such wages become payable. In such a case, the levy would be satisfied if, on the first Wednesday after the levy and on each Wednesday thereafter until the employer receives a notice of release from levy described in section 6343, the employer pays over to the district director, the director of the service center, or the director of the compliance center wages that would otherwise be paid to the employee on such Wednesday (less the exempt amount pursuant to section 6334).

* * * * *

(d) *Effective date.* These regulations are effective December 10, 1992.

Par. 3. Section 301.6331–2 is revised to read as follows:

§ 301.6331–2 Procedures and restrictions on levies.

(a) *Notice of intent to levy*—(1) *In general.* Levy may be made upon the salary, wages, or other property of a taxpayer for any unpaid tax no less than 30 days after the district director, the director of the service center, or the director of the compliance center has notified the taxpayer in writing of the intent to levy. The notice must be given in person, be left at the dwelling or usual place of business of the taxpayer, or be sent by registered or certified mail to the taxpayer's last known address. The notice of intent to levy is separate from, but may be given at the same time as, the notice and demand described in § 301.6331–1.

(2) *Content of Notice.* The notice of intent to levy is to contain a brief statement in non-technical terms concerning the following information—

(i) The Internal Revenue Code provisions and the procedures relating to levy and sale of property;

(ii) The administrative appeals available with respect to the levy and sale of property and the procedures relating to such appeals;

(iii) The alternatives available that could prevent levy on the property (including the use of an installment agreement under section 6159); and

(iv) The Internal Revenue Code provisions and the procedures relating

to redemption of property and release of liens on property.

(b) *Uneconomical levy*—(1) *In general.* No levy may be made on property if the district director estimates that the anticipated expenses with respect to the levy and sale will exceed the fair market value of the property. The estimate is to be made on an aggregate basis for all of the items that are anticipated to be seized pursuant to the levy. Generally, no levy should be made on individual items of insignificant monetary value. For the definition of fair market value, see § 301.6325–1(b)(1)(i). See § 301.6341–1 concerning the expenses of levy and sale.

(2) *Time of estimate.* The estimate, which may be formal or informal, is to be made at the time of the seizure or within a reasonable period of time prior to a seizure. The estimate may be based on earlier estimates of fair market value and anticipated expenses of the same or similar property.

(3) *Examples.* The following examples illustrate the application of this paragraph:

Example 1. A district director anticipates that Taxpayer A has only one item of property that can be seized and sold. This item is estimated to have a fair market value of $250.00. The district director also estimates that the costs of seizure and sale will total $300.00 if this item is seized. The district director is prohibited from levying on this one item of Taxpayer A's property because the costs of seizure and sale are estimated to exceed the property's fair market value.

Example 2. The facts are the same as in *Example 1* except that the district director anticipates that Taxpayer A has 10 items of property that can be seized and sold. Each of those items is estimated to have a fair market value of $250.00. The district director also estimates that the costs of seizure and sale will total $300.00 regardless of how many of those items are seized. The district director is prohibited from levying on only one item of Taxpayer A's property because the cost of seizure and sale are estimated to exceed the fair market value of the single item of property. The district director, however, would not be prohibited from levying on two or more items of Taxpayer A's property because the aggregate fair market value of the seized property would exceed the estimated costs of seizure and sale.

Example 3. A taxpayer has three items of property, A, B, and C. The district director anticipates that the value of items A, B, and C depends on their being sold as a unit. The district director estimates that due to high anticipated costs of storing or maintaining item B prior to the sale, the aggregate fair market value of items A, B, and C will not exceed the anticipated expenses of seizure and sale if all three items are seized. Accordingly, the district director is prohibited from levying on items A, B and C.

Example 4. The facts are the same as in *Example 3* except that the district director does not anticipate that the value of items A, B, and C depends on those items being sold as a unit. If the district director estimates that the aggregate fair market value of items A and C exceeds the aggregate anticipated costs of the seizure and sale of those two items, items A and C can be seized and sold. The district director is prohibited from levying on item B because the high cost of storing or maintaining item B prevents the aggregate fair market value of items A, B, and C from exceeding the anticipated expenses of seizure and sale if all three items are seized.

(c) *Restriction on levy on date of appearance.* Except for continuing levies on salaries or wages described in § 301.6331–1(b)(1), no levy may be made on any property of a person on the day that person, or an officer or employee of that person, is required to appear in response to a summons served for the purpose of collecting any underpayment of tax from the person. For purposes of this paragraph (c), the date on which an appearance is required is the date fixed by an officer or employee of the Internal Revenue Service pursuant to section 7605 or the date, if any, fixed as the result of a judicial proceeding instituted under sections 7604 and 7402(b) seeking the enforcement of such summons.

(d) *Jeopardy.* Paragraphs (a) and (c) of this section do not apply to a levy if the district director finds, for purposes of § 301.6331–1(a)(2), that the collection of tax is in jeopardy.

(e) *Effective date.* These regulations will become effective on December 10, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–29633 Filed 12–10–92; 8:45]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 763; 92F–014P]

Dunnigan Hills Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Yolo County, California, to be known as "Dunnigan Hills." This proposal is the result of a petition filed by Ron McClendon of R.H. Phillips Vineyards.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by January 25, 1993.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; Attn: Notice No. 763.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey

(U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from R.H. Phillips Vineyards proposing to establish a viticultural area in northwestern Yolo County, California, to be known as "Dunnigan Hills." The proposed viticultural area is located near Sacramento, California, and between the Napa Valley viticultural area on the west and the Clarksburg, Merritt Island and Lodi viticultural areas to the southeast. The proposed area contains approximately 89,000 acres, of which 1,118 acres are planted to vineyards. The terrain in the proposed viticultural area is characterized by gently rolling hills of 100 to 400 feet elevation. The petitioner states that two wineries and 6 vineyards are located within the proposed viticultural area.

Evidence of Name

According to the petitioner, the Dunnigan Hills area was settled in the 1850's and 1860's by western Europeans who raised grain and livestock. In 1853, A.W. Dunnigan opened a hotel which was known as Dunnigan's. In 1876, the Northern Railway was extended to Dunnigan's hotel and a town plat was recorded for the town of Dunnigan. The nearby hills were soon known as the Dunnigan Hills.

Evidence that the name of the proposed area is locally and/or nationally known as referring to the area specified in the petition includes:

(a) The name "Dunnigan Hills" appears on each of the three U.S.G.S. maps submitted with the petition.

(b) The name "Dunnigan Hills" appears in the United States Department of Agriculture Soil Survey of Yolo County California (1972).

(c) The petitioner states that the name "Dunnigan Hills" was used to describe the subject area as early as 1913 by Tom Gregory in A History of Yolo County and as recently as 1987 by Joann Larkey, in Yolo County, Land of Changing Patterns.

Evidence of Boundaries

Each of the U.S.G.S. maps used to delineate the boundary of the proposed area shows the name "Dunnigan Hills" over an area which roughly coincides with the boundaries of the proposed Dunnigan Hills viticultural area. According to the petitioner, the southern, eastern and northern boundaries of the Dunnigan Hills are distinguished by a change from the low, rolling hills of the proposed area to the flat terrain of the floor of the Sacramento Valley. On the west, the terrain changes to the steeper and higher slopes of the Coast Range.

Geographical Features

The Dunnigan Hills are a group of low, rolling hills running in a northwest to southeasterly direction for about 19.5 miles. At the widest point, the hills are about 10 miles wide.

The petitioner provided the following evidence relating to features which he contends distinguish the proposed viticultural area from the surrounding areas:

Topography and Elevation

The Dunnigan Hills rise out of a part of the Sacramento Valley which is nearly flat, varying only between 60 and 130 feet above sea level. In contrast to the surrounding valley floor, the proposed area consists of low, rolling hills, which rise to an elevation of about 400 feet above sea level. The hills are crossed by streams that flow west to east out of the Coast Range. On the west, the Dunnigan Hills drop to an elevation of approximately 250 feet before the transition to the steeper, higher slopes of the Coast Range begins. The terrain in the Coast Range rises rapidly to 1,200 and 1,600 feet, with peaks which are even higher.

Soil

The predominant soils in the proposed area are the Corning-Hillgate association, well-drained, gently sloping to moderately steep gravelly loams or loams on terraces, and the Sehorn-Balcom association, well-drained, gently sloping to steep silty clay loams and clays over sandstone. Soils outside the area include the Dibble-Millsholm and Positas associations in the foothills of the Coast Range to the west, and the Yolo-Brentwood, Rincon-Marvin-Tehama, Capay-Clear Lake and Willows-Pescadero associations on the valley floor to the north, south and east.

Climate

The petitioner states that the proposed area is warmer in the summer and winter than the Coast Range highlands to the west. He also states that the area is less prone to frost damage in the spring than the rest of the Sacramento Valley because "the hills and streams provide better air drainage than that found on the valley floor to the north, east and south of the Dunnigan Hills." This air drainage also makes the proposed area cooler than the surrounding valley floor in summer.

Proposed Boundary

The boundary of the proposed Dunnigan Hills viticultural area may be found on three United States Geological Survey (U.S.G.S.) maps with a scale of 1:62500. The boundary is described in § 9.145.

Executive Order 12291

It has been determined that this proposed regulation is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties concerning this proposed viticultural area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of

the person submitting a comment is not exempt for disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.145 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.145 Dunnigan Hills.

(a) *Name.* The name of the viticultural area described in this section is "Dunnigan Hills."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Dunnigan Hills viticultural area are three U.S.G.S. 15 minute series topographical maps of the 1:62500 scale. They are titled:

(1) "Guinda, Calif.," 1959.

(2) "Dunnigan, Calif.," 1953.

(3) "Woodland, Calif.," 1953.

(c) *Boundary.* The Dunnigan Hills viticultural area is located in Yolo County, California. The boundary is as follows:

(1) The beginning point is on the Dunnigan, Calif., U.S.G.S. map at the intersection of Buckeye Creek and U.S. Route 99W just south of the Colusa—Yolo county line;

(2) From the beginning point, the boundary follows Route 99W in a southeasterly direction until an unnamed westbound light-duty road coincident with a grant boundary (referred to by the petitioner as County Road 17) diverges from Route 99W just north of the town of Yolo, California, on the Woodland, Calif., U.S.G.S. map;

(3) The boundary then follows the Country Road 17 for approximately 2 miles to an unnamed southbound light duty road (referred to by the petitioner as County Road 95A);

(4) The boundary then follows County Road 95A south for approximately ½ mile to an unnamed westbound light duty road (referred to by the petitioner as County Road 17A);

(5) The boundary then proceeds west along County Road 17A for approximately ⅜ mile to an unnamed southbound light duty road (referred to by the petitioner as County Road 95);

(6) The boundary then proceeds south along County Road 95 for approximately 1 mile to an unnamed light duty road which goes in a southwesterly direction (referred to by the petitioner as County Road 19);

(7) The boundary than proceeds southwest along County Road 19 for approximately ¼ mile to an unnamed light duty road which travels south-southwest (referred to by the petitioner as County Road 94B);

(8) The boundary then proceeds southwest along County Road 94B approximately 1¼ mile until it intersects Cache creek

(9) The boundary then follows Cache Creek in a westerly direction 5.5 miles until it intersects an unnamed north-south light duty road approximately 1 mile north of the city of Madison, California (referred to by the petitioner as County Road 89);

(10) The boundary then follows County Road 89 two miles in a northerly direction back on to the Dunnigan, Calif., U.S.G.S. map where it intersects an unnamed light duty road (referred to by the petitioner as County Road 16);

(11) The boundary follows County Road 16 west for approximately 2 miles onto the Guinda, Calif., U.S.G.S. map, where it turns north onto an unnamed light-duty road between sections 31 and 32 of T10N/R1W (referred to by the petitioner as County Road 87);

(12) The boundary follows County Road 87 north for 2 miles to an unnamed east-west light duty road (referred to by the petitioner as County Road 14);

(13) The boundary follows County Road 14 west for 3 miles, and then leaves the unnamed road and turns north on the dividing line between sections 22 and 23 of T11N/R2W;

(14) The boundary continues due north until it intersects Little Buckeye Creek just south of the Yolo-Colusa county line;

(15) The boundary then follows Little Buckeye Creek in an easterly direction until it joins Buckeye Creek;

(16) The boundary then follows Buckeye Creek in an easterly direction back to the point of beginning on the Dunnigan, Calif., U.S.G.S. map.

Stephen E. Higgins,

Director.

[FR Doc. 92-30002 Filed 12-10-92; 8:45 am]

BILLING CODE 4810-31-M

POSTAL SERVICE

39 CFR Part 111

Address Information Product Cycle and Mandatory Update Change

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This rule proposes to change the frequency of required use of updated address information product files from four times a year to six times a year. The Computerized Delivery Sequence File (CDS) will not be affected by the frequency change. This action will reduce the potential for outdated address information being applied to mailings.

DATES: Comments must be received on or before January 18, 1993.

ADDRESSES: Written comments should be directed to Susan Hawes, Address Management Office, Customer Service Support, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., room 5801, Washington, DC 20260-6803.

Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Address Management Office, Customer Service Support, room 5801, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260-6803.

FOR FURTHER INFORMATION CONTACT: Susan Hawes, (202) 268-3503.

SUPPLEMENTARY INFORMATION: The Postal Service makes a variety of address information products available to mailers for the purpose of validating mailing address information and obtaining access to postal rate discounts. The Postal Service proposes to change the current quarterly product cycle dates for these products to bimonthly cycles. The requirements and mandatory usage dates for these products will remain unchanged (i.e., CRIS, 75 days; ZIP+4, 6 weeks). Currently updates are produced by January 15, April 15, July 15, and October 15 of each year. Mailers are then required to update their lists within a specified time to qualify for certain postage discounts. For example, mailers using the Carrier Route

Information System (CRIS) product to qualify for carrier-route discounts are given two and one-half months to update their lists, so that use of information from the updated CRIS products becomes mandatory April 1, July 1, October 1, and January 1, respectively. The time provided mailers to update their list varies by product.

(Note: The following charts are based on the CRIS product cycle and are provided as examples designed to enhance the understanding of the proposed cycle changes.)

PRESENT QUARTERLY UPDATE SCHEDULE
[CRIS Product]

Release date	Mandatory use date	Period covered
January 15	April 1	January 15 to June 30 (5½ months).
April 15	July 1	April 15 to September 30 (5½ months).
July 15	October 1	July 15 to December 31 (5½ months).
October 15	January 1	October 15 to March 31 (5½ months).

In addition to the regular quarterly updates, monthly update information is also available to mailers. The use of monthly update information is not mandatory; however, many mailers find the monthly updates valuable as a fresh data source for maintaining the most current and accurate quality information possible.

During fiscal year 1991, 8 million changes occurred to the Address Management System (AMS) database containing approximately 29 million address records. This translates to approximately 667,061 changes per month. Due to the dynamic nature of this database, the Postal Service has concluded that the current period covered by each mandatory quarterly update is no longer sufficient, and that increasing the frequency of the mandatory updates of all Address Information System (AIS) products and their use by mailers will decrease the potential for "stale" mailings which must be rehandled by the Postal Service.

Accordingly, based on discussions with mailers concerning the optimum number of mandatory updates for these products, the Postal Service proposes to increase the mandatory update frequency for all address information products from four to six times per year. This increase in frequency will apply to the following address information products.

CRIS File
Five Digit File
Delivery Statistics
City State File
CRIS Cross File
File
Zip+4 File
County Cross File

The time provided to mailers to update their mailing lists after receipt of an updated product would remain unchanged. Because of a concern to avoid unduly increasing mailers' processing costs, the Postal Service believes that updates more frequent than every other month are not appropriate at this time.

Based on the use of more frequently updated and therefore more accurate address information, mailers are expected to realize the following benefits.

—More mail qualifying for presort discounts based on the use of the later information available.
—Enhanced timeliness of delivery based on the use of up-to-date carrier route numbers and 5-digit ZIP Codes for addresses that have changed.
—More stable rates because of less rehandling volume.

The following chart lists the proposed CRIS product update release dates, the proposed mandatory use dates, and the period covered by each update.

The implementation of the revised schedule will begin no sooner than December 20, 1992, the next effective date of the Domestic Mail Manual (DMM).

PROPOSED UPDATE SCHEDULE
[CRIS Product]

Release date	Mandatory use date	Period covered
February 15	May 1	February 15 to June 30 (4½ months).
April 15	July 1	April 15 to August 31 (4½ months).
June 15	September 1	June 15 to October 31 (4½ months).
August 15	November 1	August 15 to December 31 (4½ months).
October 15	January 1	October 15 to February 28 (4½ months).
December 15	March 1	December 15 to April 30 (4½ months).

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation in 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 122—DELIVERY ADDRESS

2. In 122.441, Delivery Statistics File, change the fifth sentence to read: "The information is updated monthly via transaction files and can be ordered either with a single base file in the initial shipment or with a base file furnished bimonthly."

PART 323—PRESORTED AND CARRIER ROUTE FIRST-CLASS MAIL

3. In 323.2, Carrier Route First-Class Mail, revise the sixth sentence to read as follows: "Mailers must incorporate Carrier Route Information System (CRIS) changes in their mailings within 75 days of each effective date of the bimonthly updates, which are February 15, April 15, June 15, August 15, October 15, December 15."

PART 424—ADDITIONAL ELIGIBILITY REQUIREMENTS FOR SPECIFIC [SECOND CLASS] RATES

424.7 Walk-Sequence Rates

4. In 424.773, DSF, change the first sentence to read: "The Delivery Sequence File (DSF) is updated bimonthly."

424.8 Additional Requirements for Presort Rates

5. In 424.832, Proper Makeup, change the first sentence to read: "Mailers are responsible for makeup of mail to carrier routes according to the information published bimonthly in the Carrier Route Information System (CRIS)." Change the second sentence to read: "Mailers must incorporate Carrier Route Information System (CRIS) changes in their mailings within 75 days of the effective date of the bimonthly updates, which are February 15, April 15, June 15, August 15, October 15, December 15."

PART 531—CODING ACCURACY SUPPORT SYSTEM (CASS) CERTIFICATION [AUTOMATION-COMPATIBLE MAIL]

6. Change 531.14, Use of Current Information, to read: "When used for ZIP+4 coding or ZIP+4 barcoding, the ZIP+4 matching software and methods described in 531.11 through 531.13 must have a valid CASS certification. The matching software must use the current Postal Service ZIP+4 file that includes all applicable monthly or bimonthly change transaction files.".

7. Change 535.1a, ZIP+4 Database Product Description, to read: "ZIP+4 Database Tape and Bimonthly Cumulative Updates, which contain a master copy of the ZIP+4 database plus bimonthly updates of all additions, changes, or deletions that occurred within the database since the last release date.".

PART 624—PREPARATION OF SPECIFIC [THIRD-CLASS] BULK RATES

624.3 Eligibility for Carrier Route Presort Rate

8. In 624.361, Proper Makeup, change the first and second sentences to read: "Mailers are responsible for makeup of mail to carrier routes according to the information published bimonthly in the Carrier Route Information System (CRIS). Mailers must incorporate Carrier Route Information System (CRIS) changes in their mailings within 75 days of the bimonthly updates, which are February 15, April 15, June 15, August 15, October 15, December 15.".

9. In 624.362(b), change the heading to read as follows: "CRIS Hard-Copy (Paper) Bimonthly Updates and Monthly Scheme Changes.". Change the last sentence to read as follows: "Customers requesting updates to bimonthly Carrier Route Information System (CRIS) scheme information are provided updates on a complete zone-by-zone basis each month.".

10. In 624.362(c), change the heading to read as follows: "CRIS Bimonthly Updates and Monthly Scheme Microfiche Changes.". Change the last sentence to read as follows: "Customers requesting updates to bimonthly Carrier Route Information System (CRIS) scheme information are provided entire new sets to fiche each month that include all the monthly updates.".

11. In 624.362(d), change the heading to read as follows: "CRIS Bimonthly Updates and Monthly Scheme Tape Changes.".

12. In 624.362(f), Other Methods, change the third and fourth sentences to read as follows: "However, the mailer is responsible for sorting in accordance with the latest bimonthly CRIS scheme provided in 624.362(a) through 624.362(f). The mailer is considered to have made a sorting error only if the mail is not sorted according to the latest bimonthly CRIS scheme.".

624.8 Walk-Sequence Reduction

13. In 624.873, Delivery Sequence Information, change the first sentence to read: "The Delivery Sequence File (DSF) is updated bimonthly.".

PART 763—[FOURTH CLASS] CARRIER ROUTE BOUND PRINTED MATTER

763.2 Current Scheme

14. In 763.222, change the heading to read: "CRIS Hardcopy (Paper) Bimonthly Updates and Monthly Scheme Changes.". Change the last sentence to read: "Customers requesting updates to bimonthly CRIS scheme information are provided updates on a complete zone-by-zone basis each month.".

15. In 763.223, change the heading to read: "CRIS Bimonthly Updates and Monthly Scheme Microfiche Changes.". Change the last sentence to read: "Customers requesting updates to bimonthly scheme information are provided entire new sets of fiche each month that include all monthly updates.".

16. In 763.224, change the heading to read: "CRIS Bimonthly Updates and Monthly Scheme Tape Changes.".

17. In 763.23, Other Methods, change the third sentence to read: "However, the mailer is responsible for sorting in accordance with the latest bimonthly CRIS scheme provided in 624.362.".

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 92-30110 Filed 12-10-92; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 61, 64, and 69

[CC Docket Nos. 91-141, 91-213, 92-222, and 80-286; DA 92-1606]

Expanded Interconnection With Local Telephone Company Facilities; Transport Rate Structure and Pricing; Allocation of General Support Facility Costs; Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Commission grants in part and denies in part (DA 92-1606) a Motion to Restructure Pleading Cycles by the United States Telephone Association. The revised comment dates spread the burden of the comments and other pleadings in these dockets over a longer, more manageable time frame, while ensuring that all of these proceedings move forward in a timely manner.

DATES: Comments on Allocation of General Support Facility Costs (CC Docket No. 92-222) are due on December 4, 1992, and reply comments are due on December 21, 1992. Comments on Expanded Interconnection—Separations (CC Docket Nos. 92-141 and 80-286) are due on December 21, 1992, and reply

comments are due on January 22, 1993. Comments on Expanded Interconnection—Transport—Phase I (CC Docket No. 91–141) are due on January 14, 1993, and replies are due on February 19, 1993. Comments on Transport Rate Structure and Pricing (CC Docket No. 91–213) are due on February 1, 1993, and reply comments are due on March 9, 1993. Comments on Expanded Interconnection—Transport—Phase II (CC Docket No. 91–141) are due on March 3, 1993, and reply comments are due on April 2, 1993.

ADDRESSES: Parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street, NW., Washington, DC 20554. Two copies of the comments concerning the separations issues are also to be filed with all CC Docket No. 80–286 Federal-State Joint Board Commissioners, staff members, and other persons listed in Appendix A of Expanded Interconnection with Local Telephone Company Facilities and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 91–141 and 80–286, FCC 92–441 (released Oct. 16, 1992) (Expanded Interconnection Notice).

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten (202–653–6975), Linda L. Haller (202–632–1298), or David L. Sieradzki (202–632–1304), Policy & Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: The proposed rules originally appeared in the **Federal Register** at Transport Rate Structure and Pricing, 57 FR 54205 (Nov. 17, 1992); Allocation of General Support Facility Costs, 57 FR 54542 (Nov. 19, 1992), and Expanded Interconnection with Local Telephone Company Facilities and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board.

1. The United States Telephone Association, Inc. (USTA) has requested that the pleading cycles in the above-captioned proceedings be restructured.[1] USTA proposes no changes in the comment dates in the proceeding on the allocation of general support facility (GSF) costs[2] and the Joint Board proceeding on the separation of expanded interconnection costs.[3] USTA proposes extending the comment dates in the Transport Rate Structure and Pricing proceeding[4] and in Phases I and II of the Expanded Interconnection proceeding.[5] Under USTA's proposal, comments in Phase I of the Expanded Interconnection proceeding would be due on January 8, 1993, and replies would be due on February 9, 1993; and comments in Phase II of the Expanded Interconnection proceeding would be due on February 24, 1993, and replies would be due on March 26, 1993. Comments in the Transport proceeding would be due on March 30, 1993, and replies would be due on May 7, 1993, more than six months after release of the recent order.

2. In support of its request, USTA states that the schedules in these proceedings require a large number of filings, including comments, tariff filings, and petitions for reconsideration, within a short time frame. Given the novelty of the issues and the complexity of the required tasks, USTA argues that a restructured pleading cycle would promote more efficient use of resources by the Commission and the parties, and would not affect the pace of policy implementation. Several parties, including LECs, competitive access providers, and interexchange carriers, filed comments generally supporting USTA's proposal.[6]

3. While we do not routinely grant extensions of time,[7] we believe that USTA has shown good cause for a limited extension of time. There are an extraordinary number of filings due during December and January in these proceedings, as well as possible petitions for reconsideration and activities related to the tariff revisions reflecting the policies we have adopted concerning expanded interconnection and transport. We believe, however, that USTA's proposed comment and reply dates for the Transport proceeding would result in undue delay. Instead, we restructure the pleading cycle in a manner that ensures that both the Expanded Interconnection and Transport proceedings more forward in a timely manner.

4. We therefore adopt the following schedule:

December 4, 1992: Comments on Allocation of GSF Costs (CC Docket No. 92–222) (no change)

December 21, 1992: Reply comments on Allocation of GSF Costs (CC Docket No. 92–222) (no change). Comments to Joint Board on Separation of Expanded Interconnection Costs (CC Docket Nos. 91–141 and 80–286) (no change)

January 14, 1993: Comments on Expanded Interconnection for Switched Transport (Phase I) (CC Docket No. 91–141)

January 22, 1993: Reply comments to Joint Board on Separation of Expanded Interconnection Costs (CC Docket Nos. 91–141 and 80–286) (no change)

February 1, 1993: Comments on Transport Rate Structure and Pricing (CC Docket No. 91–213)

February 19, 1993: Reply comments on Expanded Interconnection for Switched Transport (Phase I) (CC Docket No. 91–141)

March 3, 1993: Comments on Expanded Interconnection—Competitive Switched Access Networks (Phase II) (CC Docket No. 91–141)

March 9, 1993: Reply comments on Transport Rate Structure and Pricing (CC Docket No. 91–213)

April 2, 1993: Reply comments on Expanded Interconnection—Competitive Switched Access Networks (Phase II) (CC Docket No. 91–141)

5. Accordingly, it is *Ordered that* the USTA Motion to Restructure Pleading

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[1] Motion to Restructure Pleading Cycles by the United States Telephone Association (Nov. 10, 1992).

[2] Expanded Interconnection with Local Telephone Company Facilities and Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 91-141 and 92-222, FCC 92-440 (released Oct. 19, 1992) (Expanded Interconnection Order), ¶¶ 267-69. The comment date on the allocation of GSF is December 4, 1992 and the reply comment date is December 21, 1992.

[3] Expanded Interconnection with Local Telephone Company Facilities and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 91-141 and 80-286, FCC 92-441 (released Oct. 16, 1992) Expanded Interconnection Notice), ¶¶ 54-55. The comment date on separation of expanded interconnection costs is December 18, 1992, and the reply comment date is January 22, 1993.

[4] Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, FCC 92-442 (released Oct. 16, 1992) (Transport Order and Notice). Comments are due on December 18, 1992, and replies are due on January 21, 1993.

[5] Expanded Interconnection Notice, ¶¶ 1-53. Comments on Phase I are due on December 4, 1992 and replies are due on December 21, 1992. Comments on Phase II are due on December 21, 1992, and replies are due on January 22, 1993.

[6] MCI Telecommunications Corp. Comments (Nov. 24, 1992); MFS Communications Co., Inc. Comments (Nov. 24, 1992); *Ex Parte* Letter from Lisa M. Zaina, General Counsel, Organization for the Protection and Advancement of Small Telephone Companies, to James D. Schlichting, Chief, Policy and Program Planning Commission (Nov. 20, 1992); Rochester Comments (Nov. 16, 1992); Sprint Communications Co. Comments (Nov. 20, 1992) (generally supporting USTA proposal but suggesting modifications to schedule that would slightly advance date of Transport comments and slightly postpone date of Transport replies); WilTel, Inc. Comments (Nov. 16, 1992).

[7] 47 CFR 1.46(a).

Cycles is granted to the extent provided herein, and otherwise is denied.*

Federal Communications Commission.

James D. Schlichting,

Chief, Policy and Program Planning Division, Common Carrier Bureau.

[FR Doc. 92-29029 Filed 12-10-92; 8:45 am]

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47 CFR Part 73

[MM Docket No. 92-238, RM-8086]

Radio Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KAEZ-FM, Inc., permittee of Station KAEZ-FM, Channel 289A, Amarillo, Texas, seeking the substitution of Channel 289C3 for Channel 289A at Amarillo, Texas, and the modification of Station KAEZ-FM's license accordingly. Channel 289C3 can be allotted to Amarillo in compliance with the Commission's minimum distance separation requirements and can be used at Station KAEZ-FM's licensed site. The coordinates for Channel 289C3 at Amarillo are North Latitude 35-12-28 and West Longitude 101-51-18. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 289C3 at Amarillo or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 4, 1993, and reply comments on or before January 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eric S. Kravetz, Esq., Brown Nietert & Kaufman, 1920 N Street, NW., suite 660, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-238, adopted September 28, 1992, and released November 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640 Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-30064 Filed 12-10-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-243; RM-7700]

Television Broadcasting Services; Frederiksted, Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Luis E. Rosa seeking the allotment of UHF Channel 66 as the community's first local television broadcast service. Channel 66 can be allotted to Frederiksted in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 66 are North Latitude 17-42-48 and West Longitude 64-53-00.

DATES: Comments must be filed on or before January 4, 1993, and reply comments on or before January 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, Esq., Route 1, Box 203A, Castleton, Virginia 22716 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making MM Docket No. 92-243, adopted October 1, 1992, and released November 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-30066 Filed 12-10-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR 73

[MM Docket No. 92-244-RM-8027]

Radio Broadcasting Services; Charlotte Amalie, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert E. Miller, Jonathan Cohen and Arthur V. Belendiuk, d/b/a Calypso Communications, proposing the substitution of Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands, and the modification of Station WVNX(FM)'s construction

*This action is taken pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended; 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291.

permit accordingly. Channel 267B can be allotted to Charlotte Amalie in compliance with the Commission's minimum distance separation requirements at petitioner's present construction site with a site restriction of 20 kilometers (12.9 miles) east. The coordinates for channel 267B at Charlotte Amalie are North Latitude 18–20–30 and West Longitude 64–43–59.

DATES: Comments must be filed on or before January 4, 1993, and reply comments on or before January 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur V. Belendiuk, Esq., Smithwick and Belendiuk, P.C., 1990 M Street, NW., suite 510, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–244, adopted October 1, 1992, and released November 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30063 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Tidewater Goby

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the tidewater goby (*Eucyclogobius newberryi*) as endangered, as provided by section 4 of the Endangered Species Act of 1973, as amended (Act). The tidewater goby is a fish that occurs in tidal streams associated with coastal wetlands in California. This species has significantly declined throughout its historic range and continues to be threatened by loss and degradation of its coastal habitat. Since 1900, the tidewater goby has disappeared from nearly 50 percent of the coastal lagoons within its historic range, including 74 percent of the lagoons south of Morro Bay. Only three populations currently exist south of Ventura County. The Service seeks comments and data from the public on this proposed rule.

DATES: Comments from all interested parties must be received by February 9, 1993. Public hearing requests must be received by January 25, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Office Supervisor, U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003 (telephone 805/644–1766). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Donna C. Brewer, Ventura Field Office (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The tidewater goby, *Eucyclogobius newberryi* (Girard), is a small fish, rarely exceeding 50 mm (2 inches) standard length, and is characterized by large pectoral fins and a ventral sucker-like disk formed by the complete fusion of the pelvic fins. The tidewater goby was first described as a new species (*Gobius newberryi*) by Girard (1856) from specimens collected in the San Francisco Bay area. Based on Girard's specimens, Gill (1862) reassigned *Gobius newberryi* to the newly described genus *Eucyclogobius* (Eschmeyer 1990).

A member of the family Gobiidae, the tidewater goby is the only species in the genus *Eucyclogobius* and is almost unique among fishes along the U.S. Pacific coast in its restriction to low-salinity waters in California's coastal wetlands. All life stages of tidewater gobies are found at the upper end of lagoons in salinities less than 10 parts per thousand (ppt). Although its closest relatives are marine species, the tidewater goby does not have a marine life history phase. This lack of a marine phase severely restricts the frequency of genetic exchange between coastal lagoon populations and significantly lowers the potential for natural recolonization of a locality once extirpated. Studies by Crabtree (1985) noted that some populations of gobies have differentiated genetically, indicating long isolation. Tidewater gobies have a shorter lifespan, and seem to be an annual species (Swift 1990; Irwin and Stoltz 1984), further restricting their potential to recolonize habitats from which they have been extirpated.

The tidewater goby occurs in shallow water (less than 1 meter (3 ft) deep), on the substrate, in loose aggregations of a few to several hundred individuals (Swift *et al.* 1989). Peak nesting activities commence in late April or early May, when male gobies dig a vertical nesting burrow 10–20 centimeters (4–8 in) deep in clean, coarse sand. Suitable water temperatures for nesting are 18–22 °C with salinities of 5–10 ppt. Male gobies remain in the burrows to guard eggs, which are hung from the ceiling and walls of the burrow until hatching. Larval gobies are found midwater around vegetation until they become benthic (Swift *et al.* 1989). Although the potential for year-round spawning exists, it is probably unlikely, because of seasonal low temperatures and disruptions of lagoons during winter storms. Although usually associated with lagoons, the tidewater goby has been documented in ponded freshwater habitats as far as 8 km (5 miles) upstream from San Antonio lagoon in Santa Barbara County (Irwin and Stoltz 1984).

Currently, the tidewater goby is discontinuously distributed throughout California, ranging from Tillas Slough (mouth of the Smith River), Del Norte County, south to Agua Hedionda Lagoon in San Diego County. Areas of precipitous coastlines that preclude the formation of lagoons at stream mouths

have created three natural gaps in the distribution of the goby. Gobies are apparently absent from three sections of the coast, between: (1) Humboldt Bay and Ten Mile River, (2) Point Arena and Salmon Creek, and (3) Monterey Bay and Arroyo del Oso.

Roughly 10 percent of the coastal lagoons presently containing populations of tidewater goby are under Federal ownership. Over 40 percent of the remaining populations are either wholly or partly owned and managed by the State of California. The remainder are privately owned.

Previous Federal Action

The tidewater goby was first classified by the Service as a category 2 species in 1982 (47 FR 58454). It was reclassified as a category 1 candidate in 1991 (56 FR 58804) based on status and threat information in Swift *et al.* (1989). Category 2 applies to taxa for which information in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not available to support proposed rules. Category 1 applies to taxa for which the Service has on file substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. On October 24, 1990, the Service received a petition from Dr. Camm Swift, Associate Curator of Fishes at the Los Angeles Museum of Natural History, to list the tidewater goby as endangered (Swift 1990). The Service's finding that this petition presented substantial information that the requested action may be warranted was published on March 22, 1991 (56 FR 12146). Following this finding, the Service initiated a status review on the tidewater goby.

Section 4(b)(3)(B) of the Endangered Species Act (Act), as amended in 1982, requires the Secretary to make a finding within 12 months of the date a petition is received as to whether or not the requested action is warranted. Based on the additional information supplied by Dr. Swift's petition, this proposed rule constitutes the Service's finding that the petitioned action is warranted. The petition, status surveys, and accompanying data describe the goby as imperiled owing to past and continuing wide-ranging losses of coastal and riparian habitats within its historic range.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the tidewater goby (*Eucyclogobius newberryi*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Coastal development projects that result in the loss of coastal saltmarsh habitat are currently the major factor affecting the tidewater goby. Coastal marsh habitats have been drained and reclaimed for residential and industrial developments, and waterways have been dredged for navigation and harbors, resulting in permanent and direct losses of wetland habitats as well as indirect losses due to associated changes in salinity. Coastal road construction projects have severed the connection between marshes and the ocean, resulting in unnatural temperature and salinity profiles that the tidewater goby cannot tolerate.

Furthermore, upstream water diversions adversely affect the tidewater goby by altering downstream flows, thereby diminishing the extent of marsh habitats that occurred historically at the mouths of most rivers and creeks in California. Alterations of flows upstream of coastal lagoons has already changed the distribution of downstream salinity regimes. Since the tidewater goby has relatively narrow salinity tolerances, changes in salinity distributions due to upstream water diversions may adversely affect both the size and distribution of goby populations (D. Holland, Univ. of Southwestern Louisiana, pers. comm., 1991).

Historically, the tidewater goby occurred in at least 87 of California's coastal lagoons (Swift *et al.* 1989). Since 1900, it has disappeared from approximately 50 percent of formerly occupied lagoons. A rangewide status survey conducted in 1984 found that 22 historic populations of tidewater goby had been extirpated (Swift *et al.* 1989). Only 5 years later, a subsequent status survey documented the disappearance of an additional 21 populations. In the San Francisco Bay area, 9 of 10 previously identified populations have disappeared (Swift *et al.* 1989, 1990). Losses in the southern part of the State have been greatest, including 74 percent of the coastal lagoons south of Morro Bay. Only three populations currently remain south of Ventura County. Since 1989, three additional tidewater goby populations have been lost, in San Luis Obispo and Santa Cruz counties (Swift *et al.* 1989, 1990). Five small populations have been rediscovered since 1984, but the overall losses indicate a decline of 35 percent rangewide in only 6 years (Holland 1991a, 1991b, 1991c; Swift *et al.* 1991).

Of the 43 remaining populations of tidewater gobies identified by Swift *et al.* (1990), most are small and threatened by a variety of both human and natural factors. According to Swift *et al.* (1990), only 6 extant localities contain populations that are considered large enough and free enough from habitat degradation to be safe for the immediate future. These areas are all located north of San Francisco Bay. The remaining lagoons are so small or so modified that tidewater goby populations are restricted in distribution and vulnerable to elimination (Swift *et al.* 1989, 1990). The number of extirpated localities of gobies has left remaining populations so widely separated throughout most of its range that recolonization is unlikely.

Several specific proposed and ongoing coastal development activities threaten habitats supporting tidewater gobies, including (1) road widening and bridge replacement projects along Highway 101, (2) water diversion projects in San Luis Obispo County, (3) expansion of several State Park Recreation areas in Santa Barbara and San Luis Obispo Counties, and (4) hotel and golf course developments in San Luis Obispo and Marin Counties.

In addition to these specific threats, the tidewater goby is vulnerable throughout its remaining range because of the loss of coastal marsh, as noted above and because of other effects of water diversions as well. In addition to restricting the goby's overall range by altering downstream salinities, water diversions and alternations of water flows may negatively impact the species' breeding and foraging activities. Gobies in southern and central California breed primarily in sand/mud substrates and apparently avoid areas that contain large amounts of decaying vegetation (Holland 1991b). Reductions in water flows may allow aggressive plant species to colonize the otherwise bare sand/mud substrates of coastal lagoon margins, thus degrading the habitat quality for the goby. Decreases in stream flows also reduce the deep stream pools utilized by gobies venturing upstream from lagoons. In San Luis Obispo County alone, the effects of drought, either directly or

exacerbated by upstream water diversions, have been responsible for the extirpation of at least three populations of gobies between 1986 and 1990 (K. Worcester, Calif. Dept. Fish Game, pers. comm., 1991).

The tidewater goby is also adversely affected by groundwater overdrafting and discharge of agricultural and sewage effluents. In Santa Barbara, for example, increased groundwater pumpage and siltation from topsoil runoff in the San Antonio Creek drainage has significantly affected areas immediately upstream of occupied goby habitat (i.e., Barka Slough) (C. Swift, Los Angeles County Museum of Natural History, pers. comm., 1991). Swift *et al.* (1989) cite evidence that enrichment by agricultural and sewage effluents may cause algal blooms and deoxygenation that restrict habitable areas of lagoons utilized by tidewater gobies, especially in summer. The potential for these factors to degrade remaining goby habitats has also been noted at all three extant localities south of Ventura County (D. Holland, pers. comm., 1991), and at several sites along the central California coast (T. Taylor, Calif. State Parks and Recreation, pers. comm. 1991; K. Worcester, pers. comm., 1991).

The tidewater goby is further threatened by channelization of the rivers it inhabits. Because most of the goby's localities have been moderately to extremely channelized, winter floods scour the species out of the restricted channelized areas where no protection is afforded from such high flows. This type of event was responsible for the disappearance of gobies from Waddell Creek lagoon in the winter 1972–73 (C. Swift, pers. comm., 1991), and they have not returned.

Finally, cattle grazing and feral pig activities also present a threat to the existence of the tidewater goby. These activities have resulted in increased sedimentation of coastal lagoons and riparian habitats, removal of vegetative cover, increased ambient water temperatures, and elimination of plunge pools and collapsed undercut banks utilized by tidewater gobies. In San Luis Obispo County, increased sedimentation into Morro Bay has significantly accelerated the conversion of wetland habitats to upland (Josselyn *et al.* 1989). Presently, cattle continue to graze freely both upstream and in many of the coastal lagoons supporting tidewater gobies (K. Worcester, pers. comm., 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not known to be applicable.

C. Disease or Predation

Over the past 20 years, at least 60 species of fishes have been introduced to the western states, 59 percent of which are predatory (Hayes and Jennings 1986, Jennings 1988). The introduction of exotic predators to southern California waters has been facilitated by the interbasin transport of water (e.g., California Aqueduct). Introduced predators, particularly centrarchid fishes, may have contributed to the elimination of tidewater gobies from several localities in California (Swift *et al.* 1989). The present-day absence of the tidewater gobies from the San Francisco delta area may well be explained by the presence of introduced predators such as striped bass (*Morone saxatilis*) and native predators including the Sacramento perch (*Archoplites interruptus*) (Swift *et al.* 1989, 1990). Two of the most recent disappearances of gobies from San Luis Obispo County (Old Creek) and San Diego County (San Onofre Creek) are likely due to the presence of largemouth bass (*Micropterus salmoides*) and green sunfish (*Lepomis cyanellus*), respectively. Natural predation on gobies by rainbow trout (*Oncorhynchus mykiss*) has been documented (Swift *et al.* 1989). Other non-native predators, specifically crayfish (*Cambarus spp.*) and mosquitofish (*Gambusia spp.*), may also threaten goby populations through direct predation on adults, larvae, or eggs.

D. The Inadequacy of Existing Regulatory Mechanisms

Section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act regulate the placement of dredge and fill materials into waters of the United States. Under section 404, nationwide permits, which undergo minimal public and agency review, can be issued for projects involving less than 10 acres of waters of the United States and adjacent wetlands, unless a listed species may be adversely affected. Individual permits, which are subject to more extensive review, are required for projects that affect greater than 10 acres.

The U.S. Army Corps of Engineers (Corps) is the agency responsible for administering the section 10 and section 404 programs. The Service, as part of the section 404 review process, provides comments on both pre-discharge notices for nationwide permits and public notices for individual permits. The Service's comments are only advisory, although procedures exist for elevation when disagreements between the agencies arise. In practice, the Corps' actions under section 10 and section 404 are insufficient to protect the tidewater goby.

Most projects within the range of the tidewater goby may require approval from the Corps as currently described in section 404 of the Clean Water Act. Projects proposed in coastal lagoons may also require a permit under section 10 of the Rivers and Harbors Act. Federal listing of this species would ensure greater consideration of the effects of permitted actions during the review process as well as provide the protections of section 7 of the Endangered Species Act.

The National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) require an intensive environmental review of projects that may adversely affect Federal candidate species. However, project proponents are not required to avoid impacts to this species, and proposed mitigation measures are frequently not adequately implemented. As with section 404 permits, the Service's comments through these environmental review processes are only advisory.

The California Coastal Act (CCA) regulates the approval of developments within the coastal zone. The continued loss and degradation of coastal wetlands since the CCA was enacted in 1974 attests to the limitations of this legislation, although a significant slowing in wetland losses has occurred.

E. Other Natural or Manmade Factors Affecting its Continued Existence

By far, the most significant natural factor adversely affecting the tidewater goby is drought, and resultant deterioration of coastal and riparian habitats. California has recently experienced 5 consecutive years of lower than average rainfall. These drought conditions, when combined with human induced water reductions (i.e., diversions of water from streams, excessive groundwater withdrawals) have degraded coastal and riparian ecosystems and have created extremely stressful conditions for most aquatic species. Formerly large populations of tidewater gobies have declined in numbers owing to reduced availability of suitable lagoon habitats (i.e., San Simeon Creek, Pico Creek), others disappeared owing to lack of water when the lagoons dried (i.e., Santa Rosa Creek). In San Luis Obispo County alone, 6 of 20 populations of tidewater gobies were extirpated between 1984 and 1989 owing to drought coupled with water diversions and pollution (K. Worcester, pers. comm., 1991).

Habitat degradation and losses of the tidewater goby from weather-related

natural phenomena commonly occur, due to the restriction of the species to coastal lagoon systems and its dependence on freshwater inflows. Events such as river flooding and heavy rainfall have been reported to destroy goby burrows and wash gobies out to sea. Storm surges that enter a lagoon may also adversely affect entire goby populations by rapidly changing salinity.

The tidewater goby was undoubtedly subjected to such natural flood events even before major human alteration of drainage basins. As mentioned under Factor A, channelization and urbanization have increased the frequency and perhaps the intensity of such flood events. In addition, populations of gobies are becoming more isolated from one another as intervening populations are extirpated, thus further decreasing the likelihood of successfully colonizing and reestablishing a population lost to a "natural" flood.

Competition with introduced species is a potential threat to the tidewater goby. Although problems have not been documented so far, the spread of two introduced oriental gobies (the yellowfin goby, *Acanthogobius flavimanus*, and chameleon goby, *Tridentiger trigonocephalus*) may have a detrimental effect on the tidewater goby. According to Swift *et al.* (1990), the chameleon goby was recently found in Pyramid Lake, probably imported with central California water. If this goby becomes established in the Santa Clara River as other imported species have (e.g., *Cottus asper*), the tidewater goby population at the mouth of the Santa Clara River may be at risk.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. The tidewater goby has been extirpated from nearly 50 percent of the lagoons within its historic range, including 74 percent of the lagoons south of Morro Bay. Forty-three populations remain; however, only 6 are large in number and reasonably free from immediate threats. Based on this evaluation, the preferred action is to list the tidewater goby as endangered. The tidewater goby has experienced substantial declines throughout its historic range, lives within specific habitat zones that have been, and will continue to be targeted for development and suffer degradation by human activities, and are extremely vulnerable to adverse habitat modification and to water quality changes. The tidewater goby is imminent danger of extinction throughout its range and requires the full protection of listing as endangered under the Act in order to survive. For the reasons discussed below, critical habitat is not being proposed at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. Furthermore, the Service is to designate critical habitat on the basis of the best scientific and commercial data available after taking into consideration the economic, and other relevant impacts of specifying an area as critical habitat (16 U.S.C. 1533(b)(2)). In the case of the tidewater goby, critical habitat is not presently determinable. A final designation of critical habitat requires detailed information on the possible economic effects of such a designation. The Service does not currently have sufficient information needed to perform the economic analysis. A delay in the proposed listing of the species in order to gather additional information and perform analyses would not serve the needs of the species. The Service will continue to gather information on this species, and will publish a determination on the designation of critical habitat at a later date.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act as codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A number of Federal agencies or departments control lands that support the tidewater goby. These agencies include the Department of Defense (U.S. Army Corps of Engineers, U.S. Navy, U.S. Air Force, and U.S. Marine Corps) and Department of the Interior (National Park Service and U.S. Fish and Wildlife Service). Federal actions that may be affected by this proposal would be the funding or authorization of projects within the species' habitat, including the construction of roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), and special use permits. Other Federal actions that are subject to environmental review under the National Environmental Policy Act would also require consultation with the Service. Projects on federally owned land would also be subject to the provisions of section 7 of the Endangered Species Act.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental

take in connection with otherwise lawful activities, and for economic hardship under certain circumstances. Requests for copies of the regulations on listed plants and wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species:

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Office Supervisor at the Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Author

The primary authors of this proposed rule are Donna C. Brewer and Cathy Brown of the Ventura Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Public Law 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Fishes to the List of Endangered and Threatened Wildlife:

§ 17.12 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	
FISHES							
•	•	•	•	•	•	•	
Goby, tidewater	*Eucyclogobius newberryi*	U.S.A. (CA)	Entire	E		NA	NA
•	•	•	•	•	•	•	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30175 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Proposal To List the Relict Darter and Bluemask (=Jewel) Darters as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the relict darter (*Etheostoma chienense* and bluemask (=jewel) darter (*Etheostoma (Doration)* sp.) as endangered under the Endangered Species Act of 1973, as amended (Act). The relict darter, which is endemic to the Bayou du Chien drainage in western Kentucky, has been collected from only five sites within this drainage and is known to spawn in only one Bayou du Chien tributary. The relict darter has been and continues to be impacted by poor water quality and habitat deterioration resulting from stream channelization, siltation caused by poor land use practices, and by other water pollutants. The bluemask darter is endemic to the Caney Fork River system (above Great Falls), Cumberland River

basin, in central Tennessee. Based on historic records, the species was known from five rivers in the Caney Fork River system. The bluemask darter is now known from four stream reaches. Its distribution has been reduced by such factors as impoundments, water withdrawal, and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, gravel mining, poor land use practices, and waste discharges. These factors continue to impact the species and its habitat. Comments and information are sought from the public on this proposal.

DATES: Comments from all interested parties must be received by February 9, 1993. Public hearing requests must be received by January 25, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For further information on this proposed rule, please contact Mr. Richard G. Biggins at the above address.

SUPPLEMENTARY INFORMATION:

Background

Relict Darter

The relict darter is endemic to the Bayou du Chien watershed in extreme western Kentucky. Recently this darter, which is one of 10 recognized species in the *Etheostoma squamiceps* complex of the subgenus *Catonotus*, was formally described by Page *et al.* (1992). It is a small (2½-inch) fish. Females and nonbreeding males have light tan colored backs and sides, with brown mottling and six to eight dark brown saddles. They have white unmarked undersides. Breeding males have gray to dark brown sides and backs and light tan undersides.

Warren and Burr (1991) reviewed all known recent and historical literature regarding the relict darter and surveyed known collection sites and potential habitat within the Bayou du Chien watershed. They reviewed fish collection records from adjacent watersheds and also surveyed these areas for the relict darter. They speculated that the fish was once more widespread in the Bayou du Chien system. However, based on historic and current records, they reported that the fish has only been documented from nine sites in Graves and Hickman Counties, Kentucky; only one spawning site is known.

The relict darter's distribution has apparently been reduced by such factors as channelization and the general deterioration of water and habitat quality resulting from siltation and other pollutants contributed by poor land use practices and by waste discharges. These factors continue to impact the species and its habitat. Because the species presently inhabits only limited areas and is known to spawn in only one small tributary, it is very vulnerable to extirpation from toxic chemical spills. Additionally, because of its small population size, the species' long-term genetic viability is questionable.

On October 29, 1991, the Service notified by mail (22 letters) potentially affected Federal and State agencies, and local governments, as well as interested individuals, that a status review of the relict darter was being conducted. Three comments were received as a result of this notification. The Tennessee Valley Authority and the Kentucky State Nature Preserves Commission supported the species' potential Federal protection and the Kentucky Department of Fish and Wildlife Resources provided information on fish collections in the watershed. No objections to the potential listing of the relict darter were received.

The relict darter does not appear in the Service's notice of review for animal candidates published in the **Federal Register** of November 21, 1991 (56 FR 58804–58836). However, a status survey completed in late 1991 indicated the species is facing significant threats and is in need of protection under the Act. Based on this information, the Service's Acting Assistant Director on April 29, 1992, approved elevating the relict darter to a category 1, priority 2 (based on a priority scale of 1 to 12) candidate. A category 1 species is a species for which the Service has sufficient information to propose for protection under the Act. The listing priority scale is fully explained in a notice covering the Service's listing and recovery priority guidelines that was published in the **Federal Register** of September 21, 1983 (48 FR 43098).

Bluemask Darter

Although formal description of the bluemask darter (*Etheostoma* (*Doration*) sp.) is not expected before early 1993, species distinctiveness is affirmed by the morphological and allozymic comparison of the characteristics of this species with those of other darters of the same subgenus (Steven Layman, University of Alabama, personal communication, 1992). The bluemask darter is a small (1¾-inch) fish, closely related to *E. stigmaeum*. Breeding males are nearly covered by a bright blue color. Females and nonbreeding males are not as brightly colored. They have six dark saddle-like markings across the back and seven to eight lateral blotches. The species inhabits areas of slow to moderate current over sand and fine gravel, a habitat type that is very limited in some of the occupied streams.

The bluemask darter is endemic to the Caney Fork River system (above Great Falls), Cumberland River basin, in central Tennessee. Based on current and historic records reviewed by Layman (1991), the species has been collected from five rivers in the Caney Fork River system—Upper Caney Fork River, Collins River, Rocky River, Calfkiller River, and Cane Creek in Grundy, Warren, Van Buren, and White Counties.

A 1991 fish survey (Layman 1991) of the Caney Fork River system above and below Great Falls revealed that the species is now restricted to isolated populations in reaches of four rivers in the Caney Fork River system—Cane Creek, Van Buren County: Collins River, Warren and Grundy Counties; Rocky River, Van Buren County; and Upper Caney Fork River, White County.

The bluemask darter has been impacted by such factors as impoundments, water withdrawals, and the general deterioration of water and substrate quality resulting from siltation and other pollutants contributed by coal mining, gravel mining, poor land use practices, water withdrawal, and waste discharges. These factors continue to impact the species and its habitat.

In the **Federal Register** (56 FR 58804–58836) of November 21, 1991, the Service listed the bluemask darter as a category 2 species. A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants, but for which there is insufficient information to proceed with a listing proposal. Based on more recent status information, this species was approved by the Service's Acting Assistant Director on April 29, 1992, as a category 1, priority 2 candidate.

On February 28, 1992, the Service notified by mail (40 letters) potentially affected Federal and State agencies and local governments, as well as interested individuals, that a status review of the bluemask darter was being conducted. Three agencies responded. The Tennessee Wildlife Resources Agency said it would help protect the darter during the status review period and

would continue this protection if it were listed. The U.S. Soil Conservation Service and the Department of the Air Force responded to the bluemask darter notification letter but did not take a position on the potential listing. No objections to the potential listing of the bluemask darter were received.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the relict darter and the bluemask darter are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The relict darter is endemic to the Bayou du Chien system in extreme western Kentucky (Warren and Burr 1991). Webb and Sisk (1975) indicated that this darter was "fairly common" in the high gradient reaches of Bayou du Chien in the early 1970s. Warren and Burr (1991) speculated that in presettlement times the species was likely more widespread within the Bayou du Chien watershed in areas upstream of the Mississippi floodplain (upstream of Moscow, Kentucky).

Warren and Burr (1991) surveyed the system in 1991 and collected the species of five sites but found it abundant at only two sites (18 were collected at one site and 46 at another). The other three sites yielded a total of only eight relict darters. They and other researchers have only been able to locate one spawning area in a small tributary stream located in Graves County.

Adult relict darters are concentrated in headwater areas in slow-flowing pools, usually associated with gravel, sand, and leaf litter substrates near fallen tree branches, undercut banks, or overhanging streambank vegetation (Warren and Burr 1991). Warren and Burr (1991) noted that the Bayou du Chien system has been extensively channelized. Much of the streams' sinuosity was eliminated, undercut banks were lost, streambank vegetation and instream cover were removed, and some smaller streams now flow only intermittently. This massive alteration of the relict darter's habitat reduced both relict darter numbers and the amount of suitable habitat. Aside from past channelization impacts, the area is extensively farmed, and much of the watershed has been deforested. These alterations result in a fairly high silt load within the Bayou du Chien system that continues to degrade the habitat and further impacts the species.

The bluemask darter has only been collected from the Caney Fork River system (above Great Falls), Cumberland River basin, in central Tennessee. Layman (1991) reviewed historic collection records and reported that the species has been collected from five rivers in the Caney Fork River system—Upper Caney Fork River, Collins River, Rocky River, Calfkiller River, and Cane Creek in Grundy, Warren, Van Buren, and White Counties. Historic fish collection records are sparse for this area. However, considering the extent of the fish's preferred habitat (slow to moderate current areas with sand and fine gravel substrates (Layman 1991)), which was inundated by Great Falls Reservoir in the 1910s, the species was once likely more widely distributed within this portion of the Caney Fork system than available records indicate. The belief that the species has undergone a range reduction is also supported by Starnes and Etnier (1980).

In 1991 Layman (1991) surveyed the Caney Fork River system above and below Great Falls. He found the fish restricted to isolated populations in short reaches of four rivers in the Caney Fork River system—Cane Creek, Van Buren County; Collins River, Warren and Grundy Counties; Rocky River, Van Buren County; and upper Caney Fork River, White County. Layman (1991) estimated that the bluemask darter currently inhabits about 500 feet of Cane Creek, 25 miles of the Collins River, 2 miles of the Rocky River, and 2.5 miles of the upper Caney Fork River.

The species was historically taken from two sites in the Calfkiller River, White County. However, Layman (1991) made collections at both of these historic collection sites and four other Calfkiller River sites, but no specimens were taken. It is believed that the species has now been extirpated from this river. The fish was also not taken (Layman 1991) in collections made in other Caney Fork tributaries—Barrens Fork River, Falling Water River, Charles Creek, Laurel Creek, Hickory Creek, Town Creek, and Mountain Creek.

The bluemask darter's distribution has been reduced by such factors as impoundments, water withdrawal, and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, gravel mining, poor land use practices, water withdrawal, and waste discharges. These factors continue to impact the species and its habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The specific areas inhabited by both fish are presently unknown to the general public, and until this proposal is published the public will be unaware of the presence of these rare fish in the Bayou du Chien and the Caney Fork River watersheds. As a result, take of these fish by the general public has not been a problem. However, both fish exist in very small, restricted areas; and the relict darter is known to spawn in only one short stream reach. If the specific inhabited stream reaches become public knowledge through critical habitat designation during the sometimes controversial listing process, it would be extremely easy for vandals to seriously impact the species. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat if specific inhabited locations are revealed. Federal protection could help to minimize the negative impact of illegal or inappropriate take.

C. Disease or Predation

Although the relict and bluemask darters are undoubtedly consumed by predators, there is no evidence that predation is a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

The States of Kentucky and Tennessee prohibit taking fish and wildlife for scientific purposes without a State collecting permit. These permits provide some protection for these fish. However, the species are generally not protected from other threats. Federal listing will provide additional protection for the species under the Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect them.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Because the existing relict and bluemask darter populations inhabit only short stream reaches, they are vulnerable to extirpation from accidental toxic chemical spills. This is especially true of the only known relict darter spawning site, which is close to a railroad line. Additionally, because the relict darter population has been drastically reduced in size, the species'

long-term genetic viability is questionable.

All bluemask darter populations are now isolated by the Great Falls Reservoir. As the populations in Cane Creek and the Upper Caney Fork are extremely small, and as the reservoir restricts gene flow among populations, the long-term genetic viability of these populations is questionable.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by both fish in determining to propose these rules. Based on these evaluations, the preferred action is to propose the relict darter and bluemask darter for Federal protection. The relict darter is now known from only five sites in the Bayou du Chien system in western Kentucky. The bluemask darter is currently known from only four streams in the Caney Fork River system in central Tennessee. These fish and their habitat have been and continue to be impacted by habitat destruction and range reduction. Their limited distribution also makes them very vulnerable to toxic chemical spills. Because of their restricted distributions and their vulnerability to extinction, endangered status appears to be the most appropriate classification for these species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for these fish.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to these species, and designation of critical habitat could further threaten these two species.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the fishes' general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the two species. No specific projects were identified. Should any future projects be proposed in areas inhabited by these fish, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action; and if needed, more specific distributional information would be provided.

Each of these fish occupies very restricted stream reaches. Thus, as any significant adverse modification or destruction of these species' habitat would likely jeopardize their continued existence, no additional protection for the species would accrue from critical habitat designation that would not also accrue form listing these species. Therefore, when listed, habitat protection for these species will be accomplished through the section 7 jeopardy standard and section 9 prohibitions against take.

In addition, both fish are very rare, and taking for scientific purposes and private collection could pose a threat if specific site information were released. The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism during the often controversial critical habitat designation process. The locations of populations of these species have consequently been described only in general terms in these proposed rules. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the "ADDRESSES" section; from the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501; and from the Kentucky Department of Fish and Wildlife Resources, Kentucky State Nature Preserves Commission, Tennessee Wildlife Resources Agency, and Tennessee Department of Conservation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs affecting these species. No specific proposed Federal actions were identified that would likely affect the species. Federal activities that could occur and impact the species include, but are not listed to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations (50 CFR 17.21) set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part,

make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and such permit requests are not expected.

Public Comments Solicited

The Service intends that any final action resulting from these proposals will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species; and

(4) Current or planned activities in the subject areas and their possible impacts on the species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from these proposals.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of these proposals. Such requests must be made in writing and should be addressed to the Field Supervisor (see **ADDRESSES** section of this rule).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Layman, S.R. 1991. Status survey for the dirty darter, (*Etheostoma olivaceum*) and the jewel darter, (*Etheostoma (Doration)* sp.) in the Caney Fork and Cumberland Rivers, Tennessee. Final report submitted to the U.S. Fish and Wildlife Service, Asheville, NC. 35 pages.

Page, L.M., P.A. Cease, D.L. Swofford, and D.G. Buth. 1992. Evolutionary relationships with the *Etheostoma squamiceps* complex (Percidae: subgenus *Catonotus*) with descriptions of five new species. Copies 1992(3), pp. 615–646.

Starnes, W.C., and D.A. Etnier. 1980. Fishes. Pages B1–B134 *In* D.C. Eagar and R.M. Hatcher (eds.). Tennessee's Rare Wildlife Volume 1: The Vertebrates. Tennessee Heritage Program.

Warren, M.L., and B.M. Burr. 1991. Survey of the relict darter (*Etheostoma (Catonotus)* sp. cf *E. neopterum*). Final report submitted to the U.S. Fish and Wildlife Service, Asheville, NC. November 1991. 33 pp.

Webb, D.H., and M.E. Sisk. 1975. The fishes of west Kentucky. III. The fishes of Bayou du Chien. Trans. Ky. Acad. Sci. 36:63–7.

Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195 Ext. 228).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	
Fishes:							
•	•	•	•	•	•	•	
Darter, bluemask (=jewel)	*Etheostoma (Doration)* sp.	U.S.A. (TN)	Entire	E	.....	NA	NA
•	•	•	•	•	•	•	
Darter, relict	*Etheostoma (Catonotus)* sp. ..	U.S.A. (KY)	Entire	E	.....	NA	NA
•	•	•	•	•	•	•	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-30176 Filed 12-10-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition to List Barton Springs Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for the petition to add the Barton Springs salamander (*Eurycea* sp.) to the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that the requested action may be warranted. A status review is initiated.

DATES: The finding announced in this notice was made on November 25, 1992. To be incorporated into the 12-month finding, information should be submitted to the Service by January 11, 1993 (see **ADDRESSES** below). However, the Service will continue to accept information on the status of the Barton Springs salamander at any time

ADDRESSES: Information, comments, or questions concerning this petition should be sent to the State Administrator, Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East 6th Street, room 407, Austin, Texas 78701. The petition, petition finding, and supporting data are available for public inspection by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Connor, Fish and Wildlife Biologist, at the above address (Telephone 512/482-5436).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species concerned.

On January 22, 1992, the Service received a petition from Dr. Mark Kirkpatrick and Ms. Barbara Mahler to list the Barton Springs salamander (*Eurycea* sp.) as an endangered species. The petition also requested critical habitat be designated. The Kirkpatrick and Mahler document, dated January 22, 1992, clearly identified itself as a petition and contained the names, signatures, affiliations, telephone numbers, and addresses of the petitioners.

This finding is based on various documents, including the petition and sources readily available to the Service. Listing will be evaluated in accordance with the Act's requirements. In accordance with the Administrative Procedure Act (5 U.S.C. 553), the Service will consider the request to designate critical habitat and will review the information provided and otherwise available in its deliberation.

The Barton Springs salamander has been considered a Category 2 candidate species since December 30, 1982, when it first appeared in the Animal Candidate Review for Listing as Endangered or Threatened Species (Animal Notice of Review). Category 2 taxa are considered by the Service as candidates for possible addition to the List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threats are not currently available to support proposed rules.

Biological Information

The Barton Springs salamander is a morphologically and genetically distinct, but currently unnamed, species in the genus *Eurycea*. Sweet (1978, 1984) found distinct morphological differences between the Barton Springs salamander and other Texas *Eurycea*, but did not formally describe the salamander as a new species. Recent taxonomic work at the University of Texas, based on morphological and genetic data, clearly separates the Barton Springs salamander from other Texas *Eurycea* [Texas Parks and Wildlife Department (TPWD) 1992]. Based on geographic isolation and morphological and genetic differences, the Barton Springs salamander warrants recognition as a species (TPWD 1989, 1990, 1992, Sweet 1978, 1984, Chippindale, pers. comm., 1992).

The Barton Springs salamander is completely aquatic. Adults average about 2.5 inches in length. The Barton Springs salamander is a neotenic (retains a larval form with external gills throughout its life) salamanders from the Edwards Plateau of Texas.

Population Status

There are inherent difficulties in estimating the population size and range of aquifer-dwelling species, such as the Barton Springs salamander. The subterranean conduits, caverns and cavities where the salamanders are found are inaccessible to humans. Consequently, the abundance of Barton Springs salamander is unknown. Researchers have to rely on observing individuals that reach the surface. During the past 4 years, Barton Springs salamander juveniles have been found at one of the openings of Barton Springs (Andrew Price, Texas Parks and Wildlife Department, pers. comm., 1992, Hillis and Chippindale 1992, providing evidence that the subterranean population is reproductively viable.

The known range of the Barton Springs salamander is the subterranean, water-filled conduits, caverns, and cavities in a segment of the Edwards Aquifer near the Barton Springs, in Zilker Park, Austin, Texas (Sweet 1978, 1984; TPWD 1990, 1992). Hereafter, this aquifer segment will be referred to as the Barton Springs segment. Some individuals reach the surface in springhead areas in Zilker Park. Charles Sexton (City of Austin, *in litt.*, 1992) has reported sightings of adult Barton Springs salamanders during the summers of 1989, 1990, and 1991 in the Barton Springs swimming area. Despite searches for Barton Springs salamander in other springs, including springs in the Barton Springs segment, and in caves reaching the water table, the salamander has not been found outside of its currently recognized ranged (TPWD) 1990).

Until the nearly 1970's, the Barton Springs salamander was commonly observed in aquatic vegetation in the Barton Springs headwaters (Hillis and Chippindale 1992). The abundance of salamanders in this area declined over the next 15 years. The decline can be attributed to maintenance of a vegetation-free area which has: (1) Reduced or eliminated areas where Barton Springs salamander can hide from predators; and (2) adversely affected the Barton Springs salamander's prey, particularly amphipods.

Within the Barton Springs segment, the distribution of Barton Springs salamander is limited by physical, chemical, and biological factors. Physical factors that define the distribution include the water level in the Barton springs segment and size and pattern of water filled openings or pores in the limestone skeleton of the aquifer. Pertinent chemical factors range form the nutrient content necessary to sustain the aquifer community to factors that may adversely affect the community, such as high levels of total dissolved solids or contaminants in toxic amounts. One of the important biological factors is the distribution and availability of prey items (Samuel Sweet, University of California at Santa Barbara, pers. comm., 1992).

Attempts to propagate captive Barton Springs salamander have not succeeded (Andrew Price, pers. comm., 1992). Similarly, attempts to achieve laboratory reproduction in the San Marcos salamander (*Eurycea nana*) have been unsuccessful (Janet Nelson, Southwest Texas State University, pers. comm., 1992).

Threats to Barton Springs Salamander

Barton Springs salamander faces two principal threats: a deterioration of water quality and a decline in aquifer level in the Barton Springs segment. The restricted range of the Barton Springs salamander increases the immediacy of these threats because a single incident (e.g., a pollution event) could impact the entire known population.

Water Quality Threats

The Edwards Aquifer along the Balcones Fault Zone in the Austin Region has been identified as having the highest pollution potential among all the major aquifers in Texas (Texas Water Commission 1989). This is based on a combination of geologic, hydrologic, geomorphologic, and meteorologic factors (Texas Water Commission 1989). Austin, and the surrounding area, is rapidly developing (City of Austin 1988, U.S. Geological Survey 1990). The watershed of the Barton Springs segment is a mosaic of urban, suburban, and rural land uses. Further development in the recharge area and watershed of the Barton Springs segment is likely to increase the levels of pollutants reaching Barton Creek, other creeks serving as recharge paths, and Barton Springs.

Urbanization has already affected surface water quality (USGS 1990). Analyses of surface water has found increased levels of suspended solids, biochemical oxygen demand, total organic carbon, total nitrogen, total phosphorus, and fecal-group bacteria. Fecal-group bacteria contamination at Barton Springs has occurred (USGS 1986). The conveyance and treatment of sewage in the watershed, particularly in the recharge zone, may result in an impaired local water quality. However, other than fecal-group bacteria, the water quality in the Barton Springs segment has been good (USGS 1986).

Potential contaminants of surface water and groundwater are: nutrients (nitrogen and phosphorous compounds), man-made organic contaminants including petroleum-related hydrocarbons, halogenated hydrocarbons, insecticides (organochlorine, organophosphate, carbamates, and pyrethroids), herbicides, and inorganics (such as cadmium, copper, lead, mercury, and zinc). These contaminants are of concern because: (1) They are stored, present, transported, or used in the watershed; (2) they affect acquatic life typically at trace levels; and (3) some contaminants may be present in pulses that are missed by periodic or regular contaminant sampling.

Barton Springs salamanders feed on amphipods and other similarly sized invertebrates inhabiting the Barton Springs segment of the Edwards Aquifer (Hillis and Chippindale 1992). Crustaceans, particularly amphipods, are sensitive to several organic chemicals (Fish and Wildlife Service 1986).

The Environmental Protection Agency has developed acute and chronic toxicity criteria for freshwater aquatic life for a number of contaminants (U.S. Environmental Protection Agency 1986). Data published by the U.S. Geological Services (USGS) (1986, 1990) indicate that some samples of water from streams in the Austin area, and groundwater in the Barton Springs segment, approach or exceed acute and/or chronic criteria for freshwater aquatic life. These contaminants include dissolved cadmium, copper, lead, mercury, and zinc.

Although the percentage of water samples that exceed these criteria for any particular contaminant has been small, contaminants may be present at values and durations capable of impacting Barton Springs salamander and/or its prey base. The availability/toxicity of these metals is decreased in water with high values of hardness and Barton Springs water is considered to be very hard, with a hardness greater than 180 mg/l as $CaCO_3$. However, these metals may be more toxic when they occur in mixtures and with certain organics, such as ammonia. Additionally, the levels of detection used by USGS (1990) appear to be higher than the chronic lead and mercury toxicity criteria for freshwater aquatic life.

Threat From Decline in Aquifer Level

Reduced water levels in the Barton Springs segment would adversely impact the Barton Springs salamander by causing direct loss of habitat. Ground water pumping in the area is expected to increase due to further urbanization of the outlying areas of Austin. Currently, the amount of water discharged from the Barton Springs segment (both through pumping and springflow) is roughly equal to recharge (BS/EACD 1990). Aquifer water levels rise and decline in relation to rainfall. Artificial recharge enhancement in Onion Creek is being studied (BS/EACD 1990). Since aquifer water levels respond rapidly to differences between recharge and discharge, a combination of intense pumping and drought would result in reduced flows from Barton Springs. Barton Springs has always been recorded as flowing and one of the Barton Springs/Edwards Aquifer Conservation District's (BS/EACD) goals is to assure Barton Springs springflow "does not fall appreciably below historic low levels" (BS/EACD 1990). For this purpose, BS/EACD has developed a drought contingency plan.

Additional ground water pumping may exceed the resources of the Barton Springs segment and result in a change from the "existing dynamic equilibrium" to declining ground water levels and a decrease in (or cessation of) discharge at Barton Springs (USGS 1986). Barton Spring's long-term mean discharge is about 50 cubic feet per second (cfs), with a recorded minimum discharge of 10 cfs (USGS 1986). In 1982, estimated pumping from the Barton Springs segment was about 5 cfs (USGS 1986). Water well production in the higher elevations of the Barton Springs segment has been limited during periods of lower aquifer levels in recent years (Bill Couch, Barton

Springs/Edwards Aquifer Conservation District, pers. comm., 1992).

When aquifer levels are low, the potential exists for the movement of water with high levels of total dissolved solids from a "bad-water" zone to the freshwater zone of the Barton Springs segment, including Barton Springs (USGS 1986). The "bad-water" zone is an area of groundwater with total dissolved solids greater than 1000 mg/l. The "bad-water" zone occurs along the eastern boundary of the Barton Springs segment. The higher concentration of dissolved solids that would result from an encroachment of "bad-water" would likely adversely affect wildlife found in the aquifer supplying Barton Springs. The potential for "bad-water" encroachment is increased with pumping of the aquifer and extended low recharge or low flow conditions (USGS 1986). Under low flow conditions, Barton Springs, and a well near the "bad-water" line (YD–58–50–216), show increased dissolved solid concentrations, particularly sodium and chloride, indicating encroachment from the "bad-water" zone (USGS 1986).

After a review of the petition, the references cited, and information otherwise available to the Service, the Service found that the petition presented substantial information indicating that listing the Barton Springs salamander (*Eurycea* sp.) may be warranted. The Service will consider the request for designation of critical habitat. If the Service determines designation of critical habitat is prudent and determinable, it will be included if a proposed rule is published.

This finding initiates a status review for the Barton Springs salamander as required under section (4)(b)(3)(A) of the Act. The Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the Barton Springs salamander.

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Author

This notice was prepared by Patrick Connor, See **ADDRESSES** above, (512/482–5436).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: November 25, 1992

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30177 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 921106–2306]

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to amend the regulations implementing Amendment 3 to the American Lobster Fishery Management Plan (FMP). This rule would modify the language of the existing regulations to allow lobster traps not constructed entirely of wood to contain a ghost panel with a specified degradable door fastener. The intent is to provide codified regulations to replace an interim action that is effective only through July 1, 1993.

DATES: Comments on the proposed rule must be received on or before January 11, 1993.

ADDRESSES: Comments on the proposed rule should be sent to Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Lobster Regulations." Copies of Amendment 3, which contains an environmental assessment and the regulatory impact review, are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rt. 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones (Resource Policy Analyst, Northeast Region, NMFS), 508–281–9273.

SUPPLEMENTARY INFORMATION: The American Lobster Fishery is managed under the FMP prepared by the New England Fishery Management Council (Council) and its implementing regulations at 50 CFR part 649 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP require that lobster traps contain a ghost panel to allow for the escapement of lobster after

a trap has been abandoned or lost. Section 649.21(d)(1)(iii), allows the use of the door of the lobster trap to serve as the ghost panel if fastened with a degradable material described in § 649.21(d)(1)(ii); and § 649.21(d)(2) provides the Director, Northeast Region, NMFS (Regional Director) with the authority to approve alternative designs and/or materials, at the request of, or after consultation with, the Council's Lobster Oversight Committee (Committee).

At the April 23, 1992, Committee meeting, alternatives to this ghost panel specification were discussed and the Committee agreed to request that the Regional Director approve the use of a bungee cord attachment in those instances when the bungee cord is attached with material approved under § 649.21(d)(1)(ii). At its May 20–21, 1992, meeting, the Council endorsed the Committee recommendation.

After consideration of the comments from the Committee, the Regional Director determined that the Council's recommendation was consistent with § 649.21(d)(1)(iii) and the intent of the requirement and published a notice in the **Federal Register** on July 10, 1992 (57 FR 30684), effective through July 1, 1993, approving use of this fastening alternative to the ghost panel regulations. This proposed action is necessary to codify the fastening alternative before July 1, 1993. This alternative would allow lobster fishermen to comply with the degradable escape panel requirements and allow escapement of lobster after a trap has been abandoned or lost.

Classification

The Regional Director has initially determined that this rule is necessary for the conservation and management of the American lobster fishery and is consistent with the Magnuson Act and with other applicable law.

The Regional Director has determined that this rule is consistent with the FMP and the economic effects of this rule on fishermen are contained within the Regulatory Impact Review (RIR) for Amendment 3. This proposed rule further clarifies the intent of the regulations that implemented Amendment 3. A determination was made for the final rule for Amendment 3 from review of the RIR that the rule was not a major rule under Executive Order 12291.

An Environmental Assessment (EA) was prepared which concluded that the final rule for Amendment 3 will not have a significant impact on the human environment. This rule does not alter the scope or intent of Amendment 3 and the effects of this rule are contained in the EA for Amendment 3. Therefore, this action is categorically excluded from the requirement to prepare an EA by NOAA Administrative Order 216–6.

The General Counsel of the Department of Commerce concluded that this regulation would not have a significant economic impact on a substantial number of small entities.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Regional Director has determined that this rule would be consistent to the maximum extent practicable with the approved coastal zone programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The reason for this determination is that this proposed rule agrees with the intent of the final rule for Amendment 3 implementing the ghost panel requirements. Thus, it was not necessary to submit this rulemaking for review by the responsible state agencies under Section 307 of the Coastal Zone Management Act.

This rule does not contain regulatory provisions with federal implications sufficient to warrant preparation of a federalism assessment.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: December 7, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 649 is proposed to be amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.21, paragraph (d)(1)(iii) is revised to read as follows:

§ 649.21 Gear identification and marking, escape vent, and ghost panel requirements.

* * * * *

(d) * * *

(1) * * *

(iii) The door of the trap may serve as the ghost panel if fastened with:

(A) A bungee cord that is attached with untreated nonstainless/uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter can serve as the fastener of the trap door. The bungee cord must be attached so that when the untreated material degrades, the door of the trap will pivot open freely; or

(B) A material specified in paragraph (d)(1)(ii) of this section.

* * * * *

[FR Doc. 92–30068 Filed 12–10–92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 669

Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Public hearings on Amendment 2 to the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings and provide a comment period to solicit public input on proposed changes to exiting regulations affecting the shallow-water reef fish fishery contained in Amendment 2 to the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The proposed actions address continuing and growing concerns by the Council over scarce resources, the need to protect important species when they aggregate for spawning, and the need to extend protection to other reef-associated species not presently in the management unit.

DATES: Written comments must be submitted by January 25, 1993. See **SUPPLEMENTARY INFORMATION** for times and dates of public hearings.

ADDRESSES: Written comments on the proposed actions should be addressed to Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918. Further details on each meeting and additional documents will be available at Council headquarters. See **SUPPLEMENTARY INFORMATION** for locations of public hearings.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolon, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; phone (809) 766–5926.

SUPPLEMENTARY INFORMATION: The FMP for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act became effective in September 1985. The FMP established a management program for shallow-water reef fish

resources within the exclusive economic zone (EEZ) of the Council's area of jurisdiction.

The FMP established regulations to rebuild declining reef fish species in the fishery and reduce conflicts among fishermen. It established criteria on mesh size, escape panels and degradable fasteners for the construction of fish traps; required owner identification and marking of gear and boats; prohibited the hauling of or tampering with another person's traps without the owner's written consent; prohibited the use of poisons, drugs, other chemicals and explosives for the taking of reef fish; established a minimum size limit on the harvest of yellowtail snapper and Nassau grouper; and established a spawning season closure of the taking of Nassau grouper.

The measures proposed under Amendment 2 would: Expand the management unit to include the major components of the deep-water reef fish fishery and the marine aquarium trade; restrict the collection of marine aquarium fishes to hand-held dip nets and slurp guns; modify existing fish trap construction characteristics; prohibit the harvest or possession of jewfish in waters around Puerto Rico and the U.S. Virgin Islands; recommend a permitting and reporting system by local governments; close two additional red hind aggregation areas during the December through February spawning season; prohibit the harvest of mutton snapper in a spawning aggregation area off St. Croix, from March through June of each year; establish marine coral reef reserves at strategic locations within the management area; and prohibit the unauthorized introduction of exotic spcies into marine waters.

The public hearings are scheduled to begin at 7 p.m. on the following dates and at the following addresses:

Monday, December 21, 1992—Salon Bahia, Parador Villa Parguera, La Parguera, Lajas, Puerto Rico;

Tuesday, December 22, 1992—Conference Room, Fisheries Research Laboratory, Department of Natural Resources, Road 102, 8.6 Km Interior, Punta Arenas (Joyuda) Cabo Rojo, Puerto Rico;

Wednesday, December 23, 1992—El Meson Criollo, Road 987, 3.2, Km Las Croabas, Fajardo, Puerto Rico;

Monday, December 28, 1992—Conference Room, Legislature Building, Charlotte Amalie, St. Thomas, U.S. Virgin Islands;

Tuesday, December 29, 1992—Conference Room, Legislature Building, Christiansted, St. Croix, U.S. Virgin Islands.

Council meetings are open to the public.

Dated: December 8, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30157 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 239
Friday, December 11, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program; Level of Assistance from October 1, 1992 to September 30, 1993

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the initial level of per-meal assistance for the Nutrition Program for the Elderly (NPE) for Fiscal Year 1993. The initial level of assistance is set at $.5780 for each eligible meal in accordance with section 311(a)(4) of the Older Americans Act of 1965, as amended by section 310 of the Older Americans Act Amendments of 1992, Public Law 102–375.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Classification

This program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Legislative Background

Under section 311(a)(4) of the Older Americans Act of 1965, 42 U.S.C. 3030a(a)(4), the level of suport to be provided by the Department of Agriculture for each eligible meal claimed under the Nutrition Program for the Elderly (NPE) was fixed at $.5576 for each of Fiscal Years 1986 through 1991. This rate is reflected in the NPE regulations at 7 CFR 250.42. On September 30, 1992, the President signed Public Law 102–375, the Older Americans Act Amendments of 1992. Section 310 of this law amended section 311(a)(4) of the Older Americans Act to require the Secretary of Agriculture to maintain an annually programmed level of assistance equal to the greater of: (1) The current appropriation divided by the number of meals served in the preceding fiscal year; or (2) 61 cents per meal adjusted annually beginning with Fiscal Year 1993 to reflect changes in the Consumer Price Index (CPI). Section 311(c)(2) of the Act was amended to provide that the final reinbursement claims shall be adjusted to use the full amount appropriated for the fiscal year.

However, Congress appropriated funds for NPE for Fiscal Year 1993 in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993 (Pub. L. 102–341), on August 14, 1992, prior to enactment of the Older Americans Act Amendments of 1992. Therefore, the Fiscal Year 1993 NPE appropriation was established on the basis of the per-meal rate in effect at that time, i.e., $.5676, rather than the rate that was subsequently established by the 1992 amendments to section 311. Given current estimates of participation projected for NPE in Fiscal Year 1993, the appropriation provided by the Congress in Public Law 102–341 cannot support the newly established reimbursement rate.

Notwithstanding the initial rates established by the Older Americans Act, the Department must comply with the spending clause of the U.S. Constitution and 31 U.S.C. 1341(a)(1)(A) (known as the Antideficiency Act) which prohibit the obligation or expenditure of funds in excess of the available appropriation. Thus the Department is required to establish (and, if necessary, adjust) rates in such a manner as to fully expend, but not exceed, the program appropriation.

Alternatives

The Department has identified two alternatives for providing NPE per-meal support for meals served in Fiscal Year 1993 that would comply with the aforementioned statutory requirements. The first alternative would be to reimburse initially at the rate established by the Older Americans Act, which would be 61 cents per meal adjusted to reflect changes in the CPI. However, it would mean that the Department would not be able to pay claims for reimbursement received after the Fiscal Year 1993 appropriation was exhausted.

Under the second alternative, the Department would establish the initial per-meal reimbursement rate of $.5780, which, assuming that the Department's participation estimates are accurate, could be sustained throughout the year. The Department derived this lower initial rate by dividing the Fiscal Year 1993 appropriation ($142,912,000) by the current participation estimate of 247,210,805 meals. This projected meal count represents a growth factor of almost 1 percent for Fiscal Year 1993, which is consistent with participation trends in recent years.

Fiscal Year 1993 Rate and Procedures

In order to best serve the interests of State and local level program operations, the Department has chosen the latter alternative, which will provide a more consistent approach to the reimbursement process. Assuming accurate participation projections, the rate of $.5780 can be maintained throughout the fiscal year. Thus, State agencies can better plan and budget their program operations, and local project operators can, in turn, depend on a steady, uniform flow of meal service support during the fiscal year.

Implementation of the first alternative would not be consistent with responsible program stewardship because the appropriation could not sustain the higher per-meal reimbursement rate throughout the fiscal year. This alternative would inevitably raise false expectations at the local project site level. Site operators who planned and managed their programs based on the higher initial rate would be forced to curtail program services abruptly and significantly later

in the fiscal year in response to the depletion of the Fiscal Year 1993 appropriation. Sudden reductions in program participation and/or meal quality could prove necessary. Such changes would have both immediate and long-range negative impacts on the program.

Therefore, the Department intends to reimburse each NPE meal served in Fiscal Year 1993 at $.5780. However, if it appears that due to changes in projected participation levels that funds would be insufficient to support the $.5780 per-meal reimbursement rate or that funds would remain unspent, the Department will adjust the rate at which all meals claimed for the fiscal year are reimbursed. In any event, pursuant to section 311(c)(2)(B) of the Older Americans Act, a final rate adjustment will take place after the fiscal year close-out, when the actual number of meals claimed for the fiscal year has been firmly established. The final rate will be derived by dividing this actual meal count into the program appropriation for the fiscal year, and final payments to States will be made accordingly. Thus each State will receive support in the amount of this final rate for each meal claimed during Fiscal Year 1993. State agencies will be notified directly of any further changes in the rates for Fiscal Year 1993.

Dated: December 7, 1992.

Phyllis Gault,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 92-30107 Filed 12-10-92; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Management Guidelines and Inventory and Monitoring Protocols for the Mexican Spotted Owl in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice: Adoption of Interim Policy.

SUMMARY: The Regional Forester, Southwestern Region of the U.S. Forest Service, is issuing new management direction to provide protection for the Mexican spotted owl (MSO). Because of concern for the habitat needs of the Mexican spotted owl (*Strix occidentalis lucida*) and to provide for regulatory mechanisms. This direction is being issued as an interim directive to the Forest Service Manual at 2676.2, Spotted Owl. This interim directive replaces MSO Interim Directive No. 2 (**Federal Register** Vol. 55, No. 127 27278–27287), which officially expired December 26, 1991 but was extended as policy by the Regional Forester on December 4, 1991 until replaced.

This interim directive implements the conservation strategy developed by the Forest Service over the past year. The conservation strategy has two parts. The first part develops and implements short term spotted owl habitat management direction to provide the protection necessary to ensure the owl remains viable throughout its range until a long-term strategy is developed. The second part of the strategy identifies a Scientific Team to develop a program to evaluate the effects various management activities would have on the owl and its habitat. The team would also develop a monitoring program to estimate the effects of these activities, to identify any instances when the strategy was not implemented as designed, and to ensure the strategy removes the threats identified by the U.S. Fish and Wildlife Service (FWS) (1991) for the Mexican spotted owl.

Implementation of the supplement prescribes management activities, including but not limited to prescribed fire and silvicultural treatments. These activities are designed to maintain or improve the characteristics of suitable habitat for the Mexican spotted owl. Some of the modifications prescribed in suitable habitat reduce the canopy closure below the minimum level of suitability identified for the forest cover type being modified. These modifications would be designed to improve the tree species composition and distribution in the diameter classes present. They would also be designed to maintain or increase the number and/or vigor of desired shade intolerant hardwood and conifer species. These lowered levels of canopy closure are expected to return to the suitable habitat canopy closure range in 5–7 years as trees grow taller and crowns grow wider.

Surveyed but unoccupied suitable habitat would be managed under the strategy to ensure a linkage is maintained between the blocks of occupied habitat. Management prescribed in capable habitat would speed its return to a suitable condition to meet the long term needs of the species.

Although these guidelines are being issued as policy in the form of a interim directive, the Southwestern Region will continue the administrative study and research program we jointly began in 1989 with the Rocky Mountain Forest and Range Experiment Station (RMS) to collect more information on this species. These data would provide a better understanding of habitat preferences, diet, home range size, demographics, and other characteristics of the MSO population. The intent of this data gathering program was to increase the understanding of the owl and its habitat for future development of a long-term stragegy to conserve the Mexican spotted owl, planned for fiscal year 1995/1996.

Besides issuing management direction, this interim policy also provides inventory and monitoring protocols to standardize methods used during inventory work in suitable MSO habitat and when conducting variability and population monitoring. The inventory protocol ensures consistency across the Region in the effort necessary to obtain complete coverage of all suitable habitat while still providing reasonable assurance all occupied Mexican spotted owl habitat is identified. The monitoring protocols identify the procedures to be used to monitor Management Territories to ensure consistency in data collection so the information can be compared from one Territory to another and from one year to next.

The directive identifies that a Mexican spotted owl Management Territory should be established whenever and wherever a Mexican spotted owl is located. It provides the methodology to use to establish and manage a Mexican spotted owl territory. It also provides standard definitions to use when determining habitat suitability and owl occupancy.

This interim policy is being published under Forest Service regulations at 36 CFR part 216, Involving the Public in the Formulation of Forest Service Directives. It is being published in advance of giving the public an opportunity to comment because of the immediate need to protect occupied Mexican spotted owl habitat. However, the Forest Service welcomes comments on this interim policy. These comments will be used to develop a final policy for incorporation into the Forest Service Manual as a Regional Supplement. This Regional Supplement, along with any appropriate National Environmental Policy Act (NEPA) documentation and a biological evaluation, should be completed shortly after the end of the comment period.

DATES: This policy is effective January 1, 1993. Comments on the guidelines must be received on or before January 10, 1993.

ADDRESSES: Direct comments to: Larry Henson, Regional Forester, 2670, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: James Lloyd, Director, Wildlife and Fisheries or Keith W. Fletcher, Mexican Spotted Owl Program Manager (505) 842-3261 or 842-3267. Direct requests for a complete copy of the manual supplement or the conservation strategy to Keith W Fletcher at the above address.

SUPPLEMENTARY INFORMATION:

Background and Need for Guidelines

The Mexican spotted owl is one of three subspecies of spotted owls. This subspecies can be found in the forested mountains and canyons of central Colorado and southern Utah south through Arizona and New Mexico into central Mexico. The other two subspecies include the northern (*S.o. caurina*) and the California (*S.o. occidentalis*) spotted owls. The northern subspecies occurs in the forested mountains of the coastal and Cascade ranges of northern California, Oregon, Washington and southern British Columbia. The California spotted owl inhabits the forested mountains and canyons and oak woodlands of the Sierra Nevada and coastal mountain ranges of central and southern California.

The Mexican spotted owl is historically known from only a few records and occasional observations. Johnson and Johnson (1985), Ganey and others (1986), Skaggs (1988) and Webb (1982) summarized the historical occurrences in the Southwest. The current range coincides very well with the range of historic sightings except where the low elevation riparian habitat in southeastern Arizona and adjacent southwestern New Mexico no longer exists.

Current surveys have shown Mexican spotted owls occur primarily in forested mountains containing dense, multi-layered stands with a moderately-closed to closed canopy (Bent 1938, Forsman 1988, Ganey and Balda 1989a) and rock-walled canyons often containing little or no tree cover (Kertell 1977, Reynolds 1990 and Rinkevich 1991). The forested stands inhabited by the owl are typically comprised of mixed conifer forest types, but ponderosa pine and pine/oak forest types as well as evergreen hardwood forests and woodlands, oak woodland, and canyons, often with riparian deciduous broadleaf communities, are also used by the owl (Bent 1938, Ganey 1988, Ganey and Balda 1989a, Ganey et al. 1988, Ligon 1926, Marshal 1957, Reynolds 1990 and Rinkevich 1991).

On November 4, 1991, the U.S. Fish and Wildlife Service proposed to list the Mexican spotted owl as threatened under authorities contained in the Endangered Species Act of 1973, as amended (USFWS 1991). No critical habitat was proposed because the FWS found that it is "not prudent" to do so. Once the owl was proposed for listing, the U.S. Forest Service (FS) was required to review its actions to determine if any action is likely to jeopardize the continued existence of a proposed species (Jeopardy is defined in 50 CFR 402.02 as follows: " 'Jeopardize the continued existence of' means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers of distribution of that species."). Other Federal Agencies are also required to conduct this review.

Section 4(a)(1) of the Endangered Species Act, and the regulations published to implement the listing provisions of this Act, set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species because of one or more of the five factors described in section 4 of these regulations. These factors include: (1) The present or threatened destruction, modification or curtailment of its habitat or range; (2) Overutilization for commercial, recreational, scientific, or educational purposes; (3) Disease or predation; (4) Inadequacy of existing regulatory mechanisms; or (5) Other natural or manmade factors affecting its continued existence.

In addition to the Endangered Species Act, the National Forest Management Act (NFMA) and its implementing regulations call for maintaining well-distributed populations of native and desired non-native vertebrates. Forest Service policy based on NFMA calls for maintaining populations throughout their geographic range (FSM 2670.22) and avoiding adverse impacts on species while their Federal status is being determined (FSM 2670.31).

The FWS's November 4, 1991 decision to propose the Mexican spotted owl as a threatened species, focused primarily on concerns related to listing factor 1, modifications in stands of suitable habitat, and listing factor 4, inadequacy of regulatory mechanisms. Their primary concerns included: (1) Regulatory mechanisms do not exist for most federal and state agencies and Indian nations that would prevent adverse modification of suitable Mexican spotted owl habitat; (2) Existing regulatory mechanisms in place for National Forests in Arizona and New Mexico are interim and expire December 1991; (3) Regulatory mechanisms in place in Arizona and New Mexico allow the potential for adverse modifications of un-occupied suitable habitat thus increasing fragmentation between population centers which may increase predation on dispersing owls; (4) Forest Plans in Arizona and New Mexico project a 30 percent increase in the 444 million board foot (MMbf) maximum annual sale quantity (ASQ) over the next few decades; and (5) Forest plans on five National Forests in Arizona and New Mexico and several in Utah and Colorado allow logging on steep slopes, which would increase the amount of suitable habitat modified in the future.

These concerns lead the FWS to the assumption the Mexican spotted owl would become threatened at some time in the future because of a lack of regulatory mechanisms and the present and future levels of modifications in suitable owl habitat.

Forest plans provide umbrella direction that sets out goals, objectives, standards, guidelines and are permissive in nature for a 10–15 year period. For example, all Forest plans have an objective for sensitive species habitat protection. However, detailed guidelines for Mexican spotted owl habitat management are provided by direction in the the Forest Service Directives System. The directives which describe official agency policy and official correspondence gives us the capability to act quickly when new information comes to light.

The need for spotted owl protection has been a good example of how this works. Since little was known about owl habitat needs, Forest plans contained few detailed guidelines about owl habitat management. The body of knowledge grew quickly after Forest plans were approved. Subsequently, our Interim Directive No. 1 was issued in June 1989. Additional new information was the basis for issuing Interim Directive No. 2 in June 1990 to replace Interim Directive No. 1. The body of information has continued to grow exponentially, resulting in this new management directive which replaces Interim Directive No. 2. Forest Supervisors and District Rangers are obligated to address these guidelines in site specific project design. These directives supersede Forest plan guidelines where there is a conflict.

We have issued a Notice of Intent to prepare an environmental impact statement and decision which will amend Forest plans to include the latest management guidelines. This will close

the loop and all of our control mechanisms will be included in the Forest plans.

In January of 1992, representatives from the Wildlife and Fisheries and Timber Management Staffs of the Southwestern Region (Arizona and New Mexico) in conjunction with representatives of the Wildlife and Fisheries staffs of the Rocky Mountain (Colorado) and Intermountain (Utah) Regions began developing a strategy to conserve the Mexican spotted owl. After intensive review, revision and re-review by members of the spotted owl scientific research community, a strategy was adopted by the Forest Service.

The intent of this conservation strategy is to ensure there are no future declines in the amount of occupied suitable habitat, no long-term declines in the amount of surveyed but unoccupied suitable habitat. It is also the intent of this strategy to improve both the quantity and quality of the habitat used by the Mexican spotted owl. This would remove any threats to the continued survival of the species on National Forest lands throughout its range, as identified by the U.S. Fish and Wildlife Service in their proposal to list the subspecies as threatened under the Endangered Species Act (USFWS 1991b).

The removal of threats provided by this strategy would be accomplished by cessation of practices the FWS believed would cause widespread modification of suitable habitat (USFWS 1991b) and replace these practices with ones that maintain or improve the condition of suitable spotted owl habitat and return capable habitat to suitable conditions. These proposed management practices range from no action to active habitat manipulation of habitats now delineated as suitable, capable, potential foraging, and unsuitable. To that end, management strategies and habitat conditions considered necessary for the conservation of the species have been identified, based upon the best scientific data currently available. These data include information gathered primarily by the Forest Service, but also include what information was available from other agencies, and independent researchers.

During the course of the inventory work conducted in 1988 it became evident a consistent method of inventorying Mexican spotted owl habitat throughout the Region was needed. An inventory protocol was developed by a team of spotted owl biologists and research scientists. This protocol is included in the interim directive, was included in ID No. 2 and has been used to inventory all activities since the 1989 field season. The protocol remains in effect and provides a consistent, efficient and economical method of searching potential Mexican spotted owl habitat to determine the presence or absence of Mexican spotted owls prior to management activities occurring in an area.

Under the interim directive being incorporated into the Forest Service Manual, inventories would continue to follow this protocol and would continue to be conducted in suitable habitat not known to be occupied by spotted owls prior to management activities occurring in an area.

It is assumed in the conservation strategy that Mexican spotted owls would be detected in future inventories at approximately the same rates they have been found during past inventories. Much of this assumption is based on the fact that most inventories conducted through 1992 have not targeted the habitat with the highest potential for detecting owls. Rather, the location for inventories has been determined by the location of the proposed activity. These activity areas do include some of the best habitat, but these locations also include many areas where detecting owls is less likely. Future inventories, at least for the next 3–5 years, should continue to include a mixture of habitat quality, and thus owls should continue to be detected at approximately the same rates as they are being found today.

Conservation of Mexican Spotted Owl Habitat

Any standards developed to manage Mexican spotted owl habitat must be based on the best available data describing the needs of the owl to ensure they would remove the threats identified by the FWS in their Proposed Rule to list the owl as threatened. However, the information needed to develop decisions to best meet the long-term needs of the owl is limited. For this reason, it is a priority of the conservation strategy to continue gathering information to use in making future decisions on managing owl habitat. This will be achieved through a scientific program that will recommend various land management activities to evaluate their effects on providing for the owl's needs. We expect it to take a total of 5 or more years to obtain this information. Long-term management direction will be developed once the results of this program are available. During the time it is expected to take to set up the experimental program, short-term direction has been designed to guide the 1993 forest activities to maintain and/or improve spotted owl habitat.

The short-term direction applies to all national forests within the range of the owl. This direction will be in effect through 1993 or until the scientific program replaces it. Changes to this direction could also be recommended from other spotted owl studies if their results identifies there is a need to change the prescribed management.

No changes will be made to an activity once it is awarded or the appropriate NEPA document is signed, unless the change is necessary to protect the owl's population viability, or to implement the evaluation program.

The Region 3 Biological Evaluation of the 1992 Actions (FY 1992 and first quarter FY 1993) (USFS 1992) evaluated the effects activities would have on the continued existence of the Mexican spotted owl. Any activity that was not included in this evaluation that modifies suitable owl habitat and that has not been harvested or completed by the date the FWS determines if listing is or is not warranted, would be reviewed. This review would follow the process used in the Regional Biological Evaluation.

Once the evaluation program is designed and ready to be implemented, it will provide the primary focus for management of spotted owl habitat. The short-term direction identified below will continue only where it does not conflict with this evaluation program.

Use the spotted owl strategy when suitable or capable Mexican spotted owl habitat overlaps northern goshawk habitat. The owl strategy will meet or exceed stand conditions for multi-story goshawk management. Under the owl strategy, goshawk foraging habitat would not provide the high levels of prey numbers for the wide variety of species identified in the goshawk management recommendations (Reynolds, et al. 1991). But, the owl strategy should provide optimum or near optimum conditions for several prey species used by the goshawk. Thus, the total number of individual prey animals available for the goshawk under the owl strategy should not be any different in most years than would be provided by the goshawk strategy, just the number of prey species would be different (Reynolds, personal communication).

Where suitable or capable habitat overlaps critical or essential habitat of a listed species, the management of this critical or essential habitat will follow the guidelines identified in the recovery plan for the listed species.

In certain instances, based on concurrence between wildlife biologists

and silviculturists, compelling reasons may exist to deviate from the following guidelines to prevent large-scale losses of suitable habitat from insect or disease epidemics. When this occurs, the evidence of the epidemic conditions, reasons for deviation from the guidelines and conditions to help mitigate the effects of deviating from the guidelines shall be included in the documentation for the project.

Short-term Direction for Management of Suitable Habitat

The objective of managing suitable spotted owl habitat is to maintain or improve the condition of this habitat. The condition of this habitat would be based on the description of suitable habitat identified in the owl strategy, or a revised description based on modifications recommended by the scientific committee. A variety of uneven-aged silvicultural treatments can be used to maintain or improve spotted owl habitat. Some of these treatments include single tree selection, thinning from below, free thinning, small group selection, and intermediate cuts including improvement, salvage, sanitation, thinning, etc.

All activity areas containing suitable habitat would be inventoried according to the inventory protocol prior to authorizing any proposed activity that modifies suitable habitat or would occur during the spotted owl's breeding season.

The existing Management Territories established under ID No. 2 will continue to be used. New Management Territories, with the same minimum of 2,000 acres, will be identified wherever and whenever an owl is found during spotted owl inventories. Under the new interim directive, this 2,000 acre Territory represents the mean plus two standard deviations of the 80 percent contour core area identified from home range studies in mixed conifer (Ganey and Balda 1989b and Kroel and Zwank 1991). (The 80 percent contour is the area where 80 percent of the radio locations were found during a telemetry study. It represents the area in which an owl pair would likely spend 80 percent of its time.) This contrasts with the definition used in ID No. 2 where the average home range size was used to determine the Management Territory size. Since the acreage figures for the areas being used to identify where differences in management may occur are the same for the two strategies the term "Management Territory" will continue to be used during the short-term program to reduce confusion. The Scientific Team will recommend whether this term should continue to be used or a new term applied to the area where occupied habitat would be managed.

Inside all Territories there will be a 450 acre "NO TREATMENT CORE AREA" around the nest or day roost. This represents the average of the 60 percent contour core area identified from the home range studies in mixed conifer cover types. Use the core area acreage figures (based on a minimum size core area of 450 acres) currently identified for existing territories. Allow no management activities in the no treatment core area unless prescribed in the scientific evaluation program, or allowed elsewhere in this document.

Stands meeting suitable habitat conditions should have at least a moderately closed canopy with a range of canopy closure from 60 to 100 percent in mixed conifer and 50 to 100 percent in Ponderosa pine and pine/oak, and have a multi-storied canopy, generally with three or more layers in mixed conifer stands and two or more layers in pine/oak, Ponderosa pine and other pine, oak or hardwood stands. (The habitat section of the conservation strategy has a more detailed description of suitable habitat).

Limit the extent of management activities in existing Management Territories, or newly created ones in future activities, to no more than 10 percent of the total number of Management Territories on a forest the year the activity is proposed. This percentage limit does not apply to any activities prescribed by the evaluation program.

To implement the following guidelines, it will be necessary to identify the relationship between canopy closure and basal area and/or stand density index by diameter classes. Canopy closure will be measured using a convex densiometer on a tripod to measure foliage cover or line intercept transects using a clinometer during development of this relationship. Use a sufficient number of plots to provide a statistically reliable relationship between canopy density and basal area.

Specific Short-term Direction To Manage Suitable Habitat Inside Management Territories

Conduct no stand modifying activities within the no treatment core area unless prescribed by the evaluation program, or unless allowed by other items in these guidelines.

Apply the following guidelines in the remainder of the Management Territory.

1. Maintain the existing multi-layered structure and species composition of any stand entered.

2. From the stands of suitable habitat with the highest canopy closure, select at least 20 percent to provide the best long-term, forested nesting and day roosting habitat available. Conduct no stand modifying activities within these stands. These stands should be selected or reviewed by a journey level biologist. Selection criteria should be based on canopy closure, topography, forest health and location. Generally, the stands making up this 20 percent area should exceed 80 percent canopy closure in mixed conifer and 70 percent in Ponderosa pine and pine/oak for types. Use stands with less than 80 percent canopy closure when these dense stands are not available in a Management Territory or it is desirable to select a less dense stand because of location, topography, or other reasons. Document reasons why the 20 percent was selected in the biological evaluation, especially where there is more than 20 percent of the area in stands with greater than 80 percent canopy closure or where there is a valid reason(s) relating to the owl why other stands with a lower canopy closure should be substituted for ones with a higher canopy closure in an individual Territory.

3. Identify an additional 40 percent of the suitable habitat in the core area to provide for high use foraging areas. Select this 40 percent from those stands with the next highest canopy closure. Use stands with a lower canopy closure than other stands when it is desirable to select a less dense stand because of location, topography, or other reasons. Limit stand modifying activities in these stands so that there is a minimum of a 65 percent average stand canopy closure remaining after the activity in mixed conifer forest type and 55 percent in pine and pine/oak types (Ganey and Balda 1989b). Generally, it is not expected to be economically feasible to treat stands with an average canopy closure of less than 70 percent in mixed conifer and 60 percent in pine and pine/oak. Document stand selection as in #2 above.

4. In the remaining 40 percent of the suitable habitat, limit stand modifying activities to a minimum average stand canopy closure of 50 percent in mixed conifer and 40 percent in pine and pine/oak after the activity. These will provide additional areas for foraging (Joe Ganey, Jared Verner, and Eric Forsman, personal communication) and improve stand structure and condition to maintain longterm habitat suitability.

5. Manage ponderosa pine forest types within the Management Territory boundary according to the type of

spotted owl habitat they provide, i.e. suitable, capable or potential foraging.

6. Use a reverse "J" curve and a "Q" factor that favors retaining large trees in regulating the diameter distribution for all stand modifying activities where single tree selection is used.

7. Limit openings created by group selection cuts to 1 acre, with most being less than ¼ acre in size.

8. Conduct no stand modifying management activities within ¼ mile of a nest area, except as prescribed by the evaluation program or identified elsewhere in these guidelines. Limit other prescribed activities that may affect the reproductive output of the Management Territory to outside the breeding season within this same ¼ mile distance.

9. Limit harvest activities to two seasons within each Management Territory.

10. Do not construct roads within ¼ mile of the nest area unless there is no environmentally-feasible alternative route. Conduct no road building within ¼ mile of the nest area during the breeding season (February 1–August 31). Close newly-constructed roads within ¼ mile of the nest area during all breeding seasons following construction. Close and rehabilitate unnecessary roads. Minimize road construction and use. Use dedicated skid trails. Protect rub trees where necessary to ensure average canopy closures are met.

11. Maintain a stand average of 10 square feet of basal area per acre of snags in mixed conifer and 6 square feet in pine and pine/oak. Select snags from the larger diameter classes first until the desired level is reached. Snags should be greater than 18 inches in diameter and more than 30 feet tall. Substitute smaller diameter snags only when large ones do not exist and cannot be created. Substitute shorter snags only when taller ones do not exist. Do not count any snag less than 12 inches diameter at breast height (DBH) or less than 15 feet tall. Retain sufficient cull trees to ensure replacements are available for the large snags. Girdle or kill by other means cull trees when prescribed to meet the snag density.

12. Maintain a stand average of down logs sufficient to provide an equivalent of 10 square feet of basal area per acre in mixed conifer and 6 square feet in pine and pine/oak. Measure all logs at the mid point. Down logs should be greater than 10 inches diameter at the small end and more than 12 feet long to be counted. Treat small sized down material or leave it untreated depending on other resource needs. Do not include large material when piling. Large piles of slash (5 foot by 10 foot by 5 foot tall or larger) may be substituted for down logs on a 2 foot per slash pile rate if down logs are not available. Leave slash piles unburned unless necessary to burn for other resource needs. Do not burn slash piles substituted for down logs.

13. Retain the existing hardwood component, especially oak. Also ensure the hardwood component is maintained throughout time. Each large oak tree is important. They take a long time to attain the size and structure used for nesting and roosting by the owls.

14. Prescribed fire will be designed to meet the conditions identified in 1–13 above. Limit prescribed fire to no more than 25 percent of the Management Territory in a burn year and leave a minimum of 2 full years between burn years in a Management Territory (burn year 1, wait years 2 and 3, burn year 4, etc.).

Management of Suitable Habitat Outside Management Territories

Apply the following guidelines to the suitable habitat outside of the Management Territory. Use a 5,000 to 10,000 acre analysis area for the area to consider for treatment.

1. Same as No. 1 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

2. Same as No. 2 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

3. Same as No. 3 for inside the Management Territories, except it applies to the analysis area and not the Management Territory. In addition, the minimum average stand canopy closure remaining after the activity is 60 percent in mixed conifer forest types and 50 percent in pine/oak types.

4. Same as No. 4 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

5. Manage ponderosa pine outside of the Management Territory under the 50–9–40 rule identified for potential foraging habitat. That is, 50 percent of the area has at least a 40 percent canopy closure of 9 inch DBH or larger trees.

6. Same as No. 6 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

7. Same as No. 7 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

8. Same as No. 11 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

9. Same as No. 12 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

10. Same as No. 13 for inside the Management Territories, except it applies to the analysis area and not the Management Territory.

11. Prescribed fire will be designed to meet the conditions identified in 1–10 above. Limit prescribed fire to no more than 35 percent of the Management Territory in a burn year and leave a minimum of 2 years between burn years in the analysis area.

Specific Short-term Direction to Manage Capable Habitat in Arizona and New Mexico

Manage capable habitat such that suitable habitat conditions will be attained as or more quickly than if no activity were prescribed. Even and uneven-aged techniques can be used in capable habitat as long as it can be demonstrated it would return to a suitable condition more quickly.

Manage snags and down logs as identified in numbers 11 and 12 in the section describing the short-term direction inside Management Territories.

Manage hardwoods as described in number 13 in the section describing the short-term direction inside Management Territories.

Management of Suitable, Capable, and Unsuitable Habitat in Colorado and Utah

Follow existing Forest Plan management direction, except allow no even aged management in suitable habitat.

Long-term Program

The second objective of the conservation strategy is to begin designing long-term management recommendations and standards needed to provide for the Mexican spotted owl and thus avoid the need to list the owl throughout its range. Part of this will be to expand the existing monitoring and study program to collect the information necessary to develop a long-term strategy. Throughout the stages of implementation of this program, the monitoring and research studies will have a vital function producing the information needed to improve management of MSO habitat. The process of using such information to refine management over time is referred to as adaptive management (Holling 1978 and Walters 1986). In this strategy, the objective of adaptive management is to improve the biological and economic efficiency through the continual gain of

knowledge about the owl and its habitat. This is to occur while providing the level of protection necessary for maintaining the viability of the owl over time.

Since it has been identified there is a lack of sufficient information on the owl, a scientific program will be established to obtain the needed information. Specific objectives of this program will be to use existing knowledge, on-going research and monitoring efforts to provide the forests the necessary guidelines for managing the resources. Through this effort, scientists will be able to evaluate the effects silvicultural and other management activities can have on owl habitat. From this research, a future, long-term conservation strategy and management direction will be developed.

The scope of this research program will incorporate the timber program as well as other programs for those national forest lands within the range of the owl. This program would be of sufficient size to provide a statistically valid sample with a high level of reliability. A full range of management activities will be included in the research programs. Through adaptive management, the conservation strategy will be subject to continual review by the team as new information becomes available. The research program will be amended, as necessary, to ensure the needs of the owl are continually being met.

A Scientific Advisory Team (Team) will be formed no later than Janury 1993 to evaluate the effects various management activities can have on owl habitat. Once formed, the Team will meet to begin setting up the scientific program by the end of February 1993. The short-term guides will prevail until the Team recommends alternative viable sale designs. These designs are intended to be completed by the end of FY 1993.

The Team will be made up of Forest Service scientists. Additional members may be appointed as appropriate. The Team should include individuals with research experience with spotted owl and/or Southwestern forest ecosystems and include avian ecology, forest ecology, and/or silviculture. The scientific program for the MSO will be each member's highest work priority and the Forest Service will provide the necessary support to help achieve their objectives. The Team would be terminated at the earliest time possible. Its needs would be reviewed periodically, but within 5 years. The term of the Team may be adjusted by the Regional Forester as necessary or needed.

Responsibilities of the team will include:

1. Design a strategy to evaluate the effects of management activities on spotted owl habitat and the owls' primary prey species. Develop a program to monitor populations of the owl. Based on their recommendation, the Regional Forester would develop implementation guidelines for incorporation into the Forest Service Manual. The forests would then develop a program of work to implement this strategy. The Team would review the programs developed by the forests and recommend necessary modifications to the Regional Forester.

2. Provide technical information on Mexican spotted owl adaptive management to the Regional Forester (Southwestern Region) and Station Director (Rocky Mountain Station).

3. Consult with and involve experts from FWS, New Mexico Department of Game and Fish, Arizona Game and Fish Department, Utah Division of Wildlife Resources, and Colorado Division of Wildlife. Consultation will also involve appropriate expertise from universities and other researchers.

4. Develop a summary of the current state of knowledge on Mexican Spotted Owls.

5. Prepare a comprehensive research program on population ecology and habitat requirements of Mexican Spotted Owls; establish research priorities.

6. Coordinate research and monitoring activities within and between agencies. Evaluate and incorporate results of non-federal research efforts.

7. Provide technical review of management guidelines based on the best available scientific information.

Summary of the Inventory Protocol

The objectives of the Southwestern Region's Mexican spotted owl inventory and monitoring protocols are to: Standardize the survey and monitoring methods used in the Region; ensure an adequate search effort is conducted in suitable Mexican spotted owl habitat to identify general areas where territories would be placed and to locate nest and roost sites to aid in identifying core areas; provide reasonable assurance of the absence of Mexican spotted owls prior to any management activities occurring in an area; provide standard forms for collection and compilation of inventory, monitoring and suitable habitat stand characteristic data; and, to coordinate a Regional Mexican spotted owl data base.

The protocols provide standard definitions of terms used during inventory and monitoring work. They provide the methods used to design survey routes, conduct the field outings, complete follow-up visits and complete all record keeping. The inventory protocol also requires a second year of inventory be completed in unoccupied habitat for all activities where no owl(s) was found during the first year of inventory.

Summary of Management Direction and Inventory and Monitoring Protocols

This management direction and the inventory and monitoring protocols, issued through an Interim Directive to the Forest Service Manual at 2676.2, provide the regulatory mechanism and remove the threat to Mexican spotted owl habitat identified by the Fish and Wildlife Service in their proposal to list the subspecies as threatened. They are also in keeping with the provisions of the National Cooperative Agreement on Spotted Owl Management signed December 1987 between the Forest Service and the U.S. Fish and Wildlife Service, and later signed by the Bureau of Land Management and National Park Service. Analysis by the Forest Service indicates there will be little or no reduction in the amount of suitable habitat during the 1 to 2 year life of the short-term direction.

Dated: December 4, 1992.

R. Forrest Carpenter,

Deputy Regional Forester.

[FR Doc. 92–29978 Filed 12–10–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–92]

Proposed Foreign-Trade Zone—Marysville, Michigan (Port Huron Customs Port of Entry); Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign Trade Zone, Inc. (GDFTZ), requesting authority to establish a general-purpose foreign-trade zone in Marysville, St. Clair County, Michigan, adjacent to the Port Huron Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 1, 1992. The applicant is authorized to make the proposal under Act No. 154 of the Public Acts of 1963 of the State of Michigan.

GDFTZ is the grantee of Foreign-Trade Zone 70, Detroit, Michigan, which was approved in July 1981 (Board Order 176, 46 FR 38941, 7/30/81). It is now requesting authority to establish a new general-purpose zone in the Port Huron area.

The proposed zone would consist of two contiguous parcels (32 acres) located in Marysville, some seven miles south of Port Huron and 50 miles north of Detroit. Parcel A (9 acres) includes a 130,000 square foot building and Parcel B (23 acres) consists of undeveloped land. Both parcels are owned by Wilkie Brothers Conveyors, Inc., which operates a manufacturing plant on site in which public warehouse space will be available. Metro International Trade Services, Inc., an operator of certain FTZ 70 warehouses, will operate the proposed zone.

The application indicates there is a need for zone services in the Port Huron area. The first user will be Wilkie Brothers, whose zone activity would be limited to warehousing. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 9, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 24, 1993.

While no public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 526 Water Street, room 301, Port Huron, Michigan 48060–5471.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: December 4, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–30159 Filed 12–10–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–817]

Active-Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor From Japan; Initiation of Changed Circumstances Antidumping Duty Administrative Review and Consideration of Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty administrative review and consideration of revocation of antidumping duty order.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna, Michael Diminich, or Breck Richardson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 43741) an antidumping duty order on active-matrix liquid crystal high information content flat panel displays and display glass therefor from Japan (the order). On November 3, 1992, Guardian Industries, on behalf of OIS Optical Imaging Systems (OIS), one of the petitioners, submitted a request for a changed circumstances review and revocation of the order. Guardian is the controlling shareholder of OIS, and OIS is the only petitioner that manufactures active-matrix LCDs.

Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order

Pursuant to sections 751(c) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping duty order if the Department determines, based on a review under section 751(b) of the Act, that changed circumstances exist sufficient to warrant revocation. Section 353.25(d) of the Department's regulations provides that, if the Department finds that the order under review is no longer of interest to domestic interested parties, such finding constitutes a changed circumstance sufficient to warrant revocation.

The changed circumstance cited by OIS and Guardian as the basis for the request for review is the absence of any further interest in maintaining the order. The Department has determined that the petitioner's affirmative statement of no interest constitutes "good cause" for conducting a changed circumstances review, as provided in section 751(b)(2) of the Act, and 19 CFR 353.22(f)(3).

Scope of the Review

Imports covered by this review are shipments of active-matrix liquid crystal high information content flat panel displays and display glass therefor from Japan, which are defined as large area, matrix addressed displays, no greater than four inches in depth, with a picture element (pixel) count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. These products are currently classified under items 8471, 8531.20.00, 8531.90.00, 9013.80.60, 9230, and 9240 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. This changed circumstance administrative review covers all producers/exporters of the subject merchandise produced in Japan and all shipments of subject merchandise entered, or withdrawn from warehouse for consumption on or after February 21, 1991.

Request for Comments

The Department requests written comments from interested parties regarding this review and the grounds for revocation. Comments may be submitted not later than 30 days after the date of publication of this notice. Rebuttal to written comments, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication. All written comments shall be submitted in accordance with 19 CFR 353.31(e) and shall be served on interested parties in accordance with 19 CFR 353.31(g). The Department will publish the preliminary results of this administrative review after its analysis of any written comments.

This review and notice are in accordance with sections 751 (b) and (c) of the Act and 19 CFR 353.22(f) and 353.25(d) (1992).

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-30160 Filed 12-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-805]

Sodium Thiosulfate From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Calabrian Corporation, the Department of Commerce has conducted an administrative review of the antidumping duty order on sodium thiosulfate from the People's Republic of China (the PRC). This review covers China National Chemicals Import and Export Corporation (Sinochem), and Shanghai Chemicals Import and Export Corporation (Shanghai), and the period December 12, 1990, through January 31, 1992. Since Sinochem failed to respond to our questionnaire, we have reviewed this firm using the best information available (BIA) for purposes of these preliminary results of review. We preliminarily determine that there were no shipments of this merchandise to the United States by Shanghai during the period of review. Although we initiated reviews for Henan Provincial Chemical Plant (Henan) and Eeyer Hat Oil Chemical Plant (Eeyer), based on petitioner's request, we were unable to locate these firms. Therefore, Henan and Eeyer are not included in these preliminary results. The estimated antidumping cash deposit rates for Shanghai, Henan, and Eeyer will be the "all others" rate to be established in the final results of this administrative review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 3740) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on sodium thiosulfate from the PRC. On February 19, 1992, the petitioner, the Calabrian Corporation, requested administrative review of Sinochem, Shanghai, Henan, and Eeyer, four manufacturers/exporters of this merchandise to the United States. We initiated these reviews covering the period December 12, 1990, through January 31, 1992, on March 16, 1992 (57 FR 9104). The Department has now conducted these reviews for Sinochem and Shanghai in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). Henan and Eeyer could not be located and are not included in these preliminary results.

Scope of the Review

Imports covered in this review are shipments of all grades of sodium thiosulfate, in dry or liquid form. The chemical composition of sodium thiosulfate is $Na^2S^2O^3$. Sodium thiosulfate is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 2832.30.1000. The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters of sodium thiosulfate from the PRC and the period December 12, 1990, through January 31, 1992 (the POR).

United States Price and Foreign Market Value

We forwarded the antidumping questionnaire to Sinochem and Shanghai, two manufacturers/exporters of this merchandise to the United States.

With respect to Sinochem, since the firm failed to respond to our questionnaire, the Department used the best information available (BIA) to review its sales during the POR, in accordance with section 776(c) of the Tariff Act. When a company fails to provide requested information in a timely manner, or otherwise significantly impedes the Department's review, the Department normally considers the company uncooperative and generally assigns to that company as BIA the higher of: (a) The highest rate assigned to any company in a previous review or the investigation or (b) the highest rate for a responding company with shipments during the review period. This practice is consistent with Commerce's long-standing position that BIA is not necessarily the most accurate information on the record but a choice of information on the record which is usually adverse to respondents who fail to comply with the Department's requests for information. See 19 CFR 353.37(b); Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al., 57 FR 8360 (June 24, 1992); Final Results of Antidumping Administrative Review: Potassium Permanganate from the People's Republic of China, 56 FR 19640 (April 29, 1991).

With respect to the above, the highest previous rate was 25.57 percent, calculated in the investigation using price and cost information submitted by petitioner. However, petitioner submitted information on the record in this review indicating that because costs and prices in the industry have changed substantially since the investigation, 25.57 percent was no longer sufficiently adverse to induce respondents to submit timely, accurate, and complete responses. Therefore, we have preliminarily determined to revise the investigation BIA calculation, based on the information submitted by petitioner, for purposes of this review.

In this review, we again based our BIA calculation upon the price and cost information submitted by petitioner in the investigation, as revised according to the information submitted on the record of this review. United States Price (USP) was based on the average 1991 price of sodium thiosulfate imported from the PRC, as derived from official Commerce import statistics. Foreign Market Value (FMV) was based on petitioner's 1991 cost of manufacturing sodium thiosulfate, adjusted for known differences in labor costs and the labor cost in Pakistan, the country selected in this administrative review as a surrogate for the PRC. Pakistan was selected as a surrogate because of its comparability to the PRC in terms of per capital gross national product and the availability of current Pakistani labor rate statistical data.

The increase in the cost of manufacture of sodium thiosulfate coupled with the decline in U.S. sales prices result in a dumping margin of 148.42 percent.

With respect to Shanghai, since the firm reported that it made no shipments of this merchandise to the United States during the POR, and Shanghai also had no prior company-specific estimated deposit rate, the Department will use as the estimated deposit rate for Shanghai the "all others" rate to be established in the final results of this administrative

review based on our analysis of Sinochem.

Preliminary Results of the Review

As a result of our comparison of USP to FMV, we preliminarily determine that a dumping margin of 148.42 percent exists for all manufacturers/exporters during the period December 12, 1990, through January 31, 1992.

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing. Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of sodium thiosulfate, from the PRC, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 571(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "All others" rate established in the final results of this administrative review based on our analysis of Sinochem. Although the "all others" rate is normally based on the highest non-BIA rate from the current review (or from a prior review if there is no non-BIA rate in the current review), in this case there have been no non-BIA rates. Therefore, it is anticipated the current Sinochem rate will be the "all others" rate. These deposit requirements when imposed shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated December 4, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-30161 Filed 12-10-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Olga Vélez-Lugo From an Objection and by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

By letter dated July 9, 1992, Ms. Olga Vélez-Lugo (Appellant), through her chosen representative, filed with the Department of Commerce a notice of appeal. The Appellant is appealing to the Secretary of Commerce (Secretary) under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification that the construction of a wood dock 50 feet long by six feet wide, the restoration of an existing boat ramp, and the emplacement of approximately 400 cubic yards of fill on her property in the Playitas Ward, Salinas, Puerto Rico, for which a U.S. Army Corps of Engineers permit must be obtained, is consistent with Puerto Rico's coastal zone management program.

The CZMA provides that a timely objection by a state, (including Puerto Rico), to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the PRPB's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in section 302 or section 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Puerto Rico's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Ms. Angelica Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments will also be forwarded to the Appellant and the PRPB.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the PRPB and the Office of the Assistant General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Angelica Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235 at (202) 606-4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: December 4, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-30067 Filed 12-10-92; 8:45 am]

BILLING CODE 3510-08-M

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public scoping meetings on an Atlantic bluefin tuna fishery environmental impact statement; request for comments.

SUMMARY: NMFS will hold three public scoping meetings in order to discuss preparations to develop an Environmental Impact Statement (EIS) to assess the potential impacts on the human environment of the western Atlantic bluefin tuna fishery in 1994–95. In addition, the analysis done in this EIS for the Atlantic bluefin tuna fishery will be used, as appropriate, in NMFS's preparation of a Fishery Management Plan for Atlantic tunas. A notice of intent to prepare an EIS was published in the **Federal Register** on November 4, 1992 (57 FR 52617). The EIS will evaluate the effects on stock size and harvest rates of possible actions for the 1994–95 fishing years. NMFS is responsible for managing the Atlantic bluefin tuna fishery and implementing the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

The purpose of this notice is to inform the interested public of EIS scoping meetings to solicit input to help NMFS scope issues and possible actions to be included in drafting the EIS. In addition, NMFS requests written comments on aspects of the bluefin tuna fishery that would be appropriate to include in the EIS.

DATES: Written comments on the issues for a proposed rulemaking must be received on or before January 15, 1993. See **SUPPLEMENTARY INFORMATION** for dates and times of the scoping meetings.

ADDRESSES: Written comments should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Bluefin Tuna EIS Suggestions."

See **SUPPLEMENTARY INFORMATION** for the addresses of the scoping meeting locations.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: Public scoping meetings will be held to provide an opportunity for informal discussion between the public and NMFS on the preparation of an EIS on the western Atlantic bluefin tuna fishery for the 1994–1995 season. In addition, the analysis done for this EIS will be used as appropriate, in preparing a Fishery Management Plan for all western Atlantic tunas. Additional discussion was provided in the notice of intent, and is not repeated here.071

The public scoping meetings are scheduled as follows:

January 5, 1992, Gloucester, Mass., 7–10 p.m.

NMFS Northeast Regional Office, One Blackburn Dr., Gloucester, MA 01930, (508) 281-9260 (contact Kevin Foster).

January 6, 1992, Silver Spring, Md., 1–30–6 p.m.

NMFS Headquarters, SSMC II, Second Floor Conference Rm., 1325 East-West Highway, Silver Spring, MD 20910, (301) 713-2347 (contact Aaron King).

January 7, 1993, Madeira Beach, Fla., 7–10 p.m.

Madeira Beach City Hall, 300 Municipal Drive, Madeira Beach, FL 33708, (813) 893-3161 (contact Rod Dalton).

Dated: December 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-30158 Filed 12-10-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of Permit Modification (P70E).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 222.25 of the regulations governing endangered fish and wildlife permits, Scientific Research Permit No. 765 issued to Dr. William A. Watkins, Senior Research Specialist, Woods Hole Oceanographic Institution, Woods Hole, MA 02543, on February 25, 1992, has been modified to allow sound playback experiments, at various levels, on up to five tagged whales, and to harass up to 60 additional sperm whales annually up to 10 times per payback test.

This modification becomes effective December 11, 1992.

Documents pertaining to this Modification and Permit are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281-9200); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141).

Dated: December 3, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-30103 Filed 12-10-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification No. 1 to permit No. 772 (P475).

SUMMARY: On March 27, 1992, notice was published in the **Federal Register** (57 FR 10650) that Permit No. 772 had been issued to Ms. Dena Matkin, P.O. Box 22, Gustavus, Alaska 99826.

Notice is hereby given that on December 3, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the Regulations Governing Endangered Fish and Wildlife (50 CFR parts 217–222), the National Marine Fisheries Service modified Permit No. 772 to extend the effective date through March 31, 1993.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586-7221).

Dated: December 3, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-30104 Filed 12-10-92; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

National and Community Service Act, Subtitle B1, B2 & D Programs; Availability of Funds

AGENCY: Commission on National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Commission on National and Community Service hereby announces the availability of funds for new projects pursuant to the National and Community Service Act of 1990, as amended. The Commission has been appropriated $73 million for programs and activities in Fiscal Year 1993. The majority of these funds will be committed to continuing programs established in Fiscal Year 1992. However, a small portion of funds is available for specific types of new applicants and projects (programs funded under subtitles B1 (local applicants of North Dakota only), B2, and D). This notice pertains only to the availability of funds for these new projects, and does not pertain to existing grantees submitting requests for continuations. Existing grantees will be notified separately with respect to continuation requirements.

DATES: All grant applications under these three programs must be received by the Commission by 4:30 p.m., local standard time, February 16, 1993.

ADDRESSES: Applications should be submitted to the Commission on National and Community Service, 529 14th Street, NW., suite 452, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: The Commission on National and Community Service, (202) 724–0600: Ruby Anderson for questions concerning subtitle B1; Smita Singh—subtitle B2; Michael Camunez—subtitle D; and Mike Kenefick—grants and administration.

SUPPLEMENTARY INFORMATION: Funding is available for the following types of new applicants and projects:

1. Subtitle B1, Serve-America: Funds are available under this notice for local applicants of North Dakota only. Grants will be awarded on a competitive basis to public or private nonprofit organizations and local educational agencies working in partnership with nonprofit organizations. The Serve-America program provides support for school-age Americans who volunteer their services for the benefit of others, and aims to increase the number of adults who volunteer in schools. Projects may be school-based service-learning programs, community-based service programs or adult volunteer or partnership programs. Available funds total $43,000.

2. Subtitle B2, Higher Education: Institutions of higher education and consortia of such institutions are eligible to receive grants under this program. States, Indian Tribes and public agencies or nonprofit organizations in consortia with institutions of higher education may also apply for these funds. Higher Education programs should involve students in community service activities or train teachers in service-learning concepts. Approximately $1 million is available for awards under this notice.

3. Subtitle D, National and Community Service: States and Indian Tribes are eligible to apply for funds under this notice. Up to $10 million may be available in Fiscal Year 1993 to test one to three National Service programs. Programs should engage individuals ages 17 and older in full- or part-time service.

Application materials are available from the Commission on National and Community Service, 529 14th Street, NW., suite 452, Washington, DC 20045.

Authority: 42 U.S.C. 12501 *et seq.*

Dated: December 8, 1992.

Catherine Milton,

Executive Director.

[FR Doc. 92–30181 Filed 12–10–92; 8:45 am]

BILLING CODE 6820–BA–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and a service previously furnished by such agencies.

EFFECTIVE DATE: January 11, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 21, September 11 and 25, October 16 and 23, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (57 FR 37598, 41730, 44364, 47453 and 48359) of proposed additions to and deletions from Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified workshops to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to Procurement List:

Commodities

Magazine, Cartridge
1005–00–921–5004

Charcoal, Activated, Technical
6810–00–726–7944

Can, Water, Plastic
7240–00–089–3827

Service

Administrative Services
Federal Supply Service
Tool Acquisition Division 1 (6FEP–CO)
Arlington, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity and service are hereby deleted from the Procurement List:

Commodity

Button, Insignia
8455–00–530–3700

Service

Janitorial/Custodial
Charles E. Boston USARC
Houma, Louisiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30148 Filed 12–10–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 11, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action does not appear to have a severe adverse impact on the current contractors for the commodity.
3. The action will result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Scouring Powder
7930–01–294–1115
Nonprofit Agency: Lifetime Assistance, Inc.
Rochester, New York

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30149 Filed 12–10–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 11, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action will result in authorizing small entities to furnish the commodity to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Paper, Toilet Tissue
8540–00–530–3770
(Requirements for the Palmetto, GA Depot only)
Nonprofit Agency: Duluth Lighthouse for the Blind, Duluth, Minnesota

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30150 Filed 12–10–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) for Realignment of Forces and the Restationing of the 513th Military Intelligence Brigade From Fort Monmouth, New Jersey and Vint Hill Farms Station, VA to Fort Gordon, GA and Restationing the 470th Military Intelligence Brigade From Panama to Fort Gordon, GA

AGENCY: Department of Defense, United States Army.

ACTION: Finding of No Significant Impact (FNSI).

SUMMARY: The proposed action is to withdraw two Military Intelligence Brigades from their present stations (elements of the 513th in Fort Monmouth, NJ, and Vint Hill Farms Station, VA, and the 470th from Panama) and restation them to Fort Gordon. This will be accomplished starting in FY93 and be completed during FY99. The two Brigades will be consolidated as the 513th MI Brigade. The Army considered consolidation and restationing at Fort Drum, NY, consolidation and restationing at Fort Polk, LA, the "no action" alternative, the proposed action, and the proposed action with the addition of a military remote operations facility (ROF).

No new buildings will be constructed as a result of this action. The activities conducted by the 513th MI Brigade are conducted primarily indoors. The type of training activities conducted by the 513th MI Brigade are similar to those conducted by other units at Fort Gordon.

It has been determined that the proposed action and the alternatives will not constitute an action significantly affecting the quality of the human environment. The alternatives will not significantly affect air or water quality or land use. There will not be significant impact on threatened or endangered species, nor other biotic resources. There will not be significant impact to socioeconomic conditions.

Because there would be no significant environmental impacts resulting from implementation of the Proposed Action, an Environmental Impact Statement (EIS) is not required and will not be prepared.

SUPPLEMENTARY INFORMATION: There is a 30-day waiting period for the public prior to implementation.

ADDRESSES: A request for a copy of the EA and comments may be forwarded to: Headquarters, US Army Intelligence and Security Command, Public Affairs Office, Fort Belvoir, Virginia 22060–5370.

FOR FURTHER INFORMATION CONTACT: Questions concerning this FNSI may be directed to Mr. Paul Sutton, (703) 806–5326.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health) OASA (I, L&E).

[FR Doc. 92–30108 Filed 12–10–92; 8:45 am]

BILLING CODE 3710–08–M

Preparation of a Supplement to the 1989 Environmental Impact Statement for Proposed Actions at U.S. Army Kwajalein Atoll (USAKA)

AGENCY: Department of Defense, United States Army.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent is for the preparation of a Supplemental Environmental Impact Statement to the 1989 Draft and Final Environmental Impact Statement (DEIS and FEIS) on Proposed Actions at USAKA. The Supplemental EIS adds to the original EIS by modifying its Proposed Action in two respects. One Proposed Action of the Supplemental EIS would increase the level of strategic defense test and evaluation activities to support the development and deployment of a ballistic missile defense system. The other Proposed Action would adopt USAKA Environmental Standards that have been specifically designed to protect the unique environmental conditions of the Kwajalein Atoll. This supplemental EIS also addresses the adoption of the new environmental standards for USAKA activities. The development of these new standards was provided for in the Compact of Free Association between the United States and the Government of the Republic of the Marshall Islands (RMI).

LEAD AGENCY: U.S. Army Space and Strategic Defense Command (USASSDC)

COOPERATING AGENCY: Strategic Defense Initiative Organization (SDIO)

Alternatives to this Proposed Action to be analyzed:

- Low level of Test Activities—involving the continuation of strategic defense system individual component level tests at an accelerated frequency and intensity compared to that analyzed in the 1989 USAKA EIS, but not to the higher level assessed in the proposed action. Each flight test would consist of only a single vehicle launched from USAKA.
- High level of Test Activities—consisting of multiple launches and sensing from multiple locations, and related support activities associated with both systems integration, development and operational testing; and annual service practice. This action would bound the greatest amount of range activity which could be conducted at USAKA. Each test flight would consist of a maximum of ten launches from USAKA.
- No Action Alternative—continuing space and defense activities at USAKA as described in the 1989 USAKA EIS Proposed Action and Record of Decision.

The second category of Proposed Actions relates to the environmental standards that govern U.S. Army activities at USAKA. The USAKA Environmental Standards derive from existing United States and RMI statutes, but are tailored to protect the specific environmental conditions of the Kwajalein Atoll. The Proposed Action would have one alternative:

- No-Action Alternative—defined as continuing the use of current United States regulations for environmental protection and analyses of the Kwajalein Atoll.

Scoping

The scoping process will include announcements in the Hourglass and The Marshall Islands' Journal (published in USAKA and Majuro, respectively), as well as in the **Federal Register**. The scoping process is intended to determine the significant environmental issues to be analyzed in depth in the environmental documentation. Comments received, either in writing or through contacts with RMI and U.S. Government representatives, will be used to identify potential issues. Comments should be received by January 9, 1992.

All written and verbal comments will be considered in preparing the Draft Supplemental EIS.

Written comments and questions about the Proposed Action and Supplemental EIS may be forwarded to: D. Randy Gallien, U.S. Army Strategic Defense Command, ATTN: CSSD–EN–V, P.O. Box 1500, Huntsville, Alabama 35807–3801. Verbal comments and questions regarding this proposal may be directed to D. Randy Gallien at (205) 955–4890.

More detailed information is available from Randy Gallien at the address and telephone number listed above; Dr. Don Ott, USAKA, at telephone number (805) 238–7994, extension 4218; and Alele Museum in Majuro, RMI.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 92–30147 Filed 12–10–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.036A]

Library Education and Human Resource Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: Provides grants to assist in covering the cost of courses

of study or staff development through short term or regular session institutes.

Eligible Applicants: Institutions of higher education and library organizations or agencies.

Deadline For Transmittal of Applications: February 24, 1993.

Deadline for Intergovernmental Review: April 26, 1993.

Applications Available: January 8, 1993.

Available Funds: $992,000.

Estimated Range of Awards: $35,000–$125,000.

Estimated Average Size of Awards: $66,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimate in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80 (for public library organizations or agencies), 82, 85, and 86 (for institutions of higher education); (b) The regulations for this program in 34 CFR part 776.

Priorities

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 776.5(a) the Secretary gives an absolute preference to applications that meet one or both of the following priorities. The Secretary funds under this competition only applications that meet one or both of these absolute priorities:

Absolute Priority 1

To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference and cataloging.

Absolute Priority 2

To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

Invitational Priority: Within absolute priorities 1 and 2 specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications for institutes that place particular emphasis on libraries and their contributions to achieving one or more of the following National Education Goals (1, 2, 3, 4, and 5):

Goal 1—Readiness for School: By the year 2000, all children in America will start school ready to learn.

Goal 2—High School Completion: By the year 2000, the high school graduation rate will increase to at least 90 percent.

Goal 3—Student Achievement and Citizenship: By the year 2000, American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

Goal 4—Science and Mathematics: By the year 2000, U.S. students will be first in the world in science and mathematics achievement.

Goal 5—Adult Literacy and Lifelong Learning: By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

SUPPLEMENTARY INFORMATION: Applicants interested in the invitational priority addressing libraries and their contributions to achieving the National Education Goals may request from the program office the complete text of the six goals, including the objectives supporting each individual goal.

FOR APPLICATIONS OR INFORMATION CONTACT: Yvonne B. Carter, or Louise V. Sutherland, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1021, 1032.

Dated: December 8, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–30144 Filed 12–10–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No 84.999F]

The National Assessment of Educational Progress (NAEP) Program; Notice Inviting Applications for New Awards for Fiscal Year 1993

Purpose of Program: To conduct data collection and prepare the sampling weights component for the 1994 National Assessment of Educational Progress (NAEP). NAEP supports the National Education Goals by providing measures of progress toward the Goals.

Eligible Applicants: Public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of such institutions, agencies, and organizations.

Deadline for Transmittal of Applicants: January 25, 1993.

Applications Available: December 11, 1992.

Available Funds: In fiscal year 1993, $1,400,000 will be available for the sampling, and data collection component. It is anticipated that in fiscal year 1994, a total of $5,000,000 will be available, and $900,000 in fiscal year 1995.

Estimated Number of Awards: 1.

Project Period: Up to 34 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86; (b) The regulations in 34 CFR part 98 (Students Rights in Research, Experimental Activities, and Testing); and (c) 48 CFR part 31 (Contracts with Commercial Organizations).

SUPPLEMENTARY INFORMATION: The National Assessment of Educational Progress (NAEP) is authorized by section 406 of the General Education Provisions Act (20 U.S.C. 1221e–1), as amended by Public Law 100–297. This law provides for the establishment of the National Assessment Governing Board (NAGB). The law requires the NAGB, among other responsibilities, to formulate the policy guidelines for the National Assessment and select the subject areas to be assessed. The law further requires that the 1994 National Assessment of Educational Progress will assess 9-, 13-, and 17-year-olds and grades 4, 8, and 12 in reading, mathematics, science, U.S. history, and geography. A cooperative agreement is currently in operation to develop assessment instruments for the 1994 assessment.

This notice is limited to seeking applications for activities in connection with the National Assessment. The Secretary, however, continues strongly to support the idea of conducting assessments at the State level in 1994, as was done on a trial basis in 1990 and 1992. Although a consensus to authorize State assessments seemed to exist at the close of the last session of Congress, no law authorizing State assessments was enacted prior to adjournment. The Secretary remains hopeful that this

authority will be enacted promptly upon the return of Congress in early 1993. If legislation is approved, the Secretary intends an immediate and expeditious timetable to request applications or proposals and to make selections. This expedition will be required in order to execute the State assessments on a timely basis in 1994. Accordingly, those interested in submitting applications to do work on the State assessments are hereby placed on notice that they should be prepared to proceed at the fastest permissible speed if authorizing legislation is enacted upon Congress's return.

Priorities

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Collection of 1994 National Assessment of Educational Progress Data: The data collection for the 1994 NAEP authorized by section 406(i) of GEPA must be performed in accordance with guidelines developed by the NAGB.

Invitational Priority: Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Conduct Transcript Study based upon graduating seniors in the 1994 NAEP sample.

SELECTION CRITERIA: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the selection criteria to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

FOR APPLICATIONS OR INFORMATION CONTACT: Steve Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 308b, Washington, DC 20208–5653. Telephone: (202) 219–1937. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e–1.

Dated: December 4, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–30142 Filed 12–10–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.999G]

The National Assessment of Educational Progress (NAEP) Program; Notice Inviting Applications for New Awards for Fiscal Year 1993

Purpose of Program: To conduct the scoring, analysis, and reporting component for the 1994 National Assessment of Educational Progress (NAEP). This will consist of a national assessment. NAEP supports the National Education Goals by providing measures of progress toward the Goals.

Eligible Applicants: Public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of such institutions, agencies, and organizations.

Deadline for Transmittal of Applications: January 25, 1993.

Applications Available: December 11, 1992.

Available Funds: In fiscal year 1993, $600,000 will be available for the scoring, analysis, and reporting component. It is anticipated that in fiscal year 1994, a total of $8,000,000 will be available, and $2,800,000 available in fiscal year 1995.

Estimated Number of Awards: 1.

Project Period: Up to 34 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86; (b) the regulations in 34 CFR part 98 (Students Rights in Research, Experimental Activities, and Testing); and (c) 48 CFR part 31 (Contracts with Commercial Organizations).

SUPPLEMENTARY INFORMATION: The National Assessment of Educational Progress (NAEP) is authorized by section 406 of the General Education Provisions Act (20 U.S.C. 1221e–1), as amended by Public Law 100–297. This law provides for the establishment of the National Assessment Governing Board (NAGB). The law requires the NAGB, among other responsibilities, to formulate the policy guidelines for the National Assessment and select the subject areas to be assessed. The law further requires that the 1994 National Assessment of Educational Progress will assess 9-, 13-, and 17-year-olds and grades 4, 8, and 12 in reading, mathematics, science, U.S. history, and geography. A cooperative agreement is currently in operation to develop assessment instruments for the 1994 assessment.

This notice is limited to seeking applications for activities in connection with the National Assessment. The Secretary, however, continues strongly to support the idea of conducting assessments at the State level in 1994, as was done on a trial basis in 1990 and 1992. Although a consensus to authorize State assessments seemed to exist at the close of the last session of Congress, no law authorizing State assessments was enacted prior to adjournment. The Secretary remains hopeful that this authority will be enacted promptly upon the return of Congress in early 1993. If legislation is approved, the Secretary intends an immediate and expeditious timetable to request applications or proposals and to make selections. This expedition will be required in order to execute the State assessments on a timely basis in 1994. Accordingly, those interested in submitting applications to do work on the State assessments are hereby placed on notice that they should be prepared to proceed at the fastest permissible speed if authorizing legislation is enacted upon Congress's return.

Priority

Absolute Priority: Under 34 CFR 75.105(c)(3), and section 406(i) of GEPA, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Scoring, Analysis and Reporting of Data from the 1994 National Assessment of Educational Progress.

The applicant must score, analyze and report data collected for reading, mathematics, science, geography and U.S. history in grades 4, 8, and 12 from a nationally representative sample. The data collected from the 1994 NAEP must be reported in order to increase the information available to educational policymakers and the general public regarding the educational achievement of American students. Section 406(i) requires the NAGB to develop the guidelines for the analysis and reporting of the NAEP results. The applicant must score, analyze and report in accordance with guidelines specified by the National Assessment Governing Board. Each report must be published and disseminated after completing the National Center for Educational Statistics (NCES) peer review procedure.

SELECTION CRITERIA: Under 34 CFR 75.210(c), the Secretary is authorized to

distribute and additional 15 points among the selection criteria to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

FOR APPLICATIONS OR INFORMATION CONTACT: Steve Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 308b, Washington, DC 20208–5653. Telephone: (202) 219–1937. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e–1.

Dated: December 4, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–30143 Filed 12–10–92; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study and Federal Supplemental Educational Opportunity Grant Programs: Closing Date for Institutions To File an Application for Institutional Eligibility and Certification for Participation in the Campus-Based Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an "Application for Institutional Eligibility and Certification" (ED Form E–40–34P, OMB #1840–0098) to participate in the Federal Perkins Loan, Federal Work-Study and Federal Supplemental Educational Opportunity Grant Programs for the 1993–94 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) in one or more of the "campus-based programs" for the 1993–94 award year to submit to the Secretary an "Application for Institutional Eligibility and Certification" and all documents required for an eligibility determination.

The campus-based programs are the Federal Perkins Loan Program, the Federal Work-Study Program, and the Federal Supplemental Educational Opportunity Grant Program and are authorized by title IV of the Higher Education Act of 1965, as amended. The programs support AMERICA 2000, the President's strategy for moving the Nation toward the national Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning. The 1993–94 award year is July 1, 1993 through June 30, 1994.

DATES: *Closing Date for Filing Application and Required Documents.* To participate in a campus-based program in the 1993–94 award year, a currently ineligible institution must mail or hand-deliver its "Application for Institutional Eligibility and Certification" on or before January 11, 1993. The application along with all documents required for an eligibility determination must be submitted to the Institutional Participation Division at one of the addresses indicated below.

ADDRESSES: *Applications and Required Documents Delivered by Mail.* An institutional eligibility application and required documents delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: IPD/IPOS/OPE, room 3633, Regional Office Building 3, 400 Maryland Avenue SW., Washington, DC 20202–4725.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions that submit eligibility applications and required documents after the closing date will not be considered for funding under the campus-based programs for award year 1993–94.

Applications and Required Documents Delivered by Hand. An institutional eligibility application and required documents delivered by hand must be taken to the U.S. Department of Education, Application Control Center, room 3633, Regional Office Building 3, 7th and D Streets SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays and Federal holidays. An application for eligibility for the 1993–94 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1993–94 to any currently ineligible institution unless the institution files its "Application for Institutional Eligibility and Certification" and other required documents by the closing date. If the institution submits its institutional eligibility and certification application or other required documents after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1994–95 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary, but has previously filed a FISAP.

(2) An off-campus site of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution, but has been included in the institution's 1993–94 FISAP.

(3) A branch campus that is currently part of an eligible institution, but has filed its own FISAP and is seeking eligibility as a separate institution of higher education.

The Secretary wishes to advise institutions that the insututional eligibility form, "Application for Institutional Eligibility and Certification," should not be confused with the FISAP form that institutions were required to submit electronically by October 1, 1992, in order to be considered for funds under the campus-based programs for the 1993–94 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Perkins Loan Program, 34 CFR part 674.

(3) College Work-Study Program, 34 CFR part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(6) New Restrictions on Lobbying, 34 CFR part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(8) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact Diane Sedicum, Acting Director, Institutional Participation Division, Office of Postsecondary Education, U.S. Department of Education, room 3030, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–5242. Telephone: (202) 708–4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Director, Campus-Based Programs Financial Management Division, room 4621, Regional Office Building 3, 400 Maryland Avenue SW., Washington, DC 20202–5347. Telephone: (202) 708–9711. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., eastern standard time. Program Authority: 20 U.S.C. 1807 *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance, Federal Supplemental Educational Opportunity Grant Program, 84.007; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.037)

Dated: December 8, 1992.

Carolyna Reid-Wallace,

Assistant Secretary for Postsecondary Education

[FR Doc. 92–30145 Filed 12–10–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2300–003, 2311–002, 1325–003, 2327–003, 2422–005, and 2423–002]

Notice of Application Accepted for Filing With the Commission

December 7, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project Nos.:* 2300–003, 2311–002, 2326–003, 2327–003, 2422–005, 2423–002.

c. *Date Filed:* November 16, 1992.

d. *Applicant:* James River-New Hampshire Electric, Inc. (licensee) James River Paper Company, Inc. (transferee).

e. *Name of Projects:* Shelburne, Gorham, Cross, Cascade Sawmill, and Riverside.

f. *Location:* On the Androscoggin River in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–824(r).

h. *Applicant Contact:* Ms. Jacquelyn E. Stone, McGuire Woods Battle & Boothe, One James Center, 901 East Cary Street, Richmond, VA 23219–4030, (804) 775–1000.

i. *FERC Contact:* Ms. Julie Bernt (202) 219–2814.

j. *Comment Date:* December 28, 1992.

k. *Description of Project:* Licenses were issued to the licensee to operate and maintain the Shelburn, Gorham, Cross, Cascade Sawmill and Riverside Project Nos. 2300, 2311, 2326, 2327, 2422, and 2423. The licensee intends to transfer the licenses to the transferee in order to facilitate a corporate merger. The transferee states that it would comply with all terms and conditions of the licenses.

1. The transfer application was filed within five years of the expiration of the licenses for Project Nos. 2300, 2311, 2326, 2327, and 2422. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Statues and Regulations, Regulations Preambles 1986–1990 ¶ 30,854 at 31,437), the Commission declined to forbid license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (*id.* at p. 31,438 n. 318). Project Nos. 2300, 2311, 2326, 2327, 2422, and 2423 are subject to New License proceedings and the transfer will result in a substitution of the transferee for the licensee as applicant in the New License applications.

m. This notice also consists of the following standard paragraphs: B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30097 Filed 12–10–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 92–19 & 92–20; Certification Notice—111]

Filing Certification of Compliance: Indeck-Corinth Ltd. Partnership et al.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Indeck-Corinth Limited Partnership (C&E 92–19) and Turlock Irrigation District (C&E 92–20) have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

Owner: Indeck-Corinth Limited Partnership, Buffalo Grove, Illinois
Operator: Indeck-Corinth Limited Partnership
Location: Corinth, New York
Plant Configuration: Combined cycle cogeneration
Capacity: 125 megawatts
Fuel: Natural gas
Purchasing Utilities: Consolidated Edison Company Edison Company
Expected In-Service Date: June, 1994

Owner: Turlock, Irrigation District, Turlock, California
Operator: Turlock Irrigation District
Location: Ceres, California
Plant Configuration: Combined cycle
Capacity: 49.9 megawatts
Fuel: Natural gas and L.P.G.
Purchasing Utilities: Turlock Irrigation District (100%)
Expected In-Service Date: November 1, 1994.

Issued in Washington, DC, on December 4, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–30152 Filed 12–10–92; 8:45 am]
BILLING CODE 6450–01–M

[Docket No. FE C&E 92–18; Certification Notice—110]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: KIAC Partners has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: KIAC Partners, c/o Airport Cogen Corp., Brooklyn, New York
Operator: CEA Kennedy Operators, Inc.
Location: JFK International Airport, Jamaica, New York
Plant Configuration: Combined cycle
Capacity: 100.7 megawatts
Fuel: Natural gas
Purchasing Utilities: The Port Authority—60%; Consolidated Edison Company—40%
Expected In-Service Date: April 30, 1994

Issued in Washington, DC on December 1, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–30151 Filed 12–10–92; 8:45 am]
BILLING CODE 6450–01–M

Issuance of Decision of Orders

Office of Hearings and Appeals

During the Week of November 2 Through November 6, 1992

During the week of November 2 through November 6, 1992 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Dale E. Wallace, 11/04/92, LFA–0247

Dale E. Wallace filed an Appeal from a determination issued by the Acting Director, Office of Communications, Department of Energy Field Office, Richland (DOE/RL), in response to a request for information submitted under the Privacy Act of 1974. In considering the Appeal, the DOE found: (1) Battelle Pacific Northwest Laboratories (Battelle), a DOE contractor who possessed the records sought by Wallace, is not an "agency" as defined in the Privacy Act; and (2) though Battelle is required under its contract to maintain three systems of records subject to the provisions of the Privacy Act, none of these systems of records contained documents responsive to Wallace's request. Accordingly, Wallace's Appeal was denied.

Haskell R. Brown, Jr., 11/06/92, LFA–0242

Haskell R. Brown, Jr. filed an Appeal from a Freedom of Information Act (FOIA) determination issued by the DOE's Office of Naval Reactors (ONR). In his Appeal, Mr. Brown challenged the adequacy of the search. In considering the Appeal, the DOE found that ONR's search was adequate under the FOIA and reasonably calculated to uncover responsive documents. The Appeal was therefore denied.

Knolls Action Project, 11/06/92, *KFA–0287*

The Knolls Action Project (KAP) filed an Appeal from a determination issued by the DOE's Office of Naval Reactors (ONR). In that determination, the ONR denied the KAP's request for information filed pursuant to the Freedom of Information Act (FOIA). The ONR denied portions of the KAP's request for information related to activities at the Knolls Atomic Power Laboratory pursuant to FOIA Exemptions 1, 3, 4, 5, and 6. In considering the Appeal, the DOE found that the determination to withhold the requested documents was consistent with the provisions of Exemption 5 and current classification guidelines. Accordingly, the DOE denied the KAP's Appeal.

Marylia Kelley, 11/06/92, *LFA–0244*

Marylia Kelley filed an Appeal from a Freedom of Information Act (FOIA) determination issued by the DOE's Office of Administrative Services (DOE–AS). In that Appeal, Ms. Kelley challenged the adequacy of the search. In considering the Appeal, the DOE found that the DOE–AS search was adequate under the FOIA and reasonably calculated to uncover responsive documents. The DOE also found that Ms. Kelley impermissibly broadened the scope of her initial request on Appeal. The Appeal was therefore denied.

Paul G. Richards, 11/05/92, *LFA–0145*

Paul G. Richards filed an Appeal from a denial by the Director of the Office of Classification, DOE Office of Security Affairs, of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Dr. Richards challenged the Director's withholding of the yields of five underground nuclear tests conducted at the Nevada Test Site during 1979–1986. The test yields had been provided to the Soviet Union pursuant to the information exchange requirements under which the Joint Verification Experiment was conducted. Because the JVE Agreement precludes unilateral public dissemination of exchanged information, the requested data were classified as National Security Information under section 1.3(a)(5) of Executive Order 12356 (information concerning foreign relations or foreign activities), and therefore are exempt from mandatory disclosures under Exemption 1 of the FOIA. Accordingly, the Appeal was denied.

Refund Applications

Gulf Oil Corporation/Stewart & Stevenson Services, Inc., 11/02/92, RF300–20198

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. This Application was filed by LK, Inc., a filing service, which had improperly submitted the Application without the applicant's written consent. Accordingly, the Application for Refund was denied.

Murphy Oil Corporation/Armstrong & Troutwine, Inc., 11/02/92, RF309–1147

This Decision and Order concerns the Application for Refund filed by F.P. Troutwine on behalf of Armstrong & Troutwine, Inc., in the Murphy Oil Corporation (Murphy) special refund proceeding. This closely held corporation, a retailer of Murphy gasoline and distillates during the refund period, was dissolved after the refund period, and the DOE was unable to locate Mr. Armstrong, Mr. Troutwine's partner. The Decision and Order determined that the refund should be divided equally between the two parties because Mr. Troutwine was unable to provide the firm's Articles of Dissolution or other documents detailing its stock ownership. Therefore, Mr. Troutwine was granted half the refund due to Armstrong & Troutwine, Inc. Mr. Armstrong is eligible to file a refund application for the other half of the refund. The total refund granted in this Decision and Order was $516 (comprised of $351 in principal and $165 in interest) based on 429,397 gallons of Murphy product.

Texaco Inc./BBS Construction, Inc., 11/06/92, RF321–19392

The DOE issued a Decision and Order rescinding an August 14, 1992 grant of an application for refund filed by Jim Pusley on behalf of BBS Construction, Inc., a consumer of Texaco products. Subsequently, on November 2, 1992, Wilson, Keller & Associates, a private filing service that submitted the application on behalf of Mr. Pusley, submitted evidence that the corporation was dissolved in 1985 and that Mr. Pusley was not the owner at the time of dissolution. The DOE found that Mr. Pusley was not entitled to a refund with respect to purchases made by BBS Construction, and accordingly rescinded the refund that has been granted to BBS.

Texaco Inc./Cook & Cooley, Inc., 11/02/92, RF321–14447

The DOE issued a Decision and Order denying an Application for Refund filed by Cook & Cooley, Inc. in the Texaco Inc. special refund proceeding. Subsequent to the filing of the application, the corporation sold its assets to Triton Fuel Group, Inc. The agreement regarding the sale transferred the right to any potential refunds in the Texaco proceeding. Consequently, the DOE determined that Cook & Cooley, Inc. was no longer eligible for a refund based on its purchases of Texaco products during the consent order period.

Texaco Inc./Wristen Texaco, Merced Mall Texaco, 11/05/92, RR321–55, RF321–18361, RF321–18362

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Chester Bradley, an owner of Wristen Texaco. The DOE had previously denied two duplicate Applications for Refund filed by Bradley on behalf of Wristen Texaco because he had wrongly certified that he had not filed a duplicate application in the Texaco proceeding. The DOE found that Bradley was confused by the multiple application forms that he had received from Texas and from Federal Refunds, Inc., a private filing service, and that he did not intend to file duplicate applications. Consequently, the DOE granted the Motion for Reconsideration. For part of the time period that he operated Wristen Texaco, Bradley was a partner with Lee Wristen. Accordingly, his refund was based upon 100% of the volume of Texaco purchases during the period that he was a sole proprietor and 50% of the volume of Texaco purchases during the period that he was a partner.

Bradley had previously been granted a refund with respect to Merced Mall Texaco. However, it was subsequently discovered that he owned that station in a partnership with Lee Wristen. The DOE found that with respect to Merced Mall Texaco, Bradley should repay 50% of the amount of the refund that was attributable to the period of time that Lee Wristen was a partner. The DOE offset this repayment obligation by the amount of the refund that was approved for Wristen Texaco.

The DOE also granted a refund to Lee Wristen based upon his share of the purchases by these two stations.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/John J. Lease Realtors	RF304–13235	11/03/92
Enron Corp./Pride Refining, Inc.,	RF340–21	11/03/92
Shell Oil Company	RF340–62	
George Community School District et al	RF272–81000	11/06/92
Gulf Oil Corp./Farmington Fruit & Gas et al	RF300–16015	11/05/92
Gulf Oil Corp./Sears, Roebuck and Co. et al	RF300–14631	11/03/92
Gulf Oil Corporation/St. Regis Corp./Champion et al	RF300–15502	11/06/92
Jasper-Newton Electric Coop	RF272–85873	11/05/92
Shell Oil Company/Lagen Shell Service et al	RF315–6709	11/03/92
Texaco Inc./Alva Concrete Materials Co. et al	RF321–15171	11/04/92
Texaco Inc./Benny's Texaco et al	RF321–6629	11/05/92
Texaco Inc./Burlington Industries, Inc. et al	RF321–12904	11/03/92
Texaco Inc./Franklin Logging et al	RF321–15625	11/05/92
Texaco Inc./Jack L. Vaughn Construction Company et al	RF321–16028	11/06/92
Texaco Inc./Jim Hogg Road Texaco et al	RF321–1630	11/05/92
Texaco Inc./Midwest Handling, Inc.,	RF321–18969	11/06/92
Midwest Handling, Inc	RF321–19084	
Texaco Inc./Roberts Oil Company et al	RF321–9428	11/04/92
Town of Colchester et al	RF272–84304	11/06/92
Town of Sterling et al	RF272–83602	11/04/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Anderson's Arco	RF304–8310
Arlington City Cab	RF321–16466
Austin Texaco	RF321–16446
Benson County, North Dakota	RF272–85537
Breton Village Texaco	RF321–18613
Cawthon Oil Company	RF321–19271
Commerce Gulf	RF300–17068
D.J. Shell	RF315–61
Durham Texaco	RF321–3213
E.C. Minit Stop	RF300–17048
Eagle Motor Lines	RF272–89119
El Monte Union High School District.	RF272–87184
Eldon R I	RF272–87185
Gill's Arco	RF304–12990
Goddard's Transportation	RF272–92702
Grant San Ann	RF321–3867
Lloyd's Texaco	RF321–18706
Northern Propane Gas Company	RF304–12984
Paul & Walt's Arco, Inc	RF304–13316
Perry's Garage	RF300–17224
R.C. Moore, Inc	RF272–93232
School Board of Polk County, FL	RF272–91882
Thorne's Country Store	RF300–17055
Walker Oil Company, Inc	RF304–13289
Weis Markets, Inc	RF272–92814
Western Company Wire	RF321–17573

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–30153 Filed 12–10–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4544–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 23, 1992 though November 27, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–FHW–B40073–MA Rating EC2, MA–146/Massachusetts Turnpike Interchange Project, Improvements from MA–146 between I–290 at Brosnihan Square in Worcester and MA–122A in Millbury, Funding, COE section 404 Permit and EPA NPDES Permit, Cities of Worcester and Millbury, Worcester County, MA.

Summary: EPA expressed concern regarding wetland impact; water supply resources; hazardous wastes and air quality. EPA requested additional information be included in the FEIS.

ERP No. D–FHW–H40146–MO Rating EC2, Ozark Mountain Highroad Corridor Construction from existing US 65/MO–F north of Branson, then south across Lake Taneycomo to another intersection with US 65 south of Branson, Funding, COE section 10 and 404 Permits and Coast Guard Bridge Permit, Taney and Stone Counties, MO.

Summary: EPA agreed in general with the preferred alternative, it requested additional information regarding water quality and secondary development impacts.

Final EISs

ERP No. F–BLM–K61119–CA Redding Resource Area, Land and Resource Management Plan, Implementation, Ukiah District, Butte, Shasta, Siskiyou, Tehama and Trinity Counties, CA.

Summary: EPA had no objections to the proposed project.

ERP No. F–BOP–E81033–MS Yazoo City, Mississippi Federal Correctional Complex, Construction and Operation, Possibly Consisting of a High Security U.S. Penitentiary, Medium Security Federal Correctional Institution and Minimum Security Federal Prison, Site Selection and Possible COE section 404 Permit, Yazoo City, Yazoo County, MS.

Summary: EPA concerns have been adequately addressed.

Dated: December 8, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–30171 Filed 12–10–92; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-4544-3]

Supplemental Environmental Impact Statement; National Pollutant Discharge Elimination System Permitting of New Sources in the Eastern and Central Gulf of Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: EPA anticipates issuance of a new source NPDES general discharge permit for effluent discharges from oil and gas operations to territorial waters of the United States in the Outer Continental Shelf (OCS) of the eastern and central Gulf of Mexico.

ADMINISTRATIVE HISTORY: In August 1990, Mineral Management Services (MMS) issued a final environmental impact statement (FEIS) as a result of the Proposed Western, Central and Eastern Gulf of Mexico OCS Oil and Gas Lease Sales 131, 135, and 137. Also, in November 1992, MMS issued a FEIS as a result of the Proposed Central and Western Gulf of Mexico OCS Lease Sales 142 and 143. EPA is a Cooperating Agency on this FEIS. This Cooperating Agency status will help to avoid duplication of effort in fulfilling National Environmental Policy Act (NEPA) responsibilities for permitting new sources in the eastern and central Gulf of Mexico.

SUMMARY: EPA will be issuing New Source Performance Standards for the offshore subcategory of the "Oil and Gas Extraction Point Source" category, in January 1993. Region IV EPA will prepare the SEIS on issuance of a NPDES General Permit for discharges within its jurisdictional areas in the OCS of the Gulf of Mexico areas of Florida, Alabama and Mississippi. The SEIS will address the effects of discharges from OCS oil and gas activities that are considered as "New Sources" thus requiring NPDES permits. In accordance with Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508) EPA intends to adopt portions of the 1992 MMS FEIS on Lease Sales 142 and 143 and will incorporate portions of the 1990 FEIS on Lease Sales 131, 135, and 137. EPA has conducted an independent review of both documents and will supplement adopted or incorporated sections as necessary. EPA will prepare, circulate, and file the SEIS in the same fashion (exclusive of scoping) as a draft and final EIS.

Alternatives

Possible outcomes of the NEPA process include General NPDES Permit issuance with NSPS, non-issuance of the permit, or permit issuance with other conditions.

Role of Public

Participation in the SEIS process is invited from individuals, organizations, and all governmental agencies. EPA will consider all comments concerning the scope of the SEIS and relevant issues will be addressed in the SEIS as appropriate. Written comments on the scope and issues of this action will be accepted by Heinz Mueller at the address listed below until January 19, 1993. For further information or to be placed on the mailing list contact David Melgaard, USEPA Region 4, FAB/4–OCSEIS, 345 Courtland Street, Atlanta, Georgia 30365; (404) 347–3776. Estimated Release Date of draft SEIS: March 1993. Responsible Official: Greer C. Tidwell, Regional Administrator.

Dated: December 8, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–30172 Filed 12–10–92; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4544-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Availability of Environmental Impact Statements filed November 30, 1992 through December 4, 1992 pursuant to 40 CFR 1506.9.

EIS No. 920475, FINAL SUPPLEMENT, NOA, AK, Halibut and Sablefish Fixed Gear Fisheries Individual Fishing Quota (IFQ) Management Alternative, Additional Information on the specific IFO Program recommended by the Council in December 1991, Approval and Implementation, Gulf of Alaska and Bering Sea Aleutian Islands, AK, Due: January 11, 1993, Contact: William W. Fox, Jr. (301) 713–2239.

EIS No. 920476, DRAFT EIS, FTA, NJ, Hudson River Waterfront Transportation Corridor Improvements, Funding, Transportation Systems Management, Light Rail Transit, Hudson and Bergen Counties, NJ, Due: January 25, 1993, Contact: Catherine A. Scarpa (212) 264–8973.

EIS No. 920477, FINAL EIS, BOP, AR, Forrest City Federal Correctional Complex (FCC), Construction and Operation, St. Francis County, AR, Due: January 11, 1993, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 920478, DRAFT EIS, EPA, CA, San Francisco Bay Deep-Water Ocean Dredged Material Disposal Sites, (ODMDs) Site Designation, section 404 Permit, Long-term Management Strategy (LTMS), San Francisco Bay, CA, Due: January 25, 1993, Contact: Shelley Clarke (415) 744–1162.

EIS No. 920479, FINAL EIS, FHW, WA, I–90 Seattle Added Access Ramp, Construction to and from I–90 between I–5 and the west shore of Lake Washington, Funding, City of Seattle, King County, WA, Due: January 11, 1993, Contact: Barry F. Morehead (206) 753–2120.

EIS No. 920480, FINAL EIS, COE, CA, ADOPTION—San Joaquin Hills Transportation Corridor Improvements, CA–73 Extension between I–5 in San Juan Capistrano City to Jamboree Road in Newport Beach City, Funding and section 404 Permit, Orange County, CA, Due: January 11, 1993, Contact: Bruce Henderson (213) 894–0351. The US Army Corps of Engineers has adopted the US Department of Transportation, Federal Highway Administration's Final EIS filed with the Environmental Protection Agency on 5–1–92.

EIS No. 920481, DRAFT SUPPLEMENT, UMT, DC, Metropolitan Washington Regional Rapid Rail Transit System (Project DC–23–9001), Updated Information, Outer Branch Avenue Segment of the Green (F) Line Route (Sections F–6 thru F–11), Regional Metrorail System, Funding, District of Columbia and Prince George's County, MD, Due: February 1, 1993, Contact: A. Joseph Ossi (202) 366–0096.

EIS No. 920482, DRAFT SUPPLEMENT, NOA, PR, VI, Shallow—Water Reeffish Fishery Management Plan, Updated Information, Amendment 2, Puerto Rico and U.S. Virgin Island, Due: January 11, 1993, Contact: William W. Fox Jr. (301) 713–2239.

EIS No. 920483, DRAFT EIS, AFS, OR, Hen Moose Timber Sale, Implementation, Timber Harvesting in the Hensley subdrainage, Willamette National Forest, Sweet Home Ranger District, Linn County, OR, Due: January 25, 1993, Contact: Ken Schuetz (503) 367–5139.

EIS No. 920484, DRAFT SUPPLEMENT, COE, FL, Fort Pierce Harbor Navigation Improvement, Updated Information, General Design Memorandum, General Reevaluation Report, Indian River, City of Fort St. Lucie County, FL, Due January 25, 1993, Contact: Jonathan D. Moulding (904) 232–2286.

EIS No. 920485, DRAFT SUPPLEMENT, TVA, Control of Eurasian Watermilfoil, Implementation, Updated Information on Aquatic Plant Management Program, Due: February 8, 1993, Contact: Robert Pryor (605) 632–6695.

Amended Notices

EIS No. 920398, DRAFT EIS, AFS, MI, Grand Island National Recreation Area (NRA) Comprehensive Management Plan, Implementation, Hiawatha National Forest, Munising Ranger District, Alger County, MI, Due: January 15, 1993, Contact: Teresa Chase (906) 387–2512. Published FR 10–16–92—Review period extended.

EIS No. 920457, FINAL EIS, FHW, MI, U.S. 131 Improvement and Relocation, South of Cadillac to North of Manton, Funding and section 404 Permit, Wexford County, MI, Due: December 28, 1992, Contact; Norman Stoner (517) 377–1838. Published FR 11–27–92—Due to error EIS status was published incorrect.

Dated: December 8, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–30170 Filed 12–10–92; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4544–6]

Science Advisory Board, Radiation Advisory Committee, Open Conference Call Meeting

Under Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the Science Advisory Board of EPA will conduct a conference call meeting Thursday December 17, 1992 at 4:30 p.m. The meeting is open to the public.

At this meeting, the Committee will conduct a consultation on EPA's plans for a study addressing the "risk of adverse human health effects associated with exposure to various pathways of radon" as required under Safe Drinking Water Act Implementation, published in the Congressional Record September 25, 1992. The Committee plans to conduct a review of the final Agency product at an open meeting tentatively scheduled for April 26–27, 1993. This is the fourth in a series of conference call meetings on this subject and will concentrate on parameters for the uncertainty analysis. Members of the public who wish to receive a copy of the material prepared by the Agency should contact Nancy Chiu at (202) 260–7587.

For additional information concerning this meeting or to obtain an agenda, please contact Mrs. Dorothy Clark, Staff Secretary, Radiation Advisory Committee, Science Advisory Board (A–101–F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone: (202) 260–6552; Fax: (202) 260–7118. Anyone wishing to provide public comment for the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, Science Advisory Board, at the address and phone numbers given above, no later than December 14 and be prepared to fax their materials to the participants. Opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes it total. A fixed number of conference lines have been reserved for the meeting.

Dated: December 3, 1992.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 92–30293 Filed 12–10–92; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–77 FCC No. 92–465]

Billed Party Preference for 0+ InterLATA Calls

AGENCY: Federal Communications Commission.

ACTION: Statement of policy.

SUMMARY: This action directs AT&T to change its current practices by revising its network access instructions to holders of its proprietary calling cards. Specifically, the Order directs AT&T to educate its cardholders to check public phone notices and to use the 0+ form of access only at public phones identified as presubscribed to AT&T; to provide clear and accurate access code dialing instructions on every proprietary card issued; and make its 800 access code number easier to use.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin, 202–632–6917.

SUPPLEMENTARY INFORMATION: On October 8, 1992 the Commission adopted a Report and Order and Request for Supplemental Comment (Report and Order) in CC Docket 92–77, Phase I, FCC No. 92–465, released November 6, 1992 In the Report and Order, the Commission considered certain interexchange carrier (IXC) calling card practices in the first phase of its "billed party preference" (BPP) proceeding. In Phase I, the Commission considered the need to take immediate action in response to alleged competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access, pending its consideration of the costs and benefits of a BPP-routing methodology for 0+ dialed interLATA calls. The Order directs AT&T to make certain changes in its dialing instructions to its proprietary cardholders, to educate its customers on access code dialing and to make its 800 access code number easier to use. The full text of the Commission's Order is available for public inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, suite 640, 1990 M Street, NW., Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–29927 Filed 12–10–92; 8:45 am]

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Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station.

Applicant, city and state	File No.	MM docket No.
A. Russ Robinson; Richwood, LA.	BPH–910626ML	92–265
B. Barbara Dawson-Monk, d/b/a/ Urban Network Communications; Richwood, LA.	BPH–910626MM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19,347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Contingent Environmental—A
2. Comparative—A, B
3. Ultimate—A, B

3. If there are any non-standardized issues in this proceeding, the full text of

the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202–452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 92–30179 Filed 12–10–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–947–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: November 17, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–947–DR), dated July 2, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 31, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–30133 Filed 12–10–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–968–DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–968–DR), dated November 25, and related determinations.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi, dated November 25, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 25, 1992:

The counties of Attala, Choctaw, Leake, and Noxubee for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–30134 Filed 12–10–92; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on the National Health Service Corps.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Anna Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Dated: December 7, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–30131 Filed 12–10–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 25–26, 1993, in Building 31C, Conference Room 10, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8 a.m. to 10 a.m. on February 25, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until recess on February 25, and from 8 a.m. until adjournment on February 26. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Peter R. Jackson, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, room 4C13, Rockville, Maryland 20892, telephone 301–496–8426, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30093 Filed 12–10–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held January 25–26, 1993, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to adjournment on January 26 for general discussion and program presentations. A meeting of the National Advisory Dental Research Council Subcommittee on Minority Activities will be held on January 25 from 3 p.m. until adjournment at the same location. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on January 25 from 9 a.m. to recess for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, room 2C39, Bethesda, Maryland 20892, (telephone 301–496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30094 Filed 12–10–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, January 25–26, 1993. The meeting will be held in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be held on January 25 in Building 31, room 2A03.

The Council meeting will be open to the public on January 25 from 9:30 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, and a report by the Mental Retardation and Developmental Disabilities Branch, NICHD. The meeting will be open on January 26 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on January 25 from 8 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on January 26 from 8 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30095 Filed 12–10–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, January 11, 1993, at the Executive Plaza North Building, Conference Room G, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on January 11 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 11 from 10 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301/496–5708, will provide summaries of the meeting and rosters of committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, room 807, Bethesda, Maryland 20892, Tel. 301/496–7030, will furnish substantive program information.

(Catalog of Federal Domestic Assistance - Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 25, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30096 Filed 12–10–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–3350–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including ZIP code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; room 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; *Corps of Engineers:* Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Avenue, NW., room 4133, Washington, DC 20314–1000; (202) 272–0520; *U.S. Air Force:* Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; *GSA:* Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0067; *Dept. of Transportation:* Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh Street, SW., room 10319, Washington, DC 20590; (202) 366–4246; *Dept. of Interior:* Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C Street, NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; *Dept. of Agriculture:* Marsha Pruitt, Realty Officer, USDA, South Building, room 1566, 14th and Independence Aveune, SW., Washington, DC 20250; (202) 3338; (These are not toll-free numbers).

Dated: December 4, 1992.

Randall H. Erben,

Acting Assistant Secretary.

Title V, Federal Surplus Property Program Federal Register Report for 12/11/92

California—Fort Ord

Fort Ord is located 7 miles north of the City of Monterey and 120 miles southeast of San Francisco, California 93941–5000. The installation is scheduled for closure on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 26,720 acres and 14 million square feet of permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance and storage facilities; and other more specialized structures.

For specific information concerning Fort Ord, please contact Commander, 7th ID, Attn: AFZW–RM (LTC Anderson), Fort Ord, California 93941–5000.

Suitable/Available Properties

Property Number: 329210039
Type Facility: Housing—1431 family houses; majority are 2-story.

Property Number: 329210040
Type Facility: Temporary Living Quarters—254 buildings; wood, concrete and concrete block structures including barracks.

Property Number: 329210041
Type Facility: Office/Administration—311 buildings; wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs.

Property Number: 329210042
Type Facility: Recreation—53 facilities including bowling center, guest houses, community and youth centers, library, gym and recreation bldgs.

Property Number: 329210043
Type Facility: Aircraft/Airport Facilities—10 facilities including hangars, runway, taxiways, aprons, fire station, maintenance bldgs. and control tower.

Property Number: 329210044
Type Facility: Maintenance/Engineering Facilities—24 buildings; wood, concrete block and steel structures.

Property Number: 329210045

Type Facility: Mess/Dining Halls—95 buildings; wood, concrete and concrete block dining facilities.
Property Number: 329210046
Type Facility: Child Care—7 buildings; wood and concrete child care centers.
Property Number: 329210047
Type Facility: Stores and Services—23 buildings; wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange.
Property Number: 329210048
Type Facility: Hospital Facilities—10 buildings; wood, concrete and concrete block structures including a hospital, clinics and vet. facilities.
Property Number: 329210049
Type Facility: Chapels—10 buildings; wood, concrete, concrete block chapels and chapel center facilities.
Property Number: 329210050
Type Facility: Fire Facilities—2 fire stations.
Property Number: 329210051
Type Facility: Audio Visual Facilities—8 buildings; wood, concrete and steel structures including photo labs and training centers.
Property Number: 329210052
Type Facility: Communications/Electronics Facilities—6 buildings; concrete, concrete block and steel structures including a communication center and radio bldgs.
Property Number: 329210053
Type Facility: Warehouses—224 buildings; wood, concrete, concrete block and steel structures including storage bldgs. and sheds.
Property Number: 329210054
Type Facility: Vehicle Shops—84 buildings; wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs.
Property Number: 329210055
Type Facility: Miscellaneous Facilities—440 facilities including hdqts. bldgs., reserve centers, classrooms, day rooms, roads, vehicle parks and training areas.
Property Number: 329210056
Type Facility: Multi-Purpose Facilities—27 facilities.
Property Number: 329210057
Type Facility: Fuel Facilities—31 buildings; concrete, concrete block and steel structures including gas station bldgs.
Property Number: 329210058
Type Facility: Hazardous Storage Facilities—6 buildings; concrete, concrete block and steel structures.
Property Number: 329210059
Type Facility: Explosives/Munitions Facilities—31 buildings; concrete and steel structures including igloo storages and magazine storages.

Suitable/Available Properties

Connecticut

15 Family Houses
Portland CT 36
Portland Co: Middlesex CT 06484
Landholding Agency: COE–BC
Property Numbers: 319011218–319011232
Status: Excess
Base Closure
Comment: 1000–1300 sq. ft., 1 story wood frame residences

Hawaii—Kapalama Military Reservation
Phase III

Kapalama Military Reservation is located in the Harbor district in the City of Honolulu. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 30, 1994. Properties shown below as suitable will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The based comprises 21.22 acres and contains nine buildings which are currently being used for storage.

Suitable/Unavailable Properties

Property Numbers: 329210003–329210011
Type Facility: Nine buildings currently used for storage; 116 to 39854 sq. ft.; one story wood frame; needs minor rehab.

Suitable/Available Properties

Illinois

12 Worth Family Houses
Fort Sheridan
Worth Co: Cook IL 60482
Landholding Agency: COE–BC
Property Number: 329210002
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, off-site use only, scheduled to be vacated 05/93.

Suitable/Unavailable Properties

Illinois

12 Addison Family Houses
Fort Sheridan
Addison Co: DuPage IL 60101
Landholding Agency: COE–BC
Property Number: 329210001
Status: Excess
Base Closure
Comment: 1-story residences, possible asbestos, scheduled to be vacated 05/93.

Indiana—Fort Benjamin Harrison

Fort Benjamin Harrison is located northeast of Indianapolis in the City of Lawrence 46216–5000. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2501 acres and has 4.7 million square feet of facilities. The properties that HUD has determined suitable and which are available include family housing residences, temporary living quarters, office/administration buildings, various types of recreational facilities, child care centers and chapels, dining halls, a hospital, warehouses, miscellaneous and other specialized structures. More specific information concerning properties at the base can be obtained by contacting LTC Gregory Miller, US Army Soldier Support Center, Attn: ATZI–IS, Fort Benjamin Harrison, Indiana 46216–5000; (317) 542–5382.

Suitable/Available Properties

Property Numbers: 329210066–329210069
Type Facility: Housing—90 family residences, 1 and 2 story brick frame; 29 temporary living quarters (barracks), brick or concrete frame.
Property Number: 329210070
Type Facility: Office/Administration—26 buildings; wood, brick, concrete or concrete block frame; includes personnel and general purpose buildings.
Property Number: 329210071
Type Facility: Recreational Facilities—28; wood, brick, concrete or concrete block frame; includes gym, canteen, golf course, swimming pool, riding stable, tennis court, bowling center, recreation buildings, basketball and handball courts, baseball fields, track, and playgrounds.
Property Number: 329210072
Type Facility: Child Care Centers—2 buildings; brick frame; 5,818 & 14,457 sq. ft.
Property Number: 329210073
Type Facility: Dining Halls—4; brick frame; 1,075 to 31,439 sq. ft.
Property Number: 329210074
Type Facility: Stores/Services—12 buildings; 140 to 68,899 sq. ft.; brick, wood, concrete or concrete block frame; includes restaurant, commissary, sales stores, exchange branchs, and service outlet.
Property Number: 329210075
Type Facility: Hospital, brick frame.
Property Number: 329210076
Type Facility: 2 Chapels; 3,747 & 16,587 sq. ft., brick and aluminum frame.
Property Number: 329210078
Type Facility: 2 Fire Facilities; 2,243 & 3,835 sq. ft.; includes fire station and hose house.
Property Numbers: 329210079, 329210083
Type Facility: 2 Vehicle Shops and Fuel Facility; concrete/asbestos frame; 1 gas station building, 327 sq. ft.
Property Number: 329210080
Type Facility: Maintenance Engineering—6 buildings; 168 to 14,074 sq. ft.; wood, brick or concrete block frame.
Property Numbers: 329210081, 329210082
Type Facility: Explosives/Munitions and Hazardous Storage—10 buildings; 103 to 1,138 sq. ft.; brick, steel, concrete or wood frame; includes ammo magazines and flammable materials storage.
Property Number: 329210084
Type Facility: 23 Warehouses; 960 to 56,650 sq. ft.; brick, concrete or steel frame.
Property Number: 329210085
Type Facility: 150 Miscellaneous Buildings; 31 to 211,364 sq. ft.; includes headquarters & general instruction buildings; training centers and detached garages.
Property Number: 329210086
Type Facility: 5 Multipurpose Buildings.

Land

Property Number: 329210077

Type Facility: 2 Aircraft/Airport Facilities; 938 sq. yds.

Unsuitable Properties

Property Number: 329210067
Type Facility: 1 Recreational Facility; within a floodway.

Massachusetts—Fort Devens

Fort Devens military base is located at Fort Devens, Massachusetts 01433–5000. It is approximately 45 miles west of Boston. All the properties will be excess to the needs of the Army Corps of Engineers on or about October 31, 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation covers 9,283 acres and has approximately 7.4 million square feet of facilities. The properties that HUD has determined suitable and which are available include over 550 single family and multifamily housing units; office and administration buildings, indoor and outdoor recreational facilities; warehouses and multi-use buildings; hospital facilities; stores and service facilities; dining facilities; a chapel; a child care facility; and other miscellaneous and specialized structures.

For specific information concerning Fort Devens, please contact Commander, Fort Devens, Attn: AFZD–T (Mr. Carter Hunt), Fort Devens, Massachusetts 01433–5000.

Suitable/Available Properties

Property Number: 329210012
Type Facility: 54 Office/Administration Buildings; 1,174 to 71,781 sq. ft.; wood, brick or concrete block frame including personnel bldgs., general purpose and support services bldgs.

Property Number: 329210029
Type Facility: 404 Housing units; 1,200 to 4,380 sq. ft.; wood or brick frame; single and duplex residences, multifamily residences—up to 14 units per bldg.

Property Number: 329210015
Type Facility: 150 Temporary Living Quarters; 1,028 to 19,120 sq. ft.; wood, brick or concrete block structures including barracks.

Property Number: 329210013
Type Facility: 27 Recreational Facilities; 155 to 30,000 sq. ft.; wood, brick, steel or concrete block construction including a gym, library, swimming pool, golf clubhouse, and bowling center.

Property Numbers: 329210016, 329210025
Type Facility: Aircraft/Fuel Facilities—7; six gas station bldgs. and pump stations; wood, steel or concrete block structures.

Property Numbers: 329210017, 329210021
Type Facility: Maintenance Engineering/Vehicle Shops—34 buildings; 120 to 20,310 sq. ft.; wood, brick, steel or concrete block frame including maintenance shops, entomology facility, vehicle maintenance bldgs., oil storage bldgs.

Property Number: 329210018
Type Facility: 11 Stores/Service Buildings; 271 to 107,206 sq. ft.; wood, concrete block or brick frame including commissary, sales store, exchange service station, exchange retail stores.

Property Number: 329210019
Type Facility: 7 Hospital Facilities; 493 to 126,835 sq. ft.; wood, concrete, concrete block or brick frame including clinics, hospital, veterinarian facility, and dental clinic.

Property Number: 329210022
Type Facility: 4 Audio Visual/Photo Labs; 480 to 10,612 sq. ft.; wood or concrete block construction.

Property Number: 329210027
Type Facility: 24 Mess/Dining Halls; 2,403 to 2,717 sq. ft.; wood frame.

Property Number: 329210024
Type Facility: 2 Communication Buildings; 1,322 to 1,749 sq. ft.; concrete block or brick frame; communication centers.

Property Number: 329210026
Type Facility: 92 Warehouses; 49 to 85,790 sq. ft.; wood, concrete, concrete block or steel construction including sheds, storehouse, medical supply, vehicle storage, general purpose bldgs.

Property Number: 329210014
Type Facility: Child Care Facility; 6,012 sq. ft.; wood frame.

Property Number: 329210020
Type Facility: Chapel; 22,250 sq. ft.; brick frame.

Property Number: 329210023
Type Facility: 8 Hazardous Storage Buildings; 64 to 6,000 sq. ft.; concrete, steel or concrete block structures including oxygen storage facilities and flammable materials storage.

Property Number: 329210028
Type Facility: 172 Miscellaneous Facilities; 320 to 114,000 sq. ft.; wood, concrete block, brick or steel construction including general purpose bldgs.; training facilities, RG houses, reserve centers, garages.

Property Number: 329210030
Type Facility: 4 Multi-purpose buildings.

Unsuitable Properties

Property Number: 329210032
Type Facility: 3 Recreation Facilities; within 2,000 feet from flammable or explosive material.

Property Numbers: 329210033, 329210038
Type Facility: One Temporary Living Quarters and 2 housing residences; within 2,000 feet from flammable or explosive material.

Property Number: 329210031
Type Facility: One Office/Administration Building; within 2,000 feet from flammable or explosive material.

Property Numbers: 329210034, 329210037
Type Facility: 6 Miscellaneous Buildings—including stores, service facilities, etc.

Property Number: 329210035
Type Facility: One Vehicle Shop; within 2,000 feet from flammable eplosive material.

Property Number: 329210036
Type Facility: One Warehouse; within 2,000 feet from flammable explosive material.

Suitable/Available Properties

Massachusetts

12 Bldgs., Burlington Housing
South Bedford
Burlington Co: Middlesex MA 01803–
Landholding Agency: COE—BC
Property Number: 329240005
Status: Excess
Base Closure
Number of Units: 12
Comment: 1100 sq. ft. each, 1-story wood frame residences.

Michigan

Pontiac Storage Facility
871 East South Boulevard
Pontiac Co: Oakland MI, 48054–
Landholding Agency: COE—BC
Property Number: 329240001
Status: Excess
Base Closure
Number of Units: 5
Comment: 607,202 sq. ft. warehouse w/steel frame, 4 other structures inc. well house, sentry station, heating plant & water tower located on 31.24 acres.

Minnesota

Coast Guard Family Housing
404 Eat Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230007
Status: Excess
Comment: 1333 sq. ft., 1-story frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230008
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 5492300009
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
418 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 5492300010
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

North Carolina

Federal Building
301 East King Street
Kinston Co: Lenior NC 28501–
Landholding Agency: GSA
Property Number: 549230011
Status: Excess
Comment: 3950 sq. ft., 2-story building

GSA Number: 4–G–NC–706

New Jersey—Fort Dix

Fort Dix is located in the eastern edge of Burlington County, and part of the western edge of Ocean County, New Jersey. It is approximately 17 miles southeast of Trenton, New Jersey. The installation is scheduled for realignment on or about October 1, properties may be available for interim lease for use to assist the homeless prior to that date.

In particular, the Sheridanville Family Housing complex will be available on or about December 31, 1992. The Sheridanville complex is located on Sailors Pond Road, approx. 1 mile east of State Highway 68.

The Kennedy Courts Family Housing complex is located at the corner of Pemberton-Pointville and Juliustown Roads, approx. 1 mile southeast of County Route 616 (Pemberton-Wrightstown Road). It is not available for homeless assistance use at this time. The majority of the base is being retained for Federal use.

Both complexes contain various types of housing, service stores, maintenance buildings, miscellaneous buildings and other more specialized structures.

For specific information concerning Fort Dix, please contact U.S. Army Training Center, Attn: ATZD–EHP, Jean M. Johnson, Fort Dix, NJ 08640–5506.

Suitable/Available Properties

Sheridanville Family Housing Complex

Property Number: 329220014
Type Facility: Housing—25, 6-unit buildings; 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220015
Type Facility: Housing—one, 8-unit building, 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220016
Type Facility: Housing—one, 10-unit building; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220017
Type Facility: Housing—11, 12-unit buildings; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220018
Type Facility: 33 detached sheds; 1 story, wood frame.
Property Number: 329220020
Type Facility: Maintenance Engineering—3 buildings.
Property Number: 329220021
Type Facility: Service Store—1 building, most recent use—PX, wood frame.
Property Number: 329220022
Type Facility: Miscellaneous—3 buildings; waiting shelters.
Property Number: 329220019
Type Facility: Recreational/land—basketball court and softball field

Note: An approved application for 125 units is being processed.

Suitable/Unavailable Properties

Kennedy Courts Family Housing Complex

Property Numbers: 329220005–329220009
Type Facility: Housing—2, 4, 6, 8 & 10-unit buildings; 1 to 4 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220010
Type Facility: Detached Sheds—48; wood frame, needs rehab.
Property Numbers: 329220023, 329220035, 329220043
Type Facility: Office/Administration—42 buildings; concrete or cinderblock w/brick veneer facing, 1, 2 or 3 story, includes classrooms, instructional bldgs., administration & supplies, regimental headquarters, personnel-supply services.
Property Numbers: 329220024, 329220036, 329220044
Type Facility: Recreational—12 facilities; includes gym, theater, tennis court, recreational center, museums, community centers.
Property Numbers: 329220025, 329220045
Type Facility: Maintenance Engineering—5 buildings; wood, concrete or cinderblock, 1 or 2 story, includes generator and gas meter house.
Property Numbers: 329220026, 329220037, 329220046
Type Facility: Service Stores—3 PXs.
Property Numbers: 329220027, 329220038
Type Facility: Hospitals—2 buildings; 1 story, concrete or cinderblock w/brick veneer facing.
Property Numbers: 329220028, 329220039
Type Facility: Chapels—2; 1 story.
Property Numbers: 329220029–329220030, 329220047, 329220050,
Type Facility: Vehicle/Fuel—10 facilities; includes gas stations, oil storage bldgs., vehicle greaser, automotive shop.
Property Numbers: 329220031, 329220040
Type Facility: Dining Halls—6 facilities; includes enlisted personnel dining, 1 story, concrete or cinderblock w/brick veneer facing.
Property Numbers: 329220032, 329220041
Type Facility: Housing—22 buildings; enlisted barracks, 3 story.
Property Numbers: 329220048,
Type Facility: Hazardous storage—3 buildings; 1 story.
Property Numbers: 329220049,
Type Facility: Communications/Electronics—2; 1 & 2 story.
Property Numbers: 329220012–329220013, 329220033, 329220042, 329220051–329220052
Type Facility: Miscellaneous—30 buildings; includes heat plant, waiting shelters, warehouses, and other specialized structures.
Property Number: 329220053
Type Facility: Area Confinement Facility; 109,668 sq. ft., 2 story concrete & block frame.
Property Number: 329220011,
Type Facility: Recreational/land—2; basketball courts.

Unsuitable Properties

Property Number: 329220034
Type Facility: Sewage Pump.

Suitable/Unavailable Properties

New Jersey

24 Family Houses
Franklin Lakes
Patrick Brems Court
Mahwah Co: Bergen, NJ 07430
Landholding Agency: COE–BC
Property Numbers: 319010734–319010757
Status: Excess
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences.

32 Family Houses
Livingston Family Housing
Hornung Court
East Hanover Co: Morris, NJ 07936
Landholding Agency: COE–BC
Property Numbers: 319010758–319017789
Status: Surplus
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences, possible asbestos in floor tiles.

New York

37 Nike Houses
New York 01
Tappan Co: Rockland, NY
Landholding Agency: COE–BC
Property Numbers: 319011049, 319011070–319011105
Status: Excess
Base Closure
Comment: 897 sq. ft., 1 story wood frame residences on concrete slab.

27 Dry Hill Family Housing
Route 3
Watertown Co: Jefferson, NY 13601
Landholding Agency: COE–BC
Property Numbers: 319030015–319030041
Status: Excess
Base Closure
Comment: 816–1300 sq. ft., 1 story wood frame residences.

Suitable/Unavailable Properties

Pennsylvania

12 Family Houses
C.E. Kelly Support Facility
Finleyville Area Site 52, S–101–Q
Finleyville Co: Washington PA 15332
Location: Route 88 to Mineral Beach and turn left
Landholding Agency: COE–BC
Property Numbers: 319011407, 319011409–319011419
Status: Excess
Base Closure
Comment: 1 story frame residences, possible asbestos.

12 Family Houses
Monroeville Area Site 25
C.E. Kelly Support Facility
Lindsey Lane R.D. #2
Monroeville Co: Allegheny PA 15239
Landholding Agency: COE–BC
Property Numbers: 319030051–319030062
Status: Excess
Base Closure
Comment: 1 story frame residences with playground area, possible asbestos.

Land (by State)

Pennsylvania

C.E. Kelly Support Facility
Finleyville Area Site 52
Finleyville Co: Washington PA 15332
Landholding Agency: COE–BC
Property Number: 319011408
Status: Excess
Base Closure

Comment: 11.63 acres, potential utilities, most recent use—playground area.

Suitable/Available Properties

Rhode Island

62 Bldgs., Davisville Housing
Navy Drive
Davisville Co: Kingston, RI 02852–
Landholding Agency: COE–BC
Property Number: 329240003
Status: Excess
Base Closure
Number of Units: 62
Comment: sq. ft. varies, 2-story wood frame residences.

16 Bldgs., Slaterville Housing
Pound Hill Street
N. Smithfield Co: Providence RI 02895–
Landholding Agency: COE–BC
Property Number: 329240004
Status: Excess
Base Closure
Number of Units: 16
Comment: 1,100 sq. ft. each, 1-story wood frame residences.

Texas

Marine Corps Reserve Center
208 South F Street
Harlingen Co: Cameron TX 78550–6475
Landholding Agency: GSA
Property Number: 549240002
Status: Excess
Comment: 4 Bldgs. and 0.82 acres of land; most recent use of bldgs—administration (4,708 sq. ft. brick); carport/storage (1,782/2,800 sq. ft. wood); storage (4,256 sq. ft. tin).
GSA Number: 7–N–TX–1032.

Washington

28 Bldgs., Youngslake Housing
Near 116th St., SE & 192nd St.
Renton Co: King WA
Landholding Agency: COE–BC
Property Number: 329240006
Status: Excess
Base Closure
Number of Units: 28
Comment: 1,184–1,392 sq. ft., 3-bedroom residences.

Virginia—Harry Diamond Laboratories

Harry Diamond Laboratories, Woodbridge Facility is located in Prince William County, Virginia 22191. The installation is scheduled for closure on or about September 1994. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 76,000 square feet of facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include a warehouse, communications facilities and miscellaneous facilities.

For specific information concerning Harry Diamond Laboratories, please contact Commander, U.S. Army Laboratory Command, ATTN: AMSLC–MC (Ms. Ann Barnett), 2800 Powder Mill Road, Adelphia, Maryland 20783–1145.

Suitable/Available Properties

Property Number: 329210060
Type Facility: Communications/Electronic Facilities—3 brick structures.
Property Number: 329210061
Type Facility: Warehouse—1 brick storehouse.
Property Number: 329210062
Type Facility: Miscellaneous Facilities—3 facilities including roads and a vehicle park.
Property Number: 329210063
Type Facility: Multi-Purpose Facilities—2 brick structures including an administrative building.

LAND (by State)

Georgia

Tracts 3, 16 and 33
Fort Gillem
GA Hwy 42
Forest Park Co: Clayton GA 30051–
Landholding Agency: GSA
Property Number: 219014293
Status: Unutilized
Comment: 11.19 acres, narrow strip of land, most recent use—railroad spur, access limitation
GSA Number: 4–D–GA–585–B

Idaho

Portion
Former Farragut Naval Training Center
Athol Co: Kootenai ID 83801–
Landholding Agency: GSA
Property Number: 549230004
Status: Excess
Comment: 48.42 acres, former railroad right-of-way
GSA Number: 9–GR(2)–ID–421C

Indiana

Land—Plant II
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: COE–BC
Property Number: 329220004
Status: Excess
Base closure
Number of Units: 1
Comment: 858.63 acres, 34 acres subj. to flooding, access over private property by easement of roadway, manufac. facility on site note operative for 20 yrs., scheduled to vacated 11/92.

Portion, Cannelton Locks & Dam
Adjacent to Middle Creek Boat Lanching Ramp Co: Floyd IN
Landholding Agency: GSA
Property Number: 549240008
Status: Excess
Comment: 28.65 acres with pumphouse, no utilities, periodic flooding
GSA Number: 2–D–IN–569–C

North Dakota

US Army Reserve Center
SE intersection of US 83 & County Road 10A
Minot Co: Ward ND 58701–
Landholding Agency: GSA
Property Number: 549240001
Status: Excess
Comment: 5 acres; most recent use—agricultural
GSA Number: 7–D–ND–0492.

Suitable/Unavailable Properties

Buildings (by State)

California

Bldg. 21185
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Road, PT SAL Road; Miguelito CYN
Landholding Agency: Air Force
Property Number: 189240054
Status: Unutilized
Comment: 168 sq. ft., 1 story wood frame, needs rehab, most recent use—storage.

New Jersey

Bldg. P05605, Fort Dix
8th Street and Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210064
Status: Unutilized
Base closure
Number of Units: 1
Comment: 6137 sq. ft., 1 story, possible asbestos, most recent use—administration/classroom.

Bldg. P05602, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210065
Status: Unutilized
Base closure
Number of Units: 1
Comment: 40653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.

Bldg. P05603, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210066
Status: Excess
Base closure
Number of Units: 1
Comment: 40653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.

Bldg. P05604, Fort Dix
8th Street & Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210067
Status: Excess
Base closure
Number of Units: 1
Comment: 12194 sq. ft., 1 story, presence of asbestos, most recent use—admin/supply building.

Suitable/To Be Excessed

Buildings (by State)

Ohio

Michaels, Christine E. A–8881
T2NRSW part sec, 27 & 33 Co: Washington OH
Landholding Agency: Agriculture
Property Number: 159230001
Status: Unutilized

Comment: 1104 sq. ft., 1 story frame residence, disconnected utilities, off-site removal only.

Land (by State)

Arizona

LAND-APO-GR-12-26A-09
120 Street and Mountain View
Scottsdale Co: Maricopa AZ 85259–Location: South of Shea Boulevard and East of 120th Street
Landholding Agency: Interior
Property Number: 619240002
Status: Unutilized
Comment: 4.75 acres, easement restrictions, most recent use—acquired for construction of CAP canal.

Florida

Springfield Annex (VZTD)
Tyndall Air Force Base
Springfield Co: Bay FL
Landholding Agency: Air Force
Property Number: 189240053
Status: Unutilized
Comment: 7.55acres; improved w/parking lot, 2 loading ramps and railroad tracks.

Iowa

C BAR J Ranch
¼ mile south of River Rd. on Stagecoach Rd.
Ames Co: Story IA
Landholding Agency: Agriculture
Property Number: 159230002
Status: Unutilized
Comment: 24.5 acres w/bldgs.—animal, shops, barn, storage; wood and metal frames; potential utils.; limestone quarry approx ¾ mi. north, perform some blasting; fenced area w/locked gate.

Unsuitable Properties

Buildings (by State)

Connecticut

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 879240031
Status: Unutilized
Reason: Floodway.

Florida

Pyro & Paint Locker Bldgs.
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879240017
Status: Unutilized
Reason: Floodway; Secured Area.

Illinois

Bldg. 117, Hangar
Fort Sheridan Co: Lake IL 60037–5000
Landholding Agency: COE–BC
Property Number: 329230001
Status: Excess
Base closure
Number of Units: 1
Reason: Without airport runway clear zone.

Indiana

Loran Station DANA
Dana Co: Vermillion IN 47847–
Landholding Agency: DOT
Property Number: 879240016
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Kentucky

Bldg. 06862, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219240782
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Maine

Herron Neck Light
U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240028
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Burnt Coat Harbor Light
U.S. Coast Guard
Swans Island Co: Hancock ME 04685–
Landholding Agency: DOT
Property Number: 879240030
Status: Unutilized
Reason: Floodway.

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 879240032
Status: Unutilized
Reason: Floodway.

Massachusetts

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 879240029
Status: Unutilized
Reason: Floodway; Secured Area

Montana

Lolo Work Cntr. Messhall #1001
Highway 12—Approx. Mile Marker 15 Co: Missoula MT 59801–
Landholding Agency: Agriculture
Property Number: 159220004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Other
Comment: Extensive deterioration.

Lolo Work Cntr. Bunkhouse #2001
Highway 12—Approx. Mile Marker 15 Co: Missoula MT 59801–
Landholding Agency: Agriculture
Property Number: 159220005
Status: Unutilized
Reason: Floodway; Other
Comment: Extensive deterioration.

New York

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240020
Status: Unutilized
Reason: Secured Area.

Bldgs. 607, 605 Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240021–879240022
Status: Unutilized
Reason: Secured Area, Other Comment: Extensive deterioration

North Carolina

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240018
Status: Unutilized
Reason: Secured Area

Group Cape Hatteras
Bowling Alley
Buxton Co: NC 27902–0604
Landholding Agency: DOT
Property Number: 879240019
Status: Unutilized
Reason: Secured Area

Tennessee

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Wisconsin

Kapsey Property #3961, Co: Taylor WI
Location: Sec. 2, T31N, R3W from junction of State Hwy. 64 & 73, go north on Hwy. 73 1¾ miles—turn right on Co. Hwy. G—go 2¾ miles, turn right on FR 121, turn left on 1st road past Yellow River
Landholding Agency: Agriculture
Property Number: 1592220001
Status: Unutilized
Reason: Floodway

Land (by State)

Florida

Cape St. George Reservation Fort Rucker, AL Installation #12050
Apalachicola Co: Franklin G C FL 32320–
Landholding Agency: COE–BC
Property Number: 329140001
Status: Unutilized
Base closure Number of Units: 1
Reason: Floodway, Other Comment: Inaccessible

Montana

Sherryl Tap Point Site, 3 miles south of Drummond, MT Co: Granite MT
Landholding Agency: GSA
Property Number: 549240006
Status: Excess
Reason: Other Comment: Inaccessible
GSA Number: 7–B–MT–0598

South Carolina

Land—2.66 acres Port Royal Co: Beaufort SC 29902–6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway

The Following Properties Are Suitable/Available. They Were Published in Error as Unsuitable on 11/20/92

Virginia

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: DOT

Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence

Admin. Bldg.
Group Eastern Shores
Coast Guard Station, South Main Street
Chincoteague Co: Accomack VA 23336–1510
Landholding Agency: DOT
Property Number: 879230006
Status: Unutilized
Comment: 3795 sq. ft., 1-story wood structure, off-site use only, scheduled to be vacated 6/93

Repair Shop
Group Eastern Shores
Coast Guard Station, South Main Street
Chincoteague Co: Accomack VA 23336–1510
Landholding Agency: DOT
Property Number: 879230007
Status: Unutilized
Comment: 3025 sq. ft., 1-story wood structure, off-site use only, scheduled to be vacated 6/93

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Iowa Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monore WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Wyoming

Glendale Microwave Bldg.
Section 1
Cody Co: Park WY 82414–
Landholding Agency: Energy
Property Number: 419220001
Status: Excess
Comment: 223 sq. ft., metal frame, communication equipment bldg., limited utilities, off-site removal only.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Sections 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Sections 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized

Comment: 46 acres

California

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9404
Landholding Agency: COE
Property Number: 319010015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras CA 95252–0128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Excess
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities
GSA Number: 9–2–CA–1306

Colorado

Portion/Curecanti Substation
Cimarron Co: Montrose CO 81220–
Location: 2 miles east of Cimarron on Highway 50
Landholding Agency: GSA
Property Number: 419030009
Status: Excess
Comment: 36.39 acres, easement restrictions
GSA Number: 7–B–CO–624

Railroad Spur and Right-of-Way
Denver Federal Center
Lakewood Co: Jefferson CO 80215–
Landholding Agency: GSA
Property Number: 549120007
Status: Excess
Comment: 1.5 miles long (width varies 35 to 200 ft.), limited access, right-of-way restrictions
GSA Number: 7–G–CO–441–Q

Georgia

Land—Fort Gordon
Between Windermere Dr. & Wyevale Rd.
Augusta Co: Richmond GA 30909–
Landholding Agency: GSA
Property Number: 219210382
Status: Excess
Comment: Approximately .54 acres, entire parcel under easement to State Hwy. Dept.

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Kansas

Parcel 1
El Dorado Lake
Sections 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Portion of VA Hospital Reserv.
2111 Southwest Randolph Street
Topeka Co: Shawnee KS 66603–
Landholding Agency; GSA
Property Number: 549220006
Status: Excess
Comment: 0.806 acre, utility easements, most recent use—recreation.
GSA Number: 7–GR–KS–419–I

Kentucky

Tract 2625
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres, rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; step and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.89 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE

Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; steep and wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; steep and wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tract 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co; Lyon KY 42036–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.6 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized

Comment: 203 acres; wildlife/forestry; no utilities.

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized
Comment: 8.27 acres; heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010111
Status: Underutilized
Comment: 66.13 acres, most recent use—transmitter station.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Massachusetts

Por. of Former Navy Ammo. Plt.
Fort Hill Street
Hingham Co: Plymouth MA 02043–
Location: Across from Bus Company Parking Garage.
Landholding Agency: GSA
Property Number; 549030017
Status: Excess
Comment: 1.129 acres, gravel pavement, most recent use—parking lot
GSA Number: 2–GR–MA–591B

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, MN
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Sections 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE

Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

North Carolina

USCG Station—Land
Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968–
Landholding Agency: DOT
Property Number: 879120087
Status: Unutilized
Comment: 10 acres, potential utilities.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Oklahoma

Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: GSA
Property Number: 219013808
Status: Excess
Comment: 8.77 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0004

Parcel No. 7
Fort Gibson Lake
Section 6 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010869
Status: Excess
Comment: 16.31 acres; potential utilities; most recent use—recreational and development.
GSA Number 7–D–OK–0442E–0001

Parcel No. 14
Fort Gibson Lake
Section 20 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010870
Status: Excess
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.
GSA Number 7–D–OK–0442E–0002

Parcel 15
Fort Gibson Lake
Section 22 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010871
Status: Excess
Comment: 7.51 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0003

Parcel 28
Fort Gibson Lake
Section 35 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010877
Status: Excess
Comment: 36.59 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0005

Parcel 75
Fort Gibson Lake
Section 16 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010887
Status: Excess
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0009

Parcel 88
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010899
Status: Excess
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0010

Parcel 89
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010900
Status: Excess
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0011

Parcel 95
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010906
Status: Excess
Comment: 8 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0012

Pine Creek Lake
Section 27 Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel No. 43
Fort Gibson Lake
Section 11 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011371
Status: Excess
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0006

Parcel No. 49
Fort Gibson Lake
Section 15 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Excess
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0007

Parcel No. 61
Fort Gibson Lake
Section 13 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0008

Parcel No. 99
Fort Gibson Lake
Section 21 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0013

Parcel No. 102
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0014

Parcel No. 54/GSA No.-6
Lake Texoma Co: Marshall OK 73439–
Location: Section 17, 3½ miles north of Little City, OK
Landholding Agency: GSA
Property Number: 549210007
Status: Excess
Comment: 5.05 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No.63/GSA No. 8
Lake Texoma Co: Marshall OK 73439–
Location: Section 19, 3½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210008
Status: Excess
Comment: 40-32 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 66/GSA No. 9
Lake Texoma Co: Marshall OK 73439–
Location: Section 12 and 13, 2½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210009

Status: Excess
Comment: 14.05 acres, potential utilities, most recent use—low density recreation/ natural gas well and pipelines.
GSA Number: 7–D–OK–0507–H

Parcel No. 78/GSA No. 11
Lake Texoma Co: Marshall OK 73439–
Location: Section 24, 1 mile east of McBride, OK
Landholding Agency: GSA
Property Number: 549210010
Status: Excess
Comment: 30.28 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 88/GSA No. 12
Lake Texoma Co: Marshall OK 73439–
Location: Section 1824, 3½ miles south of Kingston, OK
Landholding Agency: GSA
Property Number: 549210011
Status: Excess
Comment: 13 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 125/GSA No. 14
Lake Texoma Co: Marshall OK 73439–
Location: Section 17
Landholding Agency: GSA
Property Number: 549210012
Status: Excess
Comment: 11.24 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 150/GSA No. 15
Lake Texoma Co: Marshall OK 73439–
Location: Section 6
Landholding Agency: GSA
Property Number: 549210013
Status: Excess
Comment: 12.64 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 164/GSA No. 16
Lake Texoma Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210014
Status: Excess
Comment: 40.20 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 165/GSA No. 17
Lake Texoma Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210015
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 166/GSA No. 18
Lake Texoma Co: Love OK 73441–
Location: Section 10
Landholding Agency: GSA
Property Number: 549210016
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Crooked Creek Lake Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.89 acres; potential for utilities.

South Dakota

Por. of Pactola Dist. Ad. Site
803 Soo San Drive
Rapid City Co: Pennington SD 57702–
Landholding Agency: GSA
Property Number: 159130003
Status: Excess
Comment: 3.36 acres; potential for utilities
GSA Number: 7–A–SD–511.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: DOE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Texas

Parcel #222
Lake Texoma
(See County) Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation

Parts of Tracts
B–143, B–144, B–146, B–148, B–179
Downstream of Lewisville Dam embankment
Lewisville Co: Denton TX 75067–
Location: Along State Hwy 121
Landholding Agency: COE
Property Number: 319140015
Status: Underutilized
Comment: approx. 92.81 acres in 3 parcels, most recent use—wildlife and low density recreation.

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V.

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA. Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711–
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, leased to Owens-Illinois Glass Plant, expiration date 10/31/92, most recent use—parking lot.

Washington

Land
Goodnoe Hills Substation & Wind Study Site
Co: Klickitat WA 98620–
Location: 15 mi SE of Glodendale on S side of St. Hwy. 122
Landholding Agency: GSA
Property Number: 54921005
Status: Excess
Comment: 123 acres w/ a 20'x20' visitors center and a 6'x6' substation bldg. which has secured areas.
GSA Number: 9–B–WA–1017.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Wyoming

Wind Site A
Medicine Bow Co: Carbon WY 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: GSA
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation-easement restrictions.

[FR Doc. 92–29915 Filed 12–10–92; 8:45 am]
BILLING CODE 4310–29–M

Office of Administration

[Docket No. N–92–3549]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street,

SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 4, 1992.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Proposal: HOME Regulations-Interim Rule (Amendments) (FR–2937).

Office: Office of the Secretary.

Description of the Need for the Information and Its Proposed Use: This interim rule amends the December 16, 1991, HOME Program interim rule. The amendments provide additional guidance, make technical corrections and make substantive changes necessary for successful operation of the Program.

Form Number: HUD–40093, 40094/A, 40095/A, 40096/A, 40097/A, 40098/A, 40099, 40100/A and 40107.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: Annually and on occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	814		50		.8339		33,940
Recordkeeping	814		1		64.168		52,233

Total Estimated Burden Hours: 86,173.

Status: Revision.

Contact: Ginny Sardone, HUD, (202) 708–2470; Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 92–30182 Filed 12–10–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–5440–10 B021]

Availability of Draft Environmental Impact Report/Environmental Impact Statement for Rail-Cycle Bolo Station Landfill, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that a joint draft Environmental Impact Report/Impact Statement (EIR/EIS) has been prepared by the Bureau of Land Management and the County of San Bernardino for the proposed Bolo Station Class III landfill. The proposed federal action analyzes the environmental affects of a land exchange for 2.5 sections, a right-of-way and a plan amendment to the California Desert Plan.

SUPPLEMENTARY INFORMATION: Of the 2.5 sections of public land proposed for exchange, 1.5 sections is designated Multiple Use Class L (Limited Use) under the California Desert Plan. The proposed use of the 1.5 section for a landfill is not consistent with the guidelines of the Desert Plan, and the proposed amendment would designate the subject land, Multiple Use Class M, permitting an exchange. The proposed private lands (3 sections) to be exchanged for the Bolo Station public land contain tortoise habitat, recreational value and land in the East Mojave National Scenic Area.

Rail-Cycle, a partnership of Waste Management of North America and the Atchison, Topeka and Santa Fe Railroad Co., has proposed a waste-by-rail landfill facility. The proposed project would involve 4800 acres of which 2100 acres would be utilized for the landfill and ancillary facilities. Refuse would be sorted and recyclable material removed at Materials Recovery Facility (MRF), located in southern California. The remaining material would be packed into containers and transported by train to the Bolo Station facility, located between Amboy and Cadiz, south of US Route 66, and about 35 miles northeast of the City of Twentynine Palms. The proposed facility anticipates that within five to seven years, processed waste would total 21,000 tons per day and utilize seven trains. The proposed facility would be open 60 to 100 years and contain a maximum of 430 million tons of waste. Two alternatives beside the proposed action are considered. The EIS/EIR analyzes the effects of the proposed action on such environmental issues as water and air quality, minerals, and visual resources among other resources.

DATES: Owing to a proposed plan amendment, there is a 90 day public review period, and written comments will be accepted until March 3, 1993. Public hearings will be held on the following dates at 7 p.m.: February 8, 1993, Holiday Inn, 1511 E. Main St., Barstow, CA; February 10, 1993, Twentynine Palms High School, Multipurpose Room, 72750 Wildcat Way, Twentynine Palms, CA; February 11, 1993, San Bernardino County Government Center, Hearing Chambers, 385 North Arrowhead Ave., San Bernardino, CA.

ADDRESSES: Written comments will be accepted until March 3, 1993 and should be addressed to: County of San Bernardino, Planning Department, 385 N. Arrowhead Ave., Third Floor, San Bernardino, CA 92415–0182, Attn: Mr. Randy Scott.

Dated: December 4, 1992.

Bonnie R. Johnson,

Acting District Manager.

[FR Doc. 92–30083 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–40–M

[ID-943-4210-06; IDI-15597]

Notice of Proposed Continuation of Withdrawal; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 2,333.90 acre withdrawal for Powersite Reserve No. 521, continue for an additional twenty years. The land is still needed for waterpower purposes. These lands will remain closed to surface entry, but have been and will remain open to mineral leasing and mining.

EFFECTIVE DATE: Comments should be received on or before March 11, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384–3166.

The Bureau of Land Management proposes that the existing land withdrawal made by the Executive Order dated February 15, 1916, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

T. 3 N., R. 41 E.,
- sec. 8, lots 1, 6 and 8;
- sec. 9, lots 2, 3, 4 and 8, W½NW¼, NE¼SW¼ and SW¼SE¼;
- sec. 10, lots 1 and 2 and SE¼SW¼;
- sec. 11, lots 3 and 4;
- sec. 14, lot 4;
- sec. 15, lots 1, 2, 5, 6, 7 and 8, NW¼NW¼ and SE¼NE¼.

T. 3 N., R. 42 E.,
- sec. 4, lot 5;
- sec. 5, lots 8 to 10 inclusive;
- sec. 7, lots 5 and 6;
- sec. 9, lots 2, 3, 6 and 7 and SW¼NW¼;
- sec. 10, lots 5 to 7 inclusive and SE¼SW¼;
- sec. 13, lots 5 and 6;
- sec. 14, lot 5, S½NE¼ and NE¼SE¼;
- sec. 15, lots 1 and 2 and SE¼NE¼;
- sec. 23, NE¼NE¼
- sec. 24, lots 1 to 4 inclusive and S½N½.

T. 3 N., R. 43 E.,
- sec. 19, lots 3, 6 and 7;
- sec. 30, lots 3, 4, 5, 8 and 11, NE¼SW¼ and SW¼SE¼;
- sec. 31, lots 2, 7 and 8, NW¼NE¼, SE¼SW¼, N½SE¼ and SE¼NE¼;
- sec. 32, lots 2 and 5.

The areas described aggregate 2,333.90 acres in Bonneville County.

The withdrawal is essential for protection of potential waterpower development. The existing withdrawal closes the described land to surface entry but not to mineral leasing and mining. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Dated: December 4, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92–30084 Filed 12–10–92; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Adoption of the Page Avenue Extension Environmental Impact Statement

SUMMARY: This notice is published to advise interested parties of the National Park Service's (NPS) adoption of the Page Avenue Extension Final Environmental Impact Statement (FEIS), St. Louis and St. Charles counties, Missouri, pursuant to Council on Environmental Quality regulations § 1506.3(c), for use in a Land and Water Conservation Fund (L&WCF) Act, as amended, section 6(f)(3) conversion request from the Missouri Department of Natural Resources.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration recently completed the FEIS for the Page Avenue Extension project in St. Charles and St. Louis counties. The FEIS was filed with the Environmental Protection Agency and noticed in the **Federal Register** on December 4, 1992. This highway project, in addition to providing an additional crossing of the Missouri River, will also impact Creve Coeur Lake Memorial Park. In crossing the park, the proposed route will impact 183.4 acres, resulting in the conversion and necessary replacement of this land in accordance with section 6(f)(3) of the L&WCF Act of 1965, as amended. As a cooperating agency in the development of this FEIS and after an independent review of the statement, the NPS concludes that its comments and suggestions have been satisfied. Therefore, the NPS adopts this FEIS for use in the environmental evaluation requirements as identified in section 6(f)(3) of the L&WCF Act.

FOR FURTHER INFORMATION CONTACT: Clay McDermeit, Chief, Western Heartlands Division, Recreation Assistance Programs, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3203.

Dated: December 2, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92–30105 Filed 12–10–92; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES & TIME: February 1, 1993, 2:30 p.m. to 5 p.m. February 2, 1993, 8 a.m. until business completed.

ADDRESSES: Harry S. Truman State Office Building Conference Room 490, 301 West High, Jefferson City, Missouri.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Dated: December 3, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92–30106 Filed 12–10–92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 55; Sub-No. 92]

Compliance Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: The Commission is reinstating its prior policy that an applicant for new motor, water, broker, or freight forwarder operating authority generally must comply with the applicable insurance or surety bond, tariff, and process agent requirements within a specified period of time. The procedural change is necessitated by the large number of unclosed files that have accumulated because the applicants have never effected compliance, and is intended to alleviate the current burden on Commission resources in maintaining these files.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Julia Farr (202) 927–7513. [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: The Commission is reinstating its prior policy that an applicant for new motor, water, broker, or freight forwarder operating authority generally must comply with the applicable insurance or surety bond, tariff, and process agent requirements within a specified period of time.

In the early 1980's, the Commission had eliminated the practice of requiring an applicant to effect compliance within a specific time period. Since then, however, over 16,000 files have accumulated for applicants granted authority more than a year ago, who have not complied with the terms of the grant and may never comply. The number of files awaiting compliance continues to increase and imposes a heavy burden on the Commission's limited resources, thus necessitating some resolution.

Effective upon publication of this policy statement, all new grants of authority will include the requirement that compliance be effected within 180 days. An applicant may seek a waiver of the 180-day compliance requirement, but such requests will only be granted on a showing of good cause. This procedure should allow applicants a sufficient amount of time to comply, while at the same time providing for relief in appropriate circumstances. If an applicant timely complies, the Commission will issue an appropriate certificate, permit, or license. If an applicant fails to comply or obtain a waiver within the 180-day period, the grant of authority will be, by its own terms, void and the application dismissed for want of prosecution.

As we have noted, several thousand applicants that were granted authority more than 180 days ago have not achieved compliance. As to these applicants, and any other applicants that were granted authority before publication of this policy statement, but that do not effect compliance within 180 days of their grant of authority, we will systematically issue a decision tentatively dismissing the application for want of prosecution. To afford each such applicant one final chance to effect compliance, each dismissal decision will not take effect for 60 days. If, within 60 days from the date of service of the dismissal decision, the applicant achieves compliance, then the application will not be dismissed for want of prosecution.

Authority: 5 U.S.C. 551(a); 5 U.S.C. 553; 5 U.S.C. 559; 16 U.S.C. 1456; 49 U.S.C. 10101; 49 U.S.C. 10305; 49 U.S.C. 10321; 49 U.S.C. 10921; 49 U.S.C. 10922; 49 U.S.C. 10923; 49 U.S.C. 10924; 49 U.S.C. 10928; 49 U.S.C. 11102.

Dated: December 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30138 Filed 12–10–92; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Explosives Technologies International, Inc. (ETI), Rockwood Office Park, Bldg. #1, 501 Carr Rd.—suite 200, Wilmington, DE 19809–2863.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Blastrite Services Inc.
Incorporated—SC
Incorporated—GA
Incorporated—VA
(ii) Beattie Explosives, Inc.
Incorporated—ID
(iii) Southern Explosives Corp.
Incorporated—KY
Incorporated—OH
(iv) Contract Carrier, Inc.
Incorporated—MO
(v) ETI of California, Inc.
Incorporated—CA
(vi) DECO Services, Inc., dba Danbury Explosives
Incorporated—CT
Incorporated—NY
(vii) Explosives Energy Inc. dba Arkansas Explosives
Incorporated—AR
(viii) Explo-Tech Inc.
Incorporated—PA
Incorporated—MD
(ix) ACE Explosives ETU Ltd.
Incorporated—CN

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30137 Filed 12–10–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-No. 1104X)]

Consolidated Rail Corporation—Abandonment Exemption—In Clearfield County, PA

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR Part 1152 subpart F—*Exempt Abandonments* to abandon approximately 4.5-miles of line in Clearfield County, PA. The segment to be abandoned, the Mills Industrial Track (a.k.a. Moshannon Industrial Track), extends from a point approximately 1,800 feet west of State Route 53 at Osceola Mills, at approximately milepost 24.5, to approximately 1,750 feet north of the Beaver Branch Creek at West Moshannon, at approximately milepost 29.0.

Conrail has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. Conrail has complied with the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies).

As a condition to this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial

assistance has been received, this exemption will be effective on January 11, 1993, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 21, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 31, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 16, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 3, 1992.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30139 Filed 12–10–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decision shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Volume I

New York, NY91–3 (Feb. 22, 1991).	p. 797, p. 798.
Pennsylvania:	
PA91–3 (Feb. 22, 1991)	p. All.
PA91–6 (Feb. 22, 1991)	p. All.
PA91–11 (Feb. 22, 1991)	p. All.
PA91–14 (Feb. 22, 1991)	p. All.
PA91–16 (Feb. 22, 1991)	p. All.
PA91–18 (Feb. 22, 1991)	p. All.
PA91–20 (Feb. 22, 1991)	p. All.
PA91–22 (Feb. 22, 1991)	p. All.

Volume II

Nothing

Volume III

Colorado.	
CO91–7 (Feb. 22, 1991)	p. All.
CO91–8 (Feb. 22, 1991)	p. All.
CO91–9 (Feb. 22, 1991)	p. All.
Washington, WA91–11 (Feb. 22, 1991).	p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of December 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–30141 Filed 12–10–92; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–27,496]

Allied-Signal Aerospace Co., Garrett Fluid Systems Division, Tempe, AZ; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated October 23 and November 9, 1992, the former workers at Allied-Signal Aerospace in Tempe, Arizona requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 18, 1992 and published in the **Federal Register** on October 13, 1992 (57 FR 46880).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former workers claim that Allied-Signal shifted some of its production (machining) to a company affiliate in Singapore which resulted in a loss of jobs and a decline in production at Tempe.

The investigation file shows that the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. U.S. imports of parts for military aircraft decreased in the latest twelve month period May through April 1991–1992 compared with the same period in 1990–1991.

The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The Department's survey shows that the subject firm's major customers did not import aerospace hardware during the period relevant to the investigation.

The findings show that the workers were not separately identifiable by product line and that only a neligible amount of production was shifted to Singapore in the 1991–1992 period and much of the transferred production was performed for the company by outside vendors rather than by employees of the Tempe plant. The findings also show that the Singapore plant had declining sales in 1992 compared to 1991.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of December, 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92–30162 Filed 12–10–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,507]

Carter Jasper Company, Jasper, GA; Notice of Affirmative Determination Regarding Application for Reconsideration

On November 17, 1992, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on October 27, 1992 and published in the **Federal Register** on November 17, 1992 (57 FR 54256).

The company official states that a major customer decreased its purchases of canvas footwear from the Carter Jasper Company and increased its imported purchases of canvas footwear from China.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 4th day of December, 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92–30167 Filed 12–10–92; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 21, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training

Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23d day of November, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Cas Refining (Workers)	Lafayette, LA	11/23/92	11/03/92	28,014	Refined Oil Products.
Nestle Beverage Company (Workers)	Sunbury, OH	11/23/92	11/11/92	28,015	Coffee.
Wayne Corp. (UAW)	Richmond, IN	11/23/92	11/13/92	28,016	Buses.
Spot Fashions, Inc. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,017	Ladies' Wool Coats.
American Design & Fashion (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,018	Ladies' Coats.
Andre Fashions (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,020	Ladies' Coats.
Econo-Cut (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,020	Ladies' Wool Coats, Jackets.
Epoca Fashions (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,021	Ladies' Coats.
ERA Coats (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,022	Ladies' Coats.
Greensleeves, Inc. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,023	Ladies' and Children's Bathing Suits.
Joseph Frank, Inc. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,024	Ladies' Apparel.
Lido Fashions (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,025	Ladies' Coats.
Malcolm Clothing Corp. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,026	Ladies' Coats.
Rosarla's Sportswear, Inc. (ILGWU)	Passaic, NJ	11/23/92	10/29/92	28,027	Women's Skirts and Pants.
Ornstein Fashions (ILGWU)	Garfield, NJ	11/23/92	10/29/92	28,028	Women's Jackets.
Supercraft Coats (ILGWU)	Garfield, NJ	11/23/92	10/29/92	28,029	Women's Coats.
Nitrogen Products, Inc. (Workers)	Helena, AR	11/23/92	11/03/92	28,030	Ammonia Fertilizer.
Bayliner Marine Corp. (Workers)	Pipestone, MN	11/23/92	11/11/92	28,031	Boats and Marine Supplies.
Advanced Machine Works, Inc. (Co)	Houma, LA	11/23/92	11/13/92	28,032	Drilling Equipment.
Exlog, Inc. (Workers)	Houston, TX	11/23/92	11/02/92	28,033	Oil Exploration Services.
Gehl Company, Inc. (AIW)	West Bend, WI	11/23/92	11/06/92	28,034	Farm and Construction Equipment.
Ryan Transportation Service (Workers)	Livonia, MI	11/23/92	10/29/92	28,035	Transport Services.
Kelsey-Hayes Co. (UAW)	Detroit, MI	11/23/92	11/09/92	28,036	Rotors and Drums.
BethEnergy Mines, Inc. (UMWA)	Bethlehem, PA	11/23/92	11/06/92	28,037	Metallurgical Coal.
Pacific Enterprises Oil Co. (USA) (Co)	Wichita Falls, TX	11/23/92	11/12/92	28,038	Oil and Gas.
GCA Corp. (Workers)	Andover, MA	11/23/92	11/05/92	28,039	Semiconductor Mfg Equipment.
Itt Rayonier, Inc. (AWPPW)	Hoquium, WA	11/23/92	11/03/92	28,040	Paper and Oil Drilling Chemicals.
Grays Harbor Paper Co. (AWPPW)	Hoquaim, WA	11/23/92	11/03/92	28,041	Paper and Oil Drilling Chemicals.
Shell Oil Co. (Co)	Mobile, AL	11/23/92	11/02/92	28,042	Oil and Gas.
Shell Western E&P, Inc. (Co)	Mobile, AL	11/23/92	11/02/92	28,043	Oil and Gas.
Unisys Corp. (Workers)	Albany, NY	11/23/92	11/11/92	28,044	Repairs Data Processing Equipment.
Conca D'Oro (ILGWU)	Paterson, NJ	11/23/92	10/29/92	28,045	Ladies' Coats.
Shell Offshore (Co)	Mobile, AL	11/23/92	11/02/92	28,046	Oil and Gas.

[FR Doc. 92-30169 Filed 12-10-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,404, TA-W-27,404A Illinois, TA-W-27,404B New Jersey, TA-W-27,404C Colorado]

General Semiconductor Industries, Incorporated, Tempe, AZ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 17, 1992, applicable to all workers of General Semiconductor Industries, Inc., Tempe, Arizona. The Notice was published in the **Federal Register** on August 4, 1992 (57 FR 34307).

At the request of the workers the Department reviewed the certification for workers of General Semiconductor in Tempe, Arizona. New information from the company shows that diode assembly accounted for the major portion of production at Tempe. New information shows that imported diode components were assembled at Tempe. After assembly, the diodes were tested, marked and packaged at Tempe for the domestic market through its regional sales offices.

Worker separations at the regional sales offices occurred in Illinois, New Jersey and Colorado as a result of the August 2, 1992 sale of the company's diode product line to an independent company, General Instruments, who immediately began the production of diodes in Europe. General Instrument has their own sales offices in the U.S.

The intent of the Department's certification is to include all workers of General Semiconductor in Tempe, Arizona and their regional sales offices in Illinois, New Jersey and Colorado who were affected by the transfer of diode production overseas and the subsequent imports into the domestic market.

The amended notice applicable to TA-W-27,404 is hereby issued as follows:

All workers of General Semiconductor Industries, in Tempe, Arizona and operating in the States of Illinois, New Jersey and Colorado who became totally or partially separated from employment on or after June 10, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-30166 Filed 12-10-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,829]

Nerco Minerals Company Portland, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Nerco Minerals Company, Portland, Oregon. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,829; Nerco Minerals Company, Portland, Oregon (December 3, 1992)

Signed at Washington, DC, this 4th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-30163 Filed 12-10-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27, 602]

Nokia-Maillefer South Hadley, MA; Affirmative Determination Regarding Application for Reconsideration

On October 23, 1992, a former worker requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on September 25, 1992 and published in the Federal Register on October 13, 1992 (57 FR 46880).

The former worker states that all of Nokia's production will be transferred from South Hadley to Finland and that Nokia's domestic customers will be supplied with wire and cable extrusion machinery from Finland.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 4th day of December, 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 92-30168 Filed 12-10-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of November 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Treasure Isle, Inc. (Co)	Dover, FL	11/30/92	11/20/92	28,047	Shrimp and fresh seafood.
Sharon Steel Corp (Workers)	Farrell, PA	11/30/92	10/16/92	28,048	Flat-rolled and forging products.
Robertshaw Tennessee (USWA)	Knoxville, TN	11/30/92	11/17/92	28,049	Intake control valves.
Robertshaw Tennessee (UAW)	Carthage, TN	11/30/92	11/17/92	28,050	Intake control valves.
Parker Technology, Inc. (Workers)	Midland, TX	11/30/92	10/23/92	28,051	Oil well drilling rigs.
Ostrom Lumber Co., Inc. (Workers)	Monmouth, OR	11/30/92	11/16/92	28,052	Softwood lumber.
Leica, Inc. (Co)	Buffalo, NY	11/30/92	11/12/92	28,053	Optical instruments.
I.G.I. Adhesives, Inc. (Workers)	Lyndhurst, NJ	11/30/92	11/19/92	28,054	Adhesives
General Electric Co. (UAW)	Cincinnati, OH	11/30/92	11/18/92	28,055	Jet engines.
Dale Electronics, Inc. (Co)	El Paso, TX	11/30/92	11/18/92	28,056	Electronic components.
Dante Sportswear (ILGWU)	Clifton, NJ	11/30/92	11/10/92	28,057	Ladies' jackets.
Classic Fashion (ILGWU)	Paterson, NJ	11/30/92	11/10/92	28,058	Ladies' coats.
Allegany Apparel, Inc. (Workers)	Cresson, PA	11/30/92	11/16/92	28,059	Ladies' dresses.
Shape, Inc. (Workers)	Biddeford, ME	11/30/92	11/09/92	28,060	Computer cartridge equipment.
Teledyne Adams (IBT)	Union, NJ	11/30/92	11/10/92	28,061	Heating elements.
CTC International (Co)	Mandeville, LA	11/30/92	11/02/92	28,062	Sales.
Feature Enterprises, Inc. (Workers)	New York, NY	11/30/92	11/12/92	28,063	Gold jewelry.
Professional Geophysics, Inc. (Workers)	Houston, TX	11/30/92	11/02/92	28,064	Geophysic services for oil and gas.
Mario & Son (ILGWU)	Clifton, NJ	11/30/92	11/10/92	28,065	Women's coats and jackets.
Lyndhurst Coat (ILGWU)	Hackensack, NJ	11/30/92	11/10/92	28,066	Women's coats.
Mary Ann Casuals (ILGWU)	Garfield, NJ	11/30/92	11/10/92	28,067	Women's blazers.
Q.T. Foundations (ILGWU)	Bergenfield, NJ	11/30/92	11/11/92	28,068	Women's undergarments.
Preston Oil Co. (Co)	The Woodland, TX	11/30/92	11/17/92	28,069	Oil and gas.
Northern Processors (Co)	Traverse City, MI	11/30/92	11/17/92	28,070	Oil and gas.
Northern Processors (Co)	Enid, OK	11/30/92	11/17/92	28,071	Oil and gas.
Gorham, Inc. (Workers)	Smithfield, RI	11/30/92	10/20/92	28,072	Flatware/hollow-ware.
Drill Site Security/DSS Medical (Co)	Casper, WY	11/30/92	11/17/92	28,073	Oil field security services.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Park Avenue Exploration Corp. (Workers/Co)	Oklahoma City, OK	11/30/92	11/23/92	28,074	Oil and gas.
Fidelity Gas Systems (Workers/Co)	Oklahoma City, OK	11/30/92	11/23/92	28,075	Oil and Gas.

[FR Doc. 92-30165 Filed 12-10-92; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by January 6, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by December 29, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5434).

FOR FURTHER INFORMATION CONTACT: Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5434).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 International Program: United States/Mexico Artists Residencies Application Guidelines.

Frequency of Collection: One time.

Respondents: Individual artists.

Use: Guideline instructions and applications elicit relevant information from visual, folk, literary, and theater artists that apply for funding under the International Program Residencies category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated Number of Respondents: 150.

Average Burden Hours per Response: 10.

Total Estimated Burden: 1,500.

Roberta Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92-30081 Filed 12-10-92; 8:45 am]
BILLING CODE 7537-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by January 6, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by December 29, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5434).

FOR FURTHER INFORMATION CONTACT: Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5434).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information for a pilot project targeting up to fifteen performing arts presenters who received funding from the NEA Inter-Arts/Presenting and Commissioning Program as well as the Dance and/or Music Programs for at least two of the three Fiscal Years 91, 92, and 93. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 94 Presenting & Commissioning Program "Consolidated Application Pilot for Presenters (CAPP)" Program Announcement and Application Guidelines.

Frequency of Collection: One time.

Respondents: Non-profit presenting organizations invited to participate in the pilot project.

Use: Program announcement and guideline instructions and applications elicit relevant information from non-profit presenting organizations invited to apply for funding under the Consolidated Application Pilot for Presenters Program Announcement. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated Number of Respondents: 15.

Average Burden Hours per Response: 32.

Total Estimated Burden: 480.

Roberta Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92-30082 Filed 12-10-92; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Ocean Sciences Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science

Foundation announces the following meeting.

Date and Time: December 16–18, 1993; 8:30 a.m.–5 p.m.

Place: Room 118, St. James Hotel, 950 24th St., NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Phillip Taylor, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–9639.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Global Oceans Ecosystems Dynamic (GLOBEC) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging for a suitable meeting time for the full committee.

Dated: December 7, 1992

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–30078 Filed 12–10–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension
2. The title of the information collection: Data Report on Spouse
3. The form number if applicable: NRC Form 354
4. How often the collection is required: On occasion
5. Who will be required or asked to report: NRC employees, NRC contractors, and NRC licensee access authorization applicants who are married to non-U.S. citizens; marry after completing NRC's Personnel Security Forms; or marry after having been granted an NRC access authorization or employment clearance.
6. An estimate of the number of responses annually: 88
7. An estimate of the number of hours needed annually to complete the requirement or request: 22 (.25 hours per response)
8. An indication of whether Section 3504 (h), Pub. L. 96–511 applies: Not applicable
9. Abstract: The NRC Form 354 is completed by NRC contractors, licensee applicants, and employee applicants who are married to non-U.S. citizens; marry after submission of the Personnel Security Forms, or after receiving an access authorization or employment clearance.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room 2120 L Street NW. (Lower Level), Washington, DC. Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–0026), NEOB–3019), Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 18, day of December, 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–30125 Filed 12–10–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co. (North Anna Power Station, Units No. 1 and No. 2); Exemptions

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7 which authorize operation of North Anna Power Station, Units No. 1 and No. 2 (NA–1&2, the facility) at steady-state power levels not in excess of 2893 megawatts thermal. The licenses provide, among other things, that the facility is subject to all the rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility employs pressurized water reactors (PWRs) located at the licensee's site in Louisa County, Virginia.

The licensee is implementing a refurbishment and restoration program for the NA–1&2 service water system (SWS). The program is to be conducted in several stages. The Phase 1, Stage 1 efforts are to be conducted during the forthcoming NA–1 steam generator replacement program (SGRP) outage presently scheduled to commence on January 2, 1993. To support the Phase 1, Stage 1 SWS restoration program, the licensee has identified two exemptions required at this time. The two exemptions are specified below.

II

10 CFR Part 50, Appendix A, General Design Criterion-2 (GDC–2) requires that structures, systems, and components important to safety be designed to withstand the effects of natural phenomena such as tornados, without loss of capability to perform their safety functions.

During the Phase I, Stage I effort, approximately 160 feet (4 parallel lines approximately 40 feet in length) of buried piping will be exposed and replaced. This buried piping is located in the alleyway between the service building and the quench spray pump house. The replacement of this section of buried piping requires the excavation of which the exemption from GDC–2 (tornado missiles) is needed. In addition to the buried SWS piping, the alleyway also contains two concrete-encased electrical duct banks, a concrete encasement which encloses the 4-inch SWS lines to the NA–1 control room chillers, and various nonsafety-related storm drains. Approximately temporary supports will be used to maintain seismic qualification of critical components.

In order to accomplish these Stage I activities during the NA–1 SGRP outage, the buried portions of the SWS supply and return lines to the NA–1 containment recirculation spray heat exchangers must be excavated during a pre-outage period starting about 30 days prior to the scheduled outage. Likewise, the exposed piping will be recovered during a 30-day post-outage period. Therefore, the exemption is requested for the scheduled NA–1 SGRP outage period plus about 30 days prior to and 30 days after the scheduled outage. This will result in an exemption time period from early December 1992 through June 30, 1993. The actual repair and replacement of the piping will not begin until NA–1 is shut down for the SGRP outage.

The licensee is providing contingency measures with compensatory actions to provide added assurance of safe operation of the facility during the

exemption period. Although the exemption is requested only for missile protection, the risk to the plant due to construction mishaps is more significant than the risk due to natural phenomena. Therefore, the compensatory measures are geared toward preventing such mishaps in addition to minimizing the potential for missiles generating by severe weather. As stated in the enclosed Safety Evaluation, these compensatory actions include:

—Electronic scanning and nondestructive locating methods will be used to accurately determine underground locations of piping, duct banks, and other buried utilities prior to excavation.
—Machine excavation will be limited to near-surface depths. The bulk of the excavating will be by hand-operated power and manual tools.
—Physical barriers will be used to keep vehicles a safe distance from the excavation.
—All lifting and rigging will be inspected and load tested. Lifting of equipment or construction materials over the excavation will be prohibited while the piping is exposed and operable.
—Severe weather procedures will be used to provide notification to clear the area of vehicles and loose materials in the event of a tornado watch or other high wind conditions.
—Adequate wind protection and heating will be provided during freezing weather conditions.

In order to implement the SWS restoration project, the licensee will rely on the NA–1&2 Technical Specification (TS) 3/4.7.4.1 which permits removal of one SW header from service for up to 168 hours at a time in support of service water upgrade activities. When entering this 168-hour action statement, additional contingency and compensatory actions will be taken. As stated in the enclosed Safety Evaluation, these compensatory actions are:

—A temporary water supply from either the primary grade water or fire water systems will be available as a contingency to the charging pump coolers should the normal SWS supply be interrupted.
—Emergency pipe repair materials will be staged in key areas to reduce response time in the event of a leak or a rupture. Procedures for emergency pipe repair will be developed and plant personnel will be trained in the use of these procedures and materials.
—As required by the TS, three of the four SWS pumps and both of the auxiliary SWS pumps will be operable as a prerequisite for entry into the 168-hour action statement. There will be no planned maintenance on the SWS during an action statement period.
—Flood prevention and mitigation measures will be in place.

The excavation of the SWS piping will only affect the missile shield protection aspects of the GDC–2, with seismic support being retained. While producing some increase in missile interaction risk, excavation of the piping does not result in total vulnerability to missiles. The lines are substantially below grade and are surrounded on several sides by heavily reinforced concrete structures. This will provide some degree of protection from horizontally generated missiles from any source.

Considering the existing design features and compensatory measures proposed by the licensee, the likelihood of damage to the exposed SWS lines and safety-related electrical duct banks from postulated missiles generated by natural phenomena is minimal. Also, based on the compensatory measures provided, assurance exists that the ability to bring the plant to a safe shutdown will be maintained following any natural phenomena, including tornadoes or other severe weather which could result in airborne missiles. Therefore, there is reasonable assurance that the proposed GDC–2 exemption will present no undue risk to public health and safety.

III

10 CFR 50.49 (50.49) requires (in part) that each holder of a license to operate a nuclear power plant shall establish a program for qualifying safety-related electric equipment that is relied upon to remain functional during and following design basis events that are defined as conditions of normal operation, including operational events, and design basis accidents.

The requested exemption from 50.49 would permit temporary cooling of the NA–1 control room chillers from the common bearing cooling water system to provide normal control room temperatures and provide a reliable backup cooling system to the NA–2 air conditioning chillers. The period for the NA–1 chillers to be operating on bearing cooling water is projected to be between 90 and 120 days.

NA–1&2 each have three control room air conditioner chillers located in a missile-protected room of the service building off the respective unit's turbine building basement. Ventilation of each unit's chiller room is taken from and exhausted to the respective unit's turbine building basement. Hence, the chillers for each unit are located in the same environmental zone which is also common to the unit's turbine building basement. Therefore, as the result of an environmental qualification evaluation of the control room air conditioning systems, a station standing order requires at least one of the opposite unit's chillers to remain operable while that unit is in a shutdown condition and the other unit is operating. Specifically, the station standing order requires that at least one control room chiller on the unit in Mode 5 or 6 be maintained operable while the other unit is in Mode 4 or above. This measure assures that the air conditioning system serving the control room and emergency switchgear room of the operating unit would be available during a postulated main steam line break accident in the turbine building.

However, with bearing cooling water supplied to the NA–1 chillers instead of service water, the reliability of the NA–1 chillers is called into question because bearing cooling is not safety-related. Bearing cooling would not be available in the event of a loss of offsite power event or design basis earthquake coincident with the main steam line break accident in the turbine building. Therefore, an exemption from 10 CFR 50.49 for the NA–2 chillers is requested by the licensee for the period that the SWS is isolated from the NA–1 recirculation spray heat exchangers and the control room chillers.

While the shutdown unit's TS do not require the air conditioning systems to remain operable in Modes 5 and 6, the environmental qualification design basis for the operating unit's air conditioning systems requires at least one of the shutdown unit's chillers to be operable as a backup for the operating unit.

The design basis of concern results in an environmental condition in the NA–2 chiller room for which the NA–2 control room chillers are not qualified and may cease to function properly. The only postulated accident event that could cause this condition is the failure of a main steam line in the turbine building basement in proximity to the NA–2 chiller room. However, in order to have sufficient steam concentration in the area to disable the NA–2 chillers, the main steam trip valve on the line would also have to fail to a closed position. This is unlikely because the trip values are essentially check valves reversed to the flow of steam with the check disk physically held out of the steam flow path. Failure to hold the disk out of the steam flow path would cause the trip valve to slam shut. Failure of the valve caused by the disk sticking open is, therefore, unlikely The

likelihood of the above accident scenario during the time that the 50.49 exemption would be in effect is thus very low, and the exemption would not significantly affect the consequences of design basis accidents. The staff reviewed the risk associated with using bearing cooling water as a substitute for SWS cooling for a backup chiller and concluded the temporary change in environmental qualification is acceptable.

The required exemption period is technically from entry into the second 168-hour action statement through the clearing of the fifth 168-hour action statement for work activities associated with the Phase I, Stage 1 SWS restoration project and is projected to be between 90 and 120 days.

IV

The exemptions, as noted above, involve special circumstances as set forth in 10 CFR 50.12(a)(2)(V). The exemptions would provide only temporary relief from the applicable regulations (GDC–2 and 50.49). The exemptions are requested for a specific time period after which the facility would again be in conformance with all the requirements of GDC–2 and 50.49. The licensee has made good faith efforts in considering alternatives to the exemption requests and has concluded that the SWS refurbishment and restoration program can only be conducted without the subject exemptions during a period when both NA–1&2 are shut down and defueled. The impact of scheduling such a dual-unit outage would have significant consequences in terms of power supply, fuel storage, capacity, and replacement power costs. Finally, the exemptions will indirectly result in benefits to the public from increased reliability of the upgraded safety-related SWS.

Based on the above and on review of the licensee's submittals, as summarized in the enclosed Safety Evaluation, the NRC staff concludes that the likelihood of unacceptable damage to the exposed SW headers due to tornado-borne missiles during the exemption period is low. Also, the staff concludes that the only postulated accident which could affect the normal environmental design basis for the NA–2 control room chillers is a highly unlikely event. Therefore, for the time that the 50.49 exemption would be in effect, the exemption would not significantly affect the probability or consequences of environmental design basis events.

Based on the low probability of unacceptable events, coupled with the comprehensive compensatory measures which the licensee has committed to, the NRC staff finds the proposed exemption from GDC–2 and 50.49 acceptable. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the subject exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemptions, namely that the exemptions would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Therefore, the Commission hereby approves the following exemptions: NA–1&2 may operate without conforming to the requirements of GDC–2 as they apply to the buried portions of the SWS supply and return lines to the NA–1 containment recirculation spray heat exchangers, providing that compensatory measures as described herein are continued for the period of the exemption. This exemption shall become effective on its date of issuance and shall expire on June 30, 1993.

NA–2 may operate without conforming to the requirements of 50.49 as they apply to the normal environmental design basis for the NA–2 control room chillers. This exemption shall be in effect during the Phase 1, Stage 1 SWS restoration program from entry into the second 168-hour action statement through the clearing of the fifth 168-hour action statement.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant effect on the quality of the human environment (August 27, 1992, 57 FR 38889; November 6, 1992, 57 FR 53146; and November 30, 1992, 57 FR 56606).

For further details with respect to this action, see the licensee's request dated July 16, 1992, as supplemented on September 11, 1992, and November 4, 1992, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the NA–1&2 Local Public Document Room, the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

The GDC–2 exemption is effective from its date of issuance through June 30, 1993. The 50.49 exemption is effective during the Phase 1 Stage 1 SWS restoration program from entry into the second 168-hour action statement through the clearing of the fifth 168-hour action statement or June 30, 1993, whichever occurs first.

Dated at Rockville, Maryland, this 3rd day of December 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30126 Filed 12–10–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31565; File No. SR–OCC–91–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating To a Modification of the Margin Calculation for Clearing Members' Customers' Accounts and Firm Non-lien Accounts

December 4, 1992.

On November 7, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File NoSR–OCC–91–16) relating to a modification of the margin calculation for clearing members' customers' accounts and firm non-lien accounts. The Commission published notice of this proposed rule change in the **Federal Register** on January 31, 1992.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the proposed rule change, OCC seeks to modify the logic within its Theoretical Intermarket Margin System ("TIMS")[3] which calculates margins for positions carried in clearing members' customers' accounts with OCC.[4] In particular, OCC proposes to eliminate the logic which reduces to zero any premium margin credit or additional margin credit for each class group comprising a given product group. Accordingly, the proposal deletes

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30288 (January 24, 1992), 57 FR 3808.

[3] For a description of TIMS, refer to Securities Exchange Act Release Nos. 28928 (March 1, 1991), 56 FR 9995 [File No. SR–OCC–89–12] and 30761 (May 29, 1992), 57 FR 24286 [File No. SR–OCC–92–15].

[4] This proposal also would modify the logic controlling margin calculations for firm non-lien accounts. Currently, however, no clearing member maintains such an account with OCC.

paragraph (d)(3)[5] from Rule 601 (margins on stock options) and paragraphs (d)(3)[6] and (d)(4)[7] from Rule 602 (margins on non-equity options).

1. Background

OCC requires its clearing members to adjust their margin deposits with OCC in the morning on every business day pursuant to calculations performed by OCC overnight.[8] OCC imposes margin requirements on short positions and gives margin credits for unsegregated long positions.[9] Premium margin requirements and credits within class groups[10] are offset against each other to provide a net premium margin requirement or credit for each class group. For each class group, TIMS also calculates an upside and a downside variation.[11] Premium margin amounts are then totaled across all class groups within a product group[12] as are the upside and downside variations. Only at the product group level is the premium margin requirement or credit combined with either (1) the net upside or net downside variation (*i.e.*, the additional margin requirement) or (2) zero to arrive at the margin requirement or credit for a given product group.[13]

Under TIMS, the method for calculating margin requirements or credits for clearing members' market professionals' accounts (*e.g.*, firm accounts and market-maker's or specialist's accounts) differs in two important respects from the method for calculating margin requirements or credits for clearing members' customers' accounts. First, because OCC does not have a lien on segregated long positions in clearing members' customers' accounts, such long positions are not offset against short positions in the same series of options and are not assigned any value for margin calculation purposes.[14] Second, in calculating product group margin requirements or credits in clearing members' customers' accounts, margin credits for the class groups within a product group are reduced to zero.[15] That is, a premium margin credit for one class group cannot offset a premium margin requirement for another class group and an additional margin credit for one class group cannot offset an additional margin requirement for another class group.[16] It is the second difference (*i.e.*, reducing margin credits to zero) that this proposed rule change will eliminate.

2. Modification to Margin Calculation for a Clearing Member's Customers' Account

Under Rule 611, a clearing member may submit written instructions ("spread instructions") to OCC designating any segregated long positions in its customers' account that the clearing member desires OCC to release from segregation. A clearing member may not file spread instructions, however, unless the clearing member is carrying for the account of such customer a short position for an equal number of options contracts of the same class of option.[17] Once OCC releases the long position, it is deemed unsegregated and subject to OCC's lien. At that point, any premium margin credit the clearing member receives from the unsegregated long position is permitted to offset the premium margin requirement imposed on the short position but only up to the amount of the margin imposed.[18]

For certain spreads though, TIMS calculates a premium margin credit which may exceed the premium margin required for the short position.[19] However, because TIMS currently reduces premium margin credit for each class group in a customer's account to zero, a premium margin credit from one class group cannot be used to offset a premium margin requirement for another class group within the same product group or an additional margin requirement at the product group level.

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[5] Rule 601(d)(3) states:

In calculating margin for the stock option product group, any premium margin credit and all negative upside or downside variations for the class groups comprising the product group shall be reduced to zero.

[6] Rule 602(d)(3) states:

In calculating product group margin, any premium margin credit and all negative upside or downside variations for the class groups comprising the product group shall be reduced to zero.

[7] Rule 602(d)(4) states:

In calculating the aggregate margin requirement for the positions in non-equity options and IPs [index participations] carried in the account, any class group margin credits shall be reduced to zero, so that the aggregate margin requirement for such positions shall be an amount equal to the sum of the margin requirements for those class groups and product groups as to which a margin requirement exists, without reduction.

[8] TIMSD is designed to calculate a clearing member's margin requirement at a level sufficient to protect OCC against the costs that would be incurred in liquidating that clearing member's open positions in the event of default or insolvency.

[9] A long position is "unsegregated" if OCC has a lien on it (*i.e.*, has recourse to the value of the position if the clearing member does not perform an obligation to OCC). Long positions in firm lien accounts and market-maker's or specialist's accounts are unsegregated. OCC By-Law, art. I, Section 1 U.(3). Long positions in customer's accounts are deemed segregated unless a clearing member submits contrary instructions to OCC in accordance with Rule 611 (*i.e.*, "spread instructions"). Segregated long positions are given no value for margin calculation purposes. OCC Rules 601(d)(1) and 602(d)(1).

[10] A class group consists of all put and call options relating to the same underlying security. A class group also consists of market baskets, commodity options, and futures relating to the same underlying security that are subject to margin at OCC because of cross-margining program with a commodity exchange. OCC Rule 601(b)(2) and Rule 602(b)(2). OCC has proposed to treat Index Participations ("IPs") as part of the same class group as put and call options relating to the same underlying interest. See Securities Exchange Act Release No. 29081 (April 12, 1991), 56 FR 16142 (notice of proposed rule change).

[11] Basically, variation is the net liquidation value or cost of a position in the event of changes in the market price. OCC calculates class group values across the range of exercise prices OCC has determined to examine. Upside and downside variations are the largest projected liquidating deficit or credit.

[12] A product group consists of two or more class groups whose underlying assets exhibit a sufficient price correlation to warrant margining on a combined basis. All class groups of equity options form a single product group. By contrast, class groups for non-equity options are organized into several product groups including those for stock index options and long-term Treasury options.

[13] Premium margin can either be a requirement or a credit. At the product group level, where margin requirements are actually imposed, additional margin is always a margin requirement or zero (*i.e.*, never a margin credit to offset a premium margin requirement). OCC Rules 601(c) (5) and (7) and 602(c)(2) (B) and (D).

[14] Although the proposed change is not expressly limited to unsegregated long positions, only unsegregated longs are recognized under TIMS. TIMS ignores segregated longs. Telephone conversation between Timothy J. Hinkes, Assistant Vice President, Economic Research, OCC; Jeanne M. Cawley, Counsel, OCC; and Richard C. Strasser, Attorney, Division, Commission (December 2, 1991).

[15] The reduction or margin credits to zero at the class group level is residual logic from the margin methodologies used before TIMS. Under those methodologies, product group margin was not calculated and, for customer accounts, class group margin credits were artificially reduced to zero so that they would not be applied against other class group margin requirements. This logic was carried over and incorporated into TIMS during the course of its development without significant analysis. OCC believes that retention of this logic results in the over-margining of positions and is therefore incompatible with one of the purposes of TIMS, which is to reduce the potential for such over-margining.

[16] As described below, this reduction to zero affects only long positions in a customers' account for which a clearing member has submitted spread instructions to OCC in accordance with Rule 611, and which are, by operation of Rule 611, deemed to be unsegregated long positions. Segregated long positions in customers' accounts will continue to be assigned no value for margin purposes.

[17] That is, before a clearing member may instruct OCC to release a long position from segregation, the long position must be spread on a contract-for-contract basis against a short position in the same class of option held for the account of the same customer.

[18] TIMS methodology limits the offset to the amount of the margin imposed. Telephone conversation between Timothy J. Hinkes, Assistant Vice President, Economic Research, James C. Yong, Vice President and Deputy General Counsel, and Jeanne M. Cawley, Counsel, OCC; and Jerry W. Carpenter, Branch Chief and Richard C. Strasser, Attorney, Division, Commission (October 8, 1992).

[19] *E.g.*, long box spreads, call bull spreads, and put bear spreads. Letter from Jean M. Cawley, Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (October 7, 1992).

Similarly, if the calculation of the upside and downside variations in a class group generates a credit, TIMS will reduce that credit to zero, and it cannot be used to offset an additional margin requirement for another class group within the same product group. A clearing member, therefore, may be required to deposit margin collateral in excess of the net risk of spread positions in its customers' account.[20] Therefore, OCC proposes to remove from TIMS the logic which reduces premium margin credits and upside or downside variation credits at the class group level to zero[21] and thereby allow such credits to be used as offsets.[22]

II. Discussion

The Commission believes that OCC's proposal is consistent with the Act and in particular with Section 17A thereunder.[23] Section 17A(b)(3)(F) provides, among other things, that the rules of a clearing agency must be designed "to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions."[24] While adequate clearing margin is necessary for the integrity of the clearance and settlement system, excess margin requirements burden market participants by imposing unnecessary costs. Overmargining also reduces liquidity in the marketplace and thereby impedes the safe and efficient clearance and settlement of securities transactions. OCC has represented that this proposal will promote efficient clearance and settlement by eliminating the deposit of excessive margin collateral in positions carried in clearing members' customers' accounts without adversely affecting the securities and funds under OCC's control or for which it is responsible.

The Commission is satisfied that this modification of TIMS does not increase OCC's risk. The modification is consistent with the treatment of unsegregated long positions in clearing members' customers' accounts under OCC's liquidation rules[25] and is consistent with the TIMS' goal of calculating margin requirements based upon the risk of liquidating options positions carried by a defaulting clearing member. As OCC has represented, the provisions to be omitted by this proposal require margin in excess of what is necessary to assure that clearing members' risks are adequately collateralized. Therefore, the deletion of these provisions should not increase OCC's risk with regard to positions carried in its clearing members" customers' and firm non-lien accounts.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with Section 17A thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–91–16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret. H McFarland,

Deputy Secretary.

[FR Doc. 92–30087 Filed 12–10–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19146; 812–8092]

Application; Ameritas Variable Life Insurance Co. et al.

December 4, 1992.

AGENCY: Securities and Exchange Commission (the "Commission or the "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Ameritas Variable Life Insurance Company ("Ameritas"), AVLIC Separate Account V ("Ameritas Account"), Fidelity Investments Life Insurance Company ("Fidelity Life"), The Fidelity Investments Variable Life Account I ("Fidelity Account"), Midland National Life Insurance Company ("Midland"), Midland National Life Separate Account A ("Midland Account"), Monarch Life Insurance Company ("Monarch"), The Fidelity Variable Account ("Monarch Account"), Vermont Life Insurance Company ("Vermont"), and Vermont Variable Life Insurance Account ("Vermont Account"), (collectively the "Applicants"). Ameritas Account, Fidelity Account, Midland Account, Monarch Account and Vermont Account are referred to collectively as the "Accounts."

RELEVANT 1940 ACT SECTIONS: Order requested under Section 26(b) of the 1940 Act.[1]

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of certain securities issued by the Variable Insurance Products Fund ("VIPF") and by the Variable Insurance Products Fund II ("VIPF II"), and held by the Accounts to fund variable life insurance contracts (the "Contracts") issued by Ameritas, Fidelity Life, Midland, Monarch, and Vermont, for securities issued by the Zero Coupon Bond Fund ("ZCBF").

FILING DATE: The application was filed on September 17, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with copies of the request, personally or mail. Hearing requests must be received by the SEC by 5:30 p.m. on December 29, 1992, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.

Applicants: Ameritas Variable Life Insurance Company, 5900 O Street, Lincoln, NE 68510; Fidelity Investments Life Insurance Company, 82 Devonshire Street, Boston MA 02043; Midland National Life Insurance Company, One Midland Plaza, Sioux Falls, SD 57193; Monarch Life Insurance Company, 361

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[20] As previously explained, the proposed modification to TIMS logic will affect only the amount of margin that must be deposited with respect to spread positions in a customer's account. Unsegregated longs in a customer's account that are not part of a spread position are not eligible for release under Rule 611 and, therefore, receive no margin value.

[21] As is currently the case, no margin credit will be given for "negative" upside or downside variations at the product group level. See OCC Rules 601(c)(1), (c)(5) and (7) and 602(c)(2)(B) and (D).

[22] In calculating margin requirements or credits at the product group level, any negative upside or downside variation (*i.e.*, a variation credit) for any class group shall be reduced by the percentage OCC has specified for the product group to which that class group belongs. Therefore, the amount of offset allowed for these credits will be reduced in a manner consistent with current margin calculation procedures. OCC Rules 601(c)(1)(C)(4) and 602(c)(2)(A).

[23] 15 U.S.C. 78q–1 (1988).

[24] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[25] In the event of a clearing member default, OCC may liquidate an unsegregated long position and use the proceeds to offset the costs of liquidating short positions whether such short positions are in the same class group or in another class group in the customers' account.

[26] 17 CFR 200.30–3(a)(12) (1992).

[1] The Applicants represent that the application will be amended during the notice period to clarify that they seek an order only under section 26(b) of the 1940 Act.

Whitney Avenue, Holyoke, MA 01040; and Vermont Life Insurance Company, National Life Drive, Montpelier, VT 05604.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Ameritas is a stock life insurance company organized under the laws of the State of Nebraska. Fidelity Life is a stock life insurance company incorporated under the laws of the Commonwealth of Pennsylvania. Midland is a stock life insurance company incorporated under the laws of the State of South Dakota. Monarch is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts. Vermont is a stock life insurance company incorporated in the State of Vermont.

2. Ameritas Account was established by Ameritas as a separate investment account on August 28, 1985, to fund certain flexible premium variable universal life insurance policies (the "Ameritas Policies"). Fidelity Account was established by Fidelity Life as a separate investment account on July 22, 1987, to fund certain flexible premium variable life insurance policies (the "Fidelity Policies"). Midland Account was established by Midland as a separate investment account on July 20, 1987, to fund certain variable life insurance policies ("Midland Policies"). Monarch Account was established by Monarch as a separate investment account on August 9, 1984, to fund certain variable life insurance policies ("Vermont Policies"). (The Ameritas Policies, the Fidelity Policies, the Midland Policies, the Monarch Policies, and the Vermont Policies are referred to collectively as the "Policies.") Each of the Accounts is organized and registered under the 1940 Act as a unit investment trust.

3. Three management investment companies currently offer their shares to corresponding subaccounts of some or all of the Accounts: VIPF; VIPF II; and ZCBF. Each is registered under the 1940 Act as an open-end management investment company of the series type.

4. VIPF was organized as a Massachusetts business trust on November 13, 1981. VIPF currently offers five portfolios, only one of which, the Money Market Portfolio, is relevant to this application. By investing in high quality U.S. dollar denominated money market securities of domestic and foreign issuers, the Money Market Portfolio seeks to obtain as high a level of current income as is consistent with preserving capital and providing liquidity.

5. VIPF II was organized as a Massachusetts business trust on March 21, 1988. VIPF II currently offers two portfolios; each Account currently invests in one or both of those portfolios. Only one of the VIPF II portfolios, the Investment Grade Bond Portfolio, is relevant to this application. By investing in a broad range of investment-grade fixed-income securities, the Investment Grade Bond Portfolio seeks as high a level of current income as is consistent with the preservation a dollar-weighted average portfolio maturity of ten years or fewer.

6. VIPF and VIPF II currently offer series of shares of beneficial interest in their portfolios not only to the Accounts, but also to other separate accounts established to support variable annuity contracts.

7. ZCBF was organized as a Massachusetts business trust on February 21, 1986. ZCBF currently offers three Portfolios: The 1993 Portfolio, the 1998 Portfolio, and the 2003 Portfolio (collectively, the "Zero Portfolios"). The Zero Portfolios are offered exclusively to the Accounts; three subaccounts of each Account invest exclusively in shares of a specific portfolio of ZCBF.

The Zero Portfolios are not offered to variable annuity separate accounts, because any variable annuity separate account invested in the Zero Portfolios would fail the diversification requirements of section 817(h) of the Internal Revenue Code. Any annuity contract owner with values allocated to the Zero Portfolios would be subject to taxation each year on any increase in contract values.

8. The target maturity date of the 1993 Portfolio is November 15, 1993, that for the 1998 Portfolio is November 15, 1998, and that for the 2003 Portfolio is November 15, 2003. The Zero Portfolios seek to provide a definable return over their lifetime by investing principally in zero coupon U.S. Treasury securities.

9. In the more than four years that the Zero Portfolios have been available as an investment option, policyowners (the "Policyowners") of Ameritas, Fidelity Life, Midland, Monarch, and Vermont have shown little interest in them. As of December 31, 1991, only 372 of the 3,145 Policyowners who might have allocated their contract values to the Zero Portfolios had elected to do so. In addition, as of December 31, 1991, the 1993 Portfolio had net assets of less than $1.3 million, the 1998 Portfolio had net assets of less than $1 million, and the 2003 Portfolio had net assets of less than $1.7 million. Although Fidelity Management & Research Company (the "Adviser") has withdrawn a portion of its initial $1 million investment in each of the Zero Portfolios, its investment in the Zero Portfolios as of June 30, 1992, approximated $274,000. There have been no events during 1992 that would lead the Applicants to believe that either the number of Policyowners invested in, or the amount of the net assets of, the Zero Portfolios ever will increase by a material amount.

10. Aggregate sales of the Policies declined drastically following the enactment of the Technical and Miscellaneous Revenue Act of 1988 ("TAMRA"). Under TAMRA, variable life insurance contracts entered into after June 20, 1988, which do not satisfy the "7-pay test" are generally treated as "modified endowment contracts." Since distributions from modified endowment contracts generally are subject to current federal income taxation, including penalty taxes, such contracts are far less desirable to prospective purchasers. Applicants believe that it is extremely unlikely that significant amounts of new premium will be invested in the Zero Portfolios. In fact, sales of the Policies were so adversely affected by TAMRA that Fidelity Life, Monarch and Vermont no longer offer Policies.

By contrast, the Investment Grade Bond Portfolio and the Money Market Portfolio each are available to approximately twenty variable life and variable annuity separate accounts, and have experienced healthy asset growth since 1988. The Investment Grade Bond Portfolio, which commenced operations on December 5, 1988, had assets of approximately $48 million by December 31, 1991. The Money Market Portfolio, which commenced operations April 1, 1982, had assets of approximately $271 million by December 31, 1991.

11. Since the inception of the Zero Portfolios, their expenses have been voluntarily limited by the Adviser to 1.00% of the average net assets of each Zero Portfolio. The expense of operating the Zero Portfolios is high because many of the expenses (such as those for accounting and outside auditors) are not significantly lower, despite the Zero Portfolios' small sizes and asset bases. The following table shows the expense ratio for each Zero Portfolio for 1991 and the amount of the Adviser's reimbursement.

	1991 expense ratio before reimbursement	Dollar amount of 1991 reimbursement by adviser
1993 Portfolio	8.54%	$89,064
1998 Portfolio	11.20%	90,537
2003 Portfolio	6.13%	93,859
Total Reimbursement		273,460

The total 1991 reimbursement of $273,460 far exceeded the $18,704 in management fees earned by the Adviser for managing the Zero Portfolios.

12. Effective December 5, 1988, the Adviser voluntarily limited the expenses of the Investment Grade Bond Portfolio to 0.80% of Investment Grade Bond Portfolio's average net assets. For 1991, the expense ratio of Money Market Portfolio was 0.38%.

13. Because neither state nor federal law requires expense reimbursement, absent the proposed substitution, it is likely that in the future the Advisor may cease to make expense reimbursements to the Zero Portfolios. Without reimbursement, expenses could increase fivefold or more. Policyowners who through ignorance or inattention do not leave the Zero Portfolios might find themselves with substantially lower, or even negative rates of return.

14. The Applicants propose to substitute shares of the Money Market Portfolio for shares of the 1993 Portfolio and to substitute shares of Investment Grade Bond Portfolio for shares of the 1998 Portfolio and the 2003 Portfolio. The substitution will be effected in the following manner. Each Account will redeem all of its shares of each Zero Portfolio. On the same day, each Account will use the proceeds to purchase the appropriate number of Money Market Portfolio and Investment Grade Bond Portfolio shares. The substitution would take place at relative net asset value with no change in the amount of any policyowner's account value.

15. Policyowners will not incur any fees or charges as a result of the substitution, nor will their rights or the obligations of Ameritas, Fidelity Life, Midland, Monarch or Vermont under the Policies be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting, brokerage and other fees and expenses, will be paid by FMR Corp., the parent company of the Adviser. In addition, the proposed substitution will not impose any tax liability on Policyowners. Further, the proposed substitution will not cause the fees and charges currently being paid by existing Policyowners to be greater after the substitution than before. The Applicants represent that Accounts that impose transfer charges will not count the substitution as a transfer for that purpose.

16. Ameritas, Fidelity Life, Midland, Monarch and Vermont will mail letters to each of its Policyowners informing them: (i) Of the filing of this Application; and (ii) that if an order is issued by the Commission, at the close the next business day, any investment in the 1993 Portfolio will be transferred to the Money Market Portfolio and any investment in the 1998 Portfolio or the 2003 Portfolio will be transferred to the Investment Grade Bond Portfolio. Following the substitution, prospectuses for the Policies that are currently offered will be updated to reflect the fact that the Zero Portfolios are no longer available for investment.

17. All affected Policyowners will be told that, at any time prior to the substitution, they may transfer their account values from subaccounts investing in the Zero Portfolios to any other permissible variable investment option without incurring any transaction fees and without the transfer being counted as one of the free transfers permitted in any policy year. Monarch Policyowners also will be notified that they may elect to exchange their Monarch Policies for fixed benefit life insurance issued by Monarch or one of its affiliates instead of accepting the substitution. In addition, shortly after the substitution, Ameritas, Fidelity Life, Midland, Monarch and Vermont each will notify, in writing, all Policyowners who had remaining account values transferred from the Zero Portfolios of their right to make a "free transfer" for an additional thirty days.

18. Applicants are seeking approval of the proposed substitution from such state insurance regulators as may be necessary or appropriate.

19. After the proposed substitution occurs, the Adviser intends to redeem its investment of seed money in the Zero Portfolios. By making this redemption after the substitution, the Adviser, rather than the Policyowners, will bear any expenses arising from the final liquidation of the investment portfolios of the Zero Portfolios.

20. ZCBF then will apply to the Commission, pursuant to section 8(f) of the 1940 Act, for an order that it has ceased to be an investment company. Upon grant of that order, ZCBF will dissolve itself as a business entity under Massachusetts law.

Applicants' legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that: "It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy an provisions of this title."

2. Congress intended section 26(b) to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The proposed elimination of three subaccounts (*i.e.*, those invested in the Zero Portfolios) of each Account and the automatic transfer or reinvestment of Policy values to two other subaccounts of each Account may involve a substitution of securities within the meaning of section 26(b).

3. Ameritas, Fidelity Life, Midland, Monarch and Vermont each reserved a right of substitution and elimination to protect itself and its Policyowners in a number of situations, including the present circumstances where underlying investment portfolios have failed to grow sufficiently large to achieve the economies of scale needed to achieve viable performance without expense reimbursements.

4. With no recent interest among current Policyowners and very few new sales of the Policies, Ameritas, Fidelity Life, Midland, Monarch and Vermont each believes that the current financial circumstances of the Zero Portfolios will not improve in the foreseeable future. Moreover, they do not expect, and do not believe it is reasonable to expect, that the Adviser will forever remain willing and able to spend large sums of money to maintain the favorable expense ratios that the Zero Portfolios have so far enjoyed.

5. Applicants have determined that under these circumstances it is in the best interest of Policyowners to replace the 1998 and the 2003 Portfolios with the Investment Grade Bond Portfolio, and to replace the 1993 Portfolio with the Money Market Portfolio. The 0.38% expense ratio of the Money Market Portfolio is far lower than the reimbursed 1.00% ratio of the 1993 Portfolio, and the 0.80% reimbursed expense ratio of the Investment Grade Bond Portfolio in lower than the 1.00% reimbursed expense ratio of both the

1998 and the 2003 Portfolios. Applicants expect that in the near future the actual expense ratio of the Investment Grade Bond Portfolio will decline to a level lower than the current reimbursed rate, and that further economies of scale may be achieved as the expense ratio declines as the assets of the Investment Grade Bond Portfolio increase.

6. Applicants submit that the investment objectives and the relative safety of the portfolio holdings of the Investment Grade Bond Portfolio and the Money Market Portfolio make them reasonable substitutes for Policyowners currently invested in the Zero Portfolios.

7. The Investment Grade Bond Portfolio and the Money Market Portfolio both seek to achieve high income levels while preserving capital. On December 31, 1991, over 92% of the Investment Grade Bond Portfolio's holdings were rated investment grade by Standard & Poor's Corporation. The average maturity of the Investment Grade Bond Portfolio's holdings will never exceed ten years, and currently is 5.5 years. At least initially, the Investment Grade Bond Portfolio's exposure to interest rate risk will not be unreasonably dissimilar to that of the 1998 Portfolio, and will be far less than that of the 2003 Portfolio.

8. On December 31, 1991, approximately 92% of the Money Market Portfolio's investments were in commercial paper rated in the highest two categories by Standard & Poor's Corporation. The Money Market Portfolio's average maturity will not exceed 120 days. As the 1993 Portfolio approaches its maturity date of November 15, 1993, its effective maturity will decline so that it continually approaches the effective maturity of The Money Market Portfolio.

9. Section 26(b) was designed to forestall the ability of a depositor or sponsor to present holders of interests in a unit investment trust with situations in which a holder's only choices would be to continue an investment in a suddenly unsuitable, unbargained for underlying security, or to elect a costly, and in effect forced, redemption. The proposed substitution does not present this type of situation. Moreover, under the Policies, each Policyowner now has, and following the substitution will continue to have, the ability to make transfers among a wide range of underlying investments. Each Policyowner, by his or her own actions, can make the proposed substitution temporary, without incurring any cost or suffering any current taxation under a Policy. Further, the Applicants propose to permit free substitution by any Policyowner at any time before, and for thirty days after, the proposed substitution.

Conclusion

The Applicants assert that, for the reasons set forth above, the requested order approving the proposed substitution pursuant to section 26(b) of the 1940 Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30088 Filed 12-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19145; 811-3917]

Institutional Diversified Assets; Notice of Application

December 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Institutional Diversified Assets.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 23, 1991 and amended on November 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 4900 Sears Tower, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and open-end diversified management investment company. On November 23, 1983, applicant registered under the Act and filed a registration statement to register its securities under the Securities Act of 1933. Applicant's registration statement was declared effective on January 27, 1984, and its initial public offering commenced on January 30, 1984.

2. By letter dated June 29, 1984, applicant advised its shareholders of certain changes in the tax law that affected applicant's yield to the disadvantage of its shareholders. At no time were shareholders told that applicant would be liquidated. On various dates between June 29, 1984 and June 1, 1985 (the effective date of the new tax law), all of applicant's public shareholders redeemed their shares at net asset value. Following these redemptions, Goldman Sachs & Co., applicant's investment adviser and distributor ("Goldman Sachs"), was applicant's only remaining shareholder.

3. As of July 1, 1984, applicant had unamortized organizational expenses of approximately $225,000. Applicant originally had contemplated amortizing its organizational expenses over a five year period. Due to the uncertainty of applicant's viability after the tax law change, however, applicant amortized its organizational expenses in their entirely against its income during the period from July 1, 1984 to May 31, 1985.

4. Applicant has remained inactive since 1985. On April 19, 1990, applicant's board of trustees voted to dissolve applicant. On October 15, 1991, applicant's remaining portfolio securities were liquidated, its outstanding expense (including liquidation expenses of approximately $2,500) were paid, and its remaining cash was distributed to Goldman Sachs.

5. Applicant has no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administration proceeding. Applicant is engaged in only those business activities necessary for the winding-up of its affairs. Applicant intends to file an instrument of

termination with the Secretary of State of the Commonwealth of Massachusetts.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30090 Filed 12-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25693; International Series Release No. 505]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 4, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 28, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requestr will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Maine Yankee Atomic Power Company (70-7638)

Maine Yankee Atomic Power Company ("Maine Yankee"), Edison Drive, Augusta, Maine 04330, a subsidiary company of New England Electric System and Northeast Utilities, both registered holding companies, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act.

By order dated January 26, 1990 (HCAR No. 25031) the Commission authorized Maine Yankee to enter into and borrow up to $35 million under an amended and restated Eurodollar revolving credit agreement ("Credit Agreement") with a syndicate or international banks, for which Union Bank of Switzerland is acting as agent (collectively, "Banks"), through December 31, 1992.

The Credit Agreement provides that Maine Yankee may issue, sell, and renew promissory notes ("Euro Notes") to the Banks in an aggregate principal amount of up to $35 million ("Commitment") at any one time outstanding with maturities of up to one year from the date of issuance. The Credit Agreement further provides that Maine Yankee may select interest periods for each Euro Note of one, three, or six months. The interest rate on each Euro Note is equal to either (i) the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected for such Euro Note or, (ii) if LIBOR cannot be reasonably ascertained, the Banks' actual costs of funding such Euro Note, in each case plus ⅝%. A commitment fee on the unused portion of the Commitment will be .35%. The Euro Notes are secured by a second lien on Maine Yankee's nuclear fuel inventory and its rights to payments under related power contracts and a related Capital Funds Agreement.

Maine Yankee now proposes to extend its authorization to borrow under the Credit Agreement until December 31, 1995. It states that the Credit Agreement remains an important source of funds to finance both planned and unplanned capital needs, and to finance short-term debt balances.

Central and South West Corporation (70-7758)

Central and South West Corporation ("CSW"), a registered holding company, its wholly owned nonutility subsidiary companies, CSW Energy, Inc. ("CSW Energy") and CSW Development-I, Inc. ("Energy Sub"), each of 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, and ARK/CSW Development Partnership ("ARK Joint Venture"), 23293 South Pointe Drive, Laguna Hills, California 92653 have filed a past-effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) and Rules 43 and 45 to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 43, 45, 86, 87, 90 and 91 thereunder.

By order dated September 28, 1990 (HCAR No. 25162) ("1990 Order"), CSW and CSW Energy were authorized, through December 31, 1995: (1) To spend $75 million ("Aggregate General Authority") to conduct preliminary studies of, to investigate, to research, to develop, to agree to construct (such construction subject to further Commission authorization) and, except with respect to independent power projects ("IPPs"), consult with respect to qualifying cogeneration facilities, qualifying small power production facilities (collectively "QFs") and IPPs; (2) to finance such activities through capital contributions, open account advances and loans up to $75 million; (3) for CSW Energy to form Energy Sub for the purpose of engaging in a joint venture ("ARK Joint Venture") with ARK Energy, Inc. ("ARK"), a nonassociate corporation; and (4) for CSW Energy to use $25 million of the $75 million Aggregate General Authority to finance the ARK Joint Venture through capital contributions and loans ("ARK Joint Venture Authority").

The 1990 Order also authorized CSW to fund the activities of CSW Energy through capital contributions, open account advances and loans in the aggregate amount of $75 million through December 31, 1995. The 1990 Order provided that each such loan would have an interest rate not in excess of the prime commercial lending rate as in effect from time-to-time at Mellon Bank plus 3% per annum and a final maturity not to exceed 30 years.

The 1990 Order also authorized investments in the ARK Joint Venture in the form of capital contributions and loans. The 1990 Order provided that each such loan would bear interest at a rate equal to the prime rate of The Chase Manhattan Bank, N.A. as in effect from time-to-time plus 2%. The 1990 Order provided that the principal of each such loan would be payable no later than 5 years after the date of the making of such loan.

By order dated November 22, 1991 (HCAR No. 25414), CSW Energy was authorized to provide consulting services with respect to IPPs.

CSW, CSW Energy, Energy Sub and the ARK Joint Venture now propose, through December 31, 1995, that: (1) The financing authority originally granted by the 1990 Order be increased from $75 million to $150 million; and (2) the financing authority for the ARK Joint Venture be increased from $25 million to $50 million. In all other respects, the terms and conditions under the 1990 Order shall remain the same.

Central and South West Corporation, et al. (70-8037)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a

registered holding company, Central Power and Light Company, P.O. Box 2121, Corpus Christi, Texas 78403, a wholly-owned electric utility subsidiary company of CSW, and CSW Credit, Inc. ("Credit"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a wholly-owned nonutility subsidiary company of CSW, have filed an amendment to the application-declaration under sections 6(a), 7, 9(a), and 10 of the Act. An original notice of filing of the application-declaration was issued by the Commission on October 9, 1992 (HCAR No. 25652).

With respect to factoring of utility accounts receivable ("Receivables"), Credit is currently subject to a restriction ("50% Restriction") such that the average amount of utility Receivables from non-associated companies for the preceding 12-month period outstanding as of the end of any calendar month would be less than the average amount of Receivables acquired from associated companies outstanding as of the end of each calendar month during the preceding 12-month period. In connection with the proposal to acquire Receivables of Houston Power & Lighting Company ("HLP"), Credit has requested that the amount of the HLP's Receivables not be subject to the 50% Restriction, or in the alternative, that it be temporarily permitted to exceed the 50% Restriction, because of the special circumstances of litigation with HLP. Credit now states that it will comply with the 50% Restriction after the purchase of HLP's Receivables and requests authorization to sell a sufficient amount of HLP Receivables ("Excess Receivables") acquired by Credit from HLP to unrelated third parties ("Purchasers") so that Credit remains in compliance with the 50% Restriction. Such sales are not effected on an individual account receivable basis, but rather on an undivided interest in, or all of the interest in, a specified pool or group of Excess Receivables. Such sales will be effected either through the direct sale of the Excess Receivables or through sales of market-based participations in the Excess Receivables. Credit sates that such Purchasers may securitize the Excess Receivables acquired from Credit. The Purchasers will have all right and benefit to such Excess Receivables or to the underlying Excess Receivables (in case of participations) and all proceeds thereof. Credit will have no obligation to such Purchaser other than to remit to such Purchaser all proceeds received on account of such Excess Receivables.

Northeast Utilities, et al. (70–8064)

Northeast Utilities ("Northeast"), 107 Selden Street, Berlin, Connecticut 06037, a registered holding company; its wholly owned subsidiary, Charter Oak Energy, Inc. ("Charter Oak"), 107 Selden Street, Berlin, Connecticut 06037; and a wholly owned subsidiary of Charter Oak, COE Development Corporation ("COE Development"), 107 Selden Street, Berlin, Connecticut 06037 have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

The application-declaration seeks authorization for several related transactions relative to (i) the formation of Charter Oak Windpower Corp. ("Charter Oak Windpower"), (ii) the investment therein of $10 million, and (iii) the acquisition by Charter Oak Windpower of 33% interests, through limited partnerships, in two qualifying small power production ("SPP") facilities located in California.

The application-declaration also seeks authorization for expansion of authorities granted by orders dated May 17, 1989 (HCAR No. 24893) ("1989 Order"), January 28, 1992 (HCAR No. 25461) ("January 1992 Order"), and October 16, 1992 (HCAR No. 25655) ("October 1992 Order"). The application-declaration requests that those authorities be expanded to allow the companies to engage in preliminary development activities relative to qualifying SPP facilities throughout the United States.

In the 1989 Order, Northeast was authorized to establish Charter Oak in order to invest and participate in qualifying SPP and cogeneration facilities ("Qualifying Facilities"). The 1989 Order authorized Charter Oak to invest and participate in qualifying cogeneration facilities throughout the nation. However, its investment and participation in qualifying SPP facilities was limited to facilities located in the service territories of Northeast and the New England Power Pool.

In the January 1992 Order, the authorization in the 1989 Order was expanded to authorize Charter Oak to explore the potential for investment and participation in independent power production (IPP) facilities. In the October 1992 Order, Northeast and Charter Oak were authorized to establish and finance COE Development in order to engage in preliminary development of Qualifying Facilities and IPP facilities. Northeast and Charter Oak recently filed, in File No. 70–8062, an application-declaration to request a two-year extension—through December 31, 1994—of the authorities granted under the 1989 Order, the January 1992 Order, and the October 1992 Order ("the Orders").

Under the Orders, Charter Oak is authorized to invest and participate in qualifying SPP facilities located only in the service territories of Northeast and the New England Power Pool. Pursuant to section 713 of the Energy Policy Act of 1992, the application-declaration requests an expansion of authorities granted under the Orders to allow the companies to engage in preliminary development activities relative to qualifying SPP facilities throughout the United States.

The application-declaration also seeks authorization for the incorporation in Connecticut of Charter Oak Windpower as a direct wholly owned subsidiary of Charter Oak. The application-declaration also seeks authorization for (i) Charter Oak Windpower to issue 100 shares of common stock and (ii) Charter Oak to acquire those 100 shares for $10,000 in cash.

The application-declaration requests authorization for Charter Oak Windpower to acquire interests in two wind-fueled qualifying SPP facilities located in California. Each facility is or will be owned by a California limited partnership ("Windpower Partnerships") in which U.S. Windpower, Inc. ("USW"), a Delaware corporation, holds a 1% general partnership interest and KPC Investors, L.P. ("KPCI"), a Delaware limited partnership, holds a 99% limited partnership interest.

The partners of KPCI are (i) USW, which holds a 1% limited partner interest; (ii) Kenetich Project Company ("KPC"), a Delaware corporation and affiliate of USW, which holds a 1% general partner interest; (iii) Kenetich Corporation ("Kenetech"), a Delaware corporation that is the direct parent of USW and the indirect parent of KPC, which holds a 32% limited partners interest; and (iv) an unnamed Delaware limited partnership, in which Kenetech is an indirect general partner, which holds a 66% limited partner interest. Kenetch presently intends to transfer its 32% limited partner interest in KPCI to USW prior to the acquisition of a partnership interest by Charter Oak Windpower.

The application-declaration contemplates that Charter Oak Windpower will acquire from KPCI a 33% limited partner interest in each Windpower Partnership in a transaction scheduled to close on December 30, 1992. The cost of the acquisition will not exceed $10 million. Because it will acquire a limited partner interest in each Windpower Partnership, Charter

Oak Windpower will have no role in the management or control of the Windpower Partnerships. The application-declaration states that Charter Oak will guarantee the obligations of Charter Oak Windpower as a limited partner in the Windpower Partnerships.

The first Windpower Partnership in which Charter Oak Windpower seeks to invest is Windpower Partners 1992–2 L.P., a California limited partnership, which owns a 31–MW windplant that consists of 310 U.S. Windpower Model 56–100 wind tubrine generators located in the Altament Pass in California. The windplant is a qualifying SPP facility. The second Windpower Partnership in which Charter Oak Windpower seeks to invest is Windpower Partners 1992, L.P., a California limited partnership to be formed on or before December 30, 1992. On December 30, 1992, this Windpower Partnership will acquire a 30-MW windplant that consists of 300 U.S. Windpower Model 56–100 wind turbine generators located in the Altamont Pass in California. The windplant is a qualifying SPP facility.

To fund the acquisition of the interests in the Windpower Partnerships, Northeast proposes to invest up to $10 million in Charter Oak, which Charter Oak proposes to invest in Charter Oak Windpower. The investment of Northeast in Charter Oak and the concomitant investment of Charter Oak in Charter Oak Windpower will be in the form of additional acquisitions of common stock, capital contributions, open account advances or subordinated loans.

The application-declaration states that the open account advances or subordinated loans would be for a term of up to ten years and would be at an interest rate based on the cost to Northeast of funds in effect on the date of issue—but in no case in excess of the prime rate of a bank designated by Northeast. The application-declaration also states that the interest rates and terms of the subordinated loans and open account advances from Charter Oak to Charter Oak Windpower would be identical to the interest rates and terms of the subordinated loans and open account advances from Northeast to Charter Coak.

Blackstone Valley Electric Company (70–8093)

Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act.

By order dated December 17, 1984 (HCAR No. 21534), the Commission authorized Blackstone to borrow the proceeds from the sale of $6,500,000 electric facilities revenue bonds (the "Bonds") issued by the Rhode Island Industrial Facilities Corporation. The Bonds are supported by a letter of credit which Blackstone obtained from Citibank N.A. (the "Citibank LOC"). Interest on the Bonds is determined weekly by the Remarketing Agent, which is Citibank Securities Markets, Inc., an affiliate of Citibank, N.A.

Blackstone asserts that the Citibank LOC is adversely affecting the rate of interest paid on the Bonds by Blackstone relative to other potential letter of credit issuers because (i) Citibank's credit rating, which supports the Bonds, has deteriorated and (ii) the Remarketing Agent cannot take a position with respect to the Bonds to attain a more attractive interest rate for Blackstone because its affiliate, Citibank, has issued the letter of credit supporting the Bonds.

Blackstone proposes to enter into an alternate letter of credit and reimbursement agreement (the "Alternate Credit Agreement") with The Bank of New York ("BONY"), which provides for the issuance of a new letter of credit (the "BONY LOC"). Under the Alternate Credit Agreement, BONY will issue the BONY LOC in an amount not to exceed $6,914,643.84. Such amount represents the principal amount of the Bonds and 124 days of interest computed at a rate of 20% per annum, and is the same amount as provided in the Citibank LOC. The BONY LOC will expire three years from its date of issue and may be extended for a period of one year at Blackstone's request, and subject to the consent of BONY.

Blackstone will be required to pay BONY an annual letter of credit commission equal to 0.60% per annum on the amount available to be drawn on the BONY LOC, as compared to a letter of credit commission 0.75% for the Citibank LOC. Blackstone will be subject to business covenants in the Alternate Credit Agreement similar to those in its credit agreement with Citibank.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30089 Filed 12–10–92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Propulsion Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Propulsion Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Propulsion Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33, and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33, and 35).

The FAA announced at the Joint Aviation Authorities (JAA)—Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33, and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/

FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The transport Airplane and Engine Subcommittee, consequently, established the Propulsion Harmonization Working Group.

Specifically, the Working Group's tasks are the following: The Propulsion Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subjects recently coordinated between the JAA and the FAA:

Task 1—Bird Ingestion: Update turbine engine bird ingestion requirements, including size and number of birds and pass/fail criteria (FAR 33.77)

Task 2—Inclement Weather: Update the inclement weather requirements for rain and hail in turbine engines (FAR 33.77).

Task 3—Vibration Surveys: Determine test requirements and pass/Fail criteria for turbine engine vibration tests (FAR 33.83).

Task 4—Rotor Integrity: Determine test requirements and pass/fail criteria for turbine, compressor, fan, and turbosupercharger rotor overspeed tests (FAR 33.27).

Task 5—Turbine Rotor Overtemperature: Clarify test and pass/fail requirements for turbine engine overtemperature tests to assure consistent certification criteria (FAR 33.88).

Task 6—Windmilling: Exmaine current turbine engine windmilling requirements and specify appropriate test and analysis requirements (FAR 33.92).

Reports:

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C and D, below. If task 1–6 require the development of more than one Notice of Proposed Rulemaking, identify what proposed amendments will be included in each notice.

C. Draft a Notice of Proposed Rulemaking for tasks 1–6 proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Propulsion Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should *write* the person listed under the caption FOR FURTHER INFORMATION CONTACT expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Propulsion Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30113 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Seat Testing Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Seat Testing Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Seat Testing Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada (June 2–5, 1992), that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Seat Testing Harmonization Working Group.

Specifically, the Working Group's task is the following:

The Seat Testing Harmonization Working Group is charged with making

recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Crew Seats: Make recommendations concerning the requirements and guidance material for the certification of flightcrew seats and the associated test conditions (FAR 25.562; AC 25.562A).

Reports:

A. Recommend time line(s) for completion of the task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C, below.

C. Draft a Notice of Proposed Rulemaking the task proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Seat Testing Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Seat Testing Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30114 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Direct View Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of direct view harmonization working group.

SUMMARY: Notice is given of the establishment of the Direct View Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at the meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)–Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Direct View Harmonization Working Group.

Specifically, the Working Group's task is the following:

The Direct View Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Cabin Attendant Direct View: Review the proposed guidance material contained in draft Advisory Circular 25.785 for finding compliance with the cabin attendant's direct view requirements of FAR 25.785 and make recommendations for new or revised guidance (FAR 25.785; AC 35.785).

Reports:

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C, below.

C. Draft a change to Advisory Circular 25.783 providing appropriate guidance material.

D. Give a status report on each task at each meeting of the Subcommittee.

The Direct View Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task,

and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individuals will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Direct View Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30115 Filed 12-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Hydraulic Test Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of hydraulic test harmonization working group.

SUMMARY: Notice is given of the establishment of the Hydraulic Test Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-5364.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)—Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirement (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Hydraulic Test Harmonization Working Group.

Specifically, the Working Group's task is the following:

The Hydraulic Test Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Hydraulic Systems and Test Conditions: Make recommendations concerning new or revised requirements for hydraulic systems and the associated test conditions for hydraulic systems installed in transport category airplanes (FAR 25.1435).

Reports:

A. Recommend time line(s) for completion of the task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C, below.

C. Draft a Notice of Proposed Rulemaking the task proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Hydraulic Test Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Hydraulic Test Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30116 Filed 12-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Electromagnetic Effects Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Electromagnetic Effects Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Electromagnetic Effects Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Electromagnetic Effects Harmonization Working Group.

Specifically, the Working Group's tasks are the following:

The Electromagnetic Effects Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subjects recently coordinated between the JAA and the FAA:

Task-1—High Energy Radiated Fields: Develop new requirements for aircraft exposure to high energy radiated fields (new FAR 25.1316 and 25.1317 and related provisions of FAR parts 23, 27, 29, 33, and 35, as appropriate). The working group should draw members for this task from the interests represented by the General Aviation and Business Airplane, and Rotocraft Subcommittees.

Task 2—Lightning Protection Requirements: Revise advisory material on lightning protection requirements in Advisory Circulars 20–53B and 20–136 (FAR 25.1316 and related provisions of FAR parts 23, 27, 29, 33 and 35, as appropriate; AC 20–53B and 20–136). The working group should draw members for this task from the interests represented by the General Aviation and Business Airplane, and Rotorcraft Subcommittees.

Reports:

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C and D, below.

C. Draft a Notice of Proposed Rulemaking for task 1 proposing new requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed. When the detailed briefing under item B, above, and this report are presented to the subcommittee, the Subcommittee and Working Group Chairs should arrange for a joint meeting with the General Aviation and Business Airplane and Rotorcraft Subcommittees to consider and join in the consensus on the results of those reports.

D. Draft changes to Advisory Circulars 20–53B and 20–136 for task 2 providing appropriate advisory material for the task. When the detailed briefing under item B, above, and this report are presented to the subcommittee, the Subcommittee and Working Group Chairs should arrange for a joint meeting with the General Aviation and Business Airplane and Rotorcraft Subcommittees to consider and join in the consensus on the results of those reports.

E. Give a status report on each task at each meeting of the Subcommittee.

The Installation Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has exerptise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittee are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Installation Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcements of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30117 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Installation Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of installation harmonization working group.

SUMMARY: Notice is given of the establishment of the Installation Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33, and 35 of the Federal Aviation Regulations (14 CFR parts 25, 23 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with the assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Installation Harmonization Working Group.

Specifically, the Working Group's tasks are the following:

The Installation Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subjects recently coordinated between the JAA and FAA:

Task 1—Installations (Engines): Develop recommendations concerning new or revised requirements for the installation of engines on transport category airplanes and determine the relationship, if any, of the requirements of FAR 25.1309 to these engine installations (FAR 25.901).

Task 2—Windmilling Without Oil: Determine the need for requirements for turbine engine windmilling without oil (FAR 25.903).

Task 3—Non-contained Failures: Revise advisory material on non-contained engine failure requirements (FAR 25.903 and related provisions of FAR Parts 23, 27, 29, 33, and 35, as appropriate; AC 20–128). The working group should draw members for this task from the interests represented by the General Aviation and Business Airplane, and Rotorcraft Subcommittees.

Task 4—Thrust Reversing Systems: Develop recommendations concerning new or revised requirements and guidance material for turbojet engine thrust reversing systems (FAR 25.933).

Reports:

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C and D, below. If tasks 1, 2, and 4 require the development of more than one Notice of Proposed Rulemaking, identify what proposed amendments will be included in each notice.

C. Draft a Notice of Proposed Rulemaking for tasks 1, 2 and 4 proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Draft a change to Advisory Circular 120–128 for task 3 providing appropriate advisory material for each task. When the detailed briefing under item B, above, and this report are presented to the subcommittee, the Subcommittee and Working Group Chairs should arrange for a joint meeting with the General Aviation and Business Airplane and Rotorcraft Subcommittees to consider and join in the consensus on the results of those reports.

E. Give a status report on each task at each meeting of the Subcommittee.

The Installation Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Installation Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30118 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Cargo Standards Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of cargo standards harmonization working group.

SUMMARY: Notice is given of the establishment of the Cargo Standards Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)—Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Cargo Standards Harmonization Working Group.

Specifically, the Working Group's task is the following:

The Cargo Standards Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Main Deck Class B Cargo Compartments: Make recommendations for new or revised requirements for main deck Class B cargo compartments (FAR 25.857).

Reports

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under item C, below.

C. Draft a Notice of Proposed Rulemaking proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working group determines to be needed.

D. Give a status report on each task at each meeting of the Subcommittee.

The Cargo Standards Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Cargo Standards Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30119 Filed 12-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Rotorcraft Subcommittee; JAR/FAR 27 and 29 Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of JAR/FAR 27 and 29 Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the JAR/FAR 27 and 29 Harmonization Working Group of the Rotorcraft Subcommittee. This notice informs the public of the activities of the Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Rotorcraft Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Rotorcraft Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for normal and transport category rotorcraft in parts 27 and 29 of the Federal Aviation Regulations (14 CFR parts 27 and 29).

The FAA announced at the Joint Aviation Authorities (JAA)—Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation

Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Rotorcraft Subcommittee those projects related to JAR/FAR 27 and 29 Harmonization which were then in the process of being coordinated between the JAA and the FAA. The Harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Rotorcraft Subcommittee, consequently, established the JAR/FAR 27 and 29 Harmonization Working Group.

Specifically, the Working Group's tasks are the following:

The JAR/FAR 27 and 29 Harmonization Working Group is charged with making recommendations to the Rotorcraft Subcommittee concerning the FAA disposition of the following subjects recently coordinated between the JAA and the FAA:

Task 1—Performance: Category A performance of normal category rotorcraft (FAR 27.1 and Appendix C).

Task 2—Rotor Drive System: Design assessment of the rotor drive systems which are consistent with the present state of the design art (FAR 29.547, 29.917, AC 29–2A).

Task 3—Critical Parts: Identification of the critical parts for consideration under design, production and maintenance, according to a critical parts plan to be prepared by the manufacture (FAR 27.602, 29.602).

Task 4—Oil Pressure Indicator: An oil pressure indicator to be provided for pressure-lubricated gear boxes to inform the crew in time that oil pressure is abnormal (FAR 27.1305, 29.1305).

Task 5—Performance & Propulsion: Miscellaneous performance and propulsion requirements for transport category rotorcraft (FAR 29.67, 29.923, 29.1587).

Task 6—Flutter: Update the flutter substantiation methodology and documentation requirements for transport category rotorcraft (FAR 29.629).

Task 7—Lighting and Bonding: Update lighting and bonding requirements for transport category rotorcraft (FAR 29.610, 29.1309).

Task 8—Bird Strike: Determine the need for bird strike protection for transport category rotorcraft (FAR 29.631).

Task 9—Battery Endurance: Reassess battery endurance requirements relative to different modes of operation and to varying environments for transport category rotorcraft (FAR 29.1351).

Task 10—Fire Detection: Reduce probability of false fire detector warning for transport category rotorcraft (AC 29–2A; ref. FAR 29.1203).

Task 11—Vibrations: Update advisory material of Appendix A of FAR 29 to provide guidance on basic vibration data to be provided for service (continuing airworthiness) use (AC 29–2A; ref. FAR 29 Appendix A).

Task 12—Rotor Drive System and Fatigue Gear Substantiation: Identify acceptable compliance methodology for gear teeth fatigue (AC 29–2A; ref. FAR 29.571, 29.901).

Reports

A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C and D, below. If tasks 1–9 require the development of more than one Notice of Proposed Rulemaking, identify what proposed amendments will be included in each notice.

C. Draft a Notice of Proposed Rulemaking for tasks 1–9 proposing new or revised requirements, a supporting economic analysis, and other required analysis, with any other collateral documents (such as Advisory Circulars) the Working Group determines to be needed.

D. Draft a change to Advisory Circular 29–2A for tasks 2 and 10–12 providing appropriate advisory material for each task.

E. Give a status report on each task at each meeting of the Subcommittee.

The JAR/FAR 27 and 29 Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Rotorcraft Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the JAR/FAR 27 and 29 Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 4, 1992.

William J. Sullivan,

Executive Director, Rotorcraft Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30128 Filed 12–10–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 175; Minimum General Specification for Ground Based Electronic Equipment in the National Airspace System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the fifth meeting of Special Committee 175 to be held December 7–8, 1992, at the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036 commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of summary of meeting held October 7–9; (3) Subcommittee review of draft specification; (4) Subcommittees meet in separate sessions; (5) Discuss approach for FAA Comments to Draft Specification; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 25, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-30111 Filed 12-10-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., RTCA Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the RTCA Technical Management Committee to be held December 16, 1992, at the RTCA conference room, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC commencing at 1:30 p.m.

The agenda for this meeting is as follows: (1) Review October 26, 1992, TMC meeting summary (RTCA No. 713-82/TMC-54); (2) Consider/approve the formation of two new Special Committees as requested by the Airports Council International (formerly known as the Airports Association Council International-North America); (a) Form a new Special Committee that will prepare recommended standards for sensors/detectors used to activate runway entrance stop bars. (b) Form a new Special Committee that will prepare recommended standards for software used to control airport lights and other electronic airport surface traffic management systems; (3) Determine the preferred method for addressing the Global Navigation Satellite System Transition and Implementation Strategy Task Force recommendations calling for RTCA action. The TMC should assign tasking and establish appropriate milestones; (4) Concur in the formation of an Ad Hoc Committee on software issues that will sustain the government-industry cooperation developed by RTCA SC-167/EUROCAE WG-12 during the preparation of DO 178B. This new Ad Hoc committee will also lay the foundation for a new Special Committee to prepare "DO-178C" when the accumulation of software technology changes warrant such an effort; (5) Introduce for consideration the formation of new Special committees on: (a) Performance standards for Head Up Displays (HUDs) (b) Performance standards for flight Management Systems (FMSs) (c) Performance standards for enhanced vision components and systems; (6) Other business

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 25, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-30112 Filed 12-10-92; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Preemption Determination No. PD-1; Docket No. PDA-1(R)]

Application by National Solid Wastes Management Association for a Preemption Determination Concerning Maryland, Massachusetts, and Pennsylvania Bonding Requirements for Vehicles Carrying Hazardous Wastes

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Administrative determination that Maryland, Massachusetts and Pennsylvania bonding requirements for vehicles carrying hazardous wastes are preempted by the Hazardous Materials Transportation Act (HMTA).

APPLICANT: National Solid Wastes Management Association, on behalf of its Chemical Waste Transportation Institute.

STATE LAWS AFFECTED: Annotated Code of Maryland (Md. Code Ann.), Environment § 7-252 and Code of Maryland Regulations (COMAR) 26.13.04.04; 310 Code of Massachusetts Regulations (CMR) 30.411; 35 Pennsylvania Statutes Annotated (Pa. Stat. Ann.) § 6018.505(e) and 25 Pennsylvania Code § 263.32.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171-180.

MODE AFFECTED: Highway.

SUMMARY: The HMTA preempts the following State statutes and regulations which require the posting of a monetary bond as a condition for the issuance of a State permit to transport hazardous wastes:

Maryland: Md. Code Ann., Environment § 7-252(a)(1), COMAR 26.13.04.04;

Massachusetts: 310 CMR 30.411; and

Pennsylvania: 35 Pa. Stat. Ann. § 6018.505(e), 25 Pa. Code § 263.32.

These State bonding requirements are an obstacle to the accomplishment and execution of the HMTA and the HMR, which do not impose bonding, insurance or other financial responsibility requirements on carriers of hazardous materials (including hazardous wastes). The Maryland, Massachusetts, and Pennsylvania bonding requirements are not "otherwise authorized by Federal law" because they are not specifically authorized in the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, in the regulations of the Environmental Protection Agency (EPA) under RCRA, or in EPA's authorization of State hazardous waste programs in these three States.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder or Kathleen S. Molinar, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, telephone number (202) 366-4400.

I. Application for Preemption Determination

"[O]n behalf of its Chemical Waste Transportation Institute," the July 17, 1991 petition of the National Solid Wastes Management Association seeks an administrative determination that the HMTA preempts the requirements of three States—Maryland, Massachusetts, and Pennsylvania—for a monetary bond in order to obtain a State license or permit for transporting hazardous wastes. (The applicant is referred to as "CWTI" in the balance of this decision.)

A. Relevant EPA and State Requirements for Transporters

Under EPA's regulations implementing RCRA, each "transporter" of hazardous waste must have "an EPA identification number," 40 CFR 263.11; must comply with manifest requirements, 40 CFR 263.20-263.22; and must take appropriate immediate action if a spill of hazardous waste occurs during transportation. 40 CFR 263.30. "Transporters storing manifested shipments of hazardous wastes in (approved) containers * * *, for a period of ten days or less" need not obtain a RCRA permit. 40 CFR 270.1(c)(2)(vi).

In Maryland, Massachusetts, and Pennsylvania, a transporter who picks up or deliver hazardous waste within the State must also hold a license or permit from the State. Md. Code Ann., Environment § 7-249(a), COMAR

26.13.04.01C(1); 21C Massachusetts General Laws Annotated § 5, 310 CMR 30.402(2); 35 Pa. Stat. Ann. § 6018.501, 25 Pa. Code § 263.11(a). As a prerequisite to obtaining that license or permit, each of these States requires the transporter to obtain a bond.

In Maryland, the Department of the Environment "shall require a person to secure a bond of not less than $50,000 for the purpose of indemnifying the State for abatement of pollution from the improper transportation or spill of" hazardous wastes. COMAR 26.13.04.04. (The requirement of such a "bond or other security that the Department considers sufficient" is contained in Md. Code Ann., Environment § 7–252(a)(1).) In Massachusetts and Pennsylvania, "[t]he amount of the bond shall be $10,000 at a minimum and be in an amount sufficient to assure that the licensee" performs all of the State statutory and regulatory requirements as well as "the terms and conditions of the license and any Department order issued to the licensee." 310 CMR 30.411(3), 25 Pa. Code § 263.32(c). (In Pennsylvania, this requirement is also set forth in Pa. Stat. Ann. § 6018.505(e).)

Each of these regulations specifies only the minimum amount of the bond. CWTI states that in Pennsylvania, the actual amount required "apparently depends upon the type of materials and the volumes transported," and that "the Commonwealth typically requires bonds in amounts up to $60,000 * * *" As noted below, one company submitting comments (D & J Transportation Specialists, Inc.) states that it has posted a $60,000 bond in Pennsylvania.

These States' bonding requirements are in addition to the Federal financial responsibility requirements set forth in 49 CFR 387.7, 387.9, and any separate State insurance requirement. See, e.g., 310 CMR 30.410. Each of these three States allows certain alternate forms of providing the required financial guarantee, such as a letter of credit or the deposit of cash or negotiable securities. However, in each case the beneficiary of the guarantee must be the State, and insurance policies (or evidence of self-insurance) do not qualify. CWTI's petition represents that each of these three States imposes its bonding requirement independently; there is no reciprocity, offset, credit or other recognition for a bond posted in another State. This means that, in each State with a bonding requirement in which a transporter picks up or delivers hazardous waste, it must post a separate bond.

B. Application of the HMTA and HMR to Hazardous Wastes

All hazardous wastes are designated "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14)(C), and, as such, hazardous wastes are "listed and regulated as * * * hazardous material[s] under the" HMTA. 42 U.S.C. 9656(a). "The term [hazardous materials] includes * * * hazardous wastes, * * *" 49 CFR 171.8 (as amended November 5, 1992, 57 FR 52930, 52935). See also 49 CFR 171.3(a): "No person may offer for transportation or transport a hazardous waste * * * in interstate or intrastate commerce except in accordance with the requirements of" the HMR.

RCRA specifically directs the EPA's regulations applicable to transporters of hazardous wastes "shall be consistent with the requirements of" the HMTA and the HMR. 42 U.S.C. 6923(b). (For purposes of the HMR, hazardous wastes are "hazardous substances" when the contents of a single package equal or exceed the "reportable quantity" for that hazardous substance. 49 CFR 171.8 and 172.101 appendix.)

C. CWTI's Petition and Public Notice

CWTI's petition argues that the three States' bonding requirements are preempted because they constitute an "obstacle" to the accomplishment and execution of the HMTA and the HMR. CWTI relies primarily on RSPA's opinion in IR–25 that the HMTA preempts a city ordinance requiring a $1,000 bond for each vehicle hauling hazardous wastes and similar products. IR–25, Transporting Hazardous Wastes, City of Maryland Heights (Missouri) Ordinance Requiring Bond for Vehicles, 54 FR 16308 (Apr. 21, 1989). In IR–25, RSPA stated that "[a] local government may not impose any insurance, bonding or indemnification requirement as a precondition to the transportation of hazardous materials." 54 FR at 16310.

On August 12, 1991, RSPA published a Public Notice and Invitation to Comment on CWTI's petition. 56 FR 38294. In response to that Notice, three industry associations and two companies submitted comments in support of a finding of preemption. The Massachusetts Department of Environmental Protection (Mass-DEP) opposed the petition. CWTI submitted rebuttal comments plus an additional letter concerning the December 1991 decision in *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991). Mass-DEP responded to CWTI's additional letter on the *Harmon* decision. All these comments are summarized in Part III, below.

II. Preemption Under the HMTA

The HMTA was enacted to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced "a patchwork of state and federal laws and regulations concerning hazardous materials with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1990).

As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." HMTA, Public Law 93–633 section 112(a), 88 Stat. 2161 (1975) (amended 1990, see 49 App. U.S.C. 1811(a)). This provision was intended by Congress "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974), as quoted in IR–2 (State of Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc.), 44 FR 75566, 75567 (Dec. 20, 1979).

In 1976, DOT's Materials Transportation Bureau (MTB, whose responsibilities are now delegated to RSPA's Associate Administrator for Hazardous Materials Safety) "published procedures that implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings." IR–2, 44 FR at 75567. Such inconsistency rulings, while advisory in nature, were "an alternative to litigation for a determination of the relationship of Federal and State or local relationships," and also a possible "basis for an application * * * [for] a waiver of preemption pursuant to section 112(b) of the HMTA." *Id.* RSPA's procedures for issuing inconsistency rulings incorporated the following criteria for determining whether a State or local requirement was inconsistent with, and thus preempted by, the HMTA:

(1) Whether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible;

(2) The extent to which the State or political subdivision requirement is an

obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

41 FR 38167, 38171 (Sept. 9, 1976), 49 CFR 107.209(c) (Oct. 1, 1990 ed.) These "dual compliance" and "obstacle" criteria, respectively, are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

In 1980, a preemption provision relating to hazardous waste was added to the HMR. Subsection (c) of 49 CFR 171.3, unchanged to the present, states that:

> With regard to hazardous waste subject to [the HMR], any requirement of a state or its political subdivision is inconsistent with [the HMR] if it applies because that material is a waste material and applies differently from or in addition to the requirements of [the HMR] concerning:
>
> (1) Packaging, marking, labeling, or placarding;
>
> (2) Format or contents of discharge reports (except immediate reports for emergency response); and
>
> (3) Format or contents of shipping papers, including hazardous waste manifests.

45 FR 34560, 34586 (May 22, 1980). In the preamble to the final rule, RSPA stated that "§ 171.3(c) does not list all the conditions under which it might view a State or local law as 'inconsistent.'" 45 FR at 34567.

The preemption provision in the HMTA was expanded in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), in which Congress found that uniform Federal standards for the transportation of hazardous materials were "necessary and desirable" to solve the problem that:

> many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements.

Public Law 101–615 section 2(3), 49 App. U.S.C. 1801 note.

"[U]niformity was the linchpin in the design of" the 1990 HMTUSA amendments. *Colorado Pub. Util Comm'n* v. *Harmon*, 951 F.2d at 1575. These amendments adopted the "dual compliance" and "obstacle" criteria and also provided for preemption when: (1) Non-Federal requirements in five "covered subject" areas are not "substantively the same" as Federal ones, 49 App. U.S.C. 1804(a)(4); (2) a fee imposed by a State, political subdivision or Indian tribe "in connection with the transportation of hazardous materials * * * is not equitable [or] not used for purposes related to the transportation of hazardous materials, * * *" 49 App. U.S.C. 1811(b); (3) non-Federal highway routing requirements fail to satisfy Federal standards to be issued by DOT, 49 App. U.S.C. 1805(b)(4); and (4) as clarified in a further 1992 amendment, State forms and procedures for registration and permitting of motor vehicles which transport hazardous materials are not the same as regulations to be issued by DOT based on recommendations of a State and local government working group. 49 App. U.S.C. 1819(e), as amended by Public Law 102–508 section 507, 106 Stat. 3312 (October 24, 1992).

The 1990 amendments to the HMTA also added requirements that certain motor vehicle transporters of hazardous materials must file a registration statement with DOT, 49 App. U.S.C. 1805(c), and/or obtain a safety permit from DOT. 49 App. U.S.C. 1805(d). Regulations implementing the registration requirement were issued on July 9, 1992 (57 FR 30620; Revisions, 57 FR 37900, August 21, 1992), and apply to transporters of (1) certain high risk hazardous materials, (2) hazardous materials in bulk containers (with a capacity of 3,500 or more gallons or more than 468 cubic feet), and (3) hazardous materials shipments of 5,000 lbs. or more in non-bulk packagings for which placarding is required. 49 CFR 107.601; see also Public Law 102–508 section 503, 106 Stat. 3311 (October 24, 1992). Regulations implementing the safety permit requirement has not yet been issued, but Congress directed that they must cover carriers of certain high risk hazardous materials and that DOT must issue a permit if it "finds that the carrier is fit, willing, and able—* * * to comply with any applicable Federal motor carrier safety laws and regulations and any applicable Federal minimum financial responsibility laws and regulations." 49 App. U.S.C. 1805(d)(2).

Since DOT's regulations on State motor carrier registration and permits have not yet been issued, CWTI's petition must be considered under the preemption provisions in 49 App. U.S.C. 1811 (a) and (b). The latter subsection prohibits fees in connection with the transportation of hazardous materials which are not "equitable" or "used for purposes related to the transportation of hazardous materials * * *" Subsection 1811(a) provides that, "unless otherwise authorized by Federal law" or unless a waiver of preemption is granted by DOT, "any requirement of a State or political subdivision or Indian tribe is preempted" when:

> (1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,
>
> (2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or
>
> (3) It is preempted under section 1804(a)(4) [describing the five "covered subject" areas] * * * or section 1805(b) [with respect to highway routing requirements] * * *

The five "covered subject" areas in which a non-Federal rule is preempted unless it is "substantively the same" (or "otherwise authorized by Federal law") are:

> (i) The designation, description, and classification of hazardous materials.
>
> (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
>
> (iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
>
> (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
>
> (v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The 1990 amendments to the HMTA also authorize any directly affected person to apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA, 49 App. U.S.C. 1811(c)(1). This administrative determination replaced RSPA's process for issuing inconsistency rulings. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR

1.53(b). Under RSPA's regulations, see 49 CFR 107.201–107.211, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making determinations regarding preemption under the HMTA, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express preemption provisions, which RSPA has implemented through its regulations.

III. Public Comments

A. Comments Supporting Preemption

The five commenters who support CWTI's petition argue that the Maryland, Massachusetts, and Pennsylvania bonding requirements are an "obstacle" to the accomplishment and execution of the HMTA and the HMR.

The Hazardous Materials Advisory Council (HMAC), National Tank Truck Carriers, Inc. (NTTC), and Edison Electric Institute (EEI) contend that the prior decision in IR–25 should dispose of this case. EEI specifically notes that, since Congress codified the "obstacle" test in the 1990 amendments, previous inconsistency rulings are valid precedent. EEI acknowledges that Congress failed to "include bonding requirements in the list of [covered] subjects" in section 1804(a)(4). However, it asserts that this ommission should not "undermine DOT's prior determination that '[t]he subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal,'" as RSPA stated in IR–25 and repeated in IR–31, State of Louisiana; Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, 25582 (June 21, 1990).

Both NTTC and EEI quote Congressional statements regarding the need for consistency in hazardous materials transportation. NNTC argues RSPA should "weigh such non-Federal actions against Congressional intent as codified in HMTUSA." EEI states that "the likelihood that numerous state and local governments will seek to impose bonding and similar requirements," and the impact of such requirements, are factors which "could serve as a basis for a finding of preemption under the obstacle test."

HMAC alludes to differences between the three States' bonding requirements on "amounts, financial instruments, terms and conditions of the escrows, forfeiture terms and procedures, and terms of release * * *" Both HMAC and NTTC assert that the States fail to recognize each others' bonding requirements, and HMAC points out that they also ignore the Federal insurance requirements, in 49 CFR part 387, providing financial responsibility in case of an accident. HMAC contends that "few businesses [which operate in several States] can afford to repeatedly tie up substantial amounts of working capital. The effect, as other states assert their requirements in this area, will surely be to hinder the movement of hazardous waste."

Two companies allege the practical effect of these bonding requirements. D & J Transportation Specialists, Inc. reports that it:

> is presently permitted in forty (40) states to transport hazardous waste, including Massachusetts, Maryland, and Pennsylvania. We have posted bonds of $10,000, $50,000 and $60,000 respectively, in these states.
>
> As a private corporation it has been necessary in each case to provide a letter of credit to secure this bonding. Should each state of the forty (40) we are registered in require a $50,000 bond, letters of credit in the amount of $2,000,000 would be required.
>
> As we could not possibl[y] obtain letters of credit in this amount, we would be unable to operate in a large number of states. If you add to this the almost unlimited number of possibilities which exist if municipalities started the same thing, it is obvious how restrictive this practice would become.

An official of Bandag, Inc. states that, before the Pennsylvania bonding requirement, his previous employer had regularly shipped waste materials to a processing facility in Western Pennsylvania for recycling. However, after the requirement for a bond became effective, "we could not find a hauler to get our material to the processing facility."

Only NTTC argues that it is impossible to comply with both the HMR and these three State's bonding requirements. Although it notes that these requirements are in addition to (rather than instead of) the Federal insurance requirements in 49 CFR 387.7 and 387.9, NTTC contends that "[t]here are any number of direct conflicts between the states[']] requirements and" the HMR, essentially based on differences between bonding and insurance as means of providing financial responsibility. NTTC further argues that, since posting a bond is a requirement for obtaining a permit, these are more in the nature of permit requirements. The delay "built into" the procedures in Massachusetts and Pennsylvania, such as for negotiating the amount of the bond and receiving approval, "creates the potential for unnecessary delays, [which] violates the dual compliance test and is 'inconsistent.'"

B. Comments Opposing Preemption

Only Mass-DEP has opposed a determination of preemption on CWTI's petition; no Maryland or Pennsylvania agency—or any other person—submitted comments in support of those States' bonding requirements. Although Mass-DEP addresses only the Massachusetts regulation, its comments appear to apply, and have been considered, with respect to all three States' requirements.

Mass-DEP alleges that CWTI failed to comply with RSPA's procedural regulations by failing to "[s]pecify each requirement of the Act or the regulations issued under the Act with which the applicant wishes the State * * * requirement to be compared; * * *" 49 CFR 107.203(b)(3). Mass-DEP asserts that, since "[i]t clearly is possible for transporters to comply with the [HMTA] and 310 CMR 30.411," the "dual compliance" test is satisfied. It contends that the Massachusetts bonding requirement also meets the "obstacle" test, inasmuch as:

(1) "The HMTA does not concern itself with financial assurance requirements," but "[a]ll subject matters regulated under HMTA concern the physical transportation activity";

(2) The HMTA specifically allows States to charge hazardous materials transporters "fees" which are "equitable" and "for purposes related to the transportation of hazardous materials * * *," 49 APP. U.S.C. 1811(b);

(3) RSPA's opinion in IR–25 does not support a determination of preemption because IR–25 was based on a "different preemption standard," was only "advisory" and "would not apply to our very different set of facts and law"

(including that the Massachusetts bonding requirement is a State law, rather than a local ordinance, and does not apply to through transporters);

(4) The reference in IR–25 to the insurance requirements in 49 CFR part 387 "is irrelevant to our facts and law," since part 387 is part of the Federal Motor Carrier Safety Regulations and not the HMR, and the Massachusetts bonding requirement "covers contingencies" such as willful acts and "acts of God or other situations typically excluded from insurance policies";

(5) Commerce Clause arguments are irrelevant to issues of statutory preemption under the HMTA; and

(6) Crankcase oil, "the largest single wastestream * * * in Massachusetts," is not classified as a hazardous material and therefore is "not subject to HMTA regulation."

Mass-DEP further asserts that its bonding requirement is part of its EPA-approved program implementing RCRA. As such, it claims that 310 CMR 30.411 is "otherwise authorized by Federal law" and, therefore, not preempted under the terms of 49 App. U.S.C. 1811(a).

C. Rebuttal Comments

In rebuttal comments, CWTI ignores Mass-DEP's arguments on the "dual compliance" test, but it disputes each of the other points raised by Mass-DEP. It argues that it is unnecessary to point to a specific section in the HMTA or the HMR when "the challenged non-Federal requirement is as a whole inconsistent with the accomplishment and execution of the goals of the Act and the HMRs." Citing its own testimony before a Congressional committee in 1988 and 1989, CWTI disagree that a bond is a "fee" under 49 App. U.S.C. 1811(b). CWTI also contends, even if the posting of a bond is considered a "fee," there is nothing to show that the bond is "equitable" or that it is used for purposes related to the transportation of hazardous materials, as required by the HMTA.

CWTI further asserts that its petition relies on the "obstacle" test, not on a claim of preemption under the Commerce Clause, and that each of the points on which Mass-DEP purports to distinguish IR–25 is unpersuasive. The fact that crankcase oil is not classified as a hazardous material simply means that its petition does not seek "relief from state bonding requirements imposed on motor carriers * * * [of] crankcase oil."

CWTI also disputes Mass-DEP's argument that its bonding requirement is "otherwise authorized by Federal law." It refers to RCRA's mandate that EPA regulations for hazardous waste "shall be consistent with the requirements of" the HMTA and the HMR, 42 U.S.C. 6923(b), and that a State program shall be "equivalent to" and "consistent with" Federal programs. 42 U.S.C. 6926(b). CWTI contends that RCRA's authorization in 42 U.S.C. 6929 for States to impose "more stringent" requirements than set forth in EPA's regulations applies only to "technical, design or performance standards for treatment, storage or disposal facilities, not standards that relate to transportation."

Approximately one month after CWTI's rebuttal comments, the decision in *Colorado Pub. Util Comm'n* v. *Harmon*, above, was issued. Six weeks later, CWTI submitted a further letter to point out the statement in footnote 10 of the *Harmon* opinion that the failure of a Federal statute to specifically preempt a State or local rule "cannot be construed as an authorization of the regulation." Mass-DEP filed additional comments, stating that the *Harmon* case footnote was irrelevant since Mass-DEP "did not argue that failure of a non-HMTA federal statute to preempt the DEP's bonding requirement should be equated with authorization of the bonding requirement."

IV. Discussion

The comments submitted on CWTI's petition, together with the petition itself, well frame the two main issues to be resolved in this decision. These are whether bonding requirements for carriers of hazardous waste, such as those of Maryland, Massachusetts and Pennsylvania, (1) create an "obstacle to the accomplishment and execution of" the HMTA and the HMR, especially in light of the separate financial responsibility requirements contained in the Federal Motor Carrier Safety Regulations (FMCSR), and (2) are "otherwise authorized by Federal law" when a State administers an EPA-approved State hazardous waste program under 42 U.S.C. 6926(b).

A. The "Dual Compliance" Test

NTTC's assertion that the challenged requirements fail to meet the "dual compliance" test does not require lengthy discussion. NTTC's argument here is that "the states require 'bonding'; while the Secretary [of Transportation, in 49 CFR part 387] permits 'insurance,'" and there are differences between the two. Those differences, however, do not make it impossible for a transporter of hazardous waste to fulfill both Federal and State requirements at the same time. Indeed, 49 CFR 387.7 allows surety bonds as an alternative to insurance policies (or evidence of self-insurance). The representation by D & J Transportation Specialists, Inc., that it has posted bonds in all three of the States whose requirements are challenged here, establishes that it is possible to comply with these bonding requirements as well as the DOT requirement. The Maryland, Massachusetts, and Pennsylvania bonding requirements are not preempted under 49 App. U.S.C. 1811(a)(1).

B. The "Obstacle" Test

A non-Federal requirement is preempted if it is an obstacle to "the goals and purposes" of the HMTA. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1580. Under the test, the Court of Appeals explained in the *Harmon* case (*id.*),

> the Supreme Court has examined whether the state law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Hillsborough County* v. *Automated Medic. Labs.*, 471 U.S. 707, 713 (1985) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)) (emphasis added); see also *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270, 275 (2d Cir 1982). Further, "[a] state law also is preempted if it interferes with the methods by which the federal statute was designed to reach this goal." *International Paper Co.* v. *Quellette*, 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.*, 467 U.S. 461, 477 (1984).

As already discussed in Part II, above, in enacting the 1990 amendments to the HMTA, Congress believed that uniform Federal standards, instead of multiple and conflicting State and local requirements, would provide for increased safety in the transportation of hazardous materials. See 49 App. U.S.C. 1801 note. See also the discussion in the *Harmon* decision of the legislative history of the 1990 amendments. 951 F.2d at 1580–81.

As amended in 1990, the HMTA contains Federal registration and safety permit requirements for carriers of certain high risk hazardous materials (and others to be determined by DOT). Transporters covered by the safety permit requirement must satisfy the Federal financial responsibility requirements in 49 CFR part 387. The HMTA requires the establishment of a working group to make recommendations for uniform State registration and permit requirements and provides that, following issuance of Federal regulations on these subjects, a State may not "establish, maintain, or enforce any requirement which relates to the subject matter of such regulation unless such requirement is the same as

such regulation." 49 App. U.S.C. 1819(e).

Congress set forth in the 1990 amendments its concern about "multiple and conflicting registration, permitting, * * * and other regulatory requirements." 49 App. U.S.C. 1801 note. It specifically referred to the Federal financial responsibility requirements in 49 App. U.S.C. 1805(d), and, with the further 1992 amendment to 49 App. U.S.C. 1819, it has mandated uniformity and consistency in both permitting and registration requirements of States and local government. These permitting requirements include the bonding requirements at issue here, since each of these three States makes the bond a condition for the issuance of a permit to transport hazardous wastes.

In light of Congress's specific attention in the HMTA to multiple and conflicting State permitting requirements, RSPA cannot accept the argument of Mass-DEP that: "All subject matters regulated under HMTA concern the physical transportation activity." For the same reason, resolution of the issues presented here cannot rest on a 1985 decision that the bonding requirement in 35 Pa. Stat. Ann. § 6018.505(e) is not preempted by the HMTA. That decision, by the Commonwealth Court of Pennsylvania, *Chemclene Corp.* v. *Pennsylvania Dep't of Environ. Res.*, 497 A.2d 268, 272 (Pa. Commonw. Ct. 1985), was based on a finding that "the scope of the [HMTA] * * * is narrow, devoted principally to matters of labeling, packaging standards, testing procedures, and training and safety practices." Any validity which this description might have had in 1985 has vanished with the 1990 and 1992 amendments to the HMTA.

In its petition, CWTI complains that these three States' bonding requirements go beyond the requirements of the HMR and the financial responsibility mandates in 49 CFR part 387. Mass-DEP notes that part 387 is not part of the HMR, and it argues that no preemption should be found because CWTI failed to "[s]pecify each requirement of the [HMTA] or the regulations issued under the [HMTA] with which the applicant seeks the State * * * requirement to be compared * * *" 49 CFR 107.203(b)(3).

There are two answers to this objection. First, as already mentioned, the Federal financial responsibility requirements are not ignored in the HMTA, but specifically mentioned in connection with the Federal safety permit requirement. 49 App. U.S.C. 1805(d)(2)(C). Second, when preemption under the HMTA is arguably grounded upon the absence of a comparable requirement in the HMR, as CWTI contends here, a petition will not be summarily decided on the ground that it "fails to cite to any requirement in HMTA or its regulations" with which the non-Federal requirement should be compared. The existence of the Federal financial responsibility requirements may advance the goals and purposes of the HMTA, even without specific incorporation of those requirements in the HMR.

In 1978, the FMCSR consisted of only parts 390–397 of 49 CFR In that year, virtually the entire FMCSR, "49 CFR parts 390 through 397 (excluding § 397.3 and § 397.9)," were incorporated into the HRM "to make civil penalties and other enforcement tools of the HMTA applicable to those hazardous materials carriers already subject to Parts 390–397." 43 FR 4858 (Feb. 6, 1978). See 49 CFR 177.804.

The financial responsibility requirements in 49 CFR part 387 were added to the FMCSR in 1981, pursuant to section 30 of the Motor Carrier Act of 1980 (see 46 FR 30974, June 11, 1981), which can be found in the note to 49 U.S.C. 10927. Section 30(b) required DOT to establish levels of financial responsibility, "covering public liability, property damage, and environmental restoration for the transportation of hazardous materials * * *, oil or hazardous substances * * *, or hazardous wastes * * *." Section 30(d) provided civil penalties for violation of the Federal financial responsibility requirements. See also 49 CFR 387.17. Thus, unlike the situation with those parts of the FMCSR in 49 CFR parts 390–397, incorporation into the HMR was unnecessary to provide civil penalties for violations of part 387.

Section 30 of the Motor Carrier Act of 1980 also sets the required level of financial responsibility, under CERCLA, for all motor vehicles transporting hazardous substances (including hazardous wastes). 42 U.S.C. 9608(b)(5), 9601(14)(C). For purposes of CERCLA, the term "facility" includes motor vehicles, 42 U.S.C. 9601(9)(A), and a separate section of CERCLA, 42 U.S.C. 9614(d), precludes additional State or local financial responsibility laws:

> Except as provided in [CERCLA], no owner or operator of a * * * facility who establishes and maintains evidence of financial responsibility in accordance with [CERCLA] shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial liability in connection with liability for the release of a hazardous substance from such * * * facility.

Pursuant to section 30(b), 49 CFR 387.9 specifies either $5,000,000 or $1,000,000 in insurance, surety bonds, or evidence of self-insurance for virtually all transporters of hazardous wastes. (Excluded are only those transporters of hazardous wastes other than Class A or B explosives, poison gas or highway route controlled quantity radioactive materials who either (1) are intrastate carriers in nonbulk, or (2) use only small vehicles, less than 10,000 lbs. GVWR.)

In a series of inconsistency rulings (IRs) between 1984 and 1989, RSPA found that State insurance or other financial responsibility requirements specifically applicable to hazardous materials transportation, beyond those prescribed in 49 CFR part 387 or other Federal law, were in conflict with the purposes and objectives of the HMTA and the HMR.

Three of nine consolidated decisions in November 1984 dealt with State or local insurance requirements applicable to shipments of radioactive materials. 49 FR 46632 (Nov. 27, 1984). IR–10 concerned the position of the New York State Thruway Authority (NYSTA) that "radioactive shipments will be permitted on the Thruway when we are properly indemnified for any exposure." 49 FR at 46645. RSPA found that closing the Thruway "to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification * * *.

> directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported. For this reason, the NYSTA rule necessarily poses an obstacle to the accomplishment of the Congressional objective of enhancing hazardous materials safety.
>
> * * * * *
>
> Applying this to the instant case, if any one State may use insurance requirements to deflect interstate carries of hazardous materials into other jurisdictions, then all States may do so. The logical result would be, if not a total cessation of a Congressionally recognized form of interstate transportation[,] then the very patchwork of varying and conflicting State and local regulations which Congress sought to preclude.

49 FR at 46646–47. Based on the decision in IR–10, RSPA also found that the HMTA preempted similar insurance or indemnification requirements of the Ogdensburg (NY) Bridge and Port Authority (IR–11, 49 FR at 46649), and the State of Vermont (IR–15, 49 FR at 46663–64). In the latter case, RSPA noted that, in the course of promulgating rules on highway routing of radioactive materials, MTB had "examined the issue of indemnification

and concluded that Federal law provided adequate coverage. State adoption of higher insurance coverage requirements can operate as barriers to transportation." 49 FR at 46664. A similar finding was made in IR–18, concerning a radioactive materials transportation bonding requirement of Prince Georges County, MD. 52 FR 200, 204 (January 2, 1987).

IR–25 involved an ordinance of Maryland Heights, Missouri, which required "a bond in the amount of One Thousand Dollars ($1,000) per vehicle for each vehicle, hauling or to haul sewage, sludge, human excrement, special, hazardous or infectious wastes." 54 FR 16308. Quoting from the decision on Vermont's appeal of IR–15, 52 FR 13062, 13063 (Apr. 21, 1987), RSPA reaffirmed its earlier conclusion that: "'The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification.'" 54 FR at 16310. As to non-radioactive waste, RSPA found that:

> no such requirement is necessary—particularly because 49 CFR 387.7 and 387.9 already require insurance or surety bonds of between $1,000,000 and $5,000,000 for motor vehicles transporting hazardous wastes, hazardous substances and other hazardous materials.
>
> If OHMT later determines that a bonding, insurance, or indemnity requirement is necessary under the HMTA for the transportation of non-radioactive hazardous materials, it will amend the HMR accordingly. Until such time, the absence of such a requirement in the HMR is a reflection of OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR.
>
> The subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal. The existence in the U.S. of more than 30,000 local jurisdictions, each having the potential to impose such requirements, demonstrates the havoc which could be created if even a small percentage of them were to impose such requirements (with their inevitable differences). It would be extremely difficult for carriers to learn about, let alone comply with, such local requirements.

54 FR at 16311.

In separate rulings, RSPA also found that non-Federal requirements to provide evidence of insurance were also inconsistent with the HMTA. For example, in IR–27 RSPA stated that "[r]equirements for information or documentation in excess of the HMR create potential delay, constitute an obstacle to execution of the HMTA and the HMR, and thus are inconsistent." IR–27, Colorado Regulations on Transportation of Radioactive Materials, 54 FR 16326, 16330 (April 21, 1989). Such information requirements included proof of liability insurance (as required by 49 CFR part 387) in order for the issuance of a State permit.

Specifically approving RSPA's finding in IR–27, the Court of Appeals for the Tenth Circuit held in the Harmon case that:

> Because Colorado's regulation forces transporters of hazardous materials to generate and maintain additional documentation and information, we conclude that it is likely to confound shippers and carriers and to increase the potential for hazards in other jurisdictions. Colorado's regulations simply do not further the federal purpose of promoting safety through uniformity. Therefore, we hold that [this requirement] is preempted.

951 F.2d at 1582 (footnote omitted). Similarly, the Court of Appeals for the Ninth Circuit agreed with RSPA's determination that the potential "great expense and delay" in meeting State requirements for information and documentation, beyond that in the HMR, amounted to "an obstacle to the accomplishment or execution of those requirements." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, above, 909 F.2d at 358, 359 (approving IR–19, 52 FR 24404, June 30, 1987, and decision on appeal, 53 FR 11600, April 7, 1988).

These two Court of Appeals decisions show that RSPA may properly look to the absence of a particular requirement in the HMR in determining the "goals and purposes" of the HMTA. Moreover, in holding that a requirement to provide proof of the insurance required by 49 CFR part 387 is preempted, the *Harmon* decision virtually compels the finding that a requirement to establish and prove financial responsibility beyond that required by 49 CFR part 387 is also preempted.

The reasoning behind RSPA's ruling in IR–25 remains applicable to CWTI's petition, notwithstanding differences pointed out by Mass-DEP. The *Harmon* and *Southern Pacific* cases involved State regulations, as did IR–10 and IR–15. The 50 States, plus the District of Columbia and other territories and possessions defined as "States" in the HMTA, 49 App. U.S.C. 1802(14), are more than sufficient to create "multiple and conflicting" requirements that would frustrate the HMTA's goal of uniformity. The fact that these three States' bonding requirements apply only to hazardous wastes being picked up or delivered within each State does not prevent the potential for expense and delay associated with meeting these requirements, as well as the diversion of traffic to other States when the hazardous waste transporter cannot or does not post the required bond. To the extent that these States' bonding requirements cover "contingencies which insurance does not," as Mass-DEP asserts (but CWTI disputes in part), that difference is merely additional proof that these non-Federal requirements exceed what RSPA has found to be sufficient in 49 CFR part 387.

Mass-DEP's assertion that IR–25 was decided under a "different preemption standard," is not correct. RSPA's ruling in IR–25, while advisory, was based on the "obstacle" test which was specifically incorporated into the HMTA in the 1990 amendments. It was not "made in part on dormant Commerce Clause grounds," as Mass-DEP argues. The "procedural safeguards" which apply to CWTI's petition here, see 49 App. U.S.C. 1811(c)(1) and 49 CFR 107.201–107.211, are virtually identical to the procedures which applied to RSPA's consideration of the local ordinance in IR–25. Mass-DEP has not shown that any "more thorough analysis of the facts and law" justifies a different finding than set forth in IR–25, or that the prior ruling "is unpersuasive and unreliable."

While these State bonding requirements appear to impose substantial costs on transporters of hazardous wastes, such costs cannot be considered a State "fee" authorized by 49 App. U.S.C. 1811(b). Any sums which a transporter pays for a surety bond, a letter of credit, or cash or negotiable securities placed on deposit, are separate and apart from fees paid for a license or permit itself.

The bonding requirements of Maryland, Massachusetts and Pennsylvania create an obstacle to the accomplishment and execution of the HMTA and the HMR and, accordingly, are preempted by the HMTA under 49 App. U.S.C. 1811(a)(2).

C. Effect of EPA-Authorized State Hazardous Waste Plan

Mass-DEP also argues that the State's bonding requirement is part of the Massachusetts hazardous waste program authorized by EPA under RCRA and, therefore, is not preempted by the HMTA because it is "otherwise authorized by Federal law." 49 App. U.S.C. 1811(a). This argument is considered with respect to the Maryland and Pennsylvania bonding requirements as well, since those States also have EPA-authorized hazardous waste programs.

RCRA provides for EPA to issue "regulations requiring each person

owning or operating a facility for the treatment, storage or disposal of hazardous waste identified or listed under this subtitle (RCRA, title II, subtitle C, 42 U.S.C. 6921 *et seq.*), to have a permit * * *" 42 U.S.C. 6925(a). In addition, the EPA Administrator may authorize a State to carry out its own hazardous waste program "in lieu of the Federal program under this subtitle in such State and to issue and enforce permits for the storage, treatment and disposal of hazardous wastes * * *" 42 U.S.C. 6926(b).

To be so authorized, a State hazardous waste program must be "equivalent to the Federal program under this subtitle, * * * consistent with the Federal or State programs applicable in other States, * * * [and] provide adequate enforcement of compliance with the requirements of this subtitle." Id. "Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subtitle." 42 U.S.C. 6926(d).

RCRA does not prohibit any State from imposing requirements which are more stringent than those imposed by EPA regulations. See 42 U.S.C. 6929. EPA regulations further provide that a State may operate a State program that has a greater scope of coverage than required by Federal law, but the additional coverage is not part of the Federally-approved program. 40 CFR 271.1(i)(2).

Also within subtitle C of RCRA is the authorization for EPA to "promulgate regulations * * * applicable to transporters of hazardous waste * * *," subject to the limitation that any such regulations "shall be consistent with the requirements of [the Hazardous Materials Transportation] Act and the regulations thereunder." 42 U.S.C. 6923(a), (b).

EPA has promulgated regulations at 40 CFR part 263 which require that a transporter obtain an EPA identification number, comply with manifest requirements, and take immediate action to protect human health and the environment if a discharge of hazardous waste occurs during transportation. EPA regulations do not impose bonding requirements on transporters, nor do they require a transporter of hazardous wastes to obtain a permit, unless the transporter is also operating a storage facility. See 40 CFR 263.12, 270.1(c)(2)(vii); see also 40 CFR 262.34 (temporary storage by generators prior to transportation). Mass-DEP has not rebutted industry comments that the State bonding requirements at issue here may violate the mandate, in 42 U.S.C. 6926(b) and 40 CFR 271.4, that a State hazardous waste program be consistent with the Federal RCRA program.

EPA has recently clarified that its authorization of a State hazardous waste program does not resolve issues of HMTA preemption of non-Federal requirements. In granting final authorization to California's hazardous waste program, EPA stated:

> [I]f there are preemption issues under other Federal laws, they do not affect the State's RCRA authorization. In addition, EPA does not believe that an individual State's authorization application is the appropriate forum to resolve problems which clearly affect a large number of states. * * * [A] process is already in place intended to address the problem pursuant to the HMTUSA.

California, Final Authorization of State Hazardous Waste Management Program, 57 FR 32726, 32728 (July 23, 1992).

In sum, EPA's review of a State hazardous waste program, as part of the authorization process, provides neither the forum for consideration of HMTA preemption issues nor the specific Federal authorization that will preclude HMTA preemption of these States' bonding requirements. EPA bears responsibility for ensuring that its hazardous waste transportation standards, in 40 CFR part 263, are consistent with DOT's regulations under the HMR. However, EPA does not review State regulations that go beyond the part 263 standards for consistency with the HMTA and the HMR. Such review remains within the purview of DOT and its procedures under the HMTA.

The Maryland, Massachusetts, and Pennsylvania bonding requirements for transporters of hazardous wastes are not "otherwise authorized by Federal law," within the meaning of 49 App. U.S.C. 1811(a), because there has not been any specific authorization of those State requirements. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

V. Ruling

To the extent that they impose bonding requirements on transporters of hazardous wastes regulated by the HMR, the following State laws and regulations are preempted by the HMTA, 49 App. U.S.C. 1811(a)(2), because they create an obstacle to the accomplishment and execution of the HMTA and the HMR, and they are not "otherwise authorized by Federal law":

Maryland: Md. Code Ann., Environment section 7–252(a)(1) and COMAR 26.13.04.04;
Massachusetts: 310 CMR 30.411; and
Pennsylvania: 35 Pa. Stat. Ann. section 6018.505(e) and 25 Pa. Code section 263.32.

VI. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by this decision may file a petition for reconsideration within 20 days of service of this decision. Any party to this proceeding may seek review of RSPA's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 App. U.S.C. 1811(e).

If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC, on December 4, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 7, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0531.
Form Number: IRS Form 706NA.
Type of Review: Extension.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of a Nonresident Not a Citizen of the United States.

Description: Under section 6018, executors must file estate tax returns or nonresident noncitizens who had property in the U.S. Executors use Form 706NA for this purpose. IRS uses the information to determine correct tax and credits.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 300.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hour, 38 minutes.

Learning about the law or the form—30 minutes.

Preparing the form—1 hour, 46 minutes.

Copying, assembling, and sending the form to the IRS—41 minutes.

Frequency of Response: On occasion. (Generally, form is only filed once).

Estimated Total Reporting/ Recordkeeping Burden: 1,295 hours.

OMB Number: 1545–0704.

Form Number: IRS Form 5471 and Schedules M, N, and O.

Type of Review: Revision.

Title: Information Return of U.S. Persons with Respect to Certain Foreign Corporations.

Description: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035 and 6046 and the regulations thereunder pertaining to the involvement of U.S. person with foreign corporations.

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 88,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/sched.	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
5471	78 hrs., 41 min	24 hrs., 20 min	30 hrs., 18 min.
Sched. M	26 hrs., 33 min	18 min	44 min.
Sched. N	8 hrs., 22 min	3 hrs., 35 min	3 hrs., 52 min.
Sched. O	10 hrs., 46 min	12 min	23 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 6,846,545 hours.

OMB Number: 1545–1155.

Regulation ID Number: PS–74–89 (T.D. 8282) Final.

Type of Review: Extension.

Title: Election of Reduced Research Credit.

Description: These regulations prescribe the procedure for making the election described in section 280C(c)(3) of the Internal Revenue Code. Taxpayers making this election must reduce their section 41(a) research credit, but are not required to reduce their deductions for qualified research expenses, as required in paragraphs (1) and (2) of section 280C(c).

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 50 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–30135 Filed 12–10–92; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 239
Friday, December 11, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

DATE AND TIME: December 17, 1992, 9:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: FERC and State Public Utility Commissioners will discuss issues concerning the implementation of Order No. 636.

CONTACT PERSON FOR MORE INFORMATION: Judy Moesta or Jackie Flora, Division of Public and Intergovernmental Affairs, Telephone (202) 208–1088.

Dated: December 8, 1992.

Lois D. Cashell,
Secretary.

[FR Doc. 92–30267 Filed 12–9–11:50 am]
BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 15, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Procurement of additional disk storage.

Memorandum and resolution re: Revisions to the Corporation's delegations of authority with respect to regulation and supervision expenditures.

Discussion Agenda

Memorandum re: Review of the Corporation's 1993 Business Plan.

Memorandum and resolution re: Proposed amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would implement a permanent risk-related premium system.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 – 17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898–6745 (Voice); (202) 898–3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 92–30220 Filed 12–9–92; 9:16 am]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, December 15, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B, and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)((8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Matters relating to the Corporation's corporate activities.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 92–30221 Filed 12–9–92; 9:16 am]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:04 a.m. on Tuesday, December 8, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr. and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memoradum re: Modification of contract with AT&T for enhancements to the new wide area network.

Memorandum re: Management Education Curriculum Project: Recommendation for Award of Contract.

By the same majority vote, the Board determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

The Board also determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting on less than seven day's notice to the public, of the following matters:

Memordanum and resolution re: Proposed amendments to Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," which would require insured state banks to obtain the prior consent of the Corporation before directly, or indirectly through a subsidiary, engaging "as principal" in any activity that is not permissible for a national bank.

Memorandum and resolution re: Proposed amendments to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which would eliminate section 333.3 which makes certain prohibitions applicable to state chartered savings associations to state banks that are members of the Savings Association Insurance Fund.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations, which would eliminate Part 332, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law."

By the same majority vote, the Board further determined that no notice of these changes in the subject matter of the meeting earlier than December 2, 1992, was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30257 Filed 12–9–92; 11:15 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2), notice is hereby given that at its closed meeting held at 10:38 a.m. on Tuesday, December 8, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Matters relating to the Corporation's corporate activities.

Application of Devon Bank, Chicago, Illinois, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made at Deerbrook State Bank, Deerfield, Illinois, and for consent to establish a temporary branch until a permanent branch is established at 70 South Waukegan Road, Deerfield, Illinois.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30258 Filed 12–9–92; 11:15 am]

BILLING CODE 6714–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10 a.m., December 21, 1992.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Survey of Federal Retirement Thrift Savings Plan Inactive Accounts and Proposed Abandoned Account Policies at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

4. Review of Hewitt Associates "Defined Contribution Outsourcing Feasibility Study."
5. Ethics briefing.
6. Executive Director's compensation.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: December 9, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92–30315 Filed 12–9–92; 2:14 pm]

BILLING CODE 6760–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Wednesday, December 16, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Publication for comment of proposed criteria for sponsoring Telecommunications Service Priority (TSP) assignments.
2. Cost of Federal Reserve notes in 1993.
3. Proposed amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) to implement amendments contained in the Housing and Community Development Act of 1992.
4. Implementation of section 7(h)(1) of the International Banking Act: Activities of State-Licensed Branches and Agencies.

Discussion Agenda

5. Implementation of section 7(e)(7) of the International Banking Act: Guidelines for Foreign Banks.
6. Proposed 1993 Federal Reserve Bank budgets.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30255 Filed 12–9–92; 11:14 am]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, December 16, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserves Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30256 Filed 12–9–92; 11:14 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 57, No. 239
Friday, December 11, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

Correction

In notice document 92–28835 beginning on page 56575 in the issue of Monday, November 30, 1992, make the following correction: On page 56575, in the third column, in the 15th paragraph, "FERC–508" should read "FERC–585".

BILLING CODE 1505–01–D

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB34

Loan Policies and Operations; Collateral Evaluation Requirements, Actions on Applications, and Review of Credit Decisions

Correction

In rule document 92–27961 beginning on page 54683 in the issue of Friday, November 20, 1992, make the following corrections:

1. On page 54684, in the 2d column, under **I. General**, in the 1st paragraph, in the 21st line, "54" should read "56".

2. On page 54687, in the second column, in the first full paragraph, in the eighth line, "evaluation" should read "evaluations".

3. On page 54690, in the second column, in the third full paragraph, in the fifth line, "encourage" should read "encouraged".

§ 614.4245 [Corrected]

4. On page 54696, in the third column, in § 614.4245(a), in the third line, "leading" should read "lending".

§ 614.4265 [Corrected]

5. On page 54698, in the second column, in § 614.4265(b), in the fourth line, after "comparison" insert "approach".

§ 614.4440 [Corrected]

6. On page 54699, in the first column, in § 614.4440(f), the ninth line should follow immediately after "evaluated".

BILLING CODE 1505–01–D

FOREIGN CLAIMS SETTLEMENT COMMISSION

Sunshine Act Meeting

Correction

In notice document 92–29630 appearing on page 57530 in the issue of Friday, December 4, 1992, in the third column, at the end of the document, the FR Doc. line should read as set forth below:

[FR Doc. 92–29630 Filed 12–2–92; 2:53pm]

BILLING CODE 4410–01–M

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Implementation of Provisions of the Ryan White CARE Act Regarding Emergency Response Employees

Correction

In notice document 92–28206 beginning on page 54794 in the issue of Friday, November 20, 1992, make the following corrections:

1. On page 54794, in the second column, in the **DATES:**, in the second line, "January 19, 1992." should read "January 19, 1993."

2. On page 54795, in the first column, under the definition "*Emergency response employees*", in the ninth line, "normal" should read "nominal".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 159 (Rev.4)]

Delegation of Authority

Correction

In notice document 92–22684 appearing on page 43286 in the issue of Friday, September 18, 1992, make the following correction in the second column, in paragraph c., in the last line, after "ERISA", insert "section".

BILLING CODE 1505–01–D

federal register

Friday
December 11, 1992

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92

Home Investment Partnerships Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R-92-1808; FR-3242-I-02]

RIN 2501-AB42

Home Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements recent statutory amendments concerning insular areas participating in the HOME Investment Partnerships Program. The rule provides the formula for determining allocations to insular areas (Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa). It also provides other requirements for the insular area component of the Program.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2501-0013.

II. Background

This interim rule implements section 211 of the Housing and Community Development Act of 1992. (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992), which amended the National Affordable Housing Act (NAHA) to provide for reserving a portion of HOME funds for grants to insular areas. Section 104 of NAHA, as amended, defines "insular areas" to mean Guam, the Commonwealth of the Northern Mariana Islands (CNMI), the United States Virgin Islands, and American Samoa.

A proposed rule to implement the HOME program for the insular areas was published on August 5, 1992 (57 FR 34640). Although the Department had determined, in accordance with 24 CFR 10.1, that it would be in the public interest to omit public comment on this rule because a formula allocation for insular areas must be in place by the time of the 1993 Fiscal Year (FY) appropriation for the HOME Program, it was not necessary to omit a comment period altogether in order to promulgate an effective rule in time for FY 1993. To give interested parties an opportunity to comment before putting a rule into effect, a comment period of 30 days was permitted.

Comments were received from three of the insular areas: the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and American Samoa. In addition, on August 21, 1992, a meeting was held at the Department's Honolulu Office with HOME Coordinators from the insular areas of Guam, CNMI, and American Samoa to discuss and comment on the proposed rule. The following issues were identified by the comments and meeting:

The comments urged that a final rule be promulgated as quickly as possible in time for FY 1993 funding. The Department agrees that a rule must be in effect for FY 1993 purposes. However, this rule will be made effective as an interim rule rather than a final rule. This is because the HOME Investment Partnerships Program, which this rule amends, is currently implemented by an interim rule, published on December 6, 1991 (56 FR 65313). Because comments have already been received and considered for this rule, in accordance with the procedure explained above, comments are not being solicited here as they ordinarily are for interim rules. At the time that the rule for the entire HOME program is made final, the sections of it that deal with insular areas will also be made final.

Several of the comments pointed out that because of differences in the way land is held in some of the insular areas, the definition of "Homeownership" at § 92.2 would have to be amended for the HOME program to be effective. For example, leases are limited to 55 years in both CNMI and American Samoa. Guam has no lease limitations. In American Samoa, 97 percent of the land is communally held, and therefore residents cannot own land on a fee-simple basis; the only basis for homeownership would be on a lease basis.

It is claimed that problems arise in this regard because "Homeownership" is currently defined, in pertinent part, as, "ownership in fee simple title or a 99 year leasehold interest in a one- to four-unit dwelling or in a condominium unit, ownership or membership in a cooperative, or equivalent form of ownership approved by HUD." For this reason, "Homeownership" will be redefined in this interim rule to include a lease of 40 years or more in the insular areas. This approach is consistent with FHA mortgage insurance requirements, which permit mortgage insurance for leases if the term of the lease is not less than ten years beyond the maturity date of the mortgage.

Several suggestions concerning the funding allocation formula for the insular areas at § 92.50(b)(3) of the proposed rule were made in the comments. That formula was based on section 1 of Pub. L. 102-230, which provided that the Secretary shall reserve for grants to the insular areas an amount that reflects their share of the total population of eligible jurisdictions, and any adjustments that the Secretary determines are reasonable in light of available data that are related to the statutory factors for the basic formula allocation to States and to units of general local government that are metropolitan areas, urban counties, and consortia.

The use of the number of rental units as a part of the allocation formula was criticized by the comments because some insular areas have only recently been producing rental units for the general population and have a limited stock. It was also recommended that the number of households paying more than 30% of their gross income for shelter be used as a factor in the allocation formula. Some comments recommended that the allocation formula should take into account the need for HOME assistance and the unique social and cultural factors present in the insular areas.

The discussion of the Department's proposed funding allocation formula for insular areas has been rendered moot by the recent legislative amendments made to the allocation formula by section 211 of HCDA 1992. The new statutory formula requires the greater of $750,000 or 0.2 percent of HOME funds appropriated to be provided for insular areas, and this rule at § 92.50(b)(3) has been amended accordingly.

Although the formula for allocating funds to the insular areas is changed in this interim rule, number of rental units will continue to be used as a part of the formula for allocating HOME funds among the insular areas. The Department has determined not to make any changes at this time in this allocation formula. As stated in the preamble of the proposed rule, the Department has used share of occupied rental housing as a measure of need based on rental occupancy data. Four of the six formula allocation factors used in determining relative need (see 24 CFR 92.50) are measures of subsets of

occupied rental housing. The Department's experience indicates that there is a reasonably close correspondence between the relative need determined by using these factors, and the relative need determined by using share of occupied rental household. However, these allocation issues will continue to receive consideration as the Department gains experience in administering the HOME program. They will also be considered as a part of an allocation formula study of the entire HOME program that will be performed by the Department this coming year.

The definition in § 92.2 of "unit of general local government" has also been amended to conform to the amendments made by section 211 of HCDA 1992.

Comments also focused on the program requirements, imposed by the proposed rule on insular areas, which differed from those applicable to participating jurisdictions. Comments were received on the provisions at § 92.60(c) that made funding allocations contingent on previous HUD audit findings and outstanding monetary obligations. The concerns expressed on this issue were similar to those made regarding the specific program description requirements of § 92.61(b), the requirement at § 92.62(a) that the program description must be consistent with the approved housing strategy, and the program description amendment procedures of § 92.63, in asking why these requirements were imposed on insular areas but not on participating jurisdictions.

The Department believes that, based on its experience, these provisions provide an appropriate control mechanism for the allocation of program funds to insular areas. This rule represents a considered balancing of options in which some requirements applicable to participating jurisdictions, such as those relating to matching funds or the prohibition on using program funds for administration, are removed, and others, such as those under discussion here, are added. Of course, like other aspects of the rule, these issues will be reexamined at the time that a final rule is promulgated.

With regard to the program description requirements, there was also concern that the 60 days permitted for submission in the proposed rule was insufficient. This interim rule amends § 92.61(a) to permit an additional 30 days for the program description submission.

One comment also requested that the percent of HOME funds that may be used for administration be increased to 20 percent. The Department believes that the 15 percent limit included in the proposed rule, which is the same percentage permitted only for the Indian HOME program (participating jurisdictions may not use any program funds for administration), strikes an appropriate balance between making funds available for administrative purposes while ensuring that the program's housing purposes, which are paramount, are maximized.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because only the four statutorily defined "insular areas" are affected by this rule.

Regulatory Agenda

This rule was listed as item 1370 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have federalism implications concerning the division of local, state, and federal responsibilities. The rule affects the four Federal territories included within the term "insular areas."

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under the rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. The rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if the rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under the rule is required by statute, and is not subject to agency discretion.

List of Subjects in 24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends part 92 of title 24 of the Code of Federal Regulations as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. In part 92, the authority citation continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.2, the definitions of *homeownership* and *unit of general local government* are revised, and the newly defined term *insular areas* is added, to read as follows:

§ 92.2 Definitions.

* * * * *

Homeownership means ownership in fee simple title or a 99 year leasehold interest in a one- to four-unit dwelling or in a condominium unit, ownership or membership in a cooperative, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the

participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest. For purposes of the insular areas, homeownership includes leases of 40 years or more.

* * * * *

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

* * * * *

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; the Federal States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HOME Investment Partnerships Program.

* * * * *

3. The heading for subpart B is revised and an undesignated heading is added immediately after the heading for subpart B, to read as follows:

Subpart B—Allocation Formula and Insular Areas Program Allocation Formula

4. In § 92.50, paragraph (b) is revised to read as follows:

§ 92.50 Formula allocation.

* * * * *

(b) *Amounts available for allocation; state and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving:

(1) For grants to Indian tribes, one percent (or such other percentage or amount, as authorized by Congress) of the total funds appropriated;

(2) Up to such amounts as may be authorized by law for housing education and organization support and for coordinated federal support activities; and

(3) For allocations to insular areas, an amount that is the greater of $750,000 or 0.2 percent of the total funds appropriated.

* * * * *

5. At the end of subpart B, an undesignated heading and new §§ 92.60 through 92.66 are added, to read as follows:

Subpart B—Allocation Formula and Insular Areas Program

Insular Areas Program

92.60 Allocation amounts for insular areas.
92.61 Program description and housing strategy.
92.62 Review of program description and certifications.
92.63 Amendments to program description.
92.64 Applicability of requirements to insular areas.
92.65 Funding sanctions.
92.66 Reallocation.

§ 92.60 Allocation amounts for insular areas.

(a) *Initial allocation amount for each insular area.* The initial allocation amount for each insular area is determined based upon the insular area's population and occupied rental units compared to all insular areas.

(b) *Threshold requirements.* The responsible HUD Field Office shall review each insular area's progress on outstanding allocations made under this section, based on the insular area's performance report, the timeliness of close-outs, and compliance with fund management requirements and pertinent regulations, taking into consideration the size of the allocation and the degree and complexity of the program. If HUD determines from this review that the insular area does not have the capacity to administer effectively a new allocation, or a portion of a new allocation, in addition to allocations currently under administration, HUD may reduce the insular area's initial allocation amount.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not make an allocation to an insular area that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established and agreed to. This restriction does not apply if the Field Office manager finds that the insular area has made a good faith effort to clear the audit and, when there is an outstanding monetary obligation to HUD, the insular area has made a satisfactory arrangement for repayment of the funds due HUD and payments are current.

(d) *Increases to the initial allocation amount.* If funds reserved for the insular areas are available because HUD has decreased the amount for one or more insular area in accordance with paragraphs (b) or (c) of this section, or for any other reason, HUD may increase the allocation amount for one or more of the remaining insular areas based upon the insular area's performance in committing HOME funds within the 24 month deadline, producing housing units described in its program description, and meeting HOME program requirements. Funds that become available but which are not used to increase the allocation amount for one or more of the remaining insular areas will be reallocated to the states as provided in accordance with the requirements in subpart J for reallocating funds initially allocated to a state.

(e) *Notice of allocation amounts.* HUD will notify each insular area, in writing, as to the amount of its HOME allocation that HUD has determined for the insular area in accordance with this section.

§ 92.61 Program description and housing strategy.

(a) *Submission requirement.* Not later than 90 days after HUD notifies the insular area of the amount of its allocation, the insular area must submit a program description to HUD containing the information described in paragraph (b) of this section.

(b) *Content of program description.* The program description must provide the following information:

(1) An executed Standard Form 424;

(2) The estimated use of HOME funds (consistent with needs identified in its approved housing strategy) and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, households assisted;

(3) A timetable for the implementation of the projects or eligible activities;

(4) If the insular area intends to use HOME funds for first-time homebuyers, the guidelines for resale, as required in § 92.254(a)(4);

(5) If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.211;

(6) If an insular area intends to use other forms of investment not described in § 92.205(b), a description of the other forms of investment;

(7) A statement of the policy and procedures to be followed by the insular area to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under §§ 92.350 and 92.351, respectively.

(c) The following certifications must accompany the program description:

(1) A certification that, before committing funds to a project, the insular area will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing;

(2) If the insular area intends to provide tenant-based assistance, the certification required by § 92.211;

(3) A certification that the submission of the program description is authorized under applicable law and the insular area possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(4) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;

(5) A certification that the insular area will use HOME funds pursuant to the insular area's approved housing strategy and in compliance with all requirements of this part;

(6) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and

(7) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

(8) A certification that the insular area agrees to assist HUD to comply with 24 CFR part 50 and shall:

(i) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to such program activities with respect to any eligible property, until HUD approval is received.

(Approved by the Office of Management and Budget under control number 2501–0013)

§ 92.62 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless it is not consistent with the insular area's approved housing strategy, or if the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required by § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the information submitted is not consistent with the approved housing strategy, or the insular area has not submitted information on § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.

(b) *Review period.* The HUD Field Office will notify the insular area if its program description is not consistent with its approved housing strategy, or determinations cannot be made under § 92.61 (b)(4), (b)(6), or (b)(7), or if the proposed projects or activities are beyond currently demonstrated capability, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to show it is consistent or to revise the proposed projects or activities in its program description.

(c) *HOME Investment Partnership Agreement.* After Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the insular area. The funds are obligated on the date HUD notifies the insular area of HUD's execution of the agreement in accordance with this section and § 92.501.

§ 92.63 Amendments to program description.

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes during the fiscal year and must document any other changes in its file. A substantial change involves a change in the guidelines for resale (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)), or a change in tenure type of the project or activities, or a funding increase to a project or activity of $100,000 or 50% (whichever is greater). The HUD Field Office will notify the insular area if its program description, as amended, is not consistent with its approved housing strategy, or determinations cannot be made under § 92.61(b) (b)(4), (b)(6), or (b)(7), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to show it is consistent or to revise the proposed projects or activities in its program description.

§ 92.64 Applicability of requirements to insular areas.

(a) Insular areas are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following.

(1) Subpart E (Program Requirements): Sections 92.208 through 210 do not apply. The prohibition, in § 92.214(a) against using HOME funds to defray administrative cost does not apply, and in addition to the costs listed in § 92.206, administrative costs of an insular area not to exceed 15 percent of the HOME funds provided to the insular area are eligible costs. The matching contribution requirements in §§ 92.218 through 92.221 do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury for each insular area and the HOME funds must be used for approved activities. A local account must be established for repayment, interest and other return of investment of HOME funds. Each insular area may use either a separate local HOME account or a subsidiary account within its general fund (or other appropriate fund) as the local HOME account. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which the funds were deposited in the account;

(B) Any funds that are not expended within five years after the last day of the month in which the funds were deposited in the account; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Cash and Management Information System) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and compliance with Treasury Circular No. 1075 (31 CFR part 205) is required.

(iii) Section 92.503 (Repayment of investment) applies, except that repayments, interest and other return on investment of HOME funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; monitoring) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(6) Subpart L (Performance Reviews and Sanctions): Section 92.522 does not apply. Instead, § 92.65 applies.

(b) The requirement of subpart H (Other Federal Requirements) of this part apply as follows: § 92.352 Environmental review and § 92.359 Executive Order 12372 apply as written, and the requirements of the remaining sections which apply to participating jurisdictions are applicable to the insular areas. In addition, an insular area must advise HUD when it proposes specific properties to be used in its program, and HUD will perform an environmental review with respect to those properties in accordance with 24 CFR part 50. The insular area will supply HUD with available, relevant information necessary for that review, will carry out mitigating measures required by HUD or select alternate eligible property, and will not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to these program activities with respect to any eligible property, until HUD approval is received.

(c) Subpart B (Allocation Formula), subpart C (Participating Jurisdiction: Designation and Revocation of Designation—Consortia), subpart D (Program Description), and subpart G (Community Housing Development Organizations) of this part do not apply.

§ 92.65 Funding sanctions.

Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under § 92.551 fail to remedy a recipient's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

§ 92.66 Reallocation.

HUD will reallocate to the states any HOME funds reduced or recaptured from an insular area, and which are not used to increase the allocation amount for one or more of the remaining insular areas as provided in § 92.60 of this part, in accordance with the requirements in subpart J for reallocating funds initially allocated to a state.

(Approved by the Office of Management and Budget under control number 2501–0013)

Dated: December 3, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92–29941 Filed 12–10–92; 8:45 am]

BILLING CODE 4210-32-M

federal register

Friday
December 11 1992

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Gaming Compact Between the Three Affiliated Tribes and the State of North Dakota, which was enacted on October 7, 1992.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: December 3, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–30079 Filed 12–10–92; 8:45 am]

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federal register

Friday
December 11, 1992

Part IV

Department of the Interior

Bureau of Indian Affairs

Petition for Federal Acknowledgment of Existence as an Indian Tribe; Waccamaw-Siouan Indian Association; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Waccamaw-Siouan Indian Assoc.

November 27, 1992.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the

Waccamaw-Siouan Indian Association, of South Carolina, Inc., 1110 28th Avenue South, Myrtle Beach, South Carolina 29582.

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 16, 1992, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92–30080 Filed 12–10–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Friday
December 11, 1992

Part V

Department of Energy

Strategic Petroleum Reserve; Standard Sales Provisions; Notice

DEPARTMENT OF ENERGY

Strategic Petroleum Reserve; Standard Sales Provisions

AGENCY: Office of Strategic Petroleum Reserve.

ACTION: Notice.

SUMMARY: In the event of a severe energy supply interruption or in order to meet obligations of the United States under the Agreement on an International Energy Program (IEP), the Department of Energy (DOE) may draw down from the Strategic Petroleum Reserve (SPR) and conduct a price competitive sale of SPR petroleum under the Energy Policy and Conservation Act, as amended. 42 U.S.C. 6201 et seq. Today, DOE is publishing Standard Sales Provisions (SSPs) which may be attached to a Notice of Sale issued pursuant to SPR implementing regulations. The SSPs contain or describe contract clauses, terms and conditions of sale, and performance and financial responsibility measures, which may be used in connection with future sales. Today's version is based on experience gained in the late 1990 Test Sale and the 1991 drawdown during "Operation Desert Storm." DOE reserves the option of revising the SSPs at any time prior to issuance of a Notice of Sale.

FOR FURTHER INFORMATION CONTACT:

Nancy Marland, FE–422, Strategic Petroleum Reserve, Office of Technical Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4691.

Gary Landry, FE–4451, Strategic Petroleum Reserve Project Management Office, Acquisition and Sales Division, U.S. Department of Energy, 900 East Commerce Road, New Orleans, Louisiana 70123, (504) 734–4660.

Jocelyn Guarisco, FE–441, Strategic Petroleum Reserve Project Management Office, Office of Chief Counsel, U.S. Department of Energy, 900 East Commerce Road, New Orleans, Louisiana 70123, (504) 734–4294.

Issued in Washington, DC, November 30, 1992.

Berton J. Roth,

Deputy Director, Office of Procurement, Assistance and Program Management.

Until further notice, the SSPs for price competitive sales of petroleum from the SPR are as follows:

STANDARD SALES PROVISIONS

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Section A—General Pre-Sale Information

A.1 List of Abbreviations

(a) *ASO:* Apparently Successful Offeror
(b) *DLI:* Delivery Line Item
(c) *DOE:* U.S. Department of Energy
(d) *MLI:* Master Line Item
(e) *NA:* Notice of Acceptance
(f) *NS:* Notice of Sale
(g) *SSPs:* Standard Sales Provisions
(h) *SPR:* Strategic Petroleum Reserve
(i) *SPRCODR:* SPR Crude Oil Delivery Report (Exhibit H)
(j) *SPR/PMO:* Strategic Petroleum Reserve/Project Management Office

A.2. Definitions

(a) *Affiliate.* The term "affiliate" means associated business concerns of individuals if, directly or indirectly, (1) either one controls or can control the

other, or (2) a third party controls or can control both.

(b) *Business Day.* The term "business day" means any day except Saturday, Sunday or a U.S. Government holiday.

(c) *Contract.* The term "contract" means the contract under which DOE sells SPR petroleum. It is composed of the NS, the NA, the successful offer, and the SSPs incorporated by reference.

(d) *Contracting Officer.* The term "Contracting Officer" means the person executing sales contracts on behalf of the Government, and any other Government employee properly designated as Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his authority.

(e) *Government.* The term "Government", unless otherwise indicated in the text, means the United States Government.

(f) *Head of the Contracting Activity.* The term "Head of the Contracting Activity" means Project Manager, Strategic Petroleum Reserve Project Management Office.

(g) *Notice of Acceptance (NA).* The term "Notice of Acceptance" means the document that is sent by DOE to accept the purchaser's offer to create a contract.

(h) *Notification of Apparently Successful Offeror (ASO).* The term "notification of apparently successful offeror" means the notice, written or oral, by the Contracting Officer to an offeror that it will be awarded a contract if it is determined to be responsible.

(i) *Notice of Sale (NS).* The term "Notice of Sale" means the document announcing the sale of SPR petroleum, the amount, characteristics and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum and provide other pertinent information. (See Exhibit B, Sample Notice of Sale)

(j) *Offeror.* The term "offeror" means any person or entity (including a government agency) that submits an offer in response to a NS.

(k) *Petroleum.* The term "petroleum" means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, temporarily stored in other storage facilities, or in transit to such facilities (including petroleum under contract but not yet delivered to a loading terminal).

(l) *Project Management Office (SPR/PMO).* The term "Project Management Office" means the DOE personnel and DOE contractors located in New Orleans, Louisiana responsible for the operation of the SPR.

(m) *Purchaser.* The term "purchaser" means any person or entity (including a government agency) that enters into a contract with DOE to purchase SPR petroleum.

(n) *Standard Sales Provisions (SSPs).* The term "Standard Sales Provisions" means this set of terms and conditions of sale applicable to price competitive sales of SPR petroleum. These SSPs constitute the "standard sales agreement" referenced in the Strategic Petroleum Reserve "Drawdown" (Distribution) Plan, Amendment No. 4 (December 1, 1982, DOE/EP 0073) to the SPR Plan.

(o) *Strategic Petroleum Reserve (SPR).* The term "Strategic Petroleum Reserve" means that DOE program established by title I, part B of the Energy Policy and Conservation Act, 42 U.S.C. 6201, *et seq.*

(p) *Vessel.* The term "vessel" means a tankship, an integrated tug-barge (ITB) system, a self-propelled barge, or other barge.

A.3 Standard Sales Provisions

(a) These SSPs contain pre-sale information, sales solicitation provisions, and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of petroleum from the SPR in accordance with the SPR Sales Rule, 10 CFR part 625. The NS will specify which of these provisions shall apply to a particular sale of such petroleum, and it may specify any revisions therein and any additional provisions which shall be applicable to that sale. (See Exhibit B, Sample Notice of Sale)

(b) All offerors must, as part of their offers for SPR petroleum in response to a NS, agree without exception to all sales provisions of that NS. The Government will not award a contract to an offeror that has failed to so agree. Offerors shall indicate their agreement by signing the Sales Offer Form (Exhibit A) or an offer form printed out by a computerized system from a diskette provided by the Government.

A.4 Periodic Revisions of the Standard Sales Provisions

DOE will review the SSPs periodically and republish them in the **Federal Register**, with any revisions. When a NS is issued, it will cite the **Federal Register** and the Code of Federal Regulations (if any) in which the latest version of the SSPs was published. Offerors are cautioned that the Code of Federal Regulations may not contain the latest version of the SSPs published in the **Federal Register**. Interested persons may obtain a copy of the current SSPs by writing to the address set forth in Provision No. A.5.

A.5 Sales Offerors' Mailing List

(a) The SPR/PMO will maintain a list of those potential offerors that wish to receive a NS whenever one is issued. In order to assure that prospective offerors will receive the NS or offer forms in a timely fashion, all potential offerors are encouraged to submit the information in (d) as soon as possible. A NS may be issued with a week or less allowed for the receipt of offers. While DOE will use its best efforts to timely supply copies of the NS to persons not on the list who request the NS at the time an SPR petroleum sale is announced, this may not always be feasible in light of the short amount of time available before offers must be received.

(b) Any firm or individual may request to be on the list by sending the following information by letter, telex, telephone or facsimile to: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Acquisition and Sales Division, Mail Stop FE–4451, 900 Commerce Road East, New Orleans, Louisiana 70123. Telephone Number (504) 734–4660; Telex 8109516267 CHODT; Facsimile (504) 734–4947.

The envelope should be marked "SPR Sales Offerors' Mailing List."

(c) Copies of the SSPs and the NS, when one is issued, may also be obtained from this address.

(d) A request to be placed on the mailing list should include the following information:

Name of firm
Mailing address (Street and P.O. Box)
City, State, Zip Code
Name of authorized agent and alternate authorized agent
Telephone numbers for agent and alternate including area code
Agent address, if different from firm represented
Telex number/code
Telephone number for facsimile transmission, including area code
Telephone number for verification of message receipt, including area code
Dun's number

As DOE may use express mail, which cannot be delivered to a Post Office Box, failure to provide a street address could result in untimely receipt of the NS and will be at the offeror's risk.

A.6 Publicizing the Notice of Sale

(a) The NS will be sent to names on the Sales Offerors' Mailing List

referenced in Provision No. A.5. Interested persons may send a representative to the address in Provision No. A.5 to obtain a copy of the NS.

(b) In addition to those on the Sales Offerors' Mailing List, the NS will also be sent to anyone requesting it when a sale is announced. Firms may request the NS by telephone or in writing (letter, telex or facsimile) to the telephone number or address in Provision No. A.5 above.

(c) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

(d) At the option of the Contracting Officer, advertisements may be placed in publications likely to reach interested parties. The advertisements will contain the salient features of the NS and a name and telephone number at the SPR/PMO to call for further information.

A.7 Penalty for False Statements in Offers to Buy SPR Petroleum

A penalty for making false statements is imposed in the False Statements Act, 18 U.S.C. 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Section B—Sales Solicitation Provisions

B.1 Requirements for a Valid Offer—Caution to Offerors

A valid offer to purchase SPR petroleum must meet the following conditions:

(a) The offer guarantee (see Provision No. B.11) must be received no later than the time set for the receipt of offers;

(b) The offer must include a completed Sales Offer Form, i.e., Exhibit A or other form generated by a personal computer disk supplied by DOE for submitting offers, and signed Standard Form 33 (Exhibit C) or other forms as specified in the NS;

(c) The offer must be received no later than the time set for receipt of offers;

(d) Any amendments to the NS that explicitly require acknowledgment of receipt must be properly acknowledged as provided for on Exhibit C; and

(e) The offeror must agree without exception to all provisions of the SSPs that the NS makes applicable to a particular sale, as well as to all provisions in the NS.

B.2 Price Indexing

The Government, at its discretion, may make use of a price indexing mechanism to effect contract price adjustments based on petroleum market conditions, e.g., crude oil market price changes between the times of offer price submissions and physical deliveries. The NS will set forth the provisions applicable to any such mechanism.

B.3 Certification of Independent Price Determination

(a) The offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to: (i) those prices; (ii) the intention to submit an offer; or (iii) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or to any competitor before the time set for receipt of offers, unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person within the offeror's organization responsible for determining the prices being offered, and that the signatory has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (i) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; (ii) as their agent does hereby so certify; and (iii) as their agent has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) An offer will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. If the offeror deletes or modifies (a)(2) above, the offeror must furnish with the offer a signed statement setting forth in detail the circumstances of the disclosure.

B.4 Requirements for Vessels—Caution to Offerors

(a) The "Jones Act", 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin Islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Treasury. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are precluded by Section 506 of the Merchant Marine Act of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limited to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under Section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision No. C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Transportation's interim rule concerning Reception Facility Requirements for Waste Materials Retained on Board (33 CFR parts 151 and 158) implements the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). This rule prohibits any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oily waste reception facilities. SPR marine terminals (see Exhibit E, SPR Delivery Point Data) have Certificates of Adequacy and reception facilities for vessel sludge and oily bilge water wastes, all costs for which will be borne by the vessel. The terminals, however, may not have reception facilities for oily ballast. Accordingly, tankships without segregated ballast systems will be required to make arrangements for and

be responsible for all costs associated with appropriate disposal of such ballast, or they will be denied permission to load SPR petroleum at terminals that lack reception facilities for oily ballast.

(c) By submission of an offer, the offeror certifies that it will comply with the "Jones Act" and all applicable ballast disposal requirements.

B.5 "Superfund" Tax on SPR Petroleum—Caution to Offerors

(a) Sections 4611 and 4612 of the Internal Revenue Code, which imposed a tax on domestic and imported petroleum to support the Hazardous Substance Response Fund (the "Superfund"), were revised by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499; and the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509; the Steel Trade Liberalization Program Implementation Act, Public Law 101–221; and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239. As amended, these sections impose taxes to finance the Hazardous Substance Superfund and the Oil Spill Liability Trust Fund ("Trust Fund").

(b) Section 4611 imposes taxes on domestic crude oil and on imported crude oil to support the Superfund and the Trust Fund. The taxes are imposed on (1) crude oil received at a United States refinery and (2) petroleum products (including crude oil) entered into the United States for consumption, use, or warehousing. Section 4612 provides that no tax is imposed if it is established that a prior tax imposed by section 4611 has already been paid with respect to a barrel of oil. Additionally, as determined by the Secretary of Treasury, the Hazardous Substance Superfund tax and the Oil Spill Liability Trust Fund tax may not be imposed during certain periods when the unobligated balances of the funds reach particular statutorily-prescribed levels.

(c) DOE has already paid the Superfund and Trust Fund taxes on some of the oil imported and stored in the SPR. However, no Superfund or Trust Fund tax has been paid on imported oil stored prior to the effective dates of these Acts or on any domestic oil stored in the SPR. Because domestic and imported crude oil for which no taxes have been paid and crude oils for which Superfund and Trust Fund taxes have been paid have been commingled in the SPR, upon drawdown of the SPR, the NS will advise purchasers of the tax liability.

B.6 Export Limitations and Licensing—Caution to Offerors

(a) Offerors for SPR petroleum are put on notice that SPR crude oils subject to different export control laws have been commingled in storage. Export of SPR crude oil is subject to U.S. export control laws, the provisions of which differ depending on the source of the crude oil and the nature of the proposed export transaction. For example, imported crude oil stored in the SPR may be exported pursuant to applicable Department of Commerce "Short Supply Controls," 15 CFR part 777, if: the export is part of a transaction resulting in the importation of refined products of a quantity and quality not less than would be derived from domestic refining; the products are to be sold at prices no higher than the lowest prices at which they could have been sold by the nearest capable U.S. refinery; and for compelling economic or technological reasons beyond the exporter's control, the crude oil cannot reasonably be processed in the U.S. (15 CFR 777.6(d)(1)(vii)). However, there are somewhat more stringent, independent statutory tests to be met as preconditions to the export of certain other crude oils stored in the SPR, including Alaskan North Slope (ANS) and Naval Petroleum Reserves (NPR) oil. See 7(d) of the Export Administration Act of 1979, 50 U.S.C. App. 2406(d) (ANS oil) and 10 U.S.C. 7430(e) (NPR oil); see also 30 U.S.C. 185(u) (oil shipped across a Mineral Lands Leasing Act Section 28(u) right-of-way) and 43 U.S.C. 1354(a) (OCS oil).

(b) The Department of Commerce "Short Supply Controls" also contain special export provisions for the export of crude oil, including certain Alaskan crude oil, to and for consumption in Canada. See 15 CFR 777.6(d)(1) (viii), (x) and 777(f).

(c) Section 10 of Public Law 101–383 (42 U.S.C. 6241C) provides the President discretionary authority to waive the export control laws with regard to SPR crude oil for the purpose of obtaining refined product for the U.S. market.

(d) By submission of an offer, the offeror certifies that it will comply with any applicable U.S. export control laws.

B.7 Issuance of the Notice of Sale

In the event petroleum is sold from the SPR, DOE will issue a NS containing all of the pertinent information necessary for the offeror to prepare a priced offer. A NS may be issued with a week or less allowed for the receipt of offers. Offerors are expected to examine the complete NS document, and to become familiar with the SSPs cited therein. Failure to do so will be at the offeror's risk.

B.8 Submission of Offers and Modification of Previously Submitted Offers

(a) Unless otherwise provided in the NS, offers must be submitted to the SPR/PMO in New Orleans, Louisiana, by mail or hand-delivery. Any direct cash deposits as offer guarantees shall be sent by wire in accordance with Provision No. C.26.

(b) Unless otherwise provided in the NS, offers may be modified or withdrawn by hand delivery, mail, telegram, or telex, provided that the hand delivery, mail, telegram, or telex is received at the designated office prior to the time specified for receipt of offers.

(c) Envelopes containing offers and any material related to offers shall be plainly marked on the outside; "RE: NS # ____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFERS ARE DUE (insert time of opening), LOCAL NEW ORLEANS, LA TIME ON (insert date of opening). MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE." Envelopes containing modified offers or any material related to supplements or modifications of offers, shall be plainly marked on the outside: "RE: NS # ____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFER MODIFICATION. MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE."

(d) All envelopes shall be marked with the full name and return address of the offeror.

(e) Offers being sent by mail and modifications being sent by hand delivery, mail, telegram, or telex must be received at the address specified in the NS.

(f) Handcarried offers brought during normal business hours on the day set for receipt of offers, or any day prior to that day, shall be taken by the offeror to the place specified in the NS. This includes mail being delivered by a delivery service.

(g) Public opening of offers is not anticipated unless otherwise indicated in the NS. DOE will not release to the general public the identities of the offerors, or their offer quantities and prices, until the Apparently Successful Offerors have been determined. DOE will inform simultaneously all offerors and other interested parties of the successful and unsuccessful offerors and their offer data by means of public "offer posting." The offer posting will

normally occur within a week of receipt of offers and will provide all interested parties access to offer data as well as any DOE changes in the petroleum quantities or quality to be sold. DOE will announce the date, time, and location of the offer posting as soon as practicable.

B.9 Acknowledgment of Amendments to a Notice of Sale

When an amendment to a NS requires acknowledgment of receipt, receipt by an offeror must be acknowledged either by (a) signing and returning the amendment; (b) identifying the amendment number and date in the space provided for this purpose on Standard Form 33 (Exhibit C); or (c) letter, telegram, telex or facsimile sent to the address specified in the NS. Such acknowledgment must be received prior to the time specified for receipt of offers.

B.10 Late Offers, Modifications of Offers, and Withdrawal of Offers

(a) Any offer received at the office designated in the NS after the time specified for receipt will be considered only if it is received before award is made and only under the following conditions:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers (e.g., an offer submitted in response to a NS requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier); or,

(2) It was sent by mail, telegram or telex if authorized, and it is determined by the Contracting Officer that the late receipt was due solely to mishandling by the SPR/PMO after receipt at the address specified in the NS.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in (a) above, except that it shall be mailed not less than the third calendar day prior to the date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or its authorized representative, provided the representative's identity is made known and the representative signs a receipt for the offer, but only if the withdrawal is made prior to the time set for receipt of offers.

(c) The only acceptable evidence to establish:

(1) The date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on either (i) the envelope or wrapper, or (ii) the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification or withdrawal shall be deemed to have been mailed late. Postmark means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

(2) The time of receipt at the address specified in the NS is the time/date stamp at such address on the offer's wrapper or other documentary evidence of receipt maintained at the place of receipt.

(d) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

B.11 Offer Guarantee

(a) Each offeror must submit an acceptable offer guarantee for each offer submitted. Each offer guarantee must be received at the place specified for receipt of offers no later than the time and date set for receipt of offers.

(b) An offeror's failure to submit a timely, acceptable guarantee will result in rejection of its offer.

(c) The amount of each offer guarantee is $10 million or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each master line item, times the highest offer prices that the offeror would have to pay for that master line item if the offer were to be successful. To assist in this calculation, instructions and a worksheet are available at Exhibit J. Submission of the worksheet is not desired.

(d) Each offeror must submit one of the following types of offer guarantees with each offer:

(1) A certified check payable to the U.S. Department of Energy, drawn on a U.S. Bank;

(2) A cash wire deposit to the account of the U.S. Treasury in accordance with Provision No. C.26, all wire deposit costs to be borne by the offeror; or

(3) A standby letter of credit from a U.S. depository institution conforming without exception to the contents required by Exhibit F, Offer Standby Letter of Credit, all letter of credit costs to be borne by the offeror. If the standby letter of credit is from a single depository institution (hereinafter referred to as "bank"), including a branch or an agency of a foreign bank, that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant in the Fed's on-line FEDWIRE funds transfer system. If the standby letter of credit is issued by a syndicate of banks, only the institution acting as agent for the syndicate and responsible for honoring the drafts drawn under the letter of credit must maintain a Fed account and be a participant in the on-line FEDWIRE system. DOE reserves the right to request evidence that the bank official signing the letter of credit is authorized to do so, such as a confirming telex, telephone call, or letter from another bank official, or other appropriate evidence as determined by the Contracting Officer.

(e) If the offeror elects to make an offer guarantee by cash wire deposit, the Sales Offer Form shall be annotated with the statement "Offer guarantee made by cash wire deposit." The amount wired shall be annotated on the bottom of the first page of the offer form. In addition, the information identified in Exhibit I, Instruction Guide for Return of Offer Guarantees by Electronic Transfer or Treasury Check, shall be provided with the offer.

(f) If the offeror or bank forwards the letter of credit separately from the offer, the envelope shall clearly be marked "Offer Standby Letter of Credit (Name of Company)" and also marked in accordance with Provision No. B.8(c). Offerors are cautioned that if they provide more than one Offer Standby Letter of Credit for multiple offers and, due to the absence of clear information from the offeror, the Government is unable to identify which Letter of Credit applies to which offer, the Contracting Officer in his sole discretion may assign the Letters of Credit to specific offers.

(g) The offeror shall be liable for any amount lost by DOE due to the difference between the offer and the resale price, and for any additional resale costs incurred by DOE in the event that the offeror:

(1) Withdraws its offer within 10 days following the time set for receipt of offers;

(2) Withdraws its offer after having agreed to extend its acceptance period; or

(3) Having received a notification of ASO, fails to furnish an acceptable payment and performance guarantee within the time limit specified by the Contracting Officer.

The offer guarantee shall be used toward offsetting such price difference or additional resale costs. Use of the offer guarantee for such recovery shall

not preclude recovery by DOE of damages in excess of the amount of the offer guarantee caused by such failure of the offeror.

(h) Letters of credit furnished as offer guarantees must be valid for at least 60 calendar days after the date set for the receipt of offers.

(i) Offer guarantees (except letters of credit) will be returned to an unsuccessful offeror 5 business days after expiration of the offeror's acceptance period, except as provided in (j) below, and to a successful offeror upon receipt of a satisfactory payment and performance guarantee. All certified checks will be deposited by the Government. Cash offer guarantees (wire transfer or deposited certified check) will be subsequently returned to unsuccessful offerors via electronic transfer or Treasury check. To facilitate this, offerors submitting guarantees by certified check or wire transfer must provide with their offer the information as delineated in Exhibit I. Letters of credit will be returned only upon request. Where the offer guarantee was a cash wire deposit or a certified check, a successful offeror may apply it toward advance payment.

(j) If an offeror defaults on its offer, DOE will hold the offer guarantee so that damages can be assessed against it.

B.12 Explanation Requests From Offerors

Offerors may request explanations regarding meaning or interpretation of the NS from the individual at the telephone number indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the offeror put the question in writing; explanation or instructions regarding these questions will be given as an amendment to the NS.

B.13 Currency for Offers

Prices shall be stated and invoices shall be paid in U.S. dollars.

B.14 Language of Offers and Contracts

All offers in response to the NS and all modifications of offers shall be in English. All correspondence between offerors or purchasers and DOE shall be in English.

B.15 Proprietary Data

If any information submitted in connection with a sale is considered proprietary, that information should be so marked, and an explanation provided as to the reason such data should be considered proprietary. Any final decision as to whether the material so marked is proprietary will be made by DOE. DOE's Freedom of Information Act regulations governing the release of proprietary data shall apply.

B.16 SPR Crude Oil Streams and Delivery Points

(a) The geographical locations of the terminals and docks interconnected with permanent SPR storage locations, the SPR crude oil streams available at each location and the delivery points for those streams are as follows, (See also Exhibit D, SPR Crude Oil Stream Characteristics, and Exhibit E, SPR Delivery Point Data):

Geographical location	Delivery points	Crude oil stream
Freeport, Texas	Phillips Terminal or Phillips Terminal No. 2 Docks.	SPR Bryan Mound Sweet, SPR Bryan Mound Sour, SPR Bryan Mound Maya.
Texas City, Texas.	ARCO Terminal or ARCO Docks.	SPR Bryan Mound Sweet, SPR Bryan Mound Sour.
Nederland, Texas.	Sun Terminal or Sun Docks.	SPR West Hackberry Sweet, SPR West Hackberry Sour.
Lake Charles, Louisiana.	Texaco 22-Inch/ DOE Lake Charles Pipeline Connection.	SPR West Hackberry Sweet, SPR West Hackberry Sour.
St. James, Louisiana.	Capline Terminal, LOCAP Terminal or DOE St. James Terminal Docks.	SPR Weeks Island Sour, SPR Bayou Choctaw Sweet, SPR Bayou Choctaw Sour.

(b) The NS may change delivery points and it may also include additional terminals, temporary storage facilities or systems utilized in connection with petroleum in transit to the SPR. Alternatively, DOE or its contractor may provide the transportation to the purchaser's facility, for example, when the petroleum is in transit to the SPR at time of sale.

(c) The NS may contain additional information supplementing Exhibit E, SPR Delivery Point Data.

B.17 Notice of Sale Line Item Schedule—Petroleum Quantity, Quality, and Delivery Method

(a) Unless the NS provides otherwise, the possible master line items (MLI) and delivery line items (DLI) that may be offered are as provided in Exhibit A, SPR Sales Offer Form. Currently, there are eight MLIs in Exhibit A, one for each of the eight crude oil streams that the SPR has in storage. The NS may offer fewer than the eight possible MLIs.

(b) Each MLI contains several DLIs, each of which specifies an available delivery method and the nominal delivery period. Offerors are cautioned that the NS may alter the period of time covered by each DLI. This is most likely to occur in the first sales period of a drawdown if the period of sale does not correspond to a calendar month.

(1) DLI–A covers petroleum to be transported by pipeline, either common carrier or local. The nominal delivery period is one month.

(2) DLI–B, DLI–C and DLI–D cover petroleum to be transported by tankships: DLI–B, covering tankships to be loaded from the 1st through the 10th of the month; DLI–C, tankships to be loaded from the 11th through the 20th; and DLI–D, tankships to be loaded from the 21st through the last day of the month.

(3) DLI–E, DLI–F and DLI–G cover petroleum to be transported by barges (Caution: These DLIs are currently only applicable to deliveries of West Hackberry Sweet and Sour crude oil streams from Sun Docks): DLI–E, covering barges to be loaded from the 1st through the 10th of the month; DLI–F, barges to be loaded from the 11th through the 20th; and DLI–G, barges to be loaded from the 21st through the last day of the month.

(4) Where the storage site is connected to more than one terminal or pipeline, additional DLIs will be offered. The additional DLIs will include DLI–H, covering petroleum to be transported by pipeline over the period of a month; DLI–I, covering tankships to be loaded from the 1st through the 10th; DLI–J, tankships to be loaded from the 11th through the 20th; and DLI–K, tankships to be loaded from the 21st through the last day of the month. The Notice of Sale will specify which DLIs are offered on each MLI.

(c) The NS will state the total estimated number of barrels to be sold on each MLI. An offeror may offer to buy all or part of the petroleum offered on an MLI. In making awards, the Contracting Officer shall attempt to achieve award of the exact quantities offered by the NS, but may sell a quantity of petroleum in excess of the quantity offered for sale on a particular MLI in order to match the DLI offers received. In addition, the Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if he determines, in his sole discretion after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of

the Government because the prices offered for them are not reasonable, or that, in light of market conditions after offers are received, a lesser quantity than that offered should be sold.

(d) The NS will specify a minimum contract quantity for each DLI. To be responsive, an offer on a DLI must be for at least that quantity.

(e) The NS will specify the maximum quantity that could be sold on each of the DLIs. The maximum quantity is not an indication of the amount of petroleum that, in fact, will be sold on that DLI. Rather, it represents DOE's best estimate of the maximum amount of the particular SPR crude oil stream that can be moved by that transportation system over the delivery period. The total DOE estimated DLI maximums may exceed the total number of barrels to be sold on that MLI, as the NS DLI estimates represent estimated transportation capacity, not the amount of petroleum offered for sale. In order to avoid a competitive advantage for local pipeline owners, e.g., if there are only one or two likely offerors, the NS may omit a pipeline DLI. If this occurs, offerors may bid against vessel DLIs and, if successful, request a contract modification under Provision No. C.6, to permit delivery of the awarded oil to a pipeline.

(f) The NS will not specify what portion of the petroleum that DOE offers on a MLI will, in fact, be sold on any given DLI. Rather, the highest priced offers received on the MLI will determine the DLIs against which the offered petroleum is sold.

(g) DOE will not sell petroleum on a DLI in excess of the DLI maximum; however, DOE reserves the right to revise its estimates at any time and to award or modify contracts in accordance with its revised estimates. Offerors are cautioned that: DOE cannot guarantee that such transportation capacity is available; offerors should undertake their own analyses of available transportation capacity; and each purchaser is wholly responsible for arranging all transportation other than terminal arrangements at the terminals listed in Provision No. B.16, which shall be made in accordance with Provision No. C.5. A purchaser against one DLI cannot change a transportation mode without prior written permission from DOE, although such permission will be given whenever possible, in accordance with Provision No. C.6.

(h) Exhibit D, SPR Crude Oil Stream Characteristics, contains nominal characteristics for each SPR crude oil stream. Prospective offerors are cautioned that these data will likely change as more crude oil is stored in the SPR. The NS will provide, to the maximum extent practicable, the latest data on each stream offered.

B.18 Line Item Information To Be Provided in the Offer

(a) Each offeror, if determined to be an ASO on a DLI, agrees to enter into a contract under the terms of its offer for the purchase of petroleum in the offer and to take delivery of that petroleum (plus or minus 10 percent as provided for in Provision No. C.20) in accordance with the terms of that contract.

(b) An offeror may submit an offer which is for more than one MLI. However, offerors are cautioned that alternate offers on different MLIs are not permitted. For example, an offeror may offer to purchase 1,000,000 barrels of SPR West Hackberry Sweet and 1,000,000 barrels of SPR West Hackberry Sour, but may not offer to purchase, in the alternative, either 1,000,000 barrels of sweet or 1,000,000 barrels of sour.

(c) An offeror may submit multiple offers. However, separate offer forms and offer guarantees must be submitted and each offer will be evaluated on an individual basis.

(d) The following information will be provided to DOE by the offeror on the form in Exhibit A or other forms as required by the NS:

(1) MLI quantity. ("MAXQ" on the Exhibit A offer form) The offeror shall state the maximum quantity of each crude oil stream that the offeror is willing to buy.

(2) DLI quantity. ("DESQ") The offer shall state the number of barrels that the offeror will accept on each DLI, i.e., by the delivery mode and during the delivery period specified. The quantity stated on a single DLI shall not exceed the MAXQ for the MLI. The offeror shall designate a quantity on at least one DLI for the MLI, but may designate quantities on more than one DLI. If the offeror is willing to accept alternate DLIs, the total of its designated DLI quantities would exceed its maximum MLI quantity; otherwise, the total of its designated DLI quantities should equal its maximum MLI quantity.

(3) DLI unit price ("UP$$") and total price. The offer shall state the price per barrel for each DLI for which the offeror has designated a desired quantity, as well as the total price (quantity times unit price). Where offers have indicated quantities on more than one DLI with a different price on each, DOE will award the highest priced DLI first. If the offeror has the same price for two or more DLIs, it may indicate its first choice, second choice, etc., for award of those items; if the offeror does not indicate a preference, or indicates the same preference for more than one DLI, DOE may select the DLIs to be awarded at its discretion. Prices may be stated in hundredths of a cent ($0.0001). DOE shall drop from the offer and not consider any numbers of less than one one-hundredth of a cent.

(4) Minimum DLI quantity acceptable. ("MINQ") The offeror must choose whether to accept only the stated DLI quantity (DESQ) or, in the alternative, to accept any quantity awarded between the offer's stated DLI quantity and the minimum contract quantity for the DLI (indicated by the "N" and "Y" blocks respectively under "MINQ" on the offer form). However, DOE will award less than the DESQ only if the quantity available to be awarded is less than the DESQ. If the offer fails to indicate the offeror's choice, the offer will be evaluated as though the offeror has indicated willingness to accept the minimum contract quantity.

(5) Any other data required by the NS.

B.19 Mistake in Offer

(a) After opening and recording offers, the Contracting Officer shall examine all offers for mistakes. If the Contracting Officer discovers any price discrepancies or quantity discrepancies, he may obtain from the offeror oral or written verification of the offer actually intended, but in any event, he shall proceed with offer evaluation applying the following procedures:

(1) Price discrepancy: An offer for a DLI must contain the unit price per barrel being offered, the desired quantity of barrels to which the unit price applies, and an extension price which is the total of the quantity desired multiplied by the unit price offered. If there is a discrepancy between the unit price and the extension price, the unit price will govern and be recorded as the offer, unless it is clearly apparent on the face of the offer that there has been a clerical error, in which case the Contracting Officer may correct the offer.

(2) Quantity discrepancy: In case of conflict between the maximum MLI quantity and the stated DLI quantities (for example, if a single stated DLI quantity exceeds the corresponding maximum MLI quantity), the lesser quantity will govern in the evaluation of the offer. In the event that the offer fails to specify a maximum MLI quantity, the offer will be evaluated as though the largest stated DLI quantity is the offer's maximum MLI quantity.

(b) In cases where the Contracting Officer has reason to believe a mistake not covered by the procedures set forth in (a) may have been made, he shall

request from the offeror a verification of the offer, calling attention to the suspected mistake. The Contracting Officer may telephone the offeror and confirm the request by telex or facsimile. The Contracting Officer may set a limit of as little as 6 hours for telephone response, with any required written documentation to be received within as little as 2 business days. If no response is received, the Contracting Officer may determine that no error exists and proceed with offer evaluation.

(c) The Head of the Contracting Activity will make administrative determinations described in (1) and (2) below if an offeror alleges a mistake after opening of offers and before award.

(1) The Head of the Contracting Activity may refuse to permit the offeror to withdraw an offer, but permit correction of the offer if clear and convincing evidence establishes both the existence of a mistake and the offer actually intended. However, if such correction would result in displacing one or more higher acceptable offers, the Head of the Contracting Activity shall not so determine unless the existence of the mistake and the offer actually intended are ascertainable substantially from the NS and offer itself.

(2) The Head of the Contracting Activity may determine that an offeror shall be permitted to withdraw an offer in whole, or in part if only part of the offer is affected, without penalty under the offer guarantee, when the offeror requests permission to do so and clear and convincing evidence establishes the existence of a mistake, but not the offer actually intended.

(d) In all cases where the offeror is allowed to make verbal corrections to the original offer, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original offer will stand as submitted.

B.20 Evaluation of Offers

(a) The Contracting Officer will be the determining official as to whether an offer is responsive to the SSPs and the NS. DOE reserves the right to reject any or all offers and to waive minor informalities or irregularities in offers received.

(b) A minor informality or irregularity in an offer is an inconsequential defect the waiver or correction of which would not be prejudicial to other offerors. Such a defect or variation from the strict requirements of the NS is inconsequential when its significance as to price, quantity, quality or delivery is negligible.

B.21 Procedures for Evaluation of Offers

(a) Award on each DLI will be made to the responsible offerors that submit the highest priced offers responsive to the SSPs and the NS and that have provided the required payment and performance guarantee as required by Provision No. C.21.

(b) DOE will array all offers on an MLI from highest price to lowest price for award evaluation regardless of DLI. However, DOE will award against the DLIs and will not award a greater quantity on a DLI than DOE's estimate (which is subject to change at any time) of the maximum quantity that can be moved by the delivery method. Selection of the apparently successful offers involves the following steps:

(1) Any offers below the minimum acceptable price, if any minimum price has been established for the sale, will be rejected as nonresponsive.

(2) All offers on each MLI will be arrayed from highest price to lowest price.

(3) The highest priced offers will be reviewed for responsiveness to the NS.

(4) In the event the highest priced offer does not take all the petroleum available on the MLI, sequentially, the next highest priced offer will be selected until all of the petroleum offered on the MLI is awarded or there are no more acceptable offers. In the event that acceptance of an offer against an MLI or a DLI would result in the sale of more petroleum on an MLI than DOE has offered or the sale of more petroleum on a DLI than DOE estimates can be delivered by the specified delivery method, DOE will not award the full amount of the offer, but rather the remaining MLI quantity or DLI capacity, provided such portion exceeds DOE's minimum contract quantity. In the event that the quantity remaining is less than the offeror is willing to accept, but more than DOE's minimum contract quantity, the Contracting Officer shall proceed to the next highest priced offer.

(5) In the event of tied offers and an insufficient remaining quantity available on the MLI or insufficient remaining capacity on the DLI to fully award all tied offers, the Contracting Officer shall apply an objective random methodology for allocating the remaining MLI quantity or DLI capacity among the tied offers, taking into consideration the quantity the offeror is willing to accept as indicated in its offer. When making this allocation, the Contracting Officer in his sole discretion may do one or more of the following:

(i) Make an additional quantity or capacity available;

(ii) Contact an offeror to determine whether alternative delivery arrangements can be made; or

(iii) Not award all or part of the remaining quantity of petroleum.

(6) The Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers if in his sole discretion he determines, after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable; or if the Government determines, in light of market conditions after offers are received, to sell less than the overall quantity of SPR petroleum offered for sale.

(7) Determinations of ASO responsibility will be made by the Contracting Officer before each award. All ASOs will be notified by telephone and advised to provide to the Contracting Officer, within five business days or such other longer time as the Contracting Officer shall determine, a letter of credit (See Exhibit G, Payment and Performance Letter of Credit) or advance payment as specified in Provision No. C.21. Compliance with required payment and performance guarantees will effectively assure a finding of responsibility of offerors, except where: (i) an offeror is on either DOE's or the Federal Government's list of debarred, ineligible and suspended bidders; or (ii) evidence, with respect to an offeror, comes to the attention of the Contracting Officer of conduct or activity that represents a violation of law or regulation (including an Executive Order); or (iii) evidence is brought to the attention of the Contracting Officer of past activity or conduct of an offeror that shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the offeror's performance under the proposed contract.

B.22 Financial Statements and Other Information

(a) As indicated in Provision No. B.21(b)(7) above, compliance with the required payment and performance guarantee will in most instances effectively assure a finding of responsibility. Therefore, DOE does not intend to ask for financial information from all offerors. However, after receipt of offers, but prior to making award, DOE reserves the right to ask for the audited financial statements for an offeror's most recent fiscal year and

unaudited financial statements for any subsequent quarters. These financial statements must include a balance sheet and profit and loss statement for each period covered thereby. A certification by a principal accounting officer that there have been no material changes in financial condition since the date of the audited statements, and that these present the true financial condition as of the date of the offer, shall accompany the statements. If there has been a change, the amount and nature of the change must be specified and explained in the unaudited statements and a principal accounting officer shall certify that they are accurate. The Contracting Officer shall set a deadline for receipt of this information.

(b) DOE also reserves the right to require the submission of information from the offeror regarding its plans for use of the petroleum, the status of requests for export licenses, and plans for complying with the Jones Act. The Contracting Officer shall set a deadline for receipt of this information.

B.23 Resolicitation Procedures on Unsold Petroleum

(a) In the event that petroleum offered on an MLI remains unsold after evaluation of all offers, the Contracting Officer, at his option, may issue an amendment to the NS, resoliciting offers from all interested parties. DOE reserves the right to alter the MLIs and/or offer different MLIs in the resolicitation.

(b) In the event that for any reason petroleum that has been awarded or allotted for award becomes available to DOE for resale, the following procedures will apply:

(1) If priced offers remain valid in accordance with Provision No. B.24, the petroleum may go to the next highest ranked offer.

(2) If offers have expired in accordance with Provision No. B.24, the Contracting Officer at his option may offer the petroleum to the highest offeror for that MLI. The pertinent offeror may, at its option, accept or reject that petroleum at the price it originally offered. If that offeror rejects the petroleum, it may be offered to the next highest offeror. This process may continue until all the remaining petroleum has been allotted for award.

(3) If the petroleum is not then resold, the Contracting Officer may at his option proceed to amend the NS to resolicit offers for that petroleum or add the petroleum to the next sales cycle.

B.24 Offeror's Certification of Acceptance Period

(a) By submission of an offer, the offeror certifies that its priced offer will remain valid for 10 calendar days after the date set for the receipt of offers, and further that the successful line items of its offer will remain valid for an additional 30 calendar days should it receive a notification of ASO either by telephone or in writing during the initial 10-day period.

(b) By mutual agreement of DOE and the offeror, an individual offeror's acceptance period may be extended for a longer period.

B.25 Notification of Apparently Successful Offeror

The following information concerning its offer will be provided to the apparently successful offeror by DOE in the notification of ASO:

(a) Identification of SPR crude oil streams to be awarded;

(b) Total quantity to be awarded on each MLI and on each DLI;

(c) Price in U.S. dollars per barrel for each DLI;

(d) Extended total price offer for each DLI;

(e) Provisional contract number;

(f) Any other data necessary.

B.26 Contract Documents

If an offeror is successful, DOE will make award using an NA signed by the Contracting Officer. The NA will identify the items, quantities, prices and delivery method which DOE is accepting. Attached to the NA will be the NS and the successful offer. Provisions of the SSPs will be made applicable through incorporation by reference in the NS. The Contracting Officer also shall provide the purchaser with an information copy of the then-current SSPs as published in the Federal Register. DOE may accept the offeror's offer by an electronic notice, such as telegram or telex, and the contract award shall be effective upon the issue of such notice. The electronic notice will be followed by a mailing of the full documentation as described above.

B.27 Purchaser's Representative

As part of its offer, each offeror shall designate an agent as a point of contact for any telephone calls or correspondence from the Contracting Officer. Any such agent shall have a U.S. address and telephone number and must be conversant in English.

B.28 Procedures for Selling to Other U.S. Government Agencies

(a) If a U.S. Government agency submits an offer for petroleum in a price competitive sale, that offer will be arrayed for award consideration in accordance with Provision No. B.21. If a U.S. Government agency is an ASO, award and payment will be made exclusively in accordance with statutory and regulatory requirements governing transactions between agencies, and the U.S. Government agency will be responsible for complying with these requirements within the time limits set by the Contracting Officer.

(b) U.S. Government agencies are exempt from all guarantee requirements, but must make all necessary arrangements to accept delivery of and transport SPR petroleum as set out in Provision No. C.1. Failure by a U.S. Government agency to comply with any of the requirements of these SSPs shall not provide a basis for challenging a contract award to that agency.

Section C Sales Contract Provisions

C.1 Delivery of SPR Petroleum

(a) The purchaser, at its expense, shall make a necessary arrangements to accept delivery of and transport the SPR petroleum, except for terminal arrangements which shall be coordinated with the SPR/PMO. The DOE will deliver and the purchaser will accept the petroleum at delivery points listed in the NS. The purchaser also shall be responsible for meeting any delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents.

(b) For petroleum in the SPR's permanent storage sites, DOE shall provide, at no cost to the purchaser, transportation by pipeline from the SPR to the supporting SPR distribution terminal facility specified for the MLI and, for vessel loadings, a safe berth and loading facilities sufficient to deliver petroleum to the vessel's permanent hose connection. The purchaser agrees to assume responsibility for, to pay for, and to indemnify and hold DOE harmless for any other costs associated with terminal, port, vessel and pipeline services necessary to receive and transport the petroleum, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services other than those provided by DOE or its agent, mooring and line-handling services, tank storage charges and port charges incurred in the delivery of SPR petroleum to the purchaser. The purchaser also agrees to assume responsibility for, to pay for and to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent,

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subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of petroleum sold under a contract incorporating this provision.

C.2 Compliance With the "Jones Act" and the U.S. Export Control Laws

Failure to comply with the "Jones Act," 46 U.S.C. 883, regarding use of U.S.-flag vessels in the transportation of oil between points within the United States, or with any applicable U.S. export control laws affecting the export of SPR petroleum will be considered to be a failure to comply with the terms of any contract containing these SSPs and may result in termination for default in accordance with Provision No. C.29. Purchasers who have failed to comply with the "Jones Act" or the export control laws in SPR sales may be found to be non-responsible in the evaluation of offers in subsequent sales under Provision No. B.21 of the SSPs. Those purchasers may also be subject to proceedings to make them ineligible for future awards in accordance with 10 CFR part 625.

C.3 Storage of SPR Petroleum

Continued storage of purchasers' oil in the SPR facilities after the end of the contract delivery periods is not permitted, unless specifically authorized by the Secretary of Energy and provided for in the NS. Allowing petroleum to remain in storage as the result of failure to complete delivery arrangements may result in assessment of liquidated damages under Provision Nos. C.29 through C.31 unless such failure is excused pursuant to those provisions.

C.4 Environmental Compliance

(a) Vessels to be used for the transportation of petroleum purchased from the SPR will comply with all applicable rules and regulations, including The Ports and Waterways Safety Act, The Federal Water Pollution Control Act of 1972, The Oil Pollution Control Act of 1961, and other applicable statutes, rules and regulations, including the following: Parts 151, 153, 157, 158 and 159 of title 33, and parts 30–38 and 547 of title 46 of the Code of Federal Regulations.

(b) In the event tankships are used in the performance of this contract, the purchaser will employ only tankships whose owners are parties to the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) or who carry equivalent, as determined by the Contracting Officer, liability coverage.

(c) A purchaser using ocean-going tankships or barges for carriage of SPR petroleum must warrant that it has in place the maximum available amount of standard oil pollution insurance coverage through, as applicable, the International Group of Protection and Indemnity Clubs, Water Quality Insurance Syndicate, and membership with the Contract Regarding the Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL), or equivalent coverage. The purchaser must further warrant that such coverage will remain in effect for the duration of each voyage involving the carriage of SPR petroleum.

(d) All petroleum transfer operations in performance of the contract will be in accordance with the guidelines detailed in the International Oil Tanker Safety Guide, U.S. Coast Guard Regulations, and the "Ship to Ship Transfer Guide" of the International Chamber of Shipping Oil Companies International Marine Forum.

(e) Failure of the purchaser or the purchaser's subcontractors to comply with all applicable rules and regulations in the transportation of SPR petroleum will be considered a failure to comply with the terms of any contract containing these SSPs, and may result in termination for default, unless, in accordance with Provision No. C.29, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.5 Delivery and Transportation Scheduling

(a) Unless otherwise instructed in the notification of ASO, each purchaser shall submit a proposed vessel lifting program and/or pipeline delivery schedule to the SPR/PMO by hand-delivery, mail, telex, or facsimile, no later than the fifteenth day prior to the earliest delivery date offered by the NS. The vessel lifting program shall specify the requested three-day loading window for each tanker and the quantity to be lifted. The pipeline schedule will specify the dates for which deliveries are to be tendered to the pipeline and the quantity to be tendered for each date. In the event conflicting requests are received, preference will be given to such requests in descending order, the highest offered price first. The SPR/PMO will respond to each purchaser no later than the tenth day prior to the start of deliveries, either confirming the schedule as originally submitted or proposing alterations. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex, facsimile or express mail notice on the day after dispatch. The purchaser shall be deemed to have agreed to those alterations unless the purchaser requests the SPR/PMO to reconsider within two days after receipt of such alterations. The SPR/PMO will use its best efforts to accommodate such requests, but its decision following any such reconsideration shall be final and binding.

(b) Telex and facsimile telephone numbers, as well as the address to which mailed and hand-carried proposed schedules should be delivered, will be provided in the notification of ASO.

(c) In order to expedite the scheduling process, at the time of submission of each vessel lifting program or pipeline delivery schedule, each purchaser shall provide the DOE Contracting Officer's Representative with a written notice of the intended destination for each cargo scheduled, if such destination is known at that time. For DLIs A or H (pipeline deliveries), the purchaser shall also include, if known, the name of each pipeline in the routing to the final destination.

(d) Notwithstanding paragraph (a) above, ASOs and purchasers may request early deliveries, i.e., deliveries commencing prior to the contractual delivery period. DOE will use its best efforts to honor such requests, unless unacceptable costs might be incurred or SPR schedules might be adversely affected or other circumstances make it unreasonable to honor such requests. DOE's decision following any such consideration for a change shall be final and binding. Requests accepted by DOE will be handled on a first-come, first-served basis, except that where conflicting requests are received on the same day, the highest-priced offer will be given preference. Requests that include both a change in delivery method and an early delivery date may also be accommodated subject to Provision No. C.6. DOE may not be able to confirm requests for early deliveries until 24 hours prior to the load date.

(e) Notwithstanding paragraphs (a) and (d) above, in no event will schedules be confirmed prior to award of contracts.

C.6 Contract Modification—Alternate Delivery Line Items

(a) A purchaser may request a change in delivery method after the issuance of the NA. Such requests may be made either orally (to be confirmed in writing within 24 hours) or in writing, but will require written modification of the contract by the Contracting Officer. Such modification shall be permitted by DOE, provided, in the sole judgment of

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DOE, the change is viewed as reasonable and would not interfere with the delivery plans of other purchasers, and further provided that the purchaser agrees to pay all increased costs incurred by DOE because of such modification. The NS shall establish per barrel rates for such increased costs.

(b) Changes in delivery method will only be considered after the initial confirmation of schedules described in Provision C.5(a) above.

C.7 Application Procedures for "Jones Act" Waivers

(a) Unless otherwise specified in the Notice of Sale, an ASO or purchaser seeking a waiver of the "Jones Act" should submit a request by letter, telegram or telex to: U.S. Customs Service, Chief, Carrier Rulings Branch, 1301 Constitution Avenue, NW., Washington, DC 20229, Telephone No. (202) 566–5706, Telex (710) 822–9525.

Copies of the request should also be sent to:

(1) Assistant Secretary of Defense (Acquisition and Logistics), Department of Defense, Washington, DC 20301–8000;

(2) Associate Administrator for Marketing, Maritime Administration, Department of Transportation, Mail Stop MAR–800, Washington, DC 20590, Telex (710) 822–9426;

(3) Department of Energy, ATTN: Deputy Assistant Secretary for Strategic Petroleum Reserve/ Director, Office of Emergency Planning and Operations, Mail Stop FE–40, Washington, DC 20585, Telex (710) 822–0176.

(4) Contracting Officer, FE–4451, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans LA 70123, Telex (810) 951–6267 CHODT.

(b) A purchaser seeking a waiver to use a vessel built with a Construction Differential Subsidy (and if applicable, operated with Operating Differential Subsidy) should have the owner of that vessel submit a request by letter, telegram, or telex for such waiver(s) to: Maritime Administrator, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Telex (710) 822–9426.

Copies of the request shall be sent to:

(1) U.S. Department of Energy, ATTN: Deputy Assistant Secretary for Strategic Petroleum Reserve/ Director, Office of Emergency Planning and Operations, Mail Stop FE–40, Washington, DC 20585, Telex (710) 822–0176.

(2) Chief, Carriers Rulings Branch, U.S. Customs Service, Department of the Treasury, Washington, DC 20229, Telex (710) 822–9525.

(3) Contracting Officer, FE–4451, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123, Telex (810) 951–6267 CHODT.

For speed and brevity, the request may incorporate by reference appropriate contents of any earlier "Jones Act" waiver request by the purchaser. Under section 805(a) of the Merchant Marine Act of 1936, a hearing is also required for any intervenor, and a waiver may not be approved if it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service.

(c) Any request for waiver should include the following information:

(1) Name, address and telephone number of requestor;

(2) Purpose for which waiver is sought, e.g., to take delivery of so many barrels of SPR crude oil, with reference to the SPR NS number and the provisional or assigned contract number;

(3) Name and flag of registry of vessel for which waiver is sought, if known at the time of waiver request, and either the scheduled 3-day delivery window(s), if available, or 10-day delivery period applicable to the contract;

(4) The intended number of voyages, including the ports for loading and discharging;

(5) Estimated period of time for which vessel will be employed; and

(6) Reason for not using qualified U.S.-flag vessel, including documentary evidence of good faith effort to obtain suitable U.S.-flag vessel and responses received from that effort. Such evidence would include copies of correspondence, telexes, telegrams, and telephone conversation summaries. Use of commercial brokers and the Transportation News Ticker (TNT) is suggested for maximum market coverage. Requests for waivers by telegram or telex may reference such documentary evidence, with copies to be provided by mail, postmarked no more than one business day after transmittal of the telegram or telex requesting the waiver.

(7) For waivers to use Construction Differential Subsidy vessels, the request must also contain a specific agreement for Construction Differential Subsidies payback pursuant to section 506 of the Merchant Marine Act of 1936 and must be signed by an official of the vessel owner authorized to make a payback commitment.

(d) If there are shown to be "Jones Act" vessels available and in a position to meet the loading dates required, no waivers may be approved.

(e) The names of any vessel(s) to be employed under a "Jones Act" waiver must be provided to the U.S. Customs Service no later than 3 days prior to the beginning of the 3-day loading window scheduled in accordance with Provision No. C.5.

C.8 Vessel Loading Procedures

(a) After notification of ASO, each ASO shall provide the SPR/PMO a proposed schedule of vessel loading windows in accordance with Provision No. C.5.

(b) The length of the scheduled loading window shall be 3 days. If the purchaser schedules more than one window, the average quantity to be lifted during any single loading window will be no less than DOE's minimum contract quantity.

(c) Tankships, ITBs, and self-propelled barges shall be capable of sustaining a minimum average load rate commensurate with receiving an entire full cargo within a twenty-four (24) hour pumping time. Barges with a load rate of not less than 4,000 BPH shall be permitted at the Sun Terminal barge docks. With the consent of the SPR/ PMO, lower loading rates and the use of barges at the Sun and Phillips Terminals' suitably equipped tankship docks may be permitted if such do not interfere with DOE's obligations to other parties.

(d) At least 7 days in advance of the beginning of the scheduled loading window, the purchaser shall furnish the SPR/PMO with vessel nominations specifying: (i) name and size of vessel or advice that the vessel is "To Be Nominated" at a later date (such date to be no later than 3 days before commencement of the loading window); (ii) estimated date of arrival (to be narrowed to a firm date not later than 72 hours prior to the first day of the vessel's 3-day window, as provided in paragraph (f) below); (iii) quantity to be loaded and contract number; and (iv) other relevant information requested by the SPR/PMO including but not limited to a copy of the crew list, ship's specifications, last three ports and cargoes, vessel owner/operator and flag, any known deficiencies, and on board quantities of cargo and slops. The listing of all required vessel information shall be provided in the Notice of SDOE will advise the purchaser, in writing, of the acceptance or rejection of the nominated vessel within 24 hours of such nomination. If no advice is furnished within 24 hours, the nomination will be

firm. Once established, changes in such nomination details may be made only by mutual agreement of the parties, to be confirmed by DOE in writing. The purchaser shall be entitled to substitute another vessel of similar size for any vessel so nominated, subject to DOE's approval. DOE must be given at least 3 days' notice prior to the first day of the 3-day loading window of any such substitution. DOE shall make a reasonable effort to accept any nomination for which notice has not been given in strict accordance with the above provisions.

(e) In the event the purchaser intends to use more than one vessel to take delivery of the contract quantity scheduled to be delivered during a loading window, the information in (d) above and (f) below shall be provided for each vessel.

(f) The vessel or purchaser shall notify the SPR/PMO of the expected day of arrival 72 hours before the beginning of his scheduled 3-day loading window. This notice establishes the firm agreed-upon date of arrival which is the 1-day window for the purposes of vessel demurrage (see Provision No. C.9). If the purchaser fails to make notification of the expected day of arrival, the 1-day window will be deemed to be the middle day of the scheduled 3-day window. The vessel shall also notify the SPR/PMO of the expected hour of arrival 72, 48 and 24 hours in advance of arrival, and after the first notice, to advise of any variation of more than 4 hours. With the first notification of the hour of arrival, the Master shall advise the SPR/PMO: (i) Quantity of oily bilge wastes or sludge requiring discharge ashore; (ii) cargo loading rate requested; (iii) number, size, and material of vessel's manifold connections; and (iv) defects in vessel or equipment affecting performance or maneuverability.

(g) Notice of Readiness shall be tendered upon arrival at berth or at customary anchorage which is deemed to be any anchorage within 6 hours vessel time to the SPR dock. The preferred anchorages are identified in Exhibit E. The Notice of Readiness shall be confirmed promptly in writing to the SPR/PMO and the terminal responsible for coordination of crude oil loading operations. Such notice shall be effective only if given during customary port operating hours. If notice is given after customary business hours of the port, it shall be effective as of the beginning of customary business hours on the next business day.

(h) DOE shall use its best efforts to berth the purchaser's vessel as soon as possible after receipt of the Notice of Readiness.

(i) Standard hose and fittings (American Standard Association standard connections) for loading shall be provided by DOE. Purchasers must arrange for line handling, deballasting, tug boat and pilot services, both for arrival and departure, through the terminal or ship's agent, and bear all costs associated with such services.

(j) Tankships, ITBs, and self-propelled barges shall be allowed berth time of 36 hours. Barges loading at Sun Terminal barge dock facilities shall be allowed berth time of three (3) hours plus the quotient determined by dividing the cargo size (gross standard volume barrels) by four thousand (4,000). Vessels loading cargo quantities in excess of 500,000 barrels shall be allowed berth time of 36 hours plus 1 hour for each 20,000 barrels to be loaded in excess of 500,000 barrels. Conditions below excepted, however, the vessel shall not remain at berth more than 6 hours after completion of cargo loading unless hampered by tide or weather.

(1) Berth time shall commence with the vessel's first line ashore and shall continue until loading of the vessel, or vessels in case more than one vessel is loaded, is completed and the last line is off. In addition, allowable berth time will be increased by the amount of any delay occurring subsequent to the commencement of berth time and resulting from causes due to adverse weather, labor disputes, force majeure and the like, decisions made by port authorities affecting loading operations, actions of DOE, its contractors and agents resulting in delay of loading operations (providing this action does not arise through the fault of the purchaser or purchaser's agent), and customs and immigration clearance. The time required by the vessel to discharge oily wastes or to moor multiple vessels sequentially into berth shall count as used berth time.

(2) For all hours of berth time used by the vessel in excess of allowable berth time provided for above, the purchaser shall be liable for dock demurrage and also shall be subject to the conditions of Provision No. C.11.

C.9 Vessel Laytime and Demurrage

(a) The laytime allowed DOE for handling of the purchaser's vessel shall be 36 running hours. For vessels with cargo quantities in excess of 500,000 barrels, laytime shall be 36 running hours plus 1 hour for each 20,000 barrels of cargo to be loaded in excess of 500,000 barrels. Vessel laytime shall commence when the vessel is moored alongside (all fast) the loading berth or 6 hours after receipt of a Notice of Readiness, whichever occurs first. It shall continue 24 hours per day, seven days per week without interruption from its commencement until loading of the vessel is completed and cargo hoses or loading arms are disconnected. Any delay to the vessel in reaching berth caused by the fault or negligence of the vessel or purchaser, delay due to breakdown or inability of the vessel's facilities to load, decisions made by vessel owners or operators or by port authorities affecting loading operations, discharge of ballast or slops, customs and immigration clearance, weather, labor disputes, force majeure and the like shall not count as used laytime. In addition, movement in roads shall not count as used laytime.

(b) If the vessel is tendered for loading on a date earlier than the firm agreed-upon arrival date, established in accordance with Provision No. C.8, and other vessels are loading or have already been scheduled for loading prior to the purchaser's vessel, the purchaser's vessel shall await its turn and vessel laytime shall not commence until the vessel moors alongside (all fast), or at 0600 hours local time on the firm agreed-upon date of arrival, whichever occurs first. If the vessel is tendered for loading later than 2400 hours on the firm agreed-upon date of arrival, DOE will use its best efforts to have the vessel loaded as soon as possible in its proper turn with other scheduled vessels, under the circumstances prevailing at the time. In such instances, vessel laytime shall commence when the vessel moors alongside (all fast).

(c) For all hours or any part thereof of vessel laytime that elapse in excess of the allowed vessel laytime for loading provided for above, demurrage shall be paid by DOE, for U.S.-flag vessels, at the lesser of the demurrage rate in the tanker voyage or charter party agreement, or the most recently available United States Freight Rate Average (USFRA) for a hypothetical tanker with a deadweight in long tons equal to the weight in long tons of the petroleum loaded, multiplied by the most recent edition of the American Tanker Rate Schedule rate for such hypothetical tanker. For foreign flag vessels, demurrage shall be as determined above, except that the London Tanker Brokers' Panel Average Freight Rate Assessment (AFRA) and most recent edition of the New Worldwide Tanker Nominal Freight Scale "Worldscale" shall be used as appropriate, if less than the charter party rate. For all foreign flag vessel loadings that commence during a particular calendar month, the applicable AFRA shall be the one that

is determined on the basis of freight assessments for the period ended on the 15th day of the preceding month. The demurrage rate for barges will be the hourly rate contained in the charter of a chartered barge, or if it is not a chartered barge, at a rate determined by DOE as a fair rate under prevailing conditions. If demurrage is incurred because of breakdown of machinery or equipment of DOE or its contractors (other than the purchaser), the rate of demurrage shall be reduced to one-half the rate stipulated herein per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred. Demurrage payable by DOE, however, shall in no event exceed the actual demurrage expense incurred by the purchaser as the result of the delay.

(d) In the event the purchaser is using more than one vessel to load the contract quantity scheduled to be delivered during a single loading widow, the terms of this provision and the Government's liability for demurrage apply only to the first vessel presenting its Notice of Readiness in accordance with (a) above.

(e) The primary source document and official record for demurrage calculations is the SPRCODR (see Provision No. C.19).

C.10 Vessel Loading Expedition Options

(a) Notwithstanding Provision No. C.8(j)(1) above, in order to avoid disruption in the SPR distribution process, the Government may limit berthing time for any vessel receiving SPR petroleum to that period required for loading operations and the physical berthing/unberthing of the vessel. At the direction of the Government, activities not associated with the physical loading of the vessel (e.g., preparing documentation, guaging, sampling, etc.) may be required to be accomplished away from the berth. Time consumed by these activities will not be for the Government's account. If berthing time is to be restricted, the Government will so advise the vessel prior to berthing of the vessel.

(b) In addition to (a) above, the Government may limit vessels calling at SPR terminals to a total of 24 hours for petroleum transfer operations. In such an event, the loading will be considered completed if the vessel has loaded 95 percent or more of the nominated quantity within a total of 24 hours. If the vessel has loaded less than 95 percent of its nominated quantity, then Provision C.11 shall apply.

C.11 Purchaser Liability for Excessive Berth Time

The Government reserves the right to direct a vessel loading SPR petroleum at a delivery point specified in the NS, to vacate its SPR berth, and absorb all costs associated with this movement, should such vessel, through its operational inability to receive oil at the average rates provided for in Provision No. C.8, cause the berth to be unavailable for an already scheduled follow-on vessel. Furthermore, should a breakdown of the vessel's propulsion system prevent its getting under way on its own power, the Government may cause the vessel to be removed from the berth with all costs to be borne by the purchaser.

C.12 Pipeline Delivery Procedures

(a) No later than the last day of the month preceding the month of delivery, the purchaser shall furnish the SPR/PMO with the following information: (i) confirmation of the pipeline's acceptance of the amount of the petroleum proposed to be delivered in the delivery month; (ii) an estimated schedule (consistent with the terms of the contract) for delivery of the petroleum to the pipeline; and (iii) the name and telephone number of the pipeline point of contact with whom the SPR/PMO should coordinate the petroleum delivery.

(b) Once established, the pipeline delivery schedule can only be changed with DOE's prior written consent. Should the schedule provided by the purchaser in accordance with (a) of this provision vary from the original schedule established in accordance with the provision contained in Provision No. C.5, the Government will provide its best efforts to accommodate this revised schedule but will incur no liability for failure to provide delivery on the dates requested.

(c) The date of delivery, which will be recorded on the CODR (see Provision No. C.19), is the date delivery commenced to the custody transfer point, as identified in the NS.

(d) The purchaser shall receive pipeline deliveries at a minimum average rate of 100,000 barrels per day. The purchaser is solely responsible for making the necessary arrangements with pipeline carriers, including storage, to achieve the stated minimum.

C.13 Title and Risk of Loss

Unless otherwise provided in the NS, title to and risk of loss for SPR petroleum will pass to the purchaser at the delivery point as follows:

(a) For vessel shipment—when the petroleum passes from the dock loading equipment connections to the vessel's permanent hose connection.

(b) For pipeline shipment—as identified in the NS.

(c) For in-transit shipments—when the petroleum passes the permanent flange of the discharging vessel manifold upon discharge into the purchaser's designated marine terminal facility or vessel.

C.14 Acceptance of Crude Oil

(a) When practical, the NS shall update the SPR crude oil stream characteristics shown in Exhibit D, SPR Crude Oil Stream Characteristics. However, the purchaser shall accept the crude oil delivered regardless of characteristics. Except as provided below, DOE assumes no responsibility for deviations in quality.

(b) In the event that the crude oil stream delivered both has a total sulfur content (by weight) in excess of 3.5 percent if Bryan Mound Maya, 2.0 percent if any other sour crude oil stream, or 0.50 percent if a sweet crude oil stream, and, in addition, has an API gravity less than 20°API if Bryan Mound Maya, 26°API if any other sour crude oil stream, or 32°API if a sweet crude oil stream, the purchaser shall accept the crude oil delivered and either pay the contract price adjusted in accordance with Provision No. C.16, or request negotiation of the contract price. Unless the purchaser submits a written request for negotiation of the contract price to the Contracting Officer within 10 days from the date of delivery, the purchaser shall be deemed to have accepted the adjustment of the price in accordance with Provision No. C.16. Should the purchaser request a negotiation of the price and the parties be unable to agree as to that price, the dispute shall be settled in accordance with Provision No. C.36.

C.15 Delivery Acceptance and Verification

(a) The purchaser shall provide written confirmation to SPR/PMO, no later than 72 hours prior to the scheduled date of the first delivery under the contract, the name(s) of the authorized agent(s) given signature authority to sign/endorse the delivery documentation (CODR, etc.) on the purchaser's behalf. Any changes to this listing of names must be provided to the SPR/PMO in writing no later than 72 hours before the first delivery to which such change applies. In the event that an independent surveyor (separate from the authorized signatory agent) is appointed by the purchaser to witness the delivery operation (guaging, sampling, testing, etc.), written

notification must be provided to SPR/PMO, no later than 72 hours prior to the scheduled date of each applicable cargo delivery.

(b) Absence of the provision of the name(s) of bona fide agent(s) and the signature of such agent on the delivery documentation constitutes acceptance of the delivery quantity and quality as determined by DOE and/or its agents.

C.16 Price Adjustments for Quality Differentials

(a) The NS will specify quality price adjustments applicable to the crude oil streams offered for sale. Unless otherwise specified by the NS, quality price adjustments will be applied only to the amount of variation by which the API gravity of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/–0.5 °API) from the API gravity of the crude oil stream contracted for as published in the NS.

(b) Price adjustments for SPR crude oil are expected to be similar to one or more commercial crude oil postings for equivalent quality crude oil. The contract price per barrel shall be increased by that amount if the API gravity of the crude oil delivered exceeds the published API gravity by more than 0.5 °API and decreased by that amount if the API gravity of the crude oil delivered falls below the published API gravity by more than 0.5 °API.

C.17 Determination of Quality

(a) The quality of the crude oil delivered to the purchaser will be determined from samples taken from the delivery tanks in accordance with API Manual of Petroleum Measurement Standards, Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products (ASTM D4057), latest edition; or from a representative sample collected by an automatic sampler whose performance has been proven in accordance with the API Manual of Petroleum Measurement Standards, Chapter 8.2, Automatic Sampling of Petroleum and Petroleum Products (ASTM D4177), latest edition. Preference will be given to samples collected by means of an automatic sampler when such a system is available and operational. Tests to be performed by DOE or its authorized contractor are:

(1) Sediment and Water

Primary methods: API Manual of Petroleum Measurement Standards, Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method (ASTM D473) (IP53), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.8, Sediment in Crude Oil by Membrane Filtration (ASTM D4807), latest edition; and API Manual of Petroleum Measurement Standards, Chapter 10.2, Determination of Water in Crude Oil by Distillation (ASTM D4006) (IP358), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.9, Water in Crude Oil by Coulometric Karl Fischer Titration (ASTM D4928), latest edition.

Alternate methods: API Manual of Petroleum Measurement Standards, Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure) (ASTM D4007) (IP 359), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.4, Standard Methods of Test for Water and Sediment in Crude Oils, (API Pub. 2542) (ASTM D96), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.7, Water in Crude Oil by Karl Fischer Titration (Volumetric) (ASTM D4377), latest edition.

(2) Sulfur

Primary method: ASTM D1552, Sulfur in Petroleum Products (High Temperature Method), latest edition.

Alternate methods: ASTM D2622, Sulfur in Petroleum Products (X-ray Spectographic Method), latest edition; or ASTM D4294, Sulfur in Petroleum Products by Non-Dispersive X-ray Fluorescence Spectrometry, latest edition.

(3) API Gravity

API Manual of Petroleum Measurement Standards, Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products (ASTM D1298), latest edition; or API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method) (ASTM D287), latest edition.

To the maximum extent practicable, the primary methods will be used for determination of SPR crude oil quality characteristics. However, because of conditions prevailing at the time of delivery, it may be necessary to use alternate methods of test for one or more of the quality characteristics. The Government's test results will be binding in any dispute over quality characteristics of SPR petroleum.

(b) The purchaser or his representative may arrange to witness and verify testing simultaneously with the Government Quality Assurance Representatives. Such services, however, will be for the account of the purchaser. Any disputes will be settled in accordance with Provision No. C.36. Should the purchaser opt not to witness the testing, then the Government findings will be binding on the purchaser.

C.18 Determination of Quantity

(a) The quantity of crude oil delivered to the purchaser will be determined by opening and closing tank gauges with adjustment for opening and closing free water and sediment and water as determined from shore tank samples where an automatic sampler is not available, or delivery meter reports. All volumetric measurements will be corrected to net standard volume in barrels at 60 °F, using the API Manual of Petroleum Measurement Standards, Chapter 11.1, Volume 1, Volume Correction Factors (ASTM D1250) (IP 200); Table 5A—Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60 °F; Table 6A—Generalized Crude Oils, Correction of Volume to 60 °F Against API Gravity at 60 °F, latest edition, and by deducting the tanks' free water, and the entrained sediment and water as determined by the testing of composite all-levels samples taken from the delivery tanks; or by deducting the sediment and water as determined by testing a representative portion of the sample collected by a certified automatic sampler, and also corrected by the applicable pressure correction factor and meter factor.

(b) The quantity determination shall be made and certified by the DOE contractor responsible for loading operations, and witnessed by the Government Quality Assurance Representative at the delivery point. The purchaser shall have the right to have representatives present at the gauging/metering, sampling, and testing. Should the purchaser arrange for additional inspection services, such services will be for the account of the purchaser. Any disputes shall be settled in accordance with Provision No. C.36. Should the purchaser not arrange for additional services, then DOE's quantity determination shall be binding on the purchaser.

C.19 Delivery Documentation

The quantity and quality determination shall be documented on the SPR/PMO Crude Oil Delivery Report (SPRCODR), SPRPMO–F–6110.2–14b (Rev 8/91) (see Exhibit H for copy of this form). The SPRCODR will be signed by the purchaser's agent to acknowledge receipt of the quantity and quality of crude oil indicated. In addition, for vessel deliveries, the time statement on

the SPRCODR will be signed by the vessel's Master when loading is complete. Copies of the completed SPRCODR, with applicable supporting documentation (i.e., metering or tank gauging tickets and appropriate calculation worksheets), will be furnished to the purchaser and/or the purchaser's authorized representative after completion of delivery. They will serve as the basis for invoicing and/or reconciliation invoicing for the sale of petroleum as well as for any associated services that may be provided.

C.20 Contract Amounts

The contract quantities and dollar value stated in the NA are estimates. The per barrel unit price is subject to adjustment due to variation in the API gravity from the published characteristics, changes in delivery mode and price index values, if applicable. In addition, due to conditions of vessel loading and shipping or pipeline transmission, the quantity actually delivered may vary by +/−10 percent for each shipment. However, a purchaser is not required to engage additional transportation capacity if sufficient capacity to take delivery of at least 90 percent of the contract quantity has been engaged.

C.21 Payment

(a) Payment for petroleum delivered shall be due on the date stated on the invoice.

(b) Payment shall be made by the payment and performance guarantee which must be either:

(1) A letter of credit conforming without exception to requirements of Provision No. C.22 and Exhibit G, Payment and Performance Letter of Credit and equal to 100 percent of the contract amount; or

(2) An advance payment by cash wire deposit, made in accordance with the wire transfer instructions in Provision No. C.26 and equal to 110 percent of the contract amount.

(c) The purchaser must furnish an acceptable payment and performance guarantee before DOE will execute the NA. The Contracting Officer will inform the ASO by telephone that the guarantee is due within a period which may be as short as 5 business days. The Contracting Officer may, at his discretion, send a confirming telegram of the notification, but the timeliness of receipt for the guarantee is determined by the date of the telephone call.

(d) All wire deposit and letter of credit costs will be borne by the purchaser.

(e) The Contracting Officer (who may act through the SPR/PMO Planning and Financial Management Division) may draw against this payment and performance guarantee at any time after the first delivery for any monies due under the contract for petroleum delivered and at any time for any other monies owing to DOE under the contract, no matter how the debt arose.

C.22 Payment and Performance Letters of Credit—General Requirements

(a) Each letter of credit must conform without exception to the standard letter of credit provided as Exhibit G.

(b) DOE does not require information concerning the issuing bank's agreement with its customer. Any language in the letter of credit in addition to that specified in Exhibit G shall make the letter of credit unacceptable and shall be cause for rejection of the offer.

(c) As set forth in Exhibit G, the letter of credit provides for payment to DOE by wire transfer of funds over FEDWIRE. The banking institutional requirements required for the Payment and Performance Letters of Credit are the same as those required for the Offer Standby Letters of Credit (See Provision No. B.11).

C.23 Billing and Payment—With Purchaser's Letter of Credit

(a) After delivery of the SPR petroleum and completion of the delivery documentation, DOE shall prepare an invoice in accordance with the contract and the delivery documentation.

(b) Upon completion of the invoice, DOE shall prepare a draft requesting a wire transfer of funds in accordance with the letter of credit and transmit that message to the bank issuing the letter of credit by express mail or telex, or via the FEDWIRE system. On the date specified in the draft, the bank shall use the wire transfer procedures specified in the letter of credit to transfer the invoiced funds to the account of the U.S. Treasury. A purchaser is deemed to have received mailed invoices on the second day after their dispatch and telex and express mail invoices on the day after dispatch.

(c) If the draft message is sent to the bank by mail, DOE shall provide both the bank and purchaser copies of the draft message, the invoice, and the CODR. If the draft message is sent to the bank by FEDWIRE or telex, DOE shall provide the bank by mail a copy of the invoice and the CODR, and the purchaser a copy of the draft message, invoice, and the CODR.

(d) In the event that the bank refuses to honor the draft against the letter of credit, the purchaser shall be responsible for paying the principal and any interest due (see Provision No. C.27) from the due date specified in the draft.

(e) Within 30 calendar days after final payment under the contract, the Contracting Officer shall authorize the cancellation of the letter of credit and shall return it to the bank or financial institution issuing the letter of credit. A copy of the notice of cancellation will be provided to the purchaser.

C.24 Billing and Payment—With Purchaser's Advance Payment

(a) If the offeror elects to pay in advance, delivery documentation will be provided to the purchaser after each delivery. After the last delivery under the contract, a reconciliation billing will be made. If money is due from the purchaser to DOE, an invoice will be issued to the purchaser (see paragraph (b) below). If money is due the purchaser, funds will be returned via electronic transfer or Treasury check. Purchasers should provide the SPR/PMO the information as delineated in Exhibit I. See Provision B.11(i) for return of funds via electronic transfer or Treasury check.

(b) In accordance with the delivery documentation and the contract, DOE shall determine the amount of any reconciliation invoice and transmit it to the purchaser by express mail, mail or telex. A purchaser is deemed to have received mailed invoices on the second day after their dispatch and telex and express mail invoices on the day after dispatch. Reconciliation invoices must be paid in accordance with provision No. C.26 by the date stated in the invoice.

C.25 Replacement of Funds in the Payment and Performance Guarantee

(a) Payment and performance guarantees must be maintained in full force and effect to the Contracting Officer's satisfaction at the following minimum levels until final payment under the contract:

(1) Letter of credit at 100 percent of the contract price of the petroleum remaining to be paid for; and

(2) Advance payment at 110 percent of the contract price of the petroleum remaining to be delivered.

(b) If the Contracting Officer draws against the letter of credit, or makes charges against the advance payment, for monies owed DOE for oil delivered, for liquidated damages or for other funds due DOE, the purchaser shall be notified within 24 hours by express mail, mail or telex of the fact of such withdrawal or charge and the amount thereof. Purchaser is deemed to have received a mailed notice on the second business day after its dispatch and a

telex or express mail notice the next business day after its dispatch.

(c) In the event a draw against the payment and performance guarantee causes its amount to fall below the levels specified in (a) above, the purchaser shall, within two business days after it is deemed to have received notification in (b) above, replenish the payment and performance guarantee to those levels. Such replenishment shall be made either by the wire transfer of funds in accordance with Provision No. C.26, or by the provision of a new letter of credit or amendment of the old letter of credit. If such replenishment is not made within two business days, the Contracting Officer may, on the 3rd business day, without prior notice to the purchaser withhold deliveries under the contract and/or terminate the contract in whole or in part for default under Provision No. C.29.

(d) Notwithstanding (a) above, the Contracting Officer shall exercise discretion as to when the letter of credit or advance payment must be increased because of the effect of the price indexing mechanism provided for by Provision No. B.2. The Purchaser shall increase the guarantee level within two business days of being notified of a deficiency by the Contracting Officer by telex, express mail or facsimile. The purchaser shall be deemed to have received notice of the deficiency the next business day after the dispatch of the telex, express mail, or facsimile. If such replenishment is not made within two business days after purchaser is deemed to have received the notice of deficiency, the Contracting Officer may, without prior notice to the purchaser, withhold deliveries, in whole or in part, under the contract and/or terminate the contract in whole or in part under Provision No. C.29.

C.26 Method of Payments—General

(a) Notwithstanding any other contract provision, DOE may via a draft message request a wire transfer of funds at any time for payment of monies due under the contract. These would include but not be limited to, interest, liquidated damages, demurrage, amounts owing for any services provided for under the contract, and the difference between the contract price and price received on the resale of undelivered petroleum as defined in Provision No. C.29. If the invoice is for delinquent payments, interest shall accrue from the payment due date.

(b) All amounts payable by the purchaser shall be paid by wire transfer as a deposit to the account of the U.S. Treasury through FEDWIRE. The NS will specify the information which must be included on each wire transfer.

(c) DOE may designate another place, different timing, or another method of payment after reasonable written notice to the purchaser.

(d) No payment due DOE hereunder shall be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

(e) If a purchaser disagrees with the amounts invoiced by DOE, the purchaser immediately shall pay the amount invoiced, and notify the Contracting Officer of the basis for its disagreement. The Contracting Officer will receive and act upon any such objection asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute, and purchaser shall file a claim promptly in accordance with Provision No. C.36.

C.27 Interest

(a) Amounts due and payable by the purchaser or its bank that are not paid in accordance with the provisions governing such payments shall bear interest from the date due until the date payment is received by the Government.

(b) Interest shall be computed on a daily basis. The interest rate shall be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Act of 1982 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the **Federal Register**.

C.28 Government Options if Payment Is Not Received

(a) If any amount owed to DOE is not paid within the time deadlines specified by the applicable provisions, the Contracting Officer may, at his discretion, take the following actions either simultaneously or in any sequence he deems appropriate, with or without prior notice to the purchaser:

(1) Invoice the purchaser for the amount on which payment is delinquent or provide written notice that payment is delinquent;

(2) Draw against the letter of credit for all amounts due and delinquent;

(3) Apply any advance payment received against the amount due and delinquent;

(4) Withhold all or any part of future deliveries under the contract; and/or

(5) Terminate the contract, in whole or in part, for purchaser default, in accordance with Provision No. C.29.

(b) Any disputes will be settled by the Contracting Officer in accordance with Provision No. C.36.

C.29 Termination

(a) Immediate Termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser effective upon its being deposited in the U.S. Postal System addressed to the purchaser as provided in Provision No. C.35 in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice shall invite the purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under subparagraph (b)(1)(ii) of this provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under subparagraphs (b)(2) and (b)(3) whether such failure was excusable under the terms of the contract. The Contracting Officer shall promptly give the purchaser written notice of such determination.

(3) Any immediate termination other than one determined to be a termination for default in accordance with subparagraph (a)(2) and paragraph (b) of this provision shall be a termination for the convenience of DOE without liability of the Government.

(b) Termination for Default.

(1) Subject to the provisions of subparagraphs (b)(2) and (b)(3), the Contracting Officer may terminate the contract in whole or in part for purchaser default, without liability to DOE, by written notice to the purchaser, effective upon its being deposited in the U.S. Postal System, addressed to the purchaser as provided in Provision No. C.35 in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of petroleum in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the

contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser shall not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes shall include but are not limited to:

(i) Acts of God or the public enemy;

(ii) Acts of the Government acting in its sovereign or contractual capacity;

(iii) Fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

(iv) Strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser shall not be determined to be in default or to be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) Such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) Such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's petroleum by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser shall be liable to DOE for:

(i) The difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the petroleum; and

(ii) Liquidated damages as specified in Provision No. C.31 as fixed, agreed, liquidated damages for each day of delay until the petroleum is delivered to a purchaser under either a resolicitation for the sale of the quantities of oil defaulted on, or an NS issued after the date of default that specifies that it is for the sale of quantities of oil defaulted on. In no event shall liquidated damages be assessed for more than 30 days.

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's failure to perform was excused in accordance with subparagraphs (2) and (3), the rights and obligations of the parties shall be the same as if such termination was a termination for convenience without liability of the Government under paragraph (c).

(c) Termination for Convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Such termination shall be without liability of the Government if such termination arises out of causes specified in (a)(1) or (b)(1) above, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of SPR crude oil under this contract) and agents. For any other termination for convenience, the Government shall be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances shall the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any decrease of petroleum deliveries greater than 10 percent, or of termination, under this paragraph (c). The termination or reduction shall be effective upon its notice being deposited in the U.S. Postal System unless otherwise specified in the notice. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex or express mail notice on the day after dispatch.

(3) Termination for the convenience of the government shall not excuse the purchaser from liquidated damages accruing prior to the effective date of the termination.

(d) Nothing herein contained shall limit the Government in the enforcement of any legal or equitable remedy that it might otherwise have, and a waiver of any particular cause for termination shall not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) above, the Contracting Officer may sell any undelivered petroleum under such terms and conditions as he deems appropriate.

(f) DOE's ability to deliver petroleum on the date on which the defaulted purchaser was scheduled to accept delivery, under another contract awarded prior to the date of the contractor's default, shall not excuse a purchaser that has been terminated for default from either liquidated damages or the difference between the contract price and any lesser price obtained on resale.

(g) Any disagreement with respect to the amount due the Government for either resale costs or liquidated damages shall be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.36.

(h) The term *subcontractor* or *subcontractors* includes subcontractors at any tier.

C.30 Other Government Remedies

(a) The Government's rights under this provision are in addition to any other right or remedy available to it by law or by virtue of this contract.

(b) The Government may, without liability on its part, withhold deliveries of petroleum under this contract or any other contract the purchaser may have with DOE if payment is not made in accordance with this contract.

(c) If the purchaser fails to take delivery of petroleum in accordance with the delivery schedule developed under the terms of the contract, and such tardiness is not excused under the terms of Provision No. C.29, but the Government does not elect to terminate that item for default, the purchaser nonetheless shall be liable to the Government for liquidated damages in the amount established by Provision No. C.31 for each calendar day of delay or fraction thereof until such time as it accepts delivery of the petroleum. In no event shall such damages be assessed for longer than 30 days. No purchaser that fails to perform in accordance with the terms of the contract shall be excused from liability for liquidated damages by virtue of the fact that DOE is able to deliver petroleum on the date on which the non-performing purchaser was scheduled to accept delivery, under another contract awarded prior to the date of default.

C.31 Liquidated Damages

(a) In case of failure on the part of the purchaser to perform within the time fixed in the contract or any extension thereof, the purchaser shall pay to the Government liquidated damages in the amount of 1 percent of the contract price of the undelivered petroleum per calendar day of delay or fraction thereof in accordance with paragraph (b) of

Provision No. C.29 and paragraph (c) of Provision No. C.30.

(b) As provided in (a) above, liquidated damages will be assessed for each day or fraction thereof a purchaser is late in accepting delivery of petroleum in accordance with this contract, unless such tardiness is excused under Provision No. C.29. For petroleum to be lifted by vessel, damages will be assessed in the event that the vessel has not commenced loading by 11:59 p.m. on the second day following the last day of the 3-day delivery window established under Provision No. C.5, unless the vessel has arrived in roads and its Master has presented a notice of readiness to the Government or its agents. Liquidated damages shall continue until the vessel presents its notice of readiness. For petroleum to be moved by pipeline, if delivery arrangements have not been made by the last day of the month prior to delivery, liquidated damages shall commence on the 3rd day of the delivery month until such delivery arrangements are completed; if delivery arrangements have been made, then liquidated damages shall begin on the 3rd day after the scheduled delivery date if delivery is not commenced and shall continue until delivery is commenced.

(c) Any disagreement with respect to the amount of liquidated damages due the Government will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.36.

C.32 Failure to Perform Under SPR Contracts

In addition to the usual debarment procedures, 10 CFR 625.3 provides procedures to make purchasers that fail to perform in accordance with these provisions ineligible for future SPR contracts.

C.33 Government Options in Case of Impossibility of Performance

(a) In the event that DOE is unable to delivery petroleum contracted for to the purchaser due either to events beyond the control of the Government, including actions of the purchaser, or to acts of the Government, its agents, its contractors or subcontractors at any tier, the Government at its option may do either of the following:

(1) Terminate for the convenience of the Government under Provision No. C.29; or

(2) Offer different SPR crude oil streams or delivery times to the purchaser in substitution for those specified in the contract.

(b) In the event that a different SPR crude oil stream than originally contracted for is offered to the purchaser, the contract price will be negotiated between the parties. In no event shall the negotiated price be less than the minimum acceptable price, if established for the same or similar crude oil streams in the most recent NS or determined after the opening of offers.

(c) DOE's obligation in such circumstances is to use its best efforts, and DOE under no circumstances shall be liable to the purchaser for damages arising from DOE's failure to offer alternate SPR crude oil streams or delivery times.

(d) If the parties are unable to reach agreement as to price, crude oil streams or delivery times, DOE may terminate the contract for the convenience of the Government under Provision No. 29.

C.34 Limitation of Government Liability

DOE's obligation under these SSPs and any resultant contract is to use its best efforts to perform in accordance therewith. The Government under no circumstances shall be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided herein; neither shall the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C.35 Notices

(a) Any notices required to be given by one party to the contract to the other in writing shall be forwarded to the addressee, prepaid, by U.S. registered, return receipt requested mail, express mail, telegram, or telex. Parties shall give each other written notice of address changes.

(b) Notices to the purchaser shall be forwarded to the purchaser's address as it appears in the offer and in the contract.

(c) Notices to the Contracting Officer shall be forwarded to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Acquisition and Sales Division, Mail Stop FE–4451, 900 Commerce Road East, New Orleans, Louisiana 70123.

C.36 Disputes

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who shall issue a written decision on the dispute in the manner specified in 48 CFR 1–33.211.

(b) *Claim* means:

(1) A written request submitted to the Contracting Officer;

(2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendments to such requests for payment exceeding $50,000, the purchaser shall certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's Name _____
Signature _____
Title _____

(d) The Government shall pay to the purchaser interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semiannually in the **Federal Register**.

(e) The purchaser shall pay to DOE, interest on the amount found due to the Government and unpaid on claims submitted under this provision at the rate specified in Provision No. C.27 from the date the amount is due until the purchaser makes payment.

(f) The decision of the Contracting Officer shall be final and conclusive and shall not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with

performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.37 Assignment

The purchaser shall not make or attempt to make any assignment of a contract that incorporates these SSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (41 U.S.C. 15), which provides:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.38 Order of Precedence

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency shall be resolved by giving precedence in the following order:

(a) The NA and written modifications thereto;

(b) The NS;

(c) Those provisions of the SSPs (as published in the **Federal Register**) made applicable to the contract by the NS;

(d) The instructions to the SPR Sales Offer Form; and

(e) The successful offer.

C.39 Gratuities

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; *provided*, that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which shall not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

C.40 Officials Not to Benefit

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Exhibits

A—SPR Sales Offer Form
B—Sample Notice of Sale
C—Solicitation, Offer and Award—Standard Form 33
D—SPR Crude Oil Stream Characteristics
E—SPR Delivery Point Data
F—Offer Standby Letter of Credit
G—Payment and Performance Letter of Credit
H—Form SPRPMO–F–6110.2–14b (Rev 8/91)—SPR Crude Oil Delivery Report
I—Instruction Guide for Return of Offer Guarantees by Electronic Transfer or Treasury Check
J—Offer Guarantee Calculation Worksheet

BILLING CODE 6450-01-M

Strategic Petroleum Reserve Sales Offer Form

INSTRUCTIONS

1. Maximum MLI Quantity (MAXQ)

For each MLI offered against, offers shall state here, in thousands of barrels, the number of barrels which the offeror seeks to purchase on the MLI, regardless of delivery method. The maximum MLI quantity shall be not less than the DOE's minimum quantity as stated in the Notice of Sale (NS).

2. Delivery Line Items (DLI)

Applicable DLI delivery methods are as follows:

DLI A	Pipeline delivery from first terminal
DLI B, C, D	Tanker delivery from first terminal
DLI E, F, G	Barge delivery from first terminal
DLI H	Pipeline delivery from second terminal
DLI I,J,K	Tanker delivery from second terminal

DLI A and H nominally have a 30-day delivery period. Vessel DLIs B, E, and I have ten day delivery periods nominally from the 1st to the 10th; C, F, and J cover the 11th to the 20th; and D, G, and K cover the 21st to the last day of the period of sale. Not all DLIs may be available on a particular MLI. For example, barges are allowed only at the Sun Terminal barge docks (with certain limited exceptions, see SSP No. C.8). Therefore, only MLI 004 and MLI 005 have DLIs E, F, and G. Buyers are cautioned to read the NS carefully as it may alter the period of time covered by each DLI if the period of sale does not correspond to a calendar month.

3. Unit Price (UP$)

The offer shall state the offered price per barrel on each DLI for which the offer indicates a desired DLI quantity. The offer may state either the same unit price for different DLIs or different unit prices. DOE will award the highest price first. Prices may be stated to one-hundredths of a cent ($0.0001), but in no smaller fraction thereof.

4. Delivery Preference (P)

Where the offer has the same unit price for two or more DLIs on the same MLI, the offer may indicate the offerors order of preference for delivery method and period (1st, 2nd, 3rd, etc.). If the offer does not indicate a preference, DOE will select the DLIs to be awarded at its discretion.

5. Desired DLI Quantity (DESQ)

Offers must indicate at least one desired DLI, stating (in thousands of barrels) the number of barrels which the offeror will accept by the delivery method and during the delivery period established for that DLI. An offeror may indicate a willingness to accept alternate delivery methods or delivery periods. An offeror may request all, part or none of the offer's maximum MLI quantity on any particular DLI. A total of all the offeror's desired DLI quantities should total at least the maximum MLI quantity, but could exceed the maximum MLI quantity if the offeror is willing to accept alternate delivery methods or periods. For example, the offer could state:

MLI: 001
Maximum MLI Quantity: 1,000
Desired DLI Quantities:
DLI 001B: 1,000
DLI 001C: 1,000
DLI 001D: 1,000

This would indicate the offeror would be willing to accept one million barrels of Bryan Mound sweet to be delivered to its vessels either from the 1st through the 10th, the 11th through the 20th, or 21st through the end of the month.

6. Minimum Contract Quantity (MINQ)

For each DLI on which an offer is made, the offeror should indicate his willingness to accept as little as DOE's specified minimum contract quantity for that DLI by marking the 'Y' block, or unwillingness to accept less than the DESQ for that DLI by marking the 'N' block. If neither 'Y' or 'N' is indicated, the offer will be evaluated as though the offeror had indicated a 'Y'. DOE only will award less than the offeror's desired DLI quantity if an offer is otherwise successful, but the quantity which DOE has available for award is less than said desired DLI quantity or award of the desired quantity would cause the offeror's MAXQ on the MLI to be exceeded.

7. Total Price

The offer shall calculate the total price (desired DLI quantity times unit price) for each DLI on which an offer is made. The offeror is reminded that DESQ is stated in thousands of barrels.

8. Offer Guarantee

The amount of the offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each MLI times the highest offer prices that the offeror would have to pay for that MLI if the offer is successful. To assist in this calculation, instructions and a worksheet are available at Exhibit J. Submission of the worksheet is not mandatory.

Exhibit A

Strategic Petroleum Reserve Sales Offer Form

Offeror Information

Name

Address

City

State

Zipcode

Country

Telephone

Offer Guarantee

Agent Information

Name

Address

City

State

Zipcode

Country

U S A

Telephone

Exihibit A

Offer

DLI=Delivery Line Item (*2, 5)
UP$$=Unit Price (U.S. $)/BBL (*3)
P=Preference (*4)

* = See Instructions

MAXQ=Maximum MLI Quantity (1000 BBL) (*1)
DESQ=Desired DLI Quantity (1000 BBL) (*5)
MINQ=Minimum Contract Quantity (1000 BBL) (*6)

Bryan Mound Sweet MLI 001 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Bryan Mound Sour MLI 002 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Bryan Mound Maya MLI 003 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

West Hackberry Sweet MLI 004 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Exhibit A

Offer

DLI=Delivery Line Item (*2, 5)
UP$=Unit Price (U.S. $)/BBL (*3)
P=Preference (*4)

* = See Instructions

MAXQ=Maximum MLI Quantity (1000 BBL) (*1)
DESQ=Desired DLI Quantity (1000 BBL) (*5)
MINQ=Minimum Contract Quantity (1000 BBL) (*6)

West Hackerry Sour MLI 005 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Weeks Island Sour MLI 006 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Bayou Choctaw Sweet MLI 007 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

Bayou Choctaw Sour MLI 008 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$
		▲				$

By signing below the offeror certifies agreement without exception to all terms and conditions applicable to this sale and that the maximum potential contract amount (Instruction 8) is $_____

Signature: Offeror or Agent _____

Company Name _____

Exhibit A

Exhibit B - Sample Notice of Sale (NS)

1 NS No. DE-NS96-92P0x000x is issued (date) for sale of Strategic Petroleum Reserve (SPR) crude oil. All references to "Provision No." refer to the Standard Sales Provisions (SSPs) published in the Federal Register (date). All provisions are applicable to this sale except that provision No(s). (give number or numbers) are supplemented or modified to read: (give changes). Additional requirements applicable to this sale are as follows: (give text).

(Note: Should the SSPs be extensively changed, the Notice of Sale (NS) may include, for information purposes only, a complete text of the SSPs as modified for the sale. Offerors are cautioned, however, that these complete text SSPs have no contractual status and that in the event of any inconsistencies, the published SSPs and the NS shall establish the terms and conditions for the sale.)

2. Mailed and handcarried offers and offer guarantees must be received by 1:00 p.m. local time on (date) at (address). Offer guarantees sent by wire transfer must also be received at the U.S. Treasury by the time stated above.

3. Offerors must give names, addresses and telephone numbers, including area codes, for authorized representative of the offeror with whom the Government may conduct any necessary discussions, including financial.

4. Direct questions regarding NS to (name of individual), telephone (504) 734-4660. Collect calls will not be accepted.

5. Master Line Item (MLI) numbers given herein refer to those schedules attached as Exhibit A of the SSPs. The quantities for each MLI offered for sale are as follows:

MLI 001: _____ bbls; MLI 002 not offered this sale; MLI 003: _____ bbls; MLI 004: _____ bbls; MLI 005 not offered this sale; MLI 006 not offered this sale; MLI 007: _____ bbls; MLI 008: _____ bbls.

6. Offered delivery line items (DLI) and their maximums, i.e., offered DLIs and the Department of Energy's best estimates of the maximum amount of petroleum that can be moved by each delivery line item transportation system over the delivery period, are as follows (see provision No. B.17 of the SSPs):

7. Minimum quantities which will be awarded for each delivery line item (DLI) are as follows:

8. Delivery line item A, for pipeline delivery, is not offered under MLI 001. Offerors wishing to take delivery of MLI 001 by pipeline should offer to purchase quantities under delivery line items B, C, and D. If successful, purchasers may modify delivery method under Provision No. C.6.

9. Consideration to be paid for alteration of contract delivery modes in accordance with provision No. C.6 is as follows:

10. Applicable quality differentials are plus or minus _____¢ per degree API gravity, or part thereof, for sweet crude oil streams, and plus or minus _____ per one-tenth degree API gravity for sour crude oil streams. These quality adjustments will only be applied to the amount of variation by which the API gravity of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/- 0.5° API) from the API gravity of the crude oil stream contracted for as published in this Notice of Sale.

11. The following information is provided in connection with SSP Provision No. B.4 "'Superfund' tax on SPR petroleum - caution to offerors":

12. All offerors and purchasers are cautioned that, if the letters of credit contained in Exhibits F and G to the SSPs are altered in any manner, no matter how minor, such alterations are at the peril of the offerors/purchasers and may lead torejection of a letter of credit. It is recommended, therefore, that offerors/purchasers review and proofread letters of credit issued on their behalf, to assure their full compliance with the above cited Exhibits.

EXHIBIT C

OMB Approved No. 9000-0008

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶	RATING	PAGE OF PAGES

2. CONTRACT NO.	3. SOLICITATION NO.	4. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.

7. ISSUED BY	CODE	8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ *(Hour)* local time _____ *(Date)*

CAUTION – LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ▶	A. NAME	B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)*

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE				PART II – CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV – REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52.232-8)* ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE ☐	17. SIGNATURE	18. OFFER DATE

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )	23. SUBMIT INVOICES TO ADDRESS SHOWN IN ▶ *(4 copies unless otherwise specified)*	ITEM

24. ADMINISTERED BY *(If other than Item 7)*	CODE	25. PAYMENT WILL BE MADE BY	CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT – Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-8064
PREVIOUS EDITION NOT USABLE

33-134

STANDARD FORM 33 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

☆ GPO : 1985 O - 491-248 (20232)

EXHIBIT D

SPR CRUDE OIL ANALYSIS
Bryan Mound Sweet, MLI 001

Whole Crude

Specific Gravity, 60/60° F	0.8446	Ni, ppm	3.7	RVP, psi @ 100° F	6.90		
API Gravity	36.0	V, ppm	4.8	TAN, mg KOH/g	0.04		
Sulfur, Wt. %	0.34	Fe, ppm	2.8	Mercaptan Sulfur, ppm*	10.4		
Nitrogen, Wt. %	0.109	Org. Cl, ppm	0.5	H_2S Sulfur, ppm*	0.2		
Micro Car. Res., Wt. %*	2.23	O.D. Color	11970	Viscosity: 77° F	7.03 cSt	48.8	SUS
Pour Point, °F	30	UOP "K"	12.0	100° F	4.62 cSt	41.2	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	4.0	5.7	8.2	12.2	16.6	13.6	28.8	39.7	11.2
Vol. Sum %	4.0	9.7	17.9	30.1	46.7	60.3	89.1	100.0	100.3
Wt. %	2.9	4.6	7.2	11.2	16.3	13.8	30.6	44.1	13.1
Wt. Sum %	2.9	7.5	14.7	25.9	42.2	56.0	86.6	100.1	99.7
Specific Gravity, 60/60° F		0.6767	0.7384	0.7772	0.8268	0.8582	0.8975	0.9386	0.988
API Gravity		77.6	60.1	50.6	39.6	33.4	26.2	19.3	11.7
Sulfur, Wt. %		0.0015	0.0017	0.0138	0.07	0.21	0.51	0.70	1.22
Mercaptan Sulfur, ppm		9.4	13.0	27.4	36.4				
H_2S Sulfur, ppm		<1.0	<1.0	1.8	<1.0				
Organic Cl, ppm		0.2	0.1	0.1	0.2				
n-Paraffins, Vol. %		42.0	24.3	22.9					
i-Paraffins, Vol. %		34.6	29.2	30.6					
Aromatics, Vol. %		3.3	7.6	19.5					
Naphthenes, Vol. %		20.1	38.9	23.7					
Aniline Point, ° F				124.4	142.2	169.0	191.0		
TAN, mg KOH/g					0.02	0.08			
Cetane Index					46.4	51.4			
Naphthalenes, vol. %					4.70	8.76			
Smoke point, mm					19.9	14.4			
Nitrogen, Wt. %					0.0005	0.012	0.121	0.312	0.700
Viscosity:									
cSt 77° F					2.43				
100° F					1.93	6.21			
130° F						4.07	25.92	107.0	
180° F							10.43	31.76	3732
210° F									937.8
250° F									
Freezing Point, °F					-31.9				
Cloud Point, °F						30	114		
Pour Point, °F						35	105	100	
Ni, ppm									27.4
V, ppm									23.1
Fe, ppm									16.8
Micro Car. Res., Wt. %								5.17	17.00

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bryan Mound Sweet, MLI 001

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		42.0	24.3	22.9
Total Iso-paraffins		34.6	29.2	30.6
Total Aromatics		3.3	7.6	19.5
Total Naphthenes		20.1	38.8	23.7
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.1	3.3
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	0.2	0.0	0.0
	C5	21.3	0.4	0.0
	C6	18.0	4.1	0.0
	C7	1.4	13.3	0.4
	C8	0.0	6.4	4.7
	C9	0.0	0.2	7.5
	C10	0.0	0.0	5.9
	C11	0.0	0.0	3.0
	C12	0.0	0.0	0.3
Iso-paraffins:	C4	0.0	0.0	0.0
	C5	9.5	0.1	0.0
	C6	20.3	2.5	0.0
	C7	4.7	11.0	0.2
	C8	0.0	14.3	3.4
	C9	0.0	1.3	8.6
	C10	0.0	0.0	14.5
	C11	0.0	0.0	3.7
	C12	0.0	0.0	0.2
Aromatics:	C6	3.0	1.3	0.2
	C7	0.3	4.9	0.6
	C8	0.0	1.4	5.2
	C9	0.0	0.0	5.3
	C10	0.0	0.0	6.3
	C11	0.0	0.0	1.5
	C12	0.0	0.0	0.4
Naphthenes:	C5	2.8	0.0	0.0
	C6	14.0	7.7	0.1
	C7	3.3	22.3	1.4
	C8	0.0	8.0	6.9
	C9	0.0	0.9	9.2
	C10	0.0	0.0	4.1
	C11	0.0	0.0	1.8
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.1
Propane	22.4
i-Butane	12.5
n-Butane	49.4
i-Pentane	8.2
n-Pentane	4.2
C_6+	3.0

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.3
Toluene	0.6
Ethylbenzene	0.2
o,m,p-Xylene	0.7

Octane Number		
	RON	MON
C_5-175° F	83.8	85.5
C_5-375° F	50.5	49.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{15} (420° F).

SPR CRUDE OIL ANALYSIS
Bryan Mound Sour, MLI 002

Whole Crude

Specific Gravity, 60/60° F	0.8599	Ni, ppm	14.0	RVP, psi @ 100° F	5.30		
API Gravity	33.1	V, ppm	51.1	TAN, mg KOH/g	0.06		
Sulfur, Wt. %	1.51	Fe, ppm	6.0	Mercaptan Sulfur, ppm*	14.1		
Nitrogen, Wt. %	0.166	Org. Cl, ppm	1.0	H_2S Sulfur, ppm*	1.1		
Micro Car. Res., Wt. % *	4.56	O.D. Color	25859	Viscosity: 77° F	9.43 cSt	56.8	SUS
Pour Point, °F	-30	UOP "K"	11.9	100° F	6.26 cSt	46.4	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	2.2	5.9	7.6	13.9	15.9	11.7	26.6	43.1	18.9
Vol. Sum %	2.2	8.1	15.7	29.6	45.5	57.2	83.8	100.3	102.7
Wt. %	1.5	4.6	6.4	12.4	15.1	11.7	28.5	48.3	19.5
Wt. Sum %	1.5	6.1	12.5	24.9	40.0	51.7	80.2	100.0	99.7
Specific Gravity, 60/60° F		0.6625	0.7247	0.7705	0.8174	0.8603	0.9216	0.9643	1.029
API Gravity		82.1	63.8	52.1	41.6	33.0	22.0	15.2	6.0
Sulfur, Wt. %		0.0040	0.0061	0.0445	0.35	1.12	2.00	2.71	3.92
Mercaptan Sulfur, ppm		19.0	38.1	65.5	17.7				
H_2S Sulfur, ppm		6.9	3.8	4.0	<1.0				
Organic Cl, ppm		5.0	4.3	3.9	<0.1				
n-Paraffins, Vol. %		49.2	33.2	26.8					
i-Paraffins, Vol. %		39.2	33.5	30.7					
Aromatics, Vol. %		1.8	7.9	24.0					
Naphthenes, Vol. %		9.7	25.4	16.7					
Aniline Point, ° F				126.5	144.7	161.0	179.4		
TAN, mg KOH/g					0.01	0.02			
Cetane Index					50.0	50.8			
Naphthalenes, vol. %					3.88	10.52			
Smoke point, mm					19.7	15.4			
Nitrogen, Wt. %					0.0007	0.018	0.153	0.365	0.636
Viscosity:									
cSt 77° F					2.23				
100° F					1.78	4.87			
130° F						3.32	25.78	251.7	
180° F							10.20	63.16	18353
210° F									4331
250° F									
Freezing Point, °F					-29.2				
Cloud Point, °F						22	110		
Pour Point, °F						20	95	60	
Ni, ppm									72.8
V, ppm									244
Fe, ppm									20.4
Micro Car. Res., Wt. %								9.45	23.4

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bryan Mound Sour, MLI 002

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		48.2	33.2	26.8
Total Iso-paraffins		38.2	33.5	30.7
Total Aromatics		1.8	7.8	24.0
Total Naphthenes		8.7	25.4	16.7
Total Olefins		0.0	0.0	0.0
Total Unknowns		8.1	0.0	1.7
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	2.1	0.0	0.0
	C5	24.2	0.3	0.0
	C6	22.1	4.8	0.0
	C7	0.9	19.5	0.6
	C8	0.0	8.4	5.7
	C9	0.0	0.1	9.1
	C10	0.0	0.0	7.9
	C11	0.0	0.0	3.4
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.2	0.0	0.0
	C5	12.5	0.1	0.0
	C6	22.4	2.7	0.0
	C7	4.1	15.3	0.2
	C8	0.0	14.6	2.7
	C9	0.0	0.8	9.1
	C10	0.0	0.0	13.3
	C11	0.0	0.0	5.5
	C12	0.0	0.0	0.0
Aromatics:	C6	1.8	0.7	0.0
	C7	0.1	5.6	0.7
	C8	0.0	1.5	7.6
	C9	0.0	0.0	9.2
	C10	0.0	0.0	5.6
	C11	0.0	0.0	1.2
	C12	0.0	0.0	0.3
Naphthenes:	C5	1.8	0.1	0.0
	C6	6.9	4.2	0.0
	C7	1.0	13.1	0.7
	C8	0.0	7.7	4.7
	C9	0.0	0.3	6.7
	C10	0.0	0.0	3.3
	C11	0.0	0.0	1.2
	C12	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.1
Propane	13.9
i-Butane	12.6
n-Butane	59.8
i-Pentane	9.4
n-Pentane	3.9
C_6+	0.2

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.1
Toluene	0.4
Ethylbenzene	0.2
o,m,p-Xylene	0.8

Octane Number		
	RON	MON
C_5-175° F	66.4	61.8
C_5-375° F	47.8	44.2

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
Bryan Mound Maya, MLI 003

	Whole Crude				
Specific Gravity, 60/60° F	0.9171	Ni, ppm	57.1	RVP, psi @ 100° F	4.50
API Gravity	22.8	V, ppm	238	TAN, mg KOH/g	0.10
Sulfur, Wt. %	3.28	Fe, ppm	6.0	Mercaptan Sulfur, ppm*	9.6
Nitrogen, Wt. %	0.320	Org. Cl, ppm	1.0	H_2S Sulfur, ppm*	0.9
Micro Car. Res., Wt. % *	10.82	O.D. Color	72340	Viscosity: 77° F	114.1 cSt 527 SUS
Pour Point, °F	-25	UOP "K"	11.7	100° F	55.05 cSt 256 SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	2.1	4.5	5.4	9.5	11.8	7.5	29.7	59.6	29.2
Vol. Sum %	2.1	6.6	12.0	21.5	33.3	40.8	70.5	100.4	99.7
Wt. %	1.4	3.3	4.2	8.0	10.6	7.0	30.1	65.5	34.2
Wt. Sum %	1.4	4.7	8.9	16.9	27.5	34.5	64.6	100.0	98.8
Specific Gravity, 60/60° F		0.6644	0.7239	0.7704	0.8230	0.8633	0.9296	1.0050	1.069
API Gravity		81.5	64.0	52.2	40.4	32.4	20.7	9.3	0.87
Sulfur, Wt. %		0.0121	0.0254	0.2724	1.018	1.99	2.99	4.44	5.53
Mercaptan Sulfur, ppm		54.2	70.8	39.5	16.1				
H_2S Sulfur, ppm		10.9	9.0	2.2	<1.0				
Organic Cl, ppm		2.9	5.1	8.3	2.4				
n-Paraffins, Vol. %		49.5	33.7	26.9					
i-Paraffins, Vol. %		36.1	31.9	31.6					
Aromatics, Vol. %		2.2	7.8	21.0					
Naphthenes, Vol. %		10.2	26.5	16.7					
Aniline Point, ° F				128.0	140.6	150.8	163.7		
TAN, mg KOH/g					0.02	0.03			
Cetane Index					47.8	49.8			
Naphthalenes, vol. %					3.66	9.82			
Smoke point, mm					21.0	15.4			
Nitrogen, Wt. %					0.0009	0.019	0.202	0.482	0.816
Viscosity:									
cSt 77° F					2.30				
100° F					1.79	4.59			
130° F						2.97	29.72	7898	
180° F							11.30	887.8	
260° F									38380
280° F									17318
Freezing Point, °F					-32.8				
Cloud Point, °F						16	102		
Pour Point, °F						20	85	85	
Ni, ppm									167
V, ppm									691
Fe, ppm									17.9
Micro Car. Res., Wt. %							0.42	16.77	31.28

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bryan Mound Maya, MLI 003

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		49.5	33.7	26.9
Total Iso-paraffins		36.1	31.9	31.6
Total Aromatics		2.2	7.8	21.0
Total Naphthenes		10.2	26.5	16.7
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.1	4.0
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	1.5	0.0	0.0
	C5	26.1	1.0	0.0
	C6	20.7	5.7	0.1
	C7	1.2	18.0	0.8
	C8	0.0	8.9	5.5
	C9	0.0	0.1	9.1
	C10	0.0	0.0	7.9
	C11	0.0	0.0	3.3
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.0	0.0	0.0
	C5	13.7	0.2	0.0
	C6	19.8	3.7	0.0
	C7	4.5	13.0	0.3
	C8	0.0	13.8	3.0
	C9	0.0	1.1	9.4
	C10	0.0	0.0	13.2
	C11	0.0	0.0	5.4
	C12	0.0	0.0	0.2
Aromatics:	C6	1.7	0.9	0.2
	C7	0.5	5.2	0.8
	C8	0.0	1.7	7.1
	C9	0.0	0.0	5.3
	C10	0.0	0.0	6.3
	C11	0.0	0.0	0.9
	C12	0.0	0.0	0.3
Naphthenes:	C5	1.6	0.3	0.0
	C6	7.1	4.5	0.1
	C7	1.5	12.9	1.0
	C8	0.0	8.6	4.3
	C9	0.0	0.3	6.2
	C10	0.0	0.0	3.7
	C11	0.0	0.0	1.3
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.0
Propane	23.5
i-Butane	18.8
n-Butane	56.7
i-Pentane	0.6
n-Pentane	0.1
C_6+	0.2

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.2
Toluene	0.5
Ethylbenzene	0.2
o,m,p-Xylene	0.7

Octane Number		
	RON	MON
C_5-175° F	68.7	---
C_5-375° F	41.5	45.5

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
West Hackberry Sweet, MLI 004

Whole Crude

Specific Gravity, 60/60° F	0.8403	Ni, ppm	2.7	RVP, psi @ 100° F	7.10		
API Gravity	36.9	V, ppm	3.9	TAN, mg KOH/g	0.05		
Sulfur, Wt. %	0.31	Fe, ppm	5.4	Mercaptan Sulfur, ppm*	1.0		
Nitrogen, Wt. %	0.104	Org. Cl, ppm	<0.1	H_2S Sulfur, ppm*	<1.0		
Micro Car. Res., Wt. %*	1.96	O.D. Color	9590	Viscosity: 77° F	5.362 cSt	43.4	SUS
Pour Point, °F	25	UOP "K"	11.90	100° F	3.744 cSt	38.4	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	5.0	7.2	9.0	13.4	16.3	11.3	27.5	38.7	11.1
Vol. Sum %	5.0	12.2	21.2	34.6	50.9	62.2	89.7	100.9	100.8
Wt. %	3.6	5.8	8.0	12.4	16.1	11.5	29.5	42.7	13.0
Wt. Sum %	3.6	9.4	17.4	29.7	45.8	57.3	86.9	100.0	99.9
Specific Gravity, 60/60° F		0.6778	0.7424	0.7791	0.8286	0.8578	0.9024	0.9264	0.984
API Gravity		77.3	59.1	50.1	39.2	33.5	25.3	21.2	12.3
Sulfur, Wt. %		0.0004	0.0004	0.0054	0.06	0.26	0.58	0.64	1.04
Mercaptan Sulfur, ppm		<1.0	<1.0	<1.0	6.0				
H_2S Sulfur, ppm		<1.0	<1.0	<1.0	<1.0				
Organic Cl, ppm		0.2	0.1	0.1	0.1				
n-Paraffins, Vol. %		42.12	29.10	22.68					
i-Paraffins, Vol. %		33.69	28.46	30.45					
Aromatics, Vol. %		4.04	9.74	20.27					
Naphthenes, Vol. %		20.15	36.70	24.14					
Aniline Point, ° F				121.0	141.6	162.8	191.0		
TAN, mg KOH/g					0.01	0.07			
Cetane Index					45.7	51.6			
Naphthalenes, vol. %					5.93	10.44			
Smoke point, mm					19.1	15.5			
Nitrogen, Wt. %					0.0005	0.005	0.116	0.294	0.607
Viscosity:									
cSt 77° F					2.414				
100° F					1.912	5.001			
130° F						3.406	23.65	85.31	
180° F							9.668	23.34	1589
210° F									479.4
250° F									
Freezing Point, °F					-29				
Cloud Point, °F						22	108		
Pour Point, °F						10	100	60	
Ni, ppm									18.5
V, ppm									28.0
Fe, ppm									45.3
Micro Car. Res., Wt. %							0.13	4.45	14.79

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
West Hackberry Sweet, MLI 004

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		42.1	23.1	22.7
Total Iso-paraffins		33.7	26.5	30.4
Total Aromatics		4.0	8.7	20.3
Total Naphthenes		20.2	36.7	24.1
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	2.5
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	0.5	0.0	0.0
	C5	19.9	0.2	0.0
	C6	20.4	3.9	0.0
	C7	1.3	13.1	0.4
	C8	0.0	5.7	5.6
	C9	0.0	0.1	7.6
	C10	0.0	0.0	6.7
	C11	0.0	0.0	2.3
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.0	0.0	0.0
	C5	7.6	0.1	0.0
	C6	21.6	2.0	0.0
	C7	4.4	11.4	0.2
	C8	0.1	13.4	4.6
	C9	0.0	1.6	8.0
	C10	0.0	0.0	13.4
	C11	0.0	0.0	3.3
	C12	0.0	0.0	0.0
Aromatics:	C6	3.0	1.2	0.0
	C7	1.0	7.2	1.0
	C8	0.0	1.4	6.7
	C9	0.0	0.0	5.5
	C10	0.0	0.0	5.8
	C11	0.0	0.0	1.1
	C12	0.0	0.0	0.2
Naphthenes:	C5	2.7	0.1	0.0
	C6	14.5	8.8	0.1
	C7	3.0	22.2	1.5
	C8	0.0	6.7	6.7
	C9	0.0	0.8	10.3
	C10	0.0	0.0	3.8
	C11	0.0	0.0	1.6
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.0
Propane	10.3
i-Butane	11.2
n-Butane	40.5
i-Pentane	16.6
n-Pentane	21.4
C_6+	0.0

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.3
Toluene	0.7
Ethylbenzene	0.2
o,m,p-Xylene	0.7

Octane Number		
	RON	MON
C_5-175° F	68.1	66.9
C_5-375° F	53.7	51.8

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
West Hackberry Sour, MLI 005

Whole Crude

Specific Gravity, 60/60° F	0.8564	Ni, ppm	9.6	RVP, psi @ 100° F	6.25		
API Gravity	33.7	V, ppm	38.8	TAN, mg KOH/g	0.10		
Sulfur, Wt. %	1.44	Fe, ppm	2.8	Mercaptan Sulfur, ppm*	32.6		
Nitrogen, Wt. %	0.150	Org. Cl, ppm	0.2	H_2S Sulfur, ppm*	4.7		
Micro Car. Res., Wt. %*	4.45	O.D. Color	26220	Viscosity: 77° F	8.565 cSt	53.9	SUS
Pour Point, °F	-10	UOP "K"	11.90	100° F	5.599 cSt	44.3	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	4.6	7.2	7.8	14.4	14.4	10.5	26.6	41.9	15.2
Vol. Sum %	4.6	11.8	19.5	33.9	48.4	58.9	85.5	100.8	100.7
Wt. %	3.2	5.6	6.6	13.0	13.8	10.6	28.7	47.1	18.3
Wt. Sum %	3.2	8.8	15.4	28.4	42.2	52.8	81.5	99.9	99.8
Specific Gravity, 60/60° F		0.6663	0.7268	0.7712	0.8190	0.8618	0.9217	0.9606	1.032
API Gravity		80.9	63.2	52.0	41.3	32.7	22.0	15.8	5.6
Sulfur, Wt. %		0.0046	0.0079	0.0426	0.37	1.19	1.75	2.42	3.35
Mercaptan Sulfur, ppm		20.3	29.1	158.8	65.7				
H_2S Sulfur, ppm		2.1	7.8	31.3	<1.0				
Organic Cl, ppm		0.3	0.8	0.4	0.3				
n-Paraffins, Vol. %		46.84	31.16	26.62					
i-Paraffins, Vol. %		38.56	35.58	32.84					
Aromatics, Vol. %		3.02	8.42	20.34					
Naphthenes, Vol. %		11.58	24.84	17.56					
Aniline Point, ° F				125.9	144.8	159.0	180.0		
TAN, mg KOH/g					<0.01	<0.01			
Cetane Index					49.4	50.3			
Naphthalenes, vol. %					4.55	9.50			
Smoke point, mm					21.8	14.7			
Nitrogen, Wt. %					0.0006	0.012	0.162	0.366	0.586
Viscosity:									
cSt 77° F					2.258				
100° F					1.801	4.845			
130° F						3.301	25.21	204.3	
180° F							10.25	53.56	12266
210° F									2880
250° F									
Freezing Point, °F					-27				
Cloud Point, °F						20	96		
Pour Point, °F						20	90	30	
Ni, ppm									53.9
V, ppm									214.2
Fe, ppm									17.4
Micro Car. Res., Wt. %							0.22	9.37	23.97

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
West Hackberry Sour, MLI 005

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		46.8	31.2	26.6
Total Iso-paraffins		38.6	35.6	32.8
Total Aromatics		3.0	8.4	20.3
Total Naphthenes		11.6	24.8	17.6
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	2.6
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	1.1	0.0	0.0
	C5	19.8	0.4	0.0
	C6	24.3	5.4	0.0
	C7	1.7	16.1	0.7
	C8	0.0	7.1	6.6
	C9	0.0	0.1	8.9
	C10	0.0	0.0	7.5
	C11	0.0	0.0	2.7
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.1	0.0	0.0
	C5	9.1	0.1	0.0
	C6	24.2	2.8	0.0
	C7	5.2	15.4	0.3
	C8	0.0	15.7	4.9
	C9	0.0	1.5	9.7
	C10	0.0	0.0	14.0
	C11	0.0	0.0	3.8
	C12	0.0	0.0	0.0
Aromatics:	C6	1.9	0.8	0.0
	C7	1.1	6.1	0.9
	C8	0.0	1.5	6.6
	C9	0.0	0.0	5.4
	C10	0.0	0.0	6.0
	C11	0.0	0.0	1.2
	C12	0.0	0.0	0.2
Naphthenes:	C5	1.7	0.1	0.0
	C6	8.3	5.1	0.1
	C7	1.6	14.1	1.1
	C8	0.0	4.8	4.5
	C9	0.0	0.7	7.7
	C10	0.0	0.0	3.0
	C11	0.0	0.0	1.1
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	0.0
Propane	7.1
i-Butane	9.2
n-Butane	40.8
i-Pentane	16.8
n-Pentane	19.1
C_6+	5.5

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.2
Toluene	0.6
Ethylbenzene	0.2
o,m,p-Xylene	0.8

Octane Number		
	RON	MON
C_5-175° F	65.0	62.4
C_5-375° F	47.1	50.6

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
Weeks Island Sour, MLI 006

Whole Crude

Specific Gravity, 60/60° F	0.8824	Ni, ppm	15.6	RVP, psi @ 100° F	4.90		
API Gravity	28.9	V, ppm	46.8	TAN, mg KOH/g	0.02		
Sulfur, Wt. %	1.41	Fe, ppm	1.0	Mercaptan Sulfur, ppm*	6.3		
Nitrogen, Wt. %	0.196	Org. Cl, ppm	0.9	H_2S Sulfur, ppm*	0.6		
Micro Car. Res., Wt. % *	5.05	O.D. Color	25540	Viscosity: 77° F	16.44 cSt	83.0	SUS
Pour Point, °F	10	UOP "K"	11.8	100° F	11.06 cSt	62.6	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	1.5	4.6	6.0	11.0	14.7	12.3	31.6	50.1	18.3
Vol. Sum %	1.5	6.1	12.1	23.1	37.8	50.0	81.6	100.1	99.9
Wt. %	1.0	3.5	5.0	9.7	13.9	12.1	33.3	54.8	21.4
Wt. Sum %	1.0	4.5	9.5	19.2	33.1	45.2	78.5	100.1	99.9
Specific Gravity, 60/60° F		0.6681	0.7352	0.7775	0.8293	0.8695	0.9297	0.9662	1.030
API Gravity		80.3	61.0	50.5	39.1	31.2	20.7	15.0	5.9
Sulfur, Wt. %		0.0029	0.0044	0.0392	0.32	0.89	1.62	2.22	3.32
Mercaptan Sulfur, ppm		14.8	18.8	37.9	8.6				
H_2S Sulfur, ppm		1.7	4.0	3.7	<1.0				
Organic Cl, ppm		5.2	4.2	5.7	<0.1				
n-Paraffins, Vol. %		45.3	27.7	23.5					
i-Paraffins, Vol. %		36.3	28.0	26.9					
Aromatics, Vol. %		3.9	10.3	24.1					
Naphthenes, Vol. %		14.5	33.9	21.8					
Aniline Point, ° F				121.1	136.1	154.2	173.6		
TAN, mg KOH/g					0.01	0.04			
Cetane Index					45.5	48.0			
Naphthalenes, vol. %					4.64	10.90			
Smoke point, mm					21.1	15.0			
Nitrogen, Wt. %					0.0006	0.014	0.186	0.424	0.666
Viscosity:									
cSt 77° F					2.31				
100° F					1.84	5.17			
130° F						3.49	33.15	342.1	
180° F							12.16	79.00	31163
210° F									6411
250° F									
Freezing Point, °F					-34.6				
Cloud Point, °F *						18	94		
Pour Point, °F						20	85	65	
Ni, ppm									79.7
V, ppm									220
Fe, ppm									9.5
Micro Car. Res., Wt. %							0.32	9.10	23.08

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Weeks Island Sour, MLI 006

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		45.3	27.7	23.5
Total Iso-paraffins		36.3	28.0	28.9
Total Aromatics		3.9	10.3	24.1
Total Naphthenes		14.5	33.9	21.8
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	1.8
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	3.5	0.1	0.0
	C5	21.2	0.5	0.0
	C6	19.3	4.4	0.0
	C7	1.2	15.7	0.7
	C8	0.0	7.0	5.2
	C9	0.0	0.1	7.8
	C10	0.0	0.0	6.8
	C11	0.0	0.0	2.8
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.3	0.0	0.0
	C5	11.6	0.2	0.0
	C6	20.0	2.3	0.0
	C7	4.3	12.6	0.3
	C8	0.0	12.3	2.9
	C9	0.0	0.6	8.4
	C10	0.0	0.0	12.5
	C11	0.0	0.0	4.6
	C12	0.0	0.0	0.2
Aromatics:	C6	2.9	1.4	0.1
	C7	0.9	7.3	1.2
	C8	0.0	1.6	8.0
	C9	0.0	0.0	8.9
	C10	0.0	0.0	4.6
	C11	0.0	0.0	1.1
	C12	0.0	0.0	0.3
Naphthenes:	C5	2.4	0.1	0.0
	C6	10.2	6.2	0.1
	C7	1.9	17.6	1.4
	C8	0.0	9.3	6.5
	C9	0.0	0.6	8.6
	C10	0.0	0.0	3.8
	C11	0.0	0.0	1.4
	C12	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	2.6
Propane	36.4
i-Butane	12.4
n-Butane	42.2
i-Pentane	3.9
n-Pentane	2.1
C_6+	0.4

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.2
Toluene	0.4
Ethylbenzene	0.2
o,m,p-Xylene	0.6

Octane Number		
	RON	MON
C_5-175° F	67.2	65.6
C_5-375° F	51.1	49.4

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
Bayou Choctaw Sweet, MLI 007

Whole Crude

Specific Gravity, 60/60° F	0.8441	Ni, ppm	4.7	RVP, psi @ 100° F	7.80		
API Gravity	36.1	V, ppm	3.5	TAN, mg KOH/g	0.02		
Sulfur, Wt. %	0.39	Fe, ppm	7.3	Mercaptan Sulfur, ppm*	10.5		
Nitrogen, Wt. %	0.124	Org. Cl, ppm	0.1	H_2S Sulfur, ppm*	0.1		
Micro Car. Res., Wt. % *	2.47	O.D. Color	14150	Viscosity: 77° F	7.37 cSt	50.0	SUS
Pour Point, °F	40	UOP "K"	12.0	100° F	4.78 cSt	41.7	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	3.9	6.0	8.1	12.5	15.8	12.0	30.1	41.6	11.8
Vol. Sum %	3.9	9.9	18.0	30.5	46.3	58.3	88.4	99.9	100.2
Wt. %	2.8	4.8	7.1	11.6	15.5	12.2	31.9	46.1	13.9
Wt. Sum %	2.8	7.6	14.7	26.3	41.8	54.0	85.9	100.1	99.8
Specific Gravity, 60/60° F		0.6741	0.7385	0.7772	0.8282	0.8541	0.8950	0.9363	0.996
API Gravity		78.4	60.1	50.6	39.4	34.2	26.6	19.6	10.6
Sulfur, Wt. %		0.0009	0.0023	0.0134	0.07	0.28	0.54	0.76	1.32
Mercaptan Sulfur, ppm		7.0	11.3	31.9	36.5				
H_2S Sulfur, ppm		<1.0	1.2	<1.0	<1.0				
Organic Cl, ppm		0.7	0.4	0.6	0.2				
n-Paraffins, Vol. %		43.5	24.2	23.2					
i-Paraffins, Vol. %		35.2	26.9	30.8					
Aromatics, Vol. %		2.9	7.6	19.2					
Naphthenes, Vol. %		18.5	41.2	24.5					
Aniline Point, ° F				123.5	144.3	169.5	193.7		
TAN, mg KOH/g					<0.01	0.02			
Cetane Index					46.0	52.7			
Naphthalenes, vol. %					4.26	8.14			
Smoke point, mm					21.3	16.5			
Nitrogen, Wt. %					0.0004	0.011	0.132	0.324	0.618
Viscosity:									
cSt 77° F					2.38				
100° F					1.88	5.53			
130° F						3.27	25.84	112.9	
180° F							10.43	38.47	4402
210° F									1304
250° F									
Freezing Point, °F					-30				
Cloud Point, °F						35	112		
Pour Point, °F						30	100	65	
Ni, ppm									33.0
V, ppm									24.0
Fe, ppm									36.9
Micro Car. Res., Wt. %								5.53	17.80

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bayou Choctaw Sweet, MLI 007

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		43.5	24.2	23.2
Total Iso-paraffins		35.2	26.9	30.8
Total Aromatics		2.9	7.8	19.2
Total Naphthenes		18.5	41.2	24.5
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	2.3
Paraffins:	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	0.9	0.0	0.0
	C5	22.2	0.4	0.0
	C6	19.1	4.4	0.0
	C7	1.4	13.6	0.4
	C8	0.0	5.7	5.3
	C9	0.0	0.1	7.7
	C10	0.0	0.0	6.8
	C11	0.0	0.0	2.7
	C12	0.0	0.0	0.2
Iso-paraffins:	C4	0.0	0.0	0.0
	C5	10.5	0.1	0.0
	C6	20.4	2.4	0.0
	C7	4.2	11.6	0.2
	C8	0.1	11.8	3.7
	C9	0.0	1.0	8.9
	C10	0.0	0.0	14.2
	C11	0.0	0.0	3.7
	C12	0.0	0.0	0.2
Aromatics.	C6	2.1	1.2	0.2
	C7	0.8	5.2	1.4
	C8	0.0	1.2	5.4
	C9	0.0	0.0	5.1
	C10	0.0	0.0	5.7
	C11	0.0	0.0	1.1
	C12	0.0	0.0	0.3
Naphthenes.	C5	2.6	0.2	0.0
	C6	12.8	8.3	0.1
	C7	3.0	22.5	1.4
	C8	0.0	9.5	7.6
	C9	0.0	0.8	9.6
	C10	0.0	0.0	4.0
	C11	0.0	0.0	1.8
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	1.3
Propane	28.6
i-Butane	11.0
n-Butane	47.7
i-Pentane	7.5
n-Pentane	3.1
C_6+	0.8

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.2
Toluene	0.4
Ethylbenzene	0.1
o,m,p-Xylene	0.5

Octane Number		
	RON	MON
C_5-175° F	66.1	66.0
C_5-375° F	51.4	48.6

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

SPR CRUDE OIL ANALYSIS
Bayou Choctaw Sour, MLI 008

Whole Crude

Specific Gravity, 60/60° F	0.8591	Ni, ppm	6.8	RVP, psi @ 100° F	5.22		
API Gravity	33.2	V, ppm	25.3	TAN, mg KOH/g	0.05		
Sulfur, Wt. %	1.47	Fe, ppm	1.0	Mercaptan Sulfur, ppm*	20.8		
Nitrogen, Wt. %	0.145	Org. Cl, ppm	0.7	H_2S Sulfur, ppm*	1.7		
Micro Car. Res., Wt. % *	3.58	O.D. Color	15380	Viscosity: 77° F	8.55 cSt	53.9	SUS
Pour Point, °F	10	UOP "K"	11.85	100° F	5.87 cSt	45.2	SUS

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C_5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	2.0	4.8	7.6	13.4	16.8	13.7	28.1	41.5	13.6
Vol. Sum %	2.0	6.8	14.4	27.8	44.6	58.3	86.4	99.8	100.0
Wt. %	1.4	3.7	6.4	12.1	16.1	13.8	30.1	46.5	16.1
Wt. Sum %	1.4	5.1	11.5	23.6	39.7	53.5	83.6	100.0	99.7
Specific Gravity, 60/60° F		0.6636	0.7235	0.7722	0.8209	0.8643	0.9201	0.9615	1.020
API Gravity		81.7	64.1	51.7	40.9	32.2	22.3	15.7	7.23
Sulfur, Wt. %		0.0085	0.0158	0.0457	0.43	1.14	2.14	2.65	3.75
Mercaptan Sulfur, ppm		35.7	67.1	78.9	34.8				
H_2S Sulfur, ppm		<1.0	8.2	7.7	1.5				
Organic Cl, ppm		0.4	1.2	5.3	4.5				
n-Paraffins, Vol. %		46.7	32.7	25.9					
i-Paraffins, Vol. %		38.6	35.6	32.7					
Aromatics, Vol. %		4.6	7.9	21.2					
Naphthenes, Vol. %		10.1	23.7	17.4					
Aniline Point, ° F				125.6	143.6	163.1	178.0		
TAN, mg KOH/g					0.02	0.01			
Cetane Index					48.7	49.5			
Naphthalenes, vol. %					2.58	9.06			
Smoke point, mm					20.3	14.6			
Nitrogen, Wt. %					0.0010	0.024	0.155	0.344	0.522
Viscosity:									
cSt 77° F					2.30				
100° F					1.82	5.83			
130° F						3.86	31.45	203.8	
180° F							11.45	52.53	11376
210° F									2513
250° F									
Freezing Point, °F					-31.0				
Cloud Point, °F						32	104		
Pour Point, °F						30	95	60	
Ni, ppm									48.2
V, ppm									152.8
Fe, ppm									7.6
Micro Car. Res., Wt. %								7.93	22.23

* (c), calculated from fraction results

SPR CRUDE OIL ANALYSIS
Bayou Choctaw Sour, MLI 008

Gas Chromatographic Data

		Distillate fractions, ASTM D 2892		
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %
* Total Paraffins		46.7	32.7	25.9
Total Iso-paraffins		38.6	35.6	32.7
Total Aromatics		4.6	7.9	21.2
Total Naphthenes		10.1	23.7	17.4
Total Olefins		0.0	0.0	0.0
Total Unknowns		0.0	0.0	2.7
Paraffins	C1	0.0	0.0	0.0
	C2	0.0	0.0	0.0
	C3	0.0	0.0	0.0
	C4	1.4	0.1	0.0
	C5	21.9	0.7	0.0
	C6	21.8	7.8	0.1
	C7	1.5	17.9	8.6
	C8	0.0	7.2	5.4
	C9	0.0	0.0	5.6
	C10	0.0	0.0	7.6
	C11	0.0	0.0	3.5
	C12	0.0	0.0	0.1
Iso-paraffins:	C4	0.1	0.0	0.0
	C5	11.1	0.2	0.0
	C6	23.6	4.7	0.0
	C7	3.8	15.2	0.2
	C8	0.0	14.7	2.9
	C9	0.0	0.8	9.1
	C10	0.0	0.0	14.8
	C11	0.0	0.0	5.3
	C12	0.0	0.0	0.2
Aromatics:	C6	2.8	1.4	0.2
	C7	1.8	5.4	0.8
	C8	0.0	1.1	6.0
	C9	0.0	0.0	5.6
	C10	0.0	0.0	6.7
	C11	0.0	0.0	1.5
	C12	0.0	0.0	0.3
Naphthenes:	C5	2.0	0.3	0.0
	C6	6.8	5.7	0.1
	C7	1.4	12.3	0.8
	C8	0.0	5.6	5.3
	C9	0.0	0.5	6.6
	C10	0.0	0.0	3.3
	C11	0.0	0.0	1.2
	C12	0.0	0.0	0.1
Olefins:	C4	0.0	0.0	0.0
	C5	0.0	0.0	0.0
	C6	0.0	0.0	0.0
	C7	0.0	0.0	0.0
	C8	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol.%
Methane	0.0
Ethane	1.8
Propane	39.8
i-Butane	13.7
n-Butane	40.1
i-Pentane	1.1
n-Pentane	3.2
C_6+	1.0

From PIANO analysis of whole crude	
Component	Vol.% of crude
Benzene	0.1
Toluene	0.3
Ethylbenzene	0.1
o,m,p-Xylene	0.6

Octane Number		
	RON	MON
C_5-175° F	58.0	55.3
C_5-375° F	43.3	42.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Exhibit E - SPR Delivery Point Data

PHILLIPS TERMINAL
(Formerly Seaway Terminal)

(Data as of November 1, 1991)

LOCATION: Brazoria County, Texas (three miles southwest of Freeport, Texas on the Old Brazos River, four miles from the sea buoy)

CRUDE OIL STREAMS: Bryan Mound Sweet, Bryan Mound Sour, and Bryan Mound Maya

DELIVERY POINTS: Phillips Terminal marine dock facility number 2

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 3 Docks: Nos. 1, 2 and 3

MAXIMUM LENGTH LENGTH OVERALL (LOA): 750 feet during daylight and 615 feet during hours of darkness.

MAXIMUM BEAM: 107 feet

MAXIMUM DRAFT: 37.5 feet; subject to change due to weather and silting conditions

MAXIMUM AIR DRAFT: None

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 1 is 50,000 DWT. Dock Nos. 2 and 3 can accommodate up to 80,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: Dock No. 1 has the capability to load barges of a minimum 30,000-barrel capacity. Its use, however, is contingent upon the consent of the Government and non-interference with the Government's obligations to other parties.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Freeport Harbor sea buoy approximately 4.5 miles from the terminal.

ARCO PIPELINE COMPANY

TEXAS CITY TERMINAL

(Data as of November 1, 1991)

LOCATION: Docks 11 and 12, Texas City Harbor, Galveston County, Texas

CRUDE OIL STREAMS: Bryan Mound Sweet and Bryan Mound Sour

DELIVERY POINTS: ARCO Pipe Line Company Marine Docks (11 and 12) and connections to local commercial pipelines

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 11 and 12

MAXIMUM LENGTH OVERALL (LOA): 1,020 feet. Maximum bow to manifold centerline distance is 468 feet.

MAXIMUM BEAM: Dock 11 - 108 feet; Dock 12 - 220 feet

MAXIMUM DRAFT: 39.6 feet; subject to change due to weather and silting conditions

MAXIMUM AIR DRAFT: None

MAXIMUM DEADWEIGHT TONS (DWT): 150,000 DWT each. Terminal permission is required for less than 30,000 DWT or greater than 150,000 DWT. Vessels larger than 120,000 DWT are restricted to daylight transit. Purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Bolivar Roads (breakwater) or Galveston sea buoy.

SUN TERMINAL

(Data as of November 1, 1991)

LOCATION: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar)

CRUDE OIL STREAMS: West Hackberry Sweet, West Hackberry Sour

DELIVERY POINTS: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 5 Docks: Nos. 1, 2, 3, 4 and 5

MAXIMUM LENGTH OVERALL (LOA): 1000 feet

MAXIMUM BEAM: 150 feet

MAXIMUM DRAFT: 40 feet fresh water

MAXIMUM AIR DRAFT: 136 feet

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 1 is 85,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 150,000 DWT. Vessels larger than 85,000 DWT are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: 3 Barge Docks: A, B and C. Each is capable of handling barges up to 25,000 barrels capacity.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: South of Sabine Bar Bouy, also at Sabine Bar for vessels with draft of 39 feet or less. Short-term anchorage for vessels of less than 40 foot draft in turning basin.

TEXACO 22-INCH/DOE LAKE CHARLES PIPELINE CONNECTION

(Data as of November 1, 1991)

LOCATION: Lake Charles Upper Junction, located in Section 36, Township 10 South, Range 10 West, Calcasie Parish, (Lake Charles) Louisiana

CRUDE OIL STREAMS: West Hackberry Sweet, West Hackberry Sour

DELIVERY POINT: Texaco 22-Inch/DOE Lake Charles Pipeline Connection

MARINE DISTRIBUTION FACILITIES: None

DOE ST. JAMES TERMINAL

(Data as of November 1, 1991)

LOCATION: St. James Parish, Louisiana (30 miles southwest of Baton Rouge on the west bank of the Mississippi River at mile-marker 158.3)

CRUDE OIL STREAMS: Bayou Choctaw Sweet, Bayou Choctaw Sour, Weeks Island Sour

DELIVERY POINTS: St. James Terminal marine dock facility and LOCAP and Capline Terminals (connections to Capline interstate pipeline system and local commercial pipelines)

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 1 and 2

MAXIMUM LENGTH OVERALL (LOA): 940 feet

MAXIMUM BEAM: None

MAXIMUM DRAFT: 45 feet

MAXIMUM AIR DRAFT: 153 feet less the river stage

MAXIMUM DEADWEIGHT TONS (DWT): 100,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILIITY: None

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements and for bearing all costs associated with such arrangements. Terminal can provide suitable contacts.

CUSTOMARY ANCHORAGE: Grandview Reach approximately 11 miles from the terminal.

EXHIBIT F

OFFER

STANDBY LETTER OF CREDIT

DATE: _____

Acquisition and Sales Division
Mail Stop FE-4451
Project Management Office
Strategic Petroleum Reserve
U.S. Department of Energy
900 Commerce Road East
New Orleans, Louisiana 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer _____ we hereby establish in the U.S. Department of Energy's favor, an irrevocable Letter of Credit, Numbered _____, for an amount not to exceed U.S. $_____ (_____) effective immediately on account of our customer in response to the U.S. Department of Energy's Notice of Sale No. _____, including any amendments thereto, for the sale of Strategic Petroleum Reserve petroleum. This Letter of Credit expires 60 days from the date of issuance of this Letter of Credit.

This Letter of Credit is available by wire payment to the U.S. Department of Energy against presentation of a demand on us of a manually signed statement (with blanks filled in) containing the following:

> "THIS DRAWING OF U.S. $_____ (_____) AGAINST YOUR LETTER OF CREDIT NUMBERED _____, DATED _____, IS DUE THE U.S. GOVERNMENT BECAUSE OF THE FAILURE OF _____ TO HONOR ITS OFFER TO ENTER INTO A CONTRACT FOR THE PURCHASE OF PETROLEUM FROM THE STRATEGIC PETROLEUM RESERVE, IN ACCORDANCE WITH THE U.S. GOVERNMENT'S NOTICE OF SALE NO. _____, INCLUDING ANY AMENDMENTS THERETO."

Upon receipt of the U.S. Department of Energy's demand by hand, mail express delivery, or other means, at our office located

at _____, we will honor the demand and make payment, by 3 p.m. Eastern Time of the next business day following receipt of the demand, by wire transfer through the Federal Reserve Communications System to the U.S. Treasury (Code 021030004) for credit to Department of Energy Account 89000201. Each wire transfer shall be formatted in accordance with prescribed Treasury requirements.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the State in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit to _____.

Yours truly,

_____

Authorized Signature

INSTRUCTIONS FOR OFFER LETTER OF CREDIT

1. If issued from a single depository institution, including a branch or an agency of a foreign bank, (hereinafter referred to as "bank") that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant (on line) in the Fed's FEDWIRE funds transfer system. If issued by a syndicate of banks, only the institution acting as paying agent for the syndicate and responsible for honoring the drawing under the letter of credit must maintain a Fed account and be a participant (on line) in FEDWIRE.

2. If Offeror (bank's customer) or bank forwards letter of credit separately from the offer, the envelope shall clearly say "Offer Standby Letter of Credit (Name of Company)" and shall be clearly marked in accordance with Standard Sales Provision B.7(c).

3. Letters of Credit shall conform without exception to this attachment.

4. Insert date of issuance of Letter of Credit.

5. Insert dollar amount of Letter of Credit in numbers and in words.

6. Banks shall fill in all blanks except those in drawing statement. The drawing statement is in bold print with double lines for the blanks. Do not fill in the double-lined blanks.

7. Attachment E to Notice of Sale No. DE-NS96-91PO51012 provides an instruction guide for funds transfer deposit messages to other Federal agencies through Treasury, and the current wire transfer format.

8. If available, please include your American Bank Association Number on Letter of Credit.

9. Type name under authorized signature.

EXHIBIT G

PAYMENT AND PERFORMANCE
LETTER OF CREDIT

Date: _____

Acquisition and Sales Division
Mail Stop FE-4451
Strategic Petroleum Reserve
Project Management Office
U.S. Department of Energy
900 Commerce Road East
New Orleans, LA 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer _____ we hereby establish in the U.S. Department of Energy's favor an irrevocable Letter of Credit, Numbered _____, for about U.S. $_____ (_____) effective immediately and expiring at our office located at _____ one hundred and twenty (120) days from the date of issuance of this Letter of Credit.

This Letter of Credit is available by wire payment to the U.S. Department of Energy against presentation of a demand on us. If transmitted by telex, mail, express delivery, or means other than FEDWIRE, it shall contain either a statement (with blanks filled in) that:

"THIS DRAWING IS DUE THE U.S. DEPARTMENT OF ENERGY UNDER YOUR LETTER OF CREDIT NUMBER _____ FOR (CUSTOMER'S NAME). PAYMENT OF U.S. $_____ TO BE MADE BY WIRE TRANSFER TO U.S. DEPARTMENT OF ENERGY ON (DATE) UNDER CONTRACT NUMBER _____, INVOICE NO. _____. THE WIRE TRANSFER MUST INCLUDE OUR FEDWIRE NUMBER AND OTHER WIRE INFORMATION AS FOLLOWS: TRANSFER TREAS CODE 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) U.S. $_____ PAYMENT FOR THE SALE OF CRUDE OIL UNDER CONTRACT NO. _____, INVOICE NO._____."

or a statement (with blanks filled in) that:

"THIS DRAWING IS DUE TO THE U.S. DEPARTMENT OF ENERGY UNDER YOUR LETTER OF CREDIT NUMBER _____ FOR (CUSTOMER'S NAME). PAYMENT OF U.S. $_____ TO BE MADE BY WIRE TRANSFER TO U.S. DEPARTMENT OF ENERGY BECAUSE OF FAILURE TO PERFORM IN ACCORDANCE WITH CONTRACT NUMBER _____ RESULTING IN PAYMENT DUE UNDER THE CONTRACT IN THAT AMOUNT. THE WIRE TRANSFER MUST INCLUDE OUR FEDWIRE NUMBER AND OTHER WIRE INFORMATION AS FOLLOWS: TRANSFER TO

TREAS CODE 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) U.S. $_____ PAYMENT FOR FAILURE TO PERFORM IN ACCORDANCE WITH CONTRACT NUMBER_____."

or both.

We also will honor demands presented over the Federal Reserve Bank's FEDWIRE system, provided that each such demand contains (with blanks filled in) the substance of either of the following statements:

"THIRD PARTY SENDER, RE YOUR LOC# ___(LETTER OF CREDIT NO.)___ FOR ___(CUSTOMER'S NAME)___ THIRD PARTY RECEIVER, TRANSFER TO TREAS CODE 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) $_____ PAYMENT DUE ON ___(DATE)___ FOR SALE OF OIL UNDER CONTRACT NO._____, INVOICE NO. _____."

or a statement (with blanks filled in) that:

"THIRD PARTY SENDER, RE YOUR LOC# ___(LETTER OF CREDIT NO.)___ FOR ___(CUSTOMER'S NAME)___ THIRD PARTY RECEIVER, TRANSFER TO TREAS CODE 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) $_____ PAYMENT DUE FROM FAILURE TO PERFORM IN ACCORDANCE WITH CONTRACT NO. _____."

The U.S. Department of Energy may make multiple drawings totalling up to 110 percent of the amount of funds indicated in the first paragraph as available under this Letter of Credit.

Upon receipt of the U.S. Department of Energy's demand, we will honor the demand and make payment by 3 p.m. Eastern Time on the date stated in the demand or, if the demand is not received before the stated date, then no later than one day after presentation (or the next business day thereafter if the stated date or day after presentation does not fall on a regular business day). Payment will be by wire transfer of funds over FEDWIRE to the U.S. Treasury (Code 021030004) for credit to the Department of Energy Account 89000201. Each wire transfer of funds shall be formatted in accordance with prescribed U.S. Treasury requirements.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit to

_____

_____

Yours truly,

_____

Authorized Signature

INSTRUCTIONS FOR PAYMENT AND PERFORMANCE
LETTER OF CREDIT

1. If issued from a single depository institution, including a branch or an agency of a foreign bank, (hereinafter referred to as "bank") that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant (on line) in the Fed's FEDWIRE funds transfer system. If issued by a syndicate of banks, only the institution acting as paying agent for the syndicate and responsible for honoring the drawings under the letter of credit must maintain a Fed account and be a participant (on line) in FEDWIRE.

2. Letter of Credit shall conform without exception to this attachment.

3. Insert date of issuance of Letter of Credit.

4. Insert dollar amount of Letter of Credit in numbers and in words.

5. Banks shall fill in all blanks except those in the drawing statements. The drawing statements are in bold print with double lines for the blanks. Do not fill in the double-lined blanks.

6. Attachment E to the Notice of Sale No. DE-NS96-91P051012 provides instruction guide for funds transfer deposit messages to other Federal agencies through Treasury and the current wire transfer format.

7. If available please include your American Bank Association Number on Letter of Credit.

8. Type name under authorized signature.

EXHIBIT H

STRATEGIC PETROLEUM RESERVE CRUDE OIL DELIVERY REPORT

1 SALES CONTRACT NUMBER	2 TERMINAL REPORT NUMBER	3 CARGO NUMBER

4 DATE DELIVERED	5. TRANSPORTATION MODE	6 ACCEPTANCE POINT	7 PRICE DATE
	☐ TANKER ☐ BARGE ☐ PIPELINE	☐ ORIGIN ☐ DESTINATION	

8. SHIPPING SPR SITE/TERMINAL	9. PURCHASER NAME AND ADDRESS	10 CARRIER

11 CONTRACT LINE ITEM MLI	11 CONTRACT LINE ITEM DLI	12 DESCRIPTION OF CRUDE OIL AND GROSS BBLS	13 API GRAVITY	14 TOTAL SULPHUR %	15 DEL'D NET BBLS @ 60°F	16 UNIT PRICE	17 AMOUNT DUE

18 QUALITY ADJUSTMENT - INCREASE/(DECREASE)			
18A NET GRAVITY ADJUSTMENT FROM 18B/5) _____ ____			
18B CALCULATION OF GRAVITY ADJUSTMENT		19 NET AMOUNT DUE	
(1) ADVERTISED API GRAVITY		20 THE DELIVERED NET BARRELS, UNIT PRICE, PRICE DATE, QUALITY ADJUSTMENT AND NET AMOUNT DUE HAVE BEEN VERIFIED	
(2) DELIVERED API GRAVITY			
(3) VARIANCE--(2)MINUS(1)		SIGNATURE _____	
(4) ALLOWABLE VARIANCE		ACCOUNTABLE OFFICER	
(5) NET VARIANCE -(3)MINUS(4)		22 REMARKS	

21 TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD		
VESSEL ARRIVED IN ROADS		
PILOT ON BOARD		
WEIGHED ANCHOR		
FIRST LINE ASHORE		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD		
CARGO HOSES CONNECTED		
COMMENCED LOADING		
STOPPED LOADING		
RESUMED LOADING		
FINISHED LOADING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (ACTUAL OR ESTIMATED)		

23. GOVERNMENT INSPECTOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE (VESSEL CARGO) (PIPELINE SHIPMENT) WAS INSPECTED, DELIVERED AND ACCEPTED AS SHOWN HEREON.

DATE _____ SIGNATURE _____

NAME TYPED/PRINTED

24. RECEIPT IS ACKNOWLEDGED FOR THE QUANTITY AND QUALITY SHOWN HEREON.

DATE RECEIVED _____

AGENT: _____

BY: _____

NAME TYPED/PRINTED

25. I CERTIFY THAT THE TIME STATEMENT SHOWN HEREON IS CORRECT

SIGNATURE _____

MASTER OF VESSEL

SPRPMO-F-6110.2-14b 1/87 REV 8/91

EXHIBIT I

INSTRUCTION GUIDE FOR RETURN OF OFFER GUARANTEES
BY ELECTRONIC TRANSFER OR TREASURY CHECK

Offer guarantees will be returned at the option of the Government by either check of electronic funds transfer through the Treasury Fedline Payment System (FEDLINE). Offerors shall designate a financial institution for receipt of electronic funds transfer payments and provide the following information:

(1) Name and address of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to FEDLINE.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to FEDLINE, name and address of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the American Bankers Association identifying number for the correspondent institution.

EXHIBIT J

OFFER GUARANTEE CALCULATION WORKSHEET

MLI:

ROW (000/$)	COLUMN (A) MAXQ (000/bbls)	(B) UNIT PRICE	(C) DLI	(D) DESQ (000/bbls)	(E) MINQ (000/bbls)	(F) TOTAL DLI PRICE	(G) BOND FACTOR	(H) PRODUCT ($)
1		$				$	x50	$
2		$				$	x50	$
3		$				$	x50	$
4		$				$	x50	$
5		$				$	x50	$
6		$				$	x50	$
7		$				$	x50	$
8		$				$	x50	$
9		$				$	x50	$
10		$				$	x50	$
11		$				$	x50	$
Total								

1. Using a separate worksheet for each MLI offered against, from the SPR Sales Offer Form, enter the MLI maximum quantity offered on (expressed in thousands of barrels) in Column (A), Row 1.

2. Starting with the highest DLI unit price offered on the MLI from the SPR Sales Offer Form (and the highest preference if the unit prices of two or more DLIs are the same) enter the unit price in Row 1, Column (B); the DLI letter in Row 1, Column (C); the DLI desired quantity is Row 1, Column (D) (in thousands of barrels) and the minimum quantity in Row 1, Column (E). (The minimum quantity is either the Government's minimum contract quantity, if the offer indicates the offeror will accept as little as that amount, or the desired quantity, if the offeror indicates he will accept no less than that amount. See instructions for the SPR Sales Offer Form.)

3. If either the desired quantity in Column (D), or the minimum quantity in Column (E) exceeds the maximum quantity in Column (A), you have made an error either on this form or the offer form and should recheck your figures.

4. Multiply the price in Row 1, Column (B) times the desired quantity in Column (D) (as expressed in thousands) and enter the total DLI price in Column (F).

5. Multiply the total DLI price in Column (F) times the factor in Column (G) and enter the product in Column (H). The factor is 5% of 1000.

6. Subtract the DLI desired quantity in Row 1, Column (D) from the maximum quantity in Row 1, Column (A). Enter the result in Row 2, Column (A). If the result is zero, go to step 11.

7. Enter the next highest unit price for the MLI from the offer form in Row 2, Column (B). Enter the DLI letter, desired quantity, and minimum quantity in their respective columns. If there is a maximum quantity remaining in Row 2, Column (A), but no more DLI offers, or the minimum quantity in Row 2, Column (E) exceeds the maximum quantity, you may have made an error and should recheck your figures.

8. Multiply the lesser of the remaining maximum quantity in Column (A) (even if this quantity is less than MINQ), or the desired quantity in Column (D) times the unit price and enter the resulting total DLI price in Column (F).

9. Multiply Column (F) times the factor in Column (G) and enter the product in Column (H).

10. Repeat steps 6-9 for the next higher unit price until the maximum quantity remaining is zero, then go to step 11.

11. Sum the amounts in Column (H) and enter the total in Row 8, Column (H). Sum this amount for all the worksheets. If the sum of all the worksheets is less than $10,000,000, enter the sum in the spaces marked offer bond on the SPR Sales Offer Form. If the sum exceeds $10,000,000, then enter $10,000,000 on the offer form. Send with the offer or wire concurrently to the U.S. Treasury (refer to instructions in the Notice of Sale) an offer guarantee in the amount indicated on the offer form. These worksheets need not be submitted with the offer and should be retained for your files.

[FR Doc. 92-18574 Filed 12-10-92; 8:45 am]
BILLING CODE 6450-01-C

federal register

Friday
December 11, 1992

Part VI

Department of the Interior

Fish and Wildlife Service
50 CFR Part 32
Refuge-Specific Hunting and Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

FIN 1018–AA71

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to insure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations. In addition, these refuge-specific regulations are consistent with the proposed new format which reorganizes all hunting and fishing regulations under one part as proposed in another document published in the **Federal Register** on November 25, 1992.

DATES: Comments must be received on or before December 28, 1992. See SUPPLEMENTARY INFORMATION below for discussion of comment periods.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358-2043.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358-2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to (1) insure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values and (4) insure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to insure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Special circumstances in the reformatting of the hunting and fishing regulations as proposed to be revised at 57 FR 55686 on November 25, 1992, limit the amount of time that the Service can allow for public comment. Accordingly, interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (ADDRESSES above) by the end of the comment period. All substantive comments regarding content or format will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting and fishing regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of E.O. 12291 and

would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR. Refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—
California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—
Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—
Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—
Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—
Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 W. Gate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8200.

Region 6—
Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—
Alaska (Hunting and fishing on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting and fishing regulations for these refuges).
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3538.

Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, it is proposed to amend Part 32, as proposed to be revised at 57 FR 22686 on November 25, 1992, of chapter I of title 50 of the Code of Federal Regulations as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.20 Alabama is amended by revising paragraph C. of the Choctaw National Wildlife Refuge; by revising paragraphs A., B., and C. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Eufaula National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, mourning doves, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

3. Section 32.22 *Arizona* is amended by revising paragraph C. of Buenos Aires National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of mule deer and white-tailed deer, javelina and feral hogs is permitted on designated areas of the refuge.

* * * * *

4. Section 32.23 Arkansas is amended by revising paragraph B. of Big Lake National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Big Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon, beaver and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

5. Section 32.24 California is amended by removing paragraph A.4. and revising paragraph A.3. of Delevan National Wildlife Refuge; by revising paragraphs A.3. and paragraph B.2. of Lower Klamath National Wildlife Refuge; by revising paragraph A.3., and removing paragraph A.4., and by redesignating paragraph A.5. as paragraph A.4. of Sacramento National Wildlife Refuge; and by revising paragraphs A.4. and B.2. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Hunters assigned to the spaced blind unit are restricted to within 100 feet of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

* * * * *

3. Hunters assigned to the spaced blind unit are restricted to within 100 feet of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

* * * * *

4. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

6. Section 32.27 Delaware is amended by removing paragraph A.8. and redesignating paragraph A.9. as paragraph A.8. of Bombay Hook National Wildlife Refuge; and by removing paragraph A.7. and redesignating paragraphs A.8. and A.9. as A.7. and A.8., respectively, revising paragraphs C. introductory text, C.2., C.3., and C.4., and adding new paragraphs C.7. and C.8. of Prime Hook National Wildlife refuge to read as follows:

§ 32.27 Delaware.

* * * * *

Prime Hook National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

2. Deer hunting on Area A must be from designated stands only, unless actively tracking or retrieving wounded deer.

3. Hunting Areas A and B and the North Hunting Area are open to shotgun and muzzleloader deer hunting.

4. Archery deer hunting is permitted on the North Hunting Area only.

* * * * *

7. A shotgun only turkey hunt is permitted during the State spring season in Unit 1 north of Fowler's Beach Road and west of Slaughter Canal.

8. Hunters during firearms deer season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

7. Section 32.32 Illinois is amended by revising paragraph A.1., removing A.2. and redesignating A.3. as A.2., and adding a sentence at the end of newly designated A.2., revising paragraphs B.1., B.2. and C.3. and adding a new paragraph C.4. to Crab Orchard National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Crab Orchard National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbriar land areas, plus Orchard, Turkey, and Sawmill and Grassy Islands, from sunrise to posted closing times each day during the goose season. Waterfowl hunting in these areas, including lake shorelines, is permitted only from existing refuge blinds. Hunters must comply with the special rules posted at the blind drawing site. Only waterfowl hunting is permitted in the controlled goose hunting areas during goose season.

2. * * * No person may establish or use a goose blind or pit within 100 yards of roads, right-of-ways, easements, and refuge public use boundaries.

B. Upland Game Hunting. * * *

1. Upland game hunting is not permitted in the controlled goose hunting areas during goose season.

2. No rifles or pistols with ammunition larger than .22 caliber rim fire, except black powder firearms up to and including .40 caliber may be used.

C. Big Game Hunting * * *

* * * * *

3. Deer hunting is not permitted in the controlled goose hunting areas during goose season.

4. Hunting stands must be removed at the end of each day's hunt.

* * * * *

8. Section 32.33 Indiana is amended by adding a new paragraph C.5. to Muscatatuck National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Non-hunters must stay in vehicles when entering the hunt area during the second state deer muzzleloader season.

* * * * *

9. Section 32.37 Louisiana is amended by revising paragraph B. for Atchafalaya National Wildlife Refuge; by revising paragraph B.2. and adding a new paragraph B.5., by revising paragraph C. D'Arbonne National Wildlife Refuge; by revising paragraphs A., B., and C. of Delta National Wildlife Refuge; by revising paragraphs B.2. and B.4., and adding a new paragraph B.5., by revising paragraph C. for Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Atchafalaya National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon, opossum, nutria, muskrat, mink, fox, bobcat, beaver and otter is permitted on designated areas of the refuge

subject to the following condition: Hunting shall be in accordance with Sherburne Wildlife Management Area regulations.

* * * * *

D'Arbonne National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Feral hogs, coyotes and beaver may be taken during all refuge hunts.

* * * * *

5. Dogs are allowed for hunting squirrels, rabbits and raccoon only from the end of the last refuge gun deer hunt to the end of small game season.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Either-sex deer hunting with firearms is permitted during the second consecutive Saturday and Sunday and fourth consecutive Friday and Saturday in November only.

2. Feral hogs, coyotes, and beaver may be taken during all refuge hunts.

3. Only still hunting is permitted.

4. Deer stands may not be left unattended.

5. All deer must be checked at a designated check station.

* * * * *

Delta National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Upper Ouachita National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Feral hogs, coyotes and beaver may be taken during all refuge hunts.

* * * * *

4. Nontoxic shot is required while hunting upland game species.

5. Dogs are allowed for hunting squirrels, rabbits and raccoon only from the end of the last refuge gun deer hunt to the end of small game season.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Either-sex deer hunting with firearms is permitted during the second consecutive Saturday and Sunday and fourth consecutive Friday and Saturday in November only.

2. Feral hogs, coyotes, and beaver may be taken during all refuge hunts.

3. Firearms must be unloaded while being transported in a vehicle or boat.

4. Only still hunting is permitted.

5. Deer stands may not be left unattended.

* * * * *

10. Section 32.38 Maine is amended by revising paragraph C.2. for Moosehorn National Wildlife Refuge; by adding new paragraph B.1. and by adding a new paragraph C.1. to Rachel Carson National Wildlife Refuge; and by revising paragraph C.1. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Moosehorn National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

2. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Rachel Carson National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

C. Big Game Hunting. * * *

1. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Sunkhaze Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

11. Section 32.39 Maryland is amended by revising paragraph C.4. for Blackwater National Wildlife Refuge; and by revising paragraph C.5. for Eastern Neck National Wildlife Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Blackwater National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Eastern Neck National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

12. Section 32.40 Massachusetts is amended by removing paragraph A.1. and redesignating paragraph A.2. as paragraph A.1., and removing paragraph B.3. of Oxbow National Wildlife Refuge; by removing paragraphs A.2. and A.5. and redesignating paragraphs A.3. and A.4. as paragraphs A.2. and A.3., and removing paragraph C.7. and redesignating paragraph C.8. as paragraph C.7. of Parker River National Wildlife Refuge.

13. Section 32.42 Minnesota is amended by revising paragraphs A. and C. of the Minnesota Valley National Wildlife Refuge; and by adding a new paragraph C.4. to Rice Lake National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Minnesota Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, and coots is permitted on designated areas of the refuge.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Archery hunting is permitted.

2. All stands must be removed from the refuge at the end of each day's hunt.

3. Permits are required to participate in the shotgun Alternative Deer Control Program.

* * * * *

Rice Lake National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Hunting of deer on the Rice Lake Unit is by firearm only; hunting on the Sandstone Unit is by firearm and archery.

* * * * *

14. Section 32.45 Montana is amended by removing paragraph A.3. and by revising paragraph B. for Benton Lake National Wildlife Refuge to read as follows:

§ 32.45 Montana.

* * * * *

Benton Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use only non-toxic shot while in the field.

2. Hunting is permitted beginning on the opening day of Montana waterfowl hunting season and is closed at the end of the hunting day of November 30.

* * * * *

15. Section 32.49 New Jersey is amended by removing paragraphs A.1., A.3., A.4. and A.7. and redesignating paragraphs A.2., A.5. and A.6. as paragraphs A.1., A.2., and A.3., respectively, by adding new paragraphs A.4., A.5. and A.6., and revising paragraph C.3. for Edwin B. Forsythe National Wildlife Refuge; by revising paragraph C.3. and removing paragraph C.4. for Great Swamp National Wildlife Refuge; and by revising paragraph C.4. for Supawna Meadows to read as follows:

§ 32.49 New Jersey.

* * * * *

Edwin B. Forsythe National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Hunters may not use or possess more than 25 shells per day in Hunting Areas A, B, and C in the Barnegat Division and in Hunting Unit 1 in the Brigantine Division.

5. In Hunting Area B of the Barnegat Division, hunting is restricted to designated sites, with each site limited to one party of hunters. A minimum of six decoys per site is required.

6. No sites or areas may be occupied before 4:00 a.m. Access is by boat only.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Great Swamp National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Supawna Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

16. Section 32.51 New York is amended by removing paragraph A.4. and redesignating paragraphs A.5. through A.8. as paragraphs A.4. through A.7., by adding a new paragraph B.3., and by revising paragraph C.1. for Iroquois National Wildlife Refuge; and by revising paragraph B., by removing paragraph C.1. and redesignating paragraphs C.2. and C.3. as paragraphs C.1. and C.2., and revising the newly designated C.2. of Montezuma National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Iroquois National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

C. Big Game Hunting. * * *

* * * * *

1. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Montezuma National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge.

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

17. Section 32.52 North Carolina is amended by revising paragraphs A., B., and C. of Alligator River National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Alligator River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of swans, geese, ducks, coots, snipe, mourning doves and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

18. Section 32.56 Oregon is amended by revising paragraphs A.1. and B. for Lower Klamath National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Only unloaded firearms may be carried on hunter access routes open to motor vehicles or when taken through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

19. Section 32.57 Pennsylvania is amended by removing paragraph A.2. and redesignating paragraph A.3 as A.2., and by revising paragraphs C. introductory text and C.1. for Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Erie National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is open to turkey hunting during the State spring turkey season.

* * * * *

20. Section 32.60 South Carolina is amended by revising paragraph A. for Cape Romain National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

Cape Romain National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of rails is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

21. Section 32.63 Texas is amended by revising paragraphs C.4. and C.7. for Aransas National Wildlife Refuge; by adding paragraph A.3. to Brazoria National Wildlife Refuge; by revising paragraph A.1., removing paragraph A.2., and redesignating paragraphs A.3.

and A.4. as A.2. and A.3. of San Bernard National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Aransas National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Archery hunting is permitted in October on specified days listed in the refuge hunt brochure.

* * * * *

7. Firearms hunting is permitted in November on specified days listed in the refuge hunt brochure.

* * * * *

Brazoria National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Permits are required to hunt on certain portions of the hunting area.

* * * * *

San Bernard National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Permits are required to hunt on certain portions of the hunting area.

* * * * *

22. Section 32.65 Vermont is amended by removing paragraph A.7. and by revising paragraph C.2. for Missisquoi National Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Missisquoi National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

23. Section 32.66 Virginia is amended by revising paragraph C.5. for Back Bay National Wildlife Refuge; by revising paragraphs A. introductory text, A.1., A.4., A.5., and A.6., and by revising paragraph C.3. for Chincoteague National Wildlife Refuge; and by revising paragraph C.4. for Great Dismal Swamp National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Back Bay National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Chincoteague National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl and rails is permitted on designated areas of the refuge subject to the following conditions:

1. Written permission is required to hunt on the nonguided public hunting areas.

* * * * *

4. Permanent blinds are permitted in compartments 1–4 in Wildcat Marsh.

5. Hunting parties are limited to a maximum of 4 hunters.

6. Public hunting is permitted only on Thursday, Fridays, and Saturdays during the State waterfowl and during the entire State rail season.

* * * * *

c. Big Game Hunting. * * *

* * * * *

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Great Dismal Swamp National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

24. Section 32.67 Washington is amended by revising paragraph A. for Conboy Lake National Wildlife Refuge to read as follows:

§ 32.67 Washington

* * * * *

Conboy Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, geese, coots, and common snipe is permitted on designated areas of the refuge.

* * * * *

25. Section 32.69 Wisconsin is amended by revising paragraph A.2. for Horicon National Wildlife Refuge; and by revising paragraph C. of the Trempealeau National Wildlife Refuge to read as follows;

§ 32.69 Wisconsin.

* * * * *

Horicon National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Only participants in the Young Wildfowlers and Special Programs are permitted to hunt.

* * * * *

Trempealeau National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of whitetailed deer is permittted on designated areas of the Refuge subject to the following condition: Permits are required.

* * * * *

Dated: September 24, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–29030 Filed 12–10–92; 8:45 am]

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Friday
December 11, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

Stockbridge-Munsee Alcohol Beverage Control Law; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Stockbridge-Munsee Alcohol Beverage Control Law

December 4, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. This Notice certifies that Resolution No. 1317, the Stockbridge-Munsee Liquor Ordinance was duly adopted by the Stockbridge-Munsee Council on May 22, 1992. The ordinance provides for the regulation of the activities of the manufacture, distribution, sale and consumption of liquor in the area of Indian Country under the jurisdiction of the Stockbridge-Munsee Tribe, Wisconsin.

DATES: This Ordinance is effective as of December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611–MIB, Washington, DC 20240; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Stockbridge-Munsee Liquor Ordinance [No. 1317] is to read as follows:

Liquor Control Ordinance—Stockbridge-Munsee Community of Wisconsin

Whereas, Public Law 277, 83rd Congress, 1st Session, approved August 15, 1953, and codified at section 1161 of title 18, United States Code, provides that sections 1154, 1156, 3113, 3488, 3618 of Title 18 of the United States Code shall not apply within any area that is not Indian Country, nor to any act or transaction within any area of Indian Country, provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian Country, certified by the Secretary of the Interior, and published in the **Federal Register**.

Whereas, It is the desire of the Tribal Council of the Stockbridge-Munsee Community of Wisconsin to adopt a liquor control ordinance in the Indian Country that lies within the jurisdiction of the community; and

Whereas, The Tribal Council of the Stockbridge-Munsee Community of Wisconsin has the authority to adopt ordinances regulating liquor in the Indian Country that lies within the jurisdiction of the Community, by virtue of the provisions of Article VII, sections 1(a), (e) and (h) of the Constitution of the Stockbridge-Munsee Community of Wisconsin, adopted October 30, 1937;

Now therefore be it resolved, That the Tribal Council of the Stockbridge-Munsee Community of Wisconsin authorizes the issuance of licenses for on-premises sale of alcohol beverages within the Indian Country that lies within the jurisdiction of the Community, provided:

1. Licenses

A. Licenses for the sale of alcohol beverages may be issued only for the sale of such beverages within buildings used for casinos and restaurant-bar operations owned and regulated by the Stockbridge-Munsee Community.

B. Any restaurant-bar operation must produce more than 50% of its gross sales from food service in order to be licensed after the first year of operation.

C. Licenses issued to businesses owned by the Stockbridge-Munsee Community for the sale of alcohol beverages shall be issued by the Tribal Council of the Community, upon the receipt by the Tribal Council of a proper application containing the following information:

(1) The name of the entity that regulates the Community business at which the sale of alcohol beverages would take place. Such entity shall be the license applicant. No individual or private entity may apply for or receive a license under this Ordinance.

(2) A copy of the Community ordinance or resolution under which the applicant entity is organized.

(3) A description of the land or building owned by the Community and regulated by the applicant entity at which the applicant entity wishes to sell alcohol beverages.

(4) A statement that the applicant entity will conform to all requirements of applicable Tribal, State and Federal law, as they relate to the purchase and sale of alcohol beverages.

D. Upon receipt of a proper application under this Ordinance, licenses for the sale of alcohol beverages may be issued by the Tribal Council of the Community to a Tribal casino or restaurant-bar of the Community if the Tribal Council finds, in its sound discretion, on the basis of the facts disclosed by the application and by such additional information as the Tribal Council may deem relevant, that such issuance is in the interest of the Community.

E. Licenses for the sale of alcohol beverages issued by the Tribal Council shall contain the following requirements:

(1) Each license shall require its holder to conform its operations to the laws of the Community, the State of Wisconsin and the United States of America;

(2) No license shall be effective for a term of more than one year from the date of its issuance, and each renewal thereof shall be subject to the same procedures that apply to the initial issuance of a license.

(3) Each license shall explicitly state that its continued validity is dependent upon the compliance of its holder with all the provisions of this Ordinance and other applicable law.

(4) No licensee may give away or sell alcohol beverages at a loss.

F. The Tribal Council of the Community shall have the authority to suspend or revoke any license issued under this Ordinance, under the following procedures:

(1) Upon receiving information suggesting that the holder of a license under this Ordinance may have violated the terms of the license or applicable law, the Tribal Council shall give the license holder written notice that the Tribal Council intends to suspend or revoke the holder's license. Such notice shall be sent by certified mail, return receipt requested, to the agent of the license holder and shall specify the grounds for the proposed suspension or revocation.

(2) Any license holder who receives a notice of a proposed suspension or revocation may request a hearing by the Tribal Council, by sending a written request therefor, certified mail, return receipt requested, to the Chairman of the Stockbridge-Munsee Community, at the Community's Tribal Center, within seven (7) days of the license holder's receipt of the notice.

(3) Upon receipt of the request for a hearing under this Ordinance, the Tribal Council shall set a date for a hearing, which shall be no later than thirty days from the receipt of the hearing request.

(4) At a hearing held under this Ordinance, the holder of a license under this Ordinance shall be permitted to present evidence with respect to the holder's compliance with the terms of its license and applicable law. In reaching its decision, the Tribal Council may consider such evidence, together with all other evidence it deems relevant. Following a hearing, if in the judgment of the Tribal Council the license holder has not complied with

the terms of its license and applicable law, the Tribal Council shall suspend or revoke its license; and if in the judgment of the Tribal Council the terms of the license and applicable law have been complied with, the proceedings shall be dismissed. In either case, the decision of the Tribal Council shall be final.

G. The Tribal Council of the Stockbridge-Munsee Community may reject any application for a license, or for a renewal of a license, under this Ordinance, if the applicant previously has committed acts which have resulted in the suspension or revocation of a license under this Ordinance.

2. Agent

Any Tribally owned entity licensed under this Ordinance shall appoint, subject to the approval and confirmation of the Tribal Council, an agent who shall have full authority and control of the premises and of the conduct of all business on the premises relative to alcohol beverages. This person shall also be the person designated by Wis. Stats. § 125.04(6) requiring the appointment of agents.

3. Authority of the Tribal Council

A. The Tribal Council, or any individual member thereof or any person acting with prior written authorization of the Tribal Council may enter any premises licensed under this ordinance at any time to observe the activities taking place.

B. Written authorization may be enacted at a closed session of the Tribal Council and remain confidential until any report made by such person is before the Tribal Council for action or until such person seeks to gain access to the premises of any Tribally licensed facility during normal closed hours in which case it shall be presented to the manager on duty at the time, and said manager shall immediately admit the person to the premises.

C. Tribal Council members do not need such written authorization and may enter any Tribally licensed facility at any time upon identifying themselves if such admission is sought during normal closed hours.

4. Separate Licenses for Each Facility

Each Tribally owned entity licensed under this Ordinance shall be required to file a separate application and hold a separate license for each facility it operates.

5. Transfer of Licenses Prohibited

No license issued under this Ordinance may be transferred to any other entity or person.

6. State Law Applicable

The Stockbridge-Munsee Community recognizes the applicability of general State Law governing the sales of alcohol beverages.

7. State Law Adopted

The Stockbridge-Munsee Community hereby adopts for purposes of Tribal enforcement against any entity licensed by the Tribe under this ordinance the following provisions, as modified, of chapter 125 of the Wisconsin Statutes:

125.02	Definitions. Except as otherwise provided, in this ordinance.
125.02(1)	*Alcohol beverages* means fermented malt beverages, wine and intoxicating liquor as defined below.
125.02(6)	*Fermented malt beverage* means any beverage made by the alcohol fermentation of an infusion in potable water of barley, malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more alchol by volume.
125.02(8)	*Intoxicating liquor* means all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages".
125.02(22)	*Wine* means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agriculture products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain 0.5% or more of alcohol by volume.
125.02(8m)	*Legal drinking age* means 21 years of age.
125.02(14)	*Person* means natural person, sole proprietorship, partnership, corporation or association.
125.02(14m) ...	*Premises* means the area described in a license issued by the Tribal Council.
125.02(17)	*Regulation* means any rule or ordinance adopted by the Tribal Council.
125.02(20)	*Sell, sold, sale* or *selling* means any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any device, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale of future delivery of, alcohol beverages.
125.02(20)	*Underage person* means a person who has not attained the legal drinking age.
125.04(1)	General licensing requirement. No person may sell, manufacture, rectify, or brew any alcoholic beverage, or engage in any other activity for which this ordinance provides a license without holding the appropriate license.
125.04(2)	No license to be issued in violation of this ordinance. No license may be issued to any person except as provided in this ordinance. Any license issued in violation of this ordinance is void.
125.04(10)	License to be framed and posted. (a) Frame. Licenses for the sale of alcohol beverages shall be enclosed in frame having a transparent front which allows the license to be clearly read. (b) Display. Licenses shall be conspicuously displayed for public inspection at all times in the room or place where the sale of alcohol beverages is carried on.
125.07	Underage and intoxicated persons; presence on licensed premises; possession; penalties. (a) Alcohol beverages; Restrictions relating to underage persons. 1. No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age. 2. No licensee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age. 3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises under the adult's control. 4. No adult may intentionally encourage or contribute to a violation of this section.
125.07(2)	(b) Sales of alcohol to intoxicated persons. 1. No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated. 2. No licensee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.

125.065 ..... Any tribal entity selling alcohol beverages shall require the proof of age specified by this section.

(a) Definition. In this section, "official identification card" means a valid operator's license issued under chapter 343 of the Wisconsin Statutes that contains the photograph of the holder, an identification card issued under section 343.50 of the Wisconsin Statutes or an identification card issued under section 125.08 of the Wisconsin Statutes.

(b) Use. No card other than the identification card authorized under this section may be recognized as an official identification card by the Tribe for purposes of obtaining alcohol beverages at any Tribally licensed entity.

8. Closing Hours

Every entity licensed by the Stockbridge-Munsee Community shall observe the closing hours established by Wisconsin Statutes governing Class B Retail State licenses. Failure to do so shall be the basis for the revocation of licenses issued by the Tribal Council.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92-30132 Filed 12-10-92; 8:45 am]

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federal register

Friday
December 11, 1992

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 314 and 601

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 91N-0278]

RIN 0905-AD66

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations under which the agency will accelerate approval of certain new drugs and biological products for serious or life-threatening illnesses, with provisions for any necessary continued study of the drugs' clinical benefits after approval or with restrictions on use, if necessary. These new procedures are intended to provide expedited marketing of drugs for patients suffering from such illnesses when the drugs provide meaningful therapeutic benefit compared to existing treatment. Accelerated approval will be considered in two situations: (1) When approval can be reliably based on evidence from adequate and well-controlled studies of the drug's effect on a surrogate endpoint that reasonably suggests clinical benefit or on evidence of the drug's effect on a clinical endpoint other than survival or irreversible morbidity, pending completion of studies to establish and define the degree of clinical benefits to patients; and (2) when FDA determines that a drug, effective for the treatment of a disease, can be used safely only if distribution or use is modified or restricted. Drugs or biological products approved under these procedures will have met the requisite standards for safety and effectiveness under the Federal Food, Drug, and Cosmetic Act (the act) or the Public Health Service Act (the PHS Act) and, thus, will have full approval for marketing.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8038.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of April 15, 1992 (57 FR 13234), FDA published proposed procedures under which the agency would accelerate approval of certain new drugs and biological products for serious or life-threatening illnesses, with provision for required continued study of the drugs' clinical benefits after approval or for restrictions on distribution or use, where those are necessary for safe use of the drugs. FDA provided 60 days for public comment, and, upon request, in the Federal Register of June 18, 1992 (57 FR 27202), extended the comment period for an additional 30 days until July 15, 1992. The final rule incorporates all of the provisions of the proposed rule and provides additional clarification regarding both timing and content of the submissions of promotional materials and regarding the nature of required postmarketing studies. The agency has added a new provision clarifying when certain postmarketing requirements of the rule will be terminated.

Highlights of the final rule are summarized below, followed by a summary and discussion of the comments.

II. Highlights of the Final Rule

This final rule establishes procedures under parts 314 and 601 (21 CFR parts 314 and 601) under which FDA will accelerate approval of certain new drugs and biological products for serious or life-threatening illnesses, with provision for required continued study of the drugs' clinical benefits after approval or for restrictions on distribution or use, where those are necessary for safe use of the drugs. These procedures are intended to provide expedited marketing of drugs for patients suffering from such illnesses when the drugs provide meaningful therapeutic advantage over existing treatment. The preamble of the proposed rule (57 FR 13234) provides a description of other mechanisms available to facilitate access, speed development, and expedite review of therapeutic products (e.g., treatment investigational new drug applications (IND's), subpart E, parallel track). Where appropriate, these mechanisms can be utilized in concert with accelerated approval. The major provisions of the final rule are as follows:

A. Scope

The new procedures apply to certain new drug, antibiotic, and biological products used in the treatment of serious or life-threatening diseases, where the products provide meaningful therapeutic advantage over existing treatment (21 CFR 314.500 and 601.40).

B. Criteria for Approval

Accelerated approval will be considered in two situations: (1) When approval can be reliably based on evidence of the drug's effect on a surrogate endpoint that reasonably suggests clinical benefit or on evidence of the drug's effect on a clinical endpoint other than survival or irreversible morbidity, pending completion of studies to establish and define the degree of clinical benefits to patients; and (2) when FDA determines that a drug, effective for the treatment of a disease, can be used safely only if distribution or use is modified or restricted. Drugs or biological products approved under this final rule will have met the requisite standards for safety and effectiveness under the act or the PHS Act and, thus, will have full approval for marketing (21 CFR 314.510, 314.520, 601.41, and 601.42). Ordinarily, products used to treat serious or life-threatening illnesses, for which approval is based on a surrogate endpoint that is recognized as validated by definitive studies, will be considered for approval under the traditional process rather than under accelerated approval.

C. Postmarketing Studies

Where a drug's approval under these provisions is based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity, the applicant will be required to conduct clinical studies necessary to verify and describe the drug's clinical benefit and to resolve remaining uncertainty as to the relation of the surrogate endpoint upon which approval was based to clinical benefit, or the observed clinical benefit to ultimate outcome. The requirement for any additional study to demonstrate actual clinical benefit will not be more stringent than those that would normally be required for marketing approval; it is expected that the studies will usually be underway at the time of approval. The proposed regulations have been revised to clarify that required postmarketing studies must also be adequate and well-controlled (21 CFR 314.510 and 601.41).

D. Restrictions on Use After Marketing

FDA may grant marketing approval of a drug or biological product shown to be effective where safe use can only be assured if distribution or use is restricted. Under this final rule, FDA may: (1) Restrict distribution to certain facilities or to physicians with special training or experience, or (2) condition distribution on the performance of

specified medical procedures. The restrictions on use will be tailored to the specific safety issue raised by the particular drug or biological product and agreed to by the applicant at the time of approval (21 CFR 314.520 and 601.42). FDA expects that the imposition of these restrictions on distribution will be rare.

E. Promotional Materials

The final rule requires submission of planned promotional materials, including promotional labeling and advertisements, both prior to approval (reflecting the initial campaign), and following approval, unless informed by the agency that such submission is no longer necessary, at least 30 days before the intended time of initial dissemination of the promotional labeling or initial publication of the advertisement (21 CFR 314.550 and 601.45).

F. Withdrawal of Approval

The final rule establishes an expedited procedure for the withdrawal of approval if: (1) Postmarketing clinical studies fail to verify clinical benefit; (2) the applicant fails to perform the required postmarketing study with due diligence; (3) use after marketing demonstrates that postmarketing restrictions are inadequate to ensure safe use of the drug or biological product; (4) the applicant fails to adhere to the postmarketing restrictions agreed upon; (5) the promotional materials are false or misleading; or (6) other evidence demonstrates that the drug or biological product is not shown to be safe or effective under its conditions of use (21 CFR 314.530 and 601.43).

G. Termination of Requirements

In response to comments, the final rule provides that the requirements set forth in §§ 314.520, 314.530, and 314.550 for new drugs and antibiotics and §§ 601.42, 601.43, and 601.45 for biological products ordinarily will terminate when FDA determines that the results of required postmarketing studies have demonstrated that the drug or biological product has clinical benefit, or, where restrictions on distribution or use have been imposed, when FDA determines that safe use of the drug or biological product can be ensured without such restrictions, e.g., through appropriate labeling. FDA will notify the applicant when these requirements no longer apply (21 CFR 314.560 and 601.46).

III. Effective Date

This regulation will become effective on January 11, 1993.

IV. Comments on the Proposed Rule

FDA received 54 comments on the proposed rule. The comments came from individuals, specific disease organizations, universities, pharmaceutical manufacturers, trade associations, health professionals, and professional societies. The comments reflect broad support and acceptance of the goal of expediting the approval of drugs intended for the treatment of serious and life-threatening illnesses. A number of comments asked that the proposal be finalized expeditiously without change. Many comments posed specific questions and raised important concerns.

A. General Comments

1. One comment suggested that the term "conditional approval" was less confusing and ambiguous than the term "accelerated approval." The comment also referred to the statement in the proposal that "Drugs * * * approved under this proposal will have met the requisite standards * * * under the (act)" and argued that because postmarketing conditions may be imposed, this statement can only be read to say that the requisite standards under the act can only be met by a lower standard of evidence in hand, combined with assurance that further evidence will be obtained.

Another comment expressed concern that the proposal appears to establish a standard for the evaluation of drug product effectiveness that is inconsistent with the substantial evidence requirement of section 505(d) of the act (21 U.S.C. 355(d)), which means "evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling * * *." The comment argued that, with few exceptions, the agency has consistently interpreted the "substantial evidence" requirement as an instruction that determinations of effectiveness be based on data unambiguously reflecting the clinical status of subjects evaluated under controlled conditions in bona fide clinical experiments. In the absence of compelling empirical evidence documenting that a drug-induced change in a surrogate measure reliably and consistently predicts improved clinical outcome, a surrogate indicator is no more than a hypothetical construct. The comment asserted that the proposed rule's endorsement of the use of unvalidated surrogate endpoints, therefore, appears to represent a significant departure from traditional agency interpretations of "substantial evidence" within the meaning of the act because it allows belief rather than evidence to serve as the basis for a conclusion about the effectiveness of a new drug.

Three comments asserted that the new regulations are not needed to approve drugs intended to treat serious or life-threatening illnesses. Two comments cited FDA's approval, without new regulations, of didanosine (formerly called ddi) and zalcitabine (formerly called ddc) in combination with zidovudine (formerly called AZT) based on a surrogate marker, i.e., an increase in CD4 cell counts and the "subpart E" procedures at 21 CFR part 312, which address the need for expediting the development, evaluation, and marketing of new therapies intended to treat life-threatening or severely debilitating illnesses as examples of existing mechanisms for the expedited approval of important new drugs. One comment argued that the act requires that drugs be shown to be "safe" and "effective," and proof of effectiveness is not limited by the act to demonstration of an effect on "survival or irreversible morbidity," as the proposed rule seems to assume. The comment further argued that FDA has considerable statutory discretion to define what type of data constitutes proof of effectiveness, and demonstration of an effect on a surrogate marker is one type of such proof.

The agency believes that what the procedures are called is much less important than what the procedures are. The shorthand term selected by the agency reflects the intent of the rule, especially that part related to use of surrogate markers, which is to make drugs that provide meaningful improvement over existing therapies for serious illnesses widely available (through marketing) at the earliest time consistent with the law. The essence of the proposal is thus acceleration, not the imposition of conditions. Approval under these procedures is dependent on compliance with certain additional requirements, such as timely completion of studies to document the expected clinical benefit. The evidence available at the time of approval under this rule will meet the statutory standard, in that there must be evidence from adequate and well-controlled studies showing that the drug will have

the effect it is represented to have in its labeling. That effect will, in this case, be an effect on a surrogate endpoint that is reasonably likely to predict a clinical benefit and labeling will refer to the effect on the surrogate, not to effect on clinical outcome.

While the act does not refer to particular endpoints or state a preference for clinical, as opposed to surrogate, endpoints, it is well established that the effect shown in well-controlled studies, must, in the judgment of the agency, be clinically meaningful. Moreover, the safety standard in the act, that a drug must be shown to be safe for its intended use, implies a risk/benefit judgment. The effect shown must be such as to outweigh the risks of the treatment under the conditions of use. Approval under this rule requires, therefore, that the effect shown be, in the judgment of the agency, clinically meaningful, and of such importance as to outweigh the risks of treatment. This judgment does not represent either a "lower standard" or one inconsistent with section 505(d) of the act, but rather an assessment about whether different types of data show that the same statutory standard has been met.

Approval based on surrogate endpoints is not new, although the issue has not previously been considered in regulations. The agency has, in a number of instances, approved drugs based on surrogate endpoints. For example, drugs for hypertension have been approved based on their effects on blood pressure rather than on survival or stroke rate. Similarly, drugs for hypercholesterolemia have been approved based on effects on serum cholesterol rather than on coronary artery disease (angina, heart attacks). But, in those cases there was very good evidence from clinical trials (in the case of hypertension) and from epidemiologic and animal studies (in the case of hypercholesterolemia) that improving the surrogate would lead to or is associated with the desired effects on morbidity and mortality. Even so, there is still today considerable debate about who will benefit from cholesterol lowering. Controlled trials assessing effects on clinical endpoints of morbidity and mortality from use of cholesterol-lowering drugs have been, and are being, conducted.

Reliance on a surrogate endpoint almost always introduces some uncertainty into the risk/benefit assessment, because clinical benefit is not measured directly and the quantitative relation of the effect on the surrogate to the clinical effect is rarely known. The expected risk/benefit relationship may fail to emerge because: (1) The identified surrogate may not in fact be causally related to clinical outcome (even though it was thought to be) or (2) the drug may have a smaller than expected benefit and a larger than expected adverse effect that could not be recognized without large-scale clinical trials of long duration. Reliance on surrogate markers therefore requires an additional measure of judgment, not only weighing benefit versus risk, as always, but also deciding what the therapeutic benefit is based upon the drug effect on the surrogate.

The sections of the final rule that address approval based upon a drug effect on a surrogate endpoint specifically clarify the regulatory approval criteria when the agency relies on a surrogate endpoint that, while "reasonably likely" to predict clinical benefit, is not so well established as the surrogates ordinarily used as bases of approval in the past. Postmarketing studies required to verify and describe actual clinical benefits would also be required to be adequate and well-controlled studies. Sections 314.510 and 601.41 have been revised to clarify this point. If, on completion of required postmarketing studies, the effect on the surrogate is not shown to correspond to a favorable effect on clinical benefit, the rule provides an expedited means of removing the drug from the market.

Approval of didanosine and zalcitabine under current procedures does not show that the rule is of no value. Although approval did rely on a surrogate endpoint that is of the kind specifically addressed by the rule, the fact that studies to define clinical benefit were nearly complete and were being conducted under the auspices of the National Institute of Allergy and Infectious Diseases made it less crucial to have additional guarantees that such studies would be conducted promptly. Moreover, the sponsors of didanosine and zalcitabine agreed prior to approval to expedited withdrawal of the drug from the market if benefit were not shown. The provisions of the final rule will ensure that appropriate safeguards exist for timely generation of data on actual clinical benefit, for appropriate promotional information about labeled indications, and for prompt withdrawal of the drug from the market if clinical benefit is not confirmed.

2. Pointing to a statement in the preamble to the proposed rule that it is in the public interest to make promising new treatments available at the earliest possible point in time for use in life-threatening and serious illnesses, one comment expressed concern that the proposed rule may lead to the marketing of large numbers of clinically ineffective, but pharmacologically active, drugs and this may not be in the interest of the public health. The comment argued that early access to so-called "promising" drugs is not the same as early access to safe and effective drugs, and the number of potential markers that may be advanced as surrogates of clinical outcome is exceedingly large. The comment suggested that it may be more appropriate to seek adoption of the proposed requirements through an amendment to the act.

FDA agrees with the contention that providing people who have serious or life-threatening illnesses with numerous clinically ineffective drugs would not be helpful. However, the agency does not agree that the rule can be expected to have this result. Although studies using surrogate endpoints may provide less assurance of clinical benefit than studies using clinical endpoints, FDA believes compliance with all of the elements of the accelerated approval program will not result in the marketing of large numbers of clinically ineffective drugs. The new procedures apply to a limited group of circumstances, namely, to drugs intended for serious or life-threatening illnesses when the drugs provide a meaningful therapeutic benefit over existing therapy. Reliance on a surrogate endpoint is not equivalent to reliance on any evidence of pharmacologic activity. The endpoint must be reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit.

Whether a given endpoint is, in fact, reasonably likely to predict clinical benefit is inevitably a matter of judgment. FDA, using available internal and external expertise, will have to make informed judgments in each case presented, just as it does now. The agency acknowledges that there are well-recognized reasons for caution when surrogate endpoints are relied on. Certain putative surrogates have ultimately been shown not to correspond to clinical benefit. Perhaps the most noteworthy example is the failure of antiarrhythmic agents in the Cardiac Arrhythmia Suppression Trial (CAST) to improve survival by depressing ventricular ectopic beats; effective suppression of ectopic beats was associated with increased mortality.

A sponsor must persuasively support the reasonableness of the proposed surrogate as a predictor and show how the benefits of treatment will outweigh the risks. Such presentations are likely to be persuasive only when the disease to be treated is particularly severe (so

that considerable risk is acceptable) and/or when the surrogate endpoint is well supported. In addition, it will be the sponsor's clear obligation to resolve any doubts as to clinical value by carrying out definitive studies.

FDA does not agree that it would be more appropriate to seek an amendment to the act than to adopt the proposed requirements. As discussed in the preamble to the proposed rule as well as elsewhere in this preamble to the final rule, existing provisions of the act and the PHS Act authorize promulgation of the requirements in the final regulations.

3. One comment expressed concern that because the proposed rule would establish conditions on a drug's approval, third-party payors may decline reimbursement because the so-called approval would have attributes of investigational status.

The agency expects that, because drugs approved under the accelerated approval process meet the statutory standards for safety and effectiveness, they would be eligible for reimbursement under State Medicaid programs or other third-party plans. Drug products granted accelerated approval will not be, under the law, investigational, as suggested by the comment.

4. One comment asked if all drugs considered for accelerated approval must be reviewed by an advisory committee. The comment stated that because advisory committees meet infrequently, waiting for the next meeting may slow down the approval process.

FDA is not required to consult with an advisory committee before approving an application under these accelerated approval regulations, or any other regulation. However, FDA intends to consult the appropriate committee in most instances. Advisory committee meetings can usually be scheduled to avoid significant delays in the review process. The agency will consider any request by an applicant for referral of the application to an advisory committee.

B. Scope

5. Four comments asked for further clarification of what diseases are covered by the rule. One comment stated that the terms "serious," and "life-threatening," are defined in the proposal by reference to 21 CFR 312.34, followed by a brief statement explaining the role of judgment and examples of diseases that are currently judged to be serious. The comment asked that FDA also describe: (1) Diseases that are not currently included in the category of "serious," (2) examples of diseases that are currently judged "life-threatening," and (3) examples of diseases that are not currently included in the category "life-threatening."

One comment contended that the statement in the preamble that "seriousness of a disease is a matter of judgment, but generally is based on its impact on such factors as survival, day-to-day functioning, or the likelihood that the disease, if left untreated, will progress from a less severe condition to a more serious one" too narrowly limits diseases covered by the proposed rule (57 FR 13234 at 13235). The comment argued that some "less severe" diseases, even if treated, may progress to a more serious state, and that these diseases should also be covered by the rule. On the other hand, two comments argued that the language in the preamble that classifies diseases as "serious" was overly broad and subjective and far too large a number of illnesses could be eligible as being "serious."

FDA discussed the meaning of the terms "serious" and "life-threatening" in its final rules on "treatment IND's" (52 FR 19466 at 19467, May 22, 1987) and "subpart E" procedures (54 FR 41516 at 41518–41519, October 21, 1988). The use of these terms in this rule is the same as FDA defined and used the terms in those rulemakings. It would be virtually impossible to name every "serious" and "life-threatening" disease that would be within the scope of this rule. In FDA's experience with "treatment IND's" and drugs covered by the "subpart E" procedures there have not been problems in determining which diseases fall within the meaning of the terms "serious" and "life-threatening," and FDA would expect no problems under this accelerated approval program. The likelihood of progression to a serious condition with available treatments would also be considered in assessing whether the disease is within the scope of the final rule. The preamble to the proposed rule (57 FR 13234 at 13235) referred to chronic illnesses that are generally well managed by available therapy, but can have serious outcomes for certain populations or in some or all of their phases. Applicants are encouraged to consult with FDA's reviewing divisions early in the drug development process if they have questions about whether their specific product is within the scope of this rule.

The concerns expressed in these and other comments about considering too many illnesses eligible for consideration under the accelerated approval procedures may arise from the underlying fear that reliance on surrogate endpoints will become routine, the "normal" way drugs are brought to the market. This fear is groundless. The vast majority of drugs are directed at symptomatic or short-term conditions (pain, heart failure, acute infections, gastrointestinal complaints) whose response to drugs, if it occurs, is readily measured and where there is no need to consider or accept surrogate endpoints. Surrogates, with few exceptions, are of interest in the following situations: (1) Where the clinical benefit, if there is one, is likely to be well in the future; and (2) where the implications of the effect on the surrogate are great because the disease has no treatment at all or the drug seems to treat people with no alternative (e.g., because they cannot tolerate the usual effective treatment). In the first case, great care is needed, and would be given, as there would generally be no experience linking an effect on the surrogate to clinical success, and there have been conspicuous examples of lack of linkage (CAST, referred to above; drugs that increase cardiac output in patients with heart failure but that decrease survival; imperfect agreement of effects on coronary artery patency and effects on survival in patients with myocardial infarction; lack of beneficial effect on bone fracture rate despite favorable effects on bone density in patients with osteoporosis). FDA and outside experts will be aware of these examples as proposed surrogates are considered. The implications are especially great when considering prophylactic therapy, i.e., treatments to prevent chronic illness (coronary artery disease, cancer), in an essentially well population. In the second case, there will generally have been experience (with the standard therapy) to evaluate in considering linkage of the surrogate to benefit; this was, for example, the case with didanosine, where evidence from zidovudine studies of the relationship of an effect on CD4 lymphocytes and clinical outcome could be assessed. Similarly, there is considerable experience to show that durable complete responses in many cancers correspond to improved survival, so that an agent inducing them in refractory illness or in primary

disease that had previously been poorly responsive would generally be seen as reasonably likely to provide a clinical benefit.

6. One comment stated that epilepsy is a serious and life-threatening condition and asked that it be included within the scope of the proposal. The preamble cited, among other illnesses, depression and psychoses as examples of chronic illnesses that can have serious outcomes even if they are generally well managed. One comment asserted that neither depression nor psychosis is a disease, nor is either one serious or life-threatening. The comment stated that depression and psychosis are diagnoses. The comment urged the agency to remove them from the definition of life-threatening "illnesses" or "diseases."

With respect to epilepsy, FDA notes that in the "treatment IND" final rule (52 FR 19466 at 19467, May 22, 1987), the agency listed "certain forms of epilepsy" as an example of a disease or stage of disease that would normally be considered "serious." Certain forms of epilepsy may also be considered "serious" under the accelerated approval program. It is unlikely, however, that a surrogate endpoint would be utilized in such a case, as seizure frequency, a clinical endpoint, is readily measured.

FDA's reference to depression and psychoses was intended to give examples of conditions or diseases that can be serious for certain populations or in some or all of their phases. While drugs for the treatment of depression and psychosis would be examples of those that could be covered by the accelerated approval program, it is not the use of surrogate endpoints that would be expected; the symptoms and signs of these diseases are readily studied. On the other hand, some of these drugs have been quite toxic (e.g., clozapine for refractory psychoses) and might be considered for approval with restrictions to ensure safe use.

7. Two comments asked how FDA will decide that a drug is eligible for accelerated approval. One comment asserted that the decision should be an option for the applicant to consider, not a decision for FDA to make unilaterally. Pointing to a statement in the preamble (57 FR 13234 at 13235) that FDA reserves the right not to apply accelerated approval procedures when it believes in good faith that the drug's foreseeable use is reasonably likely to be outside the scope of "life-threatening diseases without meaningful therapeutic benefit over existing therapy," the comments argued that, if there are patients with life-threatening conditions that can benefit from expedited approval, the needs of the patients should determine the procedures used to approve the drug. One comment contended that applicants of products considered candidates for accelerated approval may have their drug or biological product "forced" into the accelerated approval process and be forced to conduct a program of studies to substantiate that surrogate endpoints actually predict significant clinical benefits.

The medical reviewing divisions within FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) will determine the type of regulatory review that FDA may apply to an application. FDA encourages sponsors to meet with FDA early in the drug development process to discuss the applicability of the accelerated approval program to their product; however, FDA reserves the discretion to determine whether these procedures are applicable to a specific product.

With respect to the preamble statement cited by one comment, the comment misreads the preamble statement, which does not say that FDA will, in all cases, apply FDA's traditional approval mechanisms rather than this accelerated process for drugs where a majority of the drug's foreseeable uses are outside the scope of "life-threatening" diseases without meaningful therapeutic benefit over existing therapy. The statement merely informs applicants that FDA will consider the possible impact of widespread use of a drug for uses other than the one supporting accelerated approval; drugs approved under this program would often have only small safety data bases so that widespread off-label use might have serious implications. The agency does not believe that such a situation would regularly lead to exclusion from these provisions.

FDA does not agree that applicants seeking approval to market drug and biological products that would be candidates for accelerated approval will be forced to use the accelerated approval mechanism. It is true, however, that some proposed surrogate endpoints would not be considered acceptable bases for approval without assurance that the clinical studies to show clinical benefit will be conducted. A sponsor that wishes the application to be considered under the traditional approval process may request and receive such consideration.

The agency wishes to clarify the circumstances in which the accelerated approval regulations will apply. Sections 314.500 and 601.40 describe aspects of the scope of these regulations. Moreover, these regulations are intended to apply to applications based on surrogate endpoints whose validity is not fully established, to applications based on clinical endpoints that leave unanswered major questions about the product's effect on ultimate outcome, and to applications for products whose safe and effective use requires limitations on distribution or use. In all other situations, accelerated approval requirements will not apply.

Where approval is based on a surrogate endpoint that is accepted as validated to predict or correlate with clinical benefit, the product will be considered under the traditional process, and the postmarketing requirements under accelerated approval will not apply. Approvals of products for serious or life-threatening illnesses based on clinical endpoints other than survival or irreversible morbidity will usually also be considered under traditional procedures. Approvals based on such clinical endpoints will be considered under the accelerated approval regulations only when it is essential to determine effects on survival or irreversible morbidity in order to confirm the favorable risk/benefit judgment that led to approval. Applications for products for serious or life-threatening illnesses that provide a meaningful therapeutic benefit over existing therapy will receive a priority rating and expedited review, even when not considered under the accelerated approval procedures.

The agency also wishes to clarify that whenever an application is approved under § 314.510 or § 601.41, postmarketing studies confirming the product's clinical benefit will thus be required. Therefore, in order to eliminate potential confusion, the agency has amended §§ 314.510 and 601.41 to clarify these points.

FDA also recognizes that over time a particular surrogate, once acceptable as a basis for approval only under the accelerated approval regulations, could become recognized as validated by definitive studies (just as high blood pressure, for example, over time became validated as a surrogate with clinical significance). In such cases, a future application relying on such a surrogate would not require postmarketing studies confirming the surrogate's clinical benefit and the application would be considered under traditional procedures.

8. Two comments asked for clarification of the phrase "meaningful

therapeutic benefit over existing therapy" as used in the description of what drugs the accelerated approval program should apply to. Specifically, pointing to an example described in the preamble that a new therapy would be eligible for accelerated approval if there was "a clear improvement" over existing therapy in being more effective or better tolerated, one comment urged FDA to clarify the meaning of "clear improvement" to discourage applicants of "me-too" products from wasting the agency's time and resources by applying for accelerated approval of such products. The comment also asked that FDA specify that if a new drug is approved under the accelerated approval provisions because the drug exhibits a "clear improvement" over an existing drug that was also granted accelerated approval, then specific restrictions will be placed on the prior approved drug to limit its use only to patients who cannot tolerate the new drug, or whose physicians assess that a change to the new drug might involve significant risks to the patient that outweigh the benefits. One comment asked that the term "meaningful therapeutic benefit over existing therapy" be interpreted and consistently applied to both drugs and biological products.

FDA believes that the examples given to help clarify the phrase "meaningful therapeutic benefit over existing therapy" (ability to treat unresponsive or intolerant patients or improved response compared to available therapy) are readily understood illustrations of the intent of the requirement. A drug that is essentially the same as available treatment (what the comment refers to as a "me too" drug) will not have a credible claim to a meaningful therapeutic benefit over that existing treatment and this should be easily detected.

With respect to restricting use of a drug previously approved under accelerated approval procedures when a new drug granted accelerated approval is a clear improvement over the prior approved drug, this would rarely be appropriate. Although, in some instances, certain therapies are identified as "second-line," this requires essentially unequivocal evidence of an advantage of alternative therapy, not likely on the basis of a surrogate endpoint. Labeling for both drugs will be accurate, however, allowing physicians to prescribe both the newly approved drug and the prior drug properly.

9. One comment asked if a change in the route of administration would be considered as a meaningful benefit and within the scope of the proposal.

A change in the route of administration may be a candidate for accelerated approval depending upon the particular evidence presented.

10. One comment asked if subpart E drugs currently under investigation will be considered for accelerated approval. The comment assumed that new drug applications (NDA's) and supplemental NDA's considered for accelerated approval will have the highest priority for review.

Subpart E drugs will be considered for accelerated approval if they satisfy both eligibility criteria for accelerated approval, i.e., if they are being developed for the treatment of serious or life-threatening illnesses and the products will provide meaningful therapeutic benefits to patients over existing treatment. As discussed above, applicants should consult with FDA early in the development process to determine the nature of the regulatory review. Early consultations are a critical part of subpart E procedures. Drugs being reviewed under accelerated approval procedures will receive high priority review. However, applications for drugs for acquired immunodeficiency syndrome (AIDS) and human immunodeficiency virus (HIV)-related conditions will receive the highest priority review.

C. Criteria for Approval

11. Two comments expressed concern that the proposal did not provide enough detail on what constitutes an appropriate surrogate endpoint. One comment recommended that FDA adopt specific criteria for what constitutes an appropriate surrogate endpoint. The comment suggested that such criteria should include: (1) The surrogate endpoint must be biologically plausible in that it must be consistent with what is known about the pathophysiology and pathogenesis of the disease; (2) the surrogate endpoint must be present or abnormal in a large percentage of people who have the disease; (3) the surrogate endpoint must be a good predictor of the disease progression and should correlate closely with the significant clinical endpoint; (4) there should be a correlation between the quantitative aspect of the surrogate endpoint and the progression of the disease (e.g., the more severe the disease, the more deviant the surrogate endpoint from normal); (5) the regression of the surrogate endpoint should be significantly associated with clinical improvement (e.g., those with the greatest improvement in the surrogate endpoint should also show the greatest clinical effects); conversely, the lack of regression of the surrogate endpoint should be commonly associated with a lack of clinical improvement; and (6) the incidence of regression or improvement in the surrogate endpoint should be significantly greater in treated than untreated patients.

One comment asked if the use of microalbuminuria data is a surrogate for diabetic nephropathy and if all drugs relying on surrogate endpoints would be eligible for accelerated approval, e.g., an angiotensin receptor antagonist with potential utility for treatment of congestive heart failure. The comment also asked what would happen if postmarketing studies demonstrate beneficial changes of surrogate endpoints but not beneficial clinical endpoints. The comment also asked if FDA will consider publishing guidelines on which surrogate endpoints would be appropriate for the diseases that may be affected by the proposed rule. Another comment expressed the belief that there is no evidence that surrogate endpoints are necessarily good indicators of therapeutic benefit. The comment stated that a drug may have an effect on a surrogate endpoint, but will not make any clinical difference because the advanced stage of the patient's disease precludes any effective therapy or the surrogate marker is not synchronous with the patient's clinical condition.

Another comment asserted that the requirement to base an approval on a surrogate endpoint that is "reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit other than survival or irreversible morbidity" is not restrictive enough to assure adequate consumer protection. Terms like "reasonably likely" and "or other evidence" allow drug manufacturers too much latitude for claiming that there is a correlation between surrogate endpoints affected by their drugs and clinical endpoints. The comment argued that until a correlation between a surrogate endpoint and a clinical endpoint has been established, a particular surrogate endpoint should only be used to approve subsequent drugs, without adequate clinical evidence, if there is a very strong effect of the drug on the surrogate marker or, if the effect is not sufficiently strong, there is an additional surrogate marker which corroborates the results of the first.

FDA intends to publish informal guidance concerning surrogate endpoints, but does not believe specific requirements for an appropriate surrogate should be specified by

regulation. Any given specifications may not be applicable to a particular case. For example, the thoughtful suggested criteria supplied by the comment would rarely, if ever, be applicable to the first effective drug for a disease, because criterion 5 requires that regression of the surrogate endpoint be associated quantitatively with clinical improvement. If there had never been effective treatment, this would never be known. Yet the surrogate could be persuasive on other grounds, such as a well-documented etiologic relation. In general, it is likely that one or another strongly supportive piece of evidence might outweigh gaps in other areas.

In developing informal guidance on surrogate endpoints, FDA will consider the suggestions in this comment. Interested persons will have an opportunity to comment on any guidance documents in this area developed by the agency. In some cases, new or revised drug class, or disease-specific, clinical guidelines may refer to surrogate endpoints. FDA is not prepared, at this time, to comment on the acceptability of an endpoint that it has not specifically considered, e.g., microalbuminuria.

The final regulations make it clear that not all drugs submitted for approval based on surrogate endpoint data are eligible for accelerated approval (§§ 314.500 and 601.40). The drug in question must be for a serious or life-threatening condition and must provide meaningful therapeutic benefit over existing therapy. In the case of an angiotensin receptor antagonist posed by the comment, there is existing documented life-prolonging treatment for congestive heart failure. An application for a new agent, to be eligible for accelerated approval, would have to show potential benefit over available therapy as well as identify a reasonable surrogate endpoint. This is problematic since no accepted surrogate endpoint for studies to treat congestive heart failure has been identified to date. For example, some drugs with favorable effects on hemodynamic measures in heart failure patients have been clinically ineffective.

The regulations are clear in requiring that, for drugs approved under these provisions based on surrogate endpoints, the postmarketing studies must show clinical benefit, not just the previously shown effect on the surrogate (§§ 314.510, 314.530, 601.41, and 601.43).

Surrogates, or proposed surrogates, are not always good, nor necessarily bad, indicators of therapeutic benefit and must be judged on a case-by-case basis. Even very good surrogates may not be perfect: Blood pressure lowering has been a better predictor of effect on stroke than on coronary artery disease, cholesterol lowering has had a clearer effect on coronary artery disease than on survival. Moreover, a surrogate may be persuasive for a phase of disease with short expected survival but much less so in an earlier phase of the disease. Caution is always appropriate in evaluating surrogate endpoints and the particular therapeutic setting should always be considered. The agency believes that the evaluation of surrogate endpoint data and the safeguards built into these accelerated approval procedures will provide adequate consumer protection.

12. One comment expressed concern that if there is no accepted surrogate endpoint, an applicant's only option is to conduct a study using some clinical event as an endpoint, which may result in long, large studies that delay approval to the detriment of patients and sponsors. One comment suggested as an alternative that FDA permit approval of a drug based on a study using a clinical endpoint, but accept a less rigorous standard of statistical significance, e.g., 0.20 or 0.15 instead of 0.05. The comment further suggested that the sponsor could then complete postmarketing studies to establish statistical significance at conventional levels. The comment argued that this alternative is totally consistent with FDA's willingness to accept greater uncertainty in approving drugs for serious and life-threatening illnesses.

The intent of the rule is to allow FDA to utilize a particular kind of evidence, an effect on a surrogate endpoint, as a basis for approval, and, where appropriate, to ensure that remaining doubts about the relationship of the effect on the surrogate to clinical benefit are resolved by additional adequate and well-controlled studies with clinical endpoints. The rule is not intended to place into the market drugs with little evidence of usefulness. Although there is no statutory requirement for significance testing of any particular value, there are well-established conventions for assessing statistical significance to support the statutorily required conclusion that the well-controlled studies have demonstrated that a drug will have the effect it is represented to have. There is nothing about serious or life-threatening diseases that make them uniquely difficult to study. A meaningful effect on survival or morbidity where there is no effective therapy should be readily discerned. Such studies need be long and large only when the effect is small or difficult to detect. In that event, proper assessment of benefit, and valid weighing of its relation to risk, is especially critical.

13. One comment asked that FDA clarify that one study could be the basis of approval and that one postmarketing study should be all that is needed to establish the link between the endpoint used for approval and some relevant clinical benefit.

FDA interprets the statute, and good science, as requiring at least two adequate and well-controlled studies to establish effectiveness. In some instances, drugs have been approved on the basis of a single well-controlled study; this has been done where the study was of excellent design, showed a high degree of statistical significance, involved multiple study centers, and showed some evidence of internal replicability, e.g., similar effects in major study subsets. FDA encourages applicants to discuss with FDA early in a drug's development the basis for the applicant's choice of a specific endpoint and, where applicable, the basis for its belief that a single study would be a sufficient basis for approval. With respect to postmarketing studies, FDA anticipates that the requirement will usually be met by studies already underway at the time of approval. As stated in the proposed rule, the requirement for any additional study to demonstrate actual clinical benefit will not be more stringent than those that would normally be required for marketing approval of the same drug for the same claim.

14. One comment expressed concern that the preamble to the proposed rule implied that a sponsor of an AIDS drug might have to do a postmarketing study to establish an effect on survival after showing an effect on such endpoints as weight or incidence of opportunistic infection (57 FR 13234 at 13235–13236). The comment stated that FDA's own advisory committee indicated that it was pleased to see an effect from a nucleoside analogue on the incidence of opportunistic infections with AIDS patients but did not suggest that further work should be done to show an effect on mortality. The comment argued that in some cases direct correlation with clinical endpoints such as mortality is difficult to prove and urged FDA to be flexible on this issue to encourage sponsors to go through the accelerated approval process.

Ordinarily, an effect on a meaningful clinical endpoint, e.g., on rate of opportunistic infections in AIDS, is a sufficient basis for approval without need for followup studies. Other endpoints, however, might leave major questions unanswered. For example, a

modest effect on weight gain in AIDS without other demonstrated benefit, if considered an adequate basis for approval, while a clinical endpoint, might leave sufficient doubt as to the ultimate value of the effect so that further studies would be necessary. FDA intends to interpret this provision of the regulations with flexibility. This provision should also serve as a reminder, however, that for life-threatening diseases, the ultimate aim of therapy is improved survival as well as improved symptoms.

15. One comment asked FDA to clarify what a sponsor's obligation is to continue supplying medication on a compassionate basis if clinical efficacy is not demonstrated to FDA's satisfaction in postmarketing studies but individual patients appear to be benefiting from use of the drug.

Sponsors are not obligated to supply drugs on a "compassionate basis." Whether, if clinical studies did not show effectiveness, further availability of the drug would be appropriate under any mechanism would be determined case-by-case.

D. Promotional Materials

16. Three comments asserted that requiring advance submissions of promotional materials is both beyond FDA's statutory authority and is unnecessary. Although FDA stated in the proposal that it does not intend specifically to approve promotional materials, two comments contended that is the likely effect of advance submission. The comment cited section 502(n) of the act (21 U.S.C. 352(n)), which provides that no regulation promulgated under that provision shall require prior FDA approval of the content of any advertisement "except in extraordinary circumstances," and asserted that the "extraordinary circumstances" language would not apply to drugs approved under the accelerated approval program. One comment argued that submission of promotional material prior and subsequent to approval is unwarranted when dealing with treatments for serious or life-threatening illnesses where dissemination of the most current and timely information is important to the treating physician. One comment questioned why there would be any greater likelihood of misleading promotional claims for products approved under the proposed accelerated approval process than for drugs intended to treat serious or life-threatening diseases that are approved under the normal NDA procedures. The comment also expressed the hope that the proposed requirement for advance submission of promotional materials was not based upon an assumption that promotional materials for drugs intended to treat serious diseases are more likely to be misleading than promotional materials for other types of drugs because any such assumption would be unfounded. One comment argued that if an advertisement or labeling is inaccurate, the product is misbranded and FDA could then obtain injunctive relief, seize the product, and/or initiate criminal proceedings. Another comment considered requiring advance submission of promotional materials unreasonable because companies are not required to do so now. One comment questioned the legal authority for requiring presubmission of promotional material following approval of a drug product, and the reason for the requirement.

The agency believes that the requirements for submission of promotional materials in the context of accelerated approval are authorized by statute. Subsections 505(d)(4) and (d)(5) of the act provide that, in determining whether to approve a drug as safe and effective, the agency may consider not only information such as data from clinical studies but also "any other information" relevant to safety and effectiveness under the proposed conditions of use. Such information would include information about how the drug would be promoted. In determining whether the drug's proposed labeling would be "false or misleading" under section 505(d)(7) of the act, the agency is similarly authorized to evaluate "all material facts" during the approval process, including the facts about promotion.

FDA is also authorized by section 505(k) of the act to require reporting of information subsequent to approval necessary to enable the agency to determine whether there may be grounds for withdrawing the approval. Among the grounds for withdrawal specified in section 505(e) of the act are that the evidence reveals the drug is not shown to be safe and effective under its conditions of use. In addition, drug approval may be withdrawn if information shows the labeling to be false or misleading. Information on how the drug will be promoted is again relevant to whether the drug's marketing approval should be withdrawn. Section 701(a) of the act (21 U.S.C. 371(a)) generally authorizes FDA to promulgate regulations for the efficient enforcement of the act.

For biological products, additional authority in section 351 of the PHS Act (42 U.S.C. 262) authorizes the promulgation of regulations designed to ensure the continued safety, purity, and potency of the products. The content of promotional materials is important to the continued safe and effective use of biologicals.

Therefore, the provisions of the final rule requiring submission of promotional materials prior to approval under the accelerated approval procedures and subsequent to such approval are authorized by statutory provisions. FDA might also invoke the authority of section 502(n) of the act (21 U.S.C. 352(n)) to require prior approval of the content of any prescription drug advertisement in "extraordinary circumstances." Whether FDA could appropriately rely on section 502(n) of the act in promulgating §§ 314.550 and 601.45 need not be determined, however, because FDA is not relying upon section 502(n) of the act as legal authority for these (or any other) sections of the accelerated approval regulations.

The agency believes that advance submissions of promotional materials for accelerated approval products are warranted under the accelerated approval circumstances. The special circumstances under which drugs will be approved under these provisions and the possibility that promotional materials could adversely affect the sensitive risk/benefit balance justify review of promotional materials before and after approval. For example, if the promotional materials exaggerate the known benefits of the drug, wider and inappropriate use of the drug could be encouraged, with harmful results.

Similarly, high risk drugs that are approved based on postmarketing restrictions would not have been approved for use without those restrictions because the risk/benefit balance would not justify such approval. If promotional materials were to undermine the postmarketing restrictions, the health and safety of patients could be greatly jeopardized.

Although there is potential harm from any misleading promotion, and there is no reason to believe improper promotion is more likely in this setting than in others, the risk/benefit balance is especially sensitive in this setting. The relatively small data base available and the minimal published information available also can contribute to making the physician and patient populations particularly vulnerable under accelerated approval circumstances.

Reliance on court actions (such as seizures, injunctions, and criminal prosecutions) can be effective in ending false promotions, but can only be initiated after the fact, when harm has already occurred. Corrective efforts can

be helpful but are always somewhat delayed. Under the circumstances of accelerated approval, FDA believes that it is far preferable to avoid problems by reviewing the promotional materials in advance of drug approval and of dissemination of the materials.

17. Two comments supported the provision about submission of promotional materials. One comment urged the agency to require that specific patient information be included in promotional materials to indicate the fact that the drug's clinical benefit has not yet been established. For drugs approved under the restricted use provision, the comment recommended that the labeling specify in detail the exact restrictions placed on the drug. In both cases, the comment recommended that this patient information appear as boxed warnings.

Section 502(n) of the act and regulations at § 202.1(e)(1) (21 CFR 202.1(e)(1)) require prescription drug advertisements (promotional material) to contain, among other things, a true statement of information in brief summary relating to side effects, contraindications, and effectiveness, which would include warnings, precautions, and limitations on use. The information in brief summary relating to side effects, contraindications, and effectiveness is required to be based solely on the approved labeling. Therefore, to the extent that a drug's labeling reflects the extent of clinical exposure and includes appropriate warnings, a drug's promotional material would also include this information.

FDA regulations governing prescription drug labeling (21 CFR 201.56 and 201.57) require that serious adverse reactions and potential safety hazards, as well as limitations in use imposed by them, be included in the "Warning" section of the labeling. In the case of approval based upon effect on a surrogate endpoint, the "Indications and Usage" section of the labeling would reflect the nature of the demonstrated effect. If the approval is based on use restrictions, the label would also specify the restrictions.

FDA may require boxed warnings if there are special problems associated with a drug, particularly those that may lead to death or serious injury (21 CFR 201.57(e)). The agency does not agree that information related to clinical benefit or use restrictions for accelerated approval drugs would necessarily always require a boxed warning.

As indicated by §§ 314.550 and 601.45 of the final rule, applicants will be required to submit promotional materials prior to approval and in advance of dissemination subsequent to approval whether the product is a new drug, an antibiotic, or a biological product.

18. One comment contended that FDA review and approval of all promotional pieces before their use will indefinitely delay product marketing campaigns and other patient and physician educational activities, which are essential to market a product, thereby significantly diminishing the advantage of securing an early approval for the applicant. The comment further contended that the requirement to submit "all promotional materials * * * intended for dissemination or publication upon marketing approval" will be overly burdensome for FDA and will unnecessarily slow down the process for review of all materials, not just those for products subject to this proposed rule. The comment recommended that FDA only request for review the primary advertising pieces, such as the introductory letter to physicians, the main detail piece, and the main journal advertisement, but not the secondary materials, e.g., a letter to pharmacists, of the initial promotional campaign.

As previously discussed in this preamble, FDA will be reviewing an applicant's planned promotional materials both prior to approval of an application (reflecting the initial campaign) and subsequent to approval to ascertain whether the materials might adversely affect the drug's sensitive risk/benefit balance. Because all promotional materials, including those referred to by the comment as "secondary" materials, can have significant adverse effects if they are misleading, the agency does not agree that such materials should, as a matter of course, not be requested for review. Insofar as such materials may be directly derived from the introductory letter to physicians, or other materials characterized by the comment as "primary" materials, the additional time to review the derivative materials should not be extensive.

The agency does not agree with the comment's contention that the requirement to submit all promotional materials prior to and subsequent to approval will indefinitely delay marketing campaigns and educational activities or be overly burdensome to FDA reviewers. FDA is committed to rapid review and evaluation of all drugs considered for approval under this rule and will promptly review the promotional materials.

19. One comment suggested a passive, time-limited clearance system for review of advertising after the initial promotional campaign such as that used for review of IND's, which would allow the sponsor to proceed to use promotional materials after an allotted timeframe, such as 30 days, unless otherwise notified by FDA.

As indicated by this comment and others, additional clarification regarding both timing and content of the submissions of promotional materials seems useful. Therefore, the agency is revising proposed §§ 314.550 and 601.45 to make it clear that, unless otherwise informed by the agency, applicants must submit during the preapproval review period copies of all promotional materials intended for dissemination or publication within the first 120 days following marketing approval. The initial promotional campaign, sometimes referred to as the "launch campaign," often has a significant effect on the climate of use for a new product. As discussed elsewhere in this preamble, the risk/benefit balance of accelerated approval products is especially sensitive, and inappropriate promotion may adversely affect the balance with resulting harm.

There may be some instances in which promotional materials that had not been completed and submitted by the applicant prior to approval would be beneficial in fostering safe and effective use of the product during the first 120 days. Under revised §§ 314.550 and 601.45, FDA would have the discretion to consider such materials at a later time. An applicant who requested permission to include additional materials among those disseminated within the first 120 days following product approval would be notified of FDA's determination. If FDA agreed that dissemination of such materials was acceptable, the materials could then be disseminated or published upon notification.

For promotional materials intended for dissemination subsequent to the initial 120 days under §§ 314.550 and 601.45 FDA would review the submitted materials within 30 days of receipt. This 30-day period is meant to be time-limited, so that the applicant will be assured of no unnecessary delay. It will be important for the applicant to identify the materials being submitted appropriately, so that it is clear that the materials are subject to the 30-day review period. The agency intends to review all such materials promptly, and to notify the applicant of any identified problems as soon as possible. The agency expects that, if the agency notifies the applicant of significant objections to the proposed materials, no materials will be disseminated or published until the agency's objections are resolved. The applicant should plan to allow sufficient time after receiving

FDA's comments for resolving differences and incorporating requested changes in the submitted materials prior to dissemination or publication.

When FDA removes the requirement for advance submission of promotional material, the agency will continue to offer a prompt review of all voluntarily submitted promotional material.

E. Postmarketing Restrictions

FDA received many comments on the proposed requirement to limit distribution to certain facilities or physicians with special training or experience, or condition distribution on the performance of specified medical procedures if such restrictions are needed to counterbalance the drug's known safety concerns.

20. Several comments questioned FDA's authority to impose restrictions on distribution or use after an approved drug is marketed. Two comments disagreed with the statutory provisions cited by FDA in the proposed rule as its authority to impose restrictions on distribution or use stating that they refer only to FDA's general authority to ensure that drugs are not misbranded, which is an entirely separate issue. Another comment argued that section 503(b) of the act (21 U.S.C. 353(b)) contemplates that the issues warranting a restriction as to distribution are not factors in whether a drug product is "safe" for purposes of approval, but rather only whether the product must be limited to prescription status. Two comments said that, in the absence of specific statutory authority, the courts clearly have refused to permit FDA to impose restrictions on distribution and cited *American Pharmaceutical Association (APhA)* v. *Weinberger*, 377 F. Supp. 824, 829 n. 9 (D.D.C. 1974), *aff'd sub nom. APhA* v. *Mathews*, 530 F.2d 1054 (D.C. Cir 1976), a case concerning conditions placed on the approval of the drug methadone.

Some comments asserted that placing restrictions on the distribution of an approved drug to only certain facilities or physicians, or restricting use to certain medical procedures interferes with the practices of medicine and pharmacy, which the comments contended FDA does not have the authority to regulate.

The agency believes that the restrictions to ensure safe use contemplated for approvals under §§ 314.520 and 601.42 are authorized by statute. As discussed in the preamble to the proposed rule (57 FR 13234 at 13237), sections 501, 502, 503, 505, and 701 of the act provide broad authority for FDA to issue regulations to help assure the safety and effectiveness of new drugs.

The agency does not agree with the comments' contention that the misbranding provisions of the act are irrelevant. Section 502(a) of the act prohibits false or misleading labeling of drugs, including (under section 201(n) of the act) failure to reveal material facts relating to potential consequences under customary conditions of use. Section 502(f) of the act requires drugs to have adequate directions for use and adequate warnings against unsafe use, such as methods of administration, that may be necessary to protect users. In addition, section 502(j) of the act prohibits use of drugs that are dangerous to health when used in the manner suggested in their labeling. Each of these misbranding provisions is intended, at least in significant part, to protect consumers against the marketing of drugs that would not be safe under certain conditions of use. Section 701(a) of the act authorizes FDA to issue regulations for the efficient enforcement of the act. The restrictions on use contemplated by §§ 314.520 and 601.42 help to ensure that products that would be misbranded under section 502 of the act are not marketed.

The restrictions on use imposed under section 503 of the act, which relate to prescription use limitations, primarily concern whether a drug is safe for use except under the supervision of a licensed practitioner. While the agency agrees that the restrictions imposed under §§ 314.520 and 601.42 concerning distribution to certain facilities or physicians with special training or experience would be in addition to ordinary prescription limitation, FDA believes these restrictions are consistent with the spirit of section 503 of the act, as well as the other provisions of the act referred to, in ensuring safe use.

New drugs may be approved under section 505(d) of the act only if they are safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling. In addition, for approval, a drug's labeling must not be false or misleading based on a fair evaluation of all material facts, which would include details about the conditions of use. For biological products, section 351(d) of the PHS Act also authorizes the imposition of restrictions through regulations "designed to insure the continued safety, purity, and potency" of the products.

The agency disagrees with the comments' implication that the courts' rulings in *American Pharmaceutical Association (APhA)* v. *Weinberger* mean there is no statutory authority to impose restrictions on distribution for accelerated approval drugs. The situation considered in that case is readily distinguishable from the situation addressed in §§ 314.520 and 601.42 of the accelerated approval regulations. The *APhA* case concerned a regulation that withdrew approval of NDA's for methadone, but permitted distribution to certain maintenance treatment programs and certain hospital and community pharmacies. Because methadone is a controlled substance within the provisions of the Controlled Substances Act, which is implemented by the Drug Enforcement Administration with the Justice Department, the district court concluded that the question of permissible distribution of the drug was within the jurisdiction of the Justice Department, not FDA. The Court of Appeals determined that the type of misuse associated with methadone, i.e., misuse by persons who have no intent to try to use drugs for medical purposes, differed from safety issues contemplated for control under section 505 of the act. In contrast, the restrictions contemplated under §§ 314.520 and 601.42 are precisely those deemed necessary to ensure that section 505 criteria have been met, i.e., restrictions to ensure that the drug will be safe under its approved conditions of use. It is clearly FDA's responsibility to implement the statutory provisions regarding new drug approval.

Nor does FDA agree that the provisions placing restrictions on distribution to certain facilities or physicians, or conditioned on the performance of certain medical procedures, impermissibly interfere with the practice of medicine and pharmacy. There is no legal support for the theory that FDA may only approve sponsors' drugs without restriction because physicians or pharmacists may wish to prescribe or dispense drugs in a certain way. The restrictions under these provisions would be imposed on the sponsor only as necessary for safe use under the extraordinary circumstances of the particular drug and use. Without such restrictions, the drugs would not meet the statutory criteria, could not be approved for distribution, and would not be available for prescribing or dispensing. The agency, as a matter of longstanding policy, does not wish to interfere with the appropriate practice of medicine or pharmacy. In this instance, the agency believes that rather than interfering with physician or pharmacy practice, the regulations permit, in exceptional cases,

approval of drugs with restrictions so that the drugs may be available for prescribing or dispensing.

21. One comment asserted that postmarketing restrictions on distribution to certain facilities or physicians with certain training or experience should be limited to rare occasions in cases of extreme hazard to patient safety in which toxicity of a particular drug may require it, but should not be applied because of insufficient efficacy data. Some comments argued that safety issues in the context of drug use should be addressed through patient management and effective product labeling, not through restricted distribution. In support of this argument, the comments cited the labeling of oncologic drugs, which provides physicians with adequate warnings and recommendations for their use without limiting distribution.

FDA agrees with these comments in part and intends to impose restrictions on distribution or use under this rule only in those rare instances in which the agency believes carefully worded labeling for a product granted accelerated approval will not assure the product's safe use. As stated in the preamble to the proposed rule (57 FR 13234 at 13237), FDA believes that the safe use of most prescription drugs will continue to be assured through traditional patient management by health professionals and through necessary safety warnings in the drug's labeling.

22. Two comments asked who will determine if restricted distribution should occur and what facilities or physicians with special training or experience will participate. Several comments expressed concern that restricted distribution and/or conditional use may not include all health care professionals who should participate in safe and effective patient care. Two organizations representing pharmacists asked that FDA develop functional and objective criteria that clearly establish the activities of pharmacists, physicians, and others in the care of patients receiving a drug under restricted distribution. The comments asserted that any health care professional that met these criteria should be allowed to participate in distribution of the drug and care of the patient. One comment recommended that any postmarketing restrictions on distribution or use of a drug approved under the accelerated approval process be developed by appropriate FDA advisory committees or panels expanded to include physicians and pharmacists with expertise in the therapeutic area being considered and in relevant drug distribution systems. Where appointment of pharmacists to these committees or panels is not feasible, the comment recommended that FDA use pharmacists in a consultant capacity. Another comment argued that current systems for drug distribution incorporate "checks and balances" such that prescribers and pharmacists work together to assure safe use of a drug by a patient. Two comments would oppose any restricted distribution system that allows manufacturers exclusively to deliver prescription drugs directly to patients. One comment asked whether FDA or the applicant would monitor the criteria for restricted distribution sites or physicians.

The medical reviewing divisions within FDA's CDER and CBER will determine if restricted distribution or use should be imposed. FDA will usually seek the advice of outside expert consultants or advisory committees before making this determination, and will, of course, consult with the applicant.

The agency does not agree that FDA should develop criteria that clearly establish the activities of health care professionals in the care of patients receiving a drug approved under this rule and for which restricted distribution has been imposed. Any postmarketing restrictions required under this rule will impose an obligation on the applicant to ensure that the drug or biological product is distributed only to the specified facilities or physicians. FDA will seek the advice of outside consultants with expertise in distribution systems or advisory committees when necessary in determining the need for or type of restricted distribution. The limitations on distribution or use imposed under this rule, including specific distribution systems to be used and the applicant's plan for monitoring compliance with the limitations, will have been agreed to by the applicant at the time of approval. The burden is on the applicant to ensure that the conditions of use under which the applicant's product was approved are being followed. As appropriate, FDA may monitor the sponsor's compliance with the specified terms of the approval and with the sponsor's obligations.

23. One comment recommended that proposed § 314.520 be modified to include therapeutic outcomes monitoring as a third example of a permissible postmarketing restriction. The comment defined therapeutic outcomes monitoring as the systematic and continual monitoring of the clinical and psychosocial effects of drug therapy on a patient which achieves the objective of preventing problems with drug therapy. Some comments argued that through therapeutic outcomes monitoring, a physician, a pharmacist, and a patient can work together to prevent problems with drug therapy by being constantly alert to signs of trouble. One comment said that indicator data can be routinely reported to a central collection point for utilization review by health care professionals, followed by educational programs to further improve the efficacy of drug therapy.

The postmarketing restrictions set forth in the proposal and in this final rule are intended to enhance the safety of a drug whose risks would outweigh its benefits in the absence of the restriction. Therapeutic outcomes monitoring does not contribute to that enhancement, and would not be required under this rule.

24. Some comments asked that FDA clarify how products will move from restrictive status to a regular prescription drug status. The comments asserted that all conditions associated with accelerated approval should automatically terminate following completion of confirmatory clinical trials; one comment urged FDA to explicitly state this in the final rule. One comment asserted that restrictions should automatically be removed 180 days after a supplemental application containing the data from the postmarketing study has been filed if FDA has not yet acted upon the supplemental application and the product should be deemed approved as if by "traditional" procedures and all other provisions of the act should apply, e.g., the applicant must have a formal hearing before removal of the product from the market.

FDA will notify the applicant when a particular restriction is no longer necessary for safe use of the product. In the case of drugs approved with a requirement for postapproval studies, FDA would expect that all of the postapproval requirements set forth in this rule, i.e., submission of promotional material and use of expedited withdrawal procedures, would no longer apply after postmarketing studies have verified and described the drug's clinical benefit. Concurrent with the review of the postmarketing studies, if requested, FDA will also review the need to continue any restrictions on distribution that have been imposed. In the case where restrictions on distribution or use have been imposed, such restrictions would be eliminated only if FDA determines that safe use of the product can be assured without them, through appropriate labeling. In

some cases, however, that assurance could not be expected and the nature of the specific safety issue raised by the product might require continued restrictions. FDA has added new §§ 314.560 and 601.46 to state when postapproval requirements will no longer apply and state that the applicant may petition the agency, in accordance with 21 CFR 10.30, at any time to remove specific postapproval requirements.

With respect to the suggested time period for removing restrictions on distribution or use following submission of a supplemental application containing the data from a postmarketing study, FDA does not believe it should prescribe any specific time period. These applications will receive a priority rating and FDA is firmly committed to expedited review of an application considered for accelerated approval and all data submitted from a postmarketing study to verify clinical benefit and believes most reviews will be completed and action taken within 180 days.

25. One comment argued that, as proposed, it is not clear how accelerated approval would apply to drugs which fall under the conditions described in §§ 314.520 and 601.42, which state the postmarketing restrictions on distribution or use that FDA may apply, because the language of these sections explicitly states that the sections apply to products "shown to be effective," which are already adequately covered by the act. To the comment, the language "shown to be effective" implies that full Phase 3 efficacy trials have been conducted, assessed, and deemed to demonstrate that the drug is effective for its proposed use. If the clinical data demonstrate that the product has an acceptable safety profile, the safe use of the drug should be addressed in the product labeling. Thus, the comment argued that §§ 314.520 and 601.42 should not be included in new subpart H of part 314 and subpart E of part 601, respectively, which deal with accelerated approval because these sections explicitly apply to products shown to be effective under a full drug development program.

Sections 314.520 and 601.42 apply not only to drugs and biological products approved on the basis of an effect on a surrogate endpoint but also to drugs and biological products that have been studied for their safety and effectiveness in treating serious or life-threatening illnesses using clinical endpoints and that have serious toxicity. In either case, if the products are so potentially harmful that their safe use cannot be assured through carefully worded labeling, FDA will approve the products for early marketing only if postmarketing restrictions on distribution or use are imposed. The phrase "shown to be effective" was not intended to distinguish drugs approved under new subpart H from drugs approved under any other subpart of the regulations. All drugs approved will have had effectiveness demonstrated on the basis of adequate and well-controlled studies, whether the endpoint of the studies is a surrogate endpoint or a clinical endpoint.

26. One comment expressed concern that the proposed restricted distribution or use provisions would restrict or eliminate the wholesale distribution of drugs approved through the accelerated approval process.

The limitations on distribution or use required under this rule are imposed on the applicant. Therefore, the burden is on the applicant to ensure that the conditions of use under which the applicant's product was approved are being followed. This rule does not specify how a manufacturer will distribute its product to those receiving the product under the approval terms. FDA will only determine which facilities or physicians may receive the drug, and the applicant will have agreed to this limitation on distribution or use.

27. One comment expressed concern that the proposed postmarketing restriction provision does not preclude a physician to whom restricted distribution applies from prescribing drugs approved under the accelerated approval process for unapproved (off-label) uses.

The comment is correct that this rule does not itself prevent a physician from prescribing a drug granted accelerated approval for an unapproved use. Under the act, a drug approved for marketing may be labeled, promoted, and advertised by the manufacturer only for those uses for which the drug's safety and effectiveness have been established and that FDA has approved. Physicians may choose to prescribe the drug for a condition not recommended in labeling. Such off-label use would, of course, be carried out under the restrictions imposed under this section. FDA also believes that physicians will be cognizant of the product's special risks and will use such drugs with particular care. The labeling of products approved under this rule will include all necessary warnings and full disclosure labeling would generally reflect the extent of clinical exposure to the drug.

F. Postmarketing Studies

28. Three comments argued that FDA does not have the authority to require postmarketing studies to be performed as a condition of approval based on a "surrogate" endpoint. One comment stated that it is widely accepted that the act empowered the agency to define the type and extent of efficacy data necessary to approve a product application. If a surrogate marker can be shown to be sufficiently related to actual patient benefit, then, the comment asserted, data regarding the effect of a drug on a surrogate marker constitute acceptable proof of efficacy under the act. Two comments urged FDA to continue to ask applicants to agree voluntarily to perform postmarketing studies when medically warranted as is the current policy under the traditional approval process. One comment expressed concern that requiring postmarketing studies may become the norm rather than the exception.

The agency's response to comment 1. explained the circumstances in which FDA might conclude that a drug should be marketed on the basis of an effect on a surrogate endpoint reasonably likely to predict clinical benefit only if studies were carried out to confirm the presence of the likely benefit. As discussed in the preamble to the proposed rule (57 FR 13234 at 13236), FDA believes that it is authorized by law to require postmarketing studies for new drugs and biological products. Section 505(d) of the act provides for the approval of new drugs for marketing if they meet the safety and effectiveness criteria set forth in section 505(d) of the act and the implementing regulations (21 CFR part 314). As discussed in the proposed rule, to demonstrate effectiveness, the law requires evidence from adequate and well-controlled clinical studies on the basis of which qualified experts could fairly and responsibly conclude that the drug has the effect it is purported to have. Under section 505(e) of the act, approval of a new drug application is to be withdrawn if new information shows that the drug has not been demonstrated to be either safe or effective. Approval may also be withdrawn if new information shows that the drug's labeling is false or misleading.

Section 505(k) of the act authorizes the agency to promulgate regulations requiring applicants to make records and reports of data or other information that are necessary to enable the agency to determine whether there is reason to withdraw approval of an NDA. The agency believes that the referenced reports can include additional studies to evaluate the clinical effect of a drug approved on the basis of an effect on a surrogate endpoint. Section 701(a) of the act generally authorizes FDA to issue

regulations for the "efficient enforcement" of the act.

With respect to biological products, section 351 of the PHS Act provides legal authority for the agency to require postmarketing studies for these products. Licenses for biological products are to be issued only upon a showing that they meet standards "designed to insure the continued safety, purity, and potency of such products" prescribed in regulations (42 U.S.C. 262(d)). The "potency" of a biological product includes its effectiveness (21 CFR 600.3(s)).

The agency notes that it has in the past required postmarketing studies as a prerequisite for approval for some drugs (see 37 FR 201, January 7, 1972; and 37 FR 26790, December 15, 1972).

29. One comment recommended that FDA require that specific timelines for completion of the required postmarketing studies be included in the marketing application. The comment further suggested that, if the sponsor fails to meet its timelines, approval of its application be withdrawn, or in the event it is difficult to withdraw approval of drugs for serious or life-threatening diseases, FDA should establish substantial fines and penalties for sponsors that deliberately withhold information from FDA regarding the preliminary results and the progress of their postmarketing studies, or delay the completion of such studies. The comment also urged FDA to publish in the **Federal Register** identification of manufacturers who are not meeting their obligation to complete the required postmarketing studies on time. These recommendations were prompted by the comment's concern that once a manufacturer is granted approval for its product, the manufacturer will have little incentive to complete postmarketing studies in a timely manner, especially if the preliminary results of such studies indicate that the drug may not be safe and/or effective. Another comment urged FDA to include in the final rule language that requires the participation of pharmacists in postmarketing studies because pharmacists can serve as an additional source of information on therapeutic outcomes of patients taking drugs approved under this rule and monitoring for such drugs.

The agency expects that the requirement for postmarketing studies will usually be met by studies already underway at the time of approval and that there will be reasonable enthusiasm for resolving the questions posed by those studies. The plan for timely completion of the required postmarketing studies will be included in the applicant's marketing application. In addition, in accord with the annual reporting requirements at § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii), an NDA applicant is required to provide FDA with a statement of the current status of any postmarketing studies. FDA declines to impose the sanctions suggested by the comment for failure of an applicant to meet its plans for completion of a postmarketing study. FDA believes this rule applies appropriate regulatory sanctions. Under the proposed rule and this final rule, FDA may withdraw approval of an application if the applicant fails to perform the required postmarketing study with due diligence.

FDA believes that it is not within the scope of this rule to establish the role of pharmacists in postmarketing studies. That role should more properly be defined by the clinical investigator and each institution or facility at which a postmarketing study is conducted.

30. One comment asserted that the proposal sets forth an inherent contradiction between the way FDA evaluates the benefit and risk for drugs today and the way the proposal contemplates. The comment argued that now, if postmarketing data raise questions about the risk associated with a drug product, FDA considers that data along with the other data known about the product, and determines whether, based on the overall knowledge about the drug, there is a need to seek withdrawal of approval. Under this proposal, if the postmarketing study data raised questions about the risk of the product, FDA would seek withdrawal of approval, whether or not the new data really made a fundamental difference to what is known about the benefit and risk of the product.

FDA does not agree that the contradiction described by the comment exists. Under the circumstances of accelerated approval, approval would be based on a weighing of the benefit suggested by the effect on the surrogate endpoint against known and potential risks of the drug. Should well-designed postapproval studies fail to demonstrate the expected clinical benefit, the benefit expected at the time of approval (reasonably likely to exist) would no longer be expected and the totality of the data, showing no clinical benefit, would no longer support approval. This evaluation of the data is not different from considerations that would apply in evaluating data in the case of a drug approved under other provisions of the regulations.

31. Two comments expressed the view that the proposed requirement for postmarketing studies may raise important ethical questions because once a drug product is approved, it may be unethical, depending on the circumstances, for a physician to conduct a study using a placebo control. One comment also contended that a postmarketing study requirement could compromise the NDA holder's ability to enroll sufficient numbers of patients in the study when the new approved drug and possible alternative therapies are widely available to patients.

Usually, and preferably, because of problems suggested in the comment, the requirement for postmarketing studies will be met by studies already underway at the time of approval, e.g., by completion of studies that showed an effect on the surrogate. FDA recognizes that ethical considerations will play a central role in the type of study carried out, a choice that will depend upon the type and seriousness of the disease being treated, availability of alternative therapies, and the nature of the drug and the patient population. There often are alternatives to use of a placebo control, including active control designs and dose-response studies that can satisfy both the demands of ethics and adequacy of design.

32. One comment contended that the term "postmarketing study" is used inconsistently in the proposed rule. The comment argued that "postmarketing study" is an accepted regulatory term of art which, to this point, has referred to studies conducted to confirm safety (not efficacy), after an approval has been granted, whereas in this proposal, a "postmarketing study" refers to a study required to establish clinical efficacy (i.e., a Phase 3 study), but not necessarily safety, although safety data will be collected. To prevent confusion and to differentiate between these required postmarketing confirmatory efficacy studies and safety studies traditionally conducted after approval and to clarify that products granted accelerated approval have been approved on the basis of Phase 2 (surrogate endpoint) data, the comment suggested changing the term "postmarketing study" to "Phase 3 study" in this rule except where traditional postmarketing studies are intended. The comment also suggested that the term "Phase 3 study" be defined as a study required to confirm findings of efficacy based upon surrogate data collected in Phase 2, which will be conducted after an accelerated approval has been granted and will be required before restrictions set forth in § 314.520 are removed.

The agency does not believe that the comment has accurately described accepted meanings of various terms.

The term postmarketing study does not refer to any particular kind of study, but to studies carried out after a drug is marketed, often as part of an agreement by a sponsor to do so. These have included pharmacokinetic, drug-drug interaction, and pediatric studies, studies of dose-response or of higher doses, and studies of new uses. The term is not limited to safety studies. Moreover, Phase 2 and 3 studies are not distinguished by the endpoints chosen. Phase 3 hypertension studies, for example, still measure blood pressure, not stroke rate. The agency believes that the use of the "postmarketing study" in the final rule is appropriate and consistent.

G. Withdrawal of Approval

33. One comment supported the proposed withdrawal of approval procedure. Other comments asserted that the proposed procedure does not provide the applicant with the procedural safeguard of a formal evidentiary hearing guaranteed by section 505 of the act and the Administrative Procedure Act (APA). As an example, the comments said that based on a finding of a single study failing to show clinical benefit or misuse of any promotional material, an approved new drug would be subject to withdrawal from the market with only a minimal opportunity for the NDA holder to be heard. The comments argued that section 505(e) of the act guarantees applicants "due notice and opportunity for a hearing" on withdrawal of an NDA in compliance with APA hearing standards, thus FDA must conduct hearings on withdrawals of NDA's using the formal adjudicatory procedures of the APA. One comment asserted that, under the proposed procedure, there is the absence of a discernible legal standard, an inability to cross-examine, the prosecuting attorney and judge are one and the same person, and there is a lack of even minimal formal evidentiary procedures. The comment expressed doubt that the proposed procedure would be sufficient to create a record suitable for review by a Court of Appeals, which must be able, on the basis of such a record, to determine whether the approval is supported by "substantial evidence."

FDA believes the withdrawal procedures set forth in proposed §§ 314.530 and 601.43 and in this final rule are consistent with relevant statutes and provide applicants adequate due process. As stated in the proposed rule, in issuing its general procedural regulations, FDA decided to afford NDA holders an opportunity for a formal evidentiary hearing even though the courts had not decided that such a hearing was necessarily legally required (see 40 FR 40682 at 40691, September 3, 1975). In promulgating its procedural regulations, FDA also determined that a formal evidentiary hearing is not required before withdrawing approval of biological products, but that it would be appropriate to apply the same procedures to biological products as to drug removal (see 40 FR 40682 at 40691).

Through the hearing process in this final rule, as in the proposed rule, applicants will be afforded the opportunity to present any data and information they believe to be relevant to the continued marketing of their product. The proposed process also would have permitted the presiding officer, the advisory committee members, a representative of the applicant, and a representative of the Center that initiates the withdrawal proceedings to question any person during or at the conclusion of the person's presentation. As discussed below in response to a comment, FDA has decided to allow up to three representatives of the applicant and of the Center to question presenters. Participants could comment on or rebut information and views presented by others. As with ordinary 21 CFR part 15 hearings, the hearing will be transcribed. Subsequent to the hearing, the Commissioner of Food and Drugs would render a final decision on the matter. The agency believes that the administrative record created through this process would be sufficient for judicial review.

The agency emphasizes that, as part of the approval process under this rule, applicants will have agreed that these withdrawal procedures apply to the drug for which they seek approval; applicants objecting to these procedures may forego approval under these regulations and seek approval under the traditional approval process. Under such circumstances, applicants would not have the benefit of accelerated approval; if the drug were subsequently approved, however, before withdrawal of the approval, the applicant would have an opportunity for a 21 CFR part 12 hearing.

34. One comment noted that the "imminent hazard" provision of section 505(e) of the act allows FDA to suspend approval of a product, immediately, if it is found to pose an imminent hazard to the public health. As an alternative to the proposed withdrawal procedure or in addition to the "imminent hazard" statutory provision, the comment suggested that, when confronted with a dangerous product on the market, FDA could request that the applicant voluntarily withdraw its product, and most applicants would comply if a legitimate hazard exists.

As noted in the proposed rule, FDA and applicants have often reached mutual agreement on the need to remove a drug from the market rapidly when significant safety problems have been discovered. However, applicants usually have been unwilling to enter into such agreements when doubts about effectiveness have arisen, such as following the review of effectiveness of pre-1962 approvals carried out under the Drug Efficacy Study Implementation (DESI) program. For drugs approved under the accelerated procedure regulations, the risk/benefit assessment is dependant upon the likelihood that the surrogate endpoint will correlate with clinical benefit or that postmarketing restrictions will enable safe use. If the effect on the surrogate does not translate into a clinical benefit, or if restrictions do not lead to safe use, the risk/benefit assessment for these drugs changes significantly. FDA believes that if that occurs, rapid withdrawal of approval as set forth in this rule is important to the public health.

35. Under the proposed withdrawal procedures, in addition to other persons, one representative of the Center that initiates the withdrawal proceedings may question participants at a withdrawal of approval hearing. One comment objected to limiting the Center to one representative because detailed knowledge about a drug product is likely to be available from several scientists.

The proposed limitation of questioning to single representatives of the initiating Center and the applicant was intended to make the proceedings manageable. On further consideration, the agency has determined that it would be appropriate and manageable to allow up to three persons to be designated as questioners for the applicant and for FDA. Sections 314.530(e)(2) and 601.43(e)(2) have been revised accordingly.

36. Some comments questioned FDA's ability to withdraw approval under the proposed procedures efficiently or effectively because of: (1) The lack of assurance that the results of postmarketing studies will be promptly provided to FDA; (2) limited agency resources to review study results and act upon them promptly; (3) the difficulties associated with establishing that an approved drug is "ineffective;" and (4) political pressure not to rescind the approval of NDA's for drug products that may lack evidence of effectiveness.

especially if no clearly effective alternative treatments are available. One comment offered the opinion that where a drug shows only modest evidence of benefit, perhaps on a surrogate endpoint, and only shows equivocal evidence of clinical efficacy in postmarketing studies it would be difficult and socially disruptive to withdraw approval and remove the drug from the market if the drug has become well established and accepted, and there is no issue of toxicity. Another comment believed it would be difficult to withdraw approval of a drug that may be beneficial in a subpopulation but which, in fact, has not been shown to be efficacious in broader patient population studies. The comments suggested the need for a lesser sanction.

Another comment suggested that expediting removal of a product from the market could be accomplished by using a procedure like the "imminent hazard" provision of the act, i.e., immediate removal of the drug from the market if any of the conditions listed in proposed § 314.530 were met followed by a hearing.

Although the potential difficulties cited by the comments are real, they are not fundamentally different from determinations FDA regularly must make in carrying out its responsibilities. The new regulations provide for an expedited procedure to withdraw approval; they do not guarantee that results of studies will be wholly unambiguous or that FDA will always be able to prevail in its view as to the need for withdrawal, any more than current withdrawal procedures do. The studies being carried out under these provisions will be conspicuous and important and their completion will be widely known. There is no reason to believe their results would or could be long hidden. A study that fails to show clinical effectiveness does not prove a drug has no clinical effect but it is a study that, under § 314.530, will lead to a withdrawal procedure because it has failed to show that the surrogate endpoint on which approval was based can be correlated with a favorable clinical effect. This may have occurred because the study was poorly designed or conducted; while FDA will make every effort to avoid this, the commercial sponsor has the responsibility for providing the needed evidence confirming clinical benefit. As previously discussed, §§ 314.510 and 601.41 have been revised to clarify that required postmarketing studies must also be adequate and well-controlled. The possibility that an ineffective drug has become "accepted" is not a basis for continued marketing. FDA intends to implement the provisions of § 314.530 as appropriate; data that are ambiguous will inevitably lead to difficult judgments.

A drug with clear clinical effectiveness in a subset of the population, but not in the population described in labeling, would have its labeling revised to reflect the data. Withdrawal would be inappropriate under such circumstances.

If an imminent hazard to the public health exists, the Secretary of Health and Human Services may suspend approval of an application and then afford the applicant an opportunity for an expedited hearing. In the absence of a significant hazard requiring immediate withdrawal, FDA believes the expedited procedure described in the rule satisfies the need for prompt action while, at the same time, allowing opportunity for discussion and debate before withdrawal.

37. One comment noted that the proposed rule would allow FDA to withdraw approval for failure to perform the required postmarketing studies with due diligence. The comment asserted that the act does not permit FDA to withdraw approval on this ground. Another comment, however, suggested that because proposed §§ 314.530 and 601.43 cite grounds for withdrawal of approval that are not grounds under the act, the language of these proposed sections should be revised to use language that closer aligns to that used in the act, e.g., describe a "postmarketing study" in statutory language.

FDA reaffirms the position expressed in the preamble to the proposal (57 FR 13234 at 13239) that there is adequate authority under the act to withdraw approval of an application for the reasons stated under proposed §§ 314.530 and 601.43, which include failure of an applicant to perform the required postmarketing study with due diligence. Section 505(e) of the act authorizes the agency to withdraw approval of an NDA if new information shows that the drug has not been demonstrated to be either safe or effective. Approval may also be withdrawn if the applicant has failed to maintain required records or make required reports. In addition, approval may be withdrawn if new information, along with the information considered when the application was approved, shows the labeling to be false or misleading.

For biological products, section 351(d) of the PHS Act authorizes approval of license applications under standards designed to ensure continued safety, purity, and potency. "Potency" for biological products includes effectiveness (21 CFR 600.3(s)). The PHS Act does not specify license revocation procedures, except to state that licenses may be suspended and revoked "as prescribed by regulations."

For drugs approved under § 314.510, FDA will have determined that reports of postmarketing studies are critical to the risk/benefit balance needed for approval; if those reports are not forthcoming, then, under authority of section 505(d) of the act, the drug cannot on an ongoing basis meet the standards of safety and efficacy required for marketing under the act. Therefore, it is important to ensure that the applicant make a good faith effort to complete any required postmarketing studies in a timely manner so that FDA can rapidly determine whether the surrogate endpoint upon which the drug was approved has been confirmed to correlate with clinical benefit. Failure to submit the study results in a timely fashion would also constitute failure to make a required report. Similarly, without submission of the information from required postmarketing studies on biological products approved under these procedures, the biological product is not assured of continued safety and effectiveness. The license application may, therefore, appropriately be revoked as described in § 601.43.

FDA does not find the statements of the grounds for withdrawal of approval under §§ 314.530 and 601.43 of this rule inconsistent with statutory language or ambiguous. The agency notes that, in the event none of the grounds for withdrawal specifically listed in § 314.530 or § 601.43 applies, but another ground for withdrawal under section 505 of the act or section 351 of the PHS Act and implementing regulations at 21 CFR 314.150 or 601.5 does apply, the agency will proceed to withdraw approval under traditional procedures.

38. Two comments expressed concern that it may be difficult for the agency to enforce the requirement that postmarketing studies be pursued with due diligence. The comments asked what would happen if a sponsor using due diligence is unable to recruit enough patients, or if the sponsor questions the validity of the data from the required postmarketing study, and would clumsy data management be seen as sufficient reason to rescind approval for a marketed drug? Another comment stated that once a product is approved and, by definition, provides a "meaningful therapeutic benefit over existing therapies," study accrual may drop off dramatically as patients may refuse to receive the "old" therapy or

placebo, or physicians may consider it unethical not to treat all patients with the approved indication with the new drug or biological product. Under these circumstances, the comment expressed the opinion that neither the sponsor nor the product should be penalized, nor should there be a threat to withdraw approval. Based on FDA's past history in postmarketing studies, which one comment characterized as resulting in poorly done studies, studies conducted much later than agreed upon, or not at all, the comment expressed the opinion that the "due diligence" with which applicants are expected to carry out postmarketing studies may be an overly great expectation. One comment asked FDA to give examples of when it may withdraw approval if "other evidence demonstrates that the drug product is not shown to be safe or effective under its conditions of use" (proposed §§ 314.530(a)(6) and 601.43(a)(6)).

FDA does not agree that it will be difficult to enforce the "due diligence" provision of this rule. The "due diligence" provision was designed to ensure that the applicant makes a good faith effort to conduct a required postmarketing study in a timely manner to confirm the predictive value of the surrogate marker or other indicator. Any requirement for postmarketing studies will have been agreed to by the applicant at the time of approval, and if the study is not conducted in a timely manner as agreed to by the applicant, approval of the applicant's application will be withdrawn. FDA will expect any required postmarketing study to be conducted in consultation with the agency. Therefore, should the applicant encounter problems with subject enrollment in a study or ethical difficulties about the type of study to conduct, FDA expects the applicant to discuss these problems with the agency and reach agreement on their resolution.

Examples of other evidence demonstrating the drug product is not shown to be safe and effective could include further studies of the effect of the drug and the surrogate endpoint that fail to show the effect seen in previous studies, new evidence casting doubt on the validity of the surrogate endpoint as a predictor of clinical benefit, or new evidence of significant toxicity.

39. Some comments objected to withdrawal of approval of a drug product approved under the accelerated approval process because of perceived misconduct by the applicant, such as failure to perform a required postmarketing study with due diligence or use of promotional materials that are false or misleading. The comments argued that the primary purpose of the accelerated approval process is to provide improved treatments to desperately ill patients at the earliest possible time, and withdrawal of approval of the new treatments for reasons not directly related to safety or efficacy undermines the purpose of the proposed rule. Two comments suggested that correction of the promotional material without interruption of access to the drug would be a better approach. Another comment suggested that there may be circumstances where continued access to the drug, if accompanied by informed consent, would be appropriate even if substantial questions arise about a product's safety and effectiveness. One comment urged that anticipated withdrawal of approval be preceded by measures to ensure that patients and their physicians will have an uninterrupted supply until alternative treatment arrangements can be made.

The need for "due diligence" in conducting the agreed to postmarketing studies is discussed in paragraph 37. The reasons for concern about misleading promotional materials are discussed under paragraph 16. With respect to promotional materials, FDA expects that, in most cases, any disagreements between the applicant and FDA will be resolved through discussion and modification of the materials, so that the drug or biological product can continue to be marketed. If, however, FDA concludes that the promotional materials adversely affect the risk/benefit conclusion supporting the drug's marketing, the agency intends to minimize the risk to the public health by removing the product from the market through the withdrawal procedures in this rule.

40. One comment expressed concern that the proposed withdrawal procedure may give the appearance of bias or preconceived notions on the part of the agency because the final decision to withdraw approval of a drug would be made by the Commissioner of Food and Drugs and the intention to withdraw approval of the drug will already have been determined by the agency.

Under the withdrawal provisions of this rule, FDA's CDER or CBER, rather than the Commissioner, will initiate the withdrawal proceedings. The withdrawal process will begin with a letter from CDER or CBER notifying the applicant that the Center proposes to withdraw marketing approval and stating the reasons for the proposed action. Although separation of functions will not apply under the provisions of §§ 314.530 or 601.43, the Commissioner's decision regarding withdrawal would not occur until after the applicant had an opportunity for hearing as described in those sections. The Commissioner would then expect to review the issues with objectivity and fairness having had the benefit of the presentations and discussions at the hearing and of the advisory committee's recommendations.

H. Safeguards for Patient Safety

41. One comment asked if drugs approved under the accelerated approval process will be held to the same standards concerning postmarketing safety as drugs approved by the traditional process.

As discussed in the preamble to the proposed rule, applicants gaining approval for new drugs through the accelerated approval procedures will also be expected to adhere to the agency's longstanding requirements for postmarketing recordkeeping and safety reporting (see 21 CFR 314.80 and 314.81). Information that comes to FDA from the applicant or elsewhere that raises potential safety concerns will be evaluated in the same manner that such information is evaluated for drugs approved under the agency's traditional procedures. If the postmarketing information shows that the risk/benefit assessment is no longer favorable, the agency will act accordingly to remove the drug from the market.

42. One comment urged FDA, if the proposed rule were adopted, to require written informed consent so that patients would know that the drugs with which they were being treated had risks and that the benefits had not been adequately established.

The agency does not agree that patients using drug products approved under the accelerated approval regulations should be asked to provide written informed consent. Drugs approved under these provisions are not considered experimental drugs for their approved uses. Like all approved drugs, drugs approved under these provisions will have both risks and benefits. As previously discussed in this preamble, for drugs approved based on studies showing an effect on a surrogate endpoint, the approved labeling will describe that effect. In addition, the labeling will contain information on known and potential safety hazards and precautionary information. As with all prescription drugs, the physician has the responsibility for appropriately advising the patient regarding the drug being prescribed.

43. One comment asked that FDA require manufacturers to maintain an updated list of names, addresses, and phone numbers of physicians prescribing their products approved

under this rule, and in the case of recall or withdrawal of approval, require manufacturers to contact these physicians and encourage them to notify their patients.

FDA does not believe such a procedure is necessary. Furthermore, maintaining such a registry for drugs prescribed through pharmacies would be very difficult. Agency experience with recalls and product withdrawals indicates that the methods of notification that have been developed for such circumstances are adequate.

44. One comment recommended that FDA require patient package inserts (PPI's) for all drugs granted accelerated approval that would state the specific restrictions placed on a drug product and/or the reason for requiring postmarketing studies. In addition, the comment recommended that FDA require the manufacturer to include an adverse drug reaction "hotline" phone number in the PPI along with an FDA phone number. The PPI should inform the patient to report immediately any adverse drug reaction experienced to his or her doctor, the manufacturer, and FDA, and the manufacturer should be required to contact FDA immediately after receiving a report of a serious adverse reaction.

FDA concludes that patient package inserts are not routinely needed for drugs granted accelerated approval, although if circumstances made one appropriate, one would be developed for a particular drug. As with any prescription drug, the approved labeling for a product granted accelerated approval will contain information about the safe and effective use of the product, including all necessary warnings and the extent of clinical exposure. In addition, the conditions of use will be carefully worded to reflect the nature of the data supporting the product's approval. Physicians have the responsibility to inform patients about the safe and effective use of an approved product. Labeling includes suggestions to the physician concerning information to be provided to patients.

The agency notes that in this final rule limited editorial changes have been made to the wording of the proposed rule. The agency has determined that these changes do not effect the intent of the proposed rule.

V. Economic Impact

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that it is not a major rule as defined by the Order. Indeed, because firms will not be forced to use the accelerated approval mechanism, applicants will most probably choose to take advantage of the program only where its use is expected to reduce net costs, Similarly, the final rule does not impose a significant economic impact on a substantial number of small entities so as to require a regulatory flexibility analysis under the requirements of the Regulatory Flexibility Act of 1980.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1980

This rule does not contain new collection of information requirements. Section 314.540 does refer to regulations that contain collection of information requirements that were previously submitted for review to the Director of the Office of Management and Budget (OMB) under section 3504 of the Paperwork Reduction Act of 1980 (Adverse Drug Experience Reporting, OMB No. 0190–0230).

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 314 and 601 are amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

2. Subpart H consisting of §§ 314.500 through 314.560 is added to read as follows:

Subpart H—Accelerated Approval of New Drugs for Serious or Life-Threatening Illnesses

Sec.
314.500 Scope.
314.510 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.
314.520 Approval with restrictions to assure safe use.
314.530 Withdrawal procedures.
314.540 Postmarketing safety reporting.
314.550 Promotional materials.
314.560 Termination of requirements

Subpart H—Accelerated Approval of New Drugs for Serious or Life-Threatening Illnesses

§ 314.500 Scope.

This subpart applies to certain new drug and antibiotic products that have been studied for their safety and effectiveness in treating serious or life-threatening illnesses and that provide meaningful therapeutic benefit to patients over existing treatments (e.g., ability to treat patients unresponsive to, or intolerant of, available therapy, or improved patient response over available therapy).

§ 314.510 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.

FDA may grant marketing approval for a new drug product on the basis of adequate and well-controlled clinical trials establishing that the drug product has an effect on a surrogate endpoint that is reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit or on the basis of an effect on a clinical endpoint other than survival or irreversible morbidity. Approval under this section will be subject to the requirement that the applicant study the drug further, to verify and describe its clinical benefit, where there is uncertainty as to the relation of the surrogate endpoint to clinical benefit, or of the observed clinical benefit to ultimate outcome. Postmarketing studies would usually be studies already underway. When required to be conducted, such studies must also be adequate and well-controlled. The applicant shall carry out any such studies with due diligence.

§ 314.520 Approval with restrictions to assure safe use.

(a) If FDA concludes that a drug product shown to be effective can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to assure safe use of the drug product, such as:

(1) Distribution restricted to certain facilities or physicians with special training or experience; or

(2) Distribution conditioned on the performance of specified medical procedures.

(b) The limitations imposed will be commensurate with the specific safety concerns presented by the drug product.

§ 314.530 Withdrawal procedures.

(a) For new drugs and antibiotics approved under §§ 314.510 and 314.520, FDA may withdraw approval, following a hearing as provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the required postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to assure safe use of the drug product;

(4) The applicant fails to adhere to the postmarketing restrictions agreed upon;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the drug product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing.* The Director of the Center for Drug Evaluation and Research will give the applicant notice of an opportunity for a hearing on the Center's proposal to withdraw the approval of an application approved under § 314.510 or § 314.520. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information.* (1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the Federal Register in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of functions.* Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings.* Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications:

(1) An advisory committee duly constituted under part 14 of this chapter will be present at the hearing. The committee will be asked to review the issues involved and to provide advice and recommendations to the Commissioner of Food and Drugs.

(2) The presiding officer, the advisory committee members, up to three representatives of the applicant, and up to three representatives of the Center may question any person during or at the conclusion of the person's presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer for response by a person making a presentation.

(f) *Judicial review.* The Commissioner's decision constitutes final agency action from which the applicant may petition for judicial review. Before requesting an order from a court for a stay of action pending review, an applicant must first submit a petition for a stay of action under § 10.35 of this chapter.

§ 314.540 Postmarketing safety reporting.

Drug products approved under this program are subject to the postmarketing recordkeeping and safety reporting applicable to all approved drug products, as provided in §§ 314.80 and 314.81.

§ 314.550 Promotional materials.

For drug products being considered for approval under this subpart, unless otherwise informed by the agency, applicants must submit to the agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the agency, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

§ 314.560 Termination of requirements.

If FDA determines after approval that the requirements established in § 314.520, § 314.530, or § 314.550 are no longer necessary for the safe and effective use of a drug product, it will so notify the applicant. Ordinarily, for drug products approved under § 314.510, these requirements will no longer apply when FDA determines that the required postmarketing study verifies and describes the drug product's clinical benefit and the drug product would be appropriate for approval under traditional procedures. For drug products approved under § 314.520, the restrictions would no longer apply when FDA determines that safe use of the drug product can be assured through appropriate labeling. FDA also retains the discretion to remove specific postapproval requirements upon review of a petition submitted by the sponsor in accordance with § 10.30.

PART 601—LICENSING

3. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 708, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 376, 381); secs. 215, 301, 351, 352 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

4. Subpart E consisting of §§ 601.40 through 601.46 is added to read as follows:

Subpart E—Accelerated Approval of Biological Products for Serious or Life-Threatening Illnesses

Sec.
- 601.40 Scope.
- 601.41 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.
- 601.42 Approval with restrictions to assure safe use.
- 601.43 Withdrawal procedures.
- 601.44 Postmarketing safety reporting.
- 601.45 Promotional materials.
- 601.46 Termination of requirements.

Subpart E—Accelerated Approval of Biological Products for Serious or Life-Threatening Illnesses

§ 601.40 Scope.

This subpart applies to certain biological products that have been studied for their safety and effectiveness in treating serious or life-threatening illnesses and that provide meaningful therapeutic benefit to patients over existing treatments (e.g., ability to treat patients unresponsive to, or intolerant of, available therapy, or improved patient response over available therapy).

§ 601.41 Approval based on a surrogate endpoint or on an effect on a clinical endpoint other than survival or irreversible morbidity.

FDA may grant marketing approval for a biological product on the basis of adequate and well-controlled clinical trials establishing that the biological product has an effect on a surrogate endpoint that is reasonably likely, based on epidemiologic, therapeutic,

pathophysiologic, or other evidence, to predict clinical benefit or on the basis of an effect on a clinical endpoint other than survival or irreversible morbidity. Approval under this section will be subject to the requirement that the applicant study the biological product further, to verify and describe its clinical benefit, where there is uncertainty as to the relation of the surrogate endpoint to clinical benefit, or of the observed clinical benefit to ultimate outcome. Postmarketing studies would usually be studies already underway. When required to be conducted, such studies must also be adequate and well-controlled. The applicant shall carry out any such studies with due diligence.

§ 601.42 Approval with restrictions to assure safe use.

(a) If FDA concludes that a biological product shown to be effective can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to assure safe use of the biological product, such as:

(1) Distribution restricted to certain facilities or physicians with special training or experience; or

(2) Distribution conditioned on the performance of specified medical procedures.

(b) The limitations imposed will be commensurate with the specific safety concerns presented by the biological product.

§ 601.43 Withdrawal procedures.

(a) For biological products approved under §§ 601.40 and 601.42, FDA may withdraw approval, following a hearing as provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the required postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to ensure safe use of the biological product;

(4) The applicant fails to adhere to the postmarketing restrictions agreed upon;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the biological product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing.* The Director of the Center for Biologics Evaluation and Research will give the applicant notice of an opportunity for a hearing on the Center's proposal to withdraw the approval of an application approved under § 601.40 or § 601.41. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information.* (1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the Federal Register in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of functions.* Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings.* Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications:

(1) An advisory committee duly constituted under part 14 of this chapter will be present at the hearing. The committee will be asked to review the issues involved and to provide advice and recommendations to the Commissioner of Food and Drugs.

(2) The presiding officer, the advisory committee members, up to three representatives of the applicant, and up to three representatives of the Center may question any person during or at the conclusion of the person's presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer for response by a person making a presentation.

(f) *Judicial review.* The Commissioner's decision constitutes final agency action from which the applicant may petition for judicial review. Before requesting an order from a court for a stay of action pending review, an applicant must first submit a petition for a stay of action under § 10.35 of this chapter.

§ 601.44 Postmarketing safety reporting.

Biological products approved under this program are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products.

§ 601.45 Promotional materials.

For biological products being considered for approval under this subpart, unless otherwise informed by the agency, applicants must submit to the agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the agency, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

§ 601.46 Termination of requirements.

If FDA determines after approval that the requirements established in § 601.42, § 601.43, or § 601.45 are no longer necessary for the safe and effective use of a biological product, it will so notify the applicant. Ordinarily, for biological products approved under § 601.41, these requirements will no longer apply when FDA determines that the required postmarketing study verifies and describes the biological product's clinical benefit and the biological product would be appropriate for approval under traditional procedures. For biological products approved under § 601.42, the restrictions would no longer apply when FDA determines that safe use of the biological product can be assured through appropriate labeling. FDA also retains the discretion to remove specific postapproval requirements upon review of a petition submitted by the sponsor in accordance with § 10.30.

Dated: December 7, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

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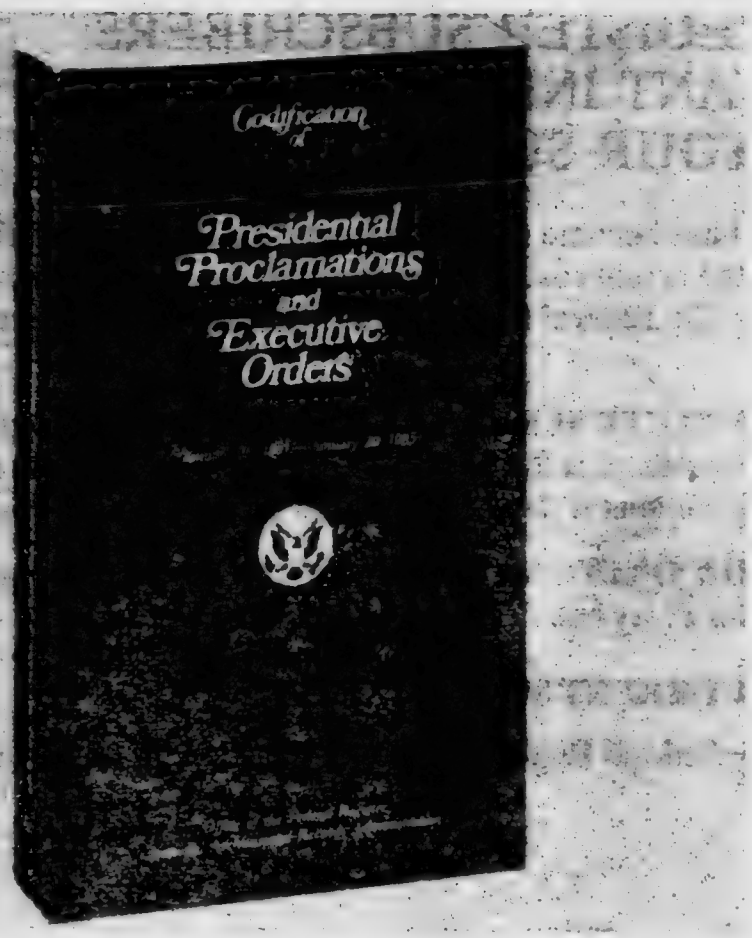

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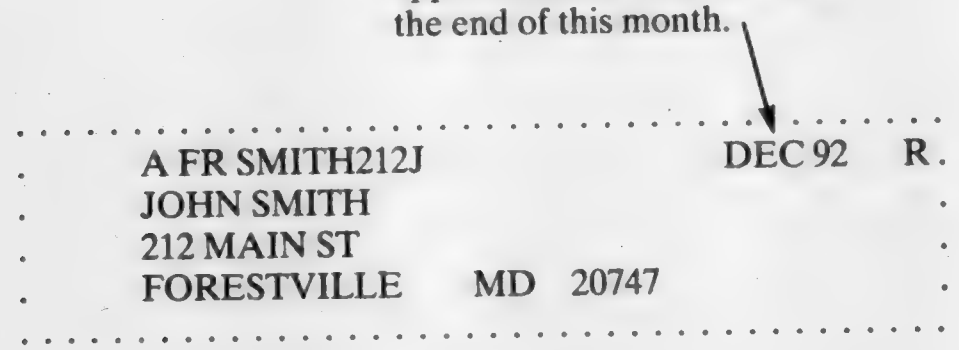

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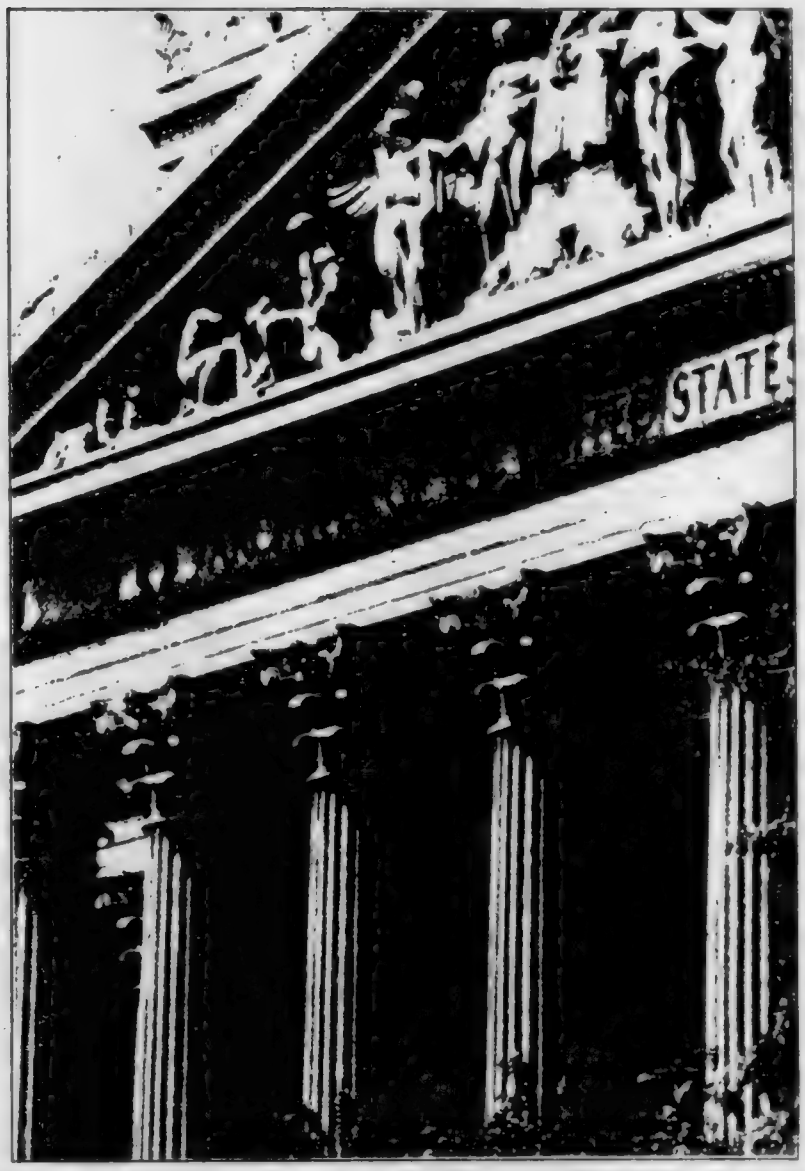

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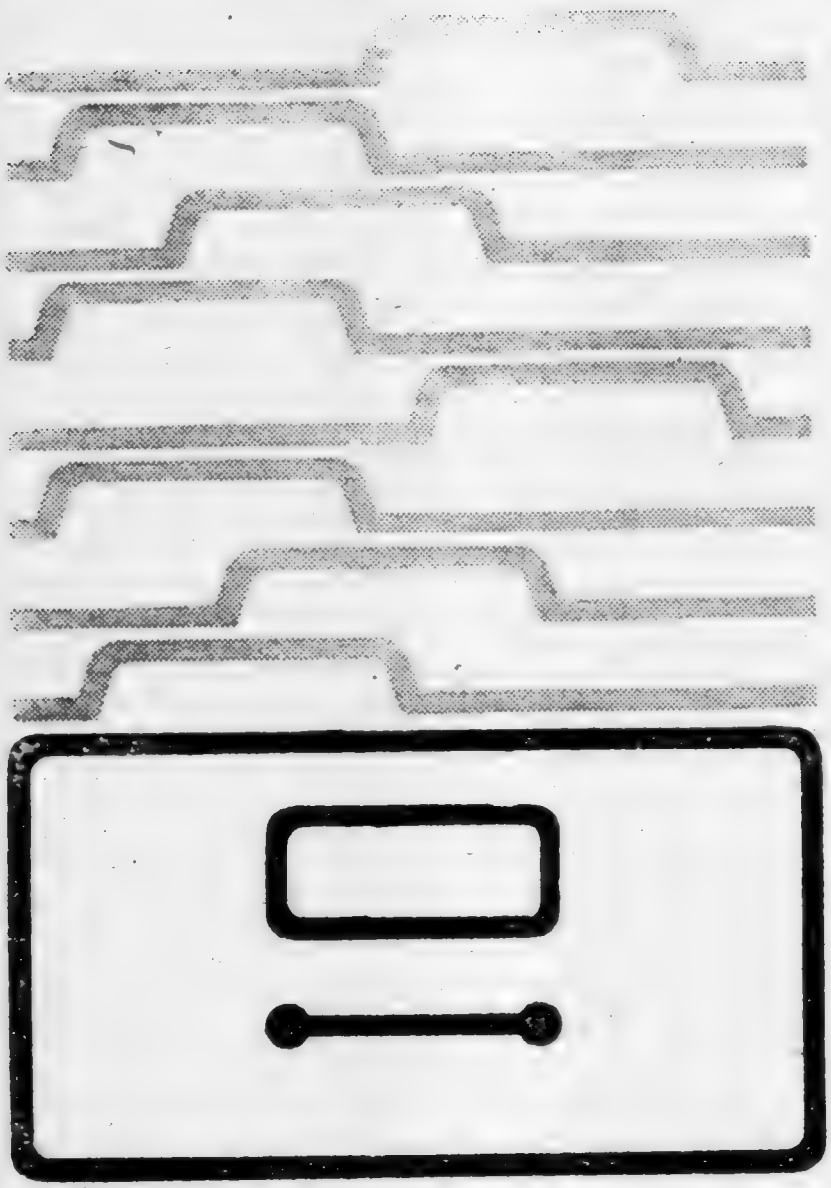

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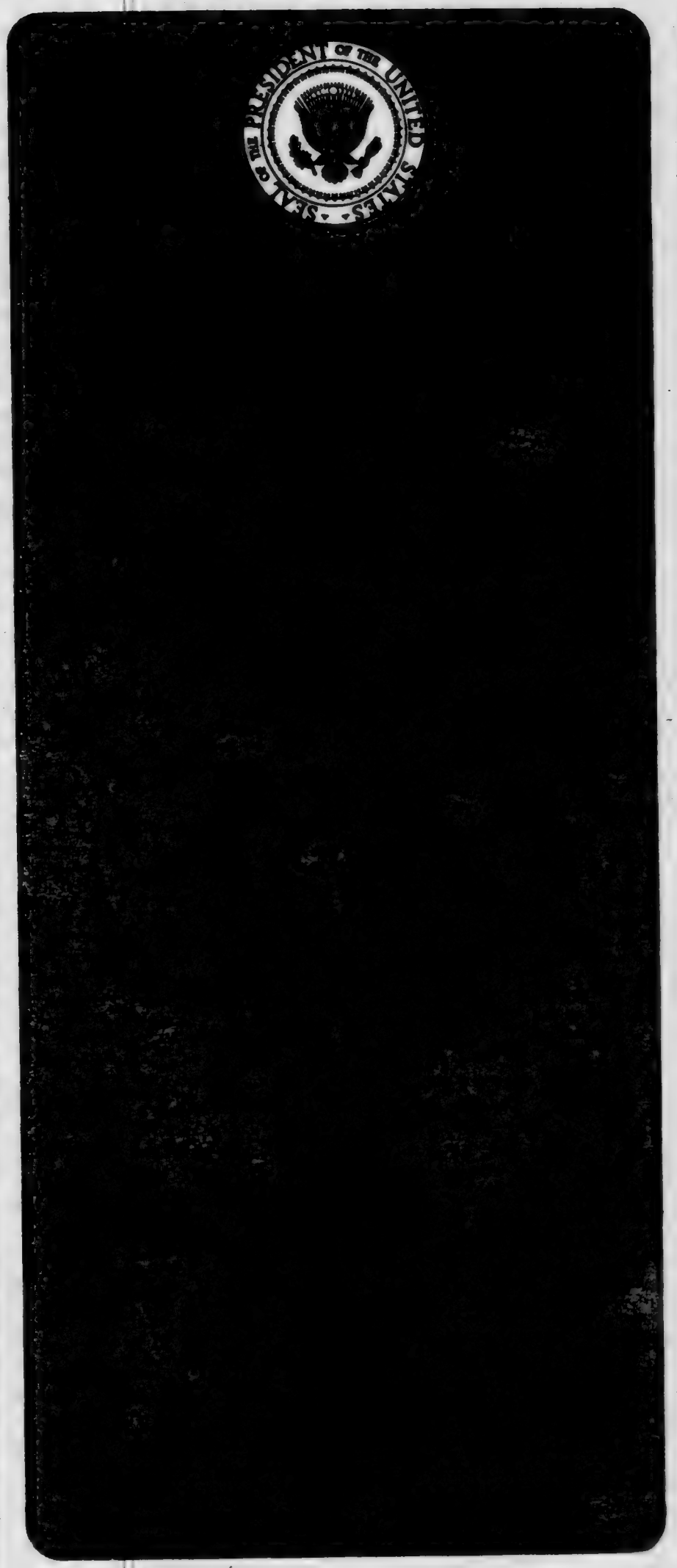

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 57, No. 240
Monday, December 14, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate from the Assistant Secretary for Science and Education to the Administrator of the Extension Service, the authority to administer a grant program to upgrade agricultural and food science facilities at 1890 land-grant colleges pursuant to 7 U.S.C. 3222b and to establish and administer the development and utilization of an agricultural communications network pursuant to 7 U.S.C. 5926.

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Marcus F. Gross, Jr., Office of the General Counsel, United States Department of Agriculture, Washington, DC, (202) 720–4076.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be effective less than 30 days after publication in the Federal Register.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12278. This action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) and thus is exempt from its provisions.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies)

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

2. Section 2.108 is amended by adding new paragraphs (a)(57) and (a)(58) to read as follows:

§ 2.108 Administrator, Extension Service.

(a) Delegations.

* * * * *

(57) Administer grants to 1890 land-grant colleges, including Tuskegee University, to upgrade agricultural and food sciences facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222b).

(58) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

Dated: December 8, 1992.

Duane C. Acker,

Assistant Secretary for Science and Education.

[FR Doc. 92–30291 Filed 12–11–92; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

7 CFR Parts 800 and 810

RIN 0580–AA15

United States Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the United States Standards for Wheat to (1) remove the description Red Durum wheat from the definition of Unclassed wheat; (2) reduce the U.S. Sample grade criteria for stones from eight or more to four or more and reduce the U.S. Sample grade aggregate weight criteria for stones from more than 0.2 percent by weight to more than 0.1 percent by weight; (3) reduce the U.S. Sample grade criteria for pieces of glass from two or more to one or more (zero tolerance); (4) establish a cumulative total criteria for factors which may cause U.S. Sample grade; (5) reduce the limit for ergot from 0.30 percent to 0.05 percent by weight; (6) reduce the minimum criteria for the special grade light smutty wheat from more than 14 smut balls to more than 5 smut balls; and (7) reduce the grading limits for foreign material in grades 1, 2, and 3. FGIS is also revising inspection plan tolerances for wheat based on the final action. This action is the result of the periodic review by FGIS of the United States Standards for Wheat.

EFFECTIVE DATE: May 1, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC 20090–6454; telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action is classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no state or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, determined this final rule does not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in this rule are approved by OMB and assigned OMB No. 0580–0013.

Background

On July 1, 1991, FGIS proposed in the **Federal Register** (56 FR 29907) to revise the U.S. Standards for Wheat by (1) removing the description Red Durum wheat from the definition of Unclassed wheat; (2) reducing the U.S. Sample grade criteria for stones from eight or more to four or more and eliminating the U.S. Sample grade aggregate weight criteria for stones; (3) reducing the U.S. Sample grade criteria for pieces of glass from two or more to one or more (zero tolerance); (4) establishing a cumulative total criteria for factors which may cause U.S. Sample grade; (5) reducing the limit for ergot from 0.30 percent to 0.05 percent by weight; (6) reducing the minimum criteria for the special grade light smutty wheat from more than 14 smut balls to more than 2 smut balls; and (7) reducing the grading limits for foreign material in grades 1, 2, and 3. FGIS further proposed to revise inspection plan tolerances for wheat based on the proposed changes.

Comment Review

During the 60-day comment period ending August 30, 1991, FGIS received a total of 28 comments from the various segments of the wheat industry including producers, end-users, grain handlers, foreign buyers, promotional associations, and a State agriculture department. The majority of the commentors addressed the specific issues included in the proposed action. Two commentors representing grain handlers expressed general opposition to all of the proposed changes without providing specific reasons for their opposition. The following paragraphs address comments received regarding the proposed changes.

Red Durum Wheat

Eighteen commentors supported or generally supported the proposal to remove Red Durum wheat from the definition of Unclassed wheat while eight commentors had no comment on the issue. Since no opposing reasons were presented in the comments received, FGIS is removing Red Durum wheat from the definition of Unclassed wheat as proposed.

Stones

Ten commentors supported or generally supported, ten commentors suggested modifications, three commentors opposed, and three commentors had no comments to the proposal to reduce the U.S. Sample grade criteria for stones from 8 or more stones to 4 or more stones and to eliminate the aggregate weight criteria.

The three commentors opposing the proposed changes represented the California wheat industry. Their comments indicated stones are inherently present in dwarf wheat varieties grown in California. They further indicated the proposed revision would unnecessarily penalize the value of the wheat and may encourage the production of lesser end-use quality wheat which exhibits better agronomic traits to avoid stones during harvest.

FGIS reviewed and evaluated this concern and concluded that the majority of wheat grown in California is of dwarf varieties; however, California wheat samples rarely contain stones. Generally, dirt clods and sand are found in semi-dwarf wheat when combines are run too close to the ground. The larger dirt clods and fine sand particles are removed as dockage during the inspection process. Further, small dirt clods remaining in the dockage-free wheat are not considered stones for grading purposes.

A review of California wheat samples selected by FGIS for monitoring inspection accuracy support this conclusion. The database used for the evaluation represents a random selection of wheat samples inspected in California from 1989 to 1991. Of the 1,520 samples in the database, 1,374 samples (90.4 percent) reported a determination for stones. Of the 1,374 samples reporting stone information, 22 samples (1.6 percent) exceeded the proposed limit of 4 or more stones and 8 samples (0.6 percent) exceeded the current limit of 8 or more stones. Consequently, revising the stone limits in wheat will not significantly affect the numerical grade of California wheat.

Ten commentors representing producers and grain handlers suggested modifications to the proposed action on stones. One of the ten commentors suggested replacing the count limit with an aggregate weight limit. The commentor indicated this action would ensure objectivity of and accuracy in inspection. The other nine commentors, suggesting a modification to the proposal, support the proposed action to reduce the stone count limit but recommended not eliminating the aggregate weight provision. Instead of completely eliminating the aggregate weight provision, some commentors suggested revising the U.S. Sample grade aggregate weight criteria from more than 0.2 percent by weight to more than 0.1 percent by weight. They also recommended determining U.S. Sample grade due to stones on a combination count and weight basis in comparison to the established separate count or weight basis. These commentors concluded that the maintenance of the aggregate weight provision ensures appropriate grading of grain in circumstances in which the presence of small stones is not a quality concern.

Historically, the wheat standards established stones as a U.S. Sample grade factor based on count alone. FGIS published a final rule on June 30, 1987 (52 FR 24414), which included weight criteria for stones independent of the count limit. Because the determination of stones is based on a dockage-free sample, excessively large and small stones are removed from the sample prior to the determination of stones. Therefore, the U.S. Sample grade determination is based on stones which are similar to the size of wheat kernels. It could take in excess of 7 to 10 stones to surpass the 0.1 percent aggregate weight limit. Consequently, reducing the count limit to 4 or more stones in combination with a weight limit in excess of 0.1 percent is viewed as not consistent with the proposed action. For these reasons, FGIS will not establish combination count and weight criteria for stones. FGIS will, however, establish a separate aggregate weight criteria for any number of stones in excess of 0.1 percent by weight.

One grain handler supporting the proposed change recommended a change to the basis of determination. Stones in wheat are determined on a dockage-free sample basis. This commentor indicated it is better to make the determination for stones on a sample before the removal of dockage because, unlike wheat for flour milling, feed wheat is generally not cleaned

prior to entering the feed mill. Therefore, the presence of any stones could cause damage to feed rolls and pellet disks.

Comments received in response to the advance notice of proposed rulemaking (54 FR 48752) and to the proposed rule (56 FR 29907) do not indicate a need to revise the basis of determination for stones in wheat. FGIS does not believe any changes to the basis of determination is needed at this time because wheat is primarily produced as a food grain, and the standards reflect normal cleaning prior to processing. Additionally, any changes to the basis of determination for stones could result in unknown economic impacts to producers and grain handlers because inspection data are not available to determine the frequency distribution of stones removed as dockage.

Based on the comments received and available information, FGIS is revising U.S. Sample grade criteria for stones in wheat from 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent by weight to 4 or more stones or any number of stones which have an aggregate weight in excess of 0.1 percent by weight.

Glass

Twenty-three commentors supported or generally supported and five had no comments to the proposal to reduce the Sample grade tolerance from two or more pieces of glass to one or more. Since no opposing reasons were presented in the comments received, FGIS is revising U.S. Sample grade criteria for glass in wheat from two or more pieces of glass to one or more (zero tolerance).

Cumulative Sample Grade Factors

Seventeen commentors supported or generally supported, three commentors suggested modifications, one commentor opposed, and five commentors had no comments to the proposal to establish a cumulative total criteria for factors which may cause U.S. Sample grade.

The one commentor opposing the proposed action represented producers from Virginia. They stated:

> We do not agree with this proposal as we understand it. We are not in favor of any existing class totals being equal to the cumulative total which by itself would cause a U.S. sample grade.

The three commentors suggesting modifications to the proposed changes represented the California wheat industry. Their comments indicated they support the concept for a total limit of suspected harmful and toxic substances; however, they stated that stones are not harmful or toxic and should not be included in this category. Stones are infrequently found in California wheat. Additionally, other harmful and toxic substances included in this category are infrequently found as well.

The National Association of Wheat Growers commented that this category is an important new addition which addresses the value of total defects on the end-use value. Based upon the comments received and available information, FGIS plans to establish the cumulative total Sample grade criteria as proposed.

Ergot

Fourteen commentors supported or generally supported, five commentors suggested modifications, and seven commentors had no comments to the proposal to reduce the limit for ergot from 0.30 percent to 0.05 percent by weight.

The five commentors suggesting modifications to the proposed action represented a foreign buyer, Idaho wheat producers, and grain handlers. The Japanese Food Agency, a foreign buyer of U.S. wheat, suggested establishing a 0.00 percent limit for ergot to match their existing regulations. Idaho wheat producers commented that they support the reduced ergot limits if a 3-year phase-in period is implemented. They suggested limits at 0.20, 0.10, and 0.05 for the first, second, and third years, respectively. Three grain handler comments indicated they do not oppose the reduction to 0.05 percent; however, they were surprised at the magnitude of reduction and urged FGIS to review the matter further to determine if a less drastic reduction would suffice.

FGIS has reviewed this issue further. Ergot, caused by a fungus and favored by wet, cool weather, occurs in wheat, rye, triticale, barley, and oats. Normally, the frequency of ergot on wheat is low, but is of a constant concern. Ergot can be avoided by planting seed free from sclerotia, crop rotation, deep soil tillage, and clean cultivation. Ergot does not get into food supplies if the infected wheat is commercially processed to remove impurities (1, 2).

Based on the comments received and available information, FGIS believes the proposed limit of 0.05 percent is reasonable and necessary.

Light Smutty Wheat

Thirteen commentors supported or generally supported, five commentors suggested modifications, and eight commentors had no comments to the proposal to reduce the criteria for the special grade light smutty wheat from more than 14 smut balls to more than 2 smut balls.

The Idaho Wheat Commission commented that they support an effort to maintain a more reliable certification process throughout the market. They suggested a phase-in period beginning at more than 5 smut balls and decreasing to more than 2 as proposed. The Idaho Grain Producers Association expressed a similar concern. Grain handlers indicated they do not oppose the reduction in the number of smut balls from 14 to 2. However, similar to their comments to ergot, they were surprised at the magnitude of reduction and urged FGIS to review the matter further to determine if a less drastic reduction would suffice.

FGIS included this proposed action in response to an Idaho grain handler who indicated the handling of wheat containing less than 14 smut balls potentially could grade light smutty due to odor when the smut balls break apart and disappear during handling. The need for reliable and repeatable certification results prompted FGIS to seek comments on the issue.

The comments received indicate the need for a change in the minimum limit of smut balls in a sample. Based on comments received and on available information, FGIS has determined to accept the Idaho wheat industry comments and revise the proposed action to establish the minimum smut ball criteria for light smutty wheat at more than 5 smut balls in 250 grams as a reasonable alternative to the proposed 2 smut ball limit. FGIS, however, will not implement a phase-in period but will evaluate the need to reduce the criteria further as part of future periodic reviews of the standards.

Foreign Material

Thirteen commentors supported or generally supported, eleven commentors opposed, two commentors suggested modifications, and one commentor had no comments to the proposal to reduce the grading limits for foreign material in grades 1, 2, and 3 from 0.5, 1.0, and 2.0 to 0.4, 0.7, and 1.3, respectively.

Grain handlers opposed the proposed action citing three reasons for their position. First, they indicated the market already supplies low foreign material wheat; therefore, changes in the standards as an incentive to maintain low foreign material is not needed. Second, they indicated there is no practical cleaning system to efficiently lower foreign material levels. Third, they indicated the proposal is premature in view of the current study undertaken

by the USDA Economic Research Service regarding the costs and benefits associated with improvements in the cleanliness of wheat.

Producers are supportive of the proposed action. Their comments indicate they support changes to improve the reputation of U.S. grain as a quality product while balancing the cost impact upon farmers.

The two comments received regarding modifications of the proposed rule generally supported the concept of reducing foreign material limits. One commentor suggested reducing the limits for U.S. Nos. 2 and 3 because these grades are commonly traded; however, they did not think it was necessary to reduce limits for U.S. No. 1 and would oppose that action. Another commentor strongly supported the position of reducing foreign material grade limits and suggested lowering the limits to 0.3, 0.5, and 1.0 for U.S. Nos. 1, 2, and 3 instead of the proposed limits of 0.4, 0.7, and 1.3.

In response to the opposing views, FGIS evaluated the situation and reached the following conclusions. Producers initiated discussions to reduce foreign material limits in wheat. Foreign material is composed of non-wheat material which is similar in size, shape, and density of wheat kernels. This material originates at the farm level and usually consists of rye, sorghum, and various weed seeds. Consequently, any economic impact as a result of revisions to foreign material limits will affect the producer. The FGIS-proposed limits complement current agronomic practices. As a result, the proposed limits should virtually have no economic impact on producer revenues due to foreign material discounts imposed by the grain industry.

Based on the above discussion and comments and other available information, FGIS is reducing the grading limits for foreign material in grades 1, 2, and 3 as proposed from 0.5, 1.0, and 2.0 to 0.4, 0.7, and 1.3, respectively.

Grade Chart Format and Authority Citation

FGIS proposed to revise the grade chart format in § 810.2204(a), Grades and grade requirements for all classes of wheat, except Mixed wheat, to improve the readability of the grade chart. Also, FGIS proposed to revise the authority citation for part 810. No comments were received regarding this action. Therefore, FGIS is revising the grade chart format and the authority citation as proposed with minor modifications for clarity.

Inspection Plan Tolerances

Five commentors supported or generally supported, one commentor opposed, one commentor suggested modifications, and eighteen commentors had no comments to the proposal to revise the breakpoints for ergoty wheat from 0.19 to 0.03 and for light smutty wheat from 6 to 2. FGIS also proposed to revise the foreign material breakpoint for U.S. No. 3 from 0.5 to 0.4. In addition, FGIS proposed to revise the breakpoint for wheat dockage from 0.20 to 0.2.

The Japanese Food Agency opposed the proposal to revise the breakpoint for wheat dockage because they were concerned that the change may lead to inferior quality wheat. An association representing grain handlers commented that the proposed 0.03 breakpoint for ergot was unreasonable and operationally impractical. They further commented that they recognize that some reduction in the ergot breakpoint is appropriate to accommodate the lower grade of 0.05 percent but did not suggest an alternative to the proposed breakpoint.

FGIS evaluated these comments and concluded that revising the dockage breakpoint from 0.20 to 0.2 will not affect the level of dockage found in wheat. This revision promotes uniform recording procedures for factors certified to the nearest tenth percentage point. FGIS also concluded that the proposed 0.03 ergot breakpoint sufficiently assures ergot levels within the 0.05 percentage point limit. This proposed limit provides the exporter with an operating range which allows a tolerance of up to 60 percent from the 0.05 percentage point limit. FGIS further believes that a 0.03 ergot breakpoint will not affect the loading efficiency of export elevators since ergot is seldom found in wheat.

Based on the comments received and issues discussed, FGIS will revise the breakpoints for ergoty wheat from 0.19 to 0.03, for the U.S. No. 3 foreign material limit from 0.5 to 0.4, and for wheat dockage from 0.20 to 0.2. FGIS is also revising the breakpoint for light smutty wheat from 6 to 3 as a result of the revised special grade limit established at more than 5 smut balls.

Miscellaneous Comments

Some commentors provided views and opinions on matters other than the specific proposed actions. These comments addressed establishing weight limits instead of count limits for U.S. Sample grade criteria, establishing grade limits for insect-damaged kernels, reducing grade limits for shrunken and broken kernels, and reporting sprout damage on the inspection certificate if it is equal to or greater than 1.0 percent. FGIS evaluated these concerns and is providing a general discussion for each.

One commentor, representing grain handlers, recommended expressing all U.S. Sample grade tolerances as a percentage of the sample weight rather than by a count. The comment suggested this change would ensure consistency of the grade determinations by replacing qualitative judgment with quantitative analysis. To address this comment, FGIS reviewed historical files regarding the establishment of U.S. Sample grade criteria which are based on a count. The criteria include animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. These U.S. Sample grade factors were included in the wheat standards as noted in the November 1, 1968, final rule (33 FR 16065) and were effective January 31, 1969. On April 27, 1976, the **Federal Register** published proposed revisions to the wheat standards (41 FR 17553). One proposed action included revising the definition of U.S. Sample grade to coincide with defect action levels established by the Food and Drug Administration (FDA). FDA action levels for commonly recognized harmful or toxic substances are established on a count basis. The June 29, 1976, final rule (41 FR 26670) implemented these revisions effective May 1, 1977.

FGIS believes uniformity of standards between Federal agencies is very important in order to prevent confusion and disruption within the grain marketing system. Therefore, the current method of reporting U.S. Sample grade factors on a count basis is appropriate since it best reflects the action levels established by FDA.

One commentor, representing the flour milling industry, recommended establishing grade limits for insect-damaged kernels, reducing grade limits for shrunken and broken kernels, and reporting sprout damage on the inspection certificate if it is equal to or greater than 1.0 percent.

The commentor recommended establishing separate grade limits for insect-damaged kernels because, in the commentor's opinion, the current U.S. Sample grade criteria of 32 or more kernels in a 100-gram sample does not reflect current market practice. The commentor indicated purchasing specifications typically reject any wheat containing 5 to 7 insect-damaged kernels. For these reasons, the commentor suggested the following grade limits based on either a count or a percentage basis.

RECOMMENDED GRADE LIMITS FOR INSECT-DAMAGED KERNELS

Grade	Number of Kernels	Maximum percent limit
1	8	0.2
2	8	.2
3	16	.5
4	32	1.0
5	32	1.0

FGIS does not believe it is appropriate to establish separate grade limits for insect-damaged kernels for the following reasons. General research determined that the interrelationships between FDA defect action levels for insect-damaged kernels in wheat and FDA defect action levels in flour found little correlation between insect-damaged kernel levels and insect fragments in flour. The research concluded that the flour miller cannot rely on the percent or the number of insect-damaged kernels in wheat as a predictor of the number of insect fragments found in the subsequent flour. The research further demonstrated the correlation between the number of insect-damaged kernels and corresponding weight is questionable. Although some research indicates 32 insect-damaged kernels per 100 grams of wheat is comparable to approximately 1 percent damage; other research indicates it could take as much as 101 insect-damaged kernels to obtain approximately 1.1 percent damage (3). Furthermore, insect-damaged kernels as it correlates to insect fragments in flour is a concern only to domestic flour mills. Export contracts do not include similar requirements.

Although FGIS did not propose and is not establishing separate grade limits for insect-damaged kernels, flour millers may request the certification of the actual number of insect-damaged kernels found in a sample. This information should assist the miller in determining if a wheat lot meets the acceptance level established in the purchase specification.

The same commentor recommended reducing grade limits for shrunken and broken kernels. The commentor indicated small and shriveled kernels greatly affect the milling quality of wheat. Although quantitative effects of shrunken and broken kernels on milling quality were not provided with the comment, the commentor suggested the following grade limits:

RECOMMENDED GRADE LIMITS FOR SHRUNKEN AND BROKEN KERNELS

Grade	Maximum percent limits	
	Current	Suggested
1	3.0	1.0
2	5.0	3.0

RECOMMENDED GRADE LIMITS FOR SHRUNKEN AND BROKEN KERNELS—Continued

Grade	Maximum percent limits	
	Current	Suggested
3	8.0	5.0
4	12.0	8.0
5	20.0	12.0

FGIS has requested the Agricultural Research Service to develop a practical test to predict milling yield and/or performance. FGIS believes the development implementation of a highly-correlated objective test to predict milling performance addresses the commentor's concern and is in the best interest of the wheat industry. Therefore, FGIS is addressing this commentor's concerns through research and welcomes any available information regarding the effects of shrunken and broken kernels on milling yield to assist in the development of a test.

Another concern expressed by this commentor involved reporting the percentage of sprout damage on the inspection certificate. The commentor indicated the presence of sprout damage is detrimental to the wheat's end use for some products. The commentor suggested reporting the actual percentage of sprout damage on the inspection certificate whenever the sprout damage level is equal to or greater than 1.0 percent. This 1.0 percent reporting threshold was recommended to reduce an unnecessary reporting burden to the inspection system while providing the milling industry with important quality information.

FGIS agrees that sprout damage could affect the end-use value of wheat. This is demonstrated by some purchase specifications which restrict the maximum allowable levels to 0.0, 0.2, and 0.5 percentage points. The national inspection system, however, already provides certification procedures for reporting the actual levels of sprout damage, as well as other types of damage, in wheat. Due to the vastly different needs of end users, FGIS has determined it is best to provide this information on a request basis and not as a mandatory reporting requirement. Certificating this additional information upon request provides for an efficient and cost-effective inspection service which meets the demands of every end user. Therefore, FGIS does not plan to revise the sprout damage reporting provision as suggested by the comment.

Final Action

On the basis of these comments and other available information, FGIS has decided to enact the changes as proposed with the exception of the elimination of the aggregate weight criteria for stones and the minimum criteria for smut balls for light smutty wheat. Rather than eliminating the aggregate weight criteria as proposed, FGIS has decided to reduce the aggregate weight criteria for stones from more than 0.2 percent by weight to more than 0.1 percent by weight. FGIS has also decided to revise the light smutty wheat criteria for smut balls from more than 2 smut balls as proposed to more than 5 smut balls.

Pursuant to section 4(b)(1) of the United States Grain Standards Act (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgement of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest the revisions become effective May 1, 1993, to coincide with the beginning of the 1993 crop year. These changes will facilitate domestic and export marketing of grain.

References

(1) Wiese, M.V., Compendium of Wheat Diseases, 1977.

(2) Christensen, C.A., and R.A. Meronuck, Quality Maintenance in Stored Grains & Seeds, 1986.

(3) Wingfield, J., and J. Pedersen, Insect Fragment Levels in Flour Milled from Selected Commercial Wheat Blends, prepared for the Millers' National Federation, August, 1984.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR parts 800 and 810 are amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.86(c)(2), Tables 23 and 24 are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 23.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR WHEAT

Grade	Minimum limits of—				Maximum limits of—											
	Test weight per bushel				Damaged kernels				Foreign material (percent)		Shrunken and broken kernels (percent)		Defects[3] (percent)		Wheat of other classes[4]	
	Hard red spring wheat or white club wheat[1] (pounds)		All other classes and subclasses (pounds)		Heat-damaged kernels (percent)		Total[2] (percent)								Contrasting classes (percent)	Total[5] (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	GL	BP
U.S. No. 1	58.0	-0.3	60.0	-0.3	0.2	0.2	2.0	1.0	0.4	0.2	3.0	0.3	3.0	0.7	1.0	3.0	1.6
U.S. No. 2	57.0	-0.3	58.0	-0.3	0.2	0.2	4.0	1.5	0.7	0.3	5.0	0.4	5.0	0.9	2.0	5.0	2.1
U.S. No. 3	55.0	-0.3	56.0	-0.3	0.5	0.3	7.0	1.9	1.3	0.4	8.0	0.5	8.0	1.2	3.0	10.0	2.9
U.S. No. 4	53.0	-0.3	54.0	-0.3	1.0	0.4	10.0	2.3	3.0	0.8	12.0	0.8	12.0	1.4	10.0	10.0	2.9
U.S. No. 5	50.0	-0.3	51.0	-0.3	3.0	0.7	15.0	2.7	5.0	0.7	20.0	0.7	20.0	1.5	10.0	10.0	2.9

[1] These requirements also apply when Hard Red Spring or White Club wheat predominate in a sample of Mixed wheat.
[2] Includes heat-damaged kernels.
[3] Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these factors may not exceed the limit for defects for each numerical grade.
[4] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[5] Includes contrasting classes.

TABLE 24.—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade.	0.3
Garlicky	More than 2 bulblets per 1,000 grams.	1⅛
Light smutty	More than 5 smut balls per 250 grams.	3
Smutty	More than 30 smut balls per 250 grams.	10
Infested	Same as in § 810.107	0
Ergoty	More than 0.05%	0.03
Treated	Same as in § 810.2204	0
Dockage	As specified by contract or load order grade.	0.2
Protein	As specified by contract or load order grade.	0.5
Class and Subclass		
Hard red spring:		
DNS	75% or more DHV	-5.0
NS	25% or more DHV but less than 75% DHV.	-5.0
Durum:		
HADU	75% or more HVAC	-5.0
ADU	60% or more HVAC but less than 75% of HVAC.	-5.0

TABLE 24.—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Soft white:		
SWH	Not more than 10% white club wheat.	2.0
WHCB	Not more than 10% of other soft white wheat.	2.0
WWH	More than 10% WHCB and more than 10% of other soft white wheat.	-3.0

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for part 810 continues to read as follows:

Authority: Public Law 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Subpart M—United States Standards for Wheat

4. Section 810.2202(a)(7) is revised to read as follows:

§ 810.2202 Definition of other terms.

(a) * * *

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes any wheat which is other than red or white in color.

* * * * *

5. Section 810.2204(a) is revised to read as follows:

§ 810.2204 Grades and grade requirements.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Minimum pound limits of:					
Test weight per bushel:					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	56.0	54.0	51.0
Maximum percent limits of:					
Defects:					
Damaged kernels:					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	3.0	5.0	8.0	12.0	20.0

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Total[1]	3.0	5.0	8.0	12.0	20.0
Wheat of other classes:[2]					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total[3]	3.0	5.0	10.0	10.0	10.0
Stones	0.1	0.1	0.1	0.1	0.1
Maximum count limits of:					
Other material:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substance	3	3	3	3	3
Total[4]	4	4	4	4	4
Insect-damaged kernels:					
In 100 grams	31	31	31	31	31

U.S. Sample grade is Wheat that:
(a) does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or
(b) has a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or
(c) is heating or of distinctly low quality.

[1] Includes damaged kernels (total), foreign material, shrunken and broken kernels.
[2] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[3] Includes contrasting classes.
[4] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substance.

* * * * *

6. Section 810.2205 paragraphs (a) and (c) are revised to read as follows:

§ 810.2205 Special grades and special grade requirements.

(a) *Ergoty wheat.* Wheat that contains more than 0.05 percent of ergot.

* * * * *

(c) *Light smutty wheat.* Wheat that has an unmistakable odor of smut, or which contains, in a 250-gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 5 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

* * * * *

Dated: November 3, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92–30198 Filed 12–11–92; 8:45 am]

BILLING CODE 3410–EN–M

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7 CFR Parts 800 and 810

RIN 0580–AA10

United States Standards for Sorghum

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the United States Standards for Sorghum to (1) reduce the maximum "broken kernels and foreign material" (BNFM) limits for U.S. No. 2 sorghum by 1 percent and U.S. Nos. 3 and 4 sorghum by 2 percent; (2) establish grade limits for foreign material; (3) reduce the amount of Brown sorghum allowed in Yellow sorghum from 10.0 percent to 3.0 percent; (4) modify the classification terminology for the classes Yellow and Brown sorghum; and (5) revise the definitions for all classes of sorghum. FGIS is also revising inspection plan tolerances for sorghum based on these changes.

EFFECTIVE DATE: June 1, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telephone (202) 720–0292; Fax (202) 720–4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements contained in this rule have been approved by OMB and assigned OMB No. 0580–0013.

Effective Date

Pursuant to section 4(b)(1) of the United States Grain Standards Act (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become

effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest these amendments become effective less than one calendar year after promulgation. Accordingly, this final rule will be effective on June 1, 1993, in order to be in effect for the 1993 crop year. These changes will facilitate domestic and export marketing of sorghum.

Final Action

On April 2, 1991, FGIS proposed in the **Federal Register** (56 FR 13420) to revise the U.S. Standards for Sorghum by (1) separating the grading factor "broken kernels, foreign material, and other grains" (BNFM) into two factors "broken kernels" (BN) and "foreign material" (FM); (2) reducing the amount of Brown sorghum allowed in Yellow sorghum; (3) modifying the classification terminology for the classes Yellow and Brown sorghum; (4) revising the definitions for all classes of sorghum; and (5) requiring dockage to be reported to the nearest tenth percent rather than whole percents with fractions disregarded.

During the 60 day comment period ending June 3, 1991, FGIS received a total of 29 comments from the various segments of the sorghum industry including producers, end-users, handlers, academicians, and official inspection agencies.

On the basis of these comments and other available information, FGIS has decided to enact the changes as proposed with the exception of the dockage and BNFM proposal.

FGIS is investigating alternative options regarding dockage determination, reporting, and certification and will solicit public comment at a later date. Meanwhile, FGIS will continue to report dockage to the whole percent and disregard any fraction.

Rather than separating BNFM into BN and FM and establishing separate limits for each, FGIS has decided to establish grade limits for FM as a subfactor of BNFM and retain BNFM as a grade determining factor for sorghum.

BN and FM

FGIS proposed to separate the grading factor BNFM into two factors, BN and FM and reduce the combined limits for BN and FM in grades 2, 3, and 4. Twenty-three commentors supported or generally supported and six opposed the proposed action.

Supporters of the proposal are encouraged by the fact that sorghum customers will know precisely how much foreign material they are receiving, thereby dispelling the perception some buyers have that BNFM is predominately or exclusively FM. They also believe the proposed action will promote the marketing of cleaner, more consistent quality sorghum and will provide more complete information regarding the end-use value of the sorghum. Supporters further believe the combination of more consistent quality sorghum and greater end-use value information will encourage domestic and foreign buyers to consider sorghum in their grain buying decisions.

Opponents are concerned that the proposal would disadvantage certain geographical locations and inflict significant economic losses on producers and handlers without improving the Nation's competitive position in the world market. They explained that many sorghum handling facilities are not equipped to clean sorghum and if enacted, the proposal could force facilities to retrofit existing operations to meet the separate BN and FM grade limits. Furthermore, they contended that dealing with two separate factors rather than one combined factor could inhibit handling efficiency. Opponents conclude that the cost of retrofitting and the reduced operational efficiency far exceed the benefits that may result from establishing separate BN and FM grading limits. Several commentors added that the market has not demonstrated any contractual interest in receiving separate BN and FM information or limiting the amounts of BN and FM currently being delivered. In fact, some handlers and merchants believe that enacting the proposal would result in a greater market demand for U.S. No. 3 sorghum and considerably less demand for U.S. No. 2 because price governs sales more so than quality.

While a consensus of the sorghum handlers oppose the idea of separating BN and FM, they do not necessarily oppose a reduction in the amount of BNFM permitted in the different numerical grades. One trade association commenting on the proposal believes the industry can economically support some tightening of the BNFM levels, but questions the rationale for such a reduction by stating that "lower limits should be based upon market demand and we don't believe that has been clearly established."

The current sorghum standards permit a wide range of BNFM in each grade. For example, the difference between the current U.S. No. 2 BNFM limit and that of U.S. No. 3 is 4 percentage points. Consequently, a buyer may receive one shipment of U.S. No. 2 sorghum containing only 4.1 percent BNFM and in the next shipment receive as much as 8 percent BNFM. This inconsistency in BNFM levels complicates end-use processing and represents a significant difference in product value.

During a 1989 grain sorghum research and utilization conference in Lubbock, Texas, end-users representing the feed, food, and industrial sectors of the sorghum industry expressed their concern over the levels and inconsistency of BNFM in sorghum. In the steam flaking process, high levels of BNFM interfere with the intact kernel's ability to absorb water. Broken kernel and foreign material absorb moisture at a faster rate which limits the amount of available moisture and impacts on the overall processing performance. In addition, processors and end-users are concerned because BNFM is a better media for mold, which could lead to mycotoxin production.

In reaching a final decision regarding BNFM, FGIS carefully considered the technical constraints and marketing concerns of the grain handlers and merchants. As stated earlier, those opposing separate BN and FM limits stated such action could threaten the efficiency with which the Untied States handles and markets sorghum and conceivably shift the quality preference of sorghum customers. FGIS believes changes to the sorghum standards must serve to improve market efficiency and encourage the production and delivery of high quality sorghum. FGIS' decision to retain BNFM as a grading factor and add a subfactor limit for FM should achieve these objectives.

BNFM will remain as a grade determining factor in sorghum with the limits for U.S. Nos. 2, 3, and 4 sorghum reduced to 7, 10, and 13 percent, respectively. The BNFM limit for U.S. No. 1 sorghum will remain at 4 percent. The corresponding FM fractions for grades 1 through 4 are established at 1.5, 2.5, 3.5, and 4.5 percent, respectively.

This new FM standard limits the amount of FM in BNFM for U.S. No. 2 sorghum to 35.7 percent; whereas, prior to this change, 100 percent of the BNFM could have been FM. Such a restriction is also comparable to the standards of other major sorghum exporters. Argentina, for instance, whose export standard is comparable to the current U.S. No. 2 BNFM standard, allows up to 5 percent BN and 3 percent FM. Therefore, 37.5 percent of the combined BNFM may be FM. Similarly, certain

Australian standards allow up to 50 percent of the BNFM to be FM.

The final decision to make FM a subfactor of BNFM rather than a separate factor alters the projected market impact discussed in the proposal. FGIS had estimated that the proposed rule to establish separate limits for BN and FM would have resulted in 77.4 rather than 100 percent of the export lots and 73.6 rather than 94.4 percent of the domestic lots receiving the U.S. No. 2 or better grade designation. These estimates were based on BNFM inspection data collected between 1987 and 1989 and assumed no immediate market reaction to lower actual BN and FM levels. FGIS's decision to place a restriction only on the levels of FM in the combined BNFM factor lessens the estimated market impact.

FGIS estimates this final rule will result in 91.4 and 87.6 percent of the export and domestic sorghum lots, respectively, continuing to receive the U.S. No. 2 or better grade designation. This compares with a current level of 99.9 and 95.7 percent for export and domestic sorghum lots, respectively. These new estimates are based on available inspection data collected between 1987 and 1991 and again assumes no immediate market reaction to lower actual BN and FM level.

It is impractical to speculate specific market reaction to the revised BNFM limits. If the market views these changes as positive, market changes could occur to create incentives for lower BNFM sorghum. That is, a market environment would evolve with greater price discrimination between low and high BNFM sorghum. If the new limits do not serve as an incentive to improve market efficiencies, the market will, through contractual arrangements, find a BNFM level that optimizes market performance. The revised limits are new parameters for describing sorghum quality which will serve as an incentive for members of the sorghum market at all levels to examine their operational and marketing practices and revise them as deemed necessary to improve market efficiency.

Based on comments received regarding the BNFM proposal and other available information, FGIS is revising the sorghum standards to:

(1) Reduce the BNFM limits for grades 2, 3, and 4; and

(2) Include FM as a subfactor with maximum limits under BNFM for each grade.

FGIS is taking this action to better reflect sorghum quality in the standards, to encourage the delivery of high quality sorghum, and to discourage the addition of foreign material and other grains to sorghum.

Dockage

To more accurately and precisely report dockage in sorghum, FGIS proposed the reporting of dockage to the nearest tenth percent, rather than whole percents with fractions being disregarded.

FGIS received mixed opinions regarding this proposal. In general, producers and academicians supported efforts to provide further quality information to the market. In contrast, the grain handlers and merchants were generally opposed to reporting dockage in tenths of a percent because it "could introduce a new variable in merchandising that would raise questions for our export customers * * *." In fact, several opponents directly or indirectly suggested that the term "dockage" be deleted from the sorghum standards and that the material currently defined as dockage be included in FM.

Based on available sorghum inspection data, dockage is not reported in 97 percent of the domestic sorghum lots and 99.9 percent of the export lots because it does not exceed 1 percent. Therefore, reporting dockage on each certificate may indeed prompt merchandisers to reevaluate the way in which sorghum is marketed. Furthermore, the two major export competitors, Argentina and Australia, do not make any distinction between BNFM and dockage.

However, FGIS has decided to investigate alternative options regarding dockage with a possible proposal for action at a later date. Therefore, no change is being made to the dockage procedures. Dockage will continue to be reported as a whole percent with any fraction of a percent disregarded.

Brown Sorghum Limits

FGIS proposed to reduce the amount of Brown sorghum allowed in Yellow sorghum from 10.0 percent to 3.0 percent. Twenty-six commentors supported the proposed action and two commentors did not have an opinion and one commentor felt the reduction was too dramatic stating that "any time you make a 70% adjustment, you either question the old standard or the new standard."

Yellow sorghum is generally considered to have approximately 95 percent of the nutritional value of corn (1, 2). However, the nutritional value of Brown (high-tannin) sorghum does not compare favorably to that of Yellow sorghum. Feeding trials have demonstrated that Brown sorghum can cause as much as a 30-percent reduction in feed efficiency when compared to Yellow sorghum, depending on the class of livestock being fed, the method of feeding, and other variables (1). Research has shown that the nutritional impact of feeding Brown sorghum depends on the level of tannin in the grain and the percent of the diet it comprises (3). At the present time, however, due to the variability of the tannin content among Brown sorghum varieties, it is impractical to assess the level which would effect feed efficiency. The intent of the proposed reduction of Brown sorghum limits is to assure U.S. sorghum customers of its relatively high nutritional value.

Brown sorghum accounts for approximately 2 percent of the total U.S. sorghum production. The potential for combining Brown sorghum with Yellow sorghum at unacceptable levels has hindered U.S. sorghum promotional efforts according to the Grain Sorghum Promotion Federation (GSPF), the market development entity of the National Grain Sorghum Producers Association (NGSPA). They indicate livestock feeders that have witnessed the animals' poor performance when fed the sorghum mixtures have become prejudiced against sorghum in general.

Although FGIS cannot establish the limit based on quantitative evidence regarding the effects on nutritional value, FGIS, believes that limiting the amount of Brown sorghum in Yellow sorghum to 3 percent will improve a buyer's confidence in the quality of U.S. sorghum by providing reasonable assurances to domestic and foreign customers that the sorghum will have approximately 95 percent the nutritional value of corn in livestock feed. Consequently, FGIS is amending the sorghum standards to reduce the amount of Brown sorghum allowed in Yellow sorghum, from 10.0 percent to 3.0 percent.

Class and Definition Terms

FGIS proposed to modify the classification terminology for the class Yellow and Brown sorghum to more clearly discriminate between the two classes. In addition, FGIS proposed to revise the definition for all classes of sorghum. Twenty-five commentors either supported or generally supported and four were silent on these issues.

The current classification system based on the visual appearance (color) of the kernel is confusing. The pericarp (seedcoat) colors of one class can also be observed in the other, with the exception of the brown pericarp. Only Brown sorghum has a brown pericarp, but, it is sometimes difficult to

distinguish the brown pericarps of the Brown sorghum varieties from the reddish-brown pericarps common to many Yellow sorghum varieties. A better distinction between the two classes is the presence of a pigmented testa (subcoat). The testa, which contains condensed tannins, is only present in Brown sorghum. It is the condensed tannins which are believed to be responsible for the nutritional effects associated with feeding Brown sorghum (1, 2). Consequently, to more distinctly define and isolate the two classes, FGIS is changing the class Brown sorghum to Tannin sorghum and revising the corresponding definition to include the words "pigmented testa" and "tannin."

The class Yellow sorghum, which includes more reddish-colored kernels than yellow colored kernels, creates some confusion in the marketplace. Due to the array of colors found in this class and the fact that the majority of the sorghum grown in the United States falls into this classification, FGIS is changing the class Yellow sorghum to Sorghum. Further, to communicate the fact that sorghum varieties within this class do not have a pigmented testa layer or the correspondingly high tannin levels, FGIS is revising the definition to reflect this information. It is important to note that although sorghum varieties without testa layers do not contain condensed tannins, the analytical methods employed for tannin analyses routinely report low-tannin levels due to the presence and measurement of other nontannin phenols (1). For this reason, definitions for the nontannin sorghum classes include a statement that they are low in tannin content.

While FGIS is retaining the classification terminology for White and Mixed sorghum, the definitions for these classes are being revised to coincide with the classification changes and revisions discussed above.

Inspection Plan Tolerances

Grain sorghum lots are inspected by a statistically based inspection plan. Inspection tolerances, commonly referred to as breakpoints (BP), are used to determine acceptable quality. As a result of the sorghum standards changes discussed above, some of the established breakpoints for sorghum require adjustment. Consequently, FGIS is revising section 800.86 (c)(2) of the regulations, tables 15 and 16, to reflect the corresponding changes/additions in the established inspection plan tolerances. The grade limits (GL) and BP for sorghum and the BP for sorghum special grades and factors are also revised.

Grade Chart Format

FGIS is revising the grade chart format in section 810.1404, Grades and grade requirements for sorghum, to improve the readability of the grade chart. In addition, section (b) of section 810.1404 is being revised and incorporated into the grade chart.

References

(1) Hahn, D.H., L.W. Rooney and C.F. Earp. Tannins and Phenols of Sorghum. Cereal Food World, 29:776–779, 1984.

(2) Rooney, L.W., M.E. Blakely, F.R. Miller, and D.T. Rosenow, 1980. Factors Affecting the Polyphenols of Sorghum and Their Development and Location in the Sorghum Kernel. Pages 25–35 in Proceedings, Symposium on Polyphenols in Cereals and Legumes, 36th Annual Meeting of the Institute of Food Technologists, St. Louis, Missouri.

(3) Fuller, H.L., Potter, D.K., and Brown, A.R. 1966. The Feeding Value of Grain Sorghums In Relation to Their Tannin Content. Univ. of Georgia, College of Agric. Exp.Stn. Bull., N.S. 176. 14pp.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Parts 800 and 810 are amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*).

2. Section 800.86(c)(2), tables 15 and 16 are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 15.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—							
			Damaged kernels				Broken kernels and foreign material			
			Heat-damaged (percent)		Total (percent)		Total (percent)		Foreign material (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	57.0	–0.4	0.2	0.1	2.0	1.1	4.0	0.3	1.5	0.3
U.S. No. 2	55.0	–0.4	0.5	0.4	5.0	1.8	7.0	0.4	2.5	0.4
U.S. No. 3[1]	53.0	–0.4	1.0	0.5	10.0	2.3	10.0	0.5	3.5	0.5
U.S. No. 4	51.0	–0.4	3.0	0.8	15.0	2.8	13.0	0.6	4.5	0.6

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS

Special grade or factors	Grade limit	Breakpoint
Class Tannin.	Not less than 90.0%	–1.9
Sorghum	Not less than 97.0%	–1.0
White	Not less than 98.0%	–0.9
Smutty	20 or more in 100 grams	8
Infested	Same as in § 810.107	0

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS—Continued

Special grade or factors	Grade limit	Breakpoint
Dockage	0.99% and above	0.32
Moisture	As specified by contract or load order grade.	0.5

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Subpart I—United States Standards for Sorghum

4. In § 810.1402, paragraph (i) is removed, paragraphs (j) and (k) are redesignated (i) and (j) and republished, and paragraphs (b) and (c) are revised to read as follows:

§ 810.1402 Definitions of other terms.

* * * * *

(b) *Broken kernels and foreign material.* The combination of broken kernels and foreign material as defined in paragraph (a) and (f) of this section.

(c) *Classes.* There are four classes of sorghum: Sorghum, Tannin sorghum, White sorghum, and Mixed sorghum.

(1) *Sorghum.* Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains less than 98.0 percent White sorghum and not more than 3.0 percent Tannin sorghum. The pericarp color of this class may appear white, yellow, pink, orange, red, or bronze.

(2) *Tannin sorghum.* Sorghum which is high in tannin content due to the presence of a pigmented testa (subcoat) and contains not more than 10.0 percent non-Tannin sorghum. The pericarp color of this class is usually brown but may also be white, yellow, pink, orange, red, or bronze.

(3) *White sorghum.* Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains not more than 2.0 percent sorghum of other classes. The pericarp color of this class is white or translucent and includes sorghum containing spots that, singly or in combination, cover 25.0 percent or less of the kernel.

(4) *Mixed sorghum.* Sorghum which does not meet the requirements for any of the classes Sorghum, Tannin sorghum, or White sorghum.

* * * * *

(i) *Pericarp.* The pericarp is the outer layers of the sorghum grain and is fused to the seedcoat.

(j) *Sieves.*

(1) *1.98 mm (5/64 (0.0781) inches) triangular-hole sieve.* A metal sieve 0.81 mm (0.032 inches) thick with equilateral triangular perforations the inscribed circles of which are 1.98 mm (0.0781 inches) in diameter.

(2) *0.99 mm (2 1/2 /64 (0.0391) inches) round-hole sieve.* A metal sieve 0.81 mm (0.032 inch) thick with round holes 0.99 mm (0.0391 inches) in diameter.

5. Section 810.1403 is revised to read as follows:

§ 810.1403 Basis of Determination.

Each determination of broken kernels and foreign material is made on the basis of the grain when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, and stones is made on the basis of the grain when free from dockage and that portion of the broken kernels, and foreign material that will pass through a 1.98 mm (5/64 inches) triangular-hole sieve. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage, broken kernels, and foreign material removed by the 1.98 mm (5/64 inches) triangular-hole sieve.

6. Section 810.1404 is revised to read as follows:

§ 810.1404 Grades and grade requirements for sorghum.

Grading factors	Grades U.S. Nos.[1]			
	1	2	3	4
Minimum pound limits of:				
Test weight per bushel	57.0	56.0	53.0	51.0
Maximum percent limits of:				
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0
Total	2.0	5.0	10.0	15.0
Broken kernels and foreign material:				
Foreign material (part of total)	1.5	2.5	3.5	4.5
Total	4.0	7.0	10.0	13.0
Maximum count limits of:				
Other material:				
Animal filth	0	0	0	0
Castor beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	1	1	1	1
Stones[2]	7	7	7	7
Unknown foreign substance	3	3	3	3
Cockleburs	7	7	7	7

U.S. Sample grade is Sorghum that:
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Has a musty, sour or commercially objectionable foreign odor (except smut odor); or
(c) Is badly weathered, heating or distinctly low quality.

[1] Sorghum which is distinctly discolored shall not grade higher than U.S. No. 3.
[2] Aggregate weight of stones must also exceed 0.2 percent of sample weight.

Dated: November 3, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92-30200 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-EH-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 92-25]

Receivership

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is removing its receivership regulation. The OCC presently makes an "insolvency" determination when placing a national bank into receivership. Effective December 19, 1992, statutory changes provide the OCC with new, additional grounds for appointing a receiver for a national bank. With these statutory changes, the OCC will no longer be required to make an "insolvency" determination; and the receivership regulation will no longer be necessary.

EFFECTIVE DATE: December 19, 1992.

FOR FURTHER INFORMATION CONTACT: Christina Trojan-Masnyk, Attorney, Corporate Organization and Resolutions Division, (202) 874-5300, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC has the authority to appoint a receiver for a national bank, under 12 U.S.C. 191, whenever the OCC becomes satisfied of its insolvency, after due examination of its affairs. Because insolvency is not defined in the statute, and to clarify the basis under which the OCC could appoint a receiver for a national bank, the OCC promulgated 12 CFR 5.49 (receivership regulation). This regulation defines two possible insolvency tests the OCC may consider in determining whether to appoint a receiver for a national bank. The receivership regulation defines a "net worth insolvency" test and a "liquidity insolvency" test. The receivership regulation notes that the OCC may also use alternate methods to determine whether a national bank is insolvent.

Effective December 19, 1992, 12 U.S.C. 191 is amended by section 133 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Stat. 2236 (December 19, 1991) (FDICIA). Section 133 of FDICIA provides the OCC, and the other Federal banking agencies, with uniform grounds for appointing either a conservator or a receiver. The grounds as specified in 12 U.S.C. 1821(c)(5) are:

(A) The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution [for a mutual institution].

(B) Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) An unsafe or unsound condition to transact business.

(D) Any willful violation of a cease and desist order which has become final.

(E) Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in 12 U.S.C. 1831o(b)) without Federal assistance.

(H) Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) Cause insolvency or substantial dissipation of assets or earnings;

(ii) Weaken the institution's condition; or

(iii) Otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund.

(I) The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) The institution ceases to be an insured institution.

(K) The institution is "undercapitalized" [1] and—

(i) has no reasonable prospect for becoming adequately capitalized (as defined);

(ii) fails to become adequately capitalized when required to do so under 12 U.S.C. 1831o(f)(2)(A);

(iii) fails to submit a capital restoration plan acceptable to the appropriate agency within the time prescribed under 12 U.S.C. 1831o(e)(2)(D); or

(iv) materially fails to implement a capital restoration plan submitted and accepted under 12 U.S.C. 1831o(e)(2).

(L) The institution—

(i) is "critically undercapitalized;" [2] or

(ii) otherwise has substantially insufficient capital. 12 U.S.C. 203(a) and 1821(c)(5).[3]

Some of these grounds are similar to, and have the same effect as, the net worth test and the liquidity test in the regulation. However, the amendment to 12 U.S.C. 191 makes the regulation unnecessary.

Administrative Procedure Act

The OCC is adopting this rulemaking as a final rule effective December 19, 1992. The OCC finds, pursuant to 5 U.S.C. 553(b)(B), that notice and public comment procedure is unnecessary and contrary to the public interest. The OCC finds that the public interest is best served through removing the receivership regulation at the same time that the new grounds for appointing a receiver for a national bank become effective. This simultaneous effective date will assure the least possible confusion regarding the basis under which a national bank may be placed into receivership and will avoid any unnecessary delays in permitting the OCC to take appropriate actions for the protection of depositors of a national bank. Because the changes to the grounds for appointing a receiver for a national bank are based on statutory amendments, and not merely changes in OCC policy on determining when to appoint a receiver, public comment on the grounds for appointment of a receiver is unnecessary and contrary to the public interest. Accordingly, the OCC finds that this decision is exempt from the notice and comment provisions

[1] "Undercapitalized" means the institution fails to meet any of the minimum required capital ratios established under 12 U.S.C. 1831o(b)(1)(C), as amended by section 131 of FDICIA.

[2] "Critically undercapitalized" means the national bank fails to meet any of the critical capital levels to be set by the OCC under 12 U.S.C. 1831o (b)(1)(E) and (c)(3)(A), as amended by section 131 of FDICIA. See 57 FR 44866, 44891 *et seq.* (September 29, 1992), to be codified at 12 CFR part 6, subpart A. For critically undercapitalized national banks, the OCC must generally appoint a receiver within 90 days, appoint a conservator within 90 days with the concurrence of the Federal Deposit Insurance Corporation (FDIC), or take other action which the OCC determines, with the concurrence of the FDIC, would better achieve the goal of increased capitalization at such bank, under 12 U.S.C. 1831o(g)(3), as amended by section 131 of FDICIA.

[3] The OCC may not appoint a conservator for a national bank under the last two grounds without the FDIC's consent, unless the OCC has given the FDIC 48 hours notice of the intention and the grounds therefor. 12 U.S.C. 1821(c)(11).

of the Administrative Procedure Act under 5 U.S.C. 553(b)(B).

For the reasons set forth above, good cause also exists for publication of this final rule less than 30 days before its effective date, pursuant to 5 U.S.C. 553(d)(3). In addition, a delayed effective date would result in the continued existence of a regulation which has been superseded, and rendered ineffective, by a statutory change.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rulemaking, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

Executive Order 12291

The OCC has determined that this rulemaking is not a "major rule" as defined in Executive Order 12291, and it therefore does not require a Regulatory Impact Analysis. This action is required to give effect to statutory changes and is not expected to have any material effect on a national bank.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 5—[AMENDED]

1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 5.49 [Amended]

2. Part 5 is amended by removing § 5.49.

Dated: October 14, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92-30191 Filed 12-11-92; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-14-AD; Amendment 39-8438; AD 92-27-05]

Airworthiness Directives; Piper Aircraft Corporation PA-31 Series Airplanes

AGENCY: Federal Aviation Administration; DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Piper Aircraft Corporation (Piper) PA-31 series airplanes. This action requires painting the color red on the aileron balance cable and the bellcrank lug of both aileron control systems. The Federal Aviation Administration (FAA) has received several reports of improper connections of the aileron control systems on the affected airplanes. The actions specified by this AD are intended to prevent improper connection of the aileron control systems, which could result in loss of lateral control of the airplane because the left and right ailerons could only move in the same direction.

EFFECTIVE DATE: January 29, 1993.

ADDRESSES: Information that is related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (404) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper PA-31 series airplanes was published in the **Federal Register** on July 15, 1992 (57 FR 31341). The action proposed painting the color red on the aileron balance cable and the bellcrank lug on both aileron control systems.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter recommends that the compliance time be changed to the next annual inspection instead of within the next 100 hours time-in-service because, if the airplane is currently flying, it is safe to assume that the aileron cables are properly connected. The FAA concurs that, if the airplane is currently flying, then the aileron cables are properly connected, and that under these circumstances, the next 100 hours TIS is not a justifiable compliance time. The FAA has determined that, because of the nature of this situation and the operator-need for flexibility in accomplishing the required actions, the compliance time should be changed to the next time the aileron cables are disconnected for any reason, but not later than 12 calendar months from the effective date of the AD. The proposed AD has been revised to reflect this change in the compliance time.

No comments were received on the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the compliance time revision described above and minor editorial corrections. The FAA has determined that the revision and minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 3,361 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $20 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $272,325.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the

Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

92-27-05 Piper Aircraft Corporation: Amendment 39-8438; Docket No. 91-CE-14-AD.

Applicability: PA-31 Series airplanes (all models and serial numbers), certificated in any category. Compliance: Required the next time the aileron cables are disconnected for any reason, but no later than 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent improper connection of the aileron control systems, which could result in loss of lateral control of the airplane, accomplish the following:

(a) Using red enamel paint, color code the aileron balance cable and the bellcrank lug of both aileron control systems in accordance with Figure 1 of this AD.

BILLING CODE 4910-13-M

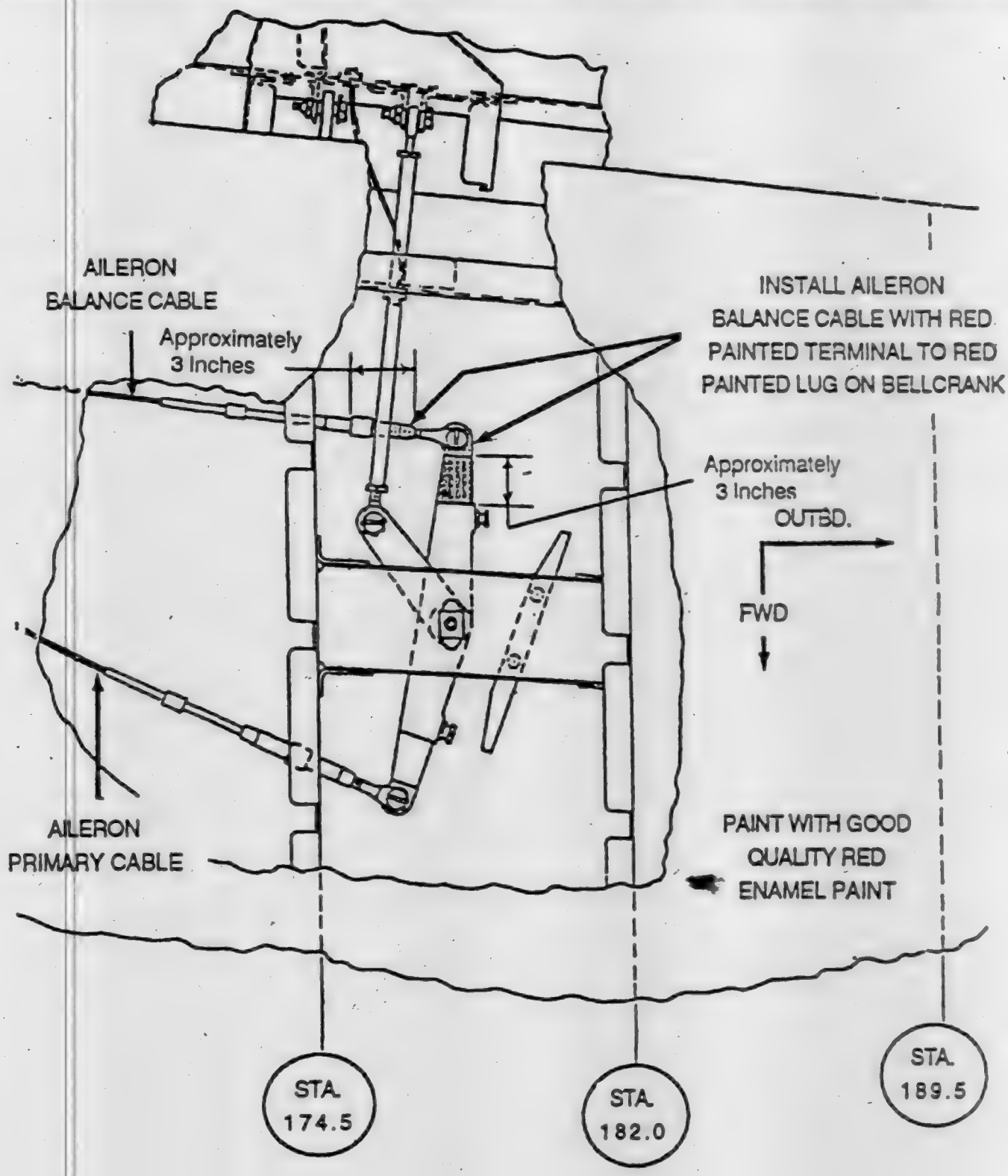

FIGURE 1

VIEW LOOKING THRU TOP WING SKIN (LEFT WING)
RIGHT WING OPPOSITE

BILLING CODE 4910-13-C

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may examine any information that is applicable to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–8438) becomes effective on January 29, 1993.

Issued in Kansas City, Missouri, on December 8, 1992.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30226 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA25

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Corrections to Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by issuing corrections to the ranges of comparability used on required labels for dishwashers that were published on September 22, 1992.[1] Properly labeled dishwashers manufactured prior to the effective date of this notice (including dishwashers labeled in accordance with the ranges published on September 22, 1992) need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised. Those manufacturers who have already printed or purchased labels in reliance on the September 22 notice may use those labels until the label stock is exhausted; they must use labels based on the ranges published today after that.

EFFECTIVE DATE: March 15, 1993.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This notice publishes the corrected range figures, which, under Sections 305.10, 305.11 and 305.14 of the rule, must be used on labels on dishwashers manufactured on and after March 15, 1993. and in advertising of dishwashers in catalogs printed after March 15, 1993.

New figures for the estimated annual costs of operation for dishwashers, which were calculated using the 1992 representative average energy costs published by DOE on January 14, 1992,[2] were submitted and analyzed by the Commission. New ranges based upon them were published in the **Federal Register** on September 22, 1992. The staff of the Commission has learned since then that there were several inadvertent errors in those ranges. The staff has corrected the errors, and the new ranges published today reflect the corrections. For the sake of clarity, the Commission is republishing the complete set of ranges in their corrected form.

Although this corrected notice is being published prior to the effective date of the September 22, 1992 notice, which is now rescinded, manufacturers need not relabel any appliances already labeled and may use any labels that were ordered or printed before the date of this notice in good faith reliance on the September 22 notice. After this initial stock of labels is exhausted, however, labels based on today's notice must be used.

In consideration of the foregoing, the Commission amends Appendix C of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of dishwashers beginning March 15, 1993.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

[1] 57 FR 43611.

[2] 57 FR 1461. The cost for electricity was published as 8.25 cents per kilowatt-hour; for natural gas: 58 cents per therm; for propane: 74 cents per gallon; for No. 2 heating oil: $1.03 per gallon.

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In appendix C, Paragraph 1 and the introductory text in Paragraph 2 are revised to read as follows:

Appendices

* * * * *

Appendix C to Part 305—Dishwashers

1. *Range Information:* "Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings.

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall conform to AHAM Specification DW–1 for chinaware, flatware and serving pieces. Load patterns shall conform to the operating normal for the model being tested.

Ranges of Comparability	Ranges of estimated yearly energy costs			
	Electrically heated Water		Natural gas heated Water	
	Low	High	Low	High
Compact	(1)	(1)	(1)	(1)
Standard	$46.00	$82.00	$25.00	$46.00

[1] No data submitted.

2. *Yearly Cost Information:* Estimates on the scales are based on a national average electric rate of 8.25¢ per kilowatt hour, a national average natural gas rate of 58¢ per therm, and eight loads of dishes per week.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 92–30302 Filed 12–11–92; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Regulation of Domestic Exchange-Traded Commodity Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is deleting regulations which require boards of trade designated as contract markets for options to adopt rules requiring member futures commission merchants ("FCMs") that engage in the offer or sale of commodity options regulated under part 33 to send copies of customer complaints and their resolutions and copies of all promotional material to the members' designated self-regulatory organization ("DSRO"). The purpose of this deletion is to eliminate duplicative recordkeeping requirements affecting FCMs.

EFFECTIVE DATE: January 13, 1993.

FOR FURTHER INFORMATION CONTACT: Tobey Kaczensky, Assistant Deputy Director, Audit and Review Section, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8246.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, the Commission published for comment a proposal to delete provisions of Regulation § 33.4 which require boards of trade designated as contract markets for options to adopt rules requiring member FCMs that engage in the offer or sale of commodity options to forward customer complaints and the resolutions thereof, and copies of all promotional material, to the member's self-regulatory organization. Commission Regulation § 33.4(b)(4)(i) will continue to require that boards of trade require member FCMs to retain all options complaints. In addition, Regulation § 33.4(b)(ii) will continue to require that boards of trade adopt and retain rules which require each FCM to make a record of the date the complaint was received, the associated person who serviced, or the introducing broker who introduced the account, a general description of the matter complained of, and what, if any, action was taken by the FCM in regard to the complaint.

The provisions to be deleted date from the Commission's pilot program for the reintroduction of domestic exchange-traded options. At that time, the Commission was concerned that the history of customer abuses that marked the previous trading of commodity options not be repeated. Thus, the Commission imposed certain requirements on the exchanges in an effort to guard against fraud in the offer and sale of exchange-traded options on commodity futures. The pilot program has since been terminated. Based on its experience with the administration of the options pilot program for ten years, the Commission recently reassessed the need for some of the differential sales practice and monitoring imposed on options, and as a result determined to eliminate some provisions of the options designation requirements.[1]

In light of the activities of the Joint Audit Committee ("JAC"), which is responsible for, among other things, coordinating the self regulatory organizations' audit and financial surveillance programs, including futures and options sales compliance audit procedures, the Commission believes that the exchanges and the National Futures Association (NFA) can be given some flexibility in meeting their affirmative action compliance obligations. It should be noted that the JAC's program for FCM audits includes a review of options, customer complaints and promotional material. In addition, NFA Rule 2–29 sets standards for promotional material and provides certain circumstances under which NFA may review such material.

The Commission believes that the elimination of the regulations described will reduce duplicative reporting requirements without significantly reducing customer protection. The staff will monitor through rule enforcement reviews the review of complaints and promotional material.

II. Related Matters

A. Notice and Comment

The Commission's proposal to delete Regulations § 33.4(b)(4)(iii) and (b)(8) was published in the **Federal Register** (57 FR 40626) on September 4, 1992 for 30 days comment.

Comments in support of the proposed deletions were received from two exchanges, the Chicago Board of Trade (CBOT) and the Chicago Mercantile Exchange (CME); from the Futures Industry Association (FIA); from the National Futures Association (NFA), and from Prudential Securities, Inc. (Prudential). There were no comments filed which opposed deletion.

The commenters uniformly stated that they believed the regulations require unnecessary recordkeeping by DSROs (FIA, CBOT, CME) and are duplicative. With regard to Regulation § 33.4(b)(4)(iii), NFA emphasized that, for those FCMs for which it serves as the DSRO, its compliance staff routinely reviews written customer complaints during audits of those FCMs. NFA stated that it is sent customer complaints directly by customers,[2] and that it reviews promotional material during on-site audits of FCMs, and also promotional material which is submitted pursuant to NFA Rule 2–29. Thus, NFA's present system assures review of both customer complaints and promotional material absent the regulatory requirements which the Commission has deleted.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5. U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These proposed deletions will permit contract markets to change rules affecting FCMs and thereby to relieve a regulatory burden. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[3] The Commission has previously determined that contract markets and registered FCMs are not small entities for the purpose of the RFA. Therefore, the deletions would not have a significant economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act the Commission has submitted these proposed deletions to the Office of Management and Budget. These proposed deletions have no burden.

List of Subjects in 17 CFR Part 33

Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, section 4(b) of said Act, the Commission amends part 33 of title 17 of the Code of Federal Regulations as follows:

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[1] For background, see generally 56 FR 43694 (September 4, 1991).

[2] Those customers who have major complaints about an FCM are unlikely to send the complaint to the firm because the firm is the source of the problem. Thus, they direct their complaint to the self-regulatory entity for the industry, which is the NFA.

[3] 47 FR 18618–18621 (April 30, 1982).

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 13a, 13a–1, 13b, 19, and 21, unless otherwise noted.

§ 33.4 [Amended]

2. Section 33.4(b)(4)(iii) is removed.

§ 33.4 [Amended]

3. Section 33.4(b)(8) is removed and reserved.

Issued in Washington, DC, this 8th day of December, 1992, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–30136 Filed 12–11–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket Nos. RM87–5–011 and CP87–238–002; Order No. 497–D]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines and Ozark Gas Transmission System; Order on Remand and Extending Sunset Date

Issued December 4, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; order on remand and extending sunset date.

SUMMARY: This order addresses on remand an opinion of the U.S. Court of Appeals for the District of Columbia Circuit which upheld in substantial part the Commission's final rule governing the relationship between interstate natural gas pipelines and their marketing affiliates. The court also remanded for further consideration the Commission's extension of the rule's contemporaneous disclosure requirement to gas sales and marketing information. The Commission's order narrows the scope of the contemporaneous disclosure requirement with respect to sales and marketing information. The Commission's order also addresses whether the marketing affiliates rule should be applicable to the operations of Ozark Gas Transmission Company. Finally, the Commission's order extends the sunset date of the rule's reporting requirements to December 31, 1993.

EFFECTIVE DATE: This order is effective January 13, 1993.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

ORDER ON REMAND AND EXTENDING SUNSET DATE

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

I. Introduction

On July 21, 1992, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Tenneco Gas* v. *Federal Energy Regulatory Commission (Tenneco)*,[1] upholding in substantial part Order Nos. 497 and 497–A,[2] the Commission's final rule governing the relationship between interstate natural gas pipelines and their marketing or brokering affiliates. However, the court found that the Commission did not adequately justify its extension of the contemporaneous disclosure requirement of § 161.3(f)[3] to gas sales and marketing information. Further, in its review of *Ozark Gas Transmission System (Ozark)*,[4] a consolidated case, the court found that the Commission erred in finding Order No. 497 applicable to Ozark Gas Transmission System (Ozark), a joint venture. Accordingly, the court remanded the proceeding to the Commission. In response to the court's remand, this order revises § 161.3(f) to narrow the scope of the contemporaneous disclosure requirement with respect to sales and marketing information, and finds that Ozark is subject to the requirements of Order No. 497. In addition, this order extends the sunset date of Order No. 497's reporting requirements from December 31, 1992, until December 31, 1993. However, 90 days after the Commission has determined that an individual pipeline is in full compliance with Order No. 636, the pipeline will no longer be required to submit the affiliated transportation log (FERC Form 592) to the Commission.[5] The pipeline must continue to maintain[6] and to provide its affiliated transportation log information on its electronic bulletin board (EBB).[7]

II. Public Reporting Burden

Since certain categories of gas sales and marketing information will be eliminated from § 161.3(f), the amount of information that a pipeline must contemporaneously disclose will be reduced. However, the reporting burden

[1] 969 F.2d 1187 (DC Cir. 1992). Parties had the opportunity to seek rehearing of the court's decision until September 4, 1992, but no petitions for rehearing were filed.

[2] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988), order on rehearing, Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989), order extending sunset date, Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990), order extending sunset date and amending final rule, Order No. ¶ 30,934 (1991), reh'g denied, 57 FR 5815, 58 FERC ¶ 61,139 (1992), aff'd in part and remanded in part, *Tenneco Gas* v. *FERC*, No. 89–1768 (DC Cir. July 21, 1992).

[3] 18 CFR 161.3(f).

[4] 49 FERC ¶ 61,247 (1989).

[5] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992) III FERC Stats & Regs. Preambles ¶ 30,939 (April 8, 1992) (Order No. 636), order on reh'g, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992).

[6] 18 CFR 250.16(a)(3) (1992).

[7] In Order No. 636, the Commission created new regulations which, *inter alia*, require all interstate pipelines transporting pursuant to part 284 of the Commission's regulations to create and maintain EBBs. See § 284.8(b)(4) and § 284.9(b)(4), 57 FR 13267 (April 16, 1992). Once operational, the EBB would become a pipeline's tool for compliance with Order No. 497's 24-hour electronic information requirement. See 18 CFR 250.16(g)(2) (1992).

will remain the same because such information is not reported on FERC Form No. 592. The Office of Management and Budget (OMB) approved the reporting requirements in the final rule on August 18, 1988. This approval is effective until December 31, 1992.

The current annual reporting burden for collection of information, as revised in order No. 636, is estimated to be 7,882 hours for FERC Form No. 592 (1902–0157). The industry burden is based on an estimated average of 9.94 hours per filing for the 61 respondents to complete 793 filings of FERC Form No. 592. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and obtaining the data needed, and completing and reviewing the collection of information. Exemption from the requirement to file Form No. 592 90 days after full compliance with Order No. 636 should result in a reduction of the number of respondents.

Hard copy and/or electronic formats for any data collection required by this order may be obtained by contacting: La Dorn Systems Corporation, in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

III. Background

On June 1, 1988, the Commission issued Order No. 497,[8] a final rule in this proceeding, which was the result of a lengthy rulemaking proceeding[9] begun in response to petitions for rulemaking[10] and several cases that raised the issue of potential abuse in the relationship between interstate natural gas pipelines and their marketing or brokering affiliates.[11] The final rule in Order No. 497 adopted standards of conduct, codified at part 161 of the Commission's regulations,[12] and reporting requirements, codified at § 250.16 of the Commission's regulations,[13] intended to prevent the preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services. The final rule also adopted a sunset provision of December 31, 1989, for the reporting requirements of Order No. 497 and specifically reserved the Commission's right to extend the date, should the Commission decide there was a need to do so.

On December 15, 1989, the Commission issued Order No. 497–A[14] which granted partial rehearing of Order No. 497 and clarified certain provisions of the final rule. Order No. 497–A also extended the final rule's reporting requirements for an additional year, from December 31, 1989, to December 31, 1990, and stated that the Commission would examine the need to further extend the rule's reporting requirements prior to their sunset date of December 31, 1990.

On December 13, 1990, the Commission issued Order No. 497–B[15] which extended the sunset date of Order No. 497's reporting requirements for an additional year, from December 31, 1990, until December 31, 1991, because several issues regarding Order Nos. 497 and 497–A were pending. The issues included those raised in the protests of filings made by pipelines in response to the issuance of Order No. 497, the applicability of the standards of conduct to discount sales programs, as well as the appeal to the United States Court of Appeals for the District of Columbia Circuit.

On December 20, 1991, the Commission issued Order No. 497–C[16] which extended Order No. 497's reporting requirements for an additional year, from December 31, 1991, until December 31, 1992, and amended the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file. The Commission extended Order No. 497's reporting requirements for an additional year because certain issues regarding Order Nos. 497 and 497–A were still pending and a new issue had arisen. The issues still pending were the applicability of the standards of conduct to discount sales programs and the appeal of Order No. 497 to the United States Court of Appeals for the District of Columbia Circuit. The new issue was the proposal in the Notice of Proposed Rulemaking in Docket No. RM91–11–00[17] to require pipelines to comply with Order No. 497's standards of conduct and reporting requirements by considering their unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate. The Commission concluded that with these issues before it, it would be premature to let the reporting requirements lapse at the end of 1991.

On April 8, 1992, the Commission issued Order No. 636, a final rule in Docket No. RM91–11–000 which requires significant structural changes in the services provided by natural gas pipelines. Order No. 636 continues Order No. 497's standards of conduct for interstate pipelines with marketing affiliates. Order No. 636 also extends Order No. 497's standards of conduct and reporting requirements to transportation transactions where the pipeline provides unbundled gas sales service because the pipeline as a merchant would be the functional equivalent of a marketing affiliate.

On July 21, 1992, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Tenneco*, upholding in substantial part Order Nos. 497 and 497–A. However, the court found that the Commission did not adequately justify its extension of the contemporaneous disclosure requirement of § 161.3(f)[18] to gas sales and marketing information. The court stated that "[o]n remand the Commission should reconsider its justification for applying [the contemporaneous disclosure requirement of § 161.3(f)] to sales and marketing information and ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefitting consumers, as well as preventing undue discrimination."[19] In a related matter, the court also stated that "[a]pplying [the contemporaneous disclosure requirement of 161.3(f)] to released-gas information prior to the issuance of Order No. 497–A might well be

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[8] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988).

[9] The proceeding included a Notice of Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines issued November 14, 1986, 51 FR 41982 (Nov. 20, 1986), IV FERC Stats. & Regs. ¶ 35,520 (1986), and a Notice of Proposed Rulemaking Related to Marketing Affiliates of Interstate Pipelines issued June 2, 1987, 52 FR 21878 (June 8, 1987), FERC Stats. & Regs. [Proposed Regulations 1982–1987] ¶ 32,445 (1987).

[10] Petitions of Hadson Gas Systems, Inc. in Docket No. RM86–19–000, Minnesota Department of Public Service, Energy Issues Intervention Office in Docket No. RM87–1–000, and Shell Gas Trading Company in Docket No. RM87–2–000.

[11] Northern Natural Gas Co., 20 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., 36 FERC ¶ 61,130 (1986); ANR Pipeline Co., 35 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Co., 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., 36 FERC ¶ 61,275 (1986) and 36 FERC ¶ 61,401 (1986); Texas Gas Transmission Corporation, 36 FERC ¶ 61,274 (1986); Arkla Exploration Co., 37 FERC ¶ 61,011 (1986); and Tenneco Oil Co., *et al.*, 36 FERC ¶ 61,399 (1986).

[12] 18 CFR part 161.

[13] 18 CFR 250.16.

[14] Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989).

[15] Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990).

[16] Order No. 497–C, 57 FR 9 (Jan. 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815, 58 FERC ¶ 61,139 (1992).

[17] In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, 56 FR 38372 (Aug. 13, 1991), IV FERC Stats. & Regs. ¶ 32,460 (1991).

[18] 18 CFR 161.3(f).

[19] *Tenneco Gas* v. *FERC*, 969 F.2d 1187, 1201 (DC Cir. 1992).

fundamentally unfair" and that the Commission could avoid "the expense of litigation over this issue by announcing that it will not retroactively apply [161.3(f)] to released gas information."[20]

Further, in its review of *Ozark*, the court found that the Commission erred in finding Order No. 497 applicable to Ozark, a joint venture. Ozark is a partnership composed of subsidiaries of four natural gas pipelines, each of which has a 25 percent ownership and voting interest. Two of the owners have marketing affiliates. The court stated that the Commission failed to consider relevant evidence regarding the ability of the owner pipelines with affiliates to control the partnership.

IV. Discussion

Section 161.3(f) states that "[t]o the extent [a pipeline] provides to a marketing affiliate information related to transportation of natural gas, or gas sales or gas marketing it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system." In *Tenneco*, the court found that "the contemporaneous disclosure requirement—at least as it affects information regarding transportation, where pipelines have monopolistic market power—reflects a reasonable effort to promote a competitive market without significantly harming existing efficiencies."[21] However, with respect to the contemporaneous disclosure of gas sales and marketing information, the court stated that it was "unable to conclude that standard (f)'s application to sales and marketing is justified; nor can we be confident that FERC possessed the statutory authority to regulate the transfer of sales and marketing information from pipelines to their affiliates."[22] The court remanded the proceeding to the Commission and stated that "[o]n remand, the Commission should consider its justification for applying standard (f) to sales and marketing information and ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefitting consumers, as well as preventing undue discrimination."[23]

Based upon the court's opinion, and in light of the structural changes in the gas industry that will occur as a result of Order No. 636, the Commission will revise § 161.3(f) to narrow the scope of the contemporaneous disclosure requirement with respect to sales and marketing information. Under revised standard (f), pipelines will still have to contemporaneously disclose information related to transportation of natural gas. However, with respect to information related to gas sales or marketing, pipelines will only be required to disclose information relating to sales or marketing on its system or the system of an affiliated pipeline. Accordingly, there will be two categories of gas sales or marketing information that will not be required to be contemporaneously disclosed: (1) gas sales or marketing information that is available from public sources and (2) information related to gas sales or marketing off a pipeline's system or the system of an affiliated pipeline. The Commission believes that a contemporaneous disclosure requirement revised in the manner discussed above is reasonably tailored to meet the its goals of improving the market and benefitting consumers, as well as preventing undue discrimination.

First, we will discuss the two categories of sales or marketing information that will be specifically excluded from the contemporaneous disclosure requirement of standard (f). The Commission believes that sales or marketing information that is available from public sources should not be required to be disclosed because that information will be available to all nonaffiliated shippers and potential shippers on a pipeline's system. The fact that the disclosure of this information by the pipeline to the marketing affiliate may give the affiliate an advantage over other potential shippers is irrelevant. As the court stated, "advantages a pipeline gives its affiliate are improper only to the extent that they flow from the pipeline's anti-competitive market power."[24] Moreover, one of the reasons the court gave for remanding standard (f) to the Commission for further explanation was that the standard, as currently written, "prohibits pipelines from sharing with their marketing affiliates information concerning potential marketing opportunities, even where that information was developed from public sources or sources entirely unrelated to a pipeline's transportation service."[25]

The Commission also believes that information related to sales or marketing off a pipeline's system, but not involving the system of an affiliated pipeline, should not be disclosed for several reasons. First, and most obvious, is that such sales or marketing information disclosed by the pipeline to the marketing affiliate will not involve the pipeline's transportation facilities, and, thus, there is no potential for a pipeline to exercise its monopoly power over the transportation facilities in a manner that would give an undue preference to its marketing affiliate. Second, and more importantly, is the role that off-system sales will play in pipelines' restructuring of their services. Under Order No. 636, pipelines will perform an effectively deregulated merchant function. As such, pipelines will seek to make sales both on and off system, an effort that may not necessarily involve their own transportation facilities with respect to off-system sales. In fact, pipelines may need to aggressively market their gas off-system if their current customers choose to only sign up for transportation services because otherwise they will be burdened with portfolios of wellhead contracts. If the pipelines do not shed their unwanted contracts, they could be subject to take-or-pay liability. The Commission believes that to require contemporaneous disclosure of information related to sales or marketing off system, but not involving the system of an affiliated pipeline, could have a chilling effect on pipelines marketing their gas.

While we are limiting the scope of standard (f), pipelines are not relieved of their obligations to refrain from unduly discriminatory conduct that is prohibited under the Natural Gas Act or the Natural Gas Policy Act, whether or not that conduct is covered by standard (f) or any of the other standards.

With respect to information relating to sales and marketing on a pipeline's system or the system of an affiliated pipeline, the Commission believes that information should continue to be disclosed for several reasons. First, any information obtained by the pipeline relating to sales and marketing on its system "flow[s] from the pipeline's anticompetitive market power."[26] The Commission's experience and common sense tell us that a pipeline has access to a great deal of information which it learns in the process of operating its transportation facilities. Its ongoing relationship with shippers on its line yields information on sales and marketing opportunities that are not readily available to others. A contemporaneous disclosure of information relating to sales and marketing on a pipeline's system is necessary because this type of

[20] *Id.* at 1202.
[21] *Id.* at 1199.
[22] *Id.* at 1199.
[23] *Id.* at 1201.
[24] *Id.* at 1201.
[25] *Id.* at 1200.
[26] *Id.* at 1201.

information naturally comes to the attention of a pipeline in connection with the transportation needed to get the gas from the point of availability to the market. The simple knowledge that there is a gas supply and a demand for gas in a particular location increases substantially in value when combined with information regarding potentially available transportation. The Commission believes that disclosing on-system sales or marketing information to an affiliate creates an undue preference because the affiliate would not have learned that information but for its relationship with the pipeline.

Second, the Commission believes that an undue preference would also be created in favor of a marketing affiliate if the pipeline gave it information concerning sales or marketing on the system of an affiliated pipeline. An illustration may be helpful:

> Acme Pipeline Company serves the southwestern United States and Apex Pipeline Company serves New England. Both pipelines are owned by the Double A Corporation and both are authorized to make unbundled firm or interruptible sales of gas throughout the country pursuant to § 284.284 of the Commission's regulations. In the course of business, Apex obtains information on a potential gas purchaser on its system which it will be unable to serve. Apex conveys this information to Acme. However, Acme is also unable to serve this potential customer. Acme, in turn, conveys this information to its marketing affiliate, Acme Gas Marketing, which does have gas supplies available to serve the customer on Apex's pipeline in New England.

In this situation, the pipeline would not have learned this information but for its membership in a corporate family with the affiliated pipeline. Further, as discussed above, the marketing affiliate would not have learned of the sales and marketing information but for its relationship with the pipeline.

In a related matter, the court stated that applying standard (f) to released-gas information prior to the issuance of Order No. 497–A might well be fundamentally unfair and that the Commission could avoid the expense of litigation over this issue by announcing that it will not retroactively apply the standard to released gas information. Accordingly, the Commission will not retroactively apply the contemporaneous disclosure requirement of standard (f) to released gas information, that is, standard (f)'s application to released gas information would begin with the issuance of Order No. 497–A.

With respect to the issue of Order No. 497's applicability to Ozark, some general background is necessary. Ozark Gas Transmission System is a general partnership with four equal partners:

- Ozark Gas Pipeline Corporation, a wholly-owned subsidiary of Texas Oil and Gas Corporation, which, in turn, is a wholly-owned subsidiary of USX Corporation;
- Tennessee Ozark Gas Pipe Company, a wholly-owned subsidiary of Tennessee Gas Pipeline Company, which is, in turn, a wholly-owned subsidiary of Tenneco, Inc.;
- Columbia Gulf Transmission Company, a wholly-owned subsidiary of the Columbia Gas System, Inc.; and
- Caney River Transmission Company, a wholly-owned subsidiary of ONEOK, Inc.

TXO Production Company (TXO) and Tenngasco Corporation (Tenngasco) are shippers on Ozark's system. TXO is owned by Texas Oil and Gas Corporation and Tenngasco is owned by Tennessee Gas Pipeline Company. Thus, the parent companies of two of Ozark's partners have marketing affiliates who are shippers on the Ozark system. The Commission in its *Ozark* order stated that because the parent companies have a 25 percent interest in Ozark they are presumed to have control over Ozark. This finding was based on § 161.2 of the Commission's regulations[27] which states that "[a] voting interest of 10 percent or more creates a rebuttable presumption of control." The Commission found that the requirements of Order No. 497 were applicable to Ozark because "[t]he ownership of Ozark by common parent companies with the shippers raises the possibility that the companies may seek and potentially obtain a preference from Ozark on their behalf or on behalf of their marketing affiliates."[28]

In its opinion in *Tenneco* v. *FERC*, the court agreed with Ozark that the Commission failed to address record evidence which called into question the presumption of control, *i.e.*, the Ozark partnership agreement which states that, except in certain limited circumstances, the Ozark Management Committee may only act if there is unanimous approval by each of the partners, who each have one vote. The court stated:

> Without remarking at all on the unanimity requirement in the Ozark partnership agreement, FERC rushed to conclude that Ozark had failed to "rebut the presumption that the overlapping economic interests of its owners provide an incentive for the granting of a preference." *Ozark Gas Transmission System*, 49 FERC at 61,870. As we noted above, however, FERC's economic interest analysis is appropriate only after it has properly determined that "control" exists. Here, FERC articulated no findings on whether "control" existed and provided no explanation as to why Ozark's rebuttal evidence did not defeat the presumption of control.[29]

Accordingly, the court remanded for further proceedings consistent with its opinion.

The Commission finds that despite the fact that there is a unanimous approval provision in the Ozark partnership agreement, the two partners that have parent companies with marketing affiliates shipping on Ozark's line can still exercise "control" over Ozark. Section 161.2 of the Commission's regulations states:

> *Control* (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

The Commission finds that even with a unanimous approval provision in the partnership agreement, Ozark Pipeline Company and Tennessee Ozark Gas Company, the two partners whose parent companies have marketing affiliates, can each act alone to direct or affect the management or policies of Ozark Gas Transmission. Since there is a unanimous approval requirement, each partner has veto power over any decision by simply withholding its vote. Such power could be exercised in a manner that could unduly prefer the marketing affiliates related to Ozark's partners, for example, by either or both partners refusing to engage in an action that would benefit an independent marketer in competition with one of Ozark's partners' affiliates. The Commission believes that control can be exercised in a negative manner, *i.e.*, by withholding approval of a specific policy or transaction, as well as in an affirmative manner, *i.e.*, by actually approving a decision that would unduly prefer a marketing affiliate.

Extension of Reporting Requirements

Finally, the Commission will also extend the sunset date of Order No. 497's reporting requirements from December 31, 1992, until December 31, 1993, because of the important role they will play in the regulatory structure created by Order No. 636. Order No. 636 does not change the requirements governing the relationship between pipelines and their marketing affiliates.

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[27] 18 CFR 161.2.

[28] 49 FERC ¶ 61,247 at 61,870 (1989).

[29] 969 F.2d at 1214.

However, Order No. 636 extends the requirements of Order No. 497 to pipelines providing unbundled gas sales service because the pipeline as merchant will be the functional equivalent of a marketing affiliate.[30] The Commission found in Order No. 636 that unbundling does not eliminate the potential for pipelines to favor their marketing affiliates because there is no change in the pipeline's control over the transportation function. Because of the fact that the potential for abuse in favor of marketing affiliates still exists, as recognized by Order No. 636, and the court found that it was in the Commission's discretion to provide for an annual review of the costs and benefits of Order No. 497's reporting requirements, the Commission will extend the sunset provision until December 31, 1993. This action is consistent with the Commission's finding in Order No. 636–A that abuses in the area of marketing affiliates might not be a perpetual problem and that increased competition that will result after unbundling may reduce the incentive for abuse.

Although Order No. 636 does not change the requirements governing the relationship between pipelines and their marketing affiliates, the structural change engendered by full compliance with the rule would remove the need to continue filing the affiliated transportation log (FERC Form No. 592) with the Commission. Order No. 636's EBB requirements ensure certain minimum standards for maintaining and communicating information about a pipeline's available capacity, current capacity release offers, and affiliate marketing-related information.[31] Unless further case-specific action is taken by the Commission, 90 days after the Commission has determined that a pipeline is in full compliance with the requirements of Order No. 636, that pipeline will no longer be required to submit the affiliated transportation log (FERC Form 592) to the Commission. The pipeline must continue to maintain[32] and to provide its affiliated transportation log information on its EBB.[33] In practice, this means that pipelines remain subject to the standards of conduct and will continue to maintain the Order Nos. 497- and 636-mandated information, but will no longer be required to file FERC Form No. 592 with the Commission.[34]

[30] For this reason, the Commission notes that pipeline sales, after compliance with Order No. 636, need not be performed by the pipeline's marketing affiliate. Rather such sales may be performed on an unbundled basis by a separate sales division of the pipeline. Such sales are subject to certain requirements discussed in Order No. 636 and Order No. 636–A.

[31] In brief, new § 284.8(b)(4) and § 284.9(b)(4) require that a pipeline's EBB must provide for information downloading by users, daily back up of information, purging information on completed transactions, displaying most recent entries ahead of information posted earlier, on-line help, a search function and menu selections.

[32] 18 CFR 250.16(a)(3).

[33] In Order No. 636, the Commission created new regulations which, *inter alia*, require all interstate pipelines transporting pursuant to Part 284 of the Commission's regulations to create and maintain EBBs. See § 284.8(b)(4) and § 284.9(b)(4), 57 FR 13267 (April 16, 1992). Once operational, the EBB would become a pipeline's tool for compliance with Order No. 497's 24-hour electronic information requirement. See 18 CFR 250.16(g)(2) (1992).

[34] Although pipelines would no longer be required to file FERC Form 592 with the Commission, they would still be required to follow the content requirements of that form in providing electronic access and maintaining affiliated transportation log information.

[35] 5 CFR 1320.14.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[35] require that OMB approve certain information collection requirements imposed by agency rule. The information collection requirements of Order No. 497 are contained in FERC Form No. 592, "Marketing Affiliates of Interstate Pipelines." The Commission is notifying OMB that it is extending the sunset provision for Order No. 497's reporting requirements and submitting the information collection provisions in this notice for its approval.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Effective Date

This order is effective January 13, 1993.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 161 and 250, chapter I, title 18 *Code of Federal Regulations* as set forth below.

By the Commission. Commissioner Moler dissented in part with a separate statement attached. Commissioner Terzic dissented.

Lois D. Cashell,

Secretary.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for part 161 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 161.3, paragraph (f) is revised to read as follows:

§ 161.3 Standards of conduct.

* * * * *

(f) To the extent it provides to a marketing affiliate information related to transportation of natural gas, or information related to gas sales or gas marketing on its system or the system of an affiliated pipeline, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system. Pipelines are not required to contemporaneously disclose: (1) Gas sales or gas marketing information that is available from public sources and (2) information related to gas sales or gas marketing off a pipeline's system, but not involving the system of an affiliated pipeline.

* * * * *

PART 250—FORMS

1. The authority citation for part 250 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 250.16, paragraphs (a)(3), (c)(1), (c)(2) introductory text and (d)(1) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* * * *

(3) Maintain all information required under this section from the time the information is received until December 31, 1993.

* * * * *

(c) *What to maintain.*

(1) An interstate pipeline must maintain the information in paragraph (b)(2) of this section for all requests for transportation services made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1993.

(2) The information required to be maintained by this section will be

available from September 12, 1988 until December 31, 1994 to:

* * * * *

(d) *When to file.*

(1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until the earlier of: 90 days after the Commission has determined that the pipeline is in full compliance with the requirements of Order No. 636; or December 31, 1993. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

* * * * *

Moler, Commissioner, *dissenting in part*:

With only minor exceptions, the majority continues to require that pipelines contemporaneously disclose to all shippers the gas sales and marketing information provided to their affiliates.[1] I disagree as a matter of policy. The requirement for contemporaneous disclosure unduly burdens pipelines and gives the pipelines' competitors an unwarranted advantage. It is also unnecessary because Standards C and E are more than adequate safeguards against affiliate abuse.

Standard C prohibits pipelines from giving their marketing affiliates preferences in receiving open access transportation.[2] Standard E prohibits pipelines from disclosing, to their marketing affiliates, information which they receive from nonaffiliated shippers.[3] The retention of these provisions adequately protects nonaffiliated marketers. The court's main concern in *Tenneco Gas* v. *Federal Energy Regulatory Commission (Tenneco)*[4] was that a pipeline should not be allowed to use its market power over transportation to skew the competitive market for natural gas in favor of its affiliate.[5] These provisions accomplish that without imposing undue burdens on pipelines and their affiliates.

I also disagree as a matter of law. I do not believe the Commission has met the challenge imposed by the court in order to justify retention of Standard F in the face of court's explicit remand in *Tenneco*. There the court found the commission's explanation for requiring contemporaneous disclosure of sales and marketing information was "unsatisfactory".[6] On remand, the court required us to justify the disclosure requirement in terms of the pipeline's monopoly control over transportation service.[7] This the Commission has failed to do.

The order is vague; it does not discuss the types of sales and marketing information that may be obtained in providing transportation services, and thus properly subject to disclosure. Instead, the order cites as truth the bare assumptions previously advanced and rejected by the *Tenneco* court: That a pipeline's ongoing relationship with shippers yields information on sales and marketing information that is not readily available to others and that disclosing this information only to an affiliate creates an undue preference because the affiliate would not have otherwise learned that information. The order utterly fails to meet the burden of showing how this flows from the pipeline's anticompetitive exercise of market power. Wrapping itself in the court's language, the Commission concludes, without support or explanation, that any information obtained by the pipeline relating to sales and marketing on its system "flow[s] from the pipeline's anticompetitive market powers" and thus must be subject to disclosure.[8] The Commission, repeating the error exposed by the *Tenneco* court, asks the world to rely on "common sense" and the Commission's "experience."[9] That is not good enough.[10]

The court has already rejected the circular reasoning that any advantage to a marketing affiliate is a bad advantage.[11] The advantage a pipeline gives to its marketing affiliate is improper only to the extent that the advantage flows from the pipeline's anticompetitive market power. Otherwise, the court said, we would improperly cripple the permissible efficiencies of vertical integration that "cannot by themselves be considered uses of monopoly power."[12]

In conclusion, I would eliminate the contemporaneous disclosure requirement for all sales and marketing information. Thus I dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 92–30269 Filed 12–11–92; 8:45 am]

BILLING CODE 6717–01–M

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[1] The order excludes from the contemporaneous disclosure requirement information obtained from public sources and information that does not directly involve the pipeline or an affiliated pipeline. Slip op. at 10.

[2] 18 CFR 161.3(c).

[3] 18 CFR 161.3(e).

[4] 969 F.2d 1187 (DC Cir. 1992).

[5] 969 F.2d at 1201.

[6] 969 F.2d at 1201.

[7] In particular, the Commission was to "ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefiting consumers, as well as preventing undue discrimination." 969 F.2d at 1201.

[8] Slip op. at 13; *cf.* 969 F.2d at 1201 ("[b]ut advantages a pipeline gives its affiliate are improper only to the extent that they flow from the pipeline's anti-competitive market power").

[9] Slip op. at 13.

[10] To be sure, while courts must defer to the "informed discretion" of the Commission, we must demonstrate how we are "informed" by relevant factual evidence. See generally *Michigan Consolidated Gas Co.* v. *FERC*, 883 F.2d 117, 123–124 (DC Cir. 1989), *cert. denied*, 494 U.S. 1079 (1990).

[11] The Commission made essentially the same claims to the court on brief as it does here.

There is no merit to the pipeline's argument that the Commission exceeded its authority in requiring disclosure of sales and marketing information rather than just transportation related information. As the Commission explained, for a pipeline to share sales and marketing information, like transportation information, with its affiliate, and not others, presents an obvious potential for undue discrimination * * *. Since the sales and marketing information, like transportation information, can afford a pipeline affiliate a significant advantage, the Commission had ample opportunity to require its disclosure to all potential shippers if the pipeline discloses such information to its affiliate.

Brief of Respondent Federal Energy Regulatory Commission at 37–38 (citations and footnote omitted).

[12] 969 F.2d at 1201.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8452]

RIN 1545–AG02

Information Returns of Brokers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to information returns of brokers. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations affect brokers effecting dispositions (including short sales) of securities, commodities, regulated futures contracts, and forward contracts and provide them with guidance needed to comply with the law.

EFFECTIVE DATE: The regulations are effective July 1, 1983.

FOR FURTHER INFORMATION CONTACT: John P. Moriarty, 202–622–4950 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 1.6045–1(a)(5) of the Income Tax Regulations (26 CFR part 1) defines the term "commodity" for purposes of the information reporting requirements of section 6045 of the Internal Revenue Code. On January 5, 1984, the Internal Revenue Service published in the **Federal Register** proposed amendments (49 FR 646) to those regulations to clarify the definition of a commodity. The proposed regulations also contain an exception to the information reporting requirements for sales of small amounts of commodities.

Public Comments

A number of comments on the proposed regulations suggested specific *de minimis* dollar amounts or quantities of commodities that should be excepted from reporting. A public hearing on the January 1984 regulations was held on March 28, 1984. After consideration of all written comments regarding the proposed amendments, the final regulations under section 6045 are revised by this Treasury decision. The Internal Revenue Service anticipates finalizing the remaining aspects of the proposed amendments in the near future.

Explanation of Provisions

After considering the comments submitted with respect to the proposed regulations, the Service has concluded that specifically tailored rules that except certain transactions from the information reporting requirements will more appropriately balance the cost of reporting against the improvement in compliance attributable to reporting than a general *de minimis* rule. Further, the Service has determined that these rules should not necessarily be limited to transactions involving commodities, but rather should apply to sales of securities as well in appropriate circumstances.

Accordingly, the final regulations provide that no return of information is required for a sale effected by a broker for a customer if the sale is an "excepted sale." A sale is an excepted sale if it is so designated by the Service in a revenue ruling or revenue procedure published in the Internal Revenue Bulletin.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is John P. Moriarty of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following authority citation:

Authority: 26 U.S.C. 7805 * * * Section 1.6045–1 also issued under 26 U.S.C. 6045 * * *

Par. 2. Section 1.6045–1 is amended by revising paragraph (c)(3) to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(c) * * *

(3) *Exceptions*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, the exceptions set forth in paragraph (c)(3) of § 5f.6045–1 of this chapter apply to sales effected on or after May 29, 1984. For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, see paragraph (c)(7) of this section. With respect to sales effected before May 29, 1984, the exceptions provided in § 1.6045–1(c)(3) (as contained in the CFR edition revised as of April 1, 1984) apply.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is so designated by the Internal Revenue Service in a revenue ruling or revenue procedure published in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*) of this chapter).

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: November 19, 1992.

Allen J. Wilensky,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 92–30069 Filed 12–11–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[TD 8453]

RIN 1545–AM68

Review of Jeopardy Levy or Assessment Procedures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the procedures for review of jeopardy levies and jeopardy and termination assessments. The Technical and Miscellaneous Revenue Act of 1988 expanded the coverage of the existing procedures for the review of an assessment made under sections 6851(a), 6852(a), 6861(a), or 6862 to include the review of those jeopardy levies made less than 30 days after notice and demand for payment is made under section 6331(a). In addition, because Congress intended to permit administrative and judicial review of all jeopardy levy cases where the general notice requirements of section 6331 (a) and (d) are not met, the regulations extend review to include all such cases. The regulations also incorporate the modifications to section 7429 which now provide the Tax Court with concurrent jurisdiction with the federal district courts regarding the review of jeopardy and termination assessments and jeopardy levies in certain circumstances, where previously only the district courts had jurisdiction with respect to the review of jeopardy and termination assessments.

EFFECTIVE DATE: These regulations are effective on December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph W. Clark, 202–622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7429 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 7429 by section 6237 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** on May 9, 1991. The Internal Revenue Service received no public comments on the proposed regulations. No changes have been made to the final regulations.

Section 6237 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100–647, 102 Stat. 3573) amended section 7429 of the Code to extend the existing procedures relating to the review of jeopardy and termination assessments to the review of certain jeopardy levies. The regulations specify that the Internal Revenue Service must give the taxpayer whose property has been subjected to jeopardy or termination assessment a written statement of the information on which the action is based within 5 days of the date the jeopardy or termination assessment is made. A written statement is also required within 5 days of the date that a jeopardy levy is made if the general notice requirements of section 6331 (a) and (d) are not met with respect to the levy. The taxpayer has 30 days from receipt of the written statement or, if no statement was provided, 30 days from the date the statement was required to be furnished to request administrative review. The taxpayer may commence judicial review of the reasonableness of the jeopardy or termination assessment or levy by bringing a civil action in the appropriate court within 90 days after the earlier of (1) the date of notice of the administrative review determination or (2) the 16th day after the request for review was made. The regulations further reflect the grant to the Tax Court of concurrent jurisdiction with the federal district courts over challenges to jeopardy and termination assessments and levies if the taxpayer has filed a petition with the Tax Court prior to the making of the jeopardy assessment or levy with respect to any deficiency covered by the jeopardy assessment or levy notice.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Joseph W. Clark, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

Lists of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2 Sections 301.7429–1, 301.7429–2 and 301.7429–3 are revised to read as follows:

§ 301.7429–1 Review of jeopardy and termination assessment and jeopardy levy procedures; information to taxpayer.

Not later than 5 days after the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or a levy is made under section 6331(a) without complying with the notice before levy provisions of section 6331(d), the district director shall provide the taxpayer a written statement setting forth the information upon which the district director relies in authorizing such assessment or levy.

§ 301.7429–2 Review of jeopardy and termination assessment and jeopardy levy procedures.

(a) *Request for administrative review.* Any request for the review of a jeopardy or termination assessment or jeopardy levy provided for by section 7429(a)(2) shall be filed with the district director within 30 days after the statement described in § 301.7429–1 is given to the taxpayer. However, if no statement is given within the 5 day period described in § 301.7429–1, any request for review of the jeopardy or termination assessment or jeopardy levy shall be filed within 35 days after the date such assessment or levy is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the district director to make the redetermination described in section 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment is reasonable and the amount assessed is appropriate, or whether the jeopardy levy is reasonable, the district director shall take into account not only information available at the time the assessment or jeopardy levy is made but also information which subsequently becomes available.

(c) *Abatement of assessment.* For rules relating to the abatement of assessments made under sections 6851 and 6861 see § § 301.6861–1(e), 301.6861–1(f) and 1.6851–1(d) of this chapter.

§ 301.7429–3 Review of jeopardy and termination assessment and jeopardy levy procedures; judicial action.

(a) *Time for bringing judicial action.* An action for judicial review described in section 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of—

(1) The date the district director notifies the taxpayer of the determination described in section 7429(a)(3) and ending on the 90th day thereafter; or

(2) The 16th day after the request described in section 7429(a)(2) was made by the taxpayer and ending on the 90th day thereafter.

(b) *Extension of period for judicial review.* The United States Government may not by itself seek an extension of the 20 day period described in section 7429(b)(3), but it may join with the taxpayer in seeking such an extension.

(c) *Jurisdiction for determination.*—In general, the United States district court will have exclusive jurisdiction over any civil action for a determination described in section 7429(b). However, if a petition for a redetermination of a

deficiency has been timely filed with the Tax Court prior to the making of an assessment or levy that is subject to the section 7429 review procedures, and one or more of the taxes and tax periods before the Tax Court as a result of the petition is also included in the written statement that was provided to the taxpayer, then the Tax Court will have jurisdiction concurrent with the district courts over any civil action for a judicial determination with respect to all the taxes and tax periods included in the written statement. In all other cases, the appropriate United States district court continues to have exclusive jurisdiction over such an action.

David G. Blattner,

Acting Commissioner of Internal Revenue.

Approved: November 13, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-30184 Filed 12-11-92; 8:45 am]

BILLING CODE 4830-01-M

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final Rule, amendment.

SUMMARY: The Office of Foreign Assets Control (FAC) is amending the Foreign Assets Control Regulations (the "FACR"), to authorize U.S. common carriers to make current settlement payments to Vietnam or Vietnamese nationals with respect to telecommunications transactions involving Vietnam.

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This rule amends § 500.571 of the FACR (31 CFR part 500), which authorizes telecommunications transactions involving Vietnam, provided that payments owed to Vietnam or its nationals are deposited into blocked interest-bearing accounts in domestic U.S. banks pending full lifting of the embargo. The final rule removes the requirement that such proceeds be deposited into blocked U.S. accounts, and the requirement that the establishment of these accounts be reported to FAC. The effect of this amendment is to authorize current settlement accounts with Vietnam or its nationals arising from telecommunications authorized in § 500.571 of the FACR.

Because the FACR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 563, requiring notice of proposed rulemaking opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Banks, Blocking of assets, Reporting and recordkeeping requirements, Telecommunications, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 500.571 is revised to read as follows:

§ 500.571 Transactions related to telecommunications authorized.

All transactions of U.S. common carriers incident to the receipt or transmission of telecommunications involving Vietnam are authorized.

Note: Exports or reexports to Vietnam of goods and technical data, or of the direct products of technical data (regardless of U.S. content), not prohibited by this part may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768-799.

Dated: November 17, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 25, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-30188 Filed 12-9-92; 12:05 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 367

[DoD Directive 5136.1]

Assistant Secretary of Defense for Health Affairs (ASD(HA))

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document revised 32 CFR part 367 to reflect the Deputy Secretary of Defense's guidance on strengthening the medical personnel, facilities, programs, land funding and other resources within DoD which are subject to the authority, direction and control of the ASD (Health Affairs). In addition, this document establishes the Defense Medical Advisory Council to provide advice to the ASD (Health Affairs).

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: R. Kennedy, Office of the Director of Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC, 20301, telephone 703-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 367

Organization and functions (Government agencies).

Accordingly, 32 CFR part 367 is revised to read as follows:

PART 367—Assistant Secretary of Defense for Health Affairs (ASD(HA))

Sec.

367.1 Purpose.
367.2 Applicability.
367.3 Responsibilities.
367.4 Functions.
367.5 Relationships.
367.6 Authorities.

Authority: 10 U.S.C. 136.

§ 367.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under title 10, United States Code, this part:

(a) Designates one of the positions of Assistant Secretary of Defense as the ASD(HA).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(HA).

§ 367.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General,

Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as the "DoD Components").

§ 367.3 Responsibilities.

The Assistant Secretary of Defense for Health Affairs is the principal staff assistant and advisor to the Secretary of Defense for all DoD health policies, programs, and activities and is responsible for the effective execution of the Department's medical mission which is to provide, and to maintain readiness to provide, medical services and support to members of the Armed Forces during military operations, and to provide medical services and support to members of the Armed Forces, their dependents, and others entitled to DoD medical care.

(a) In carrying out his responsibilities, the ASD(HA) shall exercise authority, direction, and control over the medical personnel, facilities, programs, and funding and other resources within the Department of Defense. The ASD(HA)'s exercise of that authority, direction, and control shall include, but not be limited to:

(1) Establishing policies, procedures, and standards which shall govern DoD medical programs.

(2) Serving as program manager for all DoD health and medical resources. Prepare and submit in the Department's planning, programming, and budgeting system (PPBS) a unified medical program and budget to provide resources for all medical activities within the Department of Defense. Consistent with applicable law, all funding for the DoD medical program, including operation and maintenance, procurement, research and development, and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), but excluding the personnel funds for active and reserve medical military personnel, which shall be in a single defense medical appropriations account, and funds for medical facility military construction shall be in a single appropriations account.

(3) Presenting and justifying the unified medical program and budget throughout the PPBS process, including the Defense Planning and Resources Board, and with Congress.

(4) Performing such other duties as the Secretary or Deputy Secretary of Defense may assign.

(b) The ASD(HA) may not direct a change in the structure of the chain of command within a Military Department with respect to medical personnel and may not direct a change in the structure of the chain of command with respect to medical personnel assigned to that command.

§ 367.4 Functions.

The ASD(HA) shall:

(a) Carry out the responsibilities described in § 367.3, including for the following functional areas:

(1) Medical readiness.

(2) Disease prevention.

(3) Health promotion.

(4) Health benefits programs.

(5) Alcohol and drug abuse treatment.

(6) Cost containment.

(7) Professional affairs, quality assurance, and utilization management.

(8) Medical information systems.

(9) DoD medical research and development program.

(10) Procurement, professional development, and retention of medical and dental personnel, and related health care specialists and technicians.

(11) Military medical construction.

(12) Medically related services for disabled children.

(13) DoD financed, civilian provided, health care services.

(14) Medical education and graduate medical education programs.

(b) Chair and establish the agenda of the Defense Medical Advisory Council (DMAC), which shall provide advice to the ASD(HA) in the execution of the DoD medical mission. The DMAC shall consist of the ASD(HA), one civilian Presidential Appointee from each of the Military Departments designated by the Secretary concerned, one general or flag officer from each Military Service designated by the Secretary of the Military Department concerned, and the President of the Uniformed Services University of the Health Sciences.

(c) Chair the Armed Services Biomedical Research Evaluation and Management Committee.

§ 367.7 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Coordinate and exchange information with other OSD Officials and heads of DoD Components having collateral or related functions.

(2) Consult, as appropriate, with the Comptroller of the Department of Defense (C, DoD), and the Assistant Secretary of Defense for Program Analysis and Evaluation to ensure that medical planning, programming, and budgeting activities are integrated with the DoD PPBS. The C, DoD shall allocate and reallocate the funds in the Defense Health Program account and the medical facility military construction account among the DoD Components in accordance with ASD(HA) instructions and applicable law.

(3) Obtain through the Chairman of the Joint Chiefs of Staff, submissions of the operational and other needs of the commanders of the Unified and Specified commands, and obtain submission from the Secretaries of the Military departments of their proposed elements of the medical unified program and budget, and shall consider, review, and integrate those submissions as appropriate.

(4) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to achieve maximum efficiency and economy.

(5) Exercise direction, authority, and control over:

(i) The Office of Civilian Health and Medical Program of the Uniformed Services.

(ii) The Defense Medical Programs Activity.

(iii) The Armed Forces Institute of Pathology.

(iv) The Uniformed Services University of the Health Sciences (USUHS) pursuant to the authority vested in the Secretary of Defense by 10 U.S.C. Chapter 104 and the Department of Defense Appropriations Act, 1991, except that the authority to appoint the President of the USUHS is reserved to the Secretary of Defense.

(b) Other OSD officials and Heads of DoD Components shall coordinate with the ASD(HA) on all matters concerning the functions in § 367.4.

§ 367.5 Authorities.

The ASD(HA) is hereby delegated authority to:

(a) Issue orders, DoD Instructions, publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M [1], regarding the accomplishment of functions and responsibilities assigned by the Secretary of Defense in this part. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 [2], as necessary.

(c) Communicate directly with the Heads of the DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated through the Chairman of the Joint Chiefs of Staff.

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 367.5(a).

(d) Make determinations on the uniform implementation of laws on separation from the Military Departments due to physical disability as prescribed in DoD Directive 1332.18[3].

(e) Develop, issue, and maintain regulations, with the coordination of the Military Departments, as necessary and appropriate to fulfill the Secretary of Defense's responsibility to administer 10 U.S.C. chapter 55.

(f) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(HA) has been assigned primary cognizance.

(g) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(h) The ASD(HA) also is hereby delegated the authorities contained in enclosure 1 of DoD Directive 5105.45[4]. The ASD(HA) may modify, terminate, or redelegate these authorities, in whole or in part as appropriate, and in writing, except as otherwise provided by law or regulation.

Dated: December 8, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-30285 Filed 12-11-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore, MD Regulation 92-05-33]

Safety Zone Regulation: Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing safety zones for Inner Harbor fireworks displays in Baltimore. Fireworks will be launched from a barge anchored approximately 600 feet south of Pier 6, Patapsco River, Inner Harbor, Baltimore, Maryland. The safety zones are necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of navigable waters during the events.

EFFECTIVE DATE: These regulations will be effective from 6 p.m. until 6:30 p.m. on December 05, December 12, and December 20.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Mark Williams, U.S. Coast Guard Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-5104.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, notices of proposed rulemaking have not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures is not possible due to time of receipt of notices of intent to conduct fireworks displays. Specifically, the sponsor's application to hold these events was not received until November 12, 1992, leaving insufficient time to publish notices of proposed rulemaking in advance of the event.

Drafting Information: The drafters of this regulation are Lieutenant Junior Grade Mark Williams, project officer for the Captain of the Port, Baltimore, Maryland, and Lieutenant Keith B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose: On November 12, 1992, the Baltimore Office of Promotion submitted applications to hold fireworks displays on December 05, 12, and 20, 1992. As part of its application, the Baltimore Office of Promotion requested the Coast Guard to provide assistance with control of spectator and commercial vessel traffic in the vicinity of the fireworks displays.

Discussion of Regulations: These fireworks will be launched from a barge anchored approximately 600 feet south of Pier 6, Inner Harbor, Patapsco River, Baltimore, Maryland. These Safety Zones will consist of a circle, with a radius of 600 feet, around the barge. These regulations are necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of the Patapsco River during the fireworks events. Since the main shipping channel will not be closed and these regulations will only be in effect for one half hour, the impacts on routine navigation should be minimal.

These emergency rules are not considered major under Executive Order 12291 and are not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The Coast Guard also considered the impact of these regulations on small entities and concluded that such impact should be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these emergency rules do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations: In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 C.F.R. 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 C.F.R. 1.46.

2. A temporary section 165.T592 is added to read as follows:

§ 165.T592 Safety Zone: Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Location:* The following area is a safety zone: The waters of the Patapsco River, Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39-17-00 North, longitude 076-36-15 West.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Baltimore, Maryland.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962-5105.

(2) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channels 16 and 81.

(c) *Local Regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective time of the safety zone.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

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[3] See footnote 1 to § 367.5(a).

[4] See footnote 1 to § 367.5(a).

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (2)(a) of these regulations, but may not block a navigable channel.

(d) *Effective Date:* These regulations will be effective from 6 p.m. until 6:30 p.m. on December 05, December 12, and December 20 unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: December 4, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92-30154 Filed 12-11-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[GA 017 and 020-4-5418; FRL-4111-1]

Approval and Promulgation of Implementation Plans Georgia: Approval of PM_{10} SIP

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On April 15, 1988, and January 3, 1991, the State of Georgia submitted a revision to the Georgia State Implementation Plan (SIP). However, it was not until April 3, 1991, that all the required elements were submitted, making the January 3, 1991, package a complete submittal. EPA is approving the revisions submitted by Georgia on April 15, 1988, January 3, 1991, and April 3, 1991. The revisions were submitted pursuant to the requirements of Section 110 of the Clean Air Act to provide for the attainment of the new particulate matter standards known as "PM_{10}" standards which replaced the total suspended particulate (TSP) standards. On July 1, 1987, EPA promulgated a new ambient air quality standard for particulate matter which was based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM_{10}). Consequently, States were required to develop plans which provide for attainment and maintenance of these new standards. The Georgia SIP revisions demonstrate that the existing SIP for total suspended particulates (TSP) is adequate to provide for attainment and maintenance of the PM_{10} standards.

EFFECTIVE DATES: This action will be effective February 12, 1993, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Liz Wilde of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 205 Butler Street, Southeast, Room 1162, East Tower, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Liz Wilde of the EPA Region IV Air Programs Branch at (404) 347-2864 or (FTS) 257-2864 and at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the 1977 amendments to the Clean Air Act, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The particles are referred to as PM_{10}.

In order for States to regulate PM_{10}, they must make certain changes in their rules and regulations and in the SIPs. The changes to the rules and the SIP must insure that the PM_{10} NAAQS are attained and maintained; that new and modified sources which emit PM_{10} are reviewed; that PM_{10} is one of the pollutants to trigger alert, warning, and emergency actions; and that the State's monitoring network be designed to include PM_{10} monitors. These changes must be made regardless of the existing levels of PM_{10} in any area of the State. The regulations call for the PM_{10} SIPs to be submitted nine months after the Federal PM_{10} regulations went into effect on July 31, 1987.

Because PM_{10} air quality data was lacking in most areas of the country, EPA could not arbitrarily designate areas as attainment or nonattainment. EPA developed an analysis using historical ambient TSP data and any available PM_{10} data, to classify all counties in the nation into one of three groups based upon the statistical probabilities of not attaining the new PM_{10} standards. EPA has classified the following: (1) Areas with probability of not attaining the PM_{10} standards of at least 95 percent as "Group I", (2) areas with a probability of not attaining the PM_{10} standard of between 20 and 95 percent as "Group II", and (3) areas with a probability of not attaining the PM_{10} standard of less than 20 percent as "Group III". All areas are currently conducting ambient monitoring to determine whether actual ambient PM_{10} concentrations are above or below the PM_{10} NAAQS.

A control strategy is required to show how PM_{10} emissions will be reduced to provide for attainment and maintenance of the PM_{10} NAAQS for a Group I area. For Group II areas, the States are required to commit to perform additional PM10 monitoring in that area and to prepare a control strategy if the data show with certainty that the standards are being exceeded. The commitments must be submitted in the form of an SIP revision and are termed a "committal" SIP.

EPA reviewed TSP monitoring data from Georgia to evaluate the probabilities of PM_{10} air quality levels, and concluded that Georgia was a Group III area. This means that the existing particulate matter control strategy is believed to be largely adequate to attain and maintain the PM_{10} standards. The Georgia SIP, however, still needed to be revised to address the PM_{10} NAAQS in the following ways:

(a) To include State ambient air quality standards for PM_{10} at least as stringent as the NAAQS,

(b) To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions,

(c) To invoke the emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 ug/m^3,

(d) To meet ambient PM_{10} monitoring requirements of 40 CFR part 58, and,

(e) To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM_{10} (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

In the April 15, 1988, SIP submittal, Georgia made the following regulation changes to satisfy the above requirements:

I. Georgia revised its SIP to address the PM_{10} NAAQS. The definitions for "Total Suspended Particulate", "Particulate Matter", "Particulate Matter Emissions", "PM_{10}", and "PM_{10} Emissions" were added or modified to read the same as the federal definitions.

II. The Air Quality Control Rules dealing with the prevention of significant deterioration of air quality were amended to incorporate the needed PM_{10} modifications to comply with federal regulations.

III. In the permit review regulations, provisions were added to require major sources impacting a nonattainment area to meet additional federal requirements regarding allowable offset emissions controls before being granted a state permit.

IV. In the Air Pollution Episodes regulations, several revisions were made. The paragraphs for Alert, Warning, and Emergency were revised to add the criterium for PM_{10}. The criteria for suspended particulates was deleted.

EPA's review of the April 15, 1988, submittal, identified four issues within the SIP submittal that were deficient and needed correction. In a letter dated July 6, 1988, EPA identified the following issues that needed corrections:

(a) Georgia's PM_{10} SIP dealt with the NAAQS being protected everywhere at "ground level". EPA requires that the NAAQS be attained and maintained in the "ambient air", as defined in 40 CFR part 50.1(e).

(b) Georgia did not adopt a new 24-hour and annual, primary and secondary particulate matter NAAQS measured as PM_{10}.

(c) The new particulate matter SIP did not require new sources locating in attainment or unclassifiable areas for any criteria pollutant to obtain ambient offsets if such sources would cause or contribute to nonattainment levels for any criteria pollutant in excess of significant levels as required by 40 CFR part 51.165(b).

(d) The Prevention of Air Pollution Episodes Plan contained PM_{10} levels deemed inadequate to prevent Significant Harm levels from being reached.

Dialogue between EPA and the Georgia Department of Natural Resources has led to the resolution of these issues as follows:

(a) Due to long-standing EPA policy, it is EPA's position that Georgia's proposed particulate matter NAAQS must prohibit exceedances of the standard everywhere in the "ambient air". The Code of Federal Regulations (CFR) clearly defines "ambient air" to mean that portion of the atmosphere external to buildings to which the general public has access (see 40 CFR part 50.1(e)). This includes rooftops and balconies of buildings accessible to the public. Therefore, the NAAQS must be attained everywhere in the "ambient air" and not just at "ground level".

Georgia's January 3, and April 3, 1991, submittals correct the definition from "ground level" to ambient air.

(b) EPA's promulgation of a new NAAQS for particulate matter on July 1, 1987, and subsequent guidance from EPA to states on how to develop new SIPs pursuant to the new particulate matter NAAQS, envisioned a process where states would adopt new 24-hour and annual, primary and secondary particulate matter NAAQS measured as PM_{10}. In such an approach, in addition to a provision giving the numerical value of the particulate matter standards, there would need to be a provision stating that for the purpose of determining attainment of the NAAQS, particulate matter shall be measured in the ambient air as PM_{10}. Also, there would need to be an appropriate definition for "PM_{10}" which required measurement by a reference method based on appendix J of 40 CFR part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated by EPA.

Georgia's approach in developing their new particulate matter standard was to adopt a PM_{10} NAAQS rather than a particulate matter NAAQS measured as PM_{10}. Georgia's adoption included an appropriate definition of "PM_{10}". Georgia's adoption, however, also included the following provision: "PM_{10} shall be measured in the ambient air as PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by a reference method based upon 40 CFR part 50, appendix J. There was no need for such a provision in the Georgia regulations because Georgia adopted a PM_{10} NAAQS, rather than a particulate matter NAAQS measured as PM_{10}. Thus the numerical value of the PM_{10} NAAQS and an appropriate definition of PM_{10} is all that was needed.

Despite the fact that inclusion of the provision as well as Georgia's failure to adopt the numerical value of the NAAQS as both a primary and a secondary standard are both inconsistent with national PM_{10} SIP development guidance, Region IV will proceed to approve the Georgia PM_{10} SIP without the suggested changes being made since neither appears to cause a fundamental defect in the SIP.

(c) Due to specific requirements in the Code of Federal Regulations (40 CFR 51.165(b)), it was necessary for Georgia's proposed PM_{10} SIP to require "ambient offsets" rather than "emission offset." Further, such requirements must clearly be defined to apply "within areas that do not or would not meet the applicable NAAQS or within an area that is designated nonattainment for the applicable NAAQS." Georgia revised the PM_{10} SIP to provide for the ambient offsets as well as establishing acceptable significance levels for "cause or contribute" to nonattainment of a NAAQS.

(d) The Code of Federal Regulations and PM_{10} SIP guidance clearly indicate that the PM_{10} SIPs had to replace the TSP Significant Harm level with a level of 600 micrograms per cubic meter for PM_{10} and that PM_{10} SIPs had to incorporate emergency episode criteria for PM_{10}. 40 CFR part 51.151 specifically indicates that Priority 1 Regions need a contingency plan which must, as a minimum, provide for taking action necessary to prevent ambient pollution concentrations at any location from reaching the Significant Harm Levels specified in 40 CFR 51.151. The principal problem with Georgia's submittal is that while it contains three stages of episode criteria (one more than the minimum required) and appropriate emission control actions for each stage of episode criteria specified, the third stage of episode criteria for all pollutants is triggered by ambient concentrations specified in 40 CFR part 51.151 as the Significant Harm Level. This is not allowed because all stages of episode criteria and their corresponding emission control actions must be triggered by ambient concentrations below the Significant Harm Level in order to prevent the Significant Harm Level from ever being reached.

Georgia revised their Prevention of Air Pollution Episodes Plan to incorporate lower levels to trigger Significant Harm which are consistant with 40 CFR part 51 appendix L.

Final Action

EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR part 51. Therefore, EPA is today approving Georgia's PM_{10} SIP.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective February 12, 1993. However, if notice is received

within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Agency has reviewed this request for revision of the federally approved States Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that part of the submittal preceded the date of enactment.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule of action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

Under 5 U.S.C. section 605 (b), I certify that this approval action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 7, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c) (38) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(38) State implementation plan for PM10 which was submitted on April 15, 1988, January 3, 1991, and April 3, 1991, by the Georgia Department of Natural Resources.

(i) Incorporation by reference.

(A) Revisions to Chapter 391–3–1, "Air Quality Control" which became State effective April 14, 1988. Rule 391–3–1–.01, "Definitions", mm, yyy, zzz, aaaa; Rule 391–3–1–.02(4)(c), "Ambient Air Standards"; Rule 391–3–1.–02(7), "Prevention of Significant Deterioration of Air Quality".

(B) Revisions to Rule 391–3–1–.02(4)(c), "PM10", which became State effective January 9, 1991.

(ii) Other material.

(A) April 15, 1988, January 3, 1991, and April 3, 1991, letters from the Georgia Department of Natural Resources.

[FR Doc. 92–29819 Filed 12–11–92; 8:45 am]

BILLING CODE 6560–60–M

40 CFR Part 52

[A–1–MA–5–1–5295; FRL–4536–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; RACT for Dartmouth Finishing Corporation in New Bedford

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from fabric printing and fabric finishing operations at Dartmouth Finishing Corporation (Dartmouth) in New Bedford, Massachusetts. The intended effect of this action is to approve a source-specific RACT determination submitted by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective February 12, 1992, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, (617) 565–3249.

SUPPLEMENTARY INFORMATION: On May 15, 1991, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consisted of a plan approval issued by the Massachusetts Department of Environmental Protection (DEP) which imposed VOC control measures as RACT for Dartmouth Finishing Corporation located in New Bedford, Massachusetts. This final rulemaking action approves the formal SIP revision submittal by the DEP on May 15, 1991. This notice is divided into three parts:

I. Background Information
II. Summary of SIP Revision
III. Final Action

I. Background Information

On November 9, 1983 (48 FR 51480), EPA approved Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)", as part of the Commonwealth of Massachusetts 19b-

ozone attainment plan. This regulation requires the Massachusetts DEP to determine and impose RACT on all facilities with the potential to emit one hundred tons per year or more of VOC that are not already subject to Massachusetts regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents.

On January 10, 1991, the Massachusetts DEP submitted a proposed SIP revision consisting, in part, of a draft non-CTG RACT plan approval defining VOC control requirements for Dartmouth. EPA reviewed the document for enforceability, completeness and technical sufficiency, and provided written comments to the DEP on February 13, 1991. Massachusetts incorporated EPA's proposed changes and submitted a final plan approval as a SIP revision on May 15, 1991.

II. Summary of SIP Revision

Dartmouth's VOC emissions have been reduced from 304 tons per year in 1984 to a maximum of 28 tons per year, resulting in a 90.8% reduction based on typical production. Dartmouth achieved its emissions reductions by reformulating its printing pastes. The DEP's May 13, 1991 final plan approval limits the content of Dartmouth's print pastes to 0.35 pounds of VOC per pound of solids, and requires that fabric finishing mixtures utilized by Dartmouth not exceed 0.115 pounds of VOC per pound of solids. The final plan approval also imposes a daily VOC emission limit on Dartmouth of 0.14 tons per day (280 pounds per day).

A CTG has not been issued for the fabric printing and fabric finishing operations at Dartmouth. However, the CTG governing graphic arts printing covers a printing process that is similar to the fabric printing and finishing operations at Dartmouth. The graphic arts CTG recommends a 65% overall reduction in VOC emissions from packaging rotogravure and a 75% overall reduction for publication rotogravure when using add-on controls. Furthermore, EPA has determined that 0.5 pounds of VOC per pound of solid is RACT for flexographic and packaging rotogravure printing. The emission reductions achieved by Dartmouth through reformulation of its print pastes are consistent with the reductions anticipated through add-on controls or through reformulation at facilities required to meet the emission limits suggested by EPA's graphic arts CTG. For these reasons, the DEP has imposed emission limits of 0.35 pounds of VOC per pound of solids for print pastes, and a limit of 0.115 pounds of VOC per pound of solids for fabric finishing mixtures used by Dartmouth. In addition, a daily emissions limit of 0.14 tons (280 pounds per day) will ensure maintenance of the 90.8% reduction in annual VOC emissions achieved by Dartmouth.

III. Final Action

EPA is approving Massachusetts final plan approval No. 4P89051 dated and effective May 13, 1991 as a Revision to the Massachusetts SIP. The final plan approval establishes and imposes RACT consisting of an emission limit of 0.35 pounds of VOC per pound of solids for print pastes and 0.115 pounds of VOC per pound of solids for fabric finishing mixtures. In addition, the final plan approval imposes a daily emissions limit of 280 pounds of VOC for Dartmouth Finishing Corporation in New Bedford, Massachusetts. EPA is approving this SIP revision without prior proposal because the Agency views this as an uncontroversial revision and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on (60 days from date of publication).

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note. Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 27, 1992.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52–[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(95) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection of May 15, 1991.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated May 15, 1992 submitting a revision to the Massachusetts State Implementation Plan.

(B) Final Plan Approval No. 4P89051, dated and effective May 13, 1991 imposing reasonably available control technology on Dartmouth Finishing Corporation, New Bedford, Massachusetts.

* * * * *

§ 52.1167 [Amended]

3. Table 52.1167 is amended by adding the following entry to state citation 310 CMR 7.18(17) to read as follows:

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

[See Notes at End of Table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120 (c)	Comments/unapproved sections
• •	•	•	•	•	•	•
310 CMR 7.18(17)	RACT	May 13, 1991	[Insert date of publication in FR]	[Insert FR citation from published date].	(95)	RACT for Dartmouth Finishing Corporation.
• •	•	•	•	•	•	•

[FR Doc. 92-29820 Filed 12-11-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[MA-9-4-5399; A-1-FRL-4536-7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision consists of a regulation entitled "Dispensing of Motor Vehicle Fuel" which requires motor vehicle fuel dispensing facilities to install and operate Stage II vapor recovery equipment. By this action EPA is approving this regulation which limits the amount of volatile organic compounds (VOC) emitted to the atmosphere during the refueling of automobiles. This action is being taken in accordance with section 110 of the Clear Air Act.

EFFECTIVE DATE: This rule will become effective on January 13, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565-3166.

SUPPLEMENTARY INFORMATION: On May 17, 1990, EPA received a formal State Implementation Plan (SIP) submittal from the Commonwealth of Massachusetts' Department of Environmental Protection (DEP). This submittal contained new subsection 310 CMR 7.24(6) entitled "Dispensing of Motor Vehicle Fuel;" amendments to 310 CMR 7.00 "Definitions;" and amendments to subsection 310 CMR 7.24(2)(c) requiring Stage I vapor recovery in Berkshire County. Subsequently, in a letter to EPA dated July 5, 1990, DEP withdrew the Stage I portion of the SIP submittal. Massachusetts Stage I regulation has since been resubmitted to EPA and is being processed as part of another Agency action.

This state-initiated SIP revision was submitted prior to the enactment of the Clean Air Act Amendments (CAAA) of 1990. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The Clean Air Act, as amended in 1990 (CAA), requires states with moderate or above ozone nonattainment areas adopt Stage II vapor recovery regulations and submit them to EPA by November 15, 1992 [section 182(b)(3)(A)].

On June 7, 1991, EPA received another formal SIP submittal containing an amendment to subsection (6) of 310 CMR 7.24. Massachusetts submitted this revision in response to EPA's Notice of Proposed Rulemaking (NPR) for this action published on July 10, 1991 (56 FR 31364). In addition, on April 21, 1992, DEP submitted an implementation policy statement regarding its Stage II program and a draft document entitled "Stage II Vapor Recovery Program Compliance and Enforcement Protocol."

Dispensing of Motor Vehicle Fuel—310 CMR 7.24(6)

This regulation requires all existing motor vehicle fuel dispensing facilities in Massachusetts with throughput volumes of greater than 20,000 gallons per month to install and operate Stage II vapor recovery equipment. The required installation date for the vapor recovery equipment varies depending on a facility's annual gasoline throughput. In addition, this regulation also requires any motor vehicle fuel dispensing facility, which has been constructed or substantially modified after November 1, 1989, regardless of throughput, to install and operate a Stage II vapor recovery and control system.

Definitions Added to 310 CMR 7.00

Definitions of the following terms which appear throughout the above Stage II regulation have been added to 310 CMR 7.00: "motor vehicle fuel," "motor vehicle fuel dispensing facility," "substantial modification," and "vapor collection and control system."

EPA proposed to approve the Massachusetts Stage II regulation and associated definitions with the understanding that prior to final rulemaking the Massachusetts DEP would make the necessary amendments to the rule as outlined in EPA's NPR. The necessary amendments and Massachusetts' response are discussed below. In addition, the NPR stated that when EPA published its guidance on Stage II vapor recovery, EPA would subsequently review Massachusetts' rule in accordance with this new guidance. Results of this review are summarized in the "Outstanding

Issues" section below. EPA guidance on Stage II vapor recovery is contained in the following documents: Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities (EPA–450/3–91–022b), and Enforcement Guidance for Stage II Vehicle Refueling Control Programs (EPA, Office of Mobile Sources). Massachusetts' regulation and EPA's evaluation are detailed in a memorandum dated July 27, 1992 entitled "Technical Support Document—Massachusetts—Stage II Vapor Recovery."

Amendments Required by EPA's NPR

Previously, 310 CMR 7.24(6)(b) stated: "* * * no person, owner, operator or employee of a motor vehicle fuel dispensing facility, shall dispense, or allow the dispensing of, motor vehicle fuel from any motor vehicle fuel dispensing facility unless the motor vehicle fuel dispensing facility is equipped with a properly operating vapor collection and control system." EPA's NPR noted that this language could be misinterpreted to mean only one pump per facility needs Stage II vapor recovery control equipment installed. Therefore, the NPR stated that this provision needed to be clarified to cover all nozzles dispensing motor vehicle fuel at a facility.

In response to EPA's comments, the Massachusetts DEP amended the regulation to read "* * * unless each motor vehicle fuel dispenser at the motor vehicle fuel dispensing facility is equipped with a properly operating vapor collection and control system." Thus, the regulation requires all pumps at a facility to have Stage II equipment installed. This amendment was included in the revised Stage II regulation that Massachusetts submitted to EPA on June 7, 1991.

In addition, the NPR stated that Massachusetts must address a second deficiency found at 310 CMR 7.24(6)(c)(4). This section requires that the vapor recovery system recover at least 95 percent by weight of motor vehicle fuel vapors displaced during the dispensing of motor vehicle fuel. A certified test method or a requirement to use only certified equipment is not, however, included in the regulation. The NPR stated that either a test method or a requirement to use only certified equipment must be specified in order to assure compliance. The NPR explained that as an alternative to testing each station for 95 percent control effectiveness, DEP could require Stage II systems to be certified to achieve at least a 95 percent reduction by either the California Air Resources Board (CARB), or by using CARB test procedures and methods or equivalent test procedures and methods developed by the DEP and approved by EPA. The DEP did not address this deficiency in the revised regulation which was submitted to EPA on June 7, 1991.

Although CARB certified systems are not explicitly referenced in Massachusetts' Stage II regulation, DEP has indicated to EPA that requiring these systems is the method currently being used by the State to implement the 95 percent control requirement. DEP staff have also indicated that Massachusetts is unable to reference another state's certification or testing procedures in a Massachusetts' regulation. EPA, therefore, agreed to consider, in addition to the regulation itself, other documentation which shows that the Massachusetts' Stage II program requires facilities to use CARB certified systems. In response, on April 21, 1992, DEP submitted the following documents to EPA: "Division of Air Quality Control Policy" and "Draft Stage II Vapor Recovery Program Compliance and Enforcement Protocol." Review of these documents indicates that they satisfactorily demonstrate that the Massachusetts Stage II program implements the 95 percent control requirement by requiring facilities to use CARB certified equipment, as specified in EPA's Stage II guidance documents.

Finally, the third deficiency noted in EPA's NPR relates to the applicability levels of the regulation. The Massachusetts regulation requires all motor vehicle fuel dispensing facilities with a throughput volume of greater than 20,000 gallons of motor vehicle fuel per month since January 1, 1988 to install Stage II vapor recovery systems. Section 182(b)(3)(A) of the amended CAA requires States with moderate or higher ozone nonattainment areas to submit to EPA by November 15, 1992 regulations which require Stage II systems for facilities which dispense greater than 10,000 gallons per month, or 50,000 gallons per month for independent small business marketers (ISBMs). Thus, the Massachusetts applicability levels are not consistent with the requirements of the amended CAA. For those stations that are not considered ISBMs, the Massachusetts regulation has a less stringent applicability cutoff. The DEP did not address this issue in their revised regulation submitted to EPA on June 7, 1991.

Outstanding Issues

On April 30, 1992, EPA provided comments to the Massachusetts' DEP which detailed the remaining outstanding issues which the State must address in order for the regulation to be considered consistent with EPA guidance and be approved as meeting the requirements of section 182(b)(3) of the CAA. Under the requirements of the CAA, Massachusetts must address the following outstanding issues by November 15, 1992:

1. As previously discussed, Massachusetts' Stage II applicability levels must be consistent with the requirements of the CAA.

2. As outlined in EPA's Stage II Enforcement Guidance, the following testing requirements should be included in the Massachusetts' Stage II regulation:

a. Testing, for verification of proper installation and function of the entire system, should be required once all of the equipment is in operational condition at the gasoline dispensing pumps. Liquid Blockage testing, Leak Check testing, and all other related tests for auto shutoff and flow prohibiting mechanisms, as applicable, should be conducted in accordance with the test procedures found in appendix J of the EPA document Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol II (EPA–450/3–91–022b).

b. Recertification of the function of Stage II equipment should be required at least every five years, or upon major system replacement or modification, whichever occurs first. This recertification should include a Leak Check Test and any and all other functional tests that were required for the initial system certification. A major system modification is considered to be replacing, repairing or upgrading 75 percent or more of a facility's Stage II equipment.

3. The recordkeeping provision in Massachusetts' regulation should be amended to include that the following records be kept, as specified by the Enforcement Guidance:

a. Any and all permits and licenses to operate a facility or a specific system at a facility;

b. Records which verify that the Stage II system meets or exceeds the requirements of a Liquid Blockage Test, a Leakage Test, or other applicable tests and which indicate the date of the test results and the installing and test companies' names, addresses and phone numbers;

c. A chronological file of inspection reports issued by the state;

d. A chronological file of compliance records including warnings, notices of violation, and other compliance records issued by the state; and

e. Training certification records showing proof of attendance and completion of required training.

In addition, the recordkeeping provisions stated in § 7.24(6)(f) of Massachusetts' Stage II regulation which currently require the recording of any failures of the Stage II equipment should be amended to include the recording of maintenance performed in response to these system failures.

Because of the noted deficiencies, EPA believes that this regulation does not meet the requirements of section 182(b)(3). As noted above, the DEP needs to address the remaining outstanding issues and, in accordance with the CAA, submit its revised regulation to EPA as a SIP revision by November 15, 1992. Although there are still outstanding issues associated with this rule, EPA is approving this revision to the Massachusetts SIP at this time, since it will strengthen the existing SIP and contribute to a reduction in volatile organic compound emissions until such time as DEP revises its rule to meet all of the requirements of section 182(b)(3) of the CAA.

Final Action

EPA is approving 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," and the addition of the following definitions to 310 CMR 7.00, as a revision to the Massachusetts SIP: "motor vehicle fuel," "motor vehicle fuel dispensing facility," "substantial modification," and "vapor collection and control system" submitted on May 17, 1990 and June 7, 1991. Today's action makes final the action proposed on July 10, 1991 (56 FR 31364). This approval is based on the strengthening effect of this submittal and is not an approval of the Stage II rule as meeting section 182(b)(3) of the amended CAA. EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established on January 19, 1989 (54 FR 2214).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 3, 1992.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(97) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(97) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on May 17, 1990, July 5, 1990, June 7, 1991, and April 21, 1992.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection, dated May 17, 1990 and June 7, 1991, submitting a revision to the Massachusetts State Implementation Plan.

(B) Definition of "motor vehicle fuel," "motor vehicle fuel dispensing facility," "substantial modification," and "vapor collection and control system," added to 310 CMR 7.00 and effective in the Commonwealth of Massachusetts on October 27, 1989.

(C) 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," effective in the Commonwealth of Massachusetts on October 27, 1989.

(D) Amendments to 310 CMR 7.24(6)(f) "Dispensing of Motor Vehicle Fuel" and to the definition of "substantial modification" in 310 CMR 7.00, effective in the Commonwealth of Massachusetts on June 21, 1991.

(E) Amendment to the definition of "motor vehicle fuel dispensing facility" in 310 CMR 7.00, effective in the Commonwealth of Massachusetts on April 12, 1991.

(ii) Additional materials.

(A) Letter from the Massachusetts Department of Environmental Protection, dated July 5, 1990, requesting the withdrawal of amendments to subsection 310 CMR 7.24(2)(c) which require Stage I vapor recovery in Berkshire County from the SIP revision package submitted on May 17, 1990.

(B) Letter from the Massachusetts Department of Environmental Protection, dated April 21, 1992, submitting an implementation policy statement regarding its Stage II program. This policy statement addresses the installation of California Air Resources Board (CARB) certified systems, Stage II testing procedures, and defects in State II equipment.

(C) Nonregulatory portions of the submittal.

§ 52.1167 [Amended]

3. Table 52.1167 is amended by adding a new entry to state citation "310 CMR 7.00" and by adding a new state citation for "310 CMR 7.24(6)" to read as follows:

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

[See Notes at end of Table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120	Comments/unapproved sections
•	•	•	•	•	•	•
310 CMR 7.00	Definitions	05/17/90, 06/07/91	12/14/92	[Insert *FR* citation from published date].	97	Added "motor vehicle fuel," "motor vehicle fuel dispensing facility," "substantial modification," and "vapor collection and control system."
•	•	•	•	•	•	•
310 CMR 7.24(6)	"Dispensing of Motor Vehicle Fuel" (Stage II).	05/17/90, 06/07/91	12/14/92	[Insert *FR* citation from published date].	97	
•	•	•	•	•	•	•

[FR Doc. 92-29821 Filed 12-11-92; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 57, No. 240
Monday, December 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 621

RIN 3052–AB32

Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA) issued regulations on Accounting and Reporting Requirements, as a proposed regulation on August 27, 1985 (50 FR 34711). The regulation was published as a final regulation on March 13, 1986 (51 FR 8644). The regulation was developed in large part to set requirements and standards for institutions to use in accounting for high-risk assets (i.e., problem loans) and disclosing loan performance characteristics. The regulation included specific standards and reporting requirements for nonperforming loans. The regulation defined nonperforming loans as nonaccrual, formally restructured, other restructured and reduce rate, and other high-risk loans. The FCA is soliciting comments from the public on possible amendments to the regulatory requirements.

DATES: Comments should be received on or before February 12, 1993.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA has undertaken a project to amend and update 12 CFR part 621, Accounting and Reporting Requirements, to promote consistency with industry practices pertaining to problem loan accounting issues and to ensure that the regulatory requirements are standards of 12 CFR part 621 are consistent with those of generally accepted accounting practices.

Since the regulations were issued in 1986, there have been continued efforts on the part of both the FCA and the Farm Credit System (System) to provide additional guidance in the area of problem loan accounting. However, differences continue to exist which have resulted in financial disclosures of problem loans by System institutions that are not readily comparable to similar disclosures of other financial institutions.

After careful analysis of the issues and before initiating the actual drafting of proposed regulations, the FCA has determined that it would be appropriate and beneficial to solicit input from the System and the public on this project through an advance notice of proposed rulemaking (ANPRM). Accordingly, the FCA requests public comments on the accounting and reporting requirements contained in 12 CFR part 621. Comments received will be considered in the drafting of proposed regulations amending part 621.

The FCA is seeking comment from the public with regard to financial disclosures of problem loans by System institutions, particularly as they relate to the following questions:

(1) The FCA is considering modifying § 621.2 regarding nonperforming loans and the categories within that area. What costs and/or benefits would you foresee if modifications were to be made to this area? Would revising the nonperforming loan categories enhance the usefulness of performance classifications in measuring the risk to System institutions? System institutions are requested to quantify any costs or savings as specifically as possible.

(2) What benefit would be gained by providing financial disclosure of credit quality statistics for the purpose of risk identification, in addition to the current practice of reporting and disclosing loan performance characteristics?

(3) It has been suggested that the FCA regulations pertaining to problem loan disclosure should parallel those prescribed in the Securities and Exchange Commission's (SEC) Industry Guide 3, "Statistical Disclosure by Bank Holding Companies" to promote comparability between System institutions and commercial banks. If 12 CFR part 621 were amended in such a fashion, what impact would this have on the institutions' disclosure of portfolio risk?

(a) For example, if the other high-risk (OHR) category were to be modified or eliminated, what other types of disclosures, if any, would be appropriate to identify those loans previously disclosed in the OHR category?

(b) What alternatives, if any would you propose for the other restructured and reduced rate category?

(4) The FCA is considering expanding existing nonaccrual loan guidelines to provide direction with regard to the treatment of the application of payments on nonaccrual loans, income recognition on nonaccrual loans, and criteria for reinstatement to accrual loan status. The FCA is seeking information on what criteria is currently used by lending institutions in this area, and what criteria should be established.

(5) The FCA is considering modifications to the existing rule of aggregation. The FCA received considerable comment on the rule of aggregation as it was discussed in the proposed lending limit regulations (56 FR 2452, January 23, 1991). The FCA is seeking input as to how the rule of aggregation, as discussed in 12 CFR part 621, relates to performance categories. In particular, when should the rule of aggregation be applied and what criteria should be established regarding what constitutes an independent credit risk?

(6) Please include any other comments relevant to financial disclosures of problem loans by System institutions, particularly as they relate to the above topics.

Dated: December 8, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-30301 Filed 12-11-92; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-51-AD]

Airworthiness Directives; Aerostar Aircraft Corp. PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) Series (Formerly Piper) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 92-11-08, which currently requires replacing or upgrading the main landing gear torque links on certain Aerostar Aircraft Corporation (Aerostar) PA-60-600 and PA-60-700 series airplanes. The Federal Aviation Administration (FAA) has received several reports of fatigue failure of the main landing gear torque links that were installed or upgraded in accordance with AD 92-11-08. The proposed action would require replacing these main landing gear torque links with parts of improved design. The actions specified by the proposed AD are intended to prevent loss of directional control of the airplane during ground operation caused by torque link failure.

DATES: Comments must be received on or before February 23, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-51-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is discussed in the proposed AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, 3608 South Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455-8672. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue, S.W., Renton, Washington 98055-4056; Telephone (206) 227-2589.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-51-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-51-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 92-11-08, Amendment 39-8258 (57 FR 20742, May 15, 1992), currently requires the following on certain Aerostar PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) series airplanes: (1) An inspection to determine whether the main landing gear torque links are both single lug links or a single lug link fitting into a dual lug link; and (2) the installation of a main landing gear torque upgrade kit or the installation of a main landing gear torque link replacement kit depending on the result of the inspection. The actions are accomplished in accordance with the instructions in Aerostar Service Bulletin (SB) No. 746B, dated June 11, 1991, or in accordance with the instructions in the Main Landing Gear Torque Link Replacement Kit, part number (P/N) 765-155 Rev F, which is referenced in Aerostar SB No. 746B. This action superseded AD 80-02-09.

AD 92-11-08 was issued based upon several reports of main landing gear torque links cracking or collapsing on the affected airplanes. Airplanes that are equipped with replacement or upgraded torque links in accordance with that AD have had fatigue failures of these torque links. Aerostar has redesigned and manufactured main landing gear torque links that will help prevent fatigue cracking.

In addition, Aerostar has issued SB No. 746C, dated September 15, 1992, which specifies procedures for installing these improved main landing gear torque links.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be proposed to require installation of these new improved main landing gear torque links in order to prevent loss of directional control of the airplane during ground operation.

Since an unsafe condition has been identified that is likely to exist or develop in other Aerostar PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) series airplanes of the same type design, the proposed AD would supersede AD 92-11-08 with a new AD that would require replacing the existing main landing gear torque links with improved design torque links, P/N 400126-501 and 400126-502 (left main landing gear) and P/N 400126-503 and 400126-504 (right main landing gear). The proposed action would be accomplished in accordance with the Instructions section of Aerostar SB No. 746C, dated September 15, 1992.

The FAA estimates that 800 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $882 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $793,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

Section 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–11–08, Amendment 39–8258 (57 FR 20742, May 15, 1992), and adding the following new airworthiness directive:

Aerostar Aircraft Corporation: Docket No. 92–CE–51–AD. Supersedes AD 92–11–08, Amendment 39–8258.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Numbers
PA–60–600 Aerostar 600	60–0001–003 through 60–0933–8161262.
PA–60–601 Aerostar 601	61–0001–004 through 61–0680–8162157.
PA–60–601P Aerostar 601P	61P–0157–001 through 61P–0660–8163455.
PA–60–602P Aerostar 602P	62P–0750–8165001 through 60–8365021.
PA–60–700P Aerostar 700P	60–8223001 through 60–8423025.

Note 1.—The manufacturing and ownership rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these rights were recently transferred to the Aerostar Aircraft Corporation.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of directional control of the airplane during ground operation caused by torque link failure, accomplish the following:

(a) Replace the existing main landing gear torque links with improved design torque links, part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear), in accordance with the INSTRUCTIONS section of Aerostar Service Bulletin (SB) No. 746C, dated September 15, 1992.

Note 2.—Aerostar SB No. 746C, dated September 15, 1992, references the availability of Main Landing Gear Torque Link Replacement Kit No. 765–155 revision G. This kit contains the improved torque links and all hardware necessary to install these links. This kit may be obtained from the manufacturer at the address specified in paragraph (d) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 3.—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Aerostar Aircraft Corporation, Customer Service Department, 3608 South Davison Boulevard, Spokane, Washington 99204; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment supersedes AD 92–11–08, Amendment 39–8258.

Issued in Kansas City, Missouri, on December 8, 1992.

John E. Tigue

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30232 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–CE–50–AD]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Mitsubishi Heavy Industries, Ltd., (Mitsubishi) MU–2B series airplanes. The proposed action would reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. Analysis of service history on the affected airplanes has revealed one accident and two incidents where the existing elevator nose-down trim deflection caused excessive control wheel force. The actions specified by the proposed AD are intended to prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane.

DATES: Comments must be received on or before February 23, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–50–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; Telephone (310) 988–5228; Facsimile (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–50–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–50–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion: The FAA's review of the service history of certain Mitsubishi MU–2 series airplanes has revealed one accident and two incidents where the existing elevator nose-down trim deflection caused excessive control wheel force. Extreme elevator nose-down trim deflection, if not corrected, could result in loss of control of the airplane.

Mitsubishi has issued Service Bulletin (SB) No. 216, dated September 11, 1992, which specifies procedures for reducing the elevator nose-down trim deflection to a 1-degree to 3-degree range on certain MU–2 series airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to correct the unsafe condition.

Since the condition described is likely to exist or develop in other Mitsubishi MU–2 series airplanes of the same type design, the actions specified by the proposed AD would reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. The proposed action would be accomplished in accordance with the service bulletin described above.

The FAA estimates that 252 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $300 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $158,760.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

Mitsubishi Heavy Industries, Ltd.: Docket No. 92–CE–49–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Numbers
MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, and MU–2B–26	008 through 312, 314 through 320, and 322 through 347.
MU–2B–30, MU–2B–36, and MU–2B–36	501 through 651, 653 through 660, and 662 through 666.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane, accomplish the following:

(a) Reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range in accordance with the Instructions section of Mitsubishi Service Bulletin No. 216, dated September 11, 1992.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an

appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note.—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 8, 1992.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30225 Filed 12-11-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-173-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Pratt and Whitney PW2000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, that currently requires certain inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. This action would add a requirement to install an additional thrust reverser system locking feature, which, when accomplished, would terminate the requirement for repetitive inspections and functional checks. This proposal is prompted by results of a recent safety review of the thrust reverser system on these airplanes, which revealed that the installation of additional features to further minimize the likelihood of an in-flight thrust reverser deployment is necessary. The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by February 9, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-173-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Duven, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2688; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-173-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-173-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion: On September 11, 1991, the FAA issued AD 91-20-09, Amendment 39-8043 (56 FR 46725, September 16, 1991), to require certain inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. That action was prompted by a determination that certain discrepancies in the thrust reverser system on Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines can cause an uncommanded thrust reverser deployment, and a determination that the thrust reverser systems of the Models 767 and 757 series airplanes, equipped with Pratt and Whitney PW4000 and PW2000 series engines, respectively, are similar. The requirements of that AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

Since the issuance of that AD, the FAA has completed a safety review of the thrust reverser system installed on Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines. The results of that review revealed that in-flight deployment of a thrust reverser could result in a significant reduction in controllability of the airplane from that previously considered. Consequently, the FAA has determined that the installation of additional features to further minimize the likelihood of an in-flight thrust reverser deployment is necessary.

The FAA has reviewed and approved Boeing Service Bulletin 757-78-0028, Revision 1, dated October 29, 1992, that describes procedures for installation of an additional thrust reverser system locking feature (denoted as a synch shaft lock). The locking system is controlled independently of the system's existing electro-mechanical safety features. This additional locking feature has been certified and is installed on new-production Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91-20-09 to continue to require certain inspections, adjustments, and functional checks of the engine

thrust reverser system; and modification of the engine thrust reverser directional control valve. The proposed AD would add a requirement to install an additional thrust reverser system locking feature which, when accomplished, would terminate the requirement for repetitive inspections and functional checks. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 211 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 192 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 624 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,589,440, or $34,320 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The FAA recognizes the large number of work hours required to accomplish the proposed modification. The 5-year compliance time proposed in paragraph (e) of this notice should allow the synch shaft lock installation to be made coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling. To ensure consistent progress in accomplishing these modifications, the FAA proposes that, during each one-year period after the effective date of the final rule, each operator would be required to modify 20 percent of the affected fleet in its possession during that year. By following this schedule, the FAA estimates that 20 percent of the entire affected Model 757 fleet would be modified within one year after issuance of the final rule, and 40 percent of the fleet would be modified within two years after the effective date of the final rule. This practice would continue until five years after the effective date of the final rule, at which time the entire affected fleet would be modified.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8043 (56 FR 46725, September 16, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92–NM–173–AD. Supersedes AD 91–20–09, Amendment 39–8043.

Applicability: Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines; having airplane line numbers 0001 through 0441, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note: Paragraphs (a), (b), (c), and (d) of this AD restate the requirements of AD 91–20–09, Amendment 39–8043, paragraphs (a), (b), (c), and (d). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–20–09 have been accomplished previously, paragraphs (a), (b), and (c) of this AD do not require those actions to be repeated.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Inspect the thrust reverser Directional Control Valve (DCV) assemblies of both engines to determine the solenoid-driven pilot valve's part number, in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991.

(A) If any DCV has a suspect pilot valve as specified in the service bulletin, prior to further flight, replace the DCV with a DCV that has a part number of a non-suspect solenoid-driven pilot valve, in accordance with the service bulletin.

(B) If a DCV has a non-suspect solenoid-driven pilot valve as specified in the service bulletin, that pilot valve does not need to be replaced.

(ii) Perform all tests and inspections of the engine thrust reverser control and indication system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991. If any discrepancies are found as a result of these tests or inspections, prior to further flight, correct the discrepancies in accordance with the service bulletin.

(2) Accomplish paragraph (a)(1) of this AD on one engine's thrust reverser and deactivate the other engine's thrust reverser, in accordance with Section 78–31–1 of Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991.

(b) Within 24 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), the requirements of paragraph (a)(1) of this AD must be accomplished on both engines' thrust reverser systems.

(c) Within 45 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), submit a report of the proximity sensor gap measurement and other results of the initial tests and inspections required by paragraph (a)(1)(ii) of this AD, both positive and negative, to the Manager, Seattle Aircraft Certification Office (ACO), ANM–100S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) Repeat the tests and inspections specified in paragraph (a)(1)(ii) at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system. Correct any discrepancies prior to further flight, in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991.

(e) Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync lock installation), in accordance with Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992. During each one-year

period of the 5 years after the effective date of this AD, each operator must accomplish this installation on at least 20 percent of the affected fleet in its possession during that year.

(f) Installation of an additional thrust reverser system locking feature, as required by paragraph (e) of this AD, constitutes terminating action for the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30314 Filed 12-11-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[IA-5-92]

RIN 1545-AQ50

Carryover of Passive Activity Losses and Credits and At Risk Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Rescheduling of the date and location of public hearing on proposed regulations; change of date to submit requests to speak and outlines of oral comments.

SUMMARY: This document reschedules the date and location of the public hearing, and changes the date to submit requests to speak and outlines of oral comments for the public hearing on proposed regulations relating to the application of sections 469 and 465 to the bankruptcy estates of individuals.

DATES: The public hearing will be held on Monday, January 25, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, January 4, 1993.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA-5-92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate) 202-622-8452 or 202-622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the **Federal Register** for Monday, November 9, 1992 (57 FR 53304), announced, among other things, that a public hearing relating to the application of section 469 and 465 to the bankruptcy estates of individuals would be held on Thursday, December 17, 1992, beginning at 10 a.m., in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC, and that requests to speak and outlines of oral comments should be received by Thursday, December 3, 1992. The proposed regulations were published in the **Federal Register** for Monday, November 9, 1992 (57 FR 53304).

There has been a change in the date and location of the public hearing, and change of date to submit requests to speak and outlines of oral comments. The hearing will be held on Monday, January 25, 1993, at 10 a.m., Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments must be received by Monday, January 4, 1993.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-30187 Filed 12-11-92; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606, 2612, 2615, 2616, 2622, and 2623

RIN 1212-AA40

Miscellaneous Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: Statutes amending the Employee Retirement Income Security Act of 1974 have made changes in procedures and other rules, including timing and definitional provisions, that affect and, in some cases, override several portions of the Pension Benefit Guaranty Corporation's regulations. This proposed rule would amend parts 2606, 2612, 2615, 2622, and 2623 of the regulations to conform them to current law. It also includes other organizational and procedural amendments and clarifying and technical changes.

DATES: Comments must be received on or before January 13, 1993.

ADDRESSES: Comments may be mailed to the Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, or hand-delivered to Suite 7200 at the above address between 9 a.m. and 5 p.m., Monday through Friday. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, Suite 7100, at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500), 2020 K Street NW., Washington, DC 20006, 202-778-8850 (202-778-1958 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1001 *et seq.* In 1986 and 1987, respectively, Congress enacted the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") (Pub. L. 99-272) and the Pension Protection Act ("PPA") (which was part of the Omnibus Budget Reconciliation Act of 1987 ("OBRA '87") (Pub. L. 100-203)) with the aim of

better protecting promised pension benefits and better controlling the costs of the termination insurance program for single-employer plans. Among other things, SEPPAA and the PPA amended various Title IV procedures and other rules, including timing and definitional provisions, in ways that affect and, in some cases override several portions of the PBGC's regulations (29 CFR chapter XXVI). Certain Title I amendments in the Retirement Equity Act of 1984 ("REA") (Pub. L. 98–397) and the Tax Reform Act of 1986 ("TRA '86") (Pub. L. 99–514) also affect provisions of these portions of the regulations, and Congress subsequently clarified a number of previous Title IV amendments in the technical corrections enacted as Subtitle H of Title VII of the Omnibus Budget Reconciliation Act of 1989 ("OBRA '89") (Pub. L. 100–239).

Of particular relevance here are the substantial changes in the rules for voluntary plan termination under ERISA section 4041 (29 U.S.C. 1341) and the liability incurred upon termination under ERISA sections 4062 and 4064 (29 U.S.C. 1362 and 1364). Prior to SEPPAA (which applies to terminations initiated on or after January 1, 1986), a plan administrator was free to terminate a plan under section 4041 at any time, subject to certain procedural requirements, and upon termination of an underfunded plan, Title IV protected only benefits guaranteed by the PBGC. Moreover, plan termination enabled plan sponsors to shift liability for guaranteed benefits to the insurance program because section 4062 included a net worth limitation on liability for plan underfunding.

SEPPAA restricted the right to terminate a "single-employer plan" (*i.e.*, any defined benefit plan that is not a multiemployer plan (subsection (a)(15) of ERISA section 4001 (29 U.S.C. 1301)) and expanded liability upon termination, essentially transferring back to plan sponsors liability for funding promised pension benefits when they are financially able to bear these costs. If a plan is underfunded, the "contributing sponsor" (*i.e.*, the person entitled under subsection (a) of section 404 of the Internal Revenue Code of 1986 ("Code") (26 U.S.C. 404), or that would be so entitled except for the limitations in section 404(a), to receive a deduction for required contributions) and other members of the contributing sponsor's "controlled group" (*i.e.*, a contributing sponsor and all other persons under common control with that contributing sponsor) now must demonstrate that they are in such poor financial condition, or that their single-employer plan costs have become so burdensome, that they cannot realistically continue to maintain the plan for which termination is sought.[1] In other words, "standard termination" under section 4041(b) (for sufficient plans) and "distress termination" under section 4041(c) are the exclusive means of voluntary plan termination (section 4041(a)(1)). See ERISA section 4042 (29 U.S.C. 1342) for the PBGC's authority to institute involuntary termination proceedings.)

SEPPAA also revised a number of the procedural requirements for termination under section 4041, including timing and notification requirements. Among other things, these changes simplified and expedited PBGC review of standard terminations, thereby permitting faster distribution of plan assets where the agency will not be called upon to pay benefits and enabling the PBGC to devote more resources to those terminations that do impose liabilities on the insurance program

The PPA (effective December 17, 1987) further amended Title IV requirements by, among other things, increasing the benefits that, in a standard termination, a plan must be able to satisfy to all "benefit liabilities" (*i.e.*, the benefits of participants and beneficiaries under the plan, within the meaning of subsection (a)(2) of Code section 401 (26 U.S.C. 401)). The PPA also modified the distress termination rules so that (consistent with the change for standard terminations) a contributing sponsor is liable, along with every member of its controlled group, for all unfunded benefit liabilities. In addition, the PPA further restricted the role of the net worth limitation (ERISA section 4062(b)(2)(B) and subsection (a) of section 4068 (29 U.S.C. 1368)).

Upon termination of a single-employer plan under ERISA section 4041(c) or 4042, this liability now runs solely to the PBGC (with the repeal of the section 4049 trust introduced by SEPPAA) (ERISA section 4062(b)(1)). Under subsection (c) of ERISA section 4022 (29 U.S.C. 1322), the PBGC is to pay participants and beneficiaries a portion of their outstanding benefit liabilities (*i.e.*, unfunded benefit liabilities that are not guaranteed benefits; see ERISA section 4001(a)(19)) based on the values of its employer liability recoveries. The amounts paid are allocated in accordance with subsection (a) of ERISA section 4044 (29 U.S.C. 1344).

Implementation of the SEPPAA and PPA rules for voluntary terminations necessitated the complete revision of Parts 2616 and 2617 of the PBGC's regulations. The final rule replacing these regulations appears elsewhere in today's **Federal Register**. (Unless otherwise noted, references in this proposed rule to part 2616 or 2617 regulations are to the new provisions being published today.) Also, as indicated in its Agenda of Regulations Under Development (57 17560, April 27, 1992), the PBGC anticipates further changes in its regulations to implement requirements of REA and TRA '86, as well as the PPA.

Finally, the PBGC notes that the PPA enhanced its enforcement authority by adding section 4071 (29 U.S.C. 1371) to ERISA. As clarified by OBRA '89, section 4071 authorizes the PBGC to assess a penalty when a person fails to provide any notice or other material information required under Subtitle A, B, C, or D of Title IV or section 302(f)(4) or 307(e) of Title I (29 U.S.C. 1082(f)(4) or 1085b(e)), or any regulations prescribed thereunder, within the applicable time limit specified therein. (The penalty is payable to the PBGC and may not exceed $1,000 for each day that the failure continues.) Section 4071 applies to requirements in provisions of ERISA and PBGC regulations discussed below.

Proposed Rule

The PBGC is proposing to amend Parts 2606 (Rules for Administrative Review of Agency Decisions), 2612 (Trades or Businesses Under Common Control), 2615 (Certain Reporting and Notification Requirements), 2622 (Employer Liability for Withdrawals from and Terminations of Single-Employer Plans), and 2623 (Benefit Reductions in Terminated Single-Employer Pension Plans and Recoupment of Benefit Overpayments)[2] of the regulations to conform their provisions to current law. The proposed amendments also include minor clarifying and technical changes and

[1] SEPPAA substituted "contributing sponsor" and "controlled group" for "employer" terminology in the Title IV provisions that delineate termination requirements and liability. These provisions apply whether or not a single-employer plan is maintained by contributing sponsors that are members of more than one controlled group. (Although this distinction still is relevant for certain purposes, the PBGC no longer uses the term "single employer plan" to distinguish single-employer plans that are maintained by one or more trades or businesses under common control from single-employer plans maintained by trades or businesses not under common control.)

[2] As noted below, updating the terminology in Part 2623 also would make a transition sentence in new § 2616.4(c) unnecessary.

modifications in rules of agency procedure or practice.

Thus, the objectives of the proposed rule are quite limited. The PBGC decided to restrict this rule's scope in order to facilitate their accomplishment. (In the future, the PBGC will be considering whether the requirements of certain of these regulations should be amended to increase agency effectiveness in administering Title IV, as well as amending other parts of the regulations to implement requirements of REA, TRA '86, and the PPA.)

Nevertheless, attaining these objectives does necessitate amendments to a large number of regulatory provisions, and the agency wishes to assure that, as amended, the regulations will reflect current provisions of Title IV and will be internally consistent. Therefore, the PBGC is publishing a notice of proposed rulemaking and giving interested persons an opportunity to submit written comments, as provided in section 553 of the Administrative Procedure Act (5 U.S.C. 553), despite the fact that insofar as these amendments incorporate statutory changes or make minor modifications of existing regulations, advance notice and public procedure might be viewed as unnecessary, and modifications of rules of agency organization, procedure, or practice are exempt from these requirements (5 U.S.C. 553(b) (B) and (A), respectively).

The PBGC invites members of the public to express their views on the adequacy and appropriateness of these amendments. The agency emphasizes, however, that it has sought to restrict this rule to amendments that do not raise significant policymaking questions; to the extent proposed amendments to sections of the regulations include substantive judgments, the PBGC believes that Congress already has resolved the policy issues legislatively (see, *e.g.*, the proposed revision of § 2622.3).

Part 2606—Rules for Administrative Review of Agency Decisions

For the matters specified in § 2606.1(b), Part 2606 of the PBGC's regulations sets forth procedural rules for issuing initial determinations (Subpart B) and for administrative review of those determinations (reconsideration or appeal under subpart C or D, respectively). Regulatory changes since the adoption of these procedural rules (formerly part 2613; 44 FR 42181, July 19, 1979) necessitate technical and clarifying changes. This proposed rule also includes several changes proposed in 1983 (48 FR 22330, May 18, 1983). (Except to the extent addressed herein, the PBGC is withdrawing the 1983 proposed rule.)

The PBGC is proposing to amend § 2606.1 to reflect statutory changes as well as to clarify the application of its regulations. In particular, the scope of part 2606, as set forth in paragraph (b), no longer adequately provides for the types of determinations that the agency decided to subject to the initial determination and administrative review procedures in subparts B through D of part 2606. The proposed rule also would remove an unnecessary sentence in paragraph (a) and clarify paragraph (c) to state that nothing in part 2606 of the regulations limits the PBGC's authority to review a determination to which this part does not apply, either upon request or on its own initiative (*e.g.*, to correct an error), or the procedure utilized in such a review.

The proposed amendments to paragraph (b) include updating the statutory provisions that pertain to various determinations. In paragraphs (b)(1) and (b)(5), the reference to ERISA section 4082(b) (a transitional rule for plans terminating before September 2, 1974) would be deleted as no longer necessary. In paragraphs (b)(6) and (b)(7), references to additional ERISA provisions would be added because Title IV now addresses guaranteed benefits under multiemployer plans in section 4022A (29 U.S.C. 1322a) and includes the aggregate guaranteed benefit limit in section 4022B (29 U.S.C. 1322b). The PBGC also is proposing to amend these paragraphs to reflect the fact that its benefit entitlement decisions (paragraph (b)(6)) now include determinations (as the trustee of terminated plans) that a domestic relations order is or is not a "qualified domestic relations order" (see subsection (d)(3) of ERISA section 206 (29 U.S.C. 1056) and subsection (p) of Code section 414 (26 U.S.C. 414)), and its benefit entitlement and benefit amount decisions (paragraphs (b)(6) and (b)(7)) now include determinations, under ERISA section 4022(c), with respect to outstanding benefit liabilities.

In addition, the PBGC is proposing to amend paragraph (b)(3) and paragraphs (b)(9) through (b)(11) to reflect current statutory provisions. As revised, paragraph (b)(3) would include the determinations that the PBGC may make in a standard or distress termination proceeding under subsection (b) or (c), respectively, of ERISA section 4041 (see new parts 2616 and 2617 of the regulations). All such determinations are subject to reconsideration under subpart C. However, the PBGC believes that administrative review, upon contributing sponsor or controlled group member request, of determinations that the distress criteria in section 4041(c)(2)(B) are not met should be by the Executive Director (or his or her designee) rather than by an official of the Insurance Operations Department (the department that issues initial determinations in this area), and it is proposing to amend §§ 2606.34 and 2606.36 accordingly.

New paragraph (b)(9) would combine previous paragraphs (b)(9) through (b)(11) to avoid unnecessary repetition in describing determinations as to the amount of liability under current law. As revised, paragraph (b)(9) would include such determinations under ERISA sections 4062(b)(1) and 4064 upon termination of a single-employer plan and under ERISA section 4063 (29 U.S.C. 1363) upon withdrawal of a substantial employer from a single-employer plan under multiple controlled groups. Subsection (b)(1) of section 4062 is cited as the provision that now defines the amount of liability to the PBGC upon termination. (Since persons are liable for the total "amount of unfunded benefit liabilities" (as defined in ERISA section 4001(a)(18)), agency determinations of the amount of liability under section 4062(b)(1) do not include net worth decisions (see proposed amendments to part 2622 of the regulations). As indicated above, an aggrieved person still may request that the PBGC review such a decision.)

The proposed amendments to several definitions in § 2606.2 are essentially technical. They are designed to reflect changes in the terminology that Title IV uses to describe certain "aggrieved persons" (*i.e.*, persons that may be adversely affected by PBGC determinations), including, as a "beneficiary", an alternate payee (within the meaning of ERISA section 206(d)(3)(K)) under a qualified domestic relations order (as required by section 206(d)(3)(J)), a single-employer plan's "contributing sponsor", and members of the same "controlled group" as a contributing sponsor (see §§ 2616.2 and 2617.2). These proposed amendments, and amendments to several other part 2606 provisions, also would update the regulations to reflect changes in the terminology used by the PBGC, in particular, the agency's use of "department" (rather than "office") to describe its primary organizational units.

Other proposed amendments would clarify the intended scope of part 2606 provisions. Thus, the PBGC is proposing to amend § 2606.3 to state that this section applies only to agency assistance in obtaining information or

documents in the possession of a party other than the PBGC. (Access to PBGC records may be requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a) in accordance with part 2603 or 2607, respectively, of the regulations.) Similarly, the PBGC is proposing to amend the requirements in § 2606.22 to reflect the exception in § 2606.23(b): When the PBGC orders that an initial determination is effective on the date of issuance, the determination is to state that there is no obligation to exhaust administrative remedies by seeking PBGC review (rather than notify persons of their right to request review pursuant to subpart C or D). (Aggrieved persons still may request that the agency review the determinations in such cases; however, the provisions of Subparts C and D do not apply.)

Part 2612—Trades or Businesses Under Common Control

The PBGC promulgated part 2612 of the regulations to implement the Title IV requirement that, under regulations consistent and coextensive with regulations prescribed under the Code by the Secretary of the Treasury, employees of trades or businesses (whether or not incorporated) which are under common control be treated as employed by a single employer and all such trades and businesses be treated as a single employer (currently ERISA section 4001(b)(1); previously section 4001(b) and erroneously cited in § 2612.1(a) as section 4001d(b)). After the PBGC adopted Part 2612 (41 FR 12302, March 25, 1976), Congress redesignated this requirement and added a requirement that, for single-employer plans, the PBGC's common control determinations for "controlled group" purposes be made under regulations consistent and coextensive with regulations prescribed under the Code by the Secretary of the Treasury (section 4001(a)(14)).

The PBGC is proposing to amend Part 2612 to address the range of common control determinations that the agency must make, as described in revised paragraph (a) of § 2612.1. (See also the proposed addition of "controlled groups" in the title.) In addition to conforming the regulations to accord with the current statutory provisions, the agency is proposing to reorganize this part by replacing the § 2612.2 definition of "trades or businesses (whether or not incorporated) which are under common control" with an expanded § 2612.3. As amended, § 2612.3 would address all agency determinations. The PBGC also is proposing to remove unnecessary language from § 2612.1(b) and to update, correct, and conform other definitions in § 2612.2

Part 2615—Certain Reporting and Notification Requirements

The PBGC promulgated part 2615 of the regulations to implement ERISA section 4043 (29 U.S.C. 1343) (formerly part 2617; 45 FR 55636, August 20, 1980). Except to the extent that the PBGC exercises its waiver authority, section 4043 requires the reporting of various specified events and any other event that the PBGC determines may be indicative of a need to terminate the plan. Statutory changes since the PBGC's last rulemaking on these requirements (49 FR 22472, May 30, 1984) necessitate technical and clarifying changes. In particular, for consistency with current regulatory requirements and to avoid confusion about the applicability of a number of the reportable event requirements, the terminology used should be changed (see, *e.g.*, proposed amendments to §§ 2615.3 (b) and (c), 2615.5, and 2515.23(a)).

The PBGC notes that it is proposing these changes to reflect, in language consistent with the statue as amended, the requirements that the agency intended when it promulgated various provisions. The PBGC still is considering whether to propose that certain of these requirements be modified to assure that the agency is notified of events that may indicate the need to terminate a plan.

The PBGC also notes that it recently amended this part of the regulations by designating the reportable events requirements as subpart A and adding subpart B to address notification of failures to make required contributions (implementing subsection (f)(4) of ERISA section 302 and subsection (n)(4) of Code section 412 (26 U.S.C. 412)), and (as appropriate) any future rules implementing other notification requirements (56 FR 57977, November 15, 1991; effective January 1, 1992). (The PBGC did not receive any comments that warrant modification of that interim final rule and, on October 23, 1992, published a final rule (57 FR 48317) that redesignates the new section as § 2615.31.)

Based on pre-SEPPAA voluntary termination requirements (see *e.g.*, old § 2616.3), the PBGC limited application of part 2615 (now subpart A) to plans "for which a Notice of Intent to terminate under section 4041 has not been filed with the PBGC." However, as the agency noted in its proposal to revise the termination regulations (52 FR 33318, 33326, September 2, 1987), the PBGC no longer receives a notice of intent to terminate in a standard termination (see ERISA section 4041(a)(2)) and the notice of intent to terminate in a distress termination contains little of the information required to be provided under prior law. Moreover, under prior law, a plan administrator could file the Notice of Intent to Terminate as little as 10 days before the proposed date of plan termination, whereas current law requires issuance of notices of intent to terminate at least 60 days before the proposed termination date specified therein and the PBGC's revised regulations permit a plan administrator to extend that period (to up to 90 days) in the standard or distress termination notice subsequently filed with the PBGC (see §§ 2616.2, 2616.22, 2616.26, 2617.2, 2617.22, and 2617.25).

In addition, under current law, the PBGC may not proceed with a plan termination that would violate the terms of an existing collective bargaining agreement (section 4041(a)(3)). Therefore, the PBGC will suspend a termination proceeding if timely advised that a formal challenge to plan termination has been initiated and, depending upon the final resolution of the challenge, either dismiss the proceeding or, should the plan administrator wish to do so, reactivate it (see §§ 2616.5 and 2617.5.)

In view of these developments, the PBGC is proposing to amend paragraph (b) to provide that subpart A applies to single-employer plans for which no notice of intent to terminate has been issued or, if such a notice has been issued, until the proposed termination date specified in accordance with regulatory requirements. Also, if a termination proceeding is suspended pursuant to the regulations, subpart A would continue to apply unless and until the PBGC reactivates the proceedings, thereby accounting for the possibility that a significant period of time may pass before resolution of the challenge and a decision as to whether or not the proposed termination will go forward.

The PBGC is proposing to amend § 2615.2 to correct and conform the definitions of various terms. The changes include proposed amendments to update statutory references (*e.g.*, the "Code" definition), to assure consistency with other regulations (*e.g.*, the "participant", "controlled group", "irrevocable commitment", and "notice of intent to terminate" definitions), and to delete unnecessary terms. Certain of the terms to be deleted are not used in the regulations, either as now codified (*e.g.*, "Social Security benefits") or as

they would be amended (*e.g.*, "single employer plan"). Others will be unnecessary if the amended regulations adequately address terminology questions elsewhere (*e.g.*, the meaning of "bankruptcy case", in amended §§ 2615.3(c)(5) and 2615.21(a)(1)).

Because the implications of an event for the need to terminate a single-employer plan may differ depending on whether it is maintained by multiple "contributing sponsors" that are not members of the same "controlled group" (as the PBGC uses these terms; see §§ 2616.2 and 2617.2), certain reportable event requirements distinguish plans which are not "maintained by two or more contributing sponsors that are members of more than one controlled group" from those which are so maintained. (As indicated above, the PBGC previously described the former category as "single employer plans".) The PBGC is proposing to retain this distinction, describing plans in the former category as "maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group", in amendments to §§ 2615.3(c)(2), 2615.14(b)(2), 2615.21(a), 2615.22(a), and 2615.23(a), as well as in paragraph (c)(2) of § 2615.14, which would replace the definition of "active participant".

Since § 2615.14 addresses the only reportable event for which "active participant" is relevant, the PBGC's tentative judgment is that any special usage of this term should be included in that section rather than in § 2615.2. With respect to plans maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, paragraph (c)(2) of amended § 2615.14 would include the same individuals as those who currently are described in the (a) portion of the definition. With respect to plans maintained by two or more contributing sponsors that are members of more than one controlled group, however, the PBGC believes that a special provision no longer is needed because the (b) portion of the current § 2615.2 definition covers the same individuals as those who generally are categorized as "active" participants (see § 2610.2, which would be referenced in amended § 2615.2).

Other proposed technical changes include updating amendments (*e.g.*, replacement of the statutory citation in § 2615.22(c) and the "Plan Number", PBGC organization, and form references in §§ 2615.3(b)(4), 2615.3(e), and 2615.14(b) and 2615.16(b), in that order) and clarifying the date of distribution of an irrevocable commitment (§ 2615.18(d)). They also include proposed changes for consistency with the wording and structure of this subpart (*e.g.*, moving the waiver criterion from paragraph (a) to paragraph (b) of § 2615.14). Finally, the PBGC notes that in the rule adding § 2615.30 to the regulations, the agency expanded paragraph (b) of § 2615.16 to add instances in which the form required by § 2615.30 (PBGC Form 200) has been submitted, in accordance with that section, with respect to the same failure.

Part 2622—Employer Liability for Withdrawals From and Terminations of Single-Employer Plans

The PBGC adopted part 2622 of the regulations primarily to prescribe rules for "employer liability" determinations and recovery under ERISA section 4062 and section 4067 (29 U.S.C. 1367) (formerly part 2613; 46 FR 9520, January 28, 1981). Portions of this part also apply to determinations under the special rules of ERISA sections 4063 and 4064 for withdrawal of a "substantial employer" from or termination of a plan (other than a multiemployer plan) under which more than one "employer" made contributions.

Significant changes in part 2622 provisions are necessary to reflect subsequent statutory amendments. In particular, whenever a single-employer plan is terminated, "any person who is, on the termination date, a contributing sponsor * * * or a member of * * * a contributing sponsor's controlled group" is liable to the PBGC for the total amount of unfunded benefit liabilities, together with interest (section 4062 (a) and (b)). Moreover, the collective net worth of these persons is relevant only to whether the entire liability is payable as of the termination date (section 4062(b)(2)(B)) and to the amount of the lien that ERISA section 4068(a) imposes for nonpayment. Other changes are being proposed in view of the current timing requirements for distress terminations under ERISA section 4041(c) and new part 2616 of the regulations and to update the terminology used in this part of the regulations.

As revised, § 2622.1 would summarize current provisions of subtitle D of title IV (paragraph (a)), focusing on liability to the PBGC under ERISA section 4062(b) upon single-employer plan termination and also describing the supplementary rules in ERISA sections 4063 and 4064 upon "substantial employer" withdrawal and termination for plans with two or more contributing sponsors at least two of whom are not under common control. The PBGC uses the term "multiple employer plan" to describe this category of single-employer plans and no longer uses the term "single employer plan" to describe other single-employer plans (see proposed amendments to § 2622.2; see ERISA section 4001(a)(2) and § 2616.2 of the regulations).

The statutory rules on the amount of liability to the PBGC that are reflected in this portion of the proposal apply with respect to plans for which voluntary or involuntary termination is initiated after December 17, 1987 (paragraph (b)). (For a termination initiated before that date but on or after January 1, 1986, see the discussion of liability under Title IV as amended by SEPPAA (for unfunded "benefit commitments" in excess of guaranteed benefits) in the PBGC's proposed rule on voluntary terminations (52 FR 33318, 33320, and 33327, September 2, 1987).)

In § 2622.2, the PBGC is proposing to add the term "section 4062(b) liability" to describe the liability to the PBGC now imposed by ERISA section 4062 (see subsections (a) and (b)). The new term "collective net worth of persons subject to liability in connection with a plan termination" and the revised definitions of the terms "net worth" and "net worth record date" would reflect the provisions of section 4062(d)(1), as implemented in §§ 2622.4 and 2622.5, as amended. Other proposed amendments to § 2622.2 would add terms now used in subtitle D of Title IV and/or new part 2616 (*e.g.*, "proposed termination date"), delete terms that are not needed in this part of the regulations (*e.g.*, "employer" and "Title IV"), and make minor technical and editorial changes (*e.g.*, amendments to the definition of "Act").

As revised § 2622.3 would state, in paragraphs (a) and (b), respectively, the statutory rules on the amount of section 4062(b) liability and the payment of that liability, including the PBGC's authority to make alternative arrangements for the satisfaction of liability (see ERISA sections 4062(b)(3) and 4067). Since net worth does not affect the amount of liability, this section, as amended, would not address net worth notification or determinations. (Similarly, the PBGC is proposing to delete the last sentence of § 2622.6(c).)

The exception in proposed paragraph (b) reflects the limitation on the general rule that section 4062(b) liability is due and payable as of the termination date: Under section 4062(b)(2)(B), payment of so much of the liability as exceeds 30 percent of the collective net worth of all persons described in section 4062(a) is to be made under commercially

reasonable terms prescribed by the PBGC. The PBGC is proposing to set forth the statutory rules for such cases in paragraph (c) of § 2622.8.

The statutory definition of "collective net worth of persons subject to liability in connection with a plan termination" (section 4062(d)(1)) incorporates pre-SEPPAA rules, including the requirement that net worth determinations be computed without regard to any liability under section 4062 (section 4062(d)(1)(C)). These statutory rules now are applied to each "person" that is subject to such liability. The PBGC is proposing to amend provisions of §§ 2622.4 through 2622.6 accordingly. (See also the proposed amendments to §§ 2622.7 through 2622.9, which include changes for consistency with other statutory phrasing as well.)

The collective net worth of such persons is the sum of the individual net worths of those with individual net worths that are greater than zero (section 4062(d)(1)(A)). Revised paragraph (a) of § 2622.4 would provide that the PBGC will determine individual net worths and collective net worth when, as under the current regulations, liable persons notify the agency and submit net worth information. (See § 2622.6(c) regarding incomplete submissions.)

The statutory definition now also provides for the timing of net worth determinations (subsection (d)(1)(C)). The existing net worth record date requirements of § 2622.5 are consistent with the statutory rule that "determinations * * * be made as of a day chosen by the [PBGC] (during the 120-day period ending with the termination date)." Therefore, the PBGC is proposing only technical and editorial amendments to § 2622.5.

The PBGC is proposing to expand § 2622.6 to include in paragraph (a) net worth notification, now addressed in § 2622.3(b), as well as net worth information submission, and it is proposing to move the information specifications (subparagraphs (1) through (7)) from paragraph (a) to paragraph (b) and make several editorial changes. Notification and information submission requirements that apply to an "employer who believes that 30 percent of * * * net worth is less than the plan asset insufficiency" would be amended to refer to a "contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination" (*i.e.*, that the liability under current section 4062(b) is subject to the exception to the general rule on payment) (paragraph (a)(1)). However, if a contributing sponsor or member of the contributing sponsor's controlled group complies, the PBGC would consider these requirements to be satisfied by all members of that controlled group, while reserving the authority to require any person subject to liability to submit information (paragraphs (a)(2) and (a)(3)).

As discussed above, the statutory requirements for voluntary termination of an insufficient plan, as implemented in new part 2616, are significantly different from those that applied when the PBGC promulgated this part of the regulations. A plan can terminate under ERISA section 4041(c) only if financial hardship is demonstrated [3] and other requirements are met. Among other things, the notice of intent to terminate that is filed with the PBGC (PBGC Form 600) must identify the distress criterion that each contributing sponsor and member of a contributing sponsor's controlled group expects to meet and must provide documentation regarding any relevant liquidation or reorganization proceedings; and the distress termination notice (PBGC Form 601), which is due by the 120th day after the proposed termination date (see § 2616.24(a)), must include the information required to prove each such person satisfies one of the distress criteria. Thus, substantial analysis of the financial condition of liable persons should have occurred by the time notices of intent to terminate are issued, either in planning for distress termination or as part of another proceeding, and further financial and other business information must be compiled within the next few months.

In view of the above, the PBGC believes that the time limits it established in 1981 are inappropriate when a plan is being terminated under ERISA section 4041(c). Therefore, it is proposing, in subparagraph (1) of § 2622.6(a), to reflect subsequent changes in the regulatory scheme and coordinate part 2622 with the requirements in new Part 2616 in future distress terminations.

As amended, the regulations would require contributing sponsors and controlled group members that believe section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination to so notify the agency by the 90th day after filing of the notice of intent to terminate with the PBGC and to submit net worth information by the 120th day after the proposed termination date (*i.e.*, by the deadline for filing the distress termination notice) (subparagraphs (1)(i) and (1)(ii)(A)). The PBGC believes that these periods will provide comparable time with respect to plans being terminated in distress terminations, and they are consistent with the agency's rationale in promulgating this part of the regulations.[4]

Under amended § 2622.6(a)(1), the time limits established in 1981 would continue to apply with respect to plans for which termination is initiated by the PBGC instituting proceedings under ERISA section 4042 (subparagraphs (1)(i) and (1)(ii)(B)). However, in the PBGC's judgment, the regulations no longer need emphasize when a plan's termination date is established (*i.e.*, upon the execution by all signatories of a trusteeship agreement or the issuance of a court order decreeing the plan terminated). Therefore, it is not proposing to include the last sentence of current § 2622.3(b) in amended § 2622.6(a)(1).

The PBGC is proposing to address when the net worth information specified in this section must be submitted within a shorter period and when additional information must be submitted in paragraph (a)(3) of § 2622.6. In this provision, the PBGC's objective is to consolidate and streamline existing regulatory provisions, but not to change the conditions that will result in the agency requiring such submissions. (Thus, for example, the agency believes it is not necessary to state in the regulations that one situation in which it may need additional information is when the PBGC establishes an earlier net worth record date after submission of the information specified in this section (see current §§ 2622.5(c) and 2622.6(b)).) In addition, as amended, § 2622.6(a)(3) would provide that the PBGC will specify the time within which a person subject to liability is required to submit information.

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[3] See ERISA section 4041(c)(2)(B) and § 2616.3(d)(1) through (4) of the regulations for the four distress criteria: liquidation, reorganization, inability to continue in business, and unreasonably burdensome pension costs.

[4] In 1981, the PBGC expected that establishment of a plan's termination date "typically would not occur until some weeks after" the agency received a notice of intent to terminate (46 FR 9521), and "the employer will usually have 160–180 days, or more, after submitting . . . [that] notice to submit the net worth information" (46 FR 9524). Under new Part 2616, the 90th day after issuance of the notice of intent to terminate generally is the latest proposed termination date permitted (§§ 2616.2 and 2616.22(a)(1)), and the 120th day after the proposed termination date is 180 to 210 days after issuance of the notice of intent to terminate.

The distress termination requirements discussed above also increase the possibility that information required to be submitted pursuant to § 2622.6 already has been submitted to the PBGC. Therefore, the PBGC is proposing to add a provision, paragraph (a)(4), designed to avoid duplicative efforts: A person may respond to such a requirement by identifying a previous submission.

ERISA section 4062(b) now provides that liability to the PBGC includes "interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the [PBGC]." Since paragraphs (a) and (c) of § 2622.7 currently impose interest on the unpaid portion of the liability (if any) at the rate prescribed in Code section 6601(a), the PBGC is proposing only technical and editorial changes in these paragraphs. Other proposed amendments would update § 2622.7 by modifying the terminology and deleting provisions for the calculation of pre-1983 interest (see also § 2622.6(d), as amended).

As noted above, the PBGC is proposing to expand § 2622.6 to address payment, under commercially reasonable terms, of the portion of section 4062(b) liability that exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination (see section 4062(b)(2)(B)), as well as the exercise of its discretion to defer payment of liability upon request. Revised paragraph (c) would set forth the rules for cases in which the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of all liable persons. The PBGC's standards and factors for determining what, if any, deferred payment or other terms for the satisfaction of liability to grant and the procedure for requesting such action, which currently are in paragraphs (a) through (c), would be included in revised paragraph (b). As amended, these rules would apply to persons that are or may become liable under ERISA section 4062, 4063, or 4064 and provide for updating information when a request is made one year or more after the net worth record date.

The PBGC also is proposing to amend paragraphs (a) and (b) of § 2622.9 to provide that its requests and demands for liability indicate that the agency will prescribe commercially reasonable terms for payment of so much of the liability that exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The proposed amendments to this section and § 2622.10 include other updating and editorial changes. In particular, the PBGC is proposing to amend § 2622.10(b) to require that liability payments be sent to the address specified in the notification or demand for liability issued under § 2622.9 or, if not specified therein, to the address provided (upon request) by the PBGC's Investment Management Division.

Part 2623—Benefit Reductions in Terminated Single-Employer Pension Plans and Recoupment of Benefit Overpayments

The PBGC promulgated Part 2623 of the regulations to minimize benefit overpayments by the administrators of plans that ultimately will be trusteed by the PBGC under ERISA section 4042 because they are insufficient for guaranteed benefits (subpart B) and to provide rules for the recoupment of benefit overpayments and reimbursement of benefit underpayments when the PBGC is appointed trustee (subpart C). As discussed above, when the agency adopted these regulations (50 FR 3892, January 29, 1985), the statutory requirements for voluntary termination were significantly different than they are today. Among other things, ERISA section 4041 did not address the payment of plan benefits after termination is initiated, and the proposed date of termination specified by a plan administrator might be only 10 days after the filing of a Notice of Intent to Terminate.

Section 4041(c)(3)(D) now includes specific requirements for plan administration during the pendency of a distress termination under ERISA section 4041(c). The PBGC is implementing these requirements, as well as notice and information requirements, in new Part 2616 of the regulations. Therefore, this rule includes proposed amendments to limit the functions of subpart B of part 2623 and to coordinate its provisions with the requirements of section 4041(c) and part 2616. Among these are changes to reflect current timing requirements and to update the terminology used in both subparts B and C.

In addition, as indicated in its Agenda of Regulations Under Development, the PBGC plans to issue a new part of the regulations on the payment of benefits in PBGC-trusteed plans (57 FR 17562). Because the PBGC believes that benefit payment regulations should address recoupment and reimbursement, it plans to transfer subpart C of part 2623 to that part of the regulations, and it expects to consider further amendments to subpart C provisions during the development of benefit payment regulations.

The PBGC is proposing to amend the title of part 2623 and § 2623.1 to reflect, in current terminology (provided by proposed amendments to § 2623.2), the subjects addressed by this part of the regulations and to eliminate unnecessary language. As indicated in the proposed amendment to paragraph (a) of § 2623.1, the procedures in subpart B apply to plans that are terminating in a "distress termination" and, hence, generally are not expected to be "sufficient for guaranteed benefits"; those in subpart C apply to recoupment and reimbursement of benefit payments under any "PBGC-trusteed plan".

The proposed amendments to § 2623.2 would add several terms ("guaranteed benefit" as well as those just noted) and replace terms no longer used. The PBGC is proposing to substitute "proposed termination date" for "section 4041(a) date of termination" and "termination date" for "section 4048 date of termination" (see proposed amendments to §§ 2623.5, 2623.6, 2623.7, 2623.11, and 2623.12). (Since the substitution of "proposed termination date" for "section 4041(a) date of termination" would make the last sentence of new § 2616.4(c) unnecessary, the PBGC is proposing to delete it.)

Because paragraphs (b), (c), and (e) of new § 2616.4 include the actions prohibited during distress termination proceedings and the rules for when "benefit payments" must be reduced, the PBGC is proposing to amend § 2623.5 by deleting paragraphs (e) and (f)(1) (and redesignating the remainder of paragraph (f) as paragraph (e)) and the timing and applicability conditions in paragraph (a). As revised, § 2623.5(a) would describe the restricted role that this subpart now plays: Providing the methodology for determining benefits that plan administrators may not pay (§ 2623.5 (b) and (c)) and must pay (§§ 2623.5(d), 2623.6, and 2623.7) when § 2616.4 requires that benefit payments be limited.

The PBGC is proposing to delete references to when benefit payment limitations apply from paragraphs (b) through (d) of § 2623.5 as well. In addition, the proposed rule includes updated examples in paragraph (g) (which would be redesignated as paragraph (f) of § 2623.5 and §§ 2623.6(e) and 2623.7(e). (For example, the PBGC has removed obsolete material and used the maximum guaranteeable benefit payable for plans terminating in 1992 in the revised examples. (See 56 FR 64984, December 13, 1991, for the final rule

adding the 1992 amount ($2,352.27) to part 2621, appendix A.)

No change is proposed in the § 2623.5(d) requirement that plan administrators "pay the monthly benefit * * * determined under § 2623.6 or § 2623.7, whichever produces the higher benefit." Therefore, the PBGC is proposing to remove the last sentence of paragraph (a) of § 2623.6 (the procedures for computing estimated guaranteed benefits) and the last sentence of paragraph (a) of § 2623.7 (the procedures for computing estimated Title IV benefits) as redundant.

The other noteworthy amendment to subpart B would be the removal of § 2623.8. The PBGC is proposing to delete this section because, in implementing the requirements of ERISA section 4041(a)(2) and (c) (1) and (2), the agency has addressed the information needs of both participants and the agency elsewhere (see new part 2616).

Finally, the proposed amendments to subpart C include, in addition to conforming terminology and timing changes, the substitution of "PBGC-trusted plan" for "terminated insufficient plan" in § 2623.11 (a) and (b). The PBGC generally is appointed trustee when a plan is not sufficient for guaranteed benefits. However, the PBGC may be appointed trustee of a plan that is sufficient for guaranteed benefits, and the subpart C procedures are intended to apply in such situations.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a "major rule" for the purposes of Executive Order 12291 because it would not have an annual effect on the economy of $100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The primary purpose of these proposed amendments is to conform the regulations to existing statutory requirements. The proposed rule also includes other, minor modifications of existing regulations.

For the same reasons, the PBGC certifies that, if adopted, this proposed rule will not have a significant economic effect on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 2606

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

29 CFR Part 2612

Business and industry, Pension insurance, Pensions, Small businesses.

29 CFR Part 2615

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

29 CFR Part 2616

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting requirements, Small businesses.

29 CFR Part 2623

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is proposing to amend 29 CFR parts 2606, 2612, 2615, 2616, 2622, and 2623 as follows:

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 2606 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§ 2606.1 [Amended]

2. Paragraph (a) of § 2606.1 is amended by removing the last sentence.

§ 2606.1 [Amended]

3. Paragraphs (b) and (c) of § 2606.1 are amended by removing "or section 4082(b)" in paragraph (b)(1) and paragraph (b)(5); by adding "or (c) or section 4022A(a)" after "section 4022(a)" and by adding "and determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of the Act and section 414(p) of the Code" after "covered plans" and before the semicolon in paragraph (b)(6); by adding "or (c), section 4022A(b) through (e), or section 4022B" after "section 4022(b)" and by removing "guaranteed benefits of" and adding, in its place, "benefits payable to" in paragraph (b)(7); by adding "and" at the end in paragraph (b)(8); by removing paragraph (b)(10) and paragraph (b)(11); and by revising paragraphs (b)(3), (b)(9), and (c) to read as follows:

§ 2606.1 Purpose and scope.

* * * * *

(b) *Scope.* * * *

(3) Determinations with respect to voluntary terminations under subsection (b) (standard terminations) or subsection (c) (distress terminations) of section 4041 of the Act, including—

(i) A determination that a notice requirement under section 4041(b)(1)(A) or (B) or section 4041(c)(1)(A) or (B) or a certification requirement under section 4041(b)(3)(B) or section 4041(c)(3)(B) of the Act has not been met,

(ii) A determination that a contributing sponsor or a member of a contributing sponsor's controlled group does not meet the requirements for demonstrating distress under section 4041(c)(2)(B) of the Act, and

(iii) A determination under section 4041(b)(2) or section 4041(c)(3) of the Act with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits;

* * * * *

(9) Determinations of the amount of liability under section 4062(b)(1), section 4063, or section 4064 of the Act.

(c) *Matters not covered by this part.* Nothing in this part limits—

(1) The authority of the PBGC to review, either upon request or on its own initiative, a determination to which this part does not apply when, in its discretion, the PBGC determines that it would be appropriate to do so, or

(2) The procedure that the PBGC may utilize in reviewing any determination to which this part does not apply.

4. In § 2606.2, the definition of *Act* is amended by adding ", as amended" at the end before the period; the definition of *Director* or *Office Director* is amended by removing *"Office"* and adding, in its place, *"Department"* and by removing "office" and adding, in its place "department"; and the definition of *aggrieved person* is revised and a definition of *Code* is added to read as follows:

§ 2606.2 Definitions.

* * * * *

Aggrieved person means any participant, beneficiary, plan administrator, contributing sponsor of a single-employer plan or member of such a contributing sponsor's controlled group, plan sponsor of a multiemployer plan, or employer that is adversely affected by an initial determination of

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the PBGC with respect to a pension plan in which such participant, beneficiary, plan administrator, contributing sponsor, controlled group member, plan sponsor, or employer has an interest. The term "beneficiary" includes an alternate payee (within the meaning of section 206(d)(3)(K) of the Act) under a qualified domestic relations order (within the meaning of section 206(d)(3)(B) of the Act). The term "contributing sponsor" includes only a person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to a single-employer plan under section 302 of the Act and section 412 of the Code. The term "controlled group" includes all persons under common control with a contributing sponsor and the term "employer" includes all trades or businesses under common control, as provided in subsections (a)(14) and (b)(1) of section 4001 of the Act and part 2612 of this chapter.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

* * * * *

§ 2606.3 [Amended]

5. Section 2606.3 is amended by removing "data" each time it appears and adding, in its place, "documents"; by removing "the information" at the end of the first sentence before the period and adding, in its place, "information or documents in the possession of a party other than the PBGC"; and by adding "or documents" at the end of the second sentence before the period.

§ 2606.7 [Amended]

6. Section 2606.7 is amended by removing "an Office" and adding, in its place, "a Department" and by removing "by the PBGC" at the end before the period.

§ 2606.9 [Amended]

7. Section 2606.9(b) is amended by removing "Office" and adding, in its place, "department".

§ 2606.22 [Amended]

8. Section 2606.22 is amended by adding ", except when effective on the date of issuance as provided in § 2606.23(b)," before "shall contain".

§ 2606.34 [Amended]

9. Section 2606.34 is amended by removing "office" and adding, in its place, "department" and by adding, at the end before the period, ", except that a request for reconsideration of a determination described in § 2606.1(b)(3)(ii) shall be submitted to the Executive Director".

§ 2606.36 [Amended]

10. Paragraph (a) of § 2606.36 is amended by removing "office" both times it appears and adding, in its place, "department"; by removing "an Office" and adding, in its place, "a Department"; by removing "the Office" both times it appears and adding, in its place, "the Department"; and by adding, at the end of the second sentence before the period, "of a determination other than one described in § 2606.1(b)(3)(ii), and the Executive Director (or an official designated by the Executive Director) will issue the final decision on a request for reconsideration of a determination described in § 2606.1(b)(3)(ii)".

§ 2606.51 [Amended]

11. Section 2606.51 is amended by removing "(11)" and adding, in its place, "(9)".

PART 2612—TRADES OR BUSINESSES UNDER COMMON CONTROL; CONTROLLED GROUPS

12. The authority citation for part 2612 is revised to read as follows:

Authority: 29 U.S.C. 1301(a)(14), 1301(b)(1), and 1302(b)(3).

13. The title of part 2612 is amended as set forth above.

14. Paragraph (a) of § 2612.1 is revised to read as follows:

§ 2612.1 Purpose and scope.

(a) *Purpose.* This part includes the regulations under which, for purposes of Title IV of the Act, the PBGC determines the trades or businesses (whether or not incorporated) that are under common control and, hence, treated as a single employer and whether, in the case of a single-employer plan, two or more persons are under common control and, hence, members of the same controlled group. Section 4001 of the Act requires, in subsections (b)(1) and (a)(14), respectively, that the former and the latter determinations be made under PBGC regulations which are consistent and coextensive with regulations prescribed by the Secretary of the Treasury under section 414(c) and section 414 (b) and (c), respectively, of the Code.

* * * * *

§ 2612.7 [Amended]

15. Paragraph (b) of § 2612.1 is amended by adding "*Scope.*" at the beginning after paragraph (b) designation; by removing "(88 Stat. 1014)"; and by removing everything after "applies" and before the period.

16. In § 2612.2, the definition of *Act* is amended by removing "Means" and adding, in its place, "means" and by removing "(88 Stat. 829 *et seq.*)" and adding, in its place, ", as amended"; the definition of *trades or businesses (whether or not incorporated) which are under common control* is removed; and definitions of *Code* and *single-employer plan* are added, in alphabetical order, to read as follows:

§ 2612.2 Definitions.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

17. Section 2612.3 is amended by adding "; controlled groups" after "control" in the title; by removing the comma after "Act", adding a colon in its place, and designating the remainder of the current text as paragraph (a)(2) and republishing it; and by adding new paragraphs (a)(1), (a)(3), and (b) and the introductory text is republished to read as follows:

§ 2612.3 Trades or businesses under common control; controlled groups.

For purposes of Title IV of the Act:

(a)(1) The PBGC will determine that trades and businesses (whether or not incorporated) are under common control if they are "two or more trades or businesses under common control", as defined in regulations prescribed under section 414(c) of the Code.

(2) All employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and all such trades and businesses shall be treated as a single employer.

(3) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Code.

(b) In the case of a single-employer plan:

(1) In connection with any person, a controlled group consists of that person and all other persons under common control with that person.

(2) The PBGC will determine that persons are under common control if they are members of a "controlled group of corporations", as defined in

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regulations prescribed under section 414(b) of the Code, or if they are "two or more trades or businesses under common control", as defined in regulations prescribed under section 414(c) of the Code.

PART 2615—CERTAIN REPORTING AND NOTIFICATION REQUIREMENTS

18. The authority citation for part 2615 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343, and 1365.

19. In § 2615.1, paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 2615.1 Purpose and scope.

(a) *Purpose.* This subpart prescribes specific requirements for notification of the reportable events in section 4043 of the Act, including the reportable events specified in section 4043(b)(1) through (b)(8) and other events that the PBGC has determined, under section 4043(b)(9), may be indicative of a need to terminate the plan. It also implements the PGBC's authority to waive the requirement that plan administrators notify the PBGC with respect to certain reportable events and with respect to certain plans.

(b) *Scope.* This subpart applies with respect to any single-employer plan (within the meaning of section 4001(a)(15) of the Act) which is covered by section 4021 of the Act and for which either no notice of intent to terminate has been issued or, if such a notice has been issued, until the proposed termination date specified under section 4041 (b) or (c) of the Act and parts 2616 or 2617 of this subchapter; *Provided, That,* if a termination proceeding is suspended pursuant to § 2615.5 or § 2617.5 of this subchapter, this subpart continues to apply unless and until the PBGC reactivates the termination proceeding. * * *

20. In § 2615.2, the definition of *Act* is amended by removing "(29 U.S.C. 1001 *et seq.* (1976))" and adding, in its place, ", as amended"; the definition of *active participant* is redesignated as paragraph (c)(2) of § 2615.14; the definition of *Code* is amended by removing "1954" and adding, in its place, "1986"; the definition of *irrevocable commitment* is amended by removing "which" the first time it appears and adding, in its place, "if the obligation", by removing "which" the second time it appears, and by removing "against the insurer"; the definition of *nonforfeitable benefits which are not funded* is amended by adding "section 4001(a)(8) of the Act and as provided in" after "as defined in"; the definition of *plan* is amended by removing "be a single employer, multiemployer, or multiple employer plan" and adding, in its place, "is maintained by one or more contributing sponsors"; the definition of *plan year* is amended by removing "; policy"; the definition of *substantial owner* is amended by removing "4022(b)(6)(A)" and adding, in its place, "4022(b)(5)(A)"; the definitions of *bankruptcy case, break in service, employer, money purchase plan, normal retirement benefit, plan sponsor, Railroad Retirement benefits, single employer plan, Social Security benefits,* and *Title IV* are removed; and the definitions of *contributing sponsor, controlled group,* and *participant* are revised and definitions of *notice of intent to terminate* and *proposed termination data* are added, in alphabetical order, to read as follows:

§ 2615.2 Definitions.

* * * * *

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under part 2612 of this chapter.

* * * * *

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 or § 2617.22 of this subchapter.

* * * * *

Participant has the same meaning as in § 2610.2 of this chapter.

* * * * *

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice or the standard termination notice, in accordance with section 4041 of the Act and part 2616 of part 2617 of this subchapter.

* * * * *

§ 2615.3 [Amended]

21. Paragraph (b)(2) of § 2615.3 is amended by removing the word "plan" and adding each time it appears, in its place, "contributing".

§ 2615.3 [Amended]

22. Paragraph (b)(4) of § 2615.3 is amended by removing "plan sponsor" both times it appears and adding, in its place, "contributing sponsor"; by removing "Plan Identification Number (PIN)" and adding, in its place, "Plan Number (PN)"; and by removing "EIN–PIN" both times it appears and adding, in its place, "EIN–PN".

§ 2615.3 [Amended]

23. Paragraph (c)(2) of § 2615.3 is amended by removing "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group,".

§ 2615.3 [Amended]

24. Paragraph (c)(5) of § 2615.3 is amended by removing "a bankruptcy or liquidation" and adding, in its place, "bankruptcy and insolvency".

§ 2615.3 [Amended]

25. Paragraph (c)(6) of § 2615.3 is amended by removing "of employer" and adding, in its place, "in the same controlled group as a contributing sponsor"; by removing ", or of the trade or business no longer controlled by the contributing sponsor, or of the new trade or business controlling" and adding, in its place, "or of the person no longer under common control with"; and by removing ", and of the trade or business no longer controlled by the contributing sponsor, or the new trade or business controlling" and adding, in its place, "and of the person no longer under common control with".

§ 2615.3 [Amended]

26. Paragraph (e) of § 2615.3 is amended by removing "Office of Program Operations" and adding, in its place, "Case Operations and Compliance Department" and by removing "Room 5300A" and adding, in its place, "Room 5500 (Code 45100)".

§ 2615.5 [Amended]

27. Section 2615.5 is amended by removing "employer" and adding, in its place, "contributing sponsor" in the title and by removing "an employer making contributions" and adding, in its place, "a contributing sponsor" in the text.

§ 2615.12 [Amended]

28. Sections 2615.12(a), 2615.15(a), and 2615.16(a) are amended by removing "the plan" and adding, in its place, "a plan".

§ 2615.14 [Amended]

29. Paragraph (a) of § 2615.14 is amended by removing everything after "previous plan year" and before the period.

30. Paragraph (b) of § 2615.14 is amended by removing in the introductory text "either paragraph (b)(1) or (b)(2)" and adding, in its place, "paragraph (b)(1), (b)(2), or (b)(3)" and by adding a new paragraph (b)(3) to read as follows:

§ 2615.14 Active participant reduction.

* * * * *

(b) * * *

(3) The present value of unfunded vested benefits under the plan (as reported on the most recently filed IRS/DOL/PBGC Form 5500 or Form 5500–C/R) is less than $250,000.

* * * * *

§ 2615.14 [Amended]

31. Paragraph (b)(2) of § 2615.14 is amended by removing "single employer plan, as" and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, as" and by removing "the single employer plans covered by section 4021 that are maintained by the employer" and adding, in its place, "the plans covered by this part that are maintained by a contributing sponsor and all members of the same controlled group, if any, either"; and by removing "or not" and adding, in its place, "or is not".

32. Paragraph (c) of § 2615.14 is amended by designating the sentence after the heading as subparagraph (1) and by revising the definition of *active participant*, redesignated as subparagraph (2), to read as follows:

§ 2615.14 Active participant reduction.

* * * * *

(c) *Determination of the number of active participants.*

* * * * *

(2) For purposes of this section and information submitted pursuant to § 2615.3(c)(1), with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, include as "active" only a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

33. The first sentence of paragraph (b) of § 2615.16 is amended by removing "Forms 5500, 5500–C, 5500–K or 5500–R" and adding, in its place, "Form 5500 or Form 5500–C/R".

§ 2615.18 [Amended]

34. Paragraph (d) of § 2615.18 is amended by removing "effective date of the irrevocable commitment" in the first sentence and adding, in its place, "date on which the obligation to provide benefits passes from the plan to the insurer".

§ 2615.18 [Amended]

35. In paragraph (f) of § 2615.18, the heading is revised to read *"Valuation of assets and benefits"*.

§ 2615.21 [Amended]

36. Paragraph (a) of § 2615.21 is amended by removing in the introductory text "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group" and by adding "(under Title 11, U.S.C.)" before ", or" in paragraph (a)(1).

§ 2615.22 [Amended]

37. In paragraph (a) of § 2615.22, the introductory text is amended by removing "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group".

§ 2615.22 [Amended]

38. Paragraph (c) of § 2615.22 is amended by removing *"section 4062(d)"* in the heading and adding, in its place, *"section 4069(b)"* and by removing "section 4062(d)" in the text and adding, in its place, "section 4069(b)".

§ 2615.23 [Amended]

39. The title of § 2615.23 is amended by removing "of employer" and adding, in its place, "in contributing sponsor or controlled group".

§ 2615.23 [Amended]

40. Paragraph (a) of § 2615.23 is amended by removing everything in the introductory text after "with respect to" and before "with nonforfeitable benefits" and adding, in its place, "a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group"; by removing "trade or business" each time it appears in paragraph (a)(1)(iii) and paragraph (a)(2) and adding, in its place, "person"; and by removing "the sponsor" in paragraph (a)(2) and adding, in its place, "the contributing sponsor".

§ 2615.23 [Amended]

41. In paragraph (e) of § 2615.23, the heading is revised to read *"Valuation of assets and benefits"*.

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

42. The authority citation for part 2616 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

§ 2616.4 [Amended]

43. In paragraph (c) of § 2616.4 the introductory text is amended by removing the last sentence.

PART 2622—LIABILITY ON TERMINATION OF OR WITHDRAWAL FROM A SINGLE-EMPLOYER PLAN

44. The authority citation for part 2622 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, and 1367–1368.

45. The title of part 2622 is revised to read as set forth above.

46. Section 2622.1 is revised to read as follows:

§ 2622.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to set forth rules for determination and payment of the liability incurred, under section 4062(b) of the Act, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of the Act. This part also includes related rules regarding payment arrangements under section 4067 of the Act and the PBGC's lien under section 4068 of the Act with respect to liability arising under section 4062, 4063, or 4064.

When a single-employer plan is terminated under section 4041(c) or 4042 of the Act, section 4062 imposes joint and several liability, to the PBGC and the trustee appointed under section 4042(b) or (c), on any person that, on the termination date, is a contributing sponsor or a member of a contributing sponsor's controlled group. Sections 4063 and 4064, in conjunction with section 4062, apply to liability determinations with respect to multiple employer plans. Under section 4063, the PBGC determines the conditional liability for withdrawal of a substantial employer; under section 4064, the PBGC determines the liability upon termination of persons that, within the 5 preceding plan years, contributed to the plan. Both sections provide for prorating or allocating liability among

controlled groups after calculating the amount for the entire plan under section 4062(b), and section 4062(e) makes sections 4063 and 4064 applicable when there are certain cessations of operations at a facility. (See section 4069 of the Act regarding transactions to evade liability and certain corporate reorganizations.)

(b) *Scope.* The provisions of this part regarding the amount of liability to the PBGC that is incurred upon termination of a single-employer plan apply with respect to a plan for which a notice of intent to terminate under section 4041(c) of the Act is issued or proceedings to terminate under section 4042 of the Act are instituted after December 17, 1987. Those provisions also apply, to the extent described in paragraph (a) of this section, to the amount of liability for withdrawal from a multiple employer plan after that date.

47. In § 2622.2, the definition of *Act* is amended by removing "is" and adding, in its place, "means" and by removing everything after "1974," and before the period and adding, in its place "as amended"; the definition of *PBGC* is amended by removing "is" and adding, in its place "means"; the definitions of *date of plan termination, employer, plan asset insufficiency, single employer plan,* and *Title IV* are removed; and the definitions of *net worth* and *net worth record date* are revised and definitions of *Code, collective net worth of persons subject to liability in connection with a plan termination, contributing sponsor, controlled group, multiple employer plan, notice of intent to terminate, proposed termination date, section 4062(b) liability, single-employer plan,* and *termination date* and added, in alphabetical order, to read as follows:

§ 2622.2 Definitions.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

Collective net worth of persons subject to liability in connection with a plan termination means the sum of the individual net worths of all persons that have individual net worths which are greater than zero and that (as of the termination date) are contributing sponsors of the terminated plan or members of their controlled groups, as determined in accordance with section 4062(d)(1) of the Act and § 2622.4 of this part.

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under Part 2612 of this subchapter.

Multiple employer plan means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

Net worth means the fair market value of a person liable under section 4062 of the Act, as determined in accordance with section 4062(d)(1) of the Act and § 2622.4 of this part.

Net worth record date means the day, chosen by the PBGC in accordance with section 4062(d)(1) of the Act and § 2622.5 of this part, as of which the PBGC makes net worth determinations.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 of this subchapter.

* * * * *

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice, in accordance with section 4041 of the Act and part 2616 of this subchapter.

Section 4062(b) liability means, with respect to a single-employer plan terminated under section 4041(c) or section 4042 of the Act, the joint and several liability to the PBGC which is incurred by any person that, on the termination date, is a contributing sponsor of the plan or a member of a contributing sponsor's controlled group; the amount of this liability is determined in accordance with section 4062(b)(1) of the Act and § 2622.3(a) of this part.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

Termination date means the date established pursuant to section 4048(a) of the Act.

48. Section 2622.3 is revised to read as follows:

§ 2622.3 Amount and payment of section 4062(b) liability.

(a) *Amount of liability.*

(1) *General rule.* Except as provided in paragraph (a)(2) of this section, the amount of section 4062(b) liability is the total amount (as of the termination date) of the unfunded benefit liabilities (within the meaning of section 4001(a)(18) of the Act) to all participants and beneficiaries under the plan, together with interest calculated from the termination date in accordance with § 2622.7.

(2) *Special rule in case of subsequent finding of inability to pay guaranteed benefits.* In any distress termination proceeding under section 4041(c) of the Act and part 2616 of this subchapter in which (as described in section 4041(c)(3)(C)(ii) of the Act), after a determination that the plan is sufficient for benefit liabilities or for guaranteed benefits (as defined in § 2616.2 of this subchapter), the plan administrator finds that the plan is or will be insufficient for guaranteed benefits and the PBGC concurs with that finding, or the PBGC makes such a finding on its own initiative, actuarial present values shall be determined as of the date of the notice to, or the finding by, the PBGC of insufficiency for guaranteed benefits.

(b) *Payment of liability.* Section 4062(b) liability is due and payable as of the termination date, in cash or securities acceptable to the PBGC, except that, as provided in § 2622.8(c), the PBGC shall prescribe commercially reasonable terms for payment of so much of such liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination, and the PBGC may make alternative arrangements, as provided in § 2622.8(b).

49. The title and paragraph (a) of § 2622.4 are revised to read as follows:

§ 2622.4 Determinations of net worth and collective net worth.

(a) *General rules.* When a contributing sponsor, or member(s) of a contributing sponsor's controlled group, notifies and submits information to the PBGC in accordance with § 2622.6, the PBGC shall determine the net worth, as of the net worth record date, of that contributing sponsor and any members of its controlled group based on the factors set forth in paragraph (c) of this section and shall include the value of any assets that it determines, pursuant to paragraph (d) of this section, have been improperly transferred. In making such determinations, the PBGC will consider information submitted pursuant to § 2622.6. The PBGC shall then determine the collective net worth of persons subject to liability in connection with a plan termination.

* * * * *

§ 2622.4 [Amended]

50. Paragraphs (b) through (d) of § 2622.4 are amended by removing "an employer" each time it appears and adding, in its place, "a person"; by removing "An employer's" in the introductory text of paragraph (c) and the first sentence of paragraph (d) and adding, in its place, "A person's"; by removing "the employer's" each time it appears and adding, in its place, "the person's"; by removing "the employer" each time it appears and adding, in its place, "the person"; by removing "net record" in paragraph (c)(3) and adding, in its place, "net worth record"; by removing "The employer's" in paragraph (c)(5) and adding, in its place, "The person's"; by removing "proceeding under chapter 11 of the Bankruptcy Code of 1978 (or under chapter XI of of the prior Bankruptcy Act)" in paragraph (c)(8) and adding, in its place, "case under title 11, United States Code, or any similar law of a state or political subdivision thereof,"; and by removing "employer liability" in the first sentence of paragraph (d) and adding, in its place, "liability".

§ 2622.5 [Amended]

51. Paragraph (a) of § 2622.5 is amended by removing "date of plan termination established pursuant to section 4048 of the Act" and adding, in its place, "plan's termination date".

§ 2622.5 [Amended]

52. Paragraph (b) of § 2622.5 is amended by removing everything in the first sentence after "establish" and before the period and adding, in its place, "as the net worth record date an earlier date during the 120-day period ending with the termination date".

§ 2622.5 [Amended]

53. Paragraph (c) of § 2622.5 is amended by removing "to the employer" in the heading; by removing "the employer" in the first sentence and adding, in its place, "liable person(s)"; and by removing "more information pursuant to § 2622.6(b)" in the second sentence and adding, in its place, "additional information, as provided in § 2622.6(a)(3)".

54. In § 2622.6, paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (b)(1) through (b)(7), in that order; the introductory text of paragraph (a) is designated as paragraphs (a)(1) through (a)(4) and revised and the introductory text of paragraph (b) is revised; redesignated paragraphs (b)(1) through (b)(7) are amended by removing "The employer's" and adding, in its place, "An" and by removing "its" and adding, in its place, "the person's" in paragraph (b)(1); by removing "employer's" and adding, in its place, "person's" in paragraphs (b)(2), (b)(4), (b)(5), and (b)(6); by removing "employer" both times it appears and adding, in its place, "the person's" in paragraph (b)(3); and by removing "proceeding under chapter 11 of the Bankruptcy Code of 1978 (or under chapter XI of the prior Bankruptcy Act)" and adding, in its place, "case under title 11, United States Code, or any similar law of a state or political subdivision thereof," and by removing "employer" and adding, in its place, "person" in paragraph (b)(7); and paragraph (c) is revised; and as revised, paragraph (a), the introductory text of paragraph (b), and paragraph (c) read as follows:

§ 2622.6 Net worth notification and information.

(a) *General.*

(1) A contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination shall—

(i) So notify the PBGC by the 90th day after the notice of intent to terminate is filed with the PBGC or, if no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of the Act, within 30 days after the establishment of the plan's termination date in such proceedings; and

(ii) Submit to the PBGC the information specified in paragraph (b) of this section with respect to the contributing sponsor and each member of the contributing sponsor's controlled group (if any)—

(A) By the 120th day after the proposed termination date, or

(B) If no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of the Act, within 120 days after the establishment of the plan's termination date in such proceedings.

(2) If a contributing sponsor or a member of the contributing sponsor's controlled group complies with the requirements of paragraph (a)(1) of this section, the PBGC will consider the requirements to be satisfied by all members of that controlled group.

(3) The PBGC may require any person subject to liability—

(i) To submit the information specified in paragraph (b) of this section within a shorter period whenever the PBGC believes that its ability to obtain information or payment of liability is in jeopardy, and

(ii) To submit additional information within 30 days, or a different specified time, after the PBGC's written notification that it needs such information to make net worth determinations.

(4) If a provision of paragraph (b) of this section or a PBGC notice specifies information previously submitted to the PBGC, a person may respond by identifying the previous submission in which the response was provided.

(b) *Net worth information.* The following information specifications apply, individually, with respect to each person subject to liability:

* * * * *

(c) *Incomplete submissions.* If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further removed from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

55. In § 2622.7, paragraph (d) is removed and the title and paragraphs (a) and (b) are revised to read as follows:

§ 2622.7 Calculating interest on liability and refunds of overpayments.

(a) *Interest.* Whether or not the PBGC has granted deferred payment terms pursuant to § 2622.8, the amount of liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each payment to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds.* If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the

overpayment or 10 days prior to the termination date until the date of the refund and is compounded daily.

* * * * *

§ 2622.7 [Amended]

56. In paragraph (c) of § 2622.7, the first sentence is amended by removing "employer liability and refunds of employer liability" and adding, in its place, "liability under this part and refunds thereof" and by removing "Internal Revenue Code of 1954, as amended," and adding, in its place, "Code".

57. The title and paragraphs (a), (b), (c), and (d) of § 2622.8 are revised to read as follows:

§ 2622.8 Arrangements for satisfying liability.

(a) *General.* The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Upon request.* If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of the Act and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC may, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the request and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of the Act at any time by filing a written request. The request must include the information specified in § 2622.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to "the net worth record date" in § 2622.6(b) shall be replaced by "the most recent annual anniversary of the net worth record date"; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) *Liability exceeding 30 percent of collective net worth.* If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the PBGC that no person subject to such liability has any individual pre-tax profits (within the meaning of section 4062(d)(2) of the Act) for such person's last full fiscal year ending during that year.

(d) *Interest.* Interest on unpaid liability is calculated in accordance with § 2622.7(a).

* * * * *

§ 2622.8 [Amended]

58. Paragraph (e) of § 2622.8 is amended by removing "an employer" and adding, in its place, "the liable person(s)".

§ 2622.9 [Amended]

59. The title of § 2622.9 is amended by removing "lien for employer liability" and adding, in its place, "demand for liability; lien".

§ 2622.9 [Amended]

60. In paragraph (a) of § 2622.9, the first sentence is amended by removing "an employer's liability" and adding, in its place, "the liability" and by removing "the employer" and adding, in its place, "liable person(s)"; the second sentence is amended by adding "and will indicate that, as provided in § 2622.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination" at the end before the period; and the last sentence is amended by removing "employer's".

§ 2622.9 [Amended]

61. Paragraph (b) of § 2622.9 is amended by removing "If the employer fails to pay its" and adding, in its place, "Except as provided in paragraph (c) of this section, if person(s) liable to the PBGC fail to pay the" and by adding as concluding text of paragraph (b): "The demand letter will indicate that, as provided in § 2622.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination."

§ 2622.9 [Amended]

62. In paragraph (c) of § 2622.9, the first sentence is amended by removing "an employer's" after "payment of" and by removing "for an employer's liability" and adding, in its place, "for the liability"; and the last sentence is amended by removing "to appeal of the assessment of liability" and adding, in its place, "to an appeal".

§ 2622.9 [Amended]

63. Paragraph (d) of § 2622.9 is amended by removing "If the employer" and adding, in its place, "If any person liable to the PBGC under section 4062, 4063, or 4064 of the Act"; by removing "its liability" and adding, in its place, "such liability"; and by removing everything after "arising as of the" and before the period and adding, in its place, "plan's termination date, upon all property and rights to property, whether real or personal, belonging to that person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 4062(a) of the Act".

§ 2622.10 [Amended]

64. Paragraph (a) of § 2622.10 is amended by adding "(including

information)" after "document" in the introductory text.

§ 2622.10 [Amended]

65. In paragraph (b) of § 2622.10, the first sentence is amended by removing "employer"; by removing ", and shall be sent to the Division of the Treasurer, Office of Financial Operations" and adding, in its place, ". Such payments shall be sent to the address specified in the notification or demand for liability issued by the PBGC under § 2622.9 or, if not so specified, to the address provided, upon request, by the Investment Management Division (Code 33500)"; and by adding "(202–778–8802)" at the end before the period; and the second sentence is amended by adding "(including information)" after "document" and by removing "Office of Program Operations" and adding, in its place, "Insurance Operations Department".

PART 2623—BENEFIT REDUCTIONS TERMINATING PLANS; RECOUPMENT AND REIMBURSEMENT

66. The authority citation for part 2623 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1322, 1322b, 1341(c)(3)(D), and 1344.

67. The title of part 2623 is revised to read as set forth above.

68. Section 2623.1 is revised to read as follows:

§ 2623.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe procedures that minimize the overpayment of benefits by plan administrators when terminating single-employer plans are not expected to be sufficient for guaranteed benefits and procedures for the recoupment of benefit overpayments from participants and beneficiaries entitled to annuities and the reimbursement of benefit underpayments to participants and beneficiaries in PBGC-trusteed plans.

(b) *Scope.* Subpart B of this part sets forth the rules for reducing benefit payments after initiating a distress termination; subpart C of this part sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of the Act and provides for reimbursement of benefit underpayments.

69. Section 2623.2 is amended by removing the definitions of *insufficient plan, Title IV Benefit, section 4041(a) date of termination,* and *section 4048 date of termination* and by adding, in alphabetical order, definitions of *distress termination, guaranteed benefit, notice of intent to terminate, PBGC-trusteed plan, proposed termination date, single-employer plan, sufficient for guaranteed benefits, termination date,* and *title IV benefit* to read as follows:

§ 2622.2 Definitions.

* * * * *

Distress termination means the voluntary termination, in accordance with section 4041(c) of the Act and part 2616 of this subchapter, of a single-employer plan.

Guaranteed benefit means a benefit that is guaranteed by the PBGC under section 4022 (a) and (b) of the Act and parts 2613 and 2621 of this chapter.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 or § 2617.22 of this subchapter.

* * * * *

PBGC-trusteed plan means a terminated plan for which the PBGC is appointed trustee under section 4042(b) of the Act.

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice or the standard termination notice, in accordance with section 4041 of the Act and part 2616 or part 2617 of this subchapter.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

* * * * *

Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits (within the meaning of section 4001(a)(17) of the Act).

Termination date means the date established pursuant to section 4048(a) of the Act.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of the Act and part 2618 of this subchapter.

70. The title of § 2623.5 is amended by removing "benefits payable" and adding, in its place, "benefit payments".

71. Paragraph (a) of § 2623.5 is revised to read as follows:

§ 2623.5 Limitations on benefit payments by plan administrator.

(a) *General.* When, during the pendency of a distress termination proceeding, § 2616.4 of this subchapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

* * * * *

§ 2623.5 [Amended]

72. Paragraph (b) of § 2623.5 is amended by removing "beginning on the section 4041(a) date of termination" in the first sentence and by adding "or her" after "his" in the second sentence.

§ 2623.5 [Amended]

73. Paragraph (c) of § 2623.5 is amended by removing "beginning on the section 4041(a) date of termination"; by removing "chapter" and adding, in its place "subchapter"; and by adding ", for the year of the proposed termination date" at the end before the period.

§ 2623.5 [Amended]

74. Paragraph (d) of § 2623.5 is amended by adding "*payments*" after "*benefit*" in the heading and by removing "Beginning on the thirtieth day after the section 4041(a) date of termination, or on the section 4041(a) date of termination if the Notice of Intent to Terminate proposes a date of termination that is more than thirty days after the Notice of Intent to Terminate was filed, a" and adding, in its place, "A".

§ 2623.5 [Amended]

75. Paragraph (e) of § 2623.5 is removed.

§ 2623.5 [Amended]

76. Paragraph (f) of § 2623.5 is amended by removing "*deadlines and*" in the heading; by removing paragraph (f)(1); by removing the colon after "may" in the introductory text; by removing the designation of paragraph (f)(2) and the word "Authorize" and adding, in its place, "authorize"; and, as so amended, paragraph (f) is redesignated as paragraph (e).

77. Paragraph (g) of § 2623.5 is redesignated as paragraph (f) and the examples following the introductory text are revised to read as follows:

§ 2623.5 Limitations on benefit payments by plan administrator.

* * * * *

(f) * * *

Example 1

Facts. On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of $2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (*i.e.*, $1,250

per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

Benefit reductions. Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of part 2621 of this subchapter. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is $2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 2621.4(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 2621.2. The required benefit reduction for this benefit form under § 2621.4(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00–0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 2621.4(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65–56). The required percentage reduction when the beneficiary is 9 years younger than the participant is 9 percent. The corresponding adjustment factor is 0.91 (1.00–0.09).

The maximum guaranteeable benefit adjusted for age and benefit form is $1,926.51 ($2,352.27×0.90×0.91) per month. Therefore, the plan administrator must reduce the participant's benefit payment from $2,500 to $1,926.51. If the participant dies after December 31, 1992, the plan administrator will pay his spouse $963.26 (0.50×$1,926.51) per month.

Example 2

Facts. The benefit of a participant who retired under a plan at age 60 is a reduced single life annuity of $400 per month plus a temporary supplement of $400 per month payable until age 62. The participant's accrued benefit under the plan is $450 per month, payable from the plan's normal retirement age. On the proposed termination date, June 30, 1992, the participant is 61 years old.

The maximum guaranteeable benefit adjusted for age under § 2621.4(c) of this subchapter is $1,693.63 ($2,352.27×0.72) per month. Since the benefit is payable as a single life annuity, no adjustment is required under § 2621.4(d) for benefit form.

Benefit reductions. The plan benefit of $800 per month payable until age 62 exceeds the participant's accrued benefit of $450 per month. Paragraph (b) of this section requires that, except to the extent permitted by paragraph (d), the plan benefit must be reduced to that level. Since the resulting levelized benefit of $404.10 ((0.082×50)+$400) per month, determined under § 2621.4(f), is less than the adjusted maximum guaranteeable benefit of $1,693.63 per month, no further reduction in the benefit payment is required under paragraph (c) of this section. The plan administrator next would determine the amount of the participant's benefit under paragraph (d).

Example 3

Facts. A retired participant is receiving a reduced early retirement benefit of $600 per month plus a temporary supplement of $1,200 per month payable until age 62. The benefit is in the form of a single life annuity. On the proposed termination date, November 30, 1992, the participant is 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $1,200 per month. The maximum guaranteeable benefit adjusted for age is $1,152.61 ($2,352.27×0.49) per month. A form adjustment is not required.

Benefit reductions. The plan benefit of $1,800 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age of $1,200 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the temporary supplement to $600 per month.

For the purpose of determining whether the reduced benefit, *i.e.*, a level-life annuity of $600 per month and a temporary annuity supplement of $600 per month to age 62, exceeds the maximum guaranteeable benefit adjusted for age, the temporary annuity supplement of $600 per month is converted to a level-life annuity equivalent in accordance with § 2621.4(f) of this subchapter. The level-life annuity equivalent is $232.20 ($600×0.387). This, added to the life annuity of $600 per month, equals $832.20. Since the maximum guaranteeable benefit of $1,152.61 per month exceeds $832.20 per month, no further reduction is required under paragraph (c) of this section.

The plan administrator next would determine the participant's estimated benefit under paragraph (d). Assume that the estimated benefit under paragraph (d) is $1,500 per month until age 62 and $600 per month thereafter. The plan administrator would pay the participant $1,500 per month, reduced to $600 per month at age 62, subject to the final benefit determination made under title IV.

Example 4

Facts. A retired participant is receiving a reduced early retirement benefit of $2,250 per month plus a temporary supplement of $1,200 per month payable until age 62. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount to his surviving spouse following the death of the participant. On the proposed termination date, December 20, 1992, the participant and his spouse are each 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $3,000 per month. The maximum guaranteeable benefit adjusted for age and the joint and survivor annuity (contingent basis) annuity form is $1,037.35 per month. An adjustment for age difference is not required because the participant and his spouse are the same age.

Benefit reductions. The plan benefit of $3,450 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age, which is $3,000 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the participant's benefit so that it does not exceed $3,000 per month.

The level-life equivalent of the participant's reduced benefit, determined using the § 2621.4(f) adjustment factor, is $2,540.25 (($750×0.387)+$2,250) per month. Since this benefit exceeds the participant's maximum guaranteeable benefit of $1,037.35 per month, the plan administrator must reduce the participant's benefit payment so that it does not exceed the maximum guaranteeable benefit.

The ratio of (i) the participant's maximum guaranteeable benefit to (ii) the level-life equivalent of the participant's reduced benefit (computed under the "accrued for normal retirement age" limitation) is used in converting the level-life maximum guaranteeable benefit to the step-down form. The level-life equivalent of the reduced benefit computed under the "accrued for normal retirement age" limitation is 40.84 percent ($1,037.35/$2,540.25). Thus, the plan administrator must reduce the participant's level-life benefit of $2,250 per month to $918.90 ($2,250×0.4084) and must further reduce the reduced temporary benefit of $750 per month to $306.30 ($750×0.4084). Under paragraph (c) of this section, therefore, the participant's maximum guaranteeable benefit is $1,225.20 ($918.90+$306.30) per month to age 62 and $918.90 per month thereafter, subject to any adjustment under paragraph (d) of this section.

Assume that the estimated benefit under paragraph (d) is $1,050 per month to age 62 and $750 per month thereafter. The plan administrator would reduce the participant's benefit from $1,225.20 per month to $1,050 per month and pay this amount until age 62, at which time the benefit payment would be reduced to $750 per month, subject to the final benefit determination made under title IV.

§ 2623.6 [Amended]

78. Paragraph (a) of § 2623.6 is amended by removing the last sentence.

§ 2623.6 [Amended]

79. Paragraph (b) of § 2623.6 is amended by removing "section 4041(a) date of termination" each time it appears (in the heading or the text) and adding, in its place, "proposed termination date"; by removing "was" and adding, in its place, "is" in paragraph (b)(1); and by adding "or her" after "his" in paragraph (b)(2).

§ 2623.6 [Amended]

80. Paragraph (c) of § 2623.6 is amended by adding "or her" after "his" both times it appears in paragraph (c)(1); by adding "or she" after "he" each time it appears; and by removing "section 4041(a) date of termination" each time it appears in paragraph (c)(2) and

paragraph (c)(3) and adding, in its place, "proposed termination date".

§ 2623.6 [Amended]

81. Paragraph (d) of § 2623.6 is amended by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date" and by adding "or she" after "he" and "or "her" after "his" in paragraph (d)(2)(ii).

82. The examples in paragraph (e) of § 2623.6 are revised to read as follows:

§ 2623.6 Estimated guaranteed benefit.

* * * * *

(e) * * *

Example 1

Facts. A participant which is not a substantial owner retired on December 31, 1991, at age 60 and began receiving a benefit of $600 per month. On January 1, 1989, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of ⅓sth for each year by which his or her actual retirement age preceded age 65. On January 1, 1992, the plan's benefit formula was amended to increase benefits for participants who retired before January 1, 1992. As a result, the participant's benefit was increased to $750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 1992.

Estimated guaranteed benefit. No reduction is required under § 2623.5(b) or (c) because the participant's benefit does not exceed either the participant's accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

The amendment as of January 1, 1989, resulted in a "new benefit" because the reduction in the age at which the participant could receive unreduced benefits increased the participant's benefit entitlement at actual retirement age by ⅓₆, which is more than a 20 percent increase.

The amendment of January 1, 1992, which increased the participant's benefit to $750 per month, is a "benefit improvement" because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether such an increase is a benefit improvement.)

The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of Table I (because the last new benefit had been in effect for 3 full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the 1-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is $412.50 (0.55 × $750) per month.

Example 2

Facts. A participant who is not a substantial owner terminated employment on December 31, 1990. On January 1, 1992, she reached age 65 and began receiving a benefit of $250 per month. She had completed 3 years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July 1, 1988. Under the schedule in effect before the amendment, a participant with 5 years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 1992.

Estimated guaranteed benefit. No reduction is required under § 2623.5 (b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for 4 full years before the proposed termination date, the second row of Table I is used to determine the applicable multiplier for estimating the amount of the participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is $200 (0.80 × $250) per month.

Example 3

Facts. A participant who is a substantial owner retired prior to the proposed termination date after 5½ years of active participation in the plan. The benefit under the terms of the plan when he first began active participation was $800 per month. On the proposed termination date of April 30, 1992, he was entitled to receive a benefit of $2,000 per month. No reduction of this benefit is required under § 2623.5 (b) or (c).

Estimated guaranteed benefit. Paragraph (d)(2) of this section is used to compute the amount of the estimated guaranteed benefit of substantial owners with 5 or more years of active participation prior to the proposed termination date. Consequently, the amount of this participant's estimated guaranteed benefit is the lesser of—

(i) the amount calculated as if he had been an active participant in the plan for fewer than 5 full years on the proposed termination date, or $333.33 ($2,000 × ⅙₀) per month.

(ii) the amount to which he would have been entitled as of the proposed termination date under the terms of the plan when he first began participation, as limited by § 2623.5(b) and (c), multiplied by 2 times the number of years of active participation and divided by 30, or $266.67 ($800 × 2 × ⅓₀) per month.

Therefore, the amount of the participant's estimated guaranteed benefit is $266.67 per month.

§ 2623.7 [Amended]

83. The title of § 2623.7 is amended by removing "Title IV Benefit" and adding, in its place, "title IV benefit".

§ 2623.7 [Amended]

84. Paragraph (a) of § 2623.7 is amended by removing "Benefit" each time it appears and adding, in its place, "benefit" and by removing the last sentence.

§ 2623.7 [Amended]

85. Paragraph (b) of § 2623.7 is amended by removing "Benefits" both times it appears in the introductory text and adding, in its place, "benefits" and by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date".

§ 2623.7 [Amended]

86. Paragraph (c) of § 2623.7 is amended by removing "*Benefit*" in the heading and adding, in its place, "*benefit*"; by removing "Benefit" in the first sentence of the introductory text and adding, in its place, "benefit"; and by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date".

§ 2623.7 [Amended]

87. Paragraph (d) of § 2623.7 is amended by removing "*Benefit*" in the heading and adding, in its place, "*benefit*" and by adding "or she" after "he" in paragraph (d)(1).

88. The examples in paragraph (e) of § 2623.7 are revised to read as follows:

§ 2623.7 Estimated Title IV benefits.

* * * * *

(e) * * *

Example 1

Facts. A participant who is not a substantial owner was eligible to retire 3½ years before the proposed termination date. The participant retired 2 years before the proposed termination date with 20 years of service. Her final 5 years' average salary was $45,000, and she was entitled to an unreduced early retirement benefit of $1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 2623..5(b) or (c).

On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final 5 years' salary times the number of years of service. Five years before the proposed termination date, the percentage was 1½ percent. The amendments improving benefits were put into effect 3½ years prior to the proposed termination date. There were no other amendments during the 5-year period.

The participant's estimated guaranteed benefit computed under § 2623.6(c) is $1,500 per month times 0.90 (the factor from column (b) of Table I in § 2623.6(c)(2)), or $1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the title IV benefit.

Estimated title IV benefit. For a participant who is not a substantial owner, the amount

of the estimated title IV benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of (i) the normal retirement benefit under the provisions of the plan in effect 5 years before the proposed termination date and (ii) the normal retirement benefit under the plan provisions in effect on the proposed termination date.

Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan 5 years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated title IV benefit is $1,125 (0.015/0.020 × $1,500) per month. This amount is less than the estimated guaranteed benefit of $1,350 per month. Therefore, in accordance with § 2623.5(d), the benefit payable to the participant is $1,350 per month.

Example 2

Facts. A participant who is a substantial owner retires at the plan's normal retirement age, having completed 5 years of active participation in the plan, on October 31, 1992, which is the proposed termination date. Under provisions of the plan in effect 5 years prior to the proposed termination date, the participant is entitled to a single life annuity of $500 per month. Under the most recent plan amendments, which were put into effect 1½ years prior to the proposed termination date, the participant is entitled to a single life annuity of $1,000 per month. The participant's estimated guaranteed benefit computed under § 2623.6(d)(2) is $166.67 per month.

It is assumed that all of the conditions in paragraph (b) of this section have been met. Plan assets equal $2 million. The present value of all benefits in pay status is $1.5 million based on applicable PBGC interest rates. There are no employee contributions and the present value of all vested benefits that are not in pay status is $0.75 million based on applicable PBGC interest rates.

Estimated title IV benefit. Paragraph (d) of this section provides that the amount of the estimated Title IV benefit payable with respect to a participant who is a substantial owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

Under paragraph (c), the participant's estimated priority category 3 benefit is $500 ($1,000 × $500/$1000) per month.

Under paragraph (d), the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 2623.6(c) (*i.e.*, as if the participant were not a substantial owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i). The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 2623.6(c) is $1,000 per month times 0.90 (the factor from column (b) of Table I in § 2623.6(c)(2)), or $900 per month. Multiplying $900 by the category 4 funding ratio of ⅔ (($2 million – $1.5 million)/$0.75 million) produces an estimated category 4 benefit of $600 per month.

Because the estimated category 4 benefit so computed is greater than the estimated category 3 benefit so computed, the estimated category 4 benefit is the estimated title IV benefit. Because the estimated category 4 benefit so computed is greater than the estimated guaranteed benefit of $166.67 per month, in accordance with § 2623.5(d), the benefit payable to the participant is the estimated category 4 benefit of $600 per month.

§ 2623.8 [Removed]

89. Section 2623.8 is removed.

§ 2623.11 [Amended]

90. Paragraph (a) of § 2623.11 is amended by removing "terminated insufficient plan" in the first sentence and adding, in its place, "PBGC-trusteed plan"; by removing "he or his" the first time it appears in the first sentence and adding, in its place, "the participant or his or her"; by removing "he or his" the second time it appears in the first sentence and adding, in its place, "the participant or beneficiary"; by removing "recoupment under" and adding, in its place, "recouping in accordance with the rules in" in the second sentence; and by removing "section 4048 date of termination" and adding, in its place, "termination date" in the last sentence.

§ 2623.11 [Amended]

91. Paragraph (b) of § 2623.11 is amended by removing "terminated insufficient plan" and adding, in its place, "PBGC-trusteed plan" and by removing "he or his" and adding, in its place, "the participant or his or her".

§ 2623.11 [Amended]

92. Paragraph (c) of § 2623.11 is amended by removing everything after "on or after the latest of" and before "the date on which" and adding, in its place, "the proposed termination date, the termination date, or, if no notice of intent to terminate was issued,".

§ 2623.12 [Amended]

93. Paragraph (a) of § 2623.12 is amended by removing "section 4048 date of termination" in paragraph (a)(1) and adding, in its place, "termination date" and by adding "or her" after "him" in paragraph (a)(3).

Issued in Washington, DC this 7th day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–30058 Filed 12–11–92; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Montana permanent regulatory program (the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to change the State's definition of "prospecting" to more closely conform to the Federal definition of "coal exploration" and to include in the definition certain data gathering activities.

This document sets forth the times and locations that the Montana program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received 4 p.m., m.s.t. January 13, 1993. If requested, a public hearing on the proposed amendment will be held on January 8, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on December 29, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below

during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director; Casper Field Office, Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601–1918. Telephone: (307) 261–5776.

Gary Amestoy, Administrator; Reclamation Division, Montana Department of State Lands; Capitol Station; 1625 Eleventh Ave.; Helena, MT 59620. Telephone: (406) 444–2074.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning the Montana program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Discussion of the Proposed Amendment

By letter dated October 19, 1992 (Administrative Record No. MT–9–01), Montana submitted a proposed amendment to its program pursuant to SMCRA. Montana submitted the proposed amendment in response to a 30 CFR part 732 notification, dated March 29, 1990. This notification informed Montana that its definition of "[p]rospecting," at Montana Code Annotated (MCA) 82–4–203(26), when applied to lands designated unsuitable for mining, was less effective than the Federal definition of "coal exploration" at 30 CFR 701.5.

The proposed program amendment consists of a legislative revision to the statutory definition. The revision adds to the definition new language specifying that the collection of surface or subsurface geologic, chemical, environmental, and other data, when conducted on areas designated as unsuitable for mining, is included in the definition of "[p]rospecting." As revised, the statutory definition would include the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit and, on areas designated unsuitable for coal mining pursuant to 82–4–227 and 82–4–228, the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal in an area and the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than OSM's Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.s.t. December 29, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12291

On July 12, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of E.O. 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of

section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance with the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule, is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 23, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-29695 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 114; FRL 4544-4]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds. The SIP revision consists of a new part 236, "Synthetic Organic Chemical Manufacturing Facility Component Leaks" and an amended part 200, "General Provisions" of title 6 of the New York Code of Rules and Regulations. These revisions correct deficiencies in New York's SIP, as required by the Clean Air Act (CAA) as amended in 1990. New York was required to make these corrections pursuant to a SIP call issued in 1988 and pursuant to section 182(a)(2)(A) of the CAA. EPA has evaluated these regulations and proposes approval of part 200 and part 236 under section 110(k)(3) as meeting the requirements of Section 110(a) and part D of the CAA.

DATES: Comments must be received on or before January 13, 1993.

ADDRESSES: All comments should be addressed to: Constantine Sidamon-Eristoff, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1034A, New York, New York 10278.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the 1970 Clean Air Act, the New York City Metropolitan area (NYCMA) which is comprised of New York City, Nassau, Suffolk, Westchester and Rockland counties was designated nonattainment for ozone and required to submit a SIP which would attain the National Ambient Air Quality Standard (NAAQS) for ozone, by December 31, 1982. New York requested the EPA granted an extension of the attainment date to December 31, 1987.

On May 26, 1988, EPA informed the Governor of New York that the SIP for the NYCMA was substantially inadequate to attain the NAAQS for ozone and carbon monoxide. A follow-up letter of June 14, 1988, to the New York State Department of Environmental Conservation (NYSDEC) contained the basis for this finding of SIP inadequacy and identified both the specific deficiencies in New York's existing regulations and regulations that New York had committed to develop but did not.

On November 15, 1990 amendments to the Clean Air Act were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q (Amendments). In amended section 182(a)(2)(A), Congress requires that ozone nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone. Areas that were designated nonattainment of the NAAQS before enactment of the Amendments and that were classified as marginal or worse as of enactment, are required to correct any deficiencies to its RACT rules. Section 182(a)(2)(A) establishes a May 15, 1991 deadline for correcting RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The NYCMA nonattainment area is classified as severe.[2] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On December 19, 1990 EPA sent a letter to the Governor of New York identifying a number of activities that the CAA required in the near term. The specific problems were identified in a January 30, 1991 letter to the NYSDEC.

The most significant problems EPA identified with the SIP were the failure to develop a control measure regulating the detection and repair of component leaks at synthetic organic chemical manufacturing (SOCMI) facilities, an inadequate definition of volatile organic compound (VOC) and inadequate emission limitations for certain surface coatings. This SIP revision addresses the missing control measure for SOCMI facilities and the inadequate definition of VOC.

State Submittals

On January 8, 1992, NYSDEC submitted to EPA a request to revise its SIP. The revisions consisted of a new part 236, "Synthetic Organic Chemical Manufacturing Facility Component Leaks" and an amended part 200,

[1] Among other things, the pre-amendment guidance consists of: The Post-87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (of which notice of availability was published in the Federal Register on May 25, 1988); and the existing CTGs.

[2] NYCMA retained its designation of nonattainment and was classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments (56 FR 56694).

"General Provisions" of title 6 of the New York Code of Rules and Regulations. These revisions address only the deficiencies which EPA identified with these regulations. New York had adopted both of these regulations on December 31, 1991. A summary of EPA's review and findings concerning these regulations follows.

Part 236

Part 236 regulates the monitoring and repair of leaks at SOCMI facilities. It requires SOCMI facilities to monitor components for leaks every three months. With NYSDEC approval, components that are unsafe to monitor may be monitored on an annual basis. Once a leak has been detected it must be repaired within fifteen days, unless repair would require shutting down the process unit. It this case, repair may be delayed until the next process unit shutdown.

Test methods for detecting leaks are specified. SOCMI facility operators are also required to maintain records of the monitoring of all components and the repair of all identified leaks. In addition, quarterly reports must be submitted to the NYSDEC.

Exemptions are allowed for components not in gas/vapor or light liquid service, components in vacuum service, components in process units which only produce the regulated compounds as byproducts and components in service fewer than 300 hours a year. These exemptions are consistent with EPA policy and guidance.

Section 236.6(e)(3) allows NYSDEC to accept the use of alternative methods of compliance if a source can demonstrate that the methods utilized constitute RACT. NYSDEC has agreed that for purposes of being federally enforceable it will submit any alternate requirements to EPA for approval. EPA will not recognize any alternate requirement until it is approved by EPA. Approval of a variance request will involve a case-by-case review that will be based on the effect of the proposed variance on air quality and on the ability of a facility to comply with the existing regulation.

Because EPA believes that part 236 meets the RACT requirements for SOCMI sources, EPA is proposing to approve part 236.

Part 200

Revised part 200 contains several new definitions and revisions of several other definitions. In addition, it lists the federal new source performance standards (NSPS), and the national emission standards for hazardous air pollutants (NESHAPS) that EPA has delegated NYSDEC the authority to implement.

The definitions that have been added to part 200 are: Municipal solid waste, municipal solid waste incineration facility, nonreactive volatiles, nonvolatile material and PM10.

The definitions that have been revised are: Air cleaning installation, emission, emission rate potential, facility, incinerator, maximum operating heat input, modification, process, refuse, standard conditions and volatile organic compound (VOC).

The definition of maximum operating heat input in § 200.1(gg) was changed to reflect New York's practice of specifying the maximum operating heat input as the permissible operating limit on permits to construct or certificates to operate. This practice was established by an April 27, 1983 letter from the Air Director of NYSDEC and will now be incorporated into the SIP.

The definition of VOC in § 200.1(mmm) was changed to reflect EPA's definition of VOC (40 CFR 51.100(s)). Instead of using vapor pressure limits as a means of defining VOC, it now is defined as an organic compound which participates in atmospheric photochemical reactions. New York's revised definition of VOC allows sources to measure VOC's either by EPA approved test methods in appendix A of title 40 Code of Federal Regulations part 60 or by an alternative method acceptable to the NYSDEC on the basis of a demonstration that it is as accurate as the appendix A method. The ability to use alternate test methods is needed for the rare instances when standard test methods cannot be used. NYSDEC has agreed that for purposes of being federally enforceable it will submit these alternate test methods to EPA for approval. EPA will not recognize any alternate test method until it is approved by EPA. Approval of an alternative test method will be based on a case-by-case review that involves the comparison of the proposed test method and the EPA method and on the ability of a facility to comply with the existing regulation.

The definition of nonvolatile material in § 200.1(oo) also allows for the use of alternative test methods. For the reasons explained above, NYSDEC has agreed that for purposes of being federally enforceable it will submit these alternate test methods to EPA for approval.

Section 200.10 lists the NSPS and NESHAPS that EPA has delegated to NYSDEC. This section is for informational purposes only and is not part of the SIP. The official list of NSPS's delegated to NYSDEC appear in 40 CFR part 60.4(ff)(1) and the NESHAPS are officially delegated to NYSDEC through **Federal Register** notices. Since this section is not part of the SIP, EPA is not granting either an approval or a disapproval of this section. EPA notes here that this section lists a number of NSPS and NESHAPS that have not been delegated to NYSDEC. At this time, EPA has not delegated to NYSDEC the following NSPS that are listed in table 1 of part 200.10: 40 CFR 60 subpart Db Industrial-Commercial-Institutional Steam Generating Units, 40 CFR 60 subpart Kb, Volatile Organic Liquid Storage Vessels Constructed after July 23, 1984; 40 CFR 60 subpart Na, Secondary Emissions from Basic Oxygen Processes Steelmaking Facilities; 40 CFR 60 subpart BBB, Rubber Tire Manufacturing and 40 CFR part 60 subpart TTT, Surface Coating of Plastic Parts for Business Machines. EPA has also not delegated the following NESHAPS, listed in table 2 of part 200.10: 40 CFR part 61 subpart O, Arsenic from Primary Copper Smelters and 40 CFR part 61 subpart P, Arsenic from Metallic Arsenic Production. EPA retains primary authority to implement the above standards. Therefore, sources subject to the above standards must make any required submissions to the EPA Region II office. Specific requirements for the individual NSPS and NESHAPS can also be found in current volumes of the CFR. All of the other NSPS and NESHAPS listed in tables 1 and 2, respectively, of part 200.10 have been delegated to NYSDEC.

EPA is proposing to approve part 200.

Conclusion

EPA is proposing approval of parts 200 and 236 because they are consistent with EPA policy and guidance and therefore EPA believes they meet the RACT requirements of section 182(a)(2)(A).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant

impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 29, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92–30292 Filed 12–11–92; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 417 and 434

Office of Inspector General

42 CFR Part 1003

[OCC–024–P]

RIN 0938–AF74

Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS. Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing Federally-qualified health maintenance organizations (HMOs) and competitive medical plans (CMPs) contracting with the Medicare program, and certain HMOs and health insuring organizations (HIOs) contracting with the Medicaid program, by implementing requirements in sections 4204(a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 concerning physician incentive plans.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 12, 1993.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services. Attention: OCC–024–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OCC–024–P. Written comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

Organizations and individuals desiring to submit comments on the reporting requirements discussed under the section on "Collection of Information Requirements" of this preamble should direct them to the Health Care Financing Administration at one of the addresses cited above, and to the Office of Information and Regulatory Affairs, Attention: Allison Herron Edyt, Office of Management and Budget, New Executive Office Building (Room 3001), Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT:

Medicare: Parashar Patel, (202) 619–3166.

Medicaid: Ann Page, (410) 966–5364.

Office of Inspector General: Zeno St. Cyr, II, (202) 619–3270.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Prepaid health care organizations, such as health maintenance organizations (HMOs), competitive medical plans (CMPs), and health insuring organizations (HIOs), are entities that provide enrollees with comprehensive, coordinated health care in a cost-efficient manner. The goal of prepaid health care delivery is to control health care costs through preventive care and care management and provide enrollees with affordable, coordinated, quality health care services. Titles XVIII and XIX of the Social Security Act (the Act) authorize contracts with prepaid health care organizations for the provision of covered health services to Medicare beneficiaries and Medicaid recipients. Such organizations may contract under either a risk-based or cost-reimbursed contract.

B. Medicare

Section 1876 of the Act authorizes the Secretary to enter into contracts with eligible organizations (HMOs that have been Federally qualified under section 1310(d) of the Public Health Service Act, and CMPs that meet the requirements of section 1876(b)(2) of the Act) to provide Medicare-covered services to beneficiaries, and specifies the requirements to be met by the organizations. Section 1876 of the Act also provides for Medicare payment at predetermined rates to eligible organizations that have entered into risk-based contracts under Medicare, or for payment of reasonable costs to eligible organizations that have entered into cost-reimbursed contracts. Implementing Federal regulations for the organization and operation of Medicare prepaid health care organizations, contract requirements, and conditions for payment are located at 42 CFR 417.400–417.694.

Risk-based organizations are paid a prospectively-determined per capita monthly payment for each Medicare beneficiary enrolled in the organization. This capitated payment is the projected actuarial equivalence of 95 percent of what Medicare would have paid for the Medicare beneficiaries if they had received services from a fee-for-service Medicare provider or supplier. Organizations paid on a risk basis are liable for any difference between the Medicare prepaid amounts and the actual costs they incur for providing services, and are therefore "at risk."

Cost-reimbursed organizations are paid monthly interim per capita payments that are based on a budget. Later, a retrospective cost settlement occurs to determine the reasonable costs actually incurred by the organization for the covered services it furnished to its Medicare enrollees.

C. Medicaid

Section 1903(m) of the Act specifies requirements that must be met for States to receive Federal financial participation (FFP) for their contracts with organizations (HMOs or HIOs) to provide specific arrays of services ("comprehensive services") on a risk basis, either directly or through arrangements. Federal implementing regulations for these contract requirements and conditions for payment are located at 42 CFR part 434.

States determine the per capita monthly rates that are to be paid to risk-based organizations. FFP is available for these payments at the matching rate applicable in the State as long as we determine that: (1) the HMO or HIO rates are actuarially sound; (2) the rates do not exceed the cost of providing the same scope of services on a fee-for-service basis, to an actuarially equivalent non-enrolled population group; and (3) the contract meets the additional requirements at 42 CFR part 434 and 45 CFR part 74.

II. Legislative History

Section 9313(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99–509, enacted statutory language prohibiting hospitals and prepaid health care organizations with Medicare or Medicaid risk contracts from knowingly making incentive payments to a physician as an inducement to reduce or limit services to Medicare beneficiaries or Medicaid recipients. Under OBRA '86, parties who knowingly made or accepted such payments would have been subject to specified civil money penalties. OBRA '86 also required that the Secretary report on incentive arrangements in HMOs and CMPs.

The original implementation date for the OBRA '86 physician incentive provisions applicable to prepaid health care organizations was April 1, 1989. This date was extended by section 4016 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100–203, to April 1, 1990. Section 6207 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Pub. L. 101–239, further extended the date to April 1, 1991. Sections 4204(a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Pub. L. 101–508, repealed the prohibition of all physician incentive plans in prepaid health care organizations and enacted requirements for regulating these plans.

Specifically, section 4204(a)(1) of OBRA '90 amended section 1876(i) of the Act to list these requirements, which are that prepaid health care organizations must:

- Not operate a physician incentive plan that directly or indirectly makes specific payments to a physician or physician group as an inducement to limit or reduce medically necessary services to a specific individual enrolled with the organization;
- Disclose to HCFA their physician incentive plan arrangements in such detail as to allow HCFA to determine compliance of the arrangements with Departmental regulations; and
- In instances where a physician incentive plan places a physician or physician group at "substantial financial risk" (as defined by the Secretary) for services not provided directly, provide the physicians or physician groups with adequate and appropriate stop-loss protection (under standards determined by the Secretary), and conduct surveys of currently and previously enrolled members to assess the degree of access to services and the satisfaction with the quality of services.

Each Medicare risk and cost contract must provide that the organization may not operate a physician incentive plan that does not meet the requirements stated above. Section 4731 of OBRA '90 enacted similar provisions for the Medicaid program by amending sections 1903(m)(2)(A) and 1903(m)(5)(A) of the Act.

In addition, sections 4204(a)(2) and 4731(b)(2) of OBRA '90 added violations of the above requirements to the list of violations in sections 1876(i)(6) and 1903(m)(5) of the Act that could subject an HMO, CMP, or HIO to intermediate sanctions and civil money penalties. (On July 22, 1991, we published a Notice of Proposed Rulemaking (NPRM) that described these intermediate sanctions and civil money penalties (see 56 FR 33403). For clarity and consistency, we are republishing certain sections of the regulations that were proposed in the July 22 NPRM because we are proposing to revise those regulations to incorporate the penalty provisions of this proposed rule. See Section V. of this preamble, Revisions to the Regulations, for the specific sections that are being republished).

III. Discussion of Physician Incentive Plans

Effective utilization control that identifies both under- and over-utilization is essential for the efficient operation of prepaid health care organizations. A prepaid health care organization needs to minimize over-utilization of services not only to prevent unnecessary spending, but also to reduce the risk of unnecessary and intrusive procedures. However, a prepaid health care organization also needs to assure that all medically necessary services are provided to protect patient health and to prevent more costly care later. In addition, if a prepaid health care organization inappropriately limits care, the organization may be risking its reputation and jeopardizing its ability to compete in the marketplace. Although professional ethics, risk of malpractice liability, and market competition help ensure proper utilization of services, Medicare and Medicaid require both cost-reimbursed and risk organizations to have internal quality assurance programs, external quality review or medical audits, and other mechanisms to ensure proper delivery of health care services. Medicare and Medicaid contracts also are subject to periodic monitoring for compliance. In addition, the July 22, 1991, NPRM on civil money penalties and intermediate sanctions provides for sanctions that may be imposed when an HMO or CMP fails substantially to provide medically necessary services.

One mechanism many prepaid health care organizations use to encourage proper utilization is a financial incentive as part of a physician incentive plan. OBRA '90 defines a physician incentive plan as any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.

A review and analysis of physician incentive plans in a sample of HMOs was conducted and presented in DHHS's 1990 Report to the Congress, "Incentive Arrangements Offered by Health Maintenance Organizations and Competitive Medical Plans to Physicians." The results showed a wide variety of incentive plans. There were differences in the types of incentive payments, the distribution of incentives, the basis for determining the incentive payments, and the parties or entities the incentives affected. This wide variety of physician incentive plans make it difficult to develop regulations that will apply to all arrangements. However, despite the differences, the Report examined several broad categories of

incentive arrangements, which we have considered in developing this proposal.

Physicians in prepaid health care organizations generally receive fee-for-service payments, salary, or capitation payments (a set dollar amount per patient) for the services they provide. Financial incentives may be used with the various types of physician payments to encourage appropriate levels of referral services. Referral services are any specialty, inpatient, outpatient, or laboratory services that a physician arranges but does not provide directly. Prepaid health care organizations may hold physicians or physician groups at risk for all or a portion of the cost of referral services to that they have a financial incentive to arrange for the provision of only medically necessary services. If the physician or physician group successfully controls the levels of referral services, it may receive additional compensation (an incentive payment) from the prepaid health care organization. The incentive payment may take the form of unused capitation, a returned withhold, or a bonus payment. Each of these methods is described below.

A capitation payment is a set dollar amount per patient per month that a prepaid health care organization pays to a physician or physician group to cover a specified set of services, without regard to the actual number of services provided to each person. The capitation may cover the physician's own services, referral services, or all medical services and/or administrative costs. If patient costs exceed the capitation amount, the physician must absorb these additional costs. If costs are below the capitation, the physician may keep the additional money.

Withholds are percentages of payments or set dollar amounts that a prepaid health care organization deducts from each physician's or physician group's payment (salary, fees, or capitation). The amount withheld is set aside in pools to pay for specialty referral services and inpatient hospital services. The withhold is at risk because it may be used to pay for referral services. When referral costs exceed a prepaid health care organization's budget, part or all of the withhold may be forfeited depending on the terms of the physician's contract. If referral costs do not exceed the ceiling, part or all of the withhold may be returned to the physician or physician group. Some plans limit the amount of the risk to the withhold; others hold the physician or physician group liable for amounts beyond the amount withheld. Withholds are most often used with fee-for-service or capitation payments.

Bonuses are payments prepaid health care organizations make to a physician or physician group beyond the physician's set salary, fee-for-service payments, or capitation. Bonuses may be based on a physician's or physician group's level of referral services, or may be independent (e.g., based on the overall performance of the organization). This system is most often used for salaried physicians in staff model HMOs.

If the physician or physician group has excessive referrals (as defined by the prepaid health care organization), it may not receive any incentive funds. In addition, the prepaid health care organization may hold the physician or physician group liable for referral costs that exceed a specified threshold. The prepaid health care organization may also increase the physician's or physician group's withhold or make other changes in its incentive arrangements.

Many physician incentive plans incorporate stop-loss protection to limit the liability of the physician or physician group. Most often, the stop-loss protection limits a physician's maximum liability per patient to a specific dollar amount. For example, the organization may limit a physician's liability to $5,000 per patient from his or her withhold fund, even if actual charges are higher. In some cases, prepaid health care organizations place an aggregate limit on the liability the physician could face. Instead of limiting liability to $5,000 per patient, the organization could limit total liability for all patients to $25,000. Stop-loss protection is particularly common with capitation arrangements.

There are other variables that may affect the amount of risk or the impact of financial incentives on physicians. For example, incentive payments may be calculated according to each individual physician's performance or by a physician group's performance. The size of the physician group will also impact the incentives. Performance may be evaluated over a long or short timeframe. The number of enrollees among whom the risk is spread and the amount of total income at risk vary. In addition, the relative health status of the patients involved increases risk if the enrollees are high utilizers, or may result in lower risk if the enrollees are healthier than the average enrollee. The percentage of the physician's practice that is made up of HMO/CMP/HIO patients, as opposed to fee-for-service patients, is also pertinent.

IV. Provisions of the Physician Incentive Plan Requirements

Section 9313(c) of OBRA '86 prohibited prepaid health care organizations with Medicare or Medicaid risk contracts from knowingly making incentive payments to a physician as an inducement to reduce or limit services to Medicare beneficiaries or Medicaid recipients. However, research conducted by DHHS, subsequent to the OBRA '86 prohibition, failed to find a link between the quality of care provided under the Medicare and Medicaid programs and the structure of physician incentive plans. Similarly, other researchers have found no linkage. Despite the lack of evidence, however, various media sources have alluded to quality problems related to physician incentive payments.

Sections 4204(a) and 4731 of OBRA '90 repealed the OBRA '86 prohibition of physician incentive plans in HMOs and, instead, required that physician incentive plans be regulated. To implement this legislation for Medicare, we are proposing to impose a new contract requirement pertaining to physician incentive plans. For Medicaid, we are proposing new requirements for the granting of FFP for State Medicaid agency contracts with HMOs and HIOs. These requirements address:

- The scope of the regulation;
- Disclosure requirements;
- Criteria for the determination of substantial financial risk;
- Requirements for physician incentive plans that place physicians at substantial financial risk;
- Prohibitions on certain physician payments; and
- Penalties.

Each category of requirements is discussed individually below.

We are proposing regulations, as required by OBRA '90, and after extensive consultation with the HMO industry, which we believe establish risk thresholds that are within the bounds of current industry practices and do not unduly restrict prepaid health care organizations' operational flexibility. However, if new information regarding the influence of various elements of physician incentive plans becomes available, we will evaluate it to determine if the approach in our proposed regulations should be reconsidered.

A. Scope

These proposed regulations apply to all Medicare- or Medicaid-contracting HMOs, CMPs, and HIOs with physician incentive plans. A physician incentive

plan is any compensation arrangement between an HMO, CMP, or HIO and a physician or a physician group that may directly or indirectly have the effect of limiting or reducing services provided to enrollees.

We are proposing to apply these requirements only to physician incentive plans that base incentive payments (in whole or in part) on services provided to Medicare beneficiaries or Medicaid recipients. We are proposing to limit the scope of the requirements based on the fact that sections 4204(a)(2) and 4731 of OBRA '90 amended sections 1876 and 1903(m) of the Act, which govern Medicare and Medicaid contracts, but did not amend title XIII of the Public Health Service Act, which governs all Federally-qualified HMOs. In addition, violations of the physician incentive plan requirements may result in civil money penalties and/or intermediate sanctions which only affect a plan's payment for, or ability to enroll Medicare beneficiaries or Medicaid recipients. We believe that these facts, taken together, reflect Congressional intent that this legislation apply only to Medicare and Medicaid enrollees of prepaid health care organizations.

We considered making these proposed regulations applicable to all physician incentive arrangements in HMOs, CMPs, and HIOs (including arrangements that affected only commercial enrollees), instead of limiting it to arrangements that affect only Medicare beneficiaries and Medicaid recipients. The statutory language uses the term "individuals enrolled with the organization," which could be interpreted as all of an organization's enrollees, not just Medicare or Medicaid enrollees as proposed in this rule. We are specifically seeking comments regarding the proposed scope of the regulations.

B. Disclosure

We are proposing that an HMO, CMP or HIO disclose to HCFA (for Medicare) or to the State Medicaid agency (for Medicaid) sufficient information on physician incentive plans that affect Medicare beneficiaries or Medicaid recipients so that HCFA or States may determine whether the organization is in compliance with our proposed requirements. We are proposing that the organization submit the information—

- When it applies for a contract;
- When it applies for a service area expansion (for Medicare);
- Thirty calendar days before a change in its incentive plan; or
- Within 30 calendar days of a request by HCFA (for Medicare) or the State Medicaid agency (for Medicaid).

In addition, we are proposing a one-time disclosure requirement. This one-time disclosure would require organizations that have Medicare or Medicaid contracts in effect when this proposal is published as a final rule to submit the required information within 30 days from the effective date of the final rule.

Under our proposed disclosure requirements, an organization must submit details about any incentive plan that affects Medicare beneficiaries or Medicaid recipients to HCFA (for Medicare) or to the State Medicaid agency (for Medicaid) so that these agencies may determine whether the plan meets all other proposed requirements for physician incentive plans. All organizations must submit sufficient information to determine whether the physician incentive plan includes the prohibited arrangements proposed at § 417.479(c) and whether the plan places physicians or physician groups at substantial financial risk, as defined in proposed § 417.479(d). Organizations that hold physicians or physician groups at substantial financial risk must also submit sufficient details regarding their enrollee surveys and stop-loss protection so that HCFA (for Medicare) or the State Medicaid agency (for Medicaid) can determine that they comply with the proposed standards. If HCFA or the State Medicaid agency determines that the information the organization supplies is insufficient, the organization will be required to supply additional information within 30 days of receipt of written notification.

For Medicare contracting HMOs and CMPs, we considered reviewing the physician incentive plans only at the time of site visits, which HCFA conducts at least every 2 years. However, if a prepaid health care organization changed its physician incentive plan shortly after a site visit, we may not learn of the new compensation arrangements for 2 years. Requiring disclosure of material 30 days before a change in the physician incentive plan will ensure that we have current information. It also will facilitate quick correction of plans if an organization is found out of compliance. Because HMOs and CMPs usually do not change their incentive plans more often than annually, we do not believe that this requirement will be unduly burdensome.

We also considered not requiring submission of the physician incentive plan each time it was substantially changed. However, we believe that it is important to maintain current information on the incentive plans. We also believe that this requirement is consistent with Congressional intent that HCFA be apprised of the specifics of an organization's current physician incentive plans.

C. Substantial Financial Risk

We are proposing that a physician or physician group be considered to be at substantial financial risk if more than a specified percentage (the risk threshold) of the prepaid health care organization's total potential payments to the physician or physician group is at risk, and the risk is based on the costs of services the physician or physician group does not provide (e.g., referrals to specialists or the costs of inpatient care). For purposes of determining substantial financial risk, we are defining payments as any amounts the organization pays physicians or physician groups for services they provide, plus amounts paid for administration and controlling levels or costs of referral services. Payments do not include bonuses or other forms of compensation that are not based on referral levels (such as bonuses based solely on quality of care provided, patient satisfaction, and overall plan performance).

"At risk" means amounts that a physician or physician group may or may not receive due to factors other than the number of patients served (for capitated physicians), hours worked (for salaried physician), or services performed by the physician (for fee-for-service physicians). For example, an amount would be "at risk" if its receipt depended on the status of the pool for referral services at a specified time.

Under this proposed rule, the risk threshold that determines substantial financial risk depends on the frequency with which the health plan assesses or distributes incentive payments. The risk threshold we are proposing for substantial risk for prepaid health care organizations that assess or distribute incentive payments no more often than annually is 25 percent. The risk threshold we propose for prepaid health care organizations that assess or distribute incentive payments more often than annually is 15 percent. The term "assess" means the final calculation of the incentive payment, after which further actions by the physician or physician group will not affect the incentive payment for the period being assessed. An incentive payment assessment does not include physician profiles or updates that inform providers of their performance under an incentive plan if the period being assessed has not expired.

Because physicians and physician groups voluntarily agree to participate in financial incentive arrangements, we are proposing an outlier approach in determining substantial financial risk. The DHHS Report to the Congress identified 25 percent and 30 percent as the upper ranges of withholds used under typical circumstances. In addition, the Group Health Association of America identified the median withhold percentage as 20 percent (GHAA Research Brief, Nov. 1987). Thus, our proposed rule establishes two thresholds for determining when substantial financial risk exists: (1) 25 percent of physician or physician group payments from prepaid health care organizations that assess or distribute incentive payments no more often than annually; and (2) 15 percent when the assessment or distribution occurs more often than on an annual basis. Further, we believe that an outlier approach is appropriate since there is no evidence that conventional physician incentive plans (as discussed in DHHS's 1990 Report to the Congress) have reduced access or caused quality of care problems.

It is also important to note that physician financial incentives do not work in isolation. There are other factors, such as the threat of malpractice, quality assurance programs, peer review, and professional ethics, that work in conjunction with financial incentive plans to ensure that the appropriate level of services is provided.

1. Substantial Financial Risk When Incentive Payments are Assessed No More Than Annually

We believe that allowing possible forfeiture of up to 25 percent of a physician's or physician group's payments (as defined in § 417.479(b)) is reasonable for purposes of determining whether substantial financial risk exists when incentive payments are made no more often than annually. As stated in DHHS's Report to the Congress concerning physician incentive plans, a large proportion of physicians in fee-for-service have bad debts ranging from 10 to 20 percent (i.e., bills never collected) and many have voluntarily reduced their fees as much as 20 to 25 percent below their usual charges for selected patients. Therefore, financial incentive plans that place physicians or physician groups at risk for 25 percent of their payments from prepaid health care organizations would appear to be of the same magnitude as the reduction in payments many physicians voluntarily accept in return for increased volume and protection against bad debt, and in response to marketplace competition. (See DHHS's 1990 Report to the Congress, p. V–37.)

The DHHS Report to the Congress also noted that prepaid health care organization physicians may perceive withholds as discounts. The Report states that "in many cases there is no expectation that more than some small proportion of the withhold will ever be paid. It can be argued that in these circumstances the withholds are in effect discounts . . .". (See p. V–37) The withhold is often used to cover unanticipated expenses and is usually returned only if there are plan surpluses.

Often, prepaid health care organizations use more than one type of compensation arrangement. If more than one type of arrangement is used, we will consider all the different risk arrangements placed on physicians or physician groups to determine whether they collectively exceed the 25-percent threshold. For example, if an organization's payments included withholds and bonuses, physicians or physician groups would be at substantial financial risk if the combined withhold amounts and potential bonuses comprised more than 25 percent of their total potential payments from the plan.

We would apply the 25-percent risk threshold as follows:

a. *Withholds*—Withholds on payments to physicians or physician groups to cover referral services put them at substantial financial risk when:

- The withholds are greater than 25 percent of payments for services they provide directly and administrative costs; or
- The withholds are 25 percent or less, but the physicians or physician groups are liable for amounts over the 25-percent threshold.

This would include withholds greater than 25 percent that an organization imposes because a physician repeatedly makes referrals for services that are not medically necessary. We emphasize, however, that physicians would only be considered to be at substantial financial risk if they are at risk for services they do not provide.

Example 1: An organization's annual payment to a physician for his or her services and administration total $100,000 and the organization withholds 25 percent (or $25,000) to cover deficits in the referral or inpatient hospital pool. The organization does not hold the physician liable for referral costs that exceed the withhold. The physician is not at substantial financial risk because he or she was not at risk for more than 25 percent of payments.

Example 2: An organization's annual payments to a physician total $100,000 and the organization imposes a 20-percent withhold ($20,000) for referrals. In addition, the organization holds the physician liable for up to $5,000 of any referral costs not covered by the withhold. The physician's referrals total $35,000. That is, the physician's referral costs exceed the withhold by $15,000. However, the organization does not hold its physicians liable for amounts over 25 percent of their payments. Since the physician is not liable for amounts over 25 percent of payments ($25,000), the physician is not at substantial financial risk. Had the organization held the physician liable for all amounts over the withhold (rather than limiting such liability to $5,000 for referral costs not included in the 20-percent withhold), the physician would have lost an additional $15,000 (or $10,000 more than the 25-percent risk threshold), and would have been at "substantial financial risk" because the physician's referral costs of $35,000 exceeded 25 percent of payments.

b. Bonuses—Bonuses are of concern only when they are based on levels of referral services arranged by physicians or physician groups. We believe that bonuses that represent a considerable portion of a physician's payments from an organization potentially provide the same incentives to limit services as withholds. This is true particularly since many physicians do not expect to receive their withholds back, and perceive return of all or a portion of a withhold as a bonus. Therefore, we are proposing to treat bonuses based on levels of referral services comparable to withholds.

Thus, we propose that substantial financial risk exists if bonuses represent an additional payment greater than 33 percent of the total amount the organization would pay the physician or physician group for services provided directly and for administrative costs if the bonus was not paid. The effect of this limit is to ensure that no more than 25 percent of a physician's total potential income is contingent on the status of the referral pool at the end of a specified period.

Thus, this proposal consistently limits liability of physicians or physician groups for referral services to 25 percent of payments received from an organization. Similarly, it limits bonuses based on a physician's or physician group's referral levels. The objective is to treat compensation arrangements that are based on utilization factors similarly. To the extent that surpluses or deficits accrue in risk pools that cover referrals and

inpatient care, individuals subject to withholds and bonuses would be treated comparably in the distribution of the surpluses or deficits. Bonuses that are not based on utilization will be evaluated to determine if they meet the definition of a physician incentive plan as defined in section 4202(a) of OBRA '90.

Example: An organization's annual payments to a physician total $75,000. If the physician does not exceed utilization targets for referral and inpatient hospital services, he or she is eligible for a $25,000 bonus (33 percent of $75,000). The physician is not at substantial financial risk because the bonus did not exceed 33 percent of payments.

c. *Combination Withhold and Bonuses*—We are proposing that, if a physician incentive plan consists of both withholds and bonuses as incentives to provide appropriate utilization, the organization must ensure that no more than 25 percent of the total potential payments to the physicians or physician groups is contingent on the cost of referral services. Stated another way, the amount of the payment without the withheld amount and the bonus must be at least 75 percent of the total amount of the payments, including the withhold and bonus.

There are two methods by which an organization may determine the appropriate bonus for any given withhold. Both methods will result in the same withhold and bonus percentages. In the first method, the organization calculates the withhold's portion of 25 percent. Then, using the remaining percentage, the organization prorates the 33 percent allowed for the bonus. In the second method, the organization enters the withhold percentage in the following equation: (Withhold %) = –0.75(Bonus %) + 25%.

Example: An organization withholds 20 percent of its payments to a physician under a contract that provides for the return of withholds plus bonuses. It wants to calculate the maximum bonus. By method 1, the organization calculates that 20 percent is four-fifths of 25 percent. The organization prorates the 33 percent threshold (1/5 x 33 percent) to calculate that it cannot give more than a 6.6-percent bonus without putting the physician at substantial financial risk. By method 2, the organization puts the withhold percentage in the equation:

(20%) = –0.75(Bonus %) + 25%. This also calculates to be 6.6 percent.

d. *Capitation*—We are proposing that if an organization uses withholds or bonuses in conjunction with capitation payments that cover the costs of services provided directly and administrative costs, the requirements pertaining to withholds or bonuses would apply. If the organization uses only capitation and capitates its physicians for referral services, as well as for the services they provide directly, the physician or physician group would not be considered at "substantial financial risk" if—

- The organization specifies in the physician's or physician group's contract:
  - + The maximum possible payments to be made under the capitation plan, if referral costs are low, and
  - + The minimum possible payments to be made under the capitation plan, if referral costs are high; and
- The difference between the maximum and minimum payments based on referral levels is no more than 25 percent of the maximum payment. This is consistent with the threshold for withhold and bonus incentives.

The contract could either specify actual dollar amounts or a calculation from which HCFA or States could determine that the payment would meet the test. For example, the organization could state that the maximum payment would be $100 x (the number of patients) for low referrals and the minimum payment would be $75 x (the number of patients) for high referrals. If the organization does not clearly state the physician's or physician group's risk in the contract, as expressed in maximum and minimum payments to the physician or physician group, the incentive plan would be considered as "substantial financial risk."

In examples 1 and 2, an organization capitates a physician for all medical services at $200,000 annually. This capitation includes $100,000 for the services the physician provides directly and $100,000 for referral services.

Example 1: The organization pays for all referral services if the total cost of referral services exceeds $100,000. In other words, none of the physician's capitation for his own services is at risk. In addition, the HMO allows the physician to retain up to $33,000 of the unused capitation for referral services. The contract clearly states that:

- Regardless of the level of referral services, the physician will retain the capitation of $100,000 for services provided directly.
- If referrals are lower than anticipated, the physician may retain only the first $33,000 of savings. The highest possible payments from the HMO would be $133,000.

The amount at risk would be $133,000 minus $100,000, or $33,000, which is 24.8 percent of $133,000. Therefore, the physician is not at substantial financial risk.

Example 2: The organization does not allow the physician to retain any savings from the referral account. If referrals cost less than $100,000, the physician must return the remainder of the referral account to the HMO. If the referral costs are more than $100,000, the physician may be liable for up to 25 percent of the capitation for his own services. The contract clearly states that:

- If referrals exceed $125,000, the physician will receive no less than $75,000.
- If referrals are less than $100,000, the physician will receive no more than $100,000.

Since the difference ($25,000) between the highest possible payments ($100,000) and the lowest possible payments ($75,000) is no more than 25 percent of the maximum payments, the physician is not at substantial financial risk.

Example 3: The organization pays its physicians $200/patient/month for all health care services. Of that amount, $110 of the capitation cover the services the physician provides directly and the remaining $90 cover the costs of the referral services. The health plan specifies in its physician contracts that:

- The health plan will pay stop-loss protection for the physician if referral costs average more than $100 per patient. In other words, the physician will receive at least $100/patient/month.
- Physicians may retain only up to $23/patient/month, if referral costs average less than $90/patient/month. In other words, the physician will not retain more than $133/patient/month.

The difference between the highest possible payments ($133/patient/month x the number of patients) and the lowest possible payments ($100/patient/month) is $33/patient/month. This is 24.8 percent of the highest possible payments. Therefore the physician is not at substantial financial risk.

Arrangements that do not fit the above descriptions do not automatically put physicians at substantial financial risk. However, the organization must ensure that no more than 25 percent of the total payments to the physician or physician group for services provided directly and for administrative costs are at risk based on levels of referral services. Risk may exceed the threshold if stop-loss is provided and surveys are conducted.

2. Substantial Financial Risk When Incentive Payments Are Assessed More Often Than Annually

We are proposing a lower risk threshold (15 percent) for incentive

plans that assess or distribute incentive payments more than once a year. As noted in the DHHS Report to the Congress, referenced above, and in the General Accounting Office's (GAO's) Report to the Congress, "Medicare: Physician Incentive Payments by Prepaid Health Plans Could Lower Quality of Care," the shorter the timeframe over which incentive arrangements assess a physician's or physician group's performance, the more influence the incentive arrangement will have. This is because physicians or physician groups have fewer patients in a short timeframe over which to spread the risk of expensive treatment than in a long timeframe. Since these types of arrangements have the potential to have a stronger influence on physician behavior, we believe that the lower risk threshold is appropriate.

We would apply the 15-percent risk threshold in the same manner as we propose to apply the 25-percent risk threshold for incentive payments. As a reminder, the risk threshold applies only if the risk is based on a physician's or physician group's levels or costs of referral services. Specifically, we would implement the 15-percent risk threshold as follows:

a. Withholds—Withholds meet the risk threshold if:

- The withhold is greater than 15 percent of payments for services the physician or physician group provides directly plus administrative costs; or
- The withhold is 15 percent of payments or less, but the physician or physician group is liable for referral amounts over the 15-percent threshold.

b. Bonuses—Bonuses would exceed the risk threshold level if they represent more than 17.6 percent of the payments for administrative costs and services provided directly. Stated another way, bonuses would exceed the risk threshold if they exceeded 15 percent of the total of the payments plus the bonus.

c. Combination Withhold and Bonuses—If a physician incentive plan uses both withholds and bonuses, the organization must ensure that the physician's or physician group's liability is no more than 15 percent of their total payments. Stated another way, the amount of the payments without the withheld amount and the bonus must be at least 85 percent of the amount of the payments including the withhold and the bonus.

The organization may determine the appropriate bonus for any given withhold by two methods. First, the organization may use the prorating method. This method is discussed earlier in this preamble in the section entitled "Substantial Financial Risk When Incentive Payments Are Assessed No More Than Annually." Second, the organization may enter the withhold percentage in the following equation:

(Withhold %) = –0.85 (Bonus %) + 15%.

d. Capitation—If an organization uses withholds or bonuses in conjunction with capitation that covers the costs of services provided directly plus administrative costs, the requirements pertaining to withholds or bonuses would apply. If the organization uses capitation for referral services, we would evaluate the arrangement as discussed earlier in this preamble under the section entitled "Substantial Financial Risk When Incentive Payments Are Assessed No More Than Annually." The only difference would be that we would consider physicians and physician groups to be at substantial financial risk once their risk exceeded 15 percent of payments, as compared to the 25-percent risk threshold.

Arrangements that are not discussed in the preceding categories are not automatically assumed to create substantial financial risk. However, the organization must ensure that no more than 15 percent of the total payments to the physician or physician group are at risk based on referral services. Otherwise, the requirements to provide stop-loss protection and conduct periodic surveys under section 1876(i)(8)(A)(ii) of the Act will apply.

3. Other Options Considered for Defining Substantial Financial Risk

In addition to the definition presented in this NPRM, we considered several other options for defining substantial financial risk. We considered alternatives that would address many factors, in addition to the frequency of risk assessment, that affect the impact of the strength of incentive arrangements. First, we considered rating each factor that could influence an incentive plan. The organization's risk threshold would be the lowest risk threshold rating among its varying factors. For example, HCFA could rate the substantial financial risk threshold for Factor A (less than 5 physicians in a group) at 15 percent and Factor B (less than 250 prepaid health care organization patients) at 10 percent. An organization with no factors would have a threshold of 25 percent. An organization with Factor A would have a threshold of 15 percent. An organization with Factor B would have a threshold of 10 percent. An organization with both Factors A and B would also have a threshold of 10 percent, because the threshold of incentive plans with multiple factors would be the threshold of the lowest individual factor (in this case, Factor B, with a 10-percent threshold).

One specific factor we considered was the size of the physician's or physician group's patient panel. The use of a percentage risk will have varying effects on small and large patient panels. The following examples demonstrate these effects. In examples a. and b., the physician's total income is $100,000; the total patient panel is 1,000 patients; the HMO pays $100/patient/year; and the risk incentive is 25 percent.

a. Individual Physician, 100 HMO patients
Physician's income from HMO = $10,000 (one-tenth of total income)
Total dollars at risk = $2,500 (25% of $10,000)
Total income at risk = 2.5%

b. Individual Physician, 1,000 HMO patients
Physician's income from HMO = $100,000 (all income is from HMO)
Total dollars at risk = $25,000
Total income at risk = 25%

In examples c. and d., there are 10 physicians in the group, each sees 1,000 patients (total panel = 10,000 patients). As above, the HMO pays $100/patient/year and the risk incentive is 25 percent. The physician group's total income is $1,000,000.

c. Physician Group, 1,000 patients
Physician group's income from HMO = $100,000 (one-tenth of total income)
Total dollars at risk = $25,000 (25% of $100,000)
Total income at risk = 2.5%

d. Physician Group, 10,000 patients
Physician group's income from HMO = $1,000,000 (all of income)
Total dollars at risk = $250,000
Total income at risk = 25%

The smaller the patient panel, the more likely the physician or physician group is to lose the entire incentive payment. However, as the examples illustrate, in small patient panels, the incentive payment is also much smaller, both in absolute terms and as a percentage of total payments.

There are two theories on how this risk will affect physicians. First, in cases where the physician is more likely to lose the entire incentive payment (i.e., small patient panels), the incentive might have a larger effect. This would be true if the physician viewed each group of patients as a line of business. Even a small incentive payment may have a large effect if the physician believed that the loss of the incentive payment would make that line of business unprofitable.

On the other hand, a large patient panel would result in a larger absolute incentive payment that represents a larger proportion of total earnings. The physician or physician group may pay more attention to a larger incentive payment, even if he/she/it has a smaller chance of losing the entire payment. Since these results are contradictory, we did not base determinations of substantial financial risk on panel size. However, we are interested in comments that address expected physician behavior in relation to the size of the patient panel.

We also considered developing a grid that would adjust the risk threshold according to the combination of factors in an incentive plan. An organization would identify its factor on the grid to determine its threshold level for substantial financial risk. Possible factors include the size of the physician pool and the services for which physicians are at risk. For example, if Factor A's threshold is 15 percent and Factor B's is 10 percent, Factors A and B could be limited to 5 percent.

With the exception of the special rule for cases in which assessments are made more frequently than annually, we decided not to adjust the threshold according to factors for several reasons. There are many factors that theoretically have the potential to influence incentive arrangements. However, no empirical research has been done in this area. There is no information available on the strength of the factors on incentive plans or on the effect of combinations of factors on incentive plans. In addition, some factors could either strengthen or weaken the incentive plans. For example, small patient panels may either increase or decrease risk. The risk may increase because the physician or physician group has fewer patients among whom to spread the risk. The risk may decrease because a small patient panel would represent a small portion of the physician's total income. Therefore, the level of services the prepaid health care organization patients used would have only a small impact on the physician's total income. The lack of information in this area made it extremely difficult to rate factors or develop grids on appropriate thresholds.

As mentioned earlier, there is no evidence that the customary physician incentive plans in prepaid health care organizations have caused lack of access or quality of care concerns. Since there is so little information available regarding the impact of various factors on physician behavior, and since existing incentive plans have not been problematic, we believe that our approach is reasonable and appropriate. As more information regarding the influence of various elements of physician incentive plans becomes available, we will evaluate it and, if appropriate, reconsider the definition of substantial financial risk.

Another option we considered was to define substantial financial risk as the median percentage plan withhold, as defined in the DHHS Report to the Congress. We would compare the amount of risk under the incentive plan to the median withhold percentage. The DHHS Report identified 15 to 20 percent as the most common median withhold percentages (see p. V–37), and the Physician Payment Review Commission (PPRC) testified before the Congress that most withholds were between 10 and 20 percent. (However, the actual risk to the physicians is often higher. Many plans use bonuses as well as withholds. These medians only account for risk from withholds. Therefore, actual risk is higher than reflected in the DHHS report or PPRC testimony.) Under this option, an exceptions process could be used to permit plans to exceed the median withhold level if the organization could show that the higher level would not place physicians at "substantial financial risk," without triggering the beneficiary survey and stop-loss protection.

We did not choose this option since it would require us to implement a case-by-case review of incentive plans that have not been shown to be problematic. In addition, the term "substantial financial risk" implies a greater than average risk, which supports our use of an outlier approach. Also, as discussed earlier in this preamble, we believe that an outlier approach is reasonable given physician perceptions of withholds. We also want to provide consistent guidelines so that organizations can determine whether their incentive plans are in compliance with our proposed requirements prior to submission for HCFA review.

We are concerned about the appropriateness of the 25-percent threshold for substantial financial risk when incentive payments are assessed no more than annually. As stated previously, we relied, in part, on the DHHS Report that indicated that fee-for-service physicians typically lose 10 to 20 percent of their income to bad debt, and plan physicians may "discount" their charges by 20 to 25 percent. Therefore, the 25 percent risk for services the physicians or physician groups provide may be reasonable. However, with respect to the first instance, we are concerned that such discounts may be factored into the plan's payments to the physician or physician group. If so, the 25-percent risk would be applied to an already discounted amount, which may not be reasonable. We are seeking specific comments regarding how physician compensation is determined in different models of HMOs and whether 25 percent is reasonable for all types of prepaid health care organizations. We also are particularly interested in public comments on our proposed definition of "substantial financial risk" and other alternatives that we considered but did not select.

D. Requirements for Physician Incentive Plans That Place Physicians at Substantial Financial Risk

1. Enrollee Surveys

As required by section 1876(i) of the Act, we are proposing that HMOs, CMPs, and HIOs that place their physicians or physician groups at substantial financial risk must conduct enrollee surveys. We are proposing that the surveys must:

- Either survey all current Medicare/Medicaid enrollees in the organization and those who have disenrolled (due to other than loss of eligibility in Medicaid) in the past 12 months, or survey a statistically valid sample of these same enrollees and disenrollees;
- Be designed, conducted, and results analyzed in accordance with commonly accepted principles of survey design and statistical analysis;
- Address enrollees'/disenrollees' satisfaction with the quality of the services provided and their degree of access to the services; and
- Be conducted at least annually.

We considered specifying additional parameters for the enrollee surveys, such as minimum sample size, minimum response rate, minimum confidence levels, or mandated survey questions. However, we recognize that there are a number of factors that are important to consider in designing an effective survey, and these factors may vary by HMO, e.g., the expected response rate to these surveys based on an organization's previous experiences in surveying enrollees and disenrollees. We further believe that these surveys will have the greatest utility if organizations can use the results of these surveys in conjunction with their other enrollee surveys and internal data collection efforts. For example, organizations may want to compare the survey results to information gathered on quality of care or disenrollment. If we are too prescriptive, organizations' use of the data collected might be limited. Also, stringent requirements

would be unnecessarily burdensome and could result in increased costs without correspondingly increased benefits.

Therefore, we are relying on HMOs to design their own surveys in accordance with commonly accepted principles of survey design and statistical analysis. HCFA (for Medicare) and States (for Medicaid) will review the survey methodology and results through the disclosure requirements and routine monitoring. We believe this affords the necessary safeguards to assure effective surveys. We are interested in comments addressing the approaches we did not take, as well as the proposed approach.

2. Stop-loss Protection

By statute, HMOs, CMPs and HIOs that place physicians or physician groups at substantial financial risk for referral services provided to Medicare beneficiaries and Medicaid recipients must provide adequate and appropriate stop-loss protection. We are proposing two levels of stop-loss protection depending on the incentive plan's risk threshold. If the risk threshold is 25 percent (the incentive plan assesses or distributes payments no more often than annually), then the stop-loss protection must protect physicians and physician groups from losses greater than 30 percent of the payments for services they provide, plus payments for administrative costs and controlling levels of referral services. If the risk threshold is 15 percent (the incentive plan assesses or distributes payments more often than annually), then the stop-loss protection must protect physicians and physician groups from losses greater than 20 percent of payments.

For capitated arrangements, it would be difficult to determine prospectively what stop-loss would cover 30 percent of payments for services the physicians or physician groups provide, plus payments for administrative costs and controlling levels of referral services. To make the stop-loss provisions for capitated arrangements comparable with the stop-loss provisions for bonus and withhold arrangements, we are proposing to permit no more than a 30-percent differential between the minimum and maximum payments a physician or physician group could receive. In other words, the difference between the maximum possible payments and the minimum possible payments could be no more than 30 percent of the maximum possible payments. If the incentive payments (or capitation) were paid more often than annually, the differential would be limited to 20 percent of the maximum payments.

These stop-loss levels are absolute limits on the physician's or physician group's liability. The stop-loss protection must cover all referral costs over 20 or 30 percent of payments, depending on how frequently incentive payments are made. Liability above the stop-loss protection level may not be transferred to physicians or physician groups in later contract years. Since this stop-loss protection limits total liability for all patients, it is referred to as an aggregate liability limit.

We decided to require more stop-loss protection for incentive plans that make payments more often than annually to make the provisions between the two risk thresholds equivalent. Under the 25-percent threshold, which applies to physician incentive plans that potentially exert less influence over physician behavior, the organization may increase the physician's or physician group's risk 5 percent beyond the risk threshold. Under our proposal, organizations with incentive plans with a 15-percent threshold would be able to increase the physician's or physician group's absolute risk beyond the risk threshold to the same extent, 5 percent. The organization can either provide or buy the stop-loss protection, or the physician or physician group can obtain the protection.

Many prepaid health care organizations design their stop-loss arrangements to limit liability for individual patients to a maximum dollar amount. This helps to protect against catastrophic cases. We considered placing limits on a physician or physician group's maximum liability per patient instead of using a maximum aggregate liability limit. However, without an aggregate limit on the physician's liability, a physician or physician group could ultimately receive zero net payments from the prepaid health care organizations.

Although individual stop-loss protection helps protect physicians and physician groups, a maximum limit on aggregate liability is necessary. Even if a physician group's liability is limited to no more than $10,000 per patient, if the physician group earns a good reputation for its treatment of AIDS patients, for example, it could easily be liable for all of its payments if increasing numbers of AIDs patients comprise the Medicare and Medicaid portion of the patient panel. Conceivably, the physician group would be forced to leave the prepaid health care organization, declare bankruptcy, or greatly restrict its treatment of all patients. Since it was Congressional intent to protect physicians and physician groups from unlimited liability, we believe that an aggregate limit is appropriate.

We also considered stop-loss standards that would permit more risk sharing between the prepaid health care organization and the physician or physician group. For example, we considered stop-loss protection that would cover 80 percent of referral costs when they exceeded 30 percent (or 20 percent) of payments. This would cause the physician or physician group to be liable for the remaining 20 percent of referral costs. However, we are proposing 100-percent coverage of referral costs over 30 percent (or 20 percent) of payments because even a limited risk-sharing arrangement could potentially cause a physician or physician group to be liable for large amounts of money. Under this arrangement, however, the organization could arrange any risk-sharing or stop-loss arrangements it finds effective for liability amounts less than 30 percent (or 20 percent) of payments.

We considered requiring the organization to provide the stop-loss insurance instead of permitting the physician or physician group to obtain the protection themselves. However, some physician groups prefer to obtain their own stop-loss protection rather than accepting the protection the organization offers (often the organization lowers capitation rates or charges physicians or physician groups for stop-loss protection). We wanted to retain this flexibility for physicians and physician groups. Since the legislation requires the organization to provide the stop-loss protection, we are requiring the organization to pay the cost of the portion of stop-loss protection that covers its enrollees in the physician incentive plan, or increase the amount of stop-loss protection to account for the physician's cost for stop-loss.

In cases where protection that meets the proposed standards is not available through the market, the organization would have to provide it directly. Regardless of how the stop-loss protection is provided, the organization must assure HCFA or the States that all physicians or physician groups that provide services to Medicare beneficiaries and Medicaid recipients and are at "substantial financial risk" for referral services have stop-loss protection that meets the regulatory requirements.

E. Prohibited Physician Payments

As required by OBRA '90, these regulations provide that physician incentive plans may operate only if no specific payment is made directly or

indirectly under the plan as an inducement to reduce or limit medically necessary services provided to a specific enrollee. This provision specifically prohibits bonuses or other payments to a physician or physician group as an inducement to limit or reduce medically necessary services for any individual patient. The proposed rule clarifies that indirect payments include items of money value, such as waivers of debt, or stock or equity in the organization. For example, an organization would be prohibited from paying a physician a $100 bonus or providing $100 of stock for each individual enrollee released from a hospital after delivery of a child in two days versus three days, if inpatient services were medically necessary on day three.

We considered interpreting "specific payments made indirectly as an inducement" as any payments that had the indirect effect of reducing medically necessary services. However, the statutory provision specifies that "no specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services . . .". The use of "indirectly" in the statute refers to the method by which payment is made, not to the effect of the payment. Therefore, we believe that the statutory language prohibits an alternative interpretation of the provision.

This proposed provision would not prohibit all bonuses based on utilization. For example, bonuses that are based on general utilization levels (i.e., bonuses determined by aggregate patient utilization) would be permitted.

F. Enforcement

Organizations that do not comply with these requirements may be subject to certain penalties. Determinations of non-compliance may result in civil money penalties, intermediate sanctions, and/or contract termination (for Medicare) or withholding of FFP (for Medicaid). The civil money penalties would be limited to $25,000 for each determination of non-compliance. Under the intermediate sanctions provision, HCFA (for Medicare) could suspend the enrollment of individuals into non-compliant plans and HCFA (for Medicare) or the State (for Medicaid) could suspend payment for new enrollees until it is satisfied that the basis for the determination is not likely to recur. The process for applying civil money penalties and intermediate sanctions would be the same process as that proposed in the July 22, 1991, NPRM discussed earlier in this preamble.

We are proposing that States determine compliance with these provisions for organizations contracting with Medicaid. Unlike Medicare, the Medicaid program is administered by State governments, pursuant to the Federal statutory and regulatory requirements, and a Medicaid State plan approved by HCFA. State governments are thus responsible for contracting with HMOs and other prepaid health care organizations, as well as for monitoring such contracts. In the case of Medicaid contracts, therefore, we believe that States are in the best position to monitor adherence to these specified requirements for physician incentive plans, to make determinations as to whether a violation has occurred, and to recommend intermediate sanctions based upon the nature of the violation. We are, therefore, proposing to rely upon States to perform the same monitoring functions in the Medicaid program that HCFA will perform in the Medicare program.

V. Revisions to the Regulations

Because these regulations would amend the civil money penalties and intermediate sanctions proposed in the July 22, 1991, NPRM discussed earlier in this preamble, we are republishing portions of that NPRM in these proposed regulations. Specifically, we are republishing proposed 42 CFR 417.495, which provides the requirements for imposing sanctions against eligible HMOs and CMPs, and proposed 42 CFR 434.67, which provides the requirements for imposing sanctions against HMOs with comprehensive risk contracts. We also are republishing 42 CFR 1003.100 through 1003.103 and 42 CFR 1003.106, which pertain to civil money penalties and assessments, incorporating the revisions proposed in the July 22, 1991, NPRM. While we are republishing the aforementioned sections of the regulations that were proposed in the July 22, 1991, NPRM for clarity, we request that public comments be limited to penalties and sanctions relating to physician incentive plans proposed in this NPRM.

To incorporate the policies and implement the statutory provisions described in this preamble, we propose to make the following revisions to title 42 of the regulations:

- In part 417, Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans, we would add to subpart L a new § 417.479, Requirements for physician incentive plans, to specify the requirements eligible organizations that use physician incentive plans must meet.
- We would add a new paragraph (a)(7) to proposed § 417.495, Sanctions against the organization, to specify an additional basis upon which sanctions may be applied against organizations.
- In part 434, Contracts, subpart D, we would amend § 434.44(a)(1) to incorporate these requirements into regulations governing certain HIOs that arrange for comprehensive services on a risk basis.
- In subpart E, we would add a new paragraph (a)(5) to proposed § 434.67, Sanctions against HMOs with comprehensive risk contracts, to specify an additional basis upon which sanctions may be applied against organizations.
- In subpart F, we would revise § 434.70 to condition FFP in State contracts with HMOs and certain HIOs on both the State and its HMO or HIO contractor meeting certain specified requirements for physician incentive plans.
- In part 1003, Civil Money Penalties and Assessments, we would revise § 1003.101 to include a definition for "physician incentive plan."
- We would revise § 1003.103 to add a new paragraph (e)(1)(vi) to specify an additional basis upon which the Office of the Inspector General may impose civil money penalties on organizations.
- We would revise §§ 1003.100, 1003.102, and 1003.106 to reference the physician incentive plan requirements, as appropriate.

VI. Collection of Information Requirements

Proposed regulations at § 417.479 (g) and (h), and § 434.70 (a)(2) and (b)(3) contain information collection or recordkeeping requirements or both that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Specifically, § 417.479(g) requires organizations that operate incentive plans that place physicians or physician groups at substantial financial risk to conduct enrollee surveys subject to conditions described in § 417.479(g)(1), and §§ 417.479(h) and 434.70(a)(2) concern the disclosure of information to HCFA or States concerning an HMO or CMP's physician incentive plan and the conducting of annual enrollee surveys. The respondents who will provide the information include HMOs, CMPs and HIOs that contract with the Medicare program or States and have physician incentive plans. Additionally, § 434.70(b)(3) requires States to obtain from certain HMO or HIO contractors

proof that the contractor meet the proposed requirements for physician incentive plans.

The public reporting burden for these information collections is estimated to be 50 hours per organization for survey requirements, 4 hours per organization for disclosure requirements, and 1 hour per State for each physician incentive plan for which proof of compliance is required.

A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

VII. Response to Comments

Because of the large volume of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VIII. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or any geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare and publish an initial regulatory flexibility analysis for proposed regulations consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602), unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we treat all HMOs, CMPs, and HIOs as small entities.

These proposed regulations would amend the regulations governing certain Federally qualified HMOs and CMPs contracting with the Medicare program, and certain HMOs and HIOs contracting with the Medicaid program, by adding requirements for physician incentive plans that these entities must meet. We expect these proposed rules to affect approximately 300 HMOs, CMPs, and HIOs. However, we expect few incentive plans will require changes to comply with the regulations. In addition, since we expect that most current incentive plans already comply with the proposed regulations, we believe that we will rarely need to impose sanctions or penalties. Therefore, we expect very little costs to organizations. Likewise, we expect few additional surveys and additional stop-loss protection, with the result being that costs are incurred by only a small number of facilities.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these proposed rules would not have a significant economic impact on the operations of a substantial number of small rural hospitals. We, therefore, have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a metropolitan statistical area and has fewer than 50 beds. These proposed regulations affect HMOs, CMPs, and HIOs. Consequently, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on the operations of a substantial number of small rural hospitals and, therefore, have not prepared a rural impact statement.

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR Part 434

Grant programs—Health, Health maintenance organization (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 1003

Administrative practice and procedure, Fraud; Grant programs—Health; Health facilities; Health profession; Maternal and child health; Medicaid; Medicare; Penalties.

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Chapter IV of title 42 would be amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. Part 417 is amended as follows:

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. A new § 417.479 is added to read as follows:

§ 417.479 Requirements for physician incentive plans.

(a) *Applicability.* The requirements in this section apply to physician incentive plans between eligible organizations and individual physicians or physician groups with whom they contract to provide medical services to enrollees. These requirements do not apply to financial incentive arrangements between physician groups (as defined in paragraph (b) of this section) and individual physicians who are members of such groups. These requirements only apply to physician incentive plans that base compensation (in whole or in part) on the use or cost of services provided to Medicare beneficiaries or Medicaid recipients.

(b) *Definitions.* For purposes of this section:

Bonus means a payment an organization makes to a physician or physician group beyond any salary, fee-for-service payments, capitation, or returned withhold.

Capitation means a set dollar payment per patient per unit time (usually per month) that an organization pays a physician or physician group to cover a specified set of services and administrative costs without regard to the actual number of services provided. The services covered may include the physician's own services, referral services, or all medical services.

Payments means any amounts the organization pays physicians or

physician groups for services they provide directly, plus amounts paid for administration and amounts paid (in whole or in part) based on levels and costs of referral services (such as withhold amounts, bonuses based on referral levels, and any other compensation to the physician or physician group to influence the use of referral services). Bonuses and other compensation that are not based on referral levels (such as bonuses based solely on quality of care provided, patient satisfaction, and participation on committees) are not considered payments for purposes of this subpart.

Physician group means a partnership, association, corporation, individual practice association, or other group that distributes income from practice among members according to a prearranged plan unrelated to the members' referral levels.

Physician incentive plan means any compensation arrangement between an organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided to Medicare beneficiaries or Medicaid recipients enrolled in the organization.

Referral services means any specialty, inpatient, outpatient, or laboratory services that a physician or physician group orders or arranges, but does not provide directly.

Risk threshold means the maximum risk, if the risk is based on referral services, to which a physician or physician group may be exposed under a physician incentive plan without being at substantial financial risk.

Withhold means a percentage of payments or set dollar amounts that an organization deducts from a physician's service fee, capitation, or salary payment, and which may or may not be returned to the physician, depending on specific predetermined factors.

(c) *Prohibited physician payments.* Organizations may operate physician incentive plans only if no specific payment of any kind is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided to an individual enrollee. Indirect payments include offerings of monetary value (such as stock options or waivers of debt) measured in the present or future.

(d) *General Rule: Determination of substantial financial risk.* Substantial financial risk occurs when the incentive arrangements place the physician or physician group at risk for amounts beyond the risk threshold, if the risk is based on the levels or costs of referral services. Amounts at risk based solely on factors other than a physician's or physician group's referral levels do not contribute to the determination of substantial financial risk. The risk thresholds are:

(1) 25 percent if the incentive plan distributes or assesses incentive payments no more often than annually; and

(2) 15 percent if the incentive plan distributes or assesses incentive payments more often than annually.

(e) *Arrangements that cause substantial financial risk when the risk threshold is 25 percent.* The following physician incentive plans cause substantial financial risk if risk is based (in whole or in part) on levels or costs of referral services, and incentive payments are distributed and/or assessed no more than annually:

(1) Withholds greater than 25 percent of payments;

(2) Withholds less than 25 percent of payments if the physician or physician group is potentially liable for amounts exceeding 25 percent of payments;

(3) Bonuses that are greater than 33 percent of payments minus the bonus;

(4) Withholds plus bonuses when the withholds plus bonuses equal more than 25 percent of payments. The threshold bonus percentage for a particular withhold percentage may be calculated using the formula—

Withhold %=−0.75(Bonus %)+25%;

(5) Capitation arrangements, if—

(i) The difference between the maximum possible payments and minimum possible payments is more than 25 percent of the maximum possible payments; or

(ii) The maximum and minimum possible payments are not clearly explained in the physician's or physician group's contract; and

(6) Any other incentive arrangements that have the potential to hold a physician or physician group liable for more than 25 percent of payments.

(f) *Arrangements that cause substantial financial risk when the risk threshold is 15 percent.* The following physician incentive plans cause substantial financial risk if risk is based (in whole or in part) on levels or costs of referral services, and incentive payments are distributed and/or assessed more often than annually:

(1) Withholds greater than 15 percent of payments;

(2) Withholds less than 15 percent of payments if the physician or physician group is potentially liable for amounts exceeding 15 percent of payments;

(3) Bonuses that are greater than 17.6 percent of payments minus the bonus;

(4) Withholds plus bonuses when the withholds plus bonuses equals more than 15 percent of payments for services they provided directly. The threshold bonus percentage may be calculated with the formula—

Withhold %=−0.85(Bonus %)+15%;

(5) Capitation arrangements, if—

(i) The difference between the maximum possible payments and minimum possible payments is more than 25 percent of the maximum possible payments; or

(ii) The maximum and minimum possible payments are not clearly explained in the physician's or physician group's contract; and

(6) Any other incentive arrangements that have the potential to hold a physician or physician group liable for more than 15 percent of payments.

(g) *Requirements for physician incentive plans that place physic' substantial financial risk.* Organizat that operate incentive plans that pla physicians or physician groups at substantial financial risk must do the following:

(1) Conduct enrollee surveys. These surveys must—

(i) Include either all current Medicare/Medicaid enrollees in the organization and those who have disenrolled (due to other than loss of eligibility in Medicaid) in the past 12 months, or a sample of these same enrollees and disenrollees;

(ii) Be designed, implemented, and analyzed in accordance with commonly accepted principles of survey design and statistical analysis;

(iii) Address enrollees/disenrollees satisfaction with the quality of the services provided and their degree of access to the services; and

(iv) Be conducted at least annually.

(2) Ensure that all physicians and physician groups at substantial financial risk have stop-loss protection in accordance with the following requirements:

(i) If the risk threshold is 25 percent, the stop-loss protection must cover the costs of referral services when the costs (beyond allocated amounts) exceed 30 percent of payments.

(ii) If the risk threshold is 15 percent, the stop-loss protection must cover the costs of referral services when the costs (beyond allocated amounts) exceed 20 percent of payments.

(iii) The organization may provide the stop-loss protection directly or purchase the stop-loss protection, or the physician or physician group may purchase the stop-loss protection. If the physician or physician group purchases the stop-loss protection, the organization must pay the portion of the premium that covers its enrollees or

reduce the level at which the stop-loss protection applies by the cost of the stop-loss.

(h) *Disclosure requirements for organizations with physician incentive plans.* All organizations must provide to HCFA information concerning its physician incentive plans as required or requested. The information must contain sufficient descriptive information to enable HCFA to determine whether the plan complies with the requirements specified in this section. Organizations must provide this information to HCFA—

(1) Upon application for a contract;

(2) Upon application for a service area expansion;

(3) 30 days before a change in its incentive plan;

(4) Within 30 days of a request by HCFA; and

(5) For organizations with a contract on [Insert effective date of final rule], by [Insert 30 days from effective date of final rule].

(i) *Sanctions against the organization.* HCFA may apply intermediate sanctions, or the Office of Inspector General may apply civil money penalties described at § 417.495, if HCFA determines that an eligible organization fails to comply with the requirements of this section.

3. A new § 417.495 is added to read as follows:

§ 417.495 Sanctions against the organization.

(a) *Basis for application of sanctions.* HCFA may apply intermediate sanctions specified in paragraph (d) of this section, as an alternative to termination, if HCFA determines that an organization with a contract under this part—

(1) Fails substantially to provide medically necessary items and services that are required to be provided to an individual covered under the contract, and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(2) Imposes premiums on individuals enrolled under this part in excess of premiums permitted;

(3) Acts to expel or to refuse to re-enroll an individual in violation of the provisions of this part;

(4) Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) with the organization by eligible individuals whose medical condition or history indicates a need for substantial future medical services;

(5) Misrepresents or falsifies information that is furnished—

(i) To HCFA under this part;

(ii) To an individual or to any other entity under this part;

(6) Fails to comply with the requirements of section 1876(g)(6)(A) of the Act relating to the prompt payment of claims;

(7) Fails to comply with the requirements of § 417.479(c) through (h) relating to physician incentive plans;

(8) Fails to meet the requirement in section 1876(f)(1) of the Act that not more than 50 percent of the organization's enrollment may be Medicare beneficiaries and Medicaid recipients; or

(9) Has a Medicare risk contract and—

(i) Employs or contracts with individuals or entities excluded from participation in Medicare under sections 1128 or 1128A of the Act for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of such services (directly or indirectly) through an excluded individual or entity.

(b) *Notice of intermediate sanction.* Prior to applying the sanctions specified in paragraph (d) of this section, HCFA will send a written notice to the organization stating the nature and basis of the proposed sanction. A copy of the notice (other than a notice for the violation described in paragraph (a)(8) of this section) will be forwarded to the Office of Inspector General at the same time that it is sent to the organization. HCFA will allow the organization 15 days after the date if receives the notice to provide evidence that the organization has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable.

(c) *Informal reconsideration.* If the organization submits a timely response to HCFA's notice of intermediate sanction, HCFA will conduct an informal reconsideration that includes:

(1) Review of the evidence by a HCFA official who did not participate in the initial decision to impose a sanction; and

(2) If the decision to impose a sanction is affirmed on review, forwarding to the organization a concise written decision setting forth the factual and legal basis for the decision.

(d) *Intermediate sanctions.* If HCFA determines that an organization has committed a violation described in paragraph (a) of this section and this determination is affirmed on review in the event the organization timely contests the determination under paragraph (b) of this section, HCFA may—

(1) Require the organization to suspend new applications for enrollment from Medicare beneficiaries after the effective date in paragraph (e)(1) of this section; or

(2) Suspend payments to the organization for any individuals who apply for enrollment after the effective date in paragraph (e)(1) of this section.

(e) *Effective date and duration of intermediate sanctions.* (1) Intermediate sanctions will be made effective 15 days after the date that the organization is notified of the decision to impose the sanctions, unless the organization timely seeks reconsideration under paragraph (c) of this section, in which case the intermediate sanction generally will be effective on the date the organization is notified of HCFA's decision under paragraph (c)(2) of this section.

(2) If HCFA determines that the organization's conduct poses a serious threat to an enrollees' health and safety, the intermediate sanction may be made effective on a date prior to issuance of HCFA's decision under paragraph (c)(2) of this section.

(3) The sanction will remain in effect until HCFA notifies the organization that HCFA is satisfied that the basis for applying the sanction has been corrected and is not likely to recur.

(f) *Termination by HCFA.* As an alternative to the sanctions described in paragraph (d) of this section, HCFA may decline to renew an organization's contract in accordance with § 417.492(b), or terminate its contract in accordance with § 417.494(b).

(g) *Civil money penalties.* If HCFA determines that an organization has committed an act or failed to comply with a requirement described in paragraph (a) of this section (with the exception of the violation described in paragraph (a)(8) of this section), HCFA will convey such determination to the Office of Inspector General. In accordance with the provisions of 42 CFR part 1003, the OIG may impose civil money penalties on the organization in addition to or in lieu of the intermediate sanctions imposed by HCFA.

PART 434—CONTRACTS

B. Part 434 is amended as follows:

1. The authority citation for part 434 is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(p)(2), and 1903(m) of the Social Security Act (42 U.S.C. 1302, 1396(a)(4), 1396a(p)(2), and 1396b).

2. In subpart D, § 434.44(a)(1) is revised to read as follows:

§ 434.44 Special rules for certain health insuring organizations.

(a) A health insuring organization that first enrolls patients on or after January 1, 1986, and arranges with other providers (through subcontract, or through other arrangements) for the delivery of services (as described in § 434.21(b)) to Medicaid enrollees on a prepaid capitation risk basis is—

(1) Subject to the general requirements set forth in § 434.20(d) concerning services that may be covered and § 434.20(e) which set forth the requirements for all contracts, the additional requirements set forth in §§ 434.21 through 434.38 and the Medicaid agency responsibilities specified in subpart E of this part; and

* * * * *

3. In subpart E, a new § 434.67 is added to read as follows:

§ 434.67 Sanctions against HMOs with comprehensive risk contracts.

(a) *Basis for application of sanctions.* The agency may recommend that the intermediate sanction specified in paragraph (e) of this section be imposed if the agency determines that an HMO with a comprehensive risk contract—

(1) Fails substantially to provide medically necessary items and services that are required under law or under the contract to be provided to an individual covered under the contract, and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(2) Imposes premiums on individuals covered under the contract in excess of premiums permitted;

(3) Engages in any practice that discriminates among individuals on the basis of their health status or requirements for health care services, including expulsion or refusal to re-enroll an individual, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1903(m) of the Act) by eligible individuals whose medical condition or history indicates a need for substantial future medical services;

(4) Misrepresents or falsifies information that is furnished—

(i) To HCFA or the State agency under section 1903(m) of the Act; or

(ii) To an individual or to any other entity under section 1903(m); or

(5) Fails to comply with the requirements of § 417.479 (c) through (g) of this chapter relating to physician incentive plans, or fails to submit to the State Medicaid agency its physician incentive plans as required or requested in § 434.70.

(b) *Effect of an agency determination.* (1) When the agency determines that an HMO with a comprehensive risk contract has committed one of the violations identified in paragraph (a) of this section, the agency must forward this determination to HCFA. This determination becomes HCFA's determination for purposes of section 1903(m)(5)(A) of the Act, if HCFA does not reverse or modify the determination within 15 days.

(2) When the agency decides to recommend imposition of the intermediate sanction specified in paragraph (e) of this section, this recommendation becomes HCFA's decision, for purposes of section 1903(m)(5)(B)(ii) of the Act, if HCFA does not reject this recommendation within 15 days.

(c) *Notice of intermediate sanction.* If a determination to impose intermediate sanctions becomes HCFA's determination in accordance with paragraph (b)(2) of this section, the agency must send a written notice to the HMO stating the nature and basis of the proposed sanction. A copy of the notice will be forwarded to the OIG at the same time that it is sent to the organization. The agency will allow the HMO 15 days after the date it receives the notice to provide evidence that the HMO has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable.

(d) *Informal reconsideration.* (1) If the HMO submits a timely response to the agency's notice of intermediate sanction, the agency will conduct an informal reconsideration that includes—

(i) Review of the evidence by an agency official who did not participate in the initial recommendation to impose a sanction; and

(ii) A concise written decision setting forth the factual and legal basis for the decision.

(2) The agency decision under paragraph (d)(1)(ii) of this section will be forwarded to HCFA and will become HCFA's decision if HCFA does not reverse or modify the decision within 15 days. The agency will send the HMO a copy of HCFA's decision under this section.

(e) *Intermediate sanction.* If a HCFA determination that an HMO has committed a violation described in paragraph (a) of this section is affirmed on review under paragraph (d) of this section, or is not timely contested by the HMO under paragraph (c) of this section, HCFA, based upon the recommendation of the agency, may deny payment for new enrollees of the HMO pursuant to section 1903(m)(5)(B)(ii) of the Act. Under §§ 434.22 and 434.42, this denial of payment by HCFA for new enrollees automatically results in a denial of agency payments to the HMO for the same enrollees. A "new enrollee" is defined as an enrollee that applies for enrollment after the effective date in paragraph (f)(1) of this section.

(f) *Effective date and duration of intermediate sanction.* (1) Unless an HMO timely seeks a reconsideration in accordance with paragraph (d) of this section or HCFA determines the violation poses a serious threat to enrollees' health or safety, intermediate sanctions will be made effective 15 days after the date that the HMO is notified of the HCFA decision to impose the sanction in accordance with the procedures specified in paragraph (c) of this section. If the HMO seeks reconsideration under paragraph (d) of this section, the intermediate sanction generally will be effective on the date the organization is notified of HCFA's decision under paragraph (d)(1)(ii) of this section.

(2) If HCFA, in consultation with the agency, determines that the HMO's conduct poses a serious threat to an enrollee's health and safety, the intermediate sanction may be made effective on a date prior to issuance of the decision under paragraph (d)(1)(ii) of this section.

(3) The sanction will remain in effect until HCFA, in consultation with the agency, is satisfied that the basis for applying the sanction has been corrected and is not likely to recur.

(g) *Civil money penalties.* If a determination that an organization has committed a violation under paragraph (a) of this section becomes HCFA's determination under paragraph (b)(1) of this section. HCFA will convey such determination to the Office of Inspector General. In accordance with the provisions of 42 CFR Part 1003, the OIG may impose civil money penalties on the organization in addition to or in lieu of the intermediate sanctions imposed under this section.

(h) *Performance of functions.* HCFA retains the right to independently perform the functions assigned to the agency in paragraphs (a) through (f) of this section.

(i) *State plan requirements.* The State plan must include a plan to monitor for violations specified in paragraph (a) of this section and for implementing the provisions of this section.

4. In Subpart F, § 434.70 is revised to read as follows:

§ 434.70 Condition for FFP.

(a) FFP is available in expenditures for payments to contractors only for the periods that—

(1) The contract—

(i) Meets the requirements of this part;

(ii) Meets the appropriate requirements of 45 CFR Part 74; and

(iii) Is in effect; and

(2) The HMO or HIO contractor complies with the requirements specified in § 417.479 (c) through (g) of this chapter, and has supplied sufficient information on its physician incentive plan to the State Medicaid agency to enable the State to determine whether the plan complies with such requirements. The HMO or HIO must supply this information to the State Medicaid agencies—

(i) Upon application for a contract;

(ii) Within 30 days of a change in its incentive plan;

(iii) Within 30 days of a request by the State or HCFA; and

(iv) For organizations with a contract on December 14, 1992 of final rule, by January 13, 1992 of final rule.

(b) HCFA may withhold FFP for any period during which—

(1) The State fails to meet the State plan requirements of this part;

(2) Either party to a contract substantially fails to carry out the terms of the contract; or

(3) The State fails to obtain from each HMO or HIO contractor proof that it meets the requirements for physician incentive plans specified in § 417.479 (c) through (g) of this chapter.

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

II. Chapter V of title 42 would be amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

A. Part 1003 is amended as follows:

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraph (a); republishing paragraph (b)(1) introductory text revising paragraphs (b)(1)(iv) and (b)(1)(v) and adding a new paragraph (b)(1)(vi) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128, 1128(c), 1128A, 1140, 1842(j), 1842(k), 1876(i)(6), 1882(d), and 1903(m)(5) of the Social Security Act and sections 421(c) and 427(b)(2) of Pub. L. 99–660 (42 U.S.C. 1320a–7, 1320a–7(c), 1320a–7a, 1320b–10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m)), 11131(c) and 11137(b)(2)).

(b) *Purpose.* * * *

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use, or permit access to information reported under part B of title IV of Pub. L. 99–660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Medicare and Social Security program words, letters, symbols, and emblems; or

(vi) Substantially fail to provide an enrollee with required medically necessary items and services, or who engage in certain marketing, enrollment, reporting, claims payment, employment, or contracting abuses, or who do not meet the requirements for physician incentive plans for Medicaid specified in § 417.479 (c) through (g) of this title.

* * * * *

3. Section 1003.101 is amended by adding, in alphabetical order, definitions for the terms *adverse effect, contracting organization, enrollee,* and *physician incentive plan* to read as follows:

§ 1003.101 Definitions.

* * * * *

Adverse effect means medical care has not been provided and the failure to provide such necessary medical care has presented an imminent danger to the health, safety, or well-being of the patient, or has placed the patient unnecessarily in a high-risk situation.

* * * * *

Contracting organization means a public or private entity, inclusive of a health maintenance organization (HMO), competitive medical plan (CMP), or health insuring organization (HIO) which meets the requirements of section 1876(b) or is subject to the requirements in section 1903(m)(2)(A) of the Social Security Act, and which has contracted with the Department or a State to provide medical items and services to Medicare beneficiaries or Medicaid recipients.

Enrollee means an individual who is eligible for Medicare or Medicaid, and who enters into an agreement to receive medical items and services from a contracting organization that contracts with the Department under titles XVIII or XIX of the Social Security Act.

* * * * *

Physician incentive plan means any compensation arrangement between a contracting organization and a physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to enrollees in the organization.

* * * * *

4. In § 1003.102, paragraph (b) introductory text is republished and a new paragraph (b)(8) is added, to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(8) Is a contracting organization that HCFA determines has committed an act or failed to comply with the requirements set forth in §§ 417.495(a), 434.67(a), and 434.80(c) of this title.

* * * * *

5. Section 1003.103 is amended by revising paragraph (a) and adding new paragraph (e), to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b), (c), (d), and (e) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

* * * * *

(e)(1) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization has:

(i) Failed substantially to provide an enrollee with required medically necessary items and services, if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee;

(ii) Imposed premiums on enrollees in excess of amounts permitted under section 1876 or title XIX of the Act;

(iii) Acted to expel or to refuse to re-enroll a Medicare beneficiary in violation of the provisions of section 1876 of the Act, and for reasons other than the beneficiary's health status or requirements for health care services;

(iv) Misrepresented or falsified information furnished to an individual or any other entity under section 1876 or 1903(m) of the Act;

(v) Failed to comply with the requirements of section 1876(g)(6)(A) of

the Act, regarding prompt payment of claims; or

(vi) Failed to comply with the requirements of § 417.479(c) through (h) of this title for Medicare, and § 417.479(c) through (g) of this title for Medicaid, regarding certain prohibited incentive payments to physicians.

(2) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization with a contract under section 1876 of the Act:

(i) Employs or contracts with individuals or entities excluded from participation in Medicare, under sections 1128 or 1128A of the Act, for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of such services (directly or indirectly) through an excluded individual or entity.

(3) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $100,000 for each determination that a contracting organization has:

(i) Misrepresented or falsified information furnished to the Secretary under section 1876 of the Act, or to the State under section 1903(m) of the Act; or

(ii) Acted to expel or to refuse to re-enroll a Medicare beneficiary or Medicaid recipient because of the individual's health status or requirements for health care services, or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1876 or 1903(m) of the Act) with the contracting organization by enrollees whose medical condition or history indicates a need for substantial future medical services.

(4) In cases where enrollees are charged more than the allowable premium, the OIG will impose an additional penalty equal to double the amount of excess premium charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.

(5) The OIG will impose an additional $15,000 penalty for each individual not enrolled when it is determined that a contracting organization has committed a violation described in paragraph (e)(3)(ii) of this section.

(6) For purposes of paragraph (e) in this section, a violation is defined as each incident where a person has committed an act or failed to comply with a requirement set forth in §§ 417.495(a), 434.67(a), or 434.80(c) of this title, as determined by HCFA.

6. Section 1003.106 is amended by adding new paragraph (a)(4); redesignating paragraph (d) as paragraph (e) and republishing it; and adding a new paragraph (d) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) * * *

(4) In determining the appropriate amount of any penalty or assessment under § 1003.103(e), the OIG will consider as appropriate:

(i) The nature and scope of the required medically necessary item or service not provided and the circumstances under which it was not provided;

(ii) The degree of culpability of the contracting organization;

(iii) The seriousness of the adverse effect that resulted or could have resulted from the failure to provide required medically necessary care;

(iv) The harm which resulted or could have resulted from the provision of care by a person that the contracting organization is expressly prohibited, under sections 1876(i)(6) or 1903(p)(2) of the Act, from contracting or employing;

(v) The harm which resulted or could have resulted from the contracting organization's expulsion or refusal to re-enroll a Medicare beneficiary or Medicaid recipient;

(vi) The nature of the misrepresentation or fallacious information furnished by the contracting organization to the Secretary, State, enrollee, or other entity under sections 1876 or 1903(m) of the Act;

(vii) The extent to which the failure to provide medically necessary services could be attributed to a prohibited inducement to reduce or limit services under a physician incentive plan and the harm to the enrollee which resulted or could have resulted from such failure. It would be considered an aggravating factor if the contracting organization knowingly or routinely engaged in any prohibited practice which acted as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee in the organization;

(viii) The history of prior offenses by the contracting organization, or principals of the contracting organization, including whether at any time prior to determination of the current violation or violations the contracting organization or any of its principals was convicted of a criminal charge, or was held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services; and

(ix) Such other matters as justice may require.

* * * * *

(d) In considering the factors listed in paragraph (a)(4) of this section, for violations subject to a determination under § 1003.103(e), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty:

(1) *Nature and circumstances of the incident.* It would be considered a mitigating circumstance if, where more than one violation exists, the appropriate items or services not provided were:

(i) Few in number, or

(ii) Of the same type and occurred within a short period of time.

It would be considered an aggravating circumstance if such items or services were of several types and occurred over a lengthy period of time, or if there were many such items or services (or the nature and circumstances indicate a pattern of such items or services not being provided).

(2) *Degree of culpability.* It would be considered a mitigating circumstance if the violation was the result of an unintentional, unrecognized error, and corrective action was taken promptly after discovery of the error.

(3) *Failure to provide required care.* It would be considered an aggravating circumstance if the failure to provide required care was attributable to an individual or entity that the contracting organization is expressly prohibited by law from contracting or employing.

(4) *Use of excluded individuals.* It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in the prohibited practice of contracting or employing, either directly or indirectly, individuals or entities excluded from the Medicare program under sections 1128 or 1128A of the Act.

(5) *Routine practices.* It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in any discriminatory or other prohibited practice which has the effect of denying or discouraging enrollment by individuals whose medical condition or history indicates a need for substantial future medical services.

(6) *Prior offenses.* It would be considered an aggravating circumstance if at any time prior to determination of the current violation or violations, the

contracting organization or any of its principals was convicted on criminal charges or held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services. The lack of prior liability for criminal, civil, or administrative sanctions by the contracting organization, or the principals of the contracting organization, would not necessarily be considered a mitigating circumstance in determining civil monetary penalty amounts.

(e) (1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution, and administrative review of the case.

(3) Nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126, or to compromise any penalty and assessment as provided by § 1003.128.

(Catalog of Federal Domestic Assistance Program No. 93.773—Medicare—Hospital Insurance Program; No. 93.774—Medicare—Supplementary Medical Insurance Program; No. 93.778—Medical Assistance Program.)

Dated: September 25, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: September 30, 1992.

Brian B. Mitchell,

Principal Deputy Inspector General, Department of Health and Human Services.

Approved: October 28, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-29769 Filed 12-11-92; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket No. 92-255; FCC 92-492]

Remove Unnecessary Regulations Regarding Magnetic Resonance Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In response to a petition from the National Electrical Manufacturers Association, the Federal Communication Commission is proposing to amend its rules to remove unnecessary regulations regarding Magnetic Resonance Systems. Elimination of such regulations will reduce the amount of time and money required to bring new non-consumer, medical magnetic resonance systems to market.

DATES: Comments must be submitted by March 1, 1993. Reply comments must be submitted by March 31, 1993.

ADDRESSES: All comments and reply comments should be addressed to the Office of the Secretary, Federal Communication Commission, Washington DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Errol Chang, Technical Standards Branch, Office of Engineering and Technology, (202) 653-7316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (Notice) in ET Docket No. 92-255, FCC 92-492, adopted on November 4, 1992 and released on December 7, 1992. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., room 640, Washington DC 20036.

Paperwork Reduction

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor: Downtown Copy Center, 1990 M Street NW., room 640, Washington, DC 20036, (202) 452-1422. Persons wishing to comment on this collection of information should direct their comments to Mr. Jonas Neihardt, Office of Management and Budger, room 3235 NEOB, Washington, DC 20554, (202) 395-4814. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Federal Communications Commission: Federal Communications Commission, Office of Managing Director, paperwork Reduction Project, Washington DC 20554. For further information contact Ms. Judy Boley, (202) 632-7513.

OMB Number: 3060-0329

Title: Equipment Authorization—Verification 2.955

Respondents: Business or other for profit, small business or organizations

Frequency of Response: Recordkeeping

Estimated Annual Burden:

Number of recordkeepers: 5,655

Annual hours per recordkeepers: 18

Total annual burden: 101,790

Needs and Uses: Equipment testing is performed and data is gathered to provide information to aid in controlling interference to radio communications. Data collected verifies compliance of equipment to the FCC Rules. The information is retained by the equipment manufacturer, and made available only at the request of the Commission.

Summary of Notice

1. By this action, the Commission proposes to amend Part 18 of its rules to remove regulations that unnecessarily increase the amount of time and money required to bring new non-consumer, medical magnetic resonance (MR) systems to market. These systems are used by medical professionals to study the molecular structure of a patient for diagnostic and monitoring purposes. This proposal addresses a petition for rule making filed by the National Electrical Manufacturers Association on January 29, 1992.

2. Part 18 of the rules sets forth requirements designed to minimize the potential for interference to radio and TV services by industrial, scientific and medical (ISM) equipment. Such equipment generates radio frequency (RF) energy in order to perform a non-communications related function. Common examples of consumer ISM equipment include microwave ovens and RF lighting devices. Examples of non-consumer ISM equipment include industrial heaters, RF stabilized arc welders and magnetic resonance equipment. Before ISM equipment can be marketed in the United States, it must comply with the technical standards and equipment authorization procedures specified in part 18.

3. As indicated in NEMA's petition, as well as comments received regarding NEMA's petition, it appears that MR systems pose little risk of interference because of the way they are designed and installed. We note that there are relatively few installations of MR systems (under 1000), and in the event

that measures need to be taken to correct interference, the locations of the equipment are known. We also recognize that the authorization requirement is burdensome and costly for MR systems. Given the low volume production of MR systems, this can significantly affect the unit cost of each system, contributing to the increasing costs of medical care.

4. We agree with NEMA that the circumstances presented here are similar to those that led us earlier to exempt non-consumer medical ultrasonic equipment from part 18 rules. We are unaware of any interference that resulted from the medical ultrasonic equipment exemption. On balance, we tentatively conclude that the costs of our technical standards and authorization requirements for MR systems are unwarranted given the low risk of interference. Accordingly, we are proposing to amend part 18 to exempt MR systems from the technical standards and authorization requirements that now apply to that equipment. We will, of course, continue to apply the requirements of 47 CFR 18.111(b) that operators of MR systems correct any harmful interference that may occur. The proposed rule changes are set forth below.

5. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. *Regulatory Flexibility Act.* As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1980).

7. *Comment Dates.* Pursuant to the applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 1, 1993 and reply comments on or before March 31, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

Initial Regulatory Flexibility Analysis

Reason for Action: This rule making proceeding is initiated to obtain comment on whether the Commission's technical standards and authorization requirements regarding magnetic resonance equipment are necessary.

Objective: The Commission seeks to remove regulations regarding magnetic resonance equipment that appear unnecessary in order to enable advanced medical devices to be brought to market faster and more efficiently.

Legal Basis: The action proposed is authorized under sections 4(i), 302, 303(g) and 303(r) of the Communication Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements: None.

Federal Rules which Overlap, Duplicate or Conflict with These Rules: None.

Description, Potential Impact and Number of Small Entities Involved: This action would relieve manufacturers and importers of magnetic resonance equipment used for medical diagnosis and monitoring of the responsibility to meet Commission testing and record keeping requirements. We estimate that there are no more than 20 such entities.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objective: None.

List of subjects in 47 CFR Part 18

Medical devices, Hospitals, Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Text

Part 18 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304 and 307.

2. Section 18.107 is revised by adding a new paragraph (j) after the "note" to read as follows:

§ 18.107 Definitions.

* * * * *

(j) *Magnetic resonance equipment.* A category of ISM equipment in which RF energy is used to create images and data representing spatially resolved density of transient atomic resonances within an object.

3. Section 18.121 is revised to read as follows:

§ 18.121 Exemptions.

Non-consumer ultrasonic equipment, and non-consumer magnetic resonance equipment, that is used for medical diagnostic and monitoring applications is subject only to the provisions of § 18.105, §§ 18.109 through 18.119, and § 18.303.

[FR Doc. 92–30180 Filed 12–11–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR 571

[Docket No. 92–66; Notice 1]

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: NHTSA is considering initiating rulemaking to upgrade the protection currently provided by Federal Motor Vehicle Safety Standard (FMVSS) No. 301, Fuel System Integrity. The agency desires to reduce the number of fire-related casualties to occupants of passenger cars and light trucks and vans, in all types of crash modes—frontal, side, rear, and rollover. To assist NHTSA in developing specific

proposals, the agency requests answers to questions contained at the end of this notice.

DATES: Comments must be received by February 12, 1993.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, NHTSA, room 5109, 400 Seventh Street SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cohen, Division Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: FMVSS No. 301 first became effective for passenger cars in 1968 and for multipurpose passenger vehicles (i.e., passenger vans and sport utility vehicles) and trucks of 10,000 pounds or less Gross Vehicle Weight Rating (GVWR) in 1976. The standard also applies to all school buses, and NHTSA has granted a petition to consider extending the standard to trucks over 10,000 pounds GVWR. However, the context of this notice relates to passenger cars and light trucks and vans (including sport utility vehicles), hereafter termed LTVs.

Since the standard first applied to passenger cars in 1968, it has been revised several times, most significantly in rulemaking actions taken by NHTSA in the period 1973–76. As a result, the initial standard has been extended to vehicle types other than passenger cars and to crash modes other than frontal crashes. The standard, as it applies to passenger cars and LTVs, requires fuel system integrity in a 30 mph frontal fixed barrier crash, a 30 mph rear moving barrier crash, and a 20 mph lateral moving barrier crash. The standard also requires a static rollover test, after the above crashes. Fuel system integrity is defined by limiting the amount of fuel leakage from the crashed vehicle, during and up to 30 minutes after the crash.

The purpose of the standard "is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes" (49 CFR 571.301, S2). In a 1983 evaluation of the standard, NHTSA concluded that FMVSS No. 301 had been effective in reducing post-crash fires and estimated that as a result there were 6,500 fewer passenger car fires annually, resulting in 400 fewer deaths and 630 fewer moderate and serious injuries per year. ("Evaluation of FMVSS 301–75, Fuel System Integrity: Passenger Cars," DOT HS–806–335, January 1983). However, the agency noted that newer vehicles seemed to be experiencing an increasing fire rate and pointed out that the evaluation used limited data. Because of these concerns, and the fact that the 1983 report did not study fires in light truck crashes, the agency reevaluated FMVSS No. 301 in November 1990 ("Motor Vehicle Fires in Traffic Crashes and the Effects of the Fuel System Integrity Standard;" DOT HS 807 675).

The conclusions of this more extensive evaluation were much different from the one conducted 7 years earlier. While the evaluation still found that FMVSS No. 301 reduced post-crash fires (by 14 percent or 3,900 fewer fires annually) for passenger cars, it did not find any statistically significant reductions in fire-related injuries or deaths. For LTVs, the evaluation found that implementation of the standard had no effect at all.

Commenters to the evaluation raised questions concerning the data used by NHTSA and its analysis techniques. Commenters were also concerned about the specific identification of where the fire started and whether vehicle changes to fuel systems, type of gasoline, and changes related to emission standards may have affected fire rates over time. After analyzing these comments, the agency concluded that the results in the evaluation were valid. NHTSA's response can be found in Docket No. 82–21, Notice 03 (82–21–NO3–008).

While fires are relatively rare events (only occurring in one percent of towed vehicles in crashes), they tend to be severe, in terms of casualties. Each year, there are approximately 29,000 occupants exposed to fires occurring in passenger cars and LTV's. Four to five percent of occupant fatalities occur in crashes involving fire and approximately 1,400 occupants per year die in such crashes. In addition, another 9,000 occupants are injured (Crashworthiness Data System, 1991). This number of casualties, coupled with the finding that the existing standard has had a minimal effect, leads the agency to conclude that an upgrade of the standard may be appropriate.

A recent analysis of fires in tow-away crashes ("Fires and Burns in Towed Light Passenger Vehicle Crashes" by Partyka, July 1992) showed that most fires occurred in frontal crashes (59 percent), with about an equal number occurring in rollover, side impacts, and rear impacts (12–14 percent each). Each year, an estimated 1,000 occupants of vehicles in crashes with fires had second or third degree burns over at least six percent of the body and 550 of these were fatalities with second or third degree burns over more than 90 percent of the body. Nearly 650 people per year with moderately severe or greater (AIS≥2) burns had no other moderate or greater injury reported.

In addition to the above-mentioned analysis of tow-away crashes, the agency has undertaken a hard copy analysis of 1991 NASS cases involving fires, and a FARS analysis related to fires, to attempt to obtain more information on how fires occur, in preparation for suggesting regulatory countermeasures. The difficulty in analyzing fires in vehicle crashes is that the vehicles involved are often totally destroyed, resulting in uncertainty as to the vehicle component failure that resulted in the fire.

At this time, while the agency continues its data and other analyses, it is appropriate to seek guidance and information from the public on the most effective means to reduce vehicle fires. Also affecting the agency's decision to consider rulemaking to upgrade the standard is a recent petition by Volkswagen to allow the use of the dynamic test soon to be required by FMVSS No. 214, Side Impact Protection, to be substituted for the 20 mph lateral test in FMVSS No. 301. Volkswagen claims the FMVSS No. 214 test is a more severe test than that in FMVSS No. 301. The agency, in conducting FMVSS No. 214-type dynamic tests, noted fuel leakage in several tests, also indicating that this is a more severe test than the lateral test in FMVSS No. 301. The agency has granted that petition. To help focus its investigation and possible regulatory upgrades, the agency seeks responses to the following questions:

1. Should the standard be upgraded by requiring higher impact speeds? What impact speeds are most appropriate? Why?

2. Is there any reason to continue to have different impact speeds for frontal and rear crashes as compared to side crashes? If so, why?

3. Should the current impact barriers (a moving flat barrier for rear and side impacts and a fixed barrier for frontal impact be replaced by a moving contoured barrier, such as is used to test school buses for fuel system integrity or other types of barriers? Are the current impact barriers representative of typical real-world crash situations? Are there other specifications or test conditions of FMVSS No. 301 which are not representative of real-world crashes?

4. Should the standard be upgraded by requiring all vehicles that have a Gross Vehicle Weight Rating (GVWR) of

10,000 pounds or less be subjected to the impact test requirement for large school buses? The standard requires that the impact test for large school buses (those with a GVWR greater than 10,000 pounds) be conducted with a 4,000 lb, 30-mph-moving, contoured barrier impacting the bus at any point and angle.

5. Should the FMVSS No. 301 side impact requirement be replaced by the FMVSS No. 214 type of dynamic side impact test as has been promulgated for passenger cars? Are there available data on the locations of the fuel system that are vulnerable in a side impact?

6. Accident data show that fire risk increases significantly with vehicle age. Should a test be added to the standard for testing the effect of aging of vehicles related to fires? If so, what types of tests should be considered? For example, should a test be added to the standard for testing the impact of weathering and rust problems on the fuel system and the vehicle? Or, should vehicle maintenance requirements (i.e., as given in owner's manuals) require periodic inspection/replacement of certain fuel system components, such as connector hoses which may harden/crack with age?

7. Do occupants that die with serious burns have other injuries that prevented their escape or were they unconscious from fire-related gases or from impacts? Please report any other findings that seem unique to fire-related death or injury accidents.

8. FMVSS No. 301's fuel leakage limit requirements implicitly address evacuation time from the vehicle. Considering differences of ignitability of gasoline, diesel and other applicable alternative fuels, should the standard specify different levels of permissible fuel leakage based on the type of fuel used?

9. Should a test be added to the standard for testing nonmetallic fuel tanks?

10. What available or foreseeable technologies could be used to improve fuel system integrity? What are their associated costs?

11. From the above discussions, would improving fuel system integrity by upgrading the standard prevent a reasonable number of serious occupant burns and fatalities or are other changes in vehicle materials and design needed as well?

12. The agency would like to consider international harmonization with other regulations and standards. Would an upgrade of FMVSS No. 301 increase or decrease the "window of compliance" with other foreign regulations and standards? For example, the current ECE Regulation No. 34 (for passenger cars only) and the Japanese Technical Standard for Fuel Leakage in Collision, etc. (for passenger cars and MPVs up to 5,600 pounds GVWR) do not require side impact tests or rollover tests.

The agency requests that responses be as specific and quantitative as possible.

Submission of Comments

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length (49 CFR 533.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped post card in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: December 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-30183 Filed 12-8-92; 3:30 pm]

BILLING CODE 4910-59-M

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49 CFR Parts 571 and 585

[Docket No. 74-14; Notice 79]

RIN 2127-AE46

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Vehicle manufacturers are currently permitted to comply with the automatic crash protection requirements by means of any technology that provides the specified levels of protection in a 30 miles per hour barrier crash test. The two types of automatic crash protection currently installed in vehicles are air bags and automatic belts. However, a new law (the NHTSA Authorization Act of 1991) provides that the agency shall amend the automatic crash protection requirements to specify that air bags must be the means installed to provide the requisite automatic protection. This notice proposes to amend the automatic crash protection requirements to conform to this statutory directive.

In addition, this notice proposes to require that certain information about air bags be labeled in vehicles equipped with air bags. These labeling requirements are intended to ensure that consumers will have access to important safety information with respect to the air bags installed in their vehicles.

DATES: *Comment closing date:* Comments on this notice must be received by NHTSA no later than February 12, 1993.

Proposed effective date: If adopted in a final rule, the amendments to part 571 and part 585 proposed in this notice would become effective 180 days after publication of the final rule in the **Federal Register**.

Proposed compliance dates: See the Proposed Compliance Dates section at the beginning of **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Comments should refer to the docket and notice number set forth in the heading of this notice and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. The NHTSA Docket Section is open to the public from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366–4911.

SUPPLEMENTARY INFORMATION:

Proposed Compliance Dates

At least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 would have to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 would have to be so equipped.

At least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 would have to be equipped with an air bag and a manual lap/shoulder belt. Manufacturers may count towards compliance with the 80 percent requirement those light trucks it produces that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position.

Every light truck manufactured on or after September 1, 1998 would have to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions.

Statutory Mandate

President Bush signed into law the "Intermodal Surface Transportation Efficiency Act of 1991" on December 18, 1991 (Pub. L. 102–240). That Act is intended to develop a national intermodal surface transportation system and sets forth guidance and mandates for several different modal administrations within the Department of Transportation. Sections 2500–2509 of this Act are called the "National Highway Traffic Safety Administration Authorization Act of 1991." These sections authorize appropriations for the agency for fiscal years 1992 through 1995 and direct the agency to take certain actions.

Section 2508 of this Act requires NHTSA to issue, not later than September 1, 1993, a final rule making certain amendments to Standard No. 208. This section requires that automatic crash protection must be provided by an inflatable restraint (i.e., an air bag) in all passenger cars and light trucks, and that the seating positions protected by an air bag shall also be equipped with a manual lap/shoulder belt. A schedule of dates by which all vehicles shall be equipped with air bags and manual lap/shoulder belts at both front outboard seating positions is set forth in the Act. The Act also requires certain information about air bags and manual lap/shoulder belts to appear in the owner's manual of new vehicles and requires NHTSA to establish procedures for providing temporary exemptions from the air bag requirement if there is an interruption in the supply of air bag components due to unavoidable events not within the control of vehicle manufacturers. This notice proposes to implement the statutory mandates in section 2508.

Proposed Requirements

1. Vehicles Proposed To Be Covered by this Rulemaking

Section 2508 includes in its air bag mandate all those vehicles that NHTSA had determined in previous rulemaking proceedings should be subject to the existing requirements for automatic crash protection. Accordingly, this notice proposes that all passenger cars be subject to the air bag mandate.

In addition, all trucks, multipurpose passenger vehicles (mpv's), and buses (except walk-in van-type trucks and vehicles designed to be sold exclusively to the United States Postal Service) with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less would also be subject to this air bag mandate. These trucks, mpv's and buses are collectively referred to as "light trucks" throughout the remainder of this preamble. The inclusion of light trucks in this proposal reflects the statutory determination that vehicles such as small pickups, vans, and sport utility vehicles should be equipped with both driver and front passenger air bags.

In connection with the extension of other safety standards to light trucks, some manufacturers of light trucks manufactured in more than one stage have commented that their vehicles should be excluded from the extended requirements because it would not be practicable for such vehicles to comply with the extended safety standard. NHTSA notes that section 2508 draws no distinction between light trucks that are manufactured in a single stage and those that are manufactured in more than one stage. Instead, that section specifies that all light trucks manufactured after September 1, 1998 shall be equipped with air bags and manual lap/shoulder belts at the driver's and front right passenger's seating positions, regardless of how many stages it took to manufacture the light truck. This proposal tracks the statute in that it would require multistage light trucks to comply with the same requirements that would apply to comparable single stage light trucks.

2. Schedule for Compliance

This proposal would simply adopt the schedule for compliance set forth in section 2508. With respect to passenger cars, this would mean that at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 would have to be so equipped.

With respect to light trucks, this proposal would require that at least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 be equipped with an air bag and a manual lap/shoulder belt. However, unlike with passenger cars, the Act does not require the air bag and manual lap/shoulder belt to be provided at both the driver's and right front passenger's seating position on light trucks manufactured between September 1, 1997 and September 1, 1998. Instead, manufacturers may count towards compliance with the 80 percent air bag requirement those light trucks it produces that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position.

This conclusion is based upon the provision in section 2508(a)(1) that: "This section supplements and revises, but does not replace, Federal Motor Vehicle Safety Standard 208, including the amendment to such Standard 208 of March 26, 1991 (56 FR 12472), extending the requirements for automatic crash protection, together with incentives for more innovative automatic crash protection, to trucks, buses, and multipurpose passenger vehicles." Particularly significant in that sentence are the references to the March 26, 1991 amendment and to the incentives for more innovative automatic crash protection. The March 26, 1991 amendment is the final rule that extended the automatic crash protection requirements to light trucks. That final rule established a phase-in implementation of the automatic crash protection requirements for light trucks, with a specified percentage of each

manufacturer's production of light trucks required to be equipped with automatic crash protection beginning with vehicles manufactured on or after September 1, 1994. The phase-in for light truck automatic crash protection ends on September 1, 1997, after which date the 1991 final rule requires all light trucks to be equipped with automatic crash protection.

During the phase-in period (i.e., from September 1, 1994 through August 31, 1997), the 1991 final rule provided a number of "credits" for light truck manufacturers. Among these credits are "carry-forward" credits, which permit manufacturers that exceed the specified minimum percentage of light trucks equipped with automatic crash protection in one year of the phase-in to count those excess vehicles as credits toward the specified percentage during any subsequent model years of the phase-in (S4.2.5.5 (b), (c), and (d)); the "1.5 truck credit," which allows manufacturers to count light trucks equipped with an air bag or other non-belt means of automatic crash protection at the driver's position and any type of automatic crash protection at the right front passenger's position as 1.5 trucks equipped with automatic crash protection during the phase-in (S4.2.5.5(a)(1)); and the "one truck credit" provision, which allows manufacturers to count light trucks equipped with an air bag or other non-belt means of automatic crash protection at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position as one truck equipped with automatic crash protection during the phase-in (S4.2.5.5(a)(2)).

By the terms of the March 1991 final rule, all of these credits but one expire as of September 1, 1997, the date for full implementation of the automatic crash protection requirements. The only credit that the March 1991 final rule allows after September 1, 1997 is the "one truck credit." From September 1, 1997 through August 31, 1998, the March 1991 final rule allows manufacturers to count light trucks equipped with an air bag or other non-belt automatic crash protection at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position as a truck that complies with the automatic crash protection requirement (see S4.2.6).

When viewed against this background, it seems clear that the reference in section 2508 to incentives for more innovative automatic crash protection means the "one truck credit" provision. It also seems clear from the statutory provision that section 2508 "does not replace" the incentives for more innovative automatic crash protection in the March 1991 final rule that Congress intended the one truck credit provision to be available to manufacturers during the period from September 1, 1997 to August 31, 1998. Consistent with this conclusion is the last sentence in section 2508(b)(2): "The incentives or credits available under Standard 208 (as amended by this section) prior to September 1, 1998, shall not be available to the manufacturers to comply with the 100 percent requirement to this paragraph on and after such date." This sentence contemplates at least the possibility that credits will continue to be available through August 31, 1998.

Accordingly, this notice would retain the one truck credit during the period from September 1, 1997 to August 31, 1998. Manufacturers would be permitted to count trucks produced during this period that are equipped with an air bag at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position toward compliance with the 80 percent air bag requirement.

Every light truck manufactured on or after September 1, 1998 would have to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions. The March 1991 rule established no credits that could have been used by manufacturers for light trucks manufactured on or after September 1, 1998. To ensure that there will be no credits after that date, section 2508(b)(2) provides, as noted above, that the incentives or credits available under Standard 208 prior to September 1, 1998, shall not be available to the manufacturers to comply with the 100 percent requirement on and after such date.

3. Information to Appear on Labels and in Owner's Manuals

Section 2508(a)(2) reads as follows:

> The amendment to such Standard 208 shall also require, to be effective as soon as possible after the promulgation of such amendment, that the owner manuals for passenger cars and trucks, buses, and multipurpose passenger vehicles equipped with an inflatable restraint include a statement in an easily understandable format—
>
> (A) That the vehicle is equipped with an inflatable restraint referred to as an "air bag" and a lap and shoulder belt in either or both the front outboard seating positions;
>
> (B) That the air bag is a supplemental restraint;
>
> (C) That it does not substitute for lap and shoulder belts which must also be correctly used by an occupant in such seating position to provide restraint or protection not only from frontal crashes but from other types of crashes or accidents; and
>
> (D) That all occupants, including the driver, should always wear their lap and shoulder belts, where available, or other safety belts, whether or not there is an inflatable restraint.

This notice proposes to require that this information be provided in owner's manuals of vehicles equipped with air bags. In response to the statutory directive that this requirement for information to appear in owner's manuals take effect as soon as possible, this notice proposes that such a requirement become effective 180 days after publication of a final rule. The agency has tentatively concluded that this proposed 180 day leadtime is needed to allow vehicle manufacturers to incorporate this new language into the owner's manuals of their vehicles equipped with air bags, and is short enough so that the public will be provided with this information in new vehicle owner's manuals as soon as possible. Commenters are specifically invited to address this tentative agency conclusion.

NHTSA would also like to point out that this proposed requirement would not establish the precise language that must appear in the owner's manual. Instead, it proposes that manufacturers be required to provide this information in their owner's manuals, and allows the manufacturer to choose the language it believes will most effectively convey the information to readers of the owner's manual.

The agency is proposing additional information requirements in response to a petition for rulemaking from the Motor Vehicle Manufacturers Association (MVMA), requesting changes in the information required to be provided with respect to air bags. The MVMA petition notes that S4.5.1 of Standard No. 208 requires a permanently affixed label on each vehicle equipped with an air bag. The label must indicate the manufacturer's recommended schedule for the maintenance or replacement of such air bag. MVMA stated that, while such a labeling requirement was appropriate when it was established, technical progress with air bags since the mid 1970's has made this labeling requirement no longer appropriate.

In support of this position, MVMA stated that most vehicles currently equipped with air bags are permanently labeled with a statement to the effect that no regular maintenance of the air bag system is necessary. Such information does not, in MVMA's view, rise to the level that it ought to be permanently labeled on each vehicle. MVMA asked that NHTSA update this requirement to limit it to vehicles equipped with air bag systems that require some periodic maintenance or replacement.

MVMA's petition also asked that other information be required to be labeled in vehicles equipped with air bags, so as to increase the effectiveness of those air bags. MVMA asked that the air bag label be revised to require that information be provided on at least the following topics:

a. Limitations of air bag effectiveness (i.e., they are most effective in frontal crashes, but do not deploy in low speed frontal crashes; they are not effective in side, rear, or rollover crashes),

b. The supplementary nature of air bag protection (i.e., safety belts must be worn to provide maximum safety protection),

c. Cautions about proper positioning of child safety seats in vehicles equipped with air bags (i.e., children riding in rear facing safety seats should not be riding in the right front seating position of vehicles equipped with an air bag for that seating position), and

d. Cautions to other passengers not to sit unnecessarily close to the point from which the air bag will be deployed for that seating position (e.g., the steering wheel, the instrument panel, etc.).

NHTSA has tentatively concluded that it agrees with MVMA's suggestion that the air bag labeling requirements should be updated to reflect the technical advances that have been made with air bags since the time when the current labeling requirements were promulgated. The agency tentatively agrees that the maintenance schedule labeling requirement no longer results in consumers being provided with particularly useful information. MVMA notes that, pursuant to the requirement, most current vehicles equipped with air bags are labeled with information akin to the following: "Regular Maintenance of the Air Bag System is not Required." Accordingly, this notice proposes to delete the requirement for scheduled air bag system maintenance and replacement information to appear on a permanently affixed label if the vehicle manufacturer does not recommend any scheduled maintenance or replacement. Such information would still have to be provided on a permanently affixed label for those vehicles equipped with air bag systems for which the vehicle manufacturer specifies some regular maintenance or replacement schedule.

With respect to the four additional types of information that MVMA asked be included on the label, NHTSA has tentatively determined that MVMA's request has merit. It seems appropriate to inform the public about the types of occupant behavior and uses that may reduce the effectiveness of air bags in a frontal crash. Furthermore, with the statutory mandate in section 2508 for all new passenger cars and light trucks to be equipped with air bags, this type of information can help ensure that vehicle occupants will receive the maximum safety benefit from these air bags in the future.

However, the agency is not proposing to require that all of this information be permanently affixed to a label on the vehicle, as MVMA requested. NHTSA has tentatively concluded that providing all of the information MVMA requested on a permanent label would potentially create an "information overload," in response to which consumers would pay less attention to this information. Instead, the agency is proposing in this notice that a label be permanently affixed to the sun visor for each front outboard seating position equipped with an air bag. This label could be positioned on either side of the sun visor, so that it was constantly visible or so that it was visible only when the sun visor was extended down, at the vehicle manufacturer's option. This label would set forth simple statements about the do's and don'ts that should be followed to obtain the maximum safety protection from the air bag. NHTSA is proposing that the following information appear on the sun visor label:

For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child restraints in any front passenger seat position.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

In addition, if regular maintenance or scheduled replacement is recommended for the air bag, the recommended maintenance or replacement schedule would also have to appear on this label.

The agency has proposed these statements for the label because they will ensure that vehicle occupants will have the basic information necessary to receive the maximum safety protection from their air bags. The statement about the need to wear the safety belt even though an air bag is present is required to appear in the owner's manual, pursuant to section 2508, and is so fundamental to safety protection that NHTSA has tentatively concluded that it should be presented first in the sun visor label. The second proposed statement, about not installing rearward-facing child restraints at seating positions equipped with an air bag, is information that was released in a NHTSA Consumer Advisory Bulletin on December 10, 1991. The third proposed statement, about not sitting unnecessarily close to the air bag, reflects the same premise for adult occupants as the second statement reflects for child occupants. That is, sitting or leaning too close to the air bag creates the chance of injury from a deploying air bag. NHTSA has tentatively concluded that this information would be useful to the public. The fourth proposed statement, about not putting any item over the air bag cover or between the air bag and the occupant, is important information so that the occupant will not inadvertently do something that would prevent the air bag from providing the level of occupant protection it is designed to provide. The fifth and final proposed statement would direct the vehicle occupant to the vehicle owner's manual for further information.

The agency invites public comment on the proposed content of these sun visor labels. Specifically, the agency is interested in comments about whether these five proposed statements are believed to be adequate, or whether the commenter believes that some of these statements are unnecessary or that some other statements should be substituted for one or more of these proposed statements. The agency is especially interested in the commenter's reasons for believing that these statements should be adopted as proposed or that the proposal should be modified.

NHTSA is concerned that some means may be necessary to alert vehicle occupants to the presence of the label on the sun visor, especially if manufacturers choose to affix the label on the side of the sun visor that will not generally be visible. One means of alerting occupants to the sun visor label would be to place a label in a constantly visible location within the occupant compartment alerting occupants to the label on the sun visor. For instance, a label could be placed on each air bag cover stating: "Contains air bag. Please read important safety information labeled on sun visor." The agency requests comments on the need for such a requirement to appear in the final rule on this subject.

NHTSA is also considering other possibilities for alerting the occupant to the label on the sun visor. One possibility is that the air bag covers could be embossed with a new universal air bag symbol, such as the one currently being used on the vehicle identification number (VIN) plate by some vehicle manufacturers. In conjunction with this, it might be valuable to affix a special removable warning label to the air bag cover on all new and used air bag vehicles being displayed for sale. This removal label would explain the reason for the new symbol and call attention to the warning label(s) on the sun visor(s). As part of this approach, a public education campaign could be undertaken to educate the public as to the meaning of the new symbol and the need for first-

time owners of vehicles with air bags to learn what they can do to obtain the maximum safety protection from their air bags. The agency seeks public comments on this approach to alerting occupants and on this issue generally.

The final aspect of this proposed scheme for providing the public with important safety information about air bags would be information in the vehicle owner's manual, in addition to the statutorily-required information on the importance of belt use. The owner's manual would also be required to include information about proper positioning of occupants relative to the air bag (e.g., not to sit unnecessarily close to the air bag), if any such instructions are appropriate for the air bag system installed in the vehicle; information about the positioning of child seats at positions equipped with an air bag (e.g., rear-facing child seats should not be installed at this position and the seat should be adjusted as far rearward as possible if a forward-facing child seat is installed), if any such instructions are appropriate; information about not placing objects on the air bag cover or between the occupant and the air bag, if any such instructions are appropriate; and any other information that is appropriate so that the occupants can receive the full protection the air bag system is designed to provide.

As was proposed above for the information to appear in the owner's manual with respect to the importance of belt use, the agency is not proposing the exact language that must appear in the owner's manual. Instead, this proposed requirement is simply that vehicle manufacturers provide the necessary information. It allows the manufacturers the flexibility to present this information in the most effective manner and in a way that is tailored to the features of the air bag system in the particular vehicle.

4. Temporary Exemption From Air Bag Requirements

Section 2508(c) requires the agency to prescribe the procedures to be followed by manufacturers in applying for temporary exemptions from the air bag requirements, as well as the content and timing of any such applications. That section also provides that a temporary exemption from the air bag installation requirements shall be granted only if the agency "finds that there has been a disruption in the supply of any inflatable restraint component, or a disruption in the use and installation by the manufacturer of such component due to unavoidable events not under the control of the manufacturer, that will prevent the manufacturer from meeting its anticipated production volume of vehicles with (air bags)." In addition, the statute provides that any temporary exemptions must be conditioned upon the manufacturer recalling the exempted vehicles promptly to install the omitted air bag(s) when adequate supplies of air bags become available again. The statute also provides that notice of each application for temporary exemption shall be published in the **Federal Register** and each notice of grant or denial shall be published in the **Federal Register**, along with the reasons therefor.

NHTSA is proposing to provide a temporary exemption section in Standard No. 208 that is modeled closely after the temporary exemption provisions set forth in 49 CFR part 555. Each application for a temporary exemption from the air bag requirement would have to identify the components for the air bag system that have become unavailable due to circumstances beyond the manufacturer's control, explain briefly the cause of the disruption and why it is beyond the manufacturer's control, estimate the anticipated duration of the disruption, set forth any other information the manufacturer believes the agency should consider in reaching a decision on the application, and contain an unconditional statement by the applicant that an air bag will be installed in every vehicle at those seating positions for which a temporary exemption is granted in response to the application. The vehicle manufacturer would also have to propose a reasonable time within which it would recall all vehicles granted an exemption pursuant to this application and install the omitted air bags, and explain why it believes that period of time is reasonable.

Upon receipt of an application for temporary exemption, NHTSA would review the application to see if it was complete. The manufacturer would be advised if the application did not contain all the necessary information. If the application were complete, NHTSA would publish notice of the application in the **Federal Register**. After reviewing the information available to it, NHTSA would issue its decision to grant or deny the exemption application. In no event would NHTSA's final decision on the application be issued later than 60 days after the date on which a complete petition was received.

If NHTSA were to grant a temporary exemption, it would state that the exemption applies to vehicles manufactured between specified dates. The exemption would generally begin upon the date the grant notice was published in the **Federal Register** and end on the date specified in the notice. Under the proposal, the exempted manufacturer would be required to affix a label within the passenger compartment of every vehicle not equipped with an air bag. This label would state in block capitals:

THIS VEHICLE DOES NOT CONTAIN AN AIR BAG IN CONFORMANCE WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR OCCUPANT CRASH PROTECTION. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. ____.

This label could only be removed from the vehicle after the manufacturer had recalled the vehicle and installed the required air bag(s). Upon removal of the label, the vehicle would be certified as complying with all the occupant crash protection requirements of Standard No. 208.

In addition, this notice proposes that if any vehicles are delivered without an air bag, pursuant to an exemption, the manufacturer shall furnish written notification to the dealer and to the first purchaser of the vehicle for purposes other than resale that:

1. This vehicle does not conform to Federal Motor Vehicle Safety Standard No. 208, because it is not equipped with an inflatable restraint at (insert the affected seating positions).

2. The vehicle was allowed to be sold pursuant to NHTSA Exemption No. (insert appropriate exemption number).

3. The reason this vehicle was exempted from the requirement for an inflatable restraint was because of factors beyond the vehicle manufacturer's control.

4. The vehicle manufacturer will recall this vehicle not later than (insert the time set forth in the exemption) and install the missing inflatable restraint at no charge.

5. If the reader has any questions or would like some further information, he or she may contact the manufacturer at (insert an address and telephone number).

Commenters are asked to address these proposed exemption procedures. It would be helpful to the agency if the commenter would carefully read section 2508(c) while preparing the comments, so as to minimize instances where commenters ask the agency to omit some requirement mandated by that section. For instance, comments to the effect that there should be no exemption procedures or that special labels should not be required on exempted vehicles will not prove very helpful, since the statute expressly states that there must be exemption procedures and that

exempted vehicles must be labeled. It will be more helpful if commenters identify areas where they believe the agency has not implemented a statutory mandate or areas where the commenter believes the agency has imposed an unnecessary requirement that goes beyond that which is statutorily required.

5. Reporting Requirements

Whenever the agency specifies a phase-in of some performance requirement, it is necessary for enforcement of that phase-in to require manufacturers to report at the end of the production period its total production of vehicles and the number of such vehicles that are certified as complying with the relevant performance requirement. Accordingly, since section 2508 mandates a phase-in of air bags as the exclusive means of complying with the automatic crash protection requirements, it will be necessary to amend the reporting requirements to require manufacturers to report what percentage of their production is equipped with air bags certified as complying with the crash protection requirements. This notice proposes to amend Part 585 in this manner.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts that would be associated with this proposal if it were adopted as a final rule. Based on that consideration, NHTSA has determined that this proposal is not "major" within the meaning of Executive Order 12291, because the costs should be well below the $100 million threshold for categorizing a rule as "major." However, this proposal is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures, because of the level of public interest. Accordingly, NHTSA has prepared a preliminary regulatory evaluation (PRE), a copy of which has been placed in the docket for this rulemaking action. Interested persons may obtain copies of that PRE by writing to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590.

The PRE may be briefly summarized as follows. Based on the information currently available, the agency believes that almost all manufacturers were planning on using air bags in their vehicles produced during the model years affected by this proposal. Hence, the costs associated with this proposal should be very small. There may be some minor costs associated with the proposed labeling requirements for the sun visors, but again the agency believes that most manufacturers are already labeling the sun visors in their cars equipped with air bags.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. The agency does not believe that this proposal will have any significant impacts on manufacturers other than final stage manufacturers. However, there are some potentially significant impacts on final stage manufacturers. This is discussed in detail in the PRE for this rulemaking. Interested persons are invited to review this section of the PRE.

National Environmental Policy Act

NHTSA has analyzed the environmental issues associated with air bags as part of its requirements for automatic crash protection in new cars (49 FR 28962; July 17, 1984) and light trucks and vans (56 FR 12472; March 26, 1991), and determined that the widespread introduction and use of air bags would not have a significant impact on the quality of human life. Based on those analyses, which were conducted pursuant to the National Environmental Policy Act, NHTSA has determined that a final rule adopting this proposal would likewise not have a significant impact on the quality of human life. A discussion related to the environmental issues associated with air bags can be found in Docket No. 74–14; Notice 36 (for passenger cars) and Docket No. 74–14; Notice 70 (for light trucks and vans).

Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this proposed rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under OMB No.: 2127–0535; *Administration:* National Highway Traffic Safety Administration; *Title:* Production Reporting System for Air Bag Compliance (49 CFR part 585); *Need for Information:* To assess compliance with air bag phase-in requirements; *Proposed Use of Information;* To determine if manufacturers are complying with the air bag phase-in schedule; *Frequency:* Once only; *Burden Estimate:* 828 hours; *Respondents:* 23; *Form(s):* None; *Avergage Burden Hours for Respondent:* 36.

FOR FURTHER INFORMATION CONTACT: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735, or Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 585

Motor vehicles, Reporting and recordkeeping requirements. In consideration of the foregoing, NHTSA proposes to amend chapter V of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S4.1.4 of Standard No. 208 would be revised to read as follows:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989, but before September 1, 1996.*

* * * * *

3. S4.1.5 of Standard No. 208 would be amended by removing existing § 4.1.5 through § 4.1.5.2(d), inclusive, and substituting a revised § 4.1.5 through S4.1.5.3, to read as follows:

S4.1.5 *Passenger cars manufactured on or after September 1, 1996.*

S4.1.5.1 *Frontal/angular automatic protection system.*

(a) Each passenger car manufactured on or after September 1, 1996 shall:

(1) At each front outboard designated seating position meet the frontal crash protection requirements of S5.1 by means that require no action by vehicle occupants;

(2) At any front designated seating positions that are not "outboard designated seating positions," as that term is defined at 49 CFR 571.3, and at any rear designated seating positions that are not "rear outboard designated seating positions," as that term is defined at S4.1.4.2(c) of this standard, have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 and S7.2 of this standard; and

(3) At each front designated seating position that is an "outboard designated seating position," as that term is defined at 49 CFR 571.3, and at each rear designated seating position that is a "rear outboard designated seating positions," as that term is defined at S4.1.4.2(c) of this standard, have a Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3 of this standard, and, in the case of the Type 2 seat belt assemblies installed at the front outboard designated seating positions, meet the frontal crash protection requirements with the appropriate anthropomorphic test dummy restrained by the Type 2 seat belt assembly in addition to the means that requires no action by the vehicle occupant.

(b) For the purposes of this section, an *inflatable restraint system* means an air bag that is concealed in the steering wheel or the instrument panel until it is activated in a crash.

S4.1.5.2 *Passenger cars manufactured on or after September 1, 1996 and before September 1, 1997.*

S4.1.5.2.1 The amount of passenger cars complying with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position shall be not less than 95 percent of the manufacturer's total production of passenger cars manufactured on or after September 1, 1996, and before September 1, 1997. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.1.5.2.2 *Passenger cars produced by more than one manufacturer.*

S4.1.5.2.2.1 For the purpose of calculating the production of passenger cars by each manufacturer during the period specified in S4.1.5.2, a passenger car produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.1.5.2.2.2:

(a) A passenger car that is imported into the United States shall be attributed to the importer.

(b) A passenger car manufactured within the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.1.5.2.2.2 A passenger car produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers, as specified in an express written contract, reported to the National Highway Traffic Safety Administration pursuant to Part 585 of this title, between the manufacturer so specified and the manufacturer to which the vehicle otherwise would be attributed, pursuant to S4.1.5.2.2.1.

S4.1.5.3 *Passenger cars manufactured on or after September 1, 1997.*

Each passenger car manufactured on or after September 1, 1997 shall comply with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

4. S4.2.6 of Standard No. 208 would be amended by removing existing S4.2.6, and substituting a new S4.2.6 through S4.2.6.2, to read as follows:

S4.2.6 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997.* Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, which is manufactured on or after September 1, 1997, shall comply with the requirements of S4.1.5.1 of this standard (as specified for passenger cars), except that walk-in-van-type trucks and vehicles designed to be sold exclusively to the U.S. Postal Service may instead meet the requirements of S4.2.1.1 or S4.2.1.2 of this standard.

S4.2.6.1 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998.*

S4.2.6.1.1 The amount of trucks, buses, and multipurpose passenger vehicles complying with the requirement of S4.1.5.1(a)(1) of this standard by means of an inflatable restraint system shall be not less than 80 percent of the manufacturer's total combined production of subject vehicles manufactured on or after September 1, 1997 and before September 1, 1998. Each truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998, whose driver's seating position complies with S4.1.5.1(a)(1) by means of an inflatable restraint system and whose right front passenger's seating position is equipped with a manual Type 2 seat belt assembly that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2 of this standard, shall be counted as a vehicle complying with S4.1.5.1(a)(1) by means of an inflatable restraint system. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.6.1.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer.*

S4.2.6.1.2.1 For the purpose of calculating the production by each manufacturer during the period specified in S4.2.6.1.1, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.2.6.1.2.2:

(a) A vehicle that is imported into the United States shall be attributed to the importer.

(b) A vehicle manufactured within the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.2.6.1.2.2 A truck, bus, or multipurpose passenger vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers, as specified in an express written contract, reported to the National Highway Traffic Safety Administration pursuant to Part 585 of this title, between the manufacturer so specified and the manufacturer to which the vehicle otherwise would be attributed, pursuant to S4.2.6.1.2.1.

S4.2.6.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998.*

Each truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998 shall comply with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

5. S4.5.1 of Standard No. 208 would be revised to read as follows:

S4.5 *Other general requirements.*

S4.5.1 *Labeling and owner's manual information.*

(a) *Air bag maintenance or replacement information.* If the vehicle manufacturer recommends periodic maintenance or replacement of an inflatable restraint system, as that term is defined in S4.1.5.1(b) of this standard, installed in a vehicle, that vehicle shall be labeled with the recommended schedule for maintenance or replacement. The schedule shall be specified by month and year, or in terms of vehicle mileage, or by intervals measured from the date appearing on the vehicle certification label provided pursuant to 49 CFR part 567. The label shall be permanently affixed to the vehicle within the passenger compartment and lettered in English in block capitals and numerals not less than three thirty-seconds of an inch high. This label may be combined with the label required by S4.5.1(b) of this standard to appear on the sun visor. If some regular maintenance or replacement of the inflatable restraint system(s) in a vehicle is recommended by the vehicle manufacturer, the owner's manual shall also set forth the recommended schedule for maintenance or replacement.

(b) *Label on sun visor above front outboard seating position equipped with inflatable restraint system.* Each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. This label shall read:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child seats in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

(c) *Information to appear in owner's manual.* The owner's manual for any vehicle equipped with an inflatable restraint system shall include a description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and a lap/shoulder belt at one or both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information should emphasize that all occupants, including the driver, should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the label identifying the air bag on the steering wheel and instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

* * * * *

6. A new S12 would be added to Standard No. 208 to read as follows:

S12. *Temporary Exemption from Requirement for Inflatable Restraint System.*

S12.1 *Scope.* This section establishes procedures for filing and processing applications for temporary exemption from the requirements in this standard that vehicles be equipped with inflatable restraint systems.

S12.2 *Definitions.*

"Line" means a name that a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon,

and hatchback vehicles of the same make.

S12.3 *Standard of review.* In order to receive a temporary exemption from the inflatable restraint requirement, a vehicle manufacturer must demonstrate in its application that there has been a disruption in the supply of one or more inflatable restraint system components, or a disruption in the use and installation by the manufacturer of any such component due to unavoidable events not under the control of the manufacturer, which will prevent a manufacturer from meeting its anticipated production volume of vehicles with inflatable restraint systems.

S12.4 *Exemption applications—General requirements.* Each application for a temporary exemption from the inflatable restraint requirements must—

(a) Be written in the English language;

(b) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(c) State the full name and address of the manufacturer, the nature of its organization (individual, partnership, corporation, etc.), and the name of the State or country under the laws of which it is organized;

(d) Identify the motor vehicle line or lines for which the temporary exemption is being sought;

(e) Set forth in full the data, views, and arguments of the manufacturer that would support granting the temporary exemption, including the specific information required by S12.5; and

(f) Specify and segregate any part of the information and data submitted in the application that should be withheld from public disclosure in accordance with Part 512 of this chapter.

S12.5 *Exemption applications—Specific content requirements.* Each application for a temporary exemption from the inflatable restraint requirement must include:

(a) A clear and specific identification of any component in the inflatable restraint system that has become unavailable due to circumstances beyond the manufacturer's control, and a diagram showing the location of such component within the restraint system and within the vehicle;

(b) A clear and specific explanation of the cause or causes of the disruption in the supply of the component, and a showing that such disruption is beyond the control of the manufacturer;

(c) An estimate of the length of time that will be needed to correct the disruption and again incorporate the subject components into current production;

(d) A complete statement of the bases for the manufacturer's belief that NHTSA should grant a temporary exemption in response to this application;

(e) An unconditional statement by the manufacturer that an inflatable restraint system will be installed in every vehicle at those seating positions for which a temporary exemption is requested in the application; and

(f) A proposed reasonable period of time after the disruption in the supply of inflatable restraint system components is corrected that the manufacturer estimates will ensure a sufficient quantity of components for both anticipated production and retrofit of those vehicles for which a temporary exemption is requested in the application, so that the vehicle manufacturer can recall those vehicles for which a temporary exemption is requested and install inflatable restraint systems in them, together with a demonstration of why the manufacturer believes this proposed period of time is reasonable for completing this recall.

S12.6 *Processing an application for a temporary exemption.*

(a) NHTSA will process any application for temporary exemption that contains the information specified in S12.4 and S12.5. If an application fails to provide the information specified in S12.4 and S12.5, NHTSA will not process the application, but will advise the manufacturer of the information that must be provided if the agency is to process the application.

(b) Notice of each application for temporary exemption shall be published in the **Federal Register**.

(c) NHTSA will issue its decision to grant or deny the requested temporary exemption not later than 60 days after the agency receives a complete petition, as defined in paragraph (a).

(d) Notice of each decision to grant or deny a temporary exemption, and the reasons for granting or denying it, will be published in the **Federal Register**. Such decisions will be the final agency action on those applications, so no petitions for reconsideration of such decisions will be processed or considered by the agency.

(e) Unless a later effective date is specified in a notice announcing an agency decision to grant a temporary exemption, a temporary exemption from the inflatable restraint requirement will become effective upon the date the decision is published in the **Federal Register**.

S12.7 *Labels and written notice announcing temporary exemption.*

S12.7.1 It shall be a condition of every temporary exemption from the inflatable restraint requirement that the manufacturer of exempted vehicles comply with the provisions of S12.7.2 and S12.7.3.

S12.7.2 (a) The manufacturer of any vehicle granted a temporary exemption from the inflatable restraint requirement shall affix a label within the passenger compartment of such vehicle. The label shall set forth the following information in block capital letters and numerals not less than three thirty-seconds of an inch high:

THIS VEHICLE DOES NOT CONTAIN AN AIR BAG IN CONFORMANCE WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR OCCUPANT CRASH PROTECTION. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. (insert number assigned by NHTSA).

(b) This label shall not be removed until after the vehicle manufacturer has recalled the vehicle and installed an inflatable restraint system at those seating positions for which it was granted an exemption.

(c) Removal of the label by the manufacturer or any of its dealers or distributors shall constitute a certification that the vehicle complies in full with the inflatable restraint system requirement of this standard.

S12.7.3 The manufacturer of any vehicle that is delivered without an inflatable restraint system, pursuant to a temporary exemption granted under this section, shall, at the time of delivery of the vehicle, provide a written notice to the dealer to whom the vehicle is delivered and to the first purchaser of the vehicle for purposes other than resale. Such notice shall provide the following information:

(a) This vehicle does not conform to Federal Motor Vehicle Safety Standard No. 208, because it is not equipped with an inflatable restraint at (insert the affected seating positions).

(b) The vehicle was allowed to be sold pursuant to NHTSA Exemption No. (insert appropriate exemption number).

(c) The reason this vehicle was exempted from the requirement for an inflatable restraint was because of factors beyond the manufacturer's control.

(d) The manufacturer will recall this vehicle not later than (insert the time set forth in the exemption) and install the missing inflatable restraint at no charge.

(e) If the reader has any questions or would like some further information, he or she may contact the manufacturer at (insert an address and telephone number).

* * * * *

PART 585—[AMENDED]

7. The authority citation for Part 585 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

8. Section 585.1 would be revised to read as follows:

§ 585.1 Scope.

This part establishes requirements for manufacturers of passenger cars to submit reports, and to maintain records related to the reports, concerning the number of cars equipped with inflatable restraint systems in compliance with the requirement of S4.1.5.2 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). This part also establishes requirements for manufacturers of trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less to submit reports, and to maintain records related to the reports, concerning the number of such vehicles equipped with automatic crash protection in compliance with the requirements of S4.2.5 of Standard No. 208 and the number of such vehicles equipped with inflatable restraint systems in compliance with the requirement of S4.2.6.1 of Standard No. 208.

9. Section 585.2 would be revised to read as follows:

§ 585.2 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a vehicle manufacturer has complied with the requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) to install automatic crash protection in specified percentages of the manufacturer's annual production and to install an inflatable restraint system that provides automatic crash protection in a specified percentage of the manufacturer's annual production.

10. Section 585.3 would be revised to read as follows:

§ 585.3 Applicability.

This part applies to manufacturers of passenger cars and to manufacturers of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

11. Section 585.5 would be revised to read as follows:

§ 585.5 Reporting requirements.

(a) *General reporting requirements—Passenger cars.* Within 60 days after the end of the production year ending August 31, 1997, each manufacturer that manufactured any passenger cars for sale in the United States shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirement of Standard No. 208 (49 CFR 571.208) for installation of inflatable restraint systems that provide automatic crash protection in 95 percent of its cars manufactured during that production year.

(b) *General reporting requirements—Light trucks, buses, and multipurpose passenger vehicles.*

(1) *Automatic crash protection.* Within 60 days after the end of the production years ending August 31, 1995, August 31, 1996, and August 31, 1997, each manufacturer that manufactured any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, or vehicles that were altered after previously having been certified in accordance with part 567 of this chapter) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of automatic crash protection in such vehicles manufactured during that production year. This report need not be filed by any manufacturer whose production consists exclusively of:

(i) Vehicles manufactured in two or more stages;

(ii) Walk-in van-type trucks;

(iii) Vehicles designed to be sold exclusively to the U.S. Postal Service; and/or

(iv) Vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(2) *Inflatable restraint system that provides automatic crash protection.* Within 60 days after the end of the production year ending August 31, 1998, each manufacturer that manufactured any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of inflatable restraint systems that provide automatic crash protection in 80 percent of such vehicles manufactured during that production year. This report need not be filed by any manufacturer whose production consists exclusively of:

(i)Walk-in van-type trucks; and/or

(ii) Vehicles designed to be sold exclusively to the U.S. Postal Service.

(c) Each report submitted in compliance with paragraphs (a), (b)(1), or (b)(2) of this section shall:

(1) Identify the manufacturer;

(2) State the full name, address, and title of the official responsible for preparing the report:

(3) Identify the production year for which the report is filed;

(4) Provide the information specified in paragraph (d) of this section;

(5) Be written in the English language;

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; and

(7)(i) In the case of a report filed pursuant to paragraph (a) of this section, expressly state whether the manufacturer has complied with the requirement of S4.1.5.2 of Standard No. 208 (§ 571.208 of this chapter);

(ii) In the case of a report filed pursuant to paragraph (b)(1) of this section, expressly state whether the manufacturer has complied with the requirements of S4.2.5 of Standard No. 208 (§ 571.208 of this chapter); and

(iii) In the case of a report filed pursuant to paragraph (b)(2) of this section, expressly state whether the manufacturer has complied with the requirements of S4.2.6.1 of Standard No. 208 (§ 571.208 of this chapter).

(d) *Report content.*

(1) *Passenger cars.*

(i) *Basis for phase-in production goals.* Each manufacturer shall report the total number of passenger cars it manufactured for sale in the United States for the production year ending August 31, 1997.

(ii) *Production.* Each manufacturer shall report the number of passenger cars manufactured for sale in the United States for the production year ending August 31, 1997 that it certified as complying with S4.1.5.1(a) of Standard No. 208 (§ 571.208 of this chapter) because they were equipped with an inflatable restraint system that provided automatic crash protection at both the driver's and the right front passenger's seating position.

(iii) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is

affected by one or more of the express written contracts permitted by S4.1.5.2.2 of § 571.208 of this chapter shall:

(A) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(B) Report the number of cars covered by each such contract.

(2) *Trucks, buses, and multipurpose passenger vehicles.*

(i) *Automatic crash protection.*

(A) *Basis for phase-in production goals.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for each of the three preceding production years, or, at the manufacturer's option, for the production year for which the report is filed. A manufacturer that did not manufacture any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during each of the three preceding production years must report the number of trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less it manufactured during the production year for which the report is filed. However, manufacturers are not required to report any information with respect to those vehicles that are manufactured in two or more stages, walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, and/or vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(B) *Production.* Each manufacturer shall report for the production year for which the report is filed, and for each preceding production year, to the extent that trucks, buses, and multipurpose passenger vehicles produced during the preceding production years are treated under § 571.208 of this chapter as having been produced during the production period for which the report is filed, the information specified in paragraphs (d)(2)(i)(B)(*1*) through (d)(2)(i)(B)(*3*) of this section, inclusive, with respect to its trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

(*1*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with automatic seat belts and the seating positions at which those belts are installed;

(*2*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with air bags and the seating positions at which those air bags are installed; and

(*3*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with other forms of automatic crash protection, which forms of automatic crash protection shall be described, and the seating positions at which those forms of automatic crash protection are installed.

(C) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.2.5.6.2 of § 571.208 of this chapter shall:

(*1*) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(*2*) Report the number of vehicles covered by each such contract.

(ii) *Inflatable restraint system that provides automatic crash protection.*

(A) *Basis for phase-in production goals.* Each manufacturer shall report the total number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for the production year ending August 31, 1998. However, manufacturers are not required to report any information with respect to those vehicles that are walk-in van-type trucks, and/or vehicles designed to be sold exclusively to the U.S. Postal Service.

(B) *Production.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds that it manufactured for sale in the United States for the production year ending August 31, 1998 that it certified as complying with S4.1.5.1(a) of Standard No. 208 (§ 571.208 of this chapter) because they were equipped with an inflatable restraint system that provided automatic crash protection.

(C) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.2.6.1.2 of § 571.208 of this chapter shall:

(*1*) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(*2*) Report the number of vehicles covered by each such contract.

12. Section 585.6 would be revised to read as follows:

§ 585.6 Records.

Each manufacturer shall maintain records of the vehicle identification number and type of automatic crash protection for each vehicle for which information was reported under § 585.5 until December 31, 1999.

Issued on December 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-30213 Filed 12-11-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Ten Plants and Threatened Status for Two Plants From Serpentine Habitats in the San Francisco Bay Region of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for 10 plants: *Castilleja neglecta* (Tiburon paintbrush), *Ceanothus ferrisae* (coyote ceanothus), *Cirsium fontinale* var. *fontinale* (fountain thistle), *Clarkia franciscana* (Presidio clarkia), *Cordylanthus tenuis* ssp. *capillaris* (Pennell's bird's beak), *Dudleya setchellii* (Santa Clara Valley dudleys), *Eriophyllum latilobum* (San Mateo woolly sunflower), *Pentachaeta bellidiflora* (white-rayed pentachaeta), *Streptanthus albidus* ssp. *albidus* (Metcalf Canyon jewelflower), and *Streptanthus niger* (Tiburon jewelflower). The Service also proposes threatened status for two plants, *Calochortus tiburonensis* (Tiburon mariposa lily) and *Hesperolinon congestum* (Marin dwarf-flax). These species are restricted to serpentine soil outcrops in the area near the San

Francisco Bay, California. The 12 plants have been affected variously and are threatened by one or more of the following: Urbanization, pedestrian and off-road vehicular traffic, the invasion of alien plants, road maintenance, soil erosion and slipping, unauthorized dumping, livestock grazing, seed predation by beetles, and stochastic extinction by virtue of the small isolated nature of the remaining populations. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 12, 1993. Public hearing requests must be received by January 28, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanine L. Hardison at 916/978–4866 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Cordylanthus tenuis ssp. *capillaris*, *Calochortus tiburonensis*, *Castilleja neglecta*, *Streptanthus*, *niger*, *Clarkia franciscana*, *Cirsium fontinale* var. *fontinale*, *Eriophyllum latilobum*, *Hesperolinon congestum*, *Pentachaeta bellidiflora*, *Ceanothus ferrisae*, *Dudleya setchellii*, and *Streptanthus albidus* ssp. *albidus* are endemic to serpentine soils in the region of the San Francisco Bay in California. Serpentine soils are derived from ultramafic rocks such as serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the Sierra Nevada and in the Coast Ranges from Santa Barbara County, California, to British Columbia. The chief constituent of the parent rock is some variant of iron-magnesium silicate. Most serpentine soils are formed in place over the parent rock, and are therefore shallow, rocky, and highly erodible. Serpentine soils also, because of the parent material, tend to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). These characteristics make serpentine soil inhospitable for the growth of most plants. Nevertheless, some plants have adapted to the rigors of life on serpentine soils. In fact, serpentine soils often support a high diversity of plants, including many rare species (McCarten 1988). Over 200 taxa in California are endemic (restricted) to serpentine soils (Kruckeberg 1984).

Serpentine soils in the San Francisco Bay region are derived from intrusive igneous rocks associated with fault zones in the sedimentary Franciscan formation. Outcrops occur south of the Bay in the Coyote Valley of Santa Clara County; west of the Bay at Edgewood County Park, near Crystal Springs Reservoir, and at Stanford University's Jasper Ridge Preserve in San Mateo County, and at the Presidio in San Francisco County; east of the Bay in the Oakland hills of Alameda County and at Mt. Diablo in Contra Costa County; and north of the Bay on the Tiburon Peninsula in eastern Marin County and at Mt. Tamalpais, Carson Ridge, and near Nicasio Reservoir in western Marin County, as well as in Sonoma and Napa Counties.

Serpentine soils are variable in soil chemistry, texture, and water availability, both within and between sites (McCarten 1987b). This variability and the variety of micro-climates in the San Francisco Bay region have a profound effect upon the local flora and vegetation. Several serpentine plant communities are found in the San Francisco Bay region (McCarten 1987b). Grassland and annual forb communities (serpentine bunchgrass grassland and serpentine wildflower field) tend to occur on level ground or on gentle slopes with soils to 1 meter (m) (3 feet (ft)) or more in depth. Shrub communities (Franciscan serpentine coastal scrub, mixed serpentine chaparral, and Sargent cypress woodlands) tend to occur on steep rocky slopes with shallow soils. In some areas, soil development is minimal and parent rock is extensively exposed. These serpentine barrens support a distinctive community composed of only a few species, usually growing at low densities. Another unique habitat on serpentine soils occurs near seasonal springs and seeps, which support species requiring moist soil. Most of the 12 species proposed in this rule occur in the serpentine bunchgrass grassland and serpentine wildflower field communities. *Cirsium fontinale* var. *fontinale* occurs in serpentine seep areas. *Cordylanthus tenuis* ssp. *capillaris* and *Ceanothus ferrisae* occur in chaparral, as do a few populations of *Hesperolinon congestum*. *Dudleya setchellii* and *Streptanthus albidus* ssp. *albidus* are found on serpentine barrens. *Eriophyllum latilobum* grows on serpentine-influenced soil in the coast live oak woodland community.

Serpentine endemics may have limited or widespread distributions. Some species are restricted to a single outcrop; others occur on serpentine soils within a particular region; a few species occur throughout almost the entire range of serpentine soils in California (Kruckeberg 1984). Of the taxa proposed in this rule, one (*Calochortus tiburonensis*) is thought to always have been restricted to the single outcrop on which it occurs. Others, including *Cordylanthus tenuis* ssp. *capillaris*, *Streptanthus niger*, *Eriophyllum latilobum*, *Dudleya setchellii*, and *Streptanthus albidus*, ssp. *albidus*, have a known historical range of only a few miles or less. The widest ranging species in historic times was *Pentachaeta bellidiflora*, which occurred from Marin County to Santa Cruz County. It is now restricted to a single population as a result of habitat destruction.

The human population of the San Francisco Bay region has grown rapidly over the last several decades. Urban development (including highway construction) has reduced the amount of serpentine habitat by nearly 20 percent in the past 20 years (McCarten 1987b). The construction of roads, houses, recreational facilities, and waste disposal sites continues. The increasing numbers of people also place an ever greater strain on undeveloped wildlands, through activities such as pedestrian and off-road vehicle traffic, unauthorized garbage dumping, and changes in the pattern of wildland fires. Serpentine habitats, because of their often limited vegetative cover, may appear to the uninitiated as unoccupied space, and so they are especially likely to be subject to disturbances. Recreational activities may directly impact plants; or may result in increased erosion and facilitate the invasion of alien species including many introduced annual grasses common in California. Competition with introduced species is a serious threat to serpentine natives (McCarten 1987b). The destruction of serpentine habitats due to urban development has also increased the fragmentation of rare plant populations, thus increasing the risks of extinction due to chance events such as fire, pest or disease outbreaks, reproductive failure, or other natural or human-caused disaster.

The land that supports these 12 taxa is owned by cities and counties, State and Federal agencies, parks, two water districts and private parties.

Discussion of the Twelve Species Proposed for Listing

North Bay Species

Cordylanthus tenuis ssp. *capillaris* (Pennell's bird's beak) was collected by Herbert Mason about 3 kilometers (km) (2 miles) north of Occidental in Sonoma County, California, in 1946. Francis Whittier Pennell described the plant as *Cordylanthus capillaris* in 1950, using Mason's specimen as the type (Pennell 1950). Pennell was misled by an erroneous label to think that the plants had been collected in Merced County (Bacigalupi 1966), which may have affected his treatment of the taxon (Chuang and Heckard 1986). Artificial hybridization studies of *C. brunneus* and *C. capillaris* (Chuang and Heckard 1975) showed a close relationship between the two plants. The name *C. brunneus* ssp. *capillaris* was proposed for *C. capillaris* by Chuang and Heckard (Heckard 1977) but was never formally published. In 1986 Chuang and Heckard published a revision of the genus, in which both *C. brunneus* and *C. capillaris* were treated as subspecies of *C. tenuis* (Chuang and Heckard 1986).

Cordylanthus tenuis ssp. *capillaris* is a branching herbaceous annual of the snapdragon family (Scrophulariaceae). The plant grows 30–40 centimeters (cm) (12–16 inches (in)) tall, with yellow-green hairless herbage that becomes purplish with age. The leaves are entire, or those of the primary stem three-parted, and threadlike. The floral bracts are three-parted up to two-thirds of their length, with fine marginal hairs on bracts and calyx. The tubular corolla is 1.5 cm (0.6 in) long, and garnet-brown laterally, paler dorsally. Each capsule contains 10–16 seeds. The three-lobed outer bracts of *Cordylanthus tenuis* ssp. *capillaris* distinguish it from its nearest relative (*C. tenuis* ssp. *brunneus*) and from *C. pilosus*, another *Cordylanthus* found in the area. A further distinguishing character is that *C. pilosus* is densely hairy throughout.

Cordylanthus tenuis ssp. *capillaris* is known only from two locations: the type locality in western Sonoma County and a second occurrence a few miles to the west. A third population may occur on property adjacent to the second location, but permission for botanical surveys on that property has been consistently refused (Betty Guggolz, Milo Baker Chapter, California Native Plant Society, pers. comm., 1992). The total number of plants fluctuates from year to year, as is typical of annual plants. *C. tenuis* ssp. *capillaris* is threatened with potential residential development, garbage dumping, and roadside maintenance.

Calochortus tiburonensis (Tiburon mariposa lily) was discovered in 1971 by Robert West on Ring Mountain on the Tiburon Peninsula in Marin County, California. Albert Hill collected the type specimen on Ring Mountain the following year, and published the description in 1973 (Hill 1973).

Calochortus tiburonensis is a bulbous perennial of the lily family (Liliaceae) with a single persistent, basal, linear-oblong leaf 30–60 cm (1–2 ft) long. The flowering stem, about 50 cm (20 in) tall, is usually branched and bears erect flowers in twos or threes at the ends of the branches. The three petals and three sepals are light yellow-green with reddish or purplish-brown markings. The capsule is triangular in cross-section, and about 4 cm (2 in) long. The long slender hairs on the upper surface and margins of the petals and the lack of wings on the capsule distinguish *Calochortus tiburonensis* from the other two *Calochortus* species found on the Tiburon Peninsula, *C. umbellatus* and *C. luteus*.

Calochortus tiburonensis is known only from its type locality, where it grows on rocky serpentine slopes among annual and perennial herbs and grasses. The population, estimated at 40,000 individuals in 1991 (Larry Serpa, The Nature Conservancy, pers. comm., 1992), occurs on land which has been owned and managed by The Nature Conservancy since 1982. The occurrence of this plant in a single population and its proximity to human population centers and intensive development activities renders it vulnerable to catastrophic events such as fire, disease or pest outbreak, severe drought, or other natural or human-caused disasters.

The type specimen of *Castilleja neglecta* (Tiburon paintbrush) was collected by Katherine Brandegee in the early 1900s. The plant was described by Zeile (1925) in Willis Jepson's *Manual of the Flowering Plants of California*.

Castilleja neglecta is a semi-woody perennial of the snapdragon family (Scrophulariaceae), with erect, branched stems 30–60 cm (1–2 ft) tall and a sparse covering of soft, spreading hairs. The lance-shaped leaves have one or two pairs of narrow lobes. The conspicuous floral bracts are yellowish and sometimes red-tipped; the flowers are yellow to red and 18–20 millimeters (mm) (0.7–0.8 in) long. The simple (unbranched) hairs and the lack of glands below the inflorescence distinguish *C. neglecta* from other species of *Castilleja* on the Tiburon Peninsula (*C. latifolia* var. *rubra* and *C. foliosa*) (Howell 1970).

Castilleja neglecta occurs in serpentine bunchgrass communities on north to west facing slopes. It is known from four populations in Marin County, three of which occur on the Tiburon Peninsula, and one population in Napa County. The range of this plant is approximately 50 km (30 miles) from east to west, and 35 km (22 miles) from north to south. Population sizes are small, ranging from 50 plants at a location in western Marin County (Martin 1991) to 600 plants at Ring Mountain Preserve on the Tiburon Peninsula (Hunter 1989a). A total of approximately 1,500 plants exist. The Marin County populations are threatened by residential development, foot traffic, grazing, and soil slumping; the Napa County population is threatened by gravel mining and grazing.

Streptanthus niger (Tiburon jewelflower) was described by Edward L. Greene, who cited as the type a specimen he had collected at St. Hilary's Church in the town of Tiburon in Marin County (Greene 1886a). Greene later redefined the limits of *Euclisia*, formerly a subgenus of *Streptanthus*, treating it as a genus in its own right (Greene 1904). *Streptanthus niger*, as a member of the *Euclisia* group, was thus referred to as *Euclisia niger*. Jepson (1925) returned *Euclisia* to subsection status, and later authors followed his treatment. Munz treated *S. niger* as a subspecies of *S. glandulosus* in *A California Flora* (1959), and then returned it to *S. niger* in his supplement (1968), following Kruckeberg (1958).

Streptanthus niger is an annual herb of the mustard family (Brassicaceae) that reaches 30–60 cm (1–2 ft) in height. The lower leaves are toothed, the upper leaves less toothed or not at all. The sepals are a very dark purple; the petals have a purple claw and a white blade with a purple midvein. The zig-zag inflorescence pattern and the lack of hairs distinguish *S. niger* from its near relative *S. glandulosus*.

Streptanthus niger is found on shallow rocky serpentine soils on southwest-facing slopes on the Tiburon Peninsula of Marin County. Two populations are known from the southern end of the peninsula where they occur within 3 km (2 miles) of one another. Populations number from 50 to 2,000 plants (Hunter 1989b; Andrew Allen, Belvedere-Tiburon Landmarks Society, *in litt.*, 1991). The plant is threatened by residential development, foot traffic, and road construction.

Central Bay Species

The type specimen of *Clarkia franciscana* (Presidio clarkia) was

collected by Peter Raven in 1956. *C. franciscana* was described by Harlan Lewis and Peter Raven (1958).

Clarkia franciscana is a slender, erect, herbaceous annual of the evening-primrose family (Onagraceae) to 40 cm (16 in) tall with few, very small and narrow leaves. The lavender-pink petals have a lighter basal portion and a reddish-purple basal spot. The slender capsule is 2–4 cm (1–2 in) long. *Clarkia franciscana* can be distinguished from *Clarkia rubicunda*, a related species which may occur in the same area, by the fact that its petals have irregular teeth on the apical margin (*C. rubicunda* has petals that are rounded at the apex).

Clarkia franciscana is restricted to serpentine soils in grassland communities in San Francisco and Alameda Counties. Two populations are known from the Presidio in San Francisco. Three populations are known from the Oakland Hills in Alameda County, 27 km (17 miles) east of San Francisco, and all from within 0.6 miles of each other. A fourth population in the Oakland Hills was reported in 1988 (California Department of Fish and Game, Natural Diversity Data Base), but could not be relocated in a search conducted in 1991 (David Bigham, East Bay Chapter, California Native Plant Society, *in litt.*, 1991). Population sizes fluctuate greatly; the upper limit to the total numbers of plants reported in recent years is approximately 8,000 plants. The first of the Alameda County populations was discovered in 1980 at the Redwood Regional Park. Because this discovery occurred so long after the original discovery of the plant, and because this population was relatively far from the previously known population at the Presidio, it was suggested that this population might not be a natural occurrence. This suggestion gained credence from the fact that seed collected from the type location in 1964 had been sown in the East Bay Regional Parks Tilden Botanic Garden and plants grown there for several years (Roof 1971). Seed collected from plants at the botanic garden had been sown in several sites at the Presidio in 1972 (Roof 1972). It was thought that seed might also have been sown at Redwood Regional Park in Alameda County. However, an electrophoretic comparison of the San Francisco and Alameda populations "strongly suggests that the Oakland Hills population did not originate by seed transfer from San Francisco, and that it must be regarded as indigenous to its present locality" (Gottlieb and Edwards 1992). *C. franciscana* is threatened by potential development, roadside maintenance, foot traffic, mowing, competition from alien plants, and shade from native and introduced shrubs and trees.

Cirsium fontinale var. *fontinale* (fountain thistle) was first described as *Cnicus fontinalis* (Greene 1886b). In 1892 Greene reassigned the plant to the genus *Carduus* (Greene 1892). Willis Jepson, in his *Flora of Western Middle California* (1901), put the taxon in the genus *Cirsium*. In 1938 John Thomas Howell described a close relative of the fountain thistle, *Cirsium fontinale* var. *obispoense* (Chorro Creek bog thistle) (Howell 1938). According to the rules for botanical nomenclature, when a new variety is described in a species not previously divided into infraspecific taxa, a "type" variety is automatically created. In this case, the type variety is *C. fontinale* var. *fontinale*.

Cirsium fontinale var. *fontinale* is an herbaceous perennial of the aster family (Asteraceae) with several stout, erect reddish stems 30–60 cm (1–2 ft) high. The basal leaves are 10–20 cm (4–8 in) long with spine-tipped lobes; the leaves on the stems are smaller. The flowers are dull white to pinkish, becoming brown with age. The egg-shaped, recurved bracts beneath the flower head distinguish *Cirsium fontinale* var. *fontinale* from the most similar thistle in the area, brownie thistle (*Cirsium quercetorum*). The nearest relative of *C. fontinale* var. *fontinale*, *Cirsium fontinale* var. *obispoense*, is found further south, in San Luis Obispo County.

Cirsium fontinale var. *fontinale* is restricted to perpetually moist clay openings in riparian or serpentine chaparral. Historically, this plant occurred in both San Mateo and Santa Clara Counties, but it is now found in only three locations in San Mateo County. One population of 1,000–2,800 plants occurs east of Crystal Springs Reservoir, on both sides of Interstate 280. A second population of 100–200 plants occurs 10 km (6 miles) to the south in the "Triangle area," a triangular piece of land west of Edgewood County Park, which is bounded by Interstate 280 to the east, Edgewood Road on the north, and Canada Road on the west. A single plant was found in Edgewood County Park in 1987. In 1992, there was still only one plant in this location (Susan Sommers, Santa Clara Valley Chapter, California Native Plant Society, pers. comm., 1992). The taxon is threatened by proposed recreational development, competition with alien plant species, garbage dumping, and roadside maintenance.

Eriophyllum latilobum (San Mateo woolly sunflower) was first collected by Elmer in 1903. The type specimen was collected by A.A. Heller in 1907. The plant was described by Per Axel Rydberg (1915). *E. latilobum* is believed to have originated as a hybrid between *E. confertiflorum* and *E. lanatum* var. *arachnoideum* (Munz 1959; John Mooring, Santa Clara University, pers. comm. 1992).

Eriophyllum latilobum is a bushy perennial of the aster family (Asteraceae) with leafy stems 30–40 cm (12–16 in) high. The upper surfaces of the deeply three-cleft leaves are a smooth dark green and the lower surfaces are covered with densely interwoven white hairs. The golden flower heads are borne in loose clusters. *E. latilobum* differs from *E. confertiflorum* in having eight ray flowers rather than five, large flower heads, and a more open inflorescence. *E. lanatum* var. *arachnoideum* differs from the other two species in having 13 ray flowers and shallowly cleft leaves.

Eriophyllum latilobum is found in shaded moist sites on steep grassy or sparsely wooded slopes of serpentine-influenced soil. The single remaining occurrence of *E. latilobum* consists of a few hundred plants scattered along 4 km (2.5 miles) of Crystal Springs Road in San Mateo County. These subpopulations are probably the fragments of a once-continuous population. *E. latilobum* has also been reported from southern San Mateo County, on Pescadero Road southwest of La Honda, but this report is most likely erroneous. At least one of the specimens collected at this site (in 1929) is actually *Eriophyllum confertiflorum* (Barry Prigge, University of California, Los Angeles herbarium, pers. comm., 1992), and searches in recent years have found only *Eriophyllum confertiflorum* (Toni Corelli, Santa Clara Valley Chapter, California Native Plant Society, pers. comm., 1992). The plant is threatened by erosion and soil slippage, road maintenance, garbage dumping, and recreational development.

The type specimen of *Hesperolinon congestum* (Marin dwarf-flax) was collected in Marin County by Henry Nicholas Bolander in 1863, while working on the State Geological Survey. Asa Gray described the new species as *Linum congestum*, including it in the section *Hesperolinon* which he described in the same paper (Gray 1865). J.K. Small (1907) established *Hesperolinon* as a distinct genus in 1907. Jepson (1925) treated *Hesperolinon* as a section of the genus *Linum*, and treated *H. congestum* as a subspecies of *L. californicum*. Helen K. Sharsmith (1961) conducted an extensive study of *Hesperolinon* and concluded that it definitely warrants

distinction as a separate genus. She also returned *H. congestum* to the status of a species.

Hesperolinon congestum is an herbaceous annual of the flax family (Linaceae) with slender, threadlike stems, 10–40 cm (4–16 in) tall. The leaves are linear. The flowers are borne in congested clusters; the pedicels are 0.2–2 mm (.01–.08 in) long. The sepals are hairy and the five petals are rose to whitish. The anthers are deep pink to purple; this character helps distinguish *H. congestum* from *H. californicum*, found in the same geographic area, which has white to rose anthers, as well as hairless sepals. Two other species that are found in the same region are *H. micranthum* and *H. spergulinum*. They differ from *H. congestum* in having hairless sepals and a long, open inflorescence, with pedicels 2–25 mm (.08–1 in) long.

Hesperolinon congestum is endemic to serpentine soils from Marin County south to San Mateo County, a range of 80 km (50 miles). Two populations are found in serpentine chaparral; the others occur in serpentine bunchgrass habitat. There are six populations known from Marin County, one from San Francisco County, and seven from San Mateo County. Populations fluctuate in size from hundreds to thousands of plants (Robison and Morey 1992a). The species is threatened with residential and recreational development, foot traffic, and competition from alien species.

Pentachaeta bellidiflora (white-rayed pentachaeta) was first collected in 1853–54 near Corte Madera by John Milton Bigelow, surgeon and botanist for a railway route exploration (Van Horn 1973). The plant was described as *Pentachaeta bellidiflora* (Greene 1885). Keck (1953) transferred the entire genus to *Chaetopappa*. Van Horn (1973) studied *Chaetopappa* and *Pentachaeta* and concluded that the two genera are not closely related. Based on differences in floral and vegetative morphology and chromosome number, Van Horn reinstated the genus *Pentachaeta*.

Pentachaeta bellidiflora is a small annual plant of the aster family (Asteraceae) with one or a few branches that bear narrow, linear leaves. Each flower head has numerous yellow disk florets and 5 to 16 white to purplish ray florets. The fruits are tawny, coarse-haired achenes (dry one-seeded fruits). Related species in the San Francisco Bay area (*P. exilis* ssp. *exilis* and *P. alsinoides*) differ from *P. bellidiflora* in that they have no ray flowers.

Pentachaeta bellidiflora is known only from one location, in a serpentine bunchgrass community in San Mateo County. Historically, *P. bellidiflora* was known from at least nine sites in Marin, San Mateo, and Santa Cruz Counties. The other populations have been destroyed by urbanization, off-road vehicles, or highway construction over the past 50 years (Robison and Morey 1992b). As is common among annual plants, the size of this population fluctuates dramatically from year to year. Numbers have ranged from 10,000 to just under 100 million in the last 10 years, with about 1.5 million plants growing in each of the last 2 years (Zoe Chandik, Santa Clara Valley Chapter, California Native Plant Society, pers. comm., 1992). The species is threatened by recreational development.

South Bay Species

Ceanothus ferrisae (coyote ceanothus) was collected in 1917 by LeRoy Abrams, professor of botany at Stanford University, on Madrone Springs Road above Coyote Creek, in Santa Clara County. The species was described in 1933 by Howard E. McMinn (McMinn 1933), professor of botany at Mills College and author of *An Illustrated Manual of California Shrubs*.

Ceanothus ferrisae is an erect evergreen shrub of the buckthorn family (Rhamnaceae) that grows 1–2 m (3–6 ft) high, with long stiff divergent branches. Its round leaves are dark green and hairless on the upper surface, lighter green with minute hairs below. The leaf margins have short teeth or sometimes no teeth at all; the leaf base is abruptly tapering or rounded. The small white flowers are borne in clusters 1.3–2.5 cm (0.5–1 in) long. The seed capsules are 7–9 mm (.3–.35 in) in width and have three conspicuous apical horns. The related *C. cuneatus* has entire leaves with wedge-shaped (not rounded) bases and seed capsules only 5–6 mm (.2 in) wide.

Ceanothus ferrisae grows on dry slopes in serpentine chaparral. It is known from only three locations, all within 6 km (4 miles) of each other, in Santa Clara County. Fewer than 6,000 plants are known to exist. It was thought at one time to occur in both San Mateo and Santa Cruz Counties as well, but these reports have been found to be erroneous (Corelli 1991). The existing populations are threatened by residential and recreational development and unauthorized dumping.

The type specimen of *Dudleya setchellii* (Santa Clara Valley dudleya) was collected by Willis L. Jepson in 1896 on Tulare Hill in Santa Clara County. He described it as *Cotyledon laxa* var. *setchellii* (Jepson 1901). At the same time, he described *Cotyledon caespitosa* var. *paniculata*, which he had collected from Morrison Canyon near what is now Fremont. Britton and Rose (1903) elevated both taxa to full species and transferred them to the newly-created genus *Dudleya*. Subsequently, *Dudleya setchellii* was variously treated as *Cotyledon setchellii* (Fedde 1904), *Echeveria setchellii (Nelson and Macbride 1913)*, and *Echeveria laxa* var. *setchellii* (Jepson 1936). Reid Moran (1959) combined the material referred to as *Dudleya setchellii* and *D. paniculata* in *D. cymosa* ssp. *setchellii*. Kei Nakai (1987) separated the two entities into *D. cymosa* ssp. *paniculata* and *D. cymosa* ssp. *setchellii* on the basis of leaf shape, inflorescence branching patterns, and pedicel length. Jim Bartel contends that *D. setchellii* should not be placed within *D. cymosa*, and is in fact intermediate to *D. cymosa* and *D. abramsii* (Jim Bartel, U.S. Fish and Wildlife Service, pers. comm., 1992). His forthcoming treatment of *Dudleya* retains Nakai's *D. cymosa* ssp. *paniculata* and resurrects Britton and Rose's *D. setchellii* for the Santa Clara Valley dudleya (Bartel in press).

Dudleya setchellii is a low-growing perennial of the stonecrop family (Crassulaceae) with fleshy, glabrous leaves. The oblong to triangular, slightly glaucous leaves are 3–8 cm (1–3 in) long and 7–15 mm (0.3–0.6 in) wide. Two or three flowering stems ascend to heights of 5–20 cm (2–8 in) in mid to late spring. The pale yellow petals are 8–13 mm (0.3–0.5 in) long. There are two related species in the area. *D. cymosa* ssp. *cymosa* has bright yellow to red petals rather than pale yellow, and is therefore easily distinguished from *D. setchellii* with its pale yellow flowers. *D. cymosa* ssp. *paniculata* can be distinguished from *D. setchellii* by its oblong to oblanceolate leaves (in contrast to the oblong-triangular leaves of *D. setchellii*), its greater degree of rebranching of the inflorescence branches, and its longer pedicels.

Dudleya setchellii is restricted to rocky outcrops within serpentine grasslands in Santa Clara County. It is found only in the Coyote Valley area, from San Jose south about 30 km (20 miles) to San Martin, at elevations of 100–300 m (300–900 ft). *D. cymosa* ssp. *paniculata* ranges from Contra Costa County to Fresno and Monterey Counties; the reports of Moran's combination *D. cymosa* ssp. *setchellii* from Alameda, Contra Costa, and San Benito Counties (Munz 1959, Olson and Lake 1991) reflect the distribution of *D. cymosa* ssp. *paniculata* and do not refer to *D. setchellii* as now recognized. Fourteen sites and a total of 12,000–13,000 plants are known to exist. The

plant is threatened by development, unauthorized dumping, and off-road vehicles.

Streptanthus albidus ssp. *albidus* (Metcalf Canyon jewelflower) was first collected in 1887 by Volney Rattan, a botany teacher and author of an early California flora, from hillsides a few miles south of San Jose. Edward Greene described *S. albidus* ssp. *albidus* in 1887 (Greene 1887); later he redefined the limits of *Euclisia*, formerly a subgenus of *Streptanthus*, treating it as a genus in its own right (Greene 1904). *S. albidus* ssp. *albidus*, as a member of the *Euclisia* group, was included in this change. Jepson (1925) returned *Euclisia* to subsection status, and later authors followed his treatment. Jepson (1925) also treated *S. albidus* ssp. *albidus* as a subspecies of *S. glandulosus*. Kruckeberg published a revision of the *Streptanthus glandulosus* complex in which he recognized the close relationships among *S. glandulosus*, *S. albidus*, and *S. niger* (Kruckeberg 1958). In this paper he notes that the "sharp genetic discontinuity between *S. albidus* and all other populations, coupled with the morphological distinctness and regional restriction of *S. albidus* warrant the restoration of this Greeneian species." He recognized two subspecies: *S. albidus* ssp. *albidus* and *S. albidus* ssp. *peramoenus* (Kruckeberg 1958).

Streptanthus albidus ssp. *albidus* is an annual herb of the mustard family (Brassicaceae) that reaches up to 1 m (3 ft) in height. It has bristly hairs at the base, and pale green, strongly glaucous stem and leaves. The flowers are borne in leafless terminal racemes. The upper three of the white to yellow to whitish-green sepals are fused, with the lower (fourth) sepal free and spreading. The four petals, 8-11 mm (.3–.4 in) long, are whitish with light purple veins. The erect flattened pods are 3–8 cm (1–3 in) long. The only *Streptanthus* species likely to co-occur with *S. albidus* ssp. *albidus* is its close relative *Streptanthus albidus* ssp. *peramoenus*. *S. albidus* ssp. *peramoenus* is distinguished by its dark purple sepals.

Streptanthus albidus ssp. *albidus* has always been rare. It is endemic to serpentine outcrops with little soil development. It can be locally abundant, but its range is limited, extending less than 30 km (20 miles) from San Jose south to Anderson Lake, which lies northeast of Morgan Hill. Furthermore, the serpentine outcrops on which *S. albidus* ssp. *albidus* occurs are patchily distributed and comprise only a small percentage of the area within its range. Nine populations and a total of 20,000–25,000 plants have been recorded (McCarten 1992b). The plant is threatened by urbanization and off-road vehicles.

Previous Federal Action

Federal government actions on the 12 plants began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Cordylanthus tenuis* ssp. *capillaris* (listed as *Cordylanthus brunneus* ssp. *capillaris*), *Calochortus tiburonensis*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Hesperolinon congestum*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* as endangered species and *Castilleja neglecta* and *Eriophyllum latilobum* as threatened taxa. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above 10 taxa were included in the July 1, 1975, notice. As a result of that review, on July 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Calochortus tiburonensis*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris* (listed as *Cordylanthus brunneus* ssp. *capillaris*), *Hesperolinon congestum*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* were included in the June 16, 1976, **Federal Register** document.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Calochortus tiburonensis*, *Castilleja neglecta*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris*, *Hesperolinon congestum*, *Pentachaeta bellidiflora*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* as category 1 candidates for Federal listing, and *Eriophyllum latilobum* as a category 2 candidate. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 39526). This supplement changed *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Pentachaeta bellidiflora*, and *Streptanthus albidus* ssp. *albidus* from category 1 to category 2 candidates.

The plant notice was again revised on September 27, 1985 (50 FR 39526). *Calochortus tiburonensis*, *Castilleja neglecta*, *Clarkia franciscana*, *Eriophyllum latilobum*, *Hesperolinon congestum*, and *Streptanthus niger* were included as category 1 candidates; *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Cordylanthus tenuis* ssp. *capillaris*, *Pentachaeta bellidiflora*, and *Streptanthus albidus* ssp. *albidus* were included as category 2 candidates. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184). In this revision, *Castilleja neglecta*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris*, *Dudleya setchellii*, *Eriophyllum latilobum*, *Hesperolinon congestum*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* were included as category 1 candidates; *Calochortus tiburonensis* and *Pentachaeta bellidiflora* were included as category 2 candidates. Since the publication of that notice, additional information was received on *Pentachaeta bellidiflora* that elevated it to category 1 status. The Service also re-evaluated the information available for *Calochortus tiburonensis* and elevated it to category 1 status. The Service

therefore believes that sufficient information is now available to support the proposed listing of these two species.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Calochortus tiburonensis*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris*, *Hesperolinon congestum*, *Streptanthus albidus* ssp. *albidus*, *Streptanthus niger*, *Castilleja neglecta*, and *Eriophyllum latilobum*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(c)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of this proposal constitutes the final finding for the petitioned action. There are no pending petitions for *Pentachaeta bellidiflora* or *Dudleya setechellii*.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of threatened and endangered species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Calochortus tiburonensis* Hill (Tiburon mariposa lily), *Castilleja neglecta* Zeile (Tiburon paintbrush), *Ceanothus ferrisae* McMinn (coyote ceanothus), *Cirsium fontinale* Jeps. var. *fontinale* (fountain thistle), *Clarkia franciscana* Lewis and Raven (Presidio clarkia), *Cordylanthus tenuis* Gray ssp. *capillaris* (Penn.) Chuang and Heck. (Pennell's bird's beak), *Dudleya setchellii* (Santa Clara Valley dudleya), *Eriophyllum latilobum* Rydb. (San Mateo woolly sunflower), *Hesperolinon congestum* (A. Gray) Small (Marin dwarf-flax), *Pentachaeta bellidiflora* Greene (white-rayed pentachaeta), *Streptanthus albidus* Greene ssp. *albidus* (Metcalf Canyon jewelflower), and *Streptanthus niger* Greene (Tiburon jewelflower) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The destruction of habitat through residential or recreational development is the greatest threat faced by these species. The plants are limited to serpentine soils. Serpentine outcrops in the San Francisco Bay area are limited; 20 percent of those outcrops have already been eliminated as plant habitat due to development (McCarten 1987b). The pressure to build more houses, roads, and other facilities for humans is great in all the counties under consideration. Serpentine habitats also have been fragmented by the construction of roads such as Interstate 280. Habitat fragmentation increases the risks of extinction due to chance events such as fire, flood, landslide, pest or disease outbreaks, severe drought, or other natural or human-caused disaster.

Cordylanthus tenuis ssp. *capillaris* has never been known from more than the two populations that occur today. Ownership of the type locality is mixed; part of the population occurs on the Harrison Grade Preserve, which is owned and managed by the California Department of Fish and Game. Habitat on the preserve is threatened by unauthorized activities such as off-road vehicle use. Plants on private parcels are threatened with potential development.

The second population of *Cordylanthus tenuis* ssp. *capillaris* occurs on private property a few miles to the west of the type locality. Plans for residential development of this site are currently under review at the Sonoma County Planning Department (Betty Guggolz, pers. comm. 1992). The owner of this property has been working with the California Department of Fish and Game to minimize impacts to the *Cordylanthus tenuis* ssp. *capillaris* (Ann Howald, California Department of Fish and Game, pers. comm., 1992). Plans include the donation of over 40 hectares (ha) (100 acres), including *C. tenuis* ssp. *capillaris* habitat, to the county for use as a park (Betty Guggolz, pers. comm., 1992). This donation may afford protection to part of the second population of *C. tenuis* ssp. *capillaris*, but since the transfer has not yet taken place and no plans have been made for protection of the plant on this new park, the population still should be considered threatened by development.

Calochortus tiburonensis is at present protected from development because the land on which it occurs is owned and managed by The Nature Conservancy, a group whose management goals are the maintenance of biodiversity and the protection of rare and endangered species (Larry Serpa, pers. comm., 1992). The preserve is fenced to reduce the incidence of off-road vehicle use, but the site is still accessible to bicycles, motorbikes, and pedestrians, and it is not patrolled. The proximity of the preserve to residential areas renders it vulnerable to overuse and vandalism. Furthermore, this preserve, being on The Nature Conservancy's list of potential divestitures, will transfer ownership when a suitable organization is found to manage it (Larry Serpa, pers. comm., 1992).

Castilleja neglecta has never been widespread. Three of the five populations occur on the Tiburon Peninsula in Marin County, and one occurs in Napa County. A recently discovered population on the Golden Gate National Recreation Area extends the known range to western Marin County. Each of the three occurrences on the Tiburon Peninsula has multiple landowners. The Nature Conservancy owns over half of the Ring Mountain occurrence and the town of Tiburon owns portions of the occurrence in the Middle Ridge area of the peninsula. The remainder of each of these occurrences is privately-owned. The third occurrence on the peninsula is on private property near St. Hilary's Church in Tiburon. Development on the Tiburon Peninsula is extensive and rapid; over 60 percent of *C. neglecta* habitat has already been destroyed by development (Hunter 1989a). Residential development is ongoing on several parcels of the Middle Ridge occurrence, and proposed for both parcels at the St. Hilary's occurrence. The habitat at both of these sites is also threatened by pedestrian traffic. The plants on Ring Mountain Preserve are protected from development but are threatened by sliding of the slope on which they occur. The toe of the slope was removed to accommodate residential development in the 1960s. Soil material that slides into the street at the base of the slope is removed by the City of Corte Madera, and the slope continues to slump. Managers from The Nature Conservancy estimate that approximately one-third of the population is at risk (Lynn Lozier, pers. comm., 1992). The Napa County population occurs on private property near a gravel quarry. Although quarry expansion plans that would result in the

destruction of more than 80 percent of the population are no longer being actively pursued, the potential for expansion still exists.

Streptanthus niger is an extremely narrowly-distributed species; its entire range amounts to less than one-third of a square mile. Urban development has destroyed over 40 percent of potential *S. niger* habitat (Hunter 1989b). Both of the two known occurrences have multiple landowners. The town of Tiburon owns portions of the occurrence on the Middle Ridge of the peninsula, and the occurrence at St. Hilary's Church in Tiburon is owned in part by the Tiburon Landmark Society. The remainder of each of these two occurrences is privately-owned. Residential development is ongoing at several parcels of the Middle Ridge occurrence, and proposed for both parcels of the St. Hilary's occurrence. Habitat at both of these sites is also threatened by pedestrian traffic.

Clarkia franciscana was once though to be restricted to the Presidio in San Francisco County, but about 10 years ago a population was discovered in Alameda County in the Oakland hills. The two populations in San Francisco County occur at the Presidio, currently owned by the U.S. Department of Defense. These populations are threatened by habitat degradation. The Army has plans to fence rare plant habitat on the Presidio; at present, however, pedestrian and mountain bicycle traffic on and near casually established "social trails" threatens the habitat. Ownership of the Presidio is expected to be transferred from the Army to the National Park Service within a year. The Presidio represents a significant natural and cultural resource within San Francisco city limits, and is expected to be widely promoted by the Park Service and heavily used by visitors (Terri Thomas, Golden Gate National Recreation Area, pers. comm., 1992). The increase in visitation after transfer to the Park Service will increase the negative impact of traffic on *C. franciscana*.

The three populations of *Clarkia franciscana* in Alameda County are all threatened by alien species (see Factor E). The smallest of the three, consisting of 30 plants (Olson 1991c) occurs on an undeveloped site that bears a sign offering custom-built homes.

One occurrence of *Cirsium fontinale* var. *fontinale* has been reported from Santa Clara County, but the site is thought to have been destroyed by urbanization (Niehaus 1977). The three remaining populations grow in San Mateo County. The largest population occurs to the east of Crystal Springs Reservoir and north of State Highway 92, along both sides of Interstate 280. It occurs partly on San Francisco Water Department land and partly on a California Department of Transportation right-of-way. Given its proximity to the roadside, it is likely to be affected by any highway projects in the area. Major realignments of Highway 92 were planned several years ago, but the plans have been abandoned due to lack of funding (Richard Vonarb, California Department of Transportation, pers. comm., 1992). They could be revived, however, if funding should become available. At present, a smaller project to widen Highway 92 east of the reservoir causeway is under review. Provision for the removal of water from the increased road surface may adversely affect some of the plants. The California Department of Transportation is aware of the plant locations and vulnerability. The proposed construction of multi-use recreational trails on San Francisco Water Department land presents an additional threat. Trail construction would threaten the plants through direct destruction of the habitat or through modification of hydrologic regimes. Because *C. fontinale* var. *fontinale* is dependent upon seeps and springs to provide abundant soil moisture, any disruption in the flow of water (such as that caused by road, trail, or drain construction) would threaten the plants.

A second and substantially smaller population of *Cirsium fontinale* var. *fontinale* occurs in the "Triangle" west of Interstate 280. One to two hundred plants have been observed on San Francisco Water Department lands; an outlying colony of about 25 plants occurs on an easement held by the California Department of Transportation. This colony occupies a smaller territory in 1992 than it has in previous years (Susan Sommers, pers. comm., 1992). The plants on Water Department land are threatened by proposed trail construction, as discussed for *Hesperolinon congestum*. In addition, a general management plan for the Water Department lands currently is being developed (Ed Stewart, San Francisco Water Department, pers. comm., 1992), which may include the possibility of golf course construction at the Triangle.

The single specimen of *Cirsium fontinale* var. *fontinale* in Edgewood County Park occurs in a drainage ditch beside a trail. Clearing of the ditch to improve or maintain drainage could damage or destroy this plant or any seedlings it may produce.

Eriophyllum latilobum has been reported from only two locations, one of which is likely erroneous (specimen misidentified, according to Barry Prigge, pers. comm., 1992). The single remaining population consists of about 300 plants that occur along 4 km (2.5 miles) of Crystal Springs Road in San Mateo County. Seventy-five percent of the plants occur within 9 m (30 ft) of the road, where land ownership is poorly defined (McGuire 1992). The City of Hillsborough, the County of San Mateo, and the San Francisco Water Department have varying jurisdictions over the land. The steep slopes along Crystal Springs Road provide a very unstable habitat for *E. latilobum*. The slopes are subject to erosion and soil slippage. After soil slippage occurs, road maintenance crews remove the slumped soil, which may contain mature individuals, seedlings, and/or seeds of the *E. latilobum*. The road cut is then reshaped, which may damage plants remaining on the banks. The proposed construction of the San Mateo Creek Trail (McGuire and Morey 1992) would have adverse impacts on the plant if trail design does not incorporate plant conservation. The paved trail, which is 3 m (10 ft) wide, is expected to run adjacent to Crystal Springs Road from Skyline Boulevard to the San Mateo City boundary. Construction of the trail could damage or eliminate colonies of *E. latilobum*, alter site hydrology, accelerate soil erosion through increased pedestrian and bicycle traffic, and allow for the introduction of aggressive alien plant species.

Fourteen populations of *Hesperolinon congestum* still exist. One Marin County population is protected at The Nature Conservancy's Ring Mountain Preserve. Two relatively small populations occur on land owned by the Marin Municipal Water District. Another small population is found in the Golden Gate National Recreation Area above Nicasio Reservoir. A fifth population occurs in part on a small preserve at St. Hilary's Church, and in part on private land which recently has been proposed for development (Robison and Morey 1992a). The sixth Marin County site is the Middle Ridge area of the Tiburon Peninsula, on which occur a few scattered groups of plants. Some plants grow on land designated as open space by the city of Tiburon. The remainder of the plants occur on private land and are threatened by ongoing or proposed residential development.

One population of *Hesperolinon congestum* is known from San Francisco County. This occurrence is threatened by foot traffic.

In San Mateo County, three populations of *Hesperolinon congestum* are known to occur on private property.

These plants are threatened by proposed development and by the consequences of recently completed development, such as trampling, trash dumping, and changes in hydrology caused by irrigation runoff (Robison and Morey 1992a). Two populations occur on land owned by the San Francisco Water Department. Their habitat is threatened by the proposed construction of trails in the watershed. The construction of these trails and the accompanying fences may damage *Hesperolinon congestum* habitat. Two populations occur at Edgewood County Park and have been threatened by the proposed construction of a golf course at the park. On May 5, 1992, the county board of supervisors voted to declare Edgewood County Park a natural preserve. This designation will provide guidance to park personnel in determining uses of the park, but it has no enforcement provisions, and can be revoked by a vote of the board of supervisors.

Pentachaeta bellidiflora historically ranged from Marin County to Santa Cruz County. Three populations in Marin County and two in San Mateo County were destroyed by urbanization. One Marin County occurrence was destroyed by off-road vehicles. Two sites in Santa Cruz County no longer support *P. bellidiflora* (Robison and Morey 1992b). The single remaining population of *P. bellidiflora* was bisected by the construction of California Interstate 280 in the late 1960s. The largest portion of the population occurs in the Triangle, on land administered by the San Francisco Water Department. A small remnant of this population is located to the east of Interstate 280, on Edgewood County Park. The proposed construction of trails on Water Department land threatens the *P. bellidiflora* habitat.

Ceanothus ferrisae is known from three populations in Santa Clara County. The largest population, consisting of approximately 5,000 plants, occurs near Anderson Dam, partially on Santa Clara County Park property and partially on private property. The county proposes further recreational development in the park, which could threaten the *Ceanothus ferrisae* (Chris Nagano, U.S. Fish and Wildlife Service, pers. comm., 1992). An outlying population occurs 3 km (2 miles) west on land leased and managed by a waste management firm. Waste Management, Inc. and The Nature Conservancy jointly funded research on *C. ferrisae*, which was conducted by the Center for Conservation Biology. Researchers have found that *C. ferrisae* is relatively easy to propagate from seed, and both Waste Management and the Santa Clara Valley Water District have been experimenting with the use of *C. ferrisae* for revegetation projects. The third population, consisting of approximately 500 plants (Corelli 1989) occurs on private land scheduled for development.

Dudleya setchellii always has been restricted to the Coyote Valley area of Santa Clara County. Eleven of the 14 populations are on private land and are subject to various levels of threat due to development. The three northernmost populations, which occur in southeastern San Jose, and the three southernmost populations, which occur in the area around Morgan Hill, are at greatest risk. These areas are developing especially rapidly, and all six sites have been proposed for development at one time or another. Two of the central populations also are threatened with imminent development, including residential development and road construction. One central population, due to its proximity to an off-road motorcycle park, may be threatened by off-road motorcycle traffic and unauthorized dumping. The remaining two populations that occur on private land are on the grounds of the IBM Bailey Avenue laboratory. The company apparently plans to preserve the habitat (McCarten 1992a). Three populations occur on land owned by Santa Clara County. Of these, two populations occur in county parks. The final population occurs on county-owned land that is slated for the construction of a jail and an animal shelter. The county intends to avoid the *D. setchellii* habitat during construction (Kathy Freas, CH2M Hill, pers. comm., 1992), but specific plans have not yet been developed.

The known historical distribution of *Streptanthus albidus* ssp. *albidus* is as restricted as its current distribution. It is found only in the Coyote Valley area of Santa Clara Valley, primarily on the east side of the valley. Of the 13 documented sites, 9 are known to still harbor plants. Two populations are known to have been extirpated, one by the construction of Anderson Dam, and the other as a result of being covered by fill from a housing development. Two occurrences are known from herbarium records only. One of these historical sites was revisited in 1990, but no plants were found. *Streptanthus albidus* ssp. *albidus* was last observed at the other historical site in 1895. The remaining nine populations are threatened by impending or potential development. Two of these populations occur on county property on which the construction of a jail and an animal shelter is proposed. The county intends to avoid the *Streptanthus* habitat during construction (Kathy Freas, pers. comm., 1992) but specific plans have not yet been developed.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for any of the 12 plants, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal. *Calochortus tiburonensis* is a strikingly unusual member of a much-collected genus. *Eriophyllum latilobum*, with its showy golden flowers and proximity to roads and the proposed San Mateo Creek trail, might prove to be especially tempting to collectors. *Dudleya setchellii* is also vulnerable because of the horticultural appeal of succulents and the slow growth of the plants. The remaining plants are usually not spectacular in flower, but may nonetheless appeal to collectors because of their rarity.

C. Disease or Predation

Both horses and deer have been reported to browse on *Cordylanthus tenuis* ssp. *capillaris*, but the number of plants damaged generally appears to be minimal (Lynn Lozier, pers. comm., 1992). Cattle grazing has been reported to threaten the western Marin population of *Castilleja neglecta* (Martin 1991) and a portion of the American Canyon occurrence (Hunter 1989a). Another source suggests, however, that cattle provide little threat to the American Canyon population because the plants occur on a very steep slope (Jake Ruygt, Napa Valley Chapter, California Native Plant Society, pers. comm., 1992).

Seed predation by beetle larvae has been reported for *Cirsium fontinale* var. *fontinale* (Dean Kelch, University of California, Davis, pers. comm., 1992); however, the extent of the impact of this seed predation on *C. fontinale* var. *fontinale* is unknown. Beetle larvae also have been observed in seed heads of *Eriophyllum latilobum* (McGuire and Morey 1992).

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (Division 2, Chapter 10 section 1900 *et seq.* of the Fish and Game Code) and California Endangered Species (Division 3, Chapter 1.5 section 2050 *et seq.*), the California Fish and Game Commission has listed three of these species (*Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, and *Streptanthus niger*) as endangered, two species (*Calochortus*

tiburonensis and *Castilleja neglecta*) as threatened, and one species (*Cordylanthus tenuis* ssp. *capillaris*) as rare. The California Fish and Game Commission recently voted to list two other species (*Eriophyllum latilobum* and *Pentachaeta bellidiflora*) as endangered, and one species (*Hesperolinon congestum*) as threatened. Although both statutes prohibit the "take" of State-listed plants (Chapter 1.5 section 1908 and Chapter 10 section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least ten days in advance of changing the land use to allow salvage of such plant." (Chapter 1.5 section 1913).

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species or their habitat. The protection of threatened and endangered species through CEQA is therefore dependent upon the good will of the lead agency involved, and in practice statements of overriding considerations are commonly prepared.

Three of the plants occur at Edgewood County Park in San Mateo County, which has recently been designated as a natural preserve. This designation is intended to encourage management for environmental protection, but it can be revoked by a vote of the county board of supervisors, and therefore does not provide dependable long-term protection for the plants.

Section 404 of the Clean Water Act regulates the placement of dredge and fill materials into waters of the United States (including small acreages above the headwaters of streams). Under section 404, nationwide permits, which undergo minimal public and agency review, can be issued for projects involving less than 10 acres of waters of the United States and adjacent wetlands, unless a listed species may be adversely affected. Individual permits, which are subject to more extensive review, are required for projects that affect greater than 10 acres.

The U.S. Army Corps of Engineers (Corps) is the agency responsible for administering the section 404 programs. The Service, as part of the section 404 review process, provides comments on both pre-discharge notices for nationwide permits and public notices for individual permits. The Service's comments are only advisory, although procedures exist for elevation when disagreements between the agencies arise. In practice, the Corps' actions under section 404 would not adequately protect *Cirsium fontinale* var. *fontinale*, which occurs in riparian serpentine seep areas.

Most projects within the range of *Cirsium fontinale* var. *fontinale* considered in this proposal may require approval from the Corps as currently described in section 404 of the Clean Water Act. Federal listing of this species would ensure greater consideration of the effects of permitted actions during the review process as well as provide the protections of section 7 of the Act.

E. Other Natural of Manmade Factors Affecting its Continued Existence

As discussed in the "Background" section, the large and still increasing numbers of people in the San Francisco Bay area place a great strain on undeveloped wildlands, through activities such as pedestrian and off-road vehicle traffic and unauthorized garbage dumping. Disturbance may directly impact plants; more seriously, it can increase erosion and allow the invasion of alien species such as the many introduced annual grasses common in California. Competition with introduced species is a serious threat to serpentine natives (McCarten 1987b).

Cordylanthus tenuis ssp. *capillaris* growing along roadsides is threatened by roadside maintenance such as mowing and spraying (Lynn Lozier, pers. comm., 1992). Vehicular traffic threatens plants in and near the parking area at the Harrison Grade Reserve, which is poorly defined and close to the plant population (McCarten 1987a). Unauthorized dumping of large items such as bottles, furniture, appliances, and cut wood is also a threat. Light disturbance at the Harrison Grade Reserve such as infrequent grading of dirt roads appears to increase the number of *C. tenuis* ssp. *capillaris* (Lynn Lozier, The Nature Conservancy, pers. comm., 1992), but higher levels of disturbance may facilitate the invasion of alien species (McCarten 1987a) and result in a decline of *C. tenuis* ssp. *capillaris*.

Calochortus tiburonensis is threatened, by virtue of its occurrence in a single population, with chance events such as fire, severe drought, pest or disease outbreak, landslides, or other natural or human-caused disasters. The proximity of the plant to a large human population increases the likelihood that human-caused disasters or acts of vandalism will affect the plants or their habitat.

Clarkia franciscana is threatened by road maintenance (mowing) at the Presidio. Mowing of grasslands before the *Clarkia franciscana* has set seed also threatens the populations. Populations at the Presidio also are threatened by the encroachment of alien plant species, including *Senecio mikanioides* (German ivy), *Carpobrotus* sp. (iceplant), *Rubus* spp. (blackberries), and by natives planted outside their natural range, such as *Pinus radiata* (Monterey pine) (California Department of Fish and Game 1988). The population size at the type locality increased following removal of alien plant species in the late 1980s. Constant vigilance and effort is needed to prevent reinvasion.

At latest report the largest population of *Clarkia franciscana*, occurring at Redwood Regional Park in Alameda County, consisted of 4,000–5,000 plants (Gottlieb and Edwards 1992, Olson 1991a). The East Bay Regional Park District is aware of the *Clarkia franciscana* population and has been taking it into account in their management plans (Ray Budzinski, East Bay Regional Park District, pers. comm., 1992). The habitat is threatened by competition with annual grasses (Ray Budzinski, pers. comm., 1992) and other alien plants, including *Cortaderia selloana* (pampas grass) and *Cytisus monspessulanus* (French broom) (Olson 1991a). The two smaller populations in Alameda County, consisting of 200 plants (Olson 1991b) and 30 plants (Olson 1991c) respectively, are also threatened by alien species *Cytisus monspessulanus* and *Cortaderia jubatum*. The larger of the two occurs on a roadcut.

The Crystal Springs Reservoir population of *Cirsium fontinale* var. *fontinale* is threatened by several factors, including roadside maintenance. The California Department of Transportation is aware of the rare plants in this area, and the maintenance division submits spraying plans for internal environmental review before spraying in the area where plants are known to occur (Richard Vonarb, pers. comm., 1992). Alien plants such as *Cortaderia selloana* have established themselves near the *C. fontinale* var. *fontinale*, and threaten several subpopulations (Zoe Chandik, pers. comm., 1992). Dumping of garden debris from households on the ridge above the plants covers plants and renders the habitat unsuitable for plant establishment and growth. It has been suggested that *C. fontinale* var. *fontinale* may be threatened with hybridization with *Cirsium quercetorum*, but only one hybrid has been collected in recent years, so this is not thought to be a serious problem (Dean Kelch, pers. comm., 1992).

Eriophyllum latilobum is threatened by many factors. Dumping of garden debris and downhill seepage of pesticides from homeowners living above the population may have negative impacts on *E. latilobum* habitat. The plant also is threatened by competition with alien plants; its habitat is more densely populated with *Carduus* sp. and *Bromus* sp. than it was 10 years ago (John Mooring, pers. comm., 1992). Road maintenance also threatens *E. latilobum*. Preemergent herbicide is commonly used along the side of the road; drift from herbicide spray may damage those plants close to the road. San Mateo County road maintenance crews were alerted to the existence of *E. latilobum* in 1990, and instructed to avoid the plants by the San Mateo County Planning Department; however, road maintenance activities are not monitored to ensure protection (Roman Gankin, San Mateo County Planning Division, pers. comm. to Teri McGuire, Botanist, California Department of Fish and Game, cited in McGuire and Morey 1992). *E. latilobum* is not a vigorous reproducer; low germination rates and low seedling survival have been observed under greenhouse conditions (John Mooring, *in litt.*, 1992, in McGuire and Morey 1992).

Hesperolinon congestum is threatened by the encroachment of native shrubs in San Francisco County. In San Mateo County all three populations are threatened by trash dumping as a consequence of recently completed development.

Pentachaeta bellidiflora is potentially threatened by competition from alien plant species; this competition becomes a problem when the soils are disturbed (Robison and Morey 1992b).

Ceanothus ferrisae is threatened by unauthorized dumping of litter and larger debris at the Anderson dam site.

Streptanthus albidus ssp. *albidus* is threatened by dumping and off-road motorcycle use. Road maintenance or construction threaten populations that occur on roadcuts. Grazing threatens some other populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. These 12 plants are endemic to a very specific habitat that occurs in scattered outcrops. The rapid urban development in the San Francisco Bay region offers the greatest threat to these plants. They are threatened further by the invasion of alien species, roadside maintenance, soil erosion and slipping, garbage dumping, livestock grazing, seed predation, and small population sizes that increase their vulnerability to chance events such as fire, flood, drought, pest and disease outbreaks, and other natural and human-caused disasters. Ten of the 12 are in danger of extinction throughout all or a part of their range, and the preferred action is therefore to list *Castilleja neglecta, Ceanothus ferrisae, Cirsium fontinale* var. *fontinale, Clarkia franciscana, Cordylanthus tenuis* ssp. *capillaris, Dudleya setchellii, Eriophyllum latilobum, Pentachaeta bellidiflora, Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* as endangered. Two of the twelve are not now in immediate danger of extinction throughout all or a significant portion of their range. However, given the extremely limited distribution of *Calochortus tiburonensis*, and if appropriate management actions are not taken to protect *Hesperolinon congestum*, these two species are likely to become in danger of extinction in the near future. As a result, the preferred action is to list *Calochortus tiburonensis* and *Hesperolinon congestum* as threatened.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. Because the 12 plants face numerous anthropogenic threats (see Factors A and E in "Summary of Factors Affecting the Species") and the 12 occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The listing of these species as endangered or threatened also publicizes the rarity of these plants and, thus, can make these plants attractive to researchers or collectors of rare plants. The proper agencies have been notified of the locations and importance of protecting the habitat of these species.

Protection of the habitat of these species will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the

continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities potentially affecting one or more of the 12 plants likely will involve recreation-related projects and perhaps grazing practices on Federal land. Populations of 3 of the 12 plants occur on Federal land. Two populations of *Hesperolinon congestum* and one of *Castilleja neglecta* occur on the golden Gate National Recreation Area. Two populations of *Clarkia franciscana* occur at the Presidio, on land now owned by the Department of Defense and soon to be transferred to the Golden Gate National Recreation Area.

The San Francisco Water Department owns 9,300 ha (23,000 acres) of land in San Mateo County. In 1969, a four-party agreement among the U.S. Department of the Interior, the State of California, San Mateo County, and the City and County of San Francisco established easements on the watershed lands to ensure that all future land use would be compatible with water quality criteria. These easements were granted to the U.S. Department of the Interior and are jointly administered by the San Francisco Water Department and the Golden Gate National Recreational Area. Populations of *Cirsium fontinale* var. *fontinale*, *Eriophyllum latilobum*, *Hesperolinon congestum* and *Pentachaeta bellidiflora* occur on Water Department land.

Hesperolinon congestum, *Pentachaeta bellidiflora*, *Dudleya setchellii*, and *Streptanthus albidus* ssp. *albidus* co-occur with the bay checkerspot butterfly (*Euphydryas editha bayensis*) in San Mateo or Santa Clara counties. The bay checkerspot is listed as a threatened species under the Endangered Species Act. Permits for incidental take of this species granted under section 10(a) of the Act may affect the plant species listed above. Preparation of Habitat Conservation Plans for the Bay checkerspot butterfly may therefore require internal section 7 consultation with regard to the four species listed above.

The 12 plants also may be affected by Federal mortgage programs, including the Veterans Administration and the U.S. Department of Housing and Urban Development (Federal Home Administration loans), or by construction of roads and highways by the Federal Highways Administration. At least one proposed project that may affect two of the plants also involves wetlands under the jurisdiction of the U.S. Army Corps of Engineers.

Listing these 12 plants would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also would describe site-specific management actions necessary to achieve conservation and survival of the 12 serpentine plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the 12 plants from San Francisco Bay area serpentine habitats, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the 12 species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cordylanthus tenuis* ssp. *capillaris*, *Calochortus tiburonensis*, *Castilleja neglecta*, *Streptanthus niger*, *Clarkia franciscana*, *Cirsium fontinale* var. *fontinale*, *Eriophyllum latilobum*, *Hesperolinon congestum*, *Pentachaeta bellidiflora*, *Ceanothus ferrisae*, *Dudleya setchellii*, or *Streptanthus albidus* ssp. *albidus*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Jeanine L. Hardison, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17 subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding a new family "Linaceae—Flax family," in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
• • • •	•	•	•	•	•	
Asteraceae—Aster family:						
• • • •	•	•	•	•	•	
Cirsium fontinale var. *fontinale*	Fountain thistle	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	
Eriophyllum latilobum	San Mateo woolly sunflower	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	
Pentachaeta bellidiflora	White-rayed pentachaeta	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	
Brassicaceae—Mustard family:						
• • • •	•	•	•	•	•	
Streptanthus albidus ssp. *albidus*	Metcalf Canyon jewelflower	U.S.A. (CA)	E		NA	NA
Streptanthus niger	Tiburon jewelflower	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	
Crassulaceae—Stonecrop family:						
Dudleya setchellii	Santa Clara Valley dudleya	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	
Liliaceae—Lily family:						
Calochortus tiburonensis	Tiburon mariposa lily	U.S.A. (CA)	T		NA	NA
• • • •	•	•	•	•	•	
Linaceae—Flax family:						
Hesperolinon congestum	Marin dwarf-flax	U.S.A. (CA)	T		NA	NA
• • • •	•	•	•	•	•	
Onagraceae—Evening-primrose family:						
• • • •	•	•	•	•	•	
Clarkia franciscana	Presidio clarkia	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	
Rhamnaceae—Buckthorn family:						
Ceanothus ferrisae	Coyote ceanothus	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	
Scrophulariaceae—Snapdragon family:						
• • • •	•	•	•	•	•	
Castilleja neglecta	Tiburon paintbrush	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	
Cordylanthus tenuis ssp. *capillaris*	Pennell's bird's beak	U.S.A. (CA)	E		NA	NA
• • • •	•	•	•	•	•	

Dated: November 24, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-30252 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018—AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Plants from the Waianae Mountains, Island of Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants: *Cyanea grimesiana* ssp. *obatae* (haha), *Diellia unisora* (no common name (NCN)), and *Gouania vitifolia* (NCN). These taxa are known primarily form the Waianae Mountain Range, located on the island of Oahu, Hawaii. The three plant taxa and their habitats have been adversely threatened in various degrees by one or more of the following: Habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat degradation and potential predation by feral animals. Because of the low number of extant individuals and severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also implement State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by February 12, 1993. Public hearing requests must be received by January 28, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749).

SUPPLEMENTARY INFORMATION:

Background

Cyanea grimesiana ssp. *obatae* and *Diellia unisora* are endemic to the Waianae Mountain Range on the western side of the island of Oahu, Hawaii. The only known extant population of *Gouania vitifolia* also occurs in the Waianae Mountains, but the species is known historically also from West Maui and the island of Hawaii.

The island of Oahu is formed from the remnants of two large shield volcanoes, the older Waianae Volcano on the west and the younger Koolau Volcano on the east. Because of the loss of their original shield volcano shape as the result of extensive erosion, today these volcanoes are called "mountains" or "ranges," and consist of long, narrow ridges. The Waianae Mountains were built by eruptions that took place primarily along three rift zones. The two principal rift zones run in a northwestward and south-southeastward direction from the summit, and a lesser one runs to the northeast. The range is approximately 40 miles (mi) (64 kilometers (km)) long. The caldera lies between the north side of Makaha Valley and the head of Nanakuli Valley (Macdonald *et al.* 1983). The Waianae Mountains are in the rain shadow of the parallel Koolau Mountains. Except for Mt. Kaala, the highest point on Oahu (4,020 feet (ft) (1,225 meters (m))), the Waianaes receive much less rainfall (Wagner *et al.* 1990). The median annual rainfall for the Waianae Mountains varies from 20 to 75 inches (in) (51 to 191 centimeters (cm)), with only the small summit area of Mt. Kaala receiving the highest amount.

The land that supports these three plant taxa is owned by the State of Hawaii, the Federal government, and a private estate. Plants on Federal land are located on portions of Schofield Barracks Military Reservation and Lualualei Naval Reservation, both under the jurisdiction of the U.S. Department of Defense.

Discussion of the Three Taxa Proposed for Listing

Harold St. John described *Cyanea grimesiana* ssp. *obatae* based upon a specimen collected by John K. Obata in the Kaluaa Gulch of the Waianae Mountains, Oahu, in 1965 (St. John 1978). St. John named the subspecies in honor of its discoverer.

Cyanea grimesiana ssp. *obatae*, a member of the bellflower family (Campanulaceae), is a shrub, usually unbranched, growing from 3.3 to 10.5 ft (1 to 3.2 m) tall. Its leaves are 10.5 to 23 in (27 to 58 cm) long by 5.5 to 12.5 in (14 to 32 cm) wide and are deeply cut into 9 to 12 lobes per side. The plant usually has small prickles on its stem and leaves. Clusters of 6 to 12 stalked flowers arise from the leaf axils. Sepals are fused to the ovary forming a cup 0.3 to 0.6 in (0.7 to 1.6 cm) long with small, narrow, triangular lobes at the tips. The petals are purplish or greenish to yellow-white, often washed or striped with magenta, and are about 2 to 3 in (5.5 to 8 cm) long and 0.2 to 0.4 in (0.5 to 1 cm) wide. Fruits are elliptical orange berries, 0.7 to 1.2 in (1.8 to 3 cm) long. This subspecies can be distinguished from the other two by its short, narrow, calyx lobes which are not fused or overlapping (Lammers 1990, St. John 1978).

Historically, *Cyanea grimesiana* ssp. *obatae* is known from the southern Waianae Mountains from Puu Hapapa to Kaaikukai (Hawaii Heritage Program (HHP) 1992a1 to 1992a6, Lammers 1990), a distance of about 4 mi (6.5 km). This taxon is known to be extant in Kaluaa, Ekahanui, and North Palawai Gulches, all on privately owned land, and on the slopes of Puu Hapapa in the Schofield Barracks Military Reservation (HHP 1992a2, 1992a5, 1992a6). The known extant plants total about 18 individuals in 4 populations (Joel Lau, HHP, pers. comm., 1992). *Cyanea grimesiana* ssp. *obatae* typically grows on steep, moist, shaded slopes in diverse mesic to wet forests at an elevation of 1,800 to 2,200 ft (550 to 670 m) (HHP 1992a2, Lammers 1990). Associated plants include both native and introduced species such as *Pipturus albidus* (mamaki), *Charpentiera* (papala), *Claoxylon sandwicense* (po'ola), *Pisonia* (papala kepau), *Acacia koa* (koa), *Aleurites moluccana* (kukui) and ferns (HHP 1992a2). The major threats to *Cyanea grimesiana* ssp. *obatae* are competition from alien plant species such as *Clidemia hirta* (Koster's curse) and *Schinus terebinthifolius* (Christmas berry) and stochastic extinction and/or reduced reproductive vigor due to the small number of extant individuals (HHP 1992a2). Habitat degradation by feral pigs is a potential threat (HHP 1992a2).

Donald L. Topping discovered *Diellia unisora* growing on a shaded, mossy bank in Pohakea Pass, Waianae Mountains, Oahu, in 1932. It was first reported and illustrated by Frances Smith (Smith 1934) who believed it to be a specimen of *Diellia pumila*, although she pointed out several differences between that species and the

Topping specimen. Warren H. Wagner, Jr., believing that the plant discovered by Topping merited specific recognition, described the new species, giving it the specific epithet *unisora* in reference to the usually single, marginal spore-producing body (Wagner 1951).

Diellia unisora, in the fern family Polypodiaceae, grows from a slender, erect rhizome (underground stem), 0.2 to 1.2 in (0.5 to 3 cm) tall and 0.2 to 0.4 in (0.4 to 1 cm) in diameter, which is covered with the bases of the leaf stalks and a few small black scales. Stalks of the fronds are black and shiny, and about 0.8 to 2 in (2 to 5 cm) long. The fronds are linear, 3 to 12 in (8 to 30 cm) tall by 0.2 to 1.2 in (0.5 to 3 cm) broad, with 20 to 35 pinnae (leaflets) per side, and gradually narrowing towards the apex. The pinnae are usually strongly asymmetrical in outline, unequally triangular, with mostly entire (smooth) margins. There usually is a single marginal sorus (the spore-producing body) running along the upper margin of the underside of the pinna. This species is distinguished from others in the genus by a rhizome completely covered by the persisting bases of the leaf stalks, and few, very small scales; by sori mostly confined to the upper pinnae margins; and by delicate fronds gradually and symmetrically narrowing toward the apex (Wagner 1951, 1952).

Historically, *Diellia unisora* was known from steep, grassy, rocky slopes on the western side of the Waianae Mountains, Oahu (HHP 1992b1 to 1992b4; Wagner 1951, 1952). This species is known to be extant in three areas of the southern Waianae Mountains: South Ekahanui Gulch, Palawai Gulch, and the Pualii-Napepeiauolelo Ridge (HHP 1992b2 to 1992b4). The 4 known populations, which are on Lualualei Naval Reservation and on privately owned land, are scattered over a distance of about 2 mi (3 km), and contain an estimated 700 individuals (HHP 1992b2 to 1992b4). *Diellia unisora* is a terrestrial fern which typically grows in deep shade or open understory in dryland forest at an elevation of 1,750 to 2,500 ft (530 to 760 m) (HHP 1992b2 to 1992b4). Associated species include koa, Christmas berry, *Psidium cattleianum* (strawberry guava), and *Metrosideros polymorpha* ('ohi'a), and a mixture of alien and native grasses, forbs, and shrubs (HHP 1992b2 to 1992b4). The major threat to *Diellia unisora* is competition from alien plant species (Christmas berry, *Melinus minutiflora* (molasses grass), *Passiflora suberosa* (huehue haole), and strawberry guava); habitat degradation by feral pigs is a potential threat (HHP 1992b2, 1992b4).

Gouania vitifolia was first collected "on dry hills, in the district of Waianai [Waianae]" during the U.S. Exploring Expedition in 1840. Asa Gray was given the task of preparing a report on all of the foreign plants collected by the expedition. Of the two volumes he produced concerning these specimens, only one was published, and in it *Gouania vitifolia* was described as a new species (Gray 1854). The species epithet was derived from the Latin *vitis*, a vine or grapevine, and *folium*, leaf, as the toothed leaves of this species resemble those of the grape. The Maui Island population of this species, first collected above Lahaina on West Maui by Edward F. Bishop, probably in the 1870s, was described and named *G. bishopii* in honor of its discoverer by William Hillebrand (Hillebrand 1888). In his monograph of the genus, St. John described *G. hawaiiensis* as a new species based upon a collection made in the Kau District of Hawaii Island in 1853 by Jules Remy (St. John 1969). Both of these taxa are currently considered synonyms of *Gouania vitifolia* (Wagner *et al.* 1990).

Gouania vitifolia, a member of the buckthorn family (Rhamnaceae), is a climbing shrub or woody vine with tendrils. Leaves are papery in texture with a moderate to dense covering of short, soft hairs on both surfaces. The leaves are elliptic to broadly oval in outline with toothed or lobed margins and 1.2 to 3.2 in (3 to 8 cm) long by 0.8 to 1.9 in (2 to 4.8 cm) wide. Flowers are arranged in axillary spikes 0.3 to 2.8 in (0.8 to 7 cm) long. The flowers are small with sepals and petals ranging from 0.03 to 0.04 in (0.7 to 1.1 millimeters (mm)) in length; both are white. The 2- or 3-winged fruit are about 0.4 in (9 to 10 mm) long. Seeds are oval, glossy, dark brown, and about 0.1 to 0.2 in (3.4 to 5 mm) long. This species is the only Hawaiian member of the genus with tendrils and toothed leaf margins (St. John 1969, Wagner *et al.* 1990).

Historically, *Gouania vitifolia* was known from West Maui; the Kau District of the island of Hawaii; and the northwestern portion of the Waianae Mountains in Makaleha, Keaau, and Waianae Kai Valleys (Degener and Greenwell 1947, HHP 1992c1 to 1992c5, St. John 1969, Wagner *et al.* 1990). A single population of five individuals was discovered in 1990 on the slopes of Waianae Kai Ridge on State-owned land (Anon. 1991, HHP 1992c5). Previously, the plant was believed extinct since it had not been observed since the 1930s. The five plants are close to one another, growing in a single patch in a forest of mostly naturalized, non-native species (HHP 1992c5), and may represent clones of a single individual (J. Lau, pers. comm., 1992). Information is scant, but data from herbarium labels indicate that *Gouania vitifolia* prefers dry, rocky ridges and slopes in dry shrubland or dry to mesic forests at an elevation of about 2,000 ft (610 m). Associated species include strawberry guava, kukui, Christmas berry, huehue haole, and mamaki (HHP 1992c5). The major threats to *Gouania vitifolia* are competition from alien plant species such as strawberry guava and Christmas berry; habitat destruction by feral pigs; and stochastic extinction and/or reduced reproductive vigor due to the small number of extant individuals, all of whom may be genetically identical (HHP 1992c5).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. *Diellia unisora* was considered threatened and *Gouania vitifolia* was considered extinct in that document. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. *Gouania vitifolia* was considered endangered in the proposed rule, but *Diellia unisora*, as a threatened species, was not included. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the

Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). *Gouania vitifolia* was included as a Category 1* species on all three notices of review. Category 1* taxa are those for which the Service has on file substantial information on biological vulnerability and threats in the recent past, but which may have already become extinct. Because a population of *Gouania vitifolia* was discovered in 1990, it is proposed herein for listing. *Diellia unisora* was considered a Category 1 species on the 1980 and 1985 notices, but was changed to a Category 1* species on the 1990 notice. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. With the rediscovery of *Diellia unisora* in 1991, this taxa was given high priority for listing and is thus included in this proposal. *Cyanea grimesiana* ssp. *obatae* first appeared on the 1990 notice, as a Category 2 taxon. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Additional recently acquired biological information supports listing of *Cyanea grimesiana* ssp. *obatae*.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposal constitutes the final 1-year finding for these taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cyanea grimesiana* ssp. *obatae* St. John (haha), *Diellia unisora* W.H. Wagner (no common name (NCN)), and *Gouania vitifolia* A. Gray (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The habitats of the plants included in this proposed rule have undergone extreme alteration because of past and present land management practices, including deliberate alien plant and animal introductions, agricultural development, and military use (Frierson 1973, Wagner *et al.* 1985). Competition with alien plants and degradation of habitat by feral pigs are considered the greatest present threats to the three taxa being proposed.

All of the three plant taxa being proposed for listing are threatened by competition from one or more alien plant species. *Schinus terebinthifolius* (Christmas berry), an aggressive tree introduced to Hawaii before 1911 as an ornamental, has had particularly detrimental impacts (Cuddihy and Stone 1990). This fast-growing alien plant is able to form dense thickets, displacing other plants, and also may release a chemical that inhibits the growth of other species (Smith 1985). As early as the 1940s, Christmas berry had invaded the dry slopes of Oahu; it is now replacing the native vegetation of much of the southern Waianae Mountains (Cuddihy and Stone 1990). Christmas berry is gradually invading other areas of the Waianae Mountains as well, and now threatens to occupy the habitat of the three plant taxa being proposed (HHP 1992a2, 1992b2 to 1992b4, 1992c5).

Psidium cattleianum (strawberry guava), a pervasive alien tree in the southern Waianae Mountains, is distributed mainly by feral pigs and fruit-eating birds (Smith 1985). Like Christmas berry, strawberry guava is capable of forming dense stands to the exclusion of other plant species (Cuddihy and Stone 1990). Populations of *Diellia unisora* and *Gouania vitifolia* are immediately threatened by competition with this alien plant (HHP 1992b3, 1992c5).

Clidemia hirta (Koster's curse), a noxious shrub first cultivated in Wahiawa on Oahu, spread to the Koolau Mountains in the early 1960s, where it is now rapidly displacing native vegetation. Koster's curse spread to the Waianae Mountains around 1970 and is now widespread throughout Honouliuli (Cuddihy and Stone 1990, Culliney 1988). This species forms a dense understory, shading other plants and hindering plant regeneration. At present, Koster's curse is the major threat to *Cyanea grimesiana* ssp. *obatae* (HHP 1992a2).

The native vegetation of the leeward ridges of the Waianae Mountains is being replaced by *Melinis minutiflora* (molasses grass), another aggressive alien plant species. Molasses grass ranges from the dry lowlands to the lower wet forests, especially in open areas with sparse vegetation. This fire-adapted grass produces a dense mat capable of smothering plants, provides fuel for fires, and carries fires into areas with native woody plants (Cuddihy and Stone 1990). The population of *Diellia unisora* located on the leeward slopes of the Waianae Mountains is most vulnerable to molasses grass (HHP 1992b2, 1992b4).

Passiflora suberosa (huehue haole), a vine that smothers small plants in the subcanopy of dryland habitats (Smith 1985), poses an immediate threat to some populations of *Diellia unisora* (HHP 1992b2, 1992b3). With its major infestations in the Waianae Mountains, it is also a probable threat to the only known extant population of *Gouania vitifolia* (HHP 1992c5).

Feral pigs (*Sus scrofa*) have been in the Waianae Mountains for about 150 years and are known to be one of the major current modifiers of forest habitats (Stone 1985). Pigs damage the native vegetation by rooting and trampling the forest floor and encourage the expansion of alien plants that are better able to exploit the newly tilled soils than are native species (Stone 1985). Pigs also disseminate alien species through their feces and on their bodies, accelerating the spread of alien plant species within the native forest. Present throughout the Waianae Mountains in low numbers, feral pigs pose a potential threat as some pig trails and rooting have been seen in the general areas of all three plant taxa included in this proposed rule. The rooting was localized and no direct damage to any of the proposed plants was noted. However, this situation could change very quickly (HHP 1992a2, 1992b2, 1992b3, 1992c5).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or excessive

visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all of the proposed taxa, but especially to *Gouania vitifolia*, which is known from only 1 population of 5 individuals, and *Cyanea grimesiana* ssp. *obatae*, known from 4 populations totaling 18 individuals. Any collection of whole plants or reproductive parts of these two taxa would cause an adverse impact on the gene pool and threaten the survival of the taxon. Disturbance to the area by human trampling also could promote erosion and greater ingress by competing alien species.

C. Disease or Predation

There is no direct evidence that disease or predation threatens the three proposed taxa. However, rats (*Rattus* spp.) and feral goats (*Capra hircus*), as well as feral pigs, are known from the area and damage to fruits, seeds, and plants from their foraging on other species has been observed.

D. The Inadequacy of Existing Regulatory Mechanisms

Of the three proposed taxa, two have populations located on private land, one on State, and two on Federal land: *Cyanea grimesiana* ssp. *obatae* and *Diellia unisora* are known only from Federal and private lands; *Gouania vitifolia* is known only from State land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these taxa on private land. None of the three proposed taxa are now listed by the State. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or wild plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these three plant taxa would therefore reinforce and supplement the protection available to the taxa under State law. The Federal Act also would offer additional protection to these three taxa because, if they were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations and individuals of all of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. *Gouania vitifolia* is known from a single population of five individuals. The other 2 proposed taxa are known from only 4 populations, totaling 18 individuals of *Cyanea grimesiana* ssp. *obatae* and 700 individuals of *Diellia unisora*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to list these three plant taxa as endangered. These taxa either number no more than about 20 individuals or are known from fewer than 5 populations. The three taxa are threatened by one or more of the following: Habitat degradation and competition from alien plants; habitat degradation and potential predation by feral animals, particularly pigs; and lack of legal protection or difficulty in enforcing laws which are already in effect. Small population size and limited distribution make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these three taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being proposed for the three taxa included in this proposed rule, for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowner have been notified of the general location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process. Two of these taxa are located on federally owned military reservations, but both are on steep slopes near the reservation boundaries where they are unlikely to be impacted by Federal activities. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency

cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two of these plant taxa are located on the Lualualei Naval Reservation or Schofield Barracks Military Reservation, both under the jurisdiction of the U.S. Department of Defense. There are no other known Federal activities that occur within the present known habitat of these three plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the three plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the plants are not common in cultivation nor in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The author of this proposed rule is Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding a new family "Polypodiaceae—Fern family," in alphabetical order to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•	•	•
Campanulaceae—Bellflower family:						
• •	•	•	•	•	•	•
Cyanea grimesiana ssp. *obatae*	Haha	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Polypodiaceae—Fern family:						
• •	•	•	•	•	•	•
Diellia unisora	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Rhamnaceae—Buckthorn family:						
• •	•	•	•	•	•	•
Gouania vitifolia	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-30253 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 921108-2308]

Groundfish Fishery of the Gulf of Alaska, and Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would establish two trawl test areas in the Gulf of Alaska (GOA) and one trawl test area in the Bering Sea and Aleutian Islands (BSAI) area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI would otherwise be closed to trawling. Establishment of these test areas would allow vessel operators the opportunity to test their trawl gear before a season opens so that they could begin fishing efficiently at the beginning of a season. This would reduce lost fishing time from gear problems, and would promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska. Authority to establish test areas is contained in Amendment 27 to the Fishery Management Plan (FMP) for Groundfish of the GOA and in Amendment 22 to the FMP for the Groundfish Fishery of the BSAI Area. These amendments were submitted to the Secretary of Commerce (Secretary) by the Council and are pending the Secretary's review and approval.

DATE: Comments are invited until January 8, 1993.

ADDRESS: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Individual copies of proposed Amendments 22 and 27 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the Council, P.O. Box 103136, Anchorage, AK 99510. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fisheries Management Biologist, NMFS, (907) 586-7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA and BSAI are managed by the Secretary under the FMP for Groundfish of the GOA and the FMP for the Groundfish of the BSAI area. These FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675, respectively. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Amendment 27 to the GOA FMP and Amendment 22 to the BSAI FMP were recommended to the Secretary by the Council at its January 13-18, 1992, meeting, and are under Secretarial review. A notice of availability of the amendments was published on September 25, 1992 (57 FR 44355). If approved by the Secretary, these amendments would provide NMFS with the authority to establish trawl test areas. This rule proposes to establish two areas in the GOA and one area in the BSAI area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI is otherwise closed to trawling. Establishment of these test areas would allow vessel operators to test their gear before a season opens and begin fishing efficiently at the beginning of a season, reducing lost fishing time from gear problems.

Until recently, the GOA and BSAI have been open to trawling for most of the year, and fishermen were able to test trawl gear in preparation for a season opening. However, in 1992, new regulations (57 FR 382, January 6, 1992) delayed the opening of the trawl season in the GOA and BSAI from January 1 until January 20. A similar delay of the GOA and BSAI trawl fisheries until January 20 is in effect for 1993 and beyond (57 FR 43926, September 23, 1992) to reduce bycatch rates of chinook salmon and Pacific halibut. Therefore, from January 1 until January 20 of each year, trawl gear may not be deployed in the GOA and BSAI, and fishermen will be unable to test their trawl gear before the trawl season opening.

Fishing with trawl gear is also prohibited at other times of the year in the GOA. If a quarterly allocation of halibut bycatch for trawl gear is taken, non-pelagic trawling is prohibited for the remainder of that quarter. This would prohibit fishermen from testing their bottom trawl gear before the next bottom trawling season begins.

There are several reasons for fishermen to test trawl gear before season openings. Fisheries are closing earlier because increasingly larger fleets are harvesting the total allowable catch (TAC) more quickly. The establishment of trawl test areas would enable fishermen to test their gear and begin fishing efficiently at the beginning of a season, reducing lost fishing time that might result from gear problems. In a similar trawl test program, the State of Washington allows vessels to use State waters in Puget Sound for trawl gear testing.

If approved, Amendments 27 and 22 would provide the Secretary with the authority to establish gear test areas, with no specific reference to a particular gear type. With this authority, the Secretary could implement any future gear test areas for any gear type by regulatory amendment, without amending the FMP. The amendments also include the following five criteria with which any geat test area must comply.

1. Depth and bottom type must be suitable for testing the particular gear type.

2. The areas must be outside State waters.

3. The areas must be in locations not normally closed to fishing with that gear type.

4. The areas must be in locations that are not usually fished heavily by that gear type.

5. The areas must not be within a designated Steller sea lion protection area at any time of the year.

This proposed rule would establish three trawl test areas (see Figure 1) bounded by straight lines connecting the following coordinates in the order listed:

GULF OF ALASKA—KODIAK

W. longitude	N. latitude
152° 02′	57° 37′
151° 25′	57° 37′
151° 25′	57° 23′
152° 02′	57° 23′
152° 02′	57° 37′

GULF OF ALASKA—SAND POINT

W. longitude	N. latitude
161° 00′	54° 50′
160° 30′	54° 50′
160° 30′	54° 35′
161° 00′	54° 35′
161° 00′	54° 50′

BERING SEA

W. longitude	N. latitude
167° 00′	55° 00′
166° 00′	55° 00′
166° 00′	54° 40′
167° 00′	54° 40′
167° 00′	55° 00′

Fishermen would be able to test trawl gear in these areas at times when trawling would otherwise be prohibited in those management areas under the following conditions:

(1) The cod end shall be left unzipped so that the trawl gear will not retain fish;

(2) Groundfish may not be on board; and

(3) The time vessels spend trawl gear testing in these three areas will not contribute towards observer coverage requirements, and the placement of observers on board these vessels will be at the discretion of the Regional Director.

Criteria for Gear Test Areas

The following explains how the three proposed trawl test areas comply with the criteria:

(1) Depth and bottom type must be suitable for testing pelagic and bottom trawl nets.

The Kodiak area has depths ranging from approximately 30–80 fathoms, the Sand Point area from 50–65 fathoms, and the Bering Sea area from 70–160 fathoms. These depths are suitable for bottom and pelagic trawling, and the bottom type is suitable for bottom trawling. Therefore, these test areas should be acceptable testing grounds for bottom and pelagic trawl gear. Each of these trawl test areas was chosen with the advice and assistance of trawl industry representatives.

(2) The areas must be outside Alaska State waters.

All of the trawl test areas are outside State waters.

(3) The areas must be in locations that are not usually heavily fished by trawling.

None of the three test areas is known to be an area of high trawl catch for groundfish.

(4) The areas must be in locations not normally closed to trawling.

None of the trawl test areas is in an area that is normally closed to trawling at any time of the year. However, the Bering Sea test area is entirely within the summer Herring Savings Area 2 (HSA 2). Herring Savings Area 2 regulations require that the attainment of a trawl bycatch allowance for herring would close the HSA 2 for the period from July 1 to August 15. NMFS believes that the Bering Sea test area would be required only from January 1 to January 20 before the trawl season opens. Because trawl bycatch amounts of herring are insignificant in the HSA 2 during January, conflicts should not result from having a trawl test area in HSA 2.

(5) The trawl test area must not be within a designated Steller sea lion protection area at any time of the year.

None of the three test areas is within a designated Steller sea lion protection area at any time of the year.

At the January 1992 Council meeting, the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) recommended that several issues of concern be addressed before the proposed FMP amendments and this proposed rule are published in the **Federal Register**. The following are responses to the SSC's and AP's concerns about the implementation of these trawl test areas:

(1) Species to be encountered in trawl test areas.

From the GOA and BSAI Stock Assessment and Fishery Evaluation Reports for 1992, the species that are likely to be encountered in these test areas are:

Kodiak and Sand Point Areas—walleye pollock, Pacific cod, flatfish, sablefish, rockfish, halibut, salmon, crab and other species.

Bering Sea Area—walleye pollock, Pacific cod, halibut, greenland turbot, arrowtooth flounder, sablefish, Pacific ocean perch, atka mackerel, and small amounts of rock sole, other flatfish, squid, and other species.

(2) Accessibility of these areas to fishermen.

Vessels fishing in the Gulf of Alaska could use the Kodiak and Sand Point test areas. Vessels fishing in the Bering Sea are primarily based in Dutch Harbor and Akutan, making the Bering Sea test area most convenient for testing. These test areas have been positioned to provide the best access to a test area by the majority of trawl vessels, and were chosen with input and consultation with the trawl fishing industry.

(3) The trawl test area should not be larger than is necessary to test the gear.

Kodiak Area—The approximate size for this area is 14 nautical miles (nm) by 18 nm, or 252 square nm. This is approximately the minimum size needed for a test area to allow vessels enough straight line distance and room to maneuver. For example, if a vessel is moving through a test area and begins gear testing at a normal trawling speed of 3–4 knots, the vessel could move in the same direction for about 4 hours. This should be enough time to solve most gear problems. Also, making the area nearly square provides room for vessel operators to use the test area without interfering with each other. This is important because vessels working on gear problems are less able to maneuver.

Sand Point Area—This area is approximately 15 nm by 15 nm, or 225 square nm, about the same size as the Kodiak area.

Bering Sea Area—This area is approximately 20 nm by 30 nm, or 600 square nm. This area is larger than the other two areas, because vessels that operate in the BSAI are larger. These larger vessels tow larger nets and are less capable of maneuvering because of their size. These factors contribute to the need for a larger area in the BSAI.

(4) Enforcement requirements for trawl test areas. Check in/check out or notification of trawl test area use may be required in the future to aid enforcement.

(5) *Trawl testing and crab opening conflicts.*

Crab fishing with pot gear and halibut fishing with hook and line gear are classified as stationary gear. Sometimes, movable gear such as trawl gear can conflict with stationary gear if both gear types are used on the same fishing grounds. If pot or hook and line gear is especially abundant, for example on a season opening for these gear types, it may be difficult for trawlers to avoid the stationary gear in the trawl test areas, resulting in conflict between stationary and movable gear types. In 1991, the King crab openings in the two GOA test areas were on September 25. Conflicts could have resulted in the GOA test areas if heavy use of the test areas occurred at the end of the third quarter due to a prohibition on trawling from exhausting the third quarter halibut PSC bycatch allocation. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the king crab fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

For 1991, the Tanner crab opening for all three areas occurred on January 15. Trawl testing would be required from January 1 to January 20 when trawling is prohibited in the GOA and BSAI. Therefore, heavy use of the trawl test areas could potentially conflict with the Tanner crab opening on January 15. Conflicts are not expected to occur to a great extent in the Bering Sea or the Sand Point test areas because few crab resources exist there. Crab resources in the Kodiak area are abundant, and the potential exists for conflict. NMFS does not believe that trawl testing during

these times of potential conflict will create a burden for the Tanner crab fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

(6) *Trawl testing and halibut opening conflicts.*

The Bering Sea test area falls within the International Pacific Halibut Commission (IPHC) fishing area 4A. For 1992, area 4A halibut fishing periods are from June 8 to June 9, from August 6 to announced closure, and from September 22 to announced closure. Trawl testing should not conflict with the halibut opening in the Bering Sea area, because the time of year that the Bering Sea trawl test area would normally be used would be from January 1 to January 20, when fishing with trawl gear in the BSAI is prohibited.

The Sand Point test area is in the IPHC area 3B, where the 1992 halibut fishing periods will be from June 8 to June 9, from September 7 to September 8, and from October 5 to announced closure. The Gulf of Alaska is closed to trawling from January 1 to January 20, and possibly near the end of each quarter if the quarterly allocation of halibut bycatch is exhausted. Halibut openings from June 8 to June 9 and September 7 to September 8 are near the end of the second and third quarters, respectively, so it is possible that the halibut bycatch for the trawl fleet would be taken and trawling would be prohibited resulting in use of the trawl test areas, thereby conflicting with the area 3B halibut opening. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the Pacific halibut fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

The Kodiak test area is in IPHC area 3A, and has the same 1992 halibut fishing periods as the Sand Point area. The Kodiak test area is in the same situation with regard to conflicts with halibut openings as the Sand Point area in the above paragraph. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the Pacific halibut fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

Classification

The Council prepared an environmental assessment (EA) for the FMP amendments and this proposed rule that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council (see **ADDRESSES**) and comments on it are requested.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR prepared for this proposed rule. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. More than 2,000 vessels may fish for groundfish off Alaska in 1992 and future years. This proposed rule is expected to have positive economic effects by allowing vessel operators to test their gear and have it in operating condition for the beginning of the trawl season. This opportunity is expected to improve fishing efficiency and reduce costs resulting from lost time due to inoperative fishing gear during the season. A copy of this analysis is available from the Council (see **ADDRESSES**).

NMFS has determined that none of the management measures proposed under this rule would adversely affect endangered or threatened species. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for the adoption of these FMP amendments or their implementing rules.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels.

Dated: December 8, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

BILLING CODE 3510-22-M

Note Fig. 1 will not appear in the Code of Federal Regulations

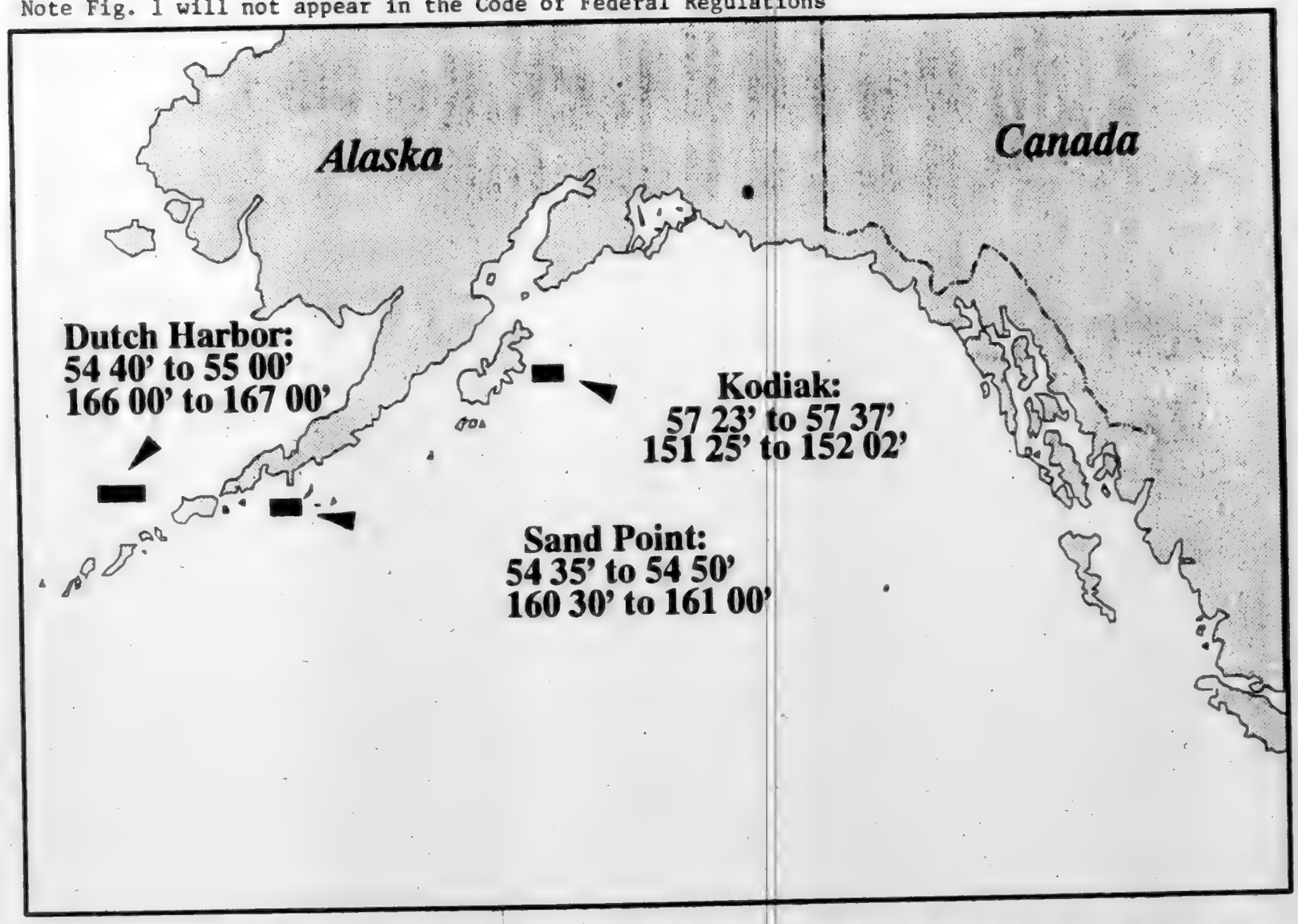

FIG 1 - LOCATION OF PROPOSED TRAWL TEST AREAS IN THE GULF OF ALASKA AND BERING SEA

BILLING CODE 3510-22-C

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.24, paragraph (f) is added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(f) *Trawl Gear Test Areas.* (1) *General.* For purposes of allowing pelagic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, "trawl gear testing" means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at § 672.27.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year .

(4) *Kodiak Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 63 as defined in § 672.2:

W. longitude	N. latitude
152° 02′	57° 37′
151° 25′	57° 37′
151° 25′	57° 23′
152° 02′	57° 23′
152° 02′	57° 37′

(5) *Sand Point Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 61 as defined in § 672.2:

W. longitude	N. latitude
161° 00′	54° 50′
160° 30′	54° 50′
160° 30′	54° 35′
161° 00′	54° 35′
161° 00′	54° 50′

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.24, paragraph (g) is added to read as follows:

§ 675.24 Gear limitations.

* * * * *

(g) *Trawl Gear Test Areas.* (1) *General.* For purposes of allowing pelagaic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, "trawl gear testing" means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at § 672.27 of this part.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) *Bering Sea Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in the Bering Sea and Aleutian Islands Management Area as defined in § 675.2:

W. longitude	N. latitude
167° 00′	55° 00′
166° 00′	55° 00′
166° 00′	54° 40′
167° 00′	54° 40′
167° 00′	55° 00′

[FR Doc. 92–30214 Filed 12–9–92; 1:16 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 240
Monday, December 14, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: M. Ann Whitehead, Patent Coordinator, USDA, ARS, room 403, Bldg. 005, BARC–West, Beltsville, Maryland 20705; (301) 504–6786 or Fax (301) 504–5060. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia, 22161; NTIS Sales Desk (703) 487–4650. Issued patents may be obtained from the Commission of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

7–519,197 (U.S. 5,122,188) Vegetable Oil-Based Printing Ink.
7–912,447 Campy-Cefex Selective and Differential Medium for *Campylobacter.*
7–921,173 Probiotic for Control of Salmonella.
7–936,423 Portable Intron as an Insertion Vector for Gene Insertion.
7–937,634 Oxidative Bleaching of Wood Pulp by Vanadium-Substituted Polyoxometallates.
7–937,764 Fungus-Bioregulator Composition and Methods for Control of Plant Parasitic Nematodes.
7–939,764 Compost Toilet Mixing Tool.
7–965,308 A Stable Beverage Clouding Agent Prepared from Isolated Soy Protein.

M. Ann Whitehead,
National Patent Coordinator.

[FR Doc. 92–30208 Filed 12–11–92; 8:45 am]
BILLING CODE 3410–03–M

Food Safety and Inspection Service

[Docket No. 92–028N]

Congressionally-Mandated Exemption Studies

AGENCY: The Food Safety and Inspection Service, USDA.

ACTION: Notice of study commencement; request for public participation.

SUMMARY: The Food Safety and Inspection Service has commenced two exemption studies pursuant to a congressional mandate. The first study will examine present and future exemptions from Federal inspection requirements for specified products; the second will consider the appropriateness of exempting from inspection certain types of wholesale meat and poultry processing. These reports will be submitted to Congress on or before December 13, 1993. Public participation in the form of written comments is encouraged.

DATES: Written comments should be submitted by mail or FAX on or before: February 12, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Jane R. Roth, Director, Policy Analysis Unit, Policy Evaluation and Planning Staff, FSIS, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–6735 or FAX (202) 690–1030.

SUPPLEMENTARY INFORMATION:

Public Participation

All parties with an interest in the issues these studies raise are invited to submit written comments explaining their position and, where appropriate, make recommendations for consideration by this Agency. In particular, FSIS is interested in potential economic impacts and health-related scientific criteria that should be evaluated during the conduct of these exemption studies. Written comments should refer to docket number 92–028N. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 4 p.m., Monday through Friday.

Background

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (section 1016, Pub. L. 101–237; approved December 13, 1991) amended the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) and commissioned two studies. The first is referred to as the "Product Exemption Study." The second is referred to as the "Wholesale Exemption Study." Study requirements as set forth in the amendments are as follows:

Product Exemption Study

"A study to develop criteria for, and evaluate, present and future inspection exemptions for meat food products and poultry products under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), respectively, which shall examine the potential effect on consumers, on the affected industries, on public health and food safety, on the role of the Department of Agriculture, and the scientific basis for the exemptions."

Wholesale Exemption Study

"A study of the appropriateness of granting an exemption from the requirements of the Federal Meat Inspection Act or the Poultry Products Inspection Act, as appropriate, for wholesale meat outlets selling to hotels, restaurants, or other similar institutional users, provided that the processing of meat by the outlets is limited to cutting, slicing, grinding, or repackaging into smaller quantities."

Commencement of the Studies

Work on these studies has begun. They are being conducted concurrently. FSIS will consult with the National Academy of Sciences before finalizing study results. Reports of the studies will

be provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than December 13, 1993.

Done at Washington, DC, on December 8, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-30321 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Exemption of Basin Salvage Timber Sale From Appeal, Okanogan National Forest, WA

AGENCY: Forest Service, USDA

ACTION: Notice to exempt decisions from administrative appeal.

SUMAMRY: This is a notification that the decision to implement the Basin Salvage Timber Sale at the base of Mt. Annie on the Okanogan National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: December 14, 1992.

FURTHER INFORMATION CONTACT: Elaine Zieroth, District Ranger, Tonasket Ranger District, Okanogan National Forest, 1 West Winesap, Tonasket, Washington 98855, Phone (509) 486–2186.

SUPPLEMENTARY INFORMATION: The Basin Salvage Area consists of 168 acres of primarily lodgepole pine with intermixed western larch and Douglas-fir. A population of mountain pine beetles have been present in the area for the past two to three years as evidenced by the past mortality which is present in patches throughout. It appears, that as the lodgepole pine in the area grow to a larger diameter, the population of beetles has been expanding taking advantage of the more favorable, larger diameter trees. In June-October 1992, an interdisciplinary team (IDT) analyzed the infested area to assess the current and potential damage to the resources that had or may occur. The IDT observed that conditions throughout the analysis area are very favorable to the continued expansion of the beetle population. The trend observed appeared to show that in the past three years the population has expanded almost exponentially in numbers and area and seemed to be reaching a critical level.

The IDT identified the need to salvage the timber which has already died and to use an integrated pest management (IPM) process in order to reduce losses from the mountain pine beetle to a tolerable level. Logging before the beetle completes another life cycle and the existing brood, which is over-wintering in the stems of currently dead trees, emerges will minimize attacks on currently healthy trees. This "preventive" IPM system is the best approach to limiting the mountain pine beetle population expansion because the techniques are more effective, economical, environmentally acceptable, and compatible with management for other forest resources.

The IDT developed different alternatives to analyze the effects of no action and implementation of possible salvage opportunities. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 2) would implement stocking reductions over approximately 168 acres of land heavily infected and at an extreme high risk of further infection. This harvest would produce about 1.9 million board feet (MMBF) of merchantable volume for local markets. Approximately .57 miles of logging roads would be constructed in order to access the area and then obliterated after log haul and harvest use.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible, limit the amount of merchantable salvage volume lost to mortality, to minimize the population growth of the mountain pine beetle, and to reduce the impacts that any further expansion of this population would have to the surrounding area and affected forest resources. To expedite this sale project and the accompanying work, this project is exempted from appeals (36 CFR 217). Under this Regulation, the following is exempt from appeal.

Decisions related to the rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, this Decision Notice for the Basin Salvage Timber Sale may be signed by the District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: December 8, 1992.

Michael S. Edrington,

Acting Deputy Regional Forester.

[FR Doc. 92-30227 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Lone Pine Recovery Project Timber Salvage and Connected Activities, Fire Interpretation, Soil and Water Protection and Improvement, Wildlife Habitat Improvement, Sensitive Plant Enhancement From Appeal, Winema National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decisions to implement Lone Pine Recovery Projects in the area of Lone Pine on the Winema National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Bob Castaneda, Forest Supervisor, Winema National Forest, 2819 Dahlia Street, Klamath Falls, Oregon 97601, Phone (503) 883–6714.

SUPPLEMENTARY INFORMATION: The projects proposed for the Lone Pine recovery include: Timber salvage of fire killed timber; reforestation of conifer and forage species; interpretation and education opportunities; soil and water protection and improvement; wildlife habitat improvement, and fall antelope bitterbrush seeding all aimed at initiating recovery of the Lone Pine Fire which occurred on the Winema National Forest in August 1992. The fire severely burned more than 25,000 acres of National Forest land, killing most of the timber and other vegetation.

Shortly after the fire occurred, an Interdisciplinary Team (IDT) was organized to conduct an environmental analysis for the recovery of the fire area. The IDT began with an initial scoping meeting on August 24, 1992. After public meetings, press releases, and contacts with individuals, environmental and timber industry groups, Federal, State, County and Tribal governments, three urgent concerns were identified. They are:

(1) Expedite economic and resource value recovery of the fire killed timber before it's value deteriorates;

(2) Accomplish the greatest amount of salvage harvest possible during the 1993 winter logging season; and

(3) Implement reforestation of conifer and forage species as quickly as possible.

The action alternatives for the timber salvage will be considering the salvage of an estimated 90 million board feet of timber covering approximately 18,000 acres. Ponderosa pine is the predominant (90%) fire killed timber species, and is subject to a high loss of economic and resource value (30 to 50% by mid summer 1993), due to blue stain fungus. Expediting economic and resource value recovery of the ponderosa pine is critical to maximize:

1. Utilization of the raw material before it deteriorates.

2. Economic value to support local and regional economies.

3. Timber sale receipts for the greatest return to the Federal and County Governments, and sufficient funds derived from the timber sale receipts to pay for area recovery projects in addition to reforestation.

The environmental analysis also supports the need to complete the greatest amount of harvest possible during the 1993 winter logging season. Logging over sufficiently frozen, snow covered soils has proven to be an effective means of diminishing impacts on soil and other resources, resulting in greater protection of those resources. Normally timber sales have two or more winter logging seasons. In the case of Lone Pine fire salvage, the second winter logging season would see a large loss of economic and timber resource value (50% or more). A delay beyond the 1993 winter logging season will compress logging activities into the less desirable spring and summer months.

Reforestation of the fire area is crucial to it's recovery. Conifers and forage need to be re-established early on to begin the process of returning the area to the desired future condition, and to provide critical hiding/thermal cover and forage for mule deer and other wildlife. The fire severely damaged important winter range and fawning habitat. This important habitat needs to be rehabilitated as soon as possible. The ground is presently in a prime condition for reforestation. Conifer and forage species have their best chance for survival before the inevitable competing vegetation becomes established.

Surplus conifer and forage seedlings have been located, and are available for planting in the spring of 1993. In order to utilize the available seedlings, planting areas must be logged prior to the spring planting season. The optimum situation for reforestation in the Lone Pine Fire Area, is completion of harvest over a sufficient number of acres, to utilize as much of the available seedlings as possible in the 1993 spring planting season.

Other projects planned for the burned area include:

—Soil and water protection and improvement (grass seedings, straw check dams, road drain dip construction).

—Interpretation and education opportunities for the public of fire related management activities (interpretation signs and turnout areas)

—Wildlife habitat improvement projects (regeneration of Klamath Plum, Mountain Mahogany planting, aspen stand protection, water guzzlers, regeneration of woody shrug species, and removal of burned fencing).

—Sensitive plant enhancement (22 acres).

In summary, the reasons for exempting the Lone Pine Recovery Projects from administrative appeal are:

1. To expedite economic and resource value recovery of the fire killed ponderosa pine, to avoid deterioration of it's resource and economic value as a result of blue stain fungus.

2. To complete the greatest amount of harvest possible during the 1993 winter logging season to diminish impacts on soil and other resource values.

3. To implement reforestation of conifer and forage seedlings in the 1993 spring planting season, to utilize available surplus seedlings, begin recovery of the fire area toward the desired future condition, and re-establish critical cover and forage vegetation for mule deer and other wildlife species.

The environmental analysis of the Lone Pine Recovery Project is nearly completed. The project and accompanying work in designed to accomplish the objective as quickly as possible and minimize the amount of economic and resource value lost. To expedite these recovery projects, they are exempted from appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Notice for the Lone Pine Recovery Project Timber Salvage and Connected Activities and Decision Memos for Soil and Water Protection and Improvement, Fire Interpretation, Wildlife Habitat Improvement, and Sensitive Plant Enhancement may be signed by the Winema Forest Supervisor. Therefore, these projects will not be subject to review under 36 CFR part 217.

Dated: December 7, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-30224 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Technology: Prevalence and Plans for Use.

Form Number(s): SMT–1.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,500 hours.

Number of Respondents: 10,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census will conduct the Survey of Technology: Prevalence and Plans for Use to measure patterns of use and diffusion of advanced manufacturing technologies. The Survey of Manufacturing Technology, conducted in 1988, provided valuable data on the diffusion of advanced technology as well as the characteristics of the establishments that incorporate technologically advanced equipment in their operations. Using data gathered in this survey, Census will evaluate the extent to which the rate of technology usage has changed over time and will determine the factors that influence decisions to acquire advanced technology. The International Trade Administration will use the data in comparing domestic manufacturers' level of technology to that of other countries as well as in appraising charges of unfair trade practices. The Department of Defense (DOD) will use the information to measure the mobilization capabilities and flexibility of our manufacturing industries. In addition, the DOD and the National Institute of Standards and Technology will use the data to more efficiently allocate resources from their technology demonstration and transfer programs.

Affected Public: Business or other for profit organizations.

Frequency: Triennially.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–30305 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Amendment to final results of antidumping duty administrative reviews.

SUMMARY: On June 24, 1992, the Department of Commerce published the final results of its 1990–91 administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews covered 63 manufacturers/exporters and the period May 1, 1990 through April 30, 1991. Based on the correction of clerical errors, we have changed the margins for ball bearings for 17 companies, and for cylindrical roller bearings for one company.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger or Bernard Carreau, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 28360) the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered rolled bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 63 manufacturers/exporters and the period May 1, 1990 through April 30, 1991.

After publication of our final results, we received in a timely fashion allegations of clerical errors from the petitioner, the Torrington Company, and from several respondents: Barden, FAG, FiatAvio, IJK, INA, Koyo, MBB, NSK, Pratt & Whitney, SKF, and SNR. In most instances, we agree with the allegations and have made corrections where appropriate.

On July 24, 1992, the Department published in the **Federal Register** (57 FR 32969) an amendment to the final results of these administrative reviews. However, because Federal-Mogul Corporation, a domestic interested party, and NTN Corporation, a Japanese exporter, had each filed a summons at the Court of International Trade (CIT), we did not issue clerical error corrections with respect to BBs from France, Germany, Italy, Japan, Sweden and the United Kingdom, as well as CRBs from Japan at that time. In accordance with *Zenith Elec. Corp.* v. *United States*, 699 F.Supp 296 (CIT 1988), *Aff'd*, 884 F.2d 556 (Fed. Cir. 1989), the Department could not automatically correct ministerial errors made in an administrative review once the court's exclusive jurisdiction had been invoked.

On November 23, 1992, the CIT granted the Department leave to correct the clerical errors for those countries and classes or kinds of merchandise under the court's jurisdiction.

Amended Final Results of Review

The Department inadvertantly excluded the word "not" from the response to Comment 20 found at the top of the first column on 57 FR 28418. The second sentence in the Department's response should read, "However, we agree with Torrington that NSK's early payment discounts or distributor incentives are *not* included as expenses in its COP data."

In its calculations of dumping margins, the Department corrected ministerial errors concerning the following:

France

For Pratt & Whitney, we corrected the application of a level of trade adjustment to home market unit prices that were adjusted for discounts and rebates rather than to Pratt & Whitney's gross unit price.

For SKF, we corrected home market commissions that were set to zero and treated warranty and technical service expenses as direct expenses.

For SNR, we eliminated the double-counting of commissions and U.S. inland freight expenses, corrected a typographical error in connection with domestic inland insurance and implemented a variable for physical differences in merchandise.

Germany

For FAG, we eliminated home market family matches where all sales were below cost, corrected the setting of some indirect selling expenses to zero and eliminated the addition of imputed credit costs and inventory carrying costs to cost of production for the home market cost test. We also eliminated adjustments for differences in merchandise and corrected the failure to include home market inventory carrying costs for some constructed value comparisons.

For Pratt & Whitney, we corrected the application of a level of trade adjustment to home market unit prices that were adjusted for discounts and rebates rather than to Pratt & Whitney's gross unit price.

For SKF, we subtracted (rather than added) a billing adjustment from indirect selling expenses and deleted the billing adjustment from adjusted home market price when applying the sales below cost test. We also corrected the treatment of warranty and technical service expenses as both direct and indirect expenses by treating them as direct expenses.

Italy

For FAG, we corrected the inclusion of inventory carrying costs and credit expenses in cost of production, the application of an adjustment for differences in merchandise to constructed value comparisons, the exclusion of home market indirect

selling expenses from constructed value margin calculations and the double-counting of inventory write-offs in calculating cost of production.

For SKF, we subtracted (rather than added) a billing adjustment from indirect selling expenses and deleted the billing adjustment from adjusted home market price when applying the sales below cost test. We also corrected the treatment of warranty and technical service expenses as both direct and indirect expenses by treating them as direct expenses.

Japan

For IJK, we corrected the calculation of constructed values that used purchase prices that were incorrect by a factor of 100 due to a computer tape formatting error. We also corrected the failure to apply the 20 percent difference in merchandise "cap" to IJK's transactions.

For Koyo, we corrected the failure to apply the intended best information available for U.S. sales for which Koyo failed to provide cost of production data for matching home market sales.

For Nachi, we corrected the failure to apply the ten percent minimum for general expenses and eight percent minimum for profit when calculating constructed value.

For NSK (ball bearings), we corrected the basing of presale U.S. inland freight expenses on an incorrect price, the exclusion of home market indirect selling expenses from the appropriate variable, the placement of consecutive plus signs in the string of variables used to determine United States direct selling expenses, the treatment of NSK's inventory carrying costs and technical service expenses as direct selling expenses rather than indirect selling expenses, the failure to convert presale inland freight expenses for purchase price sales from yen to dollars and the failure to apply the 20 percent difference in merchandise "cap" to NSK's transactions.

For NSK (cylindrical roller bearings), we corrected the exclusion of home market indirect selling expenses from the appropriate variable, the placement of consecutive plus signs in the string of variables used to determine United States direct selling expenses, the treatment of NSK's inventory carrying costs and technical service expenses as direct selling expenses rather than indirect selling expenses, and the failure to apply the 20 percent difference in merchandise "cap" to NSK's transactions.

For NTN, we corrected the failure to convert the price used to calculate the level of trade adjustment from yen to dollars and the failure to apply the ten percent minimum general expenses in calculating constructed value.

Sweden

For SKF, we corrected the treatment of some selling expenses as if reported in Swedish kronor rather than the correct currency of Deutsche marks and the treatment of warranty and technical service expenses as both direct and indirect expenses.

United Kingdom

For Barden, we corrected the addition of the value-added tax percentage to U.S. and home market prices rather than the addition of the result of multiplying the tax percentage by the U.S. price.

For FAG, we corrected the addition of the value-added tax percentage to U.S. and home market prices rather than the addition of the result of multiplying the tax percentage by the U.S. price. We also corrected the failure to apply the 20 percent difference in merchandise "cap" and the failure to deduct commissions from U.S. price.

For SKF, we corrected the double-counting of movement expenses, the treatment of warranty and technical service expenses as both direct and indirect expenses, the subtraction of "other discounts" twice from U.S. price and the addition of the value-added tax percentage to U.S. and home market prices rather than the addition of the result of multiplying the tax percentage by the U.S. price.

The Department also determined that there was no clerical error made with respect to FAG Cuscinetti's home market inventory carrying costs. Therefore, no correction was made.

As a result of our corrections of clerical errors, we have determined the following weighted-average margins to exist for the period May 1, 1990 through April 30, 1991:

Country	Company	Class or kind	Rate
France	Pratt & Whitney.	BBs	8.37
	SKF	BBs	8.37
	SNR	BBs	15.96
	All others	BBs	15.96
Germany	FAG	BBs	17.24
	Pratt & Whitney.	BBs	11.10
	SKF	BBs	11.44
	All others	CRBs	23.52
Italy	FAG	BBs	4.94
	SKF	BBs	9.31
Japan	IJK	BBs	1.43
	Koyo	BBs	6.85
	Nachi	BBs	7.66
	NSK	BBs	4.62
		CRBs	12.69
	NTN	BBs	2.26
Sweden	SKF	BBs	7.81
	All others	BBs	7.81
United Kingdom	Barden	BBs	0.74
	FAG	BBs	41.99
	SKF	BBs	8.41
	All others	BBs	41.99

Based upon these rates, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties and to assess antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews (57 FR 28361).

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: December 8, 1992.

Rolf Th. Lundberg, Jr.,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92-30306 Filed 12-11-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 921074-2274]

RIN 0693-AB11

Two Proposed Federal Information Processing Standards; Integration Definition for Function Modeling; Integration Definition Information Modeling

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The purpose of this notice is to announce two proposed Federal

Information Processing Standards (FIPS) for software modeling techniques. These proposed standards will enable Federal agencies to improve information resources management through the development and acquisition of vendor-independent and application-independent systems for modeling information system functions and for analyzing data resources.

The proposed FIPS for Integration Definition for Function Modeling (IDEF0) is based on the Air Force Wright Aeronautical Laboratories Integrated Computer Aided Manufacturing (ICAM) Architecture, Part II, Volume IV—Function Modeling Manual. This standard describes the IDEF0 modeling language (semantics and syntax) and associated rules and techniques for developing structured graphical representations of a system or enterprise.

The proposed FIPS for Integration Definition Modeling (IDEF1X) is based on the Integration Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended, 1. This standard describes the IDEF1X modeling language (semantic and syntax) and associated rules and techniques, for developing a logical model of data.

Prior to the submission of these proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and state and local governments. The purpose of this notice is to solicit such views.

The proposed standards contain two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standards; and (2) a specifications section which deals with the technical requirements of the standards. Only the announcement sections of the standard are provided in this notice. Interested parties may obtain copies of the technical specifications from the Standards Processing Coordinator (ADP), National Institute of Standards Processing coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on these proposed FIPS must be received on or before March 15, 1992.

ADDRESSES: Written comments concerning these proposed FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for IDEF0 and IDEF1X, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments concerning these proposed FIPS will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Gunn, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–3260.

John W. Lyons,
Director.
Dated: December 8, 1992.

Draft Federal Information Processing Standards Publication _____

(Date)

Announcing the Standard for Integration Definition for Function Modeling Manual (IDEF0)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Integration Definition for Function Modeling (IDEF0).

2. Category of Standard. Software Standard, Modeling Techniques.

3. Explanation. This publication announces the adoption of the Integration Definition Function Modeling (IDEF0) as a Federal Information Processing Standard (FIPS). This standard is based on the Air Force Wright Aeronautical Laboratories Integrated Computer-Aided Manufacturing (ICAM) Architecture, Part II, Volume IV–Function Modeling Manual (IDEF0), June 1981.

This standard describes the IDEF0 modeling language (semantics and syntax), and associated rules and techniques, for developing structured graphical representations of a system or enterprise. Use of this standard permits the construction of models comprising system functions (activities, actions, processes, operations), functional relationships, and data (information or objects) that support systems integration.

This standard is the reference authority for use by system or enterprise modelers required to utilize the IDEF0 modeling technique, by implementors in developing tools for implementing this technique, and by other computer professionals in understanding the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. ICAM Architecture Part II-Volume IV-Function Modeling Manual (IDEF0), AFWAL–TR–81–4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

7. Related Documents

a. Federal Information Resources Management Regulations Subpart 201.20.303, Standards, and Subpart 201.39.1002, Federal Standards.

b. Integrated Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended, December 1985.

c. ICAM Architecture Part II, Volume V—Information Modeling Manual (IDEF1), AFWAL–TR–81–4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

d. ICAM Configuration Management, Volume II—ICAM Documentation Standards for Systems Development Methodology (SDM), AFWAL–TR–82–4157, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, October 1983.

8. Objectives. The primary objectives of this standard are:

a. To provide a means for completely and consistently modeling the functions (activities, actions, processes, operations) required by a system or enterprise, and the functional relationships and data (information or objects) that support the integration of those functions;

b. To provide a modeling technique which is independent of Computer-Aided Software Engineering (CASE) methods or tools, but which can be used in conjunction with those methods or tools;

c. To provide a modeling technique that has the following characteristics:

(1) Generic (for analysis of systems of varying purpose, scope and complexity);

(2) Rigorous and precise (for production of correct, usable models);

(3) Concise (to facilitate understanding, communication, consensus and validation);

(4) Conceptual (for representation of functional requirements rather than physical or organizational implementations);

(5) Flexible (to support the full life cycle of a project).

9. Applicability.

Implementations of this standard are required in information resource management applications that are either developed or acquired for Federal Government use. Such applications include:

a. Using a modeling technique for the analysis, development, re-engineering, or integration of information systems;

b. Incorporating a system or enterprise modeling technique into a systems analysis or software engineering methodology.

The use of this standard is strongly recommended for all projects requiring a standard means of defining and analyzing the functions and associated data within an organization.

The specifications of this standard are applicable when system or enterprise modeling techniques are applied to the following:

a. Projects requiring IDEF0 as the modeling technique;

b. Development of automated software tools implementing the IDEF0 modeling technique.

The specifications of this standard are not applicable to those projects requiring a function modeling technique other than IDEF0.

Nonstandard features of the IDEF0 technique should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the integration of models more difficult and costly.

10. Specifications. This standard adopts the Integration Definition for Function Modeling (IDEF0) as a Federal Information Processing Standard (FIPS).

11. Implementation. The implementation of this standard involves two areas of consideration: acquisition of implementations and interpretation of the standard.

11.1 Acquisition of IDEF0 Implementations. This publication (FIPS XXX) is effective XXXX XX, 199X (six months after date of publication of the final document in the Federal Register). For Federal acquisitions after this date, projects utilizing the IDEF0 function modeling technique, or software implementing the IDEF0 modeling technique, should conform to FIPS XXX. Conformance to this standard should be considered whether the project or software utilizing the IDEF0 modeling technique is acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to develop products conforming to this standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, utilizing a function modeling technique that does not conform to this standard may be permitted during the transition period.

11.2 Interpretation of this FIPS. NIST provides for the resolution of questions regarding the implementation and applicability of this FIPS. All questions concerning the interpretation of this standard should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS IDEF0 Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by government-wide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required findings(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, Computer Systems Laboratory, Attn: FIPS Waiver Decisions, National Institute of Standards and Technology, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee of Government Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment of such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

Draft Federal Information Processing Standards Publication _____

(Date)

Announcing the Standard for Integration Definition for Function Modeling (IDEF1X)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Integration Definition for Information Modeling (IDEF1X).

2. Category of Standard. Software Standard, Modeling Techniques.

3. Explanation. This publication announces the adoption of the Integration Definition for Information Modeling (IDEF1X) as a Federal Information Processing Standard (FIPS). This standard is based on the Integration Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended, 1 (IDEF1X) November 1985.

This standard describes the IDEF1X modeling language (semantics and syntax) and associated rules and techniques, for developing a logical model of data. IDEF1X is used to produce a graphical information model which represents the structure and semantics of information within an environment or system. Use of this standard permits the construction of semantic data models which may serve to support the management of data as a resource, the integration of information systems, and the building of computer databases.

This standard is the reference authority for use by information modelers required to utilize the IDEF1X modeling technique, implementors in developing tools for implementing this technique, and other computer professionals in understanding the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. Integration Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended.

7. Related Documents.

a. Federal Information Resources Management Regulations Subpart 201.20.303, Standards, and Subpart 201.39.1002, Federal Standards.

b. ICAM Architecture Part II-Volume V—Information Modeling Manual (IDEF1), AFWAL–TR–81–4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

c. ICAM Architecture Part II-Volume IV—Function Modeling Manual (IDEF0), AFWAL–TR–81–4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

d. ICAM Configuration Management, Volume II—ICAM Documentation Standards for Systems Development Methodology (SDM), AFWAL–TR–82–4157, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, Ohio 1983.

8. Objectives. The primary objectives of this standard are:

a. To provide a means for completely understanding and analyzing an organization's data resources;

b. To provide a common means of representing and communicating the complexity of data;

c. To provide a technique for presenting an overall view of the data required to run an enterprise;

d. To provide a means for defining an application-independent view of data which can be validated by users and transformed into a physical database design;

e. To provide a technique for deriving an integrated data definition from existing data resources.

9. Applicability. An information modeling technique is used to model data in a standard, consistent, predictable manner in order to manage it as a resource.

Implementations of this standard are required in information resource management applications that are either developed or acquired for Federal Government use. Such applications include:

a. Incorporating a data modeling technique into a methodology;

b. Using a data modeling technique to manage data as a resource;

c. Using a data modeling technique for the integration of information systems;

d. Using a data modeling technique for designing computer databases.

The use of this standard is strongly recommended for all projects requiring a standard means of defining and analyzing the data resources within an organization.

The specifications of this standard are applicable when a data modeling technique is applied to the following:

a. Projects requiring IDEF1X as the modeling technique;

b. Development of automated software tools implementing the IDEF1X modeling technique.

The specification of this standard are not applicable to those projects requiring data modeling technique other than IDEF1X.

Nonstandard features of the IDEF1X technique should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the integration of data models more difficult and costly.

10. Specifications. This standard adopts the Integration Definition Method for Information Modeling (IDEF1X) as a Federal Information Processing Standard (FIPS).

11. Implementation. The implementation of this standard involves two areas of consideration: acquisition of implementations and interpretation of the standard.

11.1 Acquisitions of IDEF1X Implementations. This publication (FIPS XXX) is effective XXXX XX, 199X (six months after date of publication of the final document in the **Federal Register**). Projects utilizing the IDEF1X data modeling technique, or software implementing the IDEF1X data modeling technique, acquired for Federal use after this date should conform to FIPS XXX. Conformance to this standard should be considered whether the project utilizing the IDEF1X data modeling technique is acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts of programming services.

A transition period provides time for industry to develop products conforming to this standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, utilizing an IDEF1X information modeling technique that does not conform to this standard may be permitted during the transition period.

11.2 Interpretation of this FIPS. NIST provides for the resolution of questions regarding the implementation and applicability of this FIPS. All questions concerning the interpretation of IDEF1X should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS IDEF1X Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by governmentwide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, Computer Systems Laboratory, Attn: FIPS Waiver Decisions, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of

the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of acquisition or, if the waiver determination is made after that notice is published, by amendment of such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 92-30312 Filed 12-11-92; 8:45 am]
BILLING CODE 3510-CN-M

National Institute of Standards and Technology

[Docket No. 910527-2215]

RIN 0693-AA85

Approval of Federal Information Processing Standards Publication 179, Government Network Management Profile (GNMP)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 179.

SUMMARY: On July 31, 1991, (56 FR 36136) and August 12, 1991 (56 FR 38174) notices were published in the **Federal Register** that a Federal Information Processing Standard for GNMP was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the standard as Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective June 14, 1993.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Ms. Fran Nielsen, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3669.

Dated: December 8, 1992.

John W. Lyons,

Director.

Federal Information Processing Standards Publication 179

(date)

Announcing the Standard for Government Network Management Profile (GNMP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Government Network Management Profile (GNMP) (FIPS PUB 179).

2. *Category of Standard.* Hardware and Software Standards, Computer Network Protocols.

3. *Explanation.* This Federal Information Processing Standard adopts the Version 1.0 GNMP. The Government Network Management Profile (GNMP) specifies the common management information exchange protocol and services, specific management functions and services, and the syntax and semantics of the management information required to support monitoring and control of the network and system components and their resources.

The GNMP builds on FIPS 146-1, Government Open Systems Interconnection Profile (GOSIP), and includes the GOSIP Version 2.0 by reference. The GOSIP specifies lower layers protocols and three applications that support general network management operations. Future versions of the GNMP will add network management functions and services for GOSIP-compliant end systems and intermediate systems. The GNMP and GOSIP are interrelated and will cross-reference each other as required.

The primary source of specifications in the Version 1.0 GNMP is part 18 of the OIW Stable Implementation Agreements, June 1992, developed by the Open Systems Environment Implementors Workshop sponsored by NIST and IEEE Computer Society. This source provides implementation specifications for network management based on the service and protocol standards issued by the ISO.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. *Cross Index.*

a. NBS Special Publication 500-202, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 5, Edition 1, NIST Workshop for Implementors of Open Systems Environment, June 1992.

b. FIPS PUB 146-1, Government Open Systems Interconnection Profile (GOSIP).

7. *Related Documents.* Related documents are listed in the Reference Section of the GNMP document.

8. *Objectives.* The primary objectives of this standard are:

—to achieve interconnection and interoperability of computers and systems that are acquired from different manufacturers in an open systems environment;

—to reduce the costs of computer network systems by increasing alternative sources of supply;

—to facilitate the use of advanced technology by the Federal Government;

—to stimulate the development of commercial products compatible with Open Systems Interconnection (OSI) standards.

9. *Specifications.* GNMP (affixed).

10. *Applicability.* GNMP shall be used by Federal Government agencies when acquiring network management functions and services for computer and communications systems and networks.

11. *Implementation.* This standard is effective June 14, 1993. For a period of 18 months after the effective date, agencies are permitted to acquire

alternative network management functions and services which provide equivalent functionality to this standard. Agencies are encouraged to use this standard for solicitations and contracts for new network management functions and services to be acquired after the effective date. This standard is compulsory and binding for use in all solicitations and contracts for new network management functions and services to be acquired 18 months after the effective date. Additional management support functions will be added to GNMP as implementation specifications for these functions are developed by the NIST Workshop for Implementors of OSI. For a period of 18 months after these new functions are included in GNMP, agencies are permitted to acquire alternative functions and services which provide equivalent functionality. After the 18-month period, the new functions and services should be cited in solicitations and contracts when systems to be acquired provide equivalent functionality to the protocols defined in the GNMP document.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offer of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting document, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency

13. *Special Information.* The GNMP is being developed in phases. Version 1.0 GNMP specifies the initial phase of the GNMP. Additional management capabilities and managed objects will be included in subsequent releases of the profile. Eventually, as the NM standards all reach technical maturity, the GNMP will embrace the full set of management functionality.

14. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 179 (FIPSPUB179), and title. Specify microfiche if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 92–30313 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Monterey Bay National Marine Sanctuary: Petition to Suspend, Reconsider and Repeal Those Portions of the Monterey Bay National Marine Sanctuary Regulations Restricting the Use of Motorized Personal Water Craft

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a petition.

SUMMARY: NOS has received a petition, pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), from the Personal Watercraft Industry Association to suspend, reconsider and repeal those portions of the Monterey Bay National Marine Sanctuary regulations that restrict the use of motorized personal water craft to four areas within the Sanctuary.

FOR FURTHER INFORMATION CONTACT: Rafael V. Lopez, Pacific Regional Manager, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235, (202/606–4126).

SUPPLEMENTARY INFORMATION: On September 18, 1992, NOAA published the final rule the Monterey Bay National Marine Sanctuary (57 FR 43310). The rule will become effective on January 1, 1993 (57 FR 55444, November 25, 1992). On November 17, 1992, NOAA received a petition from the Personal Watercraft Industry Association, whose member companies include Arctco, Inc., Kawasaki Motors Corp., U.S.A., Yamaha Motor Corp., U.S.A., WetJet International Ltd., and SurfJet International Ltd., requesting that NOAA: "Initiate rulemaking proceedings to reconsider and repeal those provisions of the recently-promulgated rule which restrict only the use of personal watercraft within the Monterey Sanctuary; Expressly acknowledge that (1) there is currently no basis for distinguishing between personal watercraft and other motorized vehicles with respect to any potential threat posed to Sanctuary resources, and (2) there is no basis for concluding that personal watercraft pose any actual threat to the Sanctuary; and Act expeditiously to suspend the application of the recently-promulgated personal watercraft restrictions, pending completion of the requested rulemaking proceedings." NOS is reviewing the petition and will notify the petitioner of its decision to proceed or not to proceed with the rulemaking suggested by the petition within 120 days of receipt of the petition. A notice of NOS's decision will also be published in the **Federal Register**.

If NOS decides not to open rulemaking proceedings, NOS will provide the petitioner with a brief statement of grounds for its decision. If NOS decides to open rulemaking proceedings, then the public will be provided with an opportunity to comment on the proposed rulemaking in accordance with the procedures of the Administrative Procedure Act. Public comments are not requested at this time.

Dated: December 9, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-30273 Filed 12-11-92; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Correction

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of correction regarding application for scientific research permit (P523).

SUMMARY: This notice revises the fifth paragraph of a notice previously published in the **Federal Register** on November 20, 1992 (57 FR 54771) as follows:

On page 54771, column 2, the first full sentence is revised to read: "The requested animals may be approached and/or presented with sound an average of two times each annually, with some animals possibly approached or presented with sound up to four times each annually, in carrying out photo-identification and acoustic playback studies."

Dated: December 8, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-30231 Filed 12-11-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits; Correction

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of correction; application for permit (P278D).

SUMMARY: This notice revises the fourth paragraph, second sentence, of a notice previously published in the **Federal Register** November 16, 1992 (57 FR 54051). The second sentence is revised to read: "An unspecified number of the listed species, in addition to Steller sea lions (*Eumetopias jubatus*) and Guadalupe fur seals (*Arctocephalus townsendi*), may be unintentionally harassed during ground and aerial surveys."

Dated: December 8, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-30230 Filed 12-11-92; 8:45 am]

BILLING CODE 3510-22-M

Office of the General Counsel

[Docket No. 920896-2196]

Commercial Law Development Program for Central and Eastern Europe ("CLDP")

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice of the availability of funds for the CLDP Commercial Law Resident Advisor Program in Central and Eastern Europe, including the Baltic States.

SUMMARY: The Department of Commerce ("Department") Office of the General Counsel established the Commercial Law Development Program for Central and Eastern Europe ("CLDP") in January 1992, as part of the Administration's ongoing efforts to assist Central and Eastern Europe and the Baltic States in the development of a commercial infrastructure consistent with free market principles. The CLDP provides technical legal assistance to the governments of the region with respect to contract law, commercial codes, foreign and domestic investment law, commercial dispute resolution, real property rights, intellectual property rights and public procurement.

In response to the region's governments' numerous requests for U.S. on-site technical assistance with commercial law issues, CLDP will arrange for assignments (not to exceed six months) in the region of qualified U.S. legal advisors, principally from the U.S. Government, with expertise in foreign and or domestic investment law, contracts, dispute resolution, commercial codes, real or intellectual property, government procurement, or related areas of commercial law.

The first objective of CLDP's Resident Advisor Program will be the placement of resident advisors in its priority countries, which currently are Bulgaria, Poland, Lithuania, and Albania, to assist in the development of government procurement procedures, the drafting and implementation of commercial laws and regulations, and the negotiation and implementation of international economic agreements. CLDP will consider placing resident advisors in the other countries of the region after it has addressed the technical assistance needs of its priority countries. The CLDP will rely principally on government attorneys to meet the program's goals. The program reserves the right to invite or recruit Federal government attorneys to participate under non-competitive procedures.

In-country placements of U.S. commercial law advisors will range from approximately one to six month periods, depending upon the type of assistance requested by the Central and Eastern European governments. The goal of the CLDP Resident Advisor Program is to provide the governments of the region with quality, on-site, hands-on technical advice. CLDP will ensure that any CLDP assistance provided is tailored to meet the needs of the specific host government and that legislators, administrators, judges, and the private sector in the host country have the tools to build on the expert's assistance upon the expert's return to the U.S.

CLDP will place only persons who are committed to adequately prepare for their assignments and to complete appropriate follow-up activities. CLDP will screen the candidates for any in-country placement to ascertain whether they meet the criteria set forth in this Federal Register Notice and are available for assignment in a specific country for the length of time agreed upon by CLDP and the appropriate host ministry. CLDP will maintain a list of qualified advisors and make selections for in-country assignments as appropriate and reasonable requests are received from the region's governments. Final selection for any assignment in the region will be made by a panel of public and private experts knowledgeable about the subject of the proposed assignment.

U.S. commercial law experts selected for the Resident Advisor Program may be eligible to receive funds through cooperative agreements from the Department of Commerce to help defray the cost of placement.

DATES: Applications should be submitted no later than 3 p.m., on February 12, 1993.

ADDRESSES: Applications should be sent along with two (2) self-addressed mailing labels, to Susan K. Gurley, Deputy Director, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Susan K. Gurley, Deputy Director, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Tel: (202) 482-5382, Fax: (202) 482-3244.

SUPPLEMENTARY INFORMATION: In addition to the program description contained in the summary, the following information also applies:

I. Funding Availability

Pursuant to sections 521, 635(b) and 632(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2346, 2395(b) and 2392(b), respectively) and section (a)(1) under the heading "Assistance for Eastern Europe" of title II of the Foreign Operations, Export Financing, and Related Appropriations Act, 1991, funding for the Resident Advisor Program shall be provided by the Agency for International Development (A.I.D.). The present amount available for the in-country placement of U.S. commercial law experts is $350,000, including the funds available for placement of U.S. Government personnel, whether through the in-country placement program described herein or through other programs of the CLDP. This amount is subject to augmentation or reduction depending on the program needs.

II. Funding Instrument and Project Duration

Federal assistance will be awarded pursuant to a cooperative agreement between the Department and the recipient U.S. commercial law advisor. With funds provided by AID, the Department will reimburse experts for the roundtrip coach airfare between the U.S. and the country in which the expert is being placed upon submission to the Department of the travel invoice (Fly America act provisions apply). The recipient will be reimbursed for living expenses and incidentals according to applicable Government Travel regulations. In-country assignments are not to exceed 6 months. The Department of Commerce Travel Regulations suggest that if an advisor is placed in-country for more than 30 days that person make reasonable efforts to obtain lodging at weekly or monthly rates. The Department also will reimburse the recipient for pre-approved instructional materials. The Department will provide cash advances for such expenses as are reasonable and appropriate under the Federal Travel Regulations. All awards are expected to be made prior to March 31, 1993. Recipients are subject to Federal laws and Federal and Departmental policies and procedures applicable to financial assistance.

III. Request for Applications

To obtain a copy of the Competitive Application Kit, please send a written request with two self-addressed mailing labels to Susan K. Gurley, Commercial Law Development Program, room 3845, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230. Only one copy of the Application Kit will be provided to each individual, but Application Kits may be reproduced by the requester.

A signed original and three copies of the Application (Standard Form 424 (Rev. 488)) and supplemental materials must be submitted to the CLDP at the address designated in the Application Kit in order for the application to be considered. Awards are expected to be made on a rolling basis. All awards are expected to be made prior to March 31, 1993.

IV. Eligibility Requirements

Eligible for financial assistance through the CLDP Resident Advisor Program in Central and Eastern Europe are persons licensed to practice law in the U.S. including individual lawyers from private law firms or companies, not-for-profit organizations, Federal, state and local government agencies, and academia.

Each application will receive an objective review by a panel of persons from the public and private sectors knowledgeable about the subject of the program. Applications will be evaluated on a competitive basis, as they are received, in accordance with the selection criteria set forth below. The Department reserves the right to reject any application and to consider other noncompetitive procedures to distribute assistance under this program as appropriate and in accordance with law.

A. Selection Criteria

Consideration for financial assistance will be given to those experts who:

Essential Criteria

1. Have a minimum of five years of practical, substantial legal experience in any of the following: company formation, governance or reorganization, foreign investment, contracts, secured transactions, commercial dispute resolution, real property, intellectual property, or government procurement;

2. Agree to adhere to CLDP conflict of interest requirements; and

3. Are able to be placed in-country during the period of time a person with their expertise has been requested by the host ministry, agree to commit a minimum of 15 hours of time (without recompense) in advance of the assignment to prepare for the work to be done in-country and a minimum of 15 hours (without recompense) after the assignment has ended to complete follow-up activities, and have expressed willingness to be placed in the country for which CLDP is making the placement in the question.

Preferred Criteria

4. Are familiar with the region either through personal, professional or educational background or experience;

5. Are proficient in one of the languages of the region;

6. Have teaching or public speaking facility or experience; and

7. Have experience in legal reform or transnational transactions and legal issues.

Out of a 100 point scale, the critical criteria account for 80 points. The preferred criteria account for 20 points. Selection criteria 1, 2, and 3 are critical elements and are weighted equally. Selection criteria 4 to 7 represent desirable, but not essential, criteria or experience for receiving grants. Selection criteria 4 to 7 are weighted equally. Applicants must provide CLDP with a summary of their educational background, work experience, and of their experience in commercial law matters, including number of years of experience, level of expertise, and any practical application in the areas of commercial law. The summary also should include, information regarding the Applicant's language proficiency, background in Eastern European matters, and teaching experience, and should indicate whether the Applicant has experience in law reform. The summary also must indicate availability (duration of availability), length of assignment preferred, and country preference, if any.

B. Conditions

All Applicants are advised of the following:

1. No award of Federal funds shall be made to an Applicant who has an outstanding delinquent Federal debt until either:

A. The delinquent account is paid in full,

B. A negotiated repayment schedule is established and at least one payment is received, or

C. Other arrangements satisfactory to the Department of Commerce are made.

2. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

3. All Applicants must submit a completed Form CD–511, "Certifications regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and are advised that:

A. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26,

"Nonprocurement Debarment and Suspension" and the related section of the certification form;

B. *Drug Free Workplace.* Grantees (as defined at 15 CFR part, 26 section 605) are subject to 15 CFR part 26, subpart F, "Government Wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

C. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

D. *Anti-Lobbying Disclosures.* Any Applicant who has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

4. False statements on the application may be grounds for denial or termination of funding, as well as potential civil and criminal liability. The Department has no further funding liability beyond the time and amount stated in the award.

5. Recipients and subrecipients of financial assistance under this program are subject to all applicable Federal laws and Federal and departmental policies, regulations, and procedures applicable to Federal financial assistance awards.

6. Standard Form 424 (Rev. 488) is subject to the Paperwork Reduction Act and has been approved by OMB.

7. The Grants Officer is the only individual who may legally commit the Government to the expenditure of public funds. No costs chargeable to the proposed award may be incurred before receipt of either a fully executed cooperative agreement or a specific written authorization from the Grants Officer. If an applicant should incur any costs prior to an award being made, the applicant does so solely at its own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation on the part of the DOC to cover pre-award costs.

8. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

9. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the discretion of the Department of Commerce.

10. Applicants are advised that they will be subject to a name check review process. Name checks are intended to reveal if the Applicant or any key individuals associated therewith have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Recipients and subrecipients will be subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Dated: December 7, 1992.

Lynn S. West,

Deputy General Counsel.

[FR Doc. 92–30268 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–BW–M

[Docket Number 920653–2259]

Commercial Law Development Program for Central and Eastern Europe ("CLDP")

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice of the availability of funds for the CLDP Legal Intership Program.

SUMMARY: The Department of Commerce ("Department") Office of the General Counsel established the Commercial Law Development Program for Central and Eastern Europe ("CLDP") in January 1992, as part of the Administration's ongoing efforts to assist Central and Eastern Europe, and the Baltic States, in the development of a commercial law infrastructure consistent with free market principles. The CLDP provides technical assistance in the evaluation and revision of the region's commercial legal systems, with a focus on investment law, commercial dispute resolution, real property rights, intellectual property rights, and government procurement. The legal internship component of the CLDP will provide an opportunity for law students and junior attorneys from the region to serve as interns in U.S. law firms and legal offices of U.S. companies, accounting firms, and trade associations for a period of six weeks to four months in order to learn U.S. legal structures and procedures. Only attorneys with no more than five years of legal experience and law students in their final year of law school or enrolled in a graduate legal program are eligible for the internship program. All interns must be proficient in English. The CLDP Legal Internship Program will first place interns from its priority countries, which currently are Albania, Bulgaria, Poland, and Lithuania. Interns from the other countries of the region may also be placed if suitable matches are found and CLDP funding is available or unnecessary.

To ensure that the program's goals will be met, each applicant will be required to submit a plan for utilizing the U.S. experience to support commercial law reform in his or her country. The goal of the program is to provide these law students and recent law school graduates with the expertise necessary to participate in the establishment and implementation of free market legal frameworks in their countries. In addition, host firms will benefit from the program by learning more about these countries and their legal and commercial climates.

Under the CLDP Legal Internship Program, qualified U.S. law firms and the legal departments of companies, accounting firms, and trade associations will be eligible under specified circumstances to receive funds through cooperative agreements with the Department to help defray the cost of hosting an intern in the U.S. Participating U.S. firms will be expected to provide the interns with instruction in one or more of the following areas of commercial law: Commercial or financial transactions, corporate law, foreign investment law, commercial dispute resolution, real property rights, intellectual property rights, or government procurement.

CLDP also may place interns with the Eastern European legal offices of U.S. firms. U.S. firms with Eastern European legal offices interested in providing legal internships to law students and recent law school graduates are invited to participate in CLDP's "matchmaker" service. CLDP will interview candidates and recommend eligible interns for in-country placement. However, no Department funding is available for such placements, and such host firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. In addition, U.S. firms operating in the U.S. who wish to utilize the CLDP's "matchmaker" service without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

DATES: Applications should be submitted no later than 3 p.m., on February 12, 1993.

ADDRESSES: Applications should be sent, along with two self-addressed mailing labels, to Kathy Burke, International Program Assistant, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kathy Burke, International Program Assistant, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Tel: (202) 482–5382, Fax: (202) 482–3244.

SUPPLEMENTARY INFORMATION: In addition to the program description contained in the summary, the following information also applies:

I. Funding Availability

Pursuant to sections 532, 635(b) and 632(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2346, 2395(b) and 2392(b), respectively and section (a)(1) under the heading "Assistance for Eastern Europe" of title II of the Foreign Operations, Export Financing, and Related Appropriations Act, 1991, funding for the Resident Advisor Program shall be provided by the Agency for International Development (A.I.D.). The maximum amount of the financial assistance available for the legal internship portion of the CLDP program is $55,000.

II. Funding Instrument and Project Duration

Federal assistance will be awarded pursuant to a cooperative agreement between the Department and the recipient U.S. firm or company located in the U.S. With funds provided by AID, the Department will reimburse companies for the roundtrip coach airfare of each intern between the intern's home country and the U.S. internship site upon submission to the Department of the travel invoice (Fly America Act provisions apply). The Department will reimburse companies a stipend of $30 per intern per day in the U.S. for up to four months. The Department also will reimburse companies for a portion of the cost of housing the intern. The Department will reimburse companies up to $350 per month, or a prorated portion of that amount for any period during which the intern is provided housing by the host firm. The maximum lodging reimbursement amount per intern will not exceed $1,400. Disbursement of funds for reimbursement of the stipend and lodging will be made upon certification by the companies that the internship program has been completed and the intern has returned to his or her country. Each award will have a cap of $7,400 for total cost of airline, lodging, and stipend per intern. There are no specific matching requirements for the awards. Companies are expected to bear any costs of providing the intern with medical insurance, housing and other necessary incidentals during the entire term of the internship to the extent they are not covered by the award, including payment for the entire cost of medical insurance and any lodging, food and incidental costs in excess of the reimbursable limits described above. Companies also are responsible for sponsoring the intern for the appropriate U.S. visas. Awards will be provided for this program on a rolling basis. All awards are expected to be made prior to March 1993. Individual internships are expected to run from six weeks to four months.

U.S. firms wishing to utilize CLDP assistance in identifying prospective interns for placement with their U.S. or Eastern European offices and requiring no financial support from the Department may do so without competing for the grant program described herein. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

III. Request for Applications

To obtain a Competitive Application Kit, please send a written request with two self-addressed mailing labels to Kathy Burke, International Program Assistant, Commercial Law Development Program, room 3845, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. A signed original and two copies of the application (Standard Form 424 (Rev. 4–88)) and supplemental materials must be submitted to CLDP at the address designated in the Application Kit in order for the application to be considered. Awards are expected to be made on a rolling basis prior to March 1993.

IV. Eligibility

Applicants for the CLDP Legal Internship Program may be any for-profit or no-profit U.S. law firm, corporation, accounting firm, or trade association, or organization or other pubic or private entity. Each application will receive an objective review by a three-member review panel. Applications will be evaluated on a competitive basis, as they are received, in accordance with the selection criteria set forth below. The Department reserves the right to reject any application, to limit the number of interns per applicant, and to consider other non-competitive procedures to distribute assistance under this program as appropriate and in accordance with law.

A. Selection Criteria

Consideration for financial assistance will be given to CLDP proposals which:

1. Demonstrate a commitment to the intent and goals of the program to provide appropriate instruction in the areas of commercial law, including commercial or financial transactions, corporations law, contract law, foreign investment law, commercial dispute resolution, real property rights, intellectual property rights, or government procurement by presenting a realistic workplan detailing the instruction to be provided to the CLDP intern, with emphasis on how the instruction will assist the intern to utilize the training received to lead in his or her country's establishment and implementation of a free market system;

2. Are proposed by applicants with the financial capacity to successfully undertake the intended activities of hosting an intern (including the provision of providing housing and medical insurance); and

3. Improve the U.S. geographic diversity of placements.

Out of a 100 point scale the critical criteria account for 80 points. Selection criteria 1 and 2 are critical elements and will be weighted equally. Selection criteria 3 is a preferred element and will account for 20 points. Those applicants that meet both critical elements and, in addition, meet the preferred criteria will receive preferential consideration.

B. Conditions

All Applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

A. The delinquent account is paid in full;

B. A negotiated repayment schedule is established and at least one payment is received; or

C. Other arrangements satisfactory to the Department are made.

2. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

3. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and applicants are advised that:

A. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

B. *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

C. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

D. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

4. False statements on the application may be grounds for denial or termination of funding, as well as potential civil and criminal liability.

5. Recipients and subrecipients of financial assistance under this program are subject to all applicable Federal laws and Federal and departmental policies, regulations, and procedures applicable to Federal financial assistance awards.

6. The Standard Form 424 (Rev. 4–88) mentioned in this notice is subject to the Paperwork Reduction Act and has been approved by OMB under Control No. 0348–0006.

7. The Grant Officer is the only individual who may legally commit the Government to the expenditure of public funds. No costs chargeable to the proposed grant may be incurred before receipt of either a fully executed grant or a specific written authorization from the Grants Officer. If an applicant should incur any cost prior to an award being made, the applicant does so solely at its own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation on the part of the DOC to cover pre-award costs.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of the Department of Commerce.

9. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: December 8, 1992.

Lynn S. West,

Deputy General Counsel.

[FR Doc. 92–30307 Filed 12–11–92; 8:45 am]

BILLING CODE 3510-BW-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

December 4, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has agreed to increase the Normal Regime limits for Categories 347/348/647/648 and 351/651 for 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65244, published on December 16, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on December 8, 1992 you are directed to amend further the directive dated December 10, 1991, to increase the Normal Regime limits for the following categories. The Special Regime limits for Categories 347/348/647/648 and 351/651 remain unchanged.

Normal Regime Category	Amended twelve-month limit [1]
347/348/647/648	1,170,000 dozen.
351/651	145,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–29991 Filed 12–11–92; 8:45 am]

BILLING CODE 3510-DR-F

Denial of Participation in the Special Access and Special Regime Programs

December 8, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that Luis Narvaez is in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on January 1, 1993, to deny Luis Narvaez the right to participate in the Special Access and Special Regime Programs, for a period of three years, from January 1, 1993 through December 31, 1995.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Luis Narvaez is in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective on January 1, 1993, you are directed to prohibit Luis Narvaez from further participation in the Special Access and Special Regime Programs, for a period of three years, from January 1, 1993 through December 31, 1995. Goods accompanied by Form ITA–370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period January 1, 1993 through December 31, 1995, you are directed not to sign ITA–370P forms for export of U.S.-formed and cut fabric.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30235 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations With the Arab Republic of Egypt on Certain Wool Textile Products

December 9, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 27, 1992, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, the Government of the United States requested consultations with the Government of the Arab Republic of Egypt with respect to women's and girls' wool trousers, slacks and breeches in Category 448, produced or manufactured in Egypt.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Arab Republic of Egypt, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Egypt and exported during the twelve-month period which began on November 27, 1992 and extends through November 26, 1993, at a level of not less than 9,450 dozen.

A summary market statement concerning Category 448 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 448, or to comment on domestic production or availability of products included in Category 448, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Arab Republic of Egypt.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 448. Should such a solution be reached in consultations with the Government of the Arab Republic of Egypt, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Egypt

Category 448—Women's and Girls' Wool Trousers, Slacks and Shorts

November 1992

Import Situation and Conclusion

U.S. imports of women's and girls' wool trousers, slacks and shorts, Category 448, from Egypt reached 11,340 dozen in year ending September 1992. Egypt began shipping women's and girls' wool trousers to the U.S. in June 1992 and in just four months—June 1992-September 1992—shipped 11,340 dozen. Egypt became the tenth largest supplier of women's and girls' wool trousers, slacks and shorts to the U.S. market, accounting for 3.5 percent of

total Category 448 imports during the January-September 1992 period.

The sharp and substantial increase in Category 448 imports from Egypt is causing disruption in the U.S. market for women's and girls' wool trousers, slacks and shorts.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' wool trousers, slacks and shorts, Category 448, increased in 1988 and then declined in 1989, 1990, and 1991. Production fell to 204,000 dozen in 1991, 14 percent below the 1990 level and 48 percent below the 1987 level. This decline continued in 1992, with production falling to 195,000 for the year ending June 1992, 12 percent below the year ending June 1991 level. In contrast, U.S. imports of women's and girls' wool trousers, slacks and shorts, Category 448, increased 15 percent, from 299,000 dozen in 1987 to 345,000 dozen in 1991. Imports surged in 1992, increasing 22 percent over the January-September 1991 level and reaching 403,876 dozen in the year ending September 1992, 29 percent above the year ending September 1991 level and the highest 12 month level on record.

The ratio of imports to domestic production more than doubled, increasing from 76 percent in 1987 to 169 percent in 1991. This increase continued in 1992, with the ratio of imports to domestic production reaching 191 percent for the year ending June 1992. The domestic manufacturers' share of the U.S. market fell from 57 percent in 1987 to 37 percent in 1991, a decline of 20 percentage points. This decline continued in 1992, with the domestic manufacturers' share of the U.S. market falling to 34 percent for the year ending June 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 74 percent of Category 448 imports from Egypt during the year ending September 1992 entered the U.S. under HTSUSA number 6204.61.0010—women's wool trousers and breeches. These women's wool trousers and breeches entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's wool trousers and breeches.

[FR Doc. 92-30236 Filed 12-11-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Reimbursements Rates for Fiscal Year 1993; Correction

This notice corrects the ultrasound charge published in the **Federal Register** on October 15, 1992, in the Medical and Dental Reimbursement Rates for FY 1993, in the section entitled "High Cost Services Requested by External Providers." The Office of the Assistant Secretary of Defense (Health Affairs) has advised that the correct charge for an ultrasound test should be $172.66 instead of $1,109.00. All other charges and provisions of the Medical and Dental Reimbursements Rates for Fiscal Year 1993 remain as stated.

The point-of-contact for this correction is Mr. Walter Fisch, Office of the Deputy Comptroller (Management Systems), Accounting Policy. Mr. Fisch may be reached at (703) 697-3135.

Dated: December 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-30281 Filed 12-11-92; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee; Changes in Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 166. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 166 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 December 1992.

SUPPLEMENTARY INFORMATION: This document give notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ADAK 5/	$ 10		$ 34		$ 44	10-01-91
ANAKTUVUK PASS	83		57		140	12-01-90
ANCHORAGE						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
ANIAK	73		36		109	07-01-91
ATQASUK	129		86		215	12-01-90
BARROW	86		73		159	06-01-91
BETHEL						
05-01--09-30	93		83		176	05-01-92
10-01--04-30	80		81		161	02-01-92
BETTLES	65		45		110	12-01-90
CANTWELL	62		46		108	06-01-91
COLD BAY	71		54		125	12-01-90
COLDFOOT	95		59		154	10-01-92
CORDOVA	66		77		143	12-01-92
CRAIG	67		35		102	07-01-91
DILLINGHAM	76		38		114	12-01-90
DUTCH HARBOR-UNALASKA	113		67		180	05-01-92
EIELSON AFB						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
ELMENDORF AFB						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
EMMONAK	60		40		100	06-01-91
FAIRBANKS						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
FALSE PASS	80		37		117	06-01-91
FT. RICHARDSON						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
FT. WAINWRIGHT						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
HOMER						
05-01--09-30	71		60		131	05-01-93
10-01--04-30	53		62		115	12-01-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
JUNEAU				
05-01--10-01	$ 88	$ 74	$162	05-01-92
10-02--04-30	75	73	148	01-01-92
KATMAI NATIONAL PARK	89	59	148	12-01-90
KENAI-SOLDOTNA				
04-02--09-30	94	68	162	04-02-93
10-01--04-01	57	66	123	12-01-92
KETCHIKAN				
05-14--10-14	77	61	138	05-14-93
10-15--05-13	68	71	139	12-01-92
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	125	72	197	01-01-92
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	125	72	197	01-01-92
NOME				
05-15--09-15	87	72	159	05-15-92
09-16--05-14	76	71	147	05-01-92
NOORVIK	125	72	197	01-01-92
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	125	72	197	01-01-92
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	77	61	138	05-14-93
10-15--05-13	68	71	139	12-01-92
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
ST. MARY'S	$ 60	$ 40	$100	12-01-90
ST. PAUL ISLAND	81	34	115	12-01-90
TANANA				
05-15--09-15	87	72	159	05-15-92
09-16--05-14	76	71	147	05-01-92
TOK	48	55	103	12-01-92
UMIAT	97	63	160	12-01-90
UNALAKLEET	58	47	105	12-01-90
VALDEZ				
05-01--09-01	98	53	151	05-01-93
09-02--04-30	82	70	152	12-01-92
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
05-14--10-14	77	61	138	05-14-93
10-15--05-13	68	71	139	12-01-92
YAKUTAT	70	40	110	12-01-90
OTHER 3, 4, 6/	46	47	93	12-01-92
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	112	75	187	05-01-92
HAWAII:				
ISLAND OF HAWAII: HILO	65	61	126	06-01-92
ISLAND OF HAWAII: OTHER	80	61	141	06-01-92
ISLAND OF KAUAI	99	55	154	06-01-92
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI	79	64	143	06-01-92
ISLAND OF OAHU	105	55	160	06-01-92
OTHER	59	47	106	12-01-90
JOHNSTON ATOLL 2/	20	20	40	10-01-92
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	45	31	76	12-01-90
SAIPAN	68	47	115	12-01-90
TINIAN	44	24	68	12-01-90
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
CAROLINA				
04-16--12-14	$ 93	$ 67	$160	08-01-92
12-15--04-15	116	69	185	12-15-92
FAJARDO (INCLUDING LUQUILLO)				
04-16--12-14	90	57	147	08-01-92
12-15--04-15	134	61	195	12-15-92
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
MAYAGUEZ	85	65	150	08-01-92
PONCE	106	65	171	08-01-92
ROOSEVELT ROADS				
04-16--12-14	90	57	147	08-01-92
12-15--04-15	134	61	195	12-15-92
SABANA SECA				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U S				
05-02--12-15	100	68	168	08-01-92
12-16--05-01	144	73	217	12-16-92
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

6/ The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily Rate
DOD Personnel	$13
Non-DOD Personnel	$30

BILLING CODE 3810-01-C

Dated: December 8, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-30283 Filed 12-11-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice. The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, part 230, Cost Accounting Procedures; DD Form 1861; OMB Control Number 0704–0267.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 10 Hours.

Responses per Respondent: 1.

Number of Respondents: 75.

Annual Burden Hours: 750.

Annual Responses: 75.

Needs and Uses: This information is used to distribute contractor facilities capital assets by type for the purpose of developing profit objectives on defense contracts.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 8, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30284 Filed 12–11–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice. The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, part 203, Improper Business Practices and Personal Conflicts of Interest, and the clause at 252.203–7000; OMB Control No. 0704–0277.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 8 hours.

Responses Per Respondent: 1.

Number of Respondents: 1,000.

Annual Burden Hours: 8,000.

Annual Responses: 1,000.

Needs and Uses: DoD FAR Supplement, part 203, and the clause at 252.203–7000 requires contractors to annually report if they have provided compensation to former DoD employees. This collection of information is necessary to comply with 10 U.S.C. 2397c.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30282 Filed 12–11–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Amend Record Systems

AGENCY: Defense Logistics Agency, DoD.

ACTION: Amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend five existing systems of records in the DLA inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 13, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, December 20, 1985
51 FR 27443, July 31, 1986
51 FR 30104, August 22, 1986
52 FR 35304, September 18, 1987
52 FR 37495, October 7, 1987
53 FR 04442, February 16, 1988
53 FR 09965, March 28, 1988
53 FR 21511, June 8, 1988
53 FR 26105, July 11, 1988
53 FR 32091, August 23, 1988
53 FR 39129, October 5, 1988
53 FR 44937, November 7, 1988
53 FR 48708, December 2, 1988
54 FR 11997, March 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, August 8, 1990
55 FR 32947, August 13, 1990
55 FR 34050, August 21, 1990
55 FR 42755, October 23, 1990
55 FR 53178, December 27, 1990
56 FR 5806, February 13, 1991
56 FR 8987, March 4, 1991
56 FR 11207, March 15, 1991
56 FR 19838, April 30, 1991
56 FR 31392, July 10, 1991 (indexing system)
56 FR 35852, July 29, 1991
56 FR 52017, October 17, 1991
56 FR 55910, October 30, 1991
56 FR 56065, October 31, 1991
56 FR 65245, December 16, 1991
57 FR 2715, January 23, 1992
57 FR 13718, April 17, 1992
57 FR 20471, May 13, 1992
57 FR 28490, June 25, 1992
57 FR 29294, July 1, 1992
57 FR 33323, July 28, 1992
57 FR 35570, August 10, 1992
57 FR 44177, September 24, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The new system notice and the specific changes to the record systems being amended are set forth below followed by the system notices as amended, in their entirety.

Dated: December 8, 1992.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Amendments
S161.25 DLA-T

SYSTEM NAME:

Individual Access Files, (50 FR 22904, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with "S500.50 DLA-I."

* * * * *

SYSTEM NAME:

Delete and replace with "Individual Access Records."

* * * * *

SYSTEM LOCATION:

te entry and replace with "Staff Director, Office of Command Security, HQ DLA-I, Cameron Station, Alexandria, VA 22304—6100, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "DLA civilian and military personnel, contractor employees, and individuals granted or denied access to DLA activities, installations, or databases."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Section 21 of the Internal Security Act of 1950 (50 U.S.C. 781), et seq.; and E.O. 10450, Security Requirements for Government Employment."

* * * * *

PURPOSE(S):

Delete entry and replace with "Information is used to control access to DLA databases and access to and movement on DLA activities and facilities."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add at end "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

RETRIEVABILITY:

Add after "name," "or Social Security Number."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Command Security, HQ DLA-I, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individuals applying for identification badges, cards, passes, computer passwords and log-ons; commanders and facility officials who have barred persons access to their activities or databases."

* * * * *

S500.50 DLA-I

SYSTEM NAME:

Individual Access Records.

SYSTEM LOCATION:

Staff Director, Office of Command Security, HQ DLA-I, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA civilian and military personnel, contractor employees, and individuals granted or denied access to DLA activities, installations, or databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the request for authorization, issue, receipt, surrender, withdrawal, and accountability pertaining to identification badges, cards and passes, to include application forms, photographs, letters of debarment, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act of 1950 (50 U.S.C. 781), et seq.; and E.O. 10450, Security Requirements for Government Employment.

PURPOSE(S):

Information is used to control access to DLA databases and access to and movement on DLA activities and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is maintained and used by General Services Administration Protective Service personnel to adequately control access to, and movement on DLA activities and facilities. The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders, application cards, index cards, computer magnetic tapes or discs, and computer paper printouts.

RETRIEVABILITY:

Retrieved alphabetically by name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized DLA personnel.

RETENTION AND DISPOSAL:

Records are destroyed 1 year after termination or transfer of person granted access, except that individual badges, photographs or passes will be destroyed

upon revocation, cancellation, or expiration. Records relating to persons barred from a facility will be destroyed 5 years after the person is notified he/she is barred from an activity or installation.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Command Security, HQ DLA-I, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals applying for identification badges, cards, passes, computer passwords and log-ons; commanders and facility officials who have barred persons access to their activities or databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.15 DLA-M/DMLPO

SYSTEM NAME:

Information Military Personnel Records, (50 FR 22918, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with "S200.10 DLA-M."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397, Social Security Number."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are contained in the Address Directory published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

S200.10 DLA-M

SYSTEM NAME:

Information Military Personnel Records.

SYSTEM LOCATION:

Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and reserve personnel assigned to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evaluation reports, general and special orders, leave slips, qualification records, applications for ID Cards, security clearance, and miscellaneous correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397, Social Security Number.

PURPOSE(S):

To accumulate documents relating to the military member while assigned to DLA. The records are used by the Staff Director and his staff and Heads of PLFAs and their staff for notification of assignments, career briefs, assignment orders, promotion data, personal data, awards and decorations, training data, recommendations for disciplinary action, review procedures instituted to control incidents, and advising the Director of incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Retained during individual's assignment to DLA and destroyed within 1 year of departure.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Special orders, service records, in/out processing documents, and computer listings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.45 DLA-M/DMLPO

SYSTEM NAME:

Active Duty Military Personnel Data Bank System, (50 FR 22919, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with "S200.20 DLA-M."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "The system contains name, grade, Social Security Number, organization, position data, branch of service and specialty, dates of rank, civilian and professional education, position requirements, dates of assignment and rotation, and retirement and separation data. The system also contains the rater's name, grade, service, social security number, and rotation date."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397, Social Security Number."

* * * * *

PURPOSE(S):

Delete entry and replace with "To ensure effective personnel management within DLA and to assist individual military personnel in their career management."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed upon reassignment of individual or upon supersession, as appropriate."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

S200.20 DLA-M

SYSTEM NAME:

Active Duty Military Personnel Data Bank System.

SYSTEM LOCATION:

Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel currently assigned to the Defense Logistics Agency and history records of those individuals previously assigned.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains name, grade, Social Security Number, organization, position data, branch of service and specialty, dates of rank, civilian and professional education, position requirements, dates of assignment and rotation, and retirement and separation data. The system also contains the rater's name, grade, service, social security number, and rotation date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397, Social Security Number.

PURPOSE(S):

To ensure effective personnel management within DLA and to assist individual military personnel in their career management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are destroyed upon reassignment of individual or upon supersession, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel records and Position Distribution Reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.70 DLA-KR

SYSTEM NAME:

Reserve Affairs, (50 FR 22922, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with "S200.30 DLA-M."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; E.O. 9397, Social Security Number; and DoD Directive 5105.22, Defense Logistics Agency."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed 2 years after separation or release from mobilization designation, or after supersession or obsolescence, or after 5 years, as appropriate."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

S200.30 DLA-M

SYSTEM NAME:

Reserve Affairs.

SYSTEM LOCATION:

Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Ready Reserve, Army, Air Force, Navy and Marine personnel assigned to DLA Individual Mobilization Augmentee (IMA) positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer records and printouts containing such items as, name, grade, Social Security Number, service, career specialty, position title, date of birth, commission date, promotion date, release date, security clearance, education, home address and civilian occupation of the individuals involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; E.O. 9397, Social Security Number; and DoD Directive 5105.22, Defense Logistics Agency.

PURPOSE(S):

The purpose of the system is to have information readily available in the day-to-day operation of the Reserve Mobilization program. It is used by the Staff Director, his Deputy and the Reserve personnel specialist. Data is used in preparation of personnel actions such as reassignments, classification actions, promotions; scheduling, and verification of active duty and inactive duty training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Maintained in area accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after separation or release from mobilization designation, or after supersession or obsolescence, or after 5 years, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100 and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an Appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data processing output from the Military Services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S491.10 DLA-K

SYSTEM NAME:

Nonappropriated Fund (NAF) Membership Records, (50 FR 22938, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Change to "S200.40 DLA-M."

* * * * *

SYSTEM NAME:

Change to "Morale, Welfare, and Recreation (MWR) Records."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "MWR activities at DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals participating in MWR activities."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Activity membership and registration records, daily status report on Unaccompanied Personnel Housing, liability agreements between activities and participants, and check cashing and debt collection records. Records contain name, rank, Social Security Number, names of family members, emergency medical data, birth date, home address and telephone number, and office telephone number."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental regulations; 5 U.S.C. 302, Delegation of authority; 10 U.S.C. 136, Assistant Secretaries of Defense; and E.O. 9397, Social Security Number."

* * * * *

PURPOSE(S):

Delete entry and replace with "Used to determine membership and participation eligibility, to register applicants for classes and events, to notify members of activities, to bill and receipt for dues and charges, and for similar membership-related purposes. Records may also be used for debt

collection and to terminate membership for nonpayment of dues."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete and replace with "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete and replace with "Records are stored in paper and computerized form."

* * * * *

SAFEGUARDS:

Delete and replace with "Records are maintained in areas accessible only to DLA personnel who must access the records to perform their official duties. The computer files are password protected with access restricted to authorized users."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "The manager of the MWR activity at the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is obtained from the individual, assignment orders, identification cards, and financial records."

S200.40 DLA-M

SYSTEM NAME:

Morale, Welfare, and Recreation (MWR) Records.

SYSTEM LOCATION:

MWR activities at DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in MWR activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Activity membership and registration records, daily status report on Unaccompanied Personnel Housing, liability agreements between activities and participants, and check cashing and debt collection records. Records contain name, rank, social security number, names of family members, emergency medical data, birth date, home address and telephone number, and office telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; 5 U.S.C. 302, Delegation of authority; 10 U.S.C. 136, Assistant Secretaries of Defense; and E.O. 9397, Social Security Number.

PURPOSE(S):

Used to determine membership and participation eligibility, to register applicants for classes and events, to notify members of activities, to bill and receipt for dues and charges, and for similar membership-related purposes. Records may also be used for debt collection and to terminate membership for nonpayment of dues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their official duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Destroy one year after member departs, after auditing or after purpose has been served.

SYSTEM MANAGER(S) AND ADDRESS:

The manager of the MWR activity at the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, assignment orders, identification cards, and financial records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-30286 Filed 12-11-92; 8:45 am]
BILLING CODE 3810-01-F

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Committee on IR Countermeasures and Self Defense Against IR Missiles will meet on 4–5 February 1993, at Eglin AFB, Florida from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information relating to the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30245 Filed 12–11–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Committee on IR Countermeasures and Self Defense Against IR Missiles will meet on 7–8 January 1993, at Wright Laboratories, Wright-Patterson AFB, Ohio from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information relating to the study.

The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30249 Filed 12–11–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on GPS Integrity and Denial will meet from 8 a.m. to 5 p.m. on 6–7 January 1993 at the Lincoln Laboratory, Massachusetts.

The purpose of this meeting is to receive information briefings on GPS capabilities, threats, potential vulnerabilities and program impacts. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30246 Filed 12–11–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Air force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on IR Countermeasures and Self Defense Against IR Missiles will meet on 14–15 January 1993, at Phillips Laboratories, Kirtland AFB, Albuquerque, NM, from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information relating to the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30247 Filed 12–11–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Withdrawal of a Notice of Intent To Prepare a Draft Environmental Impact Statement; Rio Grande de Manati at Barceloneta, PR

AGENCY: Army Crops of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: A Notice of Intent to prepare a DEIS for a flood protection study of the Rio Grande de Manati at Barceloneta, Municipality of Barceloneta, Puerto Rico, is withdrawn because the flood protection works have been planned so that they will have no significant effect on the human environment.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action can be answered by: Dr. Gerald Atmar, U.S. Engineer District, P.O. Box 4970, Jacksonville, Florida 32232–0019; telephone (904) 323–2615.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a DEIS on the feasibility of providing flood control along the Rio Grande de Manati in the vicinity Barceloneta, Municipality of Barceloneta, Puerto Rico, was published in the FR 11731, 20 March 1991. At that time anticipated significant issues included impacts on wetlands, water quality, agricultural lands, wildlife, fisheries, surface and ground water resources, recreation and Federally listed threatened species and endangered species. Subsequent coordination with all affect agencies and planning that was responsive to the listed concerns permitted formulation of a plan that avoids impacts on significant cultural resources present in the study area and provides for salvage of any such resources as yet unevaluated. The plan produces not net loss of wetlands and other important fish and wildlife habitat and does not adversely impact water quality or other resources originally thought to be at issue. The Corps, Preliminary Environmental Assessment indicates that the planned action will produce no significant impact to the human environment, and that an Environmental Impact Statement is not required. All affected state and Federal agencies and interested private groups have been involved in ongoing scoping, and documentation has been received from the State Historic Preservation Office, the Puerto Rico Department of Natural Resources, the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act and the Endangered Species Act, and the U.S. Department of Agriculture.

A draft feasibility report and environmental assessment are scheduled to be made available for public and agency review in December 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–30248 Filed 12–11–92; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No.

96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–254, EIA–851 and EIA–858.
3. 1905–0160.
4. Nuclear and Uranium Data Program Package.
5. Revision—The purpose of this request is to obtain OMB approval of revisions on Form EIA–858, Uranium Industry Annual Survey. Changes made to Form EIA–858 for 1992 include clarifications to the instructions for Schedule A. On Schedule B, each Custody Transaction involving uranium of foreign origin as well as each Transfer of Title Transaction must be reported under Item 1.C; natural and enriched uranium inventories at enrichment suppliers must be reported separately under Item 3; and a new data element, Item 7, requests the total amounts of unirradiated (new) uranium in fuel assemblies loaded into reactors during the Survey Year and prior year.
6. Monthly, quarterly, semi-annually, and annually.
7. Mandatory.
8. State or local governments, businesses or other for-profit, and small businesses or organizations.
9. 176 respondents.
10. 2.06 responses.
11. 13.45 hours per response.
12. 4,868 hours.
13. Forms EIA–254, 851 and 858 collect data on the costs of nuclear power plants under construction, domestic uranium production, and certain aspects of uranium marketing, exploration and finance. Data are used in determining the viability of the domestic uranium industry. Respondents are firms in the uranium business and electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 7, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Adminstration.

[FR Doc. 92–30289 Filed 12–11–92; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so, within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–598.
3. Not Applicable.

4. Certification for Entities Seeking Exempt Wholesale Generator Status.
5. New.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit, small businesses or organizations.
9. 1 respondent.
10. 1 response per respondent.
11. 1 hour per response.
12. 1 hour.
13. The Energy Policy Act of 1992 amended section 32 of the Public Utility Holding Company Act (PUHCA) to create a category of power producers known as exempt wholesale generators (EWGs). Persons seeking to become an EWG must file an application with the Commission. Persons that are granted EWG status will not be considered electric utility companies under section 2(a)(3) of PUHCA, and will be exempt from regulation under PUHCA.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 8, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–30288 Filed 12–11–92; 8:45am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–83–000, et al.]

Tampa Electric Company, et al; Electric rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER93–83–000]

December 3, 1992.

Take notice that on November 25, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a clarification and amendment to the Letter of Commitment between Tampa Electric and the Kissimmee Utility Authority (Kissimmee) that was tendered for filing on October 30, 1992.

Tampa Electric's submittal clarifies the provisions of the Letter of Commitment concerning purchased costs and transmission service, and amends the provisions concerning capacity charges for supplemental capacity.

Tampa Electric propose an effective date of January 1, 1993, for the letter of Commitment, as amended, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Washington Water Power Company

[Docket No. ER93–221–000]

December 3, 1992.

Take notice that on November 18, 1992, Washington Water Power Company tendered for filing a Notice of Termination of Rate Schedule No. 158.

Comment date: December 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Appalachian Power Company

[Docket No. ER93–200–000]

December 3, 1992.

Take notice that on November 18, 1992, Appalachian Power Company (APCO) tendered for filing the following agreements, pursuant to the CIAC Amnesty Order:

(1) Letter Agreement among APCO, the City of Bedford, Virginia and the Wheelabrator Corporation, dated November 14, 1985.

(2) Letter Agreement between APCO and the City of Radford, Virginia, dated February 5, 1979.

(3) Letter Agreement between APCO and the City of Salem, Virginia, dated August 12, 1982.

(4) Letter Agreement between APCO and the City of Danville, Virginia, dated June 22, 1977.

Comment date: December 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Power Company

[Docket No. ER93–88–000]

December 3, 1992.

Take notice that on November 19, 1992, Consumers Power Company (Consumers) tendered for filing an amendment in the above-referenced docket.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket Nos. ER92–517–003 and ER92–517–001].

Errata

December 4, 1992.
November 27, 1992.

Take notice that the Notice of Filing issued on November 27, 1992 under Docket Nos. ER92–517–000 and ER92–517–001 should have been issued under Docket Nos. ER92–517–003 and ER92–517–001 instead of Docket Nos. ER92–517–000 and ER92–517–001.

6. Ohio Power Company

[Docket No. ER93–197–000]

December 4, 1992.

Take notice that on November 17, 1992, Ohio Power Comnpany (OPCo) tendered for filing an Agreement between OPCo and the City of Clyde, Ohio pursuant to the CIAC Amnesty Order issued on October 13, 1992 in Docket No. ER92–183–002.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER93–283–000]

December 4, 1992.

Take notice that on November 25, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1993 Cost Report for the RS–2 rate schedule under which CVPS sells electric power to Connecticut Valley Electric Company Inc.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER93–243–000]

December 4, 1992.

Take notice that on November 25, 1992, Union Electric Company (UE) tendered for filing an Amendment dated September 25, 1992, to the Interchange Agreement dated June 28, 1978, between Associated Electric Cooperative, Incorporated and UE. UE asserts that the Amendment primarily provides for new and revised interconnection points and intertie points.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER93–240–000]

December 4, 1992.

Take notice that on November 25, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1993 Cost Report for FERC Electric Tariff, Original Volume No. 4 under which CVPS provides unreserved system power service to the following customers:

Lyndonville Electric Department
Village of Ludlow Electric Light Department

Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER93–241–000]

December 4, 1992.

Take notice that on November 27, 1992, Florida Power & Light Company (FPL) tendered for filing the Letter Agreement Extending the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Tampa Electric Company (Letter Agreement). FPL requests that the Letter Agreement be made effective January 1, 1993.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas Gas and Electric Company

[Docket No. ER93–231–000]

December 4, 1992.

Take notice that on November 23, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed change to its Federal Energy Regulatory Commission Supplement No. 5 to Electric Service Schedule No. 182. KG&E states the purpose of the change is to extend the term of the existing Short-Term Participation Power Service Schedule between KG&E and The City of Girard, Kansas. The change is proposed to become effective February 1, 1993.

Copies of the filing were served upon the City of Girard and the Kansas Corporation Commission.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Otter Tail Power Company

[Docket No. ER93–233–000]

December 4, 1992.

Take notice that on November 23, 1992, Otter Tail Power Company (Otter Tail) tendered for filing a Notice of Cancellation of Rate Schedule No. 0153.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER93–53–000]

December 4, 1992.

Take notice that on November 20, 1992, Arizona Public Service Company (APS) tendered for filing in this docket a copy of an agreement between APS and the City of Williams providing for Operation, Maintenance, Construction and Office Functions. APS states that it is making the filing in light of earlier Commission orders announcing an amnesty period for filing of jurisdictional agreements involving contributions in aid of construction.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Power & Light Company

[Docket No. ER93–173–000]

December 4, 1992.

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for Firm Power Purchase" between Puget and Cascade Hydro, Inc. (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or Parallel operation of facilities. A copy of the filing was served upon Cascade Hydro, Inc.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power and Light Company

[Docket No. ER93–229–000]

December 4, 1992.

Take notice that on November 23, 1992, Delmarva Power and Light Company (DPL) tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Philadelphia Electric Company (PE) and DPL dated November 23, 1993. This contract sets forth the terms under which DPL will sell PJM installed capacity credits to PE. DPL requests that the Commission permit this Agreement to become effective on January 22, 1993.

DPL states that a copy of this filing has been served by mail upon PE, the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER93–227–000]

December 4, 1992

Take notice that on November 20, 1992, Florida Power & Light Company tendered for filing a notice of cancellation of its service agreement with Florida Keys Electric Cooperative Association, Inc. and a conforming change to Sheet No. 23 to its FERC Electric Tariff.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Southerwesten Public Service Company

[Docket No. ER85–477–012]

December 4, 1992

Take notice that on November 20, 1992, Southwestern Public Service Company (Southwestern) tendered for filing its compliance report in the above-referenced docket.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. United Illuminating Company

[Docket No. ER92–2–002]

December 4, 1992

Take notice that on November 20, 1992, United Illuminating Company (UI) tendered for filing its compliance report in the above-referenced docket.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER93–242–000]

December 4, 1992

Take notice that on November 27, 1992, Florida Power & Light Company (FPL) filed Amendment Number One to the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Tampa Electric Company. FPL requests an effective date of February 1, 1993.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Electric Energy, Inc

[Docket No. ER93–236–000]

December 4, 1992

Take notice that on November 25, 1992, Electric Energy, Inc. (EEInc.) tendered for filing proposed changes in its FERC Electric Service Tariff, including Modification 15 to the Service Agreement between EEInc. and the Department of Energy of the United States of America (DOE) and a Letter Supplement dated October 7, 1992 to the Power Supply Agreement dated September 2, 1987 between EEInc., on the one hand, and Union Electric Company, Illinois Power Company, Kentucky Utilities Company and Central Illinois Public Service Company (collectively, the "Sponsoring Companies"), on the other. The proposed changes modify the method of calculating demand charges and base excess energy charges under the Agreements. For the calendar year 1991, the proposed changes would have

increased jurisdictional revenues to EEInc. by $623,708.70, or 0.44%.

The proposed changes are implemented to remove the variable fuel cost factor from the formulae by which demand charges and excess Joppa energy charges are calculated. In addition, the base plant availability factor for use in the demand charge calculation has been reduced to 92.5%, rather than 100%. The proposed changes were requested by DOE to remove this variable rate element from the calculation of the charges in question.

Copies of the filing were served upon DOE, the Sponsoring Companies, and the Illinois Commerce Commission. Copies are also available for inspection at EEInc.'s offices in Joppa, Illinois.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corporation

[Docket No. ER93–239–000]

December 4, 1992

Take notice that on November 25, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1993 Cost Report for FERC Electric Tariff, Original Volume No. 3 under which CVPS provides Transmission and Distribution Service to the following customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department Village of Ludlow Electric Light Department
Village of Hyde Park Water and Light Department Rochester Electric Light and Power Company

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas City Power & Light Company

[Docket No. ER93–237–000]

December 4, 1992

Take notice that on November 25, 1992, Kansas City Power & Light Company (KCP&L) tendered for filing, pursuant to 18 CFR 35.12, an open access transmission tariff to be effective January 1, 1993. The tariff provides rates and terms for firm and non-firm transmission service for all eligible utilities, as defined in the tariff. KCP&L has requested waiver of certain Commission requirements, including notice, cost of service data and revenue estimates.

Copies of the filing were served upon the Kansas State Corporation Commission and Missouri Public Service Commission.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power & Light Company

[Docket No. ER93–228–000]

December 4, 1992

Take notice that on November 23, 1992, Florida Power & Light Company (FPL) tendered for filing the Letter of Agreement Regarding Construction and Reimbursement of Caluss-Lee No. 2 Line Terminal at Caluss between FPL and Lee County Electric Cooperative, Inc.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Municipal Resale Service Customer v. Ohio Power Company

[Docket No. EL93–6–000]

December 4, 1992.

Take notice that on November 18, 1992, Municipal Resale Service Customers (MRS) tendered for filing a Complaint and Request for Investigation against Ohio Power Company (Ohio Power). MRS request the Commission to investigate whether Ohio Power has charged and is charging wholesale rates that are unjust, unreasonably, unduly discriminatory, or otherwise unlawful under the Act.

Comment date: January 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

25. PacifiCorp

[Docket No. ER93–247–000]

December 4, 1992.

Take notice that on December 1, 1992, PacifiCorp tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, revisions to Exhibit B, D and H of the General Transfer Agreement, Contract No. DE–MS79–82BP90049, between Pacificorp and Bonneville Power Administration (Bonneville), PacifiCorp's Rate Schedule FERC No. 237.

The Exhibits have been revised to add or delete points of delivery and the associated transfer charges, loss factors and power factors.

PacifiCorp requests an effective date not later than sixty days from the Commission's receipt of this filing.

Copies of this filing were supplied to Bonneville and the Public Utility Commission of Oregon.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Shirley Ann Bird Perry

[Docket No. ID–2755–000]

Take notice that on December 1, 1992, Shirley Ann Bird Perry (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Southwestern Public Service Company
Advisory Director—Texas Commerce Bank-Austin, National Association

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.

[Docket No. ER92–50–000]

December 7, 1992.

Take notice that on November 27, 1992, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO), together with two supplements to the agreement. One supplement provides for construction and maintenance of interconnection facilities between Con Edison and LILCO; the other supplement would decrease annual transmission revenues from LILCO by $328,558.46. Con Edison has requested waivers so that the interconnection supplement can become effective as of August 22, 1977, and the transmission rate reduction supplement as of July 1, 1992.

Con Edison states that a copy of this filing has been served by mail upon LILCO and the parties to Docket No. ER92–50–000.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Company

[Docket No. ER93–2–000]

December 7, 1992.

Take notice that on November 16, 1992, New England Power Company (NEP) tendered for filing an amendment to its original filing submitted on October 1, 1992, in the above-referenced docket.

Comment date: December 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Wisconsin Electric Power Company

[Docket No. ER93–251–000]

December 7, 1992.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on

December 3, 1992, tendered for filing the MIN–WUMS Capability Allocation Agreement between itself, Wisconsin Power and Light Company, Wisconsin Public Service Corporation. The Agreement resolves the apportionment of the limited transmission capability between Minnesota and the Wisconsin-Upper Michigan subregion of the Mid America Interpool Network (MAIN).

The parties request an effective date coincident with the Commission's acceptance of the Agreement.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power Corporation

[Docket No. ER93–252–000]

December 7, 1992.

Take notice that on December 3, 1992, Florida Power Corporation filed an agreement between itself and Seminole Electric Cooperative, Inc., which provides for a reduction in rates for service by Florida Power to serve extraterritorial load. The Company requests waiver of the 60 day notice requirement so that the rate reduction which the service agreement provides for may be allowed to become effective on June 1, 1987.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. Bangor Hydro-Electric Company

[Docket No. ER93–244–000]

December 7, 1992.

Take notice that on November 30, 1992, Bangor Hydro-Electric Company (Bangor) tendered for filing Notices of Cancellation of the following rate schedules:

Rate schedule	Affected customers	Termination date
0050	Boston Edison Company	1/30/93
	Down East Peat, L.P	1/30/93
0051	Boston Edison Company	1/30/93

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Southwestern Electric Power Company

[Docket No. ER93–249–000]

December 7, 1992.

Take notice that on December 2, 1992, Southwestern Electric Power Company (SWEPCO) tendered for filing a Scheduling Agreement between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC) dated April 22, 1992 and a related Letter Agreement dated September 18, 1992. Under such agreements, SWEPCO will act as NTEC's agent for the purpose of scheduling power and energy purchased by NTEC from Entergy Power, Inc. (EPI) and Entergy Services, Inc. (ESI). The Scheduling Agreement also makes provision for the sale by SWEPCO to NTEC of Backup Energy, Emergency Energy and Substitute Energy which may be used in certain circumstances in place of energy provided by EPI or ESI.

SWEPCO requests that such agreements be made effective on the later of February 1, 1993 or the date on which the Commission permits to become effective the Unit Power Sales Agreement between NTEC and EPI filed by ESI in Docket No. ER92–365–000.

Copies of the filing have been served on NTEC and on the Public Utility Commission of Texas.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. Arizona Public Service Company

[Docket No. ER93–248–000]

December 7, 1992.

Take notice that on December 2, 1992, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Supply Agreement between Arizona Public Service Company (APS or Company) and Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk) (APS–FPC Rate Schedule No. 58) and revised Exhibit B to Service Schedule D of the Power Coordination Agreement between Plains Electric Generation and Transmission Cooperative, Inc. (Plains) and APS (APS–FERC Rate Schedule No. 82) (collectively Exhibits and Agreements). The Exhibits list Contract Demands applicable under the Agreements.

No change to the rate and revenue levels currently on file with the Commission for the 12 months immediately after the proposed effective date is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Wellton-Mohawk, Plains, the Arizona Corporation Commission, and the New Mexico Public Service Commission.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

34. Idaho Power Company

[Docket No. ER92–787–000]

December 7, 1992.

Take notice that on December 1, 1992, in response to the Commission's deficiency letter of October 1, 1992, Idaho Power Company (IPC) tendered for filing a Draft Transmission Service Agreement between Sierra Pacific Power Company and Idaho Power Company.

IPC has requested that the Commission suspend further consideration of this Agreement until the parties have concluded negotiations.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

35. LG&E—Westmoreland Hopewell

[Docket No. QF88–85–004]

December 7, 1992.

On December 3, 1992, LG&E—Westmoreland Hopewell, tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment pertains to the revision of the facility's testing period and provides additional information for computation of the operating values subsequent to the testing period.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30199 Filed 12–11–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85-221-008]

Frontier Gas Storage Co.; Sale Pursuant to Settlement Agreement

December 3, 1992.

Take notice that on November 24, 1992, Frontier Gas Storage Company (Frontier), % Reid & Priest, Market Square, 701 Pennsylvania Avenue, NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82-487-000 et. al., submitted an executed Service Agreement under Rate Schedule LVS-1, providing for the possible sale of 2,000,000 MMBtu of Frontier's gas storage inventory on an "in place" basis to Williston Basin Interstate Pipeline Company (Williston Basin).

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985 Order, Frontier is "authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement."

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before December 14, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30210 Filed 12-11-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-23-000, RP91-203-000, and RP92-132-000 (Consolidated, in Part)]

Tennessee Gas Pipeline Co.; Notice of Conference

December 4, 1992.

Take notice that on December 17, 1992, beginning at 9:30 a.m., a conference will be convened in the above-captioned restructuring docket. The conference will be held in Hearing Room Number 1 at the Federal Energy Regulatory Commission, 810 1st Street, NE., Washington, DC.

This conference is being held to discuss Tennessee Gas Pipeline Company's (Tennessee) Order No. 636 restructuring compliance filing, which Tennessee filed on November 2, 1992, and also to discuss the comments filed by the parties in response to Tennessee's filing.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Sharon Dameron at (202) 208-2017.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30211 Filed 12-11-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-137-000 (Phase II)]

Transcontinental Gas Pipe Line Corp.; Notice of Informal Settlement Conference

December 7, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on December 16, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt at (202) 208-0740 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30212 Filed 12-11-92; 8:45 am

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-106-NG]

Northwest Natural Gas Co.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northwest Natural Gas Company authorization to import, at Kingsgate, British Columbia, up to 48,168 Mcf per day of Canadian natural gas over a period of ten years, beginning the earlier of November 1, 1993, or the date the Pacific Gas Transmission Expansion Project becomes operational, through October 31, 2003.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 4, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-30290 Filed 12-11-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-44593; FRL-4178-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on dibenzo-para-dioxins/dibenzofurans: decabromodiphenyloxide (CAS No. 1163-19-5), submitted pursuant to a final test rule. Data were also submitted on methyl tertiary butyl ether (MTBE) (Cas No. 1634-04-4) pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these

testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for decabromodiphenyloxide were submitted by Ameribrom, Inc., pursuant to a test rule at 40 CFR Part 766. They were received by EPA on November 18, 1992. The submission describes the determination of polybrominated dibenzo-p-dioxins and dibenzofurans by high-resolution gas chromatography/ medium high resolution mass spectrometry in decabromodiphenyloxide. These chemical analyses are required by this test rule.

Test data for MTBE were submitted by the Methyl Tertiary Butyl Ether Task Force in behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on October 29th and November 19, 1992. The submissions describe vapor inhalation oncogenicity studies in CD-1® mice and Fischer 344 rats. Health effects testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44593). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 30, 1992.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–30296 Filed 12–11–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50753; FRL–4180–7]

Receipt of an Application for an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from the Monsanto Company for an EPA Experimental Use Permit (EUP) for a transgenic plant pesticide. This is the second EUP application under the Federal Insecticide, Fungicide, and Rodenticide Act for testing with a plant that has been genetically-altered to produce a pesticide. The Agency has determined that this application may be of regional and national significance. Therefore, the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before January 13, 1993.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50753 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall 2 1921, Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall 2, 1921 Jefferson Davis Highway, Crystal City, VA 22202, (703)305–7690

SUPPLEMENTARY INFORMATION: On October 22, 1992, an application for an EUP was received from Monsanto Company, 700 Chesterfield Village Parkway, St. Louis, Missouri 63198. The application was assigned EPA File Symbol 524–EUP–TO. Monsanto proposes to test the Colorado Potato Beetle (CPB) control protein, delta-endotoxin, derived from the soil microbe *Bacillus thuringiensis* subspecies *tenebrionis* (B.t.t.), as expressed in plants and tubers of several lines of potato cultivars. According to the application, CPB control protein, B.t.t. delta-endotoxin, will be present at no more than .01% of the total weight of the potato plants or tubers. The delta-endotoxin gene of B.t.t. is transferred to potato via the Ti plasmid of *Agrobacterium tumefaciens* strain ABI (vector PV-STBTO__). The vector agent, *Agrobacterium tumefaciens* strain ABI, however, is not associated with the transformed potato plants or tubers; during the gene transfer procedure, the potato explants are treated with an antibiotic known to inhibit the growth of the bacterium, *Agrobacterium tumefaciens* strain ABI. According to the application, the expressed B.t.t. delta-endotoxin is contained intracellularly within the tubers and plants; as a result, humans handling the plants and tubers will have an extremely low dermal exposure to the CPB control protein. In addition, Monsanto has submitted, as part of their EUP protocols, specific precautionary measures they will take to reduce the possibility of accidental ingestion of plant parts or tubers by humans or domestic animals.

Some of the potato cultivar lines will contain only the B.t.t. gene for mediating CPB resistance. Other potato cultivar lines have been modified to contain genes mediating CPB and Potato Virus Y (PVY) or Potato Leaf Roll Virus (PLRV) resistance.

Forty and one-half acres of CPB resistant potato plants and 48 acres of CPB resistant potato tubers will be planted for a total of 88.5 acres. A maximum of 15,000 plants or tubers will be planted per acre, each weighing approximately 5.6 grams per plant and 60 grams per tuber. The total plant material, at planting, will contain a maximum of 129.3 grams B.t.t. protein, with levels rising to a maximum of 34.6 kilograms of B.t.t. protein at harvest.

Individual test sites range from one-fifth to 15 acres in size; however, the majority will be under 1 acre. Proposed test sites are located in the following 14 states: Colorado, Hawaii, Idaho, Maine, Maryland, Michigan, Montana, New York, North Dakota, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin. Upon completion of testing, some potato plants and tubers will be collected and saved for future research, analyses, or plantings. All other plant material will be destroyed. Because no plants or tubers will be used for food or feed, no tolerances for this EUP are requested.

The application proposes that the permit be issued for 1 year, beginning March 1, 1993, and ending March 30, 1994. The labeling proposed by

Monsanto Company states the following:

This package contains Colorado potato beetle resistant potato plants containing a *Bacillus thuringiensis* subspecies *tenebrionis* protein. Contains plants containing vector PV-STBTO____. For use only at an application site of a cooperator and in accordance with the terms and conditions of the Experimental Use Permit. This labeling must be in the possession of the user at the time of planting of the potato plants. It is a violation of Federal law to use these plants in any manner inconsistent with this labeling. These plants contain *Bacillus thuringiensis* subspecies *tenebrionis* insecticidal protein and may only be used according to the protocols as included in the approved EUP program for evaluation of the control of the following insect:
Colorado Potato Beetle/*Leptinotarsa decemlineata*

Cooperators must have a copy of each applicable protocol prior to initiating any research with these plants. Plants should be planted at a maximum of 15,000 plants per acre depending on the site variety. Do not contaminate water, food or feed by storage and/or disposal. Store in cool dry place inaccessible to children. Any plants not used in these experiments must be returned to Monsanto or disposed of as specified in the field protocols. All plant material that is not saved for further research, analyses, or future plantings must be destroyed as specified in the field protocols. None of the plants or plant material may be sold or allowed to enter into commerce. Do not reuse bag. Discard in trash. Ensure that the bag is completely empty of plants before disposing in the trash.

Proposed EUP Program

The proposed EUP program will include the following five experiments designed to evaluate the performance of the expressed protein against the CPB: efficacy and agronomic evaluations; performance confirmation; population dynamics and resistance management. In addition, seed increase trials will be conducted in order to produce seed for future plantings. In keeping with acceptable agronomic practices for each region, fertilizer, herbicides, and fungicides will be used, if needed, to improve soil nutrient levels, and to control weeds and diseases. If CPB populations exceed economic threshold levels, additional insecticides will be applied in accordance with local integrated pest management (IPM) practices to meet the objectives of the experiment. Any conventional pesticides used in this EUP program will be applied according to each pesticide's application rate as specified on its label.

Upon review of the Monsanto application, any comments received in response to this notice and any other relevant information, EPA will decide whether to issue or deny the EUP. If issued, EPA will set conditions under which the experiments are to be conducted. Any issuance of an EUP by the Agency will be announced in the **Federal Register**.

A copy of the Monsanto EUP application deleted of all CBI is available for public inspection in the Public Docket Office at the address listed under the ADDRESSES unit.

Dated: December 8, 1992.

Lawrence E. Culleen

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-30297 Filed 12-11-92; 8:45 am]

BILLING CODE 6560-60-F

Office of Research and Development

[FRL-4545-1]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method and an Equivalent Method Determination

Notice is hereby given that on November 2, 1992, the Environmental Protection Agency received two applications from Horiba Instruments Incorporated, 17671 Armstrong Avenue, Irvine, California 92714. The first application is to determine if the Horiba Model APNA-350E Oxides of Nitrogen Monitoring System should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. The second application is to determine if the Horiba Model APSA-350E Sulfur Dixoide Monitoring System should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that either of these methods should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

Courtney Riordan,

Assistant Administrator for Research and Development

[FR Doc. 92-30294 Filed 12-11-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.
Title: Procedures for Monitoring Bank Secrecy Act Compliance.
Form Number: None.
OMB number: 3064-0087.
Expiration Date of OMB Clearance: January 31, 1993.
Frequency of Response: Recordkeeping, on occasion.
Respondents: Insured State nonmember banks.
Number of Recordkeepers: 8,400.
Annual Hours Per Recordkeepner: 0.5.
Total Annual Burden Hours: 4,200.
OMB Reviewer: Gary Waxma, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0087), Washington, DC 20503.
FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted before February 12, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Insured state nonmember banks must establish and maintain written procedures to assure and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and with Treasury Department regulations 31 CFR part 103.

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 92-30222 Filed 12-11-92; 8:45 am]
BILLING CODE 6714-01-M

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in July 2, 1992 edition of the **Federal Register**. The following is a list of financial institutions which have been placed in liquidation since the November 12, 1992 publication.

FEDERAL DEPOSIT INSURANCE CORPORATION ACTIVE INSTITUTIONS IN LIQUIDATION ALPHA LISTING (NAME)

Institution name, city/state	Date closed, region	Ref. #
Anchorage C.O.—CPII, Anchorage, AK	10/14/92, San Francisco	3963
Eastwest Bank, National Association, Kihei, HI	10/02/92, San Francisco	4519
First City Collecting Bank, Houston, TX	10/30/92, Dallas	4543
First City, Alice, Texas, Alice, TX	10/30/92, Dallas	4523
First City, Aransas Pass, Aransas Pass, TX	10/30/92, Dallas	4524
First City, Austin, Austin, TX	10/30/92, Dallas	4525
First City, Beaumont, Beaumont, TX	10/30/92, Dallas	4526
First City, Bryan, Bryan, TX	10/30/92, Dallas	4527
First City, Corpus Christi, Corpus Christi, TX	10/30/92, Dallas	4528
First City, Dallas, Dallas, TX	10/30/92, Dallas	4529
First City, El Paso, El Paso, TX	10/30/92, Dallas	4530
First City, Graham, Graham, TX	10/30/92, Dallas	4531
First City, Houston, Houston, TX	10/30/92, Dallas	4532
First City, Kountze, Kountze, TX	10/30/92, Dallas	4533
First City, Lake Jackson, Lake Jackson, TX	10/30/92, Dallas	4534
First City, Lufkin, Lufkin, TX	10/30/92, Dallas	4535
First City, Madisonville, Madisonville, TX	10/30/92, Dallas	4536
First City, Midland, Midland, TX	10/30/92, Dallas	4537
First City, Orange, Orange, TX	10/30/92, Dallas	4538
First City, San Angelo, San Angelo, TX	10/30/92, Dallas	4539
First City, San Antonio, San Antonio, TX	10/30/92, Dallas	4540
First City, Sour Lake, Sour Lake, TX	10/30/92, Dallas	4541
First City, Tyler, Tyler, TX	10/30/92, Dallas	4542
First Constitution Bank, New Haven, CT	10/02/92, New York	4521
First New York Bank for Business, New York, NY	11/13/92, New York	4549
Greenwood Bank of Bethel, Inc., Bethel, CT	11/06/92, New York	4544
Guaranty-First Trust Co., Waltham, MA	11/13/92, New York	4545
Investors Bank & Trust Co., Gretna, LA	11/13/92, Chicago	4547
Merchants Bank, Kansas City, MO	11/20/92, Chicago	4550
Metro North State Bank, Kansas City, MO	11/13/92, Chicago	4546
Statewide Thrift & Loan, Redwood City, CA	11/13/92, San Francisco	4548
The Howard Savings Bank, Livingston, NJ	10/02/92, New York	4520
Universal Bank, Lanham, MD	10/16/92, Chicago	4522

Dated: December 7, 1992.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 92-30300 Filed 12-11-92; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

BankAmerica Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101

Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; to acquire First Associates Financial, Inc., Tampa, Florida, and thereby engage in manufactured housing lending, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30238 Filed 12-11-92; 8:45 am]

BILLING CODE 6210-01-F

Federal Open Market Committee; Domestic Policy Directive of August 18, 1992

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 18, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is continuing to expand at a subdued pace. Total nonfarm payroll employment rebounded in July after declining in June, and the civilian unemployment rate edged down to 7.7 percent. Manufacturing output was unchanged in July, but overall industrial production was boosted by a higher level of mining and utility output. Retail sales increased moderately in July. Permits issued for the construction of new housing units rose slightly in July, but housing starts fell. Recent data on orders and shipments of nondefense capital goods indicate further increases in outlays for business equipment, while nonresidential construction has remained soft. The nominal U.S. merchandise trade deficit in April-May was substantially above its average rate in the first quarter. Incoming data on wages and prices suggest that inflation is slowing.

Interest rates have declined considerably since the Committee meeting on June 30-July 1. The Board of Governors approved a reduction in the discount rate from 3-1/2 to 3 percent on July 2. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined further over the first several weeks of the intermeeting period, but it has stabilized more recently.

M2 and M3 contracted somewhat further in July. Through July, both aggregates were appreciably below the lower ends of the ranges established by the Committee for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting on June 30-July 1 reaffirmed the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The Committee anticipated that developments contributing to unusual velocity increases could persist in the second half of the year. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1993, the Committee on a tentative basis set the same ranges as in 1992 for growth of the monetary aggregates and debt measured from the fourth quarter of 1992 to the fourth quarter of 1993. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from June through December at annual rates of about 2 and 1/2 percent, respectively.

By order of the Federal Open Market Committee, December 4, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92-30218 Filed 12-11-92; 8:45 am]

BILLING CODE 6210-01-F

[1] Copies of the Record of Policy Actions of the Committee for the meeting of August 18, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Brooke Holdings, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 92-29195) published at page 57067 of the issue for Wednesday, December 2, 1992.

Under the Federal Reserve Bank of Kansas City, the entry for Brooke Holdings, Inc. is revised to read as follows:

Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Brooke Holdings, Inc., Jewell, Kansas, parent of Brooke Corporation, Jewell, Kansas; to engage, through a subsidiary known as Mid Kansas Insurance Agency, Inc., Wichita, Kansas, in insurance activities, pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Comments on this application must be received by December 16, 1992.

Board of Governors of the Federal Reserve System, December 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30219 Filed 12-11-92; 8:45 am]

BILLING CODE 6210-01-F

Citizens Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Citizens Bankshares, Inc., Shawano, Wisconsin; to engage *de novo* through its subsidiary, Wisconsin Finance Corporation, Shawano, Wisconsin, in insurance activities pursuant to § 225.25(b)(8)(i), (ii), and (iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30194 Filed 12-11-92; 8:45 am]

BILLING CODE 6210-01-F

Leland P. Cook, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Leland P. Cook, Corsicana, Texas; to acquire an additional 5.88 percent for a total of 16.79 percent, and Byron Cook, Corsicana, Texas, to acquire an additional 5.88 percent for a total of 12.77 percent of the voting shares of Corsicana Bancshares, Inc., Corsicana, Texas, and thereby indirectly acquire Corsicana National Bank, Corsicana, Texas.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30195 Filed 12-11-92; 8:45 am]

BILLING CODE 6210-01-F

Exchange National Bancshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 4, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Exchange National Bancshares, Inc., Jefferson City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of The Exchange National Bank of Jefferson City, Jefferson City, Missouri.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30196 Filed 12-11-92; 8:45 am]

BILLING CODE 6210-01-F

Forest Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Forest Bancorp, Forest, Mississippi; to engage *de novo* through its subsidiary, Bankers Capital Corporation, Forest, Mississippi, in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30197 Filed 12-11-92; 8:45 am]

BILLING CODE 6210-01-F

Bank of Montana System, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 4, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Bank of Montana System, Great Falls, Montana; to acquire Montana Bancsystem, Inc., Billings, Montana, and thereby engage in general insurance agency activities in Circle, Roundup, Red Lodge, and Forsyth, Montana, towns with populations of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

2. Marquette Bancshares, Inc., Minneapolis, Minnesota; to acquire Marquette Fund Advisors, Inc., Minneapolis, Minnesota, and thereby engage in serving as investment adviser to an investment company pursuant to § 225.25(b)(4)(ii); and to provide portfolio investment advice to any other person pursuant to § 225.25(b)(4) of the Board's Regulation Y.

3. Norwest Corporation, Minneapolis, Minnesota; to acquire Boris Systems, Inc., East Lansing, Michigan, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30193 Filed 12-11-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112392 AND 120492

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
FHP International Corporation, Skandia Group Insurance Company Ltd., Great States Financial Corporation	93-0125	11/23/92
Tenneco Inc., Enron Corporation, Dean Pipeline Company	93-0164	11/23/92
Coda Energy, Inc., Mobile Corporation, Mobil Producing Texas & New Mexico Inc	93-0225	11/23/92
Saratoga Partners II, L.P., Columbia River Television, Inc., Columbia River Television, Inc	93-0230	11/23/92
General Motors Corporation, Continental Airlines Holdings, Inc. (debtor-in-poss.), System One Holdings, Inc., d/b/a System One Corporation	93-0235	11/23/92
Media General, Inc., Robert Maynard and Nancy Hicks Maynard, Maynard Communications, Inc	93-0057	11/24/92
Ruhrgas AG, TI Group plc, Ipsen Entities	93-0147	11/24/92
Raytheon Company, Amber Engineering, Inc., Amber Engineering, Inc	93-0162	11/24/92
Warburg, Pincus Investors, L.P., Berwind Group Partners, Geriatric Pharmacy Systems, Inc	93-0233	11/24/92
Service Corporation International, American Funeral Services Corporation, American Funeral Services Corporation	93-1536	11/24/94
Group Financial Partners, Inc., Alliant Techsystems, Inc., Alliant Techsystems, Inc	93-0145	11/25/92
Penn Virginia Corporation, Sonat Inc., Sonat Exploration Company	93-0205	11/25/92
Arcadian Partners, L.P., PacifiCorp, NERCO Oil and Gas, Inc	93-0180	11/27/92
BTR plc, Edward M. Harvey, Harvey, Inc., and Harvey Industries, Inc	93-0212	11/27/92
American United Global Inc., Tenneco Inc., Case Corporation	93-0208	11/30/92
WMS Industries Inc., Bally Manufacturing Corp., Bally's Aladdin's Castle, Inc	93-0214	11/30/92
Welsh, Carson, Anderson & Stowe V, L.P., Herschel Fisher, M.D., Fischer Mangold, F/M Service Co., Doctor's Essential	93-0227	11/30/92
Welsh, Carson, Anderson & Stowe V, L.P., Karl G. Mangold, M.D., Fisher Mangold, F/M Service Co. and Doctor's	93-0228	11/30/92
ALLTEL Corporation, GTE Corporation, Contel Cellular of Arkansas, Inc	93-0238	11/30/92
CBI Industries, Inc., Emmett J. Lescroart, Cooperheat, Inc	93-0240	11/30/92
SHL Systemhouse Inc., Eastman Kodak Company, Interactive Systems Corporation	93-0241	11/30/92
NEDH Corporation, Nashoba Health Systems, Inc., Nashoba Health Systems, Inc	93-0245	11/30/92
Syaco Corporation, Thomas N. Perkoff, P.B. Realty Company, Inc	93-0248	11/30/92
Charterhouse Equity Partners, L.P., Comdata Holdings Corporation, Comdata Holdings Corporation	93-0256	11/30/92
Baxter International Inc., Kelsey-Seybold Clinic, P.A., Kelsey-Seybold Clinic, P.A	93-0268	11/30/92
Household International, Inc., General Motors Corporation, GMAC Capital Corporation	93-0219	12/01/92
Enhance Financial Services Group Inc., Skandia Group Insurance Company Ltd., Vesta American Reinsurance Corporation	93-0223	12/01/92
CUC International Inc., Sally Foster Gift Wrap Sales, Inc., Sally Foster Gift Wrap, L.P	93-0244	12/01/92
Water Street Corporate Recovery Fund I, Edward D. Aster, Aster Publishing Corporation	93-0247	12/01/92
General Electric Company, John Alden Financial Corporation, John Alden Financial Corporation	93-01218	12/02/92
Malcolm I. Glazer, Gilbert/Robinson Holding Corp. (Debtor-in-Possession), Gilbert/Robinson Holding Corp. (Debtor-in-Possession)	92-1426	12/03/92

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112392 AND 120492—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Daniel K. Frierson, Carriage Industries, Inc., Carriage Industries, Inc	93-0034	12/03/92
Deaconess Care Corporation, Billings Clinic (General Partnership), Billings Clinic (General Partnership)	93-0197	12/03/92
Choctaw II Oil & Gas, Ltd., Pennzoil Company, Pennzoil Exploration and Production Company	93-0217	12/03/92
Ford Motor Company, Chrysler Corporation, Chrysler Rail Transportation Corporation	93-0222	12/03/92
Lyondell Petrochemical Company, Joint Venture Limited Liability Company, Joint Venture Limited Liability Company	93-0185	12/04/92
Petroleos de Venezuela S.A., Joint Venture Limited Liability Company, Joint Venture Limited Liability Company	93-0186	12/04/92
Medeva PLC, Armstrong Pharmaceuticals, Inc., Armstrong Pharmaceuticals, Inc	93-0237	12/04/92
ITT Corporation, The Equitable Companies Incorporated, Equi-Sher, S.D	93-0242	12/04/92
Fukutake Publishing Co., Ltd., Berlitz International, Inc., Berlitz International, Inc	93-0249	12/04/92
Golder, Thoma, Cressey Fund III Limited Partnership, Mr. Frederick B. Hunter, Fred Hunter Memorial Services, Inc., Cremation Society	93-0255	12/04/92
Vereniging AEGON, American Express Company, AMEX Life Assurance Company	93-0278	12/04/92
Louisiana Land and Exploration Company, Phillips Petroleum Company, Phillips Petroleum Production Indonesia, Inc	93-0279	12/04/92
Industrial Bank of Japan, Limited, Kansallis-Osake-Pankki, Kansallis Finance Ltd	93-0286	12/04/92
Gamar Merchant Services Group Limited, Forte PLC, Gardner Merchant Food Services,Inc	93-0287	12/04/92
Genuine Parts Company, Estate of Gertrude R. Berry, The Berry Companies	93-0293	12/04/92
Southwestern Bell Corporation, Southwestern Bell Corporation, Corpus Christi SMSA L.P	93-0297	12/04/92
General Electric Company, Volvo Car Finance, Inc., Volvo Car Finance, Inc.	93-0304	12/04/92
General Electric Company, Eastman Kodak Company, Eastman Kodak Credit Corporation	93-0312	12/04/92
The Fuji Bank, Limited, Sudbury, Inc., Wagner Castings Company	93-0327	12/04/92
SGK Equity Fund, L.P., Joint Venture Corporation, Joint Venture Corporation	93-0333	12/04/92
Matthew G. Stuller, Joint Venture Corporation, Joint Venture Corporation	93-0334	12/04/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–30304 Filed 12–11–92; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3405]

Realty Computer Associates, Inc., d/b/a Computer Listing Service; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Missouri-based real-estate multiple listing service (MLS) from refusing to publish exclusive-agency listings, or restricting its members from offering such listings. In addition, the respondent is prohibited from requiring, as a condition of membership or use of its MLS, that any applicant or member engage in real-estate brokerage full time, or that any applicant or member maintain an office located on commercially zoned property or within the respondent's service area.

DATES: Complaint and Order issued November 23, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Michael Miller, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: On Thursday, September 10, 1992, there was published in the **Federal Register**, 57 FR 41500, a proposed consent agreement with analysis In the Matter of Realty Computer Associates, Inc., d/b/a Computer Listing Service, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92–30303 Filed 12–11–92; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Program Announcement 912]

Grants for Injury Prevention and Control Research; Availability of Funds for Fiscal year 1993; Amendment

A notice announcing the availability for Fiscal Year 1993 funds for grants to support Injury Prevention and Control Research was published in the **Federal Register** on April 29, 1992 (57 FR 18154), and amended on August 3, 1992. (57 FR 34140). The notice is further amended as follows:

On page 18156 of April 29, 1992 notice, first column, under section B., delete the heading "Review by senior Federal staff" and insert "Review by Advisory Committee for Injury Prevention and Control."

All other information and requirements of the notice as amended remain the same.

Dated: December 7, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–30228 Filed 12–11–92; 8:45 am]

BILLING CODE 4160–18–M

[Program Announcement 913]

Grants for Injury Control Research Centers and Injury Control Research Program Project Grants; Availability of Funds for Fiscal Year 1993 Amendment

A notice announcing the availability of Fiscal Year 1993 funds for grants to support Injury Control Research Centers (ICRCs) and Injury Control Research Program Projects (RPPGs) was published in the **Federal Register** on April 7, 1992, [57 FR 11722], and amended on August 3, 1992 [57 FR 34140]. The notice is further amended as follows:

On page 11722 of the April 7, 1992 notice, third column, under the heading "**AVAILABILITY OF FUNDS**," following the first sentence insert: "An additional $250,000 supplement is available for a demonstration project at an existing ICRC that would provide support for new field studies conducted by new investigators."

On page 11723, first column, under the heading "**PURPOSE**," insert the following: "I. To support training of new investigators through the design and implementation of applied injury prevention and control projects as a component of the NCIPC's (National Center for Injury Prevention and Control) plan to build and enhance the field of injury control research."

On page 11723, under the heading "**PROGRAM REQUIREMENTS**" following section B., third column, insert the following:

"C. Essential Requirements for Applicants for a New Investigator Pilot Project Demonstration Supplement

1. A nationally recognized injury control research center program with existing ties to schools of medicine, public health and engineering should be in place to facilitate research training.

2. A documented mechanism that provides for the collection, management, and coordination of data necessary for injury control studies should be in place. This would include:

a. External coding of the cause of injury for hospital discharges;

b. Availability of worker compensation records for research purposes;

c. Established trauma center, preferably with a trauma registry, that is part of a research university; and

d. Demonstrated access to, and linkage with, drivers' records, traffic safety records, and criminal justice system reports.

3. An existing relationship with a successful statewide injury control program that will provide for the translation of research findings into community-based intervention programs and evaluation of these injury control interventions should be in place.

4. An established working relationship in a program for community involvement in injury control intervention and for mobilizing and coordinating professional groups and community-based organizations should be in place."

On page 11723, third column, under the heading "**EVALUATION CRITERIA**," fourth and fifth sentences, delete "senior Federal staff" and insert "the Advisory Committee for Injury Prevention and Control."

On page 11724, second column, section B., delete the heading "Review by Senior Federal Staff" and insert "Review by Advisory Committee for Injury Prevention and Control." In the first sentence of this section, delete the words "senior Federal staff" and insert "the Advisory Committee for Injury Prevention and Control."

All other information and requirements of the notice as amended remain the same.

Dated: December 7, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92-30229 Filed 12-11-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Antibody to Human Immunodeficiency Virus Type 2 (HIV-2) Reference Panel 1; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new FDA reference panel for tests intended to detect the antibody to Human Immunodeficiency Virus Type 2 (HIV-2 Reference Panel 1). FDA recommends that manufacturers of currently licensed HIV-2 and HIV-1/HIV-2 test kits amend their product license to incorporate a lot release testing protocol using the HIV-2 Reference Panel 1.

DATES: FDA recommends that manufacturers amend their product licenses by February 12, 1993.

ADDRESSES: The HIV-2 Reference Panel 1 is available for distribution from Charles O. Roberts, Food and Drug Administration, Center for Biologics Evaluation and Research (HFB-920), 8800 Rockville Pike, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Charles O. Roberts (address above), 301-227-6721.

SUPPLEMENTARY INFORMATION: The HIV-2 Reference Panel 1 is intended for the qualitative and semiquantitative evaluation of in vitro tests to detect antibody to HIV-2 in human serum or plasma. It is a regulatory test panel of sera designed to provide a lot release criterion for HIV-2 and HIV-1/HIV-2 antibody detection kits produced by licensed manufacturers or by manufacturers pursuing licensure of such kits. The Center for Biologics Evaluation and Research will limit the distribution of the HIV-2 Reference Panel 1 to conserve these reagents when necessary. These reagents should not be used for experimental or other reference purposes. Since the HIV-2 Reference Panel 1 is now available, FDA is recommending that manufacturers amend their product licenses to incorporate a lot release testing protocol using the HIV-2 Reference Panel 1.

Dated: December 1, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-30190 Filed 12-11-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Meeting of the Exxon Valdez Oil Spill Public Advisory Group

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior announces a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on January 6 and 7, 1993, at 9:30 a.m., in the first floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, suite 119, Anchorage, Alaska (907) 271-5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by paragraph V.A. 4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91-081 CV. This meeting will include: (1) A status review of the restoration plan and related activities;

(2) a discussion and recommendations for the 1993 restoration work plan and budget; and (3) reports from various working groups.

Dated: December 8, 1992.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 92-30287 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[MT-070-03-4210-04; M81796]

Realty Action: Exchange, MT

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Designation of public lands in Beaverhead, Broadwater, Gallatin, Granite, Jefferson, Lewis & Clark, Madison, Missoula, Park and Powell counties, Montana, for possible transfer out of Federal ownership via exchange.

SUMMARY: BLM proposes to exchange isolated public land tracts, with Clearwater Investments, Inc., an Idaho Corporation, as the proponent, in order to achieve more efficient management of the public land through consolidation of ownership and to acquire lands with high natural resource values.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Federal Land Exchange Facilitation Act of January 25, 1988, 43 U.S.C. 1716.

Principal Meridian, Montana

Beaverhead County

T. 5 S., R. 7 W.,
Sec. 19: SE¼NE¼
Sec. 20: E½NW¼, SW¼NW¼, NW¼SW¼
T. 5 S., R. 8 W.,
Sec. 27: SW¼NE¼
T. 5 S., R. 14 W.,
Sec. 32: SE¼SW¼
T. 7 S., R. 9 W.,
Sec. 10: NE¼SE¼
T. 8 S., R. 7 W.,
Sec. 20: SW¼SW¼
T. 9 S., R. 10 W.,
Sec. 20: NE¼NW¼
T. 10 S., R. 15 W.,
Sec. 12: SE¼NE¼
T. 11 S., R. 8 W.,
Sec. 9: NW¼NW¼
T. 11 S., R. 9 W.,
Sec. 3: SW¼NW¼
T. 12 S., R. 9 W.,
Sec. 28: NE¼NE¼
Sec. 34: NE¼NE¼
T. 13 S., R. 4 W.,
Sec. 14: NW¼SW¼
Sec. 21: SE¼SW¼
T. 14 S., R. 3 W.,
Sec. 4: NW¼SW¼
Sec. 15: NW¼NW¼
T. 14 S., R. 8 W.,
Sec. 1: Lots 1 & 2
Sec. 9: NW¼SE¼
T. 14 S., R. 9 W.,
Sec. 25: SE¼NW¼
T. 15 S., R. 11 W.,
Sec. 22: SE¼SE¼
Sec. 23: NW¼NE¼, E½NW¼, N½SW¼, SW¼SW¼
Sec. 26: NW¼NW¼
Sec. 27: N½N½
Sec. 28: N½NE¼

Broadwater County

T. 3 N., R. 1 E.,
Sec. 12: NW¼

Gallatin County

T. 1 S., R. 1 E.,
Sec. 14: NW¼NE¼
T. 1 S., R. 2 E.,
Sec. 33: E½SW¼, SW¼SE¼
T. 2 S., R. 2 E.,
Sec. 3: NE¼SW¼
T. 2 N., R. 3 E.,
Sec. 8: SE¼NE¼
Sec. 20: NW¼, W½SW¼, E½SE¼
T. 3 N., R. 3 E.,
Sec. 34: SE¼SW¼

Granite County

T. 5 N., R. 14 W.,
Sec. 18: S½SE¼SE¼
T. 5 N., R. 15 W.,
Sec. 6: Lot 1
Sec. 20: N½SW¼, SE¼SW¼
Sec. 30: Lots 3, 4, W½NE¼, SE¼NE¼, E½SW¼
T. 6 N., R. 15 W.,
Sec. 26: NE¼SE¼
Sec. 35: NE¼SE¼
T. 7 N., R. 14 W.,
Sec. 18: Lots 2, 3, 4, E½SW¼
Sec. 20: S½S½
Sec. 30: N½NE¼, E½SW¼, SE¼
T. 7 N. R. 15 W.,
Sec. 13: NE¼NE¼
Sec. 24: W½SE¼, SW¼
Sec. 25: NW¼NE¼, NE¼NW¼
Sec. 32: NW¼NW¼
T. 9 N., R. 13 W.,
Sec. 17: N½NW¼, SE¼NW¼, NE¼SW¼
T. 9 N., R. 14 W.,
Sec. 20: Lots 1, 2, W½NE¼, NE¼NW¼, S½NW¼
Sec. 32: SE¼SE¼
T. 11 N., R. 12 W.,
Sec. 22: NE¼
T. 11 N., R. 14 W.,
Sec. 3: Lot 11
Sec. 6: Lots 1, 2, 3, 7, SE¼SW¼, SE¼
Sec. 18: Lots 1, 2, 7, 8
T. 11 N., R. 16 W.,
Sec. 12: Lot 2
T. 12 N., R. 13 W.,
Sec. 30: Lots 2, 3, 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼

Jefferson County

T. 2 N., R. 5 W.,
Sec. 14: SW¼
Sec. 24: NW¼, SE¼NE¼
T. 7 N., R. 3 W.,
Sec. 17: Lot 24
T. 8 N., R. 3 W.,
Sec. 4: Lot 7
Sec. 5: Lots 31 & 32
Sec. 7: Lot 6
Sec. 9: SE¼NE¼
Sec. 10: Lots 1, 6, 7, 10, 11, 16
Sec. 32: NW¼NW¼NW¼
T. 8 N., R. 4 W.,
Sec. 15: SE¼SW¼

Lewis & Clark County

T. 11 N., R. 5 W.,
Sec. 29: Lot 9, 10, 11
T. 12 N., R. 6 W.,
Sec. 5: SE¼SW¼
T. 13 N., R. 6 W.,
Sec. 17: SE¼SE¼
Sec. 22: NE¼SW¼
T. 14 N., R. 3 W.,
Sec. 34: Lot 17

Madison County

T. 1 S., R. 2 W.,
Sec. 18: Lot 4
Sec. 22: S½SW¼
T. 1 S., R. 3 W.,
Sec. 14: NW¼
T. 1 S., R. 6 W.,
Sec. 32: NW¼
T. 2 S., R. 5 W.,
Sec. 28: NE¼, N½SE¼
T. 2 S., R. 1 E.,
Sec. 32: SE¼NW¼
T. 3 S., R. 1 W.,
Sec. 3: Lots 1 & 2
Sec. 35: SW¼SW¼
T. 3 S., R. 6 W.,
Sec. 7: Lot 4, NE¼SW¼, N½SE¼
Sec. 18: Lots 1, 2, 3, NE¼NW¼
T. 4 S., R. 1 W.,
Sec. 2: SW¼NE¼, NW¼SE¼
T. 4 S., R. 5 W.,
Sec. 13: NW¼SE¼
T. 4 S., R. 7 W.,
Sec. 22: S½SE¼
Sec. 26: NW¼NE¼, W½
T. 5 S., R. 3 W.,
Sec. 30: S½NE¼
T. 5 S., R. 4 W.,
Sec. 6: Lot 4
T. 6 S., R. 6 W.,
Sec. 14: SE¼SW¼, N½SE¼, SW¼SE¼
Sec. 22: Lot 1
T. 7 S., R. 5 W.,
Sec. 26: NW¼NW¼
T. 7 S., R. 6 W.,
Sec. 34: S½SW¼
T. 7 S., R. 7 W.,
Sec. 2: NE¼SE¼
Sec. 26: SE¼SW¼
Sec. 27: NW¼SE¼
Sec. 35: NW¼NW¼
T. 8 S., R. 4 W.,
Sec. 15: Lot 2
T. 8 S., R. 5 W.,
Sec. 15: NW¼NE¼

Madison County continued

T. 8 S., R. 6 W.,
Sec. 17: NW¼NE¼, NE¼NW¼
T. 9 S., R. 5 W.,
Sec. 17: E½NE¼
Sec. 29: NW¼NE¼
T. 9 S., R. 6 W.,
Sec. 1: S½SW¼
Sec. 12: SW¼SE¼

Missoula County

T. 12 N., R. 15 W.,
Sec. 18: Lot 1, NE¼NW¼
T. 13 N., R. 17 W.,
Sec. 8: SW¼NE¼, NW¼SE¼

Park County

T. 1 S., R. 11 E.,
Sec. 10: W½SW¼
T. 2 S., R. 9 E.,
Sec. 4: Lots 3, 4, S½NW¼
Sec. 34: W½SE¼
T. 2 S., R. 12 E.,
Sec. 18: SE¼SE¼
Sec. 27: NE¼NE¼
T. 4 S., R. 9E.,
Sec. 20: W½SE¼, SE¼SE¼
Sec. 30: Lots 3, 4, E½SW¼
Sec. 32: NW¼SW¼
T. 1 N., R. 10 E.,
Sec. 12: E½NE¼
T. 5 N., R. 9 E.,
Sec. 20: E½
Sec. 32: E½W½

Powell County

T. 9 N., R. 6 W.,
Sec. 20: Lot 4, E½SE¼
T. 9 N., T. 7 W.,
Sec. 8: Lot 4, S½SE¼
T. 9 N., R. 8 W.,
Sec. 8: W½SW¼, SE¼SW¼, SW¼SE¼
Sec. 10: N½NW¼, SW¼NW¼, SE¼SW¼
T. 9 N., R. 9 W.,
Sec. 14: SW¼NW¼
T. 10 N., R. 6 W.,
Sec. 6: Lot 1, NW¼NW¼
Sec. 14: SE¼SE¼
Sec. 15: E½SE¼
Sec. 34: E½NE¼
T. 10 N., R. 7 W.,
Sec. 24: Lot 2
T. 10 N., R. 9 W.,
Sec. 4: Lots 3 & 4
Sec. 14: W½
Sec. 18: Lots 1, 2, 3, 4, 5, 6, NE¼, NE¼NW¼, NE¼, SW¼, NW¼SE¼
T. 10 N., R. 10 W.,
Sec. 12: SE¼SW¼, S½SE¼
T. 10 N., R. 11 W.,
Sec. 14: NW¼SE¼
T. 11 N., R. 9 W.,
Sec. 34: S½, SW¼, NE¼
T. 11 N., R. 10 W.,
Sec. 18: N½NE¼, SE¼NE¼
T. 12 N., R. 10 W.,
Sec. 2: Lots 3 & 4
Sec. 3: W½SW¼SE¼
Sec. 24: Lot 1
T. 12 N., R. 11 W.,
Sec. 6: Lots 1 & 4, SE¼NW¼, SW¼NE¼
Sec. 12: NE¼SW¼, W½SE¼, SE¼SE¼
Sec. 14: W½SW¼, SE¼SW¼, E½SE¼
Sec. 22: Lot 1
Sec. 25: SE¼SW¼
T. 12 N., R. 12 W.,
Sec. 8: E½W½
T. 13 N., R. 11 W.,
Sec. 32: SE¼SW¼
T. 13 N., R. 12 W.,
Sec. 9: Lots 1, 2, 3, 4, SW¼SW¼, N½SE¼
Sec. 15: Lot 1
Sec. 22: NW¼NW¼, SE¼SW¼
Sec. 23: NW¼NE¼, NW¼, NW¼SW¼
Sec. 26: NW¼NW¼, S½SW¼
T. 14 N., R. 13 W.,
Sec. 6: Lot 2
T. 15 N., R. 13 W.,
Sec. 32: S½SW¼

The lands described above are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or five years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an Environmental Assessment. Upon completion of the Environmental Assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATE: For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, MT 59702.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Butte District Office.

Dated: December 4, 1992.

James R. Owings,

District Manager.

[FR Doc. 92-30244 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-DN-M

[UT-930-03-4333-04]

Recreation Management Restrictions: Occupancy Stay Limitation

AGENCY: Bureau of Land Management, Interior.

ACTION: Policy Statement

SUMMARY: This notice establishes occupancy stay limits on public lands managed by the Bureau of Land Management (BLM) in Utah. Notice is given that a person or persons may not occupy undeveloped public lands or designated sites or areas for more than 14 days within a 28-consecutive-day interval. The 14-day limit may be reached either through a number of individual visits or through 14 days of continuous occupation during the 28-day interval. A 28-day interval begins when an occupant initially occupies a specific site on public land. Beyond the 14-day period, occupation of another site shall not be within a 30-mile radius of the heretofore occupied location. When the 14 days have been reached, site occupation shall not reoccur until at least 14 days have expired from the last day of use. Under unique circumstances, and upon request by the site occupant, an authorized officer may give written permission for an extension of the 14-day limit.

In order to protect resources, or for other administrative purposes, an authorized officer may, by posting notification, close a given site to occupancy, even if the same person or persons have not occupied the site for 14-consecutive days. In this situation, upon notification by an authorized officer, campers and other occupants may be allowed to change to a reasonably proximate site within a 30-mile radius.

Additionally, a person or persons may not keep unattended personal property on public lands for a period of more than 48 hours without written permission from an authorized officer, with the exception that vehicles may be parked in designated parking areas for up to 14 consecutive days.

This occupancy limitation rule does not apply to Long Term Visitor Use Areas which may be so designated by the BLM in the future.

DATES: This occupancy limitation rule will take effect January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret S. Kelsey, Bureau of Land Management, Utah State Office, 324 South State Street, suite 301, Salt Lake City, Utah 84111-2303.

SUPPLEMENTARY INFORMATION: This public land occupancy limitation rule is being established to reduce user conflicts caused by long-term occupancy done under a recreational pretense which, nevertheless, hampers reasonable opportunities for other members of the general public to camp in or use the same area. In addition, long-term occupancy precipitates vegetation trampling, erosion, wildlife disruption, and improper waste disposal among other problems, all of which were considered significant factors in the institution of this rule.

Authority for this pubic land occupancy limitation rule is contained in CFR title 43, chapter II, part 8360; subparts 8364.1, 8365, 8365.1-2, 8365.1-6, and 8365.2-3.

Definitions

(a) *Occupation:* Taking or holding possession of a camp or residence on public land.

(b) *Camp or camping:* Erecting a tent or shelter of natural and/or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the presumable purpose of overnight occupancy.

(c) *Public lands:* Any lands or interest in lands owned by the United States and administered by the Bureau of Land

Management without regard to how the United States acquired ownership.

(d) *Authorized officer:* Any employee of the Bureau of Land Management who has been assigned the authority to perform under Title 43 of the Code of Federal Regulations.

(e) *Designated sites or areas:* Areas or sites that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include features such as: defined spaces for parking, camping or boat launching, sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

Penalties

Violations of this rule by a member of the public are punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

G. William Lamb,

Associate State Director.

[FR Doc. 92–30202 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–940–03–4210–02]

Notice of Scoping; Road Rights-of-Way Under Revised Statute 2477

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management is preparing a report to Congress concerning the history, as well as current and future administration of road rights-of-way granted under the provisions of Revised Statute 2477 (R.S. 2477). This statute was repealed with the enactment of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579), but valid existing rights were protected. The report will address the impacts of current and potential claims of R.S. 2477 rights-of-way and possible alternative methods for assessing the validity of such claims, and alternatives to obtaining rights-of-way. Public input from all Western public land states and other affected interests is being sought.

SUPPLEMENTARY INFORMATION: Conference Report 102–901, which accompanied the 1993 Appropriations Act for the Department of the Interior and related agencies, directed the Department of the Interior to report to the appropriate Congressional committees on the following aspects of the management of R.S. 2477 rights-of-way. Input regarding all of the information listed below is requested from all Western public land states and affected interests.

1. The likely impacts of current and potential claims under R.S. 2477 on: The management of Federal lands; access to Federal lands, private lands, State lands, Indian and Native lands; and multiple use activities.

2. The current status of claims under R.S. 2477.

3. Possible alternatives for assessing the validity of claims under R.S. 2477.

4. Possible alternatives to obtaining rights-of-way.

Other significant aspects of the report include the following:

The Bureau of Land Management has been charged with the preparation of this report, which will be completed by a task force based in the Utah State Office, and supplemented by additional Bureau of Land Management task force members from other Western public land states and representatives from other Federal land managing agencies.

There are two phases of work associated with this report which must be submitted to Congress by May 1, 1993. The first phase is information gathering, and will consist of internal research, requests for written input from the public, and scoping meetings to gather additional information. The information gathering phase will end on January 4, 1993. Examples of the types of information desired include:

—Historical information on legislative intent of R.S. 2477 and the Federal Land Policy and Management Act;
—Regulations, policy and guidance on handling assertions of rights under R.S. 2477;
—State statutes in effect since the passage of R.S. 2477 and dates of repeal, if applicable;
—Case law related to this subject;
—Status of current claims under R.S. 2477;
—Impacts on the multiple use activities and management of Federal lands;
—Alternatives for assessing the validity of claims, and anticipated impacts;
—Alternatives for obtaining rights-of-way, and anticipated impacts;
—Any other issues or concerns.

The second phase is reporting, where public input and data collection will be used to prepare a draft report that will include legislative history, issues and concerns, impacts to public and private lands/interests, analysis of alternative methods of assessing the validity of R.S. 2477 claims, and alternatives to obtaining rights-of-way. There will be public hearings associated with this phase of the report, tentatively planned for March 1993, in Salt Lake City, Utah and Fairbanks and Anchorage, Alaska.

Any group or individual desiring to provide input into the preparation of this report or interested in receiving a copy of the draft report, can be put on the mailing list by writing to the R.S. 2477 Project listed below. Anyone submitting material for the information gathering stage will automatically be added to the mailing list.

FOR FURTHER INFORMATION CONTACT: Ted Stephenson or Terry Catlin, R.S. 2477 Project, Utah State Office BLM, P.O. Box 45155, Salt Lake City, Utah 84145–0155; Telephone (801) 539–4105.

Ted D. Stephenson,

R.S. 2477 Task Force Leader.

[FR Doc. 92–30201 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Convention on International Trade in Endangered Species of Wild Fauna and Flora; Conservation of the Rhinoceros; Twenty-Ninth Meeting of the Standing Committee; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The world's total population of the five living species of rhinoceroses is now estimated to be less than 10,000 in the wild and 1,000 in captivity, an 85 percent decline since 1970, and the African black rhino in particular is now undergoing a catastrophic population crash. This notice requests comments on a number of potential rhinoceros conservation actions proposed for the consideration of party countries to the Convention on International Trade in Endangered Species (CITES), in preparation for a proposed meeting of rhinoceros range states and assistance donors in Kenya, in February or March, 1993, and on both rhinoceros and other CITES issues to be taken up at the Twenty-Ninth Meeting of the CITES Standing Committee, to be held in Washington, DC, in March. It also requests comments on what action should be taken in response to a petition from two conservation organizations requesting certification of Asian rhino horn trading countries under the Pelly Amendment to the Fishermen's Protective Act.

DATES: A public meeting will be held at 1 p.m. on Thursday, 21 January 1993, in the North Penthouse, Main Interior Building, 18th and C Streets, NW., Washington, DC. The Fish and Wildlife Service (Service) will consider written comments received by 29 January 1993.

ADDRESSES: Comments should be submitted to the Director in care of the Chief, Office of Management Authority,

4401 Fairfax Drive, room 432, Arlington, Virginia 22203, telefax 703–358–2281.
FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority at the above address, telephone 703–358–2093.

SUPPLEMENTARY INFORMATION:

Background

Four of the world's five species of rhinos are among the most highly endangered of all living mammals, due to poaching for their exceedingly valuable horn, as well as the loss of their habitats as a result of human population growth throughout Africa and Asia. A recent report by the TRAFFIC Network (an international wildlife trade monitoring organization based in Cambridge, England) estimates the following remaining populations of each species:

1. Javan rhino (*Rhinoceros sondaisuc*): Less than 80 animals, confined to a single isolated peninsula in Western Java, Indonesia;

2. Sumatran rhino (*Dicerorhinus sumatrensis*): 500–900 animals, declining throughout its Southeast Asian range due to deforestation and hunting;

3. Great one-horned rhino (*Rhinoceros unicornis*): About 2,000 in Nepal and the Indian states of Assam and West Bengal, hopefully stable but subject to periodic poaching;

4. Black rhino (*Diceros bicornis*): Currently undergoing a catastrophic population decline, with even TRAFFIC International's July 1992 estimate of 2,400-already down from 3,500 a year ago and 65,000 in 1970-now appearing to be too high, based on the most recent reports from Zimbabwe, the country with the largest remaining population but also the highest rate of poaching;

5. White rhino (*Ceratotherium simum*): About 5,000 members of the Southern subspecies (*C. s. simum*) in South Africa represent the only rhino taxon which currently seems secure (but still vulnerable), and the northern subspecies (*C.s. cottoni*) has been reduced to less than 30 animals in a single park in Zaire.

Because of their imperiled or vulnerable status, in 1973 all five rhino species were listed in Appendix I of the Convention on International Trade in Endangered Species (CITES), and all except the Southern subspecies of the white rhino (*Ceratotherium simum*) are also now listed as endangered species under the U.S. Endangered Species Act. However, the prohibitions on international commercial trade attendant to the CITES Appendix I listing have not been effectively implemented, and rhino populations have continued to decline. Rhino horn is highly prized in North and South Korea, Taiwan, and China as a fever-reducing drug, and in Yemen for ceremonial dagger handles. Unfortunately, as rhino populations have plummeted the price paid for horn has risen, so that it is now more valuable than gold. Rhino range states, most of which are among the world's poorest countries, have been unable to halt the activities of poachers and the middlemen who pay them for illegally taken horn. Many of the Asian rhino horn consumers who ultimately drive the cycle of poaching live in wealthier societies and can afford to pay ever higher prices for a mystically valued and increasingly scarce commodity.

At the third CITES Conference of the Parties in 1981 in India, recognizing that the Appendix I trade prohibitions had not stopped the poaching and illegal trade, the party countries adopted resolution Conf. 3.11, calling on the CITES Secretariat to urge both party and non-party countries to halt all international trade in rhino products. When it became clear that this resolution had not been successful, at the sixth Conference of the Parties in 1987, in Ottawa, Canada, the parties adopted a stronger resolution Conf. 6.10, which called for a complete prohibition on all domestic and international trade in rhino products (other than legal hunting trophies); use of economic, political, and diplomatic pressure on countries continuing to allow trade; the destruction of all government and parastatal stocks of horn; increased law enforcement action against poachers and traders; encouragement of the use of substitutes for rhino horn; and development of rhino conversation strategies.

Actions taken to implement the Ottawa resolution were also not sufficient to stop the rhinos' decline. However, there was little opportunity for discussion of the rhino trade at the next CITES Conference in Switzerland in 1989, due to the time consumed by the debate on the status of the African elephant and the ivory trade. The rhino discussion was resumed at the 1992 CITES Conference in Kyoto, Japan, where the Southern African nations proposed to open up legal, sustainable trade in rhino horn removed from living animals as part of a captive breeding or ranching operation, in conjunction with the sale of stockpiles of rhino horn, as a means of raising funds for rhino conservation programs. These proposals were rejected because the majority of party countries felt that they did not meet CITES' criteria for such down-listing actions. Nevertheless, the parties engaged in a general discussion of the critical need for further action, ranging from innovative methods of legalizing (and hopefully controlling) the trade to the imposition of sanctions against the Asian rhino horn consuming countries and entities. No agreement was reached, and so the issue was carried over to CITES committees scheduled to meet later in the year.

At its June, 1992 meeting in Switzerland, the CITES Standing Committee adopted a resolution calling for a number of rhino conservation actions which are detailed below. The United States, as a member of the Standing Committee, supported the adoption of this resolution, and also participated actively in a further discussion of rhino alternatives at the July meeting of the CITES Animals Committee in Zimbabwe. The Animals Committee developed an expanded list of potential conservation measures which the parties should consider (also detailed below). Finally, in August, the Executive Director of the United Nations Environmental Program (UNEP), at the urging of the CITES Secretary General, decided to convene a conference of rhino range states and potential donors (both governmental and non-governmental), to take place at the UNEP headquarters in Nairobi, Kenya, in January, 1993. UNEP also decided to send a rhino trade expert on a mission to key rhino range states and consumers—including Zambia, Zimbabwe, South Africa, Namibia, Hong Kong, Taiwan, Korea, United Arab Emirates, and Yemen—to help close down the trade in illegal rhino horn. He will also urge Yemen and Korea to become parties to CITES. A report detailing the results of the mission and making recommendations is expected to be available by January, 1993.

The first CITES Asian Region Meeting was held in Thailand in early November, 1992. Participating countries expressed profound alarm at the precipitous decline of rhino populations worldwide, and called on all consuming countries to abide by the resolutions adopted at the 1987 Ottawa CITES Conference and at the June, 1992 Standing Committee Meeting.

Potential Conservation Measures, Including Pelly Amendment Certification

The CITES Standing Committee and Animals Committee meetings discussed above each developed lists of potential rhino conservation actions for consideration by the parties. Some of these actions are identical to those recommended in the New Delhi and

Ottawa CITES resolutions, but others are new, innovative, or even unprecedented. The Service has already started an internal review of these and other actions which it might undertake to address this critical situation, and is actively soliciting further information and views from all knowledgeable organizations and individuals.

In addition, on 12 November 1922, the World Wildlife Fund and the National Wildlife Federation submitted a petition to the Secretary of Interior, requesting that China, South Korea, Taiwan, and Yemen be certified to the President under the terms of the Pelly Amendment to the Fishermen's Protective Act because of their continuing involvement in the rhino horn trade. The petition outlines evidence that these nations together are responsible for creating the demand which has resulted in the death of over 60,000 rhinos since 1944. Since this petition addresses actions which are included in the second recommendation of the CITES Standing Committee resolution, it is discussed in category 2, below

The CITES Standing Committee resolution asks all party nations to:

1. Make the rhino trade a special project for Standing Committee activities leading up to the Ninth Conference of Parties (COP9): The twenty-ninth meeting of the Standing Committee will take place in Washington, DC, in March, 1993, and the Ninth Conference of the Parties will take place in the United States in the second half of 1994. As host country for both meetings, the United States, represented by the Service in close cooperation the Department of State, will strongly support efforts by the Standing Committee Chairman, the CITES Secretary General, and CITES party countries to keep rhino alternatives at the forefront of agenda items for each meeting.

2. Use their influence with other party and non-party governments to convince them to constrain illegal trade and to acquire and destroy stockpiles of illegal rhino horn, with failure of trading governments to take such action viewed as a serious infraction likely to result in calls for trade bans or appropriate actions: The existence of huge stockpiles in Asia derived from poached, illegally exported horn is one of the greatest obstacles to gaining control of the current situation, whether the desired outcome is immediate cessation of all trade, tapering off of trade gradually during an interim educational and cultural adjustment period, or eventual institution of a new, legal trade. However, in view of the large social and economic value of these stockpiles, substantial international incentives or pressure will be needed to get governments involved to undertake effective registration, confiscation, or destruction programs.

On 12 November 1992 the Presidents of the World Wildlife Fund and the National Wildlife Federation petitioned the Secretary of Interior to invoke the Pelly Amendment to the Fishermen's Protective Act of 1967 against these countries. The petition outlines evidence that the continuing rhino horn trade in these four countries has resulted in the death of more than 60,000 rhinos (85 percent of the world's rhino population) since 1970. All four continue to allow internal rhino horn trade for medicinal purposes, or in the case of Yemen, for traditional dagger handles. Korea, Yemen, and Taiwan are not parties to CITES and are thus not bound by its trade prohibitions; China, while it is a CITES party, can never achieve any real control of imports, the petitioners contend, as long as it continues to allow a thriving internal trade.

WWF and NWF argue that this ongoing trade warrants certification to the President that these four countries are undermining the effectiveness of CITES. The Pelly Amendment calls for the Secretary of the Interior to make such a certification whenever he determines that the nationals of a country are engaged in taking or trade which undermines the effectiveness of any international program for the protection of endangered species; the legislative history of the Pelly Amendment specifically mentions CITES as one of the international programs covered by the law. Once certification is made, the President has discretionary authority to impose certain import restrictions; certification can be terminated only if the actions which precipitated the certification are ended. The Service seeks all available information about the rhinoceros trade and about what action the Secretary of the Interior should take on the petitioned Pelly Amendment certification of these four countries.

3. Support and encourage agencies and countries which are working towards rhino conservation compatible with CITES: The Service is continuing close contacts with rhino range countries. Over the past three years, a number of Service grants to African nations for elephant conservation under the African Elephant Conservation Fund (AECF) have had significant secondary benefits to rhino protection, through enhancement of anti-poaching capabilities; the Service is now considering changing the criteria for award of grants under the AECF during Fiscal Year 1993 to give priority to projects having rhino, as well as elephant, benefits. Recent Service contacts with African nations experiencing heavy poaching has indicated that field priorities are for training of anti-poaching forces, providing aircraft for surveillance and communications equipment, and better cross-border coordination of anti-poaching efforts. Asian countries, at the recent Asian Regional CITES Meeting, called for increased financial and technical assistance to range states.

4. Direct the CITES Secretariat to collect information on the rhino trade; to make contacts with party and non-party nations to urge control of the trade, education of the public, and research on substitutes for rhino horn; to provide support to range countries; and to urge re-opening of a TRAFFIC office in Taiwan to monitor wildlife trade, including rhino horn. The UNEP-sponsored mission to key African and Asian countries, which was conceived after the Standing Committee meeting, will result in a new report on the state of conservation and trade, and the TRAFFIC Network has suggested that exiting information may be sufficient for decision-making. The Nairobi rhino conference will provide an opportunity for assessment of whether there is the need—or the time—for undertaking new studies. (See also the discussion of other *research* activities below, under the CITES Animals Committee recommendations.) The Service will continue to encourage the Secretariat to use its offices with party countries to effect trade controls, and will consider all of the measures discussed in this notice to effect similar changes in non-parties. The U.S. has already agreed to consider financial support to the re-opening of the TRAFFIC office in Taiwan.

Using these Standing Committee recommendations as a starting point, the CITES Animals Committee recommended that CITES parties also consider:

5. Undertake field Management actions, including endorsement of current dehorning and translation programs; support for installation of breeding nuclei in areas safe from poaching; creation of incentive systems for detecting poachers; use of sport-hunting as a management and revenue-enhancing technique and acceptance of "dehorning" safaris: No Service or other U.S. government funds have so far been provided specifically for rhino dehorning or translocation projects in Africa, nor have any funds from the

fiscal year 1993 appropriation been identified which could be used for such projects. However, if available evidence indicates that dehorning or translocation is feasible and is likely to reduce the level of poaching, the Service could work with other agencies to encourage these programs. Previous Service grants for African Elephant conservation projects have included establishment of incentive awards for anti-poaching forces, undoubtedly benefiting rhinos as well as elephants; the Service could revise its African Elephant Conservation Fund guidelines for fiscal year 1993 to emphasize projects which address the needs of both species. Regarding trophy imports, the Service already allows import of sport-hunted white rhinos taken in South Africa, having determined that these animals are not endangered and that the hunting program generates revenues which are used to enhance the conservation of the species. Consideration could be given to allowing the non-commercial import of rhino horn trophies taken during safaris where the hunter has paid to participate in tranquilizing and dehorning of animals; the trophy fees would help pay for the operation, and after dehorning animals would be released unharmed and hopefully undesirable to poachers. However, no permit applications have so far been received, and the Service needs more information on the success of dehorning programs.

6. Encourage trade and law enforcement actions, including: recognition of the potential benefits of sanctioned trade, within a law enforcement framework of tight control; and implementation of import/export legislation and improved controls of stockpiles of rhino horn, including registration: Some range countries are reportedly considering a sale of their stockpiles of horn (obtained from animals found dead or confiscated from poachers) in order to gain funds needed for rhino protection programs; some believe that this might also temporarily depress the price for illegal horn, perhaps also reducing poaching. Without a significant change in CITES policy, however, such transactions would be considered to be serious CITES infractions. In addition, it is also possible that Asian traders dedicated to building their stockpiles against the day when all rhinos are gone might be willing to buy all available legal horn while still financing poaching operations. The UNEP expert's new report on the rhino trade may shed further light on the possible market effects of such a one-time sale. An alternative would be acquisition of stockpiles by other governments or by private organizations desiring to remove them from commercial trade. The Service also needs more information on whether it should support non-commercial acquisition of stockpiles, or their use in highly regulated transition programs which would provide for a gradual tapering off of internal commercial use as education programs proceed; as noted previously, total inventory and government control of stockpiles would be a prerequisite in either case.

Rhino horn can be periodically harvested from living animals, like vicuna wool (and unlike elephant ivory); the institution of a long-term, sustainable, legal trade from dehorned animals could provide a stable source of income for rhino conservation, provided dehorning does not have unintended, adverse effects on rhino behavior and survival. However, such trade would not be legal under the current the CITES Appendix I listing of all rhino species, and it could also reinforce demand for poached horn and provide the cover for the continuation of illegal trade. For a legal trade program to succeed, the long-term biological effects of dehorning would have to be evaluated. In addition, range countries would have to make a firm commitment to the use of revenues received for rhino conservation, rather than for the many other competing social and economic priorities which these nations face.

Particular attention would have to be given to improving wildlife law enforcement capabilities, including uncompromising action against middlemen who put poachers into the field, and perhaps coordinated cross-border operations and/or treaties allowing "hot pursuit" across these borders. The Service strongly supports extradition of poachers fleeing across international borders; consideration could also be given to proposals for establishing regional anti-poaching forces which could be deployed at the request of countries experiencing critical poaching or illegal trade problems. Finally, rhino horn consuming nations could show their will and competence to gain control of their existing stockpiles and control future imports, whether motivated by the threat of multilateral or unilateral trade sanctions or the incentive of future legal trade. The Service seeks more information on what specific enforcement actions these countries should take.

7. Conduct short-term research projects on rhino conservation and trade: The Service can encourage research projects which address immediate questions about the conservation needs and the rhino horn trade, in Asia as well as in Africa. The CITES Standing Committee Chairman has suggested that CITES parties should concentrate on "assessing the consequences of legalizing a controlled trade in horn from dehorning sources * * * attendant upon any COP9 approval by parties to down-listing rhino horn from dehorning", either through immediate new studies or through utilization of existing work already done on stockpiles, markets, etc. More information is needed about research priorities, such as assessment of the success of dehorning operations and other protection strategies, determining the demand for rhino horn, and predicting the likely outcome of various conservation alternatives. While granting the urgent need for short-term research, the Service also seeks information about how long-term research, the Service also seeks information about how long-term research and conservation measures should be developed, particularly in view of the length of time which may be required for law enforcement and educational programs to produce a reduction is demand.

8. Initiate public awareness programs to promote understanding and new approaches, and including rhino conservation in all CITES seminars: The Service believes that public awareness programs must be culturally based to appeal to the motivations most appropriate for the particular society involved; Asian governments could show that they are taking responsibility for the effects of their rhino horn consumption by immediately developing and implementing educational programs to bring about changes in the attitudes of their citizens. Under current conditions, the supply of horn will be exhausted by the continuing demand; the Service seeks information on how these countries can reverse this situation and reduce the demand *before* the wild populations of rhinos completely disappear.

At the recent Asian CITES Regional Meeting, the Service participated and played an active role in the adoption of an initiative to monitor the rhino horn trade; Asian countries also appealed to all consuming countries to abide by CITES resolutions—particularly resolution 6.10 and the June Standing Committee resolution—and cease all trade. This is particularly significant since the three rhino species native to Asia together exist in lower numbers than the two African species (though the gap is closing), and all of the rhino

poaching in Africa or Asia is ultimately the result of Asian demand. The Service, through its close working relationship with the CITES Secretariat, the United States membership on the Standing Committee, and its participation in the Animals Committee and other meetings, will work with the CITES Secretariat to encourage the inclusion of the rhino issue in similar international meetings in the future.

Twenty-Ninth Meeting of the CITES Standing Committee

The Service, with the assistance of the Department of State, will be hosting the Twenty-ninth Meeting of the CITES Standing Committee in Washington, DC, from 1–5 March 1993, coinciding with the twentieth anniversary of the negotiation and signing of CITES, at a plenipotentiary conference in Washington, DC, on 3 March 1973. While the Standing Committee meeting is an executive session not open to the public, the Service anticipates that there will be a public announcement or event, as well as a ceremony for Standing Committee members and party country observers, to commemorate the CITES anniversary during the week. In addition, although the agenda of substantive issues for the meeting has not yet been developed, it will undoubtedly include rhino conservation options and a number of other CITES issues of general interest. Thus the Service is also seeking comments and suggestions on such as issues as: Development of new criteria for listing of species on CITES appendices; review and revision of CITES resolutions; regulation of wildlife trade in Italy and Thailand; and other ongoing CITES issues. The agenda for the meeting will be available from the Service's Office of Management Authority (see **ADDRESSES** section) as soon as it has been received. It will also be distributed at the public meeting discussed below.

Public Comments Solicited

The Service requests comments from all interested organizations and individuals on all of the potential rhino conservation activities suggested by CITES committees, on the petitioned certification of these countries under the Pelly Amendment, on any other rhino conservation measures not addressed in the discussion, and on the other CITES issues discussed above relevant to the Standing Committee meeting. Comments should be sent to the address given above (see **ADDRESSES** section) by 29 January 1993 in order to ensure their consideration. The Service will also hold a public meeting to solicit information and views on these issues, as well as other CITES issues relevant to the March meeting of the CITES Standing Committee, at 1 p.m. on 21 January 1993 in the North Penthouse of the Main Interior Building, 1849 C Street, NW., Washington, DC.

Author

The primary author of this notice is Marshall P. Jones, Chief, Office of Management Authority (telephone 703/358–2093).

Dated: November 25, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30223 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material law be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0063), Washington, DC 20503, telephone 202–395–7340.

Title: Coal; Production and Reclamation Fee Report, OSM–1

OMB Number: 1029–0063

Abstract: This Part requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None

Frequency: Monthly

Description of Respondents: State Regulatory Authorities

Estimated Completion Time: 4 hours

Annual Responses: 170,580

Annual Burden Hours: 622,500

Bureau Clearance officer: John A. Trelease (202) 343–1475

Dated: October 8, 1992.

John P. Mocsseo,

Chief, Division of Technical Services.

[FR Doc. 92–30239 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0051), Washington, DC 20503, telephone 202–395–7340.

Title: Permanent Program for Inspection and Enforcement—30 CFR part 840

OMB Number: 1029–0051

Abstract: In order to ensure compliance with 30 CFR part 870, a quarterly report is required of coal produced for sale, transfer or use nationwide. Individual reclamation fee payment liability is based on this information.

Bureau Form Number: OSM–1

Frequency: Quarterly

Description of Respondents: Coal mine and coal preparation plant operators

Annual Responses: 15,000

Annual Burden Hours: 4,089

Estimated Completion Time: 16 mins

Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: October 8, 1992.

John P. Mocsseo,

Chief, Division of Technical Services.

[FR Doc. 92–30240 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32035]

Fox Valley & Western Ltd.—Exemption, Acquisition and Operation—Certain Lines of Green Bay and Western Railroad Co., Fox River Valley Railroad Corp., and the Ahnapee & Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343 *et seq.*, the acquisition by Fox Valley & Western Ltd. of substantially all of the assets of the Fox River Valley Railroad Corporation, the Green Bay and Western Railroad Company and its wholly owned subsidiary, the Ahnapee & Western Railway Company.

DATES: The exemption is effective on December 30, 1992. Petitions for stay must be filed by December 20, 1992 and petitions for reconsideration must be filed by December 24, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32035 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representatives: Robert H. Wheeler, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Suite 2400, Chicago, IL 60601.

and

Janet H. Gilbert, 6250 North River Road, Suite 9000, P.O. Box 5062, Rosemont, IL 60017–5062.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing-impaired is available through TDD services (202) 927–5721.]

Decided: December 4, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips. Vice Chairman McDonald and Commissioner Phillips commented with separate expressions. Chairman Philbin dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30280 Filed 12–11–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32202]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.

Southern Pacific Transportation Company (SPT) has agreed to extend for an additional 180 days, its previous grants of 4.7 miles of overhead trackage rights to Peninsula Coorridor Joint Powers Board (JPB) between Santa Clara Junction (milepost 44.0), and Tamien, CA (milepost 48.70).[1] The extension was to become effective on or after December 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market St., suite 2300, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 8, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30278 Filed 12–11–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32200]

Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to grant trackage rights to Southern Pacific Transportation Company (SP) over 4.7 miles of JPB's lines, between Santa Clara Junction (milepost 44.0) and Tamien (milepost 48.70), CA. The trackage rights are to be on an interim basis (for a period of 180 days) and were to become effective on or after December 1, 1992.

This grant of trackage rights is one of a series of transactions[1] that will facilitate freight, intercity passenger, and commuter service between Santa Clara Junction and Tamien, CA, during the transfer of commuter operations from SP to Amtrak. This notice is related to a notice filed in Finance Docket No. 32202, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company, in which SP is granting JPB trackage rights over SP lines, on an interim basis for a period of 180 days.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, Room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employee affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast RY., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: December 8, 1992.

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[1] SPT and JPB own parallel lines between these points. They recently agreed to grant limited, 90-day term trackage rights to each other while they studied the feasibility of entering into a coordinated use agreement to achieve more efficient freight, intercity passenger, and commuter train operations. See Finance Docket No. 32094, Penin. Corr. Jt. Powers Bd.—Tr. Rts. Exemp.—Sou. Pac. Transp. Co. (not printed), served July 13, 1992, and Finance Docket No. 32091, Sou. Pac. Transp. Co.—Tr. Rts. Exemp.—Penin. Corr. Jt. Powers Bd. (not printed), served July 13, 1992. The term was subsequently extended for an additional 60-day period in Finance Docket No. 32159, Penin. Corr. Jt. Powers Bd.—Tr. Rts. Exemp.—Sou. Pac. Transp. Co. (not printed), served October 8, 1992, and Finance Docket No. 32161, Sou. Pac. Transp. Co.—Tr. Rts. Exemp.—Penin. Corr. Jt. Powers Bd. (not printed), served October 7, 1992. This further extension is necessary because the parties have been unable to complete their negotiations. JPB has agreed to grant SPT a similar trackage rights extension in Finance Docket No. 32200.

[1] Verified notices have been filed and approved in Finance Docket No. 31960, Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Company (not printed), served January 17, 1992, to exempt JPB's and Samtrans' acquisition of certain SP main lines; in Finance Docket No. 31963, Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board and San Mateo County Transit District (not printed), served January 17, 1992, to exempt JPB's and Samtrans' grant back to SP of trackage rights over certain main line that they are acquiring from SP; in Finance Docket No. 31965, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company (not printed), served January 17, 1992, to exempt SP's related grants of certain trackage rights to JPB; in Finance Docket No. 32091, Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board (not printed), served July 13, 1992, to exempt JPB's related grants of certain trackage rights to SP on an interim basis for a period of 90 days; and in Finance Docket No. 32094, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company (not printed), served July 13, 1992, to exempt SP's related grants of certain trackage rights to JPB, also on an interim basis for a period of 90 days.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-30279 Filed 12-11-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; the SQL Access Group, Inc.

Notice is hereby given that, on July 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the SQL Access Group, Inc. ("the Group") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and its general areas of planned activity, are as follows: The SQL Access Group, Inc., Manchester, NH; and X/Open Company Limited, Reading, United Kingdom, are current parties to the venture. Current members of the SQL Access Group are: Apple Computer, Cupertino, CA; Boeing Computer Services, Seattle, WA; Borland International, Scotts Valley, CA; British Telecom Research, Ipswich, Suffolk, United Kingdom; Bull HN Information Systems, Inc., Phoenix, AZ; Cincom Systems, Cincinnati, OH; Cognos Incorporated, Ottawa, Ontario, Canada; Computer Associates Int'l, Garden City, NY; Computer Corporation of America, Cambridge, MA; Digital Equipment Corp., Nashua, NH; E.I. DuPont de Nemours & Co., Inc., Newark, DE; Fujitsu America, Inc., San Jose, CA; Fulcrum Technologies, Inc., Ottawa, Canada; GUPTA Technologies, Menlo Park, CA; Hewlett Packard, Cupertino, CA; Information Builders, Inc., New York, NY; Informix Software, Inc., Menlo Park, CA; Ingress, Alameda, CA; Lotus Development Corp., Cambridge, MA; Metaphor, Mountain View, CA; Micro Decisionware, Boulder, CO; Microsoft Corporation, Redmond, WA; Mimer Software AB, Upsala, Sweden; Must Software International, Norwalk, CT; NCR/Teradata, El Segundo, CA; Novell, Austin, TX; Oracle Corporation, Redwood Shores, CA; Progress, Bedford, MA; Retix, Santa Monica, CA; Revelation Technologies, Stanford, CT; Siemens Nixdorf Information Systems, Inc., Santa Clara, CA and Muenchen, Germany; Software AG, Reston, VA and Darmstadt, Germany; Sybase, Emeryville, CA; Tandem Computers, Inc., Cupertino, CA; Unify Corporation, Sacramento, CA; Unisys, San Jose, CA; and VMark Software, Framingham, MA.

The objective of the venture is to facilitate cooperation between X/Open and the Group in accordance with procedures established by this agreement with a view to generating jointly, and publishing (either jointly or separately) computer software specifications that may be incorporated in database and applications programs to permit applications to access information stored in databases, regardless of the computer system on which the application or the database is running.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-30243 Filed 12-11-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,722]

Ozark Cutting Hermann, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Ozark Cutting, Hermann, Missouri. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,722; Ozark Cutting Hermann, Missouri (November 25, 1992)

Signed at Washington, DC, this 4th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-30164 Filed 12-11-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminarily a revised annual fee rate of .75% for calendar year 1992. This rate shall apply to all assessable gross revenues (tier 1 and tier 2) from each class II gaming operation regulated by the Commission.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch, National Indian Gaming Commission, 1850 M Street, NW., suite 250, Washington, DC 20036; telephone 202/632-7003; fax 202/632-7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating class II gaming on Indian lands.

The regulations of the Commission (25 CFR part 500) provide for a system of fee assessment and payment that is self-administered by the class II gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The Commission is unable (at this time) to adopt a final fee rate for calendar year 1992 because all class II gaming operations regulated by the Commission have not reported their assessable gross revenues and paid their fees for the first three quarters of 1992.

The regulations of the Commission and the rate being adopted today are effective for calendar year 1992. Therefore, all Class II gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission before the end of calendar year 1992 (December 31).

Dated: December 9, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

[FR Doc. 92-30316 Filed 12-11-92; 8:45 am]

BILLING CODE 7565-01-M

NUCLEAR REGULATORY COMMISSION

Studies of Plant Components Using Yankee-Rowe Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of the Nuclear Regulatory Commission will meet with the staffs of the Yankee Atomic Power Station, Nuclear Management and Resources Council (NUMARC) and other members of the nuclear industry to discuss the possible use of the Yankee-Rowe Nuclear Power Station for studies of generic plant systems, structures and components to improve our knowledge of aging and degradation.

DATE: Tuesday, January 12, 1993.

TIME: 9 a.m.–6 p.m..

ADDRESS: 11555 Rockville Pike, Room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Z. Serpan, Jr., Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington DC 20555. Telephone: (301) 492–3835.

SUPPLEMENTARY INFORMATION: This meeting was originally scheduled for November 5, 1992, but was postponed due to conflicting meetings.

Aging degradation of the systems, structures and components (SSC) of nuclear power plants has been an issue of increased concern to operators and regulators of nuclear power plants in the recent years. The USA and virtually all other countries have initiated programs to monitor, detect, and mitigate the effects of aging degradation, so as to improve current plant operations and enhance plant safety. An exceptionally valuable resource for such studies is a shut-down nuclear plant; therefore, on July 9, 1992, NRC wrote to Yankee Atomic Electric Co. as well as NUMARC, EPRI and DOE, proposing that NRC hold a meeting to discuss the possible use of the shut-down Yankee Rowe Nuclear Power Station as a source of SSC for aging degradation studies; the meeting described in this notice is a result of that invitation. The meeting is expected to include a statement by the Yankee Atomic Electric Co. of its interest in this program, and the availability of its SSC for study. NRC and other participants are expected to make statements about their plans for aging studies, and of their interest in incorporating the Yankee Rowe SSC into their plans. Other persons wishing to make statements at the meeting should inform the NRC contact person by January 5, 1993. It is expected that common interests can be identified for future action by the parties concerned.

Dated at Rockville, Maryland, this 7th day of December, 1992, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92–30263 Filed 12–11–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Director's Advisory Committee on Law Enforcement and Protective Occupations; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the tenth meeting of the Director's Advisory Committee on Law Enforcement and Protective Occupations will be held at the time and place shown below:

DATE: December 16, 1992, 1:30 p.m.

PLACE: U.S. Office of Personnel Management, room 5A06A, 1900 E Street, NW., Washington, DC.

Less than 15 days notice is being given for this meeting because of a short deadline for completion of OPM's study of pay and job evaluation issues for Federal firefighters. OPM has made a commitment to complete this study at about the same time as the study of pay and job evaluation for Federal law enforcement officers. That study has a statutory deadline of January 1, 1993.

AGENDA: The focus of the December 16th meeting will be to solicit views on the Office of Personnel Management's staff proposals for Federal firefighter pay reform.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, Director, Law Enforcement and Protective Occupations Task Force, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H30, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Persons wishing to address the Advisory Committee orally at the meeting should submit a written request no later than the close of business on December 14, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–30322 Filed 12–11–92; 8:45 am]

BILLING CODE 6325–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Extension of Approval of Collection of Information in Single-Employer Plan Terminations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested an extension of approval by the Office of Management and Budget ("OMB") of a collection of information from plan administrators of single-employer pension plans terminating under section 4041 of the Employee Retirement Income Security Act of 1974 ("ERISA"). This information collection is contained in the PBGC's termination regulations (29 CFR parts 2616 and 2617) and the implementing forms and instructions. The PBGC has requested expedited review by OMB pursuant to 5 CFR 1320.18(g) and, therefore, is publishing the revised termination forms and instructions with this notice.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0036), Washington, DC 20503, with a copy to the Pension Benefit Guaranty Corporation, Office of the General Counsel, Code 22000, 2020 K Street, NW., Washington, DC 20006. The request for extension will be available for public inspection at the PBGC Communication and Public Affairs Department, suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22000, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 ("PRA") (44 U.S.C. chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget ("OMB") with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

The Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), which amended the Employee Retirement Income Security Act of 1974 ("ERISA"), imposed new rules for, and restrictions on, the voluntary termination of single-employer pension plans. Under SEPPAA, pension plans covered by ERISA's title IV insurance program may voluntarily terminate only in a standard or a distress termination, and then only if the statutory prerequisites are satisfied. SEPPAA also mandated the submission to the Pension Benefit Guaranty Corporation ("PBGC") of information necessary for it to determine whether the requirements for a standard or a distress termination have been met. ERISA's rules for voluntary terminations were further modified by the Pension Protection Act ("PPA") (a part of the Omnibus Budget Reconciliation Act of 1987) and clarified in the Omnibus Budget Reconciliation Act of 1989.

When the SEPPAA changes were enacted, the PBGC published a Notice of Interim Procedures (51 FR 12491, April 10, 1986). That notice summarized SEPPAA's requirements relating to terminations of single-employer pension plans and described the specific steps to be followed to terminate a pension plan under SEPPAA, including temporary changes to be made to the then-current termination forms. The PBGC also published proposed regulations to reflect and interpret the new statutory termination rules (52 FR 33318, September 2, 1987, to be codified as 29 CFR parts 2616 and 2617, replacing the previously promulgated 29 CFR parts 2616 and 2617). When PPA was enacted, the PBGC published a Notice of Revised Termination Rules summarizing the PPA statutory changes in the termination requirements and describing additional temporary changes to be made to the termination forms (53 FR 1904, January 22, 1988).

On December 22, 1989, the PBGC issued new forms that incorporated the statutory rules and procedures in SEPPAA and PPA, *i.e.*, Form 500 (Standard Termination Notice, including Schedule EA–S, the enrolled actuary certification of sufficiency); Form 501 (Post-Distribution Certification for Standard Terminations); Form 600 (Distress Termination Notice of Intent to Terminate); and Form 601 (Distress Termination Notice, including Schedule EA–D, the enrolled actuary certification) (see 54 FR 52904). These forms replaced the termination forms then in use and have been approved by OMB under PRA. In February 1990, to augment Form 500, the PBGC requested OMB approval of two unnumbered forms for submitting information to the PBGC when benefits are, or may be, distributed through the purchase of irrevocable commitments from an insurer, in order that it might receive such information earlier in the termination process (55 FR 6138, February 21, 1990). Finally, in May 1992, the PBGC issued a rule requiring that information about the insurer(s) be submitted with the Form 500 or as a supplement thereto (29 CFR part 2617, subpart E, 57 FR 22167, May 27, 1992). Both modifications to the information collection were approved by OMB.

With the promulgation of its final termination regulations (appearing elsewhere in today's Federal Register) the PBGC has revised the existing forms and drafted several new forms (including instructions thereto) to be used in fulfilling the requirements under the statute and PBGC's regulations that specified information be filed with the PBGC. The final termination regulations will apply, and the revised terminations forms would be required to be used, for single-employer plan terminations for which a notice of intent to terminate is issued on or after January 28, 1993.

The final regulations generally provide for submission of required information in accordance with the termination forms and instructions (see, *e.g.*, 2616.22(a)(4); 2616.24(a); 2616.24(b)(1); 2616.29(b); 2617.25(a); 2617.28(h)). The regulations also provide for submission of certain information in specified circumstances or at the request of the PBGC (see, *e.g.*, 2616.23(d); 2616.24(c); 2617.25(b); 2617.26(d)). Finally, the regulations contain recordkeeping requirements (2616.9, 2617.10) that track those in the existing termination regulation (2617.23) and in section 107 of ERISA.

The revised termination forms and instructions parallel the forms currently in use. (Most of the specific information called for both by the current forms and instructions and by the revised forms and instructions was included in the proposed version of the termination regulations.) However, the PBGC has added three new forms: (1) Form Rep–S (Designation of Representative—Standard Terminations); (2) Form Rep–D (Designation of Representative—Distress Terminations); and 3) Form 602 (Post-Distribution Certification—Distress Termination). The PBGC developed the designation of representative forms in response to numerous requests from members of the public that it do so. (Also in response to such requests, the PBGC has decided not to require that the forms be notarized.) The post-distribution form, which parallels current Form 501, will apply only where a plan undergoing a distress termination is sufficient for at least all guaranteed benefits, and is able to close out in the private sector; while such cases will likely be rare, Form 602 should simplify the plan administrator's task in providing needed information to the PBGC.

As noted above, the new and revised forms would be required to be used for plan terminations for which a notice of intent to terminate was issued on or after January 28, 1993. The PBGC expects that the forms and instructions, as approved by OMB, will be published in the pension reporting services and be available for mass distribution by the PBGC in adequate time to be used by plan administrators who issue the notice of intent to terminate in a standard termination on or after that date; under the final regulation (§§ 2617.22 and 2617.25), the Form 500 is not due until approximately 6 to 7 months after issuance of the notice of intent to terminate. (The PBGC hopes also to have the forms available in time for use in distress terminations, where the Form 600 would have to be filed with the PBGC within the same time limits as the notice of intent to terminate issued to other parties (2616.22); plan administrators who may be initiating distress terminations on or shortly after the above effective date should contact the PBGC for copies of Form 600.)

The PBGC also notes that there will be an overlapping period of time in which both the old and new sets of forms and instructions will be in use. Plan administrators of plans undergoing terminations in progress, *i.e.*, terminations in which the notice of intent to terminate is issued prior to the above effective date, may continue to use the current forms and instructions. (The PBGC is requesting that OMB approve the current regulations and the implementing forms and instructions, without change, for use by plan administrators of terminations in progress.) Alternatively, they may use the revised forms and instructions; if they do so, they must submit completed

forms in accordance with the instructions. Plan administrators of plans undergoing terminations in which the notice of intent to terminate is issued on or after the above effective date must use the revised forms and instructions.

Because the new and revised forms and their instructions have been drafted to implement the information collection in the final termination regulations that will become effective January 28, 1993, and because their use will greatly simplify the termination process, the PBGC has requested expedited review by OMB, pursuant to 5 CFR 1320.18(g), of the information collection requirements in the final termination regulations and the implementing forms and instructions. As part of the expedited review process, the PBGC is publishing the implementing forms and instructions as an attachment to this notice.

The PBGC anticipates receiving 8,500 standard terminations and 30 distress terminations annually. Public reporting burden for this collection of information is estimated to vary from 1.5 to 288.5 hours per response, with an average of 1.888 hours per response, including the time for reviewing instructions, collecting the information from existing data sources, completing the forms, and submitting the supplemental insurer notice. Additional information to be submitted apart from the forms and instructions is included in the above average estimate.

Issued in Washington, DC, this 7th day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

BILLING CODE 7708-01-M

STANDARD TERMINATION FILING INSTRUCTIONS

DRAFT

PAPERWORK REDUCTION ACT NOTICE

The PBGC needs this information in order to determine whether to issue a notice of noncompliance under section 4041(b)(2)(C) of ERISA nullifying a proposed standard termination. You are required to provide this information pursuant to section 4041(b) of ERISA and 29 CFR Part 2617. The information provided to the PBGC may be subject to disclosure under the Freedom of Information Act and the Privacy Act, as applicable.

The estimated time needed to complete and file these standard termination forms is 1.5 hours per termination. This time is an estimated average time and will vary depending on the circumstances of a given plan.

If you have comments concerning the accuracy of this time estimate or suggestions for making the forms simpler, please send your comments to Pension Benefit Guaranty Corporation, Office of the General Counsel, (Code 22000), 2020 K Street, NW, Washington, DC 20006-1860 and Office of Management and Budget, Paperwork Reduction Project (1212-0036), Washington, DC 20503. .

I. INTRODUCTION

The plan administrator of a single-employer pension plan that (1) is covered by the PBGC insurance program pursuant to section 4021 of ERISA and (2) has sufficient assets to satisfy all benefit liabilities must file Form 500 and Form 501 with the PBGC in order to terminate the plan in a standard termination in accordance with the requirements of section 4041 of ERISA and 29 CFR Part 2617. This package contains copies of these forms and detailed instructions for completing and filing them.

Form 500 is the Standard Termination Notice that must be filed with the PBGC pursuant to section 4041(b)(2) of ERISA and 29 CFR § 2617.25 in order to advise the PBGC of a proposed standard termination and to provide various plan data. Form 500 includes Schedule EA-S and Schedule REP-S.

Schedule EA-S is the Standard Termination Certification of Sufficiency that must be used by the enrolled actuary or, in certain situations, the plan administrator to certify that a single-employer plan terminating in a standard termination is projected to have sufficient assets to provide all benefit liabilities.

Schedule REP-S is the Designation of Representative form that may be used by a plan administrator to designate a representative or representatives to act on his or her behalf before the PBGC on some or all matters relating to the termination of a specified pension plan. Schedule REP-S also may be used to revoke a prior designation.

Form 501 is the Post-Distribution Certification that must be filed with the PBGC pursuant to section 4041(b)(3)(B) of ERISA and 29 CFR § 2617.28(h) to certify that the distribution of plan assets pursuant to the standard termination was completed in accordance with section 4041(b) of ERISA and 29 CFR § 2617.28(a) and (c).

Note: *A covered single-employer plan that does not have sufficient assets to satisfy all benefit liabilities can terminate voluntarily only if the contributing sponsor(s) and each member of the contributing sponsor's controlled group satisfy the requirements for a distress termination pursuant to section 4041(c) of ERISA and 29 CFR Part 2616. You must file Form 600 and Form 601 with Schedule EA-D with the PBGC in order to terminate in a distress termination.*

If, after beginning a standard termination proceeding, you determine that the plan is insufficient for benefit liabilities, you should stop the termination process and notify the PBGC. (In very limited circumstances, the PBGC may, upon request, permit a conversion of a standard termination to a distress termination.)

The rules and procedures for terminating a single-employer pension plan in a standard termination are set forth in section 4041(a) and (b) of ERISA and 29 CFR Part 2617. The plan administrator must follow specific steps in order to have a valid standard termination. These steps include (1) issuing the notice of intent to terminate to each person who is (as of the proposed termination date) an affected party at least 60 days and not more than 90 days before the proposed termination date; (2) issuing notices of plan benefits to plan participants and beneficiaries no later than the date the Form 500 is filed with the PBGC; (3) filing a complete and accurate Form 500 with the PBGC on or before the 120th day after the proposed termination date; and (4) distributing assets to satisfy all plan obligations for benefit liabilities within a 180-day period after PBGC's 60-day period for reviewing Form 500 ends (these time periods may be extended in accordance with 29 CFR §§ 2617.26(a)(2) and 2617.28).

It is important that you follow these rules and procedures, as set forth in ERISA, PBGC's regulations, and these instructions, because failure to do so will nullify the proposed termination. In that case, if you still intend to terminate the plan, you will have to start the process again, beginning with issuance of a new notice of intent to terminate establishing a new termination date for the plan.

Note: *Whenever the PBGC has reason to believe that any of these termination requirements have not been met, or in any proposed termination that will result in a reversion of residual assets to the contributing sponsor, the PBGC may require that additional information be submitted at such time as the PBGC requests in writing.*

Finally, by no later than the 30th day after distribution is completed, you must, in accordance with these instructions, provide notice of the annuity contract to each participant and beneficiary receiving his or her benefit through the purchase of an annuity contract and file Form 501 with the PBGC.

II. DEFINITIONS

As used in these instructions –

"Affected party" means, with respect to a terminating plan, (a) each participant; (b) each beneficiary of a deceased participant; (c) each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA; (d) each employee organization that currently represents any group of participants; and (e) for any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate. In connection with any notice required under 29 CFR Part 2617, if an affected party has designated in writing another person to receive the notice, any reference to the affected party shall be deemed to refer to the designated person.

"Benefit liabilities" means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

"Code" means the Internal Revenue Code of 1986, as amended.

"Contributing sponsor" means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of ERISA and section 412 of the Code.

"Controlled group" means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined in accordance with 29 CFR Part 2612.

"Date of distribution" means (a) for benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefit passes from the plan to the insurer; and (b) for benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, *et seq.*).

"Guidelines" means the Joint Implementation Guidelines issued by the PBGC, the Department of the Treasury, and the Department of Labor on May 24, 1984, for processing defined benefit pension plan terminations involving asset reversions to the contributing sponsor.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Irrevocable commitment" means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

"Majority owner" means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly, or indirectly, 50 percent or more of (a) an unincorporated trade or business, (b) the capital interest or the profits interest of a partnership, or (c) either the voting stock of a corporation or the value of all the stock of a corporation. For this purpose, the constructive ownership rules of sections 414(b) and (c) of the Code shall apply.

"Mandatory employee contributions" means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"Notice of intent to terminate" means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of ERISA and 29 CFR § 2617.22.

"Notice of noncompliance" means a notice issued to a plan administrator by the PBGC within a 60-day (or extended) period after a complete standard termination notice has been filed, advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan is an ongoing plan. The 60-day review period begins on the day following the filing of a complete standard termination notice and includes the 60th day.

"Notice of plan benefits" means the notice to each participant and beneficiary required by section 4041(b)(2)(B) of ERISA and 29 CFR §§ 2617.23 and 2617.24, describing his or her plan benefits.

"Participant" means—

(a) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(b) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(c) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan benefits" means the benefits to which a participant is, or may become, entitled under the plan's provisions in effect as of the termination date, based on the participant's accrued benefit under the plan as of that date. Each participant's "plan benefits" equals that participant's "benefit liabilities," and the sum of all "plan benefits" equals the plan's "benefit liabilities."

"Proposed distribution date" means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a standard termination. A proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the day on which the plan administrator files the Form 500 with the PBGC.

"Proposed termination date" means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard termination notice. If a plan terminates in a standard termination, this date becomes the "termination date." A proposed termination date may not be earlier than the 60th day, nor later than the 90th day, after the date of issuance of the notice of

intent to terminate. If the notice of intent to terminate is issued on two or more dates, the proposed termination date must be between 60 and 90 days after each date of issuance.

"Residual assets" means the plan assets remaining after all benefit liabilities and other liabilities of the plan have been satisfied.

"Section 412(i) plan" means a plan described in section 412(i) of the Code and the regulations thereunder.

"Single-employer plan" means any defined benefit plan (as defined in section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA).

"Standard termination" means the voluntary termination, in accordance with section 4041(b) of ERISA and 29 CFR Part 2617, of a single-employer plan that is able to provide for all its benefit liabilities when plan assets are distributed.

"Standard termination notice" means the notice filed with the PBGC pursuant to section 4041(b) of ERISA and 29 CFR § 2617.25, advising the PBGC of a proposed standard termination. PBGC Form 500 (including Schedule EA-S and, where required, schedule REP-S) is the standard termination notice.

III. GENERAL INSTRUCTIONS FOR FORM 500 and FORM 501

The PBGC will return incomplete filings. Therefore, the filer should assure that an appropriate response is provided for each item, as follows:

1. If an item requests a numeric response, a number must be entered.

2. If an item provides a box or boxes to be checked, written responses are not acceptable.

3. No additions or deletions may be made to the certifications required to be signed by the plan administrator or enrolled actuary.

If an item requests a date, you should enter two digits in each box, *e.g.*, enter "07" for July.

Who Must File

The plan administrator or the plan administrator's authorized representative must submit all filings required to be made with the PBGC. Schedule REP-S (PBGC Form 500) must accompany the filing if it is made by a representative of the plan administrator.

Note: While an authorized representative may submit the filing and sign any cover letter, the plan administrator must sign the Form 500, Schedule REP-S (where required), and Form 501 in all cases. If the designated plan administrator is a board (or similar group) composed of employer and employee representatives, then at least one employer representative and one employee representative must sign the forms. If the designated plan administrator is other than an individual or a board, the forms must be signed by an officer of the designated plan administrator who has the authority to sign on behalf of that entity. Schedule EA-S must be signed by an enrolled actuary unless the plan is a section 412(i) plan. In that case, the Schedule EA-S must be signed either by the enrolled actuary or by the plan administrator.

The PBGC will accept reproductions or other facsimiles of the forms. However, all signature pages require an original signature.

What and When to File

Form 500 with Schedule EA-S and Form 501 must be filed with the PBGC for all standard terminations.

Form 500 with Schedule EA-S and any required supplemental information must be filed simultaneously no later than 120 days after the proposed termination date.

Form 501 must be filed no later than 30 days after completion of the distribution of plan assets pursuant to the termination. The distribution of plan assets must generally be completed within 180 days after the expiration of the PBGC's 60-day (or extended) review period for determining whether to issue a notice of noncompliance. (See Section VII of these instructions for the requirements for the distribution of plan assets and for extension of the distribution deadline.)

The filing date for a document is the date on which the PBGC receives it, provided it is received no later than 4 p.m. on a weekday, other than a Federal holiday. Documents received after 4 p.m. or on weekends or Federal holidays will be deemed filed on the next regular business day.

In computing time periods, begin counting on the day after the event occurs. If the last day of the period falls on a Saturday, Sunday, or Federal holiday, then the period runs until the next regular business day.

Note: *The proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday, and is not deemed otherwise by the computation rule discussed above. For example, a notice of intent to terminate issued September 2, 1992, specifies a proposed termination date of October 31, 1992. The notice of intent to terminate was issued only 59 days, rather than the required 60 days, before the proposed termination date. The fact that October 31st falls on Saturday does not cause the time period for this purpose to run until the following Monday.*

Where to File

Any document being filed for a standard termination may be delivered by mail or by hand to:

Pension Benefit Guaranty Corporation
Case Operations and Compliance Department
Room 5500 (Code 45200)
2020 K Street, NW
Washington, DC 20006-1860

For Questions, Problems, Copies of Forms

Plan administrators who are unsure whether their plans are covered by PBGC or who have other questions or problems may contact:

FORM 500

Pension Benefit Guaranty Corporation
Administrative Review and Technical
Assistance Division (Code 45400)
2020 K Street, NW
Washington, DC 20006-1860
Telephone: (202) 778-8800

Hearing impaired persons may telephone (202) 778-1958.

These phone numbers, and all other phone numbers in these instructions, are not toll-free numbers, and the PBGC cannot accept collect calls.

To request copies of the forms, contact the Pension Benefit Guaranty Corporation's Case Operations and Compliance Department (Code 45200) at the same address shown above or by telephoning (202) 778-8800.

IV. SPECIFIC INSTRUCTIONS - FORM 500

Part I. Identifying Information

1a Enter the complete name of the plan as it appears on the plan document.

2a Enter the name, address, and telephone number of the contributing sponsor. If the plan covers the employees of more than one contributing sponsor, enter the name of the contributing sponsor with the greatest number of participants.

2b Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor by the Internal Revenue Service for income tax purposes and the 3-digit plan number (PN) assigned by the plan sponsor.

2c If the EIN/PN entered in item 2b is different from that used in earlier filings with the PBGC (including premium and reportable event filings for this plan), enter the EIN/PN previously reported.

FORM 500

2d Enter the same 4-digit industry code that you entered on your most recent PBGC Form 1 (premium) filing.

3a Enter the name, address, and telephone number of the individual, board, or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated or if the contributing sponsor is so designated, enter "same".

Part II. General Plan Information

4a If you are filing for an Internal Revenue Service determination letter, you should submit that request no later than the date on which you file the Form 500 with the PBGC. The automatic extension of the deadline for the distribution of assets (described in Section VII of these instructions) is only available to a plan that files with the IRS on or before the date the Form 500 is filed with the PBGC.

5a For this purpose, "multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group. Under such a plan, all plan assets are available to pay benefits to all plan participants and beneficiaries, regardless of employer.

7 Check whichever statement(s) best describes any change in the organization or structure of the contributing sponsor that is associated with, or resulted in, the decision to terminate the plan.

8a For this purpose, "active participants" includes both currently employed participants and separated, nonvested participants who are earning or retaining credited service under the plan.

9 Any currently employed participant who you expect will be covered under more than one type of new or existing plan should be included in each item that applies.

FORM 500

11a The proposed termination date entered in item 11a may be later than the proposed termination date specified in the notice of intent to terminate, but it may not be later than the 90th day after the issuance of the notice of intent to terminate is begun, *i.e.*, the earliest date a notice of intent to terminate is issued to any affected party.

EXAMPLE - *The plan administrator begins issuing the notice of intent to terminate on September 29, 1992, and completes the issuance to all affected parties on October 1, 1992, specifying a proposed termination date 63 days later, December 3, 1992. In item 11a, the plan administrator may specify a proposed termination date of any day from December 3, 1992, to and including December 28, 1992.*

12a Enter the earliest date any notice of intent to terminate was handed to, or deposited with a mail or courier service directed to, any affected party.

12b Enter the latest date any notice of intent to terminate was handed to, or deposited with a mail or courier service directed to, any affected party.

The "latest" date of issuance of any notice of intent to terminate is the date when the last copy is issued to any affected party reasonably known or discovered during the 60-90 day period before the proposed termination date. It is your responsibility to use your best efforts to locate all affected parties by taking all necessary and appropriate steps under the circumstances. (The discovery of additional affected parties after the above 60-90 day period will not cause the notice to be untimely if you could not reasonably have been expected to know of the additional affected parties and if you promptly issue the notice of intent to terminate to each additional affected party.)

FORM 500

13 Enter the latest date on which any notice of plan benefits was handed to, or deposited with a mail or courier service directed to, any affected party (other than any employee organization). This date can be no later than the date on which the plan administrator files the Form 500 with the PBGC.

The "latest" date of issuance of any notice of plan benefits is the date when the last notice is issued to each person reasonably identified as being entitled to a notice of plan benefits on or before the date of filing of Form 500. It is your responsibility to use your best efforts to locate all persons entitled to a notice of plan benefits by taking all necessary and appropriate steps under the circumstances. (The discovery of additional persons entitled to a notice of plan benefits after the Form 500 is filed with the PBGC will not cause such notices to be untimely if you could not reasonably have been expected to know of the additional persons and if you promptly issue a notice of plan benefits to each additional person entitled to receive one.)

14a If the PBGC is advised, before the 60-day (or extended) period in 29 CFR § 2617.26 ends, that a formal challenge to the plan termination has been initiated, the PBGC will suspend the termination proceeding and will so advise the plan administrator in writing. If the PBGC is advised of a challenge to the termination after the 60-day (or extended) period ends but before the termination procedure is concluded, the PBGC may suspend the termination proceedings and, if it does, will so advise the plan administrator in writing. For this purpose, the following definitions apply:

(1) "Formal challenge to a termination" means the occurrence of any of the following actions asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement: (A) the commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement, or (B) the commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(2) "Existing collective bargaining agreement" means a collective bargaining agreement that (A) by its terms, (i) has not expired or (ii) is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and (B) has not been made inoperative by judicial ruling.

When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms continue to apply by operation of law.

14b If you checked "Yes" in item 14a, attach a copy of the formal challenge and a statement showing what action was initiated, who initiated the action, the date it was initiated, and the current status of the challenge.

15 PBGC premiums are due for each year up to and including the plan year in which assets are distributed pursuant to the termination.

PART III. IRREVOCABLE COMMITMENTS

16a Each participant must be offered all optional forms of benefits for which he or she is eligible under the terms of the plan. Benefit liabilities may be distributed in a form other than an annuity (*e.g.*, an immediate lump sum or rollover) only if the plan provides for such a distribution and (1) for non-retired participants, the present value of the participant's benefit (valued in accordance with the rules described under "Valuation of Other Benefits" in the instructions to item 6 of Schedule EA-S), including amounts previously distributed, is $3500 or less, or

FORM 500

assets attributable to those contributions must be equitably distributed to the participants who made such contributions (see section 4044(d)(3) of ERISA and 29 CFR Part 2618).

18 Under section 4044(d)(2) of ERISA, a plan provision permitting an employer to recover residual assets, or a plan amendment increasing the amount of such assets that may revert to the employer, may not be effective before the end of the fifth calendar year following the adoption of the amendment.

Exceptions: A plan provision providing for a reversion is not subject to the five-year rule described above if (1) such a provision was adopted on or before December 17, 1987, (2) a plan that had no provision relating to a reversion to the employer adopted such a provision after December 17, 1987, and before December 18, 1988, or (3) a plan that has been in effect for less than five years has contained such a provision since the effective date of the plan.

A plan amendment increasing the amount of the reversion is not subject to the five-year rule if the amendment was adopted on or before December 17, 1987.

19a Check "Yes" if, during the 36-month period immediately preceding the proposed termination date, the plan has transferred assets or liabilities to a newly-created plan or to an existing plan or had transferred to it assets or liabilities from another plan.

19b A spin-off/termination occurs when a single defined benefit plan is split into two or more plans, in conjunction with the termination of one or more of the plans, resulting in a reversion of residual assets to the employer. If a transfer of assets or liabilities is part of a spin-off/termination, generally the termination would not be recognized and any attempt to recover residual assets would be treated as a diversion of assets for a purpose other than the exclusive benefit of employees and beneficiaries, unless the requirements set forth in the Guidelines are satisfied as follows:

SCHEDULE EA-S

(1) All participants and beneficiaries in the original plan who are covered by the ongoing plan must be given advance notice of the transaction in similar time and manner as if the entire original plan were being terminated. (These notice requirements are also set forth at 29 CFR §§ 2617.22 and 2617.23.) Accordingly, you must either hand deliver or deliver by first-class mail or courier service to the last known address of each affected party (other than a collective bargaining representative): (A) a notice describing the transaction, which must be issued no later than the latest date on which the notice of intent to terminate is issued with respect to the terminating plan; and (B) notices of plan benefits, which must be issued no later than the latest date on which notices of plan benefits are issued with respect to the terminating plan;

(2) The plan benefits under the ongoing plan of participants and beneficiaries described in (1) above must be fully vested as of the termination date of the terminating plan; and

(3) All plan benefits described in (2) above must be provided for by the purchase of annuity contracts that represent irrevocable commitments for the plan benefits of each participant or beneficiary.

V. SPECIFIC INSTRUCTIONS - FORM 500, SCHEDULE EA-S

Schedule EA-S must be used to certify that a plan terminating in a standard termination is projected to have sufficient assets to provide all benefit liabilities as of the proposed distribution date, as required under section 4041(b)(2)(A) of ERISA.

The plan administrator must file the completed Schedule EA-S together with the Form 500. The Schedule EA-S must be signed by the enrolled actuary, unless the plan is a Code section 412(i) plan. For a section 412(i) plan, either the enrolled actuary or the plan administrator must sign the Schedule EA-S.

SCHEDULE EA-S

Part I. Code Section 412(i) Plan

1 Check "Yes" if this is a plan described in Code section 412(i) and enter the name and address of the insurer in item 2.

Part II. Plan Sufficiency

3 Enter the proposed distribution date. The proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the filing date of the Form 500.

EXAMPLE - *The plan administrator files a Form 500 with the PBGC on March 30, 1992. The earliest possible proposed distribution date is May 30, 1992. The latest possible proposed distribution date is November 25, 1992.*

5 Enter the estimated fair market value of the plan assets available to pay for benefits, valued as of the proposed distribution date. Plan assets available to pay for benefits include all plan assets remaining after subtracting all liabilities (other than the future benefit liabilities that will be provided when assets are distributed). Liabilities include, *e.g.*, benefit payments due before the distribution date; PBGC premiums for all plan years through and including the plan year in which assets are distributed; expenses, fees, and other administrative costs. The enrolled actuary may include as a plan asset for this purpose the value of a commitment by a contributing sponsor or controlled group member to contribute any additional sums necessary to make a plan sufficient for all benefit liabilities, in accordance with the rules in 29 CFR § 2617.7(a).

6 Enter the estimated present value of benefit liabilities as of the proposed distribution date.

SCHEDULE EA-S

Value of Annuity Contracts

The value of benefit liabilities that will be provided through the purchase of annuity contracts is the cost quoted by an insurer to provide such benefit liabilities (see also instructions to item 14a of Form 500).

Note: *Because insurers may require that bids be exercised within a fairly short period of time, it may not be possible prior to filing the Form 500 to obtain a bid that would remain open until the proposed distribution date. Accordingly, the plan administrator is not required to actually obtain a bid before item 6 is completed.*

Value of Other Benefits

To value benefit liabilities that will be provided other than through the purchase of annuity contracts, the enrolled actuary must use an interest rate or rates determined in accordance with sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder. The interest rate(s) shall be determined as of the date set forth in the plan if the plan provision is in accord with the IRS rules concerning the date as of which the interest rate is determined; otherwise, the interest rate(s) shall be determined as of the date of distribution. (See 26 CFR § 1.417(e)-1(d)(3).)

Note: *If a plan contains a provision that complies with Treasury Reg. § 1.417(e)-1(d)(3), the interest rate is determined by substituting "date of distribution" for "annuity starting date" wherever used in the plan.*

Generally, the rate described in sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder is whichever of the following two rates or rate structures provides the greater benefit: (1) the rate specified in the plan or (2) the "applicable interest rate " (or, if the present value of vested accrued benefits exceeds $25,000

SCHEDULE EA-S

using the applicable interest rate, a rate no greater than 120 percent of the applicable interest rate).

Note: *When using the alternative 120 percent of the applicable interest rate, the resulting present value of the vested accrued benefits may not be less than $25,000.*

The "applicable interest rate" is the interest rate that would be used by the PBGC for purposes of determining the present value of a lump sum distribution on plan termination. Note: *The appropriate deferral factors must be used for valuing deferred annuities.*

The applicable interest rates and factors are published at 29 CFR Part 2619, Appendix B, and updated in accordance with that regulation. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC also makes interest rate information available through a telephone hotline. The hotline number is (202) 778-8899.

Note: *In order to facilitate the termination of a plan and distribution of assets in a standard termination, a majority owner may agree to an alternative treatment of his or her benefit by foregoing the receipt of all or part of the benefit until the benefit liabilities of all other plan participants have been satisfied. (In accordance with the Code and IRS regulations thereunder, if the present value of the benefit is more than $3,500, the spouse of the majority owner must consent to this alternative treatment of the benefit. See Treas. Reg. §§ 1.411(d)-4 and 1.417(e)-1.) An election to forego payment of benefits is permitted merely to facilitate a standard termination; if assets become available when final distribution occurs, such assets must be used to satisfy the benefit liabilities of the majority owner before any assets may revert to the contributing sponsor. See 29 CFR § 2617.7(b).*

SCHEDULE REP-S

7 Enter the total amount of residual assets.

8 Enter that portion of the amount in item 7 that will be distributed to the employer pursuant to section 4044(d) of ERISA.

9 Enter that portion of the amount in item 7 that will be distributed to participants. This amount includes the amount of the residual assets, if any, attributable to mandatory employee contributions. (The sum of the amounts in item 8 and item 9 must equal the amount in item 7.)

10 Check "Yes" if the plan has ever required that participants contribute to the plan.

If there are residual assets and the plan required employee contributions, the portion of the residual assets attributable to such employee contributions must be determined pursuant to section 4044(d)(3) of ERISA. For rules on allocating residual assets among participants and beneficiaries, see 29 CFR Part 2618.

11 State the interest rate or rates that will be used to value the benefits that are to be distributed other than through the purchase of annuity contracts and the source of those rates, *e.g.*, the rate specified in the plan or the PBGC rate(s) as of the appropriate date (see instructions to item 6, above). Include the deferral factors or rate structure that will be used to value the benefits for participants who are not immediately eligible for an annuity.

VI. SPECIFIC INSTRUCTIONS - FORM 500, SCHEDULE REP-S

Schedule REP-S may be used to designate a person or persons to represent you before the PBGC on some or all matters relating to the termination of your pension plan. Schedule REP-S (or another designation of representative form) must be filed simultaneously with Form 500 and Schedule EA-S if Form 500 is submitted by a representative or representatives of the plan administrator. However, you may file Schedule REP-S at any time that you

wish to designate a representative or representatives in connection with a standard termination. Schedule REP-S also may be used to revoke a prior designation.

Part I. Identifying Information

The information entered in Part I should be the same as that entered in Part I of the Form 500 that you filed, or are filing, with the PBGC.

Part III. Retention/Revocation of Prior Designation(s)

If you wish a previous designation for the same termination to remain in effect, check "Yes" in items 7a and 7b and attach to this schedule a copy of the earlier designation(s) of representative that will remain in effect.

Part IV. Signature

You, as plan administrator, must sign the Schedule REP-S. (The PBGC will accept facsimiles of the form, but your signature must be an original).

Note: *If the plan administrator is a board (or similar group) composed of employer and employee representatives, at least one employer representative and one employee representative must sign this form. If the plan administrator is other than an individual or a board, this form must be signed by an officer of the plan administrator who has the authority to do so.*

VII. SPECIFIC INSTRUCTIONS - FORM 501

Form 501 is the form that must be used by the plan administrator to certify that the distribution of assets was completed in accordance with section 4041(b) of ERISA. You must file Form 501 with the PBGC within 30 days after the completion of the distribution of assets.

Note: *Pursuant to section 4071 of ERISA, the PBGC may impose a civil penalty of up to $1,000 per day for each day for which the Form 501 is overdue. This penalty may be imposed beginning on the 31st day after the distribution is completed.*

You must complete the distribution of plan assets within 180 days after the expiration of the PBGC's review period for determining whether to issue a notice of noncompliance. This 180-day period may be extended according to the following rules:

Automatic extension

The distribution deadline will automatically be extended until the 60th day after the plan's receipt of a favorable IRS determination letter, if –

(1) on or before the date that the plan administrator files the Standard Termination Notice (Form 500) with the PBGC, the plan administrator submitted to the IRS a complete request for a determination letter with respect to the plan's tax-qualification status upon termination;

(2) the plan administrator does not receive the IRS's determination letter at least 60 days before the expiration of the 180-day period for distribution; and

(3) on or before the expiration of the 180-day period, the plan administrator notifies the PBGC in writing that an extension of the distribution deadline is required and certifies that the conditions in (1) and (2) have been met.

Discretionary extension

If the plan administrator will be unable to complete the distribution of plan assets within the 180-day (or extended) period, the plan administrator may file a written request with the PBGC for an extension of the distribution deadline. The PBGC will not grant any request based on: (1) insufficient plan assets to provide all benefit liabilities within the 180-day (or extended) period; (2) failure to meet the requirements for an automatic extension; or (3) failure to locate all participants and beneficiaries.

The PBGC will grant a discretionary extension only if the PBGC is satisfied that the delay in making the distribution is not due to the action or inaction of the plan administrator or the contributing sponsor and distribution can in fact be completed by the date requested.

The request must be filed no later than 30 days before the expiration of the 180-day (or extended) period, must explain the reasons for the request, and must provide a date certain by which the distribution will be made if the extension is granted. All requests for extensions must be in writing and addressed to:

Manager, Standard Processing Division
Pension Benefit Guaranty Corporation
Room 5500 (Code 45300)
2020 K Street, NW
Washington, DC 20006-1860

Part I. Distribution Information

3 Enter the PBGC Case Number. You will find this number on the letter that the PBGC sent to you acknowledging receipt of the Form 500 for this plan.

4 Enter the date on which the distribution of assets was completed.

A distribution of assets by the purchase of annuity contracts occurs when the obligation for providing the benefit liabilities passes irrevocably from the plan to the insurer.

A distribution of assets in a manner other than by the purchase of an annuity contract occurs on the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

6 If you have been unable to locate certain participants after having made a reasonable effort to do so, you must (except as described below) purchase irrevocable commitments to provide benefits for each participant who has not been located. In the alternative, if the benefit of any unlocatable participant is valued at $3,500 or less and would otherwise be distributed in a lump sum, you may deposit the monies that would otherwise be distributed into an interest-bearing bank account opened in the participant's name at a federally insured institution. In the limited case where you have made every reasonable effort to locate missing participants and to locate institutions that are willing to open individual interest-bearing accounts, but are still unable to complete the distribution in this manner, then the use of a pooled interest-bearing account may be appropriate.

If such an account (individual or pooled) is opened, it must be maintained by a fiduciary whom you have designated and who continues to have ongoing fiduciary obligations to those missing plan participants. The fiduciary must keep clear, up-to-date records of each participant's opening balance and earnings throughout the life of the account and must be available to make every reasonable effort to assist those participants who do come forward to claim their benefits.

7a As soon as practicable after a distribution by the purchase of an irrevocable commitment, either you or the insurer must provide each participant and beneficiary with a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit. If such a contract or certificate is not available before the deadline for filing Form 501, you must, no later than that deadline, provide each participant and beneficiary with a written notice stating:

(1) that the obligation for providing the benefit has transferred to the insurer;

(2) the name and address of the insurer;

(3) the name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(4) that the participant or beneficiary will receive from the plan administrator or the insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

8 Enter the name and address of the insurer(s), if any, that made an irrevocable commitment to provide benefit liabilities under the plan. The name must be the full official name of record.

FORM 501

9 Enter the name, address, and telephone number of the person keeping the plan records. The contributing sponsor or plan administrator must keep records supporting the calculation and valuation of benefits and assets for at least six years after the date the post-distribution certification is filed.

10 In reporting values, use the actual cost to the plan of the distribution (the amount of any lump sum distribution; the price paid for a nonparticipating annuity contract).

PBGC Form 500

PBGC
U.S. GOVERNMENT AGENCY

Standard Termination Notice
Single-Employer Plan Termination

Approved OMB [illegible]
Expires [illegible]

File this form with the Pension Benefit Guaranty Corporation for a standard termination for which a notice of intent to terminate is issued on or after _____.

Do NOT file this form with the Internal Revenue Service.

DRAFT

PART I. IDENTIFYING INFORMATION

1a Plan name _____

b Last day of plan year ☐☐ (Month Day)

2a Contributing sponsor

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____ Area code

b Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ Enter 9 digit EIN ☐☐☐ Enter 3 digit PN

c If you used a different EIN or PN for this contributing sponsor/plan in previous filings with the PBGC, also show the number(s) previously reported ☐☐☐☐☐☐☐☐☐ Enter 9 digit EIN ☐☐☐ Enter 3 digit PN

d Industry code ☐☐☐☐

3a Plan administrator (If same as 2a, enter "same".)

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____ Area code

3b Name, address, and telephone number of person to be contacted if more information is needed. (If same as 3a, enter "same".)

Name

Company

Address (number and street)

City or town State Zip Code Telephone number Area code

PART II. GENERAL PLAN INFORMATION

4a Have you filed, or will you file, with the Internal Revenue Service for a determination letter on the termination of this plan?

Yes ☐ No ☐

b If "Yes", enter the district:

and filing date: Month Day Year

5a Is this a multiple employer plan?

Yes ☐ No ☐

b If "Yes", attach a list of the names and employer identification numbers of all contributing sponsors.

6 Reason for plan termination (if more than one, rank in order of significance, beginning with "1" for the most important)

a____ Adverse business conditions
b____ Plan administration too costly
c____ Plan benefits too costly
d____ Restructuring of retirement program
e____ Other, specify

7 Changes in contributing sponsor associated with plan termination

a ☐ No change
b ☐ Reorganization as part of bankruptcy or similar proceeding
c ☐ Merger of existing subsidiaries or divisions not involving bankruptcy
d ☐ Sale or closing of subsidiaries or divisions not involving bankruptcy
e ☐ Acquisition by another business
f ☐ Acquisition of another business
g ☐ Liquidation

8 Number of plan participants

a Active participants _____
b Retirees or beneficiaries receiving benefits _____
c Separated vested participants entitled to benefits _____
d Total _____

9 Estimated percent of currently employed participants covered under the terminated plan you expect to be covered under --

a New or existing defined benefit plan, other than cash balance plan _____%
b Cash balance plan _____%
c New or existing profit-sharing plan _____%
d New or existing 401(k) plan _____%
e New or existing simplified employee plan _____%
f Other new or existing defined contribution plan, specify _____%
g No new plan _____%

10 If item 9a or 9b is greater than zero, will the types and levels of benefits under the new or existing defined benefit plan be substantially the same as under the old plan for all groups of participants?

Yes ☐ No ☐

11a Proposed termination date

☐☐☐
Month Day Year

b Proposed termination date stated in notice of intent to terminate (if different from 11a)

☐☐☐
Month Day Year

12a Earliest date notice of intent to terminate issued to affected parties

☐☐☐
Month Day Year

b Latest date notice of intent to terminate issued to affected parties

☐☐☐
Month Day Year

13 Latest date notices of plan benefits issued to participants or beneficiaries

☐☐☐
Month Day Year

14a Has a formal challenge to the termination been initiated under an existing collective bargaining agreement?

Yes ☐ No ☐ N/A ☐

b If "Yes", attach a copy of the formal challenge and a statement describing the challenge.

15 Have all PBGC premiums been paid to date?

Yes ☐ No ☐

PART III. IRREVOCABLE COMMITMENTS

16a May some or all of the benefits under the plan be provided by the purchase of irrevocable commitments from an insurer or insurers?

Yes ☐ No ☐

b If "Yes", enter name and address of the insurer or insurers from whom, or (if not yet known) from among whom, you intend to purchase irrevocable commitments. Note: A supplemental notice may be required.

Name (full official name of record)

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

Is this insurer licensed in a state or the District of Columbia? Yes ☐ No ☐

Name (full official name of record)

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

Is this insurer licensed in a state or the District of Columbia? Yes ☐ No ☐

PART IV. RESIDUAL ASSET PLANS

17a Will residual assets be returned to the employer as a result of this termination?

Yes ☐ No ☐

If "No", do not complete the rest of Part IV; go to Part V.

b If "Yes," enter the estimated amount $ _____

18a Is there a plan provision permitting a reversion of residual assets to the employer?

Yes ☐ No ☐

b If "Yes", was the provision adopted prior to December 18, 1988?

Yes ☐ No ☐

c If you checked "No" in item 18b, enter:

i) Adoption date of plan provision

Month	Day	Year

ii) Effective date of plan

Month	Day	Year

19a Has the plan been involved in a spin-off or other transfer of assets or liabilities within the 36-month period immediately preceding the proposed termination date?

Yes ☐ No ☐

b If "Yes", have the requirements set forth in the Guidelines been satisfied?

Yes ☐ No ☐ N/A ☐

i) If "Yes", enter date, or latest date, a description of the transaction(s) was issued to participants in the ongoing plan.

Month	Day	Year

ii) If "Yes", enter date, or latest date, notices of plan benefits were issued to participants in the ongoing plan.

Month	Day	Year

iii) If "Yes", have annuities been purchased or will annuities be purchased, to provide all benefit liabilities for participants in the ongoing plan at the time of the spin-off?

Yes ☐ No ☐

c If you checked "No" or "N/A" in item 19b, attach a statement that describes the transaction(s) and explains why the Guidelines were not, or need not have been, followed.

PART V. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that, to the best of my knowledge and belief:

- I am implementing the termination of the plan in accordance with all applicable laws and regulations; and
- the information contained in this filing and made available to the enrolled actuary is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

_____

Plan administrator's name (type or print)

_____ _____

Plan administrator's signature Date

Schedule EA-S
(PBGC Form 500)

Standard Termination Certification of Sufficiency

Approved OMB [illegible]
Expires [illegible]

DRAFT

Plan Name _____

EIN: ☐☐☐☐☐☐☐☐☐ PN: ☐☐☐

PART I. CODE SECTION 412(i) PLAN

1 Is this plan a Code section 412(i) plan? Yes ☐ No ☐

If "No", the enrolled actuary must complete Part II and Part III. Do not complete item 2 or Part IV.

If "Yes", item 2 below and all of Part II must be completed, and either Part III or Part IV must be completed and signed by the plan administrator or enrolled actuary, as appropriate.

2 Enter name and address of the insurer

Name _____

Address (number and street) _____

City or town State Zip Code _____

PART II. PLAN SUFFICIENCY

3 Proposed distribution date

☐☐☐
Month Day Year

4 Is the value of plan assets projected to be sufficient as of the proposed distribution date to provide all benefit liabilities?

Yes ☐ No ☐

If "No", the plan cannot terminate in standard termination.

5 Estimated value of plan assets as of the proposed distribution date $_____

6 Estimated value of benefit liabilities as of the proposed distribution date $_____

7 Total amount of residual assets $_____

8 Amount of residual assets to be distributed to the employer $_____

9 Amount of residual assets to be distributed to participants and beneficiaries $_____

10 Has the plan ever required employee contributions?

Yes ☐ No ☐

11 If the amount in item 8 is $1 million or more and if any benefits are to be distributed other than through the purchase of annuity contracts, attach a statement showing interest rate/structure used to value the benefits.

PART III. ENROLLED ACTUARY CERTIFICATION

I, the Enrolled Actuary, certify that:

- I have reviewed all plan documents and plan and participant data, and applied all relevant provisions of ERISA, the Code, and the regulations promulgated thereunder;

- to the best of my knowledge and belief, this plan's assets equal or exceed the value of the plan's benefit liabilities as of the proposed distribution date; and

- to the best of my knowledge and belief, the information contained in this schedule is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Enrolled actuary's name (type or print) Enrolled actuary identification number

Company

Address (number and street)

City or town State Zip Code Telephone number Area code

Enrolled actuary's signature Date

PART IV. PLAN ADMINISTRATOR CERTIFICATION FOR CODE SECTION 412(i) PLANS

I, the Plan Administrator, certify that, to the best of my knowledge and belief:

- this plan complies with section 412(i) of the Code and the regulations promulgated thereunder;

- I have reviewed all plan documents and plan and participant data, and applied all relevant provisions of ERISA and the Code and the regulations promulgated thereunder;

- this plan's assets equal or exceed the value of the plan's benefit liabilities as of the proposed distribution date; and

- the information contained in this schedule is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Plan administrator's name (type or print)

Plan administrator's signature Date

PBGC
U.S. GOVERNMENT AGENCY

Schedule REP-S
(PBGC Form 500)

Designation of Representative

Approved OMB [illegible]
Expires [illegible]

DRAFT

PART I. IDENTIFYING INFORMATION

1 Plan name _____

2 Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN — Enter 3 digit PN

3 Plan administrator

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____
Area code

PART II. DESIGNATION OF REPRESENTATIVE(S)

4 I, _____, plan administrator of the above-named pension plan, hereby appoint the following representative(s) to act on my behalf before the Pension Benefit Guaranty Corporation on all matters (other than those specifically excluded below) relating to the termination of the above-named pension plan:

5 Representative(s)

a

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____
Area code

b

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____
Area code

6 Matters excluded (list any specific acts with respect to the plan termination that you are excluding from the acts otherwise authorized in this designation): _____

_____

_____

_____

PART III. RETENTION/REVOCATION OF PRIOR DESIGNATION(S)

7a Have you filed any prior designation(s) of representative for this termination?

Yes ☐ No ☐

b If "Yes", do you want any such prior designation(s) of representative to remain in effect? (Attach a copy of all prior designations that are to remain in effect.)

Yes ☐ No ☐

PART IV. SIGNATURE OF PLAN ADMINISTRATOR

Note: The PBGC will not accept unsigned designations.

In executing this document, I certify that the foregoing is true and correct, and recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

_____ _____ _____

Signature Date Title (if applicable)

_____

Type or print name

_____ _____ _____

Signature Date Title (if applicable)

_____

Type or print name

PBGC Form 501

PBGC
U.S. GOVERNMENT AGENCY

Post-Distribution Certification for Standard Termination

Approved OMB 1212-0036
Expires 03/31/93

The plan administrator must file this form with the Pension Benefit Guaranty Corporation no later than 30 days after distribution of assets is completed.

DRAFT

PART I. DISTRIBUTION INFORMATION

1 Plan name _____

2 Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

3 PBGC Case number _____

4 Date of distribution ☐☐☐
Month Day Year

5a Were some or all of the benefits distributed through the purchase of irrevocable commitments from an insurer?

Yes ☐ No ☐

b If "Yes", were participants and beneficiaries provided with the name and address of the insurer(s) no later than 45 days before the date of distribution?

Yes ☐ No ☐

6a Were you able to locate all participants?

Yes ☐ No ☐

b If "No", were irrevocable commitments purchased or monies deposited, as required?

Yes ☐ No ☐

7a Has a copy of the annuity contract, certificate, or written notice been provided to each participant and beneficiary receiving benefits in the form of irrevocable commitments?

Yes ☐ No ☐ N/A ☐

b If "Yes", enter date, or latest date, annuity contracts, certificates, or written notices were issued to participants and beneficiaries:

☐☐☐
Month Day Year

8 Name and address of insurer(s), if any, from whom annuity contracts have been purchased

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____

Annuity contract number(s) _____

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____

Annuity contract number(s) _____

9 Location of plan records

Name

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

10 Summary of distribution of benefit liabilities

	Form	Number Of Participants/Beneficiaries	Total Value
a	Annuities		$
b	Lump sums (other than rollovers)		
	– consensual		$
	– nonconsensual		$
c	Rollovers		$
d	No distribution		$
e	TOTAL		$

PART II. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that

- I have made a reasonable effort to locate all participants;
- to the best of my knowledge and belief, benefits payable with respect to participants have been calculated and valued correctly in accordance with applicable provisions of ERISA and the regulations thereunder;
- to the best of my knowledge and belief, all benefit liabilities under the plan have been satisfied;
- to the best of my knowledge and belief, plan assets in excess of those needed to satisfy all benefit liabilities have been or will be distributed in accordance with applicable provisions of ERISA and the regulations thereunder;
- to the best of my knowledge and belief, the information contained in this filing is true, correct, and complete; and
- I am aware that records supporting the calculation and valuation of benefits and assets must be kept at least six years after the date this post-distribution certification is filed.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Name of plan administrator (type or print)

Company

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

Plan administrator's signature Date

DISTRESS TERMINATION FILING INSTRUCTIONS

DRAFT

PAPERWORK REDUCTION ACT NOTICE

The PBGC needs this information in order to determine whether the termination qualifies as a distress termination under section 4041(c) of ERISA and 29 CFR Part 2616. You are required to provide this information pursuant to section 4041(c) of ERISA and 29 CFR Part 2616. The information provided to the PBGC may be subject to disclosure under the Freedom of Information Act and the Privacy Act, as applicable.

The estimated times needed to complete and file these distress termination forms are listed below. These times are averages for the plans in each of the listed categories. These times will vary depending on the circumstances of a given plan.

Plans with under 100 participants-
Bankruptcy or insolvency proceeding .....29.35 hours
Other distress criteria.....43.75 hours

Plans with 100 or more participants-
Bankruptcy or insolvency proceeding..... 274.1 hours
Other distress criteria.....288.5 hours

If you have comments concerning the accuracy of these time estimates or suggestions for making the forms simpler, please send your comments to Pension Benefit Guaranty Corporation, Office of the General Counsel, (Code 22000), 2020 K Street, NW, Washington, DC 20006-1860 and Office of Management and Budget, Paperwork Reduction Project (1212-0036), Washington, DC 20503.

I. INTRODUCTION

The plan administrator of a single-employer pension plan that is covered by the PBGC insurance program pursuant to section 4021 of ERISA must file Form 600 and Form 601 with the PBGC in order to terminate the plan in a distress termination. (In addition, if the plan is sufficient for at least guaranteed benefits and thus closes out in the private sector, the plan administrator must file Form 602.) This package contains copies of these forms and detailed instructions for completing and filing them. The rules and procedures for terminating a single-employer plan in a distress termination are set forth in section 4041(a) and (c) of ERISA and 29 CFR Part 2616.

Form 600 is the Notice of Intent to Terminate that must be filed with the PBGC pursuant to section 4041(a)(2) of ERISA and 29 CFR § 2616.22 in order to advise the PBGC of a proposed distress termination and to provide various plan and sponsor data. Form 600 includes Schedule REP-D.

Schedule REP-D is the Designation of Representative form that may be used by a plan administrator to designate a representative or representatives to act on his or her behalf before the PBGC on some or all matters relating to the termination of a specified pension plan. Schedule REP-D also may be used to revoke a prior designation.

Form 601 is the Distress Termination Notice that must be filed with the PBGC pursuant to section 4041(c)(2)(A) of ERISA and 29 CFR § 2616.24 to provide information demonstrating satisfaction of the distress criteria and various plan, sponsor, and participant data. Form 601 includes Schedule EA-D.

Schedule EA-D is the Distress Termination Enrolled Actuary Certification that must be used by an enrolled actuary to certify the level of plan benefits that can be provided by plan assets.

Note: *A terminating plan that has sufficient assets to satisfy all benefit liabilities normally should be terminated in a standard termination, not a distress termination, even if the contributing sponsor(s) and controlled group members can meet the requirements for a distress termination, because the standard termination process is faster and less costly for the plan. You must file Form 500 with Schedule EA-S and Form 501 with the PBGC in order to terminate in a standard termination in accordance with the requirements of section 4041(b) of ERISA and 29 CFR Part 2617.*

Form 602 is the Post-Distribution Certification that must be filed with the PBGC pursuant to 29 CFR § 2616.29(b), if the plan is sufficient for at least guaranteed benefits (and thus closes out in the private sector), to certify that the distribution of plan assets pursuant to the distress termination was completed in accordance with section 4041(c) of ERISA and 29 CFR § 2616.29(a).

If, after beginning a distress termination proceeding, you find that the plan qualifies for a standard termination, you may be able to convert from a distress termination to a standard termination. In that event, please contact the PBGC Case Officer assigned to your case.

A plan may terminate in a distress termination only if the following conditions are met: (1) The plan administrator issues the notice of intent to terminate to each person who is (as of the proposed termination date) an affected party at least 60 days and no more than 90 days before the proposed termination date. (Form 600 is to be filed with the PBGC for this purpose. There is no prescribed form for the notice of intent to terminate that must be issued to the other affected parties; however, the notice must meet the requirements set forth in 29 CFR § 2616.22.) (2) The PBGC determines that the contributing sponsor(s) and each member of each contributing sponsor's controlled group satisfies at least one (but not necessarily the same one) of four statutory distress tests. (3) The plan administrator files a distress termination notice (Form 601, including a Schedule EA-D signed by an enrolled actuary) with the PBGC in a timely manner. Briefly, the four statutory distress tests are –

1. Liquidation in bankruptcy or insolvency proceedings;

2. Reorganization in bankruptcy or insolvency proceedings with court approval of the termination;

3. Inability to pay debts when due and to continue in business unless a distress termination occurs; and

4. Unreasonably burdensome pension costs due solely to a decline in employment.

It is important that you follow the rules set forth in ERISA, PBGC's regulations, and these instructions for terminating the plan, because failure to do so may nullify the proposed termination.

Note: *Whenever the PBGC has reason to believe that any of the termination requirements have not been met, or that it may be necessary or appropriate for the PBGC to institute termination or trusteeship proceedings pursuant to section 4042 or ERISA, the PBGC may require that additional information be submitted at such time as the PBGC requests in writing.*

The PBGC will trustee a plan if the plan qualifies for a distress termination and the PBGC determines, pursuant to section 4041(c)(3) of ERISA and 29 CFR § 2616.26, that the plan has insufficient assets to provide benefits guaranteed by the PBGC under section 4022(a) and (b) of ERISA.

If the PBGC determines that the plan has sufficient assets to provide at least all guaranteed benefits, the PBGC will issue a distribution notice. In that case, the plan administrator must (1) issue a notice of benefit distribution in accordance with 29 CFR §2616.27 to each participant/beneficiary no later than 60 days after receiving the distribution notice; (2) file a certification with the PBGC that the notices of benefit distribution were issued in accordance with 29 CFR § 2616.27, no later than 15 days after the issuance of the notices is completed; (3) make a distribution of plan assets in accordance with 29 CFR § 2616.29 no earlier that the 61st day, and no later than the 240th day (except as extended in accordance with Section IX, below), following completion of issuance of the notices of benefit distribution; and (4) file a Form 602 with the PBGC within 30 days after the distribution of assets is completed.

Note: ***Whenever a plan terminates in a distress termination without sufficient assets to pay all benefit liabilities, the contributing sponsor(s) and each controlled group member are jointly and severally liable to the PBGC under section 4062(b) of ERISA for the total amount of unfunded benefit liabilities under the plan.***

II. DEFINITIONS

As used in these instructions –

"Affected party" means the PBGC and, with respect to a terminating plan, (a) each participant; (b) each beneficiary of a deceased participant; (c) each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA; (d) each employee organization that currently represents any group of participants; and (e) for any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate. In connection with any notice required under 29 CFR Part 2616, if an affected party has designated in writing another person to receive the notice, any reference to the affected party shall be deemed to refer to the designated party.

"Benefit liabilities" means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

"Code" means the Internal Revenue Code of 1986, as amended.

"Contributing sponsor" means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of ERISA and section 412 of the Code.

"Controlled group" means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined in accordance with 29 CFR Part 2612.

"Date of distribution" means (a) for benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefit passes from the plan to the insurer; and (b) for benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

"Distress termination notice" means the notice filed with the PBGC pursuant to section 4041(c)(2)(A) of ERISA and 29 CFR § 2616.24. PBGC Form 601 (including Schedule EA-D) is the distress termination notice.

"Distribution notice" means the notice issued to the plan administrator by the PBGC pursuant to 29 CFR § 2616.26(c), upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits. The notice instructs the plan administrator to distribute all plan assets in accordance with section 4044 of ERISA, and details the requirements for filing the post-distribution certification with the PBGC.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001 *et. seq.*).

"Guaranteed benefit" means a benefit that is guaranteed by the PBGC under section 4022(a) and (b) of ERISA and 29 CFR Parts 2613 and 2621.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Irrevocable commitment" means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

"Mandatory employee contributions" means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"Notice of benefit distribution" means the notice to each participant and beneficiary, as required under 29 CFR § 2616.27, describing the benefit to be distributed to him or her.

"Notice of intent to terminate" means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of ERISA and 29 CFR § 2616.22. PBGC Form 600 is the notice of intent to terminate that must be filed with the PBGC. There is no prescribed form for the notice of intent to terminate for other affected parties. However, the notice must meet the requirements set forth in 29 CFR § 2616.22.

"Participant" means--

(a) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(b) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(c) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

"Proposed termination date" means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice. A proposed termination date specified in the notice of intent to terminate may not be earlier than the 60th day, nor later than the 90th day, after the date of issuance/filing of the notice of intent to terminate. If the notice of intent to terminate is issued (or filed with the PBGC) on two or more dates, the proposed termination date in the notice of intent to terminate must be between 60 and 90 days after each date of issuance (or filing). A proposed termination date specified in the distress termination notice may not be earlier than the proposed termination date specified in the notice of intent to terminate, or (except with PBGC approval) later than the 90th day after the earliest date of issuance of any notice of intent to terminate.

"Single-employer plan" means any defined benefit plan (as defined in section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA).

"Sufficient for benefit liabilities" means that there is no amount of unfunded benefit liabilities, as defined in section 4001(a) (18) of ERISA.

"Sufficient for guaranteed benefits" means that there is no amount of unfunded guaranteed benefits, as defined in section 4001(a) (17) of ERISA.

"Termination date" means the date established pursuant to section 4048(a) of ERISA.

"Title IV benefit" means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of ERISA and 29 CFR Part 2618. (This does not include any benefit that may be payable pursuant to section 4022(c) of ERISA.)

III. GENERAL INSTRUCTIONS FOR FORM 600, FORM 601, and FORM 602

The PBGC may return incomplete filings. Therefore, the filer should assure that an appropriate response is provided for each item, as follows:

1. If an item requests a numeric response, a number must be entered.

2. If an item provides a box or boxes to be checked, written responses are not acceptable.

3. No additions or deletions may be made to the certifications required to be signed by the plan administrator or enrolled actuary.

If an item requests a date, you should enter two digits in each box, *e.g.*, enter "07" for July.

Who Must File

The plan administrator or the plan administrator's authorized representative must submit all filings required to be made with the PBGC as part of a distress termination. Schedule REP-D (PBGC Form 600) must accompany the filing if it is made by a representative of the plan administrator.

Note: *While an authorized representative may submit the filing and sign any cover letter, in all cases the plan administrator must sign the Form 600, Form 601, and (where required) Schedule REP-D and Form 602. If the designated plan administrator is a board (or similar group) composed of employer and employee representatives, then at least one employer representative and one employee representative must sign the forms. If the designated plan administrator is other than an individual or a board, the forms must be signed by an officer of the designated plan administrator who has the authority to sign on behalf of that entity. Schedule EA-D must always be signed by an enrolled actuary.*

The PBGC will accept reproductions or other facsimiles of the forms. However, all forms require an original signature.

What and When to File

Form 600 and Form 601 with Schedule EA-D must be filed with the PBGC for all distress terminations. (In addition, if the plan is sufficient for at least guaranteed benefits and thus closes out in the private sector, the plan administrator must file Form 602.)

Form 600 must be filed at least 60 days and no more than 90 days prior to the proposed termination date, and it may not be filed before the notice of intent to terminate is issued to all other affected parties.

Form 601 with Schedule EA-D and any required supplemental information must be filed simultaneously no later than 120 days after the proposed termination date. You must complete the distress termination notice by submitting detailed participant and benefit information to the PBGC by the later of (1) 120 days after the proposed termination date or (2) 30 days after receipt of the PBGC's determination that the requirements for a distress termination have been satisfied pursuant to section 4041(c)(2)(B) of ERISA and 29 CFR § 2616.25. **Exception:** *If the enrolled actuary certifies that the plan is sufficient for at least all guaranteed benefits, you will not need to submit the participant and benefit information until the PBGC requests, in writing, that you do so.*

Note: *Initiation of a formal challenge to the termination under section 4041(a)(3) of ERISA does not relieve the plan administrator of the obligation to timely file Form 600 and Form 601 with Schedule EA-D.*

Form 602 must be filed no later than 30 days after completion of the distribution of plan assets pursuant to the termination. The distribution of plan assets must generally be completed within 180 days after you complete the issuance of the notices of benefit distribution. (See Section IX of these instructions for the requirements for the distribution of plan assets and for extension of the distribution deadline.)

The filing date for a document is the date on which the PBGC receives it, provided it is received no later than 4 p.m. on a weekday, other than a Federal holiday. Documents received after 4 p.m. or on weekends or Federal holidays will be deemed filed on the next regular business day.

In computing time periods, begin counting on the day after the event occurs. If the last day of the period falls on a Saturday, Sunday, or Federal holiday, then the period runs until the next regular business day.

Note: *The proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday, and is not deemed otherwise by the computation rule discussed above. For example, a notice of intent to terminate issued September 2, 1992, specifies a proposed termination date of October 31, 1992. The notice of intent to terminate was issued only 59 days, rather than the required 60 days, before the proposed termination date. The fact that October 31st falls on a Saturday does not cause the time period for this purpose to run until the following Monday.*

Where to File

Any document being filed for a distress termination may be delivered by mail or by hand to:

Pension Benefit Guaranty Corporation
Case Operations and Compliance Department
Room 5500 (Code 45200)
2020 K Street, NW
Washington, DC 20006-1860

For Questions, Problems, Copies of Forms

Plan administrators who are unsure whether their plans are covered by PBGC or who have other questions or problems may contact:

Pension Benefit Guaranty Corporation
Administrative Review and Technical
Assistance Division (Code 45400)
2020 K Street, NW
Washington, DC 20006-1860
Telephone: (202) 778-8800

Hearing impaired persons may telephone (202) 778-1958.

These phone numbers, and all other phone numbers in these instructions, are not toll-free numbers, and the PBGC cannot accept collect calls.

To request copies of the forms, contact the Pension Benefit Guaranty Corporation's Control Division (Code 45200) at the same address and telephone number as shown above.

Failure to Timely File Required Forms

Failure to timely file the completed forms may nullify the proposed plan termination. In addition, the PBGC may assess penalties pursuant to section 4071 of ERISA.

IV. SPECIFIC INSTRUCTIONS - FORM 600

Part I. Identifying Information

1a Enter the complete name of the plan as it appears on the plan document.

2a Enter the name, address, and telephone number of the contributing sponsor. If the plan covers the employees of more than one contributing sponsor, enter the name of the contributing sponsor with the greatest number of participants.

2b Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor by the Internal Revenue Service for income tax purposes and the 3-digit plan number (PN) assigned by the plan sponsor.

2c If the EIN/PN entered in item 2b is different from that used in earlier filings with the PBGC (including premium and reportable event filings for this plan), the Department of Labor, or the Internal Revenue Service, enter the EIN/PN previously reported.

2e Enter the same 4-digit industry code that you entered on your most recent PBGC Form 1 (premium) filing.

3a Enter the name, address, and telephone number of the individual, board, or other entity, if any, specifically designated as plan

administrator by the terms of the plan or trust agreement. If none is so designated or if the contributing sponsor is so designated, enter "same".

Part II. General Plan Information

4 The proposed termination date may not be earlier than the 60th day after Form 600 is filed with the PBGC, nor later than the 90th day after the earliest date a notice of intent to terminate is issued (handed to affected parties or deposited with a mail or courier service) to any affected party.

5a For this purpose, "active participants" includes both currently employed participants and separated nonvested participants who are earning or retaining credited service under the plan.

6 Check whichever statement(s) best describes any change in the organization or structure of the contributing sponsor that is associated with, or resulted in, the decision to terminate the plan. These changes are not intended to correspond to the four statutory distress tests.

7 Check all that apply.

8b For this purpose, "multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group. Under such a plan, all plan assets are available to pay benefits to all plan participants and beneficiaries, regardless of employer.

9b If you checked "Yes" in either items 8a or 9a, attach a statement listing the name and address of each contributing sponsor and each member of the contributing sponsor's controlled group as of the proposed termination date. For each entity listed, provide the employer identification number and identify the distress test each entity expects to meet.

FORM 600

10b If you checked "Yes" in item 10a, attach a statement describing each transaction that changed the composition of the contributing sponsor's controlled group. Include in the statement a listing of each member of the contributing sponsor's controlled group as of the transaction date(s) and a listing of each member of the controlled group after the transaction.

11d Section 4041(c)(2)(B)(ii) of ERISA and 29 CFR § 2616.3(d)(2) require that, in order to meet the reorganization distress test, the following conditions must be satisfied: (1) the reorganization proceedings have not been dismissed as of the proposed termination date; (2) the PBGC is notified concurrently with the appropriate court of any request to approve the termination; and (3) the termination is approved by the court.

11e A copy of the motion requesting court approval under the reorganization test, including any documents submitted in support of the request, must be submitted concurrently to the PBGC pursuant to section 4041(c)(2)(B)(ii)(III) of ERISA and 29 CFR § 2616.3(d)(2). If court approval was requested before the Form 600 is filed with the PBGC, enter the date on which the motion was filed and documents were submitted to the PBGC.

13a Check "Yes" if the plan has sufficient funds (cash, cash equivalents, and other liquid assets) available to pay estimated Title IV benefits when due for at least 180 days after the Form 600 is filed with the PBGC.

14 Beginning on the proposed termination date, section 4041(c)(3)(D)(ii)(IV) of ERISA and 29 CFR § 2616.4(c) require that the plan administrator reduce the benefits paid to a plan's participants and beneficiaries in pay status to the estimated benefit amounts determined in accordance with 29 CFR Part 2623. Note: *If you need assistance, you may call the PBGC's Actuarial Services Division at (202) 778-8838.*

FORM 600

SCHEDULE REP-D

15 All documents described in item 15 and submitted to the PBGC must be executed copies. Each document submitted must include the complete text as well as the signature page, and must indicate the effective date of the document and the date it was adopted. The PBGC will accept clear photocopies.

15a If your plan was adopted and has been in effect for 5 or more years, submit the plan document(s) and amendment(s) showing the provisions of the plan adopted and effective at the beginning of the 5-year period ending on the proposed termination date. You must also submit any plan amendments adopted and effective during the period. For plans in effect less than 5 years, submit the document establishing the plan and each subsequent amendment to the plan adopted and effective before the proposed termination date. (Attach a statement giving all actuarial equivalent factors, including early retirement reduction factors, if these factors are not included in the plan documents.)

15b Attach each trust agreement and/or each group annuity or group insurance contract that provides for management of plan assets, plan administration, or payment of benefits under the plan.

15c Attach a copy of the latest available financial statement of the plan and include a full listing of all assets.

15d Attach a copy of the most recent collective bargaining agreement (if any) that contains provisions relating to the plan.

15e Attach the most recent determination letter issued by the IRS that relates to the establishment of the plan, amendments to the plan, or partial termination of the plan. Attach all determination letters that relate to disqualification of the plan, and any later requalification.

15f Attach a copy of the most recent actuarial valuation of the plan.

15g Attach copies of the Form 5500, Schedule B and Schedule SSA filed for the 3 plan years ending before the proposed termination date.

V. SPECIFIC INSTRUCTIONS - FORM 600, SCHEDULE REP-D

Schedule REP-D may be used to designate a person or persons to represent you before the PBGC on some or all matters relating to the termination of your pension plan. Schedule REP-D must be filed simultaneously with Form 600 if Form 600 is submitted by a representative or representatives of the plan administrator. However, you may file Schedule REP-D at any time that you wish to designate a representative or representatives. Schedule REP-D also may be used to revoke a prior designation.

Part I. Identifying Information

The information entered in Part I should be the same as that entered in Part I of the Form 600 that you filed, or are filing, with the PBGC.

Part III. Retention/Revocation of Prior Designation(s)

If you wish a previous designation for the same termination to remain in effect, check "Yes" in items 7a and 7b and attach to this schedule a copy of the earlier designation(s) of representative that will remain in effect.

Part IV. Signature

You, as plan administrator, must sign the Schedule REP-D. (The PBGC will accept facsimiles of the form, but your signature must be an original.) Note: *If the plan administrator is a board (or similar group) composed of employer and employee representatives, at least one employer representative and one employee representative must sign this form. If the plan administrator is other than an individual or a board, this form must be signed by an officer of the plan administrator who has the authority to do so.*

VI. SPECIFIC INSTRUCTIONS - FORM 601

The plan administrator must file a Form 601 including a Schedule EA-D to request a distress termination. The Form 601 must be signed by the plan administrator and the Schedule EA-D must be signed by an enrolled actuary.

Part I. Identifying Information

4 Enter the PBGC Case Number. You will find this number on the letter that the PBGC sent to you acknowledging receipt of the Form 600 for this plan.

Part II. Specific Plan Information

5a The proposed termination date entered in item 5a may be later than the proposed termination date specified in the notice of intent to terminate, but may not be later (except with PBGC approval) than the 90th day after issuance of the notice of intent to terminate is begun, *i.e.*, the earliest date a notice of intent to terminate is issued to any affected party.

EXAMPLE - *The plan administrator begins issuing the notice of intent to terminate on September 29, 1992, and completes the issuance to all affected parties (and files Form 600 with the PBGC) on October 1, 1992, specifying a proposed termination date 63 days later, December 3, 1992. In item 5a, the plan administrator may specify a proposed termination date of any day from December 3, 1992, to and including December 28, 1992.*

6a Enter the earliest date the notice of intent to terminate was handed to, or deposited with a mail or courier service directed to, any affected party.

6b Enter the latest date the notice of intent to terminate was handed to, or deposited with a mail or courier service directed to, any affected party (other than the PBGC).

The "latest" date of issuance of any notice of intent to terminate is the date the last copy is issued to any affected party reasonably known or discovered during the 60-90 day period before the proposed termination date. It is your responsibility to use your best efforts to locate all affected parties by taking all necessary and appropriate steps under the circumstances. (The discovery of additional affected parties after the above 60-90 day period will not cause the notice to be untimely if you could not reasonably have been expected to know of the additional affected parties and if you promptly issue the notice of intent to terminate to each additional affected party.)

7a Section 4041(c)(2)(B) of ERISA and 29 CFR § 2616.3(d) provide that a plan may terminate in a distress termination only if each contributing sponsor and each member of the sponsor's controlled group meet at least one of the distress tests.

7b If you checked "Yes" in item 7a, attach a statement listing the name, address, and employer identification number of each contributing sponsor and each controlled group member and identify the distress test met by each. Also attach the information (listed below) required to prove that the contributing sponsor and each controlled group member satisfies the distress test(s) identified.

If you checked "No" in item 7a, the plan may not terminate in a distress termination and you should not complete the rest of this form. Unless the PBGC determines that the plan can qualify for a standard termination, the plan is an ongoing plan.

The distress tests are as follows:

FORM 601

"Liquidation test". A person has filed, or had filed against it, as of the proposed termination date, a petition seeking liquidation in a case under Title 11, United States Code, or under any similar law of a State or political subdivision of a State and such case has not, as of the proposed termination date, been dismissed; or a reorganization case (described below) is converted to a liquidation case as of the proposed termination date.

Section 4041(c)(2)(B)(i) of ERISA and 29 CFR § 2616.3(d)(1) refer explicitly only to liquidation under federal bankruptcy or state insolvency law and require that the liquidation case, as of the proposed termination date, not be dismissed. In determining whether a person meets the liquidation distress test, the PBGC will consider a case in which liquidation was completed prior to the proposed termination date, or was achieved through a foreclosure by secured creditors (as a result of which the person ceased operations and had all of its assets seized by such secured creditors) or through an assignment of all of the person's assets for the benefit of creditors. (In any such case, however, the PBGC will find the liquidation test is met only if it concludes that there is no indication that a principal purpose of the liquidation is to evade liability with respect to the plan or the PBGC or otherwise to abuse the termination insurance program.)

"Reorganization test". A person has filed, or had filed against it, as of the proposed termination date, a petition seeking reorganization in a case under Title 11, United States Code, or under any similar law of a State or political subdivision of a State; such case has not, as of the proposed termination date, been dismissed; such person timely submits a copy of any requests for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination to the PBGC at the time the request is made; and the bankruptcy court (or other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all of its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination.

"Business continuation test". A person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, such person will be unable to pay its debts when due and will be unable to continue in business.

"Pension costs test". A person demonstrates to the satisfaction of the PBGC that the costs of providing pension coverage have become unreasonably burdensome to such person, solely as a result of a decline of its workforce covered as participants under all single-employer pension plans for which it is a contributing sponsor.

The following proof of satisfaction of a distress test(s) must be attached:

Liquidation test: A copy of the filed petition showing the court docket number or a copy of any documents showing a foreclosure by a secured creditor or an assignment for the benefit of creditors. If this information was provided to the PBGC with Form 600, it need not be provided again.

Reorganization test: A copy of the filed petition showing the court docket number, a copy of the notification to the PBGC of the request for approval of the plan termination by the bankruptcy court or appropriate state court, and a copy of the order (if any) of the bankruptcy court or the appropriate state court approving the termination. If any of this information was provided to the PBGC with Form 600, it need not be provided again.

FORM 601

FORM 601

Business continuation test:

(1) Financial statements: Audited financial statements of the person for the 5 most recent fiscal years ending prior to the proposed termination date. If audited financial statements are not available, submit available statements and include a brief statement explaining why audited statements are not available. The financial statements must be augmented as follows:

(A) Identify pension costs recorded in each year for the pension plan that is the subject of this application. Pension costs should include an estimate of the annual and quarterly minimum funding requirements for the year in progress at the time of the application and for the next 3 years.

(B) If the person has undergone or is in the process of undergoing a partial liquidation, estimate the sales, gross profit, and operating profit that would have been reported for each of the 5 years covered by the financial statement for only the portion of the business that is currently expected to continue. State the significant assumptions made about the allocation of joint costs.

(C) State the estimated liquidation values for any assets related to discontinued operations or operations that are not expected to continue, along with the sources for the estimates.

(D) If financial statements are submitted that do not contain complete footnote disclosures, they must be augmented by a schedule identifying all outstanding indebtedness, including the name of the lender, the amount of the outstanding loan, scheduled repayments, interest rate, collateral, significant covenants, and whether the loan is in default.

(E) Identify and explain any material changes in financial position since the date of the last financial statement.

(2) Business plans and projections: Projections of future revenues, expenses, and cash flow for a minimum of 3 fiscal years in addition to the year in progress at the time of the distress application. Explicitly state all major strategic and economic assumptions made in development of the projections. Explain the reasons for any material changes from historical to projected results. If the company has or intends to obtain a line of credit with borrowing availability based on the amount of eligible collateral, include in the projections of cash flow a projection of the amount available under the line of credit and the amount of borrowing against that availability. The projections must include, or be augmented by, the projected cost of meeting minimum funding standards and, alternatively, the cost of plan termination based on payment of projected plan termination liabilities. The business plans and projections must be further augmented by submission of documents or information as follows:

(A) All business or operating plans prepared by or for management, including all explanatory text and schedules.

(B) All financial submissions, if any, made within the prior 3 years to a financial institution, government agency, or investment banker in support of possible outside financing or sale of the business.

(C) All recent financial analyses done by an outside party, with a certification by the company's chief executive officer that the information on which each analysis is based is accurate and complete.

(3) Certification by the chief executive officer that all of the information submitted is accurate and complete to the best of the individual's knowledge, and that the entity will not be able to continue in business unless the plan is terminated.

(4) Any other relevant information.

Pension costs test:

(1) The name and plan number (PN) of each single-employer defined benefit plan maintained by the contributing sponsor and each controlled group member.

(2) The latest Form 5500, Schedule B, filed for each plan named in (1).

(3) For each plan named in (1), a plan census showing total, active, and retired participants for the most recent 5 plan years ending prior to the proposed termination date (this data may be provided by submitting the relevant Form 5500, Schedule B).

(4) Audited financial statements for the person's most recent 5 fiscal years ending prior to the proposed termination date, updated to show any material changes, with a breakout of the contributing sponsor's total pension costs, including any defined contribution plans, as a percentage of the person's total wage costs and a statement of the total costs per plan. If audited financial statements are not available, submit unaudited statements and include a brief statement explaining why audited statements are not available.

(5) Reason(s) for the decline in workforce.

(6) Any other relevant information.

8a If the PBGC is advised, before issuance of a notice of inability to determine sufficiency or a distribution notice pursuant to 29 CFR § 2616.26(b) or (c), that a formal challenge to the termination has been initiated, the PBGC will suspend the termination proceeding and will so advise the plan administrator in writing. If the PBGC is advised of such a challenge to the termination after the issuance of either notice but before the termination procedure is concluded, the PBGC may suspend the termination proceeding and, if it does, will

so advise the plan administrator in writing. For this purpose, the following definitions apply:

(1)"Formal challenge to a termination" means the occurrence of any of the following actions asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement: (A) the commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; or (B) the commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(2)"Existing collective bargaining agreement" mean a collective bargaining agreement that (A) by its terms, (i) has not expired or (ii) is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and (B) has not been made inoperative by judicial ruling. When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement" whether or not any or all of its terms continue to apply by operation of law.

8b If you checked "Yes" to item 8a, attach a copy of the formal challenge and a statement showing what action was initiated, who initiated the action, the date it was initiated, and the current status of the challenge.

9 If the plan does not have sufficient assets to provide all guaranteed benefits, the benefits of participants and beneficiaries currently receiving benefits must be reduced pursuant to section 4041(c) of ERISA and 29 CFR § 2616.4(c), to the estimated benefit amounts determined in accordance with 29 CFR Part 2623, as of the proposed termination date. *Note: If you need assistance, you may call the PBGC's Actuarial Services Division at (202) 778-8838.*

FORM 601 **SCHEDULE EA-D**

12 Check "Yes" if (1) the Internal Revenue Service has waived the minimum funding requirements for this plan pursuant to section 303 of ERISA and section 412(d) of the Code for one or more plan years and (2) the amounts waived have not been fully paid to the plan as of the date this form is filed with the PBGC.

13 Check "Yes" if there are any requests for a waiver of the minimum funding requirements pending before the IRS.

14a Check "Yes" if there are amounts due and owing the plan pursuant to the minimum funding requirements of ERISA and the Code that (1) have not been paid to the plan and (2) for which no minimum funding waivers have been granted and no waiver requests are pending before the IRS.

Note: *Controlled group members are jointly and severally liable for amounts that are required to be contributed to the plan pursuant to section 302 of ERISA and section 412 of the Code. All amounts owed the plan, including unpaid contributions, are plan assets and it is generally the plan administrator's responsibility to attempt to collect such amounts.*

VII. SPECIFIC INSTRUCTIONS - FORM 601, SCHEDULE EA-D

Schedule EA-D must be used to certify the funding level of a plan terminating in a distress termination. An enrolled actuary must certify whether, as of the proposed termination date, a plan is (1) insufficient to provide all guaranteed benefits, (2) sufficient to provide all guaranteed benefits but not sufficient to provide all benefit liabilities, or (3) sufficient to provide all benefit liabilities.

The plan administrator must file the completed Schedule EA-D together with the Form 601. Schedule EA-D must be signed by an enrolled actuary.

If plan assets are sufficient (as of the proposed termination date) to provide at least all guaranteed benefits, the plan administrator must distribute plan assets in accordance with section 4041(c)(3)(B)(ii) of ERISA and 29 CFR § 2616.29. Distribution may be made only after the PBGC issues a distribution notice.

If you find, after a distribution notice is issued, that the plan is no longer sufficient for guaranteed benefits, you must promptly notify the PBGC in writing of that fact, and shall take no further action to implement the plan termination pending the PBGC's determination and notice of concurrence or non-concurrence with your finding pursuant to 29 CFR § 2616.28(b). If you find that the plan is sufficient for guaranteed benefits but no longer sufficient for benefit liabilities, you must promptly notify the PBGC in writing of this fact, but shall continue with the distribution in accordance with 29 CFR § 2616.29.

Note: *If the plan has sufficient assets to provide all benefit liabilities, the plan should be terminated in a standard termination, because the standard termination process is faster and less costly for the plan. If, after beginning a distress termination proceeding, you determine that the plan is sufficient for all benefit liabilities, you should promptly notify the PBGC. (In appropriate circumstances, PBGC may, upon request, permit a conversion of the distress termination to a standard termination.)*

Please follow the instructions below when completing this form. If you have questions about how a particular item applies to your situation, contact the PBGC Case Officer assigned to your case. If you have any questions on determining or valuing guaranteed benefits, or on determining the amount of due and unpaid employer contributions, contact:

Pension Benefit Guaranty Corporation
Actuarial Services Division (Code 41300)
2020 K Street, NW
Washington, DC 20006-1860
Telephone: (202) 778-8838

SCHEDULE EA-D

Part I. Sufficiency Level as of Proposed Termination Date

1 For the purpose of determining if a plan is sufficient for guaranteed benefits, you must include any nonguaranteed benefits that a participant is entitled to receive because of the allocation of assets priorities in section 4044 of ERISA and 29 CFR Part 2618. This means that you must include all nonguaranteed benefits to which assets are allocated. (To determine what benefits are guaranteed benefits, see 29 CFR Parts 2613 and 2621.)

2a Enter the estimated fair market value, as of the proposed termination date, of the plan assets available to pay plan benefits, excluding contributions that are owed to the plan but unpaid. Plan assets available to pay for benefits include all plan assets remaining after subtracting all liabilities (other than the future benefit liabilities that will be provided when assets are distributed), *e.g.*, benefit payments due before the termination date, expenses, fees, and other administrative costs.

2b Enter the total amount of contributions owed to the plan but unpaid as of the proposed termination date. The amount of unpaid contributions is the greater of (1) amounts required to be contributed to the plan pursuant to section 302 of ERISA and section 412 of the Code, or (2) amounts required to be contributed to the plan pursuant to commitments contained in plan or trust agreements or a collective bargaining agreement; less amounts actually contributed.

2c Enter the value (as of the proposed termination date) of the amount of unpaid contributions included in item 2b that is estimated to be collectible, valued in the same manner as other receivables. If that amount cannot be valued, enter "0".

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2d Enter the sum of the amounts entered on lines 2a and 2c.

3 Enter the estimated present value of Title IV benefits. Title IV benefits are determined by allocating plan assets to plan benefits in accordance with section 4044 of ERISA and 29 CFR Part 2618. Value Title IV benefits as of the proposed termination date in accordance with Subpart C of 29 CFR Part 2619.

4 Enter the estimated present value of all benefit liabilities, valued as of the proposed termination date in accordance with 29 CFR Part 2619, Subpart C. With respect to a participant who, as of the proposed termination date, is not receiving benefits and has not made a valid benefit election, the value of the participant's benefit must include the value of all optional forms of benefits for which he or she is eligible under the terms of the plan.

Part II. Sufficiency Level as of Proposed Distribution Date

Complete this Part only if the plan is sufficient (as of the proposed termination date) for at least guaranteed benefits.

5 The proposed distribution date is the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a distribution notice from the PBGC when plan assets are sufficient (as of the proposed termination date) for at least guaranteed benefits. The proposed distribution date must be no earlier than the 61st day after the Form 601 is filed with the PBGC. (Actual distribution must be made no earlier than the 61st day, and no later than the 180th day, following the day on which the plan administrator completes issuance of the notices of benefit distribution.)

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6 In determining whether the plan's assets are projected to be sufficient (as of the proposed distribution date) to provide for all guaranteed benefits or all benefit liabilities, take receivables (*e.g.*, due and unpaid employer contributions) into account only to the extent they are projected to be collected on or before the proposed distribution date. All plan assets must be allocated to plan benefits in accordance with section 4044 of ERISA and 29 CFR Part 2618.

Value of Annuity Contracts

The value of benefit liabilities that will be provided through the purchase of annuity contracts is the cost quoted by an insurer to provide such benefit liabilities (see instructions to item 5a of Form 602).

Note: *Because insurers may require that bids be exercised within a fairly short period of time, it may not be possible prior to filing the Form 601 to obtain a bid that would remain open until the proposed distribution date. Accordingly, the plan administrator is not required to actually obtain a bid before completing item 6.*

Value of Other Benefits

To value benefits that will be provided other than through the purchase of annuity contracts, the enrolled actuary must use the rate of interest in sections 411(a)(11) and 417(e)(3) of the Code. The interest rate(s) shall be determined as of the date set forth in the plan if the plan provision is in accord with the IRS rules concerning the date as of which the interest rate is determined; otherwise, the interest rate(s) shall be determined as of the date of distribution. (See 26 CFR § 1.417(e)-1(d)(3).) Note: *If a plan contains a provision that complies with Treasury Reg. § 1.417(e)-1(d)(3), the interest rate is determined by substituting "date of distribution" for "annuity starting date" wherever used in the plan.*

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Generally, the rate described in sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder is whichever of the following two rates or rate structures provides the greater benefit: (1) the rate specified in the plan; or (2) the "applicable interest rate" (or, if the present value of vested accrued benefits exceeds $25,000 using the applicable interest rate, a rate no greater than 120 percent of the applicable interest rate). Note: *When using the alternative 120 percent of the applicable interest rate, the resulting present value of the vested accrued benefit may not be less than $25,000.*

The "applicable interest rate" is the interest rate that would be used by the PBGC for purposes of determining the present value of a lump sum distribution on plan termination. Note: *The appropriate deferral factors must be used for valuing deferred annuities.*

The applicable interest rates and factors are published at 29 CFR Part 2619, Appendix B, and updated in accordance with that regulation. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC also makes interest rate information available through a telephone hotline. The hotline number is (202) 778-8899.

VIII. PARTICIPANT AND BENEFIT INFORMATION REQUIREMENTS

Unless the enrolled actuary certifies that the plan is sufficient for at least all guaranteed benefits, the plan administrator is required to provide participant and benefit information to the PBGC by the later of (1) 120 days after the proposed termination date or (2) 30 days after receipt of the PBGC's determination that the requirements for a distress termination have been satisfied. (If the enrolled actuary certifies that

SCHEDULE EA-D

the plan is sufficient for at least guaranteed benefits, the participant and beneficiary information must be provided, in accordance with the PBGC's instructions, at such time as the PBGC requests it in writing.) Failure to provide complete participant and benefit information may result in the PBGC's nullifying the distress termination for your plan.

You are required to provide all information necessary to calculate and value monthly benefits and plan benefits for each plan participant/beneficiary. All information, benefit determinations, and benefit valuations must be as of the proposed termination date. The information that is required to be submitted to the PBGC is not required to be in any specific format; however the PBGC requests that this data be provided electronically. We will provide you with the format in which we would like your data if and when we determine that you satisfy the distress criteria. If you have any questions concerning this electronic data transfer to the PBGC, contact the Actuarial Services Division at the address and telephone number set forth in Section VII of these instructions.

The following information, at a minimum, must be provided for each participant/beneficiary.

1. **Participant categories.** Information must be provided by categories as follows: (a) retired participants including any beneficiary receiving benefits from the plan; (b) inactive participants entitled to future benefits; (c) active participants with vested benefits; and (d) active participants without vested benefits.

2. **Name of participant.** Denote each substantial owner, as defined in section 4022(b)(5)(A) of ERISA, by entering an asterisk (*) in front of the person's name, and enter in parentheses the highest percentage of ownership during the five years preceding the proposed termination date for each substantial owner.

3. **Address.**

4. **Social security number.**

5. **Marital status and, if available, the following information on spouse:** name, social security number, and date of birth.

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6. **Sex.**

7. **Date of birth.**

8. **Beneficiaries.** If the participant is entitled to a benefit form that provides an annuity or lump-sum death benefit to a surviving beneficiary, *e.g.*, a qualified joint and survivor benefit, provide the name of the beneficiary for that participant and the beneficiary's address, social security number, sex, and date of birth.

9. **Retiree benefit information.** For each retiree, provide the benefit commencement date, form of benefit, and the type of benefit (normal, early, late, or disability).

10. **Date employment began or, if different, date plan participation began.**

11. **Date employment terminated, if earlier than proposed termination date.**

12. **Credited service.** Provide the amount of all credited service as defined in the plan document. Show any break(s) in service between date of hire and date of termination of employment or proposed termination date.

13. **Compensation.** If compensation is a factor in the benefit formula, provide the applicable compensation figure(s) as defined in the plan document. If the benefit formula provides that the past service benefit and the future service benefit are determined using different compensation figures, enter the compensation for the past service benefit in one column and the compensation for the future service benefit in another.

14. **Monthly plan benefit.** This is the monthly plan benefit in the normal annuity form under the plan based on credited service as of the proposed termination date. If the monthly plan benefit is greater than the accrued benefit, show how the benefit was calculated. Provide any other information that is necessary to show the determination of each participant's plan benefit.

The following are examples of the type of data to be provided.

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a. If the plan is contributory, provide the total amount of each employee's contributions with and without interest credited by the plan and the portion of the normal retirement benefit attributable to employee contributions. If the plan credits interest at a rate (or rates) other than those specified in section 411(c)(2)(C)(iii) of the Code, provide the amount of employee contributions plus interest computed in accordance with that Code provision.

b. If the accrued monthly benefit is integrated using an offset or excess method, provide the offset or the excess benefit and the data used in determining these amounts.

c. If, before retirement, the accrued monthly benefit is determined from the cash value of insurance or annuity contracts, provide the cash value.

15. **Adjusted monthly plan benefit.** If, as of the proposed termination date, an individual is receiving or has elected to receive benefits in an optional form or at an early retirement age permitted by the plan, show the amount payable under that election.

16. **Plan adjustment factors.** Provide any factors used by the plan to adjust benefits for payment in an optional form or as an early or late retirement benefit.

17. **Value of adjusted monthly plan benefit.** Provide the estimated value of the plan benefit as of the proposed termination date, calculated in accordance with 29 CFR Part 2619, Subpart C. With respect to a participant who, as of the proposed termination date, is not receiving benefits and has not made a benefit election, the value of the participant's benefit must include the value of all optional forms of benefits for which he or she is eligible under the terms of the plan.

18. **Vesting percentage.** The vesting percentage is to be calculated without regard to any increase in vesting due to the termination. For contributory plans, enter the percentage applicable to the portion of the accrued benefit provided by employer contributions.

19. **Monthly vested adjusted plan benefit.** The portion of the adjusted monthly plan benefit provided by employer contributions is multiplied by the vesting percentage and this amount is added to the benefit, if any, provided by employee contributions.

20. **Monthly guaranteed benefit.** This is the monthly vested adjusted benefit (number 19) reduced, if necessary, in accordance with PBGC regulations and limitations for single-employer plans. Provide the calculations, *i.e.*, phase-in, substantial owner limitation, or maximum guaranteeable benefit. These benefits should be calculated without regard to any asset allocation.

21. **Value of monthly guaranteed benefit.** Estimated value of monthly guaranteed benefit as of the proposed termination date, calculated in accordance with 29 CFR Part 2619, Subpart C.

22. **Title IV benefits.** If plan assets, when allocated in accordance with section 4044 of ERISA and 29 CFR Part 2618, can provide benefits to any participant in excess of the monthly guaranteed benefit, then the benefits that can be provided should be computed.

All computations used in the completed allocation process should be furnished along with an explanation as to how the participant's Title IV benefits were determined including any adjustments made to the amount of the benefit for the annuity form and the age at which it is assumed to be payable, *i.e.*, expected retirement age. Include any special schedules that were required to be prepared for the plan under section 414(l) of the Code.

23. **Value of Title IV benefits.** Estimated value of Title IV benefits (number 22) as of the proposed termination date calculated in accordance with 29 CFR Part 2619, Subpart C.

Note: *If additional participant and beneficiary information is needed by the PBGC to pay benefits pursuant to section 4061 or 4042(c) of ERISA, the PBGC may require that additional information be submitted at such time as the PBGC requests in writing.*

IX. SPECIFIC INSTRUCTIONS - FORM 602

Form 602 is the form that must be used by the plan administrator to certify that the distribution of assets was completed in accordance with section 4041(c) of ERISA. Form 602 must be filed with the PBGC within 30 days after the completion of the distribution of assets.

Note: *Pursuant to section 4071 of ERISA, the PBGC may impose a civil penalty of up to $1,000 per day for each day for which the Form 602 is overdue. This penalty may be imposed beginning on the 31st day after the distribution is completed.*

You must make the distribution of plan assets, after receiving a distribution notice from the PBGC, no earlier than the 61st day, and no later than the 180th day, following the day on which you complete the issuance of the notices of benefit distribution pursuant to 29 CFR § 2616.27(c). This 180-day period may be extended according to the rules set forth below.

Note: *Plan assets may not be distributed if either the plan administrator or the PBGC has made a finding that the plan is insufficient for guaranteed benefits.*

Automatic extension

The distribution deadline will automatically be extended until the 60th day after the plan's receipt of a favorable IRS determination letter, if --

(1) on or before the date that the plan administrator completes issuance of the notices of benefit distribution, the plan administrator submitted to the IRS a complete request for a determination letter with respect to the plan's tax-qualification status upon termination;

(2) the plan administrator does not receive the IRS's determination letter at least 60 days before the expiration of the 180-day period for distribution; and

(3) on or before the last day of the 180-day period, the plan administrator notifies the PBGC in writing that an extension of the distribution deadline is required and certifies that the conditions in (1) and (2) have been met.

Discretionary extension

If the plan administrator will be unable to complete the distribution of plan assets within the 180-day (or extended) period, the plan administrator may file a written request with the PBGC for an extension of the distribution deadline.

The PBGC will grant a discretionary extension only if the PBGC is satisfied that the delay in making the distribution is not due to the action or inaction of the plan administrator or the contributing sponsor and distribution can in fact be completed by the date requested.

The request must be filed no later than 30 days before the expiration of the 180-day (or extended) period, must explain the reason for the request, and must provide a date certain by which the distribution will be made if the extension is granted. All requests for extensions must be in writing addressed to:

Case Officer, Case Processing Division
Pension Benefit Guaranty Corporation
Room 5500 (Code 41400)
2020 K Street, NW
Washington, DC 20006-1860

Part I. Distribution Information

3 Enter the PBGC Case Number. You will find this number on the letter that the PBGC sent to you acknowledging receipt of the Form 600 for this plan.

4 Enter the date on which the distribution of assets was completed.

A distribution of assets by the purchase of annuity contracts occurs when the obligation for providing benefit liabilities passes irrevocably from the plan administrator to the insurer.

A distribution of assets in a manner other than by the purchase of an annuity contract occurs on the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant

or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

6a The contract that is purchased must be a single premium, non-participating (except as discussed below), non-surrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased. A participating annuity contract may be purchased to provide the annuity benefits only if the plan is sufficient for all benefit liabilities and: (1) all benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and non-cancellable obligation of the insurer; (2) in no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and (3) no amount of residual assets to which participants are entitled will be used to pay for the participation feature. Specifically, if all or a portion of the residual assets will be distributed to participants, the additional premium for the participation feature must be paid from the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor. If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature. If these requirements are not satisfied, a nonparticipating annuity contract must be purchased to close out the plan.

7 If you have been unable to locate certain participants after having made a reasonable effort to do so, you must purchase irrevocable commitments to provide benefits for each participant who has not been located. In the alternative, if the benefit of any unlocatable participant is valued at $3,500 or less and would otherwise be distributed in a lump sum, you may deposit the monies that would otherwise be distributed into an interest-bearing bank account opened in the participant's name at a federally insured institution. In the limited case where you have made every reasonable effort to locate missing participants and to locate institutions that are willing to open individual interest-bearing accounts, but are still unable to complete the distribution in this manner, then the use of a pooled interest-bearing account may be appropriate.

If such an account (individual or pooled) is opened, it must be maintained by a fiduciary whom you have designated and who continues to have ongoing fiduciary obligations to those missing plan participants. The fiduciary must keep clear, up-to-date records of each participant's opening balance and earnings throughout the life of the account and must be available to make every reasonable effort to assist those participants who do come forward to claim their benefits.

8a As soon as practicable after a distribution by the purchase of an irrevocable commitment, you or the insurer must provide each participant and beneficiary with a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

If such a contract or certificate is not available before the deadline for filing Form 602, you must, no later than that deadline, provide each participant and beneficiary with a written notice stating:

(1) that the obligation for providing the benefit has transferred to the insurer;

(2) the name and address of the insurer;

(3) the name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(4) that the participant or beneficiary will receive from the plan administrator or the insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

9 Enter the name and address of the insurer(s), if any, that made an irrevocable commitment to provide benefits under the plan. The name must be the full official name of record.

FORM 602

10 Enter the name, address, and telephone number of the person keeping the plan records. The contributing sponsor or plan administrator must keep records supporting the calculation and valuation of benefits and assets for at least six years after the date the post-distribution certification is filed.

11 In reporting values, use the actual cost to the plan of the distribution (the amount of any lump sum distribution; the price paid for a nonparticipating annuity contract).

PBGC Form 600

PBGC
U.S. GOVERNMENT AGENCY

Distress Termination
Notice of Intent to Terminate

Approved OMB [illegible]
Expires [illegible]

File this form with the Pension Benefit Guaranty Corporation for a distress termination for which a notice of intent to terminate is issued on or after _____.

Do NOT file this form with the Internal Revenue Service.

DRAFT

PART I. IDENTIFYING INFORMATION

1a Plan name _____

b Plan effective date ☐☐☐ (Month Day Year)

c Last day of plan year ☐☐ (Month Day)

2a Contributing sponsor

_____
Name

_____
Address (number and street)

_____ _____ _____ Telephone number ( ) _____
City or town State Zip Code Area code

b Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ (Enter 9 digit EIN) ☐☐☐ (Enter 3 digit PN)

c If you used a different EIN or PN for this contributing sponsor/plan in previous filings with the PBGC, the Department of Labor, or the Internal Revenue Service, also show the number(s) previously reported ☐☐☐☐☐☐☐☐☐ (Enter 9 digit EIN) ☐☐☐ (Enter 3 digit PN)

d Contributing sponsor's tax year end ☐☐ (Month Day)

e Industry code ☐☐☐☐

3a Plan administrator (If same as 2a, enter "same".)

_____
Name

_____
Company

_____
Address (number and street)

_____ _____ _____ Telephone number ( ) _____
City or town State Zip Code Area code

b Name, address, and telephone number of person to be contacted if more information is needed. (If same as 3a, enter "same".)

Name

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

PART II. GENERAL PLAN INFORMATION

4 Proposed termination date

Month Day Year

5 Estimated number of plan participants as of the proposed termination date:

a Active Participants:
(i) Fully vested _____
(ii) Partially vested _____
(iii) Nonvested _____
(iv) Total active participants (add a(i) through (iii)) _____

b Retirees or beneficiaries receiving benefits _____

c Separated vested participants entitled to receive benefits _____

d Total (add a(iv) through c) _____

6 Changes in contributing sponsor associated with plan termination:

a ☐ No change
b ☐ Reorganization as part of bankruptcy or similar proceeding
c ☐ Merger of existing subsidiaries or divisions, not involving bankruptcy
d ☐ Sale or closing of subsidiaries or divisions, not involving bankruptcy
e ☐ Acquisition by another business
f ☐ Acquisition of another business
g ☐ Liquidation

7 Intention concerning expected pension coverage for currently employed participants covered under the terminated plan:

a ☐ No new plan
b ☐ New or existing defined benefit plan
c ☐ New or existing profit-sharing plan
d ☐ New or existing 401(k) plan
e ☐ Other new or existing plan, specify _____

8a Is there more than one contributing sponsor?

Yes ☐ No ☐

b If "Yes", is this a multiple employer plan?

Yes ☐ No ☐

9a Is the contributing sponsor(s) a member of a controlled group?

Yes ☐ No ☐

b If you checked "Yes" in 8a or 9a, attach a statement identifying each contributing sponsor and each member of the contributing sponsor's controlled group as of the proposed termination date and the distress test each entity expects to meet.

10a Has there been a change in the composition of a contributing sponsor's controlled group within the 5-year period prior to the proposed termination date?

Yes ☐ No ☐

b If "Yes", attach a statement that describes the transaction(s).

11a Has the contributing sponsor(s) filed, or had filed against it, a petition seeking reorganization in bankruptcy under Chapter 11, liquidation in bankruptcy under Chapter 7, or reorganization or liquidation in a similar proceeding under the laws of a state or a political subdivision of a state?

Yes ☐ No ☐

b If you checked "Yes" in 11a, are the proceedings still ongoing?

Yes ☐ No ☐

c If "Yes", attach a copy of the petition showing the court docket number. If "No", attach a copy of the order dismissing or otherwise resolving the proceedings.

For reorganization under Chapter 11 or similar state proceeding, complete item 11d.

d Has the bankruptcy court been requested to approve the termination of the plan?

Yes ☐ No ☐

e If "Yes":

(i) Enter the date of request to the court

Month	Day	Year

(ii) Enter the date documents were submitted to the PBGC

Month	Day	Year

12a Are all eligible participants/beneficiaries, who are entitled to and have applied for benefits, receiving such monthly benefits from the plan?

Yes ☐ No ☐

b If "No", attach a statement as to the reason for non-payment, including the number of participants/beneficiaries and total monthly benefits not being paid.

13a Are the plan assets expected to be sufficient to continue to pay all benefits when due during the next 180 days?

Yes ☐ No ☐

b If "No", attach an explanation.

14a Are any participants/beneficiaries receiving benefits in excess of estimated Title IV benefits?

Yes ☐ No ☐

b If "Yes", are they scheduled to be reduced to the estimated Title IV level as of the proposed termination date?

Yes ☐ No ☐

15 Attach copies of the following documents:

a All plan documents, including all amendments within last five years;
b Trust documents and/or insurance contracts;
c Most recent financial statement of plan assets;
d Collective bargaining agreements relating to the plan;
e IRS determination letter(s);
f Most recent plan actuarial report; and
g Form 5500, Schedules B and SSA (last three years).

16 The plan records are currently available at:

Name

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

PART III. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that, to the best of my knowledge and belief:

- I am implementing the termination of the plan in accordance with all applicable laws and regulations; and

- the information contained in this filing is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Plan administrator's name (type or print)

Plan administrator's signature Date

Schedule REP-D
(PBGC Form 600)

Designation of Representative

Approved OMB [illegible]
Expires [illegible]

DRAFT

PART I. IDENTIFYING INFORMATION

1 Plan name _____

2 Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

3 Plan administrator

_____
Name

_____
Company

_____
Address (number and street)

_____ _____ _____ Telephone number _________
City or town State Zip Code Area code

PART II. DESIGNATION OF REPRESENTATIVE(S)

4 I, _____, plan administrator of the above-named pension plan, hereby appoint the following representative(s) to act on my behalf before the Pension Benefit Guaranty Corporation on all matters (other than those specifically excluded below) relating to the termination of the above-named pension plan:

5 Representative(s)

a

_____
Name

_____
Company

_____
Address (number and street)

_____ _____ _____ Telephone number _________
City or town State Zip Code Area code

b

_____
Name

_____
Company

_____
Address (number and street)

_____ _____ _____ Telephone number _________
City or town State Zip Code Area code

6 Matters excluded (list any specific acts with respect to the plan termination that you are excluding from the acts otherwise authorized in this designation): _____

_____

_____

_____

PART III. RETENTION/REVOCATION OF PRIOR DESIGNATION(S)

7a Have you filed any prior designation(s) of representative for this termination?

Yes ☐ No ☐

b If "Yes", do you want any such prior designation(s) of representative to remain in effect? (Attach a copy of all prior designations that are to remain in effect.)

Yes ☐ No ☐

PART IV. SIGNATURE OF PLAN ADMINISTRATOR

Note: The PBGC will not accept unsigned designations.

In executing this document, I certify that the foregoing is true and correct, and recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

_____ _____ _____
Signature Date Title (if applicable)

_____
Type or print name

_____ _____ _____
Signature Date Title (if applicable)

_____
Type or print name

PBGC Form 601

PBGC
U.S. GOVERNMENT AGENCY

Distress Termination Notice
Single-Employer Plan Termination

Approved OMB 1212-0036
Expires 09/30/95

File this form with the Pension Benefit Guaranty Corporation for a distress termination for which a notice of intent to terminate is issued on or after _____.

Do NOT file this form with the Internal Revenue Service.

DRAFT

PART I. IDENTIFYING INFORMATION

1 Plan name _____

2 Contributing sponsor _____

3 Employer identification and plan numbers

☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

4 PBGC Case number _____

PART II. SPECIFIC PLAN INFORMATION

5a Proposed termination date

☐☐☐
Month Day Year

b Proposed termination date stated in notice of intent to terminate (if different from 5a)

☐☐☐
Month Day Year

6a Earliest date notice of intent to terminate issued to affected parties

☐☐☐
Month Day Year

b Latest date notice of intent to terminate issued to affected parties (other than PBGC)

☐☐☐
Month Day Year

7a Does each contributing sponsor and each member of a contributing sponsor's controlled group meet one of the distress tests described in section 4041(c)(2)(B) of ERISA and 29 CFR § 2616.3?

Yes ☐ No ☐

b Attach a statement identifying each contributing sponsor and each controlled group member and the distress test met by each. Also attach the information to demonstrate that each contributing sponsor and controlled group member meets the distress test(s) identified.

8a Has a formal challenge to the termination been initiated under an existing collective bargaining agreement?

Yes ☐ No ☐ N/A ☐

b If "Yes", attach a copy of the formal challenge and a statement describing the challenge.

9 For plans that were paying benefits in excess of Title IV benefits, have the benefits of participants/beneficiaries in pay status been reduced to the estimated Title IV benefits pursuant to 29 CFR Part 2623?

Yes ☐ No ☐ N/A ☐

10 Has the plan ever required employee contributions?

Yes ☐ No ☐

11a Have you filed or will you file with the Internal Revenue Service an application for a determination letter on the termination of this plan?

Yes ☐ No ☐

b If "Yes", enter the district :

_____

and filing date: ☐☐☐ Month Day Year

12a Has the Internal Revenue Service granted any minimum funding waiver(s) for this plan?

Yes ☐ No ☐

b If "Yes", attach (1) copies of all waiver ruling letters and (2) a schedule showing the total amount waived for each plan year and the remaining unamortized amount of the waiver.

13a Are there any requests for minimum funding waiver(s) pending before the IRS?

Yes ☐ No ☐

b If "Yes", attach (1) copies of all applications including cover letters and exhibits and (2) a schedule showing for each plan year the pending waiver amount.

14a Are there outstanding employer contributions owed to the plan exclusive of amounts described in 12 and 13?

Yes ☐ No ☐

b If "Yes", attach a schedule showing for each plan year the amount of outstanding employer contributions owed.

PART III. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that, to the best of my knowledge and belief:

- the information contained in this filing is true, correct, and complete; and

- the information provided to the enrolled actuary is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

_____

Plan administrator's name (type or print)

_____ _____

Plan administrator's signature Date

PBGC
U.S. GOVERNMENT AGENCY

Schedule EA-D
(PBGC Form 601)

Distress Termination Enrolled Actuary Certification

Approved OMB 1212-0036
Expires 00/00/00

DRAFT

Plan Name _____

EIN: ☐☐☐☐☐☐☐☐☐ PN: ☐☐☐

PART I. SUFFICIENCY LEVEL AS OF PROPOSED TERMINATION DATE

1 As of the proposed termination date, is the value of plan assets available to pay for plan benefits, when allocated in accordance with section 4044 of ERISA--

a Less than the value of all benefits guaranteed by the PBGC under section 4022(a) and (b) of ERISA?

Yes ☐ No ☐

b Equal to or greater than the value of guaranteed benefits, but less than the value of benefit liabilities?

Yes ☐ No ☐

c Equal to or greater than the value of benefit liabilities?

Yes ☐ No ☐

If you checked "Yes" in 1a, complete the rest of Part I and complete Part III. Do not complete Part II. If you checked "No" in 1a, complete the rest of Part I, Part II, and Part III.

2 Estimated value of plan assets available to pay for plan benefits, determined as of the proposed termination date:

a Estimated value of plan assets (excluding value of contributions owed to the plan) $_____

b Estimated total contributions owed to the plan $_____

c Estimated collectible value of 2b $_____

d Estimated value of total plan assets (sum of a and c) $_____

3 Estimated value of Title IV benefits as of the proposed termination date $_____

4 Estimated value of all benefit liabilities as of the proposed termination date $_____

PART II. SUFFICIENCY LEVEL AS OF PROPOSED DISTRIBUTION DATE

5 Proposed distribution date

☐☐☐
Month Day Year

6 As of the proposed distribution date, do you project that the plan will have sufficient assets available to pay for plan benefits, when allocated in accordance with section 4044 of ERISA, to provide--

a All benefits guaranteed by the PBGC under section 4022(a) and (b) of ERISA, but not benefit liabilities?

Yes ☐ No ☐

b All benefit liabilities?

Yes ☐ No ☐

PART III. ENROLLED ACTUARY CERTIFICATION

I, the Enrolled Actuary, certify that:

- I have reviewed all relevant plan documents, plan and participant data, and the method used to value the plan assets;
- I have applied all relevant provisions of ERISA, the Code, and the regulations promulgated thereunder;
- to the best of my knowledge and belief, the information contained in this schedule is true, correct, and complete; and
- to the best of my knowledge and belief, the plan's assets and benefits have been valued in accordance with Title IV and PBGC regulations; and the value of the plan's assets, when allocated in accordance with the PBGC's regulation on allocation of assets (29 CFR Part 2618), is sufficient (as of the proposed termination date) to provide plan benefits as indicated:

(Check one) ☐ Insufficient for guaranteed benefits ☐ Sufficient for guaranteed benefits but not for benefit liabilities ☐ Sufficient for benefit liabilities

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Enrolled actuary's name (type or print) \ Enrolled actuary identification number

Company

Address (number and street)

City or town State Zip Code Telephone number \ Area code

Enrolled actuary's signature Date

PBGC Form 602

PBGC
U.S. GOVERNMENT AGENCY

Post-Distribution Certification for Distress Termination

Approved OMB [illegible]
Expires [illegible]

DRAFT

The plan administrator must file this form with the Pension Benefit Guaranty Corporation no later than 30 days after distribution of assets is completed.

PART I. DISTRIBUTION INFORMATION

1 Plan name _____

2 Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

3 PBGC Case number _____

4 Date of distribution ☐☐☐
Month Day Year

5 Latest date notices of benefit distribution issued to participants or beneficiaries

☐☐☐
Month Day Year

6a Were some or all of the benefits distributed through the purchase of irrevocable commitments from an insurer?

Yes ☐ No ☐

b If "Yes", were participants and beneficiaries provided with the name and address of the insurer(s) no later than 45 days before the date of distribution?

Yes ☐ No ☐

7a Were you able to locate all participants?

Yes ☐ No ☐

b If "No", were irrevocable commitments purchased or monies deposited, as required?

Yes ☐ No ☐

8a Has a copy of the annuity contract, certificate, or written notice been provided to each participant and beneficiary receiving benefits in the form of irrevocable commitments?

Yes ☐ No ☐ N/A ☐

b If "Yes", enter date, or latest date, annuity contracts, certificates, or written notices were issued to participants and beneficiaries:

☐☐☐
Month Day Year

8 Name and address of insurer(s), if any, from whom annuity contracts have been purchased

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____

Annuity contract number(s) _____

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____

Annuity contract number(s) _____

9 Location of plan records

Name

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

10 Summary of distribution of benefit liabilities

	Form	Number Of Participants/Beneficiaries	Total Value
a	Annuities		$
b	Lump sums (other than rollovers)		
	-- consensual		$
	-- nonconsensual		$
c	Rollovers		$
d	No distribution		$
e	TOTAL		$

PART II. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that

- I have made a reasonable effort to locate all participants;
- to the best of my knowledge and belief, benefits payable with respect to participants have been calculated and valued correctly in accordance with applicable provisions of ERISA and the regulations thereunder;
- to the best of my knowledge and belief, all (check one) ☐ guaranteed benefits OR ☐ benefit liabilities under the plan have been satisfied;
- to the best of my knowledge and belief, the information contained in this filing is true, correct, and complete; and
- I am aware that records supporting the calculation and valuation of benefits and assets must be kept at least six years after the date this post-distribution certification is filed.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Name of plan administrator (type or print)

Company

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

Plan administrator's signature Date

[FR Doc. 92-30059 Filed 12-11-92; 8:45 am]
BILLING CODE 7708-01-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31571; File No. SR-CBOE-92-19]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to OEX RAES Eligibility Standards

December 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 16, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend the eligibility standards under which individuals, member organizations and joint accounts may participate in the CBOE's Retail Automatic Execution System ("RAES" or "System") for Standard & Poor's ("S&P") 100 Index ("OEX") options, and to include the revised eligibility standards in the Exchange's rules as CBOE Rule 24.17, "RAES Eligibility in OEX."[1] The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The current RAES eligibility standards were approved by the Commission in Securities Exchange Act Release No. 27378 (October 24, 1989), 54 FR 27378 (order approving File No. SR-CBOE-87-22).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE proposes to amend the eligibility standards under which individuals, member organizations and joint accounts may participate in RAES for OEX options, and to include the revised eligibility standards in the Exchange's rules as CBOE Rule 24.17, "RAES Eligibility in OEX." The CBOE states that the proposed amendments reflect changes in the marketplace, as well as the Exchange's experience to date with the existing eligibility standards. The Exchange explains that the purpose of the proposed rule change is to promote (1) greater depth and liquidity in OEX options markets, and (2) more equitable participation in RAES by active Market-Makers in the OEX crowd.

Specifically, with regard to an individual Market-Maker's eligibility to participate in RAES, the proposal provides that: (1) The Exchange will consider a Market-Maker's OEX trades for the preceding month, rather than reviewing his OEX and S&P 500 Index ("SPX") trades for the preceding quarter; (2) a Market-Maker must execute at least 75% of his Market-Maker contracts for the preceding month in OEX; and (3) a Market-Maker must execute at least 75% of his trades for the preceding month in person.[2] In addition, the proposal requires individuals logged onto RAES to log off the System when they leave the trading crowd; failure to log off RAES after leaving the trading crowd will result in a fine of $500.00, imposed by the OEX Floor Procedures Committee ("OFPC").

For joint accounts, the proposal allows the manager of a joint account to log onto RAES all eligible account members present in the OEX trading crowd. In addition, the proposal provides that (1) members of a joint account who are not present in the OEX trading crowd may not be logged onto RAES; (2) a joint account member must log off RAES whenever he leaves the OEX trading crowd; and (3) once a member of a joint account has been logged onto OEX RAES at any time during an expiration cycle, each member of that account must be logged onto the System at any time that he enters the OEX trading crowd from the date of the initial log-on through the business day immediately preceding expiration. The proposed rule change mandates a fine of $500.00 per joint account member, imposed by the OFPC, for violations of the preceding requirements. In addition, a joint account member who fails to log onto the System on the last business day immediately preceding expiration will be disqualified from signing onto OEX RAES for a period of time to be determined by the OFPC.

The CBOE proposes similar rules for members with multiple nominees. Specifically, the proposal allows the manager of a multiple nominee account to log onto RAES all eligible nominees present in the OEX trading crowd. In addition, the proposal provides that: (1) Nominees not present in the OEX trading crowd may not be logged onto RAES; (2) a participating nominee must log off the System when he leaves the OEX trading crowd; and (3) once a participating nominee has been logged onto OEX RAES at any time during an expiration cycle, each participating nominee of the member organization must be logged onto the System at any time that he enters the OEX trading crowd from the date of the initial log-on through the business day immediately preceding expiration. The proposal mandates a fine, imposed by the OFPC, of $500.00 per member for violations of the preceding requirements. In addition, a participating nominee who fails to log into the System on the last business day immediately preceding expiration will be disqualified from signing onto OEX RAES for a period of time to be determined by the OFPC.

Finally, the proposed rule change would authorize the chairperson of the OFPC, or his or her designee, in consultation with a senior Exchange executive officer, to require Market-Makers who are member of the OEX trading crowd to log onto RAES if there appears to be inadequate RAES participation.

By increasing the in-person and OEX volume quotas, decreasing the length of the review period, and restricting RAES participation to members that are present in the trading crowd, the Exchange seeks to achieve several objectives. First, the CBOE believes that the proposed criteria promote greater in-percent participation in the OEX trading crowd and, concomitantly, greater liquidity and depth in OEX options markets. The Exchange anticipates that participating Market-Makers generally will trade out of their RAES positions, thereby creating greater liquidity and tighter bid-ask spreads, even in less active series. The CBOE believes that

[2] Currently, to participate in RAES, a Market-Maker must execute 50% of his Market-Maker contracts for the preceding month in OEX or SPX and must execute 25% of his Market-Maker trades for the preceding month in person in OEX or SPX.

the mandatory presence of RAES participants in the trading crowd will also promote greater accountability and is consistent with the current standard for participation in RAES and SPX and in equity options.

In addition, the proposed eligibility criteria are designed to promote more equitable participation in RAES by those OEX Market-Makers that regularly assume the responsibility for making markets in OEX. Under the existing standards, Market-Makers that are neither present in the trading crowd nor active Market-Makers in OEX options may, nevertheless, participate in OEX RAES. This expansive pool of eligible Market-Makers deprives active in-crowd Market-Makers of the opportunity to participate proportionately in the customer order flow routed thought RAES. Under the revised standards, Market-Makers that do not assume a significant responsibility for making markets in the OEX crowd will be precluded from taking the other side of RAES-executed customer orders.

The Exchange does not believe that the potential reduction in the number of Market-Makers eligible to participate in RAES will adversely affect the efficient functioning of the RAES system. Of the more than 280 Market-Makers currently logged onto RAES on an average day, approximately 210 would remain eligible under the proposed rule change. The CBOE states that in the past this has proven to be more than adequate to ensure the continued smooth operation of OEX RAES. In addition, the CBOE believes that the mandatory log-on provisions should ensure that there is adequate participation throughout the expiration cycle and, in particular, on expiration Fridays.

Moreover, the CBOE believes that the proposal enhances those safeguards currently in place to ensure sufficient Market-Maker participation on OEX RAES during periods of market volatility. Specifically, as noted above, if there appears to be inadequate RAES participation in OEX, the proposed rule change would enable the chairman of the OFPC or his designee, in consultation with a senior executive Exchange officer, to require members of the OEX trading crowd to participate in RAES, regardless of eligibility, and to request participation by members outside of the OEX trading crowd. Currently, the entire OFPC must make this determination. In addition, the separate sanctions previously imposed, respectively, against individual Market-Makers and group participants for failure to comply with the OEX RAES rules and standards have been made co-extensive. Accordingly, any participant that fails to satisfy his long-on requirement on the last business day preceding expiration will be disqualified from signing onto the system for a period of time to be determined by the OFPC. Likewise, any participant that fails to abide by the long-on and long-off requirements set forth in the proposal will be subject to a free in the amount of $500.00.

The CBOE explains that the amendments also reflect several administrative changes that have been implemented since the institution of the existing eligibility standards. First, only the manager of a group account, rather than each member of the account, is required to complete the RAES instructional program for purposes of satisfying the eligibility criteria. Likewise, the group manager has been authorized to log onto RAES all account members present in the OEX trading crowd. In addition, the revisions reflect the fact that the OFPC has assumed the enforcement responsibilities previously held by the Index Floor Procedure Committee. The format of the rule has also been amended to make it more consistent with other rules of the Exchange.

The Exchange will provide those Market-Makers currently eligible to participate on RAES with a 60-day grace period following the effective date of the rule change to satisfy the new eligibility criteria if they desire to continue their participation in OEX RAES. The Exchange believes that this will alleviate any unnecessary burden on participating Market-Makers and public customers.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to increase market depth and liquidity and to provide an efficient and fair system for the accommodation of customer transactions on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change . . should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30203 Filed 12-11-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31570; International Series No. 506; File No. SR–CBOE–92–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Expiration Cycle for Options on the Financial Times-Stock Exchange 100 Index

December 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 2, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, the CBOE lists options on a reduced value Financial Times-Stock Exchange 100 Index ("FT–SE 100" or "Index") on a March quarterly cycle of expiration months.[1] Exchange Rule 24.9(b) authorizes the CBOE to list up to six expiration months for index options; the options may expire at three-month intervals or in consecutive months. Pursuant to Exchange Rule 24.9(b) and the FT–SE Approval Order, the CBOE proposes to amend the pattern of expiration months for the Index options by increasing the number of expiration months from four to six. Specifically, the Exchange proposes to add two near-term months to the March quarterly cycle.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to Exchange Rule 24.9(b) and the FT–SE Approval Order,[2] the CBOE proposes to amend the pattern of expiration months for the Index options by increasing the number of expiration months from four to six. Specifically, the Exchange proposes to add two near-term months to the March quarterly cycle. Accordingly, the proposal will enable the Exchange to list series of reduced-value Index options with up to six different expiration months at any one time (*i.e.*, the three consecutive near-term months and the three farther out months in the March quarterly cycle. Under this pattern, for example, in January the Exchange may list series of reduced value Index options that expire in each of the three consecutive near-term months, namely January, February, and March, and in the three far out months of the March quarterly expiration cycle, namely, June, September, and December.

At no time will there be more than six expiration months in this class of options, exclusive of long-term options listed pursuant to Exchange Rule 24.9(d). Likewise, at no time will the Exchange list a series of reduced value Index options that expires more than twelve months from the date the series is listed, again with the exception of long-term options listed pursuant to Exchange Rule 24.9(d).

The purpose of the proposal is to provide the CBOE with the flexibility to list series of reduced value Index options expiring in each of the three near-term months in addition to the three further out months in the March quarterly expiration cycle. This will enable the Exchange to list reduced value Index options having the same pattern of expiration months that apply to Index options and options on futures on the Index traded on the London International Financial Futures and Options Exchange and the Chicago Mercantile Exchange, respectively. In addition, the amended pattern of expiration months is consistent with the pattern currently applicable for Exchange-listed options on the Standard & Poor's 500 Index.

The CBOE notes that the proposed change in the pattern of expiration months was expressly contemplated in the original FT–SE Approval Order.[3] In addition, the CBOE notes that the proposal is consistent with Exchange Rule 24.9(b), which contemplates as many as six expiration months, in three-month intervals or consecutive months.

The CBOE believes that the proposal is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the administration of an existing CBOE rule. The Commission notes that the CBOE's rules provide the Exchange with some discretion to add additional expiration months, and that the proposal is consistent with the procedures for changing the pattern of expiration months previously approved by the Commission.[4] Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent

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[1] See Securities Exchange Act Release No. 29722 (September 23, 1991), 56 FR 49907 ("FT–SE Approval Order").

[2] See note 1, *supra*.

[3] See note 1, *supra*.

[4] See Securities Exchange Act Release No. 23257 (May 20, 1986), 51 FR 19434 (order approving File Nos. SR–CBOE–86–02 and SR–CBOE–86–04).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30204 Filed 12-11-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31566; International Series Release No. 504; File No. SR-OCC-92-29]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Delivery-Versus-Payment Settlement Procedures

December 4, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 17, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-92-29) as described in Items I, II, and III below, which Items have been prepared primarily by OCC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend chapter XVI, Rule 1606A, of its Rules to modify the delivery-versus-payment ("DVP") settlement procedures: (1) To provide that a Clearing Member is not discharged from its obligation to pay U.S. dollars or to deliver foreign currency in settlement of an exercise of foreign currency options until the earlier of (i) the time when its agent bank makes final settlement or (ii) the time when OCC's correspondent bank irrevocably credits OCC's account with the U.S. dollars or foreign currency deliverable by the Clearing Member's agent bank; (2) to emphasize that OCC is obligated in the DVP settlement processes to cause its correspondent bank to make settlement only against receipt of the agent bank's counter-settlement; and (3) to clarify that OCC's obligation to make payment or delivery is to the party designated by the Clearing Member's agent bank in the DVP Authorization, which may or may not be the agent bank.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to chapter XVI, Rule 1606A of OCC's Rules has three purposes. First, the proposal will clarify that a Clearing Member that elects to settle via DVP procedures permitted by Rule 1606A is not discharged from its obligation to pay U.S. dollars or to deliver foreign currency in settlement of an exercise of foreign currency options until the earlier of (i) the time when its agent bank makes final settlement or (ii) the time when OCC's correspondent bank irrevocably credits OCC's account with the U.S. dollars or foreign currency deliverable by the Clearing Member's agent bank. Secondly, the proposal will emphasize the conditional nature of OCC's obligation in the DVP settlement process. OCC is obligated to cause its correspondent bank to make settlement only against receipt of the agent bank's counter-settlement. Finally, the proposal will clarify that OCC's obligation to make payment or delivery is to the party designated by the Clearing Member's agent bank in the DVP authorization, which may or may not be the agent bank.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act[2] because it conforms the allocation of the settlement risk in the DVP process to that of the regular way settlement process and avoids a situation where OCC would be obligated to release margin or deliver currency to a Clearing Member whose agent bank has failed to settle with OCC's correspondent bank.

B. SRO's Statement on Burden on Competition

OCC believes that the proposed rule change will not impose any burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has not solicited comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SRO consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should

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[5] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78q-1 (1988).

refer to File No. SR–OCC–92–29 and should be submitted by January 5, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30205 Filed 12–11–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19147; File No. 812–7911]

Anchor National Life Insurance Company, et al.

December 4, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Anchor National Life Insurance Company ("Anchor National"), Variable Separate Account (the "Separate Account"), SunAmerica Securities, Inc. ("SunAmerica") and Royal Alliance Associates, Inc. ("Royal Alliance").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge and a distribution expense charge from the assets of the Separate Account under certain individual and group flexible payment deferred annuity contracts ("Contracts").

FILING DATE: The application was filed on April 28, 1992 and amended on October 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Routier, Mackey and Johnson, 1700 K Street, NW., suite 1003, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 272–3045, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Anchor National is a stock life insurance company organized under the laws of the State of California.

2. The Separate Account was established by Anchor National to fund variable annuity contracts and is registered as a unit investment trust under the 1940 Act.

3. SunAmerica and Royal Alliance, broker-dealers registered under the Securities Exchange Act of 1934, are the principal underwriters for the securities issued by the Separate Account.

4. The Contracts provide for the accumulation of contract values and the payment of annuity benefits on a variable or a fixed basis. Purchase payments may be allocated to portfolios of the Separate Account or to the general account of Anchor National under one of the Contract's fixed options (the "Fixed Account"), or to a combination thereof. The minimum initial purchase payment for a Contract issued to fund a retirement plan that qualifies for special federal tax advantages ("Qualified Contracts") is $2,000; the minimum initial payment for a Contract that does not qualify for federal tax advantages ("Non-Qualified Contracts") is $5,000. Additional payments may be made in the amount of $250 for Qualified Contracts and $500 for Non-Qualified Contracts.

5. Anchor Series Trust ("Anchor Trust") and SunAmerica Trust ("SunAmerica Trust") are diversified, open-end management investment companies registered under the 1940 Act. Each portfolio of the Separate Account invests Contract payments in one of six series of Anchor Trust or one of ten series of SunAmerica Trust. Additional underlying funds may be available in the future.

6. If a Contract owner or participant dies during the accumulation period, a death benefit is paid to the beneficiary under the Contract. The standard death benefit is the greater of (1) the Contract value at the end of the valuation period during which due proof of death is received by Anchor National and (2) the amount of purchase payments less the sum of partial withdrawals, partial annuitizations and premium taxes incurred.

7. An enhanced death benefit also is provided where permitted by state law. During the first seven Contract years, the enhanced death benefit is determined by recomputing the standard death benefit by accumulating all amounts under (2) in paragraph 6 at 4% annually (or 3% if the Contract owner or participant was age 70 or older on the date of issue) to the date of death. After the seventh Contract year, the enhanced death benefit is the greater of the amount recomputed during the first seven Contract years, or the Contract value at the seventh Contract anniversary less the sum of partial withdrawals, partial annuitizations since the seventh anniversary and premium taxes incurred since the seventh anniversary, all accumulated at 4% annually (or 3% annually if the Contract owner or participant was age 70 or older on the date of issue) to the date of death.

8. During the accumulation period, amounts allocated to the Separate Account may be transferred among the portfolios and/or the Fixed Account. Any amounts allocated or transferred to the Fixed Account may, however, be transferred from the Fixed Account to the Separate Account only on or before seven calendar days prior to the annuity date. There is no charge for the first fifteen transfers in any Contract year. A transfer fee of $25 ($10 in Texas and Pennsylvania) is assessed for the sixteenth and each subsequent transfer in any Contract year.

9. A contingent deferred sales charge ("Withdrawal Charge") may be imposed on certain withdrawals. Withdrawal Charges will vary in amount depending upon the contribution year of the purchase payment at the time of withdrawal, in accordance with the following table:

WITHDRAWAL CHARGE TABLE

Contribution year	Applicable withdrawal charge (percent)
Zero	7
First	6
Second	5
Third	4
Fourth	3
Fifth	2
Sixth	1
Seventh and later	0

[3] 17 CFR 200.30–3(a)(23) (1991)

Withdrawals are allocated first to investment income, if any (which generally may be withdrawn free of Withdrawal Charge), and then to purchase payments on a first-in, first-out basis so that all withdrawals are allocated to purchase payments to which the lowest Withdrawal Charge applies.

There is a free withdrawal amount for the first withdrawal during a Contract year after the first Contract year. The free withdrawal amount is equal to the sum of (1) purchase payments that are no longer subject to the Withdrawal Charge and that have not previously been withdrawn, and (2) the greater of (A) 10% of purchase payments made more than one year prior to the date of withdrawal that remain subject to the withdrawal charge and that have not previously been withdrawn, or (B) earnings in the Contract owner's or participant's account. Amounts in excess of earnings that are withdrawn free of the Withdrawal Charge pursuant to the 10% free withdrawal provision are charged against future earnings for purposes of determining the Withdrawal Charge; that is, they reduce the amount of future earnings that can be withdrawn free of Withdrawal Charge.[1]

10. Anchor National deducts a distribution expense charge from each portfolio of the Separate Account during each valuation period on an annual basis of 0.15% of the net asset value of each portfolio. The distribution expense charge is designed to compensate Anchor National for assuming the risk that the cost of distributing the Contracts will exceed the revenues from the Withdrawal Charge. In no event will this charge be increased. The distribution expense charge is assessed during both the accumulation period and the annuity period but not applied to Contract values allocated to the Fixed Account.

11. An annual Contract administration charge of $35 is charged against each Contract. The amount of this charge is guaranteed and cannot be increased. The administrative charge is at cost with no anticipation of profit.

12. Anchor National imposes a charge for bearing certain mortality and expense risks under the Contract. The total annual mortality and expense risk charge is 1.37% of the net asset value of each portfolio of the Separate Account during each valuation period.

(a) The mortality risk portion of the charge is at an annual rate of 1.02%, of which 0.90% is assessed for providing the standard death benefit and 0.12% is assessed for providing the enhanced death benefit. The mortality risk charge is deducted to compensate Anchor National for assuming the risks that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates, for waiving the withdrawal charge in the event of the death of the Contract owner or participant, and for providing standard and enhanced death benefits prior to the annuity date. If the mortality risk charge is insufficient to cover the actual costs of assuming the mortality risks, Anchor National will bear the loss; however, if the charge proves more than sufficient, the excess will be a gain to Anchor National. The mortality risk charge may not be increased under the Contract.

(b) The expense risk portion of the charge is at the annual rate of 0.35% of the net asset value of each portfolio. The expense risk charge is to compensate Anchor National for assuming the risk that the Contract administration charge will be insufficient to cover the cost of administering the Contracts. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts, Anchor National will bear the loss; however, if the charge is more than sufficient, the excess will be a gain to Anchor National. The expense risk charge may not be increased under the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deductions of the mortality and expense risk charge and a distribution expense charge from the assets of the Separate Account under the Contracts.

2. Applicants represent that the mortality and expense risk charge of 1.25% (which does not include the 0.12% risk charge for the enhanced death benefit) is reasonable in relation to the risks assumed by Anchor National under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants represent that these determinations are based on their analysis of publicly available information about similar industry practices and by taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. Anchor National undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

3. Applicants represent that the mortality risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by Anchor National under the Contracts. In arriving at this determination, Anchor National ran a large number of computer-generated trials at various issue ages to determine the expected cost of the enhanced death benefit. First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical Contract owner's or participant's death during the year in question. By analyzing the results of several thousand such simulations, Anchor National was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, Anchor National determined that a mortality risk charge of 0.12% was a reasonable charge for the enhanced death benefit. Anchor National undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by Anchor National under the Contracts.

4. Anchor National represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the 1940 Act. Anchor National has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. Anchor National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

5. Applicants represent that the amount of any Withdrawal Charge imposed when added to any distribution expense charge previously

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect these representations.

paid, will not exceed 9% of purchase payments and that Anchor National will monitor each Contract owner's and participant's account for the purpose of ensuring that this limitation is not exceeded. Applicants undertake to include in the prospectus for the Contracts statements describing the purpose of the distribution expense charge, and that the staff of the Commission deems such charge to constitute a deferred sales charge.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charges and the distribution expense charge from the assets of the Separate Account under the Contracts meets the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30206 Filed 12-11-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19148; File No. 812-7511]

Golden American Life Insurance Company, et al.

December 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Golden American Life Insurance Company ("Golden American"), Golden American Separate Account D of Golden American Life Insurance Company ("the Account") and Directed Services, Inc. ("DSI").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from sections 2(a)(35), 12(b), 26(a)(2)(C) and 27(c)(2), and Rule 12b-1.

SUMMARY OF APPLICATION: Applicants seek an order to permit deduction of a mortality and expense risk charge from the assets of the Account under deferred variable annuity contracts (the "Deferred Annuity Contracts") and variable annuity certain contracts (the "Annuity Certain Contracts"), the deduction of a premium-based sales charge from the accumulation value and the deduction of a guaranteed death benefit charge under the Deferred Annuity Contract.

FILING DATE: The Application was filed on April 20, 1990 and amended on October 30, 1990, July 10, 1991, March 20, 1992 and August 26, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Golden American Life Insurance Company, 909 Third Avenue, 19th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Senior Attorney, at (202) 272-2058 or Wendell Faria, Deputy Chief, Office of Insurance Products, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Golden American Life Insurance Company is a stock life insurance company organized under the laws of the State of Minnesota. From January 2, 1973 through December 31, 1987, the name of the company was St. Paul Life Insurance Company. On December 31, 1987, after the sale of St. Paul Life Insurance Company's business, the name was changed to Golden American Life Insurance Company. On March 7, 1988, all of the stock of Golden American was acquired by The Golden Financial Group, Inc. ("GFG"), a financial services holding company. On October 19, 1990, GFG merged with and into MBL Variable, Inc. ("MBLV"), a wholly owned direct subsidiary of the Mutual Benefit Life Insurance Company ("MBL"). On January 1, 1991 MBLV became a wholly owned indirect subsidiary of MBL and Golden American became a wholly owned direct subsidiary of MBL.

In September 1992, Bankers Trust Company ("Bankers Trust"), a New York banking corporation, acquired Golden American and DSI. As of June 30, 1992, Bankers Trust New York Corp., parent of Bankers Trust, was the eighth largest bank holding company in the United States with total assets of approximately $64 billion. Bankers Trust conducts a variety of general banking and trust activities and is a wholesale supplier of financial services to the domestic and international market.

2. The Account, registered with the Commission as a managed separate account on Form N-3, is a separate investment account of Golden American established on April 18, 1990 to act as a funding vehicle for variable annuity contracts. The Account consists of the U.S. Government Bond Division (the "Division") and the Global Asset Allocation Portfolio ("Portfolio") (collectively the "Divisions"). The Division's investment objective is to achieve high total investment return consistent with a prudent regard for capital preservation. Currently, only Deferred Annuity Contracts are funded by the Divisions. Other Divisions may be added in the future.

3. On July 16, 1991, the Superior Court of New Jersey entered an order (the "Order") appointing the Commissioner of Insurance of the State of New Jersey as Rehabilitator of MBL. The Order granted the Rehabilitator immediate exclusive possession and control of, and title to, the business and all assets of MBL. The Rehabilitator has been directed to conduct the business of MBL and to begin taking such steps as he may deem appropriate toward removing the causes and conditions which have made rehabilitation necessary.

Golden American is not subject to rehabilitation under the Order. However, to protect Golden American and its Contract Owners, on July 16, 1991 a Minnesota Superior Court ordered that Golden American temporarily be placed under the supervision of the Minnesota Commissioner of Commerce and that various actions, including certain transfers of company assets, cannot be taken without the prior written consent of the Commissioner of Commerce. Golden American is permitted to accept new premiums, pay all claims and benefits and honor all requests for cash withdrawals and surrenders.

4. As previously noted, DSI will serve as the Manager to the Account. Granite Financial Services, Inc. will serve as the

Portfolio Manager to the Division and Zulauf Asset Management AG will serve as the Portfolio Manager to the Portfolio. Pursuant to a distribution agreement between Golden American and DSI, DSI will act as the principal underwriter and distributor of the Contracts and will enter into sales agreements with broker-dealers to solicit sales of the Contracts through registered representatives. The offering of the Contracts will be continuous.

5. The Contracts are currently intended to be used in connection with either a retirement plan qualified under sections 401(a), 408(a), 408(b) and 457 of the Internal Revenue Code or a non-qualified plan, or by any other purchaser for whom they may provide a suitable investment.

6. The Deferred Annuity is an individual flexible premium payment contract which provides of an initial premium payment and for subsequent premium payments if the Contract owner so desires. There is, however, no obligation to make additional payments.

7. The Annuity Certain is an immediate annuity which provides for payment of a single premium and allows for variable annuity payments to be made to the Annuitant over a fixed period of time.

8. The sales charges imposed under the Contracts may be structured in one of two ways, as described in (a) and (b) below. If Contracts are sold with both types of sales load structures a separate sub-division of the Divisions will be established to hold assets attributable to Contracts with each type of sales load.

a. Certain Contracts may provide for deferred loading at a maximum rate of 7.5% of each payment. Initially, the deferred load for the Deferred Annuity Contracts investing in the Division will be 3.00% and 6.00% for Deferred Annuity Contracts investing in the Portfolio. For both the Deferred Annuity Contracts and the Annuity Certain Contracts, the deferred loading may differ based on the size of the initial or single premium. For the Deferred Annuity Contracts, the deferred loading percentage is applicable to all subsequent premium payments and may not be modified. All deferred loading applicable to initial or additional premium payments or single premium payments is deducted by Golden American at the time of payment but is advanced back to the Divisions and recovered periodically in equal installments over a period specified in the Contracts by Golden American from the accumulation value following receipt and acceptance of the payment. If the Contract Owner surrenders a Contract, any remaining deferred loading will be recovered by Golden American at that time, and a portion of the remaining deferred loading will be immediately deducted from the accumulation value for partial withdrawals in excess of 15% of accumulation value. For purposes of the provisions of the 1940 Act applicable to sales loads, the deferred loading is a front-end sales load.

b. In the future, certain Contracts may provide for a combination of a premium-based sales load and a contingent deferred sales load in lieu of the deferred load. Golden American will deduct the premium-based sales load from accumulation value in an amount equal to a maximum of 7.50% of each premium payment. The premium-based charge will be deducted in equal installments for a period of up to ten years or until such time as the Contract Owner surrenders the Contract or annuitizes. A contingent deferred sales load may be deducted if a Contract Owner surrenders a Contract or makes a partial withdrawal thereunder in excess of 15% of accumulation value. The contingent deferred sales load upon surrender will be a maximum of 7.50% in Contract year one and will decline to zero for surrenders after Contract year eight. In no event will the sum of the premium-based sales load and any contingent deferred sales load exceed 9.00% of each premium payment.

9. Generally, premium taxes are incurred on the annuity commencement date, and a charge for premium taxes is then deducted from the accumulation value of such date. Currently, these charges range from 0% to 3.5%. Some jurisdictions impose a premium tax at the time the initial or additional premiums are paid, regardless of the annuity commencement date. In those states, Golden American advances the amount of the premium tax charge to the accumulation value and then deducts it in equal installments on each Contract processing date over a six-year period. Currently in those states where Golden American advances the charge for premium taxes, Golden American will waive the deduction of the applicable installments on each contract processing date. However, Golden American deducts the applicable unrecovered portion of the charge for premium taxes (not including installments which were waived) when determining the cash surrender value payable if the Contract Owner surrenders the Contract. Golden American reserves the right to deduct the total amount of the charge for premium taxes previously waived and unrecovered on the annuity commencement date.

10. Under the Contracts, Golden American in the future may impose an administrative charge of $40 annually which will be deducted in equal installments from the accumulation value of a Contract to reimburse Golden American for the anticipated actual cost of administrative expenses relating to the Contracts. The amount of the charge may be changed by Golden American but is guaranteed not to exceed $60 annually. There may also be an asset-based administrative charge accrued daily at a rate of 0.00276%, not to exceed 0.10% annually of the assets of the Contracts. This administrative charge, if assessed under the Contracts, would remain in effect for the life of the Contracts.

11. The Contracts provide that a maximum mortality and expense risk daily charge equal to the rate of 0.003445% (equivalent to an annual charge of 1.25%) of the asset values in each division of the Account will be deducted. The mortality risk assumed by Golden American arises from its obligation to continue to make annuity payments under the income plan provisions of the Contracts, determined in accordance with the guaranteed annuity tables and other provisions of the Contract, regardless of how long each annuitant lives and regardless of how long all payees as a group live. The mortality risk under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will possibly live longer than Golden American's actuarial projections indicated, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables set forth in the Deferred Annuity. In the Deferred Annuity Contract, Golden American also assumes a risk that it may be required to pay out a guaranteed death benefit if in excess of the accumulation value. The mortality risk assumed by Golden American under the Annuity Certain is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than Golden American's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since any payment option is guaranteed not to be less than the tables set forth in the Annuity Certain. In addition, Golden American assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

12. With respect to the Deferred Annuity, Golden American guarantees a death benefit payable to the beneficiary

if the Contract Owner or annuitant (when there is no contingent annuitant) dies prior to the annuity commencement date. Currently, Golden American will not impose a charge for its guarantee of a minimum death benefit under the Deferred Annuity. In connection with Contracts that invest in the U.S. Government Bond Division, Golden American pays the lesser of the guaranteed death benefit and the maximum guaranteed death benefit. The guaranteed death benefit is the accumulated value of the premium paid adjusted at a specified annual interest rate of up to 8.00% minus the accumulated value of the partial withdrawals (when available) adjusted at a specified annual interest rate of up to 8.00%. In connection with Contracts that invest in the Portfolio, when the annuitant and owner are both age 80 or younger at issue, Golden American pays the greater of the guaranteed death benefit and the accumulation value of the premium paid adjusted at a specified annual interest rate of up to 7.00% minus the accumulation value of any partial withdrawals (when available) adjusted at a specified annual interest rate of up to 7.00%. If the annuitant or owner is 81 years or older at issue, the death benefit is the greater of the cash surrender value and the sum of premiums paid less any partial withdrawals. Golden American reserves the right to modify this interest rate structure with newly issued Contracts. The maximum guaranteed death benefit is two times the sum of premiums paid minus the sum of partial withdrawals taken. Golden American may impose, in the future, a charge for its guarantee of a minimum death benefit ("Guaranteed Death Benefit Charge"). This charge will not be an asset based charge, but will be an account charge imposed to compensate Golden American for the risk that the guaranteed death benefit due under a Deferred Annuity Contract when the annuitant dies during the accumulation phase may exceed the normal death benefit otherwise payable. In the Deferred Annuity Contract, the guaranteed death benefit charge, if assessed, will be at a rate of $1.20 per $1,000 of guaranteed death benefit per year. All guaranteed death benefit charges will be deducted in equal installments on the contract processing date. The guaranteed death benefit in effect on the previous processing date will be multiplied by the annual rate and divided by the number of processing dates in each contract year to determine the actual charge. As an asset charge (assuming a hypothetical gross return of 5%), it would effectively increase the mortality and expense risk charge by approximately 0.10%. For higher hypothetical gross returns, this charge, when expressed as an asset charge, would be less; and, for lower hypothetical gross returns, it would be more. Assessment of the charge in this manner would benefit Contract Owners because it provides a better match of the charge and the risk than assessing the charge as a daily percentage of assets charged against assets in a division of the Account.

Applicants' Legal Analysis and Conditions

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from the provisions of the 1940 Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. To the extent any relief is necessary to permit the deduction from the Account of the mortality and expense risk charge and, from the accumulation value of the Contracts, the guaranteed death benefit charge, Applicants request an exemption from sections 12(b), 26(a)(c) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder.

3. To the extent that a guaranteed death benefit charge (as described immediately below) is imposed with respect to a particular Deferred Annuity Contract, the mortality and expense risk charge will be limited to a level such that the sum of the mortality and expense risk charge and an asset based approximation of the guaranteed death benefit charge (assuming a 5% rate of return) does not exceed 1.25% of the assets in the division of the Account.

4. If the charges are insufficient to cover the actual cost of the mortality and expense risk and guaranteed death benefit costs, the loss will fall on Golden American; conversely, if the deduction proves more than sufficient, the excess will be a profit to Golden American. Any profits resulting to Golden American from the mortality and expense risk and guaranteed death benefit charges can be used by Golden American, at its discretion, for any business purpose, including distribution expenses relating to the Contracts.

5. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk charge under comparable variably annuity contracts currently being offered in the industry, taking into consideration such factors as current charge levels or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants further represent that the maximum charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

6. Applicants do not believe that the sales loads imposed under the Contracts will necessarily cover the expected costs of distributing Contracts. Any "shortfall" will be made up from the general account assets which will include amounts derived from risk charges. Golden American has concluded that there is a reasonable likelihood that the distribution financing arrangement that will be used in connection with the Contracts will benefit the Account and the Contract Owners. Golden American will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

7. Applicants further represent that the Account will have a Board of Governors, a majority of whom are not interested persons of the Account, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

8. As described above, the Contracts may in the future provide for the deduction from accumulation value of an amount equal, on an annual basis, to a maximum of 7.50% of each premium payment as a premium-based sales load. In no event will the sum of any premium-based sales load and any contingent deferred sales load assessed under a Contract exceed 9.00% of each premium payment. Applicants request an exemption from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit this deduction from accumulation value in installments.

9. Section 2(a)(35) of the 1940 Act defines sales load as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

10. The literal language of section 2(a)(35) contemplates that any sales load imposed on a security of a registered

investment company be a front-end load. Rule 6c–8 specifically allows the deduction of contingent deferred sales loads with respect to a variable annuity contract, if certain conditions are fulfilled, all of which are met with the Contracts. Applicants argue that the deduction of the premium-based sales load from accumulation value could be viewed as an impermissible deduction from the accumulation value in the Account. Accordingly, Applicants request relief from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of the premium-based sales load.

11. Applicants submit that imposition of a sales charge in the form of a premium-based charge to be deducted from accumulation value is more favorable to a Contract Owner than the deduction of this charge from premiums paid. Specifically, the amount of the Contract Owner's investment in the Account is not reduced as it would be if these charges were taken in full directly from premiums paid. Second, the total amount charged to any Contract Owner is no greater than it would be if these charges were taken from premiums paid. Finally, the fact that the entire amount of the charge has not been deducted will favorably affect the amount of the Guaranteed Death Benefit.

Conclusion

In light of the foregoing facts and representations, Applicants believe that the requested exemptions to deduct the mortality and expense risk, guaranteed death benefit charges and premium-based sales charge under the Contracts is necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30207 Filed 12–11–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 4, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48507
Date filed: November 30, 1992
Parties: Members of the International Air Transport Association
Subject: Telex TC23 Mail Vote 600; Japan-Egypt/Israel/Jordan PEX fares, r–1; Telex TC2 Mail Vote 601; Within Africa fares, r–2
Proposed Effective Date: January 1/ April 1, 1993

Docket Number: 48508
Date filed: November 30, 1992
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P0514 dated November 27, 1992; Expedited TC3 Resos (except UST); r–1–002h, r–2–003z; TC3 Reso/P0515 dated November 27, 1992; Expedited TC3 Resos (except UST); r–3–003a, r–4–003i, r–5–003k, r–6–003n, r–7–003o, r–8–003p
Proposed Effective Date: Expedited January 1/January 4, 1993

Docket Number: 48509
Date filed: November 30, 1992
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P0513 dated November 27, 1992; Expedited TC3 Reso (US Territories); r–1–002b; TC3 Reso/P0516 dated November 27, 1992; Expedited TC3 Reso (US Territories), r–2–003M
Proposed Effective Date: Expedited January 1/January 4, 1993

Docket Number: 48510
Date filed: November 30, 1992
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0542 dated October 6, 1992; Europe-South Asian Subcontinent Resos r–1 to r–18
Proposed Effective Date: January 1, 1993

Docket Number: 48518
Date filed: December 2, 1992
Parties: Members of the International Air Transport Association
Subject: Request for Interim Approval of Amendments to the Provisions for The Conduct of The IATA Traffic Conferences
Proposed Effective Date: Upon Governmental Approval

Docket Number: 48519
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: Telex TC12 Mail Vote 604; Mid Atlantic-Africa fares
Proposed Effective Date: April 1, 1993

Docket Number: 48520
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1331 dated November 17, 1992; Middle East-Africa Expedited resos r–1 to r–5; TC2 Reso/P 1333 dated November 17, 1992; Within Africa Expedited resos r–6 to r–11
Proposed Effective Date: Expedited January 1, 1993

Docket Number: 48521
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: CAC/Reso/173 dated November 25, 1992; Expedited Resolutions (15th CAC meeting); r–1–801g, r–2–801r, r–3–851, r–4–851p
Proposed Effective Date: January 1, 1993

Docket Number: 48522
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 0960 dated November 27, 1992; North & Central Pacific Expedited Reso 015b
Proposed Effective Date: Expedited March 1, 1993

Docket Number: 48523
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 0951 dated October 27, 1992; Circle Pacific Resos 002 (r–1) & 073c (r–2); TC31 Reso/P 0971 dated November 27, 1992; Circle Pacific Reso 073c (r–3); Minutes—TC31 Meet/P 0210 dated November 27, 1992; Tables—TC31 Fares 0134 dated November 20, 1992
Proposed Effective Date: April 1/May 1, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–30262 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 4, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48514

Date filed: December 1, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 1992
Desciption: Application of Promech, Inc., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity for an indefine term to perform scheduled, interstate air transportation of persons, property and mail between the terminal points of Ketchikan and Metlakatla, Alaska.

Docket Number: 48525
Date filed: December 4, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 4, 1993
Descriptions: Application of Lines Aereas Privadas Argentinas, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to enable it to engage in charter foreign air transportation of passengers, property and mail from a point or points in Argentina to a point in the United States and return.

Docket Number: 45723
Date filed: December 4, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 4, 1993
Description: Application of Transports Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment of its Foreign Air Carrier Permit, to engage in the scheduled air transportation of persons, property and mail on the scheduled combination routes: (1) Mexicali, Mexico, on the one hand, and Los Angeles, CA, on the other hand, and Los Angeles, CA, on the other hand; (2) Ciudad Juarez, Mexico, on the one hand, and Los Angeles, CA, on the other hand; (3) Villahermosa, Mexico, on the one hand, and Houston, TX, on the other hand; (4) Zacatecas, Mexico, on the one hand, and Houston, TX, on the other hand; and (5) Mexico City/ Toluca, Mexico, on the one hand, and Ontario, CA, on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-30261 Filed 12-11-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.51, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Union Pacific Railroad Company

Waiver Petition Docket Number H-92-7

The Union Pacific Railroad Company (UP) requests a waiver of compliance with certain provisions of the railroad power brakes regulation (49 CFR part 232). The UP seeks a waiver of compliance with § 232.12(b), which stipulates, "Each carrier shall designate additional inspection points not more than 1,000 miles apart where intermediate inspection will be made to determine that—

(1) Brake pipe leakage does not exceed five pounds per minute;

(2) Brakes apply on each car in response to a 20-pound service brake pipe pressure reduction; and

(3) Brake rigging is properly secured and does not bind or foul.

The UP requests the waiver for a period of six (6) months duration from § 232.12(b) in which to perform a test. The test will include approximately 22 trains per day which presently receive a 1,000 mile intermediate train air brake test at Salt Lake City, Utah. The trains would be operated to either destination or an intermediate train brake testing location, and the distances the trains will travel are between 1,362 miles and 1,648 miles.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. However, if an opportunity for oral comment is requested, such request must be made in writing within 10 days from the date of publication of this notice. If any interested party desires an opportunity for oral comment, they shall do so in writing and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number (H-92-7) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.
Communications received within 30 days from the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on December 10, 1992.

Phil Olekszyk,
Deputy Associate Administrator for Safety.
[FR Doc. 92-30404 Filed 12-11-92; 8:45 am]
BILLING CODE 4910-06-M

Federal Transit Administration

Charter Services Demonstration Program; Advisory Committee Meeting

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces the second meeting of the advisory committee established to assist the Federal Transit Administration (FTA) in developing regulations to implement the charter services demonstration program mandated by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). This statutorily mandated advisory committee, equally representative of public transit agencies and privately owned charter companies, will provide a forum for discussion of key issues relating to the effectiveness and/or need for the modification of the current charter service regulation.

Today's notice announces a meeting of the advisory committee, which is open to the public.

DATES: The second meeting of the advisory committee will take place on January 11, 1993, from 8:30 a.m. to 5 p.m.

ADDRESS: The advisory committee meeting will be held in room 2230 at the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Office of the Chief Counsel, Federal Transit Administration (TCC-32), at 202-366-1936.

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1991, the President signed into law the Intermodel Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240) providing authorization for mass transportation, highways, and highway safety programs for the next six years. The purpose of

this Act is to develop a National Intermodal Transportation System that is economically sound, which provides the foundation for the Nation to complete in the global economy and will move people and goods in an energy efficient manner.

Title III of the Act relates to the mass transit program. Section 3040 of this title requires the FTA to issue regulations implementing a charter services demonstration program in not more than four states, which would allow transit operators to provide charter service to meet the needs of government, civic, charitable, and other community activities which would not otherwise be met in a cost-effective and efficient manner. Section 3040 also provides that in developing such regulations, the FTA shall consult a board that is equally represented by public transit operators and privately owned charter services.

Major Issues

The demonstration regulations and program have been mandated in response to concerns expressed by local transit operators about the existing charter service regulation (49 CFR part 604). It is intended that these new demonstration regulations will grant public transit operators additional flexibility that is not afforded under existing charter regulations, without creating undue competition for privately owned charter operators. The results of the demonstration program will help to determine the most effective method for providing charter services to local communities, and whether the current regulations need to be modified.

To implement this statutory mandate, the FTA established a Federal Advisory Committee, effective March 16, 1992. Appended to this preamble is a list of member organizations. The first meeting of the Advisory Committee took place in Washington, DC on May 4, 1992. With the advice and recommendation of the Advisory Committee, the FTA developed a proposed demonstration program. Under this program, a State Department of Transportation (State DOT) or metropolitan planning organization (MPO) in each of the selected sites would appoint a local advisory panel composed of representatives of the public and private sectors. The advisory panel would recommend to the State DOT or MPO that a public transit agency participating in the program be allowed to provide certain types of charter service. The State DOT or MPO would accept recommendations which received a unanimous vote from the advisory panel, and decide to grant or deny other recommendations, based on certain set criteria. There would be a limited appeal to the FTA of the State DOT's or MPO's decision. The demonstration would take place during a 12 to 18 month period, in six different sites. Data collected during the demonstration would be presented to Congress as directed by section 3040(c) of ISTEA.

On October 28, 1992, the FTA issued a notice of proposed rulemaking (NPRM) describing the demonstration program, and seeking comments and proposals. The period for submittal of comments and proposals ends on December 28, 1992. The FTA intends to pre-select six sites from among the proposals received, and to submit them for discussion and comment to the Advisory Committee at its January 11, 1993, meeting.

Meeting Procedures

The meeting of the Charter Services Demonstration Program Advisory Committee will be held on January 11, 1993, from 8:30 a.m. to 5 p.m. The goal of the committee is to provide advice and comment on the selection of sites for the demonstration program and the establishment of procedures to be followed by localities participating in the program.

Interpreters and assistive listening devices are available for persons with hearing impairments and written materials and hearing transcripts are available in accessible formats, upon request. All meetings of the Charter Services Demonstration Program Federal Advisory Committee are open to the public.

Appendix—Charter Services Demonstration Program Advisory Committee

Membership List—Public Transit Operators and their Representatives

1. Capital Area Transportation Authority, Lansing, Michigan.
2. Metropolitan Transit Authority of Harris County, Houston, Texas.
3. Monterey-Salinas Transit Authority, Monterey, California.
4. Central Oklahoma Transit Authority, Oklahoma City, Oklahoma.
5. Toledo Area Transit Authority, Toledo, Ohio.
6. Mass Transit Administration, Baltimore, Maryland.
7. Metropolitan Atlanta Regional Transit Authority, Atlanta, Georgia.
8. Pinellas-Suncoast Transit Authority, Clearwater, Florida.
9. Greenville Transit Authority, Greenville, South Carolina.
10. American Public Transit Association, Washington, DC.
11. Michigan Department of Transportation, Lansing, Michigan.
12. Sacramento Area Council of Governments, Sacramento, California.

Privately Owned Charter Services and their Representatives

1. Indian Trails Bus Company, Oswosso, Michigan.
2. American Bus Association, Washington, DC.
3. Lake Front Lines, Brookpark, Ohio.
4. American Coach Lines, Tuxedo, Maryland.
5. Academy Bus Tours, Newark, New Jersey.
6. Kerrville Bus Lines, San Antonio, Texas
7. Antelope Valley Bus, Lancaster, California.
8. Hotard Destinations Services, New Orleans, Louisiana.
9. Airport Ground Transportation Assn., Knoxville, Tennessee.
10. Arrow Stage Lines, Phoenix, Arizona.
11. California Bus Association, San Francisco, California.
12. Northfield Lines, Inc., Northfield, Minnesota.

Issued on: December 9, 1992.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 92-30251 Filed 12-11-92; 8:45 am]

BILLING CODE 4910-57-M

Research and Special Programs Administration

[Docket No. P-90-1W; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Petition for Waiver; Panhandle Eastern Corporation

The Panhandle Eastern Corporation (Panhandle) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with the repair requirements of 49 CFR 192.713(a) to allow the installation of a proprietary composite reinforced (CR) sleeve material (Clock Spring™ manufactured by Clock Spring Company of North America, Long Beach, CA) as a full encirclement wrapped sleeve for the repair of imperfections and damages in steel pipe at six locations on its Line #2 in Fayette County, Ohio. Currently under § 192.713(a), the repair permitted to each imperfection or damage that impairs the serviceability of a segment of steel transmission line operating at or above 40 percent of specified minimum yield strength (SMYS) must be either by cutting out the segment and replacing a cylindrical piece of pipe or by installing over the segment a full encirclement welded split sleeve.

Proposal and Rationale Submitted by Panhandle

The proprietary repair method proposed consists of installing a CR sleeve material in coil form held in place by an adhesive. The adhesive adheres both to the pipe surface and to

the adjacent layers of the coiled composite reinforcement. The composite reinforcement is an isophthalic polyester resin reinforced with fiberglass. The adhesive is a methacrylate. Both the composite reinforcement and the adhesive have histories of suitable performance in other applications described in documents in the docket.

The suitability of a standard CR sleeve for repair of a measured defect is determined using a computer program developed by the Gas Research Institute (GRI). Panhandle reports that destructive tests of pipe with standard CR sleeves installed over manufactured defects repeatedly burst in the non-reinforced steel pipe, demonstrating the validity of the computer program. The CR sleeve does not require pretesting nor are there any welds to be nondestructively tested.

Panhandle describes the following advantages of using CR sleeves:

(1) The CR sleeve material is relatively easy to install.

(2) The CR sleeve material is furnished in standard widths and thicknesses. The length of the repair to be made determines the number of sleeve units to be used. Multiple units can be brought to the job site at the time of excavation. Therefore, there is no delay between determining the extent of the repair and procuring materials for repair.

(3) The crew performing the investigation can make the repair without calling for pipe handling equipment or welders.

(4) In most circumstances, there will be no need to take the line out of service, eliminating interruptions or curtailments to customer service. The CR sleeve repairs can be made while the line is operated at full or reduced pressure.

(5) There is a substantial reduction in cost compared with the repair methods currently acceptable under § 192.713(a).

Panhandle estimates that the average cost of repair will be reduced from $26,000 for a pipe cutout or $16,000 for a welded split sleeve to $9,000 for a CR sleeve. The result would be a maximum savings of $17,000 per replacement repair, or $102,000 for 6 repairs or a minimum of $7,000 per welded split sleeve repair, or $42,000 for 6 repairs. Panhandle claims to make approximately 300 repairs per year. On the Panhandle system alone, annual savings could range between $5,000,000 and $2,000,000 per year.

The subject segment of Line #2 was installed in 1943. The pipe is 20 inch diameter, 0.3125 inch wall, API 5L Grade B. The line was designed and constructed in accordance with the American Society of Mechanical Engineers, ASA B31.1 Code for Pressure Piping. The line was hydrostatically tested in 1943 to a pressure of 985 p.s.i.g. or 90 percent of SNYS. The maximum allowable operating pressure (MAOP) of the line is 750 p.s.i.g. The line operates at 68.6 percent of SMYS. The line segment is in a Class Location 1 area for the entire 19 miles of its length. It is coated with standard grade coal tar enamel. The line has been operated and maintained in accordance with company operation and maintenance procedures which have met, at a minimum, the requirements of appropriate industry codes and standards and since 1970 the requirements of the pipeline safety regulations. The line segment was hydrostatically tested again in 1990 to a minimum of 90 percent of SMYS plus 25 p.s.i. as part of a scheduled pipeline integrity verification program that was initiated in 1987.

In February 1989, an instrumented internal inspection device was used to evaluate the condition of Panhandle's Line #2. The inspection indicated potential anomalies in the pipe which were classified using Panhandle's classification criteria. Type A and B are the most severe anomalies among the Panhandle classification criteria. Panhandle has disposed of the Type A and B anomalies using the conventional techniques currently permitted by § 192.713(a). The anomalies in question are classified as Type C. Type C anomalies are clusters of pits of 25–50 percent of wall thickness and massive, concentrated pitting less than 25 percent of wall thickness.

There are 12 anomaly sites on this segment of Line #2 proposed to be investigated for possible use of a CR sleeve. All 12 sites are at least 1000 feet from the nearest house or other building. The area is rural and the land use is predominantly agricultural. The integrity of all sites was validated by the hydrostatic test performed in June 1990. These 12 sites have been selected as possible candidates for repair using the alternate repair method discussed in this request for waiver. The analysis of the pig run indicates that six of the twelve anomalies will require repair. The need for repair cannot be verified without on-site visual inspection. Therefore, Panhandle intends to investigate and inspect these 12 locations in order to determine whether repair is required. If repair is required, this alternate repair method would be used on up to 6 of these sites.

The investigation of an anomaly site is to be conducted in accordance with a standard Panhandle procedure. Once the pipe is excavated and the coating is removed, the pipe will be examined, corrosion will be measured, and an analysis for serviceability will be performed using ANSI/ASME B31G "Manual for Determining the Remaining Strength of Corroded Pipelines." The manual is applicable to corroded areas with pit depths between 10 percent and 80 percent of the wall thickness of the pipe. By using the B31G manual, Panhandle can make a determination whether a pipeline can continue to operate at its established MAOP. If the corrosion is superficial and the pipeline can continue to operate at its MAOP, the pipeline will be re-coated, backfilled, and placed back in service. If the corrosion is significant, and the pipeline cannot continue to operate at the established MAOP, as determined by B31G, the MAOP will be reduced or the pipe will be replaced or repaired.

Panhandle believes that this new technology provides an excellent alternative to pipe replacement or the use of a full encirclement welded split sleeve for the repair of imperfections and damage in transmission pipe. The GRI, through various contractors, has conducted extensive analyses and tests on CR sleeves and their component materials. Panhandle reports that the strength of the sleeves has been proven through the GRI development program by laboratory and simulated field tests. Panhandle also reports that, under the GRI program, Clock Spring Company of North America has perfected the installation of the CR sleeves through numerous tests and under actual field conditions. Computerized design criteria have been developed and verified by burst tests in which CR sleeves have been installed over large, deep simulated defects. In all but one atypical sleeve installation, failure occurred in full wall thickness of the unsleeved pipe body. The computer program is designed to verify whether or not the standard CR sleeve will reliably serve as a repair.

Panhandle's waiver request includes a proposal to monitor the condition of the CR sleeves at designated intervals after installation. Panhandle will examine and take measurements of the CR sleeves and separate samples of sleeve materials to be buried adjacent to the sleeves. Two installed sleeves will be evaluated each at 2, 4, and 8 year intervals. Measurements will include strain gage readings of two CR sleeves at 6 month intervals to verify the expected absence of creep of the composite and the adhesive.

RSPA Analysis and Proposed Action

RSPA twice requested additional information to support the Panhandle waiver request. The information included the following topics:

(1) CR sleeve product specifications. The initial information submitted as product specifications was inadequate to define the product.

(2) Design calculations. The initial submission included no basis for selecting the appropriate CR sleeve thickness or verifying that the sleeve selected would perform adequately.

(3) Adhesive curing characteristics and adhesive properties. The initial submission did not include data on adhesive curing characteristics or cured adhesive properties.

(4) Quality assurance and quality control programs applicable to the production of CR sleeves. The initial submission did not include quality control criteria applicable to the CR sleeve product.

(5) Installation procedures. While the initial submission described the application of CR sleeves, it did not describe procedures necessary to ensure adequate application to pipe to the repaired.

(6) Post installation inspections. In the initial submission, the description of post installation inspections was minimal.

(7) Performance in creep of the fiber reinforced resin and the adhesive. The initial submission did not include data assuring that the proposed materials would resist creep in the installed condition.

The accumulated information in the initial waiver application and subsequent submittals represents satisfactory response to the requests by RSPA. The information provided by Panhandle is available in the docket.

In addition to the advantages cited by Panhandle, RSPA considers that the ability to make a repair without welding eliminates the possibility of cracking and pipeline failure attributable to residual stresses from welding and to hydrogen induced cracking associated with welding. Also eliminated is the possibility of burning through the pipe wall while welding. Overall, RSPA considers the CR sleeve repair procedure to be a safe alternative to either the welded split sleeve repair procedure or the pipe replacement procedure, both currently permitted by § 192.713(a).

RSPA believes that 49 CFR 192.713(a) should be waived to permit Panhandle to install CR sleeves as a permanent repair of six of the twelve corrosion anomalies cited in Line #2 in Fayette County, Ohio. RSPA believes that the use of this technology provides at least the same level of integrity as replacement of pipe or installation of a full encirclement welded split sleeve.

Interested persons are invited to comment on the proposed waiver by submitting in duplicate such data, views, or judgments as they may desire. Communications should identify the Docket and Notice numbers in the heading of this document, and be submitted to Dockets Unit, Room 8421, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590.

All comments received before February 12, 1993, will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments will be available for viewing between the hours of 8:30 a.m. to 5 p.m., before and after the closing date for comments. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, DC, on December 8, 1992.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 92–30216 Filed 12–11–92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 8, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8833.
Type of Review: New Collection.

Title: Treaty-Based Return Position Disclosure Under section 6114 or 7701(b).

Description: Form 8833 will be used by taxpayers that are required by section 6114 to disclose a treaty-based return position to disclose that position. The form may also be used to make the treaty-based return position disclosure required by Regulations section 301.7701(b)–7(b) for "dual resident" taxpayers.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 3 hours, 7 minutes.
Learning about the law or the form: 47 minutes.
Preparing and sending the form to the IRS: 53 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 28,680 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–30272 Filed 12–11–92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 8, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0915.
Form Number: IRS Form 8332.
Type of Review: Extension.

Title: Release of Claim to Exemption for Child of Divorced or Separated Parents.

Description: This form is used by the custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 150,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 7 minutes.

Learning about the law or the form: 7 minutes.

Preparing the form: 7 minutes.

Copying, assembling, and sending the form to the IRS: 14 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 81,000 hours.

OMB Number: 1545–1013.

Form Number: IRS Form 8612.

Type of Review: Revision.

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

Description: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 20.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 6 hours, 13 minutes.

Learning about the law or the form: 1 hour, 47 minutes.

Preparing and sending the form to the IRS: 1 hour, 58 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 200 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–30271 Filed 12–11–92; 8:45 am]

BILLING CODE 4830–01–M

[Number: 16–14]

Execution of Tax Withholding Agreements

Dated: December 7, 1992.

1. *Delegation.* By virtue of the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, I hereby authorize the Commissioner, Financial Management Service, to execute tax withholding agreements with State and local governments.

2. *Redelegation.* The authority delegated by this directive may be redelegated to personnel of the Financial Management Service.

3. *Cancellation.* Treasury Directive 16–41, "Executive of Tax Withholding Agreements," dated September 29, 1986, is superseded.

4. *Authorities.*

a. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 5 U.S.C. 5516, 5517, and 5520.

c. 31 CFR part 215.

5. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–30209 Filed 12–11–92; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meetings

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, January 13, 1993, at 2:30 p.m.
Wednesday, January 27, 1993, at 2:30 p.m.
Wednesday, February 10, 1993, at 2:30 p.m.
Wednesday, February 24, 1993, at 2:30 p.m.
Wednesday, March 10, 1993, at 2:30 p.m.
Wednesday, March 24, 1993, at 2:30 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 3, 1992.

By direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–30270 Filed 12–11–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 240
Monday, December 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: December 16, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 970th Meeting—December 16, 1992, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 11337–001, Moreland Energy Company
CAH–2.
Project No. 10551–021, City of Oswego, New York
CAH–3.
Project No. 2572–008, Great Northern Paper, Inc.
CAH–4.
Project No. 2232–286, Duke Power Company
CAH–5.
Project No. 3492–045, Allegheny No. 6 Hydro Partners
Project No. 3671–043, Allegheny Hydro Partners
CAH–6.
Project Nos. 9732–000 and 002, Brookside Hydroelectric Company, Inc.
Project Nos. 9277–000 and 002, Riverside Dam, Inc.
Project Nos. 10080–000 and 001, Lower Falls Hydro Company, Inc.
CAH–7.
Project No. 2523–002, Wisconsin Electric Power Company
CAH–8.
Docket No. RM93–5–00, Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act

Consent Electric Agenda

CAE–1.
Omitted
CAE–2.
Docket Nos. ER93–85–000 and EL93–7–000, Connecticut Yankee Atomic Power Company
CAE–3.
Docket No. ER92–533–000, Louisville Gas and Electric Company
CAE–4.
Docket No. EL88–1–003, Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company
Docket Nos. ER88–31–002 and ER88–32–002, Indiana Michigan Power Company
Docket Nos. ER90–270–003 and ER90–271–003, Indiana Michigan Power Company
CAE–5.
Docket No. EG93–2–000, Doswell Limited Partnership
CAE–6.
Docket No. EG93–4–000, Costanera Power Corporation
CAE–7.
Docket No. EG92–302–001, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE–8.
Docket Nos. EG92–484–001, ER92–512–001 and ER92–817–001, New England Power Company
CAE–9.
Docket No. ER89–48–002, Southern Company Services, Inc.
CAE–10.
Docket Nos. ER91–150–006 and ER91–570–005, Southern Company Services, Inc.
CAE–11.
Omitted
CAE–12.
Docket No. EL92–25–001, Cities and Villages of Albany and Hanover, Illinois; Alta Vista, Bellevue, Fairbank, Fredericksburg, Grafton, Guttenberg, Readlyn, Sabula, and Strawberry Point, Iowa; and Rushford and St. Charles, Minnesota v. Interstate Power Company
CAE–13.
Docket No. FA88–62–001, Wisconsin Electric Power Company
CAE–14.
Omitted
CAE–15.
Docket Nos. ER92–624–000, and 001, Western Resources, Inc. and Kansas Gas and Electric Company
CAE–16.
Omitted
CAE–17.
Docket No. RM85–17–000–Regulation of Electricity Sales-for-Resale and Transmission Service

Consent Miscellaneous

CAM–1.
Docket No. RM92–17–000, Elimination of Certain Filing Fees in Parts 346 and 381
CAM–2.
(A) Docket No. RO88–10–000, Houston Oil and Refining Inc. and Joseph A. Imparato
(B) Docket No. RO86–13–000, Merit Petroleum, Inc.
(C) Docket No. RO87–19–000, Pel-Star Energy, Inc. and John H. Harvison
(D) Docket No. RO87–6–000, Petrade International, Inc.
(E) Docket No. RO88–11–000, Port Petroleum, Inc. Morris M. James, T. Michael Howell, and C. Gregory Crafts
(F) Docket No. RO88–1–000, Leonard O. Rice d/b/a Rice Oil Company and Rice-Lindquist, Inc.

Consent Oil and Gas Agenda

CAG–1.
Docket No. RP93–29–000, ANR Pipeline Company
CAG–2.
Docket Nos. RP91–111–006 and 007, North Penn Gas Company
CAG–3.
Docket No. RP92–167–000, Natural Gas Pipeline Company of America
CAG–4.
Docket No. MT88–12–006, El Paso Natural Gas Company
CAG–5.
Docket No. RP93–28–000, Southwest Gas Transmission Company
CAG–6.
Omitted
CAG–7.
Docket No. RP88–67–061, Texas Eastern Transmission Corporation
CAG–8.
Docket Nos. RP93–31–000 and CP88–328–000, Transcontinental Gas Pipe Line Corporation
CAG–9.
Docket Nos. RP91–229–003, 004, 005 and 006, Panhandle Eastern Pipe Line Company
CAG–10.
Docket No. RP91–188–000, El Paso Natural Gas Company
CAG–11.
Docket Nos. RP91–41–015, RP91–90–008, TM92–2–21–005, TM92–3–21–005, TM92–9–21–004, TM92–10–21–003, TM92–11–21–002 and TM91–12–21–

004, Columbia Gas Transmission Corporation
CAG–12.
Docket No. RP92–237–001, Alabama-Tennessee Natural Gas Company
CAG–13.
Docket No. TQ92–5–1–006, Alabama-Tennessee Natural Gas Company
CAG–14.
Docket Nos. TA91–1–17–007, 003, 005, and TM91–2–17–003, Texas Eastern Transmission Corporation
CAG–15.
Docket Nos. RP88–259–081, CP89–1227–015, RP90–124–011 and RP90–161–007, Northern Natural Gas Company
CAG–16.
Docket No. RP92–132–009, Tennessee Gas Pipeline Company
CAG–17.
Docket No. RP92–165–005, Trunkline Gas Company
CAG–18.
Omitted
CAG–19.
Docket No. RP91–229–014, Panhandle Eastern Pipe Line Company
CAG–20.
Docket No. RP88–262–021, Panhandle Eastern Pipe Line Company
CAG–21.
Docket No. RP91–164–006, Granite State Gas Transmission, Inc.
CAG–22.
Docket No. RP88–211–027, CNG Transmission Corporation
CAG–23.
Docket Nos. RP87–30–000 (Phase II) and RP90–69–000, (Phase A), Colorado Interstate Gas Company
CAG–24.
Docket No. RP91–232–000, Pacific Interstate Transmission Company v. El Paso Natural Gas Company
CAG–25.
Docket No. RP91–166–014, Northwest Pipeline Corporation
CAG–26.
Docket Nos. RP92–50–001 and CP90–406–000, High Island Offshore System
CAG–27.
Docket No. RP92–135–000, West Texas Gas, Inc.
CAG–28.
Docket No. RP91–189–004, Midwestern Gas Transmission Company
CAG–29.
Omitted
CAG–30.
Docket No. RP92–15–000, Enogex, Inc.
CAG–31.
Docket Nos. IS92–21–000 and IS92–40–000, Total Pipeline Corporation
CAG–32.
Docket Nos. IS91–24–000 and IS91–30–000, Tecumseh Pipe Line Company
CAG–33.
Docket No. GP93–1–000, Louisiana Office of Conservation, Tight Formation Determination, Louisiana–13, FERC No. JD92–06945T
CAG–34.
Docket No. GP91–8–001, Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73 v. Rocky Mountain Natural Gas Company, a division of KN Energy, Inc.
Docket No. GP91–10–001, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73
CAG–35.
Docket No. GP92–14–000, Northern Natural Gas Company v. Woods Petroleum Corporation
CAG–36.
Docket Nos. RS92–24–002, RP88–115–031, RP90–104–019, RP90–192–012 and CP89–1119–003, Texas Gas Transmission Corporation
CAG–37.
Docket No. RS92–5–000, Columbia Gas Transmission
Docket No. RS92–6–000, Columbia Gulf Transmission Company
CAG–38.
Docket No. RS92–1–003, ANR Pipeline Company
CAG–39.
Docket Nos. CP91–1884–002 and CP91–1389–003, Great Lakes Gas Transmission Limited Partnership
CAG–40.
Docket No. CP92–189–001, Superior Offshore Pipeline Company
CAG–41.
Docket No. CP92–241–007, Kern River Gas Transmission Company
CAG–42.
Docket No. CP92–405–001, Transcontinental Gas Pipe Line Corporation
CAG–43.
Docket No. CP92–472–001, Equitrans, Inc.
CAG–44.
Docket No. CP92–543–002, Panhandle Eastern Pipe Line Company
CAG–45.
Docket No. CP92–441–001, National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company
CAG–46.
Docket No. CP91–2206–006, Tennessee Gas Pipeline Company
CAG–47.
Omitted
CAG–48.
Omitted
CAG–49.
Omitted
CAG–50.
Omitted
CAG–51.
Docket No. CP92–296–001, Northwest Pipeline Corporation
Docket No. CP92–289–002, El Paso Natural Gas Company
CAG–52.
Docket No. CP78–124–019, Northern Border Pipeline Company
CAG–53.
Docket No. CP90–2155–001, Southern Natural Gas Company
CAG–54.
Docket No. CP93–54–000, Transcontinental Gas Pipe Line Corporation
CAG–55.
Omitted
CAG–56.
Omitted
CAG–57.
Omitted
CAG–58.
Omitted
CAG–59.
Omitted
CAG–60.
Docket No. CP92–583–000, City Gas Company of Florida
CAG–61.
Docket No. CP89–2035–000, Meridian Oil Gathering, Inc.
CAG–62.
Docket No. CP92–657–000, Southwest Gas Corporation v. El Paso Natural Gas Company
CAG–63.
Docket No. RP93–27–000, Transcontinental Gas Pipe Line Corporation
CAG–64.
Docket Nos. RP90–109–006, RP87–62–014 and RP86–148–009 (Phase I), Pacific Gas Transmission Company
CAG–65.
Docket No. CP89–634–021, Iroquois Gas Transmission System, L.P.
CAG–66.
Docket No. RP92–187–000, Florida Gas Transmission Company
CAG–67.
Docket No. CP89–661–021, Algonquin Gas Transmission Company
CAG–68.
Docket No. CP92–259–001, Sumas International Pipeline, Inc.
Docket Nos. CP92–247–002, CP92–336–002 and CP92–383–000, Northwest Pipeline Corporation
Docket No. CP92–247–002, Northwest Pipeline Corporation and Washington Water Power Corporation
CAG–69.
Docket No. CP92–6–007, Southern Natural Gas Company and South Georgia Natural Gas Company
Docket No. CP92–311–003, Southern Natural Gas Company
GAG–70.
Docket No. CP90–1391–002, Arcadian Corporation v. Southern Natural Gas Company
CAG–71.
Docket No. ST90–267–002, Transok Gas Transmission Company (Successor to TEX/CON Gas Pipeline Company)
CAG–72.
Docket No. CP92–233–003, El Paso Natural Gas Company

Hydro Agenda

H–1.
Docket No. EL85–42–001, Guy M. Carlson. Order on rehearing and late intervention.

Electric Agenda

E–1.
Docket No. ER92–280–000, Public Service Electric and Gas Company. Order on transmission rate filing.
E–2.
Docket Nos. ER92–317–001 and ER92–456–001, Public Service Company of Colorado. Order on rehearing regarding transmission rates.
E–3.
Docket No. ER91–565–000, New England Power Company. Opinion on initial

decision regarding post-retirement benefits other than pensions.

E–4.
Docket No. EC92–21–000, Entergy Services, Inc.
Docket No. ER92–806–000, Gulf States Utilities Company. Order on rate filing and request for merger authorization.

E–5.
Omitted

Miscellaneous Agenda

M–1.
Docket No. PL93–1–000, Post-Employment Benefits Other Than Pensions. Statement of Policy.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
(A) Docket No. RP91–143–005, Great Lakes Gas Transmission Limited Partnership. Opinion No. 367–A and order on rehearing.
(B) Docket Nos. RP89–186–008 and RP90–20–005, Great Lakes Gas Transmission Limited Partnership. Order on rehearing of Opinion No. 368.

II. Restructuring Matters

RS–1.
Docket Nos. RS92–60–002 and 003, El Paso Natural Gas Company. Order on capacity release.

RS–2.
Docket No. RS92–87–000, Transwestern Pipeline Company. Order on Order No. 636 compliance filing.

RS–3.
Docket No. RS92–11–000, Texas Eastern Transmission Corporation. Order on Order No. 636 compliance filing.

RS–4.
Docket No. RS92–22–002, Panhandle Eastern Pipe Line Company. Order on Order No. 636 compliance filing.

III. Pipeline Certificate Matters

PC–1.
Docket Nos. CP92–184–000 and 001, Texas Eastern Transmission Corporation
Docket Nos. CP92–185–000 and 001, Algonquin Gas Transmission Company. Application to construct facilities and to provide firm transportation for six shippers.

PC–2.
Docket Nos. CP91–732–003 and CP88–332–024, Indicated Shippers v. El Paso Natural Gas Company. Order on rehearing re request for modification of October 7, 1992 order.

PC–3.
Docket No. CP80–34–009, Panhandle Eastern Pipe Line Company
Docket No. CP80–35–009, Colorado Interstate Gas Company. Order on application to amend existing exchange/transportation/sales agreement.

PC–4.
Omitted

PC–5.
Docket Nos. CP92–182–000 and 001, Florida Gas Transmission Company
Docket No. CP92–415–000, Transcontinental Gas Pipe Line Corporation and Florida Gas Transmission Company. Application to construct Phase III facilities and application for expansion of Mobile Bay facilities.

Dated: December 9, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30407 Filed 12–10–92; 12:42 pm]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 4:05 p.m. on Wednesday, December 9, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to administrative enforcement proceedings and to the probable failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Federal Deposit Insurance Corporation.

Dated: December 10, 1992.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30380 Filed 12–10–92; 11:47 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, December 18, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30355 Filed 12–10–92; 11:46 am]

BILLING CODE 6210–01–M

federal register

Monday
December 14, 1992

Part II

Pension Benefit Guaranty Corporation

29 CFR Parts 2616 and 2617

Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616 and 2617

RIN 1212–AA41 and RIN 1212–AA47

Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The regulations in this final rule replace regulations of the Pension Benefit Guaranty Corporation on notices of intent to terminate (29 CFR Part 2616) and determination of plan sufficiency and termination of sufficient plans (29 CFR Part 2617), as modified by a 1986 notice of interim procedures and a 1988 notice of revised termination rules. The regulations being replaced were, to a great extent, rendered obsolete by enactment of the Single-Employer Pension Plan Amendments Act of 1986 and the 1987 Pension Protection Act, which substantially changed the rules governing voluntary terminations of single-employer plans under Title IV of the Employee Retirement Income Security Act of 1974. Although the 1986 and 1988 notices provided interim guidance, more detailed rules and procedures are needed by plan administrators who wish to terminate single-employer pension plans. Part 2616 prescribes the rules and procedures for distress terminations; Part 2617 prescribes the rules and procedures for standard terminations.

EFFECTIVE DATE: January 28, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1987, the Pension Benefit Guaranty Corporation ("PBGC") published in the **Federal Register** (52 FR 33318) proposed rules governing the voluntary termination of single-employer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The PBGC, which administers the pension plan termination insurance program under Title IV of ERISA, published the proposed rules in response to substantial changes made in the insurance program by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") (Pub. L. 99–272).

Under SEPPAA, single-employer pension plans could be voluntarily terminated only in a "distress" termination or a "standard" termination. Briefly, a distress termination could occur only if specified procedural requirements are met and if the contributing sponsor of the plan and each "substantial" member of its controlled group demonstrate that they are in such poor financial condition that they cannot, realistically, continue to maintain the plan. A standard termination could occur only if specified procedural requirements are met and if plan assets are sufficient to provide all "benefit commitments" (which generally exceed PBGC guaranteed benefits but fall short of all plan benefits).

In order to provide guidance under the new law to plan administrators in terminating single-employer plans pending revisions to the regulations and accompanying forms, the PBGC had published notices of transition rules and interim procedures on April 10, 1986 (51 FR 12489 and 12491, respectively). Those notices summarized SEPPAA's requirements relating to terminations of single-employer plans, and described the specific steps necessary to terminate a plan under SEPPAA. (SEPPAA was enacted on April 7, 1986, and applied to all terminations with respect to which a notice of intent to terminate was filed or issued on or after January 1, 1986.)

To reflect the new statutory rules, the PBGC proposed to revise totally its two principal regulations dealing with the voluntary plan termination process, *i.e.*, Notice of Intent to Terminate for Non-multiemployer Pension Plans, 29 CFR Part 2616, and Determination of Plan Sufficiency and Termination of Sufficient Plans, 29 CFR Part 2617. In keeping with the structure of the SEPPAA amendments, the PBGC proposed the promulgation of two new parts in its regulations: new Part 2616 dealing solely with distress terminations and new Part 2617 dealing solely with standard terminations.

On December 17, 1987, Congress further amended ERISA's voluntary termination requirements by enacting the Pension Protection Act ("PPA") as Title IX, Subtitle D, Part II, of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). (Congress subsequently clarified a number of the provisions of both SEPPAA and PPA in the technical corrections portion of the Omnibus Budget Reconciliation Act of 1989 (Title VII, Subtitle H) (Pub. L. 101–239).) PPA was effective December 17, 1987, and the PBGC published a notice of revised termination rules to alert interested persons to the statutory changes (53 FR 1904, January 22, 1988). The notice also stated that the PBGC's final regulations on voluntary terminations would reflect the PPA amendments discussed therein and that the PBGC was in the process of preparing new forms to revise and combine the then-current termination forms, *i.e.*, Forms 444 and 445 and the PBGC portion of IRS/PBGC Form 5310.

On December 22, 1989, the PBGC published a notice of issuance of new termination forms (54 FR 52904), advising pension practitioners that it was issuing new Forms 500 and 501 for standard terminations and Forms 600 and 601 for distress terminations to replace the then-current termination forms. Those new forms, which were issued for use in plan terminations initiated on or after February 1, 1990, reflect the revised rules and procedures for plan terminations under SEPPAA and PPA. To a certain extent, the new forms also reflect the proposed regulations published earlier.

In the notice of issuance, the PBGC advised pension practitioners that provisions in the forms specifying time limits for completing those termination requirements that, under the statute, are to be completed "as soon as practicable" are to be considered as guidelines only until the final regulations are issued. The final regulations incorporate substantially the same time limits as those specified in the forms (although, as discussed below, the final regulations allow more time for filing the standard or distress termination notice with the PBGC). In addition, the forms contain a number of new or revised definitions, many of which are incorporated into this final regulation, as also discussed below.

The PBGC received 57 comments on the proposed regulations. Most of the commenters are professionals whose practice includes the pension benefits area, *i.e.*, attorneys, actuaries, accountants, and benefit consultants or firms; commenters also represent insurance companies, unions, and associations active in the private pension community. The majority of comments focused on the procedures for standard terminations rather than the procedures for distress terminations; as discussed below, the major area of concern, on which 50 comments were received, was the time limits for completing the various steps in the termination process. The PBGC has

reviewed all comments and has decided to make a number of changes, both in response to the comments and as a result of its experience in implementing the new statutory rules.

The discussion that follows deals first with a number of general issues that cut across various provisions of both the standard termination and distress termination regulations. Next is a section-by-section discussion of changes to the standard termination regulation and, then, the distress termination regulation. (The standard termination regulation is dealt with first, both because most terminations are standard terminations and because many of the distress termination rules are merely variants of the standard termination rules.) Many of the provisions in both regulations have been reorganized or rewritten for clarity; this discussion will deal only with significant substantive changes or reasons why requested changes were not made. Unless otherwise indicated, all citations are to sections in the final regulations.

General

PPA Changes

As noted above, after publication of the proposed rules, Congress enacted PPA, making a number of substantive changes in the pension plan termination insurance program. Those changes, insofar as applicable, have been incorporated into these final regulations.

For standard terminations, the major PPA change was to increase the benefits that a plan must be able to satisfy upon termination, i.e., the SEPPAA requirement that a plan be able to provide all "benefit commitments" was replaced by the PPA requirement that a plan be able to provide all "benefit liabilities" under the plan. This PPA change—along with the Retirement Equity Act of 1984 ("REA") (Pub. L. 98–397) and the issuance by the Internal Revenue Service of its final REA regulations (T.D. 8219, 1988–2 C.B. 48; 53 FR 31837, August 22, 1988)—has created a new coordination between Title IV of ERISA and the Internal Revenue Code. In particular, "benefit liabilities" are determined under the Internal Revenue Code, and include certain forms and benefit options that are protected under Code section 411(d)(6). The inclusion of such protected forms and benefit options tends also to deemphasize the importance of the plan termination date to participants' benefit entitlements in a standard termination, since participants may meet the conditions for entitlement after that date.

For distress terminations, PPA made changes in the liquidation and reorganization distress criteria; required that every member of a contributing sponsor's controlled group, rather than only "substantial" members, meet one of the distress criteria; increased termination liability to unfunded benefit liabilities; and eliminated the section 4049 trust, substituting in its place a mechanism (under ERISA section 4022(c)) whereby the PBGC pays participants and beneficiaries a portion of their outstanding benefit liabilities (i.e., unfunded benefit liabilities that are not guaranteed benefits) from the PBGC's employer liability recovery. (A more detailed discussion of the various PPA changes relating to standard and distress terminations appears in the PBGC's Notice of Revised Termination Rules, 53 FR 1904 (January 22, 1988).) The PBGC has revised the proposed regulations throughout to reflect these changes.

Time Limits

As noted above, the vast majority of commenters was concerned with the time limits for various steps in the termination process that were included in the proposed regulations. Those limits in large part implement the "as soon as practicable" standards in ERISA section 4041(b)(2)(A) and (c)(2)(A) (relating to the requirement for filing a termination notice with the PBGC) and ERISA section 4041(b)(2)(D) (relating to the time within which distribution of assets in a standard termination must be completed after the end of the period within which the PBGC may issue a notice of noncompliance ("NONC") pursuant to ERISA section 4041(b)(2)(C)).

One of Congress' goals in revising the termination rules was to simplify and expedite the PBGC's review of terminations under which the PBGC would not be called on to pay guaranteed benefits, thereby permitting faster distribution of plan assets as well as enabling the PBGC to devote more of its resources to those terminations that do impose liabilities on the plan termination insurance program. In furtherance of this Congressional goal, the PBGC attempted in the proposed regulations to keep to a minimum the maximum length of time from the issuance of the notice of intent to terminate ("NOIT") to completion of the distribution of plan assets in a standard termination.

In the case of distress terminations, the PBGC similarly sought to limit the maximum time for various processing steps (in particular, the time for filing the distress termination notice and, in the case of a plan that is sufficient at least for guaranteed benefits and that thus will close out in the private sector, the time for completing the distribution of plan assets). (The overall time for terminating in a distress termination is not subject to precise prescription; among other things, the time needed for the PBGC to make certain required determinations (e.g., as to whether the distress criteria are met and as to the level of plan sufficiency) will vary significantly based on the facts and circumstances of the particular case.) The following discussion will focus, as did the comments, on the standard termination time limits. However, where appropriate, the PBGC has made generally corresponding changes to the distress termination time limits, and has noted those changes below.

While there were two objections to the establishment of any time limits, there was considerably more support for the PBGC's establishment of specific rules. (The PBGC explained the reasons for this approach in the preamble to the proposed regulations, 52 FR at 33322–33323.) However, 49 of the commenters objected that some or all of the time limits set forth in the proposed regulations were too short, and suggested alternatives. For some, the primary concern was the time within which the standard termination notice is to be filed with the PBGC; for most, the primary concern was the time set for distribution of plan assets. The PBGC agrees with these concerns in large part, and has substantially revised the time limits with the comments in mind.

As issued, the proposed standard termination regulation allowed a maximum of 7–11 months from the issuance of the NOIT to completion of distribution. (The 7–11 month period, or 210–330 days, consisted of a period of 60–180 days from issuance of the NOIT to the proposed termination date; 60 days from the proposed termination date to the filing of the standard termination notice; 60 days for the PBGC to review the standard termination notice and to determine whether to issue a notice of noncompliance; and 30 days from the expiration of the PBGC's review period for the plan administrator to complete the distribution of plan assets.) This final regulation increases the overall time period to 14–15 months (with extensions possible); but, more importantly, it reallocates the individual time periods to reflect the public's comments.

Under the final regulations, §§ 2616.22 and 2617.22 (proposed §§ 2616.12 and 2617.12), less time is allowed between the NOIT and the

proposed termination date (decreased from a maximum of 180 days to a maximum of 90 days). This change reflects the PBGC's experience that very few plan administrators propose termination dates in the NOIT (either in a standard or distress termination) that are more than 90 days after the NOIT. (Indeed, one commenter suggested that the minimum 60-day period between the NOIT and the proposed termination date be decreased; however, that is a statutory time period established by ERISA section 4041 (a)(2), (b)(1)(A), and (c)(1)(A), which cannot be decreased by the PBGC.) Moreover, by shortening this time period, the PBGC is better able to lengthen those time periods the commenters expressed concern about without unacceptably lengthening the overall maximum time limit. (The proposed termination date in a distress termination is discussed more fully under "Section 2616.2—Definitions.")

A number of commenters stated that the time period for filing the standard termination notice (120–240 days after the NOIT is issued, but only 60 days after the proposed termination date) was inadequate, noting that the bulk of the processing work necessary to complete notices of plan benefits (which must be issued at or before the time the standard termination notice is filed) and file the standard termination notice with the PBGC is generally not begun until the proposed termination date; before then, the plan's population and participants' and beneficiaries' benefits "as of" the proposed termination date cannot be known with certainty. In response to these comments, the PBGC had lengthened the period for filing the standard termination notice from 60 to 90 days when it established "guidelines" in its 1989 form package. Experience has demonstrated that even more time is needed in many cases, and the PBGC has therefore decided to lengthen this period further, to 120 days after the proposed termination date. (While there is no provision for extension of this 120-day period, the plan administrator may defer its commencement (and thus, in effect, extend the period) if the standard termination notice filed with the PBGC proposes a termination date that is later than the one proposed in the NOIT; in no event, however, may this later proposed termination date be more than 90 days after the date of issuance of the NOIT.) See § 2617.25. The PBGC has made generally corresponding changes (in §§ 2616.2 and 2616.24) to the time limits fof filing the distress termination notice.

A clear majority of commenters objected to the 30-day time limit for completing the distribution of plan assets. (This 30-day time period was measured from the end of the PBGC's review period in a standard termination; in a distress termination sufficient for at least guaranteed benefits, it was measured from the date the plan administrator receives the PBGC's distribution notice.) The reason most cited was the length of time it generally takes to receive a favorable determination letter from the Internal Revenue Service ("IRS"). (In the preamble to the proposed regulation the PBGC suggested that, to alleviate this problem, it would be prudent for plan administrators to file with the IRS early in the procedure (*i.e.*, at or before the time of issuance of the NOIT) (52 FR at 33322). One commenter noted that some IRS districts will not accept early filings; a number of others cited instances in which determination letters were not received until much later than the maximum time allowed in the proposed regulation.) Other reasons given were (1) delays caused by participants' failures to respond to election notices in a timely manner, (2) the time required to complete the purchase of annuity contracts, and (3) the need to liquidate long-term assets (which may have penalties for premature withdrawal) or illiquid assets.

The PBGC is sensitive to these concerns and has therefore decided, as discussed below, to extend significantly the time limits for distribution. Nonetheless, the PBGC reminds plan administrators that the implementation of a decision to terminate a pension plan requires sound and careful planning, and that they should take all appropriate steps to ensure a timely distribution.

Accordingly, the PBGC has increased, from 30 days to 180 days, the time between the date the PBGC's review period ends in a standard termination and the date by which assets must be distributed. See § 2617.28(a); compare proposed § 2617.18(a). This revised time period for asset distribution generally should enable a plan administrator to obtain a determination letter before distribution must be completed.

The final rule for standard terminations also provides that if the plan administrator files a request for a determination letter with the IRS on or before the date that the standard termination notice is filed with the PBGC, but does not receive a determination letter at least 60 days before the expiration of the 180-day distribution period, the time for plan asset distribution will automatically be extended to 60 days after the date of a favorable determination letter provided that the plan administrator notifies the PBGC, prior to expiration of the 180-day distribution period, that the plan is entitled to such an extension. (Because of the similarities between the information needed to issue notices of plan benefits and complete the standard termination notice, and that needed to file a request with the IRS for a determination on the tax qualification of a plan, the PBGC expects that plan administrators will be able to file with the IRS at the same time they file with the PBGC.) In other limited situations, the PBGC may grant a discretionary extension. See § 2617.28(e)-(f).

For distress terminations that are sufficient for at least guaranteed benefits and that thus will close out in the private sector, the PBGC has similarly extended the distribution time limit from 30 days to 180 days. The proposed regulation did not provide for the plan administrator's issuance to participants, prior to distribution, of any notices regarding their plan benefits (except, under proposed § 2616.14(e), in the limited circumstance in which a plan was sufficient for all benefit commitments); this step has been added to the final rule (see "§ 2616.27—Notices of benefit distribution"), and the 180-day distribution time limit is measured from the date the plan administrator completes issuance of the notices of benefit distribution. The regulation also provides for extensions of time similar to those described above for standard terminations. See § 2616.29(a).

The following table illustrates the time line for completing a standard termination under the final rules, assuming that (1) the proposed termination date is the minimum 60 days (rather than, *e.g.*, the maximum 90 days) after the date of issuance of the NOIT, (2) each step is completed on the last day permitted, and (3) there are no extensions.

Standard Termination Time Line 420 Days or Approximately 14 Months

Day 0: Notice of intent to terminate
Day 60: Proposed termination date
Day 180: Notices of plan benefits and standard termination notice
Day 240: Notice of noncompliance period ends
Day 420: Distribution completed

Effects of Failure To Meet Termination Requirements

The proposed regulations noted, in various sections, that if the requirements for a voluntary termination (either standard or distress) are not met, the termination is null and

void. In such circumstances, the plan is ongoing. Several commenters expressed concern about the severity of this sanction for failure to comply with the pertinent requirements.

Two commenters suggested that, rather than nullifying a plan termination, the PBGC permit correction of deficiencies. The PBGC may permit correction of certain minor deficiencies, such as clerical errors, where the rights of the parties involved are not adversely affected. Similarly, where the standard or distress termination notice is incomplete, the PBGC will advise the plan administrator of the missing item(s) of information and permit completion of the notice (see §§ 2616.25(c)(2), 2617.26(c)). Finally, in a distress termination, the PBGC may waive any requirement with respect to notices to be filed with the PBGC if it will be less costly or administratively burdensome to the PBGC to do so (§ 2616.3(c)(2)). In other circumstances, however, the PBGC will not waive or permit "correction" of deficiencies.

The PBGC's discretion in this regard is substantially limited, since many of the pertinent requirements are statutory in nature. Moreover, while some of the requirements represent the PBGC's regulatory implementation of statutory requirements, the PBGC believes that these regulatory requirements should be absolute except where the regulation provides otherwise (*e.g.*, by providing for an extension of a time limit under specified circumstances). The PBGC stresses the importance of planning a termination in advance and carefully following the prescribed procedures.

The changes in the time limits, along with the extension provisions discussed above, should alleviate the commenters' concerns to a great extent. The most commonly missed deadline, other than that for distribution, is the statutory 60-day minimum period between issuance of the NOIT and the proposed termination date, and that normally occurs because the plan administrator miscounted the days. The PBGC has attempted to give greater guidance in the computation of time periods, *e.g.*, in §§ 2616.8 and 2617.9.

Another commenter asked whether a plan termination voided for PBGC purposes is also void for other purposes under ERISA. If a termination is null and void because the requirements in the statute and these regulations are not met, the plan is an ongoing plan under ERISA and the Code. However, the PBGC did not intend to imply, as one commenter suggested, that a proper freezing of accruals before the plan termination date in accordance with ERISA section 204(h) would also be voided.

Conversion of Termination

In the preamble to the proposed regulation, the PBGC stated that, if a proposed termination fails to meet the applicable requirements, that termination cannot be converted into the other type of termination in order to preserve the original proposed termination date (52 FR at 33325). The PBGC has reconsidered its position, and has decided that there is no absolute bar against the conversion of a standard termination to a distress termination, or vice versa. The PBGC expects such conversions to be extremely rare, and will determine whether to permit conversion on a case-by-case basis, taking into account the effect conversion would have on the rights of all parties involved.

Penalty Authority

The PBGC notes that PPA enhanced its enforcement authority by adding section 4071 (29 U.S.C. 1371) to ERISA (OBRA '87 section 9314(c)(1)). Section 4071 (as clarified by OBRA '89 section 7881(i)(3)(B)) authorizes the PBGC to assess a penalty when, among other things, a person fails to provide a notice or other material information required under subtitles A, B, C, or D of Title IV of ERISA, or any regulations prescribed thereunder, within the applicable time limit specified therein. The penalty is payable to the PBGC and may not exceed $1,000 for each day that the failure continues.

Effective Date

One commenter requested an effective date of 90 days after publication to allow "plan administrators and their consultants to adapt to the regulations and to develop the appropriate compliance procedures." Another commenter requested that the effective date of the final regulations be 60 days after publication "to allow those terminations which are essentially in process to be completed in accordance with the prior rules."

The PBGC does not believe that a significant delay in the effective date of these regulations (beyond the usual 30 days from date of publication) is necessary, given that the time limits for various stages in the termination process have been substantially increased; the new forms containing many of the basic procedures included in these regulations have been in use since February 1990; and the pension community has generally been following the other basic provisions in the proposed regulations. The PBGC notes, also, that the regulations apply only to terminations with respect to which the NOIT is issued on or after the effective date; terminations in process thus may be completed in accordance with the prior rules. However, the PBGC has decided to defer the effective date slightly (to January 28, 1993) so as to afford adequate time for OMB extension of approval, under the Paperwork Reduction Act, of the collection of information requirements in this final rule and the implementing forms and instructions. (Elsewhere in today's **Federal Register**, the PBGC is publishing a notice of its request to OMB, along with a copy of the revised version of the forms and instructions.)

Standard Terminations

Section 2617.2—Definitions.

Affected party: One commenter noted that there may be circumstances in which a former employee organization would have sufficient ties to an employee benefit program to be properly included as an affected party. The PBGC agrees and included a modified definition in its old termination regulation, as amended in May 1992 (57 FR 22167, May 27, 1992).

Date of distribution and *Irrevocable commitment:* A number of commenters asked for clarification concerning when *distribution* takes place. Several requested that the regulations explicitly provide that the date of *distribution*, in the case of a purchase of an *irrevocable commitment* (*i.e.*, an annuity contract) from an insurer, is the date the liability is transferred to the insurer rather than the date of issuance to the participant of a certificate or policy of insurance.

The PBGC added definitions of *date of distribution* and *irrevocable commitment* to its old termination regulation in May 1992 (57 FR 22167, May 27, 1992), and has included these definitions in this final regulation. These definitions clarify that, as suggested by the commenters, a distribution of benefits through the purchase of an irrevocable commitment occurs when the obligation to provide a benefit to an individual passes from a pension plan to an insurer.

Existing collective bargaining agreement: The PBGC added this definition to clarify the circumstances in which a collective bargaining agreement is deemed to "exist" for purposes of ERISA section 4041(a)(3) and § 2617.5.

Insurer: One commenter requested that the definition of *insurer* be modified to permit plan administrators to purchase irrevocable commitments only from "those insurance companies doing business in states with guaranty

funds and who have an A+ rating with Best's Reports." The definition in the proposed and final regulations is one that has been used for many years by the PBGC in its regulations, *e.g.*, 29 CFR part 2617. On June 21, 1991, the PBGC issued an Advance Notice of Proposed Rulemaking ("ANPRM") (56 FR 28642, 28643) soliciting public comment on whether additional regulation concerning plan administrators' selections of annuity providers for terminating plans is needed and, if so, what such regulation should include. An extended comment period on the ANPRM ended September 19, 1991, and those comments and possible regulatory action are under active consideration. If the PBGC decides to change the definition of insurer as a result of that consideration, it will do so as part of a separate rulemaking action.

Majority owner: The PBGC has added a definition of "majority owner." (The percentage ownership requirement for "majority owner" status under this definition is "50 percent or more" rather than "more than 50 percent.") As discussed more fully below (see "§ 2617.7—Facilitating plan sufficiency"), majority owners may facilitate a standard termination by electing to forego receipt of all or part of their benefit liabilities until the benefit liabilities of all other participants have been satisfied.

Participant: One commenter suggested that the definition of *participant* exclude non-vested former employees "who clearly are not eligible for benefits as a result of plan termination, absent an IRS finding of a pre-termination 'partial termination.'" Whether and to what extent former employees are entitled to receive benefits upon plan termination depends on the definition of "benefit liabilities"; the IRS, rather than the PBGC, has the authority to define that term.

Nonvested, as well as partially or fully vested, former employees may lose any entitlement they may have to benefit liabilities if they are cashed out under the terms of the plan and in accordance with applicable law and regulations. See section 411(a)(7) of the Internal Revenue Code ("Code"); Treas. Reg. § 1.411(a)-7. Whether and for how long former employees who were not cashed out retain benefit entitlements in the event of plan termination is determined under the Code.

The PBGC's *participant* definition governs only entitlement to the various notices in a termination, not entitlement to benefits. The rules governing entitlement to notice, however, should generally match those governing entitlement to benefits. (In particular, the PBGC does not want to burden plan administrators with a requirement to give notice to large numbers of individuals who are not entitled to benefits.) Pending further guidance from IRS, plan administrators wishing to terminate their plans must determine whether former employees retain benefit entitlements upon plan termination; the final regulation, in effect, requires plan administrators to provide such individuals with notice if they are entitled to benefits. Thus, former employees who are "retaining" credited service under the plan are included within the definition of "participant" and are therefore entitled to notice of the termination. Finally, the PBGC added a number of other definitions to incorporate PPA changes, or for clarity or ease of reference.

Section 2617.4—Administration of plan during pendency of termination proceedings.

Proposed § 2617.4 provided that, during the period between the issuance of the NOIT and the end of the PBGC's review period, the plan administrator may not make any distributions to participants "pursuant to or in furtherance of the plan's termination," but could carry out "the normal operations of the plan." Several commenters requested clarification as to whether particular distributions may be permitted as part of the plan's "normal operations."

The PBGC sought to strike a balance in this provision between the need to permit continued operation of the plan with as little disruption to participants as possible during the termination proceedings, and the need to protect plan assets so as to ensure fair treatment of all participants in accordance with their allocation rights under ERISA section 4044. It is difficult, however (as pointed out by the commenters), to distinguish between "normal course" distributions and those pursuant to or in furtherance of a plan's termination. The PBGC therefore has developed (in § 2617.4) rules that would permit lump sum and irrevocable commitment distributions under specified circumstances, but would limit attempts to circumvent termination and distribution requirements through premature distributions. The PBGC stresses that any distribution in furtherance of a termination (whether before or after issuance of the NOIT) before the PBGC's review period ends is a violation of ERISA section 4041(b)(2)(D).

Section 2617.5—Challenges to plan termination under collective bargaining agreement.

This section prescribes rules that apply when a plan termination is challenged on the grounds that the termination would violate the terms and conditions of an existing collective bargaining agreement. The PBGC received several comments on these provisions.

Three commenters suggested that the PBGC should make at least an initial determination as to whether the termination violates an existing collective bargaining agreement and not automatically suspend the termination until there is a final settlement of the dispute. Alternatives suggested were that PBGC at least "review the complaint to eliminate frivolous claims"; make an interim determination that there is "reasonable cause" for the challenge; or make a determination as to the legitimacy of the challenge on the basis of "an opinion of counsel of the plan administrator." The commenters expressed concern about the delay in the termination proceeding pending resolution of the challenge, and the effect of the delay on participants' benefits under the plan to be terminated and under any replacement plan.

The PBGC believes that it is not the appropriate body to decide whether a termination would violate the terms and conditions of a collective bargaining agreement. Labor-management relations law provides mechanisms for resolving such disputes, as do many collective bargaining agreements. The PBGC lacks the expertise needed to make such decisions and, in any event, cannot limit the authority of the usual labor-management forums to decide the same issues. Moreover, because of the many variables that may affect the resolution of such a challenge (*e.g.*, the bargaining history), the PBGC believes that it should not be making any determinations (even as to a claim of frivolity) regarding the merits of a dispute. Therefore, the PBGC has not changed the regulation in this respect.

In the preamble to the proposed regulation, the PBGC stated that the list of "formal challenges" was "intended to be all inclusive" (52 FR at 33321). One commenter approved of this approach. Another suggested, however, that it is "inappropriate for the PBGC to impose a formalized scheme and determine by regulation what types of actions by the parties to the collective bargaining agreement warrant a suspension of the termination process."

The PBGC sought to limit the types of challenges that would trigger suspension of a termination, in an effort to avoid suspension based on "challenges" that were of an "informal" or "preliminary" nature. This approach

poses the risk, of course, that one or more types of challenges could be overlooked; indeed, three commenters correctly pointed out that the proposed regulations erroneously omitted Railway Labor Act challenges. The PBGC agrees with the commenters that the list should not be all-inclusive, and has revised § 2617.5 accordingly.

Finally, the PBGC has clarified that it has the authority to suspend a termination proceeding under § 2617.5 at any time before the termination process (including distribution of plan assets) is completed. The proposed regulation required that PBGC be notified of a formal challenge by the end of its review period; it did not say that the PBGC was precluded from acting if the notification came later. While the PBGC's authority to suspend a termination under section 4041(a)(3) is not limited to the review period, it nonetheless wishes to encourage early filing with the PBGC of any notice of challenge to the proposed termination. Therefore, paragraph (a) of § 2617.5 provides that the PBGC will suspend a proposed termination if it receives notice before the review period ends, and that it may do so if it receives such notification after the end of the review period but before the termination process has been concluded. (PBGC Opinion Letter 89–1, in dictum, contained language suggesting that the PBGC does not have the authority to suspend a termination once the review period ends; that language is incorrect and is hereby rescinded.)

Section 2617.6—Annuity requirements.

This section sets forth the general requirement that benefits payable as an annuity under a plan be provided in annuity form through the purchase of a single premium, nonparticipating, nonsurrenderable annuity from an insurer. In the proposed regulation, exceptions to the annuity requirement and rules governing the form of annuity were reserved because of the need to determine what changes in the PBGC's previous rules were necessary to conform to the requirements of the Retirement Equity Act of 1984 ("REA"). Those rules, plus rules delineating when participating annuities may be purchased, have been added to the final regulation. The PBGC consulted with the IRS in formulating these rules, and intends that they be consistent with provisions of the Code and IRS regulations thereunder in all respects.

In the preamble to the proposed regulation, the PBGC asked for public comment on the proper interaction of REA with ERISA Title IV (52 FR at 33320). The PBGC received suggestions from three commenters on REA issues. The first related to the interaction of REA section 301 "early retirement" benefits and the proposed definition of "benefit commitments"; this is no longer a concern since "benefit liabilities" clearly includes REA section 301 "early retirement" benefits. A second commenter suggested that, where a plan provides for a lump sum option, there was a conflict between the REA rule prohibiting elimination of optional benefit forms and the PBGC's requirement (proposed § 2617.6(a)) that any benefits payable in annuity form be provided through the purchase of "nonsurrenderable" annuities. The PBGC disagrees; an annuity contract may be "nonsurrenderable" and still provide for all optional benefit forms upon a participant's reaching retirement age. Finally, the third commenter stated that the PBGC should not require annuities when the present value of the benefit is $3,500 or less; the regulation so provides in § 2617.6(b) (as did § 2617.4(b)(2) of the old termination regulations).

The PBGC notes that § 2617.4(b) of the old termination regulations contained language suggesting that a participant who is in pay status may not receive a lump sum distribution. That language, which was intended to prohibit the involuntary cashout of pay status benefits and not to prohibit elective cashouts, has been the source of some confusion; the corresponding provision in the final regulation (§ 2617.6(b)) has been clarified accordingly.

The PBGC is aware that it may be difficult to purchase annuity contracts for small benefits that exceed $3,500 in value. Plans may of course provide for a lump sum cashout in such circumstances, provided that there is participant and spousal consent. Absent such consent, the plan administrator must find an insurer willing to provide the benefit in order to complete the distribution of assets in a standard termination.

Another commenter asked that the PBGC adopt a position on the use of participating annuity contracts consistent with that of the IRS. The PBGC has added a new paragraph (d) to § 2617.6 to define the circumstances in which the plan administrator may satisfy the annuity requirement through the purchase of participating annuities.

Section 2617.7—Facilitating plan sufficiency.

Section 2617.7 of the proposed regulation provided rules whereby a contributing sponsor could make a commitment, at any time prior to the filing of a standard termination notice, to provide sufficient assets to make the plan sufficient for benefit commitments. The final regulation has been modified to provide that the commitment must be for benefit liabilities (pursuant to PPA), and to permit members of the contributing sponsor's controlled group also to make such a commitment.

One commenter suggested that the contributing sponsor be permitted to make a sufficiency commitment at any time. The PBGC has not adopted this suggestion because the value of a sufficiency commitment is to be taken into account by the enrolled actuary in certifying that the plan is sufficient for benefit liabilities. That certification must be made as part of the standard termination notice in order for the termination to proceed; accordingly, the regulation requires that the sufficiency commitment be made by the time the standard termination notice is filed. The commenter was concerned that an already sufficient plan without such a commitment might become insufficient during the distribution period and thus be unable to terminate in a standard termination; in such circumstances, the contributing sponsor or a controlled group member may of course provide the necessary funds without having first provided a commitment.

Another commenter requested that the PBGC relax its absolute rule requiring bankruptcy court approval of the commitment if the person making the commitment is in bankruptcy. The commenter suggested that such approval might be unnecessary if some other person not in bankruptcy (e.g., a principal shareholder) were to guarantee the commitment. The PBGC agrees and has provided in the final regulation (§ 2617.7(a)(2)(iii)) that bankruptcy court approval is not required if a non-bankrupt person unconditionally guarantees that the commitment will be met at or before the time distribution of assets is required in the standard termination.

Another commenter suggested that the PBGC include a provision permitting a principal owner "to waive a part of his benefit in order that all other participants would receive full benefits." The PBGC has decided that, in order to facilitate the termination of the plan and distribution of plan assets in a standard termination, a person who is a majority owner may agree to forego receipt of all or part of his or her benefit until the full plan benefits of all other plan participants have been satisfied. (In accordance with Code provisions and IRS regulations thereunder, if the present value of the benefit is more than $3,500, the spouse of the majority owner must consent to this alternative treatment of the benefit. See Treas. Reg.

§§ 1.411(d)-4 and 1.417(e)-1.) An election to forego payment of benefits is permitted merely to facilitate a standard termination; if assets become available when final distribution occurs, such assets must be used to satisfy the benefit liabilities of the majority owner before any assets may revert to the contributing sponsor.

For purposes of this provision, the definition of "majority owner" tracks that of "substantial owner" in ERISA section 4022(b)(5), except that it requires a different percentage ownership and does not include the 60-month look-back provision. The PBGC has defined "majority" to mean "50 percent or more" rather than "more than 50 percent" in order to permit use of this provision by two-person businesses in which ownership is evenly divided. The PBGC considered whether it should permit participants other than majority owners (in particular, substantial owners who are not majority owners) to elect such an alternative treatment of their benefit, but decided not to out of concern that they might be coerced into so electing. The "50% or more" test for majority owner status should effectively eliminate the risk of such coercion.

Sections 2617.8 and 2617.9—Filing with the PBGC; Computation of time.

Section 2617.8 of the proposed regulations contained rules for filing as well as rules for computing time limits. The PBGC has separated the filing and the time limit computation provisions into two sections (§§ 2617.8 and 2617.9).

The PBGC received six comments objecting to the rule that a document is not "filed" with the PBGC until it is received by the PBGC. Several commenters pointed out that most documents filed with the federal government are deemed filed when mailed, if properly addressed and postmarked by the United States Postal Service. The PBGC is aware of the general rule and has adopted it in a number of its regulations (see, e.g., 29 CFR § 2615.6). However, for purposes of these termination regulations, the PBGC believes the rule must be otherwise. As stated in the preamble to the proposed regulations, the use of the postmark date as the filing date, as in effect under the old termination regulations, proved difficult to administer. Moreover, PBGC's time for reviewing proposed terminations is shorter under the new statutory provisions. For these reasons, the PBGC has decided to define filing as the date of receipt.

Section 2617.10—Maintenance of plan records.

Section 2617.10 (proposed § 2617.9) requires the plan administrator or contributing sponsor to maintain certain plan records for a six-year period following the filing of the post-distribution certification. (The PBGC notes that most or all of the plan records required to be maintained under this provision already must be preserved and maintained for other purposes under section 107 of Title I of ERISA.) The exclusion in the proposed regulation for records with respect to participants in pay status for more than one year as of the termination date has been deleted. The PBGC developed this exclusion in recognition of the fact that many plans do not keep records for pay status participants indefinitely; it did not intend, however, to exclude such records if they were kept and were used in determining the participant's plan benefits as part of the termination process. Finally, the PBGC has added a new paragraph (c) (which retains the requirement in § 2617.23 of the PBGC's old termination regulation), providing that the records to be retained shall be made available (or submitted) to the PBGC upon request.

Section 2617.22 (proposed § 2617.12)—Notice of intent to terminate.

In § 2617.22(b), the PBGC added rules to specify the effect on the termination process if additional affected parties are discovered after issuance of the NOIT, in response to numerous inquiries since the proposed regulations were published. In § 2617.22(d), new paragraph (6) reflects comments that affected parties should be informed of the effect of a standard termination upon their accrual of benefits and service under the plan. Paragraphs (d)(7) and (8), which were not present in the proposed regulation, were added as part of an amendment to the PBGC's old termination regulation issued as an interim rule (56 FR 57980, November 15, 1991). Finally, paragraphs (d)(9) and (e), also not present in the proposed regulation, were the subject of an amendment to the old termination regulation that became final after notice and comment in June 1992 (57 FR 22167, May 27, 1992).

The PBGC has also added a new paragraph (f) providing, in the case of a spin-off/termination transaction, that the plan administrator give participants and beneficiaries in the ongoing portion of the original plan a notice describing the transaction. This notice must be provided no later than the time the plan administrator completes the issuance of the notice of intent to terminate. In order to have a valid termination in a spin-off/termination transaction involving asset reversions to the contributing sponsor, plan administrators must comply with the Implementation Guidelines jointly issued by the Departments of the Treasury and Labor and the PBGC; those guidelines require that benefits of participants be fully vested as of the date of termination, that benefits of participants covered by the ongoing portion of the original plan be annuitized, and that all participants be given advance notice of the transaction in similar time and manner as if the entire original plan were being terminated. Paragraph (f) implements the advance notice requirements of the guidelines.

Section 2617.23 (proposed § 2617.13)—Issuance of notices of plan benefits.

The PBGC added a new paragraph (c), dealing with the effect on the termination process if additional affected parties are discovered after issuance of the notices of plan benefits; these rules are similar to those noted above under § 2617.22.

Section 2717.24 (proposed § 2617.14)—Form and contents of notices of plan benefits.

Six commenters objected to the provision in proposed § 2617.14(c)(4) that, if the amount of benefit given in a notice is an estimate, "benefits paid will in no event be less than the estimate." Reasons given, variously, were that a plan administrator should be allowed to correct mathematical or clerical errors and that a participant should not get a windfall because of such mistake. The PBGC agrees and has revised § 2617.24(c)(4) accordingly.

One commenter suggested that the regulation should clarify that the benefit given in the notice is "the monthly income and not the lump sum value." The PBGC expects the plan administrator to give benefit information in the manner deemed to be most meaningful to participants, i.e., the monthly benefit (if a benefit may or must be paid as an annuity) and the estimated value of a lump sum benefit (if a benefit may or must be paid as a lump sum), and has not changed the regulation in this respect.

A number of comments were received concerning the notices to persons with benefits in pay status, as required under proposed § 2617.14(d). One commenter suggested that paragraph (d)(4), relating to additional information to be given to persons in pay status for one year or less, is burdensome and requested an explanation. Several commenters suggested that the notice to persons in pay status should be deleted as confusing and that persons in pay status less than one year should not be given an opportunity to request a

recalculation of their benefit. The PBGC believes that the statute requires that adequate benefit information be given to all participants and beneficiaries, including those in pay status, in order that errors may be corrected and to reassure them concerning the amount of their benefit. However, because many plan administrators do not keep full underlying data for persons who have been in pay status for some time, the final regulation relieves them (as did the proposed regulation) of the burden of providing such data for persons who have been in pay status for longer than one year.

Several commenters requested clarification of the information concerning lump sum benefits that proposed § 2617.14(e)(5) (§ 2617.24(e)(6) of the final regulation) required be given to persons who will be receiving their benefits in that manner. One suggested that the requirement that plan administrators explain how lump sums are calculated could be burdensome to plan administrators, and may also be excessive information for participants. Another suggested that the requirement (in proposed § 2617.14(e)(5)) for "an explanation of how the interest rate is used to calculate the lump sum" duplicates the requirement (also in proposed § 2617.14(e)(5)) for a statement that "the higher the interest rate, the smaller the lump sum amount." A third commenter suggested that additional information "describing the possible effect of the interest rate on future benefits would be appropriate."

The PBGC has not made any changes in response to these comments. Notice of how a lump sum is calculated is an essential part of the benefit information required under the statute. Further, it is the PBGC's experience that many people do not understand that there is an inverse relationship between the interest rate and the lump sum amount, and it is therefore appropriate to require a statement to that effect in the notices. Finally, the regulation sets minimum requirements for inclusion in the notices of plan benefits; the PBGC did not intend to preclude plan administrators from including any additional explanatory material, and encourages plan administrators to do so where appropriate.

Several commenters objected to the requirement in proposed § 2617.14(f)(1) that benefit information as to amount and form be given in the plan's "normal" form. They were concerned that, while the "normal" form under most plans is a qualified joint and survivor annuity for married participants, the plan administrator often does not know the marital status of a participant or the age of his or her spouse. The PBGC agrees with these comments and has changed § 2617.24(f)(1) to permit information concerning the amount and form of the benefit payable at normal retirement age to be given with respect to "any form permitted under the plan."

With respect to proposed § 2617.14(f)(2), one commenter read the provision to require benefit estimates for all optional forms of benefits and requested clarification as to whether early retirement benefit estimates need be given only with respect to the earliest retirement age. The PBGC did not intend to require that benefit estimates be given for any forms other than (1) the normal form (changed in § 2617.24(f)(1) to any permitted form), and (2) in the case of an early retirement benefit, the form payable at the earliest retirement age. The final regulation has been clarified accordingly.

Proposed § 2617.14(f)(3)–(5) required information concerning lump sum benefits to be given to participants who are not in pay status and for whom either the form or starting date of the benefit is not known. In general, such participants will not be close to retirement. One commenter noted that whether benefit amounts would be small enough to meet the $3,500 test for non-consensual cashout may depend on variables not known at the time the notice is given to these persons. Another suggested that participants should receive essentially the same information whether a lump sum cashout is consensual or nonconsensual. The PBGC agrees with these comments and has revised § 2617.24 (e) and (f) accordingly.

Finally, the PBGC notes that its use of the proposed termination date for certain purposes under this section serves merely to facilitate the preparation of the notices of plan benefits, and is not intended to alter the rules governing the determination of benefit liabilities.

Section 2617.25 (proposed § 2617.15)—Standard termination notice.

This section was revised to provide that the standard termination notice is to be filed on PBGC Form 500 (which includes Schedule EA–S, the enrolled actuary certification of sufficiency). Information similar to that required under proposed § 2617.15 (b) and (c) is now found in the forms, and those provisions are not included in the final regulation. New § 2617.25(b) ("Supplemental notice requirements"), along with certain of the information that is now in PBGC Form 500, was the subject of an amendment to the PBGC's old termination regulation that became final after notice and comment in June 1992 (57 FR 22167, May 27, 1992).

One commenter questioned the PBGC's authority to obtain information regarding reversions of residual assets to the contributing sponsor, arguing that the statute "only allows the PBGC to request such information as is necessary to determine whether adequate notices have been provided [and whether the] plan is sufficient for benefit [liabilities]." The PBGC disagrees; its role in overseeing the termination of sufficient plans extends beyond that suggested by the commenter. Plan terminations involving reversions of residual assets must comply with the PBGC/IRS/DOL Joint Implementation Guidelines as well as ERISA section 4044 and 29 CFR 2618. Thus, PBGC's role in enforcing the requirements of Title IV clearly requires that the PBGC obtain information regarding asset reversions.

Section 2617.26 (proposed § 2617.16)—PBGC action upon filing of standard termination notice.

A new paragraph (e) has been added to clarify that PBGC has continuing authority to suspend or nullify a proposed termination if it finds such action necessary to carry out the purposes of Title IV of ERISA.

One commenter suggested that the PBGC specify a time period within which it will acknowledge receipt of the standard termination notice. It has been the practice of the PBGC to issue an acknowledgement to the plan administrator upon receipt of the standard termination notice stating the date of receipt, and it intends to continue this practice. The PBGC has not experienced a problem in this regard, and does not believe it necessary to include any specific time limit for acknowledgement in the regulation.

Section 2617.27 (proposed § 2617.17)—Notice of noncompliance.

One commenter suggested that, to avoid uncertainty on the part of a plan administrator, a notice of noncompliance should be sent by certified mail and timed to arrive during the PBGC's 60-day review period. As with the preceding discussion, the PBGC is not adopting this suggestion because its experience has not shown a problem in this respect. The PBGC notes, however, that while it may issue a notice of noncompliance at or near the end of its 60-day (or extended) review period, it generally issues such notices early in the review period.

Proposed § 2617.17(c) provided that a plan administrator may appeal a notice of noncompliance under PBGC's regulation governing administrative

appeals (29 CFR part 2606, subpart D) and that filing an appeal stays the termination process until the PBGC issues its decision on the appeal. In the preamble to the proposed regulation, the PBGC asked for public comment on the appropriateness of the proposed automatic stay during the PBGC's administrative review process. The PBGC received only one comment, which noted with approval that the stay "preserves the termination process without adverse impact until the appeal is resolved"; the regulation has not been changed in this respect.

However, upon further consideration, the PBGC has changed § 2617.27(c) of the final regulation to provide that a plan administrator may request reconsideration of the determination, rather than requiring that an appeal be filed. The issues involved in review of a notice of noncompliance will ordinarily not be of sufficient complexity to warrant the need for the appeals procedure. The PBGC believes that the streamlined reconsideration process under Subpart C of Part 2606 will better serve the interests of the plan and affected parties.

Proposed § 2617.17(d) provided that, when a notice of noncompliance has been issued, the plan administrator must notify affected parties that "the plan is not going to terminate." One commenter suggested that this would be confusing if reinitiation of the termination were intended. Another suggested that the regulation clearly state that issuance of a notice of noncompliance will not prevent initiation of a new termination at any time after the notice is issued. The PBGC agrees with these comments, and has changed § 2617.27(d) to provide that the plan administrator may inform participants, when notifying them of a notice of noncompliance, that a new termination is contemplated.

Section 2617.28 (proposed § 2617.18)—Closeout of plan.

Paragraph (b) was revised to make clear that a determination of plan sufficiency for benefit liabilities must take into consideration all other liabilities of the plan. Such liabilities include, for example, actuarial fees, premiums owed to the PBGC, and other administrative expenses for which the plan is liable. The PBGC emphasizes that plans undergoing standard terminations are liable for premiums through and including the plan year in which assets are distributed; failure to pay such premiums constitutes a violation of Title IV of ERISA. Distribution of a plan's benefit liabilities in a standard termination without taking into account the plan's premium obligation may result in the invalidation of the standard termination or a civil action by the PBGC against the plan administrator in his or her personal capacity.

A number of commenters were concerned with the requirement in proposed § 2617.18(c) that the plan administrator give participants and beneficiaries, as part of a distribution through the purchase of annuities, "the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the benefits purchased." One commenter suggested that the obligation should be placed on the insurer rather than the plan administrator. Another stated that it is impossible to predict the amount of time necessary for an insurer to issue annuity certificates in any given case and suggested that the regulations permit their issuance in the ordinary course of business.

The PBGC agrees that the plan administrator would have access to a contract or annuity certificate only through the insurer, and recognizes that it often takes a considerable period of time for the insurer to provide such a contract or certificate. Nevertheless, the PBGC is concerned that participants and beneficiaries be given timely information concerning who is obligated to provide their annuity benefits and to whom they may go for answers concerning their benefits. Accordingly, the PBGC has revised § 2617.28 to provide, in paragraph (g), that evidence of the insurance may be provided either by the insurer or by the plan administrator. Further, such evidence may be in the form of a contract or certificate (as described above) or, if neither is available prior to the deadline for filing the post-distribution certification, a written notice from the plan administrator giving the necessary information. If the latter option (a written notice from the plan administrator) is used, each participant or beneficiary must be given the contract or certificate when available.

Paragraph (h) was revised to provide that the post distribution certification is to be filed on PBGC Form 501. Information similar to that required under proposed § 2617.18(f) is now found in the form and these provisions are not included in the final regulation.

The PBGC notes that the requirement of § 2617.28 to provide participants and beneficiaries (in the event of distribution through the purchase of irrevocable commitments) with a copy of the annuity contract or a notice or certificate of annuity contract, and to provide the PBGC (in all cases) with a post-distribution certification, are requirements that relate to, but are not part of, the distribution of all benefit liabilities in a standard termination. As the PBGC stated in its proposal to amend 29 CFR Part 2617, (56 FR 58014, 58015, November 15, 1991): "Although the written notice or certificate must be provided before the [post-distribution certification] can be filed and the termination thus completed, the distribution normally will occur before that notice or certificate is provided." Section 2617.28 (as well as § 2617.3(b)(5)) has accordingly been revised to clarify that the contract, notice, or certificate and the filing of the post-distribution certification are not part of the distribution.

One commenter suggested that the PBGC permit distribution of annuity contracts through the "bulk payment" method. Under this method, while the insurer is irrevocably committed to providing the benefits to participants, the insurer does so each month by sending a single check to the plan trustee who, in turn, makes payments to the individual participants. In the event the plan trustee for any reason does not perform the individual payment function, the insurer is obligated to make the payments itself (or to make arrangements with another person or entity to assume the individual payment function). The bulk payment method is permissible so long as the requisite "irrevocable commitment" exists, i.e., if the obligation has irrevocably passed from the plan to the insurer, and the plan's trustee is thus serving only as an agent of the insurer.

The PBGC has received many inquiries from plan administrators regarding how to complete the distribution of assets if one or more participants cannot be located. If the plan administrator has been unable to locate participants after having made a reasonable effort to do so, the plan administrator must purchase irrevocable commitments for each participant who has not been located. In the alternative, if the participant's benefit is valued at $3,500 or less and would otherwise be distributed in a lump sum, the plan administrator should deposit the monies that would otherwise be distributed into an individual interest-bearing account opened in the participant's name at a federally insured institution.

The PBGC, however, recognizes that plan administrators may confront difficulties in locating financial institutions willing to open individual interest-bearing accounts for missing participants, particularly where the benefit amounts are small. In the limited case where a plan administrator has made every reasonable effort to locate

missing participants and to locate institutions that are willing to open individual interest-bearing accounts for them, but is still unable to complete the distribution in this manner, then the use of a pooled interest-bearing account may be appropriate. If such an account is opened, it must be maintained by a fiduciary designated by the plan administrator who continues to have ongoing fiduciary obligations to those missing plan participants. The fiduciary must keep clear, up-to-date records of each participant's opening balance and earnings throughout the life of the account and must be available to make every reasonable effort to assist those participants who do come forward and claim their benefits. PBGC Opinion Letter 83–24 is modified in this respect.

Finally, the PBGC reminds plan administrators of the need to follow plan terms and all legal requirements in distributing plan assets. For example, each participant must be offered all optional forms of benefit for which he or she is eligible under the terms of the plan, and all required consents must be obtained. Moreover, in valuing benefits to be provided in a lump sum, the plan's actuary must use the interest rate or rate structures required by sections 411(a)(11) and 417(e)(3) of the Internal Revenue Code and the regulations thereunder. Failure to comply with any such requirements may result in invalidation of the standard termination.

Distress Terminations

Section 2616.2 Definitions.

The PBGC has made changes to the definitions of "affected party" and "participant" that parallel the changes discussed under the standard termination regulation.

The PBGC added a definition of "existing collective bargaining agreement" that is identical to the definition added to the standard termination regulation.

The definition of "proposed termination date" has been changed to parallel, generally, that in the standard termination regulation, which permits the plan administrator to propose a termination date in the standard termination notice that is later than the one proposed in the NOIT (but no later than 90 days after the date of issuance of the NOIT). In the preamble to the proposed regulation, the PBGC said that it was not permitting the plan administrator to change the proposed termination date because, in most distress terminations, the contributing sponsor and members of its controlled group are experiencing severe financial hardship and permitting a change in the proposed termination date would pose a significant risk to the PBGC (see 52 FR at 33324). One commenter objected, arguing that there may be circumstances in which the plan administrator may need to choose a later date to facilitate the plan termination, and noting that the PBGC could protect its interests by seeking establishment of a date it deems appropriate under section 4048 of ERISA. Upon reconsideration, and in view of the decreased time period within which a proposed termination date must fall under § 2616.22(a) (decreased from a 120-day period, i.e., 60–180 days after the NOIT, to a 30-day period, i.e., 60–90 days after the NOIT), the PBGC agrees that plan administrators in distress terminations should be given some flexibility, and has modified the regulation to provide that the plan administrator may change the proposed termination date in the distress termination notice to a later date, but no later than 90 days after the notice of intent to terminate except with PBGC's approval. The PBGC expects that it will rarely approve a later proposed termination date.

In the preamble to the proposed regulation, the PBGC solicited public comment on the issue of whether ERISA section 4048 continues to authorize the establishment of retroactive termination dates. Two commenters argued that retroactive termination dates should not be permitted, relying primarily on the increased emphasis, in SEPPAA, on advance notice to participants of a proposed termination date under ERISA section 4041. The PBGC has concluded that nothing in SEPPAA or PPA changed the rules, pursuant to ERISA section 4048, governing the establishment of retroactive termination dates to protect the insurance program. The PBGC intends to continue its long-standing policy (see 45 FR 80941, December 8, 1980) of seeking retroactive dates in appropriate circumstances.

The definitions of "date of distribution" and "insurer" are discussed in the standard termination portion of this preamble. Also, as in the standard termination regulation, the PBGC has added a number of other definitions to incorporate PPA changes, or for clarity or ease of reference.

Section 2616.3 Requirements for distress termination.

Section 2616.3(d)(1) restates the first statutory distress test (ERISA section 4041(c)(2)(B)(i)). That test (often referred to as the "liquidation test"), refers explicitly only to liquidations under federal bankruptcy or state insolvency law, and requires that the liquidation case, as of the proposed termination date, not be "dismissed" (a term of art under federal bankruptcy law, resulting in negation of the bankruptcy filing, and to be distinguished from a "closing" of a bankruptcy case; compare 11 U.S.C. 349 and 11 U.S.C. 350). The PBGC will consider cases under the liquidation test in which the liquidation was achieved through a foreclosure by secured creditors (as a result of which the contributing sponsor or controlled group member ceased operations and all of its assets were seized by such secured creditors) or through an assignment of all of the contributing sponsor's or controlled group member's assets for the benefit of creditors. The PBGC will also consider cases in which the liquidation was completed prior to the proposed termination date. In either case, however, the PBGC will find that the liquidation test is met only if it concludes, based on the circumstances of the specific case, that there is no indication that a principal purpose of the liquidation is to evade liability or otherwise to abuse the termination insurance program.

One commenter requested that the PBGC specify the period of time with respect to which it will determine whether the third distress test (*i.e.*, inability to continue in business; proposed and final § 2616.3(d)(3)) is met, and to develop standards of measurement to be used in making such determinations. The determinations made by the PBGC under the third distress test will necessarily be based on the facts and circumstances of each particular case. The PBGC does not believe it is appropriate, at least at this point, to develop specific time frames or standards of measurement.

Proposed § 2616.3(e) provided that, in determining whether a distress test is met, the PBGC would disregard any act or failure to act for the principal purpose of satisfying a distress test rather than for a reasonable business purpose. Two commenters objected to this provision, arguing generally that the PBGC lacks the statutory authority to make such determinations and that it is very difficult in many circumstances to determine the purpose of an action or failure to act, particularly where there may be legitimate business reasons to reduce labor costs, including pension costs. The PBGC has decided to retain this provision (paragraph (f) of the final regulation). A major purpose of the SEPPAA and PPA changes to Title IV of ERISA was to ensure that sponsors not be able to terminate underfunded pension plans unless they are financially unable to continue them. That purpose would be vitiated if

contributing sponsors and controlled group members were free to create an appearance of financial hardship in order to meet the statutory test; this provision helps to prevent that result.

Finally, a new paragraph (e) contains rules governing the interrelationship between the PBGC and a bankruptcy court in circumstances where both may be called upon to make distress findings regarding a particular plan termination. (The PBGC discussed these rules, and the reasons therefor, at 52 FR 38290, October 15, 1987.)

Section 2616.4 Administration of plan during pendency of termination proceedings.

Proposed § 2616.4(a) set forth certain restrictions that apply during the pendency of a distress termination proceeding. The PBGC has added one more restriction (§ 2616.4(b)(4)), precluding the plan administrator from providing loans to participants, because the benefit that the participant is entitled to receive following a distress termination, *e.g.*, the guaranteed benefit, may be less than the benefit amount serving as security for the loan. To preserve the plan's assets during the pendency of the termination process, the restrictions are generally in effect throughout that process beginning with the issuance of the first notice of intent to terminate; however, in the limited case of a plan sufficient for at least guaranteed benefits, the restrictions prohibiting distributions in furtherance of the termination, purchase of irrevocable commitments, and payment of benefits in lump sum form necessarily cease to be in effect once distribution of the plan's assets is permitted.

Proposed § 2616.4(c) provided that benefits that were not paid because of the cutback to estimated benefit amounts required by paragraph (b) of that section, if later required to be paid, must be paid with interest at the rate prescribed under 29 CFR Part 2610. The interest rate in Part 2610 is a rate established by statute for unpaid premiums; the interest rate more properly used for paying "past-due" benefits is that used by the PBGC for that purpose. Accordingly, § 2616.4(d)(2) provides for use of the interest rate or rates prescribed under § 2623.11(d).

Section 2616.5 Challenges to plan termination under collective bargaining agreement.

Provisions in this section parallel those in § 2617.5, discussed above, except that the time period within which notice must be given to the PBGC in order to require suspension of a distress termination ends upon issuance of a notice of inability to determine sufficiency or a distribution notice (rather than, as in the standard termination regulation, upon expiration of the PBGC's review period).

Section 2616.6 Annuity requirements.

Provisions in this section parallel those in § 2617.6, discussed above.

Proposed Section 2616.7 Contributing sponsor's commitment to make plan sufficient for guaranteed benefits.

Proposed § 2616.7 provided explicitly for a commitment by the contributing sponsor to make a plan sufficient for guaranteed benefits in a distress termination. Such commitments are extremely infrequent, and raise difficult valuation questions. The PBGC has deleted this provision from the final regulation, and will determine whether and when to accept such commitments on a case-by-case basis.

Sections 2616.7 and 2616.8 Filing with the PBGC; Computation of time.

These provisions, which were in § 2616.7 of the proposed regulation, parallel §§ 2617.8 and 2617.9 of the standard termination regulation discussed above. (While the distress termination process does not, in general, have the same kind of specific time limits for PBGC action as does the standard termination process, the PBGC often will need to act quickly to protect participants and premium payers, and thus has decided to define filing as the date of receipt, as under the standard termination regulation.)

Section 2616.9 Maintenance of plan records.

When the administrator of a plan in a distress termination receives a distribution notice from the PBGC because the plan is found to be sufficient for at least guaranteed benefits (§ 2616.26(c)), the plan administrator proceeds to close out the plan in a procedure that essentially parallels that followed in standard terminations. Thus, the PBGC does not routinely receive all plan or benefit records with respect to those plans during the termination proceedings; such records must be maintained in order that they will be available if needed (e.g., because the plan is selected for audit by the PBGC or because participants have questions regarding their benefits). Section 2616.9 (which tracks proposed § 2616.16(f) and final § 2617.10) contains this recordkeeping requirement and provides that the records shall be made available (or submitted) to the PBGC upon request. (The PBGC notes that most or all of the plan records required to be maintained under this provision already must be preserved and maintained for other purposes under section 107 of Title I of ERISA.)

Section 2616.22 (proposed § 2616.12) Notice of intent to terminate.

Paragraph (a)(3) requires that the notice of intent to terminate filed with the PBGC be on PBGC Form 600. Information similar to that required under proposed § 2616.12(e) is now found in the form and is not included in the final regulation.

Rules were added in paragraph (b), similar to those in § 2617.22(b), discussed above, concerning the effect on the termination process when affected parties are discovered after issuance of the NOIT.

A new paragraph (d)(5) (requiring that participants be informed of the effect of the termination on their benefit and service accruals), identical to § 2617.22(d)(6), was added for the same reasons discussed above in connection with that section. In addition, and for similar reasons, a new requirement was added (paragraph (d)(6)) requiring the plan administrator to advise participants of the expected level of plan sufficiency. Finally, proposed paragraph (d)(6) (now paragraph (d)(8)), requiring that retirees be told, where applicable, of the possibility of benefit reduction and recoupment, was revised to make the requirement applicable to non-retirees as well.

One commenter suggested that plan administrators be permitted to notify active employees of an intent to terminate the plan by posting the NOIT at locations usually reserved for employee notices, contending that "hand delivery of the notice is not required by statute and is unnecessary." The PBGC disagrees and has not made this change. ERISA section 4041(a)(2) requires that a written notice be provided "to each affected party." PBGC interprets the language in that section to require individual notice, particularly in view of the importance of plan termination to participants and beneficiaries.

A new paragraph (e), relating to spin-off/terminations, was added for the reasons discussed above under § 2617.22 of the standard termination regulation. (The PBGC recognizes that the rules governing participants in a spin-off/termination transaction are relevant in a distress termination only if the plan is sufficient for all benefit liabilities; while this is unlikely (since such plans would ordinarily terminate in a standard termination), it is not

Section 2616.23 (proposed § 2616.13) PBGC review of notice of intent to terminate.

One commenter suggested that the "tentative" finding of compliance to be issued under paragraph (b) by the PBGC should be final because "there is no need for a reconsideration and possible reversal of a determination with respect to whether a notice of intent to terminate is sufficient." The PBGC has not made this change because making a "tentative" determination permits the PBGC to make earlier (albeit only "tentative") determinations and, thereby, to facilitate faster processing in most cases.

Paragraph (d) of this section was revised by eliminating the list (in proposed § 2616.13(d)(1)–(3)) of specific information that might be requested by the PBGC in connection with possible institution of proceedings under ERISA section 4042. The information that the PBGC may need will vary from case to case, and it is unnecessary to specify the information in advance in the regulation.

In paragraph (e), the right to appeal the PBGC's determination that the notice of intent to terminate was not properly issued has been changed to a right to reconsideration. (As noted below, this same change was made regarding a PBGC determination that other distress termination requirements, such as meeting the distress tests, were not met.) Uncertainty as to whether a plan may terminate in a distress termination may profoundly affect the financing of an ongoing business or impede a plan of reorganization or liquidation. The time needed to complete the more sophisticated review of the appeals procedure, involving review by a three-person board and the opportunity to appear in person and to present witnesses, may be substantial. The streamlined reconsideration process should facilitate prompt resolution of the status of the termination.

One commenter noted that the standard termination regulation (proposed § 2617.17(d); final § 2617.27(d)) required the plan administrator to inform affected parties in the event the PBGC issues a notice of noncompliance in a standard termination, and suggested that a similar notification should be provided if the PBGC finds that the requirements for a distress termination were not met. The PBGC agrees and has added a new paragraph (f) that parallels § 2617.27(d).

Section 2616.24 (proposed § 2616.14) Distress termination notice.

This section was revised to provide that the distress termination notice is to be filed on PBGC Form 601 (including Schedule EA–D, the enrolled actuary certification). Information similar to that required under proposed § 2616.14(b)–(d) is now found in the form package and those provisions are not included in the final regulation.

Section 2616.25 (proposed § 2616.15) PBGC determination of compliance with requirements for distress termination.

One commenter suggested that the regulation should include a "time frame" within which the PBGC must issue its determination that the distress termination requirements are satisfied. The PBGC believes it would be impractical to establish any meaningful time frames because the time that will be needed to make distress determinations will vary widely based on the facts and circumstances of a particular case, particularly given the many variables that must be considered under the different distress criteria. However, the PBGC will attempt to make its distress determinations as expeditiously as circumstances permit.

The same commenter requested that the regulations be expanded to require that PBGC "provide copies of the plan administrator's filings in support of the proposed distress termination." The PBGC has not adopted this suggestion because disclosure of material filed with the PBGC is determined in accordance with the rules in the PBGC's Freedom of Information Act regulation, 29 CFR Part 2603.

Finally, for the reasons discussed above under § 2616.23, the PBGC has changed (in paragraph (d)) the right to appeal its determinations that the requirements for a distress termination were not met to a right to request reconsideration, and has added a new paragraph (e) requiring the plan administrator to provide notice to affected parties if the PBGC determines that the requirements for a distress termination are not met.

Section 2616.26 (proposed § 2616.16) PBGC determination of plan sufficiency/insufficiency.

Proposed paragraph (e) provided a special rule for plans that would be sufficient for guaranteed benefits only if the plan collects all or a portion of a claim for due and unpaid employer contributions. In the proposed regulation, such plans were treated as insufficient for guaranteed benefits (*i.e.*, they would be placed into trusteeship by the PBGC) if the enrolled actuary did not certify that the necessary amount would be collected by the proposed distribution date. The PBGC deleted this special rule from the final regulation. It is the PBGC, rather than the enrolled actuary, that is responsible for determining whether and when to issue a notice of inability to determine sufficiency or a distribution notice. In making this determination, the PBGC will take into account the expected date(s) and amount(s) of any collection of due and unpaid employer contributions (or other plan receivables).

Section 2616.27 Notices of benefit distribution.

This section is new; its provisions parallel, or cross-reference, the rules in §§ 2617.22 (d)(8), (d)(9), and (e), 2617.23, and 2617.24 of the standard termination regulation. As noted above in the discussion of time limits, the proposed regulation did not include this step in all cases in which the plan is sufficient for at least guaranteed benefits (and thus closes out in the same manner as in a standard termination).

Section 2616.29 (proposed § 2617.18) Closeout of plan.

Paragraph (a) of this section cross-references and parallels the provisions of § 2617.28 (c), (e), and (f) of the standard termination regulation, except that the 180-day period for completing the distribution of plan assets is measured from the date issuance of the notices of benefit distribution is completed (rather than, as in the standard termination regulation, from expiration of the PBGC's review period).

Paragraph (b) (proposed § 2616.18(c)) provides for a post-distribution certification (which parallels § 2617.28(h)) to be filed by any plan administrator distributing assets pursuant to a distribution notice issued by the PBGC. The PBGC has developed a new PBGC Form 602 to facilitate plan administrators' certifications in these cases.

E.O. 12291 and Regulatory Flexibility Act

The Pension Benefit Guaranty Corporation ("PBGC") has determined that this final rule is not a "major rule" for the purposes of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability

of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These regulations merely implement the statutory requirements and procedures governing voluntary terminations of pension plans.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Traditionally, pension plans with fewer than 100 participants have been treated as small plans. Seventy-five percent of these plans are defined contribution plans and are not subject to PBGC regulations. Only about 51,000 small plans are covered by the PBGC's single-employer insurance program. Of these, about 15 percent (7750 plans), or about 3.5 percent of all small pension plans, terminate each year and are subject to these regulations.

Paperwork Reduction Act

The collection of information requirements in this final rule have been approved by the Office of Management and Budget under control number 1212–0036 with an expiration date of January 31, 1993. As noted above, elsewhere in today's **Federal Register** the PBGC is publishing a notice of request for extension of OMB approval of the collection of information requirements contained in this rule and in the revised forms and instructions.

List of Subjects in 29 CFR Parts 2616 and 2617

Employee benefit plans, Pension insurance, Pensions, and Reporting requirements.

In consideration of the foregoing, the PBGC is revising 29 CFR parts 2616 and 2617 of subchapter C of chapter XXVI, title 29 of the Code of Federal Regulations as follows:

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.

2616.1 Purpose and scope.
2616.2 Definitions.
2616.3 Requirements for a distress termination.
2616.4 Administration of plan during pendency of termination proceedings.
2616.5 Challenges to plan termination under collective bargaining agreement.
2616.6 Annuity requirements.
2616.7 Filing with the PBGC.
2616.8 Computation of time.
2616.9 Maintenance of plan records.

Subpart B—Distress Termination Process

2616.21 Purpose and scope.
2616.22 Notice of intent to terminate.
2616.23 PBGC review of notice of intent to terminate.
2616.24 Distress termination notice.
2616.25 PBGC determination of compliance with requirements for distress termination.
2616.26 PBGC determination of plan sufficiency/insufficiency.
2616.27 Notices of benefit distribution.
2616.28 Verification of plan sufficiency prior to closeout.
2616.29 Closeout of plan.

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

Subpart A—General Provisions

§ 2616.1 Purpose and scope.

(a) Purpose. This part sets forth the rules and procedures for terminating a single-employer pension plan in a distress termination under the Employee Retirement Income Security Act of 1974, as amended. Under the Act, a single-employer plan may be voluntarily terminated only in a "standard" or a "distress" termination, and then only if the termination satisfies the statutory requirements for the type of termination sought. This part supersedes previous PBGC regulations in 29 CFR Part 2616 and includes rules governing the notice of intent to terminate for distress terminations, as well as other substantive and procedural rules pertaining to those terminations. (The rules for standard terminations are included in Part 2617 of this subchapter.) Subpart A of this part contains general rules relating to distress terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a distress termination.

(b) *Scope.* This part applies to the termination of any single-employer plan covered under section 4021(a) of the Act and not excluded by section 4021(b) for which a notice of intent to terminate in a distress termination is issued on or after January 28, 1992.

§ 2616.2 Definitions.

For purposes of this part:

Act means the Employee Retirement Income Security Act of 1974, as amended.

Affected party means the PBGC and, with respect to a terminating plan—

(1) Each participant;

(2) Each beneficiary of a deceased participant;

(3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of the Act;

(4) Each employee organization that currently represents any group of participants; and

(5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate.

In connection with any notice required under this part, if an affected party has designated in writing another person to receive the notice, any reference to the affected party shall be deemed to refer to the designated person.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined in accordance with 29 CFR part 2612.

Date of distribution means—(1) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and

(2) For benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

Distress termination means the voluntary termination, in accordance with section 4041(c) of the Act and this part, of a single-employer plan.

Distress termination notice means the notice filed with the PBGC pursuant to section 4041(c)(2)(A) of the Act and § 2616.24. PBGC Form 601 (including Schedule EA–D) is the distress termination notice.

Distribution notice means the notice issued to the plan administrator by the PBGC pursuant to § 2616.26(c) of this

part upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits.

Existing collective bargaining agreement means a collective bargaining agreement that—

(1) By its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and

(2) Has not been made inoperative by a judicial ruling.

When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms may continue to apply by operation of law.

Guaranteed benefit means a benefit that is guaranteed by the PBGC under section 4022 (a) and (b) of the Act and parts 2613 and 2621 of this chapter.

Insurer means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

Mandatory employee contributions means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Notice of benefit distribution means the notice to each participant and beneficiary required by § 2616.27 of this part describing the benefit to be distributed to him or her.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 of this part.

Participant means—(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

PBGC means the Pension Benefit Guaranty Corporation.

Person means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the distress termination notice. A proposed termination date specified in the notice of intent to terminate may not be earlier than the 60th day, nor later than the 90th day, after the issuance of the notice of intent to terminate. A proposed termination date specified in the distress termination notice may not be earlier than the proposed termination date specified in the notice of intent to terminate, or (except with PBGC approval) later than the 90th day after the issuance of the notice of intent to terminate.

Residual assets means the plan assets remaining after all benefit liabilities and other liabilities of the plan have been satisfied.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

Spin-off/termination means a splitting of a single defined benefit plan into two or more plans, in conjunction with the termination of one or more of the plans, resulting in a reversion of residual assets to the employer.

Sufficient for benefit liabilities means that there is no amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of the Act.

Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits, as defined in section 4001(a)(17) of the Act.

Termination date means the date established pursuant to section 4048(a) of the Act. The termination date is the date for determining guaranteed benefits and benefit liabilities.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of the Act and Part 2618 of this subchapter.

§ 2616.3 Requirements for a distress termination.

(a) *Exclusive means of voluntary plan termination.* Unless a plan is able to discharge all of its obligations for benefit liabilities and otherwise satisfy the requirements for a standard termination set forth in part 2617 of this subchapter, it may be voluntarily terminated by the plan administrator only if all of the requirements for a distress termination set forth in paragraph (b) of this section are satisfied.

(b) *Requirements.* A plan may be terminated in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 2616.22 at least 60 days and not more than 90 days before the proposed termination date;

(2) The plan administrator files a distress termination notice with the PBGC in accordance with § 2616.24 no later than 120 days after the proposed termination date; and

(3) The PBGC determines that the contributing sponsor and each member of its controlled group satisfy one of the distress criteria set forth in paragraph (d) of this section.

(c) *Effect of failure to satisfy requirements.* (1) Except as provided in paragraph (c)(2) of this section, if the plan administrator does not satisfy all of the requirements of paragraph (b) of this section, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. A plan administrator who still desires to terminate the plan shall initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2) The PBGC may, upon its own motion, waive any requirement with respect to notices to be filed with the PBGC under paragraph (b)(1) or (b)(2) of this section if the PBGC believes that it will be less costly or administratively burdensome to the PBGC to do so. The PBGC will not entertain requests for waivers under this paragraph.

(3) Notwithstanding any other provision of this part, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

(d) *Distress criteria.* A contributing sponsor and each member of its controlled group shall satisfy at least one (but not necessarily the same one)

of the following criteria in order for a distress termination to occur:

(1) *Liquidation.* This criterion is met if, as of the proposed termination date—

(i) A person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar law of a State or political subdivision of a State, or a case described in paragraph (d)(2) of this section has been converted to such a case; and

(ii) The case has not been dismissed.

(2) *Reorganization.* This criterion is met if—

(i) As of the proposed termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (d)(1) of this section has been converted to such a case;

(ii) As of the proposed termination date, the case has not been dismissed;

(iii) The person notifies the PBGC of any request to the bankruptcy court (or other appropriate court in a case under such similar law of a state or a political subdivision of a state) for approval of the plan termination by concurrently filing with the PBGC a copy of the motion requesting court approval, including any documents submitted in support of the request; and

(iv) The bankruptcy court or other appropriate court determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the reorganization process and approves the plan termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(e) *Non-duplicative efforts.* (1) If a person requests approval of the plan termination by a court, as described in paragraph (d)(2) of this section, the PBGC—

(i) Will normally enter an appearance to request that the court make specific findings as to whether the sponsor or controlled group member meets the distress test in paragraph (d)(3) of this section, or state that it is unable to make such findings;

(ii) Will provide the court with any information it has that may be germane to the court's ruling;

(iii) Will, if the person has requested, or later requests, a determination by the PBGC under paragraph (d)(3) of this section, defer action on the request until the court makes its determination; and

(iv) Will be bound by a final and non-appealable order of the court.

(2) If a person requests a determination by the PBGC under paragraph (d)(3) of this section, the PBGC determines that the distress criterion is not met, and the person thereafter requests approval of the plan termination by a court, as described in paragraph (d)(2) of this section, the PBGC will advise the court of its determination and make its administrative record available to the court.

(f) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the criteria contained in paragraph (d) of this section, rather than for a reasonable business purpose, the PBGC shall disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

§ 2616.4 Administration of plan during pendency of termination proceedings.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator shall continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, and investing plan assets, in accordance with plan provisions and applicable law and regulations.

(b) *Prohibitions after issuing notice of intent to terminate.* The plan administrator shall not make loans to plan participants beginning on the first day he or she issues a notice of intent to terminate, and from that date until a distribution is permitted pursuant to § 2616.29, the plan administrator shall not—

(1) Distribute plan assets pursuant to, or (except as required by this part) take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Limitation on benefit payments on or after proposed termination date.* Beginning on the proposed termination date, the plan administrator shall reduce benefits to the level determined under part 2623 of this subchapter. For purposes of applying part 2623, the term "section 4041(a) date of termination" used therein shall be replaced by the term "proposed termination date."

(d) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 2616.23(c) or § 2616.25(c)(1), that the requirements for a distress termination are not satisfied—

(1) The prohibitions described in paragraph (b)(2)–(b)(4) of this section shall cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested under §§ 2616.23(e) and 2616.25(d) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(2) Any benefits that were not paid pursuant to paragraph (c) of this section shall be due and payable as of the effective date of the PBGC's determination, together with interest from the date (or dates) on which the unpaid amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under § 2623.11(d) of this subchapter.

(e) *Effect of subsequent insufficiency.* If the plan administrator makes a finding of subsequent insufficiency pursuant to § 2616.28(b), or the PBGC notifies the plan administrator that it has made a finding of subsequent insufficiency pursuant to § 2616.28(d), the prohibitions in paragraph (b) of this section shall apply in accordance with § 2616.28(e).

§ 2616.5 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination.* (1) If the PBGC is advised, before issuance of a notice of inability to determine sufficiency or a distribution notice pursuant to § 2616.26(b) or (c), that a formal challenge to the termination (as described in paragraph (b) of this section) has been initiated, the PBGC shall suspend the termination proceeding and shall so advise the plan administrator in writing. If the PBGC is advised of such a challenge after the issuance of such notice but before the termination procedure is concluded pursuant to this part, the PBGC may suspend the termination proceeding

and, if it does, shall so advise the plan administrator in writing.

(2) The following rules shall apply during a period of suspension beginning on the date of the PBGC's written notification to the plan administrator and ending with the final resolution of the challenge to the termination:

(i) The suspension shall stay the issuance by the PBGC of any notice of inability to determine sufficiency or distribution notice or, if any such notice was previously issued, shall stay its effectiveness;

(ii) The plan administrator shall comply with the prohibitions in § 2616.4; and

(iii) The plan administrator shall file a distress termination notice with the PBGC in the manner and within the time specified in § 2616.24.

(b) *Formal challenge to termination.* For purposes of this section, a formal challenge to a plan termination is initiated when any of the following actions is taken, asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; or

(2) The commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(c) *Resolution of challenge.* Immediately upon the final resolution (as described in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge, and shall provide the PBGC with a copy of the award or order, if any. If the validity of the proposed termination has been upheld, the plan administrator also shall advise the PBGC whether the plan administrator wishes to continue the proposed termination.

(1) *Challenge sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination violates an existing collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. In this event, § 2616.4(d) shall apply as of the date of the dismissal by the PBGC.

(2) *Termination sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and the following rules shall apply:

(i) The termination proceeding shall continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension shall be effective;

(iii) The PBGC shall proceed to issue a notice of inability to determine sufficiency or a distribution notice (or reactivate any such notice stayed under paragraph (a)(2)(i) of this section), either with or without first requesting updated information from the plan administrator pursuant to § 2616.24(c);

(iv) Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding; and

(v) Any time periods that had fewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify.

(d) *Final resolution of challenge.* For purposes of this section, a formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(e) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

§ 2616.6 Annuity requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section, when a plan is closed out under § 2616.29, any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating, nonsurrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions to annuity requirement.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form if the plan provides for an alternative form of distribution and either paragraph (b)(1) or (b)(2) of this section applies:

(1) The participant is not in pay status as of the date of distribution, and the present value of the participant's total benefit under the plan, including amounts previously distributed to the participant, is $3,500 or less, determined in accordance with sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder. The date used for determining such interest rate or rates shall be—

(i) The date set forth in the plan for such purpose, provided that the plan provision is in accord with section 417(e)(3) of the Code and the regulations thereunder (substituting "date of distribution" for "annuity starting date" wherever used in the plan); or

(ii) If the plan does not provide for such a date, the date of distribution.

(2) The participant elected the alternative form of distribution in writing, with the written consent of his or her spouse, in accordance with the requirements of sections 401(a)(11), 411(a)(11), and 417 of the Code and the regulations thereunder.

(c) *Optional benefit forms.* Except as permitted by sections 401(a)(11), 411(d)(6), and 417 of the Code and the regulations thereunder, an annuity contract purchased to satisfy the annuity requirement shall preserve all applicable benefit options provided under the plan as of the termination date.

(d) *Participating annuities.* (1) *General rule.* Notwithstanding the requirement of paragraph (a) of this section that an annuity contract be nonparticipating, a participating annuity contract may be purchased to satisfy the annuity requirement if the plan is sufficient for all benefit liabilities and—

(i) All benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and noncancellable obligation of the insurer;

(ii) In no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and

(iii) As provided in paragraph (d)(2) of this section, no amount of residual assets to which participants are entitled will be used to pay for the participation feature.

(2) *Plans with residual assets.* If all or a portion of the residual assets of a plan will be distributed to participants—

(i) The additional premium for the participation feature must be paid from

the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor; and

(ii) If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature.

§ 2616.7 Filing with the PBGC.

(a) *Date of filing.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date that it is received at the PBGC, providing it is received no later than 4:00 p.m. on a day other than Saturday, Sunday, or a Federal holiday. Documents received after 4:00 p.m. or on Saturday, Sunday, or a Federal holiday shall be deemed filed on the next regular business day.

(b) *How to file.* Any document to be filed under this part may be delivered by mail or by hand to: Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street, NW., Washington, DC 20006–1806.

§ 2616.8 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Notwithstanding the preceding sentence, a proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

§ 2616.9 Maintenance of plan records.

Either the contributing sponsor or the plan administrator of a terminating plan that closes out in accordance with § 2616.29 pursuant to a distribution notice issued under § 2616.26(c) shall maintain and preserve all records used to compute benefits with respect to each individual who is a plan participant or a beneficiary of a deceased participant as of the termination date in accordance with the following rules:

(a) The records to be maintained and preserved are those used to compute the benefit for purposes of distribution to each individual in accordance with § 2616.29 and include, but are not limited to, the plan documents and all underlying data, including worksheets prepared by or at the direction of the enrolled actuary, used in determining the amount, form, and value of benefits.

(b) All records subject to this section shall be preserved for six years after the date the post-distribution certification required under § 2616.29(b) is filed with the PBGC.

(c) The contributing sponsor or plan administrator, as appropriate, shall make records subject to this section available to the PBGC upon request for inspection and photocopying, and shall submit such records to the PBGC within 30 days after receipt of the PBGC's written request therefor (or such other period as may be specified in such written request).

Subpart B—Distress Termination Process

§ 2616.21 Purpose and scope.

This subpart describes in detail the distress termination process. Sections 2616.22 and 2616.24 prescribe the rules for the two statutory notices that plan administrators must issue in a distress termination. The first, the "notice of intent to terminate," is issued to all affected parties to begin the termination process. The second, the "distress termination notice," is issued only to the PBGC. Sections 2616.23, 2616.25, and 2616.26 cover the PBGC's review of the proposed termination and the actions that the PBGC may take with respect to it. Sections 2616.27, 2616.28, and 2616.29 apply only to plans that are sufficient for at least guaranteed benefits and describe the actions the plan administrator must take to close out the plan.

§ 2616.22 Notice of intent to terminate.

(a) *General rules.* (1) At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue to each person who is (as of the proposed termination date) an affected party a written notice of intent to terminate.

(2) The plan administrator shall issue the notice of intent to terminate to all affected parties other than the PBGC at or before the time he or she files the notice with the PBGC.

(3) The notice to affected parties other than the PBGC shall contain all of the information specified in paragraph (d) of this section.

(4) The notice to the PBGC shall be filed on PBGC Form 600, Distress Termination, Notice of Intent to Terminate, completed in accordance with the instructions thereto.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the plan administrator discovers additional affected parties after the expiration of the time period specified in paragraphs (a)(1) or (a)(2) of this section, the failure to issue the notice of intent to terminate to such parties within the specified time periods will not cause the notice to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional affected parties and if he or she promptly issues the notice to each additional affected party.

(c) *Issuance.* (1) *Method.* The plan administrator shall issue the notice of intent to terminate individually to each affected party. The notice to the PBGC shall be filed in accordance with § 2616.7. The notice to each of the other affected parties shall be either hand delivered or delivered by first-class mail or courier service directed to the affected party's last known address.

(2) *When issued.* The notice of intent to terminate is deemed issued to the PBGC on the date on which it is filed and to any other affected party on the date on which it is handed to the affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice to affected parties other than the PBGC.* The plan administrator shall include in the notice of intent to terminate to each affected party other than the PBGC all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The employer identification number ("EIN") of the contributing sponsor and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a distress termination on a specified proposed termination date.

(5) A statement that benefit and service accruals will continue until the date of termination or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of the Act;

(6) A statement of whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities;

(7) A brief description of what benefits are guaranteed by the PBGC (*e.g.*, if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained), and a statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled

under the terms of the plan in excess of guaranteed benefits; and

(8) A statement, if applicable, that benefits may be subject to reduction because of the limitations on the amounts guaranteed by the PBGC or because plan assets are insufficient to pay for full benefits (pursuant to parts 2621 and 2623 of this subchapter) and that payments in excess of the amount guaranteed by the PBGC may be recouped by the PBGC (pursuant to Part 2623 of this subchapter).

(e) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction, the plan administrator shall provide all participants and beneficiaries in the original plan who are also participants or beneficiaries in the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 2616.23 PBGC review of notice of intent to terminate.

(a) *General.* When a notice of intent to terminate is filed with it, the PBGC—

(1) Shall determine whether the notice was issued in compliance with § 2616.22; and

(2) Shall advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notice of intent to terminate appears to be in compliance with § 2616.22, it shall notify the plan administrator in writing that—

(1) The PBGC has made a tentative determination of compliance;

(2) The distress termination proceeding may continue; and

(3) After reviewing the distress termination notice filed pursuant to § 2616.24, the PBGC will make final, or reverse, this tentative determination.

(c) *Finding of noncompliance.* If the PBGC determines that the issuance of the notice of intent to terminate was not in compliance with § 2616.22 (except for requirements that the PBGC elects to waive under § 2616.3(c)(2) with respect to the notice filed with the PBGC), the PBGC shall notify the plan administrator in writing—

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of the Act, whenever—

(1) A notice of intent to terminate indicates that benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of the Act.

(e) *Reconsideration of finding of noncompliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in subpart C of part 2606 of this chapter. Any request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration, but does not stay the time period within which information must be submitted to the PBGC in response to a request under paragraph (d) of this section.

(f) *Notice to affected parties.* Upon a decision by the PBGC affirming a finding of noncompliance or upon the expiration of the period within which the plan administrator may request reconsideration of a finding of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 2616.22(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued. The notice required by this paragraph shall be provided in the manner described in § 2617.27(d)(2).

§ 2616.24 Distress termination notice.

(a) *General rule.* The plan administrator shall file with the PBGC a PBGC Form 601, Distress Termination Notice, Single-Employer Plan Termination, with Schedule EA–D, Distress Termination Enrolled Actuary Certification, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date.

(b) *Participant and benefit information.* (1) *Plan insufficient for guaranteed benefits.* Unless the enrolled actuary certifies, in the Schedule EA–D filed in accordance with paragraph (a) of this section, that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator shall file with the PBGC the participant and benefit information described in PBGC Form 601 and the instructions thereto by the later of—

(i) 120 days after the proposed termination date, or

(ii) 30 days after receipt of the PBGC's determination, pursuant to § 2616.25(b), that the requirements for a distress termination have been satisfied.

(2) *Plan sufficient for guaranteed benefits or benefit liabilities.* If the enrolled actuary certifies that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator need not submit the participant and benefit information described in PBGC Form 601 and the instructions thereto unless requested to do so pursuant to paragraph (c) of this section.

(3) *Effect of failure to provide information.* The PBGC may void the distress termination if the plan administrator fails to provide complete participant and benefit information in accordance with this section.

(c) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this part or to pay benefits pursuant to section 4061 or 4022(c) of the Act. The plan administrator shall submit any information requested under this paragraph within 30 days after receiving the PBGC's written request (or such other period as may be specified in such written request).

§ 2616.25 PBGC determination of compliance with requirements for distress termination.

(a) *General.* Based on the information contained and submitted with the PBGC Form 600 and the PBGC Form 601, with Schedule EA–D, and on any information submitted by an affected party or otherwise obtained by the PBGC, the PBGC shall determine whether the requirements for a distress termination set forth in § 2616.3(b) have been met and shall notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section.

(b) *Qualifying termination.* If the PBGC determines that all of the

requirements of § 2616.3(b) have been satisfied, it shall so advise the plan administrator and shall also advise the plan administrator of whether participant and benefit information must be submitted in accordance with § 2616.24(b).

(c) *Non-qualifying termination.* (1) Except as provided in paragraph (c)(2) of this section, if the PBGC determines that any of the requirements of § 2616.3(b) have not been met, it shall notify the plan administrator of its determination, the basis therefor, and the effect thereof (as provided in § 2616.3(c)).

(2) If the only basis for the PBGC's determination described in paragraph (c)(1) of this section is that the distress termination notice is incomplete, the PBGC shall advise the plan administrator of the missing item(s) of information and that the information must be filed with the PBGC no later than the 120th day after the proposed termination date or the 30th day after the date of the PBGC's notice of its determination, whichever is later.

(d) *Reconsideration of determination of non-qualification.* A plan administrator may request reconsideration of the PBGC's determination under paragraph (c)(1) of this section in accordance with the rules prescribed in subpart C of part 2606 of this chapter. The filing of a request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration.

(e) *Notice to affected parties.* Upon a decision by the PBGC affirming a determination of non-qualification or upon the expiration of the period within which the plan administrator may request reconsideration of a determination of non-qualification (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 2616.22(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued. The notice required by this paragraph shall be provided in the manner described in § 2617.27(d)(2).

§ 2616.26 PBGC determination of plan sufficiency/insufficiency.

(a) *General.* Upon receipt of participant and benefit information filed pursuant to § 2616.24 (b)(1) or (c), the PBGC shall determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b) or (c) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it shall issue a "notice of inability to determine sufficiency" notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator shall continue to administer the plan under the restrictions imposed by § 2616.4; and

(2) The termination shall be completed under section 4042 of the Act.

(c) *Sufficiency for guaranteed benefits or benefit liabilities.* If the PBGC determines that a plan is sufficient for guaranteed benefits but not for benefit liabilities or is sufficient for benefit liabilities, the PBGC shall issue to the plan administrator a distribution notice advising the plan administrator—

(1) To issue notices of benefit distribution in accordance with § 2616.27;

(2) To close out the plan in accordance with § 2616.29;

(3) To file a timely post-distribution certification with the PBGC in accordance with § 2616.29(b); and

(4) That either the plan administrator or the contributing sponsor must preserve and maintain plan records in accordance with § 2616.9.

§ 2616.27 Notices of benefit distribution.

(a) *General rules.* When a distribution notice is issued by the PBGC pursuant to § 2616.26(c), the plan administrator shall—

(1) No later than 60 days after receiving the distribution notice, issue a notice of benefit distribution in accordance with the rules described in paragraphs (c) and (d) of this section to each person (other than any employee organization or the PBGC) who is an affected party as of the termination date (and, in the case of a spin-off/termination transaction, each person who is, as of the termination date, a participant in the original plan and covered by the ongoing plan); and

(2) No later than 15 days after the date on which the plan administrator completes the issuance of the notices of benefit distribution, file with the PBGC a certification that the notices were so issued in accordance with the requirements of this section.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional persons entitled to a notice of benefit distribution after the expiration of the time period specified in paragraph (a)(1) of this section, the failure to issue the notices of benefit distribution to such persons within the specified time period will not cause such notices to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional persons and if he or she promptly issues, to each such additional person, a notice of benefit distribution in the form and containing the information specified in paragraph (d) of this section.

(c) *Issuance.* (1) *Method.* The plan administrator shall issue a notice of benefit distribution individually to each person, either by hand-delivery or by first-class mail or courier service directed to the person's last known address.

(2) *When issued.* A notice of benefit distribution is deemed issued to each person on the date it is handed to the person or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Form and content of notices.* The plan administrator shall provide notices of benefit distribution in the form described in § 2617.24(a) and (b) of this subchapter and shall include in each—

(1) The information described in § 2617.24(c) of this subchapter;

(2) The information described in § 2617.24(d), (e), or (f) of this subchapter, as applicable (replacing the term "plan benefits" with "Title IV benefits" and "proposed termination date" with "termination date".

(3) A statement that, after plan assets have been distributed to provide all of the Title IV benefits payable with respect to a participant or a beneficiary of a deceased participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide benefits or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's or beneficiary's benefit ends; and

(4) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of distribution is issued, a statement that the affected party to whom the notice is directed will be notified of the name and address of the insurer or insurers from whom annuities may be purchased at a later date (but no

later than 45 days before the date of distribution).

(e) *Supplemental notice requirements.* (1) The plan administrator shall issue a supplemental notice (or notices) of distribution to each person in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of distribution is issued; or

(ii) The plan administrator included in the notice of distribution the name or names of the insurer or insurers from whom he or she intends to purchase the irrevocable commitments, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraphs (b) and (c) of this section no later than 45 days before the date of distribution and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

§ 2616.28 Verification of plan sufficiency prior to closeout.

(a) *General rule.* Before distributing plan assets pursuant to a closeout under § 2616.29, the plan administrator shall verify whether the plan's assets are still sufficient to provide for benefits at the level determined by the PBGC, *i.e.*, guaranteed benefits or benefit liabilities. If the plan administrator finds that the plan is no longer able to provide for benefits at the level determined by the PBGC, then paragraph (b) or (c) of this section, as appropriate, shall apply.

(b) *Subsequent insufficiency for guaranteed benefits.* When a plan administrator finds that a plan is no longer sufficient for guaranteed benefits, the plan administrator shall promptly notify the PBGC in writing of that fact and shall take no further action to implement the plan termination, pending the PBGC's determination and notice pursuant to paragraph (b)(1) or (b)(2) of this section.

(1) *PBGC concurrence with finding.* If the PBGC concurs with the plan administrator's finding, the distribution notice shall be void, and the PBGC shall—

(i) Issue the plan administrator a notice of inability to determine sufficiency in accordance with § 2616.26(b); and

(ii) Require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit liabilities and guaranteed benefits under the plan, valued in accordance with part 2619, subpart C, of this subchapter as of the date of the plan administrator's notice to the PBGC.

(2) *PBGC non-concurrence with finding.* If the PBGC does not concur with the plan administrator's finding, it shall so notify the plan administrator in writing, and the distribution notice shall remain in effect.

(c) *Subsequent insufficiency for benefit liabilities.* When a plan administrator finds that a plan is sufficient for guaranteed benefits but is no longer sufficient for benefit liabilities, the plan administrator shall immediately notify the PBGC in writing of this fact, but shall continue with the distribution of assets in accordance with § 2616.29.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency for guaranteed benefits has occurred, paragraph (b)(1) of this section shall apply, except that the guaranteed benefits shall be revalued as of the date of the PBGC's finding.

(e) *Restrictions upon finding of subsequent insufficiency.* When the plan administrator makes the finding described in paragraph (b) of this section or receives notice that the PBGC has made the finding described in paragraph (d) of this section, the plan administrator shall (except to the extent the PBGC otherwise directs) be subject to the prohibitions in § 2616.4(b).

§ 2616.29 Closeout of plan.

(a) *General rules.* (1) *Distribution.* If a plan administrator receives a distribution notice from the PBGC pursuant to § 2616.26(c) and neither the plan administrator nor the PBGC makes the finding described in § 2616.28(b) or (d), the plan administrator shall distribute plan assets in accordance with §§ 2616.6 and 2617.28(c), (e) and (f) of this subchapter no earlier than the 61st day and no later than the 180th day following the day on which the plan administrator completes the issuance of the notices of benefit distribution pursuant to § 2616.27(a). For purposes of applying § 2617.28(e)(1)(i), the phrase "the date that the plan administrator files the standard termination notice with the PBGC" shall be replaced by "the date that the plan administrator completes issuance of the notices of benefit distribution."

(2) *Notice of annuity contract.* If any of the plan's benefit liabilities payable to a participant or beneficiary have been distributed through the purchase of irrevocable commitments, the plan administrator shall provide such participant or beneficiary with a notice, contract, or certificate in accordance with § 2617.28(g).

(b) *Post-distribution certification.* Within 30 days after the completion of the distribution of plan assets in accordance with paragraph (a)(1) of this section, the plan administrator shall file with the PBGC a PBGC Form 602, Post-Distribution Certification for Distress Terminations, that has been completed in accordance with the instructions thereto.

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

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Appendix to Part 2617—Agreement for Commitment to Make Plan Sufficient for Benefit Liabilities

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

Subpart A—General Provisions

§ 2617.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules and procedures for terminating a single-employer pension plan in a standard termination under the Employee Retirement Income Security Act of 1974, as amended. Under the Act, a single-employer plan may be voluntarily terminated only in a "standard" or a "distress" termination, and then only if the termination satisfies the statutory requirements for the type of termination sought. This part combines previous PBGC regulations in 29 CFR Parts 2616 and 2617, with appropriate changes in the rules for standard terminations. (The rules for distress terminations are included in Part 2616 of this subchapter.) Subpart A of this part contains the various general

rules and requirements relating to standard terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a standard termination.

(b) *Scope.* This part applies to the termination of any single-employer plan covered under section 4021(a) of the Act and not excluded by section 4021(b) for which a notice of intent to terminate in a standard termination is issued on or after January 28, 1993.

§ 2617.2 Definitions.

For purposes of this part:

Act means the Employee Retirement Income Security Act of 1974, as amended.

Affected party means, with respect to a terminating plan—

(1) Each participant;

(2) Each beneficiary of a deceased participant;

(3) Each alternate payee under an applicable qualified domestic relations order, as defined in sections 206(d)(3) of the Act;

(4) Each employee organization that currently represents any group of participants; and

(5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate.

In connection with any notice required under this part, if an affected party has designated in writing another person to receive the notice, any reference to the affected party shall be deemed to refer to the designated person.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to a plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined in accordance with 29 CFR Part 2612.

Date of distribution means—

(1) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and

(2) For benefits provided other than through the purchase of irrevocable commitments, the date on which full plan benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

Existing collective bargaining agreement means a collective bargaining agreement that—

(1) By its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and

(2) Has not been made inoperative by judicial ruling. When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms continue to apply by operation of law.

Insurer means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more of—

(1) An unincorporated trade or business,

(2) The capital interest or the profits interest in a partnership, or

(3) Either the voting stock of a corporation or the value of all of the stock of a corporation. For this purpose, the constructive ownership rules of section 414(b) and (c) of the Code shall apply.

Mandatory employee contributions means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2617.22 of this part.

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to section 4041(b)(2)(C) of the Act and § 2617.27 of this part advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by section 4041(b)(2)(B) of the Act and § 2617.23 and 2617.24 of this part describing his or her plan benefits.

Participant means—

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

PBGC means the Pension Benefit Guaranty Corporation.

Person means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

Plan benefits means the benefits to which of a participant is, or may become, entitled under the plan's provisions in effect as of the termination date, based on the participant's accrued benefit under the plan as of that date. Each participant's "plan benefits" equals that participant's "benefit liabilities," and the sum of all "plan benefits" equals the plan's "benefit liabilities."

Proposed distribution date means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a standard termination. A proposed distribution date may not be earlier than the 61st

day, nor later than the 240th day, following the day on which the plan administrator files a standard termination notice with the PBGC.

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard termination notice. If a plan terminates in a standard termination, this date becomes the "termination date." A proposed termination date may not be earlier than the 60th day, nor later than the 90th day, after the issuance of the notice of intent to terminate.

Residual assets means the plan assets remaining after all benefit liabilities and other liabilities of the plan have been satisfied.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

Spin-off/termination means a splitting of a single defined benefit plan into two or more plans, in conjunction with the termination of one or more of the plans, resulting in a reversion of residual assets to the employer.

Standard termination means the voluntary termination, in accordance with section 4041(b) of the Act and this part, of a single-employer plan that is able to provide for all its benefit liabilities when plan assets are distributed.

Standard termination notice means the notice filed with the PBGC pursuant to section 4041(b)(2)(A) of the Act and § 2617.25 of this part advising the PBGC of a proposed standard termination. PBGC Form 500 (including Schedule EA–S) is the standard termination notice.

§ 2617.3 Requirements for a standard termination.

(a) *Exclusive means of voluntary plan termination.* Unless all the requirements for a distress termination set forth in section 4041(c) of the Act and Part 2616 of this subchapter are satisfied, a plan may be voluntarily terminated by the plan administrator only if all of the requirements for a standard termination set forth in paragraph (b) of this section are satisfied.

(b) *Requirements.* A plan may be terminated in a standard termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 2617.22 at least 60 days and not more than 90 days before the proposed termination date;

(2) The plan administrator files a standard termination notice with the PBGC in accordance with § 2617.25 no later than 120 days after the proposed termination date;

(3) The plan administrator issues notices of plan benefits to plan participants and beneficiaries in accordance with §§ 2617.23 and 2617.24 no later than the date that the standard termination notice is filed with the PBGC;

(4) The PBGC does not issue a notice of noncompliance to the plan administrator pursuant to § 2617.27; and

(5) The plan administrator distributes plan assets in accordance with § 2617.28(c) within the 180-day (or extended) distribution period under § 2617.28 (a), (e), and (f), in satisfaction of all benefit liabilities under the plan.

(c) *Effect of failure to satisfy requirements.* If the plan administrator does not satisfy all of the requirements of paragraph (b) of this section, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. A plan administrator who still desires to terminate the plan shall initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

§ 2617.4 Administration of plan during pendency of termination proceedings.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator shall continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, investing plan assets, and making loans to qualified participants, in accordance with plan provisions and applicable law and regulations.

(b) *Prohibitions after issuance of notice of intent to terminate.* Except as provided in paragraph (c) of this section, during the period beginning on the first day the plan administrator issues a notice of intent to terminate and ending on the last day of the PBGC's 60-day (or extended) review period, as described in § 2617.26(a), the plan administrator shall not—

(1) Distribute plan assets pursuant to or in furtherance of the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Exceptions.* During the period set forth in paragraph (b) of this section, the plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments from an insurer or in a form other than an annuity if—

(1) The participant has separated from active employment;

(2) The distribution is consistent with prior plan practice; and

(3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for benefit liabilities.

(d) *Effect of notice of noncompliance.* If the PBGC issues a notice of noncompliance pursuant to § 2617.27, the prohibitions described in paragraphs (b)(2) and (b)(3) of this section shall cease to apply—

(1) Upon expiration of the period during which reconsideration may be requested under § 2617.27(c) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(2) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

§ 2617.5 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination.* (1) If the PBGC is advised, before the 60-day (or extended) period specified in § 2617.26 ends, that a formal challenge to the plan termination (as described in paragraph (b) of this section) has been initiated, the PBGC shall suspend the termination proceeding and shall so advise the plan administrator in writing. If the PBGC is advised of such a challenge after the 60-day (or extended) period specified in § 2617.26 ends but before the termination procedure is concluded pursuant to this part, the PBGC may suspend the termination proceeding and, if it does, shall so advise the plan administrator in writing.

(2) The following rules shall apply during a period of suspension pursuant to paragraph (a) of this section beginning on the date of the PBGC's written notification to the plan administrator and ending with the final resolution of the challenge to the termination:

(i) The running of all time periods specified in the Act or this part relevant to the termination shall be suspended; and

(ii) The plan administrator shall comply with the prohibitions in § 2617.4.

(b) *Formal challenge to termination.* For purposes of this section, a formal challenge to a plan termination is initiated when any of the following actions is taken, asserting that the termination would violate the terms and

conditions of an existing collective bargaining agreement:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; or

(2) The commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(c) *Resolution of challenge.* Immediately upon the final resolution (as described in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge, and shall provide the PBGC with a copy of the award or order, if any. If the validity of the proposed termination has been upheld, the plan administrator also shall advise the PBGC whether the plan administrator wishes to continue the proposed termination.

(1) *Challenge sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination violates an existing collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan.

(2) *Termination sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and the following rules shall apply:

(i) The termination proceeding shall continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension shall be effective;

(iii) Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding; and

(iv) Any time periods that had fewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify.

(d) *Final resolution of challenge.* For purposes of this section, a formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(e) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

§ 2617.6 Annuity requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section, when a plan is closed out under § 2617.28, any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating, nonsurrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions to annuity requirement.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form if the plan provides for an alternative form of distribution and either paragraph (b)(1) or (b)(2) of this section applies:

(1) The participant is not in pay status as of the date of distribution, and the present value of the participant's total benefit under the plan, including amounts previously distributed to the participant, is $3,500 or less, determined in accordance with sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder. The date used for determining such interest rate or rates shall be—

(i) The date set forth in the plan for such purpose, provided that the plan provision is in accord with section 417(e)(3) of the Code and the regulations thereunder (substituting "date of distribution" for "annuity starting date" wherever used in the plan); or

(ii) If the plan does not provide for such a date, the date of distribution.

(2) The participant elected the alternative form of distribution in writing, with the written consent of his or her spouse, in accordance with the requirements of sections 401(a)(11), 411(a)(11), and 417 of the Code and the regulations thereunder.

(c) *Optional benefit forms.* Except as permitted by sections 401(a)(11), 411(d)(6), and 417 of the Code and the regulations thereunder, an annuity contract purchased to satisfy the annuity requirement shall preserve all applicable benefit options provided under the plan as of the termination date.

(d) *Participating annuities.* (1) *General rule.* Notwithstanding the requirement of paragraph (a) of this section that an annuity contract be nonparticipating, a participating annuity contract may be purchased to satisfy the annuity requirement if—

(i) All benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and noncancellable obligation of the insurer;

(ii) In no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and

(iii) As provided in paragraph (d)(2) of this section, no amount of residual assets to which participants are entitled will be used to pay for the participation feature.

(2) *Plans with residual assets.* If all or a portion of the residual assets of a plan will be distributed to participants—

(i) The additional premium for the participation feature must be paid from the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor; and

(ii) If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature.

§ 2617.7 Facilitating plan sufficiency.

(a) *Commitment to make plan sufficient.* (1) *General rule.* At any time before a standard termination notice is filed with the PBGC, in order to enable the plan to terminate in that standard termination, a contributing sponsor or a member of a controlled group of a contributing sponsor may make a commitment to contribute any additional sums necessary to make the plan sufficient for all benefit liabilities. Any such commitment shall be treated as a plan asset for all purposes under this part. A sample commitment is included in the appendix to this part.

(2) *Requirements for valid commitment.* A commitment to make a plan sufficient for all benefit liabilities shall be valid for purposes of this part only if the commitment—

(i) Is made to the plan;

(ii) Is in writing, signed by the contributing sponsor and/or controlled group member(s); and

(iii) If the contributing sponsor or controlled group member is the subject of a bankruptcy liquidation or reorganization proceeding, as described

in § 2616.3(d)(1) or (d)(2) of this subchapter, is approved by the court before which the liquidation or reorganization proceeding is pending or is unconditionally guaranteed, by a person not in bankruptcy, to be met at or before the time distribution of assets is required in the standard termination.

(b) *Alternative treatment of majority owner's benefit.* (1) *General rule.* In order to facilitate the termination of the plan and distribution of assets in a standard termination, a majority owner may agree to forego receipt of all or part of his or her benefit until the benefit liabilities of all other plan participants have been satisfied.

(2) *Requirements for valid agreement.* Any agreement by a majority owner to an alternative treatment of his or her benefit is valid only if—

(i) The agreement is in writing;

(ii) In any case in which the total value of the benefit (determined in accordance with § 2617.6(b)) is greater than $3,500, the spouse, if any, of the majority owner consents, in writing, to the alternative treatment of the benefit; and

(iii) The agreement is not inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of the Act).

§ 2617.8 Filing with the PBGC.

(a) *Date of filing.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date that it is received at the PBGC, providing it is received no later than 4:00 p.m. on a day other than Saturday, Sunday, or a Federal holiday. Documents received after 4:00 p.m. or on Saturday, Sunday, or a Federal holiday shall be deemed filed on the next regular business day.

(b) *How to file.* Any document to be filed under this part may be delivered by mail or by hand to: Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street, NW., Washington, DC 20006–1806.

§ 2617.9 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Notwithstanding the preceding sentence, a proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

§ 2617.10 Maintenance of plan records.

Either the contributing sponsor or the plan administrator of a terminating plan shall maintain and preserve all records used to compute benefit liabilities with respect to each individual who is a plan participant or a beneficiary of a deceased participant as of the termination date, in accordance with the following rules:

(a) The records to be maintained and preserved are those used to compute the benefit for purposes of distribution to each individual in accordance with § 2617.28(c) and include, but are not limited to, the plan documents and all underlying data, including worksheets prepared by or at the direction of the enrolled actuary, used in determining the amount, form, and value of benefits.

(b) All records subject to this section shall be preserved for six years after the date the post-distribution certification required under § 2617.28(h) is filed with the PBGC.

(c) The contributing sponsor or plan administrator, as appropriate, shall make records subject to this section available to the PBGC upon request for inspection and photocopying, and shall submit such records to the PBGC within 30 days after receipt of the PBGC's written request therefor (or such other period as may be specified in such written request).

Subpart B—Standard Termination Process

§ 2617.21 Purpose and scope.

This subpart describes in detail the standard termination process. Sections 2617.22–2617.24 prescribe the rules for the first two statutory notices that plan administrators must issue in a standard termination. The first, the "notice of intent to terminate," is issued to all affected parties to begin the termination process. The second, the "notice of plan benefits," is issued to participants and beneficiaries before the PBGC begins its review of the proposed termination. Section 2617.25 describes the rules for filing with the PBGC the "standard termination notice" and any supplemental notice or notices. Sections 2617.26 and 2617.27 cover the PBGC's review of the proposed termination and the actions that the PBGC may take if it finds noncompliance with the termination procedures. Section 2617.28 prescribes the rules for closing out a plan in the absence of a notice of noncompliance from the PBGC.

§ 2617.22 Notice of intent to terminate.

(a) *General rule.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue to each person who is (as of the proposed termination date) an affected party a written notice of intent to terminate containing all of the information specified in paragraph (d) of this section. Failure to comply with the requirements of this section shall nullify the proposed termination.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional affected parties after the expiration of the time period specified in paragraph (a)(1) of this section, the failure to issue the notice of intent to terminate to such parties within the specified time period will not cause the notice to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional affected parties and if he or she promptly issues the notice to each additional affected party.

(c) *Issuance.* (1) *Method.* The plan administrator shall issue the notice of intent to terminate to each affected party individually either by hand delivery or by first-class mail or courier service directed to the affected party's last known address.

(2) *When issued.* The notice of intent to terminate is deemed issued to each affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice.* The plan administrator shall include in the notice of intent to terminate all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The employer identification number ("EIN") of the contributing sponsor and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a standard termination on a proposed termination date that is either—

(i) A specific date set forth in the notice, or

(ii) A date to be determined that is dependent on the occurrence of some future event;

(5) If the proposed termination date is dependent on the occurrence of a future event, the nature of the event (such as

the merger of the contributing sponsor with another entity), generally when the event is expected to occur, and when the termination will occur in relation to the other event;

(6) A statement that benefit and service accruals will continue until the date of termination or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of the Act;

(7) A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all benefit liabilities under the plan with respect to each participant and each beneficiary of a deceased participant;

(8) A statement that, after plan assets have been distributed to provide all benefit liabilities with respect to a participant or a beneficiary of a deceased participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide benefits or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's or beneficiary's benefit ends;

(9) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of intent to terminate is issued, a statement that—

(A) Irrevocable commitments may be purchased from an insurer to provide some or all of the benefits under the plan,

(B) The insurer or insurers have not yet been identified, and

(C) Affected parties will be notified of the name and address of the insurer or insurers at a later date (but no later than 45 days before the date of distribution, as defined in § 2617.2);

(10) A statement that if the termination does not occur, the plan administrator will notify the affected parties in writing of that fact;

(11) A statement that each affected party, other than any employee organization, will be receiving a written notification of the benefits that the person will receive; and

(12) For retirees only, a statement that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination.

(e) *Supplemental notice requirements.*

(1) The plan administrator shall issue a supplemental notice (or notices) of intent to terminate to each affected party in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of intent to terminate is issued; or

(ii) The plan administrator notifies affected parties of the insurer or insurers from whom he or she intends to purchase the irrevocable commitments, either in the notice of intent to terminate or in a later notice, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraph (b) of this section no later than 45 days before the date of distribution and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

(3) Any supplemental notice or notices meeting the requirements of paragraph (e)(2) of this section shall be deemed a part of the notice of intent to terminate.

(f) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction, the plan administrator shall provide all participants in the original plan who are covered by the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 2617.23 Issuance of notices of plan benefits.

(a) *General rule.* No later than the date on which the plan administrator files the standard termination notice with the PBGC, as required by § 2617.25, the plan administrator shall issue to each person described in paragraph (b) of this section a notice of that individual's plan benefits. The notice shall be in the form and contain the information specified in § 2617.24. Failure to comply with the requirements of this section shall nullify the proposed termination.

(b) *Persons entitled to notice.* The plan administrator shall issue a notice of plan benefits to each person (other than any employee organization) who is an affected party as of the proposed termination date (and, in the case of a spin-off/termination transaction, each person who is, as of the proposed termination date, a participant in the original plan who is covered by the ongoing plan).

(c) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional persons entitled to a notice of plan benefits after the expiration of the time period specified in paragraph (a) of this section, the failure to issue a notice of plan benefits to such persons within the specified time period will not cause such notices to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional persons and if he or she promptly issues, to each such additional person, a notice of plan benefits in the form and containing the information specified in § 2617.24.

(d) *Issuance.* (1) *Method.* The plan administrator shall issue a notice of plan benefits individually to each person described in paragraph (b) of this section, either by hand-delivery or by first-class mail or courier service directed to the person's last known address.

(2) *When issued.* A notice of plan benefits is deemed issued to each person on the date it is handed to the person or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

§ 2617.24 Form and contents of notices of plan benefits.

(a) *Form of notices.* The plan administrator shall provide notices of plan benefits written in plain, non-technical English that is likely to be understood by the average participant or beneficiary. If technical terms must be used, their meaning shall be explained in non-technical language.

(b) *Foreign languages.* If, as of the proposed termination date, a plan either—

(i) covers fewer than 100 participants and at least 25 percent of those participants speak only the same non-English language or

(ii) covers 100 or more participants and the lesser of 500 or 10 percent of those participants speak the same non-English language,

the plan administrator shall comply with paragraph (a) of this section and also shall include in the notices a statement, prominently displayed, in the foreign language (or languages) common to the non-English speaking plan participants advising them of how they may obtain assistance in understanding the notice. The assistance need not involve written materials, but shall be adequate to reasonably ensure that the participants and beneficiaries understand the information contained in their notices and shall be provided through media and at times and places that are

reasonably accessible to the participants and beneficiaries.

(c) *Contents of notice.* In addition to the information described in paragraph (d), (e), or (f) of this section, as applicable, the plan administrator shall include in each notice of plan benefits the following information:

(1) The name of the plan, the employer identification number ("EIN") of the contributing sponsor, and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(2) The name, address, and telephone number of the person who may be contacted to answer questions concerning a participant's or beneficiary's benefit;

(3) The proposed termination date and, if applicable, a statement that this date is later than the proposed termination date given in the notice of intent to terminate; and

(4) If the amount of the plan benefits set forth in a notice is an estimate, a statement that the amount is an estimate and that benefits paid may be greater than or less than the estimate.

(d) *Benefits of persons in pay status.* The plan administrator shall include in the notice of plan benefits for a participant or beneficiary in pay status as of the proposed termination date the following information:

(1) The amount and form of the participant's plan benefits payable as of the proposed termination date;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur after the proposed termination date (or that has already occurred) and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) For benefits of participants or beneficiaries in pay status for one year or less as of the proposed termination date, the specific personal data used to calculate the plan benefits described in paragraphs (d)(1) and (d)(2) of this section, e.g., participant's age at retirement, spouse's age, participant's length of service, and including, for Social Security offset benefits, the participant's actual or, if unknown, estimated Social Security benefit and, for an estimated benefit, the assumptions used for the participant's earnings history.

(e) Benefits of participants not in pay status but form and starting date known. The plan administrator shall include in the notice of plan benefits for a participant who is not in pay status as of the proposed termination date, but who has, as of that date, elected to retire and has elected a form and starting date, or with respect to whom the plan administrator has determined a lump sum distribution will be made, the following information:

(1) The amount and form of the participant's plan benefits payable as of the projected benefit starting date, and what that date is;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur after the proposed termination date (or that has already occurred) and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) If the age at which, or form in which, the plan benefits will be paid differs from the age or form in which the participant's accrued benefit at normal retirement age is stated in the plan, the age or form stated in the plan and the age or form adjustment factors, including, in the case of a lump sum benefit, the interest rate used to convert to the lump sum benefit described in paragraph (e)(1) of this section and a reference to the pertinent plan provision;

(5) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the plan benefits (other than a lump sum benefit) described in paragraphs (e)(1) and (e)(2) of this section and, with respect to a benefit payable as a lump sum, the personal data used to calculate the underlying annuity; and

(6) If the plan benefits will be paid in a lump sum, an explanation of how the interest rate is used to calculate the lump sum; a statement that the higher the interest rate used, the smaller the lump sum amount; and, if applicable, a statement that the lump sum amount given is an estimate because the applicable interest rate may change before the distribution date.

(f) *Benefits of all other participants not in pay status.* The plan administrator shall include in the notice of plan benefits for any participant not described in paragraph (d) or (e) of this section, the following information:

(1) The amount and form of the participant's plan benefits payable at normal retirement age in any form permitted under the plan;

(2) The availability of any alternative benefit forms, including those payable to a beneficiary upon the participant's death either before or after retirement, and, for any benefits to which the participant is or may become entitled that would be payable before normal retirement age, the earliest benefit commencement date, the amount payable on and after such date, and whether the benefit would be subject to future reduction;

(3) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the plan benefits described in paragraph (f)(1) of this section and, with respect to a benefit that may be paid in a lump sum, the personal data used to calculate the underlying annuity; and

(4) If the plan benefits may be paid in a lump sum, an explanation of when a lump sum may be paid without a participant's consent; an explanation of how the interest rate is used to calculate the lump sum; and a statement that the higher the interest rate used, the smaller the lump sum amount.

§ 2617.25 Standard termination notice.

(a) *Form.* The plan administrator shall file with the PBGC a PBGC Form 500, Standard Termination Notice, Single-Employer Plan Termination, with Schedule EA-S, Standard Termination Certification of Sufficiency, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date.

(b) *Supplemental notice requirement.* If any of the benefits of the terminating plan may be provided in annuity form through the purchase of irrevocable commitments from an insurer and either of the conditions in paragraph (b)(1) of this section are met, the plan administrator shall file a supplemental notice (or notices) with the PBGC in accordance with the provisions in paragraph (b)(2) of this section.

(1) The plan administrator shall file with the PBGC a supplemental notice (or notices) if—

(i) The insurer or insurers from whom the plan administrator intends to purchase irrevocable commitments is not identified in the standard termination notice filed with the PBGC, or

(ii) The plan administrator has notified the PBGC of the insurer or insurers from whom he or she intends to purchase irrevocable commitments, either in the standard termination notice or in a later notice pursuant to paragraph (b)(2) of this section, and subsequently decides to select a different insurer.

(2) The supplemental notice (or notices) may be filed at any time after the filing of the standard termination

notice, but no later than 45 days before the date of distribution, and shall—

(i) Be in writing addressed to: Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street, NW., Washington, DC 20006–1860;

(ii) Give information identifying the contributing sponsor and the plan by name, address, employer identification and plan numbers ("EIN/PN"), and PBGC case number (if applicable); and

(iii) Give the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

§ 2617.26 PBGC action upon filing of standard termination notice.

(a) *Review period upon filing of standard termination notice.* (1) *General rule.* After a complete standard determination notice has been filed in accordance with § 2617.8, the PBGC has 60 days to review the notice, determine whether to issue a notice of noncompliance pursuant to § 2617.27, and issue any such notice. The 60-day review period begins on the day following the filing of a complete standard termination notice and includes the 60th day. If the PBGC does not issue a notice of noncompliance by the last day of this 60-day period, the plan administrator shall proceed to close out the plan in accordance with § 2617.28.

(2) *Extension of review period.* The 60-day review period may be extended according to the following rules:

(i) The PBGC and the plan administrator may agree in writing, before the expiration of the 60-day review period, to extend the period for up to an additional 60 days;

(ii) More than one such extension may be made; and

(iii) Any extension may be made upon whatever terms and conditions are agreed to by the PBGC and the plan administrator.

(3) *Suspension of review period.* The 60-day review period shall be suspended in accordance with paragraph (d) of this section if the PBGC requests supplemental information.

(b) *Acknowledgment of complete standard termination notice.* The PBGC shall notify the plan administrator in writing of the date on which a complete standard termination notice was filed, so that the plan administrator may determine when the 60-day review period will expire.

(c) *Return of incomplete standard termination notice.* The PBGC shall return an incomplete standard termination notice and advise the plan administrator in writing of the missing item(s) of information and that the complete standard termination notice must be filed no later than the 120th day after the proposed termination date or the 20th day after the date of the PBGC notice, whichever is later.

(d) *Authority to request supplemental information.* Whenever the PBGC has reason to believe that any of the requirements of §§ 2617.22–2617.25 of this part were not complied with, or in any proposed termination that will result in a reversion of residual assets to the contributing sponsor, the PBGC may require the submission of information supplementing that furnished pursuant to § 2617.25. A request for additional information under this paragraph shall be in writing and shall suspend the running of the 60-day (or extended) review period described in paragraph (a) of this section. That period shall begin running again on the day following the filing of the required information. If a plan administrator or contributing sponsor fails to submit information required under this paragraph within the period specified in the PBGC's request, the PBGC may issue a notice of noncompliance in accordance with § 2617.27 or take other appropriate action to enforce the requirements of Title IV of ERISA.

(e) *Authority to suspend or nullify proposed termination.* Notwithstanding any other provision of this part, the PBGC may, by written notice to the plan administrator, suspend or nullify a proposed termination after expiration of the 60-day (or extended) review period in any case in which it determines that such action is necessary to carry out the purposes of Title IV of ERISA.

§ 2617.27 Notice of noncompliance.

(a) *General.* (1) The PBGC shall issue to the plan administrator a written notice of noncompliance, within the period prescribed by § 2617.26, whenever it makes one of the following determinations:

(i) A determination that the plan administrator failed to issue the notice of intent to terminate in accordance with § 2617.22.

(ii) A determination that the plan administrator failed to issue notices of plan benefits in accordance with §§ 2617.23 and 2617.24.

(iii) A determination that the standard termination notice, or any supplemental notice, was not filed in accordance with § 2617.25.

(iv) A determination that, as of the proposed distribution date, plan assets will not be sufficient to satisfy all benefit liabilities under the plan.

(2) The PBGC shall base any determination described in paragraph (a)(1) of this section on the information contained in the standard termination notice, including any supplemental submission under § 2617.26(d) and any supplemental notice under § 2617.25(b), or on information provided by any affected party or otherwise obtained by the PBGC.

(b) *Effect of notice of noncompliance.* A notice of noncompliance ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. The notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration pursuant to paragraph (c) of this section but, once a notice is issued, the plan administrator shall take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked pursuant to a decision by the PBGC on reconsideration.

(c) *Reconsideration of notice of noncompliance.* A plan administrator may request reconsideration of a notice of noncompliance in accordance with the rules prescribed in Subpart C of Part 2606 of this chapter. Any request for reconsideration automatically stays the effectiveness of the notice of noncompliance until the PBGC issues its decision on reconsideration.

(d) *Notice to affected parties.* (1) *General rule.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 2617.22(f)) in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

(2) *Method of issuance.* The notices shall be delivered by first-class mail or by hand to each person described in paragraph (d)(1) who is an employee organization or a participant or beneficiary who is then in pay status. The notices to other participants and beneficiaries shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in an employee organization newsletter or newspaper of general circulation in the area or areas where participants and beneficiaries reside.

§ 2617.28 Closeout of plan.

(a) *General rules.* (1) *Distribution.* Except as provided in paragraphs (b), (e), and (f) of this section, if the PBGC does not issue a notice of noncompliance within the period specified in § 2617.26 or, if a notice of noncompliance is issued and later revoked after reconsideration under § 2617.27(c), the plan administrator shall complete the distribution of plan assets in accordance with paragraph (c) of this section within 180 days after the expiration of the review period specified in § 2617.26 or, if applicable, the date on which the PBGC revokes the notice of noncompliance.

(2) *Post-distribution requirements.* The plan administrator shall file with the PBGC a post-distribution certification in accordance with paragraph (h) of this section and, if any of the plan's benefit liabilities payable to a participant or beneficiary have been distributed through the purchase of irrevocable commitments, the plan administrator also shall provide such participant or beneficiary with a notice, contract, or certificate in accordance with paragraph (g) of this section.

(b) *Assets insufficient to satisfy benefit liabilities.* Before distributing plan assets to close out the plan, the plan administrator shall determine that plan assets are, in fact, sufficient to satisfy all benefit liabilities. In determining if plan assets are sufficient, the plan administrator shall subtract all liabilities (other than the future benefit liabilities that will be provided when assets are distributed), *e.g.*, benefit payments due before the distribution date; PBGC premiums for all plan years through and including the plan year in which assets are distributed; expenses, fees, and other administrative costs. If plan assets are not sufficient to satisfy all benefit liabilities, the plan administrator shall not make any distribution of assets to effect the plan's termination. In the event of an insufficiency, the plan administrator shall promptly notify the PBGC.

(c) *Method of distribution.* The plan administrator shall distribute plan assets in accordance with § 2617.6 by purchasing irrevocable commitments from an insurer in satisfaction of all benefit liabilities that must be provided in annuity form, and by otherwise providing all benefit liabilities that need not be provided in annuity form.

(d) *Failure to distribute within 180-day period.* Except as provided in paragraphs (e) and (f) of this section, failure to distribute assets in accordance with paragraph (c) of this section within the 180-day distribution period set forth in paragraph (a)(1) of this section, because of an insufficiency of plan assets as described in paragraph (b) of this section or for any other reason, shall nullify the termination. All actions taken to effect the plan's termination shall be null and void, and the plan shall be an ongoing plan. In this event, the plan administrator shall notify affected parties in writing, in accordance with § 2617.27(d), that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

(e) *Automatic extension of time for distribution.* (1) *Requirements for automatic extension.* The plan administrator shall be entitled to an automatic extension of the 180-day period in which to complete the distribution of plan assets if the plan administrator—

(i) Submits to the Internal Revenue Service a complete request for a determination with respect to the plan's tax-qualification status upon termination ("determination letter") on or before the date that the plan administrator files the standard termination notice with the PBGC;

(ii) Does not receive a determination letter at least 60 days before the expiration of the 180-day period; and

(iii) On or before the expiration of the 180-day period, notifies the PBGC in writing that an extension of the distribution deadline is required and certifies that the conditions in this paragraph have been met.

(2) *Extension period.* If the requirements in paragraph (e)(1) of this section are met, the time within which the plan administrator shall complete the distribution of plan assets is automatically extended until the 60th day after receipt of a favorable determination letter from the Internal Revenue Service,

(f) *Discretionary extension of time for distribution.* If the plan administrator will be unable to complete the distribution of plan assets within the 180-day (or extended) period for any reason other than an insufficiency described in paragraph (b) of this section, the plan administrator may request, and the PBGC shall grant or deny, in its discretion, an extension of time within which to complete the distribution according to the following rules:

(1) The plan administrator shall file a written request for a discretionary extension with the PBGC at least 30 days before the expiration of the 180-day (or extended) distribution period, explain the reason(s) for the request, and provide a date certain by which the distribution will be made if the extension is granted.

(2) The PBGC will not grant a discretionary extension based on failure to meet the requirements for an automatic extension under paragraph (e) of this section or failure to locate all participants or beneficiaries.

(3) The PBGC will grant a discretionary extension, in whole or in part, only if it is satisfied that the delay in making the distribution is not due to the action or inaction of the plan administrator or the contributing sponsor and that the distribution can in fact be completed by the date requested.

(g) *Notice of annuity contract.* In the case of the distribution of benefit liabilities through the purchase of irrevocable commitments—

(1) Either the plan administrator or the insurer shall, as soon as practicable, provide each participant and beneficiary with a copy of the annuity contract or certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit;

(2) If such a contract or certificate is not available on or before the date on which the post-distribution certificate is required to be filed pursuant to paragraph (h) of this section, the plan administrator shall, no later than such date, provide each participant and beneficiary with a written notice stating—

(i) That the obligation for providing the participant's or beneficiary's plan benefits has transferred to the insurer;

(ii) The name and address of the insurer;

(iii) The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(iv) That the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit; and

(3) The plan administrator shall certify to the PBGC, as part of the post-distribution certification required under paragraph (h) of this section, that the requirements in paragraph (g)(1) or (g)(2) of this section have been satisfied.

(h) *Post-distribution certification.* Within 30 days after the completion of the distribution of plan assets in accordance with paragraph (c) of this section, the plan administrator shall file with the PBGC a PBGC Form 501, Post-Distribution Certification for Standard Terminations, that has been completed

in accordance with the instructions thereto.

Appendix to Part 2617—Agreement for Commitment to Make Plan Sufficient for Benefit Liabilities

This agreement, by and between [name of company] _____(the "Company") and [name of plan] _____(the "Plan") shall be effective as of the last date executed.

Whereas, the Plan is an employee pension benefit plan as described in section 3(2)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001–1461; and

Whereas the Company is [describe entity, *e.g.*, corporation, partnership] _____; and

Whereas, the Company is a contributing sponsor of the Plan, or a member of the contributing sponsor's controlled group, as described in section 4001(a) (13) and (14) of ERISA, 29 U.S.C. 1301(2) (13) and (14); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of ERISA, 29 U.S.C. 1301–1461; and

Whereas, the Plan administrator has issued or intends to issue to each affected party a notice of intent to terminate the Plan, pursuant to section 4041(a)(2) of ERISA, 29 U.S.C. 1341(a)(2); and

Whereas, the Company wishes the Plan to be sufficient for benefit liabilities, as described in section 4001(a)(16) of ERISA, 29 U.S.C. 1301(a)(16); and

Whereas, the parties understand that if the Plan is not able to satisfy all its obligations for benefit liabilities, it will not be able to terminate in a standard termination under section 4041(b) of ERISA, 29 U.S.C. 1341(b); and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and this commitment is unconditionally guaranteed, by an entity or person not in bankruptcy, to be met at or before the time distribution is required in this standard termination.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the plan administrator, the amount necessary, if any, to ensure that, on the date the plan administrator distributes the assets of the Plan, the Plan is able to provide all benefit liabilities.

2. For the sole purpose of determining whether the Plan is sufficient to provide all benefit liabilities, an amount equal to the amount described in paragraph 1 shall be deemed a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of ERISA, 29 U.S.C. 1344.

3. This Agreement shall in no way relieve the Company of its obligations to pay contributions under the Plan.

Date: _____

By: _____

Company: _____

By: _____

Plan: _____

Issued in Washington, D.C. this 7th day of December, 1992.

Lynn Martin,

Chairman, Board of Directors Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Carol Connor Flowe,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 92–30057 Filed 12–11–92; 8:45 am]

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Monday
December 14, 1992

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Karner Blue Butterfly and Five Aquatic Snails in South Central Idaho; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Karner Blue Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the Karner blue butterfly (*Lycaeides melissa samuelis*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Historically, the Karner blue butterfly occurred in a rather narrow band extending from eastern Minnesota, across portions of Wisconsin, Illinois, Indiana, Michigan, Ohio, Canada (Ontario), Pennsylvania, New York, Massachusetts, and New Hampshire. It is now extirpated from Ohio, Pennsylvania, and Massachusetts, and is considered virtually extirpated from Ontario. This action is being taken because of constriction of the species' range and the declining size of remaining populations. The primary cause of past and threatened losses is habitat modification and destruction due to development, succession in the absence of natural disturbances, silviculture, and fragmentation of remaining habitat. This listing extends the Federal protection and recovery provisions afforded by the Act to *Lycaeides melissa samuelis*.

EFFECTIVE DATE: December 14, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the New York Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, New York 13045.

FOR FURTHER INFORMATION CONTACT: Mark W. Clough at the above address, telephone (607) 753–9334.

SUPPLEMENTARY INFORMATION:

Background

The Karner blue butterfly has been known for more than a century. When W.H. Edwards first described this butterfly in 1861 in Karner, New York, it was considered to belong to the same species as the Scudder's blue. In the 1940's, Nabokov revised the taxonomy of the group and renamed the Karner blue as a subspecies of the more common Melissa blue. The current scientific name is *Lycaeides melissa samuelis*, Nabokov. Some lepidopterists consider the Karner blue butterfly to be a separate species (D. Schweitzer, The Nature Conservancy, *in litt.*, 1987). However, this change has not been published and the Karner blue butterfly will be considered a subspecies for the purposes of listing.

Karner blues have a wingspan of 22–32 mm (0.87–1.26 in). The dorsal side of the male is silvery blue or dark blue with narrow black margins. The females are grayish brown dorsally, with irregular bands of orange inside the narrow black border on the upper wings. Both sexes are slate gray on the ventral side with the orange bands showing more regularity, and black spots circled with white (Shull 1987).

The habitat of the Karner blue butterfly is characterized by the presence of wild lupine (*Lupinus perennis*), a member of the pea family. Wild lupine is the only known larval food plant for the Karner blue butterfly and is, therefore, closely tied to the butterfly's ecology and distribution. In eastern New York and New Hampshire, the habitat typically includes sandplain communities, and grassy openings within very dry, sandy pitch pine/scrub oak barrens. In the Midwest, the habitat is also dry and sandy, including oak savanna and jack pine areas, and dune/sandplain communities. It is believed that the Karner blue butterfly originally occurred as shifting clusters of populations, or metapopulations, across a vast fire-swept landscape covering thousands of acres. While the fires resulted in localized extirpation, post-fire vegetational succession promoted colonization and rapid population buildups (Schweitzer 1989). Periodic disturbance is necessary to maintain openings in the canopy for wild lupine to thrive. A variety of other understory plants associated with the habitat serve as nectar sources for the adult butterflies.

The Karner blue butterfly usually has two broods each year. Eggs that have overwintered from the previous year hatch in April. The larvae feed on wild lupine leaves and mature rapidly. Near the end of May, they pupate and adult butterflies emerge very late in May in most years. The adults are typically in flight for the first 10 to 15 days of June, when the wild lupine is in bloom. Females lay eggs on or near the wild lupine plants. The eggs hatch in about one week and the larvae feed for about three weeks. They then pupate and the second brood adults appear in the second or third week of July. This time, the eggs are laid among plant litter or on grass blades at the base of the lupines, or on lupine pods or stems. By early August, no adults remain, and these eggs do not hatch until the following spring (Schweitzer 1989, Dirig 1979).

The distribution of the Karner blue butterfly is very discontinuous and generally follows the northern limits of wild lupine. Eight major population clusters of the Karner blue butterfly were known historically from portions of Wisconsin, Michigan, Minnesota, Indiana, Illinois, Ohio, Massachusetts, New Hampshire, Pennsylvania, New York, and Ontario. Over the past 100 years, Karner blue butterfly numbers have apparently declined rangewide by 99 percent or more. Over 90 percent of the decline occurred in the last 10 to 15 years. It is now extirpated from Massachusetts, Pennsylvania, and Ohio (Schweitzer 1989; *in litt.*, 1990). Unconfirmed reports indicate that one or two Karner blues may have been sighted at an historic Ontario site in 1990 or 1991.

The New York Natural Heritage Program maintains a state list of approximately 50 individual Karner blue butterfly sites, comprising about ten site-clusters, all found in the area known as the Albany Pine Bush and at scattered locations extending about 40 miles to the north. Once the site of a massive Karner blue population, the Albany Pine Bush is the locality from which the Karner blue butterfly was first scientifically described. There are also unverified records of Karner blues in Manhattan and Brooklyn from the mid 1800's. Givnish *et al.* (1988) noted a decline of Karner blue butterflies in the Albany Pine Bush of 85 to 98 percent over the past decade, exclusive of one site that has remained stable. Givnish *et al.* (1988) and Schweitzer (1990) described the decline in the Pine Bush population as dropping from numbers of around 80,000 in 1979, to around 1,000 in 1987, to 100–200 in 1990. North of the Albany Pine Bush, one disturbed site located at an airport has persisted with numbers estimated around 14,000 in 1990. This population is several times larger than all the other New York sites combined (Schweitzer 1990). The majority of extant Karner blue sites in New York are in municipal and private ownership. Other landowners include a State Park, The Nature Conservancy, and Saratoga County.

In New Hampshire, the Concord Pine Barrens along the Merrimack River support the only remaining occurrence of the Karner blue butterfly in New England. The sole population is extremely low in numbers and occurs on a privately owned, two to three acre site within a power line right-of-way bordering an industrial park, and on the grounds of a nearby airport. The results

of 1990 surveys reported by The Nature Conservancy (1990) showed a decline in the population size from an estimated 2,000 to 3,000 individuals in 1983 to an estimated 250 to 400 individuals in 1990. During that survey, Karner blue butterflies were not found at two other sites in the Concord Pine Barrens where the subspecies had been documented in 1983.

In Wisconsin, 33 of 36 historical occurrence sites were surveyed during 1990. Survey results reported by Bleser (1990) revealed that Karner blue butterflies were found at only 11 of the 33 historical sites visited. Although 23 previously unknown populations were discovered, Bleser noted that numbers of Karner blue butterflies observed were very small at most sites. Only three sites had 50 or more individuals observed, with none greater than 100. While these surveys did not provide a basis for statements of actual population size, they all appeared to be small, and many might not be considered viable. Many of the remnant populations in Wisconsin are also widely scattered, occurring in isolated patches of habitat along roadsides, power line clearings, and on abandoned agricultural fields. Additional surveys conducted in 1991 revealed a total of 131 discrete lupine areas that support Karner blue butterflies (Besadny *in litt.*, 1992). During the 1991 surveys, ten or fewer adults were counted at 53 percent of the 131 discrete sites, 11–50 adults were counted at 29 percent of the sites, 51–100 adults were counted at 10 percent of the sites, 101–300 at only seven percent of the sites, and over 300 at just one percent of the sites. It should be noted that actual population sizes may be 3 to 6 times, or higher, than the numbers of butterflies counted on a given site visit. At least half of Wisconsin's remaining Karner blue butterfly populations are small, isolated, and cannot be considered secure or viable in the long term. However, "a very good number of quite sizable populations occur on publicly owned properties offering good opportunities for long-term protection and management" (Besadny *in litt.*, 1992). Over three fourths of the Wisconsin sites are on publicly administered lands, including Necedah National Wildlife Refuge, Department of Defense, Wisconsin Department of Natural Resources, and County Forest. Other sites are owned or partly owned by other state and county governmental agencies, private landowners, and utility companies.

The Karner blue butterfly has declined throughout its range in Michigan. It still occurs in six of seven counties from which it was known historically, but the existing populations are greatly reduced and have become highly fragmented within expanses of unsuitable habitat (Wilsmann 1990). The Michigan Natural Features Inventory includes over two dozen historical locations for the Karner blue butterfly. Five of these no longer support populations of Karner blue butterflies, and many of the remainder are ranked as poor quality sites. Considering the population dynamics of the species, it can be expected that many individual sites which once supported populations of Karner blue butterflies are no longer suitable. Although information on exact historical locations is lacking, many general areas reported to have Karner blue butterflies in the 1950's have become unsuitable due to succession or conversion to plantations (L. Wilsmann, Michigan Department of Natural Resources, pers. comm., 1991). In his critique of 1989 population studies done by W. S. Lawrence and A. C. Cook in the Allegan State Game Area, Michigan's only remaining sizable population, Schweitzer (*in litt.*, 1989) noted that the results indicate a decline to fragmented remnants with dangerously low numbers, which is characteristic of a collapsing Karner blue butterfly population. Other Michigan sites occur on the Manistee National Forest (intermixed with private inholdings), on power company rights-of-way, and on other private lands.

The results of surveys during 1990 in Indiana were summarized by C. Hedge (Indiana Department of Natural Resources, pers. comm., 1991). Karner blue butterflies were reconfirmed at one known site, and they were also rediscovered on three of seven historical sites. Searches at 27 sites identified as potentially suitable for the species yielded six new locations for the species. However, all extant sites in Indiana are in two population clusters within two counties. Six sites are located on Indiana Dunes National Lakeshore, and other landowners include a county park and recreation department, a school district, and The Nature Conservancy. Shull (1987) indicated eight Indiana counties in the historic range of the Karner blue, although some of these records are based on sightings that are not supported with voucher specimens. The species is no longer found at one area where Shull reported observing dozens of individuals in 1980.

Cuthrell (1990) reported the results of 1990 surveys conducted in Minnesota. During the 1990 surveys of 50 potentially suitable sites, two areas with Karner blue butterflies were located. Both sites are on a State Wildlife Management Area, in the vicinity of one of the historical locations. Karner blue butterflies were not found at the other historical site. Studies conducted during 1991 revealed three new sites within one half to three miles of the sites surveyed in 1990 (Lane 1992a). Lane reported low numbers of individuals observed at all five sites, with none greater than 14, indicating extremely small populations.

The Karner blue butterfly was presumed extirpated from Illinois until the species was relocated there in August 1992. A total of seven butterflies, including five males and two females, were reported from a lupine site in the northern part of the State (S. Lauzon, Illinois Endangered Species Protection Board, pers. comm., 1992). The Karner blue was previously known from one collection in Illinois. This record consists of two specimens from the Andreas Bolter collection, labelled "N. I11." (Irwin and Downey 1973), which suggests that they were collected around or before 1900.

Karner blues frequently occur with other rare butterfly species such as the persius duskywing (*Erynnis persius*) and the frosted elfin (*Incisalia irus*), which are being listed by states where they occur (D. Schweitzer, pers. comm., 1991). Wild lupine is also the host plant for these species in parts of their range.

The Karner blue butterfly was first recognized by the Federal government in the **Federal Register** Notice of Review published on May 22, 1984 (49 FR 21664). That notice, which covered invertebrate wildlife under consideration for endangered or threatened status, included the Karner blue butterfly as a Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. In the **Federal Register** Animal Notice of Review published on January 6, 1989 (54 FR 554), the Karner blue butterfly was retained as a Category 2 species. Although the decline of the Karner blue butterfly in the Northeast was documented during the 1980's, it was believed that populations in the Midwest were relatively secure, particularly in Wisconsin and Michigan. Surveys conducted during 1989 and 1990 in the Midwest revealed that the butterfly is in decline there also. The Animal Notice of Review published in the November 21, 1991 **Federal Register** included the Karner blue butterfly as a Category 1 species, indicating that the

Service possessed sufficient information to support a proposal to list this butterfly. On January 21, 1992 (57 FR 2241), the Service published a proposed rule to list the Karner blue butterfly as an endangered species.

Summary of Comments and Recommendations

In the January 21, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, major landowners, and other interested parties were contacted and requested to comment. Notices were published in newspapers of general circulation in each area where the Karner blue butterfly is known to occur. On March 4, 1992, the Service received a request for a public hearing from Dr. Wilmer Pautz of the University of Wisconsin-Eau Claire. Accordingly, on June 8, 1992, the Service published a notice in the **Federal Register** extending the comment period to July 6, 1992, and announcing a public hearing to be held in Eau Claire, Wisconsin on June 25, 1992. At the hearing the public was invited to present oral or written information to be entered into the record, on factors pertinent to the proposed listing of the Karner blue butterfly. Mrs. Maud Kelley, a local resident, and Dr. Wilmer Pautz, representing various citizens in Eau Clair County, presented the only oral statements, and no additional written statements were submitted at the public hearing.

A total of 112 written comments on the proposed listing were received by the Service. Comments supporting the listing were received from the Ohio, Indiana, Wisconsin, and Minnesota Departments of Natural Resources, the New Hampshire Fish and Game Department, and the New York State Department of Environmental Conservation. Comments supporting the listing were also received from six professional or amateur lepidopterists and butterfly researchers, and eight private conservation organizations. A total of 91 comment letters were received from private citizens; 87, including 66 from elementary school students, expressed support for listing the Karner blue butterfly. The remaining four comments from private citizens include the comment letter from Dr. Pautz requesting the public hearing and also requesting that listing be delayed for three years, two commenters that did not take a position on the listing, and one commenter who expressed opposition to proposed listing. A comment letter from the Newaygo County, Michigan Board of Commissioners expressed conditional support for the listing, if it would not interfere with the gypsy moth eradication program.

Many of the commenters provided general information or observations about the Karner blue butterfly, and additional scientific or factual information. Several commenters offered suggestions or recommendations for future protection, research, management, and recovery efforts, or offered to assist the Service in these areas. The Service will consider those suggestions and recommendations, and will continue to work with all interested parties in future efforts to protect and recover this species. Comments updating the data presented in the "Background" or "Summary of Factors Affecting the Species" are incorporated in those sections of this final rule. The Service's responses to the comments and issues raised at the public hearing and in the written comments follow.

Issue 1. The one comment received that opposed the listing of the Karner blue butterfly stated that development might be impacted, forests would be destroyed, and questioned the Karner blue butterfly's contribution to society.

The Service responds that under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The first decision to list a species is based on biological criteria defined in five specific factors as discussed in the "Summary of Factors Affecting the Species" section of this rule. As discussed in that section of this rule, development has been a contributing factor in the destruction, modification, and fragmentation of the habitat of the Karner blue butterfly. The Service believes that additional protection and management of habitat for the Karner blue butterfly is essential for its survival. Management of habitat for the Karner blue butterfly requires maintaining openings in pine barrens, oak savanna, and sandplain habitat, particularly where natural processes have been curtailed, in order to allow the growth of the plant species wild lupine, upon which the Karner blue butterfly depends. Broad-scale conversion of forests to create Karner blue butterfly habitat would not be appropriate or necessary for proper management of this species. There may be many opinions as to a particular species' contribution to society including its aesthetic, scientific, ecological, or other significance, however this contribution of a species to society is not among the five factors upon which a listing determination is based.

Issue 2. Both commenters at the public hearing favored protection of the Karner blue butterfly and its habitat, and in particular, a specific area in the city of Altoona, Wisconsin. Mrs. Kelley commented on the potential of this area to provide habitat for the Karner blue butterfly. Dr. Pautz's statement pointed out the existence of suitable habitat in the Altoona area, and provided additional information on other sites in Wisconsin. Dr. Pautz's original comments requesting the hearing and his statement at the hearing contended there was a need for additional studies to determine the extent of Karner blue populations and habitat in the Altoona area prior to listing, and that Karner blue butterflies were found in more abundance in Wisconsin than indicated in the proposed rule.

Karner blue surveys were conducted in 1992 in the Altoona area in conjunction with review of a proposed highway project. Several sites that appeared to furnish suitable habitat were located during first flight period surveys in early June. However, resurvey of these areas during the second flight by a University of Minnesota graduate student who is conducting research on this species failed to locate any Karner blues at four sites and found only seven butterflies at a fifth site (Lane 1992b).

The text of this rule has been updated to reflect the most recent available data on the Karner blue butterfly's status in Wisconsin. As discussed in response to Issue 4, below, the Service believes that this butterfly warrants endangered status due to the danger of extinction in all or a significant portion of its range. The Service is confident that recent surveys have located most large Karner blue populations in Wisconsin. Furthermore, even relatively large extant populations cannot be considered secure unless threats from succession have been alleviated.

Issue 3. Dr. Pautz's statement expressed concern that the Service had proposed a finding that critical habitat determination for the Karner blue butterfly is presently not determinable. He recommended that the Service develop a description of critical habitat elements, and that studies should be conducted in the Altoona area so that critical habitat could be designated at the time of listing. In addition, 17 written comments were received that expressed concern that critical habitat was not being designated at the time of listing, suggested specific locations for

designation provided information on potential areas and habitat characteristics, or offered assistance in critical habitat designation.

The Service responds that the rationale for not designating critical habitat at the time of listing is detailed in the "Critical Habitat" Sections of the proposed rule and this final rule. The Service concluded that designation of critical habitat is not presently determinable as defined under implementing regulations at 50 CFR 424.12(a)(2). As discussed in the "Critical Habitat" section of this document, the Service is working with interested parties throughout the Karner blue butterfly's range to obtain necessary information to define the primary constituent elements of critical habitat, identify and map areas that should be designated, and ascertain the economic impacts of designation. The Service will consider information provided by commenters during formulation of the critical habitat proposal.

When a finding is made that critical habitat is not determinable at the time of listing, the regulations at 50 CFR 424.17(b)(2) provide that the designation of critical habitat be completed to the maximum extent prudent within two years from the date of publication of the proposed rule to list the species. Any proposal to designate critical habitat will be published in the **Federal Register** including maps and legal descriptions of all areas included in the proposal, and public comments will be solicited. The potential economic impacts of the critical habitat designation will be evaluated during the preparation of the required economic analysis.

Issue 4. The Wisconsin Department of Natural Resources noted that Wisconsin still supports a relatively large number of populations of Karner blue butterflies, that some are "quite sizable" with seemingly good potential for long-term viability with favorable management, and recommended that the Karner blue butterfly be designated threatened, rather than endangered. A professional lepidopterist also expressed the opinion that designation as threatened would be appropriate.

The Service responds that endangered status is warranted in situations where the species is in danger of extinction throughout all or a significant portion of its range. The Service recognizes that a few sizable populations with potential for long-term viability, are still extant; however, immediate protection and habitat management are deemed crucial to short- and long-term viability of Karner blue populations, even at these larger sites. The viability of many smaller sites, some of which may be very important to the recovery of the species, is even less certain. As discussed in the "Summary of Factors Affecting the Species" section, the fragility of remaining populations is exemplified by the recent loss of the population in Ontario due to adverse weather conditions. Major habitat restoration efforts were underway, and managers believed that this population of about 1000 second-brood adults was secure for the short- to medium-term. The collapse of the Albany Pine Bush population in New York, from around 80,000 butterflies in 1979 to 100–200 butterflies only eleven years later also illustrates the extreme vulnerability of this species. Considering the severity of decline the Karner blue butterfly has undergone in the past 10 to 15 years, the magnitude and imminence of the threats, and the vulnerability of existing populations, the Service concludes that the Karner blue butterfly is in danger of extinction without immediate and continuing protection and habitat management, and therefore, classification as endangered is warranted.

Issue 5. One commenter pointed out that evaluation of the Karner blue butterfly's relative status among the states must take into account the method of data collection and how the results were calculated. Some of the data were obtained through transect surveys and others from mark-release-recapture (MRR) methods, and the two methods are not directly comparable.

The Service recognizes that direct comparison of data collected using different methods or under different circumstances is inappropriate. The presentation of status information in this document is not intended to provide a direct comparison of population sizes among the states, rather it is presented on a state-by-state basis as an indicator of the decline that the Karner blue butterfly has undergone throughout its range. Recovery planning for this species will involve continued monitoring of its status, and the Service will be working with those involved in monitoring to develop appropriate and consistent survey methods.

Issue 6. Two commenters stated the need to clarify how prohibitions against "take" would be applied, particularly regarding research and management activities. One commenter suggested that taking of one or two voucher specimens be allowed to assure adequate documentation of new sites. Another commenter expressed concern about mark-release-recapture (MRR) work with Karner blue butterflies and its potential to cause injury or mortality.

The Service responds that "take" as defined in Section 3(18) of the Act means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct, and the prohibitions against "take" are applicable to any person subject to the jurisdiction of the United States. Regulations at 50 CFR 17.3 define "harm" as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Since some form of the Karner blue butterfly (eggs, larvae, or adults) is present at all times in habitat where it occurs, prohibitions against "take" would apply to activities involving both the butterflies or the occupied habitat. As discussed in the "Available Conservation Measures" section of this document, permits can be issued for activities to enhance the propagation or survival of listed species. The procedures for obtaining such permits for activities involving endangered species are found in the regulations at 50 CFR 17.22. The Service recognizes the need to conduct various research and management activities for this species that will require permits, and will work closely with those involved to authorize appropriate activities. The potential effects of MRR work on Karner blue butterflies will be carefully considered by the Service in the issuance of any such permits, and during the planning of recovery activities for this species.

Issue 7. One commenter recommended that the Karner blue butterfly be listed as an endangered species, and with it, wild lupine, the only known larval food plant for this species.

The Service responds that although wild lupine has declined within the range of the Karner blue butterfly, this plant species has a wider distribution than the Karner blue butterfly, and lupine is more abundant in other parts of its range. Lupine also persists in some areas within the Karner blue range where the butterflies are no longer found. Information available to the Service does not suggest that lupine warrants consideration for Federal listing.

Issue 8. The Newaygo County Board of Commissioners in Michigan expressed conditional support for listing the Karner blue butterfly, provided the listing does not affect spraying in

connection with the gypsy moth eradication program.

The Service responds that as a result of cooperation between the Service, the Michigan Department of Natural Resources, the Michigan Department of Agriculture, and the U.S. Forest Service (Forest Service) regarding the 1992 Forest Service Gypsy Moth Suppression Program in Michigan, a plan was developed to address protection of natural resources of concern, including the Karner blue butterfly. The plan included establishing no-spray areas and buffer zones around occupied habitat. The Service recognizes there are potential conflicts with protection of the Karner blue butterfly in implementing both Federal and non-Federal spraying programs. The Service will continue working with the Forest Service in reviewing future spraying plans, and will be working with non-Federal programs and examining additional alternatives, such as ground spraying in certain areas and timing of application, in order to allow suppression programs to proceed. Federal listing will extend the protection against taking under Section 9 of the Act, and will require Federal agencies to consult with the Service on activities affecting the Karner blue butterfly under Section 7 of the Act. However, the Karner blue butterfly has been listed as a threatened species by the State of Michigan and, therefore, it presently receives some protection from take under State law. The Service anticipates continuing coordination and cooperation among all those involved regarding this issue.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Karner blue butterfly (*Lycaeides melissa samuelis*) should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Karner blue butterfly (*Lycaeides melissa samuelis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Throughout its range, changes in the habitat occupied by the Karner blue butterfly resulting from silviculture, urbanization, and the declining frequency of wildfires are largely the reasons for its decline (D. Schweitzer, *in litt.*, 1991). Modification and destruction of habitat and fragmentation of remaining areas are continuing threats to the survival of this butterfly. In addition to direct destruction of suitable habitat, urbanization has led to fire suppression on interspersed habitat; in the absence of fire, vegetational succession has made this habitat unsuitable. The threats due to fire suppression are discussed in more detail under Factor E.

In New York, the decline of the Karner blue butterfly resulting from loss and alteration of habitat is largely due to industrial, commercial, and residential development; fire suppression; vegetational succession; and habitat fragmentation. Although very little of the species' decline in the Albany Pine Bush since 1979 can be attributed to overt habitat loss from development, prior to then over 90 percent of the Pine Bush was destroyed over a period of perhaps 250 years (Schweitzer, *in litt.*, 1992). The Albany Pine Bush, which once covered at least 25,000 acres, has been reduced to about 2,500 acres (Givnish *et al.*, 1988). The recent decline in the Albany Pine Bush population can be attributed largely to improper or absent habitat management. Zaremba (1991) noted that in addition to habitat loss, dissection of metapopulations by development such as buildings and roads is a major threat to the Karner blue butterfly in New York, along with detrimental management of lupine stands and habitat disturbance due to off-road vehicles and horseback riding.

Habitat fragmentation and loss of habitat through development, combined with the extremely small size of the remaining population (discussed under Factor E), are the greatest threats to the Karner blue butterfly's continued existence in New England. The pine barrens in New Hampshire have largely been destroyed as a result of industrial, commercial, and residential development; road and airport construction; and gravel and sand mining. A major retail mall, recently completed on the outer edges of Concord's pine barrens, will encourage additional commercial development and further encroachments into pine barren habitat. Remaining fragments of this natural community are threatened by continued development pressures, vegetational succession in the absence of periodic fires, airport expansion, and degradation due to off-road vehicular use. Sperduto (New Hampshire Natural Heritage Inventory, pers. comm., 1991) estimated that 90 to 95+ percent of the historic pine barrens in the Merrimack system have disappeared.

Wisconsin's native savanna or pine and oak barrens community, which historically was quite prevalent throughout central and northwestern Wisconsin, and which very likely once supported many large metapopulations of this taxon, has declined severely. The Wisconsin Department of Natural Resources also reports that very few large contiguous barrens tracts remain in Wisconsin and cite the following threats to Karner blue habitat: fire suppression and succession, conversion to agriculture and pine or Christmas tree plantations, and other development. The Department states: "These threats remain paramount, and in fact are intensified, today (Besadny, *in litt.*, 1992)." Wisconsin still harbors some relatively large Karner blue populations and there are opportunities for long-term management and protection, but a significant long-term habitat management effort will be required if this potential is to be realized. Many other remnant populations of the Karner blue butterfly in Wisconsin are small and widely scattered, occurring in isolated patches of habitat along roadsides, power line clearings, and on abandoned agricultural fields (Bleser 1990).

In Michigan, the major cause for the butterfly's decline has been the degradation and loss of habitat as a result of succession and development. The habitat has been affected by fire suppression, agriculture, silviculture, and off-road vehicles. Remaining Karner blue butterfly populations continue to be threatened by the decline and loss of wild lupine populations resulting from these factors (Wilsmann 1990).

The two major threats in Indiana identified by C. Hedge (pers. comm., 1991) are destruction of habitat by development, and succession resulting from fire suppression.

Cuthrell (1990) identified fire suppression, development, and other human disturbance as causes for the loss of Karner blue butterfly habitat in Minnesota. The major threat to the extant sites is succession, but potential logging of the oak savannas also poses a threat (R. Baker, Minnesota Department of Natural Resources, pers. comm., 1991).

Irwin and Downey (1979) discussed the Karner blue butterfly as "another species that may have become extinct in Illinois . . . as a possible result of ecological change."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There have been large scientific collections of Karner blues in

the past (R. Zaremba, The Nature Conservancy, pers. comm., 1991), although past collecting is not considered to have been a significant factor in the butterfly's decline to its present condition. However, the Karner blue butterfly's rarity and distinctively beautiful coloration may make it a desirable addition to private collections. Because the Karner blue butterfly's numbers are so low throughout its range, additional taking or collecting for any purpose other than part of a carefully planned recovery action may eliminate some populations and hamper recovery efforts.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Karner blue butterfly is listed as endangered or threatened by several states:

In New York, the Karner blue butterfly is listed as endangered, and the animals and parts thereof, including eggs and larvae, are protected from unauthorized take, import, transport, possession, or sale.

The State of Minnesota lists the Karner blue butterfly as a threatened species. Minnesota law protects state listed animals from take, import, transport, or sale.

In New Hampshire, the Karner blue butterfly is listed as endangered and is protected from unauthorized taking. While New Hampshire law directs other State agencies to avoid funding, carrying out, or authorizing actions that result in the destruction of essential habitat, it has not prevented the loss of habitat through development of private property. Wild lupine is listed by New Hampshire as an endangered plant species. It is protected by the New Hampshire Native Plant Protection Act of 1987, which is implemented by the New Hampshire Natural Heritage Inventory within the Department of Resources and Economic Development. However, this legislation does not prevent alteration of wild lupine habitat on private land with the landowner's permission.

In Wisconsin, the Karner blue butterfly has been recommended for addition to the State list as threatened, and the Department of Natural Resources reports that it hopes to formally propose the listing during 1992 (Besadny *in litt.*, 1992). In addition to protection from take at occupied sites, Wisconsin law provides for protection and management of habitat of State listed species on public lands, where a significant proportion of Wisconsin Karner blue occurrences are found.

In Michigan, the Karner blue butterfly is listed as a threatened species. Michigan law prevents taking of listed animals and protects occupied habitat, and would thereby afford protection for eggs and larvae at known sites.

The State of Indiana currently does not have an official State list for insects.

The Karner blue butterfly has not been listed by the State of Illinois due to the fact that it was believed extirpated in that State. With the recent rediscovery of a population, Illinois is likely to list the Karner blue as endangered, although Federal listing will automatically place the species on the Illinois endangered species list (S. Lauzon, pers. comm., 1992). Under Illinois State law, all life forms of listed species are protected from take, and therefore, known occupied habitat would also receive some protection. Some additional habitat protection is also provided to listed species through a provision requiring a consultation process to assess the impacts or actions authorized, funded, or carried out by State or local governments (S. Lauzon, *in litt.*, 1992).

While most states with extant Karner blue butterfly populations have legislation which protects the animals, provisions for protection and management of the habitat are incomplete to non-existent. Destruction and alteration of habitat are major reasons for the butterfly's decline.

Some populations of Karner blue butterflies occur on Federal, State, or privately owned parks, wildlife refuges, or preserves and are thereby recognized and protected. However, this protection has not prevented the range-wide declines of the Karner blue and its habitat due to the reasons discussed in Section A above, and Section E below.

The pine barrens and oak savannas where the Karner blue butterfly occurs are uplands underlain by extremely well-drained sandy soils and are thus afforded no protection by Federal or State wetland regulations. Upon Federal listing of the Karner blue butterfly, there will be additional protection provided from take or transport of the species, and from habitat alteration carried out, funded, or authorized by Federal agencies. The Endangered Species Act also provides for needed habitat management through the recovery process.

E. *Other natural or manmade factors affecting its continued existence.* The presence of wild lupine is essential to the occurrence and survival of the Karner blue butterfly. Unaltered by humans, a pine barren ecosystem is likely to be a mosaic of interspersed woody vegetation, such as pitch pine (*Pinus rigida*) and scrub oak (*Quercus ilicifolia*) and more open areas characterized by wild lupine, grasses, and other plants such as spreading dogbane (*Apocynum androsaemifolium*) and New Jersey tea (*Ceanothus americanus*) which serve as nectar sources for adult butterflies (The Nature Conservancy 1990).

Historically, the pine barren and oak savanna communities were maintained by naturally occurring, periodic fires that released nutrients and created openings favorable for wild lupine and other low growing plants. Residential and commercial development in and adjacent to these areas has lead to fire suppression. Without fire, vegetational succession to unsuitable habitat occurs on interspersed undeveloped areas. In the absence of fire, many areas once dotted with openings and wild lupine are now dominated by forest, with little or no understory. Fire suppression has affected habitat throughout the range of the Karner blue butterfly.

Since no life stage of the Karner blue butterfly is completely resistant to fire, recently burned lupine sites must be colonized by Karner blue butterflies from nearby unburned sites (Schweitzer 1989, Givnish *et al.* 1988). Maintenance of the Karner blue butterfly depends on its ability to disperse to newly expanded wild lupine sites (Zaremba 1991, Givnish *et al.* 1988, Schweitzer 1989). Fragmentation of remaining habitat prevents dispersal and results in small isolated populations.

With small, isolated, and declining populations, the subspecies is highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors, or reproductive strategy, will prevent the influx of new genetic material and can result in a highly inbred population with low viability and/or fecundity (Chesser 1983). Natural fluctuations in rainfall, host plant vigor, or predation may weaken a population to such an extent that recovery to a viable level would be impossible. Isolation prevents recolonization by butterflies from other metapopulations, resulting in extinction.

Small remnant populations are highly vulnerable to a variety of factors. Weather events can eliminate such populations, as exemplified by the failure of the Ontario, Canada remnant to survive the impacts of drought in 1988, followed by unusually cold weather in May and June of 1989 (D. Schweitzer, *in litt.*, 1991). This population was estimated by Schweitzer to be around 1000 adults in July 1984, which is better than all but a few of the populations remaining today. Its demise occurred within five or six years, despite habitat acquisition and protection. Weather events can affect the species and its habitat throughout its range, pointing out the fragility of the many small, and even the larger, remaining remnant populations. Improper management of existing wild lupine habitat, including untimely mowing, the improper use of herbicides along highways and power line rights-of-way, and poorly timed and/or configured burns, also threaten remnant populations (D. Schweitzer, *in litt.*, 1991, Bleser 1990, Zaremba 1991).

Browsing of wild lupine by deer, rabbits, and/or woodchucks also poses a threat (D. Sperduto, pers. comm., 1991; D. Schweitzer and D. Savignano, 1992, in Givnish *et al.* 1988). A relationship between the scarcity of adult nectar sources and Karner blue butterfly abundance has also been observed (Bleser 1990; D. Sperduto, pers. comm., 1991). Flowering of nectar plants like New Jersey tea (*Ceanothus americanus*) can get out of synchrony with the adult butterflies; therefore, lack of diverse nectar plants may contribute to Karner blue population declines, especially in the western part of its range (D. Schweitzer, *in litt.*, 1992).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this subspecies in determining to finalize this rule. Based on this evaluation, the preferred action is to list the Karner blue butterfly as endangered. It has been extirpated from three states in the U.S., is virtually extirpated from Canada, and has undergone significant decline in all six states with remaining populations. Due to the magnitude of the range-wide decline of the Karner blue butterfly, particularly within the past decade, and the continuing threats from destruction, succession, and fragmentation of its habitat, this butterfly is in need of Federal protection if it is to survive. These factors support listing the Karner blue butterfly as an endangered species.

Critical Habitat

Section 4(a)(3) of the Act is amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed for listing as endangered or threatened. Section 3 of the Act defines critical habitat as, "(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." Designation of critical habitat is prudent unless: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). Designation of critical habitat is determinable unless: (1) Information sufficient to perform the required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

The Service finds that designation of critical habitat for the Karner blue butterfly is not presently determinable. Most existing populations of this butterfly are located on highly fragmented habitat of declining suitability. The size, spatial configuration, and juxtaposition of habitat areas required to provide for the long-term survival of existing populations have not been identified. Range-wide conservation of the Karner blue butterfly may also require protection and/or restoration of habitat in areas where the species is now extirpated. In addition, information needed to analyze the impacts of critical habitat designation is unavailable at this time.

Since publication of the proposed rule, the Service has initiated efforts to obtain the information needed to determine critical habitat for the Karner blue butterfly. A population and habitat viability analysis (PHVA) workshop was conducted by the IUCN/SSC Captive Breeding Specialist Group and a symposium on the Karner blue butterfly was held during April 1992. Researchers, species experts, agency representatives, and interested individuals from across the Karner blue butterfly's range participated in the workshop and symposium. Information from the symposium and the forthcoming report on the results of the PHVA will be used in determining critical habitat for the Karner blue butterfly.

When the Service finds that critical habitat is not determinable at the time of listing, regulations (50 CFR 424.17(b)(2)) provide that the designation of critical habitat be completed within two years of the date of the proposed rule to list the species. A proposed rule for critical habitat designation must be published in the **Federal Register**, and the notification process and public comment provisions parallel those for a species listing. In addition, the Service will evaluate the economic and other relevant impacts of the critical habitat designation, as required under Section 4(b)(2) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal involvement under section 7 is expected for management and other land use activities on Federal lands with Karner blue butterfly populations. The Fish and Wildlife Service and the National Park Service are currently conferring about the effects of proposed prescribed burning of Karner blue habitat at Indiana Dunes National Lakeshore. Other Federally-administered locations include U.S. Forest Service lands in Michigan, lands in New Hampshire for which the U.S. Fish and Wildlife Service holds conservation easements, and U.S. Fish and Wildlife Service National Wildlife Refuge lands and Department of Defense lands in Wisconsin. Activities which are funded, regulated, or carried out by the Federal Aviation Administration involving the airport lands in New York and New Hampshire where Karner blue butterflies occur will require section 7 consultation. Some development projects involving Karner blue butterfly sites could require authorization from the U.S. Army Corps of Engineers (Corps) for certain project related activities in regulated waters or wetlands of the United States. The Corps is reviewing a permit application for a proposed marina that may adversely affect the newly rediscovered Illinois population.

Listing the Karner blue butterfly will encourage additional research and provide for the development of needed habitat protection and management strategies through the recovery process. Additional information is needed on specific habitat characteristics such as plant community species and structure, soil dryness, shading, and other factors that may affect the suitability of the habitat for Karner blue butterflies. Likely recovery activities would also include continued monitoring, evaluation of habitat management techniques, development of site-specific protection and management plans, and investigations into re-establishing populations.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Mark W. Clough (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife, under "INSECTS".

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
• •	• •	•		•		•	
INSECTS							
• •	• •	•		•		•	
Butterfly, Karner blue	*Lycaeides melissa samuelis* U.S.A. (IL, IN, MA, MI, MN, NH, NY, OH, PA, WI, Canada (Ont.).	NA	E	484	NA	NA.	
• •	• •	•		•		•	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30173 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for Five Aquatic Snails in South Central Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for four Snake River aquatic snails: The Idaho springsnail or Homedale Creek springsnail (*Pyrgulopsis* (—*Fontelicella*) *idahoensis*), the Utah valvata snail (*Valvata utahensis*), Snake River Physa snail (*Physa natricina*), and the undescribed Banbury Springs lanx or limpet in the genus *Lanx*. The Service also determines threatened status for one aquatic snail species, the Bliss Rapids snail (an undescribed monotypic genus in the family Hydrobiidae). With the exception of *Lanx*, four of the taxa have declined over all but a small fraction of their historical range. Today these five species are currently restricted to a few isolated free-flowing reaches or spring alcove habitats in the middle Snake River characterized by cold, well-oxygenated, unpolluted water. *Lanx* has remained relatively stable at three known locations since its discovery in 1988. However, because, *Lanx* is known only from three sites it is most vulnerable to habitat change. The free-flowing, cool water environments required by these species have been impacted by and are vulnerable to continued adverse habitat modification and deteriorating water quality from one or more of the following: hydroelectric development, peak-loading effects from existing hydroelectric project operations, water withdrawal and diversions, water pollution, and inadequate regulatory mechanisms. This is especially true for those species restricted to mainstem river environments, *Physa natricina* and *Pyrgulopsis idahoensis*, but also mainstem colonies of Bliss Rapids snails and *Valvata utahensis*. These mainstem populations or colonies may also be vulnerable to habitat competition from an exotic snail (*Potamopyrgus antipodarum*). With the exception of several spring habitats at a privately owned preserve in the Thousand Springs area, remaining pristine spring and spring stream complexes in the middle Snake River preferred by *Lanx*, Bliss Rapids snail and Utah valvata are not protected from all potential threats described above. This rule implements the protection and recovery provisions afforded by the Act for these aquatic snails.

EFFECTIVE DATE: January 13, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Boise Field Office, U.S. Fish & Wildlife Service, 4696, Overland Road, Room 576, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Lobdell at the above address (telephone 208/334–1931).

SUPPLEMENTARY INFORMATION:

Background

The Idaho (Homedale) Springsnail (*Pyrgulopsis-Fontelicella idahoensis*), Bliss Rapids snail (Family Hydrobiidae n. sp.), Banbury Springs lanx or limpet (*Lanx* n. sp.), Snake River Physa (*Physa natricina*), and Utah Valvata snail (*Valvata utahensis*) are part of the native mollusc fauna of the middle Snake River which characteristically require cold, fastwater or lotic habitats. These five species are part of the freshwater mollusc fauna of the middle Snake River comprising 37 native species including 22 taxa of snails in eight families and 15 clam species in three families (Frest *el al.* 1991). Although many of these 37 species display widespread geographic distribution and a greater tolerance for pollution, the five lotic species are limited geographically and generally intolerant of pollution. The "middle" Snake River is defined as extending from C.J. Strike Reservoir (river mile 517.6) upstream to Milner Dam (river mile 639.1). With few exceptions, extant populations of the five taxa are confined to this reach; although prior to river development and impoundment these and other native molluscs "extended beyond these artificial and manmade boundaries" (Frest *et al.* 1991).

The lotic fauna of the middle Snake River have been declining for several years due to fragmentation of remaining free-flowing habitats and deteriorating water quality. Hydroelectric development throughout the Snake River has directly impacted the candidate species through inundation of lotic habitats, isolating segmented populations, and impacting suitable shallow water shoreline habitat from project-caused flow fluctuations. Water quality continues to degrade in the middle Snake River from increased water use and withdrawal, aggravated by recent drought induced low flows. This 121 mile (195 kilometer) stretch of the Snake River is impacted by agricultural return flows; runoff from between 500 and 600 dairies and feedlots; effluent from over 140 private, state, and Federal fish culture facilities; and point source (e.g. municipal sewage) discharge (Idaho Department of Health and Welfare (IDHW) 1991a). These factors contribute to increased nutrient loads and concentrations which in turn adversely impact the lotic species. Nutrient loading contributes to dense blooms of free-living and attached

filamentous algae, which the species cannot utilize. This algae will often cover rock surfaces, effectively displacing suitable snail habitats and food resources. Stream sediments also become anoxic as high biochemical oxygen demand during the aquatic growing season and seasonal algae dieoffs occur.

The Bliss Rapids snail, Idaho springsnail, and Snake River Physa snail are "living fossils," in that they are relicts from ancient lakes. The Bliss Rapids snail and Idaho springsnail are survivors of the late Pliocene (Blancan) Lake Idaho, which covered much of southern Idaho. The Snake River Physa snail is a relict from Pleistocene lakes and rivers in the area (Taylor 1988). The Utah valvata snail survives only in the Snake River, Idaho, a fraction of its former range in Pliocene-Pleistocene lakes and rivers covering parts of California, Nevada, Idaho, Wyoming and Utah (Taylor 1985b). Fossil material of the Pliocene *Lanx* is needed to confirm the identity of the newly discovered species as being conspecific with the Lake Idaho *Lanx*, though this is a new species in any case.

The Bliss Rapids snail (Family Hydrobiidae, n. sp.) was first collected live and recognized as a new taxon in 1959 (Taylor 1982a), but has not yet been described in the literature. This snail is 2.0–2.5mm (0.8–.10 in) long, with three whorls, and is roughly ovoid in shape. There are two color variants or morphs in the Bliss Rapids snail, the colorless or "pale" form and the orange-red or "orange" form. The pale morph is slightly smaller with rounded whorls with more melanin pigment on the body (Frest and Johannes 1992a). This snail occurs on stable, cobble-boulder substratum only in flowing waters in the unimpounded reaches of mainstem Snake River and also in a few spring alcove habitats in the Hagerman Valley. The species does not burrow in sediments and normally avoids surfaces with attached plants. Known river populations (or colonies) of the Bliss Rapids snail occur only in areas associated with spring influences or rapids edge environments and tend to flank shorelines. They are found at varying depths if dissolved oxygen and temperature requirements persist and are found in shallow (<1cm (.4 in)) permanent cold springs (Frest and Johannes 1992a). The species is considered moderately photophobic and resides on the lateral sides and undersides of rocks during daylight (Bowler 1990). The snail will migrate to graze on aufwuchs (or perilithon) on the uppermost surfaces of rocks nocturnally. The species can be locally quite abundant, and it is especially abundant on smooth rock surfaces with common encrusting red algae. The largest known concentration of Bliss Rapids snails occurs at The Nature Conservancy's (Conservancy) Thousand Springs Preserve (Preserve) with an adult population estimated in the "low millions" (Frest and Johannes 1992a). Reproduction in the Bliss Rapids snail varies according to habitat; occurring October–February in mainstem Snake River colonies and February–May in large-spring colonies. Egg laying occurs within two months of reproduction and eggs appear to hatch within one month. Adult snails exhibit a strong seasonal die off after reproduction. Turnover appears more pronounced in mainstem river colonies, possibly due to environmental stress (Frest and Johannes 1992a). Prior to 1987, the Bliss Rapids snail was known primarily from the mainstem Snake River boulder bars above King Hill (approximately river mile 546) to lower Salmon Falls Dam (river mile 573) and upstream in Box Canyon Sprigs (river mile 588). Taylor (1982a) believed that "* * * prior to dam construction there was probably a single population throughout this range, and plausibly upstream as well." Subsequent mollusc surveys by Frest (1991b), Pentec (1991b) and Taylor (1987) found new subpopulations of the Bliss Rapids snail in the mainstem Snake River and adjacent spring habitats. Pentec (1991b) extended the present known range of the species upstream approximately 162 miles when it found specimens in spring habitats above American Falls at river mile 749.8. Based on live collections, the species currently exists as discontinuously distributed populations over 204 river miles within its historic range. These populations are primarily concentrated in the Hagerman reach in tailwaters of Bliss and Lower Salmon Dams and several unpolluted springs (i.e., Thousand Springs, Minnie Miller Springs, Banbury Springs, Niagara Springs, and Box Canyon Springs).

Call (1884) described the Utah valvata snail (*Valvata utahensis*) from Utah Lake, Utah, as *Valvata sincera* var. *utahensis*. Walker (1902) revised the genus *Valvata* and determined *V. utahensis* to be a species. The Utah valvata snail is 4.5mm (.2 in) long, the shell is turbinate (about equally high and wide) with up to four whorls. In the Snake River, *V. utahensis* lives in deep pools adjacent to rapids or in perennial flowing waters associated with large spring complexes. The species avoids areas with heavy currents or rapids. The snail prefers well-oxygenated areas of non-reducing calcareous mud or mud-sand substrate among beds of submergent aquatic vegetation. The species is absent from pure gravel-boulder bottoms. *Chara*, which concentrates both calcium carbonate ($CaCO_3$) and silicon oxide (SiO_2), is a common associate. The Utah valvata snail is primarily a detritivore, grazing along the mud surface ingesting diatoms or powdery plant debris. In habitats with boulders on mud, the snail has been observed grazing diatoms and other perilithon on rocky surfaces and macrophytes. The Utah valvata snail historically occurred from river mile 492 (near Grandview) to river mile 585 just above Thousand Springs with a disjunct population in the American Falls Dam tailwater near Eagle Rock damsite at river mile 709. The taxa was known historically from northern Utah, although recent mollusc surveys throughout the State revealed no live sites and the species is believed extirpated there (Clarke 1991). At present this species occurs in a few springs and mainstem Snake River sites in the Hagerman Valley and at a few sites below American Falls Dam downstream to Burley (Beak 1987; Taylor 1987). Recent surveys at the Conservancy's Preserve revealed declines in numbers and areal extent of Utah valvata over a four year period (Frest and Johannes 1929a). Live colonies of this snail persist in only two areas at the Preserve with a total population at each colony estimated not to exceed 6000 individuals. Density varied but averaged six live individuals counted per quarter meter square within each colony.

The Snake River Physa snail was named *Physa natricina* and described by Taylor in 1988. Fossil records of the species occur in deposits from Pleistocene-Holocene lakes and rivers from southeastern Idaho and northern Utah. The type locality is the Snake River, Gooding County, Idaho. The shells of adult Snake River Physa snails are about 5–7mm (.2–.3 in) long with 3–3.5 whorls. Fresh shells are amber to brown in color. The species occurs on the undersides of gravel to boulder substratum in swift current in the mainstem Snake River. Living specimens have been found on boulders in the deepest accessible part of the river at the margins of rapids. Taylor (1982c) believed much of the habitat for this species was in deep water beyond the range of routine sampling. Taylor (1988) cites collections of this species from 1956 through 1985 and considered its "modern" range in the Snake River to extend from Grandview (based on

empty shells) upstream through the Hagerman Reach (river mile 573).

Taylor also believes that the Grandview subpopulation has become extinct since the early 1980's ". . . as the native bottom fauna has been virtually eliminated in this segment of the Snake River." Live specimens of the Snake River Physa were recorded near river mile 675 in 1987 (Beak 1987). Pentec (1991b) also reported single live animals at river miles 740.2 and 749.1, although Frest (1991d) believes these may be immature *Physella integra* or *Physella gyrina* and identification needs confirmation. Recent comprehensive snail surveys in southeastern Idaho and northern Utah (Frest *et al.* 1991) and in a free-flowing reach near Buel (Frest and Johannes 1992a) failed to find live specimens. At present, *Physa natricina* remains at only a few locations in the Hagerman and King Hill reaches, with a disjunct population near Minidoka Dam (river mile 675). Live Snake River Physa snails are always rare at collection sites; it is believed that fewer than 50 live Snake River Physa have been collected in the middle Snake River (Frest *et al.* 1991).

Using material collected near Homedale, Idaho by H.M. Tucker in 1930, H.A. Pilsbry described the Idaho (Homedale) springsnail as *Amnicola idahoensis* (Pilsbry 1933). Gregg and Taylor (1965) established the new genus *Fontelicella* and placed *F. idahoensis* in the proposed new subgenus *Natricola*. Hershler and Thompson (1987), in a recent re-evaluation of North American hydrobiidae systematics, revised the genus and assigned *Fontelicella* to the genus *Pyrgulopsis*.

The Idaho springsnail has a narrowly elongate shell reaching a length of 5–7mm (.2–.3 in), with up to 5.5–6 whorls. This species is found only in permanent, flowing waters of the mainstem Snake River; the snail is not found in any of the Snake River tributaries or in marginal springs (Taylor 1982d). The species occurs on mud or sand associated with gravel to boulder size substratum. It is often attached to vegetation (e.g. *Potamogeton*) in riffles. Very little is known of the life history. The Idaho springsnail is a Lake Idaho endemic, and in fossil form has the same potential relic range as the Bliss Rapids snail (Frest 1991c). Historically, the Idaho springsnail was found from river mile 415 (Homedale) to river mile 553 and has been collected at 10 locales. It is currently discontinuously distributed in the mainstem Snake River at a few sites from the headwaters of C.J. Strike Reservoir at river mile 518 upstream to approximately river mile 553 (Bancroft Springs), a reduction of nearly 80 percent from its historic range. Based on repetitive visits to previous sampling sites, the species has declined and populations are small.

The Banbury Springs lanx or limpet (*Lanx* n. sp.) is a member of the Lancidae, a small family of pulmonates endemic to western North America. The species was first discovered by Terrence J. Frest in Banbury Springs Creek in 1988 and has not yet been formally described. The species is distinguished with a shell of uniform red cinnamon color, a subcentral apex, with its length and height exceeding its width. The species has been found only in spring run habitats with well oxygenated, clear, cold (15–16°C) waters on boulder or cobble substratum. All known locations have relatively swift currents. They are found most often on smooth basalt and avoid surfaces with large aquatic macrophytes or filamentous green algae. Beak Consultants, Inc. (Beak) (1989) reported the species (specimens originally identified as *Fisherola nuttalli*) at depths ranging from 30 to 75 cm (11.8–29.5 in) on boulder substratum. Frest and Johannes (1992a) found the species in water as shallow as 5 cm (2 in), but depths up to 15 cm (6 in) were more typical. All lancids are susceptible to dissolved oxygen fluctuations since respiration is accomplished only through the mantle; lungs, gills, and other specialized respiratory structures are lacking (Frest and Johannes 1992a). Common mollusc associates of this species include the Bliss Rapids snail and vagrant pebblesnail (*Fluminicola hindsi*).

This limpet was first discovered in 1988 at Banbury Springs (river mile 589) with a second population found in nearby Box Canyon Springs in 1989 (river mile 588). During 1991, a mollusc survey at the TNC's Preserve revealed a third population in the outflows of Minnie Miller Springs (river mile 584.6) (Pentec 1991b). Subsequent to this discovery, a more detailed investigation at the Preserve revealed that the single colony was sporadically distributed within an area of only 12–14 m^2 (Frest and Johannes (1992a). Population density was in the range of 4–48 per m^2. The total adult population at the Preserve was estimated at between 600 to 1,200 individuals. It should be noted that all three populations of *Lanx* were found in alcove spring complexes previously surveyed. These spring complexes contain large areas of adjacent presumably identical habitat not occupied by the species. At present the Banbury Springs lanx is known to occur only in the largest, least disturbed spring habitats at Banbury Springs, Box Canyon Springs, and Thousand Springs between river miles 584.8 and 589.4. Today, these three locations are variously affected by ongoing water withdrawal and agricultural return flows.

Based on the fossil record, the five candidate snails are endemics originating in the area within Pliocene Lake Idaho and its Pleistocene successors (Taylor 1966). In general, the fossil record shows a larger past than current distribution, with past populations considered continuous throughout their range. An exception is the case of obligate spring species such as the Banbury Springs lanx; each geographically isolated spring could be considered a different population (Frest 1991c).

Ecologically, these five species share many habitat characteristics, and in some locations two or more are sympatric. Basically, they require cold, clean, well-oxygenated flowing water of low turbidity. All the species except the Utah valvata, and possibly the Idaho springsnail prefer gravel to boulder size substratum. Despite these affinities, each of the five species have slightly different habitat preferences. The Idaho springsnail and Snake River Physa are found only in the free-flowing mainstem Snake River while the remaining three candidates are usually associated with spring or spring-like river habitats. For example, the Bliss Rapids snail can be found in both small, shallow spring or large, deep spring outflows, while the Banbury Springs lanx is known only in large spring outflows. The Utah valvata snail is able to tolerate slower flowing environments with silty vegetated substrate better than the rest, although it cannot tolerate true impoundment or reservoir conditions (Frest 1989b). In the mainstem river, they are found in areas of the river not subject to daily or seasonal fluctuations. None of the species tolerate whitewater areas with rapid flow. The species also share similar life history characteristics related to longevity. With the possible exception of Snake River Physa and Utah valvata, the species are considered annual species with an average longevity of one year. Bliss Rapids snail and Banbury Springs lanx experience a dieoff of older adults during the late winter-early spring season following reproduction, although for the Bliss Rapids snail the dieoff is less pronounced in large-spring colonies (Frest and Johannes 1992a). Utah valvata are believed to have a maximum longevity of two years, although a majority only survive a single year. Although little is known of general life history for Snake River Physa, longevity

likely coincides with related *Physa* sp. and other pulmonates, averaging two years. Implications to survival of the candidate species is that annual species with localized distribution and small populations become vulnerable to extirpation from stochastic and/or catastrophic changes in environmental events. The remaining free-flowing river and spring/spring outflow habitats for these species has been fragmented between several impounded reaches of the Snake River in southern Idaho. The Swan Falls, C. J. Strike, Bliss, Lower Salmon Falls, and Upper Salmon Falls Dams on the mainstem Snake River inundated free-flowing habitat and have extirpated populations of these species. Past diversion of large spring outflows for hydroelectric and agricultural purposes have destroyed habitat for Bliss Rapids and Utah valvata snails in Box Canyon (Taylor 1985a) and Thousand Springs. Another more recent threat is the discovery of the New Zealand mudsnail (*Potamopyrgus antipodarum*) in the middle Snake River. The eurytopic mudsnail is experiencing explosive growth in the river and shows a wide range of tolerance for water fluctuations, velocity, temperature and turbidity. The species seems to prefer warmer, polluted waters over pristine cold spring environments. At present, it is not abundant in habitats preferred by Banbury Springs lanx, Bliss Rapids snail, or the Utah valvata. However, the species does compete directly for habitats of the Snake River Physa and Idaho springsnail in the mainstem Snake River. Today these endemic species remain only in a few isolated free-flowing segments between the dams and for some species, a few spring tributaries of the Snake River (Taylor 1982a, b, c, and d, Frest 1989a).

The bed of the Snake River is held in Public Trust by the State of Idaho. Snake River water flowing over the bed is subject to State and Federal water law and water can be appropriated for beneficial uses. Water in Box Canyon Springs Creek is also subject to appropriation. Land in the upper half of Box Canyon Springs Creek is privately owned and developed by Earl M. Hardy. Land in the lower end of Box Canyon Springs Creek is managed by the Bureau of Land Management (Taylor 1985a). Much of the remaining free flowing spring habitat at Thousand Springs is owned by The Nature Conservancy; jointly purchased by the Conservancy and Idaho Power Company in 1986.

This purchase provided protection for the nearly four miles of spring outflows and Minnie Miller Lake from further appropriation and development. However, there are indications that water quality in some of the spring outflows is impacted by irrigation and aquaculture return flows initiating outside the Preserve's boundaries (Frest and Johannes 1992a).

Listing the subject species will result in increased protection of remaining free-flowing river and large spring habitat required by these and other sensitive native species such as the shortface lanx or giant Columbia River limpet (*Fisherola nuttalli*) (Taylor 1982a,b,c and d) and the Shoshone sculpin (*Cottus greenei*). These areas contain some of the last mainstem Snake River habitats with the full range of native molluscan species present, and thus represent a unique aquatic community.

Federal action on these five mollusks began in part as a result of several petitions submitted under section 4(b)(3) of the Act. Dr. Peter Bowler submitted a petition to list the Snake River Physa snail and the undescribed Bliss Rapids snail as endangered on February 7, 1980. A finding that this petition presented substantial information that the requested action may be warranted was published on April 23, 1980 (45 FR 27723). The Idaho springsnail was the subject of a petition submitted on November 12, 1987, by Dr. Bowler. The Service published on December 29, 1988, a finding that the petition to list the Idaho springsnail presented substantial information that listing may be warranted for this species. The Service initiated status reviews on these three species.

Section 4(b)(3)(B) of the Act requires the Service to make a finding within 1-year of the date a petition is received as to whether or not the requested action is warranted. If the Service finds that the requested action is warranted, but precluded by other pending proposals of higher priority, the Service must reevaluate the petition annually and make findings on whether or not the requested action is warranted. In the case of the Snake River Physa and Bliss Rapids snails, the first 12-month finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Annual warranted, but precluded, findings were in effect from 1984 through publication of the proposed rule on December 18, 1990 (55 FR 51931).

Randall Morgan and others petitioned the Service to list an undescribed species in the genus *Lanx*, the Banbury Springs lanx, as endangered using the emergency provisions of the Act on November 13, 1989. Whereas the Service's status review did not disclose the existence of an emergency within the meaning of section 4(b)(7) of the Act, it did indicate that proposing the *Lanx* for listing under the normal procedures of section 4 is warranted.

All of the subject species except the Banbury Springs lanx have been included as candidate species on the Service's notices of review. The Snake River Physa snail and the Bliss Rapids snail were first included as category 1 candidates in the 1984 Review of Invertebrate Wildlife (49 FR 21664); they retained this status in the January 6, 1989 Animal Notice of Review (54 FR 554). Category 1 candidates are those taxa for which the Service has on file enough substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. The Utah valvata snail appeared on the 1984 Review of Invertebrate Wildlife as a category 2 candidate, and remained as such on the 1989 Animal Notice of Review. The Idaho springsnail was first included as a category 2 candidate on the 1989 Animal Notice of Review. Category 2 candidates are taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive date on biological vulnerability and threat are not currently available to support proposed rules. The November 21, 1991 Animal Notice of Review (56 FR 58804), reflecting the proposed status of these taxa, included all five snails as "PE" (proposed for listing as endangered).

Based upon the petitions, status surveys, and other information on file, the Service published a proposed rule on December 18, 1990 (55 FR 51931) to list as endangered five aquatic snails: the Bliss Rapids snail, Snake River Physa snail, Idaho Springsnail, Utah valvata snail and the Banbury Springs lanx or limpet. The proposed rule included information provided by Taylor (1982 a, c, d, and 1988) and Frest (1989b) on the Bliss Rapids, Idaho spring, and Snake River Physa snails, by Taylor (1982b) for the Utah valvata snail, and by Frest (1989a) and the Service for the Banbury Springs lanx.

The Service now determines the Idaho springsnail, the Utah valvata snail, Snake River Physa snail, and Banbury Springs lanx to be endangered species and the Bliss Rapids snail to be a threatened species with publication of this rule.

Summary of Comments and Recommendations

In the December 18, 1990 proposed rule, all interested parties were requested to submit comments or

information that might contribute to the development of a final determination. The public comment period ended on February 19, 1991. On March 18, 1991, the Service published a Federal Register notice announcing public hearings and reopening and extension of the comment period through April 30, 1991 (56 FR 11401). Announcements of the proposed rule and the upcoming hearings were also published in two newspapers on March 18, 1991: the Idaho Statesman and the Twin Falls Times-News. Public hearings were held from 7 to 10 p.m. on April 3, 1991 in Boise, Idaho, and from 2 to 4 p.m. and 7 to 9 p.m. on April 4, 1991 in Hagerman, Idaho. Thirty-two commenters presented oral testimony. On June 4, 1991, the Service requested that C. Michael Falter, University of Idaho, assemble a panel of experts to review and summarize the existing technical knowledge on the status of the five snail species. To accommodate the technical review meeting and receive additional comments, the Service published a third notice, on October 7, 1991, reopening the comment period through October 31, 1991 (56 FR 50550). The technical review meeting was held on October 21–22, 1991, in Boise, Idaho with six participants. Three additional mollusc experts were invited but did not attend. However, these individuals did participate in a later review of the meeting summary and submitted detailed review comments and additional substantive information. The final Summary Report of the Technical Review Meeting was received by the Boise Field Office on March 26, 1992 (Falter 1992).

Ninety-eight written comments were received on the proposed rule. The Service considered all comments received, including oral testimony from two public hearings on the proposal to list the five aquatic snails. A majority of comments (n=60) supported the proposed rule. Opposition to the proposed rule was based on several factors, including the assertion that the proposed rule was based upon incomplete sources of knowledge on the true distribution and abundance of the snails. Five written comments opposed the proposed listing and eight letters requested a public hearing. In addition, three Idaho State agencies provided written comments. The Idaho Department of Parks and Recreation wrote in support of the listing, while the Idaho Department of Water Resources expressed interest in the listing proposal and requested the Service undertake an ". . . analysis of the constraints a listing would have on existing and proposed projects in the designated reach . . ." The Idaho Division of Environmental Quality also submitted water quality study information for the Snake River. Several commenters provided new and substantive biological information applicable to the listing decision. Other comments provided information pertaining to further research needs and recovery planning. Such information will be useful in the development of a recovery plan. Comments of a similar nature or point are grouped for consideration and response. A summary of these issues and the Service's response to each, are discussed below.

Issue 1: One respondent believed that ". . . from taxonomic and morphological perspective, four of the species identified in the proposals are snails while the fifth is a limpet. Therefore the Service should substitute the term mollusks for snails in the title."

Service response: Limpet is the common and standardized term used by malacologists when referring to snails with low conical or cap shaped shells that have lost their coiled character. Specifically, the work was first applied to marine snails (gastropods=molluscs) with a non-coiled shell having an imperforate apex. This shell form is believed to have evolved separately in many different snail lineages to provide a more hydrodynamic contour in heavy currents. The Service considers use of the term "snails" to describe the subject species in the final rule both appropriate and proper.

Issue 2: Several comments addressed the question of the Banbury Springs lanx or limpet (*Lanx sp.*) status as a separate taxon. This species shows gross morphological similarity to another candidate Snake River lancid, the shortface or giant Columbia River limpet (*Fisherola nuttali*). One commenter believed that further taxonomic corroboration is needed for discriminating *Lanx* vs. *Fisherola* ". . . before a "new" genus-species is recommended for endangered status." Some commenters also maintain that there has been some confusion regarding misidentifications of the Banbury Springs and *F. nuttali* from specimens collected in Box Canyon Springs (Beak 1989). Specifically, they refer to differences in species identification by Dwight Taylor and Terrence Frest for several lancid specimens from the same vial provided by Richard Konopacky.

Service response: The Service has considered available scientific evidence and concludes that the Banbury Springs lanx (*Lanx sp.*) and *F. nuttali* are distinct taxa and spatially segregated. Shell features are the primary morphological discriminants distinguishing the Banbury Springs lanx and *F. nuttali*. These features include shell apex location and orientation, shape of the posterior and anterior side, color, maximum dimensions, and ratios of standard shell measurements (Frest 1991d). The two species are also segregated ecologically. The Banbury Springs limpet has been collected only from spring habitats at three locations and there is no evidence of its occurrence in the mainstem Snake River. *Fisherola*, on the other hand, is known to occur only in the mainstem middle Snake River and other mainstem Columbia basin rivers and has not been found in springs. Regarding the conflicting identification by Taylor and Frest of some lancid specimens collected from Box Canyon Springs, the Service notes that the differences were most likely due to confusion from using unlabeled vials. Frest (1991a) recently collected and examined several lancids from Box Canyon and also examined collections by Taylor (dead) and Konopacky (specimens in question); he concludes that only one lancid species is present, the Banbury Springs lanx.

Issue 3: Several commenters contend that the Service failed to evaluate and incorporate information in their possession prior to publication of the proposed rule. They believed that this information indicated the candidate species are more widely distributed and abundant than indicated in the Service's proposed rule and therefore the species should not be listed.

Service response: The information in question was unpublished data on snail range and distributions in the mid-Snake river collected in a study by Beak Consultants, Incorporated during 1987. Snail field data and locations for the species of interest were submitted to the Boise Field Office on February 19, 1990. According to the author of the proposed rule (Jay Gore, U.S. Forest Service, formerly Fish and Wildlife Service, pers. comm.), the information was in draft or field note form and was not easily interpretable. The Service is requested that the information be resubmitted in a form that was more easily interpretable during the open comment period following publication of the proposed rule. This information has been evaluated and incorporated into the final rulemaking process.

Issue 4: Several commenters requested that the Service delay or preclude listing the five aquatic snails because too little is known regarding their present status. They believed there was inadequate and insufficient sampling in past mollusc surveys to

describe overall distribution and abundance. For example, statements to the effect that: (1) Less than 1 percent of the middle Snake River has been sampled; (2) the proposed rule is based on earlier surveys that failed to adequately sample deepwater and other "hard to sample" habitats; and (3) recent limited surveys have located new populations, which greatly expand the "present range" of some of these species; these facts ". . . suggest that even very limited additional efforts will uncover new populations and that all representative habitat has not been examined." Several commenters argued against the listing asserting that sampling for molluscs exhibiting localized and discontinuous distribution using non-randomized, biased sampling (or sampling "where their previous experience and prior knowledge dictate"—Steinhorst 1992) will likely miss existing populations; therefore conclusions regarding current distribution in previous studies were not statistically valid. They also contend that failure to locate populations of molluscs exhibiting discontinuous distribution should be expected when using this type of "flawed" sampling. Several respondents also suggested that the Service initiate a comprehensive, statistically-based studies program for these species to develop additional data on spatial distribution and habitat requirements prior to any final listing decision.

Service response: The listing process includes an opportunity for the public to provide input and new information is evaluated and considered before a final determination is made. Aside from previously cited studies and reports in the proposed rule, the Service has reviewed and considered new information regarding distribution and general life history for the five candidate species for eight recent mollusc surveys in the Snake River basin. The Service used information only from sites where "live" specimens were found to evaluate and establish current geographic range. The use of dead specimens or shells to establish current range can be misleading since identification for some species may be difficult and shells are easily transported downstream. Because dead shells may persist for several years and for some taxa it is difficult to distinguish recently dead versus fossilized shells, conclusions regarding recent habitation are purely speculative. Four of the surveys examined a larger geographical area than previous studies cited in the proposed rule and only in a few instances were additional new "live sites" found. The study by Beak (1987; referred to in Issue #3) reported a single live Snake River Physa below Minidoka dam at river mile 675 and two new live sites for the Idaho springsnail (within the historic range cited in the proposed rule). Frest (1991b) surveyed nearly 500 sites for candidate molluscs from 1988–91 throughout the Snake River and Columbia River basins, including 51 sites in the middle Snake River. Although Frest collected Bliss rapids snail, Idaho springsnail and Utah valvata snails, none of the collections were considered new live sites and none of the candidates were reported outside the middle Snake River drainage. Frest (1991d) reported evidence of recent range reduction for the candidate species based on failure to find live specimens during surveys by Beak (1987) at some of Taylor's earlier sites. Pentec (1991b) reported a new "live" population of Bliss rapids snail in the Snake River associated with spring outflows above American Falls reservoir at river mile 749.8. The report states that this ". . . collection of live animals (Bliss Rapids snails) increased the present range of the species upstream by 162 miles or by 486 percent relative to the present range stated in the USFWS proposal . . ." These types of range descriptions and comparisons are valid only when species distribution is 'continuous' and not fragmented or discontinuously distributed as is the situation for these species. In any event, new live sites reported for the Bliss Rapids snail are within the historic range cited in the proposed rule, and are subject to similar habitat threats as the previously cited sites. Pentec also reported the third "new" population of Banbury Springs lanx discovered in a large spring-run at the Preserve (river mile 584.6). More recently, a limited study on the effects of reservoir drawdown on molluscs in the lower Snake River below Hells Canyon reported the absence of the five candidate species in this reach (Frest and Johannes 1992b). The authors of this study also noted the absence of other expected mollusc endemics, even the eurytopic and widespread species, from exposed shorelines in deepwater habitats in impounded reaches. In summary, no new significant distributional information affecting the status of the five taxa were reported by any respondent, and in most instances the candidate species were not collected at most sites sampled in each survey. Moreover, with the exception of *Lanx*, the surveys substantiate conclusions in the proposed rule that the candidate species are found only in the Snake River and have declined to the point where they are now absent from vast reaches of the Snake River. Regarding the argument that the proposed listing is based on inadequate and biased sampling, the Service concurs with Palter's (1992) following summary and analysis:

"• • • non-randomized, purposeful sampling may well miss existing populations", therefore ". . . given suitable habitat, additional populations of these taxa might be found with more orderly, non-purposeful sampling. Statistical considerations alone do not fully answer that possibility. The sampling issue is but part of the question of whether one would expect to find additional populations of any one of these taxa. The suitability of the habitat to support the species must also be considered, *i.e.*, unacceptable habitat renders moot the question of whether non-sampling of river habitats judged to be ecologically unacceptable for a species indicates possibility of additional habitat where the taxa might be found. The stenotopic environmental requirements of all of these taxa first delimits possible habitat for a species. Secondly, one addresses the question of adequate sampling of the potential habitat, not of all the water environment in the river, irregardless (*sic*) of the degree of matching organism requirements with the environment. Ecological judgement sets the bounds; statistical judgement then considers adequacy of sampling that potential habitat. The panel had no deepwater sampling data to review but the findings of recent water quality studies of absolute environmental unsuitability offered by these habitats justifies the conclusion that Gastropods, especially taxa only found in habitats very different than those presently offered by the deepwater habitats are unlikely to be found . . ." Palter goes on to state ". . . The bulk of the remaining, poorly sampled Snake River does not now offer those habitat conditions" (needed by the taxa), ". . . so it is not potential habitat. Reasonable ecological inference correctly stratifies those latter areas out of consideration as potential habitat."

These considerations also rule out deepwater habitat by these taxa since water quality declines with depth in the middle Snake River. The Service does believe that future mollusc surveys and studies may reveal a few additional locations with live populations or colonies of the candidate species, especially in shallow, littoral areas influenced by springflows. However, it is likely that these newly discovered populations will be threatened by the same activities affecting the existing populations. The Service maintains that this final rule is based on the best information available. The Service also believes that sufficient information is provided on these five species to warrant making a determination on their status at this time.

Issue 5: Many comment letters expressed concerns with the potential economic impacts to agriculture and community development along the Snake River plain in south central Idaho from listing the five snails under the Act. For example, several commenters were concerned with the potential impacts to future hydroelectric development along the middle Snake River and constraints to existing project operations. Another respondent requested that the Service designate ". . . mitigation measures that would permit normal agricultural practices while still protecting the species . . .".

Service response: Under section 4(b)(1)(A) of the Act, listing determinations are based solely on the best scientific and commercial information available and economic considerations are not applicable. The legislative history of the provisions clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions." H.R. Rep. No. 97–835, 97th Congress 2nd Session 19 (1982). Because the Service is specifically precluded from considering economic impacts in the final rulemaking process, the Service has not addressed such impacts in this final rule.

Issue 6: One commenter was concerned with the impacts to agriculture from designating critical habitat. They requested the Service designate critical habitat during the final rulemaking process ". . . to avoid too large an area being designated."

Service response: Under section 4(a)(3)(A) of the Act, the Secretary must designate critical habitat to the maximum extent prudent and determinable at the time a species is determined to be threatened or endangered. In the proposed rule, the Service found that determination of critical habitat was not prudent for these species. As discussed under the "Critical Habitat" section below, the Service continues to find that designation of critical habitat for these aquatic snails is not prudent at this time. Because many of the remaining populations for these species are in localized springs, the Service believes such designation might increase the degree of collecting, vandalism, and other human activities, thus further threatening these five snails. Protection of these species' habitats will be addressed through the recovery process, and through the section 7 consultation process.

Issue 7: One respondent maintained that this issue should be decided by the State of Idaho and not through the Federal listing process. The Service should delay listing at this time "* * * because the legislature and Water Resources Board have extended protection to the Middle Snake for a number of years and there is no reason that this water quality and everything can't be taken care of on a state level."

Service response: In recent years, several programs to address deteriorating water quality in the Snake River have been initiated by various State of Idaho regulatory agencies with permitting and enforcement authority (IDHW 1991 a and b). One of the first of these programs was a water quality monitoring study launched in 1990 by the Division of Environmental Quality (DEQ). That same year the Snake River from Shoshone Falls downstream to Lower Salmon Falls Reservoir was listed as "water quality limited." This determination requires that DEQ develop a Total Maximum Daily Load (TMDL) for the river which quantifies pollutant sources and allocates nutrient loads. In a related matter, the DEQ recently denied certification for a National Pollution Discharge Elimination System (NPDES) permit for a new fish rearing facility in the middle Snake River area. The decision was based on DEQ's interim policy of no net increase in total nutrients discharged into the Snake River prior to development of the TMDL. Passage of the Nutrient Management Act passed by the Idaho Legislature in 1989 requires the DEQ to complete a nutrient management plan for the Snake River by 1993. The Idaho Department of Water Resources is involved in planning efforts which could result in State "protected" status for all or portions of this stretch of river. Such designation would protect "outstanding fish and wildlife, recreational, aesthetic, historical, cultural, natural or geological values * * * for the public benefit and enjoyment" from certain activities and could preclude further hydro development. At present, the stretch from below Milner Dam downstream to King Hill is under interim protected status through 1993. Despite these and other programs initiated to halt the deterioration of the middle Snake River, most are in the early stages, and it is unlikely these programs will reverse the trend any time soon. In any event, regulations that provide protection for invertebrate species equivalent to provisions of the Federal Endangered Species Act do not currently exist in Idaho. The Idaho Department of Fish and Game does maintain a list of wildlife classified as Threatened and Endangered and/or Protected Nongame species that prohibits take or possession. However this protection does not extend to any non-vertebrate species. See the discussion under Factor D in "Summary of Factors Affecting the Species" for a complete discussion on the inadequacy of existing regulatory mechanisms for the Idaho springsnail, Utah valvata snail, Snake River Physa, Banbury Springs lanx and Bliss rapids snail.

Issue 8: One commenter requested that the Service prepare as part of the final rule a Takings Implications Assessment under Executive Order 12630 to evaluate the risk and strategies for the avoidance of the taking of private property.

Service response: Concerning Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" (March 15, 1988), the Attorney General has issued guidelines on implementation of the Executive Order. Under the supplemental guidelines for the Department of the Interior, a "special situations" rule applies when an agency is expressly required to take an action, making a finding, or give consultation based solely upon specified criteria that leave the agency no discretion; such as the criteria outlined in the Endangered Species Act (Act) for the listing of species. The Attorney General's supplemental guidelines state that Taking Implication Assessments (TIA) shall be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policymakers of areas where unavoidable taking exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. Provisions of the Act require the Service to list species based solely on the best scientific and commercial information indicating whether or not they are in danger of extinction. The Service may not consider economic impacts in making a listing decision. The listing process is also subject to strict timetables and failure to comply may subject the agency to legal action. The provisions of the supplemental guidelines relating to non-discretionary actions are applicable to the determination of threatened and endangered status for the five snail species that are subject of this final rule.

Issue 9: Two respondents claim that the Service has "overstated" the threats to the species from various activities. Specifically, assertions in the proposed

rule that describe adverse impacts to the subject species such as "The species are threatened by proposed large hydroelectric dam developments, current peak-loading operations of existing hydroelectric water projects, water pollution, reduction in oxygen concentration, and possibly competition from a recently introduced hydrobiid snail" are ". . . conclusory, giving no evidence or analysis or citation for support."

Service response: Despite the above claims, no new information was provided to contradict the Service's contention that the five species are threatened by deteriorating water quality and other threats present in the middle Snake River (see Factor A in "Summary of Factors Affecting the Species"). New information submitted during the comment period reaffirmed that the snails are coldwater stenotopic species restricted to the middle Snake River with localized distribution, and absent from impounded reaches. Most of this information was found in eight mollusc surveys undertaken from 1987–1992 at various locations throughout the Snake River Basin (Beak 1987, Beak 1989, Frest 1991b, Frest and Johannes 1991, Frest and Johannes 1992a, Frest and Johannes 1992b, Pentec 1991b, and Taylor 1987). Although range extensions were noted for Utah valvata and Bliss Rapids snails in some of the surveys, sites where these and the remaining three species were collected occurred only in 'preferred or usable' habitat types. In fact, snails were absent from most sites and locations sampled in each survey. Frest and Johannes (1992a) noted declines in abundance and distribution of Utah valvata in the Conservancy's Preserve, a "protected area", due to water quality problems attributed to agricultural and aquaculture return flows initiated outside the Preserve's boundaries. Taylor (1985a) stated that diversion of a portion of Box Canyon Creek to the Clear Springs Trout Hatchery in the fall of 1973 "substantially impacted populations of Bliss Rapids snails" downstream in the Bureau of Land Management's Box Canyon Area of Critical Environmental Concern. He also noted that the diversion possibly enhanced habitat for Utah valvata snails through flow velocity reduction. Since the stenotopic environmental requirements of these species defines suitable habitat, most malacologists agree that impounding remaining free-flowing reaches would be devastating to four of the five species. Impoundment would inundate existing habitat, reduce vital shallow shoreline habitats in tailwater areas due to operating flow fluctuations, elevate water temperatures, reduce dissolved oxygen levels in sediments, modify the rivers ability to assimulate point and non-point source pollution, and further fragment remaining populations. Frest and Johannes (1991) acknowledged that proposed construction of diversion dams for power production at Kanaka, Empire, and Boulder Rapids, river miles 592.2, 594.5, and 597.5, respectively, would not impact Utah valvata or any other candidate species because the taxa no longer occur in that river reach. The authors attributed the snails absence to deteriorating water quality and emphasized that this stretch of the river was becoming marginal mollusc habitat for the remaining native species. In addition, the recent low flows associated with the prolonged drought in southeast Idaho have contributed to continuing water quality problems throughout the Snake River basin. The Service, however, does believe that *Physa* and Bliss Rapids snail would benefit from stabilized, non-fluctuating water levels in the Lower Salmon Falls and Bliss Dam tailwater reaches. As discussed in detail in the "Summary of Factors Affecting the Species" section, the Service concludes that nearly all of the remaining populations of the five snails are at risk.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Idaho springsnail (*Pyrgulopsis idahoensis*), Utah valvata snail (*Valvata utahensis*), Snake River Physa snail (*Physa natricina*), and Banbury Springs lanx (*Lanx* n. sp.) should be classified as endangered species and the Bliss Rapids snail (Family Hydrobiidae, n. sp.) should be listed as a threatened species. Procedures required by section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. Under the Act, a species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Idaho springsnail, Utah valvata snail, Snake River Physa snail, Bliss Rapids snail, and the Banbury Springs lanx are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Activities that could further threaten the continued existence of the Bliss Rapids snail, Utah valvata snail, Idaho springsnail, Banbury Springs lanx, or Snake River Physa snail include proposed large hydroelectric dam developments, peak-loading operations of existing hydroelectric water projects, water pollution, diversion of water for irrigation and aquaculture and small hydroelectric development.

Six proposed hydroelectric projects, including two high dam facilities, would alter free flowing river reaches within the existing range of these snails. Dam construction threatens the five taxa through direct habitat modification and moderates the Snake River's ability to assimilate point and non-point pollution. Further hydroelectric development along the Snake River would inundate existing mollusc habitats through impoundment, reduce critical shallow, littoral shoreline habitats in tailwater areas due to operating water fluctuations, elevate water temperatures, reduce dessolved oxygen levels in impounded sediments, and further fragment remaining mainstem populations or colonies of these snails.

The Idaho Power Company studied the feasibility of additional hydro development in the area during the early 1980's, and the Federal Energy Regulatory Commission (Commission) denied the Company's license requests when a mid-1980's power supply needs analysis revealed that the Northwest United States would have a power surplus into the early 1990's. However, the rapidly growing Northwest region is forecasting power shortages by the late 1990's and interest in developing potential hydro sites on the Snake River is on the rise.

Currently, Idaho Power Company has received a preliminary permit to evaluate the development and operation of the A.J. Wiley hydropower project (Federal Energy Regulatory Commission No. 11020) at river mile 565 on the lower Salmon Falls Dam tailwater. The reservoir created by this project would extend approximately six river miles to the tailwaters of the existing lower Salmon hydroproject and impound approximately 625 surface acres. This impoundment would inundate and destroy mainstem river habitats for existing populations of Snake River Physa and Bliss Rapids snail. Dike Hydroelectric Partners, (Federal Energy Regulatory Commission No. 10891) is currently evaluating another location, the Bliss Dam tailwaters at river mile 552, for hydropower development. This project would include construction of a large compacted concrete dam creating a 560-acre reservoir. This development would inundate existing habitat and populations of the Idaho springsnail, the Bliss Rapids snail, and the Snake River

Physa snail that occur near Bancroft Springs. Construction of these two proposed dams would inundate four mainstem sites that are currently supporting populations of the Bliss Rapid snail; both of the two known sites that are currently supporting populations of the Snake River Physa snail, and at least one known population of the Idaho springsnail. These two proposed dams would not inundate habitat for the Utah valvata snail since this snail is well upstream. The Banbury Springs lanx occurs in three tributary springs that flow into the Snake River and these would likely not be impacted by the two dams. The remaining four proposed hydro projects are diversion or run-of-river developments (without reservoirs) that would alter the flow regime and minimize annual flows in the bypass reaches at the four Snake River sites. Frest and Johannes (1991) believe that proposed construction and operation of three of these projects for power production, Kanaka, Empire and Boulder Rapids would not adversely impact the Utah valvata or any other candidate, so long as efforts to control sedimentation during construction are implemented. Deteriorating water quality is most likely the primary factor limiting the native molluscs in this reach. Even with improvements in water quality in this reach of the Snake River, construction of these projects would affect recovery efforts since otherwise suitable free-flowing habitats would be impacted.

Peak-loading, the practice of artificially raising and lowering river levels to meet short-term electrical needs by local run-of-the-river hydroelectric projects also threatens these species. Peak-loading is a frequent and sporadic practice that results in dewatering mollusc habitats in shallow, littoral shoreline areas. With the exception of the Banbury Springs lanx and possibly Snake River physa, these diurnal water fluctuations prevent the candidate species from occupying the most favorable habitats. The Bliss Dam is approximately six miles above Bancroft Springs and may adversely affect three known populations of the Idaho springsnail, two populations of the Bliss Rapids snail, and a population of the Snake River Physa snail, by restricting littoral habitat during the late summer peak-loading operation. Peak-loading operation of the lower Salmon Falls Power Plant may harm three mainstem Snake River populations of the Bliss Rapids snail, and a population of the Snake River Physa snail. The combined peak-loading effects from proposed A.J. Wiley and Dike hydroelectric projects would also impact known populations of the Idaho springsnail, most of the extant colonies of the Bliss Rapids snail, and both of the Snake River Physa snail populations in the Hagerman and King Hill reaches. The recently discovered population of Bliss Rapids snail above American Falls (river mile 749.8) is also subject to the effects of water fluctuations from operation of the Shelley hydroelectric project at river mile 783.

Based on limited sampling, these snails have not been found between Milner Dam (river mile 639.1) and Shoshone Falls (river mile 614.8). This reach of the Snake River is essentially dewatered during the irrigation season and remaining low flows have poor water quality. It is unlikely that these species could exist in this river stretch. During the irrigation season water quality and quantity below Shoshone Falls is poor, though both are gradually improved by inflow from Snake River Plain Spring tributaries through the Hagerman Reach.

The quality of water in these habitats has a direct effect on the species survival. The species require cold, well-oxygenated unpolluted water for survival. Any factor that leads to a deterioration in water quality would likely extirpate these taxa. For example, the Banbury Springs lanx lacks either lungs or gills and respires through unusually heavy vascularized mantles. This species cannot withstand temporary episodes of poor water quality conditions. Because of its stringent oxygen requirements, any factor that reduces dissolved oxygen contact for even a few days would very likely prove fatal to most or all of the populations. Factors that would degrade water quality include reduction in flow rate, warming, and increases in the concentration of fertilizers, herbicides or pesticides from irrigation waste water return. The middle Snake River is impacted by return flows from irrigated agriculture, runoff from feedlots and dairies, hatchery effluent, municipal sewage effluent, and other point and non-point discharges. During the irrigation season, 13 perennial streams and more than 50 agricultural drains contribute irrigation tailwater to the Snake River (IDHW, 1991b). In addition, more than 140 commercial, State and Federal fish culture facilities discharge wastewater into the Snake River and its tributaries. These factors, coupled with drought-induced low flows, contribute to the increased eutrophication and general decline of the coldwater lotic molluscs of the middle Snake River. Water quality in the alcove springs and tributary spring streams in the Hagerman Reach have also been somewhat impacted, though not as severely as the mainstem river has. The Hagerman Reach receives massive cold water recharge from the Snake River Plain Aquifer. Several of these springs and spring tributaries have been diverted for hatchery water supplies with return flows to the Snake River enriched with nutrients. At the Conservancy's Preserve at Thousand Springs, there is evidence that colonies of Utah valvata and Bliss Rapids snail have recently declined or been eliminated at several sites from changes in water quality due to agricultural and aquaculture wastewater originating outside the area (Frest and Johannes 1992a).

Four tributary springs or spring streams of the Hagerman area of the Snake River—Banbury Springs, Box Canyon Springs, Thousand Springs and Sand Springs Creek—contain populations of two or more of the taxa described in this rule. The Banbury Springs lanx is found in only three of these tributary springs: Banbury, Box Canyon and Thousand Springs. The Utah valvata and Bliss Rapids snail occur in Box Canyon, Thousand Springs and the mainstem Snake River. Banbury Springs has no known threats, but Box Canyon Springs is threatened by a small hydroelectric project at the upper end of Box Canyon and a water diversion dam at the lower end of Box Canyon. The upper two-thirds of Box Canyon, including the water diversion is privately owned. The stream and associated area below the diversion is owned by the Bureau of Land Management (BLM) and was designated an Area of Critical Environmental Concern (ACEC) in 1986. The ACEC was established to manage habitats for three candidate molluscs, the Bliss Rapids snail, Utah valvata, and *Fisherola nuttalli*, and the Shoshone sculpin (*Cottus greenei*). *Lanx* (Banbury Springs lanx) was added to the list of sensitive species under ACEC management with the discovery of the second of three populations of this species in the Sculpin Pool at Box Canyon in 1989 (Beak 1989). Construction of a diversion dam for a trout culture facility in upper Box Canyon in 1973 eliminated habitat of the Bliss Rapids snail, though Taylor (1985a) reported that sediment produced as a result of constructions enhanced habitat for Utah valvata downstream in the natural pool on BLM lands. Ground water mining or withdrawal may also impact spring stream habitats of the "new" Bliss Rapids snail population above

American Falls Reservoir at river mile 749.8. Biologists of the Shoshone Bannock Tribal Reservation have observed water fluctuations and seasonal declines in spring flows along this stretch of the Snake River concurrent with the irrigation season (Doug Takai, biologist, Shoshone Bannock Tribal Reservation, pers. comm.). Though not fully documented, these seasonal declines in spring flows seem more pronounced in recent years due to ongoing drought conditions.

Winter cattle grazing and recreational access may also be impacting spring habitats of the Bliss Rapids snail on the Shoshone Bannock Reservation. Although access is controlled, waterfowl hunters, and to some extent fishermen, utilize these spring areas throughout the Fall and early Winter. The Service believes trampling by cattle and people will likely produce minimal impacts to spring habitats.

In summary, the cumulative effects of these factors combined with extreme low flows throughout much of the Snake River from over five years of drought, continue to threaten the remaining habitats and increasingly fragmented populations of these five species. This is especially true for habitats and extant populations in the mainstem Snake River.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable. However, due to their rarity, some of these taxa may have been subject to past overutilization for scientific purposes. For example, of the less than fifty live Snake River Physa snails collected in the middle Snake River, nearly all were preserved or killed for scientific purposes. In other instances, some molluscs have become vulnerable to illegal collection for scientific purposes following listing under the Act.

C. *Disease or predation.* Changes in the fish fauna of the middle Snake River have been suggested as potentially threatening to some or all of the candidate taxa. However, no data to support this suggestion exists. Fish predation was not considered a "major problem" for these taxa in a recent mollusc survey at The Nature Conservancy's Preserve (Frest and Johannes 1992a).

D. *The inadequacy of existing regulatory mechanisms.* The Idaho Department of Water Resources regulates water development in the Snake River basin. At present, there is no specific allocation of water on the mainstem middle Snake River for fish and wildlife, although maintenance flows for fish and wildlife on several tributary streams to the Snake River have been established. Without Federal protection under the Act, present management regulations are inadequate to curb further water withdrawal from groundwater spring outflows or tributary spring streams.

Changes in the use of stored water in the Snake River basin to assist recovery efforts for other threatened and endangered species may also impact these species and their habitats. For example, the Bonneville Power Administration, State of Idaho, and Idaho Power Company are exploring alternatives to assist outmigrating endangered Snake River sockeye salmon (*Oncorhynchus nerka*) and threatened spring and summer chinook (*Oncorhynchus tshawytscha*) from utilizing water from the upper Snake River basin.

The Idaho Department of Health and Welfare, Division of Environmental Quality, under authority of the State Nutrient Management Act, is coordinating efforts to identify and implement preventative actions which will reduce nutrient loading to the middle Snake River below Milner Dam (IDHW 1991b). These efforts will address pollution control strategies for this stretch of river through several of the following program areas: State Agricultural Water Quality Program, NPDES permits, 401 Certification, Bureau of Land Management land management plans, the State Water Plan and local ordinances. Despite these efforts to better comprehend and halt the deterioration of the middle Snake River, it is unlikely these programs will reverse the trend any time soon, since it will be several years before any recommendations to improve water quality outlined in comprehensive resource management plans for the Snake River are fully implemented.

There are at least two State agencies that have as part of their goals and objectives the identification and protection of rare taxa and their habitats. The Idaho Parks and Recreation has authority under *Idaho Code* section 18–3913, 1967, to protect only plants, with animals not given special protection on Idaho lands. The Department of Fish and Game, under *Idaho Code* section 36–103, is mandated to preserve, protect, perpetuate, and manage all wildlife. However, these mandates do not extend protection to invertebrate species.

The Federal Energy Regulatory Commission (Commission) is the agency responsible for issuing licenses for hydroelectric projects. The Commission solicits input from the Service regarding environmental impacts that may result from proposed projects. The Service's comments regarding impacts to "candidate" only species, such as the five aquatic snails, are advisory in nature. The Commission relies upon the developer and the Service to resolve issues with respect to candidate species. Without listing, it is unlikely that the Commission would require a project proponent to mitigate for impacts to these species unless the developer did so voluntarily. Consequently, the Commission's review of projects does not provide protection to the five taxa covered in this rule.

The U.S. Army Corps of Engineers (Corps) is also involved in the permitting of projects on the Snake River through their authority under section 404 of the Clean Water Act. The Corps issues individual and nationwide permits for projects that would result in the fill of waters of the United States. Nationwide permits are often issued for relatively small projects (hydroelectric projects producing less than 5 megawatts and some bridge crossings) that presumably have minimal environmental impacts. Projects requiring individual permits undergo more extensive environmental review and the permits often include conditions that require avoidance or mitigation for environmental impacts. Virtually any project within the range of these molluscs would require an individual permit as described in section 404 of the Clean Water Act. The Corps does solicit input from the Service regarding impacts to wildlife resources. The Corps gives full consideration to the Service's comments on permits. However, the Service's comments regarding candidate species are advisory. In practice, the Corps does not give any special consideration to the five invertebrates considered herein.

With the listing of these species as threatened or endangered, the Corps and the Commission will be required to initiate formal consultation pursuant to section 7 of the Act on any project that may affect one or more of these species. Such consultation would result in a Biological Opinion on whether or not the project proposed to be authorized is likely to jeopardize the continued existence of the species. With listing, both the Commission and Corps will be required to insure that any project they authorize will not be likely to jeopardize the continued existence of these species. Conditions that would provide protection to the species could be incorporated into permits or licenses issued. The provisions of section 7 of the Act are more fully discussed later in this proposed rule.

E. *Other natural or manmade factors affecting their continued existence.*

Although not fully understood, an introduced hydrobiid snail, the New Zealand mudsnail (*Potamopyrgus antipodarum* (=*P. jenkinsi*)) may complicate survival for these native species. This non-native species occurs throughout the range of the five species included in this rule (Bowler 1989a, 1989b, 1990). This hydrobiid snail is native to New Zealand and has also spread to Europe and Australia. *Potamopyrgus antipodarum* was first reported in the middle Snake River in 1987, when Taylor found the species had invaded several alcove spring habitats at The Nature Conservancy's Preserve. This exotic taxa may have been inadvertently introduced by the private aquaculture industry in this area. By December, 1988, *P. antipodarum* was the dominant taxa in the free-flowing habitats of the Hagerman Reach below Bliss Dam (Bowler 1990). It formed dark mats of individuals in habitat formerly preferred by native species including the Bliss Rapids snails and Snake River Physa. The species has been observed at densities of nearly 400 individuals per square inch. *Potamopyrgus* is parthenogenic and ovoviparous, which contributes to the ability to build large populations rapidly and recover from population crashes. The species is eurytopic and shows very little preference for substrate type or size. The mudsnail is much more abundant in the mainstem Snake River than in cold spring environments; it is uncommon or absent in both unimpacted, pristine or stagnent, highly polluted environments (Frest and Johannes 1992a). At present, *Potamopyrgus* is not abundant in large springs inhabited by *Lanx n. sp.* and in cold springflows with colonies of Bliss Rapids snail and Utah valvata. The species does, however, compete for habitat with Snake River Physa and Idaho springsnail and mainstem colonies of Bliss Rapids snail and Utah valvata. *Potamopyrgus* is abundant in the Snake River below Bliss Dam to C.J. Strike Reservoir and inhabits the same littoral sand/silt substrate as the Idaho springsnail (Bowler 1990). In addition, the species forms "thick mats" of individuals at mainstem locations with Snake River Physa and Bliss Rapids snails. Potential threats to the subject species and other native molluscs include crowding and competition for preferred habitat for mainstem populations, and possible attraction and support of molluscivorous fish and avian predators (Bowler 1990). Although no information exists regarding foraging, it is possible that competition for forage may occur in areas where preferred habitats are limiting *i.e.*, boulder substrate is limited. In summary, *Potamopyrgus* appears to impact most directly mainstem populations of the candidate taxa. At present, it does not appear to threaten spring populations of *Lanx n. sp.*, Bliss Rapids snail and Utah valvata. The New Zealand mudsnail is still expanding its range and population in the Snake River. Further research on *Potamopyrgus* is required to monitor its expansion and to fully comprehend its full impact to the native molluscs and the overall ecology of the Snake River.

Determination

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to issue this rule. Based on this evaluation, the preferred action is to list the Idaho springsnail (*Pyrgulopsis idahoensis*), Utah valvata snail (*Valvata utahensis*), Snake River Physa snail (*Physa natricina*), and the Banbury Springs lanx (*Lanx* n. sp.) as endangered and the Bliss Rapids snail as threatened. With the exception of *Lanx*, four of the taxa have declined over all but a small fraction of their historical range. Today these species generally persist in a few isolated free-flowing reaches or spring alcove habitats in the middle Snake River characterized by cold well-oxygenated unpolluted water. *Lanx* has remained relatively stable within its three known locations since its discovery in 1988. However, because *Lanx* is known only from three locations it is most vulnerable to habitat change. The free-flowing, cool water environments required by these species have been impacted by and are vulnerable to continued adverse habitat modification and deteriorating water quality. This is especially true for those species restricted to mainstem river environments, the Snake River Physa and Idaho springsnail, but also mainstem colonies of Bliss Rapid snails and Utah valvata. These mainstem species may also be vulnerable to habitat competition from an exotic snail. With the exception of spring habitats at The Nature Conservancy's Preserve, remaining pristine spring and spring stream complexes preferred by *Lanx*, Bliss Rapids snail and Utah valvata are not protected from all threats previously discussed. Existing regulations do not provide adequate protection to prevent further direct and indirect habitat losses. Because the Idaho springsnail, Utah valvata, Snake River Physa, and Banbury Springs lanx are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

The Bliss Rapids snail is the most widespread of the five taxa, with new live populations recently reported above American Falls reservoir in springflow habitats. It is most abundant in several cold springs in the Hagerman Reach, and enjoys some degree of protection in several unpolluted springs on The Nature Conservancy's Preserve at Thousand Springs. The number of extant populations, including those on the Preserve, provides greater flexibility in recovery and reduces the likelihood that the Bliss Rapids snail will go extinct in the immediate future. However, remaining mainstem populations are variously threatened. Because of the limited threats facing the Preserve colonies of Bliss Rapids snails and the likelihood that limited additional populations may be found in spring habitats, this species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, the Bliss Rapids snail is likely to become in danger of extinction in the near future. As a result, the Bliss Rapids snail fits the definition of threatened species as defined in the Act.

For reasons discussed below, critical habitat is not being proposed at this time.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service has determined that critical habitat designation for these species is not presently prudent. Some populations are in localized springs and over-collecting by malacologists or vandalism could occur if their whereabouts were widely known. Regulations implementing section 4 of the Act provide that a designation of critical habitat is not prudent when a species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat (50 CFR 424.12). Protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process. The Service believes that Federal involvement in the areas where these snails persist can be identified without the designation of critical habitat. Therefore, it would not now be prudent to determine critical habitat for these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protections required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a threatened or endangered species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may be affected by this final rule include the granting of licenses by the Commission for hydroelectric/power dam development and the issuing of permits under section 404 of the Clean Water Act by the Corps. The Commission will likely be required to consult with the Service on the previously mentioned hydroelectric/power dam proposals (A.J. Wiley, Idaho Power Company and Dike Hydroelectric Company). The Corps and Bureau of Land Management will likely be required to consult with the Service on the Box Canyon water diversion dam. In addition, joint consultation by the Corps and the Commission with the Service may be necessary if any of the projects under licensing consideration by the Commission include plans for filling. Federal or federally assisted programs affecting potential Snake River Plain Aquifer recharge programs and the Environmental Protection Agency's NPDES program would also be subject to consultation under section 7(a)(2).

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife, and to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered species, or any threatened species not covered by a special rule. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing endangered species permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Regulations governing permits for threatened species are at 50 CFR 17.32. Unless otherwise provided by a special rule, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Stephen D. Duke, Boise Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation(s) Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Snails to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Snails							
Limpet, Banbury Springs	*Lanx* n. sp.	U.S.A. (ID)	NA	E	485	NA	NA
Snail, Bliss Rapids	Family Hydrobiidae n. sp.	U.S.A. (ID)	NA	T	485	NA	NA
Snail, Snake River Physa	*Physa natricina*	U.S.A. (ID)	NA	E	485	NA	NA
Snail, Utah valvata	*Valvata utahensis*	U.S.A. (ID)	NA	E	485	NA	NA
Springsnail, Idaho	*Pyrgulopsis idahoensis*	U.S.A. (ID)	NA	E	485	NA	NA

Dated: November 25, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-30174 Filed 12-11-92; 8:45 am]

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December 14, 1992

Part IV

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1303
Head Start Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1303

RIN 0970–AB00

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to revise and clarify for Head Start grantees and delegate agencies the requirements concerning appeals by grantees from termination and denial of refunding actions. This final rule also includes provisions on appeals by current or prospective delegate agencies of grantees' rejections of, or failures to act on, applications, or grantees' terminations of grants or contracts.

The new procedures will reduce reporting and paperwork requirements. The changes also remove unnecessary and duplicative provisions and revise the language of the current regulation for clarity.

The most significant change is an improvement to the show cause and hearings process for Head Start grantees by abolishing the current complex and costly procedures and utilizing instead the Departmental Appeals Board.

DATES: This rule is effective January 13, 1993, with the exception of sections 1303.10 through 1303.23 which will become effective upon assignment of an OMB approval number.

FOR FURTHER INFORMATION CONTACT: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 205–8347.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (the Act), section 635 of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9831 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. In FY 1991, Head Start served 583,471 children through a network of 1,346 grantees and 575 delegate agencies which have approved written agreements with grantees to operate Head Start programs.

II. Purpose of the Rule

The Administration for Children and Families (ACF) is amending the current rule governing Head Start grantee and delegate agency appeals at 45 CFR part 1303. The purpose of this revision is to eliminate duplication and increase efficiency in governmental operations by reducing the time expended in preparing and holding an appeal, and conducting a hearing and reaching a final decision. We believe this revision will reduce the cost of an appeal and the total time required for an appeal from the initial request for a review or a hearing on the proposed action to a final decision.

III. Summary of the Major Provisions of the Rule

The new regulations significantly revises, clarifies, and simplifies the appeals process for Head Start grantees and current and prospective delegate agencies. The changes are in response to a review and analysis of data on actual appeals filed by Head Start grantees and delegate agencies.

The following is a summary of the major provisions of the final rule:

(1) Currently, grantees may appeal three types of actions by the Administration for Children and Families (ACF): A termination of financial assistance; a denial of refunding, including certain reductions in funding; and a suspension. This rule requires that all allowable grantee appeals will be heard by the Departmental Appeals Board rather than by ACF staff.

(2) The rule continues to permit current and prospective delegate agencies to appeal to the grantee agency the rejection of an application and the failure of a grantee to act on an application within a timely period. In addition, the rule permits delegate agencies, for the first time, to appeal the termination of a grant or contract.

(3) The rule raises attorney fees from $100.00 per day to the usual and customary fees for the locality in which the grantee or delegate agency is located, but no higher than $500.00 per day. This figure will be adjusted to reflect annual increase in the Consumer Price Index.

(4) If a current or prospective delegate agency is dissatisfied with the grantee's decision, it may appeal that decision to ACF. The rule applies the "arbitrary and capricious" standard of review for appeals to ACF by current or prospective delegate agencies.

(5) Finally, the rule allows the ACF reviewing official to direct a remedy where a specific resolution of the dispute is appropriate.

IV. Rulemaking History

On January 29, 1992, the Department published a Notice of Proposed Rulemaking in the **Federal Register** (57 FR 3394), proposing to amend 45 CFR part 1303. Interested persons were given 60 days in which to comment on the proposed rule. During the 60 day comment period the Department received 11 letters containing 38 comments pertaining to one or more sections of the proposed regulation. There were two general comments, 13 comments on Subpart A, 17 comments on Subpart B, and six comments on Subpart C.

Section-by-Section Discussion of the NPRM

Two of the comments received were general expressions of support for the proposed changes.

Subpart A

Section 1303.1

Purpose and Application. No comments were received on this section.

Section 1303.2

Definitions. No comments were received on this section.

Section 1303.3

Right to an attorney, attorney fees, and travel costs. We received nine comments on paragraph 1303.3(a)(1), which concerns the right to an attorney and attorney fees. Six of these comments were addressed to the NPRM provision which allows attorney fees to be charged to the program grant in an amount equal to the usual and customary fees charged in the locality, up to $250 per day. Most commenters approved the increase in allowable attorney fees from $100 per day in the current regulation and the provision for automatic increases for inflation in the maximum allowable fee. Several commenters opposed the maximum as too low, stating that $250 per day is less than the usual rate for an attorney's services, and that, because of the limitation, it would be difficult for Head Start grantees to find attorneys.

While we appreciate that a maximum allowance of $250 per day may not meet the prevailing market rate for attorney fees in all places, we have kept this rate in the final rule. We have several reasons for doing so. The increase to $250 more than doubles the current maximum. The maximum fee will now be indexed for inflation and so will not remain static, as it has in the past. Finally, we have no convincing evidence that a maximum allowance of $250 per day will seriously disadvantage grantees. The community support that Head Start enjoys should provide any assistance grantees might need to secure effective representation.

In addition, we have clarified this paragraph by changing the reference to "adjusted for inflation" to "adjusted annually to reflect the percentage change in the Consumer Price Index for all Urban Consumers".

We received one comment in support of the provision in the regulation that attorney fees may be charged to the program grant. Two commenters opposed the restriction in paragraph 1303.3(a)(1) that the fees of only one attorney may be charged to the program grant with respect to a particular dispute. We have not changed this provision, which we believe is a legitimate and necessary way to avoid excessive costs being charged to the program. We do not believe that the bringing of appeals by grantees will be unduly hampered as a result of this restriction.

In the NPRM we solicited comments on the advisability of allowing payment of attorney fees (and attorney's travel and per diem costs) only in cases in which the grantee is successful in the final outcome of its appeal. Three comments were received in response to this request, all of them in opposition to the idea. We propose no change to our current policy.

Section 1303.4

Remedies. No comments were received on this section.

Section 1303.5

Service of process. No comments were received on this section.

Section 1303.6

Successor agencies and officials. No comments were received on this section.

Section 1303.7

Effect of failure to file or serve documents in a timely manner. One comment was received on this section, to the effect that the requirements of the NPRM are too restrictive. We have not changed this section, which, while requiring strict adherence to filing deadlines, is made more flexible by the waiver provisions of section 1303.8.

Section 1303.8

Waiver of requirements. No comments were received on this section. However, we deleted the last sentence of paragraph (b), which states that the requirements of the paragraph may not be waived, and added a new paragraph (g), which prohibits waiver of any of the requirements of section 1303.8. This is more consistent with our intent that waivers be granted only in accordance with the requirements of this section. In addition, we made technical edits to paragraph (e).

Supbart B

Section 1303.10

Purpose. No comments were received on this section.

Section 1303.11

Suspension on notice and opportunity to show cause. We received four comments on this section. One commenter opposed the provision in section 1303.11(f) which states that any delegate agency that wishes to participate in an informal meeting regarding an intended suspension of the grantee may request permission to do so from the responsible Department of Health and Human Services' (HHS) official. We have not changed this provision, which states that the HHS official, in acting on any such request from a delegate agency, must take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency appear to be adequately represented by other participants. Two commenters objected to section 1303.11(j), which states that an interim grantee may be named during a non-summary suspension. (One of these commenters objected to the interim grantee provisions of sections 1303.13 and 1303.14 as well.) We have not changed the interim grantee provision of this section, which is necessary to insure that services to children and families continue during the suspension of the grant. Another commenter noted that section 1303.11(g) does not make clear when the responsible official has to make a decision if no informal meeting is held. We have corrected this omission by adding, at the end of the second sentence, the words "or, if no informal meeting is held, within five days of receipt by the responsible HHS official of written material from all concerned parties."

Section 1303.12

Summary suspension and opportunity to show cause. One commenter objected to section 1303.12(1), which states that the responsible HHS official may appoint an agency to serve as interim grantee for a grantee which has been summarily suspended. This same commenter, and a different commenter, objected to the interim grantee provision of section 1303.13(e). We have not changed the interim grantee provisions of these sections, which, like that in section 1303, is necessary to insure that services to children and families continue during the suspension of the grant.

Section 1303.13

Appeal by a grantee of a suspension continuing for more than 30 days. Two comments were received opposing the interim grantee provision of section 1303.13(e). As noted above in the discussion of section 1303.12, we have not changed this provision. One commenter to sections 1303.13(f), 1303.14(c)(2), and 1303.15(d)(3) stated that, in order to speed up the appeals process, the notice of adverse action should specify that any appeal should be sent directly to the Departmental Appeals Board (DAB) and that the appellant must send a copy of the appeal to the responsible HHS official and the Commissioner, ACYF. We concur with this suggestion and have changed the final rule accordingly. A comment was received which noted that, unlike section 1303.21(a), neither section 1303.13, 1303.14 nor section 1303.15 contains any instructions about the contents of an appeal. We agree that sections 1303.13, 1303.14 and 1303.15 would be more clear and complete with instructions on the contents of an appeal. Instructions have been added to paragraphs 1303.13(f), 1303.14(c)(2) and 1303.15(d)(3).

Section 1303.14

Appeal by a grantee from a Termination of Financial Assistance. One commenter found section 1303.14 confusing in that it refers both to a right to an appeal and a right to a hearing, but only specifies that requests for hearings be transmitted to the DAB. This commenter suggests that, as in section 1303.15, this section use the word "appeal" throughout. We have changed this section by replacing the words "responsible HHS official" in paragraph 1303.14(c)(2) with the words "Departmental Appeals Board," and by deleting paragraph 1303.14(d).

(Paragraphs (e) through (k) of the NPRM have been redesignated accordingly.) This change both addresses the commenter's concern and eliminates the need for the transmission of the grantee's appeal request from the responsible HHS official to the Commissioner, ACYF, and from the Commissioner, ACYF, to the Departmental Appeals Board. In paragraph 1303.14(c)(5), we deleted the phrase "* * * the matter has been set down for hearing at a stated time and place or that * * *", which was inadvertently included in the NPRM. Only the Departmental Appeals Board should set the date and time for any hearing. This change is in accord with 45 CFR 1303.16(g).

We received one comment on this section objecting to the absence of a statement in the NPRM as to which party in an appeal under this section and section 1303.15 (dealing with appeals from denials of refunding) has the burden of proof. The current regulation provides that "ACYF will have the burden of justifying the proposed termination action." We have removed this sentence from the final rule because appeals will be heard by the Departmental Appeals Board. A comment was received on paragraph 1303.14(j) stating that it is highly undesirable to allow the responsible HHS official to set the deadline for the filing of a brief by an appellant who has waived its right to a hearing, since the official is a party in interest. It was suggested that the DAB set the deadline. We agree with this comment and have changed the final rule accordingly.

Finally, one commenter opposed the interim grantee provision of paragraph 1303.14(e)(1), stating that the naming of an interim grantee, except in cases of alleged criminal activity or apparent danger to children or staff, constitutes an assumption that the appeal will not be decided in the grantee's favor. In response to this comment, we have modified the interim grantee provision of this section to make clear what happens when a grantee appeals an administrative decision to court. We have added paragraph 1303.14(d)(3), which provides that if a grantee does not appeal the administrative decision to court within 30 days of its receipt of it, a replacement grantee will be immediately sought, and an interim grantee named, if needed, pending that selection. This modification reflects the fact that a replacement grantee may not be sought when a grantee appeals an administrative decision to court. However, we have specified at paragraph (d)(4) that an interim grantee may be sought even though the grantee has appealed within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm, and Federal funds from misuse or dissipation, or both. An interim grantee might be needed to keep the program viable in the community until the permanent successor is selected. We believe that 30 days is adequate for a grantee to decide to appeal since the matter would already have been considered in administrative proceedings and a record developed. Further, we do not believe that the process of selecting a permanent grantee should be delayed unreasonably. ACYF believes that it is important for the program's children and their families that stability be provided to the program as soon as possible, consistent with fairness to grantees. We believe the new regulation accomplishes that goal. Paragraph (d)(2) with regard to suspension of funding has been modified to clarify that an interim grantee will be appointed during the appeal period.

We have made some changes to paragraph 1303.14(i) to clarify the regulation. Grantee appeals of termination actions are to the Department Appeals Board. Therefore, all of their submissions must be to the Board, with copies as required by Board procedures. The Board, consistent with its current practices, will decide the appeal based on the written information and argument submitted to it. What is properly submitted will be determined by the Board, except as may otherwise be required by these regulations.

Section 1303.15

Appeal by a grantee from a denial of refunding. We received one comment in opposition to the last sentence of paragraph 1303.15(c), which permits refunding to be denied if it is concluded that continuing a particular program is no longer in the public interest. We have deleted this provision, since the grounds upon which the Department may seek to deny refunding are sufficiently broad to meet the Department's concerns.

Section 1303.16

Conduct of hearing. One commenter stated that paragraph 1303.16(b) should be deleted because DAB regulations already have a rule against communications outside the record. Since the DAB's usual procedure is for the presiding officer to set up the hearing, it was suggested that paragraph 1303.16(b) be changed to provide that the notice of hearing and issues be filed by (instead of with) the presiding officer. The same commenter stated that it is inappropriate to provide for the assistance of an attorney from the Department's General Counsel's office since the Board has its own staff attorneys. We concur with these comments and have made the following changes to paragraph 1303.16(b). The first sentence has been changed and now refers only to the prohibition on communications outside the record as provided by 45 CFR 16.17. The second sentence of paragraph 1303.16(b) has been deleted. One comment was received on paragraph 1303.16(e), which allows any person or organization that wishes to participate in a proceeding to apply for permission to do so from the presiding officer. The commenter stated that the provision is too broadly worded. We do not agree, and, therefore, have not changed this paragraph, which requires the person or organization which wishes to participate to state their interest in the proceeding, the evidence or arguments they intend to contribute, and the necessity for the introduction of such evidence or arguments.

Subpart C

Section 1303.20

Appeals to grantees by current or prospective delegate agencies on rejection of an application, failure to act on an application, or termination of a grant or contract. We received three comments on this section. One of the comments was on the right of a delegate agency to appeal a grantee's decision to terminate an agreement with it. This commenter strongly opposed this new right, saying that when relations between a grantee and delegate have worsened to the point where the grantee is moving to terminate the agreement between the parties, the only possible solution is intervention by the appropriate HHS official. While we are cognizant of the fact that grantee-delegate agency relations in cases in which the grantee is moving to terminate the contract which binds them may be quite strained, we think this step is very important for two reasons. First, the delegate's appeal to the grantee will create a record which the HHS official will have to review if that official is called upon to make a decision in the matter. Second, a thorough review of the situation by the parties will result in the resolution of more grantee-delegate agency disputes before they reach the HHS official. Two comments were received on the provision of this section which allows a delegate agency to have a responsible

HHS official review a grantee's rejection or failure to act on an application, or termination of a grant or contract. One commenter supported this provision, while the second opposed it, apparently on the ground that "review" by the official is not the same as an appeal. We have not changed the provision, and note that the "review" by an HHS official referred to in the NPRM's discussion of this section is in fact an appeal to the official (see paragraphs 1303.20(d) and 1303.21).

Section 1303.21

Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application. Two comments were received in opposition to the right of prospective delegate agencies, under paragraph 1303.21(a), to appeal from a grantee's denial of, or failure to act on, an application. The right of prospective delegate agencies to bring such appeals is found in section 646 of the Head Start Act (42 U.S.C. 9841). We have not made any changes to this section, which we believe simplifies and makes consistent the current regulatory provisions. One comment was received on paragraph 1303.21(e)(1), which states that a responsible HHS official may meet informally with a current or prospective delegate agency if the official determines that such a meeting would be beneficial to the resolution of the appeal. The commenter believes that no meeting should be held with the delegate agency without the grantee present, and that the provision that the meetings can be conducted by conference call should be deleted. Paragraph 1303.21(e)(2) states that "Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal." We do not believe the comment is well founded and have therefore left this paragraph as it was in the NPRM.

Section 1303.22

Decision on appeal in favor of grantee. No comments were received on this section.

Section 1303.23

Decision on appeal in favor of current or prospective delegate agency. No comments were received on this section.

Redesignation and Consolidation Table

Current section	New section
1303.1	No redesignation.
1303.2	No redesignation.
1303.3	No redesignation.
1303.4	No redesignation.
None	1303.5
None	1303.6
None	1303.7
None	1303.8
1303.10	1303.20
1303.11 and 1303.14	1303.21
1303.12	1303.22
1303.13 and 1303.15–19	1303.23
1303.20	1303.15
1303.21	1303.15
1303.22	1303.15
1303.23	1303.15
1303.24	1303.15
1303.25	1303.15
1303.26	None.
1303.30	1303.10
1303.31	1303.11
1303.32	1303.12
None	1303.13
1303.33	1303.14
1303.34	None.
1303.35	1303.16
1303.36	None.
1303.37	None.

V. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that this rule is not a major rule within the Executive Order because it will not have an annual effect on the economy of $100 million or more; nor result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, it will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

This rule revises and clarifies the existing regulatory provisions regarding Head Start grantee and delegate agency appeals. It eliminates duplication and increases efficiency in governmental operations by reducing the time necessary to prepare an appeal, conduct a hearing, and reach a final decision. The final rule also revises, clarifies and simplifies the appeals process for Head Start grantees and current and prospective delegate agencies. The final rule requires that all allowable grantee appeals will be heard by the Departmental Appeals Board; permits a delegate agency to appeal the termination of a grant or contract; and allows the ACF reviewing official to direct a remedy where a specific resolution of the dispute is appropriate.

Our estimate of resource needs indicates that, while this final rule would affect some grantees and delegates who exercise their right to an appeal, it will not have a significant impact on the economy or result in a major increase in costs or prices for a substantial number of entities. We based this estimate on previous Head Start grantee and delegate agency appeals and the additional resources in some instances needed to implement the requirements. However, we estimate that this revision of the appeals process will be a direct benefit to the Government, grantees and the public since appeals procedures are simplified and one level of review is eliminated, thereby reducing some costs and speeding up the entire process. Thus, the Department concluded that this rule is not a major rule within the meaning of the Executive Order because it does not meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) we have tried to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The public burden is estimated to be 45 hours of work load per response. This is a reduction in the paperwork burden placed on grantees because there will be less duplication of documents given the reduction in appeal levels. For each rule with a "significant economic impact on a substantial number of small entities" we must analyze the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities. While this final rule would affect small entities, it will not have a significant economic impact on a substantial number of small entities. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record keeping requirement in a proposed and final rule. This final rule contains information collection requirements in § 1303.10 through § 1303.23 which will be submitted to OMB for review and approval in accordance with § 3504(h). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose, whose name appears in

this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 3002), Washington, DC 20503, Attention: Desk Officer for HHS/ACF.

List of Subjects in 45 CFR Part 1303

Administrative practice and procedures, Appeal procedures for Head Start grantees and current or prospective delegate agencies, Education of disadvantaged, Grant programs-social programs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: July 1, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: August 18, 1992.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the Preamble, chapter XIII, subchapter B, part 1303, of title 45 of the Code of Federal Regulations is revised to read as follows:

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

Subpart A—General

Sec.

1303.1 Purpose and application.
1303.2 Definitions.
1303.3 Right to attorney, attorney fees, and travel costs.
1303.4 Remedies.
1303.5 Service of process.
1303.6 Successor agencies and officials.
1303.7 Effect of failure to file or serve documents in a timely manner.
1303.8 Waiver of requirements.

Subpart B—Appeals by Grantees

1303.10 Purpose.
1303.11 Suspension on notice and opportunity to show cause.
1303.12 Summary suspension and opportunity to show cause.
1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.
1303.14 Appeal by a grantee from a termination of financial assistance.
1303.15 Appeal by a grantee from a denial of refunding.
1303.16 Conduct of hearing.

Subpart C—Appeals by Current or Prospective Delegate Agencies

1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application, or termination of a grant or contract.
1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.
1303.22 Decision on appeal in favor of grantee.
1303.23 Decision on appeal in favor of the current or prospective delegate agency.

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—General

§ 1303.1 Purpose and application.

This part prescribes regulations based on section 646 of the Head Start Act, 42 U.S.C. 9841, as it applies to grantees and current or prospective delegate agencies engaged in or wanting to engage in the operation of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified actions or inaction by grantees. It also provides procedures for reasonable notice and opportunity to show cause in cases of suspension of financial assistance by the responsible HHS official and for an appeal to the Departmental Appeals Board by grantees in cases of denial of refunding, termination of financial assistance, and suspension of financial assistance.

§ 1303.2 Definitions.

As used in this part:

Act means the Head Start Act, 42 U.S.C. section 9831, *et seq.*

ACYF means the Administration on Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.

Agreement means either a grant or a contract between a grantee and a delegate agency for the conduct of all or part of the grantee's Head Start program.

Day means the 24 hour period beginning at 12 a.m. local time and continuing for the next 24 hour period. It includes all calendar days unless otherwise expressly noted.

Delegate Agency means a public or private non-profit organization or agency to which a grantee has delegated by written agreement the carrying out of all or part of its Head Start program.

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

Funding Agency means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.

Grantee means the local public or private non-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Interim Grantee means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year while an appeal of a denial of refunding, termination or suspension action is pending.

Prospective Delegate Agency means a public or private non-profit agency or organization which has applied to a grantee to serve as a delegate agency.

Responsible HHS Official means the official who is authorized to make the grant of financial assistance to operate a Head Start program or his or her designee.

Submittal means the date of actual receipt or the date the material was served in accordance with § 1303.5 of this part for providing documents or notices of appeals, and similar matters, to either grantees, delegate agencies, prospective delegate agencies, or ACYF.

Substantial Rejection means that a funding agency requires that the funding of a current delegate agency be reduced to 80 percent or less of the current level of operations for any reason other than a determination that the delegate agency does not need the funds to serve all the eligible persons it proposes to serve.

Suspension of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

Termination of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;

(2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension or supplemental award);

(3) Withdrawal of the unobligated balance as of the expiration of a grant;

(4) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Work day means any 24 hour period beginning at 12 a.m. local time and

continuing for 24 hours. It excludes Saturdays, Sundays, and legal holidays. Any time ending on one of the excluded days shall extend to 5 p.m. of the next full work day.

§ 1303.3 Right to attorney, attorney fees, and travel costs.

(a) All parties to proceedings under this part, including informal proceedings, have the right to be represented by an attorney.

(1) Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality. However, such fees may not exceed $250.00 per day, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of these regulations. The grantee or delegate agency may use current operating funds to pay these costs. The fees of only one attorney may be charged to the program grant with respect to a particular dispute. Such fees may not be charged if the grantee or delegate agency has an attorney on its staff, or if it has a retainer agreement with an attorney which fully covers fees connected with litigation. The grantee or delegate agency shall have the burden of establishing the usual and customary fees and shall furnish documentation to support that determination that is satisfactory to the responsible HHS official.

(2) A grantee or delegate agency may designate up to two persons to attend and participate in proceedings held under this Part. Travel and per diem costs of such persons, and of an attorney representing the grantee or delegate agency, shall not exceed those allowable under Standard Governmental Travel Regulations in effect at the time of the travel.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefor to the affected party by way of reimbursement from currently available funds.

§ 1303.4 Remedies.

The procedures established by subparts B and C of this Part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

§ 1303.5 Service of process.

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that it failed to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

§ 1303.6 Successor agencies and officials.

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

§ 1303.7 Effect of failure to file or serve documents in a timely manner.

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with § 1303.8 of this part.

§ 1303.8 Waiver of requirements.

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction.

(c) "Good cause" consists of the following:

(1) Litigation dates cannot be changed;

(2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person's immediate family, spouse, parents, or siblings;

(3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;

(4) Other matters beyond the control of the party requesting the waiver, such as strikes and natural disasters.

(d) Under no circumstances may "good cause" consist of a failure to meet a deadline due to the oversight of either a party or its representative.

(e) Waivers of timely filing or service shall be granted only when necessary in the interest of fairness to all parties, including the Federal agency. They will be granted sparingly as prompt resolution of disputes is a major goal of these regulations. The responsible HHS official or the Departmental Appeals Board shall have the right, on own motion or on motion of a party, to require such documentation as deemed necessary in support of a request for a waiver.

(f) A request for an informal meeting by a delegate agency, including a prospective delegate agency, may be denied by the responsible HHS official, on motion of the grantee or on his or her own motion, if the official concludes that the written appeal fails to state plausible grounds for reversing the grantee's decision or the grantee's failure to act on an application.

(g) The requirements of this section may not be waived.

Subpart B—Appeals by Grantees

§ 1303.10 Purpose.

(a) This subpart establishes rules and procedures for the suspension of a grantee, denial of a grantee's application for refunding, or termination of assistance under the Act for circumstances related to the particular grant, such as ineffective or improper use of Federal funds or for failure to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, in accordance with part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964.

§ 1303.11 Suspension on notice and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in § 1303.10 pursuant to notice and opportunity to show cause why assistance should not be suspended.

(b) The responsible HHS official will notify the grantee as required by § 1303.5 or by telegram that ACYF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

(1) The grounds for the proposed suspension;

(2) The effective date of the proposed suspension;

(3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with the responsible HHS official regarding the intended suspension;

(4) Information that the written material must be submitted to the responsible HHS official at least seven days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than seven days after the day the notice of intention to suspend was mailed to the grantee;

(5) Invitation to correct the deficiency by voluntary action; and

(6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting. In no event will such meeting be scheduled less than seven days after the notice of intention to suspend was sent to the grantee.

(d) The responsible HHS official may at his or her discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(e) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, the official will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(f) Within three days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy of this subpart to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting regarding the intended suspension, if not otherwise afforded a right to participate, may request permission to do so from the responsible HHS official, who may grant or deny such permission. In acting upon any such request from a delegate agency, the responsible HHS official will take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(g) The responsible HHS official will consider any timely material presented in writing, any material presented during the course of the informal meeting as well as any showing that the grantee has adequately corrected the deficiency which led to the suspension proceedings. The decision of the responsible HHS official will be made within five days after the conclusion of the informal meeting, or, if no informal meeting is held, within five days of receipt by the responsible HHS official of written material from all concerned parties. If the responsible HHS official concludes that the grantee has failed to show cause why financial assistance should not be suspended, the official may suspend financial assistance in whole or in part and under such terms and conditions as he or she specifies.

(h) Notice of such suspension will be promptly transmitted to the grantee as required in § 1303.5 of this part or by some other means showing the date of receipt, and shall become effective upon delivery or on the date delivery is refused or the material is returned. Suspension shall not exceed 30 days unless the responsible HHS official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated in accordance with § 1303.14, the suspension of financial assistance will be rescinded.

(i) New obligations incurred by the grantee during the suspension period will be not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(j) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's suspension is lifted.

(k) The responsible HHS official may modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his or her own initiative or upon a satisfactory showing that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings, except that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1303.14 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

§ 1303.12 Summary suspension and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance in whole or in part without prior notice and an opportunity to show cause if it is determined that immediate suspension is necessary because of a serious risk of:

(1) Substantial injury to property or loss of project funds; or

(2) Violation of a Federal, State, or local criminal statute; or

(3) If staff or participants' health and safety are at risk.

(b) The notice of summary suspension will be given to the grantee as required by § 1303.5 of this part, or by some other means showing the date of receipt, and shall become effective on delivery or on the date delivery is refused or the material is returned unclaimed.

(c) The notice must include the following items:

(1) The effective date of the suspension;

(2) The grounds for the suspension;

(3) The extent of the terms and conditions of any full or partial suspension;

(4) A statement prohibiting the grantee from making any new expenditures or incurring any new obligations in connection with the suspended portion of the program; and

(5) A statement advising the grantee that it has an opportunity to show cause at an informal meeting why the suspension should be rescinded. The request for an informal meeting must be made by the grantee in writing to the responsible HHS official no later than five workdays after the effective date of the notice of summary suspension as described in paragraph (b) of this section.

(d) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within five workdays after the grantee's request is received by the responsible HHS official. Notwithstanding the provisions of this paragraph, the responsible HHS official may proceed to deny refunding or initiate termination proceedings at any time even though financial assistance of the grantee has been suspended in whole or in part.

(e) Notice of summary suspension must also be furnished by the grantee to its delegate agencies within two workdays of its receipt of the notice from ACYF by certified mail, return receipt requested, or by any other means showing dates of transmittal and receipt or return as undeliverable or unclaimed. Delegate agencies affected by the summary suspension have the right to participate in the informal meeting as set forth in paragraph (d) of this section.

(f) The effective period of a summary suspension of financial assistance may not exceed 30 days unless:

(1) The conditions creating the summary suspension have not been corrected; or

(2) The parties agree to a continuation of the summary suspension for an additional period of time; or

(3) The grantee, in accordance with paragraph (d) of this section, requests an opportunity to show cause why the summary suspension should be rescinded, in which case it may remain in effect in accordance with paragraph (h) of this section; or

(4) Termination or denial of refunding proceedings are initiated in accordance with § 1303.14 or § 1303.15.

(g) Any summary suspension that remains in effect for more than 30 days is subject to the requirements of § 1303.13 of this part. The only exceptions are where there is an agreement under paragraph (f)(2) of this section, or the circumstances described in paragraph (f)(4) or (h)(1) of this section exist.

(h)(1) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance will continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official.

(2) If the suspension continues for more than 30 days, the suspension remains in effect even if it is appealed to the Departmental Appeals Board.

(3) Notwithstanding any other provisions of these or other regulations, if a denial of refunding occurs or a termination action is instituted while the summary suspension is in effect, the suspension shall merge into the later action and funding shall not be available until the action is rescinded or a decision favorable to the grantee is rendered.

(i) The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.

(j) A decision must be made within five work days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information provided at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part and under the terms and conditions specified in the notice of suspension.

(k) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or by an amendment to the notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination.

(l) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's summary suspension is lifted or a new grantee is selected in accordance with subpart B of this part.

(m) At the discretion of the funding agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(n) The responsible HHS official may modify the terms, conditions and nature of the summary suspension or rescind the suspension action at any time upon receiving satisfactory evidence that the grantee has adequately corrected the deficiency which led to the suspension and that the deficiency will not occur again. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings.

§ 1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.

(a) This section applies to summary suspensions that are initially issued for more than 30 days and summary suspensions continued for more than 30 days except those identified in paragraph § 1303.12(g) of this part.

(b) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend a grant for more than 30 days. A suspension may, among other bases, be imposed for the same reasons that justify termination of financial assistance or which justify a denial of refunding of a grant.

(c) A notice of a suspension under this section shall set forth:

(1) The reasons for the action;

(2) The duration of the suspension, which may be indefinite;

(3) The fact that the action may be appealed to the Departmental Appeals Board and the time within which it must be appealed.

(d) During the period of suspension a grantee may not incur any valid obligations against Federal Head Start grant funds, nor may any grantee expenditure or provision of in-kind services or items of value made during the period be counted as applying toward any required matching contribution required of a grantee, except as otherwise provided in this part.

(e) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's suspension is lifted or a new grantee is selected in accordance with subparts B and C of 45 CFR part 1302.

(f) Any appeal to the Departmental Appeals Board must be made within five days of the grantee's receipt of notice of suspension or return of the notice as undeliverable, refused, or unclaimed. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position.

All such appeals shall be addressed to the Departmental Appeals Board, and the appellant will send a copy of the appeal to the Commissioner, ACYF, and the responsible HHS official. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee requesting a hearing as part of its appeal shall be afforded one by the Departmental Appeals Board.

(g) If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds. Moreover, any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.

(h) If a grantee's appeal is denied by the Departmental Appeals Board, but the grantee is subsequently restored to the program because it has corrected those conditions which warranted the suspension, its activities during the period of the suspension remain outside the scope of the program.

Federal funds may not be used to offset any costs during the period, nor may any cash or in-kind contributions received during the period be used to meet non-Federal share requirements.

(i) If the Federal agency institutes termination proceedings during a suspension, or denies refunding, the two actions shall merge and the grantee need not file a new appeal. Rather, the Departmental Appeals Board will be notified by the Federal agency and will automatically be vested with jurisdiction over the termnation action or the denial of refunding and will, pursuant to its rules and procedures, permit the grantee to respond to the notice of termination. In a situation where a suspension action is merged into a termination action in accordance with this section, the suspension continues until there is an administrative decision by the Departmental Appeals Board on the grantee's appeal.

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may terminate financial assistance to a grantee. Financial assistance may be terminated in whole or in part.

(b) Financial assistance may be terminated for any or all of the following reasons:

(1) The grantee is no longer financially viable;

(2) The grantee has lost the requisite legal status or permits;

(3) The grantee has failed to comply with the required fiscal or program reporting requirements applicable to grantees in the Head Start program;

(4) The grantee has failed to meet the performance standards for operation of Head Start programs that are applicable to grantees;

(5) The grantee has failed to comply with the eligibility requirements and limitations on enrollment in the Head Start program, or both;

(6) The grantee has failed to comply with the Head Start grants administration requirements set forth in 45 CFR part 1301;

(7) The grantee has failed to comply with the requirements of the Head Start Act;

(8) The grantee is debarred from receiving Federal grants or contracts;

(9) The grantee fails to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable Federal or State requirements or policies.

(c) A notice of termination shall set forth:

(1) The violations or actions justifying the termination.

(2) The fact that the termination may be appealed within 10 days to the Departmental Appeals Board (with a copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841. Such an appeal must be in writing and must fully set forth the grounds for the appeal and be accompanied by all of the documentation that the grantee believes is relevant and supportive of its position.

(3) That the appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.

(4) That, if the activities of a delegate agency are the basis, in whole or in part, for the proposed termination, the identity of the delegate agency.

(5) Information that the grantee has a right to request a hearing in writing within a period of time specified in the notice which is not later than 10 days from the date of sending the notice.

(d) (1) During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period. At the end of the current budget period, if a decision has not been rendered, the responsible HHS official shall award an interim grant to the grantee until a decision is made.

(2) If a grantee's funding has been suspended, no funding shall be available during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful. An interim grantee will be appointed during the appeal period.

(3) If a grantee does not appeal an administrative decision to court within 30 days of its receipt of the decision, a replacement grantee will be immediately sought. An interim grantee may be named, if needed, pending the selection of a replacement grantee.

(4) An interim grantee may be sought even though the grantee has appealed an administrative decision to court within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm and Federal funds from misuse or dissipation or both.

(e) If a grantee requests a hearing, it shall send a copy of its request to all delegate agencies which would be financially affected by the termination of assistance and to each delegate agency identified in the notice. The copies of the request shall be sent to these delegate agencies at the same time the grantee's request is made of ACYF. The grantee shall promptly send ACYF a list of the delegate agencies to which it has sent the copies and the date on which they were sent.

(f) If the Departmental Appeals Board informs a grantee that a proposed termination action has been set down for hearing, the grantee shall, within five days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the dates of notification.

(g) If the responsible HHS official has initiated termination proceedings

because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(h) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies, whether or not they actually participated in the hearing.

(i) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted within a reasonable period of time to be fixed by the Departmental Appeals Board upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of written information and argument submitted by the parties to the Departmental Appeals Board.

(j) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

§ 1303.15 Appeal by a grantee from a denial of refunding.

(a) After receiving concurrence from the Commissioner, ACYF, a grantee's application for refunding may be denied by the responsible HHS official for circumstances described in paragraph (c) of this section.

(b) When an intention to deny a grantee's application for refunding is arrived at on a basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(1) Such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(2) Any such appeals must be filed within ten work days after the grantee receives notice of the decision to deny refunding.

(c) Refunding of a grant may be denied for any or all of the reasons for which a grant may be terminated, as set forth in § 1303.14(b) of this part.

(d) Decisions to deny refunding shall be in writing, signed by the responsible HHS official, dated, and sent in compliance with § 1303.5 of this part or by telegram, or by any other mode establishing the date sent and received by the addressee, or the date it was determined delivery could not be made, or the date delivery was refused. A Notice of Decision shall contain:

(1) A statement that indicates the grounds which justify the proposed denial of refunding;

(2) The identity of the delegate agency, if the activities of that delegate agency are the basis, in whole or in part, for the proposed denial of refunding; and

(3) A statement that, if the grantee wishes to appeal the denial of refunding of financial assistance, it must appeal directly to the Departmental Appeals Board, and send a copy of the appeal to the responsible HHS official and the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations.

(e) The appeal may be made only by the Board of Directors of the grantee or by an official acting on behalf of such Board.

§ 1303.16 Conduct of hearing.

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

(b) Communications outside the record are prohibited as provided by 45 CFR 16.17.

(c) Both ACYF and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (g) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer may permit the participation in the proceedings of such persons or organizations as deemed necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(e) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of termination, denial of refunding or suspension has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(f) The presiding officer shall permit or deny such participation and shall give notice of his or her decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his or her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(g) The Departmental Appeals Board will send the responsible HHS official, the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity and ACYF requirements which the grantee is alleged to have violated. The notice will be served and filed not later than ten work days prior to the hearing.

Subpart C—Appeals by Current or Prospective Delegate Agencies

§ 1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application or termination of a grant or contract.

(a) A grantee must give prompt, fair and adequate consideration to

applications submitted by current or prospective delegate agencies to operate Head Start programs. The failure of the grantee to act within 30 days after receiving the application is deemed to be a rejection of the application.

(b) A grantee must notify an applicant in writing within 30 days after receiving the application of its decision to either accept or to wholly or substantially reject it. If the decision is to wholly or substantially reject the application, the notice shall contain a statement of the reasons for the decision and a statement that the applicant has a right to appeal the decision within ten work days after receipt of the notice. If a grantee fails to act on the application by the end of the 30 day period which grantees have to review applications, the current or prospective delegate agency may appeal to the grantee, in writing, within 15 work days of the end of the 30 day grantee review period.

(c) A grantee must notify a delegate agency in writing of its decision to terminate its agreement with the delegate agency, explaining the reasons for its decision and that the delegate agency has the right to appeal the decision to the grantee within ten work days after receipt of the notice.

(d) The grantee has 20 days to review the written appeal and issue its decision. If the grantee sustains its earlier termination of an award or its rejection of an application, the current or prospective delegate agency then may appeal, in writing, to the responsible HHS official. The appeal must be submitted to the responsible HHS official within ten work days after the receipt of the grantee's final decision. The appeal must fully set forth the grounds for the appeal.

(e) A grantee may not reject the application or terminate the operations of a delegate agency on the basis of defects or deficiencies in the application or in the operation of the program without first:

(1) Notifying the delegate agency of the defects and deficiencies;

(2) Providing, or providing for, technical assistance so that defects and deficiencies can be corrected by the delegate agency; and

(3) Giving the delegate agency the opportunity to make appropriate corrections.

(f) An appeal filed pursuant to a grantee failing to act on a current or prospective delegate agency's application within a 30 day period need only contain a copy of the application, the date filed, and any proof of the date the grantee received the application. The grantee shall have five days in which to respond to the appeal.

(g) Failure to appeal to the grantee regarding its decision to reject an application, terminate an agreement, or failure to act on an application shall bar any appeal to the responsible HHS official.

§ 1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.

(a) Any current or prospective delegate agency that is dissatisfied with the decision of a grantee rendered under § 1303.20 may appeal to the responsible HHS official whose decision is final and not appealable to the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the current or prospective delegate agency believes is relevant and supportive of this position, including all written material or documentation submitted to the grantee under the procedures set forth in § 1303.20, as well as a copy of any decision rendered by the grantee. A copy of the appeal and all material filed with the responsible HHS official must be simultaneously served on the grantee.

(b) In providing the information required by paragraph (a) of this section, delegate agencies must set forth:

(1) Whether, when and how the grantee advised the delegate agency of alleged defects and deficiencies in the delegate agency's application or in the operation of its program prior to the grantee's rejection or termination notice;

(2) Whether the grantee provided the delegate agency reasonable opportunity to correct the defects and deficiencies, the details of the opportunity that was given and whether or not the grantee provided or provided for technical advice, consultation, or assistance to the current delegate agency concerning the correction of the defects and deficiencies;

(3) What steps or measures, if any, were undertaken by the delegate agency to correct any defects or deficiencies;

(4) When and how the grantee notified the delegate agency of its decision;

(5) Whether the grantee told the delegate agency the reasons for its decision and, if so, how such reasons were communicated to the delegate agency and what they were;

(6) If it is the delegate agency's position that the grantee acted arbitrarily or capriciously, the reasons why the delegate agency takes this position; and

(7) Any other facts and circumstances which the delegate agency believes supports its appeal.

(c) The grantee may submit a written response to the appeal of a prospective delegate agency. It may also submit additional information which it believes is relevant and supportive of its position.

(d) In the case of an appeal by a delegate agency, the grantee must submit a written statement to the responsible HHS official responding to the items specified in paragraph (b) of this section. The grantee must include information that explains why it acted properly in arriving at its decision or in failing to act, and any other facts and circumstances which the grantee believes supports its position.

(e)(1) The responsible HHS official may meet informally with the current or prospective delegate agency if such official determines that such a meeting would be beneficial to the proper resolution of the appeal. Such meetings may be conducted by conference call.

(2) An informal meeting must be requested by the current or prospective delegate agency at the time of the appeal. In addition, the grantee may request an informal meeting with the responsible HHS official. If none of the parties requests an informal meeting, the responsible HHS official may hold such a meeting if he or she believes it would be beneficial for a proper resolution of the dispute. Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal. If a party wishes to oppose a request for a meeting it must serve its opposition on the responsible HHS official and any other party within five work days of its receipt of the request.

(f) A grantee's response to appeals by current or prospective delegate agencies must be submitted to the responsible HHS official within ten work days of receipt of the materials served on it by the current or prospective delegate agency in accordance with paragraph (a) of this section. The grantee must serve a copy of its response on the current or prospective delegate agency.

(g) The responsible HHS official shall notify the current or prospective delegate agency and the grantee whether or not an informal meeting will be held. If an informal meeting is held, it must be held within ten work days after the notice by the responsible HHS official is mailed. The responsible HHS official must designate either the Regional Office or the place where the current or prospective delegate agency or grantee is located for holding the informal meeting.

(h) If an informal meeting is not held, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply must be submitted to the responsible HHS official within five work days after the notification required by paragraph (g) of this section. If a meeting is not to be held, notice of that fact shall be served on the parties within five work days of the receipt of a timely response to such a request or the expiration of the time for submitting a response to such a request.

(i) In deciding an appeal under this section, the responsible HHS official will arrive at his or her decision by considering:

(1) The material submitted in writing and the information presented at any informal meeting;

(2) The application of the current or prospective delegate agency;

(3) His or her knowledge of the grantee's program as well as any evaluations of his or her staff about the grantee's program and current or prospective delegate agency's application and prior performance; and

(4) Any other evidence deemed relevant by the responsible HHS official.

§ 1303.22 Decision on appeal in favor of grantee.

(a) If the responsible HHS official finds in favor of the grantee, the appeal will be dismissed unless there is cause to remand the matter back to the grantee.

(b) The grantee's decision will be sustained unless it is determined by the responsible HHS official that the grantee acted arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(c) The decision will be made within ten workdays after the informal meeting. The decision, including a statement of the reasons therefor, will be in writing, and will be served on the parties within five workdays from the date of the decision by the responsible HHS official.

(d) If the decision is made on the basis of written materials only, the decision will be made within five workdays of the receipt of the materials. The decision will be served on the parties no more than five days after it is made.

§ 1303.23 Decision on appeal in favor of the current or prospective delegate agency.

(a) The responsible HHS official will remand the rejection of an application or termination of an agreement to the grantee for prompt reconsideration and decision if the responsible HHS official's decision does not sustain the grantee's decision, and if there are issues which require further development before a final decision can be made. The grantee's reconsideration and decision must be made in accordance with all applicable requirements of this part as well as other relevant regulations, statutory provisions, and program issuances. The grantee must issue its decision on remand in writing to both the current or prospective delegate agency and the responsible HHS official within 15 workdays after the date of receipt of the remand.

(b) If the current or prospective delegate agency is dissatisfied with the grantee's decision on remand, it may appeal to the responsible HHS official within five workdays of its receipt of that decision. Any such appeal must comply with the requirements of § 1303.21 of this part.

(c) If the responsible HHS official finds that the grantee's decision on remand is incorrect or if the grantee fails to issue its decision within 15 work days, the responsible HHS official will entertain an application by the current or prospective delegate agency for a direct grant.

(1) If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action is deemed appropriate in the circumstances. Such reduction in funding shall not be considered a termination or denial of refunding and may not be appealed under this part.

(2) If such an application is not approved, the responsible HHS official will take whatever action he or she deems appropriate under the circumstances.

(d) If, without fault on the part of a delegate agency, its operating funds are exhausted before its appeal has been decided, the grantee will furnish sufficient funds for the maintenance of the delegate agency's current level of operations until a final administrative decision has been reached.

(e) If the responsible HHS official sustains the decision of the grantee following remand, he or she shall notify the parties of the fact within 15 work days of the receipt of final submittal of documents, or of the conclusion of any meeting between the official and the parties, whichever is later.

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Monday
December 14, 1992

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 48
Federal Acquisition Regulation (FAR): Value Engineering Costs Allowability; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 48

RIN 9000–AD71

[FAR Case 89–88]

Federal Acquisition Regulation; Allowability of Value Engineering Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to republish the proposal to revise paragraph (b)(1) of FAR 48.101, General, to provide that under the incentive approach, the contractor develops and submits value engineering change proposals (VECP's) and shares in the savings of any that are accepted. The contract provides for payment of implementation costs if a VECP is accepted. The development costs for accepted and unaccepted VECP's shall be accumulated by VE project and charged indirectly if otherwise allowable in accordance with part 31.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 12, 1993, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., room 4041, Washington, DC 20405. Please cite FAR case 89–88 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 89–88.

SUPPLEMENTARY INFORMATION:

A. Background

This DARC-initiated revision was published as a proposed rule with a request for comments at 55 FR part 417, January 4, 1990. Thirty-three responses were received consisting of concurrences and no comments and 15 comments. Because of the complexity of the issues and questions that surfaced during the evaluation of the comments, revisions to the coverage were considered necessary. Since these changes may affect the public, it is considered necessary to republish the coverage as a proposed rule.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it is understood that most contractors already accumulate costs by value engineering project because they need this cost information to compute the projected savings and sharing arrangement on the VECP's submitted for approval. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 89–88), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 48

Government procurement.

Dated: December 4, 1992.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 48 be amended as set forth below:

PART 48—VALUE ENGINEERING

1. The authority citation for 48 CFR part 48 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 48.101 is amended by revising paragraph (b) introductory text and (b)(1) to read as follows:

48.101 General.

* * * * *

(b) There are two value engineering approaches, as follows:

(1) The first is an incentive approach in which contractor participation is voluntary. The contractor develops and submits value engineering change proposals (VECP's) and shares in the savings of any that are accepted. The contract provides for payment of implementation costs if a VECP is accepted. The development costs for accepted and unaccepted VECP's shall be accumulated by value engineering (VE) project and charged indirectly if otherwise allowable in accordance with part 31.

* * * * *

[FR Doc. 92–30241 Filed 12–11–92; 8:45 am]

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing these parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

RIN 3206–AE22

Pay Rates and Systems (General); Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement provisions of the Federal Employees Pay Comparability Act of 1990 (FEPCA) related to the Government's special pay authority. Section 5305 of title 5, United States Code, as amended by FEPCA, substantially increases the Government's flexibility to authorize special salary rates, as compared with the statutory authority formerly contained in 5 U.S.C. 5303. These flexibilities became effective on February 3, 1991, under Executive Order 12748 of February 1, 1991. The final regulations allow OPM to approve special salary rates when the Government is experiencing, or is likely to experience, recruitment or retention problems caused by higher non-Federal sector pay, as well as by a number of other circumstances; and allow those rates to be established at higher pay levels than previously permitted.

OPM is also issuing final rules to implement the decision of the U.S. District Court for the District of Columbia (*National Treasury Employees Union* v. *Newman*, Number 83–0279 (D.D.C. June 28, 1991)), in which the court ordered OPM to promulgate a conversion rule for adjusting the pay schedules of employees paid special salary rates as required by 5 U.S.C. 5305(f) and consistent with the guidelines set forth in the decision.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 606–1413.

SUPPLEMENTARY INFORMATION: OPM published interim regulations at 56 FR 20334 on May 3, 1991, to implement provisions of FEPCA related to the Government's special salary rates program. The Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509, November 5, 1990) gives the Government authority to establish special salary rates under a wider variety of circumstances than was previously allowed. The following are the significantly expanded flexibilities permitted under FEPCA:

- Special salary rates may be established based on actual or anticipated staffing problems for any civilian position under any pay system established by or under Federal statute within the executive branch.
- Special salary rates may be established when the staffing problem is caused by higher non-Federal pay rates, remote location or area, undesirable working conditions, or any other circumstances. The final regulations also allow for consideration of higher Federal pay rates established under independent statutory authority.
- The highest rate at which the minimum rate of a special rate schedule may be set has been increased to 30 percent above the maximum rate of a grade. Previously, the limit was the maximum rate of a grade.
- The GS–10, step 1, limitation on the computation of overtime pay now includes all special rates of pay established for that grade. The final regulations set forth the criteria OPM will use for establishing a GS–10 special salary rate for overtime pay computation and certain other non-staffing purposes when one would otherwise not have been established to alleviate staffing problems.

The requirement to change the existing special salary rate regulations to conform with FEPCA has given OPM an opportunity to update other provisions of the prior regulations.

The first provision appears in the final regulations exactly as it appeared in the interim regulations. It changes agency certification levels for approving special salary rate requests. Individuals designated to act on behalf of the agency head may now approve special salary rate requests covering fewer than 1,000 positions or costing less than $4 million. This change means that involvement of an agency head will be required only in the highest impact special rate requests. This should reduce the time needed to process such requests.

The second provision was published by OPM on June 15, 1992 (57 FR 26619), as a set of proposed rules with a request for comments. The proposed rules were designed to implement a court decision (cited in the "Summary") for adjusting the pay schedules of employees paid special salary rates when the underlying statutory pay schedules are adjusted. The proposed rules replaced interim regulations 5 CFR 530.307(a) because it contained an automatic adjustment mechanism that the court concluded would not be proper. In addition, OPM proposed to amend interim regulation 5 CFR 530.304, providing for an annual review of special salary rate schedules, in order to have it conform with the court's criteria.

Comments on the Interim Regulations

We received four comments on the interim regulations, three from Federal agencies and one from a union. The union's comment and the comment of one of the agencies concern the provision described above dealing with the conversion rule for adjusting the pay schedules of employees paid special salary rates. The agency was concerned with the mechanics of the rule, while the union expressed concern that the interim rule does not "prescribe methods for adjusting special salary schedules to guarantee that special rate employees keep pace with regular rate employees, but that they do not receive duplicative increases." Both of these comments deal with the automatic schedule alignment rule, which has since been rescinded.

One agency commented that OPM should in certain limited situations delegate to agency heads the authority to approve special salary rates. While we have considered this issue, we believe it would not be in the best interest of the Government to delegate special salary rates authority to agencies. We believe OPM plays an important role in assuring that covered Federal agencies are paying uniform rates to Federal employees performing identical work in specified grades and locations.

Another agency provided comments on three issues. The first two suggested

that (1) OPM should provide examples of the documentation we would expect to see before approving special rates based on likely staffing problems, and (2) OPM should clarify how it will consider many of FEPCA's new pay flexibilities, such as above-minimum entry rates, recruitment and relocation bonuses, and retention allowances, before approving special rates. We agree that OPM should provide additional information regarding these issues, but we believe this information can be most effectively communicated by interagency memoranda rather than by regulation. For example, we issued an Interagency Advisory Group memorandum on October 24, 1991, that dealt specifically with the relationship between special salary rates and the FEPCA flexibilities. We expect there will be other formal and informal communications between OPM and agencies in the future as OPM and agencies again experience operating in the new environment.

The last issue this agency was concerned with had to do with the criteria OPM would use to establish GS–10 special rates for overtime and certain other non-staffing purposes. The agency envisioned only two situations in which the criteria could be applied—where special rates are authorized only for grades below GS–10 and where they are authorized for grades GS–9 and GS–11, but not GS–10. In these situations the agency did not see the need for the criterion we established dealing with the need to avoid pay alignment problems that would result from applying the two-step promotion rule in 5 U.S.C. 5334(b). However, we believe the provision in question is needed for us to be prepared to deal with any situation requiring establishing a GS–10 special rate for non-staffing purposes. If either of the two provisions does not apply in one instance, it may be completely appropriate in other unforeseen instances. Further, the interim regulations recognized that there may be instances in which one of the provisions might not apply by stating that OPM will consider the provisions "as appropriate in each situation."

Comments on the Proposed Regulations

We received one telephone comment on the proposed regulations from a Federal agency (later followed by a written comment that was received after the end of the comment period), one comment from another Federal agency, and two comments from individuals. One Federal agency and both individuals were concerned about applying 5 CFR 530.307 in cases in which a special salary rate schedule that is well above the underlying statutory schedule is terminated. In such cases, the proposed regulation makes it appear that an employee's pay could be reduced, except that the pay retention regulations in part 536 would bar such actions. It is not our intention to reduce employees' pay in such situations, and we have revised 5 CFR 530.307 to make this clear.

One of the agencies suggested language to simplify 5 CFR 530.304. While we agree that the suggested language does simplify the regulation, we feel that it does so at the expense of being less precise. Therefore, we have not adopted the suggested changes. Both agencies asked us to clarify the meaning of "numerical rank" as used in 5 CFR 530.307. Within the General Schedule pay system, "numerical rank" means "step." "Step" is not used in place of "numerical rank" in the regulation because we concluded it would be more appropriate to use a more generic term, since it is possible for OPM to establish special salary rates for (1) any statutory pay system, or (2) any other pay system established by or under Federal statute for civilian positions within the executive branch.

One of the individuals who commented identified himself as an employee who is also a member of the class in the lawsuit *NTEU* v. *Newman*. The employee contends that it was premature for OPM to issue the proposed regulations prior to the final decision of the court. We disagree, since the U.S. district court's June 28, 1991, decision requires OPM to issue such regulations. In other comments, the employee and another individual indicated their support for NTEU's position in the lawsuit and contended that OPM's proposed regulations run counter to the appeals and district courts' interpretation of the statute. NTEU has argued that the review of special salary rates that OPM conducts annually does not conform with legal requirements (now contained in 5 U.S.C. 5305(f)) that require that there be rules for converting special rates to the rates on new statutory pay schedules. We believe the rules we have proposed do indeed conform with the statutory requirements as interpreted by the appeals and district courts, and this conclusion has been affirmed by a recent decision of the district court (*NTEU* v. *Newman*, C.A. No. 83–0279 (D.D.C. Sept. 14, 1992)).

Finally, a conforming editorial change has been made in §§ 530.303(a) and 530.305 to clarify that special salary rates are established and adjusted to overcome existing or likely significant handicaps in the "recruitment or retention" of well-qualified personnel.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 530

Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the interim rule amending 5 CFR part 530, published at 56 FR 20334 on May 3, 1991, is adopted as final with the following changes.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for 5 CFR part 530 continues to read as follows:

Authority: 5 U.S.C. 5305; E.O. 12748, 56 FR 4521.

§ 530.303 [Amended]

2. In § 530.303(a), remove the words "recruitment and retention" and insert the words "recruitment or retention" in their place.

3. Section 530.304 is revised to read as follows:

§ 530.304 Annual review.

(a) Prior to an adjustment in the scheduled rates of pay for one or more grades or levels for which special rates have been authorized under 5 U.S.C. 5305, but at least annually, OPM shall review special salary rate schedules to determine whether the factors in § 530.303 of this part and paragraph (b) of this section require those schedules to continue, and, if they are to continue, the extent to which they are to be adjusted, if at all.

(b) In addition to the factors in § 530.303 of this part, OPM shall consider, for the purpose of making the determination required by paragraph (a) of this section—

(1) The former non-special pay rates of the special rate employees to ensure that any adjustment in the special rates of pay would not cause those rates to fall below the non-special rates of pay to which the special rate employees would otherwise have been entitled;

(2) The likelihood that the factors leading to a statutory adjustment in pay will affect special rate employees as well; and

(3) Other special rate pay adjustments that occurred prior to the date of the anticipated statutory pay adjustment.

(c) Any adjustment in the special rates of pay shall be based on the factors in paragraphs (a) and (b) of this section and shall not be made solely for mechanical reasons or for the purposes of providing automatic adjustments. Any adjustment must be based on the pay OPM determines is necessary in a given occupation and area to recruit or retain the special rate employees.

(d) In conducting the annual review, OPM shall designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(e) When special rates are adjusted as a result of this review, an employee's pay shall be fixed in the same manner as provided in § 530.307 of this part.

§ 530.305 [Amended]

4. Remove the words "recruitment and retention" and insert the words "recruitment or retention" in their place.

5. Section 530.307 is revised to read as follows:

§ 530.307 Effect of an adjustment in scheduled rates of pay.

(a) Except as provided in paragraphs (b) and (c) of this section, when an employee was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date the rate of basic pay for the numerical rank in the new special rate range established under § 530.304 of this part for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date. However, in the case of an employee who becomes eligible for pay retention because a special rate schedule has been reduced under § 530.304 of this part, the employee shall receive a rate of basic pay determined under § 536.205(b) of this chapter.

(b) If a special rate range is terminated under § 530.304 of this part, an employee who was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay shall receive on that effective date the numerical rank in the new statutory pay schedule for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date. However, in the case of an employee who becomes eligible for pay retention because the employee's pay would otherwise be reduced under § 530.304 of this part, the employee shall receive a rate of basic pay determined under § 536.205(b) of this chapter.

(c) In the case of an employee in a position under the Performance Management and Recognition System who was receiving a special pay rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date a rate of basic pay determined under § 540.106 of this chapter. However, in the case of an employee who becomes eligible for pay retention because the employee's pay would otherwise be reduced under § 530.304 of this part, the employee shall receive a rate of basic pay determined under § 536.205(b) of this chapter.

[FR Doc. 92-30414 Filed 12-14-92; 8:45 am]
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5 CFR Parts 532, 550, and 551

RIN 3206-AE32

Pay Administration Under the Fair Labor Standards Act; Overtime Pay Provisions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement section 210 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The amendments made by section 210 eliminate the requirement to perform dual overtime pay computations for employees covered by the overtime pay provisions of the Fair Labor Standards Act of 1938 (FLSA) and title 5, United States Code. Section 210 of FEPCA provides that, for the purpose of calculating overtime pay under the FLSA, hours in a paid nonwork status shall be deemed to be hours of work. Thus, overtime pay for nonexempt employees is computed and paid only under the FLSA.

EFFECTIVE DATE: The first day of the first pay period beginning on or after January 14, 1993.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Section 210 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) eliminates the need to calculate and compare an FLSA nonexempt employee's overtime pay entitlement under two laws in order to pay the greater overtime benefit. Instead, employees who are nonexempt under the Fair Labor Standards Act of 1938, as amended, always receive overtime pay under the FLSA, as provided in part 551 of title 5, Code of Federal Regulations.

Interim regulations to implement section 210 of FEPCA were published in the **Federal Register** on May 3, 1991 (56 FR 20339). The amendments made by section 210 and the interim regulations were effective on May 4, 1991. Comments were received from five Federal agencies and two labor organizations. These comments, as well as certain changes and clarifications of the regulations, are summarized below.

The interim regulations are adopted as final with the changes shown below, except for 5 CFR 550.103(j), 550.111(d)(2), and 550.113(a), which were revised and adopted as final when final regulations on special pay adjustments for law enforcement officers became effective, on the first day of the first pay period beginning on or after January 1, 1992 (57 FR 2431).

Federal employees who are exempt from the FLSA, but covered by the overtime pay provisions of title 5, United States Code, continue to have their overtime pay benefit calculated and paid under the title 5 provisions, as provided in part 532 (for prevailing rate employees) or part 550 (for General Schedule employees) of title 5, Code of Federal Regulations, as applicable.

Employee Coverage Under Part 550

Three agencies commented that the interim regulations improperly applied the changes in section 210 of FEPCA to some employees who are not covered by sections 5542 through 5544 of title 5, United States Code. The commenters stated that the regulatory changes implementing section 210 should not apply to members of the United States Secret Service Uniformed Division or the United States Park Police or to employees paid from nonappropriated funds in instrumentalities under the jurisidiction of the armed forces. (See 5 U.S.C. 2105(c) and 5541(2)(iv).)

OPM agrees with these observations. Section 210 of FEPCA applies only to employees who are covered by sections 5542 through 5544 of title 5, United States Code. Therefore, we have amended the regulations to clarify that the changes required by section 210 do not apply to employees who are not covered by sections 5542 through 5544 of title 5. (See revised § 551.401(b) and new § 551.501(a)(4).)

Overtime Pay Under Other Statutes

One agency commented that while comparison of overtime pay entitlements under title 5 and the FLSA is no longer required, it continues to be necessary to make a comparison for those Federal employees who are covered by the overtime pay provisions of both the FLSA and another non-title 5 statute. Those employees will continue to be paid under the authority that provides the greater overtime pay benefit. Therefore, OPM has revised 5 CFR 551.513 to clarify this point.

Employees Covered by 7(k) Overtime Standards

One agency commented that an unintended consequence of the interim regulations was to reduce overtime pay for fire inspectors who are covered by the 53-hour overtime standard established under section 7(k) of the FLSA for employees engaged in fire protection activities. The agency noted that prior to implementation of FEPCA, fire inspectors on a 40-hour per week tour of duty earned overtime pay under title 5, United States Code, for hours of work in excess of 40 hours per week, provided they were not being paid annual premium pay. However, the interim regulations do not permit payment of overtime pay under title 5 for nonexempt employees and preclude payment of overtime pay under the FLSA on the basis of hours or work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities.

Section 7(k) of the FLSA establishes special overtime standards for employees engaged in fire protection and law enforcement activities. Nevertheless, it is within the administrative authority of OPM to determine that section 7(k) need not be applied to a specific category of employees is (1) the application of the special provision would result in inequitable pay treatment for some employees in comparison with other employees performing similar duties, and (2) the administrative costs involved in complying with the special provision would exceed the difference in the overtime costs involved. Since the groups of employees affected by this circumstance were covered by the 40-hour per week overtime standard that applied under title 5 prior to the effective date of section 210 of FEPCA, we believe both of the above criteria are satisfied in comparison to the situation that existed at that time. Therefore, to avoid a reduction in overtime pay entitlements as a result of the implementation of FEPCA, OPM has revised the regulations to provide that employees engaged in fire protection and law enforcement activities must receive overtime pay for work in excess of 40 hours in a workweek, provided they do not receive annual premium pay under section 5545(c)(1) or (2) of title 5, United States Code. (See §§ 551.501(a)(5) and 551.541(a).)

However, if employees engaged in fire protection or law enforcement activities had received overtime pay under title 5 prior to FEPCA, their meal periods would not have been included as hours of work. Therefore, OPM has also revised the regulations to clarify that if employees engaged in fire protection or law enforcement activities are not receiving annual premium pay and are being paid overtime pay for hours of work in excess of 40 hours in a workweek, meal periods may not be included in determining their hours of work. In addition, the regulations have been amended to indicate that Federal agencies may deduct up to 8 hours out of each 24-hour shift for sleep and meal periods under the two-thirds rule for firefighters who are performing standby duty but are not receiving annual premium pay for that duty. (See §§ 551.411(c), 551.432(b), and 551.541(b).)

One labor organization commented that the interim regulations did not include the 7(k) FLSA hours of work overtime standards and that a literal reading of the regulations could lead to the conclusion that employees engaged in fire protection and law enforcement activities may not receive overtime pay at all. Since the overtime standards may be revised from time to time, we have not included them in the final regulations. However, it is not OPM's intent to deny overtime pay to these employees under the FLSA. The overtime standards for 7(k) employees are referenced in § 551.541(a) and included in Federal Personnel Manual guidance.

"Suffered and Permitted" Work

One labor organization commented that under the FLSA and 5 U.S.C. 5542(c), overtime work includes work which is "suffered and permitted" and that the interim regulations did not permit overtime compensation for work in excess of 8 hours in a day that is suffered and permitted. However, 5 U.S.C. 5542(c) does not provide that overtime work includes work which is "suffered and permitted." The commenter noted that under the interim regulations employees may not receive overtime compensation on the basis of hours of work in excess of 8 hours in a day that are not overtime hours of work under title 5, Code of Federal Regulations.

While title 5, United States Code, has been amended by FEPCA to require overtime compensation for hours of work in excess of 8 hours in a day for nonexempt employees, the FLSA concept of "suffered and permitted" hours of work has not been applied by FEPCA to hours of work under title 5. The 8-hour daily standard is included under title 5, not under the FLSA, and therefore hours of work that are "suffered and permitted," but not ordered and approved, cannot be applied towards the 8-hour daily overtime standard. In all cases, however, those hours of work which are "suffered and permitted" will be creditable against the applicable weekly overtime standard under the FLSA for nonexempt employees. Therefore, OPM has not amended the regulations. (See also FPM Letter 551–24, January 14, 1992.)

Miscellaneous

An employee commented that § 550.112(i) of the interim regulations properly belongs in part 532 because it deals with hours of work for prevailing rate (wage) employees. OPM has removed this provision from part 550 and added it to part 532. (See § 532.503(f).)

OPM has also amended the definition of "rate of basic pay" in the severance pay regulations to include special pay adjustments for law enforcement officers. This conforming amendment was inadvertently omitted when final regulations on special pay adjustments for law enforcement officers were published in the **Federal Register** on January 22, 1992. (See § 550.703 and 57 FR 2431.)

Implementation of the Interim Regulations

One agency commented that it had difficulty issuing implementing instructions by the effective date of the interim regulations—May 4, 1991. However, by statute this date was the last possible effective date for section 210.

FPM Guidance

One agency commented that "information on these subjects is presented in very difficult phraseology" and recommended that "the text include practical examples which would crystalize the concepts for application to field activity problems." OPM has issued detailed FPM guidance explaining these regulations and providing specific examples. (See FPM Letter 551–24, January 14 1992.)

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 551

Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the interim rule amending 5 CFR parts 532, 550, and 551, which was published at 56 FR 20339 on May 3, 1991, is adopted as final with the following changes:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Public Law 92–502.

2. In § 532.503, paragraph (f) is added to read as follows:

§ 532.503 Overtime pay.

* * * * *

(f) For an employee covered by 5 U.S.C. 5544, hours in a standby or on-call status or while sleeping or eating shall not be credited for the purpose of determining hours of work in excess of 8 hours in a day.

PART 550—PAY ADMINISTRATION (GENERAL)

3. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548 and 6101(c); E.O. 12748, 3 CFR 1991 Comp., p. 316.

§ 550.112 [Amended]

4. In § 550.112, paragraph (i) is removed, and paragraph (j) is redesignated as paragraph (i).

5. The authority citation for subpart G of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR 1964–1965 Comp., p. 357.

6. In § 550.703, the definition of "rate of basic pay" is revised to read as follows:

§ 550.703 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including, as applicable, annual premium pay for standby duty under 5 U.S.C. 5545(c)(1), night differential for prevailing rate employees under 5 U.S.C. 5343(f), and any interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, or locality-based comparability payment under 5 U.S.C. 5304, but not including additional pay of any kind.

* * * * *

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

7. The authority citation for part 551 is revised to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Public Law 93–259, 88 Stat. 55 (29 U.S.C. 204f).

8. In § 551.401, paragraph (b) is revised to read as follows:

§ 551.401 Basic principles.

* * * * *

(b) For an employee, as defined in 5 U.S.C. 5541(2), hours in a paid nonwork status (e.g., paid leave, holidays, compensatory time off, or excused absences) are "hours of work" under this part.

* * * * *

9. In § 551.411, paragraph (c) is revised to read as follows:

§ 551.411 Workday.

* * * * *

(c) *Bona fide* meal periods shall not be considered hours of work, except for employees engaged in fire protection or law enforcement activities who receive compensation for overtime hours of work under 5 U.S.C. 5545(c) (1) or (2). However, for employees engaged in fire protection or law enforcement activities who have periods of duty of more than 24 hours, meal periods may be excluded from hours of work by agreement between the employer and the employee.

10. In § 551.432, paragraph (b) is revised to read as follows:

§ 551.432 Sleep time.

* * * * *

(b) For employees engaged in law enforcement activities, as well as employees engaged in fire protection activities who receive annual premium pay under 5 U.S.C. 5545(c)(1), the exclusion of sleep time is appropriate for tours of duty of more than 24 hours only. For employees engaged in fire protection activities who perform standby duty and do not receive annual premium pay, Federal agencies may deduct up to 8 hours out of each 24-hour shift for sleep and meal periods. However, paragraphs (a)(2) and (a)(3) of this section still apply to employees engaged in law enforcement or fire protection activities.

* * * * *

11. In § 551.501, paragraph (a) is revised to read as follows:

§ 551.501 Overtime pay.

(a) An agency shall compensate an employee who is not exempt under subpart B of this part for all hours of work in excess of 8 in a day or 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay, except that an employee shall not receive overtime compensation under this part—

(1) On the basis of periods of duty in excess of 8 hours in a day when the employee receives compensation for that duty under 5 U.S.C. 5545(c) (1) or (2);

(2) On the basis of hours of work in excess of 8 hours in a day that are not overtime hours of work under § 410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, or part 550 of this chapter;

(3) On the basis of hours of work in excess of 8 hours in a day for an employee covered by 5 U.S.C. 5544 for any hours in a standby or on-call status or while sleeping or eating;

(4) On the basis of hours of work in excess of 8 hours in a day for an individual who is not an employee, as defined in 5 U.S.C. 5541(2), for purposes of 5 U.S.C. 5542, 5543, and 5544.

(5) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities when the employee receives compensation for those hours of work under 5 U.S.C. 5545(c) (1) or (2);

(6) For hours of work that are not "overtime hours," as defined in 5 U.S.C. 6121, for employees under flexible or compressed work schedules;

(7) For hours of work compensated by compensatory time off under § 551.531 of this part; and

(8) For fractional hours of work, except as provided in § 551.521 of this part.

* * * * *

12. Section 551.513 is revised to read as follows:

§ 551.513 Entitlement to other forms of pay.

Overtime pay under this subpart shall be paid in addition to all pay, other than overtime pay, to which the employee is entitled under title 5, United States Code, or any other authority. An employee entitled to overtime pay under this subpart and overtime pay under any authority outside of title 5, United States Code, shall be paid under whichever authority provides the greater overtime pay entitlement in the workweek.

13. In § 551.541, paragraphs (a) and (b) are revised to read as follows:

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

(a) An employee engaged in fire protection activities or law enforcement activities shall be paid at a rate equal to one and one-half times the employee's hourly regular rate of pay for those hours in a tour of duty which exceed the overtime standard for a work period specified in section 7(k) of the Act or which are in excess of 40 hours in a workweek for such an employee who does not receive compensation for those hours of work under 5 U.S.C. 5545 (c)(1) or (c)(2).

(b) The "tour of duty" of an employee engaged in these activities shall include all time the employee is on duty. Meal periods and sleep periods are included in the tour of duty except as otherwise provided in §§ 511.411(c) and 551.432(b) of this part.

* * * * *

[FR Doc. 92–30415 Filed 12–14–92; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 740]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 11 through December 17, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 740 (7 CFR 907.1040) is effective for the period from December 11 through December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Robert Curry, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 85 percent of the total production in 1991–92. District 2 is located in the southern coastal area of California and represented about 13 percent of 1991–92 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 2 percent; and District 4, which represented less than 1 percent, is northern California.

The Committee adopted its marketing policy for the 1992–93 season on July 28, 1992. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 22, 1992, in Visalia, California; and Districts 2 and 3 on September 29, 1992, in Ontario, California. The Committee revised its crop estimate, utilization, and shipping schedule at its September 22 meeting and revised them again at its November 17 meeting. At its November 24 and December 1 meetings, and again at its December 8 meeting, the Committee adopted another revised shipping schedule. The marketing policy discussed, among other things, the potential use of volume regulations for the ensuing season. The marketing policy and the revised shipping schedule are available from the Committee or Mr. Nissen.

The Committee's revised estimate of 1992–93 production is 85,500 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 72,644 cars during the 1991–92 season. The Committee has estimated that about 61 percent of the 1992–93 crop of 85,500 cars will be utilized in fresh domestic channels (52,200 cars), with the remainder being exported fresh (12 percent), processed (25 percent), or designated for other uses (2 percent). This compares with the 1991–92 total of 44,875 cars shipped to fresh domestic markets, about 62 percent of that year's crop.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing this regulation are expected to be more than offset by the potential benefits of regulation.

A proposed rule, based on the Committee's 1992–93 marketing policy, was published on October 23, 1992, in the **Federal Register** (57 FR 48340) inviting comments on the quantities of fresh California-Arizona navel oranges that may be shipped weekly to domestic markets for the 10-week period from the week ending November 5 through the week ending January 7, 1993. That rule provided interested persons the opportunity to comment on a proposed weekly volume regulation shipping level of 1,800,000 cartons for the week ending December 17.

Five comments have been received, one from Sequoia Orange Company, Inc. (Sequoia), one from Foothill Farms, two from Bee Sweet Citrus, Inc. (Bee Sweet), and one from the Small Business Administration's Office of Advocacy (SBA). The comments addressed all ten weeks of the proposed rule. The Sequoia and Foothill Farms comments were addressed in the final rule published on November 17, 1992, in the **Federal Register** (57 FR 54169), the initial comment by Bee Sweet was addressed in the final rule published in the **Federal Register** on November 23, 1992 (57 FR 54898), the comment by the SBA was addressed in the final rule published in the **Federal Register** on December 1, 1992, (57 FR 56803), and the second comment by Bee Sweet was addressed in the final rule published in the **Federal Register** on December 9, 1992 (57 FR 58125). The above comments in opposition to the proposed rule, as well as the alternatives presented, were previously denied. These comments warrant no further discussion. No additional comments were received.

The Committee met publicly on December 8, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with eight members voting in favor, two opposing, and one abstaining, that 1,900,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1992–93, marketing policy, and December 8 revised shipping schedule. The recommended amount of 1,900,000 cartons is 100,000 cartons above the amount specified in the proposed rule, and is consistent with the Committee's revised shipping schedule. Of the 1,000,000 cartons, 94.7 percent or 1,799,000 cartons are allotted for District 1, and 5.3 percent or 101,000 cartons are allotted for District 3. Handlers in Districts 2 and 4 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this time.

During the week ending on December 3, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,547,000 cartons, compared with 1,595,000 cartons shipped during the week ending on December 5, 1991. Export shipments totaled 154,000 cartons, compared with 183,000 cartons shipped during the week ending on December 5, 1991. Processing and other uses accounted for 391,000 cartons, compared with 263,000 cartons shipped during the week ending on December 5, 1991.

Fresh domestic shipments to date this season total 7,932,000 cartons, compared with 4,333,000 cartons shipped by this time last season. Export shipments total 540,000 cartons, compared with 682,000 cartons shipped by this time last season. Processing and other use shipments total 2,542,000 cartons, compared with 909,000 cartons shipped by this time last season.

For the week ending December 3, regulated shipments of navel oranges to the fresh domestic market were 1,509,000 cartons on an adjusted allotment of 1,453,000 cartons, which resulted in net overshipments of about 56,000 cartons. Regulated general maturity shipments for the current week (December 4 through December 10, 1992) are estimated at 1,800,000 cartons on an adjusted allotment of 1,671,000 cartons. Thus, overshipments of about 129,000 cartons could be carried forward into the week ending on December 17, 1992.

The average f.o.b. shipping point price for the week ending on December 3, 1992, was $7.42 per carton based on a reported sales volume of 1,099,000 cartons. The season average f.o.b. shipping point price for the week ending on December 5, 1991, was $9.85 per carton; the season average f.o.b. shipping point price at this time last year was $10.70.

The Department's Market News Service reported that, as of December 8, demand for California-Arizona navel oranges sizes 48–56 is "very good", and "good" for all other sizes. It was reported that many present shipments are for prior bookings. The market was reported as "about steady." It was also reported that harvesting has been curtailed in most areas on account of rain and wet fields.

At the meeting, Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. Two members expressed concern about the quality of the oranges being shipped. A Committee staff member reported that rainfall has curtailed harvesting, however, the industry expects to harvest enough to meet current demand. Several members commented that the market has firmed, and demand has improved significantly. The majority of Committee members favored the issuance of general maturity allotment for Districts 1 and 3 at 1,900,000 cartons, while two

Committee members favored open movement at this time.

According to the National Agricultural Statistics Service, the 1991–92 season average fresh equivalent on-tree price for California-Arizona navel oranges was $5.29 per carton, 71 percent of the season average parity equivalent price of $7.43 per carton. Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1992–93 season average fresh on-tree price is estimated at $3.49 per carton, about 45 percent of the estimated fresh on-tree parity equivalent price of $7.83 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from December 11 through December 17, 1992, would be consistent with the provisions of the marketing order tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date of the final recommendation of the Committee based on the latest marketing information, and the effective date necessary to effectuate the declared policy of the Act.

This action needs to be effective for the regulatory week which begins on December 11, 1992. Interested persons were given the opportunity to comment on a proposed rule published on October 23, 1992, in the **Federal Register** (57 FR 48340). Further, interested persons were given an opportunity to submit information and views on the regulation prior to and at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1040 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1040 Navel Orange Regulation 740.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 11 through December 17, 1992, is established as follows:

District 1	District 2	District 3	District 4	Total
cartons/ %	cartons/ %	cartons/ %	cartons/ %	cartons
(000) 1,799/94.7	(000) open	(000) 101/5.3	(000) open	(000) 1,900

Dated: December 9, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–30444 Filed 12–11–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 765]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to fresh domestic markets during the period from December 13 through December 19, 1992. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 765 (7 CFR 910.1065) is effective for the period from December 13 through December 19, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3670; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the

order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The Committee adopted its marketing policy for the 1992–93 season on May 5, 1992. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. This marketing policy is available from the Committee or Mr. Johnson.

Based on its revised crop estimate of 44,170 cars, the Committee estimates that about 40 percent of the 1992–93 crop will be utilized in fresh domestic channels (17,750 cars), compared with the 1991–92 total of approximately 17,000 cars. Fresh exports are projected at 16 percent of the total 1992–93 crop utilization, the same percentage for 1991–92. Processed and other uses would account for the residual 44 percent, again the same percentage for the 1991–92 crop.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing this regulation are expected to be more than offset by the potential benefits of regulation.

A proposed rule, based on the Committee's 1992–93 marketing policy, was published October 29, 1992, in the **Federal Register** [57 FR 49023] inviting comments on the quantities of fresh California-Arizona lemons that may be shipped weekly to domestic markets for the 10-week period from the week ending November 14, 1992, through the week ending January 16, 1993. That rule provided interested persons the opportunity to comment on a proposed weekly volume regulation shipping level of 355,000 cartons for the week ending December 19, 1992.

Two comments were received, one from Associated Citrus Packers, Inc., and one from Sequoia Orange Company, Inc. The comments addressed all 10 weeks of the proposed rule. Both comments were addressed in the final rule published on November 23, 1992, in the **Federal Register** [57 FR 54900]. These comments warrant no further discussion. No additional comments were received.

The Committee met publicly on December 8, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and, by a 10 to 2 vote, with 1 abstention, recommended that 325,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. This amount is below the level indicated in the proposed rule, and reflects inclement weather conditions affecting harvesting in the growing region and weakening market conditions. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1992–93 marketing policy. The recommended amount is below the amount specified in the proposed rule.

During the week ending on December 5, 1992, shipments of lemons to fresh domestic markets, including Canada, totaled 324,000 cartons compared with 299,000 cartons shipped during the week ending on December 7, 1991. Export shipments totaled 123,000 cartons compared with 120,000 cartons shipped during the week ending on December 7, 1991. Processing and other uses accounted for 535,000 cartons compared with 336,000 cartons shipped during the week ending on December 7, 1991. Regulated shipments for the current week (December 6, 1992, through December 12, 1992) are estimated at 360,000 cartons.

Fresh domestic shipments to date for the 1992–93 season total 5,992,000 cartons compared with 5,073,000 cartons shipped by this time during the 1991–92 season. Export shipments total 2,221,000 cartons compared with 2,214,000 cartons shipped by this time during 1991–92. Processing and other use shipments total 5,572,000 cartons compared with 2,966,000 cartons shipped by this time during 1991–92. The average f.o.b. shipping point price for the week ending on December 5, 1992, was $9.43 per carton based on a reported sales volume of 324,000 cartons compared with the previous week's average of $9.21 per carton on a reported sales volume of 248,000 cartons. The 1992–93 season average f.o.b. shipping point price to date is $11.94 per carton. The average f.o.b. shipping point price for the week ending on December 7, 1991, was $12.93 per carton; the season average f.o.b. shipping point price at this time during 1991–92 was $17.03 per carton.

The Department's Market News Service reported that, as of December 7, demand for lemons size 165 is very good, and for other lemon sizes the demand is "about unchanged".

At the meeting, Committee members discussed different levels of shipments, as well as crop and field conditions. The majority of Committee members stated that due to volume regulations being implemented in previous weeks, the lemon market has stabilized. Members supporting volume regulation cited the need for continued market stability and good returns to growers. Two Committee members supported a higher level of volume regulation to increase returns and one member abstained. Thus, the Committee, by a 10 to 2 vote with 1 abstention, recommended volume regulation be established at 325,000 cartons for the week ending on December 19, 1992.

According to the National Agricultural Statistics Service, the season-to-date on-tree price for California-Arizona fresh lemons is $7.29 per carton, 72 percent of the season-to-date parity equivalent price. The season

average fresh on-tree price is projected at $9.12 per carton, 83 percent of the preliminary season average parity equivalent price of $10.96 per carton.

Limiting the quantity of lemons that may be shipped during the period from December 13 through December 19, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register.** This is because there is insufficient time between the date of the final recommendation of the Committee, based on the latest marketing information, and the effective date necessary to effectuate the declared policy of the Act.

This action needs to be effective for the regulatory week which begins on December 13, 1992. Interested persons were given the opportunity to comment on a proposed rule published on October 29, 1992, in the **Federal Register** [57 FR 49023]. Further, interested persons were given an opportunity to submit information and views on the regulation prior to and at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.1065 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1065 Lemon Regulation 765.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 13 through December 19, 1992, is established at 325,000 cartons.

Dated: December 9, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–30445 Filed 12–11–92; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Waiver of Publication Requirements in Major Disaster Areas

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Statement and order; temporary exceptions.

SUMMARY: Section 5 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA), signed by the President on October 23, 1992, authorizes the FDIC, during the 180-day period beginning on the date of enactment of the DIDRA, to make exceptions, with respect to institutions for which the FDIC is the primary federal regulator, to any publication requirement with respect to establishing branches or other deposit-taking facilities or any similar publication requirement. The exceptions are available for transactions or activities in major disaster areas declared by the President, or as to regulated institutions headquartered in such areas, when the exceptions would facilitate recovery from the disaster.

DATES: This order is effective on December 15, 1992, and expires April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Division of Supervision, (202) 898–6918, Curtis L. Vaughn, Examination Specialist, (202) 898–6759, or Joseph A. DiNuzzo, Senior Attorney, (202) 898–7349, Legal Division.

SUPPLEMENTARY INFORMATION:

Statement

Section 5 of DIDRA (Pub. L. 102–485, 106 Stat. 2773) authorizes the FDIC, during the period ending 180 days after October 23, 1992, to make exceptions to any publication requirement with respect to establishing branch or other deposit-taking facilities or any similar publication requirement to facilitate recovery in designated major disaster areas.

The FDIC has determined that recovery from Hurricanes Andrew and Iniki and from the Los Angeles civil unrest in May 1992 would be facilitated by exempting from publication requirements certain transactions involving establishing a branch or relocating a branch or main office in the areas directly affected by those disasters. Destruction of banking facilities in the affected areas interferes with the ability to deliver financial services. The order issued with this statement removes one regulatory impediment to the ability of depository institutions to deliver full financial services in such areas.

The FDIC has also determined that the benefit from the waiver of publication outweighs the disadvantages of not receiving public comment before the transaction is consummated. The waiver is not designed to allow an institution to leave an affected area, but is intended to facilitate the return of full financial services to such areas.

Order

In accordance with section 5 of DIDRA, it is hereby ordered that the publication requirements in § 303.6(f)(1)(ii) (A) and (B) of the FDIC's regulations (12 CFR 303.6(f)(1)(ii) (A) and (B)) be suspended for a period of 180 days beginning October 23, 1992 and ending April 21, 1993 with respect to applications filed by FDIC-insured state nonmember banks whose principal place of business is within, or with respect to transactions or activities within, an area designated eligible for federal assistance by the Federal Emergency Management Agency as a result of Hurricanes Andrew [1] or Iniki [2] or of the Los Angeles civil unrest in May 1992 [3];

Provided

The facilities involved were directly affected by the disaster; or

The facilities involved were not directly affected by the disaster but the

[1] Florida counties: Broward, Collier, Dade, Monroe.

Louisiana parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, West Feliciana.

[2] Hawaii counties: Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, Oahu.

[3] California county: Los Angeles.

institution's records explain how the transaction would facilitate recovery from the disaster.

By Order of the Board of Directors.

Dated at Washington, DC, this 8th day of December, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-30421 Filed 12-14-92; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-223-AD; Amendment 39-8435; AD 92-27-02]

Airworthiness Directives; Boeing Model 747-400 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-400 and 767 series airplanes equipped with Rolls Royce engines. This action requires repetitive visual inspections of the power feeder connector at each engine firewall to detect signs of arcing, deterioration, unusual hardness or softness, and cracking of the elastomer insert; and the replacement of any damaged connectors found. This amendment is prompted by reports of damage to strut firewall power feeder connectors on these airplanes. The actions specified in this AD are intended to prevent undetected fires in the engine strut caused by ignition of fuel or fuel vapors near an overheated connector.

DATES: Effective December 30, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 30, 1992.

Comments for inclusion in the Rules Docket must be received on or before February 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-223-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Oshiro, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2793; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of damage to strut firewall power feeder connectors on Model 747-400 and 767 series airplanes equipped with Rolls Royce engines. Electrical power from the engine-driven generators was lost due to failures of the power feeder connectors at the engine firewalls. These connectors overheated and failed due to inadequate capacity of the connectors to carry current. The connectors are located in the flammable leakage zone of the engine strut. This condition, if not corrected, could result in undetected fires in the engine strut caused by ignition of fuel or fuel vapors near an overheated connector.

The FAA has reviewed and approved Boeing Alert Service Bulletins 747-24A2190 and 767-24A0088, both dated November 16, 1992, that describe procedures for repetitive visual inspections of the power feeder connector at each engine firewall to detect signs of arcing, deterioration, unusual hardness or softness, and cracking of the elastomer insert. It also describes procedures for the replacement of any damaged connectors found.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 747-400 and 767 series airplanes of the same type design, this AD is being issued to prevent undetected fires in the engine strut caused by ignition of fuel or fuel vapors near an overheated connector. This AD requires repetitive visual inspections of the power feeder connector at each engine firewall to detect signs of arcing, deterioration, unusual hardness or softness, and cracking of the elastomer insert; and the replacement of any damaged connectors found. The actions are required to be accomplished in accordance with the service bulletins described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-223-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-27-02. Boeing: Amendment 39-8435. Docket 92-NM-223-AD.

Applicability: Model 747-400 series airplanes having line positions up to and including 958, inclusive, equipped with Rolls Royce engines and electrical power feeder connectors at engine firewalls; and Model 767 series airplanes having variable numbers 111 through 124, inclusive, and variable numbers 120 through 132, inclusive, equipped with Rolls Royce engine and electrical power feeder connectors at engine firewalls; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected fires in the engine strut, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection of the power feeder connector at each engine firewall to detect signs of arcing, deterioration, unusual hardness or softness, and cracking of the elastomer insert, in accordance with Boeing Alert Service Bulletin 747-24A2190, dated November 16, 1992 (for Model 747-400 series airplanes); or Boeing Alert Service Bulletin 767-24A0088, dated November 16, 1992 (for Model 767 series airplanes); as applicable.

(1) If any damaged connector is found, prior to further flight, replace it in accordance with the applicable service bulletin. Prior to the accumulation of 1,200 flight hours on the new connector, perform the inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed 800 flight hours until the connector is replaced again.

(2) If no damage is found and no connector is replaced, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 800 flight hours.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and replacement shall be done in accordance with Boeing Alert Service Bulletin 747-24A2190, dated November 16, 1992; or Boeing Alert Service Bulletin 767-24A0088, dated November 16, 1992; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 30, 1992.

Issued in Renton, Washington, on December 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30350 Filed 12-14-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-AWP-14]

Establishment of Two Transition Areas in the Vicinity of the Goffs Very High Frequency Omnidirectional Range/ Tactical Air Navigation (VORTAC), CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes two 7,000 foot MSL and above transition areas near the Goffs VORTAC, CA. These transition areas will provide controlled airspace for aircraft proceeding via a Standard Terminal Arrival Route (STAR) into the Las Vegas McCarran International Airport, NV.

EFFECTIVE DATE: 0901 UTC, February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0010.

SUPPLEMENTARY INFORMATION:

History

On August 20, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish two 7,000 foot MSL and above transition areas near the Goffs VORTAC, CA (57 FR 40148). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Transition areas are published in § 71.181 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition areas listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Goffs North and Goffs South transition areas. The base of controlled airspace in these areas is lowered from the base of the Continental Control Area to 7,000 feet MSL. The first of the two transition areas (Goffs North) is bounded by the southeast edge of Victor Airway 8 (V-8) on the northwest, the western edge of V-237 on the east, and the northern edge of V-210 on the south. The second transition area (Goffs South) is bounded by the southern edge of V-210 on the north, the western edge

of V–237 on the east and the northeast edge of V–135 on the southwest. The Minimum Vectoring Altitude (MVA) is 7,000 feet MSL in that area. These transition areas will provide controlled airspace for aircraft proceeding via a Standard Terminal Arrival Route (STAR) into the Las Vegas McCarran Airport from the vicinity of the Thermal VORTAC, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporated by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

AWP CA TA Goffs North [New]

That airspace extending upward from 7,000 feet MSL and above bounded by the southeast edge of Victor Airway 8 (V–8) on the northwest, the western edge of V–237 on the east, and the northern edge of V–210 on the south.

AWP CA TA Goffs South [New]

That airspace extending upward from 7,000 feet MSL and above bounded by the south edge of V–210 on the north, the western edge of V–237 on the east, and the northeastern edge of V–135 on the southwest.

* * * * *

Issued in Los Angeles, California, on November 19, 1992.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 92–30409 Filed 12–14–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ACE–02]

Designation of Control Zone; Hays, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates a control zone at Hays, Kansas, to provide additional controlled airspace for aircraft using the Hays, Kansas, Municipal Airport.

EFFECTIVE DATE: 0901 UTC, February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On May 29, 1992, the FAA published a notice of proposed rulemaking that proposed to amend part 71 of the Federal Aviation Regulations to designate a control zone at Hays, Kansas (57 FR 22672). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking. Except for editorial changes, this amendment is the same as that proposed in the notice.

The coordinates in the proposal were published in North American Datum 27. However, these coordinates have been updated to North American Datum 83 for this final rule. Control zones are published in § 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a control zone at Hays, Kansas. To enhance airport usage, an Automated Weather Observation System (AWOS) has been installed that will provide weather data on a 24 hour basis. Accordingly, the control zone for the Hays Municipal Airport, Hays, Kansas, which was canceled effective June 28, 1990, is being reactivated. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from other aircraft operating in visual meteorological conditions. The notice of proposed rulemaking was published using statute miles in the legal description. The legal description for this final rule is being published in nautical miles in accordance with the Airspace Reclassification program.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A,

Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ACE KS CZ Hays, Kansas

Hays Municipal Airport, Kansas (New) (lat. 38°50'44" N, long. 99°16'27" W)
Hays VORTAC (lat. 38°50'52" N, long. 99°16'36" W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.1-nautical mile radius of Hays Municipal Airport and within 1.8 nautical miles each side of the Hays VORTAC 005° radial extending from the 4.1-nautical mile radius to 6.0 nautical miles north of the VORTAC and within 1.8 nautical miles each side of the Hays VORTAC 169° radial extending from the 4.1-nautical mile radius to 6.0 nautical miles south of the VORTAC.

* * * * *

Issued in Kansas City, Missouri, on December 1, 1992.

R. Harry Hale, Jr.,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 92-30411 Filed 12-14-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 920786-2289]

RIN 0691-AA19

International Services Surveys: BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends 15 CFR 801.9 by revising the reporting requirements for the BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons.

The BE-22 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is the annual follow-on survey to the quinquennial BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons, which was last conducted for 1991. Together, the two surveys produce a continuous annual time series of data on major types of services that are out of scope of other international services surveys. Reporting on the revised BE-22 will begin with the survey covering 1992; forms are scheduled to be mailed out in December 1992, and completed forms will be due to BEA on March 31, 1993.

The data from the BE-22 survey, together with the data from the BE-20 benchmark survey, are used to formulate U.S. international trade policy on services, support bilateral and multilateral trade negotiations, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

EFFECTIVE DATE: These rules will be effective January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION: In the August 26, 1992 **Federal Register**, volume 57, no. 166 (57 FR 38635), BEA published a notice of proposed rulemaking setting forth reporting requirements for the BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons. No comments on the proposed rule were received. As a result, the final rule is the same as the proposed rule.

Three major changes to the BE-22 survey since it was last conducted for 1990 are set forth in this final rule:

(1) The exemption criteria for the survey are changed from a per-transaction to a total transactions basis, as was done for the 1991 BE-20 benchmark survey. Specifically, a U.S. person is required to report sales of a given service if total sales of that service exceed $1 million, and is required to report purchases of the service if total purchases of that service exceed $1 million. (The reporting threshold for the 1991 BE-20 survey was $500,000 of total sales or purchases of the given service.)

(2) Coverage of several small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services—is eliminated. During the review and OMB clearance of the 1991 BE-20 benchmark survey, BEA agreed to drop these types of services from the BE-22 as long as results of the 1991 and subsequent BE-20 surveys show that transactions in them continued to be small. (Accounting services were also considered for elimination, but, because they were relatively large in both 1990 and 1991, and because data users favored their continued inclusion, the proposed and final rules reflect continued coverage.)

(3) Four services not previously included on the survey are now included. Three of these services—losses recovered on purchases of primary insurance; receipts and payments for the purchase, sale, or use of rights to natural resources; and certain "miscellaneous" disbursements, consisting of outlays to fund news-gathering costs of broadcasters and the print media, production costs of motion picture companies and companies engaged in the production of broadcast material other than news, and costs of maintaining tourist, business promotion, sales or representative offices, and for participation in foreign trade shows—were covered for the first time in the 1991 BE-20. In addition, purchases of certain financial services from foreigners will be covered in the BE-22 survey for the first time. These financial services mainly consist of those for which an explicit fee is paid and that are purchased directly by U.S. firms that are not financial services intermediaries or providers.

BEA also has made a minor change in the reporting of lease bonus payments. These transactions must be reported with purchases and sales of rights to natural resources, to conform to the treatment in the U.S. national income and product accounts. Previously, these payments were reported with receipts and payments for the use of rights to natural resources.

The public reporting burden for this collection of information is estimated to vary from 4 to 500 hours per response, with an average of 11.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608-0060, Washington, DC 20503.

Executive Order 12291

BEA has determined that this final rule is not "major" as defined in

Executive Order 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

The collection of information requirement in this final rule has been approved by OMB (OMB No. 0608–0060).

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases of a given type of service with unaffiliated foreign persons exceed $1,000,000 during the year. In addition, international business, whether in goods or services, tends to be conducted mainly by the larger companies in a given industry. Finally, small businesses tend to have specialized operations and activities, so those that do have reportable transactions will likely have to report only one type of service; therefore, the burden on them should be relatively small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Reporting and recordkeeping requirements.

Dated: October 30, 1992.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801 as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 801.9(b)(6) is revised to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(6) BE–22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons:

(i) *Who must report*—(A) *Mandatory reporting.* A BE–22 report is *required* from each U.S. person who had transactions (either sales or purchases) in excess of $1,000,000 with unaffiliated foreign persons in any of the covered services during the U.S. person's fiscal year. The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty without conducting a detailed manual records search.

(B) *Voluntary reporting.* If, during the U.S. person's fiscal year, the U.S. person's total transactions (either sales or purchases) in any of the covered services is $1,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(C) Any U.S. person receiving a BE–22 survey form from BEA must complete all relevant parts of the form and return the form to BEA. A person that is not subject to the mandatory reporting requirement in paragraph (b)(6)(i)(A) of this section and is not filing information on a voluntary basis must only complete the "Determination of reporting status" and the "Certification" sections of the survey. This requirement is necessary to ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary followup contact.

(ii) *Covered services.* With the exceptions given below, the services covered by this survey are the same as those covered by the BE–20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991, as listed in § 801.10(c) of this part. The exceptions are the elimination of coverage of four small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services—and the addition of coverage of purchases of certain financial services. The financial services covered are those directly purchased from or sold to foreigners by U.S. companies (or by domestic subsidiaries of consolidated U.S. companies) that are not financial services intermediaries or providers. Finally, lease bonus payments are to be reported with purchases or sales of rights to natural resources, rather than with receipts or payments for the use of rights to natural resources.

* * * * *

[FR Doc. 92–30233 Filed 12–14–92; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 35, 50, 131, 141, 292, 300 and 385

[Docket No. RM92–6–001]

Eliminating Unnecessary Regulation; Order No. 541–A

December 9, 1992.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing.

SUMMARY: This order denies a request for rehearing of that portion of a final rule deleting the provision of the Commission's regulations which provided that a Federal Power Marketing Administration must include a chronological discussion of the procedural history of the rate filing, including meetings held with the general public, in the record that it files with the Commission. This order states that, under the current delegation of authority from the Department of Energy, the Commission has no authority to review the procedures by which the Western Area Power Administration develops the record that it submits to the Commission.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph C. Lynch, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2128.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of

this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE, Washington, DC 20426. The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of Order No. 541–A will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Order Denying Rehearing

Deletions of Certain Outdated or Nonessential Regulations Pertaining to the Commission's Jurisdiction Under Parts II and III of the Federal Power Act, the Public Utility Regulatory Policies Act of 1978, the Pacific Northwest Electric Power Planning and Conservation Act and Delegations from the Secretary of Energy.

Background

On June 1, 1992, the Colorado River Energy Distributors Association (CREDA),[1] filed a request for rehearing of Order No. 541.[2]

In Order No. 541, the Commission, *inter alia*, deleted 18 CFR 300.10(f)(2)(i), which provided that a Federal Power Marketing Administration (PMA)[3] must include a chronological discussion of the procedural history of the rate filing, including meetings held with the general public, in the record that it files with the Commission.

CREDA argues that, by no longer requiring that PMAs include a chronological discussion of the procedural history of the filing under review, the Commission has contravened the standards governing Commission review of PMA ratemaking. According to CREDA, until Order No. 541, the Commission has always viewed itself as an appellate court to PMA ratemaking, deciding whether proposed PMA rates have a rational basis and are consistent with statutory requirements. CREDA argues that elimination of the regulation requiring a PMA to submit the procedural history of rate development effectively precludes the Commission from acting in its appellate capacity to determine whether the PMA has met the requirements of due process. CREDA sees the elimination of the previously-required procedural history as a radical departure from past Commission practice.

CREDA also challenges the Commission's citation in Order No. 541 of *Aluminum Company of America* v. *Bonneville Power Administration*, 903 F.2d 585 (9th Cir. 1989), *cert. denied*. _____U.S. _____, 111 S.Ct. 672 (1991) (*Alcoa*). CREDA argues that *Alcoa* involved only Bonneville and that the Commission reviews Western's rates under different authority.

CREDA also argues that, by deleting section 300.10(f)(2)(i) in an immediately-effective final rule, the Commission denied CREDA notice and an opportunity to comment, in violation of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553 (1988). CREDA contends that the Commission's deletion of section 300.10(f)(2)(i) in a final rule, with no opportunity for comment, was arbitrary and capricious.

CREDA insists that the Commission must reverse its deletion of the requirement for filing a procedural history. Alternatively, CREDA also requests that the Commission stay the effective date of Order No. 541 and subject the deletion of the regulation in question to notice and comment.[4]

Discussion

CREDA argues that the Commission's elimination of the routine filing of the procedural history of a PMA's rate development represents an unlawful limitation on the scope of Commission review of a PMA's, and, in particular, Western's, rates. CREDA is mistaken.

The Department of Energy Organization Act provides the Secretary of Energy with the authority to approve Western's rates on both an interim and on a final basis.[5] The Secretary has delegated to the Assistant Secretary, Conservation and Renewable Energy, Department of Energy (DOE), the authority to confirm and approve Western's rates on an interim basis, and has delegated to the Commission the authority to confirm and approve Western's rates on a final basis.[6]

That delegation of authority strictly limits the Commission's scope of review. The Commission's review is "limited to":

(a) Whether the rates are the lowest possible to customers consistent with sound business principles;

(b) Whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and

(c) The assumptions and projections used in developing the rate components that are subject to Commission review.[7]

The Commission's policy in reviewing Western's rates under the delegation of authority, as CREDA notes, has been to perform the function of an

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[1] CREDA's members consist of 133 electric systems serving customers in the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming, and purchase approximately 85 percent of the power and energy of the Salt Lake City Integrated Projects, which is marketed by the Western Area Power Administration (Western). Many of the members also purchase power and energy from other projects such as Parker-Davis, Boulder Canyon, and Pick-Sloan, whose power and energy is marketed by Western.

[2] Deletions of Certain Outdated or Nonessential Regulations, *et al.*, 57 FR 21730 (May 22, 1992), III FERC Stats. & Regs. ¶ 30,943 (1992).

[3] The PMAs include the Alaska, Southeastern and Southwestern Power Marketing Administrations, as well as Western.

The Bonneville Power Administration (Bonneville) is also a PMA, but its rate filings are also governed by additional Commission regulations. Compare 18 CFR 300.1(a) (making requirements applicable to all PMA's including Bonneville) with 18 CFR 300.10(a)(3)(ii), .10(b)(1), .10(c)(5), .14, .20, .21 (specifying additional requirements applicable only to Bonneville's rate filings).

[4] The request for a stay is premised on the need for notice and comment. As described below, however, there was and is no such need. Accordingly, the request for a stay will be denied.

[5] See 42 U.S.C. 7152 (1988).

[6] See DOE Delegation Order No. 0204–108, 48 FR 55664 (1983), amended, 51 FR 19744 (1986), further amended, 56 FR 41835 (1991). This delegation of authority also grants the Commission authority to review the rates of the Alaska, Southeastern and Southwestern Power Marketing Administrations. The Commission is here focusing on Western's ratemaking because that is the gravamen of CREDA's concern. However, what is stated as to the Commission's review of Western's ratemaking is also true of the Commission's review of Western's ratemaking is also true of the Commission's review of the other PMAs' ratemaking.

[7] 56 FR at 41836. The delegation of authority further provides that, with certain exceptions not here applicable, the Commission:

shall reject [Western's] decisions * * * *only* if the Commission finds them to be arbitrary, capricious, or in violation of the law.

Id. (emphasis added). While CREDA implies that this language provides a separate and independent basis for review of Western's rates, CREDA Request for Rehearing at 9–10, that is not the case. While the Commission is authorized to reject rates that are "arbitrary, capricious, or in violation of the law," the scope of the Commission's review is expressly constrained to the three matters identified in the text above. If the proposed rates are not, for example, the lowest possible to customers consistent with sound business principles, the rates can be rejected.

appellate tribunal.[8] But the delegation of authority limits the Commission's review of Western's rates. The delegation of authority does not provide for Commission review of Western's procedures. Accordingly, given that the Commission cannot exceed the scope of the authority delegated to it, the Commission cannot review the procedures by which Western develops its record.[9]

CREDA cites to *United States* v. *City of Fulton*, 475 U.S. 657, 663 (1986), which, in turn, cites to earlier Commission language stating that the Commission's review function in confirmation and approval cases is to determine from the record before it "that due process requirements have been met and that the Administrator's program of rate schedules and the decision of the [Assistant Secretary] are rational and consistent with the statutory standards."[10]

The Commission notes that when the Commission issued its earlier order containing the language just quoted, its review authority was prescribed by a different delegation order than the current delegation order. The earlier delegation order contained none of the limiting language that the current delegation order contains.[11] As noted above, the current delegation order limits the Commission's review of Western's rates to the criteria listed above. Accordingly, even if the Commission had in the past, under a previous delegation of authority, viewed its role as overseeing Western's hearing requirements, it can no longer do so. The deletion of the regulation in question is thus merely a recognition of the Commission's current, limited review authority.

CREDA also notes that section 553 of the APA, section 501 of the DOE Organization Act, and DOE's regulations require Western to provide notice and opportunity to comment on a proposed rate to ensure public participation in the rate's development. This is true, but irrelevant to our inquiry here. The Commission is not the proper forum in which to enforce either APA or DOE procedural requirements for Western's ratemaking, because, as explained above, the delegation of authority precludes the Commission from considering whether Western has complied with such procedural requirements. The Commission can only determine whether the rates that Western proposes, and the Assistant Secretary confirms on an interim basis, satisfy the criteria for final Commission approval expressly provided in the delegation of authority.[12]

The Commission can probe the assumptions and projections that Western uses in developing the rate components that are subject to Commission review. But the delegation of authority does not authorize the Commission to examine the procedures by which Western developed the record upon which it bases those assumptions and projections.

CREDA also faults the Commission for citing *Alcoa* in support of the removal of the regulation in question. CREDA points out that *Alcoa* involved Bonneville and not Western, and that the Commission reviews the proposed rates of the two PMAs under different authorities.[13] Upon further consideration, we agree with CREDA that *Alcoa* does not apply. But, as we explain above, the Commission's current delegation authority is sufficiently limited that the Commission cannot review Western's procedures.

CREDA next argues that the Commission should have provided notice and an opportunity for comment before deleting the requirement that a PMA must include a procedural history with the record that it files with the Commission. We disagree. CREDA bases its argument on its assertion that "Order No. 541 sharply deviates from existing policy and substantially impacts interested parties."[14] But CREDA is mistaken in its assertion that in Order No. 541 the Commission changed its policy. Far from deviating from existing policy, the deletion of the regulation in question was merely a comparatively minor procedural change implementing existing policy. The Commission has repeatedly observed that it does not review the procedures that a PMA such as Western uses to develop the record that it files with the Commission.[15] The removal of the regulation in question was thus neither "a radical change in [the Commission's] review policy of PMA rates[,]"[16] nor "a significant change in longstanding Commission policy[,]"[17] as CREDA charges. And the Commission has not "suddenly lost the authority to review the procedural history of PMA rate development,"[18] as CREDA surmises. Rather, as discussed above, the Commission does not have the authority to review the procedural history of PMA ratemaking, and does not do so.

Moreover, notice and an opportunity for comments are not required under the APA when an agency for good cause finds that notice and an opportunity for comments are impracticable, unnecessary, or contrary to the public

[8] CREDA Request for Rehearing at 9. See, e.g., United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects), 60 FERC ¶ 61,002 at 61,010 (1992) ("The Commission's policy in reviewing PMA rates under the * * * [delegation of authority] has been to perform the function of an appellate tribunal.").

[9] CREDA suggests that the delegation order provides for Commission review of Western's procedures: "[T]here are numerous procedural due process requirements in PMA rate development which, according to the Delegation Order * * *, the Commission must ensure that the PMA has followed prior to approving its rate." CREDA Request for Rehearing at 11. Although CREDA cites to no particular language that expressly provides for such review—because there is none—CREDA's subsequent discussion (referencing section 553 of the APA, *infra*, section 501(b) of the DOE Organization Act, 42 U.S.C. 7191(b) (1988), and DOE's regulations, 10 CFR 903 indicates that CREDA is relying on language in the delegation order that states:

> The Commission may reject decisions that are not in accord with (a) the standards set forth in DOE Order No. RA6120.2, or any revisions or modifications to such standards, adopted pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and the Department of Energy Organization Act (42 U.S.C. 7191), and (b) the standards set forth in any interagency agreement between the Administrator and the power generating agency that is applicable.

57 FR at 41836. However, this language on its face does not provide for Commission review of Western's procedures in developing proposed rates. Rather, the language refers to the standards in DOE Order No. RA6120.2 and to revisions or modifications to such standards adopted pursuant to the APA and the DOE Organization Act. We add that the standards in DOE Order No. RA6120.2, referred to in the delegation order, are accounting, financial reporting, and ratemaking standards applicable to the PMAs.

[10] CREDA Request for Rehearing at 10–11 (citing City of Fulton, *supra*, in turn citing U.S. Secretary of Energy, Bonneville Power Administration, 13 FERC ¶ 61,157 at 61,339 (1981)

[11] Compare DOE Delegation Order No. 0204–33, 43 FR 60636 (1978) (published at 1 FERC Stats. & Regs. ¶ 9907) and 13 FERC at 61,337 with *supra* notes 6–7 and accompanying text. Indeed, the current delegation order was not issued until 1983, while the Commission order referred to by the Supreme Court and thus ultimately relied on by CREDA was issued in 1980.

[12] See *supra* note 7 and accompanying text. CREDA states that deletion of the regulation in question "irrevocably deprives CREDA of its right to review of * * * [procedural] issues under the * * * [delegation of authority]." CREDA Request for Rehearing at 19. The delegation of authority gives the Commission no right to review Western's procedures. However, if Western does not conform to the APA or to DOE's procedural requirements, CREDA would be free to seek review of Western's actions in an appropriate judicial forum.

[13] The Commission reviews Bonneville's proposed rates under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839, *et seq.* (1988). The Commission reviews Western's proposed rates under DOE Delegation Order No. 0204–108, *supra* note 6.

[14] CREDA Request for Rehearing and at 19; see also id. at 13 ("[Order No. 541] deviates sharply from the Commission's longstanding conception of its review obligations under the * * * [delegation of authority]").

[15] See, e.g., 60 FERC at 61,009–10 & n.16.

[16] CREDA Request for Rehearing at 16.

[17] *Id.* at 16.

[18] *Id.* at 16.

interest.[19] The rule in question, providing for the filing of a procedural history, goes to matters beyond the scope of the Commission's review authority under the current delegation order, and, therefore, there was no necessity for notice and an opportunity for comments under the APA.[20]

The Commission orders:

(A) CREDA's request for rehearing is hereby denied.

(B) CREDA's request that the Commission stay the effectiveness of Order No. 541 and provide for notice and an opportunity for comments is hereby denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30332 Filed 12-14-92; 8:45 am]

BILLING CODE 6717-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning January 1, 1993. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after January 1, 1993, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since December 1, 1992. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after January 1, 1993, which set reflects a decrease of ¼ percent in the immediate interest rate from 6 percent to 5¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after January 1, 1993, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619 [AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 101 of Appendix B is revised and Rate Set 102 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

APPENDIX B—INTEREST RATES AND QUANTITIES USED TO VALUE IMMEDIATE AND DEFERRED ANNUITIES

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

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[19] 5 U.S.C. 553(b)(3)(B) (1988).

[20] To the extent that there may be a particular reason in a particular case to know, for example, whether a particular issue had been raised before WAPA, see CREDA Request for Rehearing at 14–15, the Commission still retains the ability to obtain that information. 18 CFR 300.10(h). However, that is a far cry from the routine filing of an extensive procedural history in every case—which is what CREDA seeks, when CREDA argues that the Commission should not delete 18 CFR 300.10(f)(2)(i).

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
101	12-1-92	1-1-93	6.00	1.0525	1.0400	1.0400	7	8
102	1-1-93		5.75	1.0500	1.0400	1.0400	7	8

Issued in Washington, DC, on this 8th day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-30275 Filed 12-14-92; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) by adding a new Table I–93 to appendix D. Table I–93 applies to any plan being terminated either in a distress termination or involuntarily by the PBGC, with a valuation date falling in 1993, and is used to determine expected retirement ages for plan participants. This Table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation ("PBGC") on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), plans wishing to terminate in a distress termination generally must value guaranteed benefits and benefit liabilities under the plan using formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Under § 2619.46, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in appendix D. The first set, Selection of Retirement Rate Category (I–79 through I–92), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I–79 through I–92 in appendix D establish retirement rate categories for the calendar years 1979 through 1992. The table for each year applies only to plans with valuation dates in that year. This document amends appendix D to add Table I–93 in order to provide an updated correlation, appropriate for calendar year 1993, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–93 will be used to value benefits in plans with valuation dates that occur during calendar year 1993.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest.

Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1993, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1993. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, appendix D to part 2619 of subchapter C of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. Appendix D to part 2619 is amended by adding Table I–93 as follows:

Appendix D—Tables Used to Determine Expected Retirement Age

* * * * *

TABLE I–93.—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 1992, and before January 1, 1994]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at NRA is less than—	Medium[2] if monthly benefit at NRA is—		High[3] if monthly benefit at NRA is greater than—
		From	To—	
1994	368	368	1,549	1,549
1995	380	380	1,599	1,599
1996	392	392	1,650	1,650
1997	405	405	1,703	1,703
1998	417	417	1,755	1,755
1999	430	430	1,810	1,810
2000	444	444	1,866	1,866
2001	457	457	1,924	1,924
2002	472	472	1,983	1,983
2003 or later	486	486	2,045	2,045

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

Issued at Washington, DC this 8th day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–30276 Filed 12–14–92; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2621

Limitation on Guaranteed Benefits in Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends appendix A of the Limitation on Guaranteed Benefits regulation of the Pension Benefit Guaranty Corporation ("PBGC") by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 1993. The maximum guaranteeable benefit is computed in accordance with the formula in section 4022(b)(3) of the Employee Retirement Income Security Act of 1974, which provides that the maximum guaranteeable benefit is based on the contribution and benefit base determined under section 230 of the Social Security Act. The latter number is adjusted annually, and that adjustment automatically changes the dollar amount of the maximum guaranteeable benefit paid by PBGC. The effect of this amendment is to advise plan participants and beneficiaries of the increased maximum guaranteeable benefit for 1993.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974, *as amended*, ("ERISA") provides for certain limitations on benefits guaranteed by the Pension Benefit Guaranty Corporation ("PBGC") in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations set forth in section 4022(b)(3) is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant by the PBGC. Subparagraph (B) of section 4022(b)(3) provides that the amount of monthly benefit payable in the form of a life annuity beginning at age 65 shall not exceed "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 ($13,200)". This formula is also set forth in § 2621.3(a)(2) of the PBGC's regulation entitled Limitation on Guaranteed Benefits in Single-Employer Plans (29 CFR part 2621).

The Social Security Amendments of 1977 added special increases to the contribution and benefit base. However, the amended Social Security Act specifically states that, for the purpose of section 4022(b)(3)(B) of ERISA, the contribution and benefit base for each year after 1976 will be the base that would have been determined for each year if the law in effect immediately before the amendment had remained in effect without change (the "old-law contribution and benefit base"). 42 U.S.C. 430(d) (1982). Section 10208 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239, enacted December 19, 1989) ("OBRA '89") amended section 230 of the Social Security Act to provide for the inclusion of certain deferred compensation in the determination of the contribution and benefit base for 1990 and future years. Each year the Social Security Administration determines, and notifies the PBGC of, the old-law contribution and benefit base to be used by the PBGC under these provisions.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act as amended by OBRA '89, $42,900 is the old-law contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 1993. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 2621.3(a)(2) is: $750 multiplied by $42,900/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 1993 is $2,437.50 per month in the form of a life annuity beginning at age 65. If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount will be the actuarial equivalent of $2,437.50 per month.

Appendix A to part 2621 lists the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in each year from 1974 through 1992. This amendment updates appendix A for plans that terminate in 1993.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and this amendment makes no change in its method of calculation but simply lists the 1993 maximum guaranteeable benefit amount for the public's knowledge, general notice of proposed rulemaking is not required. Moreover, because the 1993 maximum guaranteeable benefit is effective, under the statute, at the time that the Social Security contribution and benefit base is effective, *i.e.*, January 1, 1993, and is not dependent on the issuance of this regulation, the PBGC finds that good cause exists for making this amendment effective less than 30 days after publication (5 U.S.C. 553).

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2621

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2621 of subchapter C, chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2621—LIMITATION ON GUARANTEED BENEFITS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 2621 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b.

2. Appendix A to part 2621 is amended by adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2621—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 2621.3(a)(2) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
• • • • •	
1993	2,437.50

Issued at Washington, DC this 8th day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-30277 Filed 12-14-92; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of January 1993.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8820 (202-778-1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates the new entries to read as follows:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•	•			•		•			•			•		•		
January 1993	.06375	.0625	.06125	.06	.05875	.0575	.0575	.0575	.0575	.0575	.05625	.05625	.05625	.05625	.05625	.055

Issued at Washington, DC, on this 8th day of December 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-30274 Filed 12-14-92; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF93

Aggravation of Preservice Disability

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning aggravation of preservice disability and the presumption of soundness upon service entry. The intended effect of this amendment is to bring VA regulations into conformance with the statutory provisions pertaining to presumption of soundness.

EFFECTIVE DATE: This amendment is effective May 1, 1974, the date provided by Public Law 93-295.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In a memorandum dated May 18, 1992, VA's Office of General Counsel pointed out that parts of 38 CFR 3.306 are outdated since they fail to reflect the changes in law which made the wartime aggravation criteria applicable to peacetime service after December 31, 1946. In 1966, Congress added section 1137 to title 38, United States Code, to apply the wartime presumption of sound condition upon entry onto active duty to all veterans having service after January 31, 1955 (See section 7 of Pub. L. 89-358, 80 Stat. 12, 27). In 1974, section 205 of the Veterans Disability Compensation and Survivor Benefits Act of 1974 (Pub. L. 93-295, 88 Stat. 180, 183), amended 38 U.S.C. 1137 to strike out the date January 31, 1955, and substitute December 31, 1946. As a result of this amendment, the provisions of 38 U.S.C. 1132, which provide a less generous presumption of soundness for veterans with peacetime service, do not apply to veterans with service after December 31, 1946. Rather, the same presumption of soundness for wartime veterans applies to these veterans. No conforming amendments were made to 38 CFR 3.306, however, and we are now correcting that oversight.

VA is issuing a final rule to amend the provisions of 38 CFR 3.306. This amendment is necessary to make the regulatory provisions concerning peacetime service after December 31, 1946, and the presumption of soundness conform with the statute. Because this amendment implements statutory changes, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602. In any case this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. sections 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved October 6, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 38 U.S.C. 501(a).

§ 3.306 [Amended]

2. In § 3.306, remove the heading for paragraph (b) and insert, in its place, the heading "*Wartime service; peacetime service after December 31, 1946*"; remove the heading for paragraph (c), and insert, in its place the heading "*Peacetime service prior to December 7, 1941*".

[FR Doc. 92-30075 Filed 12-14-92; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AD97

Dependency and Income

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations regarding dependency, income and estate. The amendments are required to implement both legislation removing certain income sources from consideration in entitlement determinations and opinions of the VA General Counsel dealing with income computations. The intended results are to ensure that the income sources identified by legislation are excluded from income computations and that VA regulations provide adequate guidelines for determining countable income.

EFFECTIVE DATE: These changes are effective January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 5, 1991, at pages 25645 through 25649, VA published proposed rules specifying sources of income to be excluded from income or net worth computations under VA pension and parents' dependency and indemnity compensation (DIC) programs, and clarifying the guidelines established for certain income computations. The rules were proposed to implement legislation excluding specific income sources from entitlement determinations and opinions of the VA General Counsel dealing with income computations. Interested parties were invited to submit written comments on or before July 5, 1991. One comment was received, from the Paralyzed Veterans of America.

The commenter expressed concern that the amendments to 38 CFR 3.271(a)

and 3.273(d) indicate a change in VA's method of computing income, in that unanticipated "irregular" income would be counted from the beginning of the 12-month annualization period in which it is received rather than from actual date of receipt. He pointed out that this would unreasonably require claimants to project receipt of unanticipated income in order to avoid overpayments. VA does not concur with the commenter's interpretation or conclusions.

A basic concept of improved pension is annualization. VA computes a beneficiary's entitlement on the basis of estimated countable income over a given 12-month annualization period (not necessarily a calendar year), and projects the amount of pension payable for that same period. Each beneficiary is required to report actual income received during the annualization period by yearly submission of an eligibility verification report (EVR). The pension award then will be adjusted, if necessary, on the basis of actual income received during the annualization period.

However, when a claimant receives unanticipated income subsequent to the initial award of pension benefits, VA adjusts payments from the first of the month following the month in which the new income is initially received, not from the beginning of the current annualization period (38 CFR 3.660(a)(2)). This procedure, commonly called the "end-of-the-month (EOM) rule, " represents VA's established policy since the inception of improved pension on January 1, 1979.

These amendments do not affect the EOM rule. The definitions of recurring, irregular, and nonrecurring income in § 3.271(a) provide regulatory guidance for classifying income types, thereby promoting consistency in entitlement determinations. Section 3.273(d) provides a regulatory basis for computing recurring and irregular income to determine countable income for VA purposes. Introductory text added by this change specifically states that changes in benefit payments based on the provisions of that section will be determined under the provisions of § 3.31 or § 3.660, whichever is applicable. In the situation instanced by PVA, § 3.660 would be for application. Nonetheless, we understand the concerns of the commenter and have added language to 3.271(a) and 3.273(d) to clarify our intent.

VA regulations require beneficiaries to report changes in income or other circumstances that could affect benefit entitlement (38 CFR 3.660(a)(1)). VA acts as quickly as possible on evidence indicating entitlement changes, but it is not possible to avoid creation of overpayments altogether. We do not expect beneficiaries to project receipt of income that is truly unanticipated, but it is to their advantage to make reasonable estimates of income from sources that previously have provided irregular income and to furnish timely reports of newly acquired income. Whereas adjustments for unanticipated income are subject to application of the EOM rule, an adjustment to previously underreported income is made from the beginning of the annualization period for which the incorrect income had been reported. The amendments to §§ 3.271 and 3.273 will not have the effect of increasing either the number or amounts of overpayments. We foresee no adverse impact as anticipated by the commenter.

VA appreciates the comment received in response to the proposed regulations, which now are adopted with the following technical corrections, in addition to the changes to § 3.271(a) and § 3.273(d) mentioned above: we are subdividing § 3.261 into paragraphs (a), (b), and (c) and including an omitted item of income to paragraph (a)(14); in item (28) of § 3.261(a) the rows designating inclusion to or exclusion from income have been interchanged; in the first sentence of § 3.262(l)(4), the words "surviving spouse" have been replaced by the word "parent"; references to § 3.263 (m) and (m)(2) have been corrected to § 3.262 (m) and (m)(2); we have rewritten § 3.262 (r) and (s) to clarify the income exclusions there referenced; in the introductory text of § 3.660(b) the words "the following" have been replaced by "a"; the reference to 38 U.S.C. 5110(h) in the introductory text of § 3.660(b) has been moved to its proper place following § 3.660(b)(1).

Title I of Public Law 100–383, the Civil Liberties Act of 1988, provided redress in the amount of $20,000.00 to certain individuals of Japanese ancestry who were interned or relocated by the Federal government during WWII. The bill expressly provided that these payments shall not be included as income or resources for determining eligibility to benefits described in 31 U.S.C. 3803(c)(2)(C). A recent opinion of VA's General Counsel (O.G.C. *Prec. 3–92*) has held that for purposes of improved pension and parents' DIC, which are found in those chapters of title 38 U.S.C. referenced by the cited section of title 31, these payments are not countable as income or for net worth determinations. The opinion further stated that these payments are countable as income and net worth under 306 pension and old law pension. These benefits are no longer in force under title 38, but under the savings provision (section 306) of Public Law 95–588, which introduced improved pension. We are taking this opportunity to amend § 3.261, § 3.263, § 3.262, § 3.272, and § 3.275 to implement the law and the opinion of the General Counsel. Since parents' death compensation also is included within a chapter of title 38 referenced by title 31, our amendment will also reflect that these redress payments are not included for net worth purposes under that program. Since these amendments simply implement the provisions of Public Law 100–383, publication as a proposed rule for comment is not required.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: October 30, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended to read as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 105 Stat. 386, 38 U.S.C. 501(a), unless otherwise noted.

§ 3.261 [Amended]

2. In § 3.261 remove the words "protected", "widows", and "Pub. L. 86–211" in the columnar headings and add, in their place, the words "old-law", "surviving spouses" and "section 306", respectively.

3. In § 3.261, the heading titled "Income" is designated as paragraph (a), an unnumbered category is added at the end of item (14), item (28) is revised, new items (35) and (36) are added, and new paragraphs (b) and (c) are added to read as follows:

§ 3.261 Character of income; exclusions and estates.

(a) *Income*

* * * * *

(14) * * *

Annuity under § 653, Pub. L. 100–456	Included	Included	Excluded	Excluded	§ 3.262(r)
* * *	*	*	*	*	*
(28) Reimbursement for casualty loss (Pub. L. 100–687).	Included	Excluded	Included	Included	§ 3.262(t)
Other fire insurance	Excluded	Excluded	Excluded	Excluded	§ 3.262(t)
* * *	*	*	*	*	*
(35) Agent Orange settlement payments	Excluded	Excluded	Excluded	Excluded	§ 3.262(s)
(36) Restitution to individuals of Japanese ancestry (Pub. L. 100–383).	Excluded	Excluded	Included	Included	§ 3.262(u)
(b) Deduction of Amounts Paid by Claimant:					
(1) Unusual medical expenses	Not authorized	Authorized	Not authorized	Authorized	§§ 3.262(b)(1), & (1)
(2) Veteran: just debts, expenses of last illness, and burial.	Not authorized	Authorized, except debts.	Not authorized	Authorized	§§ 3.262(m) & (o)
(3) Veteran's spouse or child: expenses of last illness and burial.	Not authorized	Not authorized	Not authorized	Authorized	§ 3.262(n)
(4) Parent's spouse: just	Not authorized	Authorized			§ 3.262(o)
(5) Prepayments on real property mortgages after death of spouse (Pub. L. 91–588).	Not authorized	Not authorized	Not authorized	Authorized	§ 3.262(k)(6)
(c) Corpus of estate	Considered conditionally.	Not considered	Not considered	Considered	§ 3.263

(Authority: Public Law 101–201).

4. In § 3.262 paragraphs (l)(1) through (l)(4) and the authority citation are revised and paragraphs (r), (s), (t), and (u), and their authority citations are added to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(l) * * *

(1) *Veterans.* For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by the veteran for unusual medical expenses of self, spouse, and other relatives of the veteran in the ascending as well as descending class who are members or constructive members of the veteran's household and whom the veteran has a moral or legal obligation to support.

(2) *Surviving spouses.* For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by the surviving spouse for the unusual medical expenses of self, the veteran's children, and other relatives of the surviving spouse in the ascending as well as descending class who are members or constructive members of the surviving spouse's household and whom the surviving spouse has a moral or legal obligation to support.

(3) *Children.* For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by a child for the unusual medical expenses of self, parent, and brothers and sisters of the child.

(4) *Parents.* For dependency and indemnity compensation purposes there will be excluded unreimbursed amounts paid by the parent for the unusual medical expenses of self, spouse, and other relatives of the parent in the ascending as well as descending class who are members or constructive members of the parent's household and whom the parent has a moral or legal obligation to support. If the combined annual income of the parent and the parent's spouse is the basis for dependency and indemnity compensation, the exclusion is applicable to the combined annual income and extends to the unusual unreimbursed medical expenses of the spouse's relatives in the ascending as well as descending class who are members or constructive members of the household and whom the parent's spouse has a moral or legal obligation to support.

(Authority: 38 U.S.C. 1315(f)(3); Sec. 306, Pub. L. 95–588; 92 Stat. 2508)

* * * * *

(r) *Survivor benefit annuity.* For the purposes of old law pension and section 306 pension, there shall be excluded from computation of income annuity paid by the Department of Defense under the authority of section 653, Public Law 100–456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988)

(Authority: Sec. 653, Pub. L. 100–456; 102 Stat. 1991)

(s) *Agent Orange settlement payments.* In claims for pension and parents' dependency and indemnity income, there shall be excluded from computation of income payments received by any person in the case of In re Agent Orange Product Liability Litigation in the United States District Court for the Eastern District of New York (MDL No. 381). (January 1, 1989)

(Authority: Pub. L. 101–201, 103 Stat. 1795)

(t) *Reimbursement for casualty loss.* The following sources of reimbursements for casualty loss will not be considered as income in determining entitlement to benefits under the programs specified. Amounts to be excluded from computation in parens' dependency and indemnity compensation claims are limited to amounts of reimbursement which do not exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss.

(1) Reimbursement for casualty loss of any kind in determining entitlement to parents' dependency and indemnity

compensation benefits. For purposes of paragraph (t) of this section, the term "casualty loss" means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature.

(2) Proceeds from fire insurance in determining dependency of a parent for compensation purposes or in determining entitlement to old-law and section 306 pension benefits.

(Authority: 38 U.S.C. 1315(f))

(u) *Restitution to individuals of Japanese ancestry.* In claims for parents' death compensation and parents' dependency and indemnity compensation, there shall be excluded from income computation any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive Order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988)

(Authority: Sec. 105, Pub. L. 100–383; 102 Stat. 905)

§ 3.262 [Amended]

5. In § 3.262(g)(2), third sentence, remove the words "Where eligibility to pension is subject to determination under Public Law 86–211 (73 Stat. 432)" and add, in their place, the words "For purposes of section 306 pension".

6. In § 3.262(h), introducing text, second sentence, remove the word "widow" and add, in its place, the words "surviving spouse".

7. In § 3.262(j)(2), first and second sentences, remove the words "under Public Law 86–211 (73 Stat. 432)" and "under Public Law 86–211" and add the words "section 306" in front of the word "pension" wherever it appears.

8. In § 3.262(j)(3), remove the word "*protected*" in the paragraph heading and add, in its place, the word "*old-law*".

9. In § 3.262(k)(1), second sentence, remove the words "pension purposes under the provisions of Public Law 86–211 (73 Stat. 432)" and add, in their place, the words "section 306 pension purposes" and revise the authority citation to read "(Authority: Sec. 306, Public Law 95–588; 92 Stat. 2508)".

10. In § 3.262(k)(5) and (k)(6) remove the words "Public Law 86–211" and "Public Law 86–211 (73 Stat. 432)" wherever they appear, and add, in their place, the words "section 306 pension".

11. In § 3.262(m), introductory text, remove the words "Public Law 86–211 (73 Stat. 432)" and add, in their place, the words "section 306"; in paragraph (m)(1) remove the word "widow" and add, in its place, the words "surviving spouse" and remove the words "she, as wife,".

12. In § 3.262(m)(2) remove the word "widow" wherever it appears and add, in its place, the words "surviving spouse"; remove the word "his" where it appears, and add, in its place, the words "the veteran's"; and remove the words "for the expenses of his".

13. In § 3.262(m) the authority citation is revised to read

"(Authority: Sec. 306, Pub. L. 95–588; 92 Stat. 2508)".

14. In § 3.262(n), introductory text, remove the words "Public Law 86–211 (73 Stat. 432)", and add, in their place, the words "section 306"; in paragraph (n)(1) remove the words "him" and "his", and add, in their place, the words "the veteran" and "the veteran's"; in paragraph (n)(2), remove the words "wife or widow" and "her as wife or widow" and add, in their place, the words "spouse or surviving spouse", and "the spouse or surviving spouse", and revise the authority citation to read

"(Authority: Sec. 306, Pub. L. 95–588; 92 Stat. 2508)".

15. In § 3.262(o) the authority citation appearing at the end of the paragraph is revised to read

"(Authority: 38 U.S.C. 1315(f))".

16. In § 3.262(p) remove the words "the wife or husband" and add, in their place, the words "spouse or surviving spouse" and remove the words "widow, widower".

§ 3.263 [Amended]

17. In § 3.263(a) remove the words "widow, widower" wherever they appear and add, in their place, the words "surviving spouse".

18. In § 3.263 add paragraphs (e) and (f) and their authority citations to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(e) *Agent Orange settlement payments.* There shall be excluded from the corpus of estate or net worth of a claimant any payment made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.). (January 1, 1989).

(Authority: Pub. L. 101–201, 103 Stat. 1795)

(f) *Restitution to individuals of Japanese ancestry.* In claims for parents' death compensation, there shall be excluded from the corpus of estate or net worth of a claimant any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988)

(Authority: Sec. 105, Pub. L. 100–383; 102 Stat. 905)

19. In § 3.271 paragraphs (a) (1) through (3) are added, and paragraph (f) is amended by redesignating the introductory text as paragraph (f)(1) and adding paragraph (f)(2) to read as follows:

§ 3.271 Computation of income.

(a) * * *

(1) *Recurring income.* Recurring income means income which is received or anticipated in equal amounts and at regular intervals (e.g., weekly, monthly, quarterly, etc.), and which will continue throughout an entire 12-month annualization period. The amount of recurring income for pension purposes will be the amount received or anticipated during a 12-month annualization period. Recurring income which terminates prior to being counted for at least one full 12-month annualization period will be treated as nonrecurring income for computation purposes.

(2) *Irregular income.* Irregular income means income which is received or anticipated during a 12-month annualization period, but which is received in unequal amounts or at irregular intervals. The amount of irregular income for pension purposes will be the amount received or anticipated during a 12-month annualization period following initial receipt of such income.

(3) *Nonrecurring income.* Nonrecurring income means income received or anticipated on a one-time basis during a 12-month annualization period (e.g., an inheritance). Pension computations of income will include nonrecurring income for a full 12-month annualization period following receipt of the income.

* * * * *

(f) * * *

(2) When a claimed dependent is shown to have income which exceeds the additional amount of benefits payable based on the claimed dependency, but evidence requirements of § 3.204, § 3.205, § 3.209, or § 3.210 have not been met, the maximum annual rate of improved pension shall be determined without consideration of the claimed dependency. This amount

shall be reduced by an amount which includes the income of the unestablished dependent. Adjustments in computation of the maximum annual rate of improved pension shall occur following receipt of evidence necessary to establish the dependency.

(Authority: 38 U.S.C. 501(a))

* * * * *

20. In § 3.272 paragraph (d) and its authority citation are revised and paragraphs (n), (o), and (p), and their authority citations are added to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(d) *Reimbursement for casualty loss.* Reimbursement of any kind for any casualty loss. The amount to be excluded is not to exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss. For purposes of this paragraph, the term "casualty loss" means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature.

(Authority: 38 U.S.C. 1503(a)(5))

* * * * *

(n) *Survivor benefit annuity.* Annuity paid by the Department of Defense under the authority of section 653, Public Law 100–456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988)

(Authority: Sec. 653, Pub. L. 100–456; 102 Stat. 1991)

(o) *Agent Orange settlement payments.* Payments received by any person in settlement of the case of In re Agent Orange product liability litigation in the United States District Court for the Eastern District of New York (M.D.L. No. 381). (January 1, 1989)

(Authority: Pub. L. 101–201, 103 Stat. 1795)

(p) *Restitution to individuals of Japanese ancestry.* Any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988)

(Authority: Sec. 105, Pub. L. 100–383; 102 Stat. 905)

21. In § 3.273 add an introductory text, add a sentence at the end of paragraph (a), and add paragraph (d) to read as follows:

§ 3.273 Rate computation.

The commencement date of change in benefit payments based on rate computations under the provisions of this section will be determined under the provisions of § 3.31 or § 3.660.

(a) * * * Recomputation of rates due to changes in the maximum annual pension rate or rate of income following the initial date of entitlement are subject to the provisions of paragraph (b) of this section.

* * * * *

(d) *Recurring and irregular income.* The amount of recurring and irregular income anticipated or received by a beneficiary shall be added to determine the beneficiary's annual rate of income for a 12-month annualization period commencing at the beginning of the 12-month annualization, subject to the provisions of § 3.660(a)(2) of this chapter.

22. In § 3.273(a) and (b)(1) remove the words "annual rate of".

23. In § 3.273(b)(2) remove the words "annual rate" and add, in their place, the word "amount".

24. In § 3.273(c) remove the words "12-month period" and add, in their place, the words "12-month annualization period".

25. In § 3.275 add paragraphs (f) and (g) and their authority citations to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(f) *Agent Orange settlement payments.* There shall be excluded from the corpus of the estate or net worth of a claimant any payment made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.). (January 1, 1989)

(Authority: Pub. L. 101–201, 103 Stat. 1795)

(g) *Restitution to individuals of Japanese ancestry.* There shall be excluded from the corpus of estate or net worth of a claimant any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988)

(Authority: Sec. 105, Pub. L. 100–383; 102 Stat. 905)

§ 3.277 [Amended]

26. In § 3.277 the authority citation appearing at the end of the section is revised to read "(Authority: 38 U.S.C. 1506)".

§ 3.660 [Amended]

27. In § 3.660(a)(2) remove the word "Contingency" in the paragraph heading and add, in its place, the words "Effective dates".

28. In § 3.660(b), introductory text, remove the words "year", and "calendar year" and add, in their place, the words "12-month annualization period"; and delete the authority citation "(38 U.S.C. 5110(h).)" following the first sentence.

29. In § 3.660(b)(1) remove the words "January 1 of that year" and add, in their place, the words "the beginning of the appropriate 12-month annualization period"; and add an authority citation at the end of the paragraph to read as follows: "(38 U.S.C. 5110(h))".

30. In § 3.660(b)(2) remove the word "year" the first two times it appears and the words "within that year" and add, in their place, the words "12-month annualization period" and "within that period", respectively.

§ 3.661 [Amended]

31. In § 3.661, remove the words "*Income and net worth questionnaires*" in the section heading and add, in their place, the words "*Eligibility Verification Reports*".

32. In § 3.661, paragraphs (a)(1) and (b), heading, remove the word "questionnaire" wherever it appears and add, in its place, the word "report".

33. In § 3.661(b)(1) add the word "calendar" before the word "year" each time it appears.

34. In § 3.661(b)(2) remove the words "year" and "income questionnaire", wherever they appear, and add, in their place, the words "12-month annualization period" and "Eligibility Verification Report", respectively.

[FR Doc. 92–30077 Filed 12–14–92; 8:45 am]
BILLING CODE 6320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[SC–026–5602; FRL–4537–9]

Approval of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 20, 1992, the State of South Carolina through the Department

of Health and Environmental Control (DHEC) submitted a maintenance plan and a request to redesignate Cherokee County to attainment for ozone. The State has met the requirement for redesignation contained in section 107(d)(3)(E) of the Clean Air Act as amended in 1990 (CAA). EPA approves the maintenance plan and the redesignation of Cherokee County, South Carolina, to attainment for ozone.

DATES: This action will be effective on February 16, 1993 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by South Carolina may be examined during normal business hours at the following locations:

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Miller of the Region IV Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published November 6, 1991, Cherokee County was designated as nonattainment for ozone. This designation became effective 60 days later on January 6, 1992. On July 20, 1992, The Bureau of Air Quality Control (BAQC) of the South Carolina Department of Health and Environmental Control (DHEC) submitted a request for Cherokee County to be redesignated to attainment for ozone. This request was based on three years (1989, 1990, and 1991) of quality assured monitoring data which showed that Cherokee County had not violated the National Ambient Air Quality Standard (NAAQS) for ozone. The State of South Carolina has met all of the CAA requirements for redesignation pursuant to section 107(d)(3)(E). The requirements of section 107(d)(3)(E) are as follows:

Section 107(d)(3)(E)(i) The Administrator Has Determined That the Area Has Attained the National Ambient Air Quality Standard

South Carolina submitted air quality data showing that Cherokee County has attained the ozone NAAQS for ozone for the three year period, 1989–1991. During that period, there were no exceedances, and hence, no violations of the ozone standard.

Section 107(d)(3)(E)(ii) The Administrator Has Fully Approved the Applicable Implementation Plan for the Area Under Section 110(k)

Prior to the enactment of the Clean Air Act Amendments of 1990, Public Law 101–549, Cherokee County was a designated attainment area and had a fully approved attainment area SIP. 40 CFR 52.2120. As stated below, by this action today, EPA is approving Cherokee County's maintenance plan and has found that Cherokee County has met all of the applicable requirements under Section 110 and part D. Based on this, EPA believes that Cherokee County has a fully approved SIP under section 110(k) of the Act.

Section 107(d)(3)(iii) The Administrator Determines That the Improvement in Air Quality is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the Applicable Implementation Plan and Applicable Federal Air Pollutant Control Regulations and Other Permanent and Enforceable Reductions

The Federal Motor Vehicle Control Program (FMVCP) requirements for lower tail pipe standards have reduced emissions in Cherokee County. In addition, the Federal requirements to reduce the Reid Vapor Pressure (RVP) of gasoline to 9.5 psi went into effect in Cherokee County during the Summer of 1989. The air quality data showing attainment of the standard is for the time period, 1989–1991, when this requirement was in effect. As required for nonattainment areas in the Southeast, an RVP of 7.8 psi went into effect on June 1, 1992, in Cherokee County. This is discussed further under the section on maintenance plans. Therefore, permanent enforceable VOC emissions reductions have been obtained through State and Federal control programs.

Section 107(d)(3)(E)(iv) The Administrator Has Fully Approved a Maintenance Plan for the Area as Meeting the Requirements of Section 175A

South Carolina has submitted a maintenance plan as required in section 175A of the Act. The maintenance plan includes a requirement to assess growth factors on a triennial basis with the contingency to assess on a yearly basis if the projection inventory is exceeded by 10% or more. The projection inventory reflects the allowable emission rate and the expected actual production or activity level. The plan contains a contingency to implement additional control measures such as Control Technique Guideline (CTG) categories within nine (9) months should the area violate the ozone NAAQS. The plan also relies on a RVP of 9.0 psi. A RVP of 7.8 psi—a more stringent standard—went into effect for Cherokee County on June 1, 1992. However, since Cherokee has demonstrated that it can maintain the standard using the less stringent RVP of 9.0, EPA believes that the maintenance plan may be approved. Therefore, based on the maintenance demonstration, EPA plans to propose approval of the 9.0 psi RVP in the near future. Until such approval the 7.8 psi RVP will remain in place during the applicable months. In addition, South Carolina has committed to keep it's monitoring efforts in Cherokee County at the Cowpens National Park intact after redesignation. Therefore, EPA is approving the maintenance plan.

Section 107(d)(3)(E)(v) The State Containing Such Area Has Met All Requirements Applicable to the Area Under Section 110 and Part D

Prior to the CAA, all of South Carolina including Cherokee County, was designated as attainment and was not subject to any requirements of the CAA to date. Since its designation as nonattainment under the amended Act, none of the requirements under section 182(a) have become applicable. Also, the State agrees to meet conformity requirements of section 176(c)(4) once EPA guidance is issued. In addition, a PSD program exists and will apply in Cherokee County upon redesignation to attainment. Therefore, the State has complied with all requirements of section 110 and part D of the Act. In addition, South Carolina has taken an extra step beyond section 110 and part D by implementing RACT fixups statewide even though RACT is not required for South Carolina. Therefore, EPA believes that the State has met all applicable requirements of section 110 and Part D of the Act.

Final Action

EPA is today redesignating Cherokee County to attainment for ozone. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the

effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

For further information, the reader may consult a Technical Support Document which contains a detailed review of the material submitted. This is available at the EPA address given previously. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. Redesignations, therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base it's actions concerning SIPs on such grounds.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 1993. This action shall not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a redesignation of any nonattainment area. Each request for redesignation of any nonattainment area shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not for profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 28, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, Title 40 of the *Code of Federal Regulations* is to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. Section 52.2120 is amended by adding paragraph (c)(36) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(36) The maintenance plan for Cherokee County submitted by the South Carolina Department of Health and Environmental Control on July 20, 1992, as part of the South Carolina SIP.

(i) Incorporation by reference.

(A) Cherokee County Ozone Attainment Demonstration and Ten Year Maintenance Plan effective June 11, 1992.

(B) Emissions Inventory Projections for Cherokee County effective June 11, 1992.

(ii) Other material.

(A) July 20, 1992 letter from the Department of Health and Environmental Control. Ten Year Maintenance Plan effective June 11, 1992.

(B) Emission Inventory Projections for Cherokee County effective June 11, 1992.

(iii) Other material.

(A) July 20, 1992 letter from the Department of Health and Environmental Control.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.341 is amended by revising the attainment status designation table for Ozone to read as follows:

§ 81.341 South Carolina.

* * * * *

South Carolina—Ozone (O_3).

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment		
Abbeville County				
Aiken County				
Allendale County				
Anderson County				
Bamberg County				
Barnwell County				
Beaufort County				
Berkeley County				
Calhoun County				
Charleston County				
Cherokee County	February 16, 1993			
Chester County				
Chesterfield County				
Clarendon County				
Colleton County				
Darlington County				
Dillon County				

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Dorchester County				
Edgefield County				
Fairfield County				
Florence County				
Georgetown County				
Greenville County				
Greenwood County				
Hampton County				
Horry County				
Jasper County				
Kershaw County				
Lancaster County				
Laurens County				
Lee County				
Lexington County				
Marion County				
Marlboro County				
McCormick County				
Newberry County				
Oconee County				
Orangeburg County				
Pickens County				
Richland County				
Saluda County				
Spartanburg County				
Sumter County				
Union County				
Williamsburg County				
York County				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 92-30425 Filed 12-14-92; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7056]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2766.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No

regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego	Unincorporated Areas	Nov. 23, 1992, Nov. 30, 1992, *San Diego Union Tribune.*	The Honorable George F. Bailey, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, California 92101.	Nov. 16, 1992	060284
Colorado: Boulder	City of Longmont	Dec. 9, 1992, Dec. 16, 1992, *Longmont Daily Times.*	The Honorable Fred Wilson, Mayor, City of Longmont, Civic Center Complex, 408 Third Avenue, Longmont, Colorado 80501.	Nov. 23, 1992	080027
Florida: Sarasota	City of Sarasota	Sept. 15, 1992, Sept. 22, 1992, *Sarasota Herald-Tribune.*	The Honorable Jack Gumey, Mayor of the City of Sarasota, P.O. Box 1058, Sarasota, FL 34230.	Aug. 25, 1992	125150 B
Texas: Tarrant	City of Benbrook	Nov. 19, 1992, Nov. 26, 1992, *The Benbrook News.*	The Honorable Jerry Dunn, Mayor, City of Benbrook, 911 Winscott Road, P.O. Box 26569, Benbrook, Texas 76126.	Oct. 27, 1992	480586

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: December 7, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-30264 Filed 12-14-92; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Benton (FEMA Docket No. 7038).	City of Centerton	Oct. 28, 1991, Nov. 4, 1991, The Daily Record.	The Honorable Sherman Kinyon, Mayor of the City of Centerton, Benton County, P.O. Box 208, Centerton, Arkansas 72719.	Oct. 18, 1991 ..	050399
California:					
Mendocino	Unincorporated areas (Docket No. 7052).	Sept. 4, 1992, Sept. 11, 1992, Ukiah Daily Journal.	The Honorable Liz Henry, Chairperson, Mendocino County Board of Supervisors, Clerk of the Board, Courthouse, Ukiah, California 95482.	Aug. 25, 1992 .	060183
Riverside	City of Palm Springs (Docket No. 7052).	Aug. 20, 1992, Aug. 27, 1992, The Desert Sun.	The Honorable Lloyd Maryanov, Mayor, City of Palm Springs, P.O. Box 2743, Palm Springs, California 92263.	July 30, 1992 ..	060257
Sacramento	Unincorporated areas (Docket No. 7051).	Aug. 28, 1992, Sept. 4, 1992, Sacramento Bee.	Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, Room 304, Sacramento, California 95814.	Aug. 7, 1992 ...	060262
Sacramento	Unincorporated areas (Docket No. 7052).	Aug. 19, 1992, Aug. 26, 1992, The Sacramento Bee.	Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, Room 304, Sacramento, California 95814.	Aug. 10, 1992 .	060262
San Bernardino	City of Loma Linda (Docket No. 7049).	Aug. 20, 1992, Aug. 27, 1992, San Bernardino County Sun.	The Honorable Robert Christman, Mayor, City of Loma Linda, 25541 Barton Road, Loma Linda, California 92354.	July 16, 1992 ..	065042
Louisiana: Plaquemines Parish (FEMA Docket No. 7043).	Unincorporated areas ...	May 1, 1992, May 8, 1992, Plaquemines Gazette.	The Honorable Luke A. Petrovich, Parish President, Plaquemines Parish Government, P.O. Box 829, Port Sulphur, Louisiana 70083.	April 9, 1992 ...	220139 B&C
Ohio: Medina (FEMA Docket No. 7044).	City of Brunswick	May 14, 1992, May 21, 1992, Brunswick Sun Times.	The Honorable Judith A. Beadell-Rapp, Mayor of the City of Brunswick, Medina County, 4095 Center Road, Brunswick, Ohio 44212.	May 5, 1992 ...	390380 B
Texas:					
Tarrant	City of Colleyville (Docket No. 7052).	Sept. 3, 1992, Sept. 10, 1992, Colleyville News and Times.	The Honorable Richard Newton, Mayor, City of Colleyville, P.O. Box 185, Colleyville, Texas 76034.	Aug. 3, 1992 ...	480590
Dallas	City of Coppell (Docket No. 7051).	Aug. 21, 1992, Aug. 28, 1992, The Citizen's Advocate.	The Honorable Mark Wolfe, Mayor, City of Coppell, P.O. Box 478, 255 Parkway Boulevard, Coppell, Texas 75019.	Aug. 10, 1992 .	480170
Bexar (FEMA Docket No. 7044).	City of San Antonio	May 6, 1992, May 13, 1992, San Antonio Light.	The Honorable Nelson Wolff, Mayor of the City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	April 29, 1992 .	480045 B
Virginia: Independent City (FEMA Docket No. 7043).	City of Harrisonburg	Feb. 27, 1992, March 5, 1992, Daily News Record.	Roger D. Baker, Acting Manager of the City of Harrisonburg, 345 South Main Street, Harrisonburg, Virginia 22801.	Feb. 19, 1992 .	510076 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 7, 1992.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92–30265 Filed 12–14–92; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for

participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Walnut Ridge (city), Lawrence County (FEMA Docket No. 7050)	
Village Creek:	
Approximately 6,250 feet downstream of West Free Street	*262
Approximately 2,400 feet upstream of U.S. Highway 67	*267
Highland Creek North:	
Entire reach between Northwest Front Street and Village Creek	*268
Highland Creek South:	
Approximately 120 feet upstream of U.S. Highway 412	*267
Just downstream of Northeast Front Street	*268
Maps are available for review at City Hall, 105 Southeast Front Street, Walnut Ridge, Arkansas.	
KANSAS	
Shawnee County (Unincorporated Areas) (FEMA Docket No. 7060)	
Slumlo Creek:	
Just upstream of SW 97th Street	*967
Just downstream of Urish Road	*1018
Just upstream of Urish Road	*1024
Just downstream of SW 69th Street	*1041
Just upstream of 69th Street	*1049
Just downstream of SW 61st Street	*1081
Maps available for inspection at the County Engineer's Office, 3137 SE 29th Street, Topeka, Kansas.	
MAINE	
Pittston (Town), Kennebec County (FEMA Docket No. 7040)	
Eastern River:	
At downstream corporate limits	*13
Approximately 80 feet above State Route 194	*103
Maps available for inspection at the Town Office, State Route 126, Gardiner, Maine.	
Robbinston (Town), Washington County (FEMA Docket No. 7045)	
St. Croix River:	
At Bunker Point	*17
Shoreline at southern most corporate limits	*25
Boyden Lake: Entire shoreline within community	*79
Maps available for inspection at the Robbinston Town Hall, Ridge Road, Robbinston, Maine.	
MASSACHUSETTS	
Abington (Town), Plymouth County (FEMA Docket No. 7040)	
Stream River:	
Approximately 140 feet downstream of Walnut Street	*80
Approximately 100 feet upstream of upstream crossing of Ashland Street	*127
Maps available for inspection at the Abington Town Hall, 33 Randolph Street, Abington, Massachusetts.	
Middlefield (Town), Hampshire County (FEMA Docket No. 7040)	
Middle Branch Westfield River:	
At the downstream County boundary	*778
At the upstream corporate limits	*1,010
West Branch Westfield River:	
At the downstream County boundary	*732
Approximately 820 feet upstream of CONRAIL	*746
Maps available for inspection at the Middlefield Town Hall, Skyline Trail, Middlefield, Massachusetts.	
North Andover (Town), Essex County (FEMA Docket No. 7037)	
Mosquito Brook:	
Approximately .6 mile downstream of Boxford Street	*114
Approximately 66 feet upstream of Chestnut Street	*238
Boston Brook:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At downstream corporate limits	*86
Approximately .7 mile upstream of Hawkins Lane	*107
Maps available for inspection at the Town Hall, 120 Main Street, North Andover, Massachusetts.	
Pepperell (Town), Middlesex County (FEMA Docket No. 7040)	
Varnum Brook:	
At confluence with Nashua River	*185
Approximately 65 feet upstream of Hollis Street	*241
Greene Brook:	
At confluence with Varnum Brook	*233
Approximately 140 feet upstream of Elm Street	*255
Maps available for inspection at the Pepperell Town Office, 1 Main Street, Pepperell, Massachusetts.	
MICHIGAN	
Evart (City), Osceola County (FEMA Docket No. 7046)	
Twin Creek:	
At mouth	*992
About 1950 feet upstream of Fifth Street	*1012
Muskegon River:	
At Main Street	*992
About 2000 feet upstream of Main Street	*993
Maps available for inspection at the City Manager's Office, City Hall, 101 North Main Street, Evart, Michigan.	
MISSOURI	
Jennings (City), St. Louis County (FEMA Docket No. 7060)	
Maline Creek:	
About 1,650 feet downstream of Halls Ferry Road	*449
About 1,225 feet downstream of Lucas-Hunt Road	*454
About 740 feet upstream of Lucas-Hunt Road	*456
Maps available for inspection at the City Hall, Building Department, 2120 Hord Avenue, Jennings, Missouri.	
St. Louis County (Unincorporated Areas) (FEMA Docket No. 7053)	
Maline Creek:	
About 0.80 mile downstream of Halls Ferry Road	*448
About 0.40 mile upstream of Glenn Owen Drive	*466
Black Jack Creek:	
At mouth	*446
Just downstream of Pershall Road	*475
Just upstream of Dunn Road	*492
Just downstream of Redman Avenue	*498
Dellwood Creek:	
At mouth	*460
About 1,970 feet upstream of Clairmont Drive	*467
Halls Ferry Creek:	
At mouth	*471
Just downstream of Old Halls Ferry Road	*474
Maps available for inspection at the Department of Planning, 41 South Central Avenue, Clayton, Missouri.	
NEW HAMPSHIRE	
Jaffrey (Town), Cheshire County (FEMA Docket No. 7040)	
Contoocook Lake: Entire shoreline within community	*1,013
Mountain Brook Reservoir: Entire shoreline within community	*1,019
Contoocook River:	
At downstream corporate limits	*852
At Contoocook Lake Dam	*1,013
Mountain Brook:	
At Gilmore Pond Road	*1,022
Approximately 100 feet upstream of State Route 124	*1,063
Mead Brook:	
At confluence with Moutain Brook	*1,039
Approximately 100 feet upstream of State Route 124	*1,090
Black Reservoir Outlet Stream:	
Approximately 50 feet downstream of Contoocook Road Bridge	*1,013
Approximately 35 feet upstream of Black Reservoir Dam	*1,067
Maps available for inspection at the Jaffrey Town Hall, 69 Main Street, Jaffrey, New Hampshire 03452.	
Weare (Town), Hillsborough County (FEMA Docket No. 7050)	
Piscataquog River:	
At downstream corporate limits	*302
Approximately 100 feet upstream of Reservoir Road	*823
Weare Reservoir: Entire shoreline within community	*857
Hopkinton-Everett Reservoir: Entire shoreline within community	*416
Daniels Lake: Entire shoreline within community	*377
Maps available for inspection at the Weare Town Office, 15 Flanders Memorial Drive, Weare, New Hampshire 03281.	
Webster (Town), Merrimack County (FEMA Docket No. 7050)	
Blackwater River:	
At the downstream corporate limits	*360
Approximately 1.7 miles upstream of Clothespin Road	*472
Maps available for inspection at the Town Clerk's Office, R.F.D. #5, Box 325, Webster, New Hampshire.	
NEW YORK	
Bainbridge (Village), Chenango County (FEMA Docket No. 7044)	
Susquehanna River:	
At downstream corporate limits	*96(
At upstream corporate limits	*96(
Maps available for inspection at the Bainbridge Village Offices, 33 West Main Street, Bainbridge, New York.	
Champion (Town), Jefferson County (FEMA Docket No. 7050)	
Black River:	
Approximately 200 feet downstream of Deferiet Dam	*651
At corporate limits with Village of West Carthage	*66(
Maps available for inspection at the Champion Town Clerk's Office, 7 North Main Street, West Carthage, New York 13619.	
Milton (Town), Saratoga County (FEMA Docket No. 7050)	
Glowegee Creek:	
At the confluence with Kayaderosseras Creek (upper reach)	*369
Approximately 0.2 mile upstream of Private Dam	*43(
Kayaderosseras Creek (lower reach):	
Approximately 0.2 mile downstream of Delaware and Hudson Railroad Bridge	*229
Approximately 0.3 mile upstream of Delaware and Hudson Railroad Bridge	*232
Kayaderosseras Creek (upper reach):	
At the downstream corporate limits	*269
Approximately 200 feet upstream of corporate limits	*523
Maps available for inspection at the Milton Town Hall, Building Department, 503 Guyeer Road, Ballston Spa, New York.	
OHIO	
Avon (City), Lorain County (FEMA Docket No. 7042)	
Mills Creek:	
At mouth	*691
Just downstream of Mills Road	*703
Schwartz Ditch:	
At mouth	*689
About 2450 feet upstream of Williams Court	*696
French Creek:	
Just downstream of State Route 83	*686
Just downstream of Mills Road	*695
Maps available for inspection at the City Hall, 36774 Detroit Road, Avon, Ohio.	
OKLAHOMA	
Noble County (Unincorporated Areas) (FEMA Docket No. 7039)	
Dry Creek:	
At county boundary	*815
Approximately 1.3 miles upstream of county boundary	*832
North Stillwater Creek:	
At country boundary	*905
Approximately 500 feet upstream of county boundary	*908
Maps available for inspection at the Noble County Courthouse, Perry, Oklahoma.	
Nowata (City), Nowata County (FEMA Docket No. 7053)	
Western Branch Creek:	
Approximately 1,000 feet downstream of Choctaw Avenue, at the corporate limits	*677
Approximately 300 feet upstream of U.S. Route 169	*683
At Cherokee Avenue	*686
At Elm Street	*689
Just upstream of Maple Street	*693
Golf Course Tributary:	
At the confluence with Western Branch Creek	*691
At Pecan Street	*701
Approximately 250 feet upstream of Hickory Street	*708
Seneca Street Tributary:	
At the confluence with Western Branch Creek	*692
Just upstream of Seneca Street	*694
Southwest Tributary:	
Just downstream of Galer Street	*686
Approximately 2,000 feet upstream of Galer Street	*695
Maps are available for review at City Hall, 701 East Modoc Street, Nowata, Oklahoma.	
PENNSYLVANIA	
Muncy (Borough), Lycoming County (FEMA Docket No. 7044)	
West Branch Susquehanna River:	
Approximately 550 feet upstream of State Route 405	*504
Approximately 100 feet upstream of State Route 405	*504
Glade Run:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with W. Branch Susquehanna River	*504
At downstream side of Penn Street	*505
Maps available for inspection at the Muncy Town Office, 14 North Washington Street, Muncy, Pennsylvania.	
Springfield (Township), Montgomery County (FEMA Docket No. 7048)	
Sandy Run:	
Approximately 100 feet downstream of Valley Green Road	*178
Approximately 125 feet upstream of the upstream corporate limits	*184
Wissahickon Creek:	
At Wissahickon Avenue	*140
At upstream corporate limits	*141
Maps available for inspection at the Springfield Township Manager's Office, Township Building, 1510 Paper Mill Road, Wyndmoor, Pennsylvania.	
TEXAS	
Buda (City), Hays County (FEMA Docket No. 7049)	
Onion Creek:	
Approximately 350 feet downstream of State Route 967	*688
Approximately 0.59 mile upstream of State Route 967	*695
Maps available for inspection at the Buda City Hall, Main Street, Buda, Texas.	
Grand Prairie (City), Dallas, Tarrant, and Ellis Counties (FEMA Docket No. 7027)	
Lynn Creek:	
At the confluence with Lake Joe Pool	*538
Approximately 1.13 miles upstream of the confluence with Lake Joe Pool	*552
West Fork Trinity River:	
Approximately .9 mile upstream of Tarrant-Dallas County boundary	*458
At the Great Southwest Railroad Spur	*461
Lake Joe Pool: Entire shoreline within the community	*538
Bear Creek:	
Approximately 550 feet upstream of Beltline Road	*448
Upstream corporate limit (at Rock Island Road)	*460
Bowman Branch:	
Approximately 600 feet downstream of Arlington Webb Britton Road	*536
At Arlington Webb Britton Road	*536
Cottonwood Creek:	
Approximately 50 feet upstream of the Dallas-Tarrant County boundary	*509
Approximately 150 feet downstream of the upstream corporate limit	*528
South Fork of Cottonwood Creek:	
Approximately 800 feet downstream of the Great Southwest Parkway	*545
Approximately 800 feet upstream of the Great Southwest Parkway	*554
Johnson Creek:	
Approximately 100 feet upstream of Lower Tarrant Road	*449
At the upstream corporate limits	*509
Stream JC-1:	
At the confluence with Johnson Creek	*450
Approximately 1,230 feet upstream of West Tarrant Road	*501
Maps available for inspection at the Department of Public Works, 317 College, Grand Prairie, Texas.	
Westlake (Town), Denton and Tarrant Counties (FEMA Docket No. 7053)	
Higgins Branch:	
At confluence with Kirkwood Branch	*568
Approximately 100 feet upstream of Dove Street	*601
Kirkwood Branch:	
Approximately 100 feet downstream of State Route 114	*580
Approximately 1,825 feet upstream of Dove Street	*629
Marshall Branch:	
Approximately 50 feet downstream of State Route 114	*594
Approximately 275 feet upstream of Turner Lake Dam	*614
Whites Branch:	
Approximately 0.36 mile downstream of corporate limits	*598
At corporate limits	*607
Stream WB-1:	
At downstream corporate limits	*594
At upstream corporate limits	*596
Kirkwood Branch Tributary:	
At confluence with Kirkwood Branch	*588
Approximately 220 feet downstream of Village Access Drive	*594
Maps available for inspection at Metroplex Engineering Consultants, Inc., 501 South Carroll Road, Denton, Texas.	
Woodcreek (City), Hays County (FEMA Docket No. 7042)	
Cypress Creek:	
Approximately 100' upstream of corporate limits	*907
Approximately 610' upstream from Jacobs Well Road at corporate limits	*937
Maps available for inspection at the Woodcreek City Hall, 17 Wildwood, Woodcreek, Texas.	
U.S. VIRGIN ISLANDS	
Island of St. Thomas (FEMA Docket No. 7039)	
Turpentine Run:	
At confluence with Mangrove Lagoon	*6
Approximately 0.6 mile upstream of Bovoni Road (State Route 30)	*37
Maps available for inspection at the Department of Planning and Natural Resources, Nisky Center, suite 231, #45A Estate Nisky, St. Thomas, Virgin Islands.	
VIRGINIA	
Augusta County (Unincorporated Areas) (FEMA Docket no. 7040)	
Folly Mills Creek:	
Approximately 550 feet downstream of the most downstream crossing of State Route 693	*1,560
Approximately 1,000 feet upstream of the most upstream crossing of State Route 693	*1,580
Maps available for inspection at the Augusta County Government Center, Community Development Office, Lee Highway, Verona, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 7, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-30260 Filed 12-14-92; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 174 and 177

[Docket Nos. HM-181, and HM-189, Amdt. Nos. 171-111, 172-123, 174-68 and 177-78]

Hazardous Materials Regulations; Editorial Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; corrections.

SUMMARY: This document makes certain editorial corrections to a final rule which corrected editorial errors and made minor regulatory changes to the Hazardous Materials Regulations (HMR). This action is necessary to reduce misunderstandings of the HMR. The intended effect is to promote accuracy of the HMR. These amendments are minor editorial changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: John Gale or Beth Romo, telephone (202) 366-4488, Office of Hazardous Materials Standards, or Charles Hochman, telephone (202) 366-4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published on October 1, 1992 under Dockets HM-181 and HM-189 [57 FR 45448] which made editorial and technical corrections to 49 CFR parts 107-180. This document corrects editorial errors in the October 1, 1992 final rule.

The definition for "non-bulk packaging" in § 171.8 is corrected by restoring the quantity limits for liquids as "450 L (119 gallons) or less" and for solids "400 kg (882 pounds) or less." The "non-bulk packaging" definition in the October 1, 1992 final rule does not include the actual quantities of "450 L"

or "400 kg"; therefore, those quantities do not fall in either the "bulk" or "non-bulk" packaging definition. Also, in (3), the water capacity of a receptacle for a gas is revised to read "454 kg or less", in place of "greater than 454 kg (1000 pounds) or less", which is contradictory.

The October 1, 1992 final rule amended certain entries in the § 172.101 Hazardous Materials Table. Item "m." of the amendatory language, for the entry "Carbon monoxide", stated that the Column (8C) reference "302" was revised to read "314, 315", when in fact the Column (8C) reference to be revised was "None". However, RSPA subsequently has determined that the pre-October 1, 1992 entry for Carbon monoxide is correct, and the "None" in Column (8C) should not be revised.

In the § 172.101 Table amendments, item "dd." of the amendatory language added Special Provision B47 in Column (7) for two entries, "Nitrating acid mixtures *with not more than 50 percent nitric acid*" and "Nitrating acid mixtures *with 50 percent or more nitric acid*". This was not correct. Special Provision B47 should apply to "Nitric acid *other than red fuming with more than 70 percent nitric acid*" and "Nitric acid *other than red fuming, with not more than 70 percent nitric acid*". This document amends the entries for nitrating acid mixtures by removing Special Provision B47. For the aforementioned nitric acid entries, Special Provision B47 is added in Column (7).

The section-by-section review in the October 1, 1992 final rule stated that a domestic entry for "vinyl chloride" was being added to the § 172.101 Table, but this addition was inadvertently omitted from the amendments to the Table. A domestic entry for "Vinyl chloride" is added to the Table in this document.

An exception to permit the use of hat shaped or open channel stiffening rings on carbon steel cargo tanks used to transport asphalt and liquid tar was inadvertently omitted in Special Provision B13 in § 172.102. This exception from the circumferential reinforcement requirements of § 178.345–7(d)(5) is added in this document.

This document also clarifies a domestic exception provided for Class 9 placards. The October 1, 1992 final rule amended § 172.504 by adding an exception in paragraph (f)(9) for the display of a Class 9 placard in domestic transportation if a bulk package is marked with the appropriate identification number on an orange panel or a white square-on-point display configuration. RSPA has received several inquiries as to whether this provision precludes the use of the identification numbers on a Class 9 placard. RSPA did not intend to preclude use of the Class 9 placard for display of identification numbers as permitted under § 172.332. Therefore, § 172.504(f)(9) is revised to clarify that a Class 9 placard may be used, but is not required.

The Segregation Table, which appears in §§ 174.81 and 177.848, is editorially revised to add an "O" at the intersection of the row entitled "Oxidizers" and the column entitled "3". This revision was discussed in the section review of the October 1, 1992 final rule, but was not included in the regulatory text amendments of §§ 174.81 and 177.848.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR Part 1.

§ 171.8 [Amended]

2. In § 171.8, for the definition "Non-bulk packaging", the following changes are made:

a. In paragraphs (1) and (2), the wording "less than 450 L (119 gallons)" is revised to read "of 450 L (119 gallons) or less".

b. In paragraph (2), the wording "less than 400 kg (882 pounds)" is revised to read "of 400 kg (882 pounds) or less".

c. In paragraph (3), the wording "greater than 454 kg (1000 pounds) or less" is revised to read "of 454 kg (1000 pounds) or less".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

4. In § 172.101, in the Hazardous Materials Table, the following entry is added in appropriate alphabetical sequence:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.* * *) Exceptions	Nonbulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or rail car	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	•	•		•		•		•		•		•	
	[Add].												

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.* * *) Exceptions	Nonbulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or rail car	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
D	Vinyl chloride ..	2.1	NA1086		Flammable gas.	21, B44	306	304	314, 315	Forbidden .	150 kg	B	40

§ 172.101 [Amended]

5. In addition, in the § 172.101 Table, the following changes are made:

a. For the entry "Carbon monoxide", in Column (8B), "314, 315" is revised to read "302" and Column (8C) should continue to read "None".

b. For the entries "Nitrating acid mixtures *with not more than 50 per cent nitric acid*" and "Nitrating acid mixtures *with 50 per cent or more nitric acid*", in Column (7), Special Provision "B47," is removed.

c. For the entries "Nitric acid *other than red fuming with more than 70 percent nitric acid*" and "Nitric acid *other than red fuming, with not more than 70 percent nitric acid*", in Column (7), Special Provision "B47," is added in appropriate alpha-numeric order.

§ 172.102 [Amended]

6. In § 172.102, in paragraph (c)(3), in Special Provision B13, the wording "178.345–7(d)(5), circumferential reinforcements," is added to paragraph b. immediately following "from §§ ".

§ 172.504 [Amended]

7. In § 172.504, in paragraph (f)(9), in the second sentence, the wording "marked on each side and each end with the appropriate identification number displayed on an orange panel or a white-square-on-point display configuration are required by subpart D of this part." is revised to read "marked with the appropriate identification number displayed on a Class 9 placard, an orange panel or a white-square-on-point display configuration as required by subpart D of this part.".

PART 174—CARRIAGE BY RAIL

8. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

§ 174.81 [Amended]

9. In § 174.81, in the Segregation Table in paragraph (d), in the entry for "Oxidizers—5.1", the letter "O" is added in the column titled "3".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

10. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.848 [Amended]

11. In § 177.848, in the Segregation Table in paragraph (d), in the entry for "Oxidizers—5.1", the letter "O" is added in the column titled "3".

Issued in Washington, DC, on December 4, 1992, under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92–30250 Filed 12–14–92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407–2519]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Announcement of an Incidental Catch category quota overage for the 1992 fishing season and adjustment of the 1993 quota.

SUMMARY: NMFS announces that the longline component of the Incidental Catch category fishery for Atlantic bluefin tuna operating south of 36°00′ N. latitude in the Regulatory Area has exceeded its quota for 1992 by 13 metric tons (mt). Therefore, pursuant to Federal regulations for Atlantic tuna fisheries, the 1992 13-mt overage will be subtracted from the 1993 longline Incidental Catch quota of 67 mt. This results in a 1993 longline Incidental Catch category quota for the area south of 36°00′ N. latitude of 54 mt. The intent of this action is to prevent overharvest of the longline Incidental Catch quota established for this fishery for the 1992–93 biennial period.

EFFECTIVE DATES: The quota reduction will be effective from 0001 hours local time January 1, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22(e)(1) provides for a 1992 season quota of 132 mt of Atlantic bluefin tuna to be harvested from the Regulatory Area by longline vessels permitted in the Incidental Catch category, with no more than 104 mt. of that quota harvested in the area south of 36°00′ N. latitude. Section 285.22(e)(2) provides for a 1993 season quota of 85 mt of Atlantic bluefin tuna to be harvested from the Regulatory Area by longline vessels permitted in the Incidental Catch category, with no more than 67 mt of that quota harvested in the area south of 36°00′ N. latitude. If a quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is required under § 285.22(h) to subtract the overage from, or add the underage to, that quota for 1993; provided that the total of the 1992 harvest plus the 1993 adjusted quotas and the reserve does not exceed 2,497 mt. The Assistant Administrator is further required to publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the **Federal Register**.

The longline component of the Incidental Catch category fishery for Atlantic bluefin tuna operating south of 36°00′ N. latitude in the Regulatory Area, exceeded its quota for 1992 by 13

mt. Therefore, pursuant to § 285.22(h), the 1992 13-mt overage will be subtracted from the 1993 longline Incidental Catch quota of 67 mt. This action will create a 1993 longline Incidental Catch category quota for the area south of 36°00′ N. latitude of 54 mt. The intent of this action is to prevent overharvest of the longline Incidental Catch quota established for this fishery for the 1992–93 biennial period

Classification

This action is required by 50 CFR 285.22(h) and complies with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties

Dated: December 9, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30405 Filed 12–14–92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 241
Tuesday, December 15, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for photographic film and video cassette records.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for photographic film and for video cassette recorders. The basis for a waiver of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before December 30, 1992.

ADDRESSES: Robert J. Moffitt, Associate Administrator for Procurement Assistance, U.S. Small Business Administration, 409 3rd Street, SW., , Washington, DC 20416, Tel: (202) 205–6460.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget *Standard Industrial Classification Manual*. The second is the Product and Service Code established by the Federal Procurement Data System.

The Small Business Administration (SBA) is currently processing a request for a waiver of the Nonmanufacturer Rule for photographic film (SIC code 3861, PSC code 6770) and video cassette recorders (SIC code 3651, PSC code 5836) and invites the public to comment or provide information on potential small business sources for these products.

In an effort to identify potential small business sources, the SBA has searched the Procurement Automated Source System (PASS) and *Thomas Register*, and published a notice in the *Commerce Business Daily*. The SBA has also been in touch with procurement staff at several major procuring agencies to request information on potential small business sources. None of these efforts have identified such sources for these products.

Dated: December 2, 1992.

Robert J. Moffitt,

Associate Administrator for Procurement Assistance.

[FR Doc. 92–30376 Filed 12–14–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AWP–9]

Proposed Amendment to Tucson, AZ Transition Area and Proposed Establishment of Ryan Field, AZ Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the 700 foot above ground level (AGL) transition area at Tucson, AZ. This amendment would clarify the Tucson Transition Area by eliminating the Ryan Field, AZ, Transition Area from the Tucson Transition Area description, and listing Ryan Field as a separate entity. Heretofore, the Ryan Field Transition Area had been published as part of the Tucson Transition Area. A new Standard Instrument Approach Procedure (SIAP), the non-directional beacon/distance measuring equipment (NDB/DME) runway (RWY) 6, has been developed for Ryan Field, Tucson, AZ which necessitates the enlargement of the 700 foot transition area to contain holding pattern airspace for the missed approach portion of the new SIAP.

DATES: Comments must be received on or before February 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 92–AWP–9, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, room 6W14, 15000 Aviation Boulevard, Lawndale, CA.

An informal docket may be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific

Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWP–9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 700 foot AGL Transition Area at Tucson, AZ. This amendment would clarify the Tucson Transition Area by eliminating the Ryan Field, AZ, Transition Area from the Tucson Transition Area description. Heretofore, the Ryan Field Transition Area had been published as part of the Tucson Transition Area. The FAA proposes to list the airspace designation of the Ryan Field transition area as a separate entity. A new Standard Instrument Approach Procedure (SIAP), the NDB/DME RWY 6, has been developed for Ryan Field, Tucson, AZ which necessitates the enlargement of the 700 foot transition area to contain holding pattern airspace for the missed approach portion of the new SIAP. The coordinates for this Airspace Docket are based on North American Datum 83. Transition areas are published in § 71.181 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition areas listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

AWP AZ TA Ryan Field, AZ [NEW] (lat. 32°08'29"N, long. 111°10'26"W)
Ryan NDB, AZ (lat. 32°08'18"N, long. 111°09'41"W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Ryan Field Airport and within 8 miles north and 4.6 miles south of the Ryan NDB 252° bearing extending from the 5-mile radius to 18.4 miles southwest of the Ryan NDB.

* * * * *

AWP AZ TA Tucson, AZ [REVISED]
Tucson International Airport, AZ (lat. 32°06'58"N, long. 110°56'28"W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Tucson International Airport, and within 16 miles NE and 13 miles SW of the 138° bearing from lat. 32°07'21"N., long. 110°49'14"W.; extending from the 10-mile radius area to 16 miles SE of lat. 32°07'21"N., long. 110°49'14"W.; and within 1 mile NE and 9 miles SW of a 318° bearing from lat. 32°07'21"N., long. 110°49'14"W.; extending from the 10-mile radius area to 22 miles NW of lat. 32°07'21"N., long. 110°49'14"W.; and within 16 miles NE of the 318° bearing from lat. 32°07'21"N., long. 110°49'14"W.; extending from lat. 32°07'21"N., long. 110°49'14"W.; to 30 miles NW of lat. 32°07'21"N., long. 110°49'14"W.; and that airspace extending upward from 1200 feet above the surface bounded by a line beginning at lat. 32°33'00"N., long. 111°45'02"W.; to lat. 32°33'00"N., long. 110°52'02"W.; thence N via long. 110°52'02"W., to the S boundary of V–94; thence SE via the S boundary of V–94 to long. 110°00'02"W.; thence S to lat. 31°39'00"N., long. 110°00'02"W.; to lat. 31°39'00"N., long. 111°00'02"W.; to lat. 32°00'00"N., long. 111°45'02"W.; to the point of beginning.

* * * * *

Issued in Los Angeles, California, on November 19, 1992.

Richard R. Lien,

Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 92–30410 Filed 12–14–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252 and 255

[Docket No. R-92-1589; FR-2951-P-01]

RIN 2502-AF09

GNMA Requests for Full Insurance on Coinsurance Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would revise currently applicable multifamily and health facility coinsurance regulations to eliminate the requirement that the Government National Mortgage Association (GNMA), in every case, first attempt to assign issuer-servicer responsibility on current coinsured mortgages held by a defaulting lender-issuer before requesting full insurance endorsement by the Federal Housing Administration (FHA). The purpose of the rule is to eliminate a current regulatory requirement which has proved to be time-consuming and, in most cases, unnecessary.

DATES: Comments must be submitted on or before February 16, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communication should refer to the above docket number and title. Facsimile (FAX) are not acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Donald A. Kaplan, Director, Office of Multifamily Housing Management, room 6160, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, voice (202) 708-3730, TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department's former regulations concerning GNMA's right to assignment of coinsured mortgages were found at 24 CFR 251.827 (Multifamily Coinsurance—New Construction and Substantial Rehabilitation), § 252.827 (Coinsurance of Nursing Homes and Related Facilities), and § 255.827 (Coinsurance of Mortgages Covering Existing Multifamily Projects), before their recent removal as part of the termination of the Coinsurance program. These regulations read as follows:

Section 251.827 [252.827 or 255.827] GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-backed Securities Program, GNMA will have the right, notwithstanding the requirements of § 251.106 [252.106 or 255.106], to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, BNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers.

(2) If GNMA rejects all offers or no offers are received, GNMA will have the right to perfect an assignment of the Mortgage to itself.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 221 [232 or 207]. Any future claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR part 221 [232 or 207], except that any payment will be made in cash instead of debentures.

On October 10, 1990, a final rule was published (55 FR 41312) terminating the FHA multifamily coinsurance programs and revising parts 251, 252 and 255. As a result of the final rule, parts 251, 252 and 255 consist of a single provision dealing with the program phase-out process. However, while the former rule's provisions are no longer included in the Code of Federal Regulations, those regulations in effect before November 12, 1990 continue to govern the rights and obligations of mortgagors, coinsuring lenders and HUD in existence before the termination of the coinsurance programs. The effect of this rule would be to revise those regulations as they relate to the handling of mortgage assignments to GNMA.

In lieu of the above-quoted paragraphs (a)(1) and (a)(2), the rule would provide that "For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless it determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market or other conditions). The assignment will be attempted by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner."

Given the facts that (a) the authority to coinsure mortgages has been terminated; (b) for the most part, no market exists for the purchase of coinsurance servicing rights; and (c) none of the few remaining approved coinsuring lenders has shown any interest to date in assuming additional coinsuring risk by assignment of loans from GNMA, implementation of the regulatory requirement earlier set forth in paragraphs (a)(1) and (a)(2) has proved to be a time-consuming, burdensome and fruitless process. Therefore, this rule proposes to amend parts 251, 252 and 255 to eliminate the requirement that GNMA, in every case, first attempt to assign issuer-servicer responsibility on current coinsured mortgages before perfecting assignment of the Coinsured Mortgage to itself and requesting full insurance endorsement by FHA.

Procedural Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2)

cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is procedural in nature. It effects no substantive changes in HUD programs or policies.

This rule was listed as item number 1407 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392, 51415) under Executive order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have Federalism implications and, thus, are not subject to review under the Order. No programmatic or policy changes would result from this rule's promulgation which would affect existing relationships between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule is procedural in nature and no significant change in existing HUD policies or programs impacting on the family will result from promulgation of this rule.

An environmental assessment is unnecessary, since internal administrative procedures whose content does not constitute a development decision affecting the physical condition of specific project areas or building sites is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(k).

List of Subjects

24 CFR part 251

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR part 252

Health facilities, Loan programs—housing and community development, Loan programs—health, Mortgage insurance, Reporting and recordkeeping requirements, Nursing homes.

24 CFR part 255

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 251, 252 and 255 would be amended to read as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 251 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9 (42 U.S.C. 3535(d)).

2. Part 251 would be amended by adding the following new § 251.2, to read as follows:

§ 251.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right, notwithstanding the requirements of HUD regulations on the assignment of and participation in coinsured mortgages which were in effect before November 12, 1990, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 221. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 221, except that any payment will be made in cash instead of debentures.

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES AND BOARD AND CARE HOMES

3. The authority citation for 24 CFR part 252 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

4. Part 252 would be amended by adding the following new § 252.2, to read as follows:

§ 252.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right, notwithstanding the requirements of HUD regulations on the assignment of and participation in coinsured mortgage which were in effect before November 12, 1990, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the

agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 232. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 232, except that any payment will be made in cash instead of debentures.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. The authority citation for 24 CFR part 255 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9 (42 U.S.C. 3535(d).

6. Part 255 would be amended by adding the following new § 255.2, to read as follows:

§ 255.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right, notwithstanding the requirements of HUD regulations on the assignment of and participation in coinsured mortgages which were in effect before November 12, 1990, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 207. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 207, except that any payment will be made in cash instead of debentures.

Dated: December 9, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92–30351 Filed 12–14–92; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. R–92–1619; FR–3228–P–01]

RIN 2577–AB11

Indian Housing: Revisions to Lease and Grievance Procedures

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise the Indian housing regulations concerning required lease provisions and grievance procedures for residents of Indian housing. The changes would facilitate eviction of tenants who are involved in criminal activity that threatens the health, safety, or right to peaceful enjoyment of other tenants or who are involved in drug-related criminal activity, be permitting use of an expedited grievance procedure or reliance upon court actions without first conducting a grievance procedure.

DATES: Comments must be submitted by February 16, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Comment should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Programs, room 4140, Department of Housing and Urban Development, Washington, DC 20410–5000; telephone (202) 708–1015 (voice) or (202) 708–0850 (TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paper Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

Public reporting burden for the collection of information requirements

contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in paragraph III. H. of this Preamble. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

III. Background

Changes were made to the statutory provisions governing leases and grievance procedures in Indian housing by sections 503, 504 and 505 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), 42 U.S.C. 1437d note, which require notice and comment rulemaking. Proposed and final rules were issued concerning these statutory provisions as they applied to the public housing program (amending 24 CFR part 966), but those rules did not cover the Indian housing program. Consequently, this separate rule is now being published with respect to those statutory changes as they affect the Indian housing program.

Before the enactment of NAHA, section 6(k) of the United States Housing Act of 1937 permitted an Indian Housing Authority (IHA) to exclude from its administrative grievance procedure actions to evict tenants if the jurisdiction required a court hearing that provided the basic elements of due process. The current rule, § 905.340(a)(2), reflects that provision.

However, NAHA places greater emphasis on permitting IHAs to evict tenants quickly and easily if they are involved in criminal activity that is drug-related or threatens the health, safety or peaceful enjoyment of the premises by other tenants or IHA employees. It makes two changes to the IHA's grievance procedures. It revises the provision that has permitted the exclusion from the IHA's grievance procedure of any eviction that would be the subject of a local court proceeding affording due process, as determined by the Secretary. Now only evictions that involve the specified types of criminal activity maybe excluded from the IHA's grievance procedure. NAHA also authorizes, for the first time, an expedited grievance procedure to be established by an IHA, to be used in evictions involving the specified types of criminal activity.

NAHA also revises the provision regarding the leases used in Indian housing, to require that criminal activity as described above engaged in by a tenant, a member of the tenant's household, or a guest of the tenant, is grounds for termination of tenancy. It also requires that the lease provide that any notice of termination of tenancy or notice of eviction must inform the tenant of a right to examine relevant documents, records, or regulations directly related to the termination or eviction before any hearing or trial on the matter.

The rule implementing these changes in the public housing program (published at 56 FR 51560, October 11, 1991) included other changes, as well. This rule simply modifies § 905.340 to add one more provision to the required elements of the lease, to add a provision permitting an expedited grievance procedure, and to modify the situation under which the IHA could omit the grievance procedure and proceed directly to court to terminate tenancy and evict a tenant.

III. Findings and Certifications

A. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule merely conforms the existing rule on the subject of Indian housing leases and grievance procedures to the governing statute, as amended. As a result, the rule is not subject to review under the order.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule will simply buttress the efforts of Indian Housing Authorities to keep their housing free of criminal activity by enforcing provisions of the law making drug-related and other serious criminal activity on or near the premises clearly actionable.

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to specifying the procedures for enforcing lease provisions concerning criminal activity.

F. "Takings" Assessment

The General Counsel, as the Designated Official under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, has determined that this rule does not have "takings implications" as defined in HUD's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." The Department does not regard the effects of this rule on private property rights as "effectively denying economically viable use of any distinct legally protected property interest of [a property owner], or result in a permanent or temporary physical occupation, invasion, or deprivation."

The proposed rule would merely prescribe, pursuant to statute, the changes in lease provisions and grievance procedures to be used by Indian housing authorities that receive assistance from HUD under the United States Housing Act of 1937.

G. Regulatory Agenda

This rule was listed as item 1497 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392, 51435) in accordance with Executive order 12291 and the Regulatory Flexibility Act.

H. Public Reporting Burden

The Department has determined that the following provisions contain information collection requirements and estimates the public reporting burden as follows:

ANNUAL REPORTING BURDEN
[Indian Lease and Grievance Procedure]

Description of information collection	No. of respondents	No. of responses/respondent	Total annual response	Hours per response	Total annual hours
Adoption of expedited grievance procedure	190	1	190	5	950
Development of new lease: 905.340(b)(5)	190	1	190	10	1,900
Obtaining tenant signatures on new lease: 905.340(b)	22,800	1	190	.5	11,400
Recordkeeping	22,800	1	22,800	.5	3,420
Total					17,670

I. Catalog

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.850 and 14.851.

List of Subjects in 24 CFR Part 905

Grant programs: Indians, Low and moderate income housing, Homeownership, Public housing.

Accordingly, part 905 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 would continue to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee and 3535(d).

2. Section 905.340 would be revised to read as follows:

§ 905.340 Grievance procedure and leases.

(a) *Grievance procedures.*

(1) *General.* Each IHA shall adopt and promulgate grievance procedures that are appropriate to local circumstances. These procedures shall comply with the Indian Civil Rights Act, if applicable, and section 6(k) of the Act, as applicable, and shall assure that tenants and homebuyers will:

(i) Be advised of the specific grounds of any proposed adverse action by the IHA;

(ii) Have an opportunity for a hearing before an impartial party upon timely request;

(iii) Have a reasonable opportunity to examine any documents, records, or regulations related to the proposed action before the hearing (or trial in court);

(iv) Be entitled to be represented by another person of their choice at any hearing;

(v) Be entitled to ask questions of witnesses and have others make statements on their behalf; and

(vi) Be entitled to receive a written decision by the IHA on the proposed action.

(2) *Expedited grievance procedure.* An IHA may establish an expedited grievance for any grievance concerning a termination of tenancy or eviction that involves:

(i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Indian housing development by other residents or employees of the IHA, or

(ii) Any drug-related criminal activity on or near the premises.

(3) *Exclusion of certain grievances.* (i) *General.* An IHA may pursue termination of tenancy or eviction without offering a grievance procedure where the termination or eviction is based on one of the grounds stated in paragraph (a)(2) of this section if applicable Tribal or State law requires that, before eviction, a tenant (including a homebuyer under a homeownership agreement) be given a hearing in court, if HUD has determined that the Tribal or State procedures provide the basic elements of due process.

(ii) *Basic elements of due process.* The elements of due process against which the jurisdiction's procedures are measured by HUD are the following:

(A) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;

(B) Right of the tenant to be represented by counsel;

(C) Opportunity for the tenant to refute the evidence presented by the IHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant might have; and

(D) A decision on the merits.

(4) *Notice to post office of certain evictions.* When an IHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the IHA shall notify the local post office serving that dwelling unit that the evicted individual or family is no longer residing in the dwelling unit (so that the post office will terminate delivery of mail for such persons at the unit, and that such persons will not return to the unit to pick up mail).

(5) *Notice of procedures.* A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to any tenant, homebuyer, or applicant upon request.

(b) *Leases.* Each IHA shall use leases that:

(1) Do not contain unreasonable terms and conditions;

(2) Obligate the IHA to maintain the project in a decent, safe, and sanitary condition;

(3) Require the IHA to give adequate written notice of termination of the lease which shall not be less than—

(i) A reasonable time, but not to exceed 30 days, when the health or safety of other tenants or IHA employees is threatened;

(ii) Fourteen days in the case of nonpayment of rent; and

(iii) Thirty days in any other case;

(4) Require that the IHA may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

(5) Provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near the premises, engaged in by an Indian

housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy. For purposes of this section, the term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); and

(6) Specify that with respect to any notice of termination of tenancy or eviction, notwithstanding any applicable Tribal or State law, an Indian housing tenant shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, records, or regulations directly related to the termination or eviction.

Dated: December 9, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-30352 Filed 12-14-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-25-92]

RIN 1545-AQ70

Qualified Accelerated Death Benefits Under Life Insurance Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations relating to the definition of a life insurance contract for federal tax purposes and to the federal income tax treatment of amounts received as qualified accelerated death benefits. These proposed regulations are necessary to provide guidance to insurance companies and their policyholders.

DATES: Written comments, requests to speak, and outlines of oral arguments to be presented at the hearing scheduled for March 19, 1993, at 10 a.m. in the Internal Revenue Service Auditorium, must be received by February 26, 1993. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI-25-92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ann H. Logan, 202-622-3970 (not a toll-free number). Concerning the hearing, Mike Slaughter of the Regulations Unit, 202-622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 101, 7702, and 7702A of the Internal Revenue Code (Code). The proposed rules relate to the definition of a life insurance contract under section 7702 of the Internal Revenue Code, to the treatment of a life insurance contract under section 7702A, and to the federal income tax treatment of amounts received as qualified accelerated death benefits under section 101. The proposed regulations reflect the addition of section 7702 to the Code by section 221(a) of the Tax Reform Act of 1984, Public Law 98-369, and the addition of section 7702A to the Code by section 5012 of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647.

Purpose of Regulations

The proposed regulations provide insurers with the standards needed to design and market insurance contracts that provide both death benefits and morbidity benefits without subjecting policyholders to taxation on the inside build-up of the life insurance contracts.

In recognition of the needs of individuals who become terminally ill, the proposed regulations also allow the payment of benefits prior to death without any income tax liability to the recipient if death is expected to occur within 12 months.

For insurance contracts that, prior to July 1, 1993, provide for a benefit or loan for terminally ill individuals or a morbidity benefit, the proposed regulations provide transition rules that prevent the benefit or loan from resulting in adverse federal tax consequences to the policyholders and avoid the reporting and withholding requirements that would be imposed upon the insurers if the contracts were to fail to qualify as life insurance contracts. *See* Rev. Rul. 91-17, 1991-1 C.B. 190.

Summary of Relevant Statutory Provisions

Section 7702 defines a "life insurance contract" as any contract that is a life insurance contract under applicable law, but only if the contract either (1) meets the cash value accumulation test of section 7702(b), or (2) meets the guideline premium requirements of section 7702(c) and falls within the cash value corridor of section 7702(d).

The cash value accumulation test of section 7702(b) requires that, by the terms of the contract, the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at that time to fund the future benefits under the contract. "Cash surrender value" for purposes of section 7702 is defined in section 7702(f)(2)(A) as the cash value of the contract determined without regard to any surrender charge, policy loan, or reasonable termination dividends. The "net single premium" must be determined using the assumptions, computational rules, definitions, and special rules contained in section 7702.

The guideline premium limitation of section 7702(c) provides that the premiums paid under the contract at any time must not exceed the greater of the guideline single premium or the sum of the guideline level premiums to that date. Contracts qualifying as life insurance under the guideline premium test also must satisfy the cash value corridor of section 7702(d). The corridor specifies a minimum ratio of death benefits to cash surrender values.

Section 7702(f)(7) provides for adjustments in determinations made under section 7702 if there is a change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination or adjustment. A reduction in death benefits is an adjustment event under section 7702(f)(7). Qualification as a life insurance contract after an adjustment event requires redetermination of values under the contract, including the net single premium, the guideline premium limitation, and the cash value corridor, depending on the test under which the contract qualifies as life insurance.

Section 7702(g) governs the federal income tax treatment of a life insurance contract under applicable law that fails to meet the definition of a life insurance contract under section 7702(a), either at inception or at a later date. In general, under section 7702(g)(1)(A), the "income on the contract" is treated as ordinary income that is received or accrued annually by the policyholder.

Section 7702A(a) defines a modified endowment contract as a life insurance contract meeting the requirements of section 7702 which is entered into on or after June 21, 1988 and which fails to meet the 7-pay test of section 7702A(b) or a life insurance contract which is

received in exchange for a modified endowment contract.

Section 7702A(c)(3)(A)(i) provides that, if there is a "material change" within the meaning of section 7702A(c)(3) to a life insurance contract that is subject to section 7702A, the contract is treated as entered into on the day that the material change takes effect. A material change in the benefits under (or in other terms of) the contract includes any increase in the death benefit under the contract or any increase in, or addition of, a qualified additional benefit under the contract.

Section 101(a) provides in part that gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if the amounts are paid by reason of the death of the insured.

Section 72(c)(1) defines investment in the contract for purposes of determining the exclusion ratio for amounts received as an annuity under an annuity, endowment, or life insurance contract. Section 72(e)(6) defines investment in the contract for amounts received under an annuity, endowment, or life insurance contract if the amount is not received as an annuity and no other income tax provision applies. *See* Rev. Rul. 55–349, 1955–1 C.B. 232, (premiums for supplementary benefits excluded from the investment in the contract).

New Insurance Contracts

Insurance companies have developed insurance contracts which provide both death benefits and "living benefits" designed to assist policyholders with the rising costs of medical care, particularly medical care in the later years of life. Living benefits generally may be divided into two types of benefits. The first type of living benefit, an "accelerated death benefit," addresses the needs of terminally ill individuals who may incur substantial medical and living expenses prior to death. This benefit allows the policyholder, under a life insurance contract insuring a terminally ill individual, to "accelerate" the death benefit paid under the contract. Generally, the accelerated death benefit is equal to all or a portion of the death benefit discounted for the remaining life expectancy (generally 12 months or less) of the terminally ill individual. The payment of a benefit is conditioned upon the policyholder surrendering all or a portion of the policyholder's rights under the life insurance contract.

A second type of living benefit provides accident and health benefits upon the occurrence of certain morbidity risks, for example, a condition requiring a long-term stay in a nursing home or certain dread diseases. The living benefit is a specified amount which is determined by reference to all or a portion of the death benefit otherwise payable. As with accelerated death benefits, the payment of a benefit is conditioned upon the policyholder surrendering all or a portion of the policyholder's rights under the life insurance contract.

Explanation of Provisions

The proposed regulations are being promulgated to provide guidance concerning the tax treatment to the owners and issuers of insurance contracts that provide living benefits by addressing the application of sections 72, 101, 7702, and 7702A to those insurance contracts.

The proposed regulations allow qualified accelerated death benefits under an insurance contract to be treated as amounts paid by reason of the death of the insured for purposes of sections 101(a) and 7702. This proposed treatment allows an insurance contract including these benefits to continue to meet the definition of a life insurance contract under section 7702. The proposed regulations also permit a person who receives a qualified accelerated death benefit to exclude, under section 101(a), the benefit from gross income.

A qualified accelerated death benefit is defined in the proposed regulations as a benefit payable under a contract on the life of an insured who becomes terminally ill, where the amount of the death benefit made available cannot be discounted by more than 12 months at the rate of interest specified in the regulations. Under the proposed regulations an individual is terminally ill if the individual has an illness or physical condition that, notwithstanding appropriate medical care, is reasonably expected to result in death within 12 months from the date of payment of the accelerated death benefit. As the 12 month determination is necessarily subjective to some extent, it is expected that the insurer will act prudently in its determination of whether the person is terminally ill. The Service is considering whether to develop further guidance that would create a presumption of terminal illness in certain circumstances.

The proposed regulations also address the treatment, under section 7702, of other living benefits that provide payments upon the occurrence of a morbidity risk of an amount determined by reference to all or a portion of the death benefit otherwise payable under an insurance contract. For purposes of section 7702, the benefit could be viewed as an amount paid upon surrender of a contract and accordingly would be included in the cash surrender value of the contract. The impact of this characterization would be to disqualify as life insurance under section 7702 many contracts providing these benefits. Contracts with large cash surrender values would no longer qualify under the cash value accumulation test of section 7702(b) while contracts qualifying under the guideline premium test of section 7702(c) would fail the cash value corridor test of section 7702(d). For example, a policyholder, age 37, might own an insurance contract with a $100,000 face amount, that also provides for a payment of $70,000 upon surrender of the contract if the policyholder is hospitalized for a specified number of days. The $70,000 hospital benefit could result in the failure of the contract to qualify as a life insurance contract under section 7702.

To enable policyholders to avoid this result, the proposed regulations adopt an approach which assumes that a life insurance contract and an accident and health insurance contract which could be sold separately should be allowed to be sold together without endangering the qualification of the contract offering both benefits as a life insurance contract under section 7702. To preserve qualification of the contract offering both benefits as a life insurance contract, the proposed regulations exclude amounts payable as additional benefits (other than qualified additional benefits) from cash value if the following conditions are satisfied: (1) The benefits are paid solely upon the occurrence of a morbidity risk, (2) the charges for the benefits are separately stated and currently imposed by the insurer, and (3) the charges are not included in premiums taken into account in the determination of the investment in the contract under section 72 and are not taken into account in the determination of premiums paid under section 7702(f)(1).

If the three conditions are met, the proposed regulations treat a life insurance contract with an additional accident and health benefit as providing both a potential death benefit and a potential living benefit which is paid upon the occurrence of a morbidity risk. The living benefit is treated as being comprised of two elements: (1) A payment upon the partial or full surrender of the life insurance contract for part or all of the cash value, and (2) a payment upon the occurrence of a morbidity event of an additional accident and health benefit equal to the difference between the total payment

received and the amount received by the policyholder on the full or partial surrender of the contract. If, however, the three conditions are not satisfied, the additional benefit will not be excluded from cash value under section 7702.

The requirement that morbidity risk charges for living benefits be separately stated and currently imposed by the terms of the life insurance contract is necessary if section 7702 is to operate in the manner intended by Congress. Providing for the proper allocation and treatment of charges for these contracts assures the appropriate treatment of amounts paid into the contract and benefits paid.

The approach in the proposed regulations is intended to level the playing field between contracts that provide accident and health benefits in conjunction with life insurance benefits and contracts that provide only accident and health benefits. Thus, the approach of the proposed regulations will allow a contract providing both accident and health and life insurance benefits to continue to qualify as a life insurance contract under section 7702 so long as the contract provides appropriate treatment of the charges for the accident and health benefits.

The proposed regulations also exclude from cash value qualified additional benefits, certain amounts returned upon termination of a credit life insurance contract, and reasonable termination dividend.

The proposed regulations define cash surrender value, net surrender value, and death benefit for purposes of section 7702.

Proposed Effective Dates

The proposed regulations under section 7702, relating to the definition of cash value and the tax treatment of certain benefits, would be effective generally for contracts issued or entered into after June 30, 1993.

Under the proposed regulations, the provision of certain benefits or loans in a life insurance contract before July 1, 1993, does not increase the cash value of the contract. The proposed regulations also provide that the addition to a life insurance contract, before July 1, 1993, of certain benefits or loans has no effect on the date that the contract was issued or entered into for purposes of section 7702 and 7702A, and does not cause a material change in the contract under section 7702A.

The addition of a qualified accelerated death benefit (or an additional benefit satisfying the three conditions specified in proposed § 1.7702–2(f)) to a life insurance contract at any time has no effect on the date that the contract was issued or entered into for purposes of section 7702 and 7702A, and does not cause a material change in the contract under section 7702A.

The section 101 exclusion provided by the proposed regulations for qualified accelerated death benefits would be effective for amounts received on or after the date on which final regulations defining a qualified accelerated death benefit are published in the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service.

Comments are specifically requested on the need for special rules under section 7702(f)(7) for contracts that do not terminate upon payment of a morbidity benefit or a qualified accelerated death benefit. Comments are also requested on whether the proposed regulations treat additional benefits insuring morbidity risks that are attached to a life insurance contract in the same fashion as contracts which provide similar benefits that are not attached to a life insurance contract. Finally, comments are requested on whether the regulations should specify how premiums and charges should be allocated among the various benefits provided under a life insurance contract.

All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled for March 19, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Ann H. Logan, Office of the Assistant Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.101–1 through 1.133–1T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.7702–0 through 1.7702A–1

Life insurance contract, Taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding a citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.7702–2 also issued under 26 U.S.C. 7702(k) * * *

Par. 2 Section 1.101–8 is added to read as follows:

§ 1.101–8 Amounts paid with respect to terminally ill individuals.

For purposes of section 101(a), a qualified accelerated death benefit (as defined in § 1.7702–2(d)), received on or after [*date on which final regulations are published in the* **Federal Register**], is treated as an amount paid by reason of the death of the insured.

Par. 3. Section 1.7702–0 is added to read as follows.

§ 1.7702–0 Table of contents.

This section lists the captions that appear in §§ 1.7702–1 and 1.7702–2.

§ 1.7702–1 Mortality charges.

(a) General rule.
(b) Reasonable mortality charges.
  (1) Actually expected to be imposed.
  (2) Limit on charges.
(c) Safe harbors.
  (1) 1980 C.S.O. Basic Mortality Tables.
  (2) Unisex tables and smoker/nonsmoker tables.
  (3) Certain contracts based on 1958 C.S.O. table.
(d) Definitions.
  (1) Prevailing commissioners' standard tables.
  (2) Substandard risk.
  (3) Nonparticipating contract.

(4) Charge reduction mechanism.
(5) Plan of insurance.
(e) Effective date.

§ 1.7702–2 Definitions.

(a) In general.
(b) Cash value.
(1) In general.
(2) Amounts excluded from cash value.
(c) Death benefit.
(1) In general.
(2) Qualified accelerated death benefit treated as death benefit.
(d) Qualified accelerated death benefit.
(1) In general.
(2) Determination of present value of the reduction in death benefit.
(3) Examples.
(e) Terminally ill defined.
(f) Certain other additional benefits.
(1) In general.
(2) Examples.
(g) Adjustments under section 7702(f)(7).
(h) Cash surrender value.
(1) In general.
(2) For purposes of section 7702(f)(7).
(i) Net surrender value.
(j) Effective date and special rules.
(1) In general.
(2) Provision of certain benefits before July 1, 1993.
(i) Not treated as cash value.
(ii) No effect on date of issuance.
(iii) Special rule for addition of benefit or loan provision after December 15, 1992.
(3) Addition of qualified accelerated death benefit.
(4) Addition of other additional benefits.

Par. 4. Sections 1.7702–2 and 1.7702A–1 are added to read as follows:

§ 1.7702–2 Definitions.

(a) *In general.* Paragraphs (b) through (i) of this section provide definitions and other rules only for purposes of section 7702.

(b) *Cash value*—(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section, the cash value of a contract is the greater of—

(i) The maximum amount payable under the contract (determined without regard to any surrender charge or policy loan); or

(ii) The maximum amount that the policyholder can borrow under the contract.

(2) *Amounts excluded from cash value.* The cash value of a contract does not include—

(i) The amount of any death benefit (as defined in paragraph (c) of this section);

(ii) The amount of any qualified additional benefit;

(iii) The amount of any other benefit described in paragraph (f) of this section;

(iv) An amount returned to the insured upon termination of a credit life insurance contract due to a full repayment of the debt covered by the contract; or

(v) A reasonable termination dividend not in excess of $35 for each $1,000 of the face amount of the contract.

(c) *Death benefit*—(1) *In general.* A death benefit is the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefits).

(2) *Qualified accelerated death benefit treated as death benefit.* For purposes of paragraph (b)(2)(i) of this section, the amount payable as a qualified accelerated death benefit as defined in paragraph (d) of this section (but determined without regard to any reduction for discounting) is treated as a death benefit.

(d) *Qualified accelerated death benefit*—(1) *In general.* A benefit payable prior to death (accelerated benefit) is a qualified accelerated death benefit if, under the contract, the following conditions are satisfied—

(i) The accelerated benefit is payable only if the insured becomes terminally ill (as defined in paragraph (e) of this section);

(ii) The amount of the accelerated benefit is equal to or more than the present value of the reduction in the death benefit otherwise payable in the event of the death of the insured (without regard to any qualified additional benefits); and

(iii) The ratio of the cash surrender value of the contract immediately after the payment of the accelerated benefit to the cash surrender value of the contract immediately before the payment of the accelerated benefit is equal to or greater than the ratio of the death benefit immediately after the payment of the accelerated benefit to the death benefit immediately before the payment of the accelerated benefit.

(2) *Determination of present value of the reduction in death benefit.* For purposes of paragraph (d)(1)(ii) of this section, the present value of the reduction in death benefit occurring upon payment of a qualified accelerated death benefit must be determined by—

(i) Using as the discount rate the greater of—

(*A*) The applicable federal interest rate determined under section 846(c)(2); or

(*B*) The interest rate applicable to policy loans under the contract; and

(ii) Assuming that the death benefit (or the portion thereof) would have been paid 12 months after the date of the payment of the accelerated benefit.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (d).

Example 1. B owns an insurance contract with a death benefit of $100,000 and a cash value of $30,000. In 1994, the insured becomes terminally ill (as defined in paragraph (e) of this section). In 1994, *B* receives an accelerated benefit equal to forty percent of the death benefit under the contract (discounted in accordance with to the rules of paragraph (d)(2) of this section). As a result of the payment of the accelerated benefit, the amount that *B* is entitled to receive upon the surrender of the contract is reduced by $12,000 (forty percent of $30,000) to $18,000. The ratio of the cash surrender value of the contract immediately after the payment of the accelerated benefit to the cash surrender value of the contract immediately before the payment of the accelerated benefit (18:30) is equal to the ratio of the death benefit immediately after the payment of the accelerated benefit to the death benefit immediately before the payment of the accelerated benefit (60:100). The accelerated benefit constitutes a qualified accelerated death benefit.

Example 2. C owns an insurance contract with a death benefit of $100,000. In 1994, the insured becomes terminally ill (as defined in paragraph (e) of this section). The policy loan rate specified in the contract is 10 percent and exceeds the federal applicable rate determined under section 846(c). In 1994, *C* receives an accelerated benefit equal to the entire death benefit of the policy discounted by 10 percent for 12 months from the date of payment and the contract terminates. The accelerated benefit is not a qualified accelerated death benefit.

Example 3. The facts are the same as in *Example 2* except that *C* receives an accelerated benefit equal to the entire death benefit of the policy discounted by 20 percent for 12 months from the date of payment and the contract terminates. The accelerated benefit is a qualified accelerated death benefit.

(e) *Terminally ill defined.* An individual is terminally ill if the insurer determines that the individual has an illness or physical condition that, notwithstanding appropriate medical care, is reasonably expected to result in death within 12 months from the date of payment of the accelerated death benefit.

(f) *Certain other additional benefits*—(1) *In general.* An additional benefit is described in this paragraph (f) if the following conditions are satisfied—

(i) The benefit is payable solely upon the occurrence of a morbidity risk;

(ii) The charges for the benefit are separately stated and currently imposed by the terms of the contract; and

(iii) The charges for the benefit are not included in premiums taken into account in the determination of the investment in the contract under section 72(c)(1) or 72(e)(6) and are not taken into account in the determination of premiums paid under section 7702(f)(1).

(2) *Examples.* The following examples illustrate the provisions of this paragraph (f):

Example 1. *A* owns an insurance contract with a death benefit of $100,000. The contract contains a provision that upon the occurrence of a morbidity risk, the insurance company will pay to *A* a morbidity benefit equal to 70 percent of the contract's death benefit in complete termination of *A*'s rights under the contract. Upon surrender of the contract prior to the occurrence of the morbidity risk, *A* currently would be entitled to receive $40,000. The morbidity benefit is payable solely upon the occurrence of a morbidity risk. The charges for the morbidity benefit are separately stated and currently imposed under the contract. The charges for the morbidity benefit are not included in premiums taken into account in the determination of the investment in the contract under section 72(c)(1) or 72(e)(6) and are not taken into account in the determination of premiums paid under section 7702(f)(1). The excess of the $70,000 (70 percent of $100,000) payable to *A* upon the occurrence of the morbidity risk over $40,000 is an additional benefit which is not a qualified additional benefit. The additional benefit is described in this paragraph (f). Under paragraph (b)(2)(iii) of this section, the amount of the additional benefit (the $30,000 payable by reason of the occurrence of a morbidity risk) is not included in the contract's cash value. Accordingly, $40,000 is treated as cash value payable upon complete surrender of the contract while the remaining $30,000 is treated as a morbidity benefit under the contract.

Example 2. The facts are the same as in *Example 1* except that the charges for the morbidity benefit are not separately stated and currently imposed. The benefit is not described in this paragraph (f) and consequently the benefit is not excluded from the cash value of the contract. Under paragraph (b)(2)(iii) of this section, the contract's cash value includes the amounts payable by reason of the occurrence of a morbidity risk.

Example 3. The facts are the same as in *Example 1* except that the charges for the morbidity benefit are included in premiums taken into account in the determination of the investment in the contract under section 72(c)(1) or 72(e)(6). The benefit is not described in this paragraph (f) and consequently the benefit is not excluded from the cash value of the contract. Under paragraph (b)(2)(iii) of this section, the contract's cash value includes the amounts payable by reason of the occurrence of a morbidity risk.

(g) *Adjustments under section 7702(f)(7).* If a life insurance contract is not terminated upon the payment of a qualified accelerated death benefit or an additional benefit described in paragraph (f) of this section, any change in the benefits under (or in other terms of) the contract is a change not reflected in any previous determination or adjustment under section 7702 and is an adjustment event under section 7702(f)(7).

(h) *Cash surrender value*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, cash surrender value of a contract is its cash value, as determined under paragraph (b) of this section.

(2) *For purposes of section 7702(f)(7).* For purposes of determining the recapture ceiling under section 7702(f)(7), cash surrender value is the amount that would be payable under the contract (determined without regard to any surrender charge, policy loan, or reasonable termination dividends) if the contract were terminated immediately prior to the change in the benefits under (or in other terms of) the contract.

(i) *Net surrender value.* For purposes of section 7702(g), the net surrender value of a contract at any time is the amount that would be payable under the contract (determined with regard to surrender charges but without regard to any policy loan) if the contract were terminated at that time.

(j) *Effective date and special rules*—(1) *In general.* Except as otherwise provided in this paragraph (j), this section applies only with respect to contracts issued or entered into after June 30, 1993.

(2) *Provision of certain benefits before July 1, 1993*—(i) *Not treated as cash value.* If a benefit or loan payable only in the event the insured becomes terminally ill (as defined in paragraph (e) of this section), or an additional benefit (other than a qualified additional benefit) or loan payable solely upon the occurrence of a morbidity risk, is provided in a life insurance contract before July 1, 1993, the benefit or loan is not treated as cash value under section 7702.

(ii) *No effect on date of issuance.* If a benefit or loan provision described in paragraph (j)(2)(i) of this section is added to a life insurance contract before July 1, 1993, the addition of the benefit or loan has no effect on the date that the contract was issued or entered into for purposes of section 7702.

(iii) *Special rule for addition of benefit or loan provision after December 15, 1992.* This paragraph (j)(2) applies with respect to a benefit or loan provision added to a life insurance contract after December 15, 1992 only if the insurer can demonstrate that the benefit or loan provision was available under a life insurance contract issued in the United States as of December 15, 1992.

(3) *Addition of qualified accelerated death benefit.* If a qualified accelerated death benefit (as defined in paragraph (d) of this section) is added to a life insurance contract at any time—

(i) The addition of the benefit has no effect on the date that the contract was issued or entered into for purposes of section 7702; and

(ii) Paragraph (b)(2)(i) of this section shall apply to the qualified accelerated death benefit.

(4) *Addition of other additional benefits.* If an additional benefit described in paragraph (f) of this section is added to a life insurance contract at any time—

(i) The addition of the benefit has no effect on the date that the contract was issued or entered into for purposes of section 7702; and

(ii) The benefit is not treated as cash value under section 7702.

§ 1.7702A–1 Addition of certain benefits.

(a) *Addition of certain benefits before July 1, 1993*—(1) *No effect on date of issuance.* If a benefit or loan payable only in the event the insured becomes terminally ill (as defined in § 1.7702–2(e)), or an additional benefit (other than a qualified additional benefit) or loan payable solely upon the occurrence of a morbidity risk, is added to a life insurance contract before July 1, 1993, the addition of the benefit or loan provision has no effect on the date that the contract was issued or entered into for purposes of section 7702A.

(2) *No material change.* If a benefit or loan provision described in paragraph (a)(1) of this section is added to a life insurance contract before July 1, 1993, the addition of the benefit is not treated as a material change under section 7702A(c)(3).

(3) *Special rule for addition of benefit or loan provision after December 15, 1992.* This paragraph (a) applies with respect to a benefit or loan provision added to a life insurance contract after December 15, 1992 only if the insurer can demonstrate that the benefit or loan provision was available under a life insurance contract issued within the United States as of December 15, 1992.

(b) *Addition of qualified accelerated death benefit.* If a qualified accelerated death benefit (as defined in § 1.7702–2(d)) is added to a life insurance contract at any time—

(1) The addition of the benefit has no effect on the date that the contract was issued or entered into for purposes of section 7702A; and

(2) The addition of the benefit is not treated as a material change under section 7702A(c)(3).

(c) *Addition of other additional benefits.* If an additional benefit described in § 1.7702–2(f) is added to a life insurance contract at any time—

(1) The addition of the benefit has no effect on the date that the contract was issued or entered into for purposes of section 7702A; and

(2) The addition of the benefit is not treated as a material change under section 7702A(c)(3).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92-29919 Filed 12-14-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI-25-92]

RIN 1545-AQ70

Qualified Accelerated Death Benefits Under Life Insurance Contracts; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the definition of a life insurance contract for Federal tax purposes and to the Federal income tax treatment of amounts received as qualified accelerated death benefits.

DATES: The public hearing will be held on Friday, March 19, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, February 26, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [FI-25-92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations to amend the Income Tax Regulations (26 CFR part 1) under sections 101, 7702, and 7702A of the Internal Revenue Code, to the treatment of life insurance contract under section 7702A, and to the Federal income tax treatment of amounts received as qualified accelerated death benefits under section 101. These proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, February 26, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-29920 Filed 12-14-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-91-90]

RIN 1545-AP52

Partnership Transactions Involving Equity Interests of a Partner

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 631 of the Tax Reform Act of 1986 was intended to repeal the *General Utilities* doctrine which, under certain circumstances, permitted a corporation to distribute appreciated assets to its shareholders without recognizing gain. The Service has determined that, in certain circumstances, the acquisition (or mere ownership) by a partnership of stock in one of its corporate partners results in avoidance of the repeal of the *General Utilities* doctrine. This document contains proposed regulations that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner. The intended effect of these proposed regulations is to provide for gain recognition in such circumstances.

DATES: Written comments and requests to appear, and outlines of oral comments to be presented, at a public hearing scheduled for February 3, 1993 must be received by January 20, 1993. See notice of public hearing on these proposed regulations published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to speak at the public hearing, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-91-90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Channing Brackey at (202) 622-3070 or Tom Matragrano at (202) 622-7530 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Introduction

This document contains proposed income tax regulations under section 337(d) of the Internal Revenue Code implementing Notice 89-37, 1989-1 C.B. 679. In the notice, the Internal Revenue Service stated that it would publish regulations to prevent the use of a partnership to circumvent the repeal of the *General Utilities* doctrine. Section 337(d) provides the Service authority to issue such regulations as may be necessary and appropriate to carry out the purposes of the repeal, "including regulations to ensure that such purposes may not be circumvented through the use of any provision of the law or regulations."

Prior to the repeal of the *General Utilities* doctrine, a corporation recognized no gain or loss on certain distributions of property to its shareholders. Following the repeal, a corporation generally recognizes gain on the distribution of appreciated property to a shareholder.

In Notice 89-37, the Service clarified that section 311(b), rather than section 731(a), applies when a partner receives a partnership distribution of its own stock (the distribution rule). Further, the Service stated that the partner recognizes gain when a pre-distribution transaction (or series of transactions) has the economic effect of an exchange by the partner of appreciated property for its stock (the deemed redemption rule). Finally, the Notice indicated that some of the transactions subject to these regulations also may be subject to taxation under the "substance over form" principle or section 707(a)(2)((B), and this continues to be true.

Explanation of Provisions

In General

This section sets forth rules that apply when a partnership, either directly or indirectly, owns, acquires, or distributes the stock of a partner. The proposed regulations adopt a deemed redemption rule and a distribution rule.

The Deemed Redemption Rule

Under the deemed redemption rule, a partner recognizes gain at the time of, and to the extent that, any transaction (or series of transactions) has the economic effect of a partner exchanging its interest in appreciated property for an interest in its stock that is owned or acquired by the partnership. The economic effect of an exchange of property for stock may occur when the partner contributes property to the partnership. It may also occur when a partnership acquires stock of a partner, when a partnership makes disproportionate distributions, or when the partnership agreement is amended to provide different sharing ratios.

The Distribution Rule

Under the distribution rule, a partnership distribution to a partner of its stock is treated as a redemption of the partner's stock in exchange for all or a portion of the partner's partnership interest. Therefore, the regulations provide that the general nonrecognition rule of section 731(a) does not apply to the extent a partner receives a distribution of its own stock.

The Service received comments on Notice 89–37 suggesting that a modified distribution rule be adopted. Under the modified distribution rule, the gain recognized on the distribution generally would be limited to the difference between the partnership's basis in the stock of the partner before the distribution and the partner's basis in the stock if determined under section 732(c). Proponents of the modified distribution rule believe that the stock treated as redeemed under the deemed redemption rule should be treated as owned by the redeeming partner for certain purposes and owned by the partnership for other purposes. Otherwise, they argue, the same stock could be treated as redeemed by a partner more than once. An alternative characterization, and the one adopted in the proposed regulations, is that the redeeming partner be treated as contributing the redeemed stock back to the partnership for all purposes. The Service considered the modified distribution rule, but rejected that approach because the distribution rule is more administrable and requires less complex rules.

Affiliate Stock and Other Equity Interests

The proposed regulations also apply to transactions involving stock of an affiliate of the partner or other equity interests in the partner or affiliate, including options, warrants, and similar interests. A corporation is treated as an affiliate of a partner at the time of a deemed redemption or distribution by the partnership if, immediately thereafter, the partner and corporation are members of an affiliated group.

De minimis Rule and Inadvertence Rule

The proposed regulations, under a *de minimis* rule, do not apply to a partner for a taxable year if the partner has never owned more than five percent of the partnership, and as of the close of the taxable year and while the partner is a partner, the partnership has not held in the aggregate (whether or not held at any one time) the lesser of $250,000 of stock of the partner, or two percent of the value of any class of stock of the partner. Further, the rules do not apply to any stock of a partner that is disposed of by the partnership prior to the due date (including extensions) of its federal income tax return for the taxable year during which the stock is acquired (or for the taxable year in which the partner becomes a partner, whichever is applicable) and that is not distributed to the partner or affiliate.

Effective Date

The regulations are proposed to apply to any transaction or distribution occurring after March 9, 1989.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small business.

Comments and Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principle authors of these regulations are Channing Brackey of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Tom Matragrano of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 1.336–1 through 1.338(h)(10)–1T

Income taxes, Reporting and recordkeeping requirements, Securities.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.337(d)–3 also issued under 26 U.S.C. 337(d) * * *

Par. 2. Section 1.337(d)–3 is added to read as follows:

§ 1.337(d)–3 Gain recognition upon certain partnership transactions involving a partner's stock.

(a) *In general.* This section applies when a partnership, either directly or indirectly, owns, acquires, or distributes the stock of a partner. Under this section, a partner recognizes gain when it is treated as increasing its interest in its own stock in exchange for appreciated property (the deemed redemption rule). Further, if the partnership distributes stock of a partner to the partner, the partner is treated as redeeming its stock for a portion of its partnership interest and recognizes gain, if any (the distribution rule).

(b) *Purpose.* The purpose of this section is to prevent corporate taxpayers, through the use of a partnership, from avoiding the gain required to be recognized under sections 311 or 337(d). The rules of this section, including the determination of the amount of gain, must be applied in a

manner that is consistent with and reasonably carries out the purposes of this section.

(c) *Stock of a Partner.* For purposes of this section, stock of a partner includes a partner's stock, an affiliate's stock, or other equity interests in the partner or affiliate, including options, warrants, and similar interests. A corporation is treated as an affiliate of a partner at the time of a deemed redemption or distribution by the partnership if, immediately thereafter, the corporation and the partner are members of an affiliated group as defined in section 1504 (a), without regard to the exceptions in section 1504(b).

(d) *Deemed redemption rule*—(1) *In general.* A partner recognizes gain at the time of, and to the extent that, any transaction (or series of transactions) has the economic effect of an exchange by a partner of its interest in appreciated property for an interest in the stock of the partner owned, acquired, or distributed by the partnership. The economic effect of an exchange of property for stock may occur when the partner contributes property to a partnership which owns stock of a partner. It may also occur when a partnership acquires the stock of a partner, when a partnership makes disproportionate distributions, when a partnership agreement is amended to provide different sharing ratios, or when the *de minimis* rule of paragraph (f) (1) of this section no longer applies.

(2) *Basis.* If gain is recognized under this paragraph (d), appropriate adjustments in basis are made to take the gain into account.

(3) *Partner's interest in its own stock.* For purposes of the deemed redemption rule, a partner's interest in the stock of the partner held by the partnership is determined based on all the facts and circumstances, including allocations and distribution rights.

(e) *Distribution rule*—(1) *In general.* The distribution by a partnership to a partner of stock of the partner is treated as a redemption or an exchange of the stock of the partner for a portion of the partner's partnership interest with a value equal to the stock distributed. Section 311 or 1001 rather than section 731 applies to that portion of the distribution.

(2) *Distribution rule and section 732.* Section 732 does not apply to a distribution of stock of a partner if this paragraph (e) applies. If the distribution to a partner of the stock of that partner is part of a larger distribution, the distribution of the stock of the partner is treated as a separate transaction that occurs before the distribution of the other property.

(f) *Exceptions*—(1) *De minimis rule.* This section does not apply to a partner for a taxable year if—

(i) The partner has never owned more than five percent of the partnership; and

(ii) As of the close of the taxable year and while the partner is a partner, the partnership has not held in the aggregate (whether or not held at any one time) the lesser of—

(A) $250,000 of stock of the partner; or

(B) Two percent of the value of any class of stock of the partner.

(2) *Inadvertence rule.* This section does not apply to any stock of a partner that is—

(i) Disposed of by the partnership prior to the due date (including extensions) of its Federal income tax return for the taxable year during which the stock is acquired (or for the taxable year in which the partner becomes a partner, whichever is applicable); and

(ii) Not distributed to the partner or affiliate.

(g) *Effective date.* These regulations apply to any transaction or distribution that occurs after March 9, 1989.

(h) *Examples.* The following examples illustrate the principles of this section. For purposes of these examples, assume that the exceptions provided in paragraph (f) of this section do not apply.

Example 1. The deemed redemption and distribution rules. (i) In 1992, C, a corporation, and A, an individual, form partnership CA as 50-percent partners. C contributes Asset 1 with a $0 basis and $100 fair market value, and A contributes C stock with a basis and fair market value of $100. In 1998, when Asset 1 and the C stock each has a fair market value of $200, CA liquidates. C and A each receive 50 percent of Asset 1 and the C stock.

(ii) In 1992, the contributions have the economic effect of an exchange by C of its interest in appreciated property for an interest in its stock. Under the deemed redemption rule of paragraph (d) of this section, C is treated as exchanging an appreciated asset with a $0 basis and $50 fair market value for 50 percent of the partnership's C stock. C recognizes a $50 gain, and the basis of the partnership in Asset 1 and C's basis in the CA partnership interest each increase from $0 to $50.

(iii) Under the distribution rule of paragraph (e) of this section, when CA liquidates in 1998, C is treated under section 311 as redeeming the C stock received from the partnership (worth $100) in exchange for $100 of C's CA interest with a basis of $25 (one-half of C's basis in the partnership). Thus, C recognizes a $75 gain.

(iv) For purposes of section 731, C receives the 50-percent interest in Asset 1 in liquidation of its partnership interest. Under section 732, the remaining $25 basis in C's partnership interest is allocated to Asset 1.

Example 2. Gain in partnership interest. (i) In 1992, C, a corporation, and A, an individual, form partnership CA as 50-percent partners. C and A each contribute assets with a basis and value of $100. In 1998, when C's partnership interest has a basis of $100 and a value of $200 CA purchases C stock at a cost of $100.

(ii) In 1998, the purchase of the C stock by CA has the economic effect of an exchange by C of a portion of its partnership interest for an interest in its stock (one-half or $50 in value of the C stock). Under the deemed redemption rule of paragraph (d) of this section, C is treated as redeeming the C stock (worth $50) in exchange for $50 of C's CA interest with a basis of $25 (one-fourth of C's basis in the partnership). Thus, C recognizes a $25 gain and C's basis in CA increases from $100 to $125.

Example 3. Contribution of gain and loss property. (i) In 1992, C, a corporation, A, an individual, and B, an individual, form partnership CAB as 33⅓-percent partners. C contributes Asset 1 with a $9 basis and $90 fair market value and Asset 2 with a $90 basis and $9 fair market value. A contributes C stock with a basis and fair market value of $99. B contributes $99 of cash. In 1998, the assets have not changed in value and C receives the C stock in liquidation of its partnership interest.

(ii) In 1992, the contributions have the economic effect of an exchange by C of its interest in appreciated property for an interest in its stock. The rules of this section, including the determination of the amount gain, must be applied in a manner that is consistent with and carries out the purposes described in paragraph (b) of this section. Thus, C is treated as exchanging appreciated property with a $3.30 basis and $33 fair market value for one-third of the partnership's C stock worth $33. C recognizes a $29.70 gain.

(iii) In 1998, when C receives its stock in exchange for its partnership interest, C recognizes the remaining gain of $51.30.

Example 4. Stock acquired prior to effective date. (i) Prior to the effective date of these regulations, C, a corporation, and B form partnership CB. C contributes $1,000 of property (with a basis of $100) and B contributes $1,000 of cash. Also in the same year, CB purchases $1,000 of C stock. In 1994, CB makes a liquidating distribution of the C stock to C and the property to B. Assume that there has been no appreciation in the property or stock since acquired by the partnership.

(ii) In 1994, under this section, C is treated as exchanging an appreciated asset with a basis of $100 and value of $1,000 for CB's C stock. C recognizes a $900 gain.

M.P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–30185 Filed 12–14–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[PS–91–90]

RIN 1545–AP52

Partnership Transactions Involving Equity Interests of a Partner; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner.

DATES: The public hearing will be held on Wednesday, February 3, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, January 20, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–91–90], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 337(d) of the Internal Revenue Code implementing Notice 89–37, 1989–1 C.B. 679.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, January 20, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30186 Filed 12–14–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–15–1–5367; FRL–4545–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Group III CTG: RACT for VOC's From Synthetic Organic Chemical Manufacturing Industries (SOCMI) in Allegheny County, PA

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a request from the Pennsylvania Department of Environmental Resources (PADER) to revise the Allegheny County portion of the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted on July 13, 1987. This revision establishes and requires reasonably available control technology (RACT) to control fugitive volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industries (SOCMI), and the associated test method required to determine compliance. This revision has been submitted by PADER at the request of the Allegheny County Bureau of Air Pollution Control to fulfill its 1982 ozone SIP commitment to adopt all applicable control technique guidelines (CTGs) published by EPA. EPA has evaluated Article XX of the Rules and Regulations of the Allegheny County Health Department, section 534 and section 605 I of Article XX and is proposing a limited approval under section 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA), because the regulation strengthens the SIP. At the same time, EPA is proposing a limited disapproval of Article XX, section 534 because the regulation does not fully meet the Part D, section 182(a)(2)(A) requirements of the CAA.

DATES: Comments must be received on or before January 14, 1993.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 2357, Executive House—2nd & Chestnut Street, Harrisburg, Pennsylvania 17120; and Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline R. Lewis, (215) 597–6863.

SUPPLEMENTARY INFORMATION: On September 12, 1978 EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the Southwest Pennsylvania Intrastate Air Quality Control Region (AQCR) in the Commonwealth of Pennsylvania. Allegheny County is in this AQCR 43 FR 40513, 40 CFR 81.339. Because Allegheny and other counties were unable to reach attainment by the statutory attainment date of December 31, 1982, Pennsylvania requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.2022. The Pittsburgh-Beaver Valley metropolitan area, containing Allegheny County, did not attain the ozone standard by the approved attainment date. To fulfill the requirements of section 172(a)(2) and (b)(3) of the CAA and its 1982 SIP, PADER submitted a revision to the Allegheny County portion of the Pennsylvania ozone SIP and EPA on July 13, 1987.

On May 26, 1988, EPA notified the Governor of Pennsylvania that the Pittsburgh-Beaver Valley portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the

requirement that nonattainment areas fix their deficient RACT rules for ozone and establish a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

In addition, although this submittal preceded the date of enactment of the CAA, it serves to fulfill part of the "RACT fix-up" requirement of section 182(a)(2)(A) of the amended Act for the Pittsburgh-Beaver Valley nonattainment area. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet that RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT. RACT fix-ups were also required under pre-amended section 172(b) as that requirement was interpreted in pre-amended guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Pittsburgh-Beaver Valley nonattainment area is classified as moderate, and is, therefore, subject to the RACT fix-up requirement.[2]

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Allegheny County's revised Article XX section 534 is entitled "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" (SOCMI Fugitives (EPA 450/3–83–006, published March 1984)).

Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

This revision establishes RACT for the control of fugitive emissions from SOCMI, adopted in accordance with the recommendations made in the CTG document, referenced above. The Allegheny County July 13, 1987 submittal also included an installation permit for an afterburner to control VOC emissions from an air oxidation process. Only the portion of the July 13, 1987 SIP revision submittal pertaining to the control of VOC leaks from SOCMI facilities and the associated test method are addressed by this rulemaking action and notice. The remaining portion of the SIP revision submittal will be the subject of a separate rulemaking action and notice.

Proposed SIP Revision

The proposed revision represents the revision of Article XX, by adding a new section 534, "Synthetic Organic Chemical and Polymer Manufacturing—Fugitive Sources" and paragraph I of section 605, the associated test method which references EPA method 21, required to determine compliance with section 534. EPA has reviewed this SIP revision submittal and has determined that the amendments constitute RACT for this source category. This regulation meets the requirements of the aforementioned CTG document, except as discussed below.

Allegheny County's Article XX, section 534 at paragraph D, provides for the Director of the Bureau to approve the use of alternative VOC emission reduction system and/or alternative monitoring procedures, without specifying that the use of such alternatives must also be approved by EPA. Because of this deficiency, the regulation is not approvable pursuant to 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the pre-amendment guidance and may lead to regulatory enforceability problems.

Because of the above deficiency, EPA cannot grant full approval of this regulation under section 110(k)(3) and part D. Also, because section 534 is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the regulation under section 110(k)(3).

However, EPA may grant a limited approval of the submitted regulation under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the regulation does not meet the section 182(a)(2)(A) requirements of part D because of the noted deficiency. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Allegheny County's Article XX, section 534, under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of the regulation because section 534 at paragraph D of the County's regulation must be amended to require that the use of any alternative VOC emission reduction system and/or alternative monitoring procedures must be approved by the United States Environmental Protection Agency in addition to the Allegheny County Bureau of Air Pollution Control as required by section 182(a)(2)(A) of the CAA. Under section 179(a)(2), if the Administrator disapproves a submittal under section 110(k) for an area designated nonattainment based on the submittal's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin at the time EPA publishes the final notice of this disapproval. Moreover, the final disapproval triggers the 24-month period by the end of which EPA must promulgate a Federal implementation plan (FIP) under section 110(c).

Upon publishing a final notice of a limited approval and limited disapproval, that action will approve the rule into the SIP so that regulation is federally enforceable, and, at the same time, the final notice will require that the County correct the deficiency in the regulation within 18 months in order to avoid the promulgation of sanctions.

A more detailed description of EPA's evaluation of the above regulatory changes is presented in the Technical Support Document that has been prepared for this revision. That document is available for public inspection at the location provided in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing a limited approval and limited disapproval of the addition of section 534, Synthetic Organic Chemical and Polymer Manufacturing—Fugitive Sources and section 605 I, the associated test method required to determine compliance with section 534, which revise Article XX, as a revision to

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[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (of which notice of availability was published in the Federal Register on May 25, 1988); and the existing CTGs.

[2] The Pittsburgh-Beaver Valley area retained its designation and was classified by operation of law pursuant to section 107(d) and 181(a) upon the date of enactment of the amendments. See 56 FR 56694 (Nov. 6, 1991).

the Allegheny County portion of the Pennsylvania SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements.

Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

This action proposes limited approval and limited disapproval of a revision to the Allegheny County portion of the Pennsylvania SIP, section 534 which establishes RACT for the control of fugitive VOC emissions from SOCMI and paragraph I of section 605 the associated test method required to determine compliance. It has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Tables 2 and 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 16, 1992.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 92–30426 Filed 12–14–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7048]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Correction of proposed rule.

SUMMARY: This document contains corrections to the proposed rule (Docket No. FEMA–7048), which was published on Thursday, August 20, 1992, (57 FR 37747). The correction more accurately represents the Flood Insurance Study and Flood Insurance Rate Map for the Town of Dover-Foxcroft, Piscataquis, Maine, than previously published.

DATES: The comment period is thirty (30) days following the second publication of this correction of the proposed rule in a newspaper of local circulation in the community.

ADDRESSES: The proposed base flood elevations for the community are available for inspection at the Dover-Foxcroft Town Office, 34 E. Main Street, Dover-Foxcroft, Maine.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION:

Background

The Federal Emergency Management Agency (FEMA or Agency) publishes proposed determinations of base (100-year) flood elevations and modified base flood elevations for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a). These base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Need for Correction

As published the proposed rule contained location and elevation information at three sources of flooding that must be corrected to represent more accurately than before the Flood Insurance Study and the Flood Insurance Rate Map for the Town of Dover-Foxcroft, Maine.

Accordingly, the proposed rule (Docket No. FEMA–7048) published as FR Doc. 92–19908 on August 20, 1992, 57 FR 37747, is corrected as follows:

§ 67.4 [Corrected]

On page 37752, under the entry for the Town of Dover-Foxcroft, Piscataquis County, Maine, the entries for Dunham Brook, Davee Brook, and East Branch Davee Brook, are corrected as follows:

Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
		Existing	Modified
. . .	. . .	.	.
Dunham Brook	Approximately 200 feet upstream from confluence with Piscataquis River	*345	*346
	At downstream side of Forest Street	*369	*368
Davee Brook	At upstream side of Railroad Avenue	*348	*349
	Approximately 220 feet downstream of confluence of East Branch Davee Brook	*373	*374
East Branch Davee Brook	Approximately 120 feet upstream of confluence with Davee Brook	*375	*374
	Approximately 190 feet upstream of upstream side of State Route 153	*375	*374
. . .	. . .	.	.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 7, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-30259 Filed 12-14-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-284, RM-8119]

Radio Broadcasting Services; Repton, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Curry Communications, Inc., requesting the allotment of FM Channel 266A to Repton, Alabama, as that community's first local aural transmission service. Coordinates used for this proposal are 31-24-30 and 87-14-24.

DATES: Comments must be filed on or before February 3, 1993, and reply comments on or before February 18, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Curry Communications, Inc., Attn: Albert Curry, President, 107 Pickens Street, Monroeville, AL 36460.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-284, adopted November 18, 1992, and released December 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-30364 Filed 12-14-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-283, RM-8122]

Radio Broadcasting Services; Hope and Fordyce, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for the rule making filed on behalf of KdB, Inc., licensee of Station KXAR-FM, Channel 269A, Hope, Arkansas, seeking the substitution of Channel 269C2 for Channel 269A and modification of its license accordingly. In order to accommodate the request, petitioner seeks the substitution of Channel 272A for Channel 269A at Fordyce, Arkansas, and modification of the license of Station KQEW(FM), Channel 269A, accordingly. An Order to Show Cause is issued to Dallas Properties, Inc., licensee of Station KQEW (FM). Coordinates for Channel 269C2 at Hope, Arkansas, are 33-40-15 and 93-37-10; coordinates for Channel 272A at Fordyce Arkansas, are 33-48-17 and 92-26-07. Petitioner's modification proposal complies with the provisions of section 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the

use of Channel 269C2 at Hope, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before February 3, 1993, and reply comments on or before February 18, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Anne Thomas Paxson, Esq., Borsari & Paxson, 2033 M Street, NW., suite 630, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–283, adopted November 18, 1992, and released December 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30363 Filed 12–14–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 92–295, FCC 92–536]

Cable Television Services; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal to grant a Petition for Rulemaking filed by TV 14, Inc. (TV 14) to amend the Commission Rules changing the designation of the Atlanta, Georgia, television market to include the community of Rome, Georgia, so that TV 14's station, WTLK (TV) may be considered a local station in the Atlanta area under the cable compulsory copyright license. This action is taken to test the proposal for market hyphenation through the record established based on comment filed by interested parties.

DATES: Comments are due by January 6, 1993, and reply comments are due by January 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 92–295, FCC 92–536, adopted December 4, 1992, released December 8, 1992. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., room 239, Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1990 M Street, NW., room 640, Washington, DC 20554.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Channel 14, licensee of WRLK (TV), Rome, Georgia, proposes to amend section 76.51 of the Rules (47 CFR 76.51) to change the designation of the Atlanta, Georgia, television market to include the community of Rome, Georgia. In a previous decision (6 FCC Rcd 7234, 1991), the Commission granted a request by Channel 14 to include WTLK in the Atlanta market for purposes of section 73.658(m) of the Rules relating to territorial exclusivity. TV 14 now requests to be included in the Atlanta market so that WTLK may be considered a local station in the Atlanta area under the cable compulsory copyright license.

2. The Commission, based on the facts presented, believes that a sufficient case for market hyphenation has been set forth to justify testing this proposal through the rulemaking process and notice and comment procedures. Therefore, comment is requested on this proposal to amend section 76.51 of the Commission's Rules by adding Rome to the Atlanta, Georgia market designation.

Administrative Matters

Initial Regulatory Flexibility Analysis

3. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few number of television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the chief counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

4. This is a non-restricted notice and comment rule-making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See *generally* 47 CFR 1.1202, 1.203, and 1.206(a).

Comment Dates

5. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 6, 1993, and reply comments on or before January 19, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular

business hours in the FCC Reference Center of the Federal Communications Commission, 1919 M Street, NW., room 239, Washington, DC 20554.

6. Authority for this proposed Rule Making is contained in sections 4(i) and (j), and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

Donna R. Searcy,

Secretary.

[FR Doc. 92-30362 Filed 12-14-92; 8:45 am]

BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 57, No. 241
Tuesday, December 15, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Emerald Resource Unit Timber Sales; Idaho Panhandle National Forests, Benewah County, ID

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with Forest Service Handbook 1909.15, Chapter 21.2, it is necessary to publish a revised notice of intent in the **Federal Register** regarding any major changes, such as a delay of more than 6 months in filing either the draft or final EIS. The Draft EIS was released for public review on February 10, 1992 and notice is hereby given that the Final EIS for the Emerald Resource Unit Timber Sales is scheduled to be completed by April, 1993. Reference: **Federal Register**, Volume 56, No. 27, pages 5193–5194, dated Friday, February 8, 1991.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Tracy J. Gravelle, St. Maries Ranger District, P.O. Box 407, St. Maries, Idaho 83861. Phone: (208) 245–3531.

Dated: December 2, 1992.

Gary W. Sieren,

District Ranger, St. Maries Ranger District, Idaho Panhandle National Forests.

[FR Doc. 92–30392 Filed 12–14–92; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

December 9, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 9, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on December 9, 1992, you are directed to amend further the directive dated November 22, 1991, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in group	
226	10,219,894 square meters.
331	4,948,372 dozen pairs.
369–D [2]	4,560,250 kilograms.
607	745,985 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.
[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30357 Filed 12–14–92; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

December 9, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Memoranda of Understanding (MOUs) dated June 26, 1992 and October 30, 1992 between the Governments of the United States and Guatemala establish import limits and guaranteed access levels (GAL) for cotton, wool and man-made fiber textile products in Categories 340/640 and 448 for the period beginning on January 1, 1993 and extending through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Requirements for participation in the Special Access Program are available in **Federal Register** notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOUs, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 9, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Memoranda of Understanding (MOUs) dated June 26, 1992 and October 30, 1992 between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month limit
340/640	943,400 dozen.
448	41,873 dozen.

Imports charged to these category limits for the periods July 1, 1992 through December 31, 1992 (Category 448) and September 16, 1992 through December 31, 1992 (Categories 340/640) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU's dated June 26, 1992 and October 30, 1992 between the Governments of the United States and Guatemala.

Additionally, pursuant to the MOUs dated June 26, 1992 and October 30, 1992; and the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1993, guaranteed access levels are being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in the following categories which are re-exported to the United States from Guatemala during the period January 1, 1993 through December 31, 1993:

Category	Guaranteed access level
340/640	520,000 dozen.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30356 Filed 12–14–92; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania; Correction

December 9, 1992.

In a notice published in the **Federal Register** on November 17, 1992 (57 FR 54223), second column, third paragraph, line 37, change "December 16, 1992" to "December 17, 1992."

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30354 Filed 12–14–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Selection Criteria for Closing and Realigning Military Installations Inside the United States

AGENCY: Department of Defense (DoD).

ACTION: Notice of Final Selection Criteria.

SUMMARY: The Secretary of Defense, in accordance with Section 2903(b), Public Law 101–510, as amended, published in the February 15, 1991, **Federal Register** the Final Selection Criteria to be used in making recommendations for the closure and realignment of military installations inside the United States. These final criteria became effective on February 15, 1991. The final criteria published at that time will be used again, unchanged, by the Department of Defense to make recommendations that will be reviewed by the 1993 Defense Base Closure and Realignment Commission. This notice republishes those criteria.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Potochney or Colonel Kirby Allen, OASD (P&L), (703) 697–8048.

SUPPLEMENTARY INFORMATION:

A. Final Selection Criteria

The final criteria to be used by the Department of Defense to make recommendations for the closure or realignment of military installations in accordance with Public Law 101–510, as amended, follow:

In selecting military installations for closure or realignment, the Department of Defense, giving priority consideration to military value (the first four criteria below), will consider:

Military Value

1. The current and future mission requirements and the impact on operational readiness of the Department of Defense's total force.

2. The availability and condition of land, facilities and associated airspace at both the existing and potential receiving locations.

3. The ability to accommodate contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

4. The cost and manpower implications.

Return on Investment

5. The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

Impacts

6. The economic impact on communities.

7. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

8. The environmental impact.

B. Background Information

The February 15, 1991 **Federal Register** notice contained an analysis of public comments received and a description of the changes DoD made to the proposed criteria published in a November 30, 1990 **Federal Register** Notice. DoD received 169 public comments in response to the proposed criteria and request for comments. The proposed criteria were appropriately amended based on these comments. The final criteria were accepted by Congress in 1991 and served well in the 1991 effort. They will therefore be used again, unchanged, by the Department of Defense to make recommendations to the 1993 Defense Base Closure and Realignment Commission.

C. Previous Federal Register References

(1) 55 FR 49679, November 30, 1990: Proposed selection criteria and request for comments.

(2) 55 FR 53536, December 31, 1990: Extend comment period on proposed selection criteria.

(3) 56 FR 6374, February 15, 1991: Publish selection criteria and analysis of comments.

Dated: December 11, 1992.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 92–30523 Filed 12–11–92; 2:35 pm]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on IR Countermeasures and Self Defense Against IR Missiles will meet on 25–26 January 1993, at The ANSER Corporation, Crystal Gateway 3, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information relating to the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30319 Filed 12–14–92; 8:45 am]

BILLING CODE 3810–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 11 January 1993 at the Pentagon, Washington, D.C.

The purpose of this meeting is to present to the Principal Deputy Assistant Secretary for Acquisition the study final briefing. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30320 Filed 12–14–92; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Deauthorization of Water Resources Projects

December 2, 1992.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of project deauthorizations.

SUMMARY: The Corps of Engineers is publishing the lists of water resources projects and separable elements of projects deauthorized under the provisions of section 1001, Public Law 99–662, 33 U.S.C. 579a, and projects/separable elements not deauthorized due to obligations of funds or statutory continuations of authorization.

FOR FURTHER INFORMATION CONTACT: Mr. John Micik, Headquarters, U.S. Army Corps of Engineers, Attention: CECW–BA, Washington, DC 20314–1000. Tel. (202) 272–0705.

SUPPLEMENTARY INFORMATION: The Water Resources Development Act of 1986, Public Law 99–662, as amended, contains two provisions for the deauthorization of water resource projects or separable elements of projects. Section 1001(a), 33 U.S.C. 579a(a), requires the deauthorization of projects authorized in 1986, and thereafter, when five years have elapsed from the date of authorization without obligations of funds for planning, design or construction. Section 1001(b)(2), 33 U.S.C. 579a(b)(2), requires the Secretary of the Army to submit to the Congress a biennial list of unconstructed water resources projects, or separable elements of projects, which have had no obligations of funds for planning, design

or construction during the prior ten full fiscal years. If no funds are obligated within thirty months from the date the list is submitted, the project/separable element is deauthorized. Notwithstanding these provisions, project authorizations may be specifically continued by law.

For purposes of the Water Resources Development Act of 1986, "separable element" is defined in section 103(f), Public Law 99–662, 33 U.S.C. 2213(f).

In accordance with section 1001(b)(2), the Assistant Secretary of the Army (Civil Works) submitted a list of 30 projects/separable elements to Congress on January 18, 1990. From this list, 24 project/separable elements were deauthorized on July 19, 1992, and 6 were removed due to obligations of funds.

Eight project authorizations have been continued by law. The Energy and Water Development Appropriations Act, 1992, Public Law 102–104, August 17, 1991, 105 Stat. 510, and the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, December 18, 1991, 105 Stat. 1914, each continued one; and the Water Resources Development Act of 1992, Public Law 102–580, October 31, 1992, 106 Stat. 4796, continued six.

Authority: This notice is required by the Water Resources Development Act of 1986, Pub. L. 99–662 section 1001(c), 33 U.S.C. 579a(c), and the Water Resources Development Act of 1988, Pub. L. 100–676, section 52(e), 102 Stat. 4045.

Dated: December 2, 1992.

Nancy P. Dorn,

Assistant Secretary of the Army (Civil Works).

PROJECTS DEAUTHORIZED ON 18 NOV 91 BY SECTION 1001 (A) OF PUBLIC LAW 99–662

District	Project name	Primary state	Purpose
NPA	Allison Lake (Valdez Hydropower)	AK	MP
NPA	Scammon Bay	AK	MP
POD	Rainmaker Hotel, American Samoa	AS	N
SPL	Harbor Office, Morro Bay	CA	N
SPN	Noyo Harbor, Mendocino	CA	N
SPL	Sunset Harbor	CA	N
POD	Saipan Harbor, Northern Marianas	CM	N
SAJ	Charlotte County	FL	BE
NCR	Davenport (Nahant Marsh)	IA	FC
NCC	Wilmington Ice Control Demonstration	IL	FC
SWT	Pearson-Skubitz, Big Hill Lake (Access Road)	KS	FC
NED	Merrimack River between Lowell and Lawrence	MA	N
NED	Neponset River	MA	N
NCE	Swan Creek Harbor of Refuge	MI	N
NCR	Albert Lea Lake	MN	FC
NCE	Duluth Shoreline (Sky Harbor Airport)	MN	BE
NCR	Schuyler County	MO	FC
LMK	Vicksburg Harbor	MS	N
MRO	Milk River, Havre	MT	FC
NCS	Grafton	ND	FC
NAP	Cape May Point	NJ	BE
NAP	Hereford Inlet and Five Mile Beach	NJ	BE
NCB	Buffalo Harbor Drift Removal	NY	N
NCB	Buffalo Ship Canal	NY	N
NCB	Dunkirk Harbor	NY	N
NAB	Endicott, Johnson City and Vestal (Remedial)	NY	FC
NPP	Blue River Powerhouse	OR	MP
NPP	Yaquina South Jetty	OR	N
NAB	Curwensville Lake (Water Line)	PA	FC
NAB	Marsh Creek Bridge, F.J. Sayers Dam	PA	FC
NAP	Pottstown (Schuylkill River Basin)	PA	FC
NAB	Susquehanna River, Sunbury Closure Structure	PA	FC
NED	Gorton's Pond, Warwick	RI	N
MRO	Lake Herman (Dredging)	SD	FC
MRO	Upper Missouri River Streambank Erosion	SD	FC
SWF	Lewisville Lake, Cottonwood Bridge	TX	FC
NAO	Hampton Roads Debris Removal	VA	N
	Total: 37		

PROJECTS SEPARABLE ELEMENTS DEAUTHORIZED ON 19 JULY 92 BY SECTION 1001(B)(2) OF PUBLIC LAW 99–662

District	Project name	Primary state	Purpose
SPL	Gila Riv & Tribs Downstream from Painted Rock Res	AZ	FC
SPL	San Diego, Sunset Cliffs (Segment A)	CA	BE
NAP	Miapillion River, Kent and Sussex County (1954 Act)	DE	N
SAJ	Palm Beach to Lake Worth Inlet (1950 Act)	FL	BE
POD	Waikiki Beach, Oahu	HI	BE
ORL	Russell and Allison Levee (1938 Act)	IL	FC
ORL	Downeyville Lake (1968 Act)	IN	FC
ORL	Evansville, Howell (Section 2)	IN	FC
ORL	Frankfort, Benson Creek	KY	FC
ORH	Kehoe Lake	KY	FC
NAP	Double Creek	NJ	N
NAP	Island Beach Inlet	NJ	N
NAP	Tocks Island Lake (1962 Act)	NJ	MP
SWA	Pecos River At Carlsbad	NM	FC
NAN	East Chester Creek (1950 Act)	NY	N

PROJECTS SEPARABLE ELEMENTS DEAUTHORIZED ON 19 JULY 92 BY SECTION 1001(B)(2) OF PUBLIC LAW 99–662—Continued

District	Project name	Primary state	Purpose
NAN	Shooters Island	NY	N
SWT	Tuskahoma Lake (1962 Act)	OK	FC
NAP	Darby-Cobbs Creek	PA	FC
NAP	Delaware River and Tribs, Drift Removal	PA	N
NCB	Elk Creek Harbor	PA	N
NAP	Tocks Island Lake, Route 209 Relocation (1962 Act)	PA	MP
SWF	Carl L. Estes Lake (1970 Act)	TX	FC
SWF	Clopton Crossing Lake	TX	FC
SWG	Glww, Harbor of Refuge at Seadrift	TX	N
Total: 24			

PROJECTS/SEPARABLE ELEMENTS REMOVED FROM DEAUTHORIZATION LIST IN ACCORDANCE WITH SECTION 1001(B)(2) OF PUBLIC LAW 99–662 DUE TO OBLIGATIONS OF FUNDS

District	Project name	Primary state	Purpose
SPK	Marysville Lake	CA	MP
ORL	Indianapolis, Warfleigh	IN	FC
NAN	Fire Island Inlet—Jones Inlet	NY	BE
NCB	Cleveland Harbor (Uncompleted Portion)	OH	N
ORP	Chartiers Creek, Cannonsburg-Houston Reach, Unit 2B	PA	FC
NAO	Virginia Beach (Groins)	VA	BE
	Total: 6		

PROJECT AUTHORIZATIONS CONTINUED BY LAW

[Original Authorization in Parentheses]

District	Project name	Primary state	Purpose
Section 101, P.L. 102–104, 17 Aug 91:			
SAM	Coosa River Channel, Gadsden, AL, to Rome, GA (1945)	AL	N
Section 1085, P.L. 102–240, 18 Dec 91:			
NED	Providence, Seekonk River, India Point Bridge (1986)	RI	N
Section 115, P.L. 102–580, 31 Oct 92:			
NCR	Green Bay Levee and Drainage District No. 2 (1986)	IA	FC
LMN	Lake Pontchartrain, North Shore (1986)	LA	FC
LMM	St. Johns Bayou and New Madrid Floodway (1986)	MO	FC
NAN	Deal Lake, Monmouth County (1986)	NJ	FC
NAB	Tyrone (1944)	PA	FC
SWT	Big Pine Lake (1962)	TX	FC
	Total: 8		

LMV *Lower Mississippi Valley Division*
LMM Memphis District
LMN New Orleans District
LMS St. Louis District
LMK Vicksburg District
MRD *Missouri River Division*
MRK Kansas City District
MRO Omaha District
NED *New England Division*
NAD *North Atlantic Division*
NAB Baltimore District
NAN New York District
NAO Norfolk District
NAP Philadelphia District
NCD *North Central Division*
NCB Buffalo District
NCC Chicago District
NCE Detroit District
NCR Rock Island District
NCS St. Paul District
NPD *North Pacific Division*
NPA Alaska District
NPP Portland District
NPS Seattle District
NPW Walla Walla District
ORD *Ohio River Division*
ORH Huntington District
ORL Louisville District
ORN Nashville District
ORP Pittsburgh District
POD *Pacific Ocean Division*
SAD *South Atlantic Division*
SAC Charleston District
SAJ Jacksonville District
SAM Mobile District
SAS Savannah District
SAW Wilmington District
SPD *South Pacific Division*
SPL Los Angeles District
SPK Sacramento District
SPN San Francisco District
SWD *Southwestern Division*
SWA Albuquerque District
SWF Fort Worth District
SWG Galveston District
SWL Little Rock District
SWT Tulsa District

Purpose
N Navigation
BE Beach Erosion Control
FC Flood Control
MP Multiple Purpose Power

[FR Doc. 92–30389 Filed 12–14–92; 8:45 am]
BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.030]

Clearinghouses for Individuals With Disabilities

ACTION: Correction notice.

SUMMARY: On August 18, 1992, a notice inviting applications for Fiscal Year 1993 was published at 57 FR 37360. The amounts indicated under available

funds in the chart as published are now being corrected to reflect final appropriations action. The correct amount of available funds for the National Information Center is $1,030,000; the Postsecondary Clearinghouse is $515,000; and the Special Education Employment Clearinghouse is $605,000.

FOR FURTHER INFORMATION CONTACT: Max Mueller, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 502–9554. Deaf and hearing impaired individuals may call (202) 205–9999 for TDD services.

Program Authority: 20 U.S.C. 1433.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–30342 Filed 12–14–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL93–2–000]

Prior Notice and Filing Requirements Under Part II of the Federal Power Act; Technical Conference and Request for Comments

December 9, 1992.

Introduction

In a number of recent orders originating with *Central Maine Power Company*, 56 FERC ¶ 61,200, *reh'g denied*, 57 FERC ¶ 61,083 (1991) (*Central Maine*), the Commission has directed the payment of refunds for the late filing by public utilities of rates, charges, and related agreements for jurisdictional service. The Commission has ordered refunds in an effort to enforce the requirement of section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (1988), and the Commission's implementing regulations, 18 CFR part 35, that public utilities file rates and charges for jurisdictional service, and all contracts and agreements relating to such service, at least 60 days in advance of the commencement of jurisdictional service. The Commission also has attempted to provide additional guidance as to when it is likely to grant waiver of the prior notice requirement.

Despite the Commission's efforts, considerable uncertainty apparently remains throughout the electric utility industry concerning the filing obligations of public utilities and the applicability of the *Central Maine* remedial policy to late filings. The Commission already has issued orders clarifying the obligation of utilities to file certain types of agreements—namely, service agreements under filed tariffs of general applicability and jurisdictional agreements providing for the payment of contributions in aid of construction (CIAC agreements). In response to these orders, utilities have requested additional guidance as to the need to file other types of agreements and the extent of the Commission's willingness to apply its *Central Maine* remedial policy.

On November 16, 1992, in response to pleadings by Consolidated Edison Company of New York, Inc. (Con Edison) and the Edison Electric Institute (EEI), the Commission deferred the close of an amnesty window for the late filing of jurisdictional CIAC agreements. *See Florida Power Corp.*, 61 FERC ¶ 61,244 (1992). The Commission stated that it late would address a number of generic filing-related issues raised by Con Edison and EEI, as well as their request that the Commission engage in a comprehensive and orderly review of the filing obligations of public utilities under the FPA, as clarified in *Central Maine* and subsequent orders.

To this end, the Commission hereby schedules a technical conference, to be held on January 28, 1993, to consider issues relating to the Commission's enforcement of the prior notice and filing requirement.

Background

A. Statutory/Regulatory Framework

Section 205(c) of the FPA, 16 U.S.C. 824d(c) (1988), requires that public utilities file with the Commission all rates and charges for jurisdictional sales and transmission service, as well as all agreements that affect or relate to such rates and charges. Section 205(d) of the FPA, 16 U.S.C. 824d(d) (1988), in turn requires that public utilities file all such rates, charges, and related agreements with the Commission at least 60 days in advance of the commencement of such service. Section 205(d) also permits the Commission to waive the 60-day prior notice requirement for good cause shown. *Id.* Part 35 of the Commission's regulations implement these statutory filing requirements. See 18 CFR 35.3(a), 35.11 (1992). *See generally Indiana and Michigan Electric Co. v. FPC*, 502 F.2d 336 (D.C. Cir. 1974) (concerning earlier version of section 205 of the FPA); *National Fuel Gas Supply Corp. v. FERC*, 899 F.2d 1244 (D.C. Cir. 1990) (construing analogous filing provisions of the Natural Gas Act).

The Commission has considerable discretion in finding good cause for waiver of the prior notice and filing requirement. *See, e.g., San Diego Gas & Electric Co. v. FERC*, 904 F.2d 727, 731 (D.C. Cir. 1990); *City of Girard v. FERC*, 790 F.2d 919, 925 (D.C. Cir. 1986). For years, the Commission routinely granted waiver when the parties to a proposed rate agreed on an effective date and when waiver was adjudged to be in the public interest. *See, e.g., PacifiCorp Electric Operations*, 59 FERC ¶ 61,090, *reh'g granted*, 60 FERC ¶ 61,293 (1992). In *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), the Commission provided new guidance to the electric utility industry concerning the circumstances under which the Commission will find good cause for waiver of the 60-day prior notice requirement. Among other things, the Commission stated that, absent extraordinary circumstances, it will not grant waiver of the notice requirement when an agreement for new service, that is not provided pursuant to an accepted contract or settlement, is filed on or after the date jurisdictional service has commenced.[1] *See also United Illuminating Co.*, 61 FERC ¶ 61,186 (1992).

B. The Central Maine Policy

In *Central Maine*, the Commission was presented with the filing of 14 separate agreements for the short-term sale of capacity and energy at negotiated, market-based rates after service under all of the agreements had terminated. The Commission accepted the 14 late-filed agreements and waived the 60-day prior notice requirement, but did so only on the condition that the filing utility file revised rates reflecting a 100 percent contribution to the fixed costs of the facilities used to provide service under the 14 agreements. The Commission further directed the utility to refund all revenues received under the agreements in excess of a 100 percent contribution to fixed costs, plus associated interest.

Expressing concern with the increasing number of rate filings made after the commencement of service,[2] the

[1] The Commission also stated in *Central Hudson* that a strong showing of good cause is necessary to justify waiver with respect to a rate increase not provided for in a contract or settlement on file with the Commission. On the other hand, waiver of the notice requirement generally will be appropriate when an uncontested filing has no rate impact, when a filing reduces rates or charges, or when a rate increase and its effective date are prescribed by a Commission-accepted contract or settlement.

[2] *See* 56 FERC at 61,817. In this regard, the Commission cited its orders in Nevada Power Co., 55 FERC ¶ 61,379 at 62,153 n.14 (1991), Central

Commission took the opportunity to announce a policy statement of industry-wide application concerning implementation of the 60-day prior notice requirement. The Commission stated that utilities "transacting under existing agreements" not on file with the Commission, in violation of the prior filing requirement of Part II of the FPA, would be afforded the opportunity to file such agreements within 60 days of publication of the order in the Federal Register. The Commission further stated in *Central Maine* that any utilities filing rates (cost-based or market-based) for ongoing services during the 60-day "amnesty window" (which expired on October 7, 1991), if otherwise just and reasonable, would be entitled to recover up to a 100 percent contribution to fixed costs.

The Commission continued that any utility filing rates for ongoing jurisdictional service after the close of the amnesty window would be entitled to receive no more than its variable operation and maintenance (O&M) expenses from the date of commencement of service until the date the Commission accepts such rates for filing. Any such utility would be required to refund any amounts collected in excess of the amounts ultimately allowed by the Commission (as well as interest calculated pursuant to 18 CFR 35.19a.

C. Application of the Central Maine Policy

In the past year, the Commission has applied its *"Central Maine* policy" in a number of cases involving the late filing of jurisdictional agreements after the commencement of service. In *PacifiCorp Electric Operations*, 58 FERC ¶ 61,283, *reh'g denied*, 60 FERC ¶ 61,292 (1992), *reh'g pending*, the Commission directed the refund of certain revenues because of the late filing of a jurisdictional transmission service agreement 13 years after the date of commencement of service under the agreement and one day after the close of the *Central Maine* amnesty window. In *Green Mountain Power Corp.*, 59 FERC ¶ 61,291, *reh'g denied*, 60 FERC ¶ 61,158, *order on compliance filing*, 61 FERC ¶ _____ (1992), the Commission directed the refund of certain revenues because of the late filing of two unit power sales agreements and a related capacity exchange agreement.[3]

In a series of three cases, the Commission directed the payment of refunds for the late filing of service agreements implementing service under tariffs of general applicability. *See Mississippi Power Co.*, 58 FERC ¶ 61,286 *reh'g granted*, 61 FERC ¶ 61.014 (1992); *New England Power Co.*, 59 FERC ¶ 61,253, *reh'g granted*, 61 FERC ¶ 61.015 (1992); *Central Power & Light Co. and West Texas Utilities Co.*, 60 FERC ¶ 61,211 *reh'g granted*, 61 FERC ¶ 61,065 (1992). The utilities claimed in these cases that they were providing service under tariffs that already had been filed with and accepted by the Commission and, accordingly, that the late filing of service agreements indicating only the names of new customers taking service under approved tariffs did not warrant the harsh "penalty" of refunds. Recognizing that this matter was not entirely free of doubt at the time of issuance of *Central Maine*, the Commission announced the adoption of an additional 30-day amnesty period. See *New England Power Co.*, 61 FERC ¶ 61,015 (1992). During this amnesty period, which expired on November 9, 1992, utilities were able to file service agreements implementing tariff service at previously-approved tariff rates to particular customers without risking *Central Maine*—type refunds. See also *New England Power Co.*, 61 FERC ¶ 61,123 (1992), *reh'g pending*.

In another line of *Central Maine* cases, the Commission directed the payment of refunds for the late filing of jurisdictional agreements providing for the customer payment of contributions in aid of construction (CIAC agreements). *See Florida Power Corp.*, 58 FERC ¶ 61,161 *reh'q denied*, 60 FERC ¶ 61,003 (1992); *see also Western Massachusetts Electric Co.*, 59 FERC ¶ 61,091, *reh'g denied*, 61 FERC ¶ _____ (1992); *Blackstone Valley Electric Co.*, Docket No. ER92-207-001 (unpublished letter order, issued June 26, 1992), *reh'g pending*. The Commission explained that the type of agreements at issue always has been considered jurisdictional and subject to the statutory requirement of prior notice and filing. Nevertheless, in an order issued on October 13, 1992, the Commission recognized that the matter was not entirely clear at the time of the close (on October 7, 1991) of the *Central Maine* amnesty window. Accordingly, the Commission announced the adoption of an additional 30-day amnesty period in which to file with the Commission any now-unfiled CIAC agreements under which jurisdictional service currently is, or has been, provided. *See Florida Power Corp.*, 61 FERC ¶ 61,063 (1992).

The amnesty window for unfiled CIAC agreements originally was scheduled to expire on November 16, 1992. On November 16, 1992, the Commission issued an order extending the amnesty deadline for the filing of CIAC agreements. See *Florida Power Corp*, 61 FERC ¶ 61,244 (1992). The Commission based that decision on the applications of the Edison Electric Institute (EEI) and Consolidated Edison Company of New York, Inc. (Con Edison) to "stay" the effectiveness of the October 13 *Florida Power* order.

In support, EEI and Con Edison expressed concern about the limited amount of time available in which to search files for potentially thousands of current and expired agreements that may involve CIAC payments and that may be jurisdictional. EEI also raised a number of questions concerning the filing obligations of its member utilities: whether utilities must search files for agreements dating back to the passage of the FPA; whether the *Central Maine* policy applies to agreements which already had terminated before issuance of the *Central Maine* decision; the scope of transactions considered to be jurisdictional; and the extent to which utilities may continue to rely on past advice from Commission Staff. EEI submitted that a more formal process, in which affected parties may present their views and the Commission may respond before files are searched and documents retrieved, is necessary in order to provide a reasonable and efficient approach to addressing the concerns raised by *Central Maine* and related orders.

Some of the issues raised by EEI have been presented to the Commission in the context of individual filings currently awaiting action. In *Massachusetts Electric Co.*, 61 FERC ¶ _____(1992), the Commission explicitly deferred action on whether the remedial *Central Maine* policy should apply to the late filing of jurisdictional agreements that expired prior to the August 2, 1991 issuance of the original *Central Maine* order, as well as whether that policy should apply to the late filing of borderline sales agreements.[4] Similarly, the Commission

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Vermont Public Service Corp., 54 FERC ¶ 61,153 at 61,484–85 (1991), and Portland General Exchange, Inc., 51 FERC ¶ 61,106 at 61,246 n.87 (1990).

[3] The Commission also has refused to apply its *Central Maine* policy to the filing of rates under jurisdictional sales and transmission agreements after the commencement of service under the agreements, when the Commission previously had evaluated the rates and reviewed the operative agreements in filings made by another party to the transaction. *See* Fale-Safe, Inc., 59 FERC ¶ 61,385 (1992).

[4] Borderline sales involve deliveries of power directly to a neighboring utility's retail customers along the electric franchise areas common to both.

Continued

has not yet acted on a petition for a declaratory order, filed by Portland General Electric Company (PGE) in Docket Nos. EL93–5–000, *et al.*, to remove a number of "uncertainties" concerning implementation of the Commission's *Central Maine* policy. These uncertainties include the applicability of the *Central Maine* policy to expired agreements. Finally, Central Maine itself has requested that the Commission reopen the original *Central Maine* proceeding and rescind its refund obligation in light of the Commission's decision in recent cases not to order refunds with respect to other late-filing utilities. See *New England Power Co.*, 61 FERC ¶ 61,123 (1992), *reh'g pending*.

Discussion

Central Maine's most recent filing brings us full circle with respect to implementation of our *Central Maine* policy. We had hoped that issuance of the original *Central Maine* order would clarify the need for compliance with the prior notice and filing requirement of the FPA and the Commission's implementing regulations. That hope was dashed by the number of filings made after the October 7, 1991 close of the *Central Maine* amnesty window, raising difficult jurisdictional and implementation issues. We further hoped that issuance of the additional amnesty windows concerning service agreements and jurisdictional CIAC agreements, as well as issuance of the *Central Hudson* order concerning waiver of notice, would resolve all remaining ambiguity concerning implementation of the prior notice and filing requirement and the applicability of the *Central Maine* remedial policy. That hope, too, proved short-lived.

As EEI and others now inform us, substantial uncertainty remains concerning the obligation of public utilities to file jurisdictional rates, charges, and related agreements for Commission consideration under the FPA and the *Central Maine* policy. Accordingly, after a year of experience with our *Central Maine* policy, and at the suggestion of EEI and some of its utility members, we believe it is appropriate to reexamine precisely how to proceed with respect to further implementation of our *Central Maine* policy.

In addition to EEI and individual public utilities that have formally raised *Central Maine*-related issues in filings before the Commission, other affected entities may have similar or additional arguments concerning the applicability of the *Central Maine* policy to unfiled rates, charges, and agreements for jurisdictional service. We believe it is appropriate to consider all of these arguments at one time, and then apply our conclusions to pending and future applications for Commission action in this area. Hopefully, this will allow us to achieve the intended purpose of the *Central Maine* policy, which was to add clarity and certainty to the filing obligations of public utilities, not to add further ambiguity. Careful consideration of any concerns related to our enforcement of the prior notice and filing requirement is especially important now, as the Commission begins to implement the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992), and continues to consider applications for approval of negotiated, market-based rates.

Accordingly, the Commission will hold a technical conference on these matters on January 28, 1993, at 10 a.m. in the Commission's meeting room, 9th Floor, 825 North Capitol Street, NE., Washington, DC 20426. The Commission invites public utilities and other interested entities, including state commissions and customers, to seek to participate in the conference and to submit written comments on issues concerning the Commission's enforcement of the prior notice and filing requirement. Issues may include, but are not limited to, the following:

1. What should be the extent of a utility's obligation to search its files for unfiled jurisdictional agreements? Should this obligation extend all the way back to the date of enactment of the FPA or some other date? How extensive a burden does this search obligation impose on public utilities?

2. On a related matter, should public utilities be obligated to file jurisdictional agreements that already have terminated by their terms? If the answer is no, what statutory basis would support such action? Should the *Central Maine* policy apply to jurisdictional agreements that had terminated by the August 2, 1991, issuance of the original *Central Maine* order? Did the industry read the language of the *Central Maine* policy as imposing only a "prospective" filing obligation?

3. What are the filing obligations of public utilities if uncertain as to the jurisdictional status of certain agreements at the time of execution and commencement of service thereunder? Can a utility rely on informal advice from Commission Staff, or must it file with the Commission and raise any arguments at that time?

4. How expansively should the Commission apply the amnesty windows for service agreements and jurisdictional CIAC agreements?

5. Have public utilities been afforded sufficient time in which to comply with their filing obligations under the remedial *Central Maine* policy? If not, how much time would be sufficient and why?

6. Are public utilities unable in particular circumstances to demonstrate good cause under the *Central Hudson* standard of "extraordinary circumstances" when seeking waiver of notice for agreements for short-term coordination service, not provided pursuant to an accepted contract or settlement, negotiated on short notice and filed after the commencement of service? Does the *Central Hudson* "extraordinary circumstances" standard have the practical effect of stifling short-term economy transactions that otherwise would benefit both the buyer and the seller? If so, what approaches should the Commission consider and how would such approaches ensure just and reasonable rates?

Participating entities should, to the extent possible, refrain from making comments that pertain to specific requests for Commission action in ongoing proceedings. To the extent that participating entities may have similar concerns, they are encouraged to file joint comments. Commentators should double space their comments, provide a concise description identifying the commentator, and use the same docket number as that contained in this notice. Written comments should not exceed 30 pages in length. In addition to written comments not exceeding 30 pages, commentators should also provide an executive summary of their written comments, not to exceed three pages. Comments (including an executive summary of comments) must be filed with the Commission's Office of the Secretary no later that January 11, 1993.

The Commission also invites interested persons to file requests to participate in the technical conference on these issues. Requests must be in writing and submitted to the Office of the Secretary no later than January 11, 1993. Persons with similar positions are requested to file joint requests for participation, so that the Commission can accommodate the maximum number of participants possible. A list of persons granted requests to participate in the technical conference will be available in the Commission's Office of Public Information prior to the date of the conference.

While the power is provided directly to the retail customer, the sale is to the neighboring utility within whose service territory the borderline loads are located.

While we are scheduling a technical conference on filing-related issues, nothing in this notice is intended to stay the effectiveness of the *Central Maine* policy or any of the *Central Maine* line of cases or otherwise relieve utilities of their obligation to file jurisdictional rates, charges, and related agreements in advance of the commencement of service.

The Commission Orders

(A) A technical conference to discuss issues concerning the Commission's enforcement of the prior notice and filing requirement and implementation of its *Central Maine* policy is hereby scheduled for 10 a.m. in the Commission's meeting room, 9th Floor, 825 North Capitol Street, NE., Washington, DC 20426 on January 28, 1993.

(B) Entities that wish to file comments are hereby directed to file such comments with the Secretary, as explained in the body of this notice, by January 11, 1993.

(C) Entities that wish to participate in the technical conference scheduled in Ordering Paragraph (A) are hereby directed to file a request with the Secretary, as explained in the body of this notice, by January 11, 1993.

(D) The Secretary shall promptly publish a copy of this notice in the **Federal Register**.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30403 Filed 12-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-580-001, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. EL Paso Natural Gas Company

[Docket No. CP92-580-001]

December 3, 1992.

Take notice that on November 27, 1992, EL Paso Natural Gas Company (Applicant), Post Office Box 1492, EL Paso, Texas 79978, filed in Docket No. CP92-580-001 pursuant to section 7(c) of the Natural Gas Act an amendment to its application in Docket No. CP92-580-000, in order to request authorization to eliminate from its original request certain compression and pipeline facilities, all as more fully set forth in the amendment which is on file with the Commission and open for public inspection.

Applicant states that on July 7, 1992, Applicant filed an application in Docket No. CP92-580-000 requesting authorization to construct and operate: (1) Compression facilities totalling 12,150 horsepower (HP) at the existing Wenden Compressor Station; (2) approximately 21.0 miles of 36-inch outside diameter (O.D.) loop pipeline; and approximately 93.5 miles of 30-inch O.D. pipeling, all at an approximate cost of $91.1 million. Applicant further states that this proposal is referred to as the Yuma Lateral Expansion Project which will link Applicant's existing interstate system to a point of interconnection with facilities to be sited at the International Boundary between the United States and the Republic of Mexico in Yuma County, Arizona, near San Luis Colorado, Sonora, Mexico.

Applicant indicates that the original application was to provide for firm and interruptible transportation service up to 400,000 Mcf per day of natural gas, primarily for shippers serving existing and proposed electric generation facilities in the Baja California Norte, Mexico, and existing and proposed electric generation facilities in Yuma, Arizona area.

Applicant proposes to delete from the facilities proposed in the original application filed July 7, 1992: (1) 6,500 HP from the originally proposed 12,150 HP at the existing Wenden Compressor Station; and (2) approximately 21.0 miles of 36-inch O.D. mainline loop pipeline downstream of the Wenden Compressor Station. Applicant states that the modifications results in a reduction in the project cost from approximately $91.9 million to $71.4 million, or $20.5 million.

Applicant indicates that the deletion of these facilities requires minor changes in the project in order to meet the revised pipeling operating conditions. Applicant indicates that the proposed metering stations have been changed to accommodate the revised flow and an existing compressor unit at the Wenden Compressor station will now be restaged.

Applicant states that, with these revisions, the optimum design of the expansion project could deliver the existing firm contract transportation demand of 1,210,000 Mcf per day of natural gas at the Mlythe Delivery Point located at the Arizona-California border and 348,000 Mcf per day of natural gas to the Yuma, Arizona/International boundary area.

Applicant states that it will not contract to provide new firm transportation services aggregating more than 348,000 Mcf per day through the new Yuma Lateral unless and until it has otherwise applied for an received additional, specific authorization from the Commission beyond that now being requested here to provide additional service.

Applicant proposes to construct and operate the following facilities as part of its Yuma Lateral Expansion Project:

Compression

1. Wenden Compressor Station

Install one (1) 5,650 ISO horsepower Solar Centaur "H" compressor unit, with appurtenances, at the existing Wenden Compressor Station located in La Paz County, Arizona.

Pipeline

2. California Lines to the United States Border

Install approximately 93.5 miles of 30-inch O.D. pipeline, with appurtenances, at milepost 714.6 on Applicant's existing 30-inch O.D. pipeline in La Pax County, Arizona, and terminating in Yuma County, Arizona.

Meter Stations

3. Yuma, Arizona

Install two (2) 6-inch standard orifice-type meter facilities, with appurtenances, at milepost 91.8 on Applicant's proposed 30-inch pipeline located in Yuma County, Arizona.

4. International Boundary

Install three (3) 16-inch standard orifice-type meter run, with appurtenances, at milepost 93.5 at the terminus of Applicant's proposed 30-inch pipeline located in Yuma County, Arizona.

Applicant indicates that it will construct and operate, under § 2.55(a) of the Commission's Statement of General Policy and Interpretations under the NGA the following facilities:

Compression

1. Wenden B Compressor Station

Restage one (1) compressor unit at the existing Wenden B Compressor Station located in La Paz County, Arizona.

Comment date: December 24, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Equitrans, Inc.

[Docket No. CP93-81-000]

December 3, 1992.

Take notice that on November 27, 1992, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed in Docket No. CP93-81-000 a request pursuant to § 157.205 and § 157.211 of

the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a sales tap, under the blanket certificate issued in Docket No. CP83–508–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Equitrans proposes that the new sales tap be constructed on its transmission line in Franklin Township, Greene County, Pennsylvania to permit gas service to The State Correctional Institution of Franklin Township. Equitrans projects that the quantity of gas to be delivered through the new sales tap will be approximately 2,100 Mcf on a peak day.

Comment date: January 19, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Oryx Energy Company

[Docket No. CP93–85–000]

December 7, 1992.

Take notice that on December 1, 1992, Oryx Energy Company (Oryx), P.O. Box 2880, Dallas, Texas 75221–2880 filed in Docket No. CP93–85–000 a petition pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)) for a declaratory order stating that the Commission has no jurisdiction over the services and facilities that Oryx intends to perform or acquire in Alfalfa and Grant Counties, Oklahoma, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Oryx states that it has agreed to purchase facilities currently owned by Williams Natural Gas Company (WNG) known as the Wakita/Clyde Gathering System. Oryx submits that the services and facilities to be performed or acquired by Oryx fall within the definition of gathering facilities and are, therefore, excluded from the Commission's jurisdiction under section 1(b) of the Natural Gas Act.

The portion of the Wakita/Clyde Gathering System covered by the petition consists of approximately 70.4 miles of pipeline. Oryx states that all portions of the Wakita/Clyde Gathering System are located behind a processing facility known as the Wakita Plant (also sometimes referred to as West Hawley) which is owned by Oryx.

Oryx states that WNG provided natural gas service to two domestic customers at two taps located on the Wakita/Clyde Gathering System. Oryx states that they will assume WNG's obligations to provide a service to these domestic users and states an intent to convert the service to propane.

WNG has filed in Docket No. CP92–711–000 for authorization to abandon the subject facilities by sale to Oryx. Oryx requests that its petition be consolidated with WNG's application.

Comment date: January 6, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. ANR Pipeline Company

[Docket No. CP93–86–000]

December 7, 1992.

Take notice that on December 2, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–86–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate under the provisions of Section 7 of the Natural Gas Act certain facilities that have been constructed pursuant to section 311 of the Natural Gas Policy Act of 1978, under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that it constructed the Springboro metering facilities, located in Warren County, Ohio, pursuant to Section 311 of the NGPA to deliver gas to Cincinnati Gas and Electric. ANR asserts that it is requesting certificate authorization for these facilities so that any shipper may use the facilities when capacity is available.

Comment date: January 21, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Mid Louisiana Gas Company North Louisiana Gathering Company

[Docket No. CP93–79–000]

December 7, 1992.

Take notice that on November 25, 1992, Mid Louisiana Gas Company (Mid Louisiana), and North Louisiana Gathering Company (North Louisiana Gathering), both of P.O. Box 61865, Houston, Texas 77208–1865, filed in Docket No. CP93–79–000, a joint application pursuant to section 7(b) of the Natural Gas Act and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2), seeking authorization for Mid Louisiana to abandon all of its certificated gathering facilities which will be transferred to North Louisiana Gathering after the abandonment and petitioning the Commission to determine that the gathering facilities will not be subject to the Commission's Regulations pursuant to section 1(b) of the Natural Gas Act after the abandonment and transfer of the facilities to North Louisiana Gathering, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid Louisiana states that it would abandon and transfer to North Louisiana Gathering, all of its gathering facilities located in the Monroe Field in Louisiana. The facilities consist of nine field compressors and approximately 430 miles of gathering line, ranging in diameter from 1.25 inches to 22 inches, it is stated.

Mid Louisiana and North Louisiana Gathering request that the authorization which they seek be made effective the earlier of April 30, 1993, or the date the Commission permits Mid Louisiana's compliance filing in Docket No. RS92–20–000 to become effective.

North Louisiana asserts that upon acquisition of the facilities, it will provide its services to all persons on terms and conditions that are consistent with open-access principles and that gathering services would be available on a nondiscriminatory basis.

Comment date: December 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30331 Filed 12-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-01373T Arkansas-4]

State of Arkansas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 8, 1992.

Take notice that on December 3, 1992, the Arkansas Oil and Gas Commission (Arkansas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Haynesville Formation, Springhill Field, Columbia County, Arkansas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as the Fractional Section 12, Township 20 South, Range 23 West; the S/2 of Sections 1-3 and Fractional Sections 7-12, Township 20 South, Range 22 West, and Fractional Section 7, Township 20 South, Range 21 West, Columbia County, Arkansas.

The notice of determination also contains Arkansas' findings that the referenced portion of the Haynesville Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30336 Filed 12-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-92-000]

Arkla Energy Resources, a Division of Arkla, Inc.; Application

December 9, 1992.

Take notice that on December 4, 1992, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93-92-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon by sale to Bayou South Gas Gathering Company, L.C. (Bayou South) certain existing certificated pipeline facilities and facilities appurtenant thereto in Texas and Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, AER proposes to abandon and transfer to Bayou South the following facilities:

(1) 114 feet of AER's Line ST-4 located in Webster Parish, Louisiana;

(2) 1,325 feet of Line LT-3 and Line LT-4 (approximately 25,492 feet) located in Claiborne Parish, Louisiana; and

(3) Line AT-2 (approximately 970 feet) located in Marion County, Texas.

AER states that, pursuant to an agreement with Bayou South, it has transferred to Bayou South gathering facilities in the same areas and upon receipt of the requested abandonment authority, will transfer these pipeline segments to Bayou South. AER states that abandonment would not impair services from the abandoned facilities and Bayou South would continue to gather and deliver gas from the connected fields through the facilities. It is also indicated that there would be no effect on AER's existing tariffs and AER's customers would benefit from the resulting reduction in AER's operating and maintenance costs and rate base.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for AER to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30396 Filed 12-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-81-000, et al.]

El Paso Natural Gas Co.; Settlement Conference

December 9, 1992.

In the matter of Docket Nos. RP90-81-000, RP88-184-000, RP89-132-000, RP91-26-000, RP91-162-000, and RP92-18-000.

Take notice that a settlement conference will be convened in this proceeding on Friday, December 18, 1992, at 8 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 2402-A, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

All parties, as defined by 18 CFR 385.102(c), and all participants, as

defined by 18 CFR 385.102(b), are invited to attend. Persons wishing to become parties must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact John Katz at (202) 208–0688 or Marc G. Denkinger at (202) 208–2215.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30400 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–60–000]

El Paso Natural Gas Co.; Notice of Pre-Filing Conference

December 8, 1992.

Take notice that on Friday, December 18, 1992, a pre-filing conference will be convened in the captioned docket to discuss El Paso Natural Gas Company's summary of its proposed plan for implementation of Order No. 636. The conference will be held in Hearing Room #1 of the Federal Energy Regulatory Commission, at 810 First Street, NE., Washington, DC. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Lisa T. Long at (202) 208–2105.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30338 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–82–000]

Equitrans, Inc.; Notice of Request Under Blanket Authorization

December 8, 1992.

Take notice that on November 27, 1992, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP93–82–000 a request pursuant to § 157.205 and § 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a sales tap to permit deliveries to Equitable Gas Company (Equitable) for service to Mr. Charles E. Gaston, of Weston, West Virginia, under the blanket certificate issued in Docket No. CP83–508–000, as later transferred to Equitrans in Docket No. CP86–676–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to construct and operate a sales tap to be installed on its transmission line F–783 in Weston, West Virginia. It is indicated that the tap would be installed to permit gas service to Mr. Charles E. Gaston. It is also indicated that the customer would be served by Equitable and Equitable would be charged the applicable rate contained in Equitrans' FERC tariff. Equitrans projects that the quantity of gas to be delivered through the proposed sales tap would be approximately one Mcf on a peak day.

Equitrans states that the volumes to be delivered are within the certified entitlements of Equitable and that Equitrans' certificate does not prohibit the addition of new delivery points.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30335 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–009]

Frontier Gas Storage Co.; Notice of Sale Pursuant to Settlement Agreement

December 8, 1992.

Take notice that on December 1, 1992, Frontier Gas Storage Company (Frontier), % Reid & Priest, Market Square, 701 Pennsylvania Avenue, NW. Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 et. al., submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 1 Bcf of Frontier's gas storage inventory on an "as metered" basis to UNIGAS Corporation (UNIGAS). The Service Agreement, dated November 30, 1992, contemplates the possible sale to commence December 16, 1992.

Under subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before December 21, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30334 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–229–000]

Northwest Pipeline Corp.; Notice of Settlement Conference

December 8, 1992.

Pursuant to the Commission's order issued October 29, 1992 (61 FERC ¶ 61,126), an informal conference will be held to explore settlement of issues raised in the above-captioned proceeding. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference will be held on Thursday, January 14, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff and permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30337 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–79–004 and RP91–166–018]

Northwest Pipeline Corp.; Change in Service Agreements

December 9, 1992.

Take notice that on November 30, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance of new service agreements, as described below, in compliance with Commission directives in the above docket.

The purpose of this filing is to tender new Rate Schedule ODL–1 service agreements with various customers reflecting the partial conversion of sales services to transportation services, new service agreements under Rate Schedule SGS–1 reflecting the abandonment of SGS–1 (Option 10) Sales, and new LS–1 service agreements with various customers, which reflect the abandonment of Rate Schedule LS–1 Sales.

Northwest has requested an effective date of November 1, 1992 for the tendered service agreements.

Northwest states that copies of the filing is being served on the affected customers, all intervenors in Docket No. CP92–79 and associated state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 16, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30402 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–120–000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

December 9, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, December 15, 1992, immediately following the prehearing conference scheduled at 9 a.m. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC., for the purpose of exploring the possible settlement of all issues raised in the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Carmen Gastilo at (202) 208–2182 or Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30397 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–44–000]

Questar Pipeline Co.; Tariff Filing

December 9, 1992.

Take notice that Questar Pipeline Company, on December 7, 1992, tendered for filing and acceptance to be effective January 1, 1993, First Revised Sheet No. 40 and Original Sheet No. 40A to Original Volume No. 2–A of its FERC Gas Tariff.

Questar states that this filing revises section 5 of the General Terms and Conditions to Original Volume No. 2–A of its FERC Gas Tariff by adding tariff language that allows for the transfer of gas in place from one storage customer to another at Questar's Clay Basin storage reservoir.

Questar states further that this filing was served upon its Clay Basin storage customers and the Wyoming and Utah public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules and Regulations 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before December 16, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30398 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–15–000]

South Carolina Electric & Gas Co.; Notice of Application

December 8, 1992.

Take notice that on December 1, 1992, South Carolina Electric & Gas Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $200 million of unsecured promissory notes on or before December 31, 1994, with a final maturity date no later than December 31, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30333 Filed 12–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–162–002]

Superior Offshore Pipeline Co., Motion to Place Tariff Sheets into Effect

December 9, 1992.

Take notice that on December 1, 1992, Superior Offshore Pipeline Company (SOPCO), respectfully moves to place into effect on December 1, 1992, subject to refund, its proposed rates submitted on April 29, 1992 that were suspended for the five-month statutory period by the Commission order dated June 26, 1992.

SOPCO states that on April 29, 1992, SOPCO submitted its Original Sheets No. 5 and 6 to its FERC Gas Tariff First Revised Volume No. 1. These sheets proposed base rates, plus the approved ACA charges, of $0.0321 and $0.0277 for transportation on SOPCO's system upstream and downstream of the Lowry Gas Plant, respectively. The Commission's June 26, 1992 order suspended the effectiveness of these filed-for rates until December 1, 1992.

SOPCO moves to place these proposed rates into effect December 1, 1992, the end of the suspension period. SOPCO states that the revised Tariff Sheet Nos. 5 and 6 which reflect the suspended rates and the current ACA charge as of October 1, 1992 are attached to the filing.

SOPCO states that copies of the filing have been served upon all of SOPCO's customers and each person designated on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 16, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-30401 Filed 12-14-92; 8:45 am]

BILLING CODE 6712-01-M

[Docket No. RP93-43-000]

Transcontinental Gas Pipe Line Corp.; Motion for Waivers and Request for Interim Authority

December 9, 1992.

Take notice that on December 3, 1992, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing a request for waiver of § 284.223(f) of the Commission's regulations, and for authorization to waive certain provisions of its FERC Gas Tariff to the extent necessary to enable TGPL to convert certain firm transportation agreements with Conoco Inc. (Conoco) from service authorized under section 311 of the Natural Gas Policy Act of 1978 (NGPA) and subpart B of part 284 of the regulations to service under TGPL's blanket transportation certificate under section 7(c) of the Natural Gas Act (NGA) and subpart B of part 284.

TGPL seeks to convert the FT Agreements at the request of Conoco. With the issuance of the Commission's Order No. 636 series, Conoco seeks the greater flexibility available under the blanket certificate authorization in order to utilize more fully its firm capacity on TGPL and meet the needs expressed by Conoco's customers. TGPL requests a waiver of the requirement at § 284.223(f)(1)(ii) of the Commission's regulations that conversion from subpart B service to service under subpart G occur prior to November 1, 1990.

TGPL also requests, to the extent necessary, a waiver of § 8.1 of Rate Schedule FT of its tariff which requires TGPL to announce any new firm transportation capacity which comes available and to hold an open season for such capacity. TGPL seeks a waiver of its tariff to the extent necessary to permit it to convert Conoco's transportation to subpart G without first holding an open season. TGPL requests that the Commission expeditiously grant TGPL interim authority to transport gas for Conoco pursuant to subpart G pending approval of the instant request. TGPL submits that waiver of § 284.223(f) of the regulations should moot the need for any waiver of TGPL's tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 16, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30399 Filed 12-14-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-51812; FRL-4180-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 53 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93-127, 93-128, 93-129, 93-130, 93-131, 93-132, February 7, 1993.

P 93-133, 93-134, 93-135, February 9, 1993.

P 93-136, 93-137, February 10, 1993.

P 93-138, 93-139, 93-140, 93-141, 93-142, 93-143, 93-144, 93-145, 93-146, 93-147, 93-148, 93-149, February 13, 1993.

P 93-150, 93-151, 93-152, 93-153, 93-154, 93-156, 93-157, February 14, 1993.

P 93-158, 93-159, 93-160, 93-161, 93-162, February 15, 1993.

P 93-163, 93-164, 93-165, 93-166, 93-167, 93-168, 93-169, February 16, 1993.

P 93-170, 93-171, 93-172, February 17, 1993.

P 93-173, 93-174, 93-175, 93-176, 93-177, 93-178, 93-179, 93-180, February 20, 1993.

Written comments by:

P 93-127, 93-128, 93-129, 93-130, 93-131, 93-132, January 8, 1993.

P 93-133, 93-134, 93-135, January 10, 1993.

P 93-136, 93-137, January 11, 1993.

P 93-138, 93-139, 93-140, 93-141, 93-142, 93-143, 93-144, 93-145, 93-146, 93-147, 93-148, 93-149, January 14, 1993.

P 93-150, 93-151, 93-152, 93-153, 93-154, 93-156, 93-157, January 15, 1993.

P 93-158, 93-159, 93-160, 93-161, 93-162, January 16, 1993.

P 93-163, 93-164, 93-165, 93-166, 93-167, 93-168, 93-169, January 17, 1993.

P 93-170, 93-171, 93-172, January 18, 1993.

P 93-173, 93-174, 93-175, 93-176, 93-177, 93-178, 93-179, 93-180, January 21, 1993.

ADDRESSES: Written comments, identified by the document control number "(OPPT-51812)" and the specific number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93–127

Manufacturer. The C. P. Hall Company.

Chemical. (S) Hexanedioic acid dimethyl ester; pentanedioic aciddimethyl ester; 2-methyl-1,3-propanediol; 1,3-propanediol 2-ethyl-2-(hydroxymethyl).

Use/Production. (S) Intermediate for urethanes. Prod. range: Confidential

P 93–128

Manufacturer. Confidential.

Chemical. (G) Diamno disulfo naphthalene.

Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 93–129

Manufacturer. Confidential.

Chemical. (G) Substituted carboxylic acid, compound with diethylaminoethanol.

Use/Production. (S) Oxygen scavenger for boiler feedwater. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Static acute toxicity: time LC50 48H > 1,000 mg/l species (Daphnia magna). Skin irritation: negligible species (rabbit).

P 93–130

Manufacturer. Confidential.

Chemical. (G) Diamino disulfo naphthalene.

Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 93–131

Manufacturer. Confidential.

Chemical. (G) Diazo coupled amino *J* acid.

Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 93–132

Manufacturer. Confidential.

Chemical. (G) Tris(diamino carbopolycycle)terrate(III).

Use/Production. (S) Anti-halation dye. Prod. range: Confidential.

P 93–133

Manufacturer. Confidential.

Chemical. (G) Modified diphenylmethane diisocyanate.

Use/Production. (G) Polyurethane coating component. Prod. range: Confidential.

P 93–134

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (G) On-site maintenance. Prod. range: Confidential.

P 93–135

Importer. Confidential.

Chemical. (G) Polyoxyalkanes, alcohols C_{12-30} saturated and C_{18} unsaturated, ethoxylate reaction products with 1, 6-diisocyanato-2,4,4-trimethylhexane and 1,6-diisocyanato-2,4,4-trimethylhexane.

Use/Import. (G) Nondispersive thickener for plastic solutions. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (rat). Mutagenicity: negative.

P 93–136

Manufacturer. Confidential.

Chemical. (G) Alkyl ester of oligomer.

Use/Production. (G) Resin for transparency. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 1,091 mg/kg species (rat). Skin irritation: slight.

P 93–137

Manufacturer. Dow Corning Corporation.

Chemical. (G) Crosslinked polydimethylsiloxane.

Use/Production. (S) Thermoclave pressure packing. Prod. range: Confidential.

P 93–138

Manufacturer. Confidential.

Chemical. (G) Propanenitrile, 3-(alkylene).

Use/Production. (S) Amine production. Prod. range: Confidential.

P 93–139

Manufacturer. Confidential.

Chemical. (G) 1-Propanamine, 3(alkyloxy).

Use/Production. (S) Precursor for amino propane nitrile production. Prod. range: Confidential.

P 93–140

Manufacturer. Confidential.

Chemical. (G) Propanenitrile, 3-amino-*N*-(alkyloxy)propyl).

Use/Production. (S) Precursor to propanediamine production. Prod. range: Confidential.

P 93–141

Manufacturer. Confidential.

Chemical. (G) 1,3-Propanediamine, *N*-(3-(alkoxy)propyl).

Use/Production. (S) Flotation reagent for use in mining. Prod. range: Confidential.

P 93–142

Manufacturer. Confidential.

Chemical. (G) 1,3-Propanediamine, *N*-(3-(alkyloxy)propyl),acetates.

Use/Production. (S) Flotation reagent for use in mining. Prod. range: Confidential.

P 93–143

Manufacturer. Confidential.

Chemical. (G) Alkoxylated diphenol.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–144

Manufacturer. Confidential.

Chemical. (G) Alkoxylated diphenol.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–145

Manufacturer. Confidential.

Chemical. (G) Polymeric diphenol.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–146

Manufacturer. Bostik, Inc.

Chemical. (G) Polyamine.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–147

Importer. Confidential.

Chemical. (G) Ethyl carbazole violet.

Use/Import. (G) Pigment for colorants. Import range: Confidential.

P 93–148

Importer. Confidential.

Chemical. (G) Novolac-resin from substituted phenols and formaldehyde.

Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 93–149

Importer. Confidential.

Chemical. (G) Ethylene-vinylacetates emulsion.

Use/Import. (S) Adhesive. Import range: Confidential.

P 93–150

Manufacturer. Confidential.

Chemical. (G) Isopthalic acid polymer with benzene sulfonic acid, dicarboxy, sodium salt, monoisopropanolamine, Alkyl glycol, and styrene/acrylic polymer.

Use/Production. (G) Additive for inks. Prod. range: Confidential.

P 93–151

Importer. Goldschmist Chemical Corporation.

Chemical. (G) Polyether modified polysiloxane.
Use/Import. (G) Open nondispersive. Import range: Confidential.

P 93–152

Manufacturer. E.I. Du Pont De Nemours and Company.
Chemical. (G) Substituted alkylated polyethylene.
Use/Production. (G) Belts and hoses. Prod. range: Confidential.

P 93–153

Manufacturer. Confidential.
Chemical. (G) Substituted phosphoramide.
Use/Production. (G) Isolated intermediate used to produce specialty additive. Prod. range: Confidential.

P 93–154

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Azo substituted naphthalene sulfonic acid.
Use/Production. (S) Fiber reactive dye for textile dyeing. Prod. range: 2,500–10,000 kg/yr.

P 93–155

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Disubstituted nitrobenzene.
Use/Production. (S) Captive intermediate. Prod. range: 15,000–35,000 kg/yr.

P 93–157

Importer. Confidential.
Chemical. (G) Di bacic/glycol ester.
Use/Import. (S) Product is a resinous constituent for use in food and beverage can coatings. Import range: Confidential.

P 93–158

Manufacturer. Minnesota Mining and Manufacturing Co.
Chemical. (S) *N*-Vinylpyrrolidone; 2-propenoic acid, 2-methoxyethyl ester; 2-propenoic acid, 2-methoxyethyl ester 2,propenoic acid, ammonium salt.
Use/Production. (G) Binder. Prod. range: Confidential.

P 93–159

Importer. Confidential.
Chemical. (G) Dibasic acid/glycol ester.
Use/Import. (G) Product is a resinous constituent for food and Beverage can linings. Import range: Confidential.

P 93–160

Manufacturer. Confidential.
Chemical. (G) Alkylcarbbamate.

P 93–161

Manufacturer. Confidential.
Chemical. (G) Amine phosphate.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 93–162

Manufacturer. Confidential.
Chemical. (G) Aromatic polyether polyester.
Use/Production. (G) Epoxy resin ingredient. Prod. range: Confidential.

P 93–163

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane.
Use/Production. (G) Coating for open, nondispersive use in orginal equipment manufacture. Prod. range: Confidential.

P 93–164

Manufacturer. Confidential.
Chemical. (G) Modified diphenylmetthane diisocyanate.
Use/Production. (G) Polyurethane foam component. Prod. range: Confidential.

P 93–165

Manufacturer. Monsanto Company.
Chemical. (S) Hexanedioic acid, bis-*N*-hexyl, bis(cyclohexyl) esters ox mixed dihexyl, dicyclohexyl (hexyl, cycohexyl) adipates.
Use/Production. (G) Plasticizer. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 5,000 mg/kg species (rabbit). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 93–166

Manufacturer. Confidential.
Chemical. (G) Crosslinked polymeric acrylic microparticles.
Use/Production. (S) Coatings. Prod. range: 208,506–625,000 kg/yr.

P 93–167

Manufacturer. Confidential.
Chemical. (G) Crosslinked polymeric acrylic microparticles.
Use/Production. (S) Coatings. Prod. range: 208,000–625,518 kg/yr.

P 93–168

Importer. Confidential.
Chemical. (S) Alcohols, C_{12-18}, ethers with polyethylene.
Use/Import. (S) Spin finish synthetic fiber. Import range: 500–2,000 kg/yr.

P 93–169

Manufacturer. Confidential.
Chemical. (G) Polyurethane elastomer.
Use/Production. (G) Engineering thermoplastic alloy material. Prod. range: Confidential.

P 93–170

Manufacturer. Confidential.
Chemical. (S) Functionalized polyester polyurethane dispersion.
Use/Production. (G) Component of spray applied coating. Prod. range: 50,000–150,000 kg/yr.

P 93–171

Manufacturer. Confidential.
Chemical. (G) Functionalized. polyester polyurethane dispersion.
Use/Production. (G) Component of spray applied coating. Prod. range: 50,000–150,000 kg/yr.

P 93–172

Manufacturer. Confidential.
Chemical. (G) Functionalized polyester polyurethane dispersion.
Use/Production. (G) Component of spray applied coating. Prod. range: 50,000–150,000 kg/yr.

P 93–173

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (S) 1-Chloromethyl-4-fluoro-1,4-diazoniabicycle(2,2,2)otane bis(tetrafluoroborate).
Use/Production. (G) Selective fluorination of organic and inorganic chemical substrates. Prod. range: Confidential.

P 93–174

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Substituted triethylenediamine chloride.
Use/Production. (G) An isolated but site-limited intermediate in the manufacture of chemical identified. Prod. range: Confidential.

P 93–175

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Substituted triethylenediamine fluoroborate.
Use/Production. (G) An isolated but site-limited intermediate in the manufacture of the chemical identified. Prod. range: Confidential.

P 93–176

Importer. Confidential.
Chemical. (G) Hyrophthalically modified polyurethane.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rats). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit).

P 93–177

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalene sulfonic acid salt.
Use/Production. (S) Liquid and powder formulation of fiber reactive dye. Prod. range: 11,000–33,000 kg/yr.

P 93-178

Manufacturer. Bostik, Inc.

Chemical. (G) Polyurethane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93-179

Manufacturer. R.T. Vanderbilt Company, Inc.

Chemical. (G) 2,5-Dimercapto-1,3,4-thiadazole reaction product.

Use/Production. (S) Multifunctional additives for fuel and lubricants. Prod. range: Confidential.

P 93-180

Manufacturer. R.T. Vanderbilt Company, Inc.

Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reactin product.

Use/Production. (S) Multifunctional additives for fuel and lubricants. Prod. range: Confidential.

Dated: December 7, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 92-30433 Filed 12-14-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPT-59316; FRL-4180-9]

Certain Chemical; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any personfrom the premanufacturing notification requirements of section5(a) or (b) of the Toxic Substance Control Act (TSCA) to permitthe person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of announces receipt of two application(s) for exemption, applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 93-4, 93-5, December 25, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPT-59316)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW, Rm. 201ET Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen,Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 93-4

Close of Review Period. January 8, 1993.

Manufacturer. Confidential.

Chemical. (G) Alkanoate ester of an ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: slight species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

T 93-5

Close of Review Period. January 8, 1993.

Manufacturer. Confidential.

Chemical. (G) Alkanoate ester of an ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5.0 g/kg species (rat). Acute dermal toxicity: LD50 >2.0 g/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: slight species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

Dated: December 7, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR. Doc. 92-30436 Filed 12-14-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPT-59855; FRL-4180-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 13 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93-10, November 22, 1992.

Y 93-11, November 26, 1992.

Y 93-12, November 29, 1992.

Y 93-13, 93-14, December 2, 1992.

Y 93-15, December 6, 1992.

Y 93-16, 93-17, 93-18, 93-19, December 7, 1992.

Y 93-20, December 9, 1992.

Y 93-21, 93-22, December 13, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93-10

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,000-45,000 kg/yr.

Y 93-11

Importer. Confidential.

Chemical. (G) Polymer of benzoic acid derivative, substituted biphenyl, substituted benzenes.
Use/Import. (S) Connector electric parts. Import range: Confidential.

Y 93–12

Manufacturer. Confidential.
Chemical. (G) Polyol.
Use/Production. (G) Manufacturing precursor. Prod. range: Confidential.

Y 93–13

Importer. Toyobo America, Inc.
Chemical. (S) 1,1′-Methylenedbis(4-isocyanatobenzene), polymer with 1,3-benzenedicarboxylic acid,1,4-benzenedicarboxylic acid, 2,2-dimethyl-1,-dimethyl-1,3-propanediol,1,2-ethanediol, and 5-sulfo-1,3-benzenedicarboxylic acid monosodium salt.
Use/Import. (S) Binder for magnetic tapes. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

Y 93–14

Importer. Toyobo American, Inc.
Chemical. (G) Polyester polyurethane with 5-sulfo-1,3-benzenedicarboxylic.
Use/Import. (S) Binder for magnetic tapes. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

Y 93–15

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Clear and pigmented powder coatings. Prod. range: Confidential

Y 93–16

Manufacturer. Akzo-Lanchem.
Chemical. (G) Epoxy ester.
Use/Production. (S) Polymerized to manufacture inks. Prod. range: Confidential.

Y 93–17

Manufacturer. Confidential.
Chemical. (G) Styrene-acrylic copolymer.
Use/Production. (G) A component used in coatings for plastics. Prod. range: Confidential.

Y 93–18

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyester resin.
Use/Production. (S) Powder caotings. Prod. range: Confidential.

Y 93–19

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyester.
Use/Production. (S) Powder coatings. Prod. range: Confidential.

Y 93–20

Manufacturer. Henkel Corporation.
Chemical. (S) Nonanedioic acid and fatty acids, C_{4-11} di- polymer with 1,4 butanediol,1,2 propylene glycol, and (nonanedioic acid polymer with ethylene glycol), bishydroxyethyl nonanedioate, and ethylene glycol-, 2-ethyl hexyl ester.
Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 1,000,000–1,500,000 kg/yr.

Y 93–21

Manufacturer. Goldschmidt Chemical Corporation.
Chemical. (G) Aliphatic polyurethaneurea.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 93–22

Manufacturer. Goldschmidt Chemical Corporation.
Chemical. (G) Aliphatic polyurethaneurea.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Dated: December 3, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 92–30439 Filed 12–14–92; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:
Type of Review: Extension of expiration date without any change in substance or method of collection.
Title: Application to Participate in a Conversion Transaction.
Form Number: None (letter application).
OMB Number: 3064–0098.
Expiration Date of OMB Clearance: February 28, 1993.
Frequency of Response: On occasion.
Respondents: Any insured depository institution applying for approval from the FDIC to participate in a conversion transaction which involves the transfer of deposits between a member of the Savings Association Insurance Fund and a member of the Bank Insurance Fund or vice versa.
Number of Respondents: 35.
Number of Responses per Respondent: 1.
Total Annual Responses: 35.
Average Number of Hours per Response: 3.
Total Annual Burden Hours: 105.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0098, Washington, DC 20503.
FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before February 16, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the use of the letter application, which is required for depository institutions that wish to obtain the FDIC's approval to participate in a conversion transaction. Such transactions generally involve the transfer of deposits between the Savings Association Insurance Fund and the Bank Insurance Fund or vice versa. The requirement is based on statutory requirements contained in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Under FIRREA (section 206(a)(7), Pub. L. 101–73), no insured depository institution may participate in a conversion transaction without the prior approval of the FDIC.

Dated: December 9, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–30347 Filed 12–14–92; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–969–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of

Georgia (FEMA–969–DR), dated December 1, 1992, and related determinations.

EFFECTIVE DATE: December 4, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, dated December 1, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 1, 1992.

The counties of Dade and Talbot for Individual Assistance. The counties of Jones, Lincoln, Lumpkin, Monroe, Spaulding, Taliaferro, and Wilkes for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–30385 Filed 12–14–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–969–DR]

Georgia: Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management (FEMA).

ACTION: Notice.

EFFECTIVE DATE: December 1, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–969–DR), dated December 1, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 1, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from tornadoes, accompanied by high winds and heavy rain, on November 22, 1992, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Edward Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

The counties of Carroll, Cherokee, Cobb, Greene, and Putnam for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92–30386 Filed 12–14–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–970–DR]

Texas; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: December 4, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–970–DR), dated December 4, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 4, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe thunderstorms and tornadoes on November 21, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Brad Harris of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Harris County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92–30369 Filed 12–14–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed; American President Lines, Ltd. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor.

Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010778–072.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President, Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would restrict voting privileges on tariff items related to all-water service to those carriers who maintain and advertise regular all-water service.

Agreement No.: 203–011223–007.

Title: Transpecific Stabilization Agreement.

Parties:

American President Lines, Ltd.
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Maersk K.K.
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Yangming Marine Transportation Corp.

Synopsis: This modification adds Hapag-Lloyd Aktiengesellschaft as a party to the Agreement and corrects the addresses of several existing parties to the Agreement. The parties have requested a shortened review period.

Dated: December 9, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–30324 Filed 12–14–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barclays PLC, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England, and Barclays Bank PLC, London, England; to engage *de novo* through Barclays de Zoete Wedd Securities, Inc., New York, New York, in acting, for affiliated and nonaffiliated persons, as a futures commission merchant and advisor with respect to financial futures and options contracts, pursuant to §§ 225.25(b)(18) and (19) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30358 Filed 12–14–92; 8:45 am]

BILLING CODE 6210–01–F

Citizens Financial Corporation Employee Stock Ownership Plan and Trust, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 30, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Financial Corporation Employee Stock Ownership Plan and Trust*, Fort Atkinson, Wisconsin; to acquire 40 percent of the voting shares of Citizens Financial Corporation, Fort Atkinson, Wisconsin, and thereby indirectly acquire Citizens State Bank, Fort Atkinson, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Farmers Union Bank, Ripley, Tennessee.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Overton Financial Corporation, Overton, Texas, and its wholly-owned subsidiary, Overton Delaware Corporation, Dover, Delaware; together to acquire up to 15 percent of the voting shares of Longview Financial Corporation, Longview, Texas, and Longview Bank & Trust Company, Longview, Texas.

Board of Governors of the Federal Reserve System, December 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30359 Filed 12-14-92; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to acquire JBS Associates, Inc., Ringwood, New Jersey, and thereby engage in providing check collection and check guarantee services, which consist of check collection, check verification, and check guarantee to various corporate customers, pursuant to §§ 225.25(b)(22) and (23) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30360 Filed 12-14-92; 8:45 am]

BILLING CODE 6210-01-F

Van Diest Investment Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 7, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Van Diest Investment Company, Ankeny, Iowa; to merge with Hamilton County Bancshares, Inc., Webster City, Iowa, and thereby indirectly acquire First State Bank, Webster City, Iowa.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. CNB Financial Corp., Kansas City, Kansas; to acquire 100 percent of the voting shares of Security State Bank of Fort Scott, Fort Scott, Kansas.

2. Raton Capital Corporation, Raton, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of International State Bank, Raton, New Mexico.

3. Wally Bancorp, Inc., Parker, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Parker, Parker, Colorado.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Abilene Bankshares, Inc., Abilene, Texas; to acquire 100 percent of the voting shares of Stephenville Bank & Trust Co., Stephenville, Texas.

2. First Abilene Bankshares of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Stephenville Bank & Trust Co., Stephenville, Texas.

Board of Governors of the Federal Reserve System, December 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30361 Filed 12-14-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Development of Clinical Guideline For Smoking Prevention and Cessation with Centers for Disease Control

The Agency for Health Care Policy and Research and the Centers for Disease Control announce that they are: (1) Establishing a panel of health care experts and consumers to develop a clinical practice guideline for smoking prevention and cessation; and (2) inviting nominations of qualified individuals to serve as the chairperson(s) and as panel members.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) added a new title IX to the Public Health Service

Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) enacted on October 13, 1992, amended certain provisions of the Act. In keeping with its legislative mandates, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b–2) describes two mechanisms through which AHCPR may arrange for development of guidelines: 1. Panels of qualified health care experts and consumers may be convened; and 2. contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the panel process for development of clinical practice guidelines for smoking prevention and cessation.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

The Centers for Disease Control (CDC) serve as the national focus for developing and supporting disease prevention and control, environmental health, and health promotion and health education activities designed to improve the health of the people of the United States. Their responsibilities under 42 U.S.C. 241, 300u–300u–2, and 15 U.S.C. 1341 and 4401, include the study and prevention of chronic diseases and controllable risk factors such as cigarette smoking and smokeless tobacco use. The Office on Smoking and Health (OSH), a division of the National Center for Chronic Disease Prevention and Health Promotion, administers a program to inform Americans about the dangers of tobacco use in order to reduce death and disability due to smoking and smokeless tobacco use. In order to reduce the morbidity and mortality from tobacco use, OSH promotes and stimulates research on the determinants and health effects of smoking and smokeless tobacco use.

Panel Nominations

The panel that will develop the guideline for smoking prevention and cessation will consist of two co-chairpersons and nine to fifteen members. To assist in identifying members for the panel, AHCPR and CDC are requesting recommendations from a broad range of interested individuals and organizations, including physicians representing primary care and relevant specialties, physicians' assistants, nurses, nurse practitioners, dentists, pharmacists, respiratory care therapists and allied health and other health care practitioners, health care institutions, and consumers with pertinent experience or information. In making panel selections, AHCPR and CDC will maintain a balance between individuals selected from academic settings and individuals selected without full-time academic appointments. Also, at least two other members of this panel shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in this guideline.

AHCPR and CDC are especially interested in receiving nominations of: (1) Persons with experience in developing clinical guidelines; (2) persons with relevant experience in basic and clinical research in: Disease prevention and health promotion, particularly as they relate to smoking prevention and cessation; addictive behaviors; behavioral medicine; pulmonary medicine; social psychology of health behaviors, social marketing, cardiovascular medicine or other related areas; (3) persons with relevant experience and clinical and technical skills needed to produce smoking-related behavior changes in various types of smokers (including pre-symptomatic as well symptomatic individuals); (4) persons with relevant experience and clinical and technical skills needed to prevent people in different target populations from beginning smoking; (5) epidemiologists who are familiar with smoking-related diseases or their treatments; (6) health services researchers or health economists who have expertise regarding smoking-related diseases as well as smoking cessation interventions and other treatments; and (7) consumers who have had personal experience with smoking prevention or cessation, either as a former smoker, a family member or friend of a former smoker, or as a person who actively works with smoking prevention or cessation programs.

This notice requests nominations of qualified individuals to serve on the panel as members or as panel chairpersons. The functions of the panel chairpersons are critical to the process of developing guidelines. Chairpersons provide leadership regarding methodology, literature review, panel deliberations, and formation of the final products. Nominations for chairpersons should take into consideration the criteria specified below, which AHCPR and CDC will use in making panel selections.

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on the clinical condition(s) under consideration and the related treatment of the condition(s), including publication of relevant peer-reviewed articles;
- Commitment to the need to produce clinical guidelines;
- Recognition in the field with a record of leadership in relevant activities;

- Broad public health view of the utility of particular procedures(s) or clinical services(s);
- Demonstrated capacity to lead a health care team in group decision making processes;
- Demonstrated capacity to respond to consumer concerns;
- Prior experience in developing guidelines for the clinical condition in question; and
- No conflict of interest that would impair the scientific integrity of the guidelines.

When the panel chairperson(s) has been appointed, nominations for members of the panel will be submitted to the chairperson(s) for review and consideration. The chairperson(s) will, in turn, recommend proposed panel members to AHCPR and CDC. Appointments of the panel members will be made by the Administrator, AHCPR, in consultation with CDC, after review of proposed members' qualifications and the overall composition of the panel to ensure representation of a range of expertise and experience.

Nominations should indicate whether the individual is being recommended to serve as the panel chairperson(s) or to serve as a panel member. The term of appointment for panel chairpersons is three years and the subsequent panel chairpersons will be selected from the existing panel members at that time. Each nomination must include a copy of the individual's curriculum vitae or resume, plus a statement of the rationale for the specific nomination. To be considered, nominations must be received by January 22, 1993, at the following address: Office of the Forum for Quality and Effectiveness in Health Care, Kathleen McCormick, PhD, RN, Director, 2101 E. Jefferson Street, Suite 401 West, Rockville, MD 20852, Phone: (301) 227–6671, Fax: (301) 227–8332.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Fact Sheet, "AHCPR-Commissioned Clinical Practice Guidelines," dated January 1992 and the Program Note, "Clinical Guideline Development," dated August 1990. These documents can be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Also, information can be obtained by contacting Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, at the Rockville address above.

Dated: December 7, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92–30237 Filed 12–14–92; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–03–4120–03]

Notice of Competitive Coal Lease Sale; West Rocky Butte Tract, WYW122586

AGENCY: Bureau of Land Management, Interior, Wyoming.

SUMMARY: Notice is hereby given that certain coal resources in the West Rocky Butte Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 2 p.m., on Thursday, January 7, 1993. Sealed bids must be submitted on or before 4 p.m., on Wednesday, January 6, 1993.

ADDRESSES: The lease sale will be held in the third floor conference room of the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above, or to the Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Laura Steele, Land Law Examiner or Eugene Jonart, Coal Coordinator at (307) 775–6250.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to an application for a coal lease sale from Northwestern Resources Co., of Butte, Montana. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following described lands located in Campbell County, Wyoming, approximately 10 miles southeast of the city of Gillette, Wyoming:

T. 48 N., R. 71 W., 6th P.M., Wyoming
Sec. 5: Lots 7 thru 9, 16 and 17;
Sec. 6: Lots 8, 14 (E2), 15, 16 and 23 (E2);
Sec. 7: Lot 5 (E2);
Sec. 8: Lot 4;
T. 49 N., R. 71 W., 6th P.M., Wyoming
Sec. 32: Lot 15.
Containing 463.205 acres.

The West Rocky Butte tract, located adjacent to the existing Rocky Butte Tract Federal coal lease, WYW78633, held by Northwestern Resources Co., contains Fort Union Formation coal of the Wyodak-Anderson zone. Up to three mineable coal seams (referred to as the Upper, Middle, and Lower coals) occur in this coal zone in this area. The Upper coal is the main seam, averaging approximately 67.5 feet thick over the entire West Rocky Butte Tract. The Middle coal of the Fort Union Formation is absent from the West Rocky Butte Tract; however, the Lower coal of the Fort Union Formation, present over a small area in the northeast portion of the West Rocky Butte Tract, averages about 21 feet thick. The Upper coal in the tract is estimated to consist of 55.5 million tons of in-place coal reserves and an estimated 1.2 million tons of in-place reserves in the lower coal. The tract area has an average overall stripping ratio of approximately 3.75 BCY (Bank Cubic Yards) overburden/ton of in-place coal. The Upper and Lower coals combined contain an estimated 55.0 million tons of recoverable coal (57.5 million tons of in-place coal). The coal rank is subbituminous C. Average in-place quality for the Upper coal is 8,354 BTU/LB., 4.30% ash, 0.27% sulfur, and 31.0% moisture. Average in-place quality for the Lower coal is 7,871 BTU/LB., 7.20% ash. 0.40% sulfur, and 31.0% moisture. This places the coal reserves in the West Rocky Butte Tract at the lower end of the quality range for coal being mined in the southern Powder River Basin.

The tract in this lease offering consists of split estate lands where the surface is owned by private surface owners. Consents granted by the surface owners have been filed with and verified by the Bureau of Land Management. The consents, consisting of agreements dated December 14, 1976, July 1, 1980, and October 2, 1992, which contain the purchase price, are a part of the detailed statement for the sale.

Bids for the tract will be in the form of sealed bids. Sealed bids should be sent by "Certified Mail, Return Receipt Requested", or be hand delivered to the Cashier, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003–1828. Bids received after 4 p.m., on Wednesday, January 6, 1993, will not be considered and will be returned to the sender.

If the applicant for the lease by application is not the successful bidder, the BLM may evaluate the existing National Environmental Policy Act documentation for the tract to determine if further analysis may be necessary, which could lead to a delay in lease issuance.

Any lease issued as a result of this offering will provide for payment of an annual advance rental of $3.00 per acre or fraction thereof per year and of a royalty payable to the United States of 12½ percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 203.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are contained in the Detailed Statement available from the Wyoming State Office Public Information Desk at the addresses above. Case file documents, WYW122586, are also available for inspection at the Wyoming State Office.

Dale L. Wadleigh,

Acting Chief, Branch of Mining Law & Solid Minerals.

[FR Doc. 92-30423 Filed 12-14-92; 8:45 am]

BILLING CODE 4310-22-M

[UT-050-03-4410-03]

Proposed Amendment to the Henry Mountain Resource Area Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed amendment.

SUMMARY: The Henry Mountain Resource Area (HMRA) is proposing to amend the HMRA Management Framework Plan (MFP) to allow for the change in allocation of forage between wildlife and livestock within the HMRA. The Utah Division of Wildlife Resources has evaluated the need for additional buffalo (Bison bison) in the HMRA and has assisted the Bureau of Land Management (BLM) in preparing an Environmental Assessment (EA) addressing the forage allocations in the Pennell, Steel Butte, and Nasty Flat allotments. This area is within the area which has been nominated for the Buffalo Habitat Area of Critical Environmental Concern. The following Wilderness Study Areas (WSA) are involved: Mount Ellen-Blue Hills WSA, Bull Mountain WSA, and Mount Pennell WSA. Changes would be within the guidelines of the Interim Management Policy and would not impair or prevent areas from being eligible for wilderness designation.

This proposal would increase the allocation of forage to buffalo and reduce the allocation of forage to livestock on the Pennell, Steel Butte, and Nasty Flat allotments.

This amendment would also provide for the adjustment in forage allocations between allotments throughout the HMRA between livestock and wildlife as determined to be needed by monitoring and analysis.

FOR FURTHER INFORMATION CONTACT: Alan Partridge, Bureau of Land Management, Richfield District Office, 900 North 150 East, Richfield, Utah 84701.

SUPPLEMENTARY INFORMATION: An EA will be prepared by the Richfield District of the BLM to address any impacts of the proposed amendments. Public participation is requested to identify issues or concerns on the proposed amendment. The comment period for this notice will commence with the date of publication of this notice. Protests must be submitted on or before January 15, 1993.

G. William Lamb,

Acting State Director.

[FR Doc. 92-30341 Filed 12-14-92; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-93-4210-04; N-48090]

Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Land, Nevada

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice identifies Federal and non-Federal land involved in a recently completed exchange transaction. The mineral estates in the Federal and non-Federal land were conveyed simultaneously with the surface estate.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785-6530.

SUPPLEMENTARY INFORMATION: On November 10, 1992, the United States issued Patent No. 27-93-0002 to Van Norman Ranches, Inc., a Nevada corporation, for the following described land pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 40 N., R. 52 E.,
Sec. 25, lots 1, 2, and 3.

The area described contains 118.36 acres in Elko County, Nevada.

In exchange for that land, the United States acquired the following described land from the above-named party:

Mount Diablo Meridian, Nevada

T. 38 N., R. 53 E.,
Sec. 5, SW¼SE¼;
Sec. 8, NE¼NW¼;
Sec. 16, NW¼SE¼;
Sec. 17, SW¼SE¼.

The area described contains 160 acres in Elko County, Nevada.

Title to the non-Federal land was accepted on November 10, 1992. The value of the Federal land exceeded the value of the non-Federal land by $100.00. An equalization payment in that amount was made to the United States by Van Norman Ranches, Inc. The purpose of the exchange was for the United States to acquire non-Federal land with high values for crucial mule deer summer habitat, habitat for sagegrouse, nongame birds and mammals, and nesting habitat for raptors and cavity nesting birds.

At 10 a.m. on January 14, 1993, the lands acquired by the United States will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on January 14, 1993, will be considered as simultaneously filed at that time.

Those received thereafter shall be considered in the order of filing. At 10 a.m. on January 14, 1993, the land acquired by the United States will be open to location under the mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 10 a.m. on January 14, 1993, the land acquired by the United States will also be open to applications/offers under the mineral leasing laws, the material sale laws, and the Geothermal Steam Act.

Robert G. Steele,

Acting State Director, Nevada.

[FR Doc. 92-30318 Filed 12-14-92; 8:45 am]

BILLING CODE 4310-HC-M

[ES-020-03-4410-02]

Availability of Proposed Planning Criteria for the Florida Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to 43 CFR 1610.4–2, notice is hereby given of the availability of proposed planning criteria for the Florida Resource Management Plan (RMP).

DATES: Comments on the proposed planning criteria will be accepted through January 15, 1993.

ADDRESSES: Send comments to Bureau of Land Management, Jackson District, 411 Briarwood Drive, suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Duane Winters, RMP Team Leader, Jackson District, (601) 977–5400.

SUPPLEMENTARY INFORMATION: The RMP will guide future use of several hundred acres, comprised of small parcels of public land located in counties throughout the State. The RMP will also guide the Bureau's mineral leasing and permitting responsibilities on approximately 270,000 acres of split estate land where federal ownership is limited to mineral interests.

The BLM also has certain mineral leasing and permitting responsibilities on other areas of federal ownership including military reservations and National Forests. These responsibilities will be carried out in accordance federal laws and regulations as well as applicable land use plans of other federal agencies. The RMP will include an Environmental Impact Statement (EIS) which will address the impacts of foreseeable mineral development of these lands.

Copies of the proposed planning criteria and records of all phases of the planning process will be available for public review at the Jackson District Office. Draft and final documents of the RMP/EIS will be available upon request.

Dated: December 3, 1992.

Sammy St. Clair,

Acting District Manager.

[FR Doc. 92–30340 Filed 12–14–92; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 5, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 30, 1992.

Carol D. Shull,

Chief of Registration, National Register.

Florida

Highlands County

Old Lake Placid A. C. L. Railroad Depot, 19 Park Ave. W., Lake Placid, 92001733.

Georgia

Burke County

Hopeful Baptist Church, Winter Rd. E of jct. with Blythe Rd., Keysville vicinity, 92001734.

Louisiana

Ascension Parish

Warren, Robert Penn, House, 16381 Old Jefferson Hwy., Prairieville, 92001732.

Nebraska

Richardson County

Rulo Bridge (Highway Bridges in Nebraska MPS), US 159 over the Missouri R., Rulo, 92000718

New Jersey

Atlantic County

Beth Israel Synagogue, 14 S. Pennsylvania Ave., Atlantic City, 92001737.

North Carolina

Watauga County

Farthing, Ben, Farm, NC 1121 (Rominger Rd.) W side, just N of Watauga R., Sugar Grove vicinity, 92001736.

Tennessee

Rutherford County

Middle Tennessee State Teachers College Training School, 923 E. Lytle St., Murfreesboro, 92001731.

Texas

Bexar County

XC–99, Convair Military Cargo-Transport Aircraft, 3119 Growdon Rd., San Antonio, 92001735.

[FR Doc. 92–30348 Filed 12–14–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Notice of Trackage Rights Exemption; Dallas, Garland & Northeastern Railroad, Inc., et al.

[Finance Docket No. 32198]

The Atchison, Topeka & Santa Fe Railway Company (ATSF) has agreed to grant overhead trackage rights to Dallas, Garland & Northeastern Railroad, Inc. (DGNO) between milepost 66.7 at Garland, TX, and milepost 51.7 at Dallas, TX, a distance of approximately 15 miles. DGNO will also acquire the right to use certain sidings for the purpose of meeting and passing trains and the right to use certain existing connections. The involved trackage rights are presently held by Missouri Pacific Railroad Company (MP).[1] DGNO will obtain the trackage rights through an unconditional assignment of an agreement between ATSF and MP, dated April 22, 1992. ATSF has agreed to the assignment of trackage rights from MP to DGNO. The trackage rights were to become effective on or after December 2, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees, including employees of MP, adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: December 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30365 Filed 12–14–92; 8:45 am]

BILLING CODE 7035–01–M

[1] MP obtained the trackage rights as an incidental part of a joint relocation project exempted from Commission approval in Finance Docket No. 32060, Missouri Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company—Joint Relocation Project Exemption (not printed), served April 27, 1992.

[Finance Docket No. 32199]

Los Angeles County Transportation Commission; Acquisition Exemption; Southern Pacific Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343, *et seq.*, the purchase by Los Angeles County Transportation Commission of a 75.9-mile line in the Los Angeles area (described in the footnote below [2]) owned by Southern Pacific Transportation Company (SP). The exemption is granted subject to appropriate labor protection.

DATES: The exemption will be effective on December 15, 1992. Petitions for reopening must be filed by January 4, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32199 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Charles A. Spitulnik, Hopkins & Sutter, suite 700, 888 16th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92–30366 Filed 12–14–92; 8:45 am]
BILLING CODE 7035–01–M

[2] The line, known as the "Saugus Main Line," consists of:

a. A 40-foot strip on the west side of the right-of-way from Lancaster (milepost B–405.50) to south of Palmdale (milepost B–414.72);

b. All of SP's right-of-way from south of Palmdale (milepost B–414.72) to north of Saugus (milepost B–448.55);

c. All of SP's remaining right-of-way from north of Saugus (milepost B–448.55) to north of Taylor Yard (milepost B–478.21);

d. A 50-foot right-of-way, through Taylor Yard on SP's new alignment from north of Taylor Yard (milepost B–478.21) to Bridge Five (milepost B–481.10); and

e. Sale of SP's interest in the bridge from East Bank Junction (milepost B–481.9) to Mission Tower (milepost B–482.2) across LAUPT Bridge over the Los Angeles River.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Federal Water Pollution Control Act in United States v. Sepco Industries, Inc.

In accordance with Department of Justice regulation, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in United States versus Sepco Industries, Inc., Civil Action No. 86–0670, was lodged in the United States District Court for the Eastern District of New York on November 24, 1992. The proposed Consent Decree, if entered, will resolve the liability of Sepco Industries, Inc., under sections 307, 308, and 309 of the Federal Water Pollution Control Act ("Act"), 33 U.S.C. 1317, 1318, 1319, for alleged violations of the pretreatment requirements of the Act at Sepco Industries' electroplating facility in Brooklyn, New York. The settlement reflected in the proposed Consent Decree would require the Defendant to pay a civil penalty of $25,000 and to conduct specified tests in order to ensure compliance with the Act's pretreatment requirements in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to United States versus Sepco Industries, Inc., Department of Justice No. 90–5–1–1–2546.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 11th Floor, Brooklyn, New York 11201; at the Region II office of the United States Environmental Protection Agency, Jacob Javits Federal Building, 26 Federal Plaza, New York, New York 20005; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center, Box 1097 at the above address. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Roger Clegg,
Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–30242 Filed 12–14–92; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,964]

Homco International, Incorporated, Williston, ND; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 9, 1992 in response to a worker petition which was filed on October 26, 1992 on behalf of workers at Homco International, Incorporated, operating out of Williston, North Dakota.

On November 18, 1992, the Department of Labor amended the determination of investigation TA–W–27,571 assigned to Homco International, Incorporated, Wilburton, Oklahoma. The amended determination, a certification, was issued to include various other operating locations in the state of North Dakota (TA–W–27,571B). This amended determination covers the workers at the site of the subject investigation. Therefore, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 4th day of December 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–30368 Filed 12–14–92; 8:45 am]
BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of November 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each

of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,816; Lally Manufacturing Corp.; New York, NY

TA-W-27,817; Lally Manufacturing Corp., Port Leyden, NY

TA-W-27,818; Lally Manufacturing Corp., Adams NY

TA-W-27,822; Power Conversion, Inc., Elmwood Park, CA

TA-W-27,621; Central Plastic Co., Shawnee, OK

TA-W-27,686; Corrugated Paper Corp., Westborough, MA

TA-W-27,705; Unocal Corp., Energy Resources Div., North American Div., Louisiana Region, Lafayette, LA

TA-W-27,839; Omak Wood Products, Inc., Omak, WA

TA-W-27,808; Specialty Steel Products, Pittsburgh, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,868; Spooner Energy, Inc., Jackson, MS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,909; Haverhill Shoe Co., Haverhill, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,926; Staballoy, Inc., Broussard, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,617 & TA-W-27,775; Fujitsu Imaging Systems, Danbury, CT and Waltham, MA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,698; The Timken Co., Canton, OH

U.S. imports of tapered roller bearings declined absolutely and relative to domestic shipments in 1991 compared to 1990 and remained essentially the same absolutely in the twelve month period ending in July 1992 compared to the same period ending in July 1991.

TA-W-27,913; Intrasearch, Inc., Englewood, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,801; Spaulding Composites Co., Inc., Tonawanda, NY

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations

TA-W-27,820, TA-W-27,830, TA-W-27,831; Mitchell Energy Corp., Decator, Alba and Bridgeport, TX

A certification was issued covering all workers separated on or after September 8, 1991.

TA-W-27,908; Center Fashions, Inc., DuPont, PA

A certification was issued covering all workers separated on or after September 9, 1991.

TA-W-27,874; Lor-Rog Industries, Inc., Joplin, MO

A certification was issued covering all workers separated on or after September 16, 1991.

TA-W-27,810; Hercules, Inc., Radford, VA

A certification was issued covering all workers separated on or after August 27, 1991.

TA-W-27,853 & TA-W-27,853A; Chevron Oil Field Research, LaHabra, CA & in The State of Texas

A certification was issued covering all workers separated on or after September 14, 1991.

TA-W-27,804; Anadrill (A Div of Schlumberger Technology Corp), Headquartered in Sugarland, TX and Operating at the Following Various Locations: A, Anchorage, AK; B, Bakersfield, CA; C, Houma, LA; D, Lafayette, LA; E, New Orleans, LA; F, Hobbs, NM; G, Williston, ND; H, Oklahoma City, OK; I, Alice, TX; J, Kilgore, TX; K, Houston, TX; L, Odessa, TX; M, Casper, WY

A certification was issued covering all workers separated on or after August 28, 1991.

I hereby certify that the aforementioned determinations were issued during the month of November 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 8, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-30367 Filed 12-14-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Indian and Native American Grantees

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of Solicitation for Grant Applications (SGA).

SUMMARY: The Employment and Training Administration, U.S. Department of Labor, announces the intent to award a grant on a competitive basis to develop an effective approach to communicating directly with Indian and Native American grantees on a timely and meaningful basis; and, to research and identify the best employment practices found among these grantees. The Indian and Native American Program is funded under the Job Training Partnership Act (JTPA), title IV, part A, section 401. The purpose of the Program is to provide comprehensive employment and training services for the Indian and Native American population;

Only Indian and Native American-owned or controlled organizations are eligible for this award. Indian or Native American-owned or controlled organizations are those where ownership or members of the governing body is at least 51% Indian or Native American.

DATES: The applications will be available December 30, 1992. The requests must be made in writing to the address below. Requests via telephone and/or telefacsimile (FAX) will not be honored. The request must cite SGA/DAA 92-014 and must include two (2) self-addressed labels. Requests will be

honored on a first come, first served basis until the supply of 300 solicitation packages is exhausted. The closing date for receipt of proposals will be February 16, 1993, 2 p.m. Eastern time. Any application not received at the designated place, date, and time of delivery specified will not be considered.

ADDRESSES: Mail your request to obtain a copy of the Solicitation's for Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., room C–4305, Washington, DC 20210, Attention: Brenda Banks, Reference SGA/DAA 92–014. In order to receive a copy of the application package, your request must include a certification that your organization is an "Indian" or "Native-American owned or controlled." Requests which fail to submit a Certification Statement will not be honored.

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Telephone: (202) 219–8702 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration, U.S. Department of Labor, will award one (1) grant at approximately $150,000. The period of performance will one (1) year from date of execution by the Government.

Signed at Washington, DC, on December 7, 1992.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92–30323 Filed 12–14–92; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Costain Coal, Inc.

[Docket No. M–92–158–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.380(f)(2) (escapeways: bituminous and lignite mines) to its Wheatcroft Mine (I.D. No. 15–13920) and its Baker Mine (I.D. No. 15–14492) both located in Webster County, Kentucky. The petitioner proposes to maintain a fire extinguisher on board the golf cart as an alternate to using the automatic fire suppression system, and would not permit the golf cart to be left unattended in the primary escapeway. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Shadow Coal Co.

[Docket No. M–92–159–C]

Shadow Coal Company, HC66, Box 494, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its No. 1 Mine (I.D. No. 15–16052) located in Knox County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen monitor on permissible three-wheel tractors with drag bottom buckets.

3. Costain Coal, Inc.

[Docket No. M–92–160–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its No. 11 High Wall Mine (I.D. No. 15–13920) located in Webster County, Kentucky. The petitioner proposes to use a nonpermissible submersible pump in a borehole in a sealed area of the 11 high wall Second Main East approximately 11 crosscuts from the William Station elevator landing. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Drummond Company, Inc.

[Docket No. M–92–161–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35203 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner proposes to use high-voltage cables to power longwall equipment. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Consolidation Coal Co.

[Docket No. M–92–162–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.304 (weekly examinations for hazardous conditions) to its Arkwright No. 1 Mine (I.D. No. 46–01452) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, certain areas of the mine cannot be safely traveled. The petitioner proposes to establish evaluation points to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Costain Coal, Inc.

[Docket No. M–92–163–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.360 (preshift examinations) to its Pyro No. 9 Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. Due to hazardous conditions, the petitioner proposes to establish a continuous monitoring station to monitor the air passing through the Main North Parallel beginning at the Wheatcroft intake air shaft and ending at the First Submain East. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Costain Coal, Inc.

[Docket No. M–92–164–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.360 (preshift examinations) to its Pyro No. 9 Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. Due to hazardous conditions, the petitioner proposes to establish a continuous monitoring station to monitor the air passing through the intersection of the First Submain North and the Fourth Submain East. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Costain Coal, Inc.

[Docket No. M–92–165–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its Pyro No. 9 Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. Due to hazardous conditions, the petitioner proposes to establish a continuous monitoring station to monitor the air passing through the First North Parallel. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Costain Coal, Inc.

[Docket No. M–92–166–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.360 (preshift examinations) to its Pyro No. 9 Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. Due to hazardous conditions, the petitioner proposes to establish a continuous monitoring station to monitor the air passing through the William Station intake air shaft, the 3rd East, the 8th Main North intake, and the 9th Maine North entries. The petitioner asserts that the proposed alternate method would provide a least the same measure of protection as would the mandatory standard.

10. Costain Coal, Inc.

[Docket No. M–92–167–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) of its Baker Mine (I.D. No. 15–14492) located in Webster County, Kentucky. Due to hazardous conditions, the petitioner proposes to establish a continuous monitoring station to monitor the air passing through the No. 11 Seam Main North Parallel. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. Costain Coal, Inc.

[Docket No. M–92–168–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its Baker Mine (I.D. No. 15–14492) located in Webster County, Kentucky. Due to hazardous conditions, the petitioner proposes to establish a continuous monitoring station to monitor the air passing through the No. 13 Seam Main North Parellel. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. Helvetia Coal Co.

[Docket No. M–92–169–C]

Helvetia Coal Company, Box 179, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Lucerne No. 6 Extension Mine (I.D. No. 36–07691) located in Indiana County, Pennsylvania. The petitioner proposes to use a metal detached bar on each motor and mantrip to uncouple haulage equipment as an alternative to using the machine mounted uncoupling device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. Mate Creek Development, Inc.

[Docket No. M–92–170–C]

Mate Creek Development, Inc., P.O. Box 138, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 2 (I.D. No. 15–10753) located in Pike County, Kentucky. The petitioner requests that granted petition for modification for New Era Coal Company, docket number M–88–247–C (now Mate Creek Development, Inc.) be amended to establish evaluation points to monitor air in the affected area of the mine with return air instead of intake air. The petitioner asserts that the proposed alternate method would provide at least same measure of protection as would the mandatory standard.

14. Minton Hickory Coal Co.

[Docket No. M–92–171–C]

Minton Hickory Coal Company, P.O. Box 922, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Mine No. 6 (I.D. No. 15–17317) located in Knox County, Kentucky. The petitioner proposes to use a hand-held deck-mounted continuous methane and oxygen monitor on permissible three-wheel tractors with drag bottom buckets.

15. Carey Salt Co.

[Docket No. M–92–20–M]

Carey Salt Company, P.O. Box 10, Lydia, Louisiana 70569 has filed a petition to modify the application of 30 CFR 57.22301 (atmospheric monitoring systems) to its Cote Blanche Salt Mine (I.D. No. 16–00358) located in St. Mary County, Louisiana. The petitioner proposes to conduct limited mining operations while the atmospheric monitoring system is being repaired using specific restrictions. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 14, 1993. Copies of these petitions are available for inspection t that address.

Dated: December 4, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92–30393 Filed 12–14–92; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL FOUNDATION OF THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before January 14, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision

Title: NEH Study Grants for College and University Teachers.

Form Number: NA.

Frequency of Collection: Annual.

Respondents: University and college faculty.

Use: The application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 1,816.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 3.51 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 6,411.16 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 92-30406 Filed 12-14-92; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

John F. Kennedy Assassination Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice to Federal agencies.

SUMMARY: In accordance with the President John F. Kennedy Assassination Records Collection Act (Pub. L. 102-526, 106 Stat. 3443) and after consultation with Government offices, NARA has created an identification aid system and established an electronic database in which to store information on each assassination record subject to review under the act.

Agencies having any records relating to the assassination of John F. Kennedy are reminded to provide agency contact point information to NARA as explained in the **Federal Register** notice dated November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Ronan, Access Staff, National Archives and Records Administration, 202-501-5380.

Dated: December 10, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-30530 Filed 12-14-92; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Draft Regulatory Guide DG-1010, "Quality Assurance Program Requirements," is the proposed Revision 4 to Regulatory Guide 1.28. This guide is being developed to describe methods acceptable to the NRC staff for establishing and implementing the required quality assurance program for the design, construction, modification, and decommissioning of nuclear power plants.

This proposed draft regulatory guide would integrate current guidance for complying with appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities." In appendix B, section II, "Quality Assurance Program," states, "The quality assurance program shall provide control over activities to an extent consistent with their importance to safety." In an effort to recognize current interest in applying risk-based techniques to the regulatory framework, the NRC staff is soliciting comments on how risk-based techniques can be applied to the quality assurance program in a way that maintains safety and allows a gradation in the application of quality assurance consistent with the importance to safety of the structures, systems, and components.

The NRC staff is particularly interested in receiving comments on the impact of basing the annual evaluations on activities performed during the previous 12 months, including some type of direct observation of the operation of the suppliers' quality assurance programs (see Regulatory Position 3.2.2 of the guide).

The staff is also soliciting comments on whether this regulatory guide should be expanded to cover quality assurance programs in nuclear facilities other than power reactors and fuel reprocessing plants. Because of the general applicability of quality assurance programs, there may be an advantage in using a single regulatory guide to provide uniform guidance on quality assurance programs for a broad range of activities, thereby leading to simplication of quality assurance activities.

Commenters may submit comments in an electronic format in addition to the paper copy. Comments in an electronic format should be IMB PC DOS compatible 3.5- or 5.25-inch double-sided, double-density diskettes. Data files should be provided in WordPerfect 5.1, ASCII code, or IBM revisable-form text document content architecture.

The draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by February 8, 1993.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 24th day of November 1992.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 92-30417 Filed 12-14-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-388]

Pennsylvania Power and Light Co.; Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-22 issued to Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (the licensees) for operation of the Susquehanna Steam Electric Station (SSES), Unit 2, located in Salem Township, Pennsylvania.

The amendment would revise the Technical Specifications (TSs) to authorize operation of the Reactor Water Cleanup (RWCU) system in the current fuel cycle (Cycle 6) with the RWCU system non-regenerative heat exchanger discharge high temperature channel substituting for the inoperable 'B' RWCU High Flow isolation trip channel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

No Significant Hazards Consideration

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The RWCU piping is carbon steel and is therefore resistant to IGSCC. For one operating cycle, the probability of a RWCU line break coincident with a failure to isolate the RWCU containment penetration in the section of piping which depends on it for diversity has been determined to be very low (1.1 E-6). For the balance of the RWCU piping, operation without the inoperable RWCU high flow trip channel does not increase the probability of containment isolation malfunction as analyzed in the Susquehanna IPE [Individual Plant Examination]. With regard to consequences, other redundant and diverse means of break detection are available, and have been determined to be adequate to cover the range of potential break scenarios evaluated in the FSAR [Final Safety Analysis Report]. For the section of RWCU piping that is dependent on high flow for diversity, the combined protection of the OPERABLE 'A' channel, the compensatory actions, and the Level 2 isolation will ensure that the consequences are bounded by previous FSAR evaluations. A specific evaluation concluded that radiological consequences for RWCU pipe breaks outside of containment are within the bounds of the FSAR analysis for Main Steamline Breaks outside of containment.

2. This request does not create the possibility of a new or different kind of accident from any previously evaluated. Inoperability of an isolation channel can only affect the probability or consequences of analyzed events (a leak/break with subsequent failure to isolate). It cannot create a new event.

3. The proposed change does not involve a significant reduction in a margin of safety. For the reasons described in 1 above, the 'B' high flow trip channel can be inoperable for one cycle of operation. Adequate diversity to operate the Susquehanna units has been determined to exist in the remaining OPERABLE trip channels and those channels have been determined to cover the complete range of analyzed break scenarios required. The exception is the section of piping which depends on the High Flow function for diversity. The probability of a line break of this piping coincident with a failure to isolate has been found to be sufficiently low for one cycle. Given this low probability and the one for one replacement of the inoperable high flow channel with the non-regenerative heat exchanger discharge high temperature channel which effectively provides the same leak detection capabilities, an acceptable level of RWCU isolation reliability continues to exist, and a significant reduction in safety margin will not occur.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 14, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party is the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the

nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later that fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Charles L. Miller, Director, Project Directorate I–2, Division of Reactor Projects—I/II: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 30, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 9th day of December 1992.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30418 Filed 12–14–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

December 9, 1992.

The above name national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

McDermott, Inc.
  $2.20 Cum. Conv. Pfd., Ser. A, $1.00 Par Value (File No. 7–9768)
MCN Corp. (Holding Co.)
  Common Stock, $1.00 Par Value (File No. 7–9769)
Mellon Bank Corp.
  6.75% Cum. Conv. Ser. B Pfd., $1.00 Par Value (File No. 7–9770)
Mercury Finance Co.
  Common Stock, $1.00 Par Value (File No. 7–9771)
Metropolitan Edison Co.

3.90% Cum. Pfd. Ser. C, $100.00 Par Value (File No. 7–9772)
Metropolitan Edison Co.
8.12% Cum. Pfd. Ser. F, $100.00 Par Value (File No. 7–9773)
Metropolitan Edison Co.
7.68% Cum. Pfd. Ser. G, $100.00 Par Value (File No. 7–9774)
Metropolitan Edison Co.
8.32% Cum. Pfd. Ser. H, $100.00 Par Value (File No. 7–9775)
Metropolitan Edison Co.
8.12% Cum. Pfd. Ser. I, $100.00 Par Value (File No. 7–9776)
Metropolitan Edison Co.
8.32% Cum. Pfd. Ser. J, $100.00 Par Value (File No. 7–9777)
Metropolitan Edison Co.
$2.00 Cum. Conv. Pfd. A, $.01 Par Value (File No. 7–9778)
MFS Multimarket Total Return Trust
Common Stock, No Par Value (File No. 7–9779)
MGM Grand, Inc.
Common Stock, $.01 Par Value (File No. 7–9780)
Mickelberry Corp.
Common Stock, $1.00 Par Value (File No. 7–9781)
Morgan (J.P.) & Co., Inc.
Adj. Rte. Cum. Pfd., Ser. A (File No. 7–9782)
Munienhanced Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–9783)
Myers, (L.E.) Co. Group
Common Stock, $1.00 Par Value (File No. 7–9784)
Navistar International Corp.
Conv. Jr. Pfd., Ser. D, No Par Value (File No. 7–9785)
Navistar International Corp.
$6.00 Cum. Conv. Pfd., Ser. G, $1.00 Par Value (File No. 7–9786)
NBB Bancorp, Inc. (Holding Co.)
Common Stock, $.10 Par Value (File No. 7–9787)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 31, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30326 Filed 12–14–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 9, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Insteel Industries, Inc.
Common Stock, No Par Value (File No. 7–9788)
Healthsource, Inc.
Common Stock, $.10 Par Value (File No. 7–9789)
Caremark International, Inc.
Common Stock, $.01 Par Value (File No. 7–9790)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 31, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30328 Filed 12–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31572; File No. SR–OCC–92–34]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Stock Loan Hedge Program

December 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 "Act"),[1] notice is hereby given that on October 23, 1992, The Options Clearing Corporation ("OCC" or "Commission") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit OCC to operate a centralized facility for administering stock loan and borrow transactions between OCC clearing members and to allow certain of the stock loan and borrow positions resulting from such transactions to serve as hedges against stock option positions overlying the same stocks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose of the Proposed Rule Change

(a) *General.* In general, the purpose of the proposed rule change is to amend OCC's By-Laws and Rules to permit OCC to operate a centralized facility for administering stock loan and borrow transactions between OCC clearing members and to allow hedges of certain of the stock loan and borrow positions

[1] 15 U.S.C. 78s(b)(1) (1988).

resulting from such transactions against stock option positions overlying the same stocks. OCC's program for performing these services is referred to as the "Stock Loan/Hedge Program." Clearing members that are approved to participate in the program are referred to as "hedge clearing members." A clearing member that lends stock through the Stock Loan/Hedge Program is referred to as a "lending clearing member," and a clearing member that borrows stock is referred to as a "borrowing clearing member." Stocks that are eligible for the program are referred to as "eligible stocks." Only stocks that underlie stock option contracts issued by OCC will be eligible for the Stock Loan/Hedge Program.[2]

(b) *Initiation of a Stock Loan.* A hedge clearing member that has shares of a stock available to lend will identify another hedge clearing member that wishes to borrow the stock. (OCC will have no role in matching would-be lending and borrowing clearing members, but it is conceivable if the Stock Loan/Hedge Program is successful that the program might at some time in the future be expanded to give OCC a role in this process.) The two clearing members will agree on the amount of stock to be borrowed, the fee to be paid by the borrowing clearing member to the lending clearing member (this fee will be paid separately, and OCC will have no responsibility for it), and the value of the collateral to be initially paid by the borrowing clearing member to OCC and by OCC to the lending clearing member. Regulation T of the Board of Governors of the Federal Reserve System specifies that the value of the collateral for a stock loan cannot be less than 100% of the market value of the stock at the close on the preceding day, and OCC's proposed rules reflect this requirement. Initially, OCC will require that collateral be all cash, but this requirement may be changed to allow other types of collateral permitted by Regulation T as OCC develops experience with the program.

After the two clearing members have agreed to the terms of the transaction, the lending clearing member, prior to a time established by OCC, will transfer the stock by book-entry[3] to OCC's account at a "correspondent depository."[4] Midwest Securities Trust Company ("MSTC") will act as the initial correspondent depository, but OCC is prepared to establish correspondent relationships with other depositories if circumstances warrant. The transfer will be made pursuant to instructions identifying the borrowing clearing member and specifying the collateral to be received by the lending clearing member. Upon receiving notice from the correspondent depository of its receipt of the stock, OCC will direct the depository to re-deliver the stock to the borrowing clearing member against payment of the required collateral amount.

Money settlement with respect to the initiation of stock loans will also take place through the correspondent depository's facilities. OCC's right to receive cash from the borrowing clearing member will net against its obligation to pay cash to the lending clearing member. If the borrowing clearing member fails to make money settlement with the correspondent depository for the day on which the stock transfers take place, the correspondent depository will reverse the transfers.[5] If the borrowing clearing member makes money settlement with the correspondent depository each transfer will constitute under the rules of the correspondent depository "an entry on the books" of the correspondent depository (*i.e.*, the transaction will become final).[6]

OCC's rules will define the term "stock loan" as a "matched pair of securities contracts for the loan of eligible stock made through the Stock Loan/Hedge Program, with one such securities contract being between the lending clearing member and the Corporation as borrower and the second such securities contract being between the Corporation as lender and the borrowing clearing member."[7] OCC's rules will provide that OCC will be deemed to have "accepted" a stock loan and to have become a party to the stock loan at the time that "a transfer of the eligible stock that is the subject of such stock loan from the Corporation to the borrowing clearing member constitutes a final entry on the books of the correspondent depository"[8] (*i.e.*, when the borrowing clearing member has completed money settlement with the correspondent depository). OCC's rules will further provide that commencing at the time that OCC is deemed to have accepted a stock loan "the role of the Corporation in respect of the stock loan shall be that of a principal, and the Corporation shall have the position of borrower to the lending clearing member and lender to the borrowing clearing member" and that thereafter the rights and obligations of the two clearing members shall be against OCC.[9]

The position of a lending clearing member in respect of a stock loan is referred to as a "stock loan position" and the position of a borrowing clearing member in respect of a stock loan is referred to as a "stock borrow position." OCC's proposed rules require that stock loan positions held for the account of a customer (*i.e.*, one other than a market-maker or specialist) be carried in the lending clearing member's customers' account, and permit stock loan positions held for the account of a market-maker or a specialist to be carried in the lending clearing member's customers' account.[10] OCC's proposed rules also require that stock loan positions held for the account of a non-customer be carried in a firm account.[11] Accordingly, clearing members participating in the Stock Loan/Hedge Program will comply with paragraph (a)(2) of Commission Rules 8c–1 and 15c2–1 because OCC's By-Laws and Rules will prohibit the commingling of securities carried for the account of customers with securities

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[2] In order for a stock to qualify as an eligible stock, the stock must also be eligible for deposit at the "correspondent depository" (as defined in the text below), and OCC must not have made a determination, pursuant to proposed paragraph 2(c) of Article XXI of its By-Laws, to terminate all outstanding stock loans relating to the security.

[3] All transfers in the Stock Loan/Hedge Program will be by book-entry.

[4] A "correspondent depository" is a securities depository at which OCC has an account for processing Stock Loan/Hedge Program activity.

[5] See, *e.g.*, MSTC Article III, Rule 1, particularly Section 2 ("Right to Reverse Book-Entry Movements").

[6] See, *e.g.*, MSTC Article III, Rule 1, Section 2.

[7] Proposed paragraph 1(S)(9) of Article I of OCC's By-Laws. The term "securities contract" is used in the definition of "stock loan," among other reasons, to make clear that the contracts between OCC and a lending clearing member and between OCC and a borrowing clearing member are each a securities contract for purposes of the Bankruptcy Code. (Under section 741(7) of the Bankruptcy Code, 11 U.S.C. 741(7), a securities contract means a contract for the loan of a security.) OCC's ability to make the Stock Loan/Hedge Program available in the manner described in the proposed rule change is contingent upon the applicability to stock loans of the special provisions of the Bankruptcy Code that protect the closeout activities of securities clearing agencies from attack by the trustee for a bankrupt clearing member. The proposed definition of the term stock loan is intended to make clear that the Stock Loan/Hedge Program is within the purview of these special provisions.

[8] Proposed paragraph 2(b) of Article XXI of OCC's By-Laws.

[9] Proposed paragraph 2(a) of Article XXI of OCC's By-Laws.

[10] Proposed paragraph 5(c) of Article XXI of OCC's By-Laws. OCC's definition of the term "customer" is set out at paragraph 1(C)(16) of Article I of its By-Laws. The definition parallels the definition of the term in Commission Rules 8c–1 and 15c2–1 (17 CFR 240.8c–1 and 17 CFR 240.15c2–1, respectively).

[11] Proposed paragraph 5(e) of Article XXI of OCC's By-Laws. OCC's definition of the term "non-customer" is set out in paragraph 1(N)(1) of Article I of its By-Laws. The definition includes the clearing member itself and all other persons that are excluded from the definition of "customer" in Commission Rules 8c–1 and 15c2–1.

carried for the account of non-customers.

OCC's proposed rules require each lending clearing member to instruct OCC as to the account in which the stock loan position resulting from a stock loan is to be maintained and require each borrowing clearing member to instruct OCC as to the account in which the stock borrow position resulting from a stock loan is to be carried.[12] OCC's proposed rules permit any lending clearing member or borrowing clearing member to submit "standing instructions" to the effect that all of the clearing member's stock loan positions or stock borrow positions, as applicable, are to be carried in a specified account except as the clearing member may otherwise specify with respect to particular stock loan positions or stock borrow positions, as applicable.[13] Proposed paragraph 5(b) of Article XXI of OCC's By-Laws states that an instruction, including a standing instruction, from a lending clearing member to OCC identifying a customers' account or a market-maker's or specialist's account as the account in which a stock loan position is to be carried shall constitute a written notice pursuant to paragraph (f) of Commission Rules 8c–1 and 15c2–1 that the loaned stock to which the stock loan position relates is carried for the account of a customer and that the hypothecation of such loaned stock to OCC does not contravene any provision of either such Rule. This provision is intended to put clearing members on notice with respect to the notice and certification requirements of paragraph (f) of Commission Rules 8c–1 and 15c2–1 as these requirements apply to the Stock Loan/Hedge Program and to permit clearing members to satisfy these requirements in an efficient manner.[14]

The language of OCC's market-maker's (specialist's) account agreement currently does not accommodate stock loans. Accordingly, OCC's proposed rules specify that stock loan and borrow positions may not be maintained in a master-maker's or specialist's account unless the market-maker or specialist has entered into a market-maker's (specialist's) account agreement that authorizes stock loan and borrow positions to be maintained in the account, or in the case of a combined market-makers' or specialists' account unless each market-maker or specialist that is a participant in the account has entered into a market-maker's (specialist's) account agreements that authorizes stock loan and borrow positions to be maintained in the account.[15] OCC is planning to submit revised versions of the various forms of market-maker's (specialist's) account agreement to the Commission in a separate proposed rule change in the near future. In addition to authorizing stock loan and borrow positions to be maintained in market-maker's or specialist's accounts, the revised versions will contain a variety of other updating changes.

(c) *Margin treatment.* Stock loan positions and stock borrow positions will both be subject to two types of margin. First, lending clearing members and borrowing clearing members will be required to pay or entitled to receive daily mark-to-market payments. These payments will cause the collateral value held by the lending clearing members to be adjusted daily so that the collateral value is always equal to the closing market price for the loaned stock on the preceding trading day.[16]

Second, lending clearing members and borrowing clearing members will both be required to deposit margin with OCC to cover OCC's risk that the market will move against a stock loan position or a stock borrow position during a day and that the clearing member carrying the position will fail before making the required mark-to-market payment on the next business day. The margin required to be deposited with OCC in respect to stock loan positions and stock borrow positions in analogous to additional margin on short stock option positions, and it is referred to in OCC's proposed rules and hereinafter as "additional margin."

OCC will compute additional margin in respect of stock loan and borrow positions as follows.[17] Stock loan and borrow positions will be treated as being in the same "class group" as stock options overlying the same eligible stock. Stock loan and borrow positions in each account relating to an eligible stock will be summed to produce a net loan or net borrow position for the account. Additional margin will be determined on a combined basis on the net stock loan or borrow position and any stock options in the same class group in the account. Additional margin will be determined on the remaining stock loan and borrow positions in the account on a "gross" basis by (1) multiplying the applicable margin interval times the number of shares in the remaining gross stock loan position times the prior trading day's closing price ("marketing price"), (2) multiplying the applicable margin interval times the number of shares in the remaining gross stock loan position times the prior trading day's closing price ("marking price"), (2) multiplying the applicable margin interval times the number of shares in the remaining gross stock borrow position times the marketing price, and (3) summing the two resulting margin requirements together. The additional margin requirement on the gross stock loan and borrow positions will then be added to the combined additional margin requirement for the stock option positions and the net stock loan or borrow position to determine the total additional margin requirement for the class group.[18]

If a hedge clearing member is carrying no long or short options positions in a class group in an account in which the clearing member is carrying any stock loan position or stock borrow position, OCC's margin system will assign a "margin interval"[19] for five percent to the stock underlying the stock loan and borrow position in the account. If the clearing member is carrying any long or short options in the same class group in its account, OCC's margin system will assign the same margin interval to the stock underlying the stock loan and borrow positions in the account that OCC uses in respect of that stock as the underlying security for options positions.[20]

OCC will first collect additional margin with respect to a stock loan from the lending clearing member and the borrowing clearing member on the morning of the first business day after the stock loan is initiated. This means

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[12] Proposed OCC Rule 2201(d).

[13] Proposed paragraph 5(f) of Article XXI of OCC's By-Laws. Paragraph 5(f) expressly states that any stock loan position or stock borrow position that is carried in an account pursuant to a standing instruction shall nonetheless comply with all applicable provisions of OCC's By-Laws and Rules.

[14] Proposed paragraph 5(b) of Article XXI of OCC's By-Laws also requires each lending clearing member to represent, with respect to each stock loan position that is to be carried in a customers' account or a market-maker's or specialist's account, that the loaned stock to which the stock loan position relates is not a "fully paid security" or an "excess margin security" within the meaning of Commission Rule 15c3–3.

[15] Proposed Interpretation .01 to Section 5 of Article XXI of OCC's By-Laws.

[16] Mark-to-market payments are described in proposed OCC Rule 2203.

[17] Additional margin for stock loan and borrow positions is described in revised OCC Rule 601.

[18] Stock loan and borrow positions will also be taken into account in calculating the alternative "minimum additional margin requirement" described in OCC Rule 601(c)(1)(C)(6) in parallel to the way in which they will be taken into account in calculating the ordinary additional margin requirement.

[19] The margin interval is the maximum daily change in the marking price of the underlying security, upwards or downwards, assumed by OCC for purposes of calculating additional margin.

[20] Proposed Interpretation .06 to OCC Rule 601 sets out the treatment of the margin interval for stock loan and borrow positions.

that OCC will have no margin on deposit if a lending clearing member or a borrowing clearing member defaults after a stock loan becomes final but before margin is collected on the next business day. OCC has concluded that the other elements of its protection and back-up systems, particularly its surveillance systems and its recourse to the clearing fund deposits of clearing members, should be adequate to protect it against this risk.

(d) *Termination of stock loans.* A stock loan will be terminable by either the borrowing clearing member or the lending clearing member. The borrowing clearing member will be able to terminate a stock loan by delivering the loaned stock to OCC's account at a correspondent depository with instructions identifying the lending clearing member to which the stock is to be redelivered. Upon receiving notice of the delivery, OCC will instruct the correspondent depository to redeliver the loaned stock to the lending clearing member against payment by the lending clearing member of the then current value of the collateral, which will be equal to the preceding trading day's closing value for the stock. A lending clearing member will be required to give notice of termination to OCC five business days in advance of the day on which it wishes the termination to be settled, in order to give the borrowing clearing member time to obtain the stock that it will be required to deliver. OCC will notify the borrowing clearing member of the termination on the day that it receives the notice from the lending clearing member. Commencing at a time specified by OCC on the day appointed for settlement, the lending clearing member will have the right to buy in the loaned stock if the borrowing clearing member has failed to make delivery prior to that time. OCC will continue to require the parties to a stock loan to make and receive market-to-market payments and will continue to require additional margin with respect to both the stock loan position and the stock borrow position, until the stock loan is actually terminated.

(e) *Close-out of stock loans.* If OCC suspends a hedge clearing member, commencing at the time of the suspension OCC will not accept any new stock loan transactions to which the suspended clearing member is a party.[21] OCC also will assess the open stock loan and borrow positions of the suspended clearing member and close them out (by offset if appropriate) or keep them open (and establish additional hedges for them if appropriate) as appears to be appropriate in the circumstances.[22] In general, OCC's proposed rules relating to open stock loan and borrow positions of a suspended clearing member are designed to make the set of possible actions that are currently available to OCC in respect of open options positions also available to OCC in respect of stock loan and borrow positions.

With respect to stock loans that are in the process of being terminated at the time that the clearing member is suspended, OCC will direct the non-suspended clearing member to buy in or sell out the loaned stock for the account of OCC unless OCC concludes that the buy in or sell out may be deferred because arrangements adequate to protect OCC and the non-suspended clearing members have been made.[23]

(f) *Clearing fund provisions.* Article VII of OCC's By-Laws and OCC Rule 1001 will be amended to make clear that the stock clearing fund will be available to make good losses suffered by OCC as a result of the Stock Loan/Hedge Program and to make clear that for purposes of clearing fund deposit requirements of hedge clearing members, the "average daily aggregate margin requirement" is the aggregate margin for the stock option product group, which includes stock loan positions. OCC Rule 1001 also will be amended to specify that open stock loan obligations of clearing members will be taken into account in calculating their respective stock clearing funding obligations. This will be done essentially by determining the total number of shares of stock underlying each stock loan position and each stock borrow position and dividing each such number by the unit of trading applicable to options contracts overlying that same stock to arrive at "options contract equivalent" numbers that can be used for clearing fund calculation purposes.

(g) *OCC authority to terminate stock loans.* Proposed new paragraph 2(c) of article XXI of OCC's By-Laws gives OCC the authority to terminate the outstanding stock loans relating to one or more particular eligible stocks upon determination that circumstances warrant such action. OCC anticipates that this authority would rarely, if ever, be needed. However, OCC believes that it should have this authority, in part because stock loans, unlike options, will have an indefinite duration, and in the absence of this authority, OCC would be unable to be certain as to when the Stock Loan/Hedge Program could be terminated if OCC simply stopped accepting new stock loans.

2. Statutory Basis for the Proposed Rule Change

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of section 17A of the Act because, as compared to the current environment in which stock loan and borrow transactions are effected without a centralized facility acting as a principal, the proposed changes provide for the prompt and accurate clearance and settlement of stock loans with enhanced safeguarding of securities and funds related thereto, and for reduced exposure to counterparty default. The proposed changes accomplish this by applying procedures and protections to stock loans that have been developed by OCC in the clearance and settlement of options and that have been demonstrated to be efficient, effective, and safe in that context.

B. Self-Regulatory Organization's Statement on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period of be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[21] Proposed OCC Rule 2209(a).

[22] Proposed OCC Rules 22099(b), (c), and (d).

[23] Proposed OCC Rule 2210.

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–92–34 and should be submitted by January 6, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30330 Filed 12–14–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 9, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Western Gas Resources, Inc.
$2.28 Cum. Pfd. Stock, $.10 Par Value (File No. 7–9758)
Pratt Hotel Corporation
Common Stock, "When Issued", $.01 Par Value (File No. 7–9759)
Caremark International, Inc.
Common Stock, $.01 Par Value (File No. 7–9760)
SPI Holding, Inc.
Class B Common Stock, "When Issued", $.01 Par Value (File No. 7–9761)
Healthsource, Inc.
Common Stock, $.10 Par Value (File No. 7–9762)
Interdigital Communications Corporation
Common Stock, $.01 Par Value (file No. 7–9763)
Insteel Industries, Inc.
Common Stock, No Par Value (File No. 7–9764)
Capstead Mortgage Corporation
$.126 Cum. Conv. Pfd Stock Series B, $.10 Par Value (File No. 7–9765)
Taubman Centers, Inc.
Common Stock, $0.01 Par Value (File No. 7–9766)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 31, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30329 Filed 12–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19149; 812–7933]

Crestfunds, Inc., et al.; Notice of Application

December 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Crestfunds, Inc. (formerly Bayshore Funds, Inc.) (the "Fund"), Capitoline Investment Services Incorporated (the "Investment Adviser"), and Fidelity Distributors Corporation (the "Distributor").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) of the Act for an exemption from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) that would permit the Fund to issue separate classes of shares representing interests in the same portfolio of securities.

FILING DATE: The application was filed on June 3, 1992, and amended on September 18, 1992 and November 23, 1992. By supplemental letter dated December 7, 1992, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 4, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Fund and the Distributor, 82 Devonshire Street, Boston, Massachusetts 02109; the Investment Adviser, 1919 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act. The fund currently consists of ten series of shares. The series represent interests in three separate money market portfolios—Cash Reserve Fund, U.S. Treasury Money Fund, and Tax Free Money Fund (collectively, the "Money Market Portfolios"). The Fund also consists of seven additional series of shares representing interests in four bond portfolios and three equity portfolios (the Money Market Portfolios, bond portfolios, and equity portfolios are referred to herein collectively as the "Portfolios").

2. The Investment Adviser is a wholly owned subsidiary of Crestar Bank, which is a subsidiary of Crestar Financial Corporation. The Fund compensates the Investment Adviser

pursuant to an investment advisory agreement. Crestar Bank acts as the Fund's transfer agent and custodian, and is compensated by the Fund pursuant to a transfer agency agreement and a custodian contract.

3. The Distributor is a wholly owned subsidiary of FMR Corp. The Distributor sells shares of the Portfolios as agent on behalf of the fund, and assists in the Portfolios' administration and operation.

4. Existing shares of the Portfolios ("Existing Shares") are intended for investment of short-term monies held in trust, fiduciary, advisory, agency, custodial, or similar accounts held by financial institutions or business organizations. Existing Shares are sold and redeemed daily at net asset value without a sales or redemption charge, and are subject to a distribution plan adopted pursuant to rule 12b–1 under the Act (the "Administrative 12b–1 Plan").

5. Applicants seek an exemptive order that would permit the Fund to offer multiple classes of shares representing interests in the same Portfolio. Each class of new shares ("New Shares") would be identical in all respects to each class of Existing Shares, except for its class designation, the allocation of certain expenses, voting rights, and exchange privileges. Each portfolios' investment objectives, policies, and restrictions would apply to the New Shares of any Portfolio to the same extent as to the Existing Shares of such Portfolio.

6. Each Portfolio may offer several classes of New Shares (a) in connection with a distribution and service plan adopted pursuant to rule 12b–1 (a "Distribution and Service Plan"); and/or (b) in connection with a non-rule 12b–1 shareholder services plan (a "Shareholder Services Plan"). The Fund may offer an unlimited number of different classes of shares, either in connection with one or more of the plans described above or without any plan. All classes of shares issued by the Fund in connection with any order granted in response to the application will comply with all representations and conditions contained in the application.[1]

[1] Applicants request that any relief also apply to any future series of the Fund and any other future investment company, or series thereof, advised by the Investment Adviser or any person directly or indirectly controlling, controlled by, or under common control with the Investment Adviser (collectively, "Future Funds"). Applicants state that any such Future Fund issuing classes of shares pursuant to any order granted in response to the application will comply with all representations and conditions contained in the application.

7. Under the Administrative 12b–1 Plan adopted on behalf of Existing Shares of the Portfolios, the Portfolio pays the Distributor a monthly fee at an annual rate of up to .15% of the average net assets of such Portfolio. Each Administrative 12b–1 Plan also provides that the Investment Adviser is authorized to make payments out of its own resources, including the payments it receives under its investment advisory agreement, to third parties who engage in the sale of shares or who render shareholder support services.

8. Under the Distribution and Service Plan, either the Fund (on behalf of a Portfolio) or the Distributor (such election to be at the discretion of the Fund) would enter into servicing agreements ("Service Agreements") with banks, broker-dealers, or other institutions ("Service Organizations") that would provide certain account administration services to the customers of the Service Organizations ("Customers"), which Customers from time to time beneficially own shares that are offered pursuant to the plan. The Distribution and Service Plan would be used with respect to Service Organizations authorized to provide distribution and distribution-related liaison services. Service Agreements under the Distribution and Service Plan would provide for an asset-based sales charge to compensate Service Organizations or their affiliates, if appropriate, for the distribution of shares and the provision of certain additional shareholder liaison services to Customers. Payments to a Service Organization and to the Distributor pursuant to the Distribution and Service Plan would not exceed 0.75% (or such other amount as may be permitted under applicable regulations of the National Association of Securities Dealers, Inc. ("NASD")) per annum of the average daily net asset value of the Distribution and Service Plan shares beneficially owned by Customers of the Service Organization with respect to which services and assistance are provided under the Distribution and Service Plan. The amount of such payments to Service Organizations currently is expected to be a maximum of 0.50% per annum. The level of payments permitted under the Distribution and Service Plan shall be changed only pursuant to approval by the shareholders of the affected class of the Fund.

9. Under the Shareholder Service Plan, either the Fund (on behalf of a Portfolio) or the Distributor (such election to be at the discretion of the Fund) would enter into Service Agreements with Service Organizations concerning the provision of certain account administration services to Customers, which Customers from time to time beneficially own shares that are offered pursuant to the plan. The Shareholder Services Plan would be used with respect to Service Organizations authorized to provide only personal and account maintenance services. Service payments pursuant to the Shareholder Services Plan would not exceed 0.25% (or such other amount as may be permitted under applicable NASD regulations) per annum of the average daily net asset value of the shares beneficially owned by Customs of the Service Organization with respect to which personal and account maintenance services are performed under a Shareholder Services Plan. Such service payments currently are expected to be a maximum of 0.25% per annum.

10. Service Organizations may charge other fees to Customers who are the beneficial owners of Distribution and Service Plan shares or Shareholder Services Plan shares in connection with their customer accounts, subject to the procedures set forth in conditions 6, 7, and 8. Such fees would be in addition to any amounts received by the Service Organization under a Service Agreement. Under the terms of the Service Agreements, Service Organizations would be required to provide Customers with a schedule of fees that relate to the investment of their assets in Distribution and Service Plan shares or Shareholder Services Plan shares.

11. The expense of payments under the Administrative 12b–1 Plan, Distribution and Service Plan, and Shareholder Services Plan would be borne entirely by the beneficial owners of the class of shares of the Fund to which the particular plan relates. In the event that a Distribution and Service Plan and a Shareholder Service Plan are adopted with respect to a single class of shares, the Directors will apply the analysis required under rule 12b–1(d) to the aggregate amount paid under such plans in order to assure that, to the extent that the plans may be deemed to overlap in some respects, compensation shall not be duplicative as a result of the use of both plans.

12. The gross income of all Portfolios will be allocable among the classes of shares based upon the relative net asset values. Expenses of the Fund cannot be attributed directly to any one Portfolio will be allocated to each Portfolio based on the relative net assets of such Portfolio. Certain expenses may be attributable to a particular Portfolio, but not to a particular class ("Portfolio

Expenses"). All such Portfolio Expenses will be allocated to each class of shares in a Portfolio on the basis of the relative net asset values of the classes of that Portfolio. All expenses incurred by a class of shares ("Class Expenses") will be borne on a *pro rata* basis by the outstanding shares of such class. Because of the differing Class Expenses that may be borne by each class of shares, the net income of (and dividends payable to) each class may be different from the net income of (and dividends payable to) the other classes of shares in the same Portfolio.

13. Each class of the shares may be exchanged only for shares of the same class in another Portfolio. Notwithstanding the foregoing, exchanges will be permitted among classes should a shareholder cease to be eligible to purchase shares of the original class by reason of a change in the shareholder's status. This situation might occur, for example, when an investor who beneficially owned shares held by an institution becomes the holder of legal title by reason of a distribution from the institutional account. Such distributions may be occasioned by a termination of a trust and distribution of the corpus of the trust to beneficiaries. An individual would become the holder of shares designed for institutions, and the individuals may desire the services offered by Service Organizations in substitution of the services formerly provided by the trustees of such trust. Exchanges will be limited to within the same "group of investment companies" as that term is defined in rule 11a-3 under the Act.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) to the extent that the proposed issuance and sale of New Shares may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights in connection with New Shares may violate the provisions of 18(i).

2. Applicants assert that the proposed issuance of New Shares does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowings and does not affect the Fund's existing assets or reserves. Each class of shares will be redeemable at all times. No class of shares will have preference or priority over any other class of the Fund in the usual sense (that is, no class will have distribution or liquidation preferences to particular assets and no class will be protected by any reserve or other account).

3. Applicants state that the proposed arrangement will not increase the speculative character of the shares in a Portfolio, since each class of shares will participate in all of such Portfolio's income and expenses on the basis of the relative net assets of each class (with the exception of the payments and other expenses which are attributed solely to a particular class).

4. Applicants assert that owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would, potentially, be spread over a greater number of shares than they would be otherwise. Applicants believe that the proposed allocation of expenses and voting rights relating to the plans is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical.

5. Applicants assert that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any SEC order granting the requested relief.[2]

1. Each class of shares of a Portfolio will represent interests in the same portfolio of investments and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Portfolio will relate solely to one or more of the following: (a) The method of financing certain Class Expenses, which are limited to any or all of the following: (i) transfer agent fees identified by applicants as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxy statements to current shareholders of a specific class; (iii) SEC and Blue Sky registration fees incurred by a class of shares; (iv) the expense of administrative personnel and services as required to support the shareholders of a specific class; (v) Directors' fees or expenses incurred as a result of issues relating to one class of shares; and (vi) accounting expenses relating to one class of shares; (b) expenses assessed to a class pursuant to a Shareholder Services Plan and/or 12b-1 Plan (whether an Administrative 12b-1 Plan or a Distribution and Service Plan or both) with respect to such class; (c) the fact that the classes will vote separately with respect to the Fund's Shareholder Services Plan and/or any 12b-1 Plan; (d) the different exchange privileges of the classes of shares; and (e) the designation of each class of shares of the Fund. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated unless and until approved by the Commission.

2. The Directors of the Fund, including a majority of the independent Directors, will approve the offering of additional classes of New Shares (the "Multi-Class System"). The minutes of the meetings of the Directors regarding the deliberations of the Directors with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Directors' determination that the proposed Multi-Class System is in the best interest of both the Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Directors, including a majority of the independent Directors. Any persons authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Directors, and the Directors shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Directors of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the classes of shares. The Directors, including a majority of the independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The distributor and the investment adviser will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the distributor and the investment adviser,

[2] One of the conditions in the application (condition 5), which relates to shareholder approval of rule 12b–1 plans, is no longer required for exemptive relief permitting multiple classes of shares. Any order issued granting such relief would not be subject to this condition. The conditions in this notice have been renumbered to reflect the deletion of the condition.

at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. The Distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

6. The Shareholder Services Plans will be adopted and operated in accordance with the procedures set forth in rule 12b-1(b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1. In evaluating the Shareholder Services Plans, the Directors will specifically consider whether (a) such plans are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Plans are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in the light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

7. Each Service Agreement entered into pursuant to a Shareholder Services Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of Customers' assets in the Fund (a) will be disclosed by it to the Customers, (b) will be authorized by its Customers, and (c) will not result in an excessive fee to the Service Organization.

8. Each Service Agreement entered into pursuant to a Shareholder Services Plan will provide that, in the event an issue pertaining to a Shareholder Services Plan is submitted for shareholder approval, the Service Organization will vote any shares held of its own account in the same proportion as the vote of those shares held for its Customers' accounts.

9. The Directors will receive quarterly and annual statements concerning the amounts expended under the Shareholder Services Plans and any 12b–1 Plans and the related Service Agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors in the exercise of their fiduciary duties.

10. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount per outstanding share, except that Administrative or Service Payments made by a class under a Plan and any Class Expenses will be borne exclusively by that class.

11. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to the applicants that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, and Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and ongoing reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

12. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distribution of the classes of shares and the proper allocation of expenses among the classes and this representation has been concurred with by the Expert in the initial report referred to in condition 11 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 11 above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

13. The prospectuses of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund Shares may receive different compensation with respect to one particular class of shares over another in the Fund.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors with respect to the Multi-Class Systems will be set forth in guidelines which will be furnished to the Directors.

15. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Portfolio. The information provided by Applicants for publication in any newspaper or similar listing of the Fund's net asset value or public offering price will present each class of shares separately.

16. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization of, or acquiescence in any particular level of payments that the Fund may make pursuant to its Administrative 12b–1 Plan, Distribution and Service Plan or Shareholder Services Plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30325 Filed 12-14-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2606]

Alabama (And Contiguous Counties in Georgia and Tennessee); Declaration of Disaster Loan Area

Clay, Dekalb, and Madison Counties and the contiguous counties of Cherokee, Cleburne, Coosa, Etowah, Jackson, Limestone, Marshall, Morgan, Talladega, Tallaposa, and Randolph in Alabama; Chattooga, Dade and Walker Counties in Georgia; and Franklin and Lincoln Counties in Tennessee constitute a disaster area as a result of damages caused by high winds and tornadoes which occurred on November 22, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 1, 1993 and for economic injury until the close of business on September 3, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damages:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 260812 for Alabama, 26012 for Georgia and 261012 for Tennessee. For economic injury the numbers are 777100 for Alabama, 777200 for Georgia and 777300 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 3, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-30381 Filed 12-14-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2607]

Florida; Declaration of Disaster Loan Area

Dade County and the contiguous counties of Broward, Collier, and Monroe in the State of Florida constitute a disaster area as a result of damages caused by flooding and severe storms which occurred on November 18, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 1, 1993, and for economic injury until the close of business on September 3, 1993, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number to this disaster for physical damage is 260706 and for economic injury the number is 777000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 3, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-30377 Filed 12-14-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2596; Amdt. 2]

Hawaii; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective November 9, 1992, to extend the termination date for filing applications for physical damage to December 12, 1992. All other information remains the same, i.e., the termination date for filing applications for economic injury is June 14, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 10, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-30383 Filed 12-14-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2511]

North Carolina (and a Contiguous County in Virginia); Declaration of Disaster Loan Area

Orange and Stokes Counties and the contiguous counties of Alamance, Caswell, Chatham, Durham, Forsyth, Guilford, Person, Rockingham, Surry and Yadkin in the State of North Carolina and Patrick County in the State of Virginia constitute a disaster area as a result of damages caused by severe storms, high winds and tornadoes which occurred on November 23, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 1, 1993 and for economic injury until the close of business on September 3, 1993 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 261112 for North Carolina, and 261212 for Virginia. For economic injury the numbers are 777400 for North Carolina and 777500 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 3, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–30378 Filed 12–14–92; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2605]

Texas; Declaration of Disaster Loan Area

Maverick County and the contiguous counties of Dimmit, Kinney, Uvalde, Webb, and Zavala in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and flooding which occurred on July 21–22, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 29, 1993 and for economic injury until the close of business on August 30, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

For Physical Damage	*Percent*
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 260506 and for economic injury the number is 776700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 30, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–30382 Filed 12–14–92; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area #7766]

Washington; Declaration of Disaster Loan Area

Clallam County and the contiguous county of Jefferson in the State of Washington constitutes an Economic Injury Disaster Loan Area due to the effects of El Nino on the Salmon fishing industry in the Neah Bay area during 1992. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on August 13, 1993 at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: November 3, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–30379 Filed 12–14–92; 8:45 am]

BILLING CODE 8025–01–M

Women's Business Development Act; Federal Assistance

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: Federal Assistance to Individuals or Enterprises Eligible Under the Women's Business Ownership Act of 1991, Public Law 102–191. Federal Assistance will be provided to develop training and counseling centers for women business owners under the Women's Business Development Act of 1991, Program Announcement No. OWBO–93–005. The Program announcement is intended to assist SBA's Office of Women's Business Ownership train and counsel women wanting to start or expand businesses. The Women's business Development Act of 1991, Public Law 102–191, seeks applicants who are experienced in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners. The applicant must commence a demonstration project within a minimum amount of time. The applicant must provide training and services to a representative number of women who are both socially and economically disadvantaged. Each applicant shall submit a three year plan on proposed fundraising and training activities and may receive financial assistance for a maximum of three years per site, subject to availability of funds. As a public/private partnership, successful applicants will match SBA funding in the first year with one non-Federal dollar for each 2 Federal dollars; in the second year, one non-Federal dollar for each Federal dollar; and in the third and final year, two non-Federal dollars for each Federal dollar. The training activities must include, but need not be limited to: (1) Financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements and managing cash flow and other financial operations of a business concern; (2) management assistance; and (3) marketing assistance. Up to one-half of the non-Federal matching assistance may be in the form of in-kind contributions which are budget line items only, including but not limited to office equipment and office space. The Small Business Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal matching funds are obtained. If any recipient of assistance fails to obtain the required non-Federal contribution during any year of any project, it shall not be eligible thereafter for advance disbursements during the remainder of that project or for any other project for which it is or may be funded.

DATES: Applicants must submit their application proposal on or before January 8, 1993 at 4 p.m., Eastern Standard Time, at the SBA office specified in the program announcement.

FOR FURTHER INFORMATION CONTACT: Harriet Fredman, Senior Program Representative at 202/205–6673 or Sally Murrell, Agreement Officer at 202/205–6621.

Dated: December 8, 1992.

Patricia F. Saiki,

Administrator.

[FR Doc. 92–30375 Filed 12–14–92; 8:45 am]

BILLING CODE 8025–01–M

Northeastern Capital Corp.; Notice of Surrender of License

[License No. 01/02–0062]

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and

Regulations governing Small Business Investment Companies (13 CFR 107.105 (1992)), Northeastern Capital Corporation, 209 Church Street, New Haven, CT 06510, incorporated under the laws of the State of Connecticut has surrendered its license, No. 01/02–0062 issued by the SBA on April 1, 1983.

Northeastern Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Northeastern Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–30373 Filed 12–14–92; 8:45 am]

BILLING CODE 8025–01–M

The Capital Fund; Notice of Application to Operate as a Small Business Investment Company Licensee

[Applicant No. 99000072]

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) by The Capital Fund (TCF), for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name and address	Title
Robert F. Dailey, 7021 North Ridge Road, Lansing, Michigan 48917.	Chairman.
Barry A. Wilson, 7840 West Willow Highway, Grand Ledge, Michigan 48837.	President, Director.
Craig A. Woodman, 315 Greentree Lane, Ada, Michigan 49301.	Senior Vice President, Treasurer, Director.
Stephen L. Sandstedt, 2127 Montego Drive, Lansing, Michigan 48912.	Vice President, Secretary, Director.
Dana W. Tousley, 2206 Rockdale, Lansing, Michigan 48917.	Director.
Capital BIDCO Inc., 6412 Centurion Drive, Suite 150, Lansing, Michigan 48917	100% Shareowner.

Capital BIDCO Inc., a corporation organized and existing under the laws of the State of Michigan, owns 100% of the issued and outstanding capital stock of The Capital Fund.

The applicant, TCF, a Michigan corporation will begin operations with $2,500,000 paid-in capital and paid-in surplus. TCF will conduct its activities primarily in the State of Michigan but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Lansing, Michigan.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 4, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–30372 Filed 12–14–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03–0181]

Meridian Venture Partners, Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Meridian Venture Partners (MVP) 259 Radnor-Chester Road, Radnor, PA 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1992)), for approval of a conflict of interest transaction. MVP desires to invest $409,998 in Preferred Stock in Mother's Work, Inc., 1307 Noble Street, Philadelphia, PA 19123.

MVP is a limited partnership and has four general partners, one of which has been a director of Mothers Work since 1985. The conflict of interest arises under § 107.903(b)(1) of CFR part 13 because a general partner of MVP is also a director of Mothers Work, the small business concern in which MVP proposes to invest. Consequently, the proposed transaction falls within the purview of § 107.903 of the Regulations, and requires a written exemption granted by SBA. In addition, three of the four General partners of MVP collectively own 2.14% of the stock of Mothers Work, Inc.

Notice is hereby given that any interested person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice shall be published in the newspaper of general circulation in the Philadelphia area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 1, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–30371 Filed 12–14–92; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000075]

Opportunity Capital Partners II, L.P.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Opportunity Capital Partners II, L.P. (Applicant), 39650 Liberty Street, suite 425, Fremont, California 94538, with the Small Business Administration pursuant to 13 CFR 107.102 (1992).

The proposed individual General Partners of the General Partner (GP), a general partnership and the General Partner and Limited Partner of the Applicant are as follows:

		Ownership
Thompson Capital Management, 39650 Liberty Street, Suite 425, Fremont, CA 94538.	General Partner	1%
J. Peter Thompson, 223 E. Las Palmas Ave., Fremont, CA 94539	Managing General Partner of the GP	
Joyce M. Thompson, 223 E. Las Palmas Ave., Fremont, CA 94538	General Partner	
Bank of America NT&SA, 555 California Street, San Francisco, CA 94104	Sole Limited Partner	99%
BankAmerica Corporation, 555 California Street, San Francisco, CA 94104	Sole Shareholder of Limited Partner	

The Applicant, a California limited partnership, is expected to begin operations with $1,556,161 of private capital. The Applicant will conduct its activities primarily in the State of California.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Fremont, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 18, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-30374 Filed 12-14-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.963-1; Fuel Tank Access Covers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.963-1, Fuel Tank Access Cover. This AC sets forth a means of compliance with the provisions of part 25 of the Federal Aviation Regulations (FAR) dealing with the certification requirements for fuel tank access covers on turbine powered transport category airplanes.

DATES: Advisory Circular 25.963-1 was issued by the Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100, on July 29, 1992.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, M-443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Renton, Washington, on December 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-30413 Filed 12-14-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Special Committee 169; Aeronautical Data Link Application; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the eighth meeting of Special Committee 169 to be held December 9-11, 1992, at the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036 commencing at 9:30 a.m.

The agenda for this meeting is as follows:

(1) Chairman's introductory remarks;
(2) Review of meeting agenda;
(3) Approval of the summary of the seventh meeting held on July 30-31, 1992;
(4) Report of Air Traffic Services Data Link Communications Working Group (WG-1) activities;
(5) Report of System Architecture and Dependencies Working Group (WG-2) activities;
(6) Report on GNSS Data Link Requirements;
(7) Context Management Application Design Status Review;
(8) Report on ATN manual review;
(9) Other Business;
(10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 1, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-30412 Filed 12-14-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

[Number 16-11]

Directive; Treasury Financial Manual

December 8, 1992.

1. *Delegation.* By the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101-05, the Commissioner, Financial Management Service, is hereby delegated the authority to revise the Treasury Financial Manual.

2. *Redelegation.* The authority delegated by this directive may be redelegated to personnel of the Financial Management Service.

3. *Cancellation.* Treasury Directive 16-11, "Promulgation of the Treasury Financial Manual," dated September 22, 1986, is superseded.

4. *Authority.* TO 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

5. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-30327 Filed 12-14-92; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C.

2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Irish Watercolours and Drawings from the National Gallery of Ireland" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Boston College Museum of Art, Chestnut Hill, Massachusetts from on or about October 2, 1993 to on or about December 12, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: December 9, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92–30349 Filed 12–14–92; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 241
Tuesday, December 15, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Added to the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, December 15, 1992, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC:

Report on the status of pending regulations to be issued pursuant to the Federal Deposit Insurance Corporation Improvement Act of 1991.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 11, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30513 Filed 12–11–92; 1:19 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, December 21, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 11, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30531 Filed 12–11–92; 3:18 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 14, 21, 28, 1992 and January 4, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of December 14

Thursday, December 17

10:00 a.m.
Briefing on Role of AEOD in Oversight of Operating Reactors (Public Meeting)
(Contact: Edward Jordan, 301–492–4848)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, December 18

9:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

10:00 a.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202–586–1462)

2:00 p.m.
Briefing on License Renewal Industry Initiatives and Resources (Public Meeting)
(Contact: Dennis Crutchfield, 301–504–1199)

Week of December 21—Tentative

Monday, December 21

9:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

10:00 a.m.
Briefing on Waste Management—International Safety Convention (Closed—Ex. 9)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, December 18

9:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

10:00 a.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202–586–1462)

2:00 p.m.
Briefing on Status of General Atomic—Sequoyah Fuels Facility (Public Meeting)
(Contact: Richard Cunningham, 301–504–3426)

Tuesday, December 22

2:30 p.m.
Briefing on Status of U.S. Nuclear Initiatives with Russia and Ukraine (Closed—Ex. 1)

Week of December 28—Tentative

Tuesday, December 29

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 4—Tentative

Tuesday, January 5

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 (Commissioner de Planque not participating) on December 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule on Exclusion of Attorneys from Interviews Under Subpoena" and by a vote of 5–0 that "Affirmation of Final Rule Amending 10 CFR Part 52", (Public Meeting) be held on December 8 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: December 10, 1992.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 92–30484 Filed 12–11–92; 1:28 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 57, No. 241
Tuesday, December 15, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0440]

Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1992

Correction

In notice document 92–28980 beginning on page 56347 in the issue of Friday, November 27, 1992, make the following corrections:

1. On page 56348, in the first column, in the third line, "July 20, 1992" should read "July 28, 1992".

2. On the same page, in the same column, in the fourth line, "[57 FR 32058]" should read "[57 FR 33283]".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–758–FNC]

RIN 0938–AF82

Medicare Programs; Fee Schedule for Physicians' Services for Calendar Year 1993

Correction

In notice document 92–28184 beginning on page 55914 in the issue of Wednesday, November 25, 1992, on page 56167, in the FR Doc. line appearing at the end of the document, "92–28184" should read "92–28186".

BILLING CODE 1505–01–D

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federal register

Tuesday
December 15, 1992

Part II

Department of Transportation

Office of the Secretary
Federal Aviation Administration
Federal Highway Administration
Federal Railroad Administration
Federal Transit Administration
Research and Special Programs Administration

Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

Research and Special Programs Administration

RIN 2120–AE43; 2125–AC85; 2130–AA43; 2132–AA38; 2137–AC21

Limitation on Alcohol use by Transportation Workers

AGENCIES: Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA) and the Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; common preamble.

SUMMARY: This document is a common preamble to five proposed alcohol testing rules being published by several operating administrations of the Department of Transportation (FAA, FHWA, FRA, FTA, and RSPA) elsewhere in today's issue of the **Federal Register**. Four of these rules are required by the Omnibus Transportation Employee Testing Act of 1991. All of them should enhance the overall safety of the transportation industry and the public.

DATES: Comments on the NPRMs must be received on or before April 14, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments on the operating administrations' NPRMs should be mailed to the operating administrations at the addresses contained in the NPRMs following this common preamble. Comments on the alcohol testing procedures NPRM should be mailed to the address contained in that NPRM. Each rulemaking has a separate docket. Since there are common requirements, bases and purposes for the rules, each DOT organization involved may rely on comments submitted to the dockets of the other participating DOT organizations as necessary for developing the final rules. If a DOT organization relies upon a comment directed to the docket of another DOT organization, it will place a copy of that comment in its own docket. To ensure that comments applicable to more than one operating administration are read by each, those comments should be sent to each affected operating administration's docket.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of the General Counsel, Department of Transportation, (202) 366–9305, 400 7th Street, SW., Washington, DC 20590, with respect to the overall Departmental effort. For information concerning a particular NPRM, contact the individual(s) listed under the **FOR FURTHER INFORMATION CONTACT** section for that NPRM. The full texts of this document and all the other related DOT rulemaking documents appearing in today's **Federal Register** are electronically available through DOT's Anti-Drug Information Center (ADIC). Call 1–800–CAL–DRUG for further information.

SUPPLEMENTARY INFORMATION:

Summary

FAA, FHWA, FRA, and FTA are proposing rules to implement the Omnibus Transportation Employee Testing Act of 1991 ("the Act"), which requires alcohol testing programs and changes to the drug testing programs in the aviation, motor carrier, rail, and mass transit industries in the interest of public safety. RSPA is proposing to apply similar requirements to the pipeline transportation industry using existing statutory authority to ensure application of the drug and alcohol testing requirements to all safety-sensitive employees in that industry. The maritime industry has not been included in the proposals published in today's **Federal Register**; the U.S. Coast Guard (USCG) has some existing regulations on alcohol misuse and the industry would have difficult problems with the implementation of additional requirements similar to those being proposed by the five other operating administrations (OAs).

The five proposals generally have the same requirements and common language to a great extent, but are not exactly the same. Intended substantive differences (where industry-specific differences are necessary or to comport with existing regulatory format or statutory requirements) are explained in the preambles to the individual OA proposals.

In general, the proposed rules would prohibit covered employees from performing safety-sensitive functions: (1) When test results indicate a breath alcohol concentration of 0.04 or greater; (2) Within four hours after using alcohol; (3) While using alcohol on the job; (4) During 8 hours following an accident if their involvement has not been discounted as a contributing factor in the accident or until they are tested; (5) While behavior and appearance are characteristic of alcohol misuse or their ability to perform safety-sensitive functions is adversely affected by alcohol use; and (6) If they refuse to submit to required alcohol tests. Employers would have to remove from a safety-sensitive function any covered employee who violates any of these prohibitions until he or she has met the conditions for returning to a safety-sensitive function. Slightly different rules would apply with respect to an employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04. The proposed rules would require employers to conduct pre-employment, reasonable suspicion, post-accident, random, return-to-duty and follow-up alcohol testing with evidential breath testing devices. They also would impose reporting and recordkeeping requirements and provide for alcohol misuse information for employees, supervisor training, and referral of employees to employee assistance programs (EAPs).

Each of the OA notices of proposed rulemaking (NPRMs) developed as part of this effort has common language, to the extent possible, in recognition of the common elements of the statute and the problem being addressed. This will ease compliance for those companies, employers and third-party service providers that may be subject to the rules of more than one of the OAs.

This document is a common preamble jointly issued by each of the five OAs and provides the background for and an overview of the general, common elements of their proposed rules. It is incorporated by reference as part of the preamble for each individual OA's NPRM; additional modal-specific preambles have been issued by each of the OAs to provide an explanation of any differences from, or additions to, the common language. The following related documents appear in today's **Federal Register**:

(1) This common preamble;

(2) An Office of the Secretary (OST) NPRM on alcohol testing procedures and conforming changes to the existing drug testing procedures that is incorporated by reference into the OAs' NPRMs;

(3) The modal-specific OA preambles and proposed alcohol misuse prevention rule language for the: FAA; FHWA; FRA (also includes drug changes); FTA; and RSPA;

(4) FAA, FRA, and FHWA advance notices of proposed rulemaking (ANPRMs) seeking public comment on application of alcohol and drug testing requirements to foreign operators in the

United States in the aviation, rail, and motor carrier industries;

(5) An FTA NPRM that would impose on recipients of Federal funding in the transit industry drug testing requirements similar to those in the other transportation industries;

(6) FAA, FHWA, FRA, RSPA and USCG NPRMs that would require submission of drug test results to the Department's new Management Information System (MIS) (FTA's MIS proposal is included in its drug testing NPRM.);

(7) An FHWA NPRM that proposes changes to its existing drug rule in order to conform to the Act, including extending coverage to intrastate truck and motorcoach operations (FAA will be separately proposing, in the near future, conforming changes to its existing drug testing rule.); and

(8) A DOT-wide ANPRM that seeks public comment concerning whether there are less costly alternatives to the current random drug testing programs for the aviation, motor carrier, rail, mass transit, pipeline and maritime industries that can maintain an adequate level of deterrence and detection of illegal drug use.

Draft regulatory evaluations that analyze the costs and benefits of and the alternatives considered for each of the OA NPRMs and for the NPRM on testing procedures (part 40) have been placed in the individual dockets. We request public comment on these draft analyses and solicit additional information that would aid each OA in developing its final rule and regulatory evaluation.

The Department plans to conduct one or more public hearings on these proposed rules. The hearing dates and locations will be announced in a separate **Federal Register** notice.

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Background

The Omnibus Transportation Employee Testing Act of 1991

On October 28, 1991, President Bush signed the Omnibus Transportation Employee Testing Act of 1991 ("the Act"). (Pub. L. 102–143, Title V). The Act requires the Department to prescribe regulations within one year that require testing of safety-sensitive employees in the aviation, highway, rail, and mass transit industries and in the Federal Aviation Administration for use, in violation of law or Federal regulation, of alcohol and drugs listed in the Controlled Substances Act. The Act preempts inconsistent state and local laws, except certain state criminal laws, in the aviation, highway, and mass transit industries and requires that the regulations be consistent with U.S. international obligations. It specifically mandates, among other things, privacy in collection techniques, incorporation of the Department of Health and Human Services' (DHHS) mandatory guidelines for drug testing and comparable safeguards for alcohol testing, quantified confirmation of any initial positive result, collection of split samples of body fluid specimens, confidentiality of test results, and scientifically-random selection of employees to be tested. It requires pre-employment, random, post-accident, and reasonable suspicion testing; periodic testing is discretionary. Regulations prescribed under the Act must include provisions for the identification of, and opportunity for treatment for, covered employees in need of assistance due to misuse of alcohol or controlled substances. The Act states that current federally-mandated programs are unaffected by the new statutory requirements.

At the time of enactment of the Act, several OAs already had implemented programs designed to address the use and misuse of drugs and alcohol by transportation workers, and the Department had published an ANPRM on alcohol misuse by employees in the DOT-regulated transportation industries (54 FR 46326, November 2, 1989). In 1988, six of the Department's OAs: FAA; FHWA; FRA; FTA, formerly the Urban Mass Transportation Administration, (UMTA); USCG; and RSPA, issued drug testing rules for members of their regulated industries (53 FR 47002 et. seq., Nov. 21, 1988). (The FTA rule was overturned by a Federal appellate court in January 1990 on the grounds that the agency lacked statutory authority to issue nationwide standards requiring drug testing.) The rules generally apply

to persons performing safety-sensitive and security-related functions in commercial operations. The Department also published in 1988, and revised in 1989, a Department-wide drug testing procedures rule (49 CFR part 40) that governs testing under all the OA rules (53 FR 47002, Nov. 21, 1988; 54 FR 49854, Dec. 1, 1989). As noted above, the Act requires certain changes to the existing drug testing rules (*e.g.*, it requires split samples and extends coverage to intrastate truck and motorcoach operations under the FHWA rule). It also directs FTA to issue drug testing rules.

In addition to the requirements discussed above, the Act requires alcohol and drug testing for certain DOT employees. Air traffic controllers employed by the FAA are the largest group of employees subject to this testing (they are already subject to drug testing under an existing DOT policy). Another example of DOT employees subject to coverage is vehicle drivers who must have a Commercial Driver's License (CDL). The Department is developing a DOT Order (an internal program document) to conform the Department's drug testing program for its own employees to the requirements of the Act and to implement alcohol testing.

Regulatory History

During the drug testing rulemakings, we noted on numerous occasions that alcohol is a drug. We recognized alcohol's wide use, its addictive nature, and the number of transportation-related deaths and injuries that result every year from its misuse. We also realized that, for numerous reasons, the solution to the alcohol problem may be very different from that concerning other drugs, such as cocaine or marijuana. For that reason, with one exception, the OAs did not include alcohol among the list of substances to be tested for under the drug testing regulations. (Pursuant to a statutory mandate, the Coast Guard made post-accident alcohol testing mandatory in an amendment to an existing rule permitting that testing. The FRA had previously included alcohol in its post-accident testing mandate and had authorized alcohol testing for reasonable cause.) In announcing the drug testing rules, then Secretary of Transportation James Burnley stated that he had directed his General Counsel to review the Department's existing alcohol regulations to determine if they were sufficient.

In his June 15, 1989, testimony before the Senate Committee on Commerce, Science and Transportation, former Secretary Samuel Skinner committed the Department to further exploration of the need for additional regulation of alcohol use. "Drug and Alcohol Testing: Hearings on S. 561. Before the Committee on Commerce, Science, and Transportation", 101st Cong., 1st Sess. 23–39 (1989). On November 2, 1989, the Department published an advance notice of proposed rulemaking (ANPRM) to solicit public comment on whether the Department's existing regulatory requirements and programs were sufficient to respond to the hazards of alcohol use and misuse in DOT-regulated transportation industries and to determine what additional action, if any, should be taken. The ANPRM is discussed in greater detail below.

The Public Hearing

To enable better evaluation and comparison of the capabilities of different alcohol testing methods, the Department of Transportation conducted a public hearing on November 18, 1991, to obtain specific information from the manufacturers of breath test devices. Our purpose was to examine the current or feasible capabilities of equipment to handle the problems of testing in the transportation industry, particularly verification of the identity of tested individuals and the validity of the test result. At the hearing, the Department noted that attempts to tamper with the test and refusals to acknowledge the test result may be problems since an immediate result is available. Even with procedural safeguards, we are concerned about the integrity of a breath test in various situations, for example:

1. *Tampering:* An employer may want to ignore a positive result to keep its business operating to the detriment of public safety. Alternatively, an employer may insist that a result is positive in order to get rid of a troublesome employee. In either case, the tester could substitute someone with or without alcohol in his/her system for the covered employee who was to be tested. The Department would need to be able to verify that the employer is complying with regulatory requirements and to protect the employee.

2. *Identification of Tested Employee:* A covered employee faced with an immediate positive result and the possible loss of his/her job may insist that he/she never blew into a breath test device; *e.g.*, that he or she completed the form and then the employer/tester blew into the device. The Department would need to be able to verify that the employee was the one tested.

The Department also indicated that it would need to ensure accurate test results without adding prohibitive costs to any proposed program. Representatives of eight manufacturers assured DOT officials that existing technology can keep adequate, verifiable records of tests. They claimed that they could make the following safeguards against tampering with only minor adjustments to hardware and software: storage of results in secure computer systems, assignment of a serial number to each test, and use of magnetic cards to identify testees. Voice identification of the testee is another possible technology, but it is still being developed. DOT's query about whether a camera could be added to the breath test device elicited industry warnings that more complicated equipment would be less portable and more prone to breakdown. The manufacturers pointed out that currently available equipment alone cannot provide an indisputable verification procedure or replace trained human supervision of the testing process.

The Department believes that the testing procedures set forth in the separate document proposing new alcohol provisions for 49 CFR part 40 published in today's **Federal Register** provide adequate safeguards for breath testing in response to the above concerns, but specifically seeks comment on this issue.

The ANPRM

In its November 2, 1989, ANPRM, the Department set forth a number of options for reducing alcohol misuse in DOT-regulated transportation industries, if further action were deemed necessary. The options included:

1. Requiring employers to establish Employee Assistance Programs (EAP) that provide education on the dangers of alcohol misuse as well as training to detect alcohol use or impairment on the job;

2. Requiring employers to set up self- and peer-referral programs designed to identify alcohol abusers and get them into rehabilitation programs, with the understanding that the identified abusers could retain their jobs if rehabilitation is successfully completed;

3. Requiring alcohol testing of transportation employees similar in whole or in part to our drug testing rules (e.g., pre-employment, periodic, reasonable cause, post-accident and random testing);

4. Requiring pre-performance testing prior to permitting a covered employee to operate a vehicle or perform safety- or security-related duties (e.g., a pilot

could be tested before entering the cockpit to fly an airplane); and/or

5. Encouraging the states to implement safety programs directed at alcohol misuse and to increase their enforcement efforts.

Comments on the ANPRM

General Summary

Over 225 comments were filed in response to the ANPRM. Commenters included governmental agencies, trade associations, academic and medical institutions and associations, companies, unions and individuals. About one-half of all commenters favored no additional federal regulation. About one-third of the commenters favored some combination of testing, education, rehabilitation, and enforcement. Twelve commenters, who directed their comments to all of the OAs, favored a combination of rehabilitation and education. Twenty-eight commenters, all of whom directed their comments to the FAA, favored a combination of education and enforcement; and 39 commenters who directed their comments to various OAs favored a combination of testing, rehabilitation, and enforcement. About one-sixth of all commenters favored testing as their preferred approach.

Grounds

About 75 percent of the commenters who addressed the question of what are the most appropriate grounds for testing favored reasonable cause and post-accident testing. These commenters argued that testing should occur only where there is cause to test, such as where a covered employee is suspected of being intoxicated, or where an accident may be causally linked to alcohol consumption. A number of these commenters also suggested that there should be increased enforcement of the existing regulations.

About 40 percent of commenters who addressed the issue favored different combinations of grounds for testing. In addition to reasonable cause and post-accident testing, preferred by all of these commenters, they also favored various combinations of pre-employment, periodic, random, pre-performance and post-rehabilitation testing. Commenters who favored such combinations, usually failed to provide specific reasons to support their favored combination. Those supporting random testing, however, focused on the unpredictable occurrences of this type of testing and the resulting deterrent effect.

Testing Techniques

About one-third of the commenters who focused on this issue suggested that employers be allowed to choose the testing techniques appropriate for their businesses and financial positions. Another third of the commenters favored breath testing. These commenters noted that breath test devices are portable and inexpensive. In addition, these devices provide the least invasive of all the testing techniques, because they do not rely upon the provision of any bodily fluid.

The remaining comments were equally divided in support of blood and urine testing. Those favoring blood believed that, although it is the most invasive, it is the only legally defensible testing technique for intoxication. Those favoring urine testing, on the other hand, focused on the ease of administration, particularly if combined with the current DOT-required drug testing program. Two commenters favored a two-tiered testing method, in which a breath test device is used as a screening device with a follow-up blood test, if the screen test was positive. These two commenters focused on avoiding the intrusiveness of a blood test without a showing of cause.

Finally, one manufacturer supported the saliva-based method it currently markets. This commenter claimed that its alcohol testing method is accurate, quick (the test may be performed within two minutes), does not need calibration, and does not require technical training to operate. In addition, the colored litmus paper upon which the testing method is based is relatively inexpensive when compared with other testing techniques requiring sophisticated equipment.

Alcohol Concentration

Commenters who addressed the issue of the appropriate concentration for a "positive" alcohol test favored concentrations ranging from zero to 0.05 alcohol concentration as the standard for prohibition. About half of these commenters favored 0.04 because, currently, most federal and state regulations mandate 0.04 as the prohibited alcohol concentration for commercial transportation operators. Twenty percent of these commenters favored an alcohol concentration of zero. They noted that alcohol's effects vary among individuals and that only zero tolerance would ensure zero alcohol impairment.

The remaining comments were divided equally among three different groups. The first group recommended implementation of different alcohol concentrations according to the type of testing that is employed. For example, the College of American Pathologists favored an alcohol concentration of 0.04 for blood testing, and 0.06 for breath testing. These commenters stated that different testing techniques are not equally accurate and that different alcohol concentrations should be chosen to account for the different chances of error associated with each testing technique.

The second group favored 0.02 as the prohibited alcohol concentration. Those commenters noted that although DOT should strive for "zero tolerance" of alcohol use while an individual is on duty, they believed 0.02 is the minimum alcohol concentration that can be reliably measured. Finally, the third group favored .05, believing that current technology is unable to accurately detect an alcohol concentration below that.

Consequences of a Positive Test

Commenters who addressed this issue favored one of four general approaches. Half argued that employers should be able to take whatever action they deem appropriate. Several were concerned by the prospect of a federal regulation that would dictate the manner in which they should deal with a covered employee who might place their business at risk because of an alcohol problem. Twenty percent favored mandatory rehabilitation. These commenters noted that alcoholism is a disease that requires treatment and stated that the employer has a duty to provide treatment before deciding to terminate a covered employee. Twenty percent favored federal regulations that would allow the employer to fire a covered employee for alcohol misuse if the problem is discovered through testing, but favored rehabilitation for a covered employee who comes forth voluntarily for treatment. They argued that this approach serves the dual goals of providing treatment to those who both want and need treatment, while allowing an employer to terminate those who pose too great a risk to the employer's business. About ten percent of the commenters favored automatic termination for any transportation employee with an alcohol misuse problem on the ground that such an employee poses too great a risk to the safety of passengers and the public at large.

Several of the matters at issue in the ANPRM are no longer issues, since the Act or other legislation mandates certain action. For example, the Act requires pre-employment, reasonable suspicion, random and post-accident testing for aviation, motor carriers, rail, and mass transit. Specific responses to the issues raised by the commenters as well as the specific statutory mandates,

authorizations, and prohibitions are discussed in more detail in this preamble and the preambles of the OA NPRMs.

The NPRM

General Information and Definitions

Throughout this document, we have generally relied on or referred to the results of many studies concerning alcohol. Parenthetical references to these studies are included in the text; their full names are listed alphabetically in a bibliography in appendix A. Copies of these studies have been placed in the OST rulemaking docket. It is important to note that the test data we have are not complete; often the database includes only those tests that were performed. Tests are performed after some accidents, but not others, depending upon current regulatory requirements, the availability of testing personnel, and location and timing of accidents. Also, data are not comparable among the transportation modes, because of differences in reporting requirements, databases, and time periods. In addition, the referenced studies generally used different parameters and are therefore not comparable to each other.

Many of the words relating to alcohol are used interchangeably in our society, which may cause some confusion. In this document, we use the terms "driving while intoxicated" (DWI) and "driving under the influence" (DUI) to refer to the same thing: violation of state and/or Federal alcohol concentration standards defining intoxication. "Zero tolerance" refers to a 0.00 alcohol concentration standard. "Impairment" and "under the influence" refer to the effect of alcohol ingestion in the performance of a safety-sensitive function, without regard to a specific alcohol concentration.

Existing Safety Problem

Effects of Alcohol

The potential effects of alcohol misuse are substantial in terms of lives lost, injuries and environmental and property damage. Alcohol misuse claims at least 100,000 lives annually, 25 times as many as all illegal drugs combined. In 1991, 41,462 deaths occurred on our nation's highways, of which 38.5 percent involved an intoxicated (with an alcohol concentration over 0.10) driver or non-occupant (e.g., pedestrian), and another 9.5 percent where at least some alcohol was involved. (National Highway Traffic Safety Administration, "1991 Alcohol Fatal Crash Facts.")

Ethanol (the psychoactive component of alcoholic beverages) is a central nervous system depressant. It has been widely recognized for years that consumption of alcohol can degrade performance of demanding or delicate tasks. There is less agreement, however, about how much alcohol must be ingested before there is a significant degradation of performance. Studies have indicated that the effects of alcohol vary among individuals, and, even for a given individual, alcohol will have varying effects depending on such factors as motivation, fatigue, and previous experience with alcohol (Zero Alcohol, 1987; Ryder, 1981; Landauer, 1983; Lister, 1983). One reason for the substantial variation among individuals is that ingestion of a specified quantity of alcohol by two people will not necessarily produce the same alcohol concentration in each, even if they have the same body weight (Zero Alcohol, 1987).

In one study, for example, it was found that a given body-weight-adjusted dose of ethanol could produce a range of alcohol concentrations of .036 to .095 (O'Neill, 1983). In addition, alcohol appears to enter the blood stream at different rates in different people (Zero Alcohol, 1987). In another study, subjects were given controlled doses and had equal amounts of food in their system. Nevertheless, the time required to reach the peak alcohol concentration varied from 15 to 90 minutes after ingestion (Wilson, 1984).

There also are performance differences between individuals that are unrelated to the blood alcohol concentration. It appears that highly skilled professionals may be better able to compensate for the physiological effects of alcohol than persons who are less skilled, particularly at lower alcohol concentrations. In two studies comparing the effect of alcohol on the performance of racing drivers and ordinary drivers on a closed track, the skill of the ordinary drivers showed some degradation at an alcohol concentration of 0.05, while the racing drivers showed no impairment until they reached substantially higher alcohol concentrations (Forney, 1961). Similarly, in a comparison of nonprofessional and professional pilots at alcohol concentrations of 0.04, 0.08, and 0.12, the nonprofessionals made numerous errors in tracking, while the professionals' tracking ability did not decrease even at the highest alcohol concentration (Billings, 1972). The study noted, however, that the professional pilots committed more procedural errors than normal after alcohol consumption. Compounding factors, such as fatigue and unexpected challenges, are likely to affect results in a real-world situation.

Most States have adopted an alcohol concentration of 0.10 as the definition of intoxication in connection with laws on driving under the influence for non-commercial as well as for commercial operators. Some use it as a rebuttable presumption of a violation; others as a *per se* violation. Five states have lowered their alcohol concentration standards to 0.08; and a number of states are in the process of considering adoption of the 0.04 FHWA alcohol concentration standard for commercial drivers. States with alcohol concentration standards for operating recreational vessels or aircraft typically use 0.10.

As indicated above, however, a number of laboratory studies have shown that performance on some tasks can begin to degrade at alcohol concentrations well under 0.10 (Moskowitz, 1973; Drew, 1959; Landauer, 1983). Some studies have suggested that performance degrades in a linear fashion, beginning with the lowest levels tested (Moskowitz, 1985; Drew, 1959). Blood alcohol concentrations (BAC) lower than 0.05 have been associated with increases in errors in tasks requiring divided attention, and it appears that cognitive performance is decreased for most individuals at BAC's of 0.04 or less (Zero Alcohol, 1987; Evans, 1974). Low alcohol concentrations have also been shown to affect a driver's stopping distance and to increase errors in steering (Laurell, 1977). There is no definitive answer to how much the risk of accident occurrence increases as a result of the performance deficit, but some relationship can be assumed. Those OAs in the Department that have set allowable alcohol concentrations for transportation workers (FAA, FHWA, FRA and Coast Guard) generally have used 0.04 as the prohibited concentration.

The Alcohol Problem—Generally

The National Institute on Alcohol Abuse and Alcoholism (NIAAA) reported in 1987 that two of every three adults in the United States drink, but 10 percent of those drinkers consume half of the nation's beer, wine and liquor. The National Institute on Drug Abuse (NIDA) reported that an estimated 17 million U.S. adults are alcoholics, which is about six times higher than the number of cocaine users. (NIDA study, 1989). While it is difficult to estimate the precise cost to society from alcohol misuse, there is no doubt that the cost is enormous. The potential effects of alcohol misuse are substantial in terms

of lives lost, personal injuries, property damage, business losses (lost productivity, absenteeism, increased health care costs, etc.) and environmental damage.

According to a Research Triangle Institute study performed for the Department of Health and Human Services, the overall economic cost to American society from alcohol misuse was $89.5 billion in 1980. This amount represents direct costs, such as medical treatment, and indirect costs, such as lost wages and reduced productivity. In 1987, the NIAAA estimated the economic costs to society of alcohol misuse to be nearly $117 billion a year, including $18 billion from premature deaths, $66 billion in lost productivity, and $13 billion for rehabilitation. Assuming the base numbers are still the same, inflation presumably has increased the cost in current dollars.

Alcohol Misuse in the Transportation Industry

General

Generally, the Department's previous alcohol misuse prevention efforts have focused on alcohol as it affects an individual's medical qualifications; prohibitions against on-duty use, operating while under the influence, and, in certain cases, use during defined pre-duty periods; and sanctions for violations of the Federal regulatory scheme, as well as sanctions for violations of State alcohol laws. Thus alcohol testing, with limited exceptions, has been left to State enforcement. (Current FRA rules require post-accident and authorize reasonable cause testing. The FAA requires crewmembers to submit to State tests upon request and to furnish the results to the Administrator. The Coast Guard also has existing requirements concerning alcohol misuse, including some testing.) Each of the following sections briefly describes the existing OA rules on alcohol and contains Departmental data on the alcohol problem in each segment of the transportation industry. We specifically invite commenters to provide to the appropriate OA docket any additional relevant data about the alcohol problem in the different modes of transportation.

Aviation

The current FAA regulations prohibit a person from acting or attempting to act as an aircraft crewmember if he or she is under the influence of alcohol, has consumed any alcoholic beverage within the prior 8 hours, or has an alcohol concentration of 0.04 or greater. The FAA may medically disqualify a pilot with a history of drug dependence, alcoholism, or mental problems. Since having a valid medical certificate is an essential job qualification for a pilot, a pilot lacking such a certificate is not a "qualified individual with a disability," and the Americans with Disabilities Act of 1990 (ADA) does not require an aviation employer to provide "reasonable accommodation" to such an individual.

In 1987, the Department's Inspector General checked the National Driver Register (NDR) against records in the Florida Department of Motor Vehicles; it found that nearly 8,000 FAA-certified pilots in Florida had been convicted of drunk-driving offenses. Recent legislation allowed FAA and the rail industry to use the NDR to locate and review individual driving records to screen qualifications of airline pilots and locomotive engineers. The FAA was unaware of these DUI convictions because the pilots had not reported them to the FAA as required. The FAA then issued a DUI enforcement policy and a rule that includes, among other matters, a process for examining driving records. Pilots with 2 or more drug- or alcohol-related driving offenses within 3 years are subject to FAA certificate revocation action.

There has never been an accident involving a large U.S. passenger airline in which the probable cause was attributed to alcohol use. However, in August 1990, three Northwest Airlines pilots were sentenced for flying while intoxicated between Fargo, ND, and Minneapolis, MN. Two hours after the flight ended, the crew captain's alcohol concentration was found to be 0.13; he testified that he drank 20 rum and cokes the night before the 6:00 AM flight. Starting in the early 1970's, the Air Line Pilots Association and the major airlines, in cooperation with the FAA, developed a program to identify alcoholic pilots, so that they could be treated and, as appropriate, returned to duty. More than 1,500 pilots have been through this program, with a relapse rate of approximately 10 percent. Since the program provides for stringent surveillance of treated pilots, there has been no compromise of safety. Nevertheless, the existence of such an extensive program and the occurrence of the Northwest pilots incident demonstrate that the air carrier industry is not immune to the problem of alcohol misuse. We do not have any data, however, on the costs of alcohol misuse in terms of lost productivity and increased medical expenses.

The National Transportation Safety Board (NTSB) has collected the following data concerning the relationship between alcohol and aviation accidents. From 1975 through 1986, eleven part 135 carriers (all except one were commercial air taxi cargo planes; the exception was a non-scheduled charter carrier with a foreign crew) were involved in accidents in which alcohol was determined to be a factor. As noted above, there have been no part 121 or part 135 (large or air taxi/commuter air carrier) accidents in which alcohol has been determined to be a cause.

Motor Carriers

Currently, drivers found to be under the influence of alcohol or drugs are disqualified from operating a commercial motor vehicle (CMV), or any vehicle subject to the Federal Motor Carrier Safety Regulations (FMCSRs). FHWA regulations prohibit the use of alcoholic beverages within four hours of reporting to work and also prohibit a driver from working while having any measurable alcohol concentration or any detected presence of alcohol in his or her system. This effectively amounts to a zero alcohol limitation for CMV operators. In addition, a driver will not be considered physically qualified to drive a motor vehicle if, among other things, the driver is an active alcoholic. On October 4, 1988, FHWA issued requirements that, by October 1, 1993, states must adopt regulations whereby a commercial motor vehicle (CMV) operator convicted of having an alcohol concentration of 0.04 or above will be deemed to be DUI and subject to a disqualification of at least one year, or the states will lose a percentage of federal-aid highway funds. These alcohol concentration regulations are integral to the commercial driver's license (CDL) program, a nationwide restructuring (under FHWA and state auspices) of testing, licensing, and disqualification procedures for CMV operators. Mandated by the Commercial Motor Vehicle Safety Act of 1986, the CDL program includes a national clearinghouse through which states exchange commercial drivers' record information, including the alcohol concentrations of convicted drivers.

Accident statistics indicate that nearly half of the fatally injured noncommercial motor vehicle drivers had a measurable amount of alcohol in their blood (usually 0.10 or more) compared with about 15 percent of fatally injured drivers of medium and heavy trucks. Moreover, as the chart below indicates, for those truck drivers who had been drinking before an accident, the highest accident rate was among those consuming the most alcohol. Drivers of heavy and medium

trucks with measurable alcohol concentrations are involved in about 750 fatal crashes annually, along with another 7,700 crashes resulting in personal injuries and 4,750 crashes involving only property damage (Zero Alcohol, 1987).

	Percentage of all fatal truck accidents	Percent of the 15% of truck drivers who had alcohol in their blood
No Truck Driver Use of Alcohol	85.0	N/A
AC = 0.10 or more	9.1	60
AC = 0.04-0.10	2.7	18
AC = .03 or less	3.2	21

(Zero Alcohol, 1987) (FARS data tapes, 1982–1985) (AC means alcohol concentration).

In 1990, the NTSB published the results of a study of alcohol (and other drugs) used by CMV operators in fatal-to-the-driver, heavy truck accidents. Thirteen percent of the fatally injured drivers tested positive for alcohol. (Another 20 percent of the drivers tested positive for other drugs.) We also know that the cost of accidents to employers is substantial, over and above the lives lost, whether CMV accidents are caused by alcohol or something else. The National Safety Council estimates that an on-the-job accident is four times more costly than one that occurs in a personal vehicle, with an average cost to employers of $168,000 for a fatal accident and $6,900 for a non-fatal accident. The impact of on-the-job accidents caused by alcohol on employer costs is quite significant.

Rail

Current FRA regulations (49 CFR part 219) prohibit on-the-job use of, possession of, or impairment by, alcohol or any controlled substance, or having an alcohol concentration of 0.04 or more, for employees covered by the Hours of Service Act. FRA further prohibits any employee who performs service under the Hours of Service Act from using a controlled substance at any time, whether on duty or off-duty, except as authorized, and at the prescribed dosage, by a medical practitioner who is aware of the employee's duties. If a railroad determines that there is reason to believe that a covered employee has used a controlled substance, as evidenced by the results of certain tests, the railroad must immediately remove the employee from covered service.

Operation RedBlock is a peer prevention substance abuse program. Workers who use controlled substances or who report for duty under the influence can be identified, removed from the workplace, and referred for assistance. The covered employee can be referred for assistance by a peer, a supervisor or himself/herself. From February 1986, when mandatory FRA post-accident blood testing for alcohol began, through December 1991, 22 employees tested positive for alcohol (0.6 percent of employees tested). However, the number of positive findings has declined dramatically from 6 (1.0 percent of all persons tested) in 1989, to 1 (0.2 percent of all persons tested) in 1990. In 1991, 2 alcohol positives were recorded (0.4 percent of all tested.)

Since 1986, however, alcohol appears to have played a causal role in 10 accidents/incidents involving four deaths, three injuries, and property damage in excess of $3.2 million. In one, the engineer tested positive at an alcohol concentration of 0.16, and alcohol was found by the NTSB to be a contributing factor to the accident. The incident caused $1.58 million damage and the death of the engineer. In another accident, eight injuries and $194,000 in damages resulted, and a dispatcher tested positive at 0.15 alcohol concentration. In a 1990 accident, an engineer tested positive with an alcohol concentration of 0.05 after his train passed a stop signal and collided with another train, resulting in one injury and nearly $500,000 in property damage. In 1991, two brakemen were killed, one by a train when struck during a switching operation and the other when he fell from the side of a train. Post-mortem toxicology revealed alcohol concentrations of 0.04 and 0.08, respectively.

Reasonable cause breath testing under the FRA program or pursuant to railroad authority (triggered by rule violations, less serious accidents and injuries, or reasonable suspicion) has produced the following results: 11 of 348 persons so identified tested positive in 1986 (3.2 percent); 24 of 593 tested positive in 1987 (4.0 percent) 46 of 1005 tested positive in 1988 (4.6 percent); 31 of 973 tested positive in 1989 (3.2 percent); 32 of 2662 tested positive in 1990 (1.2 percent) and 37 of 2798 tested positive in 1991 (1.3 percent). FRA regulations define a "positive" breath test as one indicating an alcohol concentration of 0.02 or above. The significance of these results with respect to measuring prevalence in the population is difficult to determine, since some of the tests were performed because of reasonable suspicion of recent use. It should be expected that a high percentage of reasonable suspicion tests will be positive, since prohibited use or impairment had already been identified or suspected.

Mass Transit

FTA does not have any existing regulations concerning alcohol. Its primary mission is to provide grants for the financing and improvement of mass transportation systems. Many of FTA's grantees, however, are subject to other Federal requirements on alcohol use. All commuter rail operations funded by FTA, for example, are subject to FRA regulations.

The need for alcohol testing of mass transit employees recently was highlighted by a December 28, 1990, accident in Boston, Massachusetts, where a mass transit operator, with an alcohol concentration above 0.10, crashed a trolley car, injuring 33 people. In addition, the Senate Committee on Commerce, Science, and Transportation's report on S. 676, No. 102–54, (May 2, 1991), noted that in Philadelphia alone, transit operators have tested positive for drug or alcohol use in six major accidents between 1986 and 1990, involving at least 183 injuries and three deaths. (Separate figures for drug and alcohol involvement were not provided.) On August 28, 1991, a motorman later found to have an alcohol concentration of 0.21 crashed a subway train resulting in 5 deaths and 171 injuries; this accident broke the Congressional impasse on alcohol/drug testing legislation and led to the prompt passage of the Act. Following issuance of the 1988 FTA anti-drug rulemaking, some industry members indicated that alcohol is a more serious problem than drugs. One transit-specific survey indicates that between 1982 and 1985, only five out of 1,210 bus drivers tested positive for alcohol following a fatal accident. However, information originating from industry sources indicates that transit bus drivers are heavier drinkers than the general population (U.S. Census Bureau, 1984). One survey found that 57 percent of bus drivers drink alcohol at least weekly, with an average consumption of nine alcoholic drinks per week; the national median is six drinks per week (U.S. Census Bureau, 1984).

An FTA document entitled, "Substance Abuse in the Transit Industry," November 1991 (prepared under the UMTA nomenclature), was based upon a transit agency survey and an employee survey. Responding transit managers perceived alcohol as the major substance of misuse. Fifty-eight percent of the transit systems test for alcohol. Employee knowledge of coworker use of alcohol was extensive; about 70 percent

of employees surveyed had some knowledge, either through hearsay or by direct observation, of alcohol impairment of colleagues in the workplace during the past year. About six percent of the safety-sensitive employees reported alcohol use during or just before duty. Another 15 percent of the safety-sensitive employees reported less frequent alcohol consumption, but at nearly similar volume as those employees noted above. When comparing these data with those contained in the "National Household Survey on Drug Abuse: Population Estimates 1988" and the comparable 1990 NIDA survey, it appears that reported alcohol use in the transit industry is slightly lower than that reported for the general population.

Pipeline

RSPA has no specific regulations on alcohol. It does have a general regulation on health of pipeline workers at liquefied natural gas plants. Pipeline operators must look for any physical condition that would impair performance, including any observable disorder or condition that is discoverable by a professional examination.

We have no specific data on alcohol-related accidents or lost productivity data in this area; however, a number of the commenters in the anti-drug rulemaking seemed to believe that alcohol is a more pervasive problem than drugs in the pipeline industry. We also are aware that many companies in the pipeline industry are known to have alcohol prevention programs, but we do not have statistics or data on the prevalence of the problem in the industry. Although we recognize that the largest single cause of pipeline accidents is excavation damage by people digging into pipelines (people not regulated by RSPA), we specifically request public comment and data on alcohol misuse and its relationship to safety problems in the pipeline industry.

Legal Authority/Issues

General

The Omnibus Transportation Employee Testing Act of 1991 is a direct statutory mandate for the proposed alcohol testing in the aviation, motor carrier, rail, and mass transit industries. In addition to this authority, the general safety authority relied on for issuing the drug testing rules described above also provides a basis for issuing alcohol misuse prevention rules by FAA, FHWA, FRA, and RSPA. Although the existing case law addressing the constitutionality of employee alcohol testing programs remains more sparse than that for drug testing, the Department believes that existing legal precedents support this rulemaking effort to require alcohol testing in the regulated transportation industries.

Consistent with court findings in the area of government-mandated drug testing of employees, alcohol testing mandated by the government is considered a search within the meaning of the Fourth Amendment to the U.S. Constitution. See, *Schmerber* v. *California*, 384 U.S. 757, 767–768 (1966)("compelled intrusions into the body for blood to be analyzed for alcohol content" must be considered a Fourth Amendment search); *Skinner* v. *Railway Labor Executives' Association*, 489 U.S. 616–617 (1989) ("Subjecting a person to a breathalyzer test, which generally requires the production of alveolar or 'deep lung' breath for chemical analysis * * * implicates * * * concerns about bodily integrity and, like the blood-alcohol test * * * considered in *Schmerber*, should also be deemed a search.")

In deciding whether a particular search comports with Fourth Amendment protections, courts must determine that under all the particular circumstances the search itself is "reasonable." As the leading case on bodily fluid testing, *Skinner* v. *Railway Labor Executives' Association*, makes clear, issuance of a warrant or the existence of probable cause or individualized suspicion is not a minimum essential requirement in establishing the reasonableness of a search under an administrative testing program.

In *Skinner (id.)*, the Supreme Court upheld regulations issued by the Federal Railroad Administration governing drug and alcohol post-accident and reasonable cause testing of railroad employees (49 CFR part 219). The Court concluded that the testing procedures and methods of procuring blood, breath, or urine for testing as set forth in subparts C and D of the FRA regulations "pose only limited threats to the justifiable expectations of privacy of covered employees." 489 U.S. 628. In specifically focusing on the privacy implications of breath alcohol tests, the Court also pointed out that:

> The breath tests authorized by subpart D of the regulations (testing for reasonable cause) are even less intrusive than the blood tests prescribed by subpart C (post-accident toxicological testing). Unlike blood tests, breath tests do not require piercing the skin and may be conducted safely outside a hospital environment and with a minimum of inconvenience or embarrassment. Further, breath tests reveal the level of alcohol in an employee's bloodstream and nothing more. Like the blood-testing procedures mandated by subpart C, which can be used only to ascertain the presence of alcohol or controlled substances in the bloodstream, breath tests reveal no other facts in which the employee has a substantial privacy interest. * * * In all the circumstances, we cannot conclude that the administration of a breath test implicates significant privacy concerns. *Id.*, at 625–626.

While the Court indicated that the collection of urine samples requires employees "to perform an excretory function traditionally shielded by great privacy, [thus] rais[ing] concerns not implicated by blood or breath tests[,]" it pointed out that the FRA collection procedures significantly reduced the degree of personal privacy intrusion. *Id.*, at 626. The Court also examined the overall privacy expectations of covered railroad workers subject to the FRA testing requirements. It concluded that these expectations "are diminished by reason of [covered employees'] participation in an industry that is regulated pervasively to ensure safety * * * *Id.*, at 627.

By contrast, the Court found that the government's interests in seeking to determine the cause of an accident or incident, deterring alcohol and illegal drug use by rail employees, and safeguarding the general public are compelling. Under these circumstances, the Court held that alcohol and drug testing pursuant to the FRA regulations are reasonable within the meaning of the Fourth Amendment. Also, the Court found that the government's justification in testing for misuse of alcohol—a legal substance—was entitled to no less weight than its justification for testing for drugs, the possession of which is unlawful. Thus, as the Court pointed out, the FRA-prescribed toxicological tests were not designed "to assist in the prosecution of employees, but rather 'to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.'" *Id.*, at 621–622, 633 (quoting FRA regulations at 49 CFR 219.1(a)).

The proposed alcohol testing requirements for transportation industry workers published by each of the OAs in today's Federal Register are consistent with the Court's views in *Skinner*. Given the overwhelming public safety considerations associated with alcohol testing programs and the limited degree of intrusion into individual privacy interests engendered by the tests, testing programs along the lines proposed would be constitutionally permissible under the Fourth Amendment.

Also, the proposed requirement that an employer perform random alcohol testing that is performance-related, *i.e.*, related closely in time to an employee's actual performance of safety-related duties, further demonstrates the reasonableness of the proposal for Fourth Amendment purposes by ensuring that testing for misuse of alcohol is clearly related to the employee's performance of these duties. However, it is important to point out that performance-related testing is not an irreducible minimum requirement for ensuring that such testing passes Fourth Amendment muster. As a number of courts have pointed out, the reasonableness of a testing program does not necessarily turn on the existence of other alternatives that might be less intrusive. See *American Federation of Government Employees* v. *Skinner*, 885 F.2d 884, 897 (1989), *cert. denied*, 495 U.S. 923–924 (1990).

The lack of a demonstrated substance abuse problem among the workforce in a particular industry should not, of itself, pose insurmountable constitutional impediments to a testing program for that workforce. This point was made clear by the Supreme Court in *National Treasury Employees Union* v. *Von Raab*, 489 U.S.674–675 (1989), which was decided the same day as *Skinner*. In *Von Raab*, the Court upheld urinalysis testing for illegal drugs of U.S. Customs Service employees slated for promotions into positions that involved either interdicting illegal drugs or carrying a firearm. Despite the Commissioner of Customs stated belief that "Customs is largely drug-free," the Court concluded that there was little reason to suspect that the Customs Service was "immune" from society's pervasive drug abuse problem and held that the testing program was constitutionally defensible as a means to ensure that employees promoted to these sensitive positions are drug-free. *Id.*, at 660, 674. It stated that the government does not have to first establish that a specific industry has a problem. ("It is sufficient that the government have a compelling interest in preventing an otherwise pervasive societal problem from spreading through the particular context.") *Id.*, footnote 3.

Skinner and *Von Raab* established the analytical framework for courts to resolve constitutional challenges to various employee substance abuse testing programs. Not surprisingly, Federal courts reviewing anti-drug abuse regulations issued by the Department have relied extensively on these two decisions in upholding drug testing of safety- and security-sensitive workers in industries regulated by the Department. See, *Bluestein* v. *Skinner*, 908 F.2d 451 (9th Cir. 1990), *cert. denied*, 111 S.Ct. 954 (1991) (upholding constitutionality of Federal Aviation Administration regulations requiring random drug testing of flightcrew members, maintenance personnel, and other categories of employees in the commercial aviation industry); *International Brotherhood of Teamsters* v. *Department of Transportation*, 932 F.2d 1292 (9th Cir. 1991) (upholding constitutionality of Federal Highway Administration regulations requiring random, biennial, pre-employment and post-accident drug testing of commercial motor vehicle drivers operating in interstate commerce); *Railway Labor Executives' Association* v. *Skinner*, 934 F.2d 1096 (9th Cir. 1991) (upholding constitutionality of Federal Railroad Administration's regulations requiring random drug testing of railroad workers in safety-sensitive positions); *International Brotherhood of Electrical Workers* v. *Skinner*, 913 F.2d 1454 (9th Cir. 1990), and *United Steelworkers of America* v. *Skinner*, 768 F. Supp 30 (D. RI 1991)(upholding constitutionality of Research and Special Programs Administration's regulations requiring random, pre-employment, and post-accident drug testing of safety-sensitive employees engaged in natural gas, liquefied natural gas, and hazardous liquid pipeline operations.) See also, *Transportation Institute* v. *Coast Guard*, 727 F. Supp. 648 (D.D.C. 1989) (upholding constitutionality of Coast Guard regulations requiring pre-employment, periodic, post-casualty, and reasonable cause drug testing for merchant marine personnel; however, regulations requiring random drug testing of all vessel crewmembers were found to violate the Fourth Amendment because the safety-sensitive duties performed by this entire class of employees was not evident. Although the court noted that random testing for employees could be constitutionally acceptable, it held that the Coast Guard had not adequately described the safety-sensitive functions of the covered employees to allow the court to establish the necessary nexus. The missing safety nexus was established in a subsequent Coast Guard final rule reimplementing random drug testing).

Even pre-*Skinner* and *Von Raab* court decisions addressing the constitutionality of various employee alcohol testing programs have concluded that such testing comports with the Fourth Amendment. Thus, a state regulation requiring jockeys to submit to mandatory warrantless breath alcohol tests on each racing day was found to be constitutionally permissible. *Shoemaker* v. *Handel*, 795 F.2d 1136 (3d Cir.), *cert. denied*, 479 U.S. 986 (1986). Similarly, alcohol and drug testing during a pre-employment physical examination, work-related examination, return to work after unscheduled absence, or on the basis of reasonable suspicion or involvement in an accident or incident was upheld in the case of mass transit employees directly involved in the operation, maintenance, and decisionmaking of a public transit system. *Amalgamated Transit Union, Local 933* v. *City of Oklahoma City*, 710 F. Supp. 1321 (W.D. Okla. 1988). *Accord, Amalgamated Transit Union, Division 1279* v. *Cambria County Transit Authority*, 691 F. Supp. 898 (W.D. Pa. 1988)(mandatory drug and alcohol testing during annual physical examination does not violate Fourth Amendment).

Also, several more recent Federal court decisions upheld employee alcohol testing in the wake of *Skinner*. Thus, in *Transport Workers Union, Local 234* v. *Southeastern Pennsylvania Transportation Authority*, 863 F.2d 1110 (3d Cir. 1988), *vacated and remanded*, 492 U.S. 902 (1989), *aff'd on remand sub nom. United Transportation Union* v. *Southeastern Pennsylvania Transportation Authority*, 884 F.2d 1110 (1989), the U.S. Court of Appeals for the Third Circuit upheld, *inter alia*, random breath testing of mass transit operating employees. See also, *Tanks* v. *Greater Cleveland Regional Transit Authority*, 930 F.2d 475 (6th Cir. 1991) and *Holloman* v. *Greater Cleveland Regional Transit Authority*, 741 F. Supp. 677 (N.D. Ohio 1990), affirmed, 930 F.2d 918 (6th Cir. 1991) (upholding transit authority's drug and alcohol testing program requiring testing of blood, saliva, and urine in the face of challenges by two bus drivers subjected to random, post-accident, and periodic testing); *Moxley* v. *Regional Transit Services*, 722 F. Supp. 977, 980 (W.D. NY 1989) (upholding constitutionality of transit authority's drug and alcohol testing program and noting that "the Government's interest in the efficient and proper operation of the workplace is at a zenith where public's [sic] lives depend on the reliable and sober performance of Government employees").

Consistent with the Supreme Court's analysis in *Skinner* and *Von Raab* and lower court decisions, if the Congress determines that there is a need for properly-administered alcohol testing to ensure that employees in transportation

industries are not impaired while performing sensitive safety-related functions, that need would outweigh the privacy interests of these employees and, thus, would be constitutionally permissible.

The Americans With Disabilities Act of 1990

The Americans with Disabilities Act of 1990 (ADA) does not, in any way, preclude or interfere with employers' compliance with the Department's proposed or existing drug and alcohol testing regulations. However, Title I of the ADA, which prohibits discrimination against a "qualified individual with a disability," may affect the personnel actions an employer might wish to take with respect to some individuals who test positive for alcohol or drugs or otherwise violate the prohibitions of the Department's drug and alcohol rules.

Title I covers employers who have fifteen or more employees for more than 20 calendar weeks in a year (Section 101(5)(A)). Until July 26, 1994, only employers with 25 or more such employees are covered. Covered employers may not discriminate against a qualified individual with a disability with respect to applications, hiring, advancement, discharge, compensation, or other terms, conditions or privileges of employment (Section 102(a)).

Before discussing the effect Title I may have on employer personnel actions following a positive DOT-mandated drug or alcohol test or other violations of DOT drug and alcohol rules, it is important to note the specific ADA provisions that address DOT drug and alcohol rules. The ADA specifically authorizes employers to require that employees comply with the standards established in regulations of the Department of Transportation if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation). (Section 104(c)(5)(C)). By authorizing employers to require employees to comply with the standards in DOT rules, this provision authorizes compliance not only with testing provisions of the rules but also of other drug and alcohol-related provisions that affect safety-sensitive employees (e.g., pre-duty abstinence, on-the-job use). The legality under the ADA of employer compliance with DOT drug and alcohol requirements other than those concerning testing is underlined by several other provisions of Title I. An employer may prohibit the use of drugs and alcohol in the workplace, may require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs in the workplace, and may require that employees conform to the requirements of the Drug-Free Workplace Act (section 104(c)(1–3)).

Concerning drug and alcohol testing and its consequences, the statute further provides that nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to (1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and (2) remove such persons who test positive for illegal use of drugs and on duty-impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c). (Subsection (c) includes the statutory language cited above.) (Section 104(e)). These ADA provisions clearly specify that the ADA does not interfere with the compliance by covered employers with DOT regulations concerning drug and alcohol use, including requirements for testing and for removing persons who test positive from safety-sensitive functions. Under the ADA, an employer is not viewed as "discriminating" for following the mandates of DOT drug and alcohol rules.

In considering the effects on the personnel actions that employers choose to take after a safety-sensitive employee tests positive for drugs or alcohol or otherwise violates DOT drug or alcohol rules, it is important to note that the ADA's prohibition of employment discrimination applies only with respect to a "qualified individual with a disability." The ADA specifically provides that an employee or applicant who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability" (section 104(a)). The ADA does not protect such an employee from adverse personnel actions. For purposes of the ADA, the drugs that trigger this provision are those they use, possession or distribution of which is prohibited by the Controlled Substances Act (section 101(6)). The five drugs for which DOT mandates tests fit this definition (alcohol is not a drug covered by the Controlled Substances Act).

What does "currently engaging" in the illegal use of drugs mean? According to the Equal Employment Opportunity Commission (EEOC), whose rules carry out Title I, the term "currently engaging" is not intended to be limited to the use of drugs on the day of, or within a matter of days or weeks of, the employment action in question. Rather, the provision is intended to apply to the illegal use of drugs that has occurred recently enough to indicate that the individual is actively engaged in such conduct. (56 FR 35745–46, July 26, 1991). It is clear that an individual who fails a DOT-mandated drug test is currently engaging in the illegal use of drugs. Therefore, under Title I, an employer may discharge or deny employment to an individual who fails a DOT-mandated drug test.

This provision that an individual who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability" does not apply, of course, if the individual is erroneously regarded as engaging in the illegal use of drugs. In addition, if an individual, even a former user of illegal drugs, is not currently engaging in the illegal use of drugs and has successfully completed a supervised rehabilitation program or otherwise has been successfully rehabilitated, or is participating in a supervised rehabilitation program, the individual can continue to be regarded as a "qualified individual with a disability," if the individual is otherwise entitled to this status (section 104(b)). An employer may seek reasonable assurance that an individual is not currently engaging in the illegal use of drugs (including requiring a drug test) or is in or has completed rehabilitation. Some employers (EEOC uses the example of a law enforcement agency) may also be able to impose a job qualification standard that would exclude someone with a history of drug abuse if they can show that the standard is job-related and consistent with business necessity (56 FR 35746, July 26, 1991).

Unlike the situation with respect to the current use of illegal drugs, the use of alcohol contrary to law, Federal regulation, or employer policy does not deprive an individual of status as a "qualified individual with a disability" that he or she would otherwise have under Title I. An individual is protected by Title I, however, only if the individual has a disability in the first place. (This is also true with respect to a former drug user or any other individual who seeks the protection of the ADA.) To have a disability, an individual must have a "physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such

impairment, or being regarded as having such an impairment" (section 1(2)). While, as the EEOC notes in its Title I regulation, "individuals disabled by alcoholism are accorded the same protections accorded other individuals with disabilities" (56 FR 35752, July 26, 1991), not all individuals who use alcohol in violation of law, Federal regulation, or employer policy are "disabled by alcoholism."

The courts interpreting section 504 of the Rehabilitation Act of 1973 (with which ADA employment provisions are intended to be consistent) have concluded that alcoholism can be a disability which may call for reasonable accommodation. See, e.g. *Walker* v. *Weinberger*, 600 F. Supp. 757 (D.D.C., 1985); *Tinch* v. *Walters*, 765 F.2d 599 (6th Cir., 1985); *McKelvey* v. *Walters*, 596 F. Supp.1317 (D.D.C., 1984); *Anderson* v. *University of Wisconsin*, 665 F. Supp. 1372 (W.D. Wis., 1987), aff'd 841 F.2d 737 (7th Cir., 1988); *Richardson* v. *Postal Service*, 613 F. Supp. 1213 (D.D.C., 1985); *Sullivan* v. *City of Pittsburgh*, 811 F.2d 171 (3rd Cir., 1987).

The logic of the ADA, and EEOC's regulatory provisions implementing the statute, suggest that, in determining whether an employee or applicant who fails a DOT-mandated alcohol test or otherwise violates a DOT alcohol rule is disabled by alcoholism, the employer would answer two questions. First, does the individual have a physical or mental impairment; e.g., is the individual an alcoholic? (It seems clear that, in most cases, someone who is merely a recreational drinker would not have a physical or mental impairment related to alcohol use.) This question would probably have to be answered with the assistance of a physician or substance abuse professional. Second, if the individual is an alcoholic, does this impairment substantially limit a major life activity or is it regarded as substantially limiting a major life activity? This question would be answered on a case-by-case basis, following EEOC's guidance (see 56 FR 35740–44, July 26, 1991). It is likely that, under DOT's proposed alcohol rules, these determinations would be made by or in cooperation with the substance abuse professional that the proposed rules would require to be involved following a positive test or rule violation.

If the individual is determined to be disabled by alcoholism, then the employer may not discriminate against the individual on the basis of his or her disability and must make "reasonable accommodations" to the individual's known physical or mental limitations, unless the employer can demonstrate that doing so would impose an "undue hardship" on the employer's business.

The selection of an appropriate "reasonable accommodation" is done on a case-by-case basis, as EEOC guidance provides (See 56 FR 35744, July 26, 1991). Reasonable accommodation for an individual disabled by alcoholism could include such actions as referral to an Employee Assistance Program or other rehabilitation program, provision of rehabilitation services, and giving an employee sufficient time to demonstrate that rehabilitation had been successful. *See, e.g., Washington* v. *Department of the Navy*, 30 M.S.P.R. 323 (1986); *Swafford* v. *Tennessee Valley Authority*, 18 M.S.P.R. 481 (1983).

Even when an individual is disabled by alcoholism, however, the employer is not required to provide a reasonable accommodation that creates an "undue hardship." Undue hardship involves significant difficulty or expense in, or resulting from, providing an accommodation. EEOC describes an undue hardship as "an accommodation that would be unduly costly, extensive, substantial or disruptive, or that would fundamentally alter the nature or operation of the business." (*Id.*) This concept takes into account the financial resources of the employer (e.g., an accommodation that would be reasonable for a large business may be an undue hardship for a small business). But the concept is not limited to financial difficulty. For example, if a small trucking company with two drivers determined that the accommodation that one of them needed for an alcoholism-related disability was lengthy in-patient rehabilitation, the company not only might find the accommodation beyond its financial resources but also too disruptive of its operations (i.e., a temporary replacement would have to be hired or the work of the firm be halved).

Under title I, an employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance or behavior as it holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee (Section 104(c)(4)). For example, if, as the result of alcoholism, an employee is chronically late or absent, or makes frequent job errors, the employee would be subject to personnel action on the same basis as any other employee who exhibited similar behavior for other reasons.

There are also situations in which meeting qualification standards of DOT safety rules, or having a valid license or certificate from a DOT operating administration, is an essential job qualification. If a truck driver does not meet FHWA qualification standards to obtain a Commercial Driver's License from a state, or if a pilot does not qualify for an FAA medical certificate, that individual is not a "qualified" individual with a disability, even if the reason for the failure to meet DOT qualifications is a condition that an employer might be required to accommodate under the ADA. The legislative history of the ADA specifically recognizes this special status for DOT qualification standards (See Senate Report 101–116 at 27, August 30, 1989).

Overview of the Operating Administrations' Proposed Rules

Purpose

Each of the OAs is proposing to establish alcohol testing programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions in the industry under its purview. Generally, the rules would prohibit any alcohol misuse that could affect performance of a safety-related function, including (1) Use on the job, (2) Use during the four hours (in most cases) before performance of a safety-sensitive function, (3) Having prohibited concentrations of alcohol in the system while performing safety-sensitive functions, (4) Exhibiting behavior and/or appearance characteristic of alcohol misuse or an adverse effect on the employee's ability to perform due to alcohol misuse while performing safety-sensitive functions, and (5) Use following an accident. The rules would require pre-employment, reasonable suspicion (which is comparable to reasonable cause testing as used in the DOT OAs' drug rules and as discussed in the DOT ANPRM on alcohol testing), random, post-accident, return-to-duty and follow-up testing for alcohol using an evidential breath testing device; refusal to take a required test would be prohibited. The primary purpose of the testing provisions is to deter misuse of alcohol. For those who persist in their misuse of alcohol, these tests also would provide for detection.

The proposed part 40 procedural rule published elsewhere in this **Federal Register** provides for two tests to ensure accuracy: an initial and a confirmatory test. Following a determination that an employee has misused alcohol, as

determined through testing or other means, the rules generally would require the employees removal from safety-related functions and provide a bifurcated system of consequences:

(1) Following a determination that the employee has violated prohibitions in these rules, an employee must be removed from and could not be returned to a safety-sensitive function until, at a minimum,

(a) The employee undergoes evaluation, and where necessary, rehabilitation,

(b) A substance abuse professional determines that the employee has successfully complied with any required rehabilitation,

(c) The employee tests at less than 0.02, and

(d) The employer determines that the employee can resume safety-sensitive functions;

(2) An employee with an alcohol concentration of 0.02 or greater but less than 0.04 would not be permitted to perform safety-sensitive functions for

(a) A minimum of eight hours or

(b) Until a retest shows that the alcohol concentration has dropped below 0.02.

The proposed rules also would impose reporting and recordkeeping requirements and provide for alcohol misuse information for employees, supervisor training, and referral of employees to employee assistance programs (EAPs).

There are some differences among the OA NPRMs. For example, some OAs have regulatory authority over employers/companies only; others have regulatory authority over employees. Also, employees holding a license or certificate may be subject to customary agency action against their license or certificate in addition to the consequences proposed for violations of these rules. See the individual OA preambles for an explanation of any differences from the general requirements discussed above.

Applicability

The OA existing drug rules generally cover persons who perform sensitive safety- or security-related functions in commercial transportation. They affect approximately 4 million persons and include, for example, commercial truck drivers, pilots, pipeline employees, licensed and documented mariners and others serving on board a vessel with a licensed operator, and railroad workers subject to the Hours of Service Act. (An FTA proposed rule published in today's **Federal Register** would add drug testing for such workers as transit bus and subway operators.) If the proposed alcohol testing rules covered the same population, the inclusion of intrastate truck and motor coach operations (including those operated by Federal, State and local government agencies, church and civic organizations, farmers and for-hire companies) under the Act would increase total persons covered by the alcohol testing rules to about 7 million (this number excludes the maritime industry personnel covered by the drug rules, but not by the alcohol proposals, and is increasing as more people apply for Commercial Drivers Licenses).

In the ANPRM, we asked what, if any, rationale there is for covering a different population for alcohol testing than drug testing. It would appear that the same employees who could cause safety problems if they are on drugs could cause problems through misuse of alcohol. The basis for imposing any requirements concerning alcohol misuse should be the performance of safety-sensitive functions. Therefore, we are proposing to cover the same population under the proposed alcohol testing programs. Although the term "security" is used with respect to aviation passenger and baggage screeners, these persons really are performing a safety-related function-maintaining aircraft security, and, therefore, would be covered by the FAA NPRM.

The proposed OA rules focus on function rather than a defined job or position. An individual's job may encompass several different functions, some of which are not safety-sensitive. Since alcohol is a legal substance, alcohol use is relevant only to the extent it affects performance of a safety-related function. As a safety regulatory matter, for example, we are not concerned if an aircraft mechanic has a drink before or while performing functions that are not safety-related (as long as no other rule is violated); if the mechanic is receiving all-day training on retirement planning along with non-safety employees and the other employees can have a drink at lunch, the mechanic may also.

Alcohol Testing Procedures

Each of the OA NPRMs would require that employers ensure that all alcohol testing conducted under these rules complies with the procedures for alcohol testing contained in the proposed 49 CFR part 40 (the testing procedures NPRM) issued by DOT elsewhere in todays **Federal Register**. Each OA NPRM incorporates by reference the proposed 49 CFR part 40. Since the testing procedures are designed to apply to alcohol testing conducted by those OAs publishing NPRMs today, the DOT is issuing these procedures for incorporation into each OA NPRM in order to avoid unnecessary duplication.

In the ANPRM, we requested comment on which of the following test methods would be best for use in industry alcohol testing programs: (1) Preliminary or screening breath test devices, including tubes containing crystals that change color when exposed to alcohol and passive alcohol sensors; (2) Evidential breath test devices; (3) Blood; (4) Urine; (5) Saliva; and (6) Psycho-physical sobriety tests, such as the Walk and Turn, One-Leg Stand and Horizontal Gaze Nystagmus. Since that time, other testing devices for so-called "performance testing" and "fitness for duty testing" have become commercially available. As with saliva testing (see below), these devices generally are not recognized as evidential test devices (those that provide the necessary verification of an accurate result and the testee's identity upon which permanent employment consequences should rest). The Department intends in the future to seek comment on the scientific, technological, and legal status of these performance testing devices in a separate notice.

All of the preliminary breath test devices are useful as screening devices for determining the presence of alcohol and the need for further testing. As many commenters noted, they are inexpensive and easy to transport. While some are quite accurate at measuring an individuals alcohol concentration, others are not or their accuracy is too sensitive to environmental conditions. None of the preliminary breath devices currently provides the necessary verification of an accurate result upon which permanent employment consequences should rest. The National Highway Traffic Safety Administration (NHTSA) recently tested a saliva device, which represents a relatively new technology, but did not find it accurate enough to be considered an evidential alcohol testing device.

We agree with assertions by several commenters that blood testing is accurate and, conducted according to the proper procedures, provides evidential-quality results. However, it has several drawbacks. It is physically more invasive than other techniques and requires collection by qualified professionals at suitable locations. Blood test results would not be available immediately, since samples must be sent to a laboratory for analysis; this raises safety problems in the alcohol area that are of less concern in the drug area. Waiting a few days for a drug test result is still valuable, as drugs may stay

in the body for some time and the presence of drugs in urine does not necessarily mean that the person was affected by the drugs on the day tested or during the performance of safety-sensitive functions. In contrast, alcohol in the blood is affecting the person; therefore, to protect safety, it is best to determine the test result immediately to enable immediate removal from a safety-sensitive position. Blood testing also raises concern in some peoples minds because of fear of needle sticks as well as the perceived potential for spreading disease. Whether blood testing was required or simply permitted, it would require the establishment of complex collection and chain of custody procedures similar to those needed for drug testing. Its use also would require that the Department establish procedures for the certification of laboratories to do the testing, a task for which the Department lacks resources and expertise. It also would require that the federal government inspect and monitor those laboratories to ensure compliance if DOT did not find that adequate certification existed. There is currently no parallel in the alcohol area to the NIDA drug testing laboratory certification process (which the OAs rely on in their drug testing rules). Consequently, we do not propose to require or permit blood testing under the rules.

This is not to say that blood testing is not a legally valid means of establishing alcohol concentration, on the basis of which it is appropriate to take action with respect to an employee. For example, existing Coast Guard alcohol testing regulations provide for post-accident alcohol blood tests in some situations. The validity of these procedures, which are subject to evidentiary hearings, has long been recognized in administrative and court proceedings, and it is not brought into question by the Department's proposal to use breath testing in other contexts.

Some commenters noted the convenience and cost savings of using urine samples taken under the drug program for both drug and alcohol testing. Urine testing has the same drawbacks as blood testing with respect to delay in obtaining the result and the need for complicated collection, chain of custody and laboratory certification and inspection procedures. Urine alcohol testing also does not give a reliable indication of the current alcohol concentration without the time and cost of obtaining two successive urine samples. In order to establish with certainty the alcohol concentration at the time of the test, the collector must ensure that the individual completely emptied his or her bladder for the first sample; this is difficult to verify. Even with two successive samples, some experts regard the conversion factors as imprecise. While we strive for efficiency in our rulemaking, we do not believe that using urine makes sense for alcohol testing conducted to accomplish a safety objective.

Behavioral sobriety tests, while useful in conjunction with other tests, would not be a suitable method to use in our rules; they are subjective, require significant amounts of training to implement, are less reliable at the low alcohol concentrations that the OAs propose testing for, and consume a considerable amount of the tester's and the employee's time. They also cannot provide a quantified result, as required by the Act.

Part 40 proposes exclusive reliance on evidential breath test devices (EBTs) listed on NHTSAs Conforming Products List (CPL)(49 FR 48854, December 14, 1984), which sets out model specifications for EBTs used by State law enforcement officials, for alcohol testing under these rules. NHTSA carries out programs relating to the safety performance of motor vehicles and drivers and is actively involved in developing programs to reduce alcohol and other drug use among drivers. EBTs that meet NHTSA CPL specifications are highly accurate at detecting and documenting low alcohol concentrations, if they are properly calibrated and operated by trained personnel. Breath testing raises some problems with test validity and employee verification discussed earlier in the section on the public hearing. Therefore, we also propose that the EBTs would have to be capable of: (1) Printing three copies of each test result; (2) Numbering each test consecutively; (3) Processing an air blank (test of ambient air) with printed record; (4) External calibration; and (5) Distinguishing alcohol from acetone at a 0.02 concentration. Additional testing procedures to protect the integrity of the process are proposed in the part 40 procedures NPRM published elsewhere in today's **Federal Register**.

Evidential breath testing is as accurate, faster, relatively less expensive, and less invasive and frightening than blood testing. It eliminates the need for elaborate procedures for packaging, chain of custody, and laboratory certification. Since the rule would prohibit an indication of a specific concentration of alcohol in the system, there is no need for a medical review officer to interpret positive results, as is required under DOT's drug testing rules. Use of these devices is possible in all transportation settings envisioned in those industries for which the OAs are issuing rules today and provides an immediate confirmed result, which enables immediate removal of the employee who has misused alcohol. Breath testing devices have been in use a long time; all states accept breath test device results as credible evidence of an individual's violation of a law establishing a *per se* prohibited blood alcohol concentration, so long as the devices are properly calibrated and operated by trained personnel. Each device on NHTSA's conforming products list, with or without a printer, has been accepted by at least one state for use in court proceedings in that state. (Acceptance by a state of a particular device is not, however, necessary for the use of that device in that state for purposes of the DOT testing program.)

This discussion is in the context of an extensive, multi-modal testing program, including random testing as well as testing triggered by reasonable suspicion of the occurrence of an accident. Greater protections are needed in such a program, especially in the absence of procedural protections present in some existing programs that may use non-evidential testing methods in some circumstances. For example, the Coast Guard post-accident alcohol testing program can involve an administrative proceeding at which the employee has the opportunity to challenge test results before a license is revoked or an investigative inquiry at which further evidence could be introduced. In any event, the use of non-evidentiary alcohol testing devices alone would not meet the statutory requirement for verification in the testing program proposed by the five modal NPRMs and these proposed procedures.

The Department considered allowing the use of screening devices (*e.g.*, saliva and preliminary breath testers) for initial tests followed with confirmation by evidential devices. Since the Act requires a test that uses a scientifically recognized method to confirm an impermissible concentration of alcohol, employers must purchase or have access to an evidential breath test device in any event. Alcohol is processed by the body so rapidly that, particularly at low alcohol concentrations, the confirmation test must be conducted within 15–30 minutes in order to verify the initial test. The employer can use the evidential device both for the initial and confirmation tests. Using screening devices would not cut the costs of the program since the per test costs of the screening devices would exceed those of the already purchased EBTs. In addition

to the cost of purchasing and using screening devices, some of those devices are less accurate and would record false positives, directing more employees to the confirmation test at greater cost to the employer. In addition, at lower alcohol concentrations, they may record false negatives; i.e., they would not identify all persons with prohibited concentrations of alcohol for confirmation testing, allowing some violators to escape detection. Finally, it would be difficult for the employer to establish that the initial tests had been conducted to establish compliance with the rules because they could not provide the same type of record as the evidential breath devices. Comment is specifically sought on whether the requirement for EBTs for screening purposes is too restrictive. If screening devices were to be allowed, other procedural requirements of these rules and the proposed part 40 would need to be changed. For example, since screening devices are not capable of recording the sequential number and result of the initial test, what other records would suffice, if any, to satisfy the verification needed?

We are proposing the only testing method and testing devices that currently meet the criteria that the Department has determined are necessary to the success of these programs. At this time, none of the alternative testing methods of which we are aware is now appropriate for use in these proposed programs. While there may be some promising techniques under development that someday may satisfy the Department's criteria, they are not sufficiently developed to warrant inclusion in this rulemaking at this time. If, in the future, the current drawbacks of alternative testing methods are resolved or other testing devices are developed that have the requisite capabilities, we will consider permitting their use for alcohol testing under these rules.

Definitions

Some of the definitions, such as those defining *accident, covered employee,* and *safety-sensitive function,* among others, will be different in each OA NPRM based on differences in the individual regulated industries; some, such as *consortium,* are umbrella definitions that include all of the customary terms used in the different industries. Other definitions are identical in all of the OA NPRMs. *Alcohol concentration* in all of the proposed rules means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under these rules. For example, an alcohol concentration of 0.04 means 0.04 grams (four one-hundredths of one gram) of alcohol in 210 liters of expired deep lung air. This breath standard is equivalent to a blood alcohol concentration of 0.04.

The definition of *alcohol use* means consumption of any beverage, mixture, or preparation, including any medication, containing ethyl alcohol. Since ingestion of a given amount of alcohol produces the same alcohol concentration in an individual whether the alcohol comes from a mixed drink or cough syrup, the Department would apply the prohibitions in these rules to the use of any substance containing alcohol, such as prescription or over-the-counter medication or liquor-filled chocolates. Allowing an exception for medication would make it very difficult, if not impossible, to enforce the rules. Moreover, alcohol-based drugs could be used to satisfy alcohol needs rather than medical needs, if permitted. We believe there are now non-alcohol alternatives for all non-prescription medications, but we specifically seek comment on this. Prescription medications containing alcohol may have a greater impairing effect due to the presence of other elements, *e.g.*, antihistamines. We are not aware of prescription medications used (over a long term) that cannot be formulated in an aqueous preparation and that would themselves be safe to use while at work. We request comment on prohibiting use of all medications containing alcohol. Should we also prohibit possession of such medications while performing safety-sensitive functions? What hardship would this prohibition cause? We recognize that operators who take their vehicles home may stop at the drug store to pick up medications on the way home.

The proposed definition of *substance abuse professional* (SAP) encompasses licensed physicians, limited to medical doctors and doctors of osteopathy; as well as licensed or certified psychologists, social workers and employee assistance professionals. All of the categories listed must have knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders. We specifically request comment on whether there is any other professional classification that we should include.

Preemption of State and Local Laws

The Act contains an express preemption of State and local requirements that are inconsistent with the Federal alcohol rules applicable to the aviation, highway, and transit industries. Through its implementation of the Hazardous Materials Transportation Act (HMTA), the Department has long interpreted statutory preemption under an inconsistency standard by using a two-pronged test. The test was derived from Supreme Court decisions on preemption under the Constitution, has been followed successfully by the Department, and has been upheld by court decisions on preemption under the HMTA. In 1990, at the request of the Department, Congress recognized this long-standing interpretation by incorporating it into the statutory preemption provision of the HMTA. (49 U.S.C. App. 1804) The proposed rule would adopt this interpretation of the inconsistency standard for preemption by incorporating the two-pronged test.

Generally, the OA rules would preempt any state or local requirement if it is not possible to comply with both the Federal and the State or the local requirements or if compliance with the State or the local requirement would frustrate the Federal requirement. For example, a State requirement prohibiting the alcohol testing of transit employees would be preempted. Also a local requirement for a blood test to confirm alcohol use by a commercial truck driver would be preempted since it would frustrate accomplishment of the Federal rule by adding additional complicated procedures that may make it difficult to fully and accurately comply with the DOT procedures and by adding costs that may make compliance impossible for many companies. The rules would not preempt provisions of state criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the rule applies specifically to transportation employees or employers or to the general public.

The purpose of preemption is to avoid the confusion and expense of inconsistent requirements for employers or testing entities that operate in several states and to prevent interference with the functioning of the Federal program by extraneous, burdensome requirements that may defeat its purpose and benefits by making effective implementation difficult or impossible (*e.g.*, by requiring that employers pay for any rehabilitation or requiring confirmatory tests beyond those required by DOT). Because of the nationwide application of the Federal program and the interstate nature of the operations covered, even minor requirements in the aggregate may become unduly burdensome. For this reason, we intend to scrutinize closely State and local requirements under this

preemption authority. FRA operates under a statute with different preemption language; this is discussed further in the preamble of the FRA NPRM.

Other Requirements Imposed by Employers

Except as provided in the OA rules, employers retain their existing authority with respect to alcohol testing and termination or rehabilitation of their employees and employees retain their rights with respect to the use or possession of alcohol. An employer may continue to conduct an alcohol test under his/her own authority and conduct substance abuse rehabilitation programs. Employees are free to consume alcohol on their own time so long as that consumption does not violate any of the provisions of these rules or other applicable rules. Employers and employees are not free, however, to bargain away any of the requirements of the proposed rules. Whatever rights they may have to bargain collectively or otherwise agree on employer-employee relations, they cannot change or ignore Federal safety standards.

Requirement for Notice

Before performing an alcohol test under these rules, the employer must notify the employee being tested that the alcohol test being administered is required by these rules. The notice can be oral or written. An employer shall not falsely represent that a test administered under other authority is being administered under federal rules. We seek comment on whether the testing form proposed by part 40 is sufficient to constitute adequate notice.

Starting Date for Alcohol Testing Programs

The attached OA proposed rules discuss the specific implementation schedules for each industry. The requirements would be similar to those under the DOT drug testing rules. Generally, large employers would have one year from the effective date of the final rules in which to implement the requirements and small employers would have two years. Some variations justified by industry differences are noted in the OA proposals; FAA and FRA have a three tier phase-in for covered employers and contractors. The timetables generally would allow smaller employers to join alcohol misuse programs already established by larger employers or preexisting consortia, which should reduce their costs. The implementation schedules also take into account the time needed by the manufacturers to produce the required breath test devices. All employers must have an alcohol misuse program in place two years after the effective date of the rules. Thus, employers that begin to operate after the effective date of these rules must have their programs in place by the deadline according to size or by the time they initiate their operation, whichever is later.

Prohibitions

General

The OAs' drug testing rules target drug *usage* by covered employees, regardless of whether the use occurred on- or off-duty. A verified positive drug test indicates illegal use, whenever the drug was used. Moreover, it is not possible to determine, based on a chemical test, at what amount a particular drug impairs each user's performance of particular functions and thus could have safety consequences, so the mere presence of the drug must be prohibited. Data relating body fluid concentrations of alcohol to performance degradation is more extensive than that available for drugs. However, it is not possible to relate a given alcohol concentration definitively to impairment in specific individuals. The OAs therefore propose the following combination of prohibitions designed to prevent any adverse alcohol effect on a covered employee during performance of safety-sensitive functions.

Alcohol Concentration

As noted above, unlike some other drugs, alcohol is a legal substance with legally and socially acceptable uses for persons 21 years of age and older. The Department already has some prohibitions on alcohol misuse. Most of the OA's regulating commercial transportation (FAA, FHWA, FRA and USCG) have selected a 0.04 alcohol concentration as the *per se* standard for determining whether an individual is under the influence of alcohol, and prohibit any use of alcohol on the job. Some OA's (FAA, FHWA and USCG) subject certain persons to pre-duty abstinence periods. FHWA rules require that commercial vehicle operators with any measurable alcohol concentration be placed out-of-service for a 24-hour period. RSPA and FTA currently do not have alcohol concentration prohibitions.

Today's proposed rules would prohibit covered employees from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. They define alcohol concentration in terms of breath, not blood testing, and would specifically relate a violation of this prohibition to the alcohol concentration as indicated on the breath testing device to avoid problems associated with an absolute breath to blood correlation. In addition, no employer who actually knows that an employee has that concentration could permit the employee to perform or continue to perform safety-sensitive functions.

An alcohol concentration of 0.04 represents the point at or above which impairment for most individuals rises dramatically, thus justifying its use as a *per se* standard for commercial transportation employees. Studies about the effects of *any* alcohol, however, raise our concern about the effects of lower alcohol concentrations on transportation employees. For example, the National Academy of Sciences (NAS) noted that several credible studies measuring task performance at low blood alcohol concentrations indicate that, "[a]lthough individual reactions to alcohol vary depending on * * * [various] factors * * *, sensory and cognitive performance is significantly reduced at or below 0.04 percent BAC." (Zero Alcohol, 1987) The study concluded that "across broad populations of drivers, BACs exceeding about 0.04 to 0.05 clearly increase the probability of causing a crash. * * * [W]hen the driver's age and experience with alcohol are controlled for statistically, the risk of crash involvement increases at any recorded BAC above zero."

A recent National Highway Traffic Safety Administration (NHTSA) report to Congress stated that "[a]lthough the effects of alcohol on impairment and crash risk appear more dramatically above 0.05 or 0.08, for some drivers, any measurable alcohol puts them at increased risk." It noted that relatively few studies have looked at alcohol concentrations below 0.04; therefore, only a small number of studies have found clearly impairing effects for alcohol concentrations below 0.04. NHTSA noted that individuals performing more complex tasks (especially those involving a subsidiary task requiring time-sharing or divided attention) often show evidence of impairment at alcohol concentrations as low as 0.02. NHTSA concluded that one cannot specify an alcohol concentration above which all drivers are dangerous and below which they are safe or at "normal" risk. The NAS and the National Transportation Safety Board (NTSB) have favored setting an explicit policy of zero BAC. The NTSB said that "[i]t should be absolutely clear that no

alcohol is acceptable in commercial transportation because research has demonstrated that low blood alcohol levels can produce impairment." The Transportation Research Board, in a study performed for the FHWA during its Commercial Driver's License rulemaking, recommended a 0.04 BAC as the concentration where the serious penalties should apply to commercial motor vehicle drivers, but it noted that some degree of impairment such as slowed reaction time, loss of coordination, and deterioration in judgment begins with any BAC above zero. (Zero Alcohol, 1987)

Having any standard other than 0.00 raises troubling questions about whether an employer should allow an employee whose test shows an alcohol concentration between 0.00 and 0.04 to continue performing a safety-sensitive function. Clearly, the Department's concern about public safety and an employer's additional concern about liability are raised in a situation in which an employee "passed" a test with an indicated alcohol concentration below 0.04 and then begins or resumes performing safety-sensitive functions. The likelihood of being involved in an accident when performing safety-sensitive functions with a measurable alcohol concentration is increased. Therefore, we propose a two-tiered system of consequences discussed in detail later in this document. The covered employee must be removed from a safety-sensitive position at any alcohol concentration of 0.02 or greater. If the employees alcohol concentration is 0.02 or greater but less than 0.04, the employee would not be allowed to perform safety-sensitive functions until the next scheduled duty period (usually the next day), if at least eight hours has elapsed, or until a retest shows the alcohol concentration has fallen below 0.02. If the employee has an alcohol concentration of 0.04 or greater, the employee could not return to a safety-sensitive function until evaluated, treated, if applicable, and retested. In either case, the employee would be prevented from posing any danger to the public.

The Department has used the 0.02 alcohol concentration rather than 0.00, because it represents the lowest level at which scientifically accurate alcohol concentration can be measured given the limitations of any current technology (*e.g.*, blood, breath). Results below 0.02 are not statistically significant and would be forensically insufficient to support consequences under these rules. In essence, use of a 0.02 standard represents a zero tolerance standard for alcohol. NHTSA's model specifications for devices on the CPL were developed for police use under criminal laws prohibiting alcohol concentrations of 0.10 and above. Although all of the EBTs on the CPL exceed existing requirements, NHTSA plans to modify the model specifications and certify the devices at the 0.04 and 0.02 alcohol concentrations. The NHTSA proceeding would respond not only to these rulemakings, but also to the ongoing efforts of States to lower prohibited alcohol concentrations to 0.08 (0.02 for drivers under 21) and to the prohibition on 0.04 alcohol concentration or greater for commercial drivers.

Behavior and/or Appearance

The proposed rules would prohibit an employee from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while the employees behavior and/or appearance is characteristic of alcohol misuse or the employee's ability to perform his or her assigned functions is adversely affected by alcohol use. The proposed rules would prohibit an employer who actually knows the covered employee is in violation of this prohibition from permitting the employee to perform or continue to perform safety-sensitive functions. An employer observing such behavior and/or appearance would be required to conduct a reasonable suspicion test under these rules.

The time-frame for testing is limited because the body rapidly eliminates alcohol. This prohibition is therefore needed for circumstances in which it is infeasible or impossible to conduct a reasonable suspicion test in a timely manner (*e.g.*, an EBT is unavailable or broken). People are more familiar with the symptoms of alcohol intoxication than those of drug use; moreover, the presence of alcohol is easier to detect from physical symptoms (*e.g.*, breath) or behavior (*e.g.*, inability to walk a straight line), although alcohol symptoms often can be successfully masked. However, since observable alcohol-related behavior tends to become apparent only at fairly high alcohol concentrations—generally 0.12 and higher—, it is unlikely that misuse would be detected in this manner at alcohol concentrations in the 0.02–0.04 range. Thus, there are important safety reasons for requiring that an employee be removed from his or her safety-sensitive function based on behavior and/or appearance alone.

To the extent some OAs already permit removal of an employee based on observation alone, the employee has a right to an evidentiary hearing (*e.g.*, as part of a certificate revocation action). These rules would not provide for a right to a hearing. Under the proposed rules, a violation of this prohibition would require removal from a safety-sensitive position, and evaluation by a SAP. Rehabilitation, if necessary, and a determination that the employee is ready to return to duty as well as a result below 0.02 on a return-to-duty test would be required before the employee could be reinstated. Because this proposed prohibition involves a subjective determination, unverified by a test, and may provide an opportunity for the employer to harass an employee, should lesser consequences for violating this prohibition apply, *e.g.*, removal from the safety-sensitive function for 8 hours or until obtaining a result below 0.02 on a return-to-duty test? Would a lesser consequence under these rules impinge upon the employer's need to retain their authority to remove employees on this basis? The lesser consequences would not include a SAP evaluation. Should not a SAP evaluate the employee in view of the seriousness of his or her offense (observable alcohol-related behavior and/or appearance generally occur at high alcohol concentrations)? Is this any less of a safety concern because the decision is made based on a subjective observation?

On-Duty Use

The proposed rules also would prohibit a covered employee from using alcohol while performing safety-related functions and prohibit an employer who actually knows of such use from allowing the employee to perform or continue to perform safety-sensitive functions. The need for this prohibition is self-evident. Should this prohibition extend also to possession of alcohol on the job? What problems would such a prohibition raise? See the above discussion concerning the proposed prohibition on use of medications.

Pre-Duty Use

Drinking during off-duty periods may impinge upon a person's ability to function safely on the job. The proposed rules generally would prohibit a covered employee from using alcohol within the four hours preceding the performance of safety-sensitive functions. They also would prohibit an employer, who actually knows that the employee has used alcohol within that period of time, from allowing the employee to perform or continue to perform safety-sensitive functions. The FAA's long-standing eight-hour pre-duty use prohibition for crewmembers would remain in effect under its proposal. Because duty tours often are not predictable in the rail

industry, the four-hour period would be shortened for unscheduled assignments to the interval between being "called to duty" and "reporting for duty."

The Department specifically requests comment on a number of questions concerning pre-duty abstinence. Is the proposed abstinence period necessary if testing is required? Is it still valuable as an extra enforcement tool? Is it valuable for public perception; *i.e.*, should the Department consider public concern at seeing pilots drinking in an airport lounge or truck drivers drinking at a roadside restaurant, even though when they report for work a short while later they have no alcohol in their systems? Is four hours reasonable? Should all persons within an industry be subject to the same pre-duty limits, or do certain professions carry an extra duty of care? Does it matter that in some industries, lengthy abstinence periods may bar any drinking for days or weeks, because of the nature of work/rest shifts?

Use Following an Accident

Since it is important to determine whether alcohol is implicated in an accident, a covered employee who has actual knowledge of an accident in which his or her performance of a safety-sensitive function has not been discounted by the employer as a contributing factor to the accident would be prohibited from using alcohol for eight hours following the accident. The prohibition would end once the covered employee has taken a post-accident test under these rules or the employer has determined that the employee's performance could not have contributed to the accident.

The Department is aware of accidents in which employees who should have been tested after an accident left the scene and may have consumed alcohol. This rule would prevent employees who know they are subject to testing from explaining "positive" findings on an alcohol test by alleging they had a drink after the accident, since such action also would constitute a rule violation. In some situations, the employee involved in an accident may not know of the accident. For example, a mechanic makes a mistake that causes an accident hours later or half a continent away. Without actual knowledge of an accident, we do not believe a ban on drinking could be effectively enforced, but we specifically seek public comment on how to address this situation. See specific OA proposals that limit the application of this prohibition to performance of a safety-sensitive function at or near the time of the accident or on the vehicle or aircraft involved. Also, the FRA proposal does not include this requirement because under current FRA rules the employees involved remain on duty status after an accident.

Refusal to Submit to a Required Alcohol Test

The proposed rules would prohibit a covered employee from refusing to submit to required post-accident, random, reasonable suspicion or follow-up alcohol tests. This, in effect, provides that the employee must take those tests when required. The consequences for a refusal to submit to a required test would be the same as if the employee had tested at 0.04 or greater or had violated any of the other prohibitions in these rules. Failure to provide adequate breath for testing when required without a valid medical explanation or engaging in conduct that clearly obstructs the collection process would constitute a refusal to submit to testing. A covered employee subject to a post-accident test who leaves the scene of the accident without a valid reason before being tested would be deemed to have refused to submit to a required test. The proposed rules would prohibit an employer from permitting an employee who refuses to submit to testing to perform or continue to perform safety-sensitive functions. In addition, the FRA proposal would prohibit anyone refusing a required test from engaging in covered service for nine months. The FHWA would disqualify drivers for one year following a refusal.

An applicant's or employee's refusal to submit to a pre-employment test or a return-to-duty test would not trigger consequences under the rules that result in the need for evaluation. In those cases, the applicant or employee does not have to be removed from a safety-sensitive position. Since those tests are a condition precedent to starting or returning to safety-sensitive functions, the applicant or employee simply could not be hired or returned to duty.

Tests Required

General

In the Department's drug testing rules, we generally required pre-employment, periodic, reasonable cause/suspicion, post-accident and random tests (testing also is required for employees who seek to return to work following a positive test or refusal to submit to a test). The Act requires all these forms of testing except periodic tests, which generally are performed as part of required physical examinations for certification for some employees. Although periodic tests are discretionary under the Act, the Department has decided not to propose either requiring or authorizing periodic testing for alcohol at this time. We question its value with respect to alcohol if the employee would know when the test was to be conducted. We specifically request public comment on the utility of periodic testing. Would such a test be more likely to identify an alcohol misusing employee than existing safeguards or the provisions of these proposed rules? The tests required by these rules would be conducted after a triggering event (pre-employment/pre-duty, post-accident, reasonable suspicion, return-to-duty, follow-up or retest) and just before, during or just after performance of a safety-sensitive function (random).

Pre-Employment/Pre-Duty Testing

The Act requires pre-employment testing, which we noted in our ANPRM is one of the least useful types of tests when dealing with alcohol, because drinking off duty generally is legal and because alcohol remains in the body for such a short period of time. Often, a test result indicating alcohol use may only indicate bad judgment or bad timing (*e.g.*, one notices an employment advertisement after having beer and a hamburger for lunch, immediately applies, and is tested.) The drugs for which DOT requires testing are illegal at any time used and can stay in the body for a fairly long time, so pre-employment testing for illegal drugs makes more sense. In fact, some employers have detected a high rate of positives (3–8 percent in the transportation industry) from DOT-required pre-employment drug testing. Pre-employment tests comprise a large and costly portion of the total number of drug tests given, especially in industries with large employee turnover.

To make such a test more meaningful, we are proposing that a covered employee shall undergo alcohol testing any time prior to the first time the employee performs safety-sensitive functions for an employer. The employer would have the option of testing during the hiring process or before (preferably just before) the employee starts performing safety-sensitive functions. The latter option would enable the employer to avoid the cost of testing several applicants for each job, tie pre-employment tests to the performance of safety-sensitive functions and accommodate the statutory language requiring a pre-employment test for an "employee," rather than an applicant. The former option would permit identification of someone with alcohol in his/her system before incurring additional hiring

expenses. For the above reasons, the definition of "covered employee" used in these rules would include applicants for a safety-sensitive function as well as current employees applying to move into a safety-sensitive function. The rules would not confer any rights or consequences upon applicants or employees who fail a pre-employment test.

The rules would prohibit an employer from allowing an employee to perform safety-sensitive functions unless that employee has been tested with a resulting alcohol concentration less than 0.04. If the pre-employment/pre-duty test result indicates an alcohol concentration of 0.02 or greater but less than 0.04, the employee cannot perform or be allowed to perform safety-sensitive functions until the alcohol concentration falls below 0.02 on a subsequent test or until the next scheduled duty period, if it is not less than eight hours following the test.

The rules would not require an employer to administer a pre-employment test if the employee has had an alcohol test conducted under an OA alcohol misuse rule following part 40 procedures with a result less than 0.04 within the previous six months and the employer ensures that no prior employer of whom the employer has knowledge has records showing a violation of these rules within the previous six months. Generally, this means that when checking a prior employer to verify that the applicant had "passed" a previous alcohol test, the new employer would also verify that the prior employer has no records of a violation of an OA alcohol misuse rule. If the new employer knows the applicant had other employers within the last six months, the new employer would have to check them too. Does it make sense to restrict the latter requirement to six months? This option would provide the greatest flexibility for avoiding the constant retesting and related costs involved in an industry, such as trucking, which has a high employee turnover rate. The FHWA drug testing regulations currently allow a similar option for pre-employment tests. Should this option also be extended to the aviation, rail, mass transit and pipeline industries? An employer, of course, could choose to conduct pre-employment tests in lieu of reviewing information on past employment provided by the employee.

Should employers be required to give notice that a pre-employment test will be conducted to avoid the lunch situation described above? Should there be more serious consequences for failure of the test if such notice is given? Should an alcohol concentration of 0.02 be the standard for a pre-employment test, if, for example, a 24-hour notice were required? Should not the employer expect an applicant given such notice to have no alcohol in his or her system? Would not presence of any alcohol after such notice indicate a serious problem with the applicant? What cost or implementation problems would be associated with such notice, particularly for smaller employers? Would they be mitigated by a shorter notice period, such as eight or four hours? Eight hours generally represents the loss of a work day, which may impose hardship on some businesses. Four hours, the pre-duty abstinence period for most covered employees, may make more sense. Should applicants be allowed to waive such notice? Would such a waiver truly be a voluntary act? If not, should it matter? Would a waiver option introduce unfairness into the process for those who would prefer to wait the designated amount of time, since the employer may simply hire an individual who waived the right to wait before being tested?

Post-Accident Testing

Post-accident alcohol testing already is required by federal regulation in some transportation modes, and serves as a valuable accident investigation and enforcement tool. States also conduct post-accident tests, depending upon the circumstances. Post-accident testing for alcohol at remote locations can be more difficult to accomplish than drug testing, because alcohol passes from the blood and breath more quickly than most drugs. Also, delays in transporting trained personnel to an accident site can result in negative or inconclusive tests. The current drug rules of those OAs involved in this rulemaking proceeding require employers to test employees involved in an accident as soon as possible, but not later than specified maximum time limits (generally 32 hours).

The definitions of accidents or occurrences that would trigger a post-accident test vary by industry and are discussed in each OA's proposed rule. They generally are the same as the triggering events for post-accident drug testing. We are generally proposing that as soon as practicable following an accident, each employer shall test each surviving covered employee for alcohol, if that employee's performance of a safety-sensitive function either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The need for testing is presumed; any decision not to administer a test must be based on the employer's determination, using the best information available at the time the determination is made, that the employee's performance could not have contributed to the accident. See the OA proposed rules for additional events that trigger post-accident testing or for modifications to the general approach.

Any employee subject to post-accident testing who leaves the scene of an accident without a valid reason before the test is administered can be deemed by the employer to have refused to submit to testing; such a refusal is treated as if the employee recorded a test result of 0.04 or greater. The employer is responsible for judging the validity of the reason and generally must report the incident to the OA regulating the employer's industry. Where possible, employers should make every effort possible under the circumstances surrounding the accident to ensure that the employee is available for a post-accident test. This, of course, does not mean that necessary medical treatment for injured people should be delayed or that an employee cannot leave the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Because alcohol is eliminated from the body so quickly, using a 32-hour maximum limit as in the drug rules would be inappropriate. It is important that a post-accident test be administered as soon as possible to provide any information on whether alcohol misuse was a possible cause of or contributor to the accident. If a post-accident test is not administered within two hours following the accident, the employer would have to submit a report to the OA stating why the test was not promptly administered. If a post-accident test is not administered within eight hours following the accident, there is little likelihood of finding a meaningful alcohol concentration resulting from use preceding the accident. The employer then would have to cease attempts to administer the test and the report to the OA must explain why the employer was unable to administer a test. The Department recognizes there will be valid reasons for not conducting the tests in these timeframes, but every effort must be made to do so. It is important to note that this test is not meant to be a full toxicological workup for the purpose of determining accident causation. The primary purpose of the test is to determine whether the employee(s) involved should be removed from safety-sensitive functions.

FHWA is considering allowing employers to substitute a post-accident test administered by on-site police or

public safety officials, particularly if that test can be administered earlier than the employer can get to the scene. These local authorities often are first to arrive at an accident site, particularly if the accident occurs in a remote area, and sometimes are equipped to conduct field alcohol breath tests. We seek public comment on whether to allow employers to authorize, where feasible, on-site police or public safety officials to carry out post-accident testing, if they are first to arrive at the scene of the accident and they determine there is reason to test. To what degree should we allow employers to rest on the assumption that local police will administer an alcohol test, which presumably would be based only on local authority? How could we ensure cooperation in getting test reports from the police? How would conducting such tests deviate, if at all, from part 40 procedures or applicable DHHS guidelines? Is it possible to ensure employee rights, such as privacy, in that context? Is it only necessary that the test comply with the requirements applicable to the local authorities conducting it? We would not want to permit this option if police or public safety officials would use the results of the tests against the employee in a criminal proceeding where the local authority did not have independent probable cause to test. FRA has its own preexisting procedures for conducting a full toxicological analysis following an accident; see the FRA NPRM for its post-accident testing proposal.

Random Testing

In the ANPRM, commenters were requested to focus on how the objectives of random alcohol testing (*e.g.*, deterrence and detection) could be accomplished. The deterrent effect of random alcohol testing might not equal that provided by random drug tests, because alcohol is so rapidly eliminated from the body that violators are more difficult to detect. In view of the fact that alcohol is legal, we asked what is the significance of a random alcohol test of an employee indicating use. Random alcohol breath testing is considered a federally-mandated "search," under the Fourth Amendment. Accordingly, the proposed programs for detecting the misuse of alcohol promote our compelling interest in ensuring transportation safety. One option that we considered in the ANPRM was a "pre-performance" random testing requirement limited to the specific times an employee begins to perform a safety-sensitive function. That limitation provides the requisite nexus to ensuring proper performance of safety-related functions that is our primary concern and the principal purpose of these rules.

We are proposing to require random alcohol testing that is limited to the time period surrounding the performance of safety-related functions. An employee could only be tested while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. Obviously, the best time to test is before the employee begins to perform the safety-sensitive function. Detection at that point would prevent the employee from actually performing the function while he or she had alcohol in his or her system. However, if the employee understands that a random test would only be administered before he or she begins work and there is an opportunity to drink during work, deterrence is limited. The ability to test just before, during or just after performance increases the deterrent effect and may enable detection of employees who use alcohol on the job. The purpose of the concept of "just before" and "just after" is to avoid the problem that some safety-sensitive functions could not be interrupted for the performance of a test (*e.g.*, piloting an aircraft). It is intended to be close enough to the actual performance of the safety-sensitive function, however, that the test results would clearly indicate that the employee would be or was at 0.04 or above (or 0.02-or greater but less than 0.04) at the time when performing those functions. The rules also would provide that employers require that each covered employee selected for random testing proceed to the testing site immediately. In the event the employee is performing a safety-sensitive function when notified, the employer must ensure that the employee ceases the function consistent with safety and proceeds to the site as soon as possible. Should there be specific time limits on how long before or after performance of a safety-sensitive function a test can be given and still be reasonably performance-related? What period of time would make sense in view of the fact that the unannounced nature of the test provides its deterrence?

The rules would require each employer to randomly select covered employees at various times for unannounced alcohol testing. The employer must select covered employees for testing through a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each covered employee must have an equal chance of being tested under the random selection process used. During each year following the start of the employers random testing program, the employer would have to meet certain conditions: (1) The dates for administering random tests would be spread reasonably throughout the year (the deterrent effect would disappear if employees know that the employer had completed all required random tests for the year); and (2) The number of employees randomly selected for testing during the year would equal an annual rate of not less than a specified percent of the total number of employees subject to alcohol testing. Testing dates should not be predictable (*e.g.*, every Monday or the first week of each month). Because of the randomness of the testing, some employees may be tested more than once during the year, while others will not be tested at all.

Random testing pools could be formed in a variety of ways. To promote efficiency and reduce costs, particularly for smaller employers and employers subject to more than one OA rule, we permit the combination of geographically-proximate employees covered by different OA rules into one pool. To maintain fairness and the equal chance of each type of employee for selection, certain conditions could be set. For example, employees in any industry who travel most of the time could constitute one pool; others who remain in the vicinity of the testing site would be in another. However, if the testing method chosen required testing of employees immediately upon selection or whenever they first returned to the testing location after their selection (but still unannounced), there would be no need for separate pools. Any acceptable method must ensure that each employee has an equal chance of being selected for testing. Although these multi-modal pools would be permitted, other specific OA requirements might have to be met such as the FAA proposal to require prior approval of random testing pools.

If the employer joins a consortium, the rules would permit the calculation of the annual rate on either the total number of covered employees for each individual employer or the total number of covered employees subject to random testing by the consortium's pool covering the employer. This would mean that a consortium member could have less than its required number of random tests conducted if the overall consortium rate equals the required rate. Thus, if Employer A has ten covered

employees and the consortium has 500 covered employees in the pool covering Employer A, and a 50 percent rate applies, if Employer A chooses to have the rate based on the consortium, the consortium must conduct at least 250 tests even if only four or fewer covered employees of Employer A are tested. So long as each employee has an equal chance of being tested each time the consortium conducts random tests, the requisite deterrence factor remains. Membership in a consortium should improve deterrence for small companies because their employees would continue to perceive an equal chance of being selected throughout the year; it would avoid the situation where an employer of two conducts the one required test in June and both employees know they will not be tested for the remainder of the year. On the other hand, the relative perception of vulnerability to testing may lessen when a small group of employees is included in a larger pool and over time few members are selected.

We request comment on what annual rate to require for random testing within a 10 to 50 percent range. Under the Department's current drug testing rules, employers must conduct random drug tests at a 50 percent annualized rate; that is, the number of annual random tests conducted equal half the number of the covered population. We are asking for comment on whether the rate for alcohol can be lower because alcohol symptoms are somewhat better known and easier to detect. A greater chance of detection is one factor in deterrence and may provide a rationale for a lower testing rate. The Department currently believes that the higher the percentage, the greater the likely deterrence and detection. But costs also rise as the number of tests increases. What percentage best balances deterrence, detection, and cost? Commenters should note that the Department is publishing a separate ANPRM in today's **Federal Register** that seeks comment on whether there are less costly alternatives to the current drug random testing programs that could maintain an adequate level of deterrence and detection of illegal drug use.

In addition, the FRA currently is conducting a limited study of the effectiveness of random drug testing at a 25 percent rate; the results should be available as we are preparing the final alcohol misuse rules and may be helpful in determining the appropriate random rate for alcohol.

We specifically request commenters to provide extant data from their experience testing at different random rates in programs that are comparable to the OA proposals. We welcome comment on the applicability of data from one industry to another and from outside the transportation community. We also request comment on the relationship between drug random testing and alcohol random testing rates. In addition, we seek comment on how employers with large seasonal variances in numbers of covered employees should address the computation of the numbers of tests required?

Reasonable Suspicion Testing

Because alcohol use (at least at higher consumption amounts) often results in more observable symptoms than other drug use, and because more research has been done on how to train people to make these observations, reasonable suspicion testing may be more valuable for alcohol than for illegal drugs. Supervisor observation is not a complete solution, however; "practiced" drinkers often can mask symptoms (*e.g.*, they can walk a straight line) and avoid detection. Also, supervisors may have reasons to overlook employee alcohol use (*e.g.*, sympathy for the employee, the desire to avoid confrontation, or the lack of a readily available replacement). The U.S. Army has found that supervisors have a tendency to underreport alcohol involvement in accidents (The Alcohol and Accidents Guide, February 1987).

The OA NPRMs would require employers to test covered employees for alcohol when the employer has reasonable suspicion to believe that the employee has violated the prohibitions in these rules. The employer's determination that reasonable suspicion exists to require an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion testing under these rules would be authorized only if the required observations are made during, just preceding or just after the period of the work day that the covered employee is performing a safety-sensitive function. A covered employee would be required to undergo reasonable suspicion testing for alcohol as soon as possible; such testing could occur while the employee is to perform safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

The factors set out for determining when reasonable cause exists, in the drug rules and in the alcohol NPRMs, are short-term factors. They focus on what a supervisor sees at the present moment. The Department seeks comment on whether it is also appropriate for supervisors to take into account longer-term factors (*e.g.*, a long-term decline in work performance, patterns of absenteeism, lateness, or abuse of sick leave). Such factors would be considered only in conjunction with the shorter-term observations by supervisors, however.

Our drug rules require that two supervisors, at least one of whom is trained in detecting the symptoms of drug use, make the required observations and concur in the existence of reasonable suspicion. These proposed rules generally would allow a single supervisor trained in detecting the symptoms of alcohol misuse to make the required observations and determine the existence of reasonable suspicion. The rationale for allowing the testing decision to rest on one trained supervisor is that alcohol testing is too time-sensitive to incorporate as a general rule the time it takes to consult a second supervisor, which is difficult in some transportation industries. Symptoms of alcohol use also are more widely-known and easier to detect than those of drug use so there may be less need for corroboration. In addition, the supervisor who makes the determination that reasonable suspicion exists, generally is prohibited from conducting the reasonable suspicion test on that employee. The latter prohibition, like the requirement for two supervisors in the drug rules, is designed to protect against a supervisor's harassment of a specific employee. In some cases, the Breath Alcohol Technician (BAT), who conducts the test, may be there in time to provide corroboration of the employee's appearance and behavior.

We request public comment on allowing a single trained supervisor to make the decision to order a reasonable suspicion test. Should this be restricted in any way to avoid the perception of greater opportunity for harassment by supervisors? How could this be reasonably accomplished in light of the above concerns? We also request comment on the possibility of allowing a supervisor to base a decision to order a reasonable suspicion test on reports by a credible third person who has made the observations. Should specific industry/federal government rule violations also be an occasion that requires an alcohol test? The railroad industry has operated with rules that authorize the employer to test under these circumstances for several years. What events should trigger testing, if any?

Return-to-Duty Testing

The OA rules would require each employer to ensure that a covered employee, who has violated any of these alcohol misuse rules, has been evaluated and undergoes an alcohol test with a result indicating an alcohol concentration of less than 0.02 before returning to a safety-sensitive function. We believe that compelling concerns about safety and possible recidivism justify imposing a stricter 0.02 standard for those employees returning to safety-sensitive functions after they already have demonstrated problems with alcohol. In any event, under other provisions of the rules, employees could not perform safety-sensitive functions until they have a result lower than 0.02; since this test is specifically for return-to-duty, the application of the 0.02 standard would be logical. We specifically request comment on whether this is a good rationale for imposing a stricter alcohol concentration standard on individuals returning to duty.

Follow-Up Testing

The alcohol ANPRM asked numerous questions on return-to-duty or follow-up testing, *i.e.*, testing required of a covered employee who has violated the alcohol rules, undergone rehabilitation, and has been returned to duty to perform safety-sensitive functions. Many of these questions were premised on the rehabilitation/Medical Review Officer (MRO) evaluation that occurs in the illegal drug area. As discussed later in this preamble, an employer would have the option of allowing an employee to return to safety-sensitive functions after SAP evaluation, rehabilitation (if needed), and a successful return-to-duty test. Once an employee's alcohol problem has been identified, there is a chance of recidivism and a need to ensure continued disassociation from alcohol through periodic unannounced follow-up testing.

The OA rules would require that each covered employee who has been identified by an SAP as needing assistance in resolving problems with alcohol misuse, and who has returned to duty involving the performance of a safety-sensitive function, shall be subject to a minimum of six (6) unannounced, follow-up alcohol tests administered by the employer over the following twelve (12) months. The SAP could direct additional testing during this period or for an additional period up to a maximum of 60 months from the date the employee returns to duty. The SAP could terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary. Should the rule establish this minimum requirement or should any follow-up testing be based only on the SAP's discretion? Is it appropriate to vest this responsibility in the SAP?

The proposed rules would provide that the evaluation and the rehabilitation may be provided by the employer, by an SAP under contract with the employer or by an SAP not affiliated with the employer. The choice of SAP would be made in accordance with employer/employee agreements and employer policies. In view of the "gatekeeper" function that the SAP has under the proposed rules, should the employer designate the SAP? Experts note that, due to training and the profession's normal employee orientation, the SAP may be eager to place the employee back into the normal work environment, *i.e.*, the safety-sensitive function, but reluctant to require testing by the employer. The SAP may prefer to conduct any necessary follow-up testing as part of an after-case or follow-up treatment program. While we recognize that placement of the employee back on the job without follow-up testing may help the employee, it could put public safety at risk. The SAP's customary loyalty to the employee client would directly conflict with the safety responsibility of the employer. In order for this program to work and to ensure public safety, the SAP must recognize his or her obligations to be responsive to the employer's need for a fair evaluation of the employee. Would a requirement that the employer designate the SAP lead to abuses, such as appointment of a relative who would charge twice the going rate? Should the Department's final rule impose a requirement on the use of SAPs to ensure adequate candor and objectivity?

The FRA's experience under its drug testing rules with required follow-up testing for employees who tested positive for prohibited drugs illustrates the need for a minimum number of required follow-up tests. In 1991, FRA conducted a compliance review on a large railroad company and found that 9 of 10 employees who had tested positive and were returned to service for up to one year had received no follow-up tests. One employee received one follow-up test six months after returning to work. One of the employees who had received no follow-up testing later tested positive on an FRA-required random drug test. The Department's Office of Inspector General (OIG) recently completed a review of the FRA's alcohol and drug program. The OIG reviewed follow-up testing practices on several railroads and found inconsistent procedures and a lack of follow-up tests. Its report recommends prescribing procedures for follow-up tests, including a minimum number of tests and a minimum period for follow-up testing. For the above stated reasons, we believe that we should require a minimum amount of follow-up testing.

Should the 0.04 alcohol concentration standard be used for follow-up tests? In view of the fact that these employees already have had an alcohol problem, should they be subject to a stricter 0.02 alcohol concentration standard, such as that imposed on return-to-duty tests? Would the costs and time lost in conducting these follow-up tests discourage employers from bringing employees back into safety-sensitive functions? What consequences should follow an employee's failure to "pass" a follow-up alcohol test? Would these consequences be different from those following failure to "pass" any other mandated alcohol test? Should follow-up testing be administered in a way similar to random testing (e.g., at or near the time the employee is performing a safety-sensitive function)? Given the potential for poly-drug misuse, should an employee who has "failed" an alcohol test automatically be subject to follow-up testing for drugs after being returned to safety-sensitive functions following alcohol misuse? For example, if the employee has "failed" an alcohol test (even if the employee has not also "failed" a drug test), should the employee be subject to six unannounced follow-up urine drug tests as well as six breath alcohol tests in the year following the employee's return to duty? How frequently does this problem occur? What additional costs would a requirement for follow-up drug tests following alcohol misuse incur? FRA currently has such a requirement in its locomotive certification regulations. (49 CFR 240.119(d).)

Retesting of Covered Employees with an Alcohol Concentration of 0.02 or Greater, But Less Than 0.04

The rules would provide that if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an OA-required alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer must first retest the employee. The employee could return to the safety-sensitive function if the retest results in an alcohol concentration of less than 0.02. The FHWA proposal does not contain a retesting provision because of a

statutory requirement that drivers found to have a measurable amount of alcohol in their systems must be removed for 24 hours. Should this be an available option? Or should the employee be taken off the job for the full 8 hours? What logistical and economic consequences would the absence of the retest option cause? Should we be concerned about a possible "hangover" effect that an employee now below 0.02 after a session of hard drinking may be suffering? Would an enforced 8 hour absence take care of this concern?

Handling of Test Results, Record Retention, and Confidentiality

Retention of Records

To facilitate Department oversight of the alcohol testing program and to protect employee confidentiality, we propose to require each employer to maintain records of its alcohol misuse prevention program in a secure location with controlled access. Recordkeeping is necessary for effective enforcement of the regulations. It also would allow the Department to track progress in the programs and later make changes, if justified, that could reduce costs, ease implementation and enforcement, provide better employee protection, and/or increase benefits. The OA proposed rules would require employers to retain, for a minimum of five years, records of any employee alcohol test results indicating an alcohol concentration of 0.02 or greater; documentation of refusals to take required alcohol tests; equipment calibration documentation; and documentation of employee evaluation and referrals. They would require employers to retain for a minimum of two years any records related to the collection process (except equipment calibration documentation) and training. Records of negative test results would have to be retained for a minimum of one year.

Generally, the proposed rules would require each employer to maintain the following specific records:

(1) Records related to the collection process, including: collection logbooks, if used; documents relating to the random selection process; EBT equipment calibration documentation; verification of BAT training; documents generated in connection with decisions to administer reasonable suspicion and post-accident tests; and documents verifying existence of a medical explanation of an employee's inability to provide adequate breath for testing;

(2) Records related to test results, to the refusal of any covered employee to submit to a required alcohol test and to an employee dispute over the result of an alcohol test;

(3) Records related to other violations of these rules;

(4) Records related to evaluations and return to duty; and

(5) Records related to education and training.

Should documentation of reasonable suspicion determinations be required? If so, what kind?

Reporting of Results in a Management Information System

For oversight purposes, each employer would be required to submit to the Department OA that regulates it, at minimum, an annual report summarizing the results of its alcohol misuse prevention program for each calendar year. Employers subject to more than one DOT OA alcohol rule would have to identify each employee covered by the regulations of more than one OA and report the total number of such employees broken down by category of covered function. Before conducting any alcohol test on an employee regulated by more than one OA, the employer would have to determine which DOT OA rule or rules require the test and then identify such test results in the appropriate DOT OA reports. We note that the employer would provide aggregated not individual information under the MIS. The employer would be responsible for ensuring the accuracy and timeliness of each report submitted by it or a third-party service provider acting on the employers behalf. The employer would have to submit the annual reports no later than February 15 of each year for the preceding calendar year on the specified form. (The first reporting year may be different depending upon the effective date of the final rules.) Each report would contain a number of information items relevant to program evaluation or enforcement. Several of the OAs in other documents in today's **Federal Register** also are proposing a management information system for their drug testing rules. If those proposals are adopted, the alcohol and drug testing reporting requirements would be merged to permit one annual report and eliminate any duplicative information items.

Access to Facilities and Records

To preserve employee confidentiality, the proposed rules generally would prohibit employers from releasing information pertaining to an alcohol test of a covered employee or any violation of these rules, except as required by law. They would provide, however, that the employee is entitled, upon written request, to obtain copies of any records concerning the employee's use of alcohol, including alcohol test records. Employers must promptly provide any records requested by the employee, but could not make access to an employee's records contingent upon payment for records other than those specifically requested. The bundling of requested records with unrequested material at much higher cost has been a problem under the drug rules. Employers would have to release information as required by law, including court orders or subpoenas.

The proposed rules generally would require an employer to permit access to all facilities involved in its alcohol testing program and make available copies of all test results and any other alcohol program records, upon request, to the Secretary of Transportation or any OA with regulatory authority over the employer or any of its covered employees. In addition, upon request by the National Transportation Safety Board (NTSB) as part of an accident investigation, employers would be required to disclose information related to the employer's administration of a post-accident alcohol test following the accident under investigation.

Generally, the rules would require an employer to release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release to an identified person. In view of the fact that these rules would permit employers to rely upon negative pre-employment alcohol tests conducted within the preceding six months, it specifically would require an employer, upon written request from the employee, to make records available to a subsequent employer. To preserve the employee's confidentiality, the identified person or recipient employer could not subsequently disclose the records, except as expressly authorized by the terms of the employee's written request.

It is likely that a prudent employer would ask an applicant to request this information from former covered employers, and not hire the applicant until satisfactory information had been received. The Department seeks comment, however, on whether it would be useful to require employers to require applicants to consent to obtaining this information from previous employers. In this approach, an employer would be prohibited from hiring an applicant for a safety-sensitive position if the applicant did not provide this consent. When a previous employer did not respond (*e.g.*, had gone out of business, could not be located, failed or refused to provide the requested

information), should the employer presume the employee's record as having been "clean" for that previous employer? How far back into the applicant's employment history should such a search go? Should the search apply only to tests mandated by DOT regulations? Would this approach produce significant delays in employers' ability to bring new workers on board? The Department seeks comment on these issues.

The rules would permit the employer to disclose information arising from the results of an alcohol test administered under these rules or from the employer's determination that the employee violated any prohibitions in these rules to the employee or in the context of a proceeding relating to an employee benefit, to DOT agency action against the employee (*e.g.*, an action to revoke a certificate), or to an NTSB safety investigation. The employer would also have to make information available to DOT offices having regulatory or review authority.

Consequences for Employees Engaging in Alcohol-Related Conduct

Removal From Safety-Sensitive Function

In general, the OA rules would prohibit a covered employee who has engaged in conduct prohibited by any of the OA rules from performing safety-sensitive functions until he or she has met the conditions for returning to such work. The rules would require employers, if they have determined that the employee has violated these rules, to ensure that the employee does not perform or continue to perform safety-sensitive functions. The rules, however, would prohibit the employer from taking any other action under these rules against an employee based solely on test results showing an alcohol concentration less than 0.04. The proposed rules would not prohibit an employer with authority independent of these rules from taking any other action.

Required Evaluation and Testing

Each OA NPRM would prohibit a covered employee from performing safety-sensitive functions following the employee's violation of an OA rule, unless the employee has been evaluated by a SAP, completed any requirements for rehabilitation, and "passed" a return-to-duty test with a result below 0.02.

The rules would provide an exception to the requirement for immediate removal and prohibition on return-to-duty without undergoing an evaluation; they would not prohibit the employee from temporarily continuing to perform safety-sensitive functions necessary to respond to an emergency, including responding to a situation that could result in an emergency or an imminent threat to public health and safety. For example, a truck driver who has violated the alcohol rules could continue to attempt to move a truck carrying hazardous materials if it were stuck on railroad tracks, a bridge, or on an exit ramp of a highway. The exception would not support the employee's continued performance of the safety-sensitive functions once safety is achieved or if a replacement employee is readily available.

Other Alcohol-Related Conduct

Although the Department is not proposing that alcohol concentrations below 0.04 constitute a violation of the rules, it is concerned about employees whose alcohol test indicates some alcohol in their system. As noted earlier in this preamble, an alcohol concentration of .039 may not warrant evaluation and rehabilitation but it may have an adverse effect on that individual's abilities. Alternatively, the individual's blood alcohol curve may be rising (*i.e.*, the individual may have just consumed enough to produce an alcohol concentration of 0.04 or greater, but the alcohol is just entering the bloodstream and, at the time of testing, the alcohol concentration is rising). Permitting such employees to continue performing safety-sensitive functions, even though there is knowledge of alcohol in their systems, would violate our and the employer's and employee's safety responsibility. Therefore, in addition to the 0.04 alcohol concentration prohibition, the rules would prohibit covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04 from performing or continuing to perform safety-sensitive functions. The employer could not permit the employee to perform or continue to perform such functions, until the employee's alcohol concentration drops below 0.02 or until the start of the employee's next regularly scheduled duty period, if it occurs at least eight hours following administration of the test. As discussed above, the rules would not prohibit the employee from temporarily continuing to perform safety-sensitive functions necessary to respond to an emergency, including a situation that could result in an emergency or an imminent threat to public health and safety, but they would not support continuance of the functions once the emergency has been averted.

If the employer wants to use the employee to perform safety-sensitive functions less than eight hours after the test, the employer must conduct a retest. When it falls below 0.02, the employee could be put back into a safety-sensitive function. If the retest result is above 0.04, the employee has violated the prohibition against having an alcohol concentration greater than 0.04. (Given the characteristics of alcohol metabolism, it is also likely that the employee would have violated the prohibitions on pre-duty or on-duty use.) The employee would then be required to meet the conditions for returning to safety-sensitive functions.

The OA NPRMs and the part 40 alcohol testing procedures would treat any indicated alcohol concentration reading of less than 0.02 on an evidential breath testing device (EBT) as "negative." Given the limits placed on the accuracy of measuring alcohol concentration in body fluids or breath, the rules use 0.02 as the threshold for establishing any measured alcohol concentration. Readings below 0.02, therefore, would have no significance for any purpose under our rules.

Use of Back Extrapolation

What should employers be required or permitted to do under the proposed regulations where the indicated breath alcohol concentration is 0.02 or greater, but less than 0.04, and enough time has passed since the performance of a safety sensitive function (*e.g.*, in a post-accident test) to raise questions about whether the alcohol concentration during the performance of the safety-sensitive functions (*e.g.*, at the time of the accident) was 0.04 or greater? The rules would require action only based on actual readings on the EBTs. They would not permit back extrapolation.

The employers' requirement to remove persons with indicated alcohol concentrations of 0.02 or greater and less than 0.04 from safety-sensitive functions for a period of not less than 8 hours or until they retest below 0.02 would achieve some of the goals of allowing back extrapolation. The Department seeks comment on the extent to which employers (and other fact finders) should be free to apply forensic principles to evaluate whether the individual may have used alcohol on the job or reported for the safety-sensitive functions with a prohibited alcohol concentration. The Department also seeks comment on whether, if employers conduct this kind of analysis, the results of back extrapolation should be allowed to have effect under the DOT alcohol testing program and visit upon the covered employee the consequences

of a DOT test result in that range. In the alternative, should the employer, as far as the DOT program is concerned, only be permitted to apply the consequences attaching to a result of 0.02 or greater but less than 0.04, but have the discretion, under its own authority, to take other action? Should the employer be prohibited from taking action against the employee based on a DOT-mandated test beyond actions required by the DOT rules?

The rationale for back extrapolation is based on studies that show that the average rate of elimination of alcohol from the bloodstream is around .015 per hour, though this rate may well decline at low concentrations (0.02 and below). Individuals' rates of alcohol elimination are very often not "average," however. Further, it is ordinarily not known when the individual last ingested alcohol or how much alcohol he or she consumed. All of these factors makes back extrapolation subject to substantial inaccuracy. Such analysis requires a number of "assumptions." Some of the assumptions relate to the individual subject (*e.g.*, whether there is healthy liver function; or the rate of elimination may be less than or greater than 0.015 per hour due to metabolic differences), some to facts or claims that may be supplied by the individual (no on-duty consumption, no consumption during the pre-duty abstinence period), and others to data that can be supplied by the employer (when the event occurred that triggered the test, when the test occurred). It is not only desirable but necessary for such analysis to be conducted by an expert in forensic toxicology. Such services may be in short supply. Therefore, we do not propose to permit back extrapolation of alcohol test results under these rules.

Alcohol Misuse Information, Training, and Referral

Employer Obligation to Promulgate a Policy on Alcohol Misuse

Each employer would have to provide educational materials that explain the requirements of these rules and the employer's policies and procedures with respect to meeting those requirements. Each employer also would have to provide written notice to every covered employee and to representatives of employee organizations concerning the availability of this information. Under the rules, the materials would have to include: the identity of a contact person knowledgeable about the materials; categories of employees subject to testing; what period of the workday or what functions would be covered by the rules; a description of prohibited conduct and the circumstances that would trigger testing; testing procedures; an explanation of what constitutes a refusal to submit to testing and the attendant consequences; and the consequences of violating the rules.

In addition to information on how the employer would implement the DOT program, the materials also may include the description of any self-identification program or procedure under which a covered employee may decline to perform or continue to perform safety-sensitive functions without penalty when he or she may be in violation of these rules, including any limits on the program. The employer also may include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol concentration, that are based on the employers authority independent of these rules. These additional policies must be clearly identified as based on the employers independent authority.

We believe motivating employees about safety in the workplace and good health is important to making an alcohol misuse prevention program work. Because the primary objective of any effective alcohol misuse program is deterrence rather than detection, it is especially important that, before any testing is begun, employers make their employees fully aware of the dangers of alcohol misuse in their jobs, advise them where help can be obtained if they have a problem with alcohol use, and the potential consequences for people who violate these rules. An effective company policy and educational effort can more than pay for itself with the benefits it can achieve. Should these rules require that employers give covered employees a minimum period of notice (e.g., 60 days) that the testing program is going into effect?

We recognize that it may be difficult to get the attention and support of workers by handing them literature or displaying various materials on a bulletin board. To illustrate this, a soon-to-be released safety study of the New York City Transit Authority (NYCTA) finds that merely distributing literature about NYCTA's substance abuse program without establishing an on-going substance abuse awareness program has not effectively communicated training information to employees. Generally, employees interviewed for the report could not remember receiving the distributed literature; the few who did remember it could not describe its purpose. What more effective means for educating employees and transmitting information about alcohol misuse prevention programs are available that would be economically feasible for employers? Should the OAs impose training requirements for non-supervisory employees? What additional costs would such requirements impose? What quantifiable benefits would they generate?

Training for Supervisors

Under the OA NPRMs, employers would have to ensure that persons designated to determine whether reasonable suspicion exists to require an alcohol test receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Would this amount of time be adequate? Is more extensive supervisor training necessary because of the need to require identification of symptoms associated with lower concentrations of alcohol? Since comparable training for drug use detection is required by the DOT drug testing rules, can this requirement be melded into that one to minimize costs to employers?

Referral, Evaluation, and Treatment

The Act requires that an opportunity for treatment be made available to covered employees. This does not require employers to provide or pay for rehabilitation or to hold a job open for an employee with or without salary; the costs of such a requirement could be prohibitive and could jeopardize this program. In the drug testing rules, the Department decided that it was inappropriate to establish a federal role in mandating that employers provide for rehabilitation and that it should be left for management/employee negotiation. The same logic would apply here and the Department has decided not to propose mandating employer-provided rehabilitation in these rules.

We encourage those employers who can afford to provide rehabilitation to do so through established health insurance programs, since it helps their employees, benefits morale, is often cost-effective and ultimately contributes to the success of both their business and their testing programs. However, repeated provision of access to rehabilitation services after "positive" testing, followed by repeated reinstatement and repeated violations may raise public safety and liability concerns for employers. Would it dilute the deterrent value of testing programs and encourage further misuse of alcohol or drugs?

To implement the statutory mandate, these proposed rules would require an

employer to advise a covered employee, who engages in conduct prohibited under these rules, of the available resources for evaluation and treatment of alcohol problems, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. The employer would have no similar obligation to applicants who refuse to submit to or fail a pre-employment test; this obligation would run only to current employees. The rules would not prohibit an employer with independent authority from taking any other action otherwise consistent with law.

A SAP would evaluate each covered employee who violates these rules to determine whether the employee needs assistance resolving problems associated with alcohol misuse and refer the employee for any necessary treatment. Before returning to duty, each employee identified as needing assistance must (1) Be evaluated again by a SAP to determine whether the employee has successfully complied with the rehabilitation program prescribed following the initial evaluation, (2) Undergo an alcohol test with a result of less than 0.02 alcohol concentration, and (3) Be subject to a minimum of six (6) unannounced, follow-up alcohol tests over the following twelve (12) months. Compliance with the prescribed treatment and passing the alcohol test would not guarantee a right of reemployment; they would be preconditions the employee must meet in order to perform safety-sensitive functions. The decision on whether to return the employee to his or her job we would leave to the employer.

The proposed rules would provide that the evaluation and the rehabilitation may be provided by the employer, by a SAP under contract with the employer or by a SAP not affiliated with the employer. The choice of SAP and assignment of costs would be made in accordance with employer/employee agreements and employer policies. Is the requirement for an evaluation meaningful if we do not specify who should pay for the evaluation? What if both the employer and employee refuse to pay for the evaluation? Should the rules go further and prohibit an employer from taking any action under the rules against a covered employee unless the employee has been evaluated by a SAP or refused such an evaluation? Should a failure to pay constitute a refusal? What problems would this raise?

Since the determination made in alcohol tests required by these NPRMs is whether there is a prohibited concentration of alcohol in an individual's system, regardless of the source, we believe that there is no need to require a medical review officer (MRO) to interpret positive test results, as required by the DOT drug testing rules. There is no acceptable explanation for the prohibited alcohol concentration, so there is no role for an MRO. The mental health and/or medical professionals to whom the employee is referred for treatment can diagnose the disorder or disease, if any, associated with the alcohol misuse. A SAP would then determine whether the employee has complied with any rehabilitation requirements. The rules define the SAP to include a licensed physician (with a Medical Doctor or Doctor of Osteopathy degree) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders (the degrees alone do not confer this knowledge), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders. In some OA rules, where the employee operates under a certificate or license, a licensed physician must certify, in conjunction with a medical examination, whether the employee can return to work.

Other Issues

As in the drug testing rules, we want to provide program flexibility to allow employers to carry out their programs in a more efficient, cost-effective manner and to ease the compliance burden on small businesses. Testing, for example, could be conducted by the employer, an outside contractor, a consortium, a union, or any other entity. The use of consortia has worked well in the drug testing area; in fact, it is the predominant method of compliance in some industries, particularly among smaller employers. We propose to delay implementation of the rules for smaller employers to enable them to join established consortia or large employer testing programs, rather than have to establish their own programs. The operating administrations have tried to make it easier for smaller employers; FRA proposes to retain its existing exemption from its drug and alcohol rules for railroads with 15 employees or less. (These entities are not considered sufficiently safety-sensitive to be subject to testing, since they tend to operate on private track at slow speeds.) FAA, which is proposing to require covered employers to submit plans for their alcohol misuse programs, would impose significantly reduced plan requirements on smaller employers. (FRA and FAA both propose plan submission, which is customary in conducting their programs; FTA proposes to require employer certification of compliance with the rules, which is customary in its programs.) What additional measures can we take to make it easier for smaller employers to comply with the rules?

Employers may find it more cost-effective and convenient to conduct alcohol testing at the same time they conduct drug testing. Because we are proposing to require alcohol testing at or near the time of performance, however, all random and reasonable suspicion drug testing also would have to occur at such times. For random testing, employers could easily accomplish this by randomly choosing the employee's number and then testing the employee the next time he or she performs safety-sensitive functions. What problems would be raised by combining the two programs?

Motor Carrier Safety Assistance Program (MCSAP Proposal)

Each OA also seeks public comment, especially from state and local governments, on the possibility of an alternative to requiring motor carrier, aviation, rail, mass transit and pipeline employers to conduct some or all alcohol testing, particularly post-accident and random testing. Specifically, we seek comments on whether the testing could be conducted under the FHWA Motor Carrier Safety Assistance Program (MCSAP), which is a Federal/State cost reimbursement and matching grant-in-aid program, or a similar program. Possible use of the MCSAP program for motor carrier testing is discussed in detail in the FHWA NPRM. The objective of MCSAP is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles. The MCSAP seeks to accomplish this by substantially increasing the level of nationally-uniform inspection and enforcement activities and the likelihood that safety defects, driver deficiencies, including alcohol misuse, and unsafe carrier practices will be detected and corrected. Currently, 48 States and four U.S. territories are actively participating in the MCSAP.

The statute requires the Secretary of Transportation to conduct a pilot program for the purpose of testing drivers on a random basis to determine if a driver has used alcohol or a controlled substance in violation of law or federal regulation. The pilot testing program is to be administered as part of the MCSAP and implemented in four states for a period of one year. At the completion of the pilot program, the

Department will issue a report of the program, including recommendations concerning the desirability and implementation of a MCSAP-administered random testing program. FHWA began the implementation of the required pilot project in Fiscal Year 1993.

In the MCSAP option presented in the FHWA NPRM, participating States would have to submit a random alcohol testing plan as part of their application for FHWA MCSAP funding. The random alcohol testing plan component would conform to the requirements of these rules.

Recognizing that some statutory changes to implement the MCSAP option may be necessary, we seek public comment on whether involving State and local authorities in alcohol testing would work. It could be accomplished at three different levels of involvement. First, the FHWA NPRM's MCSAP option would substitute post-accident and random testing by local officials for motor carrier based testing. Would this save costs? Since States already have some equipment and their officials are already trained in using that equipment, overall costs may be less. As neutral, third-party testers, their tests may be better accepted by employees. Due to the fact that local officials may reach an accident first, they can help in determining who was involved in the accident.

The second would involve extending this option to covered safety-sensitive employees from the other transportation industries issuing proposed rules today. Could the program be adapted so that employees regulated by other OAs, such as RSPA and FAA, could be included?

The third would allow substitution of local official testing for all types of testing required by these rules (*i.e.*, pre-employment and reasonable suspicion in addition to random and post-accident). Would this be useful? Employers could send employees needing testing to a local State testing facility or the State could come to the employer upon request, since it may have mobile vans for this purpose.

Because the expenses of such a program would lessen the resources available for other MCSAP programs, user fees may be necessary for such an alternative to be possible. Would it be feasible to impose user fees for such a system? As noted above, costs may be less under such a program, so even if all employers were assessed a user fee, their overall costs would be much less than if they had to conduct their own testing. Do employers think such an option is feasible and would result in lower costs for them if available? Since some States use blood tests upon a testee's request for confirmation, we also seek comment on whether blood tests conducted by state officials should be acceptable for the purposes of these proposed rules, because such tests must meet standards that would already make them acceptable in court.

Multi-Agency Coverage

In some transportation industries, a significant percentage of employees are subject to the testing rules of more than one DOT OA; some are subject to the testing rules of more than one federal agency (*e.g.*, employee drivers covered by the Department of Energy may also be covered by FHWA). This is one reason we have tried to make the DOT OA proposals as uniform as possible. Generally, where it would not compromise the effectiveness of the testing program or other requirements, one DOT agency would defer to another or recognize the validity of the other's requirements.

There are different situations in which multi-agency coverage can occur:

(1) An employee may perform different modal functions for the same employer. For example, an employee may act as both a pipeline inspector and a truck driver for a single employer, activities regulated by the RSPA and the FHWA, respectively. Such an employee could be in a single random pool under the proposed rules, but would have to have an equal chance of being selected for random testing while performing either pipeline inspection or driving functions.

(2) An employee may have two employers. For example, an employee may fly for one employer and drive for another. That employee would be subject to two random testing requirements and would generally be in two different pools. As discussed above, however, the employee could be covered by one random testing pool, *e.g.*, one run by a consortium; in both situations, the employee would be subject to random testing in either job.

The rules would require that employees cease safety-sensitive functions in every mode of transportation, once determined to be in violation of any one of the OA rules. We note that the Act also prohibits the performance of safety-sensitive functions in the aviation, rail, motor carrier, or mass transit industries by an employee who has used alcohol in violation of any law or any federal regulation.

We also have been consulting with other federal agencies during this rulemaking proceeding in an attempt to make Federal government rules as consistent as possible. The Department of Energy (DOE) already has issued a similar proposed rule on alcohol misuse for employees in nuclear facilities. At this early stage, we are not aware of any serious programmatic differences with our rulemakings. However, to avoid any potential conflict, DOE officials have indicated that they plan to defer to the DOT rules where there are entities covered by both programs. We seek comment on any other problems caused by multi-agency coverage and potential solutions.

Impairment Testing

In the ANPRM, we discussed the possible use of impairment testing, such as ignition interlock devices (IIDs) that prohibit operation of a vehicle if the driver does not pass the test. These are being required in some states in passenger vehicles used by persons convicted of driving under the influence. Such devices, which use breath test components, are costly and relatively easy to circumvent (*e.g.*, another person could operate or blow into the device). Other devices exist that purport to measure impairment. These include the critical tracking tester (CTT), the Tracometer (which requires a driver to align a pointer on a moving target), computer devices, and simulators. The use of some devices that measure certain performance decrements would require the employer to run baseline tests on each employee for comparison with the results. These devices may need further validation before a practical device is available for use at the workplace to achieve the objectives of the proposed alcohol testing regulations. Moreover, these devices measure performance decrement, which can be caused by many things other than alcohol or illegal drug use.

It makes good sense to remove employees impaired for any reason from safety-sensitive positions, and these rules do not prohibit any employer from doing so under his or her own authority. However, the Act requires that the covered OAs require testing for alcohol concentration, not impairment. Indeed, the Act specifically requires that the devices used for confirmation testing be capable of providing quantitative data regarding alcohol by a scientifically recognized method. Even if performance testing devices could be accurate as screening devices, if employers then had to confirm positive results with an EBT, these costs would be much higher than if they used an EBT with both tests. Therefore, the OAs have not proposed anything other than breath alcohol testing in these rules. As noted earlier,

the Department intends in the future to seek comment on the scientific, technological, and legal status of these "performance testing" devices in a separate notice.

Self-Identification/Peer-Referral Programs

Since our primary purpose is to keep employees who have alcohol in their systems from performing safety-sensitive functions, employees should be able to identify themselves as unfit to work. We would like to encourage employers to establish self-identification or peer-referral programs and encourage employees to use them. These programs, which already exist in some segments of the transportation industry, allow an employee to decline without penalty to perform or continue to perform his or her job if the employee knows that he or she is or may be impaired by alcohol. We do not propose to require self-identification programs, because we believe that they are a matter more appropriate for collective bargaining. The successful implementation of such programs depends upon joint labor-management commitment to an alcohol/drug-free work environment.

None of the proposed rules would prohibit employers from establishing or continuing a self-identification program or procedure under which a covered employee is permitted to decline to perform safety-sensitive functions when the employee may be in violation of an alcohol prohibition. However, the program could not interfere with the conduct of the alcohol tests required by these rules. Such a program could permit a covered employee to take a voluntary alcohol test to determine whether the employee is in violation of these rules; there would be no Federal consequences or requirements pertaining to the test or its results, however, since the test would not be required by DOT rules.

Employers and employees must address some important questions if they set up such programs. For example, should employees be allowed to self-identify after they have reported for duty? What should happen to employees referred by co-workers? They might be in violation of these rules by having a prohibited concentration of alcohol in their body while they are performing safety-sensitive functions. Should an undetected person be allowed off the job as quickly as possible no matter when he/she self-reports? What would best enhance safety?

The proposed rules would not interfere with an employer's unfettered discretion to impose its own sanctions against self-identifying employees, so long as the sanctions are not premised on our rules.

Education

In conjunction with the implementation of the proposed rules, the Department would distribute educational materials and conduct seminars designed to increase employee awareness of the risks of alcohol misuse by those who perform safety-sensitive functions. The Department took similar action in the drug area. There is some disagreement about the respective effectiveness of education vis-a-vis enforcement. Some researchers claim that education is more effective in preventing alcohol misuse than apprehension of the abuser. The American Automobile Association Foundation for Traffic Safety compared eight states that adopted tougher drunk driving laws with six that did not. The new laws had no effect at all on traffic fatalities. The Foundation attributes the overall decline in U.S. traffic-related deaths between 1980 and 1985 to public awareness campaigns by such groups as Mothers Against Drunk Driving (MADD). A Boston University researcher similarly concluded that social pressure and publicity "may be as important as government regulations in reducing drunk driving and fatal crashes." (Both quoted in "USA Today", Wednesday, August 3, 1988.)

These studies have been criticized as poorly designed and misleading, since education programs were never isolated as an independent variable for comparison. NHTSA believes that the most effective programs are those that combine education and enforcement. Public information and education programs, in the absence of enforcement activities or sanctions, have never been shown to have an impact on alcohol-related fatal crashes. Conversely, scores of studies have found that programs involving enhanced enforcement, roadside sobriety checkpoints, and the use of sanctions such as license suspensions frequently have resulted in significant reductions of alcohol-related fatalities. Although there is disagreement on the effectiveness of education alone, it appears that using education as an adjunct to deterrent measures would make both more effective. What more can the Department do to increase educational efforts about the misuse of alcohol?

International Issues

The Act mandates that the requirements for pre-employment, reasonable suspicion, random and post-accident tests for alcohol (and drugs) be applied to foreign operators in the aviation, rail and motor carrier industries to the extent those requirements are consistent with our international obligations. We must also "take into consideration any applicable laws and regulations of foreign countries." Because of the many questions raised about the implementation of this statutory mandate, we have decided that the best approach is to issue advance notices of proposed rulemaking on these issues. The FRA, FHWA, and FAA ANPRMs on international issues are published elsewhere in today's Federal Register.

Regulatory Analyses and Notices

General

Each of the OA preambles separately addresses a number of administrative matters concerning compliance with administrative requirements in statutes, executive orders and Departmental policies and procedures. Readers should refer to the individual OA NPRMs for statements specific to each NPRM.

Appendix A to Common Preamble—Bibliography

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Common Preamble for the Proposed Alcohol Misuse Prevention Rules.

Issued on December 2, 1992 in Washington, DC.

Andrew H. Card, Jr.,
Secretary of Transportation.

Thomas C. Richards,
Administrator, Federal Aviation Administration.

Thomas D. Larson,
Administrator, Federal Highway Administration.

Gilbert E. Carmichael,
Administrator, Federal Railroad Administration.

Brian W. Clymer,
Administrator, Federal Transit Administration.

Douglas B. Ham,
Acting Administrator, Research and Special Programs Administration.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket 48513; RIN 2105–AB95]

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Proposed rule.

SUMMARY: Under the Omnibus Transportation Employee Testing Act of 1991, the Department of Transportation is required to implement alcohol testing programs in various transportation industries. This rule proposes uniform testing procedures that would be used by all Department of Transportation agencies conducting alcohol testing programs of the kind mandated by the Act. The statute also requires certain changes in the Department's drug testing procedures, which this rule proposes to implement. The Department is also proposing a Management Information System (MIS) to gather evaluation and enforcement information for the Department's drug and alcohol testing programs.

DATES: Comments must be received on or before April 14, 1993.

ADDRESSES: Comments should be sent to Docket Clerk, Att: Docket No. 48513, Department of Transportation, 400 7th Street, SW., room 4107, Washington DC, 20590. For the convenience of persons wishing to review the docket, it is requested that comments be sent in duplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington DC., 20590, 202–366–9306; or Donna Smith, Department of Transportation Office of Drug Enforcement and Program Compliance, same street address, room 9404, 202–366–3784.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employee Testing Act of 1991, enacted October 28, 1991, directed significant changes in the Department of Transportation's substance abuse-related programs for most transportation industries that the Department regulates. First, the Act directed the Federal Transit Administration (FTA) to promulgate a drug testing regulation for the transit industry. A previous FTA drug testing rule had been enjoined by the Federal courts on the basis of insufficient statutory authority. The Act also widened the Federal Highway Administration (FHWA) drug testing program to include some intrastate as well as interstate drivers for motor carriers.

Second, the Act required some changes in the Department's existing drug testing procedural rule. The most important of these changes was a requirement for using the "split sample" approach to testing in the programs covered by the Act, which Congress believed would provide an additional safeguard for employees.

Third, the Act required the Department to establish alcohol testing programs for the aviation, railroad, motor carrier, and transit industries. In response, the Department's operating administrations (the Federal Aviation Administration, Federal Railroad Administration, Federal Highway Administration, and Federal Transit Administration) are each today proposing an alcohol testing rule for its regulated industry. The Research and Special Programs Administration, for the pipeline industry, is proposing a similar regulation, in order to ensure parallel coverage for the Department's alcohol and drug testing regulations. The latter proposal is being issued under the existing RSPA safety regulatory authority. The Coast Guard is not proposing to change its existing alcohol testing regulations (33 CFR part 95 and 46 CFR part 4). The Department of Transportation has carefully coordinated the five proposed industry regulations, in order to provide substantive consistency and common language. Only where industry-specific differences can be justified as essential do the proposals differ from one another.

The Department's drug testing procedures, 49 CFR part 40, have governed drug testing under all operating administration drug testing rules. This proposal extends the same organization to alcohol testing for the five modes affected. Under the proposal, the existing drug testing procedures would become a separate subpart of the regulation, and a new subpart containing the alcohol testing procedures would be added.

Finally, the Department is proposing management information system (MIS) requirements for the Department's drug and alcohol testing requirements. The basic, Department-wide MIS provisions for drug and alcohol testing are proposed in part 40; separate modal drug MIS NPRMs and MIS provisions of the modal alcohol NPRMs apply these requirements to particular industries.

Having all the Department's uniform drug and alcohol testing procedures, as well as MIS provisions, in a single

regulation will simplify compliance for covered parties and avoid confusion by permitting all parties to look to one source for information on these issues. This should be particularly helpful to those employers who have employees covered by more than one DOT operating administration rule. However, employers regulated by the Coast Guard would continue to refer to 33 CFR part 95 and 46 CFR part 4.

Subpart A—General

Section 40.1 Applicability

This section would be revised to more accurately state the relationship between part 40 and operating administration rules. The operating administration drug and alcohol testing rules and part 40 are all manifestations of the Secretary's authority to regulate transportation industries in the interest of safety. Part 40 governs the activities of transportation employers not directly, but through the medium of the operating administration regulations, which direct the respective covered employers to conduct their tests according to part 40. As noted above, the Coast Guard has retained its existing alcohol tests rules. For this reason, while part 40 drug testing procedures apply to testing of employees covered by Coast Guard drug testing rules, part 40 alcohol testing procedures would not apply to employees covered by existing Coast Guard alcohol testing rules.

Applying the alcohol and drug testing procedural requirements to regulated parties through the regulations of the operating administrations is key because each operating administration has responsibility to implement the alcohol and drug testing programs for the mode of transportation it regulates. Oversight, administration and enforcement will be done by an operating administration for the employers it regulates. For example, an air carrier covered under the FAA's alcohol testing rule that failed to comply with a procedural requirement of part 40 would be violating the FAA's regulatory requirement that the air carrier use part 40 procedures. The FAA would use its existing enforcement procedures and would have authority to assess civil penalties and take certificate action, as appropriate.

In any regulatory program involving several different Department of Transportation agencies, coordination and consistency in the application and interpretation of regulatory provisions are essential. With two exceptions (the Coast Guard alcohol testing program and the FAA post-accident toxicology program), part 40 controls all the Department's drug and alcohol testing programs. This uniform regulatory language must be interpreted consistently. A provision cannot mean one thing in the railroad industry, something different in the transit industry, and a third thing in the aviation industry. Consequently, the Department has made a commitment to establish, before the issuance of a final rule, an internal coordination process that will ensure that formal interpretations of part 40 and guidance material developed for general distribution would be reviewed and receive DOT concurrence to ensure that they are valid on a Department-wide basis. The Department seeks comment on the most appropriate means through which regulated parties could learn that interpretations or guidance had been coordinated in this way. This could be particularly useful for employers with employees subject to more than one operating administration rule.

In creating this mechanism, the Department would ensure that it did not prevent operating administration personnel from answering questions, offering informal guidance or pursuing enforcement actions. But to maintain the essential Department-wide consistency—the absence of which would impose a significant, unnecessary burden on the regulated industries and on employees subject to testing—the Department strongly believes that a coordination mechanism of this kind must be established.

A related issue concerns the possibility of differences, or real or perceived conflicts, between part 40 and operating administration rules. The operating administration rules all would require employers to follow part 40 procedures. However, are there any provisions of any operating administration rules that might be viewed as inconsistent with the mandate to use part 40 procedures?

For example, under existing part 40 drug testing rules, an MRO must grant a retest if the employee asks for the retest within 72 hours of learning of a positive result. Some modal rules allow up to 60 days for such a request. The Department received questions about how the provisions related to each other. (We said that since a request received within 72 hours was clearly a request received within 60 days, there was no conflict between the provisions.)

The part 40 NPRM explicitly addresses this question, but there may be similar issues between the proposed part 40 alcohol testing procedures and the operating administrations' proposed alcohol testing rules. We ask commenters to point out any potential problems of this kind to us. It is the Department's objective to eliminate or clarify any such perceived inconsistencies. We also seek comment on any mechanisms or rules of construction commenters think would be appropriate to resolve any problems of this kind that may occur after final rules are published.

Although implementation of part 40 generally would be done through an operating administration, part 40 is an Office of the Secretary of Transportation (OST) regulation. As such, requests for exemption would be processed under 49 CFR part 5, an existing regulation covering requests for exemption from or amendment to all OST rules, rather than through separate operating administration exemption procedures. This would add an additional element of consistency. This approach is consistent with the existing part 40 drug testing procedures, from which exemptions would also be granted under part 40 (See 54 FR 49863; December 1, 1989).

The grant of an exemption under part 40 must be based on special or exceptional circumstances. It is not appropriate to carve out a generally applicable exception to a rule. Also, an exemption must be based on circumstances not contemplated as part of the rulemaking. The exemption process is not designed to revisit issues settled in the rulemaking process.

Section 40.1 would also emphasize that other parties involved in the testing process—such as consortia, contractors, and agents—"stand in the shoes" of the employer. They are, therefore, subject to the same obligations and requirements as the employer. If an employer is required to do something, so is the consortium that is conducting testing for the employer. If the consortium fails to do something correctly, the employer is in noncompliance.

The Department seeks comment on how best to resolve one problem that we have noted in administering the drug testing rules. In some cases where an employee has tested positive for drug use, the employee has sought review of a subsequent personnel action in an available forum. In some cases, the decisionmaker in that forum has decided that the test was procedurally invalid and ordered relief (*e.g.*, reinstatement). Employers have been uncertain about whether such a determination overrides the employer's obligation to comply with DOT drug testing rules.

This problem could arise in a number of ways. For example, suppose an employee tests positive. The employer discharges the employee, who files a grievance as provided in a labor-

management agreement. An arbitrator decides that the test was invalid because of something part 40 does not regard as a "fatal flaw" (*e.g.*, the collector failed to note on the custody and control form that the specimen temperature had been taken) or on the basis of evidence not provided for in part 40 (*e.g.*, a test of a urine sample in a laboratory not certified by the Department of Health and Human Services (DHHS)). The arbitrator orders the employee reinstated. DOT rules prohibit the employer from allowing an employee who has tested positive from performing a safety sensitive function without going through the steps provided in DOT rules (*e.g.*, evaluation by a substance abuse professional (SAP), passing a return-to-duty test, being subject to follow-up testing). Does the arbitrator's decision authorize (or obligate) the employer to return the employee to safety-sensitive duties without complying with these regulatory provisions? Should this question be answered differently in situations in which other decisionmakers (*e.g.*, the National Transportation Safety Board in an FAA certificate case, a court) or other fact situations (*e.g.*, a disputed determination that there was a "fatal flaw" in the testing process or a determination that a combination of lesser flaws was sufficient to invalidate a test) are involved.

One important consideration in answering this question, at least in the arbitration context, is that requirements of the DOT drug and alcohol testing rules are based on Federal safety law. It is well established that labor and management cannot agree to establish testing requirements for covered employees that are inconsistent with Federal rules. It seems unlikely that an arbitrator appointed under the authority of a labor-management agreement could, by ordering a result which is contrary to DOT rules, obviate the employer's duty to comply. But how would the employer know what its obligations were in a specific case? Would there need to be a DOT advisory or decisional mechanism established to provide this information to employers?

Section 40.3 Definitions

This section contains definitions applying to both drug and alcohol testing. Definitions specific to drug or alcohol testing would be found in §§ 40.41 and 40.75, respectively.

Subpart B—Drug Testing

Section 40.25 Specimen Collection Procedures

The Act requires the split sample method to be used for drug tests under the FTA, FRA, FHWA, and FAA rules. By the "split sample" method, the Act means a procedure in which urine specimens obtained for drug testing are subdivided into two containers and processed as two specimens. This procedure makes a second, sealed specimen available for testing at a second DHHS-certified laboratory if the test of the first specimen is "positive."

The existing rule spells out a split sample procedure, but makes it an employer's option. Reflecting the statute, the proposed rule would mandate the use of this procedure for the four operating administrations that the Act covers. Since the Act does not cover RSPA or the Coast Guard, the use of split samples will remain optional for employers whose employees are subject only to these two rules.

The Department proposes that the primary and split samples, with accompanying paperwork, would flow from the collection site to the DHHS-approved laboratory used for the test of the primary sample. What happens to the "split" is described under § 40.29.

The Department understands that the National Institute on Drug Abuse (NIDA) is currently considering reducing the urine specimen volume for a primary or single test from 60 to 30 ml. This amount, in our view, is sufficient to allow for all testing called for under part 40 procedures. The Department consequently endorses this proposed change, which would also be important in operating a split sample system successfully. Under the proposed split sample procedure, the primary sample, therefore, would be 30 ml, with an additional 15 ml collected for the "split." The minimum sample volume, which the collection site person would ask the employee to provide, would be 45 ml for the split samples procedure and 30 ml in the single sample procedure.

Under the existing rule, there have been a number of problems with employees being unable to provide a 60 ml sample. The proposed change should mitigate this problem. The Department also seeks comment on whether the change from a 60 ml to a 30 ml sample (45 ml in the case of a split sample) would pose significant problems for laboratories, in terms of their being able to have sufficient urine for initial testing, confirmation testing, and reanalysis.

For split samples, the proposal envisions the donor providing the entire 45 ml sample in a single collection container. The collection site person would then pour the urine into two separate specimen bottles for shipment to the laboratory. The proposal would permit a variation on this procedure in emergency or unusual circumstances (*e.g.*, a post-accident test at a remote location where the normal testing kit was not available). In this situation, the employee could urinate into one container, with a portion being poured into a second. Both would be processed and sent to the laboratory. The Department seeks comments on whether this variation is advisable and on any other collection methods that might be workable for split samples.

If the employee could not produce a 45 ml sample, the employer would direct the employee to drink up to 24 ounces of fluid in a period of up to two hours. This is a modification of the current "shy bladder" procedures designed to avoid any possibility of side effects from drinking too much water.

Section 40.29 Laboratory Analysis Procedures

In view of the statutory requirement for split samples under four of the Department's drug testing rules, procedures for laboratory handling of split samples are set forth in greater detail than in the present rule. The split sample would be logged in and stored securely, with the seal remaining intact. If the test of the primary specimen were negative, the laboratory would dump the split sample. If the test of the primary sample is confirmed positive, the lab would continue to hold the split specimen for a year (or longer if a legal challenge were pending) to ensure that it remained available for a second test. If the employee requested a test of the split specimen (through the medical review officer (MRO)), the first laboratory would ship the unopened split sample to a second DHHS-approved laboratory for testing. If the test of the split sample fails to confirm the presence of drug(s), then the entire test would be canceled.

Section 40.33 Reporting and Review of Results

Paragraphs (e) and (f), which deal with the reanalysis of specimens, would be amended in light of the mandatory use of split samples under four of the Department's drug testing programs. Under paragraph (e), where the single sample method of collection is used, the MRO would, if the employee asked within 72 hours of learning of a verified positive test, order a reanalysis of the

specimen. If the reanalysis were negative at the level of detection (*i.e.*, showed no presence of the drugs for which the sample originally tested positive), the test would be canceled. This is the same procedure as is followed under the existing rule. The difference is that the right of the employee to obtain a reanalysis of the primary specimen would not be available in cases where the split sample method of collection is used. The Department believes that the right to have a split sample tested sufficiently protects employees, and that having both a reanalysis of the original specimen and a test of the split specimen available would be unnecessarily duplicative and costly.

Paragraph (f) proposes a similar procedure with respect to split samples. As with reanalysis, testing of the split sample would only be for the presence of drugs for which the primary sample had tested positive. Under this procedure, if the split sample had been lost, or sufficient urine for testing were unavailable, the test would be canceled, since the statute creates a right to having the split sample tested.

The 72-hour notice window is the same time frame found in the existing part 40. Some operating administration regulations, however, provide that a request may be honored as long as 60 days from the date the employee learns of a positive test result. The Department seeks comment on whether a period longer than 72 hours is needed, and, if so, what that period should be (*e.g.*, a week, 10 days, 30 days, 60 days).

Section 40.41 Definitions

This is a new section, separating out those definitions pertaining only to drug testing from other definitions in part 40. There is a new definition of "canceled test." As the definition explains, a canceled test is neither positive nor negative, just invalid. The term includes a sample which has been rejected by the laboratory.

Subpart C—Alcohol Testing

This subpart sets forth the alcohol testing procedures that all transportation employers covered by the FAA, FHWA, FRA, FTA, and RSPA alcohol testing rules would implement. These uniform procedures are intended to ensure consistency in the administration of alcohol testing nationwide, whether an employer is an airline based in Atlanta or a small motor carrier in Oregon.

Persons familiar with the Department's drug testing rules will notice some similarities between those rules and the proposed alcohol testing procedures. The Department is proposing rules concerning the collection site and the collection site person (called the "breath alcohol technician" (BAT) and the "alcohol testing site," respectively, in the alcohol testing procedures), a testing form, preparation for and administration of initial and confirmatory tests, confidentiality, safeguarding, test records, what to do if an employee cannot provide an adequate amount of breath, and what errors in the process are "fatal flaws" that invalidate a test. Except for the "fatal flaws" section, all these provisions have parallels in the drug testing procedures.

The differences between this subpart and the drug testing procedures are equally noteworthy. The drug testing procedures call for the donation of a quantity of urine, its packaging, transmission to a NIDA certified laboratory for testing, and the use of an evidentiary chain of custody. A medical review officer is used to interpret lab results, so as not to label someone who has legitimately ingested a substance as an illegal drug user .

The alcohol testing procedures would use breath for purposes of determining the alcohol concentration as measured by a breath testing device that provides a definitive, quantitative result at the alcohol testing site. Therefore, packaging, chain of custody, and transmission rules are not needed. No testing laboratories would be involved, and therefore there would be no need for laboratory certification or procedure rules. Because the issue to be determined is whether an impermissible quantity of a legal substance (ethyl alcohol) is in the person's system—whether it comes from use of an alcoholic beverage or medication—a medical review officer to interpret the results would not be needed. The result is that these alcohol testing procedures would be shorter and less complex than the drug testing procedures.

As the foregoing discussion suggests, perhaps the most important decision underlying these proposed procedures is to rely exclusively on breath testing, rather than involving testing of blood, saliva, hair, or urine specimens, or evaluations of motor or cognitive functions as part of the process. After careful consideration of the scientific, economic, practical and legal issues involved, the Department believes that the choice of breath testing is consistent with its commitment to an accurate and fair testing program.

Analysis of breath for alcohol (specifically ethanol) has been practiced for many years, both in the clinical diagnosis of intoxication and for traffic law enforcement purposes. In light of the use of breath test devices for law enforcement purposes, the National Highway Traffic Safety Administration (NHTSA) developed Guideline Specifications (49 FR 48855; December 14, 1984) to ensure that the equipment meets certain minimum performance specifications.

Instruments meeting the NHTSA specifications are included in a "Conforming Products List of Evidential Breath Testing Devices" (CPL), which is used in the purchase of instruments for law enforcement purposes. Instruments on this list enjoy wide acceptance in the judicial community and have met court scrutiny for precision and accuracy. These instruments are reliable in measuring an accurate alcohol concentration from breath, as long as the operator is appropriately trained and the instrument maintained in accordance with the manufacturer's guidelines.

The precision and accuracy of the instruments, combined with their judicial acceptance, make breath testing instruments of evidential quality the most appropriate method to use in testing for alcohol misuse in the transportation industries covered by the proposed regulations of the five affected DOT agencies. Breath tests provide an immediate result. Results are obtained nearer to the time at issue than is possible with blood testing. This is a significant advantage in that it enables an employer to remove an employee who tests positive from performing safety-sensitive duties quickly.

Chain of custody issues that would arise with blood testing do not arise in breath testing. The needs for special collection facilities, certified testing laboratories, and the use of medically trained personnel would not be present in breath, as opposed to blood, testing. The operating cost per test is also lower. Breath tests are much less intrusive than blood tests, from the employee's point of view.

Also, properly conducted breath tests can accurately reflect the alcohol content of the pulmonary arterial blood which, in the initial or absorption phase of alcohol assimilation, gives a truer picture of alcohol influence on the central nervous system than a venous blood sample. In the post-absorptive phase, a quantitative breath test result will yield comparable results to blood analysis (arterial or venous).

This is not to say that blood testing is not a legally valid means of establishing alcohol concentration, on the basis of which it is appropriate to take action with respect to an employee. For example, existing Coast Guard alcohol testing regulations provide for post-

accident alcohol blood tests in some situations. The validity of these procedures which are subject to evidentiary hearings, has long been recognized in administrative and court proceedings, and it is not brought into question by the Department's proposal to use breath testing in other contexts.

The Department is aware of a number of other methods of testing for the presence of alcohol that are being marketed or developed (*e.g.*, measuring alcohol content in saliva or eye vapors). As other technologies become available, the Department is willing to consider the possibility of their use in its alcohol testing program. The Department would evaluate the merits of such testing methods or devices with respect to such factors as their accuracy and reliability under field conditions, acceptability as evidential devices, intrusiveness, ability to provide a result and a printed record of a result promptly, and cost.

At the present time, the Department believes that, viewed against these criteria, none of the alternative testing methods of which we are aware is now appropriate for use under the Department's regulations. While there may be promising techniques under development that ultimately could meet all the Department's criteria, they are not sufficiently developed at this time to warrant inclusion in this rule.

With respect to screening devices i.e., devices which do not use a scientifically recognized method to establish a quantified alcohol concentration), some are less accurate and would record false positives and/or false negatives (especially at lower alcohol concentrations). It would be difficult to establish that the initial tests had been conducted to establish compliance with the rules because the screening devices could not provide the same type of records as EBTs. Nevertheless, the Department seeks comment on whether non-evidential screening devices should be permitted in some contexts (*e.g.*, in an airport, to perform initial tests of air crew personnel at the gate, with an EBT available at a central location to perform confirmation tests of airline employees who tested positive on the screen within 15 minutes). If screening devices were to be allowed, other procedural requirements of part 40 and the modal rules may have to be changed. For example, since screening devices cannot record a sequential number and result of the initial test, what other records would be needed for this purpose?

We view the proposed testing method and testing device requirements as performance standards. If, in the future, the current drawbacks of other testing methods are resolved or the needed capabilities are developed for other testing methods, we will consider permitting their use for alcohol testing under the Department's rules. For further discussion of testing methods, readers are referred to the relevant discussion in the common preamble.

Section 40.51 The Breath Alcohol Technician (BAT)

To ensure that tests are conducted properly and accurately, each BAT would have to be trained to proficiency in the use of the particular EBT he or she would operate and in following properly the procedures in this Part. The NPRM proposes that the training would have to cover several elements, including operation and methodology of the breath testing instrument, the specific procedures of this rule, and, where needed, performing checks of external calibration on the EBT. The Department seeks comment on whether it would be cost-effective to include additional elements in BAT training (*e.g.*, concerning the pharmacology and physiology of alcohol).

To ensure that the BAT is trained to proficiency, the NPRM would require that each course of instruction contain a "hands on" or practical application component that clearly demonstrates the BAT's ability to properly use the EBT to produce an accurate result, in accordance with the procedures outlined in this rule. If the BAT is also going to perform checks of external calibration of the EBT, proficiency in doing so would also have to be demonstrated. The employer would maintain records of BAT training and proficiency. The rule further proposes that courses of instruction consistent with the NHTSA model course for EBT operator training, or other state-approved courses for breath testing device operators may be used to meet the training requirement. The Department seeks comment on whether there should be a minimum number of hours required for such training.

The NPRM proposes that a direct supervisor of the employee being tested could not, in ordinary circumstances, be the BAT, in order to avoid any appearance of bias. However, if it is impracticable for anyone else to do the job, the supervisor could do so, where not prohibited by operating administration rules (*e.g.*, with respect to reasonable suspicion tests). The Department seeks comment on whether the discretion to use a supervisor as a BAT should be further limited (*e.g.*, by absolutely prohibiting the use of a supervisor except in the case of post-accident testing). The Department also seeks comment on whether, if a person other than a BAT conducts a test in unusual circumstances (*e.g.*, a law enforcement officer who arrives at the scene of an accident before the employer's BAT), the result may be used under the Department's rules.

One issue that has occurred to the Department is that it would adversely affect the perception of the integrity of the process, and perhaps the defensibility of individual tests, if the BAT were intoxicated at the time of testing or had been seen consuming alcohol prior to conducting tests. Consequently, the Department seeks comments on whether this section should include a provision to address this concern (*e.g.*, a requirement that the BAT be alcohol-free while on duty, a pre-duty abstinence requirement for BATs, and/or a requirement that a BAT pass an alcohol test before testing others). If there were such a requirement, what should the consequences of violation be and how could the requirement be enforced?

Section 40.53 Devices To Be Used in Alcohol Testing

The Department proposes that evidential breath testing devices (EBTs) used in meeting the requirements of this rule would have to be listed on the Conforming Products List (CPL) published periodically by NHTSA. The CPL is published in the **Federal Register** and updated periodically as new technology and changes to breath testing instruments warrant. For many years, NHTSA has evaluated and field tested breath testing devices for their technical and scientific capabilities for use in law enforcement as evidential tests of breath alcohol content. By inclusion on the NHTSA CPL, a given model of breath testing device is certified as providing accurate and reliable results. In addition to being listed on the NHTSA CPL, EBTs used to meet the requirements of this rule would have to have certain other capabilities relevant to specific provisions of the rule. The Department seeks comment on whether there are additional quality control measures manufacturers or employers should take to make sure that individual devices are made and operated properly (beyond those proposed elsewhere in this NPRM).

First, the EBT (itself, or via a separate printer that would be present at the collection site) would have to be able to print three copies of each test result (either simultaneously or consecutively). Second, the EBTs would also have to number each test sequentially, with the numbers visible to both the BAT and the employee before each test and printed out on the

result. The purpose of this requirement is to identify each test result as pertaining to a specific employee. In effect, the employee's signature on the form prior to the test would signify "I am about to take test No. 243." The test result would say "Test No. 243".

Third, the EBT would also have to be able to do an "air blank" or test of the ambient air to ensure that when nobody was breathing into the instrument, it reported zero. An air blank, in other words, is a check of internal calibration. This check of internal calibration of the instrument, conducted both immediately prior to and immediately following each breath test further ensures the accuracy of the result. The EBT would also have to be able to generate printed records of the air blanks along with each test result. Fourth, an EBT would have to be capable of performing a check of external calibration (i.e., a test of its ability to produce a quantitative result consistent, within a given tolerance, of a known alcohol concentration standard).

Checks of external calibration of the instrument using known alcohol concentration standards are essential to validating the accuracy of the EBT. Each EBT model used to meet the requirements of this rule would have to have a Quality Assurance Plan (QAP) provided by the manufacturer and approved by NHTSA. The QAP would specify the manufacturer's recommended methods and frequency for checks of external calibration. This rule also proposes that EBTs would have to be capable of distinguishing ethyl alcohol from acetone at the .02 or greater level.

The Department understands that some EBTs (especially some of those using infrared technology) may now not be programmed to do so, with the result that someone with elevated acetone levels in his or her system (*e.g.*, a person with diabetes) could have a .02 result despite not having ingested any alcohol. The Department believes, based on information from manufacturers, that these specific functions outlined above are available or can be made available with relatively little technical difficulty. The Department seeks comments on this point, as well as on the incremental cost of these items.

Employers would be required to inspect, maintain, and calibrate EBTs. The work would have to be performed by the manufacturer or a certified representative of the manufacturer. BATs who have completed specific training in calibration and maintenance of EBTs may perform such duties if certified by the manufacturer. We seek comment on whether there are means to ensure the quality of work performed in calibration and maintenance of the instruments such that a wide variety of people could perform these tasks. Records of calibration and maintenance would have to be maintained for five years, a period of time equivalent to that required for the retention of positive test records.

Each EBT manufacturer would have to develop and submit to the Department a quality assurance plan (QAP) for each EBT model listed on the NHTSA CPL. This plan would tell the employer how and when to perform checks of external calibration, taking into account variations in EBT use that would affect the frequency of such checks (*e.g.*, stationary vs. mobile use, high vs. low temperatures, and low vs. high numbers of tests). The QAP would establish tolerances for each instrument that define the acceptable limits of deviation from the known alcohol concentration standards. Other inspection, maintenance, and calibration requirements would also be stated. The Department seeks comment on other factors which QAPs should cover.

Employers would have to comply with the QAP. In particular, if an external calibration check revealed that the EBT was out of calibration, the employer would have to take the EBT out of service and fix the problem before the device could be used again for DOT-mandated employee testing.

The Department seeks comment on a number of other questions concerning maintenance and quality control for EBTs. Could there be a problem with manufacturers making their QAPs either too easy (to make customers happy) or too hard (to avoid liability) that NHTSA review would not be able to correct? Are manufacturers qualified to establish such plans? Should manufacturer representatives or technicians do repairs? Do manufacturers make such persons available as part of their normal business practices, and would a requirement to use them have negative cost or quality control impacts? Are state or local government or law enforcement personnel available and qualified to perform repair, maintenance, etc.? Who else would be appropriate to perform maintenance on EBTs to ensure that they work properly? Finally, should there be a technical advisory committee (*e.g.*, composed of representatives of manufacturers, law enforcement agencies, users, academic experts) to provide information to the Department on technical breath testing issues?

The final paragraph of this section would require the employer to store the EBT securely when it is not being used. The purpose of this is to prevent anyone from tampering with the device.

Section 40.55 The Alcohol Testing Site

The requirements for an alcohol testing site are less detailed than the drug testing collection site rules. The site must afford aural and visual privacy to the person being tested, to protect the confidentiality of the process. Any number of arrangements could satisfy this performance criterion, such as a room, a van, or a partitioned-off area. While testing is going on, or when the EBT is present, the site must be able to be secured. Essentially this means that the BAT must have the EBT under his/her control at all times and be able to limit access to the testing area to authorized personnel. For example, while a temporary partition might meet the privacy requirement, it may or may not meet the security and control requirement.

One exception to collection site requirements would be a situation in which meeting all privacy requirements would be impractical, and a test would not happen at all unless it happened in a nonconforming site. We propose this exception only for unusual, spur-of-the-moment situations (like a post-accident test that could not be conducted in a timely manner if all privacy requirements had to be met), not for regular, predictable, matter of course situations. The BAT would provide privacy protections for the employee to the maximum extent feasible.

The BAT, in order to avoid potential mistakes, could administer only one breath test at a time. This refers to actual operation of the EBT only. Assuming that adequate privacy could be maintained, other employees could be waiting, filling out forms, observing the 15-minute period before a confirmatory test, etc. The BAT is also prohibited from leaving the collection site while the testing process is under way, including the waiting period.

Section 40.57 The Alcohol Testing Form

This section would mandate the use of one of the two types of testing forms. One type of form is generated by the EBT and would contain all the necessary identification data, space for required signatures, and breath test results. The form would be used when the EBT prints only the test result and this result is then attached to a standard form containing the test identification data and required signatures. Employers would not be authorized to alter or

customize these forms, so that all alcohol testing forms used nationwide under the rules incorporating part 40 would be standard. The form would be produced in triplicate, with copies to the employee, the employer, and the BAT. The form, whether EBT-generated or a standard printed form, would contain the date and time, sequential test number, employee identifying data, BAT identifying data, and certification statements about the test with signatures by the employee and the BAT.

Section 40.59 Preparation for Testing

The pre-testing procedure would be a relatively simple one. After presentation of identification by the employee (and by the BAT, if requested), the BAT would explain the testing procedures and tell the employee what is required. The BAT and the employee would fill out the testing form and sign it. This would include entering the sequential number of the test that the device indicates is about to be taken.

If the employee refuses to take the test (i.e., by refusing to sign the form or provide breath, or otherwise preventing the test from taking place), the BAT would note the refusal on the form, stop the testing process for that employee, and immediately inform the employer. The employer should provide the BAT with instructions concerning the employee's leaving the collection site.

The proposal would also direct the BAT to start a new test if, for some reason, an event occurred to invalidate the test. For example, if, after the initial test, the second post-test air blank did not show a 0.00 reading, the BAT would run a new initial test using a new form with a new sequential number. If a similar event happened on a confirmatory test, the BAT would start a new form for the confirmatory test with the new sequential number and affix it to the form used for the valid initial test. The Department seeks comment on whether it would be better to have space on the form to record repeat tests in this situation rather than to have a new form filled out.

Section 40.61 Administration of the Initial Test

The first part of the testing process would be to make sure that the EBT is operating properly with respect to detecting the presence of alcohol. In the employee's presence, the BAT would do a "dry run" operation of the EBT by conducting an "air blank" test (*e.g.* a test of the ambient air, assumed to contain no ethyl alcohol). If the device reads anything other than a zero (0.00), the BAT would know something was wrong. If the initial attempt at conducting an air blank test fails (*e.g.* the EBT registers something other than 0.00) the BAT could re-run the air blank once more. The test of the employee would not proceed unless a 0.00 reading was obtained. If the instrument again fails to provide a 0.00 result on the air blank, the EBT cannot be used for testing until a check of external calibration is conducted and the instrument is found to be within the tolerance limits on a known alcohol standard of 0.00.

Next, the BAT, in the presence of the employee, would take an individually-sealed mouthpiece (for the sake of sanitation and to avoid any possible contamination of the mouthpiece by alcohol from previous users) and place it into the EBT. In order to get a sufficient quantity of deep lung air, the employee would be instructed to blow into the mouthpiece for at least six seconds, or until the EBT indicates that an adequate amount of breath has been obtained. If the employee could not produce an adequate amount of breath, the procedures of § 40.65 would apply.

Immediately following the testing of employee's breath, a post-test air blank would also have to be performed, to ensure that the device reads 0.00 after the breath test. Once again, if the instrument did not provide a 0.00 reading on the air blank, the BAT may attempt one additional air blank. If a 0.00 reading still was not obtained, use of that EBT would be discontinued and the previous breath result would be invalid. The Department seeks comment on whether it is necessary to have both the pre- and post-test air blank results printed out and attached to the alcohol testing form. Comments are also sought on whether a post-test air blank is necessary on all tests, or only on those where the breath test result is 0.02 or greater.

If the EBT does not print the test result directly onto the testing form, the resulting printout would be attached to the form in the place provided with some means that would show clear evidence of removal (*e.g.*, tamper-evident tape). The BAT and employee would again sign the form, citing the sequential test number. (However, if the employee refuses to sign, it would not be considered a refusal to be tested, since the employee has in fact taken the test.) If the employee does refuse to sign the form after the result is obtained, the BAT should so note on the form in the remarks section.

In the event the printed result does not match the result displayed on the EBT, the employee and the BAT would both initial or sign a record of such disparity on the form. The test result would be invalid. The Department seeks comment on whether malfunctions of the EBT equipment should result in the employee not being subject to another test using that EBT or another instrument or whether, if the error is immediately detected by the BAT, the BAT would start over and immediately administer another test.

If the result is less than 0.02, the test is "negative." The BAT would report the negative result to the employer. Notification of negative test results may be done telephonically or electronically, but must be followed up with the employer's copy of the testing form. If the result is 0.02 or greater, a confirmatory test would be needed.

The Department notes that, under the alcohol testing legislation, the initial test need only indicate the consumption of alcohol. It is not statutorily required that the initial test be of evidential quality, produce a quantitative result, or have elaborate safeguards. Consequently, it would be legally possible, under the statute, for the Department to permit the use of other testing techniques (*e.g.*, non-evidential breath testing devices) for initial tests, so long as they were capable of identifying alcohol concentration of 0.02 or greater.

The consequences of "false negatives," which may occur with some non-evidential techniques, present serious safety concerns. The Department believes, in addition, that use of non-evidential testing methods would make little sense in the context of this rule. An EBT would have to be available to conduct a confirmatory test very shortly (within 30–60 minutes) after a "positive" initial test in any case. For this reason, the employer would have to incur the costs of EBT availability, to include a properly trained BAT. It would probably be less expensive to use the EBT that is already there for the initial, as well as for the confirmatory test than to use other technologies. Use of EBT technology on the initial as well as any required confirmatory test provides the additional advantage of a more scientifically accurate, sensitive, and specific test result for alcohol content on all tests conducted. Use of non-evidential methods for testing also raises issues of how to document test results and how to prevent fraudulent or "doctored" records of employer compliance with testing requirements. In particular, disposable testing methods present problems in ensuring that initial test results of employees who are in violation of the alcohol misuse standards are not ignored and that the evidence of such violation hidden or

destroyed. The Department seeks comment on this matter.

This discussion is in the context of an extensive, multi-modal testing program, including random testing as well as testing triggered by reasonable suspicion of the occurrence of an accident. Greater protections are needed in such a program, especially in the absence of procedural protections present in some existing programs that may use non-evidential testing methods in some circumstances. For example, the Coast Guard post-accident alcohol testing program can involve an administrative proceeding at which the employee has the opportunity to challenge test results before a license is revoked or an investigative inquiry at which further evidence could be introduced. In any event, the use of non-evidentiary alcohol testing devices alone would not meet the statutory requirement for verification in the testing program proposed by the five modal NPRMs and these proposed procedures.

Section 40.63 Administration of the Confirmatory Test

The confirmatory test could be a second test on the same EBT as the initial test. The statute does not require that the confirmatory test use a different technology. The Department believes that the reliability of EBTs on the NHTSA CPL is such that using the same device would have no adverse effect on the accuracy of tests. In order to guard against any possibility of alcohol on the used mouthpiece affecting the result of the confirmation test. A new mouthpiece would be used for the confirmation test.

Before the confirmatory test, a fifteen-minute waiting period would be observed. The purpose of the waiting period is to ensure that the presence of mouth alcohol (residual alcohol present in the mouth from the recent use of food, tobacco or hygiene products) does not artificially raise the test result. The BAT would instruct the employee to avoid actions that could increase mouth alcohol (*i.e.*, using tobacco products, mouthwash, breath spray, cough drops, lozenges, or other food or medicinal products containing alcohol) during the waiting period. The test would proceed even if the employee disregarded the instructions, however, since they are for the employee's protection. This rule proposes that the 15 minute waiting period be observed before the confirmatory test rather than before the initial test as a means to reduce lost time and costs in administering the testing program. Since no adverse actions may be imposed on the basis of the initial test results, the employee protections afforded by the waiting period are only necessary for the confirmation test. It is assumed that the vast majority of employees will not have impermissibly consumed alcohol immediately prior to testing and that the time necessary to prepare for the initial test and complete the form will, in fact, provide ample opportunity for residual mouth alcohol to dissipate.

The Department seeks comments on the costs and benefits of having this waiting period before all initial, rather than confirmatory, tests. The Department also seeks comment on the proposal to establish a 20-minute maximum for the waiting period, between initial and confirmation tests. The purpose of establishing a maximum limit for the waiting period is to prevent the manipulation of confirmation results by affording time for the metabolism of alcohol so that results will be lower than first recorded on the initial test. Should there be greater flexibility in the timing of confirmation tests?

In addition, the Department is looking at the issue of whether, to provide additional assurance of an accurate result, a second confirmatory test should be performed when the first confirmatory test is 0.04 or greater. This could help to assure employees of the reliability of results, particularly if the initial test and first confirmation test results were not identical.

Confirmation test results should only be higher than initial test results when an employee has very recently consumed alcohol and is in the absorption phase of alcohol metabolism. Two tests administered after the 15-minute waiting period may provide additional evidence that the result is a true and accurate record of alcohol concentration and could not be due to residual mouth alcohol or any possible interference with the instrument. One variation on a "second confirmation test" procedure would be to require a second confirmation test only when the initial and first confirmation tests differed by more than a given amount (*e.g.*, plus or minus .01 or .02). The Department seeks comments on these matters. Administering three tests (one initial and two confirmation tests) is not required practice in most law enforcement settings. The Department believes that the proposed requirement for pre- and post-test air blank readings on initial and confirmation tests provides sufficient safeguards for ensuring the internal calibration of the instruments. Adding a third test is not required by the statute. A third test would complicate the procedures, increase the opportunity for administrative errors leading to unnecessary invalidation of results, and increase costs.

Typically, under proposed operating administration rules, a confirmed result of 0.04 alcohol concentration or greater requires the employer to remove the employee from performing his or her safety-sensitive duties, pending SAP evaluation to return to work (Consequence A). A result of 0.02 alcohol concentration or higher, but lower than 0.04 alcohol concentration, requires the employer to withhold the employee from performing a safety sensitive duty until the employee tests less than 0.02, or for a prescribed number of hours (Consequence B). Someone who tests negative (less than 0.02) may continue to perform safety-sensitive duties (Consequence C). The NPRM proposes that when the confirmation result is different from the initial test result, the lower of the two results be used for the purposes of determining consequences. For example, if the confirmation result is between 0.02 and 0.04, even though the initial test result was greater than 0.04, the employee would be subject to only the consequences for results in the 0.02–0.04 range. Likewise, if the initial result was 0.02–0.04 and the confirmation test was greater than 0.02 (including greater than 0.04) the consequences of a 0.02–0.04 result would apply. It should be noted that operating administration proposed rules have some exceptions to this general pattern (*e.g.*, an employee must have a result of 0.02 or below to "pass" a return-to-duty test). Under the NPRM's proposal to rely on the lower of the two EBT test results for the assignment of consequences, the following outcomes would occur:

Initial test	Confirmation test	Consequence
0.04 or greater .	0.04 or greater .	A
0.04 or greater .	0.02 or greater but less than 0.04.	B
0.02 or greater but less than 0.04.	0.02 or greater (including 0.04 or greater).	B
0.02 or greater (including 0.04 or greater).	less than 0.02 ..	C
less than 0.02 ..	none	C

The Department seeks comment on the merits of this proposal. Does it present any significant problem in terms of the defensibility of positive test results (*e.g.*, because the result of the initial test, as a practical matter, may sometimes determine the level of consequences)? Should the result of the confirmation test govern in all

instances, regardless of the initial test result?

This section also proposes a procedure for notification of the employer of test results by the BAT. The proposed procedures address the timeliness and methods of transmitting this information.

Section 40.65 Inability to Provide an Adequate Amount of Breath

What happens if the employee allegedly cannot, because of a medical condition, provide sufficient breath to result in a valid test? (This problem is analogous to the "shy bladder" problem in drug testing).

First, the employee would have to attempt to provide sufficient breath. This means that the employee would have to attempt to breathe into the EBT. Failure to attempt to provide breath is treated as a refusal to be tested, and the BAT would note such failure to attempt the test on the testing form and immediately notify the employer. If the employee attempts to provide breath and is unable to do so (*e.g.*, cannot sustain a breath long enough, or cannot provide sufficient deep lung air) the BAT would so note on the form and immediately notify the employer, who would direct the employee to seek a medical evaluation to document his/her inability to provide a breath sample due to medical reasons. The evaluation would have to be done by a physician acceptable to the employer, in order to help maintain the integrity of the process (*i.e.*, to help prevent a situation in which the employee selects a physician who could reasonably be viewed as being biased in favor of the employee). The provision is not intended to allow an employer to arbitrarily veto the use of a physician other than one preferred by the employer. The physician would answer one basic question. Does the employee have a medical condition which has, or with a high degree of probability could have, precluded the employee from providing an adequate amount of breath? If yes, there is no "refusal." If no, the employee is deemed to have refused the test. The Department seeks comment on whether an employee who is unable to provide an adequate amount of breath should be prohibited from performing safety-sensitive duties until the medical evaluation is conducted and the physician's determination made.

It should be noted that this inquiry by the physician would be on a case-by-case, test-specific basis. Physicians would not, under this provision, be authorized to issue a blanket statement that an individual was permanently unable to provide an adequate amount of breath. Such a statement could amount to a waiver from the testing requirement, which would be contrary to the objectives of the Act.

Section 40.67 Invalid Tests

This section proposes a list of "fatal flaws" in the testing process, any one of which would invalidate a test. Other testing procedures errors do not necessarily invalidate a test. The Department seeks comments on whether items should be added to or deleted from this list.

Most of these items are self-explanatory. The Department specifically seeks comment on whether exceeding the 20-minute maximum for the waiting period before the confirmatory test, as well as failing to observe the 15-minute minimum, should invalidate a test. Our view at this time is that the 15 minute minimum waiting period is essential to protect the employee's right to a fair and accurate test. Any failure to provide at least the 15 minute waiting period before the confirmation test would result in the confirmation result being invalid. Because the 20 minute maximum on the waiting period is not an employee protection procedure (in fact, additional delay could be helpful to employees), if the waiting period between tests exceeds 20 minutes, the confirmation test would remain valid. The Department seeks comment on whether, if the BAT notices a potentially fatal error in the testing process (*e.g.*, the BAT has failed to sign the form or has failed to run a post-test air blank), before the employee has left the alcohol testing site, should the BAT be able to direct the employee to take another test to correct the problem. Should it make any difference if the error is a "machine error" by the EBT device as opposed to a human error by the BAT?

One "fatal flaw" that could create difficulty is a situation in which a check of external calibration indicates that the instrument is not properly calibrated. The NPRM proposes that, in this situation, all positive results back to the last check of external calibration that established the instrument's accuracy would be invalidated. This result appears to have merit technically, but the retroactive invalidation of results may create a number of problems in the administration of the program and employers' personnel decisions. Since confirmed results are available immediately and once notified employers are required to take action prohibiting the performance of safety-sensitive duties by employees who are found to have violated the alcohol misuse standards, tests invalidated at a later date may result in the reversal of personnel actions, including a restitution of back pay. The Department seeks comment on the necessity of this provision and suggestions for dealing with problems it could potentially cause if it is made part of the final rule. It appears, for example, that an employer could conduct more frequent external calibration checks than required by the manufacturer's QAP (*e.g.*, after every positive, at the end of every test day) to mitigate problems for subsequent personnel actions.

Section 40.69 Availability and Disclosure of Alcohol Testing Information About Individual Employees

This section would be parallel to similar material in the drug testing procedures. The general rule is that information is confidential and may not be released to third parties without the employee's written consent. The employer could release information in the context of a proceeding relating to an employee benefit, to DOT agency action against the individual (*e.g.*, an action to revoke a certificate), or to an NTSB safety investigation, however. The employer would also have to make information available to DOT offices having regulatory or review authority.

Information would also be made available to the employee upon written request. Employers or their agents could not charge employees for more material than the employees requested (*e.g.*, for an entire package of information when the employee requested only a statement of the test result). The Department seeks comment on this provision.

This section uses the term "employer." Since the employer is responsible for the compliance of other parties to the process (*e.g.*, consortias, contractors, agents, BATs, etc.), we thought it unnecessary to specify these other parties here. The Department seeks comment on whether other parties should be named in this section.

Section 40.71 Maintenance and Disclosure of Records Concerning EBTs and BATs

This section would require employers to maintain records of the inspection, maintenance, and calibration of EBTs, compliance with the manufacturer's QAP, and records of the training and proficiency of BATs. The access requirements and disclosure protections are parallel to those in § 40.69. Employers who contract with other parties for alcohol testing services

would be required to ensure that their contractors followed this requirement.

Section 40.73 Definitions

The proposed subpart would define several terms that are used only here, or used in a different sense than in the drug context. *Air blank* would be defined as a test of ambient air. *Alcohol* would refer to ethyl alcohol, in whatever form. The proposed rule regards alcohol in the system, whatever its source, as a safety problem. Someone who registers a .03 concentration as the result of use of a product containing alcohol, even if for medical purposes, is no less impaired than he or she would be at the same alcohol concentration after drinking an alcoholic beverage.

The rule would use the term *alcohol concentration*. The more familiar "blood alcohol concentration" could be misleading, since these procedures do not call for the use of blood. The concentration is expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an EBT.

Collection site, initial test, and *confirmation test* all are terms used in the drug testing portion of the part 40. Separate alcohol testing-specific definitions are used here, however. The *breath alcohol technician* (BAT) is analogous to the collection site person under the drug testing procedures, and *alcohol testing site* is analogous to *collection site.*

An *evidential breath testing device* (EBT) is any breath testing device that NHTSA has approved and put on its conforming products list. It is not relevant for purposes of this rule whether the courts in any particular state have accepted a given device for use in driving under the influence (DUI) or other legal proceedings in that state. As a matter of Federal law, NHTSA-approved EBTs would be used for all tests under these rules, regardless of the status of a device under state law.

An *invalid* test is one which has been declared invalid under the provisions of § 40.67. It is neither positive nor negative. The concept is similar to that of a canceled test in the drug testing procedures. For example, if a negative test is needed before a worker may begin performing a safety-sensitive function, an invalid test would not suffice, and the employee would have to have another test conducted. Likewise, if a test result of 0.04 or higher is declared invalid, the consequences of the test result would not apply.

Section 40.81 Reporting Drug Testing Information to the Department of Transportation

The DOT Office of Drug Enforcement and Program Compliance (a unit of the Office of the Secretary whose function is to coordinate DOT drug and alcohol testing programs) created a working group with representatives from the operating administrations to develop a comprehensive plan for a Management Information System (MIS) to obtain and analyze employer drug program data. This group drew on the experience of the FRA and FAA which already had reporting requirements in their regulations.

On November 27, 1989, the General Accounting Office (GAO) published a report on the status of the program promulgated by the DOT regulations. A primary recommendation in the GAO report was that "The Secretary of Transportation adopt evaluation criteria and provide the administrations with guidance on the types of program information they should be getting from employers to evaluate program success."

Although 49 CFR part 40, as a procedural rule, is applicable to each of the Operating Administration's drug testing rules, implementation of each administration's program is somewhat different, reflecting differences in the transportation industries. Collecting and managing program data from each of the industries is essential to evaluation of the effectiveness and credibility of the drug testing program. The DOT working committee appointed to develop an appropriate MIS for DOT has identified standard data elements which are critical to the review and management of the DOT and operating administrations' drug programs. This data will be the basis for monitoring implementation, compliance and enforcement, and evaluating the effectiveness of the drug testing programs. The regulated employers are the appropriate source for most drug testing data. DHHS certified laboratories can provide only laboratory analysis data, medical review officers can only provide drug test verification information, and collection facilities can only provide specimen collection data. Employers, however, receive the information from labs, MROs and collection facilities and therefore can provide the necessary cumulative data. The data that would be gathered by the proposed MIS for program evaluation could permit adjustments of different program elements. It is difficult to indicate what changes could be made without first gathering and analyzing the data. The data could show a lack of need for testing for certain drugs or indicate a need for modifying testing requirements based on such factors as the type of position or success of a particular company's anti-drug program. The Department believes that it is necessary, first, to determine that its programs are operating, are meeting their objectives as efficiently as possible and, second, if not, to make modifications to ensure that they do. The Department believes that the costs of reporting being proposed are both cost beneficial and effective, but welcomes public comment on this issue. One example of the use of data that would be gathered by the proposed MIS for program evaluation concern potential adjustments of the random testing rate. The main purpose of random testing is deterrence. Relatively higher random testing rates are likely to be more effective as a deterrent to illegal drug use than relatively lower rates. At the same time, relatively higher random testing rates are more expensive to industry. Decisions concerning random rates necessarily are based on considerations of deterrence, the effectiveness of current measures, and cost. The information the proposed system would gather would make rational, well-informed decisions about adjustment to random testing rates possible.

In addition, because the proposed system would gather information about individual employers, it could make possible consideration of employer-based, rather than industry based, random rates. For example, if a particular employer had an effective anti-drug program that resulted in very low detected drug usage over a reasonable period of time, it might be possible for that employer to test at a low random rate regardless of the situation of the entire industry of which it is a part.

The proposed §§ 40.81 and 40.83 would establish a standard DOT Management Information System (MIS) and require that employer reports be submitted to the appropriate Operating Administration. Each Operating Administration will amend its drug testing regulation to provide specific requirements for employer reporting. Elsewhere in today's Federal Register are Notices of Proposed Rulemaking for each of the Operating Administrations (FRA, FAA, USCG, RSPA, FHWA, FTA) with drug and/or alcohol testing rules.

Although each employer or employer's representative must maintain the data required in 40.41 as per the regulating administration rule, each OA may elect not to require all

employers to submit reports annually but instead select a representative sample for submission to the OA. Each OA rule establishes employee categories or positions covered by the OA rule. OA's have the option to require drug testing information be separated by employee category as established in their rules, or to establish other categories for reporting purposes, (i.e. licensed or unlicensed or in a single category).

Operating Administrations may allow data usually maintained by industry or commercial consortia to be submitted on behalf of individual employers. Operating Administrations that allow consortia or other service providers to maintain data, such as pre-employment test data, may allow submission of such data to the OA in aggregate figures if it cannot be attributed or assigned to a specific employer.

OA's must stipulate in their regulations that employers who fall under two or more DOT Agency regulations requiring drug testing, must submit data to each regulating OA for those employees covered by that OA rule. For example XYZ company has 100 employees subject to the RSPA rule, 50 employees covered by the FHWA rule and 25 employees covered by the FAA rule. XYZ must maintain data attributable by OA rule. Employees who perform functions covered by more than one OA should be identified by the employer as to which covered position they will be reported under. Drug testing data on dual covered employees should be reported to the appropriate OA. Generally, pre-employment, random, and return to duty tests should be reported to the OA which regulates the function used as the basis for employee category. Post-accident tests should be reported to the OA to whom that accident is reportable. Reasonable cause and periodic tests should be reported to the OA based on the employee function requiring the test.

Each OA may acquire any of the data elements through an alternative methodology. For instance, if an employer is already required to submit a post accident drug test report to the OA, the OA could consolidate those reports that would provide the necessary data and not request this data from the employer again.

The data elements will provide a factual base for decisionmaking concerning modifications to the DOT drug testing rules. Information about drug use prevalence, program implementation, and economic and logistical impact will provide a basis for policy review, development, and change. Issues such as scope of applicability, random test rates, cost benefit ratios, rehabilitation, and testing protocols can be more effectively addressed when industry-wide data is available. Program evaluation and determinations of the rules' effectiveness require feedback from the regulated industries. Over-regulation is as unwanted as under-regulation. The data made available under this NPRM will provide necessary indicators of the "outcomes" of the rules. The data elements were selected as the minimum necessary to provide information on the scope of the program, drug use and prevalence, program implementation, economic impact, employer policy and the deterrent effect of the rules over time. The drug rules were not intended to be static (*i.e.* unchangeable). A systematic program to collect, analyze, and interpret the drug testing data is necessary to provide a more effective and efficient approach to drug use deterrence and detection.

The Department seeks comment on a number of issues concerning the NPRM's basic approach to gathering needed data. With the exception of the FHWA NPRM, the proposals would seek to obtain information from all covered employers. (The FHWA NPRM would ask for information from a sample of employers, since FHWA does not have the resources to process data from the large number of covered employers in the motor carrier industry.) In particular, the Department seeks comment on the merits of seeking information only from a sample of covered employers, rather than from all employers. In answering this question, we ask commenters to keep in mind the Department's dual purpose in obtaining drug testing information: program evaluation and enforcement.

All the Operating Administrations require compliance with regulations by all regulated employers. All the Operating Administrations, except FHWA, normally require reporting, from all their regulated employers. This may not be necessary in this program. DOT request comments regarding less than 100% reporting in each industry. How would sampling work in each industry? Would a multi-tierd approach work, where small employers (less than 50 covered employees) would not be required to submit reports but larger employers (greater than 50 covered employees) would have to submit reports. What other methodologies or options would provide requisite data, be enforceable, provide adequate compliance data and be equitable.

The Department recognizes that any reporting requirement will impose burdens on employers. These burdens have been analyzed in the regulatory evaluation for the operating administration regulations that are part of this effort. The Department seeks comments on ways of achieving the objectives of this rulemaking with a smaller burden.

In a sampling approach, the Department would select a percentage of employers in each covered industry and require them to submit data to the Department. This approach would have the potential advantage of requiring reporting from fewer employers than under the Department's proposal, thereby reducing overall reporting costs. In such an approach, in the various regulated industries, what would appropriate sample percentages be? How much money and effort would be saved?

Sampling, if practicable in DOT's circumstances, might produce useful program evaluation information. However, we are concerned whether, under a sampling approach, the Department's objective of gathering data useful for enforcement purposes could be met. To be useful for enforcement with respect to a particular employer, data must pertain to that individual employer. If the Department collected data on only two percent or ten percent of employers in a given industry, how could the Department's enforcement objectives be met with respect to the employers who were not part of the sample? Would reporting be easier or harder on employers than a situation in which more Federal Inspectors had to visit employers' offices on a periodic basis to gather drug testing compliance information?

We have concerns about whether, in the Department's situation, sampling would be a practicable way of getting useful program evaluation information. Statistical samples can be useful in providing an estimate for an entire population. The primary reason for using a sample is efficiency in data collection. Sampling allows the generation of an estimate of a value for an entire population with the error of the estimate known based on data only from selected members of the population. The key to defining the known error is being able to specify the relationship of the sample to the entire population.

If one cannot identify or enumerate the population, it is not possible to specify the error in the estimate. In some industries subject to DOT drug testing, it is extremely difficult to identify or enumerate the population. That is, the operating administrations, in many cases, do not know or cannot readily retrieve the numbers of

regulated parties, their identities, and their addresses. There is an estimated five to twenty percent turnover in the regulated population each year, depending on the mode.

This situation poses a number of problems for the Department in attempting to operate under a sampling approach, and we request assistance from commenters in dealing with them. For example, how would the Department know the size of the population with sufficient precision to permit reliable statistical inferences? How would the Department inform participants in the sample that they were required to submit data at a particular time? Obviously, it is hard to mail questionnaires to employers whose addresses are not known but such an approach may be practicable after a one year "full census". For example, would it be feasible to have all employers report some information (*e.g.*, a core of items needed for enforcement) while a sample of employers reported additional information (*e.g.*, related solely to program evaluation?). Would such an approach be more rather than less confusing, could it avoid some of the drawbacks of sampling, and would it result in significant reductions in burdens to employers?

In spite of possible lower costs to respondents, a sampling approach could add significant administrative costs to the Department. (*e.g.*, to create research designs, identify respondents, mail out questionnaires or forms, and follow-up non-responses, etc.) The Department asks for comment and continues its own evaluation on how the transaction costs of alternative means of compiling the needed data can be minimized, consistent with program evaluation and enforcement needs.

Under either a sampling or more comprehensive approach, it might reduce costs if employers could report needed data electronically. The approach has proved useful, for example, in implementing the requirement that air carriers report certain tariff information to RSPA. The Department has developed an electronic Information Service called the Anti-Drug Information Center (ADIC). The Department seeks comments on whether adding an electronic filing capability to ADIC for MIS information would be useful. If so, what implementation problems do potential users see and how might they be resolved?

The GAO report specifically recommended that the Department obtain from employers the cost of implementing the program as an element of information to evaluate program success. The purpose of gathering such information would be not only to do analyses of the cost of implementing proposed regulations but also to periodically evaluate those regulations that are issued to determine whether they are achieving their intended purpose. Such an analysis would include the cost of implementing the rules, as well as an analysis of the benefits that are being achieved. With respect to the drug testing rules, many of the costs are easily identifiable. It should not be difficult, for example, to determine the charge that the company incurs to have a laboratory test a urine specimen. It may be difficult, however, to clearly identify some indirect costs, such as consequential costs of transportation delays caused by the collections. Moreover, to the extent we were to seek cost information from the companies implementing the drug testing programs, are existing accounting systems set up to capture such costs in a manner that would be specific to anti-drug compliance? If they were, could we be assured that the different accounting standards that might be used would permit comparison of data from different companies?

Similar questions are raised with respect to benefits. For example, we can determine that a specific number of individuals have tested positive and been removed from safety-sensitive positions. Although the removal of such individuals would clearly have safety benefits, will we be able to identify the direct consequences, such as a reduction in accidents? Will we be able to obtain data concerning the indirect benefits, such as better productivity and decreased absenteeism?

Perhaps the most thorough way to collect this data on cost and benefits would be to require the regulated industries to provide it to DOT. Based on such reports, the Department could evaluate the existing rules to determine whether they needed to be modified to improve upon their cost-benefit ratio. Alternatively, the cost data might be obtained through stratified or other means of sampling. The Department is seeking the best means of obtaining the following data:

Program costs for
- —Specimen collection
- —Laboratory testing
- —MRO services and
- —Education and training

The Department does not normally require cost reporting as a part of safety regulations. Cost reporting would be justified here, however, because it involves a new program involving a large number of vendors other than the regulated industry. That is, it is not traditional industry costs that are at issue. Further, the drug testing vendors have occupied what amounts to a new market for services with respect to which projections made by the agency's economic analysis (prepared in support of the rulemaking) may or may not be currently valid. That is, any cost reporting requirement may constitute a distinct exception to the rule that cost data should ordinarily be obtained in informal market surveys and through voluntary rulemaking submissions without resort to compulsory information collections. However, while there are some potential uses for cost data, there are also some serious potential problems. Asking for companies' costs for certain programs could result in the collection of what was, or what companies asserted was, proprietary information (either for themselves or their contractors). Doing so could create complications not only in the collection of the information, but also the Department's use of the information and the handling of requests from third parties for the release of the information. Moreover, reporting of cost information may be a more difficult, time-consuming, and expensive process for employers than the reporting of other drug testing information. For these reasons, the Department is not proposing to collect cost information at this time. The Department does seek comment on whether cost information should be collected and, if so, what specific information should be requested.

In addition, the Department seeks comment on a number of specific questions concerning the collection of cost information. We request comment on how expensive it would be for industry to provide this data. For example, is some or all of this data so readily available that it would be neither difficult nor expensive for the regulated industries to provide it to the Department in response to a reporting requirement? Would some cost or benefit data be so difficult for individual companies to obtain that it should not be required? Without this data would it be appropriate to request some data or would that data be misleading in the absence of all cost or benefit data? Are the four data elements on costs, listed above, that the Department wishes to collect sufficient? What other data should be collected?

The collection of actual cost data would have the aim of evaluating actual market conditions in a rapidly developing industry (*e.g.*, drug testing consortia, certified laboratories, collection services). (It must be assumed that prices and service packages will

stabilize after an initial period and that the Department will make reasonable prompt decisions with respect to adjustment of initial regulatory requirements in light of program experience. If cost data are collected, should the requirements contain an automatic expiration date? What would be a reasonable period (*e.g.*, 3 years, 4 years, etc.)?

The resolution of this issue also depends on the resolution of the sampling question. If we choose, for example, a two-tiered approach (*e.g.*, a core of enforcement data and the other tier for evaluation), we might also request the specific cost data as well as data relating to the indirect costs and benefits of the program.

Notwithstanding all the proceeding discussion justifying that program cost information is vital to DOT, DOT requests comments on the appropriateness and necessity of requesting cost data. Put another way, do employers desire to share with DOT specific program cost data to demonstrate the cost of compliance?

Each report under the proposed § 40.81 would cover a calendar year. An Operating Administration may require more frequent submission of reports. The closing date would be December 31 and the report would be due at the Operating Administration by February 15 of the following year. The transportation employer report would include each of the following data elements. The Department seeks comments on whether any of these elements should be modified or deleted, or whether any other elements should be added.

1. Number of covered employees by employee category. This data is necessary to assess the scope of the rule's application and provide a basis for determining if random testing meets the required 50% level.

2. Number of covered employees subject to testing under the anti-drug rules of more than one DOT Agency, identified by each agency. This data is necessary to review multi-modal implementation so that policy can be designed accordingly.

3. Number of specimens collected by type of test (*e.g.*, pre-employment, periodic, random, etc.) and employee category. This data is needed to check the compliance with the rules by category and to review collection, testing and the review process.

4. Number of positives verified by a Medical Review Officer (MRO) by type of test, by type of drug and employee category. This data, along with the number of tests performed, permits the calculation of positive rates necessary to determine the extent of drug use and the specific drugs detected in the various categories of employees. Further, analysis of this data over time will provide a measure of the effectiveness of the drug testing rules in deterring drug use.

5. Number of negatives verified by a MRO by type of test, and employer category. This data is needed to check compliance with the rules by category and to review the application of the components of the programs.

6. Number of persons denied a position as a covered employee following a verified drug test. This data provides an assessment of whether the testing program is being implemented as required, provides a measure of the impact of the drug testing rules on the industries, and yields information on the prevalence of drug use in the applicant pool.

7. Number of covered employees verified positive by a MRO, who were returned to duty in covered positions during the reporting period. This data provides information on employer policy implementation regarding reentry requirements and rehabilitation of identified drug users.

8. Number of employees with tests verified positive by a MRO for multiple drugs. This data provides information on the extent of polydrug use in the regulated industries.

9. Number of covered employees who refused to submit to a drug test required under this part, and the action taken in response to the refusal(s). This data provides information on employer policy implementation regarding refusals and subsequent employer actions.

10. Number of covered employees and supervisors who have received required training during the reporting period. This data provides information on training provided during the current reporting period and a cumulative count of covered employees and supervisory personnel on payroll as of December 31 who have received the required drug training.

DOT has developed a standard form for use by employers to provide the data required by this regulation. It is attached as an appendix to this proposed rule Operating Administration rules may require addenda and authorize modifications to this form to be submitted to that Administration Additionally, OA's may authorize electronic submission of the required report as prescribed in their rules. The Department seeks comment on whether these information elements, or the form on which the data would be gathered, are sufficiently clear and simple for use by employers, particularly small businesses. We are receptive to suggestions for making the form and information elements easier to use. For example, consistent with the Department's dual goals of information for program evaluation and enforcement, would it be helpful to separate the data gathering into two parts: One form with only enforcement-related elements that all employers would submit, and a second form with additional program evaluation information that would be submitted by a sample of employers. Aside from the issues surrounding the practicability of samples (see discussion above), would such an approach be helpful? Could it turn out to be more complex and difficult to deal with than the proposed approach?

Many small businesses that are required to participate in the DOT drug testing program do so through consortia. The Department seeks comment on the extent to which the use of consortia may mitigate any problems that smaller firms could have in dealing with the forms and information elements. The generic reporting form presented at appendix A can appear somewhat complex. For example, FAA has 8 categories of employees. Taken together with 6 types of testing (pre-employment, random, etc.) and five types of drugs, there would be a considerable number of data entries. For a small employer, this could appear unnecessary or burdensome. The modes (e.g. FAA) currently utilize fairly simple formats that are used by employers. Would commenters find the more complex instrument burdensome? If DOT decides to utilize it, should we allow small employers (particularly those who may not belong to a consortia) to continue to use existing formats? One of the specific areas on which the Department seeks comment is on the structure of the form in collecting several variables simultaneously versus on separate questions or matrices? The proposed structure is considerably shorter, than separate questions/matrices, but is it too complex? In general, the Department seeks to make the reporting of drug testing information as simple as possible while minimizing unnecessary burdens.

If the Department adopted a two-tiered approach (i.e. a core of data for enforcement and more detailed data for program evaluation, perhaps through sampling), the potential burdens of a more complex instrument would be reduced. Comments are invited on this issue.

The Department could also take a tiered approach as some of the OA's did in the case of the 1988 final rules

regarding the submission of plan requirements. All employers with 50 or more employees would report additional data needed for program evaluation purposes during the first year and a staged and/or short-form type of reporting (including perhaps a sampling of smaller firms) would apply after the first year for employers with 11–50 employees as well as those for 10 or fewer employees. Again, comments are particularly invited on how such an approach could serve the Department's program evaluation needs while providing data essential for enforcement purposes.

Section 40.83 Reporting Alcohol Testing Information to the Department of Transportation

This section, in conjunction with provisions of the five operating administration NPRMs, would require employers to maintain certain annual alcohol program data and report that data to the appropriate Operating Administration. The provision is parallel to the MIS provision for drug testing discussed above, and many of the same questions and requests for comments apply here as well. Each Operating Administration NPRM proposes specific requirements for employer reporting. The most thorough way to collect program data is to require the regulated industries to provide it to DOT. Based on such reports, the Department could evaluate the existing rules to determine whether they needed to be modified to improve upon their cost-benefit ratio. The Department has set forth in this proposal the information that it believes is necessary to enable it to effectively evaluate and to check compliance with the proposed rules.

Regulatory Analyses and Notices

Executive Order 12291

This proposed rule is not a major rule under Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures. The Department has prepared a regulatory evaluation in connection with this proposed rule, which gives attention to the costs of testing under the proposed procedures and to costs for small employers, among other subjects. This evaluation is available for review in the docket for this rulemaking. The costs of compliance with this proposal have also been evaluated as part of the operating administrations' economic analyses prepared in connection with their proposed rules.

Federalism

This rule does not have any direct Federalism impacts on state or local governments. Although it would apply to certain state or local agencies (e.g., transit authorities) this application would be through operating administration rules and any federalism impacts will be discussed in their proposed rules. It should be pointed out that a substantial majority of affected parties are private businesses and individuals, rather than state or local governments. The operating administrations' general statutory safety authority and the Act provide preemptive effect over conflicting state and local law, but these effects are considered as part of the operating administration rules. For these reasons, it has been determined that this proposed rule does not have sufficient Federalism impacts to warrant a Federalism assessment under the principles and criteria contained in Executive Order 12612.

Regulatory Flexibility Act

The Act and operating administration statutory safety authority apply to all covered providers of transportation services, regardless of size. While small entities are affected by this proposed rule, it is through the medium of the operating administration rules (which themselves have some special provisions for small entities) and the impact is analyzed in their rulemaking documents. The necessity of uniform testing procedures for all employees makes it impractical to have special provisions for small entities in these procedures. Moreover, it is the alcohol testing requirements of the Act itself that will have economic effects on small entities, and the operating administrations' rules will provide the opportunity for small entities to participate in volume purchases of equipment and services through consortium or other arrangements. The Department certifies that these procedures (as distinct from the operating administration rules that require alcohol testing) will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act applies to this NPRM and the modal alcohol testing NPRMs because they initiate new information collection requirements (i.e., the management information system provisions of subpart D of this NPRM and corresponding provisions of the modal NPRMs). The NPRMs would also change some existing collections of information. It is difficult for the Department, at this time, to estimate the cost or precise paperwork burden of these proposals. DOT believes that employers would maintain most of the reportable information as part of their normal operation of the proposed alcohol testing program. The principal cost to employers would be that of compiling the information and transmitting it to the operating administrations. DOT and each operating administration solicits comments on the practical utility of the information, alternative methods that might achieve program objectives while being less burdensome, and the cost and burden of providing the information. Persons desiring to comment on this topic should submit their views to the docket for part 40 and/or one or more of the operating administrations' NPRMs.

The Department will request OMB approval of these information collection requirements, which would be enforceable until OMB clearance.The Department will publish a **Federal Register** notice when we receive Paperwork Reduction Act approval.

List of Subjects in 49 CFR Part 40

Alcohol abuse, Drug abuse, Reporting and recordkeeping requirements, Safety.

Issued this 2nd day of December 1992, at Washington, DC.

Andrew H. Card, Jr.,
Secretary of Transportation.

Thomas C. Richards,
Administrator, Federal Aviation Administration.

Thomas D. Larson,
Administrator, Federal Highway Administration.

Gilbert E. Carmichael,
Administrator, Federal Railroad Administration.

Brian W. Clymer,
Administrator, Federal Transit Administration.

Douglas B. Ham,
Deputy Administrator, Research and Special Programs Administration.

Adm. J. William Kime,
Commandant, United States Coast Guard.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend title 49, Code of Federal Regulations, part 40, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for part 40 is revised to read as follows:

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

2. The title of part 40 is revised to read as set forth above.

3. Section 40.1 through 40.19 are designated subpart A, reading as follows:

Subpart A—General

40.1 Applicability.
40.3 Definitions.
40.5–40.19 [Reserved]

Subpart A—General

§ 40.1 Applicability.

This part applies, through regulations that reference it issued by agencies of the Department of Transportation, to transportation employers, including self-employed individuals, required to conduct drug and/or alcohol testing programs by DOT agency regulations and to such transportation employers' officers, employees, agents and contractors (including, but not limited to, consortia). Employers are responsible for the compliance of their officers, employees, agents and contractors with the requirements of this part.

§ 40.3 Definitions.

The following definitions apply to this part:

DHHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

DOT agency. An agency of the United States Department of Transportation administering regulations related to drug or alcohol testing, including the United States Coast Guard (for drug testing purposes only), the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Federal Transit Administration, the Research and Special Programs Administration, and the Office of the Secretary.

Employee. An individual designated in a DOT agency regulation as subject to drug testing or alcohol testing. As used in this part "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

Employer. An entity employing one or more employees that is subject to DOT agency regulations requiring compliance with this part. As used in this part, "employer" includes an industry consortium or joint enterprise comprised of two or more employing entities. No single employing entity is relieved of its responsibility for compliance with this part by virtue of participation in such a consortium or joint enterprise.

Secretary. The Secretary of Transportation or the Secretary's designee.

§§ 40.5–40.19 [Reserved]

4. Sections 40.21 through 40.39 are proposed to be designated subpart B and § 40.41 is added as follows:

Subpart B—Drug Testing

40.21 The drugs.
40.23 Preparation for testing.
40.25 Specimen collection procedures.
40.27 Laboratory personnel.
40.29 Laboratory analysis procedures.
40.31 Quality assurance and quality control.
40.33 Reporting and review of results.
40.35 Protection of employee records.
40.37 Individual access to test and laboratory certification results.
40.39 Use of DHHS-certified laboratories.
40.41 Definitions.

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

4a. In § 40.25, paragraph (f)(10) is proposed to be revised to read as follows:

§ 40.25 Specimen collection procedures.

* * * * * * *

(f) * * *

(10) The collection site person shall instruct the employee to provide at least 45 ml of urine under the split sample method of collection or 30 ml of urine under the single sample method of collection.

(i) (A) Employers with employees subject to drug testing only under the drug testing rules of the Research and Special Programs Administration and/or Coast Guard may use the "split sample" method of collection or may collect a single sample for those employees.

(B) Employers with employees subject to drug testing under the drug testing rules of the Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, or Federal Aviation Administration shall use the "split sample" method of collection for those employees.

(ii) Employers using the split sample method of collection shall follow the procedures in this paragraph:

(A) The donor shall urinate into a collection container, which the collection site person, in the presence of the donor, pours into two specimen bottles.

(B) The first 30 ml of urine shall be poured into a specimen bottle to be used for the primary specimen.

(C) The remainder of the urine shall be poured into another specimen bottle for the split specimen.

(D) In an unusual or emergency situation in which a collection container is not available or it is not practicable to pour the urine from the collection container into two specimen bottles, the donor can use a single specimen bottle and the collection site person shall pour 30 ml of urine from the specimen bottle into a second specimen bottle (to be used as the primary specimen) and retain the remainder in the collection bottle (to be used as the split specimen).

(E) Both bottles shall be shipped in a single shipping container, together with copies 1,2, and the split specimen copy of the chain of custody form, to the laboratory.

(F) If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.

(G) When the MRO informs the laboratory in writing that the employee has requested a test of the split sample, the laboratory shall forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.

(H) The result of the test of the split sample is transmitted by the second laboratory to the MRO.

(I) Action required by DOT agency regulations as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the test of the split sample.

(J) If the result of the test of the split sample fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the reasons for the cancellation to the DOT.

(iii) Employers using the single sample collection method shall follow the procedures in this paragraph:

(A) The collector may choose to direct the employee to urinate either directly into a specimen bottle or into a separate collection container.

(B) If a separate collection container is used, the collection site person shall, after determining specimen

temperature, pour the urine from the collection container into the specimen bottle in the presence of the employee.

(iv) In either collection methodology, upon receiving the specimen from the individual, the collection site person shall determine if it has at least 30 milliliters of urine for the primary or single specimen bottle and, where the split sample collection method is used, an additional, measurable amount of urine that can be poured into the split specimen bottle. If the individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. If the required amount is provided, the original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the employer so notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test. (In preemployment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral.) Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing.

* * * * *

5. In § 40.29, paragraph (b)(2) is proposed to be revised and (b)(3) is proposed to be added, as follows:

§ 40.29 Laboratory analysis procedures.

* * * * *

(b) * * *

(2) In situations where the employer uses the split sample collection method, the laboratory shall log in the split sample, with the split specimen bottle seal remaining intact. The laboratory shall store this sample securely (see paragraph (c) of this section). If the result of the test of the primary sample is negative, the laboratory may discard the split sample. If the result of the test of the primary sample is positive, the laboratory shall retain the split sample in long-term frozen storage for one year (see paragraph (h) of this section). Following the end of the one-year period, or if informed in writing by the MRO that the employee has not requested a test of the split sample, the laboratory may discard the split sample.

(3) When directed in writing by the MRO to forward the split sample to another DHHS-certified laboratory for analysis, the receiving laboratory shall analyze the split specimen by GMS to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such GMS confirmation shall be conducted without regard to the cutoff levels of § 40.29(f). The split sample shall be retained in long-term storage for one year by the laboratory conducting the analysis of the split sample (or longer if litigation concerning the test is pending).

* * * * *

5a. In § 40.33, paragraphs (e), (f) and (g) are proposed to be revised as follows:

§ 40.33 Reporting and review of results.

* * * * *

(e) In a situation in which the employer has used the single sample method of collection, the Medical Review Officer shall direct, in writing, a reanalysis of the original sample if requested to do so by the employee within 72 hours of the employee's having been informed of a verified positive test. The MRO may also direct, in writing, such a reanalysis if the MRO questions the accuracy or validity of any test result. Only the MRO may authorize such a reanalysis, and such a reanalysis may take place only at laboratories certified by DHSS. If the reanalysis fails to reconfirm the presence of the drug or drug metabolite, the MRO shall cancel the test and report the reasons for the cancellation to the DOT.

(f) In situations in which the employer uses the split sample method of collection. If the employee requests an analysis of the split sample within 72 hours of having been informed of a verified positive test (or a longer period, if provided in a DOT agency regulation), the MRO shall direct, in writing, the laboratory to provide the split sample to another DHHS-certified laboratory for analysis. If the analysis of the split sample fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split sample is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the reasons for the cancellation to the DOT.

(g) When the employer uses the split sample method of collection, the employee is not authorized to request a reanalysis of the primary sample as provided in paragraph (e) of this section.

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6. A new § 40.41 is proposed to be added, to read as follows:

§ 40.41 Definitions.

The following definitions apply to this subpart:

Aliquot. A portion of a specimen used for testing.

Blind sample or blind performance test specimen. A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

Canceled test. A test which has been declared invalid by a Medical Review Officer. A canceled test is neither a positive nor a negative test. For purposes of this part, a sample that has been rejected for testing by a laboratory is treated the same as a canceled test.

Chain of custody. Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form (see § 40.23(a)) be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory.

Collection container. A container into which the employee urinates to provide the urine sample used for a drug test.

Collection site. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection site person. A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

Confirmatory test. A second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the initial test and that uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Initial test (also known as screening test). An immunoassay screen to eliminate "negative" urine specimens from further analysis.

Medical Review Officer (MRO). A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical

training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Shipping container. A container capable of being secured with a tamper proof seal that is used for transfer of one or more urine specimen bottle(s) and associated documentation from the collection site to the laboratory.

Specimen bottle. The bottle which, after being labeled and sealed according to the procedures in this part, is used to transmit a urine sample to the laboratory.

7. A new subpart C is proposed to be added to part 40, to read as follows:

Subpart C—Alcohol Testing

40.51 The breath alcohol technician.
40.53 Devices to be used in alcohol testing.
40.55 The alcohol testing site.
40.57 The alcohol testing form.
40.59 Preparation for testing.
40.61 Administration of the initial test.
40.63 Administration of the confirmatory test.
40.65 Inability to provide an adequate amount of breath.
40.67 Invalid tests.
40.69 Availability and disclosure of alcohol testing information about individual employees.
40.71 Maintenance and disclosure of records concerning EBTs and BATs.
40.73 Definitions.
40.77–40.79 [Reserved]

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. app. 1301nt, app. 1434nt., app. 2717, app. 1618a.

§ 40.51 The breath alcohol technician.

(a) The breath alcohol technician (BAT) shall be trained to proficiency in the operation of the evidential breath testing device (EBT) he or she is using and in the alcohol testing procedures of this part.

(1) Proficiency shall be demonstrated by successful completion of a course of instruction, which at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath specimen, and interpreting and recording EBT results.

(2) Courses of instruction that meet standards of the National Highway Traffic Safety Administration (NHTSA) model course or a course approved by a state department of health or other relevant state agency may be used to demonstrate BAT proficiency.

(3) The course of instruction shall include documentation that the BAT has demonstrated competence in the operation of the specific EBT he/she will use.

(4) Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of the EBT.

(5) The BAT shall receive additional training, as needed to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.

(6) The employer shall maintain documentation of the training and proficiency test of each BAT it uses to test employees, as provided in § 40.71.

(b) The supervisor of an employee shall not act as a BAT for that employee, unless doing so is not prohibited by applicable DOT agency alcohol testing regulations and no other BAT is available in a timely manner to perform the test.

§ 40.53 Devices to be used in alcohol testing.

(a) Employers shall use only EBTs meeting the requirements of this section for alcohol testing subject to this part.

(b) EBTs shall have the capability of providing, independently or directly linked to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test and of the operations specified in paragraphs (c) and (d) of this section.

(c) EBTs shall be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the employee before each test and being printed out on each copy of the result.

(d) EBTs shall be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level.

(e) EBTs shall be capable of the following operations prior to and following each collection of breath:

(1) Testing an air blank.

(2) Performing an external calibration check.

(f) In order to be used in alcohol testing subject to this part, an EBT shall have a quality assurance plan (QAP) developed by the manufacturer.

(1) The plan shall designate the method or methods to be used to perform external calibration checks of the device.

(2) The plan shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental conditions (*e.g.*, temperature, altitude, humidity), and contexts of operation (*e.g.*, stationary or mobile use).

(3) The plan shall specify the tolerances on an external calibration check within which the EBT is regarded to be in proper calibration.

(4) The plan shall specify inspection, maintenance, and calibration requirements and intervals for the device.

(5) For a plan to be regarded as valid for purposes of this paragraph, the manufacturer shall have submitted the plan to the National Highway Traffic Safety Administration (NHTSA) for review by NHTSA and have received NHTSA approval of the plan.

(g) The employer shall comply with the NHTSA-approved quality assurance plan for each EBT it uses for alcohol testing subject to this part.

(1) The employer shall ensure that external calibration checks of each EBT are performed as provided in the manufacturer's plan.

(2) The employer shall take an EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT set forth in manufacturer's plan. The EBT shall not again be used for alcohol testing under this part until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT.

(3) The employer shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the device's manufacturer or a state health agency or other appropriate state agency. The employer shall also ensure that each BAT or other individual who performs an external calibration check of an EBT used for alcohol testing subject to this part has demonstrated proficiency in conducting such a check of the model of EBT in question.

(4) The employer shall maintain records of the external calibration checks of EBTs as provided in § 40.71.

(h) When the employer is not using the EBT at an alcohol testing site, the employer shall store the EBT in a secure space.

§ 40.55 The alcohol testing site.

(a) Each employer shall use an alcohol testing site that affords visual and aural privacy to the individual being tested. All necessary equipment, personnel, and materials for breath testing shall be provided at each site.

(b) An employer may use a mobile collection facility (*e.g.*, a van equipped for alcohol testing) as an alcohol testing site.

(c) The alcohol testing site shall be secured, and no unauthorized persons shall be permitted access to the alcohol testing site, at any time when testing is occurring or when the EBT remains unsecured within the alcohol testing site.

(d) In unusual circumstances (*e.g.*, when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a place other than an alcohol testing site. In such a case, the employer or BAT shall provide visual and aural privacy to the employee to the greatest extent practicable.

(e) The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing site while the preparations for testing and testing of a given employee (as set forth in §§ 40.59 through 40.63) are in progress.

§ 40.57 The alcohol testing form.

(a) Each employer shall use the collection form prescribed under this part or a form generated by the EBT that provides all the information contained on the form. Employers may not modify or revise these forms.

(b) The form shall provide triplicate copies: one for the employee being tested, one for the BAT, and one for the employer.

§ 40.59 Preparation for testing.

(a) When the employee enters the alcohol testing site, the BAT will require him or her to provide positive identification (*e.g.*, through use of a photo I.D. card or identification by an employer representative). On request by the employee, the BAT shall provide positive identification to the employee.

(b) The BAT shall explain the testing procedure to the employee.

(c) The employee and BAT shall complete and date the alcohol testing form. Both the BAT and the employee shall sign the form, signifying that the employee is present and is providing breath and noting the number of the test that is about to be taken.

(d) Refusal by an employee to complete and sign the alcohol testing form, to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the collection process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The collection process shall be terminated and the BAT shall immediately notify the employer of the termination.

(e) If an initial or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new initial or confirmation test, as applicable, using a new alcohol testing form with a new sequential test number.

§ 40.61 Administration of the initial test.

(a) Before the initial test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the EBT reading is greater than 0.00, the BAT shall conduct one more air blank. If the EBT does not register 0.00 on that attempt, testing shall not proceed using that instrument. However, testing of the employee may continue using another EBT.

(b) An individually-sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions.

(c) The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

(d) After the initial test is administered for each employee, the BAT shall run an air blank, after allowing adequate time for the EBT to clear any residual alcohol remaining from the test. If the EBT reading is greater than 0.00, the BAT shall conduct one more air blank. The employee's test is valid only if this check results in a 0.00 reading.

(e) Any EBT taken out of service because of failure to perform air blanks accurately shall not be used for testing until a check of external calibration is conducted and the EBT found to be within tolerance limits.

(f) If the result of the initial test is an alcohol concentration of less than 0.02, no further testing is authorized. The BAT shall transmit the result to the employer in a confidential manner, and the employer shall receive and store the information so as to ensure that confidentiality is maintained as required by § 40.69.

(g) If the result of the initial test is an alcohol concentration of 0.02 or greater, a confirmatory test shall be performed as provided in § 40.63.

(h) If the EBT does not print the results directly onto the form, the BAT shall affix the test result printout to the alcohol test form in the designated space, using a method that will provide clear evidence of removal (*e.g.*, tamper-evident tape). The BAT shall sign and date the printed result, certifying that the proper procedures were followed. The employee shall sign the printed result, certifying that he or she took the test with the sequential test number recorded on the printed result that matches the number on the EBT. If the employee declines to sign the printed result, it shall not be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the "Remarks" section of the form.

(i) In the event the result displayed on the EBT does not match the printed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with § 40.67, the test is invalid and the employer and employee shall be so advised.

§ 40.63 Administration of the confirmatory test.

(a) The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmatory test. This time period begins with the completion of the initial test, and shall not be less than 15 minutes nor more than 20 minutes long. The BAT shall explain to the employee the reason for this requirement (*i.e.*, to prevent any accumulation of mouth alcohol from leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.

(b) The BAT shall provide to the employee, and instruct the employee to read during the waiting period, a notice that should the confirmatory test result be an alcohol concentration of 0.04 or greater, the employee should not drive a motor vehicle or perform any safety-sensitive function. The employee shall initial the testing form in the space provided to indicate that this notice has been provided. If the employee declines to initial the form for this purpose, the BAT shall note the provision of the notice and the employee's refusal to initial in the "Remarks" section of the form.

(c) The procedures of § 40.61 (a), (c), (d), (e) and (i) shall be followed. A new mouthpiece shall be used for the confirmation test.

(d) In the event that the initial and confirmatory test results are not identical, the lower of the two results is deemed to be the final result upon which any action under operating administration rules shall be based.

(e) If the EBT does not print the results directly onto the form, the BAT shall affix the test result printout to the

alcohol test form in the designated space, using a method that will provide clear evidence of removal (*e.g.*, tamper-evident tape). The BAT shall sign and date the printed result, certifying that the proper procedures were followed. The employee shall sign the printed result, certifying that he or she took the test with the sequential test number recorded on the printed result that matches the number on the EBT. If the employee declines to sign the printed result, it shall not be considered a refusal to be tested. In this event, the BAT shall note the refusal to sign in the "Remarks" section of the form.

(f) The BAT shall transmit all results to the employer in a confidential manner.

(1) Each employer shall designate an employer representative for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BATs to the employer concerning the alcohol testing results of employees shall be to the designated employer representative.

(2) Such transmission may be in writing, in person or by telephone or electronic means, but the BAT shall ensure immediate transmission to the employer of results that require the employer to prevent the employee from performing a safety-sensitive function.

(3) If the initial transmission is not in writing (*e.g.*, by telephone), the employer shall establish a mechanism to verify the identity of the BAT providing the information.

(4) If the initial transmission is not in writing, the BAT shall follow the initial transmission by providing to the employer the employer's copy of the alcohol testing form. The employer shall store the information so as to ensure that confidentiality is maintained as required by § 40.69 of this part.

§ 40.65 Inability to provide an adequate amount of breath.

(a) This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition.

(b) The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the employer.

(c) If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the alcohol testing form and immediately inform the employer.

(d) The employer shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability to provide an adequate amount of breath. The employee shall make available to the physician all relevant medical history and records.

(e) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the employer a written statement of the basis for his or her conclusion.

(f) If the licensed physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (e) of this section, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The licensed physician shall provide a written statement of the basis for his or her conclusion to the employer.

§ 40.67 Invalid tests.

An alcohol test shall be invalid under the following circumstances:

(a) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the manufacturer's QAP from the known value of the test standard. In this event, every test performed on the device since the last valid external calibration check shall be invalidated;

(b) A device other than an EBT as described in § 40.53 is used for the test;

(c) The BAT does not observe the minimum 15 minute waiting period prior to the confirmatory test, as provided in § 40.61 (a);

(d) The BAT does not perform an air blank of the EBT before and after an initial or confirmatory test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test, as provided in §§ 40.63 and 40.65;

(e) The BAT does not sign the form as required by §§ 40.61 and 40.63;

(f) The employee has failed to sign the form following the printing on or attachment to the form of the test result, and the BAT has failed to note this event on the remarks section of the form.

(g) The EBT fails to print the result;

(h) The sequential test number on the EBT is not the same as the sequential test number on the printed result; or

(i) The alcohol concentration displayed on the EBT is inconsistent with the alcohol concentration printed on the result.

§ 40.69 Availability and disclosure of alcohol testing information about individual employees.

(a) Except as provided in this section, employers shall release information or copies of records regarding an employee's alcohol test results to a third party only as directed by specific, written instruction of the employee authorizing the release of the information or records to an identified person.

(b) Employers shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(c) Employers may disclose information related to an alcohol test of an individual to the individual, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, or by a DOT agency against the individual, and arising from a positive alcohol test (including but not limited to a worker's compensation, unemployment compensation, equitable relief or monetary damages, or other proceeding relating to a benefit sought by the employee).

(d) On request of the National Transportation Safety Board (NTSB), employers shall disclose to the NTSB information about any post-accident test of an employee that was performed following the accident under NTSB investigation.

(e) Employers shall make available copies of all results of employer alcohol testing programs, and any other records pertaining to alcohol testing programs, when requested by DOT or any DOT agency with regulatory authority over the employer or any of its employees.

(f) A covered employee shall, upon written request, be entitled to be provided any records relating to his or her test. The employer shall promptly provide the records requested by the employee. Assignment of costs for such records shall be made in accordance with employer/employee agreements. Access to such records shall not be contingent on the employee obtaining or paying for records in addition to those specifically requested.

§ 40.71 Maintenance and disclosure of records concerning EBTs and BATs.

(a) Each employer shall maintain the following records for five years:

(1) Records of the inspection, maintenance, and calibration of each EBT used in employee testing;

(2) Documentation of the employer's compliance with the quality assurance plan of the manufacturer of each EBT it uses for alcohol testing under this part, including records of the results of external calibration checks;

(3) Records of the training and proficiency testing of each BAT used in employee testing.

(b) Records required to be maintained by this section shall be disclosed as follows:

(1) Employers shall make available copies of all such records, upon request, to DOT or any DOT agency with regulatory authority over the employer or employee.

(2) Employers shall make available, on the request of any covered employee who has been tested, any such record that relates to a test which the employee has taken. The employer shall promptly provide the records requested by the employee. Assignment of costs for such records shall be made in accordance with employer/employee agreements. Access to such records shall not be contingent on the employee obtaining or paying for records in addition to those specifically requested.

(3) Employers shall make available to the NTSB, on request, any such record that directly pertains to a post-accident test of an employee that was performed following an accident under NTSB investigation.

(4) Employers may disclose records covered by this section to the individual, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, or by a DOT agency against the individual, and arising from a positive alcohol test (including but not limited to a worker's compensation, unemployment compensation, equitable relief or monetary damages, or other proceeding relating to a benefit sought by the employee).

§ 40.73 Definitions.

The following definitions apply to this subpart:

Air blank. A reading by an EBT of ambient air containing no alcohol.

Alcohol. Ethyl alcohol (ethanol). References to the use of alcohol include use of any beverage, mixture, or preparation containing ethyl alcohol (including any medication).

Alcohol concentration. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part. When the indicated alcohol concentration of a covered employee on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, the employee shall be considered to have the lower indicated concentration.

Alcohol testing site. The location designated by the employer at which employees are required to provide breath.

Breath Alcohol Technician (BAT). An individual who instructs and assists individuals in the testing process and operates the evidential breath testing device.

Confirmatory test. An analysis of a second, separate amount of breath on an evidential breath testing device.

Evidential breath testing device (EBT). A breath testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "conforming products list of evidential breath measurement devices."

Initial test. The first analysis of an amount of breath on an evidential breath testing device.

Invalid test. A test which has been declared invalid. It is neither a positive nor a negative test.

§§ 40.73–40.79 [Reserved]

8 and 9. A new subpart D is proposed to be added to part 40 to read as follows:

Subpart D—Management Information System

Sec.

40.81 Reporting drug testing information to the Department of Transportation
40.83 Reporting alcohol testing information to the Department of Transportation

Subpart D—Management Information System

§ 40.81 Reporting drug testing information to the Department of Transportation.

(a) Employers shall maintain the drug testing program data identified in this section as specified in the appropriate DOT Agency drug testing rule. This data shall be submitted to each DOT Agency which regulates the employer as stipulated in the DOT Agency rule. DOT Agencies may require additional data necessary to evaluate the effectiveness of the drug testing rules. Any additional requirements are specified in the DOT Agency rules which regulate the employer. Data shall normally be compiled for the calendar year (starting January 1, 1993). If the rule is effective after January 1, 1993, reports for the first year should begin as of the rule's effective date. Annual reports shall be submitted no later than February 15 of the year following the year to which the data pertain.

(b) Each employer's report shall include each of the following data elements:

(1) Number of covered employees by employee category.

(2) Number of covered employees subject to testing under the anti-drug rules of more than one DOT Agency, identified by each agency.

(3) Number of specimens collected by type of test (i.e., pre-employment, periodic, random, etc.) and employee category.

(4) Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug and employee category.

(5) Number of negatives verified by a MRO by type of test, and employer category.

(6) Number of persons denied a position as a covered employee following a verified drug test.

(7) Number of covered employees verified positive by a MRO who were returned to duty in covered positions during the reporting period.

(8) Number of employees with tests verified positive by a MRO for multiple drugs.

(9) Number of covered employees who refused to submit to a drug test required under this rule, and the action taken in response to the refusal(s).

(10) Number of covered employees and supervisors who have received required training during the reporting period.

(c) The data shall be submitted on the form specified in Appendix B to this part or as amended by a DOT Agency rule. If the governing DOT Agency rule requires additional information or modifications authorized by this rule, appropriate modifications to the form will appear in the DOT Agency rule. Modification could include authorized additions and deletions.

§ 40.83 Reporting alcohol testing information to the Department of Transportation.

(a) Each employer shall submit to each DOT agency to whose alcohol testing rules it is subject an annual report covering the calendar year, summarizing the results of its alcohol misuse prevention program.

(b) Each employer that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered function. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium or other agent.

(d) Each employer shall submit the required annual report(s) no later than February 15 of each year. The report shall be submitted on the form specified by the DOT agency. Each report shall contain:

(1) Number of covered employees by employee category.

(2) Number of covered employees subject to testing under the alcohol misuse rule of another DOT agency, identified by each agency.

(3)(i) Number of initial tests by type of test and employee category.

(ii) Number of confirmatory tests, by type of test and employee category.

(4) Number of confirmatory alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(5) Number of confirmatory alcohol tests indicating an alcohol concentration of .02 or greater but less than .04.

(6) Number of persons denied a position as a covered employee following a preemployment/pre-duty alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmatory alcohol test indicating an alcohol concentration of .04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in DOT agency regulations).

(8) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive and drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.

(9) Number of covered employees who were found to have violated other provisions of DOT agency regulations, and the action taken in response to the violation.

(10) Number of covered employees who refused to submit to an alcohol test required under this part, and the actions taken in response to the refusal.

(11) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

10. A new appendix B is proposed to be added to part 40, to read as follows:

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APPENDIX B - DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

GENERAL INSTRUCTIONS

This reporting form includes three parts. Collectively, these parts address the data elements required in the U.S. Department of Transportation (DOT) drug and alcohol testing regulations. Each part of the form is preceded by instructions which outline and explain the information requested and indicate the probable sources for this information. The three parts of the form are:

Section	Instructions Pages	Reporting Form Pages
I. ORGANIZATIONAL INFORMATION	i-ii	1-2
II. DRUG TESTING INFORMATION	iii-vii	3-9
III. ALCOHOL TESTING INFORMATION	viii-xii	10-14

I. ORGANIZATIONAL INFORMATION

INSTRUCTIONS

This part of the reporting form includes two sections. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. TRANSPORTATION EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	ii	2

Page 1 **TRANSPORTATION EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done and a current address. Below this, a signature and date are required certifying the correctness and completeness of the form.

Page 2

COVERED EMPLOYEES (Section B) requires a count for each employee category that must be tested under DOT regulations. Each operating administration will specify the categories to be used for reports submitted to it. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s)

For Office Use Only

DOT DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

YEAR COVERED BY THIS REPORT: 19___

A. TRANSPORTATION EMPLOYER INFORMATION

Company _____

Address _____

_____

_____

I, the undersigned, certify the attached United States Department of Transportation Drug and Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, a true, correct, and complete form for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

B. COVERED EMPLOYEES

COVERED EMPLOYEES							
EMPLOYEE CATEGORY	NUMBER OF COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION					
		FAA	FHWA	FRA	FTA	RSPA	USCG
TOTAL							

II. DRUG TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iv-vi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	iv	4
B. EMPLOYEE TESTING	vi	5-7
C. OTHER TESTING/PROGRAM INFORMATION	vi	8
D. TRAINING/EDUCATION	vii	9

Sections A and B are used to summarize the drug testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment testing. The five tables in Section B are for entering drug testing data on periodic, random, post-accident, reasonable cause, and return to duty testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons testing positive is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 4

JOB APPLICANT TESTING INFORMATION (Section A) requires information for pre-employment testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category, it should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by job applicants that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page v with example numbers.

Page 4

Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test**". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. Each operating administration will specify the employee categories to be used in reports submitted to it. This example will use the categories "Operator" and "Maintenance" to illustrate the procedures for completing the form.

A Urine specimens were collected for 157 job applicants for operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Operator".

B The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for operator positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Operator".

C The MRO for your company reported that 4 of those 157 specimens from applicants for operator positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Operator".

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in Section C, **OTHER TESTING/PROGRAM INFORMATION**, on page 8 of the reporting form.

PRE-EMPLOYMENT TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operator	157	153	4	3	1	0	0	1
Maintenance	107	105	2	1	0	0	1	0
	0	0	0	0	0	0	0	0
TOTAL	264	258	6	4	1	0	1	1

A B C D E

Please note that the sample data collection form also has information for maintenance workers on line two. The same procedures outlined for operators should be followed for entering the data on maintenance workers. With applicants for maintenance positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Maintenance".

E

The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for operator positions were collected and 107 for applicants for maintenance positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 5-7 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) periodic, (2) random, (3) post-accident, (4) reasonable cause, and (5) return to duty testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

Page 7 Following these tables that summarize **EMPLOYEE TESTING**, you must provide counts for employees who have tested positive and are currently in, or have completed rehabilitation, and have returned to work in a covered position. Report this information only for employees who tested positive during this reporting period. This information should be available from the personnel office and/or drug program manager.

Page 8 **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 8 **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**, then check the appropriate columns indicating the combination of drugs reported as positive. For example, if marijuana and cocaine were detected in 3 operator specimens,

then you would write "Operator" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 operator specimens, then you would write "Operator" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 8 **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a drug test required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal. An example of an action taken would be "removed from covered duties pending termination".

Page 9 **TRAINING/EDUCATION** (Section D) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by DOT drug testing regulations.

   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT TESTING									
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
TOTAL								

Number of persons denied a position as a covered employee following a verified positive drug test:

B. EMPLOYEE TESTING

PERIODIC TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
TOTAL								

RANDOM TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
TOTAL								

B. EMPLOYEE TESTING (continued)

POST-ACCIDENT TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
TOTAL								

REASONABLE CAUSE TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
TOTAL								

B. EMPLOYEE TESTING (continued)

RETURN TO DUTY TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
TOTAL								

Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during this reporting period: [ ]

C. OTHER TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of covered employees who have received initial training on the consequences, manifestations, and behavioral cues of drug use as required by DOT drug testing regulations: [ ]

Number of supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by DOT drug testing regulations: [ ]

Number of covered employees who have received recurrent or refresher training on the consequences, manifestations, and behavioral cues of drug use: [ ]

Number of supervisory personnel who have received recurrent or refresher training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use: [ ]

III. ALCOHOL TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information for the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ix-x as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	ix	10
B. EMPLOYEE TESTING	xi	11-13
C. OTHER TESTING/PROGRAM INFORMATION	xi	13-14
D. TRAINING/EDUCATION	xii	14

Sections A and B are used to summarize the alcohol testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment/pre-duty testing. The five tables in Section B are for entering alcohol testing data for random, post-accident, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of initial alcohol tests performed for each employee category;
2) the number of confirmatory alcohol tests performed for each employee category;
3) the number of confirmatory test results which were equal to or greater than 0.04; and
4) the number of confirmatory test results which were equal to or greater than 0.02, but less than 0.04.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons whose alcohol test results were 0.04 or greater is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 10

JOB APPLICANT TESTING INFORMATION (Section A) requires information for pre-employment/pre-duty testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page x.

Four types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF INITIAL TESTS**" requires a count of all initial alcohol tests performed for each employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF CONFIRMATORY TESTS**" requires a count of all confirmatory alcohol tests performed for each employee category.

The third blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04**" requires a count for each employee category.

The fourth blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04**" requires a count for each employee category.

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page x with example numbers.

Page 10

Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater**". Enter the appropriate number in the box provided.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment/pre-duty testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. Each operating administration will specify the employee categories to be used in reports submitted to it. This example will use the categories "Operator" and "Maintenance" to illustrate the procedures for completing the form.

A

Initial tests were performed on 157 job applicants for operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Operator".

B

Confirmatory tests were necessary for 6 of the 157 applicants for operator positions. Enter this information in the second blank column of the table in the row marked "Operator". The confirmatory test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmatory test results for 3 of the applicants for operator positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Operator".

D The confirmatory test results for 2 of the applicants for operator positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Operator".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for operator positions and 107 applicants for maintenance positions were subjected to initial tests. The total for that column would be 264 (i.e., 157 + 107). The same procedure should be used for each column (i.e., add all the numbers in that column and place the answer in the last row).

PRE-EMPLOYMENT/PRE-DUTY TESTING

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0 04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0 02, BUT LESS THAN 0 04
Operator	157	6	3	2
Maintenance	107	3	1	0
	0	0	0	0
TOTAL	264	9	4	2

A B C D E

Please note that our sample data collection form also has information for maintenance workers on line two. The same procedures outlined for operators should be followed for entering the data on maintenance workers. With applicants for maintenance positions, 107 initial tests were conducted resulting in 3 confirmatory tests. The confirmatory test result for 1 of the maintenance worker applicants was equal to or greater than 0.04; no results were equal to or greater than 0.02, but less than 0.04. This information is entered in the row marked "Maintenance".

x

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATORY TESTS". These numbers may differ since some confirmatory test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 11-13 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These tables are to be filled out like the sample table above. Again, these numbers do **not** include refusals for testing.

Page 12 Following the table that summarizes return to duty testing, you must provide a count of the **"Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in DOT regulations)"**. Report this information only for employees who were tested during this reporting period. This information should be available from the personnel office and/or alcohol program manager.

Pages 13-14 **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you provide information on employees who tested positive for drugs and alcohol (at the same time), information on violations of other alcohol provisions (not necessarily resulting in positive alcohol tests), and information on employees who refused to submit to an alcohol test.

Page 13 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 13 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires information on the **NUMBER OF COVERED EMPLOYEES** committing such a violation, a description of the **VIOLATION** committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the **ACTION TAKEN** in response to the violation.

Page 14 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test as required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal.

Page 14 **TRAINING/EDUCATION** (Section D) requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by DOT alcohol testing regulations.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this part of the report.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT/PRE-DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
TOTAL				

Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

B. EMPLOYEE TESTING

RANDOM TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
TOTAL				

POST-ACCIDENT TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
TOTAL				

B. EMPLOYEE TESTING (continued)

REASONABLE SUSPICION TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
TOTAL				

RETURN TO DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
TOTAL				

Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in DOT regulations): [ ]

B. EMPLOYEE TESTING (continued)

FOLLOW-UP TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
TOTAL				

C. OTHER TESTING/ PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN

C. OTHER TESTING/PROGRAM INFORMATION (continued)

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of supervisors who have received the required training in determining the existence of reasonable suspicion of alcohol misuse: [ ]

[FR Doc. 92-29674 Filed 12-10-92; 10:00 am]
BILLING CODE 4910-60-C

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Federal Register

Tuesday
December 15, 1992

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 61, et al.
Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121 and 135

[Docket No. 27065; Notice No. 92-17]

RIN: 2120-AE43

Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes regulations to establish an alcohol testing program for air carrier employees who perform safety-sensitive duties, which would implement the FAA-related provisions of the Omnibus Transportation Employee Testing Act of 1991, which was enacted on October 28, 1991. As proposed in this NPRM, employees who perform safety-sensitive duties directly or by contract for aviation employers that hold a certificate issued under certain regulatory provisions, operators as defined in the regulations, or air traffic control facilities not operated by the FAA or the U.S. military would have to be subject to an FAA-approved alcohol misuse prevention program (AMPP). The proposed rule would require alcohol testing of these employees, proscribe certain alcohol-related conduct, and establish specified consequences for engaging in alcohol misuse. Employers would also be required to provide written materials to covered employees explaining the program and to submit reports to the FAA on the results of the program. This proposed rule is intended to ensure that public safety is maintained by preventing alcohol misuse by safety-sensitive aviation employees.

DATES: Comments must be received on or before April 14, 1993. There will be public hearings on this proposal, details about which will be published in the Federal Register.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 27065, 800 Independence Avenue SW., Washington, DC 20591. Comments that are delivered to this address must be marked "Docket No. 27065." Comments may be examined in room 915G between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, Office of Aviation Medicine, Drug Abatement Division (AAM-800), Federal Aviation Administration, 400 7th Street SW., Washington, DC 20590; telephone (202) 366-6710.

SUPPLEMENTARY INFORMATION:

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the notice number of this NPRM.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Current Laws and Regulations

A variety of laws and regulations currently restrict the consumption of alcohol by some aviation employees. Federal criminal law prohibits any person from operating or directing the operation of a common carrier while under the influence of alcohol. 18 U.S.C. 342. A blood alcohol level of .10 percent is considered presumptive evidence that the person is under the influence. 18 U.S.C. 343(1).

The FAA's regulations concerning alcohol misuse would be supplemented but not changed by the rule proposed here. Currently, under the FAA's rules, no person may act or attempt to act as a crewmember of a civil aircraft within 8 hours after consuming any alcoholic beverage, while under the influence of alcohol, or while having .04 percent by weight or more of alcohol in the blood. (14 CFR 91.17(a).) In limited circumstances, the FAA's regulations require crewmembers to submit to alcohol tests requested by State or local law enforcement officers and, upon request, to furnish the results of such tests to the Administrator. (14 CFR 91.17(c).) Refusal to take a properly authorized law enforcement alcohol test or to furnish the results can result in the denial, revocation, or suspension of an airman certificate issued under part 61 or 63. (14 CFR 61.16 and 63.12a.)

Holders of or applicants for medical certificates issued under 14 CFR part 67 are subject to additional regulations regarding alcohol use. First, a diagnosis of alcoholism is a disqualifying factor for a medical certificate. A diagnosed alcoholic must be evaluated by the Federal Air Surgeon and meet certain recovery criteria prior to receiving a medical certificate. However, to facilitate recovery and to prevent the unnecessary loss of skilled employees, a program established by the FAA, the airline industry, and the pilots' unions has enabled hundreds of alcoholic pilots to safely return to duty. The program combines confrontation, therapy, and stringently monitored aftercare.

Part 67 also provides that any individual who applies for a medical certificate must permit access by the Administrator to information in the National Driver Register concerning drug- and alcohol-related driving offenses. (14 CFR 67.3.) If an individual has had two or more such offenses within 3 years after the effective date of the rule, the FAA may suspend or revoke a part 61 airman certificate held by the individual or deny the individual's application for such certificate. (14 CFR 61.15.)

Discussion of Amendments

OST Common Preamble

OST, seeking to determine the extent of any alcohol problem in the transportation industries, issued an advance notice of proposed rulemaking (ANPRM) on November 2, 1989. The ANPRM asked for comment on a variety of issues related to preventing alcohol misuse by transportation workers, and several hundred comments were received. A thorough discussion of these comments and of the general issues related to alcohol use in the transportation industries is found in the common preamble published elsewhere in today's Federal Register. The OST preamble also addresses the multi-modal aspects of the Omnibus Transportation Employee Testing Act of 1991 (the Act) (Pub. L. 102-143, title V), which provides the statutory mandate for the rule proposed in this notice and for the related notices of other operating administrations. This common preamble is incorporated into this notice by reference. Any aspects of the proposed rule that are not discussed below are addressed in the common preamble.

Proposed Alcohol Misuse Prevention Program (AMPP)

The rule proposed in this NPRM would use three primary tools for reducing the threat of alcohol misuse in aviation. First, by amending parts 65, 121, and 135, the rule would prohibit certain alcohol-related conduct by employees performing safety-sensitive duties. Second, under the provisions of new appendix J to part 121, such

employees would be subject to pre-employment/pre-duty, random, post-accident, reasonable suspicion, return to duty, and follow-up alcohol testing. This testing would be federally-mandated but would be administered by the affected employers. Third, in accordance with requirements in appendix J, employees subject to the rule would be provided with materials designed to educate them about the provisions of the rule and the consequences of engaging in alcohol misuse.

Other Requirements Imposed by Employers; Requirement for Notice

The scope of the FAA's proposed rule is limited to prohibiting alcohol misuse and to providing for testing when there is a direct implication for aviation safety. Should an aviation employer determine that, as a matter of company policy, a different program should be implemented, the employer would be able to establish such a program. Any such program, however, would have to be clearly separate from the program that would be required under this rule, with appropriate notice given prior to tests under this rule. These provisions should preclude the commingling of employer-directed and FAA-mandated programs—a problem that has been of significant concern to the FAA in the context of anti-drug programs.

Employers Who Would Be Required To Establish Programs

During the development and implementation of the FAA's industry anti-drug program, the FAA carefully considered the appropriate scope of the rule. After the implementation of the rule, the FAA amended the scope to eliminate most of the operations that do not require a part 121 or part 135 certificate. The amendment was based on the FAA's determination that the minimal benefit to public safety that might accrue from inclusion of these operators did not warrant the cost and intrusiveness of drug testing (56 FR 43974; September 5, 1991).

This NPRM proposes to include essentially the same classes of employers as are covered by the anti-drug rule: 14 CFR part 121 certificate holders, 14 CFR part 135 certificate holders, sightseeing operators who meet the criteria of 14 CFR 135.1(c), and air traffic control (ATC) facilities not operated by the FAA or the U.S. military would have to establish alcohol misuse prevention programs. Companies with employees who perform safety-sensitive functions by contract for these employers would be permitted to establish and manage programs under this appendix. However, while a contractor company that manages its own program would perform all of the functions required of an "employer" in proposed appendix J, the certificate holders, operators, and ATC facilities would remain responsible for ensuring that all covered employees who perform services for them are subject to an approved program.

One change from the coverage in the anti-drug rule should be noted: ATC facilities operated under contract with the FAA were not included in the FAA's anti-drug rule. It was originally presumed that employees of such facilities were sufficiently subject to the supervision and control of the FAA that inclusion in the FAA's program (for its own employees) would be feasible. Subsequently, however, it was determined that the scope of the FAA's authority did not extend to such inclusion. Therefore, employees of contract ATC facilities should be subject to the FAA's rules for the aviation industry, and would be included under the scope of the proposed alcohol misuse rule.

Employees Who Would Be Subject to the Rule

This proposed rule would cover employees performing certain specified safety-sensitive functions. The FAA proposes to retain essentially the same coverage as the anti-drug rule, that is persons performing any of the following duties: Flight crewmember, flight attendant, flight instruction, aircraft dispatch, aircraft maintenance, ground security coordinator, aviation screening, and air traffic control. The anti-drug rule included flight test duties in its list of covered functions. As a practical matter, these duties are subsumed in the category of flight crewmember duties; therefore, the flight test category would not be included in this rule. Additionally, the category of ground security coordinator duties has been specified separately to reflect the coverage intended by the term "aviation security" in the anti-drug rule.

The FAA has been carefully evaluating the scope of covered functions since implementation of the anti-drug rule in 1989 and finds that the scope remains appropriate and should be adopted for this rule. At this point the FAA is uncertain whether the increased benefit to safety that could accrue by including other functions warrants the imposition of an alcohol testing requirement on individuals performing those functions. However, the FAA is soliciting comment on this issue, with specific focus on the following questions:

1. Are there additional functions with sufficient safety implications to warrant regulating alcohol-related conduct and imposition of a testing requirement?
2. Do air carriers have any data on the size of the additional population that would be affected and the incidence of alcohol misuse by this population?
3. What additional costs would be incurred by inclusion of other functions and what would be the offsetting benefits (*i.e.*, in terms of accident prevention, productivity, etc.)?

The FAA is also considering whether the class of maintenance personnel covered by this rule should be limited to those persons who are in charge of maintenance operations, who perform required inspections, and who have the authority to return an aircraft to service after maintenance has been performed. The FAA seeks comment on the following questions:

1. Should the maintenance population covered by the alcohol misuse rule be limited to supervisors, inspectors, and persons authorized to return aircraft to service?
2. Is the inspection and supervisory system for maintenance sufficiently comprehensive to remove or reduce the safety impact of the actual maintenance work?
3. Would restriction of the covered population have an adverse effect on safety?
4. What cost savings would accrue from limiting the population?

Prohibited Alcohol-Related Conduct

The NPRM would prohibit specific alcohol-related conduct by covered employees. Further, an employer would be prohibited from using a covered employee if the employer had actual knowledge that the employee had engaged in such conduct. Each of the prohibitions has been carefully tailored to minimize the restriction on the otherwise lawful use of alcohol by covered employees by limiting the time of the prohibition to at or near the time of the performance of covered functions. The FAA does not, however, propose to list the specific actions within a safety-sensitive function that would trigger coverage under this rule. This would be determined by the employer based on the requirements of the FAA's regulations and the employer's experience and knowledge of the employees' duties. These determinations would have to be included in the company policy required under the new appendix J and would be subject to FAA review.

The specific prohibitions are:

Alcohol Concentration: The NPRM proposes to establish that a covered

employee would be in violation of the rule with an alcohol concentration of .04 or greater. A concentration of .04 is consistent with the FAA's current regulations regarding alcohol use by crewmembers, and is based on research conducted by the FAA and other DOT agencies into the impairing effects of different amounts of alcohol. Unlike the FAA's present regulatory provisions, however, the proposed rule would also prohibit employers from using an employee to perform a safety-sensitive function if the employee's test result was .02 or greater, but less than .04, until either the employee's next duty period if at least 8 hours has elapsed or the employee is tested again within the 8 hours and has a test result below .02.

Performance of covered functions while under the influence of alcohol: As noted above, the FAA's current regulations prohibit any person from acting or attempting to act as a crewmember while under the influence of alcohol. The FAA's experience in enforcing this provision indicates that it is a useful tool in preventing alcohol misuse. Therefore, the FAA proposes to adopt a similar prohibition in this rule. While the FAA does not propose to specifically define "under the influence," preferring rather to leave open case-by-case analysis, the FAA notes that the proposed rule does provide that "under the influence" would have to be shown by behavior or appearance characteristic of alcohol misuse, or by an adverse effect on the employee's ability to perform his or her assigned functions. Further, if an employer determined that sufficient evidence existed to believe the employee to be under the influence of alcohol, the employer would be required to administer a reasonable suspicion test.

The FAA recognizes that an "under the influence" provision would impose a subjective standard on covered employees and that that standard may in the rare case provide supervisors or employers with a means to harass or unfairly stigmatize employees. It is the intent of the FAA, therefore, that use of this provision to impose sanctions under this rule would be limited to the unusual situation in which an employer could not administer a reasonable suspicion test. The indicators of alcohol misuse are commonly recognized and a reasonable suspicion test supported by such indicators, with a result indicating an alcohol concentration of .04 or greater, would provide the employer with objective, rather than subjective, evidence of alcohol misuse on which to take action.

The FAA has considered whether to permit an employer to take action under this rule against a covered employee for violating the under the influence provision even if an alcohol test result indicated an alcohol concentration below .04. The FAA in no way proposes to limit the employer's authority to remove the employee from the performance of safety-sensitive duties if the employer believed, notwithstanding an alcohol test result, that the employee was impaired (and, in fact, the employer would be required to remove the employee, at least temporarily, if the employee's alcohol concentration was .02 or greater but less than .04). However, to prevent any possibility of harassment and in light of the fact that the FAA has proposed a comprehensive alcohol testing program, the FAA has determined that employers should not be permitted to take other action under this rule for alleged impairment that is not supported by the test result when a test is administered. Any such action would have to be under the employer's independent authority.

On-Duty Use

It is the FAA's intent that this provision would apply to any covered employee who, while not actually performing a safety-sensitive function, could be called at any time to perform. Such an employee (for example, a supervisor) would have to refrain from using alcohol or would be in violation of this provision.

Pre-Duty Use

This notice proposes a two-tiered prohibition with respect to pre-duty use of alcohol. As noted above, the FAA already prohibits any person from acting or attempting to act as a crewmember within 8 hours after the consumption of any alcoholic beverage. This prohibition applies to all persons, including those in general aviation. It was based on a determination by the FAA that a specified period of abstinence would decrease the likelihood that an individual would be impaired by alcohol while acting as a crewmember. (Many air carriers voluntarily impose a longer abstinence period for their crewmembers.) The FAA is aware that individuals who drink to excess may still be impaired even after abstaining for 8 hours; however, the 8-hour rule establishes an adequate behavioral limitation for the majority of persons who are not heavy drinkers. The FAA has determined that the 8-hour limit remains appropriate for crewmembers, and proposes to include a similar prohibition under this rule. This provision would, to some extent, duplicate the restrictions in 14 CFR 91.17(a), but would be limited in application to the covered employees of the specified employers under the rule. Additionally, the rule would prohibit the employers from using covered employees who have impermissibly used alcohol—a restriction that does not currently exist in the FAA's regulations.

The FAA proposes a 4-hour pre-duty use limitation on the remaining classes of covered employees. Imposition of an 8-hour rule on all covered employees could have a safety benefit; however, the FAA is concerned that the nature of the safety-sensitive functions other than crewmember duties are sufficiently different that an 8-hour limitation on pre-duty use of alcohol for those classes could constitute an unwarranted intrusion by the Federal government into the off-duty life of aviation industry employees.

The FAA is asking for comment on whether covered employees performing safety-sensitive functions other than crewmember duties should be subject to a pre-duty alcohol use limitation. If so, how long should the period be; if not, why not?

Use Following An Accident

Under the proposed rule, a covered employee with actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident would be required to refrain from using alcohol for 8 hours unless the employee had been given a post-accident test or the employer had determined that the employee's performance could not have contributed to the accident. The restriction on use, as proposed, would primarily affect those employees whose performance of duties may have contributed to the accident and whose consumption of alcohol prior to the time of the accident would be relevant information that should not be masked by post-accident consumption. While the prohibition would be imposed on covered employees, employers would be encouraged to attempt to control the actions of the affected employees as circumstances permit.

Refusal to Submit to a Required Alcohol Test

A refusal to submit to random, post-accident, reasonable suspicion, or follow-up testing would be, in addition to a rule violation (as discussed in the common preamble), a potential basis for the denial, suspension, or revocation of a certificate issued under 14 CFR part 61, 63, or 65. The inclusion of such provisions is necessary both to deter

noncompliance with the rule and to emphasize the important role that testing plays in increasing aviation safety. The FAA does not propose to attach any consequences other than preclusion from performing a safety-sensitive function to an individual's choice not to submit to pre-employment/pre-duty or return to duty testing.

Required Alcohol Testing

As previously mentioned, under the proposed rule aviation employees who perform safety-sensitive functions for certain employers would be subject to several types of alcohol testing: pre-employment/pre-duty, post-accident, random, reasonable suspicion, and return to duty and follow-up (after engaging in prohibited conduct or refusing to submit to required testing). Additionally, a covered employee who had an alcohol concentration of .02 or greater but less than .04 on any test would have to undergo another test if the employer wanted to permit the employee to perform a safety-sensitive function within 8 hours of the first test. All testing would have to be conducted using the DOT-wide procedures for alcohol testing contained in proposed amendments to 49 CFR part 40 issued by OST this day. The procedures would be incorporated by reference into the FAA's rule.

Pre-Employment/Pre-Duty Testing

The procedures and rationale for pre-employment/pre-duty alcohol testing are addressed in the OST common preamble.

The FAA is requesting specific comment on whether the proposed procedure for using the results of prior pre-employment/pre-duty alcohol tests is useful. It is particularly interested in knowing whether employers would be likely to use this option, whether they would hesitate to use another employer's result, and whether the need to obtain prior test results and the other required evidence would make the option too burdensome to provide a real benefit to employers.

Post-Accident Testing

The FAA's current anti-drug rule requires post-accident testing for drug use, and the proposed alcohol misuse rule includes an analogous provision for alcohol testing. The triggering event for such testing would be the same as in the anti-drug rule. Similarly, the employees subject to testing would be the same—covered employees whose performance of safety-sensitive functions either contributed to an accident or cannot be completely discounted as a contributing factor. Additionally, the purpose of this testing would be the same as under the anti-drug rule: to determine if an employee should be removed from the performance of safety-sensitive functions.

Since alcohol passes through the human system quickly, testing would have to occur within a short time following the accident. An employer who was unable to conduct a timely post-accident test would have to submit an explanatory report to the FAA.

Random Testing

As required by the Act, the proposed rule includes random alcohol testing for covered employees. The FAA has tailored the testing to ensure that testing reasonably serves the FAA's interest in aviation safety. Selection procedures like those in current FAA-approved anti-drug plans would have to be used to ensure randomness of testing.

The anti-drug rule included a "moonlighting" provision for employees working for multiple employers because random drug testing can take place at any time the employee is at work, is intended to detect any drug use, and can detect drug use that may have occurred substantially prior to the test. Because random alcohol testing would be tied to the performance of safety-sensitive functions (and the misuse of alcohol at or near the time of performance), employees who work for more than one employer would have to be in the random testing pool of each employer.

Reasonable Suspicion Testing

The anti-drug rule contains a provision for "reasonable cause" testing of employees who may have used illegal drugs. This proposed rule, like the Act, refers to reasonable suspicion testing; however, the same type of testing is meant by both terms. The FAA recognizes that logistical requirements associated with obtaining an alcohol test may cause some delay in administration of the test and that employers will not maintain or have immediate access to testing equipment at every location where reasonable suspicion testing may have to be conducted. While reasonable suspicion testing should be conducted as close in time as possible to the time of the observations, factors such as being at a remote location or air carrier outstation or having to delay testing while waiting to use equipment shared with another employer would be considered in determining if the timing of a test comported with requirements of the rule. Further, the FAA realizes that a delay in excess of 2 hours from the time of the observations on which the decision to test was made would cause the alcohol concentration determined by the test to decline and possibly drop below .04 or .02.

In some situations, where an unavoidable delay would vitiate the usefulness of a test, it could be appropriate for the employer to take action based on the employee being under the influence of alcohol rather than attempt to obtain an essentially irrelevant test result. The FAA would review each such situation to determine whether the facts supported the employer's determination that it was unable, without substantial difficulty or cost, to conduct a timely reasonable suspicion test.

In the anti-drug rule, the FAA required part 121 and large part 135 certificate holders to have two supervisors, at least one of whom was trained in the detection of drug use, substantiate and concur in the decision to conduct a reasonable cause drug test. All other covered employers could conduct a test if one trained supervisor substantiated the decision to test. Under this proposed rule, a reasonable suspicion alcohol test could be conducted by any employer based on the observations of one supervisor who has been trained in the detection of the symptoms of alcohol misuse.

Return to Duty and Follow-Up Testing

The specific requirements for these types of tests are discussed in the OST common preamble.

Retesting After Result of .02 or Greater But Less Than .04

Retesting under this provision was previously discussed in the context of the proposed alcohol concentration prohibitions. The FAA is seeking comment on whether the proposed "retest or return" procedure gives employers enough flexibility (or too much) in handling covered employees with low-level alcohol concentrations.

Recordkeeping and Reporting; Confidentiality

This rule would require employers to maintain detailed records related to their alcohol misuse prevention programs, including records of alcohol tests performed under this rule. The records would have to be maintained in a secure location and could be released only as required under the rule or with the express written consent of the employee.

The FAA is aware that some employers have hesitated to release information related to drug test results to subsequent employers. Under the anti-drug rule, such releases are based on the general permissive authority

given to employers to release information upon the written consent of the employee. This rule would require the release of employee-specific information to a subsequent employer if the original employer receives a written request from the employee. Providing a regulatory mandate for such release and removal of employer discretion should relieve employers' concerns about possible litigation.

The rule would also provide express authority to the FAA to conduct on-site inspections of employer's alcohol programs, including the alcohol testing process. The FAA's experience with compliance monitoring under the anti-drug rule has indicated that the individuals managing employers' programs are frequently persons with human resources or administration backgrounds. These people often have had no experience with other FAA inspections (*e.g.*, flight standards) and are often unaware of the FAA's authority to conduct such inspections. While the Administrator or his designee has such authority even absent a regulatory provision, the FAA determined that inclusion of such a provision in this rule would be appropriate to ensure industry awareness of the FAA's authority to monitor compliance.

Finally, the reporting of statistical information by employers (and other planholders) is an essential tool for monitoring compliance with the rule. Although the anti-drug rule requires both semi-annual and annual reporting, the FAA's experience with these reports indicates that annual reporting is sufficient to ensure that the FAA can adequately monitor the rule. This NPRM therefore proposes only annual reporting.

Consequences of Engaging in Misuse of Alcohol or Refusing To Submit to Testing

The Omnibus Transportation Employee Testing Act of 1991 (the Act) amended the Federal Aviation Act of 1958 (the FAAct) and the statutes that apply to the Federal Railroad Administration, the Federal Highway Administration, and the Federal Transit Administration. While these amendments have much common language, especially in the area of testing, they are not identical. Of greatest significance, the amendments to the FAAct contain a section entitled "Prohibition on Service," which does not appear in the amendments to the other modes' statutes.

The "Prohibition on Service" section is found at new FAAct section 614(b). Under subsection 614(b)(1), an individual may not remain on duty in a safety-sensitive function if he or she has violated the prohibitions on the use of alcohol. This legislative provision on continued duty is reflected in each of the subsections of the FAA's proposed rule addressing prohibited conduct (see, *e.g.*, proposed 14 CFR 65.46a). Each proposed section states either directly or by implication that the employee may not report for duty or remain on duty requiring the performance of safety-sensitive functions while engaging in conduct prohibited by the rule. These sections further provide that no employer who has actual knowledge that an employee is in violation of the rule may permit the employee to perform or continue to perform safety-sensitive functions. Additionally, proposed appendix J, section V, paragraph A would expressly prohibit an employee who has engaged in conduct prohibited by the rule from performing safety-sensitive functions. This section, consistent with the proposed rules of the other DOT OAs, would also require removal from duty for refusal to submit to a required alcohol test.

Section 614(b)(2) of the FAAct, "Effect of Rehabilitation," states that no covered employee may perform a safety-sensitive function after engaging in prohibited conduct unless he or she has completed a rehabilitation program under the provisions of section 614(c) of the FAAct. Section 614(c)(1) requires the Administrator to prescribe regulations that provide, at a minimum, for the identification of employees in need of assistance in resolving problems with misuse of alcohol. Further, the section gives the Administrator the authority to determine the circumstances under which such employees would be required to participate in any required rehabilitation. The provisions recognize that rehabilitation may not be appropriate or warranted in all cases of prohibited conduct.

The legislative requirement of section 614(b)(2) is implemented in proposed appendix J, section V, paragraph E, "Required evaluation." This proposed section would require that the employee be evaluated in accordance with proposed section VI of the appendix prior to performing covered functions. The evaluation process is discussed further below.

The proposed rule contains a provision, analogous to the one in the anti-drug rule, under which employers would be required to notify the Federal Air Surgeon of any instance in which a holder of a part 67 medical certificate violated the provisions of the rule or refused to submit to a required alcohol test (with the exception of pre-employment/pre-duty tests). The employer would also have to forward to the FAA copies of the evaluations conducted by the SAP. The Federal Air Surgeon would use this information to determine whether further action should be taken with respect to the medical certificate. No such employee could return to the performance of safety-sensitive functions without the Federal Air Surgeon's recommendation.

Section 614(b)(3) of the FAAct, "Performance of prior duties prohibited," provides sanctions for employees who engage in prohibited use of alcohol after the date of the Omnibus Transportation Employee Testing Act. This subsection is found only in the amendments to the FAAct and has no parallel in the amendments to the other modes' statutes. It provides that, under certain circumstances discussed below, an individual shall not be permitted to perform the duties related to air transportation that he or she performed prior to the date he or she engaged in the impermissible use of alcohol. The legislation does not require that the individual's employment be terminated, nor that he or she be reassigned to perform non-safety-sensitive functions. However, it is an absolute bar to the performance of the same duties the employee performed before the violation.

This bar applies under four circumstances. The first occurs if the individual misuses alcohol "while on duty." The remaining prohibitions all relate to rehabilitation: the absolute bar to returning to duty applies if an employee misuses alcohol after the date of enactment, and

1. Had previously misused alcohol and undergone a program of rehabilitation under the regulations promulgated pursuant to the Act;
2. Refused to undertake any required rehabilitation; or
3. Failed to complete any required rehabilitation.

The proposed rule would implement the prohibitions in two ways. First, proposed appendix J, section V, paragraph B, "Permanent disqualification for service" would prohibit an employee who has engaged in prohibited conduct from performing safety sensitive functions if the employee violated the on-duty use prohibition or if the employee twice violated the provisions of the rule after its effective date. As drafted, this bar would apply to the performance of any safety-sensitive function. Although this bar would be more extensive than that required by the Act, the FAA believes

that the alternative of a narrow bar would lead to anomalous results; for example, a person might be barred from performing screening duties but could serve as a pilot. Additionally, the bar on two-time violators would apply both to persons who had gone through rehabilitation and to those who, after evaluation by a SAP, were determined not to need treatment. Otherwise, an employee who was found to need treatment and had an instance of recidivism would be sanctioned, but an employee who did not need assistance but simply chose to engage in misuse of alcohol would not be sanctioned.

Second, the bar following a refusal or failure of rehabilitation would be implicitly implemented by the requirement that prior to returning to duty performing safety-sensitive functions each employee must be evaluated by an SAP to determine whether the employee properly met the requirements for rehabilitation established during the initial evaluation. An employee who did not meet the requirements, whether by failure or refusal, would be precluded from returning to the performance of safety-sensitive functions. The FAA has chosen, however, not to propose a definite time period during which the employee must comply. The rule would thus allow for the denial phase that most people go through when first confronted with evidence of an alcohol problem.

Alcohol Misuse Information and Training

Unlike the FAA's current anti-drug program, this NPRM does not propose to require training for covered employees, other than for supervisors who would make reasonable suspicion testing determinations. Whereas the dangers posed by various drugs and the indicators of use of the different drugs are not widely recognized, the hazards and indicators of alcohol misuse are a matter of common knowledge. Therefore, basic alcohol awareness training appears to be unnecessary. With respect to supervisors who would direct reasonable suspicion tests, however, the FAA believes that the rule should include a training requirement. This training would be sufficiently detailed to ensure that reasonable suspicion testing is directed only on specific bases meeting the requirements of this rule.

The FAA is specifically seeking comment on whether the rule should include alcohol awareness training for all employees.

Employee Referral, Evaluation, and Treatment

In drafting the proposed rule, representatives from other OAs and the FAA gave considerable thought to the issue of rehabilitation of employees who engage in alcohol misuse. During the rulemaking on the anti-drug rule, the FAA received comments from industry, labor organizations, and others stressing the sometimes conflicting needs of employer flexibility and employee health. In the end, the FAA was largely silent on the issue of rehabilitation. Although, as discussed above, the Act does address the need for rehabilitation, it has left to the discretion of the Administrator the method for approaching that need.

The FAA has chosen not to prescribe regulations with respect to specific types of rehabilitation. Rather, it is proposing a process under which each covered employee who engages in alcohol misuse or who refuses to submit to testing would be advised of all resources available to the employee. Further, each such employee would be evaluated by a SAP who would determine whether and what assistance the employee needed in resolving problems associated with alcohol misuse. Whether the employer would provide any required treatment or would hold a position open for the employee upon completion of the treatment would be a matter for employer/employee negotiation.

Employer Alcohol Misuse Prevention Program Plans

The FAA proposes to include a requirement that employers submit alcohol misuse prevention program (AMPP) plans to the FAA for approval prior to implementation of a program under the rule. The plan approval process was used during the implementation of the anti-drug rule and proved invaluable in assisting the industry in establishing programs and educating the industry about the requirements of the rule. Additionally, the plan submission requirement provided the FAA with the ability to readily determine which companies were failing or refusing to comply with the rule. The FAA also uses the plans in its ongoing compliance and enforcement efforts.

Under the proposed alcohol misuse rule, the FAA would require that the plans be submitted by certified mail, return receipt requested. With the exception of consortia core plans, the plans would be deemed approved by the FAA 60 days after the date on the receipt unless the FAA notified the plan submitter otherwise.

The elements that would be required in the plans include the AMPP manager; the type of evidential breath testing (EBT) device to be used for testing; the person or company that will be collecting breath specimens; and the person or company that will be providing EBT maintenance and breath alcohol technician training. The plan would also identify the SAP and include certification that the plan submitter agreed to comply with the provisions of the alcohol misuse prevention regulations.

As mentioned above, the FAA proposes to permit companies whose employees perform covered services by contract to an employer to establish independent alcohol misuse prevention programs. Contractor companies would be able to submit plans directly to the FAA for approval and to implement approved plans for their own employees. Each plan submitter, whether a contractor company or an employer, would be responsible for maintaining a program in accordance with the approved plan and the final rule. A contractor company, for example, would be required to maintain the confidentiality of records pertaining to its employees and could disclose such records only in accordance with the rule. The FAA's experience with the anti-drug program indicates that permitting contractor companies to manage their own programs is generally the most efficient method through which to ensure coverage of contractor employees. As with the anti-drug program, the FAA would exercise control over the contractor companies that establish programs by retaining the ability to revoke the plan approval of any contractor company that fails to properly implement its approved AMPP plan. Because employers would be able to use only contractor employees who were subject to an FAA-approved program, potential revocation of such approval would provide a strong incentive to contractor companies to properly implement their programs.

The FAA also proposes to permit employers and contractor companies to join consortia for purposes of complying with the rule. The proposed consortia system, which is based on the system developed under the anti-drug rule, would require an entity (or a group of employers/contractors) to develop a core program and submit a plan to the FAA for approval. The core program would have to contain all of the operational elements of the plan. Once the FAA approved the core program, the consortium would be able to seek

clients ("riders"). Both the client and the consortium would submit a rider plan to the FAA, which would essentially just identify the employer/contractor company program manager and include a certification by both the consortium and the client that each understands its responsibilities under the proposed rule.

Although the preparation of plans by the industry and review of the plans by the FAA could be somewhat burdensome, the FAA has found in its anti-drug program that the utility of these plans more than offsets any burden.

Phased Implementation

The NPRM includes a proposed schedule for phased implementation of the AMPP for the aviation industry. For each class of employers, the rule would require plan submission by a certain date and implementation of the approved plan 6 months later. Employers would have 8 months after their specified plan submission date to ensure that contractor employees are subject to an approved program. Part 121 and large part 135 certificate holders (more than 50 covered employees) and air traffic control facilities would be required to comply with the rule first, with implementation proposed to occur 12 months after the effective date of the rule. Part 135 certificate holders with 11 to 50 covered employees would be in the second phase of implementation (18 months after the effective date), with small part 135 certificate holders and § 135.1(c) operators in the last phase (24 months after the effective date of the final rule).

The FAA used phased implementation in establishing the anti-drug program, and found it to be the most efficient method through which to ensure that the industry had adequate time to comply with the rule and that the FAA had sufficient resources to review the required plans. Although implementation of this rule would be phased over two years, the actual process of implementation should be facilitated by the experience the FAA and the industry with implementation of the anti-drug rule. Virtually all of the employers who would be subject to this rule are also subject to the anti-drug rule and have experience in establishing and maintaining testing and training programs. While the operational aspects of this rule would be somewhat different from those of the anti-drug rule, the time to comply as currently contemplated in the NPRM should be more than sufficient.

The FAA invites comment on the proposed implementation schedule, especially with respect to any specific difficulties the industry foresees could impede implementation of the rule.

Employees Located Outside the U.S.

As proposed, this rule would apply to direct employees of U.S. air carriers who perform safety-sensitive functions outside the U.S. after January 2, 1995. The rule would not permit testing of such employees, however, if the FAA receives written documentation from an employer demonstrating that such testing would be inconsistent with the laws and regulations of the country in which the testing would occur. Employers would have to submit copies, in English, of applicable laws and regulations. It is within the purview of this agency to regulate the conduct of direct employees of holders of FAA-issued operating certificates, regardless of the location of the employees. However, the FAA is mindful of the fact that employee testing is impermissible in many countries, and does not wish to pose an impossible burden on its regulated employers. The delayed effective date of the rule should permit adequate time for employers to determine whether alcohol testing comports with the laws and regulations of the countries in which its employees are located.

Paperwork Reduction Act Approval

Proposed appendix J to part 121 would require each employer to submit to the FAA: An alcohol misuse prevention program plan for approval by the FAA; notification to the FAA of alcohol misuse by holders of airman medical certificates issued under 14 CFR part 67; notification to the FAA of refusals to submit to alcohol testing by holders of airman certificates issued under 14 CFR parts 61, 63, and 65; and annual statistical reports summarizing data on the employer's alcohol misuse prevention program. To provide the notifications and reports to the FAA, employers will be required to maintain records related to each covered employee, including test results.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the recordkeeping and reporting requirements proposed in this notice will be submitted to the Office of Management and Budget (OMB) for approval. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, room 3001, Washington, DC 20503; attention: FAA Desk Officer. A copy should be submitted to the FAA docket. Commenters should especially provide their views on the accuracy of the FAA's estimate of the burdens associated with these requirements, the practical utility of the information to be obtained, and less burdensome reporting alternatives to those proposed in this notice. The following is a synopsis of the assessment of the paperwork burden associated with this notice:

Title: Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities.
Need For Information: The information is needed to respond to regulations promulgated in accordance with the Omnibus Transportation Employee Testing Act of 1991, enacted on October 28, 1991.
Proposed Use of Information: The information submitted is intended to be the basis for monitoring industry implementation of and compliance with the FAA Alcohol Misuse Prevention Program. The information will also be used to evaluate the effectiveness of the program.
Frequency:
Alcohol Misuse Prevention Program Plan: One time submission for FAA approval (followed by any necessary amendments to the approved plan if any changes or revisions occur).
Notification of Refusals/Alcohol Misuse: As required.
Statistical Report: Annual.
Burden Estimate: 23,862.
Respondents: Specified aviation employers.
Average Burden, Hours/Respondent/Year: 4.

Economic Summary

This section summarizes a full regulatory evaluation prepared by the FAA and contained in the docket that provides detailed estimates of the economic consequences of this regulatory action. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the Regulatory Flexibility Act of 1980 (Pub.L. 96–354) and an international trade impact assessment.

Costs

The FAA calculated costs for three random testing scenarios: 10 percent, 25 percent, and 50 percent. The total costs of testing for all occupational categories for these scenarios have a net present value, over ten years, of $29.9 million, $41.6 million, and $60.8 million, respectively. In addition to testing costs, there are also costs associated with short-notice replacement of employees

who misuse alcohol and evaluating these employees. Adding the testing and follow-up costs, the total ten year discounted costs for the 10 percent random testing scenario, the 25 percent random testing scenario, and the 50 percent random testing scenario total $34.1 million, $46.6 million, and $66.6 million, respectively.

Benefits

The FAA believes that major benefits would accrue from these proposals. The first is the prevention of potential injuries and fatalities and property losses resulting from accidents attributed to alcohol misuse. The second is the potential reduction in absenteeism, lost worker productivity, and medical costs, and improved general safety in the work place resulting from the deterrence of alcohol misuse.

The FAA has estimated that the cost of human fatalities in the event of an accident could be as high as $160.5 million. The estimated cost of a National Transportation Safety Board (NTSB) accident investigation is $1.2 million. Therefore, if this proposed rule prevents one accident attributed to alcohol-impaired performance by a person who performs sensitive safety-related functions in commercial aviation during the 10-year period from 1993 to 2002, discounted benefits of $107.4 million could be realized.

The FAA estimates that productivity gains of $44.7 million, $50.7 million, and $59.6 million, discounted over ten years, would accrue to the aviation industry from the reduction of alcohol misuse, for the 10 percent, 25 percent, and 50 percent random testing scenarios, respectively.

Consequently, the total quantifiable discounted benefits that are expected to result from promulgation of the proposed rule amount to $152.1 million, $158.1 million, and $167.0 million, discounted, over ten years, for the 10 percent, 25 percent, and 50 percent random testing scenarios, respectively.

Cost/Benefit Analysis

Given the costs and benefits discussed above, as summarized in the following table, the FAA finds that all three random testing scenarios are cost beneficial (all costs discounted over ten years):

	10% random	25% random	50% random
Costs	$34.1 mil	$46.6 mil	$66.6 mil.
Benefits	152.2 mil	158.1 mil	167.0 mil.
Benefit/Cost Ratio	4.47	3.40	2.51
Net Benefits	118.1 mil	111.5 mil	100.4 mil.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A, the criterion for a "substantial number" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. For operators of aircraft for hire, a small operator is one that owns, but not necessarily operates, nine or fewer aircraft. The FAA's criteria for "significant impact" are $4,330 or more per year for an unscheduled operator, $111,250 or more per year for a scheduled operator whose entire fleet is made up of airplanes with over 60 seats, and $62,170 or more per year for other scheduled carriers.

This proposed rule would primarily affect holders of certificates issued under parts 121 and 135. The FAA calculated estimated compliance costs for small part 121 and 135 operators owning 9 aircraft. Although the average small operator owns 4 aircraft, this analysis assumes 9 aircraft as a worst case scenario. For a part 121 small operator, the annual costs are expected to be $8,649, for part 135 Scheduled, $3,164, and for part 135 Unscheduled, $1,649. Accordingly, the annual costs expected to be imposed on such small operators would not exceed the thresholds for significant impact outlined above. Therefore, the FAA finds that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The FAA finds that this proposed rule would affect all part 121 and part 135 air carriers. All safety-sensitive part 121 and part 135 employees would be covered. The FAA finds that this proposed rule would not have an adverse impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. While there would be increased costs to carriers as a consequence of this proposed rule, these costs would be offset by the benefits summarized above and an increase in public confidence.

Federalism Implications

The rule proposed herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Significance

This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more, although it may result in an increase in costs for consumers, industry, or Federal, State, or local agencies. Although the proposed rule is not "major" as defined in Executive Order 12291, the FAA has determined that this proposal involves issues of substantial interest to the public. Therefore, the FAA has determined that the NPRM is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

A draft Regulatory Impact Analysis of the proposed rule has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

Cross-Reference Table

As noted above, a number of DOT agencies in addition to the FAA are publishing notices of proposed rulemaking in today's Federal Register, all of which are introduced by a common preamble prepared by OST. The following cross-reference table identifies the relevant provision of the FAA's NPRM by the subject heading used in the DOT preamble and the location of each provision in the FAA's proposed rule.

Subject heading	FAA NPRM
	(References are to (new) appendix J to 14 CFR part 121, unless noted).
General:	
Purpose	Section I, paragraph A.
Applicability	Sec I, para C (definition of employer); also: 14 CFR 65.46a(a). 14 CFR 121.458(a). 14 CFR 135.253(a).
Alcohol Testing Procedures	Sec I, para B.
Definitions	Sec I, para C.
Preemption	Sec I, para D.
Other Requirements Imposed by Employers.	Sec I, para E.
Requirement for Notice	Sec I, para F.
Starting Dates for Alcohol Testing Programs.	Sec VII, para A(Schedule for submission of plans and implementation).
Prohibited Conduct:	
Alcohol Concentration	14 CFR 65.46a(b). 14 CFR 121.458(b). 14 CFR 135.253(b).
Behavior or Appearance	14 CFR 65.46a(c). 14 CFR 121.458(c). 14 CFR 135.253(c). (Under the influence of Alcohol).
On-duty Use	14 CFR 65.46a(d). 14 CFR 121.458(d). 14 CFR 135.253(d).
Pre-duty Use	14 CFR 65.46a(e). 14 CFR 121.458(e). 14 CFR 135.253(e).
Use Following an Accident	14 CFR 65.46a(f). 14 CFR 121.458(f). 14 CFR 135.253(f).
Refusal to Submit to a Required Alcohol Test.	14 CFR 65.46a(g). 14 CFR 121.458(g). 14 CFR 135.253(g).
Tests Required:	
Pre-employment/pre-duty	Sec III, Para A.
Post-accident	Sec III, Para B.
Random	Sec III, para C.
Reasonable Suspicion	Sec III, para D.
Return to Duty	Sec III, para E.
Follow-up	Sec III, para F.
Retesting • • • .02 or Greater • • •	Section III, para G.
Handling of Test Results, Record Retention, and Confidentiality:	
Retention of Records	Sec IV, para A.
Reporting of Results	Sec IV, para B.
Access to Facilities and Records.	Sec IV, para C.
Consequences for Employees Engaging in Alcohol-Related Conduct:	
Removal from Safety-Sensitive Function.	Sec V, para A.
Required Evaluation and Testing.	Sec V, para E.
Other Alcohol-Related Conduct	Sec V, para F.
Alcohol Misuse Information, Training, and Referral:	
Employer Obligation to Promulgate a Policy.	Sec VI, para A.
Training for Supervisors	Sec VI, para B.
Referral, Evaluation, and Treatment.	Sec VI, Para C.
Major Additional Provisions in FAA NPRM:	
Refusal to Submit to a Drug or Alcohol Test (certificate action).	14 CFR 61.14. 14 CFR 63.12b. 14 CFR 65.23.
Testing for Alcohol	14 CFR 65.46(b). 14 CFR 121.459. 14 CFR 135.255.
Covered Employees	Sec II.
Permanent Disqualification for Service.	Sec V, para B.
Notice to the Federal Air Surgeon.	Sec V, para C.
Notice of Refusals	Sec V, para D.
Employer's Alcohol Misuse Prevention Program Plan.	Sec VII.
Employees Outside the U.S	Sec VIII.

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aircraft, Aircraft pilots, Airmen, Alcohol, Alcoholism, Aviation safety, Safety, Transportation.

14 CFR Part 63

Air safety, Air transportation, Aircraft, Airmen, Alcohol, Alcoholism, Aviation safety, Safety, Transportation.

14 CFR Part 65

Air safety, Air traffic, Air transportation, Aircraft, Airmen, Alcohol, Alcoholism, Aviation safety, Safety, Transportation.

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Alcohol, Alcoholism, Aviation safety, Pilots, Safety, Transportation.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aircraft, Airmen, Airplanes, Alcohol, Alcoholism, Aviation safety, Pilots, Safety, Transportation.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 61, 63, 65, 121, and 135 as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 61.14 is revised to read as follows:

§ 61.14 Refusal to submit to a drug or alcohol test.

(a) This section applies to an employee who performs a function listed in appendix I or appendix J to part 121 of this chapter directly or by contract for a part 121 certificate holder, a part 135 certificate holder, or an operator as defined in § 135.1(c) of this chapter.

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, 1427, 1429, and 1430 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

4. Section 63.12b is revised to read as follows:

§ 63.12b Refusal to submit to a drug or alcohol test.

(a) This section applies to an employee who performs a function listed in appendix I or appendix J to part 121 of this chapter directly or by contract for a part 121 certificate holder, a part 135 certificate holder, or an operator as defined in § 135.1(c) of this chapter.

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for—

(1) Denial of an application for any certificate or rating issued under this

part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

6. Section 65.23 is revised to read as follows:

§ 65.23 Refusal to submit to a drug or alcohol test.

(a) *General.* This section applies to an employee who performs a function listed in appendix I or appendix J to part 121 of this chapter directly or by contract for a part 121 certificate holder, a part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or the U.S. military.

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

7. Section 65.46a is added to read as follows:

§ 65.46a Misuse of alcohol.

(a) This section applies to employees who perform air traffic control duties directly or by contract for an employer that is an air traffic control facility not operated by the FAA or the U.S. military (*covered employees*).

(b) Alcohol concentration. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of .04 or greater. No employer having actual knowledge that an employee has an alcohol concentration of .04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) Under the influence of alcohol. Notwithstanding the absence of a reasonable suspicion alcohol test under appendix J to part 121 of this chapter, no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by behavior or appearance characteristic of alcohol misuse or by an adverse effect on the employee's ability to perform his or her assigned functions. No employer having actual knowledge that the employee is in violation of this provision shall permit a covered employee to perform or continue to perform safety-sensitive functions.

(d) On-duty use. No covered employee shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(e) Pre-duty use. No covered employee shall perform air traffic control duties within 4 hours after using alcohol. No employer having actual knowledge that such an employee has used alcohol within 4 hours shall permit the employee to perform or continue to perform air traffic control duties.

(f) Use following an accident. No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under appendix J to part 121 of this chapter, or the employer has determined that the employee's performance could not have contributed to the accident.

(g) Refusal to submit to a required alcohol test. No covered employee shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test required under appendix J to part 121 of this chapter. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

8. Section 65.46b is added to read as follows:

§ 65.46b Testing for alcohol.

(a) Each air traffic control facility not operated by the FAA or the U.S. military (hereinafter *employer*) must establish an alcohol misuse prevention program in accordance with the provisions of appendix J to part 121 of this chapter.

(b) No employer shall use any person who meets the definition of *covered employee* in appendix J to part 121 to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

9. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1485, and 1502 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

10. Section 121.458 is added to read as follows:

§ 121.458 Misuse of alcohol.

(a) *General.* This section applies to employees who perform a function listed in appendix J to this part for a certificate holder (*covered employees*). For the purpose of this section, a person who meets the definition of covered employee in appendix J is considered to be performing the function for the certificate holder.

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of .04 or greater. No certificate holder having actual knowledge that an employee has an alcohol concentration of .04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *Under the influence of alcohol.* Notwithstanding the absence of a reasonable suspicion alcohol test under appendix J to this part, no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by behavior or appearance characteristic of alcohol misuse or by an adverse effect on the employee's ability to perform his or her assigned functions. No certificate holder having actual knowledge that the employee is in violation of this provision shall permit a covered employee to perform or continue to perform safety-sensitive functions.

(d) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No certificate holder having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(e) *Pre-duty use.* (1) No employee shall perform flight crewmember or flight attendant duties within 8 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform the specified duties.

(2) No employee shall perform safety-sensitive duties other than those specified in paragraph (e)(1) of this section within 4 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 4 hours shall permit the employee to perform or continue to perform safety-sensitive functions.

(f) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under appendix J of this part, or the employer has determined that the employee's performance could not have contributed to the accident.

(g) *Refusal to submit to a required alcohol test.* No covered employee shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test required under appendix J to this part. No certificate holder shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

11. Section 121.459 is added to read as follows:

§ 121.459 Testing for alcohol.

(a) Each certificate holder must establish an alcohol misuse prevention program in accordance with the provisions of appendix J to this part.

(b) No certificate holder shall use any person who meets the definition of *covered employee* in appendix J to this part to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

12. Appendix J to part 121 is added to read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

This appendix contains the standards and components that must be included in an alcohol misuse prevention program required by this chapter.

I. General.

A. *Purpose.* The purpose of this appendix is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

B. *Alcohol testing procedures.* Each employer shall ensure that all alcohol testing conducted pursuant to this appendix complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol testing are incorporated by reference into and are made applicable to employers by this appendix.

C. *Definitions.* As used in this appendix—

Accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and the time all such persons have disembarked, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage.

Administrator means the Administrator of the Federal Aviation Administration or his or her designated representative.

Alcohol means ethyl alcohol (ethanol).

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test performed under this appendix. When the indicated alcohol concentration of a covered employee on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, and the consequences of the two results would differ under the provisions of this appendix, the lower result shall be considered the final result on which action under this appendix shall be based.

Alcohol use means the use of alcohol include consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Confirmatory test means a second analytical procedure, separate from the screening test, to determine the concentration of alcohol in a covered employee's system. The confirmatory test may or may not use a different chemical principle from that of the screening test, but shall employ a scientifically recognized method of testing capable of providing quantitative data regarding alcohol concentration. For specific requirements concerning evidential breath testing devices see 49 CFR part 40.

Consortium means an entity, including a group or association of employers or contractors, that provides alcohol testing as required by this appendix and that acts on behalf of such employers or contractors, provided that it has an alcohol misuse prevention plan approved by the FAA in accordance with this appendix.

Contractor company means a company that has employees who perform safety-sensitive functions by contract for an employer.

Covered employee means a person who performs, either directly or by contract, a safety-sensitive function listed in section II of this appendix for an employer (as defined below). For purposes of pre-employment/pre-duty testing only, the term "covered employee" includes a person applying to perform a safety-sensitive function.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 65, 121, and 135; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

Employer means a part 121 certificate holder; a part 135 certificate holder; an air traffic control facility not operated by the FAA or the U.S. military; and an operator as defined in 14 CFR 135.1(c).

Initial alcohol test (or screening test) means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

Performing (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with this appendix, or engages in conduct that clearly obstructs the collection process.

Safety-sensitive function means a function listed in section II of this appendix.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

D. *Preemption of State and local laws.* 1. Except as provided in subparagraph 2 of this paragraph, these regulations preempt any State or local law, rule, regulation, or order to the extent that:

(a) Compliance with both the State or local requirement and this appendix is not possible; or

(b) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this appendix.

2. The alcohol misuse requirements of this title shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

E. *Other requirements imposed by employers.* Except as expressly provided in these alcohol misuse requirements, nothing in these requirements shall be construed to affect the authority of employers, or the rights of employees, with respect to the use or possession of alcohol, including any authority and rights with respect to alcohol testing and rehabilitation.

F. *Requirement for notice.* Before performing an alcohol test under this appendix, each employer shall notify a covered employee that the alcohol test is required by this appendix. No employer shall falsely represent that a test is administered under this appendix.

II. Covered Employees

Each employee who performs a function listed in this section directly or by contract

for an employer as defined in this appendix must be subject to alcohol testing under an FAA-approved alcohol misuse prevention program implemented in accordance with this appendix. The covered safety-sensitive functions are:

1. Flight crewmember duties.
2. Flight attendant duties.
3. Flight instruction duties.
4. Aircraft dispatcher duties.
5. Aircraft maintenance duties.
6. Ground security coordinator duties.
7. Aviation screening duties.
8. Air traffic control duties.

III. Tests Required

A. *Pre-employment/pre-duty.* 1. Prior to the first time a covered employee performs safety-sensitive functions for an employer, the employee shall undergo testing for alcohol. No employer shall allow a covered employee to perform safety-sensitive functions unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than .04. If a pre-employment/pre-duty test result under this paragraph indicates an alcohol concentration of .02 or greater but less than .04, the provisions of paragraph F of section V of this appendix apply.

2. An employer is not required to administer an alcohol test as required by this paragraph if:

(a) the employee has undergone an alcohol test required by this appendix or the alcohol misuse rule of another DOT agency within the previous 6 months, with a result indicating an alcohol concentration lower than .04; and

(b) the employer ensures that no prior employer of the covered employee of whom the employer has knowledge has records of a violation of §§ 65.46a, 121.458, or 135.253 of this chapter or the alcohol misuse rule of another DOT agency within the previous 6 months.

B. *Post-accident.* 1. As soon as practicable following an accident, an employer shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident.

2. If a test required by this section is not administered within 2 hours following the accident, the employer shall submit a report to the FAA, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 400 7th Street SW., Washington, DC 20590, stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall submit the same report.

3. A covered employee who is subject to post-accident testing who leaves the scene of an accident without a valid reason prior to submission to such test may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

C. *Random testing.* 1. Each employer shall, at various times, randomly select covered employees for unannounced alcohol testing. The selection of employees shall be made by use of a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each covered employee shall have an equal chance of being tested under the selection process used.

2. During each 12 month period following the start of random alcohol testing by the employer, the employer shall meet the following conditions:

(a) The dates for administering unannounced testing of randomly-selected covered employees shall be spread reasonably throughout the 12-month period; and

(b) The number of employees randomly selected for testing during the 12-month period shall equal an annual rate of not less than [10–50] percent of the total number of employees subject to alcohol testing under this appendix or the alcohol misuse rule of another DOT agency. If the employer conducts random testing through a consortium, the annual rate may be calculated for each individual employer or for the total number of covered employees subject to random testing by the consortium.

3. A covered employee shall only be tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

4. Each employer shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately. However, if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

D. *Reasonable suspicion testing.* 1. Each employer shall require any covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the alcohol misuse prohibitions in §§ 65.46a, 121.458, or 135.253 of this chapter.

2. The employer's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

3. Alcohol testing is authorized by this section only if the observations required by paragraph 2 are made during or just preceding the period of the work day that the covered employee is required to be in compliance with this rule. A covered employee may be required to undergo reasonable suspicion testing for alcohol while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

E. *Return to duty testing.* Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in §§ 65.46a, 121.458, or 135.253 of this chapter, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than .02.

F. *Follow-up testing.* Following a determination under section VI, paragraph C.2 of this appendix that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each employer shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of section VI, paragraph C.3(b)(2) of this appendix.

G. *Retesting of covered employees with an alcohol concentration of .02 or greater but less than .04.* Each employer shall retest a covered employee to ensure compliance with the provisions of section V, paragraph F of this appendix, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of .02 or greater but less than .04.

IV. Handling of Test Results, Record Retention, and Confidentiality

A. *Retention of records.* 1. *General Requirement.* Each employer shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

2. *Period of Retention.* Each employer shall maintain the records in accordance with the following schedule:

(a) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of .02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and employee evaluations and referrals, shall be maintained for a minimum of 5 years.

(b) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices) and training shall be maintained for a minimum of 2 years.

(c) *One year.* Records of negative test results (as defined in 49 CFR part 40) shall be maintained for a minimum of 1 year.

3. *Types of Records.* The following specific records shall be maintained.

(a) Records related to the collection process:

(1) Collection logbooks, if used.
(2) Documents relating to the random selection process.
(3) Calibration documentation for evidential breath testing devices.
(4) Verification of breath alcohol technician training.
(5) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
(6) Documents generated in connection with decisions on post-accident tests.
(7) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.
(b) Records related to test results:
(1) The employer's copy of the alcohol test form, including the results of the test;
(2) Documents related to the refusal of any covered employee to submit to an alcohol test required by this appendix.
(3) Documents presented by a covered employee to dispute the result of an alcohol test administered under this appendix.
(c) Documents related to other violations of § 65.46a, § 121.248, or § 135.253 of this chapter.
(d) Records related to evaluations:
(1) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.
(2) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.
(3) Records of notifications to the Federal Air Surgeon of violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.
(e) Records related to education and training:
(1) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.
(2) Documentation of compliance with the requirements of section VI, paragraph A of this appendix.
(3) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.
(4) Certification that any training conducted under this appendix complies with the requirements for such training.

B. *Reporting of results in a management information system.* 1. Each employer shall submit to the FAA an annual report covering the calendar year, summarizing the results of its alcohol misuse prevention program.

2. Each employer that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered function. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

3. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or by a consortium.

4. Each employer shall submit the required annual report no later than February 15 of each year. The report shall be submitted on the form specified by the FAA. Each report shall contain:
(a) Number of covered employees by employee category.
(b) Number of covered employees in each category subject to alcohol testing under the alcohol misuse rule of another DOT agency, identified by each agency.
(c)(1) Number of initial tests by type of test and employee category.
(2) Number of confirmatory tests, by type of test and employee category.
(d) Number of confirmatory alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.
(e) Number of confirmatory alcohol tests indicating an alcohol concentration of .02 or greater but less than .04.
(f) Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of .04 or greater.
(g) Number of covered employees with a confirmatory alcohol test indicating an alcohol concentration of .04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in section V, paragraph E, and section VI, paragraph C of this appendix).
(h) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.
(i) Number of covered employees who were found to have violated other alcohol misuse provisions of §§ 65.46a, 121.458, or 135.253 of this chapter, and the action taken in response to the violation.
(j) Number of covered employees who refused to submit to an alcohol test required under this appendix, and the action taken in response to each refusal.
(k) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.
(l) Direct costs of the program during the reporting period:
(1) Breath collection
(2) Breath analysis (equipment/service)
(3) Substance abuse professional evaluation (if appropriate)
(4) Education and training.

C. *Access to facilities and records.* 1. Except as required by law or expressly authorized or required in this appendix, no employer shall release covered employee information that is contained in records required to be maintained under this appendix.

2. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

3. Each employer shall permit access to all facilities utilized in complying with the requirements of this appendix to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

4. Each employer shall make available copies of all results of alcohol testing conducted under this appendix and any other information pertaining to the employer's alcohol misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee.

5. When requested by the National Transportation Safety Board as part of an accident investigation, each employer shall disclose information related to the employer's administration of a post-accident alcohol test administered following the accident under investigation.

6. Records shall be made available to a subsequent employer upon receipt of written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's request.

7. An employer may disclose information required to be maintained under this appendix pertaining to a covered employee to the employee or to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from the results of an alcohol test administered under this appendix or from the employer's determination that the employee engaged in conduct prohibited under § 65.46a, § 121.458, or § 135.253 of this chapter (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

8. An employer shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

A. *Removal from safety-sensitive function.* 1. Except as provided in section VI of this appendix, no covered employee shall perform safety-sensitive functions if the employee has engaged in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter or an alcohol misuse rule of another DOT agency.

2. No employer shall permit any covered employee to perform safety-sensitive functions if the employer has determined that the employee has violated this paragraph.

B. *Permanent disqualification for service.* An employee is permanently precluded from performing safety-sensitive duties for an employer if the employee has used alcohol in violation of § 65.46a(d), § 121.458(d), or

§ 135.253(d) or if the employee engages in other alcohol misuse in violation of § 65.46a, § 121.458, or § 135.253 of this chapter and had previously engaged in conduct that violated the provisions of § 65.46a, § 121.458, or § 135.253 of this chapter after [*the effective date of the final rule*].

C. *Notice to the Federal Air Surgeon.* 1. An employer who determines that a covered employee who holds a medical certificate issued under part 67 of this chapter has violated the provisions of § 65.46a, § 121.458, or § 135.253 of this chapter shall notify the Federal Air Surgeon within 2 working days.

2. Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of section VI of this appendix within 2 working days of the employer's receipt of the report.

3. All documents shall be sent to the Federal Air Surgeon, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 400 7th Street SW., Washington, DC 20590.

4. No covered employee who holds a part 67 medical certificate shall perform safety-sensitive duties for an employer following a violation until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.

D. *Notice of refusals.* 1. Except as provided in subparagraph 2 of this paragraph, each employer shall notify the FAA of any covered employee who holds a certificate issued under part 61, part 63, or part 65 who has refused to submit to an alcohol test required under this appendix. Notifications should be sent to: Federal Aviation Administration, Aviation Standards National Field Office, Airmen Certification Branch, AVN–460, P.O. Box 25082, Oklahoma City, OK 73125.

2. An employer is not required to notify the FAA of refusals to submit to pre-employment/pre-duty alcohol tests or refusals to submit to return to duty tests.

E. *Required evaluation and testing.* No covered employee who has engaged in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter shall perform safety-sensitive functions unless the employee has met the requirements of section VI, paragraph C of this appendix. No employer shall permit a covered employee to perform safety-sensitive functions unless the employee has met the requirements of section VI, paragraph C of this appendix. Nothing in this paragraph shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

F. *Other alcohol-related conduct.* 1. No covered employee tested under the provisions of section III of this appendix who is found to have an alcohol concentration of .02 or greater but less than .04 shall perform or continue to perform safety-sensitive functions for an employer, nor shall an employer permit the employee to perform or continue to perform safety-sensitive functions, until:

(a) The employee's alcohol concentration measures less than .02; or

(b) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test.

2. Except as provided in subparagraph 1 of this paragraph, no employer shall take any action under this rule against an employee based solely on test results showing an alcohol concentration less than .04. This does not prohibit an employer with authority independent of this rule from taking any action otherwise consistent with this law.

3. Nothing in this paragraph shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

VI. Alcohol Misuse Information, Training, and Referral

A. *Employer obligation to promulgate a policy on the misuse of alcohol.* 1. *General requirements.* Each employer shall provide educational materials that explain these alcohol misuse requirements and the employer's policies and procedures with respect to meeting those requirements. Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the availability of this information.

2. *Required content.* The materials to be made available to employees shall include detailed discussion of at least the following:

(a) The identity of the person designated by the employer to answer employee questions about the materials.

(b) The categories of employees who are subject to the provisions of these alcohol misuse requirements.

(c) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with these alcohol misuse requirements.

(d) Specific information concerning employee conduct that is prohibited by this chapter.

(e) The circumstances under which a covered employee will be tested for alcohol under this appendix.

(f) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(g) The requirement that a covered employee submit to alcohol tests administered in accordance with this appendix.

(h) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(i) The consequences for covered employees found to have violated the prohibitions in this chapter, including the requirement that the employee be removed immediately from performing safety-sensitive functions, and the procedures under section VI of this appendix.

(j) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04.

(k) Optional provisions. The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the employer's authority independent of this appendix. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

B. *Training for supervisors.* Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under section II of this appendix receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

C. *Referral, evaluation, and treatment.* 1. Each covered employee who has engaged in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter shall be advised by the employer of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

2. Each covered employee who engages in conduct prohibited under § 65.46a, § 121.458, or § 135.253 of this chapter shall be evaluated by a substance abuse professional who must determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

3. (a) Before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter, the employee shall undergo an alcohol test with a result indicating an alcohol concentration of less than .02.

(b) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse—

(i) Shall be evaluated by a substance abuse professional to determine whether the employee has properly followed any rehabilitation program prescribed under subparagraph 2 of this paragraph, and,

(ii) Shall be subject to unannounced follow-up tests administered by the employer following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

4. Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/employee agreements and employer policies.

5. The requirements of this paragraph with respect to referral, evaluation, and

rehabilitation do not apply to applicants who refuse to submit to or have a pre-employment/pre-duty test with a result indicating an alcohol concentration of .04 or greater.

VII. Employer's Alcohol Misuse Prevention Program Plan

A. *Schedule for submission of plans and implementation.* 1. Each employer shall submit an alcohol misuse prevention program (AMPP) plan to the FAA on a form and in a manner prescribed by the Administrator. Plans should be submitted to the FAA, Office of Aviation Medicine, Drug Abatement Division (AAM-800), 400 7th Street SW., Washington, DC 20590, by certified U.S. mail, return receipt requested, in accordance with the schedule below.

(a) Each employer who holds a part 121 certificate, each employer who holds a part 135 certificate and directly employs more than 50 covered employees, and each air traffic control facility affected by this rule shall submit an AMPP plan to the FAA by [6 months after the effective date of the final rule]. Each employer must implement an approved AMPP by [12 months after the effective date of the final rule]. Contractor employees to these employers must be subject to an FAA-approved AMPP by [14 months after the effective date of the final rule].

(b) Each employer who holds a part 135 certificate and directly employs from 11 to 50 covered employees shall submit an AMPP plan to the FAA by [12 months after the effective date of the final rule]. Each employer must implement an approved AMPP by [18 months after the effective date of the final rule]. Contractor employees to these employers must be subject to an FAA-approved AMPP by [20 months after the effective date of the final rule].

(c) Each employer who holds a part 135 certificate and directly employs ten or fewer covered employees, and each operator as defined in 14 CFR 135.1(c) shall submit an AMPP plan to the FAA by [18 months after the effective date of the final rule]. Each employer must implement an approved AMPP by [24 months after the effective date of the final rule]. Contractor employees to these employers must be subject to an FAA-approved AMPP by [26 months after the effective date of the final rule].

2. A company providing covered employees by contract to employers may submit an AMPP plan directly to the FAA for approval on a form and in a manner prescribed by the Administrator. Each contractor company shall implement its approved AMPP in accordance with its terms and the provisions of this appendix.

(a) The FAA may revoke its approval in the case of any contractor company that fails to properly implement its AMPP.

(b) No employer shall use a contractor company's employee who is not subject to the employer's AMPP unless the employer has first determined that the employee is subject to another FAA-approved AMPP.

3. A consortium may submit a core AMPP plan directly to the FAA for approval on a form and in a manner prescribed by the Administrator. Each consortium shall implement its approved plan in accordance with its terms and the provisions of this appendix.

(a) The FAA may revoke its approval in the case of any consortium that fails to properly implement its AMPP.

(b) Each employer that participates in an FAA-approved consortium remains individually responsible for ensuring compliance with the provisions of these alcohol misuse requirements and must maintain all records required under section IV of this appendix.

(c) Each consortium shall notify the FAA of any membership termination within 10 days of such termination.

4. Any person who applies for a certificate under the provisions of part 121 or 135 of this chapter after [the effective date of the final rule] shall submit an alcohol misuse prevention program (AMPP) plan to the FAA for approval and must obtain such approval prior to beginning operations pursuant to the certificate. The AMPP shall be implemented concurrently with beginning such operations or by the date specified in paragraph A.1 of this section, whichever is later. Contractor employees to a new certificate holder must be subject to an FAA-approved AMPP within 60 days of the implementation of the employer's AMPP.

5. Any person who intends to begin sightseeing operations as an operator under 14 CFR 135.1(c) after [the effective date of the final rule] shall, not later than 60 days prior to the proposed initiation of such operations, submit an alcohol misuse prevention program (AMPP) plan to the FAA for approval. No operator may begin conducting sightseeing flights prior to receipt of the FAA's approval of the AMPP plan; the AMPP shall be implemented concurrently with the inception of operations or by the date specified in paragraph A.1 of this section, whichever is later. Contractor employees to a new operator must be subject to an FAA-approved AMPP within 60 days of the implementation of the employer's AMPP.

7. Each employer or contractor company that submits an AMPP plan to the FAA shall consider its plan to be approved unless notified to the contrary by the FAA within 60 days of the date the plan was received at the FAA as reflected on the certified mail receipt.

8. Each consortium that submits a core AMPP plan to the FAA for approval must receive the express written approval of the plan from the FAA prior to submitting rider plans or performing services under the plan.

9. Each employer, and each contractor company that submits a plan directly to the FAA, shall notify the FAA of any proposed change in status (*e.g.*, join a consortium or another carrier's program, change consortium, etc.) and must receive FAA approval prior to the effective date of such change. The employer or contractor company must ensure that it is continuously covered by an FAA-approved alcohol misuse prevention program.

B. *Required content of AMPP plans.* 1. Each AMPP plan, including a consortium core plan to the extent the consortium will be providing services required under this appendix, shall provide the following information:

(a) The name, address, and telephone number of the plan submitter's AMPP manager;

(b) The evidential breath testing (EBT) device that will be used to conduct alcohol testing under this appendix;

(c) The person(s) or company that will be collecting breath specimens;

(d) The person(s) or company that will be providing EBT training and maintenance;

(e) The name, address, and telephone number of the substance abuse professional who will conduct evaluations under this appendix; and

(f) The name, address, and telephone number of the rehabilitation provider if chosen by the employer.

2. Consortium rider plans shall provide the following information:

(a) The identity of the consortium;

(b) The name, address, and telephone number of the consortium member's AMPP manager; and

(c) Any information otherwise required under paragraph 1., above, that will not be covered by the consortium.

3. Each plan and rider submitter shall provide certification of understanding of and agreement to comply with the provisions of the FAA's alcohol misuse prevention regulations.

4. Any amendments to the information required in paragraphs 1 and 2 above shall be submitted to the FAA for review and approval prior to implementation of the changes. The FAA reserves the right to require employers, consortia, and/or contractor companies to amend previously-approved plans as deemed necessary by the FAA for compliance with this appendix.

VIII. Employees Located Outside the U.S.

A. Each covered employee located outside the territory of the United States who is directly employed by an employer will become subject to the provisions of these alcohol misuse requirements on January 2, 1995; provided, however, that no such employee shall be tested for alcohol misuse while located outside the territory of the United States if the Federal Aviation Administration receives written documentation from an employer that such testing is inconsistent with the laws and regulations of the country in which the employee is located. Employers shall submit copies, in English, of any applicable laws and regulations to the FAA, Office of Aviation Medicine, Drug Abatement Division (AAM-800), 400 7th Street SW., Washington, DC 20590.

B. The provisions of this appendix shall not apply to any person located outside the territory of the United States who performs a safety-sensitive function by contract for an employer.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

13. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431, and 1502 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

14. In § 135.1 paragraphs (c) and (d) are revised to read as follows:

§ 135.1 Applicability.

* * * * *

(c) For the purpose of §§ 135.249, 135.251, 135.253, 135.255, and 135.353, *operator* means any person or entity conducting non-stop sightseeing flights for compensation or hire in an airplane or rotorcraft that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport.

(d) Notwithstanding the provisions of this part and appendices I and J to part 121 of this chapter, an operator who does not hold a part 121 or part 135 certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to FAA-approved anti-drug and alcohol misuse prevention programs to perform—

(1) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would otherwise be required to transport the aircraft more than 50 nautical miles further than the repair point closest to operator's principal place of operation to obtain these services; or

(2) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to FAA-approved programs can perform the repairs.

15. Section 135.253 is added to read as follows:

§ 135.253 Misuse of alcohol

(a) This section applies to employees who perform a function listed in appendix J to part 121 of this chapter for a certificate holder or operator (*covered employees*). For the purpose of this section, a person who meets the definition of covered employee in appendix J is considered to be performing the function for the certificate holder or operator.

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of .04 or greater. No certificate holder or operator having actual knowledge that an employee has an alcohol concentration of .04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *Under the influence of alcohol.* Notwithstanding the absence of a reasonable suspicion alcohol test under appendix J to part 121 of this chapter, no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by behavior or appearance characteristic of alcohol misuse or by an adverse effect on the employee's ability to perform his or her assigned functions. No certificate holder or operator having actual knowledge that the employee is in violation of this provision shall permit a covered employee to perform or continue to perform safety-sensitive functions.

(d) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No certificate holder or operator having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(e) *Pre-duty use.* (1) No employee shall perform flight crewmember or flight attendant duties within 8 hours after using alcohol. No certificate holder or operator having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform the specified duties.

(2) No employee shall perform safety-sensitive duties other than those specified in paragraph (e)(1) of this section within 4 hours after using alcohol. No certificate holder or operator having actual knowledge that such an employee has used alcohol within 4 hours shall permit the employee to perform or continue to perform safety-sensitive functions.

(f) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under appendix J of part 121 of this chapter, or the employer has determined that the employee's performance could not have contributed to the accident.

(g) *Refusal to submit to a required alcohol test.* No covered employee shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test required under appendix J to part 121 of this chapter.

16. Section 135.255 is added to read as follows:

§ 135.255 Testing for alcohol.

(a) Each certificate holder and operator must establish an alcohol misuse prevention program in accordance with the provisions of appendix J to part 121 of this chapter.

(b) No certificate holder or operator shall use any person who meets the definition of "covered employee" in appendix J to part 121 to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

Issued in Washington, DC, on December 2, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

Thomas C. Richards,

Administrator.

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Federal Aviation Administration

14 CFR Parts 121 and 129

[Docket No. 27066; Notice No. 92-18]

RIN 2120-AE79

Anti-Drug Program and Alcohol Misuse Prevention Program for Employees of Foreign Air Carriers Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Omnibus Transportation Employee Testing Act of 1991 directs the FAA Administrator to prescribe regulations that require foreign air carriers to establish drug and alcohol testing programs for employees performing safety-sensitive aviation functions. The regulations must be consistent with the international obligations of the United States and take into consideration any applicable laws and regulations of foreign countries. This notice invites comments on a variety of issues related to the application of drug and alcohol testing requirements to safety-sensitive employees of foreign air carriers operating within the territory of the United States.

DATES: Comments must be received on or before February 16, 1993.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 27066, 800 Independence Avenue, SW., Washington, DC 20591. Comments that are delivered to this address must be marked "Docket No. 27066." Comments may be examined in Room 915G between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, Office of Aviation

Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of a proposed rule by submitting such written data, views, suggestions, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before rulemaking action is taken. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 27066." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available for review in the Rules Docket, both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the notice number of this ANPRM.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Current Laws and Regulations

The FAA has general statutory authority to regulate safety in civil aviation under the Federal Aviation Act of 1958 (the FAAct), as amended. As provided in section 1108 of the FAAct, the United States of America has complete and exclusive national sovereignty in the airspace of the United States (49 App. U.S.C. 1508(a)). However, as a signatory to the Convention on International Civil Aviation (December 7, 1944, 61 Stat. 1180, T.I.A.S. No 1591; hereinafter the Chicago Convention), the United States must exercise that sovereignty with respect to foreign civil aircraft in a manner consistent with the Chicago Convention.

The Chicago Convention stipulates that a member State has complete and exclusive sovereignty as to regulating the operation and navigation of foreign-registered aircraft within its territory. *Id.* arts. 1–2, 12. Regulation of aviation activity that takes place wholly or substantially within the territory of the United States, so long as the regulation is reasonable and takes into consideration applicable foreign laws that may affect the foreign air carriers or their employees, is therefore clearly within the scope of the FAA's authority. The FAA has, for example, prescribed regulations requiring foreign air carrier pilots to be familiar with applicable air traffic and other rules, and directing foreign air carriers to establish procedures to verify such knowledge. (14 CFR 129.19.)

The Chicago Convention does not explicitly permit the extraterritorial application of one State's laws to non-citizens outside the territory of that State; however, States may promulgate regulations regarding entrance into or departure from their territorial boundaries by aircraft. The United States has used this authority, together with the supporting provisions of the Chicago Convention and its Annexes, to regulate foreign air carriers operating into the United States in a number of areas, including airplane security. (14 CFR 129.25.)

In addition to establishing the general rights, privileges, and obligations of the member States engaging in international aviation, the Chicago Convention established the International Civil Aviation Organization (ICAO). An adjunct of the United Nations, the ICAO includes all of the signatories to the Chicago Convention (over 170 countries) and operates through a standing Council comprised of 33 elected States and a General Assembly that meets every three years. ICAO has responsibility for establishing international Standards and Recommended Practices to promote aviation safety. Every member State must adhere to the established Standards, unless the State files a difference with ICAO. States are encouraged, but not required, to comply with Recommended Practices.

As a signatory to the Chicago Convention, the U.S. is bound by its Annex 2 (Rules of the Air), which provides in paragraph 2.5 that

> No person shall pilot an aircraft, or act as a flight crew member of an aircraft, while under the influence of intoxicating liquor or any narcotic or drug, by reason of which that person's capacity so to act is impaired.

Consistent with this standard, the FAA's regulations prohibit any person from acting or attempting to act as a crewmember within 8 hours after consuming any alcoholic beverage, while under the influence of alcohol, while using any drug that affects the person's faculties in a manner contrary to safety, or while having .04 percent by weight or more alcohol in the blood. (14 CFR 91.17(a).) This regulation covers all operations within the territory of the United States, including foreign air carrier operations.

Under Federal criminal law, no person may operate or direct the operation of a common carrier (which includes foreign air carriers operating within the territory of the United States) while under the influence of a controlled substance or alcohol. (18 U.S.C. 342.) An individual with a blood alcohol content of .10 percent or more is presumed to be under the influence of alcohol (18 U.S.C. 343(1)), as is an individual with a quantity of drug in his or her system that would be sufficient to impair the perception, mental processes, or motor functions of the average individual (18 U.S.C. 343(2)).

Many states have similar criminal laws that prohibit any person from operating an aircraft while under the influence of alcohol and/or drugs. Under limited circumstances, the FAA's regulations require persons who are being investigated for violation of these State or local laws to submit to alcohol tests when requested by authorized State or local law enforcement officers, and, upon request, to furnish the test results to the Administrator. (14 CFR 91.17(c).)

On November 21, 1988, the FAA published regulations that require certain employers to establish anti-drug programs for their employees who perform specified safety-sensitive functions (*e.g.*, pilots, flight attendants, and mechanics). In addition to requiring employers to educate employees about the detrimental effects of drug abuse, the FAA's anti-drug rule requires pre-employment, random, post-accident, reasonable cause, and return to duty drug testing. Individuals required to hold airman medical certificates under 14 CFR part 67 are also subject to periodic drug testing. The anti-drug rule is limited in its application, however, to the employees (whether direct or contract) of U.S. employers. Similarly, the proposed alcohol misuse prevention program (which lists the employees who would be subject to alcohol testing), published elsewhere in today's Federal

Register, currently only proposes application to U.S. employers and not to foreign air carriers.

Omnibus Transportation Employee Testing Act

The Omnibus Transportation Employee Testing Act of 1991 (the Act (Pub. L. 102–143, title V)) was enacted on October 28, 1991. Among other things, the Act adds a new section 614 to the FAAct, which requires the FAA Administrator to prescribe regulations under which air carriers and foreign air carriers must establish alcohol and drug testing programs for safety-sensitive employees. The Act specifically provides that the regulations must establish a program which requires air carriers *and* foreign air carriers to conduct drug and alcohol testing of safety-sensitive employees. (Section 3 of the Act, amending title VI of the FAAct (49 App. U.S.C. 1434(a)(1)).) The Act also provides that the requirements applicable to foreign air carriers must be consistent with the international obligations of the United States, and must take into consideration any applicable laws and regulations of foreign countries. (Section 3 of the Act, amending title VI of the FAAct (49 App. U.S.C. 1434(e)(3)).)

As discussed above, the FAA has jurisdiction over the navigation and operations of foreign air carriers within the territory of the United States. The FAA would not propose, for example, to apply its drug and alcohol rules to the performance of safety-sensitive functions by foreign air carrier employees outside the territory of the United States. However, in determining whether and how to impose drug and alcohol testing requirements on such carriers, the FAA must, under the Act, take into consideration not only international obligations of the U.S. such as the Chicago Convention, but also any applicable foreign laws and regulations.

We also recognize the concerns of foreign countries, and are aware of the practical considerations that may arise as we implement the provisions of the Act with respect to foreign air carriers. For these reasons, the FAA is issuing this ANPRM, rather than a notice of proposed rulemaking, to seek the public's views on a variety of issues and responses to questions that may arise in addressing drug and alcohol testing by foreign air carriers. The Act similarly amended the statutes applicable to the Federal Railroad Administration (FRA) and the Federal Highway Administration (FHWA). These amendments, and the possible implications for the rail and commercial motor vehicle industries, are addressed in ANPRMs specific to each industry published elsewhere in today's **Federal Register**. It is the intent of the Department to foster consistency to the extent possible in prescribing regulations implementing these similar statutory provisions.

In a provision specific to the FAA, the Act directed the Secretaries of State and Transportation to call on the member countries of the ICAO to strengthen and enforce existing standards to prohibit the use, in violation of law or Federal regulation, of alcohol or a controlled substance by crew members in international civil aviation. *Id.* On September 30, 1992, a resolution offered by the United States and co-sponsored by a number of other countries was introduced at the 29th General Assembly of ICAO in furtherance of this legislative directive (ICAO Document A29–WP/67; EX/17; 3/9/92). The resolution was approved by the Assembly and states that the Assembly:

1. *Declares* its strong support for making and maintaining civil aviation workplaces free of substance abuse and encourages cooperative efforts throughout the international civil aviation community to educate employees on the dangers of substance abuse, and to take steps, when deemed necessary, to detect and deter such use, and through such efforts, to ensure that substance abuse never becomes prevalent or tolerated within civil aviation;

2. *Urges* the Council to accord a high degree of priority * * * to expediting the development and publication of guidance material containing measures which may be implemented by Contracting States * * *;

3. *Requests* the Council to continue its effort to monitor:

(a) the existence and growth of the threat to the safety of international civil aviation posed by substance abuse; and

(b) efforts by Contracting States to implement preventive measures; and

4. *Requests* the Council to present a report on the implementation of this Resolution to the next ordinary session of the Assembly.

The willingness of the member States of ICAO to adopt this resolution indicates the degree to which substance abuse is recognized as a threat to international civil aviation safety. Although the methods chosen to address substance abuse problems will inevitably vary by State, the United States has at present identified substance abuse testing as a useful tool for detecting and deterring use of illegal drugs and misuse of alcohol.

General Problems and Issues

The following general problems and issues have been identified in assessing the implications of the Act's testing provisions. In responding to the questions and requests for comment below, we ask that commenters distinguish responses relating to alcohol testing from those relating to drug testing, where the same response is not appropriate for both.

1. International Agreements and Foreign Laws

We have set forth above the FAA's interpretation of the international law pertaining to the imposition of substance abuse testing requirements on foreign air carriers under U.S. regulations. We are aware, however, that commenters may have different perspectives. We seek further information on any bilateral or multilateral obligations of the U.S., or principles of customary international law, that may affect our implementation of the Act. If there are any international agreements under development that would affect drug and alcohol testing of foreign air carriers, we also seek information on them. In commenting on international obligations of the U.S., we request that commenters focus on any provisions that affect the ability of the United States to require testing of employees conducting operations in the U.S., with the testing to take place in the United States.

In addition to international obligations, we seek comment on any laws or regulations of foreign countries that we should take into account in implementing the Act. We would like to obtain information on any laws or rules, with English-language translations, of specific foreign countries whose foreign air carriers conduct operations within the territory of the U.S. that we should consider.

2. Pre-employment and Follow-Up Testing

Often, employees of foreign air carriers are recruited and hired in the foreign country involved. For example, a Canadian employer may hire Canadian nationals in Canada, some of whom will subsequently conduct operations in the United States. The employer may not know, at the time of hire, which of its employees will perform safety-sensitive functions within the territory of the United States.

In such a situation, should the employer be required to conduct any pre-employment testing? If so, how, when, and where would the foreign air carrier conduct pre-employment testing of the employees who were to perform safety-sensitive functions in the United States? Should all pre-employment testing be conducted in the U.S., or should any proposed rules permit the employer to conduct tests in its own country?

If an employee tests positive on any type of alcohol or drug test, the FAA's existing and proposed rules generally require a return to duty test and follow-up tests, over a period of time. For an employee based outside of the territory of the United States who comes into the U.S. occasionally, questions similar to those mentioned above for pre-employment testing may arise. If the foreign air carrier does not conduct the tests in its own country, should we require the foreign air carrier to arrange for the required tests to take place in the United States?

3. Random Testing

Under the FAA's current anti-drug rule, to meet random testing rate requirements, employers have to conduct a certain number of tests per year (*e.g.*, under a 50 percent random testing rate, a number of tests each year equivalent to half the number of the employees in the random pool). Should all of a foreign air carrier's covered employees who perform safety-sensitive functions within the territory of the U.S. at any time have to be part of a random testing pool? Could a true random testing program be developed that would provide for testing only within the territory of the United States? How would foreign air carriers arrange for the unannounced, random testing of their employees only in U.S. territory?

Are there circumstances in which foreign air carriers should not be subject to a random testing requirement at all?

4. Requirement for All Types of Tests

The Act specifically requires four types of substance abuse testing by covered employers: Pre-employment, random, reasonable suspicion, and post-accident. Periodic testing associated with an airman medical examination is discretionary on the part of the Administrator. Should the FAA refrain from requiring foreign air carriers to conduct certain kinds of tests? The FAA anticipates little problem with requiring a post-accident or reasonable suspicion test in the U.S., following an accident or basis for reasonable suspicion that occurred in this country. At the 29th General Assembly of ICAO, the only organization to oppose the U.S.-sponsored substance abuse resolution—the International Federation of Air Line Pilots' Associations—recognized the usefulness of both types of tests.

However, as discussed above, there may be problems with requiring foreign air carriers to conduct other forms of testing (*e.g.*, random). Should the FAA exclude foreign air carriers from some or all types of alcohol or drug testing? Why or why not? Should the legal authority of the foreign air carrier to conduct a certain kind of testing in its own country be considered in deciding whether to exclude foreign air carriers from a certain country from a requirement to conduct testing within the United States? If some exclusions are desirable, how could such exclusions be reconciled with the testing requirements of the Act? Should the FAA consider requiring different types of tests depending on where the foreign air carrier employees were based (*e.g.*, impose all types of tests on U.S.-based employees, but only reasonable suspicion and post-accident on employees based outside the U.S. when they are performing safety-sensitive functions within the territory of the U.S.)?

5. Other Compliance Activities

The FAA's current anti-drug rule and proposed alcohol misuse rule have a variety of other program requirements in addition to testing. These requirements pertain to employee assistance and training programs, substance abuse professionals, record retention, data reporting, plan submission, and others. Some of these activities or functions could be accomplished most conveniently in the foreign air carrier's country. Should some or all of the foreign air carrier's program activities be required or permitted to take place outside the territory of the United States?

How would the FAA monitor and enforce compliance with anti-drug or alcohol program activities that take place outside the United States? What problems are possible in gaining access by FAA personnel to information about the foreign air carriers' implementation of program and testing requirements?

6. Testing Procedures

Under the FAA's anti-drug rule, all testing must be conducted in accordance with the procedures established by the Office of the Secretary of Transportation (OST) in 49 CFR part 40. The proposed alcohol misuse rule would include a similar requirement to conduct alcohol testing in accordance with the procedures proposed by OST. Ensuring compliance with these procedures could raise a number of problems if any testing or collection is performed outside the territory of the United States. Should there be a method of accepting evidence of compliance with a foreign country's testing procedures in lieu of some or all of the 49 CFR part 40 procedures, if testing is permitted to be conducted outside of U.S. territory?

All urine specimens collected under the FAA's anti-drug rule must be analyzed at a laboratory certified by the National Institute on Drug Abuse (NIDA), all of which are in the United States. Unless this requirement is changed, specimens collected outside the U.S. for drug testing under the FAA's rule would have to be sent to these laboratories for analysis. This poses some obvious practical problems (*e.g.*, timeliness of transmission of specimens and associated paperwork, possible difficulties with U.S. Customs). Are there other such problems? We seek comment on how the practical problems could be solved. If specimen collection for drug testing or alcohol testing is permitted to be conducted outside the U.S., how could the possible language or training problems be overcome (*e.g.*, translations of DOT requirements or forms)?

In FAA-mandated drug testing, there is a requirement for medical review officers to verify positive tests and perform other functions. Should MROs (who, under current rules, must be physicians licensed in the U.S.) have to perform these functions, or should physicians licensed in the foreign countries involved be able to serve as MROs? Could the requirements for MROs pose particular problems in countries with scarce medical resources? The same questions can be asked for substance abuse professionals who would evaluate people who test positive for drugs or who misuse alcohol. If personnel licensed in the U.S. were required for this function, would this create difficult logistical problems for the program?

As proposed, alcohol testing would have to be conducted using evidential breath testing devices (EBTs) on the National Highway Transportation Safety Administration's Conforming Products List. Would there be problems in obtaining or using such EBTs in other countries, if testing is permitted to be conducted outside the territory of the United States?

The FAA seeks comment on any other problems related to the testing procedures that may occur in the context of testing by foreign air carriers. We are aware, for example, that there may be cultural impediments in some countries to the provision of urine for testing. Other countries may regulate forensic testing in a way that could affect the ability of foreign air carriers to comply with the provisions of 49 CFR part 40.

7. Required Consequences

Under the FAA's anti-drug rule the consequence of refusing to submit to a

drug test or failing a drug test is removal from a safety-sensitive position, until the employee follows the rule's procedures for returning to the performance of safety-sensitive duties. The alcohol misuse NPRM proposes similar consequences. However, the application of the anti-drug and alcohol misuse rules to foreign air carriers would be intended only to affect operations within the United States. Therefore, the FAA would not propose to prohibit the performance of safety-sensitive functions outside the territory of the U.S. by a foreign air carrier employee who, for example, failed a drug test. Such an employee would, however, be prohibited from conducting any safety-sensitive functions in the U.S. until the employee met the FAA's return to duty requirements. How would foreign air carriers ensure that an employee who failed or refused a drug or alcohol test or engaged in other alcohol misuse did not engage in operations in the U.S., until return to duty requirements had been met? How would the FAA monitor compliance with this requirement?

8. Costs

We are specifically seeking information from foreign air carriers on the number of employees who would be affected by a requirement to test persons performing safety-sensitive functions within the territory of the U.S. for foreign air carriers. Do commenters anticipate that foreign air carriers' positive test rates for the employees who would be subject to any proposed rules (which can affect costs significantly) would be higher, lower, or about the same as the positive test rates of comparable U.S. employers? What would be the costs of the anti-drug and alcohol misuse program activities that could occur outside the U.S. that the FAA should consider in estimating the costs of the rule? Are there any costs that would be unique to such program activities? Are there any positive or negative trade or competitive effects of testing (or not testing) employees of foreign air carriers, for either U.S. or foreign companies?

Regulatory Process Matters

Economic Impact

The FAA is unable to determine at this point what the likely costs of implementing the Act with respect to foreign air carriers might be, nor the annual effect on the economy. Following a review of the comments submitted to this ANPRM, the FAA will determine what regulatory requirements will be proposed. At that time the FAA will review the potential costs and benefits, as required by Executive Order 12291. As discussed above, we are seeking relevant cost data to facilitate the FAA's determinations.

Significance

This anticipated rulemaking is not "major" as defined in Executive Order 12291. It does involve issues of substantial interest to the public, however, and the FAA has therefore determined that the ANPRM is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

Other Regulatory Matters

At this preliminary stage, it is not yet possible to determine whether there will be a significant economic impact on a number of small entities, what the paperwork burden might be, or whether there will be any federalism implications. Each of these regulatory matters will be addressed fully at the time of publication of any notice of proposed rulemaking on this subject.

List of Subjects

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Alcohol, Alcoholism, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

14 CFR Part 129

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Alcohol, Alcoholism, Aviation safety, Drug abuse, Drugs, Foreign air carriers, Narcotics, Pilots, Safety, Transportation.

Authority: 49 U.S.C. 1346, 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1485, 1502, 1511, and 1522 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

Issued in Washington, DC, on December 2, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

Thomas C. Richards,

Administrator.

[FR Doc. 92-29676 Filed 12-10-92; 10:00 am]

BILLING CODE 4910-13-M

14 CFR Part 121

[Docket No. 25148; Notice No. 92–19]

RIN 2120–AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On November 21, 1988, the Federal Aviation Administration (FAA) published a final rule requiring specified aviation employers to implement anti-drug programs for personnel performing sensitive safety- and security-related functions. That final rule includes recordkeeping and reporting requirements. In response to a Department of Transportation (DOT) Notice of Proposed Rulemaking (NPRM), published elsewhere in today's **Federal Register**, that would establish a standard Management Information System for the Department's drug testing programs, this NPRM proposes modifications to the FAA's record-keeping and reporting requirements. The amendments proposed here would conform the FAA's requirements to those in the DOT NPRM and provide the FAA with needed additional data for use in monitoring the anti-drug program.

DATES: Send or deliver comments by April 14, 1993.

ADDRESSES: Send or deliver comments on this notice, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), room 915G, Docket No. 25148, 800 Independence Avenue, SW., Washington, DC 20591. Persons wishing the FAA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25148." The postcard will be dated and time stamped and returned to the person submitting the comment. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carol Daugherty, Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION:

General

Interested persons are invited to participate in the development of the proposed rule by submitting such written information, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the notice number identified in this NPRM. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Definitions

The following definitions apply to terms used throughout this notice of proposed rulemaking (NPRM):

FAA's current rule (or *the FAA final rule*) is the FAA's anti-drug rule, as amended, now in effect. This rule, entitled "Anti-Drug Program for Personnel Engaged in Specified Aviation Activities," was published in 53 FR 47024 (November 21, 1988), and amended 14 CFR parts 61, 63, 65, 121 and 135.

Employee category means a category of employees who must be subject to drug testing under the final rule (14 CFR part 121, appendix I, section III). The employee categories in the final rule (and this NPRM) are employees who perform the following functions: Flight crewmembers; flight attendants; flight or ground instructors; flight testing personnel; aircraft dispatchers; maintenance or preventive maintenance personnel; security or screening personnel; and air traffic control personnel.

Test category or *type of test* are synonymous and refer to the types of drug testing required by the FAA final rule: pre-employment, periodic, random, post-accident, reasonable cause, and return-to-duty. For further information regarding the types of tests, refer to 14 CFR part 121, appendix I, section V.

The Department Of Transportation NPRM

This NPRM responds to a Department of Transportation (DOT) NPRM which proposes that employers in all segments of the transportation industry maintain and submit standardized drug program information as specified in the rules of the appropriate DOT operating administration (OA). Information compiled by the FAA would be incorporated into a comprehensive, DOT-wide anti-drug program Management Information System (MIS). The proposed changes to the FAA's current reporting requirements would support the DOT's goal of establishing a systematic, standardized program to collect, analyze, and interpret anti-drug program information. The data provided through the MIS is intended to be the basis for monitoring implementation of and compliance with the anti-drug rule, and for evaluating the effectiveness of the OAs' anti-drug programs as well as the overall effectiveness of the DOT's program.

Today's **Federal Register** also contains related NPRMs issued pursuant to DOT's NPRM by each of the other DOT operating administrations that have drug testing rules [Federal Railroad Administration (FRA), United States Coast Guard (USCG), Research and Special Programs Administration (RSPA), Federal Highway Administration (FHWA)], as well as the DOT NPRM.

The FAA NPRM (Anti-Drug Management Information System)

The FAA final rule requires aviation employers to submit drug testing reports as specified in section X of appendix I to 14 CFR part 121. In accordance with the DOT's NPRM, the FAA proposes to modify the reporting requirements for aviation employers in this NPRM. These employers receive information from forensic laboratories, medical review officers, and specimen collection agents/facilities and therefore can provide the necessary cumulative data for the DOT's MIS program.

Issues Relating to Record Keeping and Reporting Procedures

In the following sections, the FAA has compared the record keeping and reporting procedures of the final rule, the DOT NPRM, and the FAA's proposals in this NPRM.

1. *Reporting by a Representative Sample of Employers.* The FAA final rule requires *all* affected aviation employers to submit semiannual and annual reports. Under the DOT NPRM, although each employer or employer's representative must maintain the data required by each OA's rule, the OAs could select a representative sample of employers who must submit reports to the OA. The FAA does not propose to adopt a representative sample reporting technique at this time. Confirmation of actual drug testing levels and other program elements through official reports from the aviation employer is an important aspect of compliance monitoring. Therefore, the FAA proposes to continue to require submission of reports from all affected aviation employers, unless an employer is otherwise expressly authorized by the FAA not to submit a report.

2. *Reporting by Employee Category.* The FAA final rule requires aviation employers to conduct drug testing and report to the FAA the results regarding specific employee categories or positions tested. The DOT NPRM proposes to permit each OA to require that drug testing information be reported either by employee categories or by other categories established for reporting purposes. The FAA NPRM proposes to continue to require reporting by employee categories, as established in the final rule. The possible addition or deletion of covered employee positions or categories would be deferred.

3. *Reporting by Consortia.* The FAA final rule requires all covered employers, even those that belong to a consortium, to submit required reports directly to the FAA. Under the DOT NPRM, the FAA could permit consortia to submit reports for their member companies directly to the FAA. The FAA proposes to adopt this procedure; however, even if a consortium prepares and submits a report for an employer, the employer would remain responsible for the accuracy and timeliness of the submission.

4. *Employers Affected by More than One OA.* An aviation employer subject to the FAA anti-drug rule whose employees are also subject to the anti-drug rule of another OA must submit data to each regulating OA for those employees covered by that OA rule. This could occur in a number of ways, for example:

a. The employer may have one group of employees who *only* perform functions covered by the FAA and other employees who only perform functions covered by another OA; or

b. The employer may have individual employees who perform functions covered by two or more OAs.

In the first situation, the groups of employees are independent and distinct. The employer is subject to the requirements of separate OAs, but the individual employee is subject to the requirements of only one OA. Under the current rule, the employer must implement an FAA-approved anti-drug program for the employees performing FAA covered functions. A separate anti-drug program covers those employees who are subject to the requirements of another OA rule. With respect to reporting to the FAA, employers may not include information about employees who do not perform a covered aviation function. The reporting of information pertaining to employees covered by the FAA's rule would not be affected by the reporting requirements of this NPRM. Reports pertaining to aviation employees are directed to the FAA; reports pertaining to employees affected by another OA are directed to that OA.

In the second situation, the individual employee is subject to the requirements of different OAs during the performance of duty. The current rule requires that employees who perform functions covered by the FAA rule be subject to an FAA-approved anti-drug program, regardless of whether the affected employees might be subject to the requirements of another OA's rule. This NPRM proposes to make the following change: for employees who perform functions covered by more than one OA, employers would identify the covered position under which the employee would be categorized, and to which OA the results would be reported. The identification would be accomplished on the new FAA annual reporting form.

Employers would continue to report information pertaining to drug tests conducted under the auspices of the FAA anti-drug rule only to the FAA. The employer would have to determine whether the test is conducted pursuant to FAA requirements or the requirements of another OA. Based on that determination, the report would be directed to the appropriate OA.

For employees subject to the requirements of more than one OA, employers would notify employees that a single drug test (for example, a pre-employment test) may be administered to satisfy the requirements of more than one OA.

5. *Alternative Reporting Methods.* The FAA final rule requires that all drug tests conducted under the FAA anti-drug program be included in the semiannual and annual reports. The DOT NPRM proposes to allow an OA to elect to acquire any of the MIS information elements through alternative methodology (for example, through separately-required post-accident reports). The FAA does not propose to acquire information through alternative means at this time. Although the FAA reporting system is still being developed, it has proven to be both practical and efficient. The FAA seeks to avoid the significant possibility that error may be introduced through the use of alternative reporting methods.

6. *Annual Reporting.* The FAA final rule requires aviation employers to submit semiannual and annual reports. The DOT NPRM proposes that program information be submitted on an annual basis, or more frequently if required by the OA's rules. The FAA proposes to eliminate the semiannual reporting requirement and require aviation employers to submit an annual report only. The report would cover the calendar year January 1 through December 31 and would be submitted by February 15 following the reporting period.

7. *Transmission of Reports Electronically.* The DOT NPRM requests comments on the usefulness of transmitting reporting data electronically through the Anti-Drug Information Center (ADIC). The FAA is interested in employers' comments on the use of the ADIC for this purpose.

Proposed Recordkeeping and Reporting Requirements

The DOT NPRM requires each operating administration to submit consolidated industry data, which must include the data elements specified in the NPRM. Therefore, the FAA proposes to require that employers provide the following data to the FAA:

1. Number of covered employees by employee category. This information is necessary to assess the scope of the rule's application and provide a basis for determining the level of random testing being conducted.

2. Employees covered by more than one OA. The employer would identify, and report upon the employees who were affected by the provisions of the FAA's and at least one other OA's anti-drug rule due to the multiple functions performed by the employee. Through employer disclosure of this information, the FAA and DOT would be able to ascertain the size of the dual covered population.

3. Number of specimens collected by type of test and employee category. This information would provide the scope of drug testing in the categories specified by the anti-drug rule and is necessary for reviewing the collection, testing, and review process.

4. Number of positive drug test results verified by a Medical Review Officer (MRO) by type of test, type of drug, and employee category. This information, along with the number of tests performed, would permit the calculation of positive rates necessary to determine the extent of drug use and the specific drugs detected in the various categories of employees. Further, analysis of this information over time would provide a measure of the effectiveness of the anti-drug rule in deterring drug abuse.

5. Number of negative tests verified by a MRO by type of test, and employee category. This data is needed to check compliance with the rules by category and to review the application of the components of the programs.

6. Number of persons denied a position as a covered employee based on verified positive tests. This information would provide an assessment of whether the testing program is being implemented as required, provide a measure of the impact of the FAA anti-drug rule on the aviation industry, and yield information on the prevalence of drug abuse in the applicant pool.

7. Number of employees with tests verified positive by a MRO, who were returned to duty in covered positions (currently in or having completed rehabilitation or otherwise qualified for duty during the reporting period). This information would show employer policies regarding rehabilitation of identified drug abusers.

8. Number of employees with tests verified positive by a MRO for more than one drug. This information would show the extent of multiple drug abuse in the aviation industry.

9. Number of covered employees who refused to submit to a drug test and the action taken in response to the refusal(s). This information would help determine appropriate certificate action on individuals who refuse to submit to testing.

10. Number of covered employees and supervisors who have received required training during the reporting period. This information would provide a cumulative count of covered employees and supervisory personnel who have received the required drug abuse education and training as of December 31st of each year.

The FAA has developed a standard form for use by employers to provide to the FAA the information required by this proposed regulation. The FAA standard form and a detailed set of instructions for correctly completing the form are attached to this NPRM. Although the proposed standard DOT format would make each OA form similar, there could be differences from one OA to the next. Therefore, aviation employers would use only the FAA standard form. As of the publication of the FAA final rule resulting from this NPRM with the attached FAA standard form, no other form would be accepted by the FAA unless expressly authorized by the FAA.

Regulatory Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposal is not "major" under Executive Order 12291. It is significant under the Department of Transportation's Regulatory Policy and Procedures.

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs to society. In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Evaluation of the final anti-drug rule. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the **Federal Register** on November 21, 1988.

The original analysis of the anti-drug rule considered the costs and benefits for all affected employers and concluded that the overall rule, which included much of the information required under this proposed change, had a positive cost-benefit ratio.

This proposed rulemaking would conform the FAA's anti-drug program reporting requirements to standardized reporting requirements proposed for each of the other OA's by the DOT NPRM. The purpose is to provide DOT and the FAA with critical program information in order to make necessary procedure and program evaluations. These evaluations could lead to policy changes to make the rule more effective, which would in turn enhance public safety. The information would provide valuable detail to evaluate the cost/benefit effect of the anti-drug program.

This proposed action could result in a modest increase in the recordkeeping cost of the final rule because the aviation employer would be required to compile and submit information in greater detail than required previously. However the elimination of a reporting requirement (semiannual report) would result in a decreased cost to the employer. In addition, once the aviation employer becomes familiar with the reporting format, preparation of successive reports would become less time-consuming. Finally, the DOT has developed a format, and the FAA has developed a specific form, with instructions that can be used to reduce the costs of compliance. Therefore, the FAA has tentatively concluded any potential effect on costs would be minimal. However, comments addressing potential increased costs are invited from the industry. A revision of the comprehensive Regulatory Evaluation and the preparation of a separate economic evaluation for this amendment is not warranted.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980, and assigned OMB control number 2120–0535.

The paperwork clearance package, 2120–0535, will be amended to reflect the burden associated with this NPRM, and submitted to OMB for approval. Following is a synopsis of the paperwork/recordkeeping burden associated with this NPRM:

DOT No.:
OMB No.: 2120–0535.
Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities.
Need For Information: The information is needed to respond to a DOT NPRM which proposes that employers in all segments of the transportation industry maintain and submit standardized anti-drug program information.
Proposed Use of Information: The information submitted is intended to be the basis for monitoring aviation industry implementation of and compliance with the anti-drug rule, and for evaluating the effectiveness of the FAA anti-drug program.
Frequency: Annually.
Burden Estimate: 32,742 hours.
Respondents: Specified aviation employers.
Average Burden Hours Per Respondent: 2.5 hours.

Trade Impact Statement

This proposed rulemaking would affect only domestic aviation operations performed under the provisions of the Federal Aviation Regulations (FAR); therefore, it would have no impact on trade opportunities for United States firms doing business overseas or foreign firms doing business in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small business entities are not unnecessarily or disproportionately burdened by Government regulations. The FAA certifies that this proposal would not have a significant economic impact, positive or negative, on a substantial number of small entities.

Federalism Implications

The proposed rulemaking action would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

In this action the FAA proposes to amend the requirements imposed upon aviation employers for the maintenance and submission of specific anti-drug program information. It is undertaken in response to a DOT NPRM that would establish a standard Management Information System (MIS) for the Department's drug-testing programs. This MIS will provide the basis for monitoring anti-drug rule implementation and compliance, and for evaluating the effectiveness of the FAA's and DOT's anti-drug programs. Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the provisions contained in this proposal would not have a

significant economic impact, positive or negative, on a substantial number of small entities. In addition, the proposal would not result in an annual effect on the economy of $100 million or more and would not result in a significant increase in consumer prices; thus, the proposal is not a major one pursuant to the criteria of Executive Order 12291. However, because the proposal involves issues of substantial interest to the public, the FAA has determined that the proposal is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend title 14, Code of Federal Regulations, part 121, appendix I, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section X of appendix I to part 121 is revised to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

X. Reporting of anti-drug program results.

A. Each employer shall maintain records of the anti-drug program information identified in this section.

B. Each employer or consortium shall submit annual reports of anti-drug program results on the FAA standard form to the FAA by February 15 for the prior calendar year January 1 through December 31.

C. An FAA-approved consortium may submit reports on behalf of individual aviation employers for purposes of compliance with this reporting requirement. However, the aviation employer shall remain responsible for ensuring the accuracy and timeliness of each report submitted on its behalf by a consortium.

D. Each report shall be submitted on the form specified by the FAA. No other DOT Operating Administration form, or the DOT form, is acceptable for submission to the FAA.

E. Each report shall be signed by the employer's or consortium's anti-drug program manager or designated representative.

F. Each report shall include each of the following informational elements:

1. Number of covered employees by employee category.

2. Number of covered employees affected by the anti-drug rule of another OA identified and reported by number and employee category.

3. Number of specimens collected by type of test and employee category.

4. Number of positive test results verified by a Medical Review Officer (MRO) by type of test, type of drug, and employee category.

5. Number of negative tests verified by a MRO by type of test and employee category.

6. Number of persons denied a position as a covered employee based on a verified positive drug test verified by a MRO.

7. Number of employees with a test verified positive by a MRO who were returned to duty in covered positions (currently in or having completed rehabilitation or otherwise qualified to return to duty during the reporting period).

8. Number of employees with tests verified positive for multiple drugs by a MRO.

9. Number of covered employees who refused to submit to a drug test and the action taken in response to the refusal(s).

10. Number of covered employees and supervisory personnel who have received required initial training. Number of supervisors who have received required recurrent or refresher training.

3. Appendix K to part 121 is added to read as follows:

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix K to Part 121—Drug and Alcohol Testing Management Information System Data Collection Form

BILLING CODE 4910-13-M

GENERAL INSTRUCTIONS

This reporting form includes three parts. Collectively, these parts address the data elements required in the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) drug and alcohol testing regulations. Each part of the form is preceded by instructions which outline and explain the information requested and indicate the probable sources for this information. The three parts of the form are:

Section	Instructions Pages	Reporting Form Pages
I. ORGANIZATIONAL INFORMATION	i-ii	1-2
II. DRUG TESTING INFORMATION	iii-vii	3-11
III. ALCOHOL TESTING INFORMATION	viii-xii	12-19

I. ORGANIZATIONAL INFORMATION

INSTRUCTIONS

This part of the reporting form includes two sections. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	ii	2

Page 1

EMPLOYER INFORMATION (Section A) requires the company name for which the report is done and a current address. Below the company names, list any other names the company uses ("Doing Business As") and the company's FAA Anti-drug Plan Identification Number. Indicate which FAA Certificate(s) are held by the company. Below this, a signature and date are required certifying the correctness and completeness of this form, and a current telephone number (including the area code). Finally, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary.

COVERED EMPLOYEES (Section B) requires a count for each employee category that must be tested under FAA/DOT regulations. For the FAA, the covered employees are "Flight Crew Members" which includes pilots, flight engineers, and navigators; "Flight Attendants", "Flight or Ground Instructors"; "Aircraft Dispatchers"; "Flight Testing Personnel"; "Maintenance or Preventive Maintenance Personnel"; "Security or Screener Personnel"; and "Air Traffic Control Personnel." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

For Office Use Only

FAA DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

YEAR COVERED BY THIS REPORT: 19___

A. AVIATION EMPLOYER INFORMATION

Company _____

Address _____

_____

Other Names the Company Uses ("Doing Business As")

_____

_____

FAA Anti-drug Plan Identification Number: _____

FAA Certificate(s) held (check all that apply):

☐ 121 ☐ 145 ☐ 135 ☐ Other (specify)

I, the undersigned, certify the attached Federal Aviation Administration Annual Anti-Drug Program Report, is to the best of my knowledge and belief, a true, correct, and complete form for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

Other aviation employers reported on this form (e.g., subsidiary companies, contractors, etc.). Attach additional sheets if necessary.

Company _____

Address _____

Phone_____ FAA Certificate (as applicable)_____

Company _____

Address _____

Phone_____ FAA Certificate (as applicable)_____

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FHWA	FRA	FTA	RSPA	USCG
Flight Crew Members						
Flight Attendants						
Flight or Ground Instructors						
Aircraft Dispatchers						
Flight Testing Personnel						
Maintenance or Preventive Maintenance Personnel						
Security or Screener Personnel						
Air Traffic Control Personnel						
TOTAL						

Mail the completed form to: Drug Abatement Division (AAM-800)
Federal Aviation Administration
U.S. Department of Transportation
400 7th Street, S.W., Room 2336
Washington, D.C. 20590

II. DRUG TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the FAA and DOT **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages v-vi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	iv	4
B. EMPLOYEE TESTING	vi	5-9
C. OTHER TESTING/PROGRAM INFORMATION	vii	10
D. TRAINING/EDUCATION	vii	11

Sections A and B are used to summarize the drug testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment testing. The five tables in Section B are for entering drug testing data on periodic, random, post-accident, reasonable cause, and return to duty testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons testing positive is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B

Page 4

JOB APPLICANT TESTING INFORMATION (Section A) requires information for pre-employment testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page vi.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by job applicants that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page vi with example numbers.

Page 4

Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test**". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example will use the first two FAA categories "Flight Crew Members" and "Flight Attendants" to illustrate the procedures for completing the form.

A — Urine specimens were collected for 157 job applicants for flight crew positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Flight Crew Members".

B — The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for flight crew positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Flight Crew Members".

C — The MRO for your company reported that 4 of those 157 specimens from applicants for flight crew positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Flight Crew Members".

D — With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in Section C, **OTHER TESTING/PROGRAM INFORMATION**, on page 10 of the reporting form.

Please note that the sample data collection form below also has information for flight attendant positions on line two of our data collection form. The same procedures outlined for flight crew positions should be followed for entering the data on flight attendant positions. With applicants for flight attendant positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Flight Attendants".

E — The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for flight crew positions were collected and 107 for applicants for flight attendant positions. The total for that column would be 264 (i.e., 157+107). The same procedure should

be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

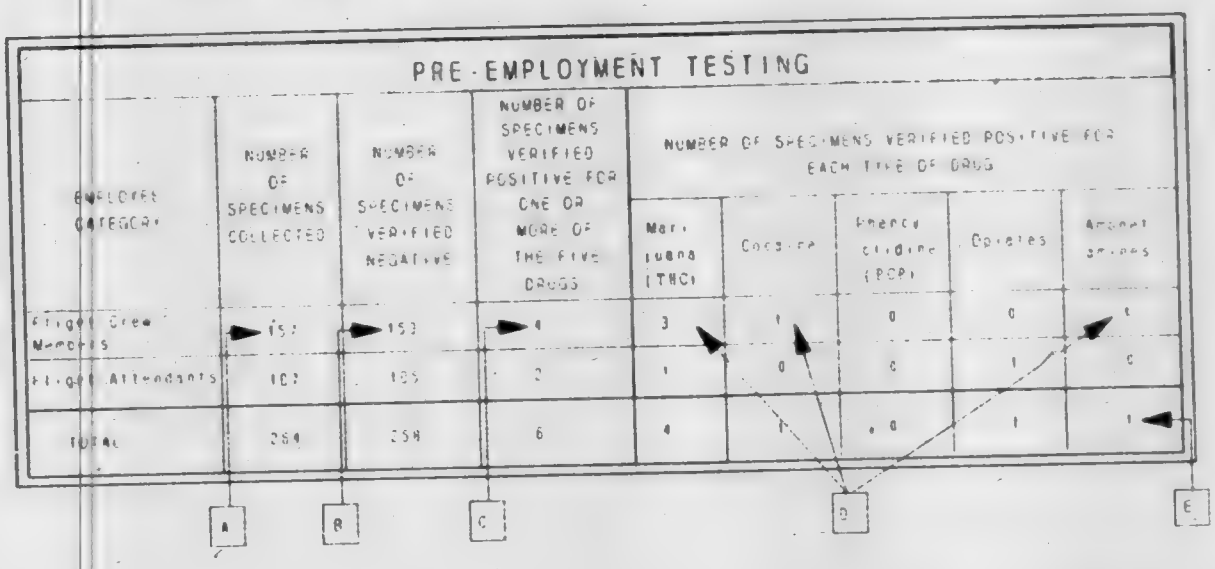

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 5-9 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) periodic, (2) random, (3) post-accident, (4) reasonable cause, and (5) return to duty testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

Page 9 Following these tables that summarize **EMPLOYEE TESTING**, you must provide counts for employees who have tested positive and are currently in, or have completed rehabilitation, and have returned to work in a covered position. Report this information only for employees who tested positive during this reporting period. This information should be available from the personnel office and/or drug program manager.

Page 10 **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 10 **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**, then check the appropriate columns indicating the combination of drugs reported as positive. For example, if marijuana and cocaine were detected in 3 flight crew members specimens, then you would write "Flight Crew Members" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 flight crew members specimens, then you would write "Flight Crew Members" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 10 **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a drug test required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal. An example of an action taken would be "removed from covered duties pending termination".

Page 11 **TRAINING/EDUCATION** (Section D) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION (FAA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by FAA/DOT drug testing regulations.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Flight Crew Members								
Flight Attendants								
Flight or Ground Instructors								
Aircraft Dispatchers								
Flight Testing Personnel								
Maintenance or Preventive Maintenance Personnel								
Security or Screener Personnel								
Air Traffic Control Personnel								
TOTAL								

Number of persons denied a position as a covered employee following a verified positive drug test: [ ]

B. EMPLOYEE TESTING

PERIODIC TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Flight Crew Members								
Flight Attendants								
Flight or Ground Instructors								
Aircraft Dispatchers								
Flight Testing Personnel								
Maintenance or Preventive Maintenance Personnel								
Security or Screener Personnel								
Air Traffic Control Personnel								
TOTAL								

B. EMPLOYEE TESTING (continued)

RANDOM TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Flight Crew Members								
Flight Attendants								
Flight or Ground Instructors								
Aircraft Dispatchers								
Flight Testing Personnel								
Maintenance or Preventive Maintenance Personnel								
Security or Screener Personnel								
Air Traffic Control Personnel								
TOTAL								

B. EMPLOYEE TESTING (continued)

POST-ACCIDENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Flight Crew Members								
Flight Attendants								
Flight or Ground Instructors								
Aircraft Dispatchers								
Flight Testing Personnel								
Maintenance or Preventive Maintenance Personnel								
Security or Screener Personnel								
Air Traffic Control Personnel								
TOTAL								

B. EMPLOYEE TESTING (continued)

REASONABLE CAUSE TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Flight Crew Members								
Flight Attendants								
Flight or Ground Instructors								
Aircraft Dispatchers								
Flight Testing Personnel								
Maintenance or Preventive Maintenance Personnel								
Security or Screener Personnel								
Air Traffic Control Personnel								
TOTAL								

B. EMPLOYEE TESTING (continued)

RETURN TO DUTY TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Flight Crew Members								
Flight Attendants								
Flight or Ground Instructors								
Aircraft Dispatchers								
Flight Testing Personnel								
Maintenance or Preventive Maintenance Personnel								
Security or Screener Personnel								
Air Traffic Control Personnel								
TOTAL								

Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during this reporting period: [ ]

C. OTHER TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of covered employees who have received initial training on the consequences, manifestations, and behavioral cues of drug use as required by FAA drug testing regulations: [ ]

Number of supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FAA drug testing regulations: [ ]

Number of supervisory personnel who have received recurrent or refresher training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use: [ ]

III. ALCOHOL TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information for the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ix-xi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	ix	13
B. EMPLOYEE TESTING	xi	14-18
C. OTHER TESTING/PROGRAM INFORMATION	xi	19
D. TRAINING/EDUCATION	xii	19

Sections A and B are used to summarize the alcohol testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment/pre-duty testing. The five tables in Section B are for entering alcohol testing data for random, post-accident, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of initial alcohol tests performed for each employee category;
2) the number of confirmatory alcohol tests performed for each employee category;
3) the number of confirmatory test results which were equal to or greater than 0.04; and
4) the number of confirmatory test results which were equal to or greater than 0.02, but less than 0.04.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons whose alcohol test results were 0.04 or greater is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

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JOB APPLICANT TESTING INFORMATION (Section A) requires information for pre-employment/pre-duty testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page x.

Four types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF INITIAL TESTS**" requires a count of all initial alcohol tests performed for each employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF CONFIRMATORY TESTS**" requires a count of all confirmatory alcohol tests performed for each employee category.

The third blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04**" requires a count for each employee category.

The fourth blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04**" requires a count for each employee category.

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page x with example numbers.

Page 13

Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater**". Enter the appropriate number in the box provided.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment/pre-duty testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example will use the categories "Flight Crew Members" and "Flight Attendants" to illustrate the procedures for completing the form.

A

Initial tests were performed on 157 job applicants for flight crew positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Flight Crew Members".

B

Confirmatory tests were necessary for 6 of the 157 applicants for flight crew positions. Enter this information in the second blank column of the table in the

row marked "Flight Crew Members". The confirmatory test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmatory test results for 3 of the applicants for flight crew positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Flight Crew Members".

D The confirmatory test results for 2 of the applicants for flight crew positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Flight Crew Members".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for flight crew positions and 107 applicants for flight attendant positions were subjected to initial tests. The total for that column would be 264 (i.e., 157 + 107). The same procedure should be used for each column (i.e., add all the numbers in that column and place the answer in the last row).

PRE-EMPLOYMENT/PRE-DUTY TESTING

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Flight Crew Members	157	6	3	2
Flight Attendants	107	3	1	0
TOTAL	264	9	4	2

A B C D E

Please note that the sample data collection form also has information for flight attendants workers on line two. The same procedures outlined for flight crew members should be followed

x

for entering the data on flight attendant workers. With applicants for flight attendant positions, 107 initial tests were conducted resulting in 3 confirmatory tests. The confirmatory test result for 1 of the flight attendant applicants was equal to or greater than 0.04; no results were equal to or greater than 0.02, but less than 0.04. This information is entered in the row marked "Flight Attendants".

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATORY TESTS". These numbers may differ since some confirmatory test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 14-18 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

Page 18 Following these tables that summarize **EMPLOYEE TESTING**, you must provide a count of the **"Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FAA/DOT regulations)"**. Report this information only for employees who were tested during this reporting period. This information should be available from the personnel office and/or alcohol program manager.

Page 19 **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you provide information on employees who tested positive for drugs and alcohol (at the same time), information on violations of other alcohol provisions (not necessarily resulting in positive alcohol tests), and information on employees who refused to submit to an alcohol test.

Page 19 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 19 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires information on the **NUMBER OF COVERED EMPLOYEES** committing such a violation, a description of the **VIOLATION** committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the **ACTION TAKEN** in response to the violation.

Page 19 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test as required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal.

Page 19 **TRAINING/EDUCATION** (Section D) requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

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READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION (FAA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by FAA/DOT alcohol testing regulations.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this part of the report.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT/PRE-DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Flight Crew Members				
Flight Attendants				
Flight or Ground Instructors				
Aircraft Dispatchers				
Flight Testing Personnel				
Maintenance or Preventive Maintenance Personnel				
Security or Screener Personnel				
Air Traffic Control Personnel				
TOTAL				

Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

B. EMPLOYEE TESTING

RANDOM TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Flight Crew Members				
Flight Attendants				
Flight or Ground Instructors				
Aircraft Dispatchers				
Flight Testing Personnel				
Maintenance or Preventive Maintenance Personnel				
Security or Screener Personnel				
Air Traffic Control Personnel				
TOTAL				

B. EMPLOYEE TESTING (continued)

POST-ACCIDENT TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Flight Crew Members				
Flight Attendants				
Flight or Ground Instructors				
Aircraft Dispatchers				
Flight Testing Personnel				
Maintenance or Preventive Maintenance Personnel				
Security or Screener Personnel				
Air Traffic Control Personnel				
TOTAL				

B. EMPLOYEE TESTING (continued)

REASONABLE SUSPICION TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Flight Crew Members				
Flight Attendants				
Flight or Ground Instructors				
Aircraft Dispatchers				
Flight Testing Personnel				
Maintenance or Preventive Maintenance Personnel				
Security or Screener Personnel				
Air Traffic Control Personnel				
TOTAL				

B. EMPLOYEE TESTING (continued)

RETURN TO DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Flight Crew Members				
Flight Attendants				
Flight or Ground Instructors				
Aircraft Dispatchers				
Flight Testing Personnel				
Maintenance or Preventive Maintenance Personnel				
Security or Screener Personnel				
Air Traffic Control Personnel				
TOTAL				

Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FAA regulations): [ ]

B. EMPLOYEE TESTING (continued)

FOLLOW-UP TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Flight Crew Members				
Flight Attendants				
Flight or Ground Instructors				
Aircraft Dispatchers				
Flight Testing Personnel				
Maintenance or Preventive Maintenance Personnel				
Security or Screener Personnel				
Air Traffic Control Personnel				
TOTAL				

C. OTHER TESTING/ PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of supervisors who have received the required training in determining the existence of reasonable suspicion of alcohol misuse: [ ]

BILLING CODE 4910-13-C

Issued in Washington, DC, on December 2, 1992.

Andrew H. Card, Jr.,
Secretary of Transportation.

Thomas C. Richards,
Administrator.

[FR Doc. 92-29677 Filed 12-10-92; 10:00 am]
BILLING CODE 4910-13-M

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federal register

Tuesday
December 15, 1992

Part IV

Department of Transportation

Federal Highway Administration

49 CFR Part 350, et al.
Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 350, 382, 383, 392, and 395

[FHWA Docket No. MC-92-19]

RIN 2125-AC85

Federal Motor Carrier Safety Regulations; Commercial Motor Carrier Safety Assistance Program; Controlled Substances and Alcohol Use and Testing; Commercial Driver's License Standards; Driving of Motor Vehicles; Hours of Service of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is requesting comments on a proposed rule which would prohibit alcohol use and possession and mandate alcohol testing of drivers who operate commercial motor vehicles. This action is being taken in response to the Omnibus Transportation Employee Testing Act of 1991 and complements existing regulatory prohibitions on alcohol and controlled substances use. This proposal is consistent with a companion NPRM published by the FHWA on controlled substances testing and an NPRM on alcohol testing procedures published by the Office of the Secretary, U. S. Department of Transportation (OST). These two NPRMs are published elsewhere in today's **Federal Register**.

The overall goal of alcohol testing is to ensure that drivers who use alcohol are not permitted to operate a commercial motor vehicle, thereby reducing accidents, injuries and fatalities on highways nationwide.

In this proposal, the FHWA is proposing two different options for testing drivers randomly for alcohol misuse as required by the Omnibus Transportation Employee Testing Act of 1991. The first option would require motor carriers to perform all aspects of an alcohol testing program. The second option would require States accepting Motor Carrier Safety Assistance Program (MCSAP) grants from the FHWA to perform random alcohol testing of commercial motor vehicle drivers, while motor carriers would be required to perform all other aspects of the alcohol testing program. The FHWA will determine from the comments received to the docket whether the second option is feasible for alcohol testing of drivers of commercial motor vehicles.

DATES: Comments must be received on or before April 14, 1993.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC-10, room 4232, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Standards, (202) 366-2981, or Mr. David Sett, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

The public is urged to obtain information through the Department of Transportation's Anti-Drug Information Center (ADIC) system. The public may access the system by dialing (800) 225-3784 using a touch tone telephone. Access to a computer system may also be made using a personal computer connected via modem on (800) 225-3804. A user fee will be charged for certain services provided by the system.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

The Omnibus Transportation Employee Testing Act of 1991 (the Act) was signed by President Bush on October 28, 1991, as part of the 1992 Department of Transportation and Related Agencies Appropriations Act. Public Law 102-143, Title V, 105 Stat. 917, 952 (1991). The Act requires the Secretary of Transportation to promulgate regulations for alcohol and controlled substances testing for persons in safety-sensitive positions in four modes of transportation: Motor carrier, airline, railroads and mass transit. The general requirements of the Act are addressed in the OST's NPRM amending 49 CFR part 40 and in a common preamble, also prepared by OST, applicable to all of the U.S. Department of Transportation (USDOT) modal agency rules on alcohol testing programs. These documents appear elsewhere in today's issue of the Federal Register. All of the requirements of the Act are fully incorporated herein.

Section 5 of the Act addresses the requirements for motor carriers. This section amends the Commercial Motor Vehicle Safety Act of 1986 (CMVSA). Public Law 99-570, 100 Stat. 3207-170 (codified at 49 U.S.C. app. 2701-2718) The CMVSA establishes the requirements for the commercial driver's license (CDL). The FHWA has implemented the CDL provisions of the CMVSA through the publication of several final rules. A discussion of the CDL requirements, including who is required to obtain a CDL, is included under Section V, Commercial driver's license program, later in this preamble.

The Act requires the Secretary to issue regulations by October 28, 1992, requiring motor carriers to conduct pre-employment, reasonable suspicion, random and post-accident testing of drivers for the use of alcohol or a controlled substance which use constitutes a violation of law or Federal regulation. Congress recognized that the Federal Highway Administration has already issued regulations for controlled substances testing which reference the scientific and technical guidelines established by the Department of Health and Human Services. (49 CFR part 391, subpart H). The FHWA believes it is the intent of Congress that the regulations required to be developed under the Act be an adjunct to FHWA's current controlled substances regulations. In addition, the FHWA believes that the sanctions addressed in the Act, for violations of law or Federal regulation for use of a controlled substance or alcohol for which a driver is not considered to be under the influence, should be the same or similar to the sanctions or penalties of Public Law 99-570, 100 Stat. 3207-170 Sec. 12008 of the CMVSA.

II. Regulatory History

The FHWA published in the **Federal Register** a final rule on November 21, 1988, setting forth regulations to require motor carriers who operate commercial motor vehicles in interstate commerce to have an anti-drug program, including the testing of commercial motor vehicle drivers for the use of controlled substances. 53 FR 47134. That rule required motor carriers to conduct five types of controlled substances tests: Pre-employment/use, periodic, reasonable cause, post-accident and random. Generally, interstate drivers of commercial motor vehicles with a gross vehicle weight rating (GVWR) more than 26,000 pounds, vehicles transporting hazardous materials which are required to be placarded, or vehicles designed to transport more than 15 passengers, including the driver, are covered by this final rule.

On the same date, November 21, 1988, the Office of the Secretary, U.S. Department of Transportation (OST) published an interim final rule, "Procedures for Transportation

Workplace Drug Testing Programs." 53 FR 47002. On November 2, 1989, OST published an advance notice of proposed rulemaking (ANPRM) on alcohol testing. 54 FR 46328. On December 1, 1989, OST published a final rule amending certain portions of the interim final rule. 54 FR 49854. This final rule is being referred to in this document as the "OST rule."

Subsequent to the publication of the November 21, 1988, FHWA final rule, the FHWA published several notices relating to the controlled substances testing requirements, including an interim final rule. 54 FR 39546; 54 FR 46616; 54 FR 53294; 55 FR 3546.

III. Substance Abuse in Transportation

Refer to the Office of the Secretary's common preamble to all the USDOT modal agencies' alcohol NPRMs, published elsewhere in today's **Federal Register** for a complete discussion of this topic. The OST preamble is referred to as the common preamble in this document since it applies to all DOT agency alcohol testing programs including FHWA's, except as noted herein.

IV. Legal Issues

Many of the legal issues implicated by the FHWA's proposed testing program have been considered in the Legal Authority/Issues section of the OST general preamble. Therefore, only those issues unique to or highlighted by FHWA's rule and regulatory environment will be discussed in this section.

In *International Brotherhood of Teamsters* v. *U.S. Department of Transportation*, 932 F.2d 1292 (9th Cir. 1991) ("IBT"), the FHWA's current controlled substances testing program was adjudged to comport with the Fourth Amendment. The court held that the search mandated by the FHWA, including random, nonsuspicion testing, was reasonable. Warrant and probable cause requirements were held impractical in the particular context of motor carrier-based testing of drivers of commercial motor vehicles. The testing program "promotes special governmental needs, beyond the normal need for law enforcement," (quoting *Bluestein* v. *Skinner*, 908 F.2d 451, 455 (9th Cir. 1990)), such as ensuring safety and deterring drug use in the workplace. *IBT* at 1299. For the same reasons, the proposed rule includes no provisions for warrants and probable cause is not a prerequisite to testing.

Also consistent with the framework of the current program is the limited release of the results under the proposed rule. *Id.* While various forms of testing will be administered without suspicion of alcohol misuse under the proposed rule, in the absence of a probable cause determination made by a Federal, State, or local official the results of such tests will not be used to prosecute a driver criminally, regardless of the level of alcohol ultimately determined to be present in the driver's system. The only consequences for having a prohibited concentration of alcohol which are provided in the proposed rule are driving prohibitions (including CDL revocations or suspensions) and referral to a substance abuse professional. It is only where probable cause is determined under authority granted by State law that a driver may be subject to criminal prosecution for driving under the influence based on an illegal breath alcohol concentration level. *See Michigan* v. *Sitz*, 496 U.S. 444 (1990).

In considering the intrusion on a driver's reasonable expectation of privacy caused by controlled substances testing, the *IBT* court found that commercial motor vehicle operations occur in the context of a highly regulated industry. "The incremental decrease in privacy caused by the search relative to the existing privacy expectations of the drivers" was insubstantial. *IBT* at 1300, citing *Skinner* v. *Railway Labor Executives' Association*, 489 U.S. 602, 624–5 (1989) and *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, 671–2 (1989). In addition to the restrictions on movement imposed on all employees as a condition of employment, the FHWA acknowledges that drivers are already required to document biennial physical examinations, including urinalysis, and to record their on-duty time on records of duty status. Both documents are reviewable by employers and government officials.

In practice, what FHWA is proposing under Option 2 is a slight incremental increase in the roadside inspection burden already imposed on drivers. Along with their medical certificate, proof of hours of service, logs, shipping papers, proof of insurance in certain cases, and commercial driver's licenses, drivers will be required to provide adequate breath for testing. As part of ongoing and longstanding roadside inspections, this brief, additional procedure will not limit a driver's freedom of movement to the extent that the search's intrusiveness is increased. The roadside location also does not increase the intrusiveness of the test procedure itself or the surprise occasioned by unannounced random tests.

Not all random tests under Option 2 will be conducted, however, along the roadside. In order to ensure scientific randomness, alcohol tests will be conducted at a wide variety of work-related locations. Places such as carrier terminals are likely locations for tests. Under such circumstances the time commitment required of drivers will be less than that involving current controlled substances testing, in which drivers usually must travel to collection sites remote from the terminal.

To be balanced against this "minimal" level of intrusiveness in an environment of "substantially reduced privacy expectations" is the compelling interest of the government in alcohol testing. *IBT* at 1303. The purpose of the alcohol testing program is to detect and deter on-duty alcohol misuse and impairment by commercial motor vehicle drivers, who perform highly safety-sensitive tasks. This "concern for safety and deterrence * * * at least parallels, if not exceeds, the government interests found compelling in [the] earlier [airline, pipeline, and Customs Service employees] cases." *Id.* at 1304. The great number of commercial motor vehicles on the roads, all much larger than most other vehicles and thus capable of inflicting enormous damage, "multiplies the danger to motorists and raises the FHWA's concern for transportation safety to the level of a compelling government interest." *Id.* The balance of interests clearly weighs in favor of the FHWA's program.

While the reasonableness of a testing program does not turn on the existence of less intrusive alternative means, the court in *IBT* nevertheless found that it was not clear that such means as requiring reasonable suspicion for all controlled substances testing would accomplish the deterrent purpose of the program. Given the widespread alcohol problem in society, and the rapid rate at which alcohol is eliminated from the body, random alcohol testing, particularly at the roadside, represents the most effective means of deterring on-duty alcohol use.

Random testing for alcohol, much like that for controlled substances, responds to the operational realities of the motor carrier industry. *Id.* at 1304–5. Drivers work alone and unsupervised for long periods. The opportunity for motor carriers to detect alcohol use by their drivers may be limited to brief encounters at terminals. Therefore, great harm could be inflicted by alcohol impaired drivers before any signs of alcohol misuse are detected.

"Given the unique deterrent effect of random testing and the inefficiency of relying on individualized suspicion in this particular employment context, the FHWA reasonably found the alternative,

less intrusive drug tests to be insufficient to meet its goals." *Id.* at 1305. In similar fashion, the FHWA has determined that alcohol testing, including random and roadside components, is the most efficient method for achieving its statutory mandate of improved highway safety.

V. Commercial Driver's License Program

The Commercial Driver's License (CDL) program is a broad-based initiative to upgrade commercial motor vehicle (CMV) safety by establishing minimum Federal standards for State testing and licensing of CMV drivers, and by disqualifying drivers who develop poor records while operating CMVs. The CDL program applies to virtually all drivers of CMVs meeting or exceeding a 26,001 pound gross vehicle weight rating threshold, hauling placardable amounts of hazardous materials, or carrying 16 or more persons. The only persons excluded or waived from CDL responsibilities are those engaged in purely personal/recreational transportation, uniformed active-duty military personnel, and certain farmers, farm related service industries and firefighters and operators of other emergency vehicles. Unlike other Federal motor carrier safety programs, the CDL applies without distinction to inter- or intrastate commerce, and without regard to the purpose, frequency, duration or amount of the transportation. Thus, for example, drivers of government vehicles, school bus operators, and volunteer drivers of CMVs of all kinds must obtain CDLs and are subject to the corresponding disqualifications.

As of April 1, 1992, except as noted above, every CMV operator must have obtained a State-issued CDL by undergoing extensive knowledge and/or skills testing, providing specified certifications and information, and undergoing driving record checks both at the State level and through the Commercial Driver's License Information System (CDLIS—the national computerized clearinghouse for CMV driver records) and the National Driver Record (addressing problem drivers of all types). The required tests are tailored to the type of vehicle operated; all vehicles are classified by size and handling characteristics, and certain specialized vehicles or hazardous materials loads require specialized testing. Upon issuing a CDL to a driver, a State must identify itself to the CDLIS as the driver's single State of record, thus preventing that driver from obtaining a CDL from another State

CMV operators who are convicted of certain very serious driving offenses involving CMVs—driving under the influence of alcohol or drugs, leaving the scene of an accident, or felonies—will lose their CDLs and all commercial driving privileges for periods of from one year to life, depending on the nature of the offense. Two or more serious traffic violations committed in CMVs—excessive speeding, reckless driving, following too closely, erratic lane changes, or any offenses pertaining to a fatal accident—will lead to disqualifications of CMV driving privileges from 60 to 120 days. The CDLIS, accessed through a nationwide computer information network for State motor vehicle departments, will assure that disqualifying offenses committed anywhere will lead to disqualification by a CDL holder's State of licensure. Thus, the CDL program as currently structured positively enhances the qualifications of the CMV operator workforce nationwide, and provides enforceable consequences against CMV operators exhibiting bad driving behavior in every State.

As currently codified, the CDL regulations do not require CMV drivers to undergo testing for alcohol use beyond the testing traditionally performed by States in traffic law enforcement. However, the existing regulations constitute a marked improvement over prior treatment of alcohol offenses by these drivers in that—

1. The CDLIS prevents drivers from obtaining multiple licenses, which formerly allowed drivers to spread alcohol and other convictions over multiple States of record;

2. The CDLIS and its supporting information network allow alcohol convictions to be forwarded speedily to the driver's State of record for licensing action;

3. The threshold at or above which a CMV driver is deemed to be driving under the influence, hence subject to severe penalties, is now 0.04 breath alcohol concentration, rather than the 0.10 prevalent in most States prior to CDL;

4. The disqualification periods for alcohol-related offenses—one year for the first offense, three years for the first offense involving hazardous materials, lifetime (commutable upon rehabilitation to 10 years) for the second offense, and lifetime (noncommutable) for the third offense—in themselves constitute a powerful deterrent against alcohol use by CMV drivers;

5. The requirement that States place drivers who are found to have any measured or detected presence of alcohol out-of-service for 24 hours provides a further consequence to CMV operators' use of intoxicating beverages, as required in § 392.5; and

6. The implied consent provision of § 383.72 requires each driver of a CMV who holds a CDL to have given his/her prior consent to be tested for the use of alcohol by any State or jurisdiction in the enforcement of §§ 383.51(b)(2)(i) and 395.5(a)(2). The FHWA is proposing to amend this provision in this rulemaking to include alcohol testing administered by State and local officials under MCSAP.

As of April 1, 1992, all States should be enforcing the 0.04 BAC requirement as part of the CDL implementation and most States have passed enabling legislation. Thus, the CDL program provides a strong foundation for the additional alcohol testing requirements proposed herein.

VI. Motor Carrier Safety Assistance Program (MCSAP)

The Motor Carrier Safety Assistance Program is a Federal/State matching grant-in-aid program which was initially created by Section 402 of the Surface Transportation Assistance Act (STAA) of 1982 (Pub.L. 97–424, 96 Stat. 2097). Since the initial authorization, the program has received tremendous public, State and Federal support resulting in further congressional reauthorizations. The most recent was a six year reauthorization through FY 1997 in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub.L. 102–240, 105 Stat. 1914).

The intent of MCSAP is to achieve a national uniform motor carrier safety program. In an effort to achieve this goal, the FHWA provides grants only to States which enforce Federal or compatible State motor carrier safety and hazardous materials regulations.

Title IV of the ISTEA is the Motor Carrier Act of 1991, and specifically in section 4002, this new legislation adds several dimensions to the MCSAP funding eligibility criteria for States' participation in MCSAP. Pursuant to this section, participating States may use MCSAP funds for specific enforcement activities such as alcohol and controlled substance detection and enforcement, provided such "activities are carried out in conjunction with an appropriate type of inspection of the commercial motor vehicle for enforcement of Federal or State commercial motor vehicle safety regulations."

Currently, there are 48 States and four United States territories participating in MCSAP. As a result, over 1.5 million

roadside inspections are conducted annually on commercial motor vehicles and/or drivers by approximately 2,800 State enforcement officials in accordance with the Federal Motor Carrier Safety Regulations (FMCSRs) or compatible State safety regulations. During these inspections, over 497,000 vehicles and over 126,000 drivers have been placed out-of-service for violations of Federal or State safety regulations.

In order to receive MCSAP funding for inspection activities and enforcement, States are required to submit a "State Enforcement Plan" to the FHWA outlining the enforcement activities contemplated during that year in accordance with the procedures set forth in 49 CFR part 350. Part 350 has been revised to include requirements of the ISTEA.

In this NPRM, the FHWA is proposing, as one option, that motor carriers can achieve compliance with the random alcohol testing provisions of this part through a MCSAP-funded approach. The FHWA believes that this approach merits consideration since it would provide a much stronger deterrent than now exists against driving a commercial motor vehicle in commerce with a measured level or detected presence of alcohol. This deterrent would draw its strength from a driver's increased exposure through MCSAP-funded roadside inspections and, if this proposal is adopted, the corresponding likelihood of having a random breath alcohol test during those inspections. The MCSAP-based proposal assumes that the greater a driver's exposure to being tested, the more he or she will be discouraged from using or possessing alcohol while or prior to driving a CMV. Under this proposal for random alcohol testing, a CMV driver would have to be prepared to demonstrate fitness, through an alcohol test which shows no alcohol concentration of 0.04 or greater, to perform the driving task at random times and locations. The FHWA is proposing the State/MCSAP-based Program proposal because it believes that in enacting the Omnibus Transportation Employee Testing Act of 1991 and the Commercial Motor Vehicle Safety Act of 1986, the Congress intended that the FHWA and the States work together to remove unsafe CMV operators from the road, especially when those operators drink and drive.

The FHWA is given the discretion in the Act to establish appropriate penalties for drivers of CMVs who are determined to have unlawfully used, but who were not under the influence of, alcohol (i.e., 0.04 BAC or greater) or a controlled substance. This proposed rule sets such penalties commensurate with those for serious traffic violations under CDL provisions. The penalties for drivers of CMVs who are convicted of driving under the influence of alcohol or a controlled substance are unchanged from current CDL provisions—disqualification from one year to life. The FHWA believes the proposed consequences will complement existing State drunk driving laws and programs.

The FHWA believes that this option would be implemented as a small incremental increase to the current general roadside inspection responsibilities. The FHWA believes that an alcohol test with an initial alcohol concentration of less than 0.02 will last approximately 5 minutes and may be done separately or in conjunction with a roadside inspection. Tests with an initial result of 0.02 or greater must be performed a second time after an elapsed period of 15 minutes. Complete roadside inspections last from 20 to 60 minutes currently. The FHWA believes that an initial test would be done at the beginning of an inspection and if a confirmation test is required, the confirmation test would be performed later in the inspection process. The 15 minute time period required by 49 CFR part 40 would be filled by the MCSAP officer performing other inspection duties such as inspecting the motor vehicle.

The option proposed herein may slightly reduce the number of vehicle safety inspections per day, however, the FHWA believes that added benefits will occur by deterring alcohol use while driving a commercial motor vehicle which will reduce the number of accidents. Will the alcohol testing rate have a significant negative impact on how many vehicle inspections may be done per day? Will this impact produce a smaller overall societal benefit, such as increased accidents, more injuries, fatalities, etc.?

The FHWA believes that a random testing program that is highly visible to drivers will deter substance misuse. Will testing at a 10, 25, or 50 percent testing rate provide the best deterrence for the overall FHWA program? Which testing rates will cost the program too much for current funding? Should the FHWA consider imposing a user fee, as suggested in the common preamble published elsewhere in today's **Federal Register**, to pay for any increased costs to the MCSAP program? The FHWA seeks comments and answers to these questions from all interested parties.

VII. Proposal

A new part 382 to title 49, Code of Federal Regulations, Controlled Substances and Alcohol Use and Testing, is proposed which would be added to the FMCSR and would contain the new requirements of the Omnibus Transportation Employee Testing Act of 1991. Most notably, as this Act amends the Commercial Motor Vehicle Safety Act of 1986, the Act expands the category of persons required to be tested for controlled substances and imposes alcohol testing requirements on the same category. This NPRM is proposing the alcohol-related sections of the new part to be set forth in subparts A through F. A companion NPRM on controlled substances testing, also published in today's **Federal Register**, includes subparts G through L of part 382, which incorporates the current controlled substances testing requirements of 49 CFR part 391, subpart H into this new part 382.

The FHWA's experience in administering the three-year-old controlled substances testing requirements, and its consideration of comments (OST Docket No. 46574, Notice No. 89–22) received in response to the November 2, 1989, ANPRM (54 FR 46326) and other comments are reflected in this proposal. Based on further comments received on this NPRM and the companion NPRM on controlled substances, the FHWA will consider integration of the two proposals in one final rule.

SECTION-BY-SECTION ANALYSIS

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Section 350.9 Conditions for Basic Grant Approval

The FHWA proposes to require States to include part 382 under the conditions for basic implementation grant approval. Consistent with the State MCSAP-based proposal, random alcohol testing by MCSAP officers would be a condition of the grant for fiscal year 1995. If a State chooses not to conduct alcohol testing of CMV drivers, that State would be denied all MCSAP funds.

The FHWA is not proposing that a State implement random alcohol testing upon the effective date of the final rule. Rather, the FHWA is proposing to allow States an amount of time similar to that generally provided during the development stage of the original MCSAP implementation process in order to obtain new authorizations, laws, rules, regulations, training, acquisition of equipment and supplies and other administratively required items that must be obtained prior to

implementation. The FHWA is proposing to allow States up until October 1, 1996 to begin random alcohol testing.

Section 350.13 State Enforcement Plan (SEP) for a Basic Grant

Paragraph (b)(8) would require the State to place in the SEP that random alcohol testing of CMV drivers would be a part of an appropriate type of driver inspection by the beginning of the fiscal year starting at least two years from the publication of this proposal as final.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE TESTING

The FHWA is issuing these proposed alcohol testing rules in cooperation with the other DOT agencies required by the Omnibus Transportation Employee Testing Act. The rules proposed herein are similar to alcohol testing regulations published by the FAA, FRA, FTA, and RSPA elsewhere in today's **Federal Register**. The Office of the Secretary of Transportation is publishing today a common preamble on general requirements and a common rule on testing procedures also. The following Section-by-Section Analysis only covers sections and areas that are unique to the FHWA rule or which differ from the common rule and common preamble.

Subpart A—Alcohol Use and Testing

Section 382.103 Applicability

Currently, the FHWA's controlled substances testing requirements are part of the driver qualification standards. The requirements apply to motor carriers and drivers of the motor carriers who are involved in interstate commerce and are subject to the FMCSRs. Private and for-hire motor carriers of property and for-hire motor carriers of passengers are subject to the FMCSRs. However, the FMCSRs include several general exemptions for certain types of transportation, such as fire trucks and rescue vehicles involved in an emergency, governmental operations and school bus operations. Therefore, drivers involved in the exempted transportation operations are not currently required to comply with the FHWA's controlled substances testing requirements. In addition, anyone who is not required to meet the physical qualification requirements, such as farm custom operations, apiarian industries and certain farm vehicle drivers, are also exempt from the controlled substances testing requirements. Finally, while the FMCSRs generally apply to commercial motor vehicles exceeding 10,000 pounds GVWR, the drug testing provisions of part 391 apply only to drivers of commercial motor vehicles exceeding 26,000 pounds GVWR.

The Act amends the CMVSA, and therefore, the definitions of "commercial motor vehicle" and "commerce" in the CMVSA apply. This means that the testing requirements of the Act extend to interstate and intrastate operations in commercial motor vehicles exceeding 26,000 pounds GVWR and that the FMCSR exemptions stated above and listed in 49 CFR 390.3(f) do not apply.

The FHWA is therefore proposing that the drivers who are required to obtain a CDL are the same drivers who would be subject to the alcohol testing requirements of this rule. Because they are the subject of a companion rule, the FHWA is also proposing that motor carriers and drivers for those motor carriers subject to the alcohol and controlled substances testing requirements of the Federal Transit Administration (FTA), formerly the Urban Mass Transportation Administration, be excluded from the requirements of this rule. Drivers subject to the FTA rule who hold CDLs will continue, however, to be subject to the CDL disqualifications provided in part 383.

By the same token, the FHWA is proposing that any entity operating under a waiver of all CDL requirements, approved or authorized by the FHWA, would not be subject to the alcohol testing requirements of the Act. The measure of applicability is: if a person is required to obtain a CDL, that driver and the motor carrier using the driver must comply with these proposed alcohol testing requirements.

This means there would be certain entities who are not required to comply with the FMCSRs, but who would now be subject to the requirements of this rule. For example, governmental and school bus drivers as well as drivers of private motor carriers of passengers would be required to submit to tests. Governmental operations include all levels of government, Federal, State and local. Private motor carriers of passengers would include, but not be limited to, civic and church organizations.

Table I shows which groups have waivers or restricted CDLs and which groups will be required to be tested under this rule.

TABLE I.—COMMERCIAL DRIVER'S LICENSE (CDL) WAIVERS

Type	CDL requirement	Tests required
Full Waiver of all CDL requirements for vehicles owned/operated by Dept. of Defense		
Non-Civilian Military Personnel: —Active Duty Military Personnel —Active Duty Reserves and Nat'l Guard —National Guard Military Technicians	No CDL required	No controlled substances or alcohol testing required under 49 CFR Pt. 382.
State Option Waiver—States may waive all CDL requirements, if waiver conditions are met		
Farm Vehicle Operators	If State waives the individual If State DOES NOT waive the individual	No testing is required. Controlled Substances and Alcohol testing is required
Firefighters and Other Operators of Emergency Equipment.	If State waives the individual If State DOES NOT waive the individual	No testing is required. Controlled Substances and Alcohol testing is required.

TABLE I.—COMMERCIAL DRIVER'S LICENSE (CDL) WAIVERS—Continued

Type	CDL requirement	Tests required
Limited Waiver/Restricted CDL—States may waive CDL knowledge and skills testing and issue restricted CDLs		
Farm-Related Service Industries —Farm retail outlets & suppliers —Agri-chemical businesses —Livestock feeders —Custom Harvesters	The operators of these vehicles ARE required to obtain a Restricted CDL.	See Note.
Isolated Sections of Alaska	The operators of these vehicles ARE required to obtain a Restricted CDL.	See Note.

Note: Controlled substances and alcohol testing is required of these operators. Additionally, these operators shall have a pre-employment/pre-duty test for controlled substances and alcohol each time the State requires the license to be revalidated for these operators.

The FHWA is proposing the same applicability with the CDL to comply with the intent of Congress and estimates that this proposal will affect approximately five million drivers.

Paragraph (c) of this section excepts those drivers from alcohol testing requirements who are based at or depart from home terminals in foreign nations. Implementation of alcohol testing of foreign-domiciled commercial motor vehicle operators, mandated by the Act, will be considered in an advanced notice of proposed rulemaking published elsewhere in today's **Federal Register**. Comments on this issue should be submitted to that docket.

Section 382.107 Definitions

The definitions unique to this part are included in this section. The terms common to title 49, chapter III, subchapter B are already included in 49 CFR 390.5, Definitions, and are applicable to this part, unless otherwise defined. The terms *commerce* and *commercial motor vehicle* are taken from 49 CFR part 383, the requirements for a CDL. These definitions expand the applicability to intrastate operations as well as the other operations currently exempted from the FMCSRs.

The term *accident* is proposed and is identical to that being proposed by the FHWA in another rulemaking on accident-reporting requirements. See July 30, 1992, of the **Federal Register**, 57 FR 33712.

The term *alcohol* is defined as ethyl alcohol. The FHWA is proposing in this NPRM to make a conforming change to 49 CFR 392.5 by replacing the term, *intoxicating beverage*, with *alcoholic beverage* and to define alcoholic beverage in 49 CFR 390.5.

The term *commerce* and *commercial motor vehicle* are identical to those included in 49 CFR part 383.

The term *on-duty* is proposed to be defined here and a conforming amendment to 49 CFR 395.2, Definitions, is also being proposed to ensure that motor carriers maintain control over the alcohol testing procedures in those cases where the motor carrier directs the driver to provide adequate breath for testing under the requirements of this rule. The FHWA strongly encourages comments on this proposal.

The FHWA is also proposing a definition of the term "consortium" to indicate that persons other than the motor carrier may perform the actual testing and other functions, provided, however, that these functions are at the direction and/or approval (when they are done prior to the motor carrier's knowledge as may be in the case of a driver-based consortium) of the motor carrier. The FHWA will continue to hold the motor carrier responsible for compliance with these proposed requirements.

Subpart B—Prohibitions

As stated in the November 2, 1989, ANPRM on alcohol issues published by OST, the FHWA has had very stringent alcohol use prohibitions in the FMCSRs. These alcohol prohibitions, which apply to both CMV drivers and motor carriers, are included in this subpart.

Additionally, the FHWA's current controlled substances testing regulations allow a driver to have an affirmative defense for the use of controlled substances, if the driver has taken the substances at the direction of a medical practitioner. The FHWA would like comments on the possibility of allowing a similar exception in the alcohol testing rules. The FHWA believes that many medications may contain alcohol and that a driver's alcohol test will show an alcohol concentration prohibited by these proposed rules. Should FHWA seriously consider allowing medications to be taken that would contain alcohol?

A possible exception might read as follows:

Medication exception.

(a) A driver may possess and use a medication approved by the Department of Health and Human Services, Food and Drug Administration which contains ethyl alcohol while on-duty driving, notwithstanding §§ 382.201, 382.204, and 382.205 of this subpart, provided:

(1) The medication does not affect driving performance,

(2) The medication is taken consistent with its directions for use, including dosage, frequency, and any limitation on driving motor vehicles or operating heavy machinery, and

(3) The driver's breath alcohol concentration is not 0.04 or greater.

(b) A driver's possession of medication as described in this section, absent other documentable observations as required by § 382.311(b), shall not constitute reasonable suspicion of alcohol misuse.

What non-alcohol alternative medications are there that may be used over-the-counter or prescribed by health care professionals that would be substitutes for medications with an alcohol base? What is the cost of these alternative medications compared to the alcohol based medications? Are there any other issues related to alcohol medications that FHWA should address?

Section 382.209 Use Following an Accident

The FHWA is changing this section from the common rule. The FHWA is removing the phrases addressing motor carriers having to discount the driver's performance as a contributing factor to the accident. The requirements for an FHWA post-accident test require a test after each fatality accident and after the driver receives a citation for a moving traffic violation. The FHWA believes that the act of receiving a citation for a moving traffic violation would indicate that the driver's actions may have contributed to the accident and thus the motor carrier does not need to decide whether the driver's actions may have contributed to the accident.

Subpart C—Tests Required

The FHWA is proposing not to require periodic testing. The Act gives the Secretary such discretion only for this type of testing. Based upon the FHWA's experience with controlled substances testing, the FHWA has decided that periodic testing is not needed. The current controlled substances testing regulations allow motor carriers to eliminate periodic testing upon implementation of a random testing program with testing at the 50% rate. The FHWA acknowledges that many carriers are taking advantage of this authority and are eliminating periodic testing for controlled substances within the two-year cycle. Moreover, the FHWA believes that other forms of testing will adequately detect and deter alcohol use justifying this action. Also, the FHWA is proposing to eliminate periodic testing for the use of controlled substances in a separate rulemaking action in today's **Federal Register**.

Section 382.303 Post-Accident Testing

The FHWA is strongly committed to ensure that drivers who are involved in an accident are tested for the use of alcohol. The FHWA is proposing to use the same criteria for an accident as is currently required in 49 CFR part 391, subpart H with one revision. A motor vehicle which is required to be towed away replaces the amount of property damage criterion.

Post-accident testing may have to be performed not only when an accident occurs while the driver is actually driving a commercial motor vehicle, but also, in an accident involving a fatality, when the driver is performing a safety-sensitive function. For instance, a driver parks a truck improperly, on the travelled portion of the highway. Another motorist collides with the truck and the motorist is killed. The driver of the truck will be required, by this rule, to be tested for alcohol. Post-Accident Testing must also be performed when the driver receives a citation arising from the accident.

The FHWA is differing from the other DOT agencies rules being proposed with regard to the documentation associated with a post accident test. Other agencies are requiring that when an employer does not require an employee to submit, or when an employee is not timely in his/her submission of, adequate breath for testing that a report be prepared and sent to the DOT agency. The FHWA will require such a report to be prepared and kept in the motor carrier's files for review upon a FHWA investigation, but it will not require that the report be sent to the FHWA. The FHWA prefers to have the motor carrier maintain these records along with the other records they must keep for each accident, as required by the FMCSRs. The FHWA investigators would review these reports along with the other documentation during safety compliance reviews.

Although stated in general terms in subpart F of this proposal, the FHWA believes that a statement that motor carriers be required to provide drivers with the necessary post-accident procedures and instructions prior to operating a CMV, on a continuous basis, be made within the body of this section. Additionally, motor carriers would be required to maintain the information relating to the alcohol test or the need for a test, if one was not performed. This information would include the valid reasons when a test was not performed under the recordkeeping requirements in § 382.403 of this proposed rule.

Paragraph (f) allows tests done by Federal, State or local officials having independent authority to require alcohol tests, to meet the requirements of this section *if* the results of the test are obtained by the motor carrier and the testing was performed in conformance with the applicable Federal, State or local requirements for alcohol testing. This means that if a National Park Service Police officer, State Highway Patrol officer, municipal police officer, or similar official has independent authority to require an alcohol test after an accident, this test may be deemed as a completed test by the motor carrier if the official used an approved or applicable testing methodology for his/her jurisdiction and the motor carrier obtains the results of the test. This will allow motor carriers to accept tests done by law enforcement officials, such as, but not limited to, blood tests, saliva tests, or breath tests when these tests are standard for the jurisdiction and are applicable in the jurisdiction of the law enforcement official.

Section 382.305 Random Testing

The FHWA is proposing two options for random testing: A motor carrier-based testing program and a State/MCSAP-based testing program. Under either program the testing rate would be between 10 to 50 percent of the number of drivers (either the number of drivers used by the motor carrier or the number of drivers holding a CDL in a State), to be determined in the final rule stage of this rulemaking.

Motor Carrier-based Program

Under the motor carrier-based program, the motor carrier would select drivers for testing at various times during the year and would ensure that the selection was based on scientifically-valid methods. The driver selected would be notified only when he/she would be able to provide a breath specimen immediately upon notification. That is, the driver once notified, would proceed directly to providing a specimen without performing any other duties. This option is similar to the current random testing requirements for controlled substances.

The FHWA has had many inquiries from owner-operators and the public on how owner-operators comply with the random testing requirements. It has been the Department of Transportation's view that owner-operators are not allowed to have a random testing program on their own. Owner-operators must meet the conditions of random testing, which include that the random selection process be unannounced. The FHWA believes that the requirement of unannounced testing requires that an owner-operator must join a consortium, group or have a neutral, unbiased third party select a date for testing and the third party keeps the date confidential from the driver until that date arrives. Owner-operators, under this proposal, will be expected to perform the same type of random selection process.

State/MCSAP-Based Program

Under the MCSAP proposal, participating MCSAP States will be required to submit their planned random alcohol testing activities as a part of their "State Enforcement Plan" required under 49 CFR part 350. The FHWA is proposing that a State's random alcohol testing plan component must include the following program requirements:

1. The number of random tests performed in the State equal 10 to 50 percent of the number of Commercial Driver's License (CDL) holders in the State as of April 1 each year or as of a date certain mutually agreed upon by the State and the FHWA.
2. Random alcohol testing will be performed in conjunction with other driver and/or vehicle inspections performed under the authority of 49 CFR part 350 at various locations, including, but not limited to, weigh stations, roadside, terminal and other motor carrier fixed locations, and portable locations.
3. Random alcohol testing must be administered in conformance with the requirements of this part and 49 CFR part 40.
4. Random alcohol testing conducted by Federal, State or local officials required under this part and part 350

shall be administered without regard to any reasonable suspicion or probable cause standard found in State or local law. The consequences of such non-reasonable suspicion or non-probable cause random alcohol testing shall be limited to those set forth in this part.

5. Random alcohol testing conducted by Federal, State or local officials where reasonable suspicion or probable cause is independently established without regard to administering random alcohol testing in accordance with this part or part 350 shall be administered in accordance with State and local law and not in accordance with this part. The consequences of such reasonable suspicion or probable cause random alcohol testing shall be determined pursuant to State or local law and if applicable, in accordance with 49 CFR 383.51.

6. A driver's refusal to be tested under this part when requested to do so by a Federal, State or local official pursuant to part 350 or under independent State or local authority for such testing shall be deemed a positive test at the 0.04 BAC level under this part for purposes of CDL disqualification.

7. Pursuant to this part and part 350, the State or local officials participating under this program shall input into SAFETYNET all required random alcohol testing data.

8. Based upon an alcohol breath testing result of 0.02 or greater, the MCSAP officer must provide written notification to the appropriate State of licensure within 5 working days.

To implement this option, the FHWA is considering that States must adopt laws and/or regulations that will establish that BAC levels of 0.02 or greater but less than 0.04 found by MCSAP officials in the course of their inspections are deemed to be serious traffic violations which would disqualify CMV drivers. This proposed action would be required of States to avoid a loss of Federal-aid highway funds, and will be addressed in further detail in the FHWA's forthcoming rulemaking of State compliance with the CDL program. States are currently required to disqualify drivers with BAC levels of 0.04 or greater. Nothing in this proposal prohibits State and local officials from applying reasonable suspicion or probable cause based alcohol breath testing or invoking criminal sanctions for violations of State drunk driving laws.

If the State/MCSAP-based testing program is selected for the final rule, the FHWA will propose in a separate rulemaking action that State licensing authorities amend their CDL definition of the term "serious traffic violation," to include any conviction, when driving a commercial motor vehicle, of a measured alcohol concentration below 0.04 BAC. When this is included in the State's law, the driver licensed in that State would know that a measured alcohol concentration of below 0.04 BAC would result in a disqualification from driving a CMV of 60 or 120 days upon the second or third conviction within a three year period, respectively. If the measured BAC is 0.04 or above the disqualification upon conviction would be from one year to life. The disqualification for BACs of 0.04 or more is already in the CDL law and was published in final rules at 53 FR 39044 and 54 FR 40782, which are codified at § 383.51.

All disqualifications assigned as State responsibilities in this proposal would, of course, remain prerogatives of the FHWA as well. The FHWA and the States are working to develop coordinated processes to assure prompt and effective disqualification procedures.

The FHWA is proposing that the random alcohol testing required by this section and administered by the MCSAP officers is procedurally a mere incremental addition to the current North American Standard Driver Vehicle Inspection, which currently includes inspections of log books, medical examiner certificates and motor vehicle inspections. The FHWA believes that MCSAP officers will not have to obtain any additional State authority to perform alcohol testing as proposed herein. One of the conditions for the implementation and approval processes for MCSAP is that State laws provide for the right of entry and inspection by State personnel sufficient to enforce the FMCSRs or compatible State rules and to perform the activities in the State Enforcement Plan.

The implementation of this proposal would require a MCSAP officer to request that a driver submit adequate breath for testing into an evidential breath testing device in accordance with this part and part 40. If the driver refuses to submit the sample, the MCSAP officer would note the refusal of the request to submit adequate breath for testing on the inspection form and enter the refusal to test into the SAFETYNET system and notify the State of licensure.

MCSAP officers would only be acting as a collector and analyzer of breath to determine if a driver has an alcohol concentration of 0.02 or greater in his/her system. MCSAP officers would place drivers out-of-service at the roadside, as they presently do, when a violation is found, but would not be required under this proposal to arrest drivers or do reasonable suspicion testing of drivers. The States' authority, rights and procedures for testing drivers under reasonable suspicion of alcohol use would remain unchanged by this proposal.

If this option is adopted, the FHWA will also add other recordkeeping requirements, other than those listed in subpart D of this proposal, that motor carriers would be required to maintain.

The FHWA strongly encourages public comments on this option. Is this option workable and enforceable? Are there any changes that should be made to this proposal to make it more workable? Should FHWA base the number of random tests done annually by MCSAP officials on some other standard than the number of commercial driver's licenses issued by the State, such as the number of driver/vehicle inspections performed, or the number of miles travelled by CMVs in that State per year, etc? Will Option 2 overburden the MCSAP driver/vehicle inspection program? The FHWA would like to have critical comments on this option and why the option will or will not work?

Retesting of Covered Employees With an Alcohol Level of 0.02 or Greater But Less Than 0.04

This section in the common rule is not included in this proposal because it conflicts with requirements of the CMVSA. Section 382.505 provides that a person found to have a BAC level of 0.02 or greater but less than 0.04 is prohibited from operating a CMV for a minimum of 24 hours. *See* sec. 12008(d) of the CMVSA.

Section 382.315 Exceptions for Testing Performed by Consortiums

This section, added to the FHWA proposal, provides that preemployment/pre-duty testing and random testing need not be performed directly by the motor carrier provided that the motor carrier directs or approves such testing program prior to using a driver participating in the program. The FHWA recognizes the high driver turnover rate in the motor carrier industry and believes that the provisions of this proposed section will minimize additional unnecessary tests while ensuring that drivers who use alcohol while operating a CMV or on duty are identified and prohibited from performing safety-sensitive tasks.

The proposed conditions in which a motor carrier would be allowed to use a driver without testing the driver for pre-employment/pre-duty are similar to the conditions included in 49 CFR

391.103. The information that a motor carrier is to obtain from a consortium is similar to that contained in 49 CFR 391.103.

Subpart D—Handling of Test Results, Record Retention and Confidentiality

As stated above, if the MCSAP random testing option is adopted, the FHWA will add other recordkeeping requirements, other than those listed herein, that motor carriers would be required to maintain. These would include, but are not limited to:

1. The motor carrier's or driver's copy of the Driver Vehicle Examination Report presented to the driver following a MCSAP driver inspection, and
2. State Out-of-Service Orders issued for violations of subpart B.

Section 382.403 Reporting of Results in a Management Information System

Elsewhere in today's **Federal Register** is a "MIS" NPRM regarding 49 CFR part 40 and 49 CFR part 391, subpart H. The preamble to the 49 CFR part 40 NPRM contains many comments, discussions and questions that should be considered in reviewing this NPRM's § 382.403. Your comments on this NPRM should indicate that you are responding to questions or comments found in the generic NPRM under 49 CFR part 40, this specific NPRM (FHWA Docket No. MC–92–19, the drug testing NPRM (FHWA Docket No. MC–92–23), or the NPRM for changing 49 CFR part 391, subpart H (FHWA Docket No. MC–93–2).

Subpart E—Consequences For Drivers Engaging In Alcohol-Related Conduct

Section 382.505 Other Alcohol-Related Conduct

The FHWA recognizes the acute possibilities for an accident if a person has been using alcohol. Therefore, the current prohibition to keep a driver who has an alcohol concentration of 0.02 or greater from operating a commercial motor vehicle for 24 hours is being proposed in this rule, instead of the requirement of eight hours off duty as used by other DOT agencies and discussed in the common preamble.

Section 382.507 Additional Consequences For Alcohol Concentration Violations

The FHWA is proposing two options for this section. These options parallel the random testing options in that different consequences would apply depending on whether the violation was discovered by a motor carrier or a Federal, State or local official and the level of alcohol concentration. Section 5(f) of the Act directs the Secretary to determine appropriate sanctions for drivers who are determined to have used alcohol through testing developed under this Act or used alcohol in violation of law or Federal regulation, but are not under the influence of alcohol as provided in the CMVSA. Regulations issued pursuant to the CMVSA impose disqualifications and penalties for driving under the influence of alcohol, see § 383.51, and other alcohol misuse. *See* § 392.5.

Option 1

The common rule's paragraph (a) for this section would remain unchanged for this option. For alcohol concentrations of 0.04 or greater, the consequence would entail that the driver not perform safety-sensitive functions, until his/her alcohol concentration is below 0.02 and will be prohibited from driving for a minimum period of 24 hours, as required by the CMVSA. The FHWA is proposing, however, that motor carrier-based testing which indicates alcohol concentrations of 0.04 or greater should result in consequences commensurate with serious traffic violations, as defined in § 383.5. The FHWA considers the alcohol concentration violations to be similar to those identified in part 383 and believes that additional consequences are needed for repeat violators. The FHWA proposes to prohibit drivers who are found to have 0.04 or greater alcohol concentrations on a second, third and subsequent violation of the alcohol concentration rule from driving for 60 or 120 days. The prohibition includes operating a CMV as defined in this part or as defined in 49 CFR part 390. That is, a person violating the prohibitions on having an alcohol concentration of 0.04 or greater proposed in this NPRM would be prohibited from operating a CMV with a gross vehicle weight rating (GVWR) of more than 10,000 pounds in interstate commerce or a CMV with a GVWR of more than 26,000 pounds in both intrastate and interstate commerce. In addition, that person would be prohibited from operating a CMV which is designed to transport 16 or more passengers, including the driver, or transporting material found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F) in either intrastate or interstate commerce.

Specifically, the FHWA is proposing increasingly more stringent consequences based on the number of violations over a three year period. The first violation of the prohibitions in § 382.201 would result in the driver being prohibited from driving for a minimum period of 24 hours, and referred by the motor carrier to a substance abuse professional for evaluation of his/her misuse of alcohol, as required in §§ 382.505(a) and 382.605.

A driver who violates the prohibitions twice within a three year period would be prohibited from driving any commercial motor vehicle for a minimum period of 60 days and must be referred to a substance abuse professional by the driver's motor carrier.

A driver who violates the prohibitions three or more times within a three year period would be prohibited from driving any commercial motor vehicle for a minimum period of 120 days and must be referred to a substance abuse professional by the driver's motor carrier.

Option 2

Under the second option, the FHWA is proposing that the consequences identified in option one for alcohol concentrations of 0.04 or greater be applied to all alcohol concentrations. Drivers who are found by a Federal, State or local official to have alcohol concentrations of 0.02 or greater but less than 0.04 would be subject to prohibited driving periods and CDL disqualifications of 60 to 120 days on second, third and subsequent violations. These consequences are intended to rid the highways of drivers who continually violate alcohol misuse prohibitions and thereby pose a threat to the public.

As stated above, under Option 1, when a violation of § 382.201 involving an alcohol concentration of 0.04 or greater is identified by a motor carrier, the motor carrier would be prohibited from using the driver for the periods provided in the rule. The motor carrier would be required to document the violation, and both the motor carrier and the driver would be required to comply strictly with the consequences noted in this section, subject to the additional consequences in paragraphs (d) through (g) for failure to comply. There would be no licensing sanctions.

By contrast, under Option 2 additional consequences, including licensing sanctions, attach for all violations of § 382.201 which are identified by a Federal, State or local official, as opposed to the driver's motor carrier. The FHWA is specifying that a violation of § 382.201, that is, a breath alcohol concentration violation discovered through the means of an

evidential breath testing device operated by a Federal, State or local official, would result in the driver being placed out-of-service for 24 hours through the issuance of an out-of-service order. Furthermore, the driver must report the order to his/her motor carrier within 24 hours. The Federal, State or local official would in turn notify the appropriate State commercial driver licensing authority for the appropriate licensing action. For alcohol concentrations of 0.02 or greater but less than 0.04, the driver's license will be suspended or revoked for 60 or 120 days upon a second and subsequent offenses. The current CDL disqualifications of one year for a first offense and lifetime for subsequent offenses upon conviction of operating a commercial motor vehicle with an alcohol concentration of 0.04 or greater remain applicable.

Proposed paragraph (d) prohibits a driver who refuses to be tested from driving any commercial motor vehicle for no less than one year. The FHWA believes that a strong disincentive to refuse to comply with this proposed rule is needed. This proposal is similar to the requirement of 49 CFR 383.51(b)(3)(i) which requires a driver who refuses to undergo testing required by a State or local jurisdiction under a probable cause determination to be disqualified for one year upon a conviction for such refusal.

Proposed § 382.507(e) would require that motor carriers who knowingly use drivers who have violated these rules, will be subject to 49 U.S.C. 521(b) penalty provisions. These provisions provide for civil forfeiture penalties of up to $10,000 for violations of motor carrier safety regulations.

Proposed § 382.507(f) prohibits a person found to have violated the alcohol use prohibition and testing rules of another DOT agency from operating a CMV until the driver complies with the requirements of that DOT agency.

As explained above, subpart F of this proposed rule includes other actions which must be taken prior to a driver operating a commercial motor vehicle after having violated the prohibitions in §§ 382.201 through 382.211. These actions include an evaluation by the substance abuse professional and a finding that the driver has properly followed any instructions given. A driver needing assistance must also be tested for alcohol use and the results must indicate an alcohol concentration of less than 0.02.

Proposed § 382.507(g) prohibits drivers from driving a commercial motor vehicle following a fatal accident in which their alcohol tests show an alcohol concentration of 0.02 or greater. This prohibition is similar to the current drug rule in part 391, in which a driver is disqualified for one year following a positive drug test result after he or she is involved in a fatal accident. See 49 CFR 391.117(b).

Tables II & III indicate the FHWA proposed consequences for drivers who violate the alcohol concentration prohibition. Table IV indicates the post accident testing requirements and additional penalties that would be imposed for prohibited actions after accidents.

TABLE II.—DRIVER ALCOHOL PROHIBITIONS AND CONSEQUENCES, OPTION 1 DISCOVERED BY A MOTOR CARRIER

[Prohibited Activities—Have a Prohibited Alcohol Concentration]

	Consequences			
First offense	Second offense within a three year period	Third offense within a three year period	Refusal to be tested	Violation of an out-of-service order
Alcohol Concentrations of 0.02 and Greater But Less Than 0.04				
Professional referral and 24 hours off duty.	Professional referral and 24 hours off duty.	Professional referral and 24 hours off duty.	One year minimum driving suspension.	First offense: 90 day driving suspension and $1000 penalty. Subsequent offenses: One year minimum up to five year maximum driving suspension and $1000 penalty.
Alcohol Concentrations of 0.04 or Greater				
24 hours out of service, professional referral.	24 hours out of service, professional referral, 60 day driving prohibition.	24 hours out of service, professional referral, 120 day driving prohibition.	Same as above.	Same as above.

TABLE III.—DRIVER ALCOHOL PROHIBITIONS AND CONSEQUENCES, OPTION 2 DISCOVERED BY A FEDERAL, STATE OR LOCAL OFFICIAL

[Prohibited activities—Have a Prohibited Alcohol Concentration]

	Consequences			
First offense	Second offense within a three year period	Third offense within a three year period	Refusal to be tested	Violation of an out-of-service order
Alcohol Concentrations of 0.02 and Greater But Less Than 0.04				
Professional referral and 24 hours off duty.	Professional referral and 60 day driving suspension.	Professional referral and 120 day driving suspension.	One year minimum driving suspension.	First offense: 90 day driving suspension and $1000 penalty Subsequent offenses: One year minimum up to five year maximum driving suspension and $1000 penalty.

TABLE III.—DRIVER ALCOHOL PROHIBITIONS AND CONSEQUENCES, OPTION 2 DISCOVERED BY A FEDERAL, STATE OR LOCAL OFFICIAL—Continued

[Prohibited activities—Have a Prohibited Alcohol Concentration]

Consequences				
First offense	Second offense within a three year period	Third offense within a three year period	Refusal to be tested	Violation of an out-of-service order
Alcohol Concentrations of 0.04 or Greater				
24 hours out of service, professional referral, one year disqualification.[1].	24 hours out of service, professional referral within three days, lifetime disqualification.	Not Applicable	Same as above	Same as above.

[1] Suspensions begin at completion of any State licensing review process. Drivers found with a BAC level of 0.04 or greater shall be subject to one year disqualification for a first offense and a lifetime disqualification for a subsequent offense under current CDL rules.

TABLE IV.—POST ACCIDENT ALCOHOL TESTING AND PENALTIES

[Qualifying Accident—Any Accident, as Defined in Part 382, Involving the Death of a Human Being, or any Accident in Which the Driver Receives a Citation for a Moving Traffic Violation (as Defined by State or Local Law)]

Testing Requirements		
Alcohol test	Penalties	Within two hours of accident
	No Fatalities	*Fatal Accident*
Refusal to submit to testing	One year suspension.	One year suspension.
Leave accident scene prior to testing	One year suspension	One year suspension.
Option 1—Alcohol concentration of 0.04 or greater	(1) Professional Referral, (2) 24 hours off duty, (3) Driver must submit adequate breath for testing which has less than a 0.02 result, and (4) Possibly 60 to 120 days driving suspension for second and subsequent times within 3 years.	(1) Professional Referral, (2) One year driving prohibition, and (3) Driver must submit adequate breath for testing which has less than a 0.02 result.
Option 2—Alcohol concentration of 0.02 or greater	(1) Professional Referral, (2) 24 hours off duty, (3) Driver must submit adequate breath for testing which has less than a 0.02 result, and (4) Possibly 60 to 120 days driving suspension for second and subsequent times within 3 years.	(1) Professional Referral, (2) One year driving prohibition, and (3) Driver must submit adequate breath for testing which has less than a 0.02 result.

The FHWA strongly encourages the public to comment on these proposed consequences. The agency encourages critical comments including why the proposed consequences will or will not be sufficient to deter alcohol misuse among CMV drivers.

Section 382.509 Disqualifications

As stated above, the penalty provisions of the CDL regulations are not affected in any way by this proposed rule. The authority of State and local officials to implement the disqualifications included in 49 CFR part 383 are not affected by this proposed rule. Drivers found, upon MCSAP inspection, to have BAC levels of 0.04 or greater will be subject (in addition to the 24-hour period out-of-service and the mandatory referral to a substance abuse professional) to disqualifications of from one year to life under § 383.51(b).

Part 383—Commercial Driver's License Standards; Requirements and Penalties

Section 383.5 Definitions

The FHWA is proposing to add to the existing definition of *Serious traffic violations* in § 383.5 a conviction while operating a CMV with a BAC of either 0.04 (Option 1) or 0.02 (Option 2). See discussion of these options under the discussion of §§ 382.505 and 382.507.

Part 392—Driving of Motor Vehicles

Section 392.5 Alcohol Prohibition

The FHWA proposes to change the name of this section from Intoxicating beverage to Alcohol prohibition to conform this section to the proposed part 382. In addition, the FHWA proposes to revise paragraphs (a)(1) and (a)(2) and paragraph (b)(2) to replace the words intoxicating beverage with the words use alcohol. Also, the FHWA would conform the section to the FHWA's proposed part 382. Paragraph (a)(3) would be revised by deleting the words intoxicating beverage and replacing it with the words alcoholic beverage.

Part 395—Hours of Service of Drivers

Section 395.2 Definitions

The FHWA proposes to revise the definition of on-duty time by adding paragraph (10) which would include all time spent in providing breath and urine samples for testing in accordance with part 382 when directed by a motor carrier to submit to a random, reasonable suspicion, post-accident or follow-up test. The definition would also include all time spent in which a driver is providing breath, urine and blood samples for testing when a Federal, State or local official requests them to provide such samples for testing, regardless of whether the request and the test is in accordance with part 382. Preemployment and return-to-duty testing will not be included in this proposal because daily records of duty status are not required to be completed by drivers who have not yet been hired and those who have been removed from driving functions.

The FHWA has had many inquiries from the public and the motor carrier industry regarding whether the time spent providing urine specimens under part 391, subpart H should be considered as on-duty time or off-duty time. The FHWA believes that a motor carrier's responsibility under part 391, subpart H is to ensure that a controlled substances urine specimen is submitted by a driver and that the test is performed correctly, regardless of who pays for the collection and analysis of the specimen. Similarly, the FHWA believes that a driver's submission of adequate breath for testing for alcohol use is the motor carrier's responsibility, when the test is required by the Omnibus Act.

The FHWA's prior interpretations that time spent by a driver taking a physical examination in accordance with § 391.41 or time spent taking driver's license examinations that were not directed by a motor carrier could be logged as off-duty time on a record of duty status is not comparable to submitting to a controlled substances or alcohol test. When a motor carrier requests a driver, who is currently employed by the motor carrier, to submit adequate breath for testing or a urine specimen, the time associated with that test should be recorded as on-duty time on an applicable record of duty status, regardless of whether the driver is paid for this time.

The FHWA believes that submission of adequate breaths or testing by drivers for a motor carrier's use is similar to other motor carrier requests or expectations for driver services that may or may not be reimbursed or paid by the motor carrier.

VIII. Regulatory Analyses and Notices

Regulatory Impact Analysis

This proposed rule will require motor carriers to test drivers for the use of controlled substances and alcohol use. This rule will affect trucking companies, passenger carriers, State and local governments and anyone who operates a commercial motor vehicle on the public highways.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document is a major rule under Executive Order 12291 and a significant regulation under the regulatory policies and procedures of the DOT. A draft regulatory impact analysis has been prepared and a copy has been placed in the docket. A summary is included here.

Economic Impact Analysis

The Act requires among other things, testing of safety-sensitive employees in the highway industry for use of alcohol in violation of the law or Federal regulations. The Act specifically mandates privacy in collection techniques, testing safeguards, confirmation of positive results, confidentiality of test results and scientific random selection of employees for testing. The Act further mandates pre-employment, random, post-accident, and reasonable suspicion testing.

Within the framework of these legislative mandates the FHWA is proposing an alcohol testing program that minimizes the economic impact to the industry by utilizing established procedures, equipment, techniques, and safeguards that are already available to, and in use by law enforcement agencies and employers. The proposed rule will not require the development of new technologies, or the need to create an extensive cadre of testing personnel. In the majority of cases, an employer's alcohol testing program will be an incremental expansion of existing drug testing programs, utilizing the same facilities, personnel, and records systems that currently exist.

The following summarizes the preliminary industry cost and benefit evaluation for the final rule on alcohol testing. The rule is intended to prohibit absolutely alcohol concentrations of 0.04 or greater in a driver's breath when operating a commercial motor vehicle. The rule will require pre-employment/pre-duty, random, post-accident, reasonable suspicion, and return-to-duty alcohol testing for approximately 5,000,000 drivers of commercial motor vehicles.

The economic cost to the motor carrier industry will be substantial and include, in addition to the cost of the test, the cost of administering a testing program, the cost of replacement drivers, the occasional court cost, and for owner-operators the potential loss of livelihood.

Notwithstanding these economic costs, the FHWA believes that substantial benefits exceeding the costs will accrue as a result of this proposal. There will be benefits due to the prevention of fatalities, personal injuries, property damage, and lost productivity resulting from accidents attributed to neglect or error on the part of commercial motor vehicle drivers whose judgment or motor skills were impaired by the use of alcohol.

The assumptions and cost factors used in preparing the economic impact estimate have been developed by the FHWA. This regulatory impact analysis is in the docket for this rulemaking and is subject to review. Cost data were furnished by motor carriers, motor carrier industry associations, and trade publications.

The benefit cost analysis is a direct arithmetic comparison between the identified and quantified cost of an alcohol testing program and the economic value of the benefits expected to be derived therefrom. The preliminary cost-benefit analysis is for a ten year period beginning with 1993; assumes three different random testing rates of 10, 25, and 50 percent, a deterrence rate of 50 percent the first year and 70 percent thereafter.

The estimated total cost consists of: setting up and administrating a testing program, the cost of pre-employment, random, post accident, reasonable suspicion, and follow-up testing. Costs were estimated using two alternative methods of testing; the cost of a testing program for all types of testing operated exclusively by the motor carriers and/or their testing contractors, and the cost of a program with all random testing operated by State motor carrier enforcement personnel and the remaining testing by the motor carrier or their testing contractors.

The estimated value of the benefits is the cost associated with projected reduction in commercial motor vehicle accidents by the assumed 3.7 percent of drivers that will have an alcohol concentration of 0.04 or greater and includes fatalities, injuries, property damage, traffic delays, and emergency services that will not occur by removing or deterring these drivers from the highways.

Summary of Benefits and Costs

Costs and benefits are total for the 10 year analysis period in assumed 1993 dollars.

Name of testing program	Random testing rate (percent)	Ten year benefits (billions)	Ten year costs (billions)	Benefit cost ratio
Motor Carrier	10	$3.92	$.731	5.36
Do	25	3.92	1.02	3.84
Do	50	3.92	1.502	2.61
Motor Carrier and Enforcement Personnel	10	3.92	.74	5.3
Do	25	3.92	.78	5.0
Do	50	3.92	.84	4.7

In other words for every $1.00 spent on this testing program there would be returned in benefits $2.61 to $5.36.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA has evaluated the effects of this rulemaking on small entities. This final rule would require motor carriers to test drivers for the use of alcohol. It will have a significant adverse economic impact on small entities. Because the Omnibus Act mandates alcohol testing irrespective of the size of the entities, the FHWA is unable to lessen the economic impact on them.

For these reasons, the FHWA hereby certifies that this action will have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This proposal adds part 382 of the FMCSRs pertaining to testing for controlled substances and alcohol by drivers of commercial motor vehicles operating in commerce on public roads and highways. These proposed requirements directly affect motor carriers and the drivers for these motor carriers. This document preempts State or local laws and regulations that are inconsistent with this proposed rule, as required by the Omnibus Transportation Employee Testing Act of 1991. Therefore, the agency does not have to prepare a Federalism Assessment for this proposal.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in part 382, subpart D and § 395.2 of this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 350, 382, 383, 392, and 395

Controlled Substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

Issued on: December 2, 1992.

Andrew H. Card Jr.,
Secretary of Transportation.
Thomas D. Larson,
Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, CFR subtitle B, chapter III, parts 350, 383, 392 and 395, and add part 382 as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. app. 2301–2304, 2505–2507; 49 U.S.C. 3102; Sec.15(d), Pub. L. 101–500, 104 Stat. 1213, 1219; Secs. 4002 and 4009, Pub. L. 102–240, 105 Stat. 2140; 49 CFR 1.48.

2. In § 350.9, paragraph (q), is added to read as follows:

§ 350.9 Conditions for basic grant approval.

* * * * *

(q) The State shall adopt and enforce the requirements of 49 CFR part 382 with respect to random alcohol testing of commercial motor vehicle operators by October 1, 1996.

3. In § 350.13, paragraph (b)(8) is added to read as follows:

§ 350.13 State enforcement plan (SEP) for a basic grant.

* * * * *

(b) * * *

(8) Describe the efforts taken by the State to adopt and enforce the requirements of 49 CFR part 382 with respect to random alcohol testing of commercial motor vehicle drivers; and

* * * * *

4. Chapter III is amended by adding part 382 as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart A—Alcohol; General

Sec.
382.101 Purpose.
382.103 Applicability.
382.105 Alcohol testing procedures.
382.107 Definitions.
382.109 Preemption of State and local laws.
382.111 Other requirements imposed by motor carriers.
382.113 Requirement for notice.
382.115 Starting date for alcohol testing programs.

Subpart B—Prohibitions

382.201 Alcohol concentration.
382.203 Behavior or appearance.
382.204 Alcohol possession.
382.205 On-duty use.
382.207 Pre-duty use.
382.209 Use following an accident.
382.211 Refusal to submit to a required alcohol test.

Subpart C—Tests Required

382.301 Pre-employment/pre-duty testing.
382.303 Post-accident testing.
382.305 Random testing.
382.307 Reasonable suspicion testing.
382.309 Return-to-duty testing.
382.311 Follow-up testing.
382.313 [Reserved]
382.315 Exceptions for testing performed by consortiums.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

382.401 Retention of records.
382.403 Reporting of results in a management information system.
382.405 Access to facilities and records.

Subpart E—Consequences for Drivers Engaging in Alcohol-Related Conduct

382.501 Removal from safety-sensitive function.
382.503 Required evaluation and testing.
382.505 Other alcohol-related conduct.
382.507 Additional consequences for alcohol concentration violations.
382.509 Disqualifications.

Subpart F—Alcohol Misuse Information, Training, and Referral

382.601 Motor carrier obligation to promulgate a policy on the misuse of alcohol.
382.603 Training for supervisors.
382.605 Referral, evaluation, and treatment.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. app. 2701 *et seq.*; 49 U.S.C. 3102; 49 CFR 1.48.

Subpart A—General

§ 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by drivers of commercial motor vehicles.

§ 382.103 Applicability.

(a) This part applies to all motor carriers and drivers as defined in this part who are required under part 383 of this chapter to obtain a commercial driver's license, except for motor carriers and their drivers who are required to conform to the alcohol testing requirements of the Federal Transit Administration of the Department of Transportation found in part 654 of this title or have obtained a full waiver or State option waiver from the Part 383 requirements.

(b) A motor carrier who employs himself/herself as a driver must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers, except the motor carrier who employs himself/herself as a driver shall not implement an alcohol testing program that only includes himself/herself as a participant.

(c) The requirements of this part do not apply to any employee whose place of reporting or point of departure *(home terminal)* for motor carrier transportation services is located outside the territory of the United States.

§ 382.105 Alcohol testing procedures.

Each motor carrier shall ensure that all alcohol testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol testing are applicable to motor carriers by this part.

§ 382.107 Definitions.

As used in this part—

Accident means an occurrence involving a commercial motor vehicle engaged in the operations of a motor carrier who is subject to this part resulting in:

(1) The death of a human being; or

(2) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(3) One or more motor vehicles incurring disabling damage as a result of the accident and transported away from the scene by a tow truck or other motor vehicle.

Alcohol means ethyl alcohol (ethanol).

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part. When the indicated alcohol concentration of a driver on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, the driver shall be considered to have the lower indicated concentration.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Commerce means (1) any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and (2) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating or gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmatory test means a second analytical procedure, separate from the screening test, to determine the concentration of alcohol in a driver's system. The confirmatory test may or may not use a different chemical principle from that of the screening test, but shall employ a scientifically recognized method of testing capable of providing quantitative data regarding alcohol concentration. For specific requirements concerning evidential breath testing devices see part 40 of this title.

Consortium means an entity, including a group or association of employers, motor carriers, or contractors that provides alcohol testing as required by this part or other DOT alcohol testing rules and that acts on behalf of the employers.

Covered employee means a driver. For the purposes of preemployment/pre-duty testing only, the term covered employee includes a person applying to perform a safety-sensitive function.

Disqualification means either:

(1) The suspension, revocation, cancellation, or any other withdrawal by a State of a driver's privileges to drive a commercial motor vehicle; or

(2) A determination by the FHWA, under the rules of practice for motor carrier safety contained in Part 386 of this title, that a driver is no longer qualified to operate a commercial motor vehicle under Part 391; or

(3) The loss of qualification which automatically follows conviction of an offense listed in §§ 383.51 or 391.15 of this chapter; or

(4) The loss of qualification which automatically follows a violation of the alcohol prohibitions as specified in this subchapter.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 65, 121, and 135; 49 CFR parts 199, 219, 382 and 654) in accordance with part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to, full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to a motor carrier or who operate a commercial motor vehicle at the direction of or with the consent of a motor carrier. For the purposes of preemployment/pre-duty testing only, the term driver includes a person applying to a motor carrier to drive a commercial motor vehicle.

Employer means a motor carrier and any other person designated in a DOT agency alcohol rule as an employer.

Initial alcohol test (or screening test) means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system.

Motor carrier means any person (including the United States, a State, the District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term *motor carrier* includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of commercial motor vehicle equipment and/or accessories.

On-duty means all on duty time as defined in § 395.2 *On-duty time* of this chapter and includes all time submitting to the breath testing process for alcohol

testing and performing any other functions contained in this part and in part 40 of this title with respect to alcohol testing.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any of those on-duty functions set forth in § 395.2 *On-Duty time*, paragraphs (1) through (7) of this chapter.

Refuse to submit (to an alcohol test) means that a driver fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with this part, or engages in conduct that clearly obstructs the collection process. The notice of the requirement to be tested may be made by the motor carrier or a Federal, State, or local official.

Safety-sensitive function means any of those on-duty functions set forth in § 395.2 *On-Duty time*, paragraphs (1) through (7) of this chapter.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

§ 382.109 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees (including drivers) or employers (including motor carriers) or to the general public.

§ 382.111 Other requirements imposed by motor carriers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of motor carriers, or the rights of drivers, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§ 382.113 Requirement for notice.

Before performing an alcohol test under this part, each motor carrier or Federal, State, or local official shall notify a driver that the alcohol test is required by this part. No motor carrier or Federal, State or local official shall falsely represent that a test is administered under this part.

§ 382.115 Starting date for alcohol testing programs.

(a) *Large motor carriers.* Each motor carrier with fifty or more drivers on [The Effective Date of the Final Rule] shall implement the requirements of this part on [Date One Year After the Effective Date of the Final Rule].

(b) Small motor carriers. Each motor carrier with fewer than fifty drivers on [The Effective Date of the Final Rule] shall implement the requirements of this part on [Date Two Years After the Effective Date of the Final Rule].

(c) All motor carriers shall have an alcohol misuse program that conforms to this part by [Date Two Years After the Effective Date of the Final Rule] or by the date a motor carrier begins motor carrier operations, whichever is later.

Subpart B—Prohibitions

§ 382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No motor carrier having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.203 Behavior or appearance.

Notwithstanding the absence of a reasonable suspicion test under § 382.307, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver's behavior or appearance is characteristic of alcohol misuse or the driver's ability to perform his or her assigned functions is adversely affected by alcohol use. No motor carrier having actual knowledge that the driver is in violation of this section shall permit a driver to perform or continue to perform safety-sensitive functions.

§ 382.204 Alcohol possession.

No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol unless the alcohol is manifested and transported as part of a shipment. No motor carrier having actual knowledge that a driver possesses unmanifested alcohol may permit the driver to drive or continue to drive a commercial motor vehicle.

§ 382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No motor carrier having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No motor carrier having actual knowledge that such a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

§ 382.209 Use following an accident.

No driver who has an accident while performing safety-sensitive functions shall use alcohol for eight hours following the accident, unless the driver has been given a post-accident test under § 382.303 of this part.

§ 382.211 Refusal to submit to a required alcohol test.

No driver shall refuse to submit to a post-accident alcohol test required under § 382.303, a random alcohol test required under § 382.305, a reasonable suspicion alcohol test required under § 382.307, or a follow-up alcohol test required under § 382.311. No motor carrier shall permit a driver who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

Subpart C—Tests Required

§ 382.301 Pre-employment/pre-duty testing.

(a) Prior to the first time a driver performs safety-sensitive functions for a motor carrier, the driver shall undergo testing for alcohol. No motor carrier shall allow a driver to perform safety-sensitive functions, unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04. If a pre-employment/pre-duty test result under this section indicates an alcohol content of 0.02 or greater but less than 0.04, the provisions of § 382.505 shall apply.

(b) A motor carrier is not required to administer an alcohol test required by paragraph (a) of this section, if:

(1) The driver has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and

(2) The motor carrier ensures, by obtaining the information required by § 382.315(b), that no prior motor carrier of the driver of whom the motor carrier has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

§ 382.303 Post-accident testing.

(a) As soon as practicable following an accident involving a commercial motor vehicle, each motor carrier shall test for alcohol each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident.

(b) If a test required by this section is not administered within two hours following the accident, the motor carrier shall prepare a written report to be kept in the motor carrier's files stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the motor carrier shall cease attempts to administer an alcohol test and shall prepare the report.

(c) A driver who is subject to post-accident testing who leaves the scene of an accident without a valid reason prior to submission to such test may be deemed by the motor carrier to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(d) A motor carrier shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(e) The results of any tests for the use of alcohol performed by Federal, State, or local officials having independent authority to require a driver to submit to a test, shall be considered to meet the requirements of this section provided such tests conform to applicable Federal, State or local requirements, and that the results of the tests are obtained by the motor carrier.

§ 382.305 Random testing.

Option 1

(a) Each motor carrier shall, at various times, randomly select drivers for unannounced alcohol testing. The selection of drivers shall be made by use of a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each driver shall have an equal chance of being tested under the selection process used.

(b) During each 12-month period following the start of random alcohol testing by the motor carrier, the motor carrier shall meet the following conditions:

(1) The dates for administering unannounced testing of randomly-selected drivers shall be spread reasonably throughout the 12-month period; and

(2) The number of drivers randomly selected for testing during the 12-month period shall equal an annual rate of not less than (10–50) percent of the total number of drivers subject to alcohol testing under this part or the alcohol misuse rule of another DOT agency. If the motor carrier conducts random testing through a consortium, the annual rate may be calculated for each individual motor carrier or for the total number of drivers and DOT covered employees subject to random testing by the consortium.

(c) A driver shall only be tested while the driver is performing safety-sensitive functions; just before the driver is to perform safety-sensitive functions; or just after the driver has ceased performing such functions.

(d) Each motor carrier shall require that each driver who is notified of selection for random testing proceeds to the testing site immediately. However, if the driver is performing a safety-sensitive function at the time of notification, the motor carrier shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

Option 2

(a) Each motor carrier shall require its drivers to submit to an alcohol test when requested to do so by a Federal, State or local official who is carrying out the requirements of this section and part 350 of this chapter.

(b) A driver shall submit to an alcohol test when requested to do so by a Federal, State or local official who is carrying out the requirements of this section and part 350 of this chapter.

(c)(1) The number of random tests performed in the State shall equal (10 to 50) percent of the number of commercial driver's license (CDL) holders in the State as of July 1 each year or as of a certain date mutually agreed upon by the State and the FHWA.

(2) Random alcohol testing may be performed in conjunction with other driver and/or vehicle inspections performed under the authority of part 350 of this chapter at various locations and times, including but not limited to, weigh stations, roadside, terminal and other motor carrier fixed locations.

(3) Random alcohol testing must be administered in conformance with the requirements of this part and part 40 of this title.

(4) Random alcohol testing conducted by Federal, State or local officials required under this part and part 350 of this chapter shall be administered without regard to any probable cause standard found in State or local law. The consequences of such non-probable cause random alcohol testing shall be limited to those set forth in this part.

(5) Random alcohol testing conducted by Federal, State or local officials where probable cause is independently established without regard to administering random alcohol testing in accordance with this part or part 350 of this chapter shall be administered in accordance with State or local law and not in accordance with this part. The consequences of such probable cause random alcohol testing shall be determined pursuant to State or local law and if applicable, in accordance with § 383.51 of this chapter.

(6) A driver's refusal to be tested under this part when requested to do so by a Federal, State or local official, pursuant to part 350 of this chapter or compatible State or local authority, shall be deemed as tantamount to a 0.04 or greater alcohol concentration level under this part.

(7) Pursuant to this part and part 350 of this chapter, the State or local officials participating under this program shall input into SAFETYNET all required random alcohol testing data.

(8) A Federal, State or local official must provide written notification to the appropriate State of licensure within five working days of any alcohol concentration test result of 0.02 or greater.

§ 382.307 Reasonable suspicion testing.

(a) Each motor carrier shall require any driver to submit to an alcohol test,

when the motor carrier has reasonable suspicion to believe that the driver has violated the prohibitions in this part.

(b) The motor carrier's determination that reasonable suspicion exists to require the driver to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that driver.

(c) Alcohol testing is authorized by this section only if the observations required by paragraph (b) are made during or just preceding the period of the work day that the covered driver is required to be in compliance with this part. A driver may be required to undergo reasonable suspicion testing for alcohol while the driver is performing safety-sensitive functions; just before the driver is to perform safety-sensitive functions; or just after the driver has ceased performing such functions.

§ 382.309 Return to duty testing.

Each motor carrier shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

§ 382.311 Follow-up testing.

Following a determination under § 382.605(b) that a driver is in need of assistance in resolving problems associated with alcohol misuse, each motor carrier shall ensure that the driver is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of § 382.605(c)(2)(ii).

§ 382.313 [Reserved]

§ 382.315 Exceptions for testing performed by consortiums.

(a) Pre-employment/pre-duty testing and random testing need not be performed directly by the motor carrier provided that the motor carrier directs or approves such testing program of a contractor or previous motor carrier prior to using a driver participating in the program.

(b) A motor carrier who exercises paragraphs (a) of this section or § 382.301(b) shall contact the alcohol testing program in which the driver participates or participated and shall obtain the following information:

(1) Name and address of the program(s).

(2) Verification that the driver participates or participated in the program(s).

(3) Verification that the program(s) conform to part 40 of this title.

(4) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for alcohol.

(5) The date the driver was last tested for alcohol.

(6) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(7) The results of any referrals to a substance abuse professional for all violations of subpart B of this part.

(c) The motor carrier shall retain the information required by this section as specified in § 382.401.

(d) A motor carrier who uses, but does not employ, such a driver more than once a year must assure itself once every six months that the driver participates in an alcohol testing program that meets the requirements of this part.

Subpart D—Handling Of Test Results, Record Retention and Confidentiality

§ 382.401 Retention of records.

(a) *General Requirement.* Each motor carrier shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of Retention.* Each motor carrier shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of driver alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and driver evaluation and referrals shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative test results (as defined in part 40 of this title) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Verification of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath for testing; and

(viii) Consolidated annual reports as required by § 382.403.

(2) Records related to test results:

(i) The motor carrier's copy of the alcohol test form, including the results of the test;

(ii) Documents related to the refusal of any driver to submit to an alcohol test required by this part;

(iii) Documents presented by a driver to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance, and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the motor carrier's policy on alcohol misuse;

(ii) Documentation of compliance with the requirements of § 382.601;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion; and

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 382.403 Reporting of results in a management information system.

(a) Each motor carrier shall submit to the Federal Highway Administration, when requested, an annual report covering the calendar year, summarizing the results of its alcohol misuse prevention program.

(b) Each motor carrier that is subject to more than one DOT agency alcohol rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered function. Prior to conducting any alcohol test on a driver subject to the rules of more than one DOT agency,

the motor carrier shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each motor carrier shall ensure the accuracy and timeliness of each report submitted by the motor carrier or a consortium.

(d) Each motor carrier notified shall submit the required annual reports no later than February 15 of each year. The report shall be submitted on the form specified by the FHWA. Each report shall contain:

(1) Number of drivers by employee category;

(2) Number of drivers subject to testing under the alcohol misuse rules of another DOT Agency, identified by each agency;

(3)(i) Number of initial tests by type of test and employee category; and

(ii) Number of confirmatory tests, by type of test and employee category

(4) Number of confirmatory alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test and employee category;

(5) Number of confirmatory alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04;

(6) Number of persons denied a position as a driver following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater;

(7) Number of drivers with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in driver positions (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605;)

(8) Number of drivers who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater;

(9) Number of drivers who were found to have violated other provisions of subpart B of this part, and the action taken in response to the violation;

(10) Number of drivers who refused to submit to an alcohol test required under this part, and the action taken in response to the refusal;

(11) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

§ 382.405 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no motor carrier shall release driver information that is contained in records required to be maintained under § 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol, including any records pertaining to his or her alcohol tests. The motor carrier shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) A motor carrier shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the motor carrier or any of its drivers.

(d) Each motor carrier shall make available copies of all results for motor carrier alcohol testing conducted under this part and any other information pertaining to the motor carrier's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the motor carrier or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, motor carriers shall disclose information related to the motor carrier's administration of a post-accident alcohol test administered following the accident under investigation.

(f) Records shall be made available to a subsequent motor carrier upon receipt of a written request from the driver. Disclosure by the subsequent motor carrier is permitted only as expressly authorized by the terms of the driver's request.

(g) A motor carrier may disclose information required to be maintained under this part pertaining to a driver to the driver or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this part, or from the motor carrier's determination that the driver engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.)

(h) A motor carrier shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the driver's consent.

Subpart E—Consequences For Drivers Engaging in Alcohol-Related Conduct

§ 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol rule of another DOT agency.

(b) No motor carrier shall permit any driver to perform safety-sensitive functions if the motor carrier has determined that the driver has violated this section.

§ 382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions unless the driver has met the requirements of § 382.605. No motor carrier shall permit a driver to perform safety-sensitive functions unless the driver has met the requirements of § 382.605. Nothing in this section shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

§ 382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for a motor carrier, nor shall a motor carrier permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no motor carrier shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

(c) Nothing in this section shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

§ 382.507 Additional consequences for alcohol concentration violations.

(a)(1) *Discovered by a motor carrier.* A driver who is found through testing under this part to have an alcohol concentration of 0.04 or greater is

prohibited from driving for the periods specified in paragraph (a)(2) of this section.

(2) *Duration of prohibited driving periods:* (i) *Second violation.* A driver who, during any three-year period, is found to have an alcohol concentration of 0.04 or greater twice in separate incidents, is prohibited from driving any commercial motor vehicle, as defined in this part or part 390 of this subchapter, for a period of 60 consecutive days.

(ii) *Third and subsequent violations.* A driver who, during any three-year period, is found to have an alcohol concentration of 0.04 or greater three or more times in separate incidents, is prohibited from driving any commercial motor vehicle, as defined in this part or part 390 of this subchapter, for a period of 120 consecutive days.

(b)(1) *Discovered by a Federal, State or local government official.* A driver who is found to have an alcohol concentration of 0.02 or greater by a Federal, State or local official shall be placed out-of-service from driving any commercial motor vehicle, as defined in this part or part 390 of this subchapter, for a minimum period of 24 hours.

(2) A driver who is found to be in violation of § 382.201 twice within three years by a Federal, State or local official shall:

(i) Be placed out of service for a 24-hour period,

(ii) Be prohibited from driving any commercial motor vehicle, as defined in this part or part 390 of this chapter, for a period of 60 consecutive days commencing upon completion of the State's licensing review process, if any; and

(iii) Have his/her commercial driver's license suspended, revoked or canceled for at least 60 days upon completion of the State's licensing review process, if any.

(3) A driver who is found to be in violation of § 382.201 three or more times within three years by a Federal, State or local official shall:

(i) Be placed out of service for a 24-hour period,

(ii) Be prohibited from driving any commercial motor vehicle, as defined in this part or part 390 of this chapter, for a period of 120 consecutive days commencing upon completion of the State's licensing review process, if any; and

(iii) Have his/her commercial driver's license suspended, revoked or canceled for at least 120 days upon completion of the State's licensing review process, if any.

(c) *Out-of-service orders.* (1) Any driver who is issued an out-of-service order by a Federal, State or local official under this section shall report such issuance to his or her motor carrier within 24 hours.

(2) No driver shall violate the terms of an out-of-service order issued under this section.

(3) A driver shall be prohibited from driving a commercial motor vehicle, as defined in this part and in part 390 of this chapter, for not less than five consecutive days, if the driver fails to inform the motor carrier of the issuance of an out-of-service order as required by this section.

(4) Any driver who violates an out-of-service order under this part shall be prohibited from driving any commercial motor vehicle, as defined in this part or in part 390 of this chapter, and have his/her commercial driver's license suspended, revoked or canceled, upon completion of the State's licensing review process, if any:

(i) On a first offense for 90 days, and he/she shall be subject to a civil penalty of not less than $1,000, and

(ii) On any subsequent offense within three years of a previous offense, for not less than one year and not more than five years, and he/she shall be subject to a civil penalty of not less than $1,000.

(5) Any motor carrier that allows, permits, authorizes, requires, or otherwise knowingly uses a driver to operate a commercial motor vehicle in violation of an out-of-service order shall be subject to a civil penalty of not more than $10,000.

(6) Any motor carrier who is notified by a driver under paragraph (b)(1) of this section, or through other means has knowledge of the issuance of an out-of-service order to its driver, shall notify the State official which issued the commercial driver's license to the driver receiving the out-of-service order no later than five days of being notified or obtaining knowledge of the issuance of the order.

(d) A driver who refuses to be tested for alcohol under the provisions of this part shall not drive any commercial motor vehicle, as defined in this part or part 390 of this chapter, for a period of not less than one year.

(e) No motor carrier shall knowingly use a driver to drive any commercial motor vehicle, as defined in this part or part 390 of this chapter, during the prohibition periods specified under this section, when the driver is in violation of any of the requirements of this subpart. A motor carrier that knowingly uses a driver to violate this subpart shall be subject to the penalty provisions of 49 U.S.C. 521(b).

(f) No motor carrier shall knowingly use a driver who has been found to have violated any requirements of this part to drive any commercial motor vehicle, as defined in this part or in part 390 of this chapter, or perform any other safety-sensitive functions regulated by any DOT agency, until the driver has complied with the requirements of this part, including the completion of any evaluation, treatment, or return to duty testing required by the substance abuse professional, and any other applicable DOT agencies' regulations.

(g) A driver shall be prohibited from driving for a period of one year following an alcohol test indicating an alcohol concentration of 0.02 or greater when the driver has been involved in a fatal accident.

§ 382.509 Disqualifications.

(a) Nothing in this subpart shall be construed to restrict the authority of Federal, State or local officials from implementing § 383.51 of this chapter. A driver whose test under § 382.201 conducted by Federal, State or local officials which results in an alcohol concentration of 0.04 or greater, shall be subject to the disqualifications contained in § 383.51(b)(3) of this chapter.

(k) Notwithstanding the provisions of this part, the penalty provisions of § 391.15 of this chapter remain applicable within this part for actions taken by Federal Highway Administration officials.

Subpart F—Alcohol Misuse Information, Training, and Referral

§ 382.601 Motor carrier obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each motor carrier shall provide educational materials that explain the requirements of this part and the motor carrier's policies and procedures with respect to meeting those requirements. Each motor carrier shall provide written notice to every driver and to representatives of driver organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the motor carrier to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol under this part;

(6) The procedures that will be used to test for the presence of alcohol, protect the driver and the integrity of the sample, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;

(7) The requirement that a driver submit to alcohol tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under § 382.605; and

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional motor carrier policies with respect to the use or possession of alcohol, including any consequences for a driver found to have a specified alcohol level, that are based on the motor carrier's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

§ 382.603 Training for supervisors.

Each motor carrier shall ensure that persons designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol testing under § 382.307 receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 382.605 Referral, evaluation, and treatment.

(a) Each driver who has engaged in conduct prohibited by subpart B of this part shall be advised by the motor carrier of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counselling and treatment programs.

(b) Each driver who engages in conduct prohibited under subpart B of this part shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(2) In addition, each driver identified as needing assistance in resolving problems associated with alcohol misuse —

(i) Shall be evaluated by a substance abuse professional to determine that the driver has properly followed the rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol tests administered by the motor carrier following the driver's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the driver's return to duty. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the motor carrier, by a substance abuse professional under contract with the motor carrier, or by a substance abuse professional not affiliated with the motor carrier. The choice of substance abuse professional and assignment of costs shall be made in accordance with motor carrier/driver agreements and motor carrier policies.

(e) The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment/pre-duty alcohol test or who have a pre-employment/pre-duty alcohol test with a result indicating an alcohol concentration of 0.04 or greater.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

5. The authority citation for part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

6. Section 383.5 is amended by revising the definition of *serious traffic violation* to read as follows.

§ 383.5 Definitions.

* * * * *

Serious traffic violation means conviction, when operating a commercial motor vehicle, of:

(1) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(2) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(3) Improper or erratic traffic lane changes;

(4) Following the vehicle ahead too closely;

(5) Testing under Part 382 which results in:

(i) A verified positive controlled substances test, *Option 1* (ii) An alcohol concentration of 0.04 or greater, *Option 2* (ii) An alcohol concentration of 0.02 or greater; or

(6) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control (other than a parking violation). (Serious traffic violations exclude vehicle weight and defect violations.)

* * * * *

7. Section 383.72 is revised to read as follows:

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CDL shall be deemed to have consented to such testing as is required of him/her by any State or jurisdiction in the enforcement of part 382 of this chapter, § 383.51(b)(2)(i) and § 392.5(a)(2). Consent is implied by driving a commercial motor vehicle.

PART 392—DRIVING OF MOTOR VEHICLES

8. The authority citation for part 392 continues to read as follows:

Authority: 49 App. U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

9. Section 392.5 is amended by revising the title of the section, paragraphs (a) and (b)(2) to read as follows:

§ 392.5 Alcohol prohibition.

(a) No driver shall—

(1) Use alcohol or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses an alcoholic beverage. However, this does not apply to possession of alcohol which is manifested and transported as part of a shipment.

(b) * * *

(2) Be on duty or operate a commercial motor vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding four hours.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

10. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; and 49 CFR 1.48.

11. Section 395.2 is amended by adding a new paragraph (10) to the definition of *On-Duty time* to read as follows:

§ 395.2 Definitions.

* * * * *

On-Duty Time

* * * * *

(10) All time providing a breath or urine sample in order to comply with random, reasonable suspicion, post-accident or follow-up testing required by part 382 of this chapter when directed by a motor carrier.

* * * * *

[FR Doc. 92-29678 Filed 12-10-92; 10:00 am]

BILLING CODE 4910-62-M

Federal Highway Administration

49 CFR Part 382

[FHWA Docket No. MC-93-3]

RIN 2125-AD11

Controlled Substances and Alcohol Use and Testing; Foreign-Based Motor Carriers and Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA is requesting comments on the applicability of alcohol and controlled substances testing requirements for foreign-based drivers of motor carriers under the Omnibus Transportation Employee Testing Act of 1991. This action is taken in conjunction with the notices of proposed rulemakings published elsewhere in today's **Federal Register** on alcohol and controlled substances testing and involves current FHWA regulations requiring controlled substances testing.

The overall goal of alcohol and controlled substances testing is to ensure that drivers who misuse alcohol and/or controlled substances do not operate a commercial motor vehicle, thereby reducing accidents, injuries and fatalities on highways nationwide.

DATES: Written, signed comments must be received on or before February 16, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-93-3, room 4232, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Standards, (202) 366-2981, or Mr. David Sett, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

The public is urged to obtain information through the Department of Transportation's Anti-Drug Information Center (ADIC) system. The public may access the system by dialing (800) 225-3784 using a touch tone telephone. Access to a computer system may also be made using a personal computer connected via modem on (800) 225-3804. A user fee will be charged for certain services provided by the system.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1988, the FHWA, along with certain other agencies of the Department of Transportation (the Department), adopted regulations requiring pre-employment/use, periodic, post-accident, reasonable cause and random drug testing of commercial motor vehicle drivers of motor carriers. On its face, the FHWA rule applies to all covered drivers while operating in the United States, regardless of whether they are based in a foreign country or the United States The rule provided, however, that it would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rule as originally published further provided that in any event it would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies. See 53 FR 47134.

On September 27, 1989, the FHWA delayed the effective date of drug testing requirements for foreign-based employees of foreign-based motor carriers to January 1, 1991. See 54 FR 39546.

In a December 27, 1989, revision to the drug testing rule, the effective date was again delayed, until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier. See 54 FR 53294. Further delays were published on April 24, 1991 (56 FR 18994), and July 14, 1992 (57 FR 31277), currently making the rule applicable to foreign-based employees of foreign-domiciled carriers on January 2, 1995. This date is also applicable to persons covered by similar rules issued by other DOT agencies.

The Department and other elements of the U.S. Government have entered into discussions with foreign governments to attempt to resolve any conflict between our current drug rules and foreign government laws or policies. The FHWA has allowed additional time to permit the Department to try to achieve our goal of a drug-free transportation system while respecting the national sovereignty of other countries. Drug testing is a part of the FHWA's continuing multilateral discussions with Canada and Mexico aimed at making the regulations governing commercial motor vehicle operations compatible in those countries.

Meanwhile, as mandated by the Omnibus Transportation Employee Testing Act of 1991, the FHWA has published elsewhere in today's **Federal Register** separate NPRM's on controlled substances and alcohol misuse. Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, title V, sec. 5, 105 Stat. 917 (the Act). The new rules would replace the current drug testing rule and would institute alcohol testing. In recognition of the ongoing discussions on foreign applicability, and to avoid the possibility of making numerous delaying revisions such as were necessitated with the current drug rule, the proposed rules expressly exclude foreign-based drivers and motor carriers. The issue is being considered instead in this advance notice of proposed rulemaking, and may ultimately be incorporated in the final rules on

controlled substances and alcohol misuse.

II. The Department's and FHWA's Legal Authority for Foreign Employer Testing Programs

The Act provides for coverage by the Department's drug and alcohol testing rules of activities in the U. S. of foreign employers. The relevant provisions of the Act for the aviation industry provide that FAA regulations shall establish a program which requires air carriers *and foreign air carriers* to conduct pre-employment, reasonable suspicion, random, and post accident testing for use, in violation of law or Federal regulation, of alcohol or a controlled substance. (Sec. 3 of the Act, amending sec. 614(a)(1) of the Federal Aviation Act (emphasis added)). Further, the Act provides that in prescribing regulations under this section, the FAA Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. (Sec. 3 of the Act, amending sec. 614(e)(3) of the Federal Aviation Act.) The portion of the Act affecting the railroad industry contains similar language that provides that FRA regulations shall establish a program which requires *railroads* to conduct pre-employment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety sensitive functions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. (Sec. 4 of the Act, amending sec. 202(r)(1) of the Federal Railroad Safety Act of 1970 (emphasis added).) In carrying out the provisions of this subsection, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries. (Sec. 4 of the Act, amending § 202(r)(1) of the Federal Railroad Safety Act of 1970.) The portion of the Act affecting the motor carrier industry also includes language of this kind that provides that FHWA regulations shall establish a program which requires *motor carriers* to conduct pre-employment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use, in violation of law of Federal regulation, of alcohol or a controlled substance. (Sec. 5(a)(1) of the Act, creating sec. 12020(a) of the Commercial Motor Vehicle Safety Act of 1986 (emphasis added).) In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries. (Sec. 5(a)(1) of the Act, creating sec. 12020(e)(3) of the Commercial Motor Vehicle Safety Act of 1986.) There are no similar provisions applicable to the transit industry, since the Federal Transit Administration drug and alcohol testing provisions do not cover foreign employers.

Under these similar provisions, FAA, FRA and FHWA have the authority and obligation to require drug and alcohol tests for safety sensitive employees of foreign employers. The FAA provisions specifically extend coverage to "foreign air carriers," and the FHWA and FRA provisions cover "motor carriers" and "railroads," respectively, which definitions include employers based in this country or in a foreign country. Moreover, the legal authority extends to all kinds of testing required by the Act: reasonable suspicion, post-accident, pre-employment, and random (subject to U.S. international obligations).

It is the Department's and the FHWA's policy to carry out the Act's requirements using a territorial jurisdiction approach. That is, the Department interprets its statutory authority and obligation for drug and alcohol testing to apply to foreign employers who conduct operations in the United States, with respect to those operations. This does not mean that all operations of such a transportation employer would be subject to the rules. For example, a foreign employer's operations within its own country would not be subject to these rules. Following the same policy, only those employees of a foreign transportation employer who perform safety-sensitive functions in operations within the U.S. would be subject to testing.

For each of the three industries involved, the Act requires the Department and the FHWA to act consistent with the international obligations of the U.S., and to take foreign countries' laws and regulations into account. (This could be relevant, for example, to the conduct of testing in some foreign countries.) The Department and the FHWA are sensitive to the concerns of foreign countries. We are also very much aware of a number of practical considerations that may arise as we implement the Act with respect to foreign employers. For these reasons, as well as to foster consistency in the implementation of very similar statutory provisions, the FRA, FHWA, and FAA are issuing advance notices of proposed rulemaking (ANPRMs) rather than notices of proposed rulemaking (NPRMs). We are seeking the public's views on a variety of issues and questions that may arise with respect to drug and alcohol testing by foreign employers.

III. General Problems and Issues

The following problems, questions, and issues appear to arise in the aviation, railroad, and motor carrier contexts. In responding to these questions and requests for comment, we ask that commenters distinguish responses relating to alcohol testing from those relating to drug testing, where the same response is not appropriate for both.

1. International Treaties and Foreign Laws

We seek information on any bilateral or multilateral treaty obligations of the U.S., or principles of international law, that may affect our implementation of the Act. If there are any international agreements under development that would affect drug and alcohol testing of foreign employers, we also seek information on them. In commenting on international obligations of the U.S., we request that commenters focus on any provisions that affect the ability of the United States to test employees conducting operations in the U.S., with the testing to take place in the United States.

In addition to international obligations, we seek comment on any laws or regulations of foreign countries that we should take into account in implementing the Act. We would like to obtain information on any laws or rules of specific foreign countries whose employers conduct U.S. operations that we should consider.

2. Pre-employment and Follow-Up Testing

Often, employees of foreign transportation employers are recruited and hired in the foreign country involved. For example, a Canadian employer may hire Canadian nationals in Canada, some of whom will subsequently conduct operations in the United States. The employer may not know, at the time of hire, which of its employees will operate in the U.S. In such a situation, should the employer be required to conduct pre-employment testing? If so, how, when and where would the foreign employer conduct pre-employment testing of the employees who were to operate in the U.S.?

Should all pre-employment testing be conducted in the U.S., or should the rules permit the employer to conduct tests in its own country? Where the employer could not, because of legal restraints on testing in its own country, conduct testing there, could the testing be arranged in the United States? For example, should the employer send the employee to a point in the United States for a test before the employee actually conducts an operation in this country? Should pre-employment testing be required at all in such a situation?

If an employee tests positive on any type of alcohol or drug test, the Department's existing and proposed rules require a return-to-duty test and follow-up tests, over a period of time. For an employee whose domicile, station, terminal, or reporting point, as applicable, is in a foreign country, and who comes into the U.S. occasionally, questions similar to those mentioned above for pre-employment testing may arise. If the employer does not conduct the tests in its own country, how does the employer arrange for the required tests to take place in the U.S.?

3. Random Testing

Should all of a foreign employer's covered employees who operate in the U.S. at any time have to be part of the random testing pool? How would foreign employers arrange for the unannounced, random testing of their employees in U.S. territory? In their own countries? Also, to meet random testing rate requirements, employers have to conduct a certain number of tests per year (e.g., under a 50 percent random testing rate, a number of tests each year equivalent to half the number of the employees in the random pool). Would it be practical for employers to meet this requirement, while maintaining randomness, if tests are conducted only in the U.S.? Are there circumstances in which foreign employers should not be subject to a random testing requirement?

4. Requirement for All Types of Tests

Should the Department refrain from requiring foreign employers to conduct certain kinds of tests? The Department anticipates little problem with requiring a post-accident or reasonable suspicion test in the U.S., following an accident or basis for reasonable suspicion that occurred in this country. However, as discussed above, there may be greater problems with other forms of testing. Is it desirable to exclude foreign employers from some or all types of alcohol or drug testing? Why or why not? Should the legal authority of the employer to conduct a certain kind of testing in its own country be considered in deciding whether to exclude employers in a certain country from a requirement? If some exclusions are desirable, how can this objective be reconciled with the testing requirements of the Act?

5. Other Compliance Activities

DOT drug and alcohol rules have a variety of other program requirements in addition to testing. These requirements pertain to employee assistance and training programs, substance abuse professionals, record retention and reporting, and many other subjects. Some of these activities or functions might well take place most conveniently in the foreign employer's country. Should some or all of the foreign employer's program activities be required or permitted to take place outside the U.S.? How would the Department monitor or enforce compliance with drug or alcohol program activities that take place outside the U.S.? How and where would Departmental personnel obtain access to information about the employers' implementation of program and testing requirements?

6. Testing Procedures

49 CFR part 40 governs testing under the DOT drug and alcohol testing rules of the three operating administrations involved (except for FRA post-accident testing). Part 40 compliance could raise a number of problems if any testing or collection is performed abroad. Some of these issues may apply even with respect to testing by foreign employers that occurs in the U.S. Some examples follow.

Drug testing under part 40 includes testing specimens at National Institute on Drug Abuse (NIDA)-certified laboratories, all of which are in the U.S. If specimen collection for drug testing is done outside the U.S., specimens would probably be sent to these laboratories for analysis. What practical problems does this create (e.g., timeliness of transmission of specimens and associated paperwork), and how could they be solved? If drug specimen collection or alcohol testing is permitted to be conducted outside the U.S., what language or training problems would need to be overcome, and what is the best way of dealing with these problems (e.g., translations of DOT requirements or forms)? In drug testing, there is a requirement for medical review officers (MROs) to verify positive tests and perform other functions. Should MROs (who, under current rules, must be physicians licensed in the U.S.) have to perform these functions, or should physicians licensed in the foreign countries involved be able to participate as well? The same question can be asked for substance abuse professionals who would evaluate people who test positive for alcohol and drugs. If personnel licensed in the U.S. were required for this function, would this create difficult logistical problems for the program? Would there be problems in obtaining or using evidential breath testing devices (EBTs) on the National Highway Traffic Safety Administration's Conforming Products List (which part 40 requires for alcohol testing) in other countries, if testing is permitted to be conducted outside the U.S.?

Should there be a method of accepting a foreign country's testing procedures in lieu of some or all of part 40 procedures, if testing is permitted to be conducted in foreign countries? The Department seeks comment on any other part 40-related problems that may occur in the context of testing of foreign operators.

7. Consequences of Positive Tests

The consequence of a "positive" test is removal from a safety-sensitive position, until the employee follows the rule's procedures for reinstatement in the safety sensitive position. However, the application of the DOT drug and alcohol testing rules to foreign employers is intended only to affect U.S. operations. Consequently, the Department would not assert jurisdiction to require that an employee of a foreign employer who tested positive not perform safety-sensitive functions in operations outside the United States. However, such an employee would be prohibited from conducting any safety-sensitive functions in the U.S., until the employee follows the rule's procedures for reinstatement in the safety sensitive position. How would foreign employers make sure that an employee who tested positive did not engage in operations in the U.S., until reinstatement requirements had been met? How would the Department monitor compliance with this requirement?

8. Costs

What is the number of employees who would be affected by a requirement to test persons performing safety-sensitive functions in the U.S. for foreign employers? Do commenters anticipate that foreign operators' positive test rates (which can affect costs significantly) be higher, lower, or about the same as the positive test rates of U.S. employers for the employees who would be subject to these rules? Are there costs unique to drug and alcohol program activities that may occur outside the U.S. that the

Department should consider in estimating the costs of the rule? Are there any positive or negative trade or competitive effects of testing (or not testing) employees of foreign employers, for either U.S. or foreign companies?

IV. Rulemaking Analyses and Notices

The FHWA requests comments on whether to require foreign-based employees of foreign-domiciled motor carriers to be tested for the use of controlled substances and alcohol. The FHWA believes there is good cause to promulgate an amendment with advance notice and opportunity to comment. The FHWA has prepared a regulatory evaluation for FHWA Docket Nos. MC–92–19 and MC–92–23 in which the FHWA figured the cost of testing foreign operators of commercial motor vehicles. Those evaluations, although not specifically broken apart for foreign based drivers, does include this group of drivers and should be referred to for costs associated with this rulemaking. The FHWA does not have any knowledge about how many foreign based drivers would be subject to this rulemaking.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, the FHWA considers this document to be significant because of public interest in the drug and alcohol testing programs and the international impact of this document.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities, however the FHWA does not believe that we can make a full assessment of whether this rulemaking will have an adverse economic impact on small entities at this time. The FHWA does not know how many small entities would be subject to this action. It should be noted, however, the Omnibus Act mandates alcohol and controlled substances testing irrespective of the size of the entities.

For these reasons, the FHWA cannot certify that this action will or will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has not been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The FHWA requests comments on whether this rule will have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

The FHWA has not determined the impact this rulemaking would have on the collection of information requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 382

Controlled substances testing, Alcohol testing, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Authority: 23 U.S.C. 315; 23 CFR 1.48.

Issued on: December 2, 1992.

Thomas D. Larson,

Administrator.

Andrew H. Card,

Secretary.

[FR Doc. 92–29679 Filed 12–10–92; 10:00 am]

BILLING CODE 4910–22–M

49 CFR Part 391

[FHWA Docket No. MC–93–2]

RIN 2125–AC81

Qualifications of Drivers; Controlled Substances Testing; Recordkeeping and Reporting Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is proposing to amend its controlled substances testing requirements. This proposal revises the recordkeeping and reporting requirements to be consistent with an NPRM also being published in today's **Federal Register** by the Department of Transportation, Office of the Secretary, regarding the collection and reporting of drug testing data and would implement the proposed DOT system. Together, the two NPRM's would require motor carriers subject to the drug testing requirements to maintain specific information and report annually to the FHWA, if requested to do so, certain information about their drug testing programs. A representative sample of motor carriers would be randomly selected to submit the data. The random selection would generate sufficient data to produce statistically valid results. The FHWA would use the data to analyze its current approach to deter and detect illegal drug use within the motor carrier industry and, as appropriate, plan a more efficient and effective means to attain program goals.

DATES: Written, signed comments on these proposals must be received on or before April 14, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–2, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: *For information regarding program issues:* Mr. David Miller, Office of Motor Carrier Standards, (202) 366–2981, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. *For information regarding legal issues:* Mr. David Sett, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of

Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA published in the **Federal Register** a final rule on November 21, 1988, setting forth regulations to require motor carriers who operate commercial motor vehicles in interstate commerce to have an anti-drug program, including testing of commercial motor vehicle drivers for the use of controlled substances (53 FR 47134). Testing under this rule must be conducted prior to employment/use, periodically, upon reasonable cause, after certain reportable accidents, and randomly. Generally, interstate drivers of commercial motor vehicles with gross vehicle weight ratings (GVWR) of more than 26,000 pounds, vehicles transporting hazardous materials which are required to be placarded, or vehicles designed to transport more than 15 passengers, including the driver, are subject to this rule.

On the same date, November 21, 1988, the U.S. Department of Transportation, Office of the Secretary (Department), published an interim final rule, "Procedures for Transportation Workplace Drug Testing Programs" (53 FR 47002). On December 1, 1989, the Department published a final rule amending certain portions of the November 21, 1988, interim final rule. (54 FR 49854).

On November 6, 1989, the FHWA published a final rule clarifying the types of testing that must be implemented by December 21, 1989 (54 FR 46616). This **Federal Register** publication also deferred implementation of the random and mandatory post-accident testing requirements pending resolution of a lawsuit in which a preliminary injunction was imposed on such tests.

On February 1, 1990, the FHWA published an interim final rule (55 FR 3546) amending the requirements for pre-employment/pre-use and post accident testing. This interim final rule also included interpretations and clarifications of the November 21, 1988, final rule.

On April 26, 1991, the Ninth Circuit Court of Appeals upheld the FHWA drug testing regulations in their entirety *International Brotherhood of Teamsters, Chauffeurs, et al.* v. *Department of Transportation*, 932 F.2d 1292 (9th Cir. 1991). The FHWA published a final rule on August 16, 1991, providing an implementation schedule for random and mandatory post-accident testing. (56 FR 40806).

Proposed Recordkeeping and Reporting Requirements

Section 391.87, Notification of test results and recordkeeping, requires motor carries to maintain:

(1) All records related to the administration and results of the drug testing program;

(2) Certain information in the driver's qualification file; and

(3) Certain summary information on a calendar year basis.

In addition, § 391.87 prescribes procedures for the communication of drug test results among the medical review officer (MRO), the driver, the motor carrier and others once the results have been received by the MRO from the testing laboratory.

In the course of administering the anti-drug rule, the FHWA has received numerous inquiries regarding the clarification of these procedures. Interested individuals have generally expressed their concern about the paperwork burden associated with the controlled substances testing regulations. The following discussion should clarify most of the concerns that have been voiced.

The FHWA controlled substances testing requirements, and by reference the Department's rule, established minimum paperwork requirements. The documentation is needed to minimize the improper identification of urine specimens, ensure that the correct information is transmitted to the proper individuals and ensure compliance with the requirements. The custody and control form (see 49 CFR part 40, appendix A) provides for positive tracking of the identification of the urine specimen from the point of collection, through the laboratory performing the analysis, to the MRO. The collection site personnel are required to send a copy of the form to the motor carrier. The MRO receives two copies (one from the collection site personnel and one from the laboratory with the test results). In those cases where the result is positive, the MRO verifies or reverses laboratory results through contact with the donor and then transmits his/her findings to the motor carrier. The motor carrier is required to maintain the information it receives from the MRO in the driver's qualification file and maintain an annual summary of that and other information. The Department's proposed § 40.41, Reporting and review of results, would establish a standard DOT-wide Management Information System (MIS) and require that such standardized annual reports be submitted as specified by the appropriate Operating Administration (OA). With regard to controlled substances testing within the motor carrier industry, the FHWA is the appropriate OA. The following proposal is in concert with the Department's NPRM.

The FHWA proposes to revise 49 CFR 391.87(h) to require motor carriers to maintain the following information on an annual (calendar year) basis for drug testing:

1. Number of drivers by employee category. This data is necessary to assess the scope of the rule's application and provide a basis for determining if random testing meets the required 50 percent level.

2. Number of drivers subject to testing under the anti-drug rules of more than one DOT Agency, identified by each agency. This data is necessary to review multi-modal implementation so that policy can be designed accordingly.

3. Number of specimens collected by type of test (e.g., pre-employment, periodic, random, etc.) and employee category. This data is needed to check compliance with the rules by category and to review collection, testing and the review process.

4. Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug and employee category. This data, along with the number of tests performed, permits the calculation of positive rates necessary to determine the extent and type of drug use. Further, analysis of this data over time will provide a measure of the effectiveness of the drug testing rules in deterring drug use.

5. Number of negatives verified by a MRO by type of test, and employee category. This data is needed to check compliance with the rules and to review the application of the components of the program.

6. Number of persons denied a position as a driver following a verified positive controlled substances test. This data provides an assessment of whether the testing program is being implemented as required, provides a measure of the impact of the drug testing rules on the motor carrier industry, and yields information on the prevalence of drug use in the applicant pool.

7. Number of drivers verified positive by a MRO, who were returned to duty in driving positions during the reporting period. This data provides information on employer policy implementation regarding reentry requirements and rehabilitation of identified drug users.

8. Number of drivers with tests verified positive by a MRO for multiple drugs. This data provides information on the extent of multiple drug use within the motor carrier industry.

9. Number of drivers who refused to submit to a controlled substances test required under this part, and the action taken in response to the refusal(s). This data provides information on employer policy implementation regarding refusals and subsequent employer actions.

10. Number of drivers and supervisors who have received required training during the reporting period. This data provides information on training provided during the current reporting period and a cumulative count of drivers and supervisory personnel on the payroll as of each December 31 who receive the required drug training.

Section 391.87 currently requires motor carriers to maintain much of the same information contained in this proposal. In complying with the proposed rule, motor carriers or their MROs would not be required to perform any computations more complex than simple arithmetic. The information the FHWA is proposing motor carriers to develop, retain, and possibly submit is available to motor carriers from their respective laboratories, MROs and their own personnel files.

The FHWA proposes, in another NPRM published in today's **Federal Register**, to include alcohol testing to the MIS requirements. The FHWA is proposing the alcohol testing form in this document as well. Motor carriers would be required to maintain the following information on an annual (calendar year) basis for alcohol testing:

1. Number of covered employees by employee category. This data is necessary to assess the scope of the rule's application and provide a basis for determining if random testing meets the required (10 to 50 percent) level.

2. Number of covered employees subject to testing under the alcohol misuse rule of another DOT agency, identified by each agency. This data is necessary to review multi-modal implementation so that policy can be designed accordingly.

3. (i) Number of initial tests by type of test and employee category. (ii) Number of confirmatory tests, by type of test and employee category. This data is needed to check the compliance with the rules by category and to review collection and testing process.

4. Number of confirmatory alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category. This data is needed to check the compliance with the rules by category and to review collection and testing process.

5. Number of confirmatory alcohol tests indicating an alcohol concentration of .02 or greater but less than .04. This data is needed to check the compliance with the rules by category and to review collection and testing process.

6. Number of persons denied a position as a covered employee following a preemployment/pre-duty alcohol test indicating an alcohol concentration of .04 or greater. This data provides an assessment of whether the testing program is being implemented as required, provides a measure of the impact of the drug testing rules on the industries, and yields information on the prevalence of drug use in the applicant pool.

7. Number of covered employees with a confirmatory alcohol test indicating an alcohol concentration of .04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in DOT agency regulations). This data provides information on policy implementation regarding reentry requirements and rehabilitation of identified alcohol misusers.

8. Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive and drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater. This data provides information on the extent of multiple drug and alcohol use in the regulated industries.

9. Number of covered employees who were found to have violated other provisions of DOT agency regulations, and the action taken in response to the violation. This data provides information on whether drivers that are also pilots, pipeline inspectors, maintenance of way inspectors, etc. have had prior violations of similar regulations and the outcome of each violation.

10. Number of covered employees who refused to submit to an alcohol test required under this part, and the actions taken in response to the refusal. This data provides information on employer policy implementation regarding refusals and subsequent employer actions.

11. Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse. This data provides information on training provided during the current reporting period and a cumulative count of covered employees and supervisory personnel on payroll as of December 31 who have received the required alcohol training.

The Department is proposing a standard format for use by motor carriers and other regulated entities for submission of the data. The FHWA believes that such forms will facilitate recordkeeping and data submission. Copies of the forms are included as an appendix to this NPRM and would be included as appendix H to 49 CFR chapter III, subchapter B. Included with the forms in the appendix are descriptions of each data element and instructions for submitting the required information. Commenters should review the appendix for a complete description of each data element.

The FHWA anticipates that motor carriers will be using third parties such as consortia, driver leasing companies, other motor carriers, unions, to perform much of the drug testing required under this rule. Also, a significant number of drivers will be used by motor carriers availing themselves of the exception to the pre-employment/use drug test provided in the current rule. Regardless, it should be noted that the motor carrier is still responsible for ensuring that a driver has been tested and the results of the test are included in the driver's qualification file as required by 49 CFR part 391, subpart H. Suppose a driver was a member of a consortium while working for two interstate motor carriers and both motor carriers were satisfied that the consortium was performing its work in accordance with the requirements of the controlled substances testing regulations (49 CFR part 391, subpart H and 49 CFR part 40). Both motor carriers would still be responsible for ensuring that required tests were performed and the results were retained by each motor carrier. The fact that a motor carrier does not perform the actual testing would not relieve the motor carrier of the responsibility to retain the information as specified in the rule.

Motor carriers who have chosen to use third parties to perform the drug testing requirements would also be responsible for submission of the information when requested. Information submitted by a third party on behalf of a motor carrier would have to clearly identify that the data being submitted is attributable to the specific motor carrier.

For those employers with some employees subject to the controlled substances and alcohol testing requirements of one DOT OA, and some employees subject to the requirements of another OA, a separate report must be retained for each OA. Each report must

include information pertinent only to that OA's requirements.

In those cases where an employee would be subject to the controlled substances and alcohol testing requirements of two or more DOT OA's, the results of each test performed would be attributed, for MIS purposes, to only one of the OAs' drug or alcohol testing rules, as determined by the motor carrier. For example, an employee drives a commercial motor vehicle for an employer which services pipelines, and is subject to requirements of both the FHWA and the Research and Special Programs Administration (RSPA). The employer must choose under which OA's reporting rules the employee will be covered. All employees with the same functions must be covered under the same OA's rules. If the employer chooses to cover the employee in the report required by RSPA, it should not include the employee in an FHWA report. The employer must note, however, in the RSPA report, the dual coverage with FHWA.

It is important to remember that the foregoing reporting requirements apply to MIS only. The results of all CMV drivers would still have to be retained in the driver's qualification file for purposes of complying with the FHWA drug testing rule, even where the information is reported to RSPA and not to FHWA.

However, for post-accident tests, the results would have to be submitted to the OA whose rules govern the required test regardless to which OA the employer decided to submit the MIS data for that employee. In the above example, if a pipeline company driver has a commercial motor vehicle accident which triggers a post-accident test solely under the FHWA's rules, in other words while driving the commercial motor vehicle, the result of this post-accident test must be reported, under the MIS, to the FHWA regardless of whether the employer chose to report the other tests to RSPA. In the different case of a test being performed because two or more OAs' rules require the test, the motor carrier would have to decide to which agency to report. In all circumstances, the MIS reporting requirements proposed in this NPRM would not relieve the motor carrier of reporting the accident to the FHWA, including the results of a post-accident test, as required by § 394.9(b) of the Federal Motor Carrier Safety Regulations (FMCSRs).

Note: The FHWA has published an NPRM which would remove the accident reporting requirements of 49 CFR part 394. (57 FR 33712)

The FHWA is also proposing that the summary information be compiled by the motor carrier and, if requested to do so, submitted to the FHWA by February 15 of the following year (e.g., 1992 data would be compiled no later than February 15, 1993). Motor carriers would not be required to submit the information to the FHWA unless requested to do so. Because of the immense size of the motor carrier industry (over 250,000 identified interstate motor carriers), the FHWA intends to randomly select motor carriers using the statistical sampling method Sampling with Replacement and would require these selected motor carriers to submit the required information to the FHWA.

The FHWA maintains a database of all known interstate motor carriers. The FHWA proposes to perform the following random selection based on nine random selection pools with one pool for each FHWA region. The FHWA proposes to assign a random number, which will be generated by a statistical computer program, to each active motor carrier on the database. The computer program will sort the motor carriers, in ascending or descending order, by the random number assigned to each carrier. The FHWA will then select a certain percentage each year, between two and ten percent, of those carriers subject to 49 CFR part 391, subpart H to be notified that a report must be submitted by the deadline. For example, the FHWA determines that two percent of the motor carriers will be required to submit data in a given year. The active motor carrier population for FHWA Region 7 (Kansas, Nebraska, Iowa and Missouri) for a given hypothetical year is 50,000. The FHWA determines that the first 1,000 motor carriers (50,000 multiplied by 0.02 (two percent) equals 1,000) in ascending order on the compiled list of randomly-ordered motor carriers for the region will be requested to submit the required report to the FHWA. The FHWA has strongly encouraged motor carriers to use this method in their random selection of drivers for testing under § 391.109.

The FHWA will also continue to examine drug testing records as part of its on-site review activities. While the summary information to be required by the proposed § 391.87(h) would not need to be completed and submitted until February 15 of the following year, the FHWA will continue to review motor carriers' drug testing programs at any time during the year.

Records Regarding the Administration of Drug Testing Program

The FHWA has received numerous requests for clarification of what is meant in the current rule by the "records regarding the administration" of the motor carriers' drug testing program. In order to spell out this requirement, the FHWA proposes to amend § 391.87(h) to require the maintenance and retention of all agreements with collection facilities, laboratories, MROs, consortia, of names and positions of company officials and their roles in the motor carrier's drug testing program, of monthly laboratory summaries, and of recordkeeping and testing procedures, including random testing selection and notification procedures.

Elsewhere in today's **Federal Register** is the parallel "MIS" NPRM regarding 49 CFR part 40. The preamble to that NPRM contains many comments, discussions and questions that should be considered in reviewing this NPRM. Your comments on this NPRM should indicate that you are responding to questions or provisions in the generic NPRM under 49 CFR part 40 or to this specific FHWA NPRM.

Rulemaking Analyses and Notices

Regulatory Impact

The action taken by the FHWA in this document proposes to amend subpart H of part 391 of the FMCSRs and is consistent with an NPRM also being published in today's **Federal Register** by the Department of Transportation, Office of the Secretary, regarding the collection and reporting of drug and alcohol testing data. The Department's proposed rule amends 49 CFR part 40 by setting forth a system to measure the effectiveness of drug and alcohol testing programs of the various operating administrations. This NPRM by FHWA implements the DOT system. Together, the two NPRMs would require motor carriers subject to the drug testing requirements of 49 CFR part 391 and the drug and alcohol testing requirements proposed elsewhere in today's **Federal Register**, to maintain specific information and report annually to the FHWA, if requested to do so, certain information about their drug and alcohol testing programs. A representative sample of motor carriers would be randomly selected to submit the data. The random selection would generate sufficient data to produce statistically valid results. The FHWA would use the data to analyze its current approach to deterring and detecting illegal drug use within the motor carrier industry and, as appropriate, plan a

more efficient and effective means to attain program goals. Interstate motor carriers are currently required to maintain most of the information that would be reported. The regulatory impact, therefore, is considered to be minimal to interstate motor carriers. Separate regulatory impact analyses have been prepared for the drug and alcohol NPRMs, proposed elsewhere in today's **Federal Register**, and should be referred to for additional information. The information may be obtained in FHWA Docket Numbers MC–92–19 and MC–92–23, which is available for inspection in the FHWA Docket room, 400 Seventh Street, SW., Washington, DC.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, but is a significant regulation under the DOT regulatory policies and procedures because of substantial congressional and public interest in precluding the operation of a commercial motor vehicle by a driver who uses illegal drugs. The impacts of these proposed provisions addressed in this document have already been considered by the impact documentation prepared for the November 21, 1988, final rule. Any changes to the November 21, 1988, final rule resulting from this document would not appreciably affect the impact documentation initially prepared for FHWA Docket No. MC–116.

Such impact documentation contained in the November 21, 1988, final rule includes a Regulatory Impact Analysis which is available for inspection in the Headquarters Office of the FHWA, 400 Seventh Street, SW., Washington, DC.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rulemaking on small entities. It is anticipated that the impacts resulting from the proposed amendments contained in this document do not differ significantly from those already considered in the adoption of the November 21, 1988, final rule. Accordingly, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that the action contained in this document will not have a significant economic impact on a substantial number of small entities which is in addition to that imposed by the November 21, 1988, final rule.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rule, if promulgated, would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment in addition to that already prepared for the November 21, 1988, final rule.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting and recordkeeping provisions that are included in this proposed regulation are being submitted for approval to the Office of Management and Budget (OMB).

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Controlled substances, Highways and Roads, Highway safety, Motor carriers, Motor vehicle safety.

Issued on: December 2, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

Thomas D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is proposing to amend title 49, Code of Federal Regulations, subchapter B, chapter III, part 391 as set forth below:

PART 391—QUALIFICATION OF DRIVERS

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

2. In § 391.87, paragraph (h) is revised to read as follows:

§ 391.87 Notification of test results and recordkeeping.

* * * * *

(h) A motor carrier shall maintain all administrative records pertaining to its controlled substances testing program and an annual (calendar year) summary of the results of its controlled substances testing program performed under this subpart.

(1) The administrative records shall include agreements with collection facilities, laboratories, MROs, consortia, name and positions of company officials and their role in the motor carrier's drug testing program, monthly laboratory summaries, recordkeeping and testing procedures, including random testing selection and notification procedures.

(2) The summary shall include, as a minimum (See appendix H to subchapter B for more detail and format):

(i) Number of drivers by employee category;

(ii) Number of drivers subject to testing under the anti-drug rules of more than one DOT Agency, identified by each agency;

(iii) Number of specimens collected by type of test (e.g., pre-employment, random, reasonable cause, post-accident) and employee category;

(iv) Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug and employee category;

(v) Number of negatives verified by a MRO by type of test, and employee category;

(vi) Number of persons denied a position as a driver following a verified drug test;

(vii) Number of drivers verified positive by a MRO who were returned to duty as a driver during the reporting period;

(viii) Number of drivers with tests verified positive by a MRO for multiple drugs;

(ix) Number of drivers who refused to submit to a drug test required under this subpart, and the action taken in response in the refusal(s); and

(x) Number of drivers and supervisors who have received required training during the reporting period.

(3) The annual summary shall be completed and submitted, if requested,

to the FHWA, Office of Motor Carriers, 400 Seventh Street, SW., Washington, DC 20590 no later than February 15 of the following year.

3. Subchapter B is amended by adding appendix H to read as follows:

BILLING CODE 4910-22-M

APPENDIX H - DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

GENERAL INSTRUCTIONS

This reporting form includes three parts. Collectively, these parts address the data elements required in the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) drug and alcohol testing regulations. Each part of the form is preceded by instructions which outline and explain the information requested and indicate the probable sources for this information. The three parts of the form are:

Section	Instructions Pages	Reporting Form Pages
I. ORGANIZATIONAL INFORMATION	i-ii	1-2
II. DRUG TESTING INFORMATION	iii-vii	3-7
III. ALCOHOL TESTING INFORMATION	viii-xi	8-11

I. ORGANIZATIONAL INFORMATION

INSTRUCTIONS

This part of the reporting form includes two sections. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	ii	2

Page 1 **EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done and a current address. Below this, a signature, date, and current telephone (including the area code) are entered by the person certifying the correctness and completeness of the form.

Page 2

COVERED EMPLOYEES (Section B) requires a count for each employee category that must be tested under DOT regulations. There is only one category of covered employees for FHWA, and that is "Drivers" in the tables. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

For Office Use Only

FHWA DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

YEAR COVERED BY THIS REPORT: 19___

A. MOTOR CARRIER EMPLOYER INFORMATION

Company _____

Principal Place of Business for Safety:

Physical Address _____

_____

Mailing Address _____

_____

U.S. DOT Number_____ ICC Number_____

I, the undersigned, certify the attached United States Department of Transportation Drug Testing Management Information System Data Collection Form, is to the best of my knowledge and belief, a true, correct, and complete form for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

II. DRUG TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages v-vi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	iv	4
B. EMPLOYEE TESTING	vi	4-6
C. OTHER TESTING/PROGRAM INFORMATION	vi	6
D. TRAINING/EDUCATION	vii	7

Sections A and B are used to summarize the drug testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment testing. The five tables in Section B are for entering drug testing data on periodic, random, post-accident, reasonable cause, and return to duty testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verifed positive for any drug(s), and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons testing positive is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 4

JOB APPLICANT TESTING INFORMATION (Section A) requires information for pre-employment testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by job applicants that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests **for each** of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

A sample table is provided on page v with example numbers.

Page 4

Below the table for pre-employment testing information is a box with the heading **"Number of persons denied a position as a covered employee following a verified positive drug test"**. This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example will use the category "Drivers" (which is the only category of employees for FHWA) to illustrate the procedures for completing the form.

A Urine specimens were collected for 157 job applicants for operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Drivers".

B The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for operator positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Drivers".

C The MRO for your company reported that 4 of those 157 specimens from applicants for operator positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Drivers".

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

PRE-EMPLOYMENT TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operator	157	153	4	3	1	0	0	1
Maintenance	107	105	2	1	0	0	1	0
	0	0	0	0	0	0	0	0
TOTAL	264	258	6	4	1	0	1	1

A B C D E

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in Section C, **OTHER TESTING/PROGRAM INFORMATION**, on page 6 of the reporting form.

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 4-6 — **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in a **covered position** only (i.e. "Drivers"). A separate table must be completed for each category of test. These categories include: (1) periodic, (2) random, (3) post-accident, (4) reasonable cause, and (5) return to duty testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

Page 6 — Following these tables that summarize **EMPLOYEE TESTING**, you must provide counts for employees who have tested positive and are currently in, or have completed rehabilitation, and have returned to work in a covered position. Report this information only for employees who tested positive during this reporting period. This information should be available from the personnel office and/or drug program manager.

Page 6 — **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 6 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**, then check the appropriate columns indicating the combination of drugs reported as positive. For example, if marijuana and cocaine were detected in 3 driver specimens, then you would write "Drivers" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 driver specimens, then you would write "Drivers" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 6

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a drug test required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal. An example of an action taken would be "removed from covered duties pending termination".

Page 7

TRAINING/EDUCATION (Section D) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by FHWA/DOT drug testing regulations.

   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Drivers								

Number of persons denied a position as a covered employee following a verified positive drug test: [ ]

B. EMPLOYEE TESTING

PERIODIC TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Drivers								

B. EMPLOYEE TESTING (continued)

RANDOM TESTING									
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Drivers								

POST-ACCIDENT TESTING									
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Drivers								

REASONABLE CAUSE TESTING									
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Drivers								

B. EMPLOYEE TESTING (continued)

RETURN TO DUTY TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Drivers								

Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during this reporting period: ____

C. OTHER TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D TRAINING/EDUCATION

Training During Current Reporting Period

Number of covered employees who have received initial training on the consequences, manifestations, and behavioral cues of drug use as required by FHWA drug testing regulations: [ ]

Number of supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations: [ ]

Number of covered employees who have received recurrent or refresher training on the consequences, manifestations, and behavioral cues of drug use: [ ]

Number of supervisory personnel who have received recurrent or refresher training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use: [ ]

III. ALCOHOL TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information for the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ix-x as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	ix	8
B. EMPLOYEE TESTING	x	9-10
C. OTHER TESTING/PROGRAM INFORMATION	xi	11
D. TRAINING/EDUCATION	xi	11

Sections A and B are used to summarize the alcohol testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment/pre-duty testing. The five tables in Section B are for entering alcohol testing data for random, post-accident, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of initial alcohol tests performed for each employee category;
2) the number of confirmatory alcohol tests performed for each employee category;
3) the number of confirmatory test results which were equal to or greater than 0.04; and
4) the number of confirmatory test results which were equal to or greater than 0.02, but less than 0.04.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons whose alcohol test results were 0.04 or greater is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 8 **JOB APPLICANT TESTING INFORMATION** (Section A) requires information for pre-employment/pre-duty testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page x.

Four types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF INITIAL TESTS**" requires a count of all initial alcohol tests performed for each employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF CONFIRMATORY TESTS**" requires a count of all confirmatory alcohol tests performed for each employee category.

The third blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04**" requires a count for each employee category.

The fourth blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04**" requires a count for each employee category.

A sample table is provided on page x with example numbers.

Page 8 Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater**". Enter the appropriate number in the box provided.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment/pre-duty testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example will use the category "Drivers" (which is the only category of employees for FHWA) to illustrate the procedures for completing the form.

A Initial tests were performed on 157 job applicants for driver positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Drivers".

B Confirmatory tests were necessary for 6 of the 157 applicants for driver positions. Enter this information in the second blank column of the table in the row marked "Drivers". The confirmatory test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmatory test results for 3 of the applicants for driver positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Drivers".

D The ccnfirmatory test results for 2 of the applicants for driver positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Drivers".

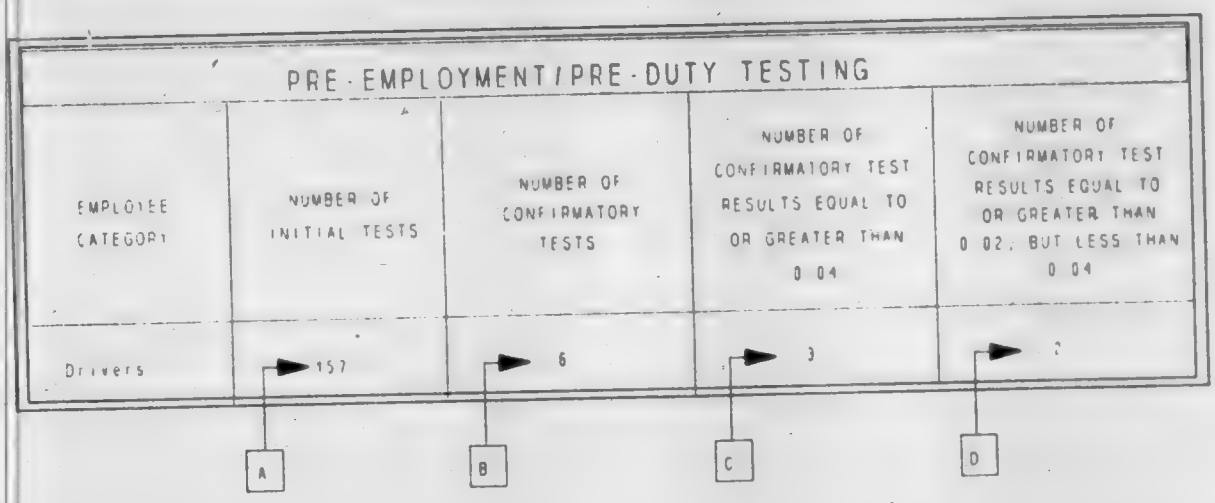

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATORY TESTS". These numbers may differ since some confirmatory test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 9-10 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

x

Page 10 — Following the table that summarizes return to duty testing, you must provide a count of the **"Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in DOT regulations)"**. Report this information only for employees who were tested during this reporting period. This information should be available from the personnel office and/or alcohol program manager.

Pages 11 — **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you provide information on employees who tested positive for drugs and alcohol (at the same time), information on violations of other alcohol provisions (not necessarily resulting in positive alcohol tests), and information on employees who refused to submit to an alcohol test.

Page 11 — **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 11 — **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires information on the **NUMBER OF COVERED EMPLOYEES** committing such a violation, a description of the **VIOLATION** committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the **ACTION TAKEN** in response to the violation.

Page 11 — **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test as required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal.

Page 11 — **TRAINING/EDUCATION** (Section D) requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by FHWA/DOT alcohol testing regulations.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this part of the report.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT/PRE-DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Drivers				

Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

B. EMPLOYEE TESTING

RANDOM TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Drivers				

POST-ACCIDENT TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Drivers				

REASONABLE SUSPICION TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Drivers				

B. EMPLOYEE TESTING (continued)

RETURN TO DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Drivers				

Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations): [ ]

FOLLOW-UP TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Drivers				

C. OTHER TESTING/ PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of supervisors who have received the required training in determining the existence of reasonable suspicion of alcohol misuse: [ ]

[FR Doc. 92-29680 Filed 12-10-92; 10:00 am]
BILLING CODE 4910-22-C

49 CFR Part 382

[FHWA Docket No. MC–92–23]

RIN 2125–AD06

Federal Motor Carrier Safety Regulations; Controlled Substances and Alcohol Use and Testing; Commercial Driver's License Standards, Requirements and Penalties; Hours of Service of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is requesting comments on a proposed rule which would mandate testing of drivers who operate commercial motor vehicles (CMV) for the use of controlled substances. This action is being taken in response to the Omnibus Transportation Employee Testing Act of 1991 and complements existing regulatory prohibitions on controlled substances use. This proposal is consistent with a companion NPRM published by the FHWA on alcohol testing and an NPRM on alcohol and drug testing procedures published by the Office of the Secretary, U.S. Department of Transportation. These two NPRMs are published elsewhere in today's **Federal Register**.

The overall goal of testing is to ensure that persons who use controlled substances are not allowed to operate a commercial motor vehicle which, in turn, would reduce accidents, fatalities, and injuries in motor carrier operations.

DATES: Comments must be received on or before April 14, 1993.

ADDRESSES: All signed, written comments should refer to the docket number MC–92–23 and should be submitted to HCC–10, room 4232, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Standards, (202) 366–2981, or Mr. David Sett, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

Additional information on existing regulatory requirements in this area may be obtained through the Department of Transportation's Anti-Drug Information Center (ADIC) system. The public may access the system by dialing (800) 225–3784 using a touch tone telephone. Access to a computer system may also be made using a personal computer connected via modem on (800) 225–3804. A user fee will be charged for certain services provided by the system.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

The Omnibus Transportation Employee Testing Act of 1991 (the Act) was signed by President Bush on October 28, 1991, as part of the 1992 Department of Transportation and Related Agencies Appropriations Act, Public Law 102–143, title V, 105 Stat. 917, 952 (1991). The Act requires the Secretary of Transportation to promulgate regulations for alcohol and controlled substances testing for persons in safety-sensitive positions in four modes of transportation: motor carrier, airline, railroads and mass transit. The requirements of the Act are addressed in the Office of the Secretary of Transportation's NPRM preamble to amend 49 CFR part 40 which are published elsewhere in today's issue of the **Federal Register** and are fully incorporated herein.

Section 5 of the Act addresses the requirements for motor carriers. This section amends the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Public Law 99–570, 100 Stat. 3207–170 (codified at 49 U.S.C. app. 2701–2718). The CMVSA establishes the requirements for the commercial driver's license (CDL). The FHWA has implemented the CDL provisions of the CMVSA through the publication of several final rules. A discussion of the CDL requirements, including who is required to obtain a CDL, is included under section V, Commercial driver's license program, later in this preamble.

The Act requires the Secretary to issue regulations by October 28, 1992, requiring motor carriers to conduct pre-employment, reasonable suspicion, random and post-accident testing of drivers for the use of alcohol or a controlled substance which use constitutes a violation of law or Federal regulation. Congress recognized that the FHWA has already issued regulations for controlled substances testing (49 CFR part 391, subpart H) and that the procedures for testing are similar to the scientific and technical guidelines established by the Department of Health and Human Services. See 49 CFR part 40. The FHWA believes it is the intent of Congress that FHWA's current controlled substances regulations be incorporated into the regulations required to be issued under the Omnibus Act. (See section III, Regulatory history, below.)

The Act provides for several significant changes to the current controlled substances testing requirements. These changes include:

1. Testing for controlled substances and alcohol use;
2. Using the definition of a commercial motor vehicle as defined in the CMVSA;
3. Requiring a test after all accidents in which there is a fatality;
4. Requiring that a split sample urine specimen for controlled substances be collected;
5. Requiring pre-employment, reasonable suspicion, random and post-accident testing;
6. Allowing, but not requiring, periodic testing;
7. Requiring referral to a substance abuse professional and providing for the opportunity for rehabilitation;
8. Expressly preempting inconsistent State or local laws;
9. Gives the Secretary the authority to determine sanctions for drivers who use controlled substances or alcohol in violation of Federal regulation but are not under the influence as defined by the CMVSA; and
10. Testing consistent with international obligations of the United States.

II. Regulatory History

The FHWA published in the **Federal Register** a final rule on November 21, 1988, setting forth regulations to require motor carriers who operate commercial motor vehicles in interstate commerce to have an anti-drug program, including the testing of commercial motor vehicle drivers for the use of controlled substances. See 53 FR 47134, codified at 49 CFR part 391, subpart H. That rule required carriers to conduct five types of controlled substances tests: pre-employment/use, periodic, reasonable cause, post-accident and random. Generally, interstate drivers of commercial motor vehicles with a gross vehicle weight rating (GVWR) more than 26,000 pounds, vehicles transporting hazardous materials which are required to be placarded, or vehicles designed to transport more than 15 passengers, including the driver, are covered by this final rule.

On the same date, November 21, 1988, the Office of the Secretary, U.S. Department of Transportation (OST) published an interim final rule, "Procedures for Transportation Workplace Drug Testing Programs." See 53 FR 47002, later codified at 49 CFR

part 40. On December 1, 1989, the OST published a final rule amending certain portions of the interim final rule, see 54 FR 49854. These final and interim final rules are being referred to in this document as the "OST rule."

Subsequent to the publication of our November 21, 1988, FHWA final rule, the FHWA published several notices relating to the controlled substances testing requirements. These publications are summarized as follows:

1. Final rule, November 6, 1989: Clarifies which types of tests must be performed by December 21, 1989, and deferred implementation of random and post-accident testing until a preliminary injunction was resolved. 54 FR 46616.

2. Final rules, September 27, 1989, December 27, 1989, April 24, 1991, and July 14, 1992: Delaying the effective date of the controlled substances regulations to foreign motor carriers and their drivers. 54 FR 39546; 53294; 56 FR 18994; 57 FR 31277.

3. Interim final rule, February 1, 1990: Amends the requirements for preemployment/use and post-accident testing and includes several interpretations and technical amendments. 55 FR 3546.

4. Final rule, August 16, 1991: Provides for an implementation schedule for random and post-accident testing based on favorable court action. 56 FR 40806.

Subsequent to the publication of our November 21, 1988 final rules, the OST published two additional documents relating to controlled substances testing as follows:

1. Notice of proposed rulemaking, July 13, 1990: Revision of the duties of the medical review officer with respect to negative tests. 55 FR 28782.

2. Notice of end of transition period, November 6, 1989: Requires the use of a custody and control form which conforms with the December 1, 1990, final rule. 55 FR 46669.

The OST has also published an advance notice of proposed rulemaking on alcohol abuse prevention programs in the transportation industry on November 2, 1989. 54 FR 46326.

All of the above referenced documents are available from the Anti-Drug Information Center (ADIC). See the **FOR FURTHER INFORMATION CONTACT** section of this Preamble for access information.

III. Legal Issues

Many of the legal issues arising from the FHWA's testing program have been addressed in the Legal Authority/Issues section of the OST general preamble for alcohol testing published in today's **Federal Register**. However, those issues unique to or highlighted by FHWA's rule and regulatory environment are more fully discussed in Section IV, Legal Issues, of the FHWA's alcohol testing rule also published in today's **Federal Register**.

IV. Commercial Driver's License Program

The current CDL regulations in 49 CFR part 383 do not contemplate testing of CMV drivers for controlled substances. Notwithstanding, the existing CDL sets forth significant penalty actions for controlled substances offenses by CMV drivers in that—

1. The commercial driver's license information system (CDLIS) prevents drivers from obtaining multiple licenses, which formerly allowed drivers to continue to drive despite revocation of a license by one State for controlled substances use convictions;

2. The CDLIS and its supporting information network allow controlled substances convictions in other States to be forwarded quickly to the driver's State of record for licensing action; and

3. A driver's conviction for driving under the influence of a controlled substance or using a CMV in the commission of certain controlled substances-related felonies result in disqualification of the driver's CDL for periods ranging from one year to life, depending on the number of offenses and the hazardous nature of the cargo. These sanctions constitute powerful deterrents against involvement with controlled substances by CMV drivers, and the program as a whole provides a strong foundation for the additional controlled substances testing requirements proposed herein.

See Section V, *Commercial driver's license program*, of the FHWA's alcohol testing rule published in today's **Federal Register** for additional discussion of the CDL program.

V. Removal of Part 391, Subpart H

This proposed rule will replace 49 CFR part 391, subpart H controlled substances testing. The present regulations for controlled substances testing are contained as a subpart to the FHWA's driver qualification regulations in part 391 which are only applicable to drivers subject to part 391. The Omnibus Act requires the FHWA to expand the scope of persons required to be tested beyond those subject to part 391. Generally, parts 390 through 399 of title 49 subchapter B are only applicable to motor carriers and drivers who operate in interstate commerce.

The Omnibus Act requires all operators of CMVs subject to the CDL requirements to be tested for controlled substances and alcohol. This expanded scope of persons will encompass far more drivers than have ever been subject to parts 390 through 399. The group will include, but is not limited to, drivers and their employers, operating wholly in intrastate commerce; employed directly by Federal, State and local governments, including school districts; and drivers with restricted use CDLs or drivers in a State that does not recognize State option waiver CDLs, i.e., farm vehicle operators, firefighters and operators of emergency equipment.

For these reasons, the FHWA believes simply changing part 391 to conform to the Omnibus Act would not be prudent. The FHWA believes that the existing controlled substances testing requirements should be moved to a new part 382 and updated to conform to the Omnibus Act.

The FHWA proposes to make part 391, subpart H ineffective on the various implementation dates of part 382 to enable motor carriers to continue to use the existing regulations until all requirements of part 382 are to be complied with fully.

Table I shows the existing regulations at 49 CFR part 391, subpart H and the section where the FHWA proposes to move the existing regulation into this proposal.

TABLE I

Name	Old section	Reason for change	New section
Purpose and scope	391.81(a)		382.701(a)
	391.81(b)		382.701(b)
	391.81(c)		382.911(d)
Applicability	391.83	Omnibus act	382.703
Definitions	391.85	Same as alcohol & subpart H	382.707

TABLE I—Continued

Name	Old section	Reason for change	New section
Notifications of test results and recordkeeping	391.87(a)		382.1005(e)
	391.87(b)		382.1007
	391.87(c)		382.1007
	391.87(d)		382.1013
	391.87(e)		382.1011
	391.87(f)		382.1005(e)
	391.87(g)		382.1017
	391.87(h)		382.1015
Access to individual test results or test findings	391.89(a)		382.1011(c)
	391.89(b)		382.1017(e)
Implementation schedule	391.93		382.715
Drug use prohibitions	391.95(a)		382.801
	391.95(b)		382.803
	391.95(c)	No medical qualification	Removed
	391.95(d)		382.807(d)
Prescribed drugs; Affirmative defense	391.97		382.1003
Reasonable cause testing requirements	391.99		382.911
	391.101		
Pre-employment testing requirements	391.103		382.903
	391.107		
Pre-employment testing exceptions	391.103(d)		382.915
Biennial (periodic) testing requirements	391.105		[Removed]
	391.107		
Random testing requirements	391.109		382.907
	391.111		
Random testing exceptions	391.109(d)		382.915
Post Accident Testing	391.113(a)	Omnibus act unenforceable	382.905(a)
	391.113(b)		Removed
	391.113(c)		382.905(e)
	391.115		382.905
Disqualifications	391.117(a)		382.807(g)
			382.807(g)
		Alcohol rule	382.809(a)
		391.117(b)	382.809(b)
		Alcohol rule	
Employee Assistance Program	391.119	Omnibus act	382.1201
EAP Training Program	391.121		382.1203
After-Care Monitoring	391.123		382.914

VI. Proposal

A new part 382 to title 49, Code of Federal Regulations, Controlled Substances and Alcohol Testing is proposed which would contain the new requirements of the Omnibus Transportation Employee Testing Act of 1991. This NPRM proposes controlled substances testing requirements as subparts G through L of new part 382. The companion NPRM on alcohol testing, also published in today's **Federal Register**, includes subparts A through F of part 382.

Based on comments received on this NPRM and the companion NPRM on alcohol testing, the FHWA will consider integration of the two proposals in one final rule.

SECTION-BY-SECTION ANALYSIS

Part 382—Controlled Substances and Alcohol Testing

Subpart G—Controlled Substances Use and Testing

Section 382.701 Purpose and scope

This section is taken from the current controlled substances testing regulations at § 391.81. Paragraph (c) of the current regulations has been moved to proposed § 382.911(e).

Section 382.703 Applicability

Currently, the FHWA's controlled substances testing requirements are part of the driver qualification standards. The requirements apply to motor carriers and drivers of the motor carriers operating in CMVs greater than 26,000 pounds GVWR who are involved in interstate commerce and are subject to the FMCSRs. Private and for-hire motor carriers of property and for-hire motor carriers of passengers are subject to the FMCSRs. However, the FMCSRs include several general exemptions for certain types of transportation, such as fire trucks and rescue vehicles involved in an emergency, governmental operations and school bus operations. Therefore, drivers involved in the exempted transportation operations are not currently required to comply with the FHWA's controlled substances testing requirements. In addition, anyone who is not required to meet the physical qualifications requirements, such as farm custom operations, apiarian industries and certain farm vehicle drivers, are also exempt from the controlled substances testing requirements. Finally, while the FMCSRs generally apply to commercial motor vehicles exceeding 10,000 pounds GVWR, the drug testing provisions of part 391 apply only to drivers of commercial motor vehicles exceeding 26,000 pounds GVWR.

The Act amends the CVMSA, and therefore, the definitions of "commercial motor vehicle" and "commerce" in the CVMSA apply. This means that the testing requirements of the Act extend to interstate and intrastate operations in commercial motor vehicles exceeding 26,000 pounds GVWR and that the FMCSR exemptions stated above and listed in 49 CFR 390.3(f) do not apply.

The FHWA is therefore proposing that the class of drivers who are required to obtain a CDL are the same drivers who would be subject to the controlled substances testing requirements of this rule. Because they are the subject of a companion rule, the FHWA is also proposing that motor carriers and drivers for those motor carriers subject to the alcohol and controlled substances testing requirements of the Federal Transit Administration (FTA), formerly the Urban Mass Transportation

Administration, be excluded from the requirements of this rule.

By the same token, the FHWA is proposing that any entity operating under a waiver of all CDL requirements, approved or authorized by the FHWA, would not be subject to the controlled substances testing requirements of the Act. This exemption from testing does not extend to holders of restricted CDLs. Accordingly, the measure of applicability is: if a person is required to obtain a CDL, that driver and the employing motor carrier must comply with these proposed controlled substances testing requirements.

This means there would be certain entities who are not required to comply with the FMCSRs, but who would now be subject to the requirements of this rule. For example, governmental and school bus drivers as well as drivers of private motor carriers of passengers would now be required to submit to tests. Governmental operations include all levels of government, Federal, State and local. Private motor carriers of passengers would include, but not be limited to, civic and church organizations.

Table II shows which groups have waivers or restricted CDLs and which groups will be required to be tested under this rule.

TABLE II—COMMERCIAL DRIVER'S LICENSE (CDL) WAIVERS

Type	CDL requirement	Tests required
Full Waiver		
Of all CDL requirements for vehicles owned/operated by Dept. of Defense.		
Non-Civilian Military Personnel —Active Duty Military Personnel —Active Duty Reserves and Natl Guard —National Guard Military Technicians	No CDL required	No controlled substances or alcohol testing required under 49 CFR Pt. 382.
State Option Waiver		
States may waive all CDL requirements, if waiver conditions are met.		
Farm Vehicle Operators	If State waives the individual If State DOES NOT waive the individual	No testing is required. Controlled Substances and Alcohol testing is required.
Firefighters and Other Operators of Emergency Equipment	If State waives the individual If State DOES NOT waive the individual	No testing is required. Controlled Substances and Alcohol testing is required.
Limited Waiver/Restricted CDL		
States may waive CDL knowledge and skills testing and issue restricted CDLs.		
Farm-Related Service Industries —Farm retail outlets & suppliers —Agri-chemical businesses —Livestock feeders —Custom Harvesters	The operators of these vehicles ARE required to obtain a Restricted CDL.	See Note.
Isolated Sections of Alaska	The operators of these vehicles ARE required to obtain a Restricted CDL.	See Note.

Note: Controlled substances and alcohol testing is required of these operators. Additionally, these operators shall have a pre-employment/pre-duty test for controlled substances and alcohol each time the State requires the license to be revalidated for these operators.

The FHWA is proposing the same applicability with the CDL to comply with the intent of Congress and estimates that this proposal will add about two million drivers to the current estimate of three million drivers subject to the current controlled substances testing requirements.

Paragraph (c) of this section excepts those drivers from controlled substances testing requirements who are based at or depart from home terminals in foreign nations. Implementation of controlled substances testing of foreign-domiciled commercial motor vehicle operators, mandated by the Act, will be considered in an advanced notice of proposed rulemaking published elsewhere in today's **Federal Register**. Comments on this issue should be submitted to that docket.

Section 382.705 Controlled Substances Testing Procedures

This section, similar to proposed § 382.105, Alcohol testing procedures, requires all motor carriers performing controlled substances testing to use the procedures described and set forth in 49 CFR part 40 for controlled substances testing.

Section 382.707 Definitions

The definitions unique to this part are included in this section. The terms common to title 49, chapter III, subchapter B, are already included in 49 CFR 390.5, Definitions, and are applicable to this part, unless otherwise defined. The terms, "commerce" and "commercial motor vehicle," are taken from 49 CFR part 383, the requirements for a CDL. These definitions expand the applicability to intrastate operations as well as the other operations currently exempted from the FMCSR.

The term *accident* is proposed and is identical to that being proposed in another rulemaking on accident-reporting requirements. See 57 FR 33712.

The term *on-duty* is proposed to be defined here and a conforming amendment to 49 CFR 395.2, Definitions, is also being proposed to ensure that motor carriers maintain control over the controlled substances testing procedures in those cases where the motor carrier directs the driver to

provide a urine specimen for testing under the requirements of this rule, i.e. all those except pre-employment and return-to-duty testing. The FHWA strongly encourages comments on this proposal.

The FHWA is also proposing a definition of the term "consortium" to indicate that persons other than the motor carrier may perform the actual testing and other functions, provided, however, that these functions are at the direction and/or approval (when they are done prior to the motor carrier's knowledge as may be in the case of a driver-based consortium) of the motor carrier. The FHWA will continue to hold the motor carrier responsible for compliance with these proposed requirements.

The other definitions remain the same as currently in 49 CFR part 391, subpart H.

Section 382.709 Preemption of State and Local Laws

The FHWA is proposing to add § 382.709, Preemption of State and local laws to be consistent with section 5(e)(1) of the Act. This section is similar to the proposed § 382.109. The Act contains an express preemption of State and local requirements that are "inconsistent with" the Federal controlled substances rules applicable to the highway, aviation, and transit industries. As proposed, State and local requirements are preempted whenever it is not possible to comply with both the Federal and the State or local requirements or whenever compliance with the State or local requirements would frustrate the Federal requirement. For example, a State requirement prohibiting controlled substances testing of commercial motor vehicle truck drivers would be preempted to the extent compliance with it would prevent compliance with a controlled substances test required under this part. Also, a local requirement for a blood test to confirm controlled substance use by a commercial motor vehicle motor coach driver would be preempted since it would frustrate accomplishment of the Federal rule, which does not require confirmatory blood testing.

The FHWA shares the same concern as expressed by the Congress regarding current and proposed State legislation which does or would prohibit or restrict drug and alcohol testing of certain classes of individuals and that these restrictions may impinge upon the ability to effectively implement these proposed rules. See S. Rep. No. 54, 102d Cong., 1st Sess. 33 (1991).

Paragraph (b) of proposed § 382.709 states that nothing in this part preempts State and local laws that impose criminal, civil or administrative penalties or other sanctions on a driver found, without regard to testing required by this part, to have operated a commercial motor vehicle while using controlled substances in violation of law or Federal regulation. The FHWA is committed to working with State and local officials in preventing all persons from operating a CMV while using controlled substances.

Section 382.711 Other Requirements Imposed by Motor Carriers

This section, similar to proposed § 382.111, explains that these proposed rules would not affect the motor carrier's policies or programs for prohibiting controlled substances use, testing or rehabilitation, except as provided for in these proposed rules. That is, unless these rules specifically address a motor carrier's program or policy element and the motor carrier's program or policy element does not frustrate or supersede these rules, the motor carrier may have more stringent rules. These more stringent rules must be clearly distinguished to the driver that the more stringent rules are based upon the motor carrier's own authority to impose such rules.

The Americans with Disabilities Act of 1990 (ADA), and relevant Equal Employment Opportunity Commission (EEOC) guidelines, require no changes to the current regulations for drug testing, part 391, subpart H, or the proposed rule. The FHWA's drug testing requirements are designed to detect current users of controlled substances. Under the ADA, current illegal users of controlled substances are expressly excluded from the definition of person with a disability and are therefore not protected by the ADA. Employers are not prohibited by the ADA from taking adverse employment actions against employees for detected drug use. Consistent with this approach, the FHWA rules simply do not contemplate the consequences of drug use on the employment relationship.

Employers may prohibit the use of drugs on the job under the ADA, which is also consistent with FHWA prohibitions. Finally, though there is no conflict between the ADA and FHWA rules, the EEOC guidelines provide that it is a defense to a charge of discrimination under the ADA that a challenged action is required by other Federal law or regulation, such as the FHWA rules on controlled substances.

Section 382.713 Requirement for Notice

This section is similar to proposed § 382.113 which provides that prior to subjecting a driver to a controlled substances test in accordance with these proposed rules, the motor carrier or Federal, State or local official must notify the driver that the test shall be performed in accordance with these proposed rules. No motor carrier shall misrepresent that a test is being performed pursuant to this part. Motor carriers or their agents shall not use the Federal standard custody and control form for testing which is not required by any Federal agency. If this form is used, it shall be a violation.

Section 382.715 Starting Date for Controlled Substances Programs

The implementation schedule proposed is consistent with the schedule used in the November 21, 1988, final rule for controlled substances testing and is the same as proposed § 382.115 for alcohol testing programs. The FHWA is proposing to allow approximately one year from the effective date for larger carriers and approximately two years for smaller carriers. The number of drivers a motor carrier is using on the effective date of the final rule will be the factor used to determine if a carrier is large or small. Fifty or more drivers will designate a motor carrier as large and less than 50 drivers will designate a motor carrier as small for the purposes of implementing the requirements of this rule. The FHWA is eliminating application of the term "drivers subject to testing" as used in the November 21, 1988, final rule.

The FHWA believes that a one year period is sufficient time to implement the controlled substances testing requirements, including the changes contained in part 40 as proposed in today's **Federal Register**, in the operations of these larger motor carriers without any significant economic or operational burdens. Motor carriers that are currently testing drivers in accordance with 49 CFR part 391, subpart H may implement these proposed regulations on or after the effective date of the final rule, but no later than the starting date delineated in this section.

Subpart H—Prohibitions and Consequences

Section 382.801 Controlled Substances Use

The FHWA currently has very stringent controlled substances use prohibitions in the FMCSRs. These prohibitions, which apply to both

drivers of CMVs and motor carriers, are being revised and included in this section and § 382.803. Drivers shall be prohibited from using controlled substances.

Section 382.803 Controlled Substances Testing

As stated in proposed § 382.801, this prohibition applies to both drivers of CMVs and motor carriers. As with § 382.801, drivers shall also be prohibited from testing positive for controlled substances while driving commercial motor vehicles. This requirement is directly from the Omnibus Act, which requires a testing program to determine if a CMV driver has used a controlled substance in violation of law or Federal regulation.

Section 382.805 Refusal to Submit to a Required Controlled Substances Test

This section, which is similar to proposed § 382.211, provides that drivers shall not refuse to submit to required tests and that the motor carrier shall not permit a driver who refuses to be tested to perform safety-sensitive functions.

Subpart I—Controlled Substances Tests Required

The FHWA is not proposing to require periodic testing. The Act gives the Secretary such discretion only for this type of testing. Based upon the FHWA's experience with controlled substances testing, the FHWA has decided to eliminate periodic testing upon the effective date of this rule. The current controlled substances testing regulations allow motor carriers to discontinue periodic testing for a driver when that driver has had one pre-employment, one periodic, or one random test and the motor carrier is randomly testing at a 50 percent testing rate. It is FHWA's understanding that many carriers are indeed discontinuing periodic testing for controlled substances after the driver has had one of these tests. The FHWA believes the other types of testing will adequately detect and deter controlled substances use. Therefore, the FHWA is proposing to eliminate periodic testing for the use of controlled substances.

The sections for pre-employment/pre-duty, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing listed below are similar to the alcohol testing sections, §§ 382.301 through 382.311, published elsewhere in today's **Federal Register**.

Section 382.901 General

Proposed § 382.901(a) is identical to the current § 391.97(d). Proposed paragraph (b) requires all controlled substances testing specimens collected to use the "split sample" collection procedure (49 CFR part 40). This provision is mandated by the Omnibus Transportation Employee Testing Act (Pub. L. 102–143).

Section 382.903 Pre-Employment/Pre-Duty Testing

Motor carriers shall test for controlled substances use drivers or driver-applicants it intends to hire or use, prior to the first time the driver operates a CMV. The motor carrier may not use the driver unless and until the result of the test is negative.

An exception from the testing requirement will be allowed if the driver has had a prior pre-employment controlled substances test performed under this subpart or another DOT agency rule in the past six months which indicated a negative test result and has had no subsequent verified positive test results.

Section 382.905 Post-Accident Testing

The FHWA is strongly committed to ensuring that drivers who are involved in an accident are tested for the use of controlled substances. The Act requires FHWA to test for controlled substances each commercial motor vehicle operator who was involved in an accident in which there was loss of any human life. The FHWA is proposing to use this requirement plus a requirement that any accident in which a motor vehicle is required to be towed away from the accident scene and the driver receives a citation for a moving violation of a State or local traffic law, a post accident test is required to be performed. This additional criteria is currently required in the existing 49 CFR part 391, subpart H, except for the motor vehicle involved in an accident, and required to be towed away from the accident scene which will replace the amount of property damage criterion.

Post accident testing may have to be performed not only when an accident occurs while the driver is actually driving a commercial motor vehicle, but also, in an accident involving a fatality, when the driver is performing a safety-sensitive function. For instance, a driver parks a truck improperly, on the travelled portion of the highway. Another motorist collides with the truck and the motorist is killed. The driver of the truck will be required, by this rule, to be tested for controlled substances. Post-accident testing must also be performed when the driver receives a citation arising from the accident.

The FHWA is proposing that drivers must be tested as soon as possible, but within eight hours of the accident. The FHWA has received a recommendation from the National Transportation Safety Board to shorten the time frame for post-accident testing. For this reason, the FHWA proposes to require a test within a shorter time frame than the current rule. However, in the event, for valid reasons (as documented by the motor carrier) the test can not be conducted within the eight-hour time frame, the driver must be tested as soon as possible, but prior to twenty-four hours elapsing. Failure to complete a test on a driver within the prescribed twenty-four hours following an accident would be justifiable only if valid reasons (as determined by FHWA) can be documented. After the twenty-four hour, the motor carrier should cease all attempts to take a urine specimen for a controlled substances test and must document why the test could not be submitted.

Valid reasons would include, but are not limited to, securing hazardous materials loads, providing first-aid treatment, assisting in securing the accident site, being detained or arrested by law enforcement officials and a driver who has a ureterosigmoidostomy or is unconscious. A driver would also be prohibited from driving a CMV for a minimum of one year if the driver refused to be tested.

Although stated in general terms in subpart L of this proposal, the FHWA believes that a statement that motor carriers be required to provide drivers with the necessary post-accident procedures and instructions prior to operating a CMV, on a continuous basis, be made within the body of this section. Additionally, motor carriers would be required to maintain the information relating to the controlled substances test or the need for a test, if one was not performed. This information would include the valid reasons when a test was not performed under the recordkeeping requirements in § 382.1013 of this proposed rule.

The FHWA proposes in § 382.905(f) to allow tests done by Federal, State or local officials having independent authority to require controlled substances tests to meet the requirements of this section if the results of the test are obtained by the motor carrier and the testing was performed in conformance with the applicable Federal, State or local requirements for controlled substances testing. This means that if a National Park Service Police officer, State Highway Patrol officer, municipal police officer, or similar official has independent authority to require a controlled substances test after an accident, this test may be deemed as a

completed test by the motor carrier if the official used an approved or applicable testing methodology for his/her jurisdiction and the motor carrier obtains the results of the test. This will allow motor carriers to accept tests done by law enforcement officials, such as, but not limited to, blood tests, saliva tests, or hair tests when these tests are approved in the jurisdiction of the law enforcement official and the results are for the NIDA-five controlled substances and at the 49 CFR part 40 cutoff levels.

§ 382.907 Random Testing

The FHWA is proposing random testing that is similar to the current requirements of 49 CFR part 391 subpart H. The FHWA is proposing that the testing rate will remain the same as subpart H at 50 percent of the number of driver positions used by the motor carrier. A motor carrier's driver positions are determined by how many drivers the motor carrier has on average during a one year period. If the motor carrier's driver population fluctuates, the FHWA expects motor carriers to adjust their random selections based on the number of drivers in a testing cycle.

The motor carrier would select drivers for testing at various times and would ensure that the selection was based on statistically-valid methods. The driver selected would be notified only when he/she would be able to provide a urine specimen immediately upon notification. That is, the driver, once notified, would proceed directly to the collection site and provide a specimen without performing further work or taking any other actions which do not lead to the submission of the specimen.

The motor carrier must spread testing reasonably throughout a 12 month period. Medium and large carriers, those with seven or more drivers, must select driver's names at least once each quarter under the current drug regulations. The FHWA will expect similar performance under this proposal. Also motor carriers must ensure that each driver has an equal chance of being tested during the selection of driver's names.

The FHWA has had many inquiries from owner-operators and the public on how owner-operators comply with the random testing requirements. It has been the Department of Transportation's view that owner-operators are not allowed to have a random testing program on their own. Owner-operators must meet the conditions of random testing, which include that the random selection process be unannounced. The FHWA believes that the requirement of unannounced testing requires that an owner-operator must join a consortium, group or have a neutral, unbiased third party select a date for testing and the third party keeps the date confidential from the driver until that date arrives. Owner-operators, under this proposal, will be expected to perform the same type of random selection process.

Section 382.911 Reasonable Suspicion Testing

The term "reasonable suspicion" is defined as "the actions, appearance, behavior, conduct, speech or body odors of a driver contemporaneous with the operation of a CMV which are indicative of the use of controlled substances." As with the current controlled substances testing requirements, unless it is not feasible, at least one supervisor or motor carrier official must make the required observations. The person making the observations and determining that the driver must be tested for controlled substances use must be trained in detecting the symptoms of controlled substances use. The observations must be documented and signed by the observers within 24 hours of the observation. A copy of the documentation shall be attached to the results of the test and retained for a minimum of one year.

Section 382.913 Return-to-Duty Testing

This proposed section requires the motor carrier to conduct return-to-duty testing after a violation of this part and prior to allowing the driver to drive a commercial motor vehicle. A motor carrier is required to test a driver who has violated any of the controlled substances prohibitions in subpart H of this part prior to that driver again performing safety-sensitive functions, such as driving a commercial motor vehicle.

Section 382.914 Follow-Up Testing

This section requires testing after a determination by a substance abuse professional that the driver is in need of assistance (rehabilitation), but that such testing cannot exceed five years and is in addition to the other types of testing. The SAP may discontinue the testing at any time after the required six follow-up tests.

Section 382.915 Exceptions for Testing Performed by Consortiums

This section provides that pre-employment/pre-duty testing and random testing need not be performed directly by the motor carrier provided that the motor carrier directs or approves such testing program prior to using a driver participating in the program. The FHWA recognizes the high driver turnover rate in the motor carrier industry and believes that the provisions of this proposed section will minimize additional unnecessary tests while ensuring that drivers who use controlled substances while operating a CMV or on duty are identified and prohibited from performing safety-sensitive tasks.

The proposed conditions under which a motor carrier may use a driver without testing the driver for pre-employment/pre-duty are similar to the conditions presently included in 49 CFR 391.103. The information that a motor carrier is to obtain from a third-party testing service provider is similar to that contained in 49 CFR 391.103 and 391.109.

Section 382.917 Split Sample Testing

This proposed section sets forth the driver's rights regarding the testing of a subdivided portion of the driver's specimen upon a verified positive test result. The Omnibus Act gives a driver who has tested positive the right to request that the split sample be tested at a different laboratory. The Act does not specify who is to choose the laboratory and who is to pay for the test. The proposed paragraph gives the driver the right to request a different laboratory to test the secondary split sample. The FHWA is restating that the request for testing the split sample must be made within 72 hours of being notified that the original sample is verified as positive. This time period is required by 49 CFR part 40. The FHWA believes, though, that it must be restated in this section because many drivers do not have copies of 49 CFR part 40 and this provision is important to them. The driver has, by this regulation, up to 72 hours to request the secondary sample be tested to confirm the presence of the controlled substance(s) identified in the primary split samples test. A motor carrier or its agent, the medical review officer, may allow a longer time period. Regardless of whether the driver requests a test of the secondary split sample, all consequences shall begin as soon as the verified positive is reported to the driver. If the test is canceled, the consequences shall cease at that time. The source of payment for the analysis of the split sample test is not provided, but is a labor/management issue.

The FHWA will require that a motor carrier report to FHWA instances in which a verified positive test result is converted to a canceled test because the split sample result is negative. The report will be made to the FHWA's Regional Director, Office of Motor Carriers for the region in which the motor carrier has its principal place of business. The regional and division

offices of the Office of Motor Carriers enforce and implement the controlled substances testing regulations. For this reason, motor carriers must keep the local offices informed of any problems they are having with the procedures or regulations. The FHWA does not expect many instances where these reports will be necessary, since the FHWA has never been informed of such an event occurring under the current regulations, which allow, but do not require, motor carriers to perform split sample testing. The reports will assist the FHWA and DOT in quality control assessments.

Section 382.919 Canceled Tests

This section specifies when a resubmission of a canceled test is required and when it is prohibited. Many motor carriers performing testing under the current rules believe that when a random test is canceled by the laboratory and/or the medical review officer that a driver must submit a new specimen for testing. This is not correct. Only pre-employment, return-to-duty and reasonable suspicion tests, where reasonable suspicion is still documentable, must be conducted again. Like random tests, post-accident tests which are canceled, must not be redone.

Random and post-accident testing are deterrent aspects of the controlled substances testing program. The FHWA believes that the acts of submission of urine for testing are themselves deterrents to controlled substances use. This is not to say that the FHWA condones only submission of urine under the random or post-accident testing requirements without the laboratory and medical review officer functions also taking place. The FHWA, though, believes that a cancellation of a test by the laboratory under its criteria for cancellation of tests should not subject a driver to a resubmission for that test. The random or post accident test would be recorded as having been performed, but that a canceled result was obtained.

Under existing regulations, a canceled test may be corrected by certain administrative procedures. This will continue under 49 CFR part 40. Additionally, part 40 allows employers or motor carriers to directly observe the next required FHWA or DOT controlled substances test, when certain criteria have been met which indicate a possible adulteration of the previous specimen. These criteria are precise and must be followed when a motor carrier chooses to perform a direct observation of a driver urinating.

Subpart J—Notification of Controlled Substances Test Results and Recordkeeping

This subpart identifies the various notifications and recordkeeping requirements between each party: Motor carrier; laboratory; medical review officer; driver and substance abuse professional.

Section 382.1001 Laboratory Notifications

Proposed § 382.1001 requires laboratories to notify medical review officers, in accordance with the procedures set forth in 49 CFR part 40.

Section 382.1003 Medical Review Officer Notifications to the Tested Individual

The FHWA is proposing to continue to afford drivers who have tested positive for controlled substances the opportunity to discuss a positive test result and present to the medical review officer the affirmative defense that the driver's use of the controlled substance(s) was prescribed by a licensed health care professional. This section is similar to the current § 391.97. The medical review officer contacts the driver after a confirmed positive test for this reason. When the medical review officer is unable to contact a driver directly after a confirmed positive test finding, the motor carrier will be contacted by the medical review officer and will be required to instruct the driver to contact the medical review officer prior to the driver being dispatched, going on duty, or continuing on duty. Many medical review officers have informed FHWA and the Office of the Secretary of Transportation in various forums that drivers often do not contact them immediately. The provision that a driver must contact the medical review officer prior to performing a safety-sensitive function is added to assist medical review officers in reviewing the results quicker and reducing the time necessary to verify a test as negative or positive.

Medical review officers have also reported to FHWA that many drivers leave the motor carrier's employ or never join the motor carrier's work force after submission of a urine specimen. This greatly reduces the medical review officer's ability to contact the driver and verify the test result. Motor carriers will, therefore, be expected to make reasonable efforts to contact a tested driver, to allow the individual to provide an alternative medical explanation to the medical review officer and be referred to a substance abuse professional if the test is verified as positive.

Section 382.1005 Medical Review Officer Notifications to the Motor Carrier

Proposed § 382.1005 requires medical review officers to notify motor carriers of the results of a controlled substances test. An initial notification may be made orally and/or by electronic transmission, but in all cases a written notification must be forwarded to the motor carrier within 3 business days. Medical review officers would also be required to report to the motor carrier the medical review officer's inability to contact a driver to discuss possible alternative medical explanations as an affirmative defense for the use of a controlled substance.

Section 382.1007 Motor Carrier Notifications

This section proposes that motor carriers would be required to notify driver-applicants of the results of pre-employment tests, if the driver requests the results within 60 days after the driver is notified about the disposition of the employment application. This section also proposes that drivers be notified after any other type of test required by subpart I of this proposal.

Motor carriers would also be required to notify drivers when the medical review officer has contacted a designated management official due to an inability to contact the driver directly. As a follow up, motor carriers must notify the medical review officer that the driver has been contacted and has been instructed to contact the medical review officer.

Section 382.1009 Laboratory Recordkeeping and Record Retention

The FHWA is well aware of the paperwork burdens associated with this proposed rule and has analyzed the need for every document required to be collected and retained. The FHWA is describing the documents which must be maintained in very general terms, allowing motor carriers and their agents (laboratories, medical review officers and third party service providers) to customize the documents to fit their particular operation. The documents may be maintained electronically and shall be made available to the FHWA in written form upon demand.

Section 382.1011 Medical Review Officer Recordkeeping and Record Retention

Section 382.1011 proposes the medical review officer's recordkeeping and record retention requirements.

Section 382.1013 Motor Carrier Record Retention

Section 382.1013 proposes a motor carrier's requirements for recordkeeping.

Section 382.1015 Reporting of Results in a Management Information System

The FHWA, along with the other DOT agencies, is proposing to establish a management information system (MIS) to obtain and analyze the controlled substances testing program and alcohol testing program information. This section sets forth the requirements for this system.

Elsewhere in today's **Federal Register** is a parallel "MIS" NPRM regarding 49 CFR part 40 and 49 CFR part 391, subpart H. The preamble to the 49 CFR part 40 NPRM contains many comments, discussions and questions that should be considered in reviewing this NPRM. Your comments on this NPRM should indicate that you are responding to questions or comments found in the generic NPRM under 49 CFR part 40, this specific NPRM (FHWA Docket No. MC–92–23, the alcohol testing NPRM (FHWA Docket No. MC–92–19), or the NPRM for changing 49 CFR part 391, subpart H (FHWA Docket No. MC–93–2).

Section 382.1017 Access to Individual Records

The FHWA is proposing that all records prepared in response to this proposed rule be maintained in a secure and confidential manner. No person may release information on an individual test, or other information pertaining to a violation of this part which is attributed to an individual, unless such a specific release is authorized by the tested individual, required by law or otherwise expressly authorized by this part. This proposal will provide for adequate security and confidentiality of test results and other information.

The FHWA is further proposing to require that a driver have access to the driver's records upon written request. This proposal is in addition to the requirement that a driver be notified of the results of a test.

Proposed paragraph (f) requires a motor carrier to make available to another motor carrier, upon written request of a driver, the information requested by the driver regarding the driver's participation in the motor carrier's controlled substances testing program. The FHWA believes this proposed requirement will provide the motor carrier, wishing to hire/use a driver who has previously driven for another motor carrier subject to this part, with the necessary information regarding the driver's participation in the program of the previous motor carrier. This paragraph complements the existing requirements in 49 CFR 383.35 and 391.23. These sections require a motor carrier to check previous employment of a person it intends to hire/use as a driver of a commercial motor vehicle.

The FHWA would like to receive comments regarding whether a driver may be required as a condition of employment to provide a signed authorization allowing the new motor carrier to obtain results from prior tests performed by the driver's preceding employing motor carriers. The FHWA recognizes that a problem exists in the industry with drivers who, after testing positive for controlled substances, seek employment with another motor carrier without informing the hiring motor carrier of the previous tests. This problem is exacerbated by the high turnover rate of drivers in the industry. The FHWA has received numerous comments and suggestions from interested parties in favor of requiring drivers to release previous tests for controlled substances to a hiring motor carrier. The FHWA is seeking comments on the feasibility of these suggestions for controlled substances test results.

This section requires a motor carrier to release all information relating to this part and permit access to all facilities utilized in complying with this part when requested by the FHWA, another DOT agency, the Secretary of Transportation or State or local officials with regulatory authority over the controlled substances use program of a motor carrier. The facilities may include collection sites, record storage areas and the offices and records of substance abuse professionals (SAP). In addition, information relating to an accident under investigation by the National Transportation Safety Board (NTSB) shall be released to the NTSB when so requested.

Section 382.1017(d) imposes on medical review officers the requirement that medical review officers make available copies of all test results and other records pertaining to the motor carrier's controlled substances misuse prevention program, when requested by appropriate government agencies. This represents a change from the current rule in part 391, subpart H, which imposes such a requirement only on motor carriers. Direct access to medical review officer records is being proposed in response to comments from motor carriers and medical review officers administering current controlled substances testing programs. Many medical review officers have expressed a desire to report positive test results directly to FHWA, but feel constrained by the lack of a provision expressly authorizing such release. Such a reporting mechanism could be an important check on motor carriers who do not retain records of positive test results.

As an agent of the motor carrier, the medical review officer is subject to the access requirements imposed expressly on the motor carrier. As the rule is currently written, however, there may also be some justification for treating the medical review officer and the motor carrier as different entities in regard to release of information. See, *e.g.*, 49 CFR 391.89(a), medical review officer access provisions; 49 CFR 391.89(b), motor carrier access provisions. In any event, FHWA currently may obtain medical review officer generated information on positive test results through access to motor carriers records. Obtaining the information directly from the medical review officer would raise no additional privacy considerations for the driver, and would serve as an effective aid in enforcement. This may prove particularly important given the additional consequences for positive test results in the proposed rule. Because evaluation, rehabilitation and driving prohibition periods will result from positive tests under the proposed rule, there will be an even greater incentive on the part of motor carriers to not retain reports of positive results.

It is not being proposed to expressly permit access to medical review officer facilities utilized in complying with the rule, only to medical review officer records. Access to facilities would not aid in solving the problem of motor carriers ignoring positive test results and continuing to administer tests on the driver until a negative result is achieved, recorded and maintained.

The FHWA requests comments on this proposal expressly granting the FHWA access rights to medical review officer records. Are medical review officers reluctant to share the information directly with the FHWA under the current rule? What is the scope of the problem of motor carriers not retaining records of positive results? Will the proposed requirements solve the problem?

In responding to this issue, possible alternatives should be addressed in detail. For instance, reporting information to the FHWA by medical review officers could be made voluntarily. Commenters may also consider what specific items of medical review officer information, if not all,

should be made available to the FHWA. Perhaps only verified positive test results should be reported directly to the FHWA. Should medical review officers be allowed to report to the FHWA laboratory confirmed positive test results which are not verified as positive by the medical review officer? Medical review officers are not allowed under the current rules to report unverified positive test results to the motor carrier.

The FHWA is also proposing in paragraph (g) that a motor carrier may release information maintained under this part to certain individuals in a proceeding initiated by or on behalf of the driver. This paragraph will ensure that relevant facts relating to a person's use of controlled substances maintained by a motor carrier are made available in proceedings.

Subpart K—Consequences For Drivers Engaging In Controlled Substances-Related Conduct

§ 382.1101 Removal From Safety-Sensitive Function

This section is similar to § 382.501 of the proposed alcohol rule.

§ 382.1103 Required Evaluation

This section is similar to § 382.503 of the proposed alcohol rule.

§ 382.1105 Other Controlled Substances-Related Conduct

This section is similar to § 382.505 of the proposed alcohol rule.

§ 382.1107 Additional Consequences for Controlled Substances Violations

Section 5(f) of the Act directs the Secretary to determine appropriate sanctions for drivers who are determined to have used controlled substances through testing developed under this Act or used controlled substances in violation of law or Federal regulation, but are not under the influence of controlled substances as provided in the CMVSA. Regulations issued pursuant to the CMVSA impose disqualifications and penalties for driving under the influence of controlled substances, see § 383.51, and other controlled substances misuse, see § 392.5. These consequences are intended to rid the highways of drivers who continually violate alcohol misuse prohibitions and thereby pose a threat to the public.

When a violation of § 382.803 involving a verified positive controlled substances test result is identified by a motor carrier, the motor carrier would be prohibited from using the driver for the periods provided in the rule. The motor carrier would be required to document the violation, and both the motor carrier and the driver would be required to comply strictly with the consequences noted in this section, subject to the additional consequences in paragraphs (c) through (e) for failure to comply. There would be no licensing sanctions.

However, the current CDL disqualifications of one year for a first offense and lifetime for subsequent offenses upon conviction of operating a commercial motor vehicle while under the influence of a controlled substance remain applicable.

Proposed paragraph (b) prohibits a driver who refuses to be tested from driving any commercial motor vehicle for no less than one year. The FHWA believes that a strong disincentive to refuse to comply with this proposed rule is needed. This proposal is similar to the requirement of 49 CFR 383.51(b)(3)(i) which requires a driver who refuses to undergo alcohol testing required by a State or local jurisdiction under a probable cause determination to be disqualified for one year upon a conviction for such refusal.

Proposed § 382.1107(c) would require that motor carriers who knowingly use drivers who have violated these rules, will be subject to 49 U.S.C. 521(b) penalty provisions. These provisions provide for civil forfeiture penalties of up to $10,000 for violations of motor carrier safety regulations.

Proposed § 382.1107(d) prohibits a person found to have violated the controlled substances misuse prohibition and testing rules of another DOT agency from operating a CMV until the driver complies with the requirements of that DOT agency.

As explained above, subpart L of this proposed rule includes other actions which must be taken prior to a driver operating a commercial motor vehicle after having violated the prohibitions in §§ 382.801 through 382.805. These actions include an evaluation by the substance abuse professional and a finding that the driver has properly followed any instructions given. A driver needing assistance must also be tested for controlled substances use and the results must indicate a negative test result.

Proposed § 382.1107(e) prohibits drivers from driving a commercial motor vehicle following a fatal accident in which their controlled substances tests shows a verified positive test result. This prohibition is similar to the current drug rule in part 391, in which a driver is disqualified for one year following a positive drug test result after he or she is involved in a fatal accident. 49 CFR 391.117(b).

Table III indicates FHWA proposed consequences for violations of the proposed controlled substances prohibitions. Table IV indicates the post-accident testing requirements and additional penalties that would be imposed for prohibited actions during and after an accident.

TABLE III.—DRIVER CONTROLLED SUBSTANCES PROHIBITIONS AND CONSEQUENCES

First offense	Second offense within a three-year period	Third offense within a three-year period	Refusal to be tested
Consequences			
Professional Referral, and (*)	Professional Referral, 60-day driving suspension, and (*).	Professional Referral, 120-day driving suspension, and (*).	One year minimum driving prohibition and (*).

Prohibited Activities: Use or tests positive for controlled substances.
(*)—Driver must submit a urine specimen which has a negative result.

TABLE IV.—POST ACCIDENT CONTROLLED SUBSTANCES TESTING AND PENALTIES

[Testing Requirements—Controlled Substances Test: Within eight hours of accident]

	Penalties	
	No fatalities	Fatal accident
Refusal to submit to testing	One year suspension	One year suspension.

TABLE IV.—POST ACCIDENT CONTROLLED SUBSTANCES TESTING AND PENALTIES—Continued

[Testing Requirements—Controlled Substances Test: Within eight hours of accident]

	Penalties	
	No fatalities	Fatal accident
Leave accident scene prior to testing	One year suspension	One year suspension.
Verified positive test result:	(1) Professional Referral (2) 120 day driving suspension, and (3) Driver must submit a urine specimen which has negative result.	(1) Professional Referral. (2) One year suspension, and (3) Driver must submit a urine specimen which has a negative result.

Qualifying Accident: Any accident involving the death of a human being, or any accident in which the driver receives a citation for a moving traffic violation arising from the accident (as defined by State or local law), and (1) There was bodily injury requiring medical treatment away from the accident scene, or (2) One or more motor vehicles incurred disabling damage as a result of the accident and must be transported away from the scene by a tow truck or other motor vehicle.

Section 382.1109 Disqualifications

As stated above, the penalty provisions of the CDL regulations are not affected in any way by this proposed rule. The authority of State and local officials to implement the disqualifications included in 49 CFR part 383 are not affected by this proposed rule. Drivers found by Federal, State or local officials to be driving under the influence of controlled substances will be subject upon conviction to disqualifications of from one year to lifetime under § 383.51(b).

Subpart L—Controlled Substances Misuse Information, Training, and Referral

Section 382.1201 Motor Carrier Obligation To Promulgate a Policy on the Misuse of Controlled Substances

This section proposes that motor carriers provide drivers with sufficient information regarding the motor carrier's controlled substances use program. The FHWA is proposing, as a minimum, that at least ten specific items be included in the materials a motor carrier makes available to its drivers.

Though the form of this material is not specified in the proposed rule, the materials must be available to all drivers at all times. Therefore, while the material may initially be presented to drivers in a course/seminar setting, the FHWA anticipates that the material will also be posted or otherwise made available to drivers on a continuing basis and updated as necessary to reflect current information and procedures.

Section 382.1203 Training for Supervisors and Company Officials

This section requires that persons who may make determinations regarding reasonable suspicion testing must receive a minimum of 60 minutes of training prior to making any such determinations. The content of the training, i.e., course outlines, instructor's materials, participant's materials, video tapes, etc. must be maintained by the motor carrier. In addition, the motor carrier must also maintain a list of all supervisors and company officials who have taken the training and the date(s) they received the training.

Section 382.1205 Referral, Evaluation, and Treatment

Refer to the Office of the Secretary's Common Preamble for a detailed discussion of this section. This section is identical to proposed § 382.605 in a companion rulemaking on alcohol testing in today's **Federal Register**.

VII. Regulatory Analyses and Notices

Regulatory Impact Analysis

This proposed rule will require motor carriers to test drivers for the use of controlled substances. This rule will affect trucking companies, passenger carriers, State and local governments and anyone who operates a commercial motor vehicle on the public highways.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document is a major rule under Executive Order 12291 and a significant regulation under the regulatory policies and procedures of the DOT. A draft regulatory impact analysis has been prepared and a copy has been placed in the docket. A summary is included here.

Economic Impact Analysis

The Act requires among other things, testing of safety-sensitive employees in the highway industry for use of controlled substances in violation of the law or Federal regulations. The Act specifically mandates privacy in collection techniques, testing safeguards, confirmation of positive results, confidentiality of test results and scientific random selection of employees for testing. The Act further mandates pre-employment, random, post-accident, and reasonable suspicion testing.

Within the framework of these legislative mandates the FHWA is proposing a controlled substances testing program that minimizes the economic impact to the industry by utilizing established procedures, equipment, techniques, and safeguards that are already available to employers. The proposed rule will not require the development of new technologies, or the need to create an extensive cadre of testing personnel. In the majority of cases, an employer's controlled substances testing program will be an incremental expansion of existing drug testing programs, utilizing the same facilities, personnel, and records systems that currently exist.

The following summarizes the preliminary industry cost and benefit evaluation for the final rule on controlled substances testing. The rule is intended to prohibit absolutely controlled substances when operating a commercial motor vehicle. The rule will require pre-employment/pre-duty, random, post-accident, reasonable suspicion, and return-to-duty controlled substances testing for approximately 5,000,000 drivers of commercial motor vehicles.

The economic cost to the motor carrier industry will be substantial and include, in addition to the cost of the test, the cost of administering a testing program, the cost of replacement drivers, the occasional court cost, and for owner-operators the potential loss of livelihood.

Notwithstanding these costs to the motor carrier industry, the FHWA believes that substantial benefits exceeding the costs will accrue as a result of this proposal. There will be benefits due to the prevention of fatalities, personal injuries, property damage, and lost productivity resulting from accidents attributed to neglect or error on the part of commercial motor vehicle drivers whose judgment or motor skills were diminished by the use of controlled substances. Benefits will

also accrue from a reduction in absenteeism and pilferage.

The assumptions and cost factors used in preparing the economic impact estimate have been developed by the FHWA. This regulatory impact analysis is in the docket for this rulemaking and is subject to review. Cost data were furnished by motor carriers, motor carrier industry associations, and trade publications.

The benefit cost analysis is a direct arithmetic comparison between the identified and quantified cost of a controlled substances testing program and the economic value of the benefits expected to be derived therefrom. The preliminary cost-benefit analysis is for a ten year period beginning with 1993; assumes a random testing rate of 50 percent, a deterrance rate of 70 percent the first year, then gradually increasing to approximately 95 percent.

The estimated total cost consists of: setting up and administrating a testing program, the cost of pre-employment, random, post accident, reasonable suspicion, and follow-up testing. Costs were estimated using the cost of a testing program for all types of testing operated exclusively by motor carriers and their testing contractors.

The estimated value of the benefits is the cost associated with projected reduction in commercial motor vehicle accidents by the assumed 5 percent of drivers that will have used controlled substances and includes fatalities, injuries, property damage, traffic delays, and emergency services that will not occur by removing or deterring these drivers from the highways. Additional benefits will also result from the reduction in absenteeism and pilferage.

Summary of Benefits and Costs

Costs and benefits are total for the 10 year analysis period in assumed 1993 dollars, based on a 50 percent random testing rate.

Controlled substances testing program	Random testing rate	10 year benefits (billions)	10 year costs (billions)	Benefit cost ratio
Motor Carrier	50%	$42.55	$2.39	17.79

In other words for every $1.00 spent on this testing program there would be returned in benefits $17.79.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA has evaluated the effects of this rulemaking on small entities. This final rule would require motor carriers to test drivers for the use of controlled substances. It will have a significant adverse economic impact on small entities. Because the Omnibus Act mandates controlled substances testing irrespective of the size of the entities, the FHWA is unable to lessen the economic impact on them.

For these reasons, the FHWA hereby certifies that this action will have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This proposal adds part 382 of the FMCSRs pertaining to testing for controlled substances by drivers of commercial motor vehicles operating in commerce on public roads and highways. These proposed requirements directly affect motor carriers and the drivers for these motor carriers. This document preempts State or local laws and regulations that are inconsistent with this proposed rule, as required by the Omnibus Transportation Employee Testing Act of 1991. Therefore, the agency does not have to prepare a Federalism Assessment for this proposal.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in part 382, subpart J of this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 382

Controlled Substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Hours of service.

Issued on: December 2, 1992.

T. D. Larson,

Administrator.

Andrew Card,

Secretary of Transportation.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subchapter B, chapter III, as set forth below:

1. Chapter III is amended by adding subparts G, H, I, J, K and L of part 382 as proposed elsewhere in this separate part of today's Federal Register as follows:

Part 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart G—Controlled Substances Use And Testing

Sec.

382.701 Purpose.
382.703 Applicability.
382.705 Controlled substances testing procedures.
382.707 Definitions.
382.709 Preemption of State and local laws.
382.711 Other requirements imposed by motor carriers.
382.713 Requirement for notice.
382.715 Starting date for controlled substances testing programs.

Subpart H—Prohibitions and Consequences

382.801 Controlled substances use.
382.803 Controlled substances testing.
382.805 Refusal to submit to a required controlled substances test.

Subpart I—Controlled Substances Tests Required

382.901 General.
382.903 Pre-employment/pre-duty testing.
382.905 Post-accident testing.
382.907 Random testing.

382.909 [Reserved]
382.911 Reasonable suspicion testing.
382.913 Return-to-duty testing.
382.914 Follow-up testing.
382.915 Exceptions to testing performed by consortiums.
382.917 Split sample testing.
382.919 Canceled tests.

Subpart J—Notification of Controlled Substance Test Results and Recordkeeping

382.1001 Laboratory notifications.
382.1003 Medical review officer notifications to the tested individual.
382.1005 Medical review officer notifications to the motor carrier.
382.1007 Motor carrier notifications.
382.1009 Laboratory recordkeeping and record retention.
382.1011 Medical review officer recordkeeping and record retention.
382.1013 Motor carrier record retention.
382.1015 Reporting of results in a management information system.
382.1017 Access to individual records.

Subpart K—Consequences for Drivers Engaging in Controlled Substances-Related Conduct

382.1101 Removal from safety-sensitive function.
382.1103 Required evaluation.
382.1105 Other controlled substances-related conduct.
382.1107 Additional consequences for controlled substances violations.
382.1109 Disqualifications.

Subpart L—Controlled Substances Use Information, Training, And Referral

382.1201 Motor carrier obligation to promulgate a policy on the misuse of controlled substances.
382.1203 Training for supervisors and company officials.
382.1205 Referral, evaluation, and treatment.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. app. 2701 *et seq.*; 49 U.S.C. 3102; 49 CFR 1.48.

* * * * *

Subpart G—Controlled Substances Use and Testing

§ 382.701 Purpose.

(a) The purpose of this subpart is to reduce highway accidents that result from driver use of controlled substances, thereby reducing fatalities, injuries and property damage.

(b) Subparts G through L prescribe minimum Federal safety standards to deter the use of controlled substances as defined in part 40 of this title (marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP).

§ 382.703 Applicability.

(a) This part applies to all motor carriers and drivers as defined in this part who are required under part 383 of this chapter to obtain a commercial driver's license, except for motor carriers and their drivers who are required to conform to the controlled substances testing requirements of the Federal Transit Administration of the Department of Transportation found in part 653 of this title or have obtained a full waiver or State option waiver from the part 383 requirements.

(b) An owner-operator motor carrier who employs himself/herself as a driver must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.

(c) The requirements of this part do not apply to any employee whose place of reporting or point of departure (home terminal) for motor carrier transportation services is located outside the territory of the United States.

§ 382.705 Controlled substances testing procedures.

Each motor carrier shall ensure that all controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address controlled substances testing are incorporated by reference and are made applicable to motor carriers by this part.

§ 382.707 Definitions.

Words or phrases used in this part are defined in § 390.5 of this chapter, except as provided herein—

Accident means an occurrence involving a commercial motor vehicle engaged in the operations of a motor carrier who is subject to this part resulting in:

(1) The death of a human being; or

(2) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(3) One or more motor vehicles incurring disabling damage as a result of the accident and transported away from the scene by a tow truck or other motor vehicle.

Canceled test means that a test was not performed by a Department of Health and Human Services, National Institute on Drug Abuse (NIDA) certified laboratory or the medical review officer determines that a procedural error or adulteration occurred which invalidates the test result.

Collection site means a place where individuals present themselves for the purpose of providing urine specimens to be analyzed for specified controlled substances. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation or shipment of the samples to a laboratory.

Commerce means (1) any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and (2) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commerial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating or gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds; or

(3) Is designed to or transport(s) 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (part 172, subpart F of this title).

Confirmed positive test means that the test a laboratory certified by the Department of Health and Human Services, National Institute on Drug Abuse (NIDA) has determined that one or more controlled substances was found in a specimen of human urine at or above the level specified in § 40.29 of this title.

Consortium means an entity, including a group or association of employers, motor carriers, or contractors, that provides controlled substances testing services as required by this part or other DOT alcohol testing rules and that acts on behalf of the employers.

Controlled substance or drug has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR part 1308).

Disqualification means either:

(1) The suspension, revocation, cancellation, or any other withdrawal by a State of a person's privileges to drive a commercial motor vehicle; or

(2) A determination by the FHWA, under the rules of practice for motor carrier safety contained in part 386 of this chapter, that a person is no longer

qualified to operate a commercial motor vehicle under parts 382 or 391 of this chapter; or

(3) The loss of qualification which automatically follows conviction of an offense listed in § 383.51; or

(4) The loss of qualification which automatically follows a violation of the controlled substances prohibitions as specified in this subchapter.

DOT Agency means an agency (or operating administration) of the United States Department of Transportation administering regulations requiring controlled substances testing (14 CFR parts 65, 121, and 135; 33 CFR part 95; 46 CFR parts 4 and 17; 49 CFR parts 199, 219, 382 and 653).

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to, full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to a motor carrier or who operate a commercial motor vehicle at the direction of or with the consent of a motor carrier. For the purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to a motor carrier to drive a commercial motor vehicle.

Employer means a motor carrier and any other person designated in a DOT agency controlled substance rule as an employer.

FHWA means the Federal Highway Administration, U.S. Department of Transportation.

Health care professional means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to prescribe controlled substances. The term includes, but is not limited to, doctors of medicine (MD), doctors of osteopathy (DO), doctors of dental surgery (DDS), physician assistants, advanced practice nurses, and doctors of chiropractic.

Medical review officer or M.R.O. means a licensed doctor of medicine (M.D.) or osteopathy (D.O.) with knowledge of drug abuse disorders that is employed or used by a motor carrier to conduct drug testing in accordance with this part.

Motor carrier means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term *motor carrier* includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of commercial motor vehicle equipment and/or accessories.

Negative test result means that a motor carrier's medical review officer has verified that a Department of Health and Human Services, National Institute on Drug Abuse (NIDA) certified laboratory's negative test result is accurate. A negative test result also means that there was not a sufficient quantity of any controlled substance in the specimen of human urine to meet the screening or confirmation levels specified in 49 CFR 40.29.

On-duty means all on duty time as defined in § 395.2, under *On-duty time*, of this subchapter and includes all time submitting urine specimens for controlled substances testing and performing any other functions contained in this part and in part 40 of this title with respect to controlled substances testing.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any of those on-duty functions set forth in § 395.2, under *On-Duty time*, (1) through (7) of this chapter.

Principal place of business means a single location designated by the motor carrier, normally its headquarters, where records required by parts 382, 387, 390, 391, 395, 396, 397 and 398 of this chapter will be maintained.

Refuse to submit to a test means that a driver failed or refuses to provide an adequate urine specimen without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with this part or engages in conduct that clearly obstructs the collection process. The notice of the requirement to be tested may be made by the motor carrier.

Safety-sensitive function means any of those on-duty functions set forth in § 395.2, under *On-duty time*, paragraphs (1) through (7) of this chapter.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of substances abuse disorders.

Verified positive test means that the test a motor carrier's medical review officer has determined that a Department of Health and Human Services, National Institute on Drug Abuse (NIDA) certified laboratory's confirmed positive test result is the result of prohibited controlled substances use.

§ 382.709 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees (including drivers) or employers (including motor carriers) or to the general public.

§ 382.711 Other requirements imposed by motor carriers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of motor carriers, or the rights of drivers, with respect to the use of controlled substances, including authority and rights with respect to controlled substances testing and rehabilitation.

§ 382.713 Requirement for notice.

Before performing a controlled substances test under this part, each motor carrier shall notify a driver or driver-applicant that the controlled substances test is required by this part. No motor carrier shall falsely represent that a controlled substances test is administered under this part.

§ 382.715 Starting date for controlled substances testing programs.

(a) Large motor carriers. Each motor carrier with fifty or more drivers on [the effective date of the final rule] shall implement the requirements of this part on [date one year after the effective date of the final rule].

(b) Small motor carriers. Each motor carrier with fewer than fifty drivers on [the effective date of the final rule] shall implement the requirements of this part on [date two years after the effective date of the final rule].

(c) All motor carriers shall have a controlled substances misuse program that conforms to this part by [date two years after the effective date of the final rule] or by the date a motor carrier begins motor carrier operations, whichever is later.

Subpart H—Prohibitions and Consequences

§ 382.801 Controlled substances use.

Except as provided in § 382.901(a) of this part, no driver shall perform a safety-sensitive function, if the driver uses any controlled substances in violation of this part. No motor carrier having actual knowledge that a driver has used controlled substances shall permit the driver to perform a safety-sensitive function or continue to perform a safety-sensitive function.

§ 382.803 Controlled substances testing.

Except as provided in § 382.901(a), no driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances. No motor carrier having actual knowledge that a driver has tested positive for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.805 Refusal to submit to a required controlled substances test.

No driver shall refuse to submit to a post-accident controlled substances test required under § 382.905, a random controlled substances test required under § 382.907, a reasonable suspicion controlled substances test required under § 382.911, or a follow-up controlled substances test required under § 382.914. No motor carrier shall permit a driver who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

Subpart I—Controlled Substances Tests Required

§ 382.901 General.

(a) This subpart does not prohibit a motor carrier from requiring a driver to notify the motor carrier of therapeutic or prescription controlled substance use.

(b) All controlled substances testing done in accordance with this part shall be performed using all part 40 of this title split sample collection procedures.

§ 382.903 Pre-employment/pre-duty testing.

(a) Prior to the first time a driver performs safety-sensitive functions for a motor carrier, the driver shall undergo testing for controlled substances. No motor carrier shall allow a driver to perform safety-sensitive functions unless the driver has been administered a controlled substances test with a negative test result.

(b) A motor carrier is not required to administer a controlled substance test as required by paragraph (a) of this section, if:

(1) The driver has undergone a pre-employment controlled substance test required by this subpart or the controlled substance testing rule of another DOT agency within the previous six months, with a negative test result; and

(2) The motor carrier ensures, by obtaining the information required by § 382.915(d), that no prior motor carrier of the driver of whom the motor carrier has knowledge has records of a violation of this part or the controlled substances misuse rule of another DOT agency within the previous six months.

§ 382.905 Post-accident testing.

(a) As soon as practicable following an accident involving a commercial motor vehicle, each motor carrier shall test for controlled substances each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident.

(b) If a test required by this section is not administered within eight hours following the accident, the motor carrier shall prepare a written report to be kept in the motor carrier's files stating the reasons the test was not promptly administered. If a controlled substances test required by this section is not administered within 24 hours following the accident, the motor carrier shall cease attempts to administer a controlled substances test and shall prepare the report.

(c) A driver who is subject to post-accident testing who leaves the scene of an accident without a valid reason, except to submit to a test, may be deemed by the motor carrier to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(d) A motor carrier shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(e) The results of any post accident tests for the use of controlled substances performed by Federal, State, or local officials having independent authority to require a driver to submit to a test, shall be considered to meet the requirements of this section provided such tests conform to applicable Federal, State or local requirements, and that the results of the tests for the controlled substances identified in part 40 of this title and cut-off levels required by this part are obtained by the motor carrier.

§ 382.907 Random testing.

(a) Each motor carrier shall, at various times, randomly select drivers for unannounced controlled substances testing. The selection of drivers shall be made by use of a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each driver shall have an equal chance of being tested under the selection process used.

(b) During each 12-month period following the start of random controlled substances testing by the motor carrier, the motor carrier shall meet the following conditions:

(1) The dates for administering unannounced testing of randomly-selected drivers shall be spread reasonably throughout the 12-month period; and

(2) The number of drivers randomly selected for testing during the 12-month period shall be equal to an annual rate of not less than 50 percent of the total number of drivers subject to controlled substances testing under this part or the controlled substances rule of another DOT agency. If the motor carrier conducts random testing through a consortium, the annual rate may be calculated for each individual motor carrier or for the total number of drivers and DOT covered employees subject to random testing by the consortium.

(c) Each motor carrier shall require that each driver who is notified of selection for random testing proceeds to the testing site immediately. However, if the driver is performing a safety-sensitive function at the time of notification, the motor carrier shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the collection site as soon as possible.

§ 382.909 [Reserved]

§ 382.911 Reasonable suspicion testing.

(a) Each motor carrier shall require any driver to submit to a controlled substances test, when the motor carrier has reasonable suspicion to believe that the driver has violated the prohibitions in this part.

(b) The motor carrier's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The required observations shall be made by a supervisor or management official who is trained in detecting the symptoms of controlled substances use. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the controlled substances test collection on that driver. Documentation of the driver's conduct shall be prepared and signed by the witnesses within twenty four hours of the observed behavior or before the results of the tests are released, whichever is earlier. A motor carrier shall ensure that the driver is transported immediately to a collection site for the collection of a urine specimen.

(c) Controlled substances testing is authorized by this section only if the observations required by paragraph (b) of this section are made during or just preceding the period of the work day that the covered driver is required to be in compliance with this part. A driver may be required to undergo reasonable suspicion testing for controlled substances while the driver is performing safety-sensitive functions; just before the driver is to perform safety-sensitive functions; or just after the driver has ceased performing such functions.

(d) As part of reasonable suspicion drug testing programs established pursuant to this section, motor carriers may test for drugs in addition to those specified in this part only with approval granted by the Federal Highway Administrator under part 40 of this title and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§ 382.913 Return to duty testing.

Each motor carrier shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart H of this part, the driver shall undergo a return to duty controlled substances tests with a result indicating a negative test result.

§ 382.914 Follow-up testing.

Following a determination under § 382.1205(b) that a driver is in need of assistance in resolving problems associated with controlled substances use, each motor carrier shall ensure that the driver is subject to unannounced follow-up testing as directed by a substance abuse professional in accordance with the provisions of § 382.1205(c)(2)(ii).

§ 382.915 Exceptions for testing performed by consortiums.

(a) A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with § 382.903(a) and § 382.907 if the driver meets the requirement of § 391.65 of this chapter.

(b) A motor carrier may use a driver who is not tested by the motor carrier without complying with § 382.903(a), provided the motor carrier assures itself:

(1) That the driver has participated in a drug testing program that meets the requirements of this subpart within the previous 30 calendar days, and

(2) While participating in that program, the driver was either:

(i) Tested for controlled substances within the past 6 months (from the date of application with the motor carrier) as required by § 382.903, or

(ii) Participated in the drug testing program for the previous 12 months (from the date of application with the motor carrier).

(c) Pre-employment/pre-duty testing and random testing need not be performed directly by the motor carrier provided that the motor carrier directs or approves the testing program of a contractor or previous motor carrier prior to using a driver who has participated in such a program.

(d) A motor carrier who exercises either paragraphs (a), (b) or (c) of this section or § 382.903(b) shall contact the controlled substances testing program in which the driver participates or participated and shall obtain the following information:

(1) Name and address of the program(s);

(2) Verification that the driver participates or participated in the program(s);

(3) Verification that the program(s) conform to part 40 of this title;

(4) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances;

(5) The date the driver was last tested for controlled substances;

(6) The medical review officer's verified results, negative or positive, of any tests taken within the previous six months; and

(7) The results of any referrals to a substance abuse professional for all tests which indicated controlled substances use.

(e) The motor carrier shall retain the information required by this section as specified in § 382.1005.

(f) A motor carrier who uses, but does not employ, a driver more than once a year must assure itself once every six months that the driver participates in a controlled substances testing program that meets the requirements of this part.

§ 382.917 Split sample testing.

(a) A motor carrier or medical review officer must notify a driver, whose primary specimen verified positive for controlled substance use, that the driver may request that the medical review officer to direct the lab to send the "split sample" to the NIDA-certified laboratory specified by the (motor carrier/driver). This testing will determine whether the controlled substance found in the split specimen is present in any quantity in the split sample.

(b) A driver shall submit a request for testing of the split sample to the medical review officer within 72 hours of the driver's actual notification of the verified positive test result.

(c) If the test of the split sample fails to confirm the presence of the drugs(s) or drug metabolites(s), or if the split sample is unavailable, inadequate for testing or untestable, the medical review officer shall cancel the test.

(d) A motor carrier must report every occurrence of a split sample negative test result which is preceded by a primary verified positive test result to the Regional Director, Office of Motor Carriers for the region in which the motor carrier has located its principal place of business. The address of each regional office is listed in § 390.27 of this chapter. The report must be mailed within 15 calendar days of being notified by the medical review officer that the test result has been canceled.

§ 382.919 Canceled tests.

(a) A driver, whose urine specimen was submitted for testing for preemployment/pre-duty or return-to-duty controlled substances testing under this part, which is canceled by the laboratory or the medical review officer shall resubmit a urine specimen for testing, when the driver continues to seek employment or continued employment with the motor carrier.

(b) A driver whose urine specimen was submitted for testing for post-accident or random controlled substances testing under this part which is canceled by the laboratory or the medical review officer shall not resubmit a urine specimen for testing.

(c) A driver whose urine specimen was submitted for testing for reasonable

suspicion controlled substances testing under this part which is canceled by the laboratory or the medical review officer shall not resubmit a urine specimen for testing, unless the specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver continue to be present and documentation of the driver's conduct is prepared and signed by the witnesses within twenty four hours of the observed behavior or before the results of the new tests are released, whichever is earlier.

Subpart J—Notification of Controlled Substance Test Results and Recordkeeping

§ 382.1001 Laboratory notifications.

A laboratory shall notify the medical review officer of controlled substances results in accordance with the procedures in part 40 of this title.

§ 382.1003 Medical review officer notifications to the tested individual.

(a) Any driver who is alleged to have violated § 382.803 of this part through a confirmed positive test result shall have available as an affirmative defense, to be proven by the driver through clear and convincing evidence to the medical review officer, that his/her use of a controlled substance (except for the substance methadone) was prescribed by a health care professional who is familiar with the driver's medical history and assigned safety-sensitive functions.

(b) The medical review officer shall make reasonable efforts to contact a driver and make available to the tested individual the opportunity to discuss a laboratory confirmed positive test result. The medical review officer shall afford a tested individual the opportunity to discuss a confirmed positive controlled substances test result with the medical review officer before reporting the test result to the motor carrier as a verified positive. If a medical review officer is unable to contact a tested driver, after making and documenting all reasonable efforts, the medical review officer shall contact a designated management official of the motor carrier to arrange for the individual to contact the medical review officer prior to being dispatched, performing or continuing to perform safety-sensitive functions, to the extent practicable. The medical review officer may verify a positive test without having communicated with the driver about the results of the test if:

(1) The driver expressly declines the opportunity to discuss the results of the test, or

(2) Within five days after a documented contact by a motor carrier's designated management official instructing the driver to contact the medical review officer, the driver has not done so.

(c) All tests reported to the motor carrier by the medical review officer as a verified positive, in which the medical review officer did not discuss the results with the driver, shall be so noted and shall be accompanied by complete documentation of the medical review officer's efforts to contact the driver including contacts with a motor carrier's designated management official.

§ 382.1005 Medical review officer notifications to the motor carrier.

(a) The medical review officer may report to the motor carrier using any communications device, but in all instances a signed written notification must be forwarded within three business days of completion of the medical review officer's review, pursuant to part 40 of this title. A medical review officer shall report to a motor carrier clearly:

(1) That the controlled substances test being reported was in accordance with part 40 of this title and this part;

(2) The name of the individual for whom the test results are being reported;

(3) The type of test indicated on the custody and control form (i.e., random, post-accident, etc.);

(4) The date and location of the test collection;

(5) The identities of the persons or entities performing the collection, analysis of the specimens and serving as the medical review officer for the specific test;

(6) The verified results of a controlled substances test, either positive or negative, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

(b) A medical review officer shall report to the motor carrier that a driver is unable to be contacted for a discussion in accordance with § 382.902, and that the driver must be contacted by the motor carrier as soon as practicable and requested to contact the medical review officer within 24 hours.

§ 382.1007 Motor carrier notifications.

(a) A motor carrier shall notify a driver of the results of a pre-employment/pre-duty controlled substance test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. A motor carrier shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The motor carrier shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated management official shall make reasonable efforts to contact and request each driver who submitted a specimen under the motor carrier's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated management official shall notify the medical review officer that the driver has been notified to contact the medical review officer in accordance with § 382.902.

§ 382.1009 Laboratory recordkeeping and record retention.

A laboratory performing the analysis of urine specimens for controlled substances shall maintain the specimen and the records of the analysis as specified in part 40 of this title.

§ 382.1011 Medical review officer recordkeeping and record retention.

(a) A medical review officer shall be the sole custodian of individual's test results. A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive test results.

(b) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled test results.

(c) No person may obtain the individual test results retained by a medical review officer, and no medical review officer shall release the individual test results of any driver to any person, without first obtaining specific written authorization from the tested driver. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employing motor carrier or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in § 382.1005(a).

§ 382.1013 Motor carrier record retention.

(a) *General Requirement.* Each motor carrier shall maintain records of its controlled substances misuse prevention program as provided in this section. The records shall be maintained

in a secure location with controlled access.

(b) *Period of Retention.* Each motor carrier shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of driver verified positive controlled substances test results, documentation of refusals to take required tests, and driver evaluations and referrals shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative and canceled test results (as defined in part 40 of this title) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Documents generated in connection with decisions to administer reasonable suspicion controlled substances tests;

(iv) Documents generated in connection with decisions on post-accident testing;

(v) Documents verifying existence of a medical explanation of the inability of a driver to provide a urine specimen for testing; and

(vi) Consolidated annual reports as required by § 382.1015.

(2) Records related to test results:

(i) The motor carrier's copy of the custody and control form;

(ii) Documents sent by the medical review officer to the motor carrier, including those required by § 382.1005.

(iii) Documents related to the refusal of any driver to submit to a controlled substances test administered under this part;

(iv) Documents presented by a driver to dispute the result of a controlled substance test administered pursuant to this part;

(3) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional, including records pertaining to rehabilitation and return to duty/follow-up testing as required by a substance abuse professional.

(4) Records related to education and training:

(i) Materials on controlled substances use awareness, including a copy of the motor carrier's policy on controlled substances use;

(ii) Documentation of compliance with the requirements of § 382.501;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for controlled substances testing based on reasonable suspicion; and

(iv) Certification that any training conducted under this part complies with the requirements for such training.

(5) Notifications, by date and time, of persons required to be notified as required by this part, including but not limited to, randomly selected drivers for testing, drivers requested to contact a medical review officer, medical review officers that the designated management official has contacted the driver or driver-applicant etc.

§ 382.1015 Reporting of results in a management information system.

(a) Each motor carrier shall submit to the Federal Highway Administration, when requested, an annual report covering the calendar year, summarizing the results of its controlled substances misuse prevention program.

(b) Each motor carrier that is subject to more than one DOT agency controlled substances regulation shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered safety sensitive functions (*e.g.*, drivers of commercial motor vehicles, airmen, pipeline inspectors, etc). Prior to conducting any controlled substance test on a driver subject to the regulations of more than one DOT agency, the motor carrier must determine which DOT agency regulation or regulations authorizes or requires the test. When a motor carrier determines that a test is required under U.S. Coast Guard or Research and Special Programs Administration (RSPA) regulations, as well as the requirements in this part, the motor carrier must use "split sample" testing procedures. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each motor carrier shall ensure the accuracy and timeliness of each report submitted by the motor carrier or a consortium.

(d) Each motor carrier notified shall submit the required annual reports no later than February 15 of each year. The report shall be submitted on the form specified by the FHWA. Each report shall contain:

(1) Number of drivers by employee category;

(2) Number of drivers subject to testing under the anti-drug rules of more than one DOT Agency, identified by each agency;

(3) Number of specimens collected by type of test (i.e., pre-employment, random, return-to-duty, etc.) and employee category;

(4) Number of positives verified by a Medical Review Officer by type of test, type of drug and employee category;

(5) Number of negatives verified by a Medical Review Officer by type of test and employee category;

(6) Number of persons denied a position as a driver following a verified positive controlled substances test;

(7) Number of drivers with verified positive by a Medical Review Officer who were returned to duty in driving positions during the reporting period;

(8) Number of drivers with tests verified by a Medical Review Officer for multiple drugs;

(9) Number of drivers who refused to submit to a controlled substances test required under this part, and the action taken in response to the refusal(s); and

(10) Number of supervisors who have received required training during the reporting period.

§ 382.1017 Access to individual records.

(a) Except as required by law or expressly authorized or required in this section, no motor carrier shall release driver information that is contained in records required to be maintained under § 382.1013.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of controlled substances, including any records pertaining to his or her controlled substances tests. The motor carrier shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each motor carrier shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part.

(d) Each motor carrier and medical review officer shall make available copies of all results for motor carrier controlled substances testing conducted under this part and any other information pertaining to the motor carrier's controlled substances misuse prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the motor carrier or its drivers.

(e) When requested by the National Transportation Safety Board as part of

an accident investigation, a motor carrier shall disclose information related to the motor carrier's administration of a post-accident controlled substances test administered following the accident under investigation.

(f) Records shall be made available to a subsequent motor carrier upon receipt of a written request from the driver. Disclosure by the subsequent motor carrier is permitted only as expressly authorized by the terms of the driver's request.

(g) A motor carrier may disclose information required to be maintained under this part pertaining to a driver to the driver or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a controlled substances test administered under this part, or from the motor carrier's determination that the driver engaged in conduct prohibited by subpart H of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver).

(h) A motor carrier shall release information regarding a driver's records only as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the driver's consent.

Subpart K—Consequences For Drivers Engaging In Controlled Substances-Related Conduct

§ 382.1101 Removal from safety-sensitive function.

(a) Except as provided in subpart L of this part, no driver shall perform safety-sensitive functions if the driver has engaged in conduct prohibited by subpart H of this part or a controlled substances misuse regulation of another DOT agency.

(b) No motor carrier shall permit any driver to perform safety-sensitive functions if the motor carrier has determined that the driver has violated this section.

§ 382.1103 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart H of this part shall perform safety-sensitive functions unless the driver has met the requirements of § 382.1205. No motor carrier shall permit a driver to perform safety-sensitive functions unless the driver has met the requirements of § 382.1205. Nothing in this section shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

§ 382.1105 Other controlled substances-related conduct.

(a) No driver tested under the provisions of subpart I of this part who is found to have a verified positive controlled substances test result shall perform or continue to perform safety-sensitive functions for a motor carrier, nor shall a motor carrier permit the driver to perform or continue to perform safety-sensitive functions, until:

(1) The driver submits to a controlled substance test which has a verified negative result; and

(2) The driver completes any rehabilitation program prescribed by a substance abuse professional in accordance with subpart L of this part.

(b) Nothing in this section shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

§ 382.1107 Additional consequences for controlled substances violations.

(a)(1) *General rule.* A driver who is found through testing under this part to have a verified positive controlled substances test result is prohibited from driving for the periods specified in paragraph (a)(2) of this section.

(2) *Duration of prohibited driving periods*—(i) *Second violation.* A driver who, during any 3-year period, is found to have a verified positive controlled substances test result twice in separate incidents, is prohibited from driving any commercial motor vehicle, as defined in this part or part 390 of this subchapter, for a period of 60 consecutive days.

(ii) *Third and subsequent violations.* A driver who, during any 3-year period, is found to have a verified positive controlled substances test result three or more times in separate incidents, is prohibited from driving any commercial motor vehicle, as defined in this part or part 390 of this chapter, for a period of 120 consecutive days.

(b) A driver who refuses to be tested for controlled substances under the provisions of subpart H of this part shall not drive any commercial motor vehicle, as defined in this part or part 390, for a period of not less than one year.

(c) No motor carrier shall knowingly use a driver to drive any commercial motor vehicle, as defined in this part or part 390 of this chapter, during the prohibition periods specified under this section, when the driver is in violation of any of the requirements of subpart H of this part. A motor carrier that knowingly uses a driver to violate this subpart shall be subject to the penalty provisions of 49 U.S.C. 521(b).

(d) No motor carrier shall knowingly use a driver who has been found to have violated any requirements of subpart H of this part to drive any commercial motor vehicle, as defined in this part or in part 390 of this subchapter, or perform any other safety-sensitive functions regulated by any DOT agency, until the driver has complied with the requirements of this part, including the completion of any evaluation, treatment, or return to duty testing required by the substance abuse professional, and any other applicable DOT agencies' regulations.

(e) A driver shall be prohibited from driving for a period of one year following a verified positive controlled substances test result when the driver has been involved in a fatal accident.

§ 382.1109 Disqualifications.

(a) Nothing in this subpart shall be construed to restrict the authority of Federal, State or local officials from implementing § 383.51 of this chapter. A driver who is convicted of driving a commercial motor vehicle under the influence of a controlled substance shall be subject to the disqualifications provided in § 383.51(b)(3) of this chapter.

(b) Notwithstanding the provisions of this part, the penalty provisions of § 391.15 of this chapter remain applicable within this part for actions taken by Federal Highway Administration officials.

Subpart L—Controlled Substances Use Information, Training, and Referral

§ 382.1201 Motor carrier obligation to promulgate a policy on the misuse of controlled substances.

(a) *General requirements.* Each motor carrier shall provide educational materials that explain the requirements of this part and the motor carrier's policies and procedures with respect to meeting these requirements. Each motor carrier shall provide written notice to every driver and to representatives of driver organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the motor carrier to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for controlled substances under this part;

(6) The procedures that will be used to test for the presence of controlled substances, protect the driver and the integrity of the urine specimens, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;

(7) The requirement that a driver submit to controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to a controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart H of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under § 382.1205 of this part.

(10) The requirement that a driver shall have the right to have the split sample specimen tested by a different NIDA-certified laboratory, when a request for such test is made by the driver to the medical review officer within 72 hours of being notified of a verified positive test result; and

(11) Optional provision. The materials supplied to drivers may also include information on additional motor carrier policies with respect to the use or possession of controlled substances, including any consequences for a driver found to have used controlled substances, that are based on the motor carrier's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

§ 382.1203 Training for supervisors and company officials.

Each motor carrier shall ensure that persons designated to determine whether reasonable suspicion exists to require a driver to undergo controlled substances testing under § 382.911 receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable controlled substances misuse.

§ 382.1205 Referral, evaluation, and treatment.

(a) A driver who has engaged in conduct prohibited by subpart H of this part shall be advised by the motor carrier of the resources available to the driver in evaluating and resolving problems associated with the misuse of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each driver who engages in conduct prohibited by subpart H shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the driver needs in resolving problems associated with controlled substances misuse.

(c)(1) Before a driver returns to duty requiring the performance of a safety sensitive function after engaging in conduct prohibited by subpart H of this part, the driver shall undergo a return-to-duty controlled substances test with a negative test result.

(2) In addition, each driver identified as needing assistance in resolving problems associated with controlled substances misuse—

(i) Shall be evaluated by a substance abuse professional to determine that the driver has properly followed the rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up controlled substances tests administered by the motor carrier following the driver's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the driver's return to duty. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the motor carrier, by a substance abuse professional under contract with the motor carrier, or by a substance abuse professional not affiliated with the motor carrier. The choice of the substance abuse professional and assignment of costs shall be made in accordance with motor carrier/driver agreements and motor carrier policies.

(e) The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment/pre-duty controlled substances test or who have a pre-employment/pre-duty controlled substances test with a verified positive test result.

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Tuesday
December 15, 1992

Part V

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217 and 219
Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6; Notice No. 34]

RIN 2130–AA43

Alcohol Testing; Amendments to Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend and expand its current alcohol/drug testing requirements to include, for safety-sensitive employees, pre-employment and random testing for alcohol, to amend its existing regulations regarding control of alcohol and drug use in railroad operations by incorporating new procedures and safeguards with respect to breath and body fluid testing for alcohol, to make reasonable suspicion testing mandatory for both alcohol and drugs, and to make additional changes. The proposed amendments would conform FRA's regulations to the requirements of the Omnibus Transportation Employee Testing Act of 1991 and would also reflect experience derived from program administration.

DATES: (1) Any request to make an oral presentation must be received by January 4, 1993.

(2) Written comments must be received by April 14, 1993. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments shall be filed in triplicate with the Docket Clerk, Docket No. RSOR–6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., room 8201, Washington, DC, 20590. Parties wishing the FRA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. RSOR–6." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons, between 8:30 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Executive Assistant to the Associate Administrator for Safety (RRS–3), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366–0897) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1988 (53 FR 47103), FRA published a final rule containing amendments to its alcohol and drug regulations, which were first promulgated on August 2, 1985. These amendments established a random drug testing program and added new safeguards for urine drug testing, incorporating procedures from a Department of Transportation regulation, "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR part 40), that had instituted standards for drug testing of transportation employees. FRA published additional amendments to its alcohol and drug regulations on December 27, 1989 (54 FR 53238) and June 4, 1990 (55 FR 22791). The current regulations are published as part 219, Title 49, Code of Federal Regulations.

On October 28, 1991, the President signed into law the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1992, Pub. L. No. 102–143, Title V of which enacts legislation popularly known as the Omnibus Transportation Employee Testing Act of 1991 (hereinafter the "Act"). The Act amends the Federal Aviation Act, the Federal Railroad Safety Act, and the Commercial Motor Vehicle Safety Act, specifically mandating alcohol and drug countermeasures for the aviation, rail and commercial trucking segments of the transportation industry. In addition, the Act enacted similar requirements for mass transit. Language utilized in the several amendments was generally parallel, but the differing histories and industry contexts addressed by legislation were reflected in subtle ways. In the case of the rail provision, explicit language preserved existing alcohol/drug regulations, which had been the subject of multiple legislative hearings by the Senate Committee on Commerce, Science and Transportation, from which the Act had been reported on several occasions (See, *e.g.*, S. Rept. No. 101–172). The sponsors and the Committee had repeatedly emphasized that it was not their intention to disrupt or displace existing regulatory provisions applicable to railroads.

Nevertheless, the Act embodies express mandates that must be honored and that go beyond the four corners of existing regulations. Among the most important requirements pertinent to this NPRM are the following:

- Pre-employment alcohol testing, to complement the current requirement for pre-employment drug testing.
- Mandatory reasonable suspicion testing for both alcohol and drugs (in lieu of discretionary or "authorized" testing under broader "reasonable cause" provisions).
- Random alcohol testing, to complement the current requirement for random drug testing.

Split sample testing, which is currently permitted, will now be required as a safeguard to reassure the sober and responsible employee that he or she will not be threatened by an error in the testing process. (The requirement for split samples is addressed in the separate Notice of Proposed Rulemaking to amend the Procedures for Transportation Workplace Drug Testing published elsewhere in today's **Federal Register**.)

In addition, the legislation instructs the Secretary to issue requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions. Here the statute uses language similar, but not identical to that employed in subpart E of part 219. As such, it is an apparent reference to employment-based mechanisms for evaluation of substance abuse disorders, referral of substance abusers to treatment resources, and determinations with respect to return to duty. FRA understands this provision to address the quality of employee assistance services, since FRA already requires that basic services be accessible and that the employment relationship be protected where the troubled employee steps forward and requests help (or is referred by a co-worker). Accordingly, FRA joins the other modal administrations in proposing professional requirements for employee assistance professionals ("substance abuse professionals").

The generic issues pertaining to alcohol misuse that are presented by the legislation are discussed in a DOT-wide preamble published by the Office of the Secretary of Transportation (hereinafter "OST") elsewhere in today's **Federal Register** (hereinafter common preamble). The common preamble is incorporated herein by reference.

Because the FRA rule already embodies the great majority of the requirements contemplated by the legislation in a manner well suited to the railroad industry, and because considerable effort has been expended in training industry personnel in those requirements, some of the preamble discussion is not directly applicable to

the proposals presented in this Notice. However, in each major subdivision of the section-by-section analysis set forth below, the basis for these differences is discussed.

The Federal Aviation Administration, Federal Highway Administration, Federal Transit Administration and Research and Special Projects Administration are also publishing alcohol testing NPRMs in today's **Federal Register**. Since FRA's proposed rule integrates the requirements of the Act into the existing structure of part 219, FRA's format differs from that of these operating administrations. FRA is therefore adding two appendixes to part 219. Appendix E contains a template that facilitates intermodal use by comparing each modal section to the corresponding language or concept in FRA's regulations. (Appendix D, which contains FRA's standard reporting form for the proposed management information system (MIS) discussed below, is published elsewhere in today's **Federal Register** as part of FRA's drug program management information system NPRM.)

Framework of the Railroad Proposal

The Act requires FRA to reexamine its existing alcohol/drug regulations. FRA has done so. Consistent with the Act's command, FRA now proposes minor adjustments in its existing regulatory program. These adjustments appear to be appropriate at this juncture due to the progress achieved under the existing rule and lessons learned as a result of additional experience in administering this program.

Among the adjustments proposed in this document are the following:

- Coverage of "safety-sensitive" employees would be reconsidered. FRA specifically proposes to include in the definition of covered employee any person engaged in the direct supervision of Hours of Service employees, including yardmasters.
- Although FRA proposes to retain its existing post-accident toxicology program, FRA proposes to reduce the number of low-damage collisions and derailments that would require testing. FRA is also prepared to consider any further adjustments in this program that may be warranted by experience, and welcomes comments on substitution of mandatory breath analysis for alcohol, together with conventional urinalysis for drugs, as a substitute for the existing program. In its final rule, FRA will amend appendix C to part 219 to include changes in post-accident sample collection and toxicology kits mandated by the new split sample procedures.

FRA has now been in almost continuous rulemaking on the issue of alcohol and drugs since 1983. This rulemaking offers the opportunity to bring some stability to this subject matter, so that attention can be turned to other, equally significant safety concerns in the field of human factors. FRA encourages active participation by the regulated community, including individual employees, employee organizations, and railroad companies.

Relationship to Existing Industry Programs

Following publication of the final rule on Certification of Locomotive Engineers (49 CFR part 240; 56 FR 28228, June 19, 1991), FRA received several inquiries regarding the effect of provisions of that rule with respect to implementation of voluntary alcohol/drug prevention programs with voluntary "mark-off" procedures, such as Operation Red Block, the rail peer prevention program. The question was whether, on railroads that permit either pre-duty or on-duty mark-offs without discipline, an engineer utilizing this procedure would be required to be handled under the mandatory certificate revocation procedures requiring a 9-month revocation period where a single violation of § 219.101 (on-duty use, possession, or impairment; BAC of .04 or greater) is established. FRA has responded to these inquiries indicating that the mark-off, by itself, does not give rise to actual knowledge on the part of the railroad that a violation has, in fact, occurred; and the railroad would not violate its duty to prevent violations by permitting the mark-off to go forward under established procedures. The reason for this position is that programs which attack co-worker tolerance of on-duty use of alcohol or drugs advance safety and add to the array of prevention techniques at work on the railroad.

The current regulatory proposals would adopt the same philosophy and approach. The objective of these programs is to enlist co-workers to apply pressure on a substance abuser to mark-off and seek assistance with his or her problem, thereby increasing the overall deterrent effect of anti-drinking policies. In this way the entire workforce takes responsibility for compliance. This collective responsibility is particularly valuable in work settings where supervisors are seldom present (as with many railroad assignments).

Most voluntary mark-offs should occur quietly, without fanfare, as if the employee had simply become ill. Abuses are limited by intervention on the part of employee prevention committees, which emphasize the unacceptability of the behavior and refer the troubled worker to the employee assistance program, as appropriate.

Experience teaches that a mark-off should be disallowed any time it is undertaken "in anticipation" of detection through supervisory observation or a chemical test. It is not enough that the mark-off occur prior to notice of the test, since at that point the employer could have adequate independent evidence to proceed without a test.

A violator who is about to be detected should not be able to use the program as a sanctuary. While the most manifest example of an invalid mark-off would be where the employee attempted to mark-off after receiving notice of a test, other, less obvious circumstances that should also invalidate an attempt to mark-off include: Mark-off to evade a supervisor who has just determined that reasonable suspicion exists to test the employee, or mark-off once the employee knows that testing collectors are on the job site (even if the employee had not received notice of a test at the time). Responsible peer prevention programs guard against abuses of this kind; and these programs are worthy of enthusiastic support.

SECTION BY SECTION ANALYSIS

Subpart A—General

Section 219.3 Application

Small Railroad Exclusion

As mentioned above, FRA is proposing a management information system, a new reporting system for alcohol and drug program information that would replace the data that railroads currently must submit in § 217.13(d) of the annual report. FRA would exempt small railroads, previously defined as employers with 15 or fewer covered employees that do not engage in joint operations, from the MIS reporting requirements in the new subpart I and the proposed recordkeeping requirements contained in the new subpart J. Small railroads will have little or no alcohol and drug program data to report, and correspondingly, few if any program records to keep.

No changes are contemplated for FRA's current exemption of small railroads from subparts D, E, F and G, since small entities would be exempted from the proposed alcohol testing amendments. FRA's previously published reasons for this treatment of small railroads remain valid. Employees of small railroads operate at low speed over private rights of way and are

subject to much closer supervision than employees of larger carriers. Compliance with breath alcohol testing would be more difficult for small railroads, particularly those situated in rural areas (as is very often the case). Requiring these isolated small entities to conduct random alcohol testing is therefore unnecessary, as evidenced by the fact that no employee from such a small entity has had a positive post-accident test in the six years of FRA's program.

FRA requests comment, however, on two small railroad issues. First, what should small railroads (who will not be required to conduct mandatory reasonable suspicion testing) be expected to do if faced with an obviously drunk employee reporting for duty, particularly if an evidential breath testing device (EBT) is not readily available on the railroad's property? Second, should small railroads, who are exempt from the employee assistance requirements of Subpart E, nevertheless be required to provide information on substance abuse services to their employees? (In the proposed section 219.23(d), larger railroads would be required to provide information to all of their employees (not just those who have been identified as having a substance-abuse problem) on the availability of substance abuse evaluation and treatment resources).

Section 219.5 Definitions

FRA proposes to define the concept of *alcohol concentration* in the alternative. When used with respect to blood, the existing definition would apply (grams per 100 milliliters of whole blood, expressed as a percent). When used with respect to breath analysis, the term would refer to the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath (as indicated by an evidential breath test under this part). The effect of this is to avoid fruitless controversy over the breath/blood partition. Contemporary motor vehicle statutes already embody this approach, consistent with recommendations of the National Highway Traffic Safety Administration. FRA needs a specific reference to alcohol concentration in blood because of the unique use of blood specimens under the post-accident testing program.

FRA proposes to expand its definition of *covered employee* to include supervisors for the first time in random alcohol and drug testing programs. Trainmasters, chief dispatchers, and others who directly supervise or control the actions of Hours of Service employees would be included, but coverage would be determined by function and not job title. FRA believes that the impact of this redefinition would be small, since many carriers already use their own authority to randomly test supervisory employees. Impairment of the faculties of the supervisor could result in issuance of instructions that could lead to unsafe practices or failure to identify unsafe practices by employees (including failure to identify or act on instances of alcohol/drug use or impairment). The supervisors involved would include supervisors of locomotive engineers, who have key roles in the administration of the locomotive engineer certification program (49 CFR part 240).

FRA solicits comment, however, on where the supervisory lines should be drawn. How direct must a manager's supervisory duties be, for him or her to be covered? How many persons would be included if only first-line supervisors of Hours of Service employees are included? To what extent may higher officers in the operating departments have occasion to issue safety-related instructions directly to train crews or dispatchers; and how should such cases be handled under the rule?

FRA introduces a new definition, *substance abuse professional* (SAP), which replaces the current definition of *EAP counselor* while carrying forward the same concept embodied in FRA's present rule. The new definition will accomplish two purposes. First, it provides a structure consistent with that of other regulated transportation industries. Second, the definition requires certification of the individual by an appropriate state regulatory body or an appropriate national standards organization. A physician qualified to practice in the field of substance abuse disorders would be within this definition.

FRA's current definition of EAP counselor recognizes that the counselor "owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of the employee." This is important because the professional must place the interest of safety above other considerations when advising the employer concerning the return to duty decision. The Common Preamble requests comment on how best to carry this concept forward in the context of these proposed amendments.

FRA would also substitute *substance abuse professional* for *EAP counselor* wherever that term appeared in the text of the Locomotive Engineer Certification rule. Commenters are welcome to suggest other changes that may be necessary to conform the language of 49 CFR part 240 to the language of this part.

Section 219.9 Responsibility for Compliance

Paragraph (a)

FRA proposes to conform this section to the recently enacted Rail Safety Enforcement and Review Act (RSERA), Public Law No. 102–365, which amended the Federal Railroad Safety Act of 1970 (FRSA) (See 45 U.S.C. 438(a)). The proposed amendment makes clear that this part, like all regulations issued under authority of the FRSA, applies not only to railroads but also to any independent contractors, agents, lessors, and lessees who provide goods and services to railroads. The amendment would also raise the minimum penalty for violations of this part from $250 to $500, as mandated by the RSERA.

Section 219.11 General Conditions for Chemical Tests

Paragraph (c)(4)

A new paragraph would be added to provide for the release of breath alcohol test results to FRA; the release of body fluid test results for alcohol is already provided for in paragraph (d) of this section. Covered employees would be deemed to have consented to the release of alcohol test results to FRA.

Paragraph (g)

Since current requirements for supervisory training for drugs are three hours in duration, and since reasonable suspicion training for drugs will now be required rather than merely authorized, FRA proposes to make supervisory training mandatory for both alcohol and drugs, with a minimum of three hours set aside for the combined training. Programs should cover the signs and symptoms of drug abuse, and post-accident testing criteria and collection procedures. FRA also recommends that programs include training on long term indicators of substance abuse that could provide a basis for intervention and referral.

Reasonable suspicion training programs are required to be filed with FRA. FRA's Field Manual provides curriculum materials for this purpose. Most major railroads have previously provided training of this kind.

Section 219.13 Preemptive Effect

Section 219.13, which states the preemptive effect of safety regulations issued under the FRSA (See 45 U.S.C. 434), would remain unchanged. The Act expressly did not provide a new preemption standard; instead, it

amended the FRSA to require the Secretary to issue rules, regulations, standards, and orders relating to alcohol and drug use in railroad operations.

Section 219.19 Field Manual

FRA will revise its Field Manual to include guidance on the new random alcohol testing procedures. After revision is complete, FRA will publish a Notice in the **Federal Register** announcing where copies of the updated manual can be obtained.

Section 219.21 Information Collection

As discussed above, FRA is proposing a management information system which would replace FRA's existing reporting requirements in part 217. The drug program portion of the MIS is published elsewhere in a separate NPRM in today's **Federal Register**. FRA now proposes, in new § 219.801, data elements that are specifically tailored to capture employer information that will become available after mandatory alcohol testing has been implemented.

Section 219.23 Railroad Policies

The proposed standard alcohol testing custody and control form published elsewhere in today's **Federal Register** in the Department's revisions to 49 CFR part 40 would be incorporated into subpart H of part 219 of FRA's regulations. It is FRA's desire that this form provide both the requisite notice to the employee that the test is being conducted under Federal requirements and written confirmation of the basic reason for the test (*e.g.*, random selection, reasonable suspicion, etc.).

Under § 219.601(d), notice to all covered employees was a precondition of random drug testing implementation. The notice had to include, among other information, the consequences of a violation of § 219.102 of this part (or any applicable railroad rule) and the employee's rights under subpart E of this part. FRA proposes to expand upon this notice concept in § 219.23(d) to require every railroad to disseminate information to each covered employee on the policies and procedures that the railroad will institute to comply with the requirements of this part. The railroad may also supply materials on its voluntary mark-off program, if it has one.

As discussed earlier in the application section, FRA would now require railroads to publish information on identifying and treating substance abuse problems to each employee. FRA hopes that this will encourage the employee with a substance abuse problem to self-refer for treatment, since the names, addresses and telephone numbers of substance abuse professionals, treatment programs and counseling programs will be supplied to all employees, not just those who have been identified as needing treatment. An employee can thus obtain such information without fear of stigmatization.

When combined, the proposed information requirements in this section should reinforce each other in encouraging the employee with a substance abuse problem to seek treatment before detection.

Subpart B—Prohibitions

Section 219.101 Alcohol and Drug Use Prohibited

FRA proposes a new paragraph, § 219.101(a)(3), that would prohibit a safety-sensitive employee from using alcohol either for four hours before reporting to perform covered service, or for the period of time running from when the employee receives a "call," or notice to report for covered service, to when the employee actually reports for covered service, whichever is the lesser of the two periods. A railroad would also be prohibited, through the employer's duty to prevent violations of § 219.101 and § 219.102, from allowing an employee to report for covered service, or go or remain on duty in covered service, if the railroad has actual knowledge that the employee is in violation of § 219.101(a)(3). This proposal would conform to the OST pre-duty abstinence proposal published elsewhere in today's **Federal Register**.

Is this pre-duty prohibition workable, in light of the very real problem posed for "short-call" employees, such as those who operate trains in pool crew service and off extra boards and signal maintainers who are subject to call without notice round the clock to handle "trouble calls?" FRA solicits suggestions on this problem, but proposes to alleviate it by allowing these employees (who are typically subject to a call of no more than two hours prior to time of reporting), to be in compliance with the pre-duty prohibition if they abstain from using alcohol from the time they are called to the time they report, even if that period of abstention runs for less than four hours before reporting to perform covered service. FRA believes that to do otherwise would be to impose total prohibition of alcohol use on short-call employees, which FRA believes would reduce the credibility of the prohibitions and thereby potentially reduce overall compliance. Comment is, of course, welcome on this proposal.

Section 219.104 Responsive action.

Paragraph (a)

FRA would revise this paragraph to clarify when the hearing rights, return to service conditions, follow-up tests, and information requirements contained in this section and § 219.105(c) apply. These sections would apply when the railroad has persuasive evidence that an employee has violated § 219.101 or 219.102, or when an employee refuses to provide breath or a body fluid sample when required to by the railroad under a mandatory provision of this part (post-accident, reasonable suspicion, and random testing). These sections do not apply when an applicant's pre-employment or pre-duty test indicates the misuse of alcohol or controlled substances, or when an applicant refuses to submit to a pre-employment or pre-duty test.

Paragraph (c)

FRA proposes to consolidate all of the hearing procedures listed elsewhere in this part into one common section, § 219.104(c), for ease of reference. Thus, the paragraphs that outlined hearing procedures in § 219.213(b), for a refusal to undergo post-accident testing, and in § 219.609(b), for a refusal to undergo random testing, would be deleted. These paragraphs had merely restated procedural rights already contained in § 219.104(c); there would be no substantive changes made by this consolidation.

Paragraph (d), Return to Covered Service

FRA proposes deletion of its current procedures concerning optional blood tests and return to service tests for employees who test positive on a breath alcohol test, since all alcohol testing procedures would be subsumed into subpart H, which would incorporate by reference the new alcohol testing procedures proposed by OST in 49 CFR part 40 elsewhere in today's **Federal Register**.

Paragraph (e)

FRA also proposes that an employee's first year of followup testing after a post-removal return to covered service include a minimum of six unannounced tests. The proposed regulatory text provides that these follow-up tests would track the basis for the employee's removal; that is, an employee who was removed for misuse of controlled substances or for refusing to provide body fluid samples under a mandatory provision of this part would be follow-up tested only for drugs, while an employee who was removed for misuse

of alcohol or for refusing to provide breath under a mandatory provision of this part would be follow-up tested only for alcohol.

FRA is concerned about the issue of polyabuse, however, and seeks comment on requiring both forms of testing. Prior testimony and comments in this docket suggest that a significant number of employees combine drug misuse with alcohol misuse. Consequently, FRA's Locomotive Engineer Qualifications Rule (49 CFR part 240) requires a minimum of six unannounced drug tests and six unannounced alcohol tests in an employee's first year of follow-up testing. Should this pattern be extended to other safety-sensitive employees? The Common Preamble also seeks comment on this approach.

FRA's proposed testing minimums are based on experience gained in compliance reviews that have indicated insufficient attention to follow-up by some railroads. Railroads would remain free to schedule additional testing, if desired, for the 48 months following this first year of mandatory follow-up testing.

Additional follow-up tests would be permitted either under an established program approved by a substance abuse professional (*e.g.*, a qualified medical director) that treats all similarly situated employees the same (*e.g.*, unannounced tests averaging once per month for three years for all clinically diagnosed cocaine dependent employees) or per the judgment of the particular substance abuse professional handling an individual case. This is important to allow the employer to establish objective criteria where the substance abuse professional may be reluctant to take on an "enforcement" role (as opposed to a "therapeutic" role) in the context of a particular case.

Where evaluation has led to a medical work-up, the advice of a physician should be taken into account (physical dependencies, related medical conditions, etc.). The employer may return the employee to covered service only upon the recommendation of the substance abuse professional.

Paragraph (f)

FRA proposes this paragraph to cover those situations where an employee's test result indicates an alcohol concentration between .02 percent and .039 percent; this BAC would be below the level of per se prohibition, but could still indicate some level of impairment. In practice, FRA anticipates that the employee would be sent home for the duration of the anticipated assignment plus eight or ten hours (representing the normal rest period under the Hours of Service Act); however, in no case should the employee be allowed to report for covered service until a minimum of eight hours has elapsed since administration of the confirmatory test.

FRA joins other DOT agencies in proposing that a railroad be permitted to allow an offending employee to remain in the workplace and be restored to service after a later test indicating an alcohol concentration of less than .02. FRA is concerned, however, that this proposal could undermine Rule G, the longstanding railroad industry rule that bars working with any alcohol in the employee's system. Comment is requested on this industry-specific consideration.

Paragraph (g):

This proposed paragraph emphasizes that the due process and follow-up testing requirements contained in this section apply only when a railroad removes an employee in response to a test conducted under Federal authority.

Section 219.107 Consequences of Unlawful Refusals

As discussed later in § 219.300, FRA proposes a minimum nine month disqualification for a refusal to submit to a mandatory reasonable suspicion test. Since the same consequence is already required for refusal to submit to a post-accident or random test, FRA would consolidate the consequences of an unlawful refusal into one section for ease of reference. This consequence would also apply to refusal of a follow-up test. Any language in subparts C and G on the consequences of a refusal would be deleted and restated in the new § 219.107 without substantive change. Thus, § 219.213(a), on refusal to undergo post-accident testing, § 219.603 and § 219.609, on refusal to undergo random testing, and the new § 219.300(c), on refusal to undergo reasonable suspicion testing, would all refer the reader to § 219.107 for delineation of the consequences. This restructuring, similar to that proposed for hearing procedures in § 219.104, would underscore the uniformity of consequences for a refusal to submit to testing under this part.

Subpart C—Post-Accident Toxicological Testing

As mentioned in OST's NPRM, the Common Preamble discussion of post-accident testing does not apply to FRA's program, which unlike those of other modes, requires full toxicological testing following designated accidents and casualties. FRA is interested in comments on the possible use of breath alcohol testing as a substitute, for those cases where collection times might be shortened.

Except for the proposed changes below, FRA would retain its existing subpart C. The amendments to testing criteria reflect the very low positive rates experienced in recent years.

Section 219.201 Events for Which Testing is Required

FRA proposes amending its property damage criteria for major train accidents and for impact accidents as follows:

Paragraph (a)(1)(iii) [Damage Threshold for Major Train Accidents]

FRA would redefine major train accidents by raising the amount of railroad property damage to require testing only after accidents that cause $1,000,000 or more in damage. In doing so, FRA hopes to capture fewer events by removing many track- and equipment-caused accidents from mandatory post-accident testing. FRA's fatality, passenger train, and hazardous materials criteria would remain unchanged.

During 1990 and 1991, 66 accidents involved damage between $500,000 and $1,000,000 (an average of 33 per year). Only 8 of these accidents (on average 4 each year) appear to have been primarily caused by human factors. These types of accidents tend to be derailments, predominantly caused by track or equipment. FRA believes that, where high-damage accidents are of sufficient public interest to warrant automatic post-accident testing, other qualifying criteria will generally apply (passenger train, release of hazardous materials accompanied by evacuation or injury, fatality, etc.). Even where other criteria do not apply, railroads will be required to conduct urine drug tests and breath alcohol tests if use or impairment is reasonably suspected. In addition, railroads will be authorized to conduct such tests if there is a reasonable belief that the particular employee played a role in the cause or severity of the accident. Comment is requested as to whether subpart D (urine, breath) testing should be required where there is such a belief. What logistical difficulties would be posed by such a requirement? To what extent would the complexity of testing requirements confound supervision seeking to implement the regulations?

Paragraph (a)(2)(ii) [Damage Threshold for Impact Accidents]

FRA would also raise the amount of railroad property damage for impact accidents, to include only those non-

injury accidents that cause $150,000 or more in damage. The National Transportation Safety Board (NTSB) uses the same reporting threshold (although the NTSB, unlike FRA, includes damage to lading). This damage threshold would allow FRA to capture data from virtually all of the events that the FRA and NTSB would investigate, while eliminating the requirement for testing following predominantly yard accidents.

Approximately 25 "impact accidents" each year fall between the existing $50,000 threshold and the proposed $150,000 threshold but do not qualify for testing under other criteria. Unlike accidents that qualify only under the $500,000 criterion, impact accidents are normally caused by human factors. However, many accidents that result in damage meeting the current $50,000 criterion are low speed switching events, often involving overspeed impact with standing equipment. Most of these events involving damage of less than $150,000 are not sufficiently serious to warrant investigation by either FRA or NTSB, given the effort expended by the railroad in its own investigation and other priorities of the investigating agencies. NTSB, for instance, investigates only about five accidents per year that fall in this range. Even though most impact accidents do involve human factors, few positive tests have resulted in recent years. Further, as in the case of the $500,000 criterion, railroads already have in place for-cause drug testing programs that would replace mandatory post-accident testing; and the other measures implemented through the Act will result in equally extensive use of breath alcohol testing in these circumstances. Again, comment is requested as to whether Subpart D testing should be required for these events (between the existing $50,000 threshold and the proposed $150,000 threshold) where there is a reasonable belief that the particular employee contributed to the accident, as well as to any complications or problems that might result.

Together, these two proposed changes in testing criteria would reduce by more than one-third the number of cases in which invasive blood testing would be required. FRA believes that railroads will conduct testing under subpart D or their own for-cause testing programs, and this data is required to be reported to FRA.

Paragraph (b) [Exceptions]

FRA solicits comment on whether accidents that otherwise qualify but are clearly attributable to vandalism should be excepted from post-accident testing. FRA believes that the fairness policy behind the existing exceptions for grade crossing and "Act of God" accidents applies equally here, since accidents caused by acts of vandalism are likewise wholly beyond the control of the employees involved. Consistent with the other exceptions, the proposed vandalism exception would hold railroad supervisors to § 219.201(c)'s reasonable inquiry/good faith judgment standard when making determinations.

Section 219.205 Sample Collection and Handling

In its final rule, FRA will amend the procedures for obtaining, marking, preserving and handling post-accident samples set forth in appendix C to part 219 to reflect the modifications to procedures, toxicology kits, forms, and instructions required to accommodate the urine split sample procedures mandated by the Act.

FRA appendix C procedures already "split" blood samples into two 10 milliliter tubes (each of which is sealed). Post-accident experience to date shows that the first 10 milliliter tube has almost always been sufficient for FRA purposes. However, there are scenarios, such as a multi-drug positive, that could require more than 10 milliliters of blood for confirmation. Obviously, if blood from the second tube is required for testing, that tube can no longer stay intact as a split sample. FRA realizes that special aliquoting procedures may conceivably be necessary for these rare instances, and solicits comment thereupon.

Section 219.211 Analysis and Follow-up

FRA will add language specifying that the MRO must conduct a review and make a report for each post-accident positive result. This is already being done under the existing rule, but the need for clarification has been brought to FRA's attention.

Additional clarifying and conforming changes to Subpart C are proposed in the rule text below.

Subpart D—Authorization to Test for Cause

Section 219.300 Mandatory Reasonable Suspicion Testing

FRA would change the title of subpart D from "Authorization to Test for Cause" to "Testing for Cause" to emphasize that reasonable suspicion testing is no longer discretionary. Under the Act, reasonable suspicion testing for alcohol and controlled substances changes from an authorized option to a mandatory program. The accident/incident and rule violation components of FRA's for cause testing program would remain optional for both alcohol and drug testing.

FRA expects that alcohol and drug reasonable suspicion testing will frequently interrelate, since supervisory observations will often be unable to target a particular substance as the medium of abuse. FRA suggests the following process: in cases that involve obvious alcoholic beverages on the breath or that involve symptoms consistent with either alcohol or controlled substance use, the employer should start with breath analysis. If the test indicates a BAC of .04 percent or more, the employer would have the option of conducting drug urinalysis. If the breath test is negative, the employer should conduct a urine drug test to continue the search for an explanation. (Cannabinoids and opiates sometimes produce symptoms that are also consistent with use of alcohol.) Where controlled substance use is specifically suspected, only a urine drug test should be conducted. (Additional guidance and examples can be found in the common preamble.)

FRA also proposes to add long-time decline in job performance as another factor that the employer may consider when determining whether to conduct a reasonable suspicion test on an employee. Indicators such as absenteeism, tardiness, and excessive and unsupported use of sick leave, have repeatedly been demonstrated to have a direct correlation with substance abuse. These could be considered, however, only in connection with contemporaneous observations of behavior or performance.

As in all other types of testing, FRA would specify a nine month disqualification from covered service for any employee who refused a reasonable suspicion test, since refusal would be a separate offense. Consistent with prior decisions on FRA-mandated testing, attachment of this definite consequence to a refusal serves a number of important purposes:

- It would provide a sanction for failure to provide a specimen as specifically required by agency rule (i.e., the offense would not go unpunished). This sanction could be carried out by the employer without any federal involvement.
- It would avoid serious conflict with employer policies, which typically treat refusal as insubordination (a serious rule violation in the railroad industry).
- It would encourage production of the specimen by the substance abuser, thus providing critical initial

information (confirmation that a controlled substance or prohibited concentration of alcohol was present and the identity of the controlled substance) to facilitate intervention by helping to break through the employee's barrier of denial.

FRA would require two trained supervisors, where feasible, to make a drug test reasonable suspicion determination. For alcohol, however, where the signs and symptoms of abuse are well-known, FRA believes that a determination by one trained supervisor that the criteria for reasonable suspicion exist is sufficient for testing. No pattern of abuse has been observed with regard to reasonable suspicion determinations under existing rules.

Supervisors will be expected to know the signs and symptoms of both alcohol abuse and drug abuse. (FRA notes that many substance abusers are polyabusers who abuse more than one controlled substance or combine alcohol abuse with drug abuse). Supervisors would be trained in accordance with the revised program requirements contained in § 219.11(g). FRA believes that most present supervisors have already received training of this kind.

Section 219.301 Testing for Reasonable Cause

As discussed above, FRA would retain accident/incident and rule violation testing as authorized options, while adding the criteria for mandatory reasonable suspicion to the circumstances that constitute reasonable cause for administration of breath alcohol tests and/or urine drug tests under this section. In addition, FRA would clarify the criteria for accident/incident testing for both alcohol and drugs, by emphasizing that this authority could be used to test only when a supervisory employee has "a reasonable belief, based on affirmative evidence of unsafe conduct, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident". FRA proposes including this phrase to stress that railroads may not use FRA accident/incident authority as a pretext for unnecessary testing. Some carriers have interpreted the current version of this section to mean that the mere happening of an accident constitutes grounds to test an employee, by assuming that the employee's failure to avoid or prevent the accident is equivalent to contributing to the accident. The proposed language would underscore that this is not an acceptable interpretation; the employer must be able to articulate a factual basis for believing the employee deliberately or negligently contributed to the occurrence or severity of the accident or incident before electing to test that employee.

Subpart F—Pre-employment Tests

Section 219.501 Pre-Employment Tests.

Paragraph (a)

Pursuant to the statutory mandate, FRA proposes to require pre-employment breath alcohol tests, in addition to urine drug tests. This section would be reorganized for clarity.

Paragraph (e):

FRA proposes a "grandfathering" provision to allow a covered employee who has "passed" both a pre-employment alcohol and a pre-employment drug test administered under the regulations of another DOT agency to be exempt from the testing requirements of § 219.501(a), if the railroad ensures (through a check of the records of any prior employer of whom the railroad has notice) that the employee has had no violations of this part or of the alcohol and drug misuse rules of another DOT agency within the last six months.

Subpart G—Random Testing Programs

FRA proposes various technical and conforming amendments to the random drug testing provisions and also proposes to add a new section addressing random alcohol testing.

Additionally, for both alcohol and drug random testing programs (§§ 219.601(b)(2) and 219.607(b)(2)), FRA proposes allowing any railroad that tests through a consortium to calculate its annual testing rate in one of two ways. FRA would allow a consortium to calculate for each member employer or calculate for the total number of covered employees subject to random testing by the consortium.

Section 219.607 Railroad Random Alcohol Testing Programs

FRA proposes, for the most part, to duplicate the notice requirements and criteria for plan approval that were used to implement random drug testing, including gradual submission and implementation schedules that would allow smaller carriers additional time to develop and execute random alcohol testing plans. However, FRA would not repeat the phase-in provisions of § 219.601(b)(2), which allowed each railroad to incrementally increase its random testing rate, so long as the railroad's program conducted testing at the required annualized rate (proposed to be set in the range of 10–50 percent) by the end of the first year of testing. At the time of random drug testing implementation, few carriers had even anecdotal experience in how to design and manage a random drug testing program, and technological capabilities were unknown. By contrast, alcohol testing technology has long been validated through widespread use by law enforcement, and all but the smallest or newest of carriers now have experience in overseeing substance abuse programs. FRA believes that carriers can achieve any reasonable testing rate at the inception of random alcohol testing without any phase-in; commenters are invited to discuss this assumption.

The short half-life of alcohol in the body will have to be considered. FRA proposes to offer railroads the flexibility to conduct random alcohol testing at any time the employee reports for work and at any time during the duty tour (except for when the employee is expressly relieved of any responsibility for the performance of safety-sensitive duties). For instance, some railroads perform all random drug tests at the end of the work day. To be effective with respect to employees reporting for duty, it may be necessary to require that at least some breath alcohol tests be performed at the beginning of the day or in the midst of the duty tour. Moreover, there may be situations in which it is not possible to conduct a urine collection and a breath test within the allowed hours of service. Certain railroads may find it more advantageous from the point of view of deterrence and efficiency to do "sweep" type random alcohol tests requiring all employees marking off duty or reporting for duty at a given point, on any given day, to be tested (with the location and date selected by use of objective and neutral criteria).

Another option that FRA is considering would be to adopt a modified version of the Federal Highway Administration's proposed § 382.809 (published in their alcohol NPRM elsewhere in today's **Federal Register**) which would limit an employer's time period within which to notify an employee of his or her selection for random alcohol testing selection to within 30 minutes before to 30 minutes after the employee operates a commercial motor vehicle. For rail purposes, FRA would allow the employer a notification period running from 30 minutes before to 30 minutes after the employee performs safety-sensitive functions, plus applicable travel time. FRA is interested in comment on the feasibility of this proposal. Is a one hour notification

window too short? How should travel time be defined and computed?

The important factor is that the date or time of the test should not be predictable from the point of view of the employee. It has been suggested that random tests should be encouraged at the beginning of the duty tour to promote deterrence; however, this ignores the scenario in which the employee reports sober to avoid detection but then proceeds to drink on the job. Pre-duty testing may be an obvious strategy for those employees who come into contact with the public and are closely observed during their duty tour, but the pattern of testing must be varied to be effective for most railroad employees.

Subpart H—Procedures and Safeguards for Urine Drug Testing and for Breath Alcohol Testing

Section 219.707 Review by MRO of Urine Drug Testing Results

Paragraph (d)

FRA proposes to delete the retest option contained in § 219.709, which allowed an employee 60 days to request that the remainder of his or her original specimen be retested under the procedures specified in that section. However, an employee whose test result indicates the presence of a controlled substance would still have 60 days (from when he or she received actual notice of the test results) to request a test of his or her split sample. The split sample is a second sample, taken at the same time as the original, and mandated by the Act.

FRA is concerned that a 72 hour period (the statutory minimum, and the period specified in the OST split sample procedures published in today's **Federal Register**) may be too short to allow an employee to obtain timely advice on how to exercise his or her rights, particularly where weekends, holidays, personal injuries and other potential delay factors are involved. Should the original 60-day period be retained, since all post-accident positive samples must be retained for two years anyway? FRA solicits comment on whether this additional protection for employees is necessary.

Subpart I—Annual Report

Section 219.801 Reporting of Alcohol Misuse Prevention Program Results in a Management Information System

As discussed earlier, FRA is proposing a comprehensive plan to obtain and analyze employer alcohol and drug program data. The information collection requirements for alcohol programs are included in this NPRM; FRA is publishing a separate NPRM elsewhere in today's **Federal Register** that contains comparable elements for drug program data and introduces the MIS in greater detail. Once a year, railroads would be required to submit a standard form containing both sets of data to FRA. (A new appendix D, which sets forth FRA's proposed mode-specific form, is included in the drug program MIS.) FRA would use this railroad feedback to evaluate its regulations to determine whether they are achieving their intended purpose.

Subpart J—Recordkeeping Requirements

Sections 219.901 and 219.903 Retention of Breath Alcohol Testing Records and Urine Drug Testing Records

FRA proposes similar recordkeeping retention requirements for alcohol and drug misuse prevention programs. The alcohol and drug record data formerly contained in § 219.713 would be integrated into both sets of recordkeeping.

Section 219.905 Access to Facilities and Records

FRA proposes to replace § 219.713's language on access to records with a new section following the discussion in the common preamble that would allow an employer to release an employee's alcohol and drug test records only with the written consent of the employee, with the exceptions of when access is requested by a DOT mode or when access is requested by a decisionmaker in a legal proceeding initiated by or on behalf of the employee.

Section 219.104 proceedings originate upon the employee's demand for a post-suspension hearing. Thus, while the employer may make the determination of whether to remove or merely suspend an employee, the employee is the initiator of the proceedings. This interpretation, consistent with the current language of 49 CFR part 40, affords due process protections to the employee while permitting the employer to disclose the employee's records to the decisionmaker. In keeping with common language proposed today to DOT agency alcohol programs, FRA requests comment as to whether the employer may also disclose an employee's records to the decisionmaker in related proceedings arising indirectly from the employee's violation of this part, such as Federal Employer's Liability Act or railroad unemployment compensation proceedings.

Request for Comments

Parties commenting on these proposed testing requirements are requested to file their comments with both the DOT's Docket in the part 40 rulemaking and with FRA's in this rulemaking. FRA also asks commenters to highlight any FRA-specific issues regarding the testing requirements. FRA will make available an opportunity for oral presentations, as required by section 202 of the Federal Railroad Safety Act of 1970, [at locations and dates to be determined].

FRA reserves the right to modify its proposals in light of comments received.

Executive Order 12291 and DOT Regulatory Policy and Procedures

This proposal is not "major" under Executive Order 12291. It is significant under the Department of Transportation's Regulatory Policy and Procedures.

FRA is proposing to require railroads to test, randomly, their employees performing safety sensitive functions to determine if these employees are working with dangerous levels of alcohol in their blood. The railroads would also be required to test new employees before allowing them to perform safety-sensitive functions. The regulation would also change reasonable suspicion testing from a permitted option to a required program, although that change is not expected to have significant costs or benefits.

Alcohol causes railroad accidents by limiting the intoxicated employee's ability to respond safely to the challenges of the job. Many accidents have been caused by alcohol. The FRA estimates that about two percent of all accident costs, excluding trespassers and grade crossing accidents, are related to alcohol abuse, and would not exist but for alcohol use.

The proposed rule would be effective because it would deter employees from drinking when they consider the consequences of being caught by a random test. The FRA estimates that half of current drinking would be deterred.

This rule will affect approximately 200 railroads and 80,000 workers. The rule will reduce accident costs by about one third of one percent, or one million dollars in the first year. It will cost about 2.5 million dollars in the first year. Over ten years it will cost, in terms of net present value, about 8.4 million dollars, and return benefits of 13.1 million dollars, for a benefit to cost ratio of 1.6 to 1. The program will cost about $62 per employee screened, including the cost of confirmation testing.

The FRA estimates that half of the tests will be administered by railroads, and the other half by third party contractors. There will be about 22,000 screening tests in the first year, 11,000 of which will be tested by contractors, and 11,000 by railroads.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

FRA specifically solicits comment on means to limit any reporting burden on small entities and on the impact of the proposed reporting requirements on small railroads not subject to the current requirements (certain railroads with fewer than 400,000 manhours of employment).

Federalism Implications

The proposed rulemaking action would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, FRA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies to this notice of proposed rulemaking because it changes several approved collections of information and initiates several new information collection requirements. As mentioned earlier, FRA will be publishing a Management Information System to collect both alcohol and drug misuse prevention program data. OST and FRA have estimated that for drug testing program data only, preparation of the annual report would require approximately 12–16 hours in the case of a small company with two million or less manhours, eight days-two weeks in the case of a medium company with two million to ten million manhours, and three weeks-two months in the case of a large company with in excess of ten million manhours. While there is no data available to corroborate the accuracy of these estimates, since MIS implementation has yet to take place, the manhours needed for railroads to institute a data system, and compile, maintain and prepare the information required for the alcohol data elements of the MIS system should be comparable. Parties are invited to submit written comments on this issue, and on the practicality of the new, comprehensive recordkeeping retention requirements that would replace § 219.713 for drug testing programs. Parties should address their views to Gloria D. Swanson, Federal Railroad Administration, room 8314, 400 Seventh Street, SW., Washington, DC 20590 and to the Regulatory Policy Branch (OMB No. 2130–526), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW, Washington, DC 20530, Attention: Desk Officer for FRA. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above, and to the docket for the DOT rulemaking published elsewhere in today's **Federal Register**.

FRA will request OMB approval of these revised information collection requirements. A **Federal Register** notice will be published when Paperwork Reduction Act approval is obtained. Current information collection requirements under part 219 were approved under OMB No. 2130–0526.

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, FRA proposes to amend 49 CFR part 219 as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. Authority for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Part 219 is amended by removing the terms "EAP counselor" and "counselor" wherever they appear and by replacing them with "Substance abuse professional" and "professional" respectively; and by removing "$5,700 in 1989 and 1990" and by adding in its place "$6,300 in 1992" wherever this phrase appears in the text.

3. Section 219.3 is amended by revising paragraph (b)(2) to read as follows:

§ 219.3 Application.

* * * * *

(b) * * *

(b)(2) Subparts D, E, F, G, I, and J do not apply to a railroad that employs not more than 15 employees covered by the Hours of Service Act (45 U.S.C. 61–64b) and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

* * * * *

4. Section 219.5 is amended by adding, in alphabetical order, definitions for *alcohol concentration (or content), alcohol use, confirmatory test, consortium, DOT agency, initial alcohol test (or screening test), performing, refuse to submit,* and *substance abuse professional;* by removing the definition for *EAP counselor;* by revising the definitions for *alcohol, covered employee, covered service* and the first sentence of *independent,* as follows:

§ 219.5 Definitions.

As used in this part—

Alcohol means ethyl alcohol (ethanol).

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath (as indicated by an evidential breath test under this part) or grams of alcohol per 100 milliliters of whole blood. When the indicated alcohol concentration of a covered employee on an initial breath alcohol test is different from an indicated alcohol concentration on a confirmatory test, the employee shall be considered to have the lower indicated concentration.

Alcohol use means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

* * * * *

Confirmatory test means a second analytical procedure, separate from the screening test, to determine the concentration of alcohol in a covered employee's system. The confirmatory test may or may not use a different chemical principle from that of the screening test, but shall employ a scientifically recognized method of testing capable of providing quantitative data regarding alcohol concentration. For specific requirements concerning breath analysis testing devices, see Part 40 of this title.

Consortium means an entity, including a group or association of employers or contractors, that provides alcohol testing as required by this part or other DOT alcohol testing regulation and that acts on behalf of the employers.

* * * * *

Covered employee means a person who has been assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, any person who performs such service, and any person

responsible for or who undertakes direct supervision or control of the aforementioned individuals with respect to their safety-sensitive duties. (An employee is not "covered" within the meaning of this part exclusively by reason of being an employee for purposes of section 2(a)(3) of the Hours of Service Act, as amended (45 U.S.C. 62(a)(3)).) For the purposes of pre-employment/pre-duty testing only, the term covered employee includes a person applying to perform a safety-sensitive function.

Covered service means service for a railroad that is subject to the Hours of Service Act (45 U.S.C. 61–64b), or service that involves direct supervision or control of persons performing such service, but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

* * * * *

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol or controlled substance testing (14 CFR parts 65, 121, and 135; 49 CFR parts 199, 219, 382 and 654) in accordance with part 40 of this title.

* * * * *

Independent with respect to a medical facility, means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. * * *

* * * * *

Initial alcohol test (or screening test) means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

* * * * *

Performing (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is on duty and is actually performing, standing by to perform, or immediately available to perform such functions.

* * * * *

Refuse to submit (to an alcohol test) means that a covered employee fails to provide breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the collection process.

* * * * *

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug related disorders.

* * * * *

5. In § 219.9, amend paragraph (a) by revising the first sentence as follows:

§ 219.9 Responsibility for compliance.

(a) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. * * *

(b) * * *

6. Section 219.11 is amended by revising paragraph (b)(2); by redesignating existing paragraph (g) as paragraph (h); and by adding paragraphs (c)(4) and (g) as follows:

§ 219.11 General conditions for chemical tests.

* * * * *

(b)(1) * * *

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment shall be accorded priority over provision of the breath or body fluid sample. No employee who is unable to urinate normally (based on the judgment of a medical professional that catheterization would be required) as a result of a personal injury, resulting medical treatment, or renal failure shall be required to provide a urine sample. Nothing in this section shall bar use of a urine specimen made available as a result of catheterization undertaken for medical purposes, provided the circumstances of such collection are fully documented and the specimen is otherwise handled in accordance with the applicable requirements of this title.

* * * * *

(c) * * *

(4) The results of any breath tests for alcohol conducted by or for the treating facility.

* * * * *

(g) Each supervisor responsible for covered employees (except a working supervisor within the definition of coworker under this part) shall be trained in the signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction on file with FRA under part 217 of this part. Such a program shall, at a minimum provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. The program shall also provide training on the qualifying criteria for post-accident testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and appendix C of this part. The duration of such training shall be not less than 3 hours.

* * * * *

§ 219.15 [Reserved]

7. Section 219.15 is removed and reserved.

8. Section 219.23 is amended by revising the section heading; revising paragraphs (a) and (b); and adding paragraphs (d) through (g), so that the section reads as follows:

§ 219.23 Railroad policies.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear and unequivocal written notice to the employee that the test is being required under Federal Railroad Administration regulations. Use of the mandated DOT form for urine drug testing or breath analysis satisfies the requirements of this paragraph.

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear, unequivocal written notice of the basis or bases upon which the test is required (*e.g.*, reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D, random selection, follow-up, etc.). Completion of the alcohol testing form or urine custody and control form indicating the basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph.

* * * * *

(d) Each covered employee who has engaged in conduct prohibited by

subpart B of this part shall be advised by the railroad of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(e) Each railroad shall provide educational materials that explain the requirements of this part, and the railroad's policies and procedures with respect to meeting those requirements. Each railroad shall provide written notice to every covered employee and to representatives of that employee's class or craft (if applicable) of the availability of this information.

(f) *Required content.* The materials to be made available to employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the railroad to answer employee questions about the materials.

(2) The classes or crafts of employees who are subject to the provisions of this part.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear that the period of the work day the covered employee is required to be in compliance with this part is that period when the employee is on duty and is required to perform or is available to perform covered service.

(4) A railroad utilizing the accident/incident and rule violation reasonable cause testing authority provided by this part shall provide prior notice (which may be combined with the notice required by §§ 219.601(d)(1) and 219.607(d)(1)), to covered employees of the circumstances under which they will be subject to testing.

(5) The circumstances under which a covered employee will be tested under this part.

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the sample, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol and drug tests administered in accordance with this part.

(8) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences.

(9) The consequences for covered employees found to have violated subpart B of this part, including the requirement that the employee be removed immediately from safety-sensitive functions, and the procedures under § 219.104.

(10) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04.

(g) *Optional provisions.* The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of this part. Any such additional policies or consequences shall be clearly and obviously described as being based on independent authority.

9. Section 219.101 is amended by revising paragraph (a)(2)(ii); and adding a new paragraph (a)(3) as follows:

§ 219.101 Alcohol and drug use prohibited.

(a) * * *

(2) * * *

(ii) Having .04 or more alcohol concentration in the breath or blood; or

* * * * *

(3) No employee may use alcohol for whichever is the lesser of the following periods:

(i) Within four hours of reporting for covered service; or

(ii) After receiving notice to report for covered service.

* * * * *

10. Section 219.104 is amended by revising paragraphs (a), (d), and (e); and adding paragraphs (f) and (g) as follows:

§ 219.104 Responsive action.

(a) *Removal from covered service.* (1) If the railroad determines that an employee has violated § 219.101 or § 219.102, the railroad shall immediately remove the employee from covered service and the procedures described in paragraphs (b) through (e) of this section shall apply.

(2) If an employee refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part, the railroad shall immediately remove the employee from covered service, and the procedures described in paragraphs (b) through (e) of this section shall apply.

(3) This section and the information requirements listed in § 219.105(c) do not apply to applicants who refuse to submit to a pre-employment/pre-duty test or who have a pre-employment/pre-duty test with a result indicating either an alcohol concentration equal to or greater than .04, or the misuse of controlled substances.

* * * * *

(d) *Return to covered service.* An employee who has been determined to have violated § 219.101 or § 219.102 or who refused to cooperate in a breath or body fluid test under this part shall not be returned to covered service unless the employee has—

(1) Been evaluated by a substance abuse professional to determine if the employee is affected by a psychological or physical dependence on alcohol or one or more controlled substances or by another identifiable and treatable mental or physical disorder involving misuse of alcohol or drugs as a primary manifestation;

(2) Been evaluated by a substance abuse professional to determine that the employee has properly followed the prescribed rehabilitation program; and

(3)(i) Presented a urine sample for testing under subpart H of this part that tested negative for controlled substances assayed (in the case of an employee who has been determined to have violated a prohibition of § 219.101 or § 219.102 regarding possession or misuse of controlled substances or who refused to provide a body fluid sample or samples when required to by the railroad under a mandatory provision of this part); or

(ii) Presented breath for testing under subpart H of this part that indicated an alcohol concentration of less than .02 (in the case of an employee who has been determined to have violated a prohibition of § 219.101 regarding possession or misuse of alcohol or who refused to provide breath when required to by the railroad under a mandatory provision of this part).

(e) *Follow-up testing.* An employee returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the substance abuse professional and shall be subject to a reasonable program of follow-up testing without prior notice for a period of not more than 60 months following return to service, with a minimum of six tests to be performed on an unannounced basis during the first 12 months of follow-up testing. Such tests shall be performed consistent with the requirements of subpart H of this part.

(1) If the employee has been determined to have violated a prohibition of § 219.101 or § 219.102 regarding possession or misuse of controlled substances, or if the employee refused to provide a body fluid sample or samples when required to by the railroad under a mandatory provision of this part, the employee shall be subject to urine drug testing as specified in this section.

(2) If the employee has been determined to have violated a

prohibition of § 219.101 regarding possession or misuse of alcohol, or if the employee refused to provide breath when required to by the railroad under a mandatory provision of this part, the employee shall be subject to breath alcohol testing as specified in this section.

(f) No covered employee tested under the provisions of this part who is found to have an alcohol concentration of .02 or greater but less than .04 shall perform or continue to perform safety-sensitive functions for a railroad, nor shall a railroad permit the employee to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than .02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(g) This section does not apply to actions based on breath or body fluid tests for alcohol or drugs that are conducted exclusively under authority other than that provided in this part (*e.g.*, testing under a company medical policy, for-cause testing policy wholly independent of subpart D of this part, or testing under a labor agreement).

11. Part 219 is amended by adding § 219.107 as follows:

§ 219.107 Consequences of unlawful refusal.

(a) An employee who refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part shall be deemed disqualified for a period of nine (9) months.

(b) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action, and the procedures described in § 219.104(c) shall apply.

(c) The disqualification required by this section shall apply with respect to employment in covered service by any railroad with notice of such disqualification.

(d) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(e) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104(d), and the employee shall be subject to follow-up tests, as provided by that section.

12. In § 219.201, by revising paragraphs (a)(1)(iii) and (a)(2)(ii), as follows:

§ 219.201 Events for which testing is required.

(a) * * *

(1) * * *

(iii) Damage to railroad property of $1,000,000 or more.

(2) * * *

(ii) Damage to railroad property of $150,000 or more.

* * * * *

13. Section 219.203 is amended by revising paragraphs (a)(1), (c)(2), and revising the first sentence of paragraph (d)(2), as follows:

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1) Following each accident and incident described in § 219.201, the railroad (or railroads) shall take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide, for toxicological testing by FRA, two blood samples, consisting of a primary sample and a split sample, and two urine samples, consisting of a primary sample and a split sample (following the procedures described in this subpart and appendix C) to be retained at the laboratory designated in appendix B of this part. Such employees shall cooperate in the provision of samples as described in this subpart and appendix C.

(c) * * *

(2) In the case of an injured employee, the railroad shall request the treating medical facility to obtain the required samples.

(d) * * *

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood samples after having been acquainted with the requirements of this subpart, the railroad shall immediately notify FRA by toll free telephone (800–424–0201), stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. * * *

* * * * *

14. Section 219.205 is amended by revising paragraph (a) as follows:

§ 219.205 Sample collection and handling.

(a) *General.* Samples shall be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this section, and the technical specifications set forth in Appendix C to this part.

* * * * *

15. Section 219.209 is amended by adding a new last sentence to paragraph (a)(1); and by revising the first sentence of paragraph (b), as follows:

§ 219.209 Reports of tests and refusals.

(a)(1) * * * Notification shall be provided to the Office of Safety, FRA, at (202) 366–0501; an answering machine will record any notification calls made to this number outside of the Federal work week (8:30 a.m. to 5 p.m. EST or EDT).

* * * * *

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain samples and cause them to be provided to FRA as required by this subpart, the railroad shall make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure.

* * *

* * * * *

16. Section 219.211 is amended by revising the second sentence of paragraph (a); by revising the last sentence of paragraph (c); by revising the last sentence of paragraph (d); and by revising paragraphs (e), (h), and (i) as follows:

§ 219.211 Analysis and follow-up.

(a) * * * Samples are analyzed for alcohol and controlled substances specified by FRA under protocols specified by FRA and accepted by the Department of Health and Human Services. * * *

* * * * *

(c) * * * The Federal Railroad Administration shall not be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) * * * (However, as further provided in this section, FRA may provide results of testing under this subpart and supporting documentation to the National Transportation Safety Board.)

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond shall do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590, within 45 days of receipt of the

test results. Any such submission shall refer to the accident date, railroad and location, shall state the position occupied by the employee on the date of the accident/incident, and shall identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request shall be made by the FRA on the basis of controlling law).

* * * * *

(h) Except as provided in § 219.201 (with respect to nonqualifying events), each sample (including each split sample) provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance). Post-mortem specimens may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that the employee's split blood and/or urine sample be tested by the designated laboratory or by another laboratory certified by the Department of Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analysts may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a split sample test shall be in writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, FRA, Washington, DC 20590, and be designated "Administratively Confidential: Attention Alcohol/Drug Program Manager."

17. Section 219.213 is amended by revising paragraphs (a) and (b) as follows:

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* (1) An employee who refuses to cooperate in providing blood or urine samples following an accident or incident specified in this subpart shall be withdrawn from covered service and shall be deemed disqualified for covered service for a period of nine (9) months in accordance with the conditions specified in § 219.107.

(b) *Procedures.* Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. The employee shall be entitled to the procedural protections set out in § 219.104(d).

* * * * *

18. Subpart D is amended by revising the heading of the subpart and adding § 219.300 as follows:

Subpart D—Testing For Cause

§ 219.300 Mandatory reasonable suspicion testing.

(a) *Requirements.* (1) A railroad shall require a covered employee to submit to a breath alcohol test when the railroad has reasonable suspicion to believe that the employee has violated any prohibition of subpart B of this part concerning alcohol. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

(2) A railroad shall require a covered employee to submit to a urine drug test when the railroad has reasonable suspicion to believe that the employee has violated the prohibitions of subpart B of this part concerning controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(3) In weighing the significance of such contemporaneous observations, the railroad may also consider any pertinent information concerning long-term decline in job performance (*e.g.*, absenteeism, tardiness, excessive and unsupported use of sick leave).

(b) When the railroad has reasonable suspicion to believe that the employee has violated the prohibitions of subpart B concerning use of alcohol or controlled substances, or both, such that the employee may be currently under the influence of or impaired by alcohol, by a controlled substance, or by alcohol in combination with a controlled substance, the railroad shall promptly conduct a breath alcohol test. If the breath alcohol test does not yield evidence of a violation of § 219.101, then the railroad shall promptly require the employee to submit to a urine drug test.

(c)(1) With respect to a breath alcohol test, one supervisor trained in accordance with § 219.11(g) may make the reasonable suspicion determination. The supervisor who makes the determination to test an employee may not also serve as the breath alcohol technician for purposes of conducting the breath alcohol test on that employee.

(2) With respect to a urine drug test, at least two supervisors trained in accordance with § 219.11(g) shall be required to make the reasonable suspicion determination.

(d) Nothing in this section shall be construed to require the conduct of breath alcohol testing or urine drug testing when the employee is apparently in need of immediate medical attention.

18. Section 219.301 is amended by removing and reserving paragraph (b)(1); revising the introductory text to paragraphs (b), (b)(2) and (c) introductory text; and removing paragraphs (f) and (g), as follows:

§ 219.301 Testing for reasonable cause.

(a) * * *

(b) *Reasonable cause for breath tests.* In addition to reasonable suspicion as described in § 219.300, the following circumstances constitute reasonable cause for the administration of breath alcohol tests under this section:

(1) [Reserved].

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under part 225 of this title, and a supervisory employee of the railroad has a reasonable belief, based on affirmative evidence of unsafe conduct, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) * * *

(c) *Reasonable cause for urine test.* In addition to reasonable suspicion as described in § 219.300, each of the conditions set forth in paragraphs (b)(2) ("accident/incident") and (b)(3) ("rule violation") of this section as constituting reasonable cause for breath alcohol testing also constitutes reasonable cause with respect to urine drug testing.

* * * * *

19. Part 219 is amended by adding a new § 219.302 as follows:

§ 219.302 Prompt sample collection; time limitation.

(a) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(b) No employee shall be required to participate in breath alcohol or urine drug testing under this subsection after the expiration of an eight hour period from—

(1) The time of the observations or other events described in this section; or

(2) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(c) An employee may not be tested under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (*i.e.*, who is absent without leave).

(d) As used in this subpart a "responsible railroad supervisor" means any responsible line supervisor (*e.g.*, a trainmaster or road foreman of engines) or superior official in authority over the employee to be tested.

(e) In the case of a urine drug test, the eight-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the urine specimens within that period.

(f) Section 219.23 prescribes the notice to an employee that is required to provide breath or a body fluid sample under this part.

20. Part 219 is amended by revising § 219.303 to read as follows:

§ 219.303 Breath test procedures and safeguards.

The conduct of breath alcohol testing under this subpart is governed by subpart H of this part and part 40 of subtitle A of this title.

§§ 219.307 and 219.309 [Removed]

21. Part 219 is amended by removing §§ 219.307 and 219.309.

22. Subpart F is amended by revising the subpart heading to read as follows:

Subpart F—Pre-employment Tests

23. Section 219.501 is revised to read as follows:

§ 219.501 Pre-employment tests.

(a) Prior to the first time a covered employee performs safety-sensitive functions for an employer, the employee shall undergo testing for alcohol and drugs. No railroad shall allow a covered employee to perform safety-sensitive functions, unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than .04 and has been administered a test for drugs with a result that did not indicate the misuse of controlled substances. If a pre-employment/pre-duty test result under this section indicates an alcohol content of .02 or greater but less than .04, the provisions of § 219.104(f) shall apply. This requirement shall apply to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service. The tests shall be accomplished through breath analysis and analysis of urine samples.

(b) The conduct of breath alcohol testing and urine drug testing under this subpart is governed by subpart H of this part and part 40 of subtitle A of this title.

(c) As used in subpart H with respect to a test required under this subpart, the term covered employee includes an applicant for pre-employment and pre-duty testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(d) A railroad is not required to administer an alcohol and drug test required by paragraph (a) of this section, if:

(1) The employee has undergone an alcohol test required by this section or the alcohol misuse regulation of another DOT agency within the previous six months, with a result indicating an alcohol concentration less than .04; and

(2) The employee has undergone a drug test required by this section or the drug misuse regulation of another DOT agency within the previous six months, with a result that did not indicate the misuse of a controlled substance; and

(3) The railroad ensures that no prior employer of the covered employee of whom the railroad has knowledge has records of a violation of this subpart or the alcohol and drug misuse regulations of another DOT agency within the previous six months.

24. Part 219 is amended by revising § 219.503 to read as follows

§ 219.503 Notification; records.

The railroad shall provide for medical review of the urine drug test results as provided in subpart H of this part. The railroad shall notify the applicant of the results of the urine and breath tests in the same manner as provided for employees in subpart H. Records shall be maintained confidentially and shall be retained in the same manner as required under subpart J for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

§ 219.505 [Amended]

25. Section 219.505 is amended by revising the section heading to read "Refusals," removing the designation from paragraph (a), and removing paragraph (b).

26. Part 219 is amended by revising the heading of Subpart G as follows:

Subpart G—Random Alcohol and Drug Testing Programs

27. Section 219.601 is amended by revising paragraph (b)(2)(iii) and the undesignated paragraph following it, revising (b)(7), and revising the first two sentences of paragraph (c) as follows:

§ 219.601 Railroad random drug testing programs.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

During each subsequent 12-month period the program shall select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the number of covered employees. Annualized percentage rates shall be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Associate Administrator for Safety. If the railroad conducts random testing through a consortium, the annual rate may be calculated for each individual employer or for the total number of covered employees subject to random testing by the consortium.

* * * * *

(7) Each time an employee is notified for random drug testing the employee will be informed that selection was made on a random basis.

(c) *Approval.* The Associate Administrator for Safety will notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Associate Administrator for Safety determines that the program does not conform to those criteria, the Associate Administrator for Safety will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions.

* * *

* * * * *

§ 219.603 [Amended]

28. Section 219.603 is amended by revising the section heading to read "Participation in drug testing."; by removing the designation and heading "(a) *Participation*" from paragraph (a); and removing paragraphs (b) and (c).

29. Section 219.605 is amended by redesignating paragraph (b) as paragraph (c); adding a new final sentence to newly designated paragraph (c), and adding a new paragraph (b) as follows:

§ 219.605 Positive drug test results; procedures.

(a) * * *

(b) If the test result of the primary sample is positive, the employee may request that the split sample be tested in accordance with the procedures outlined in part 40 of this title.

(c) * * * The responsive action required in § 219.104 is not stayed pending the result of the test of the split sample.

30. Part 219 is amended by adding a new § 219.607 as follows:

§ 219.607 Railroad random alcohol testing programs.

(a) Each railroad shall submit for FRA approval a random alcohol testing program meeting the requirements of this subpart. A Class I railroad (including the National Railroad Passenger Corporation) or a railroad providing commuter passenger service shall submit such a program not later than [*6 months after publication of the final rule*]. A Class II railroad shall submit such a program not later than [*12 months after publication of the final rule*]. A Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall submit such a program not later than [*18 months after publication of the final rule*]. A railroad commencing operations after the pertinent date specified in this paragraph shall submit a random alcohol testing program not later than 30 days prior to such commencement. The program shall be submitted to the Associate Administrator for Safety, FRA, for review and approval. If, after approval, a railroad desires to amend the random alcohol testing program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random alcohol testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

(1) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection shall be retained for not less than 24 months from the date upon which the particular samples were collected.

(2) During each 12-month period the program shall select for testing a sufficient number of employees so that the number of tests conducted will equal at least (10–50) percent of the number of covered employees, with testing to be spread reasonably through the 12-month period. Annualized percentage rates shall be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Associate Administrator for Safety. If the railroad conducts random testing through a consortium, the annual rate may be calculated for each individual employer or for the total number of covered employees subject to random testing by the consortium.

(3) Railroad random testing programs shall ensure to the maximum extent practicable that each covered employee shall perceive the possibility that a random alcohol test may be required at any time the employee reports for work and at any time during the duty tour (except any period when the employee is expressly relieved of any responsibility for performance of safety-sensitive duties).

(4) Testing shall be conducted promptly, as provided in § 219.715(a).

(5) The program shall include testing procedures and safeguards, and, consistent with this part, procedures for action based on tests where the employee is found to have violated § 219.101.

(6) An employee shall be subject to testing only while on duty. Only employees who perform covered service for the railroad shall be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program shall specify the extent to which, and the circumstances under which they shall be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program shall provide that employees shall be subject to the possibility of random testing on any day they actually perform covered service.

(7) Each time an employee is notified for random alcohol testing the employee will be informed that selection was made on a random basis.

(c) *Approval.* The Associate Administrator for Safety will notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Associate Administrator for Safety determines that the program does not conform to those criteria, the Associate Administrator for Safety will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions. The railroad shall resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.*

(1) No later than 45 days prior to commencement of random alcohol testing, the railroad shall publish to each of its covered employees, individually, a written notice that they will be subject to random alcohol testing under this part. Such notice shall state the date for commencement of the program, shall state that the selection of employees for testing will be on a strictly random basis, shall describe the consequences of a determination that the employee has violated § 219.101 or any applicable railroad rule, and shall inform the employee of the employee's rights under subpart E of this part. A copy of the notice shall be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph creates a defense to a violation of § 219.101. This notice may be combined with the notice or policy statement required by § 219.23.

(2) Each Class I railroad (including the National Railroad Passenger Corporation) and each railroad providing commuter passenger service shall implement its approved random alcohol testing program not later than [*12 months after publication of the final*

rule]. Each Class II railroad shall implement its approved random testing program not later than [*18 months after publication of the final rule*]. Each Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall implement its approved random testing program not later than [*24 months after publication of the final rule*]. In the case of a railroad commencing operations after the pertinent date set forth in paragraph (a) of this section for filing of a program, the railroad shall implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator or by the pertinent date set forth in this paragraph, whichever is later.

31. By adding § 219.609 as follows:

§ 219.609 Participation in alcohol testing.

A railroad shall, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in breath testing to determine compliance with § 219.101, and the employee shall provide the required breath and complete the required paperwork and certifications. Compliance by the employee shall be excused only in the case of a documented medical or family emergency.

32. Part 219 is amended by adding § 219.611 as follows:

§ 219.611 Test result indicating prohibited alcohol concentration; procedures.

Procedures for administrative handling by the railroad in the event an employee's confirmatory test indicates an alcohol concentration of .04 or greater are set forth in § 219.104.

33. Part 219 is amended by revising the heading of subpart H as follows:

"Subpart H—Procedures and Safeguards for Urine Drug Testing and for Breath Alcohol Testing"

§ 219.703 [Amended]

34. Part 219 is amended by revising the heading of § 219.703 to read *"Drug testing procedures."*

35. Section 219.707 is amended by revising the section heading and the first sentence of paragraph (a); by redesignating existing paragraph (d) as paragraph (e); and by adding a new paragraph (d) as follows:

§ 219.707 Review by MRO of Urine Drug Testing Results.

(a) Urine drug test results reported positive by the laboratory as provided in part 40 of this title shall not be deemed positive or disseminated to any person (other than to the employee tested in a medical interview, if conducted) until they are reviewed by a Medical Review Officer (MRO) of the railroad as required by part 40 of this title and this section.

* * *

(b) * * *

(d) The MRO shall direct the employee's split sample to be tested in accordance with the procedures specified in 49 CFR part 40 if, within 60 days of the employee's having actual notice that he or she tested positive, the employee makes such a request to the MRO.

* * * * *

§§ 219.709 and 219.713 [Reserved]

36. Part 219 is amended by removing and reserving §§ 219.709 and 219.713.

37. Part 219 is amended by adding § 219.715 as follows:

§ 219.715 Alcohol testing procedures.

(a) Each covered employee who is notified of selection for breath alcohol testing and who is not performing a safety-sensitive function at the time of notification shall proceed to the testing site immediately. The railroad shall ensure that an employee who is performing a safety-sensitive function at the time of notification shall, as soon as possible without affecting safety, cease to perform the safety-sensitive function and proceed to the testing site.

(b) Each railroad shall ensure that all breath alcohol testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol testing are made applicable to employers by this part.

38. Part 219 is amended by adding a new subpart I as follows:

Subpart I—Annual Report

§ 219.801 Reporting alcohol misuse prevention program results in a management information system.

(a) Each railroad shall submit to FRA an annual report covering the calendar year, summarizing the results of its alcohol misuse prevention program.

(b) Each railroad that is subject to more than one DOT agency alcohol regulation shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the railroad shall determine which DOT agency regulation or rule authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each railroad shall ensure the accuracy and timeliness of each report submitted by the railroad or a consortium.

(d) Each railroad shall submit the required annual reports no later than February 15 of each year. The report shall be submitted on the form specified by the FRA. Each report shall contain:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, covered supervisory, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3)(i) Number of initial tests by type of test (i.e., pre-employment and "covered service," random, post-positive return to duty, etc.), type of authority (FRA, or, for accident/incident and rule violation cause testing, railroad) and employee category.

(ii) Number of confirmatory tests, by type of test and employee category.

(4) Number of confirmatory alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(5) Number of confirmatory alcohol tests indicating an alcohol concentration of .02 or greater but less than .04, by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmatory alcohol test indicating an alcohol concentration of .04 or greater who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d).

(8) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.

(9) Number of covered employees who were found to violate other provisions of subpart B of this part, and the action taken in response to the violation.

(10) Number of covered employees who refused to submit to an alcohol test required under this part, and the action taken in response to the refusal.

(11) Number of covered employees and supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(e) Annual reporting for calendar year 1992 and prior years shall be governed by the provisions of § 217.13 of this chapter in effect during the subject calendar period.

39. Part 219 is amended by adding subpart J as follows:

Subpart J—Recordkeeping Requirements

§ 219.901 Retention of breath alcohol testing records.

(a) *General requirement.* Each railroad shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each railroad shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of .02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and employee evaluation and referrals shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative test results (as defined in part 40 of this title) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Calibration documentation for evidential breath testing devices.

(iv) Verification of breath alcohol technician training.

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(vi) Documents generated in connection with decisions on post-accident testing.

(vii) Consolidated annual reports to FRA.

(viii) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide an adequate breath sample.

(2) Records related to test results:

(i) The railroad's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Records related to evaluation and training:

(i) Materials on alcohol misuse awareness, including a copy of the railroad's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.903 Retention of urine drug testing records.

(a) *General requirement.* Each railroad shall maintain records of its drug misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each railroad shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee positive drug test results, documentation of refusals to take required drug tests, and employee evaluation and referral shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative test results (as defined in part 40 of this title) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion drug tests.

(iv) Documents generated in connection with decisions on post-accident testing.

(v) Consolidated annual reports to FRA.

(vi) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide a urine sample.

(2) Records related to test results:

(i) The railroad's copy of the drug test custody and control form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to a drug test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Records related to evaluation and training:

(i) Materials on drug misuse awareness, including a copy of the railroad's policy on drug misuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.905 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no railroad shall release covered employee information that is contained in records required to be maintained under §§ 219.901 and 219.903.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or drugs, including any records pertaining to his or her alcohol or drug tests. The railroad shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each railroad shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over

the railroad or any of its covered employees.

(d) Each railroad shall make available copies of all results for railroad alcohol and drug testing programs conducted under this part and any other information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or covered employee.

(e) Records shall be made available to a subsequent railroad upon receipt of written request from the covered employee. Disclosure by the subsequent railroad is permitted only as expressly authorized by the terms of the employee's request.

(f) A railroad may disclose information required to be maintained under this part pertaining to a covered employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol or drug test administered under this part, or from the railroad's determination that the employee engaged in conduct prohibited by subpart B of this part (including, but not limited to, a Federal Employers' Liability Act, worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(g) A railroad shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

40. Part 219 is amended by adding appendix E, as follows:

Appendix E to Part 219—Outline of FRA Regulation on Control of Alcohol and Drug Use

Modal	FRA
General	
Purpose	§219.1
Applicability	§219.3
Alcohol testing procedures.	§219.715(b)
Definitions	§219.5
Preemption	§219.13
Other requirements imposed by employers.	§§219.1(b), 219.11(g), 219.101(c), 219.104(c)(4),(c)(5), 219.301(b)(4), 219.401(e)(3), 219.403(a), 219.405(a)
Requirement for notice.	§§219.23(a),(b),(c), 219.503, 219.607(b)(7), 219.607(d)(1)
Starting date for alcohol testing programs.	§§219.5, 219.607(d)(2)
Prohibitions	
Alcohol concentration.	§§219.101(a), 219.105
Behavior and appearance.	§§219.101(a), 219.105
On-duty use	§§219.101(a), 219.105
Pre-duty use	§§219.101(a)(3), 219.105
Use following an accident.	§§219.203(b)(4), 219.213(a)
Refusal to submit to a required alcohol test.	§§219.104(d), 219.107, 219.213(a)(1), 219.300(c), 219.603(a), (b)(1), 219.609(a), (b)(1)
Tests required	
Pre-employment/pre-duty testing.	§§219.501(a),(e), 219.505
Post-accident testing	§§219.11(b)(2), 201(c)(2), 219.203(a)(1), (a)(2), (a)(3), (b)(2), (b)(3) 219.209(b)
Random testing	§§219.601(b)(1),(b)(2), 219.607(b)(1), (b)(2), (b)(6), 219.715(a)
Reasonable suspicion testing.	§§219.300(a)(1),(b), (d)(2), 219.302(a),(b) §§219.11(a),(b)(1), 219.301(a)
Return-to-service testing.	§219.104(d)(3)
Follow-up testing	§219.104(d)(3)
Retesting of covered employees with an alcohol concentration of .02 or greater but less than .04.	§219.104(f)
Handling of test results, record retention, and confidentiality	
Retention of records	§219.903
Reporting of results in a management information system.	§§219.801, 219.803
Access to facilities and records.	§§219.211(e), 219.905
Consequences for employees engaging in alcohol-related conduct	
Removal from a safety-sensitive function, required evaluation and testing.	§§219.11(b)(2), 219.101, 219.104(a), 219.105(a),(b), 219.107, 210.203(b)(2),(b)(3)
Other alcohol-related conduct.	§§219.1(b), 219.11(b)(2), 219.104(f), 219.203(b)(2),(b)(3)
Alcohol misuse information, training and referral	
Employer obligation to promulgate a policy on alcohol.	§219.23(e),(f),(g)
Training for supervisors.	§219.11(g)
Referral, evaluation, and treatment.	§§219.1(b), 219.11(g), 219.23(d), 219.104(a), (d)

Issued in Washington, DC, on December 2, 1992.

Andrew H. Card, Jr.
Secretary.

Gilbert E. Carmichael,
Administrator, Federal Railroad Administration.

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Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR-6; Notice No. 33]

RIN 2130-AA43

International Application: Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Foreign railroads operating within the United States have been subject to regulations issued by the Federal Railroad Administration (FRA) on the control of alcohol and drug use since February 10, 1986. The Omnibus Transportation Employee Testing Act of 1991 ("Act"), however, requires FRA to amend its existing regulations by (among other changes) incorporating new procedures and safeguards with respect to breath and body fluid testing for alcohol, and mandating reasonable suspicion testing for both alcohol and drugs. In this advance notice of proposed rulemaking (ANPRM), FRA seeks comment on issues arising from the international application of the new statutory requirements.

DATES: Written comments must be received by February 16, 1993. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments shall be filed in triplicate with the Docket Clerk, Docket No. RSOR-6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., room 8201, Washington, DC, 20590. Parties wishing the FRA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. RSOR-6." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons, between 8:30 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Executive Assistant to the Associate Administrator for Safety (RRS–3), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366–0897) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION: Foreign railroads operating within the United States have been subject to regulations issued by the Federal Railroad Administration (FRA) on the control of alcohol and drug use (49 CFR part 219) since February 10, 1986. However, FRA has always determined that its random drug testing requirements do not apply in any situation where compliance would violate the domestic laws or policies of another country. FRA recently published a second final rule delaying application of random drug testing (subpart G) to railroad personnel based outside the United States until January 2, 1995, to allow for negotiations with foreign governments.

Covered service employees whose place of reporting or point of departure ("home terminal") for rail transportation services is located outside the United States have therefore not been subject to random drug testing, although such employees have always been subject to FRA's prohibitions on job-related use or possession of alcohol or drugs, reasonable cause testing, and post-accident testing (subparts B (except for return to service testing), C, and D) when operating in U.S. territory. Employee assistance policies (subpart E), pre-employment testing (subpart F), and return to service testing, like random testing, have remained subject to the law of where the employee is based (as determined by the employee's home terminal or reporting point). U.S. based crews have, of course, been subject to all components of FRA's program.

FRA's current approach is consistent with our prior discussions with Transport Canada. (As applied, FRA's regulations have affected only Canadian employees, since Mexican employees do not operate in U.S. territory.) With the enactment of the Omnibus Transportation Employee Testing Act of 1991, however, FRA now reexamines its testing program to determine how the Act's mandates will affect foreign employers. A discussion of departmental issues follows. FRA also invites commenters to raise mode-specific issues.

The Department's Legal Authority for Foreign Employer Testing Programs

The Omnibus Transportation Employee Testing Act of 1991, Public Law No. 102–143, provides for coverage by the Department's drug and alcohol testing rules of activities in the U.S. of foreign employers. The relevant provisions of the Act for the aviation industry provides that FAA regulations shall establish a program which requires air carriers *and foreign air carriers* to conduct preemployment, reasonable suspicion, random, and post accident testing for use, in violation of law or Federal regulation, of alcohol or a controlled substance. [Sec. 3 of the Act, amending § 614(a)(1) of the Federal Aviation Act (emphasis added).] In prescribing regulations under this section, the FAA Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. [Sec. 3 of the Act, amending § 614(e)(3) of the Federal Aviation Act.]

The portion of the Act affecting the railroad industry provides that FRA regulations shall establish a program which requires *railroads* to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety sensitive functions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. [Sec. 4 of the Act, amending § 202(r)(1) of the Federal Railroad Safety Act of 1970 (emphasis added).] In carrying out the provisions of this subsection, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries. [Sec. 4 of the Act, amending § 202(r)(1) of the Federal Railroad Safety Act of 1970.]

The portion of the Act affecting the motor carrier industry provides that FHWA regulations shall establish a program which requires *motor carriers* to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use, in violation of law of Federal regulation, of alcohol or a controlled substance. [Sec. 5(a)(1) of the Act, creating § 12020(a) of the Commercial Motor Vehicle Safety Act of 1986 (emphasis added).] In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries. Sec. 5(a)(1) of the Act, creating Section 12020(e)(3) of the Commercial Motor Vehicle Safety Act of 1986.

There are no similar provisions applicable to the transit industry, since the Federal Transit Administration drug and alcohol testing provisions do not cover foreign employers.

Under these similar provisions, FAA, FRA and FHWA have the authority and obligation to require drug and alcohol tests for safety sensitive employees of foreign employers. The FAA provisions specifically extend coverage to foreign air carriers, and the FHWA and FRA provisions cover motor carriers and railroads, respectively, which definitions include employers based in this country or in a foreign country. Moreover, the legal authority extends to all kinds of testing required by the Act: Reasonable suspicion, post-accident, preemployment, and random (subject to U.S. international obligations).

It is the Department's policy to carry out the Act's requirements using a territorial jurisdiction approach. That is, the Department interprets its statutory authority and obligation for drug and alcohol testing to apply to foreign employers who conduct operations in the United States, with respect to those operations. This does not mean that all operations of such a transportation employer would be subject to the rules. For example, a foreign employer's operations within its own country would not be subject to these rules. Following the same policy, only those employees of a foreign transportation employer who perform safety-sensitive functions in operations within the U.S. would be subject to testing.

For each of the three industries involved, the Act requires the Department to act consistent with the international obligations of the U.S., and to take foreign countries' laws and regulations into account. (This could be relevant, for example, to the conduct of testing in some foreign countries.) The Department is sensitive to the concerns of foreign countries. We are also very much aware of a number of practical considerations that may arise as we implement the Act with respect to foreign employers. For these reasons, as well as to foster consistency in the implementation of very similar statutory provisions, the FRA, FHWA, and FAA are issuing advance notices of proposed rulemaking rather than notices of proposed rulemaking (NPRMs). We are

seeking the public's views on a variety of issues and questions that may arise with respect to drug and alcohol testing by foreign employers.

General Problems and Issues

The following problems, questions, and issues appear to arise in the aviation, railroad, and motor carrier contexts. In responding to these questions and requests for comment, we ask that commenters distinguish responses relating to alcohol testing from those relating to drug testing, where the same response is not appropriate for both. In addition to these general issues, we also seek comment on any FRA-specific issues, or FRA-specific variations on these issues. We request that all responses, on both general and FRA-specific issues, be sent to the docket for this ANPRM.

1. International Treaties and Foreign Laws

We seek information on any bilateral or multilateral treaty obligations of the U.S., or principles of international law, that may affect our implementation of the Act. If there are any international agreements under development that would affect drug and alcohol testing of foreign employers, we also seek information on them. In commenting on international obligations of the U.S., we request that commenters focus on any provisions that affect the ability of the United States to test employees conducting operations in the U.S., with the testing to take place in the U.S.

In addition to international obligations, we seek comment on any laws or regulations of foreign countries that we should take into account in implementing the Act. We would like to obtain information on any laws or rules of specific foreign countries whose employers conduct U.S. operations that we should consider.

2. Pre-Employment and Follow-Up Testing

Often, employees of foreign transportation employers are recruited and hired in the foreign country involved. For example, a Canadian employer may hire Canadian nationals in Canada, some of whom will subsequently conduct operations in the U.S. The employer may not know, at the time of hire, which of its employees will operate in the U.S. In such a situation, should the employer be required to conduct pre-employment testing? If so, how, when and where would the foreign employer conduct pre-employment testing of the employees who were to operate in the U.S.?

Should all pre-employment testing be conducted in the U.S., or should the rules permit the employer to conduct tests in its own country? Where the employer could not, because of legal restraints on testing in its own country, conduct testing there, could the testing be arranged in the United States? For example, should the employer send the employee to a point in the United States for a test before the employee actually conducts an operation in this country? Should pre-employment testing be required at all in such a situation?

If an employee tests positive on any type of alcohol or drug test, FRA's existing and proposed rules require a return- to-service test and follow-up tests, over a period of time. For an employee whose home terminal or reporting point is in a foreign country, and who comes into the U.S. occasionally, questions similar to those mentioned above for pre-employment testing may arise. If the employer does not conduct the tests in its own country, how does the employer arrange for the required tests to take place in the U.S.?

3. Random Testing

Should all of a foreign employer's covered employees who operate in the U.S. at any time have to be part of the random testing pool? How would foreign employers arrange for the unannounced, random testing of their employees in U.S. territory? In their own countries? Also, to meet random testing rate requirements, employers have to conduct a certain number of tests per year (e.g., under a 50 percent random testing rate, a number of tests each year equivalent to half the number of the employees in the random pool). Would it be practical for employers to meet this requirement, while maintaining randomness, if tests are conducted only in the U.S.? Are there circumstances in which foreign employers should not be subject to a random testing requirement?

4. Requirement for All Types of Tests

Should the Department refrain from requiring foreign employers to conduct certain kinds of tests? The Department anticipates little problem with requiring a post-accident or reasonable suspicion test in the U.S., following an accident or basis for reasonable suspicion that occurred in this country (FRA currently requires this). However, as discussed above, there may be greater problems with other forms of testing. Is it desirable to exclude foreign employers from some or all types of alcohol or drug testing? Why or why not? Should the legal authority of the employer to conduct a certain kind of testing in its own country be considered in deciding whether to exclude employers in a certain country from a requirement? If some exclusions are desirable, how can this objective be reconciled with the testing requirements of the Act?

5. Other Compliance Activities

DOT drug and alcohol rules have a variety of other program requirements in addition to testing. These requirements pertain to employee assistance and training programs, substance abuse professionals, record retention and reporting, and many other subjects. Some of these activities or functions might well take place most conveniently in the foreign employer's country. Should some or all of the foreign employer's program activities be required or permitted to take place outside the U.S.? How would the Department monitor or enforce compliance with drug or alcohol program activities that take place outside the U.S.? How and where would Departmental personnel obtain access to information about the employers' implementation of program and testing requirements?

6. Testing Procedures

49 CFR part 40 governs testing under the DOT drug and alcohol testing rules of the three operating administrations involved (except for FRA post-accident testing). Part 40 compliance could raise a number of problems if any testing or collection is performed abroad. Some of these issues may apply even with respect to testing by foreign employers that occurs in the U.S. Some examples follow.

Drug testing under part 40 includes testing specimens at NIDA-certified laboratories, all of which are in the U.S. If specimen collection for drug testing is done outside the U.S., specimens would probably be sent to these laboratories for analysis. What practical problems does this create (*e.g.*, timeliness of transmission of specimens and associated paperwork), and how could they be solved? If drug specimen collection or alcohol testing is permitted to be conducted outside the U.S., what language or training problems would need to be overcome, and what is the best way of dealing with these problems (e.g., translations of DOT requirements or forms)? In drug testing, there is a requirement for medical review officers (MROs) to verify positive tests and perform other functions. Should MROs (who, under current rules, must be physicians licensed in the U.S.) have to perform these functions, or should physicians licensed in the foreign countries involved be able to participate

as well? The same question can be asked for substance abuse professionals who would evaluate people who test positive for alcohol and drugs. If personnel licensed in the U.S. were required for this function, would this create difficult logistical problems for the program? Would there be problems in obtaining or using evidential breath testers on the National Highway Traffic Safety Administration's Conforming Products List (which part 40 requires for alcohol testing) in other countries, if testing is permitted to be conducted outside the U.S.?

The Department seeks comment on any other part 40-related problems that may occur in the context of testing of foreign operators. Should there be a method of accepting a foreign country's testing procedures in lieu of some or all part 40 procedures, if testing is permitted to be conducted in foreign countries?

7. Consequences of Positive Tests

The consequence of a "positive" test is removal from a safety-sensitive position, until the employee follows the rule's procedures for reinstatement in the safety sensitive position. However, the application of the DOT drug and alcohol testing rules to foreign employers is intended only to affect U.S. operations. Consequently, the Department would not assert jurisdiction to require that an employee of a foreign employer who tested positive not perform safety-sensitive functions in operations outside the U.S. However, such an employee would be prohibited from conducting any safety-sensitive functions in the U.S., until the employee follows the rule's procedures for reinstatement in the safety sensitive position. How would foreign employers make sure that an employee who tested positive did not engage in operations in the U.S., until reinstatement requirements had been met? How would the Department monitor compliance with this requirement?

8. Costs

What is the number of employees who would be affected by a requirement to test persons performing safety-sensitive functions in the U.S. for foreign employers? Do commenters anticipate that foreign operators' positive test rates (which can affect costs significantly) be higher, lower, or about the same as the positive test rates of U.S. employers for the employees who would be subject to these rules? Are there costs unique to drug and alcohol program activities that may occur outside the U.S. that the Department should consider in estimating the costs of the rule? Are there any positive or negative trade or competitive effects of testing (or not testing) employees of foreign employers, for either U.S. or foreign companies?

Executive Order 12291 and DOT Regulatory Policy and Procedures

This anticipated rulemaking is not "major" under Executive Order 12291. It is significant under the Department of Transportation's Regulatory Policy and Procedures.

Other Regulatory Matters

At this preliminary stage, it is not yet possible to determine whether there will be a significant economic impact on a number of small entities, what the paperwork burden might be, or whether there will be any federalism implications. Each of these regulatory matters will be addressed fully at the time of publication of any notice of proposed rulemaking on this subject.

Paperwork Reduction Act

FRA has not yet determined whether this anticipated rule will contain a collection of information requirement for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

List of Subjects in 49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

Issued in Washington, DC., on December 2, 1992.

Andrew H. Card, Jr.,
Secretary.
Gilbert E. Carmichael,
Administrator,
Federal Railroad Administration

[FR Doc. 92–29683 Filed 12–10–92; 10:00 am]
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Federal Railroad Administration

49 CFR Parts 217 and 219

[Docket No. RSOR–5; Notice No. 35]

RIN 2130–AA64

Annual Reporting Requirements; Amendments to Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend and expand its current annual reporting requirements for data concerning control of alcohol and drug misuse in railroad operations. The proposed standard format for reporting is designed to elicit data in a manner compatible with related reporting requirements that would be embodied in the alcohol and drug misuse prevention programs applicable to other transportation industries. This action is necessary to provide comparable data for inclusion in a management information system designed to determine the effectiveness of such programs.

DATES: (1) Any request to make an oral presentation must be received by January 4, 1993.

(2) Written comments must be received by April 14, 1993. Late filed comments will be considered to the extent practicable.

(3) FRA proposes to make the final rule effective immediately on publication in the Federal Register.

ADDRESSES: Comments shall be sent to Docket Clerk, Docket No. RSOR–6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Room 8201, Washington, D.C., 20590. Persons wishing the FRA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. RSOR–6." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons, between 8:30 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Don Shatinsky, Alcohol and Drug Program Manager (RRS–11), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366–0127) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1988 (53 FR 47103), FRA published a final rule containing amendments to its alcohol and drug regulations, which were first promulgated on August 2, 1985. These amendments established a random drug testing program and added new safeguards for urine drug testing, incorporating procedures from a Department of Transportation regulation, "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR part 40), that had instituted standards for drug testing of transportation employees. FRA published additional amendments to its alcohol and drug regulations on December 27, 1989 (54 FR 53238) and June 4, 1990 (55 FR 22791). The December 27, 1989 republication

significantly revised the alcohol/drug reporting requirements contained in 49 CFR 217.13(d) and provided the structure for 1990 and subsequent annual reports due before March 1 each year.

On November 27, 1989, the General Accounting Office (GAO) published a report on the status of the programs promulgated by the DOT regulations. A primary recommendation in the GAO report was that "[t]he Secretary of Transportation adopt evaluation criteria and provide the administrations with guidance on the types of program information they should be getting from employers to evaluate program success."

OST/FRA Proposal

The Office of Drug Enforcement and Program Compliance in the Office of the Secretary, DOT (hereinafter "OST"), therefore developed a comprehensive plan for a management information system (MIS) to obtain and analyze employer alcohol and drug program data. OST has identified standard data elements critical to the review and management of the operating administrations' alcohol and drug programs and is proposing, elsewhere in today's **Federal Register**, to amend its Procedures for Transportation Workplace Drug Testing (49 CFR part 40).

Employers who fall under two or more DOT Agency regulations requiring alcohol and drug testing, must submit data to each regulating operating administration (OA) for those employees covered by that OA's rule. Employees who perform functions covered by more than one OA should be identified by their employer as to which covered position they will be reported under. Alcohol and drug program data on dual covered employees should be reported to the appropriate OA. Generally, pre-employment, random, and return to duty tests should be reported to the OA that regulates the function used as the basis for employee category. Post-accident tests should be reported to the OA to whom that accident is reportable. Testing for cause should be reported to the OA based on the employee function requiring the test.

In order to elicit data that is useful for intermodal analysis, FRA proposes to repeal its existing reporting requirements (§ 217.13(d)) and substitute a MIS that includes both generic DOT elements and mode-specific refinements, reflecting industry practice and FRA and railroad programs already in place. Analysis of this data would provide an important means for monitoring implementation, compliance and enforcement, and for evaluating the effectiveness of the alcohol and drug program. (Also in today's **Federal Register**, FRA is separately proposing an analogous MIS to collect employer alcohol program data as part of a Notice of Proposed Rulemaking (NPRM) amending its alcohol and drug regulations in response to the Omnibus Transportation Employee Testing Act of 1991 ("Omnibus Act").)

A new subpart of part 219, subpart I, Reporting and Review of Results, would require railroads to submit MIS reports for each calendar year by February 15 of the following year. Subpart I would have the same applicability as subparts D, E, F and G; that is, all railroads not excluded under the small railroad exclusion in § 219.3 would be required to file annual alcohol/drug program reports.

As noted above, the proposed data collection form would incorporate format and data elements from the OST form, but with substantive changes unique to FRA. The preamble to OST's parallel NPRM contains comments, discussions and questions that should be considered when reviewing the proposals in FRA's NPRM. Commenters should therefore indicate whether they are responding to the departmental NPRM or the FRA NPRM. Persons filing comments on the OST proposal who wish to have those comments considered in this proceeding must provide copies of their filing to the FRA Docket Clerk at the address set forth above.

Adaptation of the OST MIS Format

OST and FRA recognize that FRA's regulatory provisions are not precisely parallel to those of the other modal administrations. In some cases, requirements are substantially the same, but carry different names; in others, common names tend to mask significant differences. Therefore, FRA has worked with OST to reconcile the various facets of the data collection instrument with the specific regulatory and industry context. The result is a form that should successfully elicit the data required for the OST MIS while using language more familiar to railroad reporting officers and better corresponding to the reality of railroad programs.

FRA's proposed MIS data elements include many required to be addressed in current FRA regulations (49 CFR 217.13(d)). However, the MIS elements are not coextensive with the current FRA requirements. Even where the data elements generally correspond, they are often not identical. Further, due to differences among industries and regulatory programs, the MIS elements do not include several sets of data that remain of importance with respect to the railroad industry.

The OST notice published elsewhere in today's **Federal Register** discusses the proposed standard requirements. The following discussion addresses some of the more prominent adaptations and additions proposed for the form that would be utilized by the railroads.

For each of the MIS data charts, FRA has entered standard rail employee categories (engine service, train service, dispatcher/train order operator, signal service, and other Hours of Service employees). Comment is solicited as to whether these categories adequately define the primary functional groups for which comparative analysis may be useful.

There are two data charts contained in the Part 40 form that do not appear in the FRA form:

First, there is no chart labeled "post-accident tests." Mandatory post-accident toxicological testing ("PATT"), as conducted by FRA, is designed to support accident investigations and to shed light on the role of alcohol, as well as other drugs. FRA requires railroads to obtain blood and urine samples after qualifying accidents and incidents, generally without regard to any threshold showing that the employee contributed to the accident/incident. Samples are then forwarded to an FRA contract laboratory, which analyzes them for alcohol and controlled substances that FRA has specified for the particular accident investigation. As all PATT testing is conducted by FRA's designated laboratory, and FRA maintains these test records, FRA finds it unnecessary to include questions about PATT results.

Second, there is no chart for periodic tests, since FRA does not require this form of testing.

In addition to these omissions, FRA proposes to adapt or supplement the OST format in the following respects:

In item D., "pre-employment tests," FRA has modified the caption to indicate that both pre-employment tests and first- time transfers from non-covered to covered service should be included.

In item E., following the chart for "random testing," FRA has inserted data elements derived from the current part 217 reporting requirements. These data elements are designed to follow the progress of employees identified as having violated the prohibitions on alcohol and drug use (§§ 219.101 and 219.102), with respect to discipline, evaluation, treatment, return to service and any later relapse.

The reporting format for "reasonable cause testing" data has been significantly altered. FRA has changed the caption to "testing for cause," to conform with the new subpart D heading published elsewhere today in FRA's Omnibus Act NPRM. FRA would change the title of subpart D from "Authorization to Test for Cause" to "Testing for Cause" to emphasize that reasonable suspicion testing is no longer discretionary. Under the Omnibus Act, reasonable suspicion testing for alcohol and controlled substances changes from an authorized option to a mandatory program. The accident/incident and rule violation components of FRA's for cause testing program would remain optional for both alcohol and drug testing.

The proposed OST (part 40) chart for "reasonable cause testing" would obviously not produce railroad data that would be comparable with other modes, since the FRA "testing for cause" provisions (49 CFR part 219, subpart D) are much more expansive than the reasonable cause provisions of other modal rules. Although testing for reasonable suspicion of current use or impairment (the sole basis for "testing for cause" of employees in other modes), will now be mandatory as required by the Omnibus Act, the FRA rule also authorizes testing following certain lesser-magnitude accidents and casualties and following enumerated rule violations.

"Reasonable cause testing," in other modes, is comparable to the reasonable suspicion component of FRA's testing for cause program, which requires testing where a supervisory employee has a reasonable suspicion that an employee is impaired or under the influence, based on specific, articulable observations about that employee. Data from these queries will be utilized for the intermodal "reasonable cause" analysis. The accident/incident component of FRA's testing for cause program is the portion actually analogous to "post-accident" testing as conducted by other modes. Supervisory employees are authorized to conduct testing where they have a reasonable suspicion that an employee's acts or omissions contributed to the cause or severity of a reportable accident. Data from these queries will be utilized for the intermodal "post-accident" analysis.

The third component of FRA's testing for cause program, the operating/safety rule component, authorizes testing when an employee has committed any of the specified operating rule violations. This type of testing for cause is unique to the FRA program.

FRA seeks information on all three types of testing for cause, and accordingly has included in section E of the form a separate chart for each testing for cause component. For the accident/incident and operating/safety rule components, each railroad may elect whether to test under the FRA rule (subpart D) or its own authority, and there are significant differences in the substances, testing assays, cutoffs, etc., between FRA-authorized testing using part 40 procedures and private activity. Although it might seem logical to ignore non-DOT/FRA testing for this purpose, that would result in the loss of data on the majority of railroad for-cause tests. Since these tests are both numerous and useful with respect to addressing the alcohol and drug misuse problem, FRA proposes to carry forward existing reporting requirements for this information. However, because of the technical differences that obtain, including testing for "other drugs," the reporting blocks have been modified to permit the reporting railroad to check off the type of authority under which it tested. In the rare case of a railroad using both FRA authority and the company program, the company would complete two copies of the pertinent charts to report testing for cause results from the FRA and railroad testing program. Section E also contains separate questions that request specific information on tests conducted under a railroad's own rules or collective bargaining agreements.

Following the three "testing for cause" charts, FRA proposes to add information from the existing reporting requirements concerning for-cause breath alcohol and urine alcohol testing. Like drug urinalysis, breath alcohol testing may be conducted as testing for cause under subpart D of the FRA regulation or otherwise "for cause" under a railroad's own program. Urine alcohol testing is not presently authorized under the FRA regulation (and is not included in the NPRM that FRA is publishing today proposing amendments in response to the Omnibus Act) due to the technical difficulties with this type of specimen and the apparent lack of interest in utilizing FRA authority for this purpose. However, properly conducted urine alcohol testing can add further capacity to detect and remedy alcohol safety problems. FRA thus proposes to continue to collect this information, as well.

FRA has denominated the OST chart "Return to Duty Testing" as "Post Positive Return to Service Testing" in order to emphasize that it only requests information on return-to-service tests that are required by § 219.104 of the FRA rule. It does not request information on the rather extensive testing undertaken by the railroads on employees returning to service following personal injuries, furloughs, and other periods out of service. Although this other testing is useful, it is generally undertaken with advance notice (for which a low positive rate would be expected) and is not required by the FRA rule.

The OST model chart on "test refusals" has also been modified to delineate the three forms of reasonable suspicion testing.

Finally, FRA has included a chart to collect information on follow-up urine drug testing for those employees who were returned to service after having tested positive in a federal random or for-cause test.

Section by Section Analysis

FRA proposes to add a new subpart I, addressing Annual Reporting Requirements, to part 219. Subpart I would provide data for the OST MIS and incorporate in a more useful format much of the data that FRA already requires. Section 219.3 of the existing regulations would be amended to add subpart I to the list of subparts (D, E, F and G) that do not apply to certain small railroads.

Approximately 60 railroads with 400,000 or more total manhours are currently required to submit annual operating rules and practices reports, including alcohol and drug program data, by March 1 of each following year. The new reporting requirements would expand the universe of reporting railroads to include all of those railroads (operating entities) that were required to file random drug testing programs for FRA approval (about 175 total). However, the smallest railroads, already excused from filing random testing plans, (those with fewer than 15 employees in covered service that do not operate on the tracks of another railroad or engage in joint operations) would likewise be excused under the new filing requirements.

Subpart I would require submission of annual reports to FRA providing the information required by the form and instructions set out in a new appendix D, which is reproduced below. Each report under the proposed subpart I would cover a calendar year. The closing date would be December 31 and the report would be due at FRA by February 15 of the following year. Comment is specifically requested on the feasibility of this 45 day interval for reporting the annual data.

As adapted for the railroad industry, the report must cover each of the following data elements:

1. Number of covered employees by employee category (ie., train service, engine service, dispatcher/operator, signal service, other). This data is necessary to assess the scope of the rule's application and provide a basis for determining if random testing meets the required annual testing percentage.

2. Number of covered employees in each category subject to testing under the anti-drug rules of more than one DOT agency, identified by each agency. This data is necessary to review multi-modal implementation so that policy can be designed accordingly.

3. Number of specimens collected by type of test (e.g., pre-employment/transfer, random, post-positive return to duty, etc.), type of authority (FRA, or, for accident/incident and operating/safety rule testing for cause, railroad) and employee category. This data is needed to check the compliance with the rules by category and to review collection, testing and the review process.

4. Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug and employee category. This data, along with the number of tests performed, permits the calculation of positive rates necessary to determine the extent of drug use and the specific drugs detected in the various categories of employees. Further, analysis of this data over time will provide a measure of the effectiveness of the drug testing rules in deterring drug use.

5. Number of negatives verified by a MRO by type of test, and employer category. This data is needed to check compliance with the rules by category and to review the application of the components of the programs.

6. Number of persons denied a position as a covered employee following a verified positive drug test. This data provides an assessment of whether the testing program is being implemented as required, provides a measure of the impact of the drug testing rules on the industries, and yields information on the prevalence of drug use in the applicant pool.

7. Number of covered employees verified positive by a MRO, who were returned to service in covered positions during the reporting period. This data provides information on employer policy implementation regarding reentry requirements and rehabilitation of identified drug users.

8. Number of employees with tests verified positive by a MRO for multiple drugs. This data provides information on the extent of multi-drug use in the regulated industries.

9. Number of covered employees who refused to submit to a drug test required under this part, and the action taken in response to the refusal(s). This data provides information on employer policy implementation regarding refusals and subsequent employer actions.

10. Number of covered employees and supervisors who have received required training during the reporting period. This data provides information on training provided during the current reporting period and a cumulative count of covered employees and supervisory personnel on payroll as of December 31 who have received the required drug training.

A new appendix D to part 219 would set forth a standard form to provide the data required by this regulation. Comments are specifically requested on the form and instructions.

Request for Comments

FRA requests written comment on these revised annual reporting requirements. FRA will make available an opportunity for oral presentations, as required by section 202 of the Federal Railroad Safety Act of 1970, upon request within the period specified under "DATES" above.

FRA specifically solicits comment on several issues. FRA is interested in comments on the utility and feasibility of gathering, maintaining, verifying, organizing and reporting the additional data that will be necessary to complete the proposed MIS data collection form. FRA believes that most of the required data elements can be readily derived from data already maintained under its existing data retention or reporting requirements, but realizes that many smaller railroads are not currently required to submit annual reports. These railroads have already been required, however, to submit and implement random testing plans, conduct pre-employment testing, and maintain records as required by § 219.713. FRA invites specific comment as to whether smaller railroads should be required to maintain and file the comprehensive data specified in the annual MIS reports.

In addition, FRA is aware that the proposed reports will include data that railroads are not required to report under its current annual reporting rule, *e.g.*, pre-employment testing results. FRA requests comment on the practicality of adding these new data elements to a railroad's established annual reporting system and invites suggestions as to alternative data collection methods.

The MIS as proposed will necessitate changes in railroad reporting systems. FRA is interested in any structural impediments railroads may face in modifying their data retrieval systems to fulfill the new reporting requirements. OST/FRA contemplate that the report filed in February 1994 should cover the entire 12 months of 1993, but one option would be to permit railroads to report data from the first half of 1993 in the old reporting format and data from the second half of 1993 in the new MIS format. Delay of the MIS requirements would allow railroads time to restructure the recordkeeping systems that they already have in place. FRA is interested in comments on whether this adjustment time is necessary, and also invites other options from commenters.

FRA notes that, although the adapted form appears lengthy, essentially no respondents would find it necessary to enter data (other than "0" to indicate no relevant activity) in all of the spaces provided. Commenting railroads are thus requested to focus on those elements actually relevant to their individual programs.

FRA reserves the right to modify the proposed reporting requirements in light of comments received.

Executive Order 12291 and DOT Regulatory Policy and Procedures

This proposal is not "major" under Executive Order 12291. It is significant under the Department of Transportation's Regulatory Policy and Procedures.

This notice proposes standardizing reporting requirements within DOT with retention of some rail-specific requirements. The purpose is to provide OST and FRA with critical data in order to make necessary policy and program evaluations which could lead to policy changes which make the rule more effective for safety. This data will provide significant input to evaluate the cost effectiveness of the programs and each part of the program. This modification would provide overall benefit to public safety by enhancing FRA's ability to ensure that this critical program is operating effectively. FRA anticipates that this requirement will cause minimal change in compliance burden and cost. Most of the program data requested would have been maintained in the implementation of an effective drug program under the current rule.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by

Government regulations. FRA certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

FRA specifically solicits comment on means to limit any reporting burden on small entities and regarding the impact of requiring reporting of small railroads not subject to current requirements (certain railroads with fewer than 400,000 manhours of employment).

Federalism Implications

The proposed rulemaking action would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, FRA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies to this notice of proposed rulemaking because it changes several approved collections of information and initiates several new information collection requirements. OST and FRA estimate that preparation of the annual report would require approximately 12–16 hours in the case of a small company with two million or less manhours, 8 days-2 weeks in the case of a medium company with two million to ten million manhours, and 3 weeks-2 months in the case of a large company with in excess of ten million manhours. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should address their views to Gloria D. Swanson, Federal Railroad Administration, room 8314, 400 Seventh Street, SW., Washington, DC 20590 and to the Regulatory Policy Branch (OMB No. 2130–526), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20530, Attention: Desk Officer for FRA. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

FRA will request OMB approval of these revised information collection requirements. A **Federal Register** notice will be published when Paperwork Reduction Act approval is obtained. Current information collection requirements under part 219 were approved under OMB No. 2130–0526.

List of Subjects

49 CFR Part 217

Railroad operating rules, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Control of alcohol and drug use, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA proposes to amend parts 217 and 219, title 49, Code of Federal Regulations as follows:

PART 217—[AMENDED]

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 431, 437 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Section 217.13 is amended by deleting paragraph (d).

PART 219—[AMENDED]

3. The authority citation for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

4. Part 219 is amended by adding a new § 219.803 to subpart I, as follows:

Subpart I—Annual Report

* * * * *

§ 219.803 Reporting drug misuse prevention program results in a management information system.

(a) Each railroad shall submit to FRA an annual report covering the calendar year, summarizing the results of its drug misuse prevention program.

(b) Each railroad that is subject to more than one DOT agency drug regulation shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any drug test on a covered employee subject to the regulations of more than one DOT agency, the railroad shall determine which DOT agency regulation authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each railroad shall ensure the accuracy and timeliness of each report submitted by the railroad or a consortium.

(d) Each railroad shall submit the required annual reports no later than February 15 of each year. The report shall be submitted on the form specified by the FRA. Each report shall address each of the following data elements:

(1) Number of covered employees by employee category (*i.e.*, train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug rules of more than one DOT agency, identified by each agency.

(3) Number of specimens collected by type of test (*e.g.*, pre-employment/transfer, random, post-positive return to duty, etc.), type of authority (FRA, or, for accident/incident and operating/safety rule testing for cause testing, railroad) and employee category.

(4) Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug and employee category.

(5) Number of negatives verified by a MRO by type of test, and employer category.

(6) Number of persons denied a position as a covered employee following a verified drug test.

(7) Number of covered employees verified positive by an MRO, who were returned to duty in covered positions during the reporting period.

(8) Number of employees with tests verified positive by an MRO for multiple drugs.

(9) Number of covered employees who refused to submit to a drug test required under this part, and the action taken in response to the refusal(s).

(10) Number of covered employees and supervisors who have received required training during the reporting period.

5. Part 219 is amended by adding a new appendix D as follows:

Appendix D to Part 219—Format and Instructions for Annual Report

Issued in Washington, DC, on December 2, 1992.

Andrew H. Card, Jr.,
Secretary.

Gilbert E. Carmichael,
Administrator, Federal Railroad Administration.

BILLING CODE 4910-06-M

APPENDIX B - DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

GENERAL INSTRUCTIONS

This reporting form includes three parts. Collectively, these parts address the data elements required in the Federal Railroad Administration (FRA) and U.S. Department of Transportation (DOT) drug and alcohol testing regulations. Each part of the form is preceded by instructions which outline and explain the information requested and indicate the probable sources for this information. The three parts of the form are:

Section	Instructions Pages	Reporting Form Pages
I. ORGANIZATIONAL INFORMATION	i-ii	1-2
II. DRUG TESTING INFORMATION	iii-vii	3-10
III. ALCOHOL TESTING INFORMATION	viii-xii	11-17

I. ORGANIZATIONAL INFORMATION

INSTRUCTIONS

This part of the reporting form includes two sections. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. RAILROAD EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	ii	2

Page 1 **RAILROAD EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done and a current address. Below this, a signature, date, and current telephone (including the area code) are required certifying the correctness and completeness of the form.

Page 2

COVERED EMPLOYEES (Section B) requires a count for each Hours of Service Act employee category that must be tested under FRA/DOT regulations. For FRA this includes the following categories "Engine Service", "Train Service", "Dispatcher/Operator", "Signal Service", and "Other." The **OTHER** category is a count of employees performing covered service that are not included in specific preceding categories. Examples include yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, etc. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the column.

Additional information must be completed if your company employs personnel who perform duties covered by the anti-drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

For Office Use Only

FRA DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

YEAR COVERED BY THIS REPORT: 19__

A. RAILROAD EMPLOYER INFORMATION

Company _____

Address _____

_____

_____

I, the undersigned, certify the attached Federal Railroad Administration Drug and Alcohol Management Information System Data Collection Form, is to the best of my knowledge and belief, a true, correct, and complete form for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. The willful falsification of any information in this report may also subject the submitter to civil or criminal prosecution under Title 45, U.S.C. Section 438(e).

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FTA	RSPA	USCG
Engine Service						
Train Service						
Dispatcher/Operator						
Signal Service						
Other*						
TOTAL						

*Includes yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, and other miscellaneous employees performing covered service as defined in 49 CFR 228.5 (c).

II. DRUG TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Railroad Administration (FRA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested. A sample testing results table with a narrative explanation is provided on pages iv-vi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION	iv	4
B. EMPLOYEE TESTING	vi	5-9
C. OTHER TESTING/PROGRAM INFORMATION	vii	10
D. TRAINING/EDUCATION	vii	10

Sections A and B are used to summarize the drug testing results for covered employees. There are seven tables to be completed (one in Section A and six in Section B). The first table (Section A) is where you enter the data on pre-employment testing. The six tables in Section B are for entering drug testing data on random testing, for cause testing (one table each for "for cause testing" due to accidents/injuries, rules violations, and reasonable suspicion), post-positive return to service testing, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION**. The format and explanations used for the sample table apply to all seven of the tables in Sections A and B.

Information on actions taken with those persons testing positive is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 4

JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION (Section A) requires information for pre-employment and covered service transfer testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying/transferring. A sample table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by job applicants that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana, cocaine, phencyclidine, opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant/transferee tested positive for more than one drug, for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns.

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page v illustrating this procedure with example numbers.

Page 4

Below the table for **PRE-EMPLOYMENT AND "COVERED SERVICE" TRANSFER TESTING** is a box with the heading "**Number of applicants/transfers denied employment/transfer in a covered position following a verified positive drug test**". This is simply a count of those persons who were not hired/transferred into a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION**, which summarizes pre-employment/covered service transfer testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example will use the categories "Engine Service" and "Train Service" to illustrate the procedures for completing the form.

A — Urine specimens were collected for 157 job applicants for engine service positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Engine Service".

B — The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for engine service positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Engine Service".

C — The MRO for your company reported that 4 of those 157 specimens from applicants for engine service positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Engine service".

D — With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in Section C, **OTHER TESTING/PROGRAM INFORMATION**, on page 10 of the reporting form.

PRE-EMPLOYMENT AND "COVERED SERVICE" TRANSFER TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Engine Service	157	153	4	3	1	0	0	1
Train Service	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1	0	1	1

A B C D E

Please note that the sample data collection form also has information for train service workers on line two. The same procedures outlined for engine service positions should be followed for entering the data

on train service workers. With applicants for train service positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Train Service"

E

The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for engine service positions were collected and 107 for applicants for train service positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 5-9 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) random testing, (2) for cause testing due to accidents/injuries, (3) for cause testing due to rule violations, (4) for cause testing due to reasonable suspicion, (5) post-positive return to service testing, and (6) follow-up testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

Pages 5-6 Following the table that summarizes **RANDOM TESTING**, you must provide **Additional Testing Data** on those employees who have tested positive. This includes disciplinary actions and results of evaluations and rehabilitations.

Pages 6 8 **EMPLOYEE TESTING - FOR CAUSE TESTING INFORMATION** requires three separate tables, one for accidents/injuries, one for rules violations, and one for reasonable suspicion. In the shaded portion of the tables for accidents/injuries and rules violations you must indicate whether the information in the table for testing was conducted under FRA authority or under railroad authority. **Reasonable suspicion testing is mandatory under FRA regulations and not subject to railroad discretion**.

The tables for accidents/injuries and rules violations contain two additional columns which must be completed for testing done under railroad authority. The first additional column, labeled "Other Prohibited," requires that you list any drugs, other than the five listed, that are tested under railroad rule (e.g., butalbital). The rightmost column, labeled "Combined," requires that you indicate whether any of these positives were in combination with one or more positive findings for the five

drugs (same specimen). If yes, you must attach details (e.g., 2 marijuana/butalbital).

Page 9 — Following the table that summarizes **POST-POSITIVE RETURN TO SERVICE TESTING**, you must provide counts for employees who have tested positive and are currently in, or have completed rehabilitation, and have returned to work in a covered position. Report this information only for employees who tested positive during this reporting period.

Page 10 — **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 10 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**, then check the appropriate columns indicating the combination of drugs reported as positive. For example, if marijuana and cocaine were detected in 3 engine service specimens, then you would write "Engine service" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 engine service specimens, then you would write "Engine service" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 10 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a drug test required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal. An example of an action taken would be "removed from covered duties pending termination".

Page 10 — **TRAINING/EDUCATION** (Section D) requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED TO BE REPORTED BY THE FEDERAL RAILROAD ADMINISTRATION (FRA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by FRA/DOT drug testing regulations.

   - The information requested should include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40 and other drugs where appropriate.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

A. JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION

PRE-EMPLOYMENT AND "COVERED SERVICE" TRANSFER TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Engine Service								
Train Service								
Dispatcher/ Operator								
Signal Service								
Other								
TOTAL								

Number of applicants/transfers denied employment/transfer in a covered position following a verified positive drug test: [ ]

B. EMPLOYEE TESTING - RANDOM TESTING INFORMATION

RANDOM TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Engine Service								
Train Service								
Dispatcher/ Operator								
Signal Service								
Other								
TOTAL								

Additional Testing Data

1. Number of disciplinary actions taken (attach narrative statement describing type of disciplinary action taken): [ ]

2. Number of employees referred for evaluation: [ ]

3. Number of employees evaluated as not requiring formal treatment: [ ]

4. Number of employees evaluated as requiring outpatient treatment: [ ]

5 Number of employees evaluated as requiring inpatient treatment: [ ]

B EMPLOYEE TESTING - RANDOM TESTING INFORMATION (Continued)

Additional Testing Data

6. Number of employees failing to complete rehabilitation (as determined by clinical judgement or positive test on return-to-work urine analysis): ____

7. Number of employees who completed rehabilitation determined after investigation to have been involved in subsequent drug disciplinary offenses: ____

B. EMPLOYEE TESTING - TESTING FOR CAUSE INFORMATION

Note: If you used both FRA authority and railroad authority to conduct for cause drug testing for accidents/injuries or rules violations, please fill out a separate chart for each authority, i.e., one for FRA tests and one for railroad tests (extra sheets attached).

FOR CAUSE DRUG TESTING
DUE TO ACCIDENT*/INJURY
*(Accidents NOT qualifying under 49 CFR Part 219 Subpart C)

(Testing Conducted Under: FRA Rule___ Railroad Rule___)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG						
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines	Other Prohibited [1]	Combined [2]
Engine Service										
Train Service										
Dispatcher/ Operator										
Signal Service										
Other										
TOTAL										

B. EMPLOYEE TESTING - TESTING FOR CAUSE INFORMATION (continued)

FOR CAUSE DRUG TESTING
DUE TO RULES VIOLATION

(Testing Conducted Under: FRA Authority___ Railroad Authority__)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG						
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines	Other Prohibited [1]	Combined [2]
Engine Service										
Train Service										
Dispatcher/ Operator										
Signal Service										
Other										
TOTAL										

[1] Other drugs tested under railroad rule where the use was prohibited by 49 CFR 219.102.

[2] Indicate whether any of these positives were in combination with one or more positive findings for the five drugs (same specimen). If yes, attach details (e.g., 2 marijuana/butalbital).

B. EMPLOYEE TESTING - TESTING FOR CAUSE INFORMATION (continued)

FOR CAUSE DRUG TESTING REASONABLE SUSPICION								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Engine Service								
Train Service								
Dispatcher/ Operator								
Signal Service								
Other								
TOTAL								

OPERATIONAL TESTS AND INSPECTIONS

The following items request information concerning the railroad's program for supervising its employees and ensuring that they are free from impairments caused by drugs:

1. Total number of covered employees observed in documented tests and inspections related to enforcement of the railroad's rules and policies on drug use (including, but not limited to, observations for which urine tests were conducted and observations after accidents/incidents and rule violations): ☐

2. Number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy: ☐

B. EMPLOYEE TESTING - POST-POSITIVE RETURN TO SERVICE INFORMATION

POST-POSITIVE RETURN TO SERVICE TESTING									
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Engine Service								
Train Service								
Dispatcher/ Operator								
Signal Service								
Other								
TOTAL								

Note: The following question relates to post-positive 49 CFR Part 40 and Part 219 (other than Subpart C, "FRA Post Accident Testing").

Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during this reporting period: [ ]

B. EMPLOYEE TESTING - FOLLOW-UP TESTING INFORMATION

FOLLOW-UP TESTING									
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Engine Service								
Train Service								
Dispatcher/ Operator								
Signal Service								
Other								
TOTAL								

C. OTHER TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FRA drug testing regulations: [ ]

Number of supervisory personnel who have received recurrent or refresher training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use: [ ]

III. ALCOHOL TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information for the Federal Railroad Administration (FRA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested. A sample testing results table with a narrative explanation is provided on pages ix-xi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION	ix	11
B. EMPLOYEE TESTING	xii	12-16
C. OTHER TESTING/PROGRAM INFORMATION	xi	16-17
D. TRAINING/EDUCATION	xii	17

Sections A and B are used to summarize the alcohol testing results for covered employees. There are seven tables to be completed (one in Section A and six in Section B). The first table (Section A) is where you enter the data on pre-employment/pre-duty testing. The six tables in Section B are for entering alcohol testing data for random testing, for cause testing (one table each for "for cause testing" due to accidents/injuries, rules violations, and reasonable suspicion), post-positive return to service testing, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of initial alcohol tests performed for each employee category;
2) the number of confirmatory alcohol tests performed for each employee category;
3) the number of confirmatory test results which were equal to or greater than 0.04; and
4) the number of confirmatory test results which were equal to or greater than 0.02, but less than 0.04.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION**. The format and explanations used for the sample table apply to all seven of the tables in Sections A and B.

Information on actions taken with those persons whose alcohol test results were 0.04 or greater is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 11 **JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION** (Section A) requires information for pre-employment/pre-duty and covered service transfer testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying/transferring. A sample table with example numbers is presented on page x.

Four types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF INITIAL TESTS**" requires a count of all initial alcohol tests performed for each employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF CONFIRMATORY TESTS**" requires a count of all confirmatory alcohol tests performed for each employee category.

The third blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04**" requires a count for each employee category.

The fourth blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04**" requires a count for each employee category.

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page x with example numbers.

Page 11 Below the table for pre-employment testing information is a box with the heading "**Number of applicants/transfers denied employment/transfer following an alcohol test indicating an alcohol concentration of 0.04 or greater**". Enter the appropriate number in the box provided.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment/pre-duty testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example will use the categories "Engine Service" and "Train Service" to illustrate the procedures for completing the form.

A Initial tests were performed on 157 job applicants for engine service positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Engine Service".

B Confirmatory tests were necessary for 6 of the 157 applicants for engine service positions. Enter this information in the second blank column of the table in the row marked "Engine Service". The confirmatory test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmatory test results for 3 of the applicants for engine service positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Engine Service".

D The confirmatory test results for 2 of the applicants for engine service positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Engine Service".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for engine service positions and 107 applicants for train service positions were subjected to initial tests. The total for that column would be 264 (i.e., 157 + 107). The same procedure should be used for each column. (i.e., add all the numbers in that column and place the answer in the last row).

PRE-EMPLOYMENT/PRE-DUTY TESTING

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02 BUT LESS THAN 0.04
Engine Service	157	6	3	2
Train Service	107	3	1	0
TOTAL	264	9	4	2

A B C D E

Please note that our sample data collection form also has information for train service workers on line two. The same procedures outlined for engine service should be followed for entering the data on train service workers. With applicants for train service positions, 107 initial tests were conducted resulting in 3 confirmatory tests. The confirmatory test result for 1 of the train service applicants was equal to or

x

greater than 0.04; no results were equal to or greater than 0.02, but less than 0.04. This information is entered in the row marked "Train Service".

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATORY TESTS". These numbers may differ since some confirmatory test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 12-16 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) random testing, (2) for cause testing due to accidents/injuries, (3) for cause testing due to rule violations, (4) for cause testing due to reasonable suspicion, (5) post-positive return to service testing, and (6) follow-up testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

Pages 12-13 Following the table that summarizes **RANDOM TESTING**, you must provide **Additional Testing Data** on those employees who have tested positive. This includes disciplinary actions and the results of evaluations and rehabilitations.

Pages 13-15 **EMPLOYEE TESTING - TESTING FOR CAUSE INFORMATION** requires three separate tables, one for accidents/injuries, one for rules violations, and one for reasonable suspicion. In the shaded portion of the accidents/injuries table and the rules violations table you must indicate whether the information in the table for testing was conducted under FRA authority or under railroad authority. **Reasonable suspicion testing is mandatory under FRA regulations and not subject to railroad discretion.**

Page 15 Following the table that summarizes **POST-POSITIVE RETURN TO SERVICE TESTING**, you must provide a count of the **"Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FRA regulations)"**. Report this information only for employees who were tested during this reporting period.

Pages 16-17 **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you provide information on employees who tested positive for drugs and alcohol (at the same time), information on violations of other alcohol provisions (not necessarily resulting in positive alcohol tests), and information on employees who refused to submit to an alcohol test.

Page 16 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 16 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires information on the **NUMBER OF COVERED EMPLOYEES** committing such a violation, a description of the **VIOLATION** committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the **ACTION TAKEN** in response to the violation.

Page 17 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test as required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal.

Page 17 **TRAINING/EDUCATION** (Section D) requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED TO BE REPORTED BY THE FEDERAL RAILROAD ADMINISTRATION (FRA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by FRA/DOT alcohol testing regulations.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

A. JOB APPLICANT/COVERED SERVICE TRANSFER TESTING INFORMATION

PRE-EMPLOYMENT/PRE-DUTY TESTING

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

B. EMPLOYEE TESTING - RANDOM TESTING INFORMATION

RANDOM TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

Additional Testing Data

1 Number of disciplinary actions taken (attach narrative statement describing type of disciplinary action taken): [ ]

2. Number of employees referred for evaluation: [ ]

3. Number of employees evaluated as not requiring formal treatment: [ ]

4. Number of employees evaluated as requiring outpatient treatment: [ ]

5. Number of employees evaluated as requiring inpatient treatment: [ ]

B. EMPLOYEE TESTING - RANDOM TESTING INFORMATION (continued)

Additional Testing Data

6 Number of employees failing to complete rehabilitation (as determined by clinical judgement or positive test on return-to-work): ____

7 Number of employees who completed rehabilitation determined after investigation to have been involved in subsequent alcohol disciplinary offenses: ____

B EMPLOYEE TESTING - TESTING FOR CAUSE INFORMATION

Note: If you used both FRA authority and railroad authority to conduct for cause breath testing for accidents/injuries or rules violations, please fill out a separate chart for each authority, i.e., one for FRA tests and one for railroad tests (extra sheets attached).

FOR CAUSE ALCOHOL TESTING
DUE TO ACCIDENT*/INJURY
***(Accidents NOT qualifying under 49 CFR Part 219 Subpart C)**

(Testing Conducted Under: FRA Rule ___ Railroad Rule ___)

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

B. EMPLOYEE TESTING - TESTING FOR CAUSE INFORMATION (continued)

FOR CAUSE ALCOHOL TESTING
DUE TO RULES VIOLATION

(Testing Conducted Under: FRA Rule ___ Railroad Rule ___)

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0 04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0 02, BUT LESS THAN 0 04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

FOR CAUSE ALCOHOL TESTING
REASONABLE SUSPICION

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0 04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0 02, BUT LESS THAN 0 04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

B. EMPLOYEE TESTING - TESTING FOR CAUSE INFORMATION (continued)

OPERATIONAL TESTS AND INSPECTIONS

The following items request information concerning the railroad's program for supervising its employees and ensuring that they are free from impairments caused by alcohol:

1. Total number of covered employees observed in documented tests and inspections related to enforcement of the railroad's rules and policies on alcohol use (including, but not limited to, observations for which breath tests were conducted and observations after accidents/incidents and rule violations): [ ]

2. Number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy: [ ]

B. EMPLOYEE TESTING - POST-POSITIVE RETURN TO DUTY TESTING

POST-POSITIVE RETURN TO SERVICE TESTING

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0 02, BUT LESS THAN 0 04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FRA regulations): [ ]

B. EMPLOYEE TESTING - FOLLOW-UP TESTING

FOLLOW-UP TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

C. OTHER TESTING/ PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN

C. OTHER TESTING/PROGRAM INFORMATION (continued)

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D TRAINING/EDUCATION

Training During Current Reporting Period

Number of supervisors who have received the required training in determining the existence of reasonable suspicion of alcohol misuse: [ ]

CONTINUATION SHEET FOR PAGE 7 - EXTRA REPORT FORMS

B. EMPLOYEE TESTING - FOR CAUSE TESTING INFORMATION

FOR CAUSE DRUG TESTING
DUE TO ACCIDENT*/INJURY
***(Accidents NOT qualifying under 49 CFR Part 219 Subpart C)**

(Testing Conducted Under: FRA Rule___ Railroad Rule___)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG						
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines	Other Prohibited [1]	Combined [2]
Engine Service										
Train Service										
Dispatcher/ Operator										
Signal Service										
Other										
TOTAL										

FOR CAUSE DRUG TESTING
DUE TO RULES VIOLATION

(Testing Conducted Under: FRA Authority___ Railroad Authority__)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG						
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines	Other Prohibited [1]	Combined [2]
Engine Service										
Train Service										
Dispatcher/ Operator										
Signal Service										
Other										
TOTAL										

CONTINUATION SHEET FOR PAGE 13 - EXTRA REPORT FORMS

B. EMPLOYEE TESTING - FOR CAUSE TESTING INFORMATION

FOR CAUSE ALCOHOL TESTING
DUE TO ACCIDENT*/INJURY
***(Accidents NOT qualifying under 49 CFR Part 219 Subpart C)**

(Testing Conducted Under: FRA Rule ___ Railroad Rule ___)

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

FOR CAUSE ALCOHOL TESTING
DUE TO RULES VIOLATION

(Testing Conducted Under: FRA Rule ___ Railroad Rule ___)

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

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federal register

Tuesday
December 15, 1992

Part VI

Department of Transportation

Federal Transit Administration

49 CFR Parts 653 and 654
Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 654

[Docket No 92-I]

RIN 2132-AA38

Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 28, 1991, President Bush signed the Omnibus Transportation Employee Testing Act of 1991, mandating the Federal Transit Administration to issue regulations on drug and alcohol testing for mass transit workers. This document proposes the agency's alcohol misuse prevention program. When finalized this rule should increase the safety of mass transit operations in general.

DATES: Comments on this proposed rule must be submitted by April 14, 1993.

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Docket No.92-I, Federal Transit Administration, DOT, 400 Seventh St. SW., room 9316, Washington, DC 20590. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5 p.m. If you would like acknowledgment of receipt of your comment please include a stamped, self-addressed postcard with your comment.

FOR FURTHER INFORMATION CONTACT: For legal questions contact Nancy M. Zaczek, Office of the Chief Counsel, Federal Transit Administration, DOT, 400 Seventh St, SW., room 9316, Washington, DC 20590. Telephone 202-366-4011 (voice); 202 366-2979 (TDD). For program issues contact Rhonda M. Crawley, Office of Safety, Federal Transit Administration, DOT, 400 Seventh St, SW., room 6432, Washington, DC 20590. Telephone 202-366-2896. Copies of the regulation are available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

I. General Notes

A. Name Change

Congress passed reauthorization legislation for several operating administrations of the Department of Transportation (DOT) in the Fall of 1991 (Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, December 18, 1991). One important provision involved the name change for the Urban Mass Transportation Administration (UMTA). We are now called the Federal Transit Administration (FTA). In addition, all references to the Urban Mass Transportation Act of 1964 were changed to the Federal Transit Act.

B. How To Read This Proposed Rule

Today's rule, as it affects transit operators, is in three pieces. The document you are reading now contains a proposed part 654, the substantive regulations for alcohol proposed by FTA for recipients of funds under the Federal Transit Act, as amended, and section 103(e)(4) of title 23 of the United States Code. There is a brief explanation of these provisions in the preamble section of this document with emphasis on how these provisions affect, in particular, the transit industry. The text of the substantive regulation we are proposing today for comment follows our preamble.

In addition, however, there is a long discussion of the entire Department of Transportation's efforts in the alcohol testing area in a separate preamble which precedes this document in this issue of the **Federal Register**. This DOT-wide preamble discusses provisions that all of the operating administrations have in common, so it should be read to ensure a complete understanding of today's substantive proposed rule.

Finally, there is a third document, consisting of its own rule and preamble, that contains the technical testing requirements that must be used in conjunction with the part 654 substantive regulations. This third document adds an alcohol subpart to 49 CFR part 40, the Department-wide drug testing procedures rule, and also is published elsewhere in today's issue of the **Federal Register**.

C. Other Related Documents

In addition to the alcohol rules being published today by FTA and several other operating administrations, there are a number of drug testing documents that will also be of interest to transit providers. Accompanying this alcohol NPRM in this separate part is FTA's proposed drug testing rule. The drug proposed rule contains a complete discussion of the issues involved for mandated drug testing. The Omnibus Transportation Employee Testing Act also mandated changes to current DOT testing procedures. Accordingly, in the part 40 proposed rule mentioned above, there are also drug-testing related changes.

Finally, the Department is issuing an advance notice of proposed rulemaking on issues related to random drug testing.

II. Background

On November 22, 1988, the FTA published a final rule requiring certain small and large operators, who were recipients of Federal Transit Act financial assistance, to develop and implement drug testing programs. On December 21, 1989, approximately 200 large transit systems certified compliance with that regulation and began implementing urine drug testing for 5 types of drugs of safety-sensitive employees, including their first line supervisors. Before this date, the FTA had never promulgated any drug or alcohol testing regulations for the transit industry.

On January 19, 1990, the United States Court of Appeals for the District of Columbia announced its decision that FTA did not have sufficient statutory authority to issue an anti-drug regulation on a national basis. (*Amalgamated Transit Union* v. *Skinner*, 894 F.2d 1362 (D.C. Cir. 1990)). Accordingly, on January 25, 1990, FTA published a notice in the **Federal Register** suspending its anti-drug regulation.

At the time of this suspension, the FTA, as well as DOT, indicated its commitment to acquiring the statutory mandate to reinstitute testing for the transit industry. These attempts were successful on October 28, 1991, when HR 2950, the Omnibus Transportation Employee Testing Act, (Pub. L. 102-143) was signed into law by President Bush.

Also in 1991, the FTA Office of Safety conducted a study to determine the extent of drug use in the transit industry. The study's findings, contained in a recently released report, analyze the results of two surveys designed to gather information on substance abuse policies and programs as well as drug and alcohol use patterns in the transit industry. Of the two surveys, one was completed by transit system managers and the other by safety-sensitive transit employees. (See "Substance Abuse in the Transit Industry", Rept. No. DC-90-7021; November, 1991.)

The agency survey sought information on substance abuse program policies and procedures, test results indicating drug or alcohol use during calendar year 1990, disciplinary procedures, employee training, and substance related accident data. The survey was mailed to four hundred transit systems. Three-hundred-six systems comprise the agency data base.

The employee survey was administered to 1,975 safety-sensitive employees at nine randomly selected

transit systems separated into three groups based on annual ridership. The employee questionnaire was focused solely on personal use of drugs and alcohol, and to a large extent, the questions were standardized to facilitate comparison with the National Institute on Drug Abuse (NIDA) Household Survey.

The study was designed to guarantee respondent confidentiality for both the agency and employee surveys. Since both surveys were voluntary, no data were collected from any system or employee who did not consent to participate.

The following are some key findings about alcohol use:

- Of the 306 systems in the data base, 78 percent conduct some type of drug testing and 58 percent conduct alcohol testing. However, when asked which substance was most prevalently abused by the workforce, 75 percent of the agencies identified alcohol.
- The personal use data provided in the 1988 and 1990 NIDA household surveys provide a benchmark for comparisons of the transit industry results with those of the general population. Those results indicate that self-reported alcohol use by transit employees was only slightly lower than reported use by the general population.
- About six percent of the safety-sensitive employees reported using alcohol within five hours before reporting to duty or during duty hours.
- Most of these duty-related drinkers were also high-volume drinkers of six to ten or more drinks each occasion.
- About two percent of alcohol test results confirmed consumption for all safety-sensitive employees.
- The average rate of alcohol tests indicating use for vehicle and equipment maintenance personnel is 3.7 percent, twice that for vehicle operators. Dispatchers also have an alcohol testing rate confirming use which is twice that of vehicle operators.

Based on the study's findings, the statutorily mandated testing for substance abuse is timely and well-founded. This rulemaking should aid in the control of alcohol misuse in the transit industry.

III. The Omnibus Transportation Employee Testing Act of 1991

The Omnibus Transportation Employee Testing Act of 1991 (the Act, title V, Pub. L. 102–143, October 28, 1991) mandates operating administrations within the Department of Transportation, including the FTA, to issue regulations on the misuse of alcohol by safety-sensitive employees. While there is a complete discussion of the various provisions of the Act in the Department-wide preamble found elsewhere in today's issue of the **Federal Register**, the following discussion highlights provisions concerning the FTA.

The Federal Transit Administration must issue regulations requiring recipients of sections 3, 9, and 18 of the Federal Transit Act, as amended, and section 103(e)(4) of title 23 of the United States Code to test safety-sensitive employees for the use of alcohol in violation of law or Federal regulation. The Act allows the FTA to defer to regulations issued by the Federal Highway Administration (FHWA), under the Commercial Motor Vehicle Safety Act of 1986, and the Federal Railroad Administration (FRA), under the Federal Railroad Safety Act of 1970 for operations covered by these statutes.

As a condition of FTA funding, the Act requires recipients to establish an alcohol testing program. The Act mandates four types of testing: pre-employment, reasonable suspicion, random, and post-accident. In addition, the statute permits periodic testing, under various circumstances.

The Act prescribes that certain testing procedures be followed to protect the integrity of the test as well as the privacy of the employee. Recipients performing any of the prescribed tests must promote, to the extent practicable, the individual's privacy while the specimen is being collected.

The Act does not mandate that recipients follow a particular course of action when a safety-sensitive employee has been found to have violated law or Federal regulation concerning the use of alcohol. Instead, the Act directs the FTA to issue regulations setting forth, as it deems appropriate, possible consequences for using alcohol, including education, counseling, rehabilitation programs and possible suspension or termination.

In authorizing this regulatory scheme, the Act has pre-empted all inconsistent State or local laws, rules, regulations, ordinances, standards, or orders. Provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, however, are not pre-empted by the Act.

IV. Previous Action by the Department

On November 2, 1989, the Office of the Secretary of DOT published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit ideas and information about alcohol use and possible future alcohol testing for transportation workers. (54 FR 46326) The ANPRM requested comments on the general question of whether additional Federal measures were necessary to respond to the problem of alcohol misuse among transportation industry employees. If a commenter believed further action was necessary, the ANPRM asked for recommendations whether the further action should be education; enforcement; alcohol testing; and/or state programs. The ANPRM also asked what activity should be prohibited. And, finally, the ANPRM asked what should be the consequences for an employee identified as using alcohol on the job, being under the influence while on the job, or improperly using alcohol before work.

Responses were received from transit authorities; small rural operators; trade unions; state and local governments; medical providers; and a number of individuals. The comments to this ANPRM are discussed in detail in the general preamble published by the DOT Secretary's Office elsewhere in today's issue of the **Federal Register**. What follows is a summary of the comments submitted to the ANPRM that specifically discuss the Federal Transit Administration or its programs.

FTA comments were evenly split for and against any proposed new Federal regulation in the area of alcohol misuse prevention. However, the majority of respondents conceded that a combination of education, testing and rehabilitation, coupled with additional financial assistance from the Federal Government, was necessary to ensure transportation safety.

A. Prohibition

The general consensus among commenters was that alcohol consumption by any safety-sensitive employee should be prohibited while on duty. Two commenters opined that alcohol prohibition should be applied to all employees while on duty or while on company property.

B. Education

Most commenters recommended that the Federal government provide funding for educational programs in alcohol misuse prevention.

C. Testing Method

Commenters expressed concern about the type and cost of implementing an alcohol testing program. Blood tests are perceived as the most accurate and most capable of withstanding legal challenge. However, some consider blood tests to be the most invasive to the individual. Some commenters opined that urine testing would require an observer during the collection process. Since alcohol dissipates much more rapidly in

the body than other drugs, commenters indicated that timing and sample collection are crucial for an accurate reading. Smaller systems raised concerns about the cost of any type of testing.

D. Grounds for Testing

Most commenters recommended employee testing for only reasonable cause or post-accident, that is, when an employee is believed to have consumed alcohol, or where an accident may have been due to alcohol consumption. Commenters further stated that alcohol testing should be for all employees involved directly or indirectly in transportation, including operators, supervisors, mechanics and service personnel.

E. Pre-Duty Abstinence

Comments from both labor and management expressed concern about enforcing behavior of employees off duty. One commenter indicated that local law prohibits the use of alcohol within 6 hours of reporting for work. Another commenter preferred a pre-duty abstinence rule for covered employees similar to the Federal Aviation Administration regulations that prohibit a person from performing under the influence of alcohol, or who has consumed any alcoholic beverage within eight hours of reporting for duty. Another commenter stated that the use of alcohol should be prohibited at least twelve hours before starting work.

F. What is a Positive Test?

Most employers commented that a blood alcohol concentration (BAC) level equal to or greater than .04 can result in immediate termination. One commenter suggested that penalties be more stringent for on-duty drivers and less stringent for other safety-sensitive persons in the transportation industry. One commenter stated that a .04 BAC level "sends a message of permissiveness" and preferred a zero tolerance level.

G. Consequences

Employers indicated that some form of disciplinary action is initiated, including temporary suspension or termination of employment, once a safety-sensitive employee's test indicates alcohol use. Commenters recommended allowing each recipient to establish its own disciplinary rules in accordance with its collective bargaining agreements and its past experience.

H. Rehabilitation

Most commenters stated that rehabilitation programs should be at the option of the employer and not be mandated by the Federal government. Local attitudes, labor/management agreements, and availability of rehabilitation services are some of the factors that may affect treatment policies. In addition, any requirement for employers to pay the cost of rehabilitation or to pay wages for an employee who is not working was strictly opposed. However, one commenter noted that "it is more cost effective to rehabilitate a skilled worker than to hire and train a new one."

V. Overview of Proposed Rule

This notice of proposed rulemaking (NPRM) would apply to recipients of funds under sections 3, 9, and 18 of the Federal Transit Act, as amended, and section 103(e)(4) of title 23 of the United States Code. It requires each transit operator (employer) to establish and conduct a multi-faceted alcohol misuse prevention program. A basic component of the regulation is that FTA operators must test safety-sensitive employees for the use of alcohol. There also must be education about the health and safety problems associated with alcohol misuse.

The regulation specifies that employers may not allow safety-sensitive employees to consume alcohol while performing a safety-sensitive function, for four hours before reporting for duty, or for eight hours following an accident or until an employee has actually been tested for alcohol following an accident, whichever occurs first. The NPRM proposes testing in the following situations:

1. Pre-employment/pre-duty (including transfer to a safety-sensitive position within the organization);
2. Reasonable suspicion;
3. Random;
4. Post-accident; and
5. Return to duty/follow-up.

The NPRM proposes the use of an evidential breath testing device, which has a printed read-out of each test result. The NPRM proposes different consequences, based on the measured alcohol level.

If the alcohol concentration is confirmed at or greater than .02, but less than .04, the covered employee must be removed from his or her safety-sensitive position. In addition, having removed the employee from his or her safety-sensitive function, an employer may elect to send that employee home for a minimum of eight hours or, after some period of time, retest the employee. The employee may not return to work within eight hours of the first test unless the employee's tested alcohol concentration measures less than .02.

If an alcohol test results in a confirmed alcohol concentration at .04 or greater, the covered employee must be removed from his or her safety-sensitive position, be told about educational and rehabilitation programs available, and be evaluated by a substance abuse professional. The proposed rule would allow the employer to require that the employee go through rehabilitation, although the proposed rule would not require the employer to pay for rehabilitation.

Each employer must have a policy statement which sets out its policies and procedures—including consequences—for its alcohol misuse prevention program. The policy also must include details concerning the timeframes during which employees are prohibited from using alcohol.

Finally, the regulation is directed at transit operators and recipients of Federal funds under sections 3, 9, and 18 of the Federal Transit Act, as amended, and section 103(e)(4) of title 23 of the United States Code. Because our statutory mandate directs us to develop regulations for our grantees, there is no language directed at the individual employee. In each case, it is the employer's responsibility to develop a program and implement that program in compliance with these regulations. In some cases this means having responsibility for the actions of its safety-sensitive employees.

VI. Section-by-Section Analysis

As mentioned earlier in this preamble, this section of the document highlights the various sections of the proposed rule, and should be read in conjunction with the Department-wide preamble, which precedes this document in this issue of the Federal Register. Where there is no discussion of a particular provision, there are no FTA-specific provisions or implications about which we seek comment. In these cases, we still ask that commenters direct their comments to the FTA docket on these provisions based on the FTA proposed regulatory text and the discussion of these provisions in the DOT-wide preamble.

Subpart A—General

A. Applicability (§ 654.3)

The FTA proposed rule contains a section specifically describing the applicability of the rule for various grantees under the Federal Transit Act, as amended, and section 103(e)(4) of

title 23 of the United States Code. This is necessary for clarity, since many FTA grantees have portions of their operations regulated by other operating administrations within the Department. In addition, the Act allows FTA to defer to alcohol testing regulations administered by the FRA under the Federal Railroad Safety Act of 1970 or the Federal Highway Administration under the Commercial Motor Vehicle Safety Act of 1986, if the Secretary deems that the operations are adequately covered by these other agencies. The FTA worked with other affected operating administrations of the DOT to reach consensus on which regulation should apply. This section sets out which regulation applies, under which circumstances.

1. *Federal Railroad Administration.* Several of our larger grantees have light or rapid rail subway systems regulated by FTA as well as heavy rail commuter systems, which also are subject to regulations of the Federal Railroad Administration. Section 654.3 states that, for purposes of the alcohol rule, entities or operations of entities currently governed by the FRA under the Federal Railroad Safety Act of 1970 will continue to conduct their alcohol program consistent with the provisions of the FRA regulations. These grantees must certify to the FTA that they are in compliance with the FRA regulations.

2. *Federal Highway Administration.* Grantees with safety-sensitive employees subject to the Commercial Drivers License Program of the FHWA are covered by the FTA alcohol testing program, not that of FHWA. However, drivers employed by FTA grantees, who are holders of Commercial Drivers Licenses, may be subject to other ramifications under the CDL Program. For example, conviction of a crime (*e.g.*, during under the influence) can lead to suspension or revocation of a commercial driver license. Since the FTA has no direct authority over employees, these ramifications would be in addition to those identified in today's proposed part 654.

3. *United States Coast Guard.* The Act does not provide the Secretary the discretion to defer to chemical testing regulations of the United States Coast Guard (Coast Guard) for its marine employers which are also FTA grantees. Further, the Act does not include any mandates affecting the Coast Guard, which already requires alcohol testing in certain circumstances.

In fact, the Coast Guard has a long history of requiring chemical testing (dangerous drugs and alcohol) by marine employers. Equally long is Coast Guard's relationship with individual marine employees, since it is the Coast Guard which issues and revokes a license, certificate, or document of a marine employee.

Thus, FTA grantees which are marine employers are subject to two sets of regulations, those of the Coast Guard found at 46 CFR parts 4 and 16 and 33 CFR part 95 (which are already in effect), and those of the FTA, which will be codified as today's part 654.

In addition, marine employees continue to be subject to Coast Guard regulations at 46 CFR parts 4, 5, and 16 and 33 CFR part 95, even though FTA's regulations do not apply directly to employees. FTA's authority is limited to its relationship with its grantee/employers.

In many cases, the FTA program regulation, as proposed in today's proposed rule, consists of more elements than the Coast Guard regulations affecting marine employers. As a general matter, an FTA grantee generally can rely on the FTA program elements of the regulation to also be in compliance with the Coast Guard regulations.

However, the FTA proposed mandatory testing would use breathalyzers, with testing done consistent with procedures found in 49 CFR part 40. Because the Coast Guard regulations authorizes the use of blood, their regulations include procedures which would not satisfy the requirements of the FTA testing mandates.

As noted earlier, if a grantee/employer complies with the program testing requirements of this part 654, when it becomes final, generally, the grantee also will be in compliance with the employer directed portion of the Coast Guard regulations. To assist in discerning where there may be differences between the two regulations, we have included an example below to show how the regulations are different. In addition, as we discuss specific sections in the Section-By-Section Analysis portion of this preamble, we have highlighted differences in the regulations.

For example, part 5 of the Coast Guard regulations specifies its statutory obligation to revoke a license, certificate or document of any person who has been shown at a hearing to be a user of or addicted to the use of a dangerous drug or to have been convicted of violating a dangerous drug law of the United States.

However, the FTA has no authority over the individual employee. In this example, a marine employer, which is a recipient of Federal Transit Act funds must use the program as set out in part 654. However, there are further responsibilities if the employer is dealing with an employee who has failed a chemical test, including providing specific notice to the Coast Guard of such confirmed alcohol test result. As noted in § 654.3, a grantee is directed to report in writing a test result indicating a concentration level of .04 or greater for an employee holding a license certificate of registry or merchant mariner's document to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI).

B. Alcohol Testing Procedures (§ 654.5)

This section mandates compliance with the testing procedures for alcohol testing being proposed as 49 CFR part 40 in a separate rulemaking document published elsewhere in today's issue of the **Federal Register** by the Secretary of DOT. The procedures are incorporated by reference into the substantive regulations in part 654, and thus must be complied with in conjunction with part 654.

C. Definitions (§ 654.7)

1. *Accident.* The proposed rule defines accident as an event involving a revenue service vehicle which meets one of four criteria:

(1) It must be reported under regulations of one of three other DOT operating administrations (FRA, FHWA, or Coast Guard);

(2) It results in a loss of human life;

(3) It results in injury requiring transfer to a medical facility; or

(4) It results in property damage with an estimated value of more than $1,000.

The agency is proposing $1,000 to be consistent with the threshold reporting amount of our section 15 reporting requirements. The amount is important in the context of whom must be tested in the "post-accident" setting, as well as who must refrain from using alcohol for a prescribed period of time after an accident.

The agency seeks comment on this provision, and in particular whether there should be more than one threshold amount that would trigger the definition of an accident. For example, there could be different floors based on the type of transit vehicle involved in the accident. For example, $1,000 could be the threshold for a transit van or a bus designated to carry 15 or fewer persons, but another amount—possibly $5,000—could be used for large buses and rail vehicles.

Is there another basis for distinguishing different dollar threshold amounts? What are they? The agency seeks data on this point, including

average accident property damage costs—by vehicle type if possible.

2. *Covered employee.* The proposed rule includes a definition of safety-sensitive functions. Anyone who performs a safety-sensitive function will be subject to the provisions of the rule. As proposed, the FTA defines a covered employee to be any individual who performs a safety-sensitive function, either directly employed by an FTA recipient or as a contractor to an FTA recipient. In this context a contractor need not perform under a formal contract—any ongoing relationship suffices to bestow contractor status.

The inclusion of contract service raised many questions in the suspended 1988 FTA drug testing rule. Several small operators believe including contractors may increase the difficulty of securing maintenance or other service typically provided on a contract-out basis. According to letters we received, many smaller properties use outside sources to conduct basic maintenance for their vehicles. These smaller providers do not believe these gas stations or other providers will agree to the provisions of the drug testing rule.

The FTA believes that, based on (1) Recent findings by Iowa State University in the preparation of a manual on maintenance service contracting and (2) Small operators' actual experiences related to this issue, anticipated compliance difficulties can be resolved satisfactorily.

Further, a colloquy on the floor during debate of our substance abuse testing legislation makes it clear that the sponsors of this legislation intended to include in testing anyone involved in a safety-sensitive position—whether it be a contractor or an employee. ("U.S. Cong. Rec.", S14766, October 16, 1991)

For these reasons, contract personnel who provide service to or work for a recipient in lieu of direct-hire safety-sensitive employees are included in the definition of "covered employee". This concept has been termed "standing in the shoes" of the employer, and as such are covered by the same regulations as the employer and its employees.

The agency seeks comment on this definition, particularly from small systems and those with directly related experiences.

3. *Employer.* The FTA has used the term *employer* to include anyone who is operating transit service, which is subject to this rulemaking. This includes small and large operators, as well as a consortium that may be formed to respond to the needs of several operators. The term *employer* is used instead of recipient to avoid any confusion about who has the responsibility under the rule, since States, which are the direct recipients of some FTA funds, usually do not run transit systems.

4. *Safety-sensitive.* The proposed rule defines safety-sensitive to include any function related to the operation of a revenue service vehicle; controlling the movement or dispatch of a revenue service vehicle; maintaining a revenue service vehicle, or directly supervising any employee performing one of these functions.

The agency is including maintenance functions in this definition, which drew comment in the 1985 drug testing rulemaking context. In response to these comments, FTA sponsored a recent study, "Substance Abuse in the Transit Industry", 1991. This national survey revealed that, for the 176 responding systems testing for alcohol in 1990, the test rate indicating alcohol use among vehicle operators was 1.82 percent; however, the average test rate indicating alcohol use for vehicle and equipment maintenance workers was 3.67 percent.

In addition, of the 1,075 safety-sensitive employees surveyed concerning their personal use of alcohol, six percent reported using alcohol within five hours before reporting to duty or during duty hours. Most of these duty-related drinkers were also high-volume drinkers of six to ten or more drinks per incidence.

Including maintenance functions in the definition of safety sensitive means that these workers also would be subject to post-accident testing. Currently, are maintenance employees tested for alcohol misuse? If yes, under what circumstances? Are maintenance employee attendance records and production reports reviewed for possible signs of alcohol misuse? Also, do we need the concept of "dispatching a vehicle" if the definition includes anyone who controls the movement of the vehicle?

Finally, while this definition includes the functions to be covered, the agency recognizes that each employer will have to make case-by-case determinations for some employees, based on the definition and other guidance material in the final rule.

5. *Small operator.* The definition of small operator in the FTA context is different from other operating administrations publishing proposed rules today. Because of the nature of our program—awarding grants to organizations based on program purpose and demographic size, we have defined a small operator as a recipient which operates in an area less than 200,000 in population. A large operator is defined as a recipient which operates in an area more than 200,000 in population. Other modes are basing the distinction between small and large operators on number of employees.

D. Pre-emption of State and Local Laws (§ 654.9)

The statute calls for Federal pre-emption in the field, voiding the effect of any inconsistent state or local law, ordinance, etc. While there is a complete discussion of this issue in the OST preamble, we would like to highlight this section for FTA readers.

The question of whether the FTA had authority to require grantees to implement a substance abuse program—and what was the effect of that Federal regulation in light of pre-existing inconsistent State provisions—was an impediment to implementing our 1988 drug testing regulation.

Congress included language in the Act indicating that no State (including State Constitutions) or local law continues in effect if it is inconsistent with the FTA alcohol testing regulation. Consistent with longstanding Department-wide interpretation of this type of pre-emption language, the regulation specifies that "inconsistent with" means that the regulation:

(1) Pre-empts a State or local requirement if compliance with the local requirement and the FTA regulation is not possible; or

(2) Pre-empts a State or local requirement if compliance with the local requirement is an obstacle to accomplishing the provisions of the FTA regulation.

On the other hand, the statute and the regulation do not pre-empt State criminal laws that impose sanctions for reckless conduct.

E. Starting Date for Alcohol Testing Programs (§ 654.15)

This section sets out a two-tier approach to mandatory compliance with these alcohol testing rules. For large operators, this section proposes compliance within one year of the final rule. As previously discussed, large operators are those operating in areas of 200,000 or more in population. We propose that small operators must comply within two years of the final rule, which includes operators operating in areas of less than 200,000 in population.

This is one of the few instances where the FTA regulation differs from other operating administration proposed rules. Other NPRM's key compliance to employers with over or under 25 employees. Because of the basic system used to administer the FTA grant program, we did not believe it feasible

to mandate compliance using this criterion. Accordingly, we have keyed the compliance dates to the population size of the area of operation.

F. Compliance a Condition of FTA Financial Assistance (§ 654.17)

The statute requires FTA to establish regulations for an alcohol testing program for recipients of Federal financial assistance under section 3, 9 or 18 of the Federal Transit Act, as amended or section 103(e)(4) of title 23, United States Code. The statute also states that a recipient shall not be eligible for such Federal financial assistance if the recipient fails to establish such a program in accordance with such regulations. Accordingly, continued FTA assistance under these four funding provisions is contingent upon compliance with the FTA substantive alcohol testing regulation, as well as the procedural alcohol testing regulation at part 40.

Paragraph (c) of this section sets out the role for the States in this program. Since the State is the recipient in the case of section 18 funds, and some section 9 funds, it is a "recipient" for purposes of this program. As such, the State has an affirmative obligation to certify compliance to FTA. However, in all cases, this money is funnelled to smaller entities which develop and administer programs consistent with FTA requirements. For purposes of this rule, FTA will require that each State certify compliance on behalf of its subrecipients who are subject to this rule. Each subrecipient must provide adequate assurances to its State so that the State can certify on its behalf.

A small entity will be subject to suspension of funding, through the State, if it is not possible for an appropriate certification to be made on its behalf, or if the FTA has reason to believe that the entity is not in compliance with the regulation in some other material way.

This section also states that any misrepresentation or action to mislead the FTA is a criminal violation under section 1001 of title 18 of the United States Code (see paragraph (b) of the section).

Subpart B—Prohibitions

A. Behavior and Appearance (§ 654.23)

The proposed rule would require an employer to remove an employee from a safety-sensitive function if the employer knows that the employee's behavior or appearance is characteristic of alcohol misuse or his or her ability to perform has been adversely affected by the use of alcohol.

The agency specifically seeks comment on this provision. As proposed, this option would be available to the employer in addition to the reasonable suspicion basis for testing. Are there currently standards such as this in use in the transit industry? Do such standards enhance the effectiveness of an alcohol testing program? Are there problems unique to the transit industry in integrating such a basis for removal into the program?

B. Pre-Duty Use (§ 654.27)

To ensure the safest possible workplace for transit industry employees and the safest possible service for transit system patrons, the FTA is proposing to prohibit employers with knowledge that a covered employee consumed alcohol four hours or less before reporting for duty from allowing that employee to perform or continue to perform a safety-sensitive function.

Because this requirement affects employees' off-duty behavior, the FTA seeks comments on the effect of this provision; transit systems that currently have similar work rules in place are particularly encouraged to provide any relevant information.

In addition, a covered employee who is on-call would have the opportunity to acknowledge the use of alcohol during the preceding four hours, and to take an alcohol test to determine whether or not he or she is able to perform his or her safety-sensitive function.

For a more complete discussion on the issues involved with pre-duty testing please refer to the DOT general preamble.

C. Use Following an Accident (§ 654.29).

The Federal Transit Administration has proposed that in an accident each employer must ensure that the covered employee refrains from alcohol consumption for eight hours following the accident or until a post-accident alcohol test is administered, whichever occurs first.

The agency believes that within eight hours most alcohol will be metabolized from an employee's system, thus making indicative test results problematic. Post-accident testing ensures that the employee has not misused alcohol while performing a safety-sensitive function. The prohibition on use following an accident for a stated period protects the covered employee from the assumption of alcohol misuse that could have contributed to an accident.

In 1991, a motorman whose train derailed killed five persons and injured 200. The motorman left the scene of the accident and subsequent tests showed that the blood of the motorman had an alcohol content twice the legal limit, ten hours after the crash. Prohibiting alcohol consumption following an accident pending the performance of post-accident testing provides liability protection for both the employer and the employee.

FTA solicits comments on this proposed prohibition. Are authorities currently restricting the consumption of alcohol by employees for a stated period between an accident and a post-accident test?

Subpart C—Tests Required

A. Pre-Employment/Pre-Duty (§ 654.41)

This section would require an employer to administer an alcohol test to a covered employee before the employee performs a safety-sensitive function. We anticipate that most employers will require the test as part of pre-employment testing, but seek information about whether this is accurate.

If testing is done at the pre-employment stage, and a new hire does not initially perform safety-sensitive functions, then this section would also require that this employee be given an alcohol test before he or she is transferred to a safety sensitive function.

Also proposed in this section is the employer's discretion to "accept" a test (and therefore not conduct its own preemployment/pre-duty test) if two conditions are met. First, that the employee has had an alcohol test conducted by a DOT agency that comports with the procedural testing requirements of 49 CFR part 40 within the previous six months, indicating an alcohol concentration less than .04; and, second, that the employer ensures that no previous employer of whom he has knowledge has any record of a violation of a DOT agency regulation.

The agency specifically seeks comment on this provision and whether it poses particular problems or solutions for the transit industry.

B. Post-Accident (§ 654.43)

The NPRM proposed post-accident testing for the misuse of alcohol in the case of any mass transit accident involving a loss of human life, or other serious bodily injury or significant property damage.

The FTA has proposed alcohol testing of all surviving safety-sensitive employees present and on duty in the vehicle at the time of the accident or any covered employee involved in the vehicle's most recent maintenance or other safety-sensitive function

preceding the vehicle being placed into revenue service.

The Act specifically requires substance abuse testing in the case of any accident involving the loss of human life. In other cases, the covered employee must be tested unless the employer determines that the employee's performance can be completely discounted as a contributing factor to an accident. Alcohol-misuse related accidents account for a substantial portion of all major accidents within the transit industry. In March 1991, alcohol tests showed that a bus driver was legally drunk two hours after a fatal accident. The driver pulled away from a bus stop, apparently unaware that the front right fender of the bus had struck and killed a pedestrian. Although this was the first fatal accident in that system's history, it demonstrates the need for post-accident testing.

What has been your authority's experience with post-accident testing of employees where there has been a fatality, serious bodily injury or property damage?

The agency specifically solicits statistics or information about accidents, such as the average cost, those involving only vehicle damage, those involving damage to property other than the provider's, human injury, etc.

While not provided for in this FTA proposed rule, Coast Guard regulations for an accident resulting in the death of a covered employee trigger a requirement to test the corpse for chemical substances. The provision is found in Coast Guard regulations at 46 CFR 4.06–30.

C. Retesting of Covered Employees With an Alcohol Concentration of .02 or Greater But Less Than .04 (§ 654.53)

To ensure that employees' rights are adequately protected, and because alcohol is a legal substance, the FTA is considering requiring employers to provide safety-sensitive employees who (1) Confirm at an alcohol concentration of .02 but less than .04 and (2) Are scheduled to perform safety-sensitive functions within eight hours, the opportunity for a retest. If the employee's alcohol level subsequently measures less than .02, or eight hours have elapsed since the confirmation test, the employee would be permitted to perform or continue to perform safety-sensitive functions. Any test conducted before the eight hours has elapsed should be as close as possible to the time the employee would report to work.

Also, the FTA is interested particularly in data on the potential costs of this provision, as well as its impact on productivity and actual operations.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

Reporting of Results in a Management Information System (§ 654.63)

Elsewhere in today's issue of the **Federal Register** is a DOT-wide procedural rule on alcohol and drug testing. Within this proposed rule, there is a model section on uniform data reporting requirements. While FTA's proposed rule contains the reporting requirements as well, it is the preamble to part 40 which discusses these provisions in detail. Accordingly, those interested especially in this section should read the complete discussion of the provisions in the part 40 preamble.

In commenting on these requirements please indicate either or both docket numbers, as appropriate, if you are responding to specific questions posed in the part 40 preamble, the substantive provisions in proposed part 40 or part 654, or none or all of the above.

Subpart E—Consequences for Employees Engaging in Prohibited Alcohol-Related Conduct

The most important provision in this subpart is the requirement that any safety-sensitive employee who is found to have an alcohol concentration of .02 or greater must be removed immediately from his or her safety-sensitive position. Similarly, if a supervisor has reasonable suspicion that an employee has consumed alcohol, he or she must make a reasonable suspicion finding and refer that employee to testing.

The mandated action when the alcohol content level is between .02 and .04 is that the employee must cease to perform a safety-sensitive function.

If an employee tests at or above .04, that employee must be assessed by a substance abuse professional. The employee must follow the recommendations of the SAP before he or she can return to work and would be subject to the mandatory follow-up tested described elsewhere in this preamble.

In addition, if the employer's policy so states, it is possible that the employee will be required to undergo rehabilitation before returning to a safety-sensitive function, with the approval of the substance abuse professional.

The issue of required rehabilitation, as well as possible suspension or termination are decisions left at the local level.

Subpart F—Alcohol Misuse Information, Training, and Referral

A. Employer Obligation To Promulgate a Policy on the Misuse of Alcohol (§ 654.81)

This section lists all of the elements which must be included in the policy statement developed by the employer and made available to each employee.

This section also notes that an employer may choose to have additional, consistent elements in its alcohol program. This section states that the policies and consequences must clearly describe the fact that they are based on independent authority.

B. Training for Supervisors (§ 654.83)

Training is required for supervisors making reasonable suspicion determinations, which result in alcohol testing. The section specifies that supervisors must receive 60 minutes of such training.

FTA is interested in determining if the proposed rule's training provisions provide enough training and if the provisions are consistent with current training efforts in the industry. For those employers who provide training, how much training do you provide? Is refresher training conducted periodically? Are drug and alcohol training activities combined, or are they separate? Are supervisors and non-supervisory personnel required to participate in substance abuse training? Is any training provided on an optional basis? How much training is provided:

(1) To all personnel;

(2) To personnel making reasonable suspicion determinations?

Data available to the FTA indicate that the success rate of supervisors involved in making reasonable suspicion determinations could be significantly increased with additional training. The agency seeks comment of the possibility of requiring an additional period of time, up to an additional hour, for supervisors making these reasonable suspicion determinations.

In addition, results of a recent internal study indicate that transit personnel who have been distributed educational materials, but not been provided with any inter-active training evidence little benefit from the brochures, etc. We are interested in knowing if any transit property has provided both kinds of education/training and whether there was a perceptible difference in performance, attitude, interpersonal skills or the like.

C. Referral, Evaluation, and Treatment (§ 654.85)

This section proposes that every covered employee who violates a prohibition in subpart B of this part must be evaluated by the employer's substance abuse professional. Part of the evaluation includes being informed about the resources available to deal with problems associated with alcohol misuse.

Concerning rehabilitation, the NPRM does not mandate that an employer provide it to a covered employee. The NPRM would require a covered employee whose alcohol concentration was .04 or greater to be assessed by a substance abuse professional. During this assessment, the substance abuse professional must inform the employee of different assistance that is available. Whether or not there is mandatory rehabilitation, and who pays for rehabilitation are decisions left to the local level. This position was strongly endorsed in the comments submitted on the ANPRM, discussed in an earlier section of this preamble.

Further, this position on rehabilitation is consistent with congressional debate on the topic. In particular, in a colloquy between Senators Denforth and Hollings, the Senators make it clear that rehabilitation is not mandated by the legislation, nor does the legislation specify who should pay for treatment, whether wages must be paid during treatment, or whether there is a right of reinstatement. The colloquy confirms the proposed rule's position that such arrangements can be left to negotiation between the employer and the employee. ("U.S. Cong. Rec.", S14770, October 16, 1991)

The substance abuse professional must also assess the employee to determine that the initial treatment advice was followed before the employee is allowed to return to work. It is this section as well that would require that any employee testing at .04 or greater would be subject to six follow-up tests within the first twelve months of returning to work.

D. Requirement To Certify Compliance (§ 654.87)

The proposed rule states that compliance is a condition of FTA funding and that each recipient must submit an annual certification affirming the establishment and implementation of an alcohol testing program consistent with the rule.

VII. Effect of the Americans With Disabilities Act of 1990 on Alcohol Testing Programs

Title I of the Americans With Disabilities Act of 1990 (ADA) focuses on responsibilities of employers for employees. A basic premise of title I is that a person with a disability must be provided a reasonable accommodation to work. It is possible that some covered workers will be considered persons with disabilities for purposes of protections under the ADA. For a more complete discussion of this issue please see the DOT-wide preamble preceding this FTA document in today's Federal Register.

VIII. Combined Rulemaking

The agency is considering combining the final FTA alcohol and drug testing regulations into one part in the Code of Federal Regulations. The advantage of having both requirements in one part is that the regulations could share common provisions. The disadvantage of having both requirements in one part is that the programs, in many essential ways, will be different, and combining them in one part may be confusing or difficult to understand. If the rules are not issued simultaneously, the integration would occur upon publication of the later-in-time final rule.

The agency seeks comment on the utility of combined provisions.

IX. Regulatory Process Matters

A. Executive Order 12291

The FTA has evaluated the industry costs and benefits of this alcohol testing rule, which requires that transit industry personnel who perform safety sensitive functions be covered by a program to control alcohol misuse in mass transportation operations. The FTA has determined that this rulemaking is not a major rule under Executive order 12291, because the required alcohol testing program is not likely to have costs of over $100 million in any one year.

The materials used in preparing the economic impact estimates for its preliminary regulatory evaluation are based on (1) data on the mass transit industry included in the National Urban Mass Transportation Statistics Section 15 Annual Reports and other reports; (2) data from the 1991 report entitled Substance Abuse in the Transit Industry prepared for the FTA by Booz, Allen & Hamilton, Inc; (3) data provided by the National Institute on Drug Abuse (NIDA); and (4) information gleaned from other agencies and individuals knowledgeable about alcohol misuse and testing in the United States.

Many of the questions raised in today's preamble seek to verify and expand the information the FTA currently has available to it. The preliminary regulatory impact analysis is available for public inspection in the public docket established for this rulemaking.

B. Departmental Significance

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves an important departmental policy and will probably generate a great deal of public interest. The purpose of this rule is to make mass transit systems safer by ensuring that safety sensitive employees do not misuse alcohol in the workplace.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), the Federal Transit Administration has made a preliminary assessment of the possible effects of the rule on small businesses. To the extent possible, the agency has made efforts to acknowledge the differences between small and large entities, and to make accommodations in the rule as possible. At this time, the agency can not say whether there is a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act. A request for Paperwork Reduction Act approval will be submitted to the Office of Management and Budget in conjunction with this rule. Information collection requirements are not effective until Paperwork Act clearance has been received.

E. Executive Order 12612

This action has been reviewed under Executive order 12612, on Federalism. Although the Federal Transit Administration has determined that this action has significant federalism implications to warrant a federalism assessment, this rulemaking is mandated by Congress in the Omnibus Transportation Employee Testing Act of 1991. FTA has limited discretion.

The 1991 legislation mandates the Federal Transit Administration to issue regulations requiring that grantees of section 3, 9, and 18 of the Federal Transit Act of 1964 and 163(e)(4) of title 23 of the United States Code test their safety sensitive employees for the use of alcohol in violation of law or federal regulation.

Before passage of the Omnibus Transportation Employee Testing Act of

1991, safety issues were largely handled as a local matter. This Act makes the Federal role more clear by including specific Federal pre-emption language. This makes it clear that, in the area of substance abuse testing, Federal regulations are to take precedence over any inconsistent local specification.

Although Congress has pre-empted state or local law, the FTA has preserved the local role in mass transit safety. Testing programs created by virtue of a grantee's own authority and which are not inconsistent with this regulation, are not disturbed by this regulation.

F. National Environmental Policy Act

The agency has determined that this regulation has no environmental implications. Its purpose is to regulate the behavior of those safety-sensitive employees who work in the transit industry and will have no appreciable effect on the quality of the environment.

G. Energy Impact Implications

This regulation does not affect the use of energy because it regulates the behavior of those safety sensitive employees who work in the transit industry.

List of Subjects in 49 CFR Part 654

Alcohol testing, Mass transit, Grant programs—transportation, Reporting and recordkeeping requirements, Safety, and Transportation.

Accordingly, for the reasons cited above, the agency proposes to amend title 49 by adding a new part 654, to read as set forth below:

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

Subpart A—General

Sec.

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Appendix to Part 654—Sample Certifications of Compliance

Authority: Sec. 6, Pub. L. 102–143, October 28, 1991; 49 CFR 1.51.

Subpart A—General

§ 654.1 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions for employers receiving assistance from the Federal Transit Administration (FTA).

§ 654.3 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to—

(1) Any recipient of Federal financial assistance under section 3, 9, or 18 of the Federal Transit Act, as amended; and

(2) Any recipient of Federal financial assistance under section 103(e)(4) of title 23 of the United States Code.

(b) The specific commuter rail service of an FTA recipient, if this service is subject to alcohol regulations of the Federal Railroad Administration (FRA) (See § 219.3 of this title), is specifically excluded from applicability of this part, except for the certification requirement in § 654.87. (See the appendix to this part for specific certification language.)

(c) An employer with safety-sensitive employees subject to the requirements of the Commercial Drivers License Program or other program administered by the Federal Highway Administration that could subject these employees to alcohol misuse regulations issued by the Federal Highway Administration shall cover these workers under the alcohol program specified in this part 654.

(d)(1) A grantee with marine vessel crew members is subject to chemical testing regulations issued by the U.S. Coast Guard and the alcohol misuse testing program regulations specified in this part 654. Compliance with part 654 may generally be considered compliance with the comparable U.S. Coast Guard provisions in 46 CFR parts 4, 5, and 16.

(2) However, the Coast Guard regulations encompass sanctions and other ramifications for individual marine employees, whereas the FTA regulations apply to and have ramifications for grantees funded under the Federal Transit Act, as amended, and section 103(c)(4) of title 23 of the United States Code. Accordingly, in the case of covered marine employees, there are additional provisions which apply to FTA recipients. The Coast Guard regulations are contained in 33 CFR part 95 and 46 CFR parts 4, 5, and 16.

(3) Nothing in this part prohibits the Coast Guard from directing chemical testing or obtaining test records, as provided for in Coast Guard regulations at 46 CFR parts 4 and 16 and 33 CFR part 95. A grantee shall report in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI) test results indicating an alcohol concentration of .04 or greater for an individual holding a license, certificate of registry, or merchant mariner's document.

§ 654.5 Alcohol testing procedures.

Each employer shall ensure that all alcohol testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 that address alcohol testing are made applicable to employers by this part.

§ 654.7 Definitions.

As used in this part—

Accident means an occurrence associated with the operation of a revenue service vehicle, whether or not the vehicle is in revenue service, if—

(1) An individual dies or must be taken to a medical treatment facility;

(2) The occurrence results in property damage that is estimated to be more than $1,000; or

(3) The occurrence must be reported to the Federal Highway Administration, the Federal Railroad Administration, or is a reportable incident to the Coast Guard, under applicable regulations.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Alcohol means ethyl alcohol (ethanol).

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part. When the indicated alcohol concentration of a covered employee on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, the employee shall be considered to have the lower indicated concentration.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Certification means the written affirmation by an FTA recipient that the recipient has complied with the provisions of this part. A valid certification is a condition of FTA funding and must meet the requirements of this part. Each certification must be authorized by the recipient's governing board or other authorizing official and must be signed by a party specifically authorized to do so. (See § 654.87 for requirements on certification.)

Confirmatory test means a second analytical procedure, separate from the screening test, to determine the concentration of alcohol in a covered employee's system. The confirmatory test may or may not use a different chemical principle from that of the screening test, but shall employ a scientifically recognized method of testing capable of providing quantitative data regarding alcohol concentration. For specific requirements concerning breath analysis testing devices see part 40 of this title.

Consortium means an entity, including a group or association of employers, recipients, subrecipients, or contractors, that provides alcohol testing as required by this part or other DOT alcohol testing rules, and which acts on behalf of the employers.

Covered employee means a person who performs a safety-sensitive function and is (1) Directly employed by an employer or (2) Employed by or contracts with a person or organization that provides service to the employer under contract or other agreement. This definition includes current employees transferring to a safety-sensitive function. For purposes of pre-employment/pre-duty testing only, the term *covered employee* includes a person applying to perform a safety-sensitive function.

DOT means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR part 61; 49 CFR parts 199, 219, 382, and 654) in accordance with part 40 of this title.

Employer means an entity engaging one or more covered employees that is subject to FTA regulations specifying requirements for an alcohol misuse prevention program. As used in this part, *employer* includes a large operator, a small operator, and any consortium or joint enterprise comprised of two or more employing entities requiring compliance with this part and part 40 of this title.

FTA means the Federal Transit Administration (formerly the Urban Mass Transportation Administration), an agency of the U.S. Department of Transportation.

Initial alcohol test (or screening test) means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

Large operator means a recipient operating in an area of 200,000 or more in population.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Recipient means a grantee of Federal financial assistance of Federal Transit Act funds (including a State) under sections 3, 9, or 18 or under section 103(e)(4) of title 23 of the United States Code.

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the collection process.

Revenue service vehicle means a bus, van, car, rail car, locomotive, trolley car, trolley bus, vessel, or vehicle used on a fixed guideway or inclined plane and used to transport passengers.

Safety-sensitive function means any duty related to the safe operation of mass transportation service by an employer, including:

(1) Operating a revenue service vehicle, whether or not the vehicle is in revenue service;

(2) Controlling dispatch or movement of a revenue service vehicle;

(3) Maintaining a revenue service vehicle or equipment used in revenue service; or

(4) Directly supervising an employee who performs a function listed in paragraphs (1) through (3) of this definition.

Small operator means a recipient operating in an area of less than 200,000 in population.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

§ 654.9 Pre-emption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part pre-empts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to pre-empt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 654.11 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§ 654.13 Requirement for notice.

Before performing an alcohol test under this part, each employer shall notify a covered employee that the alcohol test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 654.15 Starting date for alcohol testing programs.

(a) *Large employers.* Each recipient operating in an area of 200,000 or more in population on [*effective date of the*

final rule] shall implement the requirements of this part on [*date one year after the effective date of final rule*].

(b) *Small employers.* Each recipient operating in an area of 200,000 or less in population on [*effective date of final rule*] shall implement the requirements of this part on [*date two years after the effective date of final rule*].

(c) All employers shall have an alcohol misuse program that conforms to this part by [*date two years after the effective date of the final rule.*] or by the date the employer begins operations, whichever is later.

§ 654.17 Compliance a condition of FTA financial assistance.

(a) *General requirements.* (1) Compliance with this part is a condition of Federal Transit Administration financial assistance. Failure to certify compliance with these requirements, as specified in § 654.87 will suspend a grantee's eligibility for FTA funding. In addition, if FTA knows, or receives knowledge of, a grantee's noncompliance with the provisions of this part (including a false certification), the grantee becomes ineligible for continued FTA assistance.

(2) As a general matter, in assessing whether or not a recipient is in compliance with this part, the Administrator may determine to act on an isolated instance of violation or on a pattern or practice of noncompliance, at the Administrator's discretion and based on the particular facts of the situation.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under § 1001 of title 18 of the United States Code (Crimes and Criminal Procedure).

(c) *State's role.* Each State shall certify compliance on behalf of its section 9 or 18 subrecipients, as applicable, whose grants the State administers. In so certifying, the State shall use due diligence to ensure that each subrecipient is complying with the requirements of this part. A section 9 or 18 subrecipient, through the administering State, is subject to suspension of funding.

Subpart B—Prohibitions

§ 654. 21 Alcohol concentration.

No employer having actual knowledge that a covered employee has an alcohol concentration of .04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 654.23 Behavior and appearance.

Notwithstanding the absence of a reasonable suspicion test under § 654.47, no employer having actual knowledge that a covered employee has reported for duty or remains on duty requiring the performance of safety-sensitive functions while the employee's behavior or appearance is characteristic of alcohol misuse or on the employee's ability to perform his or her assigned functions is adversely affected by alcohol use shall permit a covered employee to perform or continue to perform safety-sensitive functions. Each employer shall prohibit a covered employee whose behavior or appearance is characteristic of alcohol misuse or whose ability to perform his or her assigned functions is adversely affected by alcohol from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions.

§ 654.25 On-duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 654.27 Pre-duty use.

(a) *General.* No employer having actual knowledge that a covered employee has used alcohol within four hours shall permit the employee to perform or continue to perform safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing safety-sensitive functions shall permit a covered employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* The employer shall establish a policy prohibiting the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. At a minimum, the procedure shall ensure that the covered employee who is on call is capable of performing his or her safety-sensitive functions. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 654.29 Use following an accident.

Each employer shall ensure that any covered employee required to take a post-accident alcohol test under § 654.43 refrains from alcohol use for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 654.31 Refusal to submit to a required alcohol test.

Each employer shall require a covered employee to submit to a post-accident alcohol test required under § 654.43, a random alcohol test required under § 654.45, a reasonable suspicion alcohol test required under § 654.47, or a follow-up alcohol test required under § 654.51. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

Subpart C—Tests Required

§ 654.41 Pre-employment/pre-duty testing.

(a) Prior to the first time a covered employee performs safety-sensitive functions for an employer, the employer shall ensure that the employee undergoes testing for alcohol. No employer shall allow a covered employee to perform safety-sensitive functions, unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than .04. If a pre-employment/pre-duty test result under this section indicates an alcohol concentration of .02 or greater but less than .04, the provisions of § 654.75 shall apply.

(b) An employer is not required to administer an alcohol test required by paragraph (a) of this section, if:

(1) The employee has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than .04; and

(2) The employer ensures that no prior employer of the covered employee of whom the employer has knowledge has records of a violation of this subpart or the alcohol misuse rule of another DOT agency within the previous six months.

§ 654.43 Post-accident testing.

(a) In the case of an accident involving the loss of human life, all surviving covered employees on duty and present in the vehicle at the time of the accident or involved in the vehicle's

maintenance or other preparation for revenue service during the time immediately preceding the vehicle being placed into revenue service shall be tested for alcohol.

(b) If there is no loss of human life, and as soon as practicable following the accident, each employer shall test for each surviving covered employee present and on duty in the vehicle at the time of the accident or involved in the vehicle's maintenance or other preparation for revenue service during the time immediately preceding the vehicle being placed into revenue service, if that employee's performance of the safety-sensitive function either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident.

(c) If a test required by this section is not administered within two hours following the accident, the employer shall submit a report to the FTA Office of Safety stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall submit the same report. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(d) An employer shall ensure that a surviving covered employee submits to a post-accident test required by this section. A covered employee who is subject to post-accident testing who leaves the scene of the accident without a valid reason prior to submission to such test may be deemed by the employer to have refused to submit to testing.

§ 654.45 Random testing.

(a) Each employer shall, at various times, randomly select covered employees for unannounced alcohol testing. The selection of employees shall be made by use of a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each covered employee shall have an equal chance of being tested under the selection process used.

(b) During each 12-month period following the start of random alcohol testing by the employer, the employer shall meet the following conditions:

(1) The dates for administering unannounced testing of randomly-selected covered employees shall be spread reasonably throughout the 12-month period; and

(2) The number of employees randomly selected for testing during the 12-month period shall equal an annual rate of not less than [10–50] percent of the total number of employees subject to alcohol testing under this part or the alcohol misuse rule of another DOT agency. If the employer conducts random testing through a consortium, the annual rate may be calculated for each individual employer or for the total number of covered employees subject to random testing by the consortium.

(c) A covered employee shall only be tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(d) Each employer shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately. However, if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead require that the employee ceases to perform the safety-sensitive function and proceed to the testing site as soon as possible.

§ 654.47 Reasonable suspicion testing.

(a) Each employer shall require any covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the prohibitions in this part.

(b) The employer's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(c) Alcohol testing is authorized by this section only if the observations required by paragraph (b) of this section are made during or just preceding the period of the work day that the covered employee is required to be in compliance with this part. A covered employee may be required to undergo reasonable suspicion testing for alcohol while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

§ 654.49 Return to duty testing.

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than .02.

§ 654.51 Follow-up testing.

Following a determination under § 654.85(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each employer shall ensure that the employee is subject to unannounced follow-up testing as directed by a substance abuse professional in accordance with the provisions of § 654.85(c)(2)(ii).

§ 654.53 Retesting of covered employees with an alcohol concentration of .02 or greater but less than .04.

Each employer shall retest a covered employee to ensure compliance with the provisions of § 654.75, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of .02 or greater but less than .04.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

§ 654.61 Retention of records.

(a) *General requirement.* Each employer shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of .02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and employee evaluation and referrals shall

be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of EBT's) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative test results (as defined in part 40 of this title) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Calibration documentation for evidential breath testing devices.

(iv) Verification of breath alcohol technician training.

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(vi) Documents generated in connection with decisions on post-accident tests.

(vii) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 654.81 of this part.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 654.63 Reporting of results in a management information system.

(a) Each employer shall submit to the FTA an annual report covering the calendar year, summarizing the results of its alcohol misuse prevention program.

(b) Each employer that is subject to more than one DOT agency alcohol regulation shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered function. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the employer shall determine which DOT agency regulation or regulations authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(d) Each employer shall submit the required annual reports no later than February 15 of each year. The report shall be submitted on the form contained in appendix B to part 653 of this title. Each report shall contain:

(1) Number of covered employees by employee category.

(2) Number of covered employees in each category subject to testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3)(i) Number of initial tests by type of test and employee category.

(ii) Number of confirmatory tests, by type of test and employee category.

(4) Number of confirmatory alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(5) Number of confirmatory alcohol tests indicating an alcohol concentration of .02 or greater but less than .04.

(6) Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmatory alcohol test indicating an alcohol concentration of .04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in §§ 654.73 and 654.85.)

(8) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.

(9) Number of covered employees who were found to have violated other provisions of subpart B of this part and the action taken in response to the violation.

(10) Number of covered employees who refused to submit to an alcohol test required under this part, and the action taken in response to the refusal.

(11) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

§ 654.65 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release covered employee information that is contained in records required to be maintained under § 654.61.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, the U.S. Coast Guard, or other DOT agencies with regulatory authority over the employer or any of its covered employees.

(d) Each employer shall make available copies of all results for employer alcohol testing conducted under this part and any other information pertaining to the employer's alcohol misuse prevention program, when requested by the Secretary of Transportation, the U.S. Coast Guard, or other DOT agencies with regulatory authority over the employer or covered employee.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered

employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this part, or from the employer's determination that the employee engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee) .

(h) An employer shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

Subpart E—Consequences for Employees Engaging in Alcohol-related Conduct

§ 654.71 Removal from safety-sensitive function.

Except as provided in subpart F of this part, no employer shall permit any covered employee to perform safety-sensitive functions if the employer has determined that the employee has engaged in conduct prohibited by subpart B of this part or an alcohol misuse rule of another DOT agency.

§ 654.73 Required evaluation and testing.

No employer shall permit any covered employee who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions unless the employee has met the requirements of § 654.85. Nothing in this section shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

§ 654.75 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart C of this part who is found to have an alcohol concentration of .02 or greater but less than .04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than .02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than .04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

(c) Nothing in this section shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

Subpart F—Alcohol Misuse Information, Training, and Referral

§ 654.81 Employer obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting those requirements. Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this part.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this part.

(4) Specific information concerning employee conduct that is prohibited by this part.

(5) The circumstances under which a covered employee will be tested for alcohol under this part.

(6) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this part.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions imposed under subpart B, including the requirement that the employee be removed immediately from safety-sensitive functions, and the procedures under § 654.85 of this part.

(10) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04.

(c) *Optional provisions.* The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol concentration, that are based on the employer's authority independent of this part. Any such additional policies or consequences shall be clearly and obviously described as being based on independent authority.

§ 654.83 Training for supervisors.

Every employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 654.47 receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 654.85 Referral, evaluation, and treatment.

(a) Each covered employee who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited by subpart B shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than .02.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse:

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol tests administered by the employer following the employee's

return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/employee agreements and employer policies.

(e) The requirements of this section with respect to referral, evaluation, and rehabilitation, do not apply to applicants who refuse to submit to a pre-employment/pre-duty alcohol test or who have a pre-employment/pre-duty alcohol test with a result indicating an alcohol concentration of .04 or greater.

654.87 Requirement to certify compliance.

(a) Each recipient of FTA financial assistance shall certify annually to the applicable FTA Regional Office compliance with the requirements of this part. Large operators shall certify compliance initially by [DATE 12 MONTHS FROM PUBLICATION OF THE FINAL RULE]. Small operators and States shall certify compliance initially by [DATE 24 MONTHS FROM PUBLICATION OF THE FINAL RULE]. Each certification shall comply with the applicable sample certification provided in the appendix to this part.

(b) Each certification must be authorized by the organization's governing board or other authorizing official. Each certification must be signed by a party specifically authorized to do so. Each certification must comply with the applicable sample certification provided in the appendix to this part.

Appendix to Part 654—Sample Certifications of Compliance

This appendix contains two separate examples of certification language. The first example consists of the generally applicable certification language. Example II should be used by employers who are covered by Federal Railroad Administration's alcohol misuse prevention program regulations.

I.

(a) *For recipients who are large or small operators* I, (name), (title), certify that (name of recipient) and its contractors, as required, for (name of recipient), has established and implemented an alcohol misuse prevention program in accordance with the terms of 49 CFR part 654.

(b) *For States* certifying on behalf of its subrecipients and their contractors, as required, shall be as follows:

I, (name, title) on behalf of (STATE) certify that, to the best of my knowledge and as the result of due diligence, the entities on the attached list of Federal Transit Act subrecipients operating in this State have established and implemented alcohol misuse prevention programs in accordance with the terms of 49 CFR part 654.

II.

The text of the certification of an employer that provides commuter rail transportation service regulated by the Federal Railroad Administration shall be as follows:

I, (name), (title), certify that (name of recipient) and its contractors, as required, for (name of recipient), has an alcohol misuse prevention program that meets the requirements of the Federal Railroad Administration's regulations for employees regulated by the Federal Railroad Administration, and has established and implemented an alcohol misuse prevention program in accordance with the terms of 49 CFR part 654 for all other covered employees who perform safety-sensitive functions.

Issued: December 2, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

Brian W. Clymer,

Administrator.

[FR Doc. 92-29685 Filed 12-10-92; 10:00 am]

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Federal Transit Administration

49 CFR Part 653

[Docket No 92-H ; RIN 2132-AA37]

Prevention of Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 28, 1991, President Bush signed the Omnibus Transportation Employee Testing Act of 1991, mandating the Federal Transit Administration to issue regulations on drug and alcohol testing for mass transit workers. This document proposes the agency's drug use prevention program, which should increase the safety of mass transit operations.

DATES: Comments on this proposed rule must be submitted by April 14, 1993.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 92-H, Federal Transit Administration, DOT, 400 Seventh St. SW., room 9316, Washington DC 20590. Comments will be available for inspection at this address Monday through Friday from 9 a.m. to 5 p.m. If you would like acknowledgment of receipt of your comment please include a stamped, self-addressed postcard with your comment.

FOR FURTHER INFORMATION CONTACT: For program issues, Judy Meade, Office of Safety, Federal Transit Administration, DOT, 400 Seventh St, SW., room 6432, Washington, DC 20590. Telephone: 202-366-2896. For legal questions, Susan Schruth, Office of the Chief Counsel, Federal Transit Administration, DOT, 400 Seventh St, SW., room 9316, Washington, DC 20590. Telephone: 202-366-4011 (voice); 202-366-2979 (TDD). Copies of the regulation are available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

I. General Note on Change of Agency's Name

Congress passed reauthorization legislation for several operating administrations of the Department of Transportation (DOT) in the Fall of 1991 (The Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, December 18, 1991). One important change was the renaming of the Urban Mass Transportation Administration (UMTA), which is now the Federal Transit Administration (FTA). In addition, all references to the Urban Mass Transportation Act of 1964, as amended, were changed to the Federal Transit Act, as amended (FT Act).

II. Background

On November 22, 1988, the FTA issued a final rule requiring recipients of Federal Transit Act financial assistance to develop and implement drug testing programs. This regulation was codified at 49 CFR part 653 and was the first time the FTA had required such a program. On December 21, 1989, approximately 200 large transit systems certified compliance with that regulation and began implementing urine drug testing of safety-sensitive employees (including first-line supervisors) for five types of drugs.

A. Litigation.

Shortly after its final rule was published in 1988, the FTA was sued by three unions representing most American transit workers. In these three suits, consolidated in the United States District Court for the District of

Columbia, the plaintiffs contended that FTA lacked statutory authority to issue a drug testing rule. Plaintiffs also argued that random testing was unconstitutional. Eventually plaintiffs conceded the constitutionality of drug testing, including random testing. After the district court upheld the regulation, the plaintiffs appealed.

On January 19, 1990, the United States Court of Appeals for the District of Columbia Circuit decided that FTA did not have statutory authority to issue an anti-drug regulation. (*Amalgamated Transit Union* v. *Skinner*, 894 F.2d 1362 (D.C. Cir. 1990)). Accordingly, on January 25, 1990, FTA published a notice in the **Federal Register** suspending its anti-drug regulation. (Today's proposed rule, when finalized, will replace the suspended part 653 with a new part 653.)

In the meantime, other agencies of the Department of Transportation have been sued on a number of different aspects of their respective drug testing regulations, and have prevailed in each case. In those cases, the testing procedures used, the five drugs tested for, the types of tests, including random, as well as the basic constitutionality of drug testing, have been upheld by the courts. Moreover, several transit systems successfully have defended challenges to their own drug and alcohol testing programs.

When FTA's 1988 drug rule was suspended, the FTA and DOT emphasized that statutory drug testing authority for the FTA was a key legislative goal. These attempts were successful on October 28, 1991, when the Omnibus Transportation Employee Testing Act (the Act, Pub. L. 102–143, Title V) was signed into law by President Bush.

Today's proposed rule carries out the mandate in the Act and is similar in many respects to the agency's suspended part 653. However, when today's rule is published in final form the 1988 suspended rule will be removed completely and the only remaining regulation will be that issued under the authority of the Omnibus Transportation Employee Testing Act.

B. Study

In 1991, the FTA Office of Safety conducted a study to determine the extent of substance abuse in the transit industry. ("Substance Abuse in the Transit Industry", DC–90–7021, 1991) The study's findings analyze the results of two surveys designed to gather information on substance abuse policies and programs as well as drug and alcohol use patterns in the transit industry. Of the two surveys, one was completed by transit system managers and the other by safety-sensitive transit employees.

The transit manager survey sought information on substance abuse program policies and procedures, positive test rates during calendar year 1990, disciplinary procedures, employee training, and substance-related accident data. The survey was mailed to 400 transit systems; 306 comprise the agency data base.

The employee survey was administered to 1,975 safety-sensitive employees at nine randomly selected transit systems divided into three groups based on annual ridership. The employee questionnaire was focused solely on personal use of drugs and alcohol and, to a large extent, the questions were standardized to facilitate comparison with the National Institute on Drug Abuse (NIDA) Household Survey.

Both studies guaranteed confidentiality. Since both surveys were voluntary, no data were collected from any system or employee who did not consent to participate.

The following are some key findings from the surveys concerning drug use:

- Of the 306 systems, 78 percent conduct some type of drug testing.
- The personal use data provided in the 1988 and 1990 NIDA household surveys provide a benchmark for comparisons of the transit industry results with those of the general population. Those results indicate that self-reported drug use by transit employees during the twelve months preceding the survey was somewhat lower than self-reported use by the general population. However, self-reported drug use by transit employees during the thirty days preceding the survey was almost identical to that reported by the general population.
- About seven percent of the safety-sensitive employees reported using drugs on the day before or the day of reporting to duty.
- Over ten percent of the safety-sensitive employees reported daily or weekly use of a duty-affecting drug.
- Slightly over four percent of all drug tests administered to safety-sensitive employees and job applicants in 1990 were confirmed positive.
- Positive drug test results were slightly higher for vehicle and equipment maintenance personnel than for vehicle operators.

III. The Omnibus Transportation Employee Testing Act of 1991

The Omnibus Transportation Employee Testing Act of 1991 (the Act) (Pub. L. 102–143, October 28, 1991) requires the FTA to issue regulations mandating testing for the use of certain drugs by safety-sensitive employees. The following highlights provisions of the Act affecting the FTA; see the section-by-section portion of this preamble for a more thorough discussion of the Act.

The Federal Transit Administration must issue regulations requiring recipients of funds under sections 3, 9, and 18 of the Federal Transit Act, as amended, and section 103(e)(4) of title 23 of the United States Code, to test safety-sensitive employees for the use of drugs in violation of law or Federal regulation. The FTA may defer to related regulations issued by the Federal Highway Administration (FHWA), under the Commercial Motor Vehicle Safety Act of 1986, or the Federal Railroad Administration (FRA), under the Federal Railroad Safety Act of 1970, for operations covered by these statutes.

As a condition of FTA funding, the Act requires recipients to establish an anti-drug program. Failure to establish such a program, or to properly carry it out, will result in a suspension of Federal transit funding.

The Act requires urine testing for controlled substances, which the Administrator determines are a risk to transportation safety. A controlled substance is defined in the Act as any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). The Act further requires four types of drug testing: Pre-employment, reasonable suspicion, random, and postaccident. In addition, the statute permits periodic testing, under various circumstances.

The Act requires that the Department of Health and Human Services (DHHS) testing procedures be followed to ensure the integrity of the test and to protect the individual's privacy, to the extent practicable, while the specimen is being collected.

The Act does not require recipients to follow a particular course of action when a safety-sensitive employee has been found to have violated law or Federal regulation concerning the use of prohibited substances. Instead, the Act directs the FTA to issue regulations establishing, as it deems appropriate, possible consequences for using a prohibited substance in violation of the FTA regulation, including education, counseling, rehabilitation programs and suspension or termination.

In authorizing this regulatory scheme, the Act pre-empts State or local laws, rules, regulations, ordinances, standards, or orders inconsistent with the regulations issued by the FTA. However, provisions of State criminal

law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property are not pre-empted by the Act.

IV. Overview of Proposed Rule

The proposed rule (NPRM) applies to recipients of funds under sections 3, 9, and 18 of the Federal Transit Act, as amended, and section 103(e)(4) of title 23 of the United States Code. It would require each transit operator (employer) that receives these funds to establish and conduct a multi-faceted anti-drug program. A basic component of the regulation is the testing of safety-sensitive employees for the use of prohibited substances, but education and awareness about the problems associated with prohibited drug use also are required.

The regulation specifies that safety-sensitive employees may not use any of the five prohibited substances identified in the regulation (marijuana, cocaine, opiates, amphetamines, phencyclidine).

The NPRM proposes testing in the following situations:

1. Pre-employment (including transfer to a safety-sensitive position within the organization);
2. Reasonable suspicion;
3. Random;
4. Post-accident; and
5. Return to duty/follow-up (periodic).

The NPRM would require the use of the Department-wide drug testing procedures, contained in part 40 of title 49 of the Code of Federal Regulations. Part 40 is consistent with the DHHS "Scientific and Technical Guidelines for Drug Testing Programs" issued on April 11, 1988. These regulations include specifications on the chain of custody procedures to be used in collecting the sample, procedures for maximizing the privacy of the individual being tested and the like. Each of the existing drug testing programs of other DOT agencies is subject to these part 40 procedures.

If a covered employee fails to pass a drug test (as defined in this part 653), the employee must be removed from his or her safety-sensitive position. In addition, the employee must be told about educational and rehabilitation programs available. Further, the covered employee must be evaluated by a substance abuse professional. The proposed rule would allow the employer to require that the covered employee successfully complete rehabilitation, although the proposed rule would not require the employer to pay for rehabilitation.

Each employer must have a policy statement which describes its anti-drug program policies and procedures, including consequences.

Because the FTA is to issue a regulation requiring a drug testing program as a condition of financial assistance, this regulation applies to recipients of FT Act funds, *i.e.*, transit systems, Metropolitan Planning Organizations, and States, and will be enforced at that level by the FTA rather than at the employee level. (Concerning MPO's and States, they are affected by this regulation if they provide transit service or provide money to a subrecipient who provides transit service and if they currently are required to provide certifications of compliance on behalf of the subrecipient.) MPO's or States that provide transit service will be responsible for developing and implementing a program like any other employer. If an MPO or State does not provide transit service, but manages or funds transit providers, the MPO or State must ensure founded certifications are made to them by employers.

It is the employer's responsibility to develop a program and implement that program in compliance with this regulation. Failure to do so, or to do so properly, will result in a suspension of Federal transit funding.

Finally, a note about terminology. The agency has changed the way it refers to its grantees for purposes of this rulemaking. One principal reason is to use substance abuse language that is uniform among the agencies of the Department of Transportation. The other reason is to more accurately describe the different parties' responsibilities under this regulation.

FTA has its primary relationship with grantees. Many grantees are entities which both receive transit funds and run mass transit services. Typical among these are large transit operators under sections 3 and 9 of the Federal Transit Act, as amended.

In addition, some grantees (typically States) pass the money they receive as grantees to smaller subrecipients within their States. In these cases, the FTA recipient is not the actual transit operator.

To use a phrase which gets at the actual transportation service provider, the NPRM uses the term "employer." This term includes both the small and large operators, as well as those providing service under contract or other arrangement with the transit operator. All of these terms are spelled out in the definitions section and are explained in more detail in the following section-by-section discussion.

V. Section-by-Section Analysis

Subpart A—General

A. Applicability (§ 653.5)

The FTA proposed rule contains a section specifically describing the applicability of the rule to various recipients of funds under the Federal Transit Act, as amended. This is necessary because many FTA recipients have portions of their operations regulated by other agencies of the Department, and the Act allows FTA to defer to anti-drug regulations administered by the FRA under the Federal Railroad Safety Act of 1970, or the FHWA under the Commercial Motor Vehicle Safety Act of 1986, if the Secretary deems that the operations would be adequately covered by these other agencies. This section describes which regulation applies and under which circumstances. In deciding which regulation would apply, the FTA coordinated with the FRA, the FHWA, and the United States Coast Guard. All agencies concur in the following decisions.

1. *Federal Railroad Administration.* In addition to bus and rail operations, several of our larger grantees also have commuter rail operations, which are subject to regulations of the Federal Railroad Administration. Proposed § 653.5 states that, for purposes of the FTA anti-drug rule, entities or operations of entities currently governed by the FRA under the Federal Railroad Safety Act of 1970 will continue to conduct their anti-drug program consistent with the provisions of the FRA regulations. (See § 219.3 of this title.) The grantees must certify to the FTA that they are in compliance with the FRA anti-drug regulations and a proposed model certification is set out in the appendix to part 653.

2. *Federal Highway Administration.* Grantees with safety-sensitive employees subject to the Commercial Drivers License Program of the FHWA are covered by the FTA anti-drug regulation, not that of FHWA.

While FTA grantees can rely on this part 653 to meet FHWA drug testing program requirements, each affected grantee should be aware that individual drivers subject to the Commercial Drivers License requirements may be subject to further sanctions, such as revocation of his or her license, based on a drug conviction.

3. *United States Coast Guard.* The Act does not provide the Secretary the discretion to defer to chemical testing regulations of the United States Coast Guard (Coast Guard) for its marine employers which are also FTA grantees.

Further, the Act does not include any mandates affecting the Coast Guard, which already requires dangerous drug and alcohol testing in certain circumstances.

In fact, the Coast Guard has a long history of requiring chemical testing (dangerous drugs and alcohol) by marine employers. Equally long is Coast Guard's relationship with individual marine employees, since it is the Coast Guard which issues and revokes a license, certificate or document of a marine employee.

Thus, FTA grantees which are marine employers are subject to two sets of regulations, those of the Coast Guard found at 46 CFR parts 4 and 16 and 33 CFR part 95, and those of the FTA, which will be codified as today's part 653. In addition, marine employees continue to be subject to Coast Guard regulations at 46 CFR parts 4, 5, and 16 and 33 CFR part 95, even though FTA's regulations do not apply directly to employees. FTA's authority is limited to its relationship with its grantee/employers.

In many cases, the FTA program regulation, as proposed in today's proposed rule, consists of more elements than the Coast Guard regulations affecting marine employers. While some examples follow later, as a general matter, an FTA grantee generally can rely on the FTA program elements of the regulation to also be in compliance with the Coast Guard regulations.

For both the FTA and the Coast Guard, testing must be done consistent with procedures found in 49 CFR part 40. As mandated by the Act, however, FTA and the Office of the Secretary will propose a change to part 40, mandating a split sample procedure for specimens. When adopted as a provision of part 40 it may not apply to Coast Guard employers. If it does not, this would be an instance in which the procedural provisions of the two agencies' regulations differ.

As noted earlier, if a grantee/employer complies with the program testing requirements of this part 653, when it becomes final, generally, the grantee will also be in compliance with the employer directed portion of the Coast Guard regulations. To assist in discerning where there may be differences between the two regulations, we have included an example below to show how the regulations are different. In addition, as we discuss specific sections in the Section-By-Section Analysis portion of this preamble, we have highlighted differences in the regulations.

For example, part 5 of the Coast Guard regulations specifies its statutory obligation to revoke a license, certificate or document of any person who has been shown at a hearing to be a user of or addicted to the use of a dangerous drug or to have been convicted of violating a dangerous drug law of the United States.

However, the FTA has no authority over the individual employee. The FTA drug rule, as proposed, does allow the employer to terminate an employee based upon a verified positive drug test result.

In this example, a marine employer, which is a recipient of Federal Transit Act funds may use the program as set out in part 653. However, there are further responsibilities if the employer is dealing with an employee who has failed a chemical test for dangerous drugs, including providing specific notice to the Coast Guard of such verified positive drug test result.

B. Definitions (§ 653.7)

1. *Accident.* This definition is important because the regulation would require drug testing after an *accident.* The proposed rule defines accident as an event involving a revenue service vehicle that: must be reported under regulations of any one of three other DOT agencies (FRA, Coast Guard, and FHWA); results in a personal injury that requires removal to a medical facility; results in a loss of human life; or results in property damage with an estimated value of $1,000 or more.

This amount is for all property damage at the scene of the accident. It is not intended to be only damage to the transit vehicle. It could be other vehicle(s), trees, buildings, tunnels, etc. The agency is proposing this property damage floor to be consistent with current Section 15 reporting requirements.

The agency seeks comment on this provision, in particular on whether there should be more than one threshold which would trigger the definition of an accident. For example, there could be different floors based on the type of transit vehicle involved in the accident. For example, the floor might be $1,000 if the transit vehicle involved is a van or other vehicle designed to carry 15 or fewer passengers (including the driver), or $5,000 for an accident involving a rail car or full size bus. Is there another basis for distinguishing different dollar threshold amounts? What are they? The agency seeks data on this point, including average accident property damage costs—by vehicle type if possible.

Post-accident testing is another area in which marine employers must be aware of and comply with additional regulations of the United States Coast Guard. Specifically in this case there are procedures governing testing following a "serious marine incident" and procedures for testing corpses.

2. *Cancelled test.* This definition provides a category of test which is neither a positive or a negative test. In effect, it makes a determination that the test was not conducted. It has important effects, because, among other things, a cancelled test cannot be counted toward meeting the specified random rate.

There are many circumstances in which a test may be "cancelled". For example, the MRO may determine that the results are scientifically insufficient to warrant further action or are suspect because of irregularities in the administration of the test or observation of chain of custody procedures.

A laboratory may refuse to accept a sample caused by a problem with the chain of custody procedures followed, or because of the condition of the specimen. These also would be considered cancelled tests.

For purposes of compliance with this part, there are two types of cancelled tests which would require further testing: Pre-employment and return to duty. Mandating another test in these circumstances follows, since in neither case may an employer place an employee in a safety-sensitive position without the employee passing a drug test. Conversely, another test is not authorized in other cases, since it would serve no purpose: the other tests are situation specific and contingent upon timely testing.

3. *Covered Employee.* This definition is important because it classifies who is subject to the transit operator's drug testing program. The FTA would define a "covered employee" to be any individual who performs a safety-sensitive function, either directly employed by an FTA recipient or subrecipient or under contract to an FTA recipient or subrecipient. The proposed rule includes a definition of specific safety-sensitive functions subject to the provisions of the rule.

As proposed, these duties are related to the safe operation of a vehicle, including operating a revenue service vehicle and maintaining a revenue service vehicle or equipment used in revenue service. The definition of safety-sensitive includes those who supervise directly individuals performing such safety-sensitive functions.

In all cases, a covered employee tested under the authority of this FTA

rule must perform duties which fall within the definition of safety-sensitive.

The definition of covered employee also contains the concept of persons who are not employees of a transit operator, but who perform safety-sensitive functions for the transit operator on a regular or continuing basis. The part also includes a definition of contractor to make it clear that an ongoing relationship suffices to have the definition apply.

The inclusion of non-employee safety sensitive workers in the rule raised many issues during the agency's previous drug testing rulemaking. Many operators, and in particular small operators, contended that covering contract service workers could make it difficult for those transit operators who rely on contract maintenance or other service as their sole method of servicing.

On the other hand, the agency has received information from Iowa State University, that will be released in report form later this year, as well as first-hand experience submitted to the agency by small operators, that indicates that the problem is manageable. Further encouragement for the agency to cover these workers is contained in a colloquy on the Senate floor during debate on the legislation mandating this program in which its sponsors clearly indicate their intent to cover safety-sensitive contract workers as well as direct employees of the grantee. ("Cong. Rec.", S14766, October 16, 1991)

For these reasons, contract personnel who "stand in the shoes" of a recipient's own safety-sensitive employees are included in the definition of *covered employee*.

The agency seeks comment on this definition, particularly from small systems and those with directly related experiences.

4. *Employer*. As proposed, the employer has primary responsibility for developing the requisite drug testing program, including educational materials, policies, and testing processes. The FTA defines "employer" to include anyone who is operating transit service subject to this rulemaking. This includes small and large transit operators, as well as any consortium that may be formed to respond to the needs of several operators. The term "employer" is used instead of recipient to avoid any confusion about who has the responsibility under the rule, since States, which are the direct recipients of some FTA funds, usually do not run transit systems.

Under this NPRM, the original recipient of funds from the FTA must make the drug testing program certification, regardless of whether or not that recipient actually provides transit service. For example, a State is the recipient of funds from the FTA under the section 18 rural program but in most, if not all cases, service is provided by subrecipients spread throughout the State. The State, as the original recipient of FTA funds, would certify to the FTA that each subrecipient complies the drug testing regulation. If for some reason a particular subrecipient fails to establish a drug testing program, or fails to implement a program in accordance with the regulation, the FTA would enforce compliance through the State, by requiring it, for example, to suspend Federal funding to that particular subrecipient unless and until the problem is resolved. The same principle would apply in the case of a transit authority recipient and any subrecipients to which it provided Federal funds.

5. *Large operator*. We have defined a large operator as a recipient which operates in an area of 200,000 or more in population.

6. *Safety-sensitive*. The proposed rule defines safety-sensitive to include any function related to operating a revenue service vehicle; controlling the movement or dispatch of a revenue service vehicle; maintaining a revenue service vehicle; or directly supervising any employee performing one of these functions.

The agency is including maintenance workers in this definition, which drew comment in the 1988 drug testing rulemaking. As noted above, the findings of a recent survey indicate that in 1990 positive drug test results were slightly higher for maintenance employees than for vehicle operators. Including maintenance workers in the definition of safety-sensitive means that these workers also would be subject to post-accident testing.

The agency is interested in whether this provision will increase the number of employees tested by grantees already conducting drug testing. Do you conduct post-accident testing now? Do you currently test maintenance employees for drug use? If yes, under what circumstances? Are maintenance employee attendance records and production reports reviewed for possible signs of drug use?

While this definition includes the functions to be covered, the agency recognizes that each employer will have to make case-by-case determinations in designating which employees are safety sensitive, based on the definition and other guidance material in the final rule.

7. *Small operator*. We have defined a small operator as a recipient which operates in an area of less than 200,000 in population. This distinction is consistent with other FTA programs.

C. Determination of Prohibited Drugs (§ 653.9)

This section lists the five drugs to be tested for and determines that these drugs pose a threat to the safety of mass transit. The definition of prohibited drug in the statute specifically requires the Administrator to make such a finding. These drugs are: Marijuana, cocaine, amphetamines, opiates, and phencyclydine. Other DOT agencies currently test for these "big five" drugs, and they are also the only drugs for which DHHS has certified laboratories to test.

Current data collected by the agency, discussed elsewhere in this preamble, confirm that these five drugs are indeed appropriate for testing under this proposed rule.

D. Pre-Emption of State and Local Laws (§ 653.11)

The statute provides for Federal pre-emption in the field, voiding the effect of any inconsistent State or local law, ordinance, rule, regulation, standard or order.

Whether the FTA had authority to require grantees to implement a substance abuse program, and the effect of that requirement in light of State provisions to the contrary, was at the core of legal challenges to our previous drug testing regulation. Congress included language in the Act indicating that no State (including State Constitutions) or local law continues in effect if it is inconsistent with the FTA drug testing regulation. Consistent with longstanding Department-wide interpretation of this type of pre-emption language, the regulation specifies that "inconsistent with" means that the regulation:

(1) Pre-empts a State or local requirement if compliance with the local requirement and the FTA regulation is not possible; or

(2) Pre-empts a State or local requirement if compliance with the local requirement is an obstacle to accomplishing the provisions of the FTA regulation.

On the other hand, the statute and the regulation do not pre-empt State criminal laws that impose sanctions for reckless conduct.

E. Other Requirements Imposed By An Employer (§ 653.15)

This section makes clear that employers, as well as employees, may

add features beyond those required in this regulation for an anti-drug program. The only limitation is that any such additional features may not conflict or interfere with the implementation of the part 653 provisions. For example, if an employer tests for additional drugs, or for different cut-off levels of the five mandated drugs, the employer would have to conduct a separate urine collection from the covered employee. Nothing could interfere with the Federally-mandated chain of custody procedures.

As indicated in § 654.31, the employer must notify the employee whether a drug test is being conducted under the authority of part 653 or the employer's own authority.

F. Compliance With Testing Procedures Requirements (§ 653.17)

Recipients of FTA assistance must establish an anti-drug program that is consistent with the substantive drug testing requirements of this part 653 as well as the procedural drug testing regulation that has been issued by the Secretary at 49 CFR part 40. FTA recipients must comply with part 40 to be in compliance with part 653.

While each grantee must acquire a copy of the Secretary's part 40 procedural regulation, subpart D of the FTA's substantive regulation contains highlights of the procedural requirements. Further explanation of these requirements can be found in the section-by-section explanation of subpart D portion of this preamble.

G. Compliance as a Condition of FTA Financial Assistance (§ 653.19)

The statute requires FTA to establish a regulation for an anti-drug program for recipients of Federal financial assistance under section 3, 9 or 18 of the Federal Transit Act, as amended, or section 103(e)(4) of title 23, United States Code. The statute also states that a recipient shall not be eligible for such Federal financial assistance if the recipient fails to establish such a program in accordance with such regulations. Accordingly, continued FTA assistance is contingent upon compliance with this drug testing regulation (which includes compliance with 49 CFR part 40).

This section also states that any false misrepresentation or action to mislead FTA is a criminal violation under section 1001 of title 18 of the United States Code.

Paragraph (c) of this section describes the role of the States in this program. Since the State is the recipient in the case of section 18 funds (and may, in some cases, be such for small areas receiving section 9 assistance), it is a "recipient" for purposes of this program. States therefore must certify to FTA compliance with this regulation. However, in most if not all cases, this money is allocated to smaller entities which develop and administer programs consistent with FTA requirements. For purposes of this rule, FTA will require each State to certify compliance on behalf of its subrecipients who are subject to this rule. Each subrecipient must provide adequate assurances to its State so that the State can certify on its behalf.

A small entity will be subject to suspension of funding, through the State, if it is not possible for an appropriate certification to be made on its behalf, or if the FTA has reason to believe that the entity is not in compliance with the regulation in some other material way.

Subpart B—General Program Requirements

This subpart sets out the elements of the anti-drug program each employer must implement to be in compliance with this part.

There are four basic elements to the program: Developing and disseminating a policy statement; employee education and training; testing for five drugs under five different circumstances; and employee suspension, removal, or rehabilitation.

A. Policy Statement Contents (§ 653.23)

The proposed rule would require a policy statement, to be made available to every covered employee, incorporating the employer's position and information on virtually all aspects of the anti-drug testing program. In particular, the policy statement must articulate the employer's position on the following:

1. Specific categories of employees subject to testing.
2. Where to go to for information.
3. When and why an employee will be tested.
4. The consequences of failure to pass a drug test.
5. Program elements in addition to those required by FTA regulation.

The FTA expects each employer to articulate in the policy statement its response concerning a covered employee's failure to pass a drug test. This must include removal of the employee from his or her safety-sensitive position, evaluation of the covered employee, and possible referral for rehabilitation; it could include funding arrangements for rehabilitation (self-pay or employer-paid or some combination). The policy must indicate whether the employer would suspend or terminate a covered employee who has failed to pass a drug test, and the circumstances in which these actions would be taken.

The NPRM would not mandate employer-provided rehabilitation for a covered employee. Further, if the employer provides rehabilitation to a covered employee, the NPRM would not require that the employer pay for it. The NPRM would require a covered employee who fails to pass a drug test to be assessed by a substance abuse professional. During this assessment, the substance abuse professional must inform the covered employee of assistance that is available. While the agency encourages rehabilitation, whether there is mandatory rehabilitation, and who pays for rehabilitation, are decisions left at the local level.

This position on rehabilitation is consistent with congressional debate on the topic. In particular, in a colloquy between Senators Danforth and Hollings, the Senators make it clear that rehabilitation is not mandated by the legislation, nor does the legislation specify who should pay for treatment, whether wages must be paid during treatment, or whether there is a right of reinstatement. The colloquy confirms the proposed rule's position that such arrangements can be left to negotiation between the employer and employee. ("U.S. Cong. Rec.", S14770, October 16, 1991)

Concerning suspension and termination, the proposed rule iterates the statutory requirement but leaves to each employer the responsibility for developing and articulating the consequences of prohibited drug use as defined in the rule. The proposed rule specifies that anyone who fails to pass a drug test (regardless of where or when the substance was ingested) must be removed from his or her safety-sensitive position. This requirement must be included in the policy statement mandated under this section.

B. Education and Training Programs (§ 653.27)

The proposed rule would require that materials providing information about the health and safety consequences of drug use, a hotline telephone number, if available, and the employer's policy on drug use be provided to all covered employees. In addition, the proposed rule would require that employees receive training on personal health and safety issues related to drug use and behavioral cues that may indicate drug use. The purpose of this provision is to raise the consciousness of workers about

drug use and its detrimental effects on the workplace. One of the most effective tools an employer has in fighting drug use is the support and involvement of its employees. Education is the key to making this happen.

In addition to this general training for all covered employees, further training is required for supervisors making reasonable suspicion determinations, which result in drug testing. Paragraph (b)(2) of this section specifies that supervisors must receive 120 minutes of such training. Data available to the FTA indicate that the success rate of supervisors involved in making reasonable suspicion determinations could be significantly increased with more than 60 minutes of training, as required in the agency's previous drug testing rule. For this reason, the agency is proposing 120 minutes of training. However, the FTA has reduced the number of supervisors necessary to make reasonable suspicion referrals from two to one as a result of the industry's expressed concerns about the impracticability of the two supervisor requirement.

FTA is interested in determining if the proposed rule's training provisions provide enough training and if the provisions are consistent with current training efforts in the industry. For those employers who provide training, how much training do you provide? Is refresher training conducted periodically? Are drug and alcohol training activities combined, or are they separate? Are supervisors required to participate in substance abuse training beyond that provided to non-supervisory employees? Is any training provided on an optional basis? How much training is provided:

(1) To all personnel;

(2) To personnel making reasonable suspicion determinations.

C. Drug Testing (§ 653.29)

This section specifies the five drugs to be tested for, as required by the statute, in each employer's program and the different types of tests which must be conducted.

The five drugs are marijuana; cocaine; opiates; amphetamines; and phencyclidine. Required tests, which are the same as the agency required in its previous rule, are: Pre-employment (including transfer to a safety-sensitive position); post-accident; reasonable suspicion, random, and return to duty/followup. The statute specifically lists the first four types of testing, and indicates that the regulation may include "periodic recurring testing", which we have included in the proposed rule as return to duty testing. This type of testing includes the requirement for the employer to test randomly a returning covered employee who has failed to pass a drug test for up to sixty months, based on the recommendation of a substance abuse professional.

The agency is considering a minimum number of return to duty tests, administered randomly, for up to a 60 month period. This provision, if adopted, would require the employer to test the returning employee a minimum number of times—such as four or six—during the first 12 months, independent of any recommendation by the substance abuse professional. The agency seeks comment on this provision, including a minimum number of tests or length of time the covered employee would be mandated to be covered by follow-up testing.

D. Requirement for Specific Notice (§ 653.31)

This section has been added to the rule in response to a concern raised under existing drug programs, and provides that an employer must indicate, before a test is administered, that the urine specimen will be tested for the five prohibited drugs and under what authority the test is being administered, either this Federal regulation or some other basis.

E. Action When Employee Fails to Pass a Drug Test (§ 653.33)

This section states the specific requirement that any safety-sensitive employee who fails to pass or refuses to submit to a drug test must be removed from his or her safety-sensitive function as soon as the employer receives information from the MRO that the covered employee has failed to pass a drug test. In addition to being removed, the employer must ensure that the employee is assessed under the provisions of § 653.35.

This area is an example where there are additional responsibilities for FTA grantees that are marine employers. Consistent with current 46 CFR 16.201(c), an employer or prospective employer of an individual holding a license, certificate of registry or merchant mariner's document who fails to pass a drug test must report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). For further information see 46 CFR part 16

F. Information, Referral, Evaluation, and Treatment (§ 653.35)

Any safety-sensitive employee who fails to pass a drug test must be removed immediately from his or her safety-sensitive position. In addition, the covered employee must be notified of available educational material and organizations providing assistance on substance abuse, and must be assessed by a substance abuse professional. If the employer's policy so states, the covered employee may be required to undergo rehabilitation before returning to a safety-sensitive function.

The substance abuse professional determines when each covered employee who has failed to pass a drug test must be evaluated and which covered employees are ready to return to work.

Subpart C—Types of Drug Testing

A. Pre-Employment/Pre-Duty Testing (§ 653.41)

This section proposes that an employer may not hire an applicant for a safety-sensitive function, unless the applicant passes a drug test that has been administered consistent with the procedures of this regulation.

In addition, any employee who wishes to transfer to a safety-sensitive function from a non-safety-sensitive function is subject to this testing category. Such an employee would not have been subject previously to the drug testing procedures mandated by this part, and consequently must be tested before performing a safety-sensitive function.

For marine employers, 46 CFR 16.210(a) prohibits them from hiring or giving a commitment of employment to an individual unless the individual passes a drug test or meets a stated pre-employment exemption under 46 CFR 16.210(b). (Marine employers which are FTA grantees, however, may not take advantage of the Coast Guard exemption provision and still be in compliance with FTA program regulations in part 653.)

B. Reasonable Suspicion Testing (§ 653.43)

The second type of testing proposed by the NPRM is reasonable suspicion testing. This section proposes that an employer require a covered employee to be tested for prohibited drug use if the employer has a reasonable suspicion that the covered employee has used prohibited drugs. As the section states, the reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, or speech of the covered employee.

It is this determination for which the proposed rule would mandate 120 minutes of additional training for

supervisors who will be making reasonable suspicion referrals. Unlike the agency's previous anti-drug rule, however, the determination need be made by one supervisor, rather than two. The agency believes that additional training is the key to successful reasonable suspicion testing, not the number of supervisors involved.

The agency seeks information on the application of the reasonable suspicion determination. For example, how many persons are involved currently in making reasonable suspicion determinations? Do fellow workers participate in identifying someone who may be jeopardizing the safety of crew or passengers? If only one supervisor is allowed to make the determination, is corroboration of any kind required? What percentage of persons tested under the reasonable suspicion category fail to pass the drug test?

C. Post-Accident Testing (§ 653.45)

The NPRM proposes post-accident drug testing. An accident is defined as any transit accident involving a loss of human life or other serious bodily injury or significant property damage. (The agency has proposed a floor of $1,000 for property damage, in the context of the definition of accident. Please see the definitions section of the preamble for a more complete discussion of the proposed financial threshold.)

The FTA proposes drug testing of all safety-sensitive employees on duty in the vehicle at the time of the accident or involved in the vehicle's most recent maintenance or other safety-sensitive function preceding the vehicle being placed into revenue service. The Act specifically requires drug testing in the case of any accident involving the loss of human life. In other cases, the covered employee must be tested unless the employer determines that the employee's performance can be completely discounted as a contributing factor to the accident.

The proposed rule requires that the employer ensure that employees required to be tested are tested as soon as possible and within 32 hours of the accident. This is consistent with other DOT agency existing drug testing rules.

This section also requires that the employer consider departure from the scene of the accident as a refusal to submit to a test, unless the covered employee has a valid reason. The agency seeks comment on whether the rule should specify what a valid reason is. Clearly to seek medical attention is, and that is specifically cited in paragraph (d) of this section. However, the covered employee may not need medical attention, but he or she may need to leave the accident to call for help. There may be the risk of explosion or toxic fumes. Should the determination of validity be determined on a case-by-case basis, at the local level, or should the FTA regulation provide some definition of what would be appropriate?

The transit agency survey results, cited earlier in this preamble, indicate that there is a measurable safety problem associated with substance abuse. The survey requested information about major accidents and those with substance abuse as a contributing factor. However, only 50 percent of the transit agency survey respondents could provide such data. Eighteen percent of the respondents who were able to provide information on major accidents reported at least one accident where substance abuse was a contributing factor in 1990.

Almost all systems reporting a substance abuse-related accident conduct both pre-employment and reasonable suspicion testing, and have an above-average likelihood of testing under most other circumstances. However, almost 40 percent of responding transit agencies, are unable to determine whether an accident may be drug or alcohol related.

The FTA seeks the industry's experience with post-accident testing of employees where there has been a fatality, serious bodily injury or property damage.

The agency specifically solicits statistics or information about accidents, such as the average cost, those involving only vehicle damage, those involving damage to property other than the employer's, human injury, etc.

While not provided for in this FTA proposed rule, Coast Guard regulations for an accident resulting in the death of a covered employee trigger a requirement to test the corpse for chemical substances. The provision is found in Coast Guard regulations at 46 CFR 4.06–30.

D. Random Testing (§ 653.47)

The Act requires random drug testing. As in the past, the agency continues to believe that random testing constitutes a significant deterrent to prohibited drug use. A successful antidrug program is a combination of education, awareness and deterrence, which random testing provides.

As described at length in FTA's previous rulemaking on this subject, in random testing covered employees are placed in a pool and, by some identifying number or symbol other than name, are selected using a scientifically valid random selection method. The method used can be a computer model, or a random generation table could be used. Of critical importance, however, is the guarantee that covered employees are chosen in an unannounced and unpredictable manner. It is possible in random generation that one person is chosen two or three times over a period of time, while another person is not chosen at all. However, no covered employee should be removed from the pool merely because he or she has been selected for testing.

The rate at which random testing must be conducted is proposed at the 50 percent rate. A random rate means the percentage of the covered population which must be tested within a given time period (under this regulation, during each calendar year).

The FTA seeks comment on the rate of random drug testing to be conducted. The purpose of random testing is deterrence.

Today's proposed rule uses the 50 percent testing rate in use by the other DOT operating administrations, a rate which has resulted in lower positive rates of tested employees.

While this 50 percent rate has been successful and all operating administrations will continue to use it, the Department—in a separate advance notice of proposed rulemaking (ANPRM) published elsewhere in today's issue of the **Federal Register**—seeks data on other rates that may be appropriate to use, as well as other methodologies or techniques used in conjunction with random testing to enhance the deterrent effect of random testing.

The FTA is participating in and fully supports the Department-wide ANPRM, but we do not anticipate adequate data being available to us by the time we issue a final rule on which to base a decision to vary the random testing rate from the established rate in use by all other DOT operating administrations mandating testing. Persons with data are encouraged to submit comments to both this proposed rule docket and the DOT-wide ANPRM docket.

E. Return to Duty Testing and Follow-Up Testing (§ 653.49)

Once a covered employee fails to pass a drug test, he or she must be evaluated by a substance abuse professional (SAP) One role of the SAP is to evaluate the kind of treatment the covered employee should receive (which may be determined by the range of services made available by the employer), whether the covered employee has followed the recommendations for

action by the SAP, and when the employee is ready to come back to work. Before the covered employee may return to a safety-sensitive position, the covered employee must take and pass a return to duty drug test.

In addition, under the proposed rule, this covered employee would be subject to return to duty random testing for up to 60 months after his or her return to the safety-sensitive position. The amount of time that each employee is subject to follow-up testing may be different, depending on a determination made by the SAP, based on the individual's circumstances.

However, the regulation proposes that a minimum number of six follow-up tests in the first twelve months after returning to duty for any employee who has failed to pass a drug test under this part and who has since passed a return to duty test. This would limit the flexibility of the SAP, but would ensure that every covered employee who has returned to duty is subject to a minimum number of follow-up tests after returning to work. FTA seeks comment on this proposal.

This section is one of the few in which there is a substantive difference between Coast Guard and FTA regulations. FTA has determined that the Coast Guard provision, which requires evaluation by an MRO rather than a SAP, will satisfy the FTA requirement. For further information on the Coast Guard provision see 46 CFR 16.370(d) and part 5.

Subpart D—Drug Testing Procedures

This subpart contains drug testing procedures employers must use that will be detailed in full in a revised part 40. Once part 40 is amended to reflect the provisions of the Act, these sections will be removed from the FTA regulation.

A. Substance Abuse Professional (§ 653.61)

The substance abuse professional (SAP) discussed earlier in the context of return to duty testing, assesses the kinds of information materials, counseling or treatment the covered employee should receive and when the covered employee is capable of returning to his or her safety-sensitive function.

B. Split Sample Procedure (§ 653.63)

This section implements a provision of the Act requiring the employer to allow a covered employee to request a test of a subdivided portion (split) of his or her primary urine specimen, when the result of the test of the primary specimen is confirmed positive. Briefly, the urine specimen is divided at the time of collection, with a minimum specified amount of urine being used for the primary sample and the remainder being poured off to be saved as the split. In all cases, the chain of custody procedures are used for both the primary and the split samples.

Under the terms of this proposed rule, the split sample procedure would consist of three separate steps. First, the MRO would have to verify the test as positive. Second, the MRO would have to contact the employee and give the employee specific notice that the specimen was positive. And, finally, the covered employee would have to indicate in writing that he or she wishes the split sample to be tested.

This request for an analysis of the split would have to be submitted in writing within 72 hours of receiving actual notice from the MRO that the test was a verified positive. The split sample would then be transported to a different DHHS certified lab, which analyzes the split.

As proposed, the 72 hours would be computed as being 72 hours during scheduled work days. Thus, you would skip scheduled vacation time and weekends in the computation of the 72 hours.

The agency seeks comment on the 72-hour notice requirement. This time period is specified in the statute, but FTA is concerned that it does not allow adequate time for the employee to request a test of the split sample. For example, does this provide enough time for an employee to seek and get advice from someone qualified to provide advice? Does it give the employee adequate time to make an informed choice concerning the ramifications of such a test result? In commenting, please provide specific recommendations for a time period and provide reasons for the time period. Those grantees who already operate under other Department agency drug rules could provide comparisons with those drug rules' 60-day allowance for requesting a reanalysis (retest) of the specimen. For those entities providing such an option, what is the average amount of time taken for a request for reanalysis to be submitted? How many requests are submitted within 72 hours? How many take 60 days? Are the circumstances known which required the 60 days?

This section provides that a covered employee may be required to advance the cost of analyzing the split sample, including the cost of transporting the sample to the second lab. If the test result of the split sample is negative, the test is cancelled.

Who pays for the cost of the test if the split sample test result is negative is something that the agency assumes will be determined at the local level.

Subpart E—Administrative Requirements

A. Retention of Records (§ 653.71)

This section explains which records relating to the drug testing program must be retained and for how long.

There are three separate record retention periods—five, two, and one year, for different types of records. The proposed rule would require each employer to maintain for five years records of covered employees' positive drug test results, documentation of refusals to take a drug test, and covered employee referrals to the SAP.

Collection process and employee training documents would be retained for two years, while records of negative test results would be retained for one year. The section specifies these records in detail.

B. Reporting of Results in a Management Information System (§ 653.73)

The proposed reporting requirements are part of a Department-wide effort to standardize its reporting for drug and alcohol testing, by establishing a Management Information System (MIS). The data collected will cover drug testing information, including the types and numbers of employees covered, results and other data, to be used by FTA and DOT to identify trends and to assess the success or failure of the agency's regulatory program.

The data elements will provide a factual base for decisionmaking concerning modifications to our drug testing rule. Information about drug use prevalence, program implementation, and logistical impact will provide a basis for policy review, development, and change, in order to establish the most effective and efficient approach to drug use deterrence and detection. Issues such as scope of applicability, random test rates, rehabilitation, and testing protocols can be more effectively addressed when industry-wide data is available.

The data elements were selected as the minimum necessary to provide information on the scope of the program, drug use and prevalence, program implementation, employer policy and the deterrent effect of the rules over time.

The FTA seeks comment on a number of issues concerning the NPRM's basic data gathering approach. While the proposed rule would require information from all covered employers

the FTA seeks comment on the merits of seeking information only from a sample of covered employers. The DOT-wide preamble discusses this issue of sampling in greater detail. Or, is reporting an area in which special consideration could be given to very small or very rural operators?

FTA recognizes that any reporting requirement will impose burdens on employers. While these burdens have been analyzed in the regulatory evaluation, we specifically seek comment on ways to achieve the objectives of this requirement with a lesser burden.

Although there are no specific cost elements proposed for the MIS, an ongoing effort of the Department will be to analyze the cost of implementing these regulations. Many of the costs are easily identifiable, such as the charge a transit authority incurs for a laboratory test of a urine specimen. It may be difficult, however, to clearly identify some indirect costs, such as consequential costs of transportation delays caused by the collections. To the extent we might consider seeking cost information from covered transit authorities, are existing accounting systems set up to capture such costs in a manner that would be specific to anti-drug rule compliance? If they were, could we be assured that the different accounting standards that might be used would permit comparison of data from different employers?

Similar questions are raised with respect to benefits. For example, we can determine the specific number of covered employees who have tested positive and been removed from safety-sensitive positions. Although the removal of such covered employees would have safety benefits, will we be able to identify the direct consequences, such as a reduction in accidents? Will we be able to obtain data concerning the indirect benefits, such as improved productivity and decreased absenteeism?

Each report to be submitted would cover a calendar year. The closing date for data would be December 31 and the report would be due at FTA by February 15 of the following year. The transportation employer report would include each of the following data elements. The FTA seeks comments on whether any of these elements should be modified or deleted, or whether any other elements should be added.

1. Number of covered employees by employee category. These data are necessary to assess the scope of the rule's application and to provide a basis for determining if random testing meets the required level.

2. Number of covered employees subject to testing under the anti-drug rules of more than one DOT agency, identified by each agency.

3. Number of specimens collected by type of test (*e.g.*, pre-employment, periodic, random, etc.) and employee category. These data are needed to check the compliance with the rule by category and to review the collection, testing and MRO processes.

4. Number of positives verified by a Medical Review Officer (MRO) by type of test, by type of drug, and employee category. These data, along with the number of tests performed, permit the calculation of positive rates necessary to determine the extent of drug use and the specific drugs detected in the various categories of employees. Further, analysis of these data over time will provide a measure of the effectiveness of the drug testing rules in deterring drug use.

5. Number of negatives verified by an MRO by type of test, and employee category. These data are needed to check compliance with the rules by category and to review the application of the components of the program.

6. Number of persons denied a position as a covered employee following a verified drug test. These data provide an assessment of whether the testing program is being implemented as required, provide a measure of the impact of the drug testing rules on the transit industry, and yield information on the prevalence of drug use in the applicant pool.

7. Number of covered employees verified positive by an MRO, who were returned to duty in covered positions during the reporting period. These data provide information on employer policy implementation regarding return to duty requirements and rehabilitation of identified drug users.

8. Number of employees with tests verified positive by an MRO for multiple drugs. These data provide information on the extent of multiple drug use in the transit industry.

9. Number of covered employees who refused to submit to a drug test required under this part, and the action taken in response to the refusal(s). These data provide information on policy implementation regarding refusals, including subsequent ramifications.

10. Number of covered employees and supervisors who have received required training during the reporting period. These data provide information on training conducted during the current reporting period and a cumulative count of supervisory personnel on the payroll as of December 31 who have received the required drug training.

DOT has developed a standard form for use by employers to provide the data required by this regulation and the FTA-specific form is attached as appendix B to this proposed rule. In addition, FTA is considering authorizing electronic submission of the required report and specifically seeks comment on the desirability or feasibility of this.

We also seek comment on whether these information elements, or the form on which the data would be gathered, are sufficiently clear for use by employers, particularly small transit systems. If not, we encourage comments on ways to make the form and information elements easier to use.

Many small covered employers will participate in the drug testing program through consortia. We seek comment on the extent to which the use of consortia may mitigate any problems that smaller employers have in dealing with the reporting requirement.

FTA also seeks comment on an approach taken by other DOT agencies in their 1988 final rules regarding plan submissions. That is, all "large" employers (for other operating administrations this is based on a minimum number of employees of 15. For the FTA, a large employer would be one operating in an area with a population of 200,000 or more) would report additional data needed for program evaluation purposes during the first year. A staged or short-form type of reporting (including perhaps a sampling of smaller employers) would apply after the first year for "small" employers (for other operating administrations this is based on a maximum number of employees of 15. For the FTA, a small employer would be one operating in an area with a population less than 200,000). Again, comments are particularly invited on how such an approach could serve the Department program evaluation needs while providing data essential for enforcement purposes.

C. Availability and Disclosure of Information (§ 653.75)

This section would establish the boundaries for allowing information to be released about a covered employee's drug test results. As with the procedural aspects of the rule, we have made every effort to maximize the privacy of the individual employee. Accordingly, this section describes the circumstances under which an MRO could release information concerning an employee and the result of any test conducted under the auspices of this part.

D. Requirement to Certify Compliance (§ 653.77)

The proposed rule states that compliance is a condition of FTA funding and that each recipient must submit an annual certification affirming the establishment and implementation of a drug testing program consistent with the rule.

VI. Implementation Period

agency is considering different implementation periods for small and large entities, in recognition of the increased difficulties small operators may face in implementing their programs. In many cases, small operators will need to develop consortia or other sharing arrangements to implement the rule in a cost-effective manner.

Because of the time FTA recipients have had to prepare for this regulation, however, extended implementation periods should be unnecessary. Accordingly, we expect to require large operators to certify compliance with the final rule between three and six months from publication of the final rule and to require States and small operators to certify compliance within six months to one year of publication of the final rule. We seek comment on these proposed periods.

VII. Americans With Disabilities Act of 1990

Title I of the Americans With Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in employment. Employers may not discriminate against a "qualified individual with a disability" and must make "reasonable accommodation" to permit qualified individuals with disabilities to work. Under the ADA, a "qualified individual with a disability" does not include an employee or applicant who is "currently engaging in the illegal use of drugs." This exclusion from the protection of the ADA applies only to users of controlled substances, not to users of alcohol.

There are a number of things employers may do concerning drug and alcohol use without violating the ADA. They may prohibit the illegal use of drugs and the use of alcohol at the workplace (e.g., drinking on the job). They may require that employees not be under the influence of alcohol at the workplace. They may require employees to conform to the requirements of the Drug-Free Workplace Act. They may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards as other employees, even if unsatisfactory performance relates to drug use or alcoholism (for example, if an employer has a policy of firing employees who are late five times in a month, the employer can fire such an employee even if the tardiness results from alcoholism). The employer may require employees to conform to the standards established in the FTA Alcohol Misuse Prevention Program Regulations.

The ADA specifically provides that entities subject to DOT jurisdiction are not prohibited from testing employees in, and applicants for, safety-sensitive positions "for the illegal use of drugs and for on-duty impairment by alcohol." These employers also do not violate the ADA if they remove persons from safety-sensitive positions whose alcohol test indicates a prohibited alcohol concentration.

Someone who currently is engaged in the illegal use of drugs (and an employee who fails a drug test falls into this category) is not a "qualified individual with a disability". This means that even if the individual is a drug addict (drug addiction being a disability), the employer has the discretion to fire him or her, and need not provide reasonable accommodation to the disability.

On the other hand, if the individual misuses alcohol, and the individual is an alcoholic (alcoholism being a disability), the individual remains a qualified individual with a disability, to whom the employer must provide reasonable accommodation. This may mean, for example, that the employer could be required to refrain from firing the individual pending the opportunity for rehabilitation. This situation exists only if the person has a disability (*i.e.*, is an alcoholic). Someone who tests at or above the prohibited level on the basis of some ill-timed casual drinking, but who is not an alcoholic, is not protected by the ADA, since such an individual does not have a disability.

VIII. Combined Rulemaking

The agency is considering combining the final FTA alcohol and drug testing regulations into one part in the Code of Federal Regulations. The advantage of having both requirements in one part is that the regulations could share common provisions. The disadvantage of having both requirements in one part is that the programs, in many essential ways, will be different, and combining them in one part may be confusing or difficult to understand. If the rules are not issued simultaneously, the integration would occur upon publication of the later-in-time final rule.

The agency seeks comments on the utility of combined provisions.

IX. Regulatory Process Matters

A. Executive Order 12291

The FTA has evaluated the industry costs and benefits of this drug testing rule, requiring that transit industry personnel performing safety-sensitive functions be covered by a program to prevent drug use in mass transit operations. The FTA has determined that this rulemaking is not a major rule under Executive order 12291 because the required anti-drug program is not likely to have costs of over $100 million in any one year.

The materials used in preparing the economic impact estimates for this preliminary regulatory evaluation are based on (1) Data on the mass transit industry included in the National Urban Mass Transportation Statistics Section 15 Annual Reports and other reports; (2) Data from the 1991 report entitled "Substance Abuse in the Transit Industry" prepared for the FTA by Booz, Allen & Hamilton, Inc.; (3) Data provided the National Institute on Drug Abuse (NIDA); and (4) Information gleaned from other agencies and individuals knowledgeable about drug testing in the United States. Many of the questions raised in today's preamble seek to verify and expand the information the agency currently has available to it. The preliminary regulatory impact analysis is available for public inspection in the public docket established for this rulemaking.

B. Departmental Significance

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves an important departmental policy and will probably generate a great deal of public interest. The purpose of this rule is to make mass transit systems safer by ensuring that safety-sensitive employees do not use prohibited substances.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), the Federal Transit Administration has made a preliminary assessment of the possible effects of the rule on small business. To the extent possible, the agency recognized the differences between small and large entities, and made as many accommodations in the rule as possible. At this time, the agency cannot say whether there is a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act. A request for Paperwork Reduction Act approval will be submitted to the Office of Management and Budget in conjunction with this rule. Information collection requirements are not effective until Paperwork Reduction Act clearance has been received.

E. Executive Order 12612

This action has been reviewed under Executive Order 12612, on federalism, Although the Federal Transit Administration has determined that this action has significant federalism implications to warrant a federalism assessment, this rulemaking is mandated by Congress in the Omnibus Transportation Employee Testing Act of 1991.

Under the 1991 legislation, the Federal Transit Administration is to issue regulations requiring that recipients of funds under sections 3, 9, and 18 of the Federal Transit Act, as amended, and 103(e)(4) of title 23 of the United States Code, test their safety-sensitive employees for the use of certain prohibited substances in violation of law or Federal regulation.

Before passage of the Omnibus Transportation Employee Testing Act of 1991, safety issues were largely handled as a local matter. This Act clarifies the Federal role by including specific Federal pre-emption language. In the area of drug testing, Federal regulations take precedence over any local specification.

Although Congress has pre-empted inconsistent State or local law, the FTA has preserved the local role in mass transit safety. Testing programs created by virtue of a grantee's own authority are not disturbed by this regulation, so long as they do not impede compliance with the Federal program.

F. National Environmental Policy Act

The agency has determined that this regulation has no environmental implications. Its purpose is to regulate the behavior of those safety-sensitive employees who work in the transit industry and will have no appreciable effect on the quality of the environment.

G. Energy Impact Implications

This regulation does not affect the use of energy because it regulates the behavior of those safety-sensitive employees who work in the transit industry.

List of Subjects in Part 653

Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, for the reasons cited above, the agency proposes to amend title 49 by deleting the suspended part 653 and adding a new part 653, as set forth below:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

Subpart A—General

Sec.

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Appendix A to Part 653—Certifications of compliance

Appendix B to Part 653—Drug and Alcohol Testing Management Information System Data Collection Form

Authority: Sec. 6, Public Law 102–143, 105 Stat. 917; 49 CFR 1.51.

Subpart A—General

§ 653.1 Overview.

(a) This part describes the drug testing requirements to be followed by recipients of funds under the Federal Transit Act, as amended. The part contains all substantive requirements concerning the types of drugs to be tested for, the types of tests to be conducted, and general legal and administrative ramifications of the program. The testing procedures for this program are contained in a Department-wide regulation in part 40 of this title.

(b) The part contains five subparts, with subpart A containing the general, overarching requirements for the FTA drug program. Subpart B specifies the basic requirements of each employer's drug program, including the types of tests to be conducted, the elements required to be in each employer's drug testing program, and options concerning rehabilitation. Subpart C discusses in detail the different types of drug tests which must be conducted. Subpart D discusses two new drug testing procedural requirements, mandated by the Act. Finally, subpart E contains administrative requirements, such as certification of compliance and the employer requirement to report to FTA, and the contents of these reports.

§ 653.3 Purpose.

This part requires a recipient of Federal Transit Administration financial assistance to have an anti-drug program that is designed to detect the use of prohibited drugs by safety-sensitive employees and to deter safety-sensitive employees from using prohibited drugs.

§ 653.5 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to—

(1) Any recipient of Federal financial assistance under sections 3, 9, or 18 of the Federal Transit Act, as amended; and

(2) Any recipient of Federal financial assistance under section 103(e)(4) of title 23 of the United States Code.

(b) The specific commuter rail service operations of FTA recipients, if these services are subject to anti-drug regulations of the Federal Railroad Administration (FRA) (see § 219.3 of this title), are excluded from applicability of this part, except § 653.77. This section sets out the certification of compliance procedure. A recipient covered by paragraph (b) of this section will be deemed to meet the substantive requirements of this part if the certification states that specified operations comply with FRA

regulations. See appendix A to this part for specific certification language.

(c) An employer with safety-sensitive employees subject to the requirements of the Commercial Drivers License Program or other program administered by the Federal Highway Administration that could subject these employees to anti-drug regulations issued by the Federal Highway Administration shall cover these workers under the program specified in this part 653.

(d)(1) A grantee with marine vessel crew members is subject to chemical testing regulations issued by the U.S. Coast Guard and the drug testing program regulations specified in this part 653. Compliance with part 653 may generally be considered compliance with the comparable U.S. Coast Guard provisions in 46 CFR parts 4, 5, and 16.

(2) However, the Coast Guard regulations encompass sanctions and other ramifications for individual marine employees, whereas the FTA regulations apply to and have ramifications for grantees of Federal Transit Act funds. Accordingly, in the case of covered marine employees, there are additional provisions which apply to FTA recipients. The Coast Guard regulations are contained in 33 CFR part 95 and 46 CFR parts 4, 5, and 16.

(3) Nothing in this part prohibits the Coast Guard from directing chemical testing or obtaining test records, as provided for in Coast Guard regulations at 46 CFR parts 4 and 16 and 33 CFR part 95.

§ 653.7 Definitions.

As used in this part—

Accident means an occurrence associated with the operation of a revenue service vehicle, whether or not such vehicle is in revenue service, if—

(1) An individual dies or must be taken to a medical treatment facility;

(2) The occurrence results in total property damage at the accident site estimated at more than $1,000; or

(3) The occurrence must be reported to the Federal Highway Administration, the Federal Railroad Administration, or is a serious marine incident to the U.S. Coast Guard, under applicable regulations.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to prevent the use of prohibited drugs as required by this part.

Cancelled test means a test which has been declared invalid. It is neither a positive nor a negative test. This term includes a specimen which is rejected for testing by a laboratory.

Certification means the written affirmation by an FTA recipient, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. A valid certification is a condition of FTA funding and must meet the requirements of this part. (See § 653.77 for requirements on certification.)

Chain-of-custody procedures means the procedures in part 40 of this title concerning the handling of a urine sample.

Consortium means a group or association of transit operators, recipients, subrecipients, or contractors which provides drug testing as required by this part, and which acts on behalf of the employers.

Contractor means a person or organization who provides service to or works for the recipient or subrecipient, consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement, which reflects an ongoing relationship between the parties.

Covered employee means a person who performs a safety-sensitive function and is (1) Directly employed by an employer or (2) Employed by or contracts with a person or organization that provides services to the employer under contract or other agreement. This definition includes applicants to perform these functions.

DOT means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug testing (see parts 199, 219, 382, and 653 of this title, 14 CFR part 121, appendix J, 33 CFR part 95, and 46 CFR parts 4 and 16).

Employer means an entity engaging one or more covered employees that is subject to DOT agency regulations specifying requirements for an anti-drug control program. As used in this part *employer* includes a large operator, a small operator, and any consortium or joint enterprise comprised of two or more employing entities requiring compliance with this part or part 40 of this title.

FTA means the Federal Transit Administration (formerly the Urban Mass Transportation Administration), an agency of the U.S. Department of Transportation.

Large operator means a recipient or subrecipient operating in an area of 200,000 or more in population.

Medical Review Officer (MRO) means a licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Pass a drug test means that a medical review officer has determined, in accordance with part 40 of this title, that the results of a drug test administered under this part—

(1) Showed no evidence or insufficient evidence of a prohibited drug or drug metabolite; or

(2) Showed evidence of a prohibited drug or drug metabolite, but there was a legitimate explanation for the result;

Prohibited drug means a substance under section 102(6) of the Controlled Substances Act, 21 U.S.C. 802(6) and which the Administrator has listed in § 653.9 as being a risk to transportation safety.

Recipient means a grantee of Federal financial assistance of FT Act funds (including a State) under sections 3, 9, or 18, or under section 103(e)(4) of title 23 of the United States Code.

Refuse to submit means the nonproduction of a urine specimen as required by this part. Refusal can include an unsubstantiated inability to provide a specimen as well as a verbal declination or physical absence resulting in the inability to conduct the test.

Revenue service vehicle means a bus, van, car, rail car, locomotive, trolley car, trolley bus, vessel, or vehicle used on a fixed guideway or inclined plane used to transport passengers.

Safety-sensitive function means any duty related to the safe operation of mass transit service by an employer, including:

(1) Operating a revenue service vehicle, whether or not the vehicle is in revenue service;

(2) Controlling dispatch or movement of a revenue service vehicle;

(3) Maintaining a revenue service vehicle or equipment used in revenue service; or

(4) Directly supervising an employee who performs a function listed in paragraphs (1) through (3) of this definition.

Small operator means a recipient or subrecipient operating in an area of less than 200,000 in population.

Substance abuse professional (SAP) means a licensed physician, licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of drug-related disorders.

§ 653.9 Determination of prohibited drugs.

Consistent with the requirements of the Omnibus Transportation Employee Testing Act of 1991, the Administrator has determined that the following drugs are prohibited drugs, since they pose a risk to transportation safety: (a) Marijuana; (b) Cocaine; (c) Opiates; (d) Amphetamines; and (e) Phencyclidine.

§ 653.11 Pre-emption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part pre-empts any State or local law, rule, regulation, order, or standard to the extent that:

(1) Compliance with both the State or local requirement and any requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 653.13 Requirement to establish an anti-drug program.

Each employer shall establish an anti-drug program consistent with the requirements of this part. Consistent with § 653.77, each recipient shall certify to the FTA that it, its contractor, or subrecipient (whoever is providing mass transit services or portions of mass transit service with Federal Transit Act assistance) has established and implemented an anti-drug program as prescribed by this part.

§ 653.15 Other requirements imposed by an employer.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of an employer, or the rights of employees, to negotiate or provide for additional or more stringent elements of an anti-drug program, so long as the program is not inconsistent with or frustrates the implementation of any provision of this part.

§ 653.17 Compliance with testing procedures requirements.

Each employer shall ensure that all drug testing conducted under this part complies with the procedures set forth in part 40 of this title. The drug testing provisions of part 40 of this title apply to employers covered by this part.

§ 653.19 Compliance a condition of FTA financial assistance.

(a) *General.* (1) Compliance with this part is a condition of Federal financial assistance under the Federal Transit Act, as amended, and section 103(e)(4) of title 23 of the United States Code. Failure to certify compliance with these requirements, as specified in § 653.77, will result in the suspension of a grantee's eligibility for Federal funding. In addition, if FTA knows, or receives knowledge of, a grantee's noncompliance with the provisions of this part (including a false certification), the grantee becomes ineligible for continued FTA assistance.

(2) As a general matter, in assessing whether or not a recipient is in compliance with this part, the Administrator may determine to act on an isolated instance of violation or on a pattern or practice of noncompliance, at the Administrator's discretion and based on the particular facts of the situation.

(b) *Criminal violation.* A recipient also is subject to criminal sanctions and fines for false statements or misrepresentations under § 1001 of title 18 of the United States Code (Crimes and Criminal Procedure).

(c) *State's role.* Each State shall certify compliance on behalf of its section 3, 9 or 18 subrecipients, as applicable, whose grant the State administers. In so certifying, the State shall use due diligence to ensure that each subrecipient is complying with the requirements of this part. A section 3, 9 or 18 subrecipient, through the administering State, is subject to suspension of funding from the State.

Subpart B—General Program Requirements

§ 653.21 Required elements of an anti-drug testing program.

At a minimum, an anti-drug program shall consist of the following:

(a) A policy statement describing the recipient's policy on prohibited drug use in the workplace, including the consequences associated with prohibited drug use. This policy statement shall include all of the elements specified in § 653.23. Each employer shall disseminate the policy consistent with the provisions of § 653.25.

(b) An education and training program which meets the requirements of § 653.27.

(c) A testing program, as generally described in § 653.29 and that meets the requirements of this part and part 40 of this title.

(d) Procedures for assessing the covered employee who fails to pass a drug test, providing information about services that are available to the covered employee and procedures for referral, dismissal and suspension, as described in § 653.35.

§ 653.23 Policy statement contents.

The policy statement made available to each covered employee shall include, at a minimum, detailed discussion of at least the following:

(a) The identity of the person designated by the employer to answer employee questions about the anti-drug program.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning covered employee behavior that is prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs under the provisions of this part.

(e) The procedures that will be used to test for drugs, to protect the covered employee and the integrity of the process, to safeguard the validity of the test results, and to ensure that the results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to submit to a drug test and a statement that such a refusal constitutes a failure to pass a drug test.

(h) The consequences for a covered employee who fails to pass or refuses to submit to a drug test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional. Additional consequences may include termination of employment, suspension of employment, or other action deemed appropriate by the employer.

(i) If the employer implements elements of an anti-drug program that are in addition to this part (see § 653.15 and § 653.31), the employer shall give each covered employee specific information concerning which provisions are mandated by Federal regulation and which are not.

§ 653.25 Requirement to disseminate policy and educational materials.

Each employer shall provide to every covered employee educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements. Each employer shall

provide written notice to every covered employee and to representatives of employee organizations of the availability of this information.

§ 653.27 Education and training programs.

Each employer shall establish an employee education and training program for all employees who perform safety-sensitive functions, which includes the following:

(a) *Education.* The education component shall include display and distribution of: informational material; a community service hot-line telephone number for employee assistance, if available; and the employer's policy regarding drug use in the workplace.

(b) *Training—(1) All safety-sensitive employees.* This component for safety-sensitive employees must include training on the effects and consequences of drug use on personal health, safety and the work environment, and the manifestations and behavioral cues that may indicate prohibited drug use.

(2) *Supervisors.* Supervisory employees shall receive at least 120 minutes of additional training in the physical, behavioral, and performance indicators of probable drug use if they will be determining when a covered employee is subject to drug testing based on reasonable suspicion under this part.

§ 653.29 Drug testing.

(a) Each employer shall establish a program which provides for drug testing in the following circumstances: Pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.

(b) When administering a drug test, each employer shall ensure that the following drugs are tested for: (1) Marijuana; (2) Cocaine; (3) Opiates; (4) Amphetamines; and (5) Phencyclidine.

(c) See subpart C of this part for details on these test types.

§ 653.31 Requirement for specific notice.

(a) Before performing a drug test, each employer shall provide specific notice to the covered employee:

(1) That the urine sample to be collected will be tested for evidence of the five prohibited drugs listed in § 653.29; and

(2) That the drug test is required by this part or is administered under the employer's own authority.

(b) No employer shall falsely represent that a test is administered under this part.

§ 653.33 Action when employee fails to pass a drug test.

(a) As soon as practicable after receiving notice from the MRO that an employee has failed to pass a drug test, or if an employee refuses to submit to a drug test, the employer shall require that a covered employee cease performing a safety-sensitive function.

(b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure that the covered employee meets the requirements of this part for returning to duty, including passing a return to duty drug test, as specified in § 653.49.

§ 653.35 Information, referral, evaluation, and rehabilitation.

(a) A covered employee who fails to pass a drug test under this part shall be advised by the employer of the resources available to the covered employee in evaluating and resolving problems associated with prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counselling and treatment programs.

(b) The employer shall ensure that each covered employee who fails to pass a drug test or who refuses to take a drug test shall be evaluated by a substance abuse professional who shall determine whether the covered employee is in need of assistance in resolving problems associated with prohibited drug use.

(c) The employer, consistent with its adopted policy, may determine that, as the result of the failure to pass a drug test or refusal to take a drug test and an employee assessment by the SAP, to take action against the covered employee. Such action could be required rehabilitation, suspension or termination.

(d) The employer shall ensure that, before returning to duty to perform a safety-sensitive function, each covered employee has complied with the referral and evaluation provisions of this part and has passed a return to duty drug test under § 653.49.

(e) Evaluation and rehabilitation may be provided by the employer, by a health care provider under contract with the employer, or by a health care provider not affiliated with the employer.

Subpart C—Types of Drug Testing

§ 653.41 Pre-employment/pre-duty testing.

(a) An employer may not hire an individual to perform a safety-sensitive function unless the individual passes a drug test administered under this part.

(b) An employer may not transfer an employee who does not perform a safety-sensitive function to perform a safety-sensitive function until the employee passes a drug test administered under this part.

(c) If an applicant or employee drug test is cancelled, the employer shall require the employee or applicant to submit to and pass another drug test.

§ 653.43 Reasonable suspicion testing.

(a) An employer shall require a covered employee to submit to a drug test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug.

(b) The employer's determination that reasonable suspicion exists to require the covered employee to undergo a drug test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, or speech of the covered employee. The required observations must be made by a supervisor who is trained in detecting the symptoms of drug use.

§ 653.45 Post-accident testing.

(a) If there is an accident which involves the loss of human life, each surviving covered employee present and on duty in the revenue service vehicle at the time of the accident and any covered employee involved in the most recent maintenance or other preparation of the vehicle before being placed into revenue service shall be tested for use of prohibited drugs.

(b) If there is no loss of human life, an employer shall test each surviving covered employee present and on duty in the vehicle at the time of the accident and any covered employee involved in the most recent maintenance or other preparation of the vehicle being placed into revenue service, unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be discounted completely as a contributing factor to the accident.

(c) An employer shall ensure that a covered employee required to be tested under this section is tested as soon as practicable and within 32 hours of the accident. If a covered employee leaves the scene of the accident without a valid reason or cannot be located before submission to any test, the employer may treat this action as a refusal to submit to testing.

(d) Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

§ 653.47 Random testing.

(a) Each employer shall, at various times, randomly select covered employees for unannounced drug testing under procedures set forth in part 40 of this title. The selection of covered employees shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with covered employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(b) During each 12 months following the start of the antidrug program required by this part, the employer shall meet the following conditions:

(1) The dates for administering unannounced testing of randomly-selected covered employees shall be spread reasonably throughout the 12-month period; and

(2) The number of covered employees randomly selected for testing during the 12-month period shall be equal to an annual rate of at least 50 percent of the total number of covered employees subject to drug testing under this part.

(c) Each covered employee shall be in a pool from which random selection is made. Each covered employee in the pool shall have an equal chance of selection and shall remain in the pool, whether or not the covered employee is ever tested.

(d) (1) Each employer shall ensure that each covered employee who is not performing a safety-sensitive function at the time of notification of selection for random testing shall proceed to the collection site immediately.

(2) Each employer shall ensure that each covered employee, who is performing a safety-sensitive function at the time of notification of selection for random testing, shall cease performing the safety-sensitive function and proceed to the collection site as soon as practicable.

§ 653.49 Return to duty testing and follow-up testing.

(a) *General.* Each employer shall ensure that, before returning to duty to perform a safety-sensitive function, each covered employee who has refused to submit to a drug test or has failed to pass a drug test—

(1) Has been evaluated by a substance abuse professional to determine whether the covered employee has properly followed the recommendations for action by the substance abuse professional, including participation in any rehabilitation program, and is ready to return to duty to perform his or her safety-sensitive functions; and

(2) Has passed a return to duty drug test. If a covered employee drug test is cancelled, the employer shall require the employee to submit to and pass another drug test.

(b) *Marine employers.* Marine employers subject to U.S. Coast Guard chemical testing regulations shall ensure that each covered employee is evaluated by a Medical Review Officer.

(c) *Follow-up.* Each employer shall ensure that each covered employee who returns to duty after a required evaluation made under § 653.35 is subject to unannounced follow-up drug testing for up to 60 months. The substance abuse professional shall determine the frequency and duration for this testing, so long as a minimum of six tests are administered to the covered employee within the first twelve months of the employee's return to duty. Once the minimum number of follow-up tests have been administered, the substance abuse professional may determine that such testing is no longer needed. Such determination shall be in writing with a copy provided to the employer and the covered employee.

Subpart D—Drug Testing Procedures

§ 653.61 Substance abuse professional.

(a) Each employer's anti-drug program shall have available the services of a designated substance abuse professional.

(b) The substance abuse professional shall evaluate whether each covered employee who has refused to submit to a drug test or failed to pass a drug test is in need of assistance in resolving problems associated with prohibited drug use.

(c) The substance abuse professional shall evaluate whether each covered employee who has refused to submit to a drug test or failed to pass a drug test has properly followed the SAP's recommendations and whether the covered employee is ready to return to duty to perform his or her safety-sensitive functions.

(d) The substance abuse professional shall determine the number of months each covered employee will be subject to follow-up testing after returning to duty, consistent with § 653.49(b).

§ 653.63 Split sample procedure.

(a) The donor shall urinate into a collection container, which the collection site person, in the presence of the donor, after determining specimen temperature, pours into two specimen bottles. (In an emergency, such as a post-accident test in which a collection container and two specimen bottles are not available, the collection site person may direct the employee to provide the specimen in a primary container.) The amount exceeding 30 ml. is poured by the collection site person into a smaller split specimen container.

(b) The collection site person shall pour 30 ml. into a specimen bottle for the primary specimen.

(c) The collection site person shall pour the remaining amount of urine into another specimen bottle for the split specimen.

(d) Both bottles shall be shipped together to the laboratory, with copies one, two, and three of the chain of custody form.

(e) If the test result of the primary specimen is verified positive, the covered employee may request (in writing) that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of the verified positive test result.

(f) When the MRO informs the laboratory that the covered employee has requested such a test of the split sample, the laboratory shall forward the split specimen bottle, with seal intact, to a different DHHS-approved laboratory. Copy 3 of the chain of custody form shall be forwarded with an appropriate chain of custody entry.

(g) The result for the test of the split sample is transmitted by the second laboratory to the MRO without regard to the cutoff values of § 40.29 of this title.

(h) Removal from a safety-sensitive function mandated by this part is not stayed pending the result of the test of the split specimen.

(i) If the result of the test of the split specimen is negative the MRO shall cancel the test.

Subpart E—Administrative Requirements

§ 653.71 Retention of records.

(a) *General requirement.* Each employer shall maintain records of its anti-drug program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* In determining compliance with the retention period requirement, each record shall be maintained for the specified period of time, measured from the date of the document's or data's creation. Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years:* Records of covered employee positive drug test results,

documentation of refusals to take required drug tests, and covered employee referrals to the SAP.

(2) *Two years:* Records related to the collection process and employee training.

(3) *One year:* Records of negative drug test results.

(c) *Types of records.* The following specific records must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion drug tests.

(iv) Documents generated in connection with decisions on post-accident testing.

(v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine sample.

(2) Records related to test results:

(i) The employer's copy of the chain of custody form;

(ii) Documents related to the refusal of any covered employee to submit to a drug test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to referral and return to duty and follow-up:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for referral or a determination concerning a covered employee's suitability to return to work as a covered employee.

(ii) Records concerning a covered employee's entry into and completion of the program of rehabilitation recommended by the substance abuse professional.

(5) Records related to employee training:

(i) Training materials on drug use awareness, including a copy of the employer's policy on prohibited drug use.

(ii) Documentation of compliance with the requirements of subpart B of this part.

(iii) Names of covered employees attending training on prohibited drug use and the dates and times of such training.

(iv) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug testing based on reasonable suspicion.

(v) Certification that any training conducted under this part complies with the requirements for such training.

§ 653.73 Reporting of results in a management information system.

(a) Each employer shall submit to FTA's Office of Safety by February 15 a report covering the previous calendar year, which summarizes the results of its anti-drug program.

(b) Employers that are subject to more than one DOT agency drug regulation shall identify each covered employee covered by the regulations of more than one DOT agency. The identification shall be by the total number of such covered employees and categories of covered functions.

(c) The employer shall remain responsible for ensuring the accuracy and timeliness of each report submitted by the employer, consortium or joint enterprise, or by a third-party service provider acting on the employer's behalf.

(d) The report shall be submitted on the form specified by the FTA. Each report shall contain:

(1) Number of covered employees by employee category.

(2) Number of covered employees subject to testing under the anti-drug regulations of more than one DOT Agency, identified by each agency.

(3) Number of specimens collected by type of test (i.e., pre-employment, periodic, random, etc.) and employee category.

(4) Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug, and employee category.

(5) Number of negatives verified by a MRO by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a verified drug test.

(7) Number of covered employees verified positive by a MRO who were returned to duty in covered positions during the reporting period.

(8) Number of employees with tests verified positive by a MRO for multiple drugs.

(9) Number of covered employees who refused to submit to a drug test required under this part, and the action taken in response to the refusal(s).

(10) Number of covered employees and supervisors who have received required training during the reporting period.

(e) The data shall be submitted on the form specified by the FTA.

§ 653.75 Availability and disclosure of information.

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 653.71.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs, including any records pertaining to his or her drug tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) An employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees.

(d) An employer shall disclose data for its drug testing program and any other information pertaining to the employer's anti-drug program required to be maintained by this part, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a drug test following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of written request from the covered employee. Subsequent disclosure by the recipient is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

§ 653.77 Requirement to certify compliance.

(a) Each recipient of FTA financial assistance shall certify annually to the applicable FTA Regional Office compliance with the requirements of this part, including the training requirements. Large operators shall certify compliance initially by [3 months or 6 months from publication of the final rule]. Small operators and States shall certify compliance initially by [6 months or 12 months from publication of the final rule].

(b) Each certification must be authorized by the organization's governing board or other authorizing official. Each certification must be signed by a party specifically authorized to do so. Each certification must comply with the applicable sample certification provided in the appendix to this part.

Appendix A to Part 653—Certification of Compliance

This appendix contains two separate examples of certification language. The first example consists of the generally applicable certification language. Example II takes into account employers who are covered by the FRA's anti-drug regulation.

I.

(a) *For recipients who are large or small operators:*

I, (name), (title), certify that (name of recipient) and its contractors, as required, for (name of recipient), has established and implemented an anti-drug program in accordance with the terms of 49 CFR part 653. I further certify that the employee training conducted under this part meets the requirements of 49 CFR part 653.

(b) *For States certifying on behalf of its subrecipients and their contractors, as required, shall be as follows:*

I, (name, title) on behalf of (STATE) certify that, to the best of my knowledge and as the result of due diligence, the entities on the attached list of FT Act subrecipients operating in this State, have established and implemented anti-drug programs in accordance with the terms of 49 CFR part 653.

II.

The text of the certification of an employer that provides commuter rail transportation service regulated by the Federal Railroad Administration shall be as follows:

I, (name), (title), certify that (name of recipient) and its contractors, as required, for (name of recipient), has an anti-drug program that meets the requirements of the Federal Railroad Administration's regulations for employees regulated by the Federal Railroad Administration, and has established and implemented an anti-drug program in accordance with the terms of 49 CFR part 653 for all other covered employees who perform safety-sensitive functions.

BILLING CODE 4910-57-M

APPENDIX B TO PART 653 - DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

GENERAL INSTRUCTIONS

This reporting form includes three parts. Collectively, these parts address the data elements required in the Federal Transit Administration (FTA) and the U.S. Department of Transportation (DOT) drug and alcohol testing regulations. Each part of the form is preceded by instructions which outline and explain the information requested and indicate the probable sources for this information. The three parts of the form are:

Section	Instructions Pages	Reporting Form Pages
I. ORGANIZATIONAL INFORMATION	i-iii	1-2
II. DRUG TESTING INFORMATION	iii-vii	3-11
III. ALCOHOL TESTING INFORMATION	viii-xii	12-19

I. ORGANIZATIONAL INFORMATION

INSTRUCTIONS

This part of the reporting form includes two sections. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	ii	2

Page 1 **EMPLOYER INFORMATION** (Section A) requires the name of the organization for which the report is done and a current address. Below this, information must be entered for the consortium used (if applicable). Finally, a signature and date are required certifying the correctness and completeness of the form. Note: A separate report must be completed by each FTA grantee for each of its contract

service and contract maintenance providers. States must report on behalf of each Section 18 grantee and their contractors.

Page 2

COVERED EMPLOYEES (Section B) requires a count for each employee category that must be tested under the FTA drug testing regulation. For the FTA this includes Revenue Vehicle Operation, Transportation Support, Revenue Vehicle Inspection and Maintenance, Vehicle Maintenance Support, Non-Vehicle Maintenance Support, and Supervisors. The most likely source for this information is the employer's personnel department. These counts should be based on the transit system's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties covered by the anti-drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional DOT operating administration(s).

For Office Use Only

FTA DRUG AND ALCOHOL TESTING DATA COLLECTION FORM

YEAR COVERED BY THIS REPORT: 19__

A. EMPLOYER INFORMATION

Company _____

Address _____

_____

Consortium Used (if applicable)

Name _____

Address _____

_____

Phone _____

I, the undersigned, certify the attached Federal Transit Administration Annual Anti-Drug Program Report, is to the best of my knowledge and belief, a true, correct, and complete form for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	RSPA	USCG
Revenue Vehicle Operation						
Transportation Support						
Revenue Vehicle Inspection and Maintenance						
Vehicle Maintenance Support						
Non-Vehicle Maintenance Support						
Supervisors						
TOTAL						

II. DRUG TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Transit Administration (FTA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iv-vi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	iv	4
B. EMPLOYEE TESTING	vi	5-9
C. OTHER TESTING/PROGRAM INFORMATION	vii	10
D. TRAINING/EDUCATION	vii	11

Sections A and B are used to summarize the drug testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment testing. The five tables in Section B are for entering drug testing data on periodic, random, post-accident, reasonable cause, and return to duty testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons testing positive is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 4

JOB APPLICANT TESTING INFORMATION (Section A) requires information for pre-employment testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED**," requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE**," requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS**," refers to the number of specimens provided by job applicants that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG**," requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page v with example numbers.

Page 4

Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test**". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Transportation Support" to illustrate the procedures for completing the form.

A — Urine specimens were collected for 157 job applicants for revenue vehicle operation positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B — The Medical Review Officer (MRO) for the transit system or contractor reported that 153 of those 157 specimens from applicants for revenue vehicle operation positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation".

C — The MRO for the transit system or contractor reported that 4 of those 157 specimens from applicants for revenue vehicle operation positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

D — With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section C, **OTHER TESTING/PROGRAM INFORMATION**, on page 10 of the reporting form.

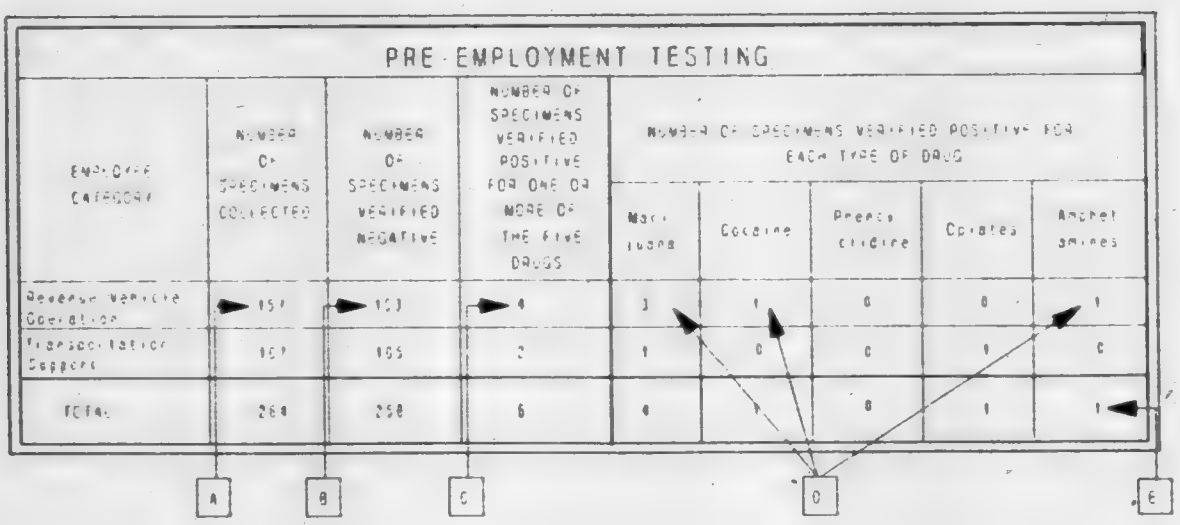

Please note that the sample data collection form also has information for transportation support workers on line two. The same procedures outlined for revenue vehicle operators should be followed for entering the data on transportation support personnel. With applicants for transportation support positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Transportation Support".

E

The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for revenue vehicle operation positions were collected and 107 for applicants for transportation support positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 5-9 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions only**. A separate table must be completed for each category of test. These categories include: (1) periodic, (2) random, (3) post-accident, (4) reasonable cause, and (5) return to duty testing. These tables are to be filled out like the sample table above. Again, these numbers do not include refusals for testing.

Page 7 Following the table for post-accident test results, you must provide a count of accidents in which resulted in a positive drug test for any covered employee involved in the accident. This information should be available from the safety program manager or the drug program manager.

Page 9 Following these tables that summarize **EMPLOYEE TESTING**, you must provide counts for employees who have tested positive and are currently in, or have completed rehabilitation, and have returned to work in a covered position. Report this information only for employees who tested positive during this reporting period. This information should be available from the personnel office and/or drug program manager.

Page 10 **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 10 **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**, then write the number of verified positives in the appropriate columns indicating the combination of drugs reported. For example, if marijuana and cocaine were detected in 3 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 10 **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a drug test required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal. An example of an action taken would be "removed from covered duties pending termination".

Page 11 **TRAINING/EDUCATION** (Section D) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by the FTA drug testing regulation.

   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section E ("OTHER TESTING INFORMATION"). Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT TESTING									
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Revenue Vehicle Operation								
Transportation Support								
Revenue Vehicle Inspection and Maintenance								
Vehicle Maintenance Support								
Non-Vehicle Maintenance Support								
Supervisors								
TOTAL								

Number of persons denied a position as a covered employee following a verified positive drug test: [ ]

B. EMPLOYEE TESTING

PERIODIC TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Revenue Vehicle Operation								
Transportation Support								
Revenue Vehicle Inspection and Maintenance								
Vehicle Maintenance Support								
Non-Vehicle Maintenance Support								
Supervisors								
TOTAL								

B. EMPLOYEE TESTING (continued)

RANDOM TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Revenue Vehicle Operation								
Transportation Support								
Revenue Vehicle Inspection and Maintenance								
Vehicle Maintenance Support								
Non-Vehicle Maintenance Support								
Supervisors								
TOTAL								

B. EMPLOYEE TESTING (continued)

POST-ACCIDENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Revenue Vehicle Operation								
Transportation Support								
Revenue Vehicle Inspection and Maintenance								
Vehicle Maintenance Support								
Non-Vehicle Maintenance Support								
Supervisors								
TOTAL								

Number of accidents, as defined by the FTA, which resulted in a positive drug test for any covered employee who was involved in the accident. [ ]

B. EMPLOYEE TESTING (continued)

REASONABLE CAUSE TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Revenue Vehicle Operation								
Transportation Support								
Revenue Vehicle Inspection and Maintenance								
Vehicle Maintenance Support								
Non-Vehicle Maintenance Support								
Supervisors								
TOTAL								

B. EMPLOYEE TESTING (continued)

RETURN TO DUTY TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Revenue Vehicle Operation								
Transportation Support								
Revenue Vehicle Inspection and Maintenance								
Vehicle Maintenance Support								
Non-Vehicle Maintenance Support								
Supervisors								
TOTAL								

Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during this reporting period: [ ]

C. OTHER TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Mari-juana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of covered employees who have received initial training on the consequences, manifestations, and behavioral cues of drug use as required by FTA drug testing regulations: [ ]

Number of supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FTA drug testing regulations: [ ]

Number of covered employees who have received recurrent or refresher training on the consequences, manifestations, and behavioral cues of drug use: [ ]

Number of supervisory personnel who have received recurrent or refresher training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use: [ ]

III. ALCOHOL TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information for the Federal Transit Administration (FTA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ix-xi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	ix	13
B. EMPLOYEE TESTING	xi	14-18
C. OTHER TESTING/PROGRAM INFORMATION	xi	18-19
D. TRAINING/EDUCATION	xii	19

Sections A and B are used to summarize the alcohol testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment/pre-duty testing. The five tables in Section B are for entering alcohol testing data for random, post-accident, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of initial alcohol tests performed for each employee category;
2) the number of confirmatory alcohol tests performed for each employee category;
3) the number of confirmatory test results which were equal to or greater than 0.04; and
4) the number of confirmatory test results which were equal to or greater than 0.02, but less than 0.04.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons whose alcohol test results were 0.04 or greater is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 13 **JOB APPLICANT TESTING INFORMATION** (Section A) requires information for pre-employment/pre-duty testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page x.

Four types of information are necessary to complete the left side of this table. The first blank column with the heading **"NUMBER OF INITIAL TESTS"** requires a count of all initial alcohol tests performed for each employee category. It should not include refusals to test. The second blank column with the heading **"NUMBER OF CONFIRMATORY TESTS"** requires a count of all confirmatory alcohol tests performed for each employee category.

The third blank column with the heading **"NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04"** requires a count for each employee category.

The fourth blank column with the heading **"NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04"** requires a count for each employee category.

Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

A sample table is provided on page x with example numbers.

Page 13 Below the table for pre-employment testing information is a box with the heading **"Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater"**. Enter the appropriate number in the box provided.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment/pre-duty testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Transportation Support" to illustrate the procedures for completing the form.

A Initial tests were performed on 157 job applicants for revenue vehicle operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B Confirmatory tests were necessary for 6 of the 157 applicants for revenue vehicle operator positions. Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation". The confirmatory test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmatory test results for 3 of the applicants for revenue vehicle operator positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

D The confirmatory test results for 2 of the applicants for revenue vehicle operator positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Revenue Vehicle Operation".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for revenue vehicle operator positions and 107 applicants for transportation support positions were subjected to initial tests. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column. (i.e., add all the numbers in that column and place the answer in the last row).

Please note that the sample data collection form also has information for transportation support workers on line two. The same procedures outlined for revenue vehicle operators should be followed for entering the data on transportation support workers. With applicants for transportation support positions, 107 initial tests were conducted resulting in 3 confirmatory tests. The confirmatory test result for 1 of the transportation support applicants was equal to or greater than 0.04; no results were equal to or greater than 0.02, but less than 0.04. This information is entered in the row marked "Transportation Support".

PRE-EMPLOYMENT/PRE-DUTY TESTING

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02 BUT LESS THAN 0.04
Revenue Vehicle Operation	157	5	3	2
Transportation Support	107	3	1	0
TOTAL	264	8	4	2

A B C D E

X

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATORY TESTS". These numbers may differ since some confirmatory test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 14-18 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

Page 15 Following the table for post-accident testing results, you must provide a count of accidents in which any covered employee who was involved had a confirmatory alcohol test result of 0.04 or greater. This information should be available from the safety program manager or the alcohol program manager.

Page 17 Following the table that summarizes results for return to duty testing, you must provide a count of the **"Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FTA regulations)"**. Report this information only for employees who were tested during this reporting period. This information should be available from the personnel office and/or alcohol program manager.

Pages 18-19 **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you provide information on employees who tested positive for drugs and alcohol (at the same time), information on violations of other alcohol provisions (not necessarily resulting in positive alcohol tests), and information on employees who refused to submit to an alcohol test.

Page 18 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 19 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires information on the **NUMBER OF COVERED EMPLOYEES** committing such a violation, a description of the **VIOLATION** committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the **ACTION TAKEN** in response to the violation.

Page 19 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test as required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal.

Page 19 **TRAINING/EDUCATION** (Section D) requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by FTA alcohol testing regulations.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this part of the report.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT/PRE-DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Revenue Vehicle Operation				
Transportation Support				
Revenue Vehicle Inspection and Maintenance				
Vehicle Maintenance Support				
Non-Vehicle Maintenance Support				
Supervisors				
TOTAL				

Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

B. EMPLOYEE TESTING

RANDOM TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Revenue Vehicle Operation				
Transportation Support				
Revenue Vehicle Inspection and Maintenance				
Vehicle Maintenance Support				
Non-Vehicle Maintenance Support				
Supervisors				
TOTAL				

B. EMPLOYEE TESTING (continued)

POST-ACCIDENT TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Revenue Vehicle Operation				
Transportation Support				
Revenue Vehicle Inspection and Maintenance				
Vehicle Maintenance Support				
Non-Vehicle Maintenance Support				
Supervisors				
TOTAL				

Number of accidents, as defined by FTA, in which any covered employee involved in the accident had a confirmatory alcohol test result of 0.04 or greater: [ ]

B. EMPLOYEE TESTING (continued)

REASONABLE SUSPICION TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Revenue Vehicle Operation				
Transportation Support				
Revenue Vehicle Inspection and Maintenance				
Vehicle Maintenance Support				
Non-Vehicle Maintenance Support				
Supervisors				
TOTAL				

B. EMPLOYEE TESTING (continued)

RETURN TO DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Revenue Vehicle Operation				
Transportation Support				
Revenue Vehicle Inspection and Maintenance				
Vehicle Maintenance Support				
Non-Vehicle Maintenance Support				
Supervisors				
TOTAL				

Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FTA regulations): [ ]

B. EMPLOYEE TESTING (continued)

FOLLOW-UP TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Revenue Vehicle Operation				
Transportation Support				
Revenue Vehicle Inspection and Maintenance				
Vehicle Maintenance Support				
Non-Vehicle Maintenance Support				
Supervisors				
TOTAL				

C. OTHER TESTING/ PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

C. OTHER TESTING/PROGRAM INFORMATION (continued)

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D TRAINING/EDUCATION

Training During Current Reporting Period

Number of supervisors who have received the required training in determining the existence of reasonable suspicion of alcohol misuse: [ ]

BILLING CODE 4910-67-C

Issued: December 2, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

Brian W. Clymer,

Administrator.

[FR Doc. 92-29686 Filed 12-10-92; 10:00 am]

BILLING CODE 4910-57-M

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Tuesday
December 15, 1992

Part VII

Department of Transportation

Research and Special Programs Administration

49 CFR Part 199

Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–128; Notice No. 1]

RIN 2137–AC21

Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule sets forth regulations to require operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities who are subject to RSPA regulations to implement an alcohol misuse prevention program for employees who perform certain safety-sensitive functions covered by the pipeline safety regulations. The proposed rule is consistent with proposed DOT regulations and the other operating administration alcohol rules.

The proposed rule would require pre-employment/pre-duty, random, reasonable suspicion, post-accident, return-to-duty, and follow-up testing to detect and deter such conduct. As required by this rule, operators would have to remove employees who engaged in prohibited conduct from safety-sensitive functions until certain requirements had been met. Additionally, operators would be required to provide employees with written materials that specifically identify the employees covered by the rule, explain the requirements of this rule, and establish the consequences of engaging in prohibited conduct. Finally, employers would be required to maintain records concerning this program and to report data regarding employee alcohol misuse to RSPA in an annual report. When finalized this rule should increase the overall safety of pipeline operations.

DATES: Comments should be received by April 14, 1993. Late-filed comments will be considered to the extent practicable. Comments on the Secretary's notices appearing elsewhere in today's **Federal Register** should be submitted as directed by that notice. Parties commenting on the testing procedures are requested to file their comments with both the Department of Transportation's (DOT) Docket in that rulemaking and with RSPA's Docket in this rulemaking. RSPA requests that commenters highlight any pipeline industry-specific issues regarding the testing procedures. Commenters should be aware that it is DOT's intention that testing procedures apply to any alcohol testing conducted under regulations issued by the Department's Operating Administrations (OAs).

ADDRESSES: Send comments on this notice in duplicate to the Dockets Unit, room 8421, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docketed material will be available for inspection and copying in room 8421 between the hours of 8:30 a.m. and 5 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Rippert, Office of Pipeline Safety Enforcement, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590 (202 366–6223).

SUPPLEMENTARY INFORMATION:

Background

The misuse of drugs and alcohol by individuals performing safety-sensitive pipeline functions has long been of concern to RSPA and to DOT. RSPA has promulgated drug testing regulations addressing part of this concern. DOT, seeking to determine the extent of any alcohol problem in the transportation industries, issued an advance notice of proposed rulemaking (ANPRM) on November 2, 1989. The ANPRM asked for comment on a variety of issues related to preventing alcohol misuse by transportation workers. The comments to this ANPRM are discussed in detail in the general preamble published by the DOT Secretary's Office elsewhere in today's issue of the **Federal Register**.

The Omnibus Transportation Employee Testing Act of 1991 requires the Secretary of Transportation to issue regulations mandating alcohol testing for highway, aviation, mass transit and rail employees regulated by the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Transit Administration (FTA) (formerly Urban Mass Transportation Administration), and Federal Railroad Administration (FRA) respectively. RSPA is today proposing alcohol testing rules under its own existing statutory authority to ensure application of DOT's drug and alcohol testing regulations to all safety-sensitive employees in the transportation industry. This Notice of Proposed Rulemaking (NPRM) is consistent with the NPRMs of other OAs, with such alterations as necessary to meet the special circumstances of the pipeline industry.

On November 21, 1988 (53 FR 47084), RSPA published a final rule setting forth regulations requiring pipeline operators subject to part 192 (natural gas), 193 (liquefied natural gas), or 195 (hazardous liquids, including carbon dioxide) to implement an anti-drug program for employees who perform operation, maintenance, or emergency-response functions on a pipeline or at an LNG facility. However, the anti-drug rules do not apply to operators of "master meter systems" defined in § 191.3. On December 18, 1989 (54 FR 51842) RSPA published a final rule which addressed petitions submitted for reconsideration. Drug testing, under part 199, became effective on April 20, 1990, for large operators and August 21, 1990, for small operators. Many aspects of the proposed alcohol misuse prevention program would mirror those of the anti-drug program, including covered employers, covered employees, and the use of phased-in implementation.

Comments to the DOT ANPRM

As noted above, in late 1989, DOT issued an ANPRM in which it asked a number of questions about regulating alcohol use in the various transportation industries. Of the 23 commenters representing pipeline related interests, nine believed that limited alcohol testing should be instituted in the pipeline context. Several commenters indicated that while drugs are a societal problem, alcohol abuse is the most abused substance in the pipeline industry. Others indicated that alcoholism is usually found as a cohabitant in substance abuse whenever drug abuse is detected and treated. In many cases, they indicated that alcohol abuse leads to drug abuse. One commenter indicated that its employee assistance program reported that among substance abusers, there were approximately four times as many individuals counseled for alcohol abuse as there were for drug abuse. The other 14 commenters believed that RSPA's current regulatory scheme for drug testing was sufficient to address any problem that might exist, although most commenters also felt that there was no indication that such a problem did, in fact, exist. Several commenters noted their long-standing alcohol testing programs have been successful without governmental regulation. Those few commenters who believed that further action by RSPA would be appropriate favored a combination of alcohol education and training and enforcement of the drug regulations already in place.

Statutory Authority

The two primary statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline

Safety Act of 1968, as amended (49 App. U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979, as amended (49 App. U.S.C. 2001 *et seq.*). RSPA also regulates operators of offshore gas gathering lines under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*).

Authority to implement alcohol education, awareness, and testing programs is derived from the broad authority granted in the above-cited statutes. This authority is applicable to various aspects of pipeline facilities affecting pipeline safety, including design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. [49 App. U.S.C. 1672 and 2002.] Under this authority, RSPA can set qualifications, such as experience and training, for pipeline personnel. This authority extends to allow RSPA to mandate certification programs for such personnel. [49 App. U.S.C. 1672(a)(1) and 2002(c).]

In *International Brotherhood of Electrical Workers, Local 1245, et al. v. Skinner*, 913 F.2d 1454 (9th Cir. 1990), the Court upheld RSPA's drug testing rules even though there was no evidence of a particularized drug program in the pipeline industry. The Court also concluded, based upon an analysis of the statutory guidelines for issuance of regulations, that the rules were not arbitrary or capricious.

Alcohol Misuse Prevention Program

Section-by-Section Analysis

Applicability

The RSPA proposed rule contains a section specifically describing the applicability of the rule for various operators under the Pipeline Safety Regulations. This is necessary for clarity, since many RSPA operators have portions of their operations regulated by other operating administrations within the Department.

Definitions

The proposed definitions of accident, Administrator, covered employee, employer, safety-sensitive function and State agency are consistent with the definitions used in the anti-drug program.

Preemption of State and Local Laws

The proposed rule would include the test for preemption of State or local pipeline safety standards under the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act. Clear expression of the preemptive effect intended by this Federal safety rule is important to preserve the careful balances (private versus public rights, benefits versus costs) which are achieved in the rule. Constitutional limitations on State and local inconsistent regulation preserve these balances. Therefore, the proposed rule also includes the two-pronged test derived from judicial decisions on preemption of inconsistent State and local regulation under the Constitution.

As proposed, State and local requirements are preempted when: (1) It is not possible to comply with both the Federal and the State or local requirements, (2) Compliance with the State or local government requirement would frustrate the Federal requirement, or (3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

Employers Who Would Be Required To Establish Programs

During the development and implementation of RSPA's industry anti-drug program, RSPA carefully considered the appropriate scope of the rule. This NPRM proposes to include essentially the same classes of employers and covered functions as are covered by the anti-drug rule. Operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas facilities, who are subject to 49 CFR part 192, 193, or 195, are required to implement an alcohol misuse prevention program for covered employees who perform certain safety-sensitive functions covered by the pipeline safety regulations.

RSPA has been carefully evaluating the scope of covered functions since implementation of the anti-drug rule in 1990 and believes that the scope remains appropriate and should be proposed for this rule. At this point we are not persuaded that the increased benefit to safety that would accrue by including other functions warrants the imposition of an alcohol testing requirement on individuals performing those functions. However, RSPA is soliciting comment on this issue, with specific focus on the following questions:

1. Are there covered functions the performance of which appears to sufficiently implicate safety to warrant regulating alcohol-related conduct and imposition of a testing requirement?
2. Do pipeline operators have any data on the size of the population that would be affected and the incidence of alcohol misuse by this population?
3. What additional costs would be incurred by inclusion of other functions and what would be the offsetting benefits (*e.g.*, in terms of accident prevention, productivity, employee lost time, etc.)?
4. Does the industry or public have any information on alcohol-related accidents?
5. Are there other ways that RSPA could reduce the burden on small operators?

Regulating Employers Rather Than Employees

RSPA's authority to enforce pipeline safety regulations is directed at the employer and not to the employees. The proposed rules requires employers to develop a program and implement that program in compliance with these regulations. In each case, it is the employer's responsibility and in some cases this means having responsibility for the actions of its safety-sensitive employees and its contractors.

Reasonable Suspicion

RSPA is proposing that a supervisor who makes the determination that reasonable suspicion exists to test a covered employee shall not conduct the breath alcohol test on that employee, if another supervisor is readily available. The purpose of this provision is to protect a covered employee from being unfairly targeted by a supervisor. However, RSPA recognizes that in the pipeline industry situations may occur, particularly in remote areas, where another supervisor is not readily available. In such a situation the supervisor who made the determination, could conduct the alcohol test.

Alcohol Testing Programs

RSPA proposes to include a requirement that employers maintain and follow a written alcohol misuse prevention plan. This process proved beneficial in assisting the industry in establishing programs and educating the industry about the requirements of the drug rule. RSPA will not require employers to submit their alcohol misuse prevention plans for review and approval. However, RSPA is considering development of a drug and alcohol "model" plan. The model plan could be used by employers and contractors that provide services to employers subject to the regulations. RSPA seeks specific comments on whether a model drug and alcohol plan would be beneficial to employers to standardize the requirements of the rules and assist in compliance issues.

Recordkeeping, Reporting, and Confidentiality.

This rule would require employers to maintain detailed records related to

their alcohol misuse prevention programs, including records of alcohol tests performed under this rule. The records would have to be maintained in a secure location and could be released only as required under the rule or with the express written consent of the employee. As proposed in this NPRM, an employee would have the right to receive records pertaining to his or her use of alcohol. The employer would be required to provide the records promptly. In response to concerns raised in the context of drug testing, the rule would prohibit making access to the records contingent on paying for records other than those specifically requested by the employee. RSPA has not addressed payment for those records that are requested by the employee, and believes that this would be an issue that would be determined between the employer and its employees. The rule would also provide for release of all records (including individual alcohol test results) to RSPA or other DOT agency with regulatory authority over the employer or its covered employees, and to the decisionmaker in a lawsuit, grievance, or other proceeding in an action initiated by or on behalf of an individual and arising from the individual's alcohol test or other alcohol misuse.

RSPA is aware that some employers have hesitated to release information related to drug test results to subsequent employers. Under the anti-drug rule, such releases are based on the general permissive authority given to employers to release information upon the written consent of the covered employee. This rule would require the release of employee-specific information to a subsequent employer if the original employer receives a written request from the covered employee. RSPA believes that providing a regulatory mandate for such release and removal of employer discretion would relieve employers' concerns about possible litigation.

The rule would also require operators to provide RSPA access to their facilities to conduct on-site inspections of employer's alcohol programs, including the alcohol testing process. RSPA's experience with compliance monitoring under the anti-drug rule has indicated that the individuals managing employers' programs are frequently persons with human resources or administration backgrounds. These people often have had no experience with other RSPA inspections (*e.g.*, risk-based inspections) and are often unaware of RSPA's authority to conduct such inspections. While the Administrator or his designee has such authority even absent a regulatory provision, RSPA determined that inclusion of such a provision in this rule would be appropriate to ensure industry awareness of RSPA's authority to monitor compliance.

Finally, RSPA believes that reporting of statistical information by employers is an essential tool for monitoring compliance with the rule. RSPA's experience with reports indicates that annual reporting is sufficient to ensure that RSPA can adequately monitor the rule. This NPRM therefore proposes submission of annual statistical data on each operator's drug and alcohol testing program. The drug and alcohol report format is contained in RSPA's Management information system, Notice of proposed rulemaking published elsewhere in today's **Federal Register.**

Contractor Compliance

RSPA believes that contractor employees should be included in the group of employees that must undergo alcohol misuse testing. Although these persons may not be under the direct control of operators, their job performance is no less critical than the performance of employees who work directly for operators. RSPA has limited the employees covered by the alcohol misuse rule to those who perform regulated operation, maintenance, or emergency-response functions, on the pipeline or LNG facility and perform regulated functions under part 192, 193, or 195, which should minimize the effects of the rule on operators who contract for unskilled transient laborers.

Regulatory Analyses and Notices

E.O. 12291 and DOT Regulatory Policies and Procedures

The proposed rule is not major under Executive Order 12291 (46 FR 13193; February 19, 1981). It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because the proposal involves issues of substantial interest to the public.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under DOT No. ; OMB No. ; Administration: Research and Special Programs Administration; *Title:* Alcohol Misuse Prevention Program; *Need for Information:* The information requested is necessary to properly monitor the effectiveness of the program and to ensure compliance with the rule. Statistical data collected will build a data base to determine the continuing need for the rule; *Frequency:* Annual report; *Burden Hours per Respondent:* RSPA has estimated that the recordkeeping and reporting burden hours per operator would be 17 hours (4 hours for annual reports and 13 hours for recordkeeping). For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735 or Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

Regulatory Flexibility Act

The proposed rule affects all entities subject to part 192 (other than operators of master meter systems), 193, or 195. Operators of master meter systems constitute the bulk of small businesses or other small entities that operate gas pipeline systems subject to part 192. There are few, if any, small entities that operate hazardous liquid or carbon dioxide pipelines subject to part 195, or LNG facilities subject to part 193. Therefore, I certify under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this proposed rule would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

E.O. 12612

The proposed rulemaking action would not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, and Transportation.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 199 as follows:

1. The heading of part 199 is proposed to be revised to read as follows:

PART 199—ANTI-DRUG AND ALCOHOL MISUSE PREVENTION PROGRAMS

2. The authority citation for part 199 is proposed to be revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

§§ 199.1 through 199.23 [Redesignated as Subpart A]

3. Part 199 is proposed to be amended by redesignating §§ 199.1 through 199.23 as a new subpart A entitled Anti-Drug Program.

4. Part 199 is proposed to be amended by adding a new subpart B as set forth below:

Subpart B—Alcohol Misuse Prevention Program

Sec.

199.200 Purpose.
199.201 Applicability.
199.202 Alcohol misuse plan.
199.203 Alcohol testing procedures.
199.205 Definitions.
199.207 Preemption of State and local laws.
199.209 Other requirements imposed by operators.
199.211 Requirement for notice.
199.213 Starting date for alcohol testing programs.
199.215 Alcohol concentration.
199.217 Behavior and appearance.
199.219 On-duty use.
199.221 Pre-duty use.
199.223 Use following an accident.
199.225 Refusal to submit to a required alcohol test.
199.227 Alcohol tests required.
199.229 Retention of records.
199.231 Reporting of results in a management information system.
199.233 Access to facilities and records.
199.235 Removal from safety-sensitive function.
199.237 Required evaluation and testing.
199.239 Other alcohol-related conduct.
199.241 Operator obligation to promulgate a policy on the misuse of alcohol.
199.243 Training for supervisors.
199.245 Referral, evaluation, and treatment.
199.247 Contractor employees.

Subpart B—Alcohol Misuse Prevention Program

§ 199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions for operators of pipeline facilities subject to part 192, 193, or 195 of this chapter.

§ 199.201 Applicability.

This subpart applies to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to part 192, 193, or 195 of this chapter. However, this subpart does not apply to operators of master meter systems defined in § 191.3 of this chapter.

§ 199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this subpart and the DOT procedures. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required education and training elements.

§ 199.203 Alcohol testing procedures.

Each operator shall ensure that all alcohol testing conducted under this subpart complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol testing are made applicable to operators by this subpart.

§ 199.205 Definitions.

As used in this subpart:

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid or carbon dioxide pipeline facilities.

Administrator means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

Alcohol means ethyl alcohol (ethanol).

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this subpart. When the indicated alcohol concentration of a covered employee on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, the employee shall be considered to have the lower indicated concentration.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Confirmatory test means a second analytical procedure, separate from the screening test, to determine the concentration of alcohol in a covered employee's system. The confirmatory test may or may not use a different chemical principle from that of the screening test, but shall employ a scientifically recognized method of testing capable of providing quantitative data regarding alcohol concentration. For specific requirements concerning evidential breath testing devices see part 40 of this title.

Consortium means an entity, including a group or association of employers, recipients, or contractors, that provides alcohol testing as required by this subpart or other DOT alcohol testing rules and that acts on behalf of the operators.

Covered employee means a person who performs on a pipeline or at an LNG facility an operating, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter. As used in this part, *employee* includes an applicant for employment. *Covered employee* and *individual* or *individual to be tested* have the same meaning for the purposes of this subpart. The term *covered employee* does not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor. For the purposes of pre-employment/pre-duty testing only, the term covered employee includes a person applying to perform a safety-sensitive function.

DOT agency means an agency (or *operating administration*) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR part 61, 49 CFR parts 199, 219, 382, and 654) in accordance with part 40 of this title.

Employer or operator means a person who owns or operates a pipeline or LNG facility subject to part 192, 193, or 195 of this chapter.

Initial alcohol test (or screening test) means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

Performing (a safety-sensitive function): An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of part 199 of this chapter and part 40 of this title or engages in conduct that clearly obstructs the collection process.

Safety-sensitive function means an operation, maintenance, or emergency-response function that is performed on

a pipeline or LNG facility and the function is regulated by part 192, 193, or 195.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

§ 199.207 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this subpart preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this subpart is not possible;

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This subpart shall not be construed to pre-empt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 199.209 Other requirements imposed by operators.

Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§ 199.211 Requirement for notice.

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

§ 199.213 Starting date for alcohol testing programs.

(a) *Large operators.* Each operator with more than fifty covered employees on [*the effective date of the final rule*] shall implement the requirements of this subpart on [*date one year after the effective date of the final rule*].

(b) *Small operators.* Each operator with fifty or fewer covered employees on [*effective date of the final rule*] shall implement the requirements of this subpart on [*date two years after the effective date of the final rule*].

(c) All operators shall have an alcohol misuse program that conforms to this subpart by [*date two years after the effective date of the final rule*], or by the date an operator begins operations, whichever is later.

§ 199.215 Alcohol concentration.

No operator shall allow a covered employee to report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of .04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of .04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 199.217 Behavior and appearance.

Notwithstanding the absence of a reasonable suspicion test under § 199.227(d), no operator having actual knowledge that a covered employee's behavior or appearance is characteristic of alcohol misuse or that the covered employee's ability to perform his or her assigned functions is adversely affected by alcohol use shall permit the covered employee to report for duty or remain on duty requiring the performance of safety-sensitive functions. Each operator shall prohibit a covered employee whose behavior or appearance is characteristic of alcohol misuse or whose ability to perform his or her assigned functions is adversely affected by alcohol from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions.

§ 199.219 On-duty use.

Each operator shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No operator having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 199.221 Pre-duty use.

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing safety-sensitive functions. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing safety-sensitive functions shall permit a covered employee to perform or continue to perform safety-sensitive functions.

§ 199.223 Use following an accident.

No operator shall permit a covered employee who has actual knowledge of an accident in which his or her performance of safety-sensitive functions has not been discounted by the operator as a contributing factor to an accident shall use alcohol for eight hours following the accident, unless he or she has been given a post-accident test under § 199.227(b), or the operator has determined that the employee's performance could not have contributed to the accident.

§ 199.225 Refusal to submit to a required alcohol test.

Each operator shall require a covered employee to submit to a post-accident alcohol test required under § 199.227(b), a random alcohol test required under § 199.227(c), a reasonable suspicion alcohol test required under § 199.227(d), or a follow-up alcohol test required under § 199.227(e). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

§ 199.227 Alcohol tests required.

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

(a) *Pre-employment/pre-duty testing.* (1) Prior to the first time a covered employee performs safety-sensitive functions for an operator, the operator shall ensure that the employee undergoes testing for alcohol. No operator shall allow a covered employee to perform safety-sensitive functions, unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than .04. If a pre-employment/pre-duty test result under this section indicates an alcohol content of .02 or greater but less than .04, the provisions of § 199.239 shall apply.

(2) An operator is not required to administer an alcohol test required by paragraph (1) of this section, if:

(i) The employee has undergone an alcohol test required by this section or the alcohol misuse regulations of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than .04; and

(ii) The operator ensures that no prior operator of the covered employee of

whom the operator has knowledge has records of a violation of this subpart or the alcohol misuse regulations of another DOT agency within the previous six months.

(b) *Post-accident.* (1) As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2) If a test required by this section is not administered within two hours following the accident, the operator shall submit a report to the appropriate Regional Office of Pipeline Safety stating the reasons the test was not promptly administered. If a test required by this paragraph (b) is not administered within eight hours following the accident, the operator shall cease attempts to administer an alcohol test and shall submit the same report.

(3) A covered employee who is subject to post-accident testing who leaves the scene of an accident without a valid reason prior to submission to such test may be deemed by the operator to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(c) *Random testing.* (1) Each operator shall, at various times, randomly select employees for unannounced alcohol testing. The selection of employees shall be made by use of a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each covered employee shall have an equal chance of being tested under the selection process used.

(2) During each 12-month period following the start of random alcohol testing by the operator, the operator shall meet the following conditions:

(i) The dates for administering unannounced testing of randomly-selected covered employees shall be spread reasonably throughout the 12-month period; and

(ii) The number of employees randomly selected for testing during the 12-month period shall equal an annual rate of not less than [10–50] percent of the total number of employees subject to alcohol testing under this subpart or the alcohol misuse regulations of another DOT agency. If the operator conducts random testing through a consortium, the annual rate may be calculated for each individual operator or for the total number of covered employees subject to random testing by the consortium.

(3) A covered employee shall only be tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(4) Each operator shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately. However, if the employee is performing a safety-sensitive function at the time of the notification, the operator shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(d) *Testing based on reasonable suspicion.* (1) Each operator shall require any covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(2) The operator's determination that reasonable suspicion exists to require the employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee, if another supervisor is readily available.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (d)(2) of this section are made during or just preceding the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be required to undergo reasonable suspicion testing for alcohol while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(e) *Return-to-duty testing.* Each operator shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by §§ 199.215–199.225, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02.

(f) *Follow-up testing.* Following a determination under § 199.245(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of § 199.245(c)(2)(ii).

(g) *Retesting of covered employees with an alcohol concentration of .02 or greater but less than .04.* Each operator shall retest a covered employee to ensure compliance with the provisions of § 199.239, if the operator chooses to permit the employee to perform a safety-sensitive function within eight hours following the administration of an alcohol test indicating an alcohol concentration of .02 or greater but less than .04.

§ 199.229 Retention of records.

(a) *General requirement.* Each operator shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each operator shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of .02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and employee evaluation and referrals shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative test results (as defined in 49 CFR part 40) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) *Records related to the collection process:* (i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Calibration documentation for evidential breath testing devices.

(iv) Verification of breath alcohol technician training.

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(vi) Documents generated in connection with decisions on post-accident tests.

(vii) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) *Records related to test results:* (i) The operator's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this subpart.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this subpart.

(3) *Records related to other violations of this subpart.*

(4) *Records related to evaluations:* (i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) *Records related to education and training:* (i) Materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 199.233.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this subpart complies with the requirements for such training.

§ 199.231 Reporting of results in a management information system.

(a) Each operator shall submit to RSPA an annual report covering the calendar year, summarizing the results of its alcohol misuse prevention program.

(b) Each operator that is subject to more than one DOT agency alcohol regulation shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered function. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each operator shall ensure the accuracy and timeliness of each report submitted by the operator or a consortium.

(d) Each operator shall submit the required annual reports no later than February 15 of each year. The report shall be submitted on the form specified by RSPA. Each report shall contain:

(1) Number of covered employees by employee category.

(2) Number of covered employees in each category subject to testing under the alcohol misuse regulations of another DOT agency, identified by each agency.

(3) (i) Number of initial tests by type of test and employee category.

(ii) Number of confirmatory tests, by type of test and employee category.

(4) Number of confirmatory alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(5) Number of confirmatory alcohol tests indicating an alcohol concentration of .02 or greater but less than .04, by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmatory alcohol test indicating an alcohol concentration of .04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in §§ 199.237 and 199.245).

(8) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of .04 or greater.

(9) Number of covered employees who were found to have violated other provisions of § § 199.215–199.225, and the action taken in response to the violation.

(10) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(11) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

§ 199.233 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in § 199.229.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation or any DOT agency with regulatory authority over the operator or any of its covered employees.

(d) Each operator shall make available copies of all results for operator alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the operator or covered employee.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, operators shall disclose information related to the operator's administration of a post-accident alcohol test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's request.

(g) An operator may disclose information required to be maintained under this subpart pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this subpart, or from the operator's determination that the covered employee engaged in conduct prohibited by §§ 199.215–199.225 (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.)

(h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 199.235 Removal from safety-sensitive function.

Except as provided in §§ 199.241–199.245, no operator shall permit any covered employee to perform safety-sensitive functions if the employee has engaged in conduct prohibited by §§ 199.215–199.225 or alcohol misuse regulations of another DOT agency.

§ 199.237 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215–199.225 to perform safety-sensitive functions unless the employee has met the requirements of § 199.245. Nothing in this section shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

§ 199.239 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.227, who is found to have an alcohol concentration of .02 or greater but less than .04, to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than .02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a)(1) of this section, no operator shall take any action under this subpart against an employee based solely on test results showing an alcohol concentration less than .04. This does not prohibit an operator with authority independent of this subpart from taking any action otherwise consistent with law.

(c) Nothing in this section shall be construed to prohibit the continued performance of safety-sensitive functions necessary to respond to an emergency.

§ 199.241 Operator obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each operator shall provide educational materials that explain the requirements of this subpart and the employer's policies and procedures with respect to meeting those requirements. Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the operator to answer covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this subpart.

(4) Specific information concerning covered employee conduct that is prohibited by this subpart.

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(6) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated this subpart, including the requirement that the employee be removed immediately from safety-sensitive functions, and the procedures under § 199.245.

(10) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04.

(c) *Optional provisions.* The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this subpart. Any such additional policies or consequences shall be clearly and obviously described as being based on independent authority.

§ 199.243 Training for supervisors.

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 199.227(d) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 199.245 Referral, evaluation, and treatment.

(a) Each operator shall ensure that a covered employee who engages in conduct prohibited under §§ 199.215–199.225 shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited by §§ 199.215–199.225 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by §§ 199.215–199.225, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse—

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in

accordance with operator/employee agreements and employer policies.

(e)(1) The provisions of this paragraph (e) apply if the policy of the operator permits reinstatement of an employee who has violated the provisions of this subpart.

(2) The operator shall designate a substance abuse professional to evaluate—

(i) The needs of the employee with respect to rehabilitation services such as counseling or treatment; and

(ii) Where rehabilitation services are required, the progress of the employee in establishing control over any substance abuse disorder before return to a safety-sensitive function. In deciding whether and under what conditions the employee is able to return to a safety-sensitive function, the substance abuse professional acts as the agent of the operator.

(3) At the operator's discretion, the designated substance abuse professional may be a salaried employee (e.g., an employee assistance counselor), a contractor, or a member of the staff of an otherwise unaffiliated health care provider.

(4) Nothing in this subpart shall be construed to determine the responsibility of the operator, employee, health insurance carrier or other person to bear the costs of substances abuse evaluation or rehabilitation services. Nothing in this subpart shall be construed to abridge existing agreements or policies with respect to payment or reimbursement of such costs.

§ 199.247 Contractor employees.

(a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:

(b) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and

(c) The contractor allows access to property and records by the operator, the Administrator, DOT agency with regulatory authority over the operator or covered employee, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the employer's compliance with the requirements of this subpart and part 40 of this title.

Issued in Washington, DC, on December 2, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92-29687 Filed 12-10-92; 10:00 am]

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Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-129; Notice No. 1]

RIN 2137-AB95

Drug Testing: MIS Standardized Data Collection and Reporting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's **Federal Register** contains a notice of proposed rulemaking issued by the Department of Transportation regarding the collection and reporting of drug and alcohol testing data. The Department's proposed rule concerns a DOT plan to measure the effectiveness of drug testing programs in all DOT-regulated modes of transportation, including pipeline. The present RSPA notice proposes a rule that is necessary to carry out the DOT plan with respect to pipeline operators. Together, the two proposed rules would require pipeline operators who are subject to drug and alcohol testing requirements to report annually to RSPA certain information about their drug and alcohol testing programs. RSPA would use the data to analyze its current approach to deterring and detecting illegal drug and alcohol misuse use in the pipeline industry, and, as appropriate, plan a more efficient and effective approach.

Elsewhere in today's **Federal Register** is the parallel "MIS" NPRM regarding 49 CFR part 40. The preamble to that NPRM contains many comments, discussions and questions that should be considered in reviewing this Operating Administration NPRM. Your comments on this NPRM should indicate that you are responding to questions or comments in the generic NPRM under 49 CFR part 40 or the specific NPRM under this Operating Administration rule.

DATES: Comments should be received by April 14, 1993. Late-filed comments will be considered to the extent practicable. Comments on the Secretary's notice appearing elsewhere in today's **Federal Register** should be submitted as directed by that notice.

ADDRESSES: Send comments on this notice in duplicate to the Dockets Unit, room 8421, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docketed material will be available for inspection and copying in room 8421 between the hours of 8:30 a.m. and 5 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Rippert, Office of Pipeline Safety Enforcement, RSPA, DOT, 400 7th Street, SW., Washington, DC 20590-0001 (202) 366-6223.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1988, RSPA published final drug testing rules (53 FR 47084). The rules are codified in 49 CFR part 199. These rules require each operator of pipelines or liquefied natural gas facilities used in the transportation of gas subject to 49 CFR part 192 or 193 (except master meter systems) or the transportation of hazardous liquids subject to 49 CFR part 195 to implement a drug testing program for specific categories of employees. The programs apply to employees that perform operation, maintenance, or emergency-response functions on pipelines or liquefied natural gas facilities.

DOT's Office of Drug Enforcement and Program Compliance oversees drug policies and programs for the Secretary of Transportation. That office created a working group with representatives from the operating administrations to develop a comprehensive plan for a Management Information System (MIS) to obtain and analyze employer drug and alcohol testing data. Two of the operating administrations currently have reporting requirements in their regulations. The MIS system is designed to measure the effectiveness of the drug and alcohol testing programs in each mode of transportation. The MIS plan identified standard data elements that are critical to the review and management of the RSPA drug and alcohol program. The data would be the basis for monitoring implementation and addressing compliance and enforcement issues and evaluating the overall effectiveness of the operators' drug and alcohol testing programs.

To begin the administrative process necessary to collect these data, the

Department of Transportation has issued a notice of proposed rulemaking. The notice is published in today's Federal Register as a proposed amendment to the regulations of the Office of the Secretary. The Department's notice proposes to add an information collection requirement to 49 CFR part 40, as § 40.41. Under the Department's proposed rule, pipeline operators subject to part 199 would have to submit certain drug and alcohol testing data to RSPA annually in accordance with a rule we are proposing in the present notice. Operators would maintain data on a calendar-year basis (closing date of December 31) and the report would be required to be submitted to RSPA by February 15 of the following year. The report would be required to contain certain data elements that are outlined under the proposed § 40.41 in the Department's notice.

Operators with employees who fall under two or more DOT agency regulations requiring drug testing must submit data to each agency for those employees covered by that agency rule. Employees who perform functions covered by more than one agency should be identified by the operator as to which covered function they will be reported under. Drug and alcohol testing data on dual covered employees should be reported to RSPA and any other appropriate agency.

As set forth below, we are proposing to revise § 199.23, concerning recordkeeping, and add a new § 199.25 to part 199 to implement the Department's proposed information collection requirements. Although the proposed § 40.41 allows RSPA to amend the reporting form to collect additional or modified data, RSPA is not proposing to deviate from DOT's format at this time. RSPA is proposing further instructions for two items on the form that would apply to pipeline operators when submitting their drug and alcohol testing data. RSPA has provided a sample report format as an appendix, which is RSPA specific, in the NPRM.

If the Department's proposed amendment to part 40 becomes final, it would require pipeline operators to submit data regarding the testing of certain contractors or contractor personnel. Many contractors conduct their own drug and alcohol testing programs or participate in drug testing consortia. RSPA is concerned about any potential difficulties in collecting information from contractors or consortia. Do pipeline operators foresee any difficulties in collecting the appropriate information on contractor employees or from consortia covering contractor employees, in order to comply with the proposed regulations? RSPA is considering whether to defer for the first year the requirement that pipeline operators report information on contractor employees regarding their drug and alcohol testing results. RSPA is concerned about multiple reports of identical information from contractors being submitted by the various pipeline operators for whom the contractor may perform services covered under the regulations. Would these difficulties, if any, create a hardship in meeting the proposed rule or the expected compliance deadline of February 15, 1994, with respect to contractors or consortia?

In accordance with § 199.1(a), part 199 does not apply to master meter systems. However, part 199 applies to operators of petroleum gas systems to which part 192 applies (See § 192.11). Many operators of petroleum gas systems operate more than one such system or the operators are small entities. Do operators of petroleum gas systems, subject to part 199, foresee any difficulties in their operations that may hinder compliance with the proposed rule? In accordance with Section 211 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561), RSPA has recently extended the part 195 regulations to cover certain high pressure pipelines used in the transportation of carbon dioxide (56 FR 26922; June 12, 1991). Those pipeline operators will have to implement a drug and alcohol testing program under part 199. Therefore, these operators are affected by the final rule to collect data about operator drug and alcohol testing programs. Do carbon dioxide pipeline operators foresee any difficulties in their operations that may hinder their compliance with this rule?

RSPA is proposing to revise some of the recordkeeping requirements contained in § 199.23(a)(2) to avoid duplicative information collection requirements. Section 199.23(a)(2) requires operators to keep certain records on employees who failed a drug test, including the type of test failed and records that demonstrate rehabilitation, if any. The required information includes (i) The functions performed by the employee, (ii) The prohibited drug(s) used, (iii) Disposition of the employee, and (iv) The age of the employee. The new MIS Annual Reporting System in 49 CFR 40.41 would require operators to maintain and report the information currently required in items (i)–(iii), as well as the type of test failed. RSPA is proposing to eliminate from recordkeeping or reporting requirements the fourth item, concerning the age of each employee who failed a drug test. RSPA does not believe this is an essential data element.

Regulatory Analyses and Notices

E.O. 12291 and DOT Regulatory Policies and Procedures

The proposed rule is not major under Executive Order 12291 (46 FR 13193; February 19, 1981). It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The rule proposed by this notice merely implements an amendment the Department is proposing to part 40. The Department has concluded that the proposed amendment to part 40 would cause minimal change in the existing compliance burden and cost of the anti-drug programs affected by the amendment. Therefore, we have not further evaluated the costs and benefits of this proposed rule.

Paperwork Reduction Act

This notice proposes new information collection requirements. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) and 5 CFR part 1320. RSPA estimates the reporting burden for the collection requirement will average 5½ hours per operator for drug testing data and approximately 4 hours for alcohol testing data. This estimate includes time for reviewing instructions, searching existing records, and completing and reviewing the collection of information.

Comments regarding this burden estimate or any other aspect of this information collection requirement, including suggestions for reducing this burden, should be sent to Desk Officer, Research and Special Programs Administration, Office of Information and Regulatory Affairs, Office of Management and Budget, 728 Jackson Place, NW., Washington, DC 20503. Persons submitting comments to OMB are requested to submit a copy of their comments to RSPA as stated above under the ADDRESSES section of this preamble.

Regulatory Flexibility Act

The proposed rule affects all entities subject to part 192 (other than operators of master meter systems), 193, or 195, and operators of carbon dioxide pipelines covered by Docket PS–112. Operators of master meter systems constitute the bulk of small businesses or other small entities that operate gas pipeline systems subject to part 192. There are few, if any, small entities that

operate hazardous liquid or carbon dioxide pipelines subject to part 195, or LNG facilities subject to part 193. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this proposed rule would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

Executive Order 12612

The proposed rulemaking action would not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 99

Pipeline safety, Drug testing, Recordkeeping and reporting.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 199 as follows:

PART 199—DRUG AND ALCOHOL TESTING—MANAGEMENT INFORMATION SYSTEM REPORTING

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

2. § 199.23 would be amended by revising paragraph (a)(2) to read as follows:

§ 199.23 Recordkeeping.

(a) * * *

(2) Records of employee drug and alcohol test results that show employees failed a test and records that demonstrate rehabilitation, if any, must be kept for at least 5 years.

* * * * *

3. Section 199.25 would be added to read as follows:

§ 199.25 Annual drug and alcohol testing report.

(a) Each operator shall submit, not later than February 15, a report of its drug and alcohol testing program for the previous calendar year.

(b) Each report must be made to the Information Resources Manager for Pipeline Safety, Research and Special Programs Administration, Department of Transportation, room 8417, 400 Seventh Street, SW., Washington, DC 20590.

(c) *Instructions.* The following instructions for completion of the report form are in addition to those in § 40.41 of this chapter:

(1) In part A of the report form under "company name," each operator shall state the primary nature of its operations as either gas gathering, gas transmission, gas distribution, transportation of hazardous liquid, or transportation of carbon dioxide.

(2) In part B of the report form, each operator shall report only information on the following employee categories: Operation, maintenance, and emergency-response. If an employee can be assigned to more than one category (e.g., a maintenance worker also responds to emergencies), report the information according to the employee's primary duties.

4. Part 199 is amended by adding Appendix B to read as follows:

BILLING CODE 4910-60-M

APPENDIX B - DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

GENERAL INSTRUCTIONS

This reporting form includes three parts. Collectively, these parts address the data elements required in Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) drug and alcohol testing regulations. Each part of the form is preceded by instructions which outline and explain the information requested and indicate the probable sources for this information. The three parts of the form are:

Section	Instructions Pages	Reporting Form Pages
I. ORGANIZATIONAL INFORMATION	i-ii	1-2
II. DRUG TESTING INFORMATION	iii-vii	3-9
III. ALCOHOL TESTING INFORMATION	viii-xii	10-14

I. ORGANIZATIONAL INFORMATION

INSTRUCTIONS

This part of the reporting form includes two sections. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	ii	2

Page 1 **EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done, a current address, the name of the person responsible for completing the form, and a current telephone (including the area code). Be sure check which one of the five categories (gas gathering; gas transmission, gas distribution; transportation of hazardous liquids; and transportation of carbon dioxide) characterizes the **primary** nature of your operation. Finally, a signature and date are required certifying the correctness and completeness of the form.

Page 2

COVERED EMPLOYEES (Section B) requires a count for each employee category that must be tested under RSPA/DOT regulations. For RSPA this includes Operations Personnel ("Operations" in the tables), Maintenance Personnel ("Maintenance" in the tables), and Emergency Response Personnel ("Emergency Response" in the tables). The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

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For Office Use Only

RSPA DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

YEAR COVERED BY THIS REPORT: 19___

A. PIPELINE EMPLOYER INFORMATION

Company _____

Address _____

_____

Person responsible for completing form: _____

Phone Number _____

Check the one box that indicates the primary nature of your operation.

- ☐ Gas gathering
- ☐ Gas transmission
- ☐ Gas distribution
- ☐ Transportation of hazardous liquids
- ☐ Transportation of carbon dioxide

I, the undersigned, certify the attached Research and Special Programs Administration Drug Testing Management Information System Data Collection Form, is to the best of my knowledge and belief, a true, correct, and complete form for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	USCG
Operations						
Maintenance						
Emergency Response						
TOTAL						

II. DRUG TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iv-vi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	iv	4
B. EMPLOYEE TESTING	vi	5 7
C. OTHER TESTING/PROGRAM INFORMATION	vi	8
D. TRAINING/EDUCATION	vii	9

Sections A and B are used to summarize the drug testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment testing. The five tables in Section B are for entering drug testing data on periodic, random, post-accident, reasonable cause, and return to duty testing, respectively Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons testing positive is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 4

JOB APPLICANT TESTING INFORMATION (Section A) requires information for pre-employment testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by job applicants that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page v with example numbers.

Page 4

Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test**". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example will use RSPA's three categories "Operations", "Maintenance", and "Emergency Response" to illustrate the procedures for completing the form.

A

Urine specimens were collected for 157 job applicants for operations positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Operations".

B

The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for operations positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Operations".

C

The MRO for your company reported that 4 of those 157 specimens from applicants for operations positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Operations".

D

With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in Section C, **OTHER TESTING/PROGRAM INFORMATION**, on page 8 of the reporting form.

PRE-EMPLOYMENT TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operations	157	153	4	3	1	0	0	1
Maintenance	107	105	2	1	0	0	1	0
Emergency Response	32	31	1	0	1	0	0	0
TOTAL	296	289	7	4	2	0	1	1

A B C D E

Please note that the sample data collection form also has information for maintenance workers on line two. The same procedures outlined for operators should be followed for entering the data on maintenance workers. With applicants for maintenance positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Maintenance". Thirty-two specimens were collected for emergency response positions resulting in thirty verified negatives and one verified positive for cocaine.

E

The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for operator positions were collected, 107 for applicants for maintenance positions, and 32 for applicants for emergency response positions. The total for that column would be 296 (i.e., 157+107+32). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 5-7

EMPLOYEE TESTING (Section B), as indicated, requires information for company employees in covered positions only. A separate table must be completed for each category of test. These categories include: (1) periodic, (2) random, (3) post-accident, (4) reasonable cause, and (5) return to duty testing. These tables are to be filled out like the sample table above. Again, these numbers do not include refusals for testing.

Page 7

Following these tables that summarize **EMPLOYEE TESTING**, you must provide counts for employees who have tested positive and are currently in, or have completed rehabilitation, and have returned to work in a covered position. Report this information only for employees who tested positive during this reporting period. This information should be available from the personnel office and/or drug program manager.

Page 8

OTHER TESTING/PROGRAM INFORMATION (Section C) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 8

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**, then check

the appropriate columns indicating the combination of drugs reported as positive. For example, if marijuana and cocaine were detected in 3 operations specimens, then you would write "Operations" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 operations specimens, then you would write "Operations" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 8

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a drug test required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal. An example of an action taken would be "removed from covered duties pending termination".

Page 9

TRAINING/EDUCATION (Section D) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION (RSPA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by RSPA/DOT drug testing regulations.

   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operations								
Maintenance								
Emergency Response								
TOTAL								

Number of persons denied a position as a covered employee following a verified positive drug test: [ ]

B. EMPLOYEE TESTING

PERIODIC TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operations								
Maintenance								
Emergency Response								
TOTAL								

RANDOM TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operations								
Maintenance								
Emergency Response								
TOTAL								

B. EMPLOYEE TESTING (continued)

POST-ACCIDENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operations								
Maintenance								
Emergency Response								
TOTAL								

REASONABLE CAUSE TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operations								
Maintenance								
Emergency Response								
TOTAL								

B. EMPLOYEE TESTING (continued)

RETURN TO DUTY TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Operations								
Maintenance								
Emergency Response								
TOTAL								

Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during this reporting period: [ ]

C. OTHER TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Mari-juana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of covered employees who have received initial training on the consequences, manifestations, and behavioral cues of drug use as required by RSPA drug testing regulations: [ ]

Number of supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by RSPA drug testing regulations: [ ]

Number of covered employees who have received recurrent or refresher training on the consequences, manifestations, and behavioral cues of drug use: [ ]

Number of supervisory personnel who have received recurrent or refresher training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use: [ ]

III. ALCOHOL TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information for Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ix-xi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes four sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. JOB APPLICANT TESTING INFORMATION	ix	10
B. EMPLOYEE TESTING	xi	11-13
C. OTHER TESTING/PROGRAM INFORMATION	xi	13-14
D. TRAINING/EDUCATION	xii	14

Sections A and B are used to summarize the alcohol testing results for covered employees. There are six tables to be completed (one in Section A and five in Section B). The first table (Section A) is where you enter the data on pre-employment/pre-duty testing. The five tables in Section B are for entering alcohol testing data for random, post-accident, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of initial alcohol tests performed for each employee category;
2) the number of confirmatory alcohol tests performed for each employee category;
3) the number of confirmatory test results which were equal to or greater than 0.04; and
4) the number of confirmatory test results which were equal to or greater than 0.02, but less than 0.04.

A sample table with detailed instructions is provided for Section A, **JOB APPLICANT TESTING INFORMATION**. The format and explanations used for the sample table apply to all six of the tables in Sections A and B.

Information on actions taken with those persons whose alcohol test results were 0.04 or greater is required at the end of both Sections A and B. Specific instructions for providing this latter information are given after the instructions for completing the tables in Sections A and B.

Page 10 **JOB APPLICANT TESTING INFORMATION** (Section A) requires information for pre-employment/pre-duty testing. All numbers entered into this table should be separated into the category of employment for which the applicant was applying. A sample table with example numbers is presented on page x.

Four types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF INITIAL TESTS**" requires a count of all initial alcohol tests performed for each employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF CONFIRMATORY TESTS**" requires a count of all confirmatory alcohol tests performed for each employee category.

The third blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04**" requires a count for each employee category.

The fourth blank column with the heading "**NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04**" requires a count for each employee category.

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page x with example numbers.

Page 10 Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater**". Enter the appropriate number in the box provided.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section A, **JOB APPLICANT TESTING INFORMATION**, which summarizes pre-employment/pre-duty testing results. The procedures detailed here also apply to the tables in Section B which require you to summarize testing results for employees. This example will use RSPA's three categories "Operations", "Maintenance", and "Emergency Response" to illustrate the procedures for completing the form.

A Initial tests were performed on 157 job applicants for operations positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Operations".

B Confirmatory tests were necessary for 6 of the 157 applicants for operations positions. Enter this information in the second blank column of the table in the row marked "Operations". The confirmatory test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmatory test results for 3 of the applicants for operations positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Operations".

D The confirmatory test results for 2 of the applicants for operations positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Operations".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for operations positions, 107 applicants for maintenance positions, and 32 applicants for emergency response positions were subjected to initial tests. The total for that column would be 296 (i.e., 157 + 107 + 32). The same procedure should be used for each column (i.e., add all the numbers in that column and place the answer in the last row).

PRE-EMPLOYMENT/PRE-DUTY TESTING

EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Operations	157	6	3	2
Maintenance	107	3	1	0
Emergency Response	32	0	0	0
TOTAL	296	9	4	2

A B C D E

Please note that the sample data collection form also has information for maintenance workers on line two. The same procedures outlined for operations should be followed for entering the data on maintenance workers. With applicants for maintenance positions, 107 initial tests were conducted resulting in 3 confirmatory tests. The confirmatory test result for 1 of the maintenance worker applicants was equal to or greater than 0.04; no results were equal to or greater than 0.02, but less than 0.04. This information is entered in the row marked "Maintenance". Thirty-two

specimens were collected for emergency response positions with no confirmatory tests performed.

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATORY TESTS". These numbers may differ since some confirmatory test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Pages 11-13 **EMPLOYEE TESTING** (Section B), as indicated, requires information for company employees in **covered positions** only. A separate table must be completed for each category of test. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These tables are to be filled out like the sample table above. Again, these numbers **do not** include refusals for testing.

Page 12 Following these tables that summarize **EMPLOYEE TESTING**, you must provide a count of the **"Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in DOT regulations)"**. Report this information only for employees who were tested during this reporting period. This information should be available from the personnel office and/or alcohol program manager.

Pages 13-14 **OTHER TESTING/PROGRAM INFORMATION** (Section C) requires that you provide information on employees who tested positive for drugs and alcohol (at the same time), information on violations of other alcohol provisions (not necessarily resulting in positive alcohol tests), and information on employees who refused to submit to an alcohol test.

Page 13 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 13 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires information on the **NUMBER OF COVERED EMPLOYEES** committing such a violation, a description of the **VIOLATION** committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the **ACTION TAKEN** in response to the violation.

Page 14 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test as required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal.

Page 14 **TRAINING/EDUCATION** (Section D) requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION (RSPA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):**

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by RSPA/DOT alcohol testing regulations.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section C ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this part of the report.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

A. JOB APPLICANT TESTING INFORMATION

PRE-EMPLOYMENT/PRE-DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Operations				
Maintenance				
Emergency Response				
TOTAL				

Number of persons denied a position as a covered employee following a pre-employment/pre-duty alcohol test indicating an alcohol concentration of 0.04 or greater: [ ]

B. EMPLOYEE TESTING

RANDOM TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Operations				
Maintenance				
Emergency Response				
TOTAL				

POST-ACCIDENT TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Operations				
Maintenance				
Emergency Response				
TOTAL				

B. EMPLOYEE TESTING (continued)

REASONABLE SUSPICION TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Operations				
Maintenance				
Emergency Response				
TOTAL				

RETURN TO DUTY TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Operations				
Maintenance				
Emergency Response				
TOTAL				

Number of employees with a confirmatory alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations): [ ]

B. EMPLOYEE TESTING (continued)

FOLLOW-UP TESTING				
EMPLOYEE CATEGORY	NUMBER OF INITIAL TESTS	NUMBER OF CONFIRMATORY TESTS	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER OF CONFIRMATORY TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04
Operations				
Maintenance				
Emergency Response				
TOTAL				

C. OTHER TESTING/ PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater: ☐

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN

C. OTHER TESTING/PROGRAM INFORMATION (continued)

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

D. TRAINING/EDUCATION

Training During Current Reporting Period

Number of supervisors who have received the required training in determining the existence of reasonable suspicion of alcohol misuse: [ ]

BILLING CODE 4910-60-C

Issued in Washington, DC, on December 2, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92-29688 Filed 12-10-92; 10:00 am]

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December 15, 1992

Part VIII

Department of Transportation

Coast Guard

46 CFR Part 16
Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 91–019]

RIN 2115–AD84

Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Collection of Drug and Alcohol Testing Information

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations for chemical drug and alcohol testing of commercial vessel personnel to include information collection requirements regarding marine industry drug and alcohol testing programs. The Coast Guard proposes to collect this data in order to assess the effectiveness of the marine industry drug and alcohol tesing programs.

DATES: Comments must be received on or before April 14, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–019), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR M. A. Grossetti, Marine Investigation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–1421.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written arguments, views or data. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–019) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, a public hearing will be held at a time and place announced by a later notice in the Federal Register.

Elsewhere in today's Federal Register is the parallel proposal for the management information system (MIS) in the NPRM regarding 49 CFR part 40. The preamble to that NPRM contains many comments, discussions and questions that should be considered in reviewing this Operating Administration NPRM. Your comments on this NPRM should indicate that you are responding to questions or comments found in the generic NPRM under 49 CFR part 40 or the specific NPRM under this Operating Administration rule.

Drafting Information

The principal persons involved in drafting this document are LCDR M. A. Grossetti, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

On December 14, 1987, the Coast Guard published regulations regarding operating a vessel while intoxicated. (52 FR 47526) Those regulations established standards of intoxication and authorized law enforcement officers and marine employers to direct individuals operating a vessel to undergo a chemical test for reasonable cause. On November 21, 1988, the Coast Guard issued a final rule (the "1988 Final Rule") requiring marine employers to establish chemical drug programs for their covered employees and job applicants that included pre-employment, periodic, random, post-accident and reasonable cause tests. Additionally, the rules require post-accident testing for alcohol. (53 FR 47063) On the same date, the Department of Transportation published an interim final rule establishing drug testing procedures. (53 FR 47002) The interim final rule followed closely the Department of Health and Human Services (DHHS) regulation entitled "Mandatory Guidelines for Federal Workplace Drug Testing Programs." (53 FR 11970) On December 1, 1989, DOT published a final rule (54 FR 49854) which responded to all comments to the interim rule and incorporated appropriate changes. (49 CFR part 40)

In October 1989, approximately one year after the Coast Guard published its 1988 final rule, the Secretary of Transportation appointed a Special Assistant for Drug Enforcement and Program Compliance. The Special Assistant is responsible for determining the effectiveness of the transportation industry drug and alcohol testing programs. A November 1989 General Accounting Office report entitled, "Drug Testing: Management Problems and Legal Challenges Facing DOT's Industry Programs", provided additional suggestions for monitoring the effectiveness of the drug testing programs.

DOT has determined that the most appropriate method to monitor the effectiveness of the transportation industry drug testing programs is to create a Management Information System (MIS). Representatives from each DOT operating administration (OA) participated in a working group to formulate a MIS proposal for the drug and alcohol testing programs. Numerous alternatives and information collection processes were considered. It was noted that whereas DHHS certified laboratories could provide only laboratory analysis data, medical review officers (MROs) could provide only drug test verification information, and collection facilities could provide only specimen collection data, employers receive drug testing information from labs, MROs and collection facilities, and therefore, could provide all the necessary data for an effective MIS. Thus, the regulated employers are the appropriate source of comprehensive drug testing data.

To implement and sustain an effective, multi-modal MIS, the Coast Guard proposes to develop data collection rules appropriate for the maritime industry. The maritime industry data may then be combined with the data from other transportation industries to provide an overall view of the effectiveness of the transportation industry drug testing programs.

Discussion of Proposed Amendments

Elsewhere in this **Federal Register**, DOT is proposing to amend 49 CFR part 40. The DOT proposal states that the 1988 drug testing rules were not intended to be static and remain unchanged. Because over-regulation is as unwanted as under-regulation, DOT seeks information about drug use prevalence, program implementation, and economic and logistical impacts of rules to provide a basis for policy review, development and change. The DOT proposal indicates that program evaluation requires transportation industry input because issues such as scope of applicability, random test rates, cost-benefit ratios, rehabilitation and testing protocols can be addressed effectively only with careful consideration of the information held by transportation industry employers. The DOT proposal describes the data elements that DOT expects each operating administration to require employers in their respective regulated industries to collect and submit.

The Coast Guard proposes to amend 46 CFR part 16 to comport with the 49 CFR part 40 data collection proposal by proposing a new § 16.500 containing a proposed list of the data that each marine employer or employer's representative (including a consortium) must collect and submit to the Coast Guard, and a proposal that marine employers that have operations regulated by other OAs submit appropriate data to each regulating OA for those employees covered by that OA rule.

The DOT proposal would require all transportation industry employers to collect data on a calendar year basis, from January 1 to December 31, and to submit at least one report per calendar year, but allows OAs to propose the data submittal frequency for their regulated industry employers.

The DOT proposal would require OAs to collect drug testing program data but would give OAs the authority to amend their drug and alcohol testing regulations as appropriate for their respective industries. Accordingly, with a view toward limiting the data collection to elements appropriate for the maritime industry, the Coast Guard proposes to require all marine employers to collect and submit annually the following drug and alcohol testing program data:

(1) Number of covered billets, either on a vessel unit basis or employee number basis by employee category. Marine employee categories will be limited to "licensed", "unlicensed (documented)", and "other" personnel, when this information is available.

DOT requires this data both to assess the scope of the drug testing rules' application in the maritime industry and to provide a basis for determining whether maritime industry random testing meets the required 50 percent level.

(2) Number of covered employees subject to testing under the anti-drug rules of more than one DOT Agency, identified by each agency. This data is necessary to review multi-modal implementation so that policy can be designed accordingly.

(3) Number of drug and alcohol tests by test type and covered billet. The drug test types are pre-employment, random, post-accident and reasonable cause. The alcohol test types are post-accident and reasonable cause. Covered billets are those described in (1) above. The Coast Guard intends to compile data submitted individually for periodic tests and not require a cumulative report from employers.

This data will be used both to evaluate the scope of maritime industry drug and alcohol testing program implementation and to determine the prevalence of maritime industry drug and alcohol use.

(4) Number of positive drug test results verified by a Medical Review Officer (MRO) by test type, type of drug(s) and covered billet. Number of alcohol tests resulting in a blood alcohol concentration of .04 percent by weight or more by test type and covered billet.

DOT requires this data to calculate positive drug test result rates and alcohol test result rates exceeding the standard of intoxication in the maritime industry. These rates are necessary to determine the extent of maritime industry drug and alcohol use and the specific drugs used in the various categories of covered billets. Further, analysis of this data over time would provide a measure of the effectiveness of maritime industry drug and alcohol testing rules in deterring drug and alcohol use.

(5) Number of negatives verified by a MRO by type of test, by type of drug, and employee category. This data is needed to check compliance with the rules by category and to review the application of the components of the programs.

(6) Number of applicants denied employment based on positive drug test results verified by an MRO.

DOT requires this data to determine whether the testing program is being implemented as required; to provide a measure of the impact of the drug testing rules on the industries; and to yield information on the prevalence of drug use in the applicant pool.

(7) Number of marine employees with positive drug test results verified by an MRO who were returned to duty in covered positions, having met the requirements of 46 CFR 16.370(d) and 46 CFR part 5.

DOT requires this data to assess the maritime industry's policy regarding rehabilitation of identified drug users.

(8) Number of marine employee drug test results that MROs verify positive for more than one drug.

DOT requires this data to provide information regarding maritime industry multiple drug use.

(9) Number of covered employees who refused to submit to a drug test required under this part, and the action taken in response to the refusal(s). This data provides information on employer policy implementation regarding refusals and subsequent employer actions.

(10) Number of marine employees receiving training and education information.

DOT requires this information to assess the maritime industry's training policies. The DOT proposal also indicates that it would provide a cumulative count of maritime industry covered billets and supervisory personnel on payroll during the covered year who have received the required drug abuse training.

The Coast Guard proposes to have marine employers submit these data elements on the proposed standard forms attached as an appendix to this NPRM. Marine employers would be permitted to photocopy the standard form. Data may be submitted by consortia or other employer representatives on behalf of a marine employer. Each marine employer must notify the Coast Guard in writing of the consortium or representative that will submit the employer's data, and remains responsible for ensuring that the data is submitted.

Regulatory Evaluation

This proposal is considered to be non-major under Executive Order 12291. However, this proposal is considered to be significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11304; February 26, 1979) because of the substantial public interest in, and concern for, a drug and alcohol abuse-free transportation environment. The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary.

This action proposes to create standard reporting requirements for

marine employers to submit data on their drug and alcohol testing programs. The Coast Guard proposes to collect this data in order to assess the effectiveness of the maritime industry drug and alcohol testing programs.

The proposed DOT amendment anticipates that the reporting requirements, if adopted, will cause minimal changes in maritime industry compliance burdens and costs. The Coast Guard proposal requests data that marine employers already may be collecting. Instructional materials and guidance being developed by DOT also would reduce the burden of compliance with the proposed regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard proposal requests data that marine employers already may be collecting. Instructional materials and guidance being developed by DOT also would reduce the burden of compliance with the proposed regulations. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "ADDRESSES") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains an information collection requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in § 16.500. The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115–XXXX.

Administration: U.S. Coast Guard.

Title: Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Collection of Drug and Alcohol Testing Information.

Need for Information: To enable DOT to monitor the effectiveness of the transportation industry drug and alcohol testing programs.

Proposed Use of Information: Marine industry data will be combined with the data from other transportation industries to provide an overall view of the effectiveness of the transportation industry drug and alcohol testing programs.

Frequency of Response: Annual.

Burden Estimate: 7262.

Respondents: 14,000.

Forms: United States Coast Guard Drug Testing Management Information System Data Collection Form.

Average Burden Hours Per Respondent: .2687.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "ADDRESSES."

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to require programs for chemical drug and alcohol testing of commercial vessel personnel has been committed to the Coast Guard by Federal statutes. This proposed rule would, therefore, if adopted, preempt State and local regulations on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal merely requires the reporting of drug and alcohol testing information and clearly would have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

2. Section 16.500 is added to read as follows:

§ 16.500 Management information System requirements.

(a) All marine employers shall collect the drug and alcohol testing program data identified in this section for each calendar year, January 1 to December 31. Marine employers shall submit this data to the Coast Guard by February 15 of the following year at Commandant (G–MMI), 2100 Second Street, SW., Washington, DC, 20593–0001.

(b) All marine employers shall collect the following drug and alcohol testing program data:

(1) Number of covered billets either on a vessel unit basis or on an employee number basis by employee category. The employee categories are licensed, unlicensed (documented), and other, when this information is available.

(2) Number of covered employees subject to testing under the anti-drug rules of more than one DOT agency, identified by each agency.

(3) Number of drug and alcohol tests by test type and covered billet. The drug test types are pre-employment, random, post-accident and reasonable cause. The alcohol test types are post-accident and reasonable cause. The covered billets are set forth in paragraph (b)(1) of this section.

(4) Number of positive drug test results verified by a Medical Review Officer (MRO) by test type, type of drug(s) and covered billet. Number of alcohol tests resulting in a blood alcohol concentration of .04 percent by weight or more by test type and covered billet.

(5) Number of negatives verified by an MRO by type of test, type of drug, and employee category.

(6) Number of applicants denied employment based on a positive drug test result verified by an MRO.

(7) Number of marine employees with a positive drug test result verified by an MRO, who were returned to duty in a covered position, having met the requirements of § 16.370(d) and part 5 of this chapter.

(8) Number of marine employee drug test results that MROs verify positive for more than one drug or combination of drugs.

(9) Number of covered employees who refused to submit to a drug test

required under this part, and the action taken in response to the refusal(s).

(10) Marine employee training and education information.

(c) The data listed in paragraph (b) of this section shall be submitted to the Coast Guard on the standard forms provided in the appendix to this part. All items on the form must be completed. Data may be submitted by consortia or other employer representatives on behalf of a marine employer. Each marine employer must notify the Coast Guard in writing of the consortium or representative that will submit the employer's data, and remains responsible for ensuring that the data is submitted.

(d) Marine employers that conduct operations regulated by another Department of Transportation Operating Administration must submit appropriate data to that Operating Administration for those employees covered by that Operating Administration's regulations.

3. Part 16 is amended by adding appendix B to read as follows:

BILLING CODE 4810-14-M

APPENDIX B - DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

GENERAL INSTRUCTIONS

This reporting form includes three parts. Collectively, these parts address the data elements required in the United States Coast Guard (USCG) and the U.S. Department of Transportation (DOT) drug and alcohol testing regulations. Each part of the form is preceded by instructions which outline and explain the information requested and indicate the probable sources for this information. The three parts of the form are:

Section	Instructions Pages	Reporting Form Pages
I. ORGANIZATIONAL INFORMATION	i-ii	1-2
II. DRUG TESTING INFORMATION	iii-vii	3-7
III. ALCOHOL TESTING INFORMATION	viii-x	8-9

I. ORGANIZATIONAL INFORMATION

INSTRUCTIONS

This part of the reporting form includes two sections. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED BILLETS	ii	2

Page 1 **EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done and a current address. Below this, a signature, date and current telephone (including the area code) are required certifying the correctness and completeness of the form.

Page 2

COVERED BILLETS (Section B) requires a count for each employee category that must be tested under USCG/DOT regulations. The employee categories are "Licensed", "Unlicensed (Documented)" and "Other". The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s)

For Office Use Only

USCG DRUG AND ALCOHOL MIS DATA COLLECTION FORM

YEAR COVERED BY THIS REPORT: 19__

A MARITIME EMPLOYER INFORMATION

Company _____

Address _____

_____

_____

I, the undersigned, certify the attached United States Department of Transportation Drug and Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, a true, correct, and complete form for the period stated

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

B. COVERED BILLETS

COVERED BILLETS						
EMPLOYEE CATEGORY	NUMBER OF COVERED BILLETS	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	RSPA
Licensed						
Unlicensed (Documented)						
Other Personnel						
TOTAL						

II. DRUG TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the United States Coast Guard (USCG) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iv-vi as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes three sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. MARINE EMPLOYEE TESTING	iii	4-5
B. OTHER TESTING/PROGRAM INFORMATION	vi	6
C. TRAINING/EDUCATION	vii	7

Sections A is used to summarize the drug testing results for covered marine employees. There are four tables to be completed. In the appropriate table, enter the data on pre-employment testing, random, post-accident, and reasonable cause. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample pre-employment table with detailed instructions is provided for Section A, **MARINE EMPLOYEE TESTING INFORMATION**. The format and explanations used for the sample table apply to all of the tables in Section A.

Information on actions taken with those persons testing positive is required at the end of Section A. Specific instructions for providing this latter information are given after the instructions for completing the tables in Section A.

Page 4 **MARINE EMPLOYEE TESTING INFORMATION** (Section A) requires information for pre-employment, random, post-accident, and reasonable cause testing. All numbers entered into this table should be separated into the category of

employment for which the applicant was applying. A sample table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by job applicants that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests **for each** of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page v with example numbers.

Page 4

Below the table for pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test**". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE MARINE EMPLOYEE TEST RESULTS TABLE

The following example is for Section A, pre-employment testing, which summarizes pre-employment testing results. The procedures detailed here also apply to the tables on random, post-accident, and reasonable cause testing. Marine industry categories are "Licensed", "Unlicensed (Documented), and "Other".

A

Urine specimens were collected for 157 job applicants for licensed positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Licensed".

B — The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for licensed positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Licensed".

C — The MRO for your company reported that 4 of those 157 specimens from applicants for licensed positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Licensed".

D — With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in Section B, OTHER TESTING/PROGRAM INFORMATION, on page 6 of the reporting form.

Please note that the sample data collection form also has information for unlicensed (documented) workers on line two. The same procedures outlined for licensed positions should be followed for entering the data on unlicensed (documented) positions. With applicants for unlicensed (documented) positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives – 1 for marijuana and 1 for opiates. This information is entered in the row marked "Unlicensed (Documented)". No testing was done with the "Other" employee category so zeros (0's) were entered in those spaces.

PRE-EMPLOYMENT TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Licensed	157	153	4	3	1	0	0	1
Unlicensed (Documented)	103	105	2	1	0	0	1	0
Other	0	0	0	0	0	0	0	0
TOTAL	264	258	6	4	1	0	1	1

A B C D E

V

E. The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for licensed positions were collected and 107 for applicants for unlicensed (documented) positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A.

Page 5 — Following these tables that summarize **MARINE EMPLOYEE TESTING**, you must provide counts for employees who have tested positive and were returned to duty in a covered position, after meeting the requirements of 46 CFR Part 16.370 (d) and 46 CFR Part 5. Report this information only for employees who tested positive during this reporting period. This information should be available from the personnel office and/or drug program manager.

Page 6 — **OTHER TESTING/PROGRAM INFORMATION** (Section B) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 6 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**, then check the appropriate columns indicating the combination of drugs reported as positive. For example, if marijuana and cocaine were detected in 3 licensed specimens, then you would write "Licensed" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 licensed specimens, then you would write "Licensed" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 6 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a drug test required under this regulation, and a description of the **ACTION TAKEN** in response to the refusal. An example of an action taken would be "removed from covered duties pending termination".

Page 7 **TRAINING/EDUCATION** (Section C) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

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READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY THE UNITED STATES COAST GUARD (USCG)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by USCG drug testing regulations.

   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section B ("OTHER TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

A. MARINE EMPLOYEE TESTING INFORMATION

PRE-EMPLOYMENT TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Licensed								
Unlicensed (Documented)								
Other								
TOTAL								

Number of persons denied a position as a covered employee following a verified positive drug test: [ ]

RANDOM TESTING

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Licensed								
Unlicensed (Documented)								
Other								
TOTAL								

A. MARINE EMPLOYEE TESTING INFORMATION (continued)

POST-ACCIDENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Licensed								
Unlicensed (Documented)								
Other								
TOTAL								

REASONABLE CAUSE TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Licensed								
Unlicensed (Documented)								
Other								
TOTAL								

Number of marine employees with a positive drug test result verified by an MRO, who were returned to duty in a covered position, having met the requirements of 46 CFR 16.370 (d) and 46 CFR Part 5: [ ]

B. OTHER TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Mari-juana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	
NUMBER OF COVERED EMPLOYEES	ACTION TAKEN

C. TRAINING/EDUCATION

Training During Current Reporting Period

Number of covered employees who have received initial training on the consequences, manifestations, and behavioral cues of drug use as required by USCG drug testing regulations: ☐

Number of supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by USCG drug testing regulations: ☐

Number of covered employees who have received recurrent or refresher training on the consequences, manifestations, and behavioral cues of drug use: ☐

Number of supervisory personnel who have received recurrent or refresher training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use: ☐

III. ALCOHOL TESTING INFORMATION

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information for the United States Coast Guard (USCG) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing Management Information System Data Collection Form**. These instructions outline and explain the information requested and indicate probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ix-x as an example to facilitate the process of completing the form correctly.

This part of the reporting form includes three sections. These sections address the data elements required in the regulations. These sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. MARINE EMPLOYEE TESTING INFORMATION	viii	8
B. TRAINING/EDUCATION	x	9

Section A is used to summarize the alcohol testing results for covered employees. There are two tables to be completed. The first table is where you enter the data on post-accident testing and the reasonable cause testing data is entered in the second table. Items necessary to complete these tables include:

1) the number of alcohol tests conducted for each employee category; and
2) the number of test results which were equal to or greater than 0.04.

A sample post-accident table with detailed instructions is provided for Section A MARINE **EMPLOYEE TESTING INFORMATION**. The format and explanations used for the sample table also apply to the reasonable cause table in Section A.

Page 8

MARINE EMPLOYEE TESTING INFORMATION (Section A) requires information for post-accident and reasonable cause testing. All numbers entered into this table should be separated into the appropriate category of employment. A sample table with example numbers is presented on page ix.

Two types of information are necessary to complete this table. The first blank column with the heading "**NUMBER OF TESTS**" requires a count of all alcohol tests conducted for each employee category. It should not include refusals to test.

The second blank column with the heading "NUMBER OF TEST RESULTS EQUAL TO OR GREATER THAN 0.04" requires a count for each employee category.

Each column in the table should be added and the answer entered in the row marked "TOTAL".

A sample table is provided on page ix with example numbers.

SAMPLE MARINE EMPLOYEE TEST RESULTS TABLE

The following example is for Section A, post-accident testing results. The procedures detailed here also apply to the table on reasonable cause testing. Marine industry categories are "Licensed", "Unlicensed (Documented)", and "Other".

A

Tests were conducted on 6 employees in licensed positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Licensed". The test results for these 6 employees were the following:

Employee	Result
#1	0.06
#2	0.01
#3	0.01
#4	0.04
#5	0.03
#6	0.02

B

The test results for 2 of the employees in licensed positions were equal to or greater than 0.04. Enter this information in the second blank column of the table in the row marked "Licensed".

C

The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 6 employees for licensed positions and 10 employees for unlicensed (documented) positions were subjected to tests. The total for that column would be 16 (i.e., 6 + 10). The same procedure should be used for each column. (i.e., add all the numbers in that column and place the answer in the last row).

POST-ACCIDENT TESTING

EMPLOYEE CATEGORY	NUMBER OF TESTS	NUMBER OF TEST RESULTS EQUAL TO OR GREATER THAN 0.04
Licensed	6	2
Unlicensed (Documented)	10	1
Other	0	0
TOTAL	16	3

A B C

Please note that the sample data collection form also has information for unlicensed (documented) employees on line two. The same procedures outlined for licensed employees should be followed for entering the data on unlicensed (documented) employees. With employees in unlicensed (documented) positions, 10 tests were conducted. The test result for 1 of the unlicensed (documented) employees was equal to or greater than 0.04. This information is entered in the row marked "Unlicensed (Documented)". No testing was done with the "Other" employee category so zeros (0's) were entered in those spaces.

Remember that the same procedures indicated above are to be used for completing all of the tables in Sections A and B.

Page 9 **TRAINING/EDUCATION** (Section C) requires information on the number of crewmembers and supervisory personnel who have received the required alcohol training during the current reporting period.

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1993 - December 31, 1993).

2. This report is only for testing **REQUIRED BY THE UNITED STATES COAST GUARD (USCG)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by USCG alcohol testing regulations.
   - The information requested should only include testing for alcohol using the standard procedures required by USCG regulation 33 CFR Part 95 and 46 CFR Parts 4 and 16.

3. Include information on completed tests only. Do not include refusals for testing.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

A. MARINE EMPLOYEE TESTING INFORMATION

POST-ACCIDENT TESTING		
EMPLOYEE CATEGORY	NUMBER OF TESTS	NUMBER OF TEST RESULTS EQUAL TO OR GREATER THAN 0.04
Licensed		
Unlicensed (Documented)		
Other		
TOTAL		

REASONABLE CAUSE TESTING		
EMPLOYEE CATEGORY	NUMBER OF TESTS	NUMBER OF TEST RESULTS EQUAL TO OR GREATER THAN 0.04
Licensed		
Unlicensed (Documented)		
Other		
TOTAL		

B. TRAINING/EDUCATION

Training During Current Reporting Period

Number of crewmembers and supervisors who have received the required alcohol training pursuant to 46 CFR 16.401(b): [ ]

Issued on: December 2, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

J. W. Kime,

Admiral, U.S. Coast Guard,

COMMANDANT.

[FR Doc. 92-29689-37 Filed 12-10-92; 10:00 am]

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Federal Register

Tuesday
December 15, 1992

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 121
Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Federal Highway Administration

49 CFR Parts 382 and 391

Federal Railroad Administration

49 CFR Part 219

Federal Transit Administration

49 CFR Part 653

Research and Special Programs Administration

49 CFR Part 199

Coast Guard

46 CFR Part 16

[OST Docket No. 48498, Notice 92-29]

RIN 2105-AB94

Random Drug Testing Program

AGENCY: Office of the Secretary, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, Research and Special Programs Administration, and the United States Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: In response to public comments received during the President's regulatory moratorium, petitions submitted by industry, and on their own initiative, the five operating administrations that currently require random drug testing—the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Research and Special Programs Administration (RSPA) and the United States Coast Guard (USCG) (collectively referred to as "DOT" or "the agencies")— are considering modifying the random drug testing program. [The Federal Transit Administration (FTA) —also a part of DOT—published elsewhere in today's **Federal Register** a drug testing NPRM that proposes to adopt, among other things, the 50 percent random testing rate that is currently used by the other operating administrations. This ANPRM is not intended to affect the random drug testing program to be established by that rulemaking. Rather, this ANPRM will review the general issue. FTA joins the other operating administrations in issuing this random drug testing program notice requesting public comment and data concerning whether there are less costly alternatives to the current random testing program that can maintain an adequate level of deterrence and detection of illegal drug use.

DATES: Comments are due February 16, 1993. A public meeting on technical and scientific issues will be held on February 1, 1992, from 8:30 a.m. to 5 p.m. and on February 2, 1992, from 8:30 a.m. to 12:30 p.m. Seating is limited to 150, which will be offered on a first-come, first-served basis.

ADDRESSES: Comments should be sent to Docket 48498, Office of Documentary Services (C-55), U.S. Department of Transportation, room 4107, 400 Seventh Street, SW., Washington, DC 20590-0001. To provide a copy for each operating administration's docket and to facilitate the Department's review, we request that an original and seven additional copies of each comment be submitted.

The technical meeting will be held at the Holiday Inn—Capitol, 550 C St., SW., Washington, DC 20024. (202) 479-4000. The hotel is offering participants a special rate, if they mention the meeting when they reserve their room.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Smith, Acting Director, Office of Drug Enforcement and Program Compliance, (202) 366-3784.

SUPPLEMENTARY INFORMATION: The Department of Transportation seeks comment on the effectiveness of the current random drug testing program for transportation industry employees. In the April 1992 "Report to the President: Review of Regulations," DOT Secretary Card committed to review this issue and determine whether adequate deterrence and detection of illegal drug use could be achieved at a lower rate of random testing and at a lower cost. In addition, several petitions have been filed with various operating administrations seeking to simply lower the rate of random drug testing.

The purpose of this notice is to seek data and ideas on additional strategies that would ensure the continued effectiveness of the Department's anti-drug program while reducing its cost. The Department is reluctant to propose a specific change in random testing requirements at this time because of the lack of data for transportation industry workers and because most of the operating administration programs have only been in place for a short time. Other than the experience of the military services that was relied on when the operating administrations originally set their random testing rates at 50 percent, we are unaware of any long-term reliable data indicating the relative deterrent effectiveness of different random testing rates. However, as described later in this document, DOT is gathering data that may help on this issue. Although the anti-drug regulations have been promulgated by various DOT agencies, we are issuing a Departmental ANPRM because of the commonality of the issues. We invite comment and supporting data on whether different programs for different industries would be appropriate. We have numbered specific questions within brackets throughout the ANPRM, and would appreciate it if commenters would reference those numbers in their responses.

Regulatory Background

DOT agencies have been involved in drug testing since the mid-1980s. The USCG has tested its uniformed personnel for drug use since 1982. DOT began testing certain of its civilian employees in September 1987.

The Department's civilian employee program is tightly controlled, centrally administered by headquarters staff, and monitored daily. Employee awareness and the visibility of the program are maintained through training programs conducted by regional drug program coordinators. Specimens are collected by a single contractor service, which operates under a uniform standard of procedures that provides for consistent and reliable collections.

The random testing program was phased-in and, by September 1988, DOT was testing a population of nearly 33,000 employees (primarily air traffic controllers, safety inspectors and individuals with high security clearances) at a testing rate of at least 50 percent each year for illegal drug use. The annual rate of positive random tests has declined from about 0.83 percent to as low as 0.21 percent over the last five years. Over the past three years, the rate consistently stayed well below 0.5 percent. The reports indicated that in this homogeneous, skilled, and stable population, there was no distinction in the percentage of positive testing results based on geography, age, etc. As a result of the apparent deterrent effect of the testing program as demonstrated by carefully-maintained recordkeeping, long experience, and the decreasing number of positive results, the Department lowered its federal employee random testing rate this year. Effective March 1, 1992, the Department has been conducting random testing at a rate of at least 25 percent annually. The positive rate continues to remain at a similarly low level. The Department

will continue to evaluate the data and may adjust the random testing rate, if necessary, back to 50 percent. The Department estimates that the reduction in the testing rate will save approximately 20 percent of the annual collection and laboratory testing costs.

The Federal Railroad Administration (FRA) has the longest experience with drug testing programs applicable to transportation industry workers. In 1986, railroads began pre-employment, post accident, and reasonable cause/suspicion testing, as required by the FRA.

In 1988, the Department of Transportation issued six final rules mandating anti-drug programs for certain transportation workers in the aviation, interstate motor carrier, pipeline, maritime, rail and transit industries. The rules included requirements for education, training, testing and sanctions. The testing component of each program included pre-employment, post-accident, reasonable cause, periodic (for those subject to periodic medical examinations) and random drug testing for approximately four million workers in safety-sensitive positions. Based on extensive experience and success in testing military and other populations, the Department imposed widescale random testing requirements because unannounced random drug testing is generally regarded as the best method of deterring illegal drug use.

The operating administrations' rules imposed a random testing rate of at least 50 percent per year. This means that if an employer has 400 covered employees, the employer must conduct at least 200 tests per year. Selection for testing must be random, with every employee in the random pool having an equal chance of being chosen each time a selection is made. Because of the randomness, some employees could be tested more than once in a given year, while others might not be tested for years. However, every covered employee would know that he or she had one chance in two of being tested each year. Employers were allowed to phase-in random testing at a rate of 25 percent for the first year, but had to increase to at least a 50 percent rate after one year.

After the final rules were issued, lawsuits delayed implementation of the rules for three of the six DOT agencies. As of today, only transit workers are not covered by the testing regulations. The 1988 final rule adopted by the Federal Transit Administration (formerly called the Urban Mass Transportation Administration) was vacated by the United States Court of Appeals for the District of Columbia Circuit because of a lack of statutory authority. Legislation (the FTA provisions of the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102–143, Title V, October 28, 1991) was subsequently enacted to remedy this problem as well as address other significant concerns with alcohol abuse and illegal drug use by individuals in various transportation industries who perform safety-sensitive duties. An NPRM proposing to cover transit employees is published elsewhere in today's **Federal Register**. As proposed, transit employees would be subject to a random testing rate of at least 50 percent. As noted above, this ANPRM involves a longer-term review of random testing program issues and is not intended to affect the random rate decision that must be made as part of FTA's proposed rulemaking. Several other DOT agency-regulated industries or industry sectors only recently began random testing at a 50 percent rate per year.

The Federal Railroad Administration phased-in random testing in three groups: Large railroads, medium-size railroads, and short line railroads. In January 1990, large railroads began testing at 25 percent, medium-size railroads began testing at 25 percent in July 1990 and short line railroads began testing at 25 percent in November 1990. Random testing at a 50 percent rate began one year after these dates for each of the three categories.

In the aviation industry, the 25 percent rate was instituted for large air carriers in December 1989, for medium-size carriers in April 1990, and for the smallest carriers in August of 1990. Testing at 50 percent began one year after the initial phase-in. Testing of contractor employees (such as repair station personnel or security screeners) began one year after the carriers that they worked for or supported.

Testing of pipeline personnel began next. Phase-in (25 percent testing) began in April 1990 for large operators and in August 1990 for small operators, with the 50 percent rate implemented one year later by each group.

Random and non-suspicion-based post-accident drug testing in the motor carrier industry were enjoined by court order, although the other types of testing were implemented on December 21, 1989. After the injunction was lifted, random testing by large motor carriers began in November 1991 at a 25 percent rate and testing by small motor carriers began in January 1992 at a 25 percent rate. One year after these dates, the rate increases to 50 percent. (The current rule covers just interstate motor carriers, but a proposed rule in today's **Federal Register** would extend coverage to all holders of commercial driver's licenses, including employees of intrastate motor carriers and school bus drivers.)

The USCG rule regarding random testing of merchant seamen was enjoined by court order in December 1989. Other types of testing were phased-in commencing in June 1989. In July 1991, the USCG issued a revised rule addressing the court's concerns and justifying the categories of employees subject to random testing. In October of 1991, the maritime industry began testing at a 25 percent random rate with a requirement to increase to a 50 percent rate one year after implementation. There was no distinction between large and small maritime employers for this implementation of random testing.

Only the Federal Aviation Administration and the Federal Railroad Administration require their regulated employers to report testing statistics to them. The Federal Highway Administration, the U.S. Coast Guard and the Research and Special Programs Administration review records maintained by covered employers, but do not have composite data for all positive test results in their industries. Separate NPRMs published in today's **Federal Register** would require that the employers (or industries) regulated by all six operating administrations submit uniform data concerning drug testing on an annual basis to those administrations. (Data from the motor carrier industry would be gathered on a survey basis.)

Purpose of Random Testing

The primary purpose of the Department's anti-drug rules is to ensure safety by deterring drug use, with detection an important collateral benefit. The integrity of the random selection process, the timing of the collection, the use of correct collection procedures, and the credibility of the MRO (medical review officer) verification actions must be considered when assessing the effectiveness of any random testing program in deterring drug use and detecting drug users. When drug users go undetected because of errors in the selection, collection, or review processes, the deterrent value for that employee and others is strongly diminished.

Random testing to achieve deterrence is a form of drug use prevention. Prevention generally is carried out using one or more of four strategies: Education, persuasion, motivation, or facilitation. Many companies have an existing drug education program. Employer policies, supervisor training, and peer-identification programs are

examples of a persuasion strategy. Drug testing is usually considered a tool for a motivational strategy in drug use prevention. Comprehensive Employee Assistance Programs are a major component of a facilitation model. In our view, workplace drug use prevention programs should consist of a mix of the four prevention strategies. These strategies must maintain or increase the visibility of the program and, therefore, the employees' awareness of it. Different employers and different industries may find different mixes of education, persuasion, motivation, and facilitation more effective and efficient in deterring drug use.

As the Department noted during the drug testing rulemakings and as FRA found when it added random testing to an existing testing program, random testing does deter use. FRA and the military services noted reductions in the positive rates for other types of drug testing after starting random testing. The Department seeks comment and data on the minimum effective random testing rate.

[1] Does increasing or decreasing the testing rate affect an individual's perception of the chances of being "caught" and increase or decrease deterrence? Why?

[2] Is there a mathematical relationship between the testing rate and deterrence, e.g., does doubling the rate double the deterrence?

[3] How does the increase or decrease in the rate affect the costs of testing, considering constant costs that exist regardless of the testing rate?

[4] To the extent the rate of positive tests is not expected to increase with a random testing rate reduction, please explain why.

[5] What is the lowest testing rate at which the rate of positive tests will not increase over the current positive test rate and how is it determined?

Random testing also helps to identify and remove drug users from safety-sensitive positions. Sanctions against detected drug users serve as effective deterrents for others. With any given prevalence of drug use, the higher the random testing rate, the higher the number of drug users who will be detected. At present, DOT's regulations call for each covered employee to be subject to random testing at the same rate as all other covered employees of that employer. Testing must be based on random selection, and employers are not permitted to target individuals or employee groups for selection for ostensibly "random" testing.

To the extent that detection is an important goal, lowering the random testing rate reduces the percentage of the workers tested over a given period and, therefore, reduces the number of drug users that would be identified. For example, if one assumes four testing periods per year and testing takes place over three years, then the following fractions of a workforce would be tested at least once during the three years at the following different annual testing rates.

Annual testing rate (percent)	Percent of workforce tested in 3 years
100	96.8
75	91.7
50	79.9
25	53.9
10	26.2

Available Data

The Department would appreciate public comment in identifying data concerning the effectiveness of random testing rates. The following summarizes the data currently available to the Department concerning the results of random testing in the regulated industries, the Department's civilian workforce, and the U.S. Coast Guard uniformed service.

AVIATION

	1990	1991
Total number of random tests	84,481	169,240
Number of positives	448	1,232
Percent positive	0.53	0.73

Data on 1991 reflects the inclusion of contractors and some testing at a 50 percent rate.

RAILROADS

	1990	1991
Total number of random tests	35,228	50,436
Number of positives	365	447
Percent positive	1.04	0.88

FRA's random testing regulations were issued in November 1988, with the first testing, as noted earlier, starting in January 1990. FRA has kept records of post-accident drug testing for the last five years. For purposes of analyzing any effect from the issuance of the requirement or the implementation of the testing, the positive rates for post-accident testing are provided; they are as follows:

Percent				
1987	1988	1989	1990	1991
5.1	5.6	3.0	3.0	1.1

For similar purposes, the positive rates for reasonable cause testing are provided; they are as follows:

Percent				
1987	1988	1989	1990	1991
5.4	4.7	3.6	1.8	1.9

FRA is currently conducting an experimental study of eight railroads, comparing testing results at the 25 percent and 50 percent random testing rates. The study began in July 1991 and is expected to be completed in July 1993. Data from the first year of the study are now being analyzed and will be released to the public shortly. Initial indications are that the FRA data do not show an increase in positive rates for the railroads conducting random testing at the 25 percent rate. However, all of these railroads had implemented testing at a 50 percent rate for some period and then lowered it for the experimental program.

Motor Carriers

In audits of 8,384 motor carrier drug testing programs by FHWA in FY 1992, records indicated that 13,612 random tests were conducted. There were 289 verified positive results (2.12 percent). The audits represent less than 5 percent of motor carriers subject to the FHWA rule. The FHWA selects motor carriers for these general compliance investigations by determining factors such as a safety rating or prior compliance problem. These compliance investigations do not offer scientific, statistically unbiased sampling methods.

U.S. DOT Employees

In the Department's Federal employee testing program, the random testing rate of at least 50 percent was phased-in over the first year of the program and achieved at the end of FY 1988. A testing rate of at least 50 percent was maintained in FY 1989–1991. In FY 1992, the figures reflect testing over the first five months with a rate of at least 50 percent, followed by seven months of testing with a rate of at least 25 percent. (As noted earlier, DOT decided to lower its testing rate in 1992.) The following table summarizes DOT Federal employee random testing data.

	FY88	FY89	FY90	FY91	FY92
Total number of random tests	5,047	17,926	19,103	18,671	12,454
Number of positives	42	92	43	40	39
Percent positive	0.83	0.51	0.23	0.21	0.31

As noted earlier, the USCG has been conducting random drug tests on its active duty and reserve uniformed personnel. Rather than setting a specific testing rate as a requirement at the beginning of the fiscal year, the USCG conducts the maximum number of tests possible from the funds that are appropriated. The percentage of positive results for random tests in each fiscal year and the approximate testing rate was as follows:

Percent	1987	1988	1989	1990	1991	1992
Percent positive	1.57	1.31	0.66	0.41	0.41	0.78
Testing rate	120	95	95	95	85	85

Testing Rates in Various Federal Agencies

Executive Order 12564, "Drug-Free Federal Workplace", signed by President Reagan in September 1986, required random drug testing of safety- and security-related Federal employees in 135 Federal executive branch agencies. According to a 1991 report of the General Accounting Office ("Employee Drug Testing: Status of Federal Agencies' Programs: Report to the Chairman, Committee on Governmental Affairs," U.S. Senate, (May 1991), GAO/FFD–91–70, 14–19,) there is a wide variation in the random drug testing rates at the 18 agencies that GAO reviewed.

Alternatives

There are a number of alternatives to the current 50 percent random testing rate that DOT could consider. They include:

(1) Making an across-the-board modification of the rate for all DOT anti-drug programs;

(2) Modifying how the random testing rate is implemented (e.g., frequency of testing, etc.)

(3) Making a selective modification of the rate by

(a) Operating administration (e.g., FAA or FRA could modify its rate);

(b) Job category (e.g., pilots, train engineers);

(c) Any other category that warranted a different rate based on drug use prevalence or other factors (e.g., age or geographic region);

(4) Establishing a performance standard program (as discussed later);

(5) Permitting employers who take specified additional steps to deter drug use to reduce their random testing rate;

(6) Modifying the random testing rate for all operating administration rules for a specific time period, subject to reconsideration after the results are analyzed;

(7) Conducting demonstration programs in each operating administration before further action is taken; or

(8) Combining some of the alternatives.

[6] DOT requests comment on these alternatives and information on any other possible alternatives.

Modifying the random testing rate across-the-board in each operating administration would result in the simplest rule and program changes and would be the easiest to enforce. Lowering the rate could reduce costs significantly with an undetermined impact on deterrence, but it would unavoidably result in less detection of drug users. Some argue that what data DOT has show very low positive rates and, therefore, the random testing rate can be reduced.

[7] Is the rate of positive test results low because the 50 percent testing rate is the minimum effective deterrent?

[8] Does a low rate of positives alone warrant a change? Does this make the rate "acceptable" for safety purposes?

[9] Is detecting fewer users acceptable even though the positive rate is the same?

Changes in how random testing is implemented in the workplace may be another approach to maintaining deterrence at a lower testing rate. For example, increasing the number of times random testing is conducted during the year may serve to increase awareness and visibility of the testing program, thus maintaining effective deterrence even though the actual number of employees tested is decreased. Procedures that ensure each person randomly selected is actually tested (*e.g.*, if a selected employee is not available, the name would be kept confidential until the employee is available for testing), as opposed to random testing procedures that allow selected individuals to "be excused" because of temporary unavailability, may also serve to maintain effective deterrence by making it more difficult for drug users to avoid detection. A policy that requires a re-collection of a specimen from a selected individual when a random test has been cancelled or the results invalidated would help deter individuals from adulterating their specimens or otherwise obstructing the testing process.

Authorizing variable random rates among operating administrations or within a workplace is another option to consider in improving deterrence and detection while reducing the overall random rate. Employers could test certain categories of employees at higher rates based on prevalence or incidence differences in the population. For example, if prevalence of drug use is greater among mechanics than among flight attendants, the employer could test mechanics at a 50 percent rate and flight attendants at a 20 percent rate. Variable rates enable deterrence and detection efforts to be targeted where drug use is most likely. A variable rate strategy, however, should be based on prevalence and incidence data, not individualized suspicion or personal characteristics. Such an approach would require employers to maintain several random pools and systematically determine drug use prevalence and incidence data, something especially difficult for small firms. This approach may present compliance and enforcement difficulties.

Another of the options DOT is exploring is use of a "performance standard" for establishing random testing rates for a specified group such as an industry, a job category, or an individual employer. The group's overall rate of testing would be determined by the success of the group in deterring drug use as measured by its rate of positive random tests. For example, if a group's positive rate is less than one percent over a given period of time, the group could be permitted to

reduce the random testing rate (*e.g.*, to 25 percent or 10 percent.) If the positive rate increased under a reduced random testing rate, the group would be required to return to a higher random testing rate. The advantage of this approach is that it could lower costs to large segments of the transportation industry, if groups could maintain low positive rates. It would also provide an incentive to achieve low positive rates, the ultimate objective of DOT's program, and would reward those groups with effective programs. Such an approach would also encourage such groups to use whatever additional steps other than testing that are appropriate in their situation, perhaps resulting in more effective programs. For example, some groups may find increased education helpful in increasing the effectiveness of their anti-drug programs.

There are many potential obstacles to implementing such an approach. It would require collection of additional testing data from each group that might offset savings in testing costs. Although this may not be a difficulty for some operating administrations, it may be more problematic in others. In the motor carrier industry, for example, even if the reports could be submitted, it is not clear that FHWA could effectively review and respond to reports from hundreds of thousands of motor carriers on millions of employees. From the Department's point of view, a performance standard program would be harder to administer because the operating administrations would have to monitor both positive rates and random testing rates for every affected group to ensure proper compliance. In addition, it may be difficult to effectively apply a low random testing rate in small companies. (For example, if a company with one or two employees had to test at only 10 percent, employees might not be deterred if they knew the next test might not be for five or six years—and DOT would not get any reports to determine whether the rate of positive test results was being kept low.) Finally, there would be less detection of drug users at a lower rate. The Department is also concerned with whether this type of performance standard would be an incentive to cheating. Employers might be tempted to falsify test results that were positive in order to maintain a reduced random testing rate.

As another approach, the Department could consider reducing the random testing rate but requiring additional steps such as increased education. Or, it could offer a lower rate to those employers that took extra steps to increase deterrence.

Another approach would be to conduct a demonstration program in each operating administration. FRA is currently in the middle of such a program. These studies could include pilot projects that explore positive rates in relationship to different random testing rates. Demonstration programs that include other deterrent or prevention initiatives in addition to random testing could explore the relationship among education, training and awareness strategies and the random testing rate. Pilot studies have the advantage of examining specific variables in relationship to deterrence and detection outcomes in a controlled study environment.

As discussed earlier, there are many alternative methods in addition to testing to deter illegal drug use, including education.

[10] Which methods do commenters believe to be the most effective? What is the basis for your belief?

[11] Should the Department mandate use of one or more of these methods in addition to current requirements in the anti-drug rules, or should it leave it up to the discretion of employers as a supplement to a testing program? Why?

In an attempt to explore the relevant research, random testing implementation strategies, and drug deterrence methodologies, to help it in this rulemaking, the Department will convene a conference on workplace random testing and drug deterrence. The conference will be open to the public. Details on the conference agenda, date and location will be offered in a subsequent announcement. Information gathered from the conference will be considered along with comments received on this ANPRM in determining the next appropriate action.

Additional Questions

The Department would appreciate commenters responding to the following additional questions and providing whatever data or studies might support their position.

[12] Should other factors apply to any decision to adjust the random testing rate besides deterrence, detection, and costs? What are they and why are they relevant?

[13] What data would justify a change? Are low positive rates alone sufficient? How do we determine if positive rates are low because the 50 percent testing rate is acting as a deterrent?

[14] What is the effect of the quality of the selection and collection process on the positive rates that are currently being produced? As the selection and collection processes improve with experience or enforcement, will the positive rates be higher? How should any potential for increased detection with improved collection affect any decision concerning the random testing rate?

[15] Can performance-based programs be developed, operated, and audited within the currently operating consortia programs? If so, how? Does participation in a consortium exacerbate the problems associated with implementation and enforcement of a performance standard for random rates?

[16] If analysis of positive rates is necessary before a decision can be made to reduce the random testing rate, for how long a period must DOT have data? What should DOT do about those industries for which it currently has little or no data? Should operating administrations that have reliable, accurate data consider taking action now? Elsewhere in today's **Federal Register** we are proposing extensive data collection for all six operating administrations. This data would not, however, be available for some time.

[17] What if positive rates were to increase after DOT lowered the random testing rate? Is some increase in the rate of positive tests acceptable? How much and why? Are there other reasons the rate could rise beside the lower random test rate?

[18] What cost reductions could be expected if the random testing rate is reduced to 25 percent? 10 percent? What is the basis for these estimates? Even if some increase in positive rates is expected with a lower random testing rate, is a reduction in the random testing rate nevertheless justified based on reduced costs? Please explain.

[19] Are there offsetting cost increases that could occur at a reduced random testing rate (*e.g.*, consortium cost per test, more accidents)?

[20] If a change is made, should it apply equally to all of the DOT operating administrations' programs, or only as justified by operating administration specific data? If particular industries, segments of industries or particular employers achieve very low positive rates, should they be allowed to have different testing rates? Could this be effectively implemented? Should random testing rates be linked to drug use in particular groups based on prevalence or incidence data available for such groups (*i.e.*, age groups, occupational categories, specific types of worksites?)

[21] What additional means of increasing deterrence are available to the government and industry to supplement random drug testing? How

would these strategies work? What would they cost? What is the evidence they work?

[22] How might DOT restructure its requirements for drug use prevention programs to maximize the efficiency and effectiveness of prevention within the transportation industry?

[23] Could a "performance standard" work? Would there be too much incentive for some groups to cheat? How could DOT effectively implement or enforce such a standard, especially for motor carriers? Is the data collection that would be required more trouble and expense than conducting a higher rate of random tests? Would the trouble and expense vary by operating administration? Please comment on the difficulties in administering such a program and the increase in enforcement oversight that would be required. How could it effectively be implemented for small companies? Would it work if implemented industry-by-industry or among segments of a given industry? Could it be effectively implemented and enforced employer-by-employer?

[24] Any reduction in the random testing rate will result in less detection. The lower the rate, the less the detection. Are there alternative approaches apart from random testing that could offset potential reductions in detection? What is their projected efficiency and effectiveness, compared with current programs? What would they cost? What is the basis of the numbers? Are there safety implications?

[25] Are there any additional data or studies concerning rates of drug testing and deterrence that may be relevant to the Department's consideration?

[26] Should each operating administration conduct a demonstration program to gather data on the relative effectiveness of different rates specific to its regulated industry? What outcome measures would be appropriate in such pilot programs?

[27] Should one or more operating administrations reduce the random testing rate for a specific time period and then analyze the results? What period of time is adequate for determining the impact on deterrence?

Regulatory Analyses and Notice

DOT Regulatory Policies and Procedures

The ANPRM is considered to be a significant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034, because of the substantial public and Congressional interest in this subject. It is difficult to estimate potential costs or benefits at this time because the Department is not proposing specific options.

Executive Order 12612

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that any potential modification in the random drug testing program does not pose the risk of a taking of constitutionally protected private property.

Regulatory Flexibility Act

Depending on what, if any, action is ultimately proposed and adopted, a potential modification in the random drug testing program could have a significant economic impact on a substantial number of small entities. The Department specifically seeks public comment on the effect, if any, of potential changes in the program on small entities as well as any suggested alternative approaches. Further review will be conducted based on comments received on this notice and when, and if, a notice of proposed rulemaking is issued.

Paperwork Reduction Act

There are a number of reporting or recordkeeping requirements associated with DOT-mandated drug testing. Because the purpose of this notice is to solicit information, no specific changes are being proposed at this time. The Department notes that effective implementation of possible alternatives and the gathering of data necessary to justify any changes, compare alternatives, or permit the implementation of some approaches may require recordkeeping and reporting by the affected industries. We are proposing substantial data collection concerning drug testing elsewhere in today's **Federal Register**.

National Environmental Policy Act

The Department has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment and that an environmental impact statement is not required.

Authority: FAA—49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, 1502; 49 U.S.C. 106(g) revised, Pub. L. 97–449, January 12, 1983.

FHWA—49 U.S.C. 504 and 3102; 49 CFR 1.48.

FRA—45 U.S.C. 431, 437, 438, as amended; Pub. L. 100–342, Pub. L. 102–143; and 49 CFR 1.49(m).

FTA—49 CFR 1.51, Pub. L. 102–143.

RSPA—49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, 2040; 49 CFR 1.53.

USCG—46 U.S.C. 2103, 3306, 7101, 7301, 7701; 49 CFR 1.46.

Multi-modal ANPRM on Random Drug Testing Program.

Issued on December 2, 1992, in Washington, DC.

Andrew H. Card, Jr.,
Secretary.

Thomas C. Richards,
Administrator, Federal Aviation Administration.

Thomas D. Larson,
Administrator, Federal Highway Administration.

Gilbert E. Carmichael,
Administrator, Federal Railroad Administration.

Brian W. Clymer,
Administrator, Federal Transit Administration.

Douglas B. Ham,
Acting Administrator, Research and Special Programs Administration.

Admiral J. William Kime,
Commandant, United States Coast Guard.

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Part X

Department of Housing and Urban Development

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, et al.
HUD Acquisition Regulation (HUDAR); Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, 2402, 2403, 2405, 2406, 2409, 2413, 2414, 2415, 2416, 2419, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2446, 2452

[Docket No. R–92–1600; FR–2473–F–02]

RIN 2535–AA16

HUD Acquisition Regulation (HUDAR)

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published for comment on June 8, 1992 (57 FR 24334) amending the HUD Acquisition Regulation (HUDAR). The final rule also contains amendments not proposed on June 8, 1992 regarding the procurement activities of the Government National Mortgage Association (GNMA).

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294. TDD (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2535–0091.

Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. The HUD Acquisition Regulation (HUDAR), which implements the FAR, is codified in title 48, chapter 24 of the Code of Federal Regulations.

On June 8, 1992 (57 FR 24334), HUD proposed amendments to the HUDAR to update existing coverage and to include additional necessary procedures to reflect recent changes to the Federal Acquisition Regulation (FAR). No comments were received during the public comment period, which ended August 7, 1992. This rule makes final the amendments, as revised, proposed on June 8.

Amendments Not Contained in Proposed Rule

The final rule also contains amendments to the HUDAR necessary to implement a policy by the Department that all procurement activities by the Government National Mortgage Association (GNMA), with the exception discussed later in this preamble, must be awarded in conformance with the FAR, the HUDAR, and the Federal Information Resources Management Regulations (FIRMR).

The HUDAR currently provides that the procurement authority of the President of GNMA, with respect to requirements related to GNMA's programmatic functions, is exempt from the HUDAR. The Department has determined that all GNMA acquisitions must be conducted in accordance with the FAR, the HUDAR, and the FIRMR, with the exception of (1) transactions with issuers of mortgage-backed securities, including subissuers (or subservicers) acting in place of defaulted or otherwise terminated issuers, in furtherance of GNMA's guaranty of those securities under section 306(g) of the National Housing Act, and (2) transactions involving the sale or guaranty of financial instruments. Changes to §§ 2401.601–70, 2401.601–72, and 2402.101 are being made to implement this policy.

In addition to the amendments with respect to GNMA, technical corrections are being made in the final rule to §§ 2401.601–71, 2401.603–2, 2402.101, 2403.670, 2406.304–71(c), 2415.604(b), 2415.608(a), 2415.612–70, and 2452.203–71. These corrections are necessary to correspond to the changes contained in the June 8, 1992 proposed rule.

The Department's regulations on rulemaking at 24 CFR part 10 provide that a rule will be published for public comment before issuing the rule for effect. However, part 10 provides for exceptions from that general rule when the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public participation is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish the amendments for effect without first soliciting public comment because the prior public participation is unnecessary. The amendments are for the purpose of implementing changes in the internal organization of the Department with regard to GNMA's procurement authority, and technical changes necessary to conform certain sections to the amendments proposed on June 8, 1992.

Other Matters

Paperwork Reduction Act

The information collection requirements contained in this rule were approved under the Paperwork Reduction Act of 1980 by OMB, and were assigned control number 2535–0091.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) (NEPA) is unnecessary, since the activities described in this rule are categorically excluded from the Department's NEPA procedures under 24 CFR 50.20(k).

Executive Order 12291, Federal Regulation

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291, Federal Regulation, issued by the President on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because the changes relate to the internal organization of HUD and conform the HUDAR to the FAR.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of

power and responsibilities among the various levels of government. The rule updates the HUD Acquisition Regulation (HUDAR) to reflect recent changes to the Federal Acquisition Regulation (FAR) and makes technical corrections to the agency's regulation. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves Departmental procurement procedures.

Semiannual Agenda of Regulations

This rule was listed as Item No. 1488 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392, 51432) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2401, 2402, 2403, 2405, 2406, 2409, 2413, 2414, 2415, 2416, 2419, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2446, 2452

Government procurement, HUD acquisition regulations.

Accordingly, title 48, chapter 24 of the Code of Federal Regulations, is amended as follows:

SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR part 2401 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2401.601–70 [Amended]

2. Section 2401.601–70 is revised to read as follows:

2401.601–70 Senior Procurement Executive.

The Assistant Secretary for Administration is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures, except for internal procedures related to procurement transactions conducted by the Government National Mortgage Association. The Senior Procurement Executive is also responsible for the development of HUD's procurement system standards, evaluation of the system in accordance with approved criteria, enhancement of career management of the procurement work force, and certification to the Secretary that the Department's procurement system meets approved criteria.

2401.601–71 [Amended]

3. Section 2401.601–71 is revised to read as follows:

2401.601–71 Office of Procurement and Contracts.

Except as provided otherwise is this chapter, the Office of Procurement and Contracts, in the Office of the Assistant Secretary for Administration, is responsible for all Departmental procurement.

2401.601–72 [Removed]

4. Section 2401.601–72 is removed.

2401.601–73 [Redesignated as 2401.601–72 and amended]

5. Section 2401.601–73 is redesignated as 2401.601–72 and revised to read as follows:

2401.601–72 Government National Mortgage Association.

(a) The President, GNMA, may exercise authority under section 306(g) of the National Housing Act and 24 CFR part 390 to enter into agreements with the issuers of mortgage-backed securities. The FAR and the HUDAR do not apply to these transactions, including the assignation of servicing requirements to a substitute servicer or issuer in the event of a default by, or other termination of, an issuer.

(b) Sales or guarantees of securities by GNMA are outside the scope of this part.

(c) All contracts that are not within the scope of paragraphs (a) and (b) of this section, and that are for the acquisition of supplies and services, shall be awarded in conformance with the FAR and HUDAR and, as appropriate, the FIRMR.

2401.601–74 [Redesignation as 2401.601–73 and amended]

6. Section 2401.601–74 is redesignated as 2401.601–73 and revised to read as follows:

2401.601–73 Regional Offices.

(a) Procurement of supplies and services for HUD Regional requirements is accomplished at each Regional Office by the Regional Contracting Division, which may redelegate contracting authority to qualified employees in Regional and Field Offices.

(b)(1) The Regional Administrator shall redelegate to Field Office Directors of Housing Management the following procurement authority related to the management or disposition of properties owned or held by HUD as mortgagee-in-possession under the National Housing Act (12 U.S.C. 1701–1749):

(i) Emergency procurement authority (pursuant to FAR 6.302–2); and

(ii) In those Field Offices without full-time contracting personnel, small purchase authority (pursuant to FAR part 13).

(2) The Regional Administrator may also redelegate small purchase authority to Office of Housing employees designated by the Field Office Director of Housing Management in those Field Offices without full-time contracting personnel.

(c) Any redelegation of procurement authority in paragraphs (a) and (b) of this section shall be accomplished on a Standard Form 1402, Certificate of Appointment, which may be revoked upon a showing that the individual has consistently failed to adhere to sound procurement practices. Any revocation of authority in (b) above shall only occur after consultation with the Assistant Secretary for Housing-Federal Housing Commissioner.

2401.603–2 [Amended]

7. Section 2401.603–2, paragraph (c) is revised to read as follows:

2401.603–2 Selection.

* * * * *

(c) Training courses as prescribed by the Senior Procurement Executive.

* * * * *

2401.603–3 [Amended]

8. Section 2401.603–3, paragraph (b) is amended by removing the words "Field Office Managers or Supervisors" and adding, in their place, the words "Appointing officials."

PART 2402—DEFINITIONS OF WORDS AND TERMS

9. The authority citation for 48 CFR part 2402 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2402.101 [Amended]

10. In section 2402.101, under the definition "Head of Contracting Activity," paragraph (2) is revised, paragraphs (3), (4), and (5) are removed, paragraph (6) is redesignated as paragraph (3) and revised, and a new definition is added in alphabetical order, to read as follows:

2402.101 Definitions.

* * * * *

Head of Contracting Activity is defined in accordance with the FAR.

The following HUD officials are designated HCAs:

* * * * *

(2) The Regional Directors, Offices of Administration, for Regional Office procurements, which authority may be redelegated to the Director, Regional Contracting Division;

(3) The President, Government National Mortgage Association (GNMA), for procurement transactions that are conducted by GNMA in accordance with 2401.601–72(c).

* * * * *

Source Selection Official (SSO)—means the head of the funding office, or designee.

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

11. The authority citation for 48 CFR part 2403 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart 2403.3—[Amended]

12. The heading for subpart 2403.3 is amended by removing the words "Identical Bids and".

13. A new section 2403.670 is added to subpart 2403.6, to read as follows:

2403.670 Solicitation Provision and Contract Clause.[1]

Insert the clause at 2452.203–70 in all solicitations and contracts, and the provision at 2452.203–71 in all solicitations.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2405—PUBLICIZING CONTRACT ACTIONS

14. The authority citation for 48 CFR part 2405 is revised to read as follows:

Authority: 42 U.S.C. 253; 40 U.S.C. 486(c); 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

15. Subpart 2405.3, consisting of section 2405.301, is added, to read as follows:

Subpart 2405.3—Synopses of Contract Awards

2405.301 General

(b) All contract awards exceeding the small purchase limitation shall be synopsized in the Commerce Business Daily, without exception.

[1] This HUDAR provision/clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

PART 2406—COMPETITION REQUIREMENTS

16. The authority citation for 48 CFR part 2406 is revised to read as follows:

Authority: 42 U.S.C. 253; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2406.304–70 [Removed]

17. Section 2406.304–70 is removed.

2406.304–71 [Redesignated as 2406.304–70]

18. Section 2406.304–71 is redesignated as 2406.304–70.

19. Section 2406.304–72 is redesignated as 2406.304–71, and paragraph (c) is revised to read as follows:

2406.304–71 Approval of the justification—Procurement Review Board.

* * * *

(c) Regional Administrators-Regional Housing Commissioners may provide for the operation of Regional Procurement Review Boards.

PART 2409—CONTRACTOR QUALIFICATIONS

20. The authority citation for 48 CFR part 2409 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2409.501 [Removed]

21. Section 2409.501 is removed.

2409.502 [Amended]

22. Section 2409.502 is amended by removing the words "consulting services" and adding, in their place, the words "advisory and assistance services".

23. A new section 2409.503 is added, to read as follows:

2409.503 Waiver.

The Senior Procurement Executive is authorized to waive any general rule or procedure in FAR Subpart 9.5 by determining that its application to a particular situation would not be in the Government's interest.

2409.504 [Amended]

24. Section 2409.504 is amended by revising the introductory text to read as follows:

2409.504 Contracting officer responsibilities.

The following actions are required for all contract actions covered by 2409.502:

* * * * *

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

25. The authority citation for 48 CFR part 2413 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

26. In section 2413.505–2, paragraph (b) is revised to read as follows:

2413.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

* * * * *

(b) For small purchase under the Acquired Property Program, Contracting Officers may use HUD Form 2542, Purchase Order and Payment Authorization. This form may also be used for the following:

(1) Construction work under the small purchase limitation; however, if over $2,000, the Davis-Bacon Act and related requirements/clauses are applicable; or

(2) Services, including indefinite delivery purchase orders; however, if over $2,500, the Service Contract Act and related requirements/clauses are applicable.

PART 2414—SEALED BIDDING

27. The authority citation for 48 CFR part 2414 is revised to read as follows:

Authority: 41 U.S.C. 253; 42 U.S.C. 486(c); 42 U.S.C. 3535(d).

28. Section 2414.406–3 is revised to read as follows:

2414.406–3 Other mistakes disclosed before award.

(e) The determination to allow a bidder to: Correct a mistake in bid discovered before award (other than obvious clerical errors); withdraw a bid; or, neither correct nor withdraw a bid shall be submitted to the Head of the Contracting Activity for approval.

PART 2415—CONTRACTING BY NEGOTIATION

29. The authority citation for 48 CFR part 2415 is revised to read as follows:

Authority: 41 U.S.C. 253; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

30. In section 2415.407, paragraph (a) is revised to read as follows:

2415.407 Solicitation provisions.

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 2452.215–70, Proposal Content and Outline, in all negotiated solicitations above the small purchase limitation. Include Section 6 in paragraph (b) of the provision if the

solicitation requires work on or access to sensitive automated systems and HUDAR clause 2452.237–76 is included.

* * * * *

31. Section 2415.604 is revised to read as follows:

2415.604 Responsibilities.

(b) For procurements of $500,000 or more, the technical requirements related to source selection shall be performed by a Source Evaluation Board (SEB), as described in 2415.612. For procurements under $500,000, the technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEB); except that an SEB may be used for procurements under $500,000 at the request of the head of the funding office.

32. In section 2415.608, paragraph (a) is revised to read as follows:

2415.608 Proposal evaluation.

(a)(2) *Technical evaluation.* The technical evaluation shall assign each proposal a score on the basis of the factors specified in the solicitation. The technical evaluation shall identify each proposal as being either acceptable or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed.

(3) A technical evaluation report shall be prepared and signed by the technical evaluator or evaluators, furnished to the Contracting Officer, and maintained as a permanent record in the official procurement file. In addition to the documentation listed in FAR 15.608(a)(2) (i)–(iv), the report shall include:

(i) The score of each proposal;

(ii) A narrative evaluation specifying the strengths and weaknesses of each proposal;

(iii) Any reservations or qualifications that may bear upon the selection of a source or sources for negotiation and/or award;

(iv) Specific technical reasons supporting a determination of unacceptability with respect to any proposal; and

(v) Score sheets of all evaluators.

* * * * *

2415.611 [Removed]

33. Section 2415.611 is removed.

2415.611–70 [Removed]

34. Section 2415.611–70 is removed.

35. Section 2415.613 is redesignated as section 2415.612 and revised to read as follows:

2415.612 Formal source selection.

(b) *Responsibilities.* (1) Selection of the source(s) for award shall be made by the Source Selection Official (SSO), who is the head of the funding office, or by his or her designee.

(2) To assist the SSO in evaluating proposals and making the selection, the SSO shall designate a Source Evaluation Board (SEB) composed of a chairperson, voting members, and advisors.

36. Section 2415.613–70 is redesignated as 2415.612–70 and revised to read as follows:

2415.612–10 Procedures.[2]

(a) *Evaluation.* (1) After the date for receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the SEB Chairperson or his or her designee, who shall be responsible for custody of the proposals throughout the evaluation process. The cost portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the SEB.

(2) The SEB shall conduct a technical evaluation of each proposal in accordance with the requirements in 2415.608(a)(2).

(3) After the initial technical evaluation, the Contracting Officer and the SEB shall evaluate the cost portion of each proposal.

(b) *Competitive range.* Unless the SEB is prepared to recommend, in accordance with FAR 15.610(a)(3), that the award be made on the basis of the most favorable initial proposal, the Contracting Officer shall, with the advice of the SEB, establish a competitive range based on evaluation of all the factors for award, including cost or price.

(c) *Written or oral discussions.* The Contracting Officer, with the assistance of the SEB, shall conduct written or oral discussions with all offerors within the competitive range, as required by FAR 15.610.

(d) *Source selection decision.* The SEB shall document its selection recommendation or recommendations in a final report addressed to the SSO. The report shall contain the documentation specified in 2415.608(a)(3).

2415.613–71 [Removed]

37. Section 2415.613–17 is removed.

38. A new section 2415.613 is added to read as follows:

2415.613 Alternative source selection procedures.

(a) The Department of Housing and Urban Development uses procedures authorized by FAR 15.613 for all research and development contracts and other contracts where the contractor's proposed methodology of carrying out the work is a significant selection factor.

(b) These procedures allow for limited oral or written discussions to avoid technical leveling, a request for best and final offers, and selection of source(s) for negotiation of a final contract.

39. A new section 2415.613–70 is added to read as follows:

2415.613–70 Technical evaluation.

Depending on the anticipated dollar value of the procurement (see 2415.604 and 2415.612(a)), either a TEP or SEB shall perform the required technical evaluation of proposals received in accordance with 2415.608 and 2415.612, respectively.

40. A new section 2415.613–71 is added to read as follows:

2415.613–71 Limited written or oral discussions.

Limited written or oral discussions shall be conducted with each offeror considered to be within the competitive range. These discussions should address technical weaknesses of the particular offer, as well as cost issues, to the fullest extent practicable while avoiding technical leveling.

41. A new section 2415.613–72 is added to read as follows:

2415.613–72 Selection and final negotiation.

(a) *Selection.* After the close of discussions and receipt of best and final offers, the TEP or SEB shall perform a final evaluation and prepare its selection recommendation for the contracting officer or SSO, respectively. Based on this evaluation, the contracting officer or SSO shall select for final contract negotiation the offeror(s) whose proposal is most advantageous to the Government in terms of price/cost, technical and other relevant factors included in the solicitation.

(b) *Final negotiation.* This includes reaching agreement with the selected source on any remaining cost/price, technical, socioeconomic, or other issues that will condition performance of the contract and setting forth those terms and conditions in a mutually acceptable contract document. No factor or condition that could have had any effect on the selection process may be

[2] This HUDAR provision/clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

changed at this point. These negotiations are led by the contracting officer and may include any technical, audit, or support personnel he/she deems necessary.

PART 2416—TYPES OF CONTRACTS

42. The authority citation for 48 CFR part 2416 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

43. Section 2416.504 is revised to read as follows:

2416.504 Indefinite-quantity contracts.

(e) The contracting officer shall insert the clause at 2452.216–75, Unpriced Task Orders, in contracts for which task orders are individually negotiated and there may be a need to issue unpriced task orders; provided, however, that the contracting officer shall ensure that the cost of the work authorized by the task order is not in excess of the funds obligated under the contract.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

44. The authority citation for 48 CFR part 2419 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

45. Subpart 2419.7, consisting of section 2419.708, is added to read as follows:

Subpart 2419.7—Subcontracting with Small Businesses and Small Disadvantaged Business Concerns

2419.708 Solicitation Provisions and Contract Clauses.[3]

(d) The Contracting Officer shall insert the provision at 2452.219–70 in negotiated solicitations exceeding $500,000 that are not set aside for small business or 8(a) concerns.

(e) The Contracting Officer shall insert the provision at 2452.219–70 with Alternate I in sealed bid solicitations exceeding $500,000 that are not set aside for small business or 8(a) concerns.

46. A new part 2425, consisting of section 2425.402, is added to read as follows:

[3] The coverage provided in paragraphs (d) and (e) have been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

PART 2425—TRADE AGREEMENTS ACT

Authority: 42 U.S.C. 3535(d).

2425.402 Policy.

It is the Department's policy to determine whether the Trade Agreements Act applies based on the total estimated dollar value of the proposed acquisition before the solicitation is issued, including all line items and options.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

47. That authority citation for 48 CFR part 2426 is added to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2426.201 [Amended]

48. Section 2426.201 is amended by removing the term "OSDBU", wherever it appears, and inserting in its place the words "Deputy Assistant Secretary for Intergovernmental Relations, in coordination with OSDBU".

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2428—BONDS AND INSURANCE

49. The authority citation for 48 CFR part 2428 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2428.203 and 2428.203–70 [Redesignated as 2428.204 and 2428.204–70]

50. Sections 2428.203 and 2428.203–70 are redesignated as sections 2428.204 and 2428.204–70, respectively.

PART 2432—CONTRACT FINANCING

51. The authority citation for 48 CFR part 2432 is revised to read as follows:

Authority: 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

52. Section 2432.402 is revised to read as follows:

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts for Headquarters contracts, or the Director of Administration, for Regional/Field contracts.

(2) Each advance payment situation shall be coordinated with the Office of Finance and Accounting, for Headquarters, or the Regional Accounting Division, for Regional/Field contracts, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

53. A new section 2432.906 is added to subpart 2432.9, to read as follows:

2432.906 Contract financing payments.

Periods for payment shorter than 30 days shall not be specified in contracts without the prior approval of the Office of Finance and Accounting, for Headquarters contracts, and shall be coordinated with the Regional Accounting Division, for Regional/Field Office contracts, to ensure that procedures are in place to allow timely payment.

PART 2433—PROTESTS, DISPUTES, AND APPEALS

54. The authority citation for 48 CFR part 2433 is revised to read as follows:

Authority: 31 U.S.C. 3551–3556; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

55. Section 2433.103 is revised to read as follows:

2433.103 Protests to the agency.

(a)(2) When the Contracting Officer makes a determination to award a contract notwithstanding a protest, as authorized by FAR 33.103(a)(2), that determination shall be approved by the HCA before award, after consultation with the Office of General Counsel.

(a)(4) Protests received after award that are filed only with the Department shall be decided promptly by the Contracting Officer after consultation with appropriate officials, including the program office and the Office of General Counsel.

2433.103–70. [Removed]

56. Section 2433.103–70 is removed.

2433.103–71 [Redesignated as 2433.103–70]

57. Section 2433.103–71 is redesignated as section 2433.103–70.

2433.104 [Amended]

58. Section 2433.104 is amended by redesignating paragraph (f) as paragraph (g).

2433.104–70 [Removed]

59. Section 2433.104–70 is removed.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

60. The authority citation for 48 CFR part 2436 is revised to read as follows:

Authority: 40 U.S.C. 286(c); 42 U.S.C. 3535(d).

2436.602–2 [Amended]

61. Section 2436.602–2(a) is amended by adding the words "(which may

include preselection boards)" after the words "permanent or ad hoc" in the first sentence, and by adding paragraph (a)(3) to read as follows:

2436.602–2 Evaluation boards.

(a) * * *

(3) *Regional Program Office Director* for boards appointed at the Regional Office level.

* * * * *

2436.602–4 [Amended]

62. Section 2436.602–4 is revised to read as follows:

2436.602–4 Selection authority.

(a) The final selection decision shall be made by the appropriate Primary Organization Head (Headquarters), the appropriate Field Office Manager (Field), or the appropriate Regional Program Office Direction (Region).

2436.602–5 [Amended]

63. Section 2436.602–5 is amended by replacing the number "$10,000" with the words "the small purchase limitation".

PART 2437—SERVICE CONTRACTING

64. The authority citation for 48 CFR part 2437 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2437.2—Advisory and Assistance Services

65. Subpart 2437.2 is retitled to read as set forth above.

2437.110 [Amended]

66. In section 2437.110, new paragraphs (g) and (h) are added to read as follows:

2437.110 Solicitation provisions and contract clauses.[4]

* * * * *

(g) The contracting officer shall insert the clause at 2452.237–76 in solicitations and contracts that involve work on or access to sensitive automated systems.

(h) The Contracting Officer shall insert the clause at 2452.237–77, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

[4] The HUDAR provisions in paragraphs (g) and (h) of this section have been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

2437.205 [Amended]

67. In section 2437.205, paragraph (b)(6) is amended by removing the words "consulting services" wherever they appear, and adding in their place the words "advisory and assistance services".

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2446—QUALITY ASSURANCE

68. The authority citation for 48 CFR part 2446 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

69. A new subpart 2446.7 consisting of section 2446.710 is added to read as follows:

Subpart 2446.7—Warranties

2446.710 Contract clauses.

(c)(1) The contracting officer may include a clause substantially the same as FAR 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, whenever it is in the Government's interest.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

70. The authority citation for 48 CFR part 2452 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

71. A new section 2452.203–70 is added to read as follows:

2452.203–70 Prohibition against the use of Federal employees.[5]

As prescribed in 2403.670, insert the following clause in solicitations and contracts:

PROHIBITION AGAINST THE USE OF FEDERAL EMPLOYEES

December 1992

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to Federal employees or a business concern or other organization owned or substantially owned or controlled by one or more Federal employees. For the purposes of this contract, this prohibition against the use of Federal employees includes any work performed by the Contractor or any of its employees, subcontractors, or consultants.

[End of clause]

72. A new section 2452.203–71 is added to read as follows:

[5] This HUDAR clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

2452.203–71 Certification regarding Federal employment.[6]

As prescribed in 2403.670, insert the following provision in solicitations:

CERTIFICATION REGARDING FEDERAL EMPLOYMENT

December 1992

By submitting an offer, the offeror hereby certifies that it is not owned or substantially owned or controlled by one or more Federal employees.

[End of provision]

(Approved by the Office of Management and Budget under control number 2535–0091).

2452.215–70 [Amended]

73. In 2452.215–70, paragraph (b) of the provision is amended by adding a new Section 6 to the end of the paragraph, and by revising paragraphs (c) and (d), to read as follows:

2452.215–70 Proposal content and outline.

* * * * *

(b) Part I—Technical and Management.

* * * * *

Section 6: *Security Investigation.* The offered shall address in its technical proposal how it intends to manage the security of automated systems as required by HUDAR clause 2452.237–76. This includes developing security procedures, requesting background investigations for employees and subcontractors as required, and requesting investigations for replacements of such individuals as necessary due to turnover, rotation, or other reasons.[7]

(c) *Part II—Cost and Pricing Data.*

(1) Furnish cost or pricing data using the SF–1411, Contract Pricing Proposal, provided in Section L of this solicitation, and the instructions attached to it, which are also printed at FAR 15.804–6. Round all amounts to the nearest dollar. Your data will be subject to review and evaluation by various Government personnel, and thus the estimates furnished on the SF–1411 should be supported by the required supplemental data so that the review and evaluation can be conducted with a minimum amount of delay and effort. In particular, ensure that the following essential elements are provided:

(i) A summary of total cost by cost element cross-reference to each proposed contract line item (instruction number 1).

(ii) Identification of the basis for the kinds, quantities, and cost of all material elements proposed; and a consolidated priced summary of individual material quantities, or a consolidated price bill of material (BOM), for the entire proposal. A well prepared BOM includes: part number/description, unit cost,

[6] This HUDAR provision has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

[7] This provision (Section 6) has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

quantity required, any nonrecurring costs, extended costs, and basis for the proposed price (quotation, prior buy, similar item, etc.) (instruction number 1, Materials).

(iii) For each subcontract over $100,000 show: source, deliverable, quantity, price, type of subcontract, degree of competition, basis for selecting vendor and establishing reasonableness of price. When required, the subcontractor's cost or pricing data must be submitted with the offeror's initial proposal. If available and if required by FAR 15.806, the contractor should provide the results of review and evaluation of subcontract proposals. Though not required, the offeror should provide reasons for omitted data/reviews with dates when data/reviews will be available (instruction number 1, Materials).

(iv) A justification, submitted on an SF–1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when claiming an exemption from submitting cost or pricing data (instruction number 1, Materials).

(v) A time phased, e.g., quarterly, annual, breakdown of labor rates and hours by category or skill level, and the basis for the estimates of rates and hours, e.g., historical experiences, engineering estimates, learning curves, etc. If labor is the allocation base for indirect costs, summarize for each overhead pool and year (instruction number 1, Director Labor).

(vi) In the absence of a forward pricing rate agreement or indirect rate proposal, the contractor should show how indirect rates were estimated and applied as a basis for evaluating the reasonableness of the proposed rates. Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data (instruction number 1, Indirect Costs).

(vii) Identification of all other costs by category and basis for pricing (instruction number 1, Other Costs).

(viii) When claiming costs of money, the contractor must submit Form CASB CMF and show the calculation of the proposed amount (instruction number 1, Facilities Capital Cost of Money).

(ix) Identification of cost or pricing data, i.e., data that are verifiable and factual, and an explanation of the estimating process. When applicable, the following items should be specifically identified:

(A) Judgmental factors and the methods used in the estimate, including those used in projecting from known data; and

(B) The nature and amount of any contingencies (instruction number 2).

(x) An index referencing all cost or pricing data and information accompanying or identified in the proposal (instruction number 4).

(xi) For change order proposals: an estimate of the cost to complete deleted work not yet performed; identification of the actual or estimated cost of deleted work already performed; and an estimate of the cost of work added (instruction number 7B).

(2) The Offeror Representations and Certifications provided in Section K of this solicitation shall be included in this Part II—Cost and Pricing Data of your proposal.

(d) Proposals shall be submitted in _____copies of Part I and ____copies of Part II.

(End of provision)

(Approved by the Office of Management and Budget under control number 2535–0091.)

2452.215–71 [Removed]

74. Section 2452.215–71, DUNS contractor establishment number, is removed.

2452.216–75 [Amended]

75. In section 2452.216–75, the introductory text is revised to read as follows:

2452.216–75 Unpriced task orders.

As prescribed in 2416.504(e), insert the following clause:

* * * * *

76. Section 2452.219–70 is added to read as follows:

2452.219–70 Small Business and Small Disadvantaged Business* Subcontracting Plan

As prescribed in 2419.708, insert the following provision:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN DECEMBER 1992

(a) This provision is not applicable to small business concerns.

(b) Consistent with the national interest, it is HUD policy that small business and small business concerns that are owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of HUD work at the prime and subcontract level. Therefore, any contract awarded as a result of this solicitation shall fully comply with the intent of this policy, and the successful offeror shall agree to pursue an effective and comprehensive small business and small disadvantaged business subcontracting program in compliance with the clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns."

(c) Prior compliance with subcontracting plans shall be considered in determining the responsibility of an offeror (see FAR 9.104–3). Therefore, offerors have previous contracts with subcontracting plans shall provide the following information: agency name; agency point of contract; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and, the applicable goals and actual performance (dollars and percentages) for subcontracting with small and small disadvantaged business concerns. This information shall be provided for the three most recently (within the last three years) completed contracts with such subcontracting plans.

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219–9, "Small Business and Small Disadvantage Business Subcontracting Plan (Alternate I)." The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination. Failure to submit an adequate subcontracting plan where applicable shall make the bidded ineligible for the contract award.

(End of provision)

Alternate I December 1992

(a) This provision is not applicable to small business concerns.

(b) Consistent with the national interest, it is HUD policy that small business and small business concerns that are owned and controlled by socially and economically disadvantage individuals shall have the maximum practicable opportunity to participate in the performance of HUD work at the prime and subcontract level. Therefore, any contract awarded as a result of this solicitation shall fully comply with the intent of this policy, and the successful bidder shall agree to pursue an effective and comprehensive small business and small disadvantaged business subcontracting program in compliance with the clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns."

(c) Prior compliance with subcontracting plans shall be considered in determining the responsibility of a bidder (see FAR 9.104–3). Therefore, bidders having previous contracts with subcontracting plans shall provide the following information: agency name; agency point of contract; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and, the applicable goals and actual performance (dollars and percentages) for subcontracting with small and small disadvantaged business concerns. This information shall be provided for the three most recently (within the last three years) completed contracts with such subcontracting plans.

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219–9, "Small Business and Small Disadvantage Business Subcontracting Plan (Alternate I)." The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination. Failure to submit an adequate subcontracting plan where applicable shall make the bidded ineligible for the contract award.

(Approved by the Office of Management and Budget under control number 2535-0091).

*This HUDAR provision has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding text.

77. Section 2452.237-76 is added to read as follows:

2452.237-76 Background investigations for sensitive automated systems/ applications.

As prescribed in 2437.110(g), insert the following clause:

BACKGROUND INVESTIGATIONS FOR SENSITIVE AUTOMATED SYSTEMS/ APPLICATIONS DECEMBER 1992

(A) *General.* This contract involves work on or access to an automated system [name] that has a sensitivity rating of [3 or 4], as defined in Appendix A of HUD Handbook 2400.23, "ADP Security." All contractor employees working on this contract are required to have a background investigation commensurate with the rating of the automated system (position designation of: 6, High Risk; 5, Moderate Risk; or 1, Low Risk) in accordance with Federal Personnel Manual (FPM) Chapters 731, 732, and 736. Any employee who is required to have a background investigation shall not be permitted to work on this contract without the required investigation; however, contractor employees in Low Risk positions are eligible for immediate (interim) approval if the contractor submits the required security package described in paragraph (c) of this section within 14 days of contract award. The contractor shall establish personnel security procedures that meet, as a minimum, the requirements of Handbook 2400.23 and shall provide a copy to the GTR.

(b) *Citizenship-related requirements.* Every contractor employee working on the sensitive applications of this contract shall satisfy at least one of the following requirements: (1) be a citizen living in the U.S.; or (2) owe allegiance to the U.S.

(c) *Approval process.* To obtain a background investigation, the contractor shall submit the following completed forms to the GTR for screening and transmittal to the Office of the Inspector General's (OIG) Security Staff for initiation of the required investigation: SF 85–P, Questionnaire for Public Trust Positions; SF 86A, Continuation Sheet (if needed); SF–171, Application for Federal Employment: FD–258, Fingerprint Chart; and other forms or information as may be necessary. An original and two copies of SF–171 and SF 85–P are necessary. The investigation process shall consist of: a range of personal background inquiries and contacts (written and personal) pertaining to verification of the information provided on the security forms. The background investigation may be waived by HUD upon presentation of acceptable evidence that an employee has received a timely appropriate background investigation.

Upon completion of the investigation process, the Contracting Officer, after conferring with the appropriate HUD offices, shall notify the contractor in writing of the individual's eligibility or ineligibility to work on this contract. The contractor is responsible for ensuring that such investigations are requested as necessary for the performance of this contract. If contractor personnel will be working on-site in any HUD office, the contractor shall comply with the requirements of HUDAR clause 2452.237–75—Clearance of Personnel and obtain building passes for those personnel.

(d) *Signed pledges.* The contractor shall require that any employees who may have access to the automated systems identified in Section C of this contract sign a pledge of nondisclosure of information. These pledges shall be signed by the employees before they are assigned to this contract and shall be maintained by the contractor for a period of three years after final payment under the contract.

(e) *Nondisclosure of information.* Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized Government personnel with an established need to know or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD are the sole property of HUD.

(f) *Contract performance.* If HUD receives disqualifying information on a contractor employee, the contractor, upon written notice, will immediately remove the employee from work on this contract. Contractor employees may be barred from working on this contract for failing to meet or maintain the suitability standards prescribed in FPM Chapter 731, as applicable. Failure to comply with the terms of this clause may result in termination for default.

(g) *Notification.* The contractor shall notify the Government Technical Representative (GTR) in writing (with a copy to the contracting officer) whenever a cleared employee terminates employment or is no longer working on this contract, and the GTR shall notify the HUD ADP Security Staff, who will notify the OIG Security Staff. The contractor shall immediately notify the Contracting Officer of any breach or suspected breach of security or any unauthorized disclosure of the information contained in the automated system specified in this contract.

(h) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

[End of clause]

[Approved by the Office of Management and Budget under control number 2535–0091].

78. Section 2452.237–77 is added to read as follows:

2452.237–77 Observance of Legal Holidays and administrative leave.[*]

As prescribed in 2437.110(h), insert the following clause:

Observance of Legal Holidays and Administrative Leave

December 1992

(a) The Department of Housing and Urban Development observes the following days as holidays:

New Year's Day
Martin Luther King's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(b) When any such day falls on a Saturday, the preceding Friday is observed; when any such day falls on a Sunday, the following Monday is observed. Observances of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(c) When HUD grants administrative leave to its Government employees, assigned contractor personnel in Government facilities shall also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled, and shall be guided by the instructions issued by the Contracting Officer or his/her duly authorized representative.

(d) For fixed-price contracts, if services are not required or provided because the building is closed due to inclement weather, unanticipated holidays declared by the President, failure of the Congress to appropriate funds, or similar reasons, deductions will be computed as follows:

(1) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(2) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided.

If services are provided for portions of days, appropriate adjustment will be made by the Contracting Officer to ensure that the contractor is compensated for services provided.

(e) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

[*] This HUDAR clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

Dated: December 9, 1992.

Jim E. Tarro,

Assistant Secretary for Administration.

[FR Doc. 92-30353 Filed 12-14-92; 8:45 am]

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Part XI

Department of Education

Office of Special Education and Rehabilitative Services

Invitation To Comment on the Feasibility and Desirability of Establishing a Nationwide Assistive Technology Information and Program Referral Network; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Invitation To Comment on the Final Report, the Feasibility and Desirability of Establishing a Nationwide Assistive Technology Information and Program Referral Network

AGENCY: Department of Education.

ACTION: Notice inviting comments.

SUMMARY: The Secretary of Education invites comments concerning the final report prepared by the University of South Carolina on a study dealing with the feasibility and desirability of establishing a national assistive technology information and program referral network. The comments will be used by the Department to help determine the appropriate action to be taken based on the report.

The Technology-Related Assistance for Individuals with Disabilities Act of 1988 required the Secretary to conduct a study to determine the feasibility and desirability of creating a national information and program referral network and to determine the appropriate structure for the organization and operation of such a network, if it is determined to be feasible and desirable. The statute requires that a contractor-prepared report of the study be submitted to the Secretary and to the appropriate committees of the Congress. In addition, the statute requires the Secretary to solicit public comment on the report and "to take appropriate action based on the report before the end of the 6-month period following the date on which the Secretary receives the report." The report reflects only the views of the contractor and not the views of the Secretary. Comments on the report will help the Secretary determine what actions should be taken based on the report.

DATES: All comments must be received on or before January 14, 1993.

ADDRESSES: Written comments should be addressed to Carol G. Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3420, Switzer Building, Washington, DC 20202–2705.

FOR FURTHER INFORMATION CONTACT: Carol G. Cohen. Telephone (202) 205–5666. Deaf and hearing impaired individuals may call (202) 205–5516 for TDD services.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the final report, "The Feasibility and Desirability of Establishing a Nationwide Assistive Technology Information and Program Referral Network."

Assistive technology (AT) can provide the tools that allow individuals with disabilities to participate more fully in daily activities, gain more control over their own lives, and have greater access to education, employment, and leisure opportunities. This report explores the feasibility and desirability of establishing a national assistive technology information and program referral (ATI&R) network from two perspectives: (1) The current processes used to disseminate information about assistive technology, and (2) the needs of individuals who want access to assistive technology information. It identifies the mechanisms essential to linking information on assistive technology with the individuals who need it.

The report's major conclusion is that a national ATI&R network is feasible and desirable. The proposed network would address disparities found in the current state of ATI&R practices in the following areas—

- The delivery of information services;
- Individual access to information;
- The quality of information provided;
- Information management methods; and
- An understanding of the benefits of assistive technology.

This report synthesizes the results of the full study funded by the National Institute on Disability and Rehabilitation Research, U.S. Department of Education. The study's five key findings are:

1. Assistive technology information services are not uniformly defined;
2. Organizational structure of assistive technology and program referral services are not uniform from program to program;
3. Training for assistive technology and program referral staff is flawed by the lack of standards and/or requirements for ATI&R for staff;
4. Information management is flawed by the lack of consistent methods to maintain, verify, and update information; and
5. Outreach efforts to target populations are ineffective and/or non-existent.

On the basis of these findings, the study made a number of recommendations to the National Institute on Disability and Rehabilitation Research, including:

1. Develop a national classification "taxonomy" for the delivery of ATI&R services;
2. Provide leadership to develop a Nationwide Assistive Technology Information and Program Referral Coordinating Institute;
3. Establish annual priorities for field-initiated research on the "best practices" in the delivery of ATI&R services;
4. Develop mechanisms for sharing training materials, innovative approaches, strategies, and technical applications;
5. Establish a mechanism to provide technical support and training on outreach strategies with formal and informal brokers; and
6. Initiate local community promotional campaigns that parallel a national assistive technology awareness campaign. Local community promotional campaigns can include public service announcements, video productions, and printed media.

This synopsis provides an overview of the results of the study. The complete findings and recommendations are summarized in the Executive Summary and Final Report of the study. Interested parties should examine the report for a more complete understanding of the issues affecting the feasibility and desirability of establishing a nationwide assistive technology information and program referral network.

The final report, "The Feasibility and Desirability of Establishing a Nationwide Assistive Technology Information and Program Referral Network," is available for review at the National Institute on Disability and Rehabilitation Research, Department of Education, 330 C Street, SW., room 3420, Switzer Building, Washington, DC 20202–2705, Telephone: (202) 205–5666. Deaf and hearing impaired individuals may call (202) 205–5516 for TDD services.

Copies of the final report can be obtained upon request from the National Institute on Disability and Rehabilitation Research.

Robert Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–30346 Filed 12–14–92; 8:45 am]

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Federal Register

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December 15, 1992

Part XII

Department of Labor

Employment and Training Administration

20 CFR Part 614
Unemployment Compensation for Ex-servicemembers; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 614

RIN 1205–AA26

Unemployment Compensation for Ex-servicemembers

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration of the Department of Labor is issuing this interim final rule incorporating the statutory amendments contained in the Emergency Unemployment Compensation Act of 1991 affecting the Unemployment Compensation for Ex-servicemembers (UCX) Program. These statutory amendments change the criteria for determining Federal service for UCX qualifying purposes as well as affect the waiting period and maximum amount of UCX benefits payable. Essential amendments to the regulations are issued as an interim final rule because the statutory changes in the program became effective for weeks of unemployment beginning on or after November 15, 1991, the date of enactment of the public law.

Finally, in a prior amendment to the regulations on October 17, 1988, a section relating to the Veterans Administration was inadvertently not deleted from the regulations and is now deleted in this rulemaking.

To provide an opportunity for public participation in this rulemaking, a comment period is provided, and a final rule will be published after taking into account comments received.

DATES: *Effective date:* The effective date of this interim final rule is January 14, 1993.

Comment date: Written comments on this interim final rule must be received in the Department of Labor on or before January 14, 1993.

ADDRESSES: Written comments on this interim final rule may be mailed or delivered to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, room S–4231, Frances Perkins Building, 200 Constitution Ave., NW., Washington, DC 20210.

All comments received will be available for public inspection during normal business hours in room S–4231 at the above address.

FOR FURTHER INFORMATION CONTACT: Sandra T. King, Chief, Division of Program Development and Implementation, or Robert J. Gillham, Chief, Federal Programs Group, Office of Program Management, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 219–5309 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The UCX program is financed with Federal funds to furnish unemployment benefits to eligible individuals who are separated from the Armed Forces and are unable to obtain work. The program, created by Public Law 85–848, approved on August 28, 1958, has been codified at 5 U.S.C. 8521–8525.

The UCX amendments contained in section 301 of the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102–164) took effect for weeks of unemployment beginning on or after November 15, 1991, the date of enactment of Public Law 102–164. The Department has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that good cause exists for publishing the amendments to 20 CFR part 614 as an interim final rule, with a post publication comment period, because prompt action is necessary to assure that the Department has regulations in place to carry out its responsibilities for the UCX program. The changes in this document are essential to the proper administration of the UCX program by the States. Therefore, a pre-publication comment period is impracticable and contrary to the public interest.

This document amends 20 CFR part 614 to incorporate statutory amendments to the UCX Program. Operating instructions for implementing these statutory amendments were issued by the Department on November 22, 1991, in General Administration Letter (GAL) No. 3–92, published at 56 FR 67333 (December 30, 1991). The operating instructions in GAL 3–92 supplement these amendments to 20 CFR part 614.

Sections 301(a) and 301(b) of the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102–164) amended 5 U.S.C. 8521, which affect entitlement to UCX. Section 301(a) repealed 5 U.S.C. 8521(c) which required a 4-week waiting period and a 13-week maximum for payment of UCX benefits. Section 301(b) amended 5 U.S.C. 8521(a) by reducing the amount of active duty in a reserve status from 180 continuous days to 90 continuous days necessary to be considered "Federal service" for UCX qualifying purposes.

Section 301(c) of Public Law 102–164 provides that the UCX amendments contained in section 301 are effective for weeks of unemployment beginning on or after November 15, 1991, the date of enactment of Public Law 102–164. This means that the UCX amendments contained in section 301 shall be effective for all UCX initial claims filed for weeks of unemployment beginning on or after November 15, 1991, as well as for weeks of unemployment beginning on or after November 15, 1991, for unexpired UCX claims.

Furthermore, the Department interprets the amendment in section 301(b) of Public Law 102–164 to apply to previously denied UCX claims of reservists who had less than 180 but at least 90 days of continuous active duty in a reserve status, for weeks of unemployment beginning on or after November 15, 1991. Thus, the application of the UCX amendments in sections 301(a) and 301(b) to unexpired UCX claims requires redetermination of those claims, and such redeterminations have already been completed pursuant to operating instructions issued to the States soon after the enactment of the amendments. It was emphasized, however, that in making those redeterminations, the UCX amendments are applicable only for weeks of unemployment beginning on or after November 15, 1991 as provided by section 301(c).

Further, many reservists may have had 90 days or more of continuous active duty in a reserve status, but did not file UCX claims because they had less than 180 days of such service.

Accordingly, in order to effectuate these statutory amendments, the Department has determined that the application of the State time limitations on claims filing will be limited, as explained below. The general rule is that State law is followed on procedural matters (i.e., claims filing, determinations and redeterminations) unless inconsistent with Federal law. Here, applying State time limitations on claims filing would thwart the purpose of these statutory amendments. It is Congress' intent to cover Desert Shield and Desert Storm veterans under the UCX amendments made by section 301 of Public Law 102–164.

The effective date of the UCX amendments as provided in the language of section 301(c) carries out this Congressional intent. Section 301(c) clearly provides that UCX amendments apply to weeks of unemployment, rather than to new claims filed, on and after the date of enactment. Furthermore, the Congressional record regarding these amendments expresses Congress' intent

to include Desert Shield and Desert Storm veterans in the amendment's coverage. The only way to extend the UCX amendments to Desert Shield and Desert Storm veterans is to require States and cooperating State agencies to redetermine all UCX claims for claimants whose benefit year expired after November 15, 1991. Thus, this Federal law authority will ensure a uniform application of the UCX amendments as intended by Congress.

Also, States and cooperating State agencies will not apply State law claims filing time limitations to reservists who did not previously file UCX claims because they had less than 180 days of continuous active duty in a reserve status, where the claimant's benefit year would have expired on or after November 15, 1991, if he/she had filed a UCX claim. However, State law provisions regarding back-dating of claims apply to UCX first claims.

Once a UCX claimant meets the qualifying requirements of 5 U.S.C. 8521, as amended by section 301 of Public Law 102–164, it is the Congressional intent to treat UCX claimants for weeks of unemployment beginning on or after November 15, 1991 under the same terms and conditions as apply to claimants covered under the applicable State UI law.

In a prior amendment to these regulations, published at 53 FR 40550 (October 17, 1988), § 614.27 was amended to delete the reference to Veterans Administration and was redesignated § 614.25. However, § 614.27 was inadvertently not deleted from the regulations. Consequently, § 614.27 is removed.

The following amendments are made to the regulations pursuant to the Emergency Unemployment Compensation Act of 1991:

1. Section 614.2, paragraph (g), is amended by reducing the amount of active duty in a reserve status necessary to be considered Federal service for UCX qualifying purpose from 180 continuous days to 90 continuous days. Also, paragraph (g)(2) is deleted as outdated and unnecessary. Paragraph (g)(1) then becomes paragraph (g).

2. Section 614.3, paragraph (e), is removed so as to reflect the repeal of 5 U.S.C. 8521(c) which required a 4-week waiting period. For weeks of unemployment beginning on or after November 15, 1991, States must follow the waiting period provisions of applicable State law.

3. Section 614.4, paragraphs (c) and (d), are amended to reflect that the 13-week maximum amount of UCX benefits payable in a benefit year to an individual has been eliminated by the repeal of 5 U.S.C. 8521(c). Therefore, the UCX maximum amount of benefits payable in a benefit year will be the same as provided under the applicable State law as if the claimant's Federal military service and Federal military wages had been included as employment and wages under the State law.

4. Other technical and conforming changes are made in part 614.

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

The rule in this document will not increase the Federal paperwork burden on the private or public sectors under the Paperwork Reduction Act. The reason for such certification is that this rule only incorporates statutory amendments to an individual entitlement program and which only affect individuals applying for benefits under the UCX Program.

Regulatory Flexibility Act

The proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States or individuals. Since these regulations involve an entitlement program for individuals administered by the States, and are directed to the States, no regulatory flexibility analysis is required. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 614

Labor, Unemployment Compensation for Ex-servicemembers (UCX), Unemployment Compensation.

Words of Issuance

For the reasons set out in the preamble, part 614 of chapter V of title 20 of the Code of Federal Regulations is amended as follows:

PART 614—[AMENDED]

1. The authority citation for part 614 continues to read as follows:

Authority: 5 U.S.C. 8506; Secretary's Order No. 4–75 (40 FR 18515).

§ 614.1 [Amended]

2. Section 614.1 is amended by removing from paragraph (a) the following phrase "as amended by sec. 201 of Public Law 97–362, 96 Stat. 1732,".

3. Paragraph (g) of § 614.2 is revised to read as follows:

§ 614.2 Definitions of terms.

* * * * *

(g) *Federal military service* means active service (not including active duty in a reserve status unless for a continuous period of 90 days or more) in the Armed Forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service—

(1) The individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(2)(i) The individual was discharged or released after completing his/her first full term of active service which the individual initially agreed to serve, or

(ii) The individual was discharged or released before completing such term of active service—

(A) For the convenience of the Government under an early release program,

(B) Because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(C) Because of hardship, or

(D) Because of personality disorders or inaptitude but only if the service was continuous for 365 days or more.

* * * * *

§ 614.2 [Amended]

4. In addition to the amendment to § 614.2 set forth above, paragraph (p)(1) of § 614.2 is amended by removing, in two places, the words "Internal Revenue Code of 1954" and adding, in their place, the words "Internal Revenue Code of 1986".

5. Section 614.3 is amended by removing paragraph (e), and revising paragraphs (c) and (d) to read as follows:

§ 614.3 Eligibility requirements for UCX.

* * * * *

(c) The individual has filed an initial claim for UCX and, as appropriate, has filed a timely claim for waiting period credit or payment of UCX with respect to that week of unemployment; and

(d) The individual is totally, part-totally, or partially unemployed, and is able to work, available for work, and seeking work within the meaning of or as required by the applicable State law, and is not subject to disqualification under this Part or the applicable State law, with respect to that week of unemployment.

6. Paragraphs (c) and (d) of § 614.4 are revised to read as follows:

§ 614.4 Weekly and maximum benefit amounts.

* * * * *

(c) *Maximum amount.* The maximum amount of UCX which shall be payable to an eligible individual during and subsequent to the individual's benefit year shall be the maximum amount of all unemployment compensation that would be payable to the individual as determined under the applicable State law.

(d) *Computation rules.* The weekly and maximum amounts of UCX payable to an individual under the UCX Program shall be determined under the applicable State law to be in the same amount, on the same terms, and subject to the same conditions as the State unemployment compensation which would be payable to the individual under the applicable State law if the individual's Federal military service and Federal military wages assigned or transferred under this Part to the State had been included as employment and wages covered by that State law, subject to the use of the applicable Schedule of Remuneration.

§ 614.27 [Removed]

7. Section 614.27 is removed.

Signed at Washington, DC on December 10, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-30418 Filed 12-14-92; 8:45 am]

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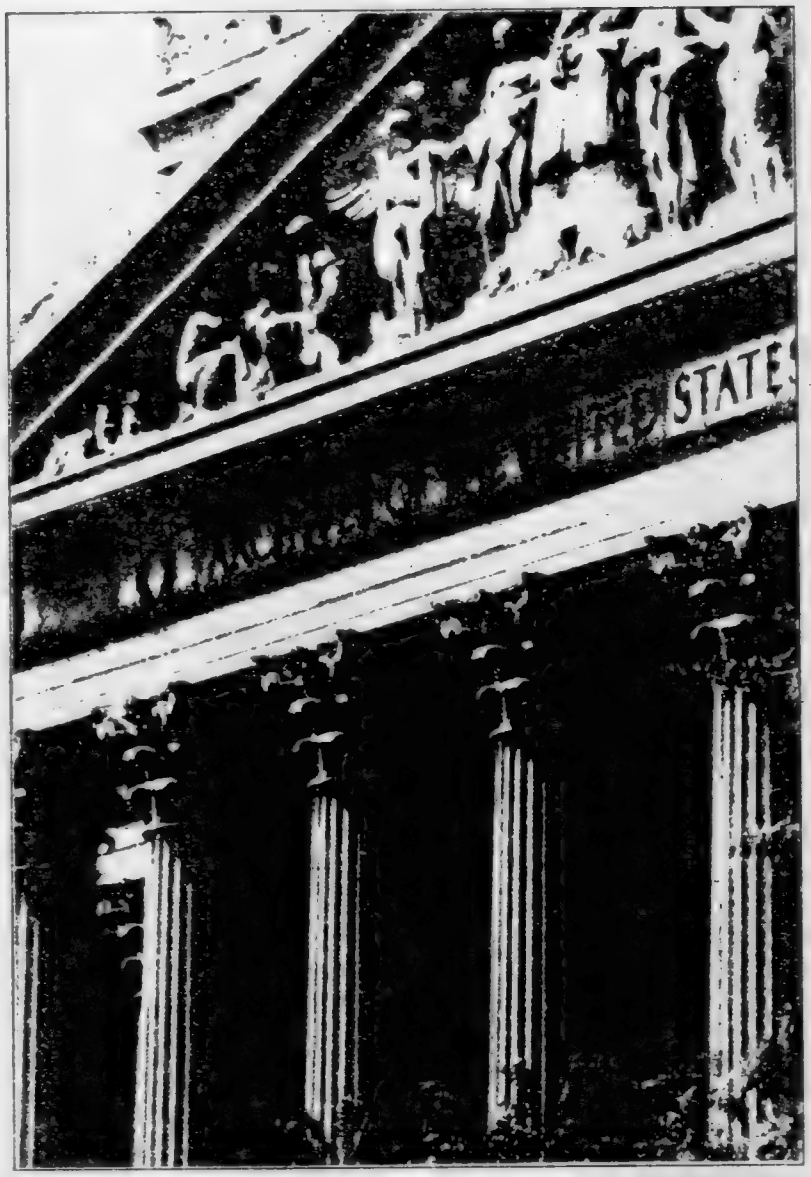

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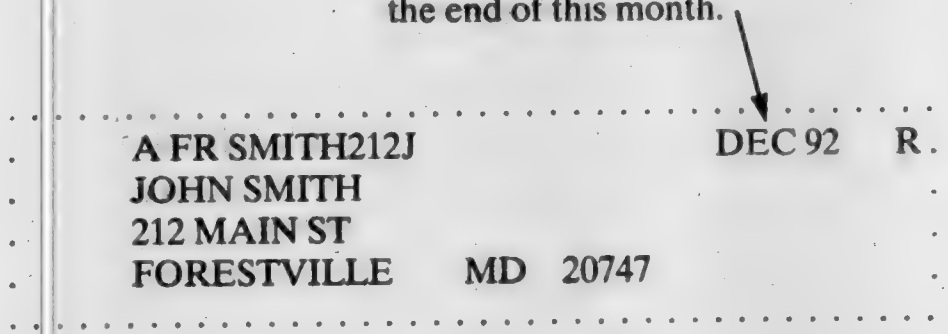

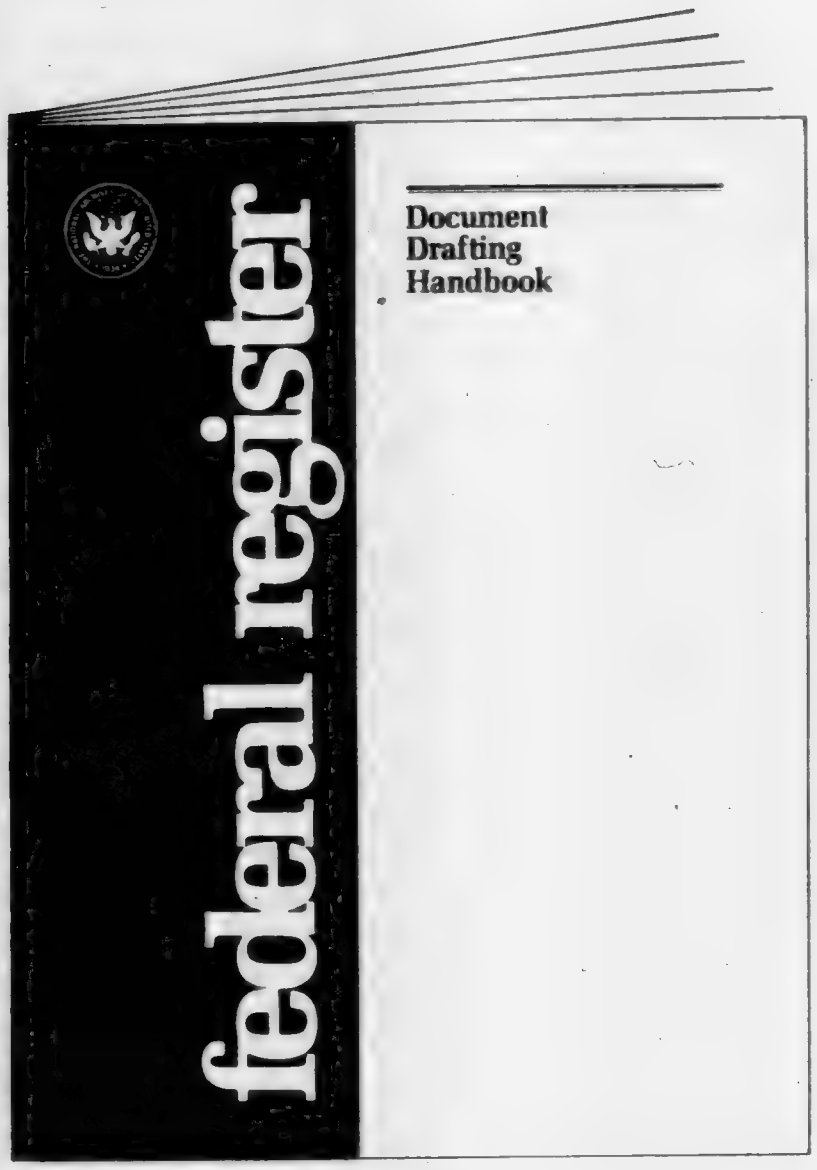

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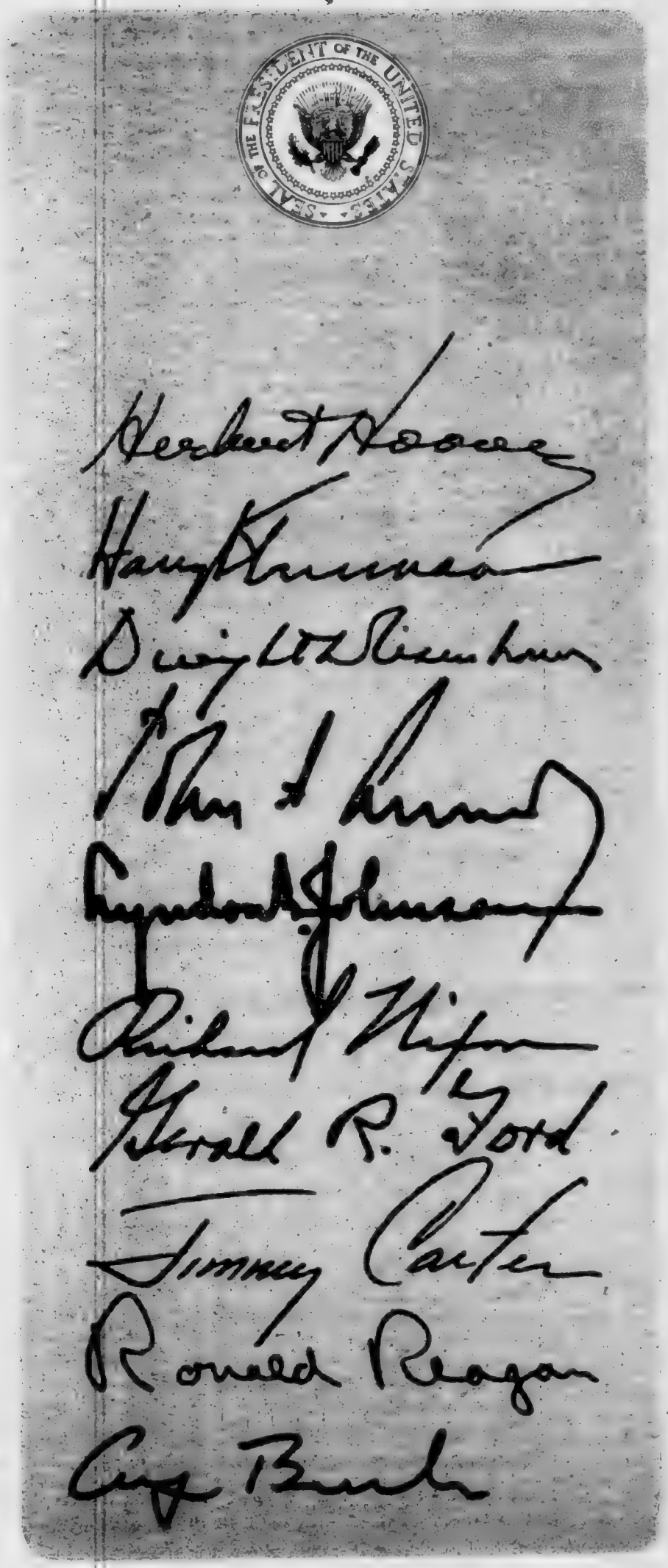

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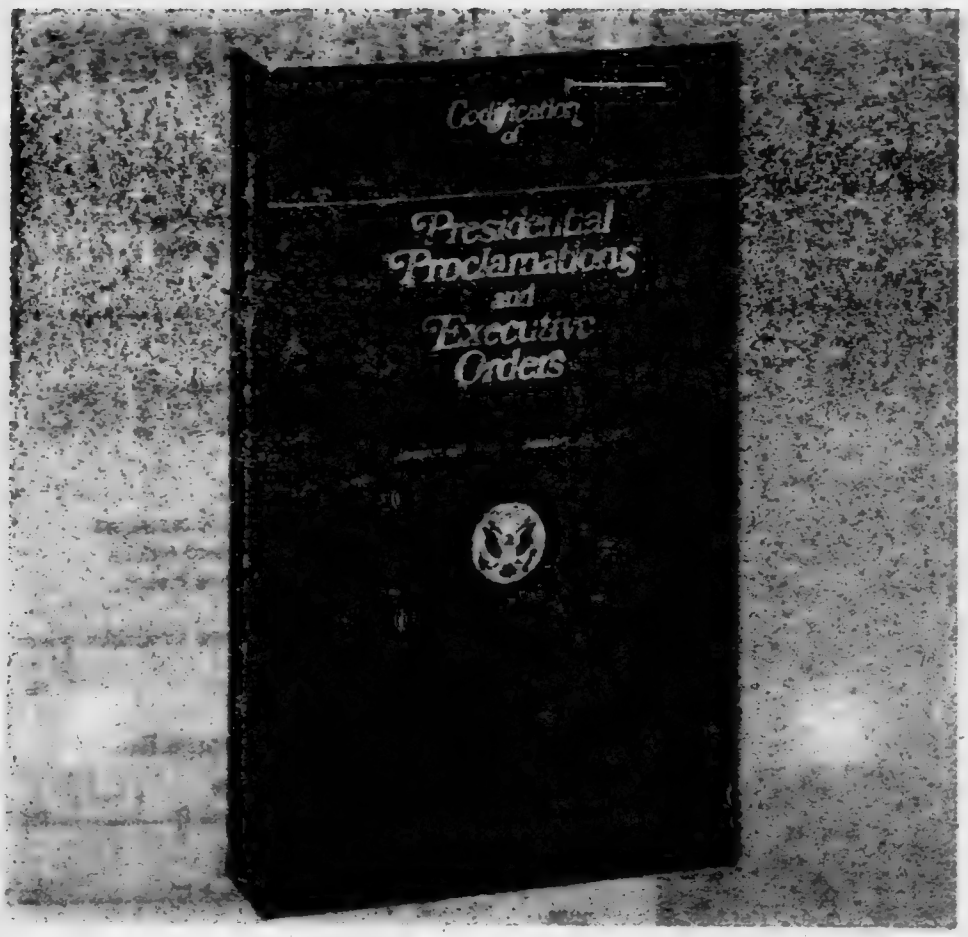

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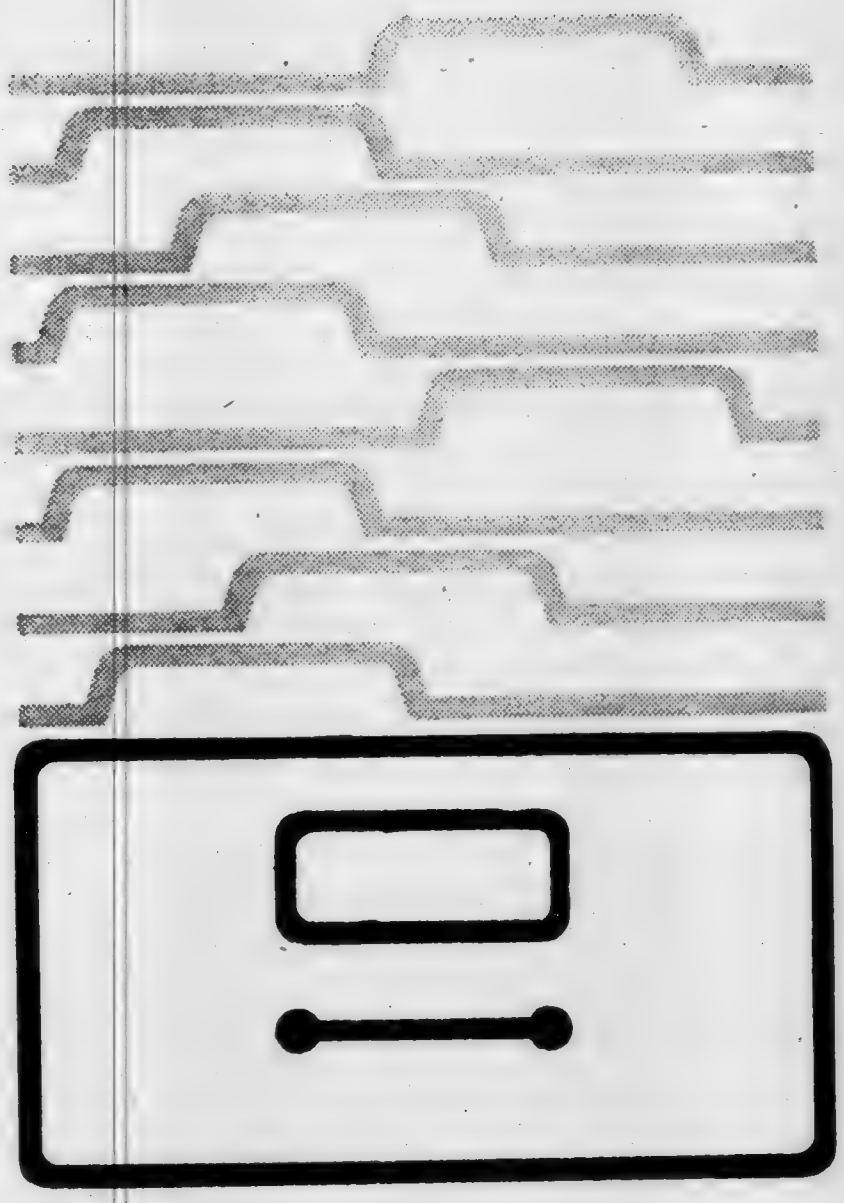

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Free Electronic Bulletin Board service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 57, No. 242
Wednesday, December 16, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–89–AD; Amendment 39–8437; AD 92–27–04]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires structural inspections of older airplanes. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. The actions specified by this AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This proposal also relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 747 series airplanes, which indicate that, to assure long term continued operational safety, various structural inspections should be accomplished.

DATES: Effective January 20, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on May 28, 1992 (57 FR 22445). That action proposed to require structural inspections of older airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the proposed rule.

One commenter requests that service bulletins that are referenced in Section 4 of Boeing Document No. D6–35999, Revision C, dated January 21, 1992, and that are the subject of other existing AD's, be exempt from the requirements of this AD in order to avoid dual compliance requirements. The FAA concurs. A new paragraph (e) has been added to the final rule to specify that service bulletins listed in the Boeing Document, which are addressed by other separate AD's, are excluded from this rulemaking action.

The same commenter further requests that Appendices B–2 and B–4 of the Boeing Document be excluded as source of service information for the proposed rule because the data is misleading. The FAA concurs. Although both paragraphs (a) and (b) of the final rule clearly state that Section 4 of the Boeing Document is the appropriate source of service information, a note has been added to the final rule to indicate that only Section 4, excluding the appendices, is to be used as the appropriate source of service information.

Another commenter requests that each of the service bulletins referenced in the Boeing Document be addressed in separate rulemaking actions to ease scheduling of, compliance with, and control over each requirement. The FAA does not concur. To issue twenty separate rulemaking actions, one for each service bulletin, would significantly prolong the effective date by which the requirements of this AD must be accomplished; therefore, safety of the fleet would be adversely affected. Further, the FAA proposed this one single rulemaking action based upon the recommendations of the Airworthiness Assurance Task Force, and with input from representatives of aircraft operators, manufacturers, regulatory authorities, and other aviation representatives.

Another commenter requests that the proposed repetitive inspection interval of 600 flight cycles be extended to 1,200 flight cycles for those airplanes that have been modified in accordance with Boeing Service Bulletin 747–57–2218, Revision 2. That modification entails replacing the fitting with 7/16-inch bolts in oversized bolt holes with wet sealant. The FAA does not concur. Those operators who choose to perform the modification may request an adjustment to the compliance time under the provisions of paragraph (e) of this AD, provided that sufficient data are presented to the FAA to justify such an extension.

The same commenter further requests that the threshold for the inspections commence at 10,000 flight cycles for those airplanes that had been modified in accordance with Boeing Service Bulletin 747–57–2218, Revision 2. To substantiate this request, the commenter notes that, thus far, no defective bolts have been found on modified airplanes in its fleet at 10,000 flight cycles. The FAA does not concur. Since all operators have not modified their fleet in accordance with the referenced service bulletin, those operators who have modified their airplanes may apply for an alternative method of compliance under the provisions of paragraph (e) of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 680 Model 747 series airplanes of the affected

design in the worldwide fleet. The FAA estimates that 170 airplanes of U.S. registry will be affected by this AD, that it will take approximately 480 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,488,000, or $26,400 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034), February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-27-04. Boeing: Amendment 39-8437. Docket 92-NM-89-AD.

Applicability: Model 747 series airplanes; as listed in Section 4 of Boeing Document Number D6-35999, "Aging Airplane Service Bulletin Structural Modification and Inspection Program," Revision C, dated January 21, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent degradation of the structural capability of the airplane, accomplish the following:

Note: Refer only to Section 4 of Boeing Document D6-35999; the appendices are not the subject of this AD.

(a) Except as provided in paragraph (e) of this AD, accomplish the inspections specified in Section 4 of Boeing Document No. D6-35999, Revision C, dated January 21, 1992, within the times specified in paragraph (b) of this AD, and thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection.

(b) The maximum initial inspection times for the inspections contained in Section 4 of Boeing Document No. D6-35999, Revision C, dated January 21, 1992, shall be the later of the time specified in either paragraph (b)(1) or (b)(2) of this AD:

(1) The threshold for inspection time for the inspection specified in the corresponding service bulletin, measured as a total (flight cycles, time-in-service, as appropriate) accumulated on the airplane; or

(2) The phase-in period for the inspection specified in the corresponding service bulletin, measured from the effective date of this AD.

(c) If any of the discrepant conditions identified in the service bulletins are found as a result of the inspections required by this AD, the corresponding corrective action specified in the service bulletins must be accomplished prior to further flight.

(d) The terminating action for each inspection required by paragraph (a) of this AD consists of the accomplishment of the modification specified in the corresponding service bulletin.

(e) Notwithstanding the references in Section 4 of Boeing Document No. D6-35999, Revision C, dated January 21, 1992, to the following list service bulletins, this AD does not require inspections in accordance with those service bulletins:

Service bulletin No.	Revision level	Service bulletin date
747-27A2253	4	Jan. 25, 1990.
747-32-2190	4	Oct. 26, 1989.
747-53-2253	2	Mar. 29, 1990.
747-53-2265	7	Jan. 25, 1990.
737-53-2283	3	Nov. 1, 1989.
747-53-2289	1	Jan. 26, 1989.
747-52-2186	4	Oct. 24, 1991.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and corrective actions shall be done in accordance with Section 4 of Boeing Document No. D6-35999, Revision C, dated January 21, 1992, which contains the following list of effective pages:

Note: Except for the title page of the document, no other pages of the document are dated.

Page No.	Revision level shown on page
a, c, d, d.1, e, f, 2.0.1, 3.1.1, 3.2.1, 3.2.2, 3.2.3, 3.3.1, 3.4.1, 4.0.1, 4.1.1, 4.2.1, 4.2.2, 4.3.1, 4.3.2, 4.3.3, 5.1.1, 5.1.2, A.3.1, B.1.1, B.2.1, B.3.1, B.4.1.	C
3.0.1, A.1.1, A.2.1	B
1.2.2, 5.0.1	A
b, 1.1.1, 1.2.1, 2.0.2	(Original)

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on January 20, 1993.

Issued in Renton, Washington, on December 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30446 Filed 12-15-92; 8:45 am]

BILLING CODE 4910-13-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act; Implementation

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Privacy Act regulations to reflect the establishment of a new Privacy Act system of records.

EFFECTIVE DATE: December 16, 1992.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, TVA, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801, telephone number: (615) 751-2523.

SUPPLEMENTARY INFORMATION: On October 7, 1992, (57 FR 46231–46232) TVA published a notice of a new Privacy Act system of records entitled "Section 26a Permit Application Records—TVA." TVA is therefore updating its regulations at 18 CFR Part 1301 to reflect that new system of records.

This rule was not published in proposed form since it relates to agency practice. Since this rule is nonsubstantive, it is being made effective immediately, December 16, 1992.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, subpart B, continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552a.

2. Section 1301.12 is amended by revising paragraph (d) to add the title of the new system of records to read as follows:

§ 1301.12 Definitions.

* * * * *

(d) The term *TVA system notice* means a notice of a TVA system published in the **Federal Register** pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Record System—TVA.
Personnel Files—TVA.
Upgrade Craft Training Program—TVA.
Demonstration Farm Records—TVA.
Discrimination Complaint Files—TVA.
Employee Accident Information System—TVA.
Employee Accounts Receivable—TVA.
Employee Alleged Misconduct Investigatory Files—TVA.
Medical Record System—TVA.
Employee Statement of Employment and Financial Interests—TVA.
Payroll Records—TVA.
Travel History Records—TVA.
Employment Applicant Files—TVA.
Grievance Records—TVA.
LAND BETWEEN THE LAKES® Hunter Records—TVA.
LAND BETWEEN THE LAKES® Register of Law Violations—TVA.
Employee Supplementary Vacancy Announcement Records—TVA.
Consultant and Personal Service Contractor Records—TVA.
Nuclear Quality Assurance Personnel Records—TVA.
Questionnaire—Farms in Vicinity of Proposed or Licensed Nuclear Power Plant—TVA.
Radiation Dosimetry Personnel Monitoring Records—TVA.
Retirement System Records—TVA.
Test Demonstration Farm Records—TVA.
Woodland Resource Analysis Program Input Data—TVA.
Electricity Use, Rate, and Service Study Records—TVA.
LAND BETWEEN LAKES® Mailing Lists—TVA.
OIG Investigative Records—TVA.
Call Detail Records—TVA.
Office of Nuclear Power Call Detail Records—TVA.
Project/Tract Files—TVA.
Building Access Security Records—TVA.
Section 26a Permit Applications—TVA.

* * * * *

John J. O'Donnell,
Vice President, Facilities Services.

[FR Doc. 92–30473 Filed 12–15–92; 8:45 am]
BILLING CODE 8120–08M

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Part 1401

Public Availability of Information

AGENCY: Office of National Drug Control Policy.

ACTION: Final rule.

SUMMARY: The Freedom of Information Act (FOIA) requires every Federal agency to make available to the public official documents and other records upon request, unless the material requested falls under one of several limited exceptions. FOIA also requires agencies to publish rules stating the time, place, fees, and procedures to apply in making records available to any person upon request. Further, section 1803 of the Freedom of Information Reform Act of 1986 requires each agency to establish a system for recovering costs associated with responding to requests for information under FOIA. The Office of Management and Budget (OMB) has issued guidelines that set standard governmentwide definitions for assessing and collecting FOIA fees (OMB Fee Guidelines).

This final rule describes the procedures to be followed in submitting a FOIA request to the Office of National Drug Control Policy (ONDCP) and the procedures that ONDCP will use in responding to such requests. Included are provisions for assessing and collecting fees from FOIA requesters in accordance with the OMB Fee Guidelines.

EFFECTIVE DATE: This regulation is effective on February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Matthew C. Ames, Office of the General Counsel, Office of National Drug Control Policy, Washington, DC 20500, (202) 467–9840.

SUPPLEMENTARY INFORMATION: The Office of National Drug Control Policy was created by the Anti-Drug Abuse Act of 1988, Public Law 100–690, 21 U.S.C. 1501 *et seq.*, and was charged with the development and coordination of national policy toward illegal drugs.

ONDCP published proposed regulations on October 1, 1992 (57 FR 45353). No comments were received, and the final rule is identical to the proposed rule.

List of Subjects in 21 CFR Part 1401

Archives and records, Freedom of information, Records.

For the reasons set out in the preamble, title 21, chapter III of the Code of Federal Regulations is amended by adding a new part 1401 to read as follows:

PART 1401—PUBLIC AVAILABILITY OF INFORMATION

Sec.
1401.1 Purpose.
1401.2 The Office of National Drug Control Policy—Organization and functions.
1401.3 Definitions.
1401.4 Records of other agencies.
1401.5 How to request records—form and content.
1401.6 Initial determination.
1401.7 Prompt response.
1401.8 Response—form and content.
1401.9 Appeal procedures.
1401.10 Fee Schedule.
1401.11 Payment of fees.
1401.12 Waiver of fees.
1401.13 Aggregation of requests.
1401.14 Records that are exempt from disclosure.
1401.15 Deletion of exempted information.

Authority: 5 U.S.C. 552, as amended.

§ 1401.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended.

§ 1401.2 The Office of National Drug Control Policy—Organization and Functions.

(a) The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, 21 U.S.C. 1501 *et seq.* The mission of ONDCP is to coordinate the anti-drug efforts of the various agencies and departments of the Federal government, to consult with States and localities and assist their anti-drug efforts, and to annually promulgate the National Drug

Control Strategy. ONDCP is headed by the Director of National Drug Control Policy. The Director is assisted by a Deputy Director for Supply Reduction, a Deputy Director for Demand Reduction, and an Associate Director for State and Local Affairs.

(b) ONDCP has an Office of Public Affairs that is responsible for providing information to the press and to the general public. If members of the public have general questions about ONDCP that can be answered by telephone, they may call the Office of Public Affairs at (202) 467–9890. This number should not be used to make FOIA requests. All oral requests for information under FOIA will be rejected.

§ 1401.3 Definitions.

As used in this part, the following definitions shall apply:

(a) *Commercial-use request* means a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a requester properly belongs in this category, ONDCP will consider how the requester intends to use the documents.

(b) *Direct costs* means those expenditures that ONDCP actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) *Duplication* means the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation. ONDCP will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

(d) *Educational institution* means preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(e) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced above, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) *Records* and/or *information* means all books, papers, manuals, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by ONDCP and preserved or appropriate for preservation by ONDCP as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the information value of the data in them, but does not include books, magazines or other material acquired solely for library purposes and through other sources, and does not include analyses, computations, or compilations of information not extant at the time of the request. The term "records" does not include objects or articles such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles, and equipment.

(g) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") that make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a reasonable basis for expecting publication through that organization, even though not actually employed by it.

(h) *Request* means a letter or other written communication seeking records or information under FOIA.

(i) *Review* means the process of examining documents located in response to a commercial-use request to determine if that document or any portion of that document is permitted to be withheld. It also includes processing any document for disclosure (i.e., doing all that is necessary to excise those portions of the document not subject to disclosure under FOIA and otherwise preparing them for release). Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches should be performed in the most efficient and least expensive manner so as to minimize costs for both ONDCP and the requester; for example, line-by-line searches should not be undertaken when it would be more efficient to duplicate the entire document. Searches should be distinguished from "review" of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

§ 1401.4 Records of other agencies.

Requests for records that originated in another agency and are in the custody of ONDCP shall be referred to the originating agency for processing, and the person submitting the request shall be so notified. Any decision made by the originating agency with respect to such records will be honored by ONDCP.

§ 1401.5 How to request records—form and content.

(a) Requests for records under FOIA must be submitted in writing, addressed to: Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The words "FOIA REQUEST" or "REQUEST FOR RECORDS" must be clearly marked on both the letter and the envelope. If the request is not so marked and addressed, the 10-day time limit imposed by § 1401.7 of this part shall not begin to run until the request has been received by the Office of the General Counsel and identified as a FOIA request. Due to security requirements, FOIA requests may not be delivered in person.

(b) Any ONDCP employee who receives a request shall promptly forward it to the Office of the General Counsel. Any ONDCP employee who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this part requiring a written request.

(c) Each request must reasonably describe the record(s) sought, including when known: The specific event or action to which the request refers, if any; the name of the agency, office, organization or person that originated the record; the date or time period to which the request refers; the subject matter of the records requested; the type of document requested; the location of the record(s) requested; and any other pertinent information that would assist in promptly locating the record(s).

(d) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on ONDCP, seriously interfering with its normal functioning to the detriment of the business of the Government, ONDCP may require the person or agent making the FOIA request to confer with an ONDCP representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(e) Upon initial receipt of a request, the Office of the General Counsel shall determine which official or officials within ONDCP shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

§ 1401.6 Initial determination.

The General Counsel or his or her designee shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the General Counsel shall be final, subject only to administrative review as provided in § 1401.9.

§ 1401.7 Prompt response.

(a) The General Counsel or his or her designee shall either approve or deny a request for records within 10 working days (excluding Saturday, Sunday and Federal holidays) after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(2) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of ONDCP that have a substantial interest in the subject matter of the request.

(b) When additional time is required for one of the reasons stated in paragraph (a) of this section, the General Counsel or his or her designee shall acknowledge receipt of the request within the 10 working day period and include a brief explanation of the reason for delay, indicating the date by which a determination will be forthcoming. An extended deadline adopted for one of the reasons set forth above may not exceed 10 additional working days.

§ 1401.8 Responses—form and content.

(a) When a requested record has been identified and is available, the General Counsel or his or her designee shall notify the person making the request as to where and when the record will be available for inspection or the copies will be available. The notification shall also advise the person making the request of any fees assessed under § 1401.10 of this part.

(b) A denial or partial denial of a request for a record shall be in writing signed by the General Counsel or his or her designee and shall include:

(1) The name and title of the person making the determination;

(2) Either a reference to the specific exemption under FOIA authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 1401.7, and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A statement that the denial may be appealed to the Director within 30 days of its receipt by the requester.

(c) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the person making the request shall be so notified and the legal authority for disposition shall be cited.

§ 1401.9 Appeal procedures.

(a) When the General Counsel or his or her designee denies a request for records in whole or in part, the person making the request may, within 30 days of receipt of the notice of denial, appeal the denial to the Director of ONDCP. The appeal must be in writing, addressed to the Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The envelope should be clearly labeled as a "Freedom of Information Act Appeal."

(b) The Director will act upon the appeal within 20 working days of its receipt. The Director may extend the 20-day period of time by any number of working days which could have been used by the General Counsel or his or her designee under § 1401.7 but which were not used in making the initial determination. The Director's action on an appeal shall be in writing and signed.

(c) If the decision is in favor of the requester, the Director shall order records promptly made available to the requester.

(d) A denial in whole or in part of a request on appeal shall set forth a brief explanation of the reasons for the decision, and shall inform the requester of his or her right to seek judicial review of the denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).

(e) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Director.

§ 1401.10 Fee schedule.

(a) There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. FOIA prescribes different levels of fees for each of these categories.

(1) *Commercial use requesters.* When a request for records is made for commercial use, charges will be assessed to cover all the costs of searching for, reviewing for release, and duplicating the records sought.

(2) *Educational and non-commercial scientific institutions.* When a request for records is made by an educational or a non-commercial scientific institution in furtherance of scholarly or scientific research, charges will be assessed to cover the cost of duplication alone, excluding charges for duplication of the first 100 pages.

(3) *Requests by representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges will be assessed to cover the cost of duplication alone, excluding charges for duplication of the first 100 pages.

(4) *All other requests.* When a request for records is made by a requester who does not fit into any of the preceding categories, charges will be assessed to cover the costs of searching for and duplicating the records sought, excluding charges for the first two hours of search time and the duplication of the first 100 pages. Moreover, requests from individuals for records about themselves will be treated under the Privacy Act of 1974, 5 U.S.C. 552a, which permits the assessment of fees for duplication costs only, regardless of the requester's characterization of the search.

(b) Fees for searches, review of records and duplication of records are charged as follows:

(1) *Search for records.* The charge for a manual search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate. The charge for a computer search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search, plus

16 percent of that rate, plus the direct cost of the operation of the computer for that portion of time attributable to the search.

(2) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review; i.e., the review undertaken the first time ONDCP analyzes the applicability of a specific exemption to a particular record or portion of a record. Charges will not be assessed for review at the administrative appeal level of the exemption(s) already applied. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review plus 16 percent of that rate.

(3) *Duplication of records.* Copies made by routine photostatic copying shall be charged at the rate of $0.15 per page. If copies need to be made by other methods, the direct costs of such copies will be charged to the requester, as determined by the General Counsel.

(4) *Unsuccessful searches.* Requesters may be charged for unsuccessful or unproductive searches or for searches when records located are determined to be exempt from disclosure.

(5) *Other charges.* ONDCP will recover the direct costs of providing special services such as certifying that records are true copies, and sending records by special methods such as express mail.

(c) No fee will be charged by ONDCP when the routine costs of collecting and processing the fee equal to or exceed the amount of the fee. For purposes of this section, the routine costs of collecting and processing a fee chargeable under FOIA are estimated to be $15.00 for each FOIA request.

§ 1401.11 Payment of Fees.

(a) The requester must agree to pay all fees that are chargeable under this section prior to issuance of the requested copies.

(b) Payment of fees shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasurer of the United States and mailed to the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500.

(c) If it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance his willingness to pay such fees, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will exceed $250.00, an advance deposit may be required. The notice or request for an advance deposit shall extend to the requester an offer to consult with ONDCP personnel in order to reformulate the request in a manner which will reduce the fees. A reformulated request shall be considered a new request, thus beginning a new 10 workday period for responding to the request.

(d) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), ONDCP may require the requester to demonstrate that he or she has, in fact, paid any outstanding fees from past requests, and to make an advance payment of the full amount of the estimated fee for the present request before ONDCP responds to that request.

(e) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be assessed at the rate prescribed in 31 U.S.C. 3717, and shall accrue from the date of the billing. The fact that a fee has been received by ONDCP, even if not processed, will suffice to stay the accrual of interest.

(f) To encourage the repayment of delinquent fees, ONDCP shall use the procedures described in the Debt Collection Act of 1982, 31 U.S.C. 3716–3719, including the use of collection agencies and disclosure to consumer reporting agencies.

§ 1401.12 Waiver of fees.

(a) Records shall be furnished without charge, or at a reduced charge, upon a determination by the General Counsel of ONDCP that:

(1) Waiver or reduction of the fees is in the public interest because release of the requested information is likely to contribute significantly to public understanding of the operations or activities of ONDCP and is not primarily in the commercial interest of the requester; or

(2) Assessment of fees is not feasible.

(b) Upon written request, a written explanation will be provided as to why a request for waiver or reduction of FOIA fees was not granted.

(c) There is no right to an administrative appeal from a decision not to waive or reduce fees.

§ 1401.13 Aggregation of requests.

(a) When the General Counsel reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, such requests may be aggregated and fees may be charged accordingly.

(b) In determining whether a series of requests shall be aggregated, the General Counsel will consider two factors: whether the requests concern a single subject or two or more closely related subjects; and whether the requests were all made within a 30-day period. If a series of requests is made by multiple requesters, the General Counsel will also consider whether there is substantial evidence to support the conclusion that the requesters are acting in concert.

§ 1401.14 Records that are exempt from disclosure.

(a) Records described in 5 U.S.C. 552(b) are exempt from disclosure under FOIA. These include the following categories of records:

(1) Records that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of an agency;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Records of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 1401.15 Deletion of exempted information.

When requested records contain matters that are exempted under 5 U.S.C. 552(b), but such exempted matters are reasonably segregable from the remainder of the records, the records shall be disclosed by ONDCP with the necessary deletions. ONDCP shall attach to each such record a written justification for making the deletion or deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

Bob Martinez,

Director.

[FR Doc. 92-30317 Filed 12-15-92; 8:45 am]

BILLING CODE 3180-02-M

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice 1735]

Bureau of Consular Affairs; Passports

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the regulations at 22 CFR part 51, subpart B in two different respects. First, it generally narrows the categories of persons who are eligible to apply for passports without personal appearance by raising the generally applicable age limit to 18. The amendment is necessary because we have found that the generally applicable age limit of 16 introduced in 1986 has caused some inefficiencies and confusion in service to the public. Second, however, the rule will in certain circumstances permit use of mail-in procedures for persons under the age of 18 residing abroad.

EFFECTIVE DATE: December 16, 1992.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Passport Office, 1425 K Street, NW., room 300, Washington, DC 20522-1705; telephone (202) 326-6172.

SUPPLEMENTARY INFORMATION: Until 1986, subsections (c) and (d) of 22 CFR 51.21 specified that personal appearance was not required when applying for a renewal of a U.S. passport if:

(i) The most recently issued passport was issued when the citizen was 18 years of age or older;

(ii) The renewal application was made within 8 years from the date on which the previous passport was issued; and,

(iii) The citizen presented that passport with his or her application for a new passport.

Present regulations allow a U.S. citizen to apply for a renewal of a U.S. passport without appearing in person before a person authorized to accept such applications if: (i) The most recent passport was issued when the citizen was 16 years of age or older; (ii) the application is made within 12 years from the date on which the previous passport was issued; and, (iii) the citizen presents that passport with his or her application for a new passport. The revised regulations partially reinstate the pre-1986 rules, allowing a person who has previously been issued a passport to use the mail-in procedure within 12 years of the date on which the passport was issued if the expired passport was issued when the applicant was 18 years of age or older.

This change is being made because: (i) The Department did not experience significant use of the mail-in procedures by individuals whose previous passports were issued when they were between 16 and 18 years of age; (ii) the Department did experience an increase in inefficiency and administrative costs when processing the forms, in that use of the form by those between the ages of 16 and 18 introduced additional decisions about fees and the passport validity period (which is longer for persons over 18 than for persons 16-18) resulting in increased use of personnel resources; and, (iii) because age 18 is the age of majority, the Department believes that use of 18 is more sensible. Under limited conditions, an exception to the requirement of personal appearance by minors is provided for an application made abroad by a person under 18 years of age. The regulation codifies the Secretary's authority to select certain foreign service posts to waive entirely the requirement for personal appearance of minors on a carefully controlled individual basis. This waiver is deemed necessary to enhance consular efficiency at those posts.

This rule was published as a Notice of Proposed Rulemaking in the **Federal Register** on August 28, 1992 (57 FR 39159). No comments were received during the 30-day comment period.

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and visas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 22 CFR part 51 is amended as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: 22 U.S.C. 211a, as amended, 22 U.S.C. 2658, 3926; sec. 122(d)(3), Public Law 98-164, 97 Stat. 1017; E.O. 12295, 36 FR 10603; 3 CFR 1966-70 Comp. p. 507; Public Law 100-690; sec. 129, Public Law 102-136, 105 Stat. 661; sec. 503, Public Law 102-140, 105 Stat. 820, unless otherwise noted.

2. Section 51.21 is amended by revising paragraphs (c) introductory text, (c)(1), (d)(1) and paragraphs (d)(4) is added to read as follows:

§ 51.21 Execution of passport application.

* * * * *

(c) Persons in the United States who have previously been issued a full validity passport. A person in the United States who has been issued a passport in his or her own name may obtain a new passport by filling out and mailing a specially prescribed application together with his or her previous passport, two recent photographs, and the established fee to the nearest U.S. passport agency, provided:

(1) The most recently issued previous passport was issued when the applicant was 18 years of age or older.

* * * * *

(d) * * *

(1) The most recently issued passport was issued when the applicant was 18 years of age or older.

* * * * *

(4) In a Consular district specifically authorized by the Secretary to waive personal appearance of minors in accordance with this subsection, a U.S. consular officer may waive the age requirement established for use of the mail application, where the consular officer determines that:

(i) The minor and, if applicable, the U.S. citizen parent(s) or legal guardian are registered in that consular district;

(ii) The minor is not subject to the provisions of subsection 51.27 (c) or (d);

(iii) The waiver of the age requirement is otherwise in the interest of consular efficiency; and,

(iv) The waiver will not otherwise compromise the integrity of the passport application process.

Dated: November 20, 1992.

James L. Ward,

Acting Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 92-30459 Filed 12-16-92; 8:45 am]

BILLING CODE 4710-06-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2640 and 2642

RIN 1212-AA30

Allocating Unfunded Vested Benefits Following the Merger of Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Allocating Unfunded Vested Benefits (29 CFR part 2642). (The amendment also makes changes to 29 CFR § 2640.4, which sets forth definitions for purposes of part 2642.) The amendment adds to the regulation a new subpart D containing rules for determining the unfunded vested benefits allocable to an employer that withdraws from a multiemployer pension plan after the plan has merged with another multiemployer pension plan. The Employee Retirement Income Security Act of 1974 provides for the PBGC to prescribe rules governing this allocation. This amendment will provide guidance to multiemployer plans on how to allocate unfunded vested benefits following the merger of multiemployer plans.

EFFECTIVE DATE: January 15, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: An employer that withdraws from a multiemployer pension plan is generally liable for a portion of the plan's unfunded vested benefits. The first step in calculating this liability is to determine the employer's allocable share of the plan's unfunded vested benefits in accordance with section 4211 of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 4211 provides four alternative allocation methods for computing this share: the presumptive method, the modified presumptive method, the rolling-5 method, and the direct attribution method. Because these methods may be difficult to apply to employer withdrawals following a merger of multiemployer plans, ERISA section 4211(f) provides that—

> [I]n the case of a withdrawal following a merger of multiemployer plans, [the allocation rules of section 4211] shall be applied in accordance with regulations prescribed by the [Pension Benefit Guaranty Corporation ["PBGC"]], except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination [of the amount of unfunded vested benefits allocable to the employer] shall be made as if each of the multiemployer plans had remained [a] separate plan[ ].

Thus, the PBGC is to prescribe rules for the allocation of unfunded vested benefits to employers that withdraw after a merger of multiemployer plans.

This final regulation, which was published in proposed form on November 9, 1987 (52 FR 43082), prescribes adjustments to the section 4211 allocation rules that the PBGC believes will give a merged plan adequate flexibility to adopt an allocation method that is well-suited to the plan's particular circumstances, while also ensuring that the method adopted will be consistent with the underlying purposes of and the aggregate results achieved by the statutory allocation methods.

Two public comments were received on the proposed regulation.

One commenter was concerned that the lack of an effective date in the proposed regulation indicated that the regulation could be construed to apply retroactively, and contended that such retroactive application could create serious problems for multiemployer plans that had previously merged and could conflict with section 405 of the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), which provides as follows:

> (a) Except as otherwise provided in the amendments made by [MPPAA] [including section 4211(f) of ERISA] and in subsection (b), if the way in which any such amendment will apply to a particular action during the period before such regulations take effect shall be treated as complying with such regulations for such period.
>
> (b) Subsection (a) shall not apply to any action which violates any instruction issued, or temporary rule prescribed, by the agency having jurisdiction but only if such instruction or rule was published, or furnished to the party taking the action, before such action was taken.

The commenter argued that "to comply with section 405, and to avoid any challenges by employers contributing to previously merged multiemployer plans, the final regulations should clearly state that reasonable actions taken by multiemployer plans in allocating unfunded vested benefits to employers that withdraw after a multiemployer plan merger that occurred prior to the final effective date of the regulations shall be treated as complying with the regulations, and that any requirement regarding plan amendments does not apply prior to that effective date."

The PBGC agrees that section 405 of MPPAA applies to actions taken before the effective date of the regulation, and intended that the regulation be consistent with section 405. The proposed regulation contained no effective date because it was published as a proposal for public comment; it was not an "instruction * * * or temporary rule" within the scope of section 405(b). The effective date of the final regulation is stated above, and reasonable actions based on plan rules allocating unfunded vested benefits to employee that withdraw from a merged plan before that effective date are to be treated as complying with the regulation. Since the provisions of section 405 are clear in this regard, the PBGC considers, it unnecessary to restate them in the regulation.

The PBGC does not agree, however, that MPPAA section 405(a) applies to any "withdraw[al] after a * * * merger that occurred prior to the final effective date of the regulations." Were that true, a plan resulting from a merger that antedated the effective date of the regulation would be forever exempt from compliance with the regulation. Rather, the PBGC considers the regulation applicable to withdrawals occurring on or after its effective date, regardless of when the plan in question was involved in a merger.

The other commenter urged the PBGC not to apply to merged plans a Notice of Interpretation that the PBGC published in the Federal Register on December 31, 1986 (51 FR 47342), dealing with the assessment of withdrawal liability by plans with no unfunded vested benefits. That notice of interpretation was withdrawn by the PBGC in a later notice, published in the Federal Register on March 22, 1991 (56 FR 12298), rendering this second comment moot.

The only difference (other than the correction of some non-substantive errors) between the proposed regulation and the final regulation hereby promulgated is that subparagraphs (i) and (ii) of § 2642.22(d)(1) have been made consistent with each other by changing the words "an employer against which withdrawal liability has been assessed after the initial plan year," which appeared in § 2642.22(d)(1)(ii) of the proposed regulation, to read "an employer that withdrew after the close of the initial plan year."

Compliance With Rulemaking Guidelines

The PBGC has determined that this amendment is not a "major rule" for purposes of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This determination is based on the fact that this regulation merely provides optional rules for allocating liabilities under merged multiemployer plans; plans are not prevented from adopting allocation methods that were permitted by Part 2642 before this amendment. The regulation neither creates nor imposes new liabilities.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Small multiemployer plans (traditionally viewed as plans with fewer than 100 participants) represent only 6 percent of all multiemployer plans covered by the PBGC (118 out of 2,000) and less than 0.25 percent of all small plans (118 out of 47,650). Further, the number of mergers is not substantial (approximately 25 per year). For these reasons, compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

List of Subjects in 29 CFR Parts 2640 and 2642

Employee benefit plans, Pensions, and Pension insurance.

In consideration of the foregoing, subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2640—[AMENDED]

1. The authority citation for part 2640 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3) (1988).

2. Section 2640.4 is revised to read as follows:

§ 2640.4 Allocating unfunded vested benefits.

For purposes of part 2642—

Initial plan year means a merged plan's first complete plan year that begins after the establishment of the merged plan.

Initial plan year unfunded vested benefits means the unfunded vested benefits as of the close of the initial plan year, less the value as of the end of the initial plan year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year.

Merged plan means a plan that is the result of the merger of two or more multiemployer plans.

Merger means the combining of two or more multiemployer plans into one multiemployer plan.

Post-1980 fraction means the fraction described in section 4211(c)(2)(C)(ii) or (c)(3)(B) of the Act.

Pre-1980 fraction means the fraction described in section 4211(b)(3)(B) or (c)(2)(B)(ii) of the Act.

Prior plan means the plan in which an employer participated immediately before that plan became a part of the merged plan.

Unfunded vested benefits means an amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

Withdrawing employer means the employer for whom withdrawal liability is being calculated under section 4201 of the Act.

Withdrawn employer means an employer who, prior to the withdrawing employer, has discontinued contributions to the plan or covered operations under the plan and whose obligation to contribute has not been assumed by a successor employer within the meaning of section 4204 of the Act. A temporary suspension of contributions, including a suspension described in section 4218(2) of the Act, is not considered a discontinuance of contributions.

PART 2642—[AMENDED]

3. The authority citation for part 2642 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f) (1988).

4. Section 2642.1 is amended by revising paragraph (a) to read as follows:

§ 2642.1 Purpose and scope.

(a) *Purpose.* Section 4211 of the Act provides four methods for allocating unfunded vested benefits to employers that withdraw from a multiemployer plan: The presumptive method (section 4211(b)); the modified presumptive method (section 4211(c)(2)); the rolling-5 method (section 4211(c)(3)); and the direct attribution method (section 4211(c)(4)). With the minor exceptions covered in § 2642.2, a plan determines the amount of unfunded vested benefits allocable to a withdrawing employer in accordance with the presumptive method, unless the plan is amended to adopt an alternative allocative method. Generally, the PBGC must approve the adoption of an alternative allocation method. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods. Subpart C of this regulation sets forth the criteria and procedures for PBGC approval of nonstatutory alternative allocation methods. Section 4211(c)(5) of the Act also permits certain modifications to the statutory allocation methods. The PBGC is to prescribe these modifications in a regulation, and plans may adopt them without PBGC approval. Subpart B of this regulation contains the permissible modifications to the statutory methods. Plans may adopt other modifications subject to PBGC approval under subpart C. Finally, under section 4211(f) of the Act, the PBGC is required to prescribe rules governing the application of the statutory allocation methods or modified methods by plans following merger of multiemployer plans. Subpart D sets forth alternative allocative methods to be used by merged plans. In addition, such plans may adopt any of the allocation methods or modifications described under subparts B and C in accordance with the rules under subparts B and C.

* * * * *

5. Part 2642 is amended by adding a new subpart D to read as follows:

Subpart D—Allocation Methods for Merged Multiemployer Plans

2642.21 Allocation of unfunded vested benefits following the merger of plans.
2642.22 Presumptive method for withdrawals after the initial plan year.
2642.23 Modified presumptive method for withdrawals after the initial plan year.
2642.24 Rolling-5 method for withdrawals after the initial plan year.
2642.25 Direct attribution method for withdrawals after the initial plan year.

2642.26 Modifications to the determination of initial liabilities, the amortization of initial liabilities, and the allocation fraction.
2642.27 Allocating unfunded vested benefits for withdrawals before the end of the initial plan year.

Subpart D—Allocation Methods for Merged Multiemployer Plans

§ 2642.21 Allocation of unfunded vested benefits following the merger of plans.

(a) *General Rule.* Except as provided in paragraphs (b) through (d) of this section, when two or more multiemployer plans merge, the merged plan shall adopt one of the statutory allocation methods, in accordance with subpart B of this part, or one of the allocation methods prescribed in §§ 2642.22 through 2642.25, and the method adopted shall apply to all employer withdrawals occurring after the initial plan year. Alternatively, a merged plan may adopt its own allocation method in accordance with Subpart C of this part. If a merged plan fails to adopt an allocation method pursuant to this subpart or subpart B or C, it shall use the presumptive allocation method prescribed in § 2642.22. In addition, a merged plan may adopt any of the modifications prescribed in § 2642.26 or in subpart B of this part.

(b) *Construction plans.* Except as provided in the next sentence, a merged plan that primarily covers employees in the building and construction industry shall use the presumptive allocation method prescribed in § 2642.22. However, the plan may, with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of the Act, adopt, by amendment, one of the alternative methods prescribed in §§ 2642.23 through 2642.25 or any other allocation method. Any such amendment shall be adopted in accordance with subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 2642.26 or any of the modifications to the statutory presumptive method set forth in § 2642.6.

(c) *Section 404(c) plans.* A merged plan that is a continuation of a plan described in section 404(c) of the Internal Revenue Code (a plan established before January 1, 1954, as a result of an agreement between employee representatives and the United States during a period of government operation, under seizure powers, of a major part of the productive facilities of an industry) shall use the rolling-5 allocation method prescribed in § 2642.24, unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods or one of the allocation methods set forth in §§ 2642.22 through 2642.25 without PBGC approval; adoption of any other allocation method is subject to PBGC approval under subpart B of this plan. The plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 2642.26 or in subpart B of this part.

(d) *Withdrawals before the end of the initial plan year.* For employer withdrawals after the effective date of a merger and prior to the end of the initial plan year, the amount of unfunded vested benefits allocable to a withdrawing employer shall be determined in accordance with § 2642.27.

§ 2642.22 Presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum (but not less than zero) of—

(1) The employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits, as determined under paragraph (b) of this section;

(2) The employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after the initial plan year, as determined under paragraph (c) of this section; and

(3) The employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (d) of this section.

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities (determined under paragraph (b)(1) of this section) and the employer's share of the adjusted initial plan year unfunded vested benefits (determined under paragraph (b)(2) of this section), with such sum reduced by five percent of the original amount for each plan year subsequent to the initial year.

(1) *Share of prior plan liabilities.* An employer's share of its prior plan's liabilities is the amount of unfunded vested benefits that would have been allocable to the employer if it had withdrawn on the first day of the initial plan year, determined as if each plan had remained a separate plan.

(2) *Share of adjusted initial plan year unfunded vested benefits.* An employer's share of the adjusted initial plan year unfunded vested benefits equals the plan's initial plan year unfunded vested benefits, less the amount that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year, multiplied by a fraction—

(i) The numerator of which is the amount determined under paragraph (b)(1) of this section; and

(ii) The denominator of which is the sum of the amounts that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year.

(c) *Share of annual changes.* An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested for the plan years ending after the end of the initial plan year is the sum of the employer's proportional shares (determined under paragraph (c)(2) of this section) of the unamortized amount of the change in unfunded vested benefits (determined under paragraph (c)(1) of this section) for each plan year in which the employer has an obligation to contribute under the plan ending after the initial plan year and before the plan year in which the employer withdraws.

(1) *Change in plan's unfunded vested benefits.* The change in a plan's unfunded vested benefits for a plan year is the amount by which the unfunded vested benefits at the end of a plan year, less the value as of the end of such year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year, exceed the sum of the unamortized amount of the initial plan year unfunded vested benefits (determined under paragraph (c)(1)(i) of this section) and the unamortized amounts of the change in unfunded vested benefits for each plan year ending after the initial plan year and preceding the plan year for which the change is determined (determined under paragraph (c)(1)(ii) of this section).

(i) *Unamortized amount of initial plan year unfunded vested benefits.* The unamortized amount of the initial plan year unfunded vested benefits is the amount of those benefits reduced by five percent of the original amount for each succeeding plan year.

(ii) *Unamortized amount of the change.* The unamortized amount of the

change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by five percent of such change for each succeeding plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the plan year in which the change arose and the four preceding full plan years; and

(ii) The denominator of which is the total amount contributed under the plan (or under employer's prior plan) for the plan year in which the change arose and the four preceding full plan years by all employers that had an obligation to contribute under the plan for the plan year in which such change arose, reduced by any amount contributed by an employer that withdrew from the plan in the year in which the change arose.

(d) *Share of reallocated amounts.* An employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits, if any, is the sum of the employer's proportional shares (determined under paragraph (d)(2) of this section) of the unamortized amount of the reallocated unfunded vested benefits (determined under paragraph (d)(1) of this section) for each plan year ending before the plan year in which the employer withdrew from the plan.

(1) *Unamortized amount of reallocated unfunded vested benefits.* The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the sum of the amounts described in paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section for the plan year, reduced by five percent of such sum for each succeeding plan year.

(i) *Uncollectible amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under Title 11, United States Code, or similar proceedings, with respect to an employer that withdrew after the close of the initial plan year.

(ii) *Relief amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year will not be assessed as a result of the operation of sections 4209, 4219(c)(1)(B), or 4225 of the Act with respect to an employer that withdrew after the close of the initial plan year.

(iii) *Other amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible or unassessble for other reasons under standards not inconsistent with regulations prescribed by the PBGC.

(2) *Employer's proportional share.* An employer's proportional share of the amount of the reallocated unfunded vested benefits with respect to a plan year is computed by multiplying the unamortized amount of the reallocated unfunded vested benefits (as of the end of the year preceding the plan year in which the employer withdraws) by the allocation fraction described in paragraph (c)(2) of this section for the same plan year.

§ 2642.23 Modified presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities, as determined under § 2642.22(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 2642.22(b)(2) with such sum reduced as if it were being fully amortized in level annual installments over fifteen years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share (determined under paragraph (c)(2) of this section) of the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, reduced by the amount of the plan's unfunded vested benefits as of the close of the initial plan year (determined under paragraph (c)(1) of this section).

(1) *Amount of unfunded vested benefits.* The plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws shall be reduced by the sum of—

(i) The value as of that date of all outstanding claims for withdrawal liability that can reasonably be expected to be collected, with respect to employers that withdrew before that plan year; and

(ii) The sum of the amounts that would be allocable under paragraph (b) of this section to all employers that have an obligation to contribute in the plan year preceding the plan year in which the employer withdraws and that also had an obligation to contribute in the first plan year ending after the initial plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the last five full plan years ending before the date on which the employer withdraws; and

(ii) The denominator of which is the total amount contributed under the plan (or under each employer's prior plan) by all employers for the last five full plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods that were collected in those plan years, and decreased by any amount contributed by an employer that withdrew from the plan (or prior plan) during those plan years.

§ 2642.24 Rolling-5 method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of

the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities, as determined under § 2642.22(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 2642.22(b)(2), with such sum reduced as if it were being fully amortized in level annual installments over five years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share determined under § 2642.23(c).

§ 2642.25 Direct attribution method for withdrawals after the initial plan year.

The allocation method under this section is the allocation method described in section 4211(c)(4) of the Act.

§ 2642.26 Modifications to the determination of initial liabilities, the amortization of initial liabilities, and the allocation fraction.

(a) *General rule.* A plan using any of the allocation methods described in §§ 2642.22 through 2642.24 may, by plan amendment and without PBGC approval, adopt any of the modifications described in this section.

(b) *Restarting initial liabilities.* A plan may be amended to allocate the initial plan year unfunded vested benefits under § 2642.22(b), § 2642.23(b), or § 2642.24(b) without separately allocating to employers the liabilities attributable to their participation under their prior plans. An amendment under this paragraph must include an allocation fraction under paragraph (d) of this section for determining the employer's proportional share of the total unfunded benefits as of the close of the initial plan year.

(c) *Amortizing initial liabilities.* A plan may by amendment modify the amortization of initial liabilities in either of the following ways:

(1) If two or more plans that use the presumptive allocation method of section 4211(b) of the Act merge, the merged plan may adjust the amortization of initial liabilities under § 2642.22(b) to amortize those unfunded vested benefits over the remaining length of the prior plans' amortization schedules.

(2) A plan that has adopted the allocation method under § 2642.23 or § 2642.24 may adjust the amortization of initial liabilities under § 2642.23(b) or § 2642.24(b) to amortize those unfunded vested benefits in level annual installments over any period of at least five and not more than fifteen years.

(d) *Changing the allocation fraction.* A plan may by amendment replace the allocation fraction under § 2642.22(b), § 2642.23(b), or § 2642.24(b) with any of the following contribution-based fractions—

(1) A fraction, the numerator of which is the total amount required to be contributed under the merged and prior plans by the withdrawing employer in the 60-month period ending on the last day of the initial plan year, and the denominator of which is the sum for that period of the contributions made by all employers that had not withdrawn as of the end of the initial plan year;

(2) A fraction, the numerator of which is the total amount required to be contributed by the withdrawing employer for the initial plan year and the four preceding full plan years of its prior plan, and the denominator of which is the sum of all contributions made over that period by employers that had not withdrawn as of the end of the initial plan year; or

(3) A fraction, the numerator of which is the total amount required to be contributed to the plan by the withdrawing employer since the effective date of the merger, and the denominator of which is the sum of all contributions made over that period by employers that had not withdrawn as of the end of the initial plan year.

§ 2642.27 Allocating unfunded vested benefits for withdrawals before the end of the initial plan year.

If an employer withdraws after the effective date of a merger and before the end of the initial plan year, the amount of unfunded vested benefits allocable to the employer shall be determined as if each plan had remained a separate plan. In making this determination, the plan sponsor shall use the allocation method of the withdrawing employer's prior plan and shall compute the employer's allocable share of the plan's unfunded vested benefits as if the day before the effective date of the merger were the end of the last plan year prior to the withdrawal.

Issued at Washington, D.C., on this 9th day of December, 1992.

Lynn Martin,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving, and authorizing its chairman to issue, this regulation.

Carol Connor Flowe,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 92-30344 Filed 12-15-92; 8:45 am]

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29 CFR Parts 2640 and 2646

RIN 1212-AA22

Reduction or Waiver of Partial Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation establishes rules for reducing or waiving the liability of an employer that has partially withdrawn from a multiemployer pension plan and subsequently increases its contributions base units or reenters the plan under the bargaining agreement or for the facility that gave rise to the partial withdrawal liability. The Employee Retirement Income Security Act of 1974, as amended, directs the PBGC to issue some of these rules and authorizes it to issue the others. The regulation is needed to provide relief to employers that incur partial withdrawal liability and subsequently resume on a covered basis some or all of the work that gave rise to the partial withdrawal. The regulation requires plans to waive or reduce the employer's obligation to make withdrawal liability payments under certain circumstances and provides guidance for implementing reductions in payments required by ERISA. It also provides procedures under which plans may adopt additional rules for the reduction or waiver of partial withdrawal liability, subject to PBGC approval.

EFFECTIVE DATE: January 15, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah J Bisco, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW.,Washington, DC 20006; (202) 778-8824 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this regulation has been reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 under control number 1212-0039. The collection of information, which is set

forth in § 2646.8, applies only to multiemployer plans that wish to adopt their own rules for the waiver or reduction of partial withdrawal liability. Plans are not required to adopt such rules. The estimated annual burden associated with this collection of information is five hours per respondent, with an estimated number of respondents of ten per year. This results in an estimated annual burden of 50 hours. Comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden should be directed to the Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500), 2020 K Street, NW., Washington, DC 20006; and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, room 3208 New Executive Office Building, Washington, DC 20503.

Background

Section 4205(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA" or "the Act"), sets forth the circumstances under which an employer is deemed to have partially withdrawn from a multiemployer pension plan. A partial withdrawal occurs on the last day of a plan year in which: (1) There is a 70-percent contribution decline, or (2) there is a partial cessation of the employer's contribution obligation. Section 4205(b)(1) sets forth the statutory formula defining a 70-percent contribution decline. Section 4205(b)(2) defines a partial cessation of the contribution obligation as: (1) The permanent cessation of the employer's contribution obligation to the plan under one or more but fewer than all of the collective bargaining agreements pursuant to which the employer contributes to the plan, with the employer either continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transferring such work to another location; or (2) the permanent cessation of the employer's contribution obligation with respect to work performed at one or more but fewer than all of the employer's facilities, with the employer continuing to perform work at the facility of the type for which the contribution obligation ceased.

The amount of an employer's liability for a partial withdrawal is calculated under section 4206(a). Section 4206(b) provides that the liability for a withdrawal subsequent to a partial withdrawal shall be reduced to reflect the liability assessed for the prior withdrawal. Section 4208 sets forth the general requirements for the reduction or waiver of partial withdrawal liability and establishes abatement rules for partial withdrawals resulting from 70% contribution declines. Section 4208(e) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to prescribe regulations providing for the reduction or elimination of partial withdrawal liability under other conditions. Section 4208(e)(3) also requires that the PBGC establish a procedure under which plans may adopt their own rules for abatement of partial withdrawal liability under other conditions, subject to PBGC approval of such rules.

On June 5, 1987, the PBGC published a proposed regulation on Reduction or Waiver of Partial Withdrawal Liability (52 FR 21319). Among other things, the regulation proposed mandatory rules for the reduction or elimination of an employer's liability arising from a bargaining unit or facility "takeout" partial withdrawal. The regulation also proposed procedures under which plans could request PBGC approval of plan rules providing for the reduction or elimination of partial withdrawal liability and standards for the PBGC's decision on such requests. Three written comments were received on the proposal. These comments have been reviewed by the PBGC and changes have been made in the regulation based on some of the comments. The PBGC has also corrected an error in the proposed regulation and has made several conforming changes necessitated by these revisions in the final regulation. Finally, the PBGC has also made a number of editorial changes for clarification or to eliminate redundancy.

Comments on the Proposed Regulation

One commenter expressed concern that the 60-day time limit contained in § 2646.2(b) may be too short. This provision requires that a plan sponsor determine within 60 days after receipt of an application from an eligible employer whether the employer qualifies for abatement. According to the commenter, "many plans reserve these types of determinations for their Boards of Trustees* * *[and] the next board meeting after the plan receives an application for abatement may not be within the sixty-day limit." The commenter also noted that the plan may need more time to collect data necessary to make the determination, to "communicate with its actuaries and process the required data," and to obtain additional data from the employer if the application was incomplete. For those reasons, the commenter recommended that the PBGC revise the regulation to provide the same requirement as in the regulation on reduction or waiver of complete withdrawal liability (29 CFR part 2647), *i.e.*, that the plan sponsor's determination be made "as soon as practicable" after an eligible employer applies for abatement (See § 2647.2(b)).

It is the PBGC's view that the 60-day period should provide plans with sufficient time to make the determination. The 60-day period begins when the employer submits a complete application to the plan. Under § 2646.2(a), this includes "the basis for reduction or waiver" of liability. Thus, if the plan has to request additional information from the employer in order to determine the basis for the abatement, the 60-day period would not commence until the additional information is received. It is likely that in most instances employers will not apply until after the close of the plan year in which they satisfy the conditions for abatement. Thus, the data necessary for the determination should be readily available. With respect to the problems cited by the commenter as to the feasibility of a plan's board of trustees making the abatement determination within the 60-day period, the PBGC does not find these problems insurmountable. The abatement determination is the type of decision that could normally be delegated by the board of trustees to, for example, a sub-group of the board that meets more frequently than the full board.

One commenter urged that the regulation provide that a plan may offset against any refund for overpayments required by § 2646.2(c)(4) any amounts owed by the employer, for whatever reason, to the plan. The PBGC believes that it is important not to create disincentives for employers to pay partial withdrawal liability during the period in which they may satisfy the criteria for abatement of that liability. Applying overpayments that result from an employer's qualifying for abatement to amounts owed by the employer to the plan for other purposes could be such a disincentive, because the employer would know that if it did qualify, it would not receive a refund of any resultant overpayments of its partial withdrawal liability. Moreover, plans have effective statutory tools to enforce payment by employers of other obligations. Title I of ERISA gives plans the authority to sue for delinquent contributions, and Title IV gives plans the authority to sue to enforce the obligation to pay withdrawal liability. Therefore, the PBGC does not believe that the refund rule in § 2646.2(c)(4) will create hardships for plans.

One commenter objected to the requirements of § 2646.3(b) of the proposed rule (redesignated § 2646.3(b)(1) in the final rule), regarding the facility/bargaining unit take-out rule, as being inconsistent with the statute and so stringent as to operate as a deterrent to reentry. Proposed § 2646.3(b) provided for the waiver of partial withdrawal liability for a facility or collective bargaining agreement partial withdrawal if the employer, in each of two consecutive years, satisfies the following three conditions:

(1) The employer resumes contributions for the same facility or agreement that gave rise to the partial withdrawal;

(2) The contribution base units for the reentered facility or agreement exceed 30 percent of the contribution base units with respect to the facility or agreement for the high base year; and

(3) The total contribution base units of the employer equal or exceed 90 percent of the total contribution base units of the employer in its high base year.

The commenter asserted that conditioning abatement on the employer's total contribution base units is inconsistent with section 4208(e)(2), which provides that:

> reduction of withdrawal liability shall be provided only with respect to subsequent changes in the employer's contributions for the same operations, or under the same collective bargaining agreement, that gave rise to the partial withdrawal, and changes in the employer's contribution base units with respect to other facilities or other collective bargaining agreements shall not be taken into account.

In the view of the commenter, this provision requires that the abatement test focus exclusively on the reentered operations and not on the employer's overall units. As to the potential deterrent effect, the commenter noted that if an employer has experienced large declines in contribution base units prior to the partial withdrawal, the 90 percent requirement could disqualify the employer for abatement even if the employer were to restore fully the operations that gave rise to the partial withdrawal.

The PBGC disagrees with the commenter's interpretation of section 4208(e)(2). It is the PBGC's view that section 4208(e)(2) mandates that an employer not receive the benefit of abatement solely as a result of increases in other operations; it does not prohibit an abatement rule that includes an employer's contribution base units at other operations as one of the criteria. Nevertheless, the PBGC does agree with the commenter that the 90 percent test in proposed § 2646.3(b) may discourage reentry in some cases and may be unduly stringent in situations in which the employer is restoring work at the full pre-withdrawal level at the facility or under the agreement that gave rise to the partial withdrawal.

In order to address these concerns, the PBGC has decided to promulgate an alternative rule under § 2646.3(b). This abatement test requires restoration of a greater amount of work at the facility, or under the bargaining agreement that gave rise to the partial withdrawal, but also permits restored work in excess of the threshold amount to offset a diminution of covered work at the employer's other facilities or under its other bargaining agreements. In addition, the pre-withdrawal period against which the employer's contribution base units at or under its other facilities or bargaining agreements are measured is the year preceding the partial withdrawal year. Thus, this new rule enables an employer to qualify for abatement if it restores to the plan substantially all of the work that gave rise to its partial withdrawal, even if the employer had been experiencing a general decline in its covered work during the several years prior to the withdrawal.

One comment was received on the request in the preamble to the proposed regulation for comments on adding an exception to § 2646.3(c)(1) "that would allow plans to adopt more stringent standards [for the reduction of the annual payment amount], when the proposed requirement would necessitate administrative costs that exceed the reduction in the employer's annual withdrawal liability payment." The sole comment on this issue endorsed the need for such an exception, without providing any criteria or suggestions as to how such an exception might be framed. Because the PBGC has no basis for setting objective standards to implement such an exception, none is included in the final rule.

As stated in the proposed regulation (§ 2646.3(d)), the description of the base period used for abatement determinations with respect to withdrawal liability resulting from 70-percent contribution declines was incorrect. The correct base period is the five plans years immediately preceding the beginning of the 3-year testing period under section 4205(b)(1)(B)(i) of the Act, not preceding the year of the withdrawal. Section 2646.3(d) has been revised accordingly.

One commenter objected to the rule in § 2646.4(a) that a bond/escrow may only be provided for withdrawal liability payments falling due after the first year in which an employer meets the abatement requirements. According to the commenter, section 4208(a)(2) of ERISA does not "require a one-year restoration [of the withdrawn work], but permits bonding in lieu of payments 'for any plan year' in which the requirements" for abatement are met.

ERISA section 4208(a)(2)(A) provides that:

> For any plan year for which the number of contribution base units with respect to which an employer who has partially withdrawn under section 4205(a)(1) has an obligation to contribute under the plan equals or exceeds the number of units for the highest year determined under [section 4208(a)(1)] without regard to "90 per cent of", the employer may furnish (in lieu of the payment of the partial withdrawal liability determined under section 4206) a bond to the plan in the amount determined by the plan sponsor (not exceeding 50 percent of the annual payment otherwise required).

While a literal reading of this provision supports the commenter's contention, as a practical matter, one cannot determine whether this standard has, in fact, been met until the end of a plan year. Therefore, the one-year restoration period required under § 2646.4(a) is a practical necessity.

The final comment related to proposed § 2646.8, which authorized plans to adopt by plan amendment, subject to PBGC approval, rules waiving or reducing partial withdrawal liability under other conditions. The PBGC's approval of such an amendment is based on its determination that adoption of the amendment is consistent with the purposes of the Act (ERISA section 4208(e)(3)). Proposed § 2646.8(f) provided that plan rules are consistent with the purposes of the Act only if, *inter alia*, "[t]he rules base waiver or reduction of the employer's partial withdrawal liability, in whole or in part, on increases in the employer's contribution base units or in the plan's overall contribution base units in years after the years following the partial withdrawal year * * *." The commenter objected to these standards as being overly restrictive in defining what is consistent with the purposes of the Act. The commenter recommended that the standards be broadened to allow a plan to base reduction or waiver of partial withdrawal liability on such factors as the financial viability of the plan in the partial withdrawal year and declines in the plan's unfunded vested benefits.

The PBGC agrees that the proposed standards may be overly restrictive; that there may be other factors on which to condition abatement that would be consistent with the purposes of the Act. However, the PBGC believes that the

commenter's proposed standards are inappropriate because they ignore an essential element of an abatement rule, *i.e.*, that abatement of withdrawal liability be predicated on events occurring or conditions existing after the withdrawal. A rule that would permit a plan to waive partial withdrawal liability if the plan is well funded as of the partial withdrawal year is really a rule amending the rules for calculating partial withdrawal liability under ERISA section 4206. As such, the rule is beyond the authority of a plan sponsor to adopt or the PBGC to approve. The commenter's recommended revision of the regulation suggests that this basic issue was not adequately addressed in the proposed regulation or its preamble. In order to clarify the prerequisites of an abatement rule, a sentence has been added to § 2646.8(a) specifying that rules adopted under § 2646.8 shall be based on events or factors existing subsequent to the partial withdrawal year.

Proposed § 2646.8(f) set forth very limited criteria for determining whether abatement rules adopted by a plan are acceptable. Therefore, § 2646.8(f) has been revised to provide less restrictive standards for determining whether plan abatement rules are consistent with the purposes of the Act. In its revised form, § 2646.8(f) provides that a plan amendment adopting abatement rules is not consistent with the purposes of the Act unless the PBGC determines that the amendment is not adverse to the interests of plan participants and beneficiaries in the aggregate and would not increase significantly the PBGC's risk of loss with respect to the plan.

Finally, the PBGC received a request for clarification of the following statement relating to the calculation of partial withdrawal liability in the preamble to the proposed regulation:

> The allocable unfunded vested benefits are determined as of the date of the partial withdrawal, or, in the case of a 70-percent decline, as of the last day of the first plan year in the 3-year testing period. (52 FR 21320)

This statement can be interpreted as requiring that the computation of partial withdrawal liability be based on the employer's allocable share of the plan's unfunded vested benefits on the date of the partial withdrawal (or, in the case of a 70-percent decline partial withdrawal, on the last day of the first plan year in the 3-year testing period). This is contrary to the statute and is not what was intended. The intent was to paraphrase ERISA section 4206(a), which provides that the unfunded vested benefits allocable to a withdrawn employer are determined as if the employer had completely withdrawn on the date of the partial withdrawal, or, in the case of a 70-percent contribution decline, on the last day of the first year in the 3-year testing period. Thus, the starting point for the calculation of partial withdrawal liability is the plan's unfunded vested benefits as of the last day of the plan year preceding either the date of the partial withdrawal, or the first year of the 3-year testing period, as applicable.

Compliance with Rulemaking Guidelines

The PBGC has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The regulation affects only multiemployer plans covered by the PBGC. Defining "small plans" as those with under 100 participants, they represent less than 14 percent of all multiemployer plans covered by the PBGC (346 out of 2500). Approximately 500,000 employers contribute to multiemployer plans, most of them small employers (under 100 employees). The PBGC estimates that fewer than 10,000 (2 percent) of these employers will be required to pay partial withdrawal liability in any year, and an even smaller percentage will subsequently increase their participation under a plan and thereby become subject to these rules. Therefore, the PBGC waives compliance with sections 603 and 604 of the Regulatory Flexibility Act.

List of Subjects in 29 CFR Parts 2640 and 2646

Employee benefit plans, Pensions, and Reporting requirements.

In consideration of the foregoing, the PBGC hereby amends subchapter F of chapter XXVI, title 29, Code of Federal Regulations as follows:

PART 2640—DEFINITIONS

1. The authority for part 2640 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

2. Part 2640 is amended by revising § 2640.6 to read as follows:

§ 2640.6 Reduction or waiver of partial and complete withdrawal liability.

For purposes of parts 2646 and 2647—

Complete withdrawal means a complete withdrawal as described in section 4203 of the Act.

Eligible employer means the employer, as defined in section 4001(b) of the Act, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

(1) A restoration involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation;

(3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or

(4) An acquisition by or of, or a merger or combination with another trade or business.

Multiemployer Act means the Multiemployer Pension Plan Amendments Act of 1980, Public Law 96–364, 94 Stat. 1208 (1980).

Partial withdrawal means a partial withdrawal as described in section 4205 of the Act.

Partial withdrawal year means the third year of the 3-year testing period in the case of a partial withdrawal caused by a 70-percent contribution decline, or the year of the partial cessation in the case of a partial withdrawal caused by a partial cessation of the employer's contribution obligation.

Period of withdrawal means the plan year in which the employer completely withdrew from the plan, the plan year in which the employer reentered the plan and all intervening plan years.

3. A new part 2646 is added to read as follows:

PART 2646—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

Sec.

2646.1 Purpose and scope.
2646.2 Abatement.
2646.3 Conditions for abatement.
2646.4 Withdrawal liability payments during pendency of abatement determination.
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Sec.
2646.6 Adjustment of withdrawal liability for subsequent withdrawals.
2646.7 Multiple partial withdrawals in one plan year.
2646.8 Plan adoption of additional abatement conditions.

Authority: 29 U.S.C. 1302(b)(3) and 1388 (c) and (e).

§ 2646.1 Purpose and scope.

(a) *Purpose.* The purpose of this regulation is to establish rules for reducing or waiving the liability of certain employers that have partially withdrawn from a multiemployer pension plan. Section 4208 of the Act establishes certain conditions under which an employer's partial withdrawal liability will be waived or reduced and authorizes the PBGC to prescribe rules setting forth additional conditions under which partial withdrawal liability will be waived or reduced. That section also directs the PBGC to establish a procedure by which a plan may, subject to PBGC approval, adopt rules for the reduction or elimination of partial withdrawal liability under other conditions. This regulation establishes procedures for eliminating the partial withdrawal liability of an employer that satisfies the conditions of section 4208 (a) or (b) and rules and procedures for reducing or eliminating partial withdrawal liability under other specified conditions. It also provides procedures for plans to apply to the PBGC for approval of plan amendments that reduce or waive partial withdrawal liability under conditions other than those specified in section 4208 and this part.

(b) *Scope.* This part applies to multiemployer pension plans covered under section 4021(a) of the Act and not excluded by section 4021(b) and to employers that have partially withdrawn from such plans after September 25, 1980, and that have not, as of the date on which they satisfy the conditions for reducing or eliminating their partial withdrawal liability, fully satisfied their obligation to pay that partial withdrawal liability. This rule shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4208 that were validly adopted pursuant to section 405 of the Multiemployer Act.

§ 2646.2 Abatement.

(a) *General.* Whenever an eligible employer that has partially withdrawn from a multiemployer plan satisfies the requirements in § 2646.3 for the reduction or waiver of its partial withdrawal liability, it may apply to the plan for abatement of its partial withdrawal liability. Applications shall identify the eligible employer, the withdrawn employer (if different), the date of withdrawal, and the basis for reduction or waiver of its withdrawal liability. Upon receiving a complete application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 2646.3. If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* Within 60 days after an eligible employer that partially withdrew from a multiemployer plan applies for abatement in accordance with paragraph (a) of this section, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 2646.3 and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 2646.4 of this part, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 2646.3, then—

(1) The employer's partial withdrawal liability shall be eliminated or its annual partial withdrawal liability payments shall be reduced in accordance with § 2646.5, as applicable;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 2646.6;

(3) Any bonds furnished under § 2646.4 shall be cancelled and any amounts held in escrow under § 2646.4 shall be refunded to the employer; and

(4) Any withdrawal liability payments originally due and paid after the end of the plan year in which the conditions for abatement were satisfied, in excess of the amount due under this part after that date shall be credited to the remaining withdrawal liability payments, if any, owed by the employer, beginning with the first payment due after the revised payment schedule is issued pursuant to this paragraph. If the credited amount is greater than the outstanding amount of the employer's partial withdrawal liability, the amount remaining after satisfaction of the liability shall be refunded to the employer. Interest on the credited amount at the rate prescribed in Part 2644 of this subchapter (relating to notice and collection of withdrawal liability) shall be added if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of a complete abatement application. Interest shall accrue from the 61st day.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 2646.3, then the employer shall take or cause to be taken the actions set forth in paragraphs (d)(1)–(d)(3). The rules in part 2644 shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3). For this purpose, a payment required under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) Any bond or escrow furnished under § 2646.4 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section.

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow.

(3) The employer shall resume or continue making its partial withdrawal liability payments as they are due to the plan.

(e) *Review of non-abatement determination.* A plan sponsor's determinations that the employer does not satisfy the requirements for abatement under § 2646.3 and of the amount of reduction determined under § 2646.5 shall be subject to plan review under section 4219(b)(2) of the Act and to arbitration under section 4221 of the Act and part 2641 of this subchapter, within the times prescribed by those provisions. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of the Act. If the plan sponsor upon review or an arbitrator determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 2646.3, the plan sponsor shall

immediately refund the amounts described in paragraph (e)(1) if the liability is waived, or credit and refund the amounts described in paragraph (e)(2) if the annual payment is reduced.

(1) *Refund for waived liability.* If the employer's partial withdrawal liability is waived, the plan sponsor shall refund to the employer the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with § 2644.2(d) of this subchapter as if the payments were overpayments of withdrawal liability).

(2) *Credit for reduced annual payment.* If the employer's annual partial withdrawal liability payment is reduced, the plan sponsor shall credit the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with § 2644.2(d) of this subchapter as if the payments were overpayments of withdrawal liability) to future withdrawal liability payments owed by the employer, beginning with the first payment that is due after the determination, and refund any credit (including interest) remaining after satisfaction of the outstanding amount of the employer's partial withdrawal liability.

§ 2646.3 Conditions for abatement.

(a) *Waiver of liability for a 70-percent contribution decline.* An employer that has incurred a partial withdrawal under section 4205(a)(1) shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which the conditions of either paragraph (a)(1) or (a)(2) are satisfied for each of the two years:

(1) The number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section).

(2) The conditions of this paragraph are satisfied if—

(i) The number of contribution base units with respect to which the employer has an obligation to contribute for each year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section); and

(ii) The total number of contribution base units with respect to which all employers under the plan have obligations to contribute in each of the two years is not less than 90 percent of the total number of contribution base units for which all employers had obligations to contribute in the partial withdrawal year.

(b) *Waiver of liability for a partial cessation of the employer's contribution obligation.* Except as provided in § 2646.7, an employer that has incurred partial withdrawal liability under section 4205(a)(2) shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which the employer satisfies the conditions under either paragraph (b)(1) or (b)(2) of this section.

(1) *Partial restoration of withdrawn work.* The employer satisfies the conditions under this paragraph if, for each of two consecutive plan years—

(i) The employer makes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal;

(ii) The employer's contribution base units for that facility or under that agreement exceed 30 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the high base year (as defined in paragraph (d) of this section); and

(iii) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals at least 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (as defined in paragraph (d) of this section).

(2) *Substantial restoration of withdrawn work.* The employer satisfies the conditions under this paragraph if, for each of two consecutive plan years—

(i) The employer makes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal;

(ii) The employer's contribution base units for that facility or under that agreement are not less than 90 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the high base year (as defined in paragraph (d) of this section); and

(iii) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals or exceeds the sum of—

(A) The number of contribution base units with respect to which the employer had an obligation to contribute in the year prior to the partial withdrawal year, determined without regard to the contribution base units for the facility or under the agreement that gave rise to the partial withdrawal; and

(B) 90 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement in either the year prior to the partial withdrawal year or the high base year (as defined in paragraph (d) of this section), whichever is less.

(c) *Reduction in annual partial withdrawal liability payment*—(1) *Partial withdrawals under section 4205(a)(1).* An employer shall be entitled to a reduction of its annual partial withdrawal liability payment for a plan year if the number of contribution base units with respect to which the employer had an obligation to contribute during the plan year exceeds the greater of—

(i) 110 percent (or such lower number as the plan may, by amendment, adopt) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year; or

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the plan year following the partial withdrawal year.

(2) *Partial withdrawals under section 4205(a)(2).* An employer that resumes the obligation to contribute with respect to a facility or collective bargaining agreement that gave rise to a partial withdrawal, but does not qualify to have that liability waived under paragraph (b) of this section, shall have its annual partial withdrawal liability payment reduced for any plan year in which the total number of contribution base units with respect to which the employer has an obligation to contribute equals or exceeds the sum of—

(i) The number of contribution base units for the reentered facility or agreement during that year; and

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the year following the partial withdrawal year.

(d) *High base year.* For purposes of paragraphs (a) and (b)(1)(iii) of this section, the high base year contributions are the average of the total contribution base units for the two plan years for which the employer's total contribution base units were highest within the five

plan years immediately preceding the beginning of the 3-year testing period defined in section 4205(b)(1)(B)(i), with respect to paragraph (a) of this section, or the partial withdrawal year, with respect to paragraph (b)(1)(iii) of this section. For purposes of paragraphs (b)(1)(ii) and (b)(2) of this section, the high base year contributions are the average number of contribution base units for the facility or under the agreement for the two plan years for which the employer's contribution base units for that facility or under that agreement were highest within the five plan years immediately preceding the partial withdrawal.

§ 2646.4 Withdrawal liability payments during pendency of abatement determination.

(a) *Bond/Escrow.* An employer that has satisfied the requirements of § 2646.3(a)(1) without regard to "90 percent of" or § 2646.3(b) for one year with respect to all partial withdrawals it incurred in a plan year may, in lieu of making scheduled withdrawal liability payments in the second year for those withdrawals, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor of whether the employer satisfies the requirements of § 2646.3(a)(1) or (b) for the second consecutive plan year. An employer that applies for abatement and neither provides a bond/escrow nor makes its withdrawal liability payments remains eligible for abatement.

(b) *Amount of bond/escrow.* The bond or escrow allowed by this section shall be in an amount equal to 50 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 2646.3(a)(1) or (b), the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Act.

(c) *Notice of bond/escrow.* Concurrently with posting a bond or establishing an escrow account under this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount of the bond or escrow specified in paragraph (b) of this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of the Act. An amendment satisfies this requirement only if it does not create an unreasonable risk of loss to the plan.

(e) *Plan sponsor determination.* Within 60 days after the end of the plan year in which the bond/escrow is furnished, the plan sponsor shall determine whether the employer satisfied the requirements of § 2646.3(a)(1) or (b) for the second consecutive plan year. The plan sponsor shall notify the employer and the bonding or escrow agent in writing of its determination and of the consequences of its determination, as described in § 2646.2(c) or (d) and (e), as appropriate.

§ 2646.5 Computation of reduced annual partial withdrawal liability payment.

(a) *Amount of reduced payment.* An employer that satisfies the requirements of § 2646.3(c)(1) or (c)(2) shall have its annual partial withdrawal liability payment for that plan year reduced in accordance with paragraph (a)(1) or (a)(2) of this section, respectively.

(1) The reduced annual payment amount for an employer that satisfies § 2646.3(c)(1) shall be determined by substituting the number of contribution base units in the plan year in which the requirements are satisfied for the number of contribution base units in the year following the partial withdrawal year in the numerator of the fraction described in section 4206(a)(2)(A).

(2) The reduced annual payment for an employer that satisfies § 2646.3(c)(2) shall be determined by adding the contribution base units for which the employer is obligated to contribute with respect to the reentered facility or agreement in the year in which the requirements are satisfied to the numerator of the fraction described in section 4206(a)(2)(A).

(b) *Credit for reduction.* The plan sponsor shall credit the account of an employer that satisfies the requirements of § 2646.3(c)(1) or (c)(2) with the amount of annual withdrawal liability that it paid in excess of the amount described in paragraph (a)(1) or (a)(2) of this section, as appropriate. The credit shall be applied, a revised payment schedule issued, refund made and interest added, all in accordance with § 2646.2(c)(4).

§ 2646.6 Adjustment of withdrawal liability for subsequent withdrawals.

The liability of an employer for a partial or complete withdrawal from a plan subsequent to a partial withdrawal from that plan in a prior plan year shall be reduced in accordance with part 2649 of this chapter.

§ 2646.7 Multiple partial withdrawals in one plan year.

(a) *General rule.* If an employer partially withdraws from the same multiemployer plan on two or more occasions during the same plan year, the rules of § 2646.3 shall be applied as modified by this section.

(b) *Partial withdrawals under section 4205(a)(1) and (a)(2) in the same plan year.* If an employer partially withdraws from the same multiemployer plan as a result of a 70-percent contribution decline and a partial cessation of the employer's contribution obligation in the same plan year, the employer shall not be eligible for abatement under § 2646.3(b) or (c)(2) or under paragraph (c) of this section. The employer may qualify for abatement under § 2646.3(a) and (c)(1) and under any rules adopted by the plan pursuant to § 2646.8.

(c) *Multiple partial cessations of the employer's contribution obligation.* If an employer permanently ceases to have an obligation to contribute for more than one facility, under more than one collective bargaining agreement, or for one or more facilities and under one or more collective bargaining agreements, resulting in multiple partial withdrawals under section 4205(b)(2)(A) in the same plan year, the abatement rules in § 2646.3(b) shall be applied as modified by this paragraph. If an employer resumes work at all such facilities and under all such collective bargaining agreements, the determination of whether the employer qualifies for elimination of its liability under § 2643.3(b) shall be made by substituting the test set forth in paragraph (c)(1) of this section for that prescribed by § 2646.3(b)(1)(ii) or (b)(2)(ii), as applicable. If the employer resumes work at or under fewer than all the facilities or collective bargaining agreements described in this paragraph, the employer cannot qualify for elimination of its liability under § 2646.3(b). However, the employer may qualify for a reduction in its partial

withdrawal liability pursuant to paragraph (c)(2) of this section.

(1) *Resumption of work at all facilities and under all bargaining agreements.* The test under this paragraph is satisfied if for each of the two consecutive plan years referred to in § 2646.3(b), the employer's total contribution base units for the facilities and under the collective bargaining agreements with respect to which the employer incurred the multiple partial withdrawals exceed 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for those facilities and under those agreements for the base year (as defined in paragraph (d) of this section).

(2) *Resumption at fewer than all facilities or under fewer than all bargaining agreements.* If the employer satisfies the conditions in § 2646.3(b)(1) (i) and (iii) and paragraph (c)(2)(i) of this section, or the conditions in § 2646.3(b)(2) (i) and (iii) and paragraph (c)(2)(ii) of this section, as applicable, the employer's withdrawal liability shall be partially waived as set forth in paragraph (c)(2)(iii) of this section.

(i) With respect to a resumption of work under § 2646.3(b)(1), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 2646.3(b)(1), the employer's contribution base units for any reentered facility or agreement exceed 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(ii) With respect to a resumption of work under § 2646.3(b)(2), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 2646.3(b)(2), the employer's contribution base units for any reentered facility or agreement exceed 90 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(iii) The employer's reduced withdrawal liability and, if any, the reduced annual payments of the liability shall be determined by adding the average number of contribution base units that the employer is required to contribute for those two consecutive years for that facility(ies) or agreement(s) to the numerator of the fraction described in section 4206(a)(2)(A). The amount of any remaining partial withdrawal liability shall be paid over the schedule originally established starting with the first payment due after the revised payment schedule is issued under § 2646.2(c)(4).

(d) *Base Year.* For purposes of this section, the base year contribution base units for a reentered facility(ies) or under a reentered agreement(s) are the average number of contribution base units for the facility(ies) or under the agreement(s) for the two plan years for which the employer's contribution base units for that facility(ies) or under that agreement(s) were highest within the five plan years immediately preceding the partial withdrawal.

§ 2646.8 Plan adoption of additional abatement conditions.

(a) *General rule.* A plan may by amendment, subject to the approval of the PBGC, adopt rules for the reduction or waiver of partial withdrawal liability under conditions other than those specified in § 2646.3, provided that such conditions relate to events occurring or factors existing subsequent to a partial withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. A plan amendment under this section may not be put into effect until it is approved by the PBGC. An amendment that is approved by the PBGC may apply retroactively.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to the Case Operations and Compliance Department (45200), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, DC 20006.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the Internal Revenue Service and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor, and, if different, also the EIN–PIN last filed with the PBGC. If an EIN–PIN has not been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) the date on which the amendment was adopted;

(ii) the proposed effective date;

(iii) the full text of the rules on the reduction or waiver of partial withdrawal liability; and

(iv) the full text of the rules adjusting the reduction in the employer's liability for a subsequent partial or complete withdrawal, as required by section 4206(b)(1) of the Act.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines that it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of the Act. An abatement amendment is not consistent with the purposes of the Act unless the PBGC determines that—

(1) The amendment is not adverse to the interests of plan participants and beneficiaries in the aggregate; and

(2) The amendment would not significantly increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control no. 1212–0039)

Issued at Washington, DC on this 9th day of December 1992.

Lynn Martin,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving this final regulation and authorizing its chairperson to issue same.

Carol Connor Flowe,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 92–30343 Filed 12–15–92; 8:45 am]

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29 CFR Parts 2640 and 2649

RIN 1212–AA37

Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation establishes rules for adjusting the statutory credit against the partial or complete withdrawal liability of an employer that had previously partially withdrawn from the same multiemployer pension plan. This regulation is required by the Employee Retirement Income Security Act, as amended. The purpose of the statutory credit is to avoid double-charging an employer for the same unfunded vested benefits upon which its liability for the prior partial withdrawal was based. However, in certain cases, this credit must be reduced to ensure that the employer does not avoid its fair share of liability based on plan experience and its participation in the plan subsequent to the prior partial withdrawal. This regulation establishes rules for reducing the credit in appropriate cases.

EFFECTIVE DATE: January 15, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah J. Bisco, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; (202) 778-8824 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 4205(a) of Employee Retirement Income Security Act of 1974, as amended ("ERISA or "the Act"), sets forth the circumstances under which an employer is deemed to have partially withdrawn from a multiemployer pension plan. The basic amount of an employer's liability for a partial withdrawal is calculated under section 4206(a). Section 4206(b) provides special rules for adjusting an employer's liability for a complete or partial withdrawal subsequent to a partial withdrawal from the same plan. Section 4206(b)(1) states that the liability for the subsequent withdrawal shall be reduced by the amount of the previous partial withdrawal liability, less any waiver or reduction of the previous liability. Section 4206(b)(2) requires the Pension Benefit Guaranty Corporation ("PBGC") to prescribe regulations providing for adjustments to this credit in order to ensure that the total liability of the employer accurately reflects that employer's proper share of plan liabilities.

On October 6, 1987, the PBGC published a proposed regulation on Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal (52 FR 37329). The regulation proposed mandatory rules for the reduction of the statutory credit for an employer who has partially withdrawn from a multiemployer plan and thereafter incurs another partial or complete withdrawal from the same plan. No written comments were received on the proposal, and the PBGC is, therefore, adopting the regulation as proposed, except for one correction, an editorial revision and a minor change.

ERISA section 4206(b)(1) provides that:

> In the case of an employer that has withdrawal liability for a partial withdrawal from a plan, any withdrawal liability of that employer for a partial or complete withdrawal from that plan in a subsequent plan year shall be reduced by the amount of any partial withdrawal liability (*reduced by an abatement or reduction of such liability*) of the employer with respect to the plan for a previous plan year. (emphasis added)

Proposed § 2649.3 (relating to the presumptive method) and proposed § 2649.4 (relating to the modified presumptive method) contained identical provisions for reducing the credit for a prior partial withdrawal by the amount of any abatement of liability for that withdrawal. Proposed § 2649.5 (relating to the rolling-5 method) erroneously omitted any mention of a reduction in the credit, and proposed § 2649.6 (relating to the direct attribution method) merely repeated the statutory language.

The PBGC has determined that the reduction in the credit should be identical for each of the statutory allocation methods, because the reduction merely represents the amount of the liability for the prior partial withdrawal that was waived or otherwise eliminated. Accordingly, the regulation has been revised to add a new § 2649.7 setting forth the rule for reducing the credit to reflect an abatement or other reduction of the prior partial withdrawal liability. (Proposed §§ 2649.7 and 2649.8 have been renumbered § 2649.8 and § 2649.9.) The rule in new § 2649.7 applies to the credits computed for each of the statutory allocation methods under §§ 2649.3–2649.6.

The new § 2649.7 does not include the reference contained in proposed §§ 2649.3(d) and 2649.4(d) to "abate[ment] pursuant to section 4208 of the Act". The specific reference to section 4208 has been deleted to prevent any inference that a credit reduction for reasons other than section 4208 should be treated differently. The reduction of the credit described in § 2649.7 applies to any employer whose withdrawal liability for a prior partial withdrawal has been "reduced by any abatement or reduction of such liability". Thus, the reduction would apply with respect to any abatement under ERISA section 4208, as well as to any adjustment of liability pursuant to, for example, an arbitrator's award.

The parenthetical phrase "determined without regard to any adjustments" has been deleted from § 2649.4(c)(2). This editorial change was made to avoid creating any negative inference concerning § 2649.4(c)(1), which does not contain this phrase. The meaning of § 2649.4(c)(2) is not changed by this revision.

The PBGC received a question concerning the language in § 2649.5, which requires that the amount of the liability for a prior partial withdrawal be treated as if it was "fully amortized in level annual installments" over a number of years. The questioner was uncertain whether the amount constituting principal should be considered level over the years, or if the total amount of both principal and interest must be in "level annual installments". The latter is the correct interpretation of § 2649.5, *i.e.*, that the total installment amount remains level over the years, and interest is a larger portion of the amount in earlier years of the payment term. This is the same interpretation as has been consistently given the identical language in section 4211(c)(2) of ERISA.

Compliance With Rulemaking Guidelines

The PBGC has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation will result in some shifting of costs among employers that contribute to multiemployer plans, but will not, in the aggregate, increase costs.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a

significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The regulation affects only multiemployer plans covered by the PBGC. Defining "small plans" as those with under 100 participants, they represent less than 14% of all multiemployer plans covered by the PBGC (346 out of 2,500). Approximately 500,000 employers contribute to multiemployer plans, most of them small employers (under 100 employees). The PBGC estimates that fewer than 10,000 (2 percent) of those employers will be required to pay partial withdrawal liability in any year, and an even smaller percentage will subsequently completely or partially withdraw from the same plan and thereby become subject to these rules. Therefore, the PBGC waives compliance with sections 603 and 604 of the Regulatory Flexibility Act.

List of Subjects in 29 CFR Parts 2640 and 2649

Employee Benefit Plans, Pensions.

In consideration of the foregoing, the PBGC amends subchapter F of chapter XXVI, title 29, Code of Federal Regulations as follows:

PART 2640—DEFINITIONS

1. The authority for part 2640 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

2. Part 2640 is amended by adding a new § 2640.8 to read as follows:

§ 2640.8 Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal.

For purposes of part 2649—

Complete withdrawal means a complete withdrawal as described in section 4203 of the Act.

Partial Withdrawal means a partial withdrawal as described in section 4205 of the Act.

3. A new part 2649 is added to read as follows:

PART 2649—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Sec.

2649.1 Purpose and scope.
2649.2 Credit against liability for a subsequent withdrawal.
2649.3 Amount of credit in plans using the presumptive method.
2649.4 Amount of credit in plans using the modified presumptive method.
2649.5 Amount of credit in plans using the rolling-5 method.
2649.6 Amount of credit in plans using the direct attribution method.
2649.7 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.
2649.8 Amount of credit in plans using alternative allocation methods.
2649.9 Special rule for 70-percent decline partial withdrawals.

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

§ 2649.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4206(b) of the Act, for adjusting the partial or complete withdrawal liability of an employer that previously partially withdrew from the same multiemployer plan. Section 4206(b)(1) provides that when an employer that has partially withdrawn from a plan subsequently incurs liability for another partial or a complete withdrawal from that plan, the employer's liability for the subsequent withdrawal is to be reduced by the amount of its liability for the prior partial withdrawal (less any waiver or reduction of that prior liability). Section 4206(b)(2) requires the PBGC to prescribe regulations adjusting the amount of this credit to ensure that the liability for the subsequent withdrawal properly reflects the employer's share of liability with respect to the plan. The purpose of the credit is to protect a withdrawing employer from being charged twice for the same unfunded vested benefits of the plan. The reduction in the credit protects the other employers in the plan from becoming responsible for unfunded vested benefits properly allocable to the withdrawing employer. In the interests of simplicity, the rules in this part provide for, generally, a one-step calculation of the adjusted credit under section 4206(b)(2) against the subsequent liability, rather than for separate calculations first of the credit under section 4206(b)(1) and then of the reduction in the credit under paragraph (b)(2) of that section. In cases where the withdrawal liability for the prior partial withdrawal was reduced by an abatement or other reduction of that liability, the adjusted credit is further reduced in accordance with § 2649.7 of this part.

(b) *Scope.* This part applies to multiemployer plans covered under section 4021(a) of the Act and not excluded by section 4021(b), and to employers that have partially withdrawn from such plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan after January 15, 1993.

§ 2649.2 Credit against liability for a subsequent withdrawal.

Whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit against the new withdrawal liability in an amount greater than or equal to zero, determined in accordance with this part. If the credit determined under §§ 2649.3–2649.8 is less than zero, the amount of the credit shall equal zero.

§ 2649.3 Amount of credit in plans using the presumptive method.

(a) *General.* In a plan that uses the presumptive allocation method described in section 4211(b) of the Act, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 2649.7.

(b) *Unamortized old liabilities.* The amounts determined under this paragraph are the employer's proportional shares, if any, of the unamortized amounts as of the end of the plan year preceding the withdrawal for which the credit is being calculated, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980;

(2) The annual changes in the plan's unfunded vested benefits for plan years ending after September 25, 1980, and before the year of the prior partial withdrawal; and

(3) The reallocated unfunded vested benefits (if any), as determined under section 4211(b)(4), for plan years ending before the year of the prior partial withdrawal.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of the old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of the Act for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if

it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) for the prior partial withdrawal.

§ 2649.4 Amount of credit in plans using the modified presumptive method.

(a) *General.* In a plan that uses the modified presumptive method described in section 4211(c)(2) of the Act, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 2649.7.

(b) *Unamortized old liabilities.* The amounts described in this paragraph shall be determined as of the end of the plan year preceding the withdrawal for which the credit is being calculated, and are the employer's proportional shares, if any, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; and

(2) The aggregate post-1980 change amount determined under section 4211(c)(2)(C) as if the employer had completely withdrawn in the year of the prior partial withdrawal, reduced as if those obligations were being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of the Act for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) for the prior partial withdrawal.

§ 2649.5 Amount of credit in plans using the rolling-5 method.

In a plan that uses the rolling-5 allocation method described in section 4211(c)(3) of the Act, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 2649.7.

§ 2649.6 Amount of credit in plans using the direct attribution method.

In a plan that uses the direct attribution allocation method described in section 4211(c)(4) of the Act, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments beginning with the plan year in which the prior partial withdrawal occurred, over the greater of 10 years or the amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Internal Revenue Code. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 2649.7.

§ 2649.7 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.

(a) *General.* If an employer's withdrawal liability for a prior partial withdrawal has been reduced or waived, the credit determined pursuant to §§ 2649.3–2649.6 shall be adjusted in accordance with this section.

(b) *Computation.* The adjusted credit is calculated by multiplying the credit determined under the preceding sections of this part by a fraction—

(1) the numerator of which is the excess of the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero) over the present value of each abatement or other reduction of that prior withdrawal liability calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) the denominator of which is the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero).

§ 2649.8 Amount of credit in plans using alternative allocation methods.

A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of the Act and part 2642 of this subchapter shall adopt, by plan amendment, a method of calculating the credit provided by § 2649.2 that is consistent with the rules in §§ 2649.3–2649.7 for plans using the statutory allocation method most similar to the plan's alternative allocation method.

§ 2649.9 Special rule for 70-percent decline partial withdrawals.

For the purposes of applying the rules in §§ 2649.3–2649.8 in any case in which either the prior or subsequent partial withdrawal resulted from a 70-percent contribution decline (or a 35-percent decline in the case of certain retail food industry plans), the first year of the 3-year testing period shall be deemed to be the plan year in which the partial withdrawal occurred.

Issued at Washington, D.C. on this 9th day of December 1992.

Lynn Martin,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving this final regulation and authorizing its chairman to issue same.

Carol Connor Flowe,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 92–30345 Filed 12–15–92; 8:45 am]

BILLING CODE 7708–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3768 and 0E3947/R1172; FRL–4173–4]

RIN 2070–AB78

Pesticide Tolerances for Oryzalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide oryzalin in or on the raw agricultural commodities guava and papaya. This regulation to establish maximum

permissible levels for residues of the herbicide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective December 16, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 9E3768 and 0E3947/R1172], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 1992 (57 FR 45018), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) 9E3768 and 0E3947 to EPA on behalf of the Agricultural Experiment Station of Hawaii. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of tolerances for residues of the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the raw agricultural commodities banana and guava (PP 0E3947) and papaya (PP 9E3768) at 0.05 part per million (ppm). The petition proposing tolerances for banana and guava (PP 0E3947) was subsequently amended by IR-4, withdrawing without prejudice to subsequent filing the proposal for establishment of a tolerance for residues of oryzalin in or on banana.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.304, to read as follows:

§ 180.304 Oryzalin; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Almond, hulls	0.05
Avocados	0.05
Citrus fruits	0.05
Cottonseed	0.05
Figs	0.05
Grain, barley	0.05
Grain, wheat	0.05
Kiwifruits	0.05
Nuts	0.05
Olives	0.05
Peas (succulent)	0.05
Pistachios	0.05
Pome fruits	0.05
Pomegranates	0.05
Potatoes	0.05
Small fruits	0.05
Soybeans	0.1
Stone fruits	0.05

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Guava	0.05
Papayas	0.05

[FR Doc. 92-30436 Filed 12-15-92; 8:45 am]

BILLING CODE 6560-50-F

[PP 8E3628/R1171; FRL-4172-7]

RIN 2070-AB78

Pesticide Tolerances for 2-(2-Chlorophenyl)Methyl-4,4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone (also referred to as clomazone) in or on the raw agricultural commodity sweet potato. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective on December 16, 1992.

ADDRESSES: Written objections, identified by the document control

number, [PP 8E3628/R1171], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-5310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 16, 1992 (57 FR 42730), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 8E3628 to EPA on behalf of the agricultural experiment stations of Georgia, Louisiana, North Carolina, and Oklahoma.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity sweet potato at 0.05 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.425 is amended in the table therein by adding and alphabetically inserting the raw agricultural commodity sweet potato, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethy-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Sweet potato	0.05

[FR Doc. 92-30437 Filed 12-15-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 6F3380, FAP 8H5502, and FAP 8H5568/R1161; FRL-4174-1]

RIN 2070-AB78

Pesticide Tolerances and Food and Feed Additive Regulations for Glyphosate; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that established tolerances and food and feed additive regulations for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethyl phosphonic acid by addressing a comment on the proposal that was inadvertently overlooked in issuing the final rule. No change is made in the final rule as a result of the comment.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-6800.

SUPPLEMENTARY INFORMATION: In FR Doc. 92-22252 appearing at page 42701 in the **Federal Register** of September 16, 1992, the following changes are made in the first column:

1. The one-sentence paragraph "There were no comments or requests for referral to an advisory committee received in response to the proposed rule." is removed.

2. The following three new paragraphs are inserted in place of the removed paragraph:

A comment was received from Mr. Stephen A. McFadden of Pasco, WA, in response to EPA's proposal to increase the tolerance level of glyphosate. Mr. McFadden expressed two primary concerns: (1) An increase in the tolerance level for glyphosate may result in increased plant metabolites which may affect public health, and (2) the introduction of genetically engineered soybeans with a glyphosate resistance could result in a similar increase.

Agency response to concern (1): When glyphosate is applied as a harvest aid (the purpose for which the increased tolerances were sought) the treated soybeans are mature, and no additional plant metabolites would be accumulated in the seed.

Agency response to concern (2): The proposed harvest aid use and associated

tolerance increase are for conventional soybeans only. Genetically engineered soybeans are now in the testing stage and are regulated by the USDA and the FDA. Mr. McFadden's comments regarding the metabolism of genetically engineered plants have been forwarded to those Agencies.

Dated: November 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-30298 Filed 12-15-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 271

[FRL-4545-3]

North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). North Carolina's revisions consist of the provisions contained in Non-HSWA Cluster VI, promulgated July 1, 1989, through June 30, 1990, and HSWA Cluster II promulgated between July 1, 1987, and June 30, 1990. These requirements are listed in Section B of this document. The Environmental Protection Agency (EPA) has reviewed North Carolina's application(s) and has made a decision, subject to public review and comment, that the North Carolina hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA approves North Carolina's hazardous waste program revisions. North Carolina's applications for program revisions are available for public review and comment.

DATES: Final authorization for North Carolina's program revisions shall be effective February 16, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on North Carolina's program revision applications must be received by the close of business, January 15, 1993.

ADDRESSES: Copies of North Carolina's program revision applications are available during normal business hours at the following addresses for inspection and copying: North Carolina Department of Environment, Health, and Natural Resources, Hazardous Waste Branch, P.O. Box 27687, Raleigh, North Carolina 27611-7687; U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347-4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-268 and 124 and 270.

B. North Carolina

North Carolina initially received final authorization for its base RCRA program effective on December 31, 1984 (49 FR 48694). North Carolina has received authorization for revisions to its program on March 25, 1986, (51 FR 10211), October 4, 1988 (53 FR 29460), April 10, 1989 (54 FR 6290), November 21, 1989 (54 FR 38993), March 19, 1991 (56 FR 1930), September 17, 1991 (56 FR 33206), and June 26, 1992 (57 FR 15254). On January 26, 1992, North Carolina submitted program revision applications for additional program approvals. Today, North Carolina is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed North Carolina's applications and has made an immediate final decision that North Carolina's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until January 15, 1993.

Copies of North Carolina's application(s) for these program revisions are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of North Carolina's program revisions shall become effective February 16, 1993, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the States is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

North Carolina is today seeking authority to administer the following Federal requirements promulgated on August 14, 1989, through June 1, 1990:

Federal requirement	HSWA or FR reference	Promulgation	State authority
Delay of Closure; Period for Hazardous Waste Management Facilities	54 FR 33376	8/14/89	15A NCAC 13A.0009(c) 15A NCAC 13A.0009(h) 15A NCAC 13A.0009(f) 15A NCAC 13A.0010(b) 15A NCAC 13A.0010(g) 15A NCAC 13A.0010(h) 15A NCAC 13A.0013(g) 15A NCAC 13A.0010(h) 15A NCAC 13A.0013(g)
Mining Waste Exclusion I	54 FR 36592	9/1/89	15A NCAC 13A.0006(a)
Testing and Monitoring Activities	54 FR 40260	9/29/89	15A NCAC 13A.0001(d) 15A NCAC 13A.0006(e)
Changes to Part 124 not accounted for by present checklists	Various	Various	15A NCAC 13A.0005
Mining Waste Exclusion II	55 FR 2322	1/23/90	15A NCAC 13A.0006(a) 15A NCAC 13A.0002(b) 15A NCAC 13A.0007(b) 15A NCAC 13A.0006(d)
Modifications of F019 Listing	55 FR 5340	2/14/90	15A NCAC 13A.0006(d)
Testing and Monitoring Activities; Technical Corrections	55 FR 8948	3/9/90	15A NCAC 13A.0001(d) 15A NCAC 13A.0006(e)
Criteria for Listing Toxic Wastes; Technical Amendment	55 FR 18726	5/4/90	15A NCAC 13A.0006(b)
Land Disposal Restrictions for Third Third Schedule Waste	55 FR 22520	6/1/90	15A NCAC 13A.0006(c) 15A NCAC 13A.0006(d) 15A NCAC 13A.0006(e) 15A NCAC 13A.0007(a) 15A NCAC 13A.0007(c) 15A NCAC 13A.0009(c) 15A NCAC 13A.0009(l)(1) 15A NCAC 13A.0009(m) 15A NCAC 13A.0009(n) 15A NCAC 13A.0009(o) 15A NCAC 13A.0010(a) 15A NCAC 13A.0010(b) 15A NCAC 13A.0010(k) 15A NCAC 13A.0010(l) 15A NCAC 13A.0010(m) 15A NCAC 13A.0010(n) 15A NCAC 13A.0012(a) 15A NCAC 13A.0012(b) 15A NCAC 13A.0012(c) 15A NCAC 13A.0012(e) 15A NCAC 13A.0013(a)
Financial Responsibility; Settlement Agreement; Correction [3]	55 FR 25976	6/26/90	15A NCAC 13A.0009(h) 15A NCAC 13A.0010(g)
Land Disposal Restriction Amendments to First Third Scheduled Waste	54 FR 18836	5/2/89	15A NCAC 13A.0012(c)
Land Disposal Restriction Amendments to Second Third Scheduled Waste	54 FR 26594	6/23/89	15A NCAC 13A.0012(b) 15A NCAC 13A.0012(c)
Land Disposal Restriction Correction to First Third Scheduled Waste	54 FR 36967	9/6/89	15A NCAC 13A.0011(a) 15A NCAC 13A.0012(a) 15A NCAC 13A.0012(b) 15A NCAC 13A.0012(d)
Reportable Quantity Adjustment Methyl Bromide Production Waste	54 FR 41402	10/6/89	15A NCAC 13A.0006(d) 15A NCAC 13A.0006(e)
Reportable Quantity Adjustment	54 FR 50968	12/11/89	15A NCAC 13A.0006(d) 15A NCAC 13A.0006(e)
Listing of 1-Dimethylhydrazine Production Waste	55 FR 18496	5/2/90	15A NCAC 13A.0006(d) 15A NCAC 13A.0006(e)
Identification and Listing of Hazardous Waste	53 FR 27162	7/19/88	15A NCAC 13A.0006(a)
Farmer Exemptions Technical Corrections	53 FR 27164	7/19/88	15A NCAC 13A.0007(a) 15A NCAC 13A.0009(b) 15A NCAC 13A.0010(a) 15A NCAC 13A.0012(a) 15A NCAC 13A.0013(a)
Land Disposal Restrictions First Third [2]	53 FR 31138	8/17/88	15A NCAC 13A.0009(c) 15A NCAC 13A.0009(f) 15A NCAC 13A.0010(b) 15A NCAC 13A.0010(e) 15A NCAC 13A.0011(a) 15A NCAC 13A.0012(a) 15A NCAC 13A.0012(b) 15A NCAC 13A.0012(c) 15A NCAC 13A.0012(d)
Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems.	53 FR 34079	9/2/88	15A NCAC 13A.0002(b) 15A NCAC 13A.0009(h) 15A NCAC 13A.0009(k) 15A NCAC 13A.0010(g) 15A NCAC 13A.0010(j) 15A NCAC 13A.0013(a)

Federal requirement	HSWA or FR reference	Promulgation	State authority
Exports of Hazardous Waste [1]	51 FR 28664	8/8/86	15A NCAC 13A.0006(a) 15A NCAC 13A.0007(d) 15A NCAC 13A.0007(e) 15A NCAC 13A.0007(f) 15A NCAC 13A.0007(g) 15A NCAC 13A.0007(h) 15A NCAC 13A.0008(b)
California List Waste	52 FR 25760	7/8/87	15A NCAC 13A.0001(d) 15A NCAC 13A.0007(g) 15A NCAC 13A.0009(c) 15A NCAC 13A.0010(b) 15A NCAC 13A.0012(a) 15A NCAC 13A.0012(b) 15A NCAC 13A.0012(c) 15A NCAC 13A.0012(d) 15A NCAC 13A.0012(e) 15A NCAC 13A.0013(g) 15A NCAC 13A.0013(j)
Exception Reporting for Small Quantity Generators of Hazardous Waste	52 FR 35894	9/23/87	15A NCAC 13A.0007(d)
HSWA Codification Rule 2 [4]	52 FR 45788	12/1/87	15A NCAC 13A.0013(b) 15A NCAC 13A.0009(g) 15A NCAC 13A.0010(a) 15A NCAC 13A.0013(f) 15A NCAC 13A.0013(g)
HSWA Codification Rule Double liners, Correction	55 FR 19262	5/9/90	15A NCAC 13A.0009(l)(1) 15A NCAC 13A.0009(o)
Organic Air Emissions Standards for Process Vents and Equipment Leaks	55 FR 25454	6/21/90	15A NCAC 13A.0001(d) 15A NCAC 13A.0006(a) 15A NCAC 13A.0009(c) 15A NCAC 13A.0009(f) 15A NCAC 13A.0009(t) 15A NCAC 13A.0009(u) 15A NCAC 13A.0010(b) 15A NCAC 13A.0010(e) 15A NCAC 13A.0010(r) 15A NCAC 13A.0010(s) 15A NCAC 13A.0013(b)
Land Disposal Restrictions	51 FR 40572 52 FR 21010		15A NCAC 13A.0001(c) 15A NCAC 13A.0002(b) 15A NCAC 13A.0003(a) 15A NCAC 13A.0006(a) 15A NCAC 13A.0006(c) 15A NCAC 13A.0006(d) 15A NCAC 13A.0007(a) 15A NCAC 13A.0008(a) 15A NCAC 13A.0009(b) 15A NCAC 13A.0009(c) 15A NCAC 13A.0009(f) 15A NCAC 13A.0010(a) 15A NCAC 13A.0010(b) 15A NCAC 13A.0010(e) 15A NCAC 13A.0012(a) 15A NCAC 13A.0012(b) 15A NCAC 13A.0012(c) 15A NCAC 13A.0012(d) 15A NCAC 13A.0012(e) 15A NCAC 13A.0013(b) 15A NCAC 13A.0013(f) 15A NCAC 13A.0013(g)

Limitations:

[1] North Carolina cannot assume the authority for the following aspects of regulating hazardous waste exports which have implications on the provisions adopted at 260.50 through 262.57 on Checklist 31. This authority is not delegable to the States.

- 1 Receive notifications of the intent to Export;
- 1 Transmit information, regarding intent to Export, to foreign countries through the Department of State; and,
- 1 Transmit acknowledgement of consent to the exporter.

EPA feels that foreign policy interest and exporters interest in expeditious processing are better served by the Agency retaining the above listed functions. The Department of State would have the single point of contact in administering the export program, allowing for uniformity and expeditious transmission of information between the United States and foreign countries.

[2] North Carolina cannot assume the authority for implementing the following provisions pertaining to the Land Disposal Restrictions because these authorities are not delegable to the States. §§ 268.5, 268.42(b), 268.44, and 268.6. This restriction has implications on the provisions listed on checklists 39, 62, and 63.

[3] North Carolina was authorized for financial responsibility settlement agreement, (51 FR 16422) on 10/4/88. This action only incorporates the corrections promulgated on 6/26/90 which added §§ 264.113 and 265.113 to the checklist.

[4] North Carolina does not allow underground injection as a means of disposal.

C. Decision

I conclude that North Carolina's application(s) for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised, except where otherwise noted.

North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application, its previously approved authorities and where otherwise noted in this Notice. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Patrick M. Tobin,

Regional Administrator.

[FR Doc. 92–30420 Filed 12–15–92; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 57, No. 242
Wednesday, December 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300272; FRL-4179-1]

RIN 2070-AC18

Tetrapotassium Pyrophosphate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of tetrapotassium pyrophosphate (CAS Reg. No. 7320-34-5) when used as an inert ingredient (sequestrant, anticaking agent, or conditioning agent) in pesticide formulations applied to growing crops only. This proposed regulation was requested by the Monsanto Co.

DATES: Comments, identified by the document control number [OPP-300272], must be received on or before January 15, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind L. Gross, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5971.

SUPPLEMENTARY INFORMATION: Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, submitted pesticide petition (PP) 1E03984 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of tetrapotassium pyrophosphate ((CAS Reg. No. 7320-34-5), also known as potassium pyrophosphate) when used as an inert ingredient (sequestrant, anticaking agent, or conditioning agent) not to exceed 10 percent in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemption for tetrapotassium pyrophosphate will not need to be submitted. The rationale for this decision is described below.

1. Tetrapotassium pyrophosphate is an inorganic compound that breaks down into potassium and phosphate ions. These potassium and phosphate ions are indistinguishable from the potassium and phosphate ions already present in the environment.

2. In solution, tetrapotassium pyrophosphate and sodium chloride exist in their ionic forms and as such are indistinguishable chemically and biologically from an ionic solution of tetrasodium pyrophosphate and potassium chloride.

3. Tetrasodium pyrophosphate is exempt from the requirement of a tolerance when used as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.1001(c) and is recognized as GRAS under 21 CFR 182.6789 and 21 CFR 582.6789 as a sequestrant.

4. Potassium chloride is exempt from the requirement of a tolerance when used as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.1001(c) and is recognized as GRAS under 21 CFR 182.5622 as a dietary supplement and is recognized as GRAS under 21 CFR 582.5622 as a nutrient and/or dietary supplement.

5. Tetrapotassium pyrophosphate is chemically similar to several chemicals (e.g., potassium phosphate) already exempt from the requirement of a tolerance when used as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.1001(c).

6. Tetrapotassium pyrophosphate is chemically similar to several chemicals (e.g., dipotassium hydrogen phosphate, potassium dihydrogen phosphate) already exempt from the requirement of

a tolerance when used as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

7. Tetrapotassium pyrophosphate is chemically similar to several potassium and sodium salts (e.g., potassium phosphate, sodium phosphate) which are considered minimum risk inerts (List 4 inerts).

8. Tetrapotassium pyrophosphate (potassium pyrophosphate) was listed in "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized As Safe (GRAS)," Appendix A, Part II, NAS, Washington, DC, pp. 14-16, U.S. Department of Commerce, National Technical Information Service, Order No. PB221-949, 1972.

9. Tetrapotassium pyrophosphate is approved for use under 21 CFR 173.315 in flume water for washing sugar beets.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300272]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 4, 1992.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
• • • • •	• • •	• •
Tetrapotassium pyrophosphate (CAS Reg. No. 7320-345).	Not to exceed 10 percent of formulation	Sequestrant, anticaking agent, conditioning agent.
• • • • •	• • •	• •

* * * * *

[FR Doc. 92-30435 Filed 12-15-92; 8:45 am]

BILLING CODE 6560-50-F

Notices

Federal Register
Vol. 57, No. 242
Wednesday, December 16, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COUNCIL ON ENVIRONMENTAL QUALITY

Availability of Annual Report on Endangered Species Act Exemption

December 8, 1992.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only: Notice of availability of Annual Report on Endangered Species Act Exemption.

SUMMARY: This notice announces the availability of the Annual Report submitted by Basin Electric Power Cooperative, as Project Manger for the Missouri Basin Power Project in the matter of an exemption granted from the requirements of the Endangered Species Act to Grayrocks Dam. The lead federal agency in the project is the Rural Electrification Administration.

DATES: The report was submitted to the Council on December 1, 1992.

ADDRESSES: The Annual Report is available from Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, ND 58501–0564; Telephone: (701) 223–0441.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. (202) 395–5754.

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act, and agency granted an exemption under 16 U.S.C. 1536(h) must submit to the Council on Environmental Quality an annual report describing its compliance methods with the mitigation and enhancement measures prescribed by 16 U.S.C. 1536. See 16 U.S.C. 1536(1)(2). This subsection further requires that the Council publish availability of the report in the **Federal Register**.

On February 7, 1979, the Endangered Species Committee granted an exemption from the requirements of the Endangered Species Act to Grayrocks Dam. In granting the Exemption Order, the Committee, as required by the act, established requirements for reasonable mitigation and enhancement measures. These requirements are set out in an "Agreement of Settlement and Compromise" and is part of the Annual Report announced here.

David B. Struhs,
Chief of Staff.

[FR Doc. 92–30475 Filed 12–15–92; 8:45 am]
BILLING CODE 3125–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Pacific Billfish Angler Survey.
Agency Form Number: NOAA 88–10.
OMB Approval Number: 0648–0020.
Type of Request: Revision of a currently approved collection.
Burden: 175 hours.
Number of Respondents: 2,500.
Avg Hours Per Response: 4 minutes.
Needs and Uses: This survey determines the annual trend in catch of billfish in the Pacific Ocean by recreational fishermen, and the effect on catch by domestic and foreign fleet operators. Data are used in domestic and international discussions, by Federal fishery councils and complies with requirements of the Marine Game Fish Research Act.
Affected Public: Individuals or households.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Ron Minsk, (202) 395–3084.

Agency: National Oceanic and Atmospheric Administration.
Title: Reporting Requirements for a Commercial Fisheries Exemption Under Section 114 of the Marine Mammal Protection Act.
Agency Form Number: None.
OMB Approval Number: 0648–0225.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 143,988 reporting/recordkeeping hours.
Number of Respondents: 28,963.
Avg Hours Per Response: Ranges between 2.5 and 5 minutes -- averages 112 responses per respondent.
Needs and Uses: The Marine Mammal Protection Act mandates the protection of marine mammals and makes their killing, except under permit or exemption, a violation. Section 114, as amended, authorizes an exemption for commercial fishermen provided they register and report all takings. The information is required by statute and needed by the National Marine Fisheries Service to determine the impacts of commercial fishing on marine mammal populations.
Affected Public: Individuals, businesses or other for–profit institutions, small businesses or organizations.
Frequency: On occasion, annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Ron Minsk, (202) 395–3084.

Agency: National Oceanic and Atmospheric Administration.
Title: Registration to Implement Temporary Emergency Sea Turtle Conservation Measures.
Agency Form Number: None.
OMB Approval Number: 0648–0267.
Type of Request: Revision of a currently approved collection.
Burden: 108 hours.
Number of Respondents: 900.
Avg Hours Per Response: 7 minutes.
Needs and Uses: The National Marine Fisheries Service has issued a final rule to amend the sea turtle protection regulations applicable to shrimp trawlers in the Southeast Atlantic and Gulf of Mexico. The regulations contain a provision for registering fishermen, if needed, when emergency conditions exist making shrimp trawling with Turtle Excluder Devices (TEDs) impracticable. The rule also contains a provision that will allow restrictions to be imposed on other fisheries that encounter sea turtles as well. The registration system will be used to identify vessels that are exempt from the TED requirement and to identify fishing vessels required to carry observers.
Affected Public: Small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395-3084.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Ron Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: December 10, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–30482 Filed 12–15–92; 8:45 am]

BILLING CODE 3510-CW-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency (MBDA).

Title: Study of Awareness and Attitudes of Minority Young Adults Toward Business Ownership.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 500 hours.

Number of Respondents: 2,000.

Avg Hours Per Respondent: 15 minutes.

Needs and Uses: The national telephone survey will provide MBDA with national estimates of the awareness and attitudes of young adults toward business ownership, including comparison of four racial/ethnic groups. This will assist MBDA in designing and targeting interventions to the minorities and age cohorts who would benefit most from their assistance.

Affected Public: Individuals or households.

Frequency: One time survey.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: December 10, 1992

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–30483 Filed 12–15–92; 8:45 am]

BILLING CODE 3510-CW-F

Foreign-Trade Zones Board

[Docket 32–91]

Foreign-Trade Zone 142—Salem, NJ, Withdrawal of Application for Subzone Status for Lignotock Auto Interior Components Plant

Notice is hereby given of the withdrawal of the application submitted by the City of Salem Port Authority, grantee of FTZ 142, requesting authority for subzone status for the automotive interior door trim panel assembly plant of Lignotock Corporation in Westampton Township, Burlington County, New Jersey. The application was filed on May 30, 1991 (56 FR 27230, 6/13/91).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: December 8, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–30516 Filed 12–15–92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Report to Congress

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of report availability.

SUMMARY: Section 114(l)(4) of the Marine Mammal Protection Act (MMPA) requires that NMFS develop, in consultation with the Marine Mammal Commission, the Fishery Management Councils, fishing and environmental communities, and other interested groups, a legislative proposal for governing the interactions between marine mammals and commercial fisheries. This report has been submitted to Congress and is now available for distribution to the general public.

ADDRESSES: A copy of the report is available from: Herbert W. Kaufman, Office of Protected Resources (F/PR2), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, F/PR2, 301/713–2319.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act Amendments of 1988 (Pub. L. 100–711, signed November 23, 1988) established a new section 114 in the MMPA which implemented a 5-year Interim Exemption for certain incidental takings of marine mammals by commercial fishermen. The primary objective of this Interim Exemption is to provide a means for collecting reliable information about interactions between commercial fishing activities and marine mammals while allowing commercial fishing to continue. Based upon this and other relevant information, the Secretary of Commerce was directed to develop a suggested regime that would govern the incidental taking of marine mammals following the termination of the interim exemption program on October 1, 1993.

This document describes NMFS' final recommendations to Congress for a regulatory regime to govern interactions between marine mammals and commercial fishing operations. NMFS previously published and distributed for public comment draft versions of the recommendations on May 24, 1991 (56 FR 23958), and on November 20, 1991 (see 56 FR 61231, December 2, 1991). Significant comments were received on various components of the recommendations during the public review period. The majority of the comments received reflected concerns about the complexity of the recommendations and their application to a broad range of fisheries rather than focusing on those with significant marine mammal incidental take problems. The final recommendations contain substantial changes in how the regulatory program will be developed and implemented. A recurring theme of many comments from both the commercial fishing industry and the environmental community was the need to focus attention and resources on the most important problems facing marine mammal stocks. In response, the final recommendations concentrate research, monitoring, and management efforts on those fisheries responsible for significant removals of marine mammal stocks. The final recommendations contain several elements. Foremost, the recommendations maintain OSP as the fundamental precept for marine mammal protection and acknowledge

that OSP levels are still not known and will not be known for many years for most marine mammal species. Therefore, the recommendations provide for a safe level of take even if OSP is not determinable or if a population is determined to be below its OSP.

The safe level of take is determined using conservative methods, from the numbers of marine mammals of various species that could be removed from the marine ecosystem each year due to commercial fishing without either decreasing the population levels below OSP or lengthening by more than 10 percent the time needed for a depleted stock to increase back to its OSP range. The results of this determination is referred to as the "potential biological removal" (PBR).

The fisheries and marine mammal populations are prioritized such that fisheries that receive the focus of conservation efforts are those with significant takes from marine mammal populations that are depleted, threatened or endangered, or where cumulative takes from all causes equal or exceed the population's PBR.

Historical data would be used to determine which commercial fisheries interact and which do not interact with marine mammals. All vessels operating in interacting fisheries would be required to register. Vessels operating in non-interacting fisheries would not be required to register. Based on stock assessment data obtained through the stock assessment program, OSP levels would be determined for each stock, if possible. If data for making OSP determinations were not available, NMFS would make a finding that the PBR methodology would be used to determine allowable removal levels. Appropriately conservative PBRs would then be calculated for each marine mammal stock that interacts with commercial fishing operations, with the goals of limiting mortality and maintaining stocks within their OSP ranges. PBRs would be adjusted to account for special circumstances surrounding endangered, threatened or depleted stocks. The total annual removal of each stock from all sources would then be compared to the calculated PBR to determine if the stock is Class Alpha (α) or Beta (β). A stock would be categorized as Class α if total removals are equal to or greater than the PBR, of if the stock is classified as depleted, threatened or endangered. A stock would be categorized as Class β if total removals are less than the PBR, or if the stock is not classified as depleted, threatened, or endangered.

Interacting fisheries would then be categorized on the basis of the marine mammals with which they interact. Fisheries that have significant interactions with Class α stocks would be placed in Category I. Fisheries that have insignificant interactions with Class α stocks or significant interactions with Class β stocks would be placed in Category II. Fisheries that have insignificant interactions with Class β stocks would be placed in Category III.

The total PBR would then be allocated among user groups. The fishery allocation would be allocated among interacting fisheries based on socio-economic factors, biological considerations, historical take rates, past performance to reduce takes, and ability to reduce takes. Category I fisheries and Category II fisheries interacting with Class α stocks would receive a portion of the total fisheries allocation and their removals would be monitored annually to ensure that allocations are not being exceeded. If necessary, NMFS would issue emergency regulations to restrict fishing. Category III fisheries would not receive an allocation, but would be monitored every 2–3 years or at NMFS' discretion to ensure that their level of take remains insignificant and that an upgrade to Category II or I is not needed. NMFS also reserves the right to issue emergency regulations for Category III fisheries, if necessary.

A mechanism by which NMFS will ensure the soundness of its recommended plan is the application of the zero mortality rate goal. This goal will be applied to all fisheries through educational efforts, gear workshops and pertinent research efforts.

Dated: December 4, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92–30458 Filed 12–15–92; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 1993 Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; and the beneficiary per diem cost-share amount for low volume providers to be used for FY 1993 under the CHAMPUS Mental Health Per Diem Payment System.

EFFECTIVE DATE: The rates contained in this notice are effective for services occurring on or after October 1, 1992.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238. The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Program Development Branch, OCHAMPUS, telephone (303) 361–1342. To obtain copies of this document, see the "**ADDRESSES**" section above. Questions regarding payment of specific claims under the CHAMPUS Mental Health Per Diem Payment System should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (52 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. Included in this final rule were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rule, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. In the **Federal Register** on September 1, 1992, (57 FR 39746), Medicare has recommended to Congress an update factor of 4.2 percent for federal fiscal year 1993 for hospitals and units excluded from the prospective payment system. CHAMPUS will adopt this update factor for FY 1993 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high CHAMPUS volume) will have their FY 1992 CHAMPUS per diem rates updated by 4.2 percent for FY 1993.

The following reflect an update of 4.2 percent.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW CHAMPUS VOLUME

United States Census Region	Rate*
Northeast:	

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW CHAMPUS VOLUME—Continued

United States Census Region	Rate*
New England	$475
Mid-Atlantic	$454
Midwest:	
East North Central	$393
West North Central	$371
South:	
South Atlantic	$469
East South Central	$508
West South Central	$427
West:	
Mountain	$426
Pacific	$503

*The wage portion of the rate, subject to the area wage adjustment, is 71.40 percent.

BENEFICIARY COST-SHARE: Beneficiary cost-share (other then dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $126 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 1992.

CAP AMOUNT: Cap amount for hospitals and units with high CHAMPUS volume is $701 per day.

Dated: December 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30447 Filed 12–15–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Notice of Procedural Changes in DOD Rate Acquisition Programs

AGENCY: Military Traffic Management Command.

ACTION: Notice.

SUMMARY: Military Traffic Management Command (MTMC), for the Department of Defense (D)D, intends to modify the procedures used to acquire rates and charges from the motor carrier industry for driveaway and towaway service. This modification is the issuance of a rules publication designed to standardize and simplify the procurement of rates and services to move military traffic in driveaway or towaway service, under 49 U.S.C. 10721. This publication, MTMC Driveaway-Towaway Rules Publication No. 2, is available in draft form for public review and comment and may be obtained from Military Traffic Management Command, ATTN: MTIN–NG, room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050 or telephone (703) 756–1585. Written comments concerning this proposed publication will be considered, if received at the same address not later than January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Blaize J. Guzzardo, Headquarters, Military Traffic Management Command, ATTN: MTIN–NG, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1585.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–30449 Filed 12–15–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.'s 137–002 and 8144–003]

Pacific Gas and Electric Company Amador County, CA; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

December 10, 1992.

The Federal Energy Regulatory Commission (FERC) has received an application for relicense of the existing Mokelumne River Project No. 137, and an application for license to construct the proposed Devil's Nose/Cross County Project No. 8144. Both hydropower projects would be located principally on the North Fork of the Mokelumne River. The Mokelumne Project is located in Alpine, Amador, and Calaveras Counties, California, and the Devil's Nose Project would be located in Amador and Calaveras Counties, California.

The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an Environmental Impact Statement (EIS) on the two hydroelectric projects in accordance with the National Environmental Policy Act.

The Forest Service, Bureau of Land Management, and Corp of Engineers will be cooperating agencies in the preparation of the EIS.

The EIS will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

Two scoping meetings will be conducted on Thursday, January 14, 1993. A scoping meeting oriented toward resource agencies will be conducted from 9 a.m. to 12 p.m., in Room West 21–42 at the Cottage Way Federal Building, 2800 Cottage Way, Sacramento, California. The building is located between Fulton Avenue and Morse Boulevard. A scoping meeting oriented toward the public will be conducted from 7 p.m. to 10 p.m., in the Civic Center at the City Hall, 33 Broadway, Jackson, California. City Hall is located at the corner of Highways 49 and 88.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions at the meetings, a preliminary scoping document outlining subject areas to be addressed in the EIS will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) determine the relative depth of analysis for issues to be addressed in the EIS; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EIS, including point of view in opposition to, or in support of, the staff's preliminary views

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Mokelumne Project and on the Devil's Nose Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in

defining and clarifying the issues to be addressed in the EIS.

Participants wishing to make oral comments at the public meeting are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until February 15, 1993.

All written correspondence should clearly show one or both of the following caption on the first page: Mokelumne River Project No. 137 or Devil's Nose/Cross County project No. 8144.

Further, intervenors—those on the Commission's service list (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

If you have any questions please contact Thomas Dean at (202) 219–2778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–30448 Filed 12–15–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50751; FRL–4168–7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

62719–EUP–16. Issuance. DowElanco, Quad IV, 9002 Purdue Rd., Indianapolis, IN 46268–1189. This experimental use permit allows the use of 119.8 pounds of the herbicide N-(2,6-difluorophenyl)-5-methyl-1,2,4-triazolo-[1,5a]-pyrimidine-2-sulfonamide on 1,765 acres of soybeans to evaluate the control of broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from September 4, 1992 to September 4, 1994. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Joanne I. Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

62719–EUP–17. Issuance. DowElanco, Quad IV, 9002 Purdue Rd., Indianapolis, IN 46268–1189. This experimental use permit allows the use of 272.77 pounds of the herbicide N-(2,6-difluorophenyl)-5-methyl-1,2,4-triazolo-[1,5a]-pyrimidine-2-sulfonamide and 3,709.64 pounds of the herbicide trifluralin on 3,879 acres of soybeans to evaluate the control of broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from September 4, 1992 to September 4, 1994. A temporary tolerance for residues of the active ingredients in or on soybeans has been established. (Joanne I. Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: November 25, 1992.

Lawrence E. Cullen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–30295 Filed 12–15–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30345; FRL–4176–8]

Rohm and Haas Company; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the pesticide product Kathon 287T, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by January 15, 1993.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30345] and the file symbol (707–EEU) to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 31, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 31, John Lee, Rm. 258, CM #2, (703–305–5675).

SUPPLEMENTARY INFORMATION: EPA received an application from Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105, to register the product Kathon 287T (File Symbol 707–EEU), a technical microbiocide containing the active ingredient (4,5-dichloro-2-n-octyl-3 (2*H*)-isothiazolone at 93.5 percent; an ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. This product is used for the formulation of industrial mildewcides. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: December 2, 1992.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–30511 Filed 12–15–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–240101; FRL–4177–8]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 23 States and Puerto Rico. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Edith Minor, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5978.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in July through August of 1992. Receipts-of-State registrations will be published periodically. Of the following registrations, 11 involve a changed-use pattern (CUP). The term "changed use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

1. *EPA SLN No. AL 92 0006.* E.I. Du Pont DeNemours and Co., Inc. Registration is for Nicosulfuron to be used on pop and field corn to control weeds. August 25, 1992.

Arizona

2. *EPA SLN No. AZ 92 0004.* Steve Pavich and Sons. Registration is for Carbon Dioxide to be used on table grapes to control black widow spider. July 22, 1992.

3. *EPA SLN No. AZ 92 0005.* Phil Hornung. Registration is for Thiram to be used on onion seeds to control seed decay, damping off and seedling blight. July 22, 1992.

4. *EPA SLN No. AZ 92 0006.* Gowan Co. Registration is for Permethrin to be used on alfalfa to control cutworm. July 22, 1992.

5. *EPA SLN No. AZ 92 0007.* American Cyanamid Co. Registration is for Pendimethalin to be used on jojoba to control pigweed, jungle rick, and johnsongrass. August 27, 1992.

California

6. *EPA SLN No. CA 92 0010.* Rogers NK Seed Co. Registration is for Sodium Hypochlorite to be used on carrot, pepper, and tomato seeds to control bacteria blight and spot. July 9, 1992.

7. *EPA SLN No. CA 92 0011.* California Grain and Feed Assn. Registration is for Propargite to be used on corn to control two-spotted spider mites. July 9, 1992.

8. *EPA SLN No. CA 92 0012.* James H. Welton. Registration is for Captan 50 WP to be used on greenhouse-grown cactus to control stem rot. July 9, 1992.

9. *EPA SLN No. CA 92 0013.* Ciba-Geigy Corp. Registration is for Banner to be used on chrysanthemums to control white rust. July 9, 1992.

10. *EPA SLN No. CA 92 0014.* Ciba-Geigy Corp. Registration is for Fenoxycarb to be used in crop ornamentals and non-bearing nursery stock to control fire ants. August 10, 1992.

11. *EPA SLN No. CA 92 0017.* Drexel Chemical Co. Registration is for Sodium Chlorate to be used on fallow ground to control weeds. August 17, 1992.

Delaware

12. *EPA SLN No. DE 92 0002.* Valent U.S.A. Corp. Registration is for Methamidophos to be used on tomatoes to control insects. July 28, 1992.

Florida

13. *EPA SLN No. FL 92 0007.* DowElanco. Registration is for Chlorpyrifos to be used peppers to control beet armyworms. August 11, 1992.

Georgia

14. *EPA SLN No. GA 92 0003.* Ciba-Geigy Corp. Registration is for Profenofos to be used on cotton to control armyworm and other insects. July 22, 1992.

15. *EPA SLN No. GA 92 0004.* ICI Americas, Inc. Registration is for Fonofos to be used on corn, sweet potatoes, and peanuts to control beetle larvae. August 11, 1992.

Idaho

16. *EPA SLN No. ID 92 0009.* Platte Chemical Co., Inc. Registration is for Methyl Parathion to be used on canola and rapeseed to control insects. July 8, 1992.

Louisiana

17. *EPA SLN No. LA 92 0010.* Ciba-Geigy Corp. Registration is for

Profenofos to be used on cotton to control tobacco budworms and cotton ballworms. August 7, 1992

Maine

18. *EPA SLN No. ME 92 0004.* Platte Chemical Co., Inc. Registration is for Diazinon to be used on balsam fir to control twig aphids and gall midge. July 31, 1992.

19. *EPA SLN No. ME 92 0005.* Platte Chemical Co., Inc. Registration is for Diazinon to be used on balsam fir to control spruce budworm. July 27, 1992.

Michigan

20. *EPA SLN No. MI 92 0002.* U.S. Dept. of Agriculture. Registration is for Compound DRC-1339 to be used in roosting places to control starlings. July 5, 1992.

21. *EPA SLN No. MI 92 0003.* FMC Corp. Registration is for Carbofuran to be used on strawberries to control root weevils. August 24, 1992.

Minnesota

22. *EPA SLN No. MN 92 0002.* Ciba-Geigy Corp. Registration is for Propiconazole to be used on american elms and oaks to control oak wilt. July 14, 1992.

Montana

23. *EPA SLN No. MT 92 0006.* Ciba-Geigy Corp. Registration is for Triforene to be used on cherries to control leafspot and brown rot. July 7, 1992.

New Mexico

24. *EPA SLN No. NM 92 0002.* E.I. Du Pont DeNemours and Co., Inc. Registration is for Oxamyl to be used on non-bell peppers to control pepper weevils. August 24, 1992.

North Carolina

25. *EPA SLN No. NC 92 0009.* ICI Americas, Inc. Registration is for Fonofos to be used sweet potatoes to control beetle larvae. August 10, 1992.

26. *EPA SLN No. NC 92 0010.* Haco, Inc. Registration is for Diphacinone to be used in commercial nurseries, xmas tree farms, plantations, and orchards to control pine and meadow voles. August 10, 1992.

27. *EPA SLN No. NC 92 0011.* Miles, Inc. Registration is for Di-Syston 15% Gran. to be used on peanuts to control mites, aphids, and thrips. August 11, 1992.

North Dakota

28. *EPA SLN No. ND 92 0001.* U.S. Dept. of Agriculture. Registration is for Compound DRC-1339 to be used in sunflower fields and staging areas to control starlings and black birds. August 17, 1992.

Oklahoma

29. *EPA SLN No. OK 92 0011.* E.I. Du Pont DeNemours and Co., Inc. Registration is for Finesse and Lexone to be used on winter wheat to control ryegrass. August 19, 1992.

Oregon

30. *EPA SLN No. OR 92 0002.* ICI Americas, Inc. Registration is for Paraquat Dichloride to be used on alfalfa to control weeds. August 14, 1992.

31. *EPA SLN No. OR 92 0003.* E.I. du Pont deNemours and Co., Inc. Registration is for Terbacil to be used on alfalfa to control broadleaf and grassy weeds. August 9, 1992.

32. *EPA SLN No. OR 92 0004.* Unocal Corp. Registration is for Wilthin to be used on apples to control apple blossoms. August 12, 1992.

33. *EPA SLN No. OR 92 0007.* Platte Chemical Co., Inc. Registration is for Terbacil to be used on conifers and xmas trees to control weed and brush. August 13, 1992.

Pennsylvania

34. *EPA SLN No. PA 92 0003.* E. I. du Pont deNemours and Co., Inc. Registration is for Methomyl to be used on nectarines and peaches to control thrips. July 13, 1992.

35. *EPA SLN No. PA 92 0004.* Rohm & Haas Co. Registration is for Dicofol to be used on raspberries and blackberries to control mites. August 24, 1992.

Puerto Rico

36. *EPA SLN No. PR 92 0002.* Hiram Mercado Perez. Registration is for Ethoprop to be used on pineapple to control symphylans. July 22, 1992.

South Dakota

37. *EPA SLN No. SD 92 0008.* FMC Corp. Registration is for Carbofuran to be used on wheat, barley and oats to control grasshoppers. July 8, 1992.

38. *EPA SLN No. SD 92 0009.* Sandoz Agro, Inc. Registration is for Dicamba to be used on millet to control weeds. July 28, 1992.

Texas

39. *EPA SLN No. TX 92 0021.* U.S. Dept. of Agriculture. Registration is for Linuron to be used on parsley to control weeds. July 5, 1992.

40. *EPA SLN No. TX 92 0022.* ISK Biotech Corp. Registration is for Chlorothalonil to be used on peaches to control peach scab. July 31, 1992.

41. *EPA SLN No. TX 92 0023.* E. I. du Pont deNemours and Co., Inc. Registration is for Finesse and Lexone to be used on winter wheat to control grass. August 18, 1992.

42. *EPA SLN No. TX 92 0024.* AMVAC Chemical Corp. Registration is for PCNB 75% Wettable Powder to be used on peanuts to control southern blight and white mold. August 25, 1992.

Vermont

43. *EPA SLN No. VT 92 0001.* Platte Chemical Co., Inc. Registration is for Diazinon to be used on balsam fir plantings to control gall midge and twin aphid. July 23, 1992.

44. *EPA SLN No. VT 92 0002.* Rhone-Poulenc AG Co. Registration is for Thiodicarb to be used on sweet corn to control european corn borer and corn ear worms. July 23, 1992.

Washington

45. *EPA SLN No. WA 92 0032.* Uniroyal Chemical Co., Inc. Registration is for Propargite to be used on potatoes to control spider mite. July 20, 1992.

46. *EPA SLN No. WA 92 0033.* U.C.B. Chemicals Corp. Registration is for Ziram Granuflo to be used on pears to control storage rots. August 18, 1992.

47. *EPA SLN No. WA 92 0034.* American Cyanamid Co. Registration is for Pendimethalin to be used on alfalfa to control weeds (dodder). August 21, 1992.

48. *EPA SLN No. WA 92 0035.* ICI Americas, Inc. Registration is for Napropamide to be used on cranberries to control silver leaf, aster, and clover. August 31, 1992.

49. *EPA SLN No. WA 92 0036.* Uniroyal Chemical Co., Inc. Registration is for Propargite to be used and apples to control mites. August 31, 1992.

Wyoming

50. *EPA SLN No. WY 92 0005.* American Cyanamid Co. Registration is for Pendimethalin to be used on alfalfa to control weeds (dodder). July 23, 1992.

Authority: Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).

Dated: November 25, 1992.

Lawrence E. Culleen,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-30299 Filed 12-15-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPT-51811; FRL-4180-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires

any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 20 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93–107, February 1, 1993.

P 93–108, 93–109, 93–110, 93–111, 93–112, 93–113, 93–114, 93–115, 93–116, 93–117, February 3, 1993.

P 93–118, 93–119, 93–120, 93–121, February 6, 1993.

P 93–122, 93–123, 93–124, 93–125, 93–126, February 7, 1993.

Written comments by:

P 93–107, January 2, 1993.

P 93–108, 93–109, 93–110, 93–111, 93–112, 93–113, 93–114, 93–115, 93–116, 93–117, January 4, 1993.

P 93–118, 93–119, 93–120, 93–121, January 7, 1993.

P 93–122, 93–123, 93–124, 93–125, 93–126, January 8, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPT–51811]" and the specific number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460 (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93–107

Manufacturer. American Colloid Company.

Chemical. (S) Humates (humic acid).

Use/Production. (S) Soil amendment. Prod. range: 250,000–750,000 ky/yr.

P 93–108

Manufacturer. E.I. Du Pont De Nemours and Company.

Chemical. (G) Polyether acetate.

Use/Production. (G) Isolated intermediate in the manufacture of a polyether glycol. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 25,000 mg/kg species (rat). Eye irritation: slight species (rabbit).

P 93–109

Importer. Mitsui Petrochemicals(America), Ltd.

Chemical. (G) Modified (stylene-olefin copolymer).

Use/Import. (S) Primer for automative polypropylene and ethylene-propylene-rubber. Import range: Confidential.

P 93–110

Manufacturer. Confidential.

Chemical. (G) Vinylidene chloride acrylate ester polymer.

Use/Production. (G) Formulation of protective coatings. Prod. range: Confidential.

P 93–111

Manufacturer. E.I. Du Pont De Nemours and Company.

Chemical. (G) Polyimide.

Use/Production. (G) Open nondispersive use. Prod. range: Confidential.

Toxicity Data. Eye irritation: slight species (rabbit). Skin irritation: slight species (rabbit).

P 93–112

Manufacturer. Confidential.

Chemical. (G) Calcium based thickener.

Use/Production. (S) Grease thickener. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: negative.

P 93–113

Manufacturer. Confidential.

Chemical. (G) Substituted alkanoic acid derivative.

Use/Production. (G) Raw material used in commercial manufacturing process. Prod. range: Confidential.

P 93–114

Manufacturer. Confidential.

Chemical. (G) Substituted alkanoic acid derivative.

Use/Production. (G) Raw material used in commercial manufacturing process. Prod. range: Confidential.

P 93–115

Manufacturer. Confidential.

Chemical. (G) Substitutes alkanoic acid derivative.

Use/Production. (G) Raw material used in commercial manufacturing process. Prod. range: Confidential.

P 93–116

Manufacturer. Confidential.

Chemical. (G) Substituted heteromonocyclic polymer.

Use/Production. (G) Resin used for industrial applications. Prod. range: Confidential.

P 93–117

Importer. EMS-American Grilon, Inc.

Chemical. (S) Copolyester of terephthalic acid, isophthalic acid, dodecanedioic acid and 1,4-butanediol.

Use/Import. (S) Hot melt for adhesion of textile substrates. Import range: Confidential.

P 93–118

Importer. Basf Corporation.

Chemical. (G) Catonic modified acrylic ester polymer.

Use/Import. (S) Sizing agent. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 1,388 mg/kg species (rat). Mutagenicity: positive.

P 93–119

Importer. Confidential.

Chemical. (G) Urea-propenamide adduct.

Use/Import. (G) Photopolymer to printing plate without lead. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 1,388 mg/kg species (rat).

P 93–120

Importer. Confidential.

Chemical. (G) Polyester polyurethane acrylate oligomer.

Use/Import. (S) Outer primary coating resin for optical fibers. Import range: Confidential.

P 93–121

Importer. EMS-American Grilon.

Chemical. (G) Polyetherheteramide, based on nylon 6 monomer caprolactam, =nylon 6 monmomer.

Use/Import. (S) Basic polymers for compounding to granules for extrusion and injection molding. Import range: Confidential.

P 93–122

Manufacturer. Confidential.

Chemical. (G) Modified acylic polymer.

Use/Production. (S) Coating, sealant, binder, adhesive and flame retardant. Prod. range: Confidential.

P 93–123

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (S) Coating, sealant, binder, adhesive, and flame retardant. Prod. range: Confidential.

P 92–124

Manufacturer. Confidential.

Chemical. (G) Modified acylic polymer.

Use/Production. (S) Coating, sealant, binder, adhesive and flame retardant. Prod. range: Confidential.

P 92–125

Manufacturer. Confidential.

Chemical. (S) A phthalic anhydride, maleic anhydride, tall oil fatty acids, neopentyl glycol, ethylene glycol, andpentaerythritol polyester reacted with styrene andmethacrylate acid.

Use/Production. (S) Styrene and acrylic-modified polyester resin used as a pigmented protective coating. Prod. range: 200,000–300,000 kg/yr.

Toxicity Data. Skin sensitization: positive.

P 92–126

Manufacturer. Ashland Chemical, Inc.

Chemical. (G) 2,2'-(Substituted) bisoxazoline.

Use/Production. (G) Thermoset resin component (open, nondispersive use). Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 3.55 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: slight. Skin irritation: slight. Mutagenicity: positive. Skin sensitization: positive.

Dated: December 3, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 92–30432 Filed 12–15–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination to Provide Assistance; Citizens State Bank

Pursuant to the provisions of section 13(c)(8) of the Federal Deposit Insurance Act (the FDI Act) (12 U.S.C. 1823(c)(8), as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991), notice is hereby given that at its closed meeting held at 10:02 a.m. on October 20, 1992, the Federal Deposit Insurance Corporation's (the Corporation's) Board of Directors determined to provide assistance to Citizens State Bank, Princeton, Texas (Citizens), before the appointment of a conservator or receiver.

Subject to the least-cost provisions of section 13(c)(4) of the FDI Act (12 U.S.C. 1823(c)(4)), the Corporation, in compliance with section 13(c)(8), determined to provide direct financial assistance after: (1) The Corporation determined that grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless Citizens' capital levels are increased; (2) the Corporation determined that it is unlikely that Citizens can meet all currently applicable capital standards without assistance; (3) based on information currently available to the Corporation, the Corporation determined that Citizens' management, as reconstituted in the course of the transaction, is competent and has complied with applicable laws, rules, and supervisory directives and orders; and (4) based on information currently available to the Corporation, the Corporation determined that Citizens' management, as reconstituted in the course of the transaction, has not engaged in any insider dealing, speculative practice or other abusive activity. The determinations described under (3) and (4) above are based on information that could be obtained in the time available. The determinations shall not prejudice future action if subsequent information indicates that such action is appropriate.

Additional information on this notice can be obtained by contacting Janet V. Norcom, Counsel, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429. Telephone: (202) 898–3607.

By direction of the Board of Directors.

Dated this 20th day of October, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30493 Filed 12–15–92; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before February 16, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0123.

Title: State and Local Emergency Operations Plans.

Abstract: State and local emergency operations plans (EOP's) are necessary to facilitate coordinated and effective response and recovery from major natural, technological, and attack-related hazards. Once an EOP is developed, it must be updated once every 4 years. State and local jurisdictions develop and update plans using multihazard emergency operations planning guidance found in FEMA Civil Preparedness Guides, specifically CPG 1–8, *Guide for the Development of State and Local Emergency Operations Plans,* and CPG 1–8A, Guide for the Review of State and Local Emergency Operations Plans.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 402,780 hours.

Number of Respondents: 959.

Estimated Average Burden Time per Response: 420 hours.

Frequency of Response: Other. During the update cycle, plans will be submitted once every 4 years.

Dated: December 9, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92–30489 Filed 12–15–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Maryland Port Administration/ Mediterranean; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comment on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200408–002.

Title: Maryland Port Administration/ Mediterranean Shipping Terminal Agreement.

Parties: Maryland Port Administration ("Port") Mediterranean Shipping Company, S.A. ("MSC")

Synopsis: The amendment provides for a $25.00 special incentive credit for loaded MSC mini-landbridge containers handled at the Port's Seagirt Marine Terminal.

Agreement No.: 224–200446–001.

Title: Port of New Orleans/Coastal Cargo Company, Inc. Leasing Agreement.

Parties: The Port of New Orleans, Coastal Cargo Company, Inc.

Synopsis: The modification extends the leasing period of the basic Agreement on a month to month basis in accordance with the provisions of the Louisiana Civil Code Article 2689.

Agreement No.: 224–200706.

Title: Port of Palm Beach/Inter-Call Communications, Inc., Lease Agreement.

Parties: Port of Palm Beach ("Port") Inter-Call Communications, Inc.

Synopsis: The Agreement provides for a leasing arrangement between the two parties for the purpose of leasing office space, with parking spaces, in the Maritime Office Building located at the Port.

Dated: December 10, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–30443 Filed 12–15–92; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Administration, GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve information collection, Zero Burden Information Collection Reports. GSA proposes to use a single, general control number for information collections that impose no burden upon the public.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503 and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th and F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

a. Background

In November 1990 GSA submitted a Request for OMB Review of Zero Burden Information Collection Reports.

b. Purpose

The information collection request submitted for approval consists of reports which do not impose collection burdens upon the public. These collections require information which is already available to the public at large or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process. Since May 10, 1991, GSA has published one rule that falls under Information collection 3090–2050. The rule was published at 56 FR 29442, June 27, 1991, titled: Implementation of Public Law 99–506. The effective date was July 8, 1991. Annual Reporting Burden: None.

FOR FURTHER INFORMATION CONTACT: Mary Cunningham, Office of Administration (202) 501–1659.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7122, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: November 30. 1992

Emily C. Karam,

Director, Information Management Division

[FR Doc. 92–30451 Filed 12–15–92; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0486]

Pfizer Pharmaceuticals Inc., et al.; Withdrawal of Approval of 45 Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 45 abbreviated antibiotic drug applications (AADA's). The holders of the AADA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

SUPPLEMENTARY INFORMATION: The holders of the AADA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

AADA no.	Drug	Applicant
60–475	Neobiotic (neomycin sulfate) Tablets, 350 milligrams (mg)	Pfizer Pharmaceuticals Inc., 235 East 42d St., New York, NY 10017–5755.
60–668	Chloramphenicol Non-Sterile Bulk and Micronized Chloramphenicol	Boehringer Mannheim GmbH, Sandhofer Strasse 116, Postfach 310120, 6900 Mannheim 31, West Germany.
60–688	Otoreid-HC Ear Drops (Neomycin Sulfate-Polymyxin B Sulfate- Hydrocortisone-Diperodon Hydrochloride)	Solvay Pharmaceuticals, 901 Sawyer Rd., Marietta, GA 30062.
60–696	Penicillin G Potassium Ophthalmic Ointment	Bristol-Myers Squibb, Pharmaceutical Research Institute, P.O. Box 4000, Princeton, NJ 08543–4000.

AADA no.	Drug	Applicant
61–116	Ampicillin Trihydrate	Bristol-Myers Squibb, Co.,Pharmaceutical Group Technical Operations, P.O. Box 4755, Syracuse, NY 13221–4755.
61–118	Cloxacillin Sodium	Do.
61–119	Dicloxacillin Sodium	Do.
61–346	Methicillin Sodium, Sterile	Do.
61–347	Oxacillin Sodium, Sterile	Do.
61–570	Hetacillin Potassium, Sterile	Do.
61–604	Ampicillin Sodium, Sterile	Do.
61–593	Kanamycin, Sterile	Do.
61–759	Cephapirin Sodium	Do.
61–776	Tetracycline Hydrochloride (non-sterile bulk)	Rhone-Poulenc Rorer, 500 Virginia Dr., Fort Washington, PA 19034.
61–780	Cefospor (cephacetrile sodium)	Ciba-Geigy Corp., Summit, NJ 07901.
61–791	Pfizer E (erythromycin stearate) Tablets	Pfizer Pharmaceuticals Inc.
61–795	Oxacillin Sodium, Sterile	Bristol-Myers Squibb Co.
61–796	Oxacillin Sodium	Do.
61–797	Methicillin Sodium	Do.
61–816	Otobione Otic Suspension	Sherling-Plough Research Institute, 2000 Galloping Hill Rd., Kenilworth, NJ 07033–0530.
61–832	Amoxicillin Trihydrate	Bristol-Myers Squibb Co.
61–924	Dicloxacillin Sodium, Sterile	Do.
61–963	Pen V Acid	Do.
61–983	Nafcillin Sodium, Sterile	Do.
62–001	Penicillin V Potassium Tablets USP, 250 mg and 500 mg	Parke-Davis, 201 Tabor Rd., Morris Plains, NJ 07950.
62–002	Penicillin V Potassium for Oral Solution USP, 125 mg/5 milliliters (mL) and 250 mg/5 mL	Do.
62–003	Penicillin G Potassium for Injection USP, 1,000,000 and 5,000,000 units per vial	Do.
62–030	Ampicillin for Oral Suspension, 125 mg/5 mL and 250 mg/5 mL	Do.
62–041	Ampicillin Capsules, 250 mg and 500 mg	Do.
62–107	Amoxicillin Capsules, 250 mg and 500 mg	Do.
62–127	Amoxicillin for Oral Suspension	Do.
62–173	Neomycin Sulfate Tablets USP, 350 mg	Roxane Laboratories, P.O. Box 16532, Columbus, OH 43216–6532.
62–217	Ampicillin Trihydrate, Sterile	Bristol-Myers Squibb Co.
62–232	Pen G Benzathine, Sterile	Do.
62–250	Pen G Procaine, Sterile	Do.
62–298	Oxytetracycline Hydrochloride (non-sterile bulk)	Rhone-Poulenc Rorer
62–316	Cefoxanide Free Acid, Sterile	Bristol-Myers Squibb Co.
62–332	Tetracycline Hydrochloride Capsules USP, 250 mg and 500 mg	Warner Chilcott Laboratories, 201 Tabor Rd., Morris Plains, NJ 07950.
62–461	Cephalothin Sodium, Sterile	Bristol-Myers Squibb Co.
62–486	Pen G Benzathine, Sterile	Do.
62–487	Nafcillin Sodium, Sterile	Do.
62–510	Rocephin (ceftriaxone sodium) Sterile Vials	Roche Pharmaceuticals, 340 Kingsland St., Nutley, NJ 07110–1199.
62–604	Sterile Erythromycin Lactobionate	Lyphomed, 2045 North Cornell Ave., Melrose Park, IL 60160–1002.
62–723	Sterile Cephapirin Sodium, USP	Do.
62–863	Cephalexin Tablets, 250 mg, 500 mg, and 1,000 mg	Vitarine Pharmaceuticals, Inc., 227–15 North Conduit Ave., Springfield Gardens, NY 11413.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the AADA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective January 15, 1992.

Dated: December 4, 1992.

D. B. Burlington,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 92–30491 Filed 12–15–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(G–910–G3–0006–4210–04; NMNM 83264)]

Issuance of Exchange Conveyance Document of Public Land in San Miguel County; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 400.00 acres of public land out of Federal ownership. This action also reconveys 400.00 acres of land to Federal ownership.

FOR FURTHER INFORMATION CONTACT: Taos Resource Area Manager, 224 Montevideo Plaza, Cruz Alta Road, Taos, New Mexico 87571.

SUPPLEMENTARY INFORMATION: The United States issued an exchange conveyance document to the Church of Spiritual Technology, a California corporation, on August 24, 1992, for the surface estate in the following described land in San Miguel County, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716).

New Mexico Principal Meridian

T. 15 N., R. 22 E.,
Sec. 14, SE¼NE¼;
Sec. 22, NW¼NE¼;
Sec. 23, SW¼NW¼;
Sec. 27, W½NE¼, SE¼NE¼, and NW¼.
Containing 400.00 acres.

In exchange for the land described above, the Church of Spiritual Technology conveyed to the United States the surface estate in the following described land located in San Miguel County, New Mexico:

New Mexico Principal Meridian

T. 17 N., R. 23 E.,
Sec. 14, SE¼SW¼;
Sec. 23, E½NW¼ and SW¼NW¼;
Sec. 27, S½SW¼;
Sec. 34, E½NW¼, NE¼SW¼, and NW¼SE¼.
Containing 400.00 acres.

The purpose of the exchange was to acquire land offering high values for wildlife habitat and recreation and also to consolidate holdings within the Sabinoso Wilderness Study Area. The exchange was consistent with the Taos Resource Management Plan approved October 1988.

The values of the Federal public land and the non-Federal land in the exchange were appraised at $28,000.00. The public interest was served through the completion of this exchange.

Dated: November 30, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92–30456 Filed 12–15–92; 8:45 am]

BILLING CODE 4310–FB–M

[OG–910–G3–0005–4210–04; NMNM 83254]]

Issuance of Exchange Conveyance Document of Public Land in Taos County; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 53.21 acres of public land out of Federal ownership. This action also reconveys 50.00 acres of land to Federal ownership.

FOR FURTHER INFORMATION CONTACT: Taos Resource Area Manager, 224 Montevideo Plaza, Cruz Alta Road, Taos, New Mexico 87571.

SUPPLEMENTARY INFORMATION: The United States issued an exchange conveyance document to Louis Menyhert on August 24, 1992, for the surface estate in the following described land in Taos County, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716).

New Mexico Principal Meridian

T. 28 N., R. 10 E.,
Sec. 30, lots 4, 9, and 10.
Containing 53.21 acres.

In exchange for the land described above, Louis Menyhert conveyed to the United States the surface estate in the following described land located in Taos County, New Mexico:

New Mexico Principal Meridian

T. 29 N., R. 9 E.,
Sec. 13, S½SE¼SW¼;
Sec. 23, N½NE¼NW¼,
W½SE¼NE¼NW¼, and
E½SW¼NE¼NW¼.
Containing 50.00 acres.

The purpose of the exchange was to provide access to private land and increase the public land holding within an area designated for retention in the Taos Resource Area Management Plan. The acquired land offers high public values for recreation and wildlife habitat.

The values of the Federal public land and the non-Federal land in the exchange were appraised at $15,300.00 and $15,500.00, respectfully. The public interest was served through the completion of this exchange.

Dated: November 30, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92–30455 Filed 12–15–92; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Final Supplemental Environmental Impact Statement; Yosemite National Park Concession Services Plan

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, and specifically to the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the Department of the Interior, National Park Service (NPS) has prepared a Record of Decision on the Final Concession Services Plan/Supplemental Environmental Impact Statement (EIS) to the 1980 Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Yosemite National Park, Mariposa, Madera, and Tuolumne Counties, California.

The NPS will amend the 1980 Yosemite National Park General Management Plan as it pertains to concession services offered in the park in accordance with the proposal set forth as Alternative B in the Final Concession Services Plan/Supplemental Environmental Impact Statement issued in September, 1992 (57 FR 41952). The Draft Plan/Supplemental Environmental Impact Statement was issued in December, 1991 (56 FR 67097).

Copies of the Record of Decision may be obtained from either the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, CA 95389, or the National Park Service, Western Regional Office, Division of Planning, Grants and Environmental Quality, 600 Harrison Street, suite 600, San Francisco, CA 94107–1372.

Dated: December 4, 1992.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 92–30494 Filed 12–15–92; 8:45 am]

BILLING CODE 4310–70–M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board, Scientific Committee (SC); Vacancies and Request for Nominations

The Minerals Management Service (MMS) is seeking interested and qualified individuals to serve on its OCS Advisory Board SC during the period of May 2, 1993, through May 1, 1995. The initial 2-year term may be renewable for up to an additional 4 years. The SC is chartered under the Federal Advisory Committee Act to advise the Director of the MMS on the appropriateness, feasibility, and scientific value of the OCS Environmental Studies Program (ESP) and environmental aspects of the offshore oil and gas program. The ESP, which was authorized by the OCS Lands Act as amended (Section 20), is administered by the MMS and covers a wide range of field and laboratory studies in biology, chemistry, and physical oceanography, as well as studies of the social and economic impacts of OCS oil and gas development. The work is conducted through award of competitive contracts and interagency and cooperative agreements. The SC reviews the relevance of the information being produced by the ESP and may recommend changes in its scope, direction, and emphasis.

The SC comprises distinguished scientists in appropriate disciplines of the biological, physical, chemical, and socioeconomic sciences. The selection is based on maintaining disciplinary expertise in all areas of research, as well as geographic balance. Demonstrated knowledge of the scientific issues related to OCS oil and gas development is essential. Selection is made by the Department of the Interior on the basis of these factors.

Interested individuals should send a letter of interest and resumé within 30 days to:

Dr. Ken Turgeon, Executive Secretary and Chief, Environmental Studies Branch, Environmental Policy and Programs Division, Minerals Management Service, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070. He may be reached by telephone on (703) 787–1717.

Dated: December 2, 1992.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 92–30476 Filed 12–15–92; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–334]

Change of Commission Investigative Attorney

In the Matter of certain condensers, parts thereof and products containing same, including air conditioners for automobiles.

Notice is hereby given that, as of this date, Steven A. Glazer, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Gabrielle Siman, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: December 8, 1992.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 92–30441 Filed 12–15–92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–627 (Preliminary)]

Pads for Woodwind Instrument Keys from Italy

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Italy of pads for woodwind instrument keys, provided for in subheading 9209.99.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2]

Background

On October 21, 1992, a petition was filed with the Commission and the Department of Commerce by Prestini Musical Instruments Corp., Nogales, AZ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of pads for woodwind instrument keys from Italy. Accordingly, effective October 21, 1992, the Commission instituted antidumping investigation No. 731–TA–627 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 29, 1992 (57 FR 49097). The conference was held in Washington, DC, on November 12, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Issued: December 8, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–30442 Filed 12–15–92; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] As defined by the Department of Commerce, "The products covered by this investigation are pads for woodwind instrument keys, which are manufactured by Pisoni."

[Investigation No. 332–315]

Uranium and Uranium Enrichment Services: The Impact on the Domestic Industry of Imports Into the United States From Nonmarket Economy Countries

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

EFFECTIVE DATE: December 11, 1992.

SUMMARY: On September 25, 1991, following receipt of a request from the Committee on Finance of the U.S. Senate, the Commission instituted investigation No. 332–315 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). Notice of the investigation was published in the **Federal Register** of October 2, 1991 (56 F.R. 49905). On December 4, 1992, the Commission received a letter from the Committee on Finance of the U.S. Senate requesting that the Commission terminate its section 332 investigation on uranium. Accordingly, on December 11, 1992, the Commission terminated investigation No. 332–315.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Emanuel (202–205–3367), Energy and Chemicals Division, Office of Industries, or Mr. William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: December 11, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–30506 Filed 12–15–92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from the ALK Associates Inc. for permission to use certain data from the 1991 ICC Waybill Sample.

A copy of the request (WB101—12/9/92) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30505 Filed 12–15–92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32194]

Wheeling & Lake Erie Railway Company and Columbus & Ohio River Rail Road Company—Joint Relocation Project Exemption; Notice of Exemption

On December 2, 1992, Wheeling & Lake Erie Railway Company (WLER) and Columbus & Ohio River Rail Road Company (CORC) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad in Harrison County, OH. The joint project involves the: (1) acquisition by WLER of overhead trackage rights over an approximately 11-mile portion of CORC's parallel line between Bowerston (CORC milepost 69.85) and Jewett (CORC milepost 81.11); (2) construction of two turnouts and two sections of connecting track, totalling approximately 2,300 feet, between WLER's line and CORC's line at Bowerston and Jewett; and (3)

abandonment by WLER of its 11.5-mile line between Bowerston (WLER milepost 168.25) and Jewett (WLER milepost 179.75). WLER and CORC planned to consummate the transaction on or about December 9, 1992.

WLER and CORC state that there are no active shippers located on the line segment to be abandoned. They contend that the proposed joint relocation project will result in the elimination of a duplicate rail line and promote the more efficient and effective utilization of railroad equipment and resources. Citing Denver & R.G.W.R. Co.—Joint Project—Relocation, 4 I.C.C.2d 95 (1987) (Joint Project), they further contend that the proposed joint relocation project will not involve a change in service to shippers, an expansion into new territory, or a change in existing competitive situations.

The Commission generally does not assume jurisdiction over the incidental abandonment and construction components of a relocation project if, as alleged here, none of the criteria set out in Joint Project have been triggered. Accordingly, the proposed abandonment and construction are not subject to Commission jurisdiction. The remainder of the joint relocation project involves WLER's acquisition of overhead trackage rights over CORC's line. While this qualifies under the class exemption procedures at 49 CFR 1180.2(d) (5) and (7), the Commission has determined that line relocations may also embrace trackage rights transactions such as the one proposed here. See D.T. & I.R.—Trackage Rights, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William A. Callison, 100 East First Street, Brewster, OH 44613; and Michael J. Connor, 136 South Fifth Street, Coshocton, OH 43812.

Dated: December 9, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-30504 Filed 12-15-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The Agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval has Expired

(1) 1992 Probation Data Survey and 1992 Parole Data Survey
(2) CJ-7 and CJ-8. Bureau of Justice Statistics
(3) Annually
(4) State or local governments and Federal agencies or employees. The information will be used by officials, administrators and researchers to evaluate current conditions and trends nationwide concerning probation and parole populations.
(5) 339 annual responses at 1.5 hours per response
(6) 509 annual burden hours
(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: December 10, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-30462 Filed 12-15-92; 8:45 am]

BILLING CODE 4410-18-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 25, 1992, a proposed Consent Decree in *United States* v. *GAF Building Materials Corporation* was lodged with the U.S. District Court for the Central District of California. This is a civil action pursuant to section 113 of the Clean Air Act ("Act"), 42 U.S.C. 7413, against GAF Building Materials Corporation ("GAF") for violations of the New Source Performance Standards ("NSPS") provisions of the Act, 42 U.S.C. 7411(e). The complaint alleges that GAF violated the notification, performance testing, and startup requirements proscribed by the NSPS for glass furnaces, set forth at 40 CFR part 60, subparts A and CC.

GAF owns and operates a facility in Irwindale, California for the manufacture of chopped glass fibers which are used by other GAF facilities for the production of asphalt roofing materials. The Irwindale plant has three furnaces which produce molten glass for the manufacture of glass fibers. In August 1986, GAF modified one of its glass furnaces which doubled the production capacity of the furnace and increased the facility's emissions of particulate matter.

GAF's T-3 furnace is an "affected facility" within the meaning of 40 CFR 60.2 and 60.290, subject to the NSPS at 40 CFR part 60, subparts A and CC, because the modification of the T-3 furnace, which increased its emissions of particulate matter from 16 tons per day to 32 tons per day, commenced on or about August 6, 1986. The 1986 modification was well after the June 15, 1979 "applicability" date for the NSPS for glass furnaces.

The proposed consent decree requires GAF to pay $89,600 in civil penalties, and to comply with all requirements of the NSPS. GAF has voluntarily ceased operations at the facility, but agrees under the terms of the settlement to comply with all requirements of the NSPS should it resume operations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *GAF Building Materials Corporation*, D.O.J. Ref. 90–5–2–1–1439.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Central District of California, room 7516 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012; the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. Copies of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction cost) payable to "Consent Decree Library".

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–30454 Filed 12–15–92; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 3, 1992 a proposed Consent Decree in *United States* v. *C.H. Heist et al.*, Civil Action No. C1–95–955, was lodged in the United States District Court for the Southern District of Ohio. The Complaint filed by the United States asserts a claim under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for costs incurred by the United States in responding to the release or threat of release of hazardous substances at the Pristine, Inc. site in Reading, Ohio. The Consent Decree requires eight *de minimis* settling defendants and the United States Environmental Protection Agency, as a *de minimis* settling federal agency, to pay $150,000 to reimburse the United States Environmental Protection Agency for unrecovered past response costs at the Pristine, Inc. site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *C.H. Heist, et al.*, D.J. Ref. No. 90–11–2–279A.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Southern District of Ohio, United States Courthouse, 100 E. 5th St., Cincinnati, Ohio 45202 (contact Assistant United States Attorney Gerald F. Kaminski); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Nancy-Ellen Zusman); and (3) the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 347–2072. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. For a copy of the Consent Decree, please enclose a check in the amount of $7.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92–30452 Filed 12–15–92; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Keystone Terminal Operating Corp.*, Civil Action No. 91–7634 was lodged on December 3, 1992 with the United States District Court for the Eastern District of Pennsylvania. Defendant Keystone Terminal Operating Corp. owns a gasoline facility in Philadelphia, Pennsylvania. The proposed consent decree requires the defendant to comply with fuel volatility regulations promulgated under the Clean Air Act and pay a civil penalty of $12,596 for certain alleged past violations of these regulations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should specifically refer to *United States* v. *Keystone Terminal Operating Corp.*, D.J. reference #90–5–2–1–1652.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 92–30453 Filed 12–15–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Established 1993 aggregate production quotas.

SUMMARY: This notice establishes initial 1993 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATES: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the

DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On September 22, 1992, a notice of the proposed initial 1993 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (57 FR 43751). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before October 22, 1992. Three comments were received.

Mallinckrodt Specialty Chemicals Company commented that the proposed initial 1993 aggregate production quotas for thebaine, codeine (for sale), hydromorphone and opium were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, estimated export requirements, and for the establishment and maintenance of reserve stocks. Mallinckrodt's comments were based on their forecasted 1993 domestic sales, forecasted 1993 exports and trends in the aggregate production quotas from 1986 to 1993.

After reviewing the relevant information, the DEA has determined that no increases are necessary for the initial 1993 aggregate production quotas for thebaine, codeine (for sale), hydromorphone and opium at this time.

Mallinckrodt Specialty Chemicals Company also commented that the proposed initial 1993 aggregate production quotas for oxycodone, morphine (for conversion), hydrocodone, diphenoxylate and codeine (for conversion) were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks. Taking into consideration the involved companies' current and projected sales and inventories and the Food and Drug Administration's (FDA) estimates of medical need for 1993, the initial 1993 aggregate production quotas for oxycodone, morphine (for conversion), hydrocodone, diphenoxylate and codeine (for conversion) were adjusted by the DEA.

Polaroid Corporation commented that the proposed initial 1993 aggregate production quota for 2,5-dimethoxyamphetamine was insufficient to provide for the estimated industrial needs of the United States and for the establishment and maintenance of reserve stocks. The DEA has reviewed Polaroid's request and has adjusted the initial 1993 aggregate production quota for 2,5-dimethoxyamphetamine.

SmithKline Beecham Pharmaceuticals commented that the proposed initial 1993 aggregate production quota for amphetamine was insufficient to meet their revised production requirements. The DEA has taken this into consideration and has adjusted the 1993 aggregate production quota for amphetamine accordingly.

A manufacturer has advised the DEA that the initial 1993 aggregate production quota for alfentanil may not be sufficient for 1993.

The DEA has reviewed and adjusted the initial 1993 aggregate production quota of alfentanil. The adjustment was based on revised 1992 and projected 1993 sales and the FDA's estimates of medical need for 1993.

The DEA has added an initial 1993 aggregate production quota for methadone (for conversion). This quota is to be used for the manufacture of methadone solely for conversion to levo-alpha-acetylmethadol. This quota will be reviewed again during 1993 and will be adjusted if necessary.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of the 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA hereby orders that the 1993 initial aggregate production quotas, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 1993 quotas (in grams)
Schedule I:	
2,5-Dimethoxyamphetamine	15,000,000
Lysergic acid diethylamide	9
3,4-Methylenedioxyamphetamine	2
3,4-Methylenedioxymethamphetamine	2
Tetrahydrocannabinols	35,000
Psilocyn	5
Psilocybin	5
4-Methylaminorex	2
Methaqualone	2
Mescaline	2
Methcathinone	2
N-Hydroxy-3,4-methylenedioxyamphetamine	0
Dimethylamphetamine	0
levo-alpha-acetylmethadol	150,000
Schedule II:	
Alfentanil	8,700
Amobarbital	5
Amphetamine	446,000
Cocaine	586,000
Codeine (for sale)	63,613,000
Codeine (for conversion)	9,297,000
Deoxyephedrine	1,161,000

Basic class	Established initial 1993 quotas (in grams)
1,140,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 21,000 grams for methamphetamine.	
Dextropropoxyphene	107,296,000
Dihydrocodeine	579,000
Diphenoxylate	832,000
Ecgonine (for conversion)	650,000
Fentanyl	50,900
Glutethimide	0
Hydrocodone	8,137,000
Hydromorphone	261,000
Levorphanol	7,500
Meperidine	8,325,000
Methadone (for sale)	2,604,000
Methadone (for conversion)	220,000
Methadone intermediate (4-Cyano-2-dimethylamino-4,4-diphenylbutane)	3,255,000
Methamphetamine (for conversion)	603,000
Methylphenidate	3,411,000
Mixed Alkaloids of Opium	800
Morphine (for sale)	6,378,000
Morphine (for conversion)	78,650,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	662,000
Oxycodone (for sale)	3,282,000
Oxycodone (for conversion)	6,300
Oxymorphone	2,500
Pentobarbital	12,912,000
Phencyclidine	15
Phenylacetone (for conversion)	320,000
Secobarbital	587,000
Sufentanil	620
Thebaine	7,155,000

Dated: November 25, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-30497 Filed 12-15-92; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 92-61]

James H. Nickens, M.D.; Revocation of Registration

On July 30, 1992, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to James H. Nickens, M.D. (Respondent), of 3551 16th Street, NW., Washington, DC, seeking to revoke DEA Certificate of Registration, AN9606534, and deny any pending applications for renewal of that application. The grounds for the issuance of the Order to Show Cause and Immediate Suspension of Registration were that Respondent lacked state authorization to handle controlled substances in the District of Columbia and that his continued registration would be inconsistent with the public interest. Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of his registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

By letter dated August 29, 1992, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Paul A. Tenney. On September 24, 1992, the Government filed a motion for summary disposition. On October 8, 1992, the Respondent filed a response in opposition to the Government's motion. On October 9, 1992, Judge Tenney issued his Opinion and Recommended Decision, recommending the revocation of Respondent's DEA Certificate of Registration based on his lack of state authorization to handle controlled substances. Neither party filed exceptions to the administrative law judge's opinion and recommended decision and, on November 9, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby enters his final order in this matter.

The Administrator finds that as of April 30, 1991, the Respondent's District of Columbia controlled substances registration expired. Consequently, Respondent is without authority to handle controlled substances in the District of Columbia. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Bobby Watts, M.D.*, 53 FR 11919 (1988); *Wingfield Drugs, Inc.*, 52 FR 27070 (1987); *Robert F. Witek, D.D.S.*, 52 FR 47770 (1987); and cases cited therein.

In his response to the Government's motion for summary disposition, Respondent acknowledges that his registration to handle controlled substances in the District of Columbia expired on April 30, 1991. Respondent argues, *inter alia*, this his DEA registration should not be revoked because he filed an application with the District of Columbia for renewal of his registration to handle controlled substances on July 29, 1992, and that he expects soon have a valid registration. The Administrator finds that since Respondent is not currently authorized to handle controlled substances in the District of Columbia, he is not entitled to possess a DEA Certificate of Registration.

Since there is no dispute about Respondent's lack of authority to handle controlled substances in the District of Columbia, the administrative law judge properly granted the Government's motion for summary disposition. When no question of fact is involved, or when the facts are agreed upon, a plenary, adversarial administrative proceeding with the full panoply of due process rights is not obligatory. *See Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub*

nom Kirk v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AN9606534, previously issued to James H. Nickens, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective January 15, 1993.

Dated: December 10, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-30498 Filed 12-15-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL COMMISSION ON FINANCIAL INSTITUTION REFORM, RECOVERY, AND ENFORCEMENT

Meeting

AGENCY: National Commission on Financial Institution Reform, Recovery, and Enforcement.

TIME AND DATE: 9 a.m. to 4 p.m., Wednesday, January 13, 1993.

PLACE: Peter Zenger Room, National Press Club, 13th Floor, 529 14th Street NW., Washington, DC 20045.

STATUS: The meeting will be open to the public. It is possible that portions of the meeting may be closed to the public pursuant to 5 U.S.C. 552b, Government in the Sunshine Act.

MATTERS TO BE CONSIDERED: At the public portion of the meeting, the Commission shall consider the progress of the Commission's study to date and make such determinations as may be necessary to conduct hearings and complete the Commission's work.

Following the public portion of the meeting, the Commission may consider and discuss in a closed session information on specific financial institutions which information is contained in or related to examination, operating or condition reports, or which constitutes commercial or financial information obtained on a confidential or privileged basis. These matters are within exemptions (c)(4), (c)(8) and (c)(9)(A) of 5 U.S.C. 552b, the Government in the Sunshine Act, which are applicable by virtue of 5 U.S.C. app. 2 section 10(d), the Federal Advisory Committee Act.

The Commission may also consider in a closed session the issuance of subpoenas or participation in a legal action or proceeding to enforce its subpoenas. These matters are within exception (c)(10) of the Government in the Sunshine Act. In addition, the Commission will consider any other matters as may properly come before it. It is possible that portions of the meeting relating to such other matters may be closed by the Commission if the Commission's counsel certifies that such portions of the meeting may be closed consistent with the Government in the Sunshine Act and the determination by the Administrator of the General Services Administration that such portions may be closed.

CONTACT PERSONS FOR MORE INFORMATION: Larry G. Hicks (202) 632-1556, or Linda R. Johnson (202) 632-1556.

Larry G. Hicks,

Director of Administration.

[FR Doc. 92-30474 Filed 12-15-92; 8:45 am]

BILLING CODE 6820-PD-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Declined General Applications for Federal Assistance

AGENCY: National Endowment for the Arts.

ACTION: Circular 1 revised; final notice.

SUMMARY: Process for reconsideration of declined applications for Federal assistance. This circular adopts in final form a Proposed Procedure published June 8, 1992, in response to public comment. This notice is being republished in its entirety, for the convenience of the reader, due to printing errors in the version published December 8, 1992 (57 FR 58031).

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, room 522, National Endowment for the Arts, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506-0001; (202) 682-5418 (voice) or (202) 682-5496 (Voice/T.T.: Text-Telephone, a telephone device for hearing impaired individuals). Visually or learning impaired people may obtain assistance in acquiring a cassette recording of this circular by writing or calling: Office for Special Constituencies, room 605, National Endowment for the Arts, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506-0001; (202) 682-5532 (voice) or (202) 682-5496 (Voice/T.T.).

1. Purpose

The processes by which the National Endowment for the Arts (the "Endowment") offers financial and technical assistance have been designed to result in supporting projects of artistic excellence and merit. The Endowment relies on advisory peer panel review of grant applications as the first step in assuring informed support. Panel recommendations are subsequently reviewed by the National Council on the Arts, which provides advice to the Chairperson of the Endowment. The Chairperson then decides whether to approve the applications recommended by the Council.

This Circular establishes a procedure for reconsideration of applications for financial and technical assistance, which have been declined by the National Endowment for the Arts based on negative recommendations of the peer review panel. This procedure does not include reconsideration of grant amounts once a grant is awarded. This Process does not apply to applications recommended by the peer review panel but rejected by the Council or Chairperson. Reconsideration of such applications is had at the discretion of the Chairperson only. The provisions of this Circular, which updates and amends the earlier Circular, dated March 29, 1983, on this subject, do not apply to procurement governed by the Federal Acquisition Regulations.

2. Policy

(a) *Statement.* Award of financial and technical assistance is discretionary. Panel recommendations are made using criteria described in the Program guidelines. Criteria that involve subjective, qualitative judgments are not subject to reconsideration. Notwithstanding this fact, a Project Director, Authorizing Official, or individual whose application has been declined (hereafter referred to as "applicant") may obtain an explanation of the declination from the appropriate Endowment Program Director. Following receipt of the explanation, if the applicant believes that the declination was based on one or more of the following Grounds for Reconsideration, reconsideration may be obtained under the procedure outlined in Section 3, below.

(b) *Ground(s) for Reconsideration.* Reconsideration of application declinations is available solely for one or more of the following three reasons relating to procedural impropriety or error:

(i) Panel considered criteria other than those appearing in the relevant Program guidelines;

(ii) Individual(s) with conflict of interest served on peer review panel;

(iii) Information relevant to the deliberations was provided by staff,

panelists, or others, but not including the applicant, which was inaccurate or incomplete, despite the fact that the applicant provided the Endowment staff with accurate and complete information as part of the regular application process.

3. Procedures To Be Followed for Reconsideration

(a) *Explanation by Program Director.* Within 30 days following written notification from the Endowment of its decision on any application, the applicant may request an explanation for a declined application from the appropriate Program Director. This initial request may be by telephone, in person, or in writing, as required by the individual Program. The Program Director will explain within 30 days following the applicant's request the basis for declination, which may include a summary of the peer review panel comments and applicable on-site evaluation reports, the names of all panel and staff members, and other information, not otherwise exempt from disclosure, requested by the applicant.

The Program Director may designate another Endowment official to provide the explanation for the declination to the applicant. The term "Program Director," as used here, applies to such designees.

(b) *Request for Reconsideration.* If the Program Director's explanation appears to the applicant to indicate the presence of one or more of the "Grounds for Reconsideration" listed in paragraph 2(b) above, the applicant may submit to the appropriate Deputy Chairperson (hereafter referred to as "Deputy") a written Request for Reconsideration. This written request must reference the particular ground(s) for reconsideration and specify the facts supporting his or her claim, with enough particularity to enable the Deputy to determine whether the claim is meritorious. A request of this nature will be considered only if: (a) The Request for Reconsideration is based on one or more of the grounds listed in paragraph 2(b); (b) the applicant has obtained an explanation from the appropriate Program Director; (c) the applicant has specified with sufficient particularity the facts supporting his or her claim; (d) the Request for Reconsideration is received by the Deputy within 30 days after the date of the Program Director's explanation.

(c) *Action by the Appropriate Deputy.*

(i) The appropriate Deputy will review the applicant's Request for Reconsideration, records of the panel discussions, the applicant's application file, and any other relevant materials to determine if the panel's recommendation was influenced by one or more of the grounds listed in paragraph 2(b). In conducting this review, the Deputy may request additional information from the applicant, obtain advice from a peer review panel, or conduct additional investigation or review. However, no revisions or additions to the grant application materials will be accepted in connection with the Request for Reconsideration, except to the extent that additional materials are necessary to substantiate the applicant's claim that one or more of the grounds listed in paragraph 2(b) exists.

(ii) The Deputy may conduct the reconsideration personally or may designate another Endowment official who had no part in the initial evaluation to do so. The term "Deputy," as used here, applies to such designees.

(iii) The Deputy will provide written notification of the results of the reconsideration within 45 days following receipt of the Request for Reconsideration. If the Deputy cannot provide such notice within 45 days, the applicant will receive a written explanation of the need for more time and an estimate of when the results can be expected.

(d) *Resolution of Requests for Reconsideration.* Reconsideration is not an adversarial process, and a formal hearing is not provided. The Endowment cannot assure applicants that reconsideration will result in the award of a grant even if error is established in connection with the initial evaluation. The Deputy shall make one of the following four determinations. The determinations of the Deputy shall be in writing and shall be final.

(i) If the Deputy determines that none of the grounds listed in paragraph 2(b) existed, the declination will be affirmed.

(ii) If the Deputy determines that one or more of the grounds listed in paragraph 2(b) existed, but the recommendation of the peer review panel was not affected materially, the declination will be affirmed.

(iii) If the Deputy determines that one or more of the grounds listed in 2(b) existed, and he or she can determine, based on the materials reviewed, that but for the infirmity in the review process, the application would have been recommended, the application will be considered by the National Council on the Arts at its next regularly scheduled meeting. The Chairperson of the Endowment then will decide whether to approve applications recommended by the Council.

(iv) If the Deputy determines that one or more of the grounds listed in paragraph 2(b) occurred, but he or she cannot determine whether, but for the infirmity, the peer review panel would have recommended that application, the application will be reviewed by a panel. If the panel recommends the application for support, the National Council on the Arts will review it at the next regularly scheduled meeting. The Chairperson of the Endowment then will decide whether to approve applications recommended by the Council.

4. Reporting Requirements

Each appropriate Deputy will maintain a record of Requests for Reconsideration, in accordance with the Endowment's Records Disposition schedule. The record will include the date of receipt, the name of the applicant, including name of organization or institution where applicable, the application number, the determinations of the Deputy, and once the Deputy's review is complete, the date on which each applicant was notified of the results of the reconsideration, and what those results were.

Dated: December 11, 1992.

Catherine Stevens,

General Counsel, National Endowment for the Arts.

[FR Doc. 92-30524 Filed 12-15-92; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation, and Dissemination; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: January 11-12, 1993.

Place: One Washington Circle Hotel, One Washington Circle Northwest, Washington, DC.

Type of Meeting: Closed.

Contact Person: Ms. Barbara Lovitts, Division of Research, Evaluation and Dissemination, rm. 1227, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, Telephone (202) 357-7071.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Research in Teaching and Learning Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including

technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 11, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-30472 Filed 12-15-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-483]

Union Electric Company Callaway Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of section III.D.1.(a) of appendix J to 10 CFR part 50 issued to the Union Electric Company, (the licensee), for the Callaway Plant, Unit 1, located in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from section III.D.1.(a) of appendix J to 10 CFR part 50, which requires a set of three Type A tests (Containment Integrated Leakage Rate Test or CILRT) be performed, at approximately equal intervals during each 10-year service period. This licensee request is for a one-time exemption from the requirement that the third Type A test of the first 10-year service period be performed during the service period. The exemption would extend the current service period by approximately 3 months beyond the normal 10-year service period. The licensee request stated the exemption would extend the current service period by 14 months. This statement was based on the assumption that the 10-year service period began with preoperational CILRT performed in January 1984, instead of the inservice date of December 1984. The 10-year service period began in December 1984.

The proposed action is in accordance with licensee's request for exemption dated June 16, 1992.

The Need for the Proposed Action

The proposed exemption is needed because the licensee's current refueling outage schedule requires the third CILRT for the first 10-year service period be performed at either a 35-month or 53-month interval. (CILRTs are generally performed coincident with refueling outages due to the time required for their performance.) The first and second CILRT testing intervals for the first 10-year service period were 40 and 41 months. Without this exemption, the licensee would be required to perform the third CILRT at a 35-month interval and perform an additional (fourth) CILRT during the second 10-year service period.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that granting the proposed exemption would not significantly increase the probability or amount of expected primary containment leakage and that containment integrity would thus be maintained. The current requirement in Section III.D.1.(a) that three Type A tests be performed would continue to be met, except one interval (54-months) will be longer than specified in the Callaway Technical Specifications. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater then previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in adding operating cost by requiring a fourth Type A test during the second 10-year service period.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Callaway Plant, Unit No. 1," dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated June 16, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 10th day of December 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-30487 Filed 12-15-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2259]

Pathfinder Mines Corp.; Finding of No Significant Impact Regarding Issuance of an Amendment to Source Material License SUA-672 for the Pathfinder Mines Corp.; Lucky Mc Mill, To Incorporate Reclamation Schedules, Fremont County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a finding of no significant impact.

1. Proposed Action

The administrative action is issuance of a license amendment to incorporate an enforceable reclamation schedule for the Lucky Mc Mill in Fremont County, Wyoming.

2. Reasons for Finding of No Significant Impact

The proposed amendment is administrative, incorporating

reclamation milestones into the license in accordance with the Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the NRC which was published in the **Federal Register** on October 25, 1991. The Notice of Intent to amend Source Material License SUA–672 for the Lucky Mc Mill to incorporate reclamation schedules was published in the **Federal Register** on September 18, 1992. The NRC accepted comments on this proposed licensing action for 45 days. No comments were received. In accordance with 10 CFR 51.22(c)(11), the Commission has determined that no environmental analysis need be performed since no significant impacts will result from the proposed licensing actions.

3. Action

The Commission action is to amend Source Material License SUA–672 upon publication of this Notice. The action is based on this Finding of No Significant Impact and no comments begin received to the Notice of Intent published on September 18, 1992.

This Notice, together with the Notice of Intent to Amend Source Material License SUA–672, are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Denver, Colorado, this 8th day of December 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92–30488 Filed 12–15–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8084]

Rio Algom Mining Corp., Finding of No Significant Impact Regarding Issuance of an Amendment to Source Material License SUA–1119 for the Rio Algom Mining Corp., Lisbon Mill, To Incorporate Reclamation Schedules, San Juan County, UT

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of a Finding of No Significant Impact.

1. Proposed Action

The administrative action is issuance of a license amendment to incorporate an enforceable reclamation schedule for the Lisbon Mill in San Juan County, Utah.

2. Reasons for Finding of No Significant Impact

The proposed amendment is administrative, incorporating reclamation milestones into the license in accordance with the Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the NRC which was published in the **Federal Register** on October 25, 1991. The Notice of Intent to amend Source Material License SUA–1119, for the Lisbon Mill to incorporate reclamation schedules was published in the **Federal Register** on August 18, 1992. The NRC accepted comments on this proposed licensing action for 45 days. No comments were received. In accordance with 10 CFR 51.22(c)(11), the Commission has determined that no environmental analysis need be performed since no significant impacts will result from the proposed licensing actions.

3. Action

The Commission action is to amend Source Material License SUA–1119 upon publication of this Notice. The action is based on this Finding of No Significant Impact and no comments being received to the Notice of Intent published on August 18, 1992.

This notice, together with the Notice of Intent to Amend Source Material License SUA–1119, are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Denver, Colorado this 8th day of December 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92–30486 Filed 12–15–92; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before January 15, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205–6629

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Procurement Automated Source System Application and Validation of PASS Registration

SBA Form No.: SBA Forms 1167 and 1395

Frequency: On Occasion

Description of Respondents: Small Businesses interested in federal procurement opportunities

Annual Responses: 219,500

Burden: 48,000

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 92–30480 Filed 12–15–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1736]

Suspension of Munitions Export Licenses to Somalia

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Somalia are suspended until further notice pursuant to sections 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: December 16, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Effective immediately, it is the policy of the U.S. Government to deny all applications for

licenses and other approvals to export or otherwise transfer defense articles and services to Somalia. In addition, U.S. manufacturers and exporters and any other affected parties are hereby notified that the Department of State has suspended all previously issued licenses and approvals authorizing the export or other transfer of defense articles or defense services to Somalia. This action has been taken in accordance with U.N. Security Council Resolution 733 instituting a general and complete embargo on all deliveries of weapons and military equipment to Somalia.

The licenses and approvals that have been suspended include any manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind involving Somalia subject to the Arms Export Control Act. This action also precludes the use in connection with Somalia of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR.

Dated: December 4, 1992.

Robert L. Gallucci,

Assistant Secretary, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92–30460 Filed 12–15–92; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 1734]

Restriction of Munitions Export Licenses to Yemen

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Pursuant to sections 38 and 42 of the Arms Export Control Act, a notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Yemen are being reviewed on a more scrutinized case-by-case basis, with a presumption of denial for lethal articles or items supporting such articles.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: It is the policy of the U.S. Government to review all licenses and approvals authorizing the export or other transfer of defense articles or defense services to Yemen on a more highly scrutinized case-by-case basis, with a presumption of denial for lethal articles. Approvals for export of defense articles or defense services bound for Yemen will be considered primarily for non-lethal defense articles or services.

The licenses and approvals subject to this policy include manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind involving Yemen subject to the Arms Export Control Act. This policy also prohibits the use in connection with Yemen of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

For the purposes of this policy, "nonlethal defense articles" means an article that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death (see, e.g., 10 U.S.C. 2547).

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States.

In accordance with §§ 126.3 and 126.7 of the ITAR, affected U.S. persons desiring review of this policy with regard to a particular export may petition the Director, Office of Defense Trade Controls.

Dated: November 27, 1992.

Robert L. Gallucci,

Assistant Secretary, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92–30461 Filed 12–15–92; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–92–070]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is seeking applications for membership for three-year terms on the Navigation Safety Advisory Council (NAVSAC). On June 30, 1993, there will be seven vacancies on the 21-member Council. The Coast Guard will review all applications and make recommendations to the Secretary. The appointments will be made by the Secretary of Transportation.

DATES: Completed applications must be received by February 28, 1993.

ADDRESSES: To request an application, either call (202) 267–0415 and give your name and mailing address or write to Commandant (G–NSR–3), U.S. Coast Guard, 2100 Second St., SW., room 1420, Washington, DC 20593–0001. Completed applications and resumes should be mailed or delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council at (202) 267–0415.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council was originally established as the Rules of the Road Advisory Council (RORAC) under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073). The RORAC provided advice to the Secretary of Transportation on matters relating to the International and Inland Navigation Rules.

Section 105 of the Coast Guard Authorization Act of 1989 (Pub. L. 101–225; 33 U.S.C. 1231a(e)), enacted December 12, 1989, changed the name of the RORAC to the Navigation Safety Advisory Council (NAVSAC), broadened the scope of the Council, and extended the life of the Council to September 30, 1995.

NAVSAC is a deliberative body which advises the Secretary of Transportation, via the Commandant, U.S. Coast Guard, on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The Council consists of 21 members who have expertise, knowledge and experience in the Navigation Rules of the Road (International and Inland), aids to navigation, navigational safety equipment, vessel traffic service, and traffic separation schemes and vessel routing. To assure balanced representation, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime

law; and (4) Federal and state officials with responsibility for vessel and port safety. Each member is appointed for a term of three years.

The Council meets twice each year at various sites in the continental United States. Members are entitled to per diem allowances and reimbursement for travel expenses to attend the meetings. The three-year membership term will begin July 1, 1993, and, assuming that the Council is continued beyond September 30, 1995, will expire June 30, 1996.

Dated: December 10, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-30500 Filed 12-15-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal High Administration (FHWA), DOT.

ACTION: Amended notice.

SUMMARY: The FHWA is issuing this notice to advise the public of closure of the comment period for the final Environmental Impact Statement [EIS No. 920134] for CA-710/Long Beach Freeway Construction, from I-10/San Bernardino Freeway to I-210/Foothill Freeway. Comments must be received by January 15, 1993. The address is: Federal Highway Administration, Attn. Mr. James Bednar, Chief/District Operations, P.O. Box 1914, Sacramento, California 95812-1915.

FOR FURTHER INFORMATION CONTACT: Mr. James Bednar at the above address. Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: The final EIS for route 710 identifies the Meridian Variation Alignment as the preferred alternative. The FHWA approved the final EIS as adequate for public disclosure of information on the preferred alternative regarding potential impacts and proposed mitigation as required by the National Environmental Policy Act (NEPA). However, because of the controversy surrounding the project and the magnitude of the impacts relating to potential community disruption, residential relocation, business dislocation, and cultural resources, the final project concept and location for the preferred alternative have not yet been approved by the FHWA.

An Enhancement and Mitigation Committee was established to develop more comprehensive mitigation and enhancement measures to further reduce the impacts of the preferred alternative. The group has met frequently since its initial meeting on September 9, 1992. The Committee's focus has been on both the mitigation and enhancement measures mentioned in the final EIS and on identification and development of appropriate additional mitigation and enhancement opportunities which will minimize the facility's "footprint" through the environmentally and historically sensitive areas the project traverses. The **Federal Register** notice of August 4, 1992, advised that public comments on the final EIS would be accepted until the FHWA published an additional notice 30 days prior to the end of the comment period. The notice further stated that it was anticipated that this would take place by the end of the current calendar year (1992).

At the Committee's meeting of December 10, 1992, significant progress was made on the Commtitee's recommendation for minimizing the facility's "footprint". The Commtitee has narrowed the number of options from 16 to 2 still under consideration and made a number of additional decisions regarding other mitigation measures.

Caltrans has advised the FHWA that Caltrans will report to the FHWA on the progress of the Committee to date. This report will be submitted to the FHWA on December 14, 1992. Copies of this report may be obtained from Caltrans District 7 Office located at 120 S. Spring Street, Los Angeles, California 90012 or from the FHWA Office in Sacramento at the address above. The report also will be available at the City Clerks' Offices in Alhambra, South Pasadena, Pasadena, and Los Angeles, California.

Comments on the FEIS may be directed to Mr. James Bednar, FHWA, at the address indicated above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 11, 1992.

Roger Borg,

Division Administrator, Sacramento, California.

[FR Doc. 92-30515 Filed 12-15-92; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 15, 1993.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10925–N	Southern Air Transport Miami, FL	49 CFR 172.101	To authorize the transportation of dimethylhydrazine, Class 3 in 55-gallon DOT Specification 50 drums and nitrogen tetroxide class 6 in 106A100W or 110A500W tank containers aboard cargo aircraft only. (mode 4.)
10926–N	Radcal Corporation Monrovia, CA	49 CFR 173.34(d)	To manufacture, mark and sell radiation monitors which incorporate a DOT Specification 39 cylinder, without a safety relief device, containing argon, Division 2.2 (modes 1, 4, 5.)
10927–N	Hoechst Celanese Corporation Pampa, TX.	49 CFR 173.21, 173.31(b)(1) and (2).	To authorize tank cars with bottom outlets and interior heater coil caps to remain open during loading process of various hazardous materials. (mode 2.)
10928–N	Jefferson Smurfit Corp./Container Corp. of America Brewton, AL.	49 CFR 174.67(i) and (j)	To authorize Chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 2.)
10929–N	Consolidated Rail Corporation Philadelphia, PA.	49 CFR 174.67(i) and (j)	To authorize tank cars containing various hazardous materials to remain connected during unloading without the physical presence of an unloader. (mode 2.)
10931–N	Western Atlas International/Atlas Wireline Service Houston, TX.	49 CFR 173.24, 173.304(a), 173.34(d), 175.30, 178.37–5.	To authorize the manufacture, mark and sell of DOT specification 3AA cylinder, constructed of titanium alloy with a design pressure of 20,000 psi for use in transporting flammable gas, n.o.s., Division 2.1 (modes 1, 2, 3, 4.)
10932–N	Nalco Chemical Company Naperville, IL.	49 CFR Parts 172, 173 and 177	To authorize the shipment of small quantities of Packing Group II and III hazardous materials in privately owned automobiles and small trucks to be exempt from shipping papers, marking, labelling and employee training. (mode 1.)
10933–N	Rollins CHEMPAK, Inc. Houston, TX.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To authorize the multi-modal transportation of lab-packs with other containerized hazardous materials with partial relief from certain segregation requirements. (modes 1, 2, 3.)
10934–N	LaRoche Industries Inc. Atlanta, GA.	49 CFR 179.101–1	To authorize the transportation of various hazardous materials in DOT Specification 105A100 or 105A200 tank car tanks constructed of stainless steel. (mode 2.)
10935–N	NSI Norfolk, VA	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245(b), 173.366 and, 173.367.	To manufacture, mark and sell non-DOT specification flexible nonreusable bulk bags of woven polypropylene fabric for the shipment of certain flammable, corrosive, oxidizer or poison B solids. (modes 1, 2, 3.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 10, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92–30465 Filed 12–15–92; 8:45 am]

BILLING CODE 4910–60–M

Research and Special Programs Administration Office of Hazardous Materials Safety

Notice of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 31, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
6874–X	Degussa Corporation Ridgefield Park, NY (See Footnote 1).	6874
7785–X	Carleton Technologies Inc. Orchard Park, NY (See Footnote 2).	7785
8725–X	CNG Cylinder Company Long Beach CA (See Footnote 3).	8725
8958–X	Goex, Inc. Moosic, PA (See Footnote 4).	8958
9061–X	The S.S.I. Group, Ltd. Fairdale, KY (See Footnote 5).	9061
9645–X	Bonar Plastics, Inc. Lindsay, Ontario, CN (See Footnote 6).	9645
10645–X	Essex Cryogenics of Missouri, Inc. St. Louis, MO (See Footnote 7).	10645
10810–X	U.S. Department of the Army Falls Church, VA (See Footnote 8).	10810

(1) To modify exemption to provide for an optional non-DOT specification wooden box of ⅜ inch thickness for use in transporting sodium cyanide, solid, classed as poison B.

(2) Request variations in test criteria for non-DOT specification missile gas storage systems containing nitrogen or helium, classed as non-flammable gas.

(3) To manufacture, mark and sell a non-DOT specification fiber reinforced plastic cylinder of 3,600 psi for shipment of certain flammable and nonflammable gases.

(4) To modify the exemption to provide for cargo vessel as an additional mode of transportation.

(5) To modify exemption to provide for an alternative packaging consisting of 2 one-gallon metal containers not to exceed 25 pounds total weight for use in transporting calcium carbide, classed as flammable solid.

(6) To authorize an additional design non-DOT specification polyethylene portable tank and to provide for shipment of organochlorine pesticides liquid, toxic, n.o.s. division 6.1 as an additional commodity.

(7) To modify exemption to provide for a half liter non-DOT specification insulated cylinder for use in transporting nonflammable gas.

(8) To modify exemption to provide for optional alcohol and 5% water solution in mixtures of explosives for transportation in specifically designed packaging.

Application No.	Applicant	Parties to exemption
7835-P	T.W. Smith Corp., Brooklyn, NY.	7835
7835-P	Volkalx, Inc., North Branch, NJ.	7835
8009-P	FleetStar, Inc., Austin, TX	8009
8236-P	Cass River Coatings, Inc., Vassar, MI.	8236
8450-P	Loral Vought Systems Corporation, Dallas, TX (See Footnote 1).	8450
8451-P	Loral Vought Systems, Dallas, TX.	8451
8845-P	Pengo Wireline of California, Inc., Bakersfield, CA.	8845
8944-P	Advanced Silicon Materials, Inc., Moses Lake, WA.	8944
9222-P	Wills Trucking, Inc., Richfield, OH.	9222
9275-P	Indopco, Inc., Mount Olive, NJ.	9275
9769-P	California Advanced Environmental Technology Corp., Hayward, CA.	9769
9781-P	Brights Associates, Inc., Tonawanda, NY.	9781
10193-P	Stolt Tank Containers, Inc., Monrovia, Liberia.	10193
10441-P	Rincham Company, Inc., Albuquerque, NM.	10441

(1) To authorize party status and modify exemption to provide for an optional larger wooden overpack container for use in transporting rocket motors without igniters.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 9, 1992.

J. Suzanne Hedgspeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-30464 Filed 12-15-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 9, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220

Internal Revenue Service

OMB Number: 1545-0820.
Regulation ID Number: EE-86-88 NPRM (Previously LR-279-81).
Type of Review: Extension.
Title: Incentive Stock Options.
Description: The affected public includes corporations that transfer stock to employees after 1979 pursuant to the exercise of a statutory stock option. The corporation must furnish the employee receiving the stock with a written statement describing the transfer. The statement will assist the employee in filing their tax returns.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,650 hours.

OMB Number: 1545-0884.
Form Number: IRS Form 8279.
Type of Review: Extension.
Title: Election to be Treated as a FSC or as a Small FSC.
Description: A foreign corporation and its shareholders must elect to be a Foreign Sales Corporation (FSC) or small FSC. Form 8279 is used to make the election. Form 8279 provides IRS with the necessary information to determine that the foreign corporation qualifies to be a FSC, number and types of shareholders, and tax year of the FSC and its principal shareholders.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hours, 32 minutes.
Learning about the law or the form—1 hour, 29 minutes.
Preparing and sending the form to the IRS—1 hour, 36 minutes.
Frequency of Response: Other (one-time election).
Estimated Total Reporting/Recordkeeping Burden: 38,300 hours.
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building; Washington, DC 20503.

Lois K. Holland,

Deartmental Reports Management Officer.

[FR Doc. 92-30463 Filed 12-15-92; 8:45 am]

BILLING CODE 4830-01-M

Customs Service

[T.D. 92-116]

Approval of Inert Gas Services, Inc. as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Approval of Inert Gas Services, Inc. as a Commercial Gauger.

SUMMARY: Inert Gas Services, Inc. of Pasadena, Texas applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Inert Gas Services, Inc. meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with Part 151.13(f) of the Customs Regulations Inert Gas Services, Inc., 109 N. Richey, Pasadena, Texas 77506 is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: December 7, 1992.

FOR FURTHER INFORMATION CONTACT:
Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202) 927–1060).

Dated: December 8, 1992.

J.E. Harrell,

Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 92–30507 Filed 12–15–92; 8:45 am]

BILLING CODE 4810-39-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 242
Wednesday, December 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, December 22, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first two items are open to the public. The last item is closed to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

5925—Hazardous Materials Special Investigation Report: Inspection and Testing of Railroad Tank Cars.
5929—Notice of Proposed Rulemaking: Civil Penalty Adjudications: Rules of Procedures.
5912—Opinion and Order: Administrator v. Frohmuth and Dworak, Dockets SE–11096 and 11097; disposition of Administrator's appeal.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: December 11, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92–30585 Filed 12–14–92; 3:09 pm]

BILLING CODE 7533–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

PLACE: Uniformed Services University of the Health Sciences, room A1005, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

9:00 a.m. Meeting—Board of Regents.

(1) Approval of Minutes—November 2, 1992; (2) Faculty Matters; (3) Departmental Reports; (4) Financial Report; (5) Report—President, USUHS; (6) Comments—Members, Board of Regents; (7) Comments—Chairman, Board of Regents; (8) Reports of Subcommittees on Planning and Oversight; New Business.

CONTACT PERSON FOR MORE INFORMATION: David S. Trump, M.D., Executive Secretary of the Board of Regents, 301/295–3886.

Dated: December 14, 1992.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30656 Filed 12–14–92; 3:08 pm]

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federal register

Wednesday
December 16, 1992

Part II

Department of Education

34 CFR Part 5b

Privacy Act Regulations; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 5b

RIN 1801–AA06

Privacy Act Regulations

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations implementing the Privacy Act of 1974 (the Act), 5 U.S.C. 552a. These amendments are needed to modify existing Department regulations (34 CFR 5b.11) exempting the system of records known as the Investigative Files of the Inspector General ED/OIG (System No. 18–10–0001) from certain provisions of the Act and corresponding departmental regulations.

DATES: Comments must be received on or before February 16, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Thomas D. Strong, U.S. Department of Education, 400 Maryland Avenue, SW., room 4117, Washington, DC 20202–1510.

FOR FURTHER INFORMATION CONTACT: Thomas D. Strong. Telephone: (202) 732–4762. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The proposed amendments would add exemptions authorized by the Act, 5 U.S.C. 552a(j)(2), to those that are currently in place for the ED/OIG Investigative Files system of records under the "(j)(2)" exemption. Under subsection (j)(2) of the Act, the Secretary of Education, through rulemaking, may exempt those systems of records maintained by a component of the Department that performs as its principal function any activity pertaining to the enforcement of criminal laws from certain provisions of the Act, if the system of records is used for certain law enforcement purposes.

The Office of Inspector General (OIG) is a component of the Department that performs as one of its principal functions investigations into violations of criminal law in connection with the Department's programs and operations, pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, and the Investigative Files system of records falls within the scope of subsection (j)(2); *i.e.*, information compiled for the purpose of criminal investigation, reports relating to any stage of the enforcement process, and information compiled for the identification of individual criminals. In addition, the proposed amendments would add exemptions authorized by the Act, 5 U.S.C. 552a(k)(2), for those investigatory materials in the system that may be deemed to relate primarily to civil and administrative law enforcement (the "(k)(2)" exemptions).

The additional proposed (j)(2) exemptions for criminal law enforcement records would remove restrictions on the manner in which information may be collected and the type of information that may be collected by OIG investigators in the course of a criminal investigation, would limit certain notice requirements, and would exempt the system of records from civil remedies for violations of the Act. These additional exemptions are necessary primarily to avoid premature disclosures of sensitive information, including, but not limited to, the existence of a criminal investigation, that may compromise or impede the investigation.

The proposal to add (k)(2) exemptions reflects recognition that certain records in the system may be deemed to fall outside the (j)(2) exemption (because they were collected primarily for civil and administrative law enforcement, such as investigations of Department employees' violations of the Standards of Conduct). Nevertheless, the Act recognizes that these records might also properly be exempted from certain disclosure and notice requirements as well as restrictions on the manner in which an investigator may collect information, in order to avoid compromising, impeding, or interfering with those investigations.

A more complete explanation of each proposed exemption follows, as required by the Act.

The Secretary proposes the following changes to the current exemptions contained in 34 CFR 5b.11.

A. Exemptions Pursant to (j)(2)

The Secretary has determined that the OIG Investigative Files should be exempt from the following provisions of the Privacy Act and corresponding departmental regulations, in addition to the exemptions already in place. These exemptions are necessary and appropriate to maintain the integrity and confidentiality of criminal investigations.

1. Expansion of the (j)(2) Exemption

Expansion of the (j)(2) exemption to cover the following Privacy Act provisions is being proposed for the following reasons:

(a) 5 U.S.C. 552a(c)(4), *duty to inform outside parties of correction of and notation of dispute about information in system in accordance with subsection (d) of the Privacy Act:* Since this system of records is already exempted from the access provisions of subsection (d) of the Privacy Act, this section is not properly applicable.

(b) 5 U.S.C. 552a(e)(1), *duty to maintain in agency records only "relevant and necessary" information about an individual:* This provision is inappropriate for criminal investigations, because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (*e.g.*, the fraudulent use of Social Security numbers), and that information may not be reasonably segregated. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(c) 5 U.S.C. 552a(e)(2), *collection of information from the subject individual:* The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in criminal investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. Often it is necessary to conduct an investigation so that the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thereby thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also in some cases preclude an OIG investigator from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with the evidence or information.

In addition, the statutory term "to the greatest extent practicable" is a subjective standard, and it is impossible adequately to define the term so that individual OIG investigators can consistently apply it to the many fact patterns presented in OIG investigations.

(d) 5 U.S.C. 552a(e)(3), *Privacy Act notice in the collection of information from individuals; deletion of inappropriate qualifying language:* As the regulations currently read, OIG investigators are exempt from giving notice (containing the authority for information collection, principal purpose, routine uses, and effect of refusal to provide information) to those from whom it collects information in the conduct of criminal investigations, but only "to the extent these requirements would prejudice the conduct of the investigation." Thus, the Department's regulations already recognize that as a general rule this exemption is necessary and appropriate for OIG investigative files.

It is ill-advised and impractical to have regulatory language that could be read as requiring investigative personnel to make a case-by-case determination as to whether in fact giving a Privacy Act notice will have a prejudicial effect on the investigation each time they interview a witness or collect documents. This is a determination that cannot always be made accurately in advance of an interview or request for documents, and the Privacy Act does not require such an impractical case-by-case assessment for the exemption to apply.

(e) 5 U.S.C. 552a(e)(4)(I), *duty to publish notice of the categories of sources of records in the system:* To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. OIG will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(f) 5 U.S.C. 552a(e)(5), *duty to maintain records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness:* Much the same rationale is applicable to this proposed exemption as that set out previously in item (b) (duty to maintain in agency records only "relevant and necessary" information about an individual). While the OIG makes every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in a criminal investigation to determine with certainty that all the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. At the point of determination by OIG to refer the matter to a prosecutive agency, for example, that information would be in the system of records, and it may not be possible until further investigation is conducted, or indeed in many cases until after a trial (if at all), to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is assured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigation.

(g) 5 U.S.C. 552a(e)(8), *duty to make reasonable efforts to serve notice on an individual when any record on such individual is made available under compulsory legal process when such process becomes a matter of public record:* Compliance with this provision could prematurely reveal and compromise an ongoing criminal investigation to the target of the investigation and reveal techniques, procedures, or evidence.

(h) 5 U.S.C. 552a(g), *exemption from civil remedies:* Allowing civil lawsuits for alleged Privacy Act violations by OIG investigators would compromise OIG investigations by subjecting the sensitive and confidential information in the ED/OIG Investigative Files to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by OIG.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file, and a Privacy Act lawsuit could therefore become a ready strategic weapon used to impede OIG investigations. Furthermore, since, under the current and proposed regulations, the system would be exempt from many of the Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those provisions in particular.

This exemption in no way detracts from OIG's commitment to meet all its legal obligations under the Privacy Act.

B. Exemptions Pursuant to (k)(2)

Since the Inspector General Act requires the OIG to uncover not only fraud but also waste and abuse, some of the records in the ED/OIG Investigative Files pertain to individuals investigated primarily for non-criminal violations for purposes of civil or administrative action or both. Accordingly, the Secretary has determined that the ED/OIG Investigative Files should also be subject to the exemptions authorized under (k)(2) to the extent that the system contains investigatory material compiled primarily for purposes not within the scope of the (j)(2) exemption. The system would thus be exempt from sections 552a(c)(3), (d) (1) through (4), (e)(1), (e)(4) (G), (H) and (I), and (f), and corresponding Department regulations.

The Secretary proposes to adopt these exemptions for the following reasons:

(a) 5 U.S.C. 552a(c)(3), *duty to grant access to an accounting of disclosures of a record:* Granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure of a record and the identity of the recipient, could alert the subject of a civil investigation to its existence and nature and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This could seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; and lead to suppression, alteration, or destruction of evidence.

(b) 5 U.S.C. 552a(d) (1) through (4) and (f), *duty to provide access to records, make corrections and amendments to records, and to notify individuals of existence of records upon their request:* Providing individuals with access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing the access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow

interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy the Government's civil claims growing out of the investigation.

(c) 5 U.S.C. 552a(e)(1), *duty to maintain in agency records only "relevant and necessary information about an individual":* The rationale for this exemption is the same as that stated previously with respect to the criminal law enforcement investigations under (j)(2) of the Privacy Act, and that explanation is incorporated herein by reference.

(d) 5 U.S.C. 552a(e)(4)(G) and (H), *duty to publish notice of notification, access, amendment, and correction procedures for the system of records:* There is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(e) 5 U.S.C. 552a(e)(4)(I), *duty to publish notice of the categories of sources of records in the system:* The rationale for this exemption is the same as that stated previously with respect to criminal investigations under (j)(2) of the Privacy Act, and that explanation is incorporated herein by reference.

The Secretary also proposes technical changes to the way exemptions are described in 34 CFR 5b.11. These technical changes are designed to facilitate a determination of which exemptions are applicable to which systems of records. Further, exemptions are broken out separately depending upon whether the basis for the exemption is section 552a(j) or (k).

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These proposed regulations involve procedural rights of individuals under the Privacy Act, and economic impact under the Regulatory Flexibility Act is not at stake.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4022 Switzer Building, 330 C Street S.W., Washington D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 5b

Administrative practice and procedures, Education Department, Privacy.

Dated: December 10, 1992.

Lamar Alexander,

Secretary of Education.

(Catalogue of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend part 5b of Title 34 of the Code of Federal Regulations as follows:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301 and 5 U.S.C. 552a, unless otherwise noted.

2. Section 5b.11 is revised to read as follows:

§ 5b.11 Exempt systems.

(a) *General policy.* The Act permits an agency to exempt certain types of systems of records from some of the Act's requirements. It is the policy of the Department to exercise authority to exempt systems of records only in compelling cases.

(b) *Specific systems of records exempted under (j)(2).* The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) system of records from the following provisions of 5 U.S.C. 552a and this part:

(1) 5 U.S.C. 552a(c)(3) and § 5b.9(a)(1) and (c)(3) of this part, regarding access to an accounting of disclosures of a record.

(2) 5 U.S.C 552a(c)(4) and §§ 5b.7(c) and 5b.8(b) of this part, regarding notification to outside parties and agencies of correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

(3) 5 U.S.C. 552a(d)(1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification or access to records and correction or amendment of records.

(4) 5 U.S.C. 552a(e)(1) and § 5b.4(a)(1) of this part, regarding maintaining only relevant and necessary information.

(5) 5 U.S.C. 552a(e)(2) and § 5b.4(a)(2) of this part, regarding collection of information from the subject individual.

(6) 5 U.S.C. 552a(e)(3) and § 5b.4(a)(3) of this part, regarding notice to individuals asked to provide a record to the Department.

(7) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(8) 5 U.S.C. 552a(e)(5), regarding maintaining records with requisite accuracy, relevance, timeliness, and completeness.

(9) 5 U.S.C. 552a(e)(8), regarding service of notice on subject individual if a record is made available under compulsory legal process if that process becomes a matter of public record.

(10) 5 U.S.C 552a(g), regarding civil remedies for violation of the Privacy Act.

(c) *Specific systems of records exempted under (k)(2).* (1) The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) from the following provisions of 5 U.S.C. 552a and this part to the extent that the system of records consists of investigatory material compiled for law enforcement purposes:

(i) 5 U.S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d)(1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(1) and § 5b.4(a)(1) of this part, regarding the requirement to maintain only relevant and necessary information.

(iv) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(2) The Department exempts the Complaint Files and Log, Office for Civil Rights (18–08–0002) from the following provisions of 5 U.S.C. 552a and this part:

(i) 5 U.S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d)(1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and

5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4)(G) and (H), regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

(d) *Specific systems of records exempted under (k)(5).* (1) The Department exempts the Investigatory Material Compiled for Personnel Security and Suitability Purposes (18–10–0002) system of records from the following provisions of 5 U.S.C. 552a and this part:

(i) 5 U.S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d)(1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4)(G) and (H), regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

(2) The Department exempts the Suitability for Employment Records (18–11–0020) from the following provisions of 5 U.S.C. 552a and this part:

(i) 5 U.S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d)(1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4)(G) and (H), regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

(e) *Basis for exemptions taken under (j)(2), (k)(2), and (k)(5).* The reason the Department took each exemption described in this section is stated in the preamble for the final rulemaking document under which the exemption was promulgated. These final rulemaking documents were published in the **Federal Register** and may be obtained from the Department of Education by mailing a request to the following address: U.S. Department of Education, Privacy Act Officer, Information Management Branch, Washington, DC 20202–4753.

(f) *Notification of or access to records in exempt systems of records.* (1) If a system of records is exempt under this section, an individual may nonetheless request notification of or access to a record in that system. An individual shall make requests for notification of or access to a record in an exempt system or records in accordance with the procedures of § 5b.5 of this part.

(2) An individual will be granted notification of or access to a record in an exempt system but only to the extent that notification or access would not reveal the identity of a source who furnished the record to the Department under an express promise, and, prior to September 27, 1975, an implied promise, that his identity would be held in confidence if—

(i) The record is in a system of records or that portion of a system of records that is exempt under subsection (k)(2), but not under subsection (j)(2), of the Act and the individual has been, as a result of the maintenance of the record, denied a right, privilege, or benefit to which he or she would otherwise be eligible; or

(ii) The record is in a system of records that is exempt under subsection (k)(5) of the Act.

(3) If an individual is not granted notification of or access to a record in a system of records exempt under subsections (k)(2) (but not under subsection (j)(2)) and (k)(5) of the Act in accordance with this paragraph, he or she will be informed that the identity of a confidential source would be revealed if notification of or access to the record were granted to the individual.

(g) *Discretionary actions by the responsible Department official.* Unless disclosure of a record to the general public is otherwise prohibited by law, the responsible Department official may, in his or her discretion, grant notification of or access to a record in a system of records that is exempt under this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate the responsible Department official to exercise his or her discretion to grant notification of or access to any other record in a system of records that is exempt under this section.

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December 16, 1992

Part III

Department of Justice

Federal Prison Industries, Inc.
Bureau of Prisons

28 CFR Part 345 and 545
UNICOR Inmate Work Programs; Proposed Rule

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

28 CFR Part 345

Bureau of Prisons

28 CFR Part 545

RIN 1120–AA04

UNICOR Inmate Work Programs

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to revise and reorganize its rule on UNICOR Inmate Work Programs. This proposed rule revises, and codifies into one part, the existing provisions on inmate hiring procedures, pay, and scholarship and incentive awards programs. It updates Bureau policy by adding provisions on position classification and recruitment, physical and medical work limitations, inmate worker standards, performance appraisal, dismissal procedures, benefit retention, and training programs. The intent of this proposal is to enable the Bureau to continue to employ and train inmates in a manner that will assist the inmate in post-release employment.

DATES: Comments due by February 1, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on UNICOR Inmate Work Programs. UNICOR is the commercial or "trade" name of Federal Prison Industries, Inc. (FPI). FPI, a component of the Bureau of Prisons, is a wholly owned government corporation whose mission is to provide institution work assignments and training opportunities for inmates confined in Federal correctional facilities. Final rules on the provisions comprising UNICOR Inmate Work Programs had previously been published in the **Federal Register** as follows: Inmate Pay on September 30, 1983 (48 FR 45047) and amended on March 27, 1990 (55 FR 11326) and April 19, 1990 (55 FR 14917), Scholarship Program on May 1, 1981 (46 FR 24900), Inmate Hiring Procedures on July 1, 1981 (46 FR 34549), and Incentive Awards Program on August 31, 1981 (46 FR 43810).

Existing regulations on UNICOR Inmate Pay are codified in 28 CFR part 345. This proposed rule reorganizes the existing provisions, simplifies the inmate pay provisions (new §§ 345.50 through 345.63) by removing tables of pay rates and various examples of pay rate calculations, adds provisions relating to position classification (new § 345.20), physical and medical work limitations (new §§ 345.64 and 65), benefit retention provisions (new § 345.66), and expands provisions related to assignment to UNICOR work status (new § 345.35).

Existing regulations on UNICOR Inmate Hiring Procedures are codified in 28 CFR part 545, subpart F. These provisions are revised and expanded upon in § 345.30 and §§ 345.32 through 345.34, and include new provisions on recruitment procedures (§ 345.31), inmate worker standards and performance appraisal (§§ 345.40 and 345.41), and inmate worker dismissal (§ 345.42).

Existing regulations on the Scholarship Program are codified in 28 CFR part 545, subpart E. These provisions are revised and expanded upon in § 345.84. As proposed, these provisions specify that an inmate maintain a verifiable average of "C" or better to maintain program eligibility.

Existing regulations on UNICOR Incentive Awards Program are codified in 28 CFR part 545, subpart G. These provisions are revised and expanded upon in §§ 345.73 and 345.74.

This proposed rule contains new provisions relating to inmate training (§§ 345.80 through 345.83).

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects

28 CFR Part 345

Inventions and patents, Prisoners, Scholarships and fellowships.

28 CFR Part 545

Prisoners.

Dated: December 9, 1992.

Kathleen M. Hawk,

Director, Bureau of Prisons, and Commissioner of Federal Prison Industries.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), it is proposed to revise part 345 in chapter III of 28 CFR, and to amend part 545 in subchapter C of 28 CFR, chapter V as set forth below.

1. 28 CFR part 345 is revised to read as follows:

PART 345—UNICOR INMATE WORK PROGRAMS

Subpart A—General

Sec.

345.10 Purpose and scope.
345.11 Definitions.

Subpart B—Classification

345.20 Position classification.

Subpart C—Recruitment and Hiring

345.31 Recruitment.
345.32 Hiring.
345.33 Waiting list hiring exceptions.
345.34 Refusal to employ.
345.35 Assignments to FPI.

Subpart D—Standards and Performance Appraisal

345.40 Inmate worker standards and performance appraisal—general.
345.41 Performance appraisal for inmate workers.
345.42 Inmate worker dismissal.

Subpart E—Pay and Benefits

345.50 Inmate pay and benefits—general.
345.51 Inmate pay.
345.52 Premium pay.
345.53 Piecework rates.
345.54 Overtime compensation.
345.55 Longevity pay.
345.56 Vacation pay.
345.57 Administrative pay.
345.58 Holiday pay.
345.59 Inmate performance pay.
345.60 Training pay.
345.61 Inmate earnings statement.
345.62 Inmate accident compensation.
345.63 Funds due deceased inmates.
345.64 Sharing of medical data with FPI staff.
345.65 Inmate medical work limitation.
345.66 Retention of benefits.

Subpart F—Awards

345.70 Awards program—general.
345.71 Official commendations.

345.72 Cash bonus or cash award.
345.73 Procedures for granting awards for suggestions or inventions.
345.74 Awards for special achievements for inmate workers.

Subpart G—Training and Scholarship Programs

345.80 FPI inmate training and scholarship programs.
345.81 Pre-industrial training.
345.82 Apprenticeship training.
345.83 Job safety training.
345.84 The FPI scholarship fund.

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

Subpart A—General

§ 345.10 Purpose and Scope.

It is the policy of Federal Prison Industries, Inc. to provide work to inmates confined in a Federal institution. This work is designed to allow inmates the opportunity to acquire the knowledge, skills, and work habits which will be useful when released from the institution. There is no requirement that inmates be paid for work in an industrial assignment. 18 U.S.C. 4126, however, provides for discretionary compensation to inmates working in Industries. Under this authority, inmates of the same grade jobs, regardless of the basis of pay (hourly, group piece, or individual piece rates) shall receive approximately the same compensation. All pay rates under this part are established at the discretion of Federal Prison Industries, Inc. Any alteration or termination of the rates shall require the approval of the Federal Prison Industries Board of Directors. While the Warden is responsible for the local administration of Inmate Industrial Payroll regulations, no pay system is initiated or changed without prior approval of the Assistant Director of Federal Prison Industries, Inc.

§ 345.11 Definitions.

(a) *Federal Prison Industries, Inc. (FPI)*—A wholly-owned government corporation established by Congress in 1934 whose mission is to provide work programs and training opportunities for inmates confined in Federal correctional facilities. Hereinafter, referred to as FPI.

(b) *UNICOR*—The commercial or "trade" name of Federal Prison Industries, Inc. Most factories or shops of Federal Prison Industries, Inc. are commonly referred to as "UNICOR" or as "Industries". Where these terms are used, they refer to FPI production locations and to the corporation as a whole. UNICOR, FPI, and Industries are used interchangeably in this manner.

(c) *Federal Prison Industries Board of Directors*—A presidentially appointed board of six directors who serve the corporation at the will of the President and without compensation.

(d) *Superintendent of Industries (SOI)*, also referred to as Associate Warden/ Industries and Education, is responsible for the efficient management and operation of an FPI factory. Hereinafter, referred to as SOI.

(e) *Unit Team*—Bureau of Prisons staff responsible for the management of inmates and the delivery of programs and services. The Unit Team may consist of a unit manager, case manager, correctional counselor, unit secretary, unit officer, education representative, and psychologist.

(f) *Unit Discipline Committee (UDC)*—The term Unit Discipline Committee refers to one or more institution staff members delegated by the Warden with the authority and duty to hold an initial hearing upon completion of the investigation concerning alleged charge(s) of inmate misconduct (see 28 CFR 541.15). The Warden shall authorize these staff members to impose minor sanctions for violation of prohibited act(s).

(g) *Discipline Hearing Officer (DHO)*—This term refers to an independent discipline hearing officer who is responsible for conducting institution Discipline Hearings and who imposes appropriate sanctions for incidents of inmate misconduct referred for disposition following the hearing required by 28 CFR 541.15 before the UDC.

Subpart B—Classification

§ 345.20 Position classification.

(a) Inmate worker positions must be assigned an appropriate level of pay. All inmate workers shall be informed of the objectives and principles of pay classification as a part of the routine orientation of new FPI inmate workers.

(b) The Warden and SOI have the responsibility for position classification at each location.

Subpart C—Recruitment and Hiring

§ 345.31 Recruitment.

Inmate workers for FPI locations may be recruited through admission and orientation lectures or through direct recruiting.

§ 345.32 Hiring.

(a) Inmate workers may be hired through waiting lists. Except as noted in § 345.33, inmates are to be placed on the waiting lists in order of receipt of applications for work with Industries, and are to be hired in the same sequence.

(b) Waiting lists are to be maintained and kept available for scrutiny by auditors and other staff with a need to know. SOIs are encouraged to maintain a waiting list for each FPI factory.

§ 345.33 Waiting list hiring exceptions.

(a) *Needed Skills.* An inmate may be hired ahead of other inmates on the waiting list if he/she possesses needed skills and the SOI documents the reasons for the action in the position classification files.

(b) *Prior FPI Work Assignment.* An inmate with prior FPI work experience during the inmate's current commitment and with no break in custody will ordinarily be placed within the top ten percent of the waiting lists unless the inmate voluntarily left the FPI work assignment for non-program reasons; i.e. for some reason other than formal education, vocational training, drug abuses or similar formal programs. For example, an inmate transferred administratively for nondisciplinary reasons, and who has documented credit as a prior worker, is covered under the provisions of this paragraph.

(c) *Industry Closing and Relocation.* When an FPI factory closes in a location with two or more factories, an inmate worker affected may be transferred to remaining factories ahead of the top portion of the inmates on the waiting lists, so there is no break in active duty with FPI. Such actions are also in order where the work force of an industry is reduced to meet institution or FPI needs. An inmate transferred under the provisions of this part will have the same rights as any intra-industry transfer.

(d) *Disciplinary Transfers.* An inmate who is a disciplinary transfer from the last institution designated and who wishes re-assignment in FPI at the receiving institution may be hired on a case-by-case basis at the discretion of the SOI, who should consider the security level and reasons for the misconduct. Such an inmate, despite prior experience, is not due special placement on the waiting list, is not given advance hiring preference, and does not receive consideration for accelerated promotion back to the grade held at the time of transfer.

(e) *Inmate Financial Responsibility Program Assignment.* The unit team may recommend an inmate for priority placement on the waiting list to assist in paying a significant financial obligation.

§ 345.34 Refusal to employ.

(a) The SOI has authority to refuse an FPI assignment to an inmate who, in the judgment of the SOI, would constitute a serious threat to the orderly and safe

operation of the factory. A refusal to assign must be documented by a memorandum to the unit team listing reasons for the refusal, with a copy to the position classification files in FPI. Typically, the reasons should include other earlier (ordinarily within the past twelve months) documented violations of the FPI inmate worker standards or institution disciplinary regulations.

(b) The refusal to assign is to be rescinded when, in the judgment of the SOI, the worker no longer constitutes a serious threat to the industrial operation.

§ 345.35 Assignments to FPI.

The inmate's unit team assigns the inmate to FPI with the SOI's concurrence.

(a) Any request by an inmate for consideration must be made through the unit team. All inmates may be considered for assignment with FPI. FPI does not discriminate on the basis of race, color, religion, ethnic origin, age, or physical handicap.

(b) New workers are ordinarily assigned at pay grade five. All first time inmate workers shall enter at pay grade five and may be required to successfully complete a course in pre-industrial training or on-the-job training (as available) before promotion to pay grade four.

(c) An inmate who has not successfully completed pre-industrial or on-the-job training remains at pay grade five for at least 30 days.

(d) An inmate hired after having resigned voluntarily from FPI may be excused from pre-industrial training and may be hired at a pay grade based on previous training and experience.

Subpart D—Standards and Performance Appraisal

§ 345.40 Inmate worker standards and performance appraisal—general.

This subpart establishes minimum work standards for inmate workers assigned to the Industries program at all field locations. The SOI may reproduce these standards and may also develop additional local guidelines to augment these standards and to adapt them to local needs and conditions. Local Industries shall place these standards and any additional local guidelines on display at appropriate locations within the industrial sites. Inmates shall be provided with a copy of these standards and local guidelines, and shall sign receipts acknowledging they have received and understand them before beginning work in the Industries program.

(a) At a minimum, each industrial location is to have work standards for each of the following areas:

(1) Safety—ensuring the promotion of workplace safety and the avoidance of activities that could result in injury to self or others.

(2) Quality Assurance—ensuring that work is done as directed by the supervisor in an attentive manner so as to minimize the chance of error.

(3) Personal Conduct and Hygiene—ensuring the promotion of harmony and sanitary conditions in the workplace through observation of good hygiene and full cooperation with other inmate workers, work supervisors, and training staff.

(4) Punctuality and Productivity—ensuring the productive and efficient use of time while the inmate is on work assignment or in training.

(b) *Compliance With Work Standards.* Each inmate assigned to FPI shall comply with all work standards pertaining to his or her work assignment. Adherence to the standards should be considered in evaluating the inmate's work performance and documented in individual hiring, retention, and promotion/demotion situations.

§ 345.41 Performance appraisal for inmate workers.

Work supervisors should complete a performance appraisal form for each inmate semi-annually, by March 31 and September 30, or upon termination or transfer from the industrial work assignment. Copies shall be sent to the unit team. Inmate workers should discuss their appraisals with their supervisors at a mutually agreeable time in order to improve their performance. Satisfactory and unsatisfactory performance ratings shall be based on the standards in § 345.40(a).

(a) The SOI is to ensure that evaluations are done and are submitted to unit teams in a timely manner.

(b) The SOI or a designee may promote an inmate to a higher grade level if an opening exists when the inmate's skills, abilities, qualifications, and work performance are sufficiently developed to enable the inmate to carry out a more complex factory assignment successfully, and when the inmate has abided by the inmate worker standards. Conversely, the SOI or SOI designee may demote an inmate worker for failing to abide by the inmate worker standards. Such demotions shall be fully documented.

§ 345.42 Inmate worker dismissal.

The SOI may remove an inmate from Industries work status in cooperation with the unit team.

(a) The SOI may remove an inmate from FPI work status according to the conditions outlined in the pay and benefits section of this policy and in cooperation with the unit team.

(b) An inmate may be removed from FPI work status for failure to comply with any court-mandated financial responsibility. (See 28 CFR 545.11(d)).

(c) An inmate found to have committed a prohibited act (whether or not it is FPI related) resulting in segregation or disciplinary transfer is also to be dismissed from Industries based on an unsatisfactory performance rating for failure to be at work.

Subpart E—Pay and Benefits

§ 345.50 Inmate pay and benefits—general.

It is the policy of FPI to provide compensation to FPI inmate workers through various conditions of pay and benefits. Title 18 U.S. Code section 4126 authorizes FPI to compensate inmates under rules and regulations promulgated by the Attorney General. The following items define terms frequently used in this section.

(a) *Full Time Work Status.* A work schedule for an inmate consisting of 90% or more of the normal factory work week.

(b) *Part Time Work Status.* A work schedule of less than 90% of the normal factory work week.

(c) *FPI Work Status.* Assignment to an Industries work detail.

(1) An inmate shall accrue vacation time, longevity service credit, and shall receive holiday pay for the period of time the inmate is officially assigned to the Industries work detail, provided claims for such pay and/or benefits occur within one calendar year of the period of time for which the claim is made. Inmate claims submitted more than one year after the time in question require the approval of the Assistant Director before an inmate may receive such pay and/or benefits.

(2) An inmate in FPI work status may be on the job, on furlough, vacation, medical idle for FPI work-related injury, or in administrative detention. An inmate on sick call, however, is not considered to be in FPI work status.

(3) FPI pay and benefits are lost in cases of disciplinary transfer and segregation.

(4) An inmate returned to the institution due to program failure at a Community Corrections Center or while on parole or escape is not entitled to credit for time spent in Industries prior to said program failure. This rule also applies to any other program failure which results in a break in confinement status.

§ 345.51 Inmate pay.

Inmate workers in FPI locations receive pay at five levels ranging from 5th grade pay (lowest) to 1st grade pay (highest). Time in grade requirements are covered in the section on performance appraisal. Inmate workers may be eligible for premium pay as specified in § 345.52.

§ 345.52 Premium pay.

Payment of premium pay to selected inmates is authorized. The total number of qualifying inmates may not exceed 15% of first grade inmates at a location.

(a) *Eligibility.* Inmates in first grade pay status may be considered for premium pay.

(b) *The Selection Process.* Candidates for premium pay must be nominated by a foreman on the FPI staff, and recommended on the basis of specific criteria by a selection committee assigned by the SOI.

(1) The SOI, as chief selecting official, must sign approval for all premium pay inmate selections. This authority may not be delegated below the level of Acting SOI.

(2) The selected candidate(s) are notified by the FPI Manager or by a posted list on the FPI bulletin board. A record of the selection and who was on the selection board is kept for documentation purposes. An inmate nominated to be a premium pay inmate may refuse the appointment without prejudice.

(c) [Reserved]

(d) *Pay Rate.* Premium pay inmates receive a specified amount over and above all other pay and benefits to which they may be entitled (e.g., longevity pay, overtime, piecework rates, etc.). Premium pay is also paid for vacation, holiday, and administrative hours.

(e) *Duties of Premium Pay Inmates.* Premium pay status is not a form of bonus or incentive pay for high producing inmates. It is recognition by staff of the value of the leadership and citizenship traits displayed by the inmate in helping to assure factory operations proceed smoothly.

(f) *Transfer Status Of Premium Pay Inmates.* Premium pay status may not be transferred from institution to institution with the inmate worker. Premium pay status must be earned at each location.

(g) *Removals From Premium Pay Status.* Removal from premium pay status may occur for failure to demonstrate the premium pay selection traits or for failure to abide by the inmate worker standards set forth in this policy. All removals from premium pay status shall be documented on the inmate's evaluation form. The following conditions also may result in removal from premium pay status:

(1) Any premium pay inmate found to have committed any level 100 or 200 series offense by the DHO is automatically removed from premium pay status whether or not the offense was FPI related.

(2) Inmates absent from work for more than 30 consecutive calendar days may be removed from premium pay status by the SOI.

§ 345.53 Piecework rates.

Piecework rates are incentives for workers to strive for higher pay and production benefiting both the worker and FPI. Piecework rates may be of two major types: Individual piecework (in which an individual's pay goes up or down depending upon his/her own output) or Group Wage Fund (in which all members of a group strive for higher rates or production output as a unit, and all share in a pool of funds distributed among work group members equally).

§ 345.54 Overtime compensation.

An inmate worker is entitled to overtime pay at a rate of two times the hourly or unit rate for hourly, individual, and group piecework rate employees when the total hours worked (including administrative pay) exceed the factory's regularly scheduled workday. Hours worked on days other than the scheduled work week (e.g., Saturday) shall be compensated at the overtime rate.

§ 345.55 Longevity pay.

(a) Except as provided in paragraph (b) of this section, an inmate earns longevity pay raises after 18 months spent in FPI work status regardless of whether or not the work was continuous. The service may have occurred in one or more FPI factories or shops. An inmate qualifies for longevity pay raises as provided in the table below:

Length of Service With FPI
After 18 months of service and payable in the 19th month
After 30 months of service and payable in the 31st month
After 42 months of service and payable in the 43rd month
After 60 months of service and payable in the 61st month
After 84 months of service (and more) and payable in the 85th month

Longevity pay allowances shall be added after the wages for each actual hour in pay status have been properly computed.

(b) *Exceptions.* (1) FPI work status during service of a previous sentence with a subsequent break in custody may not be considered in determining longevity pay.

(2) An inmate in segregation or who is given a disciplinary transfer loses any longevity status previously achieved.

(3) An inmate who voluntarily transfers to a non-FPI work assignment loses any longevity status previously achieved. An inmate who leaves FPI to enter education, vocational training, or chemical abuse programs, however, generally retains longevity and pay grade status upon return to FPI, unless the inmate withdraws from those programs without a good faith effort to complete them. The decision on whether there was a good faith effort is to be made by the SOI in concert with the staff member in charge of the program.

§ 345.56 Vacation pay.

Inmate workers are granted vacation pay by the SOI when their continued good work performance justifies such pay, based on such criteria as quality of work, attendance and punctuality, attentiveness, and adherence to industry operating regulations. The work supervisor must recommend to the SOI the vacation time to be taken or paid. Eligibility for vacation pay must be verified by the Business Office prior to approval by the SOI. The SOI may declare an inmate ineligible for vacation credit because of an inmate's unsatisfactory work performance during the month in which such credit was to occur.

(a) An inmate may take accrued vacation time for visits, participation in institution programs or for other good reasons at the discretion of the SOI. Industrial managers should make every reasonable attempt to schedule an inmate worker's vacations so as not to conflict with the manpower requirements of factory production schedules and Inmate Systems Management requirements.

(b) An inmate temporarily assigned to the Industrial detail, e.g., on construction details, also earns vacation credit which he or she must take or be paid for at the end of the temporary assignment.

(c) An inmate must take and/or be paid for vacation credit within sixty days after each annual eligibility date of the inmate's most recent date of assignment to UNICOR. An inmate who elects not to take vacation time must indicate this in writing. That inmate shall receive pay for the annual vacation credit in a lump sum on the regular monthly payroll. This amount is ordinarily paid within sixty days after the annual eligibility date of the

inmate's most recent date of assignment to UNICOR. An inmate whose employment is terminated by release, reassignment, transfer, or other reasons, and who has unused vacation credit shall be paid for this credit on the monthly payroll.

§ 345.57 Administrative pay.

An inmate excused from a job assignment may receive administrative pay for such circumstances as a general recall for an institution, power outages, blood donations, or other situations at the discretion of the SOI. Such pay may not exceed an aggregate of three hours per month.

§ 345.58 Holiday pay.

An inmate worker in FPI work status shall receive pay at the standard hourly rate, plus longevity where applicable, for all Federal holidays provided the inmate is in work status on the day before and the day after the holiday occurs. Full time workers receive one full day's pay. Part time workers receive one-half day's pay.

§ 345.59 Inmate performance pay.

Inmate workers for FPI may also receive Inmate Performance Pay for participation in programs where this award is made. However, inmate workers may not receive both Industries Pay and Performance Pay for the same program activity. For example, an inmate assigned to a pre-industrial class may not receive FPI pay as well as inmate performance pay for participation in the class.

§ 345.60 Training pay.

Inmates directed by the SOI to take a particular type of training in connections with a FPI job are to receive FPI pay if the training time occurs during routine factory hours of operation. This does not include ABE/GED or pre-industrial training.

§ 345.61 Inmate earnings statement.

Each inmate worker in FPI shall be given a monthly earnings statement while actively working for FPI.

§ 345.62 Inmate accident compensation.

An inmate worker shall be paid lost time wages while hospitalized or confined to quarters due to work-related injuries (including occupational disease or illnesses directly caused by the worker's job assignments) as specified by the Inmate Accident Compensation Program (28 CFR part 301).

§ 345.63 Funds due deceased inmates.

Funds due a deceased inmate for work performed for FPI are payable to a legal representative of the inmate's estate or in accordance with the law of descent and distribution of the state of domicile.

§ 345.64 Sharing of medical data with FPI staff.

The SOI, in consultation with the medical staff, is to ensure that documented medical information pertaining to an inmate's health and any medical limitation (e.g., back injury) is made available to the FPI staff member making the assignment and to the persons who directly supervise the assignment.

§ 345.65 Inmate medical work limitation.

In addition to any prior illnesses or injuries, medical limitations also include any illness or injury sustained by an inmate which necessitates removing the ill worker from an FPI work assignment. If an inmate worker is injured more than once in a comparatively short time, and the circumstances of the injury suggest an awkwardness or ineptitude which in turn indicates that further danger exists, the inmate may be removed to another FPI detail or to a non-FPI detail.

§ 345.66 Retention of benefits.

(a) *Job Retention.* Ordinarily, when an inmate is absent from the job for a significant period of time, the SOI will fill that position with another inmate, and the first inmate will have no entitlement to continued UNICOR employment.

(1) For up to the first 30 days when an inmate is in medical idle status, that inmate will retain UNICOR pay grade status, with suspension of actual pay, and will be able to return to UNICOR when medically able, provided the absence was not because of a UNICOR work-related injury resulting from the inmate's violation of safety standards. If the medical idle lasts longer than 30 days, was not caused by a violation of safety standards, and the unit term approves the inmate's return to UNICOR, and SOI shall place that inmate within the top ten percent of the UNICOR waiting list.

(2) Likewise, for up to the first 30 days when an inmate is in Administrative Detention, that inmate may retain UNICOR pay grade status, with actual pay suspended, and will be able to return to UNICOR, provided the inmate is not found to have committed a prohibited act. If Administrative Detention lasts longer than 30 days, and the inmate is not found to have committed a prohibited act, and the unit team approves the inmate'r return to UNICOR, the SOI shall place that inmate within the top ten percent of the UNICOR waiting list.

(3) An inmate in Administrative Detention, and found to have committed a prohibited act, may return to UNICOR work status at the discretion of the SOI.

(4) If an inmate is injured and absent from the job because of a violation of UNICOR safety standards, the SOI may reassign the inmate within UNICOR or recommend that the unit team reassign the inmate to a non-UNICOR work assignment.

(5) If an inmate is transferred from one institution to another for administrative (not disciplinary) reasons, and the unit team approves the inmate's return to UNICOR, the SOI shall place that inmate within the top ten percent of the UNICOR waiting list.

(b) *Longevity and vacation credit.* Ordinarily, when an inmate's UNICOR employment is interrupted, the inmate loses all accumulated longevity and vacation credit with the following exceptions:

(1) The inmate retains longevity and vacation credit when placed in medical idle status, provided the medical idle is not because of a UNICOR work-related injury resulting from the inmate's violation of safety standards. If the medical idle results from a UNICOR work-related injury where the inmate was not at fault, the inmate also continues to earn longevity and vacation credit.

(2) Likewise, the inmate retains, and continues earning for up to 30 days, longevity and vacation credit if placed in Administrative Detention, provided the inmate is not found to have committed a prohibited act.

(3) The inmate retains, but does not continue earning, longevity and vacation credit when transferring from one institution to another for administrative (not disciplinary) reasons, when absent from the institution on writ, or when placed in administrative detention and found to have committed a prohibited act.

(c) *Pay grade retention.* Ordinarily, when an inmate's UNICOR employment is interrupted, that inmate is not entitled to retain his or her pay grade.

(1) An inmate retains pay grade status, with actual pay suspended, for up to 30 days in Administrative Detention. The inmate, if not found to have committed a prohibited act, is reimbursed for the time spent in detention. If found to have committed a prohibited act, the pay grade is retained, but the actual pay is not granted for the time in Administrative Detention.

(2) Likewise, an inmate retains pay grade status for up to 30 days while absent from the institution on writ, with

actual pay suspended. The SOI may approve pay grade retention when an inmate is on writ for longer than 30 days on a case-by-case basis.

(3) If an inmate is absent because of a UNICOR work-related injury where the inmate was not at fault, the inmate retains his or her pay grade, with actual pay suspended.

Subpart F—Awards

§ 345.70 Awards program—general.

FPI provides incentive awards of various types to inmate workers for special achievements in their work, scholarship, suggestions, and for inventions which improve industry processes or safety, or which conserve energy or materials consumed in FPI operations, and for outstanding levels of self-development.

§ 345.71 Official commendations.

An inmate worker may receive an official written commendation for any suggestion or invention adopted by FPI, or for any special achievement, as determined by the SOI, related to the inmate's industrial work assignment. A copy of the commendation is to be placed in the inmate's central file.

§ 345.72 Cash bonus or cash award.

An inmate worker may receive a cash bonus or cash award for any suggestion or invention which is adopted by FPI and produces a net savings to FPI of at least $250.00. Cash awards shall be one percent of the net estimated savings during the first year, with the minimum award being $25.00, and the maximum award being $1,000.00.

§ 345.73 Procedures for granting awards for suggestions or inventions.

Inmate suggestions for improvements in operations or safety, or for conservation of energy or material, must be submitted in writing.

(a) The inmate's immediate supervisor shall review the suggestion and forward it with comments and award recommendation to the SOI.

(b) The SOI shall ensure that all inmate suggestions and/or inventions formally submitted are considered for incentive awards by a committee comprised of Industries personnel designated by the SOI.

(1) The committee is authorized to award a cash award of up to $100.00 or an equivalent gift not to exceed $100.00 in value to an inmate whose suggestion has been adopted. A recommendation for an award in excess of $100.00 shall be forwarded to the Assistant Director, FPI, for a final decision.

(2) The committee shall forward all recommendations for awards for inventions through the SOI to the Warden. The Warden may choose to add his or her comments before forwarding to the Assistant Director, FPI, for a final decision.

(3) Incentive awards are the exclusive methods for recognizing inmates for suggestions or inventions.

§ 345.74 Awards for special achievements for inmate workers.

While recognition of inmate worker special achievements may originate from any FPI staff member, the achievement ordinarily will be submitted in writing by the inmate's immediate supervisor.

(a) The SOI shall appoint a local institution committee to consider inmates for special achievement awards.

(b) The committee shall forward its recommendations to the SOI who is authorized to approve individual awards (cash or gifts) not to exceed $100 in value. A recommendation for an award in excess of $100 (cash or gifts) shall be forwarded, with the Superintendent's recommendation and the justification for it, through the Warden to the Assistant Director, FPI. The Warden may submit comments on the recommendation.

Subpart G—Training and Scholarship Programs

§ 345.80 FPI inmate training and scholarship programs.

As earnings permit, FPI provides appropriate training for inmates which is directly related to the inmate worker's job assignment. Additionally, FPI administers a scholarship program to provide inmates with an opportunity to begin, or to continue with business and industry courses or vocational training.

(a) An applicant for FPI-funded training program should be evaluated to determine sufficient interest and preparation to successfully complete the course content. The evaluation may be done by the Education Department, Unit Team, or other qualified personnel.

(b) An inmate selected to participate in FPI-funded training programs ordinarily must have enough sentence time remaining to serve to complete the training.

§ 345.81 Pre-industrial training.

FPI encourages the development and use of pre-industrial training programs. Such training ordinarily provides benefits to the inmate and to the factory. Pre-industrial training also provides an additional management tool for replacing inmate idleness with constructive activity. Accordingly, each factory location may provide a pre-industrial training program.

(a) Pre-industrial program trainees shall ordinarily begin at the entry level pay grade (grade 5). Positions for pre-industrial training programs are filled in the same manner as other grade five positions.

(b) Pre-industrial training is not a prerequisite for work placement if the inmate already possesses the needed skill.

(c) If pre-industrial training is available and the worker has not completed both the skill training and orientation phases of pre-industrial training, the inmate should be put into the first available training class.

(d) When pre-industrial training is not available, new FPI assignees will receive on-the-job training in pre-industrial pay status for a period of at least 30 days before being promoted into available fourth grade jobs.

§ 345.82 Apprenticeship training.

FPI provides inmate workers with an opportunity to participate in apprenticeship training programs to the extent practicable. Such programs help prepare workers for post-release employment in a variety of trades. Apprentices are given related trades classroom instruction in addition to the skill training during work hours, where necessary.

§ 345.83 Job safety training.

FPI provides inmates with regular job safety training which is developed and scheduled in coordination with the institution Safety Manager. Participation in the training shall be documented in a safety training record signed by the inmate.

§ 345.84 The FPI scholarship fund.

FPI shall award post-secondary school scholarships to selected, qualified inmate workers. These scholarships provide an inmate with the opportunity to begin or continue with business and industry courses or vocational training as approved and deemed appropriate by the Supervisor of Education.

(a) *Eligibility Requirements.* The SOI and the Supervisor of Education at each institution shall develop application procedures to include, at a minimum, the following criteria:

(1) The inmate shall be a full-time FPI worker.

(2) The inmate has a favorable recommendation for participation from his or her work supervisor.

(3) The inmate meets all relevant institution requirements for participation (e.g. disciplinary record, custody level, etc.).

(4) The inmate is accepted by the institution of higher learning offering

the course or program which is requested.

(5) The inmate must maintain a verifiable average of "C" or better to continue program eligibility.

(6) Before beginning the course of study, the inmate must sign an agreement to provide the SOI with an unaltered, original copy of his or her grades.

(b) *Scholarship Selection Procedures.* FPI scholarship awards shall be made by a three member Selection Committee comprised of the SOI, the Supervisor of Education, and one other person designated by the SOI.

(c) *Scholarship Program Operation.*

(1) Ordinarily, one scholarship may be awarded per school period for every fifty workers assigned. At least one scholarship may be awarded at each institution location, regardless of the number of inmates assigned.

(2) Individual scholarships ordinarily should not exceed the cost of tuition and books for one course. Where several courses may be taken for the same cost as one, the inmate worker may be allowed to take more than one course.

(3) Scholarship monies are to be paid only to the institution providing instruction, or to the Education Department for transfer of funds to the college, university, or technical institution providing instruction.

(4) An inmate may not receive more than one scholarship per school period.

(5) An inmate must maintain at least a "C" average to be continued as eligible for further assistance. An inmate earning less than "C" must wait one school period of eligibility before reapplying for further assistance. Where a course grade is based on a "pass/fail" system, the course must be "passed" to be eligible for further assistance.

(6) An inmate awarded a correspondence course must successfully complete the course during a school year (e.g., 2 semesters, 3 quarters).

(7) An inmate receiving scholarship aid must have approval from the SOI and the Supervisor of Education before withdrawing from classes for good reason. An inmate withdrawing or "dropping" courses without permission shall wait one school year before applying for further scholarship assistance. An inmate may withdraw from courses without penalty for medical or non-disciplinary administrative reasons such as transfer, writ, release, etc., without first securing permission, although withdrawals for medical reasons must be certified in writing by the Hospital Administrator.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

2. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart E—[Removed]

Subpart F—[Removed]

Subpart G—[Removed]

3. In 28 CFR part 545, subpart E, consisting of §§ 545.40 through 545.43, subpart F, consisting of §§ 545.50 through 545.56, and subpart G, consisting of §§ 545.60 through 545.64, are removed.

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Wednesday
December 16, 1992

Part IV

Environmental Protection Agency

Cancellation of Pesticides for Non-Payment of 1992 Registration Maintenance Fees; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64014; FRL 4166–6]

Cancellation of Pesticides for Non-Payment of 1992 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The October, 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) imposed a new requirement for payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for about 2,375 registrations. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days. The Agency is deferring cancellation for certain of these registrations, however, to permit time for affected users to explore alternatives to cancellation directly with the registrants.

DATES: Reports of agreements to support continued registration or transfer of the registrations for which cancellation is being deferred must be received by March 16, 1993.

FOR FURTHER INFORMATION CONTACT: To report agreements to support continued registration of any of the products for which cancellation has been deferred, or for further information on the maintenance fee program , contact by mail: John Jamula, Office of Pesticide Programs (H7504C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location and telephone number: Room 210, Crystal Mall No. 2, 1921 Jefferson Davis Highway South, Arlington, VA (703) 305–6426.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

I. Introduction

Section 4(i)(5) of FIFRA as amended, requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations, granted under section 3, as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The 1990 Farm Bill recently amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use registrations when he determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has identified 63 registrations that fall into this category, and is deferring their cancellation for 90 days. Section II contains a list of these registrations and their vulnerable minor uses, along with instructions for preventing their cancellation.

In late December, 1991, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15; a supplemental notice was sent in February, however, to registrants who had not responded after acknowledging receipt of the original notice. Late payments of the fees were accepted until April 15, when the process of cancellation was begun.

A few registrants who orginally requested cancellation of certain registrations later changed their minds, and contacted the Agency after April 15 seeking to pay the maintenance fee for these registrations. Since the cancellation process had already begun, the late fees were not accepted. These registrations have now been canceled, but the Agency may be able to provide expedited review of applications for replacement registrations received from these companies. Registrants who believe that they may qualify for this expedited review should call the toll-free maintenance fee information line at 1–800–755–2424 for further information.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 17,800 section 3 registrations, or about 90 percent of the registrations on file in December. Fees have been paid for about 2,500 section 24(c) registrations, or about 84 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 1,920 section 3 registrations and about 450 section 24(c) registrations.

II. Product Cancellations not Affecting Status of Active Ingredient

Our analyses indicate that a significant number of these cancellations are simple housekeeping transactions, unlikely to affect pesticide markets or users. For example, more than three quarters of the Section 3 registrations for which no fee was paid are no longer in production, and their disappearance from the market will cause no adverse impact.

Although comparable production data are not available for the canceled 24(c) registrations, the Agency believes most of them are similarly obsolete. Over 72 percent of them were originally issued before 1987—most of them for a finite term which has long since expired. A large proportion have also been made obsolete by subsequent Section 3 registrations for the same uses.

The remaining cancellations, 450 section 3 registrations and 127 section 24(c) registrations issued in the past 5 years, have been the principal focus of our further impact analyses. We anticipate two types of impact for the bulk of these cancellations. First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary. The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until the due date for the next annual registration maintenance fee, January 15, 1993. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the cancellation action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique non-agricultural uses will disappear, although the active ingredients will remain available for different uses in

other products. When this situation occurs, there may be more serious impacts on users of the canceled products. Once again, existing stocks of the canceled products already in channels of trade will be usable to mitigate these impacts in the short term. For the longer term the mechanisms of Section 3 amendments and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations; neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been canceled.

III. Cancellations Leading to Disappearance of Minor Agricultural Uses

A third type of impact arises in cases where unique agricultural uses would disappear. The 1990 Farm Bill amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural uses when he determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has identified 63 registrations in this category, and will defer cancellation of these registrations for 90 days to permit affected users to explore alternatives to cancellation. If within 90 days of publication of this notice the Agency is notified in writing by the current registrant at the address given above either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will waive the 1992 maintenance fee and retain the registration in full active status. It should be emphasized, however, that any such registration would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small business or low volume uses).

The 63 registrations containing a disappearing minor agricultural use are grouped by active ingredient in the following Table 1:

TABLE 1.—REGISTRATIONS WITH DISAPPEARING MINOR AGRICULTURAL USES PENDING CANCELLATION FOR NON-PAYMENT OF 1992 REGISTRATION MAINTENANCE FEE

Chemical Name	Registration No.	Product Name	Site
Aliphatic petroleum hydrocarbons	002270–00167	Excalcide Animal and Area Spray	Cereal Feeds
Alkanol* amine 2,4-dichlorophenoxyacetate *(salts of the ethanol and isopropanol series).	011611–00006	Term-X	Ornamental plants
			Ornamental Plants (Herb & Woody)
			Bentgrass
			Bermudagrass
			Bluegrass
			Carpetgrass
			Centipedegrass
			Fescue
			St. Augustinegrass
			Zoysia Grass
			Ornamental Woody Shrubs
			Ornamental and/or Shade Trees
Arsenic acid	004581 AZ–79–0038	Desiccant L–10	Okra
Bacillus popilliae and B. lentimorbus	036488–00001	Grub Attack	Ornamental Turf
(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate.	060182 FL–87–0017	Resmethrin EC 26 Insect Spray	Display Crops (Not for Consumption)
5-Bromo-3-sec-butyl-6-methyluracil	009754–00001	Tri-Kil Nonselective Weed and Grass Killer	Cotton
			Aerial Application
Butoxypolypropylene glycol	021165–00013	Pyranha 1–10 SC Concentrate	Dairy Cattle
(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%.	024909–00003	Formula K Insect Spray	Hatcheries
	060182 FL–87–0017	Resmethrin EC 26 Insect Spray	Display Crops (Not for Consumption)
2-Chloro-2-diethylcarbamoyl-1-methylvinyl dimethyl phosphate.	010163–00045	Phosphamidon 8 Spray	Walnut
			Potato
			Cotton
2-Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine.	060063 TX–91–0001	Ciron Italia Atrazine 90 Herbicide	Pastures (Grasses) (Forage-Fodder)
(2-Chloroethyl)phosphonic acid	064058 CA–90–0016	Ethrel Plant Regulator	Flowering Pear
Copper oleate	011037–00015	Hacienda Liquid Copper Fungicide Spray	Raspberry
			Cantaloupe
			Casaba Melons
			Honeydew and/or Honey Ball Melon
			Muskmelons
			Persian Melons
			Watermelons
Cube Resins other than rotenone	042057–00073	Morgro Soil and Bulb Dust Insecticide-Miticide	Beans, Hyacinth
			Daffodil
			Hyacinth
			Ornamental Deciduous Trees
Cuprous and cupric oxide, mixed	001366–00499	Unico Tomato Potato & Vegetable Dust	Pepper (Fruiting Vegetable)
			Collards
			Chinese Cabbage
			Dandelion
			Endive
			Carrot (Root Crop Vegetable)
			Beets, Garden
			Corn
2,2-Dichlorovinyl dimethyl phosphate	005440–00116	Cardinal Vapo–5	Grain/Cereal/Flour Bins Feed/Food

TABLE 1.—REGISTRATIONS WITH DISAPPEARING MINOR AGRICULTURAL USES PENDING CANCELLATION FOR NON-PAYMENT OF 1992 REGISTRATION MAINTENANCE FEE—Continued

Chemical Name	Registration No.	Product Name	Site
	006218–00013	Flora-Fog Vapona Greenhouse Fogging Insecticide	Grain/Cereal/Flour Elevators Cucumber Lettuce Radish Snapdragon
	006218–00026	Flora Fume Vapona Greenhouse Misting Insecticide	Cucumber Lettuce Radish Snapdragon
Diethanolamine 2-(2-methyl-4-chlorophenoxy)propionate.	008123–00100	Fertilizer 10–6–4 (with Broadleaf Weed Killer)	Buffalograss Carpetgrass Dichondra (Ground Cover)
O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate.	065362 CA–91–0025	D-Z-A Diazinon 50W Insecticide	Kenaf (Fiber Crop)
Diethylamine 2,4-dichlorophenoxyacetate	004502–00004	Bel 2,4–D Amine (A Selective Weed Killer)	Barley (Grain Crop) Rice (Grain Crop) Rye (Grain Crop) Wheat (Grain Crop) Sugarcane (Sugar Crop) Corn Sorghum Barley-Legume Mixture Rye-Legume Mixture Wheat-Legume Mixture Pastures Rangeland Farm or Agricultural Structure Uncultivated Agricultural Area Fallow or Idle Agricultural Land Aerial Application
	004502 LA–79–0007	Bel 2,4–D Amine (A Selective Weed Killer)	Aerial Application
1,2-Dihydro-3,6-pyridazinedione, potassium salt	008123–00097	Liquid Growth Retardant	Bermudagrass
6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinedilium dibromide.	003837–00023	Diquatic Weed Killer	Greenhouse Environs and Equipment
	037347–00005	Quat Aquatic Weed Killer	Ornamental Ponds and Fountains
O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate.	052466–00002	Malacide Concentrate	Goats (Wool)
	63204 CA–90–0046	Prokil Malathion 8E	Jojoba (Foliar Application)
Dimethylamine 4-(2,4-dichlorophenoxy)butyrate	039184 WA–89–0012	2,4–DB 175 Selective Post-Emergence Herbicide	Radish
Dodecylguanidine acetate	002749–00152	Dodine 65–W Fungicide	Sycamore
Ethylene oxide	065136 ME–91–0005	Carboxide Sterilant-Fumigant Gas	Beehives (Empty)
Ethylenediaminetetraacetic acid	004829–00001	Coastal Sani Det Germicidal Cleaner	Milking Equipment
Formaldehyde	001712–00007	Hydrol Formaldehyde Disinfectant	Mushroom House Environs and Equipment
Iodine	001190–00053	Pax-O-Dine 1.75	Farm or Agricultural Structure Farm or Agricultural Equipment
Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer.	000299–00173	Martin's Borer & Beetle Killer for Pine and Hardwood Trees	Forest Trees (Hardwoods)
	000769–00159	20% Lindane Emulsifiable Concentrate	Barns
Magnesium phosphide	040285–00010	Degesch Magtoxin Pellets	Sorghum
Manganese ethylenebis(dithiocarbamate)	000407–00319	Imperial Maneb Fungicide	Turnip (Leafy Vegetable)
Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane).	004691–00095	Methoxychlor & Malathion Dairy Cattle Dust	Cattle, Non-Lactating
Methyl bromide	060250 CA–82–0029	Methyl Bromide 100	Small Fruits
2-Methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl)oxime.	001016 DE–85–0003	Temik 15 G Aldicarb Pesticide	Potato
	001016 ME–85–0002	Temik 15 G Aldicarb Pesticide	Potato
	001016 VT–85–0002	Temik 15 G Aldicarb Pesticide	Potato
2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopentan-1-yl 2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate.	001421–00102	Dynamic Super Insecticide Concentrate	Poultry Egg Packing Plants
2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopentan-1-yl *d*-trans-2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate.	007885–00007	Zoe House and Garden Insect Killer	Ornamental Broadleaf Evergreen Ornamental Conifers
	044400–00003	House & Garden Insect Killer	Ornamental Broadleaf Evergreen
Methylated naphthalenes	008123–00062	Ornamental Insecticide	Ornamental Herbaceous Plants
4-(Methylthio)-3,5-xylyl methylcarbamate	001386–00576	Unico Snail and Slug Pellets-M	Greenhouse Environs and Equipment
Monosodium acid methanearsonate	011611–00006	Term-X	Ornamental Flowering Plants Carpetgrass Centipedegrass

TABLE 1.—REGISTRATIONS WITH DISAPPEARING MINOR AGRICULTURAL USES PENDING CANCELLATION FOR NON-PAYMENT OF 1992 REGISTRATION MAINTENANCE FEE—Continued

Chemical Name	Registration No.	Product Name	Site
			St. Augustinegrass
1-Napthyl-*N*-methylcarbamate	042057–00073	Morgro Soil and Bulb Dust Insecticide-Miticide	Beans, Hyacinth
			Hyacinth
N-Octyl bicycloheptene dicarboximide	006218–00046	Summit Sumithrin Greenhouse Aerosol	Rubber Plant Amaranthus Aerve Plant Hibiscus Viburnum
	046269–00009	Renex 1140	Fruits
(3-Phenoxyphenyl)methyl *d*-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate.	006218–00046	Summit Sumithrin Greenhouse Aerosol	Dahlias
			Lilies Rubber Plant Amaranthus Aerve Plant Crotons Hibiscus Hydrangea
Phorate (*O,O*-diethyl *S*-((ethylthio)methyl) phosphorodithioate).	002749–00123	Phorate 15–G	Corn
	042697 AC–83–0011	Safer Agro Chems Insecticidal Soap	Fraser Fir
Pyrethrins	024909–00003	Formula K Insect Spray	Hatcheries
Silver	059243–00002	WSA Bacteriostatic Water Trt. Unit, Model WSA2 CT	Aquatic Areas
Sodium carbonate	008238–00002	Barcrobe Germicidal Detergent Concentrate	Farm Animals
Sodium dimethyldithiocarbamate	006764–00006	Freshgard 40	Melons
Sodium fluoroacetate	035975–00004	Sodium Fluroacetate (CD 1080) Livestock Protection Collar	Goats (all) Montana
			Sheep (all) Montana
Sodium hypochlorite	011741–00012	Davies "Dairy-San"	Dairy Farm Milk Storage Rooms
	033458 FL–89–0021	Pool Guard Sodium Hypochlorite	Irrigation Systems
Sodium metaborate	009754–00001	Tri-Kil Nonselective Weed and Grass Killer	Cotton Aerial Application
Streptomycin sulfate	000618 OR–81–0029	Agri-Strep (streptomycin Sulfate Agricultural Merck)	Aerial Application
	000618 WA–81–0062	Agri-Strep (streptomycin Sulfate Agricultural Merck)	Aerial Application
Strychnine	005042 OR–84–0029	Orco Boomer-Rid	Forest Plantings (Reforestation)
2-(4'-Thiazolyl)benzimidazole	000618 WY–80–0002	Mertect 340–F Fungicide	Cottonwood
3,7,11-Trimethyl-1,6,10-dodecatrien-3-ol	063241 AZ–87–0017	Stirrup-M	Blackberry Boysenberry Dewberry Logenberry Raspberry Cranberry Grapes Strawberry Grapefruit Kumquat Lemon Lime Orange Tangelo Tangerine Almond Chestnut Filbert Macadamia Nut Pecan Walnut Apple Pear Quince Apricot Cherry Aectarine Peach Plum Prune Fig Hops (Flavoring and Spice Crop) Melons Cantaloupe Watermelons Cucumber Pumpkin Squash Eggplant

TABLE 1.—REGISTRATIONS WITH DISAPPEARING MINOR AGRICULTURAL USES PENDING CANCELLATION FOR NON-PAYMENT OF 1992 REGISTRATION MAINTENANCE FEE—Continued

Chemical Name	Registration No.	Product Name	Site
			Pepper (Fruiting Vegetable) Tomato Potato Alfalfa (Forage-Fodder) Clover (Forage-Fodder) Beans Corn Cotton Mint Peanuts Sorghum Sugar Beets Ornamental Plants (Herb & Woody)
Trisodium phosphate	011741–00012	Davies "Dairy-San"	Dairy Farm Milk Storage Rooms
Xylene	000769–00218	Grain Protection Spray	Barley (Grain Crop) Oats (Grain Crop) Rice (Grain Crop) Rye (Grain Crop) Sorghum (Grain Crop) Wheat (Grain Crop) Peanuts Seeds (Agricultural and Ornamental) Processing or Handling Equipment
	052466–00002	Malacide Concentrate	Goats (Wool)
Xylene range aromatic solvent	000550–00108	Aamco Malathion 57–E	Caneberries Macadamia Nut Papaya Corn Sorghum Vegetables Forest Trees (Deciduous) Red Pine Cull Piles (Fruit, vegetables, Etc.) Citrus Pulp Cattle Feed

We encourage individual users or user groups who are concerned about the potential loss of these active ingredients to work directly with registrants identified by the first 6 digits of the Reg No. in Table 1 to persuade them to continue to support the ingredient, or to identify third parties who would be willing to support the ingredient if the registrations were transferred to them. Their full names and address appear in Table 3 below.

IV. Cancellations Leading to Disappearance of Active Ingredients

A final type of impact arises if an active ingredient that is now or recently has been available in the marketplace disappears. The Agency has identified 25 registered active ingredients that fall into this category; i.e., they have been produced in the past 3 years and the maintenance fee has not been paid for any product containing them. Twenty-three of these 25 ingredients have not been supported for reregistration; impacts of their disappearance will not be reconsidered here.

After deleting these 23 from the list of 25, 2 disappearing active ingredients remain. None subject to prior regulatory action, and all are likely to disappear as a consequence of these cancellations. The two active ingredients affected are formulated in a single product used for aquatic weed control.

These 2 ingredients, along with the EPA registration number and product name of the product in which they occur, are listed in the following Table 2:

TABLE 2.—ACTIVE INGREDIENTS WITH RECENT PRODUCTION PENDING CANCELLATION OF ALL PRODUCTS FOR NON-PAYMENT OF 1992 REGISTRATION MAINTENANCE FEES

Chemical Name	Registration No.	Product Name
Calcium Sulfate	033436–00001	Clean-Flo Lake Cleanser
Aluminum Sulfate	033436–00001	Clean-Flo Lake Cleanser

Because these active ingredients are at risk to disappearance, the Agency has deferred cancellation of this registration for 90 days. During that time the registrant or other affected persons may make arrangements to continue the registration.

If the last Section 3 registration for an ingredient disappears, the Section 24(c) registration process is unlikely to be able to compensate for the loss. Thus EPA is temporarily deferring cancellation of this product to allow adversely affected users to pursue alternatives to cancellation.

We encourage individual users or user groups who are concerned about the potential loss of these active ingredients to work directly with the registrant identified by the first 6 digits of the Reg No. in Table 2 to persuade them to continue to support the ingredient or to identify third parties who would be willing to support the ingredient if the registration were transferred to them. Their full names and addresses appear in Table 3 below. We also encourage users to consult with the Cooperative Extension Service or other local sources

to identify alternatives to these active ingredients.

If within 90 days of publication of this notice the Agency is notified in writing by the current registrant at the address listed in Table 3 below either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will retain the registration in full active status as soon as the delinquent maintenance fee payment is received. It should be emphasized, however, that any such registration would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume uses).

TABLE 3.—REGISTRANTS OF SELECTED REGISTRATIONS CANCELLATION FOR NON-PAYMENT OF 1992 REGISTRATION MAINTENANCE FEE

EPA Company No.	Registrant Name and Address
000299	C.J. Martin Co., 606 W Main St. Box 9, Nacogdoches, TX 75961.
000407	Imperial Inc., Box 98, Shenandoah, IA 51601.
000550	Van Waters & Rogers, Inc., Subsidiary of Univar, Box 34325, Seattle, WA 98104.
000618	Merck & Co Inc., Hillsborough Rd, Three Bridges, NJ 08887.
000769	Sureco, Inc., Box 938, Fort Valley, GA 31030.
001016	Union Carbide Corp., UCC Linde Division, 200 Cottontale Lane, Somerset, NJ 08875.
001190	J.F. Daley International, Ltd., Pecks Products Division, 1200 Switzer Ave., St Louis, MO 63147.
001386	Universal Cooperatives Inc., Box 460 7801 Metro Parkway, Minneapolis, MN 55440.
001421	Dettelbach Chemical Co., Division of Hysan Corp., 4309 South Morgan Street, Chicago, IL 60609.
001712	Hydrol Chemical Co., 520 Commerce Dr., Yeadon, PA 19050.
002270	Huge' Co., Inc., The, 7625 Page Ave., St. Louis, MO 63133.
002749	Aceto Agriculture Chemicals Corp., One Hollow Lane, Lake Success, NY 11042.
003837	Southern Chemical Co., Box 350, Anna, IL 62906.
004502	Bel Chemical & Supply Co., Inc., Schriever Box Drawer 450, Schriever, LA 70395.
004581	Elf Atochem N.A. Inc., Agchem Division, Three Parkway, Room 619, Philadelphia, PA 19102.
004691	Boehringer Ingelheim Animal Health Inc., Anchor Div, 2621 North Belt Highway, St Joseph, MO 64506.
004829	Costal Industries, 225 Passaic Street, Passaic, NJ 07055.
005042	Oregon Rodent Control Outfitters, Inc., 640 Hwy 99E, Harrisburg, OR 97211.
005440	Cardinal Chemical Co., 3171 Fitzgerald Rd., Rancho Cordova, CA 95742.
006218	Summit Chemical Co., 7657 Canton Center Dr., Baltimore, MD 21224.
007865	Zoe Chemical Co., 1801 Falmouth Ave., New Hyde Park, NY 11040.
008123	Frank Miller & Sons Inc., 13831 S. Emerald Ave., Chicago, IL 60627.
008238	Barrier Industries Inc., 200 E. Main St., Port Jervis, NY 12771.
008764	FMC Corp., Box 1708, Lakeland, FL 33802.
009754	Gro-Lyfe, 810 E. 18th Street, Los Angeles, CA 90021.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
011037	Garden Valley Fertilizer Co., DBA Hacienda Enterprises, 565 Charles St, San Jose, CA 95112.
011611	Puma Management &Technical Services Inc., 1000 W. Fuller St. Box 6512, Ft Worth, TX 76115.
011741	Davies DW & Co. Inc., 3200 Phillips Ave, Racine, WI 53403.
021165	Chem-I-Matic Inc., Box 920706, Houston, TX 77292.
024909	Knapp Mfg. Co., 5227 E. Pine Ave. Box 7995, Fresno, CA 93747.
033436	Clean-Flo Laboratories Inc., 4342 Shady Oak Rd., Hopkins, MN 55343.
033458	Allied Universal Corp., 8350 N.W. 93 Street, Miami, FL 33166.
035975	Montana Department of Livestock, Capitol Station, Helena, MT 59620.
036488	Attack Pesticides, c/o Delta Analytical Corp., 1414 Fenwick Ln, Silver Spring, MD 20910.
037347	Uni-Chem Corp. of Florida, 2801 NW 55th Ct. Box 6336, Ft. Lauderdale, FL 33309.
039184	Tri-River Chemical Co., Inc., Box 2641, Pasco, WA 99302.
040285	Degesch America, Inc., Box 116, Weyers Cave, VA 24486.
042057	Morgro Chemical Co., Box 651048, Salt Lake City, UT 84165.
042697	Safer Inc., c/o Delta Analytical Corp., 1414 Fenwick Ln., Silver Spring, MD 20910.
044400	Armis Co., Division of Hysan Corp., 4309 S Morgan St, Chicago, IL 60609.
046269	Quip Laboratories, Inc., 1401 "A" Street, Wilmington, DE 19801.
052466	Horse Health Products, Inc., c/o Alchemists Inc., Box 7486, Athens, GA 30604.
059243	Water Safety Associates, Inc., 302 South Leadbetter Rd., Bldg #17, Ashland, VA 23005.
060063	Soetram Corp., 70 Mansell Ct., Suite 230, Roswell, GA 30076.

TABLE 3.—REGISTRANTS OF SELECTED REGISTRATIONS CANCELLATION FOR NON-PAYMENT OF 1992 REGISTRATION MAINTENANCE FEE—Continued

EPA Company No.	Registrant Name and Address
060182	Land, Epcot Center, Box 10,000, Lake Buena Vista, FL 32830.
060250	Consolidated Factors, Import & Export Div., 140 Olivier St., Monterry, CA 93940.
063204	Desert Ag Services, Box 409, Desert Center, CA 92239.
063241	Fermone Corp., Inc., 2620 W. 37th Drive, Phoenix, AZ 85009.
064058	City of Modesto, Parks & Recreation Dept., Box 642, Modesto, CA 95353.
065136	Maine Dept. of Agriculture, Food & Rural Resources, Div. of Plant Industry, Station #28, Augusta, ME 04333.
065362	Palmetto Seed Co., 1016 Ridge Pk., Brawley, CA 92227.

In addition to publishing this notice in the **Federal Register**, we are sending it directly to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. They should be receiving the notice at approximately the same time it is published. We hope that this extraordinary notification effort, and the deferral of cancellations for the most sensitive registrations, will serve to prevent any avoidable loss of critical minor use pesticides.

Because so many registrations are involved, it would be impractical to list them all in this notice. Complete lists of registrations canceled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket, room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

Dated: November 30, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92–30434 Filed 12–15–92; 8:45 am]

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Federal Register

Wednesday
December 16, 1992

Part V

Environmental Protection Agency

Pesticide Reregistration; Outstanding Data Requirements for Certain Lists B and C Active Ingredients (Fifth Notice)

[OPP-34034; FRL-4168-6]

Pesticide Reregistration: Outstanding Data Requirements for Certain List B and C Active Ingredients (Fifth Notice).

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1988 establishes a five-phase process for the reregistration of pesticide products containing active ingredients "contained in any pesticide first registered before November 1, 1984." During Phase 1 the Environmental Protection Agency (the Agency) divided the active ingredients subject to reregistration into four lists; Lists B, C and D were published in the Federal Register on May 25, 1989 (54 FR 22706); July 24, 1989 (54 FR 30846); and October 24, 1989 (54 FR 43388), respectively. FIFRA requires the Administrator during Phase 4 of reregistration to publish the outstanding data requirements identified for those active ingredients being supported for reregistration. The outstanding data requirements of 129 List B active ingredients were published by the Agency among four previous **Federal Register** Notices at 56 FR 6849, February 20, 1991; 56 FR 37610, August 7, 1991; 56 FR 54852, October 23, 1991, and 57 FR 9474, March 18, 1992. This fifth Notice continues the series of reporting the outstanding data requirements of one additional List B and 30 List C active ingredients. Remaining supported Lists B, C, and D active ingredients are on a later reregistration schedule and their unfulfilled data requirements will be published in future Notices.

FOR FURTHER INFORMATION CONTACT: By mail, Teung F. Chin, Special Review and Reregistration Division (H7508W), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, Crystal Station 1, 2800 Crystal Drive, Arlington, VA 22202. Telephone No. (703) 308-8589.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on the *Federal Bulletin Board* at 9:00 a.m. on the date of publcation in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII.

This Notice identifies, pursuant to FIFRA section 4(f)(1)(B), the outstanding data requirements needed for reregistration of certain of the active ingredients on Lists B and C. That section also calls for the separate issuance of Data Call-In notices to registrants to obtain information satisfying these data requirements. The Agency has recently issued such Data Call-In notices to the appropriate registrants.

This SUPPLEMENTARY INFORMATION is divided into four units. Unit I provides background information on pesticide reregistration. Unit II discusses the requirements of section 4(f)(1)(B). Unit III describes the process used by the Agency in identifying outstanding data requirements. It also contains a table of the outstanding data requirements for each active ingredient. Unit IV describes the Data Call-In notices that have been issued to obtain data to satisfy the data requirements identified in this Notice.

I. Background

Section 4 of FIFRA as amended in 1988 required the Agency to conduct pesticide reregistration of older pesticides in five phases. In Phase 1, the Agency published Lists A, B, C, and D of pesticide active ingredients subject to reregistration. For Lists B, C, and D in Phase 2, registrants seeking reregistration had to identify for the Agency any data requirements which registrants believe would apply to their active ingredients, and indicate the ones that they thought were now satisfied. For those that were not satisfied, registrants had to indicate how they would fulfill the remaining data requirements necessary for the reregistration of their products. In Phase 3, these registrants summarized and in some cases reformatted studies that they believed were adequate and that they had previously submitted to the Agency. In Phase 4, the Agency is directed to review the materials submitted by registrants in Phases 2 and 3, and to identify the outstanding data requirements that need to be fulfilled in order for the Agency to determine whether or not pesticides containing particular active ingredients are eligible for reregistration. The Agency is further directed to issue Data Call-In notices to obtain data to satisfy these outstanding requirements. Finally, in Phase 5, the Agency must review the data submitted by registrants; determine whether pesticides containing particular active ingredients are eligible for reregistration; obtain product-specific information needed to determine whether particular products should be reregistered; and make final determinations on whether such products should be reregistered. The final determination on reregistration is to be based on whether a pesticide meets the standards of FIFRA section 3(c)(5), which prescribes the standards for initial registration of pesticides. If the Administrator determines that a pesticide should not be reregistered, section 4 directs the Administrator to take appropriate regulatory action.

Pursuant to FIFRA section 4(c)(2)(B) the Agency published in the **Federal Register** on May 25, 1989, a list of 229 chemicals (in 149 review cases) constituting List B of reregistration. Similarly, on July 24, 1989, a list of 257 chemicals (in 150 review cases) constituting List C of reregistration was published in the Federal Register. The Agency then sent guidance on how to comply with Phase 2 of reregistration to all registrants of pesticides containing active ingredients on Lists B and C. Registrants were required to inform EPA of their intent to seek or not to seek reregistration, to identify data requirements they believe applied to the active ingredients in their products, to identify the data requirements for which they have already submitted adequate data, and to commit to replace missing or inadequate data concerning the List B active ingredients contained in their products.

To assist registrants in complying with Phase 3, the Agency issued on December 24, 1989 the FIFRA Accelerated Reregistration —Phase 3 Technical Guidance (EPA No. 540/09-90-078). This document provides detailed instructions on: (i) Summarizing studies, (ii) reformatting studies, (iii) identifying adverse information, and (iv) identifying previously submitted studies that may not fully satisfy current requirements. To meet the requirements for Phase 3, registrants were required to submit summaries of previously submitted studies that they wished to rely on for reregistration. Additionally, for studies submitted prior to January 1, 1982, registrants had to submit a reformatted version of the study, if data were for certain toxicological and residue chemistry guidelines. Registrants were to certify that the raw data for the previously submitted studies were either in their possession, or in the possession of the Agency, or were readily accessible elsewhere. Registrants were to identify and submit any data considered under section 6(a)(2) to show an adverse effect of the pesticide. Also, registrants were to identify any other information they considered to be supportive of registration. And registrants had to commit to fill any new data gaps identified by them.

In Phase 4, the Agency has been conducting a review of the adequacy of

the data submitted by registrants for active ingredients on Lists B and C during Phases 2 and 3 and in compliance with any Data Call-In notices previously issued under section 3(c)(2)(B) of FIFRA. The purpose of the Agency's review was to systematically identify all data requirements for active ingredients that, based on information available to the Agency at this time, are necessary for a determination of eligibility for reregistration. For many active ingredients, registrants may have already committed to meet some of those requirements but have not yet submitted the results of their studies to the Agency. Concurrently, to effect the submission of those data for which commitments have not yet been made, the Agency issued Data Call-In notices to affected registrants for the additional data required by the Agency. This Notice identifies the outstanding data requirements for 31 List B and C active ingredients. It includes any new data requirements identified that are the subject of Data Call-In notices being sent to affected registrants, as well as any other prior commitments of unfulfilled data requirements. Collection of this information is authorized under the Paperwork Reduction Act by the Office of Management and Budget under OMB Control No. 2070–0107.

II. Outstanding Data Requirements

Section 4 (f)(1)(B) of FIFRA requires the Agency to publish this Notice of outstanding data requirements for each active ingredient on Reregistration Lists B and C. The Agency has been conducting a review of the information provided on all List B and C submissions on record for data adequacy and completeness, and has identified in this followup Notice a partial list of those chemicals with outstanding data requirements. Section 2(ff) of FIFRA defines outstanding data requirements as "a requirement for any study, information, or data that is necessary to make a determination under section 3(c)(5) and which study, information, or data — (A) has not been submitted to the Administrator; or (B) if submitted to the Administrator, the Administrator has determined must be resubmitted because it is not valid, complete, or adequate to make a determination under section 3(c)(5) and the regulations and guidelines issued under such section."

For purposes of the **Federal Register** Notice, outstanding data requirements include all requirements identified by the Agency which have yet to be satisfied at the active ingredient level, before or pursuant to Phases 2, 3, and 4 of reregistration. If registrants committed during Phases 2 and 3 or pursuant to prior actions to submit data to fulfill certain data requirements, and the data have not yet been submitted, the Agency is identifying them as outstanding. Upon review of the completed studies submitted either in response to earlier Data Call-In notices or as part of the reregistration process, the Agency may need to call in some additional studies before a final determination on reregistration can be made.

As in the previous **Federal Register** Notices, the following Table 1 provides a complete listing of the Guideline Reference Numbers (GRN) and corresponding titles for the data requirements referred to in this Notice.

TABLE 1.—STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS

Guideline Reference No.	Test of Study
.....	
61–1	Product Identification and Disclosure of Ingredients[1]
61–2(a)	Description of Beginning Materials and Manufacturing Process[2]
61–2(b)	Discussion of Formation of Impurities[3]
62–1	Preliminary Analysis[4]
62–2	Certification of Limits[5]
62–3	Analytical Methods to Verify Certified Limits[6]
Physical and Chemical Characteristics[7].	
63–2	Color
63–3	Physical State
63–4	Odor
63–5	Melting Point
63–6	Boiling Point
63–7	Density, Bulk Density, or Specific Gravity
63–8	Solubility
63–9	Vapor Pressure
63–10	Dissociation Constant
63–11	Octanol/Water Partition Coefficient
63–12	pH
63–13	Stability
63–14	Oxidizing or Reducing Action
63–15	Flammability
63–16	Explodability
63–17	Storage Stability
63–18	Viscosity
63–19	Miscibility
63–20	Corrosion Characteristics
63–21	Dielectric Breakdown Voltage
64–1	Submittal of Samples
Wildlife and Aquatic Organisms Data Requirements[8].	
71–1(a)	Acute Avian Oral Toxicity (LD50) in Bobwhite Quail or Mallard Duck
71–1(b)	Acute Avian Oral Toxicity (LD50) in Bobwhite Quail or Mallard Duck (Using Typical End–Use Product)
71–2(a)	Acute Avian Dietary Toxicity (LC50) in Bobwhite Quail
71–2(b)	Acute Avian Dietary Toxicity (LC50) in Mallard Duck
71–3	Wild Mammal Toxicity Test
71–4(a)	Avian Reproductive Toxicity in Bobwhite Quail
71–4(b)	Avian Reproductive Toxicity in Mallard Duck
71–5(a)	Simulated Terrestrial Field Study
71–5(b)	Actual Terrestrial Field Study

TABLE 1.—STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test of Study
72-1(a)	Fish Toxicity to Bluegill Sunfish
72-1(b)	Fish Toxicity to Bluegill Sunfish (Using Typical End-Use Product)
72-1(c)	Fish Toxicity to Rainbow Trout
72-1(d)	Fish Toxicity to Rainbow Trout (Using Typical End-Use Product)
72-2(a)	Invertebrate Toxicity Freshwater LC50 (*Daphnia* Preferred)
72-2(b)	Invertebrate Toxicity Freshwater LC50 (*Daphnia* Preferred-Using Typical End-Use Product)
72-3(a)	Toxicity to Estuarine and Marine Organisms (In Fish)
72-3(b)	Toxicity to Estuarine and Marine Organisms (In Molluska)
72-3(c)	Toxicity to Estuarine and Marine Organisms (In Shrimp)
72-3(d)	Toxicity to Estuarine and Marine Organisms (In Fish - Using Typical End-Use Product)
72-3(e)	Toxicity to Estuarine and Marine Organisms (In Molluska - Using Typical End-Use Product)
72-3(f)	Toxicity to Estuarine and Marine Organisms (In Shrimp - Using Typical End-Use Product)
72-4(a)	Early Life Stage in Fish
72-4(b)	Life Cycle in Aquatic Invertebrates (*Daphnia*/Mysid)
72-5	Fish Life Cycle Study
72-6	Aquatic Organism Accumulation Study
72-7(a)	Simulated Field Tests for Aquatic Organisms
72-7(b)	Actual Field Tests for Aquatic Organisms
Toxicology Data Requirements[9].	
81-1	Acute Oral Toxicity in the Rat
81-2	Acute Dermal Toxicity
81-3	Acute Inhalation Toxicity in the Rat
81-4	Primary Eye Irritation in the Rabbit
81-5	Primary Dermal Irritation
81-6	Dermal Sensitization
81-7	Acute Delayed Neurotoxicity in the Hen
82-1(a)	90-Day Feeding Study in the Rodent
82-1(b)	90-Day Feeding Study in the Non-Rodent
82-2	21-Day Dermal
82-3	90-Day Subchronic Dermal
82-4	90-Day Inhalation in Rat
82-5(a)	90-Day Neurotoxicity in Hen
82-5(b)	90-Day Neurotoxicity in the Mammal (Rat Preferred)
83-1(a)	Chronic Feeding Study in the Rodent
83-1(b)	Chronic Feeding Study in the Non-Rodent
83-2(a)	Oncogenicity Study in the Rat
83-2(b)	Oncogenicity Study in the Mouse
83-3(a)	Teratogenicity in the Rat
83-3(b)	Teratogenicity in the Rabbit
83-4	2-Generation Reproduction Study in the Rat
83-5	Chronic Feeding/Oncogenicity in the Rat
84-2(a)	Gene Mutation
84-2(b)	Structural Chromosome Aberration
84-4	Other Genotoxic Effects
85-1	General Metabolism
85-2	Dermal Penetration
86-1	Domestic Animal Safety
Plant Protection Data Requirements[10].	
Tier 1	
122-1(a)	Seed Germination and Seedling Emergence
122-1(b)	Vegetative Vigor
122-2	Aquatic Plant Growth
Tier 2	
123-1(a)	Seed Germination and Seedling Emergence
123-1(b)	Vegetative Vigor
123-2	Aquatic Plant Growth
Tier 3	
124-1	Terrestrial Field
124-2	Aquatic Field
Reentry Protection Data Requirements[11].	
132-1(a)	Foliar Residue Dissipation
132-1(b)	Soil Residue Dissipation
133-3	Dermal Passive Dosimetry Exposure
133-4	Inhalation Passive Dosimetry Exposure
Non-Target Insect Data Requirements[12].	
141-1	Honey Bee Acute Contact (LD50)
141-2	Honey Bee Toxicity of Residues on Foliage
141-5	Field Testing for Pollinators
Biochemical Pesticides Data Requirements[13].	
(a) Product Analysis Data Requirements.	
151-10	Product Identity
151-11	Manufacturing Process
151-12	Discussion of Formation of Unintentional Ingredients

TABLE 1.—STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test of Study
151–13	Analysis of Samples
151–15	Certification of Limits
151–16	Analytical Methods
151–17(a)	Color
151–17(b)	Physical State
151–17(c)	Odor
151–17(d)	Melting Point
151–17(e)	Boiling Point
151–17(f)	Density, Bulk Density, Specific Gravity
151–17(g)	Solubility
151–17(h)	Vapor Pressure
151–17(i)	pH
151–17(j)	Stability
151–17(k)	Flammability
151–17(l)	Storage Stability
151–17(m)	Viscosity
151–17(n)	Miscibility
151–17(o)	Corrosion Characteristics
151–17(p)	Octanol/Water Partition Coefficient
151–18	Submittal of Samples
(b) Residue Data Requirements.	
153–3(a)	Chemical Identity
153–3(b)	Directions for Use
153–3(c)	Nature of the Residue (plants)
153–3(d)	Nature of the Residue (livestock)
153–3(e)	Residue Analytical Method
153–3(f)	Magnitude of the Residue (crop field trials)
153–3(g)	Magnitude of the Residue (processed food/feed)
153–3(h)	Magnitude of the Residue (meat/milk/poultry/eggs)
153–3(i)	Magnitude of the Residue (potable water)
153–3(j)	Magnitude of the Residue (fish)
153–3(k)	Magnitude of the Residue (irrigated crops)
153–3(l)	Magnitude of the Residue (food handling)
153–3(m)	Reduction of Residue
153–3(n)	Proposed Tolerance
153–3(o)	Reasonable Grounds in Support of the Petition
(c) Toxicology Data Requirements.	
Tier I	
152–10	Acute Oral Toxicity
152–11	Acute Dermal Toxicity
152–12	Acute Inhalation
152–13	Primary Eye Irritation
152–14	Primary Dermal Irritation
152–15	Hypersensitivity Study
152–16	Hypersensitivity Incidents
152–17	Studies to Detect Genotoxicity
152–18	Immunotoxicity
152–20	90–Day Feeding
152–21	90–Day Dermal
152–22	90–Day Inhalation
152–23	Teratogenicity
Tier II	
152–19	Mammalian Mutagenicity Tests
152–24	Immune Response
Tier III	
152–26	Chronic Exposure
152–29	Oncogenicity
(d) Nontarget Organism, Fate and Expression Data Requirements.	
Tier I	
154–6	Avian Acute Oral
154–7	Avian Dietary
154–8	Freshwater Fish LC50
154–9	Freshwater Invertebrate LC50
154–10	Nontarget Plant Studies
154–11	Nontarget Insect Testing
Tier II	
155–4(a)	Volatility Study (Lab)
155–4(b)	Volatility Study (Field)
155–5	Dispenser–Water Leaching
155–6	Adsorption–Desorption
155–7	Octanol–Water Partition
155–8	U.V. Absorption
155–9	Hydrolysis
155–10	Aerobic Soil Metabolism

TABLE 1.—STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test of Study
155–11	Aerobic Aquatic Metabolism
155–12	Soil Photolysis
155–13	Aquatic Photolysis
Tier III	
154–12	Terrestrial Wildlife Testing
154–13	Aquatic Animal Testing
154–14	Nontarget Plant Studies
154–15	Nontarget Insect Testing
Environmental Fate Data Requirements[14].	
160–5	Chemical Identity (See also 61–1)
161–1	Hydrolysis
161–2	Photodegradation in Water
161–3	Photodegradation on Soil
161–4	Photodegradation in Air
162–1	Aerobic Soil Metabolism Study
162–2	Anaerobic Soil Metabolism Study
162–3	Anaerobic Aquatic Metabolism Study
162–4	Aerobic Aquatic Metabolism Study
163–1	Leaching and Adsorption/Desorption
163–2	Laboratory Volatility Study
163–3	Field Volatility Study
164–1	Soil Field Dissipation Study
164–2	Aquatic Sediment Field Dissipation Study
164–3	Forestry Field Dissipation Study
164–4	Combinations and Tank Mixes
164–5	Long Term Soil Dissipation Study
165–1	Confined Rotational Crop Study
165–2	Field Rotational Crop Study
165–3	Accumulation in Irrigated Crops
165–4	Accumulation in Fish
165–5	Accumulation in Aquatic Non-Target Organisms
Groundwater Studies Data Requirements[15].	
166–1	Small Scale Prospective Groundwater Monitoring Study
166–2	Small Scale Retrospective Groundwater Monitoring Study
166–3	Large Scale Retrospective Groundwater Monitoring Study
Residual Chemistry Data Requirements[16].	
171–2	Chemical Identity
171–3	Directions For Use
171–4(a)	Nature of Residue in Plants
171–4(b)	Nature of Residue in Livestock
171–4(c)	Residue Analytical Method (Plants)
171–4(d)	Residue Analytical Method (Animals)
171–4(e)	Storage Stability
171–4(f)	Magnitude of the Residue in Potable Water
171–4(g)	Magnitude of the Residue in Fish
171–4(h)	Magnitude of the Residue in Irrigated Crops
171–4(i)	Magnitude of the Residue in Food Handling
171–4(j)	Magnitude of the Residue in Meat/Milk/Poultry/Eggs (Feeding/Dermal Treatment)
171–4(k)	Crop Field Trials
171–4(l)	Magnitude of the Residue in Processed Food/Feed
171–5	Reduction of Residues
171–6	Proposed Tolerance
171–7	Reasonable Grounds in Support of Petition
171–13	Analytical Reference Standard
Spray Drift Data Requirements[17].	
201–1	Droplet Size Spectrum
202–1	Drift Field Evaluation

[1] 40 CFR 158.155: Product Composition; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705
[2] 40 CFR 158.160: Description of Materials Used to Produce the Product; 40 CFR 158.162: Description of Production Process; 40 CFR 158.165: Description of Formulation Process; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1 NTIS PB88–191705.
[3] 40 CFR 158.167: Discussion of Formation of Impurities; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.
[4] 40 CFR 158.170: Preliminary Analysis; Subdivision D, Product Chemistry: NTIS PB 83–153890; Addendum 1, NTIS PB88–191705.
[5] 40 CFR 158.175: Certified Limits; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.
[6] 40 CFR 158.180: Enforcement Analytical Method; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.
[7] 40 CFR 158.190: Physical and Chemical Characteristics; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.
[8] 40 CFR 158.490; Subdivision E, Hazard Evaluation: Wildlife and Aquatic Organisms, NTIS PB83–153908; Addendum 1, NTIS PB88–246176; Addendum 2, PB87–207700; Addendum 3, NTIS PB88–117288.
[9] 40 CFR 158.340; Subdivision F, Hazard Evaluation: Human and Domestic Animals, NTIS PB83–153916 (old); NTIS PB86–106958 (revised); Addendum 1, NTIS PB88–246184; Addendum 2, NTIS PB88–162292; Addendum 3, NTIS PB88–161179; Addendum 4, NTIS PB88–162227; Addendum 5, NTIS PB88–162219; Addendum 6, NTIS PB89–124077; Addendum 7 NTIS PB89–124085; Position Document, Maximum Tolerated Dose, NTIS PB88–116736.
[10] 40 CFR 158.540; Subdivision J, Hazard Evaluation: Non-Target Plants, NTIS PB83–153940.
[11] 40 CFR 158.390; Exposure; Subdivision K, Reentry Protection: NTIS PB83–153940.
[12] 40 CFR 158.590; Subdivision L, Hazard Evaluation: Non–Target Insect, NTIS PB83–153957; Addendum 1, NTIS PB88–117296.
[13] 40 CFR 158.690; Biochemical Pesticides Data Requirements; Subdivision M, Biorational Pesticides: NTIS PB83–153965.
[14] 40 CFR 158.290; Subdivision N, Chemistry: Environmental Fate, NTIS PB83–153973; Addendum 1, NTIS PB88–247846; Addendum 2, NTIS PB87–206393; Addendum 3, NTIS PB88–159992; Addendum 4, NTIS PB88–159900; Addendum 5, NTIS PB88–161187; Addendum 6, NTIS PB88–161195; Addendum 7, NTIS PB88–191721; Addendum 8, NTIS PB88–191739.
[15] Pesticide Assessment Guidelines for groundwater studies are being developed; for further information, contact EPA's Office of Pesticide Programs, Environmental Fate and Effects Division, Environmental Fate and Groundwater Branch.
[16] 40 CFR 158.240; Subdivision O, Residue Chemistry: NTIS PB83–153981, Addendum 1, NTIS PB88–203734; Addendum 2, NTIS PB88–246192; Addendum 3, NTIS PB87–206641; Addendum 4, NTIS PB88–117270; Addendum 5, NTIS PB88–124003; Addendum 6, NTIS PB88–191713; Addendum 7, NTIS PB89–124596; Addendum 8, NTIS PB89–124606.
[17] 40 CFR 158.440; Subdivision R, Pesticide Spray Drift Evaluation: NTIS PB84–169216.

For further information and descriptions regarding specific data requirements, criteria for testing, and general guidance on data acceptability, consult the FIFRA Accelerated Reregistration—Phase 3 Technical Guidance document (December 24, 1989), and the Pesticide Assessment Guidelines available from the National Technical Information Service (NTIS), Attn: Order Desk, 5285 Port Royal Road, Springfield, VA 22161 (Tel: 703-487-4650).

III. Partial Listing of List B and C Active Ingredients Outstanding Data Requirements

To fulfill its commitments in Phase 4 the Agency is publishing a series of **Federal Register** notices and issuing Data Call-In notices for groups of active ingredients as their outstanding data requirements are identified. The outstanding data requirements of 129 List B active ingredients were published by the Agency among four previous Federal Register Notices at 56 FR 6849, February 20, 1991; 56 FR 37610, August 7, 1991; 56 FR 54852, October 23, 1991; and 57 FR 9474, March 18, 1992. This fifth Notice lists the outstanding data requirements of 31 additional List B and C active ingredients. Remaining supported List B, C and D active ingredients are on a later reregistration schedule and their unfulfilled data requirements will be published in future Notices.

The following Table 2 contains one List B and 30 List C active ingredients and the status of the requirements at this time.

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B AND C ACTIVE INGREDIENTS

Case No.[1]	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline Reference No.)
2455	077401	Aminoethanol salt of 2'5-dichloro-4'-nitrosalicylanilide	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–2, 63–3, 63–4, 63–5, 63–7, 63–8, 63–9, 63–10, 63–11, 63–12, 63–13, 70–1(d)*, 71–1(a), 71–2(a), 71–2(b), 72–1(a), 72–1(b), 72–1(d), 72–2(b), 72–4(a), 72–4(b), 81–1, 81–2, 81–3, 81–4, 81–5, 81–6, 82–1(a), 82–1(b), 83–3(a), 84–4, 86–1, 123–2, 161–1, 161–2, 162–3, 162–4, 163–1, 164–2, 171–3, 171–4(a), 171–4(b), 171–4(c), 171–4(d), 171–4(e), 171–4(f), 171–4(g), 171–4(h), 171–4(i)
3023	107001	5-Hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane	61–1, 62–3, 81–3, 82–3, 161–1
3023	100702	5-Hydroxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane	61–1, 62–3, 81–3, 82–3, 161–1
3023	100703	5-Hydroxypoly(methyleneoxy)methyl-1-aza-3,7-dioxabicyclo[3.3.0]octane	61–1, 62–3, 81–3, 82–3, 161–1
3030	035605	1,4-Bis(bromoacetoxy)-2-butene	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–2, 63–3, 63–4, 63–5 63–6, 63–7, 63–8, 63–9, 63–10, 63–11, 63–12, 63–13, 72–1(b), 72–1(c), 72–1(d), 72–2(a), 72–2(b), 72–3(a), 72–3(b), 72–3(c), 72–3(d), 72–3(e), 72–3(f), 72–4(a), 72–4(b), 83–3(a), 84–2(a), 84–2(b), 84–4, 160–5, 161–1, 161–2, 161–3, 162–1, 162–3, 163–1, 164–5, 171–2
3038	045502	1,1'-Hexamethylene bis(5-(*p*-chlorophenyl)biguanide), diacetate	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–2, 63–3, 63–4, 63–5, 63–6, 63–7, 63–8, 63–9, 63–10, 63–11, 63–12, 63–13, 81–1, 81–3, 160–5, 171–2, 171–3
3046	064208	4-Chloro-3-cresol	71–1(a), 71–2(a), 72–1(c), 72–2(a), 83–2(a)
3051	069152	Alkyl* amine hydrochloride *(as in fatty acids of coconut oil)	No outstanding data gaps
3052	123702	Methanol, [[(2-dihydro-5-methyl-3(2*H*)-oxazolyl)-1-methyl-ethoxy]methoxy]methoxy]-	No outstanding data gaps
3063	118901	* 2,3-Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,5-tetraoxide	81–1, 81–2, 81–3, 81–5, 83–2(a), 123–2, 162–1, 162–2, 162–3, 164–1, 165–1, 171–4(a), 171–4(b), 171–4(c), 171–4(d), 171–4(e), 171–4(j), 171–4(k), 171–4(l), 171–5, 201–1, 202–1
3064	001001	2,6-Dimethyl-*m*-dioxan-4-ol acetate	61–1, 62–1, 62–2, 62–3, 72–1(a), 72–1(c), 72–2(a), 72–3(a), 72–3(b), 72–3(c), 81–2, 82–3, 160–5, 161–1, 161–2, 162–3, 162–4, 163–1, 171–2

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B AND C ACTIVE INGREDIENTS—Continued

Case No.[1]	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline Reference No.)
3069	017901	1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	61–1, 62–2, 71–1(a), 71–2(a), 71–2(b), 72–1(a), 72–1(c), 72–3(a), 72–3(b), 72–3(c), 72–4(a), 72–4(b), 161–1, 161–2, 161–3, 162–1, 162–3, 163–1, 165–4
3070	099001	2-((Hydroxymethyl)amino)ethanol	61–1, 62–1, 71–2(a), 72–1(c), 72–2(a), 84–4, 161–1
3076	102901	Potassium *N*-hyroxymethyl-*N*-methyldithiocarbamate	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 71–2(a), 72–1(a), 72–1(b), 72–1(c), 72–1(d), 72–2(a), 72–2(b), 72–3(a), 72–3(b), 72–3(c), 72–3(d), 72–3(e), 72–3(f), 72–4(a), 72–4(b), 81–1, 81–2, 81–3, 81–4, 81–5, 81–6, 82–3, 83–3(a), 84–2(a), 84–2(b), 84–4, 161–1, 161–2, 161–3, 162–1, 162–2, 162–3, 162–4, 163–1, 164–1, 164–2, 165–3, 165–4
3082	036201	a,a,a-Trifluoro-4-nitro-*m*-cresol	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–6, 63–8, 63–11, 63–13, 70–1(d)*, 72–1(a), 72–1(b), 72–1(c), 72–1(d), 72–2(a), 72–2(b), 72–4(a), 72–4(b), 84–2(a), 84–4, 123–2, 160–5, 162–3, 162–4, 171–2, 171–3, 171–4(a), 171–4(b), 171–4(c), 171–4(d), 171–4(e) 171–4(f), 171–4(g), 171–4(h), 171–4(j)
3085	052001	Mercuric chloride	61–1, 61–2(a), 62–1, 62–2, 62–3, 63–12, 63–13, 71–1(b), 71–2(a), 71–2(b), 71–4(a), 71–4(b), 72–1(b), 72–1(d), 72–2(b), 72–3(d), 72–3(e), 72–3(f), 72–4(a), 72–4(b), 81–1, 81–2, 81–3, 81–4, 81–5, 81–6, 82–3, 83–3(a), 132–1(a), 133–3, 161–1, 162–1, 162–2, 163–1, 164–5, 165–4, 165–5
3085	52201	Mercurous chloride	61–1, 61–2(a), 62–1, 62–2, 62–3, 63–12, 63–13, 71–1(b), 71–2(a), 71–2(b), 71–4(a), 71–4(b), 72–1(b), 72–1(d), 72–2(b), 72–3(d), 72–3(e), 72–3(f), 72–4(a), 72–4(b), 81–1, 81–2, 81–3, 81–4, 81–5, 81–6, 82–3, 83–3(a), 132–1(a), 133–3, 161–1, 162–1, 162–2, 163–1, 164–5, 165–4, 165–5
3095	114801	Dimethoxyazolidine (8CA & 9CA)	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 63–6, 63–8, 63–9, 63–11, 63–13, 71–1(a), 82–3, 161–1
3103	046301	Hydroxyethyl octyl sulfide	82–3, 82–4, 162–1, 163–1
3106	040509	Pennyroyal oil	61–1, 62–1, 62–2, 63–7, 63–8, 63–9, 63–10, 63–11, 63–13, 81–1, 81–2, 81–3, 81–4, 81–5, 81–6, 82–1(a), 82–3, 82–4, 83–3(a), 84–2(a), 84–2(b), 84–4, 86–1, 161–1
3108	114901	* Parahydroxy-2-oxo-phenylacethydroxymic acid chloride	71–1(a), 71–2(a), 71–2(b), 72–1(a), 72–1(c), 72–2(a), 81–1, 81–2, 81–3, 81–5, 82–3, 83–3(a), 84–4, 123–2, 161–1, 161–2, 163–1, 165–3, 165–4, 165–5
3114	097003	3-(2-Methylpiperidino)propyl 3,4-dichlorobenzoate	61–1, 63–13, 72–1(a), 82–4, 163–1

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B AND C ACTIVE INGREDIENTS—Continued

Case No.[1]	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline Reference No.)
3119	079084	a-Alkyl* omega-hydroxypoly(oxyethylene)** *(100% C11–C15)	62–1, 63–11, 71–1(a), 72–1(a), 72–1(c), 72–2(a), 81–3, 81–6, 82–3, 83–3(a), 83–3(b), 84–2(a), 84–2(b), 84–4, 132–1(b), 133–3, 160–5, 161–1, 161–2, 161–3, 162–1, 162–3, 162–4, 163–1, 164–1, 164–2, 165–4, 171–4(a), 171–4(b), 171–4(c), 171–4(d), 171–4(e), 171–4(f), 171–4(g), 171–4(h), 171–4(j), 171–4(k)
3119	124601	POE isooctadecanol	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–2, 63–3, 63–4, 63–5, 63–6, 63–7, 63–8, 63–9, 63–10, 63–12, 71–4(a), 71–4(b), 72–1(a), 72–1(c), 72–3(a), 72–3(b), 72–4(a), 72–4(b), 81–6, 82–1(b), 82–2, 82–3, 83–1(a), 83–1(b), 83–2(a), 83–2(b), 83–3(a), 83–3(b), 83–4, 84–2(a), 84–2(b), 84–4, 85–1, 160–5, 162–1, 162–3, 163–1, 163–2, 164–1, 165–1, 165–3, 165–4, 171–2
3122	111801	Poly(iminoimidocarbonyliminoimidocarbonyliminohexamethylene)	61–1, 61–2(b), 63–11, 63–13, 72–1(a), 72–3(a), 72–3(b), 72–3(c), 72–3(d), 72–3(e). 72–3(f), 72–4(a), 72–4(b), 81–3, 81–6, 82–1(a), 82–1(b), 82–3, 83–1(a), 83–1(b), 83–2(a), 83–2(b), 83–3(a), 83–3(b), 83–4, 85–1, 160–5, 162–1, 163–1, 165–4, 171–2
3124	119301	Propyl (3-(dimethylamino)propyl)carbamate	71–1(a), 71–2(a), 71–2(b), 72–1(a), 81–6*, 82–2, 82–7*, 161–1, 161–2, 164–1
3128	002201	Sabadilla alkaloids	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–2, 63–3, 63–4, 63–5, 63–7, 63–8, 63–9, 63–10, 63–11, 63–12, 63–13, 71–1(a), 71–2(a), 71–2(b), 72–1(c), 72–2(a), 81–2, 81–3, 81–4, 81–5, 81–6, 82–1(a), 82–1(b), 83–3(a), 83–3(b), 84–2(a), 84–2(b), 84–4, 85–1, 160–5, 161–1, 161–2, 161–3, 162–1, 162–2, 163–1, 164–1, 165–1, 165–4, 201–1, 202–1,
3136	122001	Methyl 2-[[[(4,6-dimethyl-2-pyrimidinyl)amino]carbonyl]amino]sulfonyl]benzoate	61–1, 72–1(a), 72–1(c), 72–2(a), 72–4(a), 82–1(a), 82–1(b), 161–1, 161–3, 163–1, 164–1, 165–2, 201–1, 202–1
3138	122301	Alpha-*n*-amyl-butyrol tanol	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–2, 63–3, 63–4, 63–5, 63–6, 63–7, 63–8, 63–9, 63–10, 63–11, 63–12, 63–13, 160–5, 161–1, 162–1, 163–1
3138	122302	Alpha-n-heptyl-butyrol tanol	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–2, 63–3, 63–4, 63–5, 63–6, 63–7, 63–8, 63–9, 63–10, 63–11, 63–12, 63–13, 160–5, 161–1, 162–1, 163–1
3147	082901	1,3,5-Triethylhexahydro-s-triazine	61–2(b), 72–2(a), 83–3(a), 83–3(b)

[1] List B case numbers begin with "2", List C case numbers start with "3."

KEY: * Special Studies; Guidelines for the following studies are presently being developed (for more information, contact the person named in the Notice):

70–1(d) Special Test Requirements.

81–8 Acute Neurotoxicity Screening–Rat.

82–7 90–Day Neurotoxicity Screening–Rat.

This list contains 31 currently supported List B and C active ingredients reviewed during Phase 4 of reregistration and notes any outstanding data requirements identified as Guideline Reference Numbers. In a number of instances, registrants have

already committed to satisfy many of these requirements, with the remaining requirements being subject to the recently issued Data Call-In notices. Of these, some may have been partially satisfied by studies that can be upgraded or supplemented with additional data. The data needs for specific crops are not presented here; instead the overall Guideline Reference Number is listed if any crop specific data are outstanding, even though some individual crop data requirements under it may be in fact satisfied.

IV. Phase 4 List B and C Data Call-In Notices

Under FIFRA section 3(c)(2)(B) the Agency has issued to affected registrants Phase 4 List B and C Data Call-In notices for the outstanding data requirements that registrants have not previously committed to satisfy for the active ingredients listed on Table 2 of this Notice. Registrants with unfilled data requirements for their active ingredients must respond to the Agency within 90 days of receipt of their Data Call-In Notice to express their intent to satisfy the remaining data requirements. The data requirements identified in the Data Call-In notices must be submitted within the time schedule specified in them. Additional Data Call-In notices for the remaining List B, C and D chemicals not covered by this followup Notice will be sent to the affected registrants, coinciding with the publication of one or more additional **Federal Register** notices in the next several months.

Dated: November 13, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–30512 Filed 12–15–92; 8:45 am]

BILLING CODE 6560-50-F

federal register

Wednesday
December 16, 1992

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals; December 1, 1992

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of seven deferrals contained in the First Special Message for FY 1993, which was transmitted to Congress on October 1, 1992.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Attachments A and B)

Attachment A provides the status of the $930.9 million in budget authority being deferred from obligation as of December 1, 1992. Attachment B provides the status of each deferral reported during FY 1993.

Information from Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the **Federal Register** cited below:

57 FR 46730, Friday, October 9, 1992.

Richard Darman,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1993 DEFERRALS

	Amounts (In millions of dollars)
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Routine Executive releases through December 1, 1992	---
Overturned by the Congress.....	---
Currently before the Congress.....	930.9

ATTACHMENT B
Status of FY 1993 Deferrals – As of December 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D93–1	492,736		10–1–92					492,736
Agency for International Development									
Demobilization and transition fund	D93–2	13,750		10–1–92					13,750
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D93–3	364,582		10–1–92					364,582
Expenses, brush disposal	D93–4	40,241		10–1–92					40,241
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D93–5	2,175		10–1–92					2,175
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D93–6	7,267		10–1–92					7,267
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D93–7	10,123		10–1–92					10,123
TOTAL, DEFERRALS		930,875	0		0	0	0	0	930,875

[FR Doc. 92–30469 Filed 12–15–92; 8:45 am]
BILLING CODE 3110–01–C

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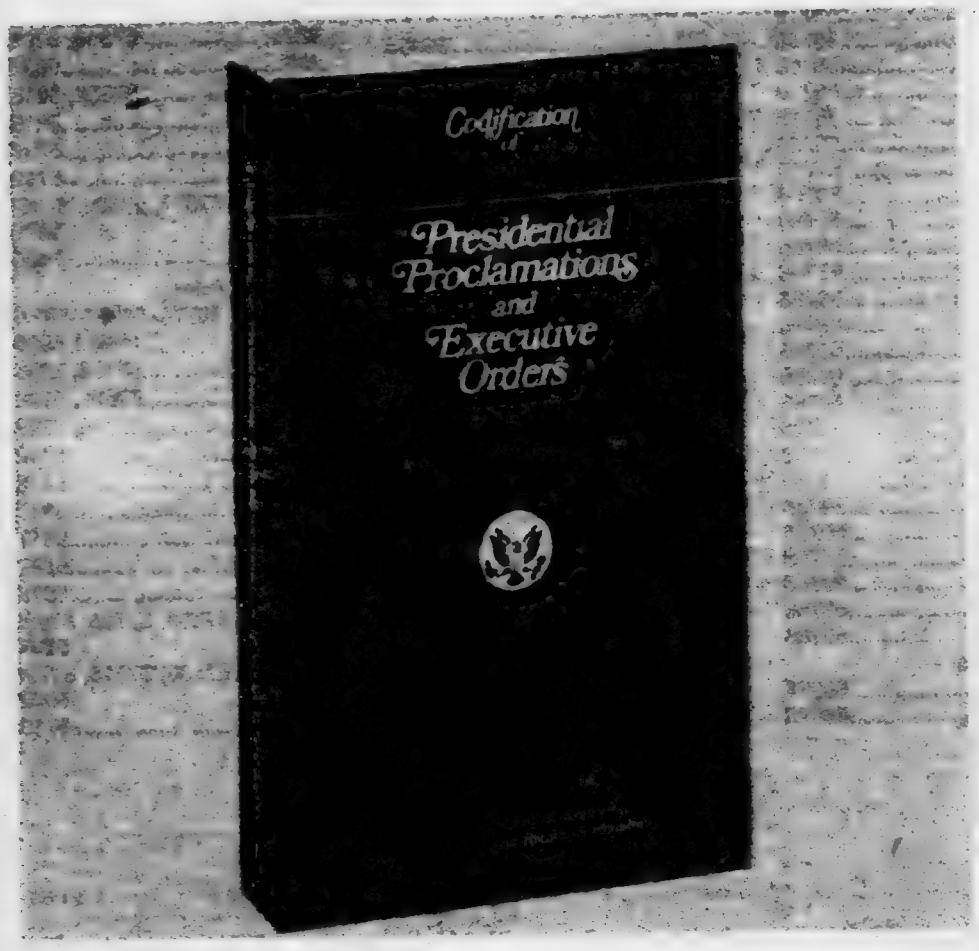

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Federal Register
Vol. 57, No. 243
Thursday, December 17, 1992

Presidential Documents

Title 3—

The President

Notice of December 14, 1992

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986. On April 15, 1992, I barred authorization for aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or as a continuation of that flight, is destined to land in or has taken off from Libya. Because the Government of Libya has continued its actions and policies in support of international terrorism, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, and April 15, 1992, to deal with that emergency, must continue in effect beyond January 7, 1993. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

George Bush

THE WHITE HOUSE,
December 14, 1992.

[FR Doc. 92-30807
Filed 12-15-92; 2:42 pm]
Billing code 3195-01-M

Editorial note: For the President's message to the Congress on the continuation of the state of emergency with Libya, see issue no. 51 of the *Weekly Compilation of Presidential Documents.*

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Rules and Regulations

Federal Register
Vol. 57, No. 243
Thursday, December 17, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

RIN 0580–AA18

Fees for Rice Inspection and Laboratory Test Services

AGENCY: Federal Grain Inspection Service,[1] USDA.

ACTION: Final rule.

SUMMARY: On April 17, 1991, the Federal Grain Inspection Service (FGIS) published an interim rule in the **Federal Register** (56 FR 15483). The interim rule implemented: (1) Fee increases for rice inspection and laboratory test services, (2) a unit fee per hundred weight (CWT) for all rice inspection services performed on lots, at rest, at export locations, (3) added several laboratory test services and consolidated others for clarity and efficiency, and (4) if needed, additional fee increases for rice inspection services on January 1, 1993, and January 1, 1995, respectively.

FGIS is adopting the interim rule without change. The Agency has also confirmed that the January 1, 1993, and January 1, 1995, rice inspection service fee increases contained in the interim rule are needed to cover operating costs including related supervisory and administrative costs.

DATES: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollan, Federal Grain Inspection Service, USDA, Room 0624-South Building, P.O. Box 96454, Washington, DC 20090–6454; (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this rule being amended have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

On April 17, 1991, FGIS published in the **Federal Register** (56 FR 15483) an interim final rule that increased fees for rice inspection and laboratory test services. This interim rule was effective April 17, 1991, and provided for a comment period ending on May 17, 1991. No comments were received.

This final rule confirms the changes in laboratory services implementation on April 17, 1991 and confirms the need for the January 1, 1993, and January 1, 1995, increases in rice inspection fees as implemented in the interim final rule.

* * * *Changes in Laboratory Services*

FGIS in the interim rule added several new laboratory test services and consolidated others for clarity and efficiency. The new tests were required to accommodate frequent grain and food industry requests for these services. The additions are as follows: Alpha monoglycerides, Brix, Color test (syrups), Moisture average (crackers), Pesticide residue (carbon tetrachloride, methyl bromide & ethylene dibromide), Visual exam (hops pellet), Visual exam (pasta), and Water activity.

Additions to existing tests are as follows: To Bostwick (uncooked/cook test/dispersibility) from Bostwick (uncooked), to Popping ratio/value popcorn form Popping value (popcorn), and to Salt or sodium content from Salt content.

Deletions to existing tests are as follows: to Appearance & odor from Appearance, flavor and odor-oils, to Moisture & volatile matter from Moisture and Volatile matter-oil and shortening, to Potassium bromate from Potassium bromate-quantitative, and to Protein from Protein, Kjeldahl.

Consolidations of existing tests are as follows: To Calcium from Calcium (AOAC) and Calcium enrichment, and to Dough handling (baking) from Baking test-bread and Loaf volume.

Name changes are as follows: To Cold test (oil) from Clarity of oil involving heating, to Lovibond color from Color lovibond, to Moisture from Moisture-oven, to Performance test (prepared bakery mix) from Baking test-cake, to Sanitation-filth (light) from Filth-light, to Visual exam (insoluble impurities, oils & shortening) from Insoluble impurities-oil and shortening, to Visual exam (pasta) from Checked and broken macaroni units, to Visual exam (total foreign material other than cereal grains) from Foreign material-processed grain products, and to Wiley melting point from Melting point-wiley.

FGIS is also deleting several tests that are no longer requested. *Those tests being deleted are:* Acidity Greek, Acid value-oil, Arachidic acid, Baume, Coliform, Color-bleached, Color-gardner, Color-oil & shortening, Congeal point, Cooking test, Density, Dextrose equivalent, Diastatic activity of flour, Farinograph characteristics, Fat-acidity, Filth-heavy, Foam test, Foots-heated and/or chilled, Heating test-oil & shortening, Insoluble bromides, Lysine

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

from fortification, Lysine from hydrolysis of protein, Maltose value-flour, Marine oil in vegetable oil-qualitative, Moisture-distillation, Neutral oil loss, Nitrogen solubility, index, Oven leak test-oil can, Oil content-oilseed, Particle size-flour, Potassium bromate-qualitative, Purity-monosodium glutamate, Reducing sugars, Refractive index, Saponification number, Sedimentation, Softening point, Specific gravity-oils, Starch damage-flour, Sucrose, Test weight per bushel-other than grain, Viscosity, Water soluble protein, and Xanthydrol test for rodent urine.

Further, the Laboratory Report fee of $3.00 was deleted.

** * * January 1, 1993, and January 1, 1995, Increase in Fees for Rice Inspection Services*

The interim rule included fee increases that are to be effective January 1, 1993, and January 1, 1995, respectively. The rule also stated that FGIS would review its cost, revenue and operating reserve levels to assure that the fee increases scheduled for January 1, 1993 and 1995, respectively, were required at the levels specified to maintain quality rice inspection services upon request.

FGIS has reviewed its cost, revenue and operating reserve levels to assure that the fee increases scheduled for January 1, 1993, and 1995, respectively, are required at the levels specified and are sufficient to maintain quality rice inspection services upon request.

FGIS has determined that revenue of $2,870,010 for Fiscal Year 1992 did not cover operating costs of $3,346,899 resulting in a negative margin of $476,889. Although FGIS reduced its costs by $125,677 when compared to Fiscal Year 1991, revenue decreased by $177,239. Clearly, the increase is required. Therefore, FGIS believes that the fee schedule, for January 1, 1993 and 1995, respectively, is needed.

Accordingly, the interim ruling amending 7 CFR part 78 which was published at 56 FR 15483 on April 17, 1991, is adopted as a final rule without change.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agriculture commodities.

For the reasons set out in the preamble, 7 CFR part 68 has been revised as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURE COMMODITIES AND THEIR PRODUCTS

1. The authority citation for part 68 continues to read as follows:

Authority: Sec. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Accordingly, the interim final rule revising sections 68.90 and 68.91 which was published on April 17, 1991 (56 FR 15483), is adopted as a final rule without change.

Dated: November 23, 1992.

David R. Galliart,

Acting Administrator.

[FR Doc. 92–30508 Filed 12–16–92; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 740, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Navel Orange Regulation 740 by increasing the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 11 through December 17, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 740, Amendment 1, (7 CFR 907.1040) is effective for the period from December 11 through December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Robert Curry, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This amendment is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 85 percent of the total production in 1991–92. District 2 is located in the southern coastal area of California and represented about 13 percent of 1991–92 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 2 percent; and District 4, which represented less than 1 percent, is northern California.

The Committee conducted a telephone vote on December 10, 1992, to consider the current and prospective conditions of supply and demand and recommended, with nine members voting in favor, one opposing, and one abstaining, an amendment to Navel Orange Regulation 740 to increase the total allotment for Districts 1 and 3 from 1,900,000 cartons to 2,100,000 cartons for the week ending on December 17, 1992.

A Committee member reported that there are substantially more request and bookings than were anticipated at the Committee's meeting on December 8. Several members commented that demand is very strong and that the market is holding firm. Two members expressed that the industry should take advantage of this increased demand. Thus, the majority of Committee members favored increasing the allotment for the week ending on December 17, 1992, by 200,000 cartons, while one Committee member favored open movement at this time.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1992–93 marketing policy, the December 8 revised shipping schedule, information provided during the telephone vote, and as previously established in Naval Orange Regulation 740. The recommended amount of 2,100,000 cartons is 200,000 cartons above the amount specified in the Committee's revised shipping schedule. Of the 2,100,000 cartons, 94.7 percent or 1,989,000 cartons are allotted for District 1, and 5.3 percent or 111,000 cartons are allotted for District 3. Handlers in Districts 2 and 4 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this time.

During the week ending on December 3, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,547,000 cartons, compared with 1,595,000 cartons shipped during the week ending on December 5, 1991. Export shipments totaled 154,000 cartons, compared with 183,000 cartons shipped during the week ending on December 5, 1991. Processing and other uses accounted for 391,000 cartons, compared with 263,000 cartons shipped during the week ending on December 5, 1991.

Fresh domestic shipments to date this season total 7,932,000 cartons, compared with 4,333,000 cartons shipped by this time last season. Export shipments total 540,000 cartons, compared with 682,000 cartons shipped by this time last season. Processing and other use shipments total 2,542,000 cartons, compared with 909,000 cartons shipped by this time last season.

For the week ending December 3, regulated shipments of navel oranges to the fresh domestic market were 1,509,000 cartons on an adjusted allotment of 1,453,000 cartons, which resulted in net overshipments of about 56,000 cartons. Regulated general maturity shipments for the week (December 4 through December 10, 1992) are estimated at 1,800,000 cartons on an adjusted allotment of 1,671,000 cartons. Thus, overshipments of about 129,000 cartons could be carried forward into the week ending on December 17, 1992.

The average f.o.b. shipping point price for the week ending on December 3, 1992, was $7.42 per carton based on a reported sales volume of 1,099,000 cartons. The season average f.o.b. shipping point price to date is $8.14 per carton. The average f.o.b. shipping point price for the week ending on December 5, 1991, was $9.85 per carton; the season average f.o.b. shipping point price at this time last year was $10.70.

The Department's Market News Service reported that, as of December 10, demand for choice California-Arizona navel oranges exceeds available supplies, and demand is very good for all others. The market was reported as about steady. Most present shipments are from prior bookings.

According to the National Agricultural Statistics Service, the 1991–92 season average fresh equivalent on-tree price for California-Arizona navel oranges was $5.29 per carton, 71 percent of the season average parity equivalent price of $7.43 per carton. Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1992–93 season average fresh on-tree price is estimated at $3.49 per carton, about 45 percent of the estimated fresh on-tree parity equivalent price of $7.83 per carton.

Increasing the quantity of navel oranges that may be shipped during the period from December 11 through December 17, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date of the final recommendation of the Committee based on the latest marketing information (December 10), and the effective date necessary to effectuate the declared policy of the Act.

This final rule amends Navel Orange Regulation 740 by increasing the total allotment for Districts 1 and 3 from 1,900,000 cartons to 2,100,000 cartons for the week ending on December 17, 1992. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1040 is amended to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1040 Navel Orange Regulation 740.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 11 through December 17, 1992, is established as follows:

District 1	District 2	District 3	District 4	Total
Cartons/% (000)	Cartons/% (000)	Cartons/% (000)	Cartons/% (000)	Cartons (000)
1,989/94.7	Open	111/5.3	Open	2,100

Dated: December 14, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–30693 Filed 12–15–92; 11:01 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1930, 1944, 1951 and 1965

RIN 0575–AA60

Farm Labor Housing Loan and Grant Program, Loan Agreement and Income Eligibility for Domestic Farm Laborers

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) hereby amends its Farm Labor Housing Loan and Grant Regulations. This action changes the basic rules of the Labor Housing Regulations affecting present and future borrowers and current and future tenants, the FmHA field staff, and housing managers concerning unauthorized rents, income eligibility, occupancy of labor housing, delegation of authority, verification of income, and verification of income from farm labor. These changes are made as a result of public comments received from the proposed rule published October 1, 1990, and Agency agreements with the Inspector General and are determined to be in the best interest of labor housing borrowers and grantees, tenant farm workers and their families, and the government.

Also, included in this change is consideration of comments received from the proposed rule published April 13, 1989, concerning retired and disabled farm workers, the definition of eligible farm labor, and the occupancy of section 514/516 (Labor Housing) by section 515 (Rural Rental Housing) eligible tenants. The final rule published June 21, 1991, did not address the issue of "substantial portion of income." The comments received at that time concerning "substantial portion of income" were considered in this final rule which does make changes to the definition for "substantial portion of income".

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Sanders, Senior Loan Officer, Special Authorities Branch, Multi-family Housing Processing Division, FmHA, USDA, Washington, DC 20250, Telephone (202) 720–1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget for an expedited twenty-one (21) day clearance under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 150 hours per response, with an average of 11 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "Non major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions, or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Background/Discussion

On October 1, 1990, Farmers Home Administration published a proposed rule (55 FR 39982) to amend subpart D of part 1944, "Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations," subpart C of part 1930, "Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients." The proposed rule invited comments for 60 days ending November 30, 1990. The purpose of the revisions is to correct inequities in the regulations as identified by audit findings by the Office of Inspector General and agreed to by FmHA.

In order to correct inequities in the regulations, it was necessary to revise language in the definition of "substantial portion of income" and it was an opportunity to use the comments concerning farm worker "income" from the proposed rule published April 13, 1989 (54 FR 14822).

The intended effect of the revisions is to define the difference in tenant reporting between employer provided (farmer owned) housing and nonprofit sponsored housing. These revisions define the Agency's expectations of the farmer with no additional burden on reporting. Likewise, for nonprofit sponsors there is no increase in the public reporting burden. The changes simply clarify the Agency's position. The result of this rulemaking is to clearly state at loan and/or grant closing the reporting expectations of the government for housing financed and provided by the employer. Additional

management guidance on rents and rent structure for income ineligible farm workers is also provided.

Discussion of Comments

Nine letters were received commenting on the various aspects on the changes proposed in the October 1, 1990, proposed rule making. Eight letters were received within the comment period and one letter was received 5 days after closing of the comment period. The letters were generally supportive of the Agency's policies and direction. An overall fairness issue was raised by some respondents regarding the difference in treatment for income verification between farmworkers residing in farmer-owned housing and those in nonprofit-sponsored housing. For the reader's information, with the exception of the Labor Housing programs, FmHA program eligibility is primarily a function of income, which we require to be verified. However, eligibility for labor housing requires an additional verification—that the source of income is from farm labor.

In this final rule there is no requirement placed on the provider (the farmer) of on-farm housing to report and verify income of the farm worker. These loans are made to farmers because of a need for farm labor. Therefore, farm worker occupancy of on-farm housing is rent free and is associated with having to live on the farm.

A discussion of the major issues follows:

1. The Verification of Income Requirement Is Not Fair to Farm Workers Living "Off-Farm"

Three respondents stated we are creating a separate class of farmworker by not requiring from the farmer income verification reports on farm workers in their employment and receiving benefit of employer (farmer) provided housing.

All farmworkers, both on-farm and off-farm, must earn a substantial portion of income from eligible farm labor in order to benefit from this program. However, a difference exists in the area of income eligibility between the sections 514 loans and 516 grants in the Housing Act of 1949. Section 514 loans simply require that a substantial portion of income be earned from eligible farm labor. Section 516 requires additionally that the occupant meet low income eligibility requirements. When Rental Assistance (RA) is provided to supplement shelter costs of farmworkers, the RA is restricted to housing owned by nonprofit organizations and is further restricted to those farmworkers with very-low or low income.

With this rule, it is the Agency's portion to strengthen the farmer (employer) reporting requirements to the Agency. The farmworker is eligible to reside in an off-farm unit provided an employment contract exists between the farmer and the farmworker. The farmer is required to report their housing occupant. Since there is no rent being paid, nor any low or moderate income mandate for section 514 loans, income verification is not needed.

In contrast, nonprofit organizations must rent to any person attesting to being a low income farmworker. As a result, farmworkers residing in nonprofit sponsored labor housing must provide verification of both source and total amount of income for determining housing eligibility. This strict verification is necessary to comply with the statutory program requirements associated with direct rental subsidy to farmworkers for shelter costs.

2. Rent Procedures for Income Ineligible Farm Workers

Eight of the nine respondents had comments on various aspects of this issue.

One respondent indicated this change did not make the distinction clear enough between on-farm and off-farm and the use of the rent procedures. We disagree; there are no distinctions to be made on rent procedures for farm workers. The FmHA must approve all rent changes for off-farm housing. This also applies to on-farm housing if rent is collected and includes on-farm units where there has previously been no rent charged. The rule now outlines the Agency's rent computation and disposition of rental income policies.

Two respondents objected to the Agency permitting above-moderate income farm laborers to occupy labor housing because there will be no incentive for project managers to market and seek income eligible farmworkers. These objections were based on a concurrent proposal to permit project managers, with FmHA approval, to retain rental income in excess of the basic rents for operating and maintenance purposes, and reserves. We agree it is inappropriate to permit the continued occupancy of above-moderate-income farm workers when there are income eligible farm workers on the waiting list for off-farm projects operating in accordance with § 1944.176(c)(6) of subpart D of part 1944. However, we do not agree that we should impose an absolute ban on all above-moderate-income residents. The modified rule should enhance the economic viability of the project by permitting occupancy by above moderate residents only when income eligible farmworkers are not available. We believe this position is more appropriate than an arbitrary rule that could create vacancies. Above-moderate-income farmworker households residing in off-farm housing projects may be required to move, with either a 7 or 30 day notice as the circumstances dictate in Exhibit B of subpart C of part 1930, if eligible farmworkers are approved for housing.

Four respondents supported the change for a higher shelter cost of up to 30 percent of household income or a market oriented rent. The proposed rule allowed for charging "* * * the lesser of the required shelter cost contribution set out in paragraph II [RR] or the prevailing rental rates for the area, * * *" However, the comments also cautioned that we should provide a formula for the computation of the rent rather than leave it up to the field staff to determine the prevailing rental rates for the area.

We agree that added guidance is needed. The Agency has adopted the recommendations to provide a formula and revised the rule to require excess to rents to be applied to the borrower's loan account.

3. Substantial Portion of Income

Three respondents commented on this definition. Two pertained to editorial consistency concerning the use of the terms "farm worker income" or "household income" or "adjusted annual income" and confusion between "certification of farm work" and "verification of income from farm work." We resolved the concerns by using "adjusted annual income" and "verification of income from farm work" throughout.

Only one respondent to this proposed rule recommended that we raise the substantial portion of income limits that are shown in Exhibit J of subpart D of part 1944. Exhibit J is a reference exhibit used in the definition for substantial portion of income. We combined this comment with those on "substantial portion of income" from the proposed rule published April 13, 1989 (54 FR 14822).

The two positions being taken are:

1. The percentages used to set a floor for minimum farm work income necessary for housing eligibility discriminates against the local seasonal and year round farmworker. (For the reader's information, the dollar minimum income to be earned varies by region. The threshold for housing eligibility for migrant farmworkers is

that at least 50 percent of their annual income must be from farm work. The threshold for local seasonal and year round farmworkers is 65 percent.), or;

2. The income limits set out in Exhibit J of this subpart are "too low" or "too high". The "too high" comment is from agricultural areas that have experienced a decline in farm work due to weather related disaster.

The "too low" comment is from agricultural areas where a high wage is earned and the minimum dollar amount can be earned in a short time. In this circumstance the farmworker has been known to switch to less strenuous work, while remaining within our income limits, and retaining housing eligibility.

While these comments reflect a concern for housing of the farmworker and housing management concerns of the respondents, they reflect anecdotal information relating to specific cases. To make a change based on anecdotal information, without thorough review and analysis of farmworkers income by state and region, and a public comment period would do more harm than good. The current definition of "substantial portion of income" used in conjunction with Exhibit J is a method that works and there is other administrative authority in Agency procedures to accommodate most situations that arise affecting a farmworker's housing eligibility.

Accordingly, we do not believe there is sufficient justification to warrant a change to the "substantial portion of income" definition or Exhibit J at this time.

3. Loan Agreement (LH Insured Loan to Farm Borrowers To Provide Housing for the Farm Borrower's Farming Operations)

There were three responses to the use of this new agreement. One respondent questioned the use of the term "certification" in lieu of verification of income from farm work. One respondent favored the use of the loan agreement. One respondent recommended we revise the loan agreement to require the same reporting of income for on-farm tenants as required for off-farm tenants. While we have adopted the editorial recommendations concerning the verification of income from farm work, the recommendation concerning the inclusion of reporting income in the loan agreement has not been adopted. It would be inconsistent with our previously stated position concerning the reporting of farmworker income by the farm borrower.

During the drafting of this final rule and review of the Loan Agreement, several other points were raised. One concerned the permissive approach for fees charged (Paragraph B item 2 of the proposed loan agreement) by the farmer for damage deposits or cleaning fees without the Agency's prior approval. The exception language for damage deposits or cleaning fees was deleted from item 2 and added to item 3 as fees that require prior agency approval. It is the agency's experience in rental housing that the use of damage deposits and cleaning fees will give the tenants a sense of responsibility and well being for their housing.

While we have changed our position on damage deposits and cleaning fees within the loan agreement, we will not discourage the use of these fees when justified in the management of on-farm housing.

The second point raised was how to obtain third party verification of farm labor and rent free housing in circumstances where we are not verifying and reporting income. It was decided that FmHA will require farm borrowers to have the farmworker tenants sign a form verifying rent free housing as a condition of farm labor employment. As a result, we have designed a form (Exhibit K–1) that gives us tenant verification of rent free housing, verification of farm labor, and is the attachment to the farm borrower's annual report.

This form is to be completed for the borrower by the tenant when the tenant moves into the housing. The tenant will keep a copy, one copy will be mailed to the designated FmHA Office, and one copy will be retained by the borrower. The borrower will submit this form(s) each year with the annual report. If the housing is operated on a seasonal basis, then a form will be needed for each of the last occupants when the housing is closed for the season for the annual report.

Accordingly with the supplementary reporting requirement for occupancy, additional procedural changes were necessary to clarify the forms use and Agency policy. Two paragraphs (d) and (e) were added in this final rule to § 1944.154 Priorities for tenants' occupancy current procedure, that were not in the proposed rule.

However, we will expect the farmer to maintain a file for these verification(s) of current occupants for yearround housing or the last occupants for seasonally operated housing. The verification(s) should be available for FmHA inspection for all current occupants regardless of season. We do not expect the verifications to be retained by the farm borrower after the annual report nor do we expect verifications to be retained for interim seasonal occupancy.

The use of the new form for the Verification of Farm Labor and Occupancy of Rent Free Housing shall be effective with the publication of this final rule.

Another point raised was the status of the borrower's loan when the Agency approves rent for the farm borrower. It is the Agency's position that the original loan purpose and the loan agreement be maintained for the life of the loan. When there is a request to rent normally non-rental units, the original loan agreement will be left in place and maximum use will be made of Agency servicing authorities.

The final point raised was retroactive execution of this new loan agreement. It has been decided that we will require notification of all existing farm borrowers within 90 days of the effective date of this rule of the new documentation for Labor Housing loans and seek loan agreements where previously none existed. However, we must emphasize that the Agency is not placing any additional reporting requirements or costs on the farm borrowers, but we are documenting that they have been notified of the program's intent, purpose, and reporting requirements. It is not our intent to place uncooperative borrowers in default, but it is our intent to establish a basis for future servicing action if required.

Accordingly, special servicing procedures for retroactive loan agreements were developed and included in § 1944.181 Loan Servicing in subpart D of part 1944. The paragraph was revised into 3 sub-paragraphs and were not in the proposed rule.

On a related issue, no comments were received disagreeing with eliminating the waiver authority of State Directors on loan agreements and making loan agreements mandatory for all labor housing loans.

4. Responsibility for Labor Housing Processing and Servicing

One comment was received concerning this change delegating processing and servicing exclusively to the District Office. Although this is an internal matter concerning delegation of duties, the OIG Audit indicated the delegation instruction was not clear to the field staff and resulted in confusion over whether the County or District Office staffs had the primary processing and servicing responsibilities. The normal functions currently being performed by the County Offices (processing, servicing, and collections) may remain in place based on the

delegation of authority by the District Director.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, Farm Labor Housing Loans and Grants, and 10.427, Rural Rental Assistance Payments (Rental Assistance), and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

The Administrator has determined that this final action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements. This action will effect labor housing borrowers, rents, and labor housing tenants with above-moderate-income.

Executive Order 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, and Reporting requirements.

7 CFR Part 1944

Farm labor housing, Migrant farmworkers, Nonprofit organizations, Public housing, Rent subsidies, and Rural housing.

7 CFR Part 1951

Loan programs—Agriculture and Rural areas.

7 CFR Part 1965

Real Property—Security servicing for multiple housing loans.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B of subpart C is amended by revising paragraphs VI.B.6.a.(5), VII C.1., and VII.C.2.; and by adding paragraph VI.B.6.A.(7) to read as follows:

Exhibits to Subpart C

Exhibit B—Multiple Housing Management Handbook

* * * * *

VI. Renting Procedure

* * * * *

B. * * *

6. * * *

a. * * *

(5) Tenants residing in RRH units who are ineligible, because their adjusted annual income exceeds the maximum for the RRH project, will be charged the FmHA approved Note Rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved Note Rate rental rate.

* * * * *

(7) Tenants residing in off-farm LH units, who are ineligible because there adjusted annual income exceeds the maximum for the area will be charged the lesser of the required shelter cost contribution set out in paragraph II RR of this exhibit or the prevailing market rent rate for the project as determined by subpart D of part 1944 of this chapter. For on-farm tenants, rent determination may be subject to local discretion with limitations is set out in subpart D of part 1944 of this chapter. Excess rent shall be remitted to the Agency for credit to the Rural Housing Insurance Fund.

* * * * *

VII. Verification and Certification of Tenant or Member Income and/or Employment

* * * * *

C. * * *

1. *Verification of Income from all sources.* Income verification is required for domestic farm laborers, including migrant farmworkers, except in instances where housing is provided rent free on a farm as part of employment compensation for farm labor. When the tenants do not have easily verifiable income, the borrower may project income expected to be received by the tenants during occupancy for determining eligibility and subsidy assistance.

2. *Farm Labor employment verification.* Farm work verification is required for all domestic farm laborers, including migrant farmworkers, and all off-farm LH tenants must have sufficient income from employment that meets the definition of domestic farm labor. Employment verification is in addition to income verification for those tenants described in paragraph VII.C.1. of this exhibit. Verification must be documented and filed in the "Tenant Record File" or in the borrower loan docket.

* * * * *

2A. In Exhibit B of this subpart, paragraph VII D is amended in the third sentence by changing the reference "paragraph VI S" to "paragraph VI G".

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

4. Section 1944.153 is amended by revising the definition of "Substantial portion of income" to read as follows:

§ 1944.153 Definitions.

* * * * *

Substantial portion of income. That portion of income received which has been derived from farm labor performed by a farm laborer as defined in this section.

(1) To determine if income is considered substantial, the measure to be used will be:

(i) For housing rented to farm laborers and owned by public bodies and public or private nonprofit organizations when charging rent:

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions, as shown in Exhibit J of this subpart (which is available in any FmHA office). For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual limits as shown in Exhibit J of this subpart.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm as a domestic farm worker during the preceding 12 months. In order to be considered as substantial the farm

laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than one year, a yearly average amounting to at least 110 days per year must be computed.

(ii) For housing owned by a farmer, family farm partnership, family farm corporation, or an association of farmers which was initially provided on a nonrental basis, substantial portion of income is earned down housing is provided by the owner as part of employment compensation for farm labor.

(2) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the last full year of work will be used to determine substantial portion of income under paragraph (1) of this definition.

(3) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in any project with a nonrestrictive farm labor clause in the mortgage covenants (see § 1944.176(d)(5) of this subpart) must not have adjusted annual income which exceeds the moderate income limit as shown in Exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA office), for the appropriate household size and appropriate geographical area. Tenants residing in housing which was initially rent free without the non-restrictive labor clause in the mortgage covenants (i.e. on-farm site projects where the tenant must work for the farm owner) need not certify income (see paragraph (1)(ii) of this definition), and need not be low or moderate income tenants in order to be eligible to occupy a unit.

(i) Income and exempted income for purposes of this subpart are defined in paragraph II A, B, and C of Exhibit B of subpart C of part 1930 of this chapter.

(ii) For servicing purposes, an exception to the moderate income rule is permitted in accordance with paragraph VI of Exhibit B of subpart C of part 1930 of this chapter.

* * * * *

5. Section 1944.154 is amended by adding paragraphs (d) and (e) to read as follows:

§ 1944.154 Priorities for tenants' occupancy.

* * * * *

(d) *Tenant Occupancy records.* (1) For tenants of housing owned by farm borrowers, rent is not charged and employment related occupancy restrictions do apply (reference § 1944.164(h) for additional guidance). The borrower shall have each tenant execute a verification of occupancy and farm labor on Exhibit K–1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing, on initial occupancy of the dwelling unit. The borrower shall retain the properly completed forms and make them available for FmHA Inspection only for the current tenant(s) and to supplement the annual reporting requirements required in the loan agreement. If the housing is not occupied on a year-round basis, then the report should list the names of the migrants or seasonal farmworkers attached to Exhibit K–1.

(2) For tenants of housing when rent is charged and employment restrictions do not apply (reference § 1944.164(h) for additional guidance). The borrower shall be guided by the procedures referenced in paragraph (c) of this section.

(e) *Ineligible occupants.* (1) For housing owned by farm borrowers. Ineligible occupants are immediate relatives of the borrower(s) and anyone who is not employed in domestic farm labor, as defined in § 1944.153 of this subpart. Normally, occupancy of labor housing owned by farm borrowers is restricted to employees of the farmer or is governed by an employment contract with the farmer. Occupancy of housing owned by farm borrowers, regardless of the site (on-farm or in town), may be occupied by ineligibles with the permission of the State Director.

(2) *For housing owned by organizations.* Ineligible occupants are defined in Exhibit B of subpart C of part 1930 of this chapter.

6. Section 1944.155 is revised to read as follows:

§ 1944.155 Responsibility for LH processing and servicing.

All LH loan and/or LH grant application processing and servicing is the responsibility of the FmHA District Director with redelegation authority for on-farm labor housing loans.

7. Section 1944.164 is amended by revising paragraph (g)(2) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(g) * * *

(2) All other loan applicants of this subpart will execute a loan agreement in substantially the same format as Exhibit D of this subpart (for rental units) or Exhibit K of this subpart (for non-rental units). Any necessary changes must be approved by OGC.

* * * * *

8. Section 1944.164(o) is amended in the second sentence by revising the reference "§ 1944.176(c)(2)" to "§ 1944.176(d)(2)".

9. Section 1944.164 (p) is amended by revising the reference "§ 1944.176(c)(2)" to "§ 1944.176 (d)(2)."

10. Section 1944.176 is amended by redesignating current paragraphs (c), (d), (e) and (f) as paragraphs (d), (e), (f) and (g) respectively; by removing newly redesignated paragraph (d)(5) and redesignating paragraphs (d) (6) and (7) as (d) (5) and (6); and by adding new paragraph (c) to read as follows:

§ 1944.176 Loan and/or grant closing.

* * * * *

(c) *LH loan agreement.* A LH loan agreement, prepared and authorized as provided in § 1944.164 (g) of this subpart will be dated and executed by the applicant on the date of loan approval. The executed agreement will be filed with the mortgage or other security instrument in the District Office case file.

* * * * *

11. Section 1944.181 is revised to read as follows:

§ 1944.181 Loan Servicing.

(a) For general purposes, LH loans and grants will be serviced in accordance with this subpart B of part 1924, subpart C of part 1930, and subpart D of part 1944 of this chapter. Requests for rent increases will be processed in accordance with Exhibit C of subpart C of part 1930 of this chapter for nonprofit organizations.

(b) For special servicing of LH loans when the Loan Agreement was waived. There will be many instances where the loan agreement was waived because of a loan agreement waiver provision in this regulation that was in effect for more than 10 years. As a result of regulation change, the State Director shall notify all LH loan farm borrowers within 180 days of the effective date of this regulation, that such labor housing borrowers will be:

(1) Requested to sign a loan agreement;

(2) Required to report tenant occupancy, at least annually (reference Exhibit K–1 of this subpart); and

(3) Provided with Exhibit K–1 of this subpart.

(i) The above action need not be completed: If there is existing servicing action where a management agreement exists and such agreement is sufficient to satisfy the notification items, or; If there is a pre-existing loan agreement, and paragraphs (b) (2) and (3) of this section are addressed. If the existing loan agreement does not include annual occupancy reporting, then the borrower must be notified in accordance with paragraphs (b) (2) and (3) of this section.

(ii) Refusal of the borrower to participate in the regulatory change should be documented. It shall be the responsibility of the State Director to determine if compliance reviews should be increased from the minimum required by procedure. Additional servicing guidance may be found in subpart N of part 1951 and subpart B (with special emphasis on Exhibit F) of part 1965 of this chapter.

(c) All special servicing needs for LH loans to farm borrowers should be incorporated in a management agreement in addition to a loan agreement. Examples of special servicing needs are: When the housing is temporarily not needed for farm laborers; When rent is being charged; When occupied by ineligibles, or; When farmers share housing costs with the borrower in exchange for the occupant(s) labor. The use of a management agreement is not limited to the examples cited. Whenever the management agreement is for a purpose unrelated to agriculture, the farmer should understand that the housing should be returned to the original loan purpose as soon as practical. A final consideration in loan servicing should be to sell the Labor Housing outside of the program when the farmer can no longer use the housing in his farming operation.

11A. Section 1944.200 is added to read as follows:

§ 1944.200 OMB Control Number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0045. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 150 hours per response, with an average of 11 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0045), Washington, DC 20503.

12. Exhibit K of subpart D is added and reads as follows:

Exhibits to Subpart D

Exhibit K

LOAN AGREEMENT

(LH Insured Loan to Farm Borrowers to Provide Housing for the Farm Borrower's Farming Operations)

A. General provisions:

1. This agreement is entered into _____(Date).

2. This agreement is between _____

_____

_____

(borrower's name whether one or more), whose mailing address is

_____

_____

_____, and the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (the Government).

3. This agreement is made in return for receiving Labor Housing (LH) loan assistance from the Government totaling $_____ as evidenced by a Promissory Note dated _____. This assistance is made with the understanding that housing is to be provided to Domestic Farm Laborers on a rent free basis. Any rents collected without the written consent of the Government are the responsibility of the borrower and shall be refunded by the borrower to the tenants.

4. The borrower agrees to comply with Government regulations governing the LH loan program.

5. This agreement is in addition to any other agreements entered into with the Government, such as any promissory note, mortgage or deed of trust, loan approval requirements, etc.

B. Rent and Occupancy.

Occupancy of the housing will be limited to domestic farmworkers or migrant farmworkers as defined by the Government, unless the Government gives prior written approval for other occupancy, except that in no case will a member of the borrower's immediate family occupy the housing.

The borrower agrees:

1. To meet the LH loan objectives by providing decent, safe, and sanitary housing for eligible tenants;

2. To provide the housing rent free to eligible farmworker tenants;

3. To get the Government's prior approval before collecting utility charges (i.e. electricity, fuel, water, waste disposal, etc.) or requiring a refundable damage deposit or cleaning fee from tenants;

4. To get the Government's prior approval if there is a need to permit occupancy by tenants who are not working in the borrower's farming operation or not normally eligible to occupy the housing unit; and

5. To get the Government's prior approval if there is a need to charge rent to tenants or change any existing rents. To provide a management plan, which meets requirements set out in Government regulations, whenever rents are charged to tenants. The management plan will describe how the housing operation will be conducted.

C. Recordkeeping.

The borrower agrees:

1. To provide the Government financial information as required by Government regulations;

2. To provide annual verification of employment of eligible tenants as occupancy changes, not less than once per year; and

3. To keep information required by Government regulations and make the information available for Government inspection, to include tenant nonrent affidavits.

D. Compliance with Federal, State, and Local Laws and Regulations.

The borrower agrees to comply with applicable Federal, State, and local laws and regulations, including but not limited to, the following:

1. To provide equal housing opportunities to tenants;

2. To operate the housing in a safe environment;

3. To maintain comprehensive property insurance on the property taken as security;

4. To pay taxes and assessments on the property taken as security; and

5. To make the security property available for inspection by the Government.

E. Disposition of LH Security Property.

The borrower agrees:

1. Not to sell or otherwise dispose of property taken as security for the LH loan without the Government's prior written approval;

2. Not to sell or enter into any business arrangement which may potentially or actually place the housing operation under the management or control of another party without the prior approval of the Government; and

3. To prohibit any liens to be taken on the security property without the prior approval of the Government.

F. Enforcement Considerations.

The. borrower understands that any violation of the terms of this agreement may enable the Government to declare the note immediately due and payable and may adversely affect the borrower's ability to obtain other Government loans or grants.

G. General Provisions.

This agreement may be cited in the security instrument and other instruments or agreements as the "Loan Agreement of _____19__." (date of this instrument)

H. Signature(s).

_____

Signature of Borrower

_____

Witness

_____

Signature of Borrower

_____

Witness

13. Exhibit K–1 of subpart D is added and read as follows:

Exhibit K–1

Date _____

SUBJECT: Verification of Domestic Farm Labor and Occupancy in Rent Free Housing

_____

_____

(borrower's name or the farm's business name)

On_____, __, I/We became the occupant(s) of the rent free dwelling owned by the above named borrower. The dwelling is provided as a condition of my farm labor employment.

If the rent free status changes, I/we will notify the Farmers Home Administration at:

_____Office
_____Phone number
_____
_____
_____, occupant
_____
_____

Distribution:

Original to occupant.

1 copy for borrower's records to be kept available for inspection upon request by Farmers Home Administration for all current tenants.

14. Exhibit M of Subpart D is added and reads as follows:

Exhibit M

Market Rent Determination for Labor Housing Projects

I. *Objective.* The objective of this exhibit is to provide guidance for a market rent determination for Labor Housing (LH) when the farmworker is not required to live on the farm (§ 1944.176(d)(5) of this subpart) or when it is necessary to determine a rent for farmer owned housing.

II. *Purpose.* When an eligible farmworker becomes ineligible because of above-moderate-income and has been granted permission to continue residing in the unit in accordance with paragraph VI B 5 or 6 of Exhibit B of subpart C of part 1930 of this chapter, then an appropriate rent must be formulated that must not exceed the market rent for the local area as determined in accordance with the provisions set out in this exhibit.

III. *Determination.* Whenever a market rent determination is required for one or more LH resident(s), the market rent will be computed by using the most recently approved Form FmHA 1930–7, "Statement of Budget and Cash Flow," and substituting a new debt service computation based on the project's development cost. The amortization factor for the Farm Labor Housing-State Director Exception interest rate as published in FmHA Instruction 440.1 (available in any FmHA office) will be used with a 33 year term. The rate used for amortization for debt service in the market rent budget should be rounded down to the nearest eighth of a percent. For example, 9.95 percent would be rounded to 9.875. The market rent is computed on a basis of the project's initial development cost and subsequent loans and grants. In contrast, the "basic" rent debt service is computed 1 percent loans offset by the construction grants.

The market rent determination, one set, will remain in place for the project; therefore, the determination must be recorded in a narrative statement which must be filed with the Promissory Note.

IV. *Limitations.* If the market rent determined in the proceeding paragraph is found to exceed the conventional market rents in the area (within an approximate 48 kilometer or (30 mile) radius or the effective market area or other appropriate geographical or local boundary) by more than $20, then the LH market rent will be limited to the prevailing market rent. Prevailing market rents may be determined from such sources as recent Rural Rental Housing Market studies or recent area classified advertisements (within the last two months), documented, and adjusted for comparability. Documentation should be similar to the information found in Exhibit A–4 of this subpart, with the advertisements attached. The adjustment for comparability should consider unit size, bedroom mix, age, and amenities. This rental determination is not intended to survey housing used exclusively for farm labor rental housing, but to determine a fair conventional market rent for an above-moderate-income farmworker and family.

PART 1951—SERVICING AND COLLECTIONS

15. The authority citation for part 1951 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

16. § 1951.261 (d)(3) is amended by revising the reference § 1944.176 (c)(2)" to "§ 1944.176 (d)(2)."

PART 1965—REAL PROPERTY

17. The authority citation for part 1965 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

18. § 1965.65 (g)(5) is amended by revising the reference "§ 1944.176 (c)(1)" to "§ 1944.176 (d)(1)."

Dated: October 9, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–30394 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

[INS No. 1376–92]

RIN 1115–AC24

Contracts With Transportation Lines; Signatory Authority

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with requests for comments.

SUMMARY: This interim rule amends 8 CFR part 238 by delegating signatory authority to enter into contracts under the purview of section 238 of the Immigration and Nationality Act (the Act) to the Executive Associate Commissioner for Operations. This change is necessary as a result of a reorganization which occurred within the Immigration and Naturalization Service (the Service). In addition, this rule amends the reference citations to conform with the appropriate paragraphs within section 238 of the Act.

DATES: This rule is effective December 17, 1992. Interested persons are invited to submit written comments on or before January 19, 1993.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1376–92 on your correspondence to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION: Under the current regulations, the Regional Commissioners have signatory authority to enter into contracts under the purview of section 238 of the Act. As a result of a reorganization within the Service, a new position entitled "Executive Associate Commissioner for Operations" was established. The Executive Associate Commissioner for Operations is now responsible for the duties extant in the Enforcement and Examinations components of the Service, and related responsibilities that were formerly exercised by the Regional Commissioners. Therefore, this rule amends 8 CFR part 238 to reflect this change by transferring the signatory authority to enter into contracts under section 238 of the Act from the Regional Commissioners to the Executive Associate Commissioner for Operations. The Executive Associate Commissioner for Operations may designate an Immigration Officer to enter into contracts in his stead.

This rule also amends the reference citations contained in 8 CFR part 238 to correspond with the appropriate paragraphs within section 238 of the Act. These changes are necessitated by Immigration and Nationality Act Amendments of 1986, section 7, Public

Law 99–653, dated November 14, 1986, which repealed subparagraph (a) of section 238 of the Act, and renumbered the remaining subparagraphs. Carriers listed in 8 CFR 238.2(b)(1) are no longer subject to agreements entered into on Form I–421 because subparagraph (a) of section 238 of the Act has been repealed and therefore the list of carriers has been removed from the regulations.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(A)–(B) and 553(d)(2)–(3). The reasons and the necessity for the immediate implementation of this interim rule are as follows: This rule relates to agency management and organization with respect to the reassigned responsibilities to the Executive Associate Commissioner for Operations. It also interprets the statutory changes made as a result of Public Law 99–653. A notice and comment period would have been impracticable and contrary to the public interest.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 238

Administrative practice and procedures, Air carriers, Aliens, Government contracts, Travel.

Accordingly, part 238 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for part 238 continues to read as follows:

Authority: 8 U.S.C. 1103, 1228, 8 CFR part 2.

2. Section 238.1 is revised to read as follows:

§ 238.1 Contracts.

The contracts with transportation lines referred to in section 238(a) of the Act may be entered into by the Executive Associate Commissioner for Operations, or by an Immigration Officer designated by the Executive Associate Commissioner for Operations on behalf of the government and shall be documented on Form I–420. The contracts with transportation lines referred to in section 238(c) of the Act shall be made by the Commissioner on behalf of the government and shall be documented on Form I–426. The contracts with transportation lines desiring their passengers to be preinspected at places outside the United States shall be made by the Commissioner on behalf of the government and shall be documented on Form I–425; except that contracts for irregularly operated charter flights may be entered into by the Executive Associate Commissioner for Operations or an Immigration Officer designated by the Executive Associate Commissioner for Operations and having jurisdiction over the location where the inspection will take place.

3. Section 238.2 is revised to read as follows:

§ 238.2 Transportation lines bringing aliens to the United States from or through foreign contiguous territory or adjacent islands.

Form I–420 shall be signed in duplicate and forwarded to the Headquarters Office of Inspections. After acceptance, each Regional Office of Inspections, the district office and the carrier will be furnished with one copy of the agreement. The transmittal letter to the Headquarters Office of Inspections shall indicate whether the signatory to the agreement is a subsidiary or affiliate of a line which has already signed a similar agreement. Correspondence regarding ancillary contracts for office space and other facilities to be furnished by transportation lines at Service stations in Canada shall be similarly handled.

Dated: November 19, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–30551 Filed 12–16–92; 8:45 am]

BILLING CODE 4410–10–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendment to Administrative Manual—Rules of Practice and Procedure

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its December 9, 1992 business meeting the Delaware River Basin Commission amended its Administrative Manual—Rules of Practice and Procedure in relation to Commission review of electric generation and cogeneration projects. The Commission's Rules of Practice and Procedure presently require Commission review and approval of all projects involving a withdrawal of surface or ground water whenever the daily average withdrawal during any month exceeds 100,000 gallons per day (gpd). Similarly, review and approval by the Commission of all discharges of wastewater to surface or ground waters having a design capacity of 50,000 gpd or more is also required. One or both of these requirements generally trigger Commission review of major electric generating projects. However, the Rules of Practice and Procedure do not specifically address similar electric generation or cogeneration projects if they elect to use an existing source of water supply and the Commission has been made aware of the fact that several such projects are under consideration. The depletive water use from these projects could have a substantial impact on the water resources of the Basin. Further, since the Commission as a matter of policy has imposed special requirements on new electric generating facilities regarding the replacement of depletive water use during critical hydrologic periods, the Commission has amended its Rules of Practice and Procedure by the addition of a new project review category under Section 3.8 of the Compact: electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gpd of water during any 30-day period.

The Commission recognizes the need to consider all large consumptive water uses and has asked staff to survey large water purveyors to obtain information on major depletive water users. Based on the results of that survey, the Commission may consider extending review authority to other large consumptive water users.

EFFECTIVE DATE: December 9, 1992.

ADDRESSES: Copies of the Commission's Administrative Manual—Rules of Practice and Procedure are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 X203.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on the proposed amendments on December 9, 1992 as noticed in the October 8, 1992 and December 3, 1992 issues of the **Federal Register** (Vol. 57, No. 196 page

46354 and Vol. 57, No. 233, page 57159). Based upon testimony received and further deliberation, the Commission has amended its Rules of Practice and Procedure.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

18 CFR part 401 is amended as follows:

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Section 401.35(b)(17) is added to read as follows:

§ 401.35 Classification of projects for review under section 3.8 of the Compact.

(b) * * *

(17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period.

* * * * *

Dated: December 11, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92-30604 Filed 12-16-92; 8:45 am]

BILLING CODE 6360-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act regulations to reflect administrative changes within TVA.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, TVA, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801, telephone number: (615) 751-2523.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency practice. Since this rule is nonsubstantive, it is being made effective immediately, December 17, 1992.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831-831dd, 5 U.S.C. 552.

2. Section 1301.1 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1301.1 Records.

* * * * *

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the TVA FOIA Officer, TVA Records and Information Management, Information Support Services, Tennessee Valley Authority, 400 Summit Hill Drive, Knoxville, TN 37902-1499. A request shall:

* * * * *

§ 1301.1 [Amended]

3. Section 1301.1 is amended by revising the second and third sentences of paragraph (c)(1)(i) to read as follows:

* * * * *

(c) * * *

(1) * * *

(i) * * * Initial determinations shall be made by the TVA FOIA Officer or the TVA FOIA Officer's designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the Vice President, Facilities Services, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

* * * * *

§ 1301.1 [Amended]

4. Section 1301.1 is amended by revising the first sentence of paragraph (c)(1)(ii) to read as follows:

* * * * *

(c) * * *

(1) * * *

(ii) For the purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to the TVA FOIA Officer and meets all the requirements of paragraph (b) of this section. * * *

* * * * *

§ 1301.1 [Amended]

5. Section 1301.1 is amended by revising the first and second sentences of paragraph (c)(2)(i) to read as follows:

* * * * *

(c) * * *

(2) * * * (i) If the initial determination is to deny the request, the person making the request may appeal such action to the Vice President, Facilities Services. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the Vice President, Facilities Services, TVA, 400 Summit Hill Drive, Knoxville, TN 37902-1499. * * *

* * * * *

§ 1301.1 [Amended]

6. Section 1301.1 is amended by revising the third sentence of paragraph (c)(2)(ii) to read as follows:

* * * * *

(c) * * *

(2) * * *

(ii) * * * Determinations of appeals under this section shall be made by the Vice President, Facilities Services, or the Vice President, Facilities Services' designee. * * *

* * * * *

§ 1301.1 [Amended]

7. Section 1301.1 is amended by revising the second sentence of paragraph (c)(3)(i) to read as follows:

* * * * *

(c) * * *

(3) * * *

(i) * * * Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the TVA FOIA Officer, or the TVA FOIA Officer's designee.

* * * * *

§ 1301.1 [Amended]

8. Section 1301.1 is amended by revising the fourth sentence of paragraph (c)(3)(ii) to read as follows:

* * * * *

(c) * * *

(3) * * *

(ii) * * * A decision to make an extension under this paragraph shall be made by the Vice President, Facilities Services, or the Vice President, Facilities Services' designee.

* * * * *

John J. O'Donnell,

Vice President, Facilities Services.

[FR Doc. 92-30457 Filed 12-16-92; 8:45 am]

BILLING CODE 6120-08-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AD18

Federal Old-Age, Survivors, and Disability Insurance Benefits; Extending Old-Age, Survivors, Disability, and Hospital Insurance Coverage to Certain State and Local Government Employees

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our regulations to reflect a statutory change as provided in section 11332 of Public Law (Pub. L.) 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). This statutory change extends mandatory Social Security old-age, survivors, disability, and hospital insurance (OASDHI) coverage to certain services performed by individuals who are employees of a State, a political subdivision of a State, or any wholly owned instrumentality of one or more of the above, and who are not members of the employer's retirement system. The statute also provides an exclusion from its coverage for certain listed services. The effect of this change is to provide OASDHI coverage and benefits to some employees whose services were previously excluded from the definition of mandatory covered employment.

EFFECTIVE DATES: December 17, 1992. The provisions of section 11332 of Public Law 101–508 apply to services performed after July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

Prior to OBRA '90, services performed by individuals who were employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality thereof, were generally not covered under Social Security unless the State entered into a voluntary coverage agreement with the Secretary of Health and Human Services (the Secretary) as provided under section 218 of the Act. Although all States entered into agreements with the Secretary, many of the States excluded certain services from coverage. Many of these excluded services also were not under any public retirement plan. As a result, a part of the workforce was not participating in any public retirement plan and was not covered by Social Security. OBRA '90 provides mandatory OASDHI coverage for much of this workforce that was not under any public retirement plan.

In these final regulations, we are amending the Social Security regulations to reflect section 11332 of OBRA '90. Section 11332 amends section 210(a) of the Social Security Act (the Act) by extending mandatory OASDHI coverage to certain services performed by individuals who are employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality of one or more of the foregoing, and who are not members of the employer's retirement system. For purposes of administering this statute, the term "retirement system" has the meaning given in section 218(b)(4) of the Act, except as provided in regulations prescribed by the Secretary of the Treasury. Section 218(b)(4) states that "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or a political subdivision thereof.

The statute provides an exclusion from mandatory coverage for services performed:

1. By an individual who is employed to relieve him or her from unemployment;
2. In a hospital, home, or other institution by an individual who is a patient or inmate thereof;
3. By an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;
4. By an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or
5. By an employee in a position compensated solely on a fee basis which is treated, pursuant to section 211(c)(2)(E) of the Act, as a trade or business for purposes of inclusion of the fees in net earnings from self-employment.

In addition, exclusions from coverage set forth in other provisions of the Act such as the exclusion for services performed by students employed in public schools, colleges, and universities will continue to be applicable. Coverage for these students will continue to be provided at the option of the State under section 218 of the Act and such coverage which was provided prior to July 2, 1991, the effective date of OBRA section 11332, will continue.

Finally, the statute provides that services mandatorily covered under section 11332 of OBRA '90 may not be covered under a voluntary section 218 agreement.

Regulations Changes

We are amending the regulations to reflect section 11332 of Public Law 101–508 and to make a technical and clarifying change to § 404.1020(a). Specifically, we are amending the regulations as follows:

- The mandatory coverage and applicable exclusions are reflected in subpart K in a revised § 404.1020(a);
- The treatment of certain State and local government employees paid by fees is reflected in a revised § 404.1073;
- In revised §§ 404.1200 and 404.1201 of subpart M, we explain there is also mandatory OASDHI coverage, provide a cross-reference to § 404.1020(a), and make clear that subpart M regulations only apply to section 218 agreements, as appropriate;
- In revised § 404.1209 we explain that services mandatorily covered under section 11332 may not be covered under a section 218 agreement; and
- We also have made a technical change to § 404.1020(a) to make it clear that work as an employee of the District of Columbia, Guam, or American Samoa is not excluded from Social Security coverage if the work is covered under § 404.1021 or § 404.1022. This clarification reflects section 210(a)(7)(C), (D), and (E) of the Act and is consistent with our longstanding policy reflecting these statutory provisions. Without this technical change, § 404.1020(a) is potentially confusing on this point due to the fact that § 404.1004 defines the term "State" to include the District of Columbia, Guam, and American Samoa.

These revisions are non-discretionary; they are needed to reflect enacted legislation. For that reason, any cost impact from the policies these revisions codify is attributable to the legislation and not to the regulations.

Regulatory Procedures

Dispensing with the Notice of Proposed Rulemaking and Public Comment

We are publishing the above amendments to the regulations as final rules instead of proposed rules. The Department of Health and Human Services, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment

procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedure. Section 553(b)(B) of the APA exempts application of notice and comment rulemaking procedure "when the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." We are dispensing with notice and comment rulemaking in the case of these regulations because such rulemaking is unnecessary since this change merely conforms the regulations to the controlling statute, does not involve administrative discretion, and does not independently affect the rights of claimants.

Executive Order No. 12291

The estimated impact on the trust funds for fiscal years (FY) 1991–1995 is as follows ($ in millions):

	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
Increase in OASDI payroll taxes	$467	$2,122	$2,275	$2,459	$2,661
Increase in HI payroll taxes	8	30	21	12	4
Increase in OASDI benefit payments	neg	neg	4	9	15

The overall increase in costs will exceed the threshold amount for a major rule under Executive Order 12291. However, because the policy codified in these regulations ultimately relates to transfer payments (i.e., benefit payments to members of the public), OMB has waived the requirement for a regulatory impact analysis for this rule.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. Any economic impact involved in the regulations reflecting section 11332 of Public Law 101–508 results directly from the statutory amendments, not from the regulations. Therefore, we believe that a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Programs Nos. 93.800 Medicare—Hospital Insurance; 93.801 Medicare—Supplementary Medical Insurance; 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

Editorial note: This document was received at the Office of the Federal Register December 10, 1992.

Dated: October 7, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 18, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 404 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 404 is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 226, 226A, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 426, 426–1, 429(a), 430, 431, and 1302; secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99–514, 100 Stat. 2505, 2779, and 2914; sec. 9003 of Pub. L. 100–203, 101 Stat. 1330–287; secs. 1011B(a)(23)(B) and 8013 of Pub. L. 100–647, 102 Stat. 3486 and 3789.

2. Section 404.1020 is amended by adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

(a) * * *

(3) You perform services after July 1, 1991, as an employee of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality of one or more of the foregoing and you are not a member of a retirement system of such State, political subdivision, or instrumentality. Retirement system has the meaning given that term in section 218(b)(4) of the Act, except as provided in regulations prescribed by the Secretary of the Treasury. This paragraph does not apply to services performed—

(i) As an employee employed to relieve you from unemployment;

(ii) In a hospital, home, or other institution where you are a patient or inmate thereof;

(iii) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) As an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or

(v) As an employee in a position compensated solely on a fee basis which is treated, pursuant to section 211(c)(2)(E) of the Act, as a trade or business for purposes of inclusion of the fees in net earnings from self-employment; or

(4) The work is covered under § 404.1021 or § 404.1022.

* * * * *

3. Section 404.1073 is amended by revising paragraph (b)(1), redesignating paragraph (b)(2) as (b)(3), and adding a new paragraph (b)(2) to read as follows:

§ 404.1073 Public office.

* * * * *

(b) *State and local governmental employees paid by fees.* (1) *Voluntary coverage under section 218 of the Act.* The services of employees of States and political subdivisions, including those in positions paid solely on a fee-basis, may be covered as employment by a Federal-State agreement under section 218 of the Act (see subpart M of this part). States, when entering into these agreements, have the option of excluding under the agreement coverage of services in positions paid solely by fees. If you occupy a position paid solely on a fee-basis and the State has not covered your services under section 218 of the Act, you are considered to be engaged in a trade or business.

(2) *Mandatory old-age, survivors, disability, and hospital insurance coverage.* Beginning with services performed after July 1, 1991, Social Security coverage (old-age, survivors, disability, and hospital insurance) is mandatory, with certain exceptions, for services performed by employees of a State, a political subdivision of a State, or of a wholly owned instrumentality of one or more of the foregoing, if the employees are not members of a retirement system of the State, political

subdivision, or instrumentality. Among the exclusions from such mandatory coverage is service performed by an employee in a position compensated solely on a fee-basis which is treated pursuant to section 211(c)(2)(E) of the Act as a trade or business for purposes of inclusion of such fees in the net earnings from self-employment.

* * * * *

4. The authority citation for subpart M of part 404 is revised to read as follows:

Authority: Secs. 205, 210, 218, and 1102 of the Social Security Act; 42 U.S.C. 405, 410, 418, and 1302; sec. 12110 of Pub. L. 99–272, 100 Stat. 287, sec. 9002 of Pub. L. 99–509, 100 Stat. 1970.

5. Section 404.1200 is amended by revising the title of the section, designating the present text as (a), adding a new heading to paragraph (a), and adding a new paragraph (b) to read as follows:

§ 404.1200 General.

(a) *Coverage under section 218 of the Act.* * * *

(b) *Mandatory old-age, survivors, disability, and hospital insurance coverage.* Under section 210(a)(7)(F) of the Act, mandatory old-age, survivors, disability, and hospital insurance coverage is extended to certain services performed after July 1, 1991, by individuals who are employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of the State, or any wholly owned instrumentality of one or more of the foregoing, and who are not members of the employer's retirement system. Certain services are excluded from such mandatory coverage (see § 404.1020(a)(3).

6. Section 404.1201 is amended by revising paragraph (a) to read as follows:

§ 404.1201 Scope of this subpart regarding coverage and wage reports and adjustments.

* * * * *

(a) Coverage under section 218 of the Act—

* * * * *

7. Section 404.1209 is amended by adding paragraph (f) to read as follows:

§ 404.1209 Mandatorily excluded services.

* * * * *

(f) Services covered under section 210(a)(7)(F) of the Act. (See § 404.1200(b).)

[FR Doc. 92–30391 Filed 12–16–92; 8:45 am]

BILLING CODE 4190–29–M

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AC45

Federal Old-Age, Survivors and Disability Insurance; Extension of Social Security Coverage to Certain Workers; Medicare Only Coverage of Certain State and Local Government Employees; Medicare Qualified Government Employment

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are revising several rules in Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income—Part 404 of title 20 of the Code of Federal Regulations. These revisions reflect statutory enactments that—Extend Social Security coverage to certain work situations; and extend Medicare coverage to certain employees of States and their local governments.

We are also amending certain regulatory provisions of part 404, Subpart E—Deductions; Reductions; and Nonpayments of Benefits—to reflect the manner in which these statutory enactments affect the annual earnings test.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: L.V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1795.

SUPPLEMENTARY INFORMATION:

Extension of Social Security Coverage

The Omnibus Budget Reconciliation Act of 1987 (OBRA 1987)—Public Law 100–203—contains several provisions extending and revising Social Security coverage to certain workers. An OBRA 1987 provision concerning coverage of agricultural work was subsequently amended by a provision of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA)—Public Law 100–647. The amendments to the rules to reflect these statutory provisions are as follows.

Section 404.1015 Family Services

Based on section 210(a)(3)(A) of the Social Security Act (the Act), as amended by section 9005 of OBRA 1987, we are amending § 404.1015 to provide that the coverage exclusion that was applicable to a child under age 21 who is an employee of his or her parent(s) applies only when the child is under age 18. However, section 210(a)(3)(B) of the Act, as amended by section 9005 of OBRA 1987, provides that we continue to exclude from coverage the nonbusiness work or domestic service a child, age 18 through 20, may perform as an employee of his or her parent(s) and our revisions to the regulations reflect this requirement. At age 21, any work a child performs for his or her parent(s) is covered.

Based on section 210(a)(3) of the Act, as amended by section 9004 of OBRA 1987, we are deleting a paragraph of § 404.1015 and amending two other paragraphs of this section pertaining to spousal employment. These changes provide that service performed by a person working for his or her spouse is no longer excluded from coverage unless the work is nonbusiness or domestic work.

Section 404.1019 Work as a Member of a Uniformed Service of the United States

Based on section 210(l)(1) of the Act, as amended by section 9001 of OBRA 1987, we are amending paragraph (a) of this section to show that we will now provide Social Security coverage for inactive duty training performed by a member of a uniformed service.

Section 404.1055 Payments for Agricultural Labor

We are amending this section to reflect the change in coverage of agricultural labor required by the amendments of section 209(a)(7) of the Act (formerly section 209(h)(2) of the Act), by section 9002 of OBRA 1987 and section 8017 of TAMRA. These statutory changes provide that all cash payments to an employee for agricultural labor are covered wages if the employer's total expenditures for agricultural labor in the calendar year equal or exceed $2,500 annually irrespective of how much the individual was paid. If the employer's total annual expenditures are less than $2,500, cash payments to an employee of $150 or more are wages, but any amount below $150 is not wages. For a hand harvest laborer (i.e., seasonal agricultural labor), irrespective of the employer's expenditures for agricultural labor, cash payments of less than $150 annually are not wages if he or she (1) is paid on a piece rate basis as a hand harvester in a piece rate operation, (2) commutes to the farm daily, and (3) was employed less than 13 weeks in agriculture in the preceding calendar year. The earnings are covered, as under prior law, if the employer pays the employee $150 or more in a year. The provision in the regulation at § 404.1055(c) which covered an agricultural employee who works at

least 20 days for an employer for cash pay computed on a time basis (the 20-day test) has been eliminated as a result of section 9002 of OBRA 1987 with respect to remuneration paid for agricultural labor after December 31, 1987.

Section 404.1058 Special Situations

This section is amended to reflect one statutory provision. We will include as wages pay to members of a uniformed service while on inactive duty for training to reflect section 9001 of OBRA 1987. See also the amendment to § 404.1019—Work as a member of a uniformed service of the United States—discussed above.

Extension of Medicare Coverage

We are amending § 404.1018b—Medicare qualified government employment—to reflect the enactment of sections 9129 and 13205 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA of 1985—Pub. L. 99–272), which amends section 210(p) of the Act to provide for Medicare coverage, subject to certain exceptions, of employees of State and local political subdivisions. This Medicare protection applies mostly to State and local government employees hired after March 31, 1986, who are not covered under title II of the Social Security Act because the State did not enter into a coverage agreement with the Secretary of Health and Human Services under section 218 of the Social Security Act providing for such coverage. The employees who come under the scope of the COBRA of 1985 legislation are thus covered under Medicare but may not be under Social Security. The amended § 404.1018b also lists the categories of State and local government employees described under section 210(p)(2) of the Act as added by section 13205(b)(1) of COBRA 1985. The amended § 404.1018b also reflects the amendments to section 210(p)(2) of the Act by the enactment of section 1985(b)(18) of the Tax Reform Act of 1986 (Pub. L. 99–514), which excludes from mandatory Medicare coverage, election officials or election workers whose remuneration for such service is less than $100 in a calendar year. Section 11332 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990—Pub. L. 101–508) mandated coverage of the services of most State and local employees not covered under a State or local employer's retirement system which are not already covered under a section 218 agreement, effective for services performed after July 1, 1991. We also are amending § 404.1020—Work for States and their political subdivisions and instrumentalities, § 404.1021—Work for the District of Columbia, and § 404.1022—American Samoa or Guam to include references to the pertinent § 404.1018b provisions.

Medicare coverage had previously been extended to Federal employment as the result of the enactment of section 278 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). These Medicare coverage provisions have been implemented by a separate regulation published on October 4, 1988 (53 FR 38943) (see § 404.1018b).

Annual Earnings Test Changes—Subpart E of Part 404

We are amending paragraph (c)(3) of § 404.429—Earnings; defined—to refer to the amended § 404.1055—Payments for agricultural labor (see above). The amended § 404.1055 reflects changes in agricultural labor coverage for remuneration paid after December 31, 1987, as required by the enactment of section 9002 of OBRA 1987 as later amended by section 8017 of TAMRA. Also, we are deleting the table of annual wage limitations from paragraph (c)(1) of § 404.429 since this table duplicates the table under § 404.1047. Paragraph (c)(1) of § 404.429 as amended will refer to the table under § 404.1047.

Public Comments

These rules were published as a notice of proposed rulemaking (NPRM) at 55 FR 37488 on September 12,1990. We received no comments on the proposed rules.

Deletion of Previously Published Section

The NPRM contained a proposed change which added a new § 404.1097 concerning income earned as a corporate director. The proposed change was dictated by section 9022 of OBRA 1987 with respect to the treatment of earnings of corporate directors for performance of services as a director. This proposed regulatory change, however, was subsequently negated by section 5123 of OBRA 1990 which reinstituted the rule as it existed prior to OBRA 1987. These final rules, therefore, contain no reference to earnings of a corporate director for services performed as a director since the statutory basis for this regulatory change no longer exists.

These regulations are non-discretionary; they are needed to reflect enacted legislation. For that reason any cost impact from the policies these revisions codify is attributable to the legislation and not to this regulation.

Regulatory Procedures

Executive Order 12291

These final regulations have been reviewed under Executive Order 12291 to determine whether a major rule is involved. Two provisions of these final regulations reflect statutory provisions with a significant cost impact on the public. The two provisions and their estimated costs are the following:

1. Social Security coverage of persons performing inactive duty training—estimated yearly costs starting in 1988 have risen to $452 million in FY 1992 and $474 million in FY 1993 with an estimated 1.4 million persons affected.

2. Medicare coverage of State and local employees—estimated yearly costs starting in 1986 have risen to $1,418 million in FY 1992 and $1,585 million in FY 1993 with an estimated 2 million employees affected.

The other legislative changes codified in this regulation will increase costs to the public by $8 million per year in FY 1992 and FY 1993. The overall increase in costs will exceed the threshold amount for a major rule under Executive Order 12291. However, because the policy codified in this regulation ultimately relates to transfer payments (i.e., benefit payments to members of the public), OMB has waived the requirement for a regulatory impact analysis for this rule.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final rules will not have a significant economic impact on a substantial number of small entities. Small businesses should not be significantly affected by any of the statutory provisions reflected in these regulations and the tax collected and paid should be insignificant. The statutory provision extending Medicare to State and local government employees will cause some small governmental entities, whose employees had not previously been covered by Medicare, to have to pay the Medicare tax. However, this regulation simply reflects a statutory provision already in effect and implemented by IRS since March 31, 1986 (see Internal Revenue Service Bulletin No. 1986–28 (July 14, 1986)) and by the Health Care Financing Administration (42 CFR 406.15). Consequently, these final regulations have no overall economic impact. Therefore, a regulatory flexibility analysis, as provided in

Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security—Disability Insurance; No. 93.803 Social Security—Retirement Insurance; No. 93.805 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements; Social Security.

Editorial Note: This document was received by the Office of the Federal Register on December 10, 1992.

Dated April 20, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: July 22, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.429 is amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 404.429 Earnings; defined.

* * * * *

(c) * * *

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

* * * * *

(3) Payments for agricultural labor excluded under § 404.1055.

* * * * *

3. The authority citation for subpart K of part 404 continues to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 226, 226A, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 426, 426–1, 429(a), 430, 431, and 1302; Secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99–514, 100 Stat. 2505, 2779, and 2914; Sec. 9003 of Pub. L. 100–203, 101 Stat. 1330–287; Secs. 1011B(a)(23)(B) and 8013 of Pub. L. 100–647, 102 Stat. 3486 and 3789.

4. Section 404.1015 is amended by removing present paragraph (a)(1), redesignating the present paragraph (a)(2) as paragraph (a)(1) and revising this redesignated paragraph, adding a new paragraph (a)(2), revising paragraph (a)(3), and revising the paragraph (a)(4) introductory text to read as follows:

§ 404.1015 Family services.

(a) * * *

(1) You work while under age 18 in the employ of your parent;

(2) You do nonbusiness work (see § 404.1058(a)(3) for an explanation of nonbusiness work) or perform domestic service (as described in § 404.1057(b)) as an employee of your parent while under age 21;

(3) You do nonbusiness work as an employee of your son, daughter, or spouse; or

(4) You perform domestic service in the private home of your son, daughter or spouse as an employee of that son, daughter or spouse unless—

* * * * *

5. Section 404.1018b is revised to read as follows:

§ 404.1018b Medicare qualified government employment.

(a) *General.* The work of a Federal, State, or local government employee not otherwise subject to Social Security coverage may constitute Medicare qualified government employment. Medicare qualified government employment means any service which in all ways meets the definition of "employment" for title II purposes of the Social Security Act, except for the fact that the service was performed by a Federal, State or local government employee. This employment is used solely in determining eligibility for protection under part A of title XVIII of the Social Security Act (Hospital Insurance) and for coverage under the Medicare program for end-stage renal disease.

(b) *Federal employment.* If, beginning with remuneration paid after 1982, your service as a Federal employee is not otherwise covered employment under the Social Security Act, it is Medicare qualified government employment unless excluded under § 404.1018(c).

(c) *State and local government employment.* If, beginning with service performed after March 31, 1986, your service as an employee of a State or political subdivision (as defined in § 404.1202(b)), Guam, American Samoa, the District of Columbia, or the Northern Mariana Islands is excluded from covered employment solely because of section 210(a)(7) of the Social Security Act which pertains to employees of State and local governments (note §§ 404.1020 through 404.1022), it is Medicare qualified government employment except as provided in paragraphs (c) (1) and (2) of this section.

(1) An individual's service shall not be treated as employment if performed—

(i) By an individual employed by a State or political subdivision for the purpose of relieving that individual from unemployment;

(ii) In a hospital, home, or other institution by a patient or inmate thereof as an employee of a State, political subdivision, or of the District of Columbia;

(iii) By an individual, as an employee of a State, political subdivision or the District of Columbia serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) By an individual as an employee included under 5 U.S.C. 5351(2) (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia government), other than as a medical or dental intern or a medical or dental resident in training; or

(v) By an election official or election worker paid less than $100 in a calendar year for such service.

(2) An individual's service performed for an employer shall not be treated as employment if—

(i) The service would be excluded from coverage under section 210(a)(7) of the Social Security Act which pertains to employees of State and local governments;

(ii) The service is performed by an individual who—

(A) Was performing substantial and regular service for remuneration for that employer before April 1, 1986;

(B) Was a bona fide employee of that employer on March 31, 1986; and

(C) Did not enter into the employment relationship with that employer for purposes of meeting the requirements of paragraphs (c)(2)(ii) (A) and (B) of this section; and

(iii) After March 31, 1986, but prior to the service being performed, the employment relationship with that employer had not been terminated.

6. Section 404.1019 is amended by revising paragraph (a) to read as follows:

§ 404.1019 Work as a member of a uniformed service of the United States.

(a) Your work as a member of a uniformed service of the United States is covered under Social Security (unless creditable under the Railroad Retirement Act), if—

(1) On or after January 1, 1957, the work is service on active duty or active duty for training but not including service performed while on leave without pay; or

(2) On or after January 1, 1988, the work is service on inactive duty training.

* * * * *

7. Section 404.1020 is amended by revising present paragraph (a)(2), redesignating present paragraph (b) as paragraph (c), adding a new paragraph (b), and revising redesignated paragraphs (c)(4)(ii)(B) and (c)(4)(iv)(B) to read as follows:

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

(a) *General.*

* * * * *

(2) The work is *covered transportation service* as defined in section 210(k) of the Act (see paragraph (c) of this section).

(b) *Medicare qualified government employment.* Notwithstanding the provisions of paragraph (a) of this section, your work may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

(c) * * *

(4) * * *

(ii) * * *

(B) Covered by a general retirement system which contains special provisions that apply only to employees described in paragraph (c)(4)(i)(B) of this section;

* * * * *

(iv) * * *

(B) The general retirement system described in paragraph (c)(2)(ii) of this section was in effect on December 31, 1950.

* * * * *

8. Section 404.1021 is amended by adding paragraph (c) to read as follows:

§ 404.1021 Work for the District of Columbia.

* * * * *

(c) *Medicare qualified government employment.* If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

9. Section 404.1022 is amended by adding paragraph (d) to read as follows:

§ 404.1022 American Samoa or Guam.

* * * * *

(d) *Medicare qualified government employment.* If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

10. Section 404.1055 is revised to read as follows:

§ 404.1055 Payments for agricultural labor.

(a) *The $2,500 expenditures and $150 cash-pay tests.* Your cash payments in a calendar year after 1987 from an employer for agricultural labor (see § 404.1056) are wages if—

(1) Your employer's total expenditures for agricultural labor in that year are $2,500 or more, regardless of how much you were paid, or

(2) Your employer's total expenditures for agricultural labor are less than $2,500 in that year and your employer paid you $150.00 or more in that year.

(b) *Exceptions to the $2,500 expenditures and $150 cash-pay tests.* (1) Noncash payments for agricultural labor are not wages under either the $2,500 expenditures or $150 cash-pay test.

(2) Your cash payments in a calendar year from an employer for agricultural labor are not wages, irrespective of your employer's total annual expenditures for agricultural labor, if you are a hand harvest laborer (i.e., seasonal agricultural labor), and—

(i) Your employer paid you less than $150 in that year;

(ii) You are paid on a piece rate basis in an operation which has been, and is customarily and generally recognized in the region of employment as paying on a piece rate basis;

(iii) You commute daily from your permanent residence to the farm on which you are so employed; and,

(iv) You were employed in agriculture less than 13 weeks during the previous calendar year.

Example: In 1988, A (not a hand harvest laborer) performs agricultural labor for X for cash pay of $144 in the year. X's total agricultural labor expenditures for 1988 are $2,450. Neither the $150 cash-pay test nor the $2,500 expenditures test is met. Therefore, X's payments to A are not wages.

(c) *When cash-pay is creditable as wages.* (1) If you receive cash pay from an employer for services which are agricultural labor and for services which are not agricultural labor, we count only the amounts paid for agricultural labor in determining whether cash payments equal or exceed $150. If the amounts paid are less than $150, we count only those amounts paid for agricultural labor in determining the wages to credit the individual if the $2,500 expenditures test is met (for periods beginning on or after January 1, 1988) or the 20-day work test described in paragraph (c) of this section (for periods of time prior to 1988).

Example: Employer X operates a store and also operates a farm. Employee A, who regularly works in the store, works on X's farm when additional help is required for the farm activities. In calendar year 1988, X pays A $140 cash for agricultural labor performed in that year, and $2,260 for work in connection with the operation of the store. Additionally, X's total expenditures for agricultural labor in 1988 were $2,010. Since the cash payments by X to A in the calendar year 1988 for agricultural labor are less than $150, and total agricultural labor expenditures were under $2,500, the $140 paid by X to A for agricultural labor is not wages. The $2,260 paid for work in the store is wages.

(2) The amount of cash pay for agricultural labor that is creditable to an individual is based on cash paid in a calendar year rather than on amounts earned during a calendar year.

(3) If you receive cash pay for agricultural labor in any one calendar year from more than one employer, we apply the $150 cash-pay test and $2,500 total expenditures test to each employer.

(d) *Application of the $150 cash-pay and 20-day tests prior to 1988.* (1) For the time period prior to 1988, we apply either the $150 a year cash-pay test or the 20-day test. Cash payments are wages if you receive $150 or more from an employer for agricultural labor or under the 20-day test if you perform agricultural labor for which cash pay is computed on a time basis on 20 or more days during a calendar year. For purposes of the 20-day test, the amount of the cash pay is immaterial, and it is immaterial whether you also receive payments other than cash or payments that are not computed on a time basis. If cash paid to you for agricultural labor is computed on a time basis, the payments are not wages unless they are paid in a calendar year in which either the 20-day test or the $150 cash-pay test is met.

11. Section 404.1058 is amended by revising paragraph (c)(1), adding introductory text to paragraph (c)(2), and adding paragraph (c)(4) to read as follows:

§ 404.1058 Special situations.

* * * * *

(c) * * *

(1) *The standard.* We include as the wages of a member of the uniformed services—

(i) Basic pay, as explained in paragraph (c)(3) of this section, for performing the services described in paragraph (a)(1) of § 404.1019 of this subpart; or

(ii) Compensation, as explained in paragraph (c)(4) of this section, for performing the services described in paragraph (a)(2) of § 404.1019 of this subpart.

(2) *Wages deemed paid.* These following provisions apply to members

of the uniformed services who perform services as described in paragraph (a)(1) of § 404.1019 of this subpart.

* * * * *

(4) *Compensation.* "Compensation" refers to the remuneration received for services as a member of a uniformed service, based on regulations issued by the Secretary concerned (as defined in 37 U.S.C. 101(5) under 37 U.S.C. 206(a), where such member is not entitled to the basic pay (as defined by paragraph (3) of this section).

* * * * *

[FR Doc. 92-30390 Filed 12-16-92; 8:45 am]
BILLING CODE 6160-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8357]

RIN 1545-AI79

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations (T.D. 8357), which were published Wednesday, March 25, 1992 (57 FR 10289), relating to certain cash or deferred arrangements (CODAs) and employee and matching contributions under employee plans.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez, 202-622-6030, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction replaces all of the 1988 proposed and final regulations on these subjects, and the amendments to regulations under section 401 (k) and (m) of the Internal Revenue Code of 1986, issued on May 14, 1990.

Need for Correction

As published, T.D. 8357 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects for 26 CFR 1.401-0 Through 1.419A-2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.401(k)-1 (f)(3)(ii), the first sentence in the concluding text is revised to read as follows:

§ 1.401(k)-1 Certain cash or deferred arrangements.

* * * * *

(f) * * *
(3) * * *
(ii) * * *

Recharacterized excess contributions continue to be treated as employer-contributions that are elective contributions for all other purposes under the Internal Revenue Code, including sections 401(a) (other than 402(a)(4) and 401(m)), 404, 409, 411, 412, 415, 416, and 417. * * *

* * * * *

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-30311 Filed 12-16-92; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Domestic and Foreign Travel by Federal Parolees

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its regulations to change the procedure by which travel requests from federal parolees are approved. Current Commission procedures require Parole Commission approval for any parolee who requests permission to travel outside the contiguous forty-eight states of the United States. Approval for travel within the contiguous forty-eight states of the United States may be granted by the U.S. Probation Office. This rule change allows the U.S. Probation Office to grant and deny requests for travel within the United States, including Alaska and Hawaii, as well as the U.S. Territories. Parole Commission approval will be required only for a request to travel to a foreign country.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of General Counsel, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The Commission has decided to allow U.S. Probation Offices to determine whether a parolee should be permitted to travel not only within the contiguous forty-eight states of the United States, but also to Alaska and Hawaii, as well as the U.S. Territories (*e.g.*, Puerto Rico, Guam and the Virgin Islands). The Commission has decided that this procedure is appropriate because continuing parole supervision by a U.S. Probation Officer is available for any parolee who is granted permission to travel to these destinations. Coordination of supervision may be arranged between the U.S. Probation Officers concerned, who can also determine the appropriateness of the travel request itself.

The Commission will retain its requirement for approval by a U.S. Parole Commissioner in the case of any request to travel to a foreign country. These requests must be closely examined because no supervision will be available for the parolee, and a variety of sensitive questions may be involved (*e.g.*, travel to a foreign country that prohibits entry to individuals convicted of certain felonies, or travel to a foreign country that is known for its bank secrecy laws by a parolee who has not adequately accounted for the proceeds for his crime). The Commission will also continue to review all requests for recurring travel and extended vacation travel.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this final rule is not a major rule within the meaning of Executive Order 12291. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.41 is amended by revising paragraph (b) to read as follows:

§ 2.41. Travel approval.

* * * * *

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district (except employment at offshore locations), and vacation travel outside the district exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

* * * * *

Dated: November 3, 1992.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 92-30547 Filed 12-16-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

30 CFR Part 400

RIN 1028-AA04

Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves, Excluding Organic Fuels, in the United States, its Territories and Possessions

AGENCY: U.S. Geological Survey, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Geological Survey (USGS) has reviewed its regulations for currency, adequacy, and continued need. Consequently, the USGS is removing the Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves, Excluding Organic Fuels, in the United States, its Territories and Possessions because the program has had no funding authority since 1979, and it is doubtful that funding will be authorized in the foreseeable future.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Gary C. Curtin, 913 National Center Reston, Virginia 22092, 703-648-4242.

SUPPLEMENTARY INFORMATION:

Response to Public Comment

No comments were received from the public in response to the proposed rule as published in the Federal Register (57 FR 43411) on September 21, 1992.

Required Analyses

The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because the program has not been funded since 1979, removal of the regulations will not adversely affect the Nation's economy or any small entities in industry or Government.

This action will have no potential for significant environmental impact and is categorically excluded from the requirements for compliance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 83 Stat. 852).

Paperwork Reduction Act

No information collection or recordkeeping has been required under the regulations since 1989.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed regulation meets the applicable standards provided in Sections 2(a) and 2(B) of Executive Order No. 12778.

Author

The principal author of this proposed rule is Gary Curtin, Geologic Division, U.S. Geological Survey.

List of Subjects in 30 CFR Part 400

Government contracts, Grant programs-natural resources, Mineral resources, Mineral royalties.

PART 400—[REMOVED]

Under the authority of 30 U.S.C. 642(e) and for the reasons stated above, 30 CFR part 400 is removed.

Dated: November 16, 1992.

Harlan L. Watson,

Principal Deputy Assistant Secretary—Water and Science.

[FR Doc. 92-30477 Filed 12-16-92; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Indiana Surface Mining Rules at 310 Indiana Administrative Code (IAC) 12-3, 12-8, and 12-9 concerning reclamation fees. The amendment specifies the requirements for payment of the reclamation fee established by Indiana Code (IC) 13-4.1-3-2. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46202, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, Federal Register (47 FR 32017). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of Amendment

By letter dated May 7, 1992 (Administrative Record No. IND-1079), the Indiana Department of Natural

Resources (IDNR) submitted a proposed amendment to the Indiana program. The proposed amendment would repeal 310 IAC 12–3–8, 12–3–9, 12–8–4, and 12–8–8. A new rule would be added at 310 IAC 12–9 which would address the applicability of reclamation fees, fee payment, and production records.

OSM announced receipt of the proposed amendment in the July 14, 1992, **Federal Register** (57 FR 31162), and in the same notice, opened the public comment period on the adequacy of the proposed amendment. The public comment period ended on August 13, 1992. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated October 20, 1992 (Administrative Record Number IND–1160), Indiana informed OSM of changes made to the proposed rules during Indiana's rule promulgation process. The changes are nonsubstantive and are discussed in the findings, below.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Revisions which are not discussed below concern nonsubstantive wording changes.

1. 310 IAC 12–9–1 Scope

This proposed new provision provides that proposed rule 310 IAC 12–9 sets forth the requirements for payment of the reclamation fee under IC 13–4.1–3–2. The Indiana statute at IC 13–4.1–3–2 provides permit application fee requirements which include a fee based on assessment of five and one-half cents per ton of coal produced. OSM approved the addition of the per-tonnage permit fee as a replacement to the previously approved permit application fee plus a permit fee of $125 per acre described in the application in the December 13, 1991, **Federal Register** (56 FR 64997). SMCRA at section 507(a) and the Federal regulations at 30 CFR 777.17 provide that each permit application shall be accompanied by a fee determined by the regulatory authority. The Federal provisions also authorize the regulatory authority to develop procedures which would enable the cost of the fee to be paid over the term of the permit. The Director finds the proposed provisions to be no less effective than SMCRA and the Federal regulations.

2. 310 IAC 12–9–2 Reclamation Fee

Proposed new subsection (a) provides that until July 1, 1995, a reclamation fee of five and one-half cents per ton of coal produced for sale, transfer, or use is required. Proposed new subsection (b) provides for that until July 1, 1995, a reclamation fee of one cent per ton of coal produced from Indiana shall be paid by all operators of underground coal mining operations with no support facilities located within Indiana, but producing coal from reserves located within Indiana. The Director finds these proposed provisions to be no less effective than the Federal regulations at 30 CFR 777.17 which provides that each permit application shall be accompanied by a fee determined by the regulatory authority and that such cost may be paid over the term of the permit.

Proposed new subsection (c) provides that the reclamation fee shall be determined based upon the weight of the coal at the time of initial bona-fide sale, transfer of ownership, or use by the operator. The proposed provision also specifies how bona-fide sale, transfer of ownership, or use shall be determined. There is no direct Federal counterpart to the proposed provisions at subsection (c). Proposed new subsection (d) provides that an operator may take a calculated weight reduction to allow for the weight of excess moisture in the coal subject to specified requirements. The Federal regulations at 30 CFR 777.17 provide that the regulatory authority may develop procedures to allow a reclamation fee to be paid over the term of a permit, but do not provide examples of such procedures. Indiana has chosen to adopt procedures similar to those at 30 CFR 870.12 concerning abandoned mine reclamation fund fee collection. The Director finds that Indiana's proposed fee collection procedures are not inconsistent with the Federal regulations and that the proposed reclamation fee is no less effective than the Federal regulations at 30 CFR 777.17.

3. 310 IAC 12–9–3 Fee Payment

Proposed new subsection (a) provides that each operator shall pay the reclamation fee concurrently with the Federal reclamation fee under SMCRA. Proposed subsections (b) and (c) provide reporting and payment procedures, while proposed subsection (d) provides delinquent payment procedures. During the promulgation process, Indiana clarified subsection (b) by adding that report form DOR–1 is "set out in the Division of Reclamation, Reclamation Fee Handbook, Revised August 1991." Indiana also added language at subsection (c) to clarify that "wire transfer, if available, can be used for payment of the reclamation fee, and the operation shall submit a copy of Form DOR–1 within five (5) days of the transfer." There are no direct Federal counterparts to the proposed provisions. However, Indiana's proposed provisions are similar to those at 30 CFR 870.15 concerning abandoned mine reclamation fee payment. The Director finds that Indiana's proposed fee payment provisions are not inconsistent with the Federal regulations and that the proposed reclamation fee payment provisions are no less effective than the Federal regulations at 30 CFR 777.17.

4. 310 IAC 12–9–4 Production Records

Proposed subsection (a) provides that any person engaging in or conducting a surface coal mining operation shall maintain current records that contain minimum specified information. Proposed subsection (b) provides the IDNR with access to the records of any surface coal mining operation for the purpose of determining compliance with rule 310 IAC 12–9. Proposed subsection (c) provides that any person engaging in or conducting a surface coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments. Subsection (c) also provides for copying of information, confidentiality of information, and auditing of OSM information in lieu of an IDNR audit of a permittee's books or records. Proposed subsection (d) provides that coal production books and records must be kept for a period of six years. Subsection (e) provides the procedures the IDNR shall use to estimate production if such records are not kept or not provided, and procedures an operator shall follow to request that the IDNR revise such an estimate. During the promulgation process for these rules, Indiana clarified proposed 310 IAC 12–9–4 by deleting the word "surface" in five locations. The deletions changed the phrase "surface coal mining operation" to read "coal mining operation." The deletions are intended to clarify that reference is made to coal mining operations and not limited to only surface coal mining operations.

There are no direct Federal counterparts to the proposed provisions. However, Indiana's proposed provisions are similar to those at 30 CFR 870.16 concerning abandoned mine reclamation production records. The Director finds that Indiana's proposed production records provisions are not inconsistent with the Federal regulations and that the proposed

production records provisions are no less effective than the Federal regulations at 30 CFR 777.17.

5. 310 IAC 12–3–8; 12–3–9; 12–8–4; and 12–8–8 Repealed

Indiana proposes to delete these provisions and to replace them with the proposed provisions at 310 IAC 12–9 discussed above at Findings 1 through 4. As discussed in the Findings above, the Director finds that the proposed provisions concerning Indiana's reclamation division fund reclamation fee, are no less effective than the Federal regulations. Therefore, the Director finds that the proposed deletion of 310 IAC 12–3–8; 12–3–9; 12–8–4; and 12–8–8 will not render the Indiana program less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the July 14, 1992, **Federal Register** (57 FR 31162) ended on August 13, 1992. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Indiana program. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Indiana on May 7, 1992, and amended by letter dated October 20, 1992. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from section 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (qq) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(pp) [Reserved]

(qq) The following amendment (Program Amendment Number 92–2) to the Indiana program as submitted to OSM on May 7, 1992, and amended by letter dated October 20, 1992, is approved effective December 17, 1992.

(1) Addition of the following Indiana regulations:

310 IAC 12–9–1	Scope
310 IAC 12–9–2	Reclamation Fee
310 IAC 12–9–3	Fee Payment
310 IAC 12–9–4	Production Records

(2) Repeal of the following Indiana regulations:

310 IAC 12–3–8
310 IAC 12–3–9

310 IAC 12–8–4
310 IAC 12–8–8

[FR Doc. 92–30481 Filed 12–16–92; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 917

Kentucky State Abandoned Mine Land Program; Expanded Eligibility Criteria, Acid Mine Drainage Treatment and Abatement Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval of proposed program amendments to the Kentucky State Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kentucky AMLR plan), and Kentucky Revised Statutes (KRS) Chapter 350, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were filed in response to changes to SMCRA made by the Abandoned Mine Land (AML) Reclamation Act of 1990 (Pub. L. 101–508) which was enacted on November 5, 1990, and became effective October 1, 1991. The amendments revise Kentucky's AMLR Plan and KRS Chapter 350 to be consistent with the changes to SMCRA.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16 and 917.17.

On May 18, 1982, the Secretary of the Interior approved the Kentucky AMLR plan. Information pertinent to the general background on the Kentucky AMLR Plan including the Secretary's findings, the disposition of comments and a detailed explanation of the approval of the Kentucky AMLR Plan can be found in the May 18, 1982, **Federal Register** (47 FR 21435–21439). Subsequent actions concerning AMLR Plan amendments are identified at 30 CFR 917.21.

II. Submission of Amendment

By letter dated June 24, 1992, (Administrative Record No. K–63), Kentucky submitted a proposed amendment modifying the Kentucky AMLR plan. The amendment consists of revisions to the narratives in Chapter 3, Goals and Obligations, and Chapter 15, Maps of Eligible Lands and Waters.

OSM announced receipt of the proposed amendment in the September 14, 1992, **Federal Register** (57 FR 41897), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 14, 1992.

By Letter dated July 30, 1992 (Administrative Record Number KY–1171), Kentucky submitted a proposed program amendment consisting of seven bills effecting Kentucky Revised Statutes Chapter 350 and a resolution that were enacted by the 1992 Regular Session of the Kentucky General Assembly. Included among the seven bills was Senate Bill 191 (SB–191) which made several revisions to KRS Chapter 350 for consistency with SMCRA as amended by Public Law 101–508, the "Abandoned Mine Reclamation Act of 1990." OSM is separating SB–191 from the July 30, 1992, submission so that it can be considered together with Kentucky's June 24, 1992, revision to its AMLR Plan.

OSM announced receipt of the July 30, 1992, amendment in the September 23, 1992, **Federal Register** (57 FR 43952), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the amendment. The comment period closed on October 23, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR part 884, and 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Kentucky AMLR Plan and the revisions to Kentucky's Revised Statutes. Any minor revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions not specifically discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Kentucky's AMLR Plan

(1) Goals and Obligations (30 CFR 884.13(c)(1))

Kentucky is revising this part of the plan in order to incorporate a reference to Public Law 101–508 (The Abandoned Mine Land Reclamation Act of 1990), which amended Title IV of Public Law 95–87 (SMCRA) effective October 1, 1991. Kentucky is also replacing the phrase "mined areas which were left without adequate reclamation prior to enactment of the law", with the phrase "eligible lands and waters, as defined in Chapter 15". In addition, Kentucky is adding a reference to conditions which endanger the "general welfare" of the public. The Director finds that the proposed changes which reference the revisions to SMCRA made by P.L. 101–508 and which provide overall clarity to Kentucky's AMLR Plan are not inconsistent with the requirements of SMCRA.

(2) Maps of Eligible Lands and Waters (30 CFR 884.13(f)(i))

Kentucky is revising this part of the plan to include among those lands and waters eligible for reclamation activities under Title IV of SMCRA, those post-1977 abandoned mine lands and water made eligible for reclamation by the AML Reclamation Act of 1990, which amended SMCRA. By letter dated October 6, 1992, Kentucky corrected several typographical errors in the amendment to Chapter 15, page 15–1, "Maps and Eligible Lands and Water." The amendment as corrected, extends eligibility to those Priority I and II sites for which there are insufficient funds to provide adequate reclamation or abatement and that resulted from: (1) Interim period coal mining operations that occurred between August 4, 1977 and May 18, 1982, or (2) permitted coal mining facilities which operated on or after August 4, 1977, and ended on or before November 5, 1990, and during this period the surety for the mine operator became insolvent. The revision also provides that there must be no

continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under State or Federal statutes.

Section 402(g)(4)(B) of SMCRA provides for the expenditure of funds for the reclamation or drainage abatement of sites if the surface coal mining operation occurred during the period beginning August 4, 1977, and either (a) Ending on or before the date of approval of the State program, or (b) ending on or before the enactment of section 402(g)(4), and during which period the surety of the mine operator became insolvent.

The Director finds Kentucky's proposed amendments to the "Maps of Eligible Lands and Waters" section of its plan to be no less stringent than the requirements of section 402(g) of SMCRA.

B. Revisions to Kentucky's Revised Statutes (KRS) Chapter 350 That Are Substantively Identical to the Corresponding Federal Statute (SMCRA)

KRS Ch 350	Subject	SMCRA
350.560(2)	Reclamation Fees; Allocation of Funds.	402(g)(4).
350.560(3)	Reclamation Fees; Allocation of Funds.	402(g)(4)(C).
350.553(1)	Certification; Completion of Coal Reclamation.	411(a).
350.553(2)	Certification; Eligible Lands, Waters, and Facilities.	411(b).
350.553(3)	Certification; Priorities.	411(c).
350.553(4)	Certification; Specific Sites and Areas not Eligible.	411(d).
350.553(5)	Certification; Utilities and Other Facilities.	411(e).
350.553(6)	Certification	411(f).
350.553(7)	Certification; Application of Other Provisions.	411(g).
350.597(2)	Reclamation Fee; Allocation of Funds.	402(g)(6).

Because the above revisions are identical in meaning to the corresponding provisions of SMCRA, the Director finds that Kentucky's rules are no less stringent than the Federal statute.

c. Revisions to Kentucky's Revised Statutes (KRS) Chapter 350 That Are Not Substantively Identical to the Corresponding Federal Statute (SMCRA)

a. Section 1 of SB–191 amended KRS 350.550(3) by adding a new subparagraph (d) which provides that the AML reclamation fund shall also consist of the interest credited to the fund pursuant to section 401(e) of Pub. L. 95–87 and allocated to the Commonwealth of Kentucky. The corresponding Federal provisions, set forth at section 401(b)(5) of SMCRA, similarly provide that the Abandoned Mine Land Reclamation Fund shall include interest credited to the fund under section 401(e) of SMCRA. The Director finds that the revision provides for the addition of such amounts to Kentucky's fund if an allocation is made to the Commonwealth, and does not establish a specific entitlement to such an allocation and, therefore, is no less stringent than the requirements of SMCRA.

b. Section 1 of SB–191 amends KRS 350.550(4) by adding at subparagraph (g) as one of the purposes for which the AML reclamation fund may be used, a reference to Section 507(c) of SMCRA relating to the Small Operator Assistance Program (SOAP). Section 402(g)(3)(A) of SMCRA provides for the expenditure of amounts available in the fund for the purpose of Section 507(c). The Director finds that Kentucky's addition at KRS 350.550(4) is no less stringent than the requirements of section 402(g) of SMCRA.

c. Section 2 of SB–191 amends KRS 350.560 by adding subsection (4) which provides for the use of funds, allocated to Kentucky by the Secretary of the Interior, in connection with protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. The new rule further provides that if the adverse effect occurred both prior to and after August 3, 1977, KRS 350.560 (1) and (2) will not be construed to prohibit use of funds for the purposes cited if the adverse effects occurred predominantly prior to August 3, 1977. This provision is similar to the rule contained in section 403(b) of SMCRA. However, the Federal rule provides for the expenditure of up to 30 percent of the funds allocated to the States in any year through grants made available under sections 402(g) (1) and (5) of SMCRA, while Kentucky's proposal refers to 30 percent of funds allocated through annual grants, without specific reference to sections 402(g) (1) and (5). The Director finds that since the only allocations currently received, or anticipated, by Kentucky are through grants made available under sections 402(g) (1) and (5) of SMCRA, the provisions of KRS 350.560(4) are no less stringent than the requirements of section 403(b) of SMCRA.

d. Section 2 of SB–191 amends KRS 350.560 by adding section (5) which provides that where the Governor has made a certification under KRS 350.553 and the Secretary of the Interior has concurred, the reclamation categories set forth at KRS 350.553(2) shall take effect, supplanting the categories set forth at KRS 350.560 (1), (2) and (4). The Director finds that KRS 350.560(5) is not inconsistent with the requirements of SMCRA and is approving the provisions of that rule with the understanding that Kentucky will deal with post-certification coal problems pursuant to the provisions of KRS 350.560 (1), and (2) and (4).

e. Section 4 of SB–191 amends KRS Chapter 350 by adding section 350.597(1) which provides that the Finance and Administration Cabinet shall establish a special trust fund which may receive and retain up to 10 percent of the total grants made annually by the Secretary of the Interior, pursuant to section 402(g)(6) and (7) of SMCRA. This provision is similar to the Federal provision set forth at section 402(g)(6) of SMCRA. However, the Federal provision refers to 10 percent of the total of the grants made annually under section 402(g)(1) and (5) of SMCRA whereas, Kentucky's proposal refers to 10 percent of the total grants made annually. The Director finds that since the only allocations currently received, or anticipated, by Kentucky are through grants made available under sections 402(g)(1) and (5) of SMCRA, the provisions of KRS 350.597(1) are no less stringent than the requirements of section 402(g)(6) of SMCRA.

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the submission dated June 24, 1992 (Administrative Record Number K–63), in the September 14, 1992, **Federal Register** (57 FR 41897); and (2) For the submission dated July 30, 1992 (Administrative Record Number KY–1171), in the September 23, 1992, **Federal Register** (57 FR 43952). The comment periods closed on October 14, 1992, and October 23, 1992.

respectively. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

By letter dated October 14, 1992, the Kentucky Resources Council (KRC) filed comments regarding the revisions to Kentucky's AMLR Plan. The KRC stated that the narrative description of eligible lands and waters in Chapter 15, page 15–1, does not accurately reflect the two criteria for eligibility of post-Act abandoned mine lands for AML expenditures. In addition, the KRC feels that the paraphrasing of the purposes of Title IV of SMCRA as set forth in Chapter 3 of Kentucky's AMLR plan, does not accurately reflect the goals enumerated in 30 U.S.C. 1233.

As set forth in the Director's Findings section herein, the Director has reviewed Kentucky's submission and determined that the proposed revisions to Kentucky's AMLR plan are no less stringent than, nor inconsistent with, the requirements of SMCRA.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Kentucky program. The U.S. Forest Service, Bureau of Mines, Mine Safety and Health Administration, and Bureau of Land Management generally considered the amendment to be acceptable or submitted an acknowledgement with no comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendments to the Kentucky Abandoned Mine Land Reclamation Plan and the revisions to the Kentucky Revised Statute Chapter 350 as submitted by Kentucky on June 24, 1992, and July 30, 1992, respectively.

The Federal rules at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OMS will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land reclamation.

Dated: October 30, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VIII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15 is amended by adding a new paragraph (nn) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(nn) The following amendments to Kentucky Revised Statutes (KRS) submitted to OSM on July 30, 1992, are approved effective December 17, 1992.

Amendments to KRS Chapter 350 sections 350.550, 350.553, 350.560 and 350.597 as contained in Senate Bill 191.

3. 30 CFR 917.21 is amended by adding a new paragraph (c) to read as follows:

§ 917.21 Amendment to approved Kentucky abandoned mine land reclamation plan.

* * * * *

(c) The following amendments submitted to OSM on June 24, 1992, are approved effective on December 17,

1992. The amendments consist of the following modifications to the Kentucky program:

Revisions to the following provisions of the Kentucky Abandoned Mine Land Reclamation Plan:

Chapter 3—Goals and Obligations

Chapter 15—Maps of Eligible Lands and Waters

[FR Doc. 92-30478 Filed 12-16-92; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 920

Maryland Regulatory Program; Small Operator Assistance Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment expands the coverage of Maryland's Small Operator Assistance Program (SOAP) and makes certain changes to Maryland's public notice and hearing regulations. The amendment revises the Maryland program to be no less effective than the corresponding Federal regulations.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

II. Submission of Amendments

By letter dated July 14, 1992, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD-556.00). The proposed amendment, House Bill Number 1284, revises section 7-505 of the Natural Resources Article of the Annotated Code of Maryland (the Code) by: (a) Increasing the SOAP coal eligibility limit for any surface coal mining operator from 100,000 tons to 300,000 tons; (b) modifying the State's public notice and hearing procedures; (c) deleting provisions for the amendment of a permit; and (d) referencing State and Federal pollution standards. The amendment also revises section 7-206 by specifying the bond release and reclamation responsibilities of Maryland's Land Reclamation Committee (the Committee).

OSM announced receipt of the proposed amendment in the September 11, 1992, **Federal Register** (57 FR 41712) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 13, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on July 14, 1992. Any revisions not specifically addressed below are found to be no less stringent than SMRA and no less effective than the Federal rules.

Revisions which are not discussed below revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Revisions to Maryland's Regulations that are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
Maryland Annotated Code 7-505(c)(4).	Soap	SMCRA Section 507(c).

Revisions to Maryland's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

Maryland is revising section 7-205 by transferring the provisions of paragraphs (b)(2) and (c) to paragraphs (A), (B), and (C) of section 7-206. The provisions of paragraphs (b)(2) and (c) have previously been approved.

Maryland is revising section 7-206(A) of the Code to require that the Committee approve a permit applicant's proposed reclamation plan. The Committee is required to publish a public notice in a newspaper of general circulation in the county of the proposed mining operation announcing receipt of a proposed reclamation plan. The public notice shall include certain identifying information and must announce that written comments and requests for a public informational hearing will be received by the Committee for at least 30 days after the newspaper publication. If a hearing is requested, the Committee is required to hold the meeting 15 to 60 days after it provides public notice. Written comments are to be accepted until the date of the hearing. The Committee is required to approve or reject the proposed plan after the hearing and notify the applicant, Department of Natural Resources (the Department), and participants of its decision.

The Federal regulations at 30 CFR 773.13 pertaining to public participation and 30 CFR 773.19(b) pertaining to notification procedures require the regulatory authority to provide public notice of a permit application and to notify the applicant of its decision regarding approval or disapproval of the permit. The permit application includes a reclamation plan. Maryland's currently approved implementing regulations at the Code of Maryland Administrative Regulations (COMAR) 08.13.09.04 pertaining to permit reviews are substantively identical to the Federal regulations at 773.13 and 773.19(b). In addition, Maryland is providing for separate public notice and hearing procedures for reclamation plans. There is no comparable requirement in SMCRA or the Federal regulations to provide for separate notice and hearing procedures for a reclamation plan. However, the Director finds the proposed revisions at 7-206(A) not inconsistent with the Federal regulations at 30 CFR 773.13 and 30 CFR 773.19(b).

Maryland is revising section 7-505(a) of the Code to delete the provision for amended permits. The Federal regulations at 30 CFR part 773 pertaining to permits do not provide for permit amendments. The Director finds the proposed deletion at section 7-505(a) does not render the Maryland program less effective than the Federal regulations.

Maryland is revising section 7-505(d) of the Code to require that the Department conduct a public

informational hearing if one is requested pertaining to an application for permit or permit revision. The current Maryland rules provide for a joint public hearing conducted by the Department and the Committee. The Department is required to grant, modify, or deny the application and notify the applicant and any participants of its decision in writing. The permit applicant has the burden of establishing the application's compliance with all applicable rules and regulations. The Federal regulations at 30 CFR 773.13(c) provide for informal conferences on permit applications. The Federal regulations at 30 CFR 773.15(a)(2) provides that the permit applicant shall have the burden of establishing the application's compliance with all requirements of the regulatory program. The Federal regulations at 30 CFR 773.19(b) provide for the written notification to the applicant by the regulatory authority of its decision to approve or disapprove a permit application. Maryland's currently approved implementing regulations at COMAR 08.13.09.04K (2) and (4) are substantively identical to the Federal regulations. The Director finds the proposed revisions at section 7–505(d) when considered along with COMAR 08.13.09.04K (2) and (4), no less effective than the Federal regulations at 30 CFR 773.13(c), 30 CFR 773.15(a)(2), and 30 CFR 773.19(b).

The provisions of paragraph (d)(5), with the exception of the last sentence, have been transferred to section 7–206(A)(4). The last sentence, which has been deleted, prohibits the Department from approving a permit or permit revision if the Committee rejects the plan. Because the Federal regulations at 30 CFR 773.15 pertaining to the review of permit applications do not include this requirement, the Director finds that the proposed deletion does not render the Maryland program less effective than the Federal regulations.

Maryland is revising section 7–505(f) to require that the operator be responsible for the prevention of stream pollution in excess of Federal or State standards. The current statute requires the operator to comply with standards established by the Department. The Federal rules at section 515(b) of SMCRA pertaining to environmental protection performance standards prohibit contributions of suspended solids to streamflow in excess of Federal or State requirements. The Director finds the proposed revision to section 7–505(f) no less effective than the Federal rule at section 515(b) of SMCRA.

Maryland is revising section 7–505(j) to require that the Director of the Bureau of Mines follow certain notification procedures if a permit application or permit revision is not approved. The current statute specifies the notification procedures for a permit application or amended application. The Federal regulations at 30 CFR 773.19(b) and 30 CFR 774.15(e) pertaining to notification procedures for permits and permit revisions require that the regulatory authority issue written notification of its decision to certain parties. The Director finds the proposed revision at section 7–505(f) no less effective than the Federal regulations at 30 CFR 773.19(b) and 30 CFR 774.15(e).

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the September 11, 1992, **Federal Register** (57 FR 41712) ended on October 13, 1992. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of the Interior, Bureau of Mines, the Department of Labor, Mine Safety and Health Administration, and the Department of Agriculture, Soil Conservation Service, all concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Maryland on July 14, 1992.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the

Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (s) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

* * * * *

(s) The following amendment submitted to OSM on July 14, 1992, is approved effective December 17, 1992. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following statutes of the Maryland Annotated Code:

7–505(a), (c), (d), (f), (j)—Permits.

(2) Addition of the following statute to the Maryland Annotated Code: 7–206—Reclamation Plan, Hearings.

(3) Deletion of the following statutes from the Maryland Annotated Code: 7–205(b)(2), (c)—Land Reclamation Committee.

7–505(d)(5)—Reclamation Plan.

[FR Doc. 92–30479 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS HAMPTON (SSN 767) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Justice Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS HAMPTON (SSN 767) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the stemlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light: Annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS HAMPTON (SSN 767) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS HAMPTON (SSN 767).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex I
USS Hampton	SSN 767	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead light arc of visibility rule 21(A)	Side lights arc of visibility rule 21(B)	Stern lights arc of visibility rule 21(C)	Side lights distance inboard of ship sides in meters annex I section 3(b)	Stern lights distance forward of stern in meters rule 21(C)	Forward anchor lights height above hull in meters annex I section 2(k)	Anchor lights relationship of aft light to forward light in meters annex I section 2(k)
USS Hampton	SSN 767			209	4.3	6.1	3.4	1.7 below

Dated: November 30, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92–30543 Filed 12–16–92; 8:45 am]

BILLING CODE 3810–AE–M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS CAPE ST. GEORGE (CG 71) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CAPE ST. GEORGE (CG 71) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

According, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights not over all other lights and obstruction Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
USS Cape St. George	CG 71	N/A	X	X	38

Dated: December 2, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92–30548 Filed 12–16–92; 8:45 am]

BILLING CODE 3810–AE–M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS CHARLOTTE (SSN 766) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA

22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CHARLOTTE (SSN 766) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS CHARLOTTE (SSN 766) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS CHARLOTTE (SSN 766).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS Charlotte	SSN 766	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead light arc of visibility rule 21(A)	Side lights arc of visibility rule 21(B)	Stern lights arc of visibility rule 21(C)	Side lights distance inboard of ship sides in meters annex I section 3(b)	Stern lights distance forward of stern in meters rule 21(C)	Forward anchor lights height above hull in meters annex I section 2(k)	Anchor lights relationship of aft light to forward light in meters annex I section 2(k)
USS Charlotte	SSN 766			209	4.3	6.1	3.4	1.7 below

Dated: November 30, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92–30545 Filed 12–16–92; 8:45 am]

BILLING CODE 3810–AE–M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS SPRINGFIELD (SSN 761) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 4, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SPRINGFIELD (SSN 761) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS SPRINGFIELD (SSN 761) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS SPRINGFIELD (SSN 761).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS Springfield.	SSN 761	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead light arc of visibility rule 21(A)	Side lights arc of visibility rule 21(B)	Stern lights arc of visibility rule 21(C)	Side lights distance inboard of ship sides in meters annex I section 3(b)	Stern lights distance forward of stern in meters rule 21(C)	Forward anchor lights height above hull in meters annex I section 2(k)	Anchor lights relationship of aft light to forward light in meters annex I section 2(k)
USS Springfield	SSN 761	.....	.....	205	4.2	6.2	3.5	1.7 below

Dated: November 4, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92–30544 Filed 12–16–92; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore, MD, Regulation 92–05–31]

Safety Zone Regulation: Upper Chesapeake Bay, Patapsco River, Elk River, C&D Canal, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a temporary moving safety zone for the upper Chesapeake Bay, Elk River, Chesapeake and Delaware Canal (C&D Canal), Patapsco River and Ruckert Terminal Pier C, Baltimore, Maryland. The safety zone is necessary to protect vessels, the port community and the environment from potential safety and environmental hazards associated with the transit of a Liquefied Petroleum Gas (LPG) Vessel. This emergency rule provides explicit instructions for the LPG vessel and any vessels operating in the vicinity of the LPG vessel.

EFFECTIVE DATES: This regulation is effective from 8 a.m. December 15, 1992 to 12 a.m. December 17, 1992, unless terminated sooner by the Captain of the Port, Baltimore, MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) Mark Williams, U.S. Coast Guard Marine Safety Office, Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5104.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication in the **Federal Register**. Adherence to normal rule making procedures would not have been possible. Specifically, the vessel operator plans commencing said operations within 30 days of Coast Guard approval. Approval for this LPG facility was not granted until November 12, 1992, and the company's target operational start-up date is December 7, 1992. Publishing an NPRM and delaying the safety zone's effective date would be contrary to the public interest and immediate action is needed to protect the environment and mariners against potential hazards associated with the transit of a vessel transporting liquefied petroleum gas.

Drafting Information

The drafters of this regulation are LT (jg) Mark Williams, project officer for the Captain of the Port, Baltimore, Maryland, and Lieutenant Commander K.B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

This safety zone includes a specific area around the LPG vessel while it is underway in a loaded or prepped condition, at anchor and during cargo or LPG transfer operations. The safety zone also will be in effect while the vessel, in a loaded condition transits the upper Chesapeake Bay to Ruckert Terminal, Pier C via the Patapsco river, to conduct LPG cargo tank cooling and preparations. Upon completion of tank preparation operations, the vessel will then transit the Patapsco River, Upper Chesapeake Bay, Elk River and then through the C&D Canal to the Sun Oil Company Refinery, Marcus Hook, Pennsylvania. This Safety Zone will extend 100 yards forward and aft of the vessel, and 50 yards on either side of the vessel while the vessel is underway. Additionally, no vessel may approach within 100 feet of the LPG vessel in a loaded or prepped condition while the LPG vessel is moored, nor anchor within 100 yards from the LPG vessel. These regulations are necessary to control all commercial and recreational traffic and to provide for the safety of life and property on navigable waters during the transit of the loaded or prepped LPG vessel. Since the main shipping channels will not be closed, the impacts on routine navigation are expected to be minimal.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The Coast Guard also considered the impact of this regulation on small entities and concluded that such impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 C.F.R. 1.05–1(g), 6.04–1, 6.04–1, 6.04–6, and 160.5; 49 C.F.R. 1.46.

2. A temporary § 165.T0591 is added to read as follows:

§ 165.T0591 Moving Safety Zone: Chesapeake Bay, Elk River, C&D Canal, Patapsco River, Baltimore, Maryland.

(a) *Location.* The following area is a safety zone: While transiting the upper Chesapeake Bay, Patapsco River, Elk River, and C&D Canal, the waters surrounding the Liquefied Petroleum Gas vessel 100 yards forward and aft, 50 yards on either side of the vessel while underway, and transiting the bay, and 100 feet on all sides of the vessel while moored or at anchor, while the vessel contains Liquid Petroleum gas, either loaded or prepped.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Baltimore, Maryland to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone and the Duty Officer at the Marine Safety Office Baltimore, Maryland.

(i) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5105.

(ii) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

(c) *Local Regulations.* (1) If the LPG vessel is in a loaded or prepped condition it may not transit if visibility is or is expected to be less than two (2) miles. If during the transit visibility becomes less than two (2) miles, the LPG vessel must seek safe anchorage and notify the COTP immediately.

(2) If during the transit of the loaded LPG vessel an emergency situation or navigational equipment problem occurs that affects the safety of the cargo or safe navigation of the vessel, the vessel must seek the nearest safe anchorage and notify the Captain of the Port, Baltimore, MD immediately.

(3) While in a loaded condition, the LPG vessel will be escorted by at least one commercial tug during any movement which occurs above the William Preston Lane Memorial Bridge (Bay Bridge).

(4) The LPG vessel will be escorted by at least one commercial tug during transit from the cargo terminal at Ruckert Terminal Pier C to the entrance to the C&D Canal.

(5) While moored, the LPG vessel must have at least two wire cable mooring lines (firewarps) rigged fore and aft on the outboard side of the vessel within six feet of the water's edge for emergency towing hook-up.

(6) While underway, the LPG vessel must have at least two wire cable mooring lines (firewarps) rigged fore and aft on the vessel within six feet of the water's edge for emergency towing hook-up should the need arise.

(7) Unless exempted by the COTP, the LPG vessel will be escorted by a Coast Guard escort vessel from the LPG Facility at Ruckert Terminal, Pier C, to the Francis Scott Key Memorial Bridge during the outbound transit. The Vessel will also be escorted by a Coast Guard vessel on its inbound transit, from the Francis Scott Key Memorial Bridge to the LPG Facility at Ruckert Terminal, Pier C, if in a loaded condition.

(8) All vessels operating within and approaching the safety zone must maintain a continuous radio guard on channels 13 and 16 VHF–FM while underway.

(9) Overtaking may take place only under conditions where the overtaking is to be completed well before any bends in the channel. Before any overtaking occurs, the pilots, masters and/or operators of both vessels must clearly agree on all factors including vessel speeds, time and location of overtaking.

(10) Above the C&D Canal, the LPG vessel and an oncoming vessel shall not meet at a relative speed greater than twenty (20) knots, or greater than prevailing weather conditions deem prudent. Meeting situations on river or severe channel bends shall be avoided.

(11) Except in times of emergency or with COTP permission, anchoring by the LPG vessel in other than approved anchorages is prohibited.

(12) Transfer of Liquefied Petroleum Gas at anchor or while bunkering is prohibited.

(13) To lesson the dangers of collision and decrease the effects of wake on the LPG vessel. The master, person in charge and/or pilot of the transiting vessel are responsible for ensuring passage at safe speed and should use vessel size and characteristics to determine the safe speed necessary to comply with this requirement. When the LPG vessel is moored at Ruckert Terminal, Pier C, all vessel's transiting this area shall operate at the minimum speed sufficient to maintain steerage.

(14) While at anchor or moored and experiencing periods of sustained winds in excess of 25 knots, but less than 40 knots, the LPG vessel must keep the main engine in a 5 minute standby condition. If sustained winds are 40 knots or over, the main propulsion plant must be on line.

(15) Venting of cargo vapors and inert medium while in the navigable waters of the United States is prohibited.

(16) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Contact the LPG Vessel on VHF channels 16 or 13 for passing, meeting or overtaking instructions.

(ii) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(iii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(iv) Any vessel may anchor outside of the regulated area specified in paragraph (2)(a) of this section, but may not block a navigable channel.

(17) Except for persons or vessels authorized by the Coast Guard Patrol Commanders, no person or vessel may enter or remain in the regulated area.

(d) *Effective Date:* This regulation is effective from 8 a.m. December 15, 1992 to 12 a.m. December 17, 1992, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: December 8, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92–30503 Filed 12–16–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 33–1–5347; FRL–4521–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On June 26, 1987 (52 FR 24036), as corrected on July 31, 1987 (52 FR 28570), USEPA proposed in the alternative either to promulgate for Illinois federal rules for issuance of

construction permits to new and modified air pollution sources located in or affecting nonattainment areas in Illinois (New Source Review or NSR rules), or to approve draft NSR rules then in the process of being adopted by the State, with the understanding that prior to final approval by USEPA the State would complete adoption of the rules. Public comment was solicited on these proposed actions. On March 24, 1987, Illinois submitted to USEPA NSR rules which had been formally adopted by the State. This final rule approves the incorporation of the Illinois NSR rules into the State's SIP. This action also provides direct final approval of Illinois' existing Operating Permit program as satisfying USEPA's recently-adopted criteria regarding federal enforceability. Because USEPA considers this finding to be noncontroversial, it is being undertaken without prior proposal. Finally, this final rule also responds to public comment received on the proposal.

As a consequence of these actions, USEPA is lifting the growth moratorium in all primary nonattainment areas in Illinois which has been in effect since May 26, 1981, when the United States Court of Appeals for the Seventh Circuit overturned USEPA's earlier approval of NSR rules in *Citizens for a Better Environment* v. *United States*, 649 F.2d 522 (7th Cir. 1981).

DATES: These actions will be effective February 16, 1993 unless proper notice is received within 30 days that significant adverse or critical comments regarding USEPA's finding that the State's operating permit program satisfies federal enforceability criteria will be submitted. If such notice is received, timely notice will be published in the **Federal Register**, indicating that USEPA's approval of the federal enforceability aspects of the Illinois operating permit provisions is withdrawn. As is explained in more detail below, USEPA may also withdraw approval of the State's NSR regulations at the same time.

ADDRESSES: Copies of the requested SIP revisions, technical support documents and public comments received are available at the following address: United States Environmental Protection Agency (AR–18J), Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief (AR–18J), Regulation Development Section, Regulation Development Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Ronald J. Van Mersbergen, (312) 886–6056.

SUPPLEMENTARY INFORMATION: On June 26, 1987 (52 FR 24036), as corrected on July 31, 1987 (52 FR 28570) (by publication of the text of the proposed Federal NSR promulgation which had been inadvertently omitted from the June 26, 1987 proposed rule), USEPA proposed to promulgate federal NSR rules for Illinois, or, in the alternative, to approve NSR rules drafted by the State, which the State was then in the process of adopting. USEPA proposed to condition approval of the State rules on the requirement that the final NSR rules submitted by Illinois be substantially the same as the State's NSR rules under consideration at the time of USEPA's proposed approval. Public comment was solicited on these proposed actions. Today's final rule responds to the public comments received, and approves for incorporation into the Illinois SIP the State's NSR rules, as finally adopted by the Illinois Pollution Control Board (IPCB) on March 24, 1988, and subsequently, submitted to USEPA. Since USEPA is approving the State NSR rules, it promulgates no federal rules.

At the time of USEPA's proposal, it was assumed by both the State and USEPA that in light of the decision in *Citizens for a Better Environment*, State operating permits issued by Illinois were, as a general proposition, "federally enforceable" for purposes of limiting a source's "potential to emit" under the NSR program. However, on June 28, 1989 (54 FR 27274), USEPA promulgated amendments to its NSR regulations. These amendments clarified the criteria which must be met by a state's operating permit program in order for the operating permit program to be approved by USEPA and incorporated into a SIP, under section 110 of the Clean Air Act (CAA).

Because of the way in which the Illinois NSR program is structured, approval of the State's operating permit program is a prerequisite to federal enforceability of any state operating permit. To assure that the operating permit program satisfies the new requirements, Illinois has submitted to USEPA for its approval, Illinois' previously-adopted regulations governing operating permits.

Since approval of Illinois' operating permit program has a direct bearing on any approval of its NSR rules, USEPA will address Illinois' operating permit program submissions first.

I. The Illinois Operating Permit Program

Background

The term "federally enforceable," defined at, e.g., 40 CFR 51.165(a)(1)(xiv), is a term of art under the NSR program that serves three principal purposes. First, a permit that is federally enforceable may be used to limit voluntarily the "potential to emit" of a new source so as to keep the source's emissions below the NSR major source applicability thresholds. Second, voluntary permit limits on the potential to emit of an existing major stationary source undertaking a modification can be used to prevent, through intra-source netting, increasing its emissions above the significance levels that would trigger a major modification. In either the first or second scenario, the source lawfully avoids the need to obtain a preconstruction permit under part D (or part C) of title I of the CAA. See, e.g., 40 CFR 51.165(a)(1)(iii). Third, if a new or modified source in a nonattainment area exceeds an applicability threshold and is subject to nonattainment NSR requirements, it must obtain external emissions offsets in accordance with sections 173(a)(1) and 173(c). The emissions reductions provided by the offsetting source must be federally enforceable in order to be creditable. 40 CFR 51.165(a)(3)(ii)(E).

Construction permits issued in accordance with a SIP-approved or USEPA-promulgated NSR program have always been considered federally enforceable. Such construction permit programs include the nonattainment NSR program applicable to major new sources and major modified sources located in nonattainment areas under part D of title I, see CAA sections 172(a)(5) and 173, and 40 CFR 51.165 and 40 CFR part 51, appendix S; the prevention of significant deterioration program applicable to major new sources and major modified sources located in attainment or unclassifiable areas under part C of title I, see CAA section 165, and 40 CFR 51.166 and 52.21; and the general or "minor source" NSR program applicable to the construction or modification of any stationary source under section 110 of title I without regard to whether the new source exceeds the statutory "major" source thresholds or to whether the modification exceeds the regulatory "significance" levels for "major"

modifications, see CAA section 110(a)(2)(C) (formerly 110(a)(2)(D), and 40 CFR 51.160–164.

Prior to the Clean Air Act Amendments of 1990, however, states were not required to have a distinct operating permit program under the Act. Until 1989, the requirements that must be met by a voluntary operating permit program to enable permits issued thereunder to be deemed federally enforceable for NSR purposes were uncertain. At that time, USEPA promulgated five criteria for approving a state operating permit program as part of the SIP. See 54 FR 27274, 27282 (June 28, 1989). The following discussion compares the Illinois regulations and procedures governing the State's operating permit program with these five criteria.

First Criterion

"The state operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) is submitted to and approved by EPA into the SIP."

On January 31, 1972 and April 4, 1979, IEPA submitted the regulations and administrative framework for supporting a permit review program to meet the requirements of 40 CFR 51.160 [51.18(j) at the time of submittal]. USEPA on May 31, 1972 (37 FR 10862) and February 21, 1980 (45 FR 11477) approved the program for issuing construction and operating permits to new sources, and modifications to sources. These permit review procedures have remained in effect in Illinois since that time. The State now desires to have that permit program approved for issuing operating permits to any existing source. Therefore, on September 18, 1991, the State submitted section 9(b) and section 9.1 of the State Environmental Protection Act (State Act) to supplement the earlier submittal. Since section 9(b) was incorporated into Illinois' SIP on May 31, 1972, USEPA is taking no action on section 9(b) in this rule. USEPA's approval of section 9.1 provides legal support for the operating permit program and satisfies the first criterion.

Second Criterion

"The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not 'federally enforceable' by EPA."

Section 9(b) of the State Act says "No person shall * * * construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution * * * without a permit granted by the Agency, or in violation of any conditions imposed by such permit."

Section 9(b) satisfies the initial part of the second approval criterion in that the operating permit holder is considered in violation of the State Act if he does not abide by the permit conditions. Section 9(b) furthermore comports with the definition "federally enforceable" found in 40 CFR part 165(a)(1)(xiv). This definition states that federal enforceability includes "operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program."

The latter part of the second approval criterion requires that the SIP has provisions which allow USEPA to deem a permit not "federally enforceable" under certain conditions. In approving the State operating permit program, USEPA is determining that Illinois' program allows USEPA to deem an operating permit not "federally enforceable" for purposes of limiting potential to emit and to offset creditability. Such a determination will (1) be done according to appropriate procedures, and (2) be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements and the requirements of USEPA's underlying regulations. Based on this interpretation of Illinois program, USEPA finds that the second criterion for approving an operating permit program has been met by the State.

Third Criterion

"The State operating permit program requires that all emissions, limitations, controls and other requirements imposed by such permits, will be at least as stringent as any other applicable limitation or requirement contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitation or requirement contained in or issued pursuant to the SIP, or that are otherwise 'federally enforceable' (e.g. standards established under sections 111 and 112 of the Act)."

With respect to issuing operating permits with limits less stringent than the SIP, section 39 of the Illinois Act which was incorporated into the Illinois SIP on May 31, 1972 (37 FR 10862) provides in pertinent part:

> When the Board [Illinois Pollution Control Board or IPCB] has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, it shall be the duty of the Agency [Illinois Environmental Protection Agency] to issue such a permit upon proof by the applicant that the facility, equipment, vehicle vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In granting permits the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder * * *

Since State-issued operating permits must comport with all State regulations, which would include the regulations adopted to implement the SIP, the State cannot issue operating permit limits less stringent than the regulations in the SIP. Furthermore, section 9.1 of the Illinois Act which is being incorporated into the SIP today clearly indicates that "It is the purpose of this section to avoid the existence of duplicative, overlapping or conflicting State and Federal regulatory systems". USEPA interprets this language to mean that both the IEPA and IPCB must act in a manner consistent with all pertinent federal statutes and regulations including the SIP. In addition, section 201.160 of Subpart D: Permit Applications and Review Process of Part 201 of Title 35 of the Illinois Administrative Code which was incorporated into the Illinois SIP as Rule 103(b)(6)(A–F) on February 21, 1980 (45 FR 11477) provides that:

> No operating permit shall be granted unless the applicant submits proof to the Agency that:
>
> (A) The emission source or air pollution equipment has been constructed or modified to operate so as not to cause a violation of the Act [Illinois Environmental Protection Act] or of this Chapter [Chapter 1: Pollution Control of Title 35 of the Illinois Administrative Code], or has been granted a variance therefrom by the Board and is in full compliance with such variance, and * * *
>
> It should be noted that Chapter 1 contains the State rules that comprise the SIP.

Section 9.1 d.2 of the State Act, which becomes part of the approved SIP by today's action, states that "no person shall * * * construct, install, modify, or operate any equipment, building, facility, source or installation which is subject to regulation under sections 111, 112, 165, or 173 of the Clean Air Act except in compliance with the requirements or such sections and federal regulations adopted pursuant thereto, and no such action shall be

undertaken without a permit granted by the Agency or in violation of any condition imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with section 40 of the Act."

Section 9.1 d.2 thus requires that State permits comply with the provisions of the CAA and federal regulations adopted pursuant to the CAA. To issue a permit with a limit less stringent than federal requirements or a State SIP rule is not allowed by the State Act. Permits reviewable by the IPCB in accordance with section 40 can only have their limits changed if the IPCB finds that IEPA has made an error. Section 40 does not have provisions which allow altering emission limits other than to correct clerical error by the IEPA. There is no authority in section 40 of the State Act to grant a waiver from a permit limit. Based on these provisions, USEPA has determined that the State authority to grant permits is properly restrained by the terms of the SIP, as required by the third criteria.

Fourth Criterion

"The limitations, controls, and requirements in the operating permits are permanent, quantifiable and otherwise enforceable as a practical matter."

USEPA has reviewed the Illinois operating permit program and is satisfied that it requires the state to issue permits which meet the requirements of this provision. While the permits do expire the conditions they impose must be complied with during the entire term of the permit as well as during the transition to a renewal permit. Section 9.1(f) of the State Act states that, "if a complete application for a permit renewal is submitted to the Agency at least 90 days prior to expiration of the permit, all of the terms and conditions of the permit shall remain in effect until final administrative action has been taken on the application." This provision of the State Act uses language similar to the federally proposed title V operating permit rules which are intended to provide permanency to the limits in title V permits, which have expiration dates. This approach to making permit limits permanent is thus approvable by USEPA.

Illinois' permit conditions are characteristically written so that they are quantifiable and enforceable as a practical matter. Limits and averaging times are consistent with test methods and procedures. If USEPA in the future determines that an individual permit condition is not quantifiable or practically enforceable, it can deem the permit not "federally enforceable" within the means of the NSR regulations. The State's current practice and regulatory provisions meet the fourth criterion for permit program approval.

Fifth Criterion

"The permits are issued subject to public participation." This means that the State agrees, as part of its program to provide USEPA and the public with timely notice of the proposal and issuance of such permits, and to provide USEPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process might also provide for an opportunity for public comment on the permit application prior to the issuance of the final permit.

On September 25, 1985, USEPA approved Illinois' rules governing public participation in the air permit program for major sources in nonattainment areas. These rules provide for public notification prior to permit issuance and an opportunity for public comment.

The public comment procedure and commitments to follow them in issuing operating permits which were submitted by IEPA, are approvable as meeting the fifth criterion.

In the preamble to the regulations that USEPA promulgated on June 28, 1989 (54 FR 27274), which set forth the five criteria outlined above for a federally enforceable operating permit program, USEPA indicated that it would "consult with States on methods by which existing operating permits could be made federally enforceable under a subsequently approved State operating program." (54 FR 27284). The preamble then went on to suggest two possible means of securing USEPA approval of previously issued permits—either submitting the permits in bulk to USEPA as a SIP revision or reissuing existing permits on a source by source basis. *Id.* These two options were not intended to be a complete list of alternatives. Rather they were suggested as two possible ways by which a state could make previously issued operating permits federally enforceable. Because both options could require the State to spend considerable resources in reprocessing otherwise valid operating permits, the USEPA has evaluated additional approaches. The USEPA today finds the existing Illinois SIP regulations to be consistent with federal requirements. If the State followed its own procedures, each permit issued under this regulation was subject to public notice and comment and prior USEPA review. Therefore, USEPA will consider all operating permits issued which were processed in a manner consistent with both the State regulations and the five criteria to be federally enforceable with the promulgation of this rule provided that any permits that the State wishes to make federally enforceable are submitted to USEPA and accompanied by documentation that the procedures approved today have been followed. USEPA will expeditiously review any individual permits so submitted to ensure their conformity to the program requirements.

Today's approval of the State's operating permit program for the purpose of issuing federally enforceable operating permits is intended as a mechanism for making the operating permits used to implement the requirements of the Act, including section 110 and part D of title I federally enforceable. After the effective date of this rule, operating permits issued by Illinois in conformance with the five criteria listed above will be considered federally enforceable. Additionally, operating permits issued subsequent to the incorporation of the Illinois operating permit program into the SIP but before the effective date of this rule will also be considered federally enforceable if the State submits them to USEPA along with documentation that they were issued in conformance with the five criteria listed above.

Prior to the 1990 Amendments of the Act, there was no express federal requirement for a SIP to include an operating permit program. Only a construction permit program was directly required. However, Illinois and many other states voluntarily included an operating permit program in their SIPs to assist them in regulating emission sources. The Illinois operating permit program covers all emission sources regardless of the source's potential to emit. In contrast, all states are required by title V of the Act Amendments of 1990 to adopt and submit to USEPA an operating permit program by November 15, 1993, regulating the following: Major sources, sources subject to a hazardous air pollutant standard under section 112 of the Act, sources subject to new source performance standards under section 111 of the Act, sources affected under the acid rain provisions of title V of the Act, sources required to have a preconstruction review permit pursuant to the prevention of significant deterioration (PSD) or NSR program under title I of the Act. In addition, USEPA may add or exempt from the title V permitting program any other

non-major sources in a category designated by USEPA upon performing appropriate rulemaking.

USEPA will go through rulemaking on Illinois' title V permit program after it has been received from the State. Today's rule has no bearing on Illinois' obligation to adopt an operating permit program meeting the requirements of title V by November 15, 1993. Although states may well choose to develop title V permit programs that address more sources than the population mandated by the Act and USEPA's implementing regulations in 40 CFR part 70, it is probable that states will continue to permit some sources pursuant to operating permit programs approved into the SIP, such as the one developed by Illinois. This is because states may prefer to permit smaller and less significant sources pursuant to such programs, rather than the somewhat more extensive title V program requirements. The USEPA recognizes that such program can be a useful supplement to the title V program in carrying out the goals of the Act. Accordingly, the USEPA wishes to confirm that it will continue to review state operating permit programs pursuant to the criteria in the June 28, 1989 **Federal Register** referenced above.

II. The Illinois New Source Review Rules

Changes From Draft Rules to Final NSR Rules

A. The draft, at § 203.107, under the definition of "allowable emissions", paragraph (a)(1), stated that part of allowable emissions is "the applicable standards set forth in 40 CFR part 60 or 40 CFR part 61." The final rule for this paragraph states that part of allowable emissions is "any applicable standards adopted by USEPA pursuant to section 111 and 112 of the Clean Air Act (42 U.S.C. 74011 et. seq.) and made applicable in Illinois pursuant to section 9.1(b) of the Environmental Protection Act." Section 9.1 makes all New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) enforceable in Illinois by the State. (There is further discussion in item II.E. of the definition of Lowest Achievable Emission Rate (LAER)). Therefore, it is concluded that this change is nonsubstantive and does not change the form of the draft rules as proposed by USEPA.

B. In 203.112, the State exchanged the word "or" for "and" in identifying the terms "'building', 'structure', 'facility'" so that the final rule has the phrase "'building', 'structure', and 'facility'". In the way these terms are used to define "stationary source" in the regulations (section 203.136), there is no substantive change in meaning; the exchange of words only adds clarification and does not change the form of the draft rules as proposed by USEPA.

C. The earlier definition of the terms "'building', 'structure', and 'facility'" in section 203.112(b)(1), referring to materials being transferred, was supplemented with the following language, "irrespective of ownership or industrial grouping." This wording adds clarity to the concept that the materials being transferred should be part of a "building, structure and facility." USEPA has determined that this is not a substantive change in the definition and does not change the form of the draft rules as proposed by USEPA.

D. The final State rule added a definition of "Nonattainment Area" in section 203.127 which was not in the draft rule as proposed by USEPA. The definition simply says a nonattainment area is an area which is so designated under the CAA. Since the State did not have a definition of "nonattainment area" in its draft NSR rules, the only definition in existence during the public comment period was the federal definition. Since this addition is no more than an inclusion of that which was already in existence as federal law, it does not constitute a substantive change, and does not change the form of the draft rules as proposed by USEPA.

E. The definition of "LAER," as it appears in section 203.301, adds the following language: "In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard adopted by USEPA pursuant to section 111 of the Clean Air Act and made applicable in Illinois pursuant to section 9.1 of the Act." (Section 9.1 of the Act refers to the Illinois Environmental Protection Act).

The phrase "and made applicable in Illinois pursuant to section 9.1 of the Act" may appear to limit the minimum level of LAER in some cases to action by Illinois. However, this is not the case. Section 9.1.b reads as follows: "The provisions of section 111 of the Federal Clean Air Act (42 U.S.C. 7411), as amended, relative to standards of performance for new stationary sources * * * are applicable in the State and are enforceable under this Act." USEPA interprets this to mean that any NSPS promulgated by the Administrator are immediately enforceable by the State of Illinois. Based on this understanding we are approving the definition of LAER.

F. In the final version of the rules in section 203.303(c)(1), the following language is added: "and made applicable in Illinois pursuant to section 9.1 of the Environmental Protection Act."

As discussed in E above, this language only recognizes in the NSR rules the incorporation by reference of Federal Standards promulgated pursuant to sections 110 and 111 of the Clean Air Act. This is not considered a substantive change, and does not change the form of the draft rules as proposed by USEPA.

G. The following language is added to the earlier draft rule in section 203.303(d)(1): "Effective stack height means actual stack height plus plume rise. Where actual stack height exceeds good engineering practice, as determined pursuant to 40 CFR 51.100 (1987) (no future amendment or edition are included), the creditable stack height shall be used."

This language merely confirms that the State NSR rules will follow stack height requirements established by USEPA in 1987. (see 52 FR 24712, July 1, 1987.) This is considered clarifying language, not a substantive change, and does not change the form of the draft rules as proposed by USEPA.

Major Features of the State Rule

A. Federal Enforceability

The term, "Federally enforceable" in 40 CFR 51.165(a)(1)(xiv) "means all limitations and conditions which are enforceable by the Administrator, including any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program." The term "permit" in State rule section 203.303(b)(5) includes only construction and operating permits. As this has been discussed, State construction permits have been made federally enforceable by an earlier program approval pursuant to 40 CFR part 51 subpart I (see 37 FR 10862, May 31, 1972 and 45 FR 11472, February 21, 1980). State operating permits will today be made federally enforceable by USEPA's approval of the State operating permit program. Section 9(b) of the State Act prohibits a person from violating any condition imposed by such a permit.

As discussed above, the provisions of 40 CFR 51.165 require federal enforceability in three matters, (1)

providing offsets, (2) defining potential to emit, and (3) providing creditable emission reductions for netting. Also, the term "federally enforceable" is mentioned in two other areas in the federal regulations (in the definition of allowable emissions and in the definition of major modification). The absence of the federally enforceable language from these areas in the State rules does not make the State rule less stringent than the federal requirement. For instance, State rule section 203.303, Baseline and Emission Offsets Determination, uses the term "enforceable by permit condition" to make an offset enforceable. All such offsets are federally enforceable since all of the permits in question are issued pursuant to USEPA-approved permitting programs and thus are federally enforceable. Specifically, the State construction permit program has been approved and the State operating permit program is approved in today's action.

In sections 203.107 (Allowable Emissions), 203.128 (Potential to Emit), and 203.208 (Net Emission Determination), the State uses the term "enforceable" and not "federally enforceable". USEPA discussed the interpretation of these terms with the State as they impact federal enforceability. The State clarified its interpretation of these terms in a February 27, 1992, letter from Bharat Mathur, Chief, Bureau of Air, IEPA to David Kee, Director, Region V, Air and Radiation Division, USEPA, which is part of the administrative record. The clarification, which is an express part of today's approval, indicates that Illinois interprets these terms so that federal enforceability is maintained. USEPA is, therefore, able to approve these sections.

B. Dual Source Definition

The State rule has a "dual definition of source" in contrast to a plantwide definition. The term "stationary source" as defined in section 203.136 includes any building, structure, facility or installation. The terms building, structure and facility are each defined in section 203.112 as encompassing all emitting activities at a plant, while the term "installation" in section 203.125 specifies identifiable pieces of equipment. Stationary source is defined in two ways (1) as all activities of a plant (plantwide) and (2) as each activity of a plant considered separately.

C. Vessel Emissions

The Illinois regulation section 203.112 defines source to include all activities of vessels and other conveyances transferring materials to and from a source as part of the source, irrespective of ownership or industrial grouping. This definition does not conflict with the implementation of the January 17, 1984, District of Columbia Court of Appeals remand of the Federal vessel emission rules to USEPA for further consideration. See *Natural Resources Defense Counsel* v. *USEPA* 725 F.2d 761 (C.A.D.C. 1984).

D. Stack Height

The June 26, 1987, **Federal Register** Notice proposing to approve the Illinois NSR rules indicated that the USEPA would not approve a NSR rule until the State's stack height rule is approved as a SIP revision. USEPA approved the Illinois stack height rule on August 14, 1989 (54 FR 32073).

E. Growth Allowance

USEPA is approving the definition of "available growth margin" in section 203.110 with the understanding that there is at present no growth allowance incorporated in the SIP. Any growth allowance that Illinois may seek to have incorporated in the SIP in the future must comply with the Clean Air Act and the USEPA policy. The Clean Air Act Amendments (CAAA) of 1990 restrict where new allowances may be established. Revised sections 172(c)(4) and 173(a)(1)(B) limit new growth allowances to only those portions of a nonattainment area which have been formally targeted for economic growth by the Administrator, in consultation with the Secretary of Housing and Urban Development.

IV. Public Comments

There were several comments on the proposed rule approval of June 26, 1987, and July 31, 1987. Those comments which relate specifically to the proposed approval of the State promulgated rule are addressed here.

A. Comment: One commenter felt that USEPA should have provided clearer guidance to the State with respect to vessel emissions, by recommending that stack emissions from vessels not be included in those attributed to a stationary source.

USEPA Response: As discussed above in III.C Vessel Emissions, USEPA recommendations to the State during the public comment period and regulation development period related only to the approvability of the State's proposal in light of the remand of the Federal vessel emission rules to USEPA by the District of Columbia Circuit Court of Appeals. Because USEPA's rules had been remanded, USEPA was unable at that time to state whether or not the forthcoming rules would require that vessel emissions be included in emissions attributed to a stationary source. USEPA was only able to advise the State that it could approve a rule which attributed vessel emissions to a stationary source.

B. Comment: The Ohio air pollution control agency encouraged the approval of the State promulgated rule rather than a federally promulgated rule because section 101(a)(3) of the CAA places the primary responsibility of controlling air pollution at the state level. The State encouraged the lifting of sanctions as rapidly as possible.

USEPA Response: None required.

C. Comment: IEPA made two comments with respect to the State promulgated rule. First, it fully supports federal approval of the rule. Second, it indicates that the IPCB changed from a plant-wide definition in its draft rule to the dual source definition in the final rule after USEPA indicated that, "while USEPA intended to propose the plant-wide definition, it could not state with certainty that it could in fact finally adopt that definition."

USEPA Response: USEPA is responding to this comment because of the potential inference that USEPA is promoting the dual source definition of source. This advice was provided to the State prior to the finalization of a policy under development for the approval of plant-wide definitions and during a time when the proposed approvals of plant-wide definitions were threatened with law suits. At that time, the dual source definition was clearly approvable under provisions of the CAA which allow a State to adopt more stringent requirements than those required to meet the federal NSR requirements. However, since that time, many jurisdictions have adopted the plant-wide definition after USEPA successfully defended the plant-wide definition in *Chevon U.S.A.* v. *Natural Resources Defense Council Inc.* 407 US 837 1984. Further the CAAA of 1990 endorse the plant-wide definition. For example, section 182(c)(6) provides that the new source review provisions shall ensure that increased emissions of volatile organic compounds shall not be considered de minimis for purposes of determining permit requirement applicability unless the increase aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years including the year in which the increase occurred is less than 25 tons. Thus, while Illinois remains free to adopt a dual source definition, that provision is not required by USEPA for approval of SIP revisions.

D. Comment: A group of Illinois industries asserted a preference for the plant-wide definition and opposed the Illinois promulgated rule with the dual source definition. The group reasoned that the plant-wide definition encouraged modernization more than the dual source definition would. Therefore, the air quality standards would be met faster and reasonable further progress would be maintained more easily.

USEPA Response: Because these commentors provided no evidence to support their contentions, USEPA need not respond to their claim that plant-wide definition is better for the environment. The dual source definition remains approvable under the federal regulations, so Illinois' submittal may be approved.

E. Comment: The State of Wisconsin opposes the lifting of sanctions in Illinois because it believes that section 110(a)(2)(i) of the CAA requires sanctions if the SIP does not meet the requirements of Part D. Wisconsin offers the following as proof that Part D requirements are not met: (1) the USEPA on July 14, 1987, proposed to disapprove the Illinois ozone SIP; (2) section 172(b)(8) requires emission limits, schedules of compliance and such other measures as may be necessary to meet the requirements of section 172, however, USEPA has not approved the SIPs for ozone, carbon monoxide, sulfur dioxide; and (3) with respect to section 172(b)(4), which requires a current emission inventory, the State of Illinois only updates one-fourth of its inventory of sources a year.

USEPA Response: It is USEPA's position that the construction ban was imposed specifically for the lack of an approvable NSR rule. Under the CAAA of 1977, section 110(a)(2)(I) of the statute required USEPA to place certain nonattainment areas under a federally imposed construction ban where the State failed to have an implementation plan meeting all of the requirements of part D of the CAA. The 1990 CAAA contains a Savings Clause in section 110(n)(3) that preserves certain existing 110(a)(2)(I) construction bans in place at passage, including bans imposed by virtue of a finding that the State did not have an adequate NSR permitting program as required by section 172(b)(6) of the 1977 CAAA. All other construction bans imposed pursuant to section 110(a)(2)(I) (except in SO_2 nonattainment areas) are lifted as a result of the new statutory provision. Thus, the 1990 CAAA does not impose categorically any new construction ban for failure to attain the NAAQS or failure to satisfy the 1977 CAAA requirements. Instead, the 1990 CAAA creates new schedules for meeting new planning and attainment requirements. If Illinois fails to meet these new deadlines, it will force certain statutorily-mandated sanctions—including higher offset ratios and loss of highway construction appropriations. Construction bans are no longer appropriate for the failure to achieve attainment or to comply with the attainment planning requirements. Accordingly, since USEPA is today approving NSR rules, the existing construction ban can be lifted.

While USEPA is today lifting this general construction ban, USEPA retains authority to impose a partial or complete construction ban should Illinois issue permits in a manner inconsistent with the NSR requirements of the CAAA.

The CAAA require Illinois to submit revised NSR nonattainment area plans by certain dates. The NSR plan for sulfur dioxide nonattainment areas which was due May 15, 1992, has not been submitted. The State's NSR particulate matter (PM) plan which is due June 30, 1992, has not been received. Revisions for ozone nonattainment areas are due November 15, 1992. As the deadlines for the submittal of NSR nonattainment area plans pass, USEPA will act on the State's submittals or lack thereof in a separate administrative action. USEPA may consider taking action under section 113(a)(5) if the State issues a major NSR permit in a nonattainment area without further updating the corresponding NSR plan to reflect the new requirements. See General Preamble, April 16, 1992 (57 FR 13498), at 13555–6.

F. Comment: Wisconsin commented that Illinois' NSR program is deficient because it does not have provisions which will ensure that construction or modification of minor sources will not interfere with attainment or maintenance of a national standard in nonattainment areas.

USEPA Response: The Illinois SIP revisions approved today provide adequate safeguards to protect the NAAQS from emissions increases associated with minor source growth. First, Illinois has a new source review program applicable to minor new sources and minor modifications that is included in the SIP pursuant to the requirement in CAA section 110(a)(2)(C) and 40 CFR 51.160 that all states adopt a permit or similar program to regulate the construction or modification of any stationary source. Section 201.142 of the Illinois regulations requires, as part of minor source preconstruction review, an assessment of the air quality impact of the new or modified minor source, and a prohibition against permit issuance where it would interfere with attainment of the NAAQS. In addition, section 203.302(a), obligates the State to secure offsets from new and modified major sources sufficient to assure reasonable further progress taking into account minor source growth. Finally, USEPA requires States to account for minor source growth as part of the State's attainment demonstration. See, e.g., General Preamble, 57 FR 13498, 13508 (April 16, 1992). The USEPA will thus have an opportunity to review and approve the State's strategy for countering any minor source growth as part of USEPA's approval of the attainment plan.

G. Comment: Wisconsin indicated that Illinois does not provide adequate public comment for minor sources and, therefore, the SIP is deficient and continuation of construction ban is required.

USEPA Response: Wisconsin's charge that Illinois fails to provide an adequate opportunity for public comment on all of its minor source permits does not require USEPA to continue the construction moratorium. The CAAA largely eliminated construction bans imposed by USEPA prior to passage of the 1990 Amendments. A saving clause, section 110(n)(3) of the CAAA, retains construction bans imposed by USEPA for the failure, *inter alia*, to submit a NSR permitting plan as required by section 172(b)(6) (now section 172(c)(5)) of the CAAA. As discussed, this is the type of construction ban now in effect in Illinois. Under section 110(n)(3), the ban only continues until the Administrator finds that the SIP of the area includes the NSR permitting requirements set forth in section 172(c)(5). That provision requires a NSR permitting program for the "construction and operation of new or modified *major* stationary sources anywhere in the nonattainment areas." (Emphasis added) By today's action, USEPA is approving a NSR permitting program for major stationary sources that satisfies section 172(c)(5). It is buttressed by a federally enforceable, minor source permitting program applicable to minor new sources and minor modifications to existing sources that affords public notice and comment for most minor source permits, including all synthetic minor permits [1]

[1] Synthetic minor permits are permits of sources whose potential to emit would subject them to prevention of significant deterioration (PSD) requirements but who chose to limit their potential to emit through an operating restriction or emission controls to escape PSD requirements.

and minor source permits that involve netting, the minor source permits most relevant to the major source program. Because USEPA today finds that Illinois has adopted an adequate NSR permitting program for major stationary sources, USEPA must comply with 110(n)(3) and lift the previously-existing construction ban. However, USEPA will continue to review Illinois' minor source permitting program as it is applied to all minor sources to ensure that it meets the requirements of USEPA regulations, including the public participation requirements set forth in 40 CFR 51.161.

V. Final Rulemaking Actions

1. After consideration of the material submitted by the State of Illinois which supplemented the permit program which was approved for the construction and operation of new sources and new modifications, USEPA has determined that State regulations and procedures are approvable in accordance with the five criteria published in the June 28, 1989, Federal Register for an operating permit program. USEPA approves the incorporation of this program into the SIP for the purpose of issuing federally enforceable operating permits. Therefore, emission limitations and other provisions contained in operating permits issued by the State in accordance with the applicable Illinois SIP provisions, approved herein, shall be federally enforceable by USEPA, and by any person in the same manner as other requirements of the SIP.

2. For the reasons stated above, and in consideration of the public comments received in response to the proposed rulemaking, USEPA approves the incorporation of the Illinois NSR rules into the SIP. These rules are contained in Illinois Administrative Code, Title 35 Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Part 203: Major Stationary Sources Construction and Modification.

3. As a consequence of the two rulemaking actions listed above, USEPA is lifting the growth moratorium in all primary nonattainment areas which has been in effect since May 26, 1981, when the United States Court of Appeals for the Seventh Circuit overturned USEPA's earlier approval of the NSR rules for Illinois on State law procedural grounds in *Citizens for a Better Environment* v. *United States* 649 F.2d 522 (7th Cir. 1981).

Because USEPA considers the approval of the Illinois operating permit program as satisfying the 1989 federally enforceable criteria to be noncontroversial, it is approving Illinois' operating permit program today without prior proposal. This action will be effective (60 days from the date of publication) unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted bearing solely on this finding, that the operating permit program satisfies the 1989 federally enforceable criteria.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on February 16, 1993.

USEPA believes that federal enforceability of the State's operating permit program is a necessary requirement for federal approval of the States' NSR rules. Therefore, if USEPA withdraws its finding regarding the State's operating permit program it will also withdraw its approval of the NSR rules unless a suitable mechanism for ensuring federal enforceability of offset and other NSR requirements can be identified. Final rulemaking on the State's NSR rules thus may be held in abeyance until final rulemaking is taken on the operating permit program.

Similarly, USEPA cannot lift the growth moratorium in all primary nonattainment areas until the NSR rules are approved for incorporation in the SIP. Therefore, USEPA will withdraw its rulemaking lifting the growth moratorium if it withdraws its approval of the NSR rules. The growth moratorium will not be lifted until USEPA approves the incorporation of NSR rules into the SIP.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 29, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 52, title 40 of the Code of Federal Regulations is amended.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraphs (c)(84) and (c)(85) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(84) On September 18, 1991, and November 18, 1991, the State submitted documents intended to satisfy federal requirements for an operating permit program which can issue federally enforceable operating permits.

(i) Incorporation in Reference.

(A) Public Act 87–555, an Act to amend the Environmental Protection Act by changing section 9.1, effective September 17, 1991. (Ch. 111 1/2, par. 1009.1) par. 1009.1(a), (b), (c), (d) and (f).

(85) On March 24, 1988, the State submitted rules for issuance of construction permits to new and modified air pollution sources located in or affecting nonattainment areas (New Source Review rules).

(i) Incorporation by reference.

(A) Illinois Administrative Code, Title 35 Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Part 203: Major Stationary Sources.

3. Section 52.736 is revised by removing and reserving paragraph (a) and adding paragraph (b).

§ 52.736 Review of new sources and modifications.

(a) [Reserved]

(b) The rules submitted by the State on March 24, 1988, to satisfy the requirements of the Clean Air Act are approved. These rules are part 203: Major Stationary Sources Construction

and Modification as effective March 22, 1991. The moratorium on construction and modification of new sources in nonattainment areas as provided in section 110(a)(2)(I) of the Clean Air Act is revoked.

4. Section 52.737 is added to read as follows:

§ 52.737 Operating permits.

Emission limitation and other provisions contained in operating permits issued by the State in accordance with the provisions of the federally approved permit program shall be the applicable requirements of the federally approved Illinois SIP for the purpose of section 113 of the Clean Air Act and shall be enforceable by USEPA and by any person in the same manner as other requirements of the SIP. USEPA reserves the right to deem an operating permit not federally enforceable. Such a determination will be made according to appropriate procedures, and be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements or the requirements of USEPA's underlying regulations.

[FR Doc. 92-30440 Filed 12-16-92; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-34

[FPMR Amendment E-273]

Supply Support for Disasters and National Security Emergencies

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation cancels the authority for GSA Handbook, Emergency Supply Support Operations, which is no longer needed and provides changes for acquiring personal property and nonpersonal services from GSA during major disasters and national emergencies. These changes are necessary to reflect the broad scope of emergency response situations and provide a basic framework for GSA supply support. It is anticipated that this framework will be utilized Governmentwide for incorporation into emergency plans and procedures.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: William M. Wilson, Office of Strategic Planning and Marketing (703-305-7992).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-34

Government property management, Emergency supply support.

For the reasons set forth in the preamble, 41 CFR part 101-34 is amended to read as follows:

PART 101-34—EMERGENCY SUPPLY SUPPORT

1. The authority citation for part 101-34 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. The heading of part 101-34 is revised as set forth above.

3. Section 101-34.000 is revised to read as follows:

§ 101-34.000 Scope of part.

This part provides for GSA supply support to Federal agencies during major natural and technological disasters and national security emergencies.

4. Section 101-34.001 is revised to read as follows:

§ 101-34.001 Applicability.

The provisions of this part are applicable to all executive agencies.

§ 101-34.002 and 101-34.003 [Removed]

5. Sections 101-34.002 and 101-34.003 are removed.

Subpart 101-34.1—Emergency Operations

6. The heading of subpart 101-34.1 is revised.

7. Section 101-34.100 is revised to read as follows:

§ 101-34.100 Scope of subpart.

This subpart provides for acquiring personal property and nonpersonal services from GSA during major disasters and national emergencies.

8. Section 101-34.101 is revised to read as follows:

§ 101-34.101 Requests for GSA support in acquiring supplies and services.

(A) Normal or established emergency FEDSTRIP/MILSTRIP requisitioning and order processing procedures shall be followed (refer to the latest editions of the GSA Supply Catalog or the GSA Federal Supply Service Customer Assistance Guide for general information). Ordering agencies shall use normal or emergency funding citations. When emergency conditions result in material shortages or other developments occur, changes may be instituted in supply methods or procedures.

(b) Requisitions and requests for acquisition support shall be processed in accordance with the assigned priority designator code and/or the assigned Defense Priorities and Allocations System (DPAS) rating.

(c) All agencies are encouraged to pre-position stocks of essential supplies and equipment to allow for 15-30 days of operation at their emergency operating facilities. Agencies supporting Federal response plans should maintain sufficient stocks of essential supplies, equipment, and materials to operate response elements independently for up to 7 days. A regularly maintained list of items expedites inventorying, stocking, and replenishment.

9. Section 101-34.102 is revised to read as follows:

§ 101-34.102 GSA emergency operation and coordination centers, and customer service director program.

(a) GSA will establish, based on the severity of the emergency, an emergency operation center at GSA Central Office. Emergency coordination centers may also be established at each GSA service headquarters and/or regional offices. Continuous 24-hour operation will be provided when necessary.

(b) Regional field supply liaison services are normally provided through the customer service director (CSD) program. Located in every GSA region and overseas, the CSD program will continue to provide assistance during an emergency.

§§ 101-34.103, 101-34.104 and 101-34.105 [Removed]

10. Sections 101-34.103, 101-34.104, and 101-34.105 are removed.

Subpart 101-34.2 (§ 101-34.200)—[Removed and Reserved]

11. Subpart 101-34.2 (§ 101-34.200) is removed and reserved.

Dated: November 19, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–30623 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 92–058]

Tonnage Measurement of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its tonnage measurement regulations for vessels by updating the list of organizations authorized to measure vessels, by extending application of the Simplified Measurement System to all barges over 79 feet in overall length not engaged on a foreign voyage, and by eliminating, in most instances, the need to file an additional form for Simplified Measurement. These amendments are necessary to update the regulations and align them with changes in the tonnage measurement laws.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Donald W. Goebel, Vessel Documentation and Tonnage Survey Branch, (202) 267–1103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principle persons involved in drafting this document are Mr. Donald W. Goebel, Project Manager, Vessel Documentation and Tonnage Survey Branch, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Regulatory Information

This rule is being issued as a final rule without opportunity for public comment and made effective on the date of publication in the **Federal Register**. This rulemaking is limited to the following administrative changes and corrections:

1. It aligns 46 CFR 69.11 with statutory changes intended to relieve the burden on barge owners by allowing them to use the less costly, quicker Simplified Measurement System on their barges of 79 feet or more in overall length not engaged on a foreign voyage.

2. It updates 46 CFR 69.15(a) by adding the name of a second organization to the list of organizations already approved by the Coast Guard to measure vessels. This change benefits vessel owners and operators by informing them of an additional source for measurement services.

3. It reduces the paperwork burden on vessel owners by eliminating, in most instances, the need to complete an additional application form when the data is available already on another Coast Guard form.

4. It corrects three minor printing errors in the existing regulations.

For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. 553 (b)(B) and (d)(3), that notice and public procedure thereon before the effective date of the final rule are unnecessary and that the final rule should be made effective in less than 30 days after publication.

Discussion of Changes

1. On November 16, 1990, Public Law 101–595 amended the vessel tonnage measurement law (46 U.S.C. subtitle II, part J) so as to allow all barges ("non-self-propelled vessels") of 79 feet or more in overall length not engaged on a foreign voyage to be measured under the Simplified Measurement System. This rulemaking amends 46 CFR 69.11 to align the tonnage measurement regulations with the statutory amendment.

2. This rulemaking updates 46 CFR 69.15(a), which lists the organizations authorized by the Coast Guard to measure vessels, by adding Det Norske Veritas Classification (USA) Inc. (DNV/USA). Under 46 U.S.C. 14103, the Coast Guard is authorized to delegate the authority to measure vessels and to issue appropriate certificates of measurement for U.S. vessels. Section 69.27 of title 46 of the Code of Federal Regulations sets forth the procedures by which an organization qualifies for such a delegation. On March 12, 1992, the Coast Guard approved the application of DNV/USA for delegation of this authority. This rulemaking simply adds DNV/USA's name to 46 CFR 69.15(a), the provision listing these authorized organizations.

3. This rulemaking allows vessels owners applying for measurement under the Simplified Measurement System to submit a form completed by vessel's builder instead of the application form specified in 46 CFR 69.205. Coast Guard form CG–1261, entitled "Builder's Certification and First Transfer of Title," has been revised to request the same information regarding the vessel's dimensions as that requested by the form presently specified (form CG–5397, entitled "Application for Simplified Measurement"). (The revised form CG–1261, as approved by the Office of Management and Budget on April 14, 1992, is illustrated on page 10570 of volume 57 of the **Federal Register** (March 16, 1992)). Thus, if the vessel's builder has completed a revised form CG–1261, the vessel's owner may submit that form to apply for Simplified Measurement instead of form CG–5397. This option simply relieves the vessel's owner of the burden of compiling the necessary information and completing a form.

4. This rulemaking corrects three minor printing errors in the regulations. In 46 CFR 69.5(a)(4), the word "Commandment" should read "Commandant". The reference in 46 CFR 69.119 to "§ 69.177(g)(3)" should read "§ 69.117(g)(3)". There is no § 69.177(g)(3). In the section heading for 46 CFR 69.169, the word "except" should read "exempt".

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This rule is administrative in nature and conforms the vessel tonnage measurement regulations to a statutory amendment, updates the list of organizations delegated measurement authority by the Coast Guard, and provides an optional application form. The only impact this rule will have results from eliminating, in most instances, the need to complete a Coast Guard form CG–5397 to apply for Simplified Measurement. This will save approximately one hour per application or a total of 10,000 hours per year industry wide.

Small Entities

As a rule not required to be published first as a notice of proposed rulemaking, this rule is exempt from the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule aligns existing regulations with a statutory amendment, references a Coast Guard delegation of authority already in effect, and eliminates, in most instances, the need to complete an application form. This rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The collection of information burden imposed on vessel owners by 46 CFR 69.205 would be lessened by the submission of form CG–

1261, if one has been completed by the vessel's builder.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is administrative in nature and concerns the procedures for measuring vessels. It clearly has no environmental impact. A Categorical Exclusion Determination is available in docket for inspection or copying at the office of the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593–0001.

List of Subjects in 46 CFR Part 69

Measurement standards, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 69 as follows:

PART 69—MEASUREMENT OF VESSELS

1. The authority citation for part 69 continues to read as follows:

Authority: 46 U.S.C. 14102, 14103; 49 CFR 1.46. Sec. 69.27 issued under 44 U.S.C. 3507; 49 CFR 1.45.

§ 69.5 [Amended]

2. In § 69.5, paragraph (a)(4), remove the word "Commandment" and add, in its place, the word "Commandant".

3. In § 69.11, paragraph (a)(2)(vi) is added and paragraph (d) is revised to read as follows:

§ 69.11 Determining the measurement system or systems for a particular vessel.

(a) * * *

(2) * * *

(vi) A non-self-propelled vessel not engaged on a foreign voyage, unless the owner requests measurement under this system.

* * * * *

(d) *Simplified Measurement System (subpart E).* This system may be applied, at the owner's option, instead of the Standard Measurement System to the following vessels:

(1) A vessel that is under 79 feet in overall length.

(2) A vessel of any length that is non-self-propelled and not engaged on a foreign voyage.

(3) A vessel of any length that is operated only for pleasure and operated only on the Great Lakes.

4. In § 69.15, paragraph (a) is revised to read as follows:

§ 69.15 Organizations authorized to measure vessels.

(a) Except as under paragraphs (c) and (d) of this section, all U.S. vessels to be measured or remeasured under the Convention, Standard, or Dual Measurement Systems must be measured by the American Bureau of Shipping (ABS Americas) or Det Norske Veritas (DNV/USA). Applications for measurement must be directed to ABS Americas, 16855 Northchase Drive, Houston, TX 77060–6008, (713) 874–6416, or to Det Norske Veritas Classification (USA) Inc., 80 Grand Avenue, suite 201, River Edge, NJ 07661, (201) 488–0112.

* * * * *

§ 69.119 [Amended]

5. In § 69.119, paragraph (c), remove "§ 69.177(g)(3)" and add, in its place, "§ 69.117(g)(3)".

69.169 [Amended]

6. In § 69.169, in the section heading, remove the word "except" and add, in its place, the word "exempt".

7. Section 69.205 is revised to read as follows:

§ 69.205 Application for measurement services.

To apply for measurement under the Simplified Measurement System, the owner of the vessel must complete and submit a current issue of Coast Guard form CG–5397 or submit a completed, current issue of Coast Guard form CG–1261 to the Coast Guard Port of Documentation Office at the port where the vessel will be documented. (See part 67, appendix D, of this chapter for a list of these offices.)

Dated: November 2, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–30499 Filed 12–16–92; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 517 and 552

[APD 2800.12A, CHGE 43]

General Services Administration Acquisition Regulation; Use and Exercise of Options

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise Subpart 517.2, Options, to facilitate the use and exercise of options in appropriate circumstances and link the use and exercise of options with GSA's objective of pursuing longer term contractual relationships with quality vendors. The change also adds section 552.217–71 to provide the text of the provisions, Notice Regarding Option(s).

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Background

GSA has obtained a class deviation from the current Federal Acquisition Regulation (FAR) coverage on the use of options in order to support its Quality Contractor Program. However, GSA believes these changes may be appropriate for Governmentwide use. Accordingly, GSA will recommend the Civilian Agency Acquisition Council consider establishing a FAR case to examine whether the FAR should be revised in a similar manner.

B. Public Comments

This rule was published in the **Federal Register** for public comment on March 13, 1992 (57 FR 8856). Public comments supporting the proposed rule were received from the Laborers' International Union of North America and the Association for Information and Image Management. Specific comments were also received from the American Bar Association on several sections of the proposed rule. All public comments and comments from GSA contracting activities were considered in formulating this final rule.

C. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

D. Regulatory Flexibility Act

GSA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

E. Paperwork Reduction Act

This rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 517 and 552

Government procurement.

1. The authority citation for 48 CFR parts 517 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 517—OPTIONS

2. Section 517.200 is added to read as follows:

517.200 Scope of subpart.

This subpart prescribes policies and procedures for the use and exercise of options. When a requirement in this subpart is inconsistent with FAR 17.2, this subpart takes precedence. When a requirement of this subpart is inconsistent with GSAR 536.6, the latter subpart takes precedence. A class deviation from the FAR has been approved to implement GSA's Quality Contractor Program. This subpart applies to contracts including those for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; (c) automatic data processing (ADP) equipment and systems; and (d) telecommunications equipment and services.

517.201 [Removed]

3. Section 517.201 is removed.

4. Section 517.202 is added to read as follows:

517.202 Use of options.

(a) The inclusion of options in contracts under appropriate circumstances is encouraged. The use of options may reduce procurement lead time and associated costs, ensure continuity of contract support, improve overall contractor performance, and facilitate longer term contractual relationships with those contractors that continuously meet or exceed quality performance expectations outlined in the contract.

(b) Inclusion of an option is normally in the Government's interest where—

(1) Additional supplies or services may be required during the contract term;

(2) Additional supplies or services may be required beyond the initial contract term and either multiyear contracting authority is not available or its use is inappropriate;

(3) There is a need for continuity of supply or services support;

(4) Funds are not available for the entirety of the Government's needs, but are likely to become available during the contract term; or

(5) The contract is with an emerging small business with minimal performance history in the contract supply or service and the basic quantity is intended to be a learning or testing quantity.

(c) Inclusion of an option may not be appropriate where the circumstances described in FAR 17.202(b)(2) and 17.202(c) (1) and (3) exist or where the market prices for the supplies or services are likely to change substantially and an economic price adjustment clause will not adequately protect the Government's interests.

5. Section 517.203 is added to read as follows:

517.203 Solicitations.

Solicitations containing options to extend (see FAR 17.208 (f) and (g)) should normally inform offerors of the potential for entering into a long term contractual relationship with the GSA subject to a continuing need and the successful offeror's ability to perform at levels which meet or exceed the agency's quality performance expectations.

6. Section 517.204 is revised to read as follows:

517.204 Contracts.

The head of the contracting activity must approve exceeding the 5-year limitations specified in FAR 17.204(e) for individual contracts. The Associate Administrator for Acquisition Policy must approve requests to exceed the limitations for classes of contracts. The contract file for individual approvals and the requests for approval of classes of contracts must support the need to exceed the 5-year limitation. This section does not apply to contracts for automatic data processing (ADP) equipment and systems or to contracts for telecommunications equipment and services.

7. Section 517.207 is revised to read as follows:

517.207 Exercise of options.

(a) If the option was not evaluated as part of the original competition, a synopsis of the option before it is exercised is required unless exempt under FAR 5.202.

(b) In addition to the items listed in FAR 17.207(d), the contracting officer may consider whether the contractor's performance under the contract has met or exceeded the Government's expectation for quality performance, or whether another circumstance exists that would warrant an extended contractual relationship when deciding whether to exercise an option. The contracting officer must always determine the option price(s) is fair and reasonable before exercising an option.

8. Section 517.208 is revised to read as follows:

517.208 Solicitation provisions and contract clauses.

(a) In addition to other applicable provisions or clauses related to options, the contracting officer shall insert a provision substantially the same as the provision at 552.217–71, Notice Regarding Option(s), in solicitations for supplies or services when necessary to inform offerors of the importance GSA will place on past performance when considering whether to exercise options.

(b) The contracting officer shall insert a provision substantially the same as the provision at 552.217–70, Evaluation of Options, in solicitations for procurements under the Federal Supply Service (FSS) stock or special order program when (1) the solicitation contains an option to extend the term of the contract and (2) a firm-fixed price contract with economic price adjustment based on the Producer Price Index or alternative indicator of market price changes is contemplated.

9. Section 552.217–71 is added to read as follows:

552.217–71 Notice Regarding Option(s).

As prescribed in 517.208(a), insert the following provision:

Notice Regarding Option(s) (Nov 1992)

The General Services Administration (GSA) has included an option to [Insert "purchase additional quantities of supplies or services" or "extend the term of this contract" or "purchase additional quantities of supplies or services and to extend the term of this contract"] in order to demonstrate the value it places on quality performance by providing a mechanism for continuing a contractual relationship with a successful Offeror that performs at a level which meets or exceeds GSA's quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the contractor's past performance under this contract in accordance with 48 CFR 517.207.

(End of Provision)

Dated: December 7, 1992.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92-30450 Filed 12-16-92; 8:45 am]

BILLING CODE 6820-61-M

Proposed Rules

Federal Register
Vol. 57, No. 243
Thursday, December 17, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period relating to a proposed rule that would amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480) and also sets forth the basis for the Regulatory Flexibility Act certification in the preamble of such proposed rule.

DATES: Consideration will be given to written comments submitted in duplicate on or before January 13, 1993.

ADDRESSES: Comments should be sent to Christopher E. Goldthwait, Acting General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, room 4071 South Building, 14th and Independence, SW., Washington, DC 20250–1000.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, room 4549 South Building, U.S. Department of Agriculture, 14th and Independence, SW., Washington, DC 20250–1000. Telephone (202) 720–3664.

SUPPLEMENTARY INFORMATION: On November 12, 1992, we published in the **Federal Register** (57 FR 53607) a proposed rule that would amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480).

The preamble to the proposed rule included a certification that the rule would not have a significant economic impact on a substantial number of small entities. The entities impacted by the proposed rule would be those engaged in shipping agent activities. We are not aware of any shipping agents that are "small entities" that are presently involved in the types of activities being limited by the proposed rule. As regards the proposal to cap the level of commissions payable on a Title I, Public Law 480 transaction, we do not believe that this would result in any significant economic impact since most vessel offers are submitted by a ships broker, which shares in the 2½% brokerage commission. Also, any reduced income would, in large part, be offset by savings due to prohibitions on payments and benefits which have been permitted in the past.

Comments on the proposed rule were required to be submitted by December 14, 1992. However, in response to requests received we are extending this comment period to January 13, 1993. This extension will allow interested persons additional time in which to prepare comments on the proposed rule.

Signed at Washington, DC on December 11, 1992.

Christopher E. Goldthwait,

Acting General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 92–30549 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 401

RIN 1028–AA03

State Water Research Institute Program

AGENCY: U.S. Geological Survey, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Geological Survey (USGS) is proposing to amend the procedures used to evaluate the State Water Research Institutes to implement the changes to the Water Resources Research Act of 1984. This action is intended to reduce costs associated with the evaluation process for both the USGS and the institutes. The USGS is also proposing to remove references to obsolete documents, revise and clarify the requirements for new institutes, revise the requirements for expenditure of unobligated funds, and make other minor changes to bring the regulation in compliance with the amended Act.

DATES: Comments must be received on or before January 19, 1993.

ADDRESSES: Comments should be addressed to the Chief Hydrologist, U.S. Geological Survey, 424 National Center, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Allen Ford, Office of External Research, U.S. Geological Survey, Water Resources Division, 424 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, (703) 648–6806.

SUPPLEMENTARY INFORMATION:

Background

The State Water Research Institutes authorized by the Water Resources Research Act of 1984 (Pub. L. 98–242, 98 Stat. 97) and reauthorized by Water Research Institutes Authorization Through Fiscal Year 1994 (Pub. L. 101–397, 104 Stat. 852) support research, education, and information transfer activities. The 54 institutes in the program are administered and periodically evaluated under the provisions of 30 CFR part 401, adopted in May 1985. The reauthorization amended several provisions of the Water Resources Research Act of 1984, and the USGS is accordingly proposing minor revisions to the rule guiding the administration and evaluation of the institutes.

The existing rule guiding the evaluation of the institutes requires that five person teams visit each of the 54 institutes at least once every 5 years. The USGS is proposing minor revisions to the rule pertaining to institute evaluations by amending subpart E of 30 CFR 401.26 which describes the procedures used to evaluate the State Water Research Institutes. The reauthorization amends section 104(e) of the Water Resources Research Act of 1984 to give the Secretary of the Interior more discretion in the evaluation process. This action would revise the rule pertaining to institute evaluations such that: The size of the evaluation team could be decreased and its

composition changed; the evaluation team would visit only those institutes it considered, on the basis of submitted documentation, to be potential candidates for probation; the composition of the evaluation team would be changed; the evaluation team would consider only those institute activities funded under section 104 of the Water Resources Research Act of 1984; evaluation criteria not directly related to performance of the institutes would be eliminated; the evaluation team would be allowed more time to submit a written report of its findings. The proposed changes would: Lower the cost of the evaluation process to both the granting agency and the institutes by minimizing the number of institute site visits; permit greater consistency in the evaluation process by using, to the extent possible, only one evaluation team for all institutes; and base the evaluation only on demonstrated performance in the use of section 104 grants.

Section 401.11(a) of the rule requires that, if the full amount of the available grant funds for any fiscal year has not been requested as of the closing date for receipt of applications, any remaining funds shall be made available to the institutes for amended applications. The USGS is proposing to revise this section to state that any such remaining funds be made available to support competitively selected research projects under the terms of section 104(g) of the Act, as required by the reauthorization.

The USGS is proposing to amend § 401.11(g) to state that Federal funds received by the institutes shall be matched on a basis of no less than two non-Federal dollars for each Federal dollar, as required by the reauthorization.

The USGS is proposing to amend § 401.12(c) to remove references to obsolete documents and add references to new documents guiding the institutes' administration of the grants received under section 104 of the Act.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the location identified in the ADDRESS section of this preamble. Comments must be received on or before January 19, 1993.

Required Analyses

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed action will promote efficiency and economy by reducing costs for both the Government and the institutes. Therefore, it will not adversely affect the economy of the Nation or any small entity.

Environmental Effects

This action will have no potential for significant environmental impact and is categorically excluded from the requirements for compliance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 83 Stat. 852)

Paperwork Reduction Act

The information collection requirements in §§ 401.11 and 401.19 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance number 1028–0044.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed regulation meets the standards provided in Sections 2(a) and 2(b) of Executive Order No. 12778.

Author

The principal author of this proposed rule is Allen Ford, Water Resources Division, U.S. Geological Survey.

The Catalog of Federal Domestic Assistance program affected is No. 15.805, Assistance to State Water Research Institutes.

List of Subjects in 30 CFR Part 401

Colleges and universities, Grants programs-natural resources, Research, Water Resources.

For the reasons set out in the preamble, 30 CFR chapter IV is proposed to be amended as follows:

PART 401—STATE WATER RESEARCH INSTITUTE PROGRAM

1. The Authority citation for 30 CFR part 401 is revised to read as follows:

Authority: 42 U.S.C. 10303.

Subpart A—General

2. Section 401.4 is revised to read as follows:

§ 401.4 Information Collection.

(a) The information collection requirements contained in §§ 401.11 and 401.19 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1028–0044. The information will be used to support water related research and provide performance reports on accomplishments achieved under Pub. L. 98–242, 98 Stat. 97 (42 U.S.C. 10303). This information allows the agency to determine compliance with the objectives and criteria of the grant programs. Response is mandatory in accordance with 30 CFR 401.11 and 401.19.

(b) Public reporting burden for the collection of information is estimated to average 84 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing the burden, to Paperwork Management Officer, U.S. Geological Survey, Paperwork Management Section, MS 208, Reston, Virginia, 22092 and the Office of Management and Budget, Paperwork Reduction Project (1028–0044), Washington, DC 20503.

Subpart B—Designation of Institutes; Institute Programs

3. Section 401.6 is amended by revising paragraph (c)(2) to read as follows:

§ 401.6 Designation of Institutes.

* * * * *

(c) * * *

(2) A management plan for meeting the requirements of the evaluation mandated by § 401.26.

Subpart C—Application and Management Procedures

4. Section 401.11 is amended by revising paragraphs (a) and (g) to read as follows:

§ 401.11 Application for grants.

(a) Subject to the availability of appropriated funds, but not to exceed a total of $10 million, an equal amount of dollars will be available to each qualified institute in each fiscal year to assist it in carrying out the purposes of the Act. If the full amount of the appropriated funds is not obligated by the close of the fiscal year for which they were appropriated, the remaining funds shall be made available in the succeeding fiscal year to support competitively selected research projects under the terms of section 104(g) of the Act. Selection and approval of such projects shall be based on criteria to be determined by the Director.

Announcement of such criteria shall be made by notice in the Federal Register. The granting agency may retain an amount up to 15 percent of total appropriation for administrative costs.

* * * * *

(g) The application shall provide assurance that non-Federal dollars will be available to share the costs of the proposed program. The Federal funds are to be matched on a basis of no less than two non-Federal dollars for each Federal dollar.

* * * * *

5. Section 401.12 is amended by revising paragraph (c) to read as follows:

§ 401.12 Program management.

* * * * *

(c)(1) Acceptance of the award document certifies the grantee's assurance that the grant will be administered in compliance with OMB regulations, policies, guidelines, and requirements as described in:

(i) Circular No. A–21, revised, Cost Principles of Educational Institutions;

(ii) Memorandum No. M–92–01, Coordination of Water Resources Information;

(iii) Circular No. A–88, revised, Indirect Cost Rates, Audit and Audit Followup at Educational Institutions;

(iv) Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations; and

(v) Circular No. A–124, Patents-Small Business Firms and Nonprofit Organizations.

(2) Copies of the documents listed in paragraph (c)(1) of this section shall be available from the granting agency.

Subpart E—Evaluation

6. Section 401.26 is revised to read as follows:

§ 401.26 Evaluation of institutes.

(a) Within 2 years of the date of its certification according to the provisions of § 401.6, each institute will be evaluated for the purpose of determining whether the national interest warrants its continued support under the provisions of the Act. That determination shall be on:

(1) The quality and relevance of its water resources research as funded under the Act;

(2) Its effectiveness as an institution for planning, conducting, or arranging for research;

(3) Its demonstrated performance in making research results available to users in the State and elsewhere; and

(4) Its demonstrated record in providing for the training of scientists through student involvement in its research program.

(b) An evaluation team, selected by the granting agency on the basis of the members' knowledge of water research and administration, shall evaluate each institute, and may with the concurrence of the granting agency, visit such institutes as it considers necessary. The team is to include at least one individual from the following categories:

(1) Employees of the Department of the Interior;

(2) University faculty or other professionals with relevant experience in the conduct of water resources research;

(3) Former directors of water research institutes; and

(4) University faculty or other professionals with relevant experience in information transfer.

(c) The granting agency may request recommendations for team selections from the National Research Council/National Academy of Sciences and from other organizations whose members include the types of individuals cited in paragraph (b) of this section.

(d) The granting agency shall, as an administrative cost, provide the funds for travel and per diem expense of the team members, within the maximum limits allowable under Federal travel regulations (41 CFR subtitle F).

(e) The granting agency has the right to select dates for evaluation visits, and notice of the team's visit shall be provided to the institute being evaluated at least 60 days in advance.

(f) It shall be the responsibility of each institute to provide such documentation of its activities and accomplishments as the granting agency and evaluation team may reasonably request. The request for this documentation shall be made at least 60 days prior to the due date of its receipt.

(g) The team shall, within 90 days after completion of its evaluation, submit a written report of its findings to the granting agency for transmittal to the institute. If an institute is found to have deficiencies in meeting the objectives of the Act, it shall be allowed 1 year to correct them and to report such action to the granting agency. The decision as to the institute's eligibility to receive further funding will rest with the granting agency.

(h) After the initial evaluation, each institute shall be reevaluated at least every 5 years.

Dated: November 16, 1992.

Harlan L. Watson,

Principal Deputy Assistant Secretary—Water and Science.

[FR Doc. 92–30471 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–112]

Drawbridge Operation Regulations; Okeechobee Waterway, Fort Myers, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Lee County, (the bridge owner), the Coast Guard proposes to change the regulations governing the Sanibel Causeway Drawbridge over San Carols Bay at Punta Rassa, by requiring a five (5) minute advance notice prior to opening of the bridge during certain hours. This action should relieve the bridge owner of the burden of having a bridge tender at the bridge site constantly available to open the draw, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before February 1, 1993.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–112] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be

submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Background and Purpose

The Sanibel Causeway Drawbridge which crosses San Carlos Bay, Okeechobee Waterway mile 151, presently opens on-signal except that from 11 a.m. to 6 p.m., the draw opens only on the quarter hour. The bridge owner has requested that from 10 p.m. to 6 a.m., the bridge be untended and allowed to open on signal if at least a five minute advance notice is given. The purpose of the request is to reduce the burden of staffing the bridge with full time bridgetenders during nighttime hours.

Discussion of Proposed Amendments

For the nighttime hours, statistics show that the span opens only once every third night during the hours requested. The bridge owner operates a toll booth East of the draw span. It operates 24 hours per day. Personnel at the toll booth will monitor a marine radio and dispatch an attendant to the bridge to operate the drawspan. This proposal should reduce the operating costs for the owner while still providing for the reasonable needs of navigation on the Okeechobee Waterway. Public vessels of the United States, vessels owned or operated by the state, county, or local government and used for public safety purposes, or vessels in a situation where a delay would endanger life or property shall, upon proper notification, be passed at any time.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979.) The Coast Guard expects the economic impact of this proposal to be so minimal that a regulatory evaluation is unnecessary. We conclude this because the bridge owner has agreed to open the draw with a five minute advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632.) Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.317, paragraph (k) is revised to read as follows:

§ 117.317 Okeechobee Waterway

* * * * *

(k) *Sanibel Causeway bridge, mile 151 at Punta Rassa.* The draw shall open on signal; except that from 11 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. to 6 a.m. the draw will open on signal if at least a five minute advance notice is given. Exempt vessels shall be passed at any time.

Dated: December 2, 1992.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 92–30501 Filed 12–16–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–56]

Drawbridge Operation Regulations; Hillsborough River, Tampa Bay, Northern Part, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Tampa, Hillsborough County and the Florida Department of Transportation (FDOT), (the bridge owners), the Coast Guard proposes to change the regulations governing seven drawbridges over the Hillsborough River by requiring two hour advance notice prior to opening the bridges. This action should relieve the bridge owners of the burden of having to staff the bridges with full-time bridge tenders to open the draws, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before February 1, 1993.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (305) 536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will

be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD7–92–56) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Background and Purpose

The drawbridges at Kennedy Blvd., Platt Street, Brorein Street, Cass Street, and Laurel Street which cross the Hillsborough River, presently open on signal from 9 a.m. to 4 p.m., Monday through Friday and from 8 a.m. to 6 p.m. Saturdays, Sundays and Federal holidays. At all other times they open on signal if at least a two hour notice is given. The West Columbus Drive Drawbridge and West Hillsborough Drive Drawbridge open on signal from 8 a.m. to 6 p.m. At all other times the draws open on signal if at least a one hour notice is given. The bridge owners have requested that all seven bridges be allowed to open on signal if at least a two hour advance notice is given. The purpose of the request is to reduce the burden of staffing the bridges with full-time bridgetenders.

Discussion of Proposed Amendments

The three bridge owners have agreed to a single point of contact (POC) for navigation to begin the bridge opening sequence within two hours of a request. Public vessels of the United States, vessels owned or operated by the state, county, or local government and used for public safety purposes, or vessels in a situation where a delay would endanger life or property shall, upon proper notification, be passed through each drawbridge as soon as possible.

A Coast Guard evaluation of the proposal concluded that none of the bridges opened more than two times per day during the last several years.

This proposal should reduce the operating costs for the owners while still providing for the reasonable needs of navigation on the Hillsborough River.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a regulatory evaluation is unnecessary. We conclude this because the bridges seldom open for commercial navigation and the bridge owners have agreed to open the draws as quickly as possible after notification in specified circumstances such as a situation where a delay would endanger life or property.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In section 117.291, paragraph (c) is removed and paragraph (a) is revised to read as follows:

§ 117.291 Hillsborough River.

(a) The draws of the bridges at Platt Street, mile 0.0, Brorein Street, mile 0.16, Kennedy Boulevard, mile 0.4, Cass Street, mile 0.7, Laurel Street, mile 1.0, West Columbus Drive, mile 2.3, and West Hillsborough Avenue, mile 4.8, shall open on signal if at least two hours notice is given; except that, the draws shall open on signal as soon as possible after a request by a public vessel of the United States, a vessel owned or operated by the State, county or local government and used for public safety purposes, or a vessel in distress.

* * * * *

Dated: December 2, 1992.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 92–30502 Filed 12–16–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7057]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Fedealism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)
TENNESSEE	
Murfreesboro (City), Rutherford County	
Bear Branch:	
At Oakland School Road	*564
At Wenlon Road	*610
Maps available for inspection at the City Hall, 200 N.W. Broad Street, Murfreesboro, Tennessee.	
Send comments to The Honorable Joe B. Jackson, Mayor of the City of Murfreesboro, Rutherford County, P.O. Box 1139, Murfreesboro, Tennessee 37133–1139.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of Carefree, Maricopa County.	Grapevine Wash	Approximately 1,300 feet upstream of the confluence with Rowe Wash.	None	*2,517
			Approximately 0.51 mile upstream of Father Kino Trail.	None	*2,725
		Galloway Wash-North Tributary.	Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash.	None	*2,311
			Approximately 0.53 mile downstream of Father Kino Trail.	None	*2,449
			Approximately 0.44 mile downstream of Father Kino Trail.	None	*2,462

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.8 mile upstream of Father Kino Trail.	None	*2,629
		Rowe Wash	Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1.	None	*2,537
			Approximately 0.6 mile upstream of the confluence with Rowe Wash-Tributary 1.	None	*2,704

Maps are available for review at Town Hall, 100 Easy Street, Carefree, Arizona.

Send comments to The Honorable Robert Anderson, Mayor, Town of Carefree, P.O. Box 740, Carefree, Arizona 85377.

Arizona	Town of Cave Creek, Maricopa County.	Grapevine Wash	At the confluence with Rowe Wash	None	*2,482
			Approximately 1,300 feet upstream of the confluence with Rowe Wash.	None	*2,517
		Galloway Wash-North Tributary.	At the confluence with Unnamed Tributary to Galloway Wash.	*2,216	*2,216
			Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash.	None	*2,311
			Approximately 0.53 mile downstream of Father Kino Trail.	None	*2,449
			Approximately 0.44 mile downstream of Father Kino Trail.	None	*2,462
		Ocotillo Wash-Tributary 1	Approximately 450 feet upstream of the confluence with Ocotillo Wash.	None	*2,291
			Approximately 0.84 mile upstream of the confluence with Ocotillo Wash-Tributary 1A.	None	*2,450
		Ocotillo Wash-Tributary 1A	At the confluence with Ocotillo Wash-Tributary 1.	None	*2,319
			Approximately 0.7 mile upstream of the confluence with Ocotillo Wash-Tributary 1.	None	*2,453
		Ocotillo Wash-Tributary 2	At the confluence with Ocotillo Wash	*2,228	*2,228
			At Echo Canyon Road: Approximately 0.73 mile upstream of Echo Canyon Road.	None	*2,274
		Ocotillo Wash-Tributary 3	At the confluence with Ocotillo Wash	*2,164	*2,164
			At Echo Canyon Road	None	*2,284
			Just upstream of Highland Road (upper crossing).	None	*2,374
		Ocotillo Wash-Tributary 4	At the confluence with Ocotillo Wash	*2,124	*2,124
			Approximately 100 feet upstream of Schoolhouse Road.	None	*2,215
			Approximately 700 feet upstream of Echo Canyon Road.	None	*2,314
		Rowe Wash	Approximately 1,900 feet upstream of Echo Canyon Road.	*2,315	*2,315
			At the confluence with Grapevine Wash	None	*2,484
			Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1.	None	*2,537
		Willow Springs Wash	Approximately 700 feet downstream of the confluence with Willow Springs Wash-Tributary 2.	*2,188	*2,188
			Approximately 275 feet upstream of the confluence with Willow Springs Wash-Tributary 2.	None	*2,218
			Approximately 2,000 feet upstream of the confluence with Willow Springs Wash-Tributary 2.	None	*2,255
			Approximately 2,550 feet downstream of Sierra Vista Drive (lower crossing).	None	*2,273
		Willow Springs Wash-Tributary 1.	At the confluence with Willow Springs Wash	*2,101	*2,101
			Approximately 1,250 feet downstream of Morningstar Road.	None	*2,162
		Willow Springs Wash-Tributary 2.	At the confluence with Willow Springs Wash	None	*2,211
			Approximately 100 feet upstream of the confluence with Willow Springs Wash.	None	*2,211
		Willow Springs Wash-Tributary 5.	At the confluence with Willow Springs Wash	*2,063	*2,063
			Approximately 100 feet upstream of Spur Cross Road.	None	*2,116
			Just downstream of Schoolhouse Road	None	*2,200
			Just downstream of Rockway Hills Drive	None	*2,251
		Willow Springs Wash-Tributary 5A.	At the confluence with Willow Springs Wash-Tributary 5.	None	*2,119
			Approximately 0.6 mile upstream of the confluence with Willow Springs Wash-Tributary 5.	None	*2,194

Maps are available for review at the Planning Department, Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.

Send comments to The Honorable James N. Threadgill, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.

Arizona	Town of Gila Bend, Maricopa County.	Gila Bend Canal	Approximately 300 feet east of the intersection of Old U.S. Highway 80 and Papago Street.	None	#3

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet east of the intersection of Watermelon Road and Gila Bend Canal.	None	#2

Maps are available for review at the Town Administration Office, 644 West Pima Street, Gila Bend, Arizona.

Send comments to The Honorable Duke Fox, Mayor, Town of Gila Bend, P.O. Box A, Gila Bend, Arizona 85337.

Connecticut	Darien, Town, Fairfield County.	Noroton River	Approximately 340 feet downstream of U.S. Route 1.	*13	*11
			Approximately 1.1 miles upstream of Woodway Road.	None	*110

Maps available for inspection at the Town Hall, 2 Renshaw Road, Darien, Connecticut.

Send comments to The Honorable Fred R. Sammis, Mayor of the Town of Darien, Fairfield County, Town Hall, 2 Renshaw Road, Darien, Connecticut 06820–5397.

Connecticut	Manchester, Town, Hartford County.	Hop Brook	At a point approximately 1,525 feet upstream of South Main Street Ramp "E".	*224	*225
			At a point approximately 600 feet upstream of the confluence with Hockanum River.	*705	*706
		Porter Brook	At the confluence with Hop Brook	*224	*225
			At a point approximately 120 feet upstream of the confluence with Hop Brook.	*226	*227
		Birch Mountain Brook	At the confluence with Hop Brook	*224	*225
			At a point approximately 70 feet upstream of the confluence with Hop Brook.	*224	*225

Maps available for inspection at the Department of Planning, 494 Main Street, Manchester, Connecticut 06045.

Send comments to The Honorable Stephen T. Cassano, Mayor of the Town of Manchester, Hartford County, 41 Center Street, P.O. Box 191, Manchester, Connecticut 06045–0191.

New Jersey–	Paramus, Borough, Bergen County.	Saddle River–	At the downstream corporate limits	*46	*44
			Approximately 340 feet downstream of confluence of Hohokus Brook.	*57	*56

Maps available for inspection at the Borough Engineer's Office, Jockish Square, Paramus, New Jersey.

Send comments to The Honorable Clifford Gennarelli, Mayor of the Borough of Paramus, Bergen County, Jockish Square, Paramus, New Jersey 07652.

New York	Chatham, Town, Columbia County.	Kinderhook Creek	At confluence with Kline Kill	None	*260
			Approximately .74 mile downstream of Bachus Road.	None–	*415

Maps available for inspection at the Chatham Town Hall, Zoning Office, Chatham Center, New York.

Send comments to Mr. William Hogencamp, Chatham Town Supervisor, Columbia County, R.D. 2, P.O. Box 199, Valatie, New York 12184.

New York	Ellicottville, Village, Cattaraugus County.	Great Valley Creek	Approximately 670 feet downstream of confluence of Holiday Valley Creek.	*20	*19
			Approximately 0.2 mile upstream of Mill Street	*1,540	*1,542
		Elk Creek	At confluence with Great Valley Creek	*1,535	*1,536
			Approximately 400 feet upstream of Park Drive	*1,547	*1,548
		Plum Creek	At confluence with Great Valley Creek	*1,530	*1,533
			Approximately 0.8 mile upstream of confluence with Great Valley Creek.	*1,597	*1,598
		Holiday Valley Creek	Approximately 160 feet upstream of corporate limits.	None	*1,521
			Approximately 140 feet upstream of upstream corporate limits.	None	*1,525

Maps available for inspection at the Ellicottville Village Hall, 1 W. Washington, Ellicottville, New York.

Send comments to The Honorable John Burrell, Mayor of the Village of Ellicottville, Cattaraugus County, P.O. Box 478, Ellicottville, New York 14731.

New York	Moreau, Town, Sullivan County.	Hudson River (Upper Reach)	Approximately .5 mile downstream of Feeder Dam.	*275	*276
			Approximately .75 mile upstream of Spier Falls Dam.	None	*440
		Hudson River Bypass	Confluence with Hudson River	None	*293
			Divergence from Hudson River	None	*301

Maps available for review at the Town Hall, 61 Hudson Street, South Glens Falls, New York.

Send comments to Mr. Michael Sullivan, Supervisor of the Town of Moreau, Saratoga County, P.O. Box 1349, South Glens Falls, New York 12803.

New York	Philadelphia, Village, Jefferson County.	Indian River	Approximately 250 feet downstream of downstream corporate limits.	None	*423
			Upstream corporate limits	None	*485
		Black Creek	Confluence with Indian River	None	*485
			Upstream corporate limits	None	*485

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Philadelphia Village Hall, 56 Main Street, Philadelphia, New York.					
Send comments to The Honorable Wayne L. Huntress, Mayor of the Village of Philadelphia, Jefferson County, P.O. Box 70, Philadelphia, New York 13673.					
Pennsylvania	Bensalem, Township, Bucks County.	Neshaminy Creek	Approximately 600 feet downstream of Hulmeville Road.	°29	°30
			Approximately 0.5 mile upstream of Hulmeville Road.	°36	°35
Maps available for inspection at the Code Enforcement Office, 2400 Byberry Road, Bensalem, Pennsylvania.					
Send comments to The Honorable Edward Burns, Mayor of the Township of Bensalem, Bucks County, 3800 Hulmeville Road, Bensalem, Pennsylvania 19020.					
Pennsylvania	Hulmeville, Borough, Bucks County.	Neshaminy Creek	Approximately 1,100 feet downstream of Hulmeville Road.	°28	°29
			At Hulmeville corporate limits	°35	°34
Maps available for inspection at the Hulmeville Borough Hall, 517 Lincoln Avenue, Hulmeville, Pennsylvania.					
Send comments to The Honorable Mark Shapcott, Jr., Mayor of the Borough of Hulmeville, Bucks County, 517 Lincoln Avenue, Hulmeville, Pennsylvania 19047.					
Tennessee	Erin City, Houston County.	Erin Branch	At confluence with Wells Creek	None	°410
			At upstream corporate limits	None	°566
		Musterground Creek	At confluence with Wells Creek	None	°410
			Approximately 50 feet upstream of State Highway 49.	None	°415
		Wells Creek	At downstream corporate limits	None	°407
			At upstream corporate limits	None	°416
		Owl Hollow	At confluence with Erin Branch	None	°453
			Approximately 820 feet upstream of Owl Hollow Road.	None	°484
		Rocky Hollow	At confluence with Erin Branch	None	°459
			At upstream corporate limits	None	°499
Maps available for inspection at the City Hall, Erin, Tennessee.					
Send comments to The Honorable E. E. Betsy Ligon, Mayor of the City of Erin, Houston County, P.O. Box 270, Erin, Tennessee 37061.					
Texas	Johnson County, Unincorporated Areas.	Hurst Creek	Approximately 150 feet downstream of County Route 601.	None	°725
			Approximately 40 feet downstream of Frontage Road to Westbound Interstate Route 35.	None	°751
		South Shannon	Approximately 0.89 mile upstream of County Route 920.	°785	°786
			Approximately 100 feet upstream of Atchison, Topeka, & Santa Fe Railway.	None	°810
Maps available for inspection at the Public Works Department, Johnson County Courthouse, 2 Main Street, Cleburne, Texas.					
Send comments to The Honorable Joe Durham, Johnson County Judge, Johnson County Courthouse, 2 Main Street, 3rd Floor, Cleburne, Texas 76031.					
Washington	Cowlitz County, Unincorporated Areas.	Cowlitz River	At Longview and Portland Northern Railroad	None	°17
			Approximately 3,600 feet upstream of State Highway 4.	°21	°21
			Approximately 1,000 feet downstream of Hazel Dell Creek.	None	°26
			At Hoyer Road	None	°41
			Just upstream of Permanent Highway 10	None	°47
			Approximately 16,500 feet upstream of the confluence of Toutle River.	None	°61
		Toutle River	At the confluence with Cowlitz River	None	°55
			Just upstream of State Highway 29	None	°70
			Approximately 12,000 feet upstream of State Highway 29.	None	°88
Maps are available for review at Department of Community Development, 207 Fourth Avenue North, Kelso, Washington.					
Send comments to The Honorable Mrs. Joan Lamieux, Chairperson, Board of Commissioners, 207 Fourth Avenue North, Kelso, Washington 98626.					
Washington	City of Kelso, Cowlitz County.	Cowlitz River	Just upstream of Burlington Northern Railroad	None	°17
			Approximately 2,500 feet upstream of State Highway 432.	None	°18
			At Milwaukee Place extended	None	°19
			At Allen Street Bridge	None	°20
			Approximately 3,600 feet upstream of Allen Street.	None	°21
Maps are available for review at Department of Public Works, 312 Allen Street, Kelso, Washington 98626.					
Send comments to The Honorable Don Gregory, Mayor, City of Kelso, 105 Allen Street, P.O. Box A, Kelso, Washington 98626.					
Washington	City of Longview, Cowlitz County.	Cowlitz River	Just upstream of State Highway 432	None	°17
			Approximately 1,000 feet downstream of Main Street.	None	°20

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream corporate limits, approximately 5,000 feet upstream of State Highway 4.	None	*21

Maps are available for review at Department of Planning, City Hall, 1525 Broadway, Longview, Washington.

Send comments to The Honorable Mark Hoahne, Mayor, City of Longview, 1525 Broadway, P.O. Box 128, Longview, Washington 98632.

Wisconsin	Outagamie County, Unincorporated Areas.	Mud Creek	Just upstream of County Route BB	None	*745
			At confluence of Mud Creek Tributary	None	*759
		Mud Creek Tributary 2	At confluence with Mud Creek	None	*759
			Approximately 0.4 mile upstream of Marquette Street.	None	*791
		Mud Creek Tributary (backwater from Fox River).	Just upstream of County Route BB	None	*743
			Approximately 1,200 feet upstream of County Route BB.	None	*743

Maps available for inspection at the County Zoning Administration, 410 South Walnut Street, Appleton, Wisconsin.

Send comments to Mr. Ronald L. Van De Hey, Outagamie County Executive, 410 South Walnut Street, Appleton, Wisconsin 54911.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 9, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-30490 Filed 12-16-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92-289; FCC 92-533]

Notice of Creation of 222-225 MHz and 1240-1300 MHz Frequency Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposal would create a small new sub-band and at 222.00-222.15 MHz where repeaters would be prohibited. It would also authorize frequency privileges for Novice Class operators in the entire 222-225 MHz band. Further, it would allow Novice Class operators to be licensees and control operators of repeaters in the 222-225 MHz band as well as in the 1270-1295 MHz segment of the 1240-1300 MHz band. The proposed rules are necessary so that there will be a small segment in the 222-225 MHz band where frequencies need not be shared with repeaters. Also, the proposed rules are needed to improve the operational standards for the amateur service. The effects of the proposed rule changes are to enhance experimentation possibilities, to provide Novices with opportunities to become more proficient in amateur service operations, and to use available spectrum more efficiently

DATES: Comments are due on or before February 23, 1993. Reply comments are due on or before March 23, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted November 30, 1992, and released December 11, 1992. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center (DCC), (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036. DCC's FAX number is (202) 296-3780.

SUMMARY OF NOTICE OF PROPOSED RULE MAKING: 1. The proposed rule changes respond to petitions filed by The American Radio Relay League, Inc. (ARRL) and Dr. Michael C. Trahos. The ARRL requests that 222.00-222.15 MHz be designated as a frequency segment where repeaters are not allowed. The ARRL believes that a rule is needed to protect experimentation and other operations from repeater interference. In response to this request, some commenters argue that such a matter should be decided by the local frequency coordinator. The ARRL also requests expansion of the frequency privileges for Novice Class operators to encompass the entire 222-225 MHz band. Dr. Trahos requests that Novice Class operators be authorized to be licensees and control operators of repeaters in the 222-225 MHz band and in the 1270-1295 MHz Novice subband.

2. The proposed rules offer improvements in the operational standards for the amateur service. Experimentation would be facilitated. Novice Class operators could become more proficient in a wider variety of amateur service operations. They would also have more flexibility in selecting the mode of transmission. Choosing the appropriate mode would result in spectrum efficiency.

3. Comments are invited on the effect that the proposed rule changes would have on Novice Class licensees.

4. The proposed rules are set forth at the end of this document.

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. In accordance with Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations that are the subject of this proceeding would not be authorized to transmit any communications that facilitate the business or commercial affairs of any party. See 47 CFR 97.113(a).

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain

no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

8. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of sections 4(i) and 303 (c), (f), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c), (f), and (r).

9. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

License privileges, Radio, Subbands.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.201(b) is revised to read as follows:

§ 97.201 Auxiliary station.

* * * * *

(b) An auxiliary station may transmit only on the 1.25 m and shorter wavelength frequency bands, except the 222.00–222.15 MHz, 431–433 MHz, and 435–438 MHz segments.

* * * * *

3. Paragraphs (a) and (b) of § 97.205 are revised to read as follows:

§ 97.205 Repeater station.

(a) Any amateur station may be a repeater. A holder of any class operator license may be the control operator of a repeater, subject to the privileges of the class of operator license held.

(b) A repeater may receive and retransmit only on the 10 m and shorter wavelength frequency bands except the 28.0–29.5 MHz, 50.0–51.0 MHz, 144.0–144.5 MHz, 145.5–148.0 MHz, 222.00–222.15 MHz, 431.0–433.0 MHz, and 435.0–438.0 MHz segments.

* * * * *

4. The entry under VHF in § 97.301(f) is amended by revising the frequencies authorized for use by Novice Class operators in ITU Region 2 to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(f) For a station having a control operator holding a Novice Class operator license:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303, paragraph:
VHF				
1.25 m	MHz	MHz	MHz	
	.....	222–225	.....	(a)
• • • • • • • •				

[FR Doc. 92–30533 Filed 12–16–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1152 and 1201

[Ex Parte No. 274 (Sub-No. 26)]

Abandonment Proceedings: Elimination of the Review and Cost Data For All Years Prior to the Base Year Period

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served November 9, 1992 (57 FR 53307, November 9, 1992), the Commission sought public comment by December 24, 1992, on the proposal to eliminate the requirement that abandonment applications include revenue and cost data for the two prior calendar years and that part of the current year prior to the filing of the application. By letter filed December 4, 1992, the Association of American Railroads (AAR) requests a 30-day extension until January 25, 1993, of the comment due date. AAR indicates additional time is needed because the current schedules of AAR's counsel and member road personnel do not permit sufficient time for an adequate and coordinated response on behalf of the railroad industry. The request will be granted.

DATES: Comments on the proposed changes are due on or before January 25, 1993.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 274 (sub-No. 26), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 927–5720; James R. Wells, (202) 927–6238 [TDD for hearing impaired: (2) 927–5721]

Decided: December 11, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30662 Filed 12–16–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AB89

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for 22 Plants From the Island of Hawaii, State of Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 22 plants: *Clermontia lindseyana* ('oha wai), *Clermontia peleana* ('oha wai), *Clermontia pyrulari* a ('oha wai),

Colubrina oppositifolia (kauila), *Cyanea copelandii* ssp. *copelandii* (haha), *Cyanea hamatiflora* ssp. *carlsonii* (haha), *Cyanea shipmanii* (haha), *Cyanea stictophylla* (haha), *Cyrtandra giffardii* (ha'iwale), *Cyrtandra tintinnabula* (ha'iwale), *Hesperocnide sandwicensis* (no common name (NCN)), *Ischaemum byrone* (Hilo ischaemum), *Isodendrion pyrifolium* (wahine noho kula), *Mariscus fauriei* (NCN), *Nothocestrum breviflorum* ('aiea), *Ochrosia kilaueaensis* (holei), *Plantago hawaiensis* (laukahi kuahiwi), *Portulaca sclerocarpa* (po'e), *Pritchardia affinis* (loulu), *Silene hawaiiensis* (NCN), *Tetramolopium arenarium* (NCN), and *Zanthoxylum hawaiiense* (a'e). All but seven of the taxa are or were endemic to the island of Hawaii, Hawaiian Islands; the exceptions are or were found on the islands of Niihau, Kauai, Oahu, Molokai, Lanai, and/or Maui as well as Hawaii. The 22 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition for space, light, water, and nutrients by naturalized, introduced vegetation; habitat degradation by wild, feral, or domestic animals (axis deer, cattle, goats, pigs, and sheep); agricultural, military, and recreational activities; habitat loss and damage to plants from fires; predation by animals (cattle, goats, insects, and rats); and natural disasters (flooding and volcanic activity). Due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also make operative State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by February 16, 1993. Public hearing requests must be received by February 1, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea copelandii ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Hesperocnide sandwicensis, Ischaemum byrone, Isodendrion pyrifolium, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Plantago hawaiiensis, Portulaca sclerocarpa, Pritchardia affinis, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense* are endemic to or have the majority of their populations on the island of Hawaii, Hawaiian islands. Thirteen of these taxa are endemic to the island of Hawaii; three additional taxa are now found only on Hawaii. One of these taxa is now or was previously also known from Niihau, one from Kauai, two from Oahu, four from Molokai, four from Lanai, and six from Maui.

The island of Hawaii is the southernmost, furthest east, and the youngest of the eight major Hawaiian Islands. This largest island of the Hawaiian archipelago comprises 4,038 square miles (sq mi) (10,458 sq kilometers (km)), or two-thirds of the land area of the State of Hawaii, giving rise to its common name, the "Big Island." The Hawaiian Islands are volcanic islands formed over a "hot spot," a fixed area of pressurized molten rock deep within the Earth. As the Pacific Plate, a section of the Earth's surface many miles thick, has moved to the northwest, the islands of the chain have separated. Currently, this hot spot is centered under the southeast part of the island of Hawaii, which is one of the most active volcanic areas on Earth. Five large shield volcanoes make up the island of Hawaii: Mauna Kea at 13,796 feet (ft) (4,205 meters (m)) and Kohala at 5,480 ft (1,670 m), both extinct; Hualalai, at 8,271 ft (2,521 m), which is dormant and will probably erupt again; and Mauna Loa, at 13,677 ft (4,169 m) and Kilauea, at 4,093 ft (1,248 m), both of which are currently active and adding land area to the island. Compared to Kauai, which is the oldest of the main islands and was formed about 5.6 million years ago, Hawaii is very young, with fresh lava and land up to 0.5 million years old (Cuddihy and Stone 1990, Culliney 1988, Department of Geography 1983, Macdonald *et al.* 1983).

Because of the large size and range of elevation of the island, Hawaii has a great diversity of climates. Windward (northeastern) slopes of Mauna Loa have rainfall up to 300 inches (in) (762 centimeters (cm)) per year in some areas. The leeward coast, shielded by the mountains from rain brought by trade winds, has areas classified as desert and receiving as little as 7.9 in (20 cm) of rain annually. The summits of Mauna Loa and Mauna Kea experience snowfall each year, and Mauna Kea was glaciated during the last Ice Age (Culliney 1988, Department of Geography 1983, Macdonald *et al*, 1983, Wagner *et al.* 1990).

Plant communities on Hawaii include those in various stages of primary succession on the slopes of active and dormant volcanoes, ones in stages of secondary succession following disturbance, and relatively stable climax communities. On Hawaii, vegetation is found in all classifications: Coastal, dryland, montane, subalpine, and alpine; dry, mesic, and wet; and herblands, grasslands, shrublands, forests, and mixed communities. The vegetation and land of the island of Hawaii have undergone much change through the Island's history. Since it is an area of active volcanism, vegetated areas are periodically replaced with bare lava. Polynesian immigrants, first settling on Hawaii by 750 A.D., made extensive alterations in lowland areas for agriculture and habitation. European contact with Hawaii brought intentional and inadvertent introductions of alien plant and animal species. In 1960, 65 percent of the total land area of the island of Hawaii was used for grazing, and much land has also been converted to modern cropland (Cuddihy and Stone 1990, Gagne and Cuddihy 1990).

The 22 taxa proposed in this rule occur between sea level and 8,600 ft (0 and 2,260 m) in elevation in various portions of the island of Hawaii. A few taxa are also found in central Kauai (one taxon), in the Waianae Mountains of Oahu (one taxon), on Eastern Molokai (three taxa), in central and southern Lanai (two taxa), and on East Maui (three taxa). Most of the proposed species exist as remnant plants persisting in grazed areas or in higher elevations which have only recently been heavily invaded by alien plant and animal species. The proposed taxa grow in a variety of vegetation communities (herbland, shrublands, and forests), elevational zones (coastal, lowland, montane, and subalpine), and moisture regimes (dry, mesic, and wet). One

taxon is found in each of two coastal habitats: Dry shrubland and mesic forest. In lowland habitats, five taxa are found in dry forest, four in mesic forest, and two in wet forest. In montane habitats, one taxon is found in wet herbland, three taxa in dry shrubland, three in dry forest, four in mesic forest, and five in wet forest. In the subalpine area, one taxon is found in dry shrubland and two taxa in dry forest.

The land on which these 22 plant taxa are found is owned by various private parties, the State of Hawaii (including conservation district lands, forest reserves, natural area reserves, State parks, and the State seabird sanctuary), or is owned or managed by the Federal government (including a U.S. Fish and Wildlife Service refuge, a U.S. Army military reservation and a military training area, a National Park, and a U.S. Coast Guard lighthouse area).

Discussion of the 22 Taxa Proposed for Listing

Rock (1957) named *Clermontia hawaiiensis* var. *grandis* on the basis of sterile specimens collected on the island of Hawaii in the 1950s. Later, after examining fertile material, he named the taxon *C. lindseyana* and also described a variety, var. *livida* (Rock 1962). The specific epithet commemorates Thomas Lindsey, a naturalist who brought the species to Rock's attention. St. John (1987a) described two other species, *C. albimontis* and *C. viridis*, but the author of the current treatment of the genus (Lammers 1990, 1991) considers St. John's species to fall within the range of *C. lindseyana* and recognizes no subspecific taxa.

Clermontia lindseyana of the bellflower family (Campanulaceae) is a terrestrial or epiphytic (not rooted in the soil) branched shrub or tree 8.2 to 20 ft (2.5 to 6 m) tall. The alternate, stalked, toothed leaves are 5 to 9 in (13 to 24 cm) long and 1.5 to 2.6 in (3.8 to 6.5 cm) wide. Two flowers, each with a stalk 0.4 to 1 in (1 to 2.5 cm) long, are positioned at the end of a main flower stalk 1 to 1.6 in (2.5 to 4 cm) long. The calyx (fused sepals) and corolla (fused petals) are similar in size and appearance, and each forms a slightly curved, five-lobed tube 2.2 to 2.6 in (5.5 to 6.5 cm) long and 0.4 to 0.7 in (0.9 to 1.8 cm) wide which is greenish white or purplish on the outside and white or cream-colored on the inside. The berries are orange and 1 to 1.6 in (2.5 to 4 cm) in diameter. This species is distinguished from others in this endemic Hawaiian genus by larger leaves and flowers, similar sepals and petals, and spreading floral lobes (Cuddihy *et al.* 1983; Lammers 1990, 1991).

Historically, *Clermontia lindseyana* was known from the island of Maui on the southern slope of Haleakala and from the island of Hawaii on the eastern slope of Mauna Kea and the eastern, southeastern, and southwestern slopes of Mauna Loa. One population of the species is known to be extant on Maui in Wailaulau Gulch on State-owned land. The 13 known populations on the island of Hawaii extend over a distance of about 53 by 13 mi (85 by 21 km). Populations are found near Laupahoehoe, in Piha, in Makahanaloa, near Puaakala, near Puu Oo, near Kulani Correctional Facility, near Kapapala, in Waiea Tract, near Kaapuna Lava Flow, and near Kahuku on privately and State-owned land. Approximately 125 to 175 individuals exist (Hawaii Heritage Program (HHP) 1991a1 to 1991a13). This species typically grows in *Acacia koa* (koa)—and *Metrosideros polymorpha* ('ohi'a)—dominated Montane Mesic Forests, often epiphytically, at elevations between 4,000 and 7,050 ft (1,220 and 2,150 m) (Gagne and Cuddihy 1990; HHP 1991a1 to 1991a13; Hawaii Plant Conservation Center (HPCC) 1991a; Lammers 1990, 1991). Associated species include *Coprosma* sp. (pilo), *Ilex anomala* (kawa'u), and *Myrsine* sp. (kolea) (HHP 1991a2, 1991a5; HPCC 1991a; Fern Duvall, Olinda Endangered Species Propagation Facility, pers. comm., 1992). The major threats to *Clermontia lindseyana* are competition from alien plant species such as *Passiflora mollissima* (banana poka) and *Pennisetum clandestinum* (Kikuyu grass), grazing and trampling by *Bos taurus* (cattle), and habitat disturbance by feral *Sus scrofa* (pigs) Cuddihy *et al.* 1983; HPCC 1991a; Pratt and Cuddihy 1991; F. Duvall and Arthur Medeiros, Haleakala National Park, pers. comms., 1992).

Clermontia peleana was first collected by John Lydgate at Hamakua, island of Hawaii, and listed as an unnamed variety of *C. gaudichaudii* by Hillebrand (1888). Rock later collected a specimen of the taxon near Kilauea, the volcano home of the Hawaiian goddess Pele, after whom he named the species (Rock 1913). Other names by which the species has been known include: *Clermontia gaudichaudii* var. *singuliflora* (Rock 1919b), *C. singuliflora* (Rock 1919b), *C. gaudichaudii* var. *barbata* (Rock 1919b), *C. clermontioides* var. *singuliflora* (Hochreutiner 1934); *C. clermontioides* var. *mauiensis*, a superfluous name (Hochreutiner 1934); and *C. clermontioides* var. *barbata* (St. John 1973). In the most recent treatment of the species (Lammers 1991), two subspecies of *C. peleana*, ssp. *singuliflora* and ssp. *peleana*, are recognized.

Clermontia peleana of the bellflower family is an epiphytic shrub or tree 5 to 20 ft (1.5 to 6 m) tall which grows on 'ohi'a, koa, *Cheirodendron trigynum* ('olapa), and *Sadleria* spp. (ama'u). The alternate, stalked, oblong or oval, toothed leaves reach a length of 3 to 8 in (8 to 20 cm) and a width of 1.2 to 2 in (3 to 5 cm). Flowers are single or paired, each on a stalk 1.2 to 1.8 in (3 to 4.5 cm) long with a main stalk 0.3 to 0.7 in (0.8 to 1.7 cm) long. Five small green calyx lobes top the hypanthium (basal portion of the flower). The blackish-purple (ssp. *peleana*) or greenish-white (ssp. *singuliflora*) petals, 2 to 2.8 in (5 to 7 cm) long and 0.3 to 0.5 in (0.8 to 1.3 cm) wide, are fused into a one-lipped, arching tube with five downcurved lobes. Berries of ssp. *peleana* are orange and 1 to 1.2 in (2.5 to 3 cm) in diameter; berries of ssp. *singuliflora* are unknown. This species is distinguished from others of the genus by its epiphytic growth habit; its small green calyx lobes; and its one-lipped, blackish-purple or greenish-white corolla (Lammers 1990, 1991).

Historically, *Clermontia peleana* ssp. *peleana* has been found only on the island of Hawaii on the eastern slope of Mauna Loa and the northeastern and southeastern slopes of Mauna Kea. Today, the taxon is found near Waiakaumalo Stream, by the Wailuku River, near Saddle Road, and between the towns of Glenwood and Volcano. The six known populations, which extend over a distance of about 12 by 5 mi (19 by 8 km), are located on State and Federally owned land and contain a total of approximately eight known individuals (HHP 1991b1 to 1991b7). *Clermontia peleana* ssp. *singuliflora* was formerly found on the island of Hawaii on the northern slope of Mauna Kea and on East Maui on the northwestern slope of Haleakala, but the taxon has not been seen in either place since early in the century and is believed to be extinct (HHP 1991c1 to 1991c3, Wagner *et al.* 1990). This species typically grows epiphytically in Montane Wet Forests dominated by koa, 'ohi'a, and *Cibotium* spp. and/or *Sadleria* spp. (tree ferns) at elevations between 1,740 and 3,800 ft (530 and 1,160m) (HHP 1991b1 to 1991b4, 1991b6, 1991b7; Lammers 1990, 1991). Associated species include 'olapa, *Melicope clusiifolia* (kolokolo mokihana), and *Scaevola chamissoniana* (naupaka kuahiwi) (HHP 1991b1; Warren L. Wagner, Smithsonian Institution, pers. comm., 1992). The major threats to *Clermontia peleana* are

habitat disturbance caused by feral pigs and illegal cultivation of *Cannabis sativa* (marijuana), *Rattus rattus* (roof or black rat) damage, flooding, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (Bruegmann 1990, Center for Plant Conservation (CPC) 1990b).

A sterile specimen of *Clermontia pyrularia* was first collected on Mauna Kea, island of Hawaii, during the United States Exploring Expedition of 1840 and 1841 and was named *Delissea obtusa* var. ? *mollis* by Gray (1861b). Later, Hillebrand (1888) collected fertile specimens of the taxon and named it *C. pyrularia*, referring in the specific epithet to the fruits, which are sometimes shaped like those of *Pyrus* (pear).

Clermontia pyrularia of the bellflower family, a terrestrial tree 10 to 13 ft (3 to 4 m) tall, has alternate toothed leaves 5.9 to 11 in (15 to 28 cm) long and 1 to 2 in (2.5 to 5 cm) wide with winged petioles. A cluster of two, three, or sometimes up to five flowers has a main stalk 1.1 to 2.4 in (2.8 to 6 cm) long; each flower has a stalk 0.3 to 0.8 in (0.8 to 2 cm) long. Five small green calyx lobes top the hypanthium. The white or greenish-white petals are covered with fine hairs, measure 1.6 to 1.8 in (4 to 4.5 cm) long, and are fused into a curved two-lipped tube 0.2 to 0.3 in (5 to 8 mm) wide with five spreading lobes. The orange berry is inversely ovoid or inversely pear-shaped. This species is distinguished from others of the genus by its winged petioles; its small, green calyx lobes; its two-lipped flowers with white or greenish-white petals; and the shape of its berry (Lammers 1990, 1991).

Historically, *Clermontia pyrularia* has been found only on the island of Hawaii on the northeastern slope of Mauna Kea, the western slope of Mauna Loa, and the saddle area between the two mountains. Today, the species is found near the Humuula-Laupahoehoe boundary, near Hakalau Gulch, near Kealakekua, and near Kaawaloa. The five extant populations, which extend over a distance of about 47 by 6 mi (76 by 10 km), are located on privately, State, and Federally owned land. Although the exact number of individuals is not known, it is likely that not more than five individuals exist (HHP 1991d1 to 1991d6). This species typically grows in koa- and/or'ohi'a-dominated Montane Wet Forests and Subalpine Dry Forests at elevations between 3,000 and 7,000 ft (910 and 2,130 m) (HHP 1991d2 to 1991d5; Lammers 1990, 1991). Associated species include pilo, *Lythrum maritium* (pukamole), and *Rubus hawaiensis* ('akala) (HHP 1991d2, 1991aa). The major threat to *Clermontia pyrularia* is competition from alien grasses and shrubs in the forest understory and banana poka as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991d2).

Colubrina oppositifolia was first collected by Remy in the 1850s and was named in 1867 by Adolphe Theodore Brongniart (Mann 1867). The specific epithet describes the plant's opposite leaf arrangement. St. John (1979) called Oahu plants *C. oppositifolia* var. *obatae*, but no subspecific taxa are recognized in the current treatment of the genus (Wagner *et al.* 1990).

Colubrina oppositifolia of the buckthorn family (Rhamnaceae), a tree 16 to 43 ft (5 to 13m) tall, has opposite, stalked, oval, thin, pinnately veined, toothless leaves with glands on the lower surface. Leaves measure 2.4 to 4.7 in (6 to 12 cm) long and 1.2 to 2.8 in (3 to 7 cm) wide in mature plants and are larger in seedlings. Ten to 12 bisexual flowers are clustered at the end of a main stalk 0.1 to 0.3 in (3 to 8 millimeters (mm)) long; each flower has a stalk about 0.07 to 0.1 in (2 to 3 mm) long which elongates in fruit. The five triangular sepals measure about 0.06 to 0.08 in (1.5 to 2 mm) long, and the five greenish-yellow or white petals are about 0.06 in (1.5 mm) long. The somewhat spherical fruit, 0.3 to 0.4 in (8 to 11 mm) long, is similar to a capsule and opens explosively when mature. This species can be distinguished from the one other species of the genus in Hawaii by its growth habit and the arrangement, texture, venation, and margins of its leaves (Wagner *et al.* 1990).

Historically, *Colubrina oppositifolia* was found on the island of Oahu in the central and southern Waianae Mountains and on the island of Hawaii in the following areas: The Kohala Mountains; the northern slope of Hualalai; and the western, southwestern, and southern slopes of Mauna Loa. Today, the species is known on Oahu in eastern Makaleha Valley, Mokuleia Forest Reserve, and Makua Valley; on Mt. Kaala; and near Honouliuli Contour Trail on private, State-owned, and Federally managed land. The 6 extant populations on Oahu, which extend over a distance of about 9 by 4 mi (14 by 6 km), contain approximately 94 known individuals (HHP 1991e1, 1991e2, 1991e5, 1991e9 to 1991e12). On the island of Hawaii, there are 7 extant populations which extend over a distance of about 16 by 4 mi (26 by 6 km), are located on privately and State-owned land, and contain about 185 to 205 known individuals. The species occurs along the Mamalahoa Highway on the northern slope of Hualalai as well as in Kapua and Puueo in the southernmost portion of the island (HHP 1991e3, 1991e4, 1001e6 to 1991e8, 1991e13 to 1991e16). This species typically grows in *Diospyros sandwicensis* (lama)-dominated Lowland Dry and Mesic Forests, often on a lava, at elevations between 800 and 3,000 ft (240 and 910m). Associated species include *Canthium odoratum* (alahe'e) and *Reynoldsia sandwicensis* ('ohe) (HHP 1991e3, 1991e8, 1991e9, 1991e15, 1991e16, HPCC 1991b). The major threats to *Colubrina oppositifolia* are competition from alien plant species such as *Lantana camara* (lantana), *Pennisetum setaceum* (fountain grass), and *Schinus terebinthifolius* (Christmas berry); habitat disturbance by feral pigs; plant damage and death from *Xylosandrus compactus* (black twig borer); fire; damage and disturbance from military exercises; and limited regeneration (HHP 1991e4, 1991e8, 1991e9, 1991e15, 1991e16; Joel Q. Lau, The Nature Conservancy of Hawaii, pers. comm., 1992).

Rock (1917) named *Cyanea copelandii* to honor his collecting companion, M.L. Copeland, with whom he first collected the species in 1914 on the island of Hawaii (Rock 1917). St. John (1987b, St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species to the genus *Delissea*, the older of the two generic names, creating *D. copelandii*. The current treatment of the family (Lammers 1990), however, maintains the separation of the two genera, and plants found on the island of Hawaii are considered to be *C. copelandii* ssp. *copelandii*. Subspecies *haleakalaensis*, found on Maui, is not as rare.

Cyanea copelandii ssp. *copelandii* of the bellflower family is a shrub with a habit similar to that of a woody vine. The alternate, stalked, toothed leaves are 7.9 to 10.6 in (20 to 27 cm) long and 1.4 to 3.3 in (3.5 to 8.5 cm) wide and have fine hairs on the lower surface. Five to 12 flowers are clustered on the end of a main stalk 0.8 to 1.8 in (2 to 4.5 cm) long; each flower has a stalk 0.2 to 0.6 in (0.4 to 1.6 cm) long. The slightly hairy hypanthium is topped by five small, triangular calyx lobes. Petals, which are yellowish but appear rose-colored because of a covering of dark red hairs, are fused into a curved tube with five spreading lobes; the corolla is 1.5 to 1.7 in (3.7 to 4.2 cm) long about 0.2 in (4 to 5 mm) wide. Berries are dark orange and measure 0.3 to 0.6 in (0.7 to

1.5 cm) long. This subspecies is distinguished from ssp. *haleakalaensis*, the only other subspecies of *Cyanea copelandii*, by its narrower leaves. The species differs from others in this endemic Hawaiian genus by its growth habit and the size, shape, and dark red pubescence of its corolla (Lammers 1990).

Cyanea copelandii ssp. *copelandii*, which has been collected only at two sites on the southeastern slope of Mauna Kea near Glenwood, was last seen in 1957. This population, located on State-owned land, is still considered extant and contains an unknown number of individuals (HHP 1991f; Thomas Lammers, Field Museum, pers. comm., 1992). This taxon often grows epiphytically and is typically found in Montane Wet Forests at elevations between 2,200 and 2,900 ft (660 and 880 m) (Lammers 1990). Associated species include tree ferns (HHP 1991f). The major known threat to *Cyanea copelandii* ssp. *copelandii* is stochastic extinction and/or reduced reproductive vigor due to the single known population.

Using sterile type material, Rock (1957) named *Cyanea carlsonii* to honor Norman K. Carlson, who first saw the taxon (Degener *et al.* 1969). Carlson cultivated a plant of the taxon in his garden, from which Rock later described the flowers and fruit (Rock 1962). Recently, St. John (1987b, St. John and Takeuchi 1987) placed the genus *Cyanea* in synonymy with *Delissea*, resulting in the new combination *Delissea carlsonii*, but Lammers (1990) retains both genera in the currently accepted treatment of the family. He also considers the taxon to be a subspecies of another species, resulting in the name *C. hamatiflora* ssp. *carlsonii* (Lammers 1988).

Cyanea hamatiflora ssp. *carlsonii* of the bellflower family, a palm-like tree, grows 9.8 to 26 ft (3 to 8 m) tall and has alternate stalkless leaves 20 to 31 in (50 to 80 cm) long and 3 to 5.5 in (8 to 14 cm) wide. Clusters of 5 to 10 flowers have a main stalk 0.6 to 1.2 in (1.5 to 3 cm) long; each flower has a stalk 0.2 to 0.5 in (0.5 to 1.2 cm) long. The hypanthium is topped with five small narrow calyx lobes. The magenta petals are fused into a one-lipped tube 2.3 to 3.1 in (6 to 8 cm) long and 0.2 to 0.4 in (0.6 to 1.1 cm) wide with five downcurved lobes. The purplish-red berries are topped by the persistent calyx lobes. This subspecies is distinguished from ssp. *hamatiflora*, the only other subspecies, by its long flower stalks and larger calyx lobes. The species differs from others in the genus by its growth habit, its stalkless leaves, the number of flowers in each cluster, and the size and shape of the corolla and calyx (Lammers 1990).

Cyanea hamatiflora ssp. *carlsonii* is only known to have occurred at two sites on the island of Hawaii, on the western slope of Hualalai and the southwestern slope of Mauna Loa. These 2 extant populations, located on privately and State-owned land at Honuaulu Forest Reserve and Keokea, are about 28 mi (45 km) apart and contain approximately 19 individuals (HHP 1991gl, 1991g2; HPCC 1991c1 to 1991c3). This taxon typically grows in 'ohi'a-dominated Montane Wet Forests at elevations between 4,000 and 5,700 ft (1,220 and 1,740 m) (HHP 1991g1, 1991g2; Lammers 1990). Associated species include kawa'u, pilo and *Myoporum sandwicense* (naio) (HHP 1991g1). The major threats to *Cyanea hamatiflora* ssp. *carlsonii* are competition from alien plant species such as banana poka, grazing and trampling by cattle, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991g2; Carolyn Corn, Hawaii Department of Land and Natural Resources (Hawaii DLNR), *in litt.*, 1991).

Based on sterile specimens collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841, Gray (1861b) noted *Cyanea grimesiana* var. ? *citrullifolia*. Rock collected the plant in 1955 in the company of Herbert Shipman, after whom he named it as a species, resulting in *Cyanea shipmanii* (Rock 1957).

Cyanea shipmanii of the bellflower family is an unbranched or few-branched shrub 8 to 13 ft (2.5 to 4 m) tall with small sharp projections, especially in young plants. The alternate, stalked leaves are 6.7 to 12 in (17 to 30 cm) long, 2.8 to 5.5 in (7 to 14 cm) wide, and deeply cut into 20 to 30 lobes per leaf. Flowers are covered with fine hairs and are clustered in groups of 10 to 15, the main stalk 0.4 to 1.2 in (1 to 3 cm) long and each flower stalk 0.4 to 0.6 in (1 to 1.5 cm) long. The hypanthium is topped with five small calyx lobes. The pale greenish-white petals, 1.2 to 1.4 in (3 to 3.6 cm) long, are fused into a curved five-lobed tube 0.1 to 0.2 in (3 to 4 mm) wide. The fruit is an ellipsoid berry. This species differs from others in the genus by its slender stems; stalked, pinnately lobed leaves; and smaller flowers (Lammers 1990).

Cyanea shipmanii has only been known from one population, located on the island of Hawaii on the eastern slope of Mauna Kea on privately owned land. When originally discovered, only 1 mature plant was found, with a total population size of less than 50 individuals (HHP 1991h). This species typically grows in koa- and 'ohi'a-dominated Montane Mesic Forests at elevations between 5,400 and 6,200 ft (1,650 and 1,900 m) (HHP 1991h, Lammers 1990). Associated species include kawa'u and kolea (HHP 1991h). The major threat to *Cyanea shipmanii* is stochastic extinction and/or reduced reproductive vigor due to the single existing population and the small number of known individuals.

Based on a specimen he collected in 1912 on Mauna Loa, island of Hawaii, Rock (1913) described *Cyanea stictophylla*, choosing the specific epithet to refer to the long and narrow leaves. Other names by which the taxon has been known include: *Cyanea palakea* (Forbes 1916), *C. quercifolia* var. *atropurpurea* (Wimmer 1953), *C. stictophylla var. inermis* (Rock 1957), and *C. nelsonii* (St. John 1976). St. John (St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species to the genus *Delissea*, the older of the two generic names, creating *D. nelsonii*, *D. palakea*, *D. quercifolia* var. *atropurpurea*, *D. stictophylla*, and *D. stictophylla* var. *inermis* (St. John 1987b). The separation of the two genera is maintained in the current treatment of the family (Lammers 1990), and all the above listed taxa are considered to fall within the range of variation of *C. stictophylla*.

Cyanea stictophylla of the bellflower family is a shrub or tree 2 to 20 ft (0.6 to 6 m) tall, sometimes covered with small, sharp projections. The alternate, stalked, oblong, shallowly lobed, toothed leaves are 7.8 to 15 in (20 to 38 cm) long and 1.6 to 3.1 in (4 to 8 cm) wide. Clusters of five or six flowers have main flowering stalks 0.4 to 1.6 in (1 to 4 cm) long; each flower has a stalk 0.3 to 0.9 in (0.7 to 2.2 cm) long. The hypanthium is topped with five calyx lobes 0.1 to 0.2 in (2 to 4 mm) long and 0.04 and 0.1 in (1 to 2 mm) wide. The yellowish-white or purple petals, 1.4 to 2 in (3.5 to 5 cm) long, are fused into an arched, five-lobed tube about 0.2 in (5 to 6 mm) wide. The spherical berries are orange. This species differs from others in the genus by its lobed, toothed leaves and its larger flowers with small calyx lobes and deeply lobed corollas (Lammers 1990).

Historically, *Cyanea stictophylla* was known only from the island of Hawaii on the western, southern, southeastern, and eastern slopes of Mauna Loa. Today, the species is known to be extant near Keauhou and in South Kona on privately owned land. The 3 known

populations, which extend over a distance of about 38 by 10 mi (61 by 16 km), contain a total of approximately 15 individuals (HHP 1991i1 to 1991i3). This species, sometimes growing epiphytically, is found in koa- and 'ohi'a-dominated Lowland Mesic and Wet Forests at elevations between 3,500 and 6,400 ft (1,070 and 1,950 m) (HHP 1991i1 to 1991i3, Lammers 1990). Associated species include tree ferns, *Melicope volcanica* (alani), and *Urera glabra* (opuhe) (HHP 1991i1 to 1991i3). The major threat to *Cyanea stictophylla* is grazing and trampling by feral cattle as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (F. Duvall, pers. comm., 1992).

Cyrtandra giffardii was first collected in 1911 on the island of Hawaii by Rock, who named the species to honor Walter M. Giffard, who collected a flowering specimen in 1918 (Rock 1919a).

Cyrtandra giffardii of the African violet family (Gesneriaceae) is a shrubby tree usually 10 to 20 ft (3 to 6 m) tall. The opposite, stalked, papery-textured, toothed leaves are usually 2.4 to 4.7 in (6 to 12 cm) long and 1 to 1.8 in (2.5 to 4.6 cm) wide and have a few tiny, coarse hairs on the upper surface. Clusters of three to five flowers have a moderate amount of short brown hairs throughout the cluster, a main stalk 1 to 1.4 in (2.5 to 3.5 cm) long, two linear bracts about 0.25 in (6 to 7 mm) long, and individual flower stalks 0.6 to 1.2 in (1.5 to 3 cm) long. The calyx, 0.1 to 0.4 in (3 to 9 mm) long, has an outer covering of short, soft brown hairs and is divided into five narrowly triangular lobes. The corolla consists of five fused white petals about 0.5 in (12 mm) long, with lobes about 0.08 to 0.1 in (2 to 3 mm) long. Only immature berries have been observed, and they were white and about 0.4 in (1 cm) long. Both this species and *Cyrtandra tintinnabula* are distinguished from others of the genus and others on the island of Hawaii by a combination of the following characteristics: The opposite, more or less elliptic, papery leaves; the presence of some hairs on the leaves and more on the inflorescences; the presence of three to six flowers per inflorescence; and the size and shape of the flowers and flower parts (Wagner *et al.* 1990).

Historically, *Cyrtandra giffardii* was found on the island of Hawaii on the northeastern slope of Mauna Kea near Kilau Stream and south to the eastern slope of Mauna Loa near Kilauea Center. The 3 extant populations on State-owned land are located near Kilau Stream, Stainback Highway, and Puu Makaala, extending over a distance of approximately 31 by 3 mi (50 by 5 km) and containing a total of about 14 to 20 plants (HHP 1991j1 to 1991j5; W. Wagner, pers. comm., 1992). This species typically grows in shady koa-,'ohi'a-, and tree fern-dominated Montane Wet Forests at elevations between 2,400 and 4,900 ft (720 and 1,500 m) (HHP 1991j1 to 1991j3, HPCC 1991d1, 1991d2, Wagner *et al.* 1990). Associated species include other taxa of *Cyrtandra* (ha'iwale), *Hedyotis* spp., and *Perrottetia sandwicensis* (olomea) (HHP 1991j1 to 1991j3; HPCC 1991d1; W. Wagner, pers. comm., 1992). The major threats to *Cyrtandra giffardii* are habitat disturbance and plant damage by feral pigs as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations (Stone 1985; W. Wagner, pers. comm., 1992).

Based on a plant he collected in 1909 on Mauna Kea, island of Hawaii, Rock named *Cyrtandra tintinnabula*. The specific ephithet describes the bell-shaped calyx of the plant (Rock 1919a).

Cyrtandra tintinnabula of the African violet family is a shrub 3.3 to 6.6 ft (1 to 2 m) tall with opposite, stalked, elliptical or oval, papery-textured leaves 5 to 10 in (13 to 26 cm) long and 2 to 4.8 in (5 to 12.3 cm) wide. Leaves, especially the lower surfaces, have yellowish-brown hairs. Flower clusters, densely covered with long soft hairs, comprise three to six flowers, a main stalk 0.4 to 0.7 in (1 to 1.8 cm) long, individual flower stalks 0.2 to 0.6 in (0.5 to 1.5 cm) long, and leaflike bracts. The green bell-shaped calyx is about 0.4 in (9 to 10 mm) long and has triangular lobes. The hairy white corolla, about 0.5 in (12 mm) long and about 0.2 in (5 mm) in diameter, is divided into five lobes, each about 0.1 in (3 mm) long. Fruit and seeds have not been observed. This species differs from *Cyrtandra giffardii* by its habit, its larger leaves, and its shorter flower stalks (Wagner *et al* 1990).

Historically, *Cyrtandra tintinnabula* was found only on the island of Hawaii on the northern to the eastern slopes of Mauna Kea. Today, 3 populations of the species are known to occur on State-owned land extending over approximately 6 by 1 mi (10 by 3 km) from Kilau Stream to Honohina Gulch and containing approximately 18 known individuals (HHP 1991k1 to 1991k6). This species typically grows in dense koa-, 'ohi'a-, and tree fern-dominated Lowland Wet Forests at elevations between 2,100 and 3,400 ft (650 and 1,040 m) (HHP 1991k3, 1991k4, 1991k6; Wagner *et al.* 1990). Associated species include other kinds of ha'iwale and *Hedyotis* sp. The major threats to *Cyrtandra tintinnabula* are habitat disturbance and plant damage by feral pigs and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals.

Based on a specimen collected on Mauna Loa by James Macrae in 1825, Weddell (1856–57) described *Urtica sandwicensis*, choosing the specific epithet to refer to the Sandwich Islands, on older name for the Hawaiian Islands. Later (1869), he transferred the species to another genus, resulting in *Hesperocnide sandwicensis*.

Hesperocnide sandwicensis of the nettle family (Urticaceae) is an erect annual herb 8 to 24 in (20 to 60 cm) tall covered with coarse stinging hairs as well as shorter non-stinging hairs. The opposite, stalked, thin toothed leaves are 0.6 to 3 in (1.5 to 7 cm) long and 0.4 to 1 in (0.9 to 2.5 cm) wide. Most of the small petalless flowers are male, but they are mixed with some female flowers in clusters 0.08 to 0.2 in (2 to 5 mm) long which originate in the leaf axils. Sepals of male flowers are fused into a four-lobed calyx about 0.02 in (0.5 mm) long which encloses four stamens. The calyx of the female flower, about 0.04 in (1 mm) long and enclosing an unstalked stigma, swells slightly in fruit and encloses a flattened achene (dry, one-celled, unopening fruit) about 0.04 in (1.1 mm) long. The only Hawaiian member of the genus, *Hesperocnide sandwicensis* is distinguished from other native Hawaiian genera of its family by its annual herbaceous habit and its stinging hairs. It is distinguished from the alien species *Urtica urens* by the lack of calyx lobes (Wagner *et al.* 1990).

Historically, *Hesperocnide sandwicensis* occurred on the island of Hawaii on the eastern and western slopes of Mauna Kea, the northern to western slopes of Mauna Loa, the Humuula Saddle between Mauna Kea and Mauna Loa, and the southeastern slope of Hualalai. Twelve extant populations are known, extending over a distance of approximately 38 by 15 mi (61 by 24 km) in much of the historic range of the species. It has not been seen on Hualalai for some time and is presumed extinct there. Known populations now occur on or near the following areas: Puu Kanakaleonui, Puu Laau, Ahumoa Cone, Pohakuloa Training Area (PTA), and Sulphur Cone. Because the species is an annual plant, the total number of individuals varies with the time of year and amount of rainfall. Several hundred to a thousand individuals have been found on PTA, a State and Federally owned area of land which is managed by the U.S. Army.

Other, smaller populations totalling approximately 80 to 130 plants are located on privately and State-owned land (HHP 199111 to 199117, HPCC 1991e; Robert Shaw, Colorado State University, pers. comm., 1992). This species typically grows in open mamane- and naio-dominated Subalpine Dry Forests at elevations between 5,840 and 8,600 ft (1,780 and 2,620 m) (Gagne and Cuddihy 1990; HHP 199111 to 199113, 199116; HPCC 1991e; Wagner *et al.* 1990). Associated species include *Asplenium fragile*, *Santalum paniculatum* ('iliahi), and the naturalized *Urtica urens* (dwarf nettle) (HHP 199111, 199116; R. Shaw, pers. comm., 1992). The major threats to *Hesperocnide sandwicensis* are competition from alien grasses such as *Anthoxanthum odoratum* (sweet vernalgrass) and *Holcus lanatus* (common velvet grass); grazing by feral pigs, *Capra hircus* (goats), and *Ovis aries* (sheep); habitat disturbance and damage to plants as a result of military exercises; and fire (HHP 199116; HPCC 1991e; Ken Nagata, U.S. Department of Agriculture, pers. comm., 1992).

Ischaemum byrone was first collected by James Macrae during the expedition of the *Blonde* in 1825 and named *Spodiopogon byronis* by Trinius in 1832. The specific epithet refers to Byron's Bay, now called Hilo Bay, where this specimen was collected. Steudel (1855) transferred the species to the genus *Andropogon*, and in 1889, Hackel redescribed the species, naming it *Ischaemum lutescens*, a superfluous name. In 1922, Hitchcock published *Ischaemum byrone*, the currently accepted name (O'Connor 1990).

Ischaemum byrone of the grass family (Poaceae) is a perennial plant with creeping stems and erect stems 16 to 31 in (40 to 80 cm) tall. The uppermost sheaths (portions of leaves surrounding the stems) are often inflated and sometimes partially enclose the yellow to yellowish-brown racemes (flowering clusters). The hairless leaf blade (the flat extended part of the leaf) is 2.8 to 7.9 in (7 to 20 cm) long and 1.2 to 2 in (3 to 5 cm) wide; the uppermost blades are much smaller in size. Flowers, arranged in two or sometimes three digitate (originating from one point), elongate racemes 1.6 to 3.9 in (4 to 10 cm) long, consist of two types of two-flowered awned (having bristles) spikelets (subclusters of flowers). The fruit is a caryopsis (grain) about 0.1 in (3 mm) long. The only species of the genus found in Hawaii, *Ischaemum byrone* differs from other grasses in the State by its C_4 photosynthetic pathway; its digitate racemes; and its two-flowered, awned spikelets (O'Connor 1990).

Historically, *Ischaemum byrone* was found on Oahu at an unspecified location, on the northeastern coasts of Molokai and East Maui, and along the central portion of the eastern coast of the island of Hawaii. Extant populations still occur on Molokai, Maui, and Hawaii. Two populations on East Molokai are located about 2 mi (3 km) apart at the head of Wailau Valley and on Kikipua Point on privately owned land. Six populations on East Maui are found along approximately 16 mi (26 km) of coast on private, State, and Federally owned land on Pauwalu Point, on Kalahu Point, near Hana, on Kauiki Head, and on the following offshore islets: Keopuka Islet, Mokuhuki Islet, and Puukii Islet. On Hawaii, the species is still found in two populations at Auwae and Kamoamoa on privately and federally owned land. The total distribution of the species includes 10 populations on 3 islands with approximately 1,200 to 2,200 individuals (HHP 1991o1 to 1991o10, 1991o12 to 1991o14). This species typically grows in Coastal Dry Shrublands among rocks or on basalt cliffs at elevations between sea level and 250 ft (0 and 75 m) (Gagne and Cuddihy 1990, O'Connor 1990). Associated species include *Bidens* spp. (ko'oko'olau), *Fimbristylis cymosa*, and *Scaevola sericea* (naupaka kahakai) (HHP 1991o5, 1991o7, 1991o9, 1991o11; HPCC 1991f). The major threats to *Ischaemum byrone* are competition from alien species such as *Digitaria ciliaris* (Henry's crabgrass) and habitat change from volcanic activity (HHP 1991o3; HPCC 1991f; Charles H. Lamoureux, Lyon Arboretum, pers. comm., 1992).

Isodendrion pyrifolium was first collected on Oahu during the United States Exploring Expedition in 1841 and was named by Gray in 1852. The specific epithet refers to the resemblance of the leaves of this species to those of *Pyrus* (pear). In his monograph of the genus, St. John (1952) named the following species, all of which are considered in the current treatment of the genus (Wagner *et al.* 1990) to be synonymous with *I. pyrifolium*: *I. hawaiiense*, *I. hillebrandii*, *I. lanaiense*, *I. molokaiense*, and *I. remyi*.

Isodendrion pyrifolium of the violet family (Violaceae), a shrub about 2.6 to 6.6 ft (0.8 to 2 m) tall, has persistent stipules (leaflike appendages on leaves) and alternate, stalked, elliptic or sometimes lance-shaped, papery leaves which measure 1 to 2.6 in (2.5 to 6.5 cm) long and 0.3 to 1.3 in (0.8 to 3.2 cm) wide. The solitary, bilaterally symmetrical, fragrant flowers have five lance-shaped sepals 0.1 to 0.2 in (3.5 to 5 mm) long with membranous edges fringed with white hairs and three types of clawed (with a narrow petiole-like base) greenish-yellow petals 0.4 to 0.6 in (10 to 15 mm) long with lobes about 0.2 in (4 to 5 mm) long. The three-lobed, 0.5 in (12 mm) long capsule opens to release olive-green seeds about 0.1 in (3 mm) long and about 0.08 in (2 mm) in diameter. This species differs from others in this endemic Hawaiian genus by its slightly smaller, greenish-yellow flowers and by the presence of hairs on the stipule midribs and leaf veins (Wagner *et al.* 1990).

Historically, *Isodendrion pyrifolium* was found at unspecified localities on Niihau, Molokai, and Lanai, as well as on Oahu in the central portion of the Waianae Mountains, on Maui in the northeastern to southwestern regions of the West Maui mountains, and on the island of Hawaii at the western base of Hualalai (HHP 1991p1 to 1991p5, Wagner *et al.* 1990). The species had not been collected since 1870 and was presumed extinct. However, in 1991, four plants were found on Hawaii near Kona in an area being developed as a golf course. A single plant is located about 250 ft (75 m) from a cluster of three other plants on State-owned land (C. Corn, *in litt.* 1991; Francis Blanco, Hawaii Housing and Finance Development Corporation, and K. Nagata, pers. comms., 1992). This species typically grows on dry sites in Lowland Mesic Forests at low elevations (Gagne and Cuddihy 1990, Wagner *et al.* 1990). Associated species include 'iliahi, *Sophora chrysophylla* (mamane), and *Waltheria indica* ('uhaloa) (Paul Weissich, Weissich and Associates, pers. comm., 1992). The major threats to *Isodendrion pyrifolium* are competition from alien species such as fountain grass, fire, and stochastic extinction and/or reduced reproductive vigor due to the single known population and the small number of existing individuals (C. Corn, K. Nagata, and P. Weissich, pers. comms., 1992).

In 1920, Kuekenthal described *Cyperus fauriei* based on a specimen collected by Faurie on Molokai in 1910 (Wagner *et al* 1989). Koyama (1990), in the current treatment of the genus, transferred the species to *Mariscus*, resulting in *M. fauriei*.

Mariscus fauriei of the sedge family (Cyperaceae), a perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 4 to 20 in (10 to 50 cm) tall, has leaves shorter than or the same length as the stems and 0.04 to 0.1 in (1 to 3.5 mm) wide. Three to 5 bracts, the lowest one 2.4 to 7.9 in (6 to 20 cm) long, are located under each flower

cluster, which measures 0.8 to 1.6 in (2 to 4 cm) long and 1.2 to 3.9 in (3 to 10 cm) wide and is made up of 3 to 10 spikes (unbranched clusters of unstalked flowers). Each spike measures 0.3 to 1.2 in (0.8 to 3 cm) long and 0.3 to 0.4 in (8 to 10 mm) wide and is made up of compressed spreading spikelets, each comprising seven to nine flowers. Fruits are three-angled achenes about 0.05 in (1.2 mm) long and about 0.03 in (0.7 mm) wide. This species differs from others in the genus in Hawaii by its smaller size and its narrower, flattened, and more spreading spikelets (Koyama 1990).

Historically, *Mariscus fauriei* was found on East Molokai, in the northwestern and southwestern portions of Lanai, and on the island of Hawaii on the northern slope of Hualalai and the northwestern and southernmost slopes of Mauna Loa. A total of 3 extant populations and about 33 to 43 known individuals of the species are found on Molokai and Hawaii, the species is almost certainly extinct on Lanai now. One population of about 20 to 30 plants occurs on Molokai above Kamiloloa on State-owned land. Two populations located about 45 mi (72 km) apart are known on Hawaii on the Hualalai side of Mauna Loa and in the South Point area. The land is privately owned, and there are a total of about 13 known individuals on that island (HHP 1991q1 to 1991q8; HPCC 1991g; Robert Hobdy, Hawaii DLNR, pers. comm., 1992). This species typically grows in lama-dominated Lowland Dry Forests, often on aa substrate, at elevations between 880 and 6,000 ft (300 and 1,830 m) (HHP 1991q8, HPCC 1991g, Koyama 1990). Associated species include alahe'e, *Peperomia* sp. ('ala'ala wai nui), and *Rauvolfia sandwicensis* (hao), (HHP 1991q8, HPCC 1991g). The major threat to *Mariscus fauriei* on Molokai is grazing and trampling by feral goats and *Axis axis* (axis deer), and on Hawaii, competition from alien species such as Christmas berry and *Oplismenus hirtellus* (basketgrass). On both islands, the species is faced with stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991q8; HPCC 1991g; R. Hobdy, pers. comm., 1992).

First collected on the island of Hawaii by Charles Pickering during the United States Exploring Expedition of 1840 and 1841, *Nothocestrum breviflorum* was named by Gray in 1862. He chose the specific epithet to refer to the short corolla of the flower of this species. In 1888, Hillebrand name var. *longipes*, but in the current treatment of the genus (Symon 1990), no varieties of the species are recognized.

Nothocestrum breviflorum of the nightshade family (Solanaceae), a stout tree 33 to 39 ft (10 to 12 m) tall with a trunk up to 18 in (45 cm) in diameter, has deciduous, alternate, stalked, oblong or elliptic-oblong, thick and papery-textured, toothless leaves which are 2 to 4.7 in (5 to 12 cm) long and 1.2 to 2.4 in (3 to 6 cm) wide. Numerous bisexual, radially symmetrical flowers are clustered at the ends of short spurs (branches with much shortened internodes) on individual stalks 0.2 to 0.4 in (4 to 10 mm) long. Each flower consists of a 0.2 to 0.4 in (6 to 11 mm) long, four-lobed tubular calyx split on one side and a greenish-yellow four-lobed corolla which barely projects beyond the calyx. The fruit, a somewhat spherical or oblong, orange-red berry about 0.2 to 0.3 in (6 to 8 mm) in diameter, is enclosed by the calyx. Seeds have not been observed. This species can be distinguished from others of this endemic Hawaiian genus by the leaf shape; the clusters of more than three flowers arranged on the ends of short branches; and the broad fruit enclosed by the calyx (Symon 1990).

Historically, *Nothocestrum breviflorum* was found only on the island of Hawaii from the southern portion of the Kohala Mountains; the northern slope of Hualalai; and the eastern, southern, and western slopes of Mauna Loa. Today, extant populations have been found in much of the species' historic range, from near Waimea, near Kiholo, in Puu Waawaa, in HVNP in Kipuka Puaulu and near Holei Pali, and in the South Point area. These 9 populations, which extend over a distance of about 63 by 41 mi (101 by 66 km), are found on privately, State-, and federally owned land and contain an estimated 53 known individuals (HHP 1991r1 to 1991r12; J. Lau and W. Wagner, pers. comms., 1992). This species typically grows in koa- and 'ohi'a- or lama-dominated Lowland Dry Forests and Montane Dry or Mesic Forests, often on a substrate, at elevations between 590 and 6,000 ft (180 and 1,830 m) (Gagne and Cuddihy 1990; HHP 1991r1, 1991r2, 1991r5, 1991r7, 1991r12, HPCC 1991h; Symon 1990). Associated species include 'iliahi, *Caesalpinia kavaiensis* (uhiuhi), and *Erythrina sandwicensis* (wiliwili) (HHP 1991r1, 1991r3, 1991r4, 1991r12; HPCC 1991h; W. Wagner, pers. comm., 1992). The major threats to *Nothocestrum breviflorum* are competition from alien species such as Christmas berry, fountain grass, lantana, and *Leucaena leucocephala* (koa haole); browsing by cattle; fire; and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (HHP 1991r4, 1991r6, 1991r12; Lamb 1981; W. Wagner, pers. comm., 1992).

Ochrosia kilaueaensis was first collected by Forbes in 1915 and was named by St. John in 1978. The specific epithet refers to Kilauea, the type locality of the plant on the island of Hawaii. Based on a specimen collected in 1909 by Rock, St. John (1978) named *O. konaensis*. In the current treatment of the genus (Wagner *et al.* 1990), *O. konaensis* is considered synonymous with *O. kilaueaensis*.

Ochrosia kilaueaensis of the dogbane family (Apocynaceae) is a hairless tree 49 to 59 ft (15 to 18 m) tall with milky sap. The lance- or ellipse-shaped toothless leaves are arranged three or four per node, are 2.4 to 7.5 in (6 to 19 cm) long and 0.9 to 2.6 in (2.2 to 6.5 cm) wide, and have veins arising at nearly right angles to the midrib. Open clusters of numerous flowers have main stalks 1.8 to 2.5 in (4.5 to 6.3 cm) long, secondary branches 0.4 to 1 in (1.1 to 2.5 cm) long, and individual flower stalks 0.2 to 0.3 in (5 to 7 mm) long. Each flower has a five-lobed calyx about 0.4 in (10 to 11 mm) long and a trumpet-shaped greenish-white corolla with a tube 0.3 to 0.4 in (7 to 11 mm) long and lobes 0.5 to 0.6 in (12 to 15 mm) long. The fruit is a drupe (a fruit with a firm outer layer, a fleshy inner layer, and a stony inner layer surrounding a single seed) thought to be yellowish brown at maturity, 1.8 to 1.9 in (4.5 to 4.9 cm) long, and 0.9 to 1.1 in (2.4 to 2.9 cm) wide. This species is distinguished from other Hawaiian species of the genus by the greater height of mature trees, the open flower clusters, the longer flower stalks, and the larger calyx and lobes of the corolla (Wagner *et al.* 1990).

Historically, *Ochrosia kilaueaensis* has been collected on the northern slope of Hualalai and on the eastern slope of Mauna Loa. There is one known extant population located at Puu Waawaa on State-owned land and consisting of an unknown number of individuals (HHP 1991s1, 1991s2). This species typically grows in koa- and 'ohi'a- or lama-dominated Montane Mesic Forests at elevations between 2,200 and 4,000 ft (670 and 1,220 m) (Gagne and Cuddihy 1990; HHP 1991s1, 1991s2; Wagner *et al.* 1990). Associated species include 'aiea, *Colubrina oppositifolia* (kauila), *Gardenia brighamii* (nanu), and *Psychotria hawaiiensis* (kopiko) (HHP 1991s1). The major threats to *Ochrosia kilaueaensis* are competition from alien species such as fountain grass, browsing by feral goats, fire, and stochastic extinction and/or reduced reproductive

vigor due to the single existing known population (Bruegmann 1990, CPC 1990b).

Gray (1862) named *Plantago pachyphylla* var. *hawaiiensis* and *P. pachyphylla* var. *hawaiiensis* subvar. *gracilis* based on specimens collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841 and by Remy in the 1850s, respectively. Leveille (1911) published *P. gaudichaudiana* based on another specimen from the island of Hawaii. In 1923, Pilger raised the taxon to specific rank, resulting in *P. hawaiensis*, and also published a new variety, var. *laxa* (Pilger 1937). The specific epithet refers to the island where the plant grows. In the current treatment of the genus, only *P. hawaiensis* is accepted (Wagner *et al.* 1990).

Plantago hawaiensis of the plantain family (Plantaginaceae), a perennial herb which grows from a stout short stem, has thick, leathery, narrowly oval or oblong leaves located at the base of the plant which measure 3 to 8.7 in (7.5 to 22 cm) long and usually 0.6 to 1.3 in (1.5 to 3.2 cm) wide. The flowering stalk is 7.9 to 35 in (20 to 90 cm) long and is topped by a spike usually 5.9 to 9 in (15 to 23 cm) long. Each upward pointing flower, subtended by a single bract 0.08 to 0.1 in (2.1 to 2.6 mm) long, has a four-lobed calyx 0.06 to 0.09 in (1.6 to 2.2 mm) long and a trumpet-shaped corolla about 0.04 in (1 mm) long. The capsule, 0.1 to 0.2 in (2.6 to 4 mm) long and projecting from the calyx, opens to release four to six dull black seeds about 0.04 in (1 mm) long and winged on one end. This species is distinguished from other endemic and naturalized species of the genus in Hawaii by its perennial herbaceous habit; its thick leathery leaves; its upward pointing flowers; and its capsules which project from the calyx (Wagner *et al.* 1990).

Historically, *Plantago hawaiensis* was found only on the island of Hawaii on the southern slopes of Mauna Kea; the northeastern, southeastern, and southern slopes of Mauna Loa; and the western slope of Hualalai. Today, the species is known to occur on the Humuula Saddle, in the Upper Waiakea Forest Reserve, and near the Keapohina Upland on privately and State-owned land. The four extant populations extend over a distance of approximately 14 by 4 mi. (23 by 6 km) and contain an unknown number of individuals (HHP 1991t1 to 1991t6). This species typically grows in boggy conditions in Montane Wet Herblands or in Montane Dry Shrublands dominated by koa or 'ohi'a trees of short stature, or sometimes in lava cracks, at elevations between 5,900 and 6,400 ft (1,800 and 1,950 m) (HHP 1991t1, 1991t2, 1991t4, 1991t6; Wagner *et al.* 1990). The major threat to *Plantago hawaiensis* is stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations.

Portulaca sclerocarpa was first collected during the United States Exploring Expedition of 1840 and 1841 and was named by Gray (1854). The specific epithet refers to the hardened capsule.

Portulaca sclerocarpa of the purslane family (Portulacaceae), a perennial herb with a fleshy tuberous taproot which becomes woody, has stems up to about 7.9 in. (20 cm) long. The stalkless, succulent, grayish-green leaves are almost circular in cross-section, 0.3 to 0.8 in. (8 to 21 mm) long, and about 0.06 to 0.1 in. (1.5 to 2.5 mm) wide. Dense tufts of hairs are located in each leaf axil and underneath the tight clusters of three to six stalkless flowers grouped at the ends of the stems. Sepals are about 0.2 in. (5 mm) long and have membranous edges. Petals are white, pink, or pink with a white base, about 0.4 in. (10 mm) long, and surround about 30 stamens and an 8-branched style. The hardened capsules are about 0.2 in. (4 to 4.5 mm) long, have walls 0.01 to 0.02 in. (0.18 to 0.5 mm) thick, open very late or not at all, and contain glossy, dark reddish-brown seeds about 0.02 in. (0.4 to 0.6 mm) long. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *Portulaca villosa*, differs mainly in its thinner-walled, opening capsule (Wagner *et al.* 1990).

Historically, *Portulaca sclerocarpa* was found on an islet off the south coast of the island of Lanai and on the island of Hawaii in the Kohala Mountains, on the northern slope of Hualalai, the northwestern slope of Mauna Loa, and near Kilauea Crater. There is 1 extant population on Poopoo Islet off the coast of Lanai which contains about 10 plants (R. Hobdy, pers. comm., 1992). On Hawaii, 11 extant populations extend over a distance of about 54 by 32 mi (87 by 51 km) and are located on 3 cinder cones in the Nohonaohae area; at PTA, including inside the Multi-Purpose Range Complex (MPRC); at Puu Anahulu; and near Puu Keanui and Puu Lehua on private, State, and Federally owned land. The 11 populations on the island of Hawaii contain a total of approximately 72 to 122 individuals (Cuddihy *et al.* 1983; HHP 1991u1 to 1991u12; R. Shaw, pers. comm., 1992). This species typically grows in Montane Dry Shrublands, often on bare cylinder and even near steam vents, at elevations between 3,380 and 5,340 ft (1,030 and 1,630 m) Gagne and Cuddihy 1990, Wagner *et al.* 1990). Associated species include mamane and 'ohi'a (HHP 1991u1, 1991u8 to 1991u10, 1991u12; HPCC 1991i). The major threats to *Portulaca sclerocarpa* are competition from alien grasses such as fountain grass and *Andropogon virginicus* (broomsedge); grazing, browsing, trampling, and habitat disturbance by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; and fire (HHP 1991u2, 1991u9; HPCC 1991i; R. Shaw, pers. comm., 1992).

Based on collections by Rock on the island of Hawaii, Beccari named *Pritchardia affinis* and three varieties: Var. *halophila* (misspelled as "holaphila"), var. *rhopalocarpa*, and var. *gracilis* (Beccari and Rock 1921). In the current treatment of the genus (Read and Hodel 1990), no subsequent taxa are recognized.

Pritchardia affinis of the palm family (Arecaceae) is a fan-leaved tree 33 to 82 ft (10 to 25 m) tall with pale or pinkish soft wool covering the underside of the petiole and extending onto the leaf blade. The wedge-shaped leaf has a green and smooth upper surface and a pale green lower surface with scattered yellowish scales. The branched, hairless flower clusters are located among the leaves. Each flower comprises a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The spherical fruit is about 0.9 in (2.3 cm) in diameter. This species is distinguished from other species of *Pritchardia* by the long, tangled, woolly hairs on the underside of the petiole and the base of the lower leaf blade; the stout hairless flower clusters which do not extend beyond the wedge-shaped leaves; and the smaller spherical fruit (Read and Hodel 1990).

Historically, *Pritchardia affinis* was found only on the island of Hawaii in the Kohala Mountains and along the western and southeastern coasts. Today, scattered individuals of the species can be found throughout much of the historically known coastal range at Kiholo, at Kukio, near Palanai Road, on Alii Drive in Kailua, in Captain Cook, at Hookena, at Milolii, and at Punaluu. Most plants grow within areas of human habitation or development, and the trees may have been cultivated by Hawaiians or others rather than having occurred in these areas naturally. There are an estimated 50 to 65 known individuals at 8 or more localities which extend along about 110 mi (180 km) along the coast on privately and State-owned land (HHP,

1991v1 to 1991v6; Norman Bezona, Hawaii Cooperative Extension Service, Brien Meilleur, Amy Greenwell Ethnobotanical Garden, and P. Weissich, pers. comms., 1992). This species typically grows in Coastal Mesic Forests at coastal sites or in gulches further inland at elevations between sea level and 2,000 ft (0 and 610 m), possibly associated with brackish water (HHP 1991v2; Read and Hodel 1990; C. Corn, pers. comm., 1992). Native associated species of this loulu are unknown, since all trees are found in cultivated zones, which have long been cleared of their native cover (B. Meilleur, pers. comm., 1992). The major threats to *Pritchardia affinis* are predation on seeds by roof rats, development of land where individuals grow, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals. In the past, the species' natural habitat was cleared for agriculture and housing, and feral pigs destroyed seedlings of the species, preventing regeneration (Beccari and Rock 1921; Hull 1980; C. Corn, pers. comm., 1992).

Gray (1854) mentioned an unnamed variety of *Silene struthioloides*, in reference to a specimen collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841. Sherff named this taxon *S. struthioloides* var. *gracilis* in 1946 and later elevated it to specific rank, resulting in *S. hawaiiensis* (1949). He chose the specific epithet to refer to the island where the plant is found.

Silene hawaiiensis of the pink family (Caryophyllaceae), a sprawling shrub with slanting or climbing stems 6 to 16 in (15 to 40 cm) long originating from an enlarged root, is covered with short, often sticky hairs. The stalkless narrow leaves are 0.2 to 0.6 in (6 to 15 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. Flowers are arranged in elongate clusters. Each flower has a stalk 0.1 to 0.2 in (3 to 6 mm) long; a five-toothed purple or purple-tinged calyx 0.4 to 0.6 in (11 to 14 mm) long; and five petals, greenish white above and maroon below, with a stalk-like base and a flat, two-lobed, expanded portion about 0.2 in (4.5 to 5.5 mm) long. The fruit is a capsule about 0.3 in (6.5 to 8 mm) long which releases pale brown seeds 0.02 to 0.03 in (0.4 to 0.7 mm) long. This species differs from others of *Silene* in Hawaii by its growth habit; its covering of short, often sticky hairs; the shape of its leaves; the arrangement of its flower clusters; and the color of its petals (Wagner *et al.* 1990).

Historically, *Silene hawaiiensis* was found only on the island of Hawaii from the western slope of Mauna Kea; the summit of Hualalai; Humuula Saddle; the northern, western, and northwestern slopes of Mauna Loa; and near Kilauea Crater. Today, populations are found in Hamakua District; on Humuula Saddle; at PTA, including inside MPRC; north of Puu Keanui; and in HVNP on privately, State-, and federally owned land. The 17 populations extend over a distance of approximately 12 by 7 mi (19 by 11 km) and contain a total of between about 2,600 and 2,700 individuals (HHP 1991w1 to 1991w10; HPCC 1991j; R. Shaw, pers. comm., 1992). This species typically grows in Montane or Subalpine Dry Shrublands in decomposed lava and ash at elevations between 3,000 and 4,300 ft (900 and 1,300 m) and sometimes up to 8,353 ft (2,546 m) (Wagner *et al.* 1990). Associated species include *Dodonaea viscosa* ('a'ali'i), *Styphelia tameiameiae* (pukiawe), and *Vaccinium reticulatum* ('ohelo) (HHP 1991w6; HPCC 1991j; R. Shaw, pers. comm., 1992). The major threats to *Silene hawaiiensis* are competition with alien plant species, particularly fountain grass; grazing, browsing, and trampling by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; fire; and volcanic activity (HPCC 1991j; R. Shaw, pers. comm., 1992).

Gray (1861a) named a plant collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841 *Vittadenia arenaria*. Hillebrand (1888) transferred the species to the genus *Tetramolopium* and named a second variety, var. *dentatum*. In the current treatment of the genus (Lowrey 1986, 1990), two subspecies, ssp. *arenarium* and ssp. *laxum*, are recognized. Variety *confertum*, described by Sherff in 1934, is recognized (Lowrey 1986, 1990) as a variety of spp. *arenarium*. Because of a recently recognized typification problem, ssp. *laxum* actually should be referred to as spp. *arenarium*, leaving what was called ssp. *arenarium* without a published name (Lavon *et al.* 1991).

Tetramolopium arenarium of the aster family (Asteraceae), an erect tufted shrub 2.6 to 4.3 ft (0.8 to 1.3 m) tall, is covered with tiny glands and straight hairs. The alternate, toothless or shallowly toothed leaves are more or less lanced-shaped, 0.6 to 1.5 in (15 to 37 mm) long, and 0.1 to 0.4 in (3 to 9 mm) wide. Five to 11 heads (dense flower clusters) are grouped at the end of each stem. Each head comprises a bell-shaped structure of 20 to 34 bracts 0.1 to 0.2 in (2.5 to 5 mm) high and 0.2 to 0.4 in (4 to 9 mm) in diameter beneath the flowers; a single series of 22 to 45 white, male ray florets 0.05 to 0.09 in (1.3 to 2.2 mm) long; and 4 to 9 bisexual disk florets with maroon petals 0.12 to 0.17 in (3.1 to 4.4 mm) long. Fruits are compressed achenes 0.06 to 0.1 in (1.5 to 3 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. This species is distinguished from others of the genus by its erect habit; the presence and types of glands and hairs on the plant; the fewer heads per flower cluster; the larger, male ray florets; the fewer, bisexual, maroon-petalled disk florets; and the wider achenes (Lowrey 1990).

Historically, *Tetramolopium arenarium* was found on the island of Maui on the western slope of Halakeala and on the island of Hawaii from the Kohala Mountains, the northwestern slopes of Mauna Kea and Mauna Loa, and the slopes of Hualalai. Only one population is known today, and it occurs on Hawaii in Kipuka Kalawamauna at PTA on federally managed land. At last count, there were 134 plants in a 660 by 200 ft (200 by 60 m) area (HHP 1991x1 to 1991x4, 1991y; HPCC 1990a; Laven *et al.* 1991; R. Shaw, pers. comm., 1992). This species typically grows in open 'a'ali'i-dominated Lowland or Montane Dry Forest at elevations between 2,600 and 4,900 ft (800 and 1,500 m) (Lowrey 1990). Associated species include 'a'ali'i, pukiawe, *Chamaesyce olowaluana* ('akoko), and *Dubautia linearis* (na'ena'e) (HPCC 1990a). The major threats to *Tetramolopium arenarium* are competition from alien plant species, particularly fountain grass; grazing, browsing, trampling, and habitat disturbance by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; fire; and stochastic extinction and/or reduced reproductive vigor due to the single existing population (Douglas *et al.* 1989, HPCC 1990a, Herbst and Fay 1979).

Hillebrand (1888) described *Zanthoxylum hawaiiense* based on a specimen collected on the island of Hawaii and also indicated an unnamed variety for a specimen collected on Lanai. Other names published for portions of this taxon include: *Z. bluettianum* (Rock 1913), *Z. hawaiiense* var. *citriodora* (Rock 1913), *Z. hawaiiense* var. *velutinosum* (Rock 1913), and *Z. hawaiiense* var. *subacutum* (St. John 1976). Some authors placed Hawaiian species in the genus *Fagara*, resulting in *F. hawaiiensis* (Engler 1896) and *F. bluettiana* (Engler 1931). Sherff (1958) named *F. hawaiiensis* var. *citriodora*, *F. hawaiiensis* var. *subacutata*, and *F. hawaiiensis* var. *velutinosa*, all of which are considered within the range of

variation of *Z. hawaiiense* in the current treatment of the Hawaiian species (Stone *et al.* 1990).

Zanthoxylum hawaiiense of the rue family (Rutaceae), a thornless tree usually 10 to 26 ft (3 to 8 m) tall with a trunk up to 10 in (25 cm) in diameter, has alternate leaves comprising three leathery, triangular-oval or lance-shaped, gland-dotted, lemon-scented, toothed leaflets usually 1.3 to 3.9 in (3.4 to 10 cm) long and 0.6 to 2 in (1.5 to 5 cm) wide. The stalk of each of the two side leaflets has one joint, and the stalk of the terminal leaflet has two joints. Flowers are usually either male or female, and usually only one sex is found on a single tree. Clusters of 15 to 20 flowers 1.6 to 3.1 in (4 to 8 cm) long have a main flower stalk 0.8 to 2 in (20 to 50 mm) long and individual flower stalks 0.08 to 0.2 in (2 to 4 mm) long. Each flower has four narrowly triangular sepals about 0.04 in (1 mm) long and four hairless petals (possibly absent in male flowers) of an unknown color. The fruit is a sickle-shaped follicle (dry fruit that opens along one side) 0.3 to 0.4 in (8 to 10 mm) long, containing one black seed about 0.3 in (7 to 8 mm) in diameter. This species is distinguished from other Hawaiian species of the genus by its leaves, which are always made up of three leaflets of similar size; the presence of only one joint on some of the leaflet stalks; and the shorter follicle with a rounded tip (Stone *et al.* 1990).

Historically, *Zanthoxylum hawaiiense* was known to occur in the central portion of the island of Kauai; on East Molokai; in the central part of the island of Lanai; on East Maui on the southwestern and southern slopes of Haleakala; and on the island of Hawaii in the Kohala Mountains, on the northern slope of Hualalai, and on the northwestern slope of Mauna Loa. There is now one living individual known on Kauai in Kawaiiki Valley on State-owned land. On Molokai, three extant populations of the species occur on privately and State-owned and federally managed land in Kalaupapa National Historical Park (NHP), in Pelekunu Valley, and near Puu Kolekole. The Molokai populations extend over a distance of about 3 by 2 mi (5 by 3 km). Although the number of plants at one of the sites is uncertain, it is estimated that the 3 populations contain 5 plants. On Lanai, one population with an unknown number of individuals has been reported on privately owned property in Kaiholena Gulch. On East Maui, extant populations of *Z. hawaiiense* have been found in Kahikinui, above Lualailua, above Kanaio, and in Auwahi. These 4 populations extend over a distance of approximately 5 by 3 mi (8 by 5 km) and contain a total of fewer than 10 plants. On the island of Hawaii, individuals are found at Puu Waawaa and at PTA on State-owned and federally managed land. These 2 extant populations are located about 13 mi (21 km) apart and contain a total of about 50 plants. In summary, *Zanthoxylum hawaiiense* is currently located on 5 islands and consists of 11 populations and about 66 individuals (HHP 1991z1 to 1991z16; R. Shaw, pers. comm., 1991).

Zanthoxylum hawaiiense typically grows in 'ohi'a-dominated Lowland Dry or Mesic Forests, and Montane Dry Forests, often on aa lava, at elevations between 1,800 and 5,710 ft (550 and 1,740 m) (Gagne and Cuddihy 1990), Stone *et al.* 1990). Associated species include *Antidesma platyphyllum* (hame) on Kauai, *Pleomele auwahiensis* (hala pepe) on Molokai, a'ia'i on Maui, and mamane and naio on the island of Hawaii (HHP 1991z1, 1991z5, 1991z9, 1991z11; HPCC 1990b; R. Shaw, pers. comm., 1992). A threat to *Z. hawaiiense* on Kauai is competition from alien plant species such as lantana and *Melia azedarach* (Chinaberry) (HHP 1991z11). On Molokai, grazing, browsing, trampling, and habitat disturbance by feral goats is a threat (HHP 1991z5). On Maui, competition with Kikuyu grass, which forms a continuous mat in many areas, and grazing, browsing, trampling, and habitat disturbance by cattle and goats are threats (A. Medeiros, pers. comm., 1992). The major threats to the species on the island of Hawaii are competition from alien plant species such as fountain grass; grazing, browsing, trampling, and habitat disturbance by feral goats and sheep; habitat disturbance and damage to plants as a result of military exercises; and fire (CPC 1990b, HHP 1991z10, HPCC 1990b). In addition, the species is threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii* (as *C. carlsonii*), *Cyanea shipmanii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum* (as *N. breviflorum* var. *breviflorum*), *Portulaca sclerocarpa,* and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citriodora*) were considered to be endangered. *Cyrtandra giffardii, Silene hawaiiensis* (as *S. hawaiiensis* var. *hawaiiensis*), and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and *Z. hawaiiense* var. *velutinosum*) were considered to be threatened. *Clermontia pyrularia, Isodendrion pyrifolium, Nothocestrum breviflorum* (as *N. breviflorum* var. *longipes*), and *Tetramolopium arenarium* (as *T. arenarium* var. *arenarium, T. arenarium* var. *confertum*, and *T. arenarium* var. *dentatum*) were considered to be extinct. On July 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered or thought to be extinct. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990) (55 FR 6183). In these notices, 10 of the taxa (including synonymous taxa) that had been proposed as endangered in the June 16, 1976, proposed rule were treated as Category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability

and threats to support preparation of listing proposals. *Clermontia lindseyana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea shipmanii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum, Portulaca sclerocarpa,* and *Zanthoxylum hawaiiense,* which were proposed as endangered in the June 16, 1976, proposed rule, were considered Category 1 candidates on all three notices of review; *Cyanea hamatiflora* ssp. *carlsonii* was considered a Category 1 taxon as *Cyanea carlsonii* in the 1980 and 1985 notices and as *Cyanea hamatiflora* ssp. *carlsonii* in the 1990 notice. *Cyanea stictophylla* and *Silene hawaiiensis* were considered Category 1 species in all three notices. In the 1980 and 1985 notices, *Isodendrion pyrifolium* and *Tetramolopium arenarium* were considered Category 1* species. In the 1990 notice, these two species were accorded Category 3A status, but because new information regarding their existence has become available, they are proposed herein for listing. Category 1* taxa are those which are possibly extinct, and Category 3A taxa are those for which the Service has persuasive evidence of extinction.

Cyrtandra giffardii appeared as a Category 2 species and *Clermontia peleana* as a Category 3C species in the 1980 and 1985 notices. *Ochrosia Kilaueaensis* first appeared as a Category 2 species in the 1985 notice. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Category 3C taxa are those which are more abundant than previously believed. Because new information provided support for listing, the above three species were conferred Category 1 status in the 1990 notice. The 1990 notice recognized *Cyanea copelandii* spp. *copelandii, Cyrtandra tintinnabula, Mariscus fauriei, Plantago hawaiensis,* and *Pritchardia affinis* as Category 1 taxa for the first time.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposed rule constitutes the final 1-year finding for these taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). The threats facing these 22 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals						Disease/ insects	Alien plants	Fire	Natural disasters	Human impacts	Military	Limited No.°
	Cattle	Deer	Goats	Pigs	Rats	Sheep							
Clermontia lindseyana.	X			X	P			X					
Clermontia peleana				X	X					X	X		X1
Clermontia pyrularia.					P			X			P		X1, 2
Colubrina oppositifolia.				X			X	X	X		P	X	
Cyanea copelandii ssp. *copelandii.*					P						P		X1, 2
Cyanea hamatiflora ssp. *carlsonii.*	X				P			X					X2, 3
Cyanea shipmanii .					P								X2, 3
Cyanea stictophylla	X				P								X2, 3
Cyrtandra giffardii .				X							P		X2, 3
Cyrtandra tintinnabula.				X									X2, 3
Hesperocnide sandwicensis.			X	X		X		X	X		P	X	
Ischaemum byrone		P	P					X		X	P		
Isodendrion pyrifolium.								X	X		P		X1, 2
Mariscus fauriei		X	X					X					X2, 3
Nothocestrum breviflorum.	X							X	X		P		X3
Ochrosia kilaueaensis.			X		P			X	X		P		X1, 2
Plantago hawaiensis.													X1, 2
Portulaca sclerocarpe.			X	X		X		X	X		P	X	
Pritchardia affinis ..					X		P				X		X3
Silene hawaiiensis			X	X		X		X	X	X	P	X	
Tetramolopium arenarium.			X	X		X		X	X		P	X	X2
Zanthoxylum hawaiiense.	X	P	X			X		X	X		P	X	X3

KEY
X—Immediate and significant threat.
P—Potential threat.
°—No more than 100 known individuals and/or no more than 5 known populations.

1—No more than 10 known individuals.
2—No more than 5 known populations.
3—No more than 100 known individuals.
4—Extinct in the wild.

These factors and their application to *Clermontia lindseyana* Rock ('oha wai), *Clermontia peleana* Rock ('oha wai), *Clermontia pyrularia* Hillebr. ('oha wai), *Colubrina oppositifolia* Brongn. ex H. Mann (kauila), *Cyanea copelandii* Rock ssp. *copelandii* (haha), *Cyanea hamatiflora* ssp. *carlsonii* (Rock) Lammers (haha), *Cyanea shipmanii* Rock (haha), *Cyanea stictophylla* Rock (haha), *Cyrtandra giffardii* Rock (ha'iwale), *Cyrtandra tintinnabula* Rock (ha'iwale), *Hesperocnide sandwicensis* (Wedd.) Wedd. (no common name (NCN)), *Ischaemum byrone* (Trin.) Hitch. (Hilo ischaemum), *Isodendrion pyrifolium* A. Gray (wahine noho kula), *Mariscus fauriei* (Kukenth.) T. Koyama (NCN), *Nothocestrum breviflorum* A. Gray ('aiea), *Ochrosia kilaueaensis* St. John (holei), *Plantago hawaiensis* (A. Gray) Pilg. (laukahi kuahiwi), *Portulaca sclerocarpa* A Gray (po'e), *Pritchardia affinis* Becc. (loulu), *Silene hawaiiensis* Sherff (NCN), *Tetramolopium arenarium* (A. Gray) Hillebr. (NCN), and *Zanthoxylum hawaiiense* Hillebr. (a'e) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The habitat of the plants included in this proposed rule has undergone extreme alteration because of past and present land management practices, including deliberate alien animal and plant introductions; agricultural, commercial, and urban development; and military and recreational use. Natural disturbances such as flooding, landslides, and volcanic activity also destroy habitat and can have a significant effect on small populations of plants. Competition with alien plants as well as destruction of plants and modification of habitat by introduced animals are the primary threats facing 19 of the 22 taxa being proposed (See Table 1.).

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to individuals allowed large-scale agricultural and ranching ventures to begin. So much land was cleared for these enterprises that climatic conditions began to change, and the amount and distribution of rainfall were altered (Wenkam 1969). Plantation owners supported reforestation programs which resulted in many alien trees being introduced in the hope that the watershed could be conserved.

Past and present activities of introduced alien mammals are the primary factor in altering and degrading vegetation and habitats on the island of Hawaii as well as on Kauai, Oahu, Molokai, and Maui, where some populations of the proposed species occur. Feral ungulates trample and eat native vegetation and disturb and open areas. This cause erosion and allows the entry of alien plant species (Cuddihy and Stone 1990, Wagner *et al.* 1990). Seventeen taxa in this proposal are directly threatened by habitat degradation resulting from introduced ungulates: 5 taxa are threatened by cattle, 1 taxon by deer, 7 taxa by goats, 9 by pigs, and 5 by sheep.

Axis deer (*Axis axis*), native to Sri Lanka and India, were first introduced to the Hawaiian Islands in 1868 as a game animal on Molokai, later to Oahu and Lanai, and finally to East Maui in 1960. Hunting of axis deer is allowed only on Molokai and Lanai during two months of the year (Hawaii DLNR 1985, Tomich 1986). The animal constitutes a threat to *Mariscus fauriei* on Molokai and a potential threat to *Ischaemum byrone* and *Zanthoxylum hawaiiense* on Molokai and Maui (HHP 1991z5; HPCC 1990b; Medeiros *et al.* 1986; R. Hobdy, pers. comm., 1992).

Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds developed as a result of restrictions on killing cattle decreed by King Kamehameha I. While small cattle ranches were developed on Kauai, Oahu, and West Maui, very large ranches of tens of thousands of acres were created on East Maui and Hawaii. Much of the land used in these private enterprises was leased from the State or was privately owned and considered Forest Reserve and/or Conservation District land. On Kauai, both sides of Waimea Canyon were supporting large cattle ranching operations by the 1870s (Ryan and Chang 1985). Feral cattle roamed Oahu, but most were removed by the early 1960s; today only a few can be found in the northwestern part of the island (J. Lau, pers. comm., 1990). Feral cattle were formerly found on Molokai and Maui and damaged the forests there. Feral cattle can presently be found on the island of Hawaii, and ranching is still a major commercial activity there. Hunting of feral cattle is no longer allowed in Hawaii (Hawaii DLNR 1985). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle becomes degraded to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. Several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Cuddihy and Stone 1990, Tomich 1986).

The habitats of many of the plants being proposed were degraded in the past by feral cattle, and this has had effects which still persist. Some taxa in this proposed rule are still being directly affected by cattle. These include: *Clermontia lindseyana, Cyanea hamatiflora* ssp. *carlsonii, Cyanea stictophylla, Nothocestrum breviflorum,* and *Zanthoxylum hawaiiense* (HHP 1991a1, 1991m, 1991n1, 1991r4, 1991r5; HPCC 1990b, 1991a, 1991h; F. Duvall, A. Medeiros, and S. Montgomery, pers. comms., 1992).

Goats (*Capra hircus*), a species originally native to the Middle East and India, were successfully introduced to the Hawaiian Islands in 1792, and currently there are populations on Kauai, Oahu, Molokai, Maui, and Hawaii. On Kauai, feral goats have been present in drier, more rugged areas since 1820; they still occur in Waimea Canyon. Goats have been on Oahu since about 1820, and they currently occur in the northern Waianae Mountains. On Molokai, goats degrade dry forests at low elevations. On Maui, goats have been widespread for 100 to 150 years and are common throughout the south slope of Haleakala (Medeiros *et al.* 1986). On Hawaii, goats damage low-elevation dry forest, montane parkland, subalpine woodlands, and alpine grasslands. Goats are managed in Hawaii as a game animal, but many herds populate inaccessible areas where hunting has little effect on their numbers. Goat hunting is allowed year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). Goats browse on introduced grasses and native plants, especially in drier and more open ecosystems. They also trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Cuddihy and Stone 1990, Culliney 1988, Tomich 1986). *Hesperocnide sandwicensis, Mariscus fauriei, Ochrosia kilaueaensis,*

Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium, and *Zanthoxylum hawaiiense* are currently threatened by goats (Bruegmann 1990; CPC 1990b; HHP 1991u5, 1991z5; HPCC 1990b; R. Hobdy, A. Medeiros, and R. Shaw, pers. comms., 1992), and *Ischaemum byrone* is potentially threatened by the animal (HHP 1991o11; R. Hobdy, pers. comm., 1992).

Sheep (*Ovis aries*) have become firmly established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests of Mauna Kea (above 3,300 ft (1,000 m)), including PTA, causing damage similar to that of goats (Stone 1985). Sheep have decimated vast areas of native forest and shrubland on Mauna Kea and continue to do so as a managed game species. Sheep threaten the habitat of at least two previously listed endangered species as well as the following proposed plant species: *Hesperocnide sandwicensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense* (Cuddihy and Stone 1990; HHP 1991u4, HPCC 1990a, 1990b; Shaw *et al.* 1990; Stone 1985; K. Nagata and R. Shaw, pers. comms., 1992).

Pigs (*Sus scrofa*) are originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Oahu, Molokai, Maui, and Hawaii and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). While rooting in the ground in search of the invertebrates and plant material they eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil substrates and cause erosion, especially on slopes. Alien plant seeds are dispersed in their hooves and coats as well as through their digestive tracts, and the disturbed soil is fertilized by their feces, helping these plants to establish (Cuddihy and Stone 1990, Medeiros *et al.* 1986, Smith 1985, Stone 1985, Tomich 1986, Wagner *et al.* 1990). Feral pigs pose an immediate threat to one or more population of the following proposed taxa: *Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Cyrtandra giffardii, Cyrtandra tintinnabula, Hesperocnide sandwicensis, Portulaca sclerocarpa, Silene hawaiiensis,* and *Tetramolopium arenarium* (Bruegmann 1990; CPC 1990b; HPCC 1990a, 1991a, 1991d1, 1991d2; J. Lau, A. Medeiros, John Obata, Hawaii Plant Conservation Center, and W. Wagner, pers. comms., 1992).

One or more species of 12 introduced plants threaten 13 of the proposed taxa. The original native flora of Hawaii consisted of about 1,000 species, 89 percent of which were endemic. Of the total native and naturalized Hawaiian flora of 1,817 species, 47 percent were introduced from other parts of the world and nearly 100 species have become pests (Smith 1985, Wagner *et al.* 1990). Naturalized, introduced species degrade the Hawaiian landscape and compete with native plants for space, light, water, and nutrients (Cuddihy and Stone 1990). Some of these species were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree species for reforestation. Ranchers intentionally introduced pasture grasses and other species for agriculture, and sometimes they inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Wenkam 1969).

Lantana camara (lantana), brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub which can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). One or more populations of each of the following taxa are threatened by lantana: *Colubrina oppositifolia, Nothocestrum breviflorum,* and *Zanthoxylum hawaiiense* (HHP 1991e4, 1991e8, 1991e15, 1991e16, 1991r4, 1991r12, 1991z11; HPCC 1991b, 1991h). *Leucaena leucocephala* (koa haole), a naturalized shrub which is sometimes the dominant species in low elevation, dry, disturbed areas on all of the main Hawaiian Islands, threatens *Nothocestrum breviflorum* (Geesnick *et al.* 1990, HHP 1991r12, HPCC 1991h). *Melia azedarach* (Chinaberry), a small tree widely cultivated and naturalized on most of the main Hawaiian Islands, threatens *Zanthoxylum hawaiiense* on Kauai (HHP 1991z11, Wagner *et al.* 1990). *Passiflora mollissima* (banana poka), a woody vine, poses a serious problem to mesic forests on Kauai and Hawaii by covering trees, reducing the amount of light which reaches trees as well as understory, and causing damage and death to trees by the weight of the vines. Animals, especially feral pigs, eat the fruit and distribute the seeds (Cuddihy and Stone 1990, Escobar 1990). Banana poka threatens *Clermontia lindseyana, Clermontia pyrularia,* and *Cyanea hamatiflora* ssp. *carlsonii* (HHP 1991a3, 1991aa; HPCC 1991c1 to 1991c3). After escaping from cultivation, *Schinus terebinthifolius* (Christmas berry) became naturalized on most of the main Hawaiian Islands (Wagner *et al.* 1990). It threatens *Colubrina oppositifolia, Mariscus fauriei,* and *Nothocestrum breviflorum* (HHP 1991e8, 1991e15, 1991e16, 1991q8, 1991r12; HPCC 1991b, 1991g).

Several hundred species of grasses have been introduced to the Hawaiian Islands, many for animal forage. Of the approximately 100 grass species which have become naturalized, 7 species threaten 12 of the 22 proposed plants. *Andropogon virginicus* (broomsedge) is a perennial, tufted grass which is naturalized on Oahu and Hawaii along roadsides and in disturbed dry to mesic forest and shrubland. This is a fire-adapted grass which threatens *Portulaca sclerocarpa* (Cuddihy and Stone 1990, HPCC 1991i, O'Connor 1990). *Anthoxanthum odoratum* (sweet vernalgrass) is a perennial, tufted grass which has naturalized in pastures, disturbed areas in wet forest, and sometimes in subalpine shrubland on Molokai, Maui, and Hawaii and is a threat to *Hesperocnide sandwicensis* (HPCC 1991e, O'Connor 1990). *Digitaria ciliaris* (Henry's crabgrass) is an annual grass which forms thick mats. It has naturalized on all the main Hawaiian Islands in lawns and pastures and threatens *Ischaemum byrone* (HPCC 1991f, O'Connor 1990). *Holcus lanatus* (common velvet grass), a perennial grass naturalized on most of the main Hawaiian Islands in wet, disturbed sites, threatens *Hesperocnide sandwicensis* (HPCC 1991e, O'Connor 1990). *Oplismenus hirtellus* (basketgrass) is a perennial grass which is naturalized in shaded mesic valleys and forests and sometimes in wet forests on most of the main Hawaiian Islands. *Mariscus fauriei* is threatened by basketgrass (HPCC 1991g, O'Connor 1990). *Pennisetum clandestinum* (Kikuyu grass), an aggressive, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and has naturalized on four Hawaiian Islands in dry to mesic forest. It produces thick mats which choke out other plants and prevent their seedlings from establishing and has been declared a

noxious weed by the U.S. Department of Agriculture (7 CFR 360) (Medeiros *et al.* 1986, O'Connor 1990, Smith 1985). Kikuyu grass is a threat to *Clermontia lindseyana*, and *Zanthoxylum hawaiiense* (HPCC 1991a; A. Medeiros and S. Montgomery, pers. comms., 1992). *Pennisetum setaceum* (fountain grass) is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plant regeneration, carries fires into areas not usually prone to fires, and increases the likelihood of fires (Cuddihy and Stone 1990, O'Connor 1990, Smith 1985). Fountain grass threatens one or more populations of the following proposed taxa: *Colubrina oppositifolia, Isodendrion pyrifolium, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* (HHP 1991n3, 1991r5; HPCC 1990a, 1991h; J. Lau, S. Montgomery, and P. Weissich, pers. comms., 1992).

Because Hawaiian plants were subjected to fire during their evolution only in areas of volcanic activity and from occasional lightning strikes, they are not adapted to recurring fire regimes and are unable to recover well following a fire. Alien plants are often better adapted to fire than native plant species, and some fire-adapted grasses have become widespread in Hawaii; native shrubland can thus be converted to land dominated by alien grasses. The presence of such species in Hawaiian ecosystems greatly increases the intensity, extent, and frequency of fire, especially during drier months or drought. Fire-adapted alien species can reestablish in a burned area, resulting in a reduction in the amount of native vegetation after each fire. Fire can destroy dormant seeds as well as plants, even in steep or inaccessible areas. Fires may result from natural causes, or they may be accidentally or purposely set by hunters, other people, or military ordnance or personnel. Vegetation within PTA on the northwestern slope of Mauna Loa is particularly vulnerable to fire, as this is an area managed for recreational hunting and used for military training. The only known population of *Tetramolopium arenarium* occurs in Kipuka Kalawamauna, and to protect this area from fires, the U.S. Army has installed firebreaks and now redirects ordnance firing away from that kipuka. Planned military maneuvers are now being reevaluated in light of several Category 1 and listed endangered species within the boundaries of PTA and an Environmental Impact Statement is being prepared for the area in response to a court decision (Cuddihy and Stone 1990; Herbst and Fay 1979; R. Shaw, pers. comm., 1992). Fire is a threat to one or more populations of the following proposed taxa: *Colubrina oppositifolia, Hesperocnide sandwicensis, Isodendrion pyrifolium, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium, and Zanthoxylum hawaiiense* (HHP 1991e15, 1991r5; HPCC 1990a, 1990b, 1991b, 1991h; J. Lau and K. Nagata, pers. comms., 1992).

Land development for housing and commercial activities threatens *Pritchardia affinis* and potentially threatens the continued existence of *Isodendrion pyrifolium* since it grows in an area being converted to a golf course (C. Corn, K. Nagata, and P. Weissich, pers. comms., 1992).

Illicit cultivation of *Cannabis sativa* (marijuana) occurs in isolated portions of public and private lands in the Hawaiian Islands. This agricultural practice opens areas in native forest into which alien plants invade after the patches are abandoned (Medeiros *et al.* 1988). Marijuana cultivation is considered a threat to the integrity of the habitat of *Clermontia peleana* (Bruegmann 1990, CPC 1990b).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all of the proposed taxa, but especially to *Cyanea copelandii* ssp. *copelandii, Isodendrion pyrifolium*, and *Ochrosia kilaueaensis*, each of which has only 1 or 2 populations and a total of 10 or fewer known individuals or exist only as cultivated individuals. Any collection of whole plants or reproductive parts of any of these five species would cause an adverse impact on the gene pool and threaten the survival of the species.

People are more likely to come into contact with taxa which have populations near trails or roads or in recreational areas. Alien plants may be introduced into such areas as seeds on footwear, or people may cause erosion, trample plants, or start fires (Cuddihy and Stone 1990). The following proposed taxa have populations in recreational areas or close to roads or trails and are potentially threatened by human disturbance: *Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyrtandra giffardii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*.

C. Disease or Predation

Axis deer, cattle, goats, or sheep have been reported in areas where populations of most of the proposed taxa occur. As the taxa are not known to be unpalatable to these ungulates, predation is a probable threat where those animals have been reported, potentially affecting the following taxa: *Clermontia lindseyana, Cyanea hamatiflora* ssp. *carlsonii, Cyanea stictophylla, Hesperocnide sandwicensis, Hibiscadelphus hualalaiensis, Ischaemum byrone, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*. The lack of seedlings of several of the taxa and the occurrence of some populations or taxa only in areas inaccessible to ungulates seem to indicate the effect that browsing mammals, especially cattle and goats, have had in restricting the distribution of these plants.

Of the four species of rodents which have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably *Rattus rattus* (roof or black rat), which now occurs on all the main Hawaiian Islands around human habitations, in cultivated fields, and in dry to wet forests. Roof rats, and to a lesser extent *Mus musculus* (house mouse), *R. exulans* (Polynesian rat), and *R. norvegicus* (Norway rat) eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce their fruit over an extended period of time, and this produces a prolonged food supply which supports rodent populations. They also damage fruit of *Pritchardia affinis* (Beccari and Rock 1921). It is probable that rats damage the fruit of *Ochrosia kilaueaensis*, which has fleshy fruits and occurs in areas where rats are found. There is direct evidence that rats feed on *Clermontia peleana*, and, since rats are found in remote areas of most islands in Hawaii, it is likely that predation occurs on the other proposed taxa of *Clermontia* and *Cyanea*, potentially affecting *Clermontia*

lindseyana, Clermontia pyrularia, Cyanea copelandii ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii* and *Cyanea stictophylla* (HPCC 1990a; J. Lau, pers. comm., 1990).

Xylosandrus compactus (black twig borer) is a small beetle about 0.06 in (1.6 mm) in length which burrows into branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs. Twigs, branches, and even the entire plant can be killed from such an infestation. Black twig borer is known to attach *Colubrina oppositifolia* and is a threat to this species (Cuddihy and Stone 1990; HHP 1991e9, 1991e16).

Pritchardia affinis is known to be susceptible to lethal yellows, which is a bacteria-like organism producing disease in many palms. This disease is not yet in Hawaii, but if it ever is accidentally introduced on plant material brought into the State, it is a potential threat to this species. In addition, cultivated loulu specimens in areas outside Hawaii may be affected by the disease (Hull 1980).

D. The Inadequacy of Existing Regulatory Mechanisms

Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4).

None of the 22 proposed taxa is presently listed as an endangered species by the State of Hawaii. Fifteen of the 22 proposed taxa have populations located on privately owned land. Two taxa, *Cyanea shipmanii* and *Cyanea stictophylla*, are found exclusively on private land. At least one population of each taxon except *Cyanea shipmanii, Cyanea stictophylla, Silene hawaiiensis*, and *Zanthoxylum hawaiiense* occurs on State land. *Colubrina oppositifolia, Cyanea copelandii* ssp. *copelandii, Cyrtandra giffardii, Cyrtandra tintinnabula*, and *Ischaemum byrone* each has one or more population located in State parks, Natural Area Reserves, or the State seabird sanctuary, which have rules and regulations for the protection of resources (Hawaii DLNR 1981; HRS, sects. 183D–4, 184–5, 195–5, and 195–8). However, the regulations are difficult to enforce because of limited personnel. One or more populations of at least 18 of the 22 proposed taxa located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. Regardless of the owner, lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts are chosen by considering how best to make a multiple use of the land (HRS, sect. 205–2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205–4, 205–17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205–2, 205–4). For any proposed land use change which will occur on county or State land, will be funded in part or whole by county or State funds, or will occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it automatically invokes State listing, would also trigger these other State regulations protecting the plants.

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). The Hawaii DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). State and Federal agencies have programs to locate, eradicate, and deter marijuana cultivation, which is a threat to one of the proposed taxa (CPC 1990b). Despite the existence of various State laws and regulations which give protection to Hawaii's native plants, their enforcement is difficult due to limited funding and personnel. Listing of these 22 plant taxa would reinforce and supplement the protection available under the State Act and other laws. The Federal Act would offer additional protection to these 22 taxa because, if they were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small numbers of populations and individuals of most of these taxa increase the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. This constitutes a major threat to 16 of the 22 taxa being proposed (See Table 1.). Five of the proposed taxa, *Cyanea copelandii* ssp. *copelandii, Cyanea shipmanii, Isodendrion pyrifolium, Ochrosia kilaueaensis*, and *Tetramolopium arenarium*, are known from a single population. Seven other proposed taxa are known from only two to five populations. Seventeen of the proposed taxa are estimated to number no more than 100 known individuals. Six of these taxa, *Clermontia peleana, Clermontia pyrularia, Cyanea copelandii* ssp. *copelandii, Isodendrion pyrifolium, Ochrosia kilaueaensis*, and *Plantago hawaiensis*, number no more than 10 known individuals.

Natural changes to habitat and substrate can result in the death of individual plants as well as the destruction of their habitat. This especially affects the continued existence of taxa or populations with

limited numbers and/or narrow ranges and is often exacerbated by human disturbance and land use practices (See Factor A.). Landslides produced by burrowing seabirds in an offshore islet population of *Ischaemum byrone* are a potential threat to that species (HHP 1991o10; R. Hobdy, pers. comm., 1992). Flooding is a threat to *Clermontia peleana*, which often grows in a riparian habitat (Bruegmann 1990, CPC 1990b). A population of *Ischaemum byrone* is presumed to have been destroyed by volcanic activity, and another population is affected by drifting black sand (HHP 1991o3; C. Lamoureux, pers. comm., 1992). *Silene hawaiiensis* is also considered to be immediately threatened by volcanic activity (HPCC 1991j).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to list these 22 plant taxa as endangered. Sixteen of the taxa proposed for listing number no more than about 100 individuals and/or are known from 5 or fewer populations. The 22 taxa are threatened by one or more of the following: habitat degradation and/or predation by axis deer, cattle, goats, insects, pigs, rats, and sheep; competition from alien plants; fire and natural disasters; human and military impacts; and lack of legal protection or difficulty in enforcing laws which are already in effect. Small population size and limited distribution make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these 22 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being proposed for the 22 taxa included in this rule, for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. As discussed under Factor B in the "Summary of Factors Affecting the Species," the taxa face numerous anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive tc researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process. There are several Federal activities within the currently known habitats of these plants. One or more populations of 10 of the proposed taxa are located on federally owned and/or managed land. Four taxa are located in Hawaii Volcanoes National Park on the island of Hawaii and one taxon in Kalaupapa NHP on Molokai. Six taxa are located on military lands, including one species on Makua Military Reservation on Oahu and five taxa on PTA on the island of Hawaii. Two taxa are found in Hakalau Forest National Wildlife Refuge on the island of Hawaii. A population of one taxon occurs at a U.S. Coast Guard lighthouse on Maui. Federal laws already protect all plants on federally owned and/or managed land from damage or removal. The Service finds that designation of critical habitat for these taxa is not prudent at this time. Such a designation would increase the degree of threat from vandalism, collecting, or other human activities and is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to taxa listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal agencies that would become involved if any of their activities may affect these 22 species include the National Park Service, Department of Defense, Fish and Wildlife Service, and the U.S. Coast Guard. There are no other known Federal activities that occur within the present known habitat of these 22 plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the 22 plant taxa proposed to be listed as endangered, all of the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It

is anticipated that few trade permits would ever be sought or issued. The taxa are not common in cultivation nor in the wild, and only one taxa, *Pritchardia affinis*, is known to be in an active program of cultivation.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** above).

Author

The author of this proposed rule is Zella E. Ellshoff, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding two new families, "Plantaginaceae—Plantain family" and "Portulacaceae—Purslane family," in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Apocynaceae—Dogbane family:						
Ochrosia kilaueaensis	Holei	U.S.A. (HI)	E		NA	NA
Arecaceae—Palm family:						
Pritchardia affinis	Loulu	U.S.A. (HI)	E		NA	NA
Asteraceae—Aster family:						
Tetramolopium arenarium	None	U.S.A. (HI)	E		NA	NA
Campanulacae—Bellflower family:						
Clermontia lindseyana	'Oha wai	U.S.A. (HI)	E		NA	NA
Clermontia peleana	'Oha wai	U.S.A. (HI)	E		NA	NA
Clermontia pyrularia	'Oha wai	U.S.A. (HI)	E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cyanea copelandii ssp. *copelandii*	Haha	U.S.A. (HI)	E		NA	NA
Cyanea hamatiflora ssp. *carlsonii*	Haha	U.S.A. (HI)	E		NA	NA
Cyanea shipmanii	Haha	U.S.A. (HI)	E		NA	NA
Cyanea stictophylla	Haha	U.S.A. (HI)	E		NA	NA
Caryophyllaceae—Pink family:						
Silene hawaiiensis	None	U.S.A. (HI)	E		NA	NA
Cyperaceae—Sedge family:						
Mariscus fauriei	None	U.S.A. (HI)	E		NA	NA
Gesneriaceae—Gesneria family:						
Cyrtandra giffardii	Ha'iwale	U.S.A. (HI)	E		NA	NA
Cyrtandra tintinnabula	Ha'iwale	U.S.A. (HI)	E		NA	NA
Plantaginaceae—Plantain family:						
Plantago hawaiensis	Laukahi kuahiwi	U.S.A. (HI)	E		NA	NA
Poaceae—Grass family:						
Ischaemum byrone	Hilo Ischaemum	U.S.A. (HI)	E		NA	NA
Portulacaceae—Purslane family:						
Portulaca sclerocarpa	Po'e	U.S.A. (HI)	E		NA	NA
Rhamnaceae—Buckthorn family:						
Colubrina oppositifolia	Kauila	U.S.A. (HI)	E		NA	NA
Rutaceae—Citrus family:						
Zanthoxylum hawaiiense	A'e	U.S.A. (HI)	E		NA	NA
Solanaceae—Nightshade family:						
Nothocestrum breviflorum	'Aiea	U.S.A. (HI)	E		NA	NA
Urticaceae—Nettle family:						
Hesperocnide sandwicensis	None	U.S.A. (HI)	E		NA	NA
Violaceae—Violet family:						

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	E		NA	NA

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30518 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant "Pritchardia aylmer-robinsonii" (Wahane)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Pritchardia aylmer-robinsonii* (wahane). The species grows only on the island of Niihau, Hawaiian Islands. The species and its habitat have been affected and are currently threatened by cattle, pigs, and sheep. Due to the small number of existing individuals and their very narrow distribution, this species is subject to reduced reproductive vigor and/or an increased likelihood of extinction from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also implement State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by February 16, 1993. Public hearing requests must be received by February 1, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

In 1947, on one of his botanical collecting trips to Niihau, Harold St. John discovered a new species of the only genus of palms native to the Hawaiian Islands. He named it *Pritchardia aylmer-robinsonii* in honor of Aylmer F. Robinson, a member of the family which owns the island and a person who provided St. John with much information regarding the island's plants (St. John 1959).

Historically, *Pritchardia aylmer-robinsonii* was found at three sites in the eastern and central portions of the island of Niihau. Trees were found on Kaali Cliff and in Mokouia and Haao Valleys at elevations between 70 and 270 meters (m) (230 and 890 feet (ft)) (Hawaii Heritage Program (HHP) 1991a to 1991d). The most recent observations indicate that the only extant natural population consists of two plants still remaining on Kaali Cliff (Read and Hodel 1990). Originally a component of the Coastal Dry Forest, this species now occurs only in a rugged and steep area where it is somewhat protected from grazing animals. The substrate in the area is rocky talus, and *Prosopis pallida* (kiawe), an introduced tree, is one of the palm's few associated plant species. Other native plants which have been found in the area included *Brighamia insignis* ('olulu), *Cyperus trachysanthos* (pu'uka'a), *Lipochaeta lobata* var. *lobata* (nehe), and *Lobelia niihauensis* (no common name) HHP 1991e; St. John 1959; Keith Woolliams, Waimea Arboretum and Botanical Garden, pers. comm., 1980).

Pritchardia aylmer-robinsonii of the palm family (Arecaceae) is a fan-leaved tree about 7 to 15 m (23 to 50 ft) tall with a trunk approximately 20 to 30 centimeters (cm) (8 to 12 inches (in)) in diameter. The upper and lower leaf surfaces are green and hairless, and leaf segments are rather thin and drooping. The lower surfaces of the petiole and the leaf ribs are covered with dense, tan wool. The branched, hairless flower clusters are located among the leaves and are no longer than the petioles. Each flower comprises a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The spherical, hard, black fruit is 1.8 to 2 cm (0.7 to 0.8 in) in diameter. This species is distinguished from others of the genus by the thin leaf texture and drooping leaf segments; the tan woolly hairs on the underside of the petiole and the leaf blade base; the stout hairless flower clusters which do not extend beyond the fan-shaped leaves; and the smaller spherical fruit (Read and Hodel 1990).

Hawaiian land practices prior to European contact probably destroyed most of the forest on Niihau. Grazing animals were introduced to the island beginning in the 1700s and have further decreased available habitat for *Pritchardia aylmer-robinsonii* as well as directly damaging trees, seedlings, and/or seeds. The entire island is now classified an Agricultural District, and it is managed as a cattle and sheep ranch. In addition to the two naturally occuring plants, there are approximately 200 immature cultivated individuals in existence. Reduced reproductive vigor and/or stochastic extinction due to the small number of reproductive plants are major threats. Rodents are known to eat the seeds of some palms of this genus, and they are a potential threat to this species as well, since they are found on Niihau (Beccari and Rock 1921; Cuddihy and Stone 1990; Department of Geography 1983; St. John 1959; Tomich 1986; Wagner et al. 1985; John Fay, U.S. Fish and Wildlife Service, pers. comm., 1992).

Federal action on this plant began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Pritchardia aylmer-robinsonii* was considered to be endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named

therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Pritchardia aylmer-robinsonii*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Pritchardia aylmer-robinsonii* was treated as a Category 1 candidate for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Pritchardia aylmer-robinsonii* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposed rule constitutes the final 1-year finding for this species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pritchardia aylmer-robinsonii* St. John (wahane) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The habitat of *Pritchardia aylmer-robinsonii* has undergone extreme alteration because of past and present land management practices, including agricultural use and deliberate introductions of alien animals. The Hawaiians made extensive agricultural use of Niihau before European contact. Modification of habitat by introduced animals, currently cattle (*Bos taurus*), pigs (*Sus scrofa*), sheep (*Ovis aries*) and formerly also goats (*Capra hircus*), is now one of the major threats facing *Pritchardia aylmer-robinsonii*.

Cattle, the wild progenitor of which was native to Europe, northern Africa, and southwestern Asia, was introduced to the Hawaiian Islands in 1793. Feral cattle formerly occurred on Niihau and caused much damage on the island. Originally native to the Middle East and India, goats were introduced to the Hawaiian Islands in 1792. All feral goats were removed from Niihau about 1910, but by that time they had caused considerable damage to the dry and mesic forests there. Sheep, the wild progenitor of which was native to western Eurasia, was also introduced to Niihau, is still raised there, and has done much damage to the native vegetation and substrate. Pig, originally native to Europe, northern Africa, Asia Minor, and Asia, was introduced to the Hawaiian Islands by the Polynesian immigrants and later from European ships. Pigs are currently present on Niihau, and, besides causing damage to substrate and plants, they are fond of the seeds of *Pritchardia aylmer-robinsonii* (Cuddihy and Stone 1990; Stone 1985; Tomich 1986; Wagner et al. 1985; J. Fay, pers. comm., 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Because the natural population is on a privately owned island with limited public access, activities such as unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants are unlikely to occur.

C. Disease or predation

Niihau is used as a cattle and sheep ranch with animals ranging in many areas of the island. Since *Pritchardia aylmer-robinsonii* is not known to be unpalatable to these ungulates, predation is a probable threat. In fact, St. John noted damage to one tree, which he believed had been caused by an animal (1959). The current occurrence of plants only in a rocky area inaccessible to ungulates seems to indicate the effect that browsing mammals have had in restricting the distribution of the species.

Roof or black rats (*Rattus rattus*), which occur on Niihau, have been reported to damage the fruit of other species of *Pritchardia* and thus pose a potential threat to *Pritchardia aylmer-robinsonii* (Beccari and Rock 1921). In addition, pigs eat the seeds of this plant.

D. The Inadequacy of Existing Regulatory Mechanisms

Pritchardia aylmer-robinsonii is not presently listed as an endangered species by the State of Hawaii. There are no State laws or existing regulatory mechanisms at the present time to protect this species. The known natural habitat of this species is located exclusively on privately owned land. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, section 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, section 195D–4).

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, section 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, section 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native

species of flora and fauna within the conservation district" (HRS, section 195D–5.1). Currently, the entire island of Niihau is within the Agricultural District. Listing of this species would reinforce and supplement the protection available under the State Act and other laws. The Federal Act would offer additional protection to this species because, if it were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of individuals of *Pritchardia aylmer-robinsonii* increases the potential for extinction from stochastic events. A single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known natural population of the species. In addition, the limited gene pool may depress reproductive vigor.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Pritchardia aylmer-robinsonii* as endangered. This species is threatened by habitat degradation and/or predation by cattle, pigs, and sheep and lack of legal protection. Small population size and limited distribution make this species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because this species is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act. Critical habitat is not being proposed for *Pritchardia aylmer-robinsonii* for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered. The Service finds that designation of critical habitat is not presently prudent for *Pritchardia aylmer-robinsonii*. Such a determination would result in no known benefit to the species. The publication of a precise map and description of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to this species from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plants and, thus, can make the species attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the landowner have been notified of the location and importance of protecting the habitat of this species, which will be addressed through the recovery process. There are no known Federal activities within the currently known habitat of this species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal activities that occur within the habitat of *Pritchardia aylmer-robinsonii*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Pritchardia aylmer-robinsonii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for *Pritchardia aylmer-robinsonii*. The species is not common in the wild and is only rarely cultivated.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Pritchardia aylmer-robinsonii;*

(2) The location of any additional populations of *Pritchardia aylmer-robinsonii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Pritchardia aylmer-robinsonii;* and

(4) Current or planned activities in the subject area and their possible impacts on *Pritchardia aylmer-robinsonii.*

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor. (See **ADDRESSES** section.)

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Beccari, O., and J.F. Rock. 1921. A monographic study of the genus *Pritchardia*. Mem. Bernice P. Bishop Mus. 8:1–77.

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Hawaii Heritage Program. 1991b. Element Occurrence Record for *Pritchardia aylmer-robinsonii*, PMARE09030.002, dated May 12, 1991, Honolulu. Unpubl., 2 pp.

Hawaii Heritage Program. 1991c. Element Occurrence Record for *Pritchardia aylmer-robinsonii*, PMARE09030.003, dated May 12, 1991, Honolulu. Unpubl., 2 pp.

Hawaii Heritage Program. 1991d. Element Occurrence Record for *Pritchardia aylmer-robinsonii*, PMARE09030.004, dated May 12, 1991, Honolulu. Unpubl., 2 pp.

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Author

The author of this proposed rule is Zella E. Ellshoff, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • •	•	•	•	•	•	•
Arecaceae—Palm family:						
• • •	•	•	•	•	•	•
Pritchardia aylmer-robinsonii	Wahane	U.S.A. (HI)	E		NA	NA
• • •	•	•	•	•	•	•

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-30517 Filed 12-16-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 243
Thursday, December 17, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 11, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New Collection

- Animal and Plant Health Inspection Service

Domestic Quarantines—Addendum 1
PPQ Forms 527, 530, 537, 540, and 586
On Occasion
State or local governments, Farms, Businesses or other for-profit, Federal Agencies or employees, and Small businesses or organizations; 55,818 Responses; 2,338 Hours
Victor Harabin, (301) 436–8645.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.
[FR Doc. 92–30550 Filed 12–16–92; 8:45 am]
BILLING CODE 3410–01–M

Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for expedited clearance under 5 CFR 1320.18. The agency solicits comments on subject submission. This action is necessary in order for the Agency to implement across-the-board verification requirements for eligible farm work and income status for labor housing occupancy.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tom Sanders, Senior Loan Officer, FmHA Housing Programs, Multi-family Housing Processing Division, Special Authorities Branch, USDA, Washington, DC 20250, Telephone (202) 720–1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is requested that OMB approve this submission within twenty-one days.

The supporting statement below explains the addition of Exhibit K–1, and the need and justification for Exhibit K–1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507.

Supporting Statement

7 CFR 1944–D, Farm Labor Housing Loans and Grants

1. Explanation of the Circumstances that Make the Collection of Information Necessary

The Farmers Home Administration is adding Exhibit K–1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing, to this regulation in order to conduct program oversight consistent with the administrative powers provided to the Secretary of Agriculture for program regulation. Previously, there was no requirement or methodology for the farm owner to verify to the Agency the housing is being occupied by eligible farmworkers on a nonrental basis.

Under the authority of sections 514 and 516 of title V of the Housing Act of 1949 (Pub. L. 87–70 and Pub. L. 88–560 respectively), the Secretary is authorized to make loans to farm owners, family farm corporations and partnerships and association of farmers. Also, the Secretary of Agriculture is authorized to make loans and/or grants to nonprofit public, private, and farmworker organizations for developing farm labor housing. Developing farm labor housing includes the range of activities required to provide housing units, including acquisition and development of the site, construction of the housing units and related necessary facilities, provision of necessary equipment for tenants and managers, and all related legal, technical and administrative costs connected to this process.

The objective of the section 514 loan program is to provide decent, safe, and sanitary housing for farmworkers through the farm owner. This loan is made with the expectation that housing occupancy is the result of an employment contract and the housing is provided on a nonrental basis.

Public Law 93–375 provides administrative powers to the Secretary to carry out the provisions of title V of the Housing Act of 1949. This provides for making rules and regulations necessary to carry out the purposes of title V. FmHA has been charged with responsibility for protecting the interest of the taxpayer's funds and to assure that the objectives of the loan are carried out as intended. With the use of this verification exhibit in conjunction with

onsite inspections, FmHA will be able to determine that tenant occupancy requirements are in compliance with the loan purpose. It will provide the Agency with documentation of compliance.

Loan recipients are required to provide and maintain certain information to assure loan approval officials that they will not directly (or through contractual or other arrangements) subject any person, or cause any person to be subjected, to discrimination with respect to any program facility.

2. Indicate How, and by Whom, and for What Purpose the Information Is To Be Used and the Consequence to Federal Program if the Collection of Information Was Not Conducted

The exhibit, available through any FmHA State or District Office, is an exhibit to this Subpart and is provided to the borrower to inform the farmworker occupant that housing is rent free. This exhibit must be completed by every farmworker on occupancy of the housing. This document would be retained by the farmer for FmHA's inspection only as long as the farmworker occupies the unit. This document is in lieu of Form FmHA 1944–8, "Tenant Certification."

3. Describe any Consideration of the Use of Improved Information Technology To Reduce Burden and Any Technical or Legal Obstacles To Reducing Burden

The Agency is not aware of any available technology that could be substituted for this recordkeeping, except in the format proposed.

4. Describe Efforts To Identify Duplication

The recordkeeping for occupancy compliance requested of the farm owner is site specific and is not duplicated by any other known database activity within or outside of FmHA. Special effort has been made to minimize the burden on the farm owner by designing and using this exhibit rather than the more lengthy Form FmHA 1944–8, "Tenant Certification."

5. Show Specifically Why any Similar Information Already Available Cannot Be Used or Modified for Use for the Purposes Described in the Preceding Item 2

The recordkeeping information requested in the preceding item 2 is unique to the site and is not available through any other source.

6. Methods Used in the Collection of Information to Minimize the Burden on Farmers

The farmer's collection and presentation of information is in accordance with the FmHA compliance review process, occurring at least once every 3 years.

7. Describe the Consequence to Federal Program if the Collection Were Conducted Less Frequently

The verification of conditions of occupancy is a joint one-time effort of each occupant and farm owner and any less frequent recordkeeping would be inconsistent application of FmHA regulations for tenant occupancy.

8. Explain any Special Circumstances That Require the Collection To Be Conducted in a Manner Inconsistent With the Guidelines in 5 CFR 1320.6

There are no special circumstances which require information to be recorded in a manner inconsistent with the guidelines in 5 CFR 1320.6.

9. Describe Efforts To Consult With Persons Outside the Agency To Obtain Their Views on the Information To Be Recorded

There has been no contact with farm owners on the specific use of this exhibit. The need for this exhibit is the result of proposed rulemaking and resulting public comments. The exhibit was not contained in the proposed rule, but is the result of public comments concerning equitable treatment of farmworkers, regardless of whether they live on- or off-farm. The Agency agreed to implement a verification process for the occupants of on-farm labor housing.

10. Describe any Assurance of Confidentiality Provided to Respondents and the Basis for the Assurance in Statute, Regulation, or Agency Policy

The information recorded is to be kept in the borrower's files and be made available for review at FmHA's request. The information recorded complies with the Privacy Act of 1974 and OMB Circular A–180, "Responsibilities for the Maintenance of Records about Individuals by Federal Agencies." The Agency has no intent to further collect and tabulate the information collected by the farmer.

11. Provide Additional Justification for Any Questions of a Sensitive Nature That Are Commonly Considered Private

The information recorded contains no sensitive questions.

12. Provide Estimates of Annualized Cost to the Federal Government and to the Respondents

We estimate the annualized cost to the Federal Government for the reporting and recordkeeping requirements contained in this program to be approximately $190,000.00, including $900 for Exhibit K–1. Federal costs include staff salaries and expenses (primarily at the District Office level), printing and reproduction, and administrative overhead allocated to the labor housing program.

The Agency's annualized estimate of costs to the public is $850,000 for the Domestic Farm Labor Housing Program, including approximately $8,000 for Exhibit K–1. This is a sum of all direct and indirect costs that may be imposed upon program participants applying for a FmHA labor housing loan and or grant. Such costs include all one-time and recurring costs that may be incurred by a program applicant. In determining public cost, the Agency considered expenses which would typically be expected by a program applicant in the development of a project proposal for loan approval. The individual and organization applicants' estimated cost times the total number of applicants that are expected to be approved. It is further expressed in terms of expenses necessary to conduct business which directly concerns a specific project proposal under consideration by the Agency. Additionally, it is recognized that costs vary in relationship to the participant's degree of participation, type and size of entity, degree of sophistication, and the size, complexity and scope of project proposal. Therefore, the Agency has considered in its estimation of public cost the range of such costs in reaching an average project-by-project cost. These costs include information collection, compilation, printing, processing, designing, analyzing, and general administrative overhead associated with a typical loan application.

13. Provide Estimates of the Burden of the Collection of Information

The Agency estimates there will be at least one verification action per loan for an average of at least 60 loans per year. However, with the implementation of this rule, the existing borrowers will be asked to conform with and be provided with the necessary exhibit(s) for compliance with the new occupancy verification and recordkeeping rule. The first year usage of the Exhibit K–1 may be as high as 4,000. The level of usage for this Exhibit K–1 will be based on occupancy turnover in the housing units

and could exceed 40 exhibits per year for borrowers providing housing for migrant farmworkers.

14. Explain Reasons for Changes in Burden Including the Need for Any Increase

The Agency's estimate of burden differs from its last estimate of information collection burden submittal because of the addition of Exhibit K–1, "Verification of Domestic Farm Labor and Occupancy in Rent Free Housing." This exhibit is now required for all labor housing tenants of farm borrower housing.

15. For Collections of Information Whose Results Are Planned To Be Published

The recording of this information is not intended to be collected or published for use.

7 CFR 1944–D.—Farm Labor Housing Loans and Grants

Secretary of regulations	Title	Form No (if any)	Estimated No. of respondents	Reports filed annually	Total annual responses (d)×(e)	Est. No. of man-hrs. per response	Est. total manhours (f)×(g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
		Reporting Requirements Approved Under OMB Numbers					
1944.164(g)	Farm and Home Plan	FmHA 431–2 (0575–0061)					
1944.164(h)	Nondiscrimination	FmHA 400–4 (0575–0018)					
1944.164(f)	Applicant's Environmental Impact Evaluation.	FmHA 1940–20 (0575–0094)					
1944.169(l)	Position Fidelity Schedule	FmHA 440–24 (0575–0015)					
1944.170(a)	For preapplication submission—Application for Federal Assistance (For Construction).	SF424.2 (0348–0006).	100	1	100	0.5	50
1944.171(a)	For application submission and short form–Application for Federal Assistance (For Construction).	SF424.2 (0348–0006).	75	1	75	0.5	38
1944.171(a) Exhibit A–5.	Statement of Budget, Income and Expense	FmHA 1930–7 (0575–0033)					
1944.175(a)(4)	Partial Payment Estimate	FmHA 1924–18 (0575–0042)					
1944.175(a)(6)	Release of Claimants	FmHA 1924–10 (0575–0042)					
1944.175(b)(2)	Estimates of Funds Needed 30-day Period Commencing.	FmHA 440–11 (0575–0015)					
1944.182	Request for Rental Assist	FmHA 1944–25 (0575–0033)					
1944.182	Tenant Certification	FmHA 1944–8 (0575–0033)					
1944.182	Request for Verification of Employment	FmHA 1910–5 (0575–0009)					
1944.182	Rental Assistance Agreement	FmHA 1944–27 (0575–0033)					
	Recordkeeping Requirements						
Exhibits C–F	Financial and Property Mgt Systems Required by Loan and Grant Agreements and Resolutions included with 7 CFR 1930–C Burden Package.	1930.122 Exhibit B–XIII (0575–0033)					
1944.154(d)(1) Exhibit K–1.	Verification of Domestic Farm Labor and Occupancy in Rent Free Housing.	Written	4,000			0.08	320
	Reporting Requirements—No Forms						
1944.164(e), 1944.164(g), Exhibits C–F and K.	Resolutions and Loan and Grant Agreements.	Written	75	1	75	3	225
1944.164(k)	Executive Order 12372	Written	15	1	15	5	75
1944.169(b)	Architectural and Engineering Services—Contracts.	Written	15	1	15	5	75
1944.169(e), 1944.175(g).	Insurance Coverage	Written	75	1	75	2	150
1944.169(f)&(j), Exhibit G.	Legal Services	Written	30	1	30	2	60
1944.169(h), Exhibit H.	Bond Counsel and Preparation of Notes and bonds.	Written	3	1	3	3	9
1944.169(l)(1) [1924.8(a)(3)].	Surety Bonding	Written	20	1	20	2	40
1944.170(a), Exhibit A–2.	Preapplication Determination of Need & Supporting Information (Individual).	Written	80	1	80	15	1,200
1944.170(a), Exhibit A–1.	Preapplication Determination of Need & Supporting Information (Organization).	Written	20	1	20	150	3,000
1944.171(a), Exhibit A–2.	Application Supporting Information (Individual).	Written	60	1	60	16	960

7 CFR 1944–D.—FARM LABOR HOUSING LOANS AND GRANTS—Continued

Secretary of regulations	Title	Form No. (if any)	Estimated No. of respondents	Reports filed annually	Total annual responses (d)x(e)	Est. No. of man-hrs. per response	Est. total manhours (f)x(g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
1944.171(a) Exhibit A–1.	Application Supporting Information (Organization).	Written	15	1	15	90	1,350
Exhibit B	Management Plan (Individual)	Written	60	1	60	5	300
Exhibit B	Management Plan (Organization)	Written	15	1	15	40	600
1944.176	Loan/grant Closing	Written	75	1	75	3	225
1944.176(c)	Prepayment Notice	Written	5	1	5	1	5
1944.178	Discrimination Complaints	Written	2	1	2	40	80
Total reporting					740		8,442
Total record-keeping.							320
Docket total					740		8,762

Date: November 12, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–30395 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Withdrawal of "Management Guidelines and Inventory and Monitoring Protocols for the Mexican Spotted Owl in the Southwestern Region", Published in the "Federal Register," December 11, 1992 [57FR58785]

AGENCY: Forest Service, USDA.

ACTION: Notice: Withdrawal of "adoption of interim policy".

SUMMARY: Notice is hereby given that the Forest Service withdraws the interim policy, "Management Guidelines and Inventory and Monitoring Protocols for the Mexican Spotted Owl [MSO] in the Southwestern Region," published in the Federal Register of December 11, 1992 [57FR58785].

These Guidelines were not intended to provide management guidance for the Rocky Mountain Region and the Intermountain Region, which contain MSO habitat. In order to apply appropriate management to all MSO habitat, the Southwestern Region Management Guidelines are withdrawn to allow further consideration and coordination with other Forest Service Regions.

DATES: This withdrawal is effective on December 17, 1992.

ADDRESSES: Direct comments to: Larry Henson, Regional Forester, 2670, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: James Lloyd, Director, Wildlife and Fisheries or Keith W. Fletcher, Mexican Spotted Owl Program Manager (505) 842–3261 or 842–3267.

Dated: December 14, 1992.

Larry Henson,

Regional Forester.

[FR Doc. 92–30709 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–11–M

Delegation of Authority to Forest Supervisor, Chequamegon NF, Eastern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: The Eastern Region of the Forest Service hereby gives notice of the delegation of authority by the Regional Forester to the Forest Supervisor of the Chequamegon NF to perform certain transactions related to the granting and terminating of easements on National Forest System lands.

EFFECTIVE DATE: This policy is effective upon issuance of an Eastern Region Supplement to Forest Service Manual 2730 delegating the above referenced authority. The effective date of this delegation of authority (and supplement) is December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Timothy G. Curtis, Natural Resources Staff, Forest Service, USDA, 310 West Wisconsin Ave., Milwaukee, WI 53203, (414–297–1902).

SUPPLEMENTARY INFORMATION: Pursuant to (36 CFR 251.52) and the delegation of authority from the Chief of the Forest Service as set forth in Forest Service Manual 2731.04, 2732.04, and 2733.04, the Regional Forester for the Eastern Region has determined that the Forest Supervisor of the Chequamegon NF has lands staff personnel sufficiently trained and experienced to permit the delegation of authority for the following:

1. To prepare and execute the Letter of Consent to the Regional Federal Highway Administrator for Department of Transportation Easements under authority of the Highway Act of August 27, 1958 (72 Stat. 23; U.S.C. 317). Additional responsibilities are identified in Forest Service Manual 2731.04.

2. Grant easements to public road agencies under the authority of the Forest Roads and Trail Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 533). These easements may also be terminated by the Forest Supervisor with the consent of the grantee. Additional responsibilities are identified in Forest Service Manual 2732.04.

3. Issue easements and reservations for construction and use of roads, execute stipulations, and terminate such easements on the occurrence of a fixed or agreed upon condition, event, or time when the easement, by its terms provides for such termination, pursuant to the Federal Land Policy and Management Act of October 21, 1976, (90 Stat. 2743; 43 U.S.C. 1715). Additional responsibilities are identified in Forest Service Manual 2733.04.

This final policy will be distributed to Forest Service employees as an amendment to Chapter 2730 of the Forest Service Manual.

Dated: December 4, 1992.

Larry Payne,

Deputy Regional Forester for Administration.

[FR Doc. 92–30387 Filed 12–16–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). The collection is for the Technology Administration of DOC.

Title: Application for Manufacturing Technology Fellowship.

Form Number: Agency—None; OMB—None.

Type of Request: New Collection.

Burden: 5,000 burden hours; 200 respondents; Average Hours Per Respondent—25 hours.

Needs and Uses: The U.S.-Japan Manufacturing Technology Fellowship Program is a new program that provides manufacturing engineers the opportunity to spend a year in Japan learning Japanese manufacturing techniques, culture and language. The information collected is needed to evaluate applicants for the program and to make selections.

Affected Public: Individuals, businesses or other for-profit institutions, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required for benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to the OMB Desk Officer, Maya A. Bernstein, (202) 395–3785, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1992.

Edward Michals

Departmental Clearance Officer; Office of Management and Organization.

[FR Doc. 92–30644 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–CW–F

National Oceanic and Atmospheric Administration

[Docket No. 921190–2299]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice to importers; removal of intermediary nation embargoes.

SUMMARY: NMFS issues a notice to importers that the intermediary nation embargoes on yellowfin tuna and yellowfin tuna products from the nations of Canada, Colombia, France, Malaysia, the Netherlands Antilles, Singapore, and the United Kingdom that were imposed on January 31, 1992, have been lifted.

FOR FURTHER INFORMATION CONTACT: Gary Matlock, Acting Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213 (310/980–4001); or, Wanda L. Cain, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2055).

SUPPLEMENTARY INFORMATION: On October 26, 1992, the President signed the International Dolphin Conservation Act of 1992. Among other things, that Act redefines intermediary nation to mean "* * * a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B)" of the Marine Mammal Protection Act.

NMFS has determined that the intermediary nation embargoes should be removed from those nations not identified as having imported yellowfin tuna from a nation under a primary embargo. On October 30, 1992, NMFS notified the Office of Trade Operations, U.S. Customs Service, that the prohibition on importation of yellowfin tuna and yellowfin tuna products from the following countries should be lifted: Canada, Colombia, Malaysia, the Netherlands Antilles, Singapore, and the United Kingdom.

On December 2, 1992, NMFS notified the U.S. Customs Service that France had submitted documentation required by the International Dolphin Conservation Act (Pub.L. 102–523) and the rules for importation of yellowfin tuna (50 CFR 216.24(e)(5)(vii)), which establish the requirements for intermediary nations, and that the intermediary nation yellowfin tuna embargo on France should be lifted. NMFS determined that the documentation provided by the Government of France constituted acceptable certification and reasonable proof that it did not import, between April and October 1992, yellowfin tuna or yellowfin tuna products banned from direct export to the United States.

Intermediary nation embargoes on all yellowfin tuna and yellowfin tuna products from the countries of Costa Rica, Italy, Japan and Spain will remain in place until NMFS obtains additional information on whether these countries have imported yellowfin tuna prohibited from direct export to the United States. Yellowfin tuna and products derived from yellowfin tuna harvested in the eastern tropical Pacific Ocean by purse seine vessels of Mexico, Venezuela and Colombia remain under primary embargoes because harvesting vessels from those nations do not meet the standards for the protection of marine mammals comparable to those in effect for vessels of the United States.

Dated: December 10, 1992.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–30629 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a Snapper-Grouper Assessment Group meeting on January 11–12, 1993, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000. The meeting will begin on January 11 at 1:30 p.m. and will end on January 12 by 12:30 p.m. The agenda is as follows:

The Assessment Group will review available wreckfish information and make a recommendation on total allowable catch (TAC) for the 1993–94 fishing year.

The Assessment Group will review stock assessment reports and a report on quota/share transactions that have occurred this year. The group will make its recommendation at the Council's January 25–29 meeting in Indialantic, FL.

The meeting will be open to the public; however, no public comments will be taken at this time. Public input will be accepted at the January Council meeting.

Wreckfish are managed under an Individual Transferable Quota program, where only those who hold percentage

shares are allowed to participate in the fishery. This year's fishery operated under a two-million-pound TAC.

For more information contact Carrie Knight, Public Information Officer: South Atlantic Fishery Management Council: One Southpark Circle, suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: December 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30639 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold Personnel and Finance Committee meetings on January 14, 1993, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–4366. The meetings will begin on January 14 at 8:30 a.m. until 10 a.m. and from 10 a.m. until 12 p.m. respectively. The Personnel Committee's meeting will be held in closed session (not open to the public).

The Personnel Committee will discuss Council staffing changes. The Finance Committee will review changes to the staff's pension plan.

For more information contact Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: December 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30638 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Receipt of Application for Permit (P321B).

SUMMARY: Notice is hereby given that Sherman C. Jones, III, 4001 Santa Maria Drive, Chesapeake, VA 23321, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Applicant seeks authorization to unintentionally harass up to 700 Atlantic bottlenose dolphin (*Tursiops truncatus*) annually during aerial and boat surveys. Aerial surveys are expected to be flown 21 times per year and individual dolphin are expected to be sighted at each occurrence. Boat cruises are expected to be conducted up to 100 days per year (April–October). The Applicant indicates that the most frequently resighted dolphin in the proposed study would be "taken" 66 times per year, and the average resighted dolphin would be seen about 30 times per year. Data thus acquired should provide adequate information to accurately describe movement, micro-habitat utilization, social affiliation and migratory patterns for many individuals in this population. The activities will occur in waters off Virginia and North Carolina. The permit is requested for a duration of five years and the Applicant proposes to initiate the work April 1993.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., Room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Documents submitted in connection with the above application are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: December 10, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30632 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 4 to Permit No. 621.

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 621 (P35F) issued to Miami Seaquarium, 4400 Rickenbacker Causeway, Miami, Florida 33149 on December 18, 1987 (52 FR 48746), modified on March 25, 1988 (53 FR 10553), December 22, 1989 (55 FR 52), and October 30, 1991 (56 FR 56505), is further modified as follows:

Section B.3, first sentence is changed to read:

3. The authority to import these marine mammals shall extend from the date of issuance through June 30, 1993.

This modification becomes effective upon publication in the **Federal Register.**

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, Room 7324, Silver Spring, Maryland, 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: December 10, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30631 Filed 12–16–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

[PPTMR DOD 4500.34–R]

Change to the Tender Service

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of change.

SUMMARY: Appendix A, Tender of Service, paragraph 40h, of DOD 4500.34–R, requires firearms to be placed in the number one external shipping container and readily accessible for examination by customs. Paragraph 9005d, of DOD 4500.34–R, reiterates the same requirement. DOD 4500.34–R does not provide instruction on when containers will be marked. In several instances, weapons packed in the number one container while the shipment was at residence, were incorrectly marked when taken back to the agent's warehouse. Upon arrival at the port, the entire shipment had to be unpacked to locate the weapons before

the shipment could clear customs. To resolve the issue, paragraphs 3002b and 40d, of DOD 4500.34–R will be changed to require the container number and the member's name to be stenciled on the number one container while the shipment is at residence. If the surface of the container will not accommodate stenciling, a military shipment label, DD Form 1387, shall be affixed while the shipment is at residence.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTPP–QO, 5611 Columbia Pike, Falls Church, VA 22041–5050.

DATES: Comments must be received on or before February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Dette, Military Traffic Management Command, Attn: MTPP–QO, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 757–1710.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–30602 Filed 12–16–92; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Department of the Army Construction Productivity Advancement Research (CPAR) Program

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform potential applicants of a program of cost-shared research, development and commercialization/technology transfer (R&D) projects between the U.S. Army Corps of Engineers (Corps) and the U.S. construction industry. The purpose of the Construction Productivity Advancement Research (DPAR) Program is to assist the U.S. construction industry in enhancing its productivity and domestic and international competitive position through the development and commercialization of advanced technologies, materials and construction management systems.

DATES: Effective date is December 21, 1992. Proposals will be accepted until March 19, 1993.

ADDRESSES: Proposals for the Fiscal Year 1993 CPAR Program should be submitted to the Corps laboratories identified in the CPAR Guidelines for Participation, dated December 1992. Copies of the Guidelines may be obtained by writing to: HQUSACE, Attn: CERD–C, 20 Massachusetts Avenue, NW. Washington, DC 20314–1000, or by calling (202) 272–0257.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse A. Pfeiffer, Jr., P.E.; HQUSACE, CERD–D; 20 Massachusetts Avenue, NW.; Washington, DC 20314–1000, or call (202) 272–1846 or 272–0257.

SUPPLEMENTARY INFORMATION: CPAR is a program consisting of cost-shared projects executed by partnerships between the Corps, the U.S. construction industry (contractors, equipment and material manufacturers and suppliers, architects, engineers, financial organizations), public and private foundations, trade and professional organizations, State and local governments, academic institutions and other entities who are interested in enhancing construction productivity and competitiveness. CPAR was created to help the domestic construction industry improve productivity and regain its competitive edge nationally and internationally by building on the foundation of the existing Corps Construction R&D Program and laboratory resources through an expansion and leveraging effect that cost-shared partnerships provide. The objective of CPAR is to facilitate research, development and application of advanced technologies through cooperative R&D, field demonstration, licensing agreements and other means of commercialization, technology transfer and reduction-to-practice. Advancing the productivity and competitiveness of the U.S. construction industry will provide savings in construction costs for the Government and U.S. industries, and result in a boost to the U.S. economy in general. R&D efforts conducted under CPAR will be based on proposals received from U.S. construction industry entities and others, as noted above, which can be addressed effectively by a partnership and which will benefit both the construction industry and the Corps.

Participation in CPAR is open to any U.S. private firm, including corporations, partnerships, limited partnerships and industrial development organizations; public and private foundations; non-profit organizations; units of State and local governments; academic institutions; and others who have an interest in and the capability to address CPAR objectives. As provided by law, special consideration will be given to small business firms and consortia involving small business firms. Preference will be given to business units located in the United States that agree to substantially manufacture and apply the products in the United States. Consideration will be given to a potential partner that is subject to the control of a foreign company or government if that foreign government permits U.S. agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

The cost of each CPAR project will be shared by the Corps and the construction industry partner(s). Specific cost-sharing terms will be defined for each proposed project prior to submission of the proposal to Corps Headquarters (HQUSACE) for approval. "In-kind" services and/or use of facilities may be considered in arriving at a cost-sharing agreement. As required by law, not more than fifty (50) percent of the total cost of a CPAR project will be provided by the Corps and not less than five (5) percent of the construction industry partner's share of the cost must be contributed in cash. The Corps and the construction industry partner(s) may each contribute personnel, services, facilities, property, patent licenses (or assignment or options to the patent license) and money. No costs previously incurred by the Corps or the construction industry partner(s) on the subject matter of the CPAR project may be recovered in the cost-sharing agreement.

A CPAR Cooperative Research and Development Agreement (CPAR–CRDA) specific to each project will be negotiated between the Corps and the U.S. construction industry partner(s). The CPAR–CRDA is defined by law as neither a procurement contract nor an assistance agreement (grant or cooperative agreement). The CPAR–CRDA will contain, in addition to the cost-sharing terms, all other conditions and responsibilities necessary to complete the project and commercialize/transfer the technology, including rights to inventions. It is anticipated that one of the most effective ways of assuring the new technology is disseminated to the public is to provide the construction industry partner(s) with a proprietary "ownership" interest in the new technology. Therefore, to the extent permitted by law, the Corps will generally grant to the industry partner(s) an option to licenses or assignments for any intellectual property made in whole or in part by a Federal employee under the CPAR–CRDA, retaining a non-exclusive, non-transferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world on behalf of the Government. The Corps may, without

further notice to others, agree to negotiate an exclusive license or waive title to intellectual property if such actions would facilitate commercialization and use of the technology. To the greatest extent possible and appropriate, licensing and assignments will be on a non-exclusive basis. In some cases, where appropriate, royalties will be negotiated and collected by the Government in exchange for such licenses or assignments.

CPAR is designed to promote and assist in the advancement of ideas and technology which will have a direct, positive impact on construction productivity and Corps mission accomplishment. CPAR is focused on four major areas: Planning and design improvement, improved construction site productivity, advanced materials, and innovative methods to commercialize and transfer R&D products to the construction industry. However, any idea for improving construction productivity will be considered. Ideas that cannot define a direct and demonstrable link to the advancement of construction productivity will not be accepted into the CPAR Program. Areas of interest include, but are not limited to:

Planning and Design Improvement

- Computer-Aided Planning and Engineering Tools.
- Advanced Site Investigation Technology.
- Knowledge-Based Cost Estimating Systems.
- Computer-Aided Design Systems.
- Total Integrated Design Systems.
- Expert Systems/Artificial Intelligence.
- Materials Selection Systems.
- Advanced Technology Selection Systems.

Improved Construction Site Productivity

- Construction Management Methods.
- Materials Handling.
- Automated Construction/Robotics.
- Expert Systems.
- Marine Construction.
- Automated Inspection and Quality Control.
- Advanced Excavating and Tunneling.
- Cold Weather Construction.
- Computer-Aided Construction Management Systems.

Advanced Materials

- High-Performance Cementitious Materials.
- Structural Polymers.
- Advanced Ceramics.
- Metal Matrix Composites.
- Advanced Fabrication Systems.
- Adhesives/Fasteners.
- Geomodifiers/Geotextiles.

Commercialization/Technology Transfer Innovation

- User-Based Technology Utilization Processes.
- Technical Support Services for Users.
- Skills Upgrading Methods.
- Cost and Performance Information Exchange Systems.
- Technology Risk Analysis.

Proposal Review Process

Proposals received by the Corps laboratories which meet CPAR criteria may be discussed and further developed, as necessary, by the laboratory and construction industry partner(s). The following criteria will be used to evaluate the proposals. The first two evaluation factors are of equal importance and are more significant than the remaining factors, which are listed in descending order of importance:

1. Potential Impact on U.S. Construction Industry Productivity

High—Technological advancement which would have major beneficial impact on current construction industry processes, materials and/or equipment and will have a demonstrable major beneficial impact on construction industry productivity and effectiveness.

Medium—Technological advancement which would improve on and/or demonstrate currently available processes, materials and/or equipment not in widespread construction industry use and which would have a demonstrable beneficial impact on construction industry productivity and effectiveness.

Low—Technological advancement which would upgrade construction industry processes, materials and/or equipment in current use and which would have a limited but beneficial impact on construction industry productivity and effectiveness.

2. Potential Impact on the Corps of Engineers

High—Technological advancement which would be a major improvement in technology and procedures currently used by the Corps and which would have a demonstrable major beneficial impact on the Corps.

Medium—Technological advancement which would significantly improve currently used Corps technology and procedures and which would result in demonstrable benefits for the Corps.

Low—Technological innovation which would upgrade current Corps standard technology and procedures and which would have a limited but beneficial impact on the Corps.

3. Commercialization/Technology Transfer

High—Plan/concepts stated for broad-scale use/adoption of the product by non-Federal and Federal organizations and the production/marketing/dissemination of the product by the non-Federal partner(s).

Medium—Plans/concepts stated for some beneficial use/adoption of the product by non-Federal and Federal organizations.

Low—Plans/concepts stated for limited but beneficial use/adoption of the product by non-Federal and Federal organizations.

4. Ease of Adoption

High—Technology provides construction industry productivity and effectiveness improvement with minimal equipment, training, materials and operating costs beyond the cost of current practice.

Medium—Technology provides construction industry productivity and effectiveness improvements, but requires moderate additional equipment, training, materials, and operating costs beyond the cost of current practice.

5. Probability of Achieving Projected Productivity and Effectiveness Enhancement

High—Some risk, requires innovative application of current knowledge, high probability of success.

Medium—Moderate risk, concepts exist but are unproven, good probability of success.

Low—High risk, basic concepts must be developed and proven, uncertain probability of success.

6. Project Duration

High—Project, including demonstration of benefits, can be completed in 3 years or less.

Medium—Project, including demonstration of benefits, can be completed in 4 years or less.

Low—Project, including demonstration of benefits, will require more than 4 years to complete.

7. R&D Investment

High—Project will obligate the Corps to invest less than $300,000 per year.

Medium—Project will obligate the Corps to invest between $300,000 and $500,000 per year.

Low—Project will obligate the Corps to invest more than $500,000 per year.

After discussions between the laboratory and the construction industry partner(s), a CPAR Executive Summary of the proposal will be prepared by the laboratory. The Executive Summary will contain the project objective and approach to be followed in developing the specific end product(s), all expected costs and cost-sharing arrangements, time needed to complete, expected benefits to the U.S. construction industry and the Corps, and a proposed commercialization/technology transfer plan.

Corps laboratories will submit their recommended Executive Summaries to HQUSACE for consideration under the CPAR Program. The CPAR Executive Summaries will be reviewed and recommendations made by the CPAR Executive Committee in HQUSACE. The CPAR Executive Committee is composed of senior-level HQUSACE managers. The Director of Civil Works, HQUSACE, will act on the recommendations of the CPAR Executive Committee in approving the annual CPAR program.

All information and data furnished by the potential construction industry partner(s) will be used for evaluation purposes only and will be safeguarded from unauthorized disclosure in accordance with applicable laws. Protection of information during and after completion of a CPAR project will be defined and agreed to in the CPAR–CRDA. Classified information and data will be handled in accordance with Army regulations.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Except where declared by law or approved by the head of agency, no award of Federal funds shall be made to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor. No award will be made to a debarred or suspended firm or organization.

Classification

This document is not a major rule requiring a regulatory analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is not a major Federal action requiring an environmental assessment under the National Environment Policy Act. The CPAR Program does not involve the mandatory payment of any matching funds from a State or local government, and does not affect directly any State or local government. Accordingly, the Corps determined that Executive Order 12372 is not applicable to CPAR. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. CPAR is being carried out under the authority of section 7, Water Resources Development Act of 1988 (Pub. L. 100–676) (33 U.S.C. 2313).

Dated: December 4, 1992.

W.L. Mayhew,

Colonel, General Staff; Executive, OASA(CW).

[FR Doc. 92–30601 Filed 12–16–92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035]

Clearance Request for Claims and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0035).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Claims and Appeals.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $50,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 7,500; responses per respondent, 20; total annual responses, 150,000; preparation hours per response, 1; and total response burden hours, 150,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

Dated: December 9, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30537 Filed 12–16–92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000–0031]

Clearance Request for Contractor Use of Government Supply Sources

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0031).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Government Supply Sources.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 300; responses per respondent, 7; total annual responses, 2,100; preparation hours per response, .25; and total response burden hours, 525.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

Dated: December 9, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30535 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0032]

Clearance Request for Contractor Use of Interagency Motor Pool Vehicles

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0032).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must contain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 70; responses per respondent, 2; total annual responses, 140; preparation hours per response, .5; and total response burden hours, 70.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: December 9, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30536 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0053]

Clearance Request for Permits, Authorities, or Franchises Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0053).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Permits, Authorities, or Franchises Certification.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1,106; responses per respondent, 3; total annual responses, 3,318; preparation hours per response, .094; and total response burden hours, 312.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

Dated: December 4, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30538 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0055]

Clearance Request for Freight Classification Description

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0055).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Freight Classification Description.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification. The information is used to determine the proper freight rate for the supplies.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,640; responses per respondent, 3; total annual responses, 7,920; preparation hours per response, .167; and total response burden hours, 1,323.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

Dated: December 4, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30539 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0057]

Clearance Request for Evaluation of Export Offers

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0057).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Evaluation of Export Offers.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Offers are evaluated on the basis of shipment through the port resulting in the lowest cost to the Government. This provision collects information regarding the vendor's preference for delivery ports. The information is used to evaluate offers and award a contract based on the lowest cost to the Government.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 100; responses per respondent, 4; total annual responses, 400; preparation hours per response, 25; and total response burden hours, 100.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0057, Evaluation of Export Offers, in all correspondence.

Dated: December 4, 1992.

Beverly Fayson,

Far Secretariat.

[FR Doc. 92–30540 Filed 12–16–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0056]

Clearance Request for Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0056).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Report of Shipment.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 250; responses per respondent, 4; total annual responses, 1,000; preparation hours per response, .167; and total response burden hours, 167.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: December 4, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-30541 Filed 12-16-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0107]

Clearance Request for Notice of Radioactive Materials

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0107).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notice of Radioactive Materials.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at FAR 52.223-7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 500; responses per respondent, 5; total annual responses, 2,500; preparation hours per response, 1; and total response burden hours, 2,500.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0107, Notice of Radioactive Materials, in all correspondence.

Dated: December 4, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-30542 Filed 12-16-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Noncompetitive Grant to Tulane University

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(G) to Tulane University under Grant Number DE-FG01-93EW53023 to initiate a comprehensive aquatic environmental hazards research program. The proposed grant will provide funding in the estimated amount of $25 million to conduct research and education activities to address the ecological and health oriented aspects of environmental restoration and waste management in aquatic environments.

SCOPE: The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(G) that a noncompetitive award based on the application submitted by Tulane University is in the public interest. This program, to be carried out jointly by Tulane University and Xavier University, will bring together national and international resources of other colleges and universities and professional societies in a national center to increase the public awareness of the risks associated with radioactive and mixed wastes in aquatic environments. The team of experts will conduct research, provide information, data, and human resources to analyze environmental risks in aquatic ecosystems in an objective manner; and identify needs and develop programs to address the critical shortage of well educated, highly skilled technical and scientific personnel in the area of energy related environmental restoration and waste management, particularly as related to aquatic ecosystems. The Department of Energy has determined it to be in the public interest to award a noncompetitive grant to Tulane University to work towards development of a more objective approach to issues concerning the ecological and health impacts of environmental restoration and waste management activities in aquatic ecosystems; to promote the development of low-risk, cost-effective environmental remediation technologies; and to elevate the public's awareness of the health and other risks associated with radioactive and mixed waste management and control in aquatic ecosystems. The anticipated project period of the proposed grant is 60 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: John L. Wengle, PR-322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 92-30621 Filed 12-16-92; 8:45 am]

BILLING CODE 6450-01-M

ENERGY INFORMATION ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request to discontinue submitted to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for discontinuance as a result of final rule RM92-10. This rule was issued by the Federal Energy Regulatory Commission on November 5, 1992 to streamline and eliminate, where possible, electric power regulations and reporting requirements.

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per

respondent annually; (11) A response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by January 19, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for discontinuance was:

1. Federal Energy Regulatory Commission
2. FERC–557
3. 1902–0042
4. Public Utilities Regulatory Policy Act, Section 133 Cost of Service Data
5. Not Applicable
6. Not Applicable
7. Not Applicable
8. Not Applicable
9. Not Applicable
10. Not Applicable
11. Not Applicable
12. Not Applicable
13. On November 5, 1992, the Commission issued RM92–10, a final rule, to streamline and eliminate, where possible, electric power regulations and reporting requirements. In particular, the Commission is eliminating in part 290 of its regulations the requirements for collection of "cost-of-service" information under section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 9, 1992.

Douglas R. Hale,

Acting Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–30619 Filed 12–16–92; 8:45 am]

BILLING CODE 6450–01–M

Inventory of Current DOE Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, Energy.

ACTION: Department of Energy's inventory of energy information collections, including reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) herein publishes an inventory of energy information collections (including reporting and recordkeeping requirements) which had Office of Management and Budget (OMB) approval on October 1, 1992, the first day of Fiscal Year (FY) 1993. The inventory is published for the use of respondents and other interested parties. DOE's management and procurement collections are the responsibility of DOE's Office of Administration and Human Resource Management and are not included in these notices.

The listing that follows includes DOE energy information collections that had OMB approval as of October 1, 1992. For each information collection utilizing a structured form, Part I lists the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections which do not utilize structured forms and the corresponding citations from the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Jay Casselberry, Energy Information Administration (EI–73), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 254–5348. Information on the availability of single, blank copies of those information collections utilizing structured forms can be obtained by contacting the National Energy Information Center (EI–231), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

SUPPLEMENTARY INFORMATION: As DOE's energy information collections are submitted for review and approval to OMB during FY 1993 (October 1, 1992 through September 30, 1993), **Federal Register** notices will be published informing the public to that effect. Such notices not only provide an opportunity for the public to review and comment on the collections but also notify the public of proposed changes to the inventory. Questions concerning the inventory or the changes that take place during FY 1993 may be directed to Mr. Casselberry at the address above.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 10, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

PART I—DOE ACTIVE INFORMATION COLLECTIONS

[October 1, 1992 Inventory]

DOE No.	Title	OMB control No.	Expiration date
Civilian Radioactive Waste Management:			
NWPA-830R-A-G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste (R Contract is on standby; A-F—Annual report is on standby; G—Quarterly Report—Standard Remittance Advice is active).	19010260	11/30/93
RW-859	Nuclear Fuel Data	19010287	12/31/94
Conservation and Renewable Energy:			
CE-63A/B	Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module/Cell Manufacturers Survey.	19010292	08/31/95
Domestic and International Energy Policy:			
EIA-767(2)	Steam Electric Plant Operation and Design Report	19010267	12/31/92
EP-872	Flue Gas Desulfurization Information system	19010299	09/30/93
Economic Regulatory Administration:			
ERA-424D	Tertiary Incentive program Annual Report of Prepaid Expenses	19030069	03/31/93
Emergency Planning and Operations:			
OE-411	Coordinated Regional Bulk Power Supply Program Report	19010286	10/31/93
OE-417R	Power System Emergency Reporting Procedures	19010288	10/31/92
Energy Information Administration:			
EIA-1	Weekly Coal Monitoring Report—General Industries and Blast Furnaces (Standby Form).	19050167	03/31/93
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	03/31/93
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/93
EIA-5	Coke Plant Report—Quarterly	19050167	03/31/93
EIA-6	Coal Distribution Report	19050167	03/31/93
EIA-7A	Coal Production Report	19050174	12/31/93
EIA-14	Refiners' Monthly Cost Report	19050167	03/31/93
EIA-20	Weekly Telephone Survey of Coal Burning Utilities (Standby Form)	19050057	12/31/94
EIA-23	Annual Survey of Domestic Oil and Gas Reserves	19050057	12/31/94
EIA-23P	Oil and Gas Well Operator List Update Report	19050149	09/30/93
EIA-28	Financial Reporting system	19050057	12/31/94
EIA-64A	Annual Report of the Origin of Natural Gas Liquids Production	19050175	12/31/93
EIA-176	Annual Report of Natural and Supplemental Gas Supply and Disposition	19050174	12/31/93
EIA-182	Domestic Crude Oil First Purchase Report	19050175	12/31/93
EIA-191	Underground Gas Storage Report	19050175	12/31/93
EIA-191S	Weekly Underground Gas Storage Report (Standby Form)	19050160	12/31/94
EIA-254	Semiannual Report on Status of Reactor Construction	19050129	12/31/92
EIA-412	Annual Report of Public Electric Utilities	19050092	05/31/93
EIA-457A/G	Residential Energy Consumption Survey	19050175	12/31/93
EIA-627	Annual Quantity and Value of Natural Gas Report	19050129	12/31/92
EIA-759	Monthly Power Plant Report	19050174	12/31/93
EIA-782A	Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report	19050174	12/31/93
EIA-782B	Resellers'/Retailers' Monthly Petroleum Product Sales Report	19050174	12/31/93
EIA-782C	Monthly Report of Petroleum Products Sold Into States for Consumption	19050165	04/30/93
EIA-800	Weekly Refinery Report	19050165	04/30/93
EIA-801	Weekly Bulk Terminal Report	19050165	04/30/93
EIA-802	Weekly Product Pipeline Report	19050165	04/30/93
EIA-803	Weekly Crude Oil Stocks Report	19050165	04/30/93
EIA-804	Weekly Imports Report	19050165	04/30/93
EIA-807	Propane Telephone Survey	19050165	04/30/93
EIA-810	Monthly Refinery Report	19050165	04/30/93
EIA-811	Monthly Bulk Terminal Report	19050165	04/30/93
EIA-812	Monthly Product Pipeline Report	19050165	04/30/93
EIA-813	Monthly Crude Oil Report	19050165	04/30/93
EIA-814	Monthly Imports Report	19050165	04/30/93
EIA-816	Monthly Natural Gas Liquids Report	19050165	04/30/93
EIA-817	Monthly Tanker and Barge Movement Report	19050165	04/30/93
EIA-818	International Energy Agency Imports/Stocks-at-Sea Report	19050183	04/30/93
EIA-819	Monthly Oxygenate Telephone Survey	19050165	04/30/93
EIA-820	Annual Refinery Report	19050174	12/31/93
EIA-821	Annual Fuel Oil and Kerosene Sales Report	19050182	04/30/93
EIA-822A/D	Oxygenate Operations Identification Survey	19050165	04/30/93
EIA-825	Petroleum Facility Operator Identification Survey	19050129	12/31/92
EIA-826	Monthly Electric Utility Sales and Revenue Report with State Distributions	19050169	11/30/94
EIA-846A/D	Manufacturing Energy Consumption Survey	19050160	12/31/94
EIA-851	Domestic Uranium Mining Production Report	19050174	12/31/93
EIA-856	Monthly Foreign Crude Oil Acquisition Report	19050175	12/31/93
EIA-857	Monthly Report of Natural Gas Purchases and Deliveries to Consumers	19050175	12/31/93
EIA-857S	Weekly Report of Natural Gas Supplies and Deliveries to Consumers (Standby Form)	19050160	12/31/94
EIA-858	Uranium Industry Annual Survey	19050129	12/31/92
EIA-860	Annual Electric Generator Report	19050129	12/31/92
EIA-861	Annual Electric Utility Report	19050174	12/31/93
EIA-863	Petroleum Product Sales Identification Survey	19050177	12/31/92
EIA-867	Annual Nonutility Power Producer Report	19060145	06/30/95
EIA-871A/F	Commercial Buildings Energy Consumption Survey	19050068	09/30/93
EIA-876A/E	Residential Transportation Energy Consumption Survey	19050174	12/31/93
EIA-877	Winter Heating Fuels Telephone Survey	19050181	12/31/93
EIA-878	Motor Gasoline Price Survey	19050185	12/31/92
EIA-881(P)	Farm Energy Consumption Survey Pretest		
Federal Energy Regulatory Commission:			
FERC-1	Annual Report of Major Electric Utilities, Licensees and Others	19020021	07/31/95

PART I—DOE ACTIVE INFORMATION COLLECTIONS—Continued

[October 1, 1992 Inventory]

DOE No.	Title	OMB control No.	Expiration date
FERC–1–F	Annual Report of Nonmajor Public Utilities and Licensees	19020029	07/31/95
FERC–2	Annual Report of Major Natural Gas Companies	19020028	08/31/93
FERC–2A	Annual Report of Nonmajor Natural Gas Companies	19020030	08/31/93
FERC–6	Annual Report of Oil Pipeline Companies	19020022	08/31/93
FERC–8	Underground Gas Storage Report	19020026	08/31/95
FERC–11	Natural Gas Pipeline Company Monthly Statement	19020032	05/31/93
FERC–15	Interstate Pipeline's Annual Report of Gas Supply	19020037	08/31/93
FERC–16	Report of Gas Supply and Requirements	19020025	08/31/95
FERC–73	Oil Pipeline Service Life Data	19020019	08/31/95
FERC–80	Licensed Hydropower Development Recreation Report	19020106	11/30/92
FERC–121	Application for Determination of the Maximum Lawful Price Under the Natural Gas Policy Act of 1978.	19020038	12/31/92
FERC–423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	09/30/93
FERC–561	Annual Report of Interlocking Positions	19020099	10/31/92
FERC–580	Fuel Purchase Practices	19020137	03/31/94
FERC–597	Customer Satisfaction Survey	19020163	01/31/94
FERC–714	Annual Electric Power System Report	19020140	12/31/94
FPC–14	Annual Report for Importers and Exporters of Natural Gas	19020027	08/31/95
Fossil Energy:			
EIA–767(3)	Steam Electric Plant Operation and Design Report	19010298	12/31/92
FE–748	Enhanced Oil Recovery Annual Report	19010291	11/30/92
FE–781R	Annual Report of International Electric Export/Import Data	19010296	09/30/94

PART II—DOE ACTIVE INFORMATION COLLECTIONS NOT UTILIZING STRUCTURED FORMS

[October 1, 1992 Inventory]

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Economic Regulatory Administration:				
ERA–766R	Recordkeeping Requirements of DOE's General Allocation and Price Rules.	19030073	09/30/93	10 CFR 210.1.
Federal Energy Regulatory Commission:				
FERC–16A	Monitoring (Omnibus) Report (stand-by authority)	19020105	12/31/92	By FERC Order.
FERC–16AT	Interstate Pipeline Curtailment (Telephone) Survey	19020139	11/30/93	By FERC Order.
FERC–314A	Application For Small Producer Exemption	19020006	12/31/92	18 CFR 250.10.
FERC–500	Application For License for Hydropower Projects Greater Than 5MW.	19020058	07/31/94	18 CFR 4.38, 4.39, 4.40, 4.41, 4.50, 4.51, 4.200–.202
FERC–505	Application for License for Water Projects 5MW or Less	19020115	07/31/94	18 CFR 4.61, 4.71, 4.92, 4.93, 4.107, 4.108, 4.112, 4.113, 4.201–.202.
FERC–510	Application for Surrender of Electric License	19020068	04–30–93	18 CFR 6.1, 6.3.
FERC–511	Application for Transfer of Electric License	19020069	10/31/94	18 CFR 9.1, 9.2, 9.10.
FERC–512	Application for Preliminary Permit	19020073	09/30/94	18 CFR 4.31, 4.32, 4.33, 4.81, 4.82.
FERC–515	Hydropower License—Declaration of Intention	19020079	09/30/94	18 CFR 24.1.
FERC–516	Electric Rate Schedule Filings	19020096	05/31/95	18 CFR 35, subpart A, 35.12–.16, 35.26, 35.30, 35.31, 292, 301.
FERC–519	Disposition of Facilities, Mergers, and Acquisitions of Securities	19020082	01/31/93	18 CFR 33.
FERC–519	Disposition of Facilities, Mergers, and Acquisitions of Securities	19020082	01/31/93	18 CFR 33.
FERC–520	Application for Authority to Hold Interlocking Directorate Positions	19020083	01/31/93	18 CFR 45.
FERC–521	Headwater Benefits	19020087	08/31/95	18 CFR 11.16.
FERC–523	Application for Authorization of The Issuance of Securities or the Assumption of Liabilities.	19020043	09/30/95	18 CFR 34.
FERC–525	Financial Audits	19020092	02/28/95	18 CFR 101, 201
FERC–530	Gas Producer Certificate: Abandonment/Termination	19020051	12/31/92	18 CFR 2.64 157.30, 250.7.
FERC–531	Gas Producer Certificates: New Service/Amendments	19020052	12/31/92	18 CFR 2.75, 154.91–154.111, 157.23–157.28, 157.40, 250.5, 250.10.
FERC–532	Gas Producer Rate: Filing	19020055	12/31/92	18 CFR 2.56(A), 154.91–.110, 157.301, 250.6–.9, 250.5, 250.14.
FERC–534	Gas Producer Rates: Application for Production-Related Costs	19020057	12/31/92	18 CFR 154.94(K), 270, 271.1100–271.1101, 271.1103–271.1105.

PART II—DOE ACTIVE INFORMATION COLLECTIONS NOT UTILIZING STRUCTURED FORMS—Continued

[October 1, 1992 Inventory]

DOE No.	Title	OMB control No.	Expiration date	CFR citation
FERC–537	Gas Pipeline Certificates: Construction, Acquisition & Abandonment.	19020060	04/30/95	18 CFR 2.79, 157.5–.21, .100, .201–.218, 159.1, 284.107, .127, .221.
FERC–538	Gas Pipeline Certificate: Initial Service	19020061	01/31/94	18 CFR 156.3, 156.4, 156.5.
FERC–539	Gas Pipeline Certificate: Import/Export Related	19020062	04/30/94	18 CFR 153.
FERC–541	Gas Pipeline Certificate: Curtailment Plan	19020066	03/31/94	18 CFR 2.78, 281.
FERC–542	Gas Pipeline Rates: Initial Rates, Rate Change, and PGA Tracking.	19020070	03/31/94	18 CFR 154.38, 154.61–154.67.
FERC–542A	Tracking and Recovery of Alaska Natural Gas Transportation System.	19020129	12/31/93	18 CFR 154.201–154.213.
FERC–543	Gas Pipeline Rates: Purchased Gas Adjustment Tracking	19020152	03/31/94	18 CFR 154.38.
FERC–544	Gas Pipeline Rates: Rate Change (Formal)	19020153	02/28/94	18 CFR 154.63–154.67.
FERC–545	Gas Pipeline Rates: Rate Change (Non-Formal)	19020154	07/31/93	18 CFR 154.63–154.67.
FERC–546	Gas Pipeline Rates: Certificated Rate Filings	19020155	02/28/94	18 CFR 154.62–154.67.
FERC–547	Gas Pipeline Rates: Refund Obligations	19020084	05/31/94	18 CFR 154.38(5)(V)(H), 270.101, 273.301, 273.302.
FERC–548	Staff Adjustment Under Natural Gas Policy Act Section 502(c)	19020085	12/31/92	18 CFR 270–277, 281, 282, 284, 385, subpart K.
FERC–549	Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions	19020086	08/31/94	18 CFR 284 Sub. A/D/E/H, 284.7–.11, .102, .105, .106, .122, and others.
FERC–550	Oil Pipeline Rates: Tariff Filings	19020089	08/31/95	18 CFR 340–345, 347.
FERC–555	Records Retention Requirements	19020098	04/30/95	18 CFR 125, 158, 160.1, 225, 276.108, 277.210, 356.
FERC–556	Cogeneration and Small Power Production	19020075	10/31/94	18 CFR 292.
FERC–557	PURPA Section 133: Cost of Service Data	19020042	02/28/93	18 CFR 290.
FERC–558	Format of Contract Summary for Applications for Certificates of Public Convenience and Necessity.	19020109	12/31/92	18 CFR 250.5.
FERC–559	Independent Producer Rate Change or Initial Billing Statement	19020036	12/31/92	18 CFR 250.14.
FERC–566	Report of Utility's Twenty Largest Purchasers	19020114	02/28/95	18 CFR 46.3.
FERC–567	Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.	19020005	09/30/93	18 CFR 260.8, 284.12.
FERC–568	Well Category Determination	19020112	12/31/92	18 CFR 271.703, 274, 275.
FERC–569	Establishment of Deadlines for 1st Sellers to Make and Report Refunds Refund Obligation (producers).	19020111	12/31/92	18 CFR 273.
FERC–570	Recordkeeping Requirements for Certain Sales of Natural Gas	19020124	12/31/92	18 CFR 271.503, 271.603, 271.903.
FERC–574	Gas Pipeline Certificates—Hinshaw Exemption	19020116	08/31/95	18 CFR 152.
FERC–576	Report by Certain Natural Gas Companies on Service Interruptions.	190200004	05/31/95	18 CFR 260.9.
FERC–577	Gas Pipeline Certificates: Environmental Impact Statement	19020128	12/31/94	18 CFR 2.80, 2.82, 157.14.
FERC–577(A)	Gas Pipeline Certificates: Environmental Impact Statement (Interim Rule).	19020161	11/30/92	18 CFR 2.80, 2.82, 157.14.
FERC–581	Management and Procurement Reporting and Recordkeeping Requirements.	19020130	05/31/93	48 CFR subtitle A, chapter 9.
FERC–582	Oil, Gas, and Electric Fees and Annual Charges	19020132	07/31/93	18 CFR 381.108, 382.105(A), 382.201(B)(4).
FERC–583	Hydroelectric Fees and Annual Charges	19020136	06/30/93	18 CFR 11.1, 11.3, 11.4, 11.6.
FERC–585	Reports on Electric Energy Shortages & Contingency Plans Under PURPA 206.	19020138	09/30/93	18 CFR 294.
FERC–588	Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	06/30/94	18 CFR 284, subpart I.
FERC–590	Wellhead Pricing: Pricing Investigations	19020147	12/31/92	Not applicable.
FERC–592	Marketing Affiliates of Interstate Pipelines	19020157	12/31/92	18 CFR 161.250.
Fossil Energy				
FE–329R	Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19010297	06/30/95	10 CFR 500, 501, 503, 504, 505, 506, 515.
FE–746R	Import and Export of Natural Gas	19010294	01/31/93	10 CFR 205, 590.
FE–750R	Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act.	19010295	04/30/94	10 CFR 463.

[FR Doc. 92-30532 Filed 12-16-92; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER93-234-000, et al.]

New England Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. New England Power Co.

[Docket No. ER93-234-000]

December 9, 1992.

Take notice that on November 25, 1992, New England Power Company (NEP) tendered for filing a Notice of Termination of Rate Schedule 335 between NEP and Green Mountain Power Corporation.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Cincinnati Gas & Electric Co.

[Docket No. ER92-33-002]

December 9, 1992.

Take notice that on November 23, 1992, Cincinnati Gas & Electric Company (CG&E) tendered for filing its compliance refund report in the above-referenced docket.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Co.

[Docket No. ER92-600-001]

December 9, 1992.

Take notice that on November 30, 1992, New England Power Company (NEP) tendered for filing an amendment to NEP's refund compliance report submitted to the Commission on September 24, 1992 in the above-referenced docket.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Washington Water Power Co.

[Docket No. ER93-245-000]

December 9, 1992.

Take notice that on November 30, 1992, Washington Water Power Company (Washington) tendered for filing a Notice of Cancellation of the filing rate schedules:

Washington Water Power Company
Supplement No. 6 to Rate Schedule FERC No. 97
PacifiCorp
Supplement No. 6 to Rate Schedule FERC No. 160
Portland General Electric Company
Supplement No. 6 to Rate Schedule FERC No. 31
Puget Sound Power & Light Company
Supplement No. 7 to Rate Schedule FERC No. 65
(Supersedes Supplement No. 6)

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Co.

[Docket No. ER92-81-000]

December 9, 1992.

Take notice that on November 30, 1992, Montaup Electric Company (Montaup) in compliance with the Commission's order of September 30, 1992 filed (1) a Notice of Cancellation of a Letter Agreement between Montaup and New England Power (NEP) which expired on its own terms on October 31, 1988; (2) a Refund Report enumerating all amounts billed and refunded to the companies of the original filings in this proceeding; and (3) Amendments to 6 System-Exchange Agreements under which Montaup makes short-term daily energy sales to various utilities incorporating revised contract language to provide for current hourly and daily energy reservation charge ceiling rates for prospective transactions and also to provide that the Exchange Unit must be out-of-service or uneconomic.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Co.

[Docket No. ER93-14-000]

December 9, 1992.

Take notice that on November 25, 1992, New England Power Company (NEP) tendered for filing an amendment concerning the interconnection agreement with the Littleton (Mass.) Electric Light and Water Department. According to NEP, the purpose of the amendment is to ensure additional notice to the Commission should the formula rate charged Littleton change in the future.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Co.

[Docket No. ER93-195-000]

December 9, 1992.

Take notice that on November 17, 1992, Indiana Michigan Power Company (I&M) tendered for filing a Letter Agreement between I&M and Northern Indiana Public Service Company (NIPSCO), dated December 26, 1985.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Co.

[Docket No. ER93-1-000]

December 9, 1992.

Take notice that on November 25, 1992, New England Power Company (NEP) tendered for filing a revised tariff sheet in response to certain inquiries of Commission staff.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER91-494-003]

December 9, 1992.

Take notice that PacifiCorp on December 1, 1992, tendered for filing, in compliance with the Commission's letter dated October 26, 1992, a compliance report showing the refunds forwarded to Western Area Power Administration (Western) for service under PacifiCorp's Rate Schedule FERC No. 262 pursuant to FERC Docket No. ER91-494-000.

Copies of this filing were furnished to Western, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: December 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Co.

[Docket No. ER93-161-000]

December 10, 1992.

Take notice that on November 30, 1992, tendered for filing an amendment to its November 17, 1992 filing in the above-referenced docket.

Comment date: December 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER92-862-000]

December 10, 1992.

Take notice that on November 16, 1992, PacifiCorp tendered for filing an amendment to its September 28, 1992 filing in the above-referenced docket.

Comment date: December 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Auburndale Power Partners, Limited Partnership

[Docket No. QF93-29-000]

December 10, 1992.

On December 1, 1992, Auburndale Power Partners, Limited Partnership of 12500 Fair Lakes Circle, suite 420, Fairfax, Virginia 22033, submitted for filing an application for certification of

a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Polk County, near Auburndale, Florida, and will consist of a combustion turbine generator, an unfired heat recovery boiler and an extraction/condensing steam turbine generator (STG). Steam recovered from the STG will be used by Coca-Cola Foods, a division of the Coca-Cola for production and packaging of orange juice and Todhunter International, Inc. for production of alcoholic beverages. The maximum net electric power production capacity of the facility will be approximately 159 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in January of 1993.

Comment date: January 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Co.

[Docket No. ER93–153–000]

December 10, 1992.

Take notice that on November 16, 1992, Florida Power & Light Company (FPL) tendered for filing Revision No. 3 to Sheet No. 23 of FPL's FERC's Electric Tariff Second Revised Volume No. 1.

Comment date: December 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Fitchburg Gas & Electric Co.

[Docket No. ER92–88–001]

December 10, 1992.

Take notice that on November 10, 1992, Fitchburg Gas & Electric Company tendered for filing copies of its revised refund report.

Comment date: December 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Idaho Power Co.

[Docket No. ER92–408–001]

December 10, 1992.

Take notice that on November 9, 1992, Idaho Power Company tendered for filing its Amended Compliance Filing in the above-referenced docket.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER93–235–000]

December 10, 1992.

Take notice that on November 25, 1992, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Operating Companies) tendered for filing notices of cancellation for certain duplicative rate schedule designations of the Operating Companies.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Nevada Sun Peak Limited Partnership

[Docket No. EG93–5–000]

December 10, 1992.

Take notice that on December 7, 1992, Nevada Sun-Peak Limited Partnership ("Nevada Sun-Peak") filed an Application under section 32(a)(1) of the Public Utility Holding Company Act of 1935 ("PUHCA"), as amended by section 711 of the Energy Policy Act of 1992, seeking determination by the Commission that Nevada Sun-Peak is an exempt wholesale generator. Nevada Sun-Peak owns a 210 MW peaking facility located at the Sunrise Generating Station in Clark County, Nevada.

Comment date: December 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30558 Filed 12–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–74–005]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 11, 1992.

Take notice that on December 1, 1992, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of December 1, 1992:

Original Sheet No. 4E
Twelfth Revised Sheet No. 30
Tenth Revised Sheet No. 31

South Georgia states that the proposed tariff sheets are being filed in order to implement a proposal for the allocation by customer of any remaining balance in South Georgia's Account No. 191 attributable to any overcollections or undercollections of gas costs. South Georgia asserts that all of South Georgia's jurisdictional sales customers have elected to convert their remaining firm sales entitlements to firm transportation on South Georgia's system. South Georgia states that as a result of the foregoing and as requested by the customers, Southern Natural Gas Company (Southern) submitted applications in Docket Nos. CP92–6–000 and CP92–311–000 requesting, among other things, orders approving abandonment of the Contract Demand Southern sells South Georgia under Southern's Rate Schedule OCD–2 and certificates of public convenience and necessity authorizing Southern to render new firm natural gas sales service to these customers. As a result of the foregoing, South Georgia asserts that it no longer has a firm sales obligation to these jurisdictional customers. Further, South Georgia submits that a method which returns or recovers any overcollections or undercollections from the customers for the periods as proposed is necessary in order to properly allocate any refunds or costs to current or departing sales customers. Specifically, South Georgia proposes to direct bill or refund, as appropriate, any remaining balance in any subaccount of South Georgia's Account No. 191.

South Georgia states that copies of the filing will be served upon all of South Georgia's customers, interested state commissions and interested parties as well as parties of record in Docket No. RP92–74–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's

Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30557 Filed 12-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1391-003]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 11, 1992.

Take notice that on December 3, 1992, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective January 2, 1993:

Second Revised Sheet No. 30L
First Revised Sheet No. 30Z.06
Original Sheet No. 45.05
Original Sheet No. 45.06
Original Sheet No. 45.07
Original Sheet No. 45.08

Southern states that the revised tariff sheets governing future direct delivery connections are filed, under protest, to comply with the Federal Energy Regulatory Commission's ("Commission") November 3, 1992, order granting rehearing in *Arcadian Corporation* v. *Southern Natural Gas Company*, 61 FERC ¶ 61,183 (1992). The revised tariff sheets provide for the construction of direct delivery connections upon request when such connections are operationally and economically feasible, as set forth in the revised tariff sheets.

Southern states that copies of the filing will be served upon all of its shippers and all parties in Docket No. CP90-1391.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30554 Filed 12-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-687-007]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

December 11, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on December 7, 1992, Third Revised Fourth Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheet is November 1, 1992.

As background to the instant filing, TGPL states that in orders issued January 17, 1991 (January 17 order) and June 11, 1991 in Docket No. CP90-687, the Commission authorized TGPL to provide bundled firm transportation service under Rate Schedule FT-NT in two phases. Phase I commenced November 1, 1991 and Phase II, which provided for an increase in the level of service, commenced November 1, 1992. Ordering Paragraph 9(b) of the January 17 order authorized initial rates for TGPL's component of the bundled Phase II rates subject to TGPL adjusting such rates to reflect the final outcome of TGPL's rate proceeding in Docket No. RP90-8.

TGPL states that the purpose of the filing is to comply with the Commission's November 30, 1992 order in Docket No. CP90-687-006, which directed TGPL to make a compliance filing to place into effect on November 1, 1992 the Phase II rates authorized by the January 17 order.

TGPL states that copies of the filing were mailed to each of its FT-NT customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30556 Filed 12-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-477-001]

Transwestern Pipeline Co.; Compliance Filing

December 11, 1992.

Take notice that on December 9, 1992, Transwestern Pipeline Company (Transwestern), tendered for filing Second Revised Sheet No. 100 of Rate Schedule X-10, and Fourth Revised Sheet No. 2 to become a part of its FERC Gas Tariff, Original Volume No. 2.

Northwest states that the tariff sheets reflect cancellation of the Gas Exchange Agreement between Transwestern and GPM Gas Corporation, (successor in interest to Phillips 66 Natural Gas Company), dated September 18, 1972. Northwest notes that the above-referenced tariff sheets are being filed in compliance with Ordering Paragraph (G) of the Commission Order at Docket No. CP92-477-000 issued October 20, 1992. The proposed effective date of the tariff sheets is November 20, 1992, which is the effective date of abandonment of the exchange service between Transwestern GPM pursuant to the Stipulation and Agreement filed in CP92-477-000 and the Commission Order issued October 20, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30552 Filed 12-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-95-000]

United Gas Pipe Line Co., Amoco Production Co.; Application

December 10, 1992.

Take notice that on December 7, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, and Amoco Production Company (Amoco), P.O. Box 3092, Houston, Texas 77253 (Applicants), filed in Docket No. CP93-95-000, a joint application pursuant to section 7(b) of the National Gas Act and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, (18 CFR 385.207(a)(2)), seeking authorization for United to abandon certain facilities which will be transferred to Amoco after the abandonment and petitioning the Commission to determine that the facilities are gathering facilities and will not be subject to Commission jurisdiction after the abandonment and transfer of the facilities to Amoco, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it would abandon and transfer to Amoco, pursuant to a Sales Agreement, certain of its facilities in the Blocker Field, Harrison County, Texas. The facilities consist of 6.73 miles of 8-inch pipeline (Field Pipeline (FPL) Nos. 11, 15 and 24) and 2.13 miles of 16-inch Transmission Pipeline (TPL) 65-2, it is stated. United indicates that the FPLs presently connect Amoco's Martin, Watson and Blankenship Central Facilities to United's TPL 65-2. Amoco would utilize the facilities to gather gas from the Watson and Blankenship Central Facility and deliver the gas to the Martin Central Facility for processing, it is stated. Amoco would construct a new pipeline to transport the processed gas from the Martin Central Facility to United's TPL 65-2, it is stated. It is indicated that United would own and operate this pipeline.

It is further indicated that Amoco would gather gas for United from the Tatum field near the Watson Central Facility.

Applicants also request an order declaring that the facilities are gathering facilities and as such are exempt from Commission jurisdiction under section 1(b) of the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-30553 Filed 12-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-45-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 11, 1992.

Take notice that Williams Natural Gas Company (WNG) on December 8, 1992 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective January 7, 1993:

Fourth Revised Sheet No. 119
Second Revised Sheet No. 126

WNG states that the purpose of this filing is to make effective tariff sheets which unbundle gathering rates from transportation rates. That is, under these revised tariff sheets, it will be clear that a shipper taking only gathering service will pay a gathering rate and not also pay a transportation rate for its service.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30555 Filed 12-16-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. EA-58-E]

Application to Amend Electricity Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application by Detroit Edison to amend electricity export authorization.

SUMMARY: The Detroit Edison Company has filed, on behalf of itself and Consumers Power Company, an application with the Office of Fuels Programs to amend its existing authorization to export electricity to Ontario Hydro.

DATES: Comments, protests or requests to intervene must be submitted on or before January 19, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number EA-58-E should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) at (202) 586-9624 or Lise Courtney M. Howe (Program Attorney) at (202) 586-2900.

SUPPLEMENTARY INFORMATION: On December 4, 1992, the Detroit Edison Company (Detroit Edison) applied on

behalf of itself and Consumers Power Company (Consumers) for an amendment to their existing electricity export authorization. The existing authorization, issued by the Federal Power Commission on October 10, 1972, allows Detroit Edison and Consumers (the Michigan Companies) to export to Ontario Hydro up to 4,000,000,000 KWH of electric energy annually at a maximum rate of 2,200,000,000 volt-amperes (2,200 MVA). The application requests that DOE amend the existing authorization by waiving, for calendar year 1993, the annual energy limit while leaving the 2,200 MVA capacity limitation unchanged. A similar request for calendar year 1992 was granted by DOE on June 4, 1992.

In their application filed pursuant to section 202(e) of the Federal Power Act, 16 U.S.C. 824(e), and 18 CFR § 205.300, *et seq.*, the Michigan Companies assert that if the waiver is granted, economic energy transactions with Ontario Hydro will be scheduled to flow over the existing Detroit Edison-Ontario Hydro interconnections in such a manner so as to minimize loop flows and to avoid detriment to the other regional interconnected utilities.

The electrical systems of the Michigan Companies and Ontario Hydro presently are interconnected at four points on the U.S.-Canadian border. Each interconnection has been authorized by a Presidential permit issued under Executive Order 10485.

The Michigan Companies assert that removal of the annual energy limit is warranted because such a condition is not necessary to maintain the reliability of the U.S. electric power supply system. Instead, the Michigan Companies argue, the reliability of their transmission system depends on keeping maximum flows on the transmission facilities within their capabilities for the system conditions encountered on a continuous basis.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should also be filed directly with: Raymond N. Shibley/Bruce W. Neely, LeBoeuf, Lamb, Leiby & MacRae, suite 1100, 1333 New Hampshire Ave., NW., Washington, DC 20036; Raymond O. Sturdy, Jr., Senior Attorney, The Detroit Edison Company, 2000 Second Avenue–688 WCB, Detroit, MI 48226; and William M. Lange, Assistant General Counsel, Consumers Power Company, Fifth Floor, 1016 16th Street, NW., Washington, DC 20036.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final determination will be made on this application after considering all available information, including information which demonstrates whether or not the proposed action will impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, nonadversarial process involving members of the public, State governments, and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms.

Copies of this application will be made available, upon request, for public inspection and copying at the address above from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 7, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–30522 Filed 12–16–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of November 16 Through November 20, 1992

During the week of November 16 through November 20, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

KOAT, 11/17/92, LFA–0246

KOAT, a television station, filed an Appeal from a determination issued by the Albuquerque Field Office (AFO) of the Department of Energy (DOE). The determination denied, in part, a Request for Information which KOAT submitted under the Freedom of Information Act (FOIA). KOAT requested two documents, entitled "Fiscal Year 91 Construction Plan Through Fiscal Year 97" (Plan) and "Site Development Plan Annual Summary." The AFO released redacted copies of the Plan and Summary which withheld information concerning proposed construction projects for fiscal years 1993 through 1997. Citing FOIA Exemption 5, the AFO determined that disclosure of the redacted information would disclose deliberative, predecisional material and that release of this material would not be in the public interest. In considering the Appeal, the DOE determined that most of the material was predecisional and deliberative. Consequently, the DOE found that this material was properly withheld by the AFO. However, the DOE determined that some segregable factual material was withheld along with some previously released information. This material should not have been withheld and was provided to KOAT. Consequently, the DOE granted in part the Appeal.

Westat, Inc., 11/17/92, LFA–0243

Westant, Inc. (Westat) filed an Appeal from a determination issued to it by the Office of Placement and Administration (OPA) within the Office of Headquarters Procurement Operations of the Department of Energy (DOE). In that

determination, OPA denied in part Westat's request for information under the Freedom of Information Act (FOIA). The Authorizing Official had withheld the entire winning proposal submitted by the Science Applications International Corporation (SAIC) in response to a Request for Proposal for Survey Design and Analysis Support Services for the Energy Information Administration, RFP No. DE–RP01–90E121944. Relying upon Exemption b(4) of the FOIA, the Authorizing Official stated that the winning proposal was withheld in its entirety because of its "proprietary nature." In considering the Appeal, the DOE found that the Authorizing Official had not adequately justified its application of Exemption 4 to the winning proposal. Specifically, the Authorizing Official did not adequately explain why release of any portion of the winning proposal would likely cause substantial competitive harm to SAIC. Therefore, the DOE remanded the matter so that the Authorizing Official could issue a new determination focusing on the likelihood of substantial competitive harm to SAIC.

Refund Applications

Apex Oil Co., Clark Oil & Refining Corp./Isenberg Enterprises, Al Isenberg's Super 100, Larry's Clark Super 100, 11/17/92, RF342–168, RF342–169, RF342–179

The DOE issued a Decision and Order denying, in part, an Application for Refund and granting two other Applications for Refund filed by purchasers of Clark refined petroleum products in the Apex/Clark special refund proceeding. In January 1979, Al Isenberg, owner of Isenberg Enterprises, entered into an informal sublease agreement with another dealer, Larry Rupert, owner of Larry's Clark Super 100. Both Mr. and Mrs. Isenberg and Mr. Rupert's widow applied for a refund for purchases made at the station from 1979 to January 1981. The DOE determined that because Mr. Rupert did not actually purchase Clark petroleum products during the period of Mr. Isenberg's sublease, he could not have been injured by Clark's alleged overcharges. Therefore, the DOE denied Mr. Rupert's request for a refund for the period after January 1979. The DOE granted Mr. and Mrs. Isenberg's claim as well as another claim the couple filed on behalf of another station which they leased directly from Clark. The total amount of the refund authorized in this Decision and Order is $15,755 (comprised of $11,954 in principal and $3,801 in interest).

Atlantic Richfield Company/Phillips Petroleum Company, 11/19/92, RF304–4403

The DOE issued a Decision and Order granting a refund to Phillips Petroleum Company (Phillips) in the Atlantic Richfield (ARCO) Subpart V special refund proceeding. Phillips, a reseller of ARCO products requested a refund based upon its purchases of 48,465,514 gallons of ARCO products during the consent order period. The DOE considered a showing of injury provided by Phillips and applied the three step competitive disadvantage analysis using *Platt's* average wholesale prices for the Mt. Belvieu, Texas, region. Based upon this analysis, the DOE concluded that it is appropriate for Phillips to receive a refund based on its above-market volumetric share for its purchases of propane and natural gas, and a refund equal to its full allocable share for its purchases of butane. The refund granted to Phillips equals $32,187, representing $19,696 in principal and $12,491 in accrued interest.

Murphy Oil Corp./Mason's Spur Station, 11/16/92, RF309–1425

The DOE issued a Decision and Order granting an Application for Refund filed in the Murphy Oil Corporation special refund proceeding on behalf of Mason's Spur Station, a reseller of covered Murphy petroleum products during the consent order period. The applicant supplied the required information and substantiated a claim for a refund of less than $5,000. Accordingly, its refund was granted. In pursuit of a conclusion to the nearly completed Murphy refund proceeding, the Decision and Order also established a final filing deadline for Applications for Refund from the Murphy consent order fund. The OHA will not accept applications in the Murphy refund proceeding that are postmarked after December 31, 1992.

Texaco, Inc./Gervais Brothers, Inc. Et Al., 11/19/92, RF321–10591 Et Al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Texaco Inc. special refund proceeding. Each of the applicants purchased indirectly from Texaco and was a reseller whose allocable share is less than $10,000. One applicant, Gervais Brothers, Inc., included in its claim gallons of motor oil purchased after the effective date of decontrol, September 1, 1976. The DOE determined that this applicant was not eligible for a refund based on these gallons because no overcharges could have occurred in sales of motor oil after that date. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $8,844 ($6,618 principal plus $2,226 interest).

Texaco Inc., Kautz Texaco, Emmett's Texaco, 11/20/92, RR321–89, RR321–98

The DOE issued a Decision and Order denying two Motions for Reconsideration in the Texaco Inc. special refund proceeding. The motions were based on purchases of Texaco products allegedly made by Kautz and Emmett's Texaco service stations. However, each of the applicants failed to provide sufficient documentation to support his claimed purchase volume. Accordingly, both Motions for Reconsideration were denied.

Texaco Inc./Southside Texaco, 11/18/92, RF321–13291

The DOE issued a Decision and Order regarding an Application for Refund filed by Southside Texaco in the Texaco Inc. special refund proceeding. Southside Texaco purchased products from Chieftain Oil Co., a Texaco consignee and petroleum jobber. Both Southside Texaco and Chieftain Oil Co. were owned by Russell M. Osborne. Mr. Osborne had previously received a refund in the Texaco proceeding based on the Texaco purchases of Chieftain Oil Co. Because Texaco products purchased by (or consigned to) one firm may be included only once in determining an applicant's refund amount, the application for Southside Texaco was denied.

Texaco, Inc./Todd's Texaco Todd's Texaco, 11/16/92, RF321–4643, RF321–19331

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Todd's Texaco in the Texaco Inc. special refund proceeding. On May 2, 1990, the owner of Todd's Texaco, Mrs. W.O. Todd, filed an Application for Refund on behalf of Todd's Texaco using a form provided by Energy Refunds, Inc. Subsequently, on October 19, 1992, Todd filed another Application for Refund on behalf of Todd's Texaco using a form provided by Wilson, Keller & Associates (WKA). The DOE held that since Todd had falsely certified on her WKA application that she had not previously signed and authorized the filing of another Texaco refund application, it was appropriate to deny both of the applications. Consequently, the DOE denied both of Todd's applications.

Time Oil Company/Nevada, 11/17/92, RQ334–583

The DOE issued a Decision and Order concerning the second-stage application

filed by the State of Nevada (Nevada) requesting approval of its percentage of Time Oil Company second-stage monies to fund five programs: an energy emergency awareness and gasoline price monitoring program; an alternative vehicle fuel demonstration; a state energy policy implementation plan; gasoline, aviation, and diesel fuel quality assurance testing, and the promotion of its used motor oil collection program. The DOE has previously approved similar programs. Thus, Nevada's proposal was approved. The total refund granted in this Decision and Order was $54,485 (comprised of $26,441 in principal and $28,044 in interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Advance Petroleum Distributing J.S. Sledge Oil Co., Inc.	RR304–13	11/19/92
	RR304–17	
Atlantic Richfield Company/Al's Service Station et al.	RF304–13211	11/19/92
Atlantic Richfield Company/Art Goodwill's Arco Station et al.	RF304–13283	11/20/92
Atlantic Richfield Company/Heat Gas Company, Inc.	RR304–25	11/16/92
Atlantic Richfield Company/Razon Arco Service Station et al.	RF304–12976	11/20/92
Atlantic Richfield Company/ Springarden Arco et al.	RF304–3863	11/20/92
Bath Local School District et al.	RF272–81330	11/17/92
Butte County et al	RF272–86000	11/16/92
Carl F. Gerken & Sons et al.	RF272–85022	11/17/92
City of Oconto et al	RF272–83321	11/17/92
City of West Des Moines et al.	RF272–85994	11/20/92
Culpeper County et al.	RF272–85404	11/16/92
Gates Chili Central School District.	RF272–83076	11/16/92
Glendive Elementary School District #1 et al.	RF272–80858	11/17/92
Gulf Oil Corporation/ Gary's Gulf Center et al.	RF300–17005	11/20/92
Gulf Oil Corporation/ J.A. Auger & Sons, Inc. et al.	RF300–17510	11/19/92
Gulf Oil Corporation/ Johnny Rombe - Gulf Service et al.	RF300–18055	11/20/92
Gulf Oil Corporation/ MJ & MJ Barbosa Gulf et al.	RF300–14610	11/18/92
Gulf Oil Corporation/ Silver Springs Outpost, Inc. et al.	RF300–13550	11/20/92
Hallmark Cards, Inc	RF272–14135	11/19/92
Hallmark Cards, Inc	RD272–14135	
Figgie International, Inc.	RF272–20153	
Figgie International, Inc.	RF272–20153	
Helmsley-Spear, Inc	RF272–13928	11/20/92
Helmsley-Spear, Inc	RD272–13928	
Marissa C.U. School District 40 et al.	RF272–87041	11/16/92
Montvale School District et al.	RF272–87101	11/18/92
Pfizer Inc.	RF272–16661	11/20/92
Pfizer Inc.	RD272–16661	
Shell Oil Company/ George A. Rosal Oil Co., Inc.	RF315–7466	11/19/92
Phillips 66 Company	RF315–8027	
Coonen Inc	RF315–8196	
Shell Oil Company/ Michael A. Roy.	RF315–333	11/20/92
Michael A. Roy	RF315–334	
Michael A. Roy	RF315–335	
Michael A. Roy	RF315–336	
Michael A. Roy	RF315–337	
Michael A. Roy	RF315–338	
Shell Oil Company/ Rocket Supply Corporation et al.	RF315–8428	11/17/92
Strasburger Enterprises, Inc./Rainbo Baking Company et al.	RF343–1	11/19/92
Texaco Inc./Glen's Texaco Service et al.	RF321–2841	11/16/92
Texaco Inc./Tony's Texaco Service et al.	RF321–16420	11/18/92
Texaco Inc./Walden's Texaco et al.	RF321–10240	11/20/92
Wee-Mor Drilling, Inc	RF272–14146	11/20/92
Wee-Mor Drilling, Inc	RF272–14146	
Cactus Drilling Company.	RF272–16665	
Cactus Drilling Company.	RD272–16665	

Dismissals

The following submissions were dismissed:

Name	Case No.
Arlington City Cab	RF272–80524
Athens Texaco Service	RF321–11484
Belmond, IA	RF272–88233
Bob's Texaco Station	RF321–19125
Boston Commuter Lines, Inc.	RF272–89103
Budget Car Wash	RF304–13236
Chesapeake Gulf	RF300–17235
Church of St. Willibrord	RF272–92536
College Square Texaco	RF321–49
Damascus Gulf	RF300–17289
Dean McVey Trucking, Inc.	RF272–89116
Dellwood Foods, Inc.	RF272–82419
Dick Huizenga Trucking	RF272–92123
Eau Claire Coop Oil Co.	RF272–93766
Fredrick & Lorraine Meyer	RF272–93550
Hank's Service Station	RF321–7183
HFCO, Inc.	RF272–93534
Hi-Way "6" Gulf	RF300–17066
Island Aviation, Inc.	RF300–20116
Kibler W.D. Trucking Co.	RF272–86556
Parkers	RF304–3870
Piedmont Trucking Co.	RF272–89112
Portal Service Center	RF321–100
Redy Mix Konkrete	RF321–15269
RLC Trucking Company	RF272–89111
Roen Steam Ship Company	RF272–89156
Smith's Grocery and Washeteria	RF300–17151
South Summit Co. School District	RF272–87468
Stan's Shell Service	RF315–7870
Unger's Texaco #1	RF321–13625
Unger's Texaco #2	RF321–13626
Vibration Texaco Service	RF321–16534
W.T. Cooper's Texaco	RF321–10090
Whitehall School District	RF272–87311
York Lines	RF272–89102

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 10, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–30618 Filed 12–16–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4546–5]

Proposed Settlement; Asbestos NESHAP

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, notice is hereby given of a proposed Settlement Agreement conditionally entered into by the United States Environmental Protection Agency ("EPA") on November 30, 1992, in litigation concerning the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP") (40 CFR 61.141–61.159). For a period of thirty days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice is authorized under section 113(g) to withdraw its consent to the Settlement Agreement if appropriate in light of the public comments.

DATES: Written comments on the Settlement Agreement must be received by January 19, 1993.

ADDRESSES: Written comments should be sent, preferably in triplicate, to Michael Horowitz, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–8883. Copies of the Settlement Agreement are available from Michael Horowitz at the same address. A copy of the settlement has been lodged with the Clerk of the United States Court of Appeals for the District of Columbia Circuit.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Ripp (703) 308–8727 at the United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Stationary Source Compliance Division.

SUPPLEMENTARY INFORMATION:

In *Safe Buildings Alliance* v. *U.S. Environmental Protection Agency,* No. 91–1034 (D.C. Cir.), the petitioner seeks review of EPA's November 20, 1990 Final Rule amending the national emission standard for asbestos under section 112 of the Clean Air Act, 55 FR 48406 (Nov. 20, 1990), codified at 40 CFR Part 61. EPA and the petitioner have entered into a conditional Settlement Agreement that includes a Notice of Clarification that will be published in the Federal Register if this Settlement Agreement is made final.

Section 113(g) of the Clean Air Act (42 U.S.C. 7413(g)) requires, with exceptions not pertinent here, that EPA publish notice of settlement agreements in the **Federal Register** and provide a reasonable opportunity for public comment. EPA or the Department of Justice may withhold consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act.

Dated: December 3, 1992.

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 92–30654 Filed 12–16–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 9, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission (202) 632–7513. Persons wishing to comment on this information collection should contact Jones Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0180

Title: Section 73.1610, Equipment Tests

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 797 responses; 0.5 hours average burden per response; 399 hours total annual burden.

Needs and Uses: Section 73.1610 requires the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. The data are used by FCC staff to assure compliance with the terms of the construction permit and applicable engineering standards.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–30534 Filed 12–16–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability: Approximately 280 acres of Vacant Land near Turpin Reservoir in the Medicine Bow National Forest, approximately 18 miles south of Elk Mountain, WY

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that approximately 280 acres of Vacant Land located near Turpin Reservoir in the Medicine Bow National Forest in Wyoming, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until March 17, 1993.

ADDRESSES: All written Notices of Serious Interest must be submitted to Marcia L. Rodgers, Legal Division, Federal Deposit Insurance Corporation, 707 17th Street, suite 3000, Denver, Colorado 80202, (303) 296–4703, ext. 3766, Fax (303) 292–3959.

SUPPLEMENTARY INFORMATION: The property is more fully described as three tracts of vacant land comprising 280 acres near Turpin Reservoir within the Medicine Bow National Forest, approximately 18 miles south of Elk Mountain, Wyoming. Two of the tracts are on the west side of Turpin Reservoir; these tracts consist of one rectangular 120-acre tract running east and west, and a contiguous 40-acre square tract which touches the larger parcel at its northwest corner. The third tract is on the east side of the reservoir and consists of a 120-acre rectangular tract running north and south. This tract borders the reservoir when the reservoir is full. The property has no structural improvements or utilities and consists primarily of lodgepole pine forest. Elevations range from approximately 9450 to 9700 feet above sea level; the eastern parcel rises steeply from the reservoir. County Road FR100 runs north and south through the eastern portion of the larger western parcel; the eastern parcel is accessed from a two-track road off County Road FR100. Access to the property is limited during the winter months due to elevation and contour. The property is zoned for ranching, agricultural and mining use and is subject to Carbon County Zoning Regulations which restrict permitted uses in such zoned areas.

Written notice of serious interest to purchase the property must be received on or before March 17, 1993 by Marcia Rodgers at the above address and in substantially the following form:

NOTICE OF SERIOUS INTEREST

RE: Vacant Land (280 Acres), near Turpin Reservoir in the Medicine Bow National Forest, approximately 18 miles south of Elk Mountain, Wyoming.

This Notice of Serious Interest is tendered in accordance with section 10 of the Coastal Barrier Improvement Act and publication in the **Federal Register** of a Notice of Availability on December 17, 1992 with respect to that property south of Elk Mountain, Wyoming in the Medicine Bow National Forest

consisting of three tracts of vacant land comprising 280 acres.

The (*Name and Address of the Agency of Other Qualified Organization*) is eligible to submit this notice under criteria set forth in Public Law 101–591, section 10(b)(2).

The (*Name of the Agency of Other Qualified Organization*) intends to use this property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

The proposed terms of purchase or transfer are as follows:

[INSERT TERMS OF PURCHASE]

Dated: December 11, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary

[FR Doc. 92–30637 Filed 12–16–92; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed; The Board of Trustees of the Galveston Wharves; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004177–008.

Title: Port of Seattle/Stevedoring Services of America Terminal Agreement.

Parties:

Port of Seattle ("Port"), Stevedoring Services of America dba, Seattle International Terminal, Inc.

Synopsis: This modification adjusts the port's rental hour billing breakpoints for container cranes.

Agreement No.: 224–200707.

Title: Port of Galveston/Galvco Bridge Terminal Agreement.

Parties:

The Board of Trustees of the Galveston Wharves ("Port"), Galvco Bridge, Ltd. ("Galvco").

Synopsis: The Agreement permits the Port to lease to Galvco certain facilities for the development and operation of a railbridge operation and sufficient water area for the operation of the railbridge as well as dolphins and winches. The Agreement has an initial term of three years.

Dated: December 14, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–30608 Filed 12–16–92; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 90–23]

Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Automated Tariff Filing and Information System ["ATFI"], Supplemental Report No. 3 and Notice

By its previous Supplemental Report and Notice ("Supplemental Report No. 2"), issued on August 12, 1992, the Federal Maritime Commission ("Commission") established a phase-in (by trade area) schedule for the filing of tariff data into the Automated Tariff Filing and Information System ("ATFI"). However, given the need for upgrades to computer hardware and software, including those enhancements suggested by industry comments, the Commission's Contractor indicates that the earliest possible date that the electronic system can accept final tariff data is February 22, 1992. Accordingly the phase-in schedule is revised to read as set forth below (all dates are in 1993). [All tariffs not converted by the "complete" date are subject to cancellation by order of the Commission in a show-cause proceeding, unless temporarily exempted.]

Trade area	Begin	Complete
[Voluntary (early) filing of ANY tariff after February 21]		
A. Worldwide/Asian & South Pacific	February 22	June 4.
B. European	June 14	August 27.
C. Africa/Mid East	September 13	September 24.
D. North American/Caribbean	September 29	October 8.
E. Central/South America	October 11	November 12.
F. Terminals/Domestic Trades	November 22	December 31.
G. New Essential Terms		November 22

Filers must notify the ATFI Hot Line at 703–883–8350 ten (10) days before beginning to convert a full tariff under the above schedule. Also, contact the Hot Line with any questions.

Explanation of Conversion Schedule

- *Voluntary (early) filing of tariffs.* Filers may convert any tariffs earlier than required in the mandatory schedules, and maintain them from that time forward.

A. *Worldwide, Asian, and/or South Pacific:* Tariffs applicable to/from worldwide points; tariffs applicable to/from countries and islands bordering the Pacific or Indian Oceans, which are wholly or partially north of the Equator, and wholly east of 90 degrees East longitude, including all of the People's Republic of China, Mongolia, and that portion of the former Russian Soviet Federated Socialist Republic east of 90 degrees East longitude; and/or tariffs applicable to/from countries and islands bordering the pacific or Indian Oceans and which are wholly south of the Equator.

B. *European:* Tariffs applicable to/from the European continent, including the islands adjacent thereto, the countries bordering the Atlantic Ocean, the northern coast of the Mediterranean Sea, Turkey, and that portion of the former Russian Soviet Federated Socialist Republic west of 90 degrees East longitude.

C. *Africa and/or Mid East:* Tariffs applicable to/from the African continent, including the islands adjacent thereto; and/or those countries not included in the "European Area"

which: border the Mediterranean Sea, and/or are wholly or partially west of 90 degrees East longitude.

D. *North America and/or Caribbean:* Tariffs applicable to/from the North American continent, not described in the "Domestic" trade areas herein; and/or points and places bordering the Caribbean Sea including Mexico but excluding Central and South America.

E. *Central and/or South America:* Tariffs applicable to/from countries and islands adjacent thereto, in Central and/or South America not included in other trade areas herein.

F. *Terminals and/or Domestic:* All marine terminal operator tariffs; and/or all tariffs for any part of the Domestic Offshore Trade under the Commission's jurisdiction.

G. *New Essential Terms:* The essential terms of all service contracts executed on or after the "Begin" date must be properly filed in the electronic ATFI system, or be subject to rejection or cancellation.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-30607 Filed 12-16-92; 8:45 am]

BILLING CODE 6730-01-M

Automated Tariff Filing and Information System (ATFI); Revised Phase-In Schedule

On November 2, 1992, Public Law 102-582 ("P.L. 102-582") was signed by the President. Section 502(b)(1) of P.L. 102-582 provides in pertinent part:

(b) Tariff Form and Availability.—
(1) Requirement to File.—Notwithstanding any other law, each common carrier and conference shall, in accordance with subsection (c), file electronically with the Commission all tariffs, and all essential terms of service contracts, required to be filed by that common carrier or conference under the Shipping Act of 1984 (46 App. U.S.C. 1701 *et seq.*), the Shipping Act, 1916 (46 App. U.S.C. 801 *et seq.*), and the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 *et seq.*).

* * * * *

(c) Filing Schedule.—New tariffs and new essential terms of service contracts shall be filed electronically not later than July 1, 1992. All other tariffs, amendments to tariffs, and essential terms of service contracts shall be filed not later than September 1, 1992.

Notwithstanding the language of the statute, February 22, 1993, is the earliest possible date the Federal Maritime Commission ("Commission") will be prepared to accept electronically filed tariff data. In Supplemental Report No. 3 and Notice ("Supplemental Report No. 3") in Docket No. 90-23, Automated Tariff Filing and Information System (ATFI), the Commission today has published a revised phase-in schedule for the mandatory electronic filing/conversion of tariff data into ATFI. That schedule establishes, according to specified trade areas, the dates during 1993 by which carriers and conferences must convert and file their tariffs electronically. As indicated in that Report, paper tariffs covering the described trade areas which are not converted by the prescribed "complete" date, will be subject to cancellation by order of the Commission in a show cause proceeding. As additionally indicated in that Report, filers must notify the ATFI Hot Line at (703) 883-8350 ten (10) days before beginning to convert a full tariff.

Other matters involving the implementation of Public Law 102-582 will be addressed separately.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-30606 Filed 12-16-92; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Office of Business, Industry, and Governmental Affairs; Business Advisory Board

Meeting Notice: Notice is hereby given that the General Services Administration (GSA) Business Advisory Board will meet January 12, 1993, from 10 a.m. to 4 p.m. at GSA's Central Office, 18th and F Streets, NW., Room 5141A, Washington, DC. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR part 101-6.

The purpose of the meeting is to provide a forum for discussion on key business and industry trends, emerging technologies and products, and other issues that may affect GSA's future policy and program formulation. The agenda for this meeting will include discussion on: quality vendor award program, service to the citizens, consortium on office technology, quality systems registration, and customer satisfaction measurement.

The meeting will be open to the public.

For further information, contact Patricia Jones (202/501-0838) of the Office of Business, Industry, and Governmental Affairs, GSA/AL, Washington, DC 20405.

Dated: December 3, 1992.

Donald C.J. Gray,

Associate Administrator for Business, Industry, and Governmental Affairs, GSA.

[FR Doc. 92-30622 Filed 12-16-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 54 FR 9252, March 6, 1989) is amended to reflect an organization change in the Food and Drug Administration (FDA).

FDA proposes to transfer the congressional and public affairs functions from the Office of Compliance within the Center for Biologics Evaluation and Research (CBER) to the Office of the Center Director, CBER to increase the accessibility of these support activities to all Center employees. The congressional and public affairs functions which include FOI requests, legislative correspondence, and professional and consumer affairs will therefore be deleted from the Office of Compliance.

Under Section HF-B, Organization:

1. Delete subparagraph (p-2) Office of Compliance (HFBC) in its entirety and insert a new subparagraph (p-2) reading as follows:

Office of Compliance (HFBC). Monitors the quality of marketed biological products through surveillance, inspections, report evaluation and compliance programs, and coordinates testing of marketed products with other components of FDA.

Advises the Center Director and other Agency officials on FDA's regulatory compliance responsibilities for biological products.

Directs and coordinates Center regulation writing activities.

Directs the Headquarters biologics inspection program and assists in training of Headquarters and field inspectors of biological products based on guidance from the curriculum committee.

Develops compliance standards for biological product industry practices,

including Current Good Manufacturing Practice (CGMP) regulations, and ensures their uniform interpretation.

Directs the Center's bioresearch monitoring program, enforcement, and recall programs for biological products.

Identifies problems in biological product regulation, manufacturing, and quality assurance and proposes solutions to these problems.

Develops biological product quality assurance compliance and surveillance programs, coordinates and directs field implementation, and advises other Center components on these programs.

Provides guidance to Headquarters and field personnel in the development of evidence to support enforcement actions for deviation from the applicable standards.

Serves as the focal point within the Center for surveillance and enforcement policy development.

Evaluates, in coordination with appropriate Agency officials, a firm's conformance with CGMP in producing biological products for procurement by Federal and State agencies.

Coordinates all Center-field compliance activities, including planning activities and field assignments, with the exception of consumer affairs activities.

Coordinates the Center's export program and serves as the Center's focal point for import issues.

Dated: December 8, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92-30640 Filed 12-16-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-060-03-4120-01]

Moab District Advisory Council; Call for Nominations

December 10, 1992.

AGENCY: Bureau of Land Management, Moab District, Utah.

ACTION: Moab District Advisory Council, call for nominations.

SUMMARY: BLM's district advisory councils (DACs) are mandated by section 309(a) of the Federal Land Policy and Management Act of 1976, as amended by section 13 of the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1739. Under our governing regulations, 43 CFR 1784.6-4(a), an advisory council must be established for each BLM district.

The purpose of this notice is to solicit public nominations to fill 1 position on the Bureau of Land Management's (BLM) Moab District Advisory Council.

Nominations are needed for the elected official position to fill an unexpired term through December 31, 1993. To qualify, nominees must be an incumbent elected official of general purpose government serving the people of the Moab District.

The purpose of the Council is to provide informed advice to the BLM Moab District Manager on the management of the public lands in the Moab District. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on the Council should contact the District Manager at the address below. They should then provide the District Manager with the names, addresses, occupations, and other relevant biographical information of qualified nominees.

DATES: All nominations should be received on or before January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Zortman, District Manager, P.O. Box 970, Moab, Utah 84532 (801) 259-6111.

Roger Zortman,

District Manager.

[FR Doc. 92-30603 Filed 12-16-92; 8:45 am]

BILLING CODE 4310-DQ-M

[ES-940-5700-10-241A]

General Land Office Automated Records Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is given that the public availability of the Bureau of Land Management (BLM) General Land Office (GLO) Automated Records Project will be delayed until February 1, 1993, due to technical difficulties. This Project has optically scanned images of the original GLO patents and deeds and contains a data base of key information derived from the patents.

DATES: February 1, 1993.

ADDRESSES: The GLO Automated Records Project system is available and supported from 8 a.m. to 5 p.m., Monday through Friday (excluding holidays) at the following location: Bureau of Land Management, Eastern States, Public Service Section, 7450 Boston Boulevard, Springfield, Virginia 22153.

SUPPLEMENTARY INFORMATION: The BLM Eastern States maintains the original GLO tract books that show how, when, and to whom title to public domain lands passed from the United States—in the States of Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Missouri, Mississippi, Ohio, and Wisconsin. The tract books record land transactions that date back to the late 1700's. Eastern States also maintains a complete set of field notes and township plats for the 13 States listed above.

The BLM initiated the GLO Automated Records Project because it recognized the need to protect and preserve these records, and make them more accessible. The Project provides the capability to scan, index, store, update, and retrieve images and attribute data for the images of the GLO documents. To protect them from further deterioration, the original documents are retired from daily public use after entry into the GLO Automated Records System.

Retrieval of the data base and document images from optical disk is now available for the States of Florida, Arkansas, Wisconsin, Louisiana, Minnesota, and Michigan, for patents issued for cash entries and homesteads before July 1, 1908. Document images can be retrieved by querying the data base in six areas: legal land description, patent authority, patentee name, land office, certificate number, and county. As they are completed, the rest of the states and the field notes and township plats will come "on-line."

Paper copies of the document images are available in several sizes. Also available are reports with information specific to the document (land description, patent authority, patentee name, land office, certificate number, and county).

Until April 1, 1993, there will be no charge for using the GLO Automated Records System, although there will be the standard charge for paper copies of documents and reports. After April 1, 1993, rates will be charged for querying the System. The rates will follow established BLM cost recovery guidelines.

The GLO Automated Records System will be available for remote use (via modem) 24 hours daily and supported during the hours of 8 a.m. and 5 p.m., Monday through Friday (excluding holidays), in the Eastern States Public Service Section as of April 1, 1993.

FOR FURTHER INFORMATION CONTACT: The Public Service Section at 703–440–1600.

Dated: December 9, 1992.

Larry E. Hamilton,

Acting State Director.

[FR Doc. 92–30600 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–GJ–M

[CO–620–93–4110–03; COC41333]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC41333, Rio Blanco County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 1888 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: November 11, 1992.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 92–30597 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–JB–M

[MT–0210–4210–04; MTM 80345]

Realty Action; Exchange of Public Lands and Minerals in Musselshell and Yellowstone Counties, MT

AGENCY: Bureau of Land Management, Miles City District Office, Montana, Interior.

ACTION: Designation of pubic surface estate lands and federal coal mineral estate in Musselshell County, Montana for transfer out of federal ownership in exchange for lands owned by the Meridian Minerals Company (Meridian) in Yellowstone County, Montana.

SUMMARY: A proposal has been received from Meridian to acquire public surface estate and coal estate from the BLM to complete its planned surface construction activities related to the Bull Mountains mine support infrastructure. Meridian agrees not to surface mine the federal coal it proposes to acquire and underground mining of the coal is not feasible. The surface estate and the entire underlying mineral estate to be acquired by the BLM is located in an area known as the South Hills located approximately three miles south of Billings, Montana. The acquired lands will connect two larger parcels of public land aggregating approximately 1,200 acres. Acquisition of this parcel would aid the management and recreational use of the area including uses such as for motocross, horseback riding, hiking, bicycling, jogging and wildlife viewing. The following surface and coal estate is being considered for disposal and acquisition by land and mineral exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

Selected Public Surface to be Acquired by Meridian in Musselshell County

T. 6 N., R. 26 E.,
Section 12, lot 4, W1/2SW, SESW
Consisting of 153.96 acres.

Selected Federal Coal to be Acquired by Meridian in Musselshell County

T. 6 N., R. 26 E.,
Section 4, all
Section 12, all
Consisting of 1257.55 acres of coal.

Offered Surface and Mineral Estate to be Acquired by BLM in Yellowstone County

T. 1 S., R. 26 E.,
Section 23, NESW, N1/2SE, SESE
Consisting of 160.00 acres.

The surface and mineral estates described above and designated for disposal are segregated from entry under the mining laws but not the mineral leasing laws and not from exchange pursuant to section 206 of the Federal Policy and Management Act of 1976, effective upon publication of this notice in the **Federal Register**. The segregative effect on the selected public lands and minerals designated for disposal will terminate upon issuance of a patent to Meridian or two years from this publication, whichever occurs first.

Comments and information related to this proposed exchange will be accepted at an open house scheduled at 5 p.m. on Wednesday, January 27, 1993 at the Montana Power Company offices, 202 Main, Roundup, Montana.

Final determination on disposal will await completion of an environmental assessment. Upon completion of an environmental assessment and land use decision, a Notice of Realty Action will be published specifying the lands to be exchanged.

DATES: Comments will be accepted until February 1, 1993.

ADDRESSES: Interested parties may submit comments related to the public interest of this exchange to the Billings Resource Area office, 810 East Main, Billings, Montana 59105.

FOR FURTHER INFORMATION CONTACT: Jim Hetzer, Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, MT, 59301, 406–232–4331.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Billings Resource Area office, 810 East Main, Billings, MT 59105.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 92–30609 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–DN–M

[CO–070–03–7122–02–7410; C–50693]

Intent To Consider Amendment of the Grand Junction Resource Area Resource Management Plan, 1987

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to consider Amendment of the Grand Junction Resource Area Resource Management Plan, 1987, to address a proposed Withdrawal of public lands from mineral location and entry, and Notice of Public Comment Period to identify issues to be addressed in an Environmental Assessment on the proposed Amendment.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969, and sections 202 and 204 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Resource Area, will consider an amendment of the Grand Junction Resource Area Resource Management Plan, 1987, and will prepare an Environmental Assessment on the proposed Amendment.

SUPPLEMENTARY INFORMATION: The Plan Amendment and Environmental Assessment are being developed to consider a proposal by the U.S. Department of Transportation, Federal Aviation Administration, to withdraw from mineral location and entry the

following public lands comprising approximately 2,163.46 acres for 20 years.

Ute Principal Meridian, Colorado

T. 1 N., R. 1 E.
- Sec. 19, Lots 1 thru 4, E½W½, SE¼;
- Sec. 20, S½SW¼;
- Sec. 29, N½, N½SE¼, SE¼SE¼;
- Sec. 30, Lot 1, NE¼, NE¼NW¼;
- Sec. 32, NE¼NE¼.

T. 1 N., R. 1 W.
- Sec. 13, N½SW¼, SW¼SW¼, S½SE¼;
- Sec. 14, SE¼;
- Sec. 23, NE¼, N½NW¼;
- Sec. 24, NE¼, N½SE¼, SE¼SE¼.

This withdrawal would protect land adjacent to Walker Field Airport in Grand Junction, Colorado, in the interest of future airport development. The land would continue to be managed by the Bureau of Land Management. Written comments on the proposal will be accepted until January 19, 1993, at the address listed below. The purpose of the public comment period is to identify issues and accept comments, suggestions or objections on the proposed mineral withdrawal. An Environmental Assessment will be prepared to evaluate the issues raised during the amendment process. A Decision Record will be issued with the Environmental Assessment to document the proposed decision concerning the proposed Plan Amendment and Withdrawal following the public comment period.

FOR FURTHER INFORMATION: Additional information concerning this proposed Mineral Withdrawal and Amendment of the Grand Junction Resource Area Resource Management Plan, 1987, is available for review in the Bureau of Land Management, Grand Junction Resource Area Office, 2815 H Road, Grand Junction, Colorado 81506, or by contacting Robin Buchanan, Realty Specialist, at (303) 244–3028.

Richard Arcand,

Acting District Manager.

[FR Doc. 92–30599 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–JB–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey; ID

The plat of survey of the following described land was officially filed in the Idaho States Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 10, 1992.

The plat representing the dependent resurvey of portions of the subdivisional lines and the 1961–1968 adjustment of the 1878 meander lines of the right and left banks of the Snake River, subdivision of section 14, and the survey of portions of the 1991 meander lines of the right and left banks of the Snake River, Township 4 North, Range 37 East, Boise Meridian, Idaho, Group No. 816, was accepted December 8, 1992.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: December 10, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92–30605 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–GG–M

[UT–942–4210–06; U–0113225]

Proposed Continuation of Withdrawal; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that a 1619.24-acre withdrawal for the White Sands Missile Range, Green River Launch Site continue for 20 years. The land would remain closed to surface entry and mining, but would be opened to mineral leasing.

DATES: Comments should be received by March 17, 1993.

ADDRESS: Comments should be sent to State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, (801) 539–4119.

SUPPLEMENTARY INFORMATION: The Corps of Engineers proposes that the existing land withdrawal made by Public Land Order 3279, dated December 7, 1963 be continued for 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Salt Lake Meridian

T. 21 S., R. 16 E.,
- Sec. 13, S½SW¼;
- Sec. 14, SE¼SE¼;
- Sec. 22, S½NE¼;
- Sec. 23, NW¼NW¼, S½NW¼, NE¼ NE¼;
- Sec. 24, NE¼;

T. 21 S., R. 17 E.,
- Sec. 19, lots 2–4 incl., E½SW¼;
- Sec. 29, S½NW¼, SW¼, W½SE¼;
- Sec. 30, lot 3, N½NE¼, E½SW¼, S½ SE¼;
- Sec. 31, NE¼, NE¼NW¼, N½SW¼, SE¼ SE¼.

The areas described aggregate 1619.24 acres in Grand County.

The purpose of the withdrawal is to protect the Green River Launch Site, White Sands Missile Range, near Green River, Utah. The withdrawal presently segregates the land from settlement, sale, location, and entry, including location and entry under the mining laws, and also the mineral leasing laws. The site is proposed to be opened to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Utah State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Ted Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–30546 Filed 12–16–92; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Delaware Water Gap National Recreation Area; Meeting

AGENCY: National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date for the next three meetings of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of said meetings is required under the Federal Advisory Committee Act.

Date: January 16, 1993.
Time: 9 a.m.
Location: New Jersey District Office, Delaware Water Gap NRA, Walpack, New Jersey.

Snow Date: January 23, 1993.
Date: February 20, 1993.
Time: 9 a.m.
Location: Bushkill School Office, Delaware Water Gap NRA, Bushkill, PA.
Snow Date: February 27, 1993.
Date: March 27, 1993.
Time: 9 a.m.
Location: Millbrook Church, Intersection Old Mine Rd. and Route 602, Millbrook Village, NJ.

Agenda: The agenda will be devoted to committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. Opportunities for public comment to the Commission will be provided.

FOR FURTHER INFORMATION CONTACT: Hal J. Grovert, Acting Superintendent; Delaware Water Gap National Recreation Area, Bushkill, PA 18324; (717) 588–2435.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

Charles P. Clapper, Jr.,
Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–30495 Filed 12–16–92; 8:45 am]
BILLING CODE 4310–70–M

Upper Delaware Scenic and Recreational River; Meetings

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of change of meeting date.

SUMMARY: This notice sets the schedule for calendar year 1993 meetings of the Upper Delaware Citizens Advisory Council, as required under the Federal Advisory Committee Act.

Date: November 12, 1992.

Type of Meeting: Plenary and informational meetings.

Address: Town of Tusten Hall, Bridge Street, Narrowsburg, New York.

Dates	Type of meeting	Inclement weather reschedule date
February 26, 1993.	Business	March 12, 1993
March 26, 1993	Informational	April 16, 1993
April 23, 1993	Business	May 14, 1993
May 21, 1993	Informational	
June 25, 1993	Business	
July 10, 1993	Educational Forum.	
August 27, 1993	Business	
October 2, 1993	Educational Forum.	
October 29, 1993.	Business	
November 19, 1993.	Informational	December 10, 1993
December 17, 1993.	Business	January 14, 1994

Press releases containing specific information regarding the subject of the monthly meeting will be published in the following area newspapers: The Sullivan County Democrat, The Times Herald Record, The River Reporter, The Tri-state Gazette, The Pike County Dispatch, The Wayne Independent, The Hawley News Eagle, The Weekly Almanac.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764–0159; (717) 729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, New York 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Charles P. Clapper, Jr.,
Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–30496 Filed 12–16–92; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a requests from the Association of American Railroads (AAR), Economics and Finance Department for permission to use certain data from the 1991 ICC Waybill Sample.

A copy of the request (WB027—12/2/92) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

CONTACT: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92–30660 Filed 12–16–92; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket Nos. 28905 (Sub-No. 22); 29430 (Sub-No. 20)]

CSX Corp., Control, Chessie System, Inc. and Seaboard Coast Line Industries, Inc.; Norfolk Southern Corp. Control, Norfolk and Western Railway Co. and Southern Railway Co. (Arbitration Review)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reopening and request for comments; extension of comment due date.

SUMMARY: By decision served November 13, 1992 (57 FR 54104, November 16, 1992), the Commission sought public comment with regard to any issues in these cases that remain open for reconsideration in light of the Supreme Court's decision in *Norfolk & Western* v. *American Train Dispatchers*, ____U.S. ____111 S.Ct. 1156 (1991). By motion filed December 7, 1992, the Brotherhood of Railway Carmen (Carmen) requests a

60-day extension of the comment due date. Carmen states additional time is needed for new counsel to survey the record, relevant case law and statutes to prepare and present meaningful comments. Carmen states it has contacted interested parties and the American Train Dispatchers Association agrees to the 60-day request, but Norfolk and Western Railway Company, Southern Railway Company, and CSX Transportation, Inc., agree only to a 30-day extension. The full 60-day request is reasonable and will be granted.

DATES: Comments are due on March 1, 1993. Replies are due on April 2, 1993.

ADDRESSES: Send pleadings referring to Finance Docket Nos. 28905 (Sub-No. 22) and 29430 (Sub-No. 20) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 [TDD for the hearing impaired: (202) 927–5721].

Decided: December 14, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30663 Filed 12–16–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32201]

Southern Pacific Transportation Co.—Trackage Rights—Los Angeles County Transportation Commission; Notice of Exemption

Los Angeles County Transportation Commission (LACTC) has agreed to grant bridge and local trackage rights to Southern Pacific Transportation Company (SP) between: (1) LACTC milepost 482.05 at Alhambra Junction and LACTC milepost 414.42 at Palmdale Junction and (2) LACTC milepost 482.05 at Alhambra Junction (across the LAUPT Bridge) and LACTC milepost 482.30, a total distance of about 68.03 miles [1] in Los Angeles County, California. The exemption became effective on December 14, 1992. The parties state their intent to consummate the transaction on or after consummation of the transaction involved in Finance Docket No. 32199, Los Angeles County Transportation Commission—Acquisition Exemption—Southern Pacific Transportation Company.[2]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Taylor, Morell & Gitomer, Suite 210, 919 18th Street, NW., Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to Norfolk and Western R. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360, I.C.C. 653 (1980).

Date: December 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30661 Filed 12–16–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Network Management Forum

Notice is hereby given that, on October 27, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum, formerly known as OSI/Network Management Forum, ("the Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional parties to the venture are as follows: Network Managers (UK) Limited, Guilford, Surrey, England is a Corporate Member; GTE Federal Systems Division (formerly Contel), Chantilly, VA; Linx, N.M.S., Ltd., Crownhill, Milton Keynes, England; Netcomm Limited, Basildon, Essex, England; and Opening Technologies, McLean, VA are Associate Members; and Midland Bank, Sheffield, England, and U.S. Department of State (DTS–PO), Springfield, VA are Affiliate Members.

No other changes have been made, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 10, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 8, 1992 (57 FR 46409).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–30615 Filed 12–16–92; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research; Smart House project

Notice is hereby given that, on October 5, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Smart House, L.P., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership of the Smart House Project ("the Project"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following parties are now participating in the Project: The American Institute of Architecture Students, Washington, DC; Ameritech Services, Inc., Cleveland, OH; Bose Corporation, Framingham, MA; H–P Products, Louisville, OH; Westinghouse Electric Corporation, Linthicum, MD. The following change has been made in the membership of the Project: The Southern Company has replaced its subsidiary Georgia Power Company as a participant in the venture and will be representing itself and its subsidiaries (including Georgia Power Company, Alabama Power Company, Gulf Power

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[1] The milepost do not total because of a change of milepost in the middle of the LAUPT bridge.

[2] By decision served December 15, 1992 in Finance Docket No. 32199, LACTC became a common carrier subject to the jurisdiction of the Interstate Commerce Commission (replacing SP as a common carrier) as to the trackage involved in this Finance Docket No. 32201. However, LACTC and SP dispute our jurisdiction over the transaction involved in Finance Docket No. 32199 and may subsequently petition to reopen that proceeding and dismiss it for lack of jurisdiction. If this is done, SP will no longer need a grant of trackage rights to be able to operate over the property involved in this Finance Docket No. 32201, and the parties will petition to reopen and dismiss the trackage rights involved herein.

Company, Savannah Electric & Power Company, and Mississippi Power Company). The following party is no longer involved in the Project: Polk Audio.

No other changes have been made in either the membership or planned activity of the Project. Participants of the Project are developing a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features.

On June 14, 1985, the predecessor in interest to Smart House, L.P., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 10, 1985 (50 FR 41428).

The last notifications was filed with the Department on July 1, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33524).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-30616 Filed 12-16-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to the requirements of Public Law 95-602, I hereby certify that the Consumer Price Index for All Urban Consumers rose by 3.2 percent between October 1991 and October 1992 from a level of 137.4 (1982-84=100) in October 1991 to a level of 141.8 (1982-84=100) in October 1992.

Signed at Washington, DC, on the 9th day of December 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-30636 Filed 12-16-92; 8:45 am]

BILLING CODE 4510-34-M

Employment and Training Administration

[TA-W-27,575, TA-W-27,575A Louisiana, TA-W-27,575B Mississippi, TA-W-27,575C Texas]

Dailey Petroleum Services, Inc., Conroe, TX and Dailey Directional Drilling, Revised Determinations on Reconsideration

On November 2, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Dailey Directional Drilling operating in Louisiana, Mississippi and Texas and Dailey Petroleum Services, Inc., in Conroe, Texas. This notice will soon be published in the **Federal Register**.

One of the petitioners states that the Department did not investigate Dailey Directional Drilling which was mentioned on the initial petition dated July 13, 1992. Dailey Directional Drilling operates offshore in the Gulf and in Texas, Louisiana and Mississippi.

Findings on reconsideration show that the preponderant activity for workers at Dailey Directional Drilling is on new wells and that drilling revenue decreased in the first six months of fiscal year (FY) 1992 compared to the same period in FY 1991. Other findings on reconsideration show substantial worker separations at Dailey Directional Drilling in 1991 and 1992.

U.S. imports of crude oil and natural gas increased absolutely and relative to domestic shipments and consumption in the period September 1991 through August 1992 compared to the year earlier.

Exploration and drilling activity in the crude oil and natural gas industry is particularly sensitive to the level of imports and changes in the price level of crude oil. The impact of crude oil imports and reduced price levels has resulted in sharply declining U.S. exploration and drilling activity.

With respect to the workers at Dailey Petroleum Service, the Department's denial was based on the fact that the workers do not produce an article within the meaning of Section 223(3) of the Act. This was fully addressed in the Department's negative determination.

Other findings on reconsideration show that Dailey Petroleum Service (DPS) does not rent drilling rig tools to Dailey Directional Drilling but rents instead to third parties or unaffiliated firms. Accordingly, there is no basis for certifying workers at DPS since their reduced revenues did not come from a reduced demand for their services from Dailey Directional Drilling.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil produced at Dailey Directional Drilling in Texas, Louisiana and Mississippi contributed importantly to the decline in sales or production and to the total or partial separation of workers at Dailey Directional Drilling. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Dailey Directional Drilling in Texas, Louisiana and Mississippi and operating offshore in the Gulf of Mexico who became totally or partially separated from employment on or after July 13, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

It is further determined that the Department's negative determination for workers at Dailey Petroleum Services in Conroe, Texas be affirmed.

Signed at Washington, DC, this 9th day of December 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-30634 Filed 12-16-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,919, et al.]

Hercules Offshore Corp., Houston, TX, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

Operating at various other places in TA-W-27,919A Texas and Offshore Texas, TA-W-27,919B Louisiana and Offshore Louisiana

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 17, 1992, applicable to all workers of Hercules Offshore Corporation, Houston, Texas. The notice was published in the **Federal Register** on December 3, 1992 (57 FR 57242).

At the request of one of the petitioners, the Department reviewed the certification for workers of Hercules Offshore Corporation. New information received from the company shows that Hercules worked in various other places in Texas and Louisiana and offshore Texas and Louisiana.

The intent of the Department's certification is to include all workers of Hercules Offshore Corporation who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA-W-27,919 is hereby issued as follows:

All workers of Hercules Offshore Corporation, Houston, Texas and in various other places in Texas and Louisiana and offshore in the Gulf of Mexico who became totally or partially separated from employment on or after October 14, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of December 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

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Pension and Welfare Benefits Administration

[Application No. D-8958, et al.]

Proposed Exemptions; California Association of Hospitals and Health Systems Retirement and Tax Savings Investment Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

California Association of Hospitals and Health Systems, Retirement and Tax Savings Investment Plan (the Plan), Located in Sacramento, CA

[Application No. D-8958]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale by the Plan to the California Association of Hospitals and Health Systems (CAHHS), the Plan sponsor, of its residual investment in a trust rate account pool (the Trust Rate Account Pool) comprised of a portfolio of student loans that had been established by the Plan's former trustee, provided: (1) The sale is a one-time transaction for cash; (2) the Plan is not required to pay any fees or commissions in connection therewith; (3) the Plan receives an amount which is not less than the balance of its residual interest in the Trust Rate Account Pool; (4) the Plan receives interest on its total investment in the Trust Rate Account Pool from May 19, 1989 to the date the exempted transaction is consummated; and (5) any additional amounts that CAHHS receives from the Superintendent of Banks of the State of California (the Superintendent) which are above the Plan's investment of $76,988 in the Trust Rate Account Pool, will be rebated to the Plan.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 108 participants and assets having a total fair market value of $1,541,601 as of August 31, 1991.[1] The trustee of the Plan is Merrill Lynch Trust Company (MLTC) of Somerset, New Jersey. MLTC has served as a directed trustee for the Plan since May 1989. Investment decisions for the Plan are made by five individuals, each of whom is a member of the Pension Advisory Committee established pursuant to the terms of the Plan. The Pension Advisory Committee is responsible for directing all investments of the Plan's assets.

2. CAHHS, formerly California Hospital Association, is a domestic, non-profit California corporation which is tax exempt under section 501(c)(6) of the Code. CAHHS was organized in 1935 as a trade association representing the interests of the hospital industry in California.

3. First Independent Trust Company (FITCO) of Sacramento, California, which is not affiliated with MLTC, is the former trustee of the Plan. FITCO served in this capacity from January 1, 1989 until May 1, 1989 when it was replaced by MLTC. On May 19, 1989, FITCO became insolvent and its assets were seized by the Superintendent.

4. Among the assets of the Plan is its residual investment in a trust rate account pool established by FITCO and consisting of a portfolio of student loans. The loans comprising the portfolio were either originated by FITCO or purchased by FITCO from other lenders. It is represented that the borrowers were unrelated persons. The amount of the Plan's investment in the

[1] It is represented that the Plan is not a governmental plan within the meaning of section 3(32) of Act.

Trust Rate Account Pool totaled $76,988. Of this amount, $43,044 represented employer contributions and $33,944 represented employee contributions.[2]

5. The Plan's investment in the Trust Rate Account Pool was made at the direction of the Pension Advisory Committee, on or about January 1989 upon FITCO's advice.[3] FITCO invested Plan funds, which it held in Trust, in the Trust Rate Account Pool and it established an account in the Plan's name. The Trust Rate Account Pool earned interest at the rate of 1 percent to 1¼ percent over the 91 day United States Treasury Bill rate.[4] Loans in the Trust Rate Account Pool were also purportedly guaranteed by the Government of the United States or by state or private nonprofit guarantee agencies which were, in turn, reinsured by the United States Government. The guarantee was to apply as long as Federal regulations governing the administration of the loans were followed by FITCO.

6. It was anticipated the Plan could terminate its investment in the Trust Rate Account Pool at any time or at least within one or two banking days as required by the Trust Rate Report. On May 3, 1989, CAHHS requested a withdrawal of all assets in the Plan's account and a transfer of the funds to MLTC. However, on May 19, 1989, the Superintendent seized the assets of FITCO including those held in the Trust Rate Account Pool which had a total balance of $29,589,000. FITCO was also closed and liquidation proceedings were begun.

7. The Superintendent has recovered approximately 83 percent of the outstanding principal balance of the Trust Rate Account Pool. However, it has been unable to return the full amount of the investment or sell the student loans on the secondary market because some of the student loans were either defaulted upon by their borrowers or they were not properly guaranteed due to their mishandling by FITCO. In addition, there is a dispute between the Superintendent and the Federal Government as to which of the student loans were properly guaranteed so full payment has not been made to investors. Further, by letter dated April 20, 1992, the Superintendent indicates that losses have resulted and will continue to occur because some loans are "uninsured and uncollectible," "undocumented" or "not guaranteed." Although the Superintendent has been selling or attempting to sell the assets of FITCO since its liquidation, the Superintendent represents that the sales price of the student loans that are sold may have to be discounted in order to attract a buyer.

8. To date, the Superintendent has transferred $65,612 (excluding interest) to the Plan as a partial return of the Plan's original investment of $76,988 in FITCO. The Superintendent has not charged investors any costs relating to the liquidation or the servicing of assets in the Trust Rate Account Pool. It is the intent of the Superintendent not to pass on any of these costs in the future, even in the event that more than 100 percent of the original principal is recovered.

The Plan's distributions have been placed in a separate account with MLTC and they have earned $3,922 in interest through February 29, 1992.[5] The Superintendent expects to collect and distribute additional assets to FITCO investors but it does not expect that these investors will receive the full value of their investments for the reasons cited above.

9. To assist the Plan in recovering the balance of funds that are outstanding from its FITCO investment, CAHHS proposes to purchase the Plan's remaining investment in the Trust Rate Account Pool from the Plan for $11,376 [representing the total contributions to FITCO of $76,988 minus the $65,612 (excluding interest) which MLTC has recovered from the Superintendent]. The consideration will be paid by CAHHS in cash and the Plan will not be required to pay any fees or commissions. In addition, CAHHS proposes to pay the Plan interest calculated on the original contribution amount of $76,988 from May 19, 1989 to the date the exempted transaction is consummated. CAHHS will base its interest payments to the Plan on the Trust Rate Income Formula as described above in paragraph number 5 and the accompanying footnote. If CAHHS receives any additional payments from the Superintendent which are above the Plan's investment of $76,988 in the Trust Rate Account Pool, such amounts will be rebated to the Plan. All proceeds from the sale will be allocated among the accounts of the participants and beneficiaries of the Plan.

10. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) Sale will be a one-time transaction for cash; (b) the Plan will not be required to pay any fees or commissions in connection therewith; (c) the Plan will receive an amount which will not be less than the balance of the residual interest; (d) the Plan will receive interest on its total investment in the Trust Rate Account Pool from May 19, 1989 to the date the exempted transaction is consummated; and (e) any additional amounts that CAHHS receives from the Superintendent which are above the Plan's investment of $76,988 in the Trust Rate Account Pool, will be rebated to the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Massachusetts Mutual Life Insurance Company (MassMutual) Located in Boston, MA

[Application No. D–9057]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the proposed arrangement, over a five year period, whereby MassMutual's general account (the General Account) will extend credit to unrelated third parties who purchase one or more parcels of real property (the Properties) from the MassMutual Real Estate Pooled Separate Account, SIA–R (the Separate Account), a separate account maintained by MassMutual on behalf of employee benefit plans (the

[2] The applicants represent that the Plan's original investment in FITCO's Trust Rate Account Pool is covered by the statutory exemptive relief that is available under section 408(b)(8) of the Act. The Department expresses no opinion herein on whether the investment satisfies the terms and conditions of section 408(b)(8) of the Act.

[3] The Department notes that the decision, by the Pension Advisory Committee, to invest Plan assets in FITCO's Trust Rate Account Pool is governed by the fiduciary responsibility requirements of Part 4 of Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the Plan's investment in the Trust Rate Account Pool.

[4] According to the applicants, the rate of return promised by FITCO is specified in the Trust Rate Report. Page 3 of the report states that Trust Rate income will be computed quarterly and will be calculated as the average of the 91 day Treasury Bill auctions during the calendar quarter, rounded up to the next highest one-quarter percent, plus one percent. The applicants note that if the average Treasury Bill rate for a given quarter is 6.06 percent, the Trust Rate income for that quarter will be 7.25 percent (6.06 percent rounded up to 6.25 percent plus 1 percent).

[5] Other than interest generated from the distributions, the Plan has received no interest income from FITCO in connection with its investment in the Trust Rate Account Pool.

Plans); provided that the following conditions are satisfied:

(A) All conditions of the transactions are no less favorable to the Separate Account than those which the Separate Account could obtain in arm's-length transactions not involving the General Account;

(B) The Separate Account receives a purchase price for each Property which is not less than the fair market value of that Property on the date of sale;

(C) The transactions do not involve sales of any of the Properties to any parties in interest with respect to the Plans participating in the Separate Account;

(D) No commissions, fees, or expenses in connection with the transaction are paid to MassMutual or any of its affiliates, other than loan origination fees of no more than .25 percent per transaction;

(E) The General Account does not charge or receive interest in excess of the fair market rate of interest;

(F) The interests of the Separate Account in the transactions are represented by one of the following fiduciaries (the Fiduciaries): Joseph J. Blake Separate Account Associates of Los Angeles, California; Realty Advisory Group of Virginia Beach, Virginia; Realty Consultants, Ltd. of Chicago, Illinois; Trahan Separate Account Partners of Houston, Texas; or American Appraisal Associates of Boston, Massachusetts;

(G) No transaction involving General Account financing of a Property sale shall occur until the appropriate Fiduciary has approved the transaction and completed a written report relating its findings with respect to the transaction (the Report); and

(H) The Report is made available for inspection by any duly authorized representative of the Department, the Internal Revenue Service (the Service) and any fiduciary of a Plan participating in the Separate Account, for a period of no less than six years from the date of the transaction.

Temporary Nature of the Exemption

This exemption, if granted, will expire five years from the date on which the final grant of the exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. MassMutual is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts, with total assets of over $39.3 billion as of December 31, 1991. Among the investment activities of MassMutual are real estate mortgage investments and equity real estate investments. MassMutual represents that it holds more than $5 billion in real estate investments under management for its own General Account and for others, including employee benefit plans covered by the Act (the Plans). In the ordinary course of its business, MassMutual performs a wide variety of services for Plans, including administration and investment services.

2. MassMutual represents that the Separate Account is a pooled fund, as described in regulations of the Department, at 29 CFR 2570.31(g). MassMutual established the Separate Account on October 1, 1981 as a vehicle for Plan fiduciaries to invest Plan assets in real property. The Separate Account invests primarily in equity ownership of income-producing properties. Participation in the Separate Account is available only to qualified pension, profit-sharing, and annuity Plans. The assets held by MassMutual on behalf of the Separate Account consist of equity interests in a geographically diverse portfolio of nine commercial properties (the Properties) ranging in size from 32,000 to 131,000 square feet. As of March 31, 1992, the Separate Account had total assets valued at $39,943,638, consisting of the Properties, valued at $39,515,688, and $427,950 in cash.

3. Every Plan which invests in the Separate Account (the Invested Plans) enters into a group annuity contract (the Contract) with MassMutual, under which the Invested Plans deposit monies for investment in the Separate Account. MassMutual acts as a fiduciary with respect to the Invested Plans' assets invested in the Separate Account. Each Invested Plan has the right under the Contract to withdraw all or any portion of its investments in the Separate Account. As of April 16, 1992, all Invested Plans had requested withdrawal of all investments in the Separate Account. MassMutual represents that at the time of the establishment of the Separate Account it was anticipated that any withdrawal requests could be satisfied from ongoing cash investments by Plans, income streams from properties held by the Separate Account, or sales of the Properties by the Separate Account to unrelated parties. In recent years, however, as regional and national real estate markets have deteriorated, the Separate Account has not received sufficient cash to provide the necessary liquidity to honor withdrawal requests.

4. MassMutual is proceeding with efforts to sell the Properties in order to provide the cash needed to honor the withdrawal requests of the Invested Plans. MassMutual maintains, however, that a major impediment to the sales of the Properties is the lack of available financing to prospective buyers. MassMutual represents that the limited availability of financing and the magnitude of the outstanding requests for withdrawals from the Separate Account are factors in MassMutual's conclusion that it should provide more active assistance to prospective buyers of the Properties. Accordingly, MassMutual proposes to utilize its General Account to finance the purchases of the Properties by unrelated buyers, and is requesting an exemption for such transactions under the terms and conditions described herein.

5. It is proposed that the General Account will provide the financing to enable the purchase by unrelated third parties of one or more of the Properties from the Separate Account, with the purchase price paid for each Property negotiated at arm's length between the Separate Account and the purchaser. As part of the marketing of the Properties, prospective buyers will be notified that market-rate financing is available to qualified buyers through MassMutual's General Account. The purchase price for each Property, in any sale financed by the General Account, will be no less than the fair market value of the subject Property at the time of the sale, and the interest to be charged by the General Account for the financing will not be in excess of the prevailing market rate of interest. The proposed exemption will apply only to transactions in which the purchasers of the Properties are third parties who are not parties in interest with respect to any of the Plans. All terms of the transaction will be reviewed in advance by an independent fiduciary (discussed below) to ensure compliance with these requirements.

6. In each Property sale transaction, in which financing is to be provided by the General Account, an independent fiduciary (the Fiduciary) will act in a fiduciary capacity on behalf of the Separate Account pursuant to a written agreement in which the Fiduciary acknowledges its status as a fiduciary under the Act, and its responsibilities and liabilities as such. As a condition of each such transaction, prior to the transaction, the Fiduciary must approve the proposed transaction and complete a written report (the Report) relating the Fiduciary's findings with respect to certain required determinations, described below, which the Fiduciary must make concerning the subject transaction. The Fiduciary in each transaction will be the independent professional real property appraiser which historically has represented the interests of the Separate Account for appraisal and management purposes

with respect to each Property. The Fiduciaries, and the Separate Account's Property for which each has acted as appraiser and will act as Fiduciary, are described as follows:

(a) Joseph J. Blake Separate Account Associates in Los Angeles, CA: Hycor Biomedical, Powdermill Plaza, and Cobblestone Village in Los Angeles;

(b) Realty Advisory Group in Virginia Beach, Virginia: Comptek Office Building in Virginia Beach;

(c) Realty Consultants, Ltd. in Chicago, Illinois: Finley Business Center and Kennicott Industrial in Chicago;

(d) Trahan Separate Account Partners in Houston, Texas: Perimeter Center and Century Center in Houston;

(e) American Appraisal Associates in Boston, Massachusetts: Union Hill Residence Inn in Boston.

MassMutual represents that the Fiduciaries are highly qualified as appraisers, with broad experience in regional and national markets involving a variety of clients. MassMutual represents that the Fiduciaries are independent of MassMutual, with no ownership interests in MassMutual, and that MassMutual has no ownership interests in any of the Fiduciaries. MassMutual represents that each Fiduciary's business with MassMutual has represented less than one percent of each Fiduciary's total billings for 1989, 1990 and 1991, except for Realty Consultants, Ltd., whose business with MassMutual represented approximately 1.5 percent of that firm's total billings for those years. MassMutual maintains that these firms are highly qualified, and the best available, to evaluate the Properties and the proposed terms of any sales and financing thereof, due to their familiarity with the Properties.

7. With respect to the Property under its authority, each Fiduciary will be responsible for evaluating the proposed sales price negotiated between the Separate Account and the buyer of the Property, including valuations made with respect thereto, the terms of the financing offered by the General Account, and the fees or other costs associated with the transaction. The Fiduciary is required specifically to evaluate the interest rate provisions of the General Account's proposed financing of the Property sale, to ensure that the General Account will not charge interest in excess of the market interest rate, and to determine that the interest rate proposed by the General Account does not adversely affect the sale price for the Property. No Property sale involving General Account financing will occur until the Fiduciary has approved of the proposed transaction and completed the Report relating its findings with respect to each of the aforementioned determinations, and the Report will remain available for inspection by any duly authorized representative of the Department, the Service, and any fiduciary of an Invested Plan, for a period of no less than six years from the date of the transaction. More specifically, each proposed Property sale involving General Account financing will require the following determinations with respect to the proposed transaction, to be included in the Report:

(a) *Sales price:* The Fiduciary will review the valuation of the Property and the proposed sales price negotiated between the Separate Account and the prospective unrelated buyer. No sale will be made until the Fiduciary has concluded that the valuation of the Property is consistent with current market values, that the sale price is in the best interests of the participants and beneficiaries of the Invested Plans, that such price is no less than the fair market value of the Property, and that the price has not been adversely affected by the financing of the transaction by the General Account.

(b) *Financing terms:* The Fiduciary will evaluate the terms of the financing offered by the General Account and must determine that the interest rate is no greater than the prevailing market rate of interest, taking into account the particular loan amount, loan term, likely holding period, and the type of Property. In analyzing the interest rate, the Fiduciary will refer to commercial mortgages for comparable properties with comparable holding periods. The Fiduciary is also required to find that the terms of the financing do not unduly favor the General Account.

(c) *Evaluation of fees:* The Fiduciary will evaluate all fees, charges, and expenses paid to or by the Separate Account in connection with the proposed transaction. No fees, commissions, or expenses (other than a loan origination fee, or "points", discussed below) related to any Property sale financed by the General Account will be paid to MassMutual or any of its affiliates. Any fees, commissions and other expenses arising from the transaction will be payable only to parties unrelated to MassMutual and the Fiduciary. The Fiduciary will also determine that the "points" charged, if any, by the General Account to the borrower, as discussed below, do not exceed amounts charged by commercial lenders in comparable transactions. The Fiduciary will evaluate all fees payable by the Separate Account, including broker's fees, legal fees, recording taxes, title fees, and miscellaneous fees required to be paid by state or municipal law. The Fiduciary's findings regarding these fees and charges will be included in the Report. With respect to such fees and charges, the Fiduciary must find that the proposed sale transaction involving General Account financing is as favorable to the Separate Account as the Separate Account could obtain in an arm's-length transaction with an unrelated party.

8. The General Account may charge the borrower a loan origination fee (the Points) of no more than one quarter of one percent of the loan amount, payable by the borrower to the General Account at the time of closing. MassMutual represents that the amount of Points proposed to be charged does not exceed the points charged by commercial lenders in comparable transactions. The Fiduciary is required in each transaction to determine that the Points charged, if any, by the General Account do not exceed the points charged by commercial lenders in comparable transactions.

9. MassMutual represents that all terms and conditions of the General Account's financing of any Property sale will be in accordance with MassMutual's standard real estate lending practices, including the following details: A market rate of interest, a loan-to-value ratio of 75 percent, a loan duration of three to ten years, a duly-filed security interest in the collateral property, provisions making the loan non-recourse as to the borrower, a first-lien position, cash equity of at least 25 percent, mortgage insurance, and restrictions on assignments of leases.

10. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The requested exemption will involve one-time transactions for cash, which will be utilized by the Separate Account to satisfy the outstanding withdrawal requests of Invested Plans; (2) The Separate Account will be represented in each transaction by one of the Fiduciaries, professional real property appraisal firms experienced with the Properties, which will review and evaluate all terms and conditions of the transactions to ensure compliance with the terms of the requested exemption; (3) Each transaction will require the respective Fiduciary's approval, based on written findings in the Report, prior to consummation; (4) The Separate Account will sell the Properties for their fair market values at the time of sale; (5) No fees, commissions or other charges will be payable to MassMutual or any of

its affiliates in connection with any transaction, except the Points limited to .25 percent per transaction, and (6) The General Account will receive no more than the prevailing market interest rate for providing the financing for any sale of the Properties.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Plan of Wachovia Corporation Diversified Funds for Retirement Trusts (the Wachovia Diversified Funds) and the South Carolina National Bank Collective Investment Fund for Corporate Employee Benefit Trusts Declaration of Trusts (the SCNB Collective Investment Fund) Located in Winston-Salem, NC and Columbia, SC, Respectively

[Application Nos. D–9143 and D–9144, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to: (1) The merger of the SCNB Short Maturity Bond Fund (the SCNB Bond Fund) into the Wachovia Short-Term Bond Fund (the Wachovia Bond Fund) (2) the merger of the SCNB Managed Guaranteed Investment Contract Fund (the Managed GIC Fund) into the Wachovia Guaranteed Investment Contract Fund (the Wachovia GIC Fund), or (3) the merger of the SCNB Growth Stock Fund (the Growth Stock Fund) into the SCNB Stock Fund (the Stock Fund).[6]

The proposed exemption is conditioned on the following requirements:

(1) Upon completion of the merger of the SCNB Bond Fund into the Wachovia Bond Fund, the Managed GIC Fund into the Wachovia GIC Fund and SCNB's Growth Stock Fund into its Stock Fund, the aggregate fair market value of the interest of an employee benefit plan (the Plan) participating in the transferee Fund immediately following the merger, together with any cash received in lieu of fractional units in the transferee Fund, equals the aggregate fair market value of such Plan's interest in the transferor Fund immediately before the merger.

[6] For purposes of this proposed exemption, the Funds described herein are collectively referred to as the Funds.

(2) Neither Wachovia Bank of North Carolina, N.A. (Wachovia), South Carolina National Bank (SCNB) nor any of their affiliates receives a fee or commission in connection with the mergers.

(3) The assets of each participating Plan are invested in the same type of investments both before and after the proposed merger.

Summary of Facts and Representations

1. Wachovia and SCNB are national banking associations and members of an "affiliated group" as defined in section 1504 of the Code. Wachovia is the principal subsidiary of Wachovia Corporation of North Carolina, a bank holding company incorporated under the laws of North Carolina. SCNB is the principal subsidiary of South Carolina National Corporation, a bank holding company incorporated under the laws of South Carolina. The Wachovia Corporation of North Carolina and South Carolina National Corporation are the principal subsidiaries of the Wachovia Corporation. The Wachovia Corporation of North Carolina and South Carolina National Corporation are the principal subsidiaries of the Wachovia Corporation. These entities are also bank holding companies registered with the Board of Governors of the Federal Reserve System.

2. The Wachovia Diversified Funds and the SCNB Collective Investment Fund, which are trusteed by Wachovia and SCNB, respectively, are common funds maintained for the collective investment of monies contributed thereto by pension, profit sharing or stock bonus plans which are exempt from Federal income taxation under section 501(a) of the Code by reason of qualifying under section 401(a) of the Code.

3. Both the Wachovia Diversified Funds and the SCNB Collective Investment Fund have short-term bond funds (the Bond Funds) organized thereunder with each having substantially identical investment objectives and investments. In the case of the Wachovia Diversified Funds, the Bond Fund is called the "Wachovia Short-Term Bond Fund." In the case of the SCNB Collective Investment Fund, the Bond Fund is known as the "SCNB Short Maturity Bond Fund." The aggregate fair market value of the Bond Funds as of February 28, 1992 and the number of Plans participating therein as of December 31, 1991 are as follows:

Bond funds	Plans	Total assets
Wachovia Bond Fund	179	$119,739,400
SCNB Bond Fund	64	26,220,930

4. Both the Wachovia Diversified Funds and SCNB Collective Investment Fund also have guaranteed investment contract funds (the GIC Funds) organized thereunder. In the case of the Wachovia Diversified Funds, the GIC Fund is referred to as the "Wachovia GIC Fund." With respect to the SCNB Collective Investment Fund, the GIC Fund is called the "Managed GIC Fund." Both GIC Funds have substantially identical investment objectives and the assets of each are invested in similar types of guaranteed investment contracts. The approximate fair market value of the assets of the GIC Funds as of February 28, 1992 and the number of Plans participating therein as of December 31, 1991 are as follows:

GIC funds	Plans	Total assets
Wachovia GIC Fund	127	$119,244,968
Managed GIC Fund	39	19,339,655

5. In addition to its Bond and GIC Funds, the SCNB Collective Investment Fund has two equity funds. These Funds are referred to herein as the "Growth Stock Fund" and the "Stock Fund." The Growth Stock Fund and the Stock Fund (collectively, the SCNB Stock Funds) have substantially the same investment objectives and investments. The aggregate fair market value of assets in the SCNB's Stock Funds as of February 28, 1992 and the number of Plans participating therein as of December 31, 1991 are as follows:

SCNB stock funds	Plans	Total assets
Growth Stock Fund	109	$8,403,842
Stock Fund	152	73,945,470

6. To improve administration of the Bond and GIC Funds and thereby improve service to Plans participating therein, Wachovia and SCNB propose to merge the Bond Funds and the GIC Funds such that the two surviving Funds will be the Wachovia Bond Fund and the Wachovia GIC Fund. Similarly, to improve the administration of its Stock Funds, SCNB proposes to merge the Growth Stock Fund and the Stock Fund such that the Stock Fund will be the surviving Fund. Accordingly, an administrative exemption is also requested from the Department.

7. The proposed mergers will be accomplished as follows:

a. The assets of the Funds (including all accrued interest and, in the case of the Stock Fund, all accrued income)

will be valued as of the merger date (the Merger Date) which will be the date declared by Wachovia and SCNB following receipt of the exemptive relief requested herein.

b. As of the Merger Date, SCNB will transfer the assets of the SCNB Bond Fund and the assets of the Managed GIC Fund to Wachovia, as trustee. In addition, SCNB will transfer assets from its Growth Stock Fund to its Stock Fund.

c. The transferred assets will be commingled for investment purposes following the Merger Date with the assets of the Wachovia Short-Term Bond Fund and the Wachovia GIC Fund. As such, all income earned in the transferor Bond, GIC and Growth Stock Funds will be deemed to have been earned in the transferee Bond, GIC or Stock Funds.

d. The participating Plans in the SCNB Bond Fund will become participating Plans in the Wachovia Bond Fund. Similarly, the participating Plans in the Managed GIC Fund will become participating Plans in the Wachovia GIC Fund. Also, as of the Merger Date, the participating Plans in the Growth Stock Fund of SCNB will become participating Plans in the Stock Fund.

e. The SCNB Bond Fund, Managed GIC Fund or Growth Stock Fund will have allocated to it as of the Merger Date, units in the Wachovia Bond Fund, Wachovia GIC Fund or Stock Fund. Such units will represent the fair market value of the assets transferred from the applicable Fund. In addition, each participating Plan involved in the applicable transferor Fund, immediately preceding the merger Date, will have allocated to it as of the Merger Date, the same proportion of units in the transferee Fund equal to the proportion of the units it had in the transferor Fund immediately preceding the merger. However, no fractional units of participation in the Wachovia Bond Fund, the Wachovia GIC Fund or the Stock Fund will be issued in the merger.

f. The Wachovia Bond Fund, the Wachovia GIC Fund and the Stock Fund will pay cash equal to the fair market value of any such fractional unit to which a participating Plan in the SCNB Bond Fund, the Managed GIC Fund or the Growth Stock Fund would otherwise have been entitled. However, neither Wachovia, SCNB nor their affiliates will receive a fee or commission in connection with the mergers.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The fair market value of the interest of the Plans participating in the affected Funds will remain unchanged as a result of the proposed mergers, (b) neither Wachovia, SCNB or any of their affiliates will receive a fee or commission in connection with the proposed mergers, (c) the assets of each participating Plan will be invested in the same type of investment both before and after the proposed merger, and (d) the proposed mergers will result in greater operational efficiencies and economies of scale as well as greater opportunities for investment diversification.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of December, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–30521 Filed 12–16–92; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 92–93; Exemption Application No. D–8057 et al.]

Grant of Individual Exemptions; J.J. Johnson & Associates Employees Profit Sharing Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

J.J. Johnson & Associates Employees Profit Sharing Trust (the Plan), Located in Rochester, New York

[Prohibited Transaction Exemption 92–93; Exemption Application No. D–9067]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed payment by The Sear-Brown Group, Inc. (SB) of certain legal expenses incurred by the Plan, and the repayment of those expenses by the Plan to SB, provided the following conditions are met: (a) The Plan pays no interest or other expenses in connection with the transaction; (b) the Plan will reimburse SB for the expenses solely from the proceeds of any recovery awarded to the Plan in connection with the litigation (the Litigation); (c) to the extent the amount of the recovery, if any, is less than the amount of the legal expenses paid by SB, the Plan shall not be liable to SB for the difference.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 27, 1992 at 57 FR 38858.

WRITTEN COMMENTS AND HEARING REQUESTS: The Department received 16 comments and no hearing requests with respect to the proposed exemption. All of the commentators opposed the granting of the exemption. Among the reasons given for their opposition to the exemption were: (1) The Plan has nothing to gain from pursuing the Litigation; (2) the Litigation had been brought as a result of a personal vendetta against the Plan's original trustee, not because it has any merit; (3) the commentators do not want the payment of legal expenses to come out of Plan assets; and (4) the Litigation should never have been commenced, and the money the Plan already has expended on the Litigation has been wasted.

The applicant has responded to the comments submitted. The current trustees of the Plan represent that they brought the Litigation not out of personal animus against the defendant, but because they believe the Plan had been harmed, and they should seek to obtain a recovery for the Plan. With respect to the other comments, the applicant represents that the Plan and its participants and beneficiaries can only benefit from the granting of the proposed exemption. By permitting SB to pay the Litigation costs and be reimbursed by the Plan out of any recovery, the proposed exemption will enable the Plan to pursue an action that may result in the recovery of additional amounts for the Plan. However, if there is no recovery for the Plan, the Plan will have no obligation to reimburse SB. Thus, the proposed exemption gives the Plan the "upside" potential of obtaining a recovery, without exposure to the "downside" risk of having paid expenses without a recovery of additional amounts. The Plan, therefore, can only gain and cannot lose. Thus, the applicant represents that the proposed exemption will not adversely affect the Plan and should be granted.

The Department has considered the entire record, including the 16 comments submitted with respect to the proposed exemption and the response to the comments submitted by the applicant, and has determined to grant the exemption as proposed. The Department wishes to note, as it did in the proposed exemption, that it is expressing no opinion regarding the merits of the Litigation. In addition, the Department notes that the decision to expend Plan assets to commence the Litigation was a decision that is governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department is granting no relief herein for any violations of part 4 of the Act which may have arisen as a result of the expenditure of $20,000 of the Plan's assets to commence the Litigation.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Norwood Clinic, Inc. Defined Benefit Plan (the Plan), Located in Birmingham, AL

[Prohibited Transaction Exemption 92–94; Exemption Application No. D–9181]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a group annuity contract (the GAC) to Norwood Clinic, Inc., a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) The sale is a one-time transaction for cash;

(2) The Plan receives a purchase price for the GAC of no less than its fair market value as of the Distribution Date (described in the Notice of Proposed Exemption); and

(3) The Plan does not incur any costs or expenses related to the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 22, 1992 at 57 FR 48247.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401 (a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all

material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of December, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–30520 Filed 12–16–92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Challenge Review Committee Section) to the National Council on the Arts will be held on January 6, 1993 from 9 a.m.–5:30 p.m. and January 7 from 9 a.m.–5 p.m. in room M–14 at the Nancy Hanks Center, 100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 6 from 9 a.m.–10 a.m. and January 7 from 4 p.m.–5 p.m. for opening remarks and policy discussion.

The remaining portions of this meeting on January 6 from 10 a.m.–5:30 p.m. and January 7 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30593 Filed 12–16–92; 8:45 am]

BILLING CODE 7537-01-M

Notice of Meeting: Challenge/Advancement Advisory Panel (Museum Advancement Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Museum Advancement Section) to the National Council on the Arts will be held on January 14, 1993 from 9 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and from 5 p.m.–5:30 p.m. The topics will be introductory remarks, an overview of Advancement, and policy discussion.

The remaining portion of this meeting from 10 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30613 Filed 12–16–92; 8:45 am]

BILLING CODE 7537-01-M

Notice of Meeting: Challenge/Advancement Advisory Panel (Advance Phase II Grant Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Phase II Grant Section) to the National Council on the Arts will be held on January 11, 1993 from 9 a.m.–5:30 p.m. and January 12 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 11 from 9 a.m.–10 a.m. and January 12 from 4 p.m.–5 p.m. for opening remarks and policy discussion.

The remaining portions of this meeting on January 11 from 10 a.m.–5:30 p.m. and January 12 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee

Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30614 Filed 12–16–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

AGENCY: National Institute for Literacy Advisory Board Meeting.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: January 11, 1993 from 9 A.M. to 4 P.M., January 12, 1993 from 9 A.M. to 12 P.M.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Thomas R. Hill, Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632–1500.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute.

In addition, the Institute consults with the Board on the award of fellowships.

The Board meeting is open to the public. The proposed agenda includes: Discussion of program priorities, recruitment process for the selection of the Institute Director, vision and mission of the Institute and organization structure of the Institute.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Franmarie Kennedy-Keel,

Interim Director, National Institute for Literacy.

[FR Doc. 92–30641 Filed 12–16–92; 8:45 am]

BILLING CODE 6055–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Notice of Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the seventeenth and eighteenth meetings of the Federal Salary Council will be held at the times and places shown below. The agenda for these meetings will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings will be open.

DATES: January 29 and February 26, 1993, beginning at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent:

Douglas A. Brook,

Acting Director.

[FR Doc. 92–30526 Filed 12–16–92; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–25702]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 11, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 4, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power & Light Co.

[70–7914]

Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215–1640, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder to its application-declaration filed under sections 6(a), 7, 9(a), 10, 12(c) and 12(e) of the Act and rules 42, 50, 50(a)(5), 62 and 65 thereunder.

By order dated December 19, 1991 (HCAR No. 25432) ("December 1991 Order"), MP&L was authorized, from January 1, 1992 through December 31, 1993, to acquire, in whole or in part, one or more series of MP&L's outstanding first mortgage bonds, general and refunding mortgage bonds, preferred stock, and/or pollution control

revenue bonds. The December 1991 Order reserved jurisdiction over MP&L's proposal, from January 1, 1992 through December 31, 1993, to: (1) Issue and sell up to $150 million aggregate principal amount of one or more new series of general and refunding mortgage bonds ("Bonds"); (2) issue and sell up to $37.5 million aggregate par value of preferred stock, cumulative, $100 par value, in one or more new series ("New Preferred"); (3) enter into transactions relating to the issuance and sale of up to $25 million of tax-exempt bonds, in one or more series; and (4) amend its Restated Articles of Incorporation, as amended, to establish a new class of preferred stock having no par value or a nominal par value.

By order dated October 20, 1992 (HCAR No. 25656) ("October 1992 Order"), MP&L was authorized to issue and sell $37.5 million aggregate par value of New Preferred by means of competitive bidding. The October 1992 Order reserved jurisdiction over MP&L's proposal ("Reversed Transactions") to, from January 1, 1992 through December 31, 1993: (1) Issue and sell up to $150 million aggregate principal amount of one or more new series of Bonds; (2) issue and sell up to $37.5 million aggregate par value of New Preferred by negotiated public offering or private placement and the granting of an exception from the competitive bidding requirements of rule 50; (3) enter into transactions relating to the issuance and sale of up to $25 million of tax-exempt bonds, in one or more series; and (4) amend its Restated Articles of Incorporation, as amended, to establish a new class of preferred stock having no par value or a nominal par value.

By order dated November 13, 1992 (HCAR No. 25675) ("November 1992 Order"), MP&L was authorized to issue and sell $65 million aggregate principal amount of two new series of Bonds ("New Bonds"), in each case by means of direct private placement. The New Bonds were issued and sold by MP&L on November 20, 1992. The November 1992 Order continued the reservation of jurisdiction over the Reversed Transactions.

NP&L now proposes to increase the principal amount of the Bonds remaining to be issued and sold by $150 million, to not more than $235 million ("Additional Bonds"), under the same terms and conditions as are currently applicable to the Bonds. In addition, MP&L requests that it be able to conduct preliminary negotiations with respect to the terms of any series of the Additional Bonds to be issued and sold by negotiated public offering or private placement pursuant to the exception under rule 50(a)(5) from the competitive bidding requirements of rule 50. It may do so.

Pennsylvania Electric Co.

[70–7923]

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric public-utility subsidiary company of General Public Utilities Corp., a registered holding company, has filed a post-effective amendment to its declaration under section 12(d) of the Act and Rule 44 thereunder.

By order dated February 5, 1992 (HCAR No. 25466) ("February 1992 Order"), Penelec was authorized to sell ("Sale") certain utility assets to Advanced Cast Products, Inc. ("Advanced"), a nonassociate company, for $140,000 in cash. Penelec has not yet completed the Sale, and the authorization under the February 1992 Order has expired. Penelec now proposes to consummate the Sale on or before June 30, 1993.

Penelec expects to apply the proceeds of the proposed sale to general corporate purposes. The assets consist of certain electric substation facilities and equipment located in Vernon Township, Crawford County, Pennsylvania ("Meadville Substation"). The Meadville Substation is situated on lands owned by Advanced and is operated solely to serve the electric service needs of Advanced. It is stated that the sale will enable Advanced to qualify for a more favorable electric service rate.

Penelec will sell the Meadville Substation pursuant to an October 1989 agreement ("Agreement") between Penelec and Advanced's predecessor in interest, Amcast Industrial Corporation ("Amcast"), also a nonassociate company. Amcast assigned the Agreement to Advanced on July 3, 1990.

Massachusetts Electric Co.

[70–8101]

Massachusetts Electric Company ("Mass Electric"), 25 Research Drive, Westborough, Massachusetts 01582, an electric public-utility subsidiary company of New England Electric System, a registered holding company, has filed a declaration under section 12(c) of the Act and Rule 42 thereunder.

Mass Electric proposes to redeem up to 350,000 shares ($35 million par value) of its preferred stock ("Cumulative Preferred Stock"), 7.84% Series at the then applicable redemption price, currently $103.25 per share, together with dividends accrued to the date of redemption.

By order dated October 30, 1992 (HCAR No. 25664) ("October Order"), Mass Electric was authorized to solicit proxies and obtain a vote of its shareholders in connection with a proposed amendment to its Articles of Organization and By-laws to allow for the issuance of additional shares of preferred stock at various par values. The 7.84% Series and 7.80% Series of Mass Electric's Cumulative Preferred Stock are now callable under the established terms of the preferred stock. At dividend rates below approximately 7%, it may become economical for Mass Electric to refinance this series with new preferred stock. It is estimated that if Mass Electric were to issue perpetual preferred stock in the current market, the rate would approximate 7¾%.

The Narragansett Electric Co.

[70–8103]

The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, an electric public-utility subsidiary company of New England Electric System, a registered holding company, has filed a declaration under section 12(c) of the Act and rule 42 thereunder.

Narragansett proposes to redeem up to 200,000 shares ($10 million par value) of its preferred stock ("Cumulative Preferred Stock"), 8% Series at the currently applicable redemption price of $51.96 per share, together with dividends accrued to the date of redemption.

By order dated October 30, 1992 (HCAR No. 25664) ("October Order"), Narragansett was authorized to solicit proxies and obtain a vote of its shareholders in connection with a proposed amendment to its preferred stock preference provisions to allow for the issuance of additional shares of preferred stock at various par values. The 8% Series of Narragansett's Cumulative Preferred Stock is now callable under the established terms of the preferred stock. At dividend rates below approximately 7.25%, it may become economical for Narragansett to refinance this series with new preferred stock. It is estimated that if Narragansett were to issue perpetual preferred stock in the current market, the rate would approximate 7¾%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30648 Filed 12–16–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-31583; File No. SR-NASD-92-50]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Excess Spread Parameters

December 9, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 24, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of the proposed rule change to Part VI, Section 2 of Schedule D to the NASD By-Laws. Additions are in italics; deletions are in brackets.

Schedule D

* * *

Part VI

* * *

Sec. 2. Character of Quotations

* * *

(d) Excess Spreads. A market maker shall not enter quotations in [to the Nasdaq System] *Nasdaq or Consolidated Quotation Service (CQS) securities* that exceed the parameters for maximum allowable spread as *approved by the NASD Board of Governors and that* may be published from time to time by the Association. [*] *The maximum allowable spreads shall be 125 percent of the average of the three (3) narrowest market maker spreads in each security (if there are fewer than three (3) market makers in a security, the maximum allowable spread will be 125% of the average spread); provided however, that the maximum allowable spread shall never be less than 1/4 point.*

[*The following are the current maximum allowable spreads approved by the NASD Board of Governors.

MAXIMUM ALLOWABLE SPREADS

Average spread	Maximum allowable spread
⅛ or less	⅛
¼	⅜
⅜	⅝
½	¾
⅝	⅞
¾	1
⅞	1⅛
1	1¼
1⅛	1⅜
1¼	1½
1⅜	1⅝
1½	1¾
1⅝	2
1¾	2
1⅞	3
2	3
2⅛	3
2¼	3
2⅜	3
2½	3
2⅝	4
2¾	4
2⅞	4

MAXIMUM ALLOWABLE SPREADS—Continued

Average spread	Maximum allowable spread
⅜	1
¾	1½
⅞	1⅝
1	1¾
1⅛	1⅞
1¼	1⅞
1⅜	1⅞
1½	2
1⅝	2
1¾	3
1⅞	3
2	3
2⅛	3
2¼	3
2⅜	3
2½	3
2⅝	4
2¾	4
2⅞	4

For an average spread of 3 or more, the maximum allowable spread is 125 percent of the average spread rounded to the next highest whole number.]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing an amendment to Part VI, Section 2 of Schedule D to the By-Laws regarding excess spread parameters for securities quoted in the NASDAQ system. The proposed rule applies to both NASDAQ and Consolidated Quotation Service ("CQS") securities[1] and establishes spread parameters no greater than 125% of the average of the narrowest three dealer spreads in each security. The NASD and its members are concerned that the current excess spread parameters in the NASDAQ market are excessively wide, in some instances permitting spreads of 150 percent of the "average dealer spread."

[1] The NASD is also modifying Section 2 to clarify that excess spread parameters apply to both NASDAQ and CQS securities.

The proposals modify the current rules in two ways—the excess spread parameters will be simplified with a uniform standard applied across the board, regardless of the average dealer spread in the security; the new parameters are based on the narrowest three dealer spreads rather than on all dealer spreads. As the chart in the current rules illustrates, the process to determine permissible spread parameters is cumbersome and unwieldy. Also, the current process uses all market maker quotes in the calculation of average dealer spread, which may give undue weight to spreads that may reflect one-sided buying or selling interest put in by a few market makers. On the other hand, the proposed rule is based on calculation of the three best dealer spreads (or the average spread if there are fewer than three dealers in the security), resulting in a more narrow permissible spread parameter for all market makers in the stock. After study of the impact on members of reducing spread parameters as described above, the NASD determined that the average of three dealers was an appropriate benchmark to utilize, with the caveat that a market maker would not be required to quote less than ¼ point spread in any security, regardless of the three narrowest spreads.

The NASD believes that an important beneficial effect of reducing the excess spread parameters may be to reduce dealer spreads overall, which would redound to the benefit of investors. NASDAQ market makers are required to maintain firm, continuous, two-sided quotations that are reasonably related to the transactions they are effecting. During rapidly moving markets, dealers may be paying more attention to the side of the market where their buy or sell interest lies, resulting in less than careful monitoring of the other side of their dealer quotes. In this fashion, spreads may widen and distort the true competitive nature of the NASDAQ market. Accordingly, the NASD is proposing a reduction in the excess spread parameters for NASDAQ and CQS securities to require market makers to input quotes no greater than 125% of the average of the three narrowest dealer spreads in the security, with the proviso that market makers will not be required to quote securities less than ¼ point spread.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and

equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The NASD believes that the proposed amendments reducing the excess spread parameters may reduce dealer spreads overall and may thereby result in narrower inside spreads, enhancing the quality of the NASDAQ market to the ultimate benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 7, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30589 Filed 12–16–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31579; File No. SR–NSCC–92–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving on an Accelerated Basis a Proposed Rule Change To Provide for the Automation of Payments of Commissions Associated With Mutual Fund Transactions

December 9, 1992.

On October 22, 1992, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–92–13) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 27, 1992, to solicit comments from interested persons.[2] On November 17, 19, and 20, 1992, NSCC filed amendments to the proposed rule change.[3] No comments were received. As discussed below, this order approves the proposal on an accelerated basis.

I. Description

The proposed rule change changes the name Mutual Fund Settlement, Entry, and Registration Verification ("Fund/SERV") Service in Rule 52[4] to Mutual Fund Services and augments this program[5] by adding a new mutual fund service, the Mutual Fund Commissions Settlement ("Commissions") service, that will provide for the automation of payments of commissions owed in respect of mutual fund transactions.[6] The mechanism for the payment of commissions will be the same as that used for the payment of dividends through NSCC's Networking service.[7] The Commissions service also will permit Settling Members[8] to advise mutual funds of changes that the funds need to know about relative to commission payments. The proposed rule change also makes several technical modifications to change the organizational structure of Rule 52 and to codify existing practices.

Under the Commissions service, Fund Members (*e.g.*, broker-dealers acting as the principal underwriters for mutual funds)[9] will be able to transmit commission debit data to NSCC on a daily basis. The Fund Member must specify the commission amounts to be debited to its account the next day. If the next day is a New York bank holiday, the payment will be debited on the next day banks in New York are open for business. Commission payments, like dividend payments, will be made by Fund Members to NSCC in federal funds.[10] Settling Members (*e.g.*, retail broker-dealers) also will be able to transmit to Fund Members information relative to commission payouts.

NSCC's role in the Commissions service will be to transmit data between

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[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31473 (November 17, 1992), 57 FR 56393 [File No. SR–NSCC–92–13].

[3] The amendments to File No. SR–NSCC–92–13 were technical, non-substantive modifications to NSCC's Rule 52. See letter from Karen Saperstein, Associate General Counsel, NSCC, to Jerry Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (November 17, 1992) and letters from Karen Saperstein to Jeffrey T. Brown, Staff Attorney, Division, Commission (November 19 and 20, 1992).

[4] NSCC Rule 52, Mutual Fund Services, is comprised of subsection A., Fund/SERV, subsection B., Networking, and subsection C., Commissions.

[5] NSCC has operated Fund/SERV since 1986. For a description of Fund/SERV, refer to Securities Exchange Act Release No. 26377 (December 28, 1988), 53 FR 52546 [File No. SR–NSCC–87–12] (order approving rule changes concerning Fund/SERV).

[6] Commissions is an optional service, so Participants may make commission settlements by other methods.

[7] Networking is a service which provides a centralized and automated facility for the exchange of customer account information between broker-dealers and mutual fund processors. For a description of Networking, refer to Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544 [File No. SR–NSCC–88–06], (order approving Networking).

[8] The term Settling Member means a Rule 2 Member or a Rule 3 Non-Clearing Member. NSCC Rule 1.

[9] The term Fund Member is defined as any partnership, corporation or other organization, entity, or person, who is not a Member pursuant to Rule 2, but who is specified and has qualified pursuant to the provisions of Rule 51. NSCC Rule 1.

[10] Fund Members will pay commission and dividend amounts to NSCC through Fed wire transfers. NSCC will pay out the commission and dividend amounts to Settling Members by use of clearing house funds according to Rule 12 of NSCC's rules. There will be no netting of Fund Members' commission and dividend settlement debits with their purchase or redemption credits.

the two parties. Data will be transmitted in the same way that customer account data is transmitted under Networking. Each party that submits data through the Commissions service will be responsible for the accuracy of the information. NSCC, however, will provide Participants with technical assistance, including detailed programming information, to enable them to transmit data through the Commissions service and will have staff available to answer questions and handle problems that might arise.[11]

The proposed rule change also includes language to codify into the Networking subsection of NSCC's Rule 52 a currently utilized correction process. A similar correction process has been incorporated into the Commissions service subsection. Pursuant to the correction process, a Fund Member that submits incorrect dividend or commission data may submit correction information. If the Fund Member's correction with respect to dividend or commission payments results in a Settling Member being in a debit position, NSCC gives such Settling Member the ability to delete such correction. Such amounts are then settled outside the Commissions service. If the correction results in the Fund Member being in a debit position or in a credit position which is not deleted by a Settling Member, such corrected amounts are included with the Fund Member's and Settling Member's other settlement obligations, and payment is made in accordance with normal settlement practices.

NSCC has developed an identification code security system to ensure that only authorized users with valid identification codes may gain access to the Commissions service. In addition, all Commissions Participants may access the Commissions service on a dial-up basis or use dedicated telephone lines in order to transmit data to and receive data from the Commissions service. This is also true for Networking Participants.[12]

The proposed rule change also makes a number of technical changes. The name of Rule 52 has been changed to reflect the myriad of mutual fund services offered. A Settling Member may take advantage of Fund/SERV, Networking, or the Commissions service independently or in conjunction with one another. Accordingly, under the Rule 52 heading, each mutual fund service that can be accessed by Participants is under a different subheading. Should NSCC offer additional mutual fund services in the future, they also will be set forth under a new subheading in Rule 52.

The proposed rule change also redefines Fund/SERV Broker-Dealer as Mutual Fund/SERV Broker-Dealer to reflect that such entity may use any Rule 52 service. It also includes within the definition of Fund Member a notation that a Fund Member was previously referred to as a Fund/SERV Member. The notation is intended to ease cross-referencing the term Fund/SERV Member, which is used in the Fund Member's Agreement signed by mutual funds, with the term Fund Member, which is now used in NSCC's rules. Furthermore, most references throughout NSCC's rules to the Fund/SERV Service are being replaced with reference to the Mutual Fund Services to accommodate the Rule 52 name change referred to above. The exception to this is limited to subsection A where the continued reference to Fund/SERV is correct.[13]

The rule change also sets forth the fees to be charged for Commissions. NSCC will implement these fees effective January 1, 1993, for billing in February 1993.

NSCC believes the proposed rule change is consistent with the requirements of the Act in that it will promote the prompt and accurate clearance and settlement of mutual fund transactions. NSCC believes that it will better serve its Participants and enable them to better serve mutual fund purchasers by implementing the Commissions service.

II. Discussion

The Commission believes the proposal is consistent with the Act and specifically with section 17A of the Act.[14] Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and that its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions.[15]

By providing Participants with a means of transacting mutual fund commission payments and communicating information relative to those commission payments through a centralized and automated system, the Commission service should enhance the efficiency of mutual fund commission transactions. Use of an automated system, as opposed to the exchange of hard-copy information, should increase the accuracy of the commission data transmitted between Fund Members, Settling Members, and mutual funds.

By codifying the correction mechanism currently in use in Networking into the Networking and Commission subsections of Rule 52, NSCC is providing its Participants with the ability to submit correction information through an automated system. This should reduce the likelihood of error in the payment of dividends and commissions.

The proposal provides certain safeguards, similar to those provided in Networking, to ensure the integrity of information sent through the Commissions system. NSCC has developed an identification code security system to ensure that only authorized users with valid identification codes may gain access to Commissions.

NSCC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. The Commission finds good cause for so approving because inclusion of the Commissions service, the Networking rule amendments, and the other portions of this filing enhance the prompt and accurate clearance and settlement of mutual fund transactions. Furthermore, because a similar service under Networking has been in operation for several years without problems or negative comment, the Commission does not expect to receive adverse comments on Commissions.

III. Conclusion

For the reasons stated above, the Commission finds that NSCC's proposal is consistent with section 17A of the Act.[16] The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–NSCC–92–13) be, and hereby is, approved on an accelerated basis.

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[11] Telephone conversation between Karen Saperstein, Associate General Counsel, NSCC, and Jeffrey T. Brown, Staff Attorney, Division, Commission (November 19, 1992).

[12] Id.

[13] The changes in terms in the proposal will have no effect upon the Settling Member's Fund/SERV clearing fund requirements. A Settling Member's Fund/SERV clearing fund requirements are based on the settling dollar debits transacted through the Fund/SERV system. Telephone conversation between Karen Saperstein, Associate General Counsel, NSCC, and Jeffrey T. Brown, Staff Attorney, Division, Commission (December 1, 1992).

[14] 15 U.S.C. 78q–1 (1988).

[15] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[16] 15 U.S.C. 78q–1 (1988).

[17] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30590 Filed 12-16-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19150; 812-8114]

The Salem Funds, et al.; Notice of Application

December 9, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Salem Funds ("Salem") and Federated Securities Corporation ("Federated").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive the CDSC under certain circumstances.

FILING DATE: The Application was filed on October 9, 1992. By supplemental letter dated December 8, 1992, Salem agreed to file an amendment during the notice period to make certain changes to its application. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1992, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Federated Investors Tower, Pittsburgh, Pennsylvania 15222-3779, Attention: C. Grant Anderson, Secretary.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Law Clerk, at (202) 504-2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations:

1. Salem is an open-end management investment company organized as a Massachusetts business trust. Salem currently consists of eight investment portfolios, five of which are equity and income portfolios, and three of which are money market portfolios. First Union National Bank of North Carolina serves as investment adviser for each of the portfolios. Federated is a registered broker dealer which serves as distributor to the portfolios. Certain of Salem's portfolios currently are offering multiple classes of shares pursuant to an existing order.[1]

2. Applicants request relief from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1 on behalf of themselves and any additional Salem portfolios and any future registered open-end management investment company advised by First Union National Bank of North Carolina or any of its affiliates for which Federated serves now or in the future as distributor (collectively, the "Funds") to permit the Funds to impose a contingent deferred sales charge ("CDSC") on certain shares that are redeemed within a specified period after the end of the calendar month in which the purchase order was accepted.[2] Applicants currently intend that the CDSC will be imposed for a period of six years. The CDSC will be imposed on the lesser of (i) the original cost of the redeemed shares, or (ii) the net asset value of the redeemed shares at the time of redemption. Applicants currently intend that the CDSC will be 4% if such shares are redeemed within the first year of purchase. The percentage will decrease each year until the end of the CDSC period.

3. No CDSC will be imposed on an amount which represents capital appreciation of shares, or reinvestment of dividends or capital gain distributions. In addition, in determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares not subject to the CDSC, and then other shares in the order of purchase.

4. No CDSC will be imposed on any shares purchased prior to the effective date of the requested order. In addition, any change to the specified terms of the CDSC will be disclosed in the prospectus of the applicable Fund. Any such change will not affect shares already issued unless such change results in terms more favorable to the shareholders, such as by reducing the amount of the CDSC or reducing the CDSC period.

5. All exchange privileges will be offered in compliance with section 11(a) of the Act and rule 11a-3 thereunder, or with the terms and conditions of any no-action letter or exemptive relief to which such privileges may be subject.

6. Applicants propose to waive the CDSC in the case of redemptions of shares: (a) Following the death or disability (as defined in the Internal Revenue Code of 1986, as amended) of a shareholder; (b) to the extent that the redemption represents a minimum required distribution from an IRA or other retirement plan to a shareholder who has reached age 70½; (c) owned by current employees of the investment adviser to the Funds or by current or former trustees of such Funds or other Funds advised by such investment adviser; (d) effected pursuant to a Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the minimum account size; or (e) in connection with the combination of a Fund with any other investment company registered under the Act by merger, acquisition of assets, or by any other transaction.

Applicants' Condition

If the requested order is granted, Applicants expressly agree to comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

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[18] 17 CFR 200.30-3(a)(12) (1992).

[1] Investment Company Act Release Nos. 17845 (August 2, 1990) (notice) and 17715 (August 30, 1990) (order).

[2] Salem proposes that the shares subject to a CDSC will include a new class of shares ("Investment C") which Salem will offer through its equity and investment portfolios. The Investment C shares will be sold at net asset value without the imposition of a front-end sales load. Pursuant to Salem's existing 12b-1 distribution plan, Investment C shares will be subject to an annual charge of up to 0.75% per annum of the class's average daily net assets.

For the SEC, by the Division of Investment Management, under delegated authority
Margaret H. McFarland,
Deputy Secretary
[FR Doc. 92–30592 Filed 12–16–92; 8:45 am]
BILLING CODE 8010–01–M

[Release No. IC–19152; 812–7746]

UST Master Funds, Inc., et al.; Notice of Application

December 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: UST Master Funds, Inc., UST Master Tax-Exempt Funds, Inc., United States Trust Company of New York, and UST Distributors, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an exemptive order amending a prior order to permit the issuance and sale of three separate classes of shares in the current and future investment portfolios (the "Funds") of UST Master Funds, Inc. and UST Master Tax-Exempt Funds, Inc. (the "Companies"). One class of each Fund will bear an administrative service fee (the "Plan Shares"); one class of each Fund will bear a distribution fee (the "Distribution Shares"); and one class of each fund will not bear either a service or distribution fee (the "Non-Plan Shares").

FILING DATES: The application was filed on July 1, 1991, and amendments to the application were filed on February 14, September 14, and November 25, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 5, 1993 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; the Companies, One Boston Place, Boston, Massachusetts 02108; United States Trust Company of New York, 114 West 47th Street, 10th Floor, New York, New York 10036; and UST Distributors, Inc., 156 West 56th Street, suite 1902, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Company is registered as a management investment company under the 1940 Act. UST Master Funds, Inc. ("Master Funds") offers shares in seven investment portfolios: The Money, Government Money, Treasury Money, Equity, Managed Income, Income and Growth, and International Funds. UST Master Tax-Exempt Funds, Inc. ("Master Tax-Exempt Funds") offers five investment portfolios: The Short-Term, Intermediate-Term, Long-Term, California Intermediate-Term, and New York Intermediate-Term Tax-Exempt Funds.

2. United States Trust Company of New York ("U.S. Trust"), a New York bank and trust company, is the Companies' investment adviser, and UST Distributors, Inc. ("UST") is the Companies' distributor. Shares are sold to customers maintaining qualified accounts at U.S. Trust, and its affiliates and correspondent banks, as well as to other institutional and individual investors.

3. The Money, Government Money, Treasury Money, and Managed Income Funds of Master Funds and all five portfolios of Master Tax-Exempt Funds declare their net investment income on a daily basis (the "Daily Dividend Funds"). The Equity, Income and Growth, and International Funds declare their net investment income quarterly. The Money, Government Money, Treasury Money and Short-Term Tax-Exempt Funds use the amortized cost method of valuation, and their shares are sold without a sales charge. Shares in the remaining Funds are sold with a front-end sales load.

4. An exemptive order issued on April 24, 1990 (the "Prior Order") authorized each Company to issue and sell separate classes of Plan Shares within each Daily Dividend Fund. Investment Company Act Release No. 17460. The Prior Order permitted Plan Shares to be sold under the Companies' non-12b–1 Shareholder Services Plans ("Shareholder Services Plans") to various institutional investors ("Service Organizations") that agreed to provide certain administrative shareholder support services to their customers who beneficially own Plan Shares in consideration of a fee currently not exceeding .40% (annualized) of the average daily net assets of each Fund's outstanding Plan Shares.

5. The Companies intend to adopt Distribution Plans (collectively with the Shareholder Services Plans, the "Plans") to enable them to reach customers of various financial intermediaries, particularly broker-dealers, that can provide various distribution services in connection with the sale of Distribution Shares. Accordingly, Applicants seek to amend the Prior Order to permit the issuance and sale of three separate classes of shares in each Fund, each of which will bear transfer agency expenses attributable to that class, one of which (the Plan Shares) will also bear a shareholder administrative support service fee, one of which (the Distribution Shares) will also bear a distribution fee, and one of which (the Non-Plan Shares) will not bear either a shareholder administrative support service fee or distribution fee.

6. The Distribution Plans would provide for the payment of expenses incurred with the distribution of Distributions Shares, including, without limitation, advertising and marketing expenses, printing costs for new prospectuses and sales literature, and payments to broker-dealers and others for distribution assistance. Payments by a Fund under the proposed Distribution Plans currently are not expected to exceed .75% (annualized) of the average daily net asset value of the Fund's outstanding Distribution Shares. The Distribution Plans and all related agreements will be subject to all the provisions of rule 12b–1 under the 1940 Act. In addition, the Companies shall comply with Sections (b) and (d) of Article III, Section 26 of the National Association of Securities Dealers, Inc.'s Rules of Fair Practice as they relate to the maximum amount of asset-based sales charges that may be imposed by an investment company, when and in the form (as amended from time to time) the provisions of such Rules relating to such charges become effective, and for as long as they remain in effect.

7. The Companies believe that by offering Plan, Non-Plan, and Distribution Shares, they will be able to

achieve added flexibility in meeting the service and investment needs of shareholders and future investors. The Companies also believe that the expenses incurred by a class of Plan Shares or Distribution Shares should be appropriately borne by the shareholders of such class because the benefits of the Plans will accrue to them. UST believes, however, that it would be inefficient, and in some cases economically or operationally unfeasible, to organize a separate investment portfolio for each class of Plan Shares and Distribution Shares. Not only would the Companies incur unnecessary accounting and bookkeeping costs in organizing and operating such additional investment portfolios, but management of the additional investment portfolios might be hampered. For example, unless the new investment portfolios grew at a sufficient rate and to a sufficient size, they could face liquidity and diversification problems that would prevent them from producing a favorable yield.

8. Each share in a Fund, regardless of class, will have identical voting, dividend, liquidation and other rights, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except that: (1) Each will have different class designations; (2) the classes of Plan Shares and Distribution Shares each will bear individually the expenses incurred pursuant to the terms of the Plan applicable to that class ("Plan Payments"); (3) each class of Plan, Non-Plan, and Distribution Shares will bear transfer agency expenses directly attributable to it; and (4) only the holders of Distribution Shares or Plan Shares of the class involved would be entitled to vote on matters pertaining to the Distribution Plan or Shareholder Services Plan, respectively, and any related agreements, relating to such class.

9. Because of Plan Payments and transfer agency expenses, the net income of (and dividends payable to) each class would be somewhat different than the net income of (and dividends payable to) the other classes in the same Fund. Similarly, because of such Plan Payments and transfer agency expenses, to the extent a Fund that uses market valuation had undistributed net income the net asset value of its classes would differ. Dividends paid to each class in a Fund will, however, be declared and paid on the same days and at the same times and, except as noted with respect to the Plan Payments and transfer agency expenses, will be determined in the same manner and paid in the same amounts.

10. The Plan, Non-Plan, and Distribution Shares in each Fund may also differ with respect to exchange privileges. It is expected that shares of a class of one Fund would only be exchangeable for shares of the similar class of another Fund.

Applicants' Legal Analysis

1. Applicants request an order, pursuant to section 6(c) of the 1940 Act, amending the Prior Order to permit the proposed issuance and sale of Plan, Non-Plan and Distribution Shares in each Fund as described above (the "Multi-Class System") to the extent that such issuance and sale might be deemed: (i) To result in a "senior security" within the meaning of section 18(g) of the 1940 Act that would be prohibited by section 18(f)(1) of the 1940 Act; and (ii) to violate the equal voting provisions of section 18(i) of the 1940 Act.

2. The issuance and sale of the Plan and Distribution Shares in each Fund may result in stock of a class having "priority over [another] class as to distribution of assets or payment of dividends" within the meaning of section 18(g) of the 1940 Act and having unequal voting rights because holders of the Distribution Shares and Plan Shares would enjoy exclusive voting rights with respect to matters concerning the pertinent Distribution Plan or Shareholder Services Plan, respectively.

3. In support of the requested order, Applicants assert that the proposed allocation of expenses and voting rights in the manner described in equitable and will not discriminate against any group of shareholders. Investors purchasing Plan and Distribution Shares and receiving the services provided under the respective Plans and the transfer agency services associated with the particular class of shares would bear the costs associated with such services, but would also enjoy exclusive shareholder voting rights with respect to matters affecting the respective Plans. Investors purchasing Non-Plan Shares would not receive services provided under the respective Plans nor bear Plan Expenses or exercise voting rights with respect to such Plans or their related agreements. However, they would bear transfer agency expenses directly attributable to the particular class of Non-Plan Shares.

4. Applicants also assert that the proposed arrangement does not involve borrowings and does not affect the Companies' existing assets or reserves. Nor, it is asserted, will the proposed arrangement increase the speculative character of the shares in a Fund, because each class will participate *pro rata*, in proportion to the net asset value of the class, in all of the Fund's income and all of the Fund's expenses (with the exception of Plan Payments and transfer agency expenses). Accordingly, Applicants submit that the exemptive standards established by section 6(c) have been met in that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conditions to the Requested Relief

Applicants agree that the following conditions may be imposed in the requested amended order in substitution for the conditions in the Prior Order:

1. Each class of shares of each Fund of the Companies will represent interests in the same portfolio of investments of the Fund and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to: (a) The Plan Payments, transfer agency expenses, and any other incremental expenses subsequently identified that should be properly allocated to a class of shares and which are approved by the SEC pursuant to an amended order; (b) the designation of the class of shares; (c) the different exchange privileges of the class of shares; and (d) the voting rights on matters which pertain to the Distribution and Shareholder Services Plans and related agreements.

2. The directors of each Company, including a majority of the independent directors, will approve the Multi-Class System for the pertinent Company. The minutes of the meetings of the directors of each Company regarding the deliberations of the directors with respect to the approvals necessary to implement the Multi-Class System for the pertinent Company will reflect in detail the reasons for the directors' determination that the proposed Multi-Class System is in the best interests of both the Company and its shareholders.

3. On an ongoing basis, the directors of each Company, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor the pertinent Company for the existence of any material conflicts between the interests of the classes of shares of a Fund. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Company's adviser and distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the

particular Company's adviser and distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The directors of each Company will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures for Plan and Distribution Shares complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

5. Dividends paid by the Company with respect to each class of a Fund, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Company with respect to the other class in the same Fund, except that any Plan Payments and transfer agency expenses relating to a class will be borne exclusively by that class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of each class of a Fund with a Multi-Class System and the proper allocation of expenses among those classes has been reviewed by an expert (the "Expert") who has rendered a report to each Company, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based on such review, will render at least annually a report to each Company that the calculations and allocations for the particular Company are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the particular Company (which the Company agrees to provide), will be available for inspection by the SEC staff upon the written request to the particular Company for such work papers by a senior member of the Division of Investment Management or a regional office of the SEC. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. The Companies have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of each class of shares of a Fund with a Multi-Class System and the proper allocation of expenses among such class of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 6 above. The particular Company will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

8. The prospectus for each Fund with a Multi-Class System will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Company shares may receive different compensation with respect to one particular class of shares over another class in the same Fund.

9. The Companies' distributor will adopt compliance standards as to when each class of Plan, Non-Plan, and Distribution Shares may appropriately be sold to particular investors. Applicants will require all persons selling the Plan, Non-Plan, and Distribution Shares to agree to conform to such standards.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of each Company with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the directors.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to Plan, Non-Plan and Distribution Shares of the same Fund in every prospectus for any such Fund, regardless of whether such shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all such shares of the same Fund in every shareholder report for any such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any such shares, it will also disclose the respective expenses and/or performance data applicable to all such shares in the same Fund. The information provided by Applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of such shares in the same Fund separately.

12. Each agreement under a Shareholder Services Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of its customers' assets in the pertinent Company (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Service Organization.

13. Each Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating a Shareholder Services Plan, the directors will specifically consider whether (a) the Shareholder Services Plan is in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed by the Service Organizations pursuant to the Shareholder Services Plan are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the pertinent Company, providing similar services, and (d) the service fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

14. Each agreement that is entered into pursuant to a Shareholder Services Plan will provide that, in the event an issue pertaining to the Shareholder Services Plan is submitted for

shareholder approval, the Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

15. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to a Plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30591 Filed 12-16-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Lafayette, Lafayette Parish, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of Draft Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that the Draft Environmental Impact Statement (DEIS) prepared for the proposed highway project in Lafayette, Louisiana has been withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Hollis, Technical Operations Manager, Federal Highway Administration, P.O. Box 3929, 750 Florida Street, Baton Rouge, Louisiana 70821 or Public Hearing and Environmental Engineer, Louisiana Department of Transportation and Development, P.O. Box 94245, Baton Rouge, Louisiana 70804-9245.

SUPPLEMENTARY INFORMATION: A DEIS was prepared on a proposal to improve U.S. Routes 90 and 167 (Evangeline Thruway) in Lafayette, Louisiana. The proposed improvement, called the I-49 Connector, would involve an upgrade of the existing transportation corridor between the Lafayette Regional Airport and just north of the existing I-10/I-49 interchange, a distance of about 5½ miles. A final environmental impact statement will not be prepared because a decision has been made not to advance the project at this time.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 11, 1992

Paul W. Pool,

FHWA Assistant Division Administrator.

[FR Doc. 92-30598 Filed 12-16-92; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket No. S-894]

Puerto Rico Maritime Shipping Authority; Application for Permission Under Section 506 of the Merchant Marine Act, 1936, as Amended, to Operate in the Domestic Trade

Notice is hereby given that Puerto Rico Maritime Shipping Authority (PRMSA) by application dated December 10, 1992, as amended by letter dated December 11, 1992, has applied for written permission under section 506 of the Merchant Marine Act, 1936, as amended (Act), for the temporary transfer of one Lancer-class vessel, the MAYAGUEZ or a substitute vessel, which PRMSA owns, to a purely domestic service during calendar year 1993 between Puerto Rico and ports along the U.S. Atlantic and Gulf Coasts. Section 506 permits the temporary transfer for up to six months of construction-differential subsidy (CDS) built vessels "whenever the Secretary determines that such transfer is necessary or appropriate to carry out the purposes of the Act." Consent by MARAD is to be conditioned upon payment to MARAD, upon such terms as MARAD may prescribe, of "an amount which bears the same proportion to the CDS paid by the Secretary as such temporary period bears to the entire economic life of the vessel."

PRMSA states that when operating its five Lancer fleet, it cannot keep the vessels in schedule if it includes Charleston as a port of call unless one vessel is exclusively dedicated to domestic trade. Otherwise, deployment requirements, regularity of service, speed and loading limitations would require PRMSA to delete Charleston as a regular port of call. It was for similar reasons that PRMSA requested a waiver which was granted by the Maritime Administration in April 1992. That waiver has been utilized in providing a service to Charleston.

PRMSA points out that under prior MARAD rulings, namely Docket S-830, while the applicant has the burden of showing that its application furthers the purposes and policies of the Act, opponents to a section 506 waiver application have the burden of showing that a proposed domestic service with a waiver "would have a substantial detrimental effect on existing domestic service. . " *Ibid*, p. 13. PRMSA contends that even such a competitive impact "alone does not preclude grant of section 506 permission" *Ibid*, p. 15, since the overall impact on purposes and policies must be measured.

PRMSA emphasizes these points because considerations relating to port service result in the absence of any competitive effect whatsoever from the grant of this waiver application. PRMSA states that, at the present time, there is no U.S.-flag service to San Juan from the port of Charleston other than that presently provided by PRMSA. PRMSA believes that thus grant of the waiver serves the important purpose of promoting commerce from and to that port, with all the ramifications well known to the administration in respect of this nation's policies of port promotion, see section 8 of the Merchant Marine Act, 1920, 46 U.S.C. 867. Because no other carrier serves Charleston, there is no competitive effect whatsoever upon other carriers by virtue of granting the waiver in respect of service at that port. PRMSA indicates that, granting of this waiver will not result in any increased service at any other port, will not increase the frequency of vessels calls, will not increase their cargo carrying capacity from any port but will allow the continuation of their existing service to the port of Charleston. PRMSA believes that thus no competitor of PRMSA in the domestic trades can claim any harm whatsoever resulting from the grant of this application.

PRMSA requests that, in view of these considerations, and pursuant to MARAD guidelines enunciated in the above-cited case, that its application be granted.

Although publication of a Notice with respect to PRMSA's request for permission under section 506 is not required by statute, the Maritime Administration believes that it is appropriate to provide an opportunity for interested parties to comment on PRMSA's application.

Any person, firm, or corporation having any interest in the application for section 506 permission and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business on December 24, 1992. The Maritime Administration, as a matter of discretion, will consider any

comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS)).

Dated: December 15, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92-30746 Filed 12-16-92; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 11, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0007
Form Number: OTS Forms 159-E and 159-F
Type of Review: Extension
Title: Application for Conversion from State Chartered Institution to Federally Chartered Institution
Description: Section 5(i) of the Home Owners' Loan Act and 12 CFR 543.8 and 552.2 require the OTS to act on requests by state chartered institutions to convert to a Federal charter. OTS forms 159-E and 159-F are used to evaluate whether or not conversion applicants satisfy appropriate eligibility requirements for a Federal charter and whether the institution will operate in accordance with OTS regulations and policies subsequent to the conversion.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 40
Estimated Burden Hours Per Respondent: 4 hours
Frequency of Response: Other (when application is submitted)
Estimated Total Reporting Burden: 160 hours

OMB Number: 1550-0016
Form Number: OTS Form 710
Type of Review: Revision
Title: Merger Application
Description: Information on OTS Form 710 is evaluated by the OTS to determine whether the proposed transaction complies with applicable state and Federal laws, OTS regulations and policy, and will not have an adverse effect on the risk exposure of the Savings Association Insurance Fund (SAIF). These applications include merger transactions with thrifts and commercial banks and transfers of assets/liabilities from banks to thrifts.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 90
Estimated Burden Hours Per Respondent: 36 hours.
Frequency of Response: Other (when application is filed)
Estimated Total Reporting Burden: 3,240 hours

OMB Number: 1550-0025
Form Number: OTS Form 1314
Type of Review: Revision
Title: Purchase of Branch Office(s)/ Transfer of Assets and/or Liabilities
Description: Information provided by OTS Form 1314 is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transaction complies with applicable laws, regulations and policy, and will not have an adverse effect on the risk exposure to the insurance fund.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 180
Estimated Burden Hours Per Respondent: 4 hours, 52 minutes
Frequency of Response: Other (information submitted each time a transfer of assets and/or liabilities is proposed)
Estimated Total Reporting Burden: 876 hours

OMB Number: 1550-0059
Form Number: None
Type of Review: Extension
Title: Capital Distributions
Description: Provides uniform treatment for capital distributions made by thrift institutions. Ensures adequate supervision of savings associations' distributions of capital, fostering safety and soundness of the thrift industry.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 1,050
Estimated Burden Hours Per Respondent: 4 hours
Frequency of Response: Other (when required transactually)
Estimated Total Reporting Burden 4,200 hours

OMB Number: 1550-0061
Form Number: None
Type of Review: Extension
Title: Outside Borrowings
Description: Information is collected from savings associations that do not meet capital requirements. These institutions must give 10 days prior notification before making long term borrowings. Information is used to monitor safety and soundness of institutions not meeting their applicable capital requirements.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 20
Estimated Burden Hours Per Respondent: 4 hours
Frequency of Response: Other (upon application)
Estimated Total Reporting Burden: 80 hours

Clearance Officer: Colleen Devine, (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-30651 Filed 12-16-92; 8:45 am]

BILLING CODE 4810-35-M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Jordan
Kuwait
Lebanon

Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of.

Dated: December 10, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 92-30650 Filed 12-16-92; 8:45 am]
BILLING CODE 4810-25-M

Customs Service

Petitioner's Desire To Contest Decision Denying Domestic Interested Party Petition Concerning the Classification of Certain Turbines and Generators Entered Together

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of petitioner's desire to contest decision on domestic interested party petition.

SUMMARY: This document advises the public of the desire of an interested party to contest Customs decision denying its petition requesting reclassification of certain turbines and generators entered together.

DATES: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Chris M. Schmitt, Metals and Machinery Classification Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1992, a notice was published in the **Federal Register** (57 FR 21914), stating that Customs had received a petition on behalf of a domestic interested party, filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and part 175, Customs Regulations (19 CFR part 175). The petition challenged Customs HQ Rulings 087074 (November 21, 1991) and HQ 088013 (November 21, 1991), which held that certain turbines and generators entered together were classified in Heading 8502, Harmonized Tariff Schedule of the United States (HTSUS).

In HQ 087074 (November 21, 1991), Customs held that gas turbines and electric generators, entered together, were classified as generating sets in subheading 8502.30.00, HTSUS, subject to a Column 1 rate of duty of 3 per cent, *ad valorem*. The turbines and generators, subsequent to entry, were connected by means of couplings on their respective shafts which were bolted together to form a single shaft. The turbine-generator machines were described as single shaft (3,600 rpm), single casing machines consisting of one 17-stage compressor and one 4-stage turbine.

In HQ 088013 (November 21, 1991), Customs held that steam turbines and electric generators, entered together, were classified as generating sets in subheading 8502.30.00, HTSUS, subject to a Column 1 rate of duty of 3 per cent, *ad valorem*. Subsequent to entry, the rotors or shafts of the turbines and generators were connected by means of a gear reduction unit or box. The turbine rotor of one model rotated between 5,500 and 11,000 rpm, and the rotor of the generator rotated at 3,600 rpm. The turbine rotor of the second model rotated at 6,045 rpm, and the rotor of the generator rotated at 3,600 rpm.

In HQ 087074 and HQ 088013, Customs found that the design features of the machines insured that the connected shafts rotated at identical speeds, and that the vibrational behavior, bearing loads and other features of the machines must be matched. Because the units were commonly bought and sold together, were commercially regarded as generating sets, and possessed design features that indicated they would be permanently attached to one another, we concluded that they were designed to be mounted together as one unit for the purposes of Heading 8502.

The petitioner contended that the turbines and generators were not classified as generator sets in Heading 8502, and that the turbines and generators should be classified separately in Headings 8411, 8406 or 8501, HTSUS. The petitioner's arguments included that the products did not have sufficient structural integration, were stand alone machines that were not mounted as one unit or fitted together to form a whole, and were incomplete and unassembled machines that were not classifiable in Heading 8502 pursuant to the HTSUS General Rules of Interpretation.

The petitioner contended that even when entered together, the turbines and generators should be classified separately, with large scale gas turbines classified in subheading 8411.82.80, HTSUS, subject to a Column 1 rate of duty of 5 per cent *ad valorem*, large scale steam turbines classified in subheading 8406.19.10, HTSUS, subject to a Column 1 rate of duty of 7.5 per cent *ad valorem*, and large scale generators classified in subheading 8501.64.00, HTSUS, subject to a Column 1 rate of duty of 3 per cent *ad valorem*.

Six of the seven comments received in response to the **Federal Register** notice of May 26, 1992, supported the correctness of the current classification and supported denial of the petition, while the remaining comment supported the petition and the requested reclassification.

Decision on Petition and Notice of Petitioner's Desire To Contest

After careful analysis of the comments received in response to the notice and further review of the matter, the petitioner was informed, by letter dated September 10, 1992, that the classification determinations in HQ 087074 and 088013 were correct, and that the petition was denied.

In response to Customs decision to deny the petition, the petitioner filed notice on October 9, 1992, of its desire to contest Customs decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23). The petitioner's notice states the desire to contest the classification of merchandise which is similar to the merchandise (finished or unfinished), at issue in HQ 087074 and HQ 088013. However, the petitioner's notice states that there is no desire to contest the classification of merchandise which is similar to the "ATPS" product at issue in HQ 088013.

Customs has reconsidered the matter in light of the petitioner's letter, but remains of the opinion that its September 10, 1992, decision affirming the classification determinations in HQ 087074 and HQ 088013, is correct. That decision will stand in the absence of a contrary judgment rendered by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit or the United States Supreme Court.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was Chris M. Schmitt, Metals and Machinery Classification Branch, Office of Regulations and Rulings, U.S. Customs Service. Personnel from other

Customs offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: November 24, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-30485 Filed 12-16-92; 8:45 am]

BILLING CODE 4820-02-M

Office of Thrift Supervision

[AC-82: OTS No. 2062]

Oak Hills Savings & Loan Co., F.A., Cincinnati, OH; Approval of Conversion Application

Notice is hereby given that on December 3, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Oak Hills Savings and Loan Company, F.A., Cincinnati, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: December 11, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-30527 Filed 12-16-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-81: OTS No. 1195]

Park View Federal Savings & Loan Association, Cleveland, OH; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on December 3, 1992, the Deputy Director for Washington Operations approved the application of Park View Federal Savings and Loan Association, Cleveland, Ohio, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a change of control application. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601.

Dated: December 11, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-30528 Filed 12-16-92; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 243
Thursday, December 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, December 16, 1992.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act on the following:

1. *Clifford Meek* v. *Essroc Corporation*, Docket No. LAKE 90–132–DM. (Issues include whether the judge erred in concluding that Essroc discriminated against Meek in violation of 30 U.S.C. 815(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

It was determined by a unanimous vote of Commissioners that this meeting be held at this time, and no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 for toll free.

Dated: December 10, 1992.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 92–30698 Filed 12–15–92; 9:51 am]
BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 17, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Peabody Coal Company*, Docket No. KENT 91 179–R, etc. (Issues include whether the judge erred in holding that Peabody violated 30 C.F.R. § 75.316 for operating mines without an approved ventilation plan.)

Any persons attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: December 10, 1992.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 92–30699 Filed 12–15–92; 9:51 am]
BILLING CODE 6735–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 14, 1992.

A closed meeting will be held on Wednesday, December 16, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, December 16, 1992, at 2:30 pm., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: December 14, 1992.

Jonathan G. Katz,
Secretary.

[FR Doc. 92–30795 Filed 12–15–92; 2:46 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 243
Thursday, December 17, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 921105-2305]

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

Correction

In rule document 92-29289 beginning on page 57112 in the issue of Thursday, December 3, 1992, make the following corrections:

1. On page 57114, in the third column, in the first full paragraph, in the fourth line, "not" should read "pot".

§ 671.2 [Corrected]

2. On page 57115, in the third column, in § 671.2, in the third line, "§ 620 2" should read "§ 620.2".

§ 671.20 [Corrected]

3. On page 57115, in the third column, in § 671.20, in the sixth line, "*(Chionoecetes*" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-55-89]
RIN 1545-AN82

General Asset Accounts Under the Accelerated Cost Recovery System

Correction

In proposed rule document 92-20910 beginning on page 39374 in the issue of Monday, August 31, 1992, make the following corrections:

1. On page 39375, in the 3rd column, in the 11th line "in" should read "is".

§ 1.168(i)-1 [Corrected]

2. On page 39376, in the third column, in § 1.168(i)-1(c)(1)(iv), in the first line "give" should read "gives".

3. On the same page, in the third column, in § 1.168(i)-1(c)(iv)(2), in the heading, "*assets*" should read "*asset*", in the fourth line "of this rule" should read "of this section", and in the ninth line "one general assets" should read "one general asset".

4. On page 39378, in the first column, in § 1.168(i)-1(e)(3)(i), in the Example, paragraph (iii), in the third line from the bottom "$0 $10,000" should read "$0-$10,000".

5. On the same page, in the same column, in § 1.168(i)-1(e)(3)(ii)(A), in the sixth line "of this section a" should read "of this section), a".

6. On the same page, in the second column, in § 1.168(i)-1(e)(3)(ii)(D), in the Example, paragraph (i), in the fourth line "$150,000 alone and" should read "$150,000 and".

7. On the same page, in the 3rd column, in § 1.168(i)-1(e)(3)(ii)(D), in the Example, paragraph (iv), in the 1st line "less" should read "loss", in the 7th line, "in" should read "is", and in the 14th line, "$2200" should read "$2,200".

8. On the same page, in the 3rd column, in § 1.168(i)-1(e)(3)(iii), in the 17th line, "in" should read "is".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Extension of Approval of Collection of Information in Single-Employer Plan Terminations

Correction

In notice document 92-30059 beginning on page 59129 in the issue of Monday, December 14, 1992, on page 59139, page 8 of Standard Form 500 was omitted. It should be inserted as follows:

(2) the participant elects the alternative form in writing, with the written consent of his or her spouse. **Note:** *For an election to be valid under (2), the participant must be given the opportunity to elect an immediate annuity (see 26 CFR §1.417 (e)-1).*

If the conditions described above are not satisfied, benefit liabilities must be distributed by the purchase from an insurer of an annuity contract that is an irrevocable commitment. Unless the participant is already in pay status, or has both elected to retire and elected a particular benefit form, the irrevocable commitment must preserve all benefit options under the plan.

Note: *Spousal consent is required for married participants for all options (other than a qualified joint-and-survivor annuity) if the present value of the participant's plan benefit is more than $3,500.*

The contract that is purchased must be a single premium, non-participating (except as discussed below), non-surrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

A participating annuity contract may be purchased to provide the benefits if: (1) all benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and non-cancellable obligation of the insurer; (2) in no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and (3) no amount of residual assets to which participants are entitled will be used to pay for the participation feature. Specifically, if all or a portion of the residual assets will be distributed to participants, the additional premium for the participation feature must be paid from the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor. If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature.

If these requirements are not satisfied, a nonparticipating annuity contract must be purchased to close out the plan.

16b If (1) you do not yet know the insurer or insurers from whom (or from among whom) you intend to purchase irrevocable commitments; or (2) if you identify an insurer or insurers, either in the standard termination notice or in a supplemental notice to the PBGC, and subsequently decide to select a different insurer, you must file a supplemental notice with the PBGC no later than 45 days before the date of distribution (*i.e.*, the date on which the obligation to provide the benefit passes from the plan to the insurer). Any supplemental notice must include: the name and address of the insurer or insurers from whom, or (if not then known) from among whom, you intend to purchase the irrevocable commitments, and identify the contributing sponsor and plan by name, address, employer identification and plan numbers, and PBGC case number (if applicable). The supplemental notice should include a statement indicating whether the insurer(s) is licensed in a state or the District of Columbia.

Part IV. Residual Asset Plans

17 Section 4044(d) of ERISA permits a distribution of residual assets to the employer if (1) all liabilities of the plan to participants and their beneficiaries have been satisfied, (2) the distribution does not contravene any provision of law, and (3) the plan provides for such a distribution in these circumstances. In addition, in a plan that provided for mandatory employee contributions, the portion of the residual

BILLING CODE 1505-01-D

federal register

Thursday
December 17, 1992

Part II

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB47

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends subparts G and H of the Student Assistance General Provisions regulations. These subparts contain the procedures for administrative hearings regarding fines and the limitation, suspension, or termination of institutional participation in the student financial assistance programs under the Higher Education Act of 1965, as amended, and appeals by institutions of audit and program review determinations under these programs. These amendments permit interlocutory appeals of interim rulings in administrative proceedings and make minor changes to expedite conduct of these proceedings.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exception of §§ 668.90, 668.98, and 668.124. Sections 668.90, 668.98, and 668.124 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these provisions of the regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Fred J. Marinucci, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4083, Washington, DC 20202–2244. Telephone (202) 401–2732. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that are common to the participation of postsecondary institutions in the student financial assistance programs under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). The title IV, HEA programs include the Federal Pell Grant Program; the Federal Family Education Loan Program, including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students, and Federal Consolidation Loan Programs; State Student Incentive Grant, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs. The last three programs are known collectively as the "campus-based programs." Procedures for actions to fine institutions, or limit, suspend or terminate the eligibility of institutions under these programs, are found in subpart G. Procedures for appeals of final audit or program review determination under these programs are contained in subpart H. The Secretary here adopts, for these proceedings, a provision for interlocutory appeals similar to that proposed on January 6, 1992 (57 FR 506), for proceedings under 34 CFR part 81, and makes other minor procedural changes.

Summary of Changes

Section 668.85(c)

The regulations for fines in § 668.84 and the regulations for terminations in § 668.86 contain a reference to expedited hearings. However, the regulations for suspensions in § 668.85 do not contain a similar provision. This omission was an oversight and therefore the Secretary includes a similar provision for suspension proceedings.

Section 668.88

This section is revised to use the more common term "stipulation" to refer to the statement by the parties of the legal issues and factual allegations presented in the case which neither party disputes.

Section 668.90

The Secretary amends this section chiefly to provide additional time within which the hearing official is to issue the initial decision in a proceeding under or subject to subpart G, and to adopt the same timetable for an appeal of that initial decision as now applies to appeals under subpart H in § 668.119.

Experience has shown that current regulations that require the hearing official to issue a decision within 30 days of the close of the proceedings are not realistic, and that more time is needed. Under the first change, the hearing official is to issue the initial decision within 50 days of the last day of any evidentiary hearing in a case in which no posthearing briefs were scheduled, or, as under the current regulations, within 30 days after the last submission or the close of the proceedings. These final regulations also provide that the Secretary may extend this 30-day period to 60 days upon a showing by the hearing official that added time was needed because of the unusual complexity of the case.

Current regulations require a party who appeals the decision to the Secretary to do so within 20 days after receiving the initial decision by submitting a brief to the Secretary stating the reasons why the initial decision should be modified or reversed. The opposing party then has 15 days to respond. The appellate process benefits from adequately prepared and articulated presentations by the parties. Experience has shown that these two deadlines in current regulations are unrealistically short, both because the regulations require the appellant to file a brief by that deadline, rather than a simple notice of appeal, and because the appellee deserves a comparable period to address properly the issues raised by the appellant. Comparable Federal rules, for example, allow the appellant 40 days to file a brief, from the filing of the record with the appellate court, and allow the appellee 30 days to reply. Fed. R. App. P. 31(a). These final regulations allow an appellant 30 days within which to file, and the opposing party 30 days to respond.

This section is also amended to make it clear that, as in judicial proceedings, an appellate tribunal that affirms the ruling of a lower court need provide no statement of its reasons for doing so. The regulations will therefore clarify that no statement of reasons is required of the Secretary in the event the Secretary affirms a hearing official's decision. Similarly, to provide guidance to the lower courts, appellate courts typically provide a statement of reasons in a decision that reverses or modifies the ruling of a lower court, and the regulations will continue to provide for such a statement from the Secretary where he reverses or modifies the decision of a hearing official. This section is further amended to reflect the authority of the Secretary to remand an initial decision to the hearing official for further proceedings consistent with the Secretary's decision.

Section 668.119

The need for additional time within which to prepare and file briefs by appellant and appelee was explained above, and the appellate filing deadlines for audit and program review appeals are modified for the same reasons. The Secretary here expands from 15 to 30 days the time within which a party may appeal to the Secretary a decision of a

hearing official in an audit or program review determination or appeal. The opposing party should have an equal opportunity to reply to the appellant's brief, and the opposing party is given a corresponding enlargement of time from 15 to 30 days within which to reply.

Sections 668.90, 668.120

These sections are revised to clarify that the Secretary may delegate to another Department official the authority to issue a decision in an appeal from a decision of a hearing official in a proceeding under subpart G or subpart H. The language of § 668.120 is revised to make clear that the Secretary's authority with regard to review of the decision of a hearing official is the same under subpart H as under subpart G. The latter revision is merely a technical clarification and reflects consistent practice under the current regulations.

Sections 668.98, 668.124

Two identical new sections are created to govern the process for interlocutory appeal to the Secretary of an interim ruling by a hearing official. This procedure is virtually identical to that proposed in the NPRM published on January 6, 1992 (57 FR 506) for interlocutory appeals in proceedings under part 81. Interlocutory appeal is a traditional procedural device allowing litigants an opportunity to secure prompt review by an appellate tribunal of those trial court rulings of immediate consequence to a party that would normally be reviewable only after final judgment by the trial court. The procedure benefits the litigants and the trial judge by clarifying the proper legal standard to be applied in the case on the issue in question, and permits the appellate tribunal to supervise the conduct of lower courts more effectively. These regulations will provide these same benefits for the affected institutions, the Department, the hearing official, and the Secretary.

These final regulations permit a party to seek an interlocutory appeal of the ruling if the ruling involves a controlling question of substantive or procedural law, and if resolution of that question would materially advance disposition of the appeal. The regulations also permit a hearing official to certify a ruling to the Secretary for immediate review. The discretion to review an interim ruling resides exclusively with the Secretary (or, as provided in these final regulations, an official to whom the Secretary delegates appellate decisionmaking authority), and the Secretary regards an interlocutory appeal as an extraordinary measure for which requests will not routinely be granted. If the Secretary does not act on a request from a party or the hearing official within 15 days of receipt, the request will be deemed to have been denied by that inaction. These regulations also make clear that any action requesting or granting interlocutory review does not automatically stay the proceedings. The decision to stay the proceedings remains at the discretion of the hearing official and the Secretary. These petitions are to be filed with the Department's Office of Hearings and Appeals.

These regulations require the proponent of an interlocutory appeal to provide a succinct explanation of the need for interim review, and provide the hearing official an opportunity to state his or her views on the desirability of the appeal. The regulations do not specify the particular procedures that will be used if the Secretary agrees to accept the request for review, beyond recognizing that the parties will be given an opportunity to address the merits of the petition in written submissions filed within a reasonable period established by the Secretary. This briefing procedure, and any other procedures to be used in disposing of the petition, will be established on a case-by-case basis by the Secretary as may be appropriate for resolution of particular issues.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, as set forth below, the Secretary has determined that these regulations are rules of agency procedure. Accordingly, the Secretary is waiving rulemaking procedures with respect to these regulations under 5 U.S.C. 553(b)(A).

These regulations expand the procedural rights of institutions that appeal adverse administrative actions by permitting them to secure a prompt secretarial review of otherwise unappealable rulings by a Department hearing official and by allowing additional time for perfecting an appeal to the Secretary of a final decision of a hearing official in a proceeding to limit, suspend, or terminate the eligibility of the institution, or to fine it. These changes reflect a similar interlocutory appeal proposal proposed for Part 81 proceedings. These changes will provide immediate benefit to the participants in these proceedings. The simplicity of the changes reduces or eliminates the need for public comment on possible alternative regulatory options, and the attendant delay in making these benefits available to parties to these proceedings. The Secretary therefore concludes that public comment is not required for these procedural changes.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of postsecondary education. These regulations make only technical and procedural modifications to existing regulations. These changes will not increase institutions' workload or costs associated with administering the title IV, HEA programs and therefore will not have a significant economic impact on a substantial number of small entities.

Assessment of Educational Impact

The Secretary requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; Supplemental Loans for Students Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Robert C. Byrd Honors Scholarship Program, 84.185)

Dated: December 10, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.85 is amended by adding a new paragraph (c) to read as follows:

§ 668.85 Suspension proceedings

* * * * *

(c) *Expedited hearings.* With the approval of the hearing officer and the consent of the designated department official and the institution, any time period specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

3. Section 668.88 is amended by revising paragraph (b)(3) and (b)(4) to read as follows:

§ 668.88 Hearing.

* * * * *

(b) * * *

(3) A stipulation by the parties to facts and legal authorities not in dispute; or

(4) A review limited to the written record.

* * * * *

4. Section 668.90 is amended by revising paragraphs (a)(1) and (c)(2) adding paragraph (c)(3), removing paragraphs (d)(1), (d)(3) and (d)(5), redesignating paragraphs (d)(2) and (d)(4) as paragraphs (d)(1) and (d)(2), respectively, and revising paragraphs (f)(1) and (f)(3) to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a)(1) The hearing official shall issue a written initial decision to the institution and the designated department officer by certified mail, return receipt requested, by the latest of the following dates:

(i) The 30th day after the last submission is filed.

(ii) The 60th day after the last submission is filed if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(iii) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

* * * * *

(c) * * *

(2)(i) A party appeals to the Secretary by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(3) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after it receives the appellant's brief or written statement.

* * * * *

(f)(1) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (f) of this section.

* * * * *

(3) If the hearing official finds that the termination is warranted pursuant to § 668.90(a)(3)(i), the Secretary affirms that decision. In any other case, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

* * * * *

5. A new § 668.98 is added to Subpart G to read as follows:

§ 668.98 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.119 [Amended]

6. In § 668.119, paragraphs (a) and (d) are amended by removing "15 days" and adding, in its place, "30 days".

7. Section 668.120 is amended by revising paragraph (a) to read as follows:

§ 668.120 Decision of the Secretary.

(a)(1) The Secretary issues a final decision. The Secretary may affirm, modify, or reverse the decision of the hearing official, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision.

(2) The Secretary may delegate the performance of functions under this section to a designated department official.

* * * * *

8. A new § 668.124 is added to subpart H to read as follows:

§ 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Authority: 20 U.S.C. 1094)

[FR Doc. 92-30388 Filed 12-16-92; 8:45 am]

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federal register

Thursday
December 17, 1992

Part III

Environmental Protection Agency

40 CFR Part 88
Credit Program for California Pilot Test Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[FRL–4541–4]

RIN 2060–AD30

Credit Program for California Pilot Test Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Provisions of the Clean Air Act enacted in 1990 require EPA to promulgate a clean-fuel vehicle program in the State of California. The program calls for the establishment of clean-fuel vehicle sales requirements, fuel availability requirements, state opt-in provisions, and, at the discretion of the Administrator, a credit program. This final rule addresses only the credit program portion of the California Pilot Test Program. The credit program is designed to assist vehicle manufacturers in meeting their clean-fuel vehicle sales requirement. Participation of the vehicle manufacturers in the credit program is optional. This credit program was proposed by EPA on September 25, 1991.

EFFECTIVE DATE: This final rule is effective December 17, 1992.

ADDRESSES: Materials relevant to this final rule are contained in EPA Air Docket LE–131, Attention: Docket No. A–91–23, located at the Air Docket Section, U.S. Environmental Protection Agency, room M–1500, 401 M Street SW., Washington, DC 20460 telephone (202) 382–7548. The docket may be inspected between the hours of 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. on weekdays. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Caffrey, U.S. EPA (SDSB–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 741–7829.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. California Pilot Test Program

Section 249 of the Clean Air Act (CAA), added to the Act by the 1990 Clean Air Act Amendments (Pub. L. 100–549), requires EPA to establish a clean-fuel vehicle pilot program in the State of California (the California Pilot Program, hereinafter referred to as the Pilot Program). As stated in section 249(a), the purpose of the Pilot Program is "to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas." The Pilot Program will include requirements concerning the number of clean-fuel vehicles to be produced and sold, fuel availability requirements, vehicle certification and enforcement procedures, and a credit program for clean-fuel vehicle sales. Additional information on the Pilot Program is available in the NPRM for this credit program (56 FR 48614, September 25, 1991).

This final rule concerns only the credit program authorized by CAA section 249(d). Regulations concerning other aspects of the Pilot Program, including sales requirements, clean-fuel vehicle exhaust emission standards for non-methane organic gas (NMOG), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM), and formaldehyde (HCHO), and other requirements applicable to clean-fuel vehicles, are not required to be promulgated until two years after the enactment of the Clean Air Act Amendments of 1990, i.e., November 15, 1992 (see sections 242(a), 249(c), 249(f) of the CAA). Consequently, these aspects of the Pilot Program will be addressed in a separate rulemaking.

B. CARB's Low-Emission Vehicle and Clean-Fuels Program

As discussed in the NPRM, the California Air Resources Board (CARB) has established a Low-Emission Vehicle program that establishes a fleet-average, non-methane organic gas (NMOG) exhaust emission standard that manufacturers must meet with their new model year sales, as well as certain percent of sales requirements for some vehicle types and weight classes. These requirements will result in the sale of a large number of clean-fuel vehicles annually. CARB's program also establishes four levels of clean-fuel vehicle emission standards, clean fuel availability requirements and a credit program. Further information is available in the NPRM for this credits program (56 FR 48614) and in the following documents available in the docket: "Proposed Regulations for Low-Emission Vehicles and Clean Fuels: Staff Report", "Proposed Regulations for Low-Emission Vehicles and Clean Fuels: Technical report", and "Regulations for Clean Fuels", all published by CARB.

C. Content of the Federal Rule

The language of the CAA indicates that the Pilot Program has been modeled in large part after the provisions of CARB's Low-Emission Vehicle program. The clean-fuel vehicle standards, fuel availability language, and credit program are all examples of this. As a result of the many similarities between the Pilot Program and CARB's Low-Emission Vehicle Program, and the likelihood that CARB's program will result in more clean-fuel vehicles being sold than are required under the Pilot Program, the Pilot Program is unlikely to have a significant environmental impact in California. Thus, EPA is fulfilling its obligations for the Pilot Program in a manner that will minimize any additional economic burden on vehicle manufacturers or adverse impacts on other entities, while at the same time ensuring that the program's environmental objectives are met. EPA believes this approach is consistent with the intent of the CAA's Pilot Program.

To accomplish this goal a Federal credit program is essential. A failure by EPA to promulgate a credit program could eliminate the sales flexibility afforded by CARB's credit program (as described in the NPRM). This could result in a manufacturer satisfying CARB's sales requirements through the use of credits but failing to meet the Pilot Program requirements because of the absence of a credit program that would allow the averaging, banking, and trading of credits. This could lead to extra costs to the manufacturer, which could be forced to meet the Pilot Program sales requirements through additional production and sales of clean-fuel vehicles.

EPA believes it is important to provide manufacturers with flexibility in meeting their clean-fuel vehicle sales requirements under the Pilot Program in order to allow them to optimize their development of clean-fuel vehicles required by both CARB's program and the Pilot Program and to avoid extra costs that may provide no additional environmental benefit.

The following sections of this preamble will discuss only the provisions of the Pilot Program that relate to the promulgation of the credit program. Areas where the credit program for the Pilot Program differ from that of CARB's are then examined and comments received concerning the NPRM are addressed. Following a description of the final rule, its environmental, economic, and energy impacts are discussed. The remaining sections cover EPA's statutory authority for the rule, administrative designation of the rule, compliance with the Regulatory Flexibility Act, and reporting and recordkeeping requirements.

II. Description of the Federal Credit Program

A. Statutory Requirements

Section 249(d) of the CAA gives EPA the discretion to issue credits to vehicle manufacturers for the sale of more clean-fuel vehicles than required and for the sale of clean-fuel vehicles that meet more stringent emission standards than those otherwise applicable to clean-fuel vehicles. Once EPA chooses to implement a Federal credit program, section 249(d) of the CAA places a number of constraints on the design of that program. The more stringent standards for the issuance of such credits and the requirements relating to the weighting of such credits on the basis of emission reductions must be those which are established by EPA under the provisions of the clean-fuel fleets program (see CAA section 246). Credits issued by EPA to manufacturers may be transferred to other manufacturers, i.e., they may be traded. Furthermore, any credits issued are to be granted notwithstanding any State law requirements or credits granted with respect to the same vehicles under State law. Despite these statutory requirements, section 249(d)(1)(B) provides EPA with some discretion regarding the credit program for the Pilot Program by stating that the "Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate."

B. Differences Between Federal Requirements and CARB's Credit Program

EPA's credit program is designed to be consistent with CARB's credit program wherever it is reasonable and legally justifiable in order to grant vehicle manufacturers the same flexibility in meeting the sales requirements of both programs. However, as discussed in the NPRM, statutory provisions of the CAA preclude EPA from promulgating a credit program for the Pilot Program that exactly matches that of CARB's. There are two principal differences between CARB's credit program and the Federal program, the method of weighting credits and the issue of negative banking, both of which are discussed below.

The Pilot Program's credit weightings, which must conform to the clean-fueled fleets credit weighting method (section 249(d)(3) of the CAA), are different from CARB's in two ways. First, the fleet average NMOG values used in CARB's program for vehicles under 6000 lbs gross vehicle weight rating (GVWR) are not used. Instead, following the credit-weighting system of the fleets program, credit values are based on individual vehicle NMOG emission rates. This method is similar to CARB's credit program for trucks over 6000 lbs GVWR. Second, in keeping with the flexibility allowed in the CAA, averaging and trading across all subclasses of light duty trucks (LDVs) and light duty vehicles (LDTs) is allowed (up to 8500 lbs GVWR). This provides vehicle manufacturers significantly greater flexibility in meeting the Pilot Program sales requirements than CARB's credit program which does not allow the transfer of credits between vehicles less than and greater than 6000 lbs GVWR. Because of this increased flexibility the use of credit weightings different from those used by CARB is not expected to have a negative impact on vehicle manufacturers.

The other major difference between the two credit programs is that CARB's program permits negative banking while the Pilot Program does not. If negative banking is allowed and used extensively in the early years of the Pilot Program, there is a possibility that the statutorily-prescribed clean-fuel vehicle sales requirement would not be met. This would effectively delay the implementation of the program, which the CAA does not give EPA the authority to do. Even if the statutory minimum number of vehicles were sold each year as a result of CARB's program, negative banking would not allow EPA to properly enforce the minimum sales requirement should the manufacturers fail to reach it. EPA, therefore, believes that manufacturers must meet the minimum sales requirements of paragraph 249(c)(1) of the CAA. However, as will be discussed in the rulemaking establishing the vehicle standards and sales requirements EPA intends to use its enforcement discretion so as to provide manufacturers some flexibility should they fall slightly below their minimum sales requirements.

Even without negative banking, one might argue that a banking program could create the possibility that the minimum sales requirement may not be met since credits earned from earlier years could potentially be used in high enough quantities in a later model-year to satisfy the sales requirement without actually selling the minimum number of vehicles. However, since the vehicles that earned credits in earlier years are already in service, the total number of clean-fuel vehicles in use is not reduced by the presence of a banking program and the environmental benefits are enhanced rather than diminished. Therefore, EPA believes that banking credits for future use could accelerate implementation of the program, not delay it. Thus, the Agency considers banking to be environmentally beneficial even though a negative banking program is not. For additional information and discussion of the differences between CARB's program and the statutory requirements for the Pilot Program the reader is referred to the NPRM for the credit program as well as CARB's publications that were cited previously and EPA's proposal concerning credits and exemptions from transportation control measures for clean-fueled fleets (56 FR 50196), which are contained in the docket.

C. Credit Program for the Pilot Program

EPA's credit program provides vehicle manufacturers flexibility in meeting the Pilot Program sales requirements similar to the flexibility they have in CARB's program. Vehicle manufacturer participation in the Pilot Program's credit program would be voluntary. As long as a manufacturer fulfills its sales requirement through its own clean-fuel vehicle sales, there would be no need for the manufacturer to participate in the credit program, unless it chooses to accumulate credits for future use or for trading with other manufacturers.

The following sections discuss various issues associated with the credit program. Comments received on the NPRM are discussed and considered in the appropriate section.

1. Averaging

Pursuant to the provisions of the CAA, EPA is promulgating averaging provisions as part of the credit program, which allow a manufacturer to earn credits from the sale of clean-fuel vehicles that meet NMOG exhaust emission standards that are more stringent than required. These credits may be applied toward the manufacturer's sales requirement in order to reduce the total number of clean-fuel vehicles it must sell. This should encourage the introduction of clean-fuel vehicles that meet more stringent standards.

The CAA does not specify any weight class restrictions on the use of credits for vehicles subject to the Pilot Program. In order to provide the maximum flexibility to vehicle manufacturers in complying with their sales requirements, EPA is promulgating only one averaging category covering all clean-fuel LDVs and LDTs. This is consistent with the CAA provisions for the clean-fueled fleets credit program, which provide in section 246(f)(2)(B)

only for a barrier to trading credits between vehicles of up to 8,500 lbs. gross vehicle weight rating (GVWR) and vehicles of more than 8,500 lbs. GVWR. Averaging across the vehicle classes subject to the Pilot Program achieves the same environmental benefit at potentially lower cost and allows manufacturers greater flexibility than under CARB's program.

2. Trading

As described above, the trading of credits between manufacturers is explicitly permitted by section 249(d)(1) of the CAA. Trading gives manufacturers increased flexibility in meeting their sales requirements. Trading also allows small volume manufacturers the ability to avoid the disproportionately high cost of clean-fuel vehicle development, while still contributing to the overall clean-fuel sales requirements. By purchasing credits through trading, small volume manufacturers could help defray the cost of developing the clean-fuel vehicle technology in proportion to their California sales volumes.

3. Banking

Although the CAA does not require banking in the Pilot Program, EPA is promulgating the banking program as proposed. EPA believes that banking will encourage both the early development of clean-fuel vehicles and the development of vehicles meeting more stringent emission standards than required. It will also facilitate the transition to tighter standards in the 2001 model year. In addition, banking provides manufacturers with the same flexibility that they have under CARB's program. Each model year, a manufacturer is given the option of either trading or banking credits earned that were not used in averaging to meet the current model year sales requirement.

Comments were received from CARB expressing its support for a banking provision, but suggesting that credits be discounted in order to promote the active use of credits. They stated that failure to discount banked credits could lead to a stagnant accumulation of credits thereby delaying the implementation of new technologies.

EPA, however, does not believe that the failure to discount Pilot Program credits will result in a delay in the implementation of new technologies. EPA believes that CARB's program will be the controlling force in initiating the development and implementation of new technologies with or without a Federal program. As a result, whether EPA discounts banked credits under the Pilot Program or not should have little impact on vehicle development and environmental impact of the program. Therefore, since discounting would add one more complexity to the credit program for no tangible benefit, credits in the Pilot Program will not be discounted over time. This is also consistent with the CAA provisions regarding credits for the fleet program, which provide in section 246(f)(2)(A) that credits are not to be discounted.

4. Negative Banking

In the NPRM (56 FR 48614) EPA expressed its concern that negative banking could result in clean fuel vehicle sales below the statutory minimum sales volume. Nevertheless, EPA acknowledged the merits of negative banking due to the additional flexibility it would provide manufacturers, and solicited comments on how negative banking could be allowed without compromising the minimum sales requirement.

The Motor Vehicle Manufacturers Association (MVMA) and Electric Transportation Coalition (ETC) both commented on the concept of negative banking. They stated that the flexibility of negative banking would provide a buffer for automobile manufacturers should they encounter production shortfalls due to unforeseen economic downturns. Both organizations supported the idea of limiting negative banking to a certain portion of the total allotted sales volume. MVMA suggested that, if negative banking were utilized in a particular year, then that deficit must be made up in the following year. Thus, a negative credit balance could not be carried over for more than one year.

EPA appreciates the concerns of manufacturers and the difficulty encountered in meeting a fixed sales quota regardless of the economic climate. EPA also believes that the limited volume, one year reconciliation concept put forth by MVMA has much merit. However, it is EPA's position that providing for negative banking explicitly as a part of the credit program would not be consistent with the sales requirements of the CAA, which require that minimum numbers of clean-fuel vehicles be sold each year.

5. Credit Standards

Section 243 of the CAA clearly defines the minimum clean-fuel vehicle NMOG, carbon monoxide (CO), nitrogen oxide (NOx), particulate (PM), and formaldehyde exhaust emission requirements that serve as the baseline from which credits are to be calculated. Section 246(f)(4) of the CAA requires EPA to promulgate more stringent exhaust emission standards, conforming as closely as possible to CARB's standards, solely for the purposes of issuing credits. The clean-fuel vehicle standards established in section 243 of the CAA and the more stringent vehicle standards to be used for credit purposes are shown in table 1.

The exhaust standards in table 1 are used for illustrative purposes only since EPA has not yet promulgated standards containing the clean-fuel vehicle exhaust standards. (Section 242 of the CAA does not require EPA to promulgate clean-fuel vehicle standards until November 15, 1992.) Should the subsequent Pilot Program rulemaking change these emission standards, the credit values contained in this rule will be adjusted accordingly in that rulemaking. To simplify the credit calculations, only the 50,000 mile standards are used (see table 1) rather than the 100,000 mile standards or some combination of the two.

The standards in table 1 are identical to the standards CARB established for their Low-Emission Vehicle Program. For vehicles up to 6,000 lbs GVWR, Pilot Program Phase I clean-fuel vehicles are equivalent to CARB's Transitional Low-Emitting Vehicle (TLEV) emission category and Phase II clean-fuel vehicles are equivalent to CARB's Low-Emitting Vehicle (LEV) emission category. When Phase II of the Pilot Program starts in the 2001 model year, vehicles certified to CARB's TLEV standards will no longer qualify as federal clean-fuel vehicles and will, therefore, not count toward meeting the Pilot Program sales requirements. For vehicles from 6,001 to 8,500 lbs GVWR, the CAA defines CARB's LEV emission category as a clean-fuel vehicle. The two additional emission categories for credit purposes only for this vehicle weight classification are defined to be CARB's Ultra Low-Emitting Vehicle (ULEV) and Zero Emitting Vehicle (ZEV) classifications (see CARB's: Proposed Regulations for Low-Emission Vehicle and Clean-Fuel, Staff Report; in the docket).

6. Credit Weighting

Section 246(f)(2)(C) of the CAA requires that credits be adjusted with appropriate weighting to reflect the level of emission reductions achieved by clean-fuel vehicles. Standards-based weighting factors depend not only on the more stringent standards EPA is required to promulgate, but also on the standards for conventional vehicles and for the minimum clean-fuel vehicle. The amount of credit assigned to a cleaner vehicle depends upon how much further these vehicles go beyond the

minimum clean-fuel vehicle in reducing emissions.

In the NPRM on the Pilot Program, EPA proposed to use the same credit weighting system and methodology as was required in the Clean-Fueled Fleets Program. The fleets program credit weighting system is based on NMOG exhaust emission reductions. The fleet credit program NPRM also proposed an optional credit weighting system that non-attainment areas could choose to apply in lieu of the otherwise required NMOG system, based on a combination of NMOG and NOx exhaust emission reductions. As proposed in the Pilot Program NPRM, EPA is only promulgating credit weightings based on NMOG emissions since this is more consistent with the CARB program. For further discussion of this issue the reader is referred to the NPRM.

As mentioned above, EPA is using the emission standards listed in table 1 for the purpose of credit calculations at this time. Should the rulemaking establishing the rest of the Pilot Program change these standards, new values will be included in that rulemaking.

As discussed in the NPRM, the credit values proposed for the fleets program do not take into account Phase I clean-fuel vehicles (i.e., TLEVs) because Phase I vehicles are not subject to the fleets program. Therefore, in addition to adopting the fleets credit values for 2001 and subsequent model-years, EPA is establishing credit values for the Phase I vehicles of the Pilot Program using the same methodology as used to determine the credit values in the fleets program. All credit values are normalized to the NMOG exhaust emission reduction required by LDVs to facilitate the exchange of credits across all subclasses of LDVs and LDTs. Therefore, the term "vehicle-equivalent" refers to the reduction calculated for a LDV certified to the minimum clean-fuel vehicle standard (TLEV through 2000, LEV 2001 and later). For early clean-fuel vehicle sales and extra clean-fuel vehicle sales, vehicle equivalent credits are calculated by dividing the difference between the 50,000 mile NMOG standards for a conventional vehicle and the clean-fuel vehicle in question (vehicles of the same vehicle type) by the difference between the conventional vehicle standard and minimum clean-fuel vehicle standard for a light duty vehicle (0.125 g/mi through 2000, 0.175 g/mi 2001 and after). For the sale of clean-fuel vehicles meeting more stringent clean-fuel vehicle standards, credits are calculated by dividing the difference between the 50,000 mile NMOG standard for the minimum clean fuel vehicle (TLEV through 2000, LEV 2001 and after) and the standard for the clean fuel vehicle in question (vehicles of the same vehicle type) by the difference between the conventional vehicle standard and minimum clean-fuel vehicle standard for a light-duty vehicle (0.125 g/mi through 2000, 0.175 g/mi 2001 and later). The credit values for Phase I are shown in table 2 and are valid through model year 2000. The credit values developed for the fleets program and established for 2001 and subsequent model-years are shown in table 3. For a more detailed explanation of the methodology used for determining the credit values, see the Fleets Program NPRM (56 FR 50196).

Since the LDTs over 6000 lbs GVWR will not be included in the minimum sales requirement until the standards for these trucks become effective in the 1998 model-year, the credit values in table 2.2 for these vehicles do not apply until the 1998 model-year. Manufacturers may still earn early credits for LDTs over 6000 lbs GVWR corresponding to the values in table 2.1.

The credits calculated by the above methodology and shown in tables 2 and 3, are based solely on emission standards and do not reflect any subclass differences in mileage or vehicle life. Any useful life difference among the clean-fuel vehicle classes that might affect the level of emission reduction was considered to be insignificant and was, therefore, not incorporated into the calculations. Since there is not a substantial difference between the full useful lives of LDVs (10 years/100,000 miles) and LDTs (11 years/120,000 miles), and since the trend in these vehicle classes is toward increasing similarity in usage patterns and technology, adjusting the credit is not justifiable given the increased complexity that these factors would present.

7. Credits for Electric Vehicles

The Electric Transportation Coalition (ETC) provided comments on the NPRM and stated that higher credits should be made available for electric vehicles through 1995 for LDVs and through 1997 for LDTs. They stated that this would spur the early development of electric vehicles which would in turn result in much greater air quality benefits. They supported their stance by pointing out that electric vehicles do not experience any emission deterioration with increasing time and mileage as do most other vehicles. Without any deterioration, electric vehicles provide an even greater emission reduction than they are given credit for based upon their certification standards. Consequently, ETC supports greater credits for ZEVs, suggesting that these credits could be doubled to reflect the greater emissions savings that can be realized by the use of electric vehicles. In addition, ETC suggested that greater (double) credits also be given to ULEVs.

While EPA recognizes the positive aspects of electric vehicles and the fact that their emissions do not deteriorate over time, at this time it is not possible to determine whether additional credit is justified. If the air quality benefits of the Pilot Program are to be realized, electric vehicles must be given appropriate credit for their in-use emission reductions relative to those from all other clean-fuel vehicles. Unfortunately, at the present time, adequate information is not available to predict the in-use emission performance of all other types of clean-fuel vehicles. Because of the new technology anticipated to be used to meet the clean-fuel vehicle standards, the emission deterioration rates for clean-fuel vehicles are likely to be significantly different from that of current conventional vehicles, and are likely to vary dramatically among clean-fuel vehicle types. Until further data and information on the in-use performance of the various new technologies that will be used to meet the CFV standards becomes available, EPA believes it is appropriate to base the credit calculations on the 50,000 mile certification standards.

The credit program established by CARB yields credit weightings similar to those under the Pilot Program for each vehicle emission class. Thus, maintaining the proposed credit weightings in the final program is consistent with the aim of the Pilot Program to be as similar as possible to CARB's Program in order to make compliance with the two programs for all parties involved as smooth as possible.

Furthermore, EPA does not believe that providing electric vehicles greater credit under the Pilot Program would significantly spur their development. Requirements for the sale of clean-fuel vehicles under the Pilot Program are expected to be dwarfed by the requirements of CARB's LEV program, causing Pilot Program credits to be of relatively little importance. In addition, CARB's special sales mandates for ZEV's in the LEV program are expected to do far more to spur the development of clean-fuel vehicles than any additional credit granted under the Pilot Program ever could. Thus, EPA will retain the proposed credit values and not grant additional credit for electric vehicles. Nevertheless, EPA is sensitive

to the matter of non-deteriorating emissions from electric vehicles and may propose adjustments to the credit values for ZEVs and other clean-fuel vehicles in the future when further data and information becomes available.

In response to EPA's request for comments on the possibility of providing credits for hybrid electric vehicles (HEVs), ETC and CARB responded with comments in favor of credits of HEVs. ETC suggested that HEVs receive the full credit value of a ZEV where it can be shown that the HEV can travel 50 or more miles, based on the Federal Urban Dynamometer Driving Schedule (UDDS), on a single charge of the battery using battery power alone and as long as the vehicle cannot be operated solely on non-electric power. In addition ETC suggested that ULEV credits be granted to HEVs that can be operated solely on their internal combustion engine regardless of their range on battery power alone.

CARB noted that its LEV program allows an HEV to be averaged into a manufacturer's fleet average NMOG requirement at a lower NMOG value than the emission category to which it was certified, provided it has a certain minimum battery operating range. CARB stated that this feature encourages the development of HEVs having greater battery ranges. CARB encouraged EPA to consider allowing similar additional credits for HEVs having a minimum battery range.

EPA believes that the emissions from HEVs when they are operated non-electrically are highly uncertain. Also, there is no guarantee that a vehicle owner will choose to run a vehicle electrically for any length of time. The total percentage of time that an individual vehicle owner will operate a vehicle solely on electricity is extremely variable and therefore it is difficult to make a determination of its emission level. This is further complicated by the wide variety of HEV concepts currently being considered by the industry. Much more information is required about the nature of HEVs before any decisions can be made regarding their respective emission categories. At the same time, EPA recognizes the potential air quality benefits of these vehicles and the need to provide them with the same opportunities as other vehicles. Therefore, EPA may reconsider these issues in the future.

8. Use of Credits

If in meeting its minimum clean-fuel vehicle sales requirement a manufacturer sells clean-fuel vehicles which meet the more stringent emissions standards, the manufacturer shall receive credit corresponding to the credit values in table 2.2 and 3.2. If the manufacturer sells more clean-fuel vehicles that are required or clean-fuel vehicles earlier than are required, the manufacturer shall receive credit corresponding to the credit values in table 2.1 and 3.1. In the case of selling more vehicles than required, the manufacturer shall have the discretion of choosing which clean-fuel vehicles are to be treated as credit generating vehicles. Since there are no weight class restrictions, it will be in the best interest for the vehicle manufacturer to select those vehicles for credit generation which receive the greatest amount of credit in tables 2.1 and 3.1.

In the case where a manufacturer does not sell the minimum number of clean-fuel vehicles required by the Pilot Program, it must purchase sufficient credits in lieu of the clean-fuel vehicles it did not sell. These credit values are listed in table 2.3 or 3.3. The manufacturer will have the discretion of choosing which of the conventional vehicles it sold were in lieu of selling the required clean-fuel vehicles. This is an important consideration because the manufacturer will then be required to purchase sufficient credits according to the credit values of the vehicle classes and/or subclasses it chose. Since EPA is requiring only one trading class for the credits, the manufacturer will be free to apply the obtained credit to any of its vehicle classes and/or subclasses.

The subsequent Pilot Program rulemaking, which will define the certification and enforcement provisions of the clean-fuel vehicle sales requirement, will also define the enforcement provisions for both sales reporting requirements and credit shortfalls necessary for this rulemaking. These enforcement provisions are common to both rulemakings and are better handled with all other enforcement provisions in the later rulemaking.

9. Early Credits

In the NPRM EPA proposed that early credits could be granted for clean-fuel vehicles sold prior to 1996. The granting of early credits would allow manufacturers to back credits, which could be used for averaging and trading in the initial years of the Pilot Program to assist in a smooth transition into the program. EPA proposed that clean-fuel vehicles sold in the 1994 model-year be the first vehicles eligible to receive early vehicle credits because 1994 would be the first full model-year after promulgation of all clean-fuel vehicle standards and certification requirements. Prior to 1994 there will not be a mechanism in place by which to certify vehicles and grant credits accordingly.

Comments were received from MVMA and ETC with both organizations suggesting that early credits be allowed before 1994. They stated that early credits will assist Small Volume Manufacturers (SVM) by making more credits available for trading earlier in the program. They also suggested that the introduction of credits prior to 1994 will provide "an incentive for manufacturers to introduce clean-fuel vehicles earlier, thus providing earlier environmental benefits and earlier consumer acceptance of clean-fuel vehicles."

EPA agrees with the commenters that granting credit for vehicles produced before the 1994 MY will encourage the early introduction of clean-fuel vehicles into the marketplace. Such a provision would also be more consistent with CARB's program. Furthermore, EPA believes that by allowing credits for 1992 through 1995 model year CFV sales, CARB's program will be virtually assured of providing that an adequate number of CFVs are sold in all years to fulfill the Pilot Program requirements. Thus, despite the fact that before-the-fact certification to EPA's standards will not be possible, EPA will allow retroactive credits, beginning with model year 1992. Credits will be granted retroactively, however, only if the vehicles receive a valid California certification and also fulfill the Federal certification and also fulfill the Federal requirements established in the Pilot Program standards rulemaking. The granting of retroactive credits will occur only if the Federal standards are replaced with CARB's standards in the clean-fuel vehicles standards rulemaking pursuant to section 243(e) of the CAA, which will mean that a vehicle certification to CARB's standards also meets the Federal certification standards. This determination will be made in the rulemaking for the Pilot Program to be published at a later date. If CARB's standards are found to be as protective then retroactive credits will be granted for qualifying vehicles back to model year 1992. Because this determination can not be made until the final rule for the standards portion of the Pilot Program is published, the calculation of any retroactive credits will not be made until 1996, the first year of required sales for the Pilot Program. This will allow manufacturers to use any accumulated credits in the first year of required Pilot Program sales. If CARB's standards are determined not to be as protective as the Federal standards then

retroactive credits will be granted from model year 1992 to 1996 as long as the vehicles were certified to the Federal standards.

10. Credit Trading to Stationary Sources

No language was contained in the NPRM regarding the possibility of trading mobile source credits derived from this program with stationary source credits. The Clean Fuel Fleets Credit Program NPRM, however, did solicit comments on the possibility of including stationary source trading. As a result, comments were received on the Pilot Program in this regard as well.

ETC recommended that EPA look into ways to allow mobile source emission credits generated under the Pilot Program to be traded with the emissions generated from stationary sources. They believe that having the broadest possible trading base will make the entire system much more flexible.

EPA is currently reviewing a variety of mobile source-stationary source trading issues and is planning to issue a guidance that will address mobile stationary source trading. Thus, EPA is not including any provisions in these regulations regarding trading to stationary sources.

11. Sales Requirements

In the NPRM, EPA stated that the sales requirements for the Pilot Program would be promulgated under a later rulemaking. EPA proposed a definition of the term "sales", at that time, in order to define the basis for granting credits. In the NPRM, EPA asked for comments on how the term sales could be defined in order to minimize the burden on the manufacturers while still adhering to the statutory requirements of the definition of "sales" stated in section 249(c)(1) of the CAA as vehicles that are "produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California."

In response to EPA's request MVMA commented that the term "sales" could be counted as sales "by a manufacturer to a dealer, distributer, fleet operator, broker, or any other entity which comprises the first point of sale." It noted that this definition would be consistent with that adopted in the rulemaking regarding the Tier I emission standards (56 FR 12724). MVMA also pointed out an additional aspect of the Tier I regulations that allows the substitution of a manufacturer's production data for the manufacturer's sales data. MVMA stated that the difference between the two numbers is small. It cited data for the 1987 to 1989 model years in which the mean difference between the sales and production data was approximately 0.2 percent. MVMA suggested that manufacturers be given the option of reporting sales data (as defined above) or actual production data with demonstration of the functional equivalence of it to sales.

EPA's goal is to establish as effective a program as possible without causing an undue burden on the manufacturer. Because of this and the apparent similarity between the three methods of evaluating clean-fuel vehicle sale, EPA has decided that the point of first sale is the most reasonable basis for determining compliance. EPA believes that sales to the ultimate purchaser and the first point of sales should be essentially equivalent, because all vehicles sold to any ultimate purchaser have to pass through or possibly terminate at the first point of sale. Any other definition of sales would require the manufacturers to initiate a new and much more cumbersome and expensive vehicle tracking program without any notable benefit to the environment.

In addition to this EPA recognizes that the difference between actual manufacturer sales and their production numbers has been shown to be an increasingly smaller number on a percentage basis over time (see Tier I rulemaking 56 FR 12724). EPA also expects that CARB's LEV program will result in far more CFVs in California than will be required under the Pilot Program (see CAA Section 249(c)(1)). Also, in their own CFV program CARB is establishing their definition of sales as the number of vehicles produced by a given manufacturer for sale in the state of California. In view of this information, EPA is proposing to allow similar flexibility with the Pilot Program as will be allowed in CARB's CFV program by giving manufacturers the option of submitting production numbers in lieu of actual sales numbers for each model year. EPA reserves the right to require that actual sales data be provided if it determines that a general equality (consistent with the language of the Tier I rulemaking) no longer exists between production data and sales data. EPA believes that this definition of sales makes sense for the Pilot Program because the sales of CFVs in California should surpass the requirements of the Pilot Program due to CARB's sales requirements. Consequently, this definition for vehicle sales will not necessarily be appropriate in all contexts.

12. Small Volume Manufacturer Concerns

Rover Group and CARB commented that small volume manufacturers may have difficulty complying with the emission and sales standards of the Pilot Program. They asked that EPA consider special provisions similar to those proposed by CARB whereby manufacturers with an average annual vehicles sales volume of less than 3000 units for the 1989–1991 model years would be exempt from the sales requirements until the year 2000. (See CARB's proposed rules in the docket).

The CAA is silent with respect to the treatment of small volume manufacturers. EPA believes that credit trading, which is addressed in this rulemaking, will help to alleviate the difficulties small volume manufacturers might otherwise have had in meeting a CFV sales requirement. The possibility of other provisions similar to CARB's, such as small volume manufacturer exemptions for a given period of time, will be addressed in the NPRM proposing the clean-fuel vehicle sales requirements for the Pilot Program.

III. Environmental Impact

EPA believes that the credit program will not result in a negative environmental impact and that all reasonable means have been taken to ensure the environmental neutrality of the credit program. Furthermore, the magnitude of CARB's Low-Emission Vehicle program, which requires clean-fuel vehicle sales that far exceed the sales requirements of the Pilot Program, should ensure that all environmental benefits expected to result from the Pilot Program are achieved.

IV. Economic Impact

The intent of the credit program is to provide flexibility to the vehicle manufacturers in meeting their clean-fuel vehicle sales requirements. This should minimize any potential for economic hardship resulting from the Pilot Program, while at the same time yielding no decrease in environmental benefits. Since CARB's Low-Emission Vehicle program will create greater environmental benefits and economic impacts than the Pilot Program, the proposed credit program should provide no additional economic burden beyond that of CARB's LEV program.

Given that there are two different, but similar credit programs, it is possible, however, that on a manufacturer specific basis some minor negative economic impacts could result. A manufacturer choosing to purchase Federal credits rather than produce all

of the clean-fuel vehicles it would otherwise have to produce may have to track and purchase both Federal credits and California credits. It is understood that just the act of managing its own credits could introduce some costs to a manufacturer; however, these are not likely to be significant. Moreover, since participation in the credit program is voluntary, a manufacturer would not choose to do it unless it viewed participation in the credit program as being more economically beneficial than producing CFVs.

The trading of Federal and California credits will likely take place together because a manufacturer who needs to purchase Federal credits will also be in need of California credits. The cost to purchase credits will be determined by the free-market, but is likely to be no higher than the cost of producing clean-fuel vehicles since a manufacturer would probably produce a clean-fuel vehicle rather than pay more than its production cost for credits. The cost of producing a clean-fuel vehicle is independent of the existence of a Federal credit program. As a result, whether the manufacturers must purchase only California credits or both Federal and California credits, the cost is expected to be the same.

In conclusion, EPA believes that negative economic impacts should not occur from the credit program. Therefore, the cost of clean-fuel vehicles to the consumer is expected to be no different than what will result from the implementation of CARB's program.

V. Energy Impact

The implementation of a credit program for the Pilot Program should have a minimal energy impact. Because manufacturers can earn more credit for vehicles which meet more stringent standards, fewer clean-fuel vehicles could theoretically be sold. The result would be a smaller fleet of clean-fuel vehicles than if no credit program was available. This reduction in fleet size would also reduce the volume of each particular clean-fuel.

The more stringent the vehicle standards, however, the more likely the vehicles are to be powered by a fuel other than gasoline. EPA is currently unaware of any reliable projections of the type of vehicles, the fuel used, or the energy efficiency of the clean-fuel vehicles that will be sold.

As discussed in the environmental and economic impact sections, due to the size of CARB's program, no fuel volume changes resulting from this credit program should occur. The Pilot Program should not affect the choice of clean-fuel vehicles and the choice of fuels used beyond what CARB's program will require. EPA, therefore, believes there will be no adverse energy impact associated with this rulemaking.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million; have a significant adverse impact on competition, investment, employment or innovation; or result in a major price increase. The elements of this rulemaking package do not constitute a major rule according to the established criteria. The implementation of this credit program will not increase the cost of clean-fuel vehicles, but will instead allow manufacturers another option which will help produce clean-fuel vehicles at lower costs. Therefore, it has been determined that this proposal does not constitute a "major" regulation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments have been placed in the public docket for this rulemaking.

VII. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, the Administrator is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. There will not be a significant impact on a substantial number of small business entities due to the credit program for the Pilot Program. The credit program will be beneficial for small volume manufacturers in meeting any sales requirement issued against them due to the option of purchasing credits in lieu of undertaking the financial investment to develop clean-fuel vehicles. For this reason, the requirements of this rule will not have a significant adverse economic impact on a substantial number of small entities. The benefits given to small volume manufacturers will not impose hardships or burdens on other small entities covered by this regulation.

VIII. Reporting and Recordkeeping Requirements

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0229. No additional requirements are added in this notice.

IX. Statutory Authority

Authority for the actions promulgated in this notice is granted to EPA by sections 241, 246, 249, and 301(a) in title II, part C of the Clean Air Act, as amended; 42 U.S.C. 7581, 7586, 7589, and 7601(a).

List of Subjects in 40 CFR Part 88

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 18, 1992.

William K. Reilly,

Administrator.

Appendix to Preamble—Tables

TABLE 1.—EXHAUST EMISSION STANDARDS FOR CLEAN-FUEL VEHICLES 50,000 MILE STANDARDS

Vehicle emission category stds (g/mi)	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] >6000 gvwr ≤3750 lw	LDT[2] >6000 gvwr >3750 lw ≤5750 lw	LDT[2] >6000 gvwr >5750 lw
CV:					
NMOG	0.25	0.32	0.25	0.32	0.39
CO	3.4	4.4	3.4	4.4	5.0
NO_x	0.4	0.7	0.4	0.7	1.1

TABLE 1.—EXHAUST EMISSION STANDARDS FOR CLEAN-FUEL VEHICLES 50,000 MILE STANDARDS—Continued

Vehicle emission category stds (g/mi)	LDV & LDT ≤8000 gvwr ≤3750 lvw	LDT ≤8000 gvwr >3750 lvw ≤5750 lvw	LDT[2] >8000 gvwr ≤3750 tw	LDT[2] >8000 gvwr >3750 tw ≤5750 tw	LDT[2] >8000 gvwr >5750 tw
HCHO	.....	.....	.....	.....	.....
TLEV:					
NMOG	0.125	0.160	(1)	(1)	(1)
CO	3.4	4.4	.....	.....	.....
NO_x	0.4	0.7	.....	.....	.....
HCHO	0.015	0.018	.....	.....	.....
LEV:					
NMOG	0.075	0.100	0.125	0.160	0.195
CO	3.4	4.4	3.4	4.4	5.0
NO_x	0.2	0.4	0.4	0.7	1.1
HCHO	0.015	0.018	0.015	0.018	0.022
ULEV:					
NMOG	0.040	0.050	0.075	0.100	0.117
CO	1.7	2.2	1.7	2.2	2.5
NO_x	0.2	0.4	0.2	0.4	0.6
HCHO	0.008	0.009	0.008	0.009	0.011
ZEV:					
NMOG	0.0	0.0	0.0	0.0	0.0
CO	0.0	0.0	0.0	0.0	0.0
NO_x	0.0	0.0	0.0	0.0	0.0
HCHO	0.0	0.0	0.0	0.0	0.0

[1] There is no TLEV category for this vehicle class.
[2] The clean-fuel vehicle standards are not effective until the 1998 model-year.
CV = Conventional gasoline vehicle.
TLEV = Transitional Low-Emitting Vehicle.
LEV = Low-Emitting Vehicle.
ULEV = Ultra Low-Emitting Vehicle.
ZEV = Zero Emitting Vehicle.
NMOG = Non-Methane Organic Gas.
CO = Carbon Monoxide.
NOx = Nitrogen Oxides.
HCHO = Formaldehyde.
gvwr = gross vehicle weight rating.
lvw = loaded vehicle weight.
tw = total weight.

TABLE 2.—CREDIT TABLE FOR PHASE I: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE 2.1—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase I: Effective Through 2000 Model-Year]

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] >6000 gvwr ≤3750 tw	LDT[2] >6000 gvwr >3750 tw ≤5730 tw	LDT[2] >8000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	1.40	1.76	1.00	1.28	1.56
ULEV	1.68	2.16	1.40	1.76	2.18
ZEV	2.00	2.56	2.00	2.56	3.12

Definitions—see Table 1.

TABLE 2.2—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] <6000 gvwr ≤3750 tw	LDT[2] >6000 gvwr >3750 tw ≤5750 tw	LDT[2] >8000 gvwr >5750 tw
TLEV	0.00	0.00	(1)	(1)	(1)
LEV	0.40	0.48	0.00	0.00	0.00
ULEV	0.68	0.88	0.40	0.48	0.62
ZEV	1.00	1.28	1.00	1.28	1.56

Definitions—see Table 1.

TABLE 2.3—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT[2] >6000 gvwr ≤3750 lw	LDT[2] >6000 gvwr >3750 lw ≤5750 lw	LDT[2] >6000 gvwr >5750 lw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	.....	.....	1.00	1.28	1.58

[1] There is no TLEV category for this vehicle class.
[2] The clean-fuel vehicle standards are not effective until the 1998 model-year.
Definitions—see Table 1.

TABLE 3.—CREDIT TABLE FOR PHASE II: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE 3.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase II: Effective 2001 and Subsequent Model-Years]

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 lw	LDT >6000 gvwr >3750 lw ≤5750 lw	LDT >6000 gvwr >5750 lw
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

Definitions—see Table 1.

TABLE 3.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 lw	LDT >6000 gvwr >3750 lw ≤5750 lw	LDT >6000 gvwr >5750 lw
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	0.20	0.28	0.29	0.34	0.45
ZEV	0.43	0.57	0.71	0.91	1.11

Definitions—see Table 1.

TABLE 3.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 lw	LDT >6000 gvwr >3750 lw ≤5750 lw	LDT >6000 gvwr >5750 lw
LEV	1.00	1.26	0.71	0.91	1.11

Definitions—see Table 1.

For reasons set forth in the preamble, a new part 88 of title 40 of the Code of Federal Regulations is added to read as follows:

PART 88—CLEAN-FUEL VEHICLES

Subpart A—Emission Standards for Clean-Fuel Vehicles

Sec.
88.101–94 Definitions.
88.102–94 Abbreviations.

Subpart B—California Pilot Test Program

Sec.
88.201–94 Scope.
88.202-94 Definitions.
88.203–94 Abbreviations.
88.205–94 California Pilot Test Program Credits Program.

Tables to subpart B of part 88

Authority: Secs. 241, 246, 249, 301(a), Clean Air Act as Amended; 42 U.S.C. 7581, 7586, 7589, and 7601(a).

Subpart A—Emission Standards for Clean-Fuel Vehicles.

§ 88.101-94 Definitions.

The definitions in 40 CFR part 86 also apply to this subpart. The definitions in this section apply to all of part 88.

Heavy Light-Duty Truck means any light-duty truck rated greater than 6000 lbs. GVWR.

Light Light-Duty Truck means any light-duty truck rated through 6000 lbs GVWR.

Loaded Vehicle Weight is defined as the curb weight plus 300 lbs.

Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Low-Emission Vehicle standard, or any heavy-duty vehicle with an engine conforming to the applicable Low-Emission Vehicle standard.

Non-methane Organic Gas is defined as in section 241(3) Clean Air Act as amended (42 U.S.C. 7581(3)).

Test Weight is defined as the average of the curb weight and the GVWR.

Transitional Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Transitional Low-Emission Vehicle standard.

Ultra Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Ultra Low-Emission Vehicle standard, or any heavy-duty vehicle with an engine conforming to the applicable Ultra Low-Emission Vehicle standard.

Zero-Emission Vehicle means any light-duty vehicle or light-dutytruck conforming to the applicable Zero-Emission Vehicle standard, or any heavy-duty vehicle conforming to the applicable Zero-Emission Vehicle standard.

§ 88.102–94 Abbreviations.

The abbreviations of part 86 also apply to this subpart. The abbreviations in this section apply to all of part 88.

CO—Carbon Monoxide.
HCHO—Formaldehyde.
NMOG—Non-Methane Organic Gas.
NOx—Nitrogen Oxides.
PM—Particulate Matter.
GVWR—Gross Vehicle Weight Rating.
LVW—Loaded Vehicle Weight.
TW—Test Weight.
TLEV—Transitional Low-Emission Vehicle.
LEV—Low-Emission Vehicle.
ULEV—Ultra Low-Emission Vehicle.
ZEV—Zero-Emission Vehicle.

Subpart B—California Pilot Test Program

§ 88.201–94 Scope.

Applicability. The requirements of this subpart shall apply to the following:

(a) State Implementation Plan revisions for the State of California pursuant to compliance with section 249 of the Clean Air Act, as amended in 1990.

(b) Vehicle manufacturers with sales in the State of California.

§ 88.202–94 Definitions.

(a) The definitions in subpart A also apply to this subpart.

(b) The definitions in this subpart shall apply beginning with the 1992 model year.

Averaging for clean-fuel vehicles means the sale of clean-fuel vehicles that meet more stringent standards than required, which allows the manufacturer to sell fewer clean-fuel vehicles than would otherwise be required.

Banking means the retention of credits, by the manufacturer generating the emissions credits, for use in future model-year certification as permitted by regulation.

Sales means vehicles that are produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) in the State of California, including owners of covered fleets under subpart C of part 86 of this chapter. The manufacturer can choose at their option from one of the following three methods for determining sales:

(i) Sales is defined as sales to the ultimate purchaser.

(ii) Sales is defined as vehicle sales by a manufacturer to a dealer, distributer, fleet operator, broker, or any other entity which comprises the first point of sale.

(iii) Sales is defined as equivalent to the production of vehicles for the state of California. This option can be revoked if it is determined that the production and actual sales numbers do not exhibit a functional equivalence per the language of § 86.708–94(b)(1) of this chapter.

Trading means the exchange of credits between manufacturers.

§ 88.203–94 Abbreviations.

The abbreviations in subpart A of this part and in 40 CFR part 86 apply to this subpart.

§ 88.205–94 California Pilot Test Program Credits Program.

(a) *General.* (1) The Administrator shall administer this credit program to enable vehicle manufacturers who are required to participate in the California Pilot Test Program to meet the clean-fuel vehicle sales requirements through the use of credits. Participation in this credit program is voluntary.

(2) All credit-generating vehicles must meet the applicable emission standards and other requirements contained in subpart A of this part.

(b) *Credit generation.* (1) Credits may be generated by any of the following means:

(i) Sale of qualifying clean-fuel vehicles earlier than required. Manufacturers may earn these credits starting with the 1992 model year, contingent upon the requirements of paragraph (g) of this section.

(ii) Sale of a greater number of qualifying clean-fuel vehicles than required.

(iii) Sale of qualifying clean-fuel vehicles that meet more stringent emission standards than those required.

(2) For light-duty vehicles and light-duty trucks, credit values shall be determined in accordance with the following:

(i) For model-years through 2000, credit values shall be determined in accordance with table B–1 of this subpart.

(ii) For the 2001 and subsequent model-years, credit values shall be determined according to table B–2 of this subpart. The sale of light-duty vehicles classified as Transitional Low-Emission Vehicles shall not receive credits starting in model year 2001.

(iii) For the calculation of credits for the sale of more clean-fuel vehicles than required, the manufacturer shall designate which sold vehicles count toward compliance with the sales requirement. The remaining balance of vehicles will be considered as sold beyond the sales requirement for credit calculations.

(3) Vehicles greater than 8500 lbs gvwr may not generate credits.

(c) *Credit use.* (1) All credits generated in accordance with these provisions may be freely averaged, traded, or banked for later use. Credits may not be used to remedy any nonconformity determined by enforcement testing.

(2) There is one averaging and trading group containing all light-duty vehicles and light-duty trucks.

(3) A vehicle manufacturer desiring to demonstrate full or partial compliance with the sales requirements by the redemption of credits, shall surrender sufficient credits, as established in this paragraph (c). In lieu of selling a clean-fuel vehicle, a manufacturer shall surrender credits equal to the credit value for the corresponding vehicle class and model year found in table B–1.3 or table B–2.3 of this subpart.

(d) *Participation in the credit program.* (1) During certification, the manufacturer shall calculate the projected credits, if any, based on quarterly sales projections.

(2) Based on information from paragraph (d)(1) of this section, each manufacturer's certification application under this section must demonstrate:

(i) That at the end of the model-year production, there is a net vehicle credit balance of zero or more with any credits obtained from averaging, trading, or banking.

(ii) It is recommended but not required that the source of the credits to be used to comply with the minimum sales requirements be stated. All such reports should include all credits involved in averaging, trading, or banking.

(3) During the model year, manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the sales requirement is achieved at the end of the model year.

(ii) Provide the end of model year reports required under this subpart.

(iii) Maintain the quarterly records required under this subpart.

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other verification steps deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated.

(i) If EPA review of a manufacturer's end-of-year report indicates an inadvertent credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero.

(ii) If within 90 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (i.e., resulting in a positive credit balance) or if the manufacturer discovers such an error within 90 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(e) *Averaging.* Averaging will only be allowed between clean-fuel vehicles under 8500 lbs gvwr.

(f) *Banking.* (1) *Credit deposits.* (i) Under this program, credits can be banked starting in the 1992 model year.

(ii) A manufacturer may bank credits only after the end of the model year and after EPA has reviewed its end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdraws.* (i) After being generated, banked/reserved credits shall be available for use and shall maintain their original value for an infinite period of time.

(ii) A manufacturer withdrawing banked credits shall indicate so during certification and in its credit reports.

(3) Banked credits may be used in averaging, trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but unreviewed by EPA may also be used. However, they may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(g) *Early Credits.* Beginning in model year 1992 appropriate credits, as determined from the given credits tables, will be given for the sale of vehicles certified to the clean-fuel vehicle standards for TLEV's, LEV's, ULEV's, and ZEV's, where appropriate, from model year 1992 to the beginning of the Pilot Program sales requirements in 1996. The actual calculation of such credits shall not begin until model year 1996.

Tables to subpart B of part 88

TABLE B–1.—CREDIT TABLE FOR PHASE I: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE B–1.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase I: Effective Through 2000 Model-Year]

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	1.40	1.76	1.00	1.28	1.56
ULEV	1.68	2.16	1.40	1.76	2.18
ZEV	2.00	2.56	2.00	2.56	3.12

TABLE B–1.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	0.00	0.00	(1)	(1)	(1)
LEV	0.40	0.48	0.00	0.00	0.00
ULEV	0.68	0.88	0.40	0.48	0.62
ZEV	1.00	1.28	1.00	1.28	1.56

TABLE B–1.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	.....	.....	1.00	1.28	1.56

Note: [1]There is no TLEV category for this vehicle class.

TABLE B–2.—CREDIT TABLE FOR PHASE II: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE B–2.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase II: Effective 2001 and Subsequent Model-Years]

Vehicle emissions category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

TABLE B–2.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emissions category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	0.20	0.28	0.29	0.34	0.45
ZEV	0.43	0.57	0.71	0.91	1.11

TABLE B–2.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLES

Vehicle emissions category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11

[FR Doc. 92–30424 Filed 12–16–92; 8:45 am]

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Federal Register

Thursday
December 17, 1992

Part IV

The President

Proclamation 6515—To Modify the Harmonized Tariff Schedule of the United States, To Extend Tariff Reductions on Certain Tropical Products, To Reduce Duties on Peach, Apricot, Raspberry, or Cherry Jams, and for Other Purposes

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Federal Register
Vol. 57, No. 243
Thursday, December 17, 1992

Presidential Documents

Title 3—

The President

Proclamation 6515 of December 16, 1992

To Modify the Harmonized Tariff Schedule of the United States, To Extend Tariff Reductions on Certain Tropical Products, To Reduce Duties on Peach, Apricot, Raspberry, or Cherry Jams, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act") (19 U.S.C. 3005(a)) directs the United States International Trade Commission ("Commission") to keep the Harmonized Tariff Schedule of the United States ("HTS") under continuous review and periodically to recommend to the President such modifications to the HTS as the Commission considers necessary or appropriate. Section 1205(a) sets forth five categories of such potential modifications to the HTS, including changes to conform the HTS with amendments made to the International Convention on the Harmonized Commodity Description and Coding System ("Convention"), to promote the uniform application of the Convention and its Annex, to ensure that the HTS is kept up-to-date in light of changes in technology or in patterns of international trade, to alleviate unnecessary administrative burdens, and to make technical rectifications.

2. Section 1205(d) of the 1988 Act (19 U.S.C. 3005(d)) provides that the Commission may not recommend any modification unless it is consistent with the Convention and that any amendment thereto recommended for adoption is consistent with sound nomenclature principles, ensures substantial rate neutrality, and does not alter existing conditions of competition for the affected United States industry, labor, or trade. Section 1205(d) further provides that any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.

3. Pursuant to section 1205(b) of the 1988 Act (19 U.S.C. 3005(b)), the Commission instituted Investigations Nos. 1205–1 and 1205–2. The Commission included in its notices of investigation the proposed changes to the HTS. Pursuant to section 1205(c) of the 1988 Act (19 U.S.C. 3005(c)), taking into account the views and submissions of Federal Government agencies and other interested parties, the Commission submitted to the President two reports, one in March 1991 (with a June addendum and revision in May 1992) and the second in November 1991, recommending changes to the HTS in accordance with the provisions of section 1205. The Commission included in its reports copies or summaries of the submissions received in the investigations, together with a statement of the probable economic effect of each recommended change on any industry in the United States.

4. Pursuant to section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)), I have determined that the recommended modifications are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States. The report and lay-over requirements of section 1206(b) of the 1988 Act (19 U.S.C. 3006(b)) have been met.

5. Pursuant to section 1102(a) of the 1988 Act (19 U.S.C. 2902(a)), on December 5, 1988, the United States entered into a trade agreement providing

for the reduction of rates of duty applicable to imports of certain tropical products. This trade agreement with other contracting parties to the General Agreement on Tariffs and Trade ("GATT") (61 Stat. (pts. 5 and 6)), as amended, committed the United States to make, on a provisional basis, tariff reductions on enumerated tropical products.

6. Pursuant to section 1102(a) of the 1988 Act, by Proclamation 6030 of September 28, 1989, and specifically Annex II thereto, I proclaimed temporary reductions of existing duties on imports of such enumerated tropical products, to be effective through December 31, 1992.

7. Pursuant to the 1988 Act, I have determined that the modification or continuance of existing duties is required or appropriate to carry out the trade agreement on tropical products. Accordingly, I have decided to extend the effective period of the temporary duty reductions on such enumerated tropical products, as set forth in headings 9903.10.01 through 9903.10.42, inclusive, of the HTS, through December 31, 1993.

8. Pursuant to subtitle B of title I of the 1988 Act (19 U.S.C. 3001–3012), by Proclamation 5911 of November 19, 1988, the United States adopted and implemented the HTS, comprising the Tariff Schedules of the United States ("TSUS") (19 U.S.C. 1202) converted into the format of the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System"). Included in the HTS, effective January 1, 1989, were new provisions covering jams of peaches, apricots, raspberries, or cherries, falling under Harmonized System subheading 2007.99. The Rates of Duty 1-General subcolumn on such products under these new HTS provisions were higher than the corresponding column 1 duty rates under the pertinent former TSUS items, because of procedures generally applied during the tariff conversion and definitional differences between the two nomenclature systems.

9. Section 312 of the Customs and Trade Act of 1990 ("1990 Act") (Public Law 101–382; 104 Stat. 666) temporarily reduced the most-favored-nation (MFN) duty rates (reflected in the column 1 rates of duty) on such imported products to the levels applicable under the former TSUS, effective through December 31, 1992. Section 312(b) of the 1990 Act authorizes the President to proclaim permanent modifications in column 1 rates of duty to restore the tariff treatment applicable under the former TSUS, upon a determination that appropriate trade concessions, including the correction of errors and oversights in foreign tariff schedules, have been obtained.

10. Accordingly, following negotiations, I have determined that appropriate trade concessions (specifically, a restoration by the European Economic Community ("EEC") of the duty rates on inedible mixtures of animal and vegetable fats and oils that applied before the EEC's implementation of a Harmonized System-based tariff in 1988) have been obtained, and that it is necessary and appropriate to restore the tariff treatment applicable under the TSUS to jams of peaches, apricots, raspberries, or cherries, falling under Harmonized System subheading 2007.99.

11. Finally, in order to effect in the HTS certain conforming changes omitted in Proclamation 6282 of April 25, 1991, Proclamation 6343 of September 28, 1991, Proclamation 6446 of June 15, 1992, and Proclamation 6455 of July 2, 1992, I have determined that it is necessary and appropriate to modify the HTS.

12. Section 604 of the Trade Act of 1974 ("Trade Act") (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction. Section 1206(c) of the 1988 Act (19 U.S.C. 3006(c)) provides that any modifications proclaimed by the President under section 1206(a) of that Act may not take effect before the 15th day after the date on which the text of the proclamation is published in the **Federal Register**.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 1102 and 1206 of the 1988 Act, section 312 of the 1990 Act, and section 604 of the Trade Act, do proclaim that:

(1) The HTS is modified as set forth in Annex I to this proclamation.

(2) In order to provide for the continuation of previously proclaimed staged duty reductions on Canadian goods in the HTS provisions modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex II to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1–Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof effective with respect to such goods on the dates specified.

(3) In order to provide for the continuation of previously proclaimed duty reductions for goods in the HTS provisions modified in Annex I to this proclamation that are the products of countries designated as beneficiary countries for purposes of the Caribbean Basin Economic Recovery Act, as amended ("CBERA") (19 U.S.C. 2701 *et seq.*), or the Andean Trade Preference Act ("ATPA") (19 U.S.C. 3201 *et seq.*), effective with respect to goods that are the products of countries designated as beneficiary countries for purposes of the CBERA or the ATPA that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex III to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "E,J" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof effective with respect to such goods on the dates specified.

(4) The duty reductions set forth in HTS headings 9903.10.01 through 9903.10.42 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, through December 31, 1993.

(5) Heading 2007 of the HTS is modified as provided in Annex IV to this proclamation.

(6) In order to provide for certain conforming changes omitted in aforementioned proclamations, the HTS is modified as set forth in Annex V to this proclamation.

(7) Any provisions of previous proclamations inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(8)(a) The modifications made by paragraph (1) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1993, or on or after the 15th day after the date of publication of this proclamation in the **Federal Register**, whichever is later.

(b) The modifications made by paragraphs (2), (3), and (6) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in Annexes II, III, and V to this proclamation.

(c) The modifications made by paragraphs (4) and (5) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1993.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

Billing code 3190-01-M

Annex I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE
OF THE UNITED STATES (HTS)

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of the proclaimed modifications. The following supersedes matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective with respect to articles that are entered, or withdrawn from warehouse for consumption, on or after January 1, 1993, or on or after the fifteenth day after the date of publication of this proclamation in the Federal Register, whichever is later.

1. Subparagraph (b) of rule 5 of the General Rules of Interpretation is modified by deleting the expression "does not apply" and by inserting the expression "is not binding" in lieu thereof.

2. The following new note 2 to chapter 3 is inserted:

"2. In this chapter the term "pellets" means products which have been agglomerated either directly by compression or by the addition of a small quantity of binder."

3. The article description for heading 0305 is modified by deleting the expression "fish meal" and by inserting the expression "flours, meals and pellets of fish," in lieu thereof.

4. The article description for subheading 0305.10 is modified by deleting the expression "Fish meal" and by inserting the expression "Flours, meals and pellets of fish," in lieu thereof.

5. The article description for heading 0306 is modified by inserting after the word "brine" and before the colon the expression "; flours, meals and pellets of crustaceans, fit for human consumption".

6. The article description for subheadings 0306.19.00 and 0306.29.00 is deleted and the following is inserted for each subheading in lieu thereof:

"Other, including flours, meals and pellets of crustaceans, fit for human consumption"

7. The article description for heading 0307 is modified by inserting after the word "brine" and before the colon the expression "; flours, meals and pellets of aquatic invertebrates other than crustaceans, fit for human consumption".

8. The superior text, "Other:", immediately preceding subheading 0307.91.00 is deleted and the following is inserted in lieu thereof:

"Other, including flours, meals and pellets of aquatic invertebrates other than crustaceans, fit for human consumption:"

9. The following new note 3 to chapter 4 is inserted:

"3. This chapter does not cover:

(a) Products obtained from whey, containing by weight more than 95 percent lactose, expressed as anhydrous lactose calculated on the dry matter (heading 1702); or

(b) Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 percent whey proteins, calculated on the dry matter) (heading 3502) or globulins (heading 3504)."

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10. The following new subheading note 1 to chapter 4 is inserted:

"Subheading Note

1. For the purposes of subheading 0404.10, the expression "modified whey" means products consisting of whey constituents, i.e., whey from which all or part of the lactose, proteins or minerals have been removed, whey to which natural whey constituents have been added, and products obtained by mixing natural whey constituents."

11.(a) Subheading 0404.10 is deleted and subheading 0404.10 and new subheadings 0404.10.05, 0404.10.07, and 0404.10.09 and new superior texts thereto are inserted, as follows:

"0404.10	[Whey, whether or not...:] Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter:			
	Modified whey:			
0404.10.05	Whey protein concentrates.....	10%	Free (A,E,IL,J) 5% (CA)	20%
	Other:			
0404.10.07	Containing over 5.5 percent by weight of butterfat and not packaged for retail sale.....	16%	Free (E,IL,J) 8% (CA)	20%
0404.10.09	Other.....	10%	Free (E,IL,J) 5% (CA)	20%
	Other:"			

(b) The article description for subheadings 0404.10.20 and 0404.10.40 shall have the same degree of indentation as that of subheading 0404.10.05.

(c) Subheading 0404.90.05 is deleted.

(d) Subheadings 0404.90.40 and 0404.90.60 are renumbered as 0404.90.45 and 0404.90.65, respectively.

(e) The article description for subheading 9904.10.75 is modified by deleting the expression "0404.90.60," and inserting the expression "0404.10.09, 0404.90.65," in lieu thereof.

(f) The article description for subheading 9904.10.81 is modified by inserting a comma after the expression "by weight of butterfat" and by deleting the expression "0404.90.40, 0404.90.60," and inserting the expression "0404.10.07, 0404.10.09, 0404.90.45, 0404.90.65" in lieu thereof.

12. The article description for subheading 0406.10 is deleted and the following is inserted in lieu thereof:

"Fresh (unripened or uncured) cheese, including whey cheese, and curd:"

13. Note 3(c) to chapter 7 is deleted and the following is inserted in lieu thereof:

"(c) Flour, meal, flakes, granules and pellets of potatoes (heading 1105);"

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14 The following new note 3 to chapter 8 is inserted:

"3. Dried fruit or dried nuts of this chapter may be partially rehydrated, or treated for the following purposes.

(a) For additional preservation or stabilization (e.g., by moderate heat treatment, sulfuring, the addition of sorbic acid or potassium sorbate)

(b) To improve or maintain their appearance (e.g., by the addition of vegetable oil or small quantities of glucose syrup)

provided that they retain the character of dried fruit or dried nuts."

15.(a) Heading 0902 and subheadings 0902.10.00 and 0902.20.00 are deleted and the following is inserted in lieu thereof:

"0902	Tea, whether or not flavored:			
0902.10	Green tea (not fermented) in immediate packings of a content not exceeding 3 kg:			
0902.10.10	Flavored	10%	Free (A,E,IL,J) 5% (CA)	20%
0902.10.90	Other	Free		Free
0902.20	Other green tea (not fermented):			
0902.20.10	Flavored	10%	Free (A,E,IL,J) 5% (CA)	20%
0902.20.90	Other	Free		Free"

(b) Subheading 2106.90.60 is renumbered as 2106.90.65.

16. The article description for heading 0909 is deleted and the following is inserted in lieu thereof:

"Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries:"

17. The article description for subheading 0909.50.00 is deleted and the following is inserted in lieu thereof:

"Seeds of fennel; juniper berries"

18. The article description for heading 1105 is deleted and the following is inserted in lieu thereof:

"Flour, meal, flakes, granules and pellets of potatoes:"

19. The article description for subheading 1105.20.00 is deleted and the following is inserted in lieu thereof:

"Flakes, granules and pellets"

20.(a) The superior text, "Industrial monocarboxylic fatty acids:", immediately preceding subheading 1519.11.00 is deleted and the following is inserted in lieu thereof:

"Industrial monocarboxylic fatty acids; acid oils from refining:"

(b) Subheading 1519.20.00 is deleted.

(c) Subheadings 1519.30, 1519.30.20, 1519.30.40 and 1519.30.60 are renumbered as 1519.20, 1519.20.20, 1519.20.40 and 1519.20.60, respectively.

21. The article description for subheading 1604.14 is deleted and the following is inserted in lieu thereof:

"Tunas, skipjack and bonito (Sarda spp.):"

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22. The article description for the superior text immediately preceding subheading 1604.14.70 is modified by deleting the expression "Atlantic bonito:" and by inserting "Bonito (Sarda spp.):" in lieu thereof.

23. The article description for subheading 1806.20 is modified by deleting the expression "blocks or slabs" and by inserting the expression "blocks, slabs or bars" in lieu thereof.

24. Note 2 to chapter 19 is deleted and the following is inserted in lieu thereof:

"2. For the purposes of heading 1901, the terms "flour" and "meal" mean:

(a) Cereal flour and meal of chapter 11, and

(b) Flour, meal and powder of vegetable origin of any chapter, other than flour, meal or powder of dried vegetables (heading 0712), of potatoes (heading 1105) or of dried leguminous vegetables (heading 1106)."

25. The article description for heading 2009 is modified by inserting the expressions "not fortified with vitamins or minerals," after the expression "Fruit juices (including grape must) and vegetable juices,".

26. Notes 1(c) through 1(g), inclusive, to chapter 21 are redesignated as 1(d) through 1(h), respectively, and the following new note 1(c) is inserted:

"(c) Flavored tea (heading 0902);"

27. Chapter 21 is modified by inserting new additional U.S. notes 1 and 2, as follows:

"Additional U.S. Notes

1. Subheadings 2106.90.16 and 2106.90.19 cover vitamin or mineral fortified fruit or vegetable juices that are imported only in concentrated form. Such juices imported in non-concentrated form are classifiable in subheadings 2202.90.30, 2202.90.35 or 2202.90.39, as appropriate.

2. For the purposes of subheadings 2106.90.16 and 2106.90.19:

(a) The term "liter" in the "Rates of Duty" column of the provisions applicable to fruit juices means liter of reconstituted fruit juice;

(b) The term "reconstituted fruit juice" means the product which can be obtained by mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secretary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States;

(c) The term "Brix value" means the refractometric sucrose value of the juice, adjusted to compensate for the effect of any added sweetening materials, and thereafter corrected for acid;

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27 (con.):

(d) In determining the number of liters of reconstituted fruit juice which can be obtained from a concentrate, the degree of concentration shall be calculated on a volume basis to the nearest 0.5 degree, as determined by the ratio of the Brix value of the imported concentrated juice to that of the reconstituted juice, corrected for differences of specific gravity of the juices. Any juice having a degree of concentration of less than 1.5 (as determined before correction to the nearest 0.5 degree) shall be regarded as a natural unconcentrated juice; and

(e) In determining the degree of concentration of mixed fruit juices, the mixture shall be considered as being wholly of the component juice having the lowest Brix value."

28. Subheading 2106.90 is modified by inserting the following new subheadings, with superior text, in numerical sequence:

	[Food preparations...:]				
	[Other:]				
	"Fruit or vegetable juices, fortified with vitamins or minerals:				
2106.90.16	Orange juice.....	9.25¢/liter	Free (E,J) 4.6¢/liter (CA)	18¢/liter	
2106.90.19	Other.....	The rate applicable to the natural juice in heading 2009	Free (E,J) The rate applicable to the natural juice in heading 2009 (A,CA,IL)	The rate applicable to the natural juice in heading 2009"	

29. Notes 1(a) through 1(e), inclusive, to chapter 22 are redesignated as 1(b) through 1(f), respectively, and the following new note 1(a) is inserted:

"(a) Products of this chapter (other than those of heading 2209) prepared for culinary purposes and thereby rendered unsuitable for consumption as beverages (generally heading 2103);"

30. Additional U.S. notes 2 through 8, inclusive, to chapter 22 are redesignated as 3 through 9, respectively, and the following new additional U.S. note 2 is inserted:

"2. Subheadings 2202.90.30, 2202.90.35 and 2202.90.39 cover vitamin or mineral fortified fruit or vegetable juices that are imported only in non-concentrated form. Such juices imported in concentrated form are classifiable in subheadings 2106.90.16 or 2106.90.19, as appropriate."

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31.(a) Subheading 2202.90 is modified by inserting the following new subheadings, with superior text, in numerical sequence:

	[Waters, including mineral...:]				
	[Other:]				
	"Fruit or vegetable juices, fortified with vitamins or minerals:				
	Orange juice:				
2202.90.30	Not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).....	5.3¢/liter	Free (E,J) 2.6¢/liter (CA)	18¢/liter	
2202.90.35	Other.....	9.25¢/liter	Free (E,J) 4.6¢/liter (CA)	18¢/liter	
2202.90.39	Other.....	The rate applicable to the natural juice in heading 2009	Free (E,J) The rate applicable to the natural juice in heading 2009 (A,CA,IL)	The rate applicable to the natural juice in heading 2009"	

(b) Subheadings 2009.19.20 and 2009.19.40 are renumbered as 2009.19.25 and 2009.19.45, respectively.

32. The article description for heading 2206.00 is deleted and the following is inserted in lieu thereof:

"Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages not elsewhere specified or included:"

33. The article description for heading 2501.00.00 is modified by deleting the expression "whether or not in aqueous solution" and by inserting the expression "whether or not in aqueous solution or containing added anticaking or free-flowing agents" in lieu thereof.

34. The article description for subheading 2528.10.00 is deleted and the following is inserted in lieu thereof:

"Natural sodium borates and concentrates thereof (whether or not calcined)"

35. Note 6(d) to chapter 28 is modified by deleting the expression "0.002 microcurie per gram;" and by inserting the expression "74 becquerels per gram (0.002 microcurie per gram);"

36. The article description for heading 2818 is deleted and the following is inserted in lieu thereof:

"Artificial corundum, whether or not chemically defined; aluminum oxide; aluminum hydroxide:"

37. The article description for subheading 2818.10 is deleted and the following is inserted in lieu thereof:

"Artificial corundum, whether or not chemically defined:"

38. The article description for subheading 2818.20.00 is deleted and the following is inserted in lieu thereof:

"Aluminum oxide, other than artificial corundum"

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39. The article description for heading 2850.00 is deleted and the following is inserted in lieu thereof:

"Hydrides, nitrides, azides, silicides and borides, whether or not chemically defined, other than compounds which are also carbides of heading 2849:"

40.(a) Subheadings 3301.30, 3301 30.10, 3301.30.50 and 3301.90.00 are superseded by:

	[Essential oils...:]			
"3301.30.00	Resinoids.....	Free		Free
3301.90	Other:			
3301.90.10	Extracted oleoresins.....	6%	Free (A*,CA,E, IL,J)	25%
3301.90.50	Other.....	Free		20%"

(b) General note 3(c)(ii)(D) to the HTS is modified by deleting "3301.30.10 India" and inserting, in numerical sequence, "3301.90.10 India" in lieu thereof.

41. Note 5 to chapter 34 is modified by inserting in (b) of the second paragraph the expression "refined or" between the words "not" and "colored"

42. The article description for heading 3502 is deleted and the following is inserted in lieu thereof:

"Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 percent whey proteins, calculated on the dry matter), albuminates and other albumin derivatives:"

43. The article description for subheading 3707.10.00 is deleted and the following is inserted in lieu thereof:

"Sensitizing emulsions"

44. The article description for subheading 3806.10.00 is deleted and the following is inserted in lieu thereof:

"Rosin and resin acids"

45. The article description for subheading 3809.91.00 is deleted and the following is inserted in lieu thereof:

"Of a kind used in the textile or like industries"

46. The article description for subheading 3809.92 is deleted and the following is inserted in lieu thereof:

"Of a kind used in the paper or like industries:"

47. The article description for subheading 3809.99 is deleted and the following is inserted in lieu thereof:

"Of a kind used in the leather or like industries:"

48.(a) The article description for heading 4202, for subheadings 4202.22, 4202.22.15, 4202.32, and 4202.92, and for the superior text to subheading 4202.32.10 is modified by deleting the expression "of plastic sheeting" and by inserting the expression "of sheeting of plastics" in lieu thereof. The article description for heading 4202 is modified by deleting the expression "with such materials" and by inserting the expression "with such materials or with paper" in lieu thereof.

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48. (con.):

(b) Subheading 4202.29.00 is superseded by:

	[Trunks, suitcases,...:] [Handbags,...:] Other: Of materials (other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper:			
"4202.29				
4202.29.10	Of plastics	5.3%	Free (A,E,IL,J) 2.6% (CA)	80%
4202.29.20	Of wood	5.1%	Free (A,E,IL,J) 2.5% (CA)	33 1/3%
4202.29.50	Other	7.8%	Free (E,IL,J) 3.9% (CA)	110%
4202.29.90	Other	20%	Free (CA,IL) 19% (E,J)	45%"

(c) Subheading 4202.39.00 is superseded by:

	[Trunks, suitcases,...:] [Articles...:] Other: Of materials (other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper:			
"4202.39				
4202.39.10	Of plastics	5.3%	Free (A,E,IL,J) 2.6% (CA)	80%
4202.39.20	Of wood	5.1%	Free (A,E,IL,J) 2.5% (CA)	33 1/3%
4202.39.50	Other	7.8%	Free (E,IL,J) 3.9% (CA)	110%
4202.39.90	Other	20%	Free (A,CA,E,IL, J)	45%"

(d) Subheading 4202.99.00 is superseded by:

	[Trunks, suitcases,...:] [Other:] Other: Of materials (other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper:			
"4202.99				
4202.99.10	Of plastics	3.4%	Free (A,E,IL,J) 1.7% (CA)	80%
	Of wood:			
4202.99.20	Not lined with textile fabrics	6.7%	Free (A,E,IL,J) 3.3% (CA)	33 1/3%
4202.99.30	Lined with textile fabrics	2.2¢/kg + 2.9%	Free (E,IL,J) 1.1¢/kg + 1.4% (CA)	11¢/kg + 20%
4202.99.50	Other	7.8%	Free (E,IL,J) 3.9% (CA)	110%
4202.99.90	Other	20%	Free (CA,IL) 19% (E,J)	45%"

(e) Subheadings 3924.90.50, 3926.90.90, 4420.90.40, 4420.90.60, 4421.90.90 and 7326.90.30 are renumbered as 3924.90.55, 3926.90.95, 4420.90.45, 4420.90.65, 4421.90.95 and 7326.90.35, respectively.

(f) The article descriptions for headings 9902.44.21 and 9902.44.22 and subheading 9905.44.15 are modified by deleting the expression "4421.90.90" and inserting the expression "4421.90.95" in lieu thereof.

49. The article description for subheading 4820.30.00 is deleted and the following is inserted in lieu thereof:

"Binders (other than book covers), folders and file covers"

Annex I (con.)

50. The following new second paragraph is inserted in note 2(A) to section XI:

"When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration."

51. Note 7(a)(iv) to chapter 59 is modified by deleting the word "fabric" and by inserting the word "fabrics" in lieu thereof.

52. The article description for subheading 5911.10 is deleted and the following is inserted in lieu thereof:

"Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes:"

53. Note 8 to chapter 61 is deleted and the following is inserted in lieu thereof:

"8. Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.

Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments."

54.(a) New subheading 6115.93.15 is inserted, as follows, in numerical sequence:

	[Panty hose, tights,...:]				
	[Other:]				
	[Of synthetic fibers:]				
"6115.93.15	Surgical compression stockings for orthopedic purposes, other than stockings merely for the treatment of varicose veins.....	5.8%	Free (A,E,IL,J) 2.9% (CA)	40%"

(b) Subheading 9021.19.80 is renumbered as 9021.19.85.

55. Note 8 to chapter 62 is deleted and the following is inserted in lieu thereof:

"8. Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.

Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments."

Annex I (con.)

56.(a) Additional U.S. note 4 to chapter 64 is modified by deleting the first sentence thereof, and by inserting the expression "of subheading 6406.10" after the expression "Provisions" in the second sentence thereof.

(b) The article description for heading 6406 is deleted and the following is inserted in lieu thereof:

"Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof:"

57. Notes 3(c) and 3(n) to chapter 71 are deleted and the following is inserted, in alphabetical order, in lieu thereof:

"(c) Goods of chapter 32 (for example, lustres);"

"(n) Articles classified in chapter 96 by virtue of note 4 to that chapter; or"

58. The article description for subheading 7308.40.00 is deleted and the following is inserted in lieu thereof:

"Equipment for scaffolding, shuttering, propping or pit-propping"

59. The article description for heading 8416 is deleted and the following is inserted in lieu thereof:

"Furnace burners for liquid fuel, for pulverized solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances; parts thereof:"

60. The article description for subheading 8416.30.00 is deleted and the following is inserted in lieu thereof:

"Mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances"

61. The article description for heading 8426 is modified by deleting the word "Derricks" and by inserting the expression "Ships' derricks" in lieu thereof.

62. The article description for heading 8470 is deleted and the following is inserted in lieu thereof:

"Calculating machines; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers:"

63. The article description for heading 8521 is deleted and the following is inserted in lieu thereof:

"Video recording or reproducing apparatus, whether or not incorporating a video tuner:"

64. Heading 8528 and subheadings 8528.10, 8528.10.40 and 8528.10.80 are deleted and the following is inserted in lieu thereof:

"8528	Television receivers (including video monitors and video projectors), whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:				
8528.10	Color:				
8528.10.30	Incorporating video recording or reproducing apparatus	3.9%	Free (A,E,IL,J) 1.9% (CA)	25%	
8528.10.60	Other	5%	Free (B,E,IL,J) 2.5% (CA)	35%"	

Annex I (con.)

65. Note 3 to chapter 87 is deleted, and notes 4 and 5 to chapter 87 are redesignated as 3 and 4, respectively.

66. The article description for heading 8702 is deleted and the following is inserted in lieu thereof:

"Motor vehicles for the transport of ten or more persons, including the driver:"

67. Notes 1(b) through 1(l), inclusive, to chapter 90 are redesignated as 1(c) through 1(m), respectively, and the following new note 1(b) is inserted:

"(b) Supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles) (section XI);"

68. The superior text, "Thermometers, not combined with other instruments:", immediately preceding subheading 9025.11, is deleted and the following is inserted in lieu thereof:

"Thermometers and pyrometers, not combined with other instruments:"

69.(a) Subheading 9025.19.00 is superseded by:

	[Hydrometers and similar...:]			
	[Thermometers...:]			
"9025.19	Other:			
9025.19.40	Pyrometers	3.9%	Free (A,C,E,IL,J) 1.9% (CA)	45%
9025.19.80	Other	5%	Free (A,B,C,E, IL,J) 2.5% (CA)	40%"

(b) Subheading 9025.80.30 is renumbered as 9025.80.35 and the article description for renumbered subheading 9025.80.35 is modified by deleting ", psychrometers and pyrometers" and by inserting "and psychrometers" in lieu thereof.

70. The article description for heading 9029 is modified by deleting the expression "of heading 9015;" and by inserting the expression "of heading 9014 or 9015;" in lieu thereof.

71. In note 1 to chapter 92--

(a) subparagraph (d) is modified by inserting the word "or" immediately following the semicolon.

(b) subparagraph (e) is modified by deleting the expression "9706); or" and by inserting the expression "9706)." in lieu thereof.

(c) subparagraph (f) is deleted.

72. The article description for heading 9506 is modified by deleting the expression "for gymnastics," and by inserting the expression "for general physical exercise, gymnastics," in lieu thereof.

73. The article description for subheading 9506.91.00 is deleted and the following is inserted in lieu thereof:

"Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof"

74. The article description for subheading 9603.21.00 is deleted and the following is inserted in lieu thereof:

"Toothbrushes, including dental-plate brushes"

Annex I (con.)

75. In note 5 to chapter 97--

(a) the expression "are to be treated as forming part of" is deleted and the expression "are to be classified with" is inserted in lieu thereof; and

(b) the following new second sentence is inserted:

"Frames which are not of a kind or of a value normal to the articles referred to in this note are to be classified separately."

Annex II

Effective with respect to goods originating in the territory of Canada that are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Subheading	1994	1995	1996	1997	1998
0404.10.05	4%	3%	2%	1%	Free
0404.10.07	6.4%	4.8%	3.2%	1.6%	Free
0404.10.09	4%	3%	2%	1%	Free
0404.90.45	6.4%	4.8%	3.2%	1.6%	Free
0404.90.65	4%	3%	2%	1%	Free
0902.10.10	4%	3%	2%	1%	Free
0902.20.10	4%	3%	2%	1%	Free
1519.20.20	3.1%	2.3%	1.5%	0.7%	Free
1519.20.40	2%	1.5%	1%	0.5%	Free
1519.20.60	1.4%	1.1%	0.7%	0.3%	Free
2009.19.25	2.1¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
2009.19.45	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2106.90.16	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2106.90.65	4%	3%	2%	1%	Free
2202.90.30	2.1¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
2202.90.35	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
3924.90.55	1.3%	1%	0.6%	0.3%	Free
3926.90.95	2.1%	1.5%	1%	0.5%	Free
4202.29.10	2.1%	1.5%	1%	0.5%	Free
4202.29.20	2%	1.5%	1%	0.5%	Free
4202.29.50	3.1%	2.3%	1.5%	0.7%	Free
4202.39.10	2.1%	1.5%	1%	0.5%	Free
4202.39.20	2%	1.5%	1%	0.5%	Free
4202.39.50	3.1%	2.3%	1.5%	0.7%	Free
4202.99.10	1.3%	1%	0.6%	0.3%	Free
4202.99.20	2.6%	2%	1.3%	0.6%	Free
4202.99.30	0.8¢/kg + 1.1%	0.6¢/kg + 0.8%	0.4¢/kg + 0.5%	0.2¢/kg + 0.2%	Free
4202.99.50	3.1%	2.3%	1.5%	0.7%	Free

Annex II (con.)

HTS Subheading	1994	1995	1996	1997	1998
4420.90.45	2.6%	2%	1.3%	0.6%	Free
4420.90.65	0.8¢/kg + 1.1%	0.6¢/kg + 0.8%	0.4¢/kg + 0.5%	0.2¢/kg + 0.2%	Free
4421.90.95	3.1%	2.3%	1.5%	0.7%	Free
6115.93.15	2.3%	1.7%	1.1%	0.5%	Free
7326.90.35	3.1%	2.3%	1.5%	0.7%	Free
8528.10.30	1.5%	1.1%	0.7%	0.3%	Free
8528.10.60	2%	1.5%	1%	0.5%	Free
9021.19.85	2.3%	1.7%	1.1%	0.5%	Free
9025.19.40	1.5%	1.1%	0.7%	0.3%	Free
9025.19.80	2%	1.5%	1%	0.5%	Free
9025.80.35	1.5%	1.1%	0.7%	0.3%	Free

Annex III

Effective with respect to articles that are the product of any designated beneficiary country under the CBERA or the ATPA that are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "E,J" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Provision	1994	1995	1996
4202.29.90	18.5%	18%	17.5%
4202.99.90	18.5%	18%	17.5%

Annex IV

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1993:

The following supersedes matter in the HTS.

1. Subheading 2007.99.05 is modified by deleting "7%" from the Rates of Duty 1-General subcolumn and by inserting "3%" in lieu thereof.

2. Subheading 2007.99.20 is modified by deleting "35%" from the Rates of Duty 1-General subcolumn and by inserting "7%" in lieu thereof.

3. Subheading 2007.99.25 is modified by deleting "15.4¢/kg + 10%" from the Rates of Duty 1-General subcolumn and by inserting "7%" in lieu thereof.

4. Subheading 2007.99.35 is modified by deleting "20%" from the Rates of Duty 1-General subcolumn and by inserting "7%" in lieu thereof.

Annex V

Section (a). Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991:

HTS heading 9902.30.33 is modified by deleting "2921.43.60" and inserting "2921.43.18" in lieu thereof.

Section (b). Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 2, 1992:

General note 3(c)(ii)(D) is modified:

(1) by deleting the following HTS subheadings and the country set opposite such subheading:

2933.59.30 India	2933.90.40 India
2933.59.50 India	2933.90.48 India
2933.90.31 India	2933.90.50 India

(2) by adding in numerical sequence, the following HTS subheadings and country set opposite them:

2933.59.59 India	2933.90.85 India
2933.59.90 India	2933.90.90 India
2933.90.55 India	2933.90.95 India

Section (c). Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 22, 1992:

General note 3(c)(ix)(D)(5) to the HTS is modified by deleting the expression "material which the product" and inserting the expression "material which is the product" in lieu thereof.

Section (d). Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1993:

(1) General note 3(c)(v)(A) to the HTS is modified by deleting from the list of countries "Saint Christopher and Nevis" and inserting "St. Kitts and Nevis", in lieu thereof.

(2) HTS subheading 9902.81.05 is modified by deleting the "Free (CA)" rate from the Rates of Duty 1-Special subcolumn for such subheading.

(3) HTS subheading 9905.00.00 is modified by deleting from the article description for such subheading "6813.10", "6813.90", and "7312.90".

(4) HTS subheading 9905.00.30 is modified by deleting from the article description for such subheading "5801.32".

(5) HTS subheading 9905.29.37 is modified by deleting from the article description for such subheading "2935.00.33 or".

(6) HTS subheading 9905.42.10 is modified by deleting from the article description for such subheading "4202.91.00 or".

(7) HTS subheading 9905.85.05 is modified by deleting from the article description for such subheading the expression "subheadings 8501.33.30, 8501.33.40, 8501.34.30, 8501.51, 8501.53.60 or 8501.53.80" and inserting "subheading 8501.51" in lieu thereof.

Annex V (con.)

Section (d) (con.)

(8) Subchapter V of chapter 99 to the HTS is modified by deleting the following subheadings:

9905.00.10	9905.68.30
9905.25.10	9905.70.05
9905.28.01	9905.76.10
9905.28.02	9905.84.05
9905.28.03	9905.84.06
9905.28.04	9905.84.07
9905.28.05	9905.84.09
9905.28.10	9905.84.11
9905.28.15	9905.84.12
9905.29.05	9905.84.13
9905.29.06	9905.84.14
9905.29.07	9905.84.15
9905.29.08	9905.84.17
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9905.29.22	9905.84.30
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9905.29.25	9905.84.42
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9905.29.35	9905.84.67
9905.29.36	9905.84.70
9905.29.38	9905.84.71
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9905.38.09	9905.85.69
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9905.39.06	9905.94.04
9905.44.05	9905.94.06
9905.48.20	9905.94.08
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9905.68.20	

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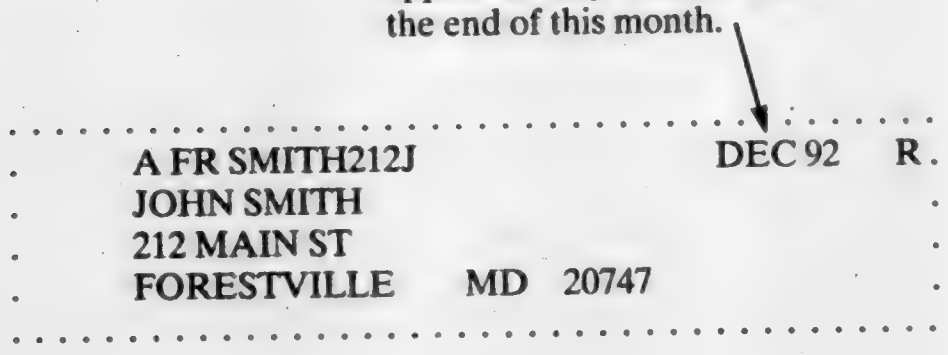

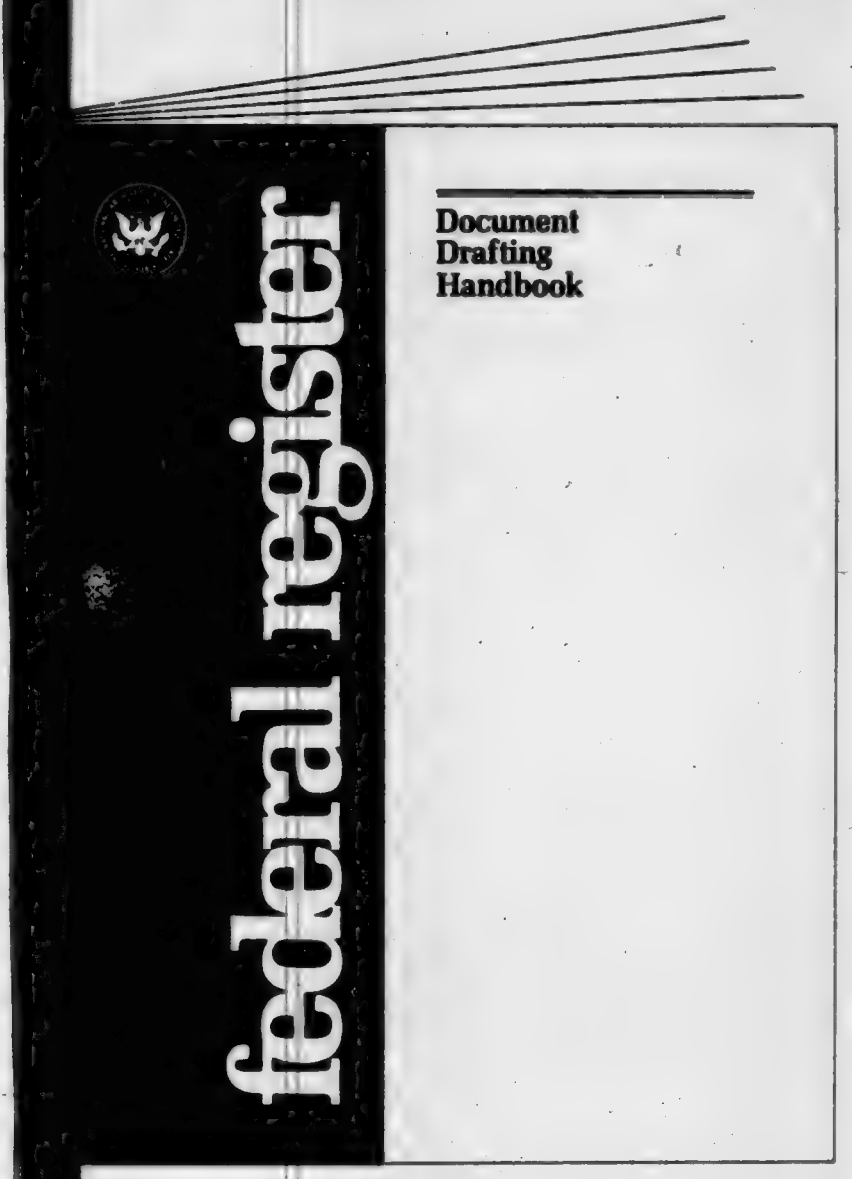

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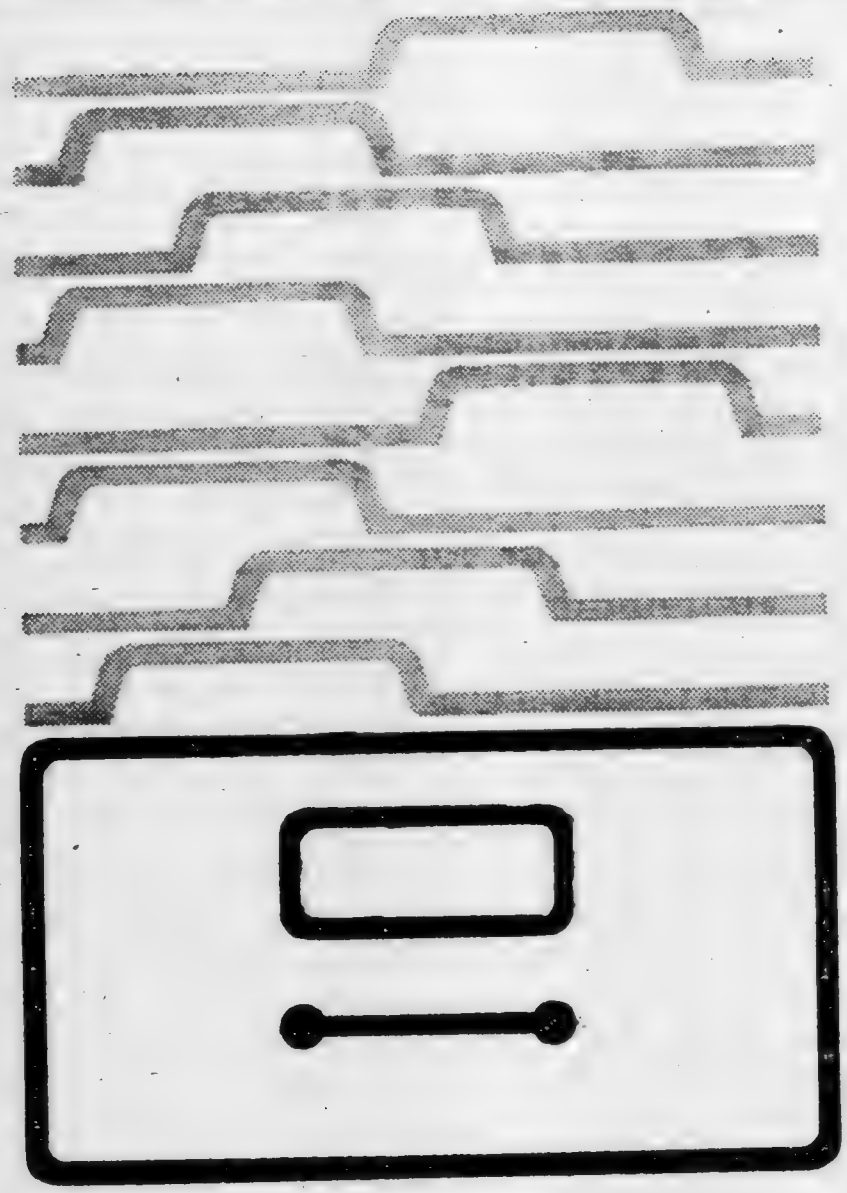

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Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan; Correction

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Correction to interim regulations.

SUMMARY: This document contains a correction to interim regulations which were published Friday, December 4, 1992, (57 FR 57321). The regulations related to the waiver of certain requirements for participants to obtain the signature of a spouse in connection with the withdrawal of funds from the Thrift Savings Plan.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942–1662 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The interim regulations that are the subject of this correction ensure that documentation submitted in support of waiver requests based on whereabouts unknown and exceptional circumstances is reliable.

Need for Correction

As published, the interim regulations revised § 1650.21(b) to include the introductory text of § 1650.21(c) but did not contain the instruction to delete the introductory text of § 1650.21(c).

Correction of Publication

Accordingly, the publication on December 4, 1992, of the interim regulations which were the subject of FR Doc. 92–29287, is corrected as follows:

§ 1650.21 [Corrected]

Paragraph 1. On page 57322 instruction 3 is amended to add at the end thereof "and the introductory text of § 1650.21(c) is removed."

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 92–30720 Filed 12–17–92; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 180

[CS–91–011]

Plant Variety Protection Act: Increase of Certification Fee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes the proposed rule published in the **Federal Register**, September 3, 1991, which proposed amending the regulations under the Plant Variety Protection act (Act) of 1970 as amended to issue corrected certificates rather than certificates of correction and to increase the fees for plant variety protection certification services to keep the administration of the Act self-supporting.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Evans; Commissioner; Plant Variety Protection Office; Science Division; Agricultural Marketing Service; National Agricultural Library Building; Room 500; Beltsville; Maryland 20705; telephone: (301) 504–5518.

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Act of 1970, as amended, (7 U.S.C. 2321 *et seq*) (Act) provides for the assessment and collection of reasonable fees for expenses incurred by the Department of Agriculture for the issuance of plant variety protection certificates and for related services. On December 22, 1987, the Act was amended to provide that fees, including late payments and accrued interest, shall be credited to the account that accrues the costs and shall remain available without fiscal year limitation to pay the costs incurred. Present fees will not cover the projected costs for fiscal year 1992. Therefore, the Department increases total fees for processing an application to $2,600. The Act also provides for issuing a corrected certificate when a correction is made in the certificate. The regulations are being changed to conform with the language of the Act to provide for the issuance of a corrected certificate. Previously the regulations provided for both corrected certificates and certificates of correction.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be "non-major." It will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in production costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor will it have a significant effect on competition, employment, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provision of this rule.

The Administrator of the Agricultural Marketing Service has determined that this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), because (1) the fee represents a minimal increase of $200 in the costs of developing and producing a new variety for the commercial market; and (2) competitive effects are offset under this voluntary program since charges are based on volume (i.e., the cost to users varies in proportion to the number of applications submitted).

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

From fiscal year 1981 to fiscal year 1984, the cost to the agency of processing an application was reduced

from approximately $3,600 to $2,000; and fees were increased from $750 to $1,500 and then in 1984 to $2,000 to make the program self-supporting. From the time of the 1984 fee increase to fiscal year 1988, operating costs attributed to the program rose 35 percent and fees were increased to $2,400 per certificate. Projected revenues for 1992 are estimated to be 10 percent below projected costs.

On February 6 and 7, 1991, the Plant Variety Protection Advisory Board (Board) met and was provided information concerning increased costs which would be incurred by the Department in processing an application for a plant variety protection certificate during fiscal year 1992. This information was provided to support the Plant Variety Protection Office's recommendation for a fee increase to fully fund the program. The Board recommended that fees be raised at this time, but indicated that some members felt that certain plant variety protection activities should be funded by appropriated funds, and that the program should be prepared to process an increasing number of applications.

Fees collected under the program must be sufficient to fully fund the costs of the program. Under legislation passed December 22, 1987, the Plant Variety Protection Office was converted to a user-fee trust fund program in which all moneys collected are deposited in an account designated for funding the program and are not returned to the general Treasury.

Therefore, in view of the increase in costs incurred by the agency, the Department proposes an increase in the fee charged per certificate from $2,400 to $2,600. This fee increase is necessary to keep the Plant Variety Protection Office funded on a fully user-fee basis to conform with the intent of the Act.

Alternatives to increasing the fees were considered by the agency, and found not to be feasible. For example, reducing agency staff would not be a feasible alternative to increasing fees since the output per person would stay the same. The backlog would increase as well as the time period ineligible varieties are protected under the protection-applied-for status. The financial burden of the Government also would be increased by the amount the backlog grows. In addition, reducing the staff would not decrease overhead or supervisory costs.

Also not viable as an alternative is reducing the amount of supervision and review of plant examiners' work by the Commissioner or eliminating the placement of information on new varieties in the computer file Either of these actions would increase the probability of issuing certificates on ineligible applications, which would adversely affect the integrity of the program.

No comments were received on the proposed rule published on September 3, 1991, in the **Federal Register**. Accordingly, the regulations are amended as provided in this final rule.

List of Subjects in 7 CFR Part 180

Administrative practice and procedure, Labeling, Plants.

Accordingly, for the reasons set forth in the preamble, 7 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: Secs. 6, 22, 23, 26, 31, 42(b), 43, 56, 57, 91(c), 84 Stat. 1542; 7 U.S.C. 2326, 2352, 2353, 2356, 2371, 2402(b), 2403, 2426, 2427, 2501(c); 29 FR 16210, as amended, 37 FR 6327, 6505; U.S.C. 2371.

2. Sections 180.120 and 180.121 are revised to read as follows:

§ 180.120 Corrected certificate—Office mistake.

When a certificate is incorrect because of a mistake in the Office and upon return of the certificate to the Office, the Secretary may issue a corrected certificate stating the fact and nature of such mistake, without charge, to be issued to the owner in accordance with section 84 of the Act and recorded in the Office.

§ 180.121 Corrected certificate—applicant's mistake.

When a certificate is incorrect because of a mistake by the applicant of a clerical or typographical nature, or of minor character, or in the description of the variety (including, but not limited to, the use of a misleading variety name or a name assigned to a different variety of the same species), and the mistake is found by the Office to have occurred in good faith and does not require a further examination, the Secretary may, upon payment of the required fee and return of the original certificate, correct the certificate by issuing a corrected certificate, in accordance with section 85 of the Act. If the mistake requires a reexamination, a correction of the certificate shall be dependent on the results of the reexamination.

3. Section 180.175 is revised to read as follows:

§ 180.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying public of filing	$275
(b) Search or examination	2,050
(c) Allowance and issuance of certificate and notifying public of issuance	275
(d) Revive an abandoned application	275
(e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material)	1
(f) Authentication (each page)	1
(g) Correcting or reissuance of a certificate	275
(h) Recording assignments (per certificate/application)	25
(i) Copies of 8 × 10 photographs in color	25
(j) Additional fee for reconsideration	275
(k) Additional fee for late payment	25
(l) Additional fee for late replenishment of seed	25
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)	2,600

(n) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(o) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $40 per employee-hour.

* * * * *

Dated: December 11, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92-30691 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 340]

Food Stamp Program; Employment and Training Provisions From the Mickey Leland Memorial Domestic Hunger Relief Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On August 15, 1991, the Department published a rulemaking that proposed several provisions affecting the Food Stamp Program's Employment and Training (E&T) requirements based upon provisions from the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101-624, November 28, 1990). The rulemaking also proposed to change the date by which the State agencies must submit E&T

plans to the Department. In addition, the rulemaking proposed to change to the current procedures for handling certain child care reimbursements which are issued by the Aid to Families with Dependent Children Program (AFDC). This rule addresses significant comments and finalizes certain provisions in the proposed rulemaking. A technical correction is also included in this rule.

EFFECTIVE DATE: The provisions at § 273.7(d)(1)(i) (A) and (B) are effective retroactive to October 1, 1991. The provision at § 273.7(c)(4)(viii) is effective January 19, 1993 and must be implemented by August 15, 1993. The provision at § 273.10(d)(1)(i) is effective and must be implemented by March 1, 1993. All other provisions are effective and must be implemented retroactively to February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2762.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum No. 1512–1

This final rule has been review under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities);

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Phyllis R. Gault, Acting Administrator of the Food and Nutrition Service (FNS), has certified that this action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected because they administer the Program.

Paperwork Reduction Act

This final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Title: Application Processing.

Description: The burden associated with Program application and application processing and the eligibility, certification, and continued eligibility of Program applicants is currently approved under OMB No. 0584–0064. The requirement in § 273.1(d) of this final action that specifies that certain households must be allowed to choose their "head of household" does not alter or change the current burden estimates for applicant households. Current burden estimates already take into consideration that a "head of household" must be designated for every household by the State agency or the household, as required by regulation.

The requirement at § 273.1(d) in this final rule specifies that the State agencies must provide a written notice to all households as appropriate. The notice must identify which households have the option to select their head of household, the circumstances under which a household may change its designation, and how such changes must be reported to the State agency. It is anticipated that the State agencies will choose to implement this requirement by revising their notices for advising recipients of their rights and responsibilities. The estimated reporting burden for this provision is minimal. Because the estimated burden is minimal, it will be submitted to OMB for approval along with the Department's upcoming revision to all burdens associated with OMB No. 0584–0064, which expires in the near future.

Title: Revision to E&T Plan.

Description: State welfare agencies are required, pursuant to 7 CFR 272.2 to plan and budget program operations and establish objectives for the next year. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, the Program Activity Statement, and certain attachments as specified at 7 CFR 272.2 (c) and (d). One such attachment to the Plan of Operation is the E&T plan.

This final rule contains a requirement at § 273.7(c)(4)(viii) which requires that the State agencies specify their methodology for reporting accurate work registrant information. The requirement at § 273.7(c)(4)(viii) of this action does not alter or change current burden estimates approved under OMB No. 0584–0083 for the overall Plan of Operation. Certain portions of the State Plan are required to be updated annually; including the E&T plan, while others are required to be updated when a significant change occurs. The revision to the Plan of Operation that may result from this action is not required to be submitted separately from the annual update. The current burden approval for the Plan of Operation estimates that State agencies will submit State Plan of Operation revisions or updates to various components of the

State Plan of Operation at least once annually, regardless of the reason for the revision/update.

Description of Respondents: 53 State Welfare Agencies.

Estimated Annual Reporting and Recordkeeping Burden: Current burden estimates associated with the need for 53 State welfare agencies to submit revisions/updates on various components of the State Plan of Operation at least once annually is estimated to average 10 hours, per respondent, for a total burden of 530 hours annually.

Background

The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) was enacted on November 28, 1990. Title XVII of this Act, entitled the "Mickey Leland Memorial Domestic Hunger Relief Act", contains numerous provisions affecting the Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032).

On August 15, 1991, the Department published a rulemaking (56 FR 40570) that proposed to implement provisions of Public Law 101–624 affecting the Food Stamp Employment and Training (E&T) Program. The proposal would: (1) Amend the definition of head of household designation for E&T and voluntary quit purposes; (2) change the current formula for distributing the non-performance based portion of the $75 million Federal E&T grant; (3) expand the E&T program to include literacy and self-employment training as E&T components; and (4) allow two State agencies, with prior approval by FNS, to provide priority service to volunteers. The proposed rule also included two administrative provisions and several technical amendments. This action incorporates comments on the proposed rule and puts a number of the proposed amendments into final regulatory form.

The Department received nineteen comment letters on the proposed rule. Most of the comments were from State welfare agencies. The Department also received comments from two public interest groups and one State Legislature. The comments were thorough and well documented and the Department appreciates the effort which went into their preparation and submission. All comment letters received by September 16, 1991 were given full consideration for inclusion in this final rulemaking. All others were read and considered.

The provisions of this final rule are discussed in this preamble. For supplementary information on the issues involved, the reader should refer to the preamble of the proposed rule (56 FR 40570), which discusses related policy issues and contains the rationale for the content of the rule.

Designating the Head of Household—7 CFR 273.1(d)

In accordance with the amendment made by Section 1725 of Public Law 101–624, the proposed rule included a provision that would allow households to select an adult parent of children as the head of household provided all the adult household members agree to the selection. The selection could be made at each certification action or whenever there is a change in household composition.

The Department received numerous comments objecting to this provision. Most expressed concern that the provision would increase work for caseworkers, confuse food stamp applicants, complicate verification requirements and delay certification actions. The commenters also asserted that the provision would complicate current policy by allowing some households the right to designate their head of household, while the principal wage earner would be the criteria imposed on others to determine the head of household. Commenters further expressed concern that the provision would undermine program integrity by allowing certain households to select someone other than the principal wage earner as their head. To lessen the complexity of the provision, some commenters suggested that all households be given the same right of selection.

The Department recognizes that the policy surrounding the head of household designation is complex. However, Section 1725 of Public Law 101–624 clearly limits the designation selection to households with adult parents of children. Although the proposed rule would have applied the selection option to adults who have parental control over children, any further extension would exceed Congressional intent. Also, as discussed in the preamble to the proposed rule, allowing all households the option to designate their head would further undermine the intent of the voluntary quit provisions under section 6(d) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(d)).

Accordingly, the Department is adopting the proposed version of 7 CFR 273.1(d) specifying that the State agency must provide households with an adult parent of children or an adult who has parental control over children the option of selecting such a person as the head of household.

In response to concerns that the provision may delay the application process, the Department is amending 7 CFR 273.1(d) in this final rule to specify that the State agency shall not deny an otherwise eligible household or delay the certification action if the household fails to designate its head of household. Households that fail to select an adult parent as head shall lose their right to this delegation option and shall be treated in accordance with current rules as specified at 7 CFR 273.1(d). In these instances, the State agency would designate the household's principal wage earner as the head of household if E&T or voluntary quit violations occur.

As previously discussed, households must be allowed to re-designate their head of household at each certification action or whenever there is a change in household composition. One commenter suggested that the household should only be allowed to re-designate a new head of household whenever there is a change in the adult members of the household.

The Department believes that the law is specific in allowing the option for a household to select an adult parent as its head whenever there is any change in household composition. Even though the addition of a non-adult member would not change the household's composition of adult members, the addition may cause household responsibilities to shift in a manner that would result in the household's desire to re-designate its head. For instance, a household may want to re-designate a husband as its head of household when the wife, who was previously designated as the head, gives birth to a child. Accordingly, the Department is adopting 7 CFR 273.1(d)(1), in this final rule to specify that households have the option of designating an adult parent of children, or an adult who has parental control over children, whenever there is a change in household composition.

Several commenters suggested that the regulation specify that there is no age limit. Because the statutory amendment under section 1725 of Public Law 101–624 does not include an age limit with respect to parental control, the Department is modifying the proposed rule at § 273.1(d)(1) to specify that, regardless of the child's age, households may select an adult parent of children as the head of household. However, because parental control is limited to control of children under 18 years of age, the final rule is also modified to specify that the household may select an adult who has parental control over children under 18 years of age.

Many commenters requested clarification on the proposed notice requirements associated with the head of household designation option. As proposed at § 273.1(d)(1), the State agencies would have to advise all households in writing at the time of application and as otherwise appropriate of the option certain households have in selecting their head of household. The notice would have to clearly identify those households which have the option, when the option is available, and how changes in the head of household designation must be reported to the State agency.

Commenters requested guidance on how agreement of all adult household members should be documented or verified. One commenter asked if the State agency could establish a timeframe for household responses. One commenter asked if the proposed provision required a new consent form. One commenter asked if a signed agreement would be required from all adult household members. Another commenter suggested that the Department require the notice to state why the head of household selection is made and what effect the decision could have on the household if the selected head failed to cooperate with E&T requirements or voluntarily quit a job.

The Department would like to give the State agencies flexibility in designing their notice or verification requirements. Therefore, provided all households are notified of the designation option as stated in the proposed rule at § 273.1(d)(1), a State agency may determine how to document the household's designation within its own application and notice requirements. The notice can be combined with other notices, included on the application or a stand alone document. The State agency may further determine how to document or verify the consent of all household adults. Although the Department does not believe all adult members must sign a statement indicating their concurrence with the selection, State agencies may develop these procedures if they so desire. However, as previously stated, these procedures must not delay the household's certification or result in denied benefits if the verification is not returned within the application processing timeframes. Accordingly, the proposed notice requirement at § 273.1(d)(1) is adopted in this final rule without change.

In the event that all adults do not agree to the selection, the proposed rule at § 273.1(d)(1) specified that the State agency would designate the head of household or allow the household to make another selection. One commenter suggested that the Department clarify what other selections are available or specify that the State agency shall make the designation when the adult members cannot agree. Another commenter maintained that the State agencies should not have the authority to designate the head of household if the adult household members do not agree to the selection because the option will result in too many variations.

Under current rules at 7 CFR 273.1(d), the State agency may select the head of household or allow the household to do so. The intent of the proposed rule was to allow the State agencies to revert to these current procedures whenever a household which has the option to select an adult parent as its head fails to do so. Therefore, the State agencies have the flexibility to implement a policy which, in these instances, allows: (1) The State agency to designate the head of household; or (2) allows the household to make another selection.

Accordingly, the Department is adopting the proposed provision at § 273.1(d)(1) that specifies what action must be taken if all adult members do not agree to the selection in this final rule. The Department believes the proposed procedures provide the State agencies with flexibility and lessen administrative complexities.

Under section 1725 Public Law 101–624, households must be permitted to select an adult parent of children as their head of household. The Department's proposal would have applied the option to designate a head of household to adults who have parental control over children. One commenter requested that the Department define "parental control." Another commenter asked if parental control would have to be verified.

The Department is not including a definition of "parental control" in this final rulemaking. However, the Department's policy has been that parental control refers to adults who supervise minors who are dependents, financial or otherwise, of the household as opposed to independent units.

The final rule does not require the State agencies to verify parental control. The State agencies may establish verification requirements if they wish provided that certification is not delayed or denied for lack of verification of parental control.

One commenter questioned whether or not the proposed provision would affect the current regulation at 7 CFR 273.1(d)(2) that prohibits the State agency from designating a child of any age as the head of household if certain conditions exist. As specified under this current rule, these conditions exist if the child is living with a parent, or person fulfilling the role of a parent, who is registered for work or exempt from work registration requirements because the parent is: (1) Subject to and participating in any work requirement under Title IV of the Social Security Act; (2) in receipt of unemployment compensation; (3) registered for work as part of the unemployment compensation or has registered for work as part of the application process; or (4) employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours. Although the proposed rule did not address the effect the designation option would have on this current rule, the Department believes that this sentence must be revised to clarify that the household has the choice to select an adult parent as its head of household even if the adult parent meets the conditions specified in the current regulations. Therefore, the final rule amends § 273.1(d)(2) to clarify that the household has the option to select an adult parent who meets the criteria specified under this section as its head of household if all adult members of the household agree to this selection.

The proposed rule included an amendment to § 273.7(g) specifying the effect the statutory provision will have in situations when a noncompliant head of household moves from one food stamp household to another. Under current rules, a sanction is imposed on the new household if the new member is designated as the head of household. The proposed rule specified that the new member could not be designated as the head of household by the State agency in instances where the new household has already selected an adult parent as its head *unless* the new household elects to choose the newly joining individual as its head.

Several commenters expressed their support of this provision. Accordingly, the Department is adopting the amendments at 7 CFR 273.7(g) as proposed in this final rule.

Many commenters submitted a number of specific questions related to the designation of the head of household. The Department is providing the following responses to these questions.

Question—Is the household allowed to designate someone other than the adult parent of children as the head of household? For example, if the household does not want the adult parent as its head, can the State agency allow the household to select someone else?

Answer: Yes, the State agency may allow the household to select someone else if the household does not want to select the household's adult parent of children as its head. However, for the purposes of determining compliance with E&T and voluntary quit provisions, the State agency must consider the household's principal wage earner as the head of household unless the household selected an adult parent of children.

Question: Does the new head of household rule take precedence over the principal wage earner?

Answer: The State agency may not designate the household's principal wage earner as the head of household if the household has selected another adult parent of children as its head.

Question: May a household which has an adult parent of children who is the principal wage earner designate a different adult parent of children as the head of household? If so, would the entire household be disqualified if the principal wage earner voluntarily quit a job?

Answer: The household may select any adult parent of children as its head of household provided all adult household members agree to the selection. If the household selected an adult parent of children as its head of household over the household's principal wage earner and the principal wage earner quit his or her job, the State agency would have to consider the selected adult parent as the head of household when determining if a voluntary quit violation occurred. In this instance, a voluntary quit violation does not exist because it was not the head of household who quit the job.

Question: Is a designation binding for sanction purposes if the adult household members do not agree to select the adult parent of children as the head and the State agency designates another head of household?

Answer: The State agency shall consider the principal wage earner as head of household for E&T and voluntary quit unless the household has selected an adult parent of children as its head and all adult members agree to the selection. The selection would then be binding.

Question: Why is the household's selection as head of household required in project areas in which no E&T program exists?

Answer: The consequences of establishing the head of household extend beyond the scope of the E&T program. The new provisions affect the voluntary quit requirements as specified at 7 CFR 273.7(n). They also apply, as specified under § 273.7(g) in this final rule, when a head of household, who has been sanctioned for either an E&T or voluntary quit violation, moves to another household. If the household receiving the sanctioned individual is deprived of its right to select its head, because no E&T program is operating in its project area, the household receiving the sanctioned head of household may be disqualified from the program.

If given the option, the household might have selected an adult parent in the household its head rather than have the new member, by virtue of his or her wages, be designated as head.

Distribution of Nonperformance-Based Federal E&T Funds—7 CFR 273.7(d)

The proposed rule included a provision from section 1753 of Public Law 101–624 which requires the Department, as of Fiscal Year 1993, to distribute the nonperformance-based Federal E&T grant ($60 Million) on the basis of each State agency's percentage of work registrants compared to the number of work registrants nationwide. Prior to this amendment, the Department distributed the nonperformance-based portion of the E&T grant based on each State agency's average monthly caseload as a percentage of the average monthly caseload nationwide. As required under section 1753 of Public Law 101–624, the Department implemented, or phased in, the new allocation formula in Fiscal Year (FY) 1992. Under the phase in provisions of the law, the FY 1992 allocations were based on each State agency's work registrant and caseload populations with additional adjustments mitigating the losses of States which would receive allotments of less than $50,000. Funds were allocated solely on the work registrant population in FY 1993.

Many commenters support the formula specified under Public Law 101–624 because it distributes E&T funds on the basis of each State agency's proportion of the work registrant population served in the E&T program. Even so, some commenters suggested that the Department implement additional modifications to the formula. One commenter suggested that the formula take into consideration the number of work registrants who are exempted from participation (e.g., geographic or individual) under the State agency's approved E&T plan. Because a number of State agencies receive approval from the Department to exempt a significant portion of their work registrant population, the commenter stressed that this modification would further direct E&T funds to those States which have the greatest need for the funds, based on their proportion of work registrants. Another commenter recommended that the formula also include recipients who are exempt from work registration but who request to participate in the E&T program (i.e., exempt volunteers).

The Department agrees that a formula directing E&T funds towards actual participants may result in an equitable distribution of the funds. However, these suggestions are not being adopted. It is the Department's opinion that section 1753 of Public Law 101–624 specifically requires *all* work registrants to be included in the formula for allocating E&T funds and does not mention including volunteers in the calculation. In addition, counting volunteers in the formula is inequitable to State agencies that are serving only their work registrant population. Accordingly, the Department is not amending the proposed provisions at § 273.7(d)(1) to incorporate these suggestions.

The proposed language at § 273.7(d)(1)(i)(A) specified that, by using the work registrant data from the most recent Federal fiscal year, the E&T nonperformance-based grants would be allocated on the basis of the average monthly number of work registrants in each State as a percentage of the average monthly number of work registrants nationwide. Two commenters questioned how the Department would determine a monthly average when the FNS Form 583 requires a total count of work registrants in the month of October and new work registrants in the remaining eleven months. The commenters also noted that the preamble to the proposed rule did not discuss that a monthly average would be used. The preamble indicated that each State agency's percentage of work registrants from the most recent Federal fiscal year would be used.

The Department intended to specify, as discussed in the preamble to the proposed rule, that work registrant data reported in the most recent Federal fiscal year would be used to determine each State agency's percentage of work registrants. The Department agrees that the 583 database does not produce a monthly average because the same work registrant data is not reported in all twelve months of the fiscal year. Accordingly, the Department is amending the proposed provision at § 273.7(d)(1)(i)(A) to specify that, effective in FY 1992, the E&T grants shall be allocated on the basis of work registrants in each State agency as a percentage of work registrants nationwide.

When allocating the nonperformance-based E&T funds to the State agencies, the Department proposed to use work registrant information that is reported, on a quarterly basis, through FNS Form 583. The FNS Form 583 identifies the number of work registrants in the State as of October 31st, and all new work registrants that are certified in the remaining eleven months of the fiscal year. Even though the 583 database is the most reliable source of work registrant information, the Department acknowledged that certain reporting practices would result in some State agencies overreporting their work registrants numbers. To address this concern, the proposed rule included provisions which would require State agencies that universally work register or double count work registrants within a fiscal year to specify in their E&T plans their methodology for adjusting their work registrant figures.

The Department received many comments with respect to the use of the 583 database. Most expressed concern that the database is unreliable and, if used as the basis for allocating E&T funds, would result in an equitable distribution. Many commenters pointed to the wide variations in the percent of work registrant populations that existed in the 583 database used for the FY 1992 allocations as an example of problems with the 583 database. Because of these concerns, some commenters recommended that the Department delay the implementation of the new allocation formula until a reliable work registrant database exists. Others suggested that the Department take additional measures, such as validating the work registrant populations in State agencies that report substantial increases in their work registrant populations. One commenter also suggested that *aln* State agencies specify how work registrant information is collected and what measures are taken to adjust for overreporting or double counting within a fiscal year.

Given the provisions specified under section 1753 of Public Law 101–624, the Department does not have the option of delaying the implementation of the allocation formula or substituting another database that does not reflect work registrant information. However, the Department shares the commenters' concerns that the 583 database is valid and has taken numerous steps, in addition to the proposed provisions, to correct apparent discrepancies. Discrepancies that existed in the database used for the FY 1992 allocations were corrected and the State agencies were notified of the resulting adjustments to their allocations. FNS Regional Offices also conduct a Management Evaluation review of work registrant reporting systems if a State agency's reported percentage of work registrants compared to caseload is outside the range of 6 to 10 percent. The Department believes that these activities help ensure that reliable work registrant data is used.

The Department also concurs that all State agencies should identify their procedures for collecting work registrant data and ensuring that individuals are not counted as work registrants more than one time in each fiscal year. This will allow the Department to scrutinize each State agency's methodology and resolve any problems if it is determined that questions exist with the work registrant figures reported on the FNS Form 583. Accordingly, the Department is amending the proposal at § 273.7(c) in this final rule to specify that the E&T plan must describe the State agency's method for collecting and reporting accurate work registrant information.

Under the proposed rule, the Department specified that FNS reserves the right to adjust a State agency's figure if it is determined that the State agency's work registrant data is questionable or unacceptable. The State agency would have 30 days to submit revised figures that satisfy the Department's concern.

One commenter suggested that the State agency be provided with an opportunity to respond to the Department's concern before it takes place. Another commenter stated that the Department should define "questionable" and "unacceptable." One other commenter maintained that the procedures for correcting duplicate counts will delay notification to the State agencies of their E&T allocations.

It is the Department's intention that the State agency would be notified of the Department's proposed adjustment before it takes place so that it has an opportunity to respond to the Department's concern. This will expedite the resolution of contested work registrant data by allowing the State agency to respond to the Department's adjustment in its submittal of another methodology. With respect to suggested definitions, the Department does not believe a regulatory definition for "questionable" or "unacceptable" work registrant data is workable or appropriate. The Department will clearly inform the State agency of the reasons its work registrant data is considered questionable or unacceptable as the situation warrants. The Department is therefore adopting the proposed amendment at § 273.7(c)(4)(viii) in this final rule without change.

Expansion of E&T Programs—7 CFR 273.7(f)(1)

In accordance with section 1726 of Public Law 101–624, the Department proposed changes to 7 CFR 273.7(f)(1) to add two new activities to the list of potentially approvable E&T components. The first is any educational component that will improve a participant's literacy. The second is a component designed to improve the self-sufficiency of recipients through self-employment programs including programs that provide instruction for self-employment ventures.

All the comments received on this provision were in support of the Department's proposal. However, since the publication of the proposed rule, the Department published final regulations (56 FR 55052) on October 24, 1991 that amend 7 CFR 273.7(f)(1)(vi) to specify that a remedial education program designed to achieve a basic literacy level is an acceptable educational program. The Department is amending 7 CFR 273.7(f)(1) in this final action to specify that programs designed to improve the self-sufficiency of recipients through self-employment programs is a potentially acceptable E&T component.

Priority Volunteer Service—7 CFR 273.7(f)(5)

As specified under section 1726 of Public Law 101–624, the proposed rule contained a provision that would allow two State agencies, upon FNS approval, to give priority service to food stamp participants who volunteer to participate in E&T provided that the State agencies continue to meet nationally established performance standards. Once an application is approved, the State agency may provide service to volunteers (exempt and non-exempt) through September 30, 1995.

Several commenters objected to the Department's decision to limit the number of applications to two, when, as specified under Public Law 101–624, the authority exists to approve more. Some commenters maintained that the results from more than two voluntary programs would be necessary for the Department to adequately assess voluntary programs. One commenter further suggested that the Department publish a Notice in the Federal Register inviting State agencies to apply for approval to conduct voluntary E&T service if at least two applications are not received within the proposed 90-day period.

The Department does not intend to approve more than two applications at this time. It is the Department's opinion that two programs will be sufficient to examine the effect of volunteer service.

Accordingly, the final rule adopts the proposal at 7 CFR 273.7(f)(5), specifying that the Department will approve two acceptable applications for priority volunteer service. As previously discussed in the preamble to the proposed rule, the Department will review all applications received within 90 days after the publication of this final rule. If two approvable applications are not received within this time period, the Department will continue to accept and review applications until two applications are approved.

The preamble to the proposed rule discussed the current definition of exempt and non-exempt volunteers at 7 CFR 273.7(f)(4) of the regulations. A number of commenters stressed that this definition is too restrictive and would not allow the State agencies to effectively provide volunteer service when established performance standards must be met. Rather than apply the current definition of volunteer, several commenters suggested that the Department conform the definition of volunteer to that used by the Job Opportunities and Basic Skills (JOBS) program.

The JOBS program encompasses the work requirement for Aid to Families with Dependent Children (AFDC) recipients as specified under Title IV F of the Social Security Act (42 U.S.C. 681). As specified under 45 CFR 250.31 of the JOBS program regulations, a volunteer could be a recipient who is not exempt from work requirements but chooses to participate in the JOBS program prior to being assigned to a JOBS activity on a mandatory basis. Commenters stressed that this would allow the State agencies to serve a significant volunteer population while meeting required performance standards. Mandatory work registrants could volunteer to participate without first completing an E&T component on a mandatory basis.

The Department agrees that, to effectively provide priority service to volunteers while still meeting applicable performance standards, some deviation from current policy must be allowed. It was the Department's intention in the proposed rule to allow State agencies flexibility in defining their volunteer population for priority volunteer service. Accordingly, the final rule amends the proposal at § 273.7(f)(5)(i)(A) to clarify that the State agencies submitting an application for priority service to volunteers have the flexibility to define their volunteer population, with certain restrictions, as discussed below.

One commenter recommended that the regulations clarify that AFDC recipients who are exempt from work registration because they are subject to JOBS requirements could volunteer for priority volunteer service. One other commenter expressed support for the provision if it would allow the State agencies to leverage JOBS funding and count participation in both programs.

It is not the Department's position that JOBS participants may be considered E&T volunteers unless the JOBS participants are assigned to an E&T activity that is separate from the assignment under the JOBS program. For example, a JOBS participant assigned to an education component could volunteer for an E&T Job Club component. However, a JOBS participant assigned to an education component under the JOBS program could not be considered an E&T volunteer in the same education component that is operated through the E&T program. Counting the same activity in both programs would misrepresent program participation for both the JOBS and E&T programs.

As specified under current regulations at 7 CFR 273.7(f)(4)(ii), any food stamp recipient who is exempt from food stamp work registration may volunteer for the E&T program. Accordingly, the final rule does not amend the proposal at § 273.7(f)(5) and continues to allow a State agency discretion in defining its volunteer population.

The Department's proposed rule identified the required information a State agency's application must contain for it to be approvable. Very few comments were received on the proposed application requirements. However, two commenters objected to the requirement that, without an increase in funding, the State agency obtain an outside agency to provide an evaluation of its volunteer service.

As discussed in the preamble to the proposed rule, there is considerable debate surrounding the merits of a voluntary program over a mandatory program. Because the provisions of section 1726 of Public Law 101–624 represent the first major change from the mandatory nature of the E&T program, the Department believes it is important that the approved volunteer programs be evaluated by an objective organization outside of the State agency operating the program. Although no additional funds were provided under Public Law 101–624 for the implementation or operation of the priority volunteer service experiments, a State agency may, as stated in the preamble to the proposed rule, include the costs of the evaluation as part of its E&T program costs.

The Department intends to allow State agencies discretion in defining what aspects of volunteer service the evaluation will study. A State agency may design the evaluation to study its primary reason for providing priority service for volunteers. Other aspects of priority service to volunteers would not necessarily need to be included in the evaluation. For instance, the State agency may want to assess if voluntary participants, who are under no obligation to participate in the E&T program, benefit more from the completion of an E&T component over mandatory participants who may lose their benefits if they fail to comply with the E&T components. Such a benefit could be measured by test scores taken before and after a participant completes the component. The State agency may also want to assess the degree to which volunteers begin or complete component activities when compared to mandatory participants. These are examples of information that may be useful in assessing the potential benefits of providing priority volunteer service in the E&T program.

Accordingly, the proposed provisions at § 273.7(f)(5)(i) and § 273.7(f)(5)(ii) are adopted in this final rule with one additional change. The change in the final rules at § 273.7(f)(5)(i)(E) requires the State to identify a recommended research design in its application that will be used to evaluate priority volunteer service. This information will provide the Department with sufficient information when approving applications for priority service.

Due Date for Plan Submissions—7 CFR 273.7(c)(5)

The proposed rule included a provision that would allow the Department additional time to approve E&T plan submittals by requiring the State agencies to submit their E&T plans to the Department no later than 60 days prior to the applicable fiscal year. As specified under 7 CFR 273.7(c)(5) of the regulations, State agencies currently must submit their E&T plans 45 days (August 15) prior to the beginning of the fiscal year.

Some commenters supported the provision, provided the Department notifies the State agencies of their E&T allocations and other pertinent E&T plan instructions in sufficient time for the State agencies to meet the deadline. Other commenters objected to the proposal because the change would complicate program coordination and

may not provide sufficient time for the State agencies to submit their plans.

It has been common in the past for State agencies to miss the August 15 deadline. In such cases it is often difficult to conduct a thorough review, obtain necessary clarifications, and approve these plans prior to the beginning of the upcoming Federal fiscal year. The Department believes that the proposal would lessen the administrative and financial complexities that are created when plan approval are not finalized by the beginning of the Federal fiscal year. However, because of the objections to this proposal and the difficulties some commenters believed it would create, the Department is withdrawing its proposal to change the deadline for submitting E&T plans. This final rule does not amend current rules at 7 CFR 273.7(c)(5).

Transitional Child Care Expenses—7 CFR 273.10(d)(1)(i)

On October 13, 1988, Public Law 100–485, the Family Support Act of 1988, was enacted. Title II of the Act (42 U.S.C. 602) establishes the JOBS program. Title III of the Act, Supportive Services for Families, provides for Transitional Child Care (TCC), extended child care for eligible families which have ceased to receive AFDC as a result of the increased hours or increased income from employment. Title III of the Family Support Act also specifies that any money received as payment for child care or any reimbursement for costs incurred for child care shall not be treated as income for purposes of any other Federal or federally-assisted program that bases eligibility for, or the amount of benefits, upon need, such as the Food Stamp Program.

Under current food stamp policy, AFDC TCC payments are treated neither as income nor as a reimbursement. Households that pay child care providers directly and receive AFDC TCC payments may receive a dependent care deduction from income for the amount of the child care costs, up to the regular limit. In the more common situation where a household's child care expenses are paid directly to the child care provider, a deduction is not allowed because the household does not pay the expense. This uneven treatment is not consistent with other food stamp policy concerning reimbursement for expenses. In order to make the policy internally consistent, treat day care recipients more equitably, and conform Food Stamp policy with AFDC, the Department proposed at 7 CFR 273.10(d)(1)(i) to treat these funds as a reimbursement, which allows a deduction only for the portion of child care expenses not reimbursed by JOBS or TCC.

The Department received five comments on this proposal. Four commenters were State agencies; one was a public interest group. Two State agencies supported the provision. Commenters who opposed the provision believed that TCC should be treated in the same manner as the Low Income Home Energy Assistance Program (LIHEAP) payments. Households which receive LIHEAP are also entitled to receive a deduction for the standard utility allowance. The Department believes that these are not analogous payments. The special provisions that allow households to have their utility expenses reimbursed with LIHEAP and also to receive a standard utility allowance deduction are mandated by section 5(e) of the Food Stamp Act of 1977, as amended. There is no legislative provision that provides for both an income exemption for the TCC payments and for the payments not to be treated as a reimbursement. Accordingly, the Department is adopting 7 CFR 273.10(d)(1)(i) as proposed in this final rule.

Technical Amendments

E&T Plans

The rule proposed two technical changes regarding the submission of E&T plans. The first change concerned current regulations at 7 CFR 273.7(c)(4) which state that interim E&T State plans are due to the Department by March 1987. This provision reflects the initial plan requirements for the E&T program. The proposed rule would have removed this date as well as other outdated references to the initial start-up of the E&T program.

The second change concerned current regulations at 7 CFR 273.7(c)(5) which specify that plans shall be submitted "biannually" beginning with FY 1991. The Department intended that plans be submitted "biennially" (i.e., every two years) not "biannually" (i.e., twice a year). The proposed rule would correct this mistake. Also, the submission of plans on a biennial basis began prior to FY 1991. The proposed rule would also correct this technical error.

No comments were received on either of the proposed technical changes. Therefore, the proposed amendments contained in 7 CFR 273.7(c) (4) and (5) are adopted as final without change by this final action.

Plan of Operation Submission Requirements

Food Stamp Program regulations at 7 CFR 272.2(e) specify the submission requirements of the State Plan of Operations which includes the State E&T plan. The proposed rule would amend § 272.2(e) to specify that the E&T plan must be submitted in accordance with 7 CFR 273.7(c)(5). This conforming amendment does not propose to change the current submission requirements specified at 7 CFR 273.7(c)(5).

No comments were received on this proposed technical amendment. Therefore, the proposed amendment contained in 7 CFR 272.2(e) is adopted without change by this final action.

Technical Correction—7 CFR 273.7(g)

A final rule published on October 24, 1991 (56 FR 55052) inadvertently removed language at 7 CFR 273.7(g)(1)(i) that clarified that noncompliant household members who join other households as nonheads of household are to be ineligible for two months. This sanction provision is prescribed by the statute and was implemented by a final rule published on August 15, 1990 (55 FR 33275). This final rule corrects this technical error by replacing the language that was unintentionally removed.

Implementation

In accordance with section 1781 of Public Law 101–624, the provisions at § 273.7(d)(1)(i)(A) and (B) which specify that the non-performance portion of the Federal E&T grant be distributed on the basis of each States agency's proportion of food stamp work registrants were effective and implemented by the Department on October 1, 1991. The provision at § 273.7(c)(4)(viii) which identifies information that must be included in the State agency's E&T plan is effective and must be implemented by August 15, 1993, the date the E&T plan must be submitted to FNS. The provision at § 273.10(d)(1)(i) which pertains to the treatment of certain child care reimbursements is effective 30 days after publication and must be implemented the first of the month following 45 days after publication of this rule. All other provisions contained in this rule are effective and must be implemented retroactively to February 1, 1992, as specified under section 1781 of Public Law 101–624.

In a March 4, 1992 memorandum to the FNS Regional Offices, the State agencies were instructed to implement the provisions at § 273.1(d), related to the households' option to designate their head of household, retroactively to

February 1, 1992. In accordance with guidance provided in this memorandum, the State agencies are not required to conduct a case file review of certification actions made since February 1, 1992.

Variances resulting from implementation of the provision regarding transitional child care shall be excluded from error analysis for 90 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii).

List of Subjects

7 CFR part 272

Alaska, Civil rights, Food Stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for parts 272 and 273 continue to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(127) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(127) *Amendment No. 340.* (i) The provisions at § 273.7(d)(1)(i)(A) and § 273.7(d)(1)(i)(B) are effective retroactive to October 1, 1991.

(ii) The provision at § 273.7(c)(4)(viii) is effective and must be implemented by August 15, 1993, the date E&T plans must be submitted to FNS.

(iii) The provision at § 273.10(d)(1)(i) is effective January 19, 1993 and must be implemented by March 1, 1993.

(iv) The remaining provisions of Amendment No. 340 are effective and must be implemented retroactively to February 1, 1992.

(v) Any variances resulting from implementation of the provision at § 273.10(d)(1)(i) shall be excluded from error analysis for 90 days from the required implementation date in accordance with 7 CFR 273.12(d)(2)(vii).

3. In § 272.2, a new paragraph (e)(9) is added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(e) *Submittal Requirements.* * * *

(9) The Employment and Training Plan shall be submitted as specified under § 273.7(c)(5).

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1, paragraph (d)(1) and the first and fourth sentences of paragraph (d)(2) are revised to read as follows:

§ 273.1 Household concept.

* * * * *

(d) *Head of household.* (1) A State agency shall not use the head of household designation to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits. When designating the head of household, the State agency shall allow the household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult household members agree to the selection. The State agency shall permit such households to select their head at each certification action or whenever there is a change in household composition. The State agency shall provide written notice to all households at the time of application and as otherwise appropriate that specifies the household's right to select its head of household in accordance with this paragraph. The written notice shall identify which households have the option to select their head of household, the circumstances under which a household may change its designation of head of household, and how such changes must be reported to the State agency. If all adult household members do not agree to the selection or decline to select an adult parent as the head of household, the State agency may designate the head of household or permit the household to make another selection. In no event shall the household's failure to select an adult parent of children or an adult who has parental control over children as the head of household delay the certification or result in the denial of benefits of an otherwise eligible household. For households that do not consist of adult parents and children or adults who have parental control of children living in the household, the State agency shall designate the head of household or permit the household to do so.

(2) For purposes of failure to comply with § 273.7 and § 273.22 (to the extent that workfare programs operated under this paragraph are included as components of State agency E&T programs), the head of household shall be the principal wage earner unless the household has selected an adult parent of children as specified in § 273.1(d)(1). * * * No person of any age living with a parent or person fulfilling the role of a parent who is registered for work or exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in any work requirement under Title IV of the Social Security Act, or in receipt of unemployment compensation (or has registered for work as part of the application for or receipt of unemployment compensation), or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household unless the person is an adult parent of children as specified in § 273.1(d)(1) and the household elects to designate the adult parent as its head of household. * * *

* * * * *

5. In § 273.7:

a. The introductory text of paragraph (c)(4) is amended by removing the first two sentences and adding a new sentence in their place.

b. Paragraphs (c)(4)(viii) through (c)(4)(xii) are redesignated as paragraphs (c)(4)(ix) through (c)(4)(xiii), respectively, and a new paragraph (c)(4)(viii) is added.

c. Paragraph (c)(5) is amended by removing the first sentence and revising the second sentence.

d. Paragraph (d)(1)(i)(A) is revised.

e. Paragraphs (d)(1)(i)(B) through (d)(1)(i)(F) are redesignated as paragraphs (d)(1)(i)(C) through (d)(1)(i)(G) respectively and a new paragraph (d)(1)(i)(B) is added.

f. A new paragraph (f)(1)(vii) is added.

g. A new paragraph (f)(5) is added.

h. The fifth sentence in paragraph (g)(1)(i) is amended by adding the words, "as specified under § 273.1(d)(1) or (d)(2)" after the words "joins another household as head of the household".

i. The last sentence of paragraph (g)(1)(i) is amended by adding the words, "ineligible for two months and shall be" between the words, "be" and "considered".

j. Paragraph (n)(1)(vii) is redesignated as paragraph (n)(1)(viii), the last three

sentences of paragraph (n)(1)(vi) are redesignated as paragraph (n)(1)(vii) and the first sentence in newly redesignated paragraph (n)(1)(vii) is amended by adding the words, "as specified under § 273.1(d)(1) or (d)(2)" to the end of the sentence.

The additions and revisions read as follows:

§ 273.7 Work requirements.

* * * * *

(c) *State agency responsibilities.*

* * *

(4) In accordance with 7 CFR 272.2(e)(9), each State agency must prepare and submit an Employment and Training plan to its appropriate FNS Regional Office and to the FNS National Office. * * *

(viii) The method the State agency uses to report work registrant information and prevent work registrants from being reported twice within a Federal fiscal year on the quarterly FNS Form 583. This method must specify how work registrants are excluded if the State agency work register all food stamp applicants (i.e., universal work registration) when the applicants are exempt from work registration as specified under paragraph (b) of this section *or* if the State agency work registers nonexempt participants whenever a new application is submitted and the participants may have already been registered within the past twelve months as specified under paragraph (a) of this section. If the method the State agency uses is questionable or unacceptable, FNS reserves the right to adjust a State agency's work registrant count. FNS shall advise a State agency of how the adjusted figure was determined and shall allow the State agency 30 days to submit another method for consideration by FNS.

* * * * *

(5) Plans shall be submitted biennially, 45 days before the start of the fiscal year, beginning in FY 1990.

* * *

* * * * *

(d) Federal financial participation.—(1) *Employment and training grants.* (i) * * *

(A) Except as otherwise provided in paragraph (d)(1)(i)(D) of this section, effective in FY 1992, the nonperformance based Federal funding for employment and training grants shall be allocated on the basis of work registrants in each State agency as a percentage of work registrants nationwide. FNS will use work registrant data from the most recent Federal fiscal year. In FY 1992, each State agency shall receive an increase or decrease that is one-half of the difference between:

(*1*) an amount that is based on the percent of each State agency's caseload in FY 1990 as compared to the average monthly caseload nationwide; and

(*2*) an amount that is based on the percent of each State agency's work registrant population in FY 1990 as compared to number of work registrants nationwide.

(B) Effective in FY 1992, no State agency shall receive less than $50,000 in nonperformance based Federal E&T funds. To ensure that no State agency receives less than $50,000 in FY 1992, each State agency that is allocated more than $50,000 and would receive an increase in its E&T grant shall have its grant reduced if necessary. The reduction shall be proportionate to the number of work registrants in each State receiving more than $50,000 and receiving an increase in its E&T grant as compared to the total number of work registrants in all the States receiving more than $50,000 coupled with increases in their E&T grants. To ensure that no State agency receives less than $50,000 as of FY 1993, each State agency that is allocated to receive more than $50,000 shall have its grant reduced, if necessary, proportionate to the number of work registrants in each State as compared to the total number of work registrants in all the State agencies receiving more than $50,000. The funds from the reduction shall be distributed to State agencies initially allocated to receive less than $50,000.

* * * * *

(f) *Employment and Training programs.* * * *

(1) *Components.* * * *

(vii) A program designed to improve the self-sufficiency of recipients through self-employment including programs that provide instruction for self-employment ventures.

* * * * *

(5) *Priority Service to Volunteers.* With prior approval from FNS, two State agencies may provide priority service to volunteers through September 30, 1995. State agencies that submit an application to provide priority service to volunteers have the flexibility to establish procedures that deviate from regulations specified under paragraph (f)(4) of this section.

(i) To be eligible for FNS approval, a State agency shall submit an application that:

(A) Describes the volunteer population it intends to serve (e.g., number served, volunteer definition, characteristics of the target group, percent of volunteer population that are mandatory work registrants under normal E&T requirements and percent that are exempt from work registration);

(B) Describes the component activities that will be offered to volunteer participants;

(C) Identifies where the volunteer program will operate (i.e., Statewide or selected counties);

(D) Specifies the duration of the volunteer program;

(E) Identifies the criteria and research design the State agency recommends to evaluate the effectiveness of the program;

(F) Provides assurances that applicants who are subject to work registration as specified under § 273.7 (a) and (b) are required to work register as a condition of eligibility;

(G) Provides assurances that the State agency will meet the established performance standards under § 273.7(o); and

(H) Provides assurances that the evaluation will be conducted by an organization separate from the administration of the State agency and that ongoing and final result of the evaluation will be provided to FNS.

(ii) State agencies which receive approval to provide priority volunteer service shall:

(A) Submit a revised E&T plan that incorporates the voluntary service provisions;

(B) Continue to report quarterly (i.e., Form FNS 583) as specified under paragraph (c)(6) of this section;

(C) Meet the performance standards as specified under § 273.7(o); and

(D) Submit data annually which show the number of volunteers who fail to complete an assigned E&T activity.

* * * * *

6. In § 273.10, paragraph (d)(1)(i) is amended by adding a new sentence at the end of the paragraph.

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(1) *Disallowed expenses.* (i) * * * A child care expense which is reimbursed or paid for by the Job Opportunities and Basic Skills Training (JOBS) program under Title IV–F of the Social Security Act (42 U.S.C. 681) or the Transitional Child Care (TCC) program shall not be deductible.

* * * * *

Dated: December 11, 1992.

Phyllis R. Gault,

Acting Administrator.

[FR Doc. 92–30788 Filed 12–17–92; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1955, 1956, 1962 and 1965

Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Servicing and Liquidation of Chattel Security regulations to address servicing of bankruptcy cases and update references to forms in the Agency's regulations. These amendments will consist of conforming changes and cross references in several FmHA servicing regulations. The intended effect of this action is to add clarification in bankruptcy cases.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Edward Yaxley, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, room 5435-South, Washington, DC 20250, Telephone (202) 720–6293.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management, making publication for comment unnecessary. These revisions clarify the following provisions. Section 1955.15(d)(6)(i) of subpart A of part 1955 of chapter XVIII of the Code of Federal Regulations is being revised to clarify that when a bankruptcy petition has been filed after an account has been accelerated FmHA foreclosure will be suspended until the requirements of the Bankruptcy Code have been met. There has been some confusion about whether FmHA's existing regulation intended to suspend all foreclosure activity including sales by a trustee in bankruptcy. FmHA has never intended to suspend the actions of other parties in its regulations, and is clarifying this regulation so that it includes FmHA foreclosures only.

Exhibit E–1 to FmHA Instruction 1955–A (available in any FmHA office) entitled "Notice of Acceleration of Farmer Program Loan Accounts Secured by Real Estate and/or Chattels in Cases Involving Discharged Chapter 11, 12 and 13 Bankruptcy Borrowers" is added to provide a notice of acceleration for discharged borrowers who default under their confirmed bankruptcy plans under chapter 11, 12 and 13 of this Bankruptcy Code. Exhibit E of FmHA Instruction 1955–A (available in any FmHA office) is an unpublished exhibit entitled "Notice of Acceleration of Farmer Program Loan Accounts Secured by Real Estate and/or Chattels in Cases Involving Bankruptcy" is being clarified to change its title to "Notice of Intent to Foreclose on the Security of Farmer Program Borrowers Discharged Under Chapter 7 of the Bankruptcy Code and Terminate Any Farmer Program Family Living and Farm Operating Expenses" and to state that FmHA will be foreclosing on its loan security and not attempting to collect the debt as an individual liability against a borrower who has been discharged in a chapter 7 bankruptcy. Exhibit F of FmHA Instruction 1955–A (available in any FmHA office) is an unpublished exhibit entitled "Notice Declaring FmHA Debt Immediately Due and Payable and Advising of the Availability of Debt Settlement." This exhibit is being clarified to remove the due and payable clause. The revision is consistent with existing FmHA regulations at [56 FR 10145–10150], March 11, 1991, which removed the due and payable requirement for farmer program debt settlements. The revisions also update several cross-references and add references to Exhibit E–1 described above which is being added to FmHA Instruction 1955–A. Exhibit A of subpart B of part 1956 of chapter XVIII of the Code of Federal Regulations is removed. This exhibit is strictly an internal management document to summarize the debt settlement case file to assist the approval officer in the review of the case. It was unintentionally published March 11, 1991 [56 FR 10147].

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V [48 FR 29115, June 24, 1983] and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency loans, Farm Operating Loans, and Farm Ownership Loans are excluded, with the exception of nonfarm enterprise activity, from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.33 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. Section 1955.15 is amended by revising the introductory text of paragraphs (d)(2) and (d)(6)(i) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

* * * * *

(d) * * *

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to Exhibits B, C, D, E, or E–1 of this subpart (available in any FmHA office), as appropriate, to be signed by the official who approved the foreclosure. The accounts of borrowers with pending Chapter 12 and 13 cases which have not been discharged will be accelerated in accordance with instructions from OGC. Upon OGC approval, accounts of these borrowers may be accelerated using a notice substantially similar to Exhibit D of this subpart. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in accordance with § 1965.26 (c) of subpart A of part 1965 of this chapter. The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under subpart A of part 1962 of this chapter, the Finance Office will be sent a copy of Exhibits D, E, or E–1 (available in any FmHA office) as applicable. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases). If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official. Farmer Program appeals will be concluded before acceleration. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

* * * * * —

(6) * * *

(i) When bankruptcy is filed after an account has been accelerated, any foreclosure action initiated by FmHA must be suspended until:

* * * * *

PART 1956—DEBT SETTLEMENT

3. The authority citation for part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Housing

4. Exhibit A of Subpart B is removed.

PART 1962—PERSONAL PROPERTY

5. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

6. Section 1962.17(a)(1) is revised to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) * * *

(1) The borrower must account for all security and will be instructed of this requirement by the County Supervisor when a loan is made and as often afterward as necessary. When the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and will remain subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. When the borrower fails to account properly for security, the County Supervisor will take the actions required in § 1962.18 of this subpart. Releases of sales proceeds will automatically be terminated when Exhibits D, E, or E–1 to subpart A of part 1955 of this chapter is sent to the borrower. Termination of such release will not occur prior to that time.

* * * * *

§ 1962.40 [Amended]

7. Section 1962.40 is amended by adding in the fourth sentence of the introductory text of paragraph (b)(2) the words ", or 9–A and 10–A, as appropriate," after the words "Attachments 9 and 10"; by revising in the fifth sentence of the introductory text of paragraph (b)(2) the words "attachments 4, 6 or 10" to read "Attachments 4, 6, 6–A, 10 or 10–A "; and by revising in paragraphs (b)(2)(i) and (b)(2)(ii) the words "Exhibits D or E" to read "Exhibits D, E, or E–1".

8. Section 1962.41(c) is revised to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

* * * * *

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to FmHA by signing Form FmHA 455–4, "Agreement for Voluntary Liquidation of Chattel Security." This form authorizes FmHA to sell the security at either public or private sale. If FmHA hires a caretaker, services should be obtained by use of Form AD–838, "Purchase Order."

* * * * *

§ 1962.49 [Amended]

9. Section 1962.49 is amended in paragraph (c)(2) by revising the words "Exhibit D or Exhibit E" to read "Exhibits D, E, or E–1" and by removing in paragraph (c)(3)(ii)(A) the words "or Form FmHA 451–25, 'Status of Account,' ".

PART 1965—REAL PROPERTY

10. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases.

11. Section 1965.34 is amended by revising paragraph (e) to read as follows:

§ 1965.34 Non-Program (NP) loans.

* * * * *

(e) *Default.* When an NP debtor is in default of the loan and/or security instruments and the default cannot be corrected in a reasonable period of time (usually less than 1 year) the account will be accelerated by the use of Exhibits D, E, or E–1 of subpart A of part 1955 (available in any FmHA office), as applicable. The statement regarding deferrals in Exhibit D will be deleted. If the debtor has not cured the default within the time provided in the acceleration notice, FmHA will proceed with the foreclosure without further notice or any extension of time.

* * * * *

Dated: October 2, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–30679 Filed 12–17–92; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 91-128-3]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; withdrawal.

SUMMARY: On December 18, 1981, we published in the **Federal Register** (46 FR 61641, Docket No. 81-099) a document suspending the effective date of that part of a final rule published in the **Federal Register** on November 20, 1981 (46 FR 57026-57027), that increased the maximum Federal indemnity which could be paid for breeding swine destroyed because of brucellosis. This document withdraws that part of the final rule of November 20, 1981.

EFFECTIVE DATE: Effective December 18, 1992. The amendment to the second sentence of § 51.3(b) (1), (2), and (3), that was published at 46 FR 57027, November 20, 1981, and suspended at 46 FR 61641, December 18, 1981, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, USDA, room 736-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious disease of animals and man caused by bacteria of the genus Brucella. Brucellosis in swine is characterized by abortion, infertility, orchitis, posterior paralysis, and lameness. The regulations is 9 CFR part 512 provide for payment of Federal indemnity to owners of animals destroyed because of brucellosis.

On November 20, 1981 (46 FR 57026-57027), we published in the **Federal Register** a final rule that amended that the regulations in § 51.3(b)(1), (b)(2), and (b)(3) by, among other things, increasing the maximum Federal indemnity that could be paid for breeding swine destroyed because of brucellosis. On December 18, 1981, we published in the **Federal Register** (46 FR 61641, Docket No. 81-099) a document suspending the effective date of only that part of the final rule. The suspension was necessary because there were no funds available at the time to pay increased Federal indemnity for breeding swine destroyed because of brucellosis.

In a final rule published and effective on November 2, 1992 (57 FR 49375-49376, Docket No. 91-128-2), we amended the regulations in § 51.3(b)(2) and (b)(3) to increase the amount of Federal indemnity for breeding swine destroyed because of exposure to brucellosis. The proposed rule was published in the Federal Register on July 1, 1991 (57 FR 29225-29226, Docket No. 91-128). As explained in the proposed rule, this increase was based on a reevaluation of the brucellosis eradication program and a determination that funds were available to pay a higher level of indemnity for those exposed breeding swine. The final rule did not increase the amount of indemnity that could be paid for breeding swine destroyed as brucellosis reactors, so that owners of breeding swine would have a financial incentive to destroy brucellosis exposed swine in a timely manner, reducing the risk of the disease spreading.

It was our intention for the final rule of November 2, 1992, to supersede the suspended part of the final rule published in November 20, 1981. However, we did not include specific instructions to that effect in the November 2, 1992, final rule. This document corrects that oversight.

Accordingly, we are withdrawing the amendment to § 51.3(b), the second sentences in paragraphs (b)(1), (2), and (3), that was published in the **Federal Register** on November 20, 1981 (46 FR 57027) and suspended at 46 FR 61641, December 18, 1981.

Authority: 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, and 134b.

Done in Washington, DC, this 15th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30769 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 162

[Docket No. 91-027-4]

Accreditation of Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: In a final rule published in the **Federal Register** and effective on November 23, 1992 (57 FR 54906-54916, Docket No. 91-027-3), we amended our regulations in 9 CFR part 162 to accredit veterinarians and authorize them to perform, on behalf of the Animal and Plant Health Inspection Service, certain animal health activities. We also revised procedures for suspending and revoking accredited veterinarian status, and added language describing how civil and criminal penalties may be imposed on accredited veterinarians who violate regulatory requirements.

In response to a comment on the preceding proposed rule published on June 4, 1992 (57 FR 23540-23548, Docket No. 91-027), our final rule stated in the preamble that we were removing a sentence in proposed § 162.12(d) that read: "Issuance of three or more letters of dismissal within a 5-year period citing incidents of minor violations by an accredited veterinarian may be cause for more severe action under this section and § 161.4." We inadvertently left this sentence in the regulatory text. We are correcting this error in the regulatory text of the final rule.

FOR FURTHER INFORMATION CONTACT: Dr. J.A. Heamon, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 700, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

Correction

In FR Doc. 92-28318, page 54915, in § 162.12, third column, paragraph (d) is corrected by removing the last sentence.

Done in Washington, DC, this 15th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30770 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 206

[Regulation F; Docket No. R-0769]

Interbank Liabilities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing in final a new Regulation F, Interbank Liabilities. The final rule implements section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which requires the Board to prescribe standards to limit the risks posed by exposure of insured depository institutions to other depository institutions. The final rule applies to banks, savings associations,

and branches of foreign banks with deposits insured by the Federal Deposit Insurance Corporation (FDIC).

The final rule generally requires insured banks, savings associations, and branches of foreign banks, referred to collectively as "banks," to develop and implement internal prudential policies and procedures to evaluate and control exposure to the depository institutions with which they do business, referred to as "correspondents."

The rule also establishes a general "limit" stated in terms of the exposed bank's capital, for overnight "credit exposure" to an individual correspondent, as defined by the rule. Under the rule, a bank ordinarily should limit its credit exposure to an individual correspondent to an amount equal to not more than 25 percent of the exposed bank's total capital, unless the bank can demonstrate that its correspondent is at least "adequately capitalized." No limit is specified by the rule for credit exposure to correspondents that are at least "adequately capitalized," but a bank is required to establish and follow its own internal policies and procedures with regard to exposure to all correspondents, regardless of capital level.

The final rule provides for a thirty-month transition period after the effective date for full implementation of the rule. Banks must have in place the internal policies and procedures required by the rule on June 19, 1993. The regulatory limit on credit exposure to correspondents that a bank cannot demonstrate are at least "adequately capitalized" will be phased in, with the limit set at 50 percent of the exposed bank's capital for a one-year period beginning on June 19, 1994, and reduced to 25 percent as of June 19, 1995.

EFFECTIVE DATE: December 19, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), Lawranne Stewart, Attorney (202/452–3513), or Manley Williams-Stander, Legal Assistant (202/452–5565), Legal Division; or Stephen Lovette, Manager (202/452–3622), or Derek L. Young, Supervisory Financial Analyst (202/452–2960), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th & C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On July 20, 1992, the Board published for comment a proposed Regulation F, Interbank Liabilities, to implement section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). 57 FR 31974, July 20, 1992. Section 308, which added a new section 23 to the Federal Reserve Act (FRA), requires the Board to prescribe standards, by regulation or order, that will have the effect of limiting the risks posed by an insured depository institution's exposure to another depository institution.

Summary of the Proposed Rule

The Board's proposed rule was designed to ensure that banks adopt prudent limits on credit and liquidity risks in dealing with other depository institutions. The proposed rule required banks to establish limits on both credit and settlement exposure to each individual correspondent. The proposed rule also established "benchmark" guidelines on the overnight credit exposure to individual correspondents that ordinarily should not be exceeded. The benchmark guidelines were stated as percentages of the exposed bank's capital. The levels of overnight credit exposure considered to be permissible under the benchmarks were tiered based on the capital of the correspondent with which the bank is dealing, so that higher levels of a bank's capital may be exposed to better capitalized correspondents. The benchmark guidelines under the proposed rule were intended to establish the maximum credit exposure that ordinarily would be considered to be prudent with respect to a correspondent with a particular level of capital.

The benchmark guidelines, which were based on a measure of credit exposure that excluded certain relatively low-risk transactions, generally permitted a bank to have credit exposure to an individual correspondent in an amount up to 25 percent of the exposed bank's total capital. For a correspondent that a bank could demonstrate is "adequately capitalized," the bank could have credit exposure under the proposed rule equal to 50 percent of the bank's total capital, but no more than 25 percent of the bank's capital could be exposed through transactions with a term to maturity of more than thirty days. No specific benchmark guideline was provided under the proposed rule for credit exposure to a correspondent that the bank could demonstrate was "well capitalized."

Summary of Final Rule

The final rule continues to require that a bank adopt internal policies and procedures to address exposure to correspondents, and includes a "regulatory limit" for exposure to correspondents that are less than adequately capitalized. As with the proposed rule, "correspondent" includes both domestically chartered depository institutions that are federally insured and foreign banks. The Board has made several significant modifications to the proposed rule, however, in order to improve the effectiveness of the rule and to reduce burdens identified by the comments.

Prudential Standards

The final rule provides greater detail concerning the prudential standards in order to clarify the rule's requirements for internal policies and procedures to identify and control risk. Under the final rule, a bank is required to adopt internal policies and procedures to address the risk arising from exposure to a correspondent, taking into account the financial condition of the correspondent and the size, form, and maturity of the exposure. The final rule allows banks to adopt flexible policies and procedures to meet this requirement in order to permit banks to allocate resources in a manner that will result in real reductions in risk, while minimizing the burden of compliance with the rule.

The final rule requires a bank to maintain written policies and procedures to prevent excessive exposure to any individual correspondent in relation to the financial condition of the correspondent. Under the final rule, a bank's board of directors must review annually the bank's policies and procedures concerning correspondents, but need not approve individual correspondent relationships. The policies and procedures adopted by the board must provide for consideration of credit and liquidity risks, including operational risks, in establishing and maintaining relationships with correspondents. Where a bank's exposure to a correspondent is significant, considering the size and maturity of the exposure and the condition of the correspondent, the bank must periodically review the financial condition of the correspondent. The final rule does not require periodic review of the financial condition of all correspondents. For example, the final rule does not require periodic review of the financial condition of a correspondent to which the bank has only insignificant levels of exposure, such as small balances maintained for clearing purposes.

The final rule requires that a bank take into account any deterioration in

the condition of a correspondent in evaluating the creditworthiness of the correspondent, and lists other factors that have a bearing on the financial condition of the correspondent. A bank may base its review of the financial condition of a correspondent on publicly available information, such as call reports, Thrift Financial Reports, Uniform Bank Performance Reports, or annual reports.[1] The final rule generally does not require a bank to obtain non-public information on which to base its analysis of the financial condition of a correspondent.[2]

The final rule provides that a bank may rely on another party, such as its bank holding company, a bank rating agency, or another correspondent, to provide financial analysis of a correspondent, as long as the bank has reviewed the assessment criteria used by that party. Additionally, a bank may rely on its bank holding company to select and monitor correspondents, or on a correspondent, such as a bankers' bank, to choose other correspondents with which to place the bank's federal funds, as long as the bank has reviewed and approved the selection criteria used.

The final rule requires that a bank establish internal limits on exposure only where the financial condition of the correspondent and the form or maturity of the exposure create a significant risk that payments will not be made as contemplated. Limits must be consistent with the risk undertaken, but may be flexible, based on factors such as the level of monitoring of the exposure and the condition of the correspondent. The final rule also provides that a bank need not set one overall limit on exposure to a correspondent, but may instead set separate limits for different forms of exposure, products, or maturities.

The final rule provides that, for the significant sources of exposure for which internal limits are required, the bank either should monitor its exposure or structure transactions with the correspondent in order to ensure that the exposure ordinarily remains within the internal limits established by the bank.[3] Where monitoring is used, the final rule indicates that the appropriate level of monitoring will depend on the type and volatility of the exposure, on the extent to which the exposure approaches the bank's internal limits, and on the condition of the correspondent. The final rule also indicates that *ex post* monitoring generally is sufficient.

Although the purpose of requiring monitoring or structuring of transactions to which limits apply is to ensure that exposure generally remains within established limits, the final rule recognizes that occasional excesses over limits may result from factors such as unusual market disturbances, unusual favorable market moves, or other unusual increases in activity or operational problems. The final rule requires the bank to establish appropriate procedures to address excesses over internal limits.

The final rule continues to require that a bank's internal policies and procedures address intraday exposure. As with other exposure of longer maturities, however, the final rule does not necessarily require that limits be established on intraday exposure. Such limits would be required only if the size of the intraday exposure and the condition of the correspondent indicated that there is a significant risk that payments will not be made as contemplated.

Limit on Credit Exposure to Certain Correspondents

The final rule provides that a bank's internal policies and procedures should limit overnight credit exposure to a correspondent to 25 percent of the exposed bank's capital, unless the bank can demonstrate that its correspondent is at least "adequately capitalized," as defined by the rule. The final rule does not specify limits for credit exposure to adequately or well-capitalized correspondents.[4]

The benchmark guideline included in the proposed rule for exposure to adequately capitalized correspondents served largely as a transition from the unrestricted exposure permitted for well-capitalized correspondents to the 25 percent benchmark for correspondents that are less than adequately capitalized. The final rule requires banks to take into account the maturity of exposure and changes in the financial condition of the correspondent in establishing internal prudential limits and monitoring, and therefore decreases the need for formal limits on credit exposure to adequately capitalized correspondents. Additionally, because existing exposure above the 25 percent limit for credit exposure to a less than adequately capitalized correspondent is not "grandfathered" under the rule if the correspondent slips below adequately capitalized, the existence of this limit will encourage banks to shorten the maturity of exposure to correspondents that are at risk of dropping below the capital levels required to be adequately capitalized.

This regulatory "limit" requires that a bank's internal policies and procedures limit "credit exposure" to a correspondent to 25 percent or less of the exposed bank's capital, unless the bank can demonstrate that the correspondent is at least "adequately capitalized," as defined in the rule. As in the proposed rule, this limit should be viewed as a maximum level for credit exposure, rather than as a safe harbor. Formal limits on credit exposure to such a correspondent would not be necessary where the banks' policies and procedures effectively limit credit exposure to an amount below the 25 percent limit, such as where only small balances are maintained with the correspondent, or where the correspondent has only been approved for a limited relationship. Although in many cases it will be necessary for a bank to establish formal internal limits to meet the regulatory limit, the provisions of § 206.3 of the final rule concerning excesses over internal limits also apply to limits established for the purpose of controlling "credit exposure" under § 206.4 of this rule.

As in the proposed rule, the "credit exposure" that is limited under the final rule is based on the assets and off-balance sheet transactions against which the bank must maintain capital under the risk-based capital guidelines, with the same exclusions of lower-risk

[1] For significant correspondent banking relationships, the Board believes that banks generally have considerable non-public information concerning their correspondents, such as information on the quality of management, general portfolio composition, and similar information. The limitation of the rule to financial analysis based on publicly available information is intended to recognize that access to non-public information is not always available, and is not intended to discourage the use of more extensive information, where available.

[2] A bank is required to obtain non-public information to evaluate a correspondent's condition only for those foreign banks for which no public financial statements are available. In these limited circumstances, the bank would need to obtain financial information directly from the correspondent.

[3] A bank could meet the requirements of the rule by monitoring actual overall exposure, or by establishing individual lines for significant sources of exposure, such as federal funds sales, and establishing procedures to ensure that exposure generally remained within the established lines. A bank could also maintain limits on exposure by establishing limits monitored by a correspondent, such as for sales of federal funds through the correspondent as agent.

[4] While the proposed rule referred to "benchmark guidelines" to reflect that the numerical limits were subject to exceptions, the successor provision in final rule refers to "limits" to reflect that this "limit" is an outside limit on the bank's own internal limits. This limit, as well as the bank's internal limits, are subject to exceptions noted in the final rule. Thus, the nature of this limit is substantially the same as the benchmark guidelines in the proposed rule.

transactions permitted. The final rule clarifies that "credit exposure" does not include settlement exposure, transactions in which the bank acts as agent, and other forms of exposure that are not covered by the capital adequacy guidelines.

Transition Provisions

To mitigate the need for a bank to reduce exposure rapidly to a correspondent whose capital has slipped below the levels needed to be considered adequately capitalized, the final rule increases the transition period for application of the 25 percent limit on credit exposure to 120 days. The longer transition period will avoid undue disruptions in correspondent relationships due to temporary declines in capital ratios by allowing the correspondent an opportunity to bring its capital ratios back above the relevant levels before the end of the next quarterly report. The extended period will also provide the exposed bank more time to implement any monitoring required to demonstrate compliance with the limit on credit exposure and to adjust the maturities or level of its exposure to the correspondent.

Initial Implementation Period

The proposed rule required that banks have internal policies and procedures in place by December 19, 1992, with the benchmark guidelines to be phased in over a two-year period. The final rule provides a transition period of six months before the prudential standards become effective, with the remaining limit on credit exposure phased in over a two-year period after that date. The longer initial implementation period will enable banks that have not made credit assessments of their correspondents to do so, and will provide an opportunity for banks to review and, where appropriate, improve their monitoring procedures.

Additional modifications to the proposed rule are detailed in the discussion below.

Summary of Comments

The Board received 321 comment letters on the proposed rule. Two hundred fourteen commenters opposed the rule. Five commenters supported the regulation's implementation of section 308. An additional seventeen commenters offered qualified support for the rule, urging the Board to modify implementation to make it less burdensome, by, for example, eliminating the guidelines based on capital. The others expressed no opinion or offered detailed comments. The comments included seventy-three "form letters," forty-one of which focused on the effect of the proposed rule on bankers' banks and sixty-one of which addressed the competition between Federal Reserve Banks and private sector correspondents. All of the form letters were from small banks.[5] The 321 commenters by category included 233 commercial banks, 41 bank holding companies, 18 bankers' banks, 13 trade associations, 5 clearinghouses, 6 savings associations, 1 Federal Home Loan Bank, and 6 others.

General Comments

Cost. One hundred fifty-one commenters expressed concern over the additional cost burden the proposed rule would impose. The Board has attempted to minimize costs to banks of implementing the final rule, but some costs are inherent in any new rule that results in changes in bank practices.

Excessive regulation. One hundred sixty-six commenters believed the proposed rule created excessive regulation. While the Board recognizes the regulatory burden associated with the new rule, the Board believes that the provisions of the final rule are necessary to carry out the intent of section 308.

Federal Reserve Bank and Federal Home Loan Bank competition. One hundred seventy-nine commenters expressed concern that the proposed rule would divert business from the private sector to the Federal Reserve Banks and Federal Home Loan Banks. Two commenters suggested that the Board reduce the competitive impact by including Federal Reserve Banks in the definition of correspondent. Another commenter suggested the Board require banks to conduct the same analysis of Federal Reserve Banks that would be required for a private correspondent. Because exposure to a Federal Reserve Bank or Federal Home Loan Bank poses minimal risk to a respondent, the Board does not believe that Federal Reserve Banks and Federal Home Loan Banks should be included in the definition of correspondent in the final rule. To treat Federal Reserve Banks and Federal Home Loan Banks as correspondents under the final rule would impose unnecessary costs and burdens on banks, with no appreciable reduction in risk.

Five commenters proposed that the Board rectify the competitive effect of the rule by changing the private-sector adjustment factor or the prices charged for check collection.[6] The Board will review the calculation of the private-sector adjustment factor to determine if modifications are appropriate.

Disruption of the federal funds market. Twenty-four commenters expressed concern that the proposed rule would disrupt the federal funds market by preventing banks from selling all of their federal funds to a single correspondent, and stated that the need to diversify federal funds sales among a number of purchasers could result in higher transaction costs. In addition, commenters expressed concern that the need to evaluate the financial condition of correspondents could lead banks that are members of the Federal Home Loan Banks to deposit funds in those banks rather than selling them to correspondents.

While the Board recognizes that there may be some initial restructuring of the channels for federal funds sales, the Board does not believe that the regulation will result in a material or lasting disruption of the federal funds market or to a material reduction in the availability of federal funds. The federal funds market is competitive, and the Board believes that creditworthy correspondents that are buyers of federal funds will continue to be able to fund profitable business utilizing this market. The Board also believes that modifications incorporated in the final rule, including elimination of the regulatory limit on credit exposure to adequately capitalized correspondents, will reduce the effect of the rule on the federal funds market.

Availability of credit. Fifty-six commenters asserted that the proposed rule would exacerbate the "credit crunch," generally either because of disruption in the federal funds markets or because of diversion of funds to Federal Reserve Banks or Federal Home Loan Banks. Twenty-two of these commenters claimed that this effect would be particularly pronounced in small communities. As discussed above, the Board believes that the modifications incorporated in the final rule have significantly reduced the

[5] For example: 30 commercial banks and bank holding companies sent identical letters which focused on competition from Federal Reserve Banks; 19 bankers' banks and their customers sent an identical resolution on the effect of the proposed rule on bankers' banks and competition from Federal Reserve Banks; 10 commercial banks, customers and shareholders of a bankers' bank, sent identical letters concerning the proposal's effect on bankers' banks; and 9 commercial banks sent substantially similar letters on bankers' banks and Reserve Bank competition.

[6] Two commenters noted that, in addition to the cost of maintaining capital, correspondents generally would have to bear the cost of disseminating call reports in order to provide their respondents with information on their capital ratios, and that Reserve Banks would not have to bear this cost.

likelihood of any reduction in the availability of funds for lending.

Effect on the FDIC funds. Thirty-eight commenters, nine of whom submitted a substantially similar letter, expressed concern that the proposed rule would weaken the Federal Deposit Insurance funds. Another commenter, however, asserted that the proposed rule would actually strengthen the funds. To the degree that the proposed rule diverts deposits, generally in the form of compensating balances, from depository institutions to Federal Reserve Banks or Federal Home Loan Banks, it may reduce FDIC insurance assessments. However, the Board believes that the overall effect of the final rule will be to strengthen the funds by reducing losses.

Repeal. Forty-six commenters urged the repeal of the statute and one commenter asserted that similar limits at the state level have failed. The power to repeal the statute, however, rests with the Congress rather than the Board.

Miscellaneous. Thirteen commenters suggested that, as an alternative to regulating respondents, the federal regulators supervise the correspondent banking business by restricting which banks could engage in such business, notifying respondents that do business with unsound correspondents, setting limits on the amount of exposure a correspondent can accept, or automatically transferring balances from weak correspondents to strong ones and notifying respondents later. Seven other commenters noted that it is inefficient for a thousand banks to monitor the same correspondent, which is also being monitored by a regulator. The Board does not believe that it would be appropriate to endorse specific correspondents, as such a practice could perpetuate the "too big to fail" concept that section 308 was designed to address.

One commenter urged the Board to create a new instrument for Treasury obligations for which the Federal Reserve Banks would be the broker and administrator. The Board does not believe that the creation of such an instrument is necessary, as the government securities market is broad and deep, offering many opportunities for investment. Another commenter suggested that the Board permit banks to sell federal funds to Federal Reserve Banks. The Board does not believe that such a practice would be appropriate because it would interfere with the conduct of monetary policy.

Another commenter suggested that the Board change Regulation D and the FDIC insurance calculation to encourage fee payment. The final rule increases the incentives for respondents to compensate correspondents by fees, and the Board believes that the market will make appropriate adjustments to this change.

One commenter suggested that the Board expand legal lending limits to include off-balance sheet items. The Board does not have the authority to effect such a change, however, as these limits are administered by the Comptroller of the Currency under the National Bank Act and by state banking regulators under state law.

One commenter urged the Board to tailor the rule to the strength of the respondent on the assumption that well-capitalized respondents would be managed wisely. The final rule places greater emphasis on a bank's internal policies and procedures.

Section-by-Section Comments

The section and paragraph numbers in the headings refer to the numbering of the proposed rule. Where a provision has been renumbered or moved, the appropriate cite in the final rule is provided in brackets.

Section 206.2 Definitions

Section 206.2(a) Bank

The proposed rule defined "bank" as an insured depository institution as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813). Banks covered by this definition must control their exposure to correspondents under this rule. The Board received twenty-seven comments on this section.

Exclusion of Small Banks

Fourteen commenters proposed that the Board exclude small or community banks, defined by some commenters as banks with assets under $1 billion, or hold such banks to a more lenient standard, especially in their correspondents are well or adequately capitalized. Another thirteen commenters, nine of whom submitted a substantially similar letter, asserted that the current rule violated Congressional intent, as Congress did not intend to harm small banks with this regulation.

Section 308 states that the Board should address the risk posed to an insured depository institution by the failure of another depository institution. It does not restrict that mandate to risks posed to large institutions. Section 308 is designed to limit bank failures attributable to losses due to the failure of a correspondent. An exemption for small bank exposure to correspondents would be contrary to this design, as the failure of a correspondent would continue to precipitate the failure of small banks.

Coverage of Definition

One commenter urged that the Board clarify that a nonbank credit card company is excluded from the definition of "bank."
Nonbank credit card companies are not considered to be banks for the purposes of this rule. However, bank users of credit card or other payment services may, depending upon the terms of their services, incur exposure to other banks by virtue of use of such services.

The definition in the final rule has been redrafted for clarity.

Section 206.2(b) Correspondent [Final Rule—Section 206.2(c)]

The proposed rule defined "correspondent" as a U.S. depository institution or a foreign bank, as defined in the proposed rule, to which a bank had exposure. The Board received 134 comments on this section.

Exclusion of Bankers' Banks

One hundred twenty-two commenters urged exclusion of bankers' banks from the definition of correspondent. Forty-seven commenters, twenty-six of whom submitted substantially similar letters, argued that bankers' banks pose no systemic risk, either because the bankers' banks are themselves small, or because they serve only small banks. Thirteen commenters, nine of whom submitted a substantially similar letter, asserted that bankers' banks reduce systemic risk by providing alternative correspondent services. Twenty-seven commenters, eighteen of whom submitted a substantially similar letter, argued that a bankers' bank may be less risky because it is a local institution, it is chartered to serve only banks, and its board includes officers of its respondent banks, who are therefore in a position to monitor its financial condition more closely.

Forty-six commenters, twenty-nine of whom submitted a substantially similar letter, pointed out that bankers' banks rely exclusively on interbank liabilities and are thus uniquely vulnerable to the interbank liability limits. Sixty-three commenters, including twenty-eight form letters and a number of bankers' banks, argued that Congress did not intend bankers' banks to be targeted. Many of these commenters concluded that the rule should create special provisions for bankers' banks. Thirty-two commenters, nine of whom submitted a substantially similar letter, argued that Congress recognized the unique role of bankers' banks in the Depository Institutions Deregulation and Monetary Control Act of 1980. One commenter argued that it was unfair to

subject bankers' banks to the rule when central liquidity facilities, which provide services to credit unions, are not covered. Another commenter argued that bankers' banks are not commercial banks and that the deserve the same treatment as Federal Reserve Banks. Eleven commenters argued that bankers' banks should be excluded from the scope of the rule because banks would otherwise be forced to obtain correspondent services from their competitors.

In contrast, two commenters argued that exclusion of bankers' banks would unfairly restructure the market for correspondent services, and another commenter noted that exemptions for some providers of correspondent services would erode competition.

The Board recognizes that bankers' banks are providing important services to respondents and are meeting a market need, and that Congress has given special status to bankers' banks in other statutes. Nonetheless, the Board does not believe that other legislation or the statutory language or legislative history of section 308 demonstrate a Congressional intent to exclude bankers' banks from the coverage of section 308. Nor does the Board believe the Congress intended for bankers' banks to be targeted by the rule. Accordingly, the final rule treats bankers' banks no differently than other correspondents.

The Board does not believe that bankers' banks will be unduly harmed by being treated as correspondents under the rule. Bankers' banks generally are at least adequately capitalized and there is no regulatory limit on credit exposure to an adequately capitalized correspondent under the final rule. Although respondents will need to obtain information on correspondents' capital ratios in order to demonstrate that correspondents are at least adequately capitalized, bankers' banks can reduce this burden by providing the information to their respondents directly. To the extent that bankers' banks are concerned that the burden of meeting the requirements of the rule's prudential standards will cause banks to transfer business from a bankers' bank to a Federal Reserve Bank or Federal Home Loan Bank, the Board believes that the more extensive guidance provided in the language of the final rule will reduce this effect.

The Board believes that including bankers' banks within the scope of the rule is appropriate. Bankers' banks represent a concentration of interbank risk because they rely exclusively on interbank liabilities and because their assets subject them to the same risks as other banks. Further, an exception for bankers' banks could alter the market for correspondent services, possibly increasing risk as correspondent business moves to such special purpose banks. With regard to arguments that including bankers' banks as correspondents under the rule will force banks to obtain services from their competitors, the Board notes that banks often do business with competitors.

Sixteen commenters asserted that the rule would result in a reduction in deposits at bankers' banks which, in turn, would reduce the capacity of bankers' banks to provide "overline" loan and participation arrangements and other correspondent services. The Board believes that the demand for these services will provide incentives for banks to continue to do business with bankers' banks rather than shifting to Federal Reserve Banks or Federal Home Loan Bands, which provide only limited services.

Six commenters stated that the proposed rule would preclude a bankers' bank from raising capital when it is most needed because banks could not increase exposure to the bankers' bank through stock investments. Although most bankers' banks are well or adequately capitalized, the Board recognizes that the capital of bankers' banks generally represents exposure of the owner-customers of the bankers' bank. The Board notes, however, that capital ratios may be increased by other means, such as by reducing certain assets of the bankers' bank.

Restriction of Coverage to Large, Weak Banks

Fifty-nine commenters concerned with the regulatory burden imposed by the proposed rule urged that the rule focus exclusively on banks that might be considered "too big to fail." Thirty-five of these commenters, twenty-eight of whom submitted a substantially similar letter, suggested that the Congressional intent was to focus on the risk caused by the failure of a large depository institution, and that small banks were not to be affected by the regulation. In addition, thirty-five commenters, thirty of whom submitted a substantially similar letter, urged the Board to exempt exposure to well-capitalized correspondents from the regulation or at least to treat exposure to them no differently than exposure to a Federal Reserve Bank.

Although the introductory language in section 308 refers to the failure of a large depository institution, the text of the statute directs the Board to limit risks posed by exposure to "any other depository institution." Further, excluding exposure to small correspondents from the rule could cause correspondent business to shift to small correspondents, regardless of their financial condition, thereby increasing the risk that the failure of a small correspondent would cause the failure of other banks. Finally, entirely excluding exposure to well-capitalized correspondents could encourage banks to take exposure to a well-capitalized correspondent that may be excessive in relation to the overall financial condition of the correspondent. Thus, the Board believes that the definition of "correspondent" should not exclude depository institutions on the basis of size or capitalization.

Expansion of the Definition of Correspondent

Nine commenters expressed concern about competition in the correspondent business from nonbanks and credit unions. Three of these commenters proposed that the definition of correspondent encompass all providers of correspondent services, including nonbanks. One commenter pointed out that Edge Act companies are not defined as correspondents but are included as subsidiaries.

The Board notes that the interbank liability provisions of section 308 concern exposure to depository institutions, not to financial service providers generally. The definition of "correspondent" in the proposed rule was limited to institutions that receive special treatment under the capital adequacy guidelines, which provide that claims against certain foreign banks and federally insured domestic depository institutions generally are given a 20 percent risk weight.[7] Furthermore, the Board does not believe that nonbank providers of correspondent services, including credit unions, provide a full range of correspondent services in competition with traditional correspondents or that risk to banks will increase materially through migration to providers of services that are not covered by the rule. Finally, the failure of financial institutions that are not insured by the Federal Deposit Insurance Corporation would not pose a threat to the Federal Deposit Insurance funds through invocation of "too big to fail."

Final Rule

The definition of correspondent has been amended to exclude commonly controlled correspondents that are subject to cross-guarantees under the

[7] Claims against other types of financial institutions generally are given a 100 percent risk-weighting under the capital adequacy guidelines.

Federal Deposit Insurance Act. The proposed rule excluded commonly controlled correspondents from the limits on credit exposure, but not from the prudential standards. In the final rule this exclusion has been extended to the prudential standards for consistency. This exclusion does not affect the applicability of other statutory provisions governing transactions with affiliated institutions, such as section 23A of the Federal Reserve Act (12 U.S.C. 371c).

Section 206.2(c) Exposure [Final Rule—Section 206.2(d)]

The proposed rule defined "exposure" as the risk that payment to complete a transaction will not be made in a timely manner or that an obligation will not be paid in full. The definition further provided that "exposure" includes the operational and liquidity risks related to the settlement of transactions and risk related to the creditworthiness of a correspondent. Both overnight and intraday exposure were covered by the definition. The proposed rule required exposure to be monitored under the prudential standards. The Board received twenty comments on this section.

Scope of the Definition

Ten commenters urged that the scope of the definition be restricted. Nine commenters suggested that the definition of exposure include only significant exposure measured by the amount at risk and the product line at issue to a particular correspondent. Four of these commenters suggested that the Board provide guidance, such as that in the payments system risk policy, as to what constitutes significant exposure. One commenter urged that the definition exclude items covered by FDIC insurance. Another commenter suggested that the purchase and sale of Treasury securities be excluded. One commenter suggested that the Board exclude settlement risk from the definition of exposure. Another commenter suggested that the settlement risk in delivery-versus-payment systems be excluded. Two commenters, clearinghouses, suggested that the settlement risk attendant to a clearing and settlement system that includes settlement finality should be excluded from the definition of exposure because it is insignificant. One commenter asked the Board to exclude collateralized interest rate swaps from the definition of exposure. Another commenter questioned whether other exposures like payroll, pending ATM, and coin and currency settlements should be included in exposure. One commenter suggested that the definition of exposure distinguish exposure due to capital market transactions from exposure due to correspondent banking activity. In addition, four commenters urged the exclusion of short-term exposure. One commenter suggested that the rule exclude all exposure with a maturity of less than 14 days, two others urged the exclusion of demand deposits, and the fourth called for the exclusion of federal funds transactions. Three commenters expressed concern that regulators would unreasonably expand the definition.

The final rule excludes certain lower-risk transactions from the definition of "credit exposure," which is the measure of exposure subject to a specific regulatory limit under the rule. The general definition of "exposure" used in the final rule, however, covers all types of transactions that create a risk of nonpayment or delayed payment. The Board believes that banks should consider all types of financial exposure in establishing prudential policies and procedures. As discussed in the summary of the final rule, however, the prudential standards in the final rule have been amended to clarify that a bank is not required to treat all types of exposure in the same manner, and that a bank's internal policies and procedures may provide for differential treatment of exposure based on the form, maturity, and size of the exposure, as well as on the condition of the correspondent.

Clarification of the Definition

Seven commenters found the definition of exposure too vague. Two commenters sought clarification of the definition of settlement risk. One commenter asked for clarification of how settlement risk relates to automated clearinghouse (ACH) transactions. One commenter urged that exposure arising out of credit card transactions should be excluded from the definition of exposure because a bank cannot control the banks to which it has this exposure. In this regard, the Board notes that exposure arising from the following transactions generally is insignificant because the exposed bank usually has prompt recourse to other parties or because the amounts involved are not significant: (1) A collecting bank's risk that a check will be returned, (2) an originating bank's risk that an ACH debit transfer will be returned or its settlement reversed, (3) a receiving bank's risk that settlement for an ACH credit transfer will be reversed, or (4) a credit card transaction. Under the final rule, a bank is not required to conduct periodic reviews of the financial condition of a correspondent where the amount of the exposure is insignificant and would not be required to limit exposure unless there is a significant risk that payment will not be made as contemplated.

Another commenter requested clarification of the terms "liquidity risk" and "operational risk" used in the definition of exposure. Liquidity risk is the risk that payment will be delayed for some period of time. For example, a bank is subject to the liquidity risk that a payment due from a failed correspondent will not be made on time; the bank's credit risk may be a lesser amount due to later distributions from the correspondent's receiver. Liquidity risk is included in the definition of exposure in the final rule. Operational risk if the risk that operational problems at a correspondent, such as computer failure, may prevent it from making payments, thereby creating liquidity risks for other banks, and is also included in the definition of exposure in the final rule.

One commenter asked if correspondent obligations that a bank holds in a fiduciary capacity are excluded. Because obligations held in a fiduciary capacity do not expose the bank itself to loss due to credit, liquidity, or operational problems, such obligations are not included in the definition of exposure.

One commenter argued that depository institution equity securities taken as collateral or in satisfaction of a debt should be excluded from the definition of "exposure" because they are not payment obligations. Such transactions are covered by the definition of "exposure," in the final rule, as they create a credit risk to the bank should the depository institution fail. The definition in the final rule has been redrafted for clarity.

Section 206.2(d) Foreign Banks [Final Rule—Section 206.2(e)]

The proposed rule defined a "foreign bank" as an institution that is organized under the laws of a country other than the United States, engages in the business of banking, is recognized as a bank by the bank supervisory or monetary authorities of the country of the bank's organization, receives deposits to a substantial extent in the regular course of business, and has the power to accept demand deposits. Foreign banks were included in the definition of correspondent in the proposed rule. The Board received seven comments on this section.

Exclusion of Foreign banks

Two commenters urged that the rule exclude foreign banks because of the cost and difficulty in obtaining necessary information, such as capital information, and because the proposed rule would harm the competitiveness of U.S. banks in foreign correspondent markets. These commenters also argued that foreign banks do not pose a risk to the deposit insurance fund, or to the U.S. banking system as a whole. An additional two commenters, focusing on the lack of current risk-based capital ratio information and on the decreased risk posed by foreign banks, suggested that exposure to foreign banks be excluded from application of the benchmark guidelines and subjected only to the prudential standards. Two other commenters, however, strongly supported the coverage of foreign banks in the rule, arguing that exclusion would grant such banks a competitive advantage over domestic banks. One commenter, a clearinghouse, noted that its members were divided on this issue.

Foreign banks were included as correspondents under the proposed rule because failure to cover foreign banks could encourage a migration of correspondent and interbank business to foreign banks irrespective of their condition, thereby potentially increasing risk to insured depository institutions. Consequently, the Board does not believe that foreign banks should be excluded from coverage of the limits on credit exposure or the prudential standards. To address problems with obtaining adequate information concerning foreign banks, however, the final rule provides greater flexibility as to the timing and frequency with which a bank must obtain information on the capital levels of its foreign bank correspondents.

Clarification of the Definition

Two commenters called for recognition of the decreased risk posed by a foreign central bank or a bank guaranteed by a foreign government, and perhaps even exclusion of these institutions from coverage as "correspondents" under this rule. The definition of "foreign bank" is based on the criteria used in the risk-based capital guidelines. As those guidelines exclude the central bank of a foreign country, such institutions would be excluded for the purposes of this rule as well. The Board believes, however, that banks guaranteed by foreign central governments may pose risks and should be included as correspondents for the purposes of this rule.

The definition remains unchanged in the final rule.

Section 206.2(e) Primary Federal Supervisor [Final Rule—Section 206.2(f)]

No comments were received on this section, and the definition remains unchanged in the final rule.

Section 206.2(f) Quality Asset [Final Rule—Section 206.4(f)(3)]

The proposed rule defined a "quality asset" as an asset that is not in a nonaccrual status, on which principal or interest is not more than thirty days past due, and whose terms have not been renegotiated or compromised due to the deteriorating financial condition of the primary obligor. Furthermore, under the proposed rule an asset would not be considered to be a "quality asset" if any other loans to the primary obligor on the asset have been classified as "substandard," "doubtful," or "loss" or treated as "other loans specially mentioned" in the most recent report of examination or inspection of the bank or an affiliate prepared by either a federal or a state supervisory agency. Under the proposed rule, a transaction for which a correspondent is only secondarily liable could be excluded from a bank's "credit exposure" to the correspondent as long as the transaction could be considered a "quality asset."

The Board received one comment, which criticized this definition as too restrictive. The commenter urged that the definition include assets on which principal or interest is not more that 90 days past due, as is the standard in SEC Guide 3 Section III C.1. This SEC standard is used for reporting and disclosure purposes and does not appear to be appropriate for the purposes of this rule. The Board believes that the proposed definition, which was derived from section 23A of the Federal Reserve Act (12 U.S.C. 371c), permits a more accurate measure of actual credit exposure. In the final rule the definition of "quality asset" has been incorporated into the section concerning "credit exposure" (§ 206.4).

Section 206.2(g) Subsidiary [Final Rule—Section 206.4(e)]

Under the proposed rule, the term "subsidiary" was given the same meaning as that term under section 23A of the Federal Reserve Act, and therefore included any company in which a bank owns or control 25 percent or more of any class of voting securities. This definition in the final rule has been modified and incorporated into § 206.4, and is discussed below in the description of comments on that section.

Section 206.2(i) Total Capital [Final Rule—Section 206.2(g)]

The proposed rule defined total capital as the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary federal supervisor. For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord. The Board received two comments on this section.

Two commenters requested clarification that the benchmark guidelines would be based on the total capital of a foreign bank, rather than only on the capital of the branch. The limit on credit exposure of the insured branch of a foreign bank is based on the foreign bank's total capital, as defined in this section, not on the imputed capital of the branch.

The definition remains unchanged in the final rule.

Section 206.2(j) U.S. depository Institution [Final Rule—Section 206.2(h)]

The proposed rule defined "U.S. depository institution" as a federally insured depository institution chartered in the United States under federal or state law, and included an insured national bank, state bank, District bank, or savings association, as those terms are defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), but did not include an insured branch of a foreign bank. U.S. depository institutions were included in the definition of "correspondent" in the proposed rule. The Board received eight comments on this section, two of which supported the definition as written.

Scope of the Definition

Three commenters urged the inclusion of credit unions, asserting that they poses risks to the financial system through the large inter-institution liabilities of credit union corporate centrals. Credit unions do not offer a full range of correspondent services to FDIC-insured banks and are not insured by the FDIC. Therefore, the Board does not believe that exposure to credit unions poses risks to insured banks and

to the FDIC insurance funds of the type that section 308 was designed to address.

Clarification of the Definition

Three commenters suggested that the final rule include specific language excluding Federal Home Loan Banks. The Board believes that the definition excludes Federal Home Loan Banks and that a specific exclusion for Federal Home Loan Banks is unnecessary. The definition in the final rule has been redrafted for clarity.

Section 206.3 Prudential Standards

Section 206.3(a) Internal limits. [Final Rule—Section 206.3(c)]

The proposed rule required that a bank establish and maintain policies and procedures to limit exposure to the correspondents with which it does business. The rule further required that banks establish and periodically review and revise, as necessary, limits on exposure to individual correspondents based on an evaluation of the overall financial condition and other factors being on the creditworthiness of each correspondent. Finally, it required that a bank structure these limits to avoid undue concentration of settlement or credit risk with respect to any individual correspondent. Most of the comments received addressed the prudential standards, and 110 of those comments addressed § 206.3(a) on internal limits.

Appropriateness of Internal Prudential Standards

Twenty-four commenters agreed that the prudential standards reflect prudent banking and general industry practice, and twenty-eight commenters indicated that they had already established prudential standards for interbank exposure. Moreover, twenty-four commenters suggested that this provision, supplemented by examination, be the heart of the regulation. On the other hand, forty-two commenters, including five who indicated that they already conduct similar prudential analyses, disagreed with the Board's approach to the problem of interbank liabilities. These commenters argued that the examination process can adequately address the problem, both because adequate controls already exist in the safety and soundness criteria and because the examination and consultative process is superior to regulation. These commenters concluded, therefore, that the rule would impose increased costs without achieving a commensurate reduction in risk. Three of these commenters suggested that the Board conduct an empirical study of the risks associated with interbank liabilities and the cost of controlling those risks.

Thirty-two commenters offered alternatives to the prudential standards. Three suggested approval of correspondent relationships by vote of the bank's board of directors. Eighteen commenters, submitting an identical letter, suggested that the prudential standards require only that a bank obtain information from its correspondents once a year to demonstrate that the correspondents meet appropriate capital standards. One commenter suggested that banks be permitted to tier their prudential standards in a similar fashion as the capital guidelines. Six commenters favored a simple statement that the risks must be addressed, while another suggested that the standard be the same due diligence standard applied to any loan. One commenter urged the Board to require specific, detailed lending policies, similar to those for highly leveraged transactions, while another commenter asserted that only on-site examinations offer a true measure of risk. One commenter suggested that the rule require an annual review of capital, management experience, and income trends.

Implementation of the Requirement

Twelve commenters expressed a desire for greater specificity regarding the preparation and review of the internal limits. Six requested specificity as to the factors that a bank should evaluate or argued that the factors be limited. One commenter sought clarification of whether internal standards could ever be breached. Four commenters indicated that respondents may lack the expertise to analyze the financial condition and risk of larger correspondent banks, particularly where the correspondent has significant off-balance sheet activities. Six commenters expressed concern about the availability of the information. One of these commenters stated that correspondents that compete on other fronts may be unwilling to divulge non-public information. One commenter asked whether banks could rely on information from correspondents. Two commenters expressed concern that call and audit reports do not address overall conditions and operations, although both are mentioned as factors in the proposed rule. Five commenters expressed concern that the proposed rule failed to encourage banks to improve continuously their risk management programs and may encourage banks to abandon a more sophisticated system for one which tracks the guidelines. One of those commenters urged that the Board adopt uniform examination guidelines that reflect to the greatest degree possible existing risk monitoring and control practices.

Final Rule

The primary focus of the final rule is on a bank's analysis of the creditworthiness of its correspondents. Many of the concerns raised by these commenters are addressed by the more extensive guidance in the final rule as to the standards that a bank's internal policies and procedures would be expected to meet. The final rule states that internal procedures should be directed at preventing excessive exposure to a correspondent in relation to the financial condition of the correspondent, and allows banks to adopt flexible policies and procedures to meet this standard. The final rule does not require the same procedures to be used for all correspondents or all types of exposure.

Under the final rule, a bank's internal policies and procedures must provide for periodic reviews of a correspondent's financial condition only where exposure to the correspondents is significant. Periodic review of the financial condition of correspondents to which the bank has only insignificant levels of exposure, such as small balances maintained for clearing purposes, would not be required under the final rule. While the bank's board of directors would be required to review the bank's policies and procedures concerning correspondents on an annual basis, the board would not be required to approve individual correspondent relationships. The final rule also does not require the bank to obtain non-public information on which to base its analysis of the financial condition of a correspondent, but permits use of publicly available information, such as call reports, Uniform Bank Performance Reports, and annual reports.[8]

Additionally, the final rule requires the establishment of internal limits only where the financial condition of the correspondent and the form or maturity of the exposure create a significant risk that payments will not be made as contemplated. The rule does not require a particular structure or method of maintaining such limits, but permits the bank flexibility to structure limits in a

[8] A bank would be required to obtain non-public financial information only in the limited circumstances where no publicly available source of information existed, such as for certain privately owned foreign banks.

manner that will meet the needs of the bank. For example, in appropriate circumstances a bank may establish limits for longer term exposure to a correspondent, while not setting limits for overnight or intraday exposure.

Clarification of the Requirement

Eight commenters inquired whether the Board would permit a lead bank or bank holding company to conduct the prudential analysis for affiliated banks. The final rule clarifies that a bank may rely on its bank holding company, a bank rating agency, or another party to provide financial analysis of correspondents or to select correspondents, as long as the board of directors of the bank has reviewed the assessment or selection criteria used by that party.

Section 206.3(b) Monitoring. [Final Rule—§ 206.3(c)]

The proposed rule required that a bank structure transactions with a correspondent or monitor exposure to a correspondent to ensure that its exposure does not exceed its internal limits established under § 206.3(a) and that its credit exposure ordinarily not exceed any applicable guidelines on credit exposure specified in § 206.4. The Board received 160 comments on this section.

One hundred fourteen commenters, thirty of whom submitted a substantially similar letter, protested the cost burden implicit in the monitoring requirements. Sixteen commenters argued that the costs of the monitoring provisions of the proposed rule outweigh the benefits. Fifty-nine commenters argued that these costs will be exacerbated if banks must spread their correspondent business among a number of banks. Two commenters complained that the cost burden would fall disproportionately. One asserted that small community banks would bear the brunt of it and another asserted it would fall inequitably on the adequately and well-capitalized banks of the Midwest. Seven commenters pointed out that even well-capitalized private correspondents and respondents will have to bear these costs.

Clarification of the Requirement

Six commenters requested clarification as to whether the requirement of the rule would be satisfied by structuring relations so that the limits are not exceeded, such as through agency sales policies. Five commenters urged the Board to consider permitting a lead or parent bank in a bank holding company to monitor exposure for its affiliated banks. Two commenters urged that the monitoring requirements distinguish between significant and insignificant exposure. Another urged that the final rule permit systems consistent with the institution's business, internal systems operations, and personnel. Seven commenters expressed concern that examiners might unduly restrict the regulatory flexibility that was designed to permit the use of diverse existing monitoring and risk control practices. They urged the Board to adopt uniform examination guidelines that would accommodate existing systems. Two commenters suggested as a model the guidelines for self-assessments on payment system risk.

Frequency of Monitoring

Twelve commenters argued that daily monitoring is excessive if not impossible. One commenter asserted that a banker cannot know the balance on a pass-through account. Two other commenters stated that global monitoring of outstanding exposures on a daily basis in products such as interest rate swaps, letters of credit, and other transactions would be extremely difficult, and that banks should be permitted to use their prudential limits as proxies for actual exposure where these limits are below the benchmarks. One commenter urged that the final rule match the frequency of review with the risk, while another urged the Board to permit banks to monitor exposure in arrears and take corrective action should exposure exceed prearranged levels. One commenter urged the Board to permit banks to monitor weekly or monthly averages. Two commenters expressed approval of the proposed rule's acceptance of *ex post* monitoring.

Monitoring Overnight Exposure

Fourteen commenters urged the Board to clarify the requirements for monitoring overnight interbank transactions and to consider eliminating monitoring of these transactions. Four of these commenters stated that the likelihood of a bank failing solely on the basis of its overnight exposure is very remote, and two argued that market factors weed out weak correspondent banks. Five other commenters argued that the regulatory burden on small banks in monitoring and controlling overnight interbank transactions is unreasonable and costly, and could force small banks to transfer their business to Reserve Banks. Another commenter urged the exclusion of overnight federal funds sales from the exposure that must be monitored as long as the sales were made under a preauthorized line to an approved list of correspondents, on the grounds that it may be difficult to determine other exposure to a correspondent at the time of a federal funds transaction.

Monitoring Credit Exposure

Fifteen commenters addressed the issue of monitoring credit exposure. Five of these commenters urged that the proposed rule's acceptance of occasional or inadvertent excesses be maintained and broadened sufficiently that small banks with unexpected large deposits or late incoming wire transfers be permitted to adjust their balances within a day or two. Six commenters expressed concern that the guidelines would be viewed as rigid limits. Another commenter asserted that the proposed rule's acceptance of occasional excesses would be where the trouble spots would arise. Three other commenters requested clarification as to how often and under what circumstances a bank may exceed the guidelines. One commenter suggested that the final rule grant banks time to bring combined credit exposures due to mergers or other acquisitions into compliance with the benchmark guidelines.[9]

Monitoring Intraday Exposure

Eleven commenters urged the Board to eliminate any requirement for intraday monitoring. Three of these commenters stated that most banks, and especially smaller banks, would find it difficult or impossible to monitor and manage intraday exposure. Another commenter expressed concern that banks' attempts to limit intraday exposure by delaying settlements pending receipt of offsetting funds could lead to system gridlock. Two commenters argued that intraday exposure was similar to cash items in the process of collection and should be excluded from the rule. Four additional commenters sought clarification as to whether daylight overdrafts would be violations of the rule.

The Final Rule

The final rule allows a bank to adopt monitoring policies and procedures that are appropriate for the bank's particular situation. The final rule does not require the establishment of limits or monitoring for all sources of exposure to all correspondents. The final rule provides that, for the significant sources of exposure for which internal limits are required, a bank may either monitor exposure or structure transactions to

[9] Other comments on monitoring credit exposure are addressed in the discussion of the guidelines on credit exposure.

ensure that internal limits generally are not exceeded. A bank could accomplish this either by monitoring actual overall exposure, or by establishing individual lines for significant sources of exposure, such as federal funds sales, and establishing procedures to ensure that exposure generally remained within the established lines. A bank could also maintain limits on exposure by establishing limits with correspondents, such as for federal funds sold on an agency basis.

Under the final rule, banks are not expected to monitor exposure to correspondents on a real-time basis. Monitoring generally may be done retrospectively, and the required frequency depends on the extent to which exposure approaches the bank's internal limits, on the volatility of the exposure, and on the condition of the correspondent.

Although the purpose of requiring monitoring or structuring of transactions is to ensure that exposure generally remains within established limits, the final rule recognizes that occasional excesses may occur. The final rule provides that a bank should structure transactions or monitor exposure to a correspondent to ensure that exposure ordinarily does not exceed internal limits, except for occasional excesses resulting from factors such as unusual market disturbances, market movements favorable to the bank, operational problems, or increases in activity. Unusual late incoming wires or unusually large cash letters would be considered examples of the types of activities that could lead to excesses over internal limits that would not be considered impermissible under the final rule. The final rule requires the bank to establish appropriate procedures to address excesses over internal limits.

With respect to intraday monitoring, the Board recognizes that intraday exposure may be difficult for a bank to actively monitor and limit. Under the final rule, intraday exposure, like interday exposure, may be monitored retrospectively. Further, where the risk resulting from intraday exposure is low, taking into account the condition of the correspondent and the size of the exposure, specific limits and monitoring to those limits would not be required under the final rule.

Additionally, to ease monitoring in the case of mergers or acquisitions, the final rule excludes exposure resulting from the merger or acquisition of a bank from the calculation of "credit exposure," for the purposes of the limit on credit exposure for one year after the merger or acquisition.

Under the final rule, a bank's internal policies and procedures are required to limit credit exposure to a less than adequately capitalized correspondent to not more than 25 percent of the exposed bank's capital. Therefore, these monitoring requirements for exposure would also apply to monitoring credit exposure limits.

Section 206.4 Guidelines for Credit Exposure

The proposed rule provided that, in addition to the prudential limits on exposure established by a bank under § 206.3, a bank ordinarily would be expected to maintain credit exposure to an individual correspondent, as calculated under § 206.5, within certain guidelines or limits unless the exposure is to a commonly controlled insured depository institution, as provided in paragraph (b) of that section. The proposed guidelines or limits were structured as "benchmarks" that would be considered prudent outside limits on credit exposure and were not intended to endorse levels of credit exposure that otherwise would not be considered prudent based on the condition and operations of the correspondent. The Board received 112 comments addressing this section specifically.

Elimination of the Guidelines

Forty-three commenters, primarily large banks, opposed the requirement that banks adhere to these limits. Forty commenters argued that the Board should eliminate the guidelines, and three commenters urged that the guidelines be merged into the prudential standards to retain responsibility in management for the safe and sound management of exposure. One commenter proposed that where banks have appropriate internal prudential policies, they need not demonstrate that they are within the guidelines. Seven commenters argued that the proposed rule would require the creation of a comprehensive system to monitor credit exposure, as measured by the rule, simply to demonstrate that credit exposure is substantially within the guidelines. Ten other commenters argued that the benchmarks are crudely calibrated and that compliance with them would divert resources within banks away from activities designed to achieve real reductions in risks. Eight other commenters stated that the guidelines would create costly inefficiencies and reduce interbank liquidity, as banks would reduce exposure to an individual correspondent solely to avoid monitoring costs. One commenter contended that the guidelines would, in effect, penalize banks with existing internal controls. One commenter asserted that many banks lack the information technology that would permit on-line access to information on credit exposure to a specific correspondent, and that purchasing such a system would cost $1 million. Two commenters argued that it is impossible to monitor and therefor to limit global exposure daily.

The Level of the Guidelines

The board received fifty-seven comments concerning the amount of permissible exposure under the guidelines, two of which specifically endorsed the guidelines. Two commenters urged that banks in a bank holding company be permitted to aggregate their credit exposure to individual correspondents in measuring compliance with the guidelines. One commenter argued that the limits were too high and suggested that they not exceed the legal lending limits, which are themselves too high in the opinion of the commenter. The remainder of the commenters argued that the guidelines were too restrictive.

The commenters presented a number of arguments for relaxing the guidelines. Seventeen commenters noted that the benchmarks could force a bank to reduce its exposure to a well-managed, adequately capitalized correspondent while taking more exposure to other correspondents that the bank may not believe are as creditworthy. Eight commenters stated that small banks' federal funds sales can fluctuate dramatically, making continuous compliance costly and difficult. Six commenters expressed concern that cash letter fluctuations would make compliance with the guidelines difficult. Two commenters expressed concern that the guidelines would make it difficult to fund their correspondent to cover payments system transactions. One commenter argued that the guidelines would force inexperienced banks to engage in securities trading in order to avoid federal funds sales.

Sixty-two commenters emphasized the difficulty of diversifying correspondent business in order to comply with the guidelines. Fifty-nine of these commenters focused on the costs of establishing and maintaining additional correspondent relationships, and many argued that the expense of diversification exceeds the reduction in risk. Four commenters asserted that mergers and acquisitions have reduced the number of suitable correspondents. One commenter argued that larger correspondents were not interested in providing services to smaller banks.

Five correspondents argued that concentrating correspondent business is beneficial because a close relationship covering multiple services is important and brings such benefits as preferred customer status. One commenter argued that only by concentrating its correspondent business can a small bank engage in a broad range of transactions, such as settling trades in Treasury bills in an amount large enough to obtain the maximum yield. Six other commenters argued that concentrating correspondent business may reduce systemic risk by facilitating closer monitoring.

Eight commenters contended that reducing exposure by selling federal funds through an agent is more expensive. Four commenters asserted that reducing exposure by shifting from compensating balances to fees reduces profitability because compensating balances often provide a higher return than short-term investments. Another commenter argued that fees created a risk to the correspondent of nonpayment.

Three commenters proposed modifications to the guidelines. One urged an exemption for well-managed banks and two others suggested that the tiers be altered to permit a minimum percentage or dollar amount of acceptable exposure without regard to capitalization.

The Final Rule

The final rule places greater emphasis on analysis of the creditworthiness of correspondents and decreases the emphasis on across-the-board limits. The limit on credit exposure to adequately capitalized correspondents has been eliminated. The limit on credit exposure to correspondents that a bank cannot demonstrate are at least adequately capitalized remains, however. The Board believes that the elimination of the limit for adequately capitalized correspondents will significantly reduce the problems associated with the limits. Because fewer correspondents would be subject to the limits, monitoring to ensure compliance should be less costly. Additionally, because the remaining limit on credit exposure would be implemented as part of the bank's normal policies and procedures, the final rule permits a bank to choose to implement the limit through structuring of relationships or monitoring.

Section 206.4(a)(1) Well-Capitalized Correspondents [Final Rule—Included With Adequately Capitalized Correspondents Under Section 206.4(a)(1)]

The proposed rule stated that, except as otherwise provided in § 206.3, a bank need not limit its credit exposure to a correspondent that the bank can demonstrate is well capitalized, as defined in § 206.6 of the proposed rule. The Board received three comments on this section, two of which strongly endorsed the rule as written.

One commenter expressed concern that regulators will restrict respondent's discretion in creating exposure to well-capitalized banks and that respondents, fearing that, will themselves restrict their exposure, reducing liquidity and fragmenting correspondent relationships. The final rule continues to provide that, while prudential limits to well-capitalized correspondents may be appropriate, these limits are not bounded by an express limit in the rule.

Section 206.4(a)(2) Adequately Capitalized Correspondents [Final Rule—Included in Section 206.4(a)(1)]

The proposed rule provided that a bank ordinarily should limit its daily interday credit exposure to a correspondent that the bank can demonstrate is adequately capitalized, as defined in § 206.6 of the proposed rule, to an amount equal to not more than 50 percent of the bank's total capital. The proposed rule also provided that, for such a correspondent, the bank ordinarily should limit its daily inter-day credit exposure with a remaining term to maturity of more than thirty days to an amount equal to not more than 25 percent of the bank's total capital. Twenty-three commenters specifically addressed this section.

Elimination of Limit

Eighteen commenters suggested that the final rule eliminate the distinction between adequately and well-capitalized correspondents altogether.

A number of banks argued that this provision would have an adverse effect on adequately capitalized banks or that the difference between adequately and well-capitalized banks was not meaningful. One commenter argued that the rule would interfere with an adequately capitalized bank's ability to compete in international funding markets. Three commenters pointed out that, although the difference between a well-capitalized bank and an adequately capitalized bank is insignificant at the margin, the rule imposes a significant monitoring burden on respondents dealing with an adequately capitalized correspondent. Two other commenters asserted that the burden of complying with the rule would lead respondents to cease to do business with adequately capitalized banks. Three commenters argued that it would be very difficult for banks to regain market share if they drop, even temporarily, from well to adequately capitalized. Two commenters suggested that the rule may exacerbate systemic risk by restricting credit to a bank when that bank's capital declines by an arbitrary amount.

Two commenters complained that, in effect, the rule would force banks to restrict their exposure to transactions with maturities shorter than 30 days, leading banks to concentrate bank funding in shorter maturities, rather than balancing short- and long-term exposure. These commenters also argued that the rule would force banks to buy securities, reducing liquidity and exacerbating the credit crunch. In addition, two commenters expressed concern that misunderstanding of the purpose of the capital classifications could lead to a retreat from institutions that do not pose a risk to the banking system or to their customers, but that do not meet the standards to be considered "well capitalized."

Proposed Changes

Six commenters proposed changes to the guidelines concerning adequately capitalized banks. Two commenters suggested that the 25 percent limit only apply to exposures with a maturity of over 90 days. One suggested that the only restriction on banks dealing with adequately capitalized correspondents be a limit of 50 percent of capital on exposure with maturities of 90 days or more. Two other commenters suggested that the exposure limit be increased to 100 percent of capital with a 50 percent limit for 30 day maturities. Conversely, one commenter suggested that the Board eliminate limits on credit exposure with maturities longer than 30 days, asserting that tracking exposure by maturity is expensive, especially for small banks, and that as a result banks will eliminate exposure to adequately capitalized banks.

The Final Rule

The final rule does not include a regulatory limit on credit exposure to adequately capitalized institutions. The Board believes that this change will reduce monitoring costs and avoid unwarranted reductions in the business of adequately capitalized banks due to the implementation of section 308. Elimination of this limit also reflects the difficulty in setting an appropriate

exposure limit that reflects the actual credit and liquidity effects of a correspondent's failure in light of prompt partial payment by the FDIC.

Further, the proposed limit on credit exposure for adequately capitalized correspondents served largely as a transition from the unrestricted credit exposure permitted for well-capitalized correspondents to the 25 percent limit for less than adequately capitalized correspondents. The prudential standards of the proposed final rule have been modified to address this issue more directly by emphasizing analysis of the creditworthiness of a correspondent and requiring a bank to take into account any deterioration in the financial condition of its correspondent.

Finally, credit exposure in excess of 25 percent of the bank's total capital would not be "grandfathered" under the proposed final rule, thus encouraging a bank with significant credit exposure to a correspondent that is in danger of slipping below adequately capitalized to limit the maturity of any credit exposure in excess of the 25 percent guideline.

The final rule also reduces the need for a rapid reduction in exposure to a correspondent that has slipped below adequately capitalized by extending the transition provision to 120 days, allowing the bank more time to evaluate exposure and restructure activities.

Section 206.4(a)(3) Other Correspondents [Final Rule—Incorporated in Section 206.4(a)(1)]

The proposed rule provided that a bank ordinarily should limit its daily interday credit exposure to a correspondent that the bank cannot demonstrate is well or adequately capitalized to an amount equal to not more than 25 percent of the bank's total capital. The Board received nine comments on this section, one of which supported the regulation as written.

Three commenters proposed that the rule increase permissible exposure to 50 percent of capital. One of these commenters suggested that this increase be contingent upon the respondent conducting due diligence quarterly. Another commenter argued that restricting exposure to less than adequately capitalized banks would increase the likelihood of their failure. Three commenters suggested that the final rule be more stringent. Two suggested that the rule prohibit any uninsured exposure to a significantly or critically undercapitalized correspondent, and the other suggested that the rule prevent significantly undercapitalized banks from purchasing federal funds or certificates of deposit with maturities over seven days. Finally, one commenter questioned why the proposed rule did not distinguish between undercapitalized, significantly undercapitalized, and critically undercapitalized banks.

As discussed above, the limit on credit exposure to correspondents that a bank cannot demonstrate are at least adequately capitalized has been retained in the final rule. Greater credit exposure to such correspondents would generally create undue risk to banks. However, the Board does not believe that additional guidelines to address more significantly impaired correspondents are warranted. Banks' prudential policies and procedures should address exposure to particularly troubled correspondents.

Section 206.4(b) Commonly Controlled Insured Depository Institutions [Final Rule—Section 206.2(b) and (c)]

The proposed rule provided that, except for the general prudential standards in § 206.3, a bank need not limit its credit exposure to a correspondent that is commonly controlled with the bank and for which the bank is subject to liability under section 5(e) of the Federal Deposit Insurance Act.

The proposed rule defined a correspondent as commonly controlled with the bank if 25 percent or more of any class of voting securities of the bank and the correspondent were owned, directly or indirectly, by the same depository institution or company; or, either the bank or the correspondent owns 25 percent or more of any class of voting securities of the other. Exposure to a commonly controlled depository institution was excluded from the limits on credit exposure because there is no effective way for an insured bank to limit its credit exposure to an FDIC-insured depository institution that is commonly controlled with the bank. The cross-guarantee provisions of the Federal Deposit Insurance Act make an insured depository institution potentially liable to the FDIC for losses resulting from the failure of a commonly controlled insured depository institution. The Board received fourteen comments on this section, three of which supported the section as written.

Substantive Comments

Eleven commenters criticized the exemption for commonly controlled institutions. Eight of them, submitting a substantially similar letter, argued that this provision would permit big banks to evade the purpose of the statute by shifting funds among commonly controlled institutions. Another commenter argued that depositor risk is measured by institutions and that risk to the deposit insurance system is not reduced because of bank consolidation. The commenter questioned whether the rule reflects a regulatory bias towards consolidation. In contrast, two other commenters argued that the Board should exclude inter-affiliate transactions from the rule entirely.

The provisions of the proposed rule reflected the authority of the FDIC to invoke cross-guarantees and thereby override any efforts of a bank to limit exposure to a commonly controlled correspondent, as well as current inter-affiliate funding arrangements within bank holding companies. Because of the cross-guarantees, disruption of these arrangements would not yield a commensurate reduction in risk to the FDIC insurance funds or to the banking system. The Board believes that exposure to commonly controlled correspondents should not be covered by either the limits on credit exposure or the prudential standards provisions of the final rule, as a bank cannot effectively limit its exposure to such correspondents under either provision. However, the Board notes that section 23A(a)(4) of the Federal Reserve Act would continue to apply to transactions with affiliates, including commonly controlled insured depository institutions.

One commenter suggested that the exclusion apply to banks that own shares in bankers' banks. The Board does not believe that it is appropriate to apply the exclusion to owners of a bankers' bank because the failure of the bankers' bank would not subject the owners to the cross-guarantee provisions of section 5(e) of the Federal Deposit Insurance Act.

Drafting

Two commenters suggested that the exception include banks subject to the provisions of section 23A of the Holding Company Act. This portion of the rule reflects those banks subject to the cross-guarantee provisions, which will cover virtually all those covered by section 23A.

This provision has been retained in the final rule but has been moved to the definitions section with conforming drafting changes.

Section 206.4(c) Exposure of Subsidiaries [Final Rule—Section 206.4(e)]

The proposed rule provided that, in calculating credit exposure to a correspondent under this part, a bank must include the credit exposure of the bank's subsidiaries to the

correspondent. If the bank did not own 100 percent of the shares of the subsidiary, the proposed rule required the bank's credit exposure to include a *pro rata* portion of the subsidiary's exposure, based on the percentage ownership of the bank in the subsidiary. The purpose of this section was to capture the full exposure of a bank to a correspondent. The Board received five comments on this section.

Four commenters argued for restricting the scope of the regulation to subsidiaries of which the bank owns a majority of the voting stock. Two commenters argued that where a bank owns only a minority position, it may be unable to obtain daily exposure figures. Three commenters stated that the parent bank is unlikely to have consolidated systems for calculating exposure for minority-owned subsidiaries, and one noted that the percentage ownership may not justify the expense to the subsidiary of establishing an information reporting system for the shareholder bank. One of the commenters argued a bank cannot cause a subsidiary that the bank does not control to reduce its exposure, and the bank therefore could ensure compliance with the limits only by selling its interest in the subsidiary or by reducing its own exposure to the counterparty. Finally, three commenters argued that where the subsidiary is not included in the bank's consolidated financial statements, but is only reported as an investment, the parent's exposure is not the subsidiary's exposure but is limited to the bank's investment.

One commenter queried how the *pro rata* portion should be determined if a bank holds different classes of stock in the subsidiary. This commenter suggested that the provision only apply to banks holding common stock because the same credit exposure does not exist if the bank holds preferred stock, and proposed that where a bank holds a different class of stock, it should be permitted to use any reasonable method to calculate exposure.

In formulating the proposed rule, the Board noted that banks may assume obligations to support a subsidiary beyond their actual investment. However, the Board has modified the final rule to require a bank to include with the bank's own credit exposure 100 percent of the credit exposure of any subsidiary that the bank is required to consolidate on its Report of Condition and Income or Thrift Financial Report. This provision generally captures the credit exposure of any majority-owned subsidiary of the bank. Under the final rule, therefore, none of a minority-owned subsidiary's exposure and all of a majority-owned subsidiary's exposure would be included in the parent bank's exposure calculation.

Section 206.4(d) Transition Provisions [Final Rule—Section 206.4(a)(2)]

The proposed rule required that, where a bank is no longer able to demonstrate that a correspondent is adequately capitalized or well capitalized for the purposes of § 206.4(a)(1) or (2), including where the bank cannot obtain adequate information concerning the capital ratios of the correspondent, the bank should reduce its credit exposure to the appropriate level under § 206.4(a) within 30 days after the date when current call report or other relevant financial data normally would be available. The Board received forty-seven comments on this section.

Extension of the Transition Period

Forty-five commenters expressed concern about the increase in monitoring requirements when a correspondent drops from well to adequately capitalized, the competitive impact on the correspondent, and compliance burdens. These commenters urged the Board to avoid overreaction to temporary dips in capital and to extend the transition period. Thirty of these commenters, submitting a substantially similar letter, proposed that banks be given one year to resume well-capitalized status. Eight commenters recommended transition periods ranging from 90 to 120 days. Four commenters noted that a variety of factors, such as regulatory changes, increases in reserves, asset revaluation, or acquisitions, could cause a bank's capitalization ratio to change abruptly without necessarily signifying significantly increased risk. Another commenter argued that the proposed rule, as written, would require a swift, abrupt adjustment to temporary swings in capital, resulting in a market bias for banks with capital less subject to fluctuations. Five commenters argued that where the credit exposure consists of off-balance sheet items or instruments with maturities of longer than 30 days, judicious reductions in credit exposure may not be possible within the rule's time frame. Three others stated that delays in financial reporting, especially where the respondent relies on a reporting service, may make compliance with the transition provisions extremely difficult.

One commenter inquired whether a respondent must adjust its exposure if the correspondent provides assurances that it will reacquire its former status within the next reporting period.

The Board believes that a longer transition period of at least a calendar quarter will avoid undue disruptions in correspondent relationship for temporary declines in capital ratios by allowing the correspondent an opportunity to bring its capital ratios back the relevant levels before the next quarterly report. The extended period will also provide the exposed bank more time to implement any monitoring required to demonstrate compliance with the regulatory limit and to adjust the maturities or level of exposure to the correspondent. Accordingly, the final rule would permit a bank 120 days to reduce its credit exposure to a correspondent.

If a bank has been relying on information from call reports or from a bank rating service for a correspondent's capital ratios, the 120-day period would run from the date when the call report or bank rating reflecting the correspondent's reduced capital ratios was received, or from the date that the information normally would be received. If a bank has been relying on information received from the correspondent to demonstrate that the correspondent is at least adequately capitalized, and the correspondent is no longer providing such information, the 120-day period would run from the date when the bank ordinarily would have received the information from the correspondent.

Section 206.5 Credit Exposure [Final Rule Consolidated in Section 206.4]

Section 206.5(a) Scope of Credit Exposure [Final Rule—Section 206.4(b)]

The proposed rule defined the credit exposure of a bank to a correspondent as the bank's assets and off-balance sheet items that are subject to capital requirements under the capital adequacy guidelines of the bank's primary federal supervisor and that involve claims on the correspondent. The proposed rule excluded certain relatively lower-risk items. In addition, for the purposes of this section, the rule provided that off-balance sheet items were to be valued on the basis of current exposure. Under the proposed rule, "credit exposure" was subject to the numerical benchmark guidelines or limits. In addition to the comments concerning the definition of exposure, addressed in § 206.2(c) above, the Board received ten comments on the definition of credit exposure.

One commenter noted that credit exposure is difficult to measure and criticized the proposed rule's emphasis on it. The proposed final rule deemphasizes credit exposure by

eliminating the regulatory limit on credit exposure to adequately capitalized correspondents. While most of the commenters addressed the specific exclusions from the calculation of credit exposure, one commenter expressed concern about the inclusion of derivative instruments, such as swaps, in the calculation of interbank exposures, especially in light of the fact that non-bank correspondents or parties to derivative instruments are excluded. This commenter argued that the rule would drive the derivative business to non-bank counter-parties, weakening the safety protocols introduced into the swaps and other derivative markets as a result of bank participation in the markets. The Board believes that banks should have similar controls on credit exposure to nonbanks as on credit exposure to banks. However, exposure to nonbanks was not addressed by the statute. Further, the Board believes that it is not appropriate to exclude credit exposure from derivative instruments from the rule, as it represents a significant source of interbank exposure in many cases.

One commenter argued that depository institution equity securities taken as collateral or in satisfaction of a debt should be excluded from the definition of "credit exposure" because these instruments are not payment obligations. Such transactions give rise to a risk of loss if the correspondent fails, and therefore are covered by the definition of "credit exposure." In some circumstances, however, obligations collateralized by bank stock may qualify for exclusion under 206.4(d)(3) of the final rule. The definition in the final rule has been redrafted to clarify that capital instruments issued by the correspondent are included in the definition of "credit exposure."

Another commenter asked if the calculation of "current replacement value" for interest rate and foreign exchange contracts means that banks must make daily mark-to-market calculations on a counterparty by counterparty basis. The rule provides that monitoring must be on a mark-to-market basis. However, the marking need only be done at the appropriate monitoring intervals, which depend on the factors listed in the revised monitoring provision discussed above, not daily. One commenter stated that it has a sophisticated system which measures fractional rather than mark-to-market exposure, and inquired whether it may use its own system rather than the proposed rules. As noted above in the discussion of monitoring, alternative systems may be used where they will effectively maintain exposure within the prescribed limits.

Six commenters urged that settlement exposure be specifically excluded for the sake of clarity. Two commenters urged that intraday exposure be specifically excluded. One commenter suggested that intraday exposure be defined as exposure of less than 24 hours.

The proposed final rule has been redrafted for greater clarity, specifying that intraday or settlement exposure and agented funds are not included in "credit exposure."

Section 206.5(b) Netting [Final Rule—Section 206.4(c)]

The proposed rule provided that transactions covered by netting agreements that are valid and enforceable under all applicable laws may be netted in calculating exposure. The Board received two comments on this section.

One commenter urged the Board to permit mutual correspondents to deduct the reciprocal "due from" balances from exposure limits because they reduce exposure risk. Another commenter requested that the Board clarify the requirements that a bank "must have reasoned legal opinions" that netting contracts are valid and enforceable.

Under the final rule, the netting provision remains unchanged. Reciprocal "due from" balances that do not result in legally binding netting do not reduce credit risk to the same extent as legally binding netting. Reasoned legal opinions that netting contracts are valid would include opinions of counsel describing the legal reasoning that led to the conclusions expressed in the opinions.

Section 206.5(c) Exclusions [Final Rule—Section 206.4(d)]

The proposed rule established four exclusions to the scope of credit exposure.

Section 206.5(c)(1) Secured Transactions [Final Rule—Section 206.4(d)(1)]

The first exclusion involved transations, including reverse repurchase agreements, that are fully secured by government securities or readily marketable collateral having a current market value equal to 100 percent of the credit exposure under the transaction. For the purpose of this exclusion, "government securities" were defined as obligations of, or obligations fully guaranteed as to principal and interest by, the United States government or any department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned directly or indirectly by the United States. "Readily marketable collateral" means financial instruments or bullion that may be sold in ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid- and ask-price market. Both of these definitions were taken from the Office of the Comptroller of the Currency's lending limits on national banks. The Board received six comments on this section.

Two commenters suggested that this exception cover transactions to the extent that they are secured. The final rule has been redrafted to exclude transactions to the extent that they are secured.

Two other commenters suggested that the definition of government securities include those backed by the full faith and credit of a state government as well. The definition of government securities has not been changed, but the Board believes that most state securities would be covered by the definition of "readily marketable collateral." Transactions secured by these securities, therefore, would be excluded from credit exposure.

One commenter asked if letters of credit guaranteed by the Export-Import Bank of the United States would be considered government securities. The Board notes that, regardless of whether guaranteed letters of credit would be considered to be government securities, such transactions generally would qualify for exclusion from the calculation of credit exposure provided under § 206.4(d)(3) of the final rule (see discussion under "Quality assets").

Another commenter expressed concern that the exclusion for transactions secured by government-backed securities would lead to increased investment in government securities and decreased loans. The Board recognizes that the rule could encourage investment in government securities, but investment in government securities reflects lower credit risk than many other transactions and is consistent with the capital guidelines.

Section 206.5(c)(2) Cash Items in the Process of Collection (CIPC) [Final Rule—Section 206.4(d)(2)]

The second exclusion from the calculation of credit exposure covered the proceeds of checks and other cash items deposited in an account at a correspondent that are not yet available for withdrawal. The Board received nine

comments on this section, three of which supported the section as written.

Three commenters expressed concern about the rule's treatment of when a cash item becomes exposure. One asked if "due from" balances should be measured by the actual available balance as reported by the bank on its internal ledger balance. The final rule requires that such balances be measured by the actual available balance. Two trade associations commenting on the rule stated that current correspondent practice is to make funds available as early in the day as possible, causing respondents under the proposed rule to incur a measurable exposure for a longer period of time and perhaps before collection of the underlying item has actually taken place. The Board notes that the valuation of cash items in the process of collection that would not be considered to be deposits by the FDIC, acting as receiver of a failed bank, can only be made after the fact. The Board believes, however, that the proposed standard best approximates this value and has retained it in the final rule.

Clarification

Six commenters asked what comparable items are included in "checks and other cash items." One commenter specifically suggested that credit card and debit card transaction be covered by the exclusion. Two commenters urged that it exclude all cash items, since the associated risk tends to be relatively short in duration. While cash items that are not treated as "agency" transactions by the FDIC clearly result in credit risk and should be included in credit exposure, the Board believes that it is appropriate to exclude from credit exposure any item that the FDIC treats as being collected in an agency capacity rather than as a deposit or claim. The Board does not believe, however, that the FDIC has addressed whether the credit and debit card transactions are collected in an agency capacity.

Miscellaneous

One commenter asked if the Board would provide systems support in accounting for settlement exposure and cash items in the process of collection. The Board believes that this support is better provided by the market, and that correspondents may provide such support.

This exclusion remains unchanged in the final rule.

Section 206.5(c)(3) Quality Assets [Final Rule—Section 206.4(d)(3)]

The third exclusion covered "quality assets" on which the correspondent is secondarily liable or that result in secondary exposure to the correspondent, including loans to third parties secured by stock or debt obligations of the correspondent, loans to third parties purchased from the correspondent with recourse, and loans or obligations of third parties backed by stand-by letters of credit issued by the correspondent. The Board received three comments on this section.

One commenter expressed concern that the definition of "quality asset" raises the possibility that a loan secured by the stock of a correspondent may lose its status and be counted as exposure, discouraging such loans. Another commenter suggested that the rule give an exposed bank at least 30 days to adjust to a decline in the quality of a quality asset. The third commenter argued that credit exposure backed by a quality asset, such as a letter of credit, should be excluded from the definition of credit exposure.

In the final rule the exclusion for quality assets has been broadened to include direct exposure to a correspondent that is backed by a creditworthy obligor as well as a correspondent's secondary exposure on a quality asset. Additionally, under the final rule, the potential for excesses in exposure is recognized and a bank is required to have appropriate procedures to deal with such excesses.

Section 206.5(c)(4) FDIC-Insured Amounts [Final Rule—Section 206.4(d)(5)]

No comments were received on this section and it remains unchanged in the final rule.

Mergers and Acquisitions [Final Rule—Section 206.4(d)(4)]

As noted above, one commenter suggested that banks be given time after a merger to bring exposure within the guidelines for credit exposure. The final rule excludes exposure that results from a merger or acquisition of a bank from the definition of "credit exposure" for one year after the merger or acquisition. This exclusion gives banks one year to merge their systems for monitoring credit exposure.

Section 206.6 Capital Levels of Correspondents [Final Rule—Section 206.5]

The proposed rule provided that, for the purpose of compliance with the credit exposure guidelines, a correspondent would be considered "well capitalized" if the correspondent has a total risk-based capital ratio of 10.0 percent or greater, a Tier 1 risk-based capital ratio of 6.0 percent or greater, and a leverage ratio of 5.0 percent or greater. A correspondent would be considered "adequately capitalized" if the correspondent has a total risk-based capital ratio of 8.0 percent or greater, a Tier 1 risk-based capital ratio of 4.0 percent or greater, and a leverage ratio of 4.0 percent or greater. As used in the proposed rule, the terms "well capitalized" and "adequately capitalized" were similar but not identical to the definition of those terms as used for the purposes of the prompt corrective action standards under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) ("prompt corrective action standards"). The proposed rule further provided that a correspondent that is a foreign bank may be considered "well capitalized" or "adequately capitalized" under this section without regard to the minimum leverage ratios required under subparagraphs (a)(1)(iii) and (a)(2)(iii) of this section of the proposed rule. The Board received 137 comments on this section.

Criticism of the Emphasis on Capital

Sixteen commenters disagreed with the Board's approach to structuring the limits on credit exposure. Ten commenters argued that the proposed rule overemphasized capital relative to other creditworthiness indicators such as liquidity, asset quality, earnings strength, regional and product line portfolio diversity, and operating environment. These commenters expressed concern that the proposed rule could encourage banks to focus on capitalization rather than on their own, broader based, prudential systems for analyzing correspondent credit or on the efficiency or competitiveness of the correspondent's payments and processing systems. In addition, seven commenters questioned the value of capital as an indicator of strength. One commenter pointed out that risk-based capital provides a numerical assessment of subjective risks. Another commenter asserted that capital levels measured on a daily or quarterly basis are notoriously inaccurate. A third commenter argued that the limits on credit exposure should be based on the book value rather than on the market value of a correspondent's assets. A bank holding company argued that inadequate loan loss provisions can lead to a misrepresentation of a bank's actual strength. Two commenters suggested that if the proposed rule is seeking an objective measure it should select one which is easy to measure and not subject to frequent fluctuations. One commenter suggested that, as an alternative, the guidelines be based on

the financial markets. In contrast, two commenters pointed out that the advantage of using capital is that it will encourage large banks that are not well capitalized to strengthen their capital position in order to maintain their interbank business. The final rule has been amended to de-emphasize the capital of correspondents by removing the limit on credit exposure to adequately capitalized correspondents.

Monitoring Capital of Domestic Banks

Sixteen commenters argued that gathering and analyzing data to the extent required by the rule is extremely difficult and unfairly burdensome, and that small banks lack the technical capacity and resources to conduct this analysis. Eight commenters objected to the cost of monitoring capital. Another commenter claimed that large banks may resist giving capitalization information to smaller banks seeking to initiate a correspondent relationship. Moreover, this commenter pointed out that prompt corrective action rules forbid advertizing capital levels. One commenter argued that without access to its correspondent's examination report, it would be unable to determine if the correspondent was adequately capitalized. Four commenters noted that CAMEL ratings are confidential.

Nineteen commenters suggested that regulatory agencies publish capitalization ratings, lists of well and adequately capitalized correspondents, or exposure limits for particular correspondents, domestic and foreign. These commenters justified the request by arguing that regulatory agencies have access to the information and have the capacity to make a more complete evaluation of safety and soundness. One commenter urged that the regulatory authorities release the data they have available. Five others urged that call reports or financial reports be altered to require banks to disclose capital adequacy.

Four commenters expressed concern that small banks will be unable to analyze capitalization information from a call report due to the length and complexity of the document. Four commenters urged that where federal funds are sold on an agency basis, the respondent should be able to rely on the capitalization information supplied by the agent. One commenter expressed concern that although the regulation only required a ratio analysis, respondents will ask for quarterly call reports. Moreover, seven commenters complained of the cost of disseminating this information. One of these commenters, for example, noted that it has 110 respondents to distribute the report to. Two other commenters expressed concern that the compliance burden would increase the advantage enjoyed by other financial service providers. One commenter proposed that the Board draft a model form with only the essential information necessary to comply with the rule.

Eight commenters urged the Board to shift the burden from respondents to correspondents. Two commenters proposed that the rule require correspondents to prepare uniform disclosure reports and to disclose promptly any deterioration in capitalization. Two other commenters urged that the rule permit respondents to base their credit assessment on a correspondent's self-assessment of its capital adequacy classification together with any supporting information it may provide. Twenty commenters, nineteen of whom submitted a substantially similar letter, urged the Board to permit respondents to rely on a correspondent's annual documentation of its capital levels. Thirty-four commenters suggested that quarterly submissions satisfy the requirement. One commenter urged the Board to inform correspondents that the financial information provided to other banks is subject to review by examiners and should be consistent with the information provided to regulators.

The Board recognizes that it is currently difficult to obtain information on the risk-based capital levels of a correspondent. Under the final rule, this task is somewhat simplified, as a bank will be required to demonstrate only that its correspondent's capital ratios qualify it as at least adequately capitalized. While the call report for correspondents that are not required to file a complete Schedule RC–R currently does not provide sufficient information to calculate a correspondent's precise capital ratios, it can be relied on to demonstrate that a correspondent is at least adequately capitalized.[10] Further, the Board anticipates that most banks will receive information on their correspondent's capital ratios either directly from the correspondents or from a bank rating agency. Finally, the Board notes that the standard used in the rule is based solely on capital ratios and does not require disclosure of CAMEL ratings.

Five commenters asked for clarification of permissible sources for capitalization information. One claimed that the most accurate information is informal information and sought acknowledgement of the validity of it as a source. Another suggested that the rule explicitly permit banks to rely on call reports in determining capitalization. Two commenters requested that banks be permitted to rely on call reports alone. Three commenters asked the Board to describe a publicly available information base. The final rule does not limit a bank to a single source of information for capital ratios, but indicates that a bank may rely on capital information obtained from a correspondent, bank rating agency, or other reliable source of information. The bank may also rely on information contained in the call report for this purpose. While the Board recognizes that informal information may be useful in evaluating the overall condition of a correspondent, such information is not sufficient to justify the higher levels of credit exposure permitted to adequately or well-capitalized correspondents under the rule. As stated in the summary of the final rule, the rule does not limit a bank to the use of publicly available information, but merely provides that a bank generally is not required to obtain non-public information.

Application of the Provision to Foreign Banks

Thirteen commenters expressed concern about the difficulty and cost of monitoring capital levels of foreign banks. One commenter noted that disclosure of capital information varies widely among foreign banks and another noted that information is difficult to obtain from the institution or from secondary sources. One requested that G–10 banks be required to provide uniform information. Two other commenters suggested that additional flexibility be granted to U.S. banks which deal with non-Basle banks because of the added difficulty in obtaining capital information. Two commenters requested that the Board develop a method to determine the capital levels of foreign correspondents.

One commenter proposed that the rule permit respondents to rely on annual data if that is the best available. Another commenter argued that it is inequitable to require quarterly analysis of the capital of U.S. banks while permitting banks to analyze the

[10] Banks with assets of $1 billion or less generally are required to complete only Part I of the Schedule, which provides a rough estimate of risk-based capital. A bank may assume that its correspondent is at least adequately capitalized if the correspondent has completed only Part I of Schedule RC–R. For correspondents that file a complete Schedule RC–R, the call report does include sufficient information to calculate a correspondent's risk-based capital. The Board expects that further information to facilitate this calculation will be made available prior to the implementation of the regulatory limit on credit exposure to less than adequately capitalized correspondents.

capitalization of foreign banks semi-annually because information on foreign banks is unavailable on a more frequent basis. A third commenter proposed that if information is not available at least semi-annually, exposure to foreign banks should be restricted to 25 percent.

As in the proposed rule, the final rule permits a foreign correspondent to be considered "adequately capitalized" without regard to the level of the foreign bank's leverage ratio. As indicated in the supplementary information to the proposed rule, the Board believes that this treatment of foreign banks is consistent with the findings of the Capital Equivalency Report submitted by the Board and the Department of Treasury to Congress earlier this year.

The Board recognizes that public sources of information on risk-based capital ratios may not be available for many foreign bank correspondents. As with domestic correspondents, however, the Board anticipates that in most instances the correspondent will provide the information to the banks with which it does business. As foreign banks do not necessarily prepare financial statements on a quarterly basis, as domestic banks do, the final rule would permit a bank to rely on the foreign bank correspondent's most recent financial statements.

Clarification of the Provision

Eight commenters quoted the supplementary information to the proposed rule, which stated that banks should not rely on capitalization alone and that weakness in a correspondent's management, operations, or loan portfolio might lead a bank to restrict its exposure below the permissible limits on credit exposure. These commenters pointed out that these terms are subjective and that their interpretation by the various federal bank regulators may lead to substantial and unevenly enforced compliance burdens. Two of these commenters added that it may be prohibitively expensive to judge any potential "weakness" in a correspondent and, as a result, respondents may shift their correspondent activities to the public sector. One commenter suggested that to facilitate compliance, the final rule eliminate references which cut back on what is permissible under the guidelines and leave other considerations for the prudential analysis section.

The Board continues to believe that the remaining limit on credit exposure should be viewed as a maximum level for credit exposure rather than a safe harbor. To the extent that a bank's prudential policies and procedures suggest a lower level of credit exposure to a correspondent, the bank should adhere to the lower level.

Frequency of Monitoring

Twenty-six commenters sought clarification of the frequency with which capital must be monitored and the way it must be measured. Two commenters suggested that quarterly monitoring is too frequent and another proposed that capital be monitored annually. Twenty-three commenters, nineteen of whom submitted a substantially similar letter, urged that capital be measured over a period of time, rather than at a point in time. Three commenters urged that the capitalization of a correspondent in a multibank holding company be based on the capital of the bank holding company.

Under the final rule for domestic correspondents, capital should be monitored quarterly to pick up information based on the correspondent's most recent call report, financial statement, or bank rating report. For foreign bank correspondents, monitoring frequency should be related to the frequency with which financial statements or other regular reports are available. Although such information is available quarterly for some foreign banks, for many foreign banks financial statements generally will be available only on a semi-annual basis. Further, quarterly monitoring of capital is only required for correspondents to which a bank's potential credit exposure is more than 25 percent of its own capital. If the internal systems of a bank ordinarily limit credit exposure to a correspondent to less than 25 percent of the exposed bank's capital, no monitoring of the correspondent's capital would be necessary, although periodic reviews of the correspondent's financial condition may be required under § 206.3(a)(2) if exposure to the correspondent is significant.

Six commenters expressed concerns about the timeliness of the required information. Three noted substantial delays before generally published reports become available and another noted that this information is more expensive if it is obtained before it is commercially available. Two commenters requested guidelines on the requisite freshness of this data. Because information in risk-based capital ratios is generally based on the call report, a bank would be justified in relying on the most recently available reports based on call report data. While there may be a significant lag in such data, the Board believes that where the information in such reports is followed by the bank on a continuing basis, the reports remain a useful monitor of trends in the conditions of the correspondent.

Definition of "Adequately Capitalized"

Several commenters criticized the definition of "adequately capitalized." One suggested that the definition include all banks with a leverage ratio of 4 percent or greater and a total risk based capital ratio in excess of 8 percent. One suggested it include all banks with a tier 1 ratio of at least 5 percent. Another argued that the definition of adequately capitalized is unjustifiably more restrictive than the definition in the prompt corrective action standards and suggested that the definition include correspondents with a capital ratio of 3 percent and a 1 CAMEL rating. While acknowledging that a bank cannot disclose its CAMEL rating, the commenter suggested that it could disclose if it is adequately capitalized under this standard. Another bank suggested that the leverage ratio be excluded because it is not applied to foreign banks. Commenters also addressed the definition of "well capitalized," which has been deleted. One commenter suggested that the rule be written to state clearly the capital requirements imposed upon correspondents. Another commenter supported the capital definitions.

The definition of adequately capitalized in the proposed rule was based on, but not identical to, the definition used for prompt corrective action. The difference between the definitions is to enable banks to determine, from publicly available information, a correspondent's capital for the purpose of this rule. The Board believes that it would be confusing to make further changes in this rule's definition of "adequately capitalized" and the definition in the final rule remains unchanged.

Section 206.7 Waiver [Final Rule—Section 206.6]

The proposed rule provided that the Board may waive the application of § 206.4(a) to a bank if the primary federal supervisor of the bank advises the Board that the bank is not reasonably able to obtain necessary services, including payment-related services and placement of funds, without incurring exposure to a correspondent in excess of otherwise applicable limits. The Board received three comments on this section.

Two commenters suggested that if the guidelines are not relaxed, small rural banks with seasonal cash flows should receive waivers. As noted above, the

proposed final rule would eliminate the regulatory limit on credit exposure for adequately capitalized banks, substantially easing this constraint. To the extent that seasonal cash flows require rural banks to sell federal funds or engage in other transactions in excess of 25 percent of their capital, the Board believes that they should deal with banks that are adequately capitalized or better or diversify their credit exposure.

Another commenter suggested that the Board use its waiver authority liberally when the exposure is of a length or a type that extrication within 30 days is quite difficult. The Board does not believe that this use of the waiver authority is appropriate. The waiver is designed for low capital banks that need payment services and would not be able to obtain them otherwise. Rather than liberalize the waiver provisions, the Board has extended to 120 days the transition period for compliance with the limit on credit exposure to a correspondent that is less than adequately capitalized. This extension should permit banks to reduce exposure judiciously to a bank whose capital has been reduced. Under the final rule, the waiver provision remains unchanged.

Section 206.8 Record Retention [Deleted in Final Rule]

The proposed rule required that banks establish recordkeeping reasonably designed to demonstrate compliance with the provisions of §§ 206.3 and 206.4. The Board received forty-seven letters that commented on this section specifically and one hundred eight letters that complained of excessive paperwork generally.

Concerns With Cost Burdens

All of the forty-seven comments on this section complained of the cost and burden of these requirements. A trade association pointed out that banks already confront substantial compliance and recordkeeping requirements and that the requirements in the proposed rule may exceed banks' compliance capacity and ability. Two commenters asserted that requiring documentation of every closed transaction would substantially increase compliance costs. These commenters stated that records of closed transactions generally are not retained. Rather, limits are set for specific products and maturities, and internal limits are monitored to ensure they are not exceeded without specific credit approval. The commenters proposed that rather than requiring that records of closed transactions be available for review, the final rule should focus on the adequacy of a bank's establishment and monitoring of limits, including any reported overages.

Clarification of the Requirement

Three commenters requested that the final rule articulate what documentation must be maintained on file, in what format, and for how long, both to assist banks in maintaining reasonable records and to provide examiners with guidelines to effect uniform enforcement.

Proposals of Modification

Thirty-eight commenters offered specific suggestions for reducing the burden. Two commenters suggested that the requirements should not apply to exposure covered by FDIC insurance and that the requirements should be reduced for smaller amounts of exposure regardless of the correspondent's capitalization. Another commenter suggested an exception when exposure is less than 25% of capital.

Thirty-two commenters urged a reduction in recordkeeping requirements for respondents dealing with well-capitalized banks. Thirty of them sent an identical letter urging that the recordkeeping requirement be the same for a well-capitalized bank as it is for a Federal Reserve Bank. One commenter suggested that if a respondent selects a well-capitalized correspondent the recordkeeping burden should be restricted to maintaining on file the correspondent's quarterly disclosure and certification of its capitalization.

Other commenters urged a generalized reduction in the burden. One commenter suggested that the prudential standards requirement be limited to documenting an annual review. Two commenters suggested that the capital monitoring requirement be satisfied by documentation of an annual review of capital.

One commenter urged that the requirement be eliminated altogether, proposing that examiners rely on the adequacy of the prudential policies and that the burden be on the examiners to prove a violation of the regulation rather than on banks to prove compliance.

Final Rule

The specific record retention requirement has been deleted from the final rule. Examiners will use examiner guidance to determine compliance with the rule.

Section 206.9 Transition Provisions [Final Rule—Section 206.7]

The proposed rule provided that for a period of one year beginning on December 19, 1992, a bank would be required to comply with the prudential standards required under § 206.3(a), and under § 206.3(b) would be required to structure transactions with a correspondent or monitor exposure to a correspondent to ensure that its exposure did not exceed its internal limits established under § 206.3(a). During this period, the proposed rule did not require the bank to meet the guidelines for credit exposure established under § 206.4 or monitor credit exposure under § 206.3(b).

The proposed rule further provided that for a period of one year beginning on December 19, 1993, the overall guideline for credit exposure to an adequately capitalized correspondent contained in § 206.4(b)(ii) would be 100 percent of the bank's total capital, with the guideline for credit exposure having a remaining term to maturity of more than 30 days at 50 percent of the bank's capital. The proposed rule set the interim guideline on credit exposure to an individual correspondent contained in § 206.4(a)(iii) at 50 percent of the exposed institution's total capital. This section was designed to allow banks adequate time to rearrange their correspondent banking relationship to meet the new requirements. The Board received twelve comments on this section, one of which supported the provision as written and another of which supported the idea of a transition period.

Proposed Extension of the Transition Period.

Nine commenters urged the Board to extent the initial transition period, i.e. the period before the prudential guidelines become effective, to permit banks to prepare new policies or review and revise existing policies, to establish procedures to monitor and control interbank exposures, and to restructure correspondent relationships. Two commenters suggested that the proposed implementation date would not allow bank regulatory agencies sufficient time to train examiners.

The Board believes that a longer initial transition period will enable banks that have not made credit assessments of their correspondents to do so and for banks to review and, where appropriate, improve their monitoring procedures. An extended initial transition period also will enable the Board to develop examination guidelines related to the rule. Therefore, the final rule provides for a six-month transition period before the prudential standards become effective, with the regulatory limit on credit exposure

phased in over a two year period after that date.

Competitive Analysis

The proposed rule included a competitive impact analysis discussing the effects of the proposed rule on the ability of private sector correspondent banks to compete effectively with the Federal Reserve Banks in providing similar services. The proposed rule did not limit credit exposure of a bank to Federal Reserve Banks or to "well capitalized" correspondents because such exposure would not pose a risk to the bank. However, the proposed rule did impose three substantive requirements on a bank's exposure to a well capitalized correspondent that are not imposed on a bank's exposure to a Federal Reserve Bank, requiring a bank to have internal policies and procedures to limit exposure to a well capitalized correspondent, to structure transactions or monitor exposure to ensure that exposure ordinarily remains within the internal limits established, and to obtain sufficient information to demonstrate that the correspondent is well capitalized. Additionally, for adequately-capitalized correspondents, the proposed rule required a bank to limit overall credit exposure to an amount equal to not more than 50 percent of the exposed bank's capital, and to limit credit exposure with a term to maturity of greater than thirty days to an amount equal to not more than 25 percent of the exposed bank's capital.

The analysis included with the proposed rule indicated that the rule could have a direct and material adverse effect on the ability of correspondents to compete effectively with the Federal Reserve Banks in providing payment services, particularly in the area of check collection. The analysis concluded that this adverse effect was due to the differing legal powers of the Federal Reserve Banks. In assessing whether the objective of the proposed rule, to limit the risks that the failure of a correspondent would pose to exposed banks, could be reasonably achieved with a lesser or no adverse competitive impact, the Board concluded that the structure of the proposed rule minimized any adverse competitive effects on correspondents by not imposing rigid limits on credit exposure, by permitting higher levels of credit exposure to correspondents with higher capital levels, and by excluding cash items in the process of collection from the calculation of credit exposure to a correspondent.

In light of comments received on the proposed rule, however, the Board has made a number of modifications to the final rule to reduce further any adverse competitive effect on private sector correspondents. These modifications, described in detail above, include removing the limit on credit exposure to adequately capitalized correspondents, requiring internal limits on exposure to a correspondent only where there is a significant risk that payments will not be made as contemplated, and requiring monitoring or structuring of transactions to remain within limits only where limits are required by the final rule. Additionally, the final rule affords a longer initial implementation period in order to provide banks adequate time to review existing internal policies and procedures. The Board believes that the extended implementation period, along with the other modifications to the final rule, will reduce the likelihood that a bank will conclude that it must transfer activities to a Federal Reserve Bank.

While the Board recognizes that the modifications to the final rule do not completely remove the adverse competitive effects of the rule, the Board believes that the provisions of the final rule are necessary to fulfill the statutory objectives. Additionally, the Board will consider whether modifications should be made to the private-sector adjustment factor (PSAF) used to calculate the prices of Reserve Bank services to address disparities in capital ratios between the Reserve Banks and private correspondents resulting from the rule.

Regulatory Flexibility Analysis

Pursuant to section 603 of the Regulatory Flexibility Act (Pub. L. 96–354, U.S.C. 601 *et seq.*), the Board published for comment an initial regulatory flexibility analysis analyzing the provisions of its proposed Regulation F. Section 604 of the Regulatory Flexibility Act requires the Board to publish a final regulatory flexibility analysis with the final rule containing: (1) A statement of the need for, and objectives of, the rule; (2) a summary of the issues raised by the public comment in response to the initial regulatory flexibility statement, a summary of the assessment of such comments, and a statement of changes made in the proposed rule in response to comments; (3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities, and a statement of why these alternatives were rejected.

Each of these items are discussed in detail in the Supplementary Information above. The Board believes that the modifications included in the final rule significantly reduce the recordkeeping and regulatory burden imposed by the rule. The final rule places greater emphasis on the general internal policies and procedures of the bank, and does not require internal limits for all exposure to correspondents. The proposed rule also had been clarified to reduce the burden of monitoring such exposure. Additionally, the limit on credit exposure to adequately capitalized correspondents has been removed, significantly reducing the regulatory burden on banks in complying with the rule. This change lessens the probability that a bank will be required to diversify its exposure to a correspondent as a result of the rule, and eliminates the need for banks to monitor credit exposure to an adequately capitalized correspondent. Although a bank will continue to be required to monitor the capital levels of correspondents to which it has significant exposure, the final rule clarifies that a bank may rely on information obtained from its bank holding company, correspondent, or other party, significantly reducing the burden of obtaining the information.

Notice of Final Rule

A final rule is generally required to be published at least thirty days prior to its effective date. 5 U.S.C. 553(d). An exception is provided, however, where the agency has found good cause and provided the basis for the finding in the publication of the rule. 5 U.S.C. 553(d)(3). The final rule has been made effective as of December 19, 1992, in order to comply with the requirements of section 308 of FDICIA, which becomes effective on December 19, 1992. Further, although less than thirty days' notice has been provided before the effective date of the final rule, the rule contains transition provisions for actual compliance with the provisions of the regulation. Depository institutions covered by the rule will have six months after the effective date before actual compliance with any of the provisions of the rule is required. The Board therefore finds that there is good cause for the final rule to be made effective with less than a thirty-day notice period.

List of Subjects in 12 CFR Part 206

Banks, Banking, Interbank liability, Lending limits, Savings associations.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 23 of the Federal Reserve Act, 12 U.S.C. 371b–2, the Board is adding 12 CFR Part 206 to read as follows:

PART 206—LIMITATIONS ON INTERBANK LIABILITIES

Sec.
206.1 Authority, purpose, and scope.
206.2 Definitions.
206.3 Prudential standards.
206.4 Credit exposure.
206.5 Capital levels of correspondents.
206.6 Waiver.
206.7 Transition provisions.

Authority: Section 308 of Public Law 102–242, 105 Stat. 2236, 12 U.S.C. 371b–2.

§ 206.1 Authority, purpose, and scope.

(a) *Authority and purpose.* This part (Regulation F, 12 CFR part 206) is issued by the Board of Governors of the Federal Reserve System (Board) to implement section 308 of the Federal Deposit Insurance Corporation Improvements Act of 1991 (Act), 12 U.S.C. 371b–2. The purpose of this part is to limit the risks that the failure of a depository institution would pose to insured depository institutions.

(b) *Scope.* This part applies to all depository institutions insured by the Federal Deposit Insurance Corporation.

§ 206.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Bank* means an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and includes an insured national bank, state bank, District bank, or savings association, and an insured branch of a foreign bank.

(b) *Commonly-controlled correspondent* means a correspondent that is commonly controlled with the bank and for which the bank is subject to liability under section 5(e) of the Federal Deposit Insurance Act. A correspondent is considered to be commonly controlled with the bank if:

(1) 25 percent or more of any class of voting securities of the bank and the correspondent are owned, directly or indirectly, by the same depository institution or company; or

(2) Either the bank or the correspondent owns 25 percent or more of any class of voting securities of the other.

(c) *Correspondent* means a U.S. depository institution or a foreign bank, as defined in this part, to which a bank has exposure, but does not include a commonly controlled correspondent.

(d) *Exposure* means the potential that an obligation will not be paid in a timely manner or in full. "Exposure" includes credit and liquidity risks, including operational risks, related to intraday and interday transactions.

(e) *Foreign bank* means an institution that: (1) Is organized under the laws of a country other than the United States;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authorities of the country of the bank's organization;

(4) Receives deposits to a substantial extent in the regular course of business; and

(5) Has the power to accept demand deposits.

(f) *Primary federal supervisor* has the same meaning as the term "appropriate Federal banking agency" in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(g) *Total capital* means the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary federal supervisor. For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord.

(h) *U.S. depository institution* means a bank, as defined in § 206.2(a) of this part, other than an insured branch of a foreign bank.

§ 206.3 Prudential standards.

(a) *General.* A bank shall establish and maintain written policies and procedures to prevent excessive exposure to any individual correspondent in relation to the condition of the correspondent.

(b) *Standards for selecting correspondents.* (1) A bank shall establish policies and procedures that take into account credit and liquidity risks, including operational risks, in selecting correspondents and terminating those relationships.

(2) Where exposure to a correspondent is significant, the policies and procedures shall require periodic reviews of the financial condition of the correspondent and shall take into account any deterioration in the correspondent's financial condition. Factors bearing on the financial condition of the correspondent include the capital level of the correspondent, level of nonaccrual and past due loans and leases, level of earnings, and other factors affecting the financial condition of the correspondent. Where public information on the financial condition of the correspondent is available, a bank may base its review of the financial condition of a correspondent on such information, and is not required to obtain non-public information for its review. However, for those foreign banks for which there is no public source of financial information, a bank will be required to obtain information for its review.

(3) A bank may rely on another party, such as a bank rating agency or the bank's holding company, to assess the financial condition of or select a correspondent, provided that the bank's board of directors has reviewed and approved the general assessment or selection criteria used by that party.

(c) *Internal limits on exposure.* (1) Where the financial condition of the correspondent and the form of maturity of the exposure create a significant risk that payments will not be made in full or in a timely manner, a bank's policies and procedures shall limit the bank's exposure to the correspondent, either by the establishment of internal limits or by other means. Limits shall be consistent with the risk undertaken, considering the financial condition and the form and maturity of exposure to the correspondent. Limits may be fixed as to amount of flexible, based on such factors as the monitoring of exposure and the financial condition of the correspondent. Different limits may be set for different forms of exposure, different products, and different maturities.

(2) A bank shall structure transactions with a correspondent or monitor exposure to a correspondent, directly or through another party, to ensure that its exposure ordinarily does not exceed the bank's internal limits, including limits established for credit exposure, except for occasional excesses resulting from unusual market disturbances, market movements favorable to the bank, increases in activity, operational problems, or other unusual circumstances. Generally, monitoring may be done on a retrospective basis. The level of monitoring required depends on:

(i) The extent to which exposure approaches the bank's internal limits;

(ii) The volatility of the exposure; and

(iii) The financial condition of the correspondent.

(3) A bank shall establish appropriate procedures to address excesses over its internal limits.

(d) *Review by board of directors.* The policies and procedures established under this section shall be reviewed and approved by the bank's board of directors at least annually.

§ 206.4 Credit exposure.

(a) *Limits on credit exposure.* (1) The policies and procedures on exposure established by a bank under § 206.3(c) of this part shall limit a bank's interday credit exposure to an individual correspondent to not more than 25 percent of the bank's total capital, unless the bank can demonstrate that its correspondent is at least adequately capitalized, as defined in § 206.5(a) of this part.

(2) Where a bank is no longer able to demonstrate that a correspondent is at least adequately capitalized for the purposes of § 206.4(a) of this part, including where the bank cannot obtain adequate information concerning the capital ratios of the correspondent, the bank shall reduce its credit exposure to comply with the requirements of § 206.4(a)(1) of this part within 120 days after the date when the current Report of Condition and Income or other relevant report normally would be available.

(b) *Calculation of credit exposure.* Except as provided in §§ 206.4 (c) and (d) of this part, the credit exposure of a bank to a correspondent shall consist of the bank's assets and off-balance sheet items that are subject to capital requirements under the capital adequacy guidelines of the bank's primary federal supervisor, and that involve claims on the correspondent or capital instruments issued by the correspondent. For this purpose, off-balance sheet items shall be valued on the basis of current exposure. The term "credit exposure" does not include exposure related to the settlement of transactions, intraday exposure, transactions in an agency or similar capacity where losses will be passed back to the principal of other party, or other sources of exposure that are not covered by the capital adequacy guidelines.

(c) *Netting.* Transactions covered by netting agreements that are valid and enforceable under all applicable laws may be netted in calculating credit exposure.

(d) *Exclusions.* A bank may exclude the following from the calculation of credit exposure to a correspondent:

(1) Transactions, including reverse repurchase agreements, to the extent that the transactions are secured by government securities or readily marketable collateral, as defined in paragraph (f) of this section, based on the current market value of the collateral;

(2) The proceeds of checks and other cash items deposited in an account at a correspondent that are not yet available for withdrawal;

(3) Quality assets, as defined in paragraph (f) of this section, on which the correspondent is secondarily liable, or obligations of the correspondent on which a creditworthy obligor in addition to the correspondent is available, including but not limited to:

(i) Loans to third parties secured by stock or debt obligations of the correspondent;

(ii) Loans to third parties purchased from the correspondent with recourse;

(iii) Loans or obligations of third parties backed by stand-by letters of credit issued by the correspondent; or

(iv) Obligations of the correspondent backed by stand-by letters of credit issued by a creditworthy third party;

(4) exposure that results from the merger with or acquisition of another bank for one year after that merger or acquisition is consummated; and

(5) The portion of the bank's exposure to the correspondent that is covered by federal deposit insurance.

(e) *Credit exposure of subsidiaries.* In calculating credit exposure to a correspondent under this part, a bank shall include credit exposure to the correspondent of any entity that the bank is required to consolidate on its Report of Condition and Income or Thrift Financial Report.

(f) *Definitions.* As used in this section:

(1) *Government securities* means obligations of, or obligations fully guaranteed as to principal and interest by, the United States government or any department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned, directly or indirectly, by the United States.

(2) *Readily marketable collateral* means financial instruments or bullion that may be sold in ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid- ask-price market.

(3)(i) *Quality asset* means an asset:

(A) That is not in a nonaccrual status;

(B) On which principal or interest is not more than thirty days past due; and

(C) Whose terms have not been renegotiated or compromised due to the deteriorating financial conditions of the additional obligor.

(ii) An asset is not considered a "quality asset" if any other loans to the primary obligor on the asset have been classified as "substandard," "doubtful," or "loss," or treated as "other loans specially mentioned" in the most recent report of examination or inspection of the bank or an affiliate prepared by either a federal or a state supervisory agency.

§ 206.5 Capital levels of correspondents.

(a) *Adequately capitalized correspondents.*[1] For the purpose of this part, a correspondent is considered adequately capitalized if the correspondent has:

(1) A total risk-based capital ratio, as defined in paragraph (e)(1) of this section, of 8.0 percent or greater;

(2) A Tier 1 risk-based capital ratio, as defined in paragraph (e)(2) of this section, of 4.0 percent or greater; and

(3) A leverage ratio, as defined in paragraph (e)(3) of this section, of 4.0 percent or greater.

(b) *Frequency of monitoring capital levels.* A bank shall obtain information to demonstrate that a correspondent is at least adequately capitalized on a quarterly basis, either from the most recently available Report of Condition and Income, Thrift Financial Report, financial statement, or bank rating report for the correspondent. For a foreign bank correspondent for which quarterly financial statements or reports are not available, a bank shall obtain such information on as frequent a basis as such information is available. Information obtained directly from a correspondent for the purpose of this section should be based on the most recently available Report of Condition and Income, Thrift Financial Report, or financial statement of the correspondent.

(c) *Foreign banks.* A correspondent that is a foreign bank may be considered adequately capitalized under this section without regard to the minimum leverage ratio required under paragraph (a)(3) of this section.

(d) *Reliance on information.* A bank may rely on information as to the capital levels of a correspondent obtained from the correspondent, a bank rating agency, or other party that it reasonably believes to be accurate.

(e) *Definitions.* For the purposes of this section:

(1) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets.

(2) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets.

(3) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the capital adequacy

[1] As used in this part, the term "adequately capitalized" is similar but not identical to the definition of that term as used for the purposes of the prompt corrective action standards. See, *e.g.* 12 CFR part 208, subpart B.

guidelines of the correspondent's primary federal supervisor.

(f) *Calculation of capital ratios.* (i) For a correspondent that is a U.S. depository institution, the ratios shall be calculated in accordance with the capital adequacy guidelines of the correspondent's primary federal supervisor.

(ii) For a correspondent that is a foreign bank organized in a country that has adopted the risk-based framework of the Basle Capital Accord, the ratios shall be calculated in accordance with the capital adequacy guidelines of the appropriate supervisory authority of the country in which the correspondent is chartered.

(iii) For a correspondent that is a foreign bank organized in a country that has not adopted the risk-based framework of the Basle Capital Accord, the ratios shall be calculated in accordance with the provisions of the Basle Capital Accord.

§ 206.6 Waiver.

The Board may waive the application of § 206.4(a) of this part to a bank if the primary Federal supervisor of the bank advises the Board that the bank is not reasonably able to obtain necessary services, including payment-related services and placement of funds, without incurring exposure to a correspondent in excess of the otherwise applicable limit.

§ 206.7 Transition provisions.

(a) Beginning on June 19, 1993, a bank shall comply with the prudential standards prescribed under § 206.3 of this part.

(b) Beginning on June 19, 1994, a bank shall comply with the limit on credit exposure to an individual correspondent required under § 206.4(a) of this part, but for a period of one year after this date the limit shall be 50 percent of the bank's total capital.

By order of the Board of Governors of the Federal Reserve System, December 11, 1992.

William W. Wiles,

Secretary of the Board.

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FARM CREDIT ADMINISTRATION

12 CFR Part 625

RIN 3052-AB11

Application for Award of Fees and Other Expenses Under the Equal Access to Justice Act

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: The FCA issues regulations to implement the Equal Access to Justice Act (EAJA). In accordance with the EAJA, the regulations establish conditions under which parties who prevail over the FCA in certain administrative proceedings may be awarded attorney fees and other expenses.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

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SUPPLEMENTARY INFORMATION: On August 5, 1985, Congress enacted Public Law 99-80, 99 Stat. 183, which reauthorized and amended the Equal Access to Justice Act, 5 U.S.C. 504. The EAJA provides for the award of attorney fees and other expenses to parties who prevail over Federal agencies in certain administrative proceedings. The EAJA requires Federal agencies, after consultation with the Chairman of the Administrative Conference of the United States (ACUS), to establish uniform procedures for the submission and consideration of applications for fee and expenses awards.

On July 16, 1992, after consultation with ACUS, the FCA proposed rules implementing the EAJA. (57 FR 31463). The FCA received two comment letters in response to its EAJA implementation proposal. The Farm Credit Council (FCC) raised five issues in its letter, with which the Farm Credit Bank of Baltimore concurred generally.

The final rules are in large part the same as the proposed rules, which followed generally the ACUS Model Rules For Implementation of the Equal Access to Justice Act in Agency Proceedings, 1 CFR part 315 (model rules). The FCA has adopted several changes in the rules as proposed, based on its further consideration of the EAJA and ACUS model rules and in response to public comments. Discussion of these changes follows.

Analysis of Changes by Subpart

Subpart A—General Provisions

Section 625.2(d) is amended to further clarify that references in the regulations to the "presiding officer" may also apply to the FCA Board (Board) where the Board conducts proceedings under the EAJA.

As noted in the rule proposal, these EAJA implementation regulations do not apply to judicial awards of costs and fees in civil actions. See 28 U.S.C. 2412. Nevertheless, the FCC suggested that the regulations would be clearer if reference were made to fee awards in the context of court review of the underlying adversary adjudication, Therefore, the FCA has added a new § 625.2(e) stating the statutory requirement of 5 U.S.C. 504(c)(1) that an award for fees in connection with a court review of an underlying adversary adjudication may be made only pursuant to 28 U.S.C. 2412(d)(3).

To clarify that the regulations are consistent with the EAJA, § 625.5(b) is amended to substitute the language of the EAJA regarding compensation of expert witnesses.

Section 625.5(c) is amended to change the reference from "FCA" to the "presiding officer." This change responds to a comment from the FCC noting an apparent inconsistency with other provisions of the proposed regulations. It is also in accord with the intent of the clarifying amendment to § 625.2(d) regarding the Board's authority to preside over EAJA proceedings.

The EAJA limits attorney or agent fees to a maximum of $75 per hour unless the agency determines by regulation that a higher fee is justified by an increase in the cost of living or by special circumstances. The FCA did not propose to establish a specific regulatory procedure through which the public could petition the FCA to raise the ceiling on EAJA attorney or agent fee awards because it would seem to restate current law. The Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, already grants interested parties the right to petition an agency to change its rules and the EAJA clearly authorizes FCA rulemaking on a higher rate ceiling. As the FCC commented, however, the ACUS model rules contain a separate provision (1 CFR 315.107) covering agency rulemaking on maximum rates for attorney fees that establishes the procedure for such rulemaking. The FCC suggested that the FCA add the ACUS model provision in the interest of completeness and clarity. While it is not bound to adopt the ACUS model rules, the FCA agrees that the addition of the

ACUS model provision on maximum rate rulemaking may be helpful in illuminating this aspect of the EAJA. The FCA believes the 60-day timetable established by the ACUS model rule provision may be impractical depending on the rulemaking workload of the agency. Therefore, the FCA is setting the deadline for action on a petition at 90 days. The new provision appears as § 625.6.

Subpart C—Procedures for Considering Applications

Section 625.22 provides for the FCA counsel's answer to the application for fees. The FCC suggested in its comments that this provision be revised along lines similar to the ACUS model rules to treat a failure to file an answer to an application within 30 days "as a consent to the award requested." 1 CFR 315.302(a). While the FCA has no objection to the time constraint on an agency answer to an EAJA application, it does not agree that failure to answer an application within 30 days should result in a default award of fees without a further showing that the application is meritorious. Accordingly, the FCA is amending § 625.22(a) to include language similar to § 315.302(a) of the ACUS model rules, but modified to require the applicant to make a satisfactory showing of entitlement to an EAJA fee award before such an award could be granted by the presiding officer.

The FCC comment letter also suggested that the FCA include in its EAJA rules a provision similar to ACUS model rule § 315.304, which permits any party to a proceeding other than the applicant and agency counsel to file timely comments on an application or answer. The FCA viewed this model rule provision as having little practical applicability to its adjudications, and thus did not include it in the proposed rules. Recognizing, however, that there might be limited circumstances of applicability, the FAC is now adding new § 625.24, which is based on ACUS model rule § 315.304.

List of Subjects in 12 CFR Part 625

Application, Attorney fees, Delegation, Equal Access to Justice Act, Organization and functions, and Procedures.

For the reasons stated in the preamble, part 625 is added to chapter VI of title 12 of the Code of Federal Regulations to read as follows:

PART 625—APPLICATION FOR AWARD OF FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.
625.1 Purpose.
625.2 Proceedings covered.
625.3 Eligibility of applicants.
625.4 Standards for awards.
625.5 Allowable fees and expenses.
625.6 Rulemaking on maximum rates for attorney fees.
625.7 Awards against other agencies

Subpart B—Applicant Information Required

625.10 Contents of application.
625.11 Net worth exhibit.
625.12 Documentation of fees and expenses.
625.13 When an application may be filed.

Subpart C—Procedures for Considering Applications

625.20 Settlement.
625.21 Filing and service of documents.
625.22 Answer to application.
625.23 Reply.
625.24 Comments by other parties.
625.25 Further proceedings.
625.26 Recommended decision.
625.27 Board decision.
625.28 Judicial review.
625.29 Payment of award.

Authority: 5 U.S.C. 504, 12 U.S.C. 2252.

Subpart A—General Provisions

§ 625.1 Purpose.

These rules implement the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (designated by the EAJA as "adversary adjudications") before Federal agencies. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this part explain how the EAJA applies to Farm Credit Administration (FCA) proceedings. The rules describe the parties eligible for awards, how such parties may apply for awards, and the procedures and standards that govern FCA consideration of applications.

§ 625.2 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the FCA either on its own behalf or in connection with any other agency of the United States that participates in or in any way is a part of the adversary adjudication. Adversary adjudications are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the FCA or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding; and

(2) Enforcement proceedings under 12 U.S.C. 2261–2273.

(b) The failure of the FCA to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes that the proceeding is covered by the EAJA; whether the proceeding is covered shall then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered and excluded from coverage by the EAJA, any award made will include only fees and expenses related to covered issues.

(d) Proceedings under this part may be conducted by the FCA Board (Board) or by the presiding officer (referred to as the "adjudicative officer" in the EAJA), as defined in § 622.2(f) of this chapter. If the Board conducts proceedings, reference to the "presiding officer" in this part shall mean the Board, in applicable context. Where the Board presides, the recommended decision under § 625.26 of this part will be omitted and the Board will make a final decision on the application in accordance with § 625.27 of this part.

(e) If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 625.3 Eligibility of applicants.

(a) To be eligible for an award under the EAJA, an applicant must be a prevailing party named or admitted to the adversary adjudication for which an award is sought. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of $2 million or less;

(2) The sole owner of an unincorporated business who has both a net worth of $7 million or less (including personal and business interests), and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of $7 million or less and 500 or fewer employees.

(c) For eligibility purposes, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for that applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility unless the presiding officer determines that aggregation would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities.

(1) For purposes of this part, an affiliate is:

(i) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant; or

(ii) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests.

(2) The presiding officer may determine that financial relationships of the applicant other than those described in paragraph (f)(1) of this section constitute special circumstances that would make an award unjust.

(g) An applicant that participates in an adversary adjudication primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 625.4 Standards for awards.

(a) If an eligible applicant prevails over the FCA in an adversary adjudication, or in a significant and discrete substantive portion thereof, the applicant may receive an award for fees and expenses incurred in the adjudication, or portion thereof, unless the position of the FCA over which the applicant prevailed was substantially justified.

(b) The position of the FCA includes:

(1) The position taken by the FCA in the adversary adjudication; and

(2) The action or inaction of the FCA upon which the adversary adjudication is based.

(c) Except as provided in paragraph (d) of this section, the FCA must prove that its position was substantially justified before an award may be denied to an otherwise eligible applicant.

(d) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

§ 625.5 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FCA pays expert witnesses. However, an award also may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the presiding officer shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, audit, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for the preparation of the applicant's case.

§ 625.6 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the FCA may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The FCA will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the FCA a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the FCA should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The FCA will respond to the petition within 90 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 625.7 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in or in any way is a part of an adversary adjudication before the FCA and that agency's position is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Applicant Information Required

§ 625.10 Contents of application.

(a) An application for an award of fees and other expenses under the EAJA shall identify the applicant and the adversary adjudication for which an award is sought. The application shall show that the applicant has prevailed in the adversary adjudication. If the application is made on the basis of significant and discrete substantive issues on which the applicant prevailed, the issues must be specifically identified. The application also shall identify each position of the FCA or other agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall describe briefly the type and purpose of its organization or business and state the number of persons employed.

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an

individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It states that it has 500 employees or fewer and attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees.

(c) The application shall state the total amount of fees and other expenses for which an award is sought.

(d) The application may include any other relevant matters that the applicant wishes the FCA to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. The application must contain a written verification under oath or under penalty of perjury that the information provided in the application and any supporting documents is accurate.

§ 625.11 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 625.3(f)(1) of this part) as of the date when the adversary adjudication was initiated. The exhibit may be in any convenient form that provides full disclosure of the assets and liabilities of the applicant and its affiliates and is otherwise sufficient to demonstrate that the applicant qualifies under the standards in this part. The presiding officer may require an applicant to file additional information supporting its eligibility for an award.

(b) An applicant that objects to public disclosure of information in any portion of the net worth exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion under § 622.11 of this chapter to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the FCA, but need not be served on any other party to the application proceeding. If the presiding officer, or the FCA Board pursuant to § 622.11(e) of this chapter, finds that the information should not be withheld from disclosure, it shall be placed in the public record of the application proceeding. Otherwise, any request to inspect or copy the exhibit shall be treated in accordance with the FCA's procedures regarding release of information (12 CFR part 602).

§ 625.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, engineering report, test, project, or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. Under § 625.25 of this part, the presiding officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed.

§ 625.13 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication, or in a significant and discrete substantive portion thereof, but in no case later than 30 days after the FCA's final disposition of the adversary adjudication.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the adversary adjudication is issued or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and is unreviewable by the FCA, any other administrative body, or the courts.

(c) If review, reconsideration, or appeal is sought or taken of an adversary adjudication decision as to which an applicant believes it has prevailed, application proceedings for any award of fees and other expenses shall be stayed pending final disposition of the underlying controversy.

Subpart C—Procedures for Considering Applications

§ 625.20 Settlement.

A prevailing party and the FCA through its counsel may agree on a proposed settlement of an award at any time, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If a prevailing party and the FCA counsel agree on a proposed settlement of an award, the proposed settlement must be submitted to the presiding officer for a recommended decision pursuant to § 625.26 of this part. If it has not been previously filed, the application must be submitted to the presiding officer along with the proposed settlement.

§ 625.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication (*see* §§ 622.18 and 622.19 of this chapter), except as provided in § 625.11(b) of this part for confidential financial information.

§ 625.22 Answer to application.

(a) Within 30 days after service, counsel for the FCA may file an answer to the application. Unless the FCA counsel requests an extension of time for filing or a statement of intent to negotiate under paragraph (c) of this section is filed, the presiding officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the EAJA.

(b) The answer shall set forth any objections to the requested award and identify the facts relied on in support of the FCA's position. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the FCA counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 625.25 of this part.

(c) If the FCA counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to

negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the FCA counsel and the applicant.

§ 625.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 625.25 of this part.

§ 625.24 Comments by other parties.

Any party to a proceeding other than the applicant and FCA counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 625.25 Further proceedings.

(a) The determination of an award shall be made on the basis of the written record unless the presiding officer finds that further proceedings are necessary for full and fair resolution of the issues arising from the application. Such further proceedings may be at the request of either the applicant or the FCA counsel, or on the presiding officer's own initiative, and shall be conducted as promptly as possible. Further proceedings may include an informal conference, oral argument, additional written submissions, or other actions required by the presiding officer, but may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

(b) Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 625.26 Recommended decision.

The presiding officer shall file a recommended decision within 30 days after completion of proceedings on the application, and, promptly upon filing, shall serve a copy of the recommended decision upon each party to the proceedings. The decision shall include written findings and conclusions on the applicant's eligibility, status as a prevailing party, the recommended amount of the award, if any, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FCA's position was substantially justified, whether the applicant unduly protracted the adversary adjudication, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 625.27 Board decision.

Following filing of the recommended decision with the Board, the Board shall render a final decision on the application. The Board maintains full discretion to uphold, reverse, remand, or alter the recommended decision. The Board may order further proceedings (including those set forth in §§ 622.11 and 622.13 through 622.16 of this chapter) upon request by any party to the application proceeding or on its own initiative, but such proceedings may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

§ 625.28 Judicial review.

Judicial review of final FCA decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 625.29 Payment of award.

(a) An applicant seeking payment of an award shall submit to the Secretary to the Board a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek judicial review of the decision. The required submission and certification should be sent to: Secretary to the Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) The FCA will pay the amount awarded to the applicant within 60 days of receipt of the applicant's submission and certification.

Dated: December 10, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–30817 Filed 12–17–92; 8:45 am]

BILLING CODE 6705–01–M

FARM CREDIT SYSTEM ASSISTANCE BOARD

12 CFR Chapter XIII

Removal of Regulations

AGENCY: Farm Credit System Assistance Board.

ACTION: Final rule.

SUMMARY: The Farm Credit System Assistance Board (Assistance Board) was established by the Agricultural Credit Act of 1987 as a temporary agency, which terminates on December 31, 1992. All agency program activities officially end on that date. Accordingly, it is the purpose of this action to deactivate the Assistance Board's regulations and to remove such regulations from the Code of Federal Regulations.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: For information before or on December 31, 1992, contact Isabella W. Sammons, General Counsel, or Christine C. Dion, Senior Attorney, (202) 737–9255.

SUPPLEMENTARY INFORMATION:

Classification

This is not a major rule under E.O. 12291 since it has no effect on costs, prices or economic competition.

Public Comment

Pursuant to 12 U.S.C. 2278a–10, the Assistance Board is not required to follow the requirements of the Administrative Procedure Act (APA) with respect to notice and comment on rulemaking. Furthermore, this removal of regulations is issued as a final rule without opportunity for public comment in the sole interest of informing the public. It does not impose any new requirements on any individuals or organizations involved in the Assistance Board's program activities.

Statutory Authority

This removal of regulations is issued under the authority Public Law 92–181, title VI, § 6.10, as added by Public Law 100–233, title II, section 201, Jan. 6, 1988, 101 Stat. 1594.

Paperwork Reduction Act

There is no information collection requirement in this action.

List of Subjects in 12 CFR Part 1300

Freedom of information, and Privacy.

Removal of Regulations

CHAPTER XIII—[REMOVED]

PART 1300—[REMOVED]

Accordingly, under the authority of § 6.10 of title VI of Public Law 92–181, as amended, part 1300 of title 12 of the Code of Federal Regulations is removed and chapter XIII of title 12 of the Code of Federal Regulations is vacated, effective December 31, 1992.

Kenneth L. Peoples,

President and Chief Executive Officer.

[FR Doc. 92–30674 Filed 12–17–92; 8:45 am]

BILLING CODE 3810–FC–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–147–AD; Amendment 39–8434; AD 92–27–01]

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes, that requires a one-time general visual inspection of certain door linings and door posts to determine the date of manufacture, and replacement, if necessary. This amendment is prompted by results of inspections that have revealed that the fire resistance of certain painted door linings may be inadequate. The actions specified by this AD are intended to prevent increased risk of injury to the passengers and crew members in the event of a fire within the airplane cabin.

DATES: Effective January 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes was published in the **Federal Register** on September 24, 1992 (57 FR 44138). That action proposed to require a one-time general visual inspection of certain door linings and door posts to determine the date of manufacture, and replacement, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Another commenter requests that the proposed rule be revised to make the requirements consistent with the procedures contained in the applicable service bulletins for each model. The commenter notes that, as proposed in the notice, the rule would require that the door linings as well as the door posts be removed on both the Model ATR42 and Model ATR72 prior to performing the general visual inspection to determine the date of manufacture. However, as described in the applicable service bulletin, only the door linings (not the door posts) need to be removed from the Model ATR42. The requirement to remove both the door posts and the door linings should apply only to the Model ATR72. The FAA concurs with the commenter and has revised the final rule to make this distinction in the requirements.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 99 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,445, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–27–01. Aerospatiale: Amendment 39–8434. Docket 92–NM–147–AD.

Applicability: All Model ATR42 and ATR72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased risk of injury to the passengers and crew members in the event of a fire within the airplane cabin, accomplish the following:

(a) For Model ATR42 series airplanes: Within 2 years after the effective date of this

AD, remove the door linings and perform a general visual inspection to determine the date of their manufacture, in accordance with Aerospatiale Service Bulletin ATR42–25–0084, dated April 10, 1992.

(1) If the door linings were manufactured prior to January 15, 1990, prior to further flight, replace them with linings manufactured after January 15, 1990, in accordance with Aerospatiale Service Bulletin ATR42–25–0075, dated September 4, 1991.

(2) If the door linings were manufactured on or after January 15, 1990, reinstall the linings. No further action is required by this AD.

(b) For Model ATR72 series airplanes: Within 2 years after the effective date of this AD, remove the door linings and door posts and perform a general visual inspection to determine the date of their manufacture, in accordance with Aerospatiale Service Bulletin ATR72–25–1025, Revision 1, dated May 18, 1992.

(1) If the door linings or door posts were manufactured prior to January 15, 1990, prior to further flight, replace them with linings or posts manufactured after January 15, 1990, in accordance with ATR72–25–1020, dated September 4, 1991.

(2) If the door linings or door posts were manufactured on or after January 15, 1990, reinstall the linings or posts. No further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacements shall be done in accordance with Aerospatiale Service Bulletin ATR42–25–0084, dated April 10, 1992; Aerospatiale Service Bulletin ATR42–25–0075, dated September 4, 1991; Aerospatiale Service Bulletin ATR72–25–1025, Revision 1, dated May 18, 1992; or Aerospatiale Service Bulletin ATR72–25–1020, dated September 4, 1991; as applicable. Aerospatiale Service Bulletin ATR72–25–1025, Revision 1, dated May 18, 1992, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	May 18, 1992.
2–9	Original	Apr. 10, 1992.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 22, 1993.

Issued in Renton, Washington, on December 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30714 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–158–AD; Amendment 39–8436; AD 92–27–03]

Airworthiness Directives; de Havilland, Inc., Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–7 series airplanes, that requires an inspection to determine whether rivets securing the upper longeron in each inner nacelle are installed, and modification of the upper longerons, if necessary. This amendment is prompted by reports that four rivets securing the upper longeron in each engine inner nacelle may have been omitted inadvertently during production. The actions specified by this AD are intended to prevent reduced structural integrity of the engine nacelles.

DATES: Effective January 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes was published in the **Federal Register** on September 29, 1992 (57 FR 44710). That action proposed to require an inspection to determine whether rivets securing the upper longeron in each inner nacelle are installed, and modification of the upper longerons, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 de Havilland Model DHC–7 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of parts will be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-27-03. De Havilland, Inc.: Amendment 39-8436. Docket 92-NM-158-AD.

Applicability: Model DHC-7 series airplanes; serial numbers 1 through 7, inclusive, and 9, 10, and 11; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine nacelles, accomplish the following:

(a) Within 6 months after the effective date of this AD, conduct an inspection to determine whether rivets that secure the upper longerons in each inner engine nacelle have been installed, in accordance with de Havilland Service Bulletin 7-54-9, dated February 29, 1980.

(1) If any rivets are missing, prior to further flight, accomplish Modification No. 7/1707, in accordance with the service bulletin.

(2) If all rivets are detected, no further action is required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with de Havilland Service Bulletin 7-54-9, dated February 29, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 22, 1993.

Issued in Renton, Washington, on December 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30713 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-110-AD; Amendment 39-8440; AD 92-27-06]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-8 series airplanes, that requires visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly and replacement of the assembly, if necessary. This amendment is prompted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. The actions specified by this AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Effective January 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-122L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5325; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-8 series airplanes was published in the **Federal Register** on June 18, 1992 (57 FR 27200). That action proposed to require visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly and replacement of the assembly, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Since issuance of the notice, however, the manufacturer has advised the FAA that it does not have an adequate supply of parts so that replacement, if necessary, can be accomplished on the U.S. fleet within the proposed compliance time of 180 days. Based on this new data, the FAA has determined that an extension of the compliance time to 270 days for the initial inspection of the rudder pedals adjuster hub assembly is appropriate. The FAA has determined that such an extension of the compliance time will not adversely affect safety. The final rule has been revised accordingly.

Paragraph (c) of the final rule has been revised to clarify that replacement rudder pedals adjuster hub assemblies must continue to be inspected in accordance with the requirements of paragraph (a) of the AD (that is, the assembly must be inspected prior to the accumulation of 15,000 landings on the

assembly) and, if no cracks are detected, must be reinspected in accordance with paragraph (b) of the AD (that is, at intervals not to exceed 3,500 landings.) The notice only referenced paragraph (a) with regard to repetitive inspection intervals.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 341 McDonnell Douglas Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $36,630, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–27–06. McDonnell Douglas: Amendment 39–8440. Docket 92–NM–110–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

(a) Prior to the accumulation of 15,000 landings or within 270 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992.

(b) If no cracks are detected as a result of the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.

(c) If cracks are detected as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement shall be done in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 22, 1993.

Issued in Renton, Washington, on December 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30718 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–86–AD; Amendment 39–8441; AD 92–27–07]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes. This amendment requires visual and eddy current inspections to detect cracking of the rubber pedals adjuster hub assembly and replacement of the assembly, if necessary. This amendment is promoted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. The actions specified by this AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Effective January 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–122L, FAA, Transport Airplane Directorate, 329 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) series airplanes was published in the **Federal Register** on June 18, 1992 (57 FR 27199). That action proposed to require visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly and replacement of the assembly, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

Several commenters request that the proposed compliance time of 180 days for the initial visual and eddy current inspection of the rudder pedals adjuster hub assembly be extended, for a variety of reasons:

One commenter requests that the compliance time be extended to 3,500 landings or 1 year, whichever occurs later. This commenter's entire fleet has accumulated in excess of 15,000 landings and would be required to accomplish the initial inspection within 180 days after the effective date of this AD. To do so would require that this commenter schedule numerous airplanes for the initial inspection and/or repair at places other than regular maintenance bases, where necessary equipment and trained personnel may not be available. The commenter considers this request to be justified since there have been no failures of the rudder pedals adjuster hub assembly on airplanes in its fleet.

Several other commenters are concerned about the possibility that sufficient replacement parts will be available, and request that the compliance time for inspections be extended. The commenters state that airplanes will be grounded if replacement of a lug or hub assembly is required within the proposed compliance time of 180 days and no replacement components are available.

The FAA concurs that the compliance time may be extended somewhat. Since issuance of the notice, the manufacturer has advised the FAA that it does not have an adequate supply of parts so that replacement, if necessary, could be accomplished on the U.S. fleet within the proposed compliance time of 180 days. Based on this new data, the FAA has determined that an extension of the compliance time to 270 days for the initial inspection is appropriate. Such an extension (1) will not adversely affect safety, (2) will allow the majority of affected operators sufficient time to schedule and accomplish the initial inspection and any necessary replacement during a regularly scheduled maintenance interval; and (3) will allow sufficient time for the manufacturer to procure a sufficient number of replacement parts.

Another commenter requests that this AD be delayed until such time that a terminating modification is available to operators. Since such a modification would terminate the requirement for repetitive inspections, the commenter asserts that delay of this AD will be a considerable cost and time savings for operators. The FAA does not concur. In its response to commenters, above, the FAA has already extended the compliance time for this AD by three additional months (in effect, delaying the AD for three months). The FAA has determined that any further delay of this AD is not warranted. The degradation of safety due to the unsafe condition outweighs any cost savings operators may incur if this AD is further delayed. The FAA has determined that the required inspections must be conducted in order to ensure continued safety. Once a terminating modification is developed and approved, the FAA may consider further rulemaking action at that time.

Paragraph (c) of the final rule has been revised to clarify that replacement rudder pedals adjuster hub assemblies must continue to be inspected in accordance with the requirements of paragraph (a) of the AD (that is, the assembly must be inspected prior to the accumulation of 15,000 landings on the assembly) and, if no cracks are detected, must be reinspected in accordance with paragraph (b) of the AD (that is, at intervals not to exceed 3,500 landings.) The notice only referenced paragraph (a) with regard to the repetitive inspection intervals.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 721 McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 373 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,545, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-27-07. McDonnell Douglas: Amendment 39-8441. Docket 92-NM-86-AD.

Applicability: Model DC-9-10, -20, -30, -40, and -50 series airplanes; Model DC-9-81, -82, -83, and -87 series airplanes; Model MD-88 airplanes; and C-9 (Military) airplanes; as listed in McDonnell Douglas DC-9 Alert Service Bulletin A27-325, Revision 1, dated February 3, 1992; certified in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

(a) Prior to the accumulation of 15,000 landings or within 270 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-325, Revision 1, dated February 3, 1992.

(b) If no cracks are detected as a result of the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.

(c) If cracks are detected as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-325, Revision 1, dated February 3, 1992. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with paragraph (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement shall be done in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-325, Revision 1, dated February 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 22, 1993.

Issued in Renton, Washington, on December 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30719 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-212-AD; Amendment 39-8439; AD 92-24-51]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) T92-24-51 that was sent previously to all known U.S. owners and operators of Boeing Model 747 series airplanes by individual telegrams. This AD supersedes an existing AD to require the replacement of certain nacelle strut midspar fuse pins, and inspections to detect corrosion and cracks of certain other fuse pins. This AD also decreases the initial inspection threshold and adds airplanes to the applicability of the AD. This amendment is prompted by numerous reports of corrosion and fatigue cracking found in the subject fuse pins. The actions specified by this AD are intended to prevent failure of the engine support structure and the inability of the strut to carry required engine support loads.

DATES: Effective January 4, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-24-51, issued November 13, 1992, which contained the requirements of this amendment.

Incorporation by reference of Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992, was approved previously by the Director of the Federal Register as of November 27, 1992 (57 FR 53546, November 12, 1992).

The incorporation by reference of Boeing Alert Service Bulletin 747-54A2150, Revision 1, dated November 13, 1992, is approved by the Director of the Federal Register as of January 4, 1993.

Comments for inclusion in the Rules Docket must be received on or before February 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-212-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Backman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2776; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On November 13, 1992, the FAA issued telegraphic AD T92-24-51, applicable to all Boeing Model 747 series airplanes, which supersedes AD 92-21-51 R1, Amendment 39-8414 (57 FR 53546, November 12, 1992).

The FAA previously issued AD 92-21-51 R1 on November 4, 1992. That AD was applicable to certain Boeing Model 747 series airplanes, and required:

1. Repetitive ultrasonic inspections to detect cracks in the "old style" nacelle strut midspar fuse pins, and replacement of the pins, if necessary;

2. Repetitive inspections of the "new style" fuse pins to detect cracks and corrosion, and rework or replacement of the pins, if necessary;

3. Repetitive detailed visual inspections of the midspar fitting lugs to detect cracks, and repair or replacement of any cracked lugs found; and

4. The submission of written reports to the FAA of all findings of cracks or corrosion as a result of initial inspections.

That AD action was prompted by 14 reports of fatigue cracks initiating at corrosion sites on the inside diameter of new style fuse pins at the pin insert on airplanes equipped with Pratt and Whitney and Rolls Royce engines. In addition, results of an inspection revealed a crack in a midspar fitting lug.

The actions required by that AD were intended to prevent failure of the engine support structure and the inability of the strut to carry the required engine support loads.

As a result of the reporting requirement of AD 92-21-51 R1, the FAA has received numerous reports of corrosion and 13 additional reports of fatigue cracking in new style fuse pins. The FAA has received reports of heavy corrosion found on fuse pins that were in service fewer than five years (approximately 5,000 landings). Therefore, the FAA has determined that the existing initial inspection threshold of 5,000 landings must be reduced in order to detect corrosion and cracking in a timely manner.

Recently, one operator reported that the ultrasonic inspection procedures required by AD 92-21-51 R1 failed to detect a crack in the presence of heavy corrosion. That AD requires removing one fuse pin insert and performing a visual inspection to detect corrosion, followed by an ultrasonic inspection to detect cracks. Due to the presence of heavy corrosion, the operator removed the fuse pin itself to perform the visual inspection to detect cracking in the corroded area. Subsequently, the operator and Boeing performed ultrasonic inspections of the fuse pin prior to removal of the corrosion; these inspections failed to detect cracking in the corroded area. From this data, the FAA concludes that the ultrasonic inspection procedure, as required by AD 92-21-51 R1, does not detect cracks reliably when corrosion is present. Since that AD requires inspection of the fuse pin from only one end, the possibility exists for corrosion or cracks to remain undetected in the other end of the pin. Therefore, the FAA has determined that it is necessary to correct this unsafe condition by requiring a detailed visual inspection to detect corrosion and, following the removal of any corrosion, an ultrasonic inspection to detect cracks from each end of the pin with both inserts removed.

Additionally, the FAA recently received a report of a cracked old style fuse pin that was found on a Model 747 series airplane that had accumulated 257 flight cycles since the last inspection of the fuse pins. These fuse pins were installed on earlier Model 747 series airplanes. Service data show that these old style fuse pins are even more susceptible to cracking than the new style fuse pins. Therefore, the FAA has determined that the old style fuse pins must be removed from service.

Fatigue cracks in the nacelle strut midspar fuse pins, if not detected and corrected, could result in failure of the engine support structure and the consequent inability of the strut to carry the required engine support loads.

(It should be noted that investigations related to two recent accidents, both of which involved Model 747-200 freighter airplanes, are continuing. These accidents occurred in Amsterdam in October 1992 and in Taiwan in December 1991. No determination has been made that cracking of the fuse pins was the cause of either accident.)

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-54A2150, Revision 1, dated November 13, 1992, that describes procedures for detailed visual inspections to detect corrosion and ultrasonic inspections to detect cracks of the new style fuse pins at both ends of the fuse pin, and replacement or rework of the pins, if necessary.

The fuse pins installed on the nacelle struts of Model 747 series airplanes equipped with General Electric engines are identical to those installed on Pratt and Whitney and Rolls Royce engines. In view of the widespread findings of corrosion and cracks on fuse pins installed on other types of engines, the FAA finds that this condition is likely to exist as well on airplanes equipped with General Electric engines.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T92-24-51 on November 13, 1992, the requirements of which are intended to prevent failure of the nacelle strut midspar fuse pins. This AD is applicable to all Model 747 series airplanes, regardless of engine type. This AD supersedes AD 92-21-51 R1 to require removal of the old style nacelle strut midspar fuse pins and replacement of these fuse pins with new style fuse pins.

This AD also requires detailed visual inspections to detect corrosion and ultrasonic inspections to detect cracks of the new style fuse pins at both ends of the fuse pin, and replacement or rework, if necessary. These inspections are required to be accomplished in accordance with the service bulletin described previously.

This AD also decreases the initial inspection threshold from that specified in the existing AD and adds airplanes equipped with General Electric engines to the applicability of the AD.

It should be noted that repetitive ultrasonic inspections of the midspar fitting lugs are required currently by AD 85-22-07, Amendment 39-5153 (50 FR 42146, October 18, 1985). Inspecting these lugs using ultrasonic techniques, rather than the detailed visual techniques required by AD 92-21-51 R1, will detect cracking of the lugs more reliably. Consequently, the FAA has not included a requirement for detailed visual inspections of the lugs in this AD. The FAA may consider further rulemaking to address inspections of the lugs.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on November 13, 1992, to all known U.S. owners and operators of Boeing Model 747 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–212–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows: Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8414 (57 FR 53546, November 12, 1992), and by adding a new airworthiness directive (AD), to read as follows:

92–24–51. BOEING: Amendment 39–8439. Docket 92–NM–212–AD. Supersedes AD 92–21–51 R1, Amendment 39–8414.

Applicability: All Model 747 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note: Paragraphs (d) and (f) of this AD require inspections from both ends of the nacelle strut midspar fuse pins, whereas AD 92–21–51 R1, Amendment 39–8414 (57 FR 53546, November 12, 1992), which is superseded by this AD, required inspection from only one end of the fuse pins. As allowed by the phrase, "unless accomplished previously," paragraphs (d) and (f) of this AD do not require that the inspections performed previously from one end of the fuse pins in accordance with AD 92–21–51 R1 be repeated. For those fuse pins, only the end of the fuse pin not inspected previously must be inspected to comply with the initial inspection requirements of this AD.

To prevent failure of the nacelle strut midspar fuse pins, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove all old style nacelle strut midspar fuse pins and replace with new style fuse pins, in accordance with Boeing Service Bulletin 747–54–2063, Revision 9, dated April 23, 1992. When an old style fuse pin is removed, the engine must be removed in accordance with the Boeing Model 747 Maintenance Manual, section 54–10–03; or supported in accordance with the service bulletin; or supported in a manner approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) As of 30 days after the effective date of this AD, no person shall install an old style nacelle strut midspar fuse pin on any airplane.

(c) Perform the inspection required by paragraph (d) of this AD at the times specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable.

(1) For airplanes equipped with Pratt and Whitney or Rolls Royce engines on which the new style nacelle strut midspar fuse pins have accumulated 5,000 or more landings as of the effective date of this AD: Inspect inboard engine positions 2 and 3 within 30 days after the effective date of this AD; and inspect outboard engine positions 1 and 4 within 60 days after the effective date of this AD.

(2) For all other airplanes equipped with Pratt and Whitney, Rolls Royce, or General Electric engines having new style nacelle strut midspar fuse pins, other than those identified in paragraph (c)(1) of this AD: Inspect inboard engine positions 2 and 3 at the later of the times specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 3,000 landings on the fuse pin or within 3 years since installation of the fuse pin, whichever occurs first; or

(ii) Within 60 days after the effective date of this AD.

(3) For all other airplanes equipped with Pratt and Whitney, Rolls Royce, or General Electric engines having new style nacelle strut midspar fuse pins, other than those identified in paragraph (c)(1) of this AD: Inspect outboard engine positions 1 and 4 at the later of the times specified in paragraph (c)(3)(i) or (c)(3)(ii) of this AD:

(i) Prior to the accumulation of 3,000 landings on the fuse pin or within 3 years since installation of the fuse pin, whichever occurs first; or

(ii) Within 90 days after the effective date of this AD.

(d) In accordance with the compliance times specified in paragraph (c) of this AD, perform a detailed visual inspection to detect corrosion of the new style nacelle strut midspar fuse pins from each end of the fuse pin with the insert removed, in accordance with Boeing Alert Service Bulletin 747–54A2150, Revision 1, dated November 13, 1992. When a new style fuse pin is removed, the engine must be removed in accordance with the Boeing Model 747 Maintenance Manual, Section 54–10–03; or supported in accordance with the service bulletin; or supported in a manner approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) If corrosion is detected as a result of the inspection required by paragraph (d) of this AD, prior to further flight, accomplish the following:

(1) If the amount of corroded material that must be removed exceeds the 0.010-inch limit on the fuse pin inner diameter specified in the service bulletin, replace the fuse pin with a new style fuse pin. Thereafter, accomplish the actions required by this AD on the newly-installed fuse pins.

(2) If the amount of corroded material that must be removed is more than light, and equal to or less than the 0.010-inch limit on the fuse pin inner diameter specified in the service bulletin, rework the fuse pin in accordance with the service bulletin instructions, or replace the pin with a new style fuse pin. "Light" corrosion is characterized by discoloration or pitting to a depth of not more than 0.001-inch maximum. This type of corrosion can be removed normally by light hand sanding. A fuse pin that has been reworked in accordance with Boeing Alert Service Bulletin 747–54A2150, dated October 5, 1992; or Revision 1, dated November 13, 1992, must be replaced with a new fuse pin prior to the accumulation of 3,000 landings on the fuse pin, or 3 years since the pin was reworked and reinstalled, whichever occurs first.

(3) If the corrosion is light, remove the corroded material in accordance with the service bulletin. Thereafter, repeat the inspections required by paragraph (h) of this AD.

(f) Following accomplishment of the actions required by paragraphs (d) and (e) of this AD, if the fuse pin has been found to be corrosion free, or if the pin has been reworked on the airplane to remove light corrosion, prior to further flight, perform an ultrasonic inspection to detect cracks in the fuse pin from each end of the fuse pin with the insert removed, in accordance with Boeing Alert Service Bulletin 747–54A2150, Revision 1, dated November 13, 1992. When a new style fuse pin is removed, the engine must be removed in accordance with the Boeing Model 747 Maintenance Manual, section 54–10–03; or supported in accordance with the service bulletin; or supported in a manner approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(g) If any crack is found as a result of the inspections required by paragraph (d) or (f) of this AD, prior to further flight, replace the pin with a new style fuse pin in accordance with Boeing Alert Service Bulletin 747–54A2150, Revision 1, dated November 13, 1992. Thereafter, accomplish the actions required by this AD on the newly-installed fuse pins.

(h) Thereafter, repeat the actions required by paragraphs (d), (e), (f), and (g) of this AD at intervals not to exceed 500 landings.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) The inspections, replacement, and rework shall be done in accordance with Boeing Alert Service Bulletin 747–54A2150, Revision 1, dated November 13, 1992; and Boeing Service Bulletin 747–54–2063, Revision 9, dated April 23, 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Incorporation by reference of Boeing Service Bulletin 747–54–2063, Revision 9, dated April 23, 1992, was approved previously by the Director of the Federal Register as of November 27, 1992 (57 FR 53546, November 12, 1992). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on January 4, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92–24–51, issued on November 13, 1992, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30700 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–228–AD; Amendment 39–8442; AD 92–27–08]

Airworthiness Directives; Cessna Citation Model 650 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Cessna Citation Model 650 series airplanes. This action requires a one-time inspection of the inboard attach fittings of the elevator torque tubes to detect cracking and to determine the thickness of the wall of the fitting; and the replacement of the fittings, if necessary. This amendment is prompted by a report indicating that a single inboard attach fitting on an elevator torque tube was found cracked. The actions specified in this AD are intended to prevent potential loss of elevator control.

DATES: Effective January 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1993.

Comments for inclusion in the Rules Docket must be received on or before February 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas Haig, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4125; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: Recently, the manufacturer found a cracked inboard attach fitting of the elevator torque tube, while installing a modification on a Cessna Citation Model 650 series airplane. The cause of this cracking has been attributed to insufficient thickness in the wall of the inboard attach fitting of the elevator torque tube. The discrepant part was installed at the time of manufacture of the airplane; however, the manufacturer subsequently purged all discrepant parts from its stock. Inboard attach fittings of the elevator torque tube with appropriate thickness in the wall have been installed on airplanes having serial numbers –0220 and subsequent, and –7014 and subsequent. Cracked attach fittings, if not detected and corrected in a timely manner, could lead to failure of the fitting and consequent loss of elevator control.

The FAA has reviewed and approved Cessna Citation Alert Service Letter A650–27–30, dated November 12, 1992, that describes procedures for inspection to determine the minimum material wall thickness of the inboard attach fittings of the elevator torque tube, and the replacement of the fittings, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other Cessna Citation Model 650 series airplanes of the same type design, this AD is being issued to prevent the potential loss of elevator control. This AD requires a one-time inspection of the inboard attach fittings of the elevator torque tube to detect cracking and to determine the thickness of the wall of the fitting; and replacement of the fittings, if necessary. The actions are required to be accomplished in accordance with the alert service letter described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements

affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–228–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–27–08. Cessna: Amendment 39–8442. Docket 92–NM–228–AD.

Applicability: Citation Model 650 series airplanes, having serial numbers –0001 thru –0219, inclusive, and –7001 thru –7013, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent the potential loss of elevator control, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD: Perform an inspection of the inboard attach fittings of the left-hand and right-hand elevator torque tubes to determine minimum material wall thickness in accordance with Cessna Citation Alert Service Letter A650–27–30, dated November 12, 1992; and perform a visual inspection of the fittings to detect cracking.

(1) If the material thickness of the inboard attach fitting, at all locations, is 0.045 inch or thicker, and if no cracked fitting is found, no further action is required by this AD.

(2) If the material thickness of the inboard attach fitting, at any location, is equal to or greater than 0.040 inch but less than 0.045 inch, and if no cracked fitting is found, within 150 flight hours, replace the inboard attach fitting in accordance with the service letter.

(3) If the material thickness of the inboard attach fitting, at any location, is thinner than 0.040 inch, or if a cracked fitting is found, prior to further flight, replace the fitting with a fitting having part number 6234132–8, in accordance with the service letter.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and replacement shall be done in accordance with Cessna Citation Alert Service Letter A650–27–30, dated November 12, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 4, 1993.

Issued in Renton, Washington, on December 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30701 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 778 and 799

[Docket No. 920817–2217]

Revisions to the Commerce Control List: Chemical Precursors, Microorganisms and Toxins

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: The Bureau of Export Administration maintains the Commerce Control List (CCL), which appears in the Export Administration Regulations (EAR). This rule amends the CCL by revising Export Control Classification Numbers (ECCNs) 1C60C and 1C61B. These ECCNs control dual-use items that can be used in the production of chemical and biological weapons (CBW). The changes made by

this rule are intended to conform the list of CBW related items controlled by the United States to the lists of items agreed to and adopted by countries participating in the Australia Group.

DATES: This rule is effective December 18, 1992. Comments must be received by January 19, 1993.

ADDRESSES: Written comments (six copies) should be sent to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 482–4531.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological weapons agents, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 482–4777.

SUPPLEMENTARY INFORMATION:

Background

This interim rule amends ECCN 1C60C by adding four chemical precursors to the list of items controlled: Sulfur monochloride (C.A.S. #10025–67–9), sulfur dichloride (C.A.S. #10545–99–0), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S. #4261–68–1), and triethanolamine hydrochloride (C.A.S. #637–39–8). These items are added to ECCN 1C60C in order to conform the list of chemical precursors controlled by the United States with the list of chemical precursors adopted by the countries participating in the Australia Group. The twenty-two member Australia Group, in which the United States participates, seeks to prevent the proliferation of chemical and biological weapons.

Exports and reexports of chemical precursors controlled by ECCN 1C60C require an individual validated license to all destinations, except countries participating in the Australia Group or NATO. In addition to the United States and Canada, the countries participating in the Australia Group include: Australia, Austria, Belgium, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Prior to the publication of this interim rule, exports and reexports to Finland or Sweden of chemical precursors controlled by ECCN 1C60C required an individual validated license. This interim rule removes the individual validated license requirement for Finland and Sweden, since both countries now participate in the Australia Group.

This rule also amends ECCN 1C61B to add the following microorganisms that the delegates at the June 1992 meeting of the Australia Group agreed to adopt, subject to approval by their governments:

(1) *Viruses:* African swine fever virus, avian influenza virus, bluetongue virus, foot and mouth disease virus, goat pox virus, herpes virus (Aujeszky's disease), hog cholera virus, Newcastle disease virus, peste des petits ruminants virus, porcine enterovirus type 9, rinderpest virus, sheep pox virus, teschen disease virus, and vesicular stomatitis virus;

(2) *Bacteria:* Mycoplasma mycoides, pseudomonas solanacerum, xanathonomas campestris pv citri, and xanthomonas campestris pv oryzae;

(3) *Fungi:* Heliminthosporium maydis, heliminthosprium oryzae, puccinia glumarum, puccinia graminis, puccinia striiformis, pyricularia grisea, and ustilago maydis.

(4) *Genetically modified microorganisms:* (a) Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity and are derived from organisms identified in the Commerce Control List (CCL);

(b) Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity derived from plant pathogens identified in the Commerce Control List (CCL).

Exports and reexports of microorganisms and toxins controlled by 1C61B require an individual validated license to all destinations except Canada.

The additions to ECCN 1C61B made by this interim rule follow a total revision of this entry by an interim rule published on July 15, 1992 (57 FR 31309). That interim rule revised ECCN 1C61B to provide a positive list of viruses, rickettsiae, bacteria, genetically modified organisms, and toxins. The changes made by the July 15, 1992, interim rule marked the first time the Australia Group had agreed in principle to establish multilateral export controls on biological items. The Administration has been working in cooperation with participating governments in the Australia Group to establish multilateral controls on CBW related items.

Savings Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before January 4, 1993 may be exported under the previous general license provisions up to and including January 19, 1993. Any such items not actually exported before midnight January 19, 1993, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 19, 1993. The Department will consider all comments received before the close of the comment period in developing final

regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 778 and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 778 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 778—[AMENDED]

3. Section 778.8 is amended:

a. By revising paragraph (a)(1) introductory text;

b. By revising paragraph (a)(5)(i);

c. By revising paragraph (a)(5)(iv)(B); and

d. By revising paragraph (a)(5)(v), to read as follows:

§ 778.8 Chemical precursors and biological agents, and associated equipment, software, and technology.

(a) * * *

(1) Chemicals identified in ECCN 1C60 require a validated license for export from the United States to all destinations except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

* * * * *

(5) * * *

(i) General License GTDR is not available for technical data for the production of chemical precursors described in paragraph (a)(1) of this section, except to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom;

* * * * *

(iv) * * *

(B) This prohibition on use of General License GTDR is available only to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom;

(v) General License GTDR is available only to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom, for software for process control that is specifically configured to control or initiate the production of chemical weapons precursors controlled by ECCN 1C60.

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

4. In Supplement No. 1 to § 799.1, Category 1, ECCN 1C60C is revised to read as follows:

1C60C Precursor and intermediate chemicals used in the production of chemical warfare agents.

Requirements

Validated License Required: QSTVWYZ, *except* Australia, Austria, Belgium, Denmark, Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.
Unit: Liters or kilograms, as appropriate
Reason for Control: CB
GLV: $0
GCT: No
GFW: No

Notes: 1. *Sample Shipments:* General License G–DEST is available for one sample shipment of a 55-gallon container (209 liters) or less of each chemical to any one consignee per calendar year (not applicable to Iran, Iraq, Syria, Country Groups S and Z, the South

African military and police, or countries subject to an embargo administered by the Department of the Treasury).

2. *Compounds:* General License G–DEST is available, except to Country Groups S and Z and the South African military and police, for compounds that are created from chemicals controlled under this ECCN 1C60C provided that the compound itself is not controlled under this ECCN or another ECCN on the CCL. (Mixtures that contain chemicals controlled under this ECCN are controlled as precursors, except when the precursor chemical is merely an impurity that was not intentionally added or is a normal ingredient in consumer goods intended for retail sales.)

List of Items Controlled

(See Supplement No. 1 to § 799.2, Interpretation 23: Precursor Chemicals, for synonyms for the following chemicals.)

1. (C.A.S. #1341–49–7) Ammonium hydrogen fluoride;
2. (C.A.S. #7784–34–1) Arsenic trichloride;
3. (C.A.S. #76–93–7) Benzilic acid;
4. (C.A.S. #107–07–3) 2-Chloroethanol;
5. (C.A.S. #78–38–6) Diethyl ethylphosphonate;
6. (C.A.S. #15715–41–0) Diethyl methylphosphonite;
7. (C.A.S. #2404–03–7) Diethyl-N,N-dimethylphosphoroamidate;
8. (C.A.S. #762–04–9) Diethyl phosphite;
9. (C.A.S. #100–37–8) N,N-Diethylethanolamine;
10. (C.A.S. #5842–07–9) N,N-Diisopropyl-.beta.-aminoethane thiol;
11. (C.A.S. #4261–68–1) N,N-Diisopropyl-.2.-aminoethyl chloride hydrochloride;
12. (C.A.S. #96–80–0) N,N-Diisopropyl-.beta.-aminoethanol;
13. (C.A.S. #96–79–7) N,N-Diisopropyl-.beta.-aminoethyl chloride;
14. (C.A.S. #108–18–9) Diisopropylamine;
15. (C.A.S. #6163–75–3) Dimethyl ethylphosphonate;
16. (C.A.S. #756–79–6) Dimethyl methylphosphonate;
17. (C.A.S. #868–85–9) Dimethyl phosphite (dimethyl hydrogen phosphite);
18. (C.A.S. #124–40–3) Dimethylamine;
19. (C.A.S. #506–59–2) Dimethylamine hydrochloride;
20. (C.A.S. #57856–11–8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL);
21. (C.A.S. #1498–40–4) Ethylphosphonous dichloride [Ethylphosphinyl dichloride];[1]
22. (C.A.S. #430–78–4) Ethylphosphonous difluoride [Ethylphosphinyl difluoride];[1]
23. (C.A.S. #1066–50–8) Ethylphosphonyl dichloride;
24. (C.A.S. #753–98–0) Ethylphosphonyl difluoride;
25. (C.A.S. #7664–39–3) Hydrogen fluoride;
26. (C.A.S. #3554–74–3) 3-Hydroxyl-1-methylpiperidine;
27. (C.A.S. #76–89–1) Methyl benzilate;
28. (C.A.S. #676–83–5) Methylphosphonous dichloride [Methylphosphinyl dicloride];[1]
29. (C.A.S. #753–59–3) Methylphosphonous difluoride [Methylphosphinyl difluoride];[1]
30. (C.A.S. #676–97–1) Methylphosphonyl dichloride;
31. (C.A.S. #676–99–3) Methylphosphonyl difluoride;
32. (C.A.S. #10025–87–3) Phosphorus oxychloride;
33. (C.A.S. #10026–13–8) Phosphorus pentachloride;
34. (C.A.S. #1314–80–3) Phosphorus pentasulfide;
35. (C.A.S. #7719–12–2) Phosphorus trichloride;
36. (C.A.S. #75–97–8) Pinacolone;
37. (C.A.S. #464–07–3) Pinacolyl alcohol;
38. (C.A.S. #151–50–8) Potassium cyanide;
39. (C.A.S. #7789–23–3) Potassium fluoride;
40. (C.A.S. #7789–29–9) Potassium hydrogen fluoride;
41. (C.A.S. #1619–34–7) 3-Quinuclidinol;
42. (C.A.S. #3731–38–2) 3-Quinuclidinone;
43. (C.A.S. #1333–83–1) Sodium bifluoride;
44. (C.A.S. #143–33–9) Sodium cyanide;
45. (C.A.S. #7681–49–4) Sodium fluoride;
46. (C.A.S. #1313–82–2) Sodium sulfide;
47. (C.A.S. #10025–67–9) Sulfur monochloride;
48. (C.A.S. #10545–99–0) Sulfur dichloride;
49. (C.A.S. #111–48–8) Thiodiglycol;
50. (C.A.S. #7719–09–7) Thionyl chloride;
51. (C.A.S. #102–71–6) Triethanolamine;
52. (C.A.S. #637–39–8) Triethanolamine hydrochloride;
53. (C.A.S. #122–52–1) Triethyl phosphite; and
54. (C.A.S. #121–45–9) Trimethyl phosphite.

5. In Supplement No. 1 to § 799.1, Category 1, ECCN 1C61B is revised to read as follows:

1C61B Microorganisms and toxins.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: CB
GLV: $ 0
GCT: No
GFW: No

List of Items Controlled

a. Viruses, as follows:
a.1. African swine fever virus;
a.2. Avian influenza virus;
a.3. Bluetongue virus;
a.4. Chikungunya virus;
a.5. Congo-Crimean haemorrhagic fever virus;
a.6. Dengue fever virus;
a.7. Eastern equine encephalitis virus;
a.8. Ebola virus;
a.9. Foot and mouth disease virus;
a.10. Goat pox virus;
a.11. Hantaan virus;
a.12. Herpes virus (Aujeszky's disease);
a.13. Hog cholera virus;
a.14. Japanese encephalitis virus;
a.15. Junin virus;
a.16. Lassa fever virus;
a.17. Lymphocytic choriomeningitis virus;
a.18. Machupo virus;
a.19. Marburg virus;
a.20. Monkey pox virus;
a.21. Newcastle disease virus;
a.22. Peste des petits ruminants virus;
a.23. Porcine enterovirus type 9;
a.24. Rift Valley fever virus;
a.25. Rinderpest virus;
a.26. Sheep pox virus;
a.27. Teschen disease virus;
a.28. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
a.29. Variola virus;
a.30. Venezuelan equine encephalitis virus;
a.31. Vesicular stomatitis virus;
a.32. Western equine encephalitis virus;
a.33. White pox; or
a.34. Yellow fever virus.

b. Rickettsiae, as follows:
b.1. Coxiella burnetii;
b.2. Rickettsia quintana;
b.3. Rickettsia prowasecki; or
b.4. Rickettsia rickettsii.

c. Bacteria, as follows:
c.1. Bacillus anthracis;
c.2. Brucella abortus;
c.3. Brucella melitensis;
c.4. Brucella suis;
c.5. Chlamydia psittaci;
c.6. Clostridium botulinum;
c.7. Francisella tularensis;
c.8. Mycoplasma mycoides;
c.9. Pseudomonas mallei;
c.10. Pseudomonas pseudomallei;
c.11. Pseudomonas solanacerum;
c.12. Salmonella typhi;
c.13. Shigella dysenteriae;
c.14. Vibrio cholerae;
c.15. Xanthonomas campestris pv citri;
c.16. Xanthomonas campestris pv oryzae; or
c.17. Yersinia pestis.

[1] Chemical name used elsewhere in the List of Chemicals for this ECCN 1C60C.

d. Fungi, as follows:
d.1. Heliminthosporium maydis;
d.2. Heliminthosporium oryzae;
d.3. Puccinia glumarum;
d.4. Puccinia graminis;
d.5. Puccinia striiformis;
d.6. Pyricularia grisea; or
d.7. Ustilago maydis.

e. Genetically modified micro-organisms, as follows:

e.1. Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity and are derived from organisms identified in this ECCN;

e.2. Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity derived from plant pathogens identified in this ECCN; or

e.3. Micro-organisms genetically modified to produce any of the toxins listed in paragraph f. of this ECCN.

f. Toxins, as follows:
f.1. Botulinum toxins;
f.2. Clostridium perfringens toxins;
f.3. Conotoxin;
f.4. Mocrocystin (cyanogenosin);
f.5. Ricin;
f.6. Saxitoxin;
f.7. Shiga toxin;
f.8. Staphylococcus aureus toxins;
f.9. Tetrodotoxin; or
f.10. Verotoxin.

Dated: December 11, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-30514 Filed 12-17-92; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8432]

RIN 1545-AP18

Branch Profits Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8432, which was published in the Federal Register for Friday, September 11, 1992 (57 FR 41644). The final regulations relate to the branch profits tax, branch-level interest tax and qualified resident rules issued under section 884 of the Internal Revenue Code of 1986.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide guidance needed to comply with this section and generally affect foreign corporations engaged in trade or business in the United States. These regulations also provide guidance relating to the application of section 884 to foreign governments in light of the changes made by the Technical and Miscellaneous Revenue Act of 1988 under section 892(a)(3) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8432 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8432), which was the subject of FR Doc. 92-21297, is corrected as follows:

§ 1.884-0 [Corrected]

1. On page 41650, column 2, § 1.884-0(b), the entry for § 1.884-2T(c)(3), first line, the language, "Transferor's dividend equivalent among" is corrected to read "Transferor's dividend equivalent amount".

§ 1.884-1 [Corrected]

2. On page 41651, column 3, § 1.884-1(b)(4), *Example 5*, third line from the bottom of the paragraph, the language "A has $50 of accumulated ECEP (i.e. 110" is corrected to read "A has $50 of accumulated ECEP (i.e. $110".

3. On page 41653, column 1, § 1.844-1(d)(2)(vii) is corrected to read:

(d) * * *

(2) * * *

(vii) *Securities held by a foreign corporation engaged in a banking, financing or similar business.* Securities described in § 1.864-4(c)(5)(ii)(*b*)(*3*) held by a foreign corporation engaged in the United States during the taxable year shall be treated as U.S. assets in the same proportion that income, gain, or loss from such securities is ECI for the taxable year under § 1.864-4(c)(5)(ii).

4. On page 41654, column 1, § 1.884-1(d)(3)(iii), in the *Example*, line fifteen, the language, "The real estate securities each have an" is corrected to read "The real estate and the securities each have an".

§ 1.884-2T [Corrected]

5. On page 41659, column 3, § 1.884-2T(b), second line from the bottom of the paragraph, the language "substitution is not less than their" is corrected to read "substitution not less than their".

§ 1.884-4 [Corrected]

6. On page 41663, column 2, § 1.884-4(b)(6)(ii), line ten, the language, "next latest payment until the amount of" is corrected to read "next-latest payment until the amount of".

§ 1.884-5 [Corrected]

7. On page 41667, column 2, § 1.884-5(b)(1)(iv)(B), line three, the language "its not-for-profit status;" is corrected to read "its not-for-profit status; and".

8. On page 41669, column 1, § 1.884-5(b)(3)(iii), second line from the bottom of the concluding text, the language, "conditions set forth in this paragraph are" is corrected to read "conditions set forth in this paragraph (b)(3)(iii) are".

9. On page 41669, column 1, § 1.884-5(b)(3)(v), line twelve, the language, "specified in paragraph (b)(3) or (b)(8) of" is corrected to read "specified in this paragraph (b)(3) or (b)(8) of".

10. On page 41669, column 1, § 1.884-5(b)(3)(v), line twenty-one, the language, "in a timely manner and a describing the" is corrected to read "in a timely manner and describing the".

11. On page 41675, column 3, § 1.884-5(e)(4)(iii), the last line of the paragraph, the language, "consistent manner from year-to-year" is corrected to read "consistent manner from year to year".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-30310 Filed 12-17-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 92-119]

Special Local Regulations; City of Pompano Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the 30th Annual Christmas Boat Parade. This event will be held on December 20, 1992, from 6:30 p.m. e.s.t. (Eastern Standard Time) until 9 p.m. e.s.t. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations will become effective on December 20, 1992, at 6 p.m. e.s.t. and terminate on December 20, 1992, at 9:30 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: LTJG T.M. Perez, U.S.C.G. Group Miami, (305) 535–4346.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable as there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Teresa M. Perez, Project Officer, U.S.C.G. Group Miami.

Discussion of Regulations

The City of Pompano Beach 30th Annual Christmas Boat Parade is a nighttime parade of approximately one hundred fifty (150) pleasure and fishing boats ranging in length from 23 feet to 125 feet and decorated with holiday lights. There will be approximately seventh-five (75) spectator craft.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service, the Florida Department of Natural Resources, and the National Marine Fisheries Service about the environmental impact of this event, and it was determined that the event does not threaten protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–07–119 is added to read as follows:

§ 100.35–07–119 City of West Palm Beach, FL.

(a) *Regulated Area.* A regulated area is established in the Intracoastal Waterway with the southern boundary formed by latitude 26–13 N, the northern boundary formed by latitude 26–15 N, and the eastern and western boundaries formed by the ICW.

(b) *Special local regulations.* (1) Vessel movement or anchoring in the regulated area is prohibited unless authorized by the Patrol Commander.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective dates:* These regulations become effective on December 20, 1992, from 6 p.m. e.s.t., and terminate on December 20, 1992, at 9:30 p.m. e.s.t.

Dated: December 2, 1992.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92–30787 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 92–131]

Safety Zone; Sandy Hook Bay, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a safety zone in Sandy Hook Bay, New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an Army training exercise involving numerous parachutists entering a drop zone in this area. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATE: This zone becomes effective on January 9, 1993 between 12 p.m. and 8 p.m., and again on January 10, 1992 between 1:30 am to 5 am.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J. E. Peschel, Waterways Management Officer, Coast Guard Group New York (212) 668-7933

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J. E. Peschel, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards, and sufficiently protect the boating public from this Army training exercise. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

This regulation is required to protect the maritime public from possible dangers and hazards associated with an Army training exercise in the waters of Sandy Hook Bay. The exercise includes a large number of paratroopers dropping into a ½ mile drop zone. This zone is needed to protect the participants from marine traffic and also to aid in rescue operations should the need arise. No vessel will be permitted to enter or move within the safety zone unless authorized to do so by Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The impact of this regulation is expected to be minimal due to the following factors: Limited duration of the exercises, the extensive advisories made to the affected maritime community, the location of the zone away from shipping channels, and the fact that the event is taking place on a Saturday night and Sunday morning, which typically doesn't experience a significant volume of commercial marine traffic. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominent in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continuous to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary § 165.T01–131 is added to read as follows:

§ 165.T01–131 Sandy Hook Bay, New Jersey.

(a) *Location.* The safety zone will include all waters of Sandy Hook Bay within a 1000 yard radius of a point located at 40° 26′ 30″N and 74° 02′ 00″W, located approximately 1.5 miles north of Atlantic Highlands, NJ shoreline.

(b) *Effective period.* This zone becomes effective on January 9, 1993 between 12 p.m. and 8 p.m., and again on January 10, 1993 between 1:30 am to 5 am.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port (COTP), New York. The COTP will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(2) All persons and vessels shall comply with the instructions of the COTP NY or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and only proceed as directed.

Dated: December 3, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92–30785 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 124

[FRL–4546–9]

Changes to Regulations to Reflect the Role of the Environmental Appeals Board in Agency Adjudications; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendments.

SUMMARY: This document contains corrections to the final regulations published on Thursday, February 13, 1992. The regulations were promulgated to reflect the role of the Environmental Appeals Board in Agency adjudications.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Black, Environmental Appeals Board (MC–1103B), 401 M Street, SW., Washington, DC 20460, (202) 501–7077.

SUPPLEMENTARY INFORMATION: Parts 22 and 124 of title 40 of the Code of Federal Regulations contain procedures governing most administrative permit and penalty proceedings conducted by the Agency. On February 13, 1992, parts 22 and 124 were amended to reflect the role of the newly created Environmental Appeals Board as the final Agency decisionmaker in such cases. As published, however, the final regulations contain technical errors that may cause confusion and are therefore in need of clarification.

In addition, when the February 13, 1992 rule change was published, the Agency had intended to include in that rule change a revision of 40 CFR 124.5(b), which provides that denials of requests for modification, revocation and reissuance, or termination of the permit under that section may be informally appealed to the Administrator. The Agency had intended to include in the February 13, 1992 rule change an amendment reflecting the fact that the Board has received delegated authority from EPA's Administrator to render final Agency decisions in such informal appeals. The Agency inadvertently neglected to include such an amendment in the February 13, 1992 rule change. That the Agency had intended to include such an amendment in the rule change is evident from the fact that the rule change did amend paragraph 1.c.ii. of figure 1 of appendix A of part 124 to provide that if a request for modification, revocation and reissuance, or termination under § 124.5 is denied, an informal appeal to the Board is available. The inconsistency between appendix A of part 124 and paragraph (b) of § 124.5 is hereby being corrected.

List of Subjects

40 CFR Part 22

Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Edward E. Reich,

Environmental Appeals Judge.

Accordingly, 40 CFR ch. I is amended as follows.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

1. The authority citation for part 22 continues to read as follows:

Authority: 15 U.S.C. 2615; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547(d), 7601 and 7607(a); 7 U.S.C. 136 (l) and (m); 33 U.S.C. 1319, 1415 and 1418; 42 U.S.C. 6912, 6928, and 6991(e); 42 U.S.C. 9609; 42 U.S.C. 11045.

2. Section 22.04 is amended by revising the section heading to read as follows:

§ 22.04 Powers and duties of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, and the Presiding Officer; disqualification.

* * * * *

3. Section 22.16 is amended by revising the first and last sentences of paragraph (b) to read as follows:

§ 22.16 Motions.

* * * * *

(b) * * * A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. * * * The Presiding Officer, the Regional Administrator, or the Environmental Appeals Board, as appropriate, may set a shorter time for response, or make such orders concerning the disposition of motions as they deem appropriate.

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C.300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.2 is amended by revising the second sentence of the definition of "Environmental Appeals Board" to read as follows:

§ 124.2 Definitions.

* * * * *

Environmental Appeals Board

* * * The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in RCRA, PSD, UIC, or NPDES permit appeals filed under this subpart, including informal appeals of denials of requests for modification, revocation and reissuance, or termination of permits under Section 124.5(b). * * *

* * * * *

3. Section 124.5 is amended by revising the third, fourth, and fifth sentences of paragraph (b) to read as follows:

§ 124.5 Modification, revocation and reissuance, or termination of permits.

* * * * *

(b) * * * Denials by the Regional Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Environmental Appeals Board may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section. The appeal shall be considered denied if the Environmental Appeals Board takes no action on the letter within 60 days after receiving it. * * *

* * * * *

[FR Doc. 92-30777 Filed 12-17-92; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-4153-5]

Extension of States' Interim Authorization Option to Implement HSWA Regulations

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: Pursuant to sections 3006(c)(2) and 3006(g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6926(c)(2) and (g), the U.S. Environmental Protection Agency (EPA) extends until January 1, 2003, the availability of interim authorization for States to implement requirements of the 1984 Hazardous and Solid Waste Amendments (HSWA). The current regulatory deadline, as codified in 40 CFR 271.24, is scheduled to expire on January 1, 2003. A State will need to obtain final authorization by that date for those requirements for which it holds HSWA interim authorization. EPA is promulgating this action as an interim final rule to maintain the availability of HSWA interim authorization for eligible States and to avoid the reversion to EPA of those portions of State programs with HSWA interim authorization.

Through HSWA interim authorization, EPA may authorize State hazardous waste programs which are substantially equivalent to federal regulations issued under HSWA. It can be used to enhance and expedite State authorization and reduce EPA's direct implementation responsibility.

DATES: This extension of HSWA interim authorization availability to the States shall be effective on December 18, 1992. Comments on this interim final rule will be accepted until January 19, 1993. EPA will promulgate a final rule affirming or modifying the interim final rule in response to any comments April 19, 1993.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket Clerk, room 2427 (OS-332), 401 M Street, SW., Washington, DC 20460.

Place "Docket Number F92-ISAP-FFFFF" on your comments. Copies of materials relevant to this interim rulemaking are located in the docket at the address listed above. The Office of Solid Waste (OSW) Docket is located in room 2427 at the above address, and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: Richard LaShier, State and Regional Programs Branch, Permits and State Programs Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-2210.

SUPPLEMENTARY INFORMATION:

I. Background

When Congress enacted RCRA in 1976, interim authorization was established to allow States to continue operating their own hazardous waste programs, while striving to achieve the requirements for final authorization, RCRA section 3006(c), 42 U.S.C. 6926(c). Interim authorization was the vehicle used to expedite the States' lead in hazardous waste program implementation, thus reducing the time during which there would be dual Federal/State programs. It was intended to provide States a transition period to adopt all the changes necessary to implement programs equivalent to the Federal requirements. The statutory provision for interim authorization under RCRA expired on January 31, 1986. See 45 FR 33378 (May 19, 1980) for more information about interim authorization for the base RCRA program.

Under RCRA, the relationship between the Federal and State program is structured so that once a State becomes authorized for the base RCRA

program, any additional RCRA regulations promulgated by EPA only become effective in the authorized State once the State has adopted those regulatory provisions. EPA reviews and authorizes these program revisions as they are submitted by the State.

The Hazardous and Solid Waste Amendments (HSWA), enacted in 1984, changed the Federal/State relationship. Regulations promulgated under HSWA authority become effective at the same time in all States and are implemented by EPA until the State has revised its regulatory program and received authorization for those provisions. HSWA also included a new provision, section 3006(g)(2), to allow EPA to grant interim authorization for the implementation of HSWA provisions to any State which received interim or final authorization for RCRA prior to the enactment of HSWA, and which submitted evidence showing that the State's analogous requirements were substantially equivalent to the Federal regulations. The new HSWA interim authorization provision provided States a developmental period in which to prepare requirements fully equivalent to the Federal regulations, and ensure adequate State capability to carry out the program.

Congress did not establish an expiration date for interim authorization under the new HSWA provision, section 3006(g), but section 3006(c)(2) required EPA to establish a regulatory deadline for the expiration of HSWA interim authorization. EPA selected January 1, 1993 as the deadline for HSWA interim authorization expiration, expecting that date to provide adequate time for the States to adopt the HSWA provisions, including any modifications they deemed necessary. See 50 FR 28731–28732 (July 15, 1985) and 51 FR 33712, 33719 (September 22, 1986).

II. Discussion

Final authorization allows a State to implement its own hazardous waste program in lieu of EPA, once it has demonstrated that its program is "equivalent" to the Federal requirements. However, to obtain interim authorization, a State must only show that its program is "substantially equivalent" to the Federal program. A substantially equivalent State program may include most, but not all of the provisions of the Federal program. Without interim authorization, a State must first modify its provisions in order to make them fully equivalent to the Federal requirements. These modifications may require additional State rulemaking or amendments to State statutes, which may take a minimum of one to two years to complete. Until EPA grants a State either interim or final authorization for a particular HSWA requirement, EPA must implement that HSWA requirement. This dual Federal/State implementation creates unnecessary costs and a duplication of efforts.

The legislative history of both RCRA and HSWA indicates that Congress intended that the Federal program be administered so as to encourage each State to assume or continue primary responsibility for program administration. Congress intended that States be granted interim authorization in a relatively liberal manner to encourage States to take the lead in program implementation. Congress clearly provided for interim authorization for both RCRA and HSWA requirements. With the HSWA interim authorization provision, States can assume the lead role in HSWA implementation more rapidly, pending final authorization.

Despite the eight year time period that had been considered sufficient for interim authorization, the need for the provision remains. The overall RCRA program and authorization process has become much more complex than when HSWA was first enacted. Since November 1984, the Office of Solid Waste has published 38 regulations and listing determinations based on HSWA, and the regulatory development process is not yet complete. EPA projects the completion of 27 or more additional HSWA rulemakings through at least the fall of 1998.

Although many States have adopted as part of their State law many of the HSWA requirements, EPA authorization of State regulations in lieu of both RCRA and HSWA Federal rules has lagged. Only fourteen States (as of May 30, 1992) have been authorized for any of the HSWA regulations promulgated since June 30, 1987. No State has achieved final authorization for all of the HSWA requirements promulgated to date.

Some States are currently operating portions of the HSWA program on an interim basis, and others may be considered for HSWA interim authorization in early 1993. Expiration of HSWA interim authorization availability on January 1, 1993 would cause those portions of the State program that are authorized on an interim basis to revert to EPA for implementation. Reversion of the affected portions of the State program would cause disruption for States currently granted HSWA interim authorization, and impede other States eligible for HSWA interim authorization from implementing portions of the HSWA program, pending the development of fully equivalent requirements under State law.

Furthermore, if HSWA interim authorization is allowed to lapse on January 1, 1993, there will be confusion among the members of the regulated community due to the shifting of regulatory implementation authority for the affected HSWA program elements from the States to the Federal government. EPA believes that such a lapse would have significant adverse effects on State and Federal relationships, and in the continuity of permitting responsibilities. Therefore, to avoid this disruption, EPA is promulgating this action as an interim final rule. EPA will fully consider any comments on this interim final rule and promulgate a final rule within 120 days affirming or modifying the rule in response to comments received.

HSWA mandated joint EPA/State implementation of hazardous waste management programs to ensure the HSWA requirements were implemented at the same time everywhere. However, the statute maintained the RCRA emphasis on State implementation and provided interim authorization as a mechanism to expedite the transfer of authority to the State. Interim authorization allows a State to maintain its lead role, while it is establishing the stronger, more comprehensive program that is fully equivalent to the Federal requirements. An extension of the interim authorization option will allow States to continue assuming this responsibility.

In the proposed Subpart S rule for corrective action, 55 FR 30798 (July 27, 1990), interim authorization has been cited as the appropriate tool to avoid disruption of State corrective action programs authorized before the issuance of the final subpart S rule. Without interim authorization, EPA would have to step back in immediately to implement the revised HSWA provisions, until the State could demonstrate full equivalence. It is likely that up to fifteen States will be authorized for corrective action by the end of the summer of 1992. The impact of not having this tool available could be even more extensive, however, since the number of States authorized for corrective action is expected to increase steadily in the near future.

The proposed subpart S rule states that Congress clearly did not intend for the authorized State program's authority to return, in part, to EPA every time EPA promulgates a subsequent, more stringent modification or addition to these requirements under HSWA. See

55 FR 30860 (July 27, 1990). Interim authorization was the mechanism designed to prevent this problem.

HSWA interim authorization may prove useful as well for handling the adoption of other future significant additions or revisions to HSWA requirements. When such a situation arises, interim authorization will ensure that authorized States maintain regulatory authority, without the need for EPA to step in to implement the modified provisions. Because interim authorization is designed to respond to changing HSWA requirements, Congress did not want the States to lose this important tool.

Interim authorization can be used in a variety of ways to complement and enhance both State and Federal resources. It can ease State adoption and implementation of amendments to Federal corrective action and other HSWA requirements, without reverting to joint EPA/State implementation. It can provide flexibility in approving State programs which are nearly equivalent to the Federal requirements. By facilitating State program implementation, interim authorization minimizes duplicative activities at the Federal level. For all these reasons, EPA believes that it would be contrary to the public interest to lose the availability of HSWA interim authorization. While providing the benefits previously listed, the extension of the provision will not add any additional costs or burdens to the program.

EPA is designating January 1, 2003 as the new expiration date for HSWA interim authorization because the Agency believes that up to an additional ten years will be needed for State programs to be fully authorized for HSWA. HSWA mandated regulations are currently projected to be promulgated through at least 1988. Based on our experience, States will need additional time to expand their programs and submit them to EPA for approval.

Although we currently believe that a ten year time frame would be most appropriate for HSWA interim authorization, we solicit comment on this issue. Either a shorter or longer time period could be used. If a shorter period is employed, it is likely that EPA would need to seek another extension, as there would not likely be adequate time for the States to adopt all the expected regulatory changes and obtain approval from EPA.

Conversely, EPA cannot predict all the changes that might occur in the long term. There may be additional amendments to the RCRA statute; EPA cannot anticipate the modifications that will be needed to implement those statutory changes. As changes take place, the Agency will consider their impact upon State authorization and make the necessary adjustments. Interim authorization should not be used indefinitely, since the statute, RCRA section 3006(c)(2), requires that the EPA Administrator establish a deadline.

The extension of the availability of interim authorization to States for HSWA regulations shall become effective today. The Agency requests comments on the ten year time frame designated, or other options noted above, for the extension of HSWA interim authorization. EPA will either withdraw the interim final decision or promulgate a final rule by April 19, 1993.

III. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis in connection with a major rule. A "major" rule is defined as one likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State/Tribal, and local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises in domestic or export markets.

This interim final will have none of the above effects. Because this rulemaking does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis at this time. Today's interim final was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

This interim final will not have significant impact on a substantial number of small entities, since the proposal has direct effects only on State Agencies. Therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No new information collection requirements will be imposed by today's interim final. Therefore, an Information Collection Request (ICR) has not been prepared by EPA.

D. Administrative Procedure Act

EPA is invoking the good cause exception in section 553(b)(3) and 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3) and 553(d)(3), to immediately extend the expiration of HSWA interim authorization to January 1, 2003. As discussed above, EPA is taking this action to avoid the disruption and confusion among States and the regulated community that would be caused by reversion to EPA of portions of State programs implementing HSWA requirements under HSWA interim authorization. In addition, EPA is taking this action to maintain the availability of HSWA interim authorization for eligible States, and thereby facilitate State implementation of HSWA requirements while this rulemaking is undergoing public comment.

EPA is today soliciting comments on whether a ten year time frame is appropriate for HSWA interim authorization. The Agency will fully evaluate the comments and withdraw today's rule or promulgate a final rule affirming or modifying the interim final rule in response to comments received.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 3, 1992.

William K. Reilly,

Administrator.

For reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 271 is amended as set forth below:

PART 271—[AMENDED]

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.24 is revised to read as follows:

§ 271.24 Interim authorization under section 3006(g) of RCRA.

(a) Any State which is applying for or has been granted final authorization pursuant to section 3006(b) of RCRA may submit to the Administrator evidence that its program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement identified in § 271.1(j) of this part. Such a State may request interim authorization under section 3006(g) of RCRA to carry out the State requirement in lieu of the Administrator carrying out the Federal requirement.

(b) The applications shall be governed by the procedures for program revisions in § 271.21(b) of this part.

(c) Interim authorization pursuant to this section expires on January 1, 2003.

[FR Doc. 92–30652 Filed 12–17–92; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–38

[FPMR Amendment G–100]

Motor Vehicle Registration, Identification, and Exemptions

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation adds the license plate code MC for the Marine Corps. This new code was requested by the Marine Corps and approved by the General Services Administration. This action will allow the Marine Corps to procure motor vehicle license plates showing the code designation MC.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses, Sr., Fleet Management Division, 703–305–7169.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–38

Motor equipment management.

For the reasons set forth in the preamble, 41 CFR part 101–38 is amended as follows:

PART 101–38—MOTOR EQUIPMENT MANAGEMENT

1. The authority citation for part 101–38 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

Subpart 101–38.2—Registration, Identification, and Exemptions

2. Section 101–38.202–4 is revised to read as follows:

§ 101–38.202–4 Numbering and coding.

Official U.S. Government tags, except tags issued by the District of Columbia, Department of Transportation under § 101–38.203–1, shall be numbered serially for each executive agency, beginning with 101, and shall be preceded by a letter code designating the agency having accountability for the motor vehicles as follows:

ACTION	ACT
Agriculture, Department of	A
Air Force, Department of the	AF
Army, Department of the	W
Commerce, Department of	C
Consumer Product Safety Commission.	CPSC
Corps of Engineers, Civil Works	CE
Defense Commissary Agency	DECA
Defense Contract Audit Agency	DA
Defense, Department of	D
Defense Logistics Agency	DLA
District of Columbia Redevelopment Land Agency.	LA
Education, Department of	ED
Energy, Department of	E
Environmental Protection Agency	EPA
Executive Office of the President	EO
Council of Economic Advisers, National Security Council, Office of Management and Budget	
Export-Import Bank of the United States.	EB
Federal Communications Commission.	FC
Federal Deposit Insurance Corporation.	FD
Federal Emergency Management Agency.	FE
Federal Home Loan Bank Board	FB
Federal Mediation and Conciliation Service.	FM
Federal Reserve System	FR
Federal Trade Commission	FT
General Accounting Office	GA
General Services Administration	GS
Government Printing Office	GP
Health and Human Services, Department of.	HHS
Housing and Urban Development, Department of.	H
Interagency Fleet Management System, GSA.	G
Interior, Department of the	I
Interstate Commerce Commission	IC
Judicial Branch of the Government	JB
Justice, Department of	J
Labor, Department of	L
Legislative Branch	LB
Marine Corps	MC
National Aeronautics and Space Administration.	NA
National Capital Housing Authority	NH
National Capital Planning Commission.	NP
National Guard Bureau	NG
National Labor Relations Board	NL
National Science Foundation	NS
Navy, Department of the	N
Nuclear Regulatory Commission	NRC
Office of Personnel Management	OPM
Panama Canal Commission	PC
Railroad Retirement Board	RR
Renegotiation Board	RB
Securities and Exchange Commission	SE
Selective Service System	SS
Small Business Administration	SB
Smithsonian Institution	SI
National Gallery of Art	
Soldiers' and Airmen's Home, U.S.	SH
State, Department of	S
Tennessee Valley Authority	TV
Transportation, Department of	DOT
Treasury, Department of the	T
United States Information Agency	IA
United States Postal Service	P
Veterans Affairs, Department of	VA

Dated: November 2, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–30596 Filed 12–17–92; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 201–38

Management of Telecommunication Resources

CFR Correction

In title 41 of the Code of Federal Regulations, chapter 201 to end, revised as of July 1, 1992, the text appearing on page 48 is correct as published. CFR correction published at 57 FR 56280 through 56284, Nov. 27, 1992 reinstating part 201–38 consisting of §§ 201–38.000 through 201–38.017 and reserved subpart 201–38.1 is withdrawn.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PR Docket No. 91–295; RM–7182, FCC 92–534]

Private Land Mobile Radio Services; Additional 72–76 MHz Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has released a Report and Order that amends Part 90 of its Rules to provide 20 additional frequencies in the 72–76 MHz band for low-power mobile use on a shared basis in the Business, Manufacturers, Petroleum, Power, and Railroad Radio Services. This action will result in less congestion on existing frequencies.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91–295, adopted November 30, 1992, and released December 14, 1992. The full text is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, telephone (202) 452–1422.

Summary of Report and Order

1. The action taken in the Report and Order creates twenty frequencies in the 74.6–74.8 MHz and 75.2–75.4 MHz bands for low-power mobile use by eligibles in the Business, Manufacturers, Petroleum, Power, and Railroad Radio Services. The frequencies will be limited for use within specific confines appropriate to each eligible radio service and will be subject to the provisions of § 90.257(b)(1) of the Rules that govern the use of 72–76 MHz low-power mobile frequencies.

2. Providing additional 72–76 MHz low-power mobile frequencies for use in the Manufacturers and Railroad Radio Services will relieve the congestion currently being experienced by these services. These frequencies will also provide new spectrum for low-power applications by eligibles in the Power, Petroleum, and Business Radio Services.

Final Regulatory Flexibility Analysis

We certify that the Regulatory Flexibility Act of 1980 does into apply to this rule making proceeding because the adopted rule amendments will not have significant economic impact on small business entities as defined by Section 601(3) of the Regulatory Flexibility Act. No comments were received addressing this certification in the Initial Regulatory Flexibility Analysis contained in the Notice of Proposed Rule Making in this proceeding.

List of Subjects in 47 CFR Part 90

Private land mobile radio, 72–76 MHz frequencies, Radio.

Amendatory Text

47 CFR parts 2 and 90 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 302, 303 and 307, unless otherwise noted.

2. 47 CFR 2.106 is amended by adding entries in the FCC use designators column for the frequency bands 74.6–74.8 and 75.2–75.4 as listed in the United States table column to read as follows:

§ 2.106 Table of Frequency Allocations.

International table	United States table		FCC use designators	
•	•	•	•	•
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	•
			74.6–74.8 Fixed Mobile 572 US273	74.6–74.8 Fixed Mobile 572 US273	Private Land Mobile (90)	
•	•	•	•	•	•	•
			75.2–75.4 Fixed Mobile 572 US273	75.2–75.4 Fixed Mobile 572 US273	Private Land Mobile (90)	
•	•	•	•	•	•	•

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303 and 332, unless otherwise noted.

4. 47 CFR 90.63 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74.79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39 MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (c), and adding paragraph (d)(27) to read as follows:

§ 90.63 Power Radio Service.

* * * * *

(c) * * *

POWER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
•	•	•	•	•
74.61	do	27
74.63	do	27
74.65	do	27
74.67	do	27
74.69	do	27
74.71	do	27
74.73	do	27
74.75	do	27
74.77	do	27
74.79	do	27
75.21	do	27

POWER RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
75.23	do	27
75.25	do	27
75.27	do	27
75.29	do	27
75.31	do	27
75.33	do	27
75.35	do	27
73.37	do	27
73.39	do	27

(d) * * *

(27) This frequency is available on a shared basis with the Petroleum, Business, Manufacturers, and Railroad Radio Services and interservice coordination is required. All communications on this frequency must be conducted within the boundaries or confines of a power plant, factory, liquified natural gas facility, shipyard, mine, substation, pumping station, or operations control room. Operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

5. 47 CFR 90.65 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74.79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39 MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (b), and adding paragraph (c)(43) to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(b) * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
74.61	do	43
74.63	do	43
74.65	do	43
74.67	do	43
74.69	do	43
74.71	do	43
74.73	do	43
74.75	do	43
74.77	do	43
74.79	do	43
75.21	do	43
75.23	do	43
75.25	do	43
75.27	do	43
75.29	do	43
75.31	do	43
75.33	do	43
75.35	do	43
75.37	do	43

PETROLEUM RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
75.39	do	43

(c) * * *

(43) This frequency is available on a shared basis with the Power, Business, Manufacturers, and Railroad Radio Services and interservice coordination is required. All communications on this frequency must be conducted within the boundaries or confines of a plant, factory, or drilling platform primarily engaged in the production or refining of petroleum products (including natural gas). Operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

6. 47 CFR 90.75 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74.79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39 MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (b), and adding paragraph (c)(45) to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
74.61	do	45
74.63	do	45
74.65	do	45
74.67	do	45
74.69	do	45
74.71	do	45
74.73	do	45
74.75	do	45
74.77	do	45
74.79	do	45
75.21	do	45
75.23	do	45
75.25	do	45
75.27	do	45
75.29	do	45
75.31	do	45
75.33	do	45
75.35	do	45
75.37	do	45
75.39	do	45

(c) * * *

(45) This frequency is available on a shared basis with the Power, Petroleum, Manufacuturers, and Railroad Radio Services and interservice coordination is required. All communications on this frequency must be conducted within the boundaries or confines of the licensee's business premises. Operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

7. 47 CFR 90.79 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74,79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39 MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (c), and adding paragraph (d)(28) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(c) * * *

MANUFACTURERS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
74.61	do	28
74.63	do	28
74.65	do	28
74.67	do	28
74.69	do	28
74.71	do	28
74.73	do	28
74.75	do	28
74.77	do	28
74.79	do	28
75.21	do	28
75.23	do	28
75.25	do	28
75.27	do	28
75.29	do	28
75.31	do	28
75.33	do	28
75.35	do	28
75.37	do	28
75.39	do	28

(d) * * *

(28) This frequency is available on a shared basis in the Power, Petroleum, Business, and Railroad Radio Services and interservice coordination is required. All communications on this frequency must be conducted within the boundaries or confines of a plant, factory, shipyard, mill, or other manufacturing area. All operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

8. 47 CFR 90.91 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74.79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39

MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (b), and adding paragraph (c)(21) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

RAILROAD RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
74.61	do	21
74.63	do	21
74.65	do	21
74.67	do	21
74.69	do	21
74.71	do	21
74.73	do	21
74.75	do	21
74.77	do	21
74.79	do	21
75.21	do	21
75.23	do	21
75.25	do	21
75.27	do	21
75.29	do	21
75.31	do	21
75.33	do	21
75.35	do	21
75.37	do	21
75.39	do	21
*	*	*

(c) * * *

(21) This frequency is available on a shared basis in the Power, Petroleum, Business, and Manufacturers Radio Services and interservice coordination is required. All communications must be within the boundaries or confines of railroad terminals or yards. All operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

9. 47 CFR 90.175 is amended by revising paragraph (f)(3) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) * * *

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies subject to §§ 90.63(d)(27), 90.65(c)(43), 90.67(c)(34), 90.73(d)(7), 90.75(c)(45), 90.79(d)(4), 90.79(d)(28), 90.91(c)(2) and 90.91(c)(21).

* * * * *

10. 47 CFR 90.257 is amended by revising the introductory sentence of paragraph (b) and the first sentence in paragraph (b)(1) to read as follows:

§ 90.257 Assignment and use of frequencies in the band 72–76 MHz.

* * * * *

(b) The following criteria shall govern the authorization and use of frequencies within the 72–76 MHz band by mobile stations in the Power, Petroleum, Forest Products, Special Industrial, Business, Manufacturers, and Railroad Radio Services.

(1) Mobile operation on frequencies in the 72–76 MHz band (see §§ 90.63(c), 90.65(b), 90.67(b), 90.73(c), 90.75(b), 90.79(c), and 90.91(b)) is subject to the condition that no interference is caused to the reception of television stations operating on Channels 4 and 5. * * *

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–30727 Filed 12–17–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222, and 227

[Docket No. 921184–2284]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary turtle excluder device (TED) requirement and temporary observer requirement for vessels in the summer flounder trawl fishery and request for comments.

SUMMARY: NMFS will continue to require owners and operators of vessels participating in the trawl fishery for summer flounder from Cape Charles, Virginia, to the southern border of North Carolina, to use a NMFS-approved TED in any net that is rigged for fishing, for a 30-day period starting December 16, 1992, unless exempted from doing so by NMFS. In addition, NMFS, for this period, will continue to require vessels, if requested by the Director, Southeast Region, NMFS, to carry a NMFS-approved observer to monitor compliance with required conservation measures and incidental capture of sea turtles. This action is necessary to protect threatened and endangered sea turtles in the area, and is authorized by 50 CFR 227.72(e)(6). This temporary requirement to use TEDs is necessary to avoid the risk that the summer flounder fishery could jeopardize the continued existence of endangered sea turtles while allowing the fishery to continue. NMFS may extend this requirement beyond 30 days and impose additional temporary sea turtle conservation measures on the fishery for summer flounder as necessary to protect sea turtles.

DATES: This action is effective December 16, 1992, through January 14, 1993. Comments on this action must be received by January 14, 1993.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. Michael F. Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713–2319), Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893–3366) or Colleen Coogan, Protected Species Program, NMFS, Northeast Region (508/281–9291).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 *et seq.* (ESA). According to the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water, but collectively, activities in non-shrimp fisheries, which includes the summer flounder fishery, constitute the second largest source.

NMFS took emergency action pursuant to 50 CFR 227.72(e)(6)(ii) to require TED use by summer flounder bottom trawlers from November 15, 1992, through December 15, 1992 (57 FR 53603, November 12, 1992). NMFS modified that action to provide the option, for 1 week, to use limited tow times with observers instead of TEDs (57 FR 54533, November 19, 1992). The background and need for these actions was thoroughly discussed in the November 12 and November 19, 1992, **Federal Register** notices and will not be repeated here.

Recent Events

NMFS' continuing review of the available information regarding the temporary TED requirement in the summer flounder bottom trawl fishery indicates that conditions continue to necessitate the use of TEDs. Sea turtles and bottom trawling continue to co-occur in the waters off southern Virginia and North Carolina based on

observations of turtles, both at sea and from strandings on ocean beaches, monitoring of sea surface temperatures, and aerial surveys of fishing activity.

Incomplete reports show that over 94 sea turtles have stranded on ocean beaches from New Jersey through North Carolina from October 29, 1992, through December 9, 1992, coinciding with the operation of the summer flounder fishery, as well as other fisheries, in the mid-Atlantic region. The majority of the strandings (82) occurred in North Carolina. The reporting of sea turtle strandings is not meant to imply that only the summer flounder bottom trawl fishery is responsible, but rather to demonstrate the continued presence of turtles in the region. Other fisheries, including coastal gill net, fly net and long-line fisheries are operating throughout the mid-Atlantic, and are capable of incidentally capturing and killing turtles if no conservation measures are employed. NMFS is working with several states to attempt to assess the impacts of these various fisheries on sea turtles and other protected species. However, NMFS has determined, based on last year's reports from observers on-board summer flounder trawlers, that bottom trawl nets without TEDs capture and kill sea turtles at a rate comparable to that of the shrimp trawl fishery in the south Atlantic, where TED use is now required at all times. Based on this information, when turtles and summer flounder bottom trawling co-occur, the use of TEDs should be a required conservation measure.

Only one unidentified turtle (assumed to be a loggerhead turtle) has been reported captured by a summer flounder trawler during this temporary TED requirement. A NMFS observer, on board a TED-equipped trawler, observed a dead turtle in the net during retrieval, but was unable to retain it for examination because it fell into the water. Based on the advanced state of decomposition of the turtle, it was determined that it had been killed prior to the observed net retrieval.

NMFS and the U.S. Coast Guard are conducting cooperative enforcement activities in the waters off of southern Virginia and North Carolina. NMFS has determined that compliance with the TED use requirement has been very good. Only one violation of the TED requirement, an allegedly restricted escape opening, has been reported during approximately 22 at-sea boardings and continuous shore-based observations and inspections.

NMFS authorized for 1 week the use of limited tow times with observers instead of TEDs (57 FR 54533, November 19, 1992), so that fishermen would have sufficient time to purchase and install TEDs. However, only two fishermen opted to use restricted tow times with an observer. This indicated that TEDs could in fact be purchased and installed in a timely manner, and that the use of TEDs was a more acceptable option than the frequent retrieving and setting of nets necessitated by restricted tow times.

NMFS promulgated final regulations under the Magnuson Fisheries Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (57 FR 57348, December 4, 1992) to require sea turtle protection measures for the summer flounder fishery in a limited area off the coast of North Carolina and southern Virginia during the fall and winter as part of Amendment 2 to the Summer Flounder Fishery Management Plan (FMP) to be codified at 50 CFR 625.72(c). Section 625.72(c) authorizes the Regional Director to impose TED requirements in the fishery. Such action, however, is limited to an area from 3 to 10 nautical miles (5.6 to 18.5 km) measured from the baseline, i.e., from the shoreward boundary of the state territorial sea. NMFS has gathered information during the 1991–1992 season that demonstrates that turtles and trawl fishing co-occur beyond the 10-nautical mile (18.5-km) boundary. NMFS, therefore has determined that the protection provided under Amendment 2 of the FMP is insufficient to protect sea turtles, and that emergency measures implemented under the authority of the ESA are necessary.

Based on continued fishing effort the 1992–1993 season and information previously discussed concerning past and present interactions between sea turtles and the summer flounder fishery, NMFS anticipates that continued unrestricted trawling activities may result in the injury or mortality of loggerhead, Kemp's ridley, green, leatherback, and hawksbill turtles. Therefore, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), extends the requirement to use TEDs in the southern Virginia-North Carolina restricted area, acting pursuant to 50 CFR 227.72(e)(6)(ii).

Comments on the November 15, 1992, Temporary TED-Use Requirement

Comment: NMFS has received a number of complaints from fishermen alleging that TEDs do not work, and that continuation of TED requirements will drive summer flounder fishermen out of business. The most commonly reported problem with TEDs is clogging and bending of bars as a result of encounters with large concentrations of angel sharks, dogfish, puffers, skates, conchs, etc. Fishermen have also complained vigorously about reduced catches of flounder and the loss of large (jumbo) fish.

Response: Allegations that TEDs will not work in the flounder fishery are not supported by the data. In fact, comparative testing of flounder nets with and without TEDs conducted by North Carolina and NMFS during 1992 indicated no significant differences in flounder catch rates or reduction in the size of fish caught. Given this information, NMFS can only conclude that, under normal fishing conditions, TEDs in flounder nets are an effective means of conserving sea turtles with minimal impacts on fishing efficiency.

While NMFS maintains that TEDs are necessary and appropriate in the summer flounder fishery, it acknowledges that large concentrations of bycatch species and debris can pose a problem to fishermen using TEDs. When large schools of some bycatch species have been encountered, TEDs have clogged and the weight of the bycatch has resulted in bending of some TED designs. In other cases, large amounts of bycatch have been released through TEDs, carrying with it large amounts of the target species. This problem does not occur in the majority of the tows, but such events are a legitimate concern to fishermen. Unfortunately, there appears to be no way to predict when and where bycatch concentrations will be encountered.

To help alleviate this problem, NMFS gear specialists are working with fishermen to determine which TEDs operate best under which conditions. Depending on the species of bycatch involved, clogging problems may be eliminated simply by reversing the escape opening of the TED to shoot upward rather than downward. If conchs or debris are the problem, however, a downward shooting TED is probably the best choice. Flounder fishermen may find it necessary to reverse the orientation of TEDs periodically to avoid clogging as bycatch species composition changes.

NMFS is also examining the potential for strengthening some TEDs to better withstand the weight of unusually large catches. Several different designs are currently being investigated, and will be field tested aboard volunteer vessels under actual fishing conditions. NMFS believes that bending problems can be corrected in most cases through use of stronger materials and or bracing (reinforcement) in TED construction.

In summary, TEDs seem to work well in the flounder fishery under normal

fishing conditions. However, when fishermen encounter large concentrations of bycatch species or debris in the course of trawling operations, clogging and bending of some TEDs has been observed. Gear specialists from NMFS and North Carolina are working with commercial flounder trawlers to investigate means of avoiding clogging problems and to increase the strength of existing and several new TEDs.

Comment: The Center for Marine Conservation supported the TED use requirement in the summer flounder fishery, noting that it should have been imposed sooner, that it should be extended an additional 30 days, and that a permanent ESA rule requiring TED use should be promulgated as soon as possible.

Response: NMFS agrees in general with these comments. The November 15, 1992, implementation of the TED-use requirement was based on NMFS' estimation of when summer flounder fishing activities would co-occur this season with turtles in waters off of southern Virginia and North Carolina. The large number of observed strandings prior to the TED-use requirement, while correlated with summer flounder fishing, also took place while other fisheries were operating. It is possible that all of these fisheries, as well as other factors, contributed to the large number of strandings.

Finally, NMFS is considering the imposition of permanent sea turtle conservation requirements for this fishery under the authority of the ESA to be in place for the next fishing season.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that the summer flounder trawl fishery takes endangered and threatened sea turtles, the Assistant Administrator has determined that continued action is necessary to conserve sea turtles as authorized by 50 CFR 227.72(e)(6)(ii). The Assistant Administrator has determined that incidental takings of sea turtles during summer flounder fishings are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion on the impacts of the summer flounder trawl fishery managed under the FMP and Amendment 2 was issued on August 10, 1992; that incidental take statement allows for the documented lethal take of 18 sea turtles; three in any combination of Kemp's ridley, hawksbill, green, or leatherback sea turtles, and 15 loggerhead turtles.

A new biological opinion was prepared for this action. Authorization for this action differs from the August 10, 1992, authorization by including both lethal takes and takes by injury. Furthermore, while only documented takes will be calculated for vessels using TEDs, takings for vessels that are not using TEDs may be based on direct observations or estimates from other onboard observers, or from other sources, such reported strandings of sea turtles. Finally, if one or more Kemp's ridley, hawksbill, green, or leatherback sea turtle, or three or more loggerhead sea turtles are lethally taken or injured during the 30-day effectiveness period of this action, consultation must be reinitiated.

Requirements

This action is authorized by 50 CFR 227.72(e)(6). The definitions in 50 CFR 217.12, as revised by the final regulations (57 FR 57348, December 4, 1992), are applicable to this action, as well as all relevant provisions in 50 CFR parts 217, 222, and 227. For example, § 227.71(b)(3) provides that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e) (3) or (6). Section 227.72(b)(1) states that it is unlawful to own, operate, or be onboard a vessel, unless that vessel is in compliance with all the applicable provisions of § 227.72(e).

For purposes of this action, the term "Virginia-North Carolina restricted area" means all offshore waters, which are defined to include waters seaward of the COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), bounded on the north by a line along 37°05′ N. latitude (Cape Charles, Va.) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border). A "summer flounder trawl vessel" means any vessel equipped with trawl gear that targets or is capable of taking summer flounder, or any vessel possessing summer flounder that has trawl gear onboard. For the purposes of this action, trawl gear does not include fly nets.

NMFS hereby notifies owners and operators of summer flounder trawl vessels that for a 30-day period, starting December 16, 1992, they must have an approved TED (as defined in 50 CFR 217.12) installed in each net that is rigged for fishing if the vessel is in the Virginia-North Carolina restricted area. For the purpose of this action and notwithstanding 50 CFR 227.72(e)(2)(i), a net is rigged for fishing if it is in the water or if it is shackled, tied, or otherwise connected to any trawl door or board.

The provisions of 50 CFR 227.72(e)(4) and (5), as revised by the final regulations (57 FR 57348, December 4, 1992), are applicable to summer flounder trawl vessels and summer flounder trawl gear as if they were shrimp trawlers or shrimp trawl gear. For purposes of this action, large-mesh webbing may be attached outside of the webbing flap to prevent chaffing on downward shooting TEDs, if it does not interfere or otherwise restrict the turtle escape opening. It is the responsibility of the owner and the operator of any summer flounder trawl vessel to ensure that any sea turtle taken by that vessel is handled and resuscitated in accordance with the requirements specified under 50 CFR 227.72(e)(1) (i) and (ii).

The Assistant Administrator may grant a written waiver of the requirement for a summer flounder trawler to have a TED in its net(s) if that vessel is conducting research operations approved under 50 CFR 227.72(e)(5)(ii) (for further information concerning waivers contact Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, (813/893–3366)). In order for this waiver to be applicable, the written waiver issued by the Assistant Administrator must be carried onboard the vessel at all times that the vessel is in the Virginia-North Carolina restricted area and does not have a TED installed in each of its nets that is rigged for fishing.

The Assistant Administrator may consider the use of restricted tow times instead of TEDs in the future. Any allowance for trawlers to use tow times instead of TEDs may require that the vessel operators carry a NMFS-approved observer at their own expense and limit tow times to no longer than 75 minutes, measured from the time the trawl doors or boards enter the water until they are removed from the water.

NMFS hereby notifies owners and operators of summer flounder trawl vessels that they must carry a NMFS-approved observer onboard such vessel(s) if selected to do so by the Director, Southeast Region, NMFS, upon written notification sent to either the address specified for the vessel in either the NMFS or state fishing permit application, or for registration or documentation purposes, or otherwise served on the owner or operator of the vessel. A summer flounder trawl must comply with the terms and conditions specified in such written notification.

A NMFS-approved observer may be required regardless of whether the

vessel is fishing within the Virginia-North Carolina restricted area and regardless of whether the summer flounder trawl vessel has TEDs installed in its nets if observer information is necessary to document interactions with sea turtles or to determine the effectiveness of conservation measures.

All NMFS-approved observers will report any violations of the conservation measures required by this action, or other applicable regulations and laws; such information can be used for law enforcement purposes.

Any person who does not comply with any requirement in this document, including any term or condition in any written notification issued hereunder, is in violation of the final sea turtle conservation regulations, codified at 50 CFR 227.71(b)(3).

Additional Sea Turtle Conservation Measures

The Assistant Administrator may, at any time, modify the requirements of this action through notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, if he determines that summer flounder trawl vessels are having a significant adverse effect on sea turtles. Likewise, conservation measures may be modified if the incidental take for the fishery is projected to reach the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. Additional conservation measures are likely if one or more Kemp's ridley, hawksbill, green, or leatherback sea turtle, or three loggerhead turtles are lethally taken or injured by summer flounder trawlers subject to this notice during the 30-day effectiveness period of this notice.

The Assistant Administrator will impose additional conservation measures on this fishery if the incidental take level is approached or exceeded, or if significant or unanticipated levels of lethal or nonlethal takings or strandings of sea turtles associated with summer flounder fishing activities occur. Such additional measures may expand the restricted area or the time during which TEDs are required or impose requirements to take NMFS-approved observers at the expense of vessel owners or operators. The Assistant Administrator may withdraw or modify the requirement for specific conservation measures or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of the 30-day requirement to use TEDs in summer flounder trawls, will be published in the **Federal Register**.

Classification

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to protect listed sea turtles, and is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under E.O. 12291 because it is not a "major rule."

The Assistant Administrator, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), finds there is good cause to take this action without full notice and full public procedure thereon. The Assistant Administrator finds that full notice and full public procedure thereon is unnecessary, impracticable, and contrary to the public interest. Comments were requested on the initial emergency action (57 FR 53603, November 12, 1992), and have been responded to herein. The continued co-occurrence of sea turtles and summer flounder fishing effort off southern Virginia and North Carolina makes delay for further public comment inconsistent with the need to take action to insure that the activities of the summer flounder fishery are not likely to jeopardize the continued existence of sea turtles. Delay in imposing a TED requirement is likely to result in further takings of sea turtles by the summer flounder fishery, which could result in closure of the fishery.

In addition, the Assistant Administrator has determined that good cause exists to reduce the 30-day delayed effective date otherwise required by section 553(d) of the APA. Good cause exists because of the continued need to protect sea turtles, which makes it impracticable and contrary to the public interest to delay the effective date beyond December 16, 1992. Further, TEDs have been required in the summer flounder fishery off southern Virginia and North Carolina since November 15, 1992. To help the fishery use TEDs during this fishing season, NMFS, in cooperation with North Carolina and the summer flounder fishing industry, has conducted four workshops on TEDs and the requirements of the sea turtle conservation regulations, participated in a series of gear evaluation cruises, provided alternative TED designs and technical assistance for TED testing by cooperating flounder trawlers, and provided direct TED technology transfer assistance to fishermen. These research and technology transfer efforts are ongoing.

Because neither section 553 of the APA nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the final rule (57 FR 57348, December 4, 1992). A supplemental EA prepared specifically for this action concludes that this action will have no significant impact on the human environment and is available from NMFS (see **ADDRESSES**).

Dated: December 15, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries.

[FR Doc. 92–30776 Filed 12–15–92; 3:03 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. PY-91-002]

RIN 0581-AA59

Amendments to Egg Research and Promotion Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Egg Research and Promotion Rules and Regulations by adding a late-payment charge on all delinquent assessments. The American Egg Board approved this change at its July 17–18, 1991, meeting, and has since requested the Secretary to amend the Rules and Regulations accordingly.

A late-payment charge of 1.5 percent per month would be levied on all assessment charges more than 30 days past due. This change is proposed in order to facilitate the Board's efforts to make timely collections.

DATES: Comments must be received on or before January 19, 1993.

ADDRESSES: Written comments are to be mailed to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944-South, P.O. Box 96456, Washington, DC 20090–6456. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. PY–91–002.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–720–3506.

SUPPLEMENTARY INFORMATION:

Executive Orders 12291 and 12778 and Regulatory Flexibility Act

This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512–1 and has been classified a "non-major" rule under the criteria contained therein. It will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or will not have a significant impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 14 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provisions of such order or any obligations imposed in connection with such order are not in accordance with law; and requesting a modification of the order or an exemption therefrom. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

The AMS Administrator has determined that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1250 have been approved by the Office of Management and Budget and assigned OMB Control No. 0581–0098 under the Paperwork Reduction Act of 1980.

Background and Proposed Changes

The Rules and Regulations in § 1250.517 require egg handlers to pay assessments on a monthly basis. Assessments are due and collectable on or before the 15th day after the end of the reporting period. It is incumbent upon the Board's compliance department to ensure that such payments are made. However, some handlers continually remit assessments after they are due or, in some cases, refuse to pay at all.

Since the Board relies on a predictable income to fund ongoing projects, an additional mechanism is needed to facilitate the Board's efforts with regard to the timely remittance of assessments. Other commodity research and promotion boards have found that late-payment charges have been effective in facilitating timely payment of assessments. The Board has recommended the addition of such a charge and, similar to regulations governing other like programs, requested that a late-payment charge of 1.5 percent per month be incorporated into the Rules and Regulations.

List of Subjects in 7 CFR Part 1250

Agricultural research, Egg and egg products.

For the reasons set forth in the preamble, title 7, CFR part 1250 is proposed to be amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended, 7 U.S.C. 2701–2718.

2. A new § 1250.519 is added to read as follows:

§ 1250.519 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1250.347 shall be increased by a late-payment charge of 1.5 percent each month beginning with the day following the date such assessments are 30 days past due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Assessments that are not paid when due because of a person's failure to submit a handler report to the Board as required shall accrue late-payment charges from the time such assessments should have been remitted. The timeliness of a payment to

the Board shall be based on the applicable postmark date or the date payment is actually received by the Board, whichever is earlier.

Dated: December 10, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-30692 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 357

RIN 3064-AA97

Determination of Economically Depressed Regions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its rule, which designates certain "economically depressed regions," by revising the rule to designate different economically depressed regions in light of current economic conditions. The FDIC is required by law to consider proposals for direct financial assistance by Savings Association Insurance Fund members having offices located in an "economically depressed region" and meeting certain other specified criteria, before grounds exist for the appointment of a conservator or receiver for the institution. The proposed rule reflects the FDIC's most recent periodic review and reasonable application of the factors the FDIC considers in determining which regions are economically depressed.

DATES: Comments must be received by February 16, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898-3838.) Comments may be inspected in the FDIC's Reading Room, room 7118, 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Jaske, Financial Economist, Financial and Industry Analysis Section, Division of Research and Statistics, (202) 898-6549, FDIC, 550 17th Street, NW., Washington, DC 20429; or Sandra Comenetz, Senior Attorney, Legal Division, (202) 898-3582, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed rule does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule does not impose regulatory compliance requirements on depository institutions of any size.

Discussion

The FDIC has authority under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) (FDI Act) to provide financial assistance to prevent the default of an insured depository institution. Under section 13(k)(5) of the FDI Act (12 U.S.C. 1823(k)(5)), the FDIC must consider proposals for eligible Savings Association Insurance Fund (SAIF) member institutions to receive assistance pursuant to section 13(c) before grounds exist for the appointment of a conservator or receiver for the institution. Section 13(k)(5) establishes nine criteria for such eligibility. One of the criteria is that an institution's offices must be located in an "economically depressed region." In addition, under section 13(k)(5), SAIF member applicants must separately meet the fourteen criteria under section 13(c) to qualify for assistance. However, assistance proposals with respect to SAIF member institutions under section 13(k)(5) that do not meet all nine of the criteria set forth in section 13(k)(5) may nevertheless be submitted to the FDIC for consideration under section 13(c). Thus, institutions whose offices are not located in an "economically depressed region" under section 13(k)(5) are not precluded from proposing and receiving open institution assistance.

The term "economically depressed region" is defined in section 13(k)(5)(C) to mean any geographical region which the [FDIC] determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.

On September 17, 1990, the FDIC issued a final rule (55 FR 38043) codified at 12 CFR 357.1, which determined that certain geographical regions were "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. In determining which regions were economically depressed, the FDIC considered the following factors: (1) The ratio of poor quality real estate assets to total assets in the portfolios of banks; (2) the ratio of poor quality real estate assets to total assets in the portfolios of SAIF members; and (3) unemployment figures. The statewide percentages of impaired real estate assets for banks and SAIF members and unemployment rates were analyzed with reference to national levels. These factors are subject to periodic review and application by the FDIC in light of changing economic conditions.

The FDIC's final rule designated eight individual states as "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. They were: Alaska, Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

Having examined real estate and employment conditions based on the most recent information, the FDIC has determined that the eight states previously designated as "economically depressed regions" should no longer receive that designation. The FDIC has concluded that ten different states should now be classified as "economically depressed regions." These are California, Connecticut, the District of Columbia, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

To determine which regions are economically depressed in light of current economic conditions, the FDIC considered, as before, the ratio of poor quality real estate assets to total assets in the portfolios of banks and SAIF members, and the unemployment situation. The FDIC considered both the overall unemployment rate and the non-farm employment growth rate, the latter of which can provide an indication of a change in the employment situation.

The FDIC intends to revisit annually the criteria used to identify regions for designation as "economically depressed regions," as well as the list of regions so designated, and may make revisions as circumstances warrant.

List of Subjects in 12 CFR Part 357

Bank deposit insurance, Grant programs—Housing and Community Development, Savings associations.

For the reasons set forth in the preamble, part 357 of Chapter III of Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 357—DETERMINATION OF ECONOMICALLY DEPRESSED REGIONS

1. The authority citation for part 357 is revised to read as follows:

Authority: 12 U.S.C. 1819, 1823(k)(5).

2. Section 357.1 is amended by revising paragraph (b) to read as follows:

§ 357.1 Economically depressed regions.

* * * * *

(b) *Economically depressed regions.* The FDIC has determined that the following geographical regions are "economically depressed regions" for purposes of section 13(k)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(5)): California, Connecticut, the District of Columbia, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont,

By order of the Board of Directors.

Dated at Washington, DC this 8th day of December, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-30672 Filed 12-17-92; 8:45 am]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Proposed rule; withdrawal of earlier proposed rule; correction.

SUMMARY: This document contains corrections to proposed part 707 of the NCUA Rules and Regulations, published November 30, 1992 (57 FR 56686). The proposed regulation will implement the Truth in Savings Act, which requires credit unions to disclose fees, dividend rates and other terms concerning deposit accounts, and limits the methods by which credit unions determine the balance on which dividends are calculated.

FOR FURTHER INFORMATION CONTACT: Margaret R. Suuberg, Staff Attorney, or Martin E. Conrey, Staff Attorney, National Credit Union Administration, 1776 G St., NW., suite 600, Washington, DC 20456, or telephone (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Background

NCUA's proposed part 707, which is the subject of these corrections, will implement the Truth in Savings Act (12 U.S.C. 4301 et seq., contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Stat. 2236).

Need for Correction

As published, appendix A to the proposed regulation contains ten drafting errors that are confusing and should be clarified. An error in the supplementary information that may be confusing is also being corrected at this time.

Correction of Publication

For the reasons set forth in the preamble, the publication on November 30, 1992 of the proposed regulation in the **Federal Register** is corrected as follows.

1. On page 56691, in the third column, under the heading "Paragraph (u)—Rollback Account", in the first paragraph, the last sentence, the citation "§ 707.4(b)(2)(ii)" is corrected to read "§§ 707.4(b)(2)(iii) and 707.4(b)(3)(ii)(B)".

Appendix A [Corrected]

2. On page 56716, in the second column, under the heading "A. General Rules", in the second paragraph, the first sentence, the formula "APY=100 [(1+Dividends/Principal) $^{(365/Days\ in\ term)}$–1]"

3. On page 56716, in the second column, under the subheading "Examples", in the first example, the first sentence, the formula "APY=100 [(1+61.68/1,000 $^{(365/365)}$–1]".

4. On page 56716, at the top of the third column, under the subheading "Examples", in the second example, the first sentence, the formula "APY=[(1+30.37/1,000) (365/182)–1]" is corrected to read "APY=[(1+30.37/1,000) $^{(365/182)}$–1]".

5. On page 56716, in the third column, under the heading "B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)", under the subheading "Examples", in the first example, the first sentence, the formula "APY=100 [(1+26.10/1,000) (365/183)–1]" is corrected to read "APY=100 [(1+26.10/1,000) $^{(365/183)}$–1]".

6. On page 56716, in the third column, under the heading "B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)", under the subheading "Examples", in the second example, the first sentence, the formula "APY=100 [(1+133.13/1,000) (365/730)–1]" is corrected to read "APY=100 [(1+133.13/1,000) $^{(365/730)}$–1]".

7. On page 56717, in the first column, under the heading "D. Accounts with Tiered Rates (Different Rates Apply to Specified Balance Level)", under the subheading "Tiering Method A", in the fourth paragraph beginning "First Tier", the second sentence, the formula "APY=100 [(1+53.90/1,000) (365/365)–1]" is corrected to read "APY=100 [(1+53.90/1,000) $^{(365/365)}$–1]".

8. On page 56717, in the third column, under the heading "Part II. Annual Percentage Yield Earned for Periodic Statements", in the third paragraph, the first sentence, the formula "APY Earned=100 [(1+Interest earned/Balance) (365/Days in period)–1]" is corrected to read "APY Earned=100 [(1+Interest earned/Balance) $^{(365/Days\ in\ period)}$–1]".

9. On page 56718, in the first column, under the heading "Part II. Annual Percentage Yield Earned for Periodic Statements", under the subheading "Examples", in the first example, the third sentence, the formula "APY Earned=100 [(1+5.25/1,000) (365/30)–1]" is corrected to read "APY Earned=100 [(1+5.25/1,000) $^{(365/30)}$–1]".

10. On page 56718, in the first column, under the heading "Part II. Annual Percentage Yield Earned for Periodic Statements", under the subheading "Examples", in the second example, the fifth sentence "The annual percentage yield earned (using the formula above) is 6.69%:

APY Earned=100 [(1+6.50/1,500) (365/30)–1]

APY Earned=6.69%" is corrected to read "The annual percentage yield earned (using the formula above) is 5.40%:

APY Earned=100 [(1+6.50/1,500) $^{(365/30)}$–1]

APY Earned=5.40%".

11. On page 56718, in the first column, under the heading "Part II. Annual Percentage Yield Earned for Periodic Statements", under the subheading "Examples", in the third example, the fifth sentence, the formula "APY Earned=100 [(1+21/2,000) (365/91)–1]" is corrected to read "APY Earned=100 [(1+21/2,000) $^{(365/91)}$–1]".

By the National Credit Union Administration Board on December 11, 1992.

Hattie M. Ulan,

Acting Secretary of the Board.

[FR Doc. 92-30642 Filed 12-17-92; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-163-AD]

Airworthiness Directives; Aerospatiale Model ATR42-300 Series Airplanes, and Model ATR72-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42-300 series airplanes, and all Model ATR72-100 and -200 series airplanes. This proposal would require replacement of certain electrical push button switches which control the cabin pressurization valves and attach the emergency battery to the standby bus. This proposal is prompted by reports of faulty electrical push button switches. The actions specified by the proposed AD are intended to prevent failure of the pressurization valves to close in the event of ditching, and to prevent interruption of electrical power to certain electrical equipment used during approach and landing.

DATES: Comments must be received by February 3, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-163-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-163-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-163-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR42-300 series airplanes, and all Model ATR72-100 and -200 series airplanes. The DGAC advises that cases recently have been reported of faulty electrical push button switches which, when pushed, failed to latch in the "on" position. These switches are used to control the cabin pressurization valves, and also to attach the emergency battery to the standby bus. In the event of an airplane ditching situation, a failed switch could prevent closure of the pressurization valves, which could result in water entering the fuselage. A failed switch could also interrupt electrical power to certain electrical equipment used during approach and landing.

The faulty electrical switches, part numbers 9PD and 12HM, originated from one batch and have electro-engraved date codes of A6, A7, A8, A9, AO, AN, AD, B1, B2, B3, B4, B5, B6, or B7.

Aerospatiale has issued Service Bulletins ATR42-31-0023 and ATR72-31-1006, both dated May 15, 1992, which describe procedures for replacement of certain electrical push button switches which control the cabin pressurization valves and attach the emergency battery to the standby bus. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directives 92-122-047(B) and 92-123-013(B), both dated May 27, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of certain electrical push button switches which control the cabin pressurization valves and attach the emergency battery to the standby bus. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,740, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 92–NM–163–AD.

Applicability: All Model ATR42–300 series airplanes, and all Model ATR72–100 and –200 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pressurization valves to close in the event of ditching, and to prevent interruption of electrical power to certain electrical equipment used during approach and landing, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the electrical switches, part numbers 9PD and 12HM, and identify the date codes in accordance with Aerospatiale Service Bulletin ATR42–31–0023, dated May 15, 1992 (for Model ATR42–300 and –320 series airplanes); or Aerospatiale Service Bulletin ATR72–31–1006, dated May 15, 1992 (for Model ATR72–100 and –200 series airplanes); as applicable.

(1) If the date code is identified as A6, A7, A8, A9, AO, AN, AD, B1, B2, B3, B4, B5. B6, or B7, prior to further flight, replace the currently-installed switch with a serviceable switch marked with a date code other than those listed above.

(2) If the date code is other than those listed in paragraph (a)(1) of this AD, reinstall the switch. No further action is necessary.

(b) As of the effective date of this AD, no person shall install an electrical switch, part numbers 9PD and 12HM, having a date code of A6, A7, A8, A9, AO, AN, AD, B1, B2, B3, B4, B5, B6, or B7, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 2, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92–30627 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–112–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes Equipped with General Electric (GE) Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300 series airplanes. This proposal would require repetitive visual and eddy current inspections to detect wear or cracks of the inner doublers on the pylon side panel around the fire extinguisher access doors, and replacement of worn or cracked parts, if necessary. This proposal is prompted by reports that wear marks have been detected on the inner doubler of the pylon side panel around the fire extinguisher bottle access doors. The actions specified by the proposed AD are intended to prevent cracks from developing in the pylon side panel, which would result in reduced structural integrity of the engine pylon.

DATES: Comments must be received by February 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–112–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98056–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–112–AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-112-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300 B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 series airplanes equipped with GE engines. The DGAC advises that numerous cases have been reported of wear marks found on the inner doubler of the pylon side panel around fire extinguisher bottle access doors 484AR and 473AL. These wear marks are the result of a high level of vibration, that has caused the door latches to chafe against the doubler (especially the version of the doors configured with 3 and 4 latches). When not repaired, these wear marks could develop into cracks. If not detected and corrected in a timely manner, such cracks could reach a certain length and spread quickly to the side panel. This condition would reduce the structural integrity of the engine pylon.

Airbus Industrie has issued Service Bulletin A300-54-070, Revision 1, dated March 17, 1992, which describes procedures for repetitive visual and eddy current inspections to detect wear or cracks of the inner doubler on the pylon side panel around the fire extinguisher access doors and replacement of the doubler, if necessary. The areas to be inspected and the recommended intervals for the repetitive visual and eddy current inspections and doubler replacement vary, depending upon the airplane's configuration. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 90-082-131(B), dated April 1, 1992, in order to assure the continued airworthiness of these airplanes in France.

Airbus Industrie has also issued Service Bulletin A300-54-046, dated June 24, 1982, and Change Notice, dated July 8, 1985, which describe procedures for modification of the locking system on fire extinguisher access doors. The latches are removed and replaced by a screw attachment system. The DGAC has not classified this service bulletin and change notice as mandatory.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual and eddy current inspections to detect wear or cracks of the inner doubler on the pylon side panel around the fire extinguisher access doors, and replacement of worn or cracked parts, if necessary. The actions would be required to be accomplished in accordance with the service bulletins and change notice described previously. An optional terminating action is also provided which, if accomplished, would eliminate the need for repetitive visual and eddy current inspections.

The FAA considers three criteria for those situations where repetitive inspections of a crack-prone area may be permitted to continue indefinitely, even though a positive fix to the problem exists: (1) the area is easily accessible, (2) the cracking is easily detectable, and (3) the consequences of the cracking are not likely to be catastrophic. In consideration of the cracking that may occur on the inner doubler on the pylon side panel around the fire extinguisher access doors, the FAA has determined that the crack-prone area addressed by this proposal meets these three criteria and that the circumstances warrant the allowance of continued repetitive inspections in lieu of a mandated design modification.

The FAA estimates that 77 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,998, or $468 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AIRWORTHINESS DIRECTIVES]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92-NM-112-AD.

Applicability: Model A300 B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 series airplanes; equipped with General Electric (GE) engines on which engine Pylon Modification No. 2434, as described in Airbus Industrie Service Bulletin A300-54-070, Revision 1, dated March 17, 1992, has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine pylon, accomplish the following:

(a) Prior to the accumulation of 22,400 total hours time-in-service, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later, perform an initial visual and eddy current inspection to

detect wear or cracks of the inner doubler on the pylon side panel around the fire extinguisher access doors, in accordance with Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992. If cracks are detected, prior to further flight, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) If cracks less than 5 mm (0.197 inch) are detected, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) If cracks greater than or equal to 5 mm (0.019 inch) are detected, accomplish either paragraph (a)(2)(i) or (a)(2)(ii), as applicable:

(i) For airplanes on which the modification described in Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD.

(ii) For airplanes on which the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD; and repeat those inspections thereafter in accordance with paragraphs (b), (c), (d), or (e) of this AD, as applicable.

(b) For airplanes having Configuration No. 1.A.: Repeat the visual and eddy current inspections to detect doubler wear and cracks, as required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than to 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,400 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,400 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 1,800 hours time-in-service.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Accomplish either paragraph (b)(5)(i), (b)(5)(ii), or (b)(5)(iii) of this AD.

(i) Repeat the visual and eddy current inspection at intervals not to exceed 350 hours time-in-service. Or

(ii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (b) of this AD.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 6 mm (0.236 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) For airplanes having Configuration No. 1.B: Repeat the visual and eddy current inspections for doubler wear and cracks, as required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than to 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,400 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,400 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Accomplish either paragraph (c)(4)(i), (c)(4)(ii), or (c)(4)(iii) of this AD.

(i) Repeat the visual and eddy current inspection at intervals not to exceed 300 hours time-in-service. Or

(ii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after the replacement date of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (c) of this AD.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 4 mm (0.157 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) For airplanes having Configuration No. 1.A. on which the modification described in Airbus Industrie Service Bulletin No. A300–54–008 (door with 4 latches) has been accomplished; and for airplanes having Configuration No. 2.A.: Repeat the visual and eddy current inspections for doubler wear and cracks at zones D1, D2, D3, and D4, as required by paragraph (a) of this AD, in accordance with Airbus Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors)

has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than to 0.1 mm (0.004 inch) and less than or equal to 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 5,800 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 5,800 hours time-in-service.

(4) For airplanes the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,300 hours time-in-service.

(5) For airplanes on which the modification described in Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Repeat the visual and eddy current inspection at intervals not to exceed 2,300 hours time-in-service.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 6 mm (0.236 inch) and less than 8 mm (0.315 inch): Accomplish either paragraph (d)(6)(i), (d)(6)(ii), or (d)(6)(iii), of this AD.

(i) Repeat the visual and eddy current inspections at intervals not to exceed 450 hours time-in-service. Or

(ii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (d) of this AD.

(7) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 8 mm (0.315 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(e) For airplanes having Configuration No. 1.B. on which the modification described in Service Bulletin No. A300–54–008 (door with 4 latches) has been accomplished; and for airplanes having Configuration No. 2.B.: Repeat the visual and eddy current inspections for doubler wear and cracks at zones D1, D2, D3, and D4, as required by paragraph (a) of this AD, in accordance with Airbus Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,500 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,500 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,300 hours time-in-service.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Repeat the visual and eddy current inspections at intervals not to exceed 1,800 hours time-in-service.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 6 mm (0.236 inch) and less than 8 mm (0.315 inch): Accomplish either paragraph (e)(6)(i), (e)(6)(ii), or (e)(6)(iii) of this AD.

(i) Repeat the visual and eddy current inspections at intervals not to exceed 400 hours time-in-service. Or

(ii) If the modification described in Service Bulletin A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (e) of this AD.

(7) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 8 mm (0.315 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) Accomplishment of the replacement of the inner doubler on the pylon side panel around the fire extinguisher access doors, and installation of the modification (screwed doors), as described in Airbus Service Bulletin No. A300–54–046, dated June 24, 1982, and Change Notice, dated July 8, 1985, constitutes terminating action for the visual and eddy current inspections required by this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 11, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30646 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–184–AD]

Airworthiness Directives; AMI Industries, Inc., Pilot and Co-Pilot Seats, Model 1108, as Installed in, but not Limited to, de Havilland Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain AMI Industries, Inc., pilot and co-pilot seats. This proposal would require replacement of lap belt attachment links for certain pilot and co-pilot seats. This proposal is prompted by a report that a lap belt link fitting failed due to fatigue. The actions specified by the proposed AD are intended to prevent failure of the pilot's and co-pilot's lap belts during air turbulence, which could lead to reduced ability of the pilots to control the airplane.

DATES: Comments must be received by February 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AMI Industries, Inc., 1275 North Newport Road, Colorado Springs, Colorado 80916. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Pliny Brastel, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2783; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–184–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has been advised that a lap belt link fitting installed in a pilot or co-pilot seat on a de Havilland Model DHC–8 series airplane failed recently due to fatigue. Such failure could cause the lap belts to become unattached and, therefore, unable to restrain the pilot and co-pilot in their seats during turbulent air conditions. This condition, if not corrected, could lead to reduced ability of the pilots to control the airplane.

The FAA has reviewed and approved AMI Industries, Inc., Service Bulletin 25–1108–03, dated May 20, 1992, that describes procedures for replacement of lap belt attachment links for certain pilot and co-pilot seats with an improved lap belt attachment link kit. The modification has been designed to improve reliability of the lap belt attachment links and thereby reduce fatigue and possible breakage.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of lap belt attachment links for certain pilot and co-pilot seats with an improved lap belt attachment link kit. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This modification has already been incorporated in production on de Havilland Model DHC–8 series airplanes equipped with AMI Industries, Inc., pilot and co-pilot seats, Model 1108, having serial numbers 190 and subsequent. Therefore, the applicability of the proposal would include only those seats having serial numbers 004 to 189, inclusive.

The actual number of pilot and co-pilot seats of the affected design in the worldwide fleet is not known. However, the FAA is aware that the subject seats may be installed in, but not limited to, de Havilland Model DHC–8 series airplanes. There are approximately 109 of these airplanes in the worldwide fleet; of this number, the FAA estimates that 85 airplanes are of U.S. registry. It would take approximately 1 work hour per airplane to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts would be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $55 per airplane. For U.S. operators of Model DHC–8 series airplanes, these figures translate to a total cost impact of $4,675. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AMI Industries, Inc.: Docket 92–NM–184–AD.

Applicability: Pilot and Co-Pilot Seats, Model 1108, serial numbers 004 to 189, inclusive; as installed in, but not limited to de Havilland Model DHC–8 series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pilot's and co-pilot's lap belts during air turbulence, which could lead to reduced ability of the pilots to control the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove the lap belt attachment links and install the improved lap belt attachment link kit, P/N 1B9014–3R, in accordance with AMI Industries, Inc., Service Bulletin 25–1108–03, dated May 20, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 11, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30645 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1311

Registration and Reregistration Application Fees

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to adjust the current application fee schedule for DEA registration to adequately recover the Federal costs associated with the Diversion Control Program as mandated in the Department of Justice and Related Agencies Appropriations Act, 1993 (section 111 (b), Pub. L. 102–395).

DATES: Comments and objections must be submitted by January 19, 1993.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537 Attention: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. Terrance Woodworth, Chief, Drug Operations Section, Office of Diversion Control, Washington, DC 20537, Telephone (202) 307–8569.

SUPPLEMENTARY INFORMATION: The Department of Justice and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395) requires that the Drug Enforcement Administration (DEA) collect fees to ensure the recovery of the full costs of operating the Diversion Control Program. Section 111 (b) of that Act requires that there be established an account in the general fund of the Treasury, and in section 111 (b)(1) "there shall be deposited as offsetting receipts into that account all fees collected by the Drug Enforcement Administration, in excess of $15,000,000, for the operation of its diversion control program." In addition, section 111 (b)(3) requires "fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program."

The Controlled Substances Act of 1970 (CSA) has, for 22 years, required the registration of any person who manufactures, distributes or dispenses a controlled substance. Section 301 of the CSA (21 U.S.C. 821) authorizes the charging of "reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances." This is the only fee collection made by DEA and the administrative mechanisms for its collection and processing are well established and efficient. The fee schedule under the CSA was established in 1971 and was adjusted in 1984. The fees have remained unchanged since that time. Modifications to the fee structure have been applied equitably across all registration categories in accordance with the existing structure.

The legislation (Pub. L. 102–395) requires that the established fee recover costs during fiscal year 1993 and thereafter. The amount to be recovered is established by the Congressional appropriations process. This announcement establishes the fee structure under the existing registration system to recover the legislated appropriation. This appropriated amount required to be recovered for fiscal year 1993 will be $12 million above the fees currently set, and a total of $65.6 million will be required for fiscal year 1994.

A correction is also being made to Section 1301.11(d) to include reregistration which was inadvertently omitted in a previous change to the section.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed action has been submitted for review to the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. The vast majority of DEA registrants are considered to be small entities whose interests are to be considered under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. However, these registrants are predominantly practitioners and pharmacies whose individual registration fees would be increased by $180 once every three years. Therefore, the Administrator has concluded that the fee increase will have no significant impact on small entities.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule has no implications which would warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1311

Administrative practice and procedure, Drug traffic control, Exports, Imports.

For reasons set out above, 21 CFR part 1301 and 21 CFR part 1311 are proposed to be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.11 is proposed to be revised as follows:

§ 1301.11 Fee amounts.

(a) For each registration or reregistration to manufacture controlled substances, the registrant shall pay an application fee of $1,000.

(b) For each registration or reregistration to distribute controlled substances, the registrant shall pay an application fee of $500.

(c) For each registration or reregistration to dispense, or to conduct instructional activities with, controlled substances listed in Schedules II through V, the registrant shall pay an application fee of $240 for a three-year registration equating to an annualized fee of $80 per annum.

(d) For each registration or reregistration to conduct research or instructional activities with a controlled substance listed in Schedule I, or to conduct research with a controlled substance in Schedules II through V, the registrant shall pay an application fee of $80.

(e) For each registration or reregistration to conduct chemical analysis with controlled substances listed in any schedule, the registrant shall pay an application fee of $80.

(f) For each registration or reregistration to engage in a narcotic treatment program, including a compounder, the registrant shall pay an application fee of $80.

PART 1311—[AMENDED]

1. The authority citation for part 1311 continues to read as follows:

Authority: 21 U.S.C. 952, 956, 957, 958, unless otherwise noted.

2. Section 1311.11 is proposed to be revised as follows:

§ 1311.11 Fee amounts.

(a) For each registration or reregistration to import controlled substances, the registrant shall pay an application fee of $500.

(b) For each registration or reregistration to export controlled substances, the registrant shall pay an application fee of $500.

Dated: November 20, 1992.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 92-30643 Filed 12-17-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

31 CFR Part 10

[IA-20-92]

RIN 1545-AQ57

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service; Correction

AGENCY: Treasury.

ACTION: Correction to correction of proposed regulations.

SUMMARY: This document contains corrections to the correction to proposed regulations (IA-20-92), which were published Friday, December 4, 1992, (57 FR 57400). The proposed regulations would amend the regulations governing the practice of individuals before the Internal Revenue Service. These regulations would affect individuals who are eligible to practice before the service.

FOR FURTHER INFORMATION CONTACT: David Meyer at 202-622-6232, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this correction contains corrections to the proposed amendments to the regulations governing practice before the Internal Revenue Service (57 FR 46356, October 8, 1992). The regulations are in subtitle A, part 10, of title 31 of the Code of Federal Regulations and have been reprinted as Treasury Department Circular 230 ("Circular 230").

Need for Correction

As published, IA-20-92 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to proposed regulations (IA-20-92), which was the subject of FR Doc. 92-29351, is corrected as follows:

1. On page 57400, column 1, under the heading **FOR FURTHER INFORMATION CONTACT:**, line 2, the telephone number "202-622-7606" is corrected to read "202-622-6232".

2. On page 57400, column 2, item number 5, the telephone number "202-622-7606" is corrected to read "202-622-6232" wherever it appears in that item number.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-30429 Filed 12-17-92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT3-1-5452; FRL-4545-8]

Clean Air Act Approval and Promulgation of PM-10 Implementation Plan for Utah

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes approval of the State Implementation Plan (SIP) submitted by the State of Utah for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). The implementation plan was submitted by the Governor of Utah, to satisfy certain Federal requirements for an approvable nonattainment area PM-10 SIP for Utah and Salt Lake Counties.

EPA is also proposing to approve revisions to the State-wide SIP, Chapters 1 through 7 and 10 through 15, which was submitted by the Utah Air Quality Division Director as a supplement to the Governor's submittal. The State-wide revisions pertain to air program elements necessary to implement control strategies to assure attainment and maintenance of the NAAQS, such as resources, emergency episodes, monitoring program, legislative authority, public notification, etc.

DATES: Comments on this proposed action must be received in writing by February 16, 1993.

ADDRESSES: Comments should be addressed to the contact indicated below. Douglas Skie, Chief, 8ART-AP, Air Programs Branch, U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2466.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, 8ART-AP, U.S. EPA Region

VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1760.

SUPPLEMENTARY INFORMATION:

I. Background

A. Utah PM10 Statutory and Regulatory History

1. 1977 Clean Air Act (CAA) Requirements: Revision and Implementation of PM10 NAAQS

The CAA requires EPA to periodically review and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as revise the NAAQS themselves. On July 1, 1987 (52 FR 24634), EPA finalized its decision to revise the particulate matter NAAQS from "total suspended particulate" (TSP) to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10).

To implement the new particulate matter NAAQS, all areas in the country were divided into three groups, based on the probability that each area would violate the new PM10 NAAQS. "Group I" areas were those areas having violated the PM10 NAAQS or having air quality data showing a high (greater than 95%) probability of violating the NAAQS. These areas required substantial SIP adjustment. "Group II" areas were those areas estimated at having 20–95% probability of violating the PM10 NAAQS and needing less adjustment to their existing SIPs. "Group III" areas were those areas estimated as having less than 20% probability of violating the PM10 NAAQS and, therefore, only needing SIP adjustment as required under the preconstruction review program. See 52 FR 24672, 24679–82 (July 1, 1987).

In the State of Utah, Salt Lake and Utah Counties were identified by EPA as Group I areas. The rest of the State was classified as Group III (52 FR 29383, August 7, 1987). The State, therefore, under section 110(a)(1) of the 1977 CAA, was required to submit a PM10 SIP.

2. Citizen Lawsuit

In 1989, a lawsuit (*Preservation Counsel* v. *Reilly, Civil Action No. 89–C–262–G*, (D. Utah)) was filed by the Preservation Counsel, Utah Environment Center and the Utah Valley Citizens for Clean Air against EPA. The plaintiffs claimed that because the State had failed to submit a PM10 SIP within the timeframe provided under the 1977 CAA that provided for attainment of the PM10 NAAQS, the duty to issue such a plan for Utah had devolved to EPA and that EPA was required to issue a plan for Utah pursuant to section 110(c)(1) of the 1977 CAA.

A settlement agreement was signed by the parties in January 1990, which called for submittal of a SIP for Utah County and Salt Lake County and EPA approval, or EPA promulgation of a Federal Implementation Plan (FIP) for these Counties, if necessary, signed by the EPA Administrator by December 31, 1991. The settlement allowed the State to maintain the SIP development lead, but placed significant emphasis on EPA's involvement and technical oversight.

In mid–1990, the State determined that the stationary source issues in Utah County were significantly different from those of Salt Lake County and proposed to focus on one area plan at a time. The design values (levels from which to reduce emissions to attain the standard) were also different in these two areas. The Utah County area plan was adopted in September 1990 and submitted to EPA in October 1990. On November 15, 1990, the President signed into law revisions to the CAA (Pub. L. No. 101–549, 104 Stat. 2399). All former "Group I" areas and certain other areas were designated nonattainment for PM10 and classified as moderate by operation of law upon enactment of the 1990 Amendments. (Sections 107(d)(4)(B) and 188(a) of the Act.) Thus, Utah and Salt Lake County became moderate PM10 nonattainment areas (56 FR 56694, 56840, November 6, 1991) and were subject to the associated moderate PM10 nonattainment area SIP requirements.

The Salt Lake County area plan was adopted in June 1991, and submitted to EPA in November 1991. EPA's agreement as to the appropriateness of developing separate plans for the two area plans was based on its review of the various complex source contributions in these areas, the effort by the State to address the issues in an equitable and timely manner (numerous scoping and public hearings were held to obtain interested parties' comments), and the different areas' design values.

The State did consider control strategies for area and mobile sources which were common to both counties. The Utah County plan, therefore, was modified in June 1991 to be consistent with the Salt Lake County plan and resubmitted with the Salt Lake County plan in November 1991.

The parties voluntarily stipulated to dismissal of the lawsuit (agreeing to vacate the Settlement Agreement and dismiss the complaint) in August 1991.

B. Moderate PM10 Nonattainment Area SIP Requirements

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements. (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).) The reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. Today's rulemaking action will apply EPA's interpretations to the Utah PM–10 SIP taking into consideration the specific factual issues presented. EPA will consider any timely submitted comments before taking final action on today's proposal.

Part D of title I contains the provisions applicable to nonattainment areas. Moderate PM–10 nonattainment areas must meet the applicable requirements set out in subparts 1 and 4 of part D. Subpart 1, contains provisions generally applicable to all nonattainment areas and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subparts 1 and 4 overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in today's notice.

Those States containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. A comprehensive, accurate, current inventory of actual emissions which provides a sufficient basis for determining the adequacy of the attainment demonstration.

2. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

3. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable, but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

4. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

5. Provisions to assure that control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992. (See section 189(a).) Such States also must submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline of December 1994. (See section 172(c)(9) and 57 FR 13543–44.)

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565–66.) In today's action, EPA is proposing to grant approval of the plan revision submitted to EPA in a letter dated November 15, 1991. This submittal was intended to satisfy those moderate PM–10 nonattainment area SIP requirements due November 15, 1991. EPA proposes to approve the submittal as meeting all of the applicable requirements of the Act.

A. Regulatory Discussion

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Utah held several public hearings after reasonable notice, evaluated the hearing comments, made changes to the SIPs and regulations as needed, and provided EPA with documentation of this process. The State documentation can be found in the State TSD, Evaluation of the PM10 SIPs Compliance with 40 CFR part 51, appendix V requirements.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action. (See section 110(k)(1) and 57 FR 13565.) The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The Utah PM10 SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter dated January 19, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Section 110(a)(2)(K) generally authorizes EPA to request any data necessary to perform air quality modeling for the purpose of predicting, among other things, impacts on the PM10 NAAQS. This would include, for example, a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with this submission. (See 57 FR 13539.)

EPA describes the emission inventories for the Utah County and Salt Lake County plans in the discussion of these SIPs set out below. EPA proposes to approve the emission inventories as meeting the section 172(c)(3) statutory requirement.

3. RACM (Including RACT)

The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see sections 172(c)(1) and 189(a)(1)(C), 57 FR 13539–45 and 13560–61; 57 FR 18072–74). The EPA's interpretation of this requirement is set out here only in broad terms.

The State should first identify available control measures, evaluating them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. A State may reject an available control measure if the measure is technologically infeasible or the cost of the control is unreasonable. The SIP must demonstrate attainment of the NAAQS as expeditiously as practicable, but no later than December 31, 1994 (unless the State demonstrates that attainment by that date is impracticable). Therefore, if a State adopts less than all available measures, but demonstrates, adequately and appropriately, that RFP and attainment of the PM–10 NAAQS is assured, and application of all such available measures would not result in attainment any faster, then a plan which requires implementation of less than all available measures may be approved as meeting the RACM requirement. As a suggested starting point for determining RACM, EPA has identified available control measures for sources of fugitive dust, residential wood combustion, and prescribed burning (57 FR 18072–74). The State should add to the list of available measures in an area, any measures that public commenters demonstrate may well be reasonably available in a particular circumstance.

The RACT for a particular source is similarly determined. The EPA's longstanding definition of RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see 57 FR 13541). Thus, EPA recommends that available control technology be applied to those existing sources in the areas that are reasonable to control in light of the attainment needs of the area and the feasibility of controls.[2]

The State submitted documentation on the available control measures (including any available control technology) that explains what constitutes RACM (or RACT) for Utah County and Salt Lake County. EPA

[1] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] The EPA has issued guidance on the technological and economic parameters that should be considered in determining RACT for a particular source (57 FR 18073–74).

generally describes the control measures in the Utah County and Salt Lake County plans in the discussion of these SIPs set out below. As indicated below, EPA proposes to approve the control measures in these plans as meeting the RACM (including RACT) requirement.

A more detailed discussion of the individual source and source category contributions, their associated control measures (including available control technology) and an explanation as to why certain available control measures were not implemented, can be found in the State Technical Support Document (TSD).

4. Demonstration of Attainment

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable, but no later than December 31, 1994. (See section 189(a)(1)(B) of the Act; 57 FR 13538–39.) Alternatively, the State must show that attainment by December 31, 1994, is impracticable. In the General Preamble, EPA indicated that the attainment demonstrations for the initial moderate areas must follow existing modeling guidelines for PM10 or, if appropriate, may be developed consistent with the supplemental attainment demonstration policy issued for initial areas (see 57 FR 13539).

The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter (μg/m3), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m3 is equal to or less than one. (See 40 CFR 50.6.) The annual PM10 NAAQS is 50 μg/m3, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m3 (id.).

EPA describes the attainment demonstrations, including the air quality modeling utilized, for Utah County and Salt Lake County in the discussion of these SIPs set out below. Both areas demonstrate attainment by the end of 1993 with the control measures adopted. EPA proposes to approve the attainment demonstrations for both of these areas. For a more detailed description of the attainment demonstration and the control strategy used, see the TSD accompanying this notice.

5. PM–10 Precursors

The control requirements applicable to major stationary sources of PM10 precursors must also apply to major stationary sources of PM10 unless EPA determines that such sources do not contributes significantly to PM10 levels which exceed the NAAQS in the area (section 189(e) of the Act). The General Preamble contains a lengthy discussion on control requirements for PM10 precursors in moderate nonattainment areas and the type of technical information which EPA will rely on in making any determinations under section 189(e). (See 57 FR 13539–40 and 13541–42.)

An analysis of air quality and emissions data for the nonattainment area of Utah demonstrates that violations of the PM10 NAAQS are attributable to direct particulate matter emissions from PM10 and to sources of particulate matter precursor emissions of S02 and NOx.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act; 57 FR 13539). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For the initial moderate PM10 nonattainment areas, the emissions reductions progress made between the SIP submittal due date of November 15, 1991 and the attainment date of December 31, 1994, will satisfy the first milestone requirement. The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations. In implementing RFP for these initial moderate areas, EPA has reviewed the attainment demonstration and control strategy for the areas to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994. (See section 171(1).) EPA is proposing to approve the submittals for both areas as satisfying the quantitative milestone and RFP requirement.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA. (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556.) The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (See 57 FR 13541.) The criteria include, for example, ensuring that the rules contained in the SIP are clearly worded and explicit in their applicability to the regulated sources, compliance date(s) should be clearly specified, compliance periods and test methods should be clearly noted, recordkeeping requirements should be commensurate with the substantive requirements and failure to keep the required records should constitute a separate violation in itself, and any exemptions or variances should be clear in their applicability and how they are triggered. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP. (See section 110(a)(2)(C).) The State of Utah has a program that will ensure that the measures and other SIP elements are adequately enforced. EPA's confidence level on the enforceability of the PM10 measures and of continued enforcement for stationary sources can be found in the EPA staff evaluation report and in the FY91 end-of-year EPA compliance report which are included in the TSD.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. (See generally 57 FR 13543–44.) These measures must be submitted by November 15, 1993, for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy.

These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM10 NAAQS by the applicable statutory deadline. Since contingency measures were not due with the November 15, 1991 moderate PM10 nonattainment area SIP requirements, EPA is not taking any action on this requirement in today's proposal.

C. The Utah PM10 SIP

1. Utah County

a. *Design value.* The Utah County area has three monitoring sites, each of which recorded violations of the PM10 NAAQS. For the period April 1988 through March 1990, the Lindon site

had 666 total number of days of available data; the second highest value is 254 µg/m3, measured in February 1989. For the period April 1988 through March 1990, the North Provo site had 226 days of available data; the first high is 191 µg/m3 measured in January 1988. For the period January 1989 to December 1989, the West Orem site had 339 days of available data; the first high is 263 µg/m3. These high/second high days represent the design value for these sites; they were determined using the "look-up table," Table 6–1, in the PM10 SIP Development Guideline document (EPA–450/2–86–001).

The Utah County monitoring network recorded additional data other than those stated above. However, to ensure that each season of the year is represented by the data used in determining the design value, EPA requires the use of a complete discrete 12-month data set, or sets which are multiples of 12-month periods. The use of the most recent data sets which represents the area is also encouraged.

The Utah County area had a unique data base involving the operation-shutdown-startup of Geneva Steel. The steel mill was down for the period from August 1986 to September 1987. Data comparison showed the facility as a major contributor to the PM10 violations. The days of violations, the average winter concentration, and average iron content on the filters were significantly greater during the operation of the facility than during the down period.

b. *Methods used to demonstrate attainment.* EPA recommends the use of certain methods to demonstrate whether a plan will provide for timely attainment (57 FR 13538–39). Dispersion and receptor modeling are among the recommended methods and these methods were initially used by the State to define the design value(s) and control strategies. EPA's initial review of the State's effort identified significant problems.

The State's wind data for use in the dispersion model were in vector units; scaler units were required. The meteorological conditions also affected modeling accuracy; the area experienced winds less than two meters per second. The EPA Gaussian (dispersion) model results are suspect under these stagnation conditions. The receptor modeling (Chemical Mass Balance (CMB), version 7.0) showed secondary contribution of 40%+; the dispersion model could address 20% secondary contribution. (Secondary particles are those which form in the atmosphere from gases which are directly emitted by sources. Sulfates and nitrates are the most common secondary particles in this nonattainment area and result from sulfur dioxide and oxides of nitrogen emissions.)

Within the time constraints in meeting the settlement agreement imposed deadlines to complete a SIP, there were extensive reanalyses of the monitoring network, CMB filters, and the emission inventory. The available time and software to convert the vector data to scaler were also reviewed. EPA determined that, with the information available from the detailed emission inventory (supported by a micro inventory) and new CMB analyses, the SIP would not result in additional or different control strategies if there were sufficient time to rerun a dispersion modeling analysis, adjusting for the concerns regarding stagnation and secondary contributions.

As indicated in the General Preamble, 57 FR 13539, EPA has developed a supplemental attainment demonstration policy that applies to the initial moderate PM10 nonattainment areas. ("PM10 SIP Attainment Demonstration Policy for Initial Moderate Nonattainment Areas" issued by John Calcagni on March 4, 1991.) The policy indicates that in certain circumstance (where time constraints, inadequate resources, inadequate data bases, lack of a model for some unique situations, and other unavoidable circumstances would leave an area unable to submit an attainment demonstration by November 15, 1991), "modified demonstrations" may be accepted on a case-by-case basis. The policy recommends that a modified demonstration be accompanied with the following: (1) Documentation of the procedures or analyses used in the modified method; (2) an explanation why alternative methods identified in EPA guidance were not used; (3) a description of how the modified method demonstrates, adequately and appropriately, area-wide attainment; and (4) when the design value is based on monitoring data, a showing that the SIP is based on one full year of adequate data for an approved network, a review of the monitoring data and network, and provision for appropriate followup monitoring to address issues raised during the review. For the reasons stated previously, EPA believes it was appropriate for the State to use a modified demonstration for Utah County. The State TSD describes how the Utah County analyses are consistent with this policy.

c. *Emission inventories.* The base year emission inventory was for 1988. Since the exceedances are winter-time occurrences, the State focused on a winter-time (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.3 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in Volume II, Utah County, State Technical Support Document. The accuracy of the emission inventory was verified through a micro inventory effort. The micro inventory effort is an analyses of the emissions in a specifically defined area around a monitor. The area is defined by looking at the sources that may impact that monitor and the wind patterns for a given 24-hour period around that monitor. The inventory analysis critically scrutinizes the source emissions in that area. For example, in evaluating fuel burning emissions, a door-to-door survey asked questions about what type of fuel was burned, how much was burned, what type of device was used for burning, and when and for how long burning occurred. This type of analysis was carried out for all the source categories; it relied on specific data gathered, rather than on general calculations such as those based on population. The results of this effort are provided in volume I, appendix D, Utah County, State Technical Support Document. The discussion comparing the results of the micro inventory to the primary PM10 average estimates for the CMB analyses is found in volume I, General Data, section 7.0, Salt Lake County, State Technical Support Document. EPA is proposing to approve the emissions inventory submitted by the State for Utah County as meeting the emissions inventory requirement of section 172(c)(3) of the Act.

Although the design values varied by site, the source apportionments were similar. The source apportionment at the West Orem monitoring site, which had the County's highest design value, was representative of the source apportionment of the Lindon and North Provo monitoring sites. Thus, if attainment can be demonstrated at West Orem, attainment could also be assured at the other two sites. The categories of sources contributing to the design day include Geneva Steel (62.5%, primary and secondary), automobile (10.9%, primary and secondary), space heating (including wood and coal burning, primary and secondary, 16.6%), and other point sources (10%, primary and secondary).

d. RACM (including RACT). To demonstrate attainment by December 1994 (and to show ongoing maintenance of the NAAQS), the SIP provided for implementation of the following control

measures (the SIP shows attainment by 1993 and maintenance to 2003):

(1) New operating parameters and emission limitations for PM10, SO_2, and NOx for existing sources of primary and secondary PM10 impacting the ambient concentrations at the monitoring sites are detailed in appendix A.1. of the Utah Air Conservation Regulation (UACR). These control measures include:

(a) A 54.4% emission reduction for Geneva Steel (primarily from the coke oven stacks and open hearth), includes facility-wide emission limitations, and reporting and recordkeeping requirements specified in appendix A.1.2.F of the SIP;

(b) Fourteen other sources, which include a nitric acid plant, power plants, and asphalt & cement plants, have emission limitations specified in appendix A.1.2.A through A.1.2.O;

(c) Provisions limiting fuel burning to natural gas or to a specific sulfur content in the fuel, with specific permitting and recordkeeping requirements, apply to all major fuel burning units or facilities in the County;

(d) General provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc., are specified in appendix A.1.1;

(e) Regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, and emergency episode requirements.

(2) No burn periods, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (section 9.A.6(4)(a) of the SIP):

(a) Area coverage is north of the southernmost border of Payson City and east of State Route 68. (This covers virtually all the populated areas in Utah County; the area not covered is mountainous and Utah Lake);

(b) Program is triggered when ambient PM10 concentrations reach 120ug/m3 as measured by the real-time monitor located at the Lindon monitoring site;

(c) City and County Health Department commits to adopt local regulations to promulgate plan consistent with the State regulations;

(d) The State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(e) A regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local Health District (UACR 4.13.3);[3] and

(f) Guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6.(4)(c)(viii)).

(3) Reducing sand/salt/slag applied to roads during the winter time by 20% (section 9.A.6(7) of the SIP). In addition, a study is to be conducted to confirm 20% reduction. Within six months from completion of the study, agencies responsible for application of these materials on the road must submit a plan and implementation schedules to reduce initial silt loading by 25% from the amount applied during the 1990 base year. The methods included in the Plan must be implemented by 10/1/93. Regulations specifying the requirements for those who apply salt, slag or sand to road are located in UACR 3.2.7.A & B.

EPA is proposing to approve the road salting and sanding rules contained in the SIP. Further, based on the information currently available, EPA believes the 20% reduction estimated by the State is reasonable. However, the State has committed to conduct a study to confirm the appropriateness of this reduction estimate.

In addition, the State has committed to implement methods, described above, in light of the study no later than October 1, 1993, and to submit the findings of the study and any such measures to EPA as a SIP revision. In acting on any such SIP revision, EPA would review the sufficiency of any new measures in light of the new information. EPA also may find it necessary to assess the sufficiency of the area's attainment demonstration in light of such new information. See section 110(k)(6) of the Act.

e. Attainment demonstration. EPA requires that attainment be demonstrated at all sites violating the PM10 standard. The control measures discussed above are necessary for all the sites to attain the standard, although the impact of a specific source category at a site may vary. The attainment summary for the 24-hour PM10 NAAQS at each of the three monitoring sites (Lindon, North Provo, and West Orem) through the year 2003 can be found in Tables 9.A.5, 9.A.7 and 9.A.9 of the SIP, respectively. Changes in emissions between 1993 and 2003 show a slight decrease in mobile source emissions, but a slight increase in residential space heating (woodburning) emissions.

Although the State focused on the emissions and exceedances during the winter months, the control measures specific to the stationary sources are year-round. The highest annual average in Utah County occurred in 1988 at the Lindon site and was 54 ug/m3. Since attainment of the 24-hour design value results in an emission reduction of 43% in Utah County, the 24-hour emission limits are the more restrictive and will ensure attainment of the annual standard (as summarized in Table 9.A.24 of the SIP).

In sum, EPA believes the methods, including modeling, that the State has employed to demonstrate attainment are adequate and appropriate. Those methods demonstrate that the control measures described above will provide for attainment of the PM10 NAAQS in Utah County as expeditiously as practicable and no later than December 31, 1994. Therefore, EPA is proposing to approve the State's attainment demonstration. Because the State has adopted those available control measures, described above, that will provide for attainment of the PM10 NAAQS in Utah County as expeditiously as practicable and no later than December 31, 1994, these measures are "reasonably" available and EPA is proposing to approve these control measures as meeting the RACM (including RACT) requirement for the Utah County PM10 nonattainment area.

f. Additional measures. The State has also committed to adopt a diesel inspection and maintenance (I/M) program to reduce diesel particulate emissions by 20%. The SIP contains a detailed discussion of the program elements, committed to by the State, including, among other things, the following measures:

(a) Opacity inspections and mandatory repair upon failure;

(b) Compliance monitored through diesel vehicle registration;

(c) Certification of mechanics and stations upon their demonstration of adequate training, skill, and resources;

(d) Opacity compliance test methods and roadside opacity enforcement;

(e) Fleet self-certification;

(f) Limited waiver provisions;

(g) Public education on the program requirements provided to diesel vehicle owners and diesel industry organizations;

[3] The SIP requires that the County develop regulations/ordinances for fireplace and woodstove installer and operator training programs, a solid fuel burner inspection program, weatherization requirements for homes, and banning of coal burning. EPA notes that when implemented, this program should ensure maintenance of the NAAQS in the area.

(h) Enforcement program, penalties and annual program evaluation.

The SIP also contains a detailed schedule of the State's action on the program that indicates, among other things, the program provisions will become effective on July 1, 1993. If EPA takes final action approving the State's commitment, the State must submit the program to EPA as a SIP revision.

Based on information available at the time the SIP was developed, it was believed that a 20% emission reduction could be achieved by a diesel I/M program combining elements of the California and Colorado diesel I/M programs, and inclusion of the majority of diesel vehicles operating in the Wasatch Front area. Recently, EPA has examined the Colorado and California programs because of increasing interest nationwide, and has presented revised estimates of their effectiveness. This updated information suggests that more work needs to be completed on both the technical design and administrative implementation elements of the Utah program.

EPA is proposing to approve the State's commitment to implement a diesel I/M program as strengthening the SIP. The State has been holding working group meetings with the I/M counties and affected parties to draft regulations and technical specifications, and has consulted with EPA Region VIII and the EPA Office of Mobile Sources (OMS) on available technologies, experience with other programs, and program enforcement. While test procedures have not been finalized and vehicle applicability has not been defined, EPA believes that a 20% reduction may be achievable under some program scenarios similar to those currently under consideration by the State of Utah.

In sum, EPA notes that it is unnecessary at this juncture to quantify the actual emissions reductions that will be realized from this program. EPA intends to determine what emissions reductions should be assigned to this program when EPA takes rulemaking action on the SIP revision containing the program actually adopted by the State.

2. Salt Lake County

Two distinct PM10 problems have been identified in Salt Lake County: (1) The summer-time exceedances due to blowing dust from the Kennecott tailings in Magna, and (2) the winter exceedances during winter inversion periods in Salt Lake and Davis Counties.

a. Magna—design value. Based on 724 observations in a three-year period, 1987 through 1989, the design value was determined to be the third-high reading, 304 ug/m3. The exceedances were specifically caused by blowing dust from the Kennecott tailings pond while the facility was shut down. Additional analyses to determine any other source contribution were not necessary.

b. Magna—RACM (including RACT). Kennecott and the State agreed to various control measures to ensure dust control of the tailings pond during current operation, and temporary or permanent shutdown of the mine, smelter and/or associated tailings pond operations.

The control measures (which included slurry distribution throughout the periphery and surface top of the pond) were completed in July 1988. Vegetation planting was also initiated. The meteorological conditions (winds at 15 mph or greater) which caused the past exceedances have occurred since the implementation of the control measure and no exceedances were recorded. The control measures are defined in section 9.A.6(1) of the SIP and appendix A.2.2.BB.B of the Utah Air Conservation Regulation.

c. Salt Lake County—Design Value. The Salt Lake County exceedances, with the exception of the Magna area problem, occurred only during the winter season (November through February). The County has three monitoring sites (North Salt Lake, Air Monitoring Center, and Salt Lake), which recorded violations of the PM10 NAAQS. The North Salt Lake site had data from 1987 to 1990; the design value is 169ug/m3. The Air Monitoring Center had data from 1989 and 1990; the design value is 177ug/m3. The Salt Lake site had data from 1988 to 1990; the design value is 170ug/m3.

The source apportionments for these sites are fairly similar, showing significant PM10 contribution from secondary emissions. (In this nonattainment area secondary emissions, called precursors, are gaseous emissions of sulfur dioxide (SO2) and nitrogen oxides (NOx) that result in particulates due to chemical reactions in the atmosphere.) The Salt Lake area has different types of major stationary sources which emit SO2 and NOx emissions including refineries, a copper smelter, power plants, and asphalt plants. Significant emissions were also identified from industrial vehicles, trains, and planes (Salt Lake has an international airport and a major railroad distribution center), woodburning, and from gasoline vehicles. The State concluded that showing attainment at the Air Monitoring Center, where the design value was highest, would also show attainment at the remaining two sites.

Analyses of the gridded emission inventory and the CMB indicated that the Salt Lake monitors, especially the North Salt Lake site, were impacted by PM10 and its precursors (SO2 and NOx) in Davis County. Therefore, to adequately address the nonattainment problem in Salt Lake County, sources were evaluated and controls required in Davis County, as well as in Salt Lake County.

d. Salt Lake County—Methods Used to Demonstrate Attainment. As with the Utah County effort, the Salt Lake modeling analysis was receptor modeling, or CMB, due to difficulties with using dispersion modeling. Low wind speed (stagnation) and inversions were occurring meteorological conditions; they were not necessarily as severe as the conditions in Utah County. The area, however, had significant mountain-valley-lake effects. (The Wasatch Mountains are to the east and the Great Salt Lake is to the west.) The State has only vector wind data, which could not be changed to scaler units in a timely manner. Therefore, to meet the deadlines of the Settlement Agreement, EPA and the State agreed to proceed with the Salt Lake analysis using CMB and emission inventory rollback. A micro inventory and critical review of the CMB provides an adequate and appropriate analyses of the PM10 contribution and the required emission reduction necessary for attainment in Salt Lake County. In addition, Kennecott Copper performed a tracer study in February 1990 to determine if its emissions impact the Salt Lake monitoring sites. That study confirmed that the 1,215 ft. stack and emissions from low heights at the smelter do impact the monitoring sites.

One of the factors that supported the decision to evaluate the area using CMB and emission inventory data and not dispersion modeling was the acceptability of the ambient air monitoring network. The area has seven sites: (1) Bountiful is representative of the residential community to the north, (2) North Salt Lake is representative of the refinery industrial area, (3) Salt Lake City is representative of downtown Salt Lake and vehicle related emissions, (4) Air Monitoring Center also represented the downtown area, (5) Magna is representative of the Kennecott Tailings problem, (6) Breeze Drive is representative of the residential area in Magna and is not source oriented, and (7) Cottonwood is southeast of downtown Salt Lake and is a residential area of maximum woodburning impact. The State provided gridded emissions

analyses for all stationary sources of PM10, SOx, and NOx emitting greater that 40 tons per year (tpy), area source emissions (space heating emissions based on the micro inventory and population density information), and mobile source emissions (based on traffic counts, vehicle registration and population density information). The adequacy of the monitoring network's performance (i.e., quality assurance, performance and accuracy, etc.) was also evaluated as described in the TSD.

As discussed in II.C.1.b above, EPA's policy indicates that, in certain circumstances, "modified demonstrations" may be accepted on a case-by-case basis. The policy is applicable to the Salt Lake County attainment demonstration due to the meteorological and topographical concerns, as well as the secondary particulate contribution issues. These issues were documented in the TSD.

The State also adequately addressed issues associated with the complexity of collecting, analyzing, and interpreting the CMB data including: (1) Excess water or ice buildup on the filters, (2) quartz versus teflon filters, (3) refrigeration versus room temperature for storing of filters, (4) number of samples to evaluate, (5) availability of source profiles for identified source types, (6) more source profile versus chemical measurements, and (7) interpretation of mass loss. The potential uncertainties associated with the CMB were significant in Salt Lake County due to the larger impact from a variety of source types in the area and the larger area, and stationary and mobile source secondary emissions. However, the State adequately addressed this by conducting extensive analysis on additional filter media collected in 1990 which considered all the factors mentioned above. The State's documentation of this modeling analysis is found in volume I, Salt Lake County, General Data Technical Support Document.

e. *Salt Lake County—Emission Inventory.* The base year emission inventory was for 1988. Since the exceedances were winter-time occurrences, the State focused on a winter-time (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.13 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in volumes II through VI, Salt Lake County, State Technical Support Document. The accuracy of the emission inventory was verified through a micro inventory effort. The results of this effort are provided in volume I, appendix D, Salt Lake County, State Technical Support Document. The discussion comparing the results of the micro inventory to the primary PM10 average estimates for the CMB analysis is found in volume I, General Data, sections 4.0, 5.0 and 7.0, Salt Lake County, State Technical Support Document. Thus, EPA is proposing to approve the emissions inventory information submitted by the State for this area as meeting the requirement of section 172(c)(3) of the Act.

The Air Monitoring Center site, with the highest design value in the area, was used as the "control" site for demonstrating attainment of the PM10 NAAQS in Salt Lake County. The categories of source contribution for the highest design value site include refineries (5.35% primary), other point sources (12.42% primary), secondary sulfates (12.97%, primarily from Kennecott smelter and refineries), secondary nitrates (10.42%, primarily from Kennecott mine and refineries), automobiles (29.28% primary and secondary), space heating (including wood and coal burning, 24% primary and secondary), and other sources (trains and planes, 3.52% primary and secondary). The source contribution for all the sources, except Kennecott, are similar at the other monitoring sites. The Kennecott source contributions were 4 to 6% for primary PM10 at the North Provo and Salt Lake sites and 0% at the Air Monitoring Center.

f. Salt Lake County—RACM (including RACT). To demonstrate attainment by December 1994 (and to show on-going maintenance of the NAAQS), the SIP provides for implementation of the following control measures (the SIP shows attainment by 1993 and maintenance to at least 2000):

(1) New operating parameters and emission limitations for PM10, SO2, and NOx for existing sources of primary and secondary PM10 impacting the ambient concentrations at the monitoring sites are detailed in appendix A.2. of the UACR. These control measures include:

(a) Significant emission reduction for Kennecott's facilities (concentrator, power plant, refinery, gold mine, copper mine and smelter). The smelter's 1215 foot stack previously was allowed to emit SO2 emissions of 18,000 lbs/hr, annual average and a maximum 3-hour average of 98,400 lbs/hr. The new emission limit which requires emission reduction equivalent to that which would be realized from a double contact acid plant is 3,240 lbs/hr, annual average and 5,700 lbs/hr, 24-hour average.

(b) Emission reduction for the refineries (the major control requirements are the installation of a sulfur recovery unit, and emission limitations on the boilers, furnaces, flares, catalytic crackers, etc.);

(c) Provisions allowing the burning of only natural gas fuel during the winter time (November through February) at all power plants; year-round burning of natural gas fuel is required at Utah Power and Light (Gadsby and 40 N. 100W.) and Murray City Power;

(d) Sources are considered major if they emit 50 tpy of PM10, SO2, or NOx, or any combination of the three pollutants.

(e) General provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc.

(f) Regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, emergency episode requirements and malfunction provisions.

(2) No burn period, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (section 9.A.6(4)(b) of the SIP):

(a) Area coverage is all of Salt Lake County and for areas in Davis County which are south of the southern-most border of Kaysville; the prohibition applies when the ambient concentration of PM10 reaches 120 μg/m3 and the forecasted weather includes a temperature inversion which is predicted to continue for at least 24 hours;

(b) The State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(c) A regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local health department (UACR 4.13.3); and

(d) Guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6(4)(c)(viii)).

(3) Reducing sand/salt/slag applied to roads during the winter-time by 20%, as described above in the Utah County plan, B.1.d.3. EPA's position regarding

this measure is also the same as described above in the discussion of the Utah County plan and is incorporated here by reference. In short, EPA is proposing to approve the road salting and sanding rules contained in the SIP. Based on the information currently available, EPA believes the 20% reduction estimated by the State is reasonable. However, in acting on any SIP revision following from the study described in B.1.d.3 above, EPA would review the sufficiency of any new measures in light of the new information. EPA also may find it necessary to assess the sufficiency of the area's attainment demonstration in light of such new information. See section 110(k)(6) of the Act.

g. *Salt Lake County—Attainment Demonstration.* The control strategies discussed above are necessary to demonstrate attainment at the three monitoring sites, although the impact of a specific source category at a site may vary. The attainment summaries for the 24-hour PM10 NAAQS at each of the monitoring sites (North Salt Lake, Air Monitoring Center, and Salt Lake City) through the year 2000 can be found in Tables 9.A.16, 9.A.a and 9.A.22, respectively. Changes in emissions between 1993 and 2000 show a slight decrease in mobile source emissions, but an increase from residential space heating (woodburning).

Although the State focused on the emissions and exceedances during the winter months, the control measures specific to the stationary sources are year-round. The highest annual average, 54μg/m3, in Salt Lake County occurred in 1988 at the North Salt Lake site. Since the 24-hour design value results in a PM10 emission reduction of 19.6% in Salt Lake County, the 24-hour emission limits are more restrictive, and will ensure attainment of the annual standard (as summarized in Table 9.A.24 of the SIP).

The methods, including modeling, that the State has employed to demonstrate attainment are adequate and appropriate. Those methods demonstrate that the control measures, including the Magna measures, will provide for attainment of the PM10 NAAQS in Salt Lake County as expeditiously as practicable and no later than December 31, 1994. Therefore, EPA is proposing to approve the State's attainment demonstration for Salt Lake County. Because the State has adopted those available control measures, described above, that will provide for attainment of the PM10 NAAQS in Salt Lake County as expeditiously as practicable and no later than December 31, 1994, these measures are "reasonably" available and EPA is proposing to approve these control measures as meeting the RACM (including RACT) requirement for the Salt Lake County PM10 nonattainment area.

h. *Additional Measures.* The State's commitment to adopt a diesel I/M program to reduce diesel particulate emission by 20% applies to Salt Lake and Davis County as well as Utah County (section 9.A.6(6) of the SIP). In the Utah County portion of this notice, EPA described in broad terms the program elements and associated schedules committed to by the State. The prior discussion of the commitment applies with equal force here. EPA's position regarding the State's commitment to adopt this program is also the same as that described in the Utah County discussion above and is incorporated here by reference. In short, EPA is proposing to approve the State's commitment to develop and implement the program as strengthening the SIP. EPA also notes that it is unnecessary, at this juncture to quantify the actual emissions reduction that will be realized from the program. EPA intends to determine what emissions reductions should be assigned to this program when EPA takes rulemaking action on the SIP revision containing the program actually adopted by the State.

D. Additional Section 110(a)(2) and Section 172 CAA Requirements

The Utah State-wide SIP was last revised in 1978 and, at that time, the State addressed major SIP elements such as resources, ambient monitoring program, emergency episodes, permitting, etc. These program elements are required by section 110(a)(2) and section 172 (Part D) of the CAA. The Utah SIP has been revised since 1978, but the revisions were only for pollutant specific nonattainment areas. To ensure adequate implementation and enforcement of the PM10 SIP, the State reviewed and updated its State-wide SIP and regulations. The regulations were revised with the PM10 SIP. The State-wide SIP, excluding section 9 (pollutant specific nonattainment area plans and section 8 (Prevention of Significant Deterioration), was revised to address changes in EPA guidance and other Federal requirements. A public hearing was held on these revisions on December 16, 1991. The revisions were made effective on March 31, 1992, and officially submitted to EPA on October 16, 1992. These revisions are set out in chapters 1–7 and 10–16 of the State-wide SIP. EPA is proposing to approve these revisions in today's notice.

Prior to this revision, the UACR were incorporated into the State-wide SIP, chapter 12. During the public hearing process, the State identified administrative and publishing concerns which justified the "rearranging" of the regulations and the document titled "SIP". The State clarified that the SIP has always been incorporated by reference into the regulations, as stated in UACR R446–2. Past inclusion of the regulations into the SIP creates a double incorporation. The State clarified that the regulations and the revised "SIP" will continue to be federally enforceable for the State-wide program. Clarification of the State's position on this issue is documented in the State's response to public hearing comments on the revisions to chapter 1–7 and 10–15; the State's internal memorandum of its response to public hearing comments is dated December 23, 1991, and is included in the State TSD.

E. Post SIP Submittal Issues

EPA reviewed the Utah PM10 submittal dated November 15, 1991, and determined the package as administratively and technically complete. This finding was documented in a letter to the Governor of Utah on January 17, 1992. EPA, however, had several concerns on the approvability of the SIP due to missing documentation. Documentation on the State's analyses on various stationary source control measures and how they were to be revised in the SIP and specified in the permits was needed. EPA has since received a majority of the documentation requested or has received an adequate State response with respect to correcting any stationary source emission limitation clarity issues. The State did not need a formal SIP revision (i.e., that which has gone to the public hearing process) to correct these changes (with the exception of the Pacific States Cast Iron opacity and the 202 test method, discussed below) because the changes were not significant substantive modifications.

The Pacific States Cast Iron Company (this source is located in Utah County) opacity limit stated in the SIP is 30%. Generally, EPA policy provides that, for any major stationary source emitting particulates in a nonattainment area, the opacity should be restricted to 20% unless the source can demonstrate that 20% is not feasible. In that case, the source must demonstrate the lowest opacity level that is feasible. The 30% opacity was a requirement that was stated in the public hearing document. This opacity limit was an oversight in the review of the Pacific States Cast Iron emission limitations. In a letter dated

October 23, 1992, the Director of the Utah Division of Air Quality committed to review the emission limit (the 20% or feasible opacity level) for this source and to adopt a SIP revision, if appropriate, by March 1993. The source permit requirements will be modified through the permit review process (as approved by EPA and which includes a public hearing). The SIP limitations will be revised accordingly. The actions proposed in today's notice do not appear to be affected by the current emission limit for this source. However, review of the emission limit may, among other things, facilitate maintenance of the PM10 NAAQS.

When the Utah PM10 SIP was finalized, Method 202 had not been promulgated by EPA. Therefore, the absence of Method 202 is not a basis for disapproving any requirements or elements in the SIP submittal being acted on today. However, Method 202 is now available and should be specified in the future as appropriate in the SIP and in the stationary source permits. The State was aware of this potential requirement and did agree to address this in a future SIP revision. This issue was discussed during the public hearing process.

During the review of the November 15, 1991 submittal, EPA and the State identified typographical errors in the final printing of the SIP. The State has committed to correct these errors in a letter dated July 1, 1992. The typographical errors are:

(1) page 42 of the SIP, section 9.A.6.(2)(a), fifth line incorrectly references the monitor site in the UACR. It should reference appendix A, section 9 of the SIP. (2) page 52 of the SIP, third paragraph, sixth line, the "* * * 1998 base year * * *" should be "* * * 1990 base year * * *" (3) page 185, section 9 of the SIP, appendix A.2.2.RR, Condition 6, needs to be deleted, this condition applies to the Kennecott tailings pond, not the Salt Lake County Asphalt-Welby Pit.

III. Implications of Today's Action

The EPA is proposing to approve the plan revision submitted to EPA for the Utah and Salt Lake Counties, Utah, in a letter from the Governor dated November 15, 1991. Among other things, the State of Utah has demonstrated that the Utah and Salt Lake Counties PM10 nonattainment areas will attain the PM–10 NAAQS by December 31, 1994. The Utah Air Quality Regulations have been revised numerous times since the early 1970's. The regulations have been renumbered and new requirements added. For that reason, EPA has proposed to replace, in its entirety, the existing UACR with that which was also submitted on November 15, 1991.

EPA is also proposing to approve the State-wide SIP revisions (chapters 1–7 and 10–15) submitted in a letter dated October 15, 1992, by the Director, Utah Air Quality Division. The October 15, 1992 submittal was referenced in the Governor's original November 15, 1991 letter.

As noted, additional submittals for the initial moderate PM–10 nonattainment areas are due at later dates. The EPA will determine the adequacy of any such submittal (i.e., new source review, contingency measures) as appropriate.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by February 16, 1993.

V. Executive Order 12291

The OMB has exempted this rule from the requirement of section 3 of Executive Order 12291.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, hydrocarbons, intergovernmental relations, nitrogen dioxide, particulate matter, reporting and recordkeeping requirements, and sulfur dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 7, 1992.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 92–30659 Filed 12–17–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 88–079a]

RIN 2115–AD12

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking; extension of comment period.

SUMMARY: On October 27, 1992 the Coast Guard published in the **Federal Register** (57 FR 48670) a supplemental notice of proposed rulemaking for documented or state numbered uninspected fishing, fish processing, and fish tender vessels to implement provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. Because of requests for additional time to comment on the proposed rulemaking, the comment period is being extended for an additional 60 days. Also, a toll free telephone number will be established at Coast Guard Headquarters that will allow the public another avenue to provide the Coast Guard with comments.

DATES: Comments must be received on or before February 28, 1993.

ADDRESSES: Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD 88–079a), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments via the toll free (1–800–282–8724) number may be called in 24 hours a day, seven days a week. The telephone number is (202) 267–1477 for further information about submitting written comments. For further information concerning phone comments, contact LCDR Tim Skuby, (202) 267–2307.

The Executive Secretary maintains the public docket for this rulemaking.

Written comments and synopsized transcripts of verbal comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters. Original recordings of telephone comments may be listened to at this address with advance request to do so.

FOR FURTHER INFORMATION CONTACT: LCDR Tim Skuby, Merchant Vessel Inspection and Documentation Division, Fishing Vessel/Offshore Activities Branch (G–MVI–4), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2307.

SUPPLEMENTARY INFORMATION:

Request for Comments

In the supplemental notice of proposed rulemaking (SNPRM) published on October 27, 1992, the Coast Guard encouraged interested persons to participate in this proposed rulemaking by submitting written comments including views, data, or arguments. Several persons requested additional time to comment citing the reason that the SNPRM will have a potentially major impact on a large segment of the fishing industry and that with the holiday season approaching, it would be difficult for them to study these proposed regulations and provide responsible feedback. Further, the Coast Guard has determined that a 60 day comment period may have been insufficient for industry publications to notify their readers of the opportunity to comment on the proposed rule in time for them to do so.

Additionally, the Coast Guard is establishing a toll free number at Coast Guard Headquarters that will allow the public another avenue to provide comments. The toll free number is 1–800–282–8724 and will be on line beginning December 28, 1992. This number will be unattended. A prerecorded message will greet the caller. Comments received using this number will be considered along with the written comments. In addition, use of this number to provide verbal comments will constitute specific permission from the caller to record the phone call.

The Coast Guard does not agree that there is a need to provide the public hearings for this rulemaking. It is the Coast Guard's position that the holding of public hearings will not measurably benefit this rulemaking.

The Coast Guard held 13 public hearings prior to the publication of a final rule (CGD 88–079) implementing other provisions of the Commercial fishing Industry Vessel Safety Act of 1988 in the **Federal Register** on August 14, 1991 (56 FR 40364). As a result of these public hearings and the written comments, three topics (stability for fishing vessels less than 79 feet in length, survival craft for fishing vessels carrying less than four individuals on board operating within 12 miles of the coastline, and the administration of exemptions) were separated from that final rule. This SNPRM is the direct result of written and verbal comments previously provided on the subject of stability for fishing vessels less than 79 feet in length, and they have been incorporated into this proposed rulemaking. By extending the comment period an additional 60 days, for a total of 120 days, and by establishing the toll free number, the Coast Guard has determined that ample opportunity to comment on these proposed regulations is provided.

Persons submitting comments, whether written or verbal, should include their name and address, identify this rulemaking (CGD 88–079a) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgement of receipt of written comments should enclose a stamped self-addressed postcard or envelope. For those persons using the toll free number, a request for acknowledgment of receipt of their verbal comments should be made during the phone call.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Dated: December 10, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–30568 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing on Proposal To List the Delhi Sands Flower-Loving Fly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed rule to list the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as an endangered species. The hearing will be held on January 5, 1992, in San Bernardino, California. Interested parties may submit oral or written comments on the proposal to the Service at the hearing. The proposed rule was published on November 19, 1992 (57 FR 54547).

DATES: A public hearing will be held from 6 p.m. to 8 p.m. on Tuesday, January 5, 1993, in San Bernardino, California. Comments from all interested parties must be received by January 19, 1993. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The hearing on Tuesday, January 5, 1993, will be held at the San Bernardino County Government Center, Board Chambers, 385 N. Arrowhead Avenue, San Bernardino, California. Written comments and materials may be submitted at the hearing or may be sent directly to Mr. Jeffrey Opdycke, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Jeffrey Opdycke, Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) is a large insect that is restricted to areas of the Delhi Sands formation, within an 8 mile radius in southwestern San Bernardino and northwestern Riverside Counties, California. Agricultural land conversions during the 1800's destroyed most of the Delhi Sands flower-loving fly's habitat. Intensive urban, residential, and commercial development, removal of vegetation for fire control, invasion of exotic vegetation, illegal dumping, and off-road vehicle use threaten the species' survival at present. Since 1975, 50 percent of the species' habitat has been destroyed. In the fall of 1990, only six extant colonies remained. Since then, two colonies have been destroyed and

one colony was bisected and reduced in size.

On November 19, 1992, the Delhi Sands flower-loving fly was proposed for listing as an endangered species (57 FR 54547). Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of publication of a proposed rule.

Because of the level of interest in this proposed action, and in anticipation of requests for a hearing on the proposal, the Service has scheduled a public hearing at the following time and location:

Tuesday, January 5, 1993, from 6 p.m. to 8 p.m.: San Bernardino County Government Center, Board Chambers, 385 N. Arrowhead Avenue, San Bernardino, California.

Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the Carlsbad, California address given in the ADDRESSES section of this notice. The comment period closes on January 19, 1993.

Author

The primary author of this notice is Mr. John Hanlon, Fish and Wildlife Biologist, Carlsbad Field Office (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 11, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–30633 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AA98

Endangered and Threatened Wildlife and Plants; Notice Reopening the Public Comment Period for the Bruneau Hot Spring Snail (Pyrgulopsis Bruneauensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) is reopening the comment period on the proposal to add the Bruneau Hot Spring snail (*Pyrgulopsis bruneauensis*) to the list of endangered wildlife. The Bruneau Hot Spring snail is endemic to the complex of related thermal springs adjacent to the Bruneau River south of Mountain Home, Idaho. The major threat to this species is habitat loss due to the drastic and continuing reduction in thermal spring flows from groundwater withdrawal/mining in the Bruneau Hot Spring aquifer. The Service proposed the snail for listing as endangered on August 21, 1985 (50 FR 33803). During four public comment periods and two public hearings following the proposed rule, the Service received new information that questioned the distribution, population status, and impacts of present threats. In addition, there was substantial disagreement regarding the sufficiency or accuracy of the available data used to prepare the proposed rule. Following this period, the U.S. Congress appropriated funds to: (1) Implement a tentative draft management plan developed by the Service and five cooperating agencies: Bureau of Land Management, U.S. Geological Survey, Farmers Home Administration, Idaho Department of Fish and Game, and Idaho Department of Water Resources; (2) further study the species' current status and distribution; and (3) study hydrological conditions and groundwater withdrawal in the Bruneau River basin. A final decision concerning the proposed rule has not been published. On July 6, 1992, the Land and Water Fund of the Rockies, representing the Idaho Conservation League and the Committee for Idaho's High Desert, filed suit in Federal district court in Boise, Idaho. The suit was filed under the Endangered Species Act of 1973, as amended, over the Service's failure to make a final decision on the proposed listing of the Bruneau Hot Spring snail. Because of the concerns raised in the lawsuit and to ensure the accuracy of any final decision concerning the appropriateness of listing, the Service reopened the public comment period on October 5, 1992, for 30 days to solicit any additional new information available for consideration. However, after the comment period closed on November 4, 1992, the Service published a notice in the Idaho Statesman announcing that the comment period had reopened. In response to this newspaper notice, several individuals expressed an interest in submitting comments; however, the Service could not officially consider those comments since the public comment period had closed. For this reason, the Service reopens the public comment period on the proposed rule for 10 days. The Service's goal is to base its final decision on the best available scientific and commercial information.

DATES: The comment period on the proposal is reopened until December 28, 1992.

ADDRESSES: Written comments and materials should be sent to Charles Lobdell, Field Supervisor, Boise Field Office, Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Boise Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Duke, Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705, (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

The first collections of the Bruneau Hot Spring snail were made in 1952 and 1953. Dr. Dwight Taylor studied the anatomy of the species and determined that it represented a previously unknown genus and species of the snail family Hydrobiidae. Dr. R. Hershler (1990) formally described this species, naming it *Pyrgulopsis bruneauensis*. The thin, transparent shell of the species is less than 3.00 mm (1/10 inch) in height, with 3.75 to 4.25 whorls and roughly globose to low-conic in shape.

Based on the most recent information, the species is found in over 100 small thermal springs and seeps along an 8 km length of the Bruneau River in southwestern Idaho (Mladenka 1992). No Bruneau Hot Spring snails have been collected outside thermal plumes of hot springs entering the Bruneau River. The species is normally collected in springs with seasonally fluctuating water temperatures greater than 20°C, with the maximum temperature tolerance limit of 35°C. The species is found in these

habitats on all substrate types, including rocks, gravel, mud, silt, and algal film. These springs and proximal thermal outflows are on lands administered by the Bureau of Land Management. Some downstream habitat is on private land.

The major threat to the Bruneau Hot Spring snail is the reduction of its thermal spring habitats from groundwater withdrawal/mining in the Bruneau Hot Spring aquifer. Exacerbated by drought, the extent of seepage at spring sources has been greatly reduced in recent years. In addition, considerable habitat has been lost in recent years due to sedimentation from flash flooding. This is especially true for the Indian Bathtub area, where the snail was first discovered. Heavy sedimentation of gravel, sand, and silt has rendered a considerable amount of habitat in the Indian Bathtub unavailable to snails.

Dr. Dwight Taylor prepared a status report on the Bruneau Hot Spring snail, which was submitted to the Service in June 1982. This report was the basis for the placement of this species on the Service's comprehensive notice of review on invertebrate candidate species published in the **Federal Register** (49 FR 21664) on May 24, 1984. The Service proposed the Bruneau Hot Spring snail for listing as endangered on August 21, 1985 (50 FR 33803). The comment period on this proposal, which originally closed on October 21, 1985, was extended to December 31, 1985 (50 FR 45443). To accommodate public hearings in Boise, Idaho, and Bruneau, Idaho, the comment period was reopened until February 1, 1986 (50 FR 51894). On December 30, 1986, the public comment period was again reopened until February 6, 1987, to accommodate the receipt of additional information (52 FR 47033).

In 1990, Congress allocated approximately $400,000 for conservation measures associated with the Bruneau Hot Spring snail. This money was used to fund hydrological studies of the Bruneau Hot Spring aquifer by the U.S. Geological Survey and ecological life history studies by the Idaho State University.

The Service provided funding to implement a short-term conservation easement with Owen Ranches, Inc., owners of much of the snail habitat in Hot Creek and the Indian Bathtub. Terms of the easement included fencing to exclude cattle from grazing along snail habitats in Hot Creek. Expiration of this agreement will coincide with the completion of the hydrological studies by the U.S. Geological Survey.

On July 6, 1992, the Idaho Conservation League and the Committee for Idaho's High Desert filed a lawsuit in Federal District Court in Boise, Idaho. The lawsuit was filed under the Endangered Species Act of 1973, as amended, over the failure of the Service to make a decision regarding the listing of the Bruneau Hot Spring snail.

In order to respond to the concerns raised in the lawsuit and to ensure the accuracy of any final decision concerning the appropriateness of listing, the Service reopened the public comment period on October 5, 1992, for 30 days to solicit any additional new information available for consideration. However, after the comment period closed on November 4, 1992, the Service published a notice in the Idaho Statesman announcing that the comment period was open. In response to this newspaper notice, several individuals expressed an interest in submitting comments; however, the Service could not officially consider those comments since the public comment period had closed. For this reason, the Service reopens the public comment period on the proposed rule for 10 days. The Service's goal is to base its final decision on the best available scientific and commercial information. Written comments may now be submitted for this proposal until December 28, 1992. The Service continues to be particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

The final decision on this issue will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final decision that differs from the proposal to list the species. Comments and data concerning this species should be sent to the Boise Field Office (see **ADDRESSES** section).

References

Hershler, R. 1990. *Pyrgulopsis bruneauensis*, a new springsnail (Gastropoda: Hydrobiidae) from the Snake River plain, southern Idaho. Proc. Biol. Soc. Wash. 103(4), 1990, pp. 803–814.

Mladenka, G.C. 1992. The ecological life history of the Bruneau Hot Spring snail (*Pyrgulopsis bruneauensis*). Final report submitted to the Fish and Wildlife Service. Stream Ecology Center, Department of Biological Sciences, Idaho State University, Pocatello, Idaho. 116 pp.

Author

The primary author of this notice is Mr. Stephen Duke, Fish and Wildlife Service, Boise Field Office, 4696 Overland Road, Room 576, Boise, Idaho 83705, (208) 334–1931.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 11, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30664 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Public Comment Period on Proposed Endangered Status for the Giant Garter Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that the public comment period is reopened on the proposed determination of endangered status for the giant garter snake (*Thamnophis gigas*). The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: The comment period on the proposal is opened until December 28, 1992. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Sorensen (see **ADDRESSES**) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

The giant garter snake is restricted to valley floor wetlands, including low gradient streams, ponds, irrigation and drainage canals, and certain rice field habitats in the San Joaquin and Sacramento Valleys of California. Approximately 13 apparently isolated populations are distributed locally from Burrell, Fresno County, northward to the vicinity of Chico, Butte County. The giant garter snake is threatened by a variety of factors, including urbanization, flood control and water diversion projects, and agricultural practices.

A proposal to list the giant garter snake as an endangered species was published on December 27, 1991 at 56 FR 67046. Subsequently, the Service published a notice announcing a public hearing on May 15, 1992 (57 FR 20806) and a separate notice on May 26, 1992 (57 FR 21933) reopening the public comment period until July 15, 1992. The Service conducted the public hearing on June 1, 1992, at the Radisson Hotel in Sacramento, California. Testimony was taken from 6 p.m. to 8 p.m. The Service is aware of information on the status of the giant garter snake that has become available since that time. Reopening the comment period will allow the Service to consider this and any other information in determining whether or not the giant garter snake warrants listing as an endangered species. Additional information may now be submitted until the end of the comment period on December 28, 1992.

Author

The primary author of this notice is Peter C. Sorensen (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 11, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–30665 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 921077–2277]

Endangered and Threatened Species; Saimaa Seal

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: Based on a review of the status of the Saimaa seal (*Phoca hispida saimensis*), NMFS has determined that this species is endangered and should be added to the U.S. List of Endangered and Threatened Wildlife. NMFS used the best available scientific and commercial data to make this determination. Scientists estimate the population at about 160–180, and they are found only in Lake Saimaa, in eastern Findland.

DATES: Comments on the proposed rule should be received by February 16, 1993.

ADDRESSES: Send comments to Dr. Michael F. Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, NMFS, at 301/713–2322.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*; (ESA)) is administered jointly by the U.S. Fish and Wildlife Service (USFWS), the Department of the Interior, and NMFS. NMFS has jurisdiction over most marine species and makes determinations under section 4(a) of the ESA (Pub. L. 93–205) as to whether the species should be listed as endangered or threatened. The USFWS maintains and publishes the List of Endangered and Threatened Wildlife in 50 CFR part 17 for all species determined by NMFS or USFWS to be endangered or threatened. A list of threatened and endangered species under the jurisdiction of NMFS also is contained in 50 CFR 227.4 and 222.23(a), respectively.

The ESA defines "species" to include any subspecies of fish, wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

Summary of Status Review

The Saimaa seal (*Phoca hispida saimensis*) is a subspecies of the ringed seal (*Phoca hispida*) that is limited in distribution to the freshwater Lake Saimaa in eastern Finland. It has been separated from other ringed seals since the last glacial period, 8,000 years ago (Sipilä *et al.* 1990).

There are differences between the Saimaa seal and other ringed seals. In general, the pelage of the Saimaa seal is darker than ringed seals from Lake Ladoga and the Baltic Sea. Saimaa seal pups are gray, rather than white, indicating that camouflage may be less important. Morphologically, the Saimaa seal can be distinguished from other ringed seals. Measurements of bones in the skull differ from both the ringed seal in the Baltic Sea and the Ladoga seal, another subspecies of the ringed seal. The auditory bulla are higher, indicating a possible adaptation to the low visibility conditions in Lake Saimaa (Hyvärinen 1989; Hyvärinen and Vieminen 1990). There is evidence that the seals' sense of hearing has been adapted to these conditions. The Saimaa seal's vibrissae, or whiskers, may be used to detect sounds. The innervation of one vibrissa of the Saimaa seal is more than ten times greater than in any other mammal or any other ringed seal. It is hypothesized that sounds are detected through sensory elements in the vibrissae (Hyvärinen 1989).

There are only about 160–180 Saimaa seals (Sipilä 1990, 1991; Sipilä *et al.* 1990). Concern over the status of the population was first expressed in the early 1950s when the Government of Finland prohibited hunting of the seals (Sipilä and Hyvärinen 1988). The first estimate of total population was 200–250 animals, based on a limited sample area. A more comprehensive survey produced an estimate of at least 250 animals in 1971. Between 1971 and 1984, the number continued to decrease. A census conducted in 1984 produced a best estimate of 130–160 seals (Hyvärinen and Sipilä 1983; Sipilä 1990; Sipilä and Hyvärinen 1988; Sipilä *et al.* 1990). Since then, numbers have remained relatively stable. The most vigorous populations are in the central part of Lake Saimaa, both north and south of the town of Savonlinna. The northern part of Lake Saimaa has a smaller population. There has been a marked decline of the population in the

southern part of the lake. As an example, in 1971, it was estimated that the number of seals in the Petranselkä-Ilkonselkä area was 44–46. The corresponding estimate for 1984 was 14–16. In other areas in the south where seals were present historically, such as Puruvesi and Yövesi, none remain (Sipilä *et al.* 1990). Although studies of migrations between areas of the lake have not been conducted, one study indicated that there are four distinct colonies (Hyvärinen and Sipilä 1984a). The possibility of limited genetic exchange among subpopulations raises further concerns over the status of the seals in the northern and southern parts of the lake.

Although no data are available on the longevity of the Saimaa seal, the life-span for ringed seals generally is estimated at 15 to 25 years (Riedman 1990). Similar to other ringed seals, the sex ratio the Saimaa seals is 1:1 (Sipilä *et al.* 1990; Sipilä 1991). One study estimated that 55.7 percent of the population is sexually mature. The same study provided an estimate of approximately 39 reproductive females in the population. The pregnancy rate in mature females has been estimated at up to 70 percent per annum (Sipilä *et al.* 1990). The number of births has been estimated at 18–26 pups annually. Examinations of birth lairs indicated that 19 percent of the pups born were still-born or died before weaning.

The overall reproductive rate for the population is estimated at 15 percent annually, which is low when compared to other populations of ringed seals (Sipilä and Kurlin 1991; Sipilä *et al.* 1990).

The Government of Finland has taken measures to protect the species. In 1955, a law was passed to prohibit the hunting of Saimaa seals (Sipilä and Hyvärinen 1988). In 1982, another law was passed to restrict fishing in some areas during periods when interactions were occurring with seal pups. Before the fishing restrictions, entanglement in fishing gear was a significant cause of pup mortality (Sipilä *et al.* 1990). Of eight breeding areas, the Government of Finland has protected three by creating natural parks (Sipilä 1989).

It is thought that a listing action in the United States would make it easier to obtain international funds to promote conservation of the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and the NMFS listing regulations set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) Inadequacy of existing regulatory mechanisms; or

(5) Other natural or man-made factors affecting its continued existence.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Housing developments have affected the habitat of the Saimaa seal. Construction of summer cottages and increased human activity have caused the seals to abandon some breeding areas (Sipilä 1989, 1991; Sipilä and Hyvärinen 1988).

Additionally, drawing down of water levels of up to 50 centimeters for hydroelectric generation has affected habitat and breeding success (Sipilä 1990). Birth lairs are constructed in the ice and rest along the shoreline. When water levels are reduced, there is a tendency for the birth lairs to collapse, crushing the pups or rendering them homeless with no protection from the cold (Sipilä 1988, 1990; Sipilä and Hyvärinen 1988).

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no evidence that these activities have contributed to the decline of the species.

Disease or Predation

No evidence exists that disease or predation has been responsible for the decline in population. With such a small number of animals, however, the population could be vulnerable to the introduction of a disease. As an example of the potential vulnerability to disease, the introduction of phocine distemper virus into seal populations in Lake Baikal and the North Sea resulted in massive mortalities (Osterhaus *et al.* 1990). A similar outbreak could lead to the extinction of the Saimaa seal.

The Inadequacy of Existing Regulatory Mechanisms

The Government of Finland has taken measures to protect the Saimaa seal. In 1955, a law was passed to prevent direct hunting of the species (Sipilä and Hyvärinen 1988). In 1981, a law was passed to stop net-fishing in some areas of Lake Saimaa (Sipilä 1990; Sipilä *et al.* 1990;). However, not all areas of the lake are protected. Natural parks have been set up to ensure the safety of the seals in some areas (Sipilä 1989). Despite these measures, the population of seals has continued to decrease in some areas.

Other Natural or Man-made Factors

As discussed earlier, the generation of hydroelectricity has had an impact on the Saimaa seal. Although there are restrictions against fishing in some areas in Lake Saimaa, net fishing has caused the Saimaa seal's population to decline (Hyvärinen and Sipilä 1984a; Sipilä 1989; Sipilä and Hyvärinen 1988; Sipilä *et al.* 1990;). Seal pups are particularly vulnerable to fishery interactions after they have been weaned. Before fishing restrictions were imposed in 1981, mortality of pups caused by fishing interactions was estimated to be as high as 60 percent. Restrictions appear to have reduced this figure to 40 percent in those areas with restrictions. However, even that percentage represents a significant cause of mortality (Sipilä *et al.* 1990).

The genetic pool is so small that there is a serious possibility that inbreeding could result in a loss of genetic variability, resulting in the loss of capacity to adapt to changes or in genetic defects. This problem would be exacerbated if there is site fidelity and limited genetic flow between subpopulations.

Some researchers have indicated that pollution may have an impact on the population (Helle *et al.* 1985; Hyvärinen and Sipilä 1984b; Kari and Kauranen 1978; Perttilä *et al.* 1986; Sipilä and Hyvärinen 1988). However, no direct cause and effect relationship has been established. Analyses have shown that Saimaa seal tissues have relatively high levels of heavy metals such as nickel, zinc, copper, lead, and cadmium (Hyvärinen and Sipilä 1984b; Perttilä *et al.* 1986). High levels of nickel have been found in the natal hair of seal pups. High levels of nickel may be linked to the still-births of the pups (Hyvärinen and Sipilä 1984b). One study indicated high mercury and selenium levels in the seal's liver tissue. Other studies have linked mercury and selenium and it has been suggested that selenium serves a role in metabolizing mercury in seals (Kari and Kauranen 1978; Perttilä *et al.* 1986). The ratio of selenium to mercury in Saimaa seals, however, is lower than in other seals from the Baltic area, which may indicate that mercury levels may be cause for concern (Kari and Kauranen 1978).

Although levels of organochlorines in tissue are relatively high, they are lower than levels recorded in ringed seals in

the Baltic. Studies have shown a high correlation between PCBs and reproductive abnormalities in seal population in the Baltic Sea and the North Sea. A high level of uterine occlusions was found in ringed seals with high PCBs in the Baltic Sea (Helle 1980). A reduction in fertility of harbor seals in the North Sea is correlated with PCB levels (Reijnders 1984, 1986). The author hypothesized that the contaminant might affect fertility by altering hormonal levels (Reijnders 1986). Although levels of DDT in Saimaa seal blubber have fallen since the early 1970s, levels of PCBs have remained relatively constant (Helle *et al.* 1983, 1985; Perttilä 1986).

Proposed Determination

NMFS believes that the available data support the proposed endangered classification for the Saimaa seal. NMFS has determined that it is likely that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA.

Recommended Critical Habitat

Regulations regarding listing of species and designation of critical habitat (50 CFR 424.12(h)), specify that critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction.

Classification

The 1982 Amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413; February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of E.O. 12291 and the Regulatory Flexibility Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of E.O. 12612. For this reason, the provisions in this rule are not subject to the moratorium on regulatory actions in accordance with paragraph 4 of the President's January 28, 1992, Directive.

The proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

References

Helle, E. 1980. Lowered reproductive capacity in female ringed seals (*Pusa hispida*) in the Bothnian Bay, northern Baltic Sea, with special reference to uterine occlusions. Ann. Zool. 17: 147–158.

Helle, E., H. Hyvärinen, H. Pyysalo, and K. Wickström. 1983. Levels of organochlorine compounds in an inland seal population in eastern Finland. Mar. Poll. Bull. 14(7): 256–260.

Helle, E., H. Hyvärinen, and O. Stenman. 1985. PCB and DDT levels in the Baltic and Saimaa seal population. Finnish Game Res. 44: 65–68.

Hyvärinen, H. 1989. Diving in darkness: Whiskers as sense organs of the ringed seal (*Phoca hispida saimensis*). J. Zool. 218: 663–678.

Hyvärinen, H. and M. Nieminen. 1990. Differentiation of the ringed seal in the Baltic Sea, Lake Ladoga and Lake Saimaa. Finnish Game Res. 47: 21–27.

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Kari, T. and P. Kauranen. 1977. Mercury and selenium contents of seals from fresh and brackish water in Finland. Bull. Environ. Contam. Toxicol 19(3): 273–280.

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Sipilä, T. 1988. The influence of water level changes on the breeding of the Saimaa ringed seal. Abstract from the Eleventh Nordic Congress on Game Research, September 5–9, 1988, Espoo, Finland.

Sipilä, T. 1989. The very endangered Saimaa ringed seal (*Phoca hispida saimensis*) will be preserved in reservation areas. Abstract from the Eighth Biennial Conference on the Biology of Marine Mammals, December 7–11, 1989, Pacific Grove, California.

Sipilä, T. 1990. Lair structure and breeding habitat of the Saimaa ringed seal (*Phoca hispida saimensis* Nordq.) in Finland. Finnish Game Res. 47: 11–20.

Sipilä, T. 1991. The structure of the Saimaa ringed seal population in its breeding areas. Abstract from the Ninth Biennial Conference of Marine Mammals, December 5–9, 1991, Chicago, Illinois.

Sipilä, T. and Hyvärinen. 1988. Saving the Saimaa seal. Soumen Luonto 47(4): 21–25. In Finnish with English summary.

Sipilä, T. and K. Kurlin. 1991. 62 infrared videothermography as a method to localize the under-snow lairs of the ringed seal (Abstract only). Fourth European Conference on Wildlife Telemetry, September 16–20, 1991, University of Aberdeen.

Sipilä, T., E. Helle, and H. Hyvärinen. 1990. Distribution, population size and reproductivity of the Saimaa ringed seal (*Phoca hispida saimensis* Nordq.) in Finland, 1980–84. Finnish Game Res. 47: 3–10.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 10, 1992.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 222 is proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a), introductory text, is amended by adding the phrase "Saimaa seal (*Phoca hispida saimensis*);" immediately after the phrase "Mediterranean monk seal (*Monachus monachus*);" in the second sentence.

[FR Doc. 92–30630 Filed 12–17–92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-168-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-244-02, renewal of permit 92-066-01, issued on 06-04-92.	Holden's Foundation Seeds, Incorporated.	08-31-92	Corn plants genetically engineered to express a phosphinothricin acetyl transferase (PAT) gene for tolerance to the herbicide glufosinate.	Hawaii.
92-203-01	Pioneer Hi-Bred International, Incorporated.	10-16-92	Soybean plants genetically engineered to express either the enzyme 5-enolpyruvyl shikimate-3-phosphate snythase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate; or methionine- and cysteine-rich seed storage proteins from Brazil nut.	Puerto Rico.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 14th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30771 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-188-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-209-03	Monsanto Agricultural Company.	11-18-92	Corn plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects, or genes for tolerance to the herbicide glyphosate, or a beta-glucuronidase (GUS) as a marker.	Hawaii.
92-260-02	Monsanto Agricultural Company.	11-19-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Puerto Rico.
92-261-01	Monsanto Agricultural Company.	11-20-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Florida, Illinois.
92-256-01	ICI Seeds, Incorporated	11-23-92	Corn plants genetically engineered to express genes from a non-pathogenic source organism and resistance to the herbicide glufosinate.	Hawaii.
92-262-02	Monsanto Agricultural Company.	11-23-92	Potato plants genetically engineered to express a from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt) for resistance to Colorado potato beetle, and the coat protein gene of potato virus Y (PVY) for resistance to PVY.	Florida, Hawaii.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 14th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30773 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-182-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests" require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation of interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-308-01, renewal of permit 90-274-05, issued on 11-15-90.	Upjohn Company	11-03-92	Soybean plants genetically engineered to express the enzyme phosphinothricin acetyltransferase (PAT) for tolerance to the herbicide bialaphos.	Puerto Rico.

Done in Washington, DC, this 14th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30772 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-189-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests of Which There Is Reason to Believe Are Plant Pests." require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-325-01, renewal of permit 92-036-01, issued on 05-26-92.	Washington State University	11-20-92	Potato plants genetically engineered to express disease resistance response genes from the pea.	Washington.
92-329-01	Crop Genetics International	11-24-92	Corn plants containing *Clavibacterxyli* subsp. *cynodontis* genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strain HD-73 delta-endotoxin protein for resistance to European corn borer.	Iowa, Maryland, Nebraska.

Application No.	Applicant	Date received	Organisms	Field test location
92-330-01	Pioneer Hi-Bred International Incorporate.	11-25-92	Corn plants genetically engineered to express resistance to European corn borer and other insect pests of corn.	Hawaii.
92-330-02, renewal of permit 91-322-01; issued on 02-04-92.	North Carolina State University.	11-25-92	Tobacco plants genetically engineered to express a coat protein of tobacco etch virus (TEV).	North Carolina.
92-335-01, renewal of permit 92-037-03, issued on 05-19-92; of permit 92-037-05, issued on 05-01-92; of permit 92-055-01, issued on 05-20-92.	Monsanto Agricultural Company.	11-30-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, Ohio, South Carolina, Tennessee, Texas, Virginia, Wisconsin.

Done in Washington, DC, this 14th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30774 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Midway Face Viewshed Management Project, Dixie National Forest, Iron County, Utah

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Midway Face Viewshed Management project was published in the **Federal Register** on October 24, 1991 (56 FR 55116). After examining the analysis to date in light of the 10 points of significance, 40 CFR 1509.27, I believe it is unlikely that there will be a significant impact on the human environment; therefore, an EIS will not be prepared. The project analysis will be documented in an Environmental Assessment. Additional public involvement with this project is planned prior to the release of the Environmental Assessment; tentatively scheduled for May 1993.

FOR FURTHER INFORMATION CONTACT: Diana McGinn, Forester, Cedar City Ranger District, P.O. Box 627, Cedar City, Utah 84721-0627, 801-865-3200.

Dated: December 11, 1992.

Dan Deiss,

Timber Staff Officer.

[FR Doc. 92-30749 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-11-M

Pacer Timber Sale, Dixie National Forest, Garfield County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for a Forest Service proposal to implement a timber sale and associated road construction on the Escalante Ranger District, Dixie National Forest. The area is located approximately 25 miles northwest of Escalante, Utah. The project would be implemented in accordance with direction in the Dixie National Forest Land and Resource Management plan (DNF-LRMP).

The agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other Federal agencies, are invited to participate and contribute to the environmental analysis. The Dixie National Forest invites written input regarding issues specific to the proposed action.

DATES: Written comments to be considered in the Draft Environmental Impact Statement (DEIS) should be submitted on or before February 1, 1993.

ADDRESSES: Submit written comments to: District Ranger, Escalante Ranger District, 755 West Main, P.O. Box 246, Escalante, Utah 84726.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Kevin R. Schulkoski, District Ranger, 801-826-5400.

SUPPLEMENTARY INFORMATION: The proposed project covers an analysis area of 3,364 acres of National Forest System Lands. Timber stands in the project area cover 3,079 acres. Unevenaged stands of Engelmann spruce and subalpine fir is the dominant timber type. A few stands of even-aged Engelmann spruce is also present as are even-aged stands of aspen. Aspen remnants are also scattered throughout the Engelmann spruce/subalpine fir stands. Stands proposed for harvest are located within sections 25, 26, 35, and 36, Township 32 South, Range 1 West; and Sections 1, 2, and 11, Township 33 South, Range 1 West, Salt Lake Base Meridian.

The proposed action would implement management direction and projects identified in the DNF-LRMP. This project EIS will be tiered to the DNF-LRMP EIS, which provides goals, objectives, standards and guidelines for the various activities and land allocations on the Forest.

The purpose of the proposed action is to improve growth and yield and to reduce the potential for a spuce beetle outbreak through improved forest health. The proposed action is to harvest diseased or insect infected trees, high risk trees, and to obtain the desired stocking levels utilizing a combination of individual tree and group selection and improvement harvest methods. These treatments would be designed to move the project area towards the desired habitat conditions as described in the "Management Recommendations for the Northern Goshawk in the Southwestern United States." The proposed action would be located in Management Areas 7A (Wood Products and Utilization), 6A (Livestock Grazing), and 2B (Rural and Roaded Recreation Opportunities).

The proposed action consists of commercial timber harvest within Management Areas 7A, 6A, and 2B using uneven-aged and even-aged management and yielding approximately 5.5 MMBF of Engelmann spruce, subalpine fir, and aspen sawtimber. Post sale activities would include brush disposal, precommercial thinning and reforestation.

Approximately 333 acres (10% of the analysis area) would be managed for old growth habitat.

Road Management would include development of a transportation plan requiring approximately nine miles of road construction and 12 miles of road reconstruction and reconditioning. Seasonal gated closures would be utilized on sale area roads during post

harvest activities. After completion of these activities, the area would be closed to motorized traffic via an area closure, with the exception of three existing motorized trails which currently cross the area. This would bring the post-sale open road density down to .9 miles per square mile.

Preliminary issues that have been identified through scoping to date include project effects on: Availability of forest products; forest health; Threatened, Endangered, Sensitive, and Proposed species; Wildlife habitat; Biodiversity; Quality of the recreational experience; Old growth habitat; Watershed. Open road density and its effects on wildlife use; Cultural resources; Access and recreation opportunities; and the cost of harvest activities may affect the viability of the sale.

Tentative alternatives to the proposed action include: No action (the project will not take place but current management will continue); maximization of short term benefit by using a combination of even-aged and uneven-aged treatments in the conifer with an open road density reduction to .6 miles per square mile; an alternative to maximize timber production; and alternative to maximize the economics of the sale; and low intensity timber management to emphasize enhancement of wildlife habitat, visual, and recreational values.

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects of a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

The Forest Service is seeking comments from individuals, organizations, and local, state, and Federal agencies who may be interested in or affected by the proposed action.

Scoping notices have been sent to the Dixie National Forest NEPA mailing list. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, 755 West Main, P.O. Box 246, Escalante, Utah, 84726.

The entire analysis area lies within National Forest System lands. No Federal or local permits, licenses or entitlements would be needed. There are no potential conflicts with the plans and policies of other jurisdictions.

The comment period on the Draft EIS will be 45 days from the date of the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at this time. To be most helpful, comments on the DEIS should be as specific as possible and may discuss the adequacy of the statement or the merits of the alternatives discussed (see CEQ Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS, *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final EIS.

The DEIS is expected to be available for review by February 15, 1993. The Record of Decision and Final Environmental Impact Statement are expected to be available by May, 1993.

Dated: December 11, 1992.

Dan Deiss,

Timber Staff Officer, Dixie National Forest.

[FR Doc. 92–30750 Filed 12–17–92; 8:45 am]

BILLING CODE 3410–11–M

Withdrawal of the Record of Decision for the South Fork Fire Recovery/ Salvage Project

SUMMARY: The Forest Service has withdrawn its August 17, 1988, Record of Decision for the South Fork Fire Recovery/Salvage Project in the Shasta-Trinity National Forests; Trinity County, California.

DATES: December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about the withdrawal of the Record of Decision for the South Fork Fire Recovery/Salvage Project should be directed to Jerry B. Brogan, Timber Management Officer, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, CA 96001. Telephone (916) 246–5380.

SUPPLEMENTARY INFORMATION: In 1987, the Shasta-Trinity NF was struck by a series of massive fires. Those fires damaged valuable trees and wildlife habitat, and denuded watersheds of protective vegetation. In response, the Forest Service studied how to respond to the widespread devastation, and prepared an EIS addressing the South Fork Fire Recovery/Salvage Project. That project included the harvest of the damaged trees, and provided for a series of habitat recovery actions. Shortly after the Record of Decision approving the project was signed, a number of parties filed a lawsuit in the United States District Court for the Eastern District of California seeking to enjoin the Forest Service from proceeding with the recovery project. Judge Karlton enjoined the project, and that injunction remains in place today, even though there is no decision on the merits that the Forest Service has violated any law.

A number of factors have caused me to re-evaluate the decision to proceed with the South Fork Fire Recovery/ Salvage Project, and to withdraw the Record of Decision. First, more than five years have passed since the fires, and a significant number of the dead trees that were identified for harvest are no longer of any merchantable value. With the court processes we have seen over the last five years, I consider it unlikely that we would be able to proceed with a timber sale contract prior to the 1994 field season.

Second, since the original decision was made, both the northern spotted owl and the marbled murrelet have been listed as threatened species. While the record demonstrates that we have fully complied with all obligations of the Endangered Species Act with regard to the northern spotted owl, the recent listing of the marbled murrelet would require additional analysis of the project to assure compliance with that Act.

Third, Regional Forester Ronald E. Stewart approved the Record of Decision for the South Fork Trinity River Wild and Scenic River Management Plan. While the recovery project is consistent with that plan, I believe it is appropriate to proceed to implement that plan without this litigation

Fourth, a recovery project that we would design today would vary in some respects from the recovery project that was designed in 1988. Even if we were to proceed with this particular project, we would need to make changes to the contract that was offered in 1988.

Finally, we are undergoing a significant downsizing of our staff on the Shasta-Trinity National Forests. With this reduction, I believe our limited resources are more effectively allocated to planning future activities to benefit the Forest and the community

than to continue to divert them to this litigation.

Therefore, I am withdrawing the Record of Decision for the South Fork Fire Recovery/Salvage Project, effective immediately.

Dated: December 8, 1992.

William V. Carpenter,

Acting Forest Supervisor, Shasta-Trinity National Forests.

[FR Doc. 92-30695 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-11-M

Grand Targhee Resort Master Development Plan, Targhee National Forest, Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the comment period on the Draft EIS for the Grand Targhee Master Development Plan (57 FR 56557, November 30, 1992) for a period of 43 days. This is the second extension of the comment period that has been approved for this DEIS. The original comment period ended November 20, 1992. The comment period will end February 1, 1993. The extension is granted based upon requests, from the Grand Targhee Resort and Jackson Hole Alliance For Responsible Planning, for additional time to thoroughly assess all the information contained in the document. The current deadline of December 20, 1992 falling in the middle of the holiday season and understanding the concerns of the primary parties affected by the EIS were also given as reasons for extending the deadline.

FOR FURTHER INFORMATION CONTACT: Lynn Ballard, Interdisciplinary Team Leader (208) 624-3151, Targhee National Forest, P.O. Box 208, St. Anthony, ID 83445.

Dated: December 10, 1992.

James L. Caswell,

Forest Supervisor.

[FR Doc. 92-30625 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

The Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee (CSTAC) will be held January 13 & 14, 1993, in the Herbert C. Hoover Building, room 1617M-2, 14st Street & Pennsylvania Avenue, NW., Washington, DC. The CSTAC advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems, peripherals and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482-2583.

Dated: December 10, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 92-30711 Filed 12-17-92; 8:45 am]

BILLING CODE 3510-DT-M

Economics and Statistics Administration

[Docket No. 920946-2246]

Plan to Produce a National Economic, Social, and Environmental Data Bank (NESE.DB) on an Experimental Basis

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: This notice and request for comments seeks public comment(s) on the contents of a proposed National Economic, Social, and Environmental Data Bank, described herein. The Department of Commerce plans to produce a National Economic, Social, and Environmental Data Bank (NESE.DB) on an experimental basis in CD-ROM format using the Browse software and standard data formats of the National Trade Data Bank (NTDB). The NESE.DB will be a quarterly product containing core domestic data from all Federal agencies that wish to contribute. A prototype CD-ROM has been produced containing contributions from 15 agencies. The Department will prepare six quarterly issues of the NESE.DB on a test basis, starting with the fall issue of October 1992. Single issues will be sold for $95.00 and annul subscriptions (4 issues) for $360.00. If subscriptions and single disc sales are sufficient to make the project self-financing, the NESE.DB will become a permanent information product.

DATES: Comments regarding the contents of the proposed National Economic, Social, and Environmental Data Bank must be submitted on or before January 19, 1993.

ADDRESSES: Written comments should be addressed to: John E. Cremeans, Director, Office of Business Analysis, Economics and Statistics Administration, room H4878, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Contact John E. Cremeans, 202/482-1405.

SUPPLEMENTARY INFORMATION: The Department's National Trade Data Bank has been extraordinarily successful and has made export promotion data, trade date, and international economic data available to the public throughout the country in an accessible and inexpensive form. The software, procedures, and product development work done for the NTDB can be used with no additional cost in the creation of a domestic data bank with similar advantages. A prototype disc was produced in April 1992, and extensive testing has shown that the project is practicable and that operating costs can be expected to be both modest and self-financing through sales of the discs. The startup costs are being financed through the Department's "Pioneer Fund" procedure. Single discs and subscriptions to the NESE.DB may be ordered by calling 202/482-1986.

The prototype NESE.DB contains:

Council of Economic Advisers:
- Economic Report of the President, 1992

Office of Management and Budget:
- Budget of the United States—Historical Tables

U.S. Department of Commerce

Economics and Statistics Administration

Office of Business Analysis:
- Capital Stocks Data Base
- National Energy Accounts

Bureau of the Census:
- Summary demographic data from the 1990 Decennial Census

Census of Manufactures, 1987—selected tables
Statistical Abstract—selected construction industry tables
Bureau of Economic Analysis:
Business Cycle Indicators
Annual input-output tables
Business Statistics
Fixed Tangible Wealth of the U.S.
Gross State Product Originating
National Income and Product Accounts—Quarterly and Annual Data
Regional Projections to 2040

International Trade Administration

1992 U.S. Industrial Outlook

National Oceanic and Atmospheric Administration

National Environmental Satellite Data Service:
Average Weather Conditions at Meteorological Stations in the U.S.

U.S. Department of Education

National Center for Education Statistics

Digest of Educational Statistics, 1991

U.S. Department of Energy

Energy Information Administration

Annual Energy Review, 1991

U.S. Department of Health and Human Services

National Center for Health Statistics

Health Statistics, 1991

U.S. Department of Justice

Bureau of Justice Statistics

Criminal Victimization in the U.S., 1990
Capital Punishment, 1990
Crime and the Nation's Households
Drugs and Jail Inmates, 1989
Felony Sentences in State Courts, 1988
Female Victims of Violent Crimes
Jail Inmates, 1990
Prisoners in 1990
Profile of Jail Inmates
Probation and Parole, 1990
School Crime
Women in Prison

U.S. Department of Transportation

Airline On-time Arrival and Departure Data

Congressional Budget Office

The Economic and Budget Outlook: Fiscal Years 1993–1997

Environmental Protection Agency

Toxics in the Community

Federal Reserve System

Federal Reserve Bank of Boston

New England Economic Indicators

Authority: 15 U.S.C. Section 1501 *et seq.*

Susanne H. Howard,

Deputy Under Secretary, Economics and Statistics Administration.

[FR Doc. 92–30712 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–EA–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trade Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trade Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–00013." A summary of the application follows.

Summary of the Application

Applicant: General Aviation Manufacturers Association, Inc. ("GAMA"), 1400 K Street, N.W., suite 801, Washington, DC 20005, Contact: Edward W. Stimpson, Telephone: (202) 393–1500.

Application No.: 92–00013.

Date Deemed Submitted: December 8, 1992.

Members (in addition to applicant): Advanced Industries, Inc., Wichita, KS; Aircraft Technical Publishers, Brisbane, CA; Aire-Sciences, Inc., Fairfield, NJ; Airtechnics, Inc., Wichita, KS; Allied-Signal General Aviation Avionics, Olathe, KS (Controlling Entity: Allied-Signal Aerospace, Torrance, CA); Garrett General Aviation Services, Phoenix, AZ (Controlling Entity: Allied-Signal Aerospace, Torrance, CA); Allison Gas Turbine Division, Indianapolis, IN (Controlling Entity: General Motors, Detroit, MI); American General Aircraft Corp, Greenville, MS; Ametek, Inc. US Gauge Div., Sellersville, PA (Controlling Entity: Ametek, Inc., Wilmington, MA); Aviation Simulation Technology, Inc., Bedford, MA; B & D Instruments and Avionics, Inc, Valley Center, KS (Controlling Entity: Bowthorpe Holdings, PLC, Sussex, England); Beech Aircraft Corporation, Wichita, KS (Controlling Entity: Raytheon Corporation, Lexington, MA); BFGoodrich Aerospace, Akron, OH (Controlling Entity: BFGoodrich Company, Jacksonville, FL); Century Flight Systems, Inc., Mineral Wells, TX; Cessna Aircraft Company, Wichita, KS (Controlling Entity: Textron, Inc., Providence, RI); Collins Commerical Avionics, Cedar Rapids, IA (Controlling Entity: Rockwell International Corp., Seal Beach, CA); Hydro-Aire Division, Burbank, CA (Controlling Entity: Crane Company, New York, NY); The Dee Howard Company, San Antonio, TX (Controlling Entity: Alenia S.P.A., Naples, Italy); Dukes, Inc., Northridge, CA; Elano Corporation, Dayton, OH (Controlling Entity: GE Aircraft Engines, Cincinnati, OH); ERDA, Inc., Peshtigo, WI; Fairchild Aircraft Incorporated, San Antonio, TX; FlightSafety International, Inc., New York, NY; Global-Wulfsberg Systems, Irvine, CA (Controlling Entity: Sundstrand Corporation, Rockford, IL); Gulfstream Aerospace Corp, Savannah, GA; Hartzell Propeller, Inc., Piqua, OH; Honeywell, Inc., Phoenix, AZ (Controlling Entity: Honeywell, Inc., Minneapolis, MN); Jeppesen Sandersen, Inc., Englewood, CO; Learjet, Incorporated, Wichita, KS (Controlling Entity: Bombardier, Inc., West, Montreal PQ, Canada); Lucas Aerospace Power Equip. Company, Aurora, OH (Controlling Entity: Lucas Aerospace LTD., W. Midlands, England); Marathon Power Technologies, Waco, TX, Mooney Aircraft Corp., Kerrville, TX; Parker Bertea Aerospace Group, Irvine, CA (Controlling Entity: Parker Hannifin Corp., Cleveland, OH); Piper Aircraft Corp., Vero Beach, FL; Precision

Airmotive Corporation, Everett, WA; Sabreliner Corporation, Chesterfield, MO; SimuFlite Training International, Dallas/Fort Worth, TX; Teledyne Continental Motors, Mobile, AL (Controlling Entity: Teledyne, Inc., Los Angeles, CA); Textron Lycoming Turbine Engine Div., Stratford, CT (Controlling Entity: Textron, Inc., Providence, RI); Textron Lycoming Recipicating Engine Div., Williamsport, PA (Controlling Entity: Textron, Inc., Providence, RI); Unison Industries, Inc., Jacksonville, FL; United Technologies Corporation, Longueuil, Quebec, Canada (Controlling Entity: United Technologies Corp., Hartford, CT); Universal Navigation Corporation, Tuscon, AZ; Whittaker Controls, Inc., North Hollywood, CA; Williams International, Walled Lake, MI; and Woodward Governor Company, Rockford, IL.

GAMA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Export Trade Facilitation Services

Export trade promotion and facilitation activities for its Members, including: Consulting, coordination, and negotiation of the terms and conditions of participation in trade promotion activities such as air shows, trade shows, expositions, exhibitions, conferences, or similar events.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

GAMA and one or more of its Members may:

1. Agree on which foreign air shows, trade shows, expositions, exhibitions and conferences to attend, duration of attendance, level of participation and size or content or displays;
2. Refuse to attend specific foreign air shows, trade shows, expositions, exhibitions or conferences;
3. Jointly negotiate with sponsors or hosts of foreign air shows, trade shows, expositions, exhibitions, and conferences on frequency, duration, costs, and all other terms and conditions of participation in such events;
4. Jointly negotiate with providers of transportation services, intermodal shipments, insurance, or documentation for airframes, engines, and other equipment used at foreign air shows, trade shows, expositions, or conferences;
5. Jointly negotiate with providers of ancillary services, such as hotels, local transportation companies, and caterers, in connection with participation in foreign air shows, trade shows, expositions, exhibitions, and conferences.
6. Exchange and discuss information relevant to the conduct identified in 1–5.
7. Refuse to provide export trade promotion and facilitation services to companies who are not members of GAMA.

Dated: December 14, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–30710 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–DR–M

Minority Business Development Agency

Business Development Center Applications: U.S. Virgin Islands

AGENCY: Minority Business Development Agency, Commerce (Service Area).

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $169,125 in Federal funds, and a minimum of $29,846 in non-Federal (cost sharing) contribution, from May 1, 1993 to April 30, 1994. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the U.S. Virgin Islands SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date

quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Work-place Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for application is *January 20, 1993.* Applications must be postmarked on or before *January 20, 1993.*

The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278, Area Code/Telephone Number: (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Inter-governmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 2, 1992.

William R. Fuller,

Deputy Regional Director.

[FR Doc. 92–30744 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P368C).

On August 7, 1992, Notice was published in the **Federal Register** (57 FR 34911) that an application had been filed by Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, for a scientific research permit to capture 200 California sea lions (*Zalophus californianus*) and to inadvertently harass up to 300 during capture activities and during efforts to collect fecal samples and regurgitated material.

Notice is hereby given that on December 11, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit and supporting documentation are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Dated: December 11, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30703 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, DOC.

ACTION: Notice of correction regarding Application for Scientific Research Permit (P171C).

SUMMARY: This notice revises the second paragraph of a notice previously published in the **Federal Register** on November 20, 1992 (57 FR 54771) as follows:

On page 54771, column 1, the following should be added to the end of the second paragraph: "Individuals of the following species may be approached on an opportunistic basis for observation/photo-identification up to three times each annually over the five-year period: 500 bottlenose dolphins (*Tursiops truncatus*); 500 spotted dolphins (*Stenella attenuata*); 1000 spinner dolphins (*Stenella longirostris*); 200 false killer whales (*Pseudorca crassidens*); and 100 pilot whales (*Globicephala macrorhynchus*)."

Written data or views, or requests for a public hearing on this portion of the application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular application

would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289);
Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016);
Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221); and
Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

This notice does not affect the comment period for the portion of the application concerning humpback whale research, notification of which was previously published in the **Federal Register** on November 20, 1992 (57 FR 54771).

Dated: December 14, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30704 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–22–M[illegible] resolution is required from each participating Tribe.

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of experimental fishing permits.

SUMMARY: This notice announces the issuance of experimental fishing permits (EFPs) to shore-based catcher boats to implement a pilot observation program to monitor the bycatch of salmon caught incidental to Pacific whiting trawl operations. The permits authorized the retention of salmonids incidentally caught with mid-water trawl gear, for limited experimental purposes. The permits allowed fishing practices that were otherwise prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations.

EFFECTIVE DATES: The EFPs issued were effective from 0001 hours (local time) April 28, 1992, through 0001 hours (local time) October 31, 1992.

ADDRESSES: Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: The FMP and implementing regulations at 50 CFR part 663 specify that an EFP may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10. An EFP application was received from the States of Washington, Oregon, and California on March 23, 1992, requesting to delay, until offloading, the sorting of salmon caught incidental to the Pacific whiting trawl fishery in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. Retention of trawl-caught salmon is prohibited by 50 CFR 663.7(b). The purpose of the EFP was to allow the states to monitor the bycatch of salmon caught incidental to Pacific whiting trawl operations on vessels that delivered shoreside. A notice acknowledging the receipt of the application, describing the proposal and requesting public comment, was published in the **Federal Register** (57 FR 11466, April 3, 1992). No written comments were received.

The application was reviewed by the Pacific Fishery Management Council (Council) at its April 7–10, 1992, public meeting. At the Council's recommendation, the Director, Northwest Region, NMFS, approved the application and granted the permits.

Between April and October 1992, 18 EFPs were issued to individual vessels designated by Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fisheries (WDF) as participants in the pilot observation program. At various times, 18 catcher boats operated in this experimental fishery. Their catch was landed at participating shore-based processing plants in Newport and Astoria, Oregon, and Ilwaco, Washington. Catcher boats landing whiting in California did not express an interest in the experimental fishery, so no EFPs were issued to them.

A number of conditions were imposed on the use of the EFPs. Each permitted vessel was required to carry an observer. The permits were valid only for landings at processing plants designated by the States of Washington and Oregon as participants in the observation program. Designated processing plants agreed to set aside salmonids for biological sampling and disposition by state agency personnel and allow state personnel to sample whiting landings. The permits were valid only for mid-water trawl fishing that targeted whiting. All salmon caught incidentally while fishing for whiting were required to be retained onboard the fishing vessel and offloaded at a designated shoreside processing plant so that the state could examine each fish. Salmon retained under the permit could not be sold. The permit holder agreed to the public release of any and all information obtained as a result of activities conducted under the permit. The results of the experimental fishery were prepared by ODFW and presented at the November 16–20, 1992, Council meeting. A copy of the permits may be obtained from the NMFS Regional Director (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 14, 1992.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30800 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

December 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended and extended, between the

Governments of the United States and the People's Republic of Bangladesh, establishes limits for the period beginning on February 1, 1993 and extending through January 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period February 1, 1993 through January 31, 1994. The limit for Categories 340/640 has been reduced to account for carryforward and special carryforward used. The reduction for special carryforward used is at the rate of 1.2 dozen for every dozen used, as agreed in letters exchanged on October 14 and October 15, 1992, between the Governments of the United States and the People's Republic of Bangladesh.

A copy of the bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended and extended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on February 1, 1993 and extending through January 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	325,815 dozen.
331	825,439 dozen pairs.
334	99,399 dozen.
335	178,471 dozen.
336/636	304,170 dozen.
338/339	925,204 dozen.
340/640	1,682,731 dozen.
341	1,732,602 dozen.
342/642	299,767 dozen.
347/348	1,559,340 dozen.
351/651	476,092 dozen.
363	17,745,950 numbers.
369–S[1]	1,189,523 kilograms.
634	347,750 dozen.
635	225,301 dozen.
638/639	1,173,328 dozen.
641	725,489 dozen.
645/646	275,543 dozen.
647/648	980,718 dozen.
847	495,929 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period February 1, 1993 through January 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30647 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 19, 1993.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following commodities to the Procurement List for production by the nonprofit agency listed:

Arming Wire Assembly
1325–00–947–6698
1325–01–155–9965
1325–01–264–5465
Nonprofit Agency: JobWorks, Inc., St. Petersburg, Florida.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30789 Filed 12–17–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by a nonprofit agency employed persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 19, 1993.

ADDRESS: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 16, 23 and 30, 1992, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (57 FR 47454, 48359 and 49176) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the services, fair market price, and the impact of the additions on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, Federal Service Center, 5600 Rickenbacker Road, Bell, California.
Janitorial/Custodial, Naval Facilities Engineering Command, Western Division, Naval and Marine Corps Reserve Center, San Bruno, California.
Mailroom Operation, U.S. Army Corps of Engineers, Los Angeles District, Los Angeles, California.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30791 Filed 12–17–92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 19, 1993.

ADDRESSES: Committee for Purchase From People Who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List for production by the nonprofit agency listed:

Commodity

Deployment Bag, Parachute
1670–01–235–0923
Nonprofit Agency: Huntsville Rehabilitation Foundation, Huntsville, Alabama.

Services

Janitorial/Custodial
Anderson National Historic Site, Rt. 1, Box 85, Andersonville, Georgia.
Nonprofit Agency: Macon County Mental Retardation Service Center, Montezuma, Georgia.

Janitorial/Custodial
Federal Building and U.S. Courthouse, 316 North 26th Street, Billings, Montana.
Nonprofit Agency: Community Options Resource Enterprises, Inc., Billings, Montana.

Janitorial/Custodial
Federal Building and U.S. Courthouse, 301 South Park Avenue, Helena, Montana.
Nonprofit Agency: Helena Industries, Inc., Helena, Montana.

Janitorial/Custodial
U.S. Army Reserve Center, 1001 and 1005 Lakecrest Road, Grand Prairie, Texas.
Nonprofit Agency: Fairweather Associates, Inc., Dallas, Texas.

Janitorial/Custodial
U.S. Army Reserve Center, 200 North New Road, Waco, Texas.
Nonprofit Agency: Heart of Texas Goodwill Industries, Inc., Waco, Texas.

Parts Machining
Naval Aviation Depot, Jacksonville, Florida.
Nonprofit Agency: West Tennessee Lions Blind Industries, Memphis, Tennessee.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30790 Filed 12–17–92; 8:45 am]

BILLING CODE 6820-33-M

COMPETITIVENESS POLICY COUNCIL

Notice of forthcoming meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the

Competitiveness Policy Council announces several forthcoming meetings.

DATES: January 7 and 8, 1993; 8:30 to 5:30 p.m.

ADDRESS: Eighth Floor Conference Center, 11 Dupont Circle, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, suite 650, 11 Dupont Circle, NW., Washington, DC 20036, (202) 387–9017.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the U.S. economy. The Council's chairman, Dr. C. Fred Bergsten, will chair each meeting.

Each meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA: The Chairman will open each meeting with a report on developments related to the activities of the Council. The work of each of the eight subcouncils will be discussed. The subcouncils include: Capital formation, corporate governance, critical technologies, education, manufacturing, public infrastructure, trade policy, and training. The Council will also consider additional business as suggested by its members.

Dated: December 14, 1992.

Dr. C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 92–30748 Filed 12–17–92; 8:45 am]

BILLING CODE 6820–11–M

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary of the Army; Environmental Assessment for Realignment Actions at Fort Jackson, SC

AGENCY: United States Army, Department of Defense.

ACTION: Finding of no significant impact.

SUMMARY: The Department of the Army has prepared an Environmental Assessment (EA) that evaluates the impact of the realignment of the Soldier Support Center (SSC) from Fort Benjamin Harrison, Indiana, to Fort Jackson, South Carolina, in accordance with the Base Closure and Realignment Act of 1990 (Pub. L. 101–510).

The realignment will involve approximately 500 permanent party soldiers, 400 civilian employees, and an average daily student load of 1650. The realignment of the SSC requires construction and/or renovation of over 331,000 square feet of instructional and administrative space, unaccompanied enlisted soldier barracks, additional medical facilities and a child development center.

Alternatives considered in the EA include the No Action Alternative, leasing facilities in the city of Columbia, South Carolina, using existing facilities without renovation, using facilities with renovation, and new construction.

The preferred alternative to meet the requirements of this realignment is as follows:

- Time-phase the movement of personnel over a nine month period.
- Construct Soldier Support War Fighting Center (SSWFC) in the cleared area lying northwest of Lee Road and southwest of Hampton Parkway.
- Construct the Non-Commissioned Officers (NCO) Academy and the Advanced Individual Training (AIT) component of the Adjutant General and Finance School separate from SSWFC.
- Construct the NCO Academy at the site that lies northeast of Bragg and southeast of Jackson streets. Furthermore, the NCO Academy will make full use of buildings 2280 and 3200 without renovation.
- Locate the Field Training Area for the NCO Academy (NCOFTA) at the site that lies south of Sergeant Jasper Road and 320 feet east of Ivy Road. No permanent improvements are needed for this facility.
- Renovate the former cook and baker School (Building 2375) and buildings 2270 and 2210 for use as instructional classroom facilities by the AIT school.
- Collocate the Adjutant General Battle Simulator (AGBS) with the SSWFC.
- Convert buildings 3215, 3235, 3265, 3275, and 3276 to standard-design unaccompanied enlisted personnel housing to provide residence accommodations for new personnel.
- Construct a new 60-child Child Development Center (CDC) at the currently unimproved site that lies along Scales Avenue across from the existing CDC.
- Construct the addition to the Moncrief Memorial Hospital at the site adjacent to the southwest corner of the existing facility.

The proposed alternatives were evaluated for expected impacts to air quality, water resources, geology, landfills, traffic, energy, hazardous and medical wastes, plant and animal ecology, threatened and endangered species, wetlands, cultural resources, socioeconomic environment, and quality of life. The EA did not identify any significant adverse impacts to any of these environmental factors.

The EA identifies the following mitigation actions that will be implemented to provide sound stewardship of Fort Jackson's environment: Increase existing on-base law enforcement staff; continue to develop Fort Jackson's Integrated Natural Resource Management Plan; review and update all hazardous waste disposal contracts; and exercise appropriate erosion and air emissions control measures. The proposed action is environmentally sound and sufficient data are available to determine the proposed realignment will not have a significant environmental effect. Therefore, an Environmental Impact Statement (EIS) will not be prepared.

DATES: Comments must be received on or before January 19, 1993.

ADDRESSES: The EA is available for public review at the office of the Directorate of Engineering and Housing and the Fort Jackson Library, Fort Jackson, South Carolina, and the Richland County Library at Sumter Street, Columbia, South Carolina. A copy of the EA can be obtained by contacting Mr. J. B. Knight of the Environmental and Natural Resources Division at Fort Jackson at (803) 751–5011.

FOR FURTHER INFORMATION: Send all comments to: Dr. Bradley Foster, U.S. Army Corps of Engineers, Savannah District, 100 W. Oglethorpe Ave., Savannah, Georgia 31401, or call 912–652–5833.

Dated: December 14, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, Environment, Safety, & Occupational Health, OASA (IL&E).

[FR Doc. 92–30688 Filed 12–17–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment to teleconference meeting notice for December 18, 1992.

SUMMARY: Notice is hereby given of an amendment to the notice of a teleconference meeting of the Executive Committee of the National Assessment Governing Board published in the **Federal Register** on Thursday, December 3, 1992 in Vol. 57, No. 233, page 57161. Due to the expedited action required as the result of the early resignation of the incumbent Board member in the category of Governor or former Governor (Republican), the Executive Committee will meet in partially closed session to review the Nominations Committee recommendations of nominees to fill this vacancy. The Executive Committee will formulate recommendations for the full Board to take a final action on the nominees. The meeting will be closed to the public from 11 a.m. to 11:30 a.m. to permit the Committee to discuss the qualifications of nominees for appointment to the National Assessment Governing Board. The review and subsequent discussion of the nominees' qualifications relates solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

A summary of the activities at the closed portion of the meeting and related matters, which are informative to the public consistent with the policy of 5 U.S.C., 552b, will be available to the public within fourteen days after the meeting.

Dated: December 15, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–30745 Filed 12–17–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for a Proposed Pipeline and Outfall Structure, Weldon Spring Site Remedial Action Project, MO

AGENCY: Department of Energy.

ACTION: Floodplain Statement of Findings for Proposed Pipeline and Outfall Structure.

SUMMARY: Regulations at 10 CFR part 1022 require the Department of Energy (DOE) to evaluate actions it may take in a floodplain/wetlands in order to ensure consideration of protection of the floodplain/wetlands in decision making. In accordance with these regulations, DOE published in the **Federal Register** on September 15, 1992 (57 FR 42564), a notice of floodplain/wetlands involvement for the proposed construction of buried pipeline through wetland areas and a submerged outfall structure in the Missouri River floodplain. The public comment period for this notice ended September 30, 1992, and no comments were received. A Floodplain/Wetlands Assessment for this action was prepared in which DOE described the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. This Statement of Findings addresses the action in the floodplain only, as required by 10 CFR 1022.15(b). DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Stephen McCracken, Project Manager, Weldon Spring Site Remedial Action Project (WSSRAP), U.S. Department of Energy, 7295 Highway 94 South, St. Charles, Missouri 63303, (314) 441–8978. For further information on general DOE Floodplain/Wetlands Environmental Review Requirements, contact Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy,1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756. DOE can provide information and maps showing the route of the proposed pipeline and 1984 FEMA Floodplain and Floodway maps showing the floodplain.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for a proposed pipeline and outfall structure in the Missouri River near WSSRAP prepared in accordance with 10 CFR part 1022. A Notice of Floodplain/Wetlands Involvement was published in the **Federal Register** on September 15, 1992 (57 FR 42564) and a Floodplain/Wetlands Assessment was prepared. DOE is conducting response actions at the chemical plant area of the Weldon Spring Site under its Environmental Restoration and Waste Management Program. The site is located in St. Charles County, Missouri, approximately 30 miles west of St. Louis. The site became contaminated as a result of processing and disposal activities that took place from the 1940s to the 1960s. The chemical plant area of the site has been inactive since 1967 and was placed on the National Priorities List of the U.S. Environmental Protection Agency in 1989.

Cleanup of the Weldon Spring Site consists of several actions, one of which involves the treatment and discharge of approximately 57 million gallons of radioactive and chemically contaminated water currently impounded at the site. After the water is treated in a newly-constructed on-site treatment plant, it would be discharged to a buried pipeline constructed from the site to the Missouri River. Site water will be treated in the general range of drinking water quality as identified in the National Pollutant Discharge Elimination System permit for this action.

A small section of the pipeline and its outfall structure would be located in the 100-year floodplain of the Missouri River. The floodplain in this location is that area with an elevation less than 474 feet above mean sea level, as identified by the St. Charles County Planning and Zoning Department (1984 FEMA Floodplain and Floodway Maps) in accordance with the authority delegated by the Federal Emergency Management Agency (FEMA) District 7 to manage floodplains in St. Charles County.

Other discharge options were evaluated in an engineering evaluation/cost analysis (EE/CA) report which was prepared in July 1990 for the water treatment action (DOE/OR/21548–106). Further options were evaluated in a value engineering study that was conducted subsequent to a drainage flow study as part of detailed design activities for the water treatment action. Five alternate pipeline routes and two alternatives for outfall structures were evaluated in this detailed engineering study, each of which would have resulted in greater environmental impacts. Some of the alternatives were routed through environmentally sensitive resources, such as the preferred habitat area for the Cooper's Hawk and archaeological sites. The proposed route and the location of the outfall structure in the floodplain were selected because they are restricted to areas that have previously been disturbed for roads and railroads, so that the short-term incremental disturbance would be minimal.

The alternative identified in the EE/CA for the water treatment action was to discharge the treated water to a natural drainage channel, referred to as the Southeast Drainage channel. This alternative would result in minimal disturbance, but it might result in the resuspension and/or dissolution of contaminants from sediment present in the drainage as a result of past discharges and ongoing surface runoff from the site. To address this possibility, the pipeline has been

proposed as an alternate discharge option. This pipeline would follow a route of previous disturbance within the floodplain to minimize potential environmental impacts.

The treatment of contaminated water from the chemical plant area and discharge of the treated water would limit potential exposures at, and migration from, the contaminated on-site impoundments and would promote short-term and long-term protection of human health and the environment relative to the contaminated surface water.

This construction would conform to applicable State and local floodplain protection standards. This action would not require a floodplain development permit from the St. Charles County Planning and Zoning Department because the action does not involve construction of, and furnishing electricity to, an above-ground building.

Good engineering practices, such as straw bales and/or other sediment control devices, would be used during construction. Seeding would be used to maintain the pipeline and outfall structure after construction. The level of activity in the floodplain for this action would be extremely minimal. Therefore, any impacts to the floodplain would be negligible.

DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-30775 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-01-M

Bartlesville Project Office, Fluvial-Dominated Deltaic Reservoirs in the Southern Midcontinent

AGENCY: Bartlesville Project Office, Department of Energy.

ACTION: Notice of determination of Noncompetitive financial assistance.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B) and (D), it intends to make a Noncompetitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to the Oklahoma Geological Survey to organize and conduct a workshop which will include both formal and informal presentations on "Fluvial-Dominated Deltaic Reservoirs in the Southern Midcontinent."

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Donna J. Lebetz, P.O. Box 10940, MS921-118, Pittsburgh, PA 15236-0940. Telephone: (412) 892-6206.

SUPPLEMENTARY INFORMATION: .

Grant No.

DE-FG22-93PC14876

Term of Assistance/Estimated Cost

The term of the grant is for a twelve-month period at an estimated value of $22,500. DOE's funding share will be $9,500.

Scope

Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (B) and (D), the objective of this Grant (DE-FG22-93BC14876) is to permit the DOE/BPO and the Oklahoma Geological Survey to participate in funding a workshop to enhance science and technology transfer through discussions and reports dealing with the geologic setting, depositional environments, and digenetic history of fluvial-dominated deltaic reservoirs, as well as reservoir characterization and the engineering factors that influence hydrocarbon accumulation or hydrocarbon production. The Workshop will focus on deltaic reservoirs in fluvial-dominated environments of the southern Midcontinent, including Oklahoma and contiguous parts of Kansas, Missouri, Arkansas, Texas, New Mexico, and Colorado. The presentations will address a means of technology transfer in order to provide a new source of information for oil and gas producers and does meet the *National Energy Strategy* goal of arresting the U.S. vulnerability to oil supply disruptions by increasing the domestic crude oil resource base.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 92-30767 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Intent to Revise Transmission Rates to Become Effective October 1, 1993; Request for Comments

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent and request for comments. BPA File No.: TR-93. BPA requests that all comments and documents to become part of the official record compiled in the process of adjusting transmission rates contain the file number designation TR-93.

SUMMARY: BPA is developing transmission rates proposed to become effective October 1, 1993. At this time, BPA announces its intent to revise its rates and seeks comments that BPA can use to develop its proposal. BPA expects to publish a notice of the proposed rates in the **Federal Register** in January 1993.

The January notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings, and informal field hearings, will give interested persons an opportunity to present oral and written comments on the rate proposal.

DATES: Comments concerning the development of proposed transmission rates will be accepted through 4 p.m., January 15, 1993. Pursuant to the ex parte limitations contained in BPA's general rate proceeding procedures, BPA will not accept oral recommendations on substantive issues except in meetings for which notice has been given. 51 FR 7611 (March 5, 1986).

Responsible Official: Mr. Sydney Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's rates.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Shirley Price, Public Involvement Office, at the address listed above, 503-230-4366, or toll free 1-800-622-4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 Northeast Irving Street, Portland, Oregon 97232, 503-230-4552.

Mr. Robert N. Laffel, Eugene District Manager, Room 206, Federal Building, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-465-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, U.S. Courthouse, 920 West Riverside Avenue, Spokane, Washington 99201, 509-353-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Ms. Carol Fleischman, Spokane District Manager, Room 112, U.S. Courthouse, 920 West Riverside, Spokane, Washington 99201, 509-353-3279.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98807–0741, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706

Mr. James Normandeau, Boise District Manager, Room 540, 304 North 8th Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION: The Federal Columbia River Transmission System (FCRTS) is owned and operated by BPA, a Federal power marketing agency within the Department of Energy. The FCRTS encompasses approximately 80 percent of the capacity of the high-voltage electric transmission system within the Pacific Northwest. Electric power from Federal and non-Federal generating units is integrated and transmitted utilizing the FCRTS. Interregional transmission services to customers outside the Pacific Northwest are also provided by BPA.

Current rates apply to four types of transmission service: (1) Firm integration of utilities' remote resources; (2) firm interregional transactions; (3) nonfirm transactions between systems both within the outside the Pacific Northwest region; and (4) firm transmission over specified facilities. Firm transmission is sold generally pursuant to contracts for periods up to 20 years. Firm transmission on BPA's network (main grid) is available on a mileage basis as well as a postage stamp rate structure.

BPA develops a Revenue Requirement Study that projects BPA's total costs of providing services to BPA's customers, including repayment of the Federal investment in the Federal Columbia River Power system. The revenue requirement calculation will be a major factor in determining the overall level of BPA's proposed power and transmission rates.

BPA has just completed a public process for culminating in decisions on budget program levels for FY's 1994 and 1995. Accordingly, program level decisions will not be an issue in the rate case. Another focus of this public process was the development of BPA's financial goals. Consistent with BPA's pledge at the end of the 1991 rate case, implementation of the 10-Year Financial Plan will be addressed in this rate case. The Revenue Requirement Study will incorporate BPA's program levels and implement BPA's financial goals.

In developing the 1993 transmission rate proposal, BPA plans to revise the level and charges of some of the existing transmission rate schedules and possibly revise the General Transmission Rate Schedule Provisions. However, BPA anticipates that the general application and availability of these rate schedules will remain unchanged. BPA also plans to propose a new rate schedule to recover annual costs associated with possible non-Federal ownership rights on the Pacific Northwest AC Intertie.

In order to be considered in the development of BPA's initial proposal, comments must be in writing and be submitted no later than 4 p.m., January 15, 1993. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about January 20, 1993), formal public hearings will be, and general public field hearings may be, conducted by BPA. Written comments from individuals or entities other than parties to BPA's formal rate case will also be accepted through March 15, 1993. After completion of an environmental process pursuant to the National Environmental Policy Act and following the hearings, BPA will announce its final proposed transmission rates and submit them by August 2, 1993, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 4, 1992.

Steven G. Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 92–30766 Filed 12–17–92; 8:45 am]

BILLING CODE 6450–01–M

Intent To Revise Wholesale Power Rates To Become Effective October 1, 1993; Request for Comments

AGENCY: Bonneville Power Administration, (BPA), DOE.

ACTION: Notice of Intent and Request for Comments. BPA File No.: WP–93. BPA requests that all comments and documents to become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP–93.

SUMMARY: BPA is developing adjusted wholesale power rates proposed to become effective October 1, 1993. At this time, BPA announces its intent to revise its rates and seeks comments that BPA can use to develop its proposals. BPA expects to publish a notice of the proposed rates in the **Federal Register** in January 1993.

The January notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings, and informal field hearings, will give interested persons an opportunity to present oral and written comments on the proposal.

DATES: Comments concerning the development of proposed wholesale power rates will be accepted through 4 p.m., January 15, 1993. Pursuant to the ex parte limitations contained in BPA's general rate proceeding procedures, BPA will not accept oral recommendations on substantive issues except in meetings for which notice has been given. 51 FR 7611 (March 5, 1986).

Responsible Official: Mr. Sydney Berweger, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's rates.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement Office, at the address listed above, 503–230–4366, or call 1–800–622–4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 Northeast Irving Street, Portland, Oregon 97232, 503–230–4552.

Mr. Robert N. Laffel, Eugene District Manager, Room 206, Federal Building, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, U.S. Courthouse, 920 West Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Ms. Carol Fleischman, Spokane District Manager, Room 112, U.S. Courthouse, 920 West Riverside, Spokane, Washington 99201, 509–353–3279.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301

Yakima Street, Wenatchee, Washington 98807–0741, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla, Walla, Washington 99362, 509–522–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. James Normandeau, Boise District Manager, Room 450, 304 North 8th Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is a Federal power marketing agency in the Pacific Northwest. BPA markets hydroelectric power from 30 dams, including projects operated by the U.S. Army Corps of Engineers and U.S. Bureau of Reclamation on the Columbia River and its tributaries, and projects owned by the City of Idaho Falls and the Washington Public Power Supply System (Supply System). BPA also markets thermal power BPA acquires from interests in the region. In addition, BPA owns, operates, and maintains the nation's largest high-voltage transmission system grid.

BPA supplies about 45 percent of the electric energy consumed in the Pacific Northwest and maintains about 80 percent of the region's high-voltage transmission capacity. BPA sells power to 174 customers, including publicly, cooperatively, and privately owned utilities; Federal and State agencies; and direct-service industries (DSIs). The power is sold wholesale to BPA utility customers for resale to consumers and is sold directly to BPA's industrial and Federal agency customers. In addition, BPA sells power that is surplus to the needs of the Pacific Northwest to customers within and outside the region.

The rates that BPA charges its customers must produce revenues that are sufficient to repay, with interest, the Federal investment in generation, conservation, and transmission facilities. Revenues must also pay BPA's operation and maintenance expenses, purchased power costs, and other miscellaneous expenses. BPA also sets rates to recover a certain amount of positive net revenues. These planned net revenues, combined with BPA's existing financial reserves, will provide current rate period risk mitigation protection to help assure BPA's ability to recover its costs, including its annual payments to the U.S. Treasury.

BPA's current wholesale power rates became effective on October 1, 1991.

BPA is preparing studies to determine the extent to which projected revenue requirements for FY's 1994 and 1995 will exceed revenues projected under current rates. BPA will then prepare studies to establish proposed rates for the FY 1994 and 1995 period. BPA will also assess the potential environmental effects of the proposed rates.

II. Major Issues

The development of BPA's rates is complex, raising numerous issues for resolution in the hearings process. The following is a brief explanation of several major issues that are expected to be addressed in the hearing. Some of these issues have been the subject of much discussion in previous BPA rate cases.

A. Revenue Requirement

BPA develops a Revenue Requirement Study that projects BPA's total costs of providing services to BPA's customers, including repayment of the Federal investment in the Federal Columbia River Power System. The revenue requirement calculation will be a major factor in determining the overall level of BPA's power and transmission proposed rates.

BPA has just completed a public process for culminating in decisions on budget program levels for FY's 1994 and 1995. Accordingly, program level decisions will not be an issue in the rate case. Another focus of this public process was the development of BPA's financial goals. Consistent with BPA's pledge at the end of the 1991 rate case, implementation of the 10-Year Financial Plan will be addressed in this rate case. The Revenue Requirement Study will incorporate BPA's program levels and implement BPA's financial goals.

B. Revenue Forecast and Risk Analysis

The Revenue Forecast projects BPA's expected level of sales and revenue for the rate period. The Risk Analysis reviews the risks associated with the major elements of the forecast. The probabilities given to the various risk factors influence the need to adjust rates.

Projected revenues from nonfirm energy sales are credited during ratemaking against costs allocated to rates of firm power classes. Forecasts of nonfirm sales play a key role in determining the level of rate adjustments and have a large impact on BPA's ability to make its projected payments to the Treasury.

C. Loads and Resources Determinations

The energy and capacity loads and resources forecasted by BPA to occur during the forthcoming rate period determine BPA's forecasted power sales. Forecasted sales and revenue requirements determine the level of rates that must be charged to generate sufficient revenue.

D. Allocation of Costs

The rates charged each customer class reflect the classification of costs between capacity and energy and the allocation of costs to that particular customer class. Given the change in BPA's load and resource position from surplus to load/resource balance, BPA is projecting some resource acquisitions, the costs of which must be allocated to customer classes. BPA's initial rate proposal will present BPA's proposed cost classification and allocation methodologies and results. To the extent possible, the methodologies employed will be the same as were used in BPA's initial proposal in the 1991 rate case.

E. 7(b)(2) Rate Test Study

In accordance with section 7(b)(2) of the Northwest Power Act, BPA must conduct a test to determine whether it is necessary to provide rate protection for BPA's public body and cooperative customers and, if so, the amount of the protection. Since the section 7(b)(2) rate test may reallocate costs to other customers, the rate test and the assumptions used to perform the test are expected to be an issue in the rate case.

In order to be considered in the development of BPA's initial proposal, comments must be in writing and be submitted no later than 4 p.m, January 15, 1993. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about January 20, 1993), formal public hearings beginning on or about January 28, 1993, will be, and general public field hearings may be, conducted by BPA. Written comments from individuals or entities other than parties to BPA's formal rate case will also be accepted through March 15, 1993. After completion of an environmental process pursuant to the National Environmental Policy Act and following the hearings, BPA will announce its final proposed wholesale power rates and submit them on August 2, 1993, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 4, 1992.

Steven G. Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 92-30765 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF93-15-000]

Central Florida Power, L.P.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 11, 1992.

On November 3, 1992, Central Florida Power, L.P. (Applicant), c/o Destec Energy, Inc., of 2500 CityWest Blvd., Suite 150, Houston, Texas, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Polk County, Florida, and will consist of a combustion turbine generator, an unfired heat recovery boiler and an extraction/condensing steam turbine generator (STG). Steam recovered from the STG will be used by Fort Meade Chemical Products (FMCP), an unaffiliated fertilizer manufacturing entity, primarily in manufacturing of concentrated phosphoric acid. Applicant states that, should FMCP's plant cease to produce fertilizer, FMCP will continue to purchase steam from the facility to evaporate the runoff water from the gypsum pile, a byproduct of the fertilizer production, in order to avoid any discharge of the acidic runoff water into the surrounding ground water. Applicant states that when the fertilizer plant is in operation the runoff water is used for the production of fertilizer. The net electric power production capacity of the facility will be approximately 206 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in the first quarter of 1993.

On December 10, 1992, Applicant tendered for filing an amendment to its filing in this docket. The amendment provides additional information pertaining to the ownership structure and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30684 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 1267-000, et al.]

Applications; Hydroelectric Applications (Greenwood County & Duke Power Co., et al.)

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* New License.

b. *Project No.:* 1267-000.

c. *Date Filed:* February 3, 1982.

d. *Applicant:* Greenwood County and Duke Power Company.

e. *Name of Project:* Buzzards Roost Project.

f. *Location:* On Saluda River, Greenwood, Laurens, and Newberry Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Albert V. Carr, Jr., Associate General Counsel, Duke Power Company, 422 South Church Street, Charlotte, NC 28242, (704) 382-8129.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* Initial Comments Due January 19, 1993; Reply Comments Due March 2, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The existing project consists of: a reservoir with a surface area of 11,400 acres and an impoundment of approximately 254,000 acre-feet; (1) a 67-foot-high and 2,400-foot-long earthfill dam with a crest elevation of 457.0 feet msl; (3) an 11-foot-high and 200-foot-long fuse plug dike; (4) a spillway structure containing four 250-foot-high and 38-foot-long Taintor gates; (5) a reinforced concrete powerhouse, integral with the spillway structure containing three generating units with a total rated capacity of 15,000 kW; (6) a trailrace; and (7) appurtenant facilities. The project generates an average of 48,557,000 kWh annually. The project is owned by Greenwood County and operated by Duke Power Company under a lease agreement approved by the Commission on June 29, 1966.

m. *Purpose of Project:* The purpose of the project is to generate electric energy to meet Duke Power Company's system load.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Duke Power Company, 422 South Church Street, Charlotte, NC, 28242, (704) 382-8129.

2 a. *Type of Application:* New License.

b. *Project No.:* 2288-004.

c. *Date Filed:* December 26, 1991.

d. *Applicant:* Public Service Company of New Hampshire.

e. *Name of Project:* Gorham.

f. *Location:* On the Androscoggin River near Berlin in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. James J. Kearns, 1000 Elm Street, P.O. Box 330, Manchester, NH 03105.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219-2814.

j. *Comment Date:* Initial Comments Due January 19, 1993; Reply Comments Due March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) a 20-foot-high timber crib dam; (2) an impoundment having a surface area of 32 acres, a gross storage capacity of 120 acre-feet with no usable storage capacity and a normal water surface elevation of

773.53 feet USGS; (3) a 415-foot-long earthen power canal; (4) a powerhouse containing four generating units with a total rated capacity of 2,150 kW; and, (5) appurtenant facilities. The applicant estimates the average annual energy generation of 13,800 MWh.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. The license will expire on December 31, 1993.

m. *Purpose of Project:* The project energy generated is produced for sales to the applicant's electric customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 1000 Elm Street, Manchester, NH 03105 or by calling (603) 634–2799.

3 a. *Type of Application:* New Major License.

b. *Project No.:* 2300–002.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* James River-New Hampshire Electric, Inc.

e. *Name of Project:* Shelburne.

f. *Location:* On the Androscoggin River near Berlin in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. George W. Hill, 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* Initial Comments Due January 19, 1993; Reply Comments Due March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The Shelburne Project's principal features consist of a dam, an integral powerhouse, an impoundment, and appurtenant facilities. For the existing condition, the project has a total nameplate generator capacity of 3.72 MW and an average annual generation of about 18,000 MWh. The applicant is proposing to raise the impoundment level by increasing the flashboards' height by 1.76 feet. Due to this proposals, the average annual generation would increase to 20,000 MWh. In detail, the existing and proposed project is described as follows:

(1) A 551-foot-long concrete gravity dam; (2) an existing impoundment having a surface area of 210 acres, having a negligible useable storage capacity and a normal pool headwater elevation of 733.6 feet msl; (3) a proposed impoundment having a surface area of 250 acres, a negligible useable storage capacity and a normal pool headwater elevation of 735.3 feet msl; (4) a powerhouse containing three generating units with a total rated capacity of 3,720 kW; and, (5) appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric power for use in the applicant's pulp and paper mills.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy if also available for inspection and reproduction at James River-Hampshire Electric, Inc., 50 Main Street, Berlin, NH 03570–2489, or calling (603) 752–4600.

4 a. *Type of Application:* New Major License.

b. *Project No.:* 2306–008.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* Citizens Utilities Company.

e. *Name of Project:* Clyde River.

f. *Location:* On the Clyde River near Newport in Orleans County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas C. Anderson, High Ridge Park, Stamford, CT 06905–0390, (802) 334–6538.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* January 28, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The licensed project consists of three existing hydroelectric generating facilities, West Charleston, Newport Dam, and Newport No. 11, on the Clyde River and two existing storage reservoirs, Seymour Lake and Echo Pond, on a tributary to the Clyde River.

Seymour Lake is a natural lake with a man-made 43-foot-long rock-filled timber crib dam outlet structure. It has a surface area of 1,750 acres, a useable storage capacity of 2,040 acre-feet and a normal water surface elevation of 1,279 feet USGS. Presently, Seymour Lake provides annual storage for the Clyde River Project but the proposed mode of operation is spillway crest controlled instantaneous run-of-river.

Echo Pond is a natural lake having a surface area of 530 acres, a useable storage capacity of 3,180 acre-feet and a normal water surface elevation of 1,249 feet USGS. Presently Echo provides annual storage for the Clyde River Project but the proposed mode of operation is spillway crest controlled instantaneous run-of-river.

West Charleston consists of: (1) a 197-foot-long rock-fill and masonry dam; (2) a reservoir named Lubber Lake having a surface area of 40 acres, a storage capacity of 220 acre-feet, and a normal water surface elevation of 1,059 feet USGS; (3) a 1,622-foot-long, 6-foot-diameter steel penstock; and, (4) a powerhouse containing one generating united with a rated capacity of 800 kW.

Newport Dam consists of: (1) a 714-foot-long concrete and masonry dam; (2) a reservoir named Clyde Pond having a surface area of 200 acres, a storage capacity of 2,400 acre-feet, and a normal water surface elevation of 879.25 feet USGS; (3) a 50-foot-long, 6-foot-diameter steel penstock which bifurcates into a 6-foot-diameter, 2,175-foot-long penstock and a 5-foot-diameter, 1,800-foot-long penstock leading to a 6-foot-diameter surge tank; (4) a 4.5-foot-diameter intake pipe leads to the powerhouse; and, (5) a powerhouse containing three generating units with a total rated capacity of 4,000 kW.

Newport No. 11 consists of: (1) a 114-foot-long concrete gravity dam; (2) a reservoir having a surface area of 1 acre, a storage capacity of 3.5 acre-feet, and a normal water surface elevation of 740.67 feet USGS; (3) an 80-foot-long, 10-foot-diameter steel penstock; and, (4) a powerhouse containing one generating unit with a rated capacity of 1,800 kW.

The applicant is proposing to operate the project in a run-of-river mode. The average annual net energy generation is 25,437 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Citizens Utilities Company, High Ridge Park, Stamford, CT 06905–0390, or by calling (802) 334–6538.

5 a. *Type of Application:* New Major License.

b. *Project No.:* 2311–001.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* James River-New Hampshire Electric, Inc.

e. *Name of Project:* Gorham.

f. *Location:* On the Androscoggin River near Berlin in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. George W. Hill, 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* Initial Comments Due January 19, 1993; Reply Comments Due March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The Gorham Project's principal features consist of a dam, an impoundment, a power canal, a powerhouse, and appurtenant facilities. For the existing condition, the project has a total capacity of 4.8 MW and an average annual generation of 29,100 MWh. The applicant is proposing to replace two existing generating exciters with a new 1.3 MW capacity unit. The average annual generation would then increase to 33,500 MWh. The existing and proposed project is described as follows:

(1) A 775-foot-long earthen dam; (2) an impoundment having a surface area of 45 acres, a gross storage capacity of 370 acre-feet but a negligible useable storage capacity, and a normal pool headwater elevation of 813.3 feet msl; (3) a 3,350-foot-long, 100-foot-wide power canal; (4) a powerhouse containing four existing and one proposed generating units with a proposed total rated capacity of 6.1 MW; and, (5) appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric power for use in the applicant's pulp and paper mills.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104 Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at James River-New Hampshire Electric, Inc., 50 Main Street, Berlin, NH 03570–2489, or by calling (603) 752–4600.

6 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2366–001 & 2367–001.

c. *Date Filed:* June 27, 1991.

d. *Applicant:* Maine Public Service Company.

e. *Name of Project:* Aroostook River Hydro Project.

f. *Location:* On the Aroostook River and Millinocket Stream, in Piscataquis and Aroostook Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Calvin D. Deschene, Manager, Maine Public Service Company, 209 State Street, P.O. Box 1209, Presque Isle, ME 04769–1209, (207) 768–5811.

i. *FERC Contact.* Ed Lee (202) 219–2809.

j. *Deadline Date:* Initial Comments Due January 29, 1993; Reply Comments Due March 15, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D5.

l. *Description of Project:* The project as licensed consists of the following: The existing project will utilize the Millinocket storage dam and reservoir licensed under Project No. 2366 and the Caribou dam licensed under Project No. 2367. The project consists of (1) a 451-foot-long rock-filled, concrete capped, timber-crib spillway with a maximum section height in excess of 40 feet and a permanent crest elevation of 390.0 feet msl with 12-foot-high wooden flashboards; (2) a 73-foot-long by 50-foot-wide forebay with an average depth of 13 feet located on the west bank; (3) a 16-foot-wide by 80-foot-long concrete pool-type fishway situated on the west abutment between the spillway and the existing powerhouse; (4) a 51-foot-long by 34-foot-wide powerhouse containing two identical vertical, fixed-blade propeller turbines with a total nameplate capacity of 800 kilowatts; (5) a 2,400 Volt bus located in the powerhouse; (6) 5 kV, 3/0 copper cable, which is encased in an underground conduit to a 3,000 kVA transformer; (7) 4 transmission lines constructed of 2.0 F copper weld; and (8) appurtenances.

There are no lands of the United States affected by the project. The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 7,138 MWh and owns all existing project facilities.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: D5.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Maine Public Service Company, 209 State Street, P.O. Box 1209, Presque Isle, ME.

7. a. *Type of Application:* Non Project Use of Project Lands.

b. *Project No.:* 2370–043.

c. *Date Filed:* September 4, 1992.

d. *Applicant:* Pennsylvania Electric Company.

e. *Name of Project:* Deep Creek Lake.

f. *Location:* Deep Creek in Garrett County, Maryland.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* T. N. Atherton, Esq., Pennsylvania Electric Company, 1001 Broad Street, Johnstown, PA 15907.

i. *FERC Contact:* John Costello, (202) 219–2914.

j. *Comment Date:* January 19, 1993.

k. *Description of Project:* The Pennsylvania Electric Company, licensee for the Deep Creek Lake Project, requests the Commission's authorization to permit Echo Marina, Inc. (the developer for the Echo Marina at Deep Creek Lake) to relocate its marina facilities. Echo Marina proposes to relocate its rental boat operations from its present site in North Glade Cove, an area which is zoned "residential" to a location zoned "town center". The new site, located along Glendale Road, includes a mix of commercial and residential development, as well as undeveloped land. Echo Marina's

proposal does not significantly affect the amount of buffer strip land or remove land from the project boundary (a copy of the application may be obtained by interested parties directly from the licensee).

1. This notice also consists of the following standard paragraphs: B, C, and D2.

8. a. *Type of Application:* New License.

b. *Project No.:* 2373–001.

c. *Dated filed:* December 23, 1991.

d. *Applicant:* South Berloit Water, Gas and Electric Company.

e. *Name of Project:* Rockton.

f. *Location:* On the Rock River, at the town of Rockton, in Winnebago County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Norman E. Boys, Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3086.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Deadline:* January 19, 1993; reply comments March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.

l. *Description of Project:* The project would consist of: (1) A 6-foot-high concrete overflow dam (2) a 23-foot-high earth dike abutting the upstream end of the dam; (3) a reservoir with a surface area of 155 acres; (4 headworks consisting of five 10-foot-high tainter gates; (5) a 5000-foot-long power canal; (6) a powerhouse containing two generating units with a combined installed capacity of 1,100 kW and an average annual generation of 5,705,333 kWh; and (7) appurtenant facilities.

The licensee is not proposing any changes to the existing project works.

m. *Purpose of Project:* All project energy generated would be utilized by the licensee.

n. This notice also consists of the following standard paragraphs: B1, and D6.

9 a. *Type of Application:* New Major License (Less than 5 MW).

b. *Project No.:* 2532–005.

c. *Date filed:* November 25, 1991.

d. *Applicant:* Minnesota Power & Light Company.

e. *Name of Project:* Little Falls Hydroelectric Project.

f. *Location:* On the Mississippi River in Morrison County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stephen A. Kopish, Hydro Operations Manager, Minnesota Power & Light Company, 30 West Superior Street, Duluth, Minnesota 55802, (218) 722–2641.

i. *FERC Contact:* Mr. Michael Strezelecki, (202) 219–2827.

j. *Comment Date:* January 19, 1993; reply comments March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.

l. *Description of Project:* The run-of-river project consists of: (1) A 30-foot-high, 900-foot-long concrete dam; (2) a 576-acre impoundment with a normal pool evaluation of 1,107 feet; (3) two powerhouses, one containing four generating units with a total installed capacity of 3,920 MW, and one containing two generating units with a total installed capacity of 800 MW; and (4) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 26,117 MWh.

m. *Purpose of Project:* All project energy generated would be put into the applicant's electrical grid and distributed to its customers.

n. This notice also consists of the following standard paragraphs: B1 and D6.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Minnesota Power & Light Company, located at 30 West Superior Street, Duluth, Minnesota 55802, or by calling Mr. Stephen A. Kopish at (218) 722–2641.

10 a. *Type of Application:* New License.

b. *Project No.:* 2582–002.

c. *Date Filed:* December 27, 1991.

d. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station 2 Project.

f. *Location:* On the Genesee River, Monroe County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Fingado, Rochester Gas & Electric Corp., 89 East Avenue, Rochester, NY 14649–0001, (716) 724–8108.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Deadline Date:* January 29, 1993; reply comments March 9, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D5.

l. *Description of Project:* The existing Station No. 2 Project's principal features consist of a dam structure, a power canal, an intake house, a penstock, a powerhouse, an impoundment, a transmission line, and appurtenant facilities. The existing project has a total nameplate generator capacity of 6.5 megawatts (MW) (minimum and maximum net output capacity of 2.5 and 7.1 MW), a hydraulic capacity range of 484 to 1,250 cubic feet per second (cfs), and an average annual generation of about 44,000 megawatthours (MWh).

The applicant has proposed to replace the turbine's runners, which would increase the generating capacity of the project. The proposed project would have a total nameplate generator capacity of 6.5 MW (minimum and maximum net output capacity of 3.0 and 7.9 MW), a hydraulic capacity range of 546 to 1,400 cfs, and an average annual generation of about 47,000 MWh.

In detail, the existing proposed project is described as follows:

(1) A dam consisting of (a) a 305.6-foot-long concrete gravity primary spillway section, about 26.4 feet high at a crest elevation of 482.64 feet mean sea level (msl), topped with six vertical lift gates, each measuring 40 feet wide by 11 feet high; and (b) a timber crib diversion dam, at the head of the power canal, about 32 feet long by 11 feet high at a crest elevation of 482.6 feet msl, topped with six steel gates, each measuring 5 feet by 6 feet.

(2) An excavated power canal, about 400 feet long by 50 feet wide by 8 feet deep;

(3) An intake house, known as the Rack House, containing (a) angled trashracks with ⅜-inch steel bars at 2-inch spacing, measuring 80 feet long by 14 feet high, and an area of 1,800 square feet; and (b) a siphon spillway;

(4) An underground steel penstock, 11 feet in diameter by 235 feet long;

(5) A brick and steel powerhouse, about 42 square feet by 17 feet high, equipped with one vertical Francis electric generating unit having (a) an existing nameplate capacity of 6.5 megawatts (MW) (minimum and maximum net output capacity of 2.5 and 7.5 MW), a hydraulic capacity range of 484 to 1,250 cubic feet per second (cfs), an average annual generation of 44,000 MWh, and a net head of 86 feet; and (b) the proposed nameplate capacity of 6.5 MW (minimum and maximum net output capacity of 3.0 and 7.9 MW), a hydraulic capacity range of 546 to 1,400

cfs, an average annual generation of 47,000 MWh, and a net head of 86 feet;

(6) An impoundment, about 1,200 feet long, having (a) a surface area of 16 acres; (b) a gross storage capacity of 107 acre-feet and a negligible usable storage capacity; and (c) a normal headwater elevation of 482.6 feet msl;

(7) A 4607-foot-long, 11-kilovolt (kV), underground transmission line; and

(8) Appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $2,741,982.

m. *Purpose of Project:* All project energy generated would be utilized in distribution to its customers.

n. This notice also consists of the following standard paragraphs: B1, and D5.

o. *Available Location on Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.

11 a. *Type of Application:* New License.

b. *Project No.:* 2583–004.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station 5 Project.

f. *Location:* On the Genesee River, Monroe County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Fingado, Rochester Gas & Electric Corp., 89 East Avenue, Rochester, NY 14649–0001, (716) 724–8108.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Deadline Date:* January 29, 1993; reply comments March 9, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D5.

l. *Description of Project:* The existing Station No. 5 Project's principal features consist of a dam structure, an impoundment, a powerhouse, and appurtenant facilities. For the existing condition, the project has a total nameplate generator capacity of 38.25 megawatts (MW) and an average annual generation of about 165,000 megawatthours (MWh). The Applicant proposes to replace the turbines' runners and rewind the generators, which would increase the generating capacity of the project. For the proposed condition, the project would have a total nameplate generator capacity of 43.88 MW and an average annual generation of about 177,000 MWh.

In detail, the existing and proposed project is described as follows:

(1) A concrete gravity dam consisting of (a) a 200-foot-long gate section with four Taintor gates, each measuring 50 feet long by 17 feet high and having a sill elevation of about 375.0 feet mean sea level (msl), and (b) two sector gate sections, each measuring 100 feet long by 17 feet high having a sill elevation of about 375.0 feet msl, separated by (c) a gate control building, 40 feet long by 67 feet wide, adjoining to (d) an intake house, about 97 feet long by 36 feet wide by 34 feet high, having (i) a horseshoe-shaped tunnel, 1,400 feet long by 16-foot-wide base, leading to (ii) a surge tank, 60 feet in diameter by 40 feet high, and (iii) three steel penstocks, that lead to the powerhouse, each 13 feet in diameter and 30 feet long;

(2) A concrete, masonry, and steel powerhouse, about 112 feet high by 75 feet wide by 95 feet long, equipped with three vertical Francis electric generating units having (a) the total existing rated capacity of 38,250 kilowatts (kW), a maximum hydraulic capacity of 4,300 cubic feet per second (cfs), an average annual generation of 165,000 MWh, and a net head of 130 feet; and (b) the total proposed rated capacity of 43,875 kW, a maximum hydraulic capacity of 5,000 cfs, an average annual generation of 177,000 MWh, and a net head of 130 feet;

(3) An impoundment having (a) a gross storage capacity of 414 acre-feet, (b) a usable storage capacity of 150 acre-feet; and (c) a normal pool headwater elevation of 391.5 feet msl; and

(4) Appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $12,746,877.

m. *Purpose of Project:* All project energy generated would be utilized in distribution to its customers.

n. This notice also consists of the following standard paragraphs: B1, and D5.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.

12 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2596–002.

c. *Date Filed:* December 4, 1991.

d.. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station 160 Project.

f. *Location:* On the Genesee River,Livingston County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Fingado, Rochester Gas & Electric Corp., 89 East Avenue, Rochester, NY 14649–0001, (716) 725–8108.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Deadline Date:* January 29, 1993; reply comments March 9, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D1.

l. *Description of Project:* This Project consists of: (1) An existing 334-foot-long cut stone and concrete gravity dam varying in height from 20 feet to 30 feet; (2) an impoundment having a surface area of 4.5 acres and a storage capacity of 250 acre-feet with a normal water surface elevation of 579.1 feet msl; (3) the existing intake structure; (4) the existing concrete and masonry powerhouse containing one vertical francis turbine with a normal rating of 600-hp at 19 feet rated head at 150 revolutions-per-minute, and connected to a Westinghouse vertical synchronous generator with a rated capacity of 420-kW; (5) the existing tailrace; and (6) appurtenant facilities.

The licensee is increasing the generating capacity of the powerhouse from 340-kW to 420-kW by replacing the turbine runner and rewinding the generator.

m. *Purpose of Project:* All project energy generated would be utilized in distribution to its customers.

n. This notice also consists of the following standard paragraphs: B1, and D1.

o. *Available Location of Application:* A copy of the application, as amended

and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capital Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.

13 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11289–000.

c. *Date Filed:* May 11, 1992.

d. *Applicant:* Village of Potsdam.

e. *Name of Project:* West Dam.

f. *Location:* On the Raquette River in the Village of Potsdam, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Frank O. Christie, 8 East Main Street, Malone, NY 12953, (518) 483–1945.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.

j. *Comment Date:* January 28, 1993.

k. *Description of Project:* The proposed project would consist of: (1) An excavated intake; (2) a new powerhouse containing a 1,000-kW generating unit operated at a 9.5-foot net head and at a flow of 1,500 cfs; (3) an excavated tailrace; (4) a 125-foot-long, 13.8-kV underground transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual energy production would be 3,000,000 kWh and that the cost of the studies under the permit would be $20,000. Energy produced would be sold to Niagara Mohawk Power Corporation. All facilities are and would be owned by the Village of Potsdam. Exemption for Project No. 2869, held by the Village of Potsdam, includes the West Dam.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11341–000.

c. *Dated filed:* September 30, 1992.

d. *Applicant:* Windsor Machinery Company, Inc.

e. *Name of Project:* Still River Hydroelectric Project.

f. *Location:* On the Still River, in Fairfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harry A. Terbush, 16 Orbit Lane, Hopewell Junction, New York 12533, (914) 897–4194.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* January 28, 1993.

l. *Description of Project:* The proposed project would consist of: (1) An existing dam 8.5 feet high and 47 feet long; (2) an existing reservoir approximately 30,600 square feet with a storage capacity of approximately 122,400 cubic feet at a normal surface elevation of 250.3 feet; (3) a 36-inch-diameter, 15.5-foot-long penstock; (4) a new powerhouse containing one turbine-generator unit at a rated capacity of 75 kilowatts; (5) undetermined transmission line; and (6) appurtenant facilities. The total average annual generation will be 250,000 kilowatthours and the cost of the studies are $16,500. The owners of the dam are Lois Hunt and Alvin J. Tuck.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11352–000.

c. *Date filed:* October 14, 1992.

d. *Applicant:* Peak Power Corporation.

e. *Name of Project:* Crescent Modular Pumped Storage Project.

f. *Location:* On Crescent Mountain in Jefferson County, Colorado, near the town of Denver. T.2S, R.70W, sections 5 and 6; T.2S, R.71W, sections 1, 2, and 12.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791 (a)–825(r).

h. *Applicant Contact:* Rich S. Koebbe, Vice President, Peak Power Corporation, 10 Lombard Street, Suite 410, San Francisco, CA 94111, (415) 362–0622.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* February 5, 1993.

k. *Description of Project:* The proposed project would consist of (1) A 260-foot-high, 550-foot-long earthen dam; creating (2) a 35-acre reservoir with a storage capacity of 2,300 acre-feet and a surface elevation of 7,620 feet msl, to be used as the upper reservoir; (3) a 11-foot-diameter, 6,900-foot-long buried tunnel/penstock; (4) an underground powerhouse containing two pump-turbines with a combined installed capacity of 200,000 kW, producing an estimated average annual energy output of 12,500 GWh; (5) a tailrace; (6) a 100-foot-high, 1,250-foot-long earthen dam; creating (7) a 49-acre reservoir with a storage capacity of 2,300 acre-feet at elevation 6,200 feet msl, to be used as the lower reservoir; (8) a 100-foot-high, 1,250-foot-long earthen dam; (9) a substation; (10) a 115/230 kV, 7,000-foot-long transmission line from the substation to an existing Public Service of Colorado line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $1,000,000.

No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to the Public Service of Colorado.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

16 a. *Type of Application:* New License (Tendered Notice).

b. *Project No.:* 1922–008.

c. *Date filed:* November 19, 1992.

d. *Applicant:* The City of Ketchikan, dba Ketchikan Public Utilities.

e. *Name of Project:* Beaver Falls.

f. *Location:* On Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. It occupies lands within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–.

h. *Applicant Contact:* Thomas W. Stevenson, General Manager, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 225–1000.

i. *FERC Contact:* Hector M. Perez at (202) 219–2843.

j. *Description of Project:* The existing project consists of the Silvis Development and the Beaver Falls Development.

The Silvis Development consists of: (1) The 60-foot-high, 135-foot-long Upper Silvis Dam with a crest elevation of 1,164 feet; (2) the Upper Silvis Spillway with a crest elevation of 1,154 feet; (3) an 800-foot-long spillway channel from the Upper Silvis Spillway to Lower Lake Silvis; (4) Upper Lake Silvis with a storage capacity of 38,000 acre-feet at maximum water surface of 1,154 feet; (5) the 980-foot-long Tunnel 1; (6) a 36-inch-diameter penstock; (7) Silvis Powerhouse containing a 2,100-kW generating unit; (8) a trapezoidal-shaped channel tailrace about 150 feet long discharging into Lower Lake Silvis; (9) a 2,900-foot-long, 5-kV submarine cable and a 7,100-foot-long, 34.5-kV aerial transmission line; and (10) other appurtenances.

The Beaver Falls Development consists of: (1) Lower Lake Silvis with a storage capacity of 8,052 acre-feet at maximum water surface elevation of 827 feet; (2) the 32-foot-high, 140-foot-long Lower Silvis Dam; (2) the 3-foot-high, 140-foot-long Lower Silvis Dam; (2) the 3-foot-high, 40-foot-long Beaver Falls Creek Diversion Dam, with 6-inch-high flashboards, about two-thirds of a mile downstream of Lower Lake Silvis; (3) an intake structure at Lower Lake Silvis; (4) the 3,800-foot-long Tunnel 2; (4) a 42-

inch-diameter penstock through Tunnel 3 feeding units 3 and 4 (2,000 kW each) in Beaver Falls powerhouse; (5) a 225-foot-long, 20-inch-diameter wood stave pipe from Tunnel 2 discharging into Beaver Falls Creek just upstream of the diversion dam; (6) a 28-inch-diameter, 4,170-foot-long penstock from the diversion dam feeding unit 1 (1,000 kW) at the Beaver Falls Powerhouse (unit 2 has been decommissioned); (7) 2 tailrace channels; and (8) other appurtenances.

k. Under § 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (January 19, 1993).

17 a. *Type of Application:* New License (Tendered Notice).

b. *Project No.:* 2188–030.

c. *Date filed:* November 25, 1992.

d. *Applicant:* The Montana Power Company.

e. *Name of Project:* Missouri-Madison.

f. *Location:* On the Madison River in Gallatin and Madison Counties, and on the Missouri River in Lewis, Clark, and Cascade Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 723–5421.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Description of Project:* The existing project consists of: (1) Hebgen Lake that serves to store and regulate water; (2) the Madison Development; (3) the Hauser Development; (4) the Holter Development; (5) the Black Eagle Development; (6) the Rainbow Development; (7) the Cochrane Development; (8) the Ryan Development; and (9) the Morony Development. The project has a total generating capacity of 292.1 MW and 73.6 MW would be added.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed (January 25, 1993) and must serve a copy of the request on the applicant.

18 a. *Type of Application:* Conduit Exemption (Tendered Notice).

b. *Project No.:* 11362–000.

c. *Date filed:* November 17, 1992.

d. *Applicant:* Cool Water, Inc.

e. *Name of Project:* Lower White.

f. *Location:* At the Dirty George pipeline, Hoosier Ditch, and Hoosier Ditch extension, in Lower Ranch, Delta, Colorado.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* G.C. Harned, President, Cool Water, Inc., 247 Rim Rock Drive, Durango, CO 81301, (303) 247–8024.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Description of Project:* The proposed project would consist of a powerhouse with a 935–kW unit.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (January 19, 1993).

19 a. *Type of Application:* Conduit Exemption (Tendered Notice).

b. *Project No.:* 11363–000.

c. *Date filed:* November 17, 1992.

d. *Applicant:* Cool Water, Inc..

e. *Name of Project:* Upper White.

f. *Location:* At the Dirty George Pipeline, in Lower Ranch, Delta, Colorado.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–.

h. *Applicant Contact:* G.C. Harned, President, Cool Water, Inc., 247 Rim Rock Drive, Durango, CO 81301; (303) 247–8024.

i. *FERC Contact:* Hector M. Pérez at (202) 219–2843.

j. *Description of Project:* The proposed project would consist of a powerhouse with a 565–kW unit.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (January 19, 1993).

Standard Paragraphs

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No completing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such and application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed

under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D5. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 29, 1993 for Project Nos. 2366–001, 2367–001, 2582–002 and 2583–004). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 9, 1993 for Project Nos. 2366–001, 2367–001, 2582–002 and 2583–004.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D6. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments,

recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 19, 1993 for Project Nos. 2373–001 and 2532–005). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 2, 1993 for Project Nos. 2373–001 and 2532–005.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 19, 1993 for Project Nos. 1267–000, 2288–004, 2300–002, and 2311–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 2, 1993 for Project Nos. 1267–000, 2288–004, 2300–002, and 2311–001.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 11, 1993 for Project No. 10895–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 23, 1993 for Project No. 10895–000.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS" "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. *Filing and Service of Responsive Documents*—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments,

recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: December 14, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30722 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-93-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

December 10, 1992.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP93-93-000]

Take notice that on December 7, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93-93-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 an 157.211) for authorization to operate under the provisions of section 7 of the Natural Gas Act certain facilities that have been constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the subject facilities, Shorewood facilities, are located in Will County, Illinois. ANR further states that the authorization would allow any shipper, whether or not the shipper qualifies under section 311, the opportunity to use the subject facilities when capacity is available. ANR further states that it currently renders transportation service through the Shorewood facilities, pursuant to its FERC Gas Tariff, First Revised Volume No. 1-A, Rate Schedules FTS and ITS. It is also stated that ANR is not herein requesting sales authority.

Comment date: January 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Co.

[Docket No. CP93-91-000]

Take notice that on December 4, 1992, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93-91-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing delivery point and appurtenant facilities for use in a transportation service for Coastal Gas Marketing, Inc. (Coastal), in Sherman County, Texas, under CIG's blanket certificate issued in Docket No. CP83-21-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to operate the Palo Duro Meter Station, which was installed under Natural Gas Policy Act section 311 authorization, in order to accommodate interruptible transportation service for Coastal to serve GGSI Gas Company for use in irrigation. It is stated that CIG will use the proposed delivery point for the delivery of up to 6,000 Mcf of natural gas per day for Coastal. It is asserted that the cost of installing the delivery point was $19,356. CIG states that the deliveries would have no impact on its peak day or annual deliveries. It is explained the CIG can accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: January 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP93-96-000]

Take notice that on December 7, 1992, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP93-96-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to reactivate and operate an existing tap for delivery of natural gas to Mississippi Valley Gas Company (MVG) under Southern's blanket certificate issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to activate an existing tap which is located at or near Milepost 6.7 on Southern's 16-inch Lake St. John-Cranfield Line in Adams County, Mississippi, for delivery of natural gas to MVG under its Rate Schedule IT (December 31, 1987, service agreement, as amended). Southern explains that MVG would redeliver the gas (up to 100 Mcf per day; 8,400 Mcf annually) to Serio Energy Corporation for use as gas lift gas at its production facilities in Adams County. Southern advises that no new facilities are required to be constructed or installed at the tap. Southern states that MVG has agreed to reimburse it for the cost of reactivating the tap, estimated to be $990. Southern further states that the gas would be transported for MVG under Southern's blanket certificate in Docket No. CP88-316-000.

Comment date: January 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30685 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-01630T Colorado-53]

NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation; State of Colorado

December 14, 1992.

Take notice that on December 10, 1992, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Codell Formation underlying certain lands in Weld County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described on the attached appendix.

The notice of determination also contains Colorado's findings that the referenced portion of the Codell Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended area is the Codell Formation underlying certain lands in Weld County, Colorado more fully described as:

Township 5 North, Range 61 West
Sections 4–9: All
Sections 16–18: All
Township 5 North, Range 62 West
Sections 1–36: All
Township 5 North, Range 63 West
Sections 19: All
Sections 21–36: All
Township 6 North, Range 61 West
Sections 19–21: All
Sections 28–33: All
Township 6 North, Range 62 West
Sections 1–36: All
Township 6 North, Range 63 West
Sections 1–18: All
Township 7 North, Range 63 West
Sections 1–36: All

[FR Doc. 92-30732 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

[Docket Nos. TQ93-2-20-001; TM 3-5-20-001 and TM 3-7-20-001]

December 14, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 9, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed To Be Effective December 1, 1992

2 Sub 16 Rev Sheet No. 21
2 Sub 16 Rev Sheet No. 22
2 Sub 16 Rev Sheet No. 25
2 Sub 16 Rev Sheet No. 26
2 Sub 16 Rev Sheet No. 27
2 Sub 16 Rev Sheet No. 28
2 Sub 16 Rev Sheet No. 29

Algonquin states that the revised tariff sheets listed above are being filed to comply with a Commission Letter Order dated November 24, 1992 ("Letter Order") in Docket Nos. TQ93-2-20-000 and TM93-5-20-000, Algonquin's latest regularly scheduled Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment pursuant to Sections 17 and 39, respectively, of the General Terms and Conditions of its FERC Gas Tariff.

Algonquin further states that in this Letter Order, the Commission directed Algonquin to file revised tariff sheets to track CNG's currently effective winter rates within 15 days of the date of the Letter Order.

Algonquin is also filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, six (6) copies each of the following tariff sheets:

Proposed To Be Effective January 1, 1993

Sub 1 Rev 16 Sheet No. 21
Sub 1 Rev 16 Sheet No. 22
Sub 1 Rev 16 Sheet No. 26
Sub 1 Rev 16 Sheet No. 27
Sub 1 Rev 16 Sheet No. 28

Algonquin states that during the intervening period it filed tariff sheets to implement the Interim Tracking Mechanism for the 1993 funding of the Gas Research Institute ("GRI") in Docket No. TM93-7-20-000. Algonquin further states that these tariff sheets reflect the same base rates tracked in Docket Nos TQ93-2-20-000 and TM93-5-20-000 and therefore must also be revised to comply with the Letter Order.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30743 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-59-000]

Chandeleur Pipe Line Co.; Notice of Conference

December 14, 1992.

Take notice that on Tuesday, December 22, 1992, a conference will be convened in the captioned restructuring docket to discuss Chandeleur Pipe Line Company's proposed plan to implement Order No. 636.

The conference will be held at the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, beginning at 10 a.m. All interested parties are invited to attend. Attendance at the conference does not convey party status. For additional information, interested persons may call Joan Dreskin at (202) 208-0738.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30735 Filed 12-17-92; 8.45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-6-21-001]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 14, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 4, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1993:

Substitute Twenty-second Revised Sheet No. 26.1
Substitute Twenty-second Revised Sheet No. 26A.1
Substitute Eighteenth Revised Sheet No. 26B.1
Substitute Twenty-sixth Revised Sheet No. 26C
Substitute Nineteenth Revised Sheet No. 26D

On November 30, 1992, Columbia filed revised tariff sheets to reflect the Federal Energy Regulatory Commission's (Commission) approved

Gas Research Institute (GRI) funding unit level for 1993. Columbia, on December 4, 1992, filed to withdraw its October 30th and November 12, 1992 rate tariff sheets reflecting the switch from straight fixed variable (SFV) rate design to enhance fixed variable (EFV) pursuant to settlement in Docket No. RP91–161, et al. The instant filing reflects the reinstatement of the SFV rate design in the base rates that were in effect prior to Columbia's October 30, 1992 filing.

Columbia states that copies of the filing were served on Columbia's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30740 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–70–001]

Columbia Gulf Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

December 14, 1992.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on December 4, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1993.

Substitute Seventh Revised Sheet No. 021

On November 30, 1992, Columbia Gulf filed revised tariff sheets to reflect the Federal Energy Regulatory Commission's (Commission) approved Gas Research Instituted (GRI) Funding Unit Level for 1993. Columbia Gulf on December 4, 1992 filed to withdraw its October 30th Rate Tariff Sheet reflecting the switch from Straight Fixed Variable (SFV) Rate Design to Enhanced Fixed Variable (EFV) pursuant to settlement in Docket No. RP91–160 *et al.* The instant filing reflects the reinstatement of the SFV Rate Design in the Base Rates that were in effect prior to Columbia Gulf's October 30, 1992 filing.

Columbia Gulf states that copies of the filing were served on Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30742 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–99–002]

Kern River Gas Transmission Co.; Notice of Report of Refunds

December 14, 1992.

Take notice that on November 16, 1992, Kern River Gas Transmission Company (Kern River) tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds made in compliance with the Commission's October 20, 1992 order in Docket No. TM93–1–99–000. Kern River's report reflects it refunded ACA surcharges prematurely collected from its customers. Kern River states that on November 15, 1992, it refunded all principal and interest amounts in excess of $1.00 and will refund all amounts of $1.00 or less upon any customer's request.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before December 24, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30738 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–84–000]

Petition for Declaratory Order; Mississippi River Transmission Corp.

December 14, 1992.

Take notice that on November 30, 1992, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri, 63124, filed in Docket No. CP93–84–000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order finding that certain of MRT's facilities which have been certificated pursuant to Section 7(c) of the Natural Gas Act (NGA) as jurisdictional facilities but which have been functionalized as production and gathering facilities on MRT's books and records, in fact perform a transmission function and should be refunctionalized as transmission facilities for rate and accounting purposes.

In the event the Commission determines that any of the facilities that MRT proposes to refunctionalize to transmission does not perform a transmission function and therefore should remain refunctionalized as gathering, MRT requests that the Commission conform the jurisdictional status of the facility to its function and vacate any of the section 7(c) certificates authorizing MRT to construct and operate the facility as a transmission facility.

MRT states that the filing of this petition was prompted by the Commission's October 30, 1992, "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions, and Establishing Hearing Procedures" in Docket Nos. RP93–4–000 and RS92–43–000 (not consolidated). In that order, MRT was ordered to file a certificate application to refunctionalize certain facilities from production and gathering to transmission plant. MRT states that it already has certificates for the facilities at issue, and is thus seeking rehearing of the requirement that it file a certificate application. MRT states that in the event the Commission determines that there must be a separate proceeding to address the refunctionalization of MRT's facilities, it is filing this Petition for Declaratory Order in compliance with the October 30, 1992, order. MRT states that it

submits this petition subject to the outcome of its "Request for Rehearing" and, in the event the Commission determines that no separate proceeding is required, MRT respectfully requests that this filing be deemed moot and the filing fee refunded.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 4, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30733 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-26-001]

Proposed Changes in FERC Gas Tariff; Natural Gas Pipeline Company of America

December 14, 1992.

Take notice that on December 10, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, Substitute First Revised Sheet No. 5 to be effective January 1, 1993.

Natural states the purpose of the filing is to correct a mathematical error on one of the tariff sheets it filed on November 20, 1992 in Docket No. TM93-2-26-000. That filing reflected revised GRI surcharges to be effective January 1, 1993 pursuant to section 26 of the General Terms and Conditions of Natural's tariff. The mathematical error was in the maximum volume injection charge of Rate Schedule BESS. The correct total rate should be $0.0400, not $0.0547.

Natural states that because the filing corrects a mathematical error that results in a reduction of the filed rate and there is only a short time before the requested effective date, that it mailed copies of the filing to interested state regulatory agencies and that it placed a notice of the filing on its Electronic Bulletin Board notifying its jurisdictional customers of the correction.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the substituted tariff sheet to become effective January 1, 1993, together with the other previously filed tariff sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30739 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-79-003, RP91-166-017 and RP93-20-001]

Change in FERC Gas Tariff; Northwest Pipeline Corp.

December 14, 1992.

Take notice that on November 25, 1992, Northwest Pipeline Corporation (Northwest) tendered the tariff sheets listed below to comply with Commission Orders issued May 1, 1992 and October 7, 1992.

Second Revised Volume No. 1

Substitute First Revised Original Sheet No. 123
Substitute First Revised Sheet No. 125
Second Revised Sheet No. 131
First Revised Sheet Nos. 132 through 135

Original Volume No. 2

Fifth Revised Sheet No. 3

Northwest states that the tariff sheets listed above are filed as a supplement to Northwest's November 6, 1992 Docket No. CP92-79 compliance filing. This filing also contains an accounting, in Annual PGA filing format, of Northwest's PGA activity for the eleven months ended October 31, 1992. Northwest requests a November 1, 1992 effective date for all tariff sheets contained in this filing.

Northwest states that copies of its filing have been served on all parties of record in Docket No. CP92-79 and upon all affected customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30734 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-166-005]

Compliance Filing; Panhandle Eastern Pipe Line Co.,

December 14, 1992.

Take notice that on December 8, 1992 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised tariff sheets in the above-mentioned proceeding.

Panhandle states that the revised tariff sheets to be effective November 1, 1992 and December 1, 1992 comply with the requirements of the Commission's November 16, 1992 Order on Rehearing and the Commission's December 1, 1992 Order Accepting Motion Rate-Compliance Filing Subject To Refund And Conditions in this proceeding and are without prejudice to Panhandle's rights on rehearing or judicial review in connection with the various Commission orders affecting this filing.

Panhandle states that while the December 1, 1992 Order accepted in most pertinent parts Panhandle's original motion filing of October 1, 1992, it required certain additional changes necessitating this additional filing. Panhandle states that the December 1, 1992 Order summarily required Panhandle to eliminate the system-wide access charge contained in its original filing in this Docket and replace it with a market zone only access charge. This filing complies with the Commission's requirement and eliminates the system-wide access charge.

Panhandle previously sought to move its Docket No. RP92-166-000 suspended rates into affect in a filing made October 1, 1992. However, prior to the issuance of an order respecting those motion rates, the Commission issued an order on November 16, 1992 which

indicated that certain changes would be required to the motion rates. Other orders of the Commission, particularly in connection with a Settlement of Docket Nos. RP91–229–012, *et al.*, which affected the rates in this proceeding also were issued after the October 1, 1992 motion rate filing, but prior to the issuance of an order respecting the motion rate filing. Accordingly, in light of those intervening Commission orders, on November 18, 1992 Panhandle filed revised rates to be effective November 1, 1992. Panhandle states that this filing replaces its filing in this docket of November 18, 1992 in every particular and requests that the November 18, 1992 filing be deemed to be withdrawn.

Panhandle states that in its June 1, 1992 Order Terminating Technical Conference Proceeding, Granting Rehearing in Part and Denying Rehearing in Part in Docket No. RP91–229–000, the Commission required Panhandle to alter the functionalization of its cost of service to reflect the current functionalization of facilities. 59 FERC at 61,893. Panhandle reflect that functionalization in its rates in Docket No. RP91–229–000 in a compliance filing submitted on July 31, 1992. In a subsequent Order Granting Rehearing in Part and Denying Rehearing in Part, in Docket No. RP91–229–007, 61 FERC ¶61,172 issued November 2, 1992, however, the Commission reversed itself and determined that Panhandle should be permitted to reflect the refunctionalization of facilities. On November 18, 1992 Panhandle filed an amendment to Docket No. CP90–1050–000 to clarify the material in this proceeding and to identify the specific facilities for which Panhandle seeks a certificate and/or refunctionalization from gathering to transmission. Accordingly, the rates herein reflect the changes in Docket No. CP90–1050–000 so that the certificate and rates conform to one another.

Panhandle states that it has also reflected the requirements of the November 16, 1992 Order on Rehearing to change the allocation of gathering costs between sales and transportation and to reflect what the Commission characterized as the allocation of fixed costs for the return on equity and related taxes.

In addition, Panhandle states that in its June 1, 1992 Order on Report Filed Pursuant to Opinion No. 369 and Motion Rate and Compliance Filing (59 FERC ¶61,246 (1992)), the Commission required Panhandle's rate for certain specified backhaul services to equal one-half the forward-haul rate. This requirement is reflected in the rates submitted herewith.

Panhandle states it has reflected the elimination, effective November 1, 1992 of costs associated with Trunkline Gas Company, consistent with the provisions of Article VII, Section 6 of the July 15, 1992 Settlement in Docket Nos. RP91–229–009, *et al.*, approved by Order of the Commission issued August 28, 1992.

In addition, Panhandle states that on October 29, 1992 the Commission permitted tariff sheets to become effective on November 1, 1992 implementing Rate Schedule FS. Accordingly, Panhandle has removed 10 Bcf of storage inventory and the costs assigned to Rate Schedule FS from the rates in this proceeding.

Panhandle states it has reflected the reduced settlement cost components associated with its former Canadian suppliers, as set forth in the October 2, 1992 Settlement in Docket Nos. RP91–229–012, *et al.* approved by order of the Commission issued October 30, 1992.

Panhandle states that the rates and tariffs submitted herewith also reflect ACA and PGA filings in Docket No. Docket No. TM92–4–28–000, Docket No. TM93–1–28–000, TQ92–5–28–000 and Docket No. TQ93–1–28–000, which have been made since Panhandle's rate filing of May 1, 1992, the latter of which is to be effective December 1, 1992.

Panhandle states that copies of the revised tariff sheets are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30737 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–18–001]

Proposed Changes in FERC Gas Tariff; Texas Gas Transmission Corp.

December 14, 1992.

Take notice that on December 9, 1992 Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, First Revised Volume No. 2–A

Substitute Fifth Revised Sheet No. 10A
Substitute Fourth Revised Sheet No. 10C
Substitute First Revised Sheet No. 106
Substitute First Revised Sheet No. 107
Substitute First Revised Sheet No. 108
Substitute Original Sheet No. 108A

Texas Gas notes that the revised tariff sheets are being filed to correct the page headings on certain sheets contained in Texas Gas's November 30, 1992, filing reflecting changes in its General RD&D Funding Units (Docket No. TM93–2–18), and are proposed to be effective January 1, 1993. No other changes are proposed herein. Texas Gas requests to withdraw the First Review Volume No. 2–A sheets filed on November 30, 1992 (Fifth Revised Sheet No. 10A, Fourth Revised Sheet No. 10C, First Revised Sheet No. 106, First Revised Sheet No. 107, First Revised Sheet No. 108, and Original Sheet No. 108A), which are being replaced by the instant filing.

Texas Gas states that copies of the filing were served on Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30741 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–152–023]

Proposed Changes in FERC Gas Tariff; Williams Natural Gas Co.

December 14, 1992.

Take notice that Williams Natural Gas Company (WNG) on December 8, 1992,

tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Effective December 1, 1992

First Revised Thirteenth Revised Sheet No. 6
First Revised Fourteenth Revised Sheet No. 6A
First Revised Thirteenth Revised Sheet No. 9

Effective January 1, 1993

First Revised Fourteenth Revised Sheet No. 6
First Revised Fifteenth Revised Sheet No. 6A
First Revised Fourteenth Revised Sheet No. 9

WNG states that it filed a Stipulation and Agreement (Stipulation) on November 22, 1991 in the above referenced docket. Article I, Section 3, of the Stipulation requires WNG to file Revised Tariff Sheets within fifteen days after a Final Commission Order approving the Stipulation. Article I, Section 3 states that such Revised Tariff Sheets shall become effective on the first day of the billing month beginning after the date that the Commission's Order making the Stipulation effective becomes a Final Commission Order. A Final Commission Order was issued in this docket on August 5, 1992. The Revised Tariff Sheets to be effective December 1, 1992 are being filed in compliance with the Stipulation.

WNG is filing Revised Tariff Sheets to be effective January 1, 1993, to reflect the RP91–152 rates in the GRI filing made by WNG on December 1, 1992 in Docket No. TM93–2–43.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30736 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Conservation and Renewable Energy

[Case No. SBE–001]

Energy Conservation Program for Consumer Products; Application for Small Business Exemption

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes an Application for Small Business Exemption from the January 1, 1993, standard for Single Package Air Conditioning Systems submitted to the Department of Energy (DOE) by Consolidated Technology Corporation (CTC).

DATES: Data and information submitted by CTC to support this application are available for public review at Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. DOE will accept comment, data and information with respect to this application not later than (60 days from publication).

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. SBE–001, Mail Station CE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0561.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock, Jr., U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5778.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPACT), Public Law 102–486,[1] prescribes energy conservation standards for certain consumer products, including central air conditioners and heat pumps, and requires DOE to administer an energy conservation program for these products. For each of the covered products, the Act prescribes initial Federal energy conservation standards, section 325(b)-(h).

On February 7, 1989, DOE amended the prescribed procedures by adding 10 CFR part 430, subpart E, creating the small business exemption process, 54 FR 6080.

The small business exemption process allows the Assistant Secretary for Conservation and Renewable Energy to grant manufacturers of covered consumer products, with annual gross revenues that do not exceed $8 million, exemption from all or part of the applicable energy conservation standards.

The exemption terminates according to its terms but not later than twenty-four months after the effective date of the rule for which the exemption is allowed.

CTC manufactures a line of single package air conditioner heat pumps which are designed for use in manufactured/modular homes. The entire product line is designed to use a high efficiency scroll compressor. CTC claims that the manufacturer of the scroll compressor has oversold its product and efforts to expand production capabilities have been delayed; therefore, the manufacturer is unable to supply CTC with these compressors. Efforts by CTC to obtain a comparable compressor from other sources have also failed.

CTC has redesigned the product line to use a reciprocating compressor. Because reciprocating compressors are less efficient than scroll compressors and configuration and size constraints imposed by the manufactured/modular home industry limit other design changes, the units with reciprocating compressors are less efficient than the same size units with scroll compressors. For example, the CTC 2½ ton heat pump equipped with a scroll compressor having an energy efficiency ratio (EER) of 11.0, has an SEER of 10.0 and an HSPF of 6.8. The same unit equipped with a high efficiency reciprocating compressor with an EER of 10.28 in the cooling mode, has an SEER of 8.5 and an HSPF of 6.3. Since CTC product line equipped with reciprocating compressors will not meet

[1] Part B of Title III of EPCA, as amended by NECPA, NAECA, NAECA 1988 and EPACT, is referred to in this notice as the Act.

the January 1, 1993, standard for Single Package Heat Pump Air Conditioning Systems, CTC has requested a Small Business Exemption for a period of 24 months beginning January 1, 1993, though December 31, 1994, by which time CTC expects to be supplied with scroll compressors which will enable the product line to meet the standard.

CTC is an independently owned small business with gross annual sales below $8 million. Only two other companies are known to manufacture a similar product, Nordyne, Inc. and Coleman Industries. A copy of the CTC application for a Small Business Exemption has been transmitted to the Attorney General requesting a determination by the Attorney General that a failure to allow an exemption would likely result in a lessening of competition. Based upon a review of the CTC application; comments, data and information received with respect to this notice; and the Attorney General's written views, DOE will make a determination as to whether a Small Business Exemption should be granted to CTC.

Issued in Washington, DC, December 11, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

April 9, 1992.

U.S. Department of Energy,
Small Business Exemptions,
Appliance Efficiency Standards,
Assistant Secretary for Conservation and Renewable Energy,
Forrestal Building,
1000 Independence Avenue, SW.,
Washington, DC 20585.

Subject: Title 10—Energy, Chapter II, Subchapter D, Part 430—Energy Conservation Program for Consumer Products, Title III, Part B, Section 325(q)—Small Manufacturer Exemption.

Dear Sir: Consolidated Technology Corporation (CTC) manufactures central air conditioners and central air conditioning heat pumps. At this time because of circumstances beyond our control, we wish to apply for a Small Manufacture Exemption of the above subject. I am not sure as to the exact method of action needed to implement the above.

I am requesting that any information pertinent to the above be sent to me as soon as possible. Should you have any questions, please feel free to contact me. I want to thank you in advance for your timely consideration.

Sincerely,

Kevin W. Sawyer,

Vice President Engineering.

[FR Doc. 92-30768 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-1-M

Office of Energy Research

Energy Research Financial Assistance Program Notice 93-05: Innovations in Tokamak Improvements and New Fusion Confinement Systems

AGENCY: Department of Energy, (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy (OFE) of the U.S. Department of Energy (DOE) announces its interest in receiving applications for funding to support innovations in tokamak improvements and new fusion confinement systems. This notice is issued in response to recent recommendations made by the Fusion Energy Advisory Committee (FEAC). These recommendations are summarized in the "Fusion Energy Advisory Committee Report on Program Strategy for U.S. Magnetic Fusion Research," dated September 23, 1992, which reads: "9. A Program for Innovative Fusion Concepts: In the FEAC letter to DOE dated June 12, 1992, the FEAC recommended that even as the U.S. fusion program implements a goal-oriented program strategy, the U.S. should encourage innovative ideas. In addition to the innovation encouraged by the existing Applied Plasma Physics (APP) program, FEAC recommended that a small but structured and highly visible periodic competition be established to foster new concepts and ideas that, if verified, would make a significant improvement in the attractiveness of fusion rectors. Predefined sunset clauses [see below] would help ensure that funds for new ideas were available on a periodic basis. The ideas to be funded might relate to improving aspects of the tokamak or other established confinement concepts, or to proposals from individuals and institutions that are not now part of the primary program activities. Priority should be given to testing scientifically well-founded concepts at the small-scale, proof-of-principle levels."

DATES: To permit timely consideration for award in Fiscal Year 1993, formal applications submitted in response to this notice must be received no later than 4:30 p.m., February 2, 1993. No electronic submissions of formal applications will be accepted.

ADDRESSES: Application kits and guides are available from: U.S. Department of Energy, Office of Fusion Energy, ER-542, Washington, DC 20585. Telephone requests may be made by calling (301) 903-3421. Formal applications referencing Program Notice 93-05 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585, Attn: Program Notice 93-05. The following address must be used when submitting applications by U.S. Postal Express Mail Service, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Blanken, Division of Advance Physics & Technology, Office of Fusion Energy, ER-542, U.S. Department of Energy, Washington, DC 20585, telephone (301) 903-3421.

SUPPLEMENTARY INFORMATION: In implementing the FEAC recommendations, the DOE Office of Fusion Energy will give priority to applications that can produce proof-of-principle results within three years. In the spirit of the FEAC recommendations regarding sunset clauses, it is not anticipated that the selected applications will be renewed as a part of this innovations program; the selected applicants will, however, be eligible to apply for support under the Magnetic Fusion Energy Program after successful completion of the proof-of-principle phase.

This notice requests that the detailed description of the proposed project component of a complete grant application required by 10 CFR 605.9(b)(2) should include a detailed research plan which includes the specific results expected at the end of the three-year grant period. Evaluation of this written component against the selection criteria set forth in 10 CFR part 605 will be the principal means for selecting the successful applications.

Contingent upon availability of FY 1993 appropriated funds, it is anticipated that approximately $1,000,000 will be available to initiate one to three new grants in the range $300,000 to $1,000,000 per year. At present, it is anticipated that a total of $1,000,000 will be available to fund initiated grants, if any, in both FY 1994 and FY 1995. However, future year funding will depend on the nature of the applications, suitable experimental progress and the availability of funds.

Information about the development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the ER Application Kit and Guide for the Special Research Grant Program and in

10 CFR part 605. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on December 8, 1992.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 92-30620 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4546-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION OR A COPY OF THE ICR CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Information Collection from States in Accordance with the CERCLA Capacity Assurance Process, (EPA No. 1343.04). This is a renewal of a currently approved collection.

Abstract: Under section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), EPA requires that States provide data and program information to assure that they have adequate capacity to treat, store, or dispose of all hazardous waste expected to be generated within or imported into the State for a twenty year period. Under CERCLA, States must provide this assurance in order to be eligible for Superfund remedial funds. The information States provide for the Capacity Assurance Process (CAP) includes: Current hazardous waste management practices; waste minimization program; projected future instate generation, imports, and exports of hazardous waste; and projected future hazardous waste management.

States prepare CAPs in accordance with the Guidance Document that EPA has developed in consultation with their States. The Guidance Document was developed to lessen the burden on States by providing suggested analytical methods, data sources, and presentation formats.

Burden Statement: The estimated average public reporting burden for this collection of information is about 466 hours per State for Phase I submissions; 677 hours per State for Phase II submissions; and 381 hours per State for Phase III submissions. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and submitting the information to the Agency.

Respondents: States, Territories, and the District of Columbia.

Estimated Number of Responses: 54.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 73,405 hours.

Frequency of Collection: As Required.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 11, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30653 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-M

Office of Research and Development

[FRL-4546-1]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. This new designated method is identified as follows:

RFNA-1292-090, "Lear Siegler Measurement Controls Corporation Model ML9841 Nitrogen Oxides Analyzer," operated on the 0-0.5 ppm range, at any temperature in the range of 15 °C to 35 °C, with a 5-micron Teflon filter element installed in the filter assembly behind the secondary panel and the service switch on the secondary panel set to the IN position, with the following menu choices selected: Range: 0.500 ppm; Over-Ranging: Disabled; Filter Type: Kalman; Calibration: Manual; Span Comp: Disabled; Pres/Temp/Flow Comp: On; with the 50-pin I/O board installed on the rear panel configured at any of the following voltage or current output settings: 0.1, 1, 5, 10 volts or 0-20, 2-20, 4-20 mA; and with or without any of the following options: Valve Assembly for External Zero/Span (EZS); Rack Mount Assembly; Internal Floppy Disk Drive.

This method is available from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, CO 80112-5189. A notice of receipt of application for this method appeared in the **Federal Register** (57 FR 39401, August 31, 1992).

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with 40 CFR part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of 40 CFR part 58 are permitted only with prior approval of EPA, as provided in 40 CFR part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

40 CFR part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of 40 CFR part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with 40 CFR part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will assist the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Courtney Riordan,

Assistant Administrator for Research and Development.

[FR Doc. 92–30655 Filed 12–17–92; 8:45 am]

BILLING CODE 6560–60–M

[ER–FRL–4546–2]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Availability of Environmental Impact Statements Filed December 7, 1992 Through December 11, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920486, Final Supplement, UMC, NC, Cherry 1 Military Operating Areas (MOA), Craven, Beaufort, Hyde, Pamlico and Washington Counties, Core MOA, and North Carolina Outer Banks/Cape Lookout National Seashore Establishments, Additional Mitigation Alternatives and Regional Cumulative Effects Analysis, NC, Due: January 13, 1993, Contact: Col. A. M. Lloyd (919) 466–2343.

EIS No. 920487, Draft EIS, FHW, NY, I–90/I–8 Connector to Route 4/43 at Washington Avenue Transportation Improvements, Funding and COE Permits, Town of North Greenbush, Rensselaer County, NY, Due: February 1, 1993, Contact: H. J. Brown (518) 472–3616.

EIS No. 920488, Draft EIS, AFS, ID, Trail Creek II Timber Sale, Implementation, Timber Harvest, Road Construction and Reconstruction, Trail, Ninemile and Packsaddle Creeks, Boise National Forest, Lowman Ranger District, Valley County, ID, Due: February 1, 1993, Contact: Dautis Pearson (208) 259–3361.

EIS No. 920489, Final EIS, BLM, AZ, Sanchez Open Pit Heap Leach Copper Mine Project, Construction and Operation, Permits Approval, Gila Mountain, Graham County, AZ, Due: January 19, 1993, Contact: Larry Thrasher (602) 428–4040.

EIS No. 920490, Draft EIS, USN, MD, Naval Air Warfare Center Aircraft Division Base Realignment, Naval Air Station Patuxent River, St. Mary's, Calvert and Charles Counties, MD, Due: February 1, 1993, Contact: Mike Bryan (202) 433–3387.

EIS No. 920491, Draft EIS, USN, TX, Chase Field Naval Air Station Disposal and Reuse, Implementation, Permits and Approval, City of Beeville, Bee County, TX, Due: February 1, 1993, Contact: Laurens Pitts (803) 743–0893.

EIS No. 920492, Draft EIS, FRC, LA, MS, West-East Cross Interstate Natural Gas Pipeline Project, Construction and Operation, Section 10 and 404 Permits, NPDES Permit and Right-of-Way Grant, several Parishes, LA and several Counties, MS, Due: February 1, 1993, Contact: Laura Turner (202) 208–0916.

EIS No. 920493, Final EIS, USN, NJ, SC, VA, US East Coast Homeporting Program, (two AOE–6 Class) Fast Combat Support Ships, Implementation and Site Selection, Naval Weapons Station Earle, Colts Neck, Monmouth Co., NJ; Yorktown Naval Weapons Station, Gloucester County, VA or Charleston Naval Weapons Station, Charleston County, SC, Due: January 13, 1993, Contact: Robert Schwarz (202) 433–3387.

EIS No. 920494, Final EIS, NOA, Atlantic Ocean Sharks Fishery Management Plan (FMP), Implementation, Possible NPDES, COE and Coast Guard Permits, Exclusive Economic Zone (EEZ) the Gulf of Mexico, Atlantic Ocean and the Caribbean Sea, Due: January 13, 1993, Contact: Richard H. Schaefer (301) 713–2334.

Amended Notices

EIS No. 920417, Revised Draft EIS, AFS, CA, Lake Tahoe Basin Management Unit (LTBMU) Forest Plan, New Information concerning the Lake of the Sky Visitor Information or Interpretative Center and Community Parking Development Project to Comply with the LTBMU Forest Plan,

Tahoe City, Lake Tahoe, Placer County, CA, Due: January 13, 1993, Contact: Jackie Faike (916) 573–2600. Published FR 10–30–92—Review period extended.

EIS No. 920418, Draft EIS, FRC, CA, Lower Mokelumne River Hydroelectric Project Modifications, Licensing, (FERC, No. 29116–004), Parts of Pardee and Camanhe Dams, Mokelumne River, CA, Due: March 1, 1993, Contact: John A. Schnagl (202) 219–2661. Published FR–10–30–92—Review period extended.

Dated: December 15, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–30793 Filed 12–17–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4546–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 30, 1992 through December 4, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–FHW–D40255–PA Rating LO, Park Road Corridor Project, West Shore Bypass/US 422/222 and Warren Street Bypass Connection to the Outer Bypass/PA–3055, Funding and section 404 Permit, Berks County, PA.

Summary: EPA expressed a lack of objections to the project as stated. Because of planned residential and commercial development, the impacts should be minimal.

ERP No. D–FHW–D53307–PA Rating EC2, Lackawanna Valley Industrial Highway Project, Reconstruction and Redevelopment, I–81 to Dunmore and US 6 in Whites Crossing north of Carbondale, Funding and COE Section 404 Permit, Lackawanna Valley, Lackawanna County, PA.

Summary: EPA expressed concerns for the potential project impacts to natural and cultural resources in the Lackawanna Valley. Additional information is required in the FEIS on intersection analysis for air quality, the impacts of the Mayfield Shift, the Meredith Street bridge relocation, and the proposed mitigation for the unavoidable impacts.

ERP No. D–FHW–E40256–AL Rating EC2, Southern Bypass and Weatherly Road Extension Project, Hobbs Island Road to I–565 Interchange, Funding and COE Section 404 Permit, City of Huntsville, Madison County, AL.

Summary: EPA had concerns for the degradation of high quality wetlands and noise problems for residents along the highway. Additional information on wetland impacts, air quality modeling and wetland mitigation was requested.

Final EISs

ERP No. F–MMS–A02235–00 1993 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales No. 142 and No. 143, Lease Offerings, offshore AL, LA, TX and MS.

Summary: EPA continued to have concerns about the impact of leasing on biologically sensitive offshore habitats without including protective environmental stipulations. EPA encourages MMS to commit to these protective measures before concluding lease sales for the affected planning areas.

Dated: December 15, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–30792 Filed 12–17–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4544–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Region III: Chesapeake Bay Program

Title: Chesapeake Bay Attitudes Survey (EPA No. 1627.01).

Abstract: This ICR is a new collection in support of the Chesapeake Bay Program, a cooperative venture involving representatives from the EPA (Region III), the District of Columbia, the State of Maryland, and the Commonwealths of Pennsylvania and Virginia. Since its establishment in 1983, the Chesapeake Bay Program has been formally directing and conducting the restoration of the Chesapeake Bay. The restoration is now moving to a stage which will require greater involvement of the diverse communities that comprise the Chesapeake Bay area. To gain the active participation of these communities, it is critical that the Bay Program obtain baseline information on the attitudes, awareness and behavior of community members toward the Chesapeake Bay.

Following approval of this ICR, Chesapeake Bay Program representatives will conduct a voluntary telephone survey of randomly-selected households within the Chesapeake Bay area. One adult member of each selected household will be interviewed by a trained program representative using a standard interview guide. Respondents will be asked to provide general demographic information and specific information that includes: Their perception of the status of the Bay clean-up, the value of the Bay to their lives, their active support for the Bay clean-up and environmental efforts in general, and their knowledge of the Chesapeake Bay Program.

The information will be tabulated, analyzed, and compiled into a report which will be used by Bay Program representatives to refine their public outreach and communications strategy. A total of 2000 households will voluntarily participate in the survey.

Burden Statement: Public reporting burden for this collection of information is estimated to average 15 minutes per response including time for listening to instructions and responding to survey questions.

Respondents: Individual members of households within the Chesapeake Bay Area.

Estimated Number of Respondents: 2000.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One time.

Estimated Total Annual Burden on Respondents: 500 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy

Branch (PM–223Y), 401 M Street, SW., Washington, DC, 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: December 10, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–30666 Filed 12–17–92; 8:45 am]

BILLING CODE [illegible]

[FRL–4545–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Selective Enforcement Auditing Reporting Requirements (EPA ICR No. 11.06; OMB No. 2060–0064). This ICR requests renewal of the existing clearance.

Abstract: Motor vehicle manufacturers are subject to selective audits of production vehicles to verify that the prototype design can be manufactured and still meet emission requirements. Eighteen manufacturers keep records of emission tests and submit a summary of assembly-line emission testing to the Agency. From this information EPA selects approximately 8 vehicles each year for audits. Manufacturers subject to audits provide the EPA with emission test data, significant events and vehicle data, reports of SEA results, test facility descriptions, SEA laboratory check-out data, SEA test failure reports and an audit failure report. EPA uses this information to ensure that manufacturers follow the prescribed emissions test procedures, that their test equipment accurately measures emissions and that production vehicles conform to Federal emissions requirements when they come off the assembly line.

Burden Statement: The public reporting burden for this collection of information is estimated to average 234 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle manufacturers.

Estimated Number of Respondents: 18.

Estimated Total Annual Burden on Respondents: 4,216 hours.

Frequency of Collection: On occasion, quarterly and annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20530.

Dated: December 10, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–30667 Filed 12–17–92; 8:45 am]

BILLING CODE [illegible]

[FRL–4544–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of the Administrator

Title: Preaward Compliance Review Report for All Applicants Requesting Federal Financial Assistance (ICR No. 275.05; OMB No. 2090–0014).

Abstract: This ICR is for an extension of an existing information collection in support of Title VI of the Civil Rights Act of 1964, and described at 40 CFR Part 7.80 and 28 CFR Part 42.406–42.407. The information will be used by the EPA to determine preaward compliance with Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or age.

Under this ICR, applicants for grants must complete a form that requests information on: (1) Disparities in the services of the applicant's program or activities between minority and non-minority populations; (2) any outstanding lawsuits alleging discrimination or civil rights compliance reviews; (3) the applicant's receipt of, or application to, other Federal agencies for financial assistance; and (4) the accessibility of proposed facility under design to handicapped individuals (if applicable).

This application form is part of the construction grant application package which must be completed by grant applicants and forwarded to EPA for review by EPA grant specialists. There is no recordkeeping requirement.

Burden Statement: Public reporting burden for those subject to this collection of information is estimated to average 0.5 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information.

Respondents: State or local governments applying for construction grants.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC, 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and

Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: December 10, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30668 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4544-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Application for Registration of Pesticide-Producing Establishments (Form No. 3540-8) and Pesticide Report for Pesticide-Producing Establishments (Form No. 3540-16). (EPA ICR No. 0160.04; OMB No. 2070-0078). EPA ICR No. 0158, OMB No. 2070-0045, has been merged into this collection. This is a request for reinstatement of two previously approved collections.

Abstract: Under section 7(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), producers of pesticide products, active ingredients and devices, are required to register the establishment in which the pesticide is produced with the EPA. Under section 7(e) of the FIFRA any producer operating a registered establishment must submit a report to the Administrator of EPA 30 days after the establishment is registered, and then annually. Producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced. They are also required to disclosed the location of production, and the location of sale and distribution of pesticides. In addition, respondents must keep records of all the production data. EPA uses the information to perform risk assessments, to ensure compliance with the FIFRA, and to respond to Congressional requests.

Burden Statement: The public burden for this collection of information is estimated to average 1.2 hours per response for reporting and 0.8 hour per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, complete the forms, and review the collection of information.

Respondents: Operators of pesticide-producing establishments

Estimated Number of Respondents: 12,382.

Estimated Number of Responses Per Respondent: 1,057.

Estimated Total Annual Burden on Respondents: 16,724 hours.

Frequency of Collection: Once and annually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: December 10, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30669 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Digital Audio Radio Service Satellite Systems Applications Launch Fee Required

[DA 92-1666]

December 9, 1992.

On October 13, 1992 the Commission released a Public Notice, DA 92-1408, requesting comment on the application filed by Satellite CD Radio (CD Radio). It also announced a cut-off for applications to be considered concurrently with CD Radio's and stated that concrete and comprehensive proposals must be filed by December 15, 1992 together with the appropriate fees. Commission staff have received numerous inquiries about fee issues and there appears to be confusion among potential applicants regarding what fee should accompany their proposals.

Parties wishing to file applications for U.S. domestic digital audio radio service satellite systems to operate in the downlink frequency band of 2310-2360 MHz to be considered concurrently with CD Radio's may do so on or before December 15, 1992. Consistent with our policies for domestic fixed-satellite applications, these applications must request authority to construct, launch and operate a system. An applicant seeking construction authority only will not be afforded concurrent consideration with the CD Radio proposal. Together with its detailed proposal, applicants must file, at a minimum, a construction application fee of $2030 for each space station included in its proposal. Applicants may also choose to file the fee for launch and operating authority, which is $70,000 per satellite, at this time. Because there has been some confusion about the appropriate fee to pay, applicants will be permitted to submit the launch and operating authority fee for their system proposals on or before January 15, 1993. Failure to file all fees by January 15, 1993 will result in the dismissal of the application.

For further information, contact Rosalee Chiara at 202-634-1781.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 92-30729 Filed 12-17-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1921]

Petitions for Reconsideration and Clarification and Petition for Stay of Actions in Rule Making Proceedings

December 15, 1992.

Petitions for reconsideration and clarification and petition for stay have been filed in the Commission rulemaking proceedings listed in this Pubic Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Opposition to these petitions must be filed January 4, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of allotments, FM Broadcast Stations, (Scotland Neck and Pinetops, North Carolina). (MM Docket No. 92-7, RM No. 7879). Number of Petitions Filed: 1.

Subject: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991. (CC Docket No. 92–90). Number of Petitions Filed: 8.

Petition for Stay

Subject: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991. (CC Docket No. 92–90). Number of Petitions Filed: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–30728 Filed 12–17–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on Assistance to Operating Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement.

SUMMARY: This statement of policy revises the statement of policy of the Federal Deposit Insurance Corporation (the FDIC), which was published in the **Federal Register** on April 4, 1990, to implement several provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991. In particular, this statement of policy incorporates amendments under that legislation to the Federal Deposit Insurance Act with respect to (1) the statutory cost test for FDIC-assisted resolutions of failed or failing insured depository institutions, and (2) new requirements for any FDIC assistance provided to an operating institution prior to the appointment of a conservator or a receiver for that institution.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Hartheimer, Associate Director, Division of Resolutions, (202) 898–8789; Gail Patelunas, Assistant Director, Division of Resolutions, (202) 898–6779; Ruth R. Amberg, Senior Counsel, Legal Division, (202) 898–3736; Michael B. Phillips, Counsel, Legal Division, (202) 898–3753; Faye Cope, Senior Attorney, Legal Division, (202) 898–7265, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This statement of policy does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that this statement of policy will not have a significant economic impact on a substantial number of small entities. In addition, this statement of policy will not impose regulatory compliance requirements on depository institutions of any size.

The text of the statement of policy follows:

FDIC Statement of Policy on Assistance to Operating Insured Depository Institutions

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) contained several provisions that affect the authority of the Federal Deposit Insurance Corporation (the FDIC) to provide assistance to operating insured depository institutions under section 13(c) of the Federal Deposit Insurance Act, as amended (the FDI Act), 12 U.S.C. 1823(c). As a result of these new statutory provisions, the Board of Directors of the FDIC has concluded that the FDIC's policy for assistance to operating insured banks and savings associations (the 1990 Policy Statement), which was published in the **Federal Register** on April 4, 1990,[1] should be revised. This policy statement replaces the 1990 Policy Statement.

I. Introduction

Section 13(c) of the FDI Act authorizes the FDIC to provide assistance to operating insured institutions (1) to prevent the "default" of insured depository institutions or to assist acquisitions of insured depository institutions that are "in danger of default",[2] or (2) if severe financial conditions exist that threaten the stability of a significant number of insured institutions or of insured depository institutions possessing significant financial resources, to lessen the risk to the FDIC posed by such insured institutions under such threat of instability.

In order for the FDIC to provide assistance to an operating insured depository institution, the FDIC must determine that the assistance meets the least-cost test set forth in section 13(c) of the FDI Act. That section, as amended by FDICIA, provides that the assistance (1) must be necessary to meet the obligation of the FDIC to provide insurance coverage for the insured deposits in such institution, and (2) must be the least costly to the deposit insurance fund of all possible methods for meeting that obligation.[3]

The FDIC has the authority to provide an operating institution assistance that does not meet the least-cost test only if the Secretary of the Treasury (in consultation with the President and upon the written recommendations of two-thirds of the Board of Directors of the FDIC and two-thirds of the Board of Governors of the Federal Reserve System) determines that the FDIC's compliance with the least-cost test would have adverse effects on economic conditions or financial stability and the assistance to the operating institution would avoid or mitigate such adverse effects.[4]

FDICIA also added a new prerequisite to the FDIC's authority to provide assistance to an operating insured depository institution. The FDIC may consider providing direct financial assistance under section 13(c) to an operating insured institution before the appointment of a conservator or receiver only if the FDIC determines that (1) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the institution's capital levels are increased,[5] and (2) it is unlikely that the institution can meet all currently applicable capital standards without assistance.[6] In addition, before the FDIC may provide assistance to an operating insured institution, (1) the appropriate federal banking agency[7] and the FDIC must determine that, for such period of time as the agency or the FDIC considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders,[8] and (2) the FDIC must determine that the institution's management did not engage in any

[1] 55 FR 12358 (April 4, 1990).

[2] The terms "default" and "in danger of default" are defined in section 3(x) of the FDI Act, 12 U.S.C. 1813(x).

[3] See section 13(c)(4)(A)(ii) of the FDI Act, 12 U.S.C. 1823(c)(4)(A)(ii).

[4] See section 13(c)(4)(G) of the FDI Act, 12 U.S.C. 1823(c)(4)(G).

[5] See section 13(c)(8)(A)(i)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(I).

[6] See section 13(c)(8)(A)(i)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(II).

[7] "Appropriate Federal banking agency," is defined at 12 U.S.C. 1813(q), in part, to mean: (1) The Comptroller of the Currency, in the case of a national bank; (2) the Board of Governors of the Federal Reserve System, in the case of a state member insured bank; (3) the FDIC, in the case of a state nonmember insured bank; and (4) the Director of the Office of Thrift Supervision, in the case of any savings association.

[8] See section 13(c)(8)(A)(ii)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(I).

insider dealing, speculative practice, or other abusive activity.[9] Any determination made by the FDIC to provide assistance to an operating insured institution under 13(c) must be made in writing and published in the **Federal Register**.[10]

This revised policy statement reflects several changes from the FDIC's 1990 Policy Statement. First, this statement of policy reflects the mandatory provisions added to section 13(c) of the FDI Act by FDICIA, in addition to the "Sense of the Congress" in section 143 of FDICIA which encourages the early resolution of troubled insured depository institutions.[11] Second, this statement reflects the experience of the FDIC with assistance transactions under its 1990 Policy Statement. Third, this statement has been reorganized so that the criteria are grouped into subject categories and the section applicable only to savings associations (part IV) follows the section regarding assistance to any operating insured institution. These organizational changes are not intended to have any substantive impact; rather, they are intended to facilitate use of the statement.

Proposals for assistance for any operating insured institution under section 13(c) of the FDI Act will be reviewed by the FDIC under the criteria listed in section III of this policy statement. Proposals for assistance for operating savings associations under section 13(k)(5) of the FDI Act also must meet the criteria listed in section IV of this policy statement.

Prior to October 1, 1993, proposals for assistance with respect to operating savings associations may be funded by the Resolution Trust Corporation (the RTC). Until the Savings Association Insurance Fund (the SAIF) has adequate funding,[12] the FDIC may request that the RTC, with the approval of the Thrift Depositor Protection Oversight Board, provide necessary funds for the SAIF's financial assistance operations.[13]

[9] See section 13(c)(8)(A)(ii)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(II).

[10] See section 13(c)(8)(B) of the FDI Act, 12 U.S.C. 1823(c)(8)(B).

[11] See FDICIA, Pub. L. 102–242, section 143, 105 Stat. 2281 (1992). The "Sense of the Congress" in section 143 of FDICIA encourages early resolution of troubled insured depository institutions, so long as the early resolution is consistent with achieving the resolution method that is least costly to the deposit insurance fund. Section 143 of FDICIA includes seven general principles that have been incorporated substantially into the criteria in this revised policy statement.

[12] See section 11(a)(6)(F) of the FDI Act, 12 U.S.C. 1821(a)(6)(F).

[13] See section 11(a)(6)(H) of the FDI Act, 12 U.S.C. 1821(a)(6)(H).

II. Timing for Open Assistance Proposals

In recent years, most of the proposals made for assistance to an operating insured depository institution have been received by the FDIC either after or, at best, shortly before grounds have existed for the appointment of a receiver. Generally, the receipt of a proposal for open assistance at that time is too late to prevent the appointment of a receiver by that institution's chartering authority.

Under section 13(c)(4) of the FDI Act, the FDIC must select the resolution alternative that involves the least cost to the relevant deposit insurance fund. Because of the cost savings inherent in FDIC-assisted transactions involving the appointment of a receiver for an institution,[14] it may be difficult for an open assistance proposal to be more cost-effective than an available closed bank resolution. Therefore, an open assistance proposal, to be acceptable, generally must be submitted substantially before grounds exist for the appointment of a receiver for the institution.[15] Moreover, because of the complexity of many transactional structures involving open assistance, the time required to negotiate terms acceptable to all parties and to obtain necessary regulatory and shareholder approvals, and FDICIA's "prompt corrective action" mandates,[16] the FDIC encourages any proposals for open assistance to be submitted well before grounds first exist for the institution's closure.[17] In general, this timing consideration will require the board of directors of the insured institution to make the difficult business judgment that the institution is likely enough to fail that the balance of their responsibilities, including those to depositors as well as shareholders, compels the board to seek assistance, and to make that judgment before it is certain that the institution will fail.

For larger institutions seeking open assistance, the FDIC believes that unless discussions commence roughly eighteen (18) months before the probable appointment of a receiver, it will be difficult to effect an open assistance transaction.

[14] See, e.g., section 11(d), (e), (g) and (i) of the FDI Act, 12 U.S.C. 1821(d), (e), (g) and (i). Among the cost advantages favoring a resolution transaction following the appointment of a receiver for an institution are the effect of the receivership on the contingent liabilities of the failed institution, the potential for uninsured depositors and other unsecured creditors to share in the loss incurred on the institution and the ability of the FDIC as receiver to repudiate burdensome contracts.

[15] Under the least-cost test in section 13(c)(4) of the FDI Act, the FDIC evaluates open assistance proposals by comparing the cost of such proposals to the estimated cost of liquidating the institution and the estimated costs of other possible resolution transactions involving a closed institution. The costs of liquidation and possible resolution transactions involving a closed institution will be estimated as of the date on which the FDIC estimates that the appropriate regulatory authority will, or will be able to, appoint a receiver for the institution.

[16] See section 38(h)(3) of the FDI Act, 12 U.S.C. 1831o(h)(3).

[17] Section 131 of FDICIA, which added the "prompt corrective action" requirements under section 38 of the FDI Act, requires, among other provisions, that an insured depository institution that is "critically undercapitalized" be placed in receivership within ninety (90) days, unless the FDIC concurs in a conservatorship or the appropriate Federal banking agency for that institution and the FDIC concur that other action would better achieve the purposes of section 38 of the FDI Act. Pursuant to statutory mandates, the FDIC and the other bank and thrift regulatory agencies have set the "critically undercapitalized" level at a ratio of tangible equity to total assets of two(2) percent or less. See 57 FR 44866, 44897 (September 29, 1992).

Moreover, section 133 of FDICIA, effective December 19, 1992, expands the grounds on which a receiver or conservator may be appointed for an insured depository institution. See, e.g., section 11(c)(5) of the FDI Act, 12 U.S.C. 1821(c)(5).

III. Criteria for the FDIC's Consideration of Proposals for Assistance to an Operating Depository Institution

A proposal for assistance to an operating insured depository institution will be evaluated pursuant to the following criteria:

A. Prerequisites for FDIC Financial Assistance

Criterion 1

The FDIC must determine that grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution's capital levels are increased.[18]

Criterion 2

The FDIC must determine that it is unlikely that the institution can meet all currently applicable capital standards without assistance.[19]

B. Financial Criteria for Open Assistance

Criterion 3

The cost of the proposal to the FDIC must be determined to be the least-costly alternative available.[20] In order to

[18] This criterion is mandatory. See section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[19] This criterion is mandatory. See section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[20] This criterion is mandatory unless the Secretary of the Treasury makes a systemic risk determination. See section 13(c)(4) (A) & (G) of the FDI Act, 12 U.S.C. 1823(c)(4) (A) & (G). The least-cost test, as amended by FDICIA, requires that resolution alternatives be evaluated on a present-

ensure that a proposal for open assistance is the least-costly alternative, the FDIC will, in many cases, also seek proposals for resolving the institution on a closed basis.

Criterion 4

The proposal must provide for sufficient tangible capitalization, including capital infusions from outside private investment sources, to meet the regulatory capital standards of the appropriate federal banking agency.[21]

Criterion 5

The amount of the assistance and the new capital injected from outside sources must provide for a reasonable assurance of the future viability of the institution.[22]

Criterion 6

Applicants must establish quantitative limits on all financial items in the proposal. For example, if applicants request indemnification from the FDIC for certain contingent liabilities, assistance proposals must include ceilings on the FDIC's financial exposure.

C. Competition

Criterion 7

The FDIC shall consider assistance proposals within a competitive context which provides for the solicitation by the FDIC of interest from qualified entities.[23]

D. FDIC Financial Contribution and Repayment

Criterion 8

The FDIC will consider on a case-by-case basis whether the proposal shall provide the FDIC with an equity or other financial interest in the resulting institution.[24]

Criterion 9

It is preferable that any proposal for FDIC assistance provide for repayment of such assistance in whole or in part.

E. Impact on Shareholders and Creditors

Criterion 10

Preexisting shareholders and debtholders of the assisted insured institution shall make substantial concessions. In general, any remaining ownership interest of preexisting shareholders shall be subordinate to the FDIC's right to receive reimbursement for any assistance provided.

F. Due Diligence

Criterion 11

An operating institution seeking assistance must consent to unrestricted on-site due diligence reviews by the FDIC (or its agents) and FDIC-monitored, on-site due diligence reviews by all potential acquirers determined by the FDIC to be qualified after consultation with the appropriate federal banking agency.

G. Acquisition Within a Holding Company Structure

Criterion 12

The proposal must ensure that the assistance will benefit the institution and the FDIC and not be diverted to other purposes. If the assisted institution is a subsidiary of a holding company, the proposal should be structured so that FDIC assistance is not provided to the holding company, except where compelling reasons require it, and then only when the holding company acts as a conduit immediately to provide the entire amount of assistance to the failing insured depository institution.[25]

Criterion 13

If the assisted institution is a subsidiary of a holding company, the proposal should be structured so that available resources from the holding company and its other insured subsidiaries and/or nondepository subsidiaries are used to make a significant contribution toward minimizing the financial exposure of the FDIC.

H. Assets

Criterion 14

Although the FDIC will consider on a case-by-case basis whether to acquire or service assets of assisted institutions, assistance proposals should generally provide for the surviving institution to service the assets of the assisted institution. Under appropriate circumstances, the FDIC may consider loss-sharing, gain-sharing and other incentive arrangements on distressed assets.

I. Supervisory Concerns With Respect to Management

Criterion 15

The appropriate federal banking agency and the FDIC must determine that, during such period of time preceding the date of such determination as the agency or the FDIC considers to be relevant, management of the institution was competent and complied with applicable laws, rules, and supervisory directives and orders. In no event will such determination, for assistance transaction purposes, estop or impair the FDIC or the appropriate federal banking agency from pursuing any enforcement, civil or criminal remedies or redress against any person.[26]

Criterion 16

The FDIC must determine that the management of the resulting institution did not engage in any insider dealing,

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value basis, using a realistic discount rate. See section 13(c)(4)(B) of the FDI Act, 12 U.S.C. 1823(c)(4)(B). This cost determination is premised on evaluating all possible resolution alternatives and must be made as of the date the FDIC determines to provide section 13(c) assistance. See section 13(c)(4)(C) of the FDI Act, 12 U.S.C. 1823(c)(4)(C). In calculating the cost of such assistance, the FDIC must treat any tax revenues that the U.S. Treasury would forego as a result of an assistance transaction, to the extent they are reasonably determinable, as revenues foregone by the applicable deposit insurance fund.

[21] The regulatory capital requirements of the respective federal banking agencies are stated in: (1) For the Office of the Comptroller of the Currency, 12 CFR 3 6; (2) for the Board of Governors of the Federal Reserve System, Appendix A, Appendix B and Appendix D to Regulation Y, 12 CFR Appendix A, Appendix B and Appendix D to part 225; (3) for the FDIC, 12 CFR part 325, including Appendix A and Appendix B to part 325; and (4) for the Office of Thrift Supervision, 12 CFR part 567.

[22] Viability may be demonstrated by pro forma projections based on reasonable assumptions regarding the use of the assistance, earnings, reserve levels, asset quality trends, anticipated dividends, and capital levels and needs. The viability projections will be reviewed closely by the FDIC for the reasonableness of assumptions. In addition, under normal circumstances, enough new capital should come from outside private sources to represent a vote of confidence in the viability of the assisted institution. By contrast, as an example, a de minimus investment which gave the investor an option on the whole institution would not represent a market validation of the assurance of viability.

[23] The FDIC has determined that under 12 U.S.C. 1823(c)(4), in order to demonstrate that the least-costly resolution was selected, an assistance transaction generally cannot be the result of a single-party negotiation, but rather must be the result of a competitive process.

[24] Under 12 U.S.C. 1823(c)(5), the FDIC is prohibited from purchasing the voting or common stock of an insured institution; however, this restriction does not preclude the acceptance by the FDIC of non-voting preferred stock, warrants, or other forms of equity or equity-equivalent arrangements.

[25] See section 13(c)(3) of the FDI Act, 12 U.S.C. 1823(c)(3).

[26] This criterion is mandatory. See section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A). The FDIC interprets section 13(c)(8)(A)(ii) of the FDI Act that the management criterion applies to the management of the resulting institution, including any management retained from the predecessor institution, but not including predecessor management that is not retained. This interpretation is based on the relevant statutory provisions and their legislative history and reconciles the management criteria of section 13(c)(8)(A)(ii) with the statutory mandate of minimizing the cost of resolutions and with Congress' desire to encourage early resolutions, as reflected in section 143 of FDICIA.

speculative practice, or other abusive activity.[27]

Criterion 17

The proposal must provide for adequate managerial resources. Continued service of any directors or senior ranking officers who served in a policy-making role of the assisted institution, as may be determined by the FDIC, will be subject to approval by the FDIC.

Criterion 18

Any renegotiation or termination of management contracts is to be completed prior to the granting of assistance. Further, the FDIC may review and object to any or all parts of any compensation arrangements (including termination clauses) covering these individuals during the period assistance is outstanding.[28] In no event will the failure to terminate a particular management contract estop the FDIC or the appropriate Federal banking agency from pursuing any enforcement, civil, or criminal remedies or redress against any person unless there is a written statement explicitly waiving such rights that is signed by an authorized official of the FDIC and the appropriate Federal banking agency.

J. Fee Arrangements

Criterion 19

All fee arrangements to attorneys, investment bankers, accountants, consultants, and other advisors and agents incident to requests for financial assistance must be disclosed to the FDIC and will be evaluated in determining the cost of the assistance package. Excessive fees must be avoided.

IV. Open Assistance for SAIF-Insured Institutions

Section 13(k)(5) of the FDI Act provides that the FDIC shall consider proposals for financial assistance by eligible SAIF members before grounds exist for appointment of a conservator or receiver for such institutions. Proposals under section 13(k)(5) must meet the nine criteria of the statute, as follows:[29]

(1) Grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the member's "tangible capital" is increased.[30]

(2) It is unlikely that the institution can achieve positive tangible capital without assistance.

(3) Assistance by the FDIC likely would lessen the risk to the SAIF.

(4) Before the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the institution was solvent under applicable regulatory accounting principles but had negative tangible capital.[31]

(5) The negative tangible capital position of the institution is substantially attributable to supervisory transactions initiated by the Federal Home Loan Bank Board (FHLBB) or the Federal Savings and Loan Insurance Corporation (FSLIC).

(6) The institution is a "qualified thrift lender"[32] or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in supervisory transactions initiated by the FHLBB or the FSLIC were excluded from the institution's total assets.

(7) The appropriate federal banking agency has determined that the institution's management is competent and in compliance with applicable laws and regulatory directives.

(8) The institution's management did not engage in insider dealing, speculative practices, or other activities that jeopardized the institution's safety or soundness or contributed to its impaired capital position.

(9) The institution's offices are located in an "economically depressed region".[33]

Applicants seeking FDIC assistance pursuant to section 13(k)(5) generally will be required to meet all nineteen criteria listed in part III of this policy statement, in addition to the aforementioned statutory criteria in section 13(k)(5). However, with respect to Criterion 17 in part III of this policy statement, the FDIC generally will look to the determination of the Office of Thrift Supervision, but will retain discretion to review the merits of individual directors and senior ranking officers.

Assistance proposals with respect to SAIF member institutions under section 13(k)(5) that do not meet all nine of the aforementioned criteria may be submitted to the FDIC for consideration under section 13(c).

V. Other Information

Any proposal requesting assistance to prevent the closing of an insured depository institution should be addressed to the appropriate FDIC regional offices of the Division of Supervision and the Division of Resolutions and should provide the amount, terms, and conditions to the assistance requested as well as the details of the financial support to be provided. This information must be presented in sufficient detail to permit the FDIC to estimate the maximum cost that will be incurred as a result of the proposal and to determine the extent to which the proposal satisfies the criteria of this policy statement.

With respect to the management determinations set forth in Criteria 15, 16, 17 and 18 in part III, a proposal must include information about proposed management of the resulting assisted institution. Specifically, the proposal must identify all individuals who would exercise significant influence over, or participate in, major policy-making decisions of the insured depository institution proposed to be assisted, without regard to title, salary or compensation. This list would include, without limitation, all directors, the chief executive officer, the chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer and chief investment officer.

Copies of the proposal also should be provided to (1) the Director of the Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429, (2) the Director of the Division of Resolutions, FDIC, 550 17th Street, NW., Washington, DC 20429, (3) the institution's chartering authority, and, (4) if approvals under the Bank Holding Company Act are required, the appropriate Federal Reserve Bank.

By Order of the Board of Directors. Dated at Washington, DC this 8th day of December, 1992.

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[27] This criterion is mandatory. See section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A). See footnote 26, *supra*.

[28] In addition, under section 18(k)(1) of the FDI Act, the FDIC may "prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment." See 12 U.S.C. 1828(k)(1). The terms "golden parachute payment" and "indemnification payment" are defined in 12 U.S.C. 1828(k) (4) and (5)(A), respectively.

[29] The nine criteria for proposals submitted under section 13(k)(5) of the FDI Act are listed in subsections (k)(5)(A)(i)(I)–(III) and (A)(ii)(I)–(VI) of section 13 of the FDI Act, 12 U.S.C. 1823 (k)(5)(A)(i)(I)–(III) and (A)(ii)(I)–(VI).

[30] "Tangible capital" is defined in section 5(t)(9)(C) of the Home Owners' Loan Act, as amended (the HOLA), 12 U.S.C. 1464(t)(9)(C).

[31] *See* section 13(k)(5)(A)(ii)(I) of the FDI Act, 12 U.S.C. 1823(k)(5)(A)(ii)(I). Included among the accounting changes enacted under FIRREA was a five-year phaseout of qualifying supervisory goodwill as a component of "core capital", as defined in section (5)(t)(9)(A) of the HOLA, 12 U.S.C. 1464(t)(9)(A). The requirements for the phaseout of supervisory goodwill are set forth in section 5(t)(3) of the HOLA, 12 U.S.C. 1464(t)(3).

[32] *See* section 10(m) of the HOLA, 12 U.S.C. 1467a(m), which was amended by section 301 of FIRREA.

[33] *See* section 13(k)(5)(C) of the FDI Act, 12 U.S.C. 1823(k)(5)(C); 12 CFR 357.1.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 92-30673 Filed 12-17-92; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3094-EM]

Rhode Island; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

EFFECTIVE DATE: November 20, 1992.
SUMMARY: This notice amends the notice of an emergency for the State of Rhode Island (FEMA-3094-EM), dated September 16, 1992, and related determinations.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.
SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective November 20, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)
Grant C. Peterson,
Associate Director, State and Local Programs and Support.
[FR Doc. 92-30752 Filed 12-17-92; 8:45 am]
BILLING CODE 6718-02-M

[Docket No. FEMA-REP-5-OH-3]

Ohio Radiological Emergency Response Plans

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: The Region V Office of the Federal Emergency Management Agency gives notice that it has received radiological emergency response plans from the State of Ohio. These plans support the State of Ohio, and include the plans of local governments near the Cleveland Electric Illuminating Company's Perry Nuclear Power Plant, located in Lake County, Ohio.
DATE PLANS RECEIVED: May 24, 1989.
ADDRESSES: Comments on the plans may be submitted in writing to Janet M. Odeshoo, Chief, Natural and Technological Hazards Division, Federal Emergency Management Agency, Region V Office, 175 West Jackson Boulevard, Fourth Floor, Chicago, Illinois 60604, on or before January 19, 1993.

Copies of the plans are available for review at the Federal Emergency Management Agency, Region V Office, 175 West Jackson Boulevard, Fourth Floor, Chicago, Illinois 60604. Please call (312) 408-5500 in advance to arrange a time to review the plans. Copies are also available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, 44 CFR 5.26. See **SUPPLEMENTARY INFORMATION** below for further information on requesting copies of the plans.
FOR FURTHER INFORMATION CONTACT: Janet M. Odeshoo, Federal Emergency Management Agency, Region V Office, 175 West Jackson Boulevard, Fourth Floor, Chicago, Illinois 60604.
SUPPLEMENTARY INFORMATION: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Under 44 CFR 350.7, "Application by State for Review and Approval," the State of Ohio submitted its Radiological Emergency Plan for the State of Ohio and Affected Counties to the Federal Emergency Management Agency, Region V Office for review and approval under 44 CFR part 350.

Included in the submission are plans for the State of Ohio and for Lake, Ashtabula and Geauga Counties which are wholly or partially within the plume exposure pathway emergency planning zone of the Perry Plant.

Copies of the plans are available for review at the Federal Emergency Management Agency, Region V Office, 175 West Jackson Boulevard, Fourth Floor, Chicago, Illinois 60604. They are also available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, 44 CFR part 5.26. The four plans site-specific to the Perry Nuclear Power Plant are: The Ohio Plan for Response to Radiation Emergencies at Licensed Nuclear Facilities (542 pages), Lake County Emergency Response Plan for the Perry Nuclear Power Plant (442 pages), Ashtabula County Radiological Emergency Preparedness Plan (264 pages), and Geauga County Radiological Emergency Response Plan (213 pages). Reproduction fees are $.10 a page payable at the time the copies are requested.

The Perry Nuclear Power Plant public meeting was conducted February 20, 1985, at the Lakeland Community College Center, Kirtland, Ohio. Announcement of the public meeting was published in the Cleveland Plain Dealer and other local newspapers. Local radio and television stations announced the meeting.

Dated: December 14, 1992.
Arlyn F. Brower,
Regional Director, FEMA Region V.
[FR Doc. 92-30751 Filed 12-17-92; 8:45 am]
BILLING CODE 6718-20-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Puerto Rico Ports Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200708
Title: Puerto Rico Ports Authority/ Antilles Shipping Terminal Agreement
Parties: The Puerto Rico Ports Authority ("Port") Antilles Shipping Corporation ("Antilles")
Synopsis: The subject Agreement permits Antilles the exclusive use of the Port's Isle Grande Terminal for $380,000 per year, subject to five percent increases every five years during the initial 25-year term of the lease. The Port will undertake necessary construction and improvements.

Dated: December 14, 1992.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92-30675 Filed 12-17-92; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: January 10, 1993–8:30 a.m. to 4 p.m.

ADDRESSES: ANA Hotel (Westin), 2401 M Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Matthew Guidry, Ph.D., Deputy Executive Director, President's Council on Physical Fitness and Sports, 701 Pennsylvania Ave., NW., Suite 250, Washington, DC, 202/272–3424.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, and subsequent orders. The functions of the Council are:

(1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress;

(2) Advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services;

(3) Advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program of physical fitness and sports, to report on ongoing Council programs, and to plan for future directions.

Dated: December 15, 1992.

Matthew Guidry,

Deputy Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 92–30801 Filed 12–17–92; 8:45 am]

BILLING CODE 4160–17–M

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research, and Evaluation Meeting

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Thursday, January 21, from 9 a.m. to 5:30 p.m., and on Friday, January 22, from 9 a.m. to 10:30 a.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on January 22, 1993, from 10:45 a.m. to 2 p.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be at the Hyatt Regency, 7400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 227–8459.

In addition, if sign language interpretation or other reasonable accommodations for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 227–6662 no later than January 8, 1993.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the activity of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Linda H. Aiken, Ph.D.; Edward C. Bessey, M.B.A.; Marion F. Bishop, Ph.D.; Linda Burnes Bolton, Dr.P.H.; Joseph T. Curti, M.D.; John W. Danaher, M.D.; David E. Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Barbara J. McNeil, M.D., Ph.D.; Walter J. McNerney, M.H.A.; Lawrence H. Meskin, D.D.S., Ph.D.; Theodore J. Phillips, M.D.; Louis F. Rossiter, Ph.D.; Barbara Starfield, M.D.; and Donald E. Wilson, M.D.

There also are Federal ex officio Members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Thursday, January 21, 1993, the open portion of the meeting will begin at 9 a.m. with the call to order by the Council Chairman. The Administrator will provide an update on AHCPR activities. The AHCPR Legislative officer will conclude the morning meeting with an update on the recent AHCPR reauthorization as well as a discussion on health care reform. In the afternoon the Deputy Administrator, AHCPR, will update the Council on the issues of market forces, quality of care, and primary care, discussed by the Council at the September meeting. Following that discussion the Deputy Administrator also will provide an update on AHCPR Minority Health Resource Centers. Concluding the Thursday meeting will be discussion by the Council and AHCPR staff on guideline selection criteria. The Council will recess at 5:30 p.m.

On Friday, January 22, 1993, the Council will resume at 9 a.m. with a discussion on AHCPR technology assessment activities. The open meeting will adjourn at 10:30 a.m. The Council will begin the closed portion of the meeting to review grant applications from 10:45 a.m. to 2 p.m. The meeting will then adjourn at 2 p.m.

Agenda items are subject to change as priorities dictate.

Dated: December 14, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92–30731 Filed 12–17–92; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs

AGENCY: Centers for Disease Control and Prevention (CDC). Public Health Service, HHS.

ACTION: Request for comments.

SUMMARY: Since 1985, the Centers for Disease Control and Prevention (CDC), as part of the terms and conditions for receipt of CDC funds for human immunodeficiency virus (HIV) prevention programs, has required that all educational and related program materials be reviewed by a Program Review Panel designated by the funded organization. Since education about preventing HIV transmission involves effectively presenting sensitive subject matter, the purpose of this requirement has been to preclude local controversies over the use of Federal funds and thereby disrupting CDC-funded programs by requiring a careful consideration of the content and intended audience for the materials and programs. A guidance document for this review, entitled "Content of AIDS–Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs," was revised and published in the **Federal Register** on March 30, 1992, (57 FR 10794).

On May 11, 1992, the U.S. District Court for the Southern District of New York found unconstitutional the use of the "offensiveness" standard by Program Review Panels which review AIDS education materials and activities in CDC assistance programs. *Gay Men's Health Crisis* v. *Sullivan*, 88–CIV–7482 (S.D.N.Y. 1992). On May 27, 1992, the court enjoined CDC from further application or enforcement of the "offensiveness" standard, as provided in paragraph 1.b. and 2.d. of the Revised Terms published on March 30, 1992.

In response to this decision, an "Interim Revision" of the content guidelines were published in the June 15, 1992, **Federal Register** (57 FR 26742) and recipients in CDC assistance programs were instructed to adhere to these revised requirements. On July 31, 1992, CDC published a notice (57 FR 33964) stating that there would be no appeal of the District Court's decision and that the interim revisions, as published in June, would continue to remain in effect for CDC-funded AIDS prevention programs.

CDC is now soliciting comments with respect to the current version of these content guidelines. A copy is included for reference in this notice.

EFFECTIVE DATE: February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Gary West, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), (404) 639–1480.

SUPPLEMENTARY INFORMATION: Before making any further revisions to the guidelines, CDC requests comments from interested parties, especially state/local health departments and other current grantees, on the Interim Revision of the content guidelines and will carefully consider all comments in the revision process. In reviewing the terms and conditions which are set forth below, these questions should be addressed:

1. Program Review Panels (PRPs) were required by CDC to allow careful consideration of the content of AIDS-related information and educational materials. Such attention was thought to be necessary to preclude disruptions of HIV prevention programs as a result of local controversies over the use of Federal funds to develop or disseminate these materials. Based on the experience of your agency or organization, do you believe that the PRPs have assisted your HIV prevention efforts by precluding or minimizing such controversies?

2. Do you believe there is a continuing need for the PRPs or for some similar process involving community review of AIDS-related information or educational materials developed or disseminated with CDC funds?

3. Do you believe that important AIDS prevention information has been or will be withheld from dissemination due to the current AIDS content guidelines? Give examples.

4. What improvements could CDC make to the PRP requirements, review principles, or review process that would increase its usefulness in obtaining community input, enhance the quality and effectiveness of materials, and reduce the burden on grantees?

5. Are there ways, other than PRPs, through which careful review of materials could be accomplished with community input? Please provide detailed suggestions for consideration by CDC.

6. What additional assistance could be provided by CDC to assist grantees in developing and disseminating accurate, effective HIV/AIDS prevention educational materials that are well-supported by the communities served?

Dated: December 14, 1992.

Walter R. Dowdle,

Acting Director, Centers for Disease Control and Prevention (CDC).

Following are the interim revisions, as published on June 15, 1992:

Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers For Disease Control Assistance Programs—Interim Revisions June 1992

1. Basic Principles

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. These methods include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship with an uninfected partner. For those individuals who do not or cannot cease risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. These principles are intended to provide guidance for the development and use of educational materials, and to require the establishment of Program Review Panels to consider the appropriateness of messages designed to communicate with various groups.

a. Written materials (e.g., pamphlets, brochures, fliers), audiovisual materials (e.g., motion pictures and video tapes), and pictorials (e.g., posters and similar educational materials using photographs, slides, drawings, or paintings) should use terms, descriptors, or displays necessary for the intended audience to understand dangerous behaviors and explain less risky practices concerning HIV transmission.

b. Written materials, audiovisual materials, and pictorials should be reviewed by Program Review Panels consistent with the provisions of section 2500(b), (c), and (d) of the Public Health Service Act, 42 U.S.C. section 300ee(b), (c), and (d), as follows:

"SEC. 2500. USE OF FUNDS.

(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and

the benefits of abstaining from such activities.

(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction.—Subsection (c) may not be constructed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene."

c. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

d. Messages provided to young people in schools and in other settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988;37 [suppl. no. S–2]).

2. Program Review Panel

a. Each recipient will be required to establish or identify a Program Review Panel to review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This requirement applies regardless of whether the applicant plans to conduct the total program activities or plans to have part of them conducted through other organization(s) and whether program activities involve creating unique materials or using/distributing modified or intact materials already developed by others. Whenever feasible, CDC funded community-based organizations are encouraged to use a Program Review Panel established by a health department or an other CDC-funded organization rather than establish their own panel. The Surgeon General's Report on Acquired Immune Deficiency Syndrome (October 1986) and CDC-developed materials do not need to be reviewed by the panel unless such review is deemed appropriate by the recipient. Members of a Program Review Panel should:

(1) Understand how HIV is and is not transmitted; and

(2) Understand the epidemiology and extent of the HIV/AIDS problem in the local population and the specific audiences for which materials are intended.

b. The Program Review Panel will be guided by the CDC Basic Principles (in the previous section) in conducting such reviews. The panel is authorized to review materials only and is not empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the recipient organization or local governmental jurisdiction.

c. Applicants for CDC assistance will be required to include in their applications the following:

(1) Identification of a panel of no less than five persons which represent a reasonable cross-section of the general population. Since Program Review Panels review materials for many intended audiences, no single intended audience shall predominate the composition of the Program Review Panel, except as provided in subsection (d) below. In addition:

(a) Panels which review materials intended for a specific audience should draw upon the expertise of individuals who can represent cultural sensitivities and language of the intended audience either through representation on the panels or as consultants to the panels.

(b) The composition of Program Review Panels, except for panels reviewing materials for school-based populations, must include an employee of a state or local health department with appropriate expertise in the area under consideration who is designated by the health department to represent the department on the panel. If such an employee is not available, an individual with appropriate expertise, designated by the health department to represent the agency in this matter, must serve as a member of the panel.

(c) Panels which review materials for use with school-based populations should include representatives of groups such as teachers, school administrators, parents, and students.

(d) Panels reviewing materials intended for racial and ethnic minority populations must comply with the terms of (a), (b), and (c), above. However, membership of the Program Review Panel may be drawn predominately from such racial and ethnic populations.

(2) A letter or memorandum from the proposed project director, countersigned by a responsible business official, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the panel.

d. CDC-funded organizations that undertake program plans in other than school-based populations which are national, regional (multistate), or statewide in scope, or that plan to distribute materials as described above to other organizations on a national, regional, or statewide basis, must establish a single Program Review Panel to fulfill this requirement. Such national/regional/state panels must include as a member an employee of a state or local health department, or an appropriate designated representative of such department, consistent with the provisions of section 2.c.(1). Materials reviewed by such a single (national, regional, or state) Program Review Panel do not need to be reviewed locally unless such review is deemed appropriate by the local organization planning to use or distribute the materials. Such national/regional/state organization must adopt a national/regional/statewide standard when applying Basic Principles 1.a. and 1.b.

e. When a cooperative agreement/grant is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals which are under development;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that its project files contain a statement(s) signed by the Program Review Panel specifying the vote for approval or disapproval for each proposed item submitted to the panel; and

(4) Provide to CDC in regular progress reports signed statement(s) of the chairperson of the Program Review Panel specifying the vote for approval or disapproval for each proposed item that is subject to this guidance.

[FR Doc. 92–30702 Filed 12–17–92; 8:45 am]
BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and

Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Arthritis Advisory Committee Subcommittee

Date, time, and place. January 5, 1993, 8:30 a.m., Conference rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 23, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to a pending investigational new drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 14, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92-30721 Filed 12-17-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Announcement of Proposed Methodology for Implementation of the Statutory General Funding Preference for Selected Grant Programs Under Titles VII and VIII of the Public Health Service Act for Fiscal Year 1993

SUMMARY: The Health Professionals Education Extension Amendments of 1992 and the Nurse Education and Practice Improvement Amendments of 1992 (Pub. L. 102-408, dated October 13, 1992) amend the Public Health Service Act (the Act) to include a general funding preference (sections 791(a) and 860(e)) for selected grant programs. For the purpose of making grant and cooperative agreement awards, funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications. This notice will describe the proposed methodology for implementation of the general funding preference authorized by sections 791(a) and 860(e).

EFFECTIVE DATE: The methodology for implementing the statutory general funding preference is proposed for use in fiscal year (FY) 1993 grant cycles for the programs which are subject to this funding preference. Public comments are invited on the proposed FY 1993 methodology for implementing this statutory general funding preference and will be considered prior to the publication of the final notice.

SUPPLEMENTARY INFORMATION: Sections 791(a) and 860(e) of the Act include a general funding preference for selected grant programs under titles VII and VIII. Grant programs which are subject to this funding preference are:

Department of Family Medicine (section 747(b)),
Grants for Graduate Training in Family Medicine (section 747(a)),
** Grants for Faculty Development in Family Medicine (section 747(a)),
* Grants for Predoctoral Training in General Internal Medicine and/or General Pediatrics Predoctoral Training (section 748),
Grants for Residency Training in General Internal Medicine and/or General Pediatrics (section 748),
** Grants for Faculty Development in General Internal Medicine and/or General Pediatrics (section 748),
Residency Training and Advanced Education in the General Practice of Dentistry (section 749),
* Grants for Physician Assistant Training Program (section 750),
* Podiatric Primary Care Residency Training (section 751),
* Grants for Preventive Medicine Residency Training (section 763),
* Allied Health Traineeships (section 766),
Allied Health Project Grants (section 767),
* Advanced Nurse Education (section 821),
Nurse Practitioner and Nurse Midwife Education and Traineeships (section 822),
Professional Nurse Traineeships (section 830),
Nurse Anesthetist Education Programs (section 831(a)),
Nurse Anesthetist Traineeships (section 831(a)), and
Grants for Nurse Anesthetist Faculty Fellowships (section 831(b)).

Statutory General Funding Preference Provision

Under sections 791(a) and 860(e) of the Act, with respect to the above listed grant programs, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Preference will be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group.

Statutory Definition of "Graduate"

Under sections 791(c) and 860(e)(3), "graduate" is defined as an individual who has successfully completed all training (and residency requirements) necessary for full certification in the health profession selected by the individual.

Additional details concerning the definition of the word "graduate" will be included in the program materials for the grant programs which are subject to the general funding preference.

Proposed Methodology for Implementation

The methodology for implementing this statutory general funding preference includes (1) the definition of terms including "high rate," "significant increase in the rate," and "medically underserved communities," (2) a system of providing access to lists of work settings which are recognized as medically underserved areas, and (3) a system of ranking applications when multiple funding preferences are used.

To qualify for this funding preference, an applicant must meet the criteria for either part (A) or part (B) of the statutory provision cited above and be ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. Information submitted to apply for this statutory funding preference will be subject to the normal monitoring and Federal audit processes.

Proposed Definitions of "High Rate" and "Significant Increase in Rate"

Ideally, the definitions of "high rate" and "significant increase in rate" might vary according to different patterns of practice for individual health professions disciplines. However, for fiscal year 1993 grant cycles, detailed and systematized data on which to base precise discipline-specific standards do not exist. Pending collection of more data through public comment, grant applications, or other means, the following definitions are proposed.

"High rate" is defined as 20 percent of graduates in academic year 1990-91 or academic year 1991-92, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings.

"Significant increase in the rate" means that, between academic years 1990-91 and 1991-92, the rate of placing graduates in the specified settings has increased by at least 50 percent and that not less than 10 percent of graduates are working in these settings.

Applications for the development of new programs should provide information about the placement of graduates from the entire school in medically underserved areas. For

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* There will be no competitive grant cycles in FY 1993.

** For these programs focused on the development of faculty members to teach, a method of implementing the intent of this preference will be developed in FY 1993 to be implemented in FY 1994.

example, an application for a new program for nurse practitioners should provide information relative to the placement of graduates from the school of nursing.

The statutory preference for Allied Health Project grants in section 767(b)(2)(B) provides a precedent for the use of 20 percent to define "high rate" of placing graduates in medically underserved communities. With respect to "significant increase in the rate," an increase of 50 percent in the placement of graduates with at least 10 percent placed in these settings is intended to be an achievable goal, while emphasizing provision of substantial care in medically underserved areas.

Statutory Definition of "Medically Underserved Community"

Section 799(6) of the Act defines "medically underserved community" as an urban or rural area or population that—

(A) Is eligible for designation under section 332 as a health professional shortage area;

(B) Is eligible to be served by a migrant health center under section 329, a community health center under section 330, a grantee under section 340 (relating to homeless individuals), or a grantee under section 340A (relating to residents of public housing); or

(C) Has a shortage of personal health services, as determined under criteria issued by the Secretary under section 1861(aa)(2) of the Social Security Act (relating to rural health clinics).

Proposed Amplification of "Medically Underserved Community" Definition

In addition to the definition in the law, the Congressional conferees emphasized in the Statement of Managers for Public Law 102–408, that this definition should encompass not only currently designated health professions shortage areas (HPSA) and populations served by existing community (CHC), migrant (MHC) or homeless health centers but also communities and practice sites which may fit the standards for these designations, but which are not, in fact, so designated. Therefore, in implementing this funding preference for fiscal year 1993, a "medically underserved community" is proposed to include the following work settings:

Community Health Centers (section 330)
Migrant Health Centers (section 329)
Health Care for the Homeless Grantees (section 340)
Public Housing Primary Care Grantees (section 340A)
Rural Health Clinics, federally designated (section 1861(aa)(2) of the Social Security Act)
National Health Service Corps sites, freestanding (section 333)
Indian Health Service Sites (Pub. L. 93–638 for tribally operated sites and Pub. L. 94–437 for IHS operated sites)
Federally Qualified Health Centers (section 1905 (a) and (l) of the Social Security Act)
Primary Medical Care Health Professional Shortage Areas (HPSAs) (facilities and geographic) (designated under section 332) for primary care physicians and other health personnel except dentists and nurses
Dental HPSAs (facilities and geographic) (designated under section 332) for dentists only
Nurse Shortage Areas (section 836) for nurses only
Local Health Departments (regardless of sponsor—for example, local health departments who are funded by the state would qualify).

This list of work settings was developed to be objective, reasonable, practical, consistent with current definitions/usages and consistent with the law and report language (Conference Report for Public Law 102–408). There are other practice sites that serve medically underserved communities but are not included in this proposed FY 1993 implementation of the statutory funding preference. Information about such sites and suggestions of ways to categorize or define these sites for possible inclusion in FY 1994 are solicited.

Access to the Lists of Medically Underserved Work Settings

The above listed sites are proposed because medically underserved locations have been identified and compiled into listings by recognized Federal units. Beginning January 1, 1993, a listing of Community Health Centers, Migrant Health Centers, Health Care for the Homeless Grantees, Public Housing Primary Care Grantees, Rural Health Clinics, National Health Service Corps Sites, Indian Health Service Sites, and Federally Qualified Health Centers will be available through an electronic bulletin board, called the BHPr (Bureau of Health Professions) Bulletin Board. Data will be available in two formats, as a dBASE III file or as an ASCII file. The BHPr Bulletin Board can be accessed by using a personal computer with a communication package and a modem by dialing (301) 443–3997. Detailed instructions for how to proceed will appear on the screen as soon as access to the Bulletin Board is complete. Applicants who do not have the necessary equipment to access the electronic bulletin board may obtain additional information by calling the Program Official identified in the application materials for the grant programs subject to this statutory funding preference.

A list of designated Primary Medical Care Health Professional Shortage Areas (HPSAs) was published in the Federal Register on October 28, 1992 (57 FR 48854). For additional information concerning the Primary Medical Care Health Professional Shortage Areas (HPSAs), Dental HPSAs, and Nurse Shortage Areas, applicants may call the Division of Shortage Designation at (301) 443–6932.

For additional information concerning Local Health Departments, applicants may call the National Association of County Health Officers (NACHO) at (202) 783–5550.

Ranking Applications When Multiple Funding Preferences Are Used

Grant programs which are subject to the statutory general funding preference, under sections 791(a) and 860(e) of the Act, may also include another statutory funding preference and/or nonstatutory, administratively determined funding preferences. For grant programs that include multiple funding preferences, it is proposed that preference points be assigned. An application would receive one point for qualifying for a statutory funding preference and one half point for qualifying for each administrative preference, but no applicant qualifying only for an administratively determined preference would be funded ahead of an applicant qualifying for a statutory funding preference. The total number of preference points for any grant program will equal the number of statutory preferences plus half the number of administrative preferences. The preference points will (1) provide equitable treatment of applicants which qualify for more than one preference, (2) recognize that statutory funding preferences should have the most weight, and (3) give appropriate credit for administratively determined preferences.

Continued Development of Methodology

The proposed implementation methodology is intended to be a starting point in an evolutionary process. Ultimately, definitions of "high rate" and "significant increase in the rate" may be individualized for specific grant programs or for specific health professions as more data are available from public comments and specific data collection efforts. The list of acceptable

work settings may also be refined and/or expanded in the future. Changes based on public comment will be considered for fiscal year 1993 or may be implemented in future program cycles. Comments from the public are encouraged to assist in refining the methodology for implementing this funding preference. Specific efforts will be undertaken to solicit comments from affected constituency groups and institutions. For example, relevant applicants will be provided with a copy of the **Federal Register** notice and are encouraged to comment. In addition, relevant applicants will be asked to describe their methodology for obtaining information about graduates and to provide suggestions for future approaches. The goal is to attain an implementation system that adheres to the Statute and Congressional intent, and is objective and achievable without undue burden on the applicant.

Additional Information

Interested persons are invited to comment on the proposed implementation methodology. The comment period is 30 days. All comments received on or before January 19, 1993 will be considered before the final implementation methodology for fiscal year 1993 is established. No funds for competitive grants will be awarded until a final notice is published. Written comments should be addressed to: Ms. Shirley Johnson, Director, Office of Program Development, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Office of Program Development, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Dated: December 14, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–30670 Filed 12–17–92; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, December 4, 1992.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests)

1. National Nosocomial Infections Surveillance System (NNIS)—0920–0012—The NNIS system collects data to describe the scope and magnitude of the nosocomial infection problem in the U.S., identifies risk factors associated with these infections and assists hospitals to use surveillance data to improve the quality of patient care. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 165; *Number of Responses per Respondent:* 1600; *Average Burden Per Response:* 0.012 hours; *Estimated Annual Burden:* 3160 hours.

2. Farm Family Health & Hazard Surveillance in Ohio—New—This submission is for a survey of Ohio farm operators and eligible family members who are involved in cash grain farming. Data will determine prevalence and incidence of health conditions and injuries by farm demographics. The data will be used to set priorities and to develop intervention strategies in specific subpopulations in order to reduce health and safety risks in them. *Respondents:* Individuals or households; *Number of Respondents:* 6762; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .998 hours; *Estimated Annual Burden:* 6747 hours.

3. Indian Health Service Loan Repayment Program—0917–0014—Respondents are American Indian Loan Repayment Health professionals applying to the Indian Health Service (IHS) Loan Repayment Program (LRP). The application provides information on training status in compliance with program requirements. *Respondents:* Individual or households, State or local governments, businesses or other for profit.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Applicants	1,200	1	1.5
Leaders	1,600	1	0.25
Estimated Total annual Burden			2,200

Desk Officer: Shannah Koss

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: December 14, 1992.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 92–30697 Filed 12–17–92; 8:45 am]

BILLING CODE 4160–17–M

Health Resources and Services Administration; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a new system of records: 09–15–0058, "Faculty Loan Repayment Program, HHS/HRSA/BHPr."

DATES: PHS invites interested parties to submit comments on or before January 19, 1993. PHS has sent a Report of A New System to the Congress and to the Office of Management and Budget (OMB) on December 8, 1992. The new system will be effective 60 days from the date submitted to OMB unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please address comments to the Health Resources and Services Administration (HRSA) Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, Room 14A–20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3780. This is not a tool-free number.

FOR FURTHER INFORMATION CONTACT: Director, Division of Disadvantaged Assistance BHPr/HRSA, Room 8A09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2100. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration (HRSA) proposes to establish a new system of records: 09–15–0058, "Faculty Loan Repayment Program, HHS/HRSA/BHPr." Under this program, disadvantaged graduates from certain health professions schools are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Services agrees to repay a specified amount of their graduate loan indebtedness. In exchange, the graduate health professional agrees to have contract with an accredited health professions school to serve as a fulltime faculty member for a minimum of 2 years.

The purposes of the records maintained in this system are to: (1) Maintain all information relative to the application for the awarding of a contract to an individual; (2) monitor recipient's continued eligibility; (3) monitor recipient's employment with the accredited health professions school; (4) monitor all repayment actions until the repayment obligation is satisfied; and (5) compile and generate managerial and statistical reports.

HRSA will permit disclosure of the records to third parties pursuant to a routine use as follows: The first routine use permits disclosure to a congressional office, to allow subject individuals to obtain assistance from their representatives in Congress, if they so desire. The second routine use allows disclosure to the Department of Justice or a court, in the event of litigation. The third routine use allows disclosure to a consumer reporting agency (credit bureau) to obtain a commercial credit report. The fourth routine use allows disclosure to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt. The fifth routine use allows disclosure to authorized persons employed at educational institutions to assist in identifying defaulted contract recipients. The sixth routine use allows disclosure to a Federal, State or local agency charged with the responsibility of investigating or prosecuting violations or potential violations of law. The seventh routine use allows disclosure to another Federal agency so that the agency can effect a salary offset, or an authorized administrative offset. The eighth routine use allows disclosure to the General Accounting Office and the Office of Management and Budget for auditing financial obligations. The ninth routine use allows disclosure to another agency that has asked the Department to effect an administrative offset to help collect a debt owed to the United States. The tenth routine use allows disclosure to the Treasury Department, Internal Revenue Service, of the written-off amount of a debt owed by an individual to the Federal Government as taxable income. The eleventh routine use allows disclosure to a third party for the purpose of obtaining the current address.

Because the payments made by the Federal Government to individuals under the program are taxable income and require HHS to file Form 1099 for each participating individual, participants will be required to furnish their Social Security number as required by the Internal Revenue Code (26 U.S.C. 6109(c)(2)).

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after it becomes effective.

Dated: December 10, 1992.

Wilford J. Forbush,

Director, Office of Management.

09–15–0058

SYSTEM NAME:

Faculty Loan Repayment Program, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8A09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and receipients of contracts under the Faculty Loan Repayment Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contain name, Social Security number, school identifier, contract number, birthdate, demographic background, educational status, school location, employment status, payback status, and financial information about the individual for whom the record is maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, section 761 (42 U.S.C. 294cc). This section authorizes the establishment of a program for entering into contract with individuals from disadvantaged backgrounds for repayment of educational loans in exchange for teaching services.

PURPOSES:

1. To maintain all information relative to the application for awarding a contract to an individual.
2. To monitor recipient's continued eligibility.
3. To monitor recipient's employment in fulfillment of recipient's service obligation.
4. To monitor all repayment actions until the repayment obligation is satisfied.
5. To compile and generate managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual, in responses to an inquiry from the congressional office made at the request of the individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in such care HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. HRSA may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect or compromise a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

4. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a loan. The purpose of this disclosure is to assist institutions in identifying defaulted loan recipients (hereafter called debtors) in order to enforce the conditions and terms of such loans.

5. In the event that system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

6. HRSA may disclose from this system of records a debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows: (a) To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset; (b) to another Federal agency so that agency can effect an authorized administrative offset (i.e., withhold money payable to or held on behalf of debtors other than Federal employees); (c) to the Treasury Department, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising debt, or to have a commercial credit report prepared.

7. Records may be disclosed to the General Accounting Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

8. HRSA may disclose information from this system of records to another Federal agency that has asked the Department to effect an administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual, and other information concerning the administrative offset.

9. HRSA will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

10. HRSA may disclose information from this system of record to any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, professional organization, alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be strictly limited to information necessary to identify the individual without any reference to the reason for the agency's need for obtaining the address.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of disclosure is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on magnetic tape, microfilm, and/or in disk packs.

RETRIEVABILITY:

Retrieval will be by name and/or Social Security number.

SAFEGUARDS:

1. Authorized Users: Administrative and staff personnel of the Division of Disadvantaged Assistance and other components of the HRSA.

2. Physical Safeguards: Magnetic tapes, microfilms, disk packs, computer equipment, and hard copy files are stored in areas where fire and life safety codes are strictly enforced. Twenty-four hours, 7-day security guards perform random checks on the physical security of the data. All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural and Technical Safeguards: A password is required to access the terminal, and a software security system controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and the Department's Information Systems Security Handbook.

RETENTION AND DISPOSAL:

Records will be retained for 6 years (1 year on site and 5 years at the National Records Center) after completion of the service obligation or repayment to the Secretary in cases of default. Records on magnetic tape are retained for 5 years and then they are destroyed. Records are disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration. Contact the System Manager for disposal standard.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, room 8A09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain in apparent discrepancy between information contained in the records and that provided by the individual requesting access to the

records. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified above and reasonably identify the record, specify the information being contested, and state the corrective action and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual contract recipients, recipient's school.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92-30730 Filed 12-17-92; 8:45 am]

BILLING CODE 4160-15

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, November 20, 1992. (Call Reports Clearance Officer on (410) 965-4142 for copies of package)

1. Statement of Death by Funeral Director—0960-0142. The information on form SSA-721 is used by the Social Security Administration (SSA) to make timely and accurate decisions in connection with the death of an individual and to determine if there are survivors who may be eligible for Social Security benefits.

Number of Respondents: 900,000
Frequency of Response: 1
Average Burden Per Response: 3.5 minutes
Estimated Annual Burden: 52,500 hours

2. Disability Report—0960-0141. The information on form SSA-3368 is used by SSA to help make a determination of disability on a claim for benefits. The respondents are applicants who have filed for disability benefits under titles II or XVI.

Number of Respondents: 1,800,000
Frequency of Response: 1
Average Burden Per Response: 45 minutes
Estimated Annual Burden: 1,350,000

3. Medical History and Disability Report—0960-0504. The information on form SSA-3820 is used by SSA to help make a disability determination in claims for disabled child's benefits. The respondents are claimants for those benefits.

Number of Respondents: 453,000
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 151,500 hours.

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 8, 1992.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92-30266 Filed 12-17-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3551]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 9, 1992.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Proposal: Actions to Reduce Losses in FHA Programs (FR-2491).
Office: Housing.

Description of the Need for the Information and its Proposed Use: This information collection requires a mortgagee, when notified by the FHA Commissioner, that the mortgage had a higher than normal rate of serious defaults and claims in the processing year to submit a report to the Commissioner and, if applicable, a plan and a timetable for corrective action.

Form Number: None.

Respondents: Individuals or households, businesses or other for-profit, non-profit institutions and small businesses or organization.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		40		8,000

Total Estimated Burden Hours: 8,000.

Status: Extension.

Contact: Andrew Zirneklis, HUD, (202) 708–1824, Angela Antonelli, OMB, (202) 395–6880.

Dated: December 9, 1992.

Proposal: Section 8 Housing Assistance Program for the Disposition/ HUD-owned Projects, Section 8 Housing Assistance Payments (HAP) Contract (Part II).

Office: Housing.

Description of the Need for the Information and its Proposed Use: The HAP Contract, Part II, form HUD–52522–D, is the legal document used to obligate Federal funds and to commit the owner to HUD regulations and necessary procedural requirements governing the purpose and use of these funds.

Form Number: HUD–52522–D.

Respondents: Individuals or households, State or local governments, businesses or other for-project and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	860		1		30.1244		25,907

Total Estimated Burden Hours: 25,907.

Status: New.

Contact: R. K. Weldon, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880.

Dated: December 9, 1992.

[FR Doc. 92–30707 Filed 12–17–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3552]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 8, 1992.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Request for Construction Change.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information is used by contractors, mortgagors, and mortgagees to obtain approval of changes in the contract drawings and specifications. HUD will use the information to make sure they are complying with Article 1F of the Construction Contract.

Form Number: HUD–92437, 92441, 92442 and 92442A.

Respondents: Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions and Small Businesses or Organization.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Request for Construction change	500		20		3		30,000

Total Estimated burden Hours: 30,000.

Status: Extension.

Contact: Felix Coward, HUD, (202) 708–0743, Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

Proposal: Section 8 Housing Assistance Payments Program, Additional Assistance Program for Project with HUD–Held Mortgages, 24 CFR part 886, subpart A Housing Assistance Payments (HAP)

Office: Housing.

Description of the Need for the Information and its Proposed Use: Owners or managing agents of certain categories of HUD-Insured or HUD-held project mortgages with immediate or potentially serious financial difficulties apply for assistance under 24 CFR Part 886, Subpart A. These contracts provide the administrative mechanism to obligate the necessary funds for the financially troubled projects or the renewal of existing HAP contracts.

Form Number: HUD–52530 and 53537.

Respondents: Individual or Households, State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3,126		1		7.243		22,642

Total Estimated Burden Hours: 22,642.

Status: Revision.

Contract: R.K. Weldon, HUD, (202) 708–3944. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

Proposal: Request for Alternative Construction ("No Action Letter") 24 CFR 3282.14 Alternative Construction of Manufactured Homes.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Department will use this information to allow manufactured to build homes using construction methods other than those required by the National Manufactured Home Construction and Safety Standards established by the Secretary. It will also assure that home purchasers are aware of any use of alternative construction methods.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	11		1		32.66		359

Total Estimated Burden Hours: 359.

Status: Extension.

Contact: Philip Schulte, HUD, (202) 708–1920. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

Proposal: Agreement to Avoid Judgment.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–56145 is used by HUD Field Office personnel to obtain payments due the Government in the case of a claim for reimbursement for loss on an eligible title I loan.

Form Number: HUD–56145.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–56145	1,258		1		1		1,258

Total Estimated Burden Hours: 1,258.

Status: New.

Contact: Annie Baird-Bridges, HUD, (202) 708–5880. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

Proposal: Requirements for Single Family Mortgage Instruments Model/ Adjustable Rate Note Form.

Office: Housing.

Description of the Need for the Information and its Proposed Use: As the insurer for single family mortgages, HUD must ensure that the mortgage instruments have provisions that are compatible with the Department's requirements. In addition, these instruments must contain the specific provisions necessary to accomplish program objectives.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Mortgage Instruments	8,300		90		.25		186,750

Total Estimated Burden Hours: 186,750.

Status: Extension.

Contact: Joan Morgan, HUD, (202) 708–2676. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

[FR Doc. 92–30708 Filed 12–17–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–92–3542; FR–3348–N–03]

State and Local Fair Housing Laws: Notice of Certification of Substantially Equivalent Agency—State of North Carolina

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and request for comments.

SUMMARY: Title 24, part 115 of the Code of Federal Regulations describes the procedure for certifying State and local fair housing laws that provide substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act. In accordance with 24 CFR 115.6(c), this Notice announces the Department's determination that the fair housing law of the State of North Carolina is substantially equivalent, on its face, to the Fair Housing Act. This notice also solicits comments from the public on this determination, and on whether the present practices and past performance of the agency enforcing the fair housing law for the State of North Carolina demonstrate that, in operation, the law provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act.

DATES: Comment Due Date: January 19, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of housing and Urban Development, 451 Seventh Street, SW, room 5234, Washington, DC 20410, telephone (202) 708–0455. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600–3619), the Department is authorized to investigate complaints alleging discrimination in housing. (Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 is cited as the Fair Housing Act. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to State and local agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards are codified at 24 CFR part 115.)

On January 13, 1992 (57 FR 1277), the Department published the annual notice required by 24 CFR 115.6, which announced, among other things, the updated, consolidated list of all certified agencies, and a list of agencies with which an agreement for interim referrals or other utilization of services has been entered into under 24 CFR 115.11. In the January 13, 1992 notice, the Department listed eight jurisdictions which had entered into an agreement with the Department, subsequent to September 12, 1988, for interim referrals, and were considered to have interim certification in accordance with section 810(f)(4) of the Fair Housing Amendments Act of 1988 (hereafter "Act"). (The Fair Housing Amendments Act of 1988 was enacted on September 13, 1988.) Today's notice announces that the fair housing law of the State of North Carolina has been determined by the Assistant Secretary of Fair Housing and Equal Opportunity to be substantially equivalent on its face.

This Notice

In accordance with 24 CFR 115.6(c)(1), this Notice announces that the fair housing law of the State of North Carolina is, on its face, substantially equivalent to the Fair Housing Act. The Assistant Secretary for Fair housing and Equal Opportunity has determined, after application of the criteria set forth in 24 CFR 115.3 and 115.4, that the fair housing law for the State of North Carolina provides, on its face, substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act. Following a review of performance standards and other material, the Department expects to determine that the law in operation provides rights and remedies that are substantially equivalent to those available under the Fair housing Act. The Department intends to execute a Memorandum of Understanding with the agency charged with enforcement of the fair housing law of the State of North Carolina in accordance with 115.6(c).

In accordance with 24 CFR 115.6(b), the public is invited to submit written comments on this Notice. Specifically, the Department requests written comments on the proposed determination that the current practices and past performance of the State of North Carolina agency charged with administration and enforcement of the State' fair housing law demonstrate that, in operation, the State law provides substantive rights and remedies which are substantially equivalent to the Fair housing Act. This Notice also invites comments from the public on the Department's determination that the State of North Carolina fair housing law is, on its face, substantially equivalent to the Fair Housing Act.

Dated: December 7, 1992.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92–30705 Filed 12–17–92; 8:45 am]

BILLING CODE 4210–28–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–3350–N–10]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD:

(1) Its intention to make the property available for use to assist the homeless;

(2) Its intention to declare the property excess to the agency's needs; or

(3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the handholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; room 1E671, Pentagon, Washington, DC 20310–2600; 693–4583; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Veterans Affairs: Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW., Washington, DC 20420; (202) 233–8484; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers.)

Dated: December 11, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/18/92

Suitable/Available Properties

Buildings (by State)

California

Bldg. 156, VAMC
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979230015
Status: Underutilized
Comment: Portion of 39,454 sq. ft. bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7,566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only.

Indiana

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230007
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent sue—trash house, access restrictions.

Maine

Bldg. 332, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME

Landholding Agency: Navy
Property Number: 779240013
Status: Excess
Comment: 1,248 sq. ft., 1-story, most recent use—office building, off-site use only.

Bldg. 333, Naval Air Station
Topsham Annex
Brunswick Co: Segadahoc ME
Landholding Agency: Navy
Property Number: 779240014
Status: Excess
Comment: 12,672 sq. ft., 2-story, most recent use—office building, off-site use only.

Oklahoma

Bldg. T–1475, Fort Sill,
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240784
Status: Unutilized
Comment: 544 sq. ft., 1-story wood frame donkey shed, off-site use only.

Washington

Federal Building,
801 Capitol Way
Olympia Co: Thurston WA
Landholding Agency: GSA
Property Number: 549240003
Status: Excess
Comment: 13,800 sq. ft., 3-story plus basement, sandstone blocks over steel-concrete superstructure, most recent use—office space, listed on National Hisioric Register.
GSA Number: G–WA–1040

Vancouver Substations
Vancouver Co: Clark WA 98661—
Landholding Agency: GSA
Property Number: 549240004
Status: Excess
Comment: 7 electrical control houses and transmission line corridors, access restrictions, high voltage present, minor contamination.
GSA Number: 9–B–WA–1019–1028

Land (by State)

California

.4075 acres
Ocotillo Wells
Borrego CA
Landholding Agency: GSA
Property Number: 549230002
Status: Excess
Comment: unimproved land, surrounding land—desert.
GSA Number: 9–F–CA–1327

Oklahoma

Parcel No. 100/GSA No. 13
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall OK
Location: 1 mile northeast of Enos
Landholding Agency: GSA
Property Number: 319010440
Status: Excess
Comment: 11.77 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel No. 58/GSA No. 7
Lake Texoma
Section 34 and Section 3
Co: Marshall OK
Location: About 2 miles northeast of Cumberland
Landholding Agency: GSA
Property Number: 319010460
Status: Excess
Comment: 28.66 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel No. 44/GSA No. 4
Lake Texoma
Section 15, T5S, R7E
Co: Johnston OK
Location: About ½ miles southeast of Bee
Landholding Agency: GSA
Property Number: 319010475
Status: Excess
Comment: 14.98 acres, no utilities, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel No. 46/GSA No. 5
Lake Texoma
Section 15 and Section 16, T5S, R7E
Co: Johnston OK
Location: About 1 miles southwest of Bee
Landholding Agency: GSA
Property Number: 319010477
Status: Excess
Comment: 23.91 acres, no utilities, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel No. 13/GSA No. 1
Lake Texoma
Section 7, T7S, R8E
Co: Bryan OK
Location: Approximately 2 miles south of Mead, OK.
Landholding Agency: GSA
Property Number: 319011345
Status: Excess
Comment: 26.76 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel No. 21/GSA No. 2
Lake Texoma
Section 3, T7S, R7E
Co: Bryan OK
Location: Approximately 5 miles southwest of Mead, OK.
Landholding Agency: GSA
Property Number: 319011352
Status: Excess
Comment: 41.16 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel No. 23/GSA No. 3
Lake Texoma
Section 34, T7S, R8E
Co: Bryan OK
Location: Approximately 3½ miles west of Mead, OK
Landholding Agency: GSA
Property Number: 319011354
Status: Excess
Comment: 9 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel No/ 68/GSA No. 10
Lake Texoma, Sect. 11 T6S, R6E
Cumberland Co: Marshall OK
Landholding Agency: GSA
Property Number: 549240010
Status: Excess
Comment: 29.76 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Texas

Parcel #185/GSA No. 19
Lake Texoma
Co: Cooke TX
Location: Robert Firnash survey A–368
Landholding Agency: GSA
Property Number: 319010405
Status: Excess
Comment: 31.64 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel #224/GSA No. 24
Lake Texoma
Co: Grayson TX
Location: Thomas E. Hardway survey A–543
Landholding Agency: GSA
Property Number: 319010423
Status: Excess
Comment: 14.07 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel #226/GSA No. 25
Lake Texoma
Co: Grayson TX
Location: Shields Booke survey A–59
Landholding Agency: GSA
Property Number: 319010425
Status: Excess
Comment: 23.84 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel #239/GSA No. 26
Lake Texoma
Co: Grayson TX
Location: Greenberry Gate survey A–443
Landholding Agency: GSA
Property Number: 319010429
Status: Excess
Comment: 13.03 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel #241/GSA No. 27
Lake Texoma
Co: Grayson TX
Location: Greenberry Gates survey A–443
Landholding Agency: GSA
Property Number: 319010431
Status: Excess
Comment: 12.37 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Parcel #242/GSA No. 28
Lake Texoma
Co: Grayson TX
Location: Thomas Allen survey A–25
Landholding Agency: GSA
Property Number: 319010432
Status: Excess
Comment: 11.91 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Suitable/Unavailable Properties

Buildings (by State)

Florida

Bldg. 24, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230008
Status: Underutilized
Comment: Portion of 6150 sq. ft., 3 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 36, VAMC

10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230009
Status: Underutilized
Comment: Portion of 15,984 sq. ft., 1 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 37, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230010
Status: Underutilized
Comment: Third floor of a concrete frame bldg. (13,900 sq. ft.), presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Indiana

Bldg. 24, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230005
Status: Underutilized
Comment: Portion of 4135 sq. ft. 2-story wood structure, needs major rehab, no sanitary or heating facilities, presence of asbestos, access restrictions.

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230006
Status: Underutilized
Comment: 310 sq. ft., 1 story stone structure, needs major rehab, no sanitary or heating facilities, access restrictions.

Pennsylvania

Bldg. 2, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230011
Status: Underutilized
Comment: Portion of 16,360 sq. ft. 3-story structure, most recent use—storage.

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230012
Status: Underutilized
Comment: Portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage.

Bldg. 27, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230013
Status: Underutilized
Comment: Second floor bldg. (3,410 sq. ft.)

Bldg. 103, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230014
Status: Underutilized
Comment: Portion of 1215 sq. ft. 2–story stone farm house, needs repair.

Land (by State)

Florida

Buffer Zone, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230016
Status: Underutilized
Comment: Approx. 20 acres, storm water retention area.

Compound, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230017
Status: Underutilized
Comment: Approx. 7 acres, storage compound, partially wooded.

Unsuitable Properties

Building (by State)

Hawaii

Bathhouse—Wailupe Quarters
U.S. Coast Guard
Honolulu Co: Honolulu HI 96821–
Property Number: 879240033
Status: Unutilized
Reason: Other, Secured Area.
Comment: Extensive deterioration.

Maint. Shop—Wailupe Quarters
U.S. Coast Guard
Honolulu Co: Honolulu HI 96821–
Landholding Agency: DOT
Property Number: 879240034
Status: Unutilized
Reason: Other, Secured Area.
Comment: Extensive deterioration.

Maine

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240035
Status: Unutilized
Reason: Other.
Comment: Extensive deterioration.

[FR Doc. 92–30492 Filed 12–17–92; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3472; FR–3155–N–03]

NOFA for Rental Voucher Program and Rental Certificate Program; Announcement of Funding Awards

AGENCY: Office of the Assistance Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Rental Voucher Program and Rental Certificate Program. The announcement contains the names and addresses of the award winners and the amount of each award.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Director, Rental Assistance Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–0477. The TDD number for the speech- or hearing-impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to assist eligible families to pay the rent for decent, safe, and sanitary housing. The NOFA on which these awards were based identified the amount of housing assistance budget authority available for incremental rental vouchers and rental certificates for each HUD Field Office jurisdiction.

The FY 1992 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on July 29, 1992 (57 FR 33606). Applications were scored and selected for funding on the basis of selection criteria contained in that notice.

A total of $648,395,690 was awarded for 683 projects. Of this total, $189,186,615 of budget authority was committed for 5,610 rental voucher units, and $459,209,075 of budget authority was committed for 13,330 rental certificate units. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the name, address, and amount of the award, as shown in the Appendix to this announcement.

Dated: December 14, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix—NOFA for Rental Voucher Program and Rental Certificate Program

BILLING CODE 4210–33–M

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
01	Arlington HA	4 Winslow St., Arlington, MA 02174	MA06-V048-006	5	244,165
01	Brookline HA	90 Longwood Ave., Brookline, MA 02146	MA06-V033-007	5	293,760
01	Cambridge HA	270 Green St., Cambridge, MA 02139	MA06-V003-013	5	326,590
01	Everett HA	92 Chelsea St., Everett, MA 02149	MA06-V027-007	5	285,355
01	Exec Off. Comm & Devel	100 Cambridge St., Boston, MA 02202	MA06-V901-035	6	260,080
01	Exec Off. Comm & Devel	100 Cambridge St., Boston, MA 02202	MA06-V901-036	13	597,035
01	Hanover HA	Town Hall, Hanover, MA 02339	MA06-V148-001	5	307,320
01	Holliston HA	492 Washington St., Holliston, MA 01746	MA06-V185-001	5	258,770
01	Lowell HA	350 Moody St., Lowell, MA 01853	MA06-V001-007	25	938,945
01	Marlborough CDA	240 Main St., Marlborough, MA 01752	MA06-V070-003	5	291,955
01	Norwood HA	40 WM Shine Circle, Norwood, MA 02062	MA06-V109-004	25	1,321,145
01	Salem HA	27 Charter St., Salem, MA 01970	MA06-V055-010	5	241,600
01	Salisbury HA	37 Beach Rd., Salisbury, MA 01953	MA06-V174-005	8	376,845
01	Stockbridge HA	Pine St., Stockbridge, MA 01262	MA06-V080-001	12	356,640
01	Stoughton HA	4 Capen St., Stoughton, MA 02072	MA06-V117-003	5	307,320
01	Walpole HA	8 Diamond Pond Terrace, Walpole, MA 02081	MA06-V140-001	5	268,630
01	Winchester HA	13 Westley St., Winchester, MA 01890	MA06-V125-008	25	1,253,350
01	Bridgeport HA	1 Highland Ave., Bridgeport, CT 06604	CT26-V001-014	25	984,430
01	CT Dept. of Hsg.	1179 Main St., Hartford, CT 006105	CT26-V045-009	6	305,815
01	Middletown HA	40 Broad St., Middletown, CT 06450	CT26-V009-008	25	720,685
01	Stratford HA	75 Griffen St., Stratford, CT 06497	CT26-V027-005	25	1,166,265
01	Wallingford HA	45 Tremper Dr., Wallingford, CT 06492	CT26-V025-001	20	846,110
01	Berlin HA	10 Granite St., Berlin, NH 03570	NH36-V011-004	14	360,445
01	Manchester HA	198 Hanover St., Manchester, NH 03104	NH36-V001-017	16	612,195
01	South Portland HA	P.O. Box 2128, South Portland, ME 04106	ME36-V020-006	10	413,650
01	Vermont HA	P.O. Box 397, Montpelier, VT 05602	VT36-V007-021	20	575,200
01	Vermont HA	P.O. Box 397, Montpelier, VT 05602	VT36-V007-022	12	314,275
01	Westerly HA	5 Chestnut St., Westerly, RI 02891	RI43-V008-007	22	903,510
02	New York City HA	250 Broadway, New York, NY 10007	NY36-V005-017	294	10,511,750
02	NYC-HPD	100 Gold St., New York, NY 10038	NY36-V110-009	153	5,233,855
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-V903-082	128	4,300,820
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-V903-085	20	934,645
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-V903-086	11	274,480
02	Town of Babylon Housing	P.O. Box 2791, North Babylon, NY 11703	NY36-V130-013	15	796,360
02	Town of East Hampton	159 Pantigo Rd., East Hampton, NY 11937	NY36-V154-008	16	739,830
02	Town of Hempstead DUR	200 N. Franklin St., Hempstead, NY 11550	NY36-V046-004	25	1,044,925
02	Village of Kiryas Joel HA	P.O. Box 566, Monroe, NY 10950	NY36-V158-004	8	405,665
02	Village of New Square HA	766 N. Main St., New Square, NY 10977	NY36-V136-010	10	738,675
02	Gloversville	Kingsboro Twrs, Frontage Rd., Gloversville, NY 12078	NY06-V048-005	13	241,635
02	NYSHFA-DHCR	1 Fordham Plaza, 2nd Floor, New York, NY 1045	NY06-V902-692	40	987,415

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
02	NYSHFA–DHCR	1 Fordham Plaza, 2nd Floor, New York, NY 10458	NY06–V902–693	28	780,425
02	Town of Bethlehem	445 Delaware Ave., Delmar, NY 12054	NY06–V427–004	10	253,475
02	Town of Colonie	Memorial Town Hall, Newtownville, NY 12128	NY06–V408–006	12	281,030
02	Town of Greece	2505 Ridge Rd. W., Rochester, NY 14626	NY06–V444–004	10	255,950
02	Town of Rotterdam	1100 Vinewood Ave., Schenectady, NY 12306	NY06–V516–004	10	270,370
02	Village of Ballston Spa	66 Front St., Ballston Spa, NY 12020	NY06–V562–004	20	584,170
02	Village of Fairport	31 S. Main St., Fairport, NY 14450	NY06–V406–006	20	541,950
02	Bergen Co.	21 Main St., Rm. 307W, Hackensack, NJ 07601	NJ39–V067–012	22	1,174,185
02	Gloucester Co.	223 S. Evergreen Ave., Woodbury, NJ 08096	NJ39–V204–015	25	934,690
02	Morristown HA	31 Early St., Morristown, NJ 07960	NJ39–V023–001	25	1,256,175
02	Newark HA	57 Sussex Ave., Newark, NJ 07103–3992	NJ39–V002–006	11	561,460
02	NJDCA – Bergen Co.	CN–051, Trenton, NJ 078625–0051	NJ39–V087–140	8	387,470
02	NJDCA – Hunterdon Co.	CN–051, Trenton, NJ 078625–0051	NJ39–V087–144	7	321,875
02	NJDCA – Middlesex Co.	CN–051, Trenton, NJ 078625–0051	NJ39–V087–146	7	296,400
02	NJDCA – Somerset Co.	CN–051, Trenton, NJ 078625–0051	NJ39–V087–147	7	327,870
02	Orange HA	340 Thomas Blvd., Orange, NJ 07050	NJ39–V025–012	10	524,880
02	Passaic Co HA	317 Pennsylvania Ave., Paterson, NJ 07503	NJ39–V090–005	30	1,761,605
02	West New York HA	6100 Adams St., W. New York, NJ 07093	NJ39–V030–006	22	777,715
03	Dauphin Co. HA	P.O. Box 7598, 501 Mohn St., Steelton, PA 17113	PA26–V035–007	25	864,575
03	Dover HA	1266–76 Whiteoak Rd., Dover, DE 19901–3437	DE26–V002–004	12	558,000
03	Easton HA	P.O. Box 876, 222 S. 4th St., Easton, PA 18044	PA26–V024–007	25	760,995
03	Lehigh Co. HA	333 Ridge Ave., Emmaus PA 18014	PA26–V061–012	25	740,145
03	Luzerne Co. HA	250 First Ave., Kingston, PA 18704–5815	PA26–V057–015	15	415,630
03	Philadelphia HA	2012 Chestnut, Philadelphia, PA 19103	PA26–V002–013	60	2,066,715
03	Wilkes–Barre HA	Lincoln Plaza, Wilkes–Barre, PA 18702	PA26–V047–012	10	227,270
03	City of Hagerstown HA	11 W. Baltimore St., Hagerstown, MD 21741	MD06–V006–005	25	725,655
03	Harford Co. HA	15 S. Main St., Suite 106, Bel Air, MD 21014	MD06–V025–009	25	669,125
03	St. Mary's Co. HA	P.O. Box 653, Leonardtown, MD 20650	MD06–V021–010	7	233,640
03	Washington Co. HA	33 W. Washington St., Hagerstown, MD 21740	MD06–V028–007	25	673,695
03	Huntington HA	P.O. Box 2183, Huntington, WV 25722	WV15–V004–014	13	366,195
03	Parkersburg HA	1901 Cameron Ave., Parkersburg, WV 26101	WV15–V005–014	20	661,260
03	Allegheny Co. HA	341 Fourth Ave., Pittsburgh, PA 15222	PA28–V006–019	4	106,205
03	Butler Co. HA	111 S. Cliff St., Butler, PA 16003–1917	PA28–V010–006	18	506,450
03	Pittsburgh HA	200 Ross St., Pittsburgh, PA 15219	PA28–V001–016	25	612,690
03	Washington Co. HA	100 Crumrine Tower, Washington, PA 15301	PA28–V017–013	38	967,765
03	City of VA Beach	Municipal Center, Virginia Beach, VA 23456	VA36–V039–001	13	493,960
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA36–V027–032	25	583,625
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA36–V027–033	25	552,500
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA36–V027–035	11	349,145
03	Waynesboro RHA	1700 New Hope Rd., Waynesboro, VA 22908	VA36–V022–011	22	537,500

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
03	Alexandria, VA RHA	600 N. Fairfax St., Alexandria, VA 22314	VA39-V004-019	22	1,125,580
03	Fairfax County DHCD	1 University Plaza, Fairfax, VA 22030	VA39-V019-015	7	282,645
03	HOC of Montgomerty Co.	10400 Detrick Ave., Kensington, MD 20895	MD39-V004-021	29	1,151,300
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA39-V027-028	10	543,690
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA39-V027-029	10	528,230
04	Georgia HFA	60 Executive Pkwy, Ste. 250, Atlanta, GA 30329	GA06-V267-038	54	1,235,220
04	HA of the City of Macon, GA	P.O. Box 4928, Macon, GA 31208	GA06-V007-014	38	939,580
04	HA of the Co. of Dekalb	P.O. Box 1627, Decatur, GA 30031	GA06-V237-017	50	1,387,090
04	Evergreen HA	P.O. Box 187, Evergreen, AL 36401	AL09-V181-003	6	141,630
04	Jacksonville HA	895 Gardener Dr., Jacksonville, AL 36265	AL09-V139-006	10	208,975
04	Jefferson County HA	2100 Walker Chapel Rd., Fultondale, AL 35068	AL09-V086-006	14	371,830
04	Walker Co. HA	P.O. Box 607, Dora, AL 35062	AL09-V129-005	26	638,410
04	Canovanas	P.O. Box M, Canovanas, PR 00629	RQ46-V075-003	19	638,760
04	Juana Diaz	P.O. Box I, Juana Diaz, PR 00665	RQ46-V036-003	18	620,880
04	Utuado	P.O. Box 190, Utuado, PR 00761	RQ46-V033-009	14	340,130
04	Anderson HA	1335 East River St., Anderson, SC 29621	SC16-V037-010	16	295,985
04	Beaufort HA	P.O. Box 1104, Beaufort, SC 29901	SC16-V026-009	5	146,010
04	Charleston Co. HA	2106 Mt. Pleasant St., Charleston, SC 29403	SC16-V056-008	16	545,705
04	Myrtle Beach HA	P.O. Box 2468, Myrtle Beach, SC 29578	SC16-V034-010	15	355,260
04	Union HA	201 Porter St., Union, SC 29379	SC16-V019-008	5	112,530
04	Albemarle Dept. of Hsg.	P.O. Box 1367, Albemarle, NC 28002	NC19-V075-003	14	333,730
04	Brunswick Co. PHA	P.O. Box 9, Bolivia, NC 28422	NC19-V147-003	25	623,150
04	Greenville HA	P.O. Box 1426, Greenville, NC 27834	NC19-V022-012	26	493,195
04	High Point	P.O. Box 1779, High Point, NC 27261	NC19-V006-013	59	1,562,385
04	Statesville HA	433 S. Meeting St., Statesville, NC 28677	NC19-V072-013	16	475,185
04	Mississippi Reg. HA #VI	P.O. Box 8746, Jackson, MS 39284-8746	MS26-V058-054	10	330,590
04	North Delta Reg. HA	P.O. Box, 1153, Clarkedale, MS 38614	MS26-V128-014	44	1,066,080
04	City of Pompano Beach HA	P.O. Box 2006, Pompano Beach, FL 33060	FL29-V028-008	25	760,750
04	Collier Co. HA	1800 Farm Worker Way, Immokalee, FL 33934	FL29-V141-007	25	908,715
04	Fort Lauderdale HA	437 SW 4th Ave., Fort Lauderdale, FL 33315	FL29-V010-014	18	601,885
04	Lake County Section 8	315 W. Main St., Tavares, FL 32778	FL29-V016-004	2	60,695
04	Lee County HA	P.O. Box 398, Fort Myers, FL 33902	FL29-V128-006	25	728,835
04	Monroe Co. HA	240 Sombrero Rd., Marathon, FL 33050	FL29-V144-008	12	386,180
04	Plant City HA	1306 Larrick Ln., Plant City, FL 33566	FL29-V034-005	25	888,425
04	Riviera Beach HA	2014 W. 17th Ct., Riviera Beach, FL 33404	FL29-V076-007	25	783,245
04	Tallahassee HA	2940 Grady Rd., Tallahassee, FL 32312	FL29-V073-014	25	728,205
04	Crossville HA	P.O. Box 425, Crossville, TN 38557	TN37-V042-001	11	231,275
04	Knoxville's CDC	P.O. Box 3550, Knoxville, TN 37927	TN37-V003-016	19	553,470
04	Bowling Green HA	P.O. Box 430, Bowling Green, KY 42102	KY36-V171-019	25	473,350
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-V134-112	14	337,990

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-V134-113	8	199,650
04	Lexington-Fayette Co. HA	635 Ballard St., Lexington, KY 40508	KY36-V130-018	28	874,610
04	Metro Dev. & Hsg. Agency	P.O. Box 846, Nashville, TN 37202	TN43-V005-013	20	657,800
04	Murfreesboro HA	318 E. Lokey Ave., Murfreesboro, TN 37130	TN43-V020-006	10	293,350
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-V112-053	6	172,565
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-V112-054	18	376,945
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-V112-055	3	54,775
05	Chicago HA	22 W. Madison St., Chicago, IL 60602	IL06-V002-019	131	5,196,760
05	Jersey Co. HA	505 Horn Dr., Jerseyville, IL 62052	IL06-V074-003	25	783,720
05	Kendall Co. HA	123 W. Hydraulic Ave., Yorkville, IL 60560	IL06-V137-001	50	2,055,600
05	Madison Co.	1609 Olive St., Collinsville, IL 62234	IL06-V015-014	25	781,400
05	Whiteside Co. HA	401 W. 16th St., Rock Falls, IL 61071	IL06-V032-004	34	1,136,500
05	Butler MHA	4110 Hamilton-Middletown Rd., Hamilton, OH 45012	OH10-V015-007	6	160,080
05	Cincinnati MHA	16 W. Central Pkwy., Cincinnati, OH 45210	OH10-V004-018	27	797,750
05	Darke MHA	1469 Dayton Rd., Greenville, OH 45331	OH10-V045-004	8	181,830
05	Dayton MHA	400 Wayne Ave., Dayton, OH 45410	OH10-V005-018	8	170,840
05	Middletown PHA	435 City Centre Plaza, Middletown, OH 45042	OH10-V065-004	6	139,105
05	Cuyahoga MHA	1441 W. 25th St., Cleveland, OH 44113	OH12-V003-030	40	1,598,800
05	Erie MHA	322 Warren St., Sandusky, OH 44870	OH12-V026-012	15	436,675
05	Trumbull MHA	1977 Niles Rd., SE, Warren, OH 44484-5197	OH12-V006-018	29	800,100
05	Cambridge MHA	1100 Maple Ct., Cambridge, OH 43725	OH16-V033-004	8	203,650
05	Meigs MHA	237 Race St., Middleport., OH 45760	OH16-V035-003	6	134,430
05	Pickaway MHA	178 Rustic Dr., Circleville, OH 43113	OH16-V059-010	9	240,235
05	Portsmouth MHA	410 Court St., Portsmouth, OH 45662	OH16-V010-022	20	724,800
05	Zanesville MHA	2746 Maple Ave., Zanesville, OH 43701	OH16-V009-013	6	153,000
05	Ann Arbor	727 Miller Ave., Ann Arbor, MI 48103	MI28-V064-012	25	921,610
05	Dearborn Hgts.	1160 Sheridan, Plymouth, MI 48170	MI28-V160-002	25	809,340
05	MSHCA	401 S. Washington Sq., Lansing, MI 48909	MI28-V150-040	8	194,180
05	MSHCA	401 S. Washington Sq., Lansing, MI 48909	MI28-V150-039	20	561,240
05	Plymouth	1160 Sheridan, Plymouth, MI 48170	MI28-V045-010	25	790,135
05	Bath Township Hsg. Comm.	14379 Webster Rd., Bath, MI 48808	MI33-V194-003	25	668,875
05	Coldwater Hsg. Comm.	60 S. Clay, Coldwater, MI 49036	MI33-V056-001	25	602,760
05	Wyoming Hsg. Comm.	2450 - 36th St., SW, Wyoming, MI 49509	MI33-V115-007	9	250,675
05	Elkhart HA	1396 Benham Ave., Elkhart, IN 46516	IN36-V026-005	18	561,960
05	Goshen HA	302 S. Fifth St., Goshen, IN 46526	IN36-V101-005	16	417,120
05	Jeffersonville HA	208 Eastern Blvd., Jeffersonville, IN 47130	IN36-V023-007	31	747,790
05	Plymouth HA	2124 Western Ave., Plymouth, IN 46563	IN36-V103-001	30	631,070
05	Eau Claire Co. HA	761 Oxford Ave., Eau Claire, WI 54703	WI39-V193-005	12	310,695
05	Oconto Co. HA	1201 Main St., Oconto, WI 54153	WI39-V262-002	20	381,690
05	Racine Co. HA	520 - 21st St., Ste. A, Racine, WI 53403	WI39-V183-014	40	1 156,840

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FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
05	Richland Co. HA	701 W. Seminary St. E, Richland Center, WI 53581	WI39-V256-004	19	399,585
05	Waukesha Co. HA	120 Corrina Blvd. S., Waukesha, WI 53186	WI39-V261-007	24	530,890
05	Austin HRA	200 First Ave., NE, Austin, MN 55912	MN46-V065-005	25	584,255
05	Dakota Co. HRA	2496 - 145th St., West, Rosemount, MN 55068	MN46-V147-017	25	911,850
05	Minneapolis PHA	1001 Washington Ave., N., Minneapolis, MN 55401	MN46-V002-014	25	937,300
05	Owatonna HRA	540 W. Hills Circle, Owatonna, MN 55060	MN46-V220-004	3	59,325
06	Amarillo PHA	P.O. Box 1971, Amarillo, TX 79186	TX21-V472-015	25	675,395
06	Garland HA	701 Clark St., Garland, TX 75040	TX21-V435-007	25	937,615
06	Lubbock HA	515 N. Zenith, Lubbock, TX 79403	TX21-V018-012	25	675,580
06	Texoma COG	10000 Grayson Dr., Denison, TX 75020-8399	TX21-V542-010	25	622,020
06	Port Arthur HA	920 DeQueen, Port Arthur, TX 77643	TX24-V034-005	40	1,297,305
06	Walker Co. HA	P.O. Box 1411, Huntsville, TX 77342-1411	TX24-V461-002	11	291,930
06	Arkadelphia HA	670 S. 6th, Arkadelphia, AR 71923	AR37-V012-005	9	181,675
06	Harrison HA	City Hall, Harrison, AR 72601	AR37-V200-007	9	208,430
06	Pulaski Co. HA	201 S. Broadway, Little Rock, AR 72201	AR37-V252-002	15	442,775
06	White River Regional HA	P.O. Box 650, Melbourne, AR 72556-0650	AR37-V197-009	25	324,000
06	Caddo Parish	501 Texas St., Shreveport, LA 71101-5409	LA48-V184-001	16	553,910
06	E. Baton Rouge Parish HA	4546 North St., Baton Rouge, LA 70806	LA48-V003-015	40	1,472,500
06	Morehouse Parish	P.O. Box 509, Bastrop, LA 71220	LA48-V258-003	12	187,135
06	Vernon Parish HA	P.O. Box 1247, Leesville, LA 71496-1247	LA48-V128-002	25	405,575
06	Cherokee Nation IHA	P.O. Box 1007, Tahlequah, OK 74465	OK56-V045-009	4	127,580
06	Cherokee Nation IHA	P.O. Box 1007, Tahlequah, OK 74465	OK56-V045-010	4	86,645
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-012	5	61,825
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-013	4	70,120
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-015	3	66,285
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-016	5	61,435
06	Norman HA	700 N. Berry Rd., Norman, OK 73069	OK56-V047-014	4	65,980
06	OHFA	P.O. Box 26720, Oklahoma City, OK 73126-6720	OK56-V139-013	14	313,795
06	Stillwater PHA	807 S. Lowry, Stillwater, OK 74074	OK56-V901-080	6	197,440
06	Tulsa HA	P.O. Box 6369, Tulsa, OK 74148-0369	OK56-V146-002	6	188,220
06	Cameron HA	P.O. Box 5806, Brownsville, TX 78520	OK56-V073-015	5	165,340
06	Laredo HA	2000 San Francisco Ave., Laredo, TX 78040	TX59-V509-010	35	1,195,125
06	Zapata Co. HA	P.O. Box 99, Zapata, TX 78076	TX59-V011-010	35	1,032,895
06	Alamogordo HA	Box 336, Alamogordo, NM 88311-0336	TX59-V507-002	19	378,060
06	Dona Ana Co. HA	2407 W. Picacho, #A-2, Las Cruces, NM 88005	NM02-V004-001	25	530,580
06	Sante Fe Co. HA	52 Camino de Jacobo, Sante Fe, NM 87501	NM02-V062-006	25	662,760
07	Cowley Co. PHA	P.O. Box 1122, Arkansas, KS 67005	NM02-V050-009	15	536,055
07	Human Services Dept.	City Hall, 2nd Fl., 455 Main St., KS 67202	KS16-V166-006	31	675,190
07	Salina PHA	P.O. Box 1202, Salinas, KS 67402-1202	KS16-V004-012	43	1,262,395
			KS16-V038-002	5	93,375

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
07	Eastern Iowa RHA	P.O. Box 1140, Dubuque, IA 52004-1140	IA05-V126-017	26	608,220
07	Siouxland PHA	P.O. Box 447, Sioux City, IA 51102-0447	IA05-V136-009	10	253,200
07	Waterloo HA	215 E. 4th St., Waterloo, IA 50704	IA05-V050-018	22	642,665
07	Central Nebraska Joint HA	P.O. Box 509, Loup City, NE 68853	NE26-V182-001	5	85,390
07	Norfolk HA	111 S. First St., Norfolk, NE 68701	NE26-V157-006	15	315,685
07	Omaha HA	540 S. 27th St., Omaha, NE 68105-1521	NE26-V001-023	13	375,865
07	Missouri Housing Development	301 E. Armour, Ste. 600, Kansas City, MO 64111	MO36-V920-005	25	1,005,345
07	St. Francois Co. PHA	P.O. Box N, Flat River, MO 63601-0357	MO36-V203-012	19	437,820
07	St. Louis Co. HA	8865 Natural Bridge, St. Louis, MO 63121-0580	MO36-V004-013	2	97,160
08	Archuleta Co. HA	572 E. Sixth Ave., Durango, CO 81303	CO06-V081-003	25	767,075
08	CO Div. of Housing	1313 Sherman St., Rm. 323, Denver, CO 80203	CO99-V911-022	27	938,520
08	HA City of CO Springs	P.O. Box 1575, MC340, Colorado Sprgs., CO 80903	CO99-V028-015	35	826,945
08	HA County of Salt Lake	1962 S. 200 E., Salt Lake City, UT 84115	UT99-V003-013	38	837,680
08	HA of Cass Co.	230 Eighth Ave. W., West Fargo, ND 58078	ND06-V001-007	25	635,800
09	Alameda Co. HA	29800 Mission Blvd., Hayward, CA 94544	CA39-V067-022	28	1,004,795
09	Contra Costa HA	P.O. Box 2759, Martinez, CA 94553	CA39-V011-017	30	1,494,430
09	Madera	205 N 'G' St., Madera, CA 93637	CA39-V069-008	23	675,405
09	Marin Co. HA	30 N. Pedro Rd., San Rafael, CA 94913-4282	CA39-V052-016	25	1,224,225
09	Monterey	123 Rico St., Salina, CA 93907	CA39-V033-018	25	874,745
09	Napa City HA	1115 Seminary St., Napa, CA 94559-0660	CA39-V073-007	25	1,062,355
09	Reno	1525 E. Ninth St., Reno, NV 89512	NV39-V001-016	25	1,329,670
09	San Mateo Co. HA	456 Peninsula Ave., San Mateo, CA 94401	CA39-V014-015	30	1,295,860
09	Santa Clara HA	505 W. Julian St., San Jose, CA 95110	CA39-V059-024	26	1,453,440
09	Stanislaus	1701 Robertson Rd., Modesto, CA 95352	CA39-V026-012	25	821,825
09	Honolulu City & Co.	650 S. King St., Honolulu, HI 96813	HI10-V003-018	17	1,030,855
09	Kauai Co. HA	4193 Hardy St., #1, Lihue, HI 96766	HI10-V005-011	9	510,300
09	Carlsbad	2965 Roosevelt, Ste. 700, Carlsbad, CA 92008	CA16-V077-005	25	888,610
09	Garden Grove	11400 Stanford Ave., Garden Grove, CA 92942	CA16-V102-014	25	1,377,565
09	Glendale	520 E. Broadway Ave., Ste. 302, Glendale, CA 91205	CA16-V114-016	25	995,885
09	Kern Co.	525 Roberts Ln., Bakersfield, CA 93308	CA16-V008-015	25	909,980
09	Lawndale	14717 Burin Ave., Lawndale CA 90260	CA16-V138-005	15	440,785
09	Los Angeles City	515 Columbia Ave., Los Angeles, CA 90017	CA16-V004-020	77	3,862,730
09	Los Angeles Co.	2525 Corporate Pl., Monterey Park, CA 91754	CA16-V002-015	56	2,597,945
09	Oceanside	300 N. Hill St., Oceanside, CA 92054	CA16-V132-011	25	987,465
09	Orange Co.	2043 N. Broadway, Santa Ana, CA 92706	CA16-V094-019	25	1,289,745
09	Paramount	16400 Colorado Ave., Paramount, CA 90723	CA16-V037-006	15	500,250
09	Redondo Beach	200 N. Pacific Coast Hwy., Redondo Beach, CA 90277	CA16-V103-007	25	980,700
09	San Diego Co.	3989 Ruffin Rd., San Diego, CA 92123	CA16-V108-019	25	959,480
09	San Diego Hsg. Comm.	1625 Newton St., San Diego, CA 92113	CA16-V063-017	65	2,706,800
09	San Luis Obispo	487 Leff St., San Luis Obispo, CA 93406	CA16-V064-009	12	437,510

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
09	Santa Barbara City	808 Laguna St., Santa Barbara, CA 93101	CA16-V076-011	25	1,034,770
09	Santa Monica	612 Colorado Ave., Santa Monica, CA 90401	CA16-V111-011	25	1,023,275
09	Torrance	3031 Torrance Blvd., Torrance, CA 90509	CA16-V121-004	25	1,061,030
09	Chandler City	99 N. Delaware, Chandler, AZ 85225	AZ20-V028-008	25	891,905
09	Mohave Co.	P.O. Box 7000, Kingman AZ 86402	AZ20-V043-003	10	357,240
09	Tempe HA	P.O. Box 5002, Temple, AZ 85280	AZ20-V031-010	11	331,210
09	Nevada Co.	10433 Willow Valley Rd., Nevada City, CA 95959	CA30-V146-002	8	259,850
09	Sacramento Co.	P.O. Box 1834, 630 I St., Sacramento, CA 95812	CA30-V007-015	30	1,314,075
09	Kodiak Island HA	2815 Woody Way, Kodiak, AK 99615-6991	AK06-V016-002	6	332,980
09	Seattle HA	120 Sixth Ave., No., Seattle, WA 98109	WA19-V001-014	41	1,699,885
09	Spokane	W. 55 Mission, Spokane, WA 99201	WA19-V055-014	25	661,240
09	Wenatchee HA	236 N. Mission St., Wenatchee, WA 98801-2004	WA19-V064-002	24	864,615
10	Siletz Indian HA	P.O. Box 549, Siletz, OR 97380	OR97-VO35-001	25	644,825
10	Coos-Curry HA	1700 Monroe St., North Bend, OR 97459	OR16-V020-005	18	593,810
10	HA of Vancouver	500 Omaha Way, Vancouver, WA 98661	OR16-V008-014	19	637,150
10	Lane County HA	177 Day Island Rd., Eugene, OR 97401	OR16-V008-021	25	866,630

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
01	Arlington HA	4 Winslow St., Arlington, MA 02174	MA06-E048-016	20	904,685
01	Brookline HA	90 Longwood Ave., Brookline, MA 02146	MA06-E033-018	20	1,077,240
01	Burlington HA	15 Birchcrest St., Burlington, MA 01803	MA06-E112-011	5	230,700
01	Cambridge HA	270 Green St., Cambridge, MA 02139	MA06-E003-023	20	1,085,340
01	Everett HA	92 Chelsea St., Everett, MA 02149	MA06-E027-016	20	1,012,440
01	Exec Off. Comm & Devel	100 Cambridge St., Boston, MA 02202	MA06-E052-166	19	811,455
01	Exec Off. Comm & Devel	100 Cambridge St., Boston, MA 02202	MA06-E052-167	11	487,390
01	Franklin County HA	80 Canal St., Turner Falls, MA 01376	MA06-E094-015	24	874,080
01	Hanover HA	Town Hall, Hanover, MA 02339	MA06-E148-004	20	1,031,220
01	Holliston HA	492 Washington St., Holliston, MA 01746	MA06-E165-004	20	1,090,860
01	Leominster HA	100 Main St., Leominster, MA 01453	MA06-E066-015	25	966,945
01	Malden HA	630 Salem St., Malden, MA 02148	MA06-E022-016	25	1,360,820
01	Marlborough CDA	240 Main St., Marlborough, MA 01752	MA06-E070-009	20	1,082,760
01	N. Attleborough HA	P.O. Box 668, N. Attleborough, MA 02760	MA06-E170-004	20	665,110
01	Pembroke HA	Kilcommons Dr., Pembroke, MA 02359	MA06-E111-008	25	1,339,740
01	Revere HA	70 Cooledge St., Revere, MA 02151	MA06-E014-021	25	1,307,040
01	Salem HA	27 Charter St., Salem, MA 01970	MA06-E055-018	20	915,185
01	Salisbury HA	37 Beach Rd., Salisbury, MA 01953	MA06-E174-003	17	770,640
01	Stockbridge HA	Pine St., Stockbridge, MA 01262	MA06-E080-005	12	306,045
01	Stoughton HA	4 Capen St., Stoughton, MA 02072	MA06-E117-006	20	1,044,840
01	Walpole HA	8 Diamond Pond Terrace, Walpole, MA 02081	MA06-E140-009	20	1,036,435
01	CT Dept. of Hsg.	1179 Main St., Hartford, CT 006105	CT26-E045-040	25	1,285,920
01	CT Dept. of Hsg.	1179 Main St., Hartford, CT 006105	CT26-E045-041	15	696,850
01	Hondon HA	P.O. Box 4051, Hondon, CT 06514	CT26-E042-011	25	1,169,200
01	Stanford HA	22 Clinton St., Stanford, CT 06904	CT26-E007-020	25	1,731,460
01	Wallingford HA	45 Tremper Dr., Wallingford, CT 06492	CT26-E067-001	25	1,141,130
01	West Hartford HA	759 Formington Ave., West Hartford, CT 06119	CT26-E039-016	10	505,210
01	West Haven HA	15 Glade St., West Haven, CT 06516	CT26-E029-016	25	1,231,260
01	Dover HA	62 Whittier St., Dover, NH 03820	NH36-E003-009	20	697,600
01	Laconia HA	25 Union Ave., Laconia, NH 03246	NH36-E007-017	19	584,870
01	Maine State HA	P.O. Box 2669, Augusta, ME 04330	ME36-E017-541	25	811,050
01	Manchester HA	198 Hanover St., Manchester, NH 03104	NH36-E001-027	10	357,450
01	NH Hsng Fin. Auth	P.O. Box 5087, Manchester, NH 03102	NH36-E019-203	10	368,760
01	NH Hsng Fin. Auth	P.O. Box 5087, Manchester, NH 03102	NH36-E019-204	10	345,460
01	Portsmouth HA	245 Middle St., Portsmouth, NH 03801	NH36-E004-007	25	1,043,700
01	South Portland HA	P.O. Box 2128, South Portland, ME 04106	ME36-E020-018	10	425,025
01	Vermont HA	P.O. Box 397, Montpelier, VT 05602	VT36-E007-218	3	82,035
01	Waterville HA	60 Elm St., Waterville, ME 04901	ME36-E008-017	25	656,000
01	Bristol HA	P.O. Box 535, Bristol, RI 02809	RI43-E019-018	25	894,500
01	Johnston HA	8 Forand Circle, Johnston, RI 02919	RI43-E009-016	25	944,585

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
01	Warren HA	20 Libby Ln., Warren, RI 02885	RI43-E022-022	9	333,730
02	New Rochelle MHA	50 Sickles Ave., New Rochelle, NY 10801	NY36-E088-010	29	1,311,795
02	New York City HA	250 Broadway, New York, NY 10007	NY36-E005-036	844	30,662,515
02	NYC-HPD	100 Gold St., New York, NY 10038	NY36-E110-019	417	15,343,375
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-E108-116	43	1,510,420
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-E108-119	58	2,922,580
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-E108-120	14	386,695
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-E108-122	7	240,690
02	Port Jervis Comm Dev Ag	P.O. Box 1002, Port Jervis, NY 12771	NY36-E134-011	16	580,250
02	Town of Babylon Housing	P.O. Box 2791, North Babylon, NY 11703	NY36-E130-015	24	1,291,405
02	Town of East Hampton	159 Pantigo Rd., East Hampton, NY 11937	NY36-E154-006	13	725,615
02	Town of Hempstead DUR	200 N. Franklin St., Hemptead, NY 11550	NY36-E046-008	32	1,404,090
02	Town of Ramapo HA	Pondview Dr., Suffern, NY 10901	NY36-E084-015	29	1,764,840
02	Village of Kiryas Joel HA	P.O. Box 566, Monroe, NY 10950	NY36-E158-005	21	1,209,660
02	Village of Mamaroneck HA	154 W. Boston Post Rd., Mamaroneck, NY 10543	NY36-E101-011	25	1,035,245
02	Village of New Square HA	766 N. Main St., New Square, NY 10977	NY36-E138-013	19	1,021,200
02	Corning	7 Civic Center, Corning, NY 14830	NY06-E095-008	25	740,940
02	Fort Plain	3 Main St., Fort Plain, NY 13339	NY06-E530-011	20	548,500
02	Little Falls	550 John St., Little Falls, NY 13365	NY06-E109-008	30	689,250
02	NYSHFA-DHCR	1 Fordham Plaza, 2nd Floor, New York, NY 10458	NY06-E902-692	85	2,008,365
02	NYSHFA-DHCR	1 Fordham Plaza, 2nd Floor, New York, NY 10458	NY06-E902-693	62	1,587,325
02	Syracuse HA	516 Burt St., Syracuse, NY 13202	NY06-E001-024	3	81,680
02	Town of Clifton Park	P.O. Box 653, Clifton Park, NY 12065	NY06-E416-003	10	297,505
02	Town of Coeymans	Russell Ave., Coeymans, NY 12143	NY06-E557-008	10	288,680
02	Town of Colonie	Memorial Town Hall, Newtownville, NY 12128	NY06-E408-008	18	501,520
02	Town of Duanesburg	RD #1, Duanesburg, NY 12056	NY06-E428-002	5	142,230
02	Town of Greece	2505 Ridge Rd. W., Rochester, NY 14626	NY06-E444-006	24	608,930
02	Town of Schodack	1777 Columbia Tnpk., Castleton, NY 12033	NY06-E431-003	10	295,570
02	Town of Stillwater	P.O. Box 700, Stillwater, NY 12170	NY06-E561-008	10	302,110
02	Village of Corinth	260 Main St., Corinth, NY 12822	NY06-E538-010	20	561,610
02	Village of Deposit	Village Hall, 146 Front St., Deposit, NY 13754	NY06-E446-001	30	632,280
02	Village of Fairport	31 S. Main St., Fairport, NY 14450	NY06-E406-011	20	551,750
02	Village of Waterford	65 Broad St., Waterford, NY 12188	NY06-E630-004	10	306,060
02	Bergen Co.	21 Main St., Rm. 307W, Hackensack, NJ 07601	NJ39-E067-020	46	2,363,420
02	Highland Park HA	242 S. Sixth Ave., Highland Park, NJ 08904	NJ39-E044-006	25	1,088,995
02	Jersey City	400 US Hwy #1, Jersey City, NJ 07306	NJ39-E009-026	37	1,852,055
02	Middlesex Co. HA	303 George St., Rm 304, New Brunswick, NJ 08903	NJ39-E114-011	11	512,950
02	Monmouth Co. BOSS	P.O. Box 300, Freehold, NJ 07728	NY39-E095-021	45	1,864,350
02	Morris Co. HA	P.O. Box 900, Morristown, NJ 07963-0900	NJ39-E092-012	50	2,621,000
02	Newark HA	57 Sussex Ave., Newark, NJ 07103-3992	NJ39-E002-023	15	783,345

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
02	NJDCA – Bergen Co.	CN–051, Trenton, NJ 078625–0051	NJ39–E087–235	32	1,576,940
02	NJDCA – Camden Co.	CN–051, Trenton, NJ 078625–0051	NJ39–E087–236	20	838,925
02	NJDCA – Hunterdon Co.	CN–051, Trenton, NJ 078625–0051	NJ39–E087–239	18	860,240
02	NJDCA – Middlesex Co.	CN–051, Trenton, NJ 078625–0051	NJ39–E087–241	18	783,240
02	NJDCA – Somerset Co.	CN–051, Trenton, NJ 078625–0051	NJ39–E087–242	18	845,790
02	Orange HA	340 Thomas Blvd., Orange, NJ 07050	NJ39–E025–017	15	787,020
02	Passaic Co HA	317 Pennsylvania Ave., Paterson, NJ 07503	NJ39–E090–015	30	1,761,605
02	West New York HA	6100 Adams St., W. New York, NJ 07093	NJ39–E030–007	28	956,940
02	Woodbridge	10 Bunns Ln., Woodbridge, NJ 07095	NJ39–E033–011	25	1,031,510
03	Bradford Co. HA	4 Riverside Plaza, Blossburg, PA 16912	PA26–E064–013	25	706,450
03	Columbia HA	37 W. Main St., Bloomsburg, PA 17815	PA26–E083–015	25	602,780
03	Cumberland Co. HA	114 N. Hanover St., Carlisle, PA 17013–2407	PA26–E075–016	25	804,205
03	Cumberland Co. HA	114 N. Hanover St., Carlisle, PA 17013–2407	PA26–E075–017	20	608,450
03	Dover HA	1266–76 Whiteoak Rd., Dover, DE 19901–3437	DE26–E002–004	13	566,700
03	Harrisburg Co. HA	351 Chestnut St., Harrisburg, PA 17105–9713	PA26–E008–015	25	992,400
03	Lancaster City HA	333 Church St., Lancaster, PA 17602	PA26–E036–014	25	1,015,640
03	Lehigh Co. HA	333 Ridge Ave., Emmaus PA 18014	PA26–E081–020	25	703,920
03	Luzerne Co. HA	250 First Ave., Kingston, PA 18704–5815	PA26–E057–013	25	651,495
03	Philadelphia HA	2012 Chestnut, Philadelphia, PA 19103	PA26–E002–029	150	6,767,430
03	Wilkes–Barre HA	Lincoln Plaza, Wilkes–Barre, PA 18702	PA26–E047–013	15	362,330
03	Baltimore City HA	417 E. Fayette St., Baltimore, MD 21202	MD06–E002–037	35	1,354,075
03	Baltimore Co. DCD	1 Investment Pl., Suite 825, Towson, MD 21204	MD06–E033–017	70	2,194,995
03	Calvert Co. HA	420 W. Dares Beach Rd., Frederick, MD 20678	MD06–E022–002	25	1,416,875
03	City of Westminster HCDP	P.O. Box 010, Westminster, MD 21158	MD06–E027–010	25	668,375
03	St. Mary's Co. HA	P.O. Box 653, Leonardtown, MD 20650	MD06–E021–013	18	539,135
03	Charleston HA	P.O. Box 86, Charleston, WV 25321–0086	WV15–E001–018	3	119,475
03	Huntington HA	P.O. Box 2183, Huntington, WV 25722	WV15–E004–012	28	781,430
03	Mingo Co. HA	P.O. Box 2239, Williamson, WV 25661	WV15–E037–010	25	610,800
03	Morgantown HA	517 Fairmont Ave., Fairmont, WV 26554	WV15–E002–003	15	444,000
03	Parkersburg HA	1901 Cameron Ave., Parkersburg, WV 26101	WV15–E005–018	14	451,690
03	Allegheny Co. HA	341 Fourth Ave., Pittsburgh, PA 15222	PA28–E006–031	47	1,302,600
03	Altoona HA	P.O. Box 671, Altoona, PA 16603	PA28–E031–018	38	1,253,580
03	Bedford Co. HA	P.O. Box 400, Bedford, PA 15522	PA28–E085–015	25	508,725
03	Butler Co. HA	111 S. Cliff St., Butler, PA 16003–1917	PA28–E010–016	7	273,000
03	Clarion Co HA	8 W. Main St., Clarion, PA 16214	PA28–E066–016	13	307,450
03	Erie Co. HA	108 S. Center St., Corry, PA 16407	PA28–E087–012	26	874,770
03	Meadville HA	1120 Market St., Meadville, PA 16335–4356	PA28–E033–006	5	137,825
03	Pittsburgh HA	200 Ross St., Pittsburgh, PA 15219	PA28–E001–030	26	719,070
03	Big Stone Gap RHA	P.O. Box 536, Big Stone Gap, VA 24219	VA36–E038–002	14	302,085
03	Chesapeake RHA	P.O. Box 1304, Chesapeake, VA 23320	VA36–E012–017	25	793,875

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
03	City of VA Beach	Municipal Center, Virginia Beach, VA 23456	VA36-E039-001	12	471,720
03	Harrisonburg RHA	286 Kelley St., Harrisonburg, VA 22801	VA36-E014-005	25	731,815
03	Lee Co. RHA	P.O. Box 665, Jonesville, VA 24283	VA36-E034-003	25	510,710
03	Newport News RHA	P.O. Box 77, Newport News, VA 23607	VA36-E003-021	19	677,160
03	Norfolk RHA	P.O. Box 968, Norfolk, VA 23501	VA36-E006-019	25	832,875
03	Portsmouth RHA	P.O. Box 1098, Portsmouth, VA 23705	VA36-E001-011	19	669,720
03	Richmond RHA	P.O. Box 26887, Richmond, VA 23261	VA36-E007-022	25	570,525
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA36-E027-022	14	479,080
03	Alexandria, VA RHA	600 N. Fairfax St., Alexandria, VA 22314	VA39-E004-014	20	1,095,025
03	DPAH	1133 N. Capitol St., Washington, DC 20002	DC39-E001-028	8	398,400
03	Fairfax County DHCD	1 University Plaza, Fairfax, VA 22030	VA39-E019-035	18	967,665
03	HA of the City of Rockville	14 Moore Dr., Rockville, MD 20850	MD39-E007-002	50	2,979,480
03	HA Prince George Co.	9400 Peppercorn Pl., Landover, MD 20785	MD39-E015-022	40	2,438,700
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA39-E027-006	18	1,061,040
04	Georgia HFA	60 Executive Pkwy, Ste. 250, Atlanta, GA 30329	GA06-E267-053	97	2,244,975
04	HA of Savannah	P.O. Box 1179, Savannah, GA 31402-1179	GA06-E002-016	22	577,615
04	HA of the City of Americus	P.O. Box 1226, 825 N. Mayo St., Americus, GA 31709	GA06-E062-012	25	573,025
04	HA of the City of Macon, GA	P.O. Box 4928, Macon, GA 31208	GA06-E007-016	36	913,295
04	HA of the Co. of Dekalb	P.O. Box 1627, Decatur, GA 30031	GA06-E237-021	125	4,246,920
04	Birmingham HA	P.O. Box 55906, Birmingham, AL 35255	AL09-E001-017	10	293,880
04	Evergreen HA	P.O. Box 187, Evergreen, AL 36401	AL09-E181-004	18	396,210
04	Florence HA	303 N. Pine St., Florence, AL 35630	AL09-E054-012	26	553,570
04	Foley HA	302 Fourth St., Foley, AL 36535	AL09-E165-008	25	716,100
04	Guntersville HA	P.O. Box 4, Guntersville, AL 35976	AL09-E014-006	25	455,320
04	Huntsville HA	P.O. Box 486, Huntsville, AL 35804	AL09-E047-012	31	908,620
04	Lineville HA	P.O. Box 455, Lineville, AL 36266	AL09-E114-002	30	560,835
04	Prichard HA	P.O. Box 10307, Prichard, AL 36610	AL09-E169-021	20	530,610
04	Aguas Buenas	P.O. Box 128, Aguas Buenas, PR 00607	RQ46-E082-004	12	350,100
04	Cabo Rojo	P.O. Box II, Cabo Rojo, PR 00623	RQ46-E061-004	25	559,500
04	Juana Diaz	P.O. Box I, Juana Diaz, PR 00665	RQ46-E038-005	7	184,800
04	Luquillo	P.O. Box M, Luquillo, PR 00673	RQ46-E081-002	25	816,000
04	Mayaguez	P.O. Box 447, Mayaguez, PR 00709-0447	RQ46-E009-010	25	518,100
04	San Lorenzo	P.O. Box K, San Lorenzo, PR 00754	RQ46-E037-006	25	680,100
04	Utuado	P.O. Box 190, Utuado, PR 00761	RQ46-E033-006	12	279,300
04	Yauco	P.O. Box 1, Yauco, PR 00968	RQ46-E083-001	25	499,500
04	Charleston HA	20 Franklin St., Charleston, SC 29401	SC16-E001-021	13	391,215
04	Chester HA	P.O. Box 773, Chester, SC 29706	SC16-E020-007	20	424,580
04	Columbia HA	1917 Harden St., Columbia, SC 29204	SC16-E002-024	25	844,125
04	Newberry HA	P.O. Box 737, Newberry SC 29108	SC16-E035-006	40	429,560
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-104	3	58,020

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-107	3	72,240
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-109	4	84,360
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-110	3	71,555
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-111	4	101,160
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-112	2	37,920
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-113	24	635,440
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-115	5	136,440
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-116	3	69,960
04	Albemarle Dept. of Hsg.	P.O. Box 1367, Albemarle, NC 28002	NC19-E075-006	36	809,640
04	Brunswick Co. PHA	P.O. Box 9, Bolivia, NC 28422	NC19-E147-013	15	242,445
04	Greensboro HA	P.O. Box 21287, Greensboro, NC 27420	NC19-E011-014	50	1,473,600
04	High Point	P.O. Box 1779, High Point, NC 27261	NC19-E006-014	15	353,340
04	Northwestern Regional HA	P.O. Box 2510, Boone, NC 28607	NC19-E167-014	45	1,045,955
04	Twin Rivers Opport.	P.O. Box 1482, New Bern, NC 28560	NC19-E151-009	50	1,205,650
04	Wilmington HA	P.O. Box 899, Wilmington, NC 28402	NC19-E001-009	25	597,030
04	Winston-Salem HA	901 Cleveland Ave., NE, Winston-Salem, NC 27101	NC19-E012-028	54	1,420,160
04	Mississippi Reg. HA #II	P.O. Box 1887, Oxford, MS 38655	MS26-E016-007	50	1,149,900
04	Mississippi Reg. HA #II	P.O. Box 1887, Oxford, MS 38655	MS26-E016-008	9	262,980
04	Mississippi Reg. HA #V	P.O. Box 419, Newton, MS 39345	MS26-E030-017	50	1,120,535
04	Mississippi Reg. HA #VI	P.O. Box 8746, Jackson, MS 39284-8746	MS26-E058-048	15	554,400
04	Tennessee Valley Reg. HA	P.O. Box 1329, Corinth, MS 38834	MS26-E006-033	50	579,140
04	Avon Park HA	P.O. Box 1327, Avon Park, FL 33825-1327	FL29-E012-002	25	631,450
04	Broward County HA	1773 N. State Rd. 7, Lauderhill, Fl 33313	FL29-E079-020	25	964,060
04	City of Dania	715 W. Dania Beach Blvd., Dania, FL 33004-3227	FL29-E116-006	25	970,200
04	City of Ft. Myers CRA	P.O. Drawer 2217, Fort Myers, FL 33902	FL29-E091-012	25	974,335
04	City of Kissimmee	P.O. Box 421608, Tampa, FL 34742-1608	FL29-E103-005	25	801,010
04	DeLand HA	300 Sunflower Circle, DeLand, FL 32724-5556	FL29-E072-007	25	686,595
04	Gainesville HA	P.O. Box 1468, Gainesville, FL 32602	FL29-E088-014	25	691,500
04	HA of Deerfield Beach	425 NW 1st Terr., Deerfield Beach, FL 33441	FL29-E081-005	25	966,820
04	HA of the City of Tampa	P.O. Box 4766, Tampa, FL 33607	FL29-E003-016	25	907,950
04	Hernando Co. HA	820 Kennedy Blvd., Brooksville, FL 34601	FL29-E137-009	25	795,840
04	Hialeah HA	70 E. 7th St., Hialeah, FL 33010-4465	FL29-E066-016	25	677,085
04	Hillsborough Co. HA	9260 Bay Plaza Blvd., Tampa, FL 33619-4458	FL29-E089-019	25	776,020
04	Mantee Co. HA	5631 - 11th St., E., Bradenton, FL 34203	FL29-E105-011	25	838,035
04	Monroe Co. HA	240 Sombrero Rd., Marathon, FL 33050	FL29-E144-005	13	405,560
04	Orange Co. HA	P.O. Box 1393, Orlando, FL 32801-1393	FL29-E093-012	3	108,970
04	Palm Beach Co. HA	3432 W. 45th St., West Palm Beach, FL 33407	FL29-E080-018	25	867,355
04	Panama City HA	804 E. 15th St., Panama City, FL 32405	FL29-E016-007	25	610,200
04	Pasco County HA	507 Acorn Circle, Dade City, FL 33525	FL29-E104-015	25	760,015
04	Pinellas County HA	209 S. Garden Ave., Clearwater, FL 34616	FL29-E026-023	25	718,200

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REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
04	Santa Rosa Co. HAPP	1498 Byrom St., Milton, FL 32570	FL29-E097-013	25	636,750
04	West Palm Beach HA	3801 Georgia Ave., West Palm Beach, FL 33405	FL29-E009-013	25	644,135
04	Crossville HA	P.O. Box 425, Crossville, TN 38557	TN37-E042-003	28	531,165
04	Knoxville's CDC	P.O. Box 3550, Knoxville, TN 37927	TN37-E003-019	51	1,380,420
04	Cumberland Valley Reg. HA	P.O. Box 806, Barbourville, KY 40906	KY36-E160-013	25	576,300
04	Jefferson Co.	300 York St., Louisville, KY 40203	KY36-E105-023	39	942,600
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-098	12	265,885
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-099	19	332,180
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-100	19	325,670
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-101	19	422,395
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-102	14	381,300
04	Lexington-Fayette Co. HA	635 Ballard St., Lexington, KY 40508	KY36-E130-017	10	266,515
04	Louisville HA	420 S. 8th, Louisville, KY 40203	KY36-E131-017	39	942,600
04	Dickson HA	333 MLK, Jr. Bldg, Dickson, TN 37055	TN43-E079-008	25	635,125
04	Metro Dev. & Hsg. Agency	P.O. Box 846, Nashville, TN 37202	TN43-E005-019	48	1,585,690
04	Murfreesboro HA	318 E. Lokey Ave., Murfreesboro, TN 37130	TN43-E020-010	5	155,990
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-E112-043	[illegible]	228,045
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-E112-044	20	443,650
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-E112-045	7	168,005
05	Aurora HA	1630 Plum St., Aurora, IL 60506	IL06-E090-014	50	2,280,000
05	Bloomington HA	104 E. Wood St., Bloomington, IL 61701-6768	IL06-E051-010	34	1,053,300
05	Champaign HA	P.O. Box 183, Urbana, IL 61801-0183	IL06-E006-008	25	810,360
05	Chicago HA	22 W. Madison St., Chicago, IL 60602	IL06-E002-038	128	4,619,280
05	Cicero HA	2132 S. 61st Ave., Cicero, IL 60650	IL06-E130-003	25	994,200
05	City of Marion HA	501 W. DeYoung - Ste. 6, Marion, IL 62959	IL06-E126-003	15	415,200
05	Cook Co. HA	59 E. Van Buren St., Ste. 1800, Chicago, IL 60605	IL06-E025-043	169	7,978,980
05	Decatur HA	1808 E. Locust St., Decatur, IL 62521	IL06-E012-015	32	974,400
05	Marion Co. HA	719 E. Howard St., Centralia, IL 62801	IL06-E057-001	45	1,103,580
05	Mason Co. HA	200 East Hurst, Havana, IL 62644	IL06-E042-004	33	730,200
05	McHenry Co. HA	1108 N. Seminary, Woodstock, IL 61701-6768	IL06-E116-015	25	1,165,860
05	Rockford HA	330 Fifteenth Ave., Rockford, IL 61108	IL06-E022-018	25	869,640
05	Springfield HA	200 N. 11th St., Springfield, IL 62703	IL06-E004-017	25	919,500
05	Whiteside Co. HA	401 W. 18th St., Rock Falls, IL 61071	IL06-E032-006	11	345,600
05	Butler MHA	4110 Hamilton-Middletown Rd., Hamilton, OH 45012	OH10-E015-012	20	515,940
05	Cincinnati MHA	16 W. Central Pkwy., Cincinnati, OH 45210	OH10-E004-027	50	1,465,945
05	Darke MHA	1469 Dayton Rd., Greenville, OH 45331	OH10-E045-010	17	417,505
05	Dayton MHA	400 Wayne Ave., Dayton, OH 45410	OH10-E005-018	20	568,800
05	Middletown PHA	435 City Centre Plaza, Middletown, OH 45042	OH10-E065-011	20	583,250
05	Cuyahoga MHA	1441 W. 25th St., Cleveland, OH 44113	OH12-E003-043	10	360,600
05	Erie MHA	322 Warren St., Sandusky, OH 44870	OH12-E028-024	19	622,440

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REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
05	Lake MHA	200 W. Jackson St., Painesville, OH 44077	OH12-E025-012	68	1,880,450
05	Lorain MHA	1600 Kansas Ave., Lorain, OH 44052	OH12-E012-021	74	2,195,020
05	Portage MHA	223 W. Main, Ravenna, OH 44266-4997	OH12-E031-024	33	904,460
05	Seneca MHA	P.O. Box 1029, Mansfield, OH 44901	OH12-E075-004	16	372,605
05	Trumbull MHA	1977 Niles Rd., SE, Warren, OH 44484-5197	OH12-V008-015	25	581,250
05	Delaware MHA	P.O. Box 1292, Delaware, OH 43015	OH16-E079-003	50	1,181,970
05	Fayette MHA	101 E. East St., Washington C.H., OH 43160	OH16-E056-003	19	442,905
05	Morrow MHA	298 E. Center St., Marion, OH 43302	OH16-E083-001	19	450,435
05	Pickaway MHA	176 Rustic Dr., Circleville, OH 43113	OH16-E059-012	31	770,765
05	Portsmouth MHA	410 Court St., Portsmouth, OH 45662	OH16-E010-010	9	240,480
05	Springfield MHA	437 E. John St., Springfield, OH 45505	OH16-E021-018	14	421,140
05	Flint	3820 Richfield Rd., Flint, MI 48506	MI28-E009-016	35	838,545
05	Melvindale	3100 Oakwood St., Melvindale, MI 48122	MI28-E048-003	25	777,845
05	MSHCA	401 S. Washington Sq., Lansing, MI 48909	MI28-E150-051	22	445,815
05	MSHCA	401 S. Washington Sq., Lansing, MI 48909	MI28-E150-052	78	2,246,915
05	Port Huron	905 - 7th St., Port Huron, MI 48060-5399	MI28-E039-009	25	934,510
05	Redford Twp	12121 Hemingway, Redford, MI 48239	MI28-E141-011	25	811,925
05	Roseville	18330 Eastland, Roseville, MI 48066	MI28-E037-009	25	547,650
05	St. Clair Sho.	24700 Jefferson, St. Clair Shores, MI 48080	MI28-E059-005	25	668,500
05	Westland	32715 Dorsey, Westland, MI 48185	MI28-E139-007	25	753,855
05	Belding Hsg. Comm.	41 Belhaven, Belding, MI 48809	MI33-E025-001	25	656,305
05	Evart Hsg. Comm.	601 W. First St., Evart, MI 49631	MI33-E112-001	25	561,500
05	Jackson Hsg. Comm.	301 Steward Ave., Jackson, MI 49201	MI33-E038-003	25	734,810
05	Lansing Hsg. Comm.	310 Seymour Ave., Lansing, MI 48933	MI33-E058-010	25	737,875
05	Manistique Hsg. Comm.	400 E. Lakeshore Dr., Manistique, MI 49854	MI33-E049-003	9	155,730
05	Muskegon Hsg. Comm.	1080 Terrace St., Muskegon, MI 49442	MI33-E066-003	16	329,840
05	Wyoming Hsg. Comm.	2450 - 36th St., SW, Wyoming, MI 49509	MI33-E115-006	16	459,745
05	Columbus HA	799 McClure Rd., Columbus, IN 47201	IN36-E058-014	26	619,150
05	Goshen HA	302 S. Fifth St., Goshen, IN 46526	IN36-E101-003	25	658,905
05	Indiana DFSS	P.O. Box 6116, Indianapolis, IN 46206	IN36-E072-071	38	998,850
05	Kokoma HA	210 E. Taylor St., Kokoma, IN 46903-1207	IN36-E007-015	50	1,451,040
05	Michigan City HA	621 E. Michigan Blvd., Michigan City, IN 46360	IN36-E019-006	25	667,025
05	Mt. Vernon HA	1500 Jefferson Dr., Mount Vernon, IN 47620	IN36-E037-006	44	1,159,500
05	Seymour HA	P.O. Box 822, Seymour, IN 47274	IN36-E056-010	5	155,400
05	Barron Co. HA	P.O. Box 211, Barron, WI 54812	WI39-E245-003	40	828,420
05	Brown Co. HA	100 N. Jefferson St., Green Bay, WI 54301	WI39-E186-008	25	491,080
05	Chippewa Co. HA	711 N. Bridge St., Chippewa Falls, WI 54729	WI39-E248-005	25	503,235
05	City of Eau Claire HA	203 S. Farwell St., Eau Claire, WI 54701	WI39-E207-011	25	529,315
05	Marinette Co. HA	P.O. Box 438, Waukeshee, WI 54177	WI39-E241-003	24	455,770
05	Milwaukee Co.	907 N. 10 St., Milwaukee, WI 53233	WI39-E218-018	71	2,476,860

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REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
05	Richland Co. HA	701 W. Seminary St. E, Richland Center, WI 53581	WI39-E256-003	24	498,565
05	West Allis CDA	7525 W. Greenfield Ave., West Allis, WI 53214	WI39-E201-013	24	585,480
05	Winnebago Co. HA	600 Merritt Ave., Oshkosh, WI 54901	WI39-E213-008	24	333,685
05	Cloquet HRA	960 – 14th St., Cloquet, MN 55720	MN46-E073-007	10	235,405
05	Metropolitan Council HRA	230 E. Fifth St., Saint Paul, MN 55101	MN46-E163-024	37	1,983,960
05	Minneapolis PHA	1001 Washington Ave., N., Minneapolis, MN 55401	MN46-E002-025	5	207,690
05	New Ulm HRA	100 N. Broadway, New Ulm, MN 56073	MN46-E128-010	25	447,135
05	Owatonna HRA	540 W. Hills Circle, Owatonna, MN 55060	MN46-E220-004	12	304,755
05	Saint Cloud HRA	619 Mall Germain, Saint Cloud, MN 56301	MN46-E038-018	25	613,350
05	Saint Paul PHA	413 Wacouta St., Saint Paul, MN 55101	MN46-E001-022	37	1,741,270
05	SE MN Multi Co. HRA	134 E. Second St., Wabasha, MN 55981	MN46-E197-014	25	482,906
06	Arlington HA	401 W. Sanford, #2600, Arlington, TX 76011	TX16-E433-019	25	800,940
06	Fort Worth HA	P.O. Box 430, Ft. Worth, TX 76101	TX16-E004-024	120	4,127,280
06	Plano HA	1581 Avenue K, Plano, TX 75074	TX16-E128-006	25	873,025
06	Texoma COG	10000 Grayson Dr., Denison, TX 75020-8399	TX16-E542-011	11	231,900
06	Waco HA	Box 978, Waco, TX 76703	TX16-E010-019	25	588,445
06	Houston HA	601 Sawyer, Ste. 720, Houston, TX 77007	TX24-E005-023	50	1,730,400
06	Nacogdoches Co. HA	804 Jordon St., #701, Nacogdoches, TX 75961	TX24-E501-006	23	667,365
06	Port Arthur HA	920 DeQueen, Port Arthur, TX 77643	TX24-E034-011	72	2,204,880
06	Cabot HA	Box 1113, 1918 W. Main, Cabot, AR 72023	AR37-E219-007	12	278,440
06	Craighead Co. HA	600 Alpine, Jonesboro, AR 72401	AR37-E234-005	25	571,435
06	Mississippi Co. HA	808 W. Keiser, Osceola, AR 72370	AR37-E213-010	25	521,750
06	Pulaski Co. HA	201 S. Broadway, Little Rock, AR 72201	AR37-E252-011	25	833,625
06	Siloam Springs HA	P.O. Box 280, Siloam Springs, AR 72761	AR37-E163-016	9	170,935
06	White River Regional HA	P.O. Box 650, Melbourne, AR 72556-0650	AR37-E197-045	25	324,000
06	Bienville PPJ	P.O. Box 479, Arcadia, LA 71001	LA48-E241-005	25	572,700
06	Lake Charles HA	661 Dixy Dr., Lake Charles, LA 70612-1206	LA48-E004-018	25	521,400
06	New Iberia HA	457 E. Main St., Rm. 406, New Iberia, LA 70560	LA48-E165-008	11	256,685
06	Quachita PPJ	P.O. Box 3007, Monroe, LA 71210-3007	LA48-E171-012	25	609,400
06	Shreveport HA	623 Jordan St., Shreveport, LA 71101	LA48-E002-022	22	704,880
06	St. Bernard PPJ	8201 W. Judge Perez Dr., Chalmette, LA 70043	LA48-E167-005	25	894,780
06	St. Martin PPJ	P.O. Box 9, St. Martinville, LA 70582	LA48-E178-007	25	786,000
06	St. Mary PPJ	P.O. Box 972, Morgan City, LA 70381	LA48-E220-006	25	524,600
06	Terrebonne PPJ	P.O. Box 2768, Houma, LA 70361	LA48-E211-011	50	1,464,000
06	Cherokee Nation IHA	P.O. Box 1007, Tahlequah, OK 74465	OK56-E045-033	11	358,800
06	Cherokee Nation IHA	P.O. Box 1007, Tahlequah, OK 74465	OK56-E045-034	20	405,895
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-E047-031	5	82,875
06	Norman HA	700 N. Berry Rd., Norman, OK 73069	OK56-E139-010	34	789,620
06	Oklahoma City PHA	1700 NE 4th St., Oklahoma City, OK 73117	OK56-E002-019	21	649,530
06	Stillwater PHA	807 S. Lowry, Stillwater, OK 74074	OK56-E146-011	39	838,325

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REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
06	Tulsa HA	P.O. Box 6369, Tulsa, OK 74148-0369	OK56-E073-027	5	177,965
06	Alice HA	P.O. Box 1407, Alice, TX 78333	TX59-E178-008	25	613,850
06	Brownsville HA	P.O. Box 4420, Brownsville, TX 78523	TX59-E007-022	50	1,288,800
06	Cameron HA	P.O. Box 5806, Brownsville, TX 78520	TX59-E509-014	50	1,536,300
06	San Antonio HA	P.O. Drawer 1300, San Antonio, TX 78295	TX59-E006-027	44	1,539,540
06	Uvalde HA	1700 Garner Field Rd., Uvalde, TX 78801	TX59-E421-009	13	248,980
06	Albuquerque Hsg Serv.	Box 25064, Albuquerque, NM 87125	NM02-E001-016	25	765,540
06	Bernalillo Co. Hsg. Dept.	620 Lomas NW, Albuquerque, NM 87102	NM02-E057-011	25	887,460
06	Las Cruces HA	926 S. San Pedro St., Las Cruces, NM 88001	NM02-E003-013	25	675,665
06	Region V HA	Box 3015, Silver City, NM 88062	NM02-E067-023	38	991,320
06	Region VI HA	Box 2303, Roswell, NM 88202-2303	NM02-E063-012	25	700,800
06	Rio Arriba Co. HA	Box 310, Espanola, NM 87532	NM02-E039-001	25	527,120
06	San Miguel Co. HA	San Miguel Co. Courthouse, Las Vegas, NM 87701	NM02-E061-003	15	408,600
07	Dodge City PHA	407 E. Bend, KS 67801	KS16-E006-003	31	734,605
07	Human Services Dept.	City Hall, 2nd Fl., 455 Main St., KS 67202	KS16-E004-012	12	332,485
07	Johnson Co. PHA	9307 W. 74th St., Merriam KS 66203	KS16-E162-005	25	739,020
07	Manhattan PHA	P.O. Box 1024, Manhattan, KS 66502	KS16-EO63-009	25	620,790
07	MO. Hsg. Dev. Commission	301 E. Armour, Ste. 600, Kansas City, MO 64111	MO16-E195-007	25	743,160
07	Salina PHA	P.O. Box 1202, Salinas, KS 67402-1202	KS16-E038-007	20	395,925
07	Topeka HA	1312 Polk St., Topeka, KS 66612	KS16-E002-020	25	632,385
07	Weston PHA	256A Main St., Weston, MO 64098-1249	MO16-E193-004	25	658,700
07	Eastern Iowa RHA	P.O. Box 1140, Dubuque, IA 52004-1140	IA05-E126-036	10	250,055
07	NWIRHA	1812 24th Ave., West Spencer, IA 51301-0704	IA05-E129-018	49	971,380
07	Region VI	1500 E. Linn St., Marshalltown, IA 50158	IA05-E138-003	25	606,855
07	Sioux City HA	P.O. Box 447, Sioux City, IA 51102	IA05-E018-015	30	694,710
07	Siouxland PHA	P.O. Box 447, Sioux City, IA 51102-0447	IA05-E136-005	5	131,460
07	Waterloo HA	215 E. 4th St., Waterloo, IA 50704	IA05-E050-010	28	894,840
07	Central Nebraska Joint HA	P.O. Box 509, Loup City, NE 68853	NE26-E182-001	20	304,775
07	Lincoln HA	P.O. Box 5327, 5700 R St., Lincoln, NE 68505	NE26-E002-023	17	562,850
07	Norfolk HA	111 S. First St., Norfolk, NE 68701	NE26-E157-003	10	232,670
07	Omaha HA	540 S. 27th St., Omaha, NE 68105-1521	NE26-E001-024	12	361,855
07	Stromsburg HA	517 E. 7th St., Stromsburg, NE 68666	NE26-E017-001	16	376,465
07	Boone County PHA	807 B N. Providence Rd., Columbia, MO 65201	MO36-E198-035	25	712,200
07	Lincoln Co. HA	P.O. Box 470, Bowling Green, MO 63334-0470	MO36-E199-041	25	590,570
07	Lincoln Co. HA	P.O. Box 470, Bowling Green, MO 63334-0470	MO36-E199-042	45	1,544,100
07	Phelps Co. PHA	101 W. 10th St., Rolla, MO 65401-3299	MO36-E206-018	12	287,645
07	St. Francois Co. PHA	P.O. Box N, Flat River, MO 63601-0357	MO36-E203-033	6	119,435
07	St. Louis Co. HA	8865 Natural Bridge, St. Louis, MO 63121-0580	MO36-E004-028	17	456,085
08	Cedar City HA	P.O. Box 1721, Cedar City, UT 84721	UT99-E031-003	30	877,800
08	CO Dept. of Institutions	4131 S. Julian Way, Denver, CO 80236	CO99-E074-037	25	436,015

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
08	CO Dept. of Institutions	4131 S. Julian Way, Denver, CO 80236	CO99-E074-038	10	209,250
08	CO Div. of Housing	1313 Sherman St., Rm. 323, Denver, CO 80203	CO99-E093-019	24	875,460
08	Fort Collins HA	1715 W. Mountain Ave., Ft. Collins, CO 80521	CO99-E041-016	25	942,000
08	HA of Fountain City	501 E. Iowa Ave., Fountain, CO 80817	CO99-E071-010	38	1,349,280
08	Larimer Co. HA	1525 Blue Spruce Dr., Ft. Collins, CO 80524	CO99-E103-003	35	1,224,585
08	Provo City HA	650 W. 100 North, Provo, UT 84601	UT99-E007-013	25	625,150
08	St. George HA	975 N. 1725 W., #101, St. George, UT 84770	UT99-E021-005	30	1,009,760
08	Utah Paiute IHA	600 N. 100 E., Cedar City, UT 84720	UT99-E010-004	30	914,920
08	West Valley City HA	3600 Constitution Blvd., West Valley City, UT 84119	UT99-E025-006	36	1,061,760
09	Alameda Co. HA	29800 Mission Blvd., Hayward, CA 94544	CA39-E067-028	27	1,171,050
09	Contra Costa HA	P.O. Box 2759, Martinez, CA 94553	CA39-E011-031	66	3,245,015
09	Humboldt	735 W. Everding St., Eureka, CA 95501	CA39-E086-015	45	1,516,630
09	Marin Co. HA	30 N. Pedro Rd., San Rafael, CA 94913-4282	CA39-E052-024	48	2,577,960
09	Monterey	123 Rico St., Salina, CA 93907	CA39-E033-027	28	1,022,755
09	Oakland	1619 Harrison St., Oakland, CA 94612	CA39-E003-035	42	1,785,495
09	Reno	1525 E. Ninth St., Reno, NV 89512	NV39-E001-023	25	1,224,000
09	San Mateo Co. HA	458 Peninsula Ave., San Mateo, CA 94401	CA39-E014-022	98	6,097,790
09	Santa Clara HA	505 W. Julian St., San Jose, CA 95110	CA39-E059-031	92	5,128,225
09	Santa Rosa	P.O. Box. 1806, Santa Rosa, CA 95402	CA39-E088-021	25	922,150
09	Stanislaus	1701 Robertson Rd., Modesto, CA 95352	CA39-E026-023	98	2,819,350
09	Honolulu City & Co.	650 S. King St., Honolulu, HI 96813	HI10-E003-023	50	2,536,240
09	Kauai Co. HA	4193 Hardy St., #1, Lihue, HI 96766	HI10-E005-013	23	1,162,945
09	Anaheim HA	300 S. Harbor Blvd., Anaheim, CA 92805	CA16-E104-028	13	696,710
09	Baldwin Park	14403 E. Pacific Ave., Baldwin Park, CA 91706	CA16-E120-014	25	1,271,765
09	CA Hsg. & Comm. DEv.	1800 3rd St., Suite 450, Sacramento, CA 95814	CA16-E112-070	10	291,625
09	CA Hsg. & Comm. Dev.	1800 3rd St., Suite 450, Sacramento, CA 95814	CA16-E112-072	25	1,125,300
09	Garden Grove	11400 Stanford Ave., Garden Grove, CA 92942	CA16-E102-026	25	1,375,825
09	Glendale	520 E. Broadway Ave., Ste. 302, Glendale, CA 91205	CA16-E114-018	25	1,083,390
09	Kern Co.	525 Roberts Ln., Bakersfield, CA 93308	CA16-E008-022	25	998,580
09	Lawndale	14717 Burin Ave., Lawndale CA 90260	CA16-E138-004	25	1,033,630
09	Los Angelen City	515 Columbia Ave., Los Angeles, CA 90017	CA16-E004-038	303	16,343,960
09	Los Angeles Co.	2525 Corporate Pl., Monteray Park, CA 91754	CA16-E002-042	290	10,822,060
09	Oceanside	300 N. Hill St., Oceanside, CA 92054	CA16-E132-013	25	932,990
09	Orange Co.	2043 N. Broadway, Santa Ana, CA 92706	CA16-E094-036	25	1,577,875
09	Paramount	16400 Colorado Ave., Paramount, CA 90723	CA16-E137-004	25	611,250
09	San Diego Co.	3989 Ruffin Rd., San Diego, CA 92123	CA16-E108-030	114	4,445,090
09	San Diego Hsg. Comm.	1625 Newton St., San Diego, CA 92113	CA16-E063-034	93	4,015,410
09	San Luis Obispo	487 Leff St., San Luis Obispo, CA 93406	CA16-E044-025	19	710,175
09	Santa Ana	500 W. Santa Ana Blvd., Santa Ana, CA 92707	CA16-E093-025	25	1,555,070
09	Santa Monica	612 Colorado Ave., Santa Monica, CA 90401	CA16-E111-019	25	997,865

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
09	Santa Paula	P.O. Box 404, Santa Paula, CA 93060	CA16-E075-016	25	1,008,820
09	South Gate	8650 California Ave., Southgate, CA 90280	CA16-E119-011	25	945,525
09	Upland	1226 Campus, Upland, CA 91786	CA16-E009-013	25	946,200
09	Ventura Co.	99 N. Glenn Dr., Camarillo, CA 93010	CA16-E092-026	25	1,193,530
09	Gila Co.	1400 E. Ash, Globe, AZ 85501	AZ20-E045-003	16	457,740
09	Mesa HA	415 N. Pasadena, Mesa, AZ 85201	AZ20-E005-017	25	883,850
09	Mohave Co.	P.O. Box 7000, Kingman AZ 86402	AZ20-E043-003	10	359,990
09	Pima Co.	P.O. Box 27210, Tucson, AZ 85726	AZ20-E033-009	25	897,920
09	Tempe HA	P.O. Box 5002, Temple, AZ 85280	AZ20-E031-017	12	368,920
09	Tucson City	P.O. Box 27210, Tucson, AZ 85726	AZ20-E004-028	25	880,180
09	Butte Co. PHA	580 Vallombrosa Ave., Chico, CA 95926	CA30-E096-019	25	835,680
09	Nevada Co.	10433 Willow Valley Rd., Nevada City, CA 95959	CA30-E146-002	14	592,860
09	Redding City	760 Parkview Ave., Redding, CA 96001	CA30-E043-024	25	781,680
09	Shasta Co.	1670 Market St., Ste. 300, Redding, CA 96001	CA30-E048-019	25	888,360
09	Sutter Co.	448 Garden Hwy, Yuba City, CA 95992	CA30-E048-021	25	731,340
10	Kelso HA	P.O. Box 599, Kelso, WA 98626	WA19-E020-008	27	779,520
10	King Co. HA	15455 – 65th Ave., So., Seattle, WA 98188	WA19-E002-030	107	4,613,205
10	Kodiak Island HA	2815 Woody Way, Kodiak, AK 99615-6991	AK06-E016-001	15	768,855
10	Longview HA	1207 Commerce Ave., Longview, WA 98632	WA19-E007-014	29	743,980
10	Seattle HA	120 Sixth Ave., No., Seattle, WA 98109	WA19-E001-032	28	1,197,000
10	Boise City HA	680 Cunningham Pl., Boise, ID 83702	ID16-E013-017	33	1,177,215
10	HA Ada County	680 Cunningham Pl., Boise, ID 83702	ID16-E021-018	25	959,795
10	HA City of Salem	360 Church St., NE, Salem, OR 97301	OR16-E011-026	20	703,600
10	HA of Washington Co.	P.O. Box 988, Hillsboro, OR 97123	OR16-E022-023	29	868,155
10	Linn-Benton HA	1250 SE Queen Ave., Albany, OR 97321	OR16-E019-016	50	1,353,350
10	Mid-Columbia HA	506 E. Second St., The Dalles, OR 97058	OR16-E025-018	25	727,900
10	NE Oregon HA	P.O. Box 3357, LaGrande, OR 97850	OR16-E032-011	25	739,715

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-065-03-4191-03]

Notice of Intent; Proposed Briggs Project Inyo County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management and County of Inyo will prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to assess the potential environmental impacts that may be associated with development of the proposed Briggs Project. Public scoping meetings have been scheduled in connection with the preparation of that document.

CR Briggs, a wholly owned subsidiary of Canyon Resources Corporation has filed applications with the Bureau and County for development of an open-pit, heap-leach gold mine in the Panamint Valley on the west flank of the Panamint Range in Inyo County, California. The Briggs Project is located approximately 34 miles northeast of Ridgecrest, California. The project will ultimately affect approximately 450 acres, and includes the following activities: mining, construction and operation of the heap-leach processing facility, construction and maintenance of roads, development of a water well field and pipelines, and reclamation of disturbed lands.

The EIS/EIR will be prepared by the Bureau and County with the assistance of an independent environmental consulting firm selected by the agencies. The following issues have been preliminarily identified for analysis: Water resources, vegetation and wildlife resources (including special interest species), cultural resources, recreation, visual resources, air quality, and public health and safety. In accordance with the National Environmental Policy Act and California Environmental Quality Act requirements, the EIS/EIR will also consider alternatives to the proposed action. Alternatives and additional issues may be identified as a result of the public scoping process.

Two scoping meetings are scheduled for public and agency input to determine the full scope of issues which should be addressed in the EIS/EIR. The dates, times and locations of the public meetings are as follows:

Date and Time: January 12, 1993, 7 p.m.

Location: Ridgecrest, California, Kerr McGee Center, 100 West California, Ridgecrest, CA 93555.

Date and Time: January 13, 1993, 7 p.m.

Location: Lone Pine, California, Statham Hall, 183 Jackson, Lone Pine, CA 93545.

This notice is a request for environmental information that you or your organization feels should be addressed in the EIS/EIR. Detailed information may be included in your response. Written comments should be sent to the address below no later than January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Dave Taylor, Project Manager, Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Rd., Ridgecrest, CA 93555, 619/375-7125.

Dated: December 10, 1992.

Joseph L. Gum,

Acting Area Manager.

[FR Doc. 92-30470 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-40-M

[CO-030-03-5101-10-YCKD: COC51280]

Availability of the Record of Decision for the TransColorado Gas Transmission Project

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management has prepared the Record of Decision (ROD) for the TransColorado Gas Transmission Project in accordance with the National Environmental Policy Act of 1969, and 40 CFR part 1500. This document is now available to the public.

SUMMARY: The ROD adopts the Agency Preferred Alternative as described in the final Environmental Impact Statement (EIS) and approves issuance of a Right of Way (ROW) grant to TransColorado for the construction, operation, maintenance and eventual termination of a natural gas pipeline and associated facilities. The permanent ROW will be limited to 50 feet in width with an additional temporary work space limited to 25 feet for the majority of the length of the pipeline. In areas where visual concerns were identified the total ROW width will be limited to a maximum of 50 feet. TransColorado will be required to obtain additional temporary use permits (TUP) if Federal lands outside of the authorized ROW are to be disturbed.

The environmental protection measures contained in the EIS will be incorporated into the final Plan of Development (POD). The final POD will be completed and approved prior to issuance of any construction related Notice to Proceed.

The decision is made under the authority of the Mineral Leasing Act of 1920 as amended, the implementing regulations contained in 43 CFR parts 2800 and 2880, and the policy guidance contained in BLM Manual 2800.

The date of publication of this notice in the **Federal Register** is the start of the 30 day appeal period on the ROD.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of the ROD by writing to Chuck Pinch, Project Manager, Bureau of Land Management, 2465 South Townsend Avenue, Montrose, Colorado 81401, or by calling Mr. Finch at 303-249-7791.

Dated: December 10, 1992.

Alan L. Kesterke,

District Manager.

[FR Doc. 92-30468 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-JB-M

[OR-013-03-4410-03: G3-071]

Intent to Amend the Warner Lakes Management Framework Plan; Lakeview, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Opportunity for public comment; notice of intent to amend the Warner Lakes Resource Area Management Framework Plan (MFP), especially for juniper management.

SUMMARY: This notice of intent is to advise the public that the BLM Lakeview District Office intends to amend the existing planning document to address juniper management opportunities.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the 1983 Warner Lakes Resource Area MFP to address management of juniper within view of Oregon Highway 140 and in Deep, Camas, Twelvemile and Twentymile Creek Canyons. The plan amendment area covers about 13,500 acres, the majority located in the extreme southern portion of Lake County, Oregon and generally 10-20 miles east and southeast of Lakeview, Oregon. The planning area also includes 400 acres along Twelvemile Creek in Washoe County, Nevada and 10 acres in Modoc County, California that are managed by the Lakeview Resource Area.

The purpose of the amendment would be to identify alternatives which resolve concerns relating to the management of juniper in portions of the Lakeview Resource Area. Preliminary management alternatives identified to

date include: (1) Maintain present situation (No Action). (2) Juniper management to meet watershed, wildlife and riparian objectives, excluding wilderness study areas. (3) Juniper management to meet watershed, wildlife and riparian objectives, including wilderness study areas.

At the time the existing MFP was prepared, it was felt that juniper was not a serious watershed concern and that it did not affect watershed or riparian condition, so it does not accommodate significant program changes since then. In addition, it does not allow management of juniper within view of State Highway 140, nor in Deep, Camas or Twentymile Creek Canyons.

Disciplines to be represented on the interdisciplinary team preparing the plan amendment and environmental assessment are wildlife, forestry, fisheries, sensitive plants, recreation, visual resources, fuels management, watershed, range management, wilderness and land use planning.

The following preliminary issues are proposed to be addressed in the MFP Amendment: (1) What constitutes ancient juniper and what level of protection will it be afforded? (2) What actions will be taken to protect visual resources both in the long and short term? (3) Where and how much juniper should be left to provide thermal and hiding cover for resident deer herds? (4) Should juniper management be allowed within the boundary of the Fish Creek Rim Wilderness Study Area and if so at what levels? (5) What will be done to increase stream and ground cover, and reduce stream sedimentation and erosion in order to improve watershed and fish habitat condition? (6) What methods will be allowed for juniper removal and disposal? More detailed information on planning issues and criteria is available at the Lakeview District Office and has also been mailed to known interested parties.

The comment period on the preliminary issues and planning criteria for the plan amendment and associated environmental assessment will close February 1, 1993. A public meeting will be held in the Lakeview District Conference Room at 1000 South Ninth, Lakeview, Oregon from 7-9 p.m. on Tuesday, January 12, 1993. Other public participation activities will include a 45-day review of the draft plan amendment and EA, a public meeting and a tour of the plan area during the public comment period for the draft plan amendment and EA. Dates, times and locations of future meetings and document review periods will be announced through local media and mailings to interested parties. Existing planning documents and information are available at the Lakeview District Office of the BLM, 1000 South Ninth Street, P.O. Box 151, Lakeview, OR 97630 during normal working hours. Phone (503) 947–2177.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Lakeview District Office, (503) 947–2177.

Judy Ellen Nelson,

Lakeview District Manager.

[FR Doc. 92–30753 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–33–M

[NV–930–91–4320–13]

Las Vegas District Grazing Advisory Board Meeting; NV

Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Las Vegas District Grazing Advisory Board will be held Friday, January 15, 1993. The meeting will begin at 8 a.m. in the conference room of the Las Vegas District Office, 4765 W. Vegas Drive, and continue until 5 p.m..

The agenda is as follows:

1. Field trip to typical ephemeral and perennial range.
2. Introductions and discussion of what reclassification of ephemeral range means.
3. Discuss allotment by allotment reclassification results.
4. Public comments.
5. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral comments to the board during the public comment period on the day of the meeting or they may file written statements for the board's consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board. Summary minutes of the board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Ben F. Collins,

District Manager, Las Vegas.

[FR Doc. 92–30626 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–HC–M

[UT–942–4210–06; U–42931 et. al.]

Proposed Continuation of Withdrawals; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that several land withdrawals for the Strawberry Valley Project and Central Utah Project, totalling 65,715.56 acres, continue for 100 years. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATES: Comments should be received by March 18, 1993.

ADDRESSES: Comments should be sent to State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, (801) 539–4119.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Orders dated May 6, 1905, November 16, 1905, January 30, 1906, May 13, 1907, and November 12, 1909, be continued for 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Strawberry Valley Project

U–42931

Salt Lake Meridian

T. 8 S., R. 4 E.,
  Sec. 36, lots 1–8, 10–13, NW¼;
T. 9 S., R. 3 E.,
  Sec. 11, lot 1;
  Sec. 12, lot 3;
T. 9 S., R. 4 E.,
  Sec. 1, lots 3 and 4, SE¼SE¼;
  Sec. 10, N½NW¼.

U–42932, U–42934, U–42935

Uintah Special Meridian

T. 2 S., R. 11 W.,
  Sec(s) 18, 19, 29, 30, 31, 32;
T. 2 S., R. 12 W.,
  Sec(s) 1–3, 10–15, 22–27, 34–36;
T. 3 S., R. 11 W.,
  Sec(s) 1–36;
T. 3 S., R. 12 W.,
  Sec(s) 1, 2, 12, 36;
T. 4 S., R. 11 W.,
  Sec(s) 1–12, 15–22, 27–32;
T. 4 S., R. 12 W.,
  Sec(s) 1–3;

Central Utah Project, Bonneville Unit

U–42933

Salt Lake Meridian

T. 7 S., R. 6 E.,
  Sec. 33, SE¼SE¼;
  Sec. 34 S½S½;
  Sec. 35, W½ (unsurveyed);
T. 8 S., R. 5 E.,
  Sec. 13, NE¼, S½;
  Sec. 23 NE¼NE¼, S½NE¼, SE¼SW¼, SE¼;
  Sec. 24, NW¼NE¼, NW¼, NW¼SW¼;
  Sec. 26, NE¼, NE¼NW¼, S½NW¼, SW¼, NW¼SE¼;

Sec. 27, NE¼SW¼, S½SW¼, SE¼;
Sec. 31, lots 2, 3, 4, NE¼, SE¼NW¼, E½SW¼, N½SE¼;
Sec. 32, N½, N½S½;
Sec. 33, NE¼, N½NW¼, SE¼NW¼, N½SW¼NW¼, E½SE¼SW¼NW¼;
Sec. 34 NW¼, NW¼NE¼;
T. 8 S., R. 6 E.,
Sec. 2, lots 9, 10, 12–14;
Sec. 3, SE¼SW¼, SE¼;
Sec. 8, SE¼SW¼, E½SE¼, SW¼SE¼;
Sec. 9, E½NE¼, SW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼, NW¼SE¼;
Sec. 10, NW¼NE¼, N½NW¼, SW¼NW¼;
Sec. 17, N½NE¼, NW¼, N½SW¼;
Sec. 18, lots 1–3, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
T. 9 S., R. 2 E.,
Sec. 21, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 29, SE¼NE¼, E½SE¼;

The areas described aggregate 65,715.56 acres in Utah and Wasatch Counties.

The purpose of the withdrawals is to protect Strawberry Dam and Reservoir, Soldier Creek Dam and appurtenant works. They are also needed to protect the Syar Tunnel (construction completed), the Wasatch Aqueduct and the Diamond Fork Power System (construction planned), all features of the Bonneville Unit of the Central Utah Project. The withdrawals segregate the lands from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and, if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Robert Lopez,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–30815 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force; Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting begins on Thursday, January 7, 1993, at 9 a.m.

ADDRESSES: The meeting will be at the Expo Inn, 1413 Howe Avenue, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Bruss, Trinity River Task Force Secretary, Bureau of Reclamation, MP–720, 2800 Cottage Way, Sacramento CA 95825; telephone: (916) 978–4956.

SUPPLEMENTARY INFORMATION: The Task Force will consider Grass Valley Creek issues and the status of the proposed program extension. The meeting of the Task Force is open to the public. Any member of the public may file a written statement with the Task Force before, during, or after the meeting, in person or by mail. To the extent that time permits, the Task Force chairman may allow public presentation of oral statements at the meeting.

Dated: December 10, 1992.

Kathy E. Gordon,

Deputy Assistant Commissioner—Administration.

[FR Doc. 92–30624 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Proposed Champagne Shores Development Near Arvin, Kern County, California

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: D.L. Griffin Company of Calabasas, California, has applied for a section 10(a)(1)(B) permit PRT–768386 from the U.S. Fish and Wildlife Service (Service) for the incidental take of the Tipton kangaroo rat *(Dipodomys nitratoides nitratoides)*. A Habitat Conservation Plan (HCP) and Implementation Agreement (IA) have been submitted with the application. The proposed permit would allow incidental take for a 100-year period during construction and operation of two water ski lakes and a residential development of 20 homes on 82 acres in Kern County. The take would include the loss of approximately 25 acres of occupied habitat. To compensate for the loss of habitat, the applicant will secure 75 acres of Prime Tipton kangaroo rat habitat at a location acceptable to the Service. A management endowment and protective fencing will be provided for the compensation lands. A series of specific on-site mitigation measures will also be conducted to minimize the potential for take during construction and operation of the development. The mitigation efforts will be fully funded by the applicant. Alternatives considered include implementation of the project on alternative sites, and no project.

DATES: Written comments on the permit application, HCP, IA, and EA should be received on or before January 19, 1993.

ADDRESSES: Comments regarding the adequacy of these documents should be addressed to: Mr. Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Lehman, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, room E–1823, Sacramento, California 93710, (916) 978–4866. Individuals wishing copies of the EA, HCP, or IA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act prohibits the "taking" of endangered species, like the Tipton kangaroo rat. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

D.L. Griffin Company (Griffin) proposes to construct and operate a water ski lake and residential development on an 82-acre parcel, which is located near the community of Arvin, in Kern County, California. The proposed development will be located within the east half of the northwest quarter of Section 1 T32S, R28E, Mount Diablo Baseline Meridian. Construction of the development will result in the permanent loss of approximately 25 acres of degraded and fragmented Tipton kangaroo rat habitat. Griffin proposes to mitigate for this incidental take via several off-site and on-site compensation and mitigation measures. Such measures include the offsite acquisition of 75 acres of prime Tipton kangaroo rat habitat, the transfer of $22,500 to the California Department of Fish and Game for a management

endowment to ensure the long-term management of the lands and various on-site mitigation measures designed to avoid "take" of listed species to the maximum extent possible during construction and operation of the development. The EA considers the environmental consequences of the proposed action, an alternative location and the no action alternative. The action requires the trapping and salvage and/or relocation of the on-site kangaroo rats. Even though the kangaroo rats are removed from the site, the potential exists trapping will miss a few. Consequently, the proposed action may result in the "take" of a small number of individual Tipton kangaroo rats. However, the action will also result in the preservation of 75 acres of prime habitat contiguous with an existing large refuge, the installation of protective fencing and the provision of funds for a long-term, management endowment, where funds for management were previously unavailable. Although the no action alternative would not result in the "take" of individual Tipton kangaroo rats, degradation of the fragmented habitat on the preferred alternative site would likely continue from outside pressures and the potential for take from wandering domestic animals, children playing, unauthorized trespassing and off-road vehicular traffic would result.

Dated: December 4, 1992.

Don Weathers,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92-30761 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Civil War Sites Advisory Commission Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on Saturday, January 30, 1992, at the Gettysburg Hotel, Eisenhower Room, One Lincoln Square, Gettysburg, Pennsylvania 17325. The meeting will begin at 9 a.m. and conclude before 3:30 p.m.

This meeting constitutes the thirteenth meeting of the Commission. The primary focus of the meeting will be on the Commission's draft report. The Commission will welcome input from the public on the subject of Civil War site evaluation and preservation, especially as it relates to Civil War sites in Pennsylvania and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-3936). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in Suite 250, 800 N. Capitol St., NW., Washington, DC 20002.

Dated: December 10, 1992.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92-30689 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-70-M

Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 section 10), that the Maine Acadian Culture Preservation Commission will meet on Thursday, January 21, 1993.

The Committee was established pursuant to Public Law 101-543. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary with respect to the development and implementation of an interpretive program of Acadian culture in the State of Maine and the selection of sites for interpretation and preservation by means of cooperative agreements.

The meeting will convene at 7 p.m. at the Madawaska High School on 7th Avenue in Madawaska, Aroostock County, Maine. The agenda for the meeting is as follows:

1. Review and approval of the summary report of the November 19, 1992 meeting;
2. Public Involvement Subcommittee report;
3. Presentation by the Executive Director of Blackstone Valley River National Historic Corridor;
4. Report of the National Park Service planning team;
5. Opportunity for public comment;
6. Proposed agenda, place and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning these meetings may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone: (207) 288-5472.

Dated: December 10, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92-30687 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-70-M

History Areas Committee of the National Park Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of History Areas Committee of National Park System Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee Of the Secretary of the Interior's National Park System Advisory Board will be held at 9 a.m. on the following date and at the following location.

DATES: January 12, 1993.

LOCATION: National Park Service Director's Conference Room 3119, Main Interior Building, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ben Levy, Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Telephone (202) 343-8164.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's national Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on February 3, 1993, of the qualifications of properties being proposed for National Historic landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Chairperson
Mr. F.C. Duke Zeller, Vice-Chairman
Lt. Governor Connie b. Binsfeld
Mr. Paul F. Cole
Ms. Carrel Cowan-Ricks
Dr. Stuart Kaufman
Mr. Karl A. Komatsu

Hon. Jim Smith
Judge Robert Flynn Orr, *ex officio*

The meeting will include presentations and discussions on the national historic significance and the integrity of a number of properties being nominated for National Historic Landmark designation. These nominations are:

7 properties being considered as part of the Women's History Theme Study:

Alice Austen House, New York;
Kate Chopin House, Louisiana;
Marie Webster House, Indiana;
Birdcfart Museum and Sanctuary, Connecticut;
Philadelphia School of Design, Pennsylvania
Picottee Memorial Hospital, Nebraska; and
IDA Tarbell House, Connecticut;

8 properties relating to art or architecture:

Canterbury Shaker Village, New Hampshire;
Cobblestone Historic District, New York;
Old First Presbyterian Chruch, Tennessee;
Florence Giswold House and Museum, Connecticut;
Wharton Esherick Studio, Pennsylvania;
Principia College Historic District, Illinois;
Majestic Theater, Texas; and
Bok Tower Gardens, Lake Wales, Florida;

a site relating to westward exploration and settlement:

Beginninig Point of the Louisiana Purchase Land Survey, Arkansas;

a property relating to engineering:

St. Clair River Tunnel, Michigan;

2 individual archaeological sites:

African Burial Ground, New York; and
Brooks River Archeological District, Alaska;

and 4 archaeological properties part of the Historic Contact Theme Study:

Nauset Archaeological District, Massachusetts;
Minisink Site, Pennsylvania and New Jersey;
Wards Point, New York; and
Fort Massapeag, New York.

The Committee will also review and make recommendations on the following special resource studies:

—Georggia O'Keeffe Sites, New Mexico
—Thomas Cole House, New York

The Committee will also hear status reports on the special resource studies program for fiscal years 1993 and 1994.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to Ben Levy, Manager, national Historic Landmarks Survey, History Division (418), National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Dated: December 14, 1992.

Rowland T. Bowers,

Deputy Associate Director, Cultural Resources, National Park Service, WASO.

[FR Doc. 92–30690 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–70–M

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app 1, section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, January 28, 1993.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System. Wayland Town Hall is located on the west side of Rte. 27, just south of the intersection of Rtes. 20 and 27 in Wayland center. From the north, take Rte. 27 south and turn right at first driveway after crossing Rte. 27. From the west, take Rte. 20 east, turn left on Rte. 27 south and take immediate right into driveway. Parking lot is behind building.

Agenda

I. Welcome and introductions—Bill Sullivan
II. Approval of minutes from 12/3/92 meeting
III. Brief statements and comments from the public
IV. Presentation—Existing laws and regulations affecting recreation on the study rivers
V. Subcommittee Reports—Subcommittee Chairs
  A. River Conservation Planning Subcommittee
  B. Water Resources Subcommittee
  C. Public Participation Subcommittee
VI. Discussion—Issues of Local Concern
VII. Opportunity for public questions and comments
VIII. Other Business
  A. Next meeting dates and locations

Dated: December 10, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92–30686 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Certain Anisotropically Etched One Megabit and Greater Drams, Components Thereof, and Products Containing Such Drams; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 13, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Micron Semiconductor Inc., 2805 East Columbia Road, Boise, Idaho 83706–9698. A supplement to the complaint was filed on December 3, 1992. The complaint, as supplemented, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain anisotropically etched one megabit and greater dynamic random access memories ("DRAMs"), components thereof, and products containing such DRAMs, alleged to be manufactured abroad by a process covered by claims 1, 2, 5, and 6 of U.S. Letters Patent 4,436,584, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Importation Investigations, U.S. International Trade Commission, telephone 202–205–2568.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the

Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on December 11, 1992, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain anisotropically etched one megabit or greater DRAMs, components thereof, or products containing such DRAMs, by reason of alleged infringement of claims 1, 2, 5, or 6 of U.S. Letters Patent 4,436,584, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Micron Semiconductor Inc., 2805 East Columbia Road, Boise, Idaho 83706–9698.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hyundai Electronics Industries Co., Ltd., San 136–1, Ami-Ri, Bubal-Myun, Ichon-Ku, Kyungki-Do, Korea

Hyundai Electronics America, Inc., 4401 Great America Parkway, Santa Clara, California 95054

Goldstar Electron Co., Ltd., 16, Woomyeon-Dong, Seocho-Gu, Seoul, Korea

Goldstar Electron America, Inc., 3003 North First Street, San Jose, California 95134.

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., room 401–J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: December 14, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–30676 Filed 12–17–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–319–332, 334, 336–342, 344, and 347–353 (Final)]

Certain Flat-Rolled Carbon Steel Products From Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, and the United Kingdom; Institution of Final Countervailing Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701–TA–319–332, 334, 336–342, 344, and 347–353 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain flat-rolled carbon steel products (as indicated in the table below), provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21, 7212.29, 7212.30, 7212.40, 7212.50, and 7212.60 of the Harmonized Tariff Schedule of the Untied States, that the U.S. Department of Commerce (Commerce) has preliminarily found to have been subsidized by the Governments of the following countries:

Country	Cut-to-length plate	Hot-rolled sheet and strip	Cold-rolled sheet and strip	Corrosion-resistant sheet
Austria	.....	.....	701–TA–336	
Belgium	701–TA–319	701–TA–329	701–TA–337	
Brazil	701–TA–320	701–TA–330	701–TA–338	701–TA–347
France	701–TA–321	701–TA–331	701–TA–339	701–TA–348
Germany	701–TA–322	701–TA–332	701–TA–340	701–TA–349
Italy	701–TA–323	.....	701–TA–341	
Korea	701–TA–324	701–TA–334	701–TA–342	701–TA–350
Mexico	701–TA–325	.....	.....	701–TA–351
New Zealand	.....	.....	.....	701–TA–352
Spain	701–TA–326	.....	701–TA–344	
Sweden	701–TA–327	.....	.....	701–TA–353
United Kingdom	701–TA–328			

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determinations to coincide with those to be made in the ongoing antidumping investigations on certain carbon steel flat-rolled products from the above-listed countries and, in addition, has extended the date for its final determination on corrosion-resistant carbon steel flat-rolled products from

New Zealand to coincide with the final determinations in other investigations on those products. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigations until Commerce makes preliminary determinations in the antidumping investigations (currently scheduled for January 26, 1993).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 7, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce, under section 703 of the Act (19 U.S.C. 1671b), that certain benefits constituting subsidies are being provided to manufacturers, procedures, or exporters in Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, and the United Kingdom of certain carbon steel flat-rolled products (cut-to-length plate, hot-rolled sheet and strip, cold-rolled sheet and strip, and/or corrosion-resistant sheet and strip). The investigations were requested in a petition filed on June 30, 1992, by counsel for Armco Steel Co., L.P.; Bethlehem Steel Corp.; Geneva Steel; Gulf States Steel, Inc. of Alabama; Inland Steel Industries, Inc.; Laclede Steel Co.; LTV Steel Co., Inc.; Lukens Steel Co.; National Steel Corp.; Sharon Steel Corp.; USX Corp./U.S. Steel Group; and WCI Steel, Inc. (not all companies are petitioners in all cases).

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Identification of Competition Arguments

Persons wishing to raise arguments during these investigations that specific subject imported steel products do not compete with products of the domestic industries (i.e., "niche product" arguments) are requested to provide a written, non-business-proprietary description (including tariff classification) of each steel product in question no later than the date for filing entries of appearance. Please note that this request pertains not only to products and countries covered by Commerce's preliminary subsidy determinations but also to products and countries for which preliminary antidumping determinations are pending.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 16, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–30880 Filed 12–17–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

December 15, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Agway, Inc.
(2) 333 Butternut Drive, DeWitt, NY 13214
(3) 333 Butternut Drive (Mailing address: Box 4933, Syracuse, NY 13221)
(4) Larry Clark, Box 4746, Syracuse, NY 13221.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30763 Filed 12–17–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Extension of Public Comment Period on Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and Other Environmental Statutes

Notice is hereby given that the public comment period on the second proposed settlement agreement in In re National Gypsum Co., Case No. 390–37213–SAF–11 (Bankr. N.D. Tex.) is being extended through January 5, 1993. This extension is due to a change in the Bankruptcy Court's confirmation

hearing schedule. For a summary of the proposed settlement agreement and a description of where copies may be obtained, please refer to the notice published at 57 FR 56,374 (Nov. 27, 1992).

The Department of Justice will receive comments relating to the proposed settlement agreement through January 5, 1993. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should specifically refer to In re National Gypsum Co., D.J. reference #90-11-2-689.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-30681 Filed 12-17-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s). New General Wage Determination

Volume I

Indiana:	
IN91-17 (Dec. 18, 1992).	p. All.
Kentucky:	
KY91-29 (Feb. 22, 1991).	p. All.
New York:	
NY91-11 (Feb. 22, 1991).	p. All.
Pennsylvania:	
PA91-4 (Feb. 22, 1991).	p. All.
PA91-7 (Feb. 22, 1991).	p. All.
PA91-31 (Feb. 22, 1991).	p. All.
West Virginia:	
WV91-3 (Feb. 22, 1991).	p. 1445, pp. 1446-1458b.

Volume II

Indiana:	
IN91-16 (Feb. 22, 1991).	p. All.
Michigan:	
MI91-2 (Feb. 22, 1991).	p. All.
Wisconsin:	
WI91-8 (Feb. 22, 1991).	p. All.
WI91-10 (Feb. 22, 1991).	p. All.
WI91-19 (Feb. 22, 1991).	p. All.

Volume III

Colorado:	
CO91-1 (Feb. 22, 1991).	p. 151, p. 152.
CO91-2 (Feb. 22, 1991).	p. All.
CO91-3 (Feb. 22, 1991).	p. All.
CO91-4 (Feb. 22, 1991).	p. All.
CO91-6 (Feb. 22, 1991).	p. 179, p. 180.
Wyoming:	
WY91-9 (Feb. 22, 1991).	p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes,

arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 11th day of December 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–30519 Filed 12–17–92; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The Assistant Director for Engineering has determined that the renewal of the Special Emphasis Panel in Engineering Education and Centers (formerly Special Emphasis Panel in Engineering Infrastructure Development) is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Special Emphasis Panel in Engineering Education and Centers.

Purpose: To review applications to programs, progress of ongoing Engineering Research Centers and Engineering Education Coalitions, review special initiative proposals, and to advise the Division management of continuing funding.

Balanced Membership Plan: Membership will be selected on an "as needed basis in response to specific proposals/applications/sites to be reviewed. About 165 individual panelists will be used each year. Members will be selected for their technical fit and the breadth and depth of candidate members. Membership will represent industry and/or academia, small or large organizations. Consideration will also be given to achieving geographic balance and to enhancing representation for women, minority, younger and disabled scientists.

Responsible NSF officials: Dr. Sue Kemnitzer, Deputy Division Director (Education), National Science Foundation, room 1776G, Washington, DC 20550 (202) 786–9831.

Dated: December 11, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–30717 Filed 12–17–92; 8:45 am]

BILLING CODE 7555–01–M

Committee Management; Establishment

The Assistant Director for Education and Human Resources has determined that the establishment of the Advisory Panel for the Presidential Faculty Fellows activity is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Panel for Presidential Faculty Fellows.

Purpose: To provide advice and recommendations to the Director, NSF, and the President, regarding nominations to the Presidential Faculty Fellow award for support and recognition of 36 of the nation's most outstanding young faculty members working in research, education, and human resources in the areas of the physical sciences, engineering, geoscience, mathematics, biology, computer and information science, and social, behavioral, and economic sciences.

Balanced Membership Plan: Membership will consist of about 35 persons selected to be representative of the scientific and engineering areas normally supported by the Foundation. Every effort is made to achieve a balanced membership with representation including women, minority scholars, disabled persons, as well as different geographic regions of the U.S. and leaders from predominately undergraduate institutions and industry.

Responsible NSF Officials: Dr. Sonia Ortega, Program Director or Ms. Mary Saladek, Program Manager, National Science Foundation, room 1202, Washington, DC 20550 (202) 357–9466.

Dated: December 11, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–30716 Filed 12–17–92; 8:45 am]

BILLING CODE 7555–01–M

Proposed Change to Grant Policy; Request for Comments

AGENCY: National Science Foundation.

ACTION: Notice of proposed change to National Science Foundation grant policy; request for comments.

SUMMARY: The National Science Foundation (NSF) is considering revisions to Section 517 of the NSF Grant Policy Manual, which sets forth NSF policy on payment of page charges for scientific journal publications under NSF grants. The proposed change to Section 517d of the NSF Grant Policy Manual would eliminate the present prohibition against payment of page charges to journals operated for profit. If adopted, NSF policy would no longer distinguish between journals published by profitmaking organizations and those published by scientific societies or other non-profit organizations for purposes of allowing page charges.

DATES: The NSF will welcome any comments on the proposed policy change. In order to be assured consideration comments must be postmarked no later than January 19, 1993.

ADDRESSES: Comments may be addressed to Robert B. Hardy, Acting Head of Policy, Division of Grants and Contracts, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Robert E. Hardy, 202–357–7880.

Lawrence Rudolph,

Deputy General Counsel.

[FR Doc. 92–30628 Filed 12–17–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing; Carolina Power & Light Co., et. al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–71 and DPR–62, issued to Carolina Power & Light Company (CPL, the licensee), for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The amendments would allow a one-time revision to the requirements of Technical Specification 3.3.3, Emergency Core Cooling System Actuation Instrumentation, when in Operational Condition 4 (Cold Shutdown) to allow the minimum number of operable channels for one reactor steam dome pressure—low instrumentation trip system to be

temporarily reduced from two (2) channels to one (1) channel. The proposed amendments would allow, on three (3) separate occasions, one (1) reactor steam dome pressure—low (injection permissive) channel to be placed in the inoperable status for up to seven (7) days without invoking the ACTION statement in order to support modifications to upgrade the seismic qualifications of instrument racks H21–P009 (Unit 2 only) and H21–P010 (Unit 1 and Unit 2).

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By January 19, 1993, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–248–5100 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated November 16, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room.

Dated at Rockville, Maryland, this 11th day of December 1992.

For the Nuclear Regulatory Commission.

Stephen T. Hoffman,

Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30724 Filed 12–17–92; 8:45 am]

BILLING CODE 7590–01–M

GE Nuclear Energy Receipt of Application for Design Certification

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from GE Nuclear Energy (GE) dated August 27, 1992, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, for design certification of the Simplified Boiling Water Reactor (SBWR) Standard Plant Design. A notice relating to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The SBWR is a 670 MWe boiling water reactor in which passive safety systems are used for the ultimate safety protection of the plant. All of the safety systems are designed to be passive, where natural forces, such as gravity, natural convection, and stored energy (in the form of compressed gas or batteries), are used as the motive forces of these systems. The SBWR has a number of unique features that distinguish it from both the current generation of light water reactors and the evolutionary light water reactors. The SBWR application includes the entire power generation complex, except those elements and features considered site-specific, and is not a modular design in which major components are shared.

The application is incomplete in several important respects, and cannot, therefore, be accepted formally as a rulemaking petition for design certification. However, the NRC staff plans some review activities at this early stage to give GE notice of issues and concerns. Therefore, Docket Number 52–004 is being assigned to the application to facilitate public access to correspondence and review information. No formal review schedule has been established. The staff will establish its review schedule for final design approval after GE supplies the missing material.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Previous correspondence on this application was filed under Project Number 681. The new docket number established for this application is 52–004.

Dated at Rockville, Maryland this 8th day of December 1992.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Standardization Project Directorate, Associate Directorate for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30725 Filed 12–17–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31587; File No. SR–Amex–92–31]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Automatic Cancellation of Orders in Expiring Rights and Warrants

December 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 28, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Rule 179 provides for automatic cancellation of "regular way" and "next day" orders in expiring rights and warrants prior to commencing "next day" and "cash" trading, respectively, in such issues.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 179 provides time frames during which orders in expiring rights and warrants must be for "next day" delivery or for "cash" settlement, rather than for "regular way" five-day delivery. In order to assure that trades are settled prior to expiration, orders in expiring warrants must be for "cash" settlement during the last five business days before expiration, and for "next day" delivery during the three business days preceding that five day period. Orders in rights must be for "cash" settlement on the last trading day before expiration and for "next day" delivery on the five business days preceding the last trading day. Currently, "regular way" orders and "next day" orders on the specialist's book are not cancelled unless prior to execution the member or member organization from whom the specialist received the order cancels it. If the order is not cancelled, it automatically becomes "next day" or "cash" in accordance with the above time frames.

The Exchange has determined to amend Rule 179 to provide, in accordance with the time frames of the Rule, for the automatic cancellation of open "regular way" and "next day" orders in expiring rights and warrants entered in the Post Execution Reporting ("PER") system and on the specialist's book prior to commencing "next day" and "cash" trading in those securities. The normal ticker notice provided by the Exchange with respect to expiring rights and warrants would provide ample notice to members and member organizations regarding such order cancellations thereby giving them the opportunity to replace or not replace their cancelled orders. Substituted "next day" and "cash" orders would be treated as new orders and not entitled to retain the priority on the specialist's book of the "regular way" order.

The new procedures are particularly important in light of the utilization of the Amex Order File ("AOF") by an increasing number of member organizations. GTC/GTX (good 'til cancelled) or open orders in rights or warrants entered into PER/AOF as "regular way" orders but not cancelled prior to the automatic "non-regular way" trading (*e.g.*, "next day" or "cash") may result in errors in clearance and settlement. "Regular way" GTC/GTX orders entered by member organizations are recorded on the AOF with the Amex omnibus give-up

"APEX" to facilitate clearance through National Securities Clearing Corporation ("NSCC") facilities. Currently, the omnibus give-up "APEX" remains on the order on file and on the paper order on the specialist's book until it is executed, cancelled, or manually deleted. "Cash" or "next day" trades require a member organization's specific give-up symbol, instead of "APEX", to facilitate clearance of such "non-regular way" trades through NSCC facilities. Modifications to AOF to permit automatic purging from the system of open orders in expiring rights and warrants and their re-entry by member organizations with the organization's specific "give-up", if applicable, will facilitate accurate clearance and settlement of "cash" and "next day" trades without special action being taken by the specialist.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–31 and should be submitted by January 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30781 Filed 12–17–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31591; File No. SR–AMEX–92–18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Portfolio Depository Receipts

December 11, 1992.

On July 22, 1992,[1] the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to adopt new Rules 1000 *et seq.* to provide for the listing and trading of Portfolio Depositary Receipts ("PDRs"), which are securities issued by a unit investment trust and holding a portfolio of securities linked to an index.

Notice of the proposed rule changes were published for comment and appeared in the **Federal Register** on August 20, 1992.[4] No comments were received on the proposed rule changes. This order approves the proposal.

II. Description of the Proposal

A. Listing Requirements for Unit Investment Trusts

The Exchange proposes to adopt new Rules 1000 *et seq.* to accommodate the trading on the AMEX of PDRs, securities which are interests in a unit investment trust ("Trust")[5] holding a portfolio of securities linked to an index. The Trust sponsor ("Sponsor") will be PDR Services Corporation, a wholly-owned subsidiary of the AMEX. Each Trust will provide investors with an instrument that closely tracks the underlying portfolio of securities, that trades like a share of common stock, and that pays PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade PDRs based on one or more stock indexes or securities portfolios. PDRs based on each particular stock index or portfolio shall be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based shall be selected by the AMEX or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.[6]

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[1] The AMEX originally submitted its filing on June 5, 1992. On July 22, 1992, the AMEX submitted an amendment to its filing.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b–4 (1991).

[4] See Securities Exchange Act Release No. 31039 (August 20, 1992), 57 FR 37851.

[5] The SPDR Trust, Series I, filed with the Commission's Division of Investment Management an application seeking, among other things, an order: (1) Permitting secondary market transactions in SPDRs at negotiated prices, rather than at a current public offering price described in the prospectus as required by section 22(d) of the Investment Company Act of 1940 ("'40 Act") and Rule 22c–1; and (2) permitting the sale of Standard & Poor's ("S&P") Depositary Receipts ("SPDRs") to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by section 4(3) of the Securities Act of 1933 but may be required according to section 24(d) of the '40 Act for redeemable securities issued by a Unit Investment Trust. The Commission granted these exemptions on October 26, 1992. The exemptions permit individual SPDRs to be traded in secondary market transactions similar to closed-end investment company securities.

[6] The Commission notes that the AMEX is required to submit rule filings pursuant to section 19(b) of the Act before it lists a PDR based on a new index or group of securities. See letter from James P. Duffy, Senior Vice President & General Counsel, Legal & Regulatory Policy Division, AMEX, to Sharon Lawson, Assistant Director, Division of

Continued

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust.[7]

Because the Trust operates on an open-end type basis, and because the number of SPDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the Index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the Sponsor, following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.[8]

B. Listing of SPDRs

The AMEX expects that the first Trust to be formed in connection with the issuance of Portfolio Depositary Receipts will be based on the S&P 500 Composite Stock Price Index ("S&P 500 Index" or "Index") with the securities of the Trust known as SPDRs. It is anticipated that the term of the SPDR Trust will be 25 years.[9] The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted.[10] Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying SPDRs.

The Trust will issue SPDRs in exchange for "Portfolio Deposits" of all of the S&P 500 Index securities, weighted according to their representation in the Index.[11] An investor making a Portfolio Deposit into the Trust will receive a "Creation Unit" composed of 500,000 SPDRs, with an initial net asset value of approximately $2.1 million.[12] The price of SPDRs will be based on a current bid/offer market.[13] SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (*i.e.*, 50,000 SPDRs). Specifically, a Creation Unit may be redeemed for an in-kind distribution of securities identical to a Portfolio Deposit.[14] PDR Distribution Services, Inc. ("Distributor"), a registered broker-dealer, will act as underwriter of SPDRs on an agency basis.

C. Trading of PDRs

The Amex proposal includes rules to govern the trading of PDRs, in general, and SPDRs, in particular.[15] First the AMEX proposal provides procedures to govern the application of trading halts. Specifically, the AMEX has stated that prior to commencement of trading in PDRs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. Under the proposal, the circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Exchange Rule 918C(b), the AMEX's rule governing trading rotations, halts and suspensions for stock index options, in exercising its discretion to halt or suspend trading. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

According to the AMEX, SPDR trading would be halted (along with other securities on the Exchange) if the circuit breaker parameters under AMEX Rule 117 have been reached.[16] The triggering of futures price limits for the S&P 500, S&P 100 Composite Price Stock Index ("S&P 100 Index") or Major Market Index ("MMI") futures contracts will not, in themselves, result in a halt in SPDR trading or a delayed opening. Such an event, however, could be considered by the Exchange, along with other factors, such as a halt in trading in S&P 100 Index Options ("OEX"), S&P

Market Regulation, SEC, dated July 23, 1992 ("AMEX Letter").

[7] The AMEX indicates that 150,000 SPDRs (approximately $8 million) will be required to be outstanding when trading commences.

[8] For an example of some specific conditions for termination of a Trust, see *infra* note 9.

[9] The SPDR Trust may terminate at an earlier time under certain circumstances, as provided in the prospectus. For example, the SPDR Trust may terminate if the license agreement with S&P Corporation terminates. In addition, the Sponsor of the SPDR Trust may terminate the Trust if the net asset value of the Trust, after six months from inception, falls below $150 million, and, after three years from inception, the net asset value of the Trust falls below $350 million, as adjusted annually for inflation.

[10] The Trustee will abstain from voting if the stocks held by the Trust cannot be voted in proportion as all other shares of the securities are voted.

[11] A Portfolio Deposit also will include a cash payment equal to a *pro rata* portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[12] The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index. At the index's current level, the net asset value of a SPDR would be approximately $43 of the S&P 500 Index. At the index's current level, the net asset value of a SPDR would be approxiamtely $43.

[13] The AMEX has, in a separate rule filing, proposed to use 1/32's as the minimum fraction for trading in SPDRs. See file no. SR–AMEX–92–14 (December 11, 1992).

[14] An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

[15] Because SPDRs represent a portfolio of securities, and do not involve the trading of the stocks in the portfolio on an individual basis, the Commission believes that SPDRs are distinct and separate securities from the securities contained in the portfolio and, thus, would not be subject to off-board trading restrictions. Accordingly, SPDRs may be traded off-exchange or off-board pursuant to Rule 19c–3. In addition, SPDRs also would be eligible for trading by other exchange markets pursuant to the unlisted trading privileges ("UTP") procedure, as set forth under 12(f) under the Act.

[16] AMEX Rule 117 provides that:

If the Dow Jones Industrial Average ("DJIA") is calculated at a value of 250 or more points below its closing value on the previous trading day ("Closing Value"), trading in securities on the Exchange shall halt and not reopen for one hour. If, on the same day, the DJIA is subsequently calculated at a value of 400 or more points below that closing value, trading in securities on the Exchange shall halt and may not reopen for two hours.

500 Index Options ("SPX"), or Major Market Index Options ("XMI"), in deciding whether to halt trading in SPDRs.[17]

Second, the AMEX proposal requires that members and member organizations provide to all purchasers of each series of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a number or member organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to member and member organizations. The written description must be included with any sales material on that series of PDRs that a member provides to customers or the public. Moreover, other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of PDRs] has been prepared by the AMEX and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs]." [18] Finally, as noted above, the Exchange requires that members and member organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

Third, the proposal provides in Commentary .02 to Proposed AMEX Rule 1000 that transactions in PDRs may be necessary on the AMEX until 4:15 p.m. each business day.[19] Secondary market transactions of PDRs, in general, and SPDRs, in particular, will be reported to the consolidated tape.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission believes that providing for the exchange-trading of PDRs, in general, and SPDRs, in particular, will offer a new and innovative means of participating in the securities markets. In particular, the Commission believes that the trading of PDRs will provide investors with increased flexibility in satisfying their investment needs of allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.[20] The Commission also believes that the PDRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[21]

The Commission believes that the listing and trading on an exchange of a security like SPDRs, which replicates the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets, such as during the October 1987 and 1989 Market Breaks.[22] The Commission believes the creation of one or more products where actual portfolios of stocks or instruments representing portfolios of stock, such as PDRs, that can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[23]

The 1987 Market Break Report noted the potential benefits to be derived from providing a market where institutional investors and member firms could focus their equity transactions at posts trading a portfolio of stocks in a single transaction. In particular, the 1987 Market Break Report noted that the specialist(s) and the trading crowd(s) at the portfolio post could provide additional liquidity, that is currently unavailable at the posts for trading in each of the individual stocks, as well as provide the additional efficiencies associated with effecting a single transaction in a portfolio of securities as opposed to numerous transactions in individual stocks. The additional layer of liquidity to the market could help to absorb the velocity and concentration of trading associated with index-related trading strategies involving individual stocks. Because market portfolio instruments, such as SPDRs, would be traded at a single location on an exchange floor, the potentially adverse effects of program trading order flows during volatile market conditions, such as imbalances in particular stocks, would be diminished.[24] Moreover, the trading of a single security replicating the performance of a broad portfolio of stocks, in general, and SPDRs, in particular, will provide an easy and inexpensive method to clear and settle a portfolio of stocks. Accordingly, given the design of the PDRs in general, and SPDRs, in particular, the Commission believes that the benefits to the marketplace noted above resulting from the trading of a "basket" product likely will result from the trading of PDRs.

As noted above, an individual SPDR will have a value approximately equal to 10% of the value of the S&P 500 Index. This should potentially make this product more available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that SPDRs will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide stock market participants several advantages over existing

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[17] See AMEX Letter, *supra* note 6.

[18] See Commentary .01 to Proposed AMEX Rule 1000.

[19] SPDR creations and redemptions, however, will not be reported to the tape by any party, nor will securities delivered to the Trust upon the creation of SPDRs or securities delivered by the Trust to SPDR holders upon redemption. The transfer of stock to create or redeem SPDRs is not a transaction on the Exchange, and, therefore is not a transaction that would be subject to the requirements of Rule 11Ac1–2 under the Act. Accordingly, because no transactions in individual S&P 500 stocks will occur on the AMEX, an application to trade such securities pursuant to UTP procedures is unnecessary and not required under the Act.

[20] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[21] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem SPDRs in 50,000 share units. Nevertheless, SPDRs would have the added benefit of liquidity from the secondary market and SPDR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[22] See Division of Market Regulation, SEC, The October 1987 Market Break (February 1988) ("1987 Market Break Report") and Division of Market Regulation, SEC, Market Analysis of October 13, and 16, 1989 (December 1990).

[23] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of $1 million or more.

[24] See *infra* note 35.

methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and SPDRs, in particular, will provide investors with several advantages over standard open-end S&P 500 Index mutual fund shares. In particular, investors will have the ability to trade SPDRs continuously throughout the business day in secondary market transactions at negotiated prices.[25] In contrast, pursuant to Investment Company Act Rule 22c–1,[26] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[27] Accordingly, PDRs, and SPDRs in particular, will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although SPDRs are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their price will still be derived and based upon the securities held in the Trust. In essence, SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P 500 Index.[28] Accordingly, the level of risk involved in the purchase or sale of a SPDR is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for SPDRs is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, SPDRs raise disclosure, market impact and secondary market trading issues that must be addressed adequately. As discussed in more detail below, the Commission believes the AMEX proposal adequately addresses these concerns.

A. Disclosure

The Commission believes the AMEX proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading PDRs. As noted above, the proposal include five aspects addressing disclosure concerns. First, AMEX members must provide their customers trading PDRs with a written explanation of any special characteristics and risks attendant to trading such PDR securities (such as SPDRs), in a form prepared by the AMEX.[29] Second, members and member orgnaizations must include this written product description with any sales material relating to a series of PDRs that is provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing PDRs as an investment vehicle must include a statement in a form specified by the AMEX, that a circular and prospectus are available from a broker upon request. Fourth, a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of PDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in PDR securities, in general, and SPDRs, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments.[30]

Finally, under the AMEX's proposal there will be no special account opening or customer suitability rules applicable to the trading of PDRs.[31] Nevertheless, pursuant to proposed AMEX Rule 1000(a), the AMEX equity rules governing account opening and suitability will apply. Specifically, these provisions provide that members shall use due diligence to learn the essential facts relative to every customer, order or account accepted, and, prior to or promptly after the competition of a transaction for such account, specifically approve the opening of the account.[32]

B. Market Impact

The Commission believes the AMEX has adequately addressed the potential market impact concerns raised by its proposal. First, the AMEX proposal permits the listing and trading of specific PDRs only after review by the Commission.[33] Second, the AMEX has developed policies regarding trading halts in PDRs. Specifically, the Exchange would halt PDR trading if the circuit breaker parameters under AMEX Rule 117 were reached.[34] In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and SPDRs, in particular, the AMEX represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. Specifically, consistent with AMEX Rule 918C(b), the AMEX may consider whether trading has been halted or suspended in the primary market(s) for any combination of

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[25] Because of potential arbitrage opportunities, the Commission believes that SPDRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a SPDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will track the S&P 500 index more closely than an open-end index fund because the Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will redeem only in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the S&P 500 Index.

[26] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted SPDR Trust an exemption from this provision in order to allow SPDRs to trade at negotiated prices in the secondary market.

[27] *Id.*

[28] In fact, the margin requirement for the PDRs will be identical to the requirements for other equity securities. The short sale of a SPDR will be margined at 150% of the current market value of the security, while long SPDR positions are set at 50% of the current market value of the security, the usual Regulation T requirements for equity margin stocks.

[29] The AMEX submitted with its rule filing a SPDR Product Description required to be distributed to customers trading SPDRs. This document describes, among other things, that SPDRs possess risks similar to those present when investing in a broadly based portfolio of common stocks, including the risk that the general level of stock prices may decline, thereby adversely affecting the value of such investment.

[30] In addition, the exemptions granted by the Commission under the Investment Company Act of 1940 that permit the secondary market trading of SPDRs are specifically conditioned upon the customer disclosure requirements described above.

[31] This reflects the fact that PDRs are equity products and not an options product, and, therefore, do not necessitate the imposition of options-like rules.

[32] See Amex Rule 411.

[33] See AMEX Letter, *supra* note 6. In reviewing proposals concerning specific series of PDRs, the Commission expects to focus on whether the PDR series by virtue of its design or composition raises potential manipulation, disclosure, or other trading abuse concerns.

[34] The circuit breaker rules provide that trading in the stock, options and futures markets will halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points or more from its previous day's closing level, and, thereafter, trading would halt for an additional two hours if the DJIA declines 400 points from the previous day's close. The triggering of futures price limits for the S&P 500, S&P 100, or MMI futures, however, will not, in themselves, result in a halt in PDR trading or delayed openings. Such an event, however, could be considered by the Exchange, along with other factors, in deciding whether to halt trading in PDRs.

underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission believes that the listing and trading of SPDRs will not adversely impact U.S. securities markets. The corpus of the SPDR Trust will be a portfolio of stocks replicating the S&P 500 Index, a broad-based, capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. Accordingly, the Commission believes that SPDRs do not contain features that will make them likely to impact adversely the U.S. securities markets. In fact, as described above, the Commission believes SPDRs may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[35] Finally, the AMEX has developed surveillance procedures for PDRs that incorporate and rely upon existing AMEX surveillance procedures governing options and equities.

C. Trading Rules

The Commission finds that the AMEX has designed adequate rules and procedures to govern the trading of PDR securities, including SPDRs. Specifically, because PDRs, in general, and SPDRs, in particular, are equity securities that will be subject to the full panoply of AMEX rules governing the trading of equity securities on the AMEX, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists. In addition, the AMEX has developed specific listing and delisting criteria for PDRs that will help to ensure that the markets for PDRs will be deep and liquid. As noted above, the AMEX also has developed trading halt procedures governing PDRs. Accordingly, the Commission believes that the AMEX's rules governing the trading of PDRs provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. The Commission also finds that permitting the trading of PDRs until 4:15 p.m. is appropriate given the availability of other basket products, such as stock index options, until that time.

[35] Even though PDR transactions may serve as substitutes for transactions in the cash market, thereby making the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs and SPDRs, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although PDRs and SPDRs could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

IV. Conclusion

The Commission finds that the listing and trading of PDRs, in general, and SPDRs, in particular, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). As discussed above, the trading of PDRs, including SPDRs, on a secondary market, should provide a variety of benefits to the marketplace and investors trading portfolios of securities. Accordingly, the Commission believes that SPDRs will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (SR–AMEX–92–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30782 Filed 12–17–92; 8:45 am]

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[36] 15 U.S.C. 78s(b)(2) (1988).

[37] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–31586; International Series Release No. 508; File No. SR–NASD–92–27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Amendment and Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to Issuer Notification Requirements and Fees for the Issuance of Additional Shares and the Creation of Certain Stock Plans

December 11, 1992.

On June 17, 1992, the National Association of Securities Dealers, Inc. ("NASD", "Association" or "Corporation") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal amends Schedule D of the NASD's By-Laws[3] in order to require issuers included in either the Regular NASDAQ System ("regular NASDAQ") or the NASDAQ/National Market System ("NASDAQ/NMS"), (together known as "NASDAQ") to file with the NASD notification of the creation of a stock option, employee stock purchase or other stock remuneration plan or the issuance of additional shares of any class of securities included in NASDAQ, other than securities issued under such plans. Issuers of securities (except for ADRs) included in NASDAQ will also be required to notify the NASD of any change in the issuer's transfer agent or registrar. Further, the rule change amends Schedule D of the By-Laws[4] to require NASDAQ issuers to pay a fee for each issuance of additional shares of an already included security in connection with certain enumerated transactions.

Notice of the proposed rule change, as originally filed, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31289, International Release No. 467, October 5, 1992) and by publication in the **Federal Register** (57 FR 46887, October 13, 1992). No comments were received in response to the Commission release.

On November 18, 1992, the NASD submitted Amendment No. 1 to the proposed rule change. Amendment No. 1 responds to four comment letters received by the Commission prior to publication of notice of the original filing; amends the language of the filing to clarify the intent of the NASD, especially to clarify that the proposed fee will be a *per issuance* fee and that the notification requirements apply only to the creation of certain stock remuneration plans and the issuance of additional shares; corrects certain technical errors in the filing; and requests an effective date of December 1, 1992 for the rule change.[5]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] NASD Securities Dealers Manual, Schedule D to the By-Laws, Part II, Sections 1 and 2, CCH, ¶¶ 1803–1804.

[4] NASD Securities Dealers Manual, Schedule D to the By-Laws, Part IV, CCH, ¶¶ 10185– 1810.

[5] By letter dated December 3, 1992, the NASD withdrew its request for an effective date of

Continued

Amendment No. 2, filed on December 8, 1992, further clarifies the rule change by making certain technical changes to the text of the rule change.

By this release, the Commission: (i) Solicits comments on Amendment Nos. 1 and 2; and (ii) approves the proposed rule change, as amended, on an accelerated basis, until February 28, 1993. At the end of the comment period for Amendment Nos. 1 and 2, the Commission will determine whether to approve the proposed rule change, as amended, on a permanent basis.

Below is the text of the rule change, as amended by Amendment Nos. 1 and 2. Language added to the original proposal is italicized; proposed deletions to the language originally filed as SR–NASD–92–27 are in brackets.

Schedule D to the NASD By-Laws

Part II

Qualification Requirements for NASDAQ Securities

Sec. 1 Qualification Requirements for Domestic and Canadian Securities

* * * * *

(c)

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(15) The issuer shall be required to file on a form designated by the Association notification of the creation of a stock option, [stock purchase or similar plan or arrangement to issue additional shares] *employee stock purchase or other stock remuneration plan* or the issuance of additional shares of any class of securities included in the NASDAQ System, *except for the issuance of additional shares under a stock option, employee stock purchase or other stock remuneration plan,* no later than 15 calendar days prior to the creation of the plan[, arrangement] or *the* issuance *of additional shares.*

(16) The issuer of any class of securities included in the NASDAQ System shall notify the Association promptly in writing of any change in the issuer's transfer agent or registrar.

Subsections (15)–(17) are renumbered (17)–(19) respectively.

Sec. 2 Qualification Requirements for non-Canadian Foreign Securities and American Depositary Receipts.

* * * * *

(e)

* * * * *

(14) The issuer shall be required to file on a form designated by the Association notification of the creation of a stock option, [stock purchase or similar plan or arrangement to issue additional shares] *employee stock purchase or other stock remuneration plan* or the issuance of additional shares of any class of securities included in the NASDAQ System, except for *the issuance of additional shares under a stock option, employee stock purchase or other stock remuneration plan and* American Depository Receipts, no later than 15 calendar days prior to the date of creation of the plan[, arrangement] or *the* issuance *of additional shares.*

(15) The issuer of any class of securities included in the NASDAQ System, except for American Depositary Receipts, shall notify the Association promptly in writing of any change in the issuer's transfer agent or registrar.

Subsections (14)–(16) are renumbered (16)–(18) respectively.

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Part IV

Listing Fees

The NASDAQ Stock Market-National Market System

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B. Additional Shares

1. The issuer of each class of security, other than American Depositary Receipts, which is listed in the National Market System shall pay to the Corporation the fee set forth in paragraph 2. below in connection with the issuance of additional shares of each class of listed security set forth in paragraph 3. below.

2. The fee in connection with additional shares shall be $2,000 or $.02 per additional share, whichever is higher, up to a maximum of $17,500 per [issuer] *issuance.*

3. The fee in connection with additional shares is applicable to the following issuances of securities:

a. Acquisitions, mergers or consolidations;

b. Public offerings;

c. Rights and subscription offerings;

d. Exchange offers; and

e. Private placements.

4. Payment of the fee to the [Association] *Corporation* shall be included with the issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Sections 1(c)(15) and 2(e)(14) of Part II to Schedule D of the NASD By-Laws.

[B]*C.* Annual Fee-Domestic and Foreign Issues.

* * * * *

[C]*D.* Annual Fee-American Depositary Receipts (ADRs).

* * * * *

Regular NASDAQ System

[D]*E.* Entry Fee.

* * * * *

F. Additional Shares

1. The issuer of each class of security other than American Depositary Receipts which is listed in the Regular NASDAQ System shall pay to the Corporation the fee set forth in paragraph 2. below in connection with the issuance of additional shares of each class of listed security set forth in paragraph 3. below.

2. The fee in connection with additional shares shall be $1,000 or $.01 per additional share, whichever is higher, up to a maximum of $7,500 per [issuer] *issuance.*

3. The fee in connection with additional shares is applicable to the following issuances of securities:

a. Acquisitions, mergers or consolidations;

b. Public offerings;

c. Rights and subscription offerings;

d. Exchange offers; and

e. Private placements.

4. Payment of the fee to the [Association] *Corporation* shall be included with the issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Sections 1(c)(15) and 2(e)(14) of Part II to Schedule D of the NASD By-Laws.

Subsections E–G are renumbered G–I, respectively.

Fifteen Days Prior Notice

In the past, the NASD has not required issuers included in NASDAQ to file with the NASD notification of the issuance of additional shares or notification of the creation of stock option, employee stock purchase or other stock remuneration plans under which securities included in NASDAQ will be issued.[6] The NASD has determined that such notification will supply the NASD with relevant information regarding NASDAQ issuers

December 1, 1992. *See* letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC, dated December 3, 1992.

[6] In contrast to the application and approval procedures required by the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") for issuance of additional securities, the instant rule change requires issuers only to submit notification to the NASD of the issuance of additional shares. See § 703.00, NYSE Manual and sections 301–343 of part 3 to the Listing Standards, Policies and Requirements of the AMEX Guide, Vol. 2. The NYSE and AMEX do not permit a listed company either to issue or to authorize the company's registrar or transfer agent to issue or register additional securities of a class listed on the exchange until the company has filed an application with the exchange. The application requirements of the NYSE and AMEX also apply to the creation of stock option, stock purchase and other remuneration plans involving listed securities.

and the purpose for which the securities are being issued. The rule change approved herein on a temporary basis will require domestic and foreign issuers of securities included in NASDAQ, except for issuers of such securities held in American Depositary Receipts ("ADRs"), to file on a NASD designated form, notification regarding the issuance of additional shares of any class of securities included in NASDAQ no later than 15 calendar days prior to such issuance.[7] Issuances of additional securities include securities issued in connection with dividends, stock splits, rights and exchange offers, public and private offers, acquisitions, mergers or consolidations. Issuances of additional shares will not include securities *issued under* a stock option, employee stock purchase or other stock remuneration plan.[8]

However, issuers of securities included in NASDAQ will be required to provide detailed notification to the NASD upon the *creation* of a stock option, employee stock purchase or other stock remuneration plan. The NASD believes such plans have the potential for affecting the market of issuers in NASDAQ. Notification will further facilitate NASD oversight of the NASDAQ/NMS criteria for shareholder approval of certain remuneration plans under section 5(i) of Part III to Schedule D of the NASD's By-Laws.[9] In the case of such plans, the NASD believes only notification of creation of the plan will be necessary for oversight purposes and not actual notification of the periodic issuance of stock under the plan. The NASD, therefore, will require that domestic and foreign issuers of securities included in NASDAQ, except for issuers having such securities held in ADRs, file on a NASD designated form notification regarding the creation of a stock option, employee stock purchase or other stock remuneration plan in connection with any class of securities included in NASDAQ no later than 15 calendar days prior to creation of such plan.

Notification of Change in Transfer Agent or Registrar

The NASD previously did not require a NASDAQ issuer to notify the NASD when there was a change in the issuer's transfer agent or registrar. The NASD believes prompt receipt of such information is relevant to the NASD's oversight of NASDAQ. Therefore, upon the effective date of this approval order, foreign and domestic issuers of securities included in NASDAQ, except for issuers of securities held in ADRs,[10] must notify the NASD promptly in writing of any change in the issuer's transfer agent or registrar.

Fee for Issuances of Additional Shares

The NASD is also imposing a fee on NASDAQ issuers to be paid when such issuers notify the NASD of the issuance of an additional amount of an already included security in connection with the following transactions: (a) Acquisitions, mergers or consolidations; (b) public offerings; (c) rights and subscription offerings; (d) exchange offers; and (e) private placements. Under the rule change, the issuance of additional shares of an already included security in connection with a transaction that is not listed above would not have a fee for additional shares imposed. For example, the issuance of additional shares in connection with a stock option, dividend reinvestment plan, stock split or stock dividend will not result in a fee under the rule change. Moreover, no fee will be charged in connection with the establishment of stock option, employee stock purchase or other stock remuneration plan.

The NASD has created a separate fee schedule for regular NASDAQ and NASDAQ/NMS issuers that the NASD believes reflects the different level of service and exposure provided to such respective issuers in NASDAQ. For securities included in regular NASDAQ, issuances or plans to issue additional securities under the specific circumstances set forth above are subject to a fee of $1,000 or $.01 per additional share, whichever is higher, up to a maximum of $7,500 per issuance.[11] For securities included in NASDAQ/NMS, issuances or plans to issue additional securities are subject to a fee of $2,000 or $.02 per additional share, whichever is higher, up to a maximum of $17,500 per issuance.[12]

Increased funding for Issuer-Related Operations

The NASD has stated that the fees obtained from the rule change are intended to fund additional issuer-related operations. Such operations include educational initiatives, issuer service initiatives, and NASD surveillance measures currently being created, or improved, which the NASD believes will enhance the quality of NASDAQ for issuers and improve the capital-raising capabilities for such issuers.

Specifically, the NASD states that it plans educational programs for registered representatives of NASD members to increase their knowledge of the market structure of NASDAQ. Training programs are also planned for the entry level personnel of NASD members to increase their knowledge of the NASD and NASDAQ by focusing on issues such as NASD market surveillance procedures, NASDAQ trading practices, and the qualifications criteria for companies included in NASDAQ. Also planned is the development of educational programs for international investors regarding the qualification requirements of NASDAQ. In addition, the revenues obtained from the fee will supplement current advertising to make the public more aware of the opportunities of investing in the stock of NASDAQ companies.

The NASD states that revenues obtained from the fee also will be used to enhance the ability of NASDAQ to educate individual companies on market-related issues whenever individual corporate inquiries arise. Specifically, a program is planned to increase the expertise of the NASDAQ representatives whose duty it is to help designated NASDAQ/NMS and regular NASDAQ issuers on a day-to-day basis with inquiries regarding NASDAQ, the securities markets, and questions of capital formation. The NASD also anticipates that the revenues obtained

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[7] Rule 10b–17 of the Act requires certain issuers to provide notification to the NASD in connection with: a dividend or other distribution in cash or in kind; a stock split or reverse split; or a rights or subscription offering. To avoid duplicate reporting to the NASD for issuers in the NASDAQ System who are commencing stock splits, rights offers, subscription offers, or a dividend or other distribution involving the issuance of additional shares, the NASD designated notification form will include the information required to be submitted to the NASD pursuant to Rule 10b–17. The NASD will inform issuers in the NASDAQ System by means of an NASD "Notice to Issuers" that compliance with the proposed rule change's notification requirements for purposes of a stock split, a rights offer, a subscription offer, or a dividend or other distribution involving the issuance of additional shares, will also satisfy Rule 10b–17's notification requirements to the NASD.

[8] Amendment No. 2 amends the text of the rule change to clarify that securities issued under a stock option, employee stock purchase or other stock remuneration plan will not be included in the notification requirements.

[9] NASD Securities Dealers Manual, Schedule D to the By-Laws, Part III, Designation of NASDAQ/NMS Securities, Section 5(i), Non-Quantitative Designation Criteria, CCH, ¶ 1612.

[10] The exception of ADRs is proposed because notifications to U.S. holders of ADRs are provided by the U.S. depository bank that created the ADR and not the registrar or transfer agent of the foreign issuer.

[11] Amendment No. 1 to the filing clarifies that the NASD intends to make the fee a "per issuance" fee. As originally filed, the language of the proposal indicated a fee "per issuer" despite the fact that the descriptive language of the original filing described a "per issuance" fee.

[12] The fee schedule for NASDAQ/NMS is equivalent to the AMEX fee schedule under Section 142 to Part 1 of the Listing Standards, Policies and Requirements of the AMEX Guide, Vol. 2.

from the fee will be used for the development and maintenance of experimental issuer information services including: (i) A system that would permit certain issuers to access current and historical trading data of the company via a personal computer, and to set-up and track the company's stock in comparison to the stock of peer companies; (ii) a surveillance system that would monitor trading in certain stocks pursuant to parameters set by the issuer and provide a next-day report to those companies; and (iii) a system that would provide certain issuers with quarterly and annual customized records of the company's stock trading activity. Revenues from the fee are also intended to support further automation and streamlining of the NASDAQ issuer application procedures, and for further automation of the work-flow process and analysis of maintenance qualifications. In particular, it is intended that monitoring and reviewing the issuances of additional shares of NASDAQ/NMS issuers will be enhanced to ensure compliance with NASDAQ/NMS issuers will be enhanced to ensure compliance with NASDAQ/NMS corporate governance requirements imposed pursuant to Part III, section 5 of Schedule D to the NASD By-Laws.

The NASD states that revenues from the new fee will also support further development and ongoing implementation of NASD Market Surveillance procedures including the implementation of an incident tracking surveillance system, enhancements to the StockWatch automated tracking system ("SWAT"), procurement of additional commercially available surveillance data to better monitor issuer price and volume movement, the development of a surveillance system for the proposed high-yield fixed-income pricing system, enforcement of Rule 10b–6 in accordance with the NASD's passive market-making proposal, and enforcement of the proposed NASD short-sale rule.

Waiver of Fees for Issuances Pending on Effective Date of the Rule Change

The boards of directors of some NASDAQ issuers may have approved the issuance of additional shares without notice of the fee approved herein and that the approved issuance may be pending on the effective date of the rule change. To ensure that all issuers included in NASDAQ have adequate notice of the new fee prior to action by the issuer's board of directors, the NASD will waive the fee for the issuance of additional shares if the company's board approved the issuance prior to the effective date of the rule change.

Comment Letters

Four comment letters were received by the Commission and the NASD prior to Commission publication of the rule change.[13] The four letters, all in opposition to the rule change, responded to an NASD informational bulletin issued in June 1992 describing the proposal.[14] No additional comments were received by the Commission after publication of notice of the filing in the **Federal Register**.

The four commenters each argued directly or indirectly that the fees are excessive. In response, the NASD states that the fees imposed are either comparable to or less than the fees charged for issuances of additional shares of securities listed on the national exchanges. Specifically, the NASD notes that the rule change would impose a significantly lower burden on issuances of additional shares of securities included in regular NASDAQ. For issuances of additional shares of securities in NASDAQ/NMS, the fee schedule is equivalent to the AMEX fee schedule, and lower than the NYSE fee schedule.

Three commenters questioned the NASD's justification for the new fees. For example, the comment letter from Old National Bancorp stated that an issuance of additional shares "results in no additional work on the part of NASDAQ, and notifications of such issuances are already provided for through any number of other sources." In response, the NASD states that it provided ample justification for the new fee schedule in a letter [15] to the Commission staff responding to a request for further justification for the fees. The contents of that letter are reflected in the Notice of Proposed Rule Change published in the **Federal Register**. In essence, the NASD plans to implement new programs or supplement existing programs that it believes will benefit the NASDAQ issuer community.

One commenter raised the concern that the notification requirements would infringe on a company's right to conduct normal business functions.[16] Science Dynamics specifically mentioned notification of serious negotiations where securities are issued under circumstances described under subsections B.3. and F.3. to Part IV of Schedule D. The NASD believes that the commenter was misled by a general description of the rule change in the NASD informational bulletin published in June 1992. The NASD states that the rule change is intended only to require notification of the creation of stock option and other stock remuneration plans and would not require notification of the creation of all types of corporate plans to issue additional shares. To avoid any misinterpretation, the NASD submitted Amendment No. 1, which clarifies that the rule applies only to the creation of stock option, employee stock purchase or other stock remuneration plans.

The NASD further believes that Science Dynamics misinterpreted the fee imposed by the fee schedules to be the same regardless of the size of the issuance. Science Dynamics stated that the issuance of 10,000 warrants at $1 each would cost a company $17,500. In response, the NASD notes that the fee schedules impose a fee on the commenter's described transaction of only $1,000 for an issuer included in regular NASDAQ and only $2,000 for an issuer included in NASDAQ/NMS.

Science Dynamics further notes that its Board of Directors has approved shares for a second offering that may or may not be forthcoming and believes such Board approval will result in the fee being waived for the future issuance. This comment raises the issue of whether a company could avoid future fees on an issuance of additional shares by approving the issuance prior to the effective date of the rule change but with no intent to effect the issuance in the near future. The NASD that the purpose of the waiver is to ensure that every NASDAQ issuer has adequate notice of the fee prior to action by its board of directors and where the approved issuance may be pending on the effective date of the rule filing. The NASD states that the waiver is not intended to provide a permanent exemption for future issuances based on the date of a Board's approval, especially when there was no intent by such approval to effect the issuance in the near future. When the issuance is not pending on the effective date of the rule change, the NASD will review the

[13] Letters from David J. Hunter, President, BI Incorporated, to SEC, dated July 7, 1992; Dan W. Mitchell, Chairman, Old National Bancorp, to Jonathan Katz, Secretary, SEC, dated July 20, 1992; W. Ross C. Corace, President, Foxmoor Industries, Ltd., to SEC, dated July 22, 1992; and Lyndon A. Keele, President, Science Dynamics Corp., to Tony Shaffer, NASD, dated July 22, 1992.

[14] The informational bulletin is attached as Exhibit 1 to Amendment No. 1.

[15] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Katherine A. England, Branch Chief, Division of Market Regulation, SEC, dated August 6, 1992.

[16] Letter from Lyndon A. Keele, President, Science Dynamics Corp. ("Science Dynamics"), to Tony Shaffer, NASD, dated July 22, 1992.

issuer's request for a waiver of the fee on a case-by-case basis to ensure the fee schedule is equitably applied or waived pursuant to the described intent of the waiver.

In its comment letter, Old National Bancorp argued that the fees for additional shares would be unfair when applied in connection with mergers and acquisitions, because the fees would be obtained at the expense of strong, successful companies which are presently in the position to acquire others. In response, the NASD notes that the fee schedules for regular NASDAQ and NASDAQ/NMS would apply to issuances of additional shares not only in connection with acquisitions, mergers or consolidations, but also in connection with public offerings, rights and subscription offerings, exchange offers and private placements. The NASD states that fee schedules would not be imposed on particular types of companies, but on the activity of raising capital by issuing additional shares. The NASD, therefore, believes the rule change will not impose an inequitable burden on successful companies involved in mergers and acquisitions.

Amendment Nos. 1 and 2

As mentioned above, the NASD filed Amendment No. 1 to the rule filing in order to: (i) Respond to the four comment letters received by the NASD and the Commission; (ii) request an effective date of December 1, 1992; (iii) correct certain technical errors; and (iv) provide additional clarification. Amendment No. 2 was filed to further clarify that the NASD will not require notification of the issuance of additional shares under stock option, employee stock purchase or other stock remuneration plans. The Commission is seeking comment on the clarifications to the original rule change.

By filing Amendment No. 1, the NASD proposes to amend part II, sections 1(c)(15) and 2(e)(14) of the proposed rule change relating to certain issuer notification requirements to provide that the scope of the notification requirements apply only to corporate activities that were intended and described in the descriptive language of the original rule filing. In the original descriptive language, it was noted that the purpose of requiring issuer notification prior to the creation of a "stock option, stock purchase or similar plan or arrangement to issue additional shares" is to further facilitate NASD oversight of the NASDAQ/NMS criteria for shareholder approval of certain remuneration plans pursuant to section 5(i) of Part III to Schedule D of the NASD By-Laws. In addition, the NASD indicated that it believes that such plans have the potential to affect the market of issuers in NASDAQ. To avoid misinterpretation, the NASD is amending the description of the situations to which the new reporting requirements apply to "stock option, employee stock purchase or other stock remuneration plan." In the case of such plans, the NASD believes only notification of creation of the plan will be necessary for oversight purposes and not actual notification of the periodic issuance of stock under the plan.

The NASD also seeks to amend part IV, sections B.2. and F.2. to Schedule D of the By-Laws. Specifically, Amendment No. 1 changes the term "per issuer" to "per issuance." As corrected, the text of the proposed rule change on the fee schedules will correspond to the general description of the fee schedules contained in the original filing.[17]

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1993.

Discussion and Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes that the rule change is consistent with the provisions of section 15A(b)(5) of the Act.[18] Section 15A(b)(5) requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons. The Commission believes that the fee structure approved herein is equitably divided between those securities included in regular NASDAQ and those included in NASDAQ/NMS. In addition, the Commission believes that the fees imposed are reasonable. Issuers listed on the national exchanges pay fees for the issuance of additional shares that are either equivalent to or less than those that will be imposed by the NASD. The Commission also finds that the rule change approved herein is consistent with the provisions of section 15A(b)(6) of the Act.[19] Section 15A(b)(6), among other things, requires that the rules of the NASD be designed to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Notification of additional issuances of securities will provide the NASD with greater oversight of such securities. In addition, by requiring notification of the creation of stock remuneration plans and the issuance of additional shares, the NASD will be able to more closely monitor the corporate governance requirements for shareholder approval of remuneration plans and the issuance of additional shares under section 5(i) of part III to Schedule D of the By-Laws. Such monitoring should further perfect the NASDAQ marketplace and provide better protection to investors and the public interest.

By letter dated December 3, 1992, the NASD requests that the Commission find good cause for approving the rule filing as amended by Amendment No. 1, prior to the 30th day following publication of notice of the filing of Amendment No. 1 in the **Federal Register**.[20] The NASD states that the proposed rule change is essential to the efficient implementation and maintenance of the issuer-related operations that the NASD expects to fund with the fees anticipated from the rule change. Additionally, the NASD has withdrawn its request in Amendment No. 1 for an effective date of December 1, 1992 and has consented to the approval of the filing on a

[17] In Amendment No. 1, the NASD indicated that the intent expressed in the general description of the proposed fee schedule was to apply the fees on a "per issuance" basis in contrast to the text of the initial proposal which said "per issuer." Further, the NASD notes that footnote 5 to the rule filing cites both the NYSE and AMEX fee schedules for the issuance of additional shares, both of which are "per issuance" fees.

[18] 15 U.S.C. 78o-3(b)(5) (1988).

[19] 15 U.S.C. 78o-3(b)(6) (1988).

[20] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC, dated December 3, 1992.

temporary basis, until February 28, 1993.

Pursuant to section 19(b)(2) of the Act,[21] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication of Amendment Nos. 1 and 2 in the **Federal Register**. The Commission believes it is important for the NASD to receive notification of the creation of plans for stock option and other stock remuneration plans. Such plans may have effects on the market for the securities of the issuer of which the NASD should be aware. In addition, the NASD has already begun to implement the issuer-related operations that will be funded by the fee requirements approved herein. In order that such operations may continue without interruption, the Commission believes that the rule filing should be approved, as amended, without delay.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved until February 28, 1993.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30649 Filed 12-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 31593; File No. SR-PTC-92-01]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Relating to a Modification of the Rebate Policy

December 11, 1992.

On January 10, 1992, the Participants Trust Company ("PTC") filed a proposed rule change (File No. SR-PTC-92-01) with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposed rule change is to modify PTC's rebate policy relating to excess earnings from principal and interest ("P&I") payments. Notice of the proposed rule change appeared in the **Federal Register** on February 3, 1992.[2] No comments were received. This order approves the proposed rule change.

I. Description

PTC filed the proposed rule change to modify PTC's policy with respect to the rebate of revenues to its participants from invested principal and interest payments ("P&I") received but not yet disbursed. Under the proposed rule change, PTC will distribute excess earnings from invested P&I receipts based on each participant's pro rata share of P&I disbursements.

Under PTC's rebate policy, PTC may determine to distribute revenues based upon consideration as PTC's board of directors deems relevant, including projected earnings of PTC, projected financial needs of PTC, and the desirability of paying dividends on PTC's outstanding stock. Under PTC's current policy on rebates, PTC may distribute revenues based on all sources of revenue, including excess income from invested P&I receipts. Rebates for each participant are calculated on the basis of the participant's share of total service fees regardless of the participant's share of P&I receipts. The proposal will calculate any rebate from excess income from invested P&I receipts differently from other excess revenue and will distribute the excess income from invested P&I receipts based on each participant's pro rata share of P&I.

II. Discussion

Section 17A of the Act sets forth certain standards with regard to clearing agency rules. Specifically, section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[3] As discussed below, the Commission believes that the proposed rule change is consistent with the Act and in particular section 17A(b)(3)(D).

PTC participants use PTC's facilities to access a number of clearing agency services including certificate safekeeping, book-entry deliveries, and pledging or loaning of securities. Because some participants use primarily safekeeping services and other participants use primarily book-entry and pledge facilities, the current policy on rebates may not adequately reflect a participant's use of a particular service.

The Commission, in approving PTC's proposal to eliminate proration charges for the cost of financing P&I advances, required that PTC's board of directors adopt a policy statement addressing the use of excess earnings from invested P&I receipts.[4] This proposal implements a rebate policy for excess earnings from invested P&I receipts based upon participants' pro rata share of P&I disbursements. Since the amount of a participant's rebate directly correlates to the amount of a participant's P&I disbursements, the proposal will provide a more equitable allocation of excess earnings from invested P&I receipts. Thus the Commission believes that the proposed rule change is consistent with the Act in that the proposal equitably allocates dues, fees, and other charges among its participants.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR-PTC-92-01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pusuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30780 Filed 12-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31592; File No. SR-OCC-92-35]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Proposed Rule Change Relating to Clarifying a Competency Requirement

December 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 12, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 30292 (January 27, 1992), 57 FR 4076.

[3] 15 U.S.C. 78q-1(b)(3)(D).

[4] Because of PTC's efforts to encourage paying agents to make P&I payments available by payment date, the income from investing collected P&I received prior to distribution date is more than sufficient to satisfy anticipated borrowing costs. Securities Exchange Act Release No. 29311 (June 14, 1991), 56 FR 28783.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would change a clarifying amendment to OCC's By-laws [2] and Rules [3] that require U.S. broker-dealer applicants for membership and existing Domestic Clearing Members to employ one associated person who is registered with the National Association of Securities Dealers ("NASD") as a "Limited Principal—Financial and Operations" (a "FINOP"). Under the amendment, the Clearing Member would have met such requirement by employing a person who has passed the appropriate qualification examination even if such person is not registered with the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In January 1992, the Commission approved an OCC rule change which, among other things, requires that at least one associated person of registered broker-dealer applicants for clearing membership, and existing Domestic Clearing Members, be registered with the National Association of Securities Dealers ("NASD") as a "Limited Principal—Financial and Operations" (a "FINOP").[4] OCC has been advised by the NASD that it does not deem a person who has passed the NASD FINOP examination, but who is associated with a broker-dealer that is not a NASD member, to be registered as a FINOP. Rather, the NASD would consider such person to be qualified as a FINOP. Because the recently approved rule change requires that an associated person be registered as a FINOP, this interpretation could affect broker-dealer applicants for OCC clearing membership and existing Domestic Clearing Members, who are not NASD members (*i.e.*, firms doing a proprietary business), but who have or employ an associated person who has passed the FINOP qualification examination for registration as such. Accordingly, OCC would make a technical amendment to its By-laws and Rules to accommodate this situation. The amendment would require a U.S. broker-dealer applicant for membership or an existing Domestic Clearing Member to employ one associated person who is either registered with NASD as a FINOP or qualified to be a FINOP.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act. Specifically, OCC believes that the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions and will provide for the safeguarding of securities and funds.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period is appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–OCC–92–35 and should be submitted by January 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30784 Filed 12–17–92; 8:45 am]

BILLING CODE 8010–01–M

[2] Article V, section 1, Interpretation and Policy .03 of OCC's By-laws.

[3] Chapter II, Rule 214(a) of OCC's Rules.

[4] Securities Exchange Act Release No. 30169 (January 8, 1992), 57 FR 1770.

[Release No. 34–31588; International Series Release No. 509; File No. SR–OCC–92–31]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Acceptance of Certain Sovereign Debt as Margin Deposits

December 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 22, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. On December 2, 1992, OCC filed an amendment to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow the sovereign debt of cross-rate foreign currency countries to be

[1] 15 U.S.C. 78s (1988).

designated as Government Securities acceptable to OCC for margin purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 7, 1991, the Commission approved OCC's proposed rule change which set forth the clearance and settlement rules for cross-rate foreign currency options ("cross-rates").[2] As part of the cross-rate filing, OCC amended the definition of Government Securities to allow it to accept as a form of margin the deposit of sovereign debt of any country designated by OCC. With this filing, OCC proposes to designate the sovereign debt of Germany and Japan as Government Securities acceptable to OCC as a form of margin.

Both Germany and Japan are countries whose currencies are presently the "trading currencies" [3] for classes of cross-rate options ("cross-rate countries"). OCC has established banking relationships in both of the cross-rate countries,[4] and OCC has experience respecting the deposit and withdrawal of the trading currencies at these banks. Based upon this experience, OCC has concluded that the criteria used to approve banking relationships for the settlement of cross-rate obligations should be the same criteria used to approve banks to act as custodians for sovereign debt obligations.[5]

OCC currently accepts, with Commission approval, deposits of the sovereign debt of Canada as a form of margin.[6] OCC's experience in valuing the sovereign debt of Canada can be used in valuing the sovereign debt of the cross-rate countries. Appropriate haircuts, as determined by OCC's Membership/Margin Committee ("Committee"), will be taken in valuing such deposits. While the Committee will have some discretion in establishing the haircuts, the Committee will take into consideration the haircuts specified in paragraph (c)(2)(vi)(F) of the Commission's uniform net capital rule, Rule 15c3–1.[7] It is anticipated that the Committee will use such haircuts unless it determines that it has good cause to use some other value. Once the Committee has determined the haircut, the sovereign debt will be valued for margin purposes at the lesser of par value or an amount not to exceed the current market value less the haircut.

OCC notes that the sovereign debt of foreign governments is includable in broker-dealers' net capital computations and that the staff of the Division has issued a no-action letter respecting a request made by the Securities Industry Association ("SIA") wherein the Division stated it would not recommend enforcement action to the Commission if broker-dealers apply the haircut standards set forth in Rule 15c3–1(c)(2)(vi)(F) to certain sovereign debt contained in the broker-dealers' proprietary accounts.[8] The sovereign debt of the cross-rate countries currently meets each and every one of the criteria set forth in both the SIA's request and the Division's no-action letter in that it (1) is a general obligation of a sovereign government; (2) has a fixed maturity date; (3) is not traded flat or in default as to principal or interest; and (4) is rated (implicitly or explicitly) in one of the four higher rating categories by at least two nationally recognized statistical rating organizations.

OCC has been advised that the Commodity Futures Trading Commission ("CFTC"), by letter dated June 30, 1992, approved an amendment to the rules of the Chicago Mercantile Exchange ("CME") to add, among other things, the sovereign obligations of the Group of Seven Leading Industrialized Democracies ("G–7 Countries") as acceptable forms of "performance bonds" for CME Clearing Members. Germany and Japan are included in the list of G–7 Countries.

As in the case of U.S. Government securities deposited with OCC for margin purposes, all interest received on Government Securities of cross-rate countries prior to any sale or negotiation thereof will belong to the Clearing Member. The interest may be released to the Clearing Member upon instructions from the Clearing Member (subject to any withholding tax required by the local jurisdiction of the approved depository).

Finally, the current market value of Government Securities of the cross-rate countries shall be determined by OCC on a daily basis using pricing information from a third party. The third party providing such pricing information will value such securities in local currency and in U.S. dollars using the close of market prices and exchange rates. Initially, the third party will be one of OCC's custodian banks equipped to provide such service. However, OCC reserves the right to engage other third party sources that may provide comparable services.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act,[9] as amended, because it allows OCC to accept the sovereign debt of certain foreign governments as a form of margin like other financial institutions. Moreover, the proposed rules sets forth adequate controls to ensure that OCC will be able to provide for the adequate safeguarding of those securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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[2] Securities Exchange Act Release No. 34–29920, International Series Release No. 340 (November 7, 1991), 56 FR 58105 [File No. SR–OCC–91–04].

[3] In Article XX of OCC's By-Laws, the term "trading currency" is defined as the currency in which premium and exercise prices are determined for a class of cross-rate foreign currency options. The Commission has approved three cross-rates contracts: (1) Options on German (Deutsche) marks with exercise prices in Japanese yen ("DM/JY options"); (2) options on British pounds with exercise prices in Japanese yen ("BP/JY options"); and (3) options on British pounds with exercise prices in German (Deutsche) marks ("BP/DM options").

[4] OCC's lead settlement banks in Cross-Rate Countries are the Mitsubishi Bank in Japan, the Commerzbank in Germany, and Citibank in the United Kingdom.

[5] OCC has established eleven standards to be met before granting approval to a local bank as an approved Cross-Rate Settlement Bank. These eleven standards are set forth in the letter from Jacqueline R. Luthringshausen, Staff Attorney, OCC, to Jeffrey T. Brown, Staff Attorney, Division of Market Regulation ("Division"), Commission (November 20, 1992).

[6] Securities Exchange Act Release No. 25610 (April 28, 1988), 53 FR 15323 [File No. SR–OCC–87–17] (order approving the deposit of the sovereign debt of Canada, including the valuation of such deposit, for margin purposes).

[7] 17 CFR 240.15c3–1 (1992).

[8] Letter from Michael A. Macchiaroli, Assistant Director, Division, to Mr. Dominic A. Carone, Chairman, Capital Committee, SIA (June 12, 1992).

[9] 15 U.S.C. 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–OCC–92–31 and should be submitted by January 11, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30783 Filed 12–17–92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1738]

Policy Governing Munitions Export Licenses to Cyprus

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to any of the armed forces on Cyprus (except to the United Nations Forces in Cyprus—UNFICYP) are being denied pursuant to section 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: It is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to any of the armed forces in Cyrpus. The U.S. Government opposes such exports because of their ability to contribute to an arms race on the island and hinder U.N. and U.S. efforts to reach a fair and permanent settlement of the Cyprus dispute. This action does not affect exports of defense articles or defense services for the United Nations Forces in Cyprus (UNDICYP) or for civilian end-users.

The licenses and approvals that are affected include manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind involving any of the armed forces on Cyprus subject to the Arms Export Control Act. This action also affects the use in connection with Cyprus of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States.

In accordance with §§ 126.3 and 126.7 of the ITAR, affected U.S. persons desiring review of this decision with regard to a particular export may petition the Director, Office of Defense Trade Controls.

Dated: December 9, 1992.

Robert L. Gallucci,

Assistant Secretary, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92–30754 Filed 12–17–92; 8:45 am]

BILLING CODE 4710-25-M

[Public Notice 1737]

Suspension of Munitions Export Licenses to Liberia

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Liberia, other than articles or services destined for the sole use of the peace-keeping forces of ECOWAS, are suspended until further notice pursuant to sections 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Effective immediately, it is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to Liberia. In addition, U.S. manufacturers and exporters and any other effected parties are hereby notified that the Department of State has suspended all previously issued licenses and approvals authorizing the export or other transfer of defense articles or defense services to Liberia. This action has been taken in accordance with U.N. Security Council Resolution 788 instituting a general and complete embargo on all deliveries of weapons and military equipment to Liberia. This action does not apply to weapons and military equipment destined for the sole use of the peace-keeping forces of ECOWAS in Liberia, including weapons and military equipment destined for constituent members of the ECOWAS peace-keeping forces.

The licenses and approvals that have been suspended include any manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind subject to the Arms Export Control Act involving Liberia. This action also precludes the use in connection with Liberia of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR.

Dated: December 9, 1992.

Robert L. Gallucci,

Assistant Secretary, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92-30755 Filed 12-17-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGDO-92-33]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, January 19, 1993, in the 29th floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Minutes of the October 20, 1992 meeting.
3. Old Business.
4. New Business.
5. Report from the VTS Subcommittee.
6. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting this waterway.

All meetings are open to the public. Members of the public may present written or oral statements at the meetings.

Additional information may be obtained from Mr. M. M. Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: December 11, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92-30786 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. 92-44; Notice 2]

Determination that Nonconforming 1990 Mercedes-Benz 190E Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1990 Mercedes Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1990 Mercedes Benz 190E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. certified version of the 1990 Mercedes Benz 190E), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. section 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Liphardt & Associates of Ronkonkoma, New York (Registered Importer No. R-90-004) petitioned NHTSA to determine whether 1990 Mercedes Benz 190E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 18, 1992 (57 FR 43284) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #22 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1990 Mercedes Benz 190E (Model ID 201.024) that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Mercedes Benz 190E (Model ID 201.028) that was originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 9, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-30747 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0068.
Form Number: CF–28.
Type of Review: Extension.
Title: Request for Information.
Description: Customs Form 28 is used to request additional information from importers if sufficient information is not provided on the invoice or entry documentation for Customs to carry out their responsibilities.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 60,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 40,020 hours.
Clearance Officer: Ralph Meyer (202) 927–1552; U.S. Customs Service; Paperwork Management Branch; room 6316; 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880; Office of Management and Budget; room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–30760 Filed 12–17–92; 8:45 am]
BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

December 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0023.
Form Number: IRS Form 720.
Type of Review: Revision.
Title: Quarterly Federal Excise Tax Return.
Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and vaccines, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (IRC section 6011).
Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 326,900.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Record-keeping	Learning about the law or the form	Preparing and sending the form to the IRS
720	12 hr., 58 min..	1 hr., 35 min..	6 hr., 38 min.
Schedule A	2 hr., 23 min..	.....	2 min.

Frequency of Response: Quarterly.
Estimated Total Reporting/Recordkeeping Burden: 7,665,557 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 92–30762 Filed 12–17–92; 8:45 am]
BILLING CODE 4830-01-M

Fiscal Service

[Dept. Circ. 570, 1992 Rev., Supp. 7]

Surety Companies Acceptable on Federal Bonds; Cumberland Surety Insurance Company, Inc.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29368 to reflect this addition:

Cumberland Surety Insurance Company, Inc. Business Address: 367 West Short Street, Lexington, KY 40507.

Underwriting Limitation b: $489,000. Surety licenses c: KY, IN. Incorporated in: Kentucky.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: December 11, 1992.

Charles F. Schwan, III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 92–30756 Filed 12–17–92; 8:45 am]
BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Islamic Culture and Civilization Today Program

AGENCY: United States Information Agency.
ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the U.S. Information Agency (USIA) seeks a non-profit organization to assist in the administration of the FY 1993 Fulbright "Islamic Culture and Civilization Today" program. The organization, in cooperation with USIA, shall solicit and receive applications from faculty of colleges, universities and community colleges in the U.S. The organization also shall coordinate the competitive review of technically eligible

applications and provide panel recommendations and assessments on each application based on academic criteria to be provided by USIA.

The Islamic Culture and Civilization Today program shall support a seminar in a country with a substantial Muslim population. Interested organizations may propose to develop and administer a seminar of up to four to six weeks beginning June 1994 in one of the following countries: Egypt, Jordan, Morocco, Tunisia, Yemen, or Pakistan. The seminar should be conducted in English for up to 12 U.S. faculty who are neither area nor Islamic studies specialists. Participants must be U.S. citizens with limited or no previous experience in the area but whose teaching or other professional responsibilities relate in some degree to the Islamic world. The seminar shall examine the political, social, economic, educational, and cultural institutions of the subject country, in light of its recent history and current development.

The seminar shall be interdisciplinary and the sessions led by experts in fields concerned with seminar topics and who are resident in the subject country. The seminar may include sessions or meetings in various locales within the subject country, as well as visits to relevant institutions in the country. The organization shall publicize the opportunity among and accept applications from faculty of social sciences and humanities, such as history, religious studies, political science, art, geography. A Ph.D. shall be generally required and candidacy restricted to applicants who hold full-time teaching appointments.

DATES: Deadline for proposals: All copies must be received at USIA by 5 p.m. Washington, DC, time on March 12, 1993. Faxed documents will not be accepted, nor will documents postmarked on March 12, 1993, but received at a later date. It is the responsibility of each organization to ensure that proposals are received by USIA by the above deadline. Grants should begin September 1, 1993, and run through August 31, 1994.

ADDRESSES: The original and fourteen (14) copies of the completed application, including required forms, should be submitted by the deadline to U.S. Information Agency, Islamic Culture and Civilization Today, Office of Grants Management (E/XE), room 336, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations should contact Mr. Michael B. Graham, Near East/South Asia Academic Exchange Programs (E/AEN), U.S. Information Agency, room 212, 301 Fourth Street, SW., Washington, DC 20547 (Tel. 202–619–5368), to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing a proposal, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

Authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act). Through the Fulbright program and other academic exchange activities, USIA seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Eligibility

Non-profit organizations with experience in international exchange, such as educational and professional organizations and institutions, American overseas research centers, colleges and universities, are invited to submit proposals for a USIA cooperative agreement.

Guidelines

In preparing a proposal, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful proposal should clearly cover publicity, logistical and scheduling measures. A plan for post-seminar follow-up evaluation and reporting must also be submitted.

Proposed Budget

A comprehensive line item budget not to exceed $100,000 must be submitted with the proposal. Not more than 20 percent of the proposed total cost to USIA may be for administrative and overhead expenses. Specific guidelines for budget preparation are included in the application material available from USIA. (Grants awarded to eligible organizations with less than four years experience conducting international exchange activities will be limited to $60,000. Budget submissions from such organizations cannot exceed this amount.)

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the USIA Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for awarding a grant resides with USIA's Office of Contracts.

Review Criteria

Technically eligible proposals for this competition will be reviewed according to the following criteria and funding will be allocated on the basis of the degree to which the criteria are met:

1. Quality/responsiveness—Quality of administrative plan and adherence of the proposed activity to the criteria and conditions described in the application material available from USIA. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.

2. Institutional capacity—Proposed personnel and institutional resources to be applied to the project should be adequate and appropriate to achieve all goals and objectives.

3. Cost-effectiveness—The overhead and administrative components of the proposal, including salary/benefits, cannot exceed 20 percent of the total funds requested from USIA. All budget items should be necessary and appropriate. Proposals should demonstrate cost-sharing and in-kind support.

4. Track record/potential—Proposals should demonstrate potential for excellence and/or a track record of the organization's involvement in international education; particularly academic exchange.

5. Evaluation plan—Proposals should provide a plan for follow up and evaluation by the grantee organization.

6. Reasonableness, feasibility, flexibility—Proposals should demonstrate how the objectives will be met.

7. Multiplier effect/impact—A particular priority is that the seminar strengthen long-term mutual understanding, include maximum sharing of information and views among participants, and provide opportunities to facilitate the establishment of broader institutional and individual scholarly ties for collaborative teaching and research in the U.S. and the subject country.

8. Mutuality of benefits—Proposals should show evidence of strong mutual benefits to the U.S. and foreign institutions and individuals involved, as well as evidence of strong commitment to the goals of the program.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review of full proposals on or about May 7, 1993. Grant awards will be subject to periodic reporting and evaluation requirements.

Dated: December 14, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-30682 Filed 12-17-92; 8:45 am]

BILLING CODE 8230-01-M

Postdoctoral Foreign Language and Area Studies—U.S. Scholars; Request for Prospectuses

AGENCY: United States Information Agency.

ACTION: Notice; request for prospectuses.

SUMMARY: The Bureau of Educational and Cultural Affairs of the U.S. Information Agency (USIA) seeks prospectuses from non-profit organizations for programs or projects under the rubric of the FY 1993 "Near and Middle East Research and Training" program. USIA will evaluate the prospectuses to identify organizations that will be invited to submit full proposals for further consideration.

Organizations shall conceive, develop and administer in cooperation with USIA activities that will assist American scholars in Near and Middle East studies. Activities permitted under this program include foreign language training, foreign area studies and foreign area research for periods ranging from two months to a full academic year abroad.

A total of $1 million will be made available through this competition. USIA expects to make up to 10 awards ranging from $100,000 to $500,000 each. Organizations that are awarded funding shall solicit and receive applications from American scholars nationwide who seek to conduct overseas study and research on the Near and Middle East and have little or no previous experience in the region. The organizations also shall coordinate the competitive review of technically eligible scholar applications and provide panel recommendations and assessments based on academic criteria to be provided by USIA.

Eligible fields of study and research shall be open to scholars of all disciplines with a need or established interest in topics requiring study or research abroad in the Near and Middle East. However, special emphasis will be given to social sciences and humanities. Eligibility shall be restricted to applicants who have a Ph.D. degree and who have postdoctoral college or university teaching experience.

For the purposes of this program, the Near and Middle East refers to the region consisting of countries and peoples covered by the Bureau of Near Eastern Affairs of the U.S. Department of State. Currently eligible locales for study overseas are Mauritania, Morocco, Algeria, Tunisia, Egypt, Israel, Jordan, Syria, Saudi Arabia, Kuwait, United Arab Emirates, Bahrain, Qatar, and Yemen.

DATES: Deadline for submissions: All copies must be received at USIA by 5 p.m. Washington, DC, time on Thursday, February 11, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 11, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that submissions are received by USIA by the above deadline. Grants should begin September 1,1993, and may last for up to 24 months.

ADDRESSES: The original and ten (10) copies of the prospectus should be submitted by the deadline to U.S. Information Agency, Postdoctoral Foreign Language and Area Studies—U.S. Scholars, Office of Grants Management (E/XE), room 336, 301 Fourth Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations should contact Dr. Jerry Brennig, Chief, Near East/South Asia Branch, Academic Exchange Programs Division (E/AEN), U.S. Information Agency, room 212, 301 Fourth Street SW., Washington, DC 20547 (Tel. 202-619-6864), for further information if needed.

SUPPLEMENTARY INFORMATION:

Overview

Authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256 (Fulbright-Hays Act). Through the Fulbright program and other exchange activities, USIA seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Eligibility

Non-profit organizations with experience in international academic exchange activities, such as educational and professional organizations and institutions, American overseas research centers, colleges and universities, are invited to apply.

Guidelines

No application material from USIA is necessary to prepare a prospectus for this competition. In preparing prospectuses, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful prospectus should clearly cover publicity, logistical and scheduling measures. A basis plan for post-program follow-up evaluation should also be included. The prospectus must be typewritten and double-spaced, and cannot exceed ten pages, including budget attachment.

Proposed Budget

A one-page budget not to exceed $500,000 must be submitted as part of the prospectus. Not more than 20 percent of the proposed total cost to USIA may be for administrative and overhead expenses. USIA does not award grants of greater than $60,000 to organizations with less than four years experience conducting international exchange programs. Submissions from such organizations cannot be considered technically eligible for the purposes of this program.

Review Process

USIA will acknowledge receipt of all prospectuses and will review them for technical eligibility. Prospectuses will be deemed ineligible if they do not adhere to the guidelines established herein. Eligible submissions will be

forwarded to panels of USIA officers for advisory review. All eligible submissions will also be reviewed by the appropriate geographic area office. Invitations to submit a full proposal are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for awarding a grant resides with USIA's Office of Contracts.

Review Criteria

Technically eligible prospectuses will be competitively reviewed according to the following criteria:

1. Quality/responsiveness—Quality of administrative plan and adherence of the proposed activity to the criteria and conditions described herein. Prospectuses should demonstrate how the organization will meet the program's objectives and plan.

2. Institutional capacity—Proposed personnel and institutional resources to be applied to the project should be adequate and appropriate to achieve all goals and objectives.

3. Cost-effectiveness—The overhead and administrative components of the costs to USIA, including salary/benefits, cannot exceed 20 percent of the total budget. Prospectuses should demonstrate cost-sharing and in-kind support.

4. Track record/potential—Submissions should demonstrate potential for excellence or a track record of the organization's involvement in international programs, particularly academic exchange.

5. Evaluation plan—Prospectuses should provide for follow up and evaluation by the grantee organization.

6. Reasonableness, feasibility, flexibility—Prospectuses should demonstrate how the objectives will be met.

7. Multiplier effect/impact—A particular priority is that the program strengthen long-term mutual understanding, include maximum sharing of information and views by participants with host country counterparts, and provide opportunities to facilitate the establishment of broader institutional and individual scholarly ties in the U.S. and the host country.

8. Mutuality of benefits—Prospectuses should show evidence of strong mutual benefits to the institutions and individuals involved, as well as evidence of strong commitment to the goals of the program.

Notice

The terms and conditions published in this announcement are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this announcement does not constitute an award commitment on the part of the U.S. Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review of prospectuses on or about March 15, 1993. Invitations and application material needed to submit a full proposal also will be issued at that time, with submissions due at USIA on or about April 30, 1993. Grant awards will be subject to standard periodic reporting and evaluation requirements.

Dated: December 14, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-30759 Filed 12-17-92; 8:45 am]

BILLING CODE 8230-01-M

Predoctoral Foreign Language and Area Studies—U.S. Students

AGENCY: United States Information Agency.

ACTION: Notice—request for prospectuses.

SUMMARY: The Bureau of Educational Cultural Affairs of the U.S. Information Agency (USIA) seek prospectuses from non-profit organizations for programs or projects under the rubric of the FY 1993 "Near and Middle East Research and Training" program. USIA will evaluate the prospectuses to identify organizations that will be invited to submit full proposals for further consideration.

Organizations shall conceive, develop and administer in cooperation with USIA activities to assist American students in Near and Middle East studies. Activities permitted under this program include foreign language training, foreign area studies and foreign area research for periods ranging from a semester to a full academic year abroad.

A total of $1 million will be made available through this competition. USIA expects to make up to 10 awards ranging from $100,000 to $500,000 each. Organizations that are awarded funding shall solicit and receive applications from American students nationwide who seek to conduct overseas study and research on the Near and Middle East. The organizations also shall coordinate the competitive review of technically eligible student applications and provide panel recommendations and assessments based on academic criteria to be provided by USIA.

Eligible fields of study and research shall be open to students of all disciplines with a need or established interest in topics requiring study or research abroad in the Near and Middle East. However, special emphasis will be given to social sciences and humanities. Eligibility shall be restricted to applicants who have a baccalaureate degree and who are already enrolled in graduate-level academic programs.

For the purposes of this program, the Near and Middle East refers to the region consisting of countries and peoples covered by the Bureau of Near Eastern Affairs of the U.S. Department of State. Currently eligible locales for study overseas are Mauritania, Morocco, Algeria, Tunisia, Egypt, Israel, Jordan, Syria, Saudi Arabia, Kuwait, United Arab Emirates, Bahrain, Qatar, and Yemen.

DATES: Deadline for submissions: All copies must be received at USIA by 5 p.m. Washington, DC, time on Thursday, February 11, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 11, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that submissions are received by USIA by the above deadline. Grants should begin September 1, 1993, and may last for up to 24 months.

ADDRESSES: The original and ten (10) copies of the prospectus should be submitted by the deadline to U.S. Information Agency, Predoctoral Foreign Language and Area Studies—U.S. Students, Office of Grants Management (E/XE), room 336, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations should contact Dr. Jerry Brennig, Chief, Near East/South Asia Branch, Academic Exchange Programs Division (E/AEN), U.S. Information Agency, room 212, 301 Fourth Street, SW., Washington, DC 20547 (Tel. 202-619-6864), for further information if needed.

SUPPLEMENTARY INFORMATION:

Overview

Authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256.

(Fulbright-Hays Act). Through the Fulbright program and other exchange activities, USIA seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation,

programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Eligibility

Non-profit organizations with experience in international academic exchange activities, such as educational and professional organizations and institutions, American overseas research centers, colleges and universities, are invited to apply.

Guidelines

No application material from USIA is necessary to prepare a prospectus for this competition. In preparing prospectuses, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful prospectus should clearly cover publicity, logistical and scheduling measures. A basic plan for post-program follow-up evaluation should also be included. The prospectus must be typewritten and double-spaced, and cannot exceed ten pages, including budget attachment.

Proposed Budget

A one-page budget not to exceed $500,000 must be submitted as part of the prospectus. Not more than 20 percent of the proposed total cost to USIA may be for administrative and overhead expenses. USIA does not award grants of greater than $60,000 to organizations with less than four years experience conducting international exchange programs. Submissions from such organizations cannot be considered technically eligible for the purposes of this program.

Review Process

USIA will acknowledge receipt of all prospectuses and will review them for technical eligibility. Prospectuses will be deemed ineligible if they do not adhere to the guidelines established herein. Eligible submissions will be forwarded to panels of USIA officers for advisory review. All eligible submissions will also reviewed by the appropriate geographic area office. Invitations to submit a full proposal are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for awarding a grant resides with USIA's Office of Contracts.

Review Criteria

Technically eligible prospectuses will be competitively reviewed according to the following criteria:

1. Quality/responsiveness—Quality of administrative plan and adherence of the proposed activity to the criteria and conditions described herein. Prospectuses should demonstrate how the organization will meet the program's objectives and plan.

2. Institutional capacity—Proposed personnel and institutional resources to be applied to the project should be adequate and appropriate to achieve all goals and objectives.

3. Cost-effectiveness—The overhead and administrative components of the costs to USIA, including salary/benefits, cannot exceed 20 percent of the total budget. Prospectuses should demonstrate cost-sharing and in-kind support.

4. Track record/potential—Submissions should demonstrate potential for excellence or a track record of the organization's involvement in international programs, particularly academic exchange.

5. Evaluation plan—Prospectuses should provide for follow up and evaluation by the grantee organization.

6. Reasonableness, feasibility, flexibility—Prospectuses should demonstrate how the objectives will be met.

7. Multiplier effect/impact—A particular priority is that the program strengthen long-term mutual understanding, include maximum sharing of information and views by participants with host country counterparts, and provide opportunities to facilitate the establishment of broader institutional and individual scholarly ties in the U.S. and the host country.

8. Mutuality of benefits—Prospectuses should show evidence of strong mutual benefits to the institutions and individuals involved, as well as evidence of strong commitment to the goals of the program.

Notice

The terms and conditions published in this announcement are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this announcement does not constitute an award commitment on the part of the U.S. Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applications will be notified of the results of the review of prospectuses on or about March 15, 1993.

Invitations and application material needed to submit a full proposal also will be issued at that time, with submissions due at USIA on or about April 30, 1993. Grant awards will be subject to standard periodic reporting and evaluation requirements.

Dated: December 14, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92–30758 Filed 12–17–92; 8:45 am]

BILLING CODE 8230–01–M

International Educational and Cultural Activities Discretionary Grant Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a discretionary grants program for private, non-profit organizations in support of projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

ANNOUNCEMENT NUMBER: The Announcement Number is E/P–93–6. Please refer to this number in all correspondence or telephone calls to the Agency.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, February 26, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 26, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through February 26, 1993, for projects whose activities will begin between July 1, 1993, and December 31, 1993.

ADDRESSES: The original and *14* copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: E/P Discretionary Grant Competition, Office of Grants Management (E/XE), 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen

Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5348, to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency announces a program to encourage, through limited awards to non-profit institutions, increased private sector commitment to and involvement in international exchanges. Awarding of any and all grants is contingent upon the availability of funds.

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: Urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, environmental specialists, parliamentarians, educators, economic planning and other government officials.

Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

The Newly Independent States: USIA and other agencies of the U.S. government have numerous programs in the countries of the NIS (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). As such, the amount of funds for that part of the world in this competition will be extremely limited. Proposals which would normally be considered for other USIA grant competitions will not be accepted. E/P encourages organizations to seek clarification on these points before presenting a proposal.

Europe, Eastern Europe, and the Baltics (EU): Projects are encouraged involving Western Europe. Due to the fact that the office has or is in the process of conducting specific competitions in Eastern Europe and the Baltics, we will not accept proposals for youth exchange programs or for programs in the following thematic areas: Public administration, business management, independent media development, journalism training, and local government administration and municipal management.

East Asia and the Pacific (EA): Except where noted elsewhere in this announcement, there are no country or thematic restrictions for this geographic region, which also includes Mongolia, Indochina, and the Pacific Islands.

American Republics (AR): Except where noted elsewhere in this announcement, there are no country or thematic restrictions for this geographic region. However, priority will be given to projects in the following areas: Strengthening of democracy, economic reform, free markets, journalism, administration of justice, civil/military relations, and good governance.

Africa (AF): Except where noted elsewhere in this announcement, there are no country or thematic restrictions for this geographic region.

North Africa, Near East and South Asia (NEA): Except where noted elsewhere in this announcement, there are no country or thematic restrictions for this geographic region. However, priority will be given to projects which promote democratization, free markets, tolerance and pluralism, and conflict resolution.

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, should be balanced and representative of the diversity of American political, social and cultural life.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas.

The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. USIS post consultation by applicants, prior to submission of proposals, is strongly recommended for all programs.

Additional Guidelines and Restrictions

Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register**.

For projects that would begin after December 31, 1993, competition details will be announced in the **Federal Register** on or about June 1, 1993. Inquiries concerning technical requirements are welcome prior to submission of applications.

Selection of Participants

A project proposal should clearly describe the type of person who will participate in the program and for what reasons. The process by which participants will be selected initially should be described (e.g., nominations from employers, open competition, applications, interviews, etc.)

In the selection of foreign participants, USIA and USIS and American Embassies retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions will often provide support,

as requested by USIA, in the nomination of participants. The grantee institution will also provide the names of American participants and brief biographical data to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Application Requirements

Proposals must be structured as outlined in the application package. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

Funding

Competition for USIA funding is keen. The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals with cost sharing of less than 33 percent of the total project cost will be considered ineligible. USIA-funded administrative costs are limited to twenty (20%) percent of the total funds requested from USIA. Administrative costs are defined as salaries for grantee organization employees, benefits, other direct and indirect costs incurred in the United States. Overseas administrative costs—such as compensation of an employee in an overseas office—are not counted in this 20 percent limit. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process. Although no set funding limit exists, proposals for less than $150,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to the availability of funds.

Review Criteria

USIA will evaluate proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality and substance. Their rationale should persuade the reader that the U.S. taxpayer's dollar is being well-spent for a clearly defined need.

2. *Institution Reputation/Ability:* Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG) will be considered.

3. *Project Personnel:* Personnel's professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

5. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and obtainable. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should show cost-sharing through other private sector support as well as direct funding contributions and in-kind support from the prospective grantee institution.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-funded programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. This Office of Citizen Exchanges encourages project proposals involving more than one country. However, single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and

committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 14, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-30683 Filed 12-17-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R. 57864.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, December 29, 1992.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting previously announced to discuss a Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–30863 Filed 12–16–92; 3:53 pm]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: (Times listed below), Tuesday, December 22, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

10:00 a.m.

1. Pride in Public Service

The Commission will present the Pride in Public Service Award to December's recipient.

2. Election of Vice Chairman

The Commission will elect a Vice Chairman for a term ending on December 31, 1993.

3. ANPR on Sleepwear

The Commission will consider an Advance Notice of Proposed Rulemaking (ANPR) to amend the standards for flammability of children's sleepwear to exempt close fitting garments and garments intended for infants.

4. Charcoal Container Labeling, Petition HP 91–1

The Commission will consider petition HP 91–1 from Barbara Muak requesting changes to the labeling requirements for containers of charcoal.

2:00 p.m.

5. Voluntary Standards/International Affairs

The staff will brief the Commission on voluntary standards and international affairs activities carried out by staff during the fourth quarter of fiscal year 1992.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: December 15, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–30867 Filed 12–16–92; 3:54 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:04 a.m. on Tuesday, December 15, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in my Acting Chairman Andrew C. Hove, Jr., and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of the following matter:

Report on the status of pending regulations to be issued pursuant to the Federal Deposit Insurance Corporation Improvement Act of 1991.

By the same majority vote, the Board further determined that no notice earlier than December 11, 1992, of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: December 15, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30847 Filed 12–16–92; 10:42 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:39 a.m. on Tuesday, December 15, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Matters relating to an assistance agreement with an insured institution.

Recommendation concerning certain financial institutions.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 15, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30848 Filed 12–16–92; 10:42 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 58858, Friday, December 11, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m. Wednesday, December 16, 1992.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Implementation of section 7(e)(7) of the International Banking Act: Guidelines for Foreign Banks.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30835 Filed 12–15–92; 5:04 pm]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-143-000, et al]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92-28743 beginning on page 56331 in the issue of Friday, November 27, 1992 make the following correction:

On page 56333, in the first column, under item 11., the docket number is corrected to read as follows:

[Docket No. ER92-835-000]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-234-AD; Amdt. 39-8357; AD 92-18-12]

Airworthiness Directives; Boeing 747 Series Airplanes

Correction

Due to errors in the original publication of rule document 92-24750 beginning on page 46769 in the issue of Tuesday, October 13, 1992, the airworthiness directive beginning on page 46770 is republished in its entirety as follows:

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8011 (56 FR 51232, October 11, 1991), and by adding a new airworthiness directive (AD), amendment 39-8357, to read as follows:

92-18-12 **Boeing:** Amendment 39-8357. Docket No. 91-NM-234-AD. Supersedes AD 91-18-08, Amendment 39-8011.

Applicability: Model 747 series airplanes, equipped with brake part numbers (P/N) identified in paragraphs (a) and (b) of this AD, certificated in any category.

Compliance required as indicated, unless previously accomplished.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after November 12, 1991 (the effective date of Amendment 39-8011, AD 91-18-08), incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program:

Brake mfr.	Brake P/N	Boeing P/N	Maximum wear limit (inches)
Bendix	2603703-13	60B10014-9	1.55
Bendix	2603703-14	60B10014-11	1.55
Bendix	2605662-1	60B10014-15	2.50
Bendix	2605662-3	60B10014-23	2.70
BFGoodrich	2-1515-1	60B10062-11	2.00
BFGoodrich	2-1515-2	60B10062-12	2.00

(b) Within 180 days after the effective date of this AD, accomplish the requirements specified in paragraph (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) of this AD, as applicable:

(1) For airplanes equipped with Bendix Part Numbers (P/N) 2602012-2, -3, -4, and -5, (Boeing P/N 60B00150-5, -6, -8, and -12):

(i) Inspect each brake to ensure it is not worn more than 1.75 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with a Bendix Brake P/N 2602012-30, -40, or -50, (Boeing P/N 60B00150-21, -22, and -23), as applicable, built in accordance with Bendix Service Bulletin 2602012-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N's 2602012-30, -40, and -50 to the FAA-approved Airplane Flight Manual (AFM), Section 4, "Maximum Brake Energy Limit Speed," Category "B," and remove Bendix brake P/N's 2602012-2, -3, -4, and -5 from the AFM.

(iii) Intermix of the P/N 2602012-2, -3, -4, and -5 brakes with the P/N 2602012-30, -40 and -50 brakes is allowed for 360 days after the effective date of this AD. Delay removal of the P/N 2602012-2, -3, -4, and -5 brakes from the AFM, as required by paragraph (b)(1)(ii) of this AD, until intermix is ended.

(iv) Change all references of Bendix Brake P/N's 2602012-2, -3, -4, and -5 to Category "B" on the Maximum Brake Energy Chart in section 4 of the AFM.

(v) Incorporate a 1.75-inch maximum allowable brake wear limit for Bendix brake P/N's 2602012-30, -40 and -50 into the FAA-approved maintenance inspection program.

(2) For airplanes equipped with Bendix Brake P/N's 2601902-1, -2, and -5, (Boeing P/N's 60B00150-4, -9, and -13): Incorporate a 2.38-inch maximum allowable brake wear limit into the FAA-approved maintenance inspection program.

(3) For airplanes equipped with Bendix Brake P/N's 2601902-3, -4, and -6, (Boeing P/N's 60B00150-10, -11, and -14):

(i) Inspect each brake to ensure it is not worn more than 1.73 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with a Bendix Brake P/N 2601902-30, -40, or -60, (Boeing P/N's 60B00150-24, -25, and -26), as applicable, built in accordance with Bendix Service Bulletin 2601902-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N's 2601902-30, -40, and -60 to the AFM, Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2601902-3, -4, and -6 brakes with the P/N 2601902-30, -40, and -60 brakes is allowed for 360 days after the effective date of this AD when a 1.73-inch maximum allowable brake wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N's 2601902-3, -4, and -6 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of these brakes to Category "B" until intermixing is ended.

(v) Change all references of Bendix P/N's 2601902-3, -4, and -6 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 2.38-inch maximum allowable brake wear limit for Bendix Brake P/N's 2601902-3, -4, and -6, and a 1.73-inch maximum allowable brake wear limit for P/N's 2601902-30, -40, and -60, into the FAA-approved maintenance inspection program.

(4) For airplanes equipped with Bendix Brake P/N 2605662-2, (Boeing P/N 60B10014-14):

(i) Inspect each brake to ensure that it is not worn more than 1.73 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with Bendix Brake P/N

2605662–20, (Boeing P/N 60B10014–30), built in accordance with Bendix Service Bulletin 2605662–32–028, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N 2605662–20 to the AFM, Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2605662–2 brakes with the P/N 2605662–20 brakes is allowed for 360 days after the effective date of this AD when a 1.73-inch maximum allowable ware limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N 2605662–2 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of these brakes to Category "B" until intermix is ended.

(v) Change all references of Bendix P/N 2605662–2 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 2.30-inch maximum allowable brake wear limit for Bendix Brake P/N 2605662–2, and a 1.73-inch maximum allowable brake wear limit for P/N 2605662–20, into the FAA-approved maintenance inspection program.

(5) For airplanes equipped with Bendix Brake P/N 2605155–1, (Boeing P/N 60B10014–10):

(i) Inspect each brake to ensure that it is not worn more than 2.50 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with Bendix Brake P/N 2605155–2, (Boeing P/N 60B10014–31), built in accordance with Bendix Service Bulletin 2605155–32–001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N 2605155–2 to the Airplane Flight Manual (AFM), Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2605155–1 brakes with the P/N 2605155–2 brakes is allowed for 360 days after the effective date of this AD when a 2.50-inch maximum allowable wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N 2605155–1 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of this brake to Category "B" until intermixing is ended.

(v) Change all references of Bendix P/N 2605155–1 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 3.20-inch maximum allowable brake wear limit for Bendix Brake P/N 2605155–1, and a 2.50-inch maximum allowable brake wear limit for P/N 2605155–2, into the FAA-approved maintenance inspection program.

(6) For airplanes equipped with Bendix Brake P/N 2605392–1, (Boeing P/N 60B10035–2): Incorporate a 1.90-inch maximum allowable brake wear limit into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) Brakes shall be built in accordance with Bendix Service Bulletin 2601902–32–001, Revision 2, dated October 10, 1991; Bendix Service Bulletin 2602012–32–001, Revision 2, dated October 10, 1991; Bendix Service Bulletin 2605155–32–001, Revision 2, dated October 10, 1991; or Bendix Service Bulletin 2605662–32–028, Revision 2, dated October 10, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied-Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46628. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1992.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[IA–20–92]

RIN 1545–AQ57

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service

Correction

In proposed rule document 92–24347 beginning on page 46356 in the issue of Thursday, October 8, 1992, make the following corrections:

§ 10.3 [Corrected]

1. On page 46358, in the third column, in § 10.3(f), in the third line, "any" should read "an".

§ 10.7 [Corrected]

2. On page 46359, in the first column, in § 10.7(b), "*ruleaking*" should read "*rulemaking*".

3. On the same page, in the same column, in § 10.7(c), in the 10th line, "this" should read "his".

§ 10.53A [Corrected]

4. On page 46360, in the second column, in § 10.53A(b)(2), "on" should read "of".

BILLING CODE 1505-01-D

federal register

Friday
December 18, 1992

Part II

Department of Education

34 CFR Part 682
Federal Family Education Loan Programs; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AA96

Federal Family Education Loan Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Federal Family Education Loan (FFEL) programs. The new FFEL regulations will govern the Federal Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan programs. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation programs. These programs complement key components of American 2000, the President's education strategy. The final regulations incorporate statutory changes made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (enacted April 7, 1986) (COBRA) (Pub. L. 99–272), the Higher Education Amendments of 1986 (enacted October 17, 1986) (1986 Amendments) (Pub. L. 99–498), the Higher Education Technical Amendments Act of 1987 (enacted June 3, 1987) (Technical Amendments) (Pub. L. 100–50), Public Law 100–297 (enacted April 28, 1988), Public Law 100–369 (enacted July 18, 1988), the Omnibus Budget Reconciliation Act of 1989 (enacted December 19, 1989) (Pub. L. 101–239), the Omnibus Budget Reconciliation Act of 1990 (enacted November 5, 1990) (Pub. L. 101–508), the National and Community Service Act of 1990 (enacted November 16, 1990) (Pub. L. 101–610), the Higher Education Technical Amendments of 1991 (enacted April 9, 1991) (Pub. L. 102–26), one technical change required by the Emergency Unemployment Compensation Act of 1991 (enacted November 14, 1991) (Pub. L. 102–164), and changes to reflect self-implementing provisions of the Higher Education Amendments of 1992 (1992 Amendments) (enacted July 23, 1992) (Pub. L. 102–325). To the extent these regulations may be inconsistent with the 1992 Amendments, the 1992 Amendments supersede the regulations. The remainder of the provisions enacted as part of the 1992 Amendments will be addressed in separate proposed and final regulations developed under the requirements of negotiated rulemaking. The final regulations also establish various policy initiatives intended to improve program administration, prevent loan defaults, and generate repayment of defaulted loans.

EFFECTIVE DATE: Except as otherwise specified below, these regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of §§ 682.205, 682.206, 682.208, 682.209, 682.210, 682.211, 682.214, 682.301, 682.305, 682.401, 682.402, 682.404, 682.406, 682.407, 682.409, 682.410, 682.411, 682.412, 682.414, 682.507, 682.508, 682.511, 682.515, 682.601, 682.602, 682.603, 682.604, 682.605, 682.606, 682.610, 682.711, 682.712, 682.713, 682.802, 682.803, and appendix B. These sections will become effective after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Subject to approval under the Paperwork Reduction Act, if applicable, the following effective dates also apply to certain provisions of these regulations.

Section 682.302(d)(1)(v), which requires lenders to file default claims within 60 days after the date of default to retain eligibility for special allowance payments from the Secretary, is effective for loans on which the first day of delinquency is on or after 120 days of following the date of publication.

Section 682.302(d)(1)(vii), which requires a lender to resubmit within 30 days a default claim that has been returned to the lender by the guaranty agency due solely to inadequate documentation to maintain eligibility for special allowance, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.401(d)(3), which requires a guaranty agency to use common forms approved by the Secretary is, with the exception of the common application form and promissory note, effective 360 days following the date of publication. Under the 1992 Amendments, the Secretary must approve a common application form and promissory note within 360 days after the enactment of that law.

Section 682.401(b)(17), which requires a guaranty agency to have a written agreement with each lender in its program, is effective 120 days following the date of publication.

Section 682.401(b)(18)(ii), which requires guaranty agencies to use the data elements and report format provided in appendix B for monitoring the enrollment status of student borrowers, is effective 120 days following the approval of this provision by OMB under the Paperwork Reduction Act of 1980.

Section 682.406(a)(3), which requires a lender to provide an accurate collection history and payment history to the guaranty agency with each default claim, is effective for loans that enter repayment on or after the effective date of these regulations.

Section 682.406(a)(6), which requires a lender to resubmit within 30 days a default claim that has been returned by the guaranty agency due solely to inadequate documentation for interest accruing beyond the 30th day to be reinsured, or to resubmit the claim within 60 days to maintain reinsurance on the loan, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.406(a)(8), which requires that guaranty agencies must pay or reject a claim by the 60th day after a default claim is received for the interest accruing after the 60th day to be reinsured, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.410(b)(4), which requires guaranty agencies to capitalize any interest due to the lender from the borrower at the time the guaranty agency pays the default claim, is effective for claims paid by the agency on or after 120 days following the date of publication.

Section 682.411, which defines the minimum due diligence requirements for lenders in the collection of guaranty agency loans, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patricia Beavan or Pamela Moran, U.S. Department of Education, 400 Maryland Avenue, SW., room 4310, ROB 3, Washington, DC 20202–5449. Telephone: (202) 708–8242. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at

1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Stafford, SLS, and PLUS programs provide loans to eligible student or parent borrowers who might otherwise be unable to finance the costs of postsecondary education. The Consolidation Loan Program gives borrowers an opportunity to consolidate loans made under the Stafford loan, Perkins loan (formerly National Direct Student Loan), PLUS (for loans made to students prior to 1986), SLS, and Health Professions Student Loan programs.

On November 20, 1990, the Secretary published a notice of proposed rulemaking (NPRM) for the GSL programs in the **Federal Register** (55 FR 48324). Those proposed regulations did not reflect changes to the Higher Education Act of 1965, as amended, (the Act) authorizing legislation for the FFEL programs made after the enactment of Public Law 100–369 (July 18, 1988). These final regulations, however, now reflect the statutory changes made to the programs by the laws identified in the Summary, which include provisions that—

- Provide that an individual serving in a medical internship or residency program, except for an internship in dentistry, is ineligible to receive a Stafford or SLS loan (§ 682.201(a)(8));
- Prohibit a borrower who is serving in a medical internship or residency program, except for an internship in dentistry, from receiving or continuing a deferment of repayment on a Stafford or SLS loan based on the borrower's full-time or half-time study at a school (§ 682.210(c)(4));
- Require a lender to grant forbearance to a borrower who is serving in a medical internship or residency program and who already has received the maximum two-year internship deferment (§ 682.211(g));
- Provide that a student who does not have a high school diploma or recognized equivalent is ineligible to borrow an SLS loan (§ 682.201(a)(3)(ii));
- Provide that the proceeds of any Stafford or SLS loan must be disbursed in two or more installments regardless of the amount of the loan or the length of the period of enrollment for which the loan is made (§ 682.207(c)(1));
- Prohibit a lender or escrow agent from disbursing the second or any subsequent disbursement of a Stafford or SLS loan after it is informed by the student or institution that the student has ceased to be enrolled at the institution (§ 682.207(b)(1)(vi));
- Require an institution to withhold from the student and promptly return to the lender or escrow agent any Stafford or SLS disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid obtained by the student (§ 682.604(h));
- Require the student to provide the lender with a statement from the institution setting forth a disbursement schedule for the proceeds of a Stafford or SLS loan in installments (§ 682.207(b)(1)(B));
- Require that, for a student to be eligible to receive financial assistance authorized by Title IV of the Higher Education Act of 1965, as amended (the Act), a student who does not have a high school diploma or a recognized equivalent must pass an independently administered examination approved by the Secretary (§ 682.201(a)(7));
- Require guaranty agencies, upon request of a lender, to provide preclaims assistance on accounts that are less than 120 days delinquent and supplemental preclaims assistance on accounts that are delinquent at least 120 days (§ 682.411(h));
- Require guaranty agencies, upon the request of an eligible institution, to furnish information to the institution on borrowers who were enrolled at the institution and who have defaulted on their FFEL loans (§ 682.401(b)(22));
- Establish a minimum period for annual SLS loan eligibility that is the greater of the length of the institution's academic year or seven consecutive months (§ 682.204(e)(2));
- Prohibit an institution from delivering for endorsement the first installment of a Stafford or SLS loan to any student who is entering the first year of a program of undergraduate education at an institution, and who has not previously received a Stafford or SLS loan, until 30 days after the first day of the student's program of study (§ 682.604(c)(5));
- Extend the provision prohibiting the discharge of certain student loans to borrowers who file for relief under Chapter 13 of the Bankruptcy Code;
- Extend the 5-year period under which a Title IV loan generally may not be discharged in bankruptcy to 7 years (§ 682.402(d)(5)(B));
- Permit an institution to refuse to certify an otherwise eligible borrower's FFEL application, or to certify a loan for an amount that is less than what the student would be otherwise eligible for, as long as the reason for that action is documented and given to the student in writing (§ 682.603(e));
- Require an institution to review with the borrower during exit counseling the conditions under which the borrower may defer repayment of a loan because of service under the Peace Corps Act, the Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer in a tax-exempt organization (§ 682.604(g)(2)(vi));
- Eliminate any statutes of limitation that previously applied to enforcement action to collect FFEL loans;
- Prohibit a guaranty agency for retaining 35 percent of collections from defaulted borrowers obtained through a wage garnishment law that complied with section 428E of the Act, which was repealed by section 605(b)(1) of Pub. L. 102–164;
- Provide a reduced annual limit on SLS loans for a student in a program of study that is less than a full academic year in length (§ 682.204(e)(1));
- Prohibit an incarcerated student from borrowing under the FFEL program;
- Require an annual independent compliance audit of each lender conducted by an independent organization or person (§ 682.305(c));
- Require a guaranty agency to submit a request for payment of reinsurance no later than 45 days after the guaranty agency has paid a claim to the lender on a loan (§ 682.406(a)(9));
- Require a guaranty agency, upon the request of a school, to provide information to the school about a borrower who received an FFEL loan for attendance at the school if the borrower's lender submitted a request for preclaims assistance (§ 682.404(a)(5));
- Require the lender prior to or at the time the loan is disbursed to provide the borrower with a clear and concise statement, in bold print and prominently and clearly displayed, that the borrower is receiving a loan that must be repaid (§ 682.205(a)(1));
- Require the lender to disclose certain information regarding repayment to Stafford and SLS borrowers not less than 60 days nor more than 240 days before the first payment on the borrower's loan becomes due (§ 682.205(c)(1));
- Eliminate the requirement for a lender to disclose the projected total of interest charges to SLS, PLUS, or unsubsidized Stafford loan borrowers if the lender provides the borrower with sample projections of monthly repayment amounts (§ 682.205(d));
- Provide that the lender must charge an SLS or PLUS loan borrower an origination fee of five percent of the principal amount of the loan (§ 682.202(c));
- Change the definition of eligible institution by repealing the definitions

of "institution of higher education" and "vocational school" previously found in section 435(b) of the Act (§ 682.200). For purposes of an in-school deferment, an eligible institution includes an institution of higher education whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL programs because of a high default rate;

- Define when a repayment period begins for loans made under each of the FFEL programs (§ 682.200);
- Provide a variable interest rate for new Stafford loan borrowers (§ 682.202(a)(1));
- Establish new maximum variable rates for SLS and PLUS loans (§ 682.202(a)(2) and (a)(3));
- Establish a reduced annual loan limit for Stafford loan borrowers who have not completed the first year of an undergraduate program (§ 682.204(a));
- Require a lender to disburse a PLUS loan by means of a co-payable check or by electronic funds transfer (EFT) to the school (§ 682.207(b));
- Require a lender to disburse loan proceeds, at the borrower's request, directly to a borrower enrolled in a study-aboard program approved for credit at the home institution or, at the borrower's request, to the home institution for the endorsement or EFT authorization by an individual provided power-of-attorney by the borrower (§ 682.207(b)(10)(v));
- Require that if a loan is sold, transferred, or assigned to another holder and there will be a change in the identity of the party to whom the borrower must send subsequent payments or direct communications, both the assignor and assignee must provide separate notices to the borrower regarding the sale or transfer (§§ 682.208(e) and 682.508);
- Provide that an SLS borrower who has not yet entered repayment on a Stafford loan may postpone payment until expiration of the borrower's grace period on the borrower's Stafford loan (§ 682.209(a)(2)(iii));
- Make PLUS borrowers eligible to borrow under the Consolidation Loan program if the PLUS loans were obtained after October 17, 1986 (§ 682.100);
- Extend eligibility for Consolidation loans to delinquent and defaulted borrowers who will re-enter repayment through loan consolidation (§ 682.201(c)(1)(ii)(C)(1));
- Allow a Consolidation loan borrower to add additional loans received prior to the date of the Consolidation loan during the 180-day period following the making of the Consolidation loan (§ 682.209(h)(4));
- Provide that interest will be paid by the Secretary on behalf of a Consolidation loan borrower during authorized deferment periods (§ 682.210(a)(3));
- Allow married couples to consolidate their loans jointly (§ 682.201(c)(2));
- Provide for longer repayment periods for Consolidation loan borrowers and require lenders to offer these borrowers repayment schedules that provide for graduated or income-sensitive repayment (§ 682.209(h));
- Provide that when a lender grants forbearance to a borrower, it must be a total cessation of payments unless the borrower requests an extension of time for making payments or a temporary acceptance of smaller payments than previously were scheduled (§ 682.211(h));
- Increase the amount of a fine from $1,000 to $10,000 for any person who knowingly and willfully makes an unlawful inducement to an eligible lender (§ 682.212(g));
- Require a guaranty agency to have an independent financial and compliance audit annually (§ 682.410(b)(1));
- Require the Secretary to prescribe a common application form and promissory note and other common forms developed in cooperation with FFEL program participants (§ 682.401(d));
- Repeal the prior 1 percent limitation on the amount of discount at which a tax-exempt authority may purchase student loans from lenders;
- Eliminate a lender or school's opportunity to request a hearing on the record as governed by the Administrative Procedure Act in the Secretary's review of a guarantee agency's disqualification action against the lender or school (§§ 682.712 and 682.713).

The regulations established various policy initiatives designed to reduce defaults and increase collections on loans that go into default. They also include the revisions to part 682 made in the following final regulations that recently were published: regulations implementing the targeted teacher deferment, see 55 FR 35002 (August 27, 1990); regulations relating to appeals from the loss of FFEL program eligibility for high default rate schools, see 56 FR 33332 (July 19, 1991); and regulations requiring the lender to notify the borrower of a loan assignment, see 56 FR 48990 (September 26, 1991).

To reduce unnecessary duplication of regulations that apply to all Title IV student assistance programs, these regulations delete a number of definitions and existing rules and replace them with cross-references to the Student Assistance General Provisions regulations (34 CFR part 668) and the Institutional Eligibility Regulations (34 CFR part 600).

These regulations seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the President's America 2000 strategy to move the nation toward achieving the National Education Goals. The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Substantive Revisions to the Notice of Proposed Rulemaking

Subpart B—General Provisions

Section 682.200 Definitions

- The Secretary has incorporated into the regulations a definition of "expected family contribution" for the FFEL programs that is consistent with the existing definition used in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs.
- The Secretary has revised the definition of "holder" to include a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.
- The Secretary has changed the definition of "lender" contained in proposed § 682.200. The NPRM would have allowed mortgage loans serviced, but not held by the lender, to be included in the calculation of the lender's total consumer credit portfolio. The final regulations provide that only loans held by the lender may be included in this calculation. The final regulations also delete the proposal to use a net income standard to determine a lender's primary consumer credit function since events beyond the lender's control, such as an increase in interest rates or defaults on non-student loans, may result in student loans representing the majority of a lender's profits.

• The Secretary has modified the definition of "Stafford Loan Program" to indicate that an unsubsidized Stafford loan is an insured Stafford loan that does not qualify for interest benefits.

Section 682.201 Eligible Borrowers

• The Secretary has revised the provisions of § 682.201(a)(5) to require borrowers to reaffirm any written-off FFEL programs debt before the borrower can receive additional aid under the FFEL programs.

Section 682.202 Permissible Charges by Lenders to Borrowers

• The Secretary has revised § 682.202(a) of the regulations to include the provisions of section 427A of the Act that require a rebate to be given to a borrower with a Stafford loan with an interest rate of 10 percent in the event that Treasury bill rates decline below a certain level.

• Section 682.202(f)(2)(ii) of the proposed regulations has been dropped to be consistent with changes made in § 682.201(a)(4).

• The Secretary has deleted from § 682.202(g) of the proposed regulations, which identifies the costs that a lender may pass on to the borrower in the collection of a FFEL loan, the cost of local and long-distance telephone calls, skip-tracing costs, credit bureau reporting costs, costs of preparing letters or notices, and collection firm charges.

Section 682.205 Disclosure Requirements

• The Secretary has deleted the requirement in proposed § 682.205(a)(1) that would have required a lender to secure the borrower's signed acknowledgement of the initial disclosure statement before disbursing loan funds. Current regulatory language, without the requirement of a signed statement, has been reinstated.

• Proposed § 682.205(b)(3) has been deleted in light of the deletion of § 682.215 resulting from the Secretary's decision not to prescribe in regulations a uniform Federal rule regarding borrower defenses.

Section 682.207 Due Diligence in Disbursing a Loan

• The Secretary has revised § 682.207(d)(2) of the proposed regulations to allow a lender to make a late disbursement within 60 days after the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended unless the guaranty agency prohibits late disbursements. The regulations also have been revised to allow a late disbursement to cover a student's documented educational expenses for costs normally included in a borrower's cost of attendance under section 472 of the Act rather than only outstanding institutional charges as proposed in the NPRM.

Section 682.208 Due Diligence in Servicing a Loan

• The Secretary has deleted the requirement in § 682.208(b) of the proposed regulations that would have required a lender to report the borrower's date of default to at least one national credit bureau as provided in section 430A(a)(2) of the Act. This task has been, and will continue to be, performed by the guaranty agency that pays the default claim.

• The Secretary has deleted the requirement in § 682.208(d) that required lenders offering graduated repayment to restrict to the first five years of repayment the period during which the lender may provide for graduated or income-sensitive payments.

Section 682.210 Deferment

• The Secretary has deleted the proposal contained in proposed § 682.210(a)(4)(ii) that permitted a lender to grant a borrower a deferment based on substantially complete documentation pertaining to the borrower's eligibility for a deferment. The final regulations permit a lender to grant a deferment based only on complete information and documentation that establishes the borrower's deferment eligibility.

• The Secretary has changed proposed § 682.210(h)(1)(iii), which specifies the requirements for an unemployment deferment, to define the circumstances under which a public or private employment agency's location is accessible. The Secretary has determined that such an agency is accessible to an unemployed borrower if the agency is located within a 50-mile radius of the borrower's permanent or temporary address.

• The Secretary has modified proposed § 682.210(m)(1)(iii) to permit a borrower to qualify for a deferment as a full-time paid volunteer for a tax-exempt organization as long as the borrower does not receive compensation that exceeds the Federal minimum wage. The proposed regulations would have required the borrower to earn less than the Federal minimum wage to qualify for this deferment.

Section 682.211 Forbearance

• The Secretary has revised the proposed section to permit lenders to grant forbearances to endorsers as well as to the student or parent borrower. Historically, the Secretary has encouraged lenders to extend forbearance to borrowers to prevent defaults. The Secretary believes that extending the forbearance provisions to an endorser who has agreed to make scheduled payments on behalf of the borrower but who temporarily is unable to do so because of personal circumstances will be equally effective in preventing defaults.

• The Secretary has added § 682.211(g) of the regulations to provide that a lender must grant forbearance of interest and principal to borrowers serving in medical internships or residencies whose eligibility for deferment under § 682.210(n) has expired. This revision implements section 428(C)(3)(A) of the Act as added by Public Law 101–239.

Section 682.215 Defenses to the Borrower's Obligation to Repay a FFEL Loan

• The Secretary proposed in § 682.215 to restrict sharply the instances in which borrowers could raise school-related defenses to repayment of a loan made by a bank or other third party. After considering the comments on this proposal and the Department's experience with litigation regarding this matter, the Secretary has determined that it is not desirable at this time to prescribe by regulation a uniform Federal rule regarding borrower defenses that would preempt State law otherwise applicable to FFEL program loans. In the Department's view, whether a defense to repayment of a FFEL program loan is available under State law depends on whether application of State law would frustrate accomplishment of the Federal objectives of the FFEL programs. This requires a case-by-case assessment of individual State laws.

In litigation, the Department has identified four kinds of State laws whose application would not frustrate the accomplishment of FFEL program policies; those State laws are, therefore, not preempted by Federal law. These are State laws that would make a lender subject to school-related defenses if—

(1) The lender had notice (actual or imputed) of substantial prior unresolved complaints about the school prior to making the loan at issue;

(2) The lender had delegated substantial loan-making functions to the school ("an origination relationship" under FFEL program regulations);

(3) The lender and school are corporate affiliates or are otherwise commonly controlled; or

(4) The lender paid a finder's fee or referral fee to the school with regard to the loan.

The Secretary recognizes that whether particular State laws are preempted ultimately must be decided by the courts and that Congress may enact a uniform Federal rule in the future. The Secretary considers the issuance of preemptive Federal regulations to be unwarranted at this time.

Subpart D—Guaranty Agency Programs

Section 682.401 Basic Program Agreement

- The Secretary has revised the proposed regulations to require a borrower to notify the holder of his or her loan, rather than the school, whenever there is a change in the borrower's employer or employer's address.
- The Secretary has revised the proposed regulations to allow a guaranty agency to consider a lender's prior experience in similar Federal, State, or private student loan programs in determining whether to permit the lender to participate in the guaranty agency's program.
- The Secretary has revised the proposed regulations to codify his policy that any transfer of loan guarantees between guaranty agencies may be done only with this approval unless it is a transfer sought by a borrower to secure a single guarantor for all of the borrower's FFEL program loans. The Secretary takes this position in light of the reinsurance implications for the affected agencies and the potential financial liabilities to the Department if such a transfer occurs.
- The Secretary has revised § 682.401(b)(15) to require that a loan may be assigned only if it is fully disbursed and to clarify to which entities a guaranty agency shall permit a loan to be assigned.
- The Secretary has revised the regulations to require that a guaranty agency must have a written agreement with each eligible lender in its program. As part of the President's initiative to reduce the Federal government's regulatory burden on the private sector, the Secretary and student loan industry representatives are participating in a task force sponsored by the Department of Treasury's Financial Management Service to develop a standardized lender agreement for use in the FFEL programs.
- The Secretary has revised the regulations to delete the requirement that a guaranty agency must submit forms to the Secretary for pre-approval prior to their use. Under the 1992 Amendments, the secretary is required to work with FFEL program participants to develop a common application form and promissory note and other common forms. Guarantee agencies will be required to use these forms when they are developed.
- The Secretary has revised the regulations to require that a guaranty agency must develop and implement appropriate procedures that provide for granting a student deferment as specified in § 682.210(a)(6)(iv) and § 682.210(c) (2) and (3). The Secretary expects agencies to require lenders to use these procedures.

Section 682.404 Federal Reinsurance Agreement

- The proposed regulations have been revised to incorporate provisions of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) that require the Secretary to pay guaranty agencies $50 for each account on which the agency performs supplemental preclaims assistance and for which a default claim is not filed by the 150th day after the loan becomes 120 days delinquent.
- The proposed regulations have been revised to require that the Secretary's equitable share of amounts collected on defaulted loans by guaranty agencies be forwarded to the Secretary within 45 days after the payment is received by the guaranty agency, or a collection agency acting on behalf of the guaranty agency, rather than within 30 days as proposed in the NPRM. These amounts normally are offset (subtracted) from amounts owed by the Secretary to guaranty agencies for reinsurance. Because reinsurance claims are processed monthly, the Secretary believes that it would be virtually impossible, using a 30-day deadline, for amounts received at the end of the month to be included on that month's reinsurance-claims submission.

Section 682.406 Conditions of Reinsurance Coverage

- The Secretary has reinstated the requirement in § 682.406(a) of the Department's current regulations that a lender's exercise of due diligence in making, disbursing, and servicing a loan is a condition of reinsurance. The Secretary did not intend to delete this requirement.

Subpart E—Federal Guaranteed Student Loan Programs

Section 682.515 Records, Reports, and Inspection Requirements for Federal Guaranteed Student Loan (GSL) Programs Lenders

- The Secretary has revised § 682.515(c), which governs lender inspections, to correspond to similar inspection requirements for guaranty agencies in § 682.414(c).

Subpart F—Requirements, Standards, and Payments for Participating Schools

Section 682.603 Certification by a Participating School in Connection With a Loan Application

- The Secretary has revised the regulations to require a school, if it becomes aware that a loan applicant is a member of a religious order, group, community, society, agency, or other organization, to determine if the organization meets the conditions of § 682.301(a)(2), which would make the applicant ineligible for Federal interest benefits on a Stafford loan. The school may rely on information provided by the applicant.
- The proposed regulations have been amended to reflect the Department's previous policy guidance establishing the minimum and maximum periods of enrollment for which a school may certify a FFEL program loan application.
- The regulations have been revised to specify that a school may not certify an SLS loan application for an undergraduate student after the school receives a notice from the Secretary, pursuant to § 668.15(i), that its cohort default rate for the most recent fiscal year is equal to or greater than 30 percent. This restriction does not apply to a student who is seeking an SLS loan to complete a program of study for which he or she previously received an SLS loan. A school may not extend the duration of a program of study to evade the consequences of this restriction.
- The regulations have been amended to prohibit a school from engaging in discriminatory practices when refusing to certify a FFEL program loan application.

Section 683.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

- The Secretary has deleted the reference in § 682.604(b)(ii) to a student notifying the school on or before the first day of classes that he or she will be delaying attendance. The Secretary has changed the regulations to allow the school to consider any student who begins attendance after the first day of the period of enrollment for which the loan is intended to have maintained eligibility for the loan from the first day of the period of enrollment. The Secretary has also deleted the 30-day time limit for the student to commence delayed attendance, but has modified § 682.604(d)(3) to provide that a school must return loan proceeds to the lender

no later than 30 days after the first day of the period of enrollment if the students does not register for the period of enrollment or does not begin attendance on a delayed basis prior to that date.

• The Secretary has revised § 682.604(d)(1)(ii)(B) of the proposed regulations to permit but not require a school to hold additional loan proceeds on behalf of a student to help the student manage his or her loan funds, if the student requests that help in writing.

• The Secretary has revised proposed § 682.604(d) (3) and (4) to provide that the school must return the loan proceeds to the lender no later than 30 days after the first day of the period of enrollment if the student fails to register or does not begin attendance. The NPRM would have provided the school with 60 days to return the loan proceeds.

• The proposed regulations have been revised to incorporate new section 428G(b)(1) of the Act (as added by Pub. L. 101–508) that provides that a school may not present the proceeds of the first installment of a loan made to any student who is a first-year, first-time FFEL borrower for endorsement until 30 days after the first day of the student's program of study.

• The regulations have been revised to provide that a school may not deliver a second or subsequent disbursement to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully has completed the period of enrollment for which the loan was intended.

• The regulations have been revised to allow a school to deliver to the borrower a Stafford or SLS disbursement issued in accordance with § 682.207(e). The school will be allowed to deliver a late disbursement, within 60 days after the earlier of (1) the end of the period of enrollment, or (2) before the end of the period of enrollment for which the loan was made but after the student ceased to be enrolled at the school on least a half-time basis, unless the lender or guaranty agency has informed the school that a late disbursement is not permitted.

• The regulations have been revised to provide that a PLUS loan, Consolidation loan, or a loan to a student attending a foreign school is not subject to the overaward provisions in § 682.604(h).

Section 682.605 Determining the Date of a Student's Withdrawal

• The Secretary has revised § 682.605(b) of the regulations, which establishes rules for determining the date of a student's withdrawal. If the student drops out without notifying the school, the school must determine the student's date of withdrawal no later than (1) 45 days after the expiration date of the academic term for a school with standard academic terms and (2) no later than 25 days after a student's last date of attendance for a school using clock hours or credit hours without standard academic terms.

Section 682.606 Refund Policy

• Section 682.606(c)(1)(i) of the regulations governing *pro rata* refunds has not been revised to include a change discussed in the preamble of the NPRM but inadvertently not included in the proposed regulations. The proposed change provided that the reasonable administrative fee a school could subtract from the *pro rata* refund could not exceed $100. However, this change will not be made because the 1992 Amendments include a definition of *pro rata* refund that permits the school to subtract the lesser of $100 or 5 percent of tuition, fees, room and board, and other charges assessed the student.

Section 682.607 Payment of a Refund to a Lender

• The Secretary has revised § 682.607(c) of the regulations, which specifies the deadlines for schools to make timely payments of refunds to lenders on behalf of borrowers, to conform to changes made in § 682.605(b) for determining the date of a student's withdrawal.

Appendix B—Student Status Confirmation Report

• The Secretary has modified appendix B to define the types of data mandated for use on the report to ensure standardized reporting of data.

Appendix D—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guaranty Agency Director Letter 88–G–138]

• The Secretary has modified Appendix D to impose a 3-year limit on a lender's option to cure due diligence violations on loans that have lost reinsurance coverage.

• The Secretary has modified Appendix D so that if a loan subject to § 682.411 has a gap of more than 45 days in collection activities, the due diligence violation may be cured by the receipt of a full payment or a signed repayment obligation from the borrower.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 313 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues and significant technical changes are discussed under the section of the regulations to which they pertain.

Section 682.200 Definitions

Endorser

Comment: Many commenters believed that the inclusion of the definition of "endorser" indicates that an endorser is "co-liable" or jointly liable and suggested that the term endorser be deleted.

Discussion: The definition of "endorser" is not intended to imply that an endorser is jointly liable on the borrower's FFEL. As indicated in the definition, the endorser agrees to repay the loan in the event the borrower fails to do so. In the event the endorser refuses to repay the loan, the endorser is in default at the end of the 180th day of delinquency.

Changes: None.

Comment: A number of commenters stated that the proposed definition of "endorser" makes an endorser a co-maker.

Discussion: The definition of "endorser" in current regulations states that the endorser is secondarily liable for the repayment of the loan. The definition was revised in the NPRM to state more clearly that the endorser is liable only in the event that the borrower does not repay the loan. The Secretary does not believe that this definition suggests that the endorser is a co-maker; the endorser is not a co-maker.

Changes: None.

Escrow Agent

Comment: Many commenters suggested that the Secretary change the proposed definition of "escrow agent." Some commenters suggested that the Secretary revise the proposed definition to include PLUS loans. Other commenters indicated that the Secretary's proposed definition was not specific and appeared to exceed the statutory provision providing that only guaranty agencies and eligible lenders may act as an escrow agent to transmit FFEL funds to the borrower or the borrower's school.

Discussion: The Secretary agrees with the commenters that the proposed definition should include PLUS loans among the types of loans that may be transmitted through an escrow agent. The Secretary also agrees that the definition of "escrow agent" should be clarified to indicate that only a guaranty agency or another eligible lender may act as an escrow agent.

Changes: A change has been made. In the final regulations, the Secretary has revised the definition of "escrow agent" to specify that only eligible lenders or guaranty agencies may act as an escrow agent and that these entities may transmit the proceeds of any FFEL program loan to the borrower or the borrower's school.

Estimated Financial Assistance

Comment: Several commenters noted that, to avoid double-counting, estimated financial assistance should not include veterans' educational benefit payments that are included in the need analysis as part of the student contribution. They also noted that, in addition to SLS and PLUS loans, the definition should be expanded to clarify that private and State-sponsored loans and nonsubsidized Stafford loans may be used to substitute for the expected family contribution (EFC).

Discussion: The 1992 Amendments have revised the definition of "estimated financial assistance" to include all veterans' benefits paid because of enrollment in an institution of higher education as well as veterans' education benefits as defined in section 480(c) of the Act. In the loan certification process, institutions currently are required to include as estimated financial assistance those veterans' benefits not included in the need analysis formula. The Secretary has decided that, because the changes made by the 1992 Amendments to exclude veterans benefits from the needs analysis formula do not become effective until July 1, 1993, veterans' benefits should not be included as "estimated financial assistance" until these changes are effective. In light of this change in the law, the Secretary does not believe it is appropriate to change the treatment of veteran's educational benefits as recommended by the commenters. This provision of the 1992 Amendments will be reflected in separate proposed and final regulations developed under the requirements of negotiated rulemaking. The Secretary agrees, however, that the definition should be revised to discuss private and State-sponsored loans and unsubsidized Stafford loans.

Changes: The definition has been revised to incorporate the statutory provision in section 428(a)(2)(E) of the Act that allows amounts received by a student from private and State-sponsored loans to substitute for the EFC and to reflect current policy that allows unsubsidized Stafford loans to be used in the same manner.

Comment: A few commenters disagreed with the proposed change to the definition of "estimated financial assistance" that would require schools to include as estimated financial assistance, Perkins loan or College Work-Study (CWS) awards that were offered to a student and declined, unless an award was declined for an acceptable reason. The commenters believe that the aid administrator should not be required to determine whether the student's declination is for an acceptable reason and that declined awards should not be included in the amount of estimated financial assistance.

Discussion: Current regulations require that the amount of assistance that has been or will be awarded to the student must be considered in determining estimated financial assistance. This amount includes all awards offered, even if declined by the student, regardless of the reason. In proposing the definition included in the NPRM, the Secretary acknowledged that there are certain limited circumstances in which a student should be allowed to decline a Perkins loan or CWS award and not have the amount included in the amount of estimated financial assistance used to determine the student's FFEL eligibility. The Secretary believes that these circumstances include, but are not limited to the following: A student declines a CWS award because he or she (1) is unable to work because of family responsibilities such as caring for an elderly parent or dependent child; (2) is carrying a heavy academic workload (perhaps as part of an accelerated program) or is at academic risk and therefore requires special tutoring or other remedial work; or (3) is already employed at a higher paying or an academically or a career-related job. In the case of a Perkins loan, the student may decline a small Perkins loan award to increase the student's eligibility for a Stafford loan and allow the student to avoid simultaneous repayment to multiple sources following completion of his or her program of study. The Secretary believes that excluding all awards declined by the student, as suggested by the commenters, would frustrate the goal of ensuring that students apply for all forms of assistance. Accordingly, the Secretary is adopting the NPRM proposal in the final regulations.

Change: None.

Full-Time Student

Comment: Several commenters suggested that the Secretary revise the proposed definition of "full-time student" to include a student enrolled at more than one school under a consortium agreement or under similar contractual arrangements.

Discussion: The Secretary wishes to clarify that a student who is enrolled in more than one school under a consortium agreement or similar contractual arrangement may be considered a full-time student based on the student's combined enrollment. The determination that the student is full-time must be made by the school from which the student is seeking a degree or certificate and must be made according to standards applicable to all students enrolled in the student's program of study. The Secretary does not believe, however, that a change in the definition of "full-time student" is necessary.

Change: None.

Grace Period

Comment: Several commenters suggested that the definition of "grace period" should be changed to define that term as the period that begins on the day after a Stafford loan borrower ceases to be enrolled on at least a half-time basis and end on the day before the repayment period begins. The commenters also suggested that using the term "participating school" in the definition rather than the term "eligible institution" would mean that a borrower who transfers to an otherwise eligible institution that has elected not to participate in the FFEL programs will use up his or her grace period even though pursuing a postsecondary education.

Discussion: The Secretary agrees that the commenters' suggested change to the definition more appropriately describes the length of the grace period. The Secretary also agrees with the commenters that requiring a student to be enrolled at a participating school rather than at an otherwise eligible institution could unnecessarily penalize the student by prematurely starting the grace period while he or she is still pursuing a postsecondary education.

Changes: The Secretary has revised the definition of "grace period" in the regulations to be the period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-Time Student

Comment: Several commenters recommended that the Secretary revise the definition of "half-time student" to permit a student enrolled in an eligible institution but not at a school participating in the FFEL programs to qualify for a student deferment. The commenters argued that requiring enrollment in a participating school penalizes a student who enrolls in an otherwise eligible institution that elects not to participate in the FFEL programs. They pointed out that such a student would be required to use his or her grace period and begin repayment on a FFEL program loan while still pursuing a postsecondary education.

Discussion: The Secretary understands the commenters' concerns. However, the Secretary notes that at least half-time enrollment is only one criterion for a "new" borrower, as defined in § 682.210(b)(7), to qualify for a student deferment. The other criterion is that the borrower has received a Stafford or SLS loan for the period of enrollment for which the deferment is sought. Therefore, a borrower enrolled on less than a full-time basis may not qualify for a student deferment unless the school is participating in the FFEL programs.

Changes: None.

Comment: Several commenters suggested that the definition specify that a student attending more than one school during an academic term under a consortium agreement or similar contractual arrangement may be considered to be a half-time student based on the student's combined enrollment.

Discussion: The Secretary wishes to clarify that a student may be considered to be enrolled half-time based on the student's combined enrollment at more than one institution under a consortium agreement or similar contractual arrangement. However, the Secretary does not believe that a change in the definition of "half-time student" is necessary.

Changes: None.

Holder

Comment: Many commenters suggested that the Secretary should revise the definition of "holder" to specify which entities may be holders of FFEL loans.

Discussion: The Secretary agrees with the commenters that the definition of "holder" should identify the entities authorized to hold FFEL loans.

Changes: A change has been made. The regulations have been changed to state that a holder is an eligible lender in possession of an FFEL loan note that is payable to, or has been assigned to, the lender, including a Federal or State agency or an organization or corporation acting on behalf of the agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Lender

Comment: One commenter stated that the Act prohibits a lender from mailing unsolicited applications only to students and proposed that the prohibition against mailing unsolicited applications to a student's parents should be deleted. The commenter believes that the restriction should not apply to mailings to parents because it is not provided for in the statute and parents require less protection than students.

Discussion: The Secretary believes that an application that is sent to a student's parents is actually sent to the parents on behalf of the student and, therefore, the same protective measures provided for the student are also necessary for the parents. A lack of any restriction on unsolicited mailings to parents would create a loophole in the explicit statutory restriction on unsolicited mailings to students.

Changes: None.

Comment: Many commenters opposed the provision within the definition of "eligible lender" that would allow a lender to include home mortgages that it serviced, but did not hold, in the calculation of the lender's consumer-credit loan portfolio. The commenters indicated that a loan that is serviced, but not held by a bank, is not considered an asset of the bank for other purposes and, therefore, should not be considered an asset for FFEL program purposes.

Discussion: The Secretary has decided that mortgage loans that a lender services, but does not hold, should not be included in the calculation of a lender's primary consumer-credit function because they do not give a true indication of the receivables due the lender.

Changes: A change has been made. The definition of "eligible lender" has been revised to prohibit the inclusion of home mortgages that only are serviced by the lender in the lender's consumer-credit portfolio in determining whether FFEL loans exceed 50 percent of that portfolio.

Comment: Many commenters objected to the proposal in the definition of "eligible lender" that would examine a lender's net income to determine if FFEL program loans constituted the primary consumer-credit function of the lender. The commenters pointed out that using a net-income standard to determine if a lender's primary function is student loans could result in a lender inadvertently violating the standard due to events beyond the lender's control. These events might include a precipitous rise in interest rates or defaults in non-student loan areas that result in student loans representing the majority of the lender's profits.

Discussion: The Secretary agrees that using a net-income standard could result in the kind of inadvertent technical violations the commenters cite.

Changes: A change has been made. The use of the net-income standard to determine the lender's primary consumer-credit function has been deleted from the definition.

National Credit Bureau

Comment: Many commenters indicated that a credit bureau that operates in more than one State but only in a single region is not considered to be a national credit bureau under present reporting standards.

Discussion: The Secretary believes that the national credit bureau reporting requirements will be frustrated if reporting is restricted to a single region of the country. The Secretary agrees with the commenters that to satisfy the statute's intent, the definition must specify that a credit bureau operating in only one region is not a national credit bureau for FFEL program purposes.

Changes: A change has been made. The Secretary has changed the definition of "national credit bureau" in the final regulations to define a national credit bureau as one that operates in more than one region.

Origination Fee

Comment: A number of commenters suggested that the definition of "origination fee" should be modified to reflect the fact that lenders must pay this fee to the Secretary even if the fee is not charged to borrowers.

Discussion: Section 438 of the Act requires that the origination fee be paid by the lender regardless of whether the fee is assessed against the borrower.

Changes: A change has been made. The definition has been modified to reflect the requirement that lenders must pay the origination fee to the Secretary and may assess the fee against the borrower.

Parent

Comment: Many commenters recommended that the proposed definition be expanded to include a stepparent. These commenters believe that it is unfair to expect a stepparent to

contribute financially to a student's education and yet prohibit the stepparent from borrowing a PLUS loan on behalf of the student.

Discussion: "Parent" is defined in 34 CFR 668.2 as a student's natural or adoptive mother or father and, under limited circumstances, the student's legal guardian; this includes the legal definition of a stepparent. The Secretary believes the definition of "parent" for the PLUS program should be consistent with this definition.

Changes: A change has been made. The term "parent" is defined in 34 CFR 668.2 for title IV program purposes. Therefore, the definition has been deleted in the final FFEL program regulations.

Period of Enrollment

Comment: Several commenters recommended that this term be defined to codify current policy. The commenters argued that it is necessary to define this term in regulations because guaranty agencies do not define the term consistently. The commenters indicated that schools need guidance to correctly certify FFEL program loan applications.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has revised the final regulations to define the term "period of enrollment" as the period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed.

Post-Deferment Grace Period

Comment: One commenter recommended that the proposed definition be expanded to specify that the borrower is eligible for only one post-deferment grace period regardless of the number of times the borrower qualifies for an unemployment deferment.

Discussion: The Secretary believes this change is unnecessary.

Changes: No change has been made to the definition. However, the Secretary has revised § 682.210(a)(2)(ii) to include the restriction.

Repayment Period

Comment: One commenter suggested that the term "repayment period" be defined clearly as the term is used frequently throughout the regulations.

Discussion: The Secretary agrees with the commenter that it would be helpful to include a definition of this term that is consistent with § 682.209(a). Moreover, the 1992 amendments have defined when the repayment period begins in each of the FFEL programs.

Changes: The final regulations have been revised to reflect the change made to the Act by the 1992 Amendments. The repayment period for a Stafford loan is now defined as the period beginning the day following the expiration date of the grace period and ending no later than 10 years from that date. For an SLS loan, the repayment period is defined as the period that begins on the date of the last disbursement of the loan and ends no later than 10 years from that date. For a PLUS loan, the repayment period begins on the date the loan is disbursed and ends no later than 10 years from the beginning date of the repayment period. For a Consolidation loan, the repayment begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25, or 30 years from the beginning date of the repayment period, depending upon the sum of the amount of the Consolidation loan and the unpaid balance on other student loans. Corresponding changes have been made in § 682.209(a). Any period of deferment or forbearance is not included in the statutory maximum repayment period.

School

Comment: One commenter suggested deleting the phrase "public or private nonprofit" from the definition. The commenter pointed out that this phrase was unnecessary because the definition of institution of higher education contained in 34 CFR part 600 contained this element.

Discussion: The Secretary agrees with the commenter that it is unnecessary to include this phrase.

Change: The phrase "public or private nonprofit" has been deleted from the definition.

Comment: One commenter objected to including a hospital or health care facility in the definition of "school." The commenter believes that attendance in a program of study at such a facility is approved only for deferment purposes.

Discussion: The 1992 Amendments repealed the definitions of "institution of higher education" and "vocation school" in sections 435 (b) and (c) of the Act. The definition of "institution of higher education" is now in section 481 of the Act and does not include hospital and health care facilities. Therefore, the Secretary now agrees with the commenter that the reference to hospitals and health care facilities should be deleted.

Changes: The reference to a hospital or health care facility has been deleted from the definition of "school."

Comment: Many commenters suggested that the Secretary revise the proposed definition of "promote the availability" as it relates to the definition of "school" as a way to prevent commissioned salespersons from providing application forms or other FFEL loan information to enrolled students as well as to prospective students.

Discussion: The Secretary agrees that enrolled students should receive the same protection from commissioned salespersons promoting the availability of FFEL loans that prospective students receive.

Changes: A change has been made. The Secretary has revised the final regulations to prevent a commissioned salesperson from promoting the availability of FFEL loans to enrolled students.

Comment: A few commenters objected to the proposed expansion of the prohibition on activities of commissioned salespersons. The commenters argued that the proposed language would prevent commissioned salespersons from providing a school catalog to a prospective student because the catalog contains information on student financial aid, including the FFEL programs.

Discussion: The Secretary does not intend to prevent commissioned salespersons, as part of their recruitment activities, from distributing school catalogs that may contain general information regarding student financial aid. The Secretary believes, however, that the proposed language is needed to restrict commissioned salespersons from activities such as providing individuals with financial aid applications, assisting them with the completion of the applications, and assisting them with other aspects of the aid application process.

Change: None.

Temporarily Totally Disabled

Comment: Many commenters suggested that the 90-day time period for which a borrower must be unable to work, earn money, or attend school resulting from an injury or illness was unreasonably long. The commenters suggested that a 30-day time period was more equitable.

Discussion: The Secretary agrees that the proposed minimum 90-day period that a borrower must be totally disabled to satisfy the definition of "temporarily totally disabled" may be too long. The Secretary proposed this standard to be consistent with the 90-day period, required by section 435(g)(2) of the Act, to qualify for a deferment based on the disability of a dependent. The Secretary

agrees that the impact of a borrower's totally disabling condition on his or her ability to repay a FFEL program loan might be much more immediate than the financial impact of a borrower's dependent's disability. However, the Secretary believes that 30 days is too short a period of time, because the borrower would not have yet missed a payment by the close of a 30-day period.

Changes: A change has been made. The Secretary has reduced from 90 days to 60 days the minimum time period that a borrower must be temporarily totally disabled to qualify for the temporarily totally disabled deferment.

Comment: A number of commenters suggested that the phrase "but not for a period of more than three years" be added at the end of the definition of "temporarily totally disabled". The commenters said this should be done to provide a limit to the temporarily totally disabled deferment that was consistent with the statutory deferment provisions.

Discussion: The Secretary does not agree that the three-year maximum should be included with the definition. That limitation is codified in 34 CFR 682.210(b)(1)(iv). In addition, because the criteria for a borrower to be considered temporarily totally disabled differs from the criteria necessary for the borrower to receive a deferment based on the condition of the borrower's spouse or dependent, to include the three-year maximum in the definition could cause unnecessary confusion. For example, the period for which a borrower may receive a deferment based on his or her own total temporary disability, is limited to a reasonable period to recover from an injury or illness up to 3 years. However, a total temporary disability deferment based on a spouse's or dependant's condition is contingent only upon whether the condition is such that the spouse or dependent "during a period of injury or illness of not less than 3 months, requires continuous nursing or similar services." See section 435(g)(2) of the Act.

Changes: None.

Totally and Permanently Disabled

Comment: Many commenters objected to the Secretary further restricting the conditions under which a borrower may receive a loan repayment cancellation by incorporating the phrase "or attend school" in the definition of "totally and permanently disabled."

Discussion: The Secretary does not believe that the phrase "or attend school" further restricts the conditions to receive a loan repayment cancellation for a borrower who is totally and permanently disabled. The Secretary notes that section 435(g) of the Act defines "temporarily and totally disabled" as an individual who is unable to work or attend school. The Secretary does not believe it was the intent of Congress to allow loan cancellations to be based on less restrictive requirements than those required by statute to receive such a deferment.

Changes: None.

Undergraduate Student

Comment: A few commenters recommended that the Secretary redefine the term "undergraduate student." The commenters recommended deleting the phrase "designed to lead to a first degree" because they believe it might be misinterpreted. They pointed out that a baccalaureate degree could be a second degree for a student who previously received an associate's degree and that a student seeking a second baccalaureate degree is still considered to be an undergraduate student. Another commenter objected to considering a student in "any other length program" as an undergraduate student only for the first four academic years. The commenter was concerned that students enrolled in short-term vocational programs would be considered graduate students if they were enrolled for more than four of the school's academic years. The commenter also pointed out that a student who took longer than four years to complete a baccalaureate degree would be considered a graduate student after the fourth year.

Discussion: The Secretary agrees with the commenters that the proposed definition may be misinterpreted. The Secretary did not intend that a student enrolled in a succession of short-term vocational programs that extend beyond four of the school's academic years be considered a graduate student. The Secretary also did not intend that a program of study at or below the baccalaureate level that is designed to lead to a degree or certificate at or below the baccalaureate level could be considered a graduate program. The Secretary also agrees that the language "leads to a first degree" also lends itself to differing interpretations. The Secretary intends that a student enrolled in a second baccalaureate degree program or in a first baccalaureate degree program following completion of a certificate, diploma, or associate's degree program be considered an undergraduate student.

Changes: The definition of "undergraduate student" has been revised to include a student who is enrolled at a school in a program of study at or below the baccalaureate level that is designed to lead to a degree or certificate at or below the baccalaureate level and that normally is completed in four academic years or less.

Section 682.201 Eligible Borrowers

Section 682.201(a)

Comment: Many commenters believed that since proposed § 682.201(a) did not expressly state that a borrower must provide his or her social security number as a condition for Stafford or SLS loan eligibility, a social security number no longer was required. The commenters indicated that without a social security number, their skip-tracing, credit-bureau reporting, and other collection activities would be impaired significantly.

Discussion: Although proposed § 682.201(a) does not expressly require a borrower to provide his or her social security number as an eligibility requirement for a Stafford or an SLS loan, it does require that the borrower meet the eligibility requirements contained in 34 CFR part 668. The provisions of 34 CFR 668.32(a)(1) require the borrower to report his or her social security number to the lender on the statement of educational purpose. The Secretary does not believe that it is necessary to repeat this requirement in the FFEL program regulations as it is required in the regulations governing all the student financial assistance programs authorized under title IV of the Act.

Changes: None.

Section 682.201(a)(2)

Comment: Many commenters objected to including incarcerated students in § 682.201(a) as eligible borrowers. The commenters argued that due to the difficulty involved in working with correctional institutions to acquire an "unconditional release date," all of those students should be ineligible until they no longer are incarcerated. Several commenters also noted that incarcerated borrowers are likely to encounter difficulty locating employment, thus making it unwise, and not in the best interest of the FFEL programs, to make loans to those students.

Discussion: The 1992 Amendments now prohibit incarcerated students from receiving title IV student loans.

Changes: The provision providing for the eligibility of incarcerated students has been deleted.

Section 682.201(a)(3)

Comment: Several commenters suggested that the Secretary amend the requirement that a borrower have his or her need for a Stafford loan determined,

and if determined to have need file an application for a Stafford loan, before being determined eligible for an SLS loan. The commenters recommended that the Secretary codify policy guidance provided in Dear Colleague Letter GEN–88–34 that exempted from this requirement borrowers who have need of less than $200.

Discussion: The Secretary agrees with the commenters that an applicant for an SLS loan should not be required to file an application for a Stafford loan if the borrower has need of less than $200. The Secretary believes this exemption is consistent with section 428(j) of the Act, which provides that a lender of last resort is not required to make a Stafford loan to a borrower who has need of less than $200.

Changes: A change has been made in what now appears as § 682.201(a)(2) of the regulations. The Secretary has revised the definition of "eligible borrower" to provide that a borrower who has need of less than $200 is not required to file an application for a Stafford loan before applying for an SLS loan.

Section 682.201(a)(4)

Comment: Many commenters suggested that the Secretary define or itemize the exceptional circumstances under which a dependent undergraduate student's parents are likely to be precluded from borrowing under the PLUS program as a way to determine whether the student is eligible for an SLS loan.

Discussion: The Secretary believes that a restrictive list of the criteria for determining a dependent undergraduate student's eligibility for an SLS loan should not be included in the regulations because exceptional circumstances might arise that are not covered by the regulations. The Secretary believes that the most equitable way to administer this provision is by providing examples of exceptional circumstances in the regulations while giving the financial aid administrator the discretion to determine, on a case-by-case basis, if other equally acceptable exceptional circumstances exist. Examples of exceptional circumstances include, but are not limited to (1) situations in which the parent is denied a PLUS loan because the parent receives public assistance; (2) the parent is totally and permanently disabled and receives only disability benefits as income; (3) the parent is incarcerated; or (4) the parent is unable to borrow because his or her whereabouts are unknown. Under no circumstances may a financial aid administrator certify a dependent undergraduate student for an SLS loan if the student's parents refuse to borrow a PLUS loan and no exceptional circumstances exist.

Changes: A change has been made in what now appears in § 682.201(a)(3) of the regulations. The Secretary has revised the regulations to incorporate examples of exceptional circumstances that may be used to determine a dependent undergraduate student's eligibility for an SLS loan.

Section 682.201(a)(5)

Comment: Several commenters objected to the proposal to require, as a condition to receive additional FFEL program loans, that a borrower reaffirm a FFEL debt that previously was canceled due to the borrower's total and permanent disability or was discharged in bankruptcy. These commenters suggested that a person who had become disabled may need additional training to be able to secure gainful employment. They also believe the policy was inconsistent with the "fresh start" principle of consumer bankruptcy and the reaffirmation procedures in section 524 of the Bankruptcy Code. The commenters suggested that a borrower who had his or her loan discharged in bankruptcy on grounds of hardship may need to return to school to acquire the skills necessary to secure gainful employment and that forcing the individual to reaffirm prior debts would be a disincentive to returning to school.

Discussion: The Secretary believes that the requirement that a borrower reaffirm a FFEL debt previously canceled is consistent with the principles underlying 34 CFR 668.7(a)(7) regarding the eligibility of defaulted borrowers—e.g., that a borrower who has not satisfied a previous FFEL debt, for whatever reason, should not receive new loans. Furthermore, the Secretary believes that a borrower who has benefitted from having all or part of a loan unilaterally written-off by the Secretary or a guaranty agency should be required to reaffirm the written-off debt before receiving additional Title IV loans.

Changes: A change has been made in what now appears in § 682.201(a)(4) of the regulations. The regulations have been revised to include a provision to require a borrower to reaffirm any FFEL program debt previously written off before receiving additional FFELs.

Section 682.201(c)

Comment: One commenter suggested that the Secretary revise the criteria under which a loan may be consolidated in a Consolidation loan. The commenter suggested that a borrower be allowed to consolidate a loan that is more than 90-days delinquent at the time the Consolidation loan is made rather than requiring that a loan not be more than 90-days delinquent at the time of application for the Consolidation loan. Another commenter recommended that the Secretary permit a borrower who is more than 90-days delinquent on a loan to borrow under the Consolidation loan program to prevent default. The commenter suggested offering this option to borrowers as part of the supplemental preclaims assistance (SPA) effort.

Discussion: The Secretary's proposed regulations governing Consolidation loan eligibility in § 682.201(c) were consistent with former section 428C(a)(3)(A)(ii) of the Act, which stipulated that, to be eligible for loan consolidation, a borrower may not be more than 90-days delinquent on a loan to be consolidated at the time the borrower submits an application for a Consolidation loan. However, the 1992 Amendments changed section 428C(a)(3)(A)(ii) of the Act to delete the "90-day delinquent" provision and provide for the eligibility of a delinquent or defaulted borrower who will re-enter repayment through loan consolidation.

Changes: The regulations have been revised to reflect the change in the definition of eligible borrower for Consolidation loans made by the 1992 Amendments.

Section 682.202—Permissible Charges by Lenders to Borrowers

Comment: One commenter suggested that the Secretary eliminate the words "by lenders" in the title because interest may be charged, interest may be capitalized, and late charges or collection charges or both may be assessed by a guaranty agency after it pays a default claim on a loan. The commenter stated that it would be useful to make the agency's authority to assess these charges explicit in the title of this section.

Discussion: The Secretary does not agree that the title of this section of the regulations should be revised so as to clarify a guaranty agency's authority to assess a borrower these charges because not all the costs listed in the regulations (i.e., origination fees and refinancing fees) are charged by guaranty agencies. The Secretary also believes that an agency's authority to assess collection charges and capitalize interest are adequately addressed elsewhere in the regulations.

Changes: None.

Section 682.202(a)

Comment: Many commenters suggested that the interest rate on a Stafford loan with an 8 percent interest rate should increase to 10 percent under proposed § 682.202(a)(1)(i)(D) if a default claim is paid on the loan after the repayment period begins but before the 4-year period elapses that dictates when the interest rate changes to 10 percent.

Discussion: Section 427A(d) of the Act only authorizes a change in the interest rate at the end of four years after the beginning of repayment, even if a default claim has been paid on the loan.

Changes: None.

Comment: Many commenters suggested that § 682.202(a)(5) of the NPRM should be modified to reflect that lenders may charge an actual interest rate on a Consolidation loan that is lower than the interest rate calculated under section 428C of the Act.

Discussion: The NPRM appears to prohibit a lender from charging a lesser interest rate than the interest rate calculated under section 428C of the Act. However, section 427A(f) of the Act clearly states that a lender may charge a lesser rate than the one specified in section 428C of the Act.

Changes: A change has been made. The regulations have been revised to clarify that a lender may charge a lower interest rate on a Consolidated loan than the rate specified in section 428C of the Act.

Comment: Many commenters suggested that a provision should be added to the regulations for variable interest rate loans that are based on the 91-day Treasury bill rate plus 3.25 percent that changes each January 1.

Discussion: A number of variable interest rate PLUS and SLS loans made after the enactment of the 1986 Amendments but before the enactment of the Technical Amendments remain subject to a calendar-year adjustment of the variable interest rate based on the 91-day Treasury bill method that existed in section 427A(c)(4) of the Act during this period. Such a loan remains subject to this variable-rate adjustment, as stated in the borrower's promissory note, for the life of the loan unless the borrower chooses to refinance under the current interest rate provisions. If a borrower whose interest rate changes each January 1 refinances his or her loan, that loan may not revert back to the interest rate provisions applied to the borrower's original loan.

Changes: A change has been made. The final regulations have been revised to reflect the interest rate provisions for those borrowers whose interest rates change each January 1.

Comment: A number of commenters noted that the 12 percent ceiling on variable interest rate PLUS and SLS loans was not mentioned in the proposed regulations.

Discussion: The Secretary agrees with the commenters that the provisions of section 427A(c)(4) of the Act related to the variable interest rate ceiling for PLUS and SLS loans should be included in the regulations.

Changes: A change has been made. The final regulations will clarify that a 12 percent ceiling applies to variable-rate PLUS and SLS loans. The Secretary has also amended the regulations to reflect the new variable interest rate ceilings of 10 percent for PLUS loans disbursed on or after October 1, 1992 and 11 percent for SLS loans disbursed on or after October 1, 1992, resulting from the 1992 amendments.

Section 682.202(b)

Comment: Many commenters suggested that the regulations should be modified to provide for the capitalization of interest from the beginning of the repayment period until the first payment due date when the lender receives late notification that the borrower has dropped below half-time enrollment. The commenters also suggested that the regulations permit capitalization of interest accruing on SLS loans during periods of student deferment and on nonsubsidized Stafford loans during periods of student deferment and during the grace period if the borrower agreed to make payments but (1) failed to do so, and (2) failed to respond to a notice of delinquency stating that the lender plans to capitalize the interest accruing during the remainder of the deferment period.

Discussion: Previous guidance from the Department in Dear Guaranty Agency Director Letter 88–G–138 and Dear Colleague Letter 90–G–175 allowed lenders to capitalize interest in these instances. Many program participants have adopted these practices. While the Secretary remains concerned about the effects of capitalization on borrowers, the Secretary agrees that a borrower's failure to honor his or her obligation to make a promised payment or to respond to a delinquency notice sent by the lender warrants this approach.

Changes: A change has been made. Section 682.202(b) has been modified to reflect the Department's decision to permit lenders to capitalize interest under these circumstances.

Section 682.202(c)(4)

Comment: Many commenters suggested that the phrase "the portion of loan proceeds which are" be deleted and replaced with the phrase "any full disbursement". The commenters argued that the proposal does not agree with earlier guidance provided by the Department in a Dear Colleague letter. They believe the suggested change will ensure that only full disbursements returned to the lender or not delivered to the borrower will trigger a refund of origination fees.

Discussion: The Secretary agrees with the commenters. Guidance provided by the Department in Dear Colleague Letter Gen–90–93, Q&A 78, stated that if an institution negotiated the original loan check because the student was eligible for a portion of the original disbursement, the lender was not required to refund the amount of the origination fee attributable to the portion of the loan returned to the lender for which the student is no longer eligible. If the student is ineligible for the entire amount disbursed or the institution otherwise chooses to return the original loan check and request a revised check, the lender must refund the amount of the insurance premium and origination fee that is attributable to the amount of the loan for which the student is no longer eligible to the student's account.

Changes: A change has been made in the final regulations in what is now § 682.202(c)(5) to reflect the guidance provided in Dear Colleague Letter Gen–90–93, Q&A 78.

Section 682.202(e)

Comment: A few commenters suggested changing "a lender" to "any lender" to prevent misinterpretation of the one-time refinancing fee. The commenters believe this clarification is necessary because there may be more than one lender involved in refinancing.

Discussion: The Secretary does not believe that the regulations preclude a lender, or more than one lender, from charging a borrower a $100 fee for separate refinancing transactions. For example, if a borrower refinances different loans through the same lender over a period of years, the lender may charge the borrower a fee for each refinancing transaction. Similarly, if a borrower refinances different loans through different lenders, each lender refinancing a loan for the borrower may assess the borrower the $100 fee. The regulations permit only the lender refinancing the loan to charge the borrower the fee.

Changes: None.

Section 682.202(g)

Comment: Several commenters objected to proposed § 682.202(g),

which would permit lenders to require borrowers to pay the costs normally associated with routine collection activities.

Discussion: The Secretary agrees with the commenters. The Secretary expects lenders to cover the routine collection costs associated with preparing letters and notices or with making local and long-distance telephone contact with the borrower through earnings made on the loans. The Secretary will allow only extraordinary costs, such as telegrams, attorney's fees, and court costs to be passed along to the borrower.

Changes: A change has been made. The final regulations have been revised to contain the same language as current regulations except for the addition of a reference to long-distance telephone calls, which the Secretary believes are routine collection costs.

Section 682.204 Maximum Loan Amounts

Comment: Several commenters asked the Secretary to clarify that annual loan amounts for a Stafford loan borrower are based on the borrower's academic standing in the program in which he or she currently is enrolled.

Discussion: The Secretary agrees with the commenters. If a borrower has received a baccalaureate degree and then subsequently enrolls in a second baccalaureate program, that borrower is eligible only for $2,625 annually until he or she is considered a third-year student in the second program.

Changes: The regulations have been revised to reflect that the Stafford loan annual amounts are based on the borrower's academic standing in the program in which he or she is currently enrolled.

Comment: A few commenters recommended that "a borrower" should be revised to "each borrower" in § 682.204(c) to clarify that the PLUS annual loan limit does not restrict a parent from borrowing for more than one dependent.

Discussion: The Secretary agrees with the commenters' recommendation. The Secretary also notes that the 1992 Amendments repealed the annual and aggregate limits on the amount a parent may borrow in the PLUS programs, for loans on which the first disbursement is made on or after July 1, 1993.

Changes: The regulations have been revised to clarify that a parent may borrow up to $4,000 for each dependent student in the family for any academic year and up to a total of $20,000 for each dependent student.

Comment: A number of commenters recommended deleting the provision to attribute Consolidation loan amounts to the borrower's Stafford, SLS, and PLUS loan maximums in proportion to the amounts of the underlying loans consolidated. They indicated that neither lenders nor guarantors could be expected to track this data. They argued that it is unreasonable to expect borrowers to keep track of the information and report it to subsequent FFEL lenders. Furthermore, they believe no enforcement mechanisms exist for carrying out this provision.

Discussion: The Secretary disagrees. The Secretary believes that lenders are able, through the certified statement provided by other lenders during the consolidation process, to determine the amounts of underlying loans that have been consolidated. Guaranty agencies must require their lenders to submit data that allows the agency to track a borrower's aggregate loan amounts, in accordance with section 428C(a)(3)(B)(ii) of the Act and these regulations. A guaranty agency's ED form 1130 report submissions will be subject to review by the Secretary to ensure compliance with this provision.

Changes: None.

Section 682.205 Disclosure Requirements for Lenders

Comment: Some commenters suggested that this section be modified to prohibit lenders from charging the borrower for the costs incurred in making required disclosures concerning the loan.

Discussion: Lenders are required to make certain disclosures to borrowers before they enter repayment. However, the cost of making these disclosures is considered a normal cost of doing business and may not be charged to the borrower under § 682.202 and is prohibited under § 682.205(d).

Changes: None.

Section 682.205(a)(1)

Comment: Commenters overwhelmingly objected to the requirement that a borrower must provide the lender with a written acknowledgement of his or her receipt and understanding of the disclosure information that the lender is required to provide the borrower before the lender may disburse the loan. The commenters believe that imposing this additional step after the lender provides the required disclosure information and before the loan disbursement is made will be extremely burdensome for the school, the lender, and the borrower. They argued (1) that the requirement would impose another item for lenders to monitor; (2) that borrowers' signed acknowledgements would not be received in a timely fashion, which would result in the expiration of loan guarantees and requiring borrowers to reapply; and (3) that students' and schools' receipt of loans would be delayed significantly. School commenters noted that the terms and conditions and other information related to the loan are reviewed with new borrowers during the required initial counseling prior to delivery of the loan proceeds and that this provides the borrower with an opportunity to cancel the loan.

Discussion: The Secretary understands that requiring a signed acknowledgement of the initial disclosure prior to loan disbursement could seriously impede the delivery of student loans and frustrate the goal of electronic funds transfer, which the Secretary supports. The Secretary also agrees that confirmation of a borrower's understanding of the terms and conditions of the loan prior to the borrower incurring the debt can be handled successfully during required initial counseling.

Changes: The Secretary has deleted the proposal to require the borrower to provide the lender with a signed acknowledgement of the initial disclosure.

Section 682.205(a)(2)(xvii)

Comment: Some commenters suggested that paragraph (a)(2)(xvii) should specify that the use of a reference table of estimated repayment amounts in disclosing an estimate of a borrower's projected monthly payment is acceptable as stated previously by ED.

Discussion: The Secretary agrees with the commenters that this paragraph should codify existing policy guidance provided in Dear Colleague Letter 86–G–97 that allows a table to be used in disclosing a borrower's estimated cumulative monthly payment.

Changes: A change has been made. The regulations have been revised to adopt this suggestion.

Section 682.205(b)(3)

Comment: A number of commenters suggested that the language of this provision regarding the statement of borrower's rights and responsibilities is misleading and could be construed to imply that borrowers need not repay loans made by school lenders.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has deleted that language to prevent any potential misunderstanding regarding the repayment obligation of borrowers.

Section 682.205(d)

Comment: One commenter recommended retaining the language from current § 682.205(c) that requires the lender to provide the information that is required to be disclosed by this section at no cost to the borrower.

Discussion: The Secretary agrees with the commenter that this information should be provided to the borrower without charge.

Changes: Current § 682.205(c) has been restored to the regulations as § 682.205(d).

Section 682.206 Due Diligence in Making a Loan

Section 682.206(a)(1)

Comment: Some commenters suggested that § 682.206(a)(1) assumes that there must be a separate application or promissory note or both for each period of enrollment for which FFEL program loan funds are sought. They believe this approach would preclude the possible use of a single, open-ended promissory note for a borrower's entire undergraduate and graduate loan maximum, the use of the Application for Federal Student AID (AFSA) and other approved aid applications, and the use of electronically submitted application data to guarantee and disburse loans. The commenters objected to any regulatory restrictions that would prevent establishing new processing procedures to reduce the administrative burden on applicants, schools, lenders, and guarantors.

Discussion: The Secretary does not believe that this section precludes the possible use of a single application or promissory note or both or the use of electronically transmitted data. The Secretary actively encourages examination of the use of any approach that may streamline and improve the student aid delivery system. In working with the community in the development of common forms, the Secretary will examine the use of electronically submitted data, as well as other concepts.

Changes: None.

Section 682.206(b)

Comment: One commenter suggested adding a new provision prohibiting a lender, school, or guaranty agency from obtaining a borrower's power of attorney to complete a FFEL loan application on behalf of the borrower. The commenter argued that it is unreasonable to expect a student to understand the rights and obligations of a borrower of a FFEL program loan if the school or another party completes the application or promissory note.

Discussion: The regulations prohibit the use of a power of attorney to endorse a loan check or to approve the transfer of loan proceeds to the borrower's account using electronic funds transfer unless the borrower is enrolled in a study-abroad program approved for credit at the home institution at which the student is enrolled. See § 682.207(b)(2). The Secretary believes that this restriction provides sufficient protection for the borrower. The Secretary also believes that the use of power of attorney to complete an application or promissory note is useful for the student in some circumstances and should not be totally precluded. For example, power of attorney was used extensively for completing applications by borrowers serving in Operation Desert Shield or Operation Desert Storm.

Changes: None.

Section 682.206(c)

Comment: Several commenters recommended that § 682.206(c) of the regulations be revised to specify that in determining a borrower's eligibility for a loan amount, the lender may not approve a loan for more than the borrower requests or shows financial need, for, or the annual loan maximum. The commenters cited many instances of borrower requests for loans less than the annual loan maximum being ignored. They also believe that it should be emphasized that the lender is responsible for monitoring the borrower's approved loan amount based on the borrower's remaining financial need and annual loan maximums. The commenters believe this is particularly critical in processing multiple applications for a borrower during a given academic year and in light of the format of many loan applications.

Discussion: The Secretary agrees that a lender must follow the borrower's instructions regarding the loan amount as requested. The Secretary believes that, although it is the school's primary responsibility as part of the certification process to monitor a borrower eligibility based on annual and aggregate loan maximums, the lender also has a responsibility in making a loan to ensure that a borrower does not receive loan proceeds in excess of the annual and aggregate maximums.

Changes: A new section has been added to the regulations to specify that a lender may not approve a loan amount that is more than the borrower requests or qualifies for based on unmet financial need or annual loan maximums.

Comment: One commenter stated that this section assumes that all schools certify Cost of Attendance and Estimated Financial Assistance on a paper application form that is submitted to the lender. The commenter pointed out that in a number of automated application processes already in place, the data information is transmitted electronically by the school. The commenter recommended that the first sentence of the section be revised to require the lender to review data on the student's cost of attendance and estimated financial assistance provided by the school. Another commenter noted that in many application processing systems the guaranty agency, rather that the lender, receives the data *via* paper application or electronic transmission. The guaranty agency is the party that reviews the data to determine the loan amount based on annual and aggregate loan limits before issuing a guarantee and notifying the lender. The commenters recommended revising this provision of the regulations to allow the lender or guaranty agency to fulfill this function.

Discussion: The Secretary agrees with the commenter that the regulations should reflect the use of electronic data transmission in the application process. The Secretary also understands that in some application-processing systems the guaranty agency reviews the data before issuing a guarantee. The Secretary does not intend, through the regulations, to preclude a guaranty agency from operating in this manner on behalf of lenders. However, the lender is responsible for reviewing the application and determining the loan amount pursuant to § 682.206 of the regulations. In the situation described by the commenters, the guaranty agency acts as the agent of the lender in its receipt and review of application data and its determination of borrower eligibility. Therefore, the Secretary does not believe that the regulations should be changed to refer to guaranty agencies specifically.

Changes: The regulations have been changed to clarify that applicant and loan certification data may be provided electronically.

Section 682.206(e)

Comment: Many commenters opposed the requirement in the proposed regulations that prohibited a guaranty agency from requiring cosigners for a Stafford or SLS loan. The commenters noted that nothing in the Act supported such a prohibition.

Discussion: The Secretary agrees with the commenters.

Changes: The prohibition against a guaranty agency requiring a lender to obtain security or endorsement on a

Stafford or SLS loan has been deleted from the final regulations.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(b)(1)(i)(B)

Comment: A commenter suggested that regulations governing loan disbursement should require the lender to comply with the disbursement schedule provided by the school or with the recommended disbursement dates provided by the school for a particular borrower on the loan application.

Discussion: Under section 428G(c)(1) of the Act, the lender must follow the disbursement schedule provided by the school under section 428(a)(1)(A)(i)(III).

Changes: The regulations have been revised to provide that a lender must disburse a Stafford or SLS loan in accordance with a disbursement schedule provided by the school.

Section 682.207(b)(1)(ii)(A)

Comment: One commenter suggested that all FFEL checks should be co-payable, including PLUS. The commenter believes that the school should have the opportunity to verify the eligibility of the student on whose behalf a parent is borrowing a PLUS loan before the parent receives the loan proceeds.

Discussion: As a result of the 1992 Amendments, section 428B(c) of the Act now requires that PLUS checks be made co-payable to the borrower and the school. However, in regard to the other FFEL programs, section 428(b)(1)(N) of the Act prohibits the Secretary from requiring co-payable checks.

Changes: The regulations have been revised to require PLUS checks to be made co-payable to the borrower and the school.

Comment: Many commenters supported the Secretary's deletion of the phrase "other written approval" from the regulations because they believe it is ambiguous. One commenter supported the deletion of the phrase and also noted that this paragraph allows co-payable checks only if the guarantor requires co-payable checks. The commenter recommended that since many lenders make loans guaranteed by more than one guarantor, it may be more appropriate to allow the co-payable decision to be made by the lender rather than the guaranty agency. Several other commenters asked whether the deletion of "or other written approval" would prevent delivery of the borrower's loan process through the use of direct deposit of a borrower's loan funds.

Discussion: The Secretary notes that the deletion of the phrase "or other written approval" would prevent the delivery of loan proceeds through the use of direct deposit into a borrower's account at a financial institution because the borrower's signature on a direct deposit form does not constitute a personal endorsement. Because the Secretary believes that the use of the direct-deposit delivery mechanism is important for borrowers who are attending classes at another institution under an agreement with the borrowers' home institution, he has decided to revise the regulations to include the phrase "or other written certification." This phrase, which is consistent with the language of section 428(b)(1)(N) of the Act, is intended to permit the use of direct deposit based on the borrower's written certification on a direct deposit form. The Secretary agrees that a lender of a Stafford or SLS loan should be allowed to establish a policy of making Stafford or SLS loan checks co-payable if co-payable checks are not required by the guaranty agency and the guaranty agency has no objection to the lender adopting such a policy.

Changes: The regulations have been revised to include the phrase "or other written certification" to provide for the use of direct deposit of a borrower's funds into his or her account at a financial institution. The regulations also have been revised to allow a lender to establish a policy of making Stafford or SLS checks co-payable if this is not required by the guaranty agency.

Section 681.207(b)(1)(ii)(B)

Comments: Several commenters supported the Department's proposed requirement that the borrower approve the release of loan proceeds by electronic funds transfer to an account that requires written approval by the borrower for the release of those funds from the account. However, the commenters did not agree with the requirement of a separate "written" approval statement from the borrower. The commenters suggested that the term "written" be deleted and that the phrase "negotiated in accordance with § 682.604(c)(3)(ii)" be added at the end of the provision. They believe that the additional language would clarify that the school is required to document the receipt and application of the funds to the borrower's account with the school. They recommended that the requirement that the borrower approve the release of loan proceeds by electronic funds transfer be moved from § 682.207 to § 682.604 to clarify that the responsibility for obtaining the borrower's authorization to release funds and maintaining evidence of the authorization rests with the school.

Discussion: The Secretary believes that the requirement that the borrower give written approval for release of the loan proceeds is consistent with the statutory requirement that funds be disbursed in a manner that requires "the endorsement or other certification by the student." See section 428(b)(1)(N) of the Act. The Secretary has clarified the school's responsibility to secure and retain the borrower's written authorization in § 682.610(b)(9)(iv).

Changes: None.

Comment: A number of commenters objected to the proposed requirement that funds disbursed by electronic funds transfer be disbursed to a restricted account maintained by the school from which funds cannot be released without the borrower's written approval.

Discussion: Section 428(b)(1)(N) of the Act requires that funds are to be disbursed to students by a means that "requires the endorsement or other certification by such student." The Secretary has decided that a single written approval for each type of loan (e.g., Stafford or SLS) is sufficient for all disbursements. This written approval to release loan proceeds from the school's restricted account must be a separate statement and may not be incorporated into the loan application.

Changes: None.

Section 682.207(b)(1)(v)(B)

Comments: A few commenters expressed concern about the proposed requirement governing loan disbursement to a borrower enrolled at a foreign institution as part of a program of study at a school located in the United States. Under these circumstances, the loan check must be disbursed to the school in the United States and the borrower's endorsement on the loan check must be secured before the loan proceeds can be applied to the borrower's account with the school. The commenters understand that, under current regulations, the school has the option of directly depositing the check into the borrower's account at a financial institution. The borrower then pays the school from that account. The commenter recommended that the proposed regulations be revised to allow the school to secure the borrower's approval for the use of direct deposit earlier than 30 days before the date the borrower is scheduled to enroll because most students involved in these programs generally have left the country and are in school by the time loan funds are disbursed.

Discussion: The 1992 Amendments changed section 428(b)(1)(N) of the Act to provide that in the case of a student in a study-abroad program approved for

credit at the home institution at which the student is enrolled, the lender must, at the borrower's request, disburse the loan directly to the borrower. Alternatively, at the borrower's request, the lender shall disburse the loan proceeds to the borrower's home institution if the borrower provides his or her power-of-attorney to an individual not affiliated with the institution to endorse the borrower's check or complete an EFT authorization. The endorsement of the loan checks or completion of an EFT authorization by an individual under a power-of-attorney must be done according to the requirements contained in § 682.604(c)(2) and (3). The Secretary believes that these changes to the disbursement and delivery provisions for students studying abroad under the auspices of the home institution do not prohibit the use of the option of directly depositing the borrower's loan proceeds into the borrower's account at a financial institution as previously authorized. For borrowers who are not first-time borrowers subject to delayed delivery of Stafford and SLS loan proceeds, nothing contained in § 682.604(c)(2) prevents the school from securing a borrower's approval for direct deposit of a loan check into the borrower's account at a financial institution earlier than 30 days before the first day of classes in the period of enrollment, provided the borrower is registered as a student. The actual delivery of the loan proceeds, however, must be made pursuant to § 682.604(d) of the regulations.

Changes: None.

Section 682.207(d)(2)

Comment: Many commenters objected strenuously to the proposal to limit the amount of a late disbursement only to the amount needed to cover a student's outstanding charges at the institution. The commenters argued that this creates an unfair economic burden on the student because the student's demonstrated financial need for the period of enrollment for which the loan is intended is based on institutional and non-institutional charges and is not reduced after the last day of classes. The commenters argued that the proposed regulations are not consistent with the disbursement of late awards in the other Title IV programs and do not recognize that a student may have other outstanding debts that resulted from the student borrowing to finance his or her attendance at the school (e.g., paying tuition with a credit card, using private loans for living expenses, etc.).

Discussion: The Secretary agrees with the commenters that a lender making a late disbursement of FFEL loan proceeds should be allowed to recognize more than outstanding institutional charges if the borrower can document additional educational costs he or she incurred that are included normally in a borrower's cost of attendance under section 472 of the Act. The school would be expected to collect and retain documentation from the student supporting the amount of the late disbursement delivered to the borrower. Excess loan proceeds must be refunded by the school to the lender.

Changes: The regulations have been revised to allow a lender to make a late disbursement based on the borrower's documented educational expenses for the period of enrollment if those expenses include costs that are normally included in a borrower's cost of attendance under section 472 of the Act.

Comment: A number of commenters agree with the Secretary that the late disbursement policy needs to be standardized. However, they believe the language of the NPRM is unnecessarily complex and should be simplified. They recommended that lenders be allowed to disburse funds up to 60 days after the student has ceased to be enrolled on at least a half-time basis without express guaranty agency approval. Other commenters believe that guaranty agencies should be allowed to establish procedures for requesting and approving late disbursements according to the needs of their program participants and systems.

Discussion: The Secretary agrees with the commenters that the late disbursement policy needs to be simplified and that the guaranty agency should have the option of allowing lenders to make late disbursements. The Secretary believes that, if a guaranty agency does not prohibit late disbursements, a lender should be allowed to make a late disbursement within 60 days after the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended without prior approval of the agency. The Secretary also believes that if the guaranty agency and lender have informed the school that late disbursements are permitted, a school should be able to deliver the loan proceeds to the borrower without obtaining the guaranty agency's or lender's approval on a case-by-case basis.

Changes: The regulations have been revised to provide that if the guaranty agency does not prohibit late disbursements, the lender may disburse loan proceeds within 60 days after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended. The Secretary has also revised § 682.604(e) to correspond with the changes made to § 682.208(d) by allowing a school to deliver loan proceeds received within 60 days of the earlier of the dates specified in § 682.604(e)(1) unless the guaranty agency or lender have informed the school that late disbursements are prohibited.

Section 682.208 Due Diligence in Servicing a Loan

Comment: One commenter recommended that the Secretary regulate servicers as many loans are serviced by third-party servicers.

Discussion: The 1992 Amendments specifically authorized the Secretary to regulate third-party servicers. The Secretary intends to develop these regulations through the negotiated rulemaking process for rules implementing the 1992 Amendments.

Changes: None.

Section 682.208(b)

Comment: Several commenters recommended changing the time period required for credit bureau reporting from 90 days to 150 days of a disbursement. They stated that making credit bureau reporting consistent with the 120-day cancellation rule will prevent many instances of unnecessary reporting in which information submitted to meet the 90-day reporting deadline must be corrected because a loan is subsequently canceled by the 120th day.

Discussion: While it is true that a loan is canceled if the amount disbursed is repaid or the check is not cashed within 120 days, the Secretary believes that 150 days is too long and that the 90-day period is late enough in the disbursement process to prevent the unnecessary reporting of most canceled disbursements.

Changes: None.

Comment: Several commenters indicated that reporting a borrower's delinquency before the 90th day of delinquency substantially increases the unnecessary reporting of borrowers who are in the process of remitting payment or securing the documentation to support a deferment or forbearance. They recommended that reporting the extent of the borrower's delinquency should occur at or after the 90th day of delinquency.

Discussion: The Secretary believes that it would be inconsistent with the intent of Congress and the purpose of credit bureau reporting if only

borrowers who are delinquent on their loans by 90 days or more are reported to credit bureaus. The fact that a borrower consistently is late in remitting payments is relevant information to those entities that use credit bureau information. In addition, although the Secretary understands that there might be a delay in the submission of documentation supporting a borrower's eligibility for a forbearance or deferment, he nevertheless believes that the borrower remains responsible for making payments if he or she is unable to submit supporting documentation promptly.

Changes: None.

Section 682.208(c)(1)

Comment: Several commenters suggested that this section be revised to require that a lender respond to any inquiries about a loan from a borrower or endorser within a reasonable time period rather than within the proposed 30 days. They believe that in many cases 30 days is not enough time to research properly a borrower's account, especially if the research involves the originating lender, system transfers, and several subsequent holders. They also believe that in some cases, such as deferment processing, 30 days may be too much time. They recommended that the regulations provide that responses be made within a reasonable time, thus allowing guaranty agencies the flexibility to establish reasonable response times depending on the nature of the inquiry.

Discussion: The Secretary wishes to clarify that the lender's response to a borrower's inquiry by the 30-day deadline may be in the form of a written interim response. The Secretary recognizes that a lender may need more time to research some cases, but believes that it is reasonable to expect some form of response be given to the borrower within this time period.

Changes: None.

Section 682.208(d)

Comment: Many commenters opposed the Secretary's effort in the NPRM to encourage lenders to offer graduated or income-sensitive repayment schedules, citing the increased costs the borrower incurs over time with those schedules. On the other hand, many other commenters applauded the Secretary's efforts, saying that such an initiative shows sensitivity to the fact that a borrower's income and ability to repay is generally less at the beginning of the repayment period than at the end.

Discussion: The Secretary recognizes that a borrower will pay less over the life of a loan with a level repayment schedule than with a graduated repayment schedule. However, the Secretary also believes that it is critical to establish a repayment habit with borrowers. A repayment schedule that the borrower views as unrealistic might impede that effort and might, in fact, precipitate a default. Therefore, the Secretary will continue to strongly encourage the use of graduated repayment schedules for old borrowers. The 1992 Amendments amended section 428(b)(1)(E)(i) of the Act to require lenders to offer a graduated or income-sensitive repayment schedule to new borrowers after July 1, 1993.

Changes: None.

Section 682.208(f)

Comment: Several commenters objected to the proposed requirement that a lender make what they believe is a highly subjective evaluation of whether the borrower "knew" or "should have known" that information used to support his or her eligibility was incorrect. The commenters recommended that the regulations be revised to permit a lender to use "substantial facts" to determine whether a borrower has established eligibility for all or part of the loan.

Discussion: The Secretary notes that the proposed requirement that the lender determine whether the borrower "knew" or "should have known" was intended to clarify that the procedures of § 682.412 should be applied only to: (1) Borrowers who provided false or erroneous information to support their eligibility for insurance coverage and the payment of Federal interest benefits on their behalf, and (2) borrowers who received loan proceeds for which they subsequently were determined to be ineligible because they did not attend school for the period of enrollment for which the loans were intended. The Secretary wishes to distinguish these borrowers from those whose ineligibility resulted from an error made by the school in determining borrower eligibility and certifying the loan application or by the lender in making the loan. In clarifying the application of § 682.412, however, the Secretary did not intend to require the lender to take action unless it received information about a borrower that could be substantiated by the lender directly or by the school.

Changes: The regulations have been revised to provide that a lender shall follow the procedures in § 682.412 if it receives information that can be substantiated that the borrower, or, if applicable, the student on whose behalf a parent borrowed, provided false or erroneous data to support his or her loan eligibility or that the borrower received loan proceeds for which he or she became ineligible due to nonattendance.

Section 682.209 Repayment of a Loan

Comment: A commenter suggested there should be a section in this area that addresses combining Stafford loans to allow one payment by the borrower. The commenter also questioned whether loans can be combined in one payment if the loans enter repayment at different times.

Discussion: Nothing in this section prevents a lender from establishing a single repayment schedule for a borrower with multiple FFEL loans. If the lender establishes such a schedule, it must ensure that payments are applied so that each loan is repaid within the 10-year maximum repayment period.

Changes: The Secretary has added language in § 682.208(d) to clarify that a lender may establish a single repayment schedule for all the FFEL loans that the lender holds for a particular borrower.

Section 682.209(a)(3)

Comment: One commenter stated that there is a great deal of confusion surrounding the establishment of the payment due date following a period of authorized deferment or forbearance and recommended that the Secretary provide clarification in this area.

Discussion: The Secretary has decided that a lender may use the 45-day standard in the regulations for establishing a first payment due date for a borrower completing a deferment or forbearance period.

Changes: A change has been made in the regulations to require the lender to establish a first payment due date that is no more than 45 days following the expiration of the borrower's deferment or forbearance period.

Section 682.209(a)(3)(ii)

Comment: Several commenters noted that the regulations state that the first payment on a Stafford loan is due on a date established by the lender that is no more than 45 days following the first day of the month in which the repayment period begins. The commenters noted that this requirement would not be feasible for lenders that have day-specific servicing systems.

Discussion: The Secretary understands that some lenders use day-specific servicing systems and that the 9- and 12-month grace period is calculated on a day-specific basis. For lenders with day-specific systems or with loans that have a 9- to 12-month

grace period, the requirement that the first payment due date be no more than 45 days after the first day of the month in which the repayment period begins could result in that date being considerably sooner than 45 days after the end of the grace period.

Changes: The regulations have been revised to specify that a first payment due date established by the lender must be within 45 days of the end of the grace period or, if the lender learns, after the fact, that the borrower has entered the repayment period, no later than 75 days after the lender learns that the borrower has entered the repayment period.

Section 682.209(a)(4)

Comment: One commenter suggested adding a restriction in the last sentence of § 682.605(b)(3) of the regulations because he felt that the phrase "first failure to submit a lesson" was unclear and subject to misinterpretation.

Discussion: The Secretary agrees with the commenter that the reference to "first failure to submit a lesson" in § 682.209(a)(4) is unclear and might be interpreted to mean that the school may grant more than one restoration to in-school status. Under § 682.605(b)(3), a school may not grant a correspondence student more than one restoration to in-school status after the student fails to submit lessons in accordance with the established schedule.

Changes: The regulations have been changed to reflect that a school may provide a borrower with a one-time restoration to in-school status following the borrower's failure to submit a lesson within the 60-day period after the due date for submission.

Section 682.209(a)(6)

Comments: Many commenters suggested deleting the provision limiting the terms of graduated or income-sensitive repayment schedules. The commenters believe that the Secretary should not prescribe the terms of graduated or income-sensitive repayment schedules because this will limit lenders' use of this optional default management tool.

Discussion: The Secretary believes that the terms imposed on graduated or income-sensitive repayment schedules in § 682.209(a)(6) merely reflect long-standing Departmental policy prohibiting a schedule that includes large balloon payments. The Secretary believes that assisting a borrower in avoiding default early in the repayment period is meaningless if a graduated repayment schedule with unrealistically large payments precipitates a default later in the repayment cycle.

Changes: None.

Section 682.209(a)(7)(i)

Comment: Several commenters recommended deleting the last sentence regarding the 15-year repayment rule for Federally Insured Student Loans (FISLs) made for periods of enrollment before July 1, 1986. They believe this deletion is necessary because the Secretary indicated in the preamble of the NPRM his intention to waive violations of this rule for pre-1986 FISLs.

Discussion: The Secretary wishes to reiterate that the provision still applies and lenders must comply with it. Through his discussion in the preamble of the NPRM, the Secretary simply intended to clarify that he would waive any violation of this provision of the regulations

Changes: None.

Section 682.209(b)

Comment: Several commenters questioned the Secretary's proposed rule on how a borrower's prepayment of a FFEL program loan should be applied. The commenters recommended that the lender should be allowed to apply the prepayment to unpaid accrued interest before it is applied to unpaid principal. Several other commenters argued that not allowing the lender to apply the prepayment to late changes the borrower may have been assessed conflicted with standard banking practice.

Discussion: The Secretary understands that a borrower making a prepayment might have overdue accrued interest or late charges that have been assessed. The Secretary agrees that a lender receiving a prepayment should have the flexibility to apply the prepayment to cover outstanding interest or late charges before applying it to unpaid principal.

Changes: The final regulations have been amended to clarify that the lender may credit the prepayment first to late charges or collection costs, then to outstanding interest, and then to unpaid principal, unless the borrower otherwise specifies that the prepayment be applied to future installments or as a prepayment of principal.

Comment: Many commenters applauded the proposal that would allow a lender to credit prepayment that equal or exceed three full payments against future installment payments. Several commenters felt that lenders should be able to apply any amount received in excess of a full payment against future installments. Still other commenters favored retention of the existing requirement that lenders apply payments in excess of the amount due to reduce outstanding principal because of the financial benefit to the borrower.

Discussion: The Secretary recognizes the financial benefit to the borrower of having outstanding principal on the loan reduced as quickly as possible. The Secretary also believes, however, that a borrower who makes a large payment generally intends it to be used to satisfy future loan repayment installments. The Secretary believes that these regulations identify a realistic payment-amount-threshold that allows a lender to interpret the borrower's intent for a payment to be applied to future repayment installments. The Secretary also has decided that when a borrower makes such a large payment, without specifying how it should be applied, the lender should have the option to apply the payment either to future installments or as a prepayment of principal.

Changes: A change has been made to § 682.209(b)(2) to allow the lender, in the absence of direction from the borrower, to apply a payment amount that equals or exceeds three full payments under the repayment schedule either to future installments or as a prepayment of principal.

Section 682.209(c)(1)

Comment: Several commenters recommended that language be included in the regulations to distinguish between loans that have the $360 minimum annual repayment and loans that have the $600 minimum annual repayment. Several commenters suggested including the applicable dates these minimum annual repayment amounts became effective in the regulations to make the distinction.

Discussion: The minimum annual repayment was increased from $360 to $600 by the Postsecondary Student Assistance Amendments of 1981 (sections 531–540 of Pub. L. 97–35). The Secretary believes that it is unnecessary to include in the final regulations the $360 minimum annual repayment provision as no new loans are effected. All loans to which the $360 minimum annual repayment provision applies include the minimum annual repayment amount as a term of the promissory note.

Changes: None.

Section 682.209(f)(3)

Comment: Many commenters objected to the requirement that the promissory note be sent to the refinancing lender because consumer-banking laws dictate that the paid-in-full note be returned to the borrower. Other commenters objected to the requirement that lenders mail a certification statement to the refinancing lender within three days following receipt of a payment-in-full

due to refinancing. They believe this proposal would require that a separate payment system be developed to identify a refinanced payment. They indicated that these payments generally are processed through a lockbox. Therefore, most lenders are unable to identify a payment as a refinancing payment and would not be able to comply with the requirement.

Discussion: The Secretary proposed that the lender send the borrower's original promissory note to the refinancing lender as an alternate method of certifying that a borrower's fixed-rate loan had been discharged as provided for in section 428A(d)(4) and section 428B(d)(4) of the Act. However, the Secretary understands that the practice of forwarding an original paid-in-full promissory note to a party other than the borrower is contrary to consumer-banking laws and agrees that the use of this proposed option rather than a certification statement might result in the inadvertent loss of the borrower's promissory note. Therefore, the Secretary has decided to allow the use of a copy of the borrower's original promissory note evidencing the loan as the certification statement. The Secretary believes that the refinancing lender must receive timely notification that a borrower's original loan has been discharged. However, he agrees that three business days might be insufficient time for the original lender to apply the loan proceeds to discharge the original loan and mail the refinancing lender a certification to that effect. Although the Secretary recognizes that payments are generally processed through a lockbox system, and that this might make it more difficult to identify a refinancing payment, he believes that lenders must make the system changes necessary to post the payment and provide the required certification statement to the refinancing lender within the specified time limit.

Changes: Proposed § 682.209(f)(3)(i) has been deleted. However, lenders are still required to provide either a copy of the borrower's original promissory note evidencing the loan or a statement to the refinancing lender certifying the discharge of the original loan. See sections 428A(d)(4) and 428B(d)(4) of the Act. The regulations also have been revised to provide lenders with five business days to post a refinancing payment and provide the certification statement to the refinancing lender.

Section 682.209(h)

Comments: Several commenters noted that the regulations did not reflect section 428C(c)(2)(B) of the Act, which provides that unless a Consolidation loan is being used to discharge at least $5,000 of FFEL programs loans, the Consolidation loan must be repaid in not more than 10 years.

Discussion: The Secretary agrees; this provision of the statute inadvertently was not included in the NPRM. Moreover, the 1992 Amendments have changed this section of the statute to require that such a Consolidation loan must be repaid in not more than 12 years.

Changes: The regulations have been revised to include this statutory provision.

Section 682.209(i)(1)

Comment: A number of commenters objected to the proposal that a refund received by a lender from a school should be used to reduce the borrower's outstanding principal. The commenters stated that general accounting principles, as well as their own system requirements, would require that any outstanding interest be satisfied first. Other commenters felt that this requirement should apply only to Stafford loans because interest would have accrued on nonsubsidized Stafford, PLUS, and SLS loans.

Discussion: The Secretary wishes to note that interest accrues on all loans, but the Department pays the interest for certain periods on subsidized Stafford loans. The Secretary views refunds as "unused loan proceeds" that should be credited against the principal of the loan to create the maximum benefit for the borrower.

Changes: None.

Section 682.209(j)

Comment: A few commenters recommended that the 10-day time period for responding to a certification statement in connection with a Consolidation loan should be changed to 10 business days to allow for adequate auditing of all loan and payment records before issuing the certification.

Discussion: The Secretary agrees with the commenters.

Changes: The regulations have been changed to provide the lender 10 business days to provide the certification.

Section 682.210 Deferment

Comment: One commenter requested that the Secretary clarify why a 6-month certification limitation applies to some deferments (e.g., temporary total disability, dependent's temporary total disability, and unemployment) but not to others.

Discussion: The Secretary strongly believes that a deferment based on a condition that temporarily affects a borrower's ability to repay should be recertified periodically to assure the Secretary that the condition continues. He does not believe that the deferment should be granted automatically for the maximum statutory period as the borrower's situation might no longer warrant the deferment.

Changes: None.

Section 682.210(a)(4)(i)

Comment: The majority of commenters recommended permitting oral requests for deferments provided the lender is required to document these requests in the borrower's file. Many commenters felt that requiring a borrower to request a deferment in writing would delay significantly the time it takes to process a deferment.

Discussion: The Secretary agrees with the commenters that it is appropriate to allow the lender to accept the borrower's verbal request for a deferment since the lender may not grant the deferment until the borrower has submitted complete documentation supporting his or her eligibility for the deferment.

Changes: A change has been made. The Secretary has deleted "in writing" from § 682.210(a)(4).

Section 682.210(a)(4)(ii)

Comment: Many commenters supported the concept of allowing lenders to grant deferments based on substantially complete documentation. However, they did not agree with the NPRM proposal and recommended significant changes. Many commenters recommended that the Secretary define the term "substantially complete" because they felt it was overly ambiguous and would lead to inconsistent treatment of borrowers by different lenders. Many commenters objected to the operational difficulties they believe would be associated with retroactively canceling a 60-day "conditional" deferment and repaying interest to the Secretary if the borrower does not complete the deferment process. The commenters indicated that few lenders would choose to use this option because of these operational problems. They recommended instead that the 60-day conditional deferment period be retained even if the borrower does not provide the missing information; the borrower would be expected to resume repayment at the close of the 60-day period. A few commenters recommended that the lender be allowed to grant forbearance to the borrower until the borrower

submits the missing information rather than granting a 60-day deferment period that they might have to cancel.

Discussion: The Secretary agrees with the commenters that the term "substantially complete" is somewhat vague. However, the Secretary declined to be more prescriptive in the NPRM expressly to provide lenders flexibility in administering this provision. Further, he does not believe that the term can be defined effectively to address the many situations to which it may apply. The Secretary understands that the lender performs additional work if a borrower fails to provide missing information by the close of the 60-day conditional deferment period and the lender is required to cancel the deferment and repay interest payments paid to the lender by the Secretary. However, the Secretary does not believe that it is in the fiscal interest of the FFEL programs to allow the 60-day deferment period to stand if the borrower does not complete the deferment process. Further, the Secretary is persuaded by the commenters that few lenders will use this option as currently written. Therefore, the Secretary has decided to delete this provision from the regulations. Lenders are reminded that they may grant forbearance until the borrower submits the missing documentation. Once the lender receives complete documentation establishing the borrower's eligibility, a deferment can be granted based on the date the condition entitling the borrower to the deferment first existed in accordance with § 682.210(a)(5).

Changes: A change has been made. The proposal to allow lenders to grant a deferment based upon substantially complete information submitted by the borrower has been deleted from the regulations.

Section 682.210(a)(6)(iv)

Comment: Several commenters requested clarification of an apparent conflict between proposed § 682.210(a)(6)(iv) and § 682.210(c)(2) regarding the use of the anticipated graduation date (AGD) as the ending date of a Stafford and SLS student deferment. Additional comments included concerns that requiring a separate certification statement for the half-time student deferment represents unnecessary duplication since a condition for receipt of that deferment is that the borrower is also receiving a loan for the intended deferment period and, therefore, a loan application is required. Several commenters supported the proposal to treat a certified loan application as sufficient documentation for a student deferment up through the student's anticipated graduation date for (a) any SLS loan, and (b) a Stafford loan if the guaranty agency's student status confirmation report (SSCR) system includes a mechanism for the school's confirmation of the borrower's student deferment status. A number of commenters supported the concept of a yearly recertification for the student deferment if the guaranty agency does not have an SSCR system that includes a borrower's student-deferment status and emphasized that a yearly recertification of eligibility for the student deferment by the school would represent unnecessary work for schools, lenders, and guaranty agencies, and be a duplication of SSCR enrollment-verification data.

Discussion: The Secretary agrees with the commenters that the use of the loan application to request a student deferment, the use of the school's certification on the loan application to document the borrower's eligibility, and the use of the borrower's anticipated graduation date as the end date of the deferment represents an efficient and reasonably accurate method for granting a student deferment in the Stafford and SLS programs, provided the guaranty agency's student status confirmation report system provides status reports for each borrower with a student deferment. Further, the Secretary has decided that, in the interest of standardizing procedures and reducing the administrative burden associated with student deferments, this same approach should be extended to the PLUS program. The Secretary also agrees with commenters that proposed §§ 682.210(a)(6)(iv) and 682.210(c)(2) are inconsistent in describing the end date of a student deferment.

Changes: A change has been made to § 682.210(a)(6)(iv) to provide that the AGD date also should generally be considered the end date of a student deferment for a PLUS borrower. In addition, the language of proposed § 682.210(c)(2) that would have restricted the period of enrollment that may be certified in a single deferment certification to one academic year has been deleted from the regulations and § 682.210(c) has been revised to provide for the use of the loan application to request and document eligibility for a student deferment in the Stafford, SLS, and PLUS loan programs.

Section 682.210(b)(1)

Comment: A few commenters suggested that the regulations include a complete description of the eligibility requirements for what is popularly referred to as the "summer bridge" student deferment for continuously enrolled borrowers who do not attend classes during the summer months.

Discussion: The Secretary considers the summer months part of the in-school period for borrowers who are maintaining either an in-school status or a student deferment status and who plan to return to school in the fall. For borrowers in a student deferment status, particularly SLS borrowers, the Department has recommended that lenders collect a statement-of-intent-to-reenroll from the borrower to support the lender's continued cessation of collection activity otherwise required under the due diligence regulations during the summer months. The lender should continue to bill the Department for interest on Stafford loans during this period. If a borrower does not submit documentation supporting continued eligibility for a student deferment within 30 days of the start of the fall term, the lender is required to convert the borrower to repayment. Under these circumstances, the borrower is considered to have ceased enrollment on the last day of the previous spring term. However, the lender is allowed to treat the borrower as entering repayment without the lender's knowledge so that the borrower is not considered retroactively delinquent for a period during which he or she neither has been billed nor has an opportunity to pay. The lender is required to repay ED the interest paid on behalf of the borrower for the summer period. The interest may be capitalized pursuant to the regulations.

Changes: None.

Section 682.210(b)(1)(i)

Comment: Some commenters suggested replacing the term "school" with "eligible institution of higher education," and specifying that this includes vocational school and foreign schools. The commenters stated that they believed this would result in consistency between the requirements for a full-time student deferment and the definition of full-time student in § 682.200.

Discussion: The Secretary does not agree with the commenters. The definition of "school" found in § 682.200 properly reflects the statutory definition of "institution of higher education" in section 481 of the Act resulting from the 1992 Amendments.

Changes: None.

Section 682.210(b)(1)(v)

Comment: Some commenters suggested that the Secretary define "United States" for purposes of the unemployment deferment so that

lenders clearly understand which geographic areas are included.

Discussion: The Secretary believes it is unnecessary to define this term in the regulations. For purposes of this deferment, the Secretary clarifies that, consistent with the definition of State in 34 CFR 668.2, the United States includes borrowers residing in and seeking employment in any State of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Additionally, a U.S. military base or U.S. embassy compound in a foreign country is considered as "in the United States" for purposes of this deferment. A borrower who resides on a U.S. military base or U.S. embassy compound in a foreign country because his or her spouse is stationed there, and who is seeking employment, would be required to provide documentation roughly equivalent to that required in § 682.210(h)(1)(i). The "name of the firm" could be the "U.S. Military Base employment office" or "U.S. Embassy Personnel Office." The Secretary does not require those borrowers to comply with the requirement that they make six attempts to secure employment during the period of certification.

Changes: None.

Section 682.210(b)(4)

Comment: Some commenters suggested deleting the language referring to a borrower's attendance at a school that is operated by an agency of the Federal Government. The commenters recommended this change because students in the service academies do not qualify for FFEL program loans and are, therefore, ineligible for student deferments based on half-time enrollment.

Discussion: The Secretary recognizes that a condition of receiving a student deferment for half-time enrollment is that the borrower simultaneously be receiving a FFEL program loan. Since students attending the service academies, (and other federally-operated schools that do not participate in the FFEL programs) may not receive loans because these schools do not participate in the FFEL programs, they cannot qualify for this deferment.

Changes: The regulations have been revised. The language referencing schools operated by an agency of the Federal government has been deleted.

Section 682.210(b)(5)(iv)

Comment: One commenter suggested revising the rules dealing with the working-mother deferment. The commenter believes the regulations go beyond the statutory language by limiting eligibility for the deferment to only those individuals who apply for the deferment within one year of entering or re-entering the work force.

Discussion: The Secretary disagrees with the commenter. The statute clearly states that the deferment is "* * *for mothers with pre-school age children who are just entering or re-entering the work force* * *" (Emphasis added.) See section 428(b)(1)(M)(xi) of the Act. The Secretary believes that it is appropriate to define "just entering or re-entering" as within one year of entering or re-entering the work force on a full-time basis.

Changes: The Secretary is not revising the rules dealing with the working-mother deferment. However, the regulations are being revised to reflect that full-time employment involves at least 30 hours of work a week and is expected to last at least three months. This standard is consistent with the standard used in regard to the unemployment deferment.

Section 682.210(c)(1)(ii)

Comment: Many commenters stated that the proposed language would require both the registrar's and financial aid officer's signatures for half-time student deferments. They suggested that this places an unreasonable administrative burden on the borrower, school, and lender.

Discussion: The Secretary notes that for a new borrower applying for a student deferment, two conditions must be met. The borrower must obtain documentation from an authorized official of the school certifying at least half-time enrollment and a statement, or other documentation, from the financial aid administrator, indicating that the borrower has received or will receive a Stafford or SLS loan for the same period of enrollment for which the deferment is requested. Nothing in the regulations precludes the financial aid administrator, as an authorized official of the school, from certifying the student's half-time enrollment, based on information provided by the registrar. The borrower may provide other information, i.e., a copy of the certified loan application, promissory note, or notice-of-loan guarantee as evidence that the borrower has or will be receiving a loan for the same period.

Changes: The Secretary has revised § 682.210(c)(1)(ii) to permit the borrower to provide other documentation evidencing that the borrower has received or will be receiving a Stafford or SLS loan for the same period for which the deferment is requested.

Comment: Several commenters suggested that the borrower be allowed to provide the necessary proof that he or she has obtained a new loan for the period covered by the student deferment.

Discussion: The Secretary agrees with the commenters that allowing the borrower who applies for a student deferment to provide proof that he or she has obtained a new loan for the same period would lessen the administrative burden. The Secretary believes that a copy of the lender's notice-of-loan-guarantee or a copy of the application containing the school's certification would be acceptable documentation that the borrower has received or will receive a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

Changes: The Secretary has revised the regulations, as noted earlier, to permit a borrower to document eligibility for a student deferment by submitting evidence that a loan has been received.

Section 682.210(c)(1)(iii)

Comment: One commenter recommended that the Department's current policy that deferment applications be prescribed by the guaranty agency be changed. The commenter asked that the Department prescribe the use of standard deferment forms. The commenter believes that the Department is in the best position to develop a standard format for all deferment forms and that standardization would ease the administrative burden on schools. The commenter also believes that the use of standard deferment forms prescribed by the Secretary would contribute to the goal of greater automation in the administration of the FFEL programs and to the development of the National Student Loan Data Base.

Discussion: The Secretary understands the commenter's preference for the standardization of various FFEL program documents, especially as they relate to the Department's move toward enhanced methods of electronic processing and the development of the National Student Loan Data Base. As a result of a change made in section 432(m)(2) of the Act by the 1992 Amendments, the Secretary is required to work with representatives of guaranty agencies, institutions of higher education, and lenders to develop and prescribe a common deferment reporting form.

Changes: Section 682.401(d)(3) of the regulations have been revised to specify

that guaranty agencies must use common forms, including common deferment forms, approved by the Secretary.

Section 682.210(f)(2)

Comment: Some comments suggested that the Secretary clarify that pregnancy is not considered a disabling condition unless extraordinary circumstances are certified by the physician.

Discussion: The Secretary restates his prior guidance that "temporarily totally disabled" is defined in section 435(g) of the Act as referring to a borrower "* * * who, by reason of *injury or illness,* cannot be expected to be able to attend an eligible institution or to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed 3 years." (Emphasis added.) Since the statute specifically uses the term "by reason of injury illness," this deferment does not include all medical conditions. A healthy pregnancy is neither an injury nor illness and does not satisfy the requirements for a deferment.

The Secretary recognizes that during pregnancy there may be a period of time during which the borrower is unable to continue to attend school. The Secretary encourages lenders and guaranty agencies to grant forbearance to borrowers in these circumstances.

Changes: None.

Section 682.210(h)(1)(i)

Comment: Several commenters recommended deleting the requirement that a borrower seeking an unemployment deferment provide the names or titles of the people contacted as part of the borrower's conscientious search for employment. The commenters believe this requirement is burdensome and of little or no benefit to the borrower.

Discussion: The Secretary strongly disagrees. The Secretary expects an unemployed borrower to make a truly conscientious effort to secure employment. The Secretary believes that this involves making personal contact, either by phone or in person, with key personnel of potential employers, not just submitting resumes or job applications to those employers. The Secretary believes that if a borrower is not required to provide this information there is no evidence that a contact was made. However, the Secretary has decided to amend the regulations to provide that a lender may also accept, as evidence of employer contacts, documentation the borrower has provided to meet the requirements of the Unemployment Insurance Service if the documentation shows the same number of contacts and contains the same information that the borrower would be required to provide under the Department's regulations.

Changes: The regulations have been revised to provide that a lender may accept alternative documentation of employer contacts made to meet the requirements of the Unemployment Insurance Service.

Comment: Several commenters recommended inserting "during the preceding six months, except in the case of the initial period of unemployment" after "conscientious search for full-time employment." They suggested that this change clarifies that the borrower is to identify employers whom they already have contacted as opposed to listing potential future contacts. The commenters believe this avoids requiring that the deferment always be back-dated.

Discussion: The Secretary agrees that the attempts to secure employment for a given certification period should reflect contacts already made rather than potential contacts.

Changes: The Secretary has revised the regulations to adopt the recommended language.

Section 682.210(h)(1)(iii)

Comment: Several commenters suggested that the Secretary define what is considered an "accessible" public or private employment agency because they did not believe it was reasonable to expect an unemployed borrower to travel to the nearest public or private employment agency regardless of the distance involved. Some commenters recommended using a 50-mile radius as a reasonable distance to expect an unemployed borrower to travel.

Discussion: The Secretary believes that it is reasonable to expect a borrower to make a good-faith effort to register with a public or private employment agency as part of his or her employment search. However, the Secretary agrees with the commenters that for an unemployed borrower this requirement is reasonable only if the borrower does not have to travel long distances to register with an agency. Further, the Secretary believes that employment opportunities listed by an agency a significant distance from the borrower's home may not be realistic prospects if getting to work sites involves significant travel.

Changes: The Secretary has revised the regulations to reflect that a borrower must register with such an agency if one is within a 50-mile radius of the borrower's permanent or latest temporary address.

Section 682.210(h)(3)

Comment: One commenter recommended that the Secretary reinstate language found in current regulations in this section that provides that an unemployment deferment is not justified if a borrower refuses to seek or accept employment "in kinds of positions or at salary and responsibility levels for which the borrower feels overly qualified by virtue of education or previous experience." The commenter stated that this wording had been helpful in the administration of this provision. Other commenters supported the concept that an unemployed borrower should not be overly restrictive in his or her search for employment, but also felt that a borrower should be allowed to take certain professional considerations into account in that search. They believe that someone trained for, or who has been employed in, a specific professional area should be able to pursue employment in that career.

Discussion: The Secretary agrees that the language deleted from this provision in the NPRM is intended to establish a requirement that a borrower cannot refuse work based on certain preferences. The Secretary does not agree with those commenters who believe that an unemployed borrower should be allowed to take into account professional preferences in his or her job search. The Secretary believes that a borrower is responsible for repayment of a FFEL program loan and should not expect the Secretary to subsidize the borrower's search for the best professional opportunity. The Secretary understands that this may require a borrower to accept temporary or less desirable employment in order to make payments on the loan while continuing a long-term search for a better job opportunity.

Changes: The Secretary has revised the regulations to include the phrase deleted from the NPRM.

Section 682.210(i)

Comment: Numerous commenters recommended that borrowers attempting to qualify for a military deferment should be allowed to provide the lender with a copy of his or her official military orders in lieu of a "written" statement from the borrower's commanding or personnel officer.

Discussion: The Secretary agrees that a lender should be able to use information from the borrower's military orders to document that the borrower is eligible for a military deferment.

Changes: The Secretary has revised the regulations to allow a borrower to

document eligibility for a military deferment by providing either a "written" statement from the commanding or personnel officer or a copy of his or her official military orders and official military identification.

Comment: Several commenters recommended that proposed § 682.210(i)(3) be revised to provide that under certain circumstances military reservists serving on active duty for less than one year would be eligible for a military deferment. The commenters noted that many reservists that were called to active duty in Operation Desert Shield or Operation Desert Storm would not qualify for a military deferment based on the proposed regulations. The commenters recommended that the Secretary provide for flexibility in the regulations to address these types of situations.

Discussion: The Secretary agrees with the commenters that the regulations should be revised to give lenders the ability to react in a timely fashion to circumstances in which the normal one-year requirement for active duty might not be appropriate.

Changes: The language of § 682.210(i)(3) has been revised to specify that a reservist called to active duty would be expected to serve on a full-time basis for at least one year unless an order for national mobilization of reservists is issued.

Section 682.210(m)

Comment: Some commenters objected to the limitation on the compensation rate for full-time volunteers serving with tax-exempt organizations to qualify for a deferment as proposed in § 682.210(m)(1)(iii) of the regulations. The commenters stated that restricting the compensation rate to one that does not equal or exceed the Federal minimum wage was inconsistent with the statutory intent that these volunteers be treated as performing service comparable to service performed by volunteers in the Peace Corps and ACTION programs because volunteers in those programs are compensated at a rate consistent with the Federal minimum wage. Another commenter indicated that this restriction was in conflict with the President's active support of volunteerism. Still another commenter indicated that many individuals working for tax-exempt organizations would be ineligible for the deferment if the organizations' by-laws required that individuals serving with the organizations be paid the Federal minimum wage.

Discussion: Sections 427(a)(2)(C) and 428(b)(1)(M) of the Act were amended by the 1992 Amendments to reduce the different types of deferments available to FFEL borrowers. In particular, the new law provides new borrowers, whose first disbursement is made on or after July 1, 1993, with the following types of deferment: (1) Student deferment, (2) graduate fellowship deferment, (3) rehabilitation training program deferment, (4) unemployment deferment, and (5) economic hardship deferment. For purposes of these deferments, a new borrower is one who, on the date of application, has no outstanding balance of interest or principal on a Stafford, SLS, or PLUS loan or, in the case of a Consolidation loan applicant, has no outstanding balance on any other FFEL program loan obtained prior to July 1, 1993. The term economic hardship is defined in the statute as circumstances under which a borrower is working full-time and is earning an amount that does not exceed the greater of the minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938 or an amount equal to 100 percent of the poverty line for a family of two as determined in accordance with section 673(2) of the Community Service Block Grant Act, or under other criteria identified by the Secretary in regulations. Because this definition provides for a compensation rate that is at least the Federal minimum wage and new borrowers serving as volunteers in tax-exempt organizations may be eligible for this deferment based on this criteria, the Secretary believes that the same standard of compensation should apply to borrowers subject to the previous deferment provisions.

Changes: The phrase "or equals" has been deleted from § 682.210(m)(1)(iii).

Section 682.210(n)

Comment: One commenter suggested clarifying the definition of "internship or residency." The commenter indicated that these terms can refer to any profession and believe it is necessary to specify which professions satisfy the requirements for this deferment.

Discussion: The Secretary does not believe that it is necessary to define these terms. An internship or residency deferment may be provided to borrowers in any profession that meets the regulatory requirements.

Changes: None.

Section 682.210(o)(1)

Comment: A few commenters suggested revising the eligibility criteria for a parental-leave deferment so that a Stafford loan borrower may qualify for the deferment without being required to forego a portion of his or her grace period. A Stafford loan borrower does not enter repayment until his or her six-month grace period has elapsed. At that time, the borrower would not have been enrolled at an eligible institution during the preceding six months, as required for the deferment. The commenters believe that by relaxing this criterion the Department will ease the lender's task of securing a borrower's authorization to waive voluntarily a portion of his or her grace period so the deferment can be processed.

Discussion: Section 435(h)(3) of the Act clearly requires that to qualify for a parental-leave deferment the borrower has to be enrolled at least half-time at an eligible institution during the preceding six months. The Secretary cannot waive these statutory requirements. The Secretary previously has issued guidance to lenders indicating that they may advise a borrower that he or she voluntarily may waive a portion of the grace period to qualify for the deferment.

Changes: None.

Comment: Several commenters recommended that the phrase "or the borrower's spouse is pregnant * * *" be deleted from the eligibility criteria for the parental-leave deferment. The commenters stated that the pregnancy of a borrower's spouse did not appear to be covered by section 435(h) of the Act.

Discussion: The Secretary agrees with the commenters that the Act does not extend to cover the pregnancy of a borrower's spouse.

Changes: The phrase has been deleted from the regulations.

Comment: One commenter noted that in many adoption cases the child is placed in the home before the completion of the adoption process. The commenter recommended that the regulations be revised to ensure that a borrower on leave as part of a preadoption placement is eligible for the parental-leave deferment.

Discussion: The Secretary believes that a borrower who takes leave from employment in conjunction with the adoption process should be eligible for the parental-leave deferment regardless of whether the leave occurs before or immediately following the official adoption date.

Changes: The regulations have been revised to permit a borrower to qualify for the parental-leave deferment during the period the borrower cares for a child immediately following placement of the child with the borrower in connection with an adoption.

Section 682.210(r)(2)

Comment: Many commenters objected to the documentation required to support a borrower's eligibility for the working-mother deferment. They

believe it represents a significant burden on the borrower and that the documents cannot be obtained easily. The commenters suggested that the borrower be allowed to self-certify the information necessary to qualify for the deferment.

Discussion: The Secretary notes that a borrower is required under § 682.210 "to provide the lender with all information and documents required to establish eligibility for a specific type of deferment." The Secretary believes that allowing a borrower to self-certify eligibility for the working-mother deferment fails to meet this requirement. The Secretary considers that the documents the borrower is required to submit to support eligibility (e.g., a photocopy of child's birth certificate documenting the child's age and a pay stub or similar document showing her pay rate) represent minimal requirements and are obtained easily.

Changes: None.

Comment: One commenter suggested that the benefits of the working-mother deferment should be extended to single fathers who also meet the eligibility criteria for the deferment.

Discussion: The provisions of section 428(b)(1)(M)(xi) of the Act clearly restrict the working-mother deferment to mothers.

Changes: None.

Section 682.211 Forbearance

Section 682.211(a)(2)(i)

Comment: A few commenters recommended the deletion of the requirement that the lender document that the borrower intends to repay the loan as a condition for granting forbearance. The commenters believe this affirmation by the borrower serves no purpose. They believe it adds no further creditability to the information submitted by the borrower to support the forbearance.

Discussion: The Secretary believes that forbearance should be granted only to borrowers who are willing to repay their loans but temporarily are unable to make payments due to medical or other acceptable circumstances. The proposed additional documentation requirement forces the lender to ensure that the borrower states his or her intention to repay the loan as well as providing a record of the factors that support the lender's decision to grant the forbearance. The lender is being required simply to document the borrower's willingness to repay.

Changes: None.

Section 682.211(b), (c), and (d)

Comment: Many commenters opposed the proposal to treat a forbearance granted after default differently from other types of forbearance, i.e., a post-default forbearance would not extend the 10-year repayment period and the minimum annual repayment provisions would apply. The commenters indicated that this would require the lender to develop a separate tracking system for borrowers granted forbearance after default. Several other commenters questioned the need for specifying that a lender must grant a forbearance on terms that are "consistent with" or "inconsistent with" the 10-year repayment and the minimum annual repayment provisions and requested that the Secretary simplify the forbearance provisions. Still other commenters recommended that the Secretary specify that a lender does not have to sign a forbearance agreement with a borrower in offering the borrower a graduated repayment schedule that provides for payments that total less than the minimum annual payment amount. The commenters believe that requiring a signed forbearance agreement would discourage lenders from offering the graduated repayment option to borrowers.

Discussion: The Secretary agrees that developing and maintaining separate tracking systems for different types of forbearances would be administratively burdensome and complicate significantly the use of forbearance to assist a borrower in avoiding default. The Secretary also agrees that a lender should be able to offer a borrower a graduated repayment schedule that provides for payment of less than the minimum annual repayment amount without executing a forbearance agreement with the borrower.

Changes: The Secretary has deleted all reference to repayment terms that are consistent or inconsistent with the minimum annual payment requirement and the 10-year maximum repayment period in § 682.211(b), § 682.211(c), and § 682.211(d) of the regulations. Section 682.209(a)(6)(ii) of the regulations has also been revised to provide that a lender may offer a borrower a graduated repayment schedule without completing an agreement as specified in § 682.209(c)(1)(ii).

Comment: Several commenters recommended that the regulations be revised specifically to provide that, upon notice to a borrower, a lender may grant forbearance in circumstances similar to the Operation Desert Shield or Operation Desert Storm action in which contact with a borrower might be impossible.

Discussion: The Secretary agrees that specific guidance should be incorporated into the regulations to ensure that lenders react in a timely manner to situations such as Operation Desert Shield or Operation Desert Storm in the future.

Changes: The regulations have been revised in § 682.211(f) to provide that, upon notice to a borrower, forbearance may be granted by a lender in the event of a national military mobilization or other national emergency for a period authorized by the Secretary.

Section 682.211(f)

Comment: Several commenters recommended that a lender be allowed to grant forbearance for the period prior to the borrower filing a bankruptcy petition. The commenters noted that, without this change, lenders would only be able to approve forbearance from the date the borrower files the bankruptcy petition when the borrower might already be severely delinquent.

Discussion: The Secretary agrees that lenders should be provided with the option of offering forbearance to a borrower to cover this period. The Secretary believes this would assist in the handling of delinquencies for borrowers who, after a significant period of time, emerge from a stay of collections associated with the bankruptcy process and are again subject to collection.

Changes: A new provision has been added to § 682.211(f) to permit a lender to grant a forbearance for a period prior to the borrower filing a bankruptcy petition.

Section 682.213 Prohibition Against the Use of the Rule of 78s

Comment: Some commenters recommended that this section be expanded to include guidance on loans previously approved using the Rule of 78s to calculate the outstanding principal balance of the loan.

Discussion: The Secretary continues to receive questions on this issue and agrees that the regulations should recognize loans on which the principal balance was previously calculated using the Rule of 78s.

Changes: The regulations have been revised to recognize that the Rule of 78s still might apply to loans that entered repayment before June 26, 1987 that had the principal balance calculated using the Rule of 78s. The Rule of 78s would be used for the life of the loan.

Section 682.214 Compliance With Equal Credit Opportunity Requirements

Comment: A number of commenters recommended that this section be modified to include all the FFEL programs, rather than having it apply just to the Stafford Loan Program.

Discussion: The Secretary has been advised by the Federal Reserve Board that the regulations as currently written comply with Regulation B, 12 CFR part 202. The PLUS program does not meet any of the criteria of 12 CFR 202.8, and neither PLUS nor SLS meet the criteria of 12 CFR 202.8(d) of Regulation B.

Changes: None.

Section 682.215 Defenses to the Borrower's Obligation To Repay a GSL Loan

Comment: Many commenters indicated that they believed that lenders must have a clearly protected right to repayment by borrowers even if the borrower's school violates its obligations to its students. The commenters recommended that the regulations be modified to state that lenders would be subject to a borrower's defense against repayment of a loan based on school misconduct only if a written origination contract existed between the school and lender, or the school, with the consent of the lender, completes the lender's section of the loan application on behalf of the lender. These same commenters supported the proposed use of a disclaimer to inform borrowers that lenders are generally not responsible for school misconduct. They recommended that the definition of "origination" in 34 CFR 682.200 be modified to delete reference to a "special" relationship and the examples provided in the definition because the regulations would specify the circumstances under which a defense would apply. Several other commenters recommended defining what does not constitute an "origination relationship" rather than what does. Many other commenters stated that they agreed that the quality of a school's performance and the employability of its graduates should not provide a borrower with a defense to repayment of a loan. However, these commenters indicated that the proposed regulations still held borrowers financially responsible for most cases of school fraud and recommended that the Secretary take direct responsibility in the final regulations for borrowers harmed by school fraud or school closings. Several commenters indicated that they believed that the regulations provided insufficient protection to borrowers from a school's failure to comply with Title IV refund requirements. Two other commenters strongly objected to the proposed section, saying that it did not provide adequate consumer protection for borrowers and recommended deletion of the section. The commenters stated that the use of the disclaimer notice by the lender made it virtually impossible for a borrower to ever raise such a defense and thereby rendered the borrower's rights illusory.

Discussion: After considering the comments on this proposed section and the Department's experience in this area, the Secretary has decided that it is not desirable at this time to prescribe in regulations a uniform Federal rule regarding borrower defenses that would preempt State law otherwise applicable to the FFEL programs. The Department believes that the determination of whether a defense under State law is available to a borrower requires a case-by-case assessment of whether individual State laws would frustrate accomplishment of the Federal objectives of the FFEL program. The Department, as a result of its litigation experience, has identified four kinds of State laws whose application would not frustrate FFEL program policies and are therefore not preempted by Federal law. These are State laws that would make a lender subject to school-related defenses against the repayment of the loan if: (1) The lender has notice (actual or imputed) of substantial prior unresolved complaints about the school prior to making the loan; (2) the lender has delegated substantial loan making functions to the school (an "origination relationship"); (3) the lender and the school are corporate affiliates or are otherwise commonly controlled; and (4) the lender paid a finder's fee or referral fee to the school with regard to the loan. Consistent with this approach, the term "origination" in proposed § 682.200 has been revised to be "origination relationship." The Secretary has also decided to describe an "origination relationship" as a special business relationship between a school and a lender so as to distinguish it from the relationship that exists between these parties as part of the normal loan processing and delivery system. In addition, the Secretary notes that the 1992 Amendments have amended the Act to provide for the discharge of loans for a student who received a loan on or after January 1, 1986 and who was unable to complete a program of study in which he or she was enrolled due to the school's closure or if the student's eligibility for a loan was falsely certified by the school. These provisions will be reflected in future regulations developed as a result of the 1992 Amendments.

Changes: The Secretary has deleted the provisions of § 682.215. The term "origination" in proposed § 682.200 has been revised to "origination relationship." Further, the regulations have been revised to describe an "origination relationship" as a special business relationship.

Section 682.300 Payment of Interest Benefits on Stafford Loans

Section 682.300(b)(2)

Comment: Several commenters suggested that the Secretary modify the proposed regulatory provision requiring interest on loan proceeds transferred electronically to cease on the 120th day if the school has not released the funds from the school's restricted account. The commenters argued that the lender would have no way of knowing if funds are released and might incur a violation based on an event controlled by the school and not by the lender. The commenters suggested defining the date that interest benefits cease as the date funds are returned to the lender. Other commenters suggested that processing time is needed after loan proceeds are returned to the lender and recommended that 10 business days be provided for that purpose.

Discussion: The Secretary believes that 120 days is sufficient time for a school to return funds from its restricted account to the lender and for the lender to complete any required processing. Lenders must have a system in place to monitor the release of loan proceeds to ensure that funds are not delivered after 120 days.

Changes: None.

Comment: One commenter stated that § 682.300(b)(2)(iii) and § 682.300(b)(2)(iv) are confusing. The commenter indicated that the event causing the claim to be filed, *i.e.*, default, always would be earlier than the date the lender receives payment on a claim for loss on the loan. Thus, the Secretary's obligation to pay interest benefits always would cease on the date of default.

Discussion: There are special conditions, such as school closings, in which default claims must be filed with the guaranty agency. In these cases, the loan is in default only for the purpose of allowing the lender to receive an insurance payment. The borrower is not considered to be in default as defined in section 435(1) of the Act, and a lender may not report to any credit bureau or other third party that the borrower is in default on the loan.

Changes: None.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford Loans

Comment: One commenter suggested that the Secretary clarify that it is the school's responsibility to determine whether a borrower is a member of a

religious order and, if so, to notify the lender that the borrower is ineligible to receive interest benefits. Another commenter asked whether this determination would have to be made for every applicant that indicates a religious affiliation on a school application or other form.

Discussion: The Secretary wishes to clarify that these regulatory provisions are intended to mirror similar provisions that have existed in other Title IV programs for a number of years. See §§ 673.22(a)(5), 674.9(c), 675.9(c) and 676.9(c). They are not intended to apply to every applicant that responds to a question on religious affiliation. In determining an applicant's eligibility for interest benefits, if the school has received information indicating that the applicant is a member of a religious order, group, community, society, agency, or other similar organization, it is required to document whether the conditions detailed in in § 682.301(a)(2) apply to the applicant. In the Secretary's view, service in such an order generally reflects that the individual is supported fully by the order and does not have financial need for FFEL purposes. A school is not expected to make a determination unless it has reason to know that an applicant is a member of such an order and meets the criteria specified in § 682.301(a)(2). The school must document its determination and place it in the student's file.

Changes: None.

Section 682.301(b)

Comment: One commenter argued that § 682.301(b) seems to require the student to submit the loan application directly to the lender and, therefore, unduly restricts the use of automated application processing. The commenter urged the Secretary to clarify that a school may submit a loan application directly to the lender at the borrower's request.

Discussion: The Secretary did not intend in § 682.301(b) to require a borrower to submit a loan application directly to a lender.

Changes: A change has been made. The Secretary has modified § 682.301(b) to clearly state that a school may transmit a loan application to an eligible lender at the direction of the borrower.

Section 682.301(c)

Comment: One commenter suggested that § 682.301(c), concerning use of loan proceeds to replace EFC, should also clearly indicate that borrowers may use aid from private and State-sponsored programs.

Discussion: The Secretary agrees with the commenter. Section 428(a)(2)(E) of the Act provides for the EFC to be offset by loans made under the SLS, PLUS, State-sponsored, or private loan programs.

Changes: A change has been made. The Secretary has revised § 682.301(c) to reflect the requirements of section 428(a)(2)(E) of the Act. In addition, the Secretary is codifying current policy that allows the use of a nonsubsidized Stafford loan to replace the student's EFC.

Section 682.302 Payment of Special Allowance on FFEL Loans

Section 682.302(d)

Comment: Many commenters opposed the Secretary's proposal to terminate a lender's eligibility for special allowance payments 45 days after the borrower's default on the loan unless the lender had filed a default claim with the guaranty agency by the 45th day. The commenters felt that 45 days would not provide sufficient time for a lender to compile all the required documents for a default claim, particularly given the new requirement that a payment and collection history be part of the default claim filed with the guaranty agency. The commenters felt that the current 90-day standard with full interest and special allowance benefits should be retained.

Discussion: The Secretary notes that a lender may continue to file a default claim with the guaranty agency within 90 days of default under the provisions of § 682.406(a)(5). The Secretary intended, through this proposal, to restrict the payment of special allowance to the lender to 45 days after the borrower's default on the loan if the lender did not submit the default claim to the guaranty agency by the 45th day. However, the Secretary agrees with the commenters that the 45-day deadline for submission of a default claim package for the lender to retain special allowance after the 45th day may not provide sufficient time to prepare and submit a default claim package in light of the new documentation requirements for claim submissions. Therefore, the Secretary has decided to change the 45-day deadline to a 60-day deadline. The regulations will now restrict the payment of special allowance to the lender to 60 days after the borrower's default on the loan if the lender does not submit the default claim package to the guaranty agency by the 60th day. Additionally, to provide lenders with extra time to adjust to this provision, the Secretary has decided to delay the effective date of the provision. The provision will become effective for loans for which the first day of delinquency is on or after 120 days following the date of publication of the regulations.

Changes: The Secretary has amended the regulations to allow a lender to maintain eligibility for special allowance payments if the lender submits a claim to the guaranty agency within 60 days of the date of default.

Comment: Several commenters disagreed with the Secretary's proposal to terminate special allowance on the date the guaranty agency returns a claim to a lender for additional documentation. These commenters felt that eligibility for special allowance should continue until the claim is paid.

Discussion: The Secretary agrees with the commenters and has decided to revise the regulations so as not to penalize a lender by terminating special allowance on an otherwise eligible loan if it is returned by the guaranty agency due to inadequate documentation. If the loan had not been submitted by the lender by the 60th day after default, it already would have lost eligibility for special allowance and being returned because of inadequate documentation would not re-establish eligibility for special allowance. If a loan is rejected by the guaranty agency because of a due diligence or timely filing violation, eligibility for special allowance already would have been lost as of the date of the violation.

Changes: The regulations have been revised to reflect that an otherwise eligible loan may continue to receive special allowance if it is resubmitted by the 30th day after the loan was returned to the lender by the guaranty agency solely because of inadequate documentation. If the loan is submitted after the 30th day, but by the 60th day, the loan is reinsured but special allowance is limited to the 30th day after the loan is returned by the guaranty agency due solely to inadequate documentation. If an otherwise eligible loan is not resubmitted by the 60th day after being returned to the lender by the guaranty agency, the timely filing violation must be cured by the lender using the procedures in Bulletin 88–G–138 (appendix D).

Comment: One commenter stated that the provisions of § 682.302(d)(vii) conflicted with § 682.406(a)(7). These two sections reflect that special allowance terminates on returned claims at a different time than the period during which interest is paid.

Discussion: The Secretary disagrees with the commenter. Section 682.302(d)(vii) specifies one of the conditions under which special allowance payments will terminate.

Section 682.406(a)(7) outlines the conditions of reinsurance coverage and specifies the maximum length of time the Secretary will pay interest on a reinsured claim.

Changes: None.

Section 682.304 Methods for Computing Interest Benefits and Special Allowance

Section 682.304(b)

Comment: One commenter noted that § 682.304(b)(2) is inconsistent with § 682.304(c). The commenter suggested that the 365.25-day calculation method should be used in the average daily balance method as well as in the actual accrual method.

Discussion: Section 682.304(b)(2) prescribes the calculation method that the Secretary will use to determine the average daily balance for interest benefits unless the lender chooses to use the actual accrual method. A lender chooses the average daily balance method by not completing ED Form 799, part III, Column E, entitled "Interest benefits." Completion of this part of the form is optional. If the lender chooses to complete the interest section, it may use the 365.25-day calculation method. If the lender chooses not to complete the interest section, the Secretary will use the calculation method prescribed in 34 CFR 682.304(b)(2) to compute interest benefits.

Changes: None.

Section 682.304(d)

Comment: One commenter suggested that the Secretary should clarify that the calculation in § 682.304(d)(1) represents the average daily balance for the quarter for qualifying loans at each applicable interest rate.

Discussion: The Secretary agrees with the commenter's suggestion.

Changes: A change has been made. Section 682.304(d)(1) has been revised to clarify that the average daily balance calculation for the quarter represents qualifying loans at each applicable interest rate.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

Section 682.305(a)(4)(ii)

Comment: Many commenters were opposed to the Secretary's proposal to make the buyer and the seller jointly and severally liable for payment of origination fees. The commenters argued that the buyer paid the seller for outstanding origination fees at the time of the sale and that the buyer should be liable only if the loans were bought in the same quarter in which they were originated.

Discussion: The proposed regulations codify the Secretary's long-standing view that if a loan is assigned the assignee and assignor have equal responsibility to ensure that origination fees are paid to the Secretary. Bulletin 91–L–142, dated October 1991, reiterated this requirement, reminding chief executive officers of entities that make, sell, and buy Stafford loans that origination fees should be paid in a timely manner. For operational purposes, the regulations allow either the buyer or the seller to report the amount of the origination fee to the Secretary if the loan is originated and sold within the same quarter. It is assumed that if a loan is sold in a quarter after the one in which it was originated, the originating lender would already have reported the amount of the origination fee to the Secretary.

Changes: The Secretary has modified § 682.406(a)(12) to specify that the payment of origination fees is a condition of reinsurance. However, the Secretary will apply this sanction only if the purchasing lender refuses to pay outstanding origination fees on loans it has purchased.

Section 682.305(b)(1)(ii)

Comment: Several commenters argued that § 682.305(b)(1)(ii) should be revised to clarify that, for penalty interest purposes, the payment of interest benefits begins on the date on which payment actually is made by the Treasury Department rather than the date on which the Secretary authorizes the Treasury Department to pay the lender.

Discussion: Section 682.305(b)(1)(ii) is based on section 438(b)(4) of the Act, which provides that the calculation of the time period ends on the date the Secretary authorizes payment.

Changes: None.

Comment: Several commenters argued that penalty interest should not be limited to the special allowance rate applicable to loans made on or after November 16, 1986, *i.e.*, Treasury bills plus 3.25 percent. The commenters suggested that the Secretary reimburse the lender for the actual special allowance factor as authorized by the Act.

Discussion: The Secretary agrees that the penalty interest calculation should be based on the actual interest and special allowance rates. He also believes that it is necessary to clarify how reductions to interest and special allowance payments (e.g., reductions for origination fees or other debts owed to the Federal government) will be accommodated in penalty interest calculations.

Changes: The Secretary has modified the regulations to base penalty interest calculations on actual interest and special allowance rates.

Section 682.305(b)(6)(iv)

Comment: A few commenters suggested that the Secretary include the phrase "unless the Secretary authorizes an exception in writing" at the end of § 682.305(b)(6)(iv).

Discussion: Proposed § 682.305(b)(6), which is now § 682.306(b)(5), specifically identifies the circumstances in which the Secretary considers a request from a lender for payment of interest and special allowance to be inaccurate and incomplete. The Secretary does not anticipate permitting any exceptions to these requirements.

Changes: None.

Section 682.305(c)

Comment: Many commenters objected to the Secretary requiring an independent audit of a lender's loan portfolio if the lender originates in excess of, or its loan volume exceeds, $10 million. The commenters stated that large lenders are audited extensively by their own auditors, guaranty agencies, and the Federal government, and this requirement only would produce unnecessary financial expense and burden for lenders. Other commenters stated that an audit every two or three years is sufficient. Several commenters objected to the proposed requirement that the audit report be submitted within 90 days of the end of the Federal fiscal year. The commenters did not believe that this was sufficient time to conduct an audit of this scope and complete and submit the required audit report to the Secretary.

Discussion: The 1992 Amendments require that each lender participating in the FFEL programs have an annual independent compliance audit conducted by a qualified independent organization or person. The regulations have been changed to reflect this new requirement. In addition, the Secretary agrees with the commenters that 90 days after the end of the Federal fiscal year may not be sufficient for conducting the audit and completing and submitting the audit report. The Secretary has decided to require that the audit report be submitted within six months following the end of the audit period. However, the Secretary will monitor the implementation of this requirement closely to determine if this period can be reduced in the future.

Changes: A change has been made. The Secretary has revised § 682.305(c)

to require all lenders to conduct an annual compliance audit by a qualified independent organization or person. The audit must be submitted to the Secretary within six months following the end of the audit period. The Secretary also is requiring that the first audit cover the lender's first fiscal year that begins after July 23, 1992.

Comment: A number of commenters opposed the requirement that the independent financial and compliance audit period be based on the Federal fiscal year.

Discussion: The Secretary understands that this requirement would represent a significant administrative burden for lenders that do not use the Federal fiscal year and are required to conduct audits to comply with other Federal or State requirements. To prevent having to conduct more than one audit, the lender would be required to conduct one audit to cover all program operations occurring within the three months overlapping separate audit periods.

Changes: The Secretary has revised the regulations to allow lenders to use an alternative audit period to the Federal fiscal year to conduct the annual compliance audit.

Comment: A few commenters noted that nonprofit and State government lenders are subject to the provisions of Office of Management and Budget (OMB) Circular No. A–133 that provides that a single audit of the entity's participation in all Federal programs satisfies the audit requirement of all of those programs. The commenters suggested that nonprofit and State lenders be exempt from the proposed audit requirement in § 682.305(c).

Discussion: The Secretary agrees with the commenters. An additional independent audit of nonprofit and State government lenders' administration of the FFEL programs would create an additional financial burden if the lenders are subject to the single Federal audit requirement.

Changes: A change has been made. The Secretary has revised 34 CFR 682.305(c)(2) to exempt nonprofit and State government lenders from the audit requirement if an audit, in accordance with 31 U.S.C. 7502 and OMB Circular A–133, has been conducted.

Section 682.401 Basic Program Agreement

Section 682.401(b)(4)

Comment: Many commenters opposed the proposed requirement that borrowers notify the school of any change in employer or employer's address. The commenters indicated that borrowers are unlikely to report this information to their schools and that although this information is useful to lenders if a borrower becomes delinquent, it is not useful to schools. The commenters recommended that the requirement be deleted or modified to require that borrowers notify lenders of those changes. Other commenters recommended that the borrower be required to notify the current holder of the loan of these changes rather than the lender; this was based on the likelihood that the loan would be sold.

Discussion: The Secretary agrees that it is unusual for a school to know when a borrower changes employers and that the information should be reported to the lender to assist the lender in collecting the loan if the borrower becomes delinquent. The Secretary also agrees that changes of student status or employer should be reported to the current holder of the loan to ensure that the information is provided to the party to which it will prove most useful. The Secretary believes that Congress also contemplated that this information would be most useful to the lender when it required in section 485(b) of the Act that information collected from the borrower during the exit interview regarding the borrower's expected future employment be forwarded to the holder of the borrower's loan.

Changes: The Secretary has amended the regulations to require a borrower to notify the current holder of any change of name, address, student status to less than half-time, employer, or employer's address.

Section 682.401(b)(8)

Comment: Some commenters requested that the Secretary clarify whether any service or fee restrictions can be imposed on students (or parents borrowing on behalf of those students) who are not residents of the State served by a guaranty agency but who are attending school in that State. The commenters questioned whether a variable fee structure for out-of-state borrowers would be prohibited by this provision.

Discussion: A guaranty agency is prohibited from imposing any additional restrictions on out-of-state students who are attending a school in a State served by the guaranty agency. A fee structure that discriminates against out-of-state borrowers attending an in-state school would violate the non-discrimination provisions in section 428(b)(1)(S) of the Act. However, a variable fee structure imposed by the agency on both in-state and out-of-state students would not be considered such a restriction.

Changes: None.

Section 682.401(b)(9)

Comment: One commenter suggested deleting the phrase "excluding interest or other charges the lender may have added to the principal balance" from § 682.401(b)(9)(iv), which describes how much the guaranty agency may charge as an insurance premium.

Discussion: Because the insurance premium is deducted from the proceeds of a loan when it is made, it is not possible for interest or other charges to have been added to the loan before the insurance premium is deducted.

Changes: The regulations have been revised to remove the phrase regarding interest and other charges from the description of how much a guaranty agency can charge for an insurance premium.

Comment: A number of commenters objected to requirements in § 682.401(b)(9) and § 682.406(a)(1) that, if funds are disbursed by means of electronic funds transfer and the funds are not released within 120 days from the school's restricted account, the insurance premium must be refunded and the loan loses reinsurance. The commenters stated that a lender would have no way of knowing if or when the funds were released from the restricted account.

Discussion: If loan proceeds are disbursed by means of electronic funds transfer, the lender must have a system in place to determine that the funds were released from the school's restricted account within 120 days of disbursement. The system developed to monitor and document that the funds have been released is a matter between the lender and the school. If these funds are released after the 120th day, the loan loses reinsurance, and the origination fee and any insurance premium assessed against the borrower must be refunded.

Changes: None.

Section 682.401(b)(12)

Comment: Some commenters asked the Secretary to clarify that if a guaranty agency charges its lenders a fee to refinance fixed-rate PLUS and SLS loans, the agency must not charge different fees to different lenders. Other commenters asked how this fee may be assessed, *i.e.*, is it to be a flat dollar fee or may a percentage of the refinanced amount be used?

Discussion: Guaranty agencies are permitted to charge lenders a fee for refinancing fixed-rate PLUS and SLS loans. See § 682.401(b)(12). If an agency charges a fee, it must charge that fee consistently to all lenders who refinance

fixed-rate PLUS and SLS loans. A guaranty agency may not discriminate against participating lenders. See section 428(b)(1)(u) of the Act. This fee may be either a flat dollar amount or a percentage of the fee charged to the borrower.

Changes: The regulations have been amended to clarify that if an agency charges a fee, it must charge that fee to all lenders.

Section 682.401(b)(18)

Comment: Some commenters questioned what lenders and guaranty agencies would be permitted to do with information learned through a student status confirmation report. Other commenters questioned what procedures should be followed if information on a student status confirmation report conflicts with information held by the lender or guaranty agency.

Discussion: A holder of a FFEL program loan is required to act on any information received from the student status confirmation report. As noted in Section III of Dear Guaranty Agency Director Letter 88–G–138, "A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has."

Changes: None.

Comment: A number of commenters suggested that rather than requiring guaranty agencies to use the report format specified in appendix B for the student status confirmation report, the Secretary should specify only the data elements that must be included and let the format be developed by guaranty agencies and other program participants. Many commenters wholeheartedly supported the establishment of a uniform system for monitoring student enrollment status.

Discussion: In the "Comments and Responses" to the final FFEL regulations published on November 10, 1986, the Secretary noted his concern "with the administrative burden that might be imposed on schools if each agency adopts a different monitoring system." See 51 FR 40941. No uniform system for monitoring student-enrollment status has been established voluntarily in the intervening years. Therefore, the Secretary, in response to continuing requests from schools to establish such a system, is mandating that guaranty agencies use the form specified in appendix B of these regulations, unless the Secretary notifies the guaranty agency that other data elements or a revised format may be used.

Changes: The regulations have been revised to require the guaranty agency to use appendix B, unless notified by the Secretary that other data elements or a revised format may be used. The Secretary has also revised appendix B to provide definitions that apply to the data elements.

Section 682.401(d)(1)

Comment: Many commenters asked the Secretary to include a provision in the regulations that requires the school or a Multiple Data Entry (MDE) service to provide, without cost, the items on the common financial aid form that could not be included in the loan application.

Discussion: The Secretary does not believe a regulatory change is necessary and will ensure that a guaranty agency has access without cost to the data that is needed by the guaranty agency but that may not be included on the loan application.

Changes: None.

Section 682.401(e)

Comment: A number of commenters asked that Dear Colleague Letter 89–G–157, which dealt with inducements by lenders and guaranty agencies, be incorporated into the regulations.

Discussion: Dear Colleague Letter 89–G–157, issued in February 1989, described a number of scenarios that the Secretary would consider improper inducements and a number of scenarios that he would not consider to be inducements. Nothing in these regulations invalidates that guidance. The Secretary declines, however, to incorporate the contents of the letter into the regulations.

Changes: None.

Section 682.402 Death, Disability and Bankruptcy Payments

Section 682.402(a)(3)

Comment: Many commenters suggested that the Secretary should reinsure a death, disability, or bankruptcy claim even if the loan would not qualify for payment as a default claim. They suggested the lender's activity or inactivity has no relation to the borrower's present condition.

Discussion: The Secretary agrees that the lender's actions had no bearing on the condition that would otherwise qualify the borrower for cancellation. The same cannot be said about the effect of the lender's failure to service the loan properly on the repayment status of the loan before the cancellation. Therefore, the Secretary continues to believe that a claim that is not otherwise eligible for a default claim before cancellation should not be paid simply as a result of an unrelated condition of the borrower.

Changes: None.

Section 682.402(b)(3)

Comment: Several commenters requested that the Secretary increase the period for suspension of collection activities pending receipt of documentation verifying a borrower's death to 60 days from the proposed 30 days. They argued that the proposed rule provided lenders with insufficient time to secure the required documentation and placed them in the position of having to resume collection activities with the borrower's bereaved family.

Discussion: The Secretary understands the commenters' reluctance to resume collection activities under these circumstances. However, the Secretary believes that 30 days is a sufficient period to secure documentation of a borrower's death in light of the fact that, in addition to a death certificate, a lender may accept "other proof of death that is acceptable under applicable State law" or, if that is not available, "other evidence" that the guaranty agency believes establishes that the borrower has died. The Secretary believes that in many States the borrower's obituary notice is sufficient to document the borrower's death. "Other evidence" may also include, but is not limited to, a published account of a borrower's death in a newspaper or other published report or a letter from a member of the clergy or funeral home director in a position to verify the death.

Changes: None.

Section 682.402(d)(2)

Comment: Several commenters requested that the Secretary revise § 682.402(d)(2) to provide that if a lender receives notification of a borrower's bankruptcy filing in the form of a written notice from the borrower's attorney, the notice must specify the name and address of the court in which the bankruptcy petition was filed and the case number. The commenters believe this additional information is necessary because written notices sometimes reflect a borrower's intention to file rather than an actual filing.

Discussion: The Secretary understands that written notices can sometimes be misleading. However, he believes that being overly prescriptive in detailing the contents of the written notice will result in a lack of lender response to notices that do not contain exactly the information prescribed in

the regulations. The Secretary expects the lender to follow up with the attorney or the borrower if it receives a written notice that does not include all the information necessary to conclude that a bankruptcy petition has been filed.

Changes: None.

Section 662.402(d)(4)

Comment: A number of commenters noted that there was no mention in the regulations as to what procedures a lender should follow if it receives notice that a bankruptcy court has converted a "no asset" case to an "asset" case. The commenters suggested that the lender should be required to file a proof of claim with the bankruptcy court within 30 days after receiving such a notice from the court.

Discussion: The Secretary agrees with the commenters. It is not uncommon for a bankruptcy court to decide that the borrower does have assets even though the original bankruptcy petition stated that no assets were available.

Changes: The Secretary has added a provision to the regulation to require a lender to file a proof of claim with the bankruptcy court within 30 days after receiving notice that a "no asset" case has been converted to an "asset" case.

Section 682.402(d)(5)

Comment: Several commenters requested that the Secretary clarify that, in the case of a Consolidation loan, the seven-year period in which a Title IV student loan cannot be discharged in bankruptcy begins when the Consolidation loan enters repayment rather than when the loans that were consolidated entered repayment.

Discussion: Section 682.402(d)(5) of the regulations, which addresses the circumstances under which a lender must file a bankruptcy claim with the guaranty agency, specifies that "the loan has been in repayment for more than seven years * * * from the due date of the first payment until the date of the filing of the petition for relief * * *." The Secretary notes that "the loan" as used in the regulations includes a Consolidation loan and that the seven-year period of nondischargeability commences from the due date of the first payment on the Consolidation loan rather than from the due date of the first payment on the underlying loans paid off by the Consolidation loan.

Changes: None.

Comment: A number of commenters felt the language in the regulations requiring a lender to file a bankruptcy claim if the borrower "has begun an action" to have the loan discharged was unnecessarily vague. The commenters believed that the language concerning the lender learning of a bankruptcy action should refer to the lender receiving a "summons and complaint" to determine dischargeability based on undue hardship.

Discussion: The term "summons and complaint" is the correct technical term for what the lender should receive if the dischargeability of a loan is going to be addressed to a bankruptcy court. However, the Secretary also recognizes that a lender might learn of a bankruptcy petition or action filed by the borrower through other means. The general language of the regulations requires the lender to take action to protect the loan from being discharged on the basis of information that might not necessarily come as a formal "summons and complaint" from the bankruptcy court.

Changes: None.

Section 682.402(d)(5)(ii)

Comment: Several commenters requested that the regulations be revised to allow a lender, after a bankruptcy proceeding has been completed or dismissed, to treat the loan as having been in forbearance from the date of the borrower's delinquency preceding the filing of the bankruptcy petition rather than from the date of the borrower's filing of the petition as proposed. The commenters believe that this will improve the lender's chances of averting a default by a borrower who might have been severely delinquent prior to filing a bankruptcy petition and who will continue to have difficulty making payments on a FFEL loan after the stay on collections is lifted.

Discussion: The Secretary understands the commenter's concerns and agrees that lenders should have greater flexibility in assisting borrowers in these circumstances to avoid default. However, the Secretary has decided to provide for this treatment by revising § 682.211 of the regulations rather than making a change to § 682.402.

Changes: None.

Section 682.402(e)(2)(ii)

Comments: Several commenters recommended revisions to the filing deadlines for a lender to file a bankruptcy claim with the guaranty agency. One commenter stated that the deadline for submission of a bankruptcy claim should never be less than 30 days and recommended that the Secretary allow a guaranty agency to provide a longer filing period if it believes this will not in any way hamper its ability to oppose the discharge of the loan. The commenter indicated that he knew of no instance where a 30-day period prevented an agency from opposing a discharge. Other commenters objected to the 10 (calendar) day standard included in § 682.402(e)(2)(ii)(C) because they believe this is an insufficient period for claim filing. These commenters recommended that the provision be revised to 10 business days or 15 days.

Discussion: The Secretary believes that bankruptcy claims must be handled as expeditiously as possible to provide guaranty agencies with sufficient time to successfully oppose the discharge of the loan. The Secretary does not agree that 30 days is always sufficient time. The Secretary also believes that, given the increased number of bankruptcy filings nationwide, standard filing deadlines are important. Therefore, the Secretary declines to allow a guaranty agency to establish its own filing deadlines. The Secretary agrees that 10 calendar days might be insufficient time for claim filing if it includes a holiday period. Therefore, the regulations have been revised to provide 15 days.

Changes: Section 682.402(e)(2)(ii)(B) has been revised to provide the lender with 15 days to file a claim with the guaranty agency after the lender is served with a complaint or motion to have a loan determined to be dischargeable on the grounds of undue hardship.

Section 682.402(h)(5)

Comment: Several commenters objected to the proposed requirement that a lender repurchase a loan if a judgment is entered that the loan is non-dischargeable in bankruptcy or a discharge is denied to the borrower on any ground. The commenters stated that it is possible that the lender required to repurchase the claim might no longer participate in the FFEL program and that these repurchases will result in borrower confusion. They also stated that a borrower who has filed a bankruptcy petition is unlikely to be able to repay the loan and is likely to default on the loan. Therefore, they recommended that the borrower be required to make payments to the guaranty agency sufficient for the borrower to rehabilitate the loan.

Discussion: The Secretary believes that a loan subject to repurchase under these provisions should be handled like all other loans subject to pre-default collection and that the lender is the party best equipped to deal with these loans. If the guaranty agency should find that a lender that would be expected to repurchase a loan has withdrawn from the program, the Secretary would expect the agency to arrange a repurchase by another eligible

lender in its program. The Secretary also believes, contrary to the commenter's view, that a borrower who has filed a bankruptcy petition and has discharged other debts might be in a better position to repay his or her FFEL loan than prior to the bankruptcy filing. Finally, the Secretary is requiring the repurchase of loans that were not in default at the time the bankruptcy petition was filed. Loans that were in default prior to the borrower's filing of the bankruptcy petition would remain with the guaranty agency and loan rehabilitation and repurchase would be an option available to the borrower.

Changes: None.

Section 682.402(i)

Comment: Many commenters strongly supported the proposed change in the treatment of chapter 13 bankruptcy claims that provides that the Secretary would reimburse the guaranty agency for its losses after it pays those claims to lenders. Several commenters requested that the Secretary clarify that this treatment would apply to chapter 13 bankruptcy claims paid to lenders prior to the date these regulations become effective and held currently by the guaranty agency.

Discussion: The Secretary agrees that it is necessary to clarify that the provisions contained in § 682.402(i) apply to chapter 13 claims paid to lenders prior to the date these regulations become effective and held currently by the guaranty agencies, in addition to any claims paid subsequent to the date the regulations become effective. However, the Secretary does not believe a revision to the regulations is necessary.

Changes: None.

Section 682.404 Federal Reinsurance Agreement

Section 682.404(a)(2)

Comment: Some commenters objected to the definition of preclaims assistance as at least three collection activities by the guaranty agency. If preclaims assistance is available only at the 90th day of delinquency, the commenters believe that there will not be enough time for the agency to comply with the statutory requirement that supplemental preclaims assistance be performed.

Discussion: While there is a requirement that supplemental preclaims assistance be performed on or after the 120th day of delinquency, there is no similar requirement regarding the timing of preclaims assistance. If a guaranty agency offering preclaims assistance only at the 90th day of delinquency feels that it is incapable of performing three collection activities in 30 days before beginning supplemental preclaims assistance at day 120, it should consider making preclaims assistance available to its lenders earlier (e.g., at the 60th day of delinquency).

Changes: None.

Section 682.404(g)(2)

Comment: A number of commenters stated that the Secretary's equitable share of payments received on defaulted loans should not apply to collection costs guaranty agencies charge on those loans. These commenters believe that section 428(c)(2)(D) of the Act limits the Secretary's equitable share only to payments made to reduce outstanding principal and interest owed by the borrower. The commenters also believe that since the Secretary does not provide reinsurance for collection costs it is inappropriate to deduct the Secretary's equitable share from these costs.

Discussion: Section 428(c)(2)(D) of the Act specifies that an agreement between the Secretary and a guaranty agency "shall provide that if * * * any payments are made in discharge of the obligation incurred by the borrower * * * (including any payment of interest accruing on such loan * * *), there shall be paid over to the Secretary * * * (a) proportion of the amounts of such payments * * *" Thus, this provision clearly states that a portion of all payments made by a borrower on a defaulted loan held by a guaranty agency goes to the Secretary. The debtor's obligation includes principal, interest, and collection costs under section 484A(b)(1) of the Act. An agency receives reimbursement for its cost of collecting a defaulted loan through the portion of the collected amounts it is allowed to keep. By assessing and collecting these costs (even though it may only keep a portion of the collection), an agency receives more than if it had never assessed collection costs.

Changes: None.

Section 682.404(g)(3)

Comment: A number of commenters objected to the proposal that the Secretary's equitable share of payments made on defaulted loans be forwarded to the Secretary within 30 days of receipt of those payments because this would conflict with the contracts many guaranty agencies have with their collection contractors. The commenters also argued that it would be difficult to reflect end-of-the-month collections on the monthly reports to the Secretary.

Discussion: Many guaranty agencies use outside collection contractors. In fact, the alternative collection procedure for defaulted loans in § 682.410(b) requires an agency to use outside collection contractors if the guaranty agency's own efforts to bring the borrower into repayment are unsuccessful. The Secretary recognizes that as payments to the Department are made once a month, it would be unlikely that a payment made at the end of the month would be included in that month's payment to the Secretary.

Changes: The regulations have been amended to allow guaranty agencies 45 days from receipt of payments made on defaulted loans to send the Secretary's equitable share of those payments to the Secretary.

Section 682.406 Conditions of Reinsurance Coverage

Section 682.406(a)(2)

Comment: Many commenters opposed the proposal that the lender provide a payment history and a collection history to the guaranty agency with a default claim. Several commenters believe that the collection history should be required only on the most recent 180 days before the borrower defaulted on the loan.

Discussion: One of the greatest areas of dispute with borrowers is how loan payments have been applied. Without a payment history in the file, it is impossible for the guaranty agency to determine if payments have been applied properly. If a loan is transferred to another servicing system, a print-out of the payment history should be maintained in the borrower's file to meet this requirement. While it is true that in reviewing the due diligence performed on a loan the Secretary is concerned with the 180-day delinquency period that preceded the default, an examination of the activity that occurred on the account before it became delinquent is equally important. A report on this activity is used to verify the repayment status of the borrower at the beginning of the delinquency period.

Changes: None.

Section 682.406(a)(5)

Comment: Many commenters objected to the proposal that would require, as a condition of reinsurance, that a claim returned to the lender due to inadequate documentation be resubmitted to the guaranty agency within 30 days. Many commenters felt that 60 or 90 days should be permitted, while other commenters stated that lenders should be allowed a "reasonable" time to resubmit such a claim. One commenter stated that an interest limitation on

resubmitted claims would better ensure that returned claims are resubmitted in a timely manner rather than having resubmission of the claim required within a given number of days as a condition of reinsurance.

Discussion: The Secretary is concerned that loans eligible for default claim payments be processed quickly to allow the guaranty agency to begin its collection efforts against the borrower at the earliest possible time. The Secretary also is concerned that a lender not file a claim it knows is incomplete and will be rejected solely to avoid missing the timely filing deadline or to extend the period for which the lender may receive interest and special allowance payments. The Secretary also recognizes that there are occasions when a claim submitted to the guaranty agency does not initially satisfy the requirements for claim payment but can do so with additional documentation or explanation.

Changes: The Secretary has changed the regulations to provide that a lender may receive full reimbursement for outstanding principal, accrued interest, and special allowance if an otherwise eligible claim that has been returned solely because of inadequate documentation is resubmitted within 30 days after the date the agency returned the claim. If the lender resubmits the claim by the 60th day after the claim was returned by the guaranty agency, principal is reinsured but interest payments will be limited to the 30th day after the claim is returned. The timely filing violation on otherwise eligible claims not resubmitted by the 60th day after being returned by the guaranty agency must be cured using the procedures set forth in Bulletin 88–G–139 (appendix D).

Section 682.406(a)(7)

Comment: Many commenters strenuously opposed the proposed requirement that a guaranty agency pay or return a default claim to a lender within 45 days of the date the lender filed the claim in order for interest accruing beyond the 45th day to be reinsured. The commenters felt that the increased administrative burden to review claims quickly would outweigh any costs realized by the reduction in time allowed guaranty agencies to pay or return claims. Many commenters believed that 45 days would not provide sufficient time for a guaranty agency to adequately review a claim. Other commenters noted that some guaranty agencies begin collection activity when a claim is submitted and that it was not uncommon for this collection activity to be instrumental in causing the borrower to reduce the delinquency status sufficient to bring the loan out of default. Many commenters suggested that the proposed rule might actually increase defaults because a borrower would no longer have the benefit of this additional collection activity.

Discussion: The Secretary believes that it is necessary for the default claim to be reviewed and paid promptly to reduce the amount of the default claim and to allow the guaranty agency to begin collection activity against the defaulted borrower. If an agency is able to bring a borrower into repayment so quickly after the lender has failed to collect on the loan, the Secretary believes it calls into question the lender's collection efforts. However, the Secretary recognizes that in some circumstances (e.g., an unusually large volume of default claims), it might be difficult for a guaranty agency to adequately review a claim within 45 days and, therefore, he has extended to 60 days the deadline by which a guaranty agency must pay a default claim to receive reinsurance on all otherwise eligible accrued interest. The Secretary wishes to clarify that if a claim is paid after the 60th day, and the guaranty agency's agreement with the lender covers accrued interest, the guaranty agency is required to pay the interest accruing after the 60th day to the lender even though this interest is not eligible for reinsurance. In consideration of commenters' concerns regarding the change in procedures required by this provision, the Secretary is delaying the date this requirement becomes effective.

Changes: The Secretary has extended to 60 days the deadline by which a guaranty agency must pay a default claim to receive reinsurance on all otherwise eligible accrued interest.

Section 682.406(a)(9)

Comment: Some commenters objected to the proposal establishing, as a condition of reinsurance, the requirement that a loan be legally enforceable when the agency pays the claim. The commenters argued that a number of events relevant to the enforceability of the loan may have occurred without the guaranty agency's or lender's knowledge.

Discussion: The Secretary notes that it has always been the Department's policy that a loan be legally enforceable if it is to be insured or reinsured by the Secretary. This provision, which is now contained in § 682.406(a)(10), is not new and merely codifies within the regulations a long-standing policy that has been part of the FISL and the FFEL programs since their inception.

Discussion: A guaranty agency may use the assets of its reserve fund only as permitted by § 682.410(a). Paragraph (a)(3) of that section permits a guaranty agency to use a specific portion of its reserve funds "* * * only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for proper administration of the guaranty agency's FFEL loan guarantee activities." The costs of operating a loan servicer for loans that have not yet defaulted clearly are unrelated to the expenses incurred by a guaranty agency in providing loan guarantees to lenders and are, therefore, not permissible.

This policy applied to all agencies as of December 26, 1986, the date the final regulations published by the Department on November 10, 1986 went into effect. The Secretary believes that the use of any reserve funds for for-profit enterprises is not permitted because of the risk to funds dedicated to the FFEL program.

Changes: None.

Section 682.410(a)(3)

Comment: Several commenters objected to the proposed restrictions on the use of borrower payments by guaranty agencies contained in § 682.410(a)(3)(iv). The commenters believed that these restrictions conflict with section 428(c)(6) of the Act, which allows guaranty agencies to use the percentage it retains of borrower payments "for costs related to the student loan insurance program, including the administrative costs of collection * * *"

Discussion: The Secretary agrees with the commenters that the proposed restrictions represent a narrow interpretation of the intent of the statute and that agencies should be allowed to use borrower payments for activities supporting the proper administration of the guaranty agency's loan guarantee activities.

Changes: Section 682.410(a)(3)(iv) has been deleted and "amounts collected on FFEL loans" has been added to the other items specified in § 682.410(a)(3)(i) that can be used to support the agency's administration of its loan guarantee activities.

Section 682.410(b)(2)

Comment: Many commenters objected to the requirement that a guaranty agency must assess collection charges against the borrower. Other commenters stated that if collection charges had to be assessed, a flat rate should be used by each guaranty agency.

Discussion: The statute clearly specifies that, notwithstanding any

provision of State law to the contrary, collection charges must be assessed against the borrower. See section 484A(b) of the Act. The formula referenced in § 682.410(b)(2) specifies that the amount charged will be the lesser of the costs of collection under the formula in 34 CFR 30.60, or the amount the borrower would be charged if the loan was held by the Department. This amount will be a percentage of the principal and interest outstanding, may be calculated annually, and would be a flat rate assessed against all borrowers with defaulted loans held by that agency.

Changes: None.

Section 682.410(b)(4)

Comment: Some commenters questioned what charges a guaranty agency may capitalize after a default claim has been paid.

Discussion: A guaranty agency is required to capitalize any interest owed on the loan by the borrower. This may include interest that was not paid to the lender by the guaranty agency and interest paid by the guaranty agency that will not be reimbursed by the Secretary.

Changes: This provision of the regulations has been amended to clarify that all interest, rather than "unpaid charges" owed by the borrower, must be capitalized by the guaranty agency.

Section 682.410(b)(5)

Comment: Many commenters vigorously opposed the provision that requires a guaranty agency to grant a borrower an opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation before reporting the default to a credit bureau or assessing collection costs against the borrower. The commenters stated that a defaulted borrower had already had ample opportunity throughout the repayment period to protest the debt and that the administrative review would result in a substantial administrative burden for an agency and would delay any recovery of the debt. In addition, the commenters felt that section 430A of the Act set the parameters of credit bureau reporting for the FFEL programs and that an opportunity for an administrative review was inconsistent with congressional intent.

Discussion: Federal law requires notice and opportunity to contest a debt before a default is reported to a credit bureau. See 31 U.S.C. 3711(f). Moreover, in light of the serious consequences of credit bureau reporting for a borrower, the Secretary believes it reasonable and appropriate for a borrower to have an opportunity to contest the default. The Secretary believes that a guaranty agency should not have difficulty implementing this requirement as it already provides an opportunity for review when it assigns a loan to the Secretary for participation in the Internal Revenue Service (IRS) offset process. The statute authorizing Federal agencies to collect debts by administrative offset also requires the agency to provide a debtor with notice of a proposed IRS offset and at least 60 days in which to present evidence regarding the debt. See 31 U.S.C. 3720A. In the FFEL program, the Secretary provides this opportunity to a debtor by a review and an initial determination by the guaranty agency that held the debtor's loan and maintains records of that loan account. At this time, virtually all guaranty agencies participate in the IRS offset procedures. When a guaranty agency submits loans to the Department for collection through IRS tax-offset, it certifies that the affected borrowers have been granted an opportunity for an administrative review. Both 31 U.S.C. 3711(f) and 31 U.S.C. 3720A require a 60-day notice period and an opportunity for an administrative review of the debt. The administrative review procedures outlined in the regulations meet the credit bureau reporting requirements and the requirements for participation in the IRS offset process. Once the opportunity for an administrative review has been offered to the borrower, the guaranty agency is not required to offer it again. The Secretary expects the volume of requests for administrative reviews received by a guaranty agency to be manageable.

Changes: The Secretary has retained the requirement that borrowers be given an opportunity for an administrative review before a guaranty agency reports the debt to a credit bureau. However, to reduce both the administrative burden for agencies and possible confusion for borrowers, the Secretary has modified § 682.410(b)(6) to provide that the initial notices sent to borrowers in the administrative review process shall also serve as the initial collection activities for purposes of collecting the loan under § 682.410(b)(6).

Section 682.410(b)(7)

Comment: Some commenters objected to the proposed requirement in the alternative due diligence collection procedures for guaranty agencies that a guaranty agency refer all loans to one or more collection contractors if its collection efforts are unsuccessful. The commenters believe the agency should be allowed to retain some loans to compete with the collection contractors.

Discussion: A major underlying premise of the proposed alternative due diligence collection procedures is that a guaranty agency will do everything possible within the 180 days during which it attempts to collect to bring the borrower into repayment. If the borrower does not begin repayment, the amount the agency is allowed to retain after paying the Secretary's equitable share and the contingency fee to the collection contractor is much smaller than the amount it would retain if it brought the borrower into repayment through its own efforts. The Secretary believes that there would be little incentive for the guaranty agency to vigorously pursue repayment within the allotted 180-day period if the guaranty agency were allowed to continue to collect on loans after that period.

Changes: None.

Section 682.410(c)(11)

Comment: Many commenters opposed the provision that would require a guaranty agency to provide training and technical assistance or to act as an escrow agent for a school that is experiencing financial difficulty. These commenters felt that a guaranty agency should not "prop-up" a school that is experiencing financial difficulty.

Discussion: The Secretary agrees that it is not always in the best interest of the FFEL program to prolong the existence of schools that are in financial difficulty.

Changes: The Secretary has amended the regulations to require a guaranty agency to provide training and technical assistance, if appropriate, to a school or holder experiencing financial problems and has deleted the provision that would have required a guaranty agency to act as an escrow agent.

Section 682.411 Due Diligence by Lenders in the Collection of Guaranty Agency Loans

Comment: The Department received many comments regarding the due diligence requirements for lenders collecting loans guaranteed by a guaranty agency. Virtually all the commenters commended the Department's willingness to be more accommodating to lenders' concerns and to reduce the opportunity for a loan to lose reinsurance because of incidental violations of the due diligence collection requirements. While some commenters approved of the proposed procedures with minor modifications, others felt that a complete reworking of the procedures focusing on performance-based standards related to the lender's default rate or compliance with a given standard would better

achieve the goals of reducing default and minimizing the lender's risk of losing reinsurance on a loan. A number of other commenters felt that retaining the standards set forth in the Department's current regulations and cure procedures would be preferable to adopting another standard. Other commenters felt the previous standards should be maintained but that the cure procedures for loans that have lost reinsurance should be relaxed.

Discussion: The Secretary is sympathetic to the commenters' concerns that a lender should not face an undue risk of loss of reinsurance because of technical violations of a collection standard. However, the Secretary is also convinced that the level and intensity of effort expended in the collection of a student loan relates directly to the likelihood of its default. One commenter, in supporting the Secretary's development of performance-based collection standards, noted that stringent standards are necessary for some lenders but are inappropriate for others because of the care and diligence with which those lenders exercise their fiduciary obligations. The Secretary believes that, while performance standards for lenders might be attractive, establishing an acceptable standard of performance is not possible because the make-up of lenders' portfolios differs greatly, e.g., by type of school and region of the country, etc. Compliance with a given performance standard also presents difficulties because an audit using a statistically valid sample of a lender's entire student loan portfolio, not just claims submitted, would have to be used to determine an acceptable level of compliance. Changes that occur subsequent to the audit that affect compliance, e.g., loan volume, personnel or computer changes, etc., could not be accounted for or even anticipated by the audit. Finally, given the serious and detrimental effect of a defaulted loan to the borrower, the Secretary is strongly opposed to the idea that a default claim could be paid by a guaranty agency without a review by the agency to ensure that the borrower was given the opportunity to respond to a diligent collection effort on the loan. Establishing different standards for different lenders would make that review extremely difficult and time-consuming. The commenters who generally supported the proposed § 682.411 felt that some modifications would be necessary for lenders to be able to continue to use the collection systems designed to meet the standards in the current FFEL program regulations. It has always been the Secretary's intent that lenders and servicers that made substantial investments in systems to meet the existing collection requirements should be able to meet the new requirements without making substantial modifications to their systems.

The cure procedures that were issued in March 1988 and published as appendix D of the NPRM will not be relaxed. They were developed after extensive discussion and consultation with representatives of the lender and guaranty agency community and the Secretary continues to believe that they adequately address good-faith violations of the regulatory requirements.

Changes: After carefully reviewing the comments received on § 682.411 and meeting with various representatives of the industry, the Secretary has decided to adopt, with some modifications, the standards proposed in the NPRM. The Secretary has amended the regulations so that no required collection activity during a borrower's delinquency is contingent upon the timing, success, or failure of another collection activity. In addition, the Secretary has changed the due diligence requirements to ensure telephone collection efforts will be used throughout the delinquency cycle, rather than only at the beginning or end, as the Secretary believes that telephone collection activity is most effective if used at regular intervals throughout the delinquency.

Section 682.411(a)

Comment: Many commenters indicated that the language in the NPRM concerning the due diligence requirements for endorsers was unclear. Other commenters opposed the Secretary's proposal to regulate due diligence for endorsers and felt it only would discourage the use of endorsers. Other commenters noted that some State laws prohibit collection efforts against an endorser until after default. Many commenters were also concerned about the consequences of failing to complete the collection activities required of endorsers.

Discussion: The Secretary believes that the use of endorsers can be an effective means of reducing defaults. However, the value of having an endorser on a loan is eliminated if the endorser is not subject to collection activity when the loan becomes delinquent. The Secretary believes that the collection activities undertaken for an endorser should differ from those applied to the borrower and generally should not begin until the borrower is significantly delinquent. Any State law that normally would prohibit collection activity against an endorser from occurring before default occurs is preempted by § 682.411(n).

Changes: Section 682.411(m) has been added to the regulations to clarify that an endorser on a loan must receive at least two collection letters in addition to a final demand letter and at least one diligent effort for telephone contact. If during the delinquency cycle, but prior to the sending of the final demand letter, the lender receives information indicating it does not know the address of the endorser, the lender must attempt to locate the endorser through the use of normal skip-tracing techniques, which must include at least an inquiry to directory assistance. In addition, § 682.406(a)(3) has been revised to state explicitly that due diligence against an endorser is a condition of reinsurance. If a lender fails to perform all, or any portion of, the required due diligence with an endorser, the loan will not be eligible for reinsurance until the missing activities have been performed. The lender may perform the collection activities late, but the timely-filing deadlines and associated penalties still apply. Missed due diligence activities with an endorser will not be counted as violations but must be performed.

Comment: Several commenters noted that the term "outside the United States" would exclude telephone efforts against borrowers residing in Puerto Rico, Canada, and Mexico who are easily accessible by telephone.

Discussion: The Secretary agrees with the commenters that diligent telephone efforts to contact borrowers residing in these areas should not be excluded.

Changes: The regulations have been revised to provide that the lender must make telephone calls to borrowers who reside in a State (as that term is defined in § 668.2), Canada, and Mexico.

Section 682.411(b)

Comment: A number of commenters were concerned about how violations would be counted if the first payment due date was not established in a timely manner.

Discussion: Section II of appendix D discusses the requirements for establishment of the first payment due date. The deadlines and penalties outlined in that discussion are based on the current regulations under which a violation could not occur until the 31st day of delinquency. The penalties increase depending upon how late the first payment due date is established. Under the new standards contained in § 682.411, a violation occurs if the first payment due date does not occur by the deadline contained in § 682.411(b). The Secretary has decided that in

determining the penalties to be associated with the failure to establish a first payment due date on a timely basis, the Secretary will look at the period between when the first payment due date should have been established according to § 682.411(b) and the date of the actual first payment due date. If this period is more than 45 days, reinsurance is lost, any special allowance received for the period that begins 31 days after the date the first payment due date should have been established according to § 682.411(b) must be returned, and the lender must receive a full payment or signed repayment agreement in order for reinsurance to be reinstated. If this period is more than 35 days, but not more than 45 days, a single violation will be assessed against the lender.

Changes: None.

Comment: Several commenters opposed the inclusion of the phrase "more than half of which" payment is later made. The commenters believed that this wording would require a major change to the collection systems of many lenders. They believed that lenders should not be required to count one half of a payment as advancing the due date and curing delinquency for that month. Many commenters believed that the language should be revised to allow a guaranty agency to determine a reasonable payment-shortfall tolerance if a full payment is not received before the date the lender must consider the borrower delinquent.

Discussion: The Secretary recognizes that the language as written might create substantial administrative burden associated with half payments. The Secretary agrees that a reasonable payment-shortfall tolerance amount needs to be established under which a lender need not initiate collection activities if the lender's system allows for such a tolerance. The Secretary also believes that such a tolerance must be standardized across the FFEL program and not vary by guaranty agency.

Changes: The regulations have been revised to provide that a payment that is within $5 of the amount required to advance the due date may advance the due date if the lender's procedures allow for that advancement.

Section 682.411(c)

Comment: Many commenters objected to the proposal that the first collection notice be sent by the 10th day of delinquency. Some commenters submitted data showing that many borrowers who do not meet the payment due date make a payment shortly afterward. Commenters believe that sending a delinquency notice to a borrower so soon after the payment due date was missed is counterproductive and will increase costs to the lender without any commensurate benefit to the FFEL programs. Commenters also pointed out that to provide themselves sufficient lead time to comply with this requirement, lenders would have to reprogram their computer systems to generate the late notices no later than the seventh day of delinquency.

Discussion: The Secretary believes that a notice sent very early in a borrower's delinquency impresses upon the borrower the seriousness of the delinquency status and provides greater incentive to the borrower to make a payment to bring the loan current and avoid further delinquency and default. The Secretary does not believe that lenders will incur significantly greater costs by sending the initial collection notice by the 10th day of delinquency rather than at a slightly later date.

Changes: None.

Section 682.411(d)

Comment: A number of commenters objected to the proposed requirement in the NPRM that each collection letter sent to a borrower must include the consequences of default, including the possibility that litigation may be initiated against the borrower by the guaranty agency. The commenters felt that collection letters sent during the delinquency cycle should be progressively more forceful to be most effective.

Discussion: The Secretary agrees that sending an extremely forceful collection letter early in the delinquency cycle may needlessly alienate a borrower who, for any number of reasons, is experiencing a short-term delinquency. The Secretary also agrees that a series of progressively more forceful collection letters is likely to be more effective than a series of identical letters.

Changes: The regulations have been amended to require that only two of the four letters that lenders are required to send to delinquent borrowers outline the consequences of default. Although the timing of these letters is left to the discretion of the lender, the Secretary intends that the two most forceful letters should be sent late in the delinquency cycle, when they are likely to have the greatest effect on the borrower.

Comment: A number of commenters observed that the language in the NPRM required the final demand letter to be sent after the 180th day of delinquency. The commenters felt that the lender should be able to send the final demand letter earlier than the 180th day of delinquency in order to have more time to prepare and file the claim with the guaranty agency.

Discussion: The Secretary agrees with the commenters. The lender is required to wait 30 days after sending the final demand letter before filing a default claim to give the borrower a chance to respond before a claim is filed with the guaranty agency. The Secretary understands that the proposed rule would have left the lender with only a short time period to file a timely claim.

Changes: The regulations have been amended to allow the lender to send the final demand letter on or after the 151st day of delinquency.

Section 682.411(e)

Comment: A number of commenters objected to the provision that would have required a borrower, after the final demand letter had been sent, to avert default only by making payments sufficient to bring the loan current. The commenters felt that lenders should have the option of not filing a default claim if the borrower could make payments sufficient to bring the loan out of default or sign a forbearance agreement to cover all or some portion of the delinquency.

Discussion: The Secretary agrees with the commenters that there might be circumstances where the borrower might be able to reduce the extent of the delinquency, and thus avoid default, but still not be able to repay the loan in full.

Changes: The Secretary has revised the regulations to allow the lender to permit a borrower who is more than 180 days delinquent to avert default by bringing his or her account less than 180 days delinquent. The requirement that the borrower accomplish this by making payments has been deleted.

Section 682.411(g)

Comment: A commenter requested that the Secretary clarify whether skip-tracing may be undertaken on a borrower prior to the skip-tracing of a delinquent borrower required under § 682.411(g) and, if it is undertaken but unsuccessful, whether skip-tracing activities must be repeated when the borrower becomes delinquent. The commenter stated his belief that skip-tracing should be undertaken as soon as the lender receives information indicating the address of the borrower is unknown, even if this takes place in the grace period prior to the borrower entering repayment.

Discussion: The Secretary agrees with the commenter that a lender should have the flexibility to undertake skip-tracing activities as soon as the address of a borrower becomes unknown. Furthermore, he strongly supports this

approach to loan collection. The Secretary believes that a lender should not be required, if the skip-tracing activities are unsuccessful, to repeat those activities later in the borrower's delinquency cycle unless the lender receives a payment or some other communication from the borrower indicating the borrower's address.

Changes: The Secretary has added a new paragraph (g) to § 682.208 specifying that a lender may undertake the skip-tracing activities specified in § 682.411(g) when a borrower is not delinquent if the lender receives information indicating that the borrower's address is unknown.

Comment: Many commenters felt that the skip-tracing requirements were unclear and were particularly concerned about what penalties a lender would incur if some or all of the skip-tracing was not performed.

Discussion: The Secretary believes that skip-tracing should begin soon after the lender learns the borrower's address is unknown and continue until all possible sources of information available to the lender regarding the borrower's address have been exhausted. Once these efforts have been concluded, or the final demand letter has been sent, the Secretary does not believe that there is any point in requiring further activity until the loan is eligible for claim payment.

Changes: The Secretary has revised the regulation so that a lender may be considered to have met the requirement to diligently attempt to locate the borrower if it attempts to contact, by the date of default, each individual and entity identified in the borrower's file and if there is no gap of more than 45 days between attempts to contact those individuals or entities. If the lender does not contact one or more of the individuals or entities identified in the borrower's loan file and the borrower's address remains unknown, a single due diligence violation will have occurred. If the guaranty agency requires that the lender request preclaims assistance in the event the borrower's address becomes unknown, and the lender does not request the preclaims assistance within 10 days of when it receives information indicating it does not know the borrower's current address, another violation will be considered to have occurred. If a lender performs no skip-tracing on a borrower whose address is unknown, up to three violations would be considered to have occurred. However, under the definition of "Gap in collection activity" in § 682.411(i), a gap begins the day after a lender receives information indicating the lender does not know the borrower's current address. A gap is also defined as the period between collection activities. Any attempt to contact an individual or entity in the borrower's loan file is a collection activity. A gap of more than 45 days (60 for a transfer), necessitates a cure via the lender's receipt of a signed repayment obligation or a full payment. See appendix D. If a lender does not contact each individual or entity in the borrower's loan file by the date of default, but no gap of more than 45 days exists, the lender must satisfy the requirements outlined in I.E.1. of appendix D, or receive a full payment, or a new signed repayment agreement for reinsurance to be reinstated.

Section 682.412 Consequences of the Failure of a Borrower or Student to Establish Eligibility

Section 682.412(a)

Comment: Some commenters expressed concern about subjecting borrowers who receive loan proceeds but do not attend classes to the provisions of § 682.412. The commenters recommended that these borrowers be allowed to receive a grace period and begin normal repayment on the loan.

Discussion: Federal student financial assistance is intended to assist students and their parents to meet the costs of postsecondary education. If a student receives a FFEL program loan but does not attend school, that student has no costs of attendance. Therefore, the borrower must repay immediately the funds for which he or she is now ineligible. The Secretary believes that an individual who borrows and does not matriculate should not receive FFEL program benefits such as the grace period or the 10-year repayment period normally provided to student borrowers.

Changes: None.

Comment: Several commenters objected to the subjective evaluation that a lender would be required to make regarding a borrower's intentions under proposed § 682.412. The proposed rules specify that the lender would exercise the provisions of § 682.412 against a borrower if it determined that a borrower's initial eligibility for a FFEL program loan resulted from information that the borrower knew or should have known was incorrect. The commenters stated these such actions should be taken only on the basis of substantiated fact.

Discussion: The Secretary agrees that subjective determinations cannot be made effectively by lenders and that they should only undertake these actions based on information they can substantiate. The Secretary believes these actions should be taken when the lender can substantiate that a borrower, or a student on whose behalf a parent is borrowing, provided false or erroneous information to support his or her eligibility. These situations are to be distinguished from borrower ineligibility resulting from school certification error or lender error in making the loan where the Secretary does not intend the provisions of § 682.412 to apply.

Changes: The regulations have been revised, consistent with the changes made to similar provisions in § 682.208(f) of the regulations, to require a lender to exercise the provisions of § 682.412 when it receives substantiated information supporting the fact that a borrower, or a student on whose behalf a parent is borrowing, provided false or erroneous information upon which his or her eligibility was based or took other actions leading to a borrower's ineligibility. The provisions also apply to borrowers who receive loan proceeds but do not attend classes.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Section 682.414(a)(3)

Comment: Many commenters stated that they believed lenders should be able to keep a copy of a signed repayment obligation or an affidavit of the borrower's debt in lieu of the original application and promissory note.

Discussion: The Secretary continues to feel strongly that any standard of due diligence that lenders are required to exercise should require that the lender maintain a copy of the original documents that are the basis of the debt. While a signed repayment obligation or affidavit may reflect the borrower's affirmation of the debt's existence, the Secretary believes it would be inconsistent with his responsibilities to allow these types of documents to be retained in lieu of the original application and promissory note.

Changes: None.

Section 682.414(c)

Comment: Many commenters questioned the Secretary's authority in § 682.414(c)(2) to prohibit a guaranty agency from requiring the presence of an agency representative during interviews conducted with personnel during a review of the agency. The commenters believe this prohibition denies the agency due process.

Discussion: The Secretary feels that it is imperative that the Department's representatives have complete access to

guaranty agency personnel and records during reviews of the agency's administration of the FFEL programs. The Secretary further believes, and prior experience indicates, that the presence of agency representatives during interviews with personnel or recording the interviews results in less than a candid flow of information among the reviewers and the agency's personnel. The Secretary believes that an agency receives sufficient due process related to findings that might result from a review and that the restriction on attendance at interviews does not deny due process.

Changes: None.

Section 682.502 The Application To Be a Lender

Section 682.502(b)(4)

Comment: In determining whether to enter into an agreement with an applicant to become a participating lender in the Federal GSL programs, one commenter suggested that the Secretary consider the applicant's default track record under the Title IV loan programs.

Discussion: The Secretary believes that § 682.502(b)(4) provides him with sufficient authority to examine a lender's prior default experience to determine whether to enter into an agreement with the lender. This is because it provides that the Secretary will consider "whether the applicant has had prior experience with a similar Federal, State, or private, nonprofit student loan program * * *." The Secretary believes that this allows him to examine all aspects of a lender's previous performance with Title IV and other programs, including the lender's default rates.

Changes: None.

Section 682.505 Insurance Premium

Section 682.505(c)

Comment: One commenter argued that there is no basis for the FISL insurance premium calculation to be any different from the insurance premium calculation required by statute for guaranty agencies.

Discussion: The statute provides for a separate insurance premium calculation for FISL loans. See section 429(c) of the Act.

Changes: None.

Section 682.507 Due Diligence in Collecting a Loan

Section 682.507(a)(1)

Comment: Several commenters stated that § 682.507(a)(1) should allow for the release of endorsers or, if not, the lender should be directed to use the due diligence collection procedures in § 682.411 with cosigners and endorsers. Some commenters argued that the use of endorsers is not allowed in the FISL program and questioned why they are mentioned in the regulations.

Discussion: Section 427(a)(2)(A) of the Act provides, in part, that a loan is insurable by the Secretary if the promissory note or other written agreement is made without security and without endorsement, except endorsement may be required if the borrower is a minor and his or her signature would not create a binding obligation under applicable State law. Clarification regarding the release of endorsers under the FISL program was provided to lenders in Bulletin L–35, dated June 27, 1978. This Bulletin stated that the Secretary would not pay a default claim on a loan made on or after September 30, 1977 that contained an unauthorized endorsement. However, it allowed a lender to release an unauthorized endorser before the loan became delinquent without jeopardizing Federal insurance. The Bulletin stated further that if the borrower was a minor (and could not legally have entered into a contract) at the time the promissory note was executed, the authorized endorser could not be released. Although due diligence steps with respect to authorized endorsers in the FISL program are not specified, the collection activities required for endorsers in § 682.411 are acceptable to the Secretary.

Changes: The Secretary has revised the regulations to reflect that a lender should exercise due diligence in collecting a loan with regard to an authorized endorser.

Comment: Many commenters suggested that the collection procedures for FISL loans should parallel the due diligence collection procedures required of lenders in the guaranty agency program in § 682.411.

Discussion: The Secretary does not believe it is necessary, at this time, to change the FISL due diligence procedures for lenders because loans no longer are being made under the FISL program. However, as there are only minor differences between the requirements of § 682.411 and § 682.507, the Secretary believes lenders should be allowed to use the due diligence procedures in § 682.411 in lieu of the requirements of § 682.507.

Changes: The regulations have been revised to state specifically that a lender may use the due diligence procedures in § 682.411 in lieu of the requirements in § 682.507.

Section 682.508 Assignment of a Loan

Comment: Two commenters suggested that 45 days be inserted in place of the word "promptly" for notifying borrowers of the purchase or assignment of their loans. They believe this will require lenders holding FISLs and FFELs to service them consistently.

Discussion: The Secretary agrees with the commenters that, if possible, consistent servicing of FISL and guaranteed loans is desirable.

Changes: The regulations have been revised to conform to § 682.208(e)(1) and include the 45-day notice requirement suggested by the commenters.

Section 682.513 Factors Affecting Coverage of a Loan Under the Loan Guarantee

Comment: Several commenters recommended that the phrase "* * * or if it would not be payable on a default claim by the Secretary * * *" be removed from § 682.513(b). The commenters argued that a lender should not be at risk for principal on any bankruptcy, death, or disability claim if no action or inaction by the lender affected whether the claim is collectable.

Discussion: The Secretary believes that a due diligence violation affecting the insurability of a loan before the lender's filing of a death, disability, or bankruptcy claim is sufficient grounds to reject payment of a claim. A death, disability, or bankruptcy should not be an assurance to the lender that the claim will be paid. The Secretary believes a lender's assurance for claim payment must be based on its total due diligence performance in making, disbursing, servicing, and collecting the loan.

Changes: None.

Section 682.515 Records, Reports, and Inspection Requirements for Federal GSL Programs Lenders

Section 682.515(a)(3)

Comment: One commenter suggested that this section be modified to allow documents to be retained on optical-disk media.

Discussion: The Secretary agrees with the commenter that other methods for storing and retrieving data should be recognized.

Changes: A change has been made. The Secretary is revising § 682.515(a)(3)(i) to include optical-disk media or other machine readable formats as an optional method for storing and retrieving data. This change has also been made in § 682 414(a)(4)(i).

Section 682.600 Agreement Between an Eligible School and the Secretary for Participation in the FFEL Programs.

Section 682.600(a)(1)

Comment: Several commenters stated that the Secretary should include proprietary institutions and postsecondary vocational institutions in § 682.600(a)(1) because 34 CFR 600.2 defines four types of schools as eligible institutions. The commenters believe that these two regulatory provisions should be consistent to prevent any confusion surrounding the types of institutions that are eligible to participate in the FFEL programs.

Discussion: The Secretary shares the commenters' concern regarding the need to clarify what constitutes an eligible institution. For purposes of the FFEL programs, section 435(a) of the Act and 34 CFR 682.200 specify two types of eligible institutions: institutions of higher education and vocational schools. A school that meets the definition of a vocational school may also meet the definition of proprietary institution or postsecondary vocational institution in 34 CFR 600.2. The school types listed in 34 CFR 600.2 are not mutually exclusive.

Changes: None.

Section 682.600(a)(2)

Comment: One commenter recommended that the Secretary modify proposed § 682.600(a)(2) to permit only the owner or the institution's Chief Executive Officer to sign the written program participation agreement on behalf of the institution. The commenter recommended this because he felt it was the only way to ensure that the institution's most senior management official understood the administrative and fiduciary responsibilities required of a participating school. The commenter did not believe it was in the best interest of the FFEL programs to delegate this responsibility to another authorized official of the school.

Discussion: The Secretary agrees with the commenter that this change is necessary to protect the integrity of the FFEL programs. Further, the program participation agreement form used by the Department allows only for the signature of the Chief Executive Officer of the institution.

Changes: A change has been made. The Secretary has revised the regulations to specify that the Chief Executive Officer of the institution must sign the program participation agreement with the Secretary.

Section 682.601 Rules for a School That Makes or Originates Loans

Section 682.601(a)

Comment: One commenter stated that § 682.601(a)(3) should be modified to stipulate that an eligible school lender may not make loans to more than 25 percent of the undergraduate students at the school.

Discussion: Section 435(d) of the Act specifies that an eligible school lender may make loans to 50 percent of its undergraduate students. The Secretary has no authority to change this statutory provision.

Changes: None.

Comment: A number of commenters recommended that the Secretary retain the paragraph in current regulations that allows the Secretary to consider any evidence that suggests that a school lender may not have provided sufficient counseling to students to seek loans from a commercial lender before the school makes a loan to a student. Any pattern of denial letters or students' sworn statements may reveal that a school lender did not make a good-faith effort to counsel students to obtain loans from a commercial lender.

Discussion: The Secretary agrees with the commenters.

Changes: The paragraph detailing what the Secretary may consider in deciding whether a school has given sufficient counseling to students to seek loans from commercial lenders first has been reinstated.

Section 682.601(b)

Comment: Many commenters stated their objection to the proposed elimination of the requirement that the student have documented evidence that he or she has been denied a loan from a commercial lender before obtaining a loan from a school lender.

Discussion: The Secretary agrees with the commenters that documentation is necessary to implement section 435(d)(2)(D) of the Act. This provision of the Act specifies that, to be an eligible lender of a FFEL loan, a school may not make a loan to an undergraduate student unless the student previously has received a loan from the school or has been denied a loan by an eligible lender.

Changes: A change has been made. The Secretary has revised the regulations to require the student to provide a written statement of denial for a FFEL loan from an eligible commercial lender before applying to the school for a FFEL program loan. Consequently, the written documentation requirement previously contained in § 682.601(c) of the Department's current regulations has been reinstated in these final regulations.

Section 682.601(c)

Comment: One commenter expressed concern that a school might use the factors listed in § 682.601(c) (1), (2), and (3) of the NPRM when requesting a waiver of the 50 percent school lending limit to circumvent the requirements contained in § 682.601(a). The commenter believes that a school should be required to prove that economically disadvantaged students would be better off for having received the training offered by the school when requesting such a waiver. Further, the commenter does not believe "uniqueness" is a valid reason to permit a school to take advantage of a student who may not be a well-informed consumer.

Discussion: The Secretary does not agree. Section 682.601(c) contains some, but not all, of the factors the Secretary uses to evaluate a school's request to waive the 50 percent lending limit because imposing that limit would create substantial hardships for the school's present or prospective students. The Secretary believes that these factors represent reasonable criteria to use in determining whether a waiver will provide access to FFEL program loans to students who otherwise would not have access.

Changes: None.

Section 682.602 Correspondence School Schedule Requirements

Section 682.602(b)

Comment: One commenter objected to the requirement that a correspondence school establish and provide a schedule for lesson submission to a prospective student before the student actually makes a commitment to enroll in a course of study by correspondence. The commenter argued that each schedule is individualized and that the actual lesson due dates for each lesson that makes up the course schedule are contingent upon the student's actual program start date.

Discussion: The Secretary does not agree with the commenter. The Secretary believes that it is essential to provide a prospective student who is considering a program of study by correspondence with a schedule containing sufficient information to help the student make a good decision about undertaking the course of study. The Secretary understands that a course schedule provided before the student enrolls is a tentative schedule that might require later modification. However, the Secretary believes that information

provided to a prospective student on the content of lessons in the program and the sequence of those lessons would greatly assist the student in determining whether a course of study meets his or her individual needs and lifestyle. Finally, the Secretary believes that a prospective student who receives this kind of information is more likely to complete the program successfully.

Changes: None.

Comment: One commenter recommended that the schedule required of correspondence schools also should contain information about the location of any residential training required by the program.

Discussion: The Secretary agrees that the location of residential training is often an important factor in whether a student is able to complete a course of study by correspondence and, therefore, a prospective student should have this information before he or she makes a commitment to a course of study.

Changes: A change has been made. The school is required now to provide the exact location of any required residential training as part of the course schedule given to prospective students.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Comment: Several commenters recommended the deletion of § 682.603(c), which requires that a school delay loan certification for first time Stafford and SLS borrowers entering the first year of an undergraduate program of study. The commenters stated that this provision is no longer necessary because section 428G(b)(1) of the Act now requires delayed delivery of loan proceeds to the same category of borrowers until 30 days after the borrower begins a course of study.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.603(c) of the regulations has been deleted.

Section 682.603(d)

Comment: Several commenters suggested that the school should not be required to monitor annual loan limits in certifying an application for a loan. The commenters believe that the school's sole responsibility in the loan certification process should be to determine the applicant's unmet need for loan eligibility.

Discussion: A school's responsibility for monitoring a student's annual loan limits and aggregate maximum loan limits is mandated by section 484(g) of the Act. Also, 34 CFR 668.19(a)(4)(ii) stipulates that a school must return to the lender any Stafford or SLS proceeds that, according to a financial aid transcript, would cause the student to exceed a loan limit under the Stafford or SLS programs. A school is held responsible for information relating to an applicant's annual and aggregate loan limits to the extent that the school's records contain such information.

Changes: None.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

Section 682.604(b)(2)

Comments: Many commenters disagreed with the requirement of § 682.604(b)(2)(ii) that bases the school's ability to deliver loan proceeds to a student who delays attendance on whether the student notifies the school of his or her plans. Commenters believe that a school should be able to consider any student who begins attendance no later than 30 days after the first day of classes to have maintained eligibility for the loan.

Discussion: The Secretary agrees that the school should be allowed to consider such a borrower to have maintained eligibility and deliver the loan proceeds even if the student does not notify the school of his or her intentions. However, the school also must comply with the change made in § 682.604(d)(3), which requires that if the student fails to register or begins attendance on a delayed basis, the school must return the check to the lender no later than 30 days after the first day of the period of enrollment. To comply with this requirement, the school must develop a system to monitor whether students begin attendance on a delayed basis in sufficient time to prevent having to return the check to the lender by the 30th day.

Changes: A change has been made. A school may consider a student to have maintained eligibility from the first day of the period of enrollment if the student delays attendance.

Comments: Many commenters objected to the proposal that a school could deliver FFEL loan proceeds to a student after the school receives notice of its loss of institutional eligibility if the first disbursement of the loan had been delivered to the student before the institution's receipt of the notice. The commenters believe that the student only will have incurred increased debt for a program of questionable quality and that this provision is not in the best interests of the FFEL programs.

Discussion: The Secretary notes that 34 CFR 668.25(c) authorizes a school to deliver loan proceeds under these circumstances. *See* 56 FR 33332, 33341 (July 19, 1991). The Secretary believes it is important to provide the second disbursement of a FFEL program loan to a student who has received the first disbursement of the loan, and who has completed a significant portion of his or her program of study. The Secretary believes that a loss of access to loan funds will present serious obstacles to the student's completion of the program and will, as a result, precipitate a default. Although the Secretary shares the commenters' concern that the borrower has incurred increased debt, the Secretary believes the borrower is better served by having the opportunity to complete his or her program of study and secure employment.

Changes: None.

Section 682.604(c)(3)

Comment: Many commenters objected to the exception provided in proposed § 682.604(c)(3) that would permit delivery of loan proceeds through EFT to borrowers attending an initial loan-counseling session without written authorization. The commenters stated that it was unclear whether the Secretary intended to exempt these borrowers from providing written authorization for the release of loan funds or from the 30-day time frame provided for securing written authorization. Many commenters questioned the relationship between attending an initial loan-counseling session and providing written authorization.

Discussion: The Secretary agrees with the commenters that the purpose of the exception is unclear. The Secretary also believes that the proposed exception would be contrary to the Secretary's long-standing view that the borrower's written authorization for the release of loans by EFT is a vital measure to protect students in the FFEL programs.

Changes: The exception has been deleted from § 682.604(c)(3).

Section 682.604(d)

Comments: A number of commenters objected to the proposed requirement under § 682.604(d)(1)(ii)(B) that if a student asks the school to help manage his or her loan funds for the academic year, the school must establish a separate trust account. Many commenters believe that the requirement is both administratively burdensome and costly to a school. The commenters also indicated that such a student service should be optional rather than required.

Discussion: The Secretary has decided to permit, but not require, schools to

provide this service to help students budget loan proceeds. If a school chooses to offer this student service, all of the excess loan proceeds that students request the school to hold in its account must be maintained in a separate account. The Secretary does not intend to require that a separate account be maintained for each borrower. However, consistent with provisions in the Campus-Based program regulations, these may not be commingled with other accounts of the school. The account may be an interest-bearing account. The Secretary considers the interest earned by the school on this account to be an administrative allowance for providing this student service.

Change: A change has been made. The regulations have been changed to provide that if the student requests, in writing, that the school hold loan funds to assist the student in budgeting those funds, a school may, but is not required to do so.

Section 682.604(f)

Comment: A number of commenters suggested that the requirement that the initial counseling required by § 682.604(f) be conducted either in person or by videotape presentation is not a reasonable expectation for a student who is enrolled in foreign study abroad under the auspices of a school in the United States.

Discussion: The Secretary agrees with the commenters.

Change: The regulations have been revised to provide that the initial counseling requirement for students enrolled in a program of study abroad approved for credit by the home institution will be the same as that for students enrolled in a correspondence program.

Section 682.605 Determining the Date of a Student's Withdrawal.

Section 682.605(b)(1)

Comment: Several commenters argued that the regulations should impose a limit on the period in which a school has to determine that a student has withdrawn if the student does not formally withdraw. They believe that a time limit is essential because such a determination directly affects a student's right to a refund and the timely payment of a refund to a lender on behalf of the student.

Discussion: The Secretary agrees that there should be a maximum time period for a school to determine a student's date of withdrawal under § 682.605(b)(1)(ii). The Secretary believes that the lack of a specific time period exacerbates the problem of unpaid and untimely refunds.

Changes: A change has been made. The Secretary has revised the regulations to provide that if the student drops out without notifying the school, the school must determine the student's date of withdrawal no later than 45 days after the expiration date of the academic term for a school with standard terms, and no later than 25 days after a student's last date of attendance for a schoool using clock hours or credit hours without standard terms. The Secretary believes the time frames established in these regulations are reasonable given the different methods used for determining progress at various schools.

Section 682.605(b)(2)

Comment: One commenter objected to the proposed rule requiring a school to determine the withdrawal date for a student who was granted a leave of absence, approved under paragraph (c) of this section, and who fails to return to school at the expiration of the leave of absence, to be the date of the first day of the leave of absence. The commenter argued that this requirement conflicts with the requirement of § 682.607(c)(2) that requires a school to pay a refund to a lender within 30 days after the last day of a student's approved leave of absence should the student not resume his or her program of study.

Discussion: The Secretary disagrees with the commenter. The Secretary notes that § 682.605(b)(2) establishes a procedure for a school to determine the withdrawal date for a student who fails to return to school after a leave of absence has expired. This date is determined for the purpose of a school reporting to the lender the date the student has withdrawn from the school and for determining when a refund must be paid under § 682.606. The Secretary also notes that § 682.607(c)(2) requires that a school must make a refund, if applicable, within 30 days after the last day of a leave of absence, not 30 days after the withdrawal date.

Changes: None.

Section 682.609 Remedial Actions

Section § 682.609(a)

Comment. Many commenters stated that a borrower whose eligibility has been affected by a school's error in determining financial need or in certifying the loan application should not lose the rights and benefits afforded other eligible FFEL program loan borrowers if the school is required to purchase all or a portion of the loan. The commenters believed that the school should absorb any losses on interest benefits or special allowance payments resulting from such a situation.

Discussion: The Secretary does not believe that a change to the regulations is necessary. It has been the Secretary's longstanding view that a student who becomes ineligible for a loan due to a school error does not lose his or her rights. The school, like any other holder of a FFEL program loan, is bound by the terms of the promissory note. The school is also responsible for payment to the Secretary of any interest and special allowance paid by the Secretary on the ineligible portion of the loan.

Changes: None.

Section 682.610 Administrative and Fiscal Requirements for Participating Schools

Section § 682.610(b)

Comment: Several commenters recommended that § 682.610(b) of the regulations be revised to allow a school to keep a copy of the loan certification data electronically transmitted by the school to the lender or guaranty agency in lieu of a copy of a paper application form. The commenters believe it is important for the regulations to reflect the electronic application processing now in place at many schools.

Discussion: The Secretary agrees that the regulations should reflect electronic application processing and schools should be allowed to comply with the record-retention requirements by maintaining this data in a computer or optical-disk medium. The Secretary expects, however, that a school, upon request, will be able to produce a hard copy of the loan certification data.

Changes: The regulations have been revised to allow a school to retain the data electronically transmitted as part of the loan certification process to satisfy the record-retention requirements.

Section 682.610(d)

Comment: Several commenters expressed concern that the 5-year record-retention requirement under § 682.610(d)(1) is not long enough. The commenters believe the information contained in a school's record on a borrower is useful when the borrower enters the repayment period or when a default claim is filed, which may be after 5 years.

Discussion: The Secretary agrees with the commenters. In addition, the Secretary recognizes that there may be instances when it is necessary for schools to retain records to respond to on-going audits.

Changes: The regulations have been revised to require the school to retain

records for 5 years after the borrower's last day of attendance and to retain records involved in any loan, claim, or expenditure questioned by a Federal audit until the audit questions have been resolved.

Comment: A number of commenters suggested that the inspection requirements in § 682.610(e)(2) deny a school due process and are unreasonable.

Discussion: The Secretary believes that it is imperative that the Department's representatives have complete access to a school's records during an investigation of the school's administration of the Title IV programs. Further, the Secretary believes, and his experience has shown, that allowing the presence of a school representative during an interview with school personnel or allowing the school to record the interview would result in less than a candid exchange of information among investigators and the personnel interviewed. The Secretary believes the school receives sufficient due process related to findings that might result from such an inspection and does not believe that a prohibition on attendance at interviews by school representatives violates due process.

Changes: None.

Section 682.610(f)

Comment: Several commenters argued that § 682.610(f)(2), which requires the school to notify the holder of a borrower's loan within 30 days of receiving information on the borrower's change of permanent address, is an administrative burden for the school because the provision places no limits on the reporting requirement. The commenters noted that as written the requirement applies to all borrowers who ever attended the school for the life of their loans, the duration of which the school is unlikely to even know. The commenters also indicated that they believe the requirement is not feasible since loan transfers are now commonplace and schools do not always know the current holder of a borrower's loan.

Discussion: The Secretary understands that a school might not always know the current holder of a borrower's loan. However, in light of the increasing volume of loan defaults, the Secretary believes that schools have a particular responsibility to share any information they have on a borrower's whereabouts. The Secretary agrees with the commenters that a requirement that the school provide information within 30 days of the school's receipt of the information throughout the life of the borrower's loan, without regard to the lender's need for the information, might be overly burdensome.

Changes: The regulations have been revised to require the school to notify the current holder of the loan of a borrower's change of permanent address only while the borrower is enrolled at the school. Section 682.610(f)(1) continues to require the school to provide this information upon request of the Secretary, guaranty agency, or lender.

Section 682.700 Purpose and Scope

Section 682.700

Comment: Several commenters asked the Secretary to clarify whether subpart G, which governs fine, limitation, suspension, and termination proceedings, applies directly to actions taken by guaranty agencies or whether policies of the guaranty agency must be consistent with, but not the same as, subpart G.

Discussion: The Secretary specifies in § 682.401(b)(6)(i)(A) that lender's eligibility may be subject to a limitation, suspension, or termination action by a guaranty agency under standards and procedures that are substantially the same as subpart G.

Changes: None.

Section 682.701 Definitions of Terms Used in This Subpart

Section 682.701 Disqualification

Comment: A commenter expressed concern that the NPRM would revise current policy regarding the Department's review of guaranty agency Limitation, Suspension, and Termination (L, S, & T) actions to allow disqualifications based on a guaranty agency's termination to last indefinitely rather than the 18 months specified in current Department bulletins. The commenter believes that a guaranty agency should not be able to trigger indefinite disqualification of a lender or school from the FFEL programs. Accordingly, the commenter urged the Secretary to incorporate the current 18-month limitation in the final regulations.

Discussion: Sections 682.710 and 682.711 of the regulations allow a lender to request removal of a limitation 12 months after it is imposed and reinstatement of its eligibility 18 months after termination. However, section 432(h)(2)(C) of the Act specifies that the Secretary shall not lift a disqualification until the Secretary is satisfied that the lender has corrected the failures that led to the limitation, suspension, or termination action by the guaranty agency and there are assurances that, in the future, the lender will comply with all program requirements. Because the Secretary is required to apply qualitative standards in deciding whether to lift sanctions, he does not believe it is appropriate to impose a time limit such as the commenter suggests.

Changes: None.

Section 682.702 Effect on Participation

Section 682.702(c)

Comment: Many commenters suggested that the Secretary prohibit a lender that is subject to an L, S, & T proceeding from making a second or subsequent disbursement on a loan for which a guarantee commitment has been issued.

Discussion: The Secretary believes that it is important to provide a student who has received the first disbursement of a FFEL program loan access to subsequent disbursements of the loan. The Secretary believes that a loss of access for such a student will present serious obstacles to the student's completion of the program and will, as a result, precipitate a default.

Changes: None.

Section 682.704 Emergency Action

Section 682.704(c)

Comment: Many commenters suggested that the Secretary revise the date an emergency action becomes effective from the date the notification of the action is mailed to the lender to the date the lender actually receives the notification. The commenters believe that such a change is necessary to ensure that an emergency action does not become effective before the lender receives notification of that action.

Discussion: The Secretary does not agree. The Secretary believes that the date an emergency action against a lender becomes effective should be consistent with the date an emergency action taken against an institution becomes effective, which, pursuant to section 487(c)(1)(E) of the Act, is the date on which the notification is mailed. The regulations also specify that the notice must be sent by certified mail, return receipt requested.

Changes: None.

Section 682.705 Suspension Proceedings

Section 682.705(b)(2)

Comment: Many commenters suggested that the Secretary revise the date a lender's suspension becomes effective from the date the notification of the suspension is mailed to the lender to the date the lender receives the notification. The commenters believe that such a change is necessary to

ensure that the suspension does not become effective before the lender receives the notification of the suspension.

Discussion: Unlike the emergency actions, which are intended to have immediate effect, suspensions do not take effect until after an opportunity is provided for a hearing. Therefore, the Secretary has revised the regulations to give a lender notice of an impending suspension.

Changes: A change has been made. The Secretary has revised the regulations to provide that a lender's suspension will become effective on a proposed date that is at least 20 days after the date the Secretary's notice is mailed to the lender.

Section 682.706 Limitation or Termination Proceedings

Section 682.706(c)

Comment: One commenter suggested that, in the event the lender's owner or an officer is convicted of, or pleads nolo contendere or guilty to, a crime involving FFEL program administration, the provision that a lender be subject to automatic termination is too severe a penalty to impose on a lender that is discovered to have one dishonest officer or employee. The commenter suggested that the discretionary authority afforded the Secretary in § 682.712(c) should specify that an automatic termination under this section may be waived.

Discussion: The language in the regulations provides that such a criminal conviction is grounds for the Secretary to terminate a lender's eligibility. It does not, however, automatically terminate the lender's eligibility. The Secretary will make this determination on a case-by-case basis.

Changes: None.

Section 682.709 Reimbursements, Refunds, and Offsets

Comment: A number of commenters requested that the Secretary clarify the authority of a guaranty agency to require a school to repay FFEL funds owed to borrowers and lenders. The commenters stated that this authority should be explicitly spelled out in the regulations because guaranty agencies generally identify school error that results in liability or the repurchase of FFEL loans by the school.

Discussion: The Secretary agrees that this authority should be explicit in regulations and also believes that the agency's general enforcement authority should be clarified. However, he does not believe that these regulatory changes should be contained in § 682.709.

Changes: Section 682.609 of the regulations has been revised to contain a new paragraph (e) that specifies that a guaranty agency may take an emergency action against a school or limit, suspend, or terminate the school's participation in the agency's loan guarantee program and may require the school to repay funds to another party or to purchase loans.

Section 682.712 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guaranty Agencies Against Lenders

Section 682.712

Comment: One commenter recommended that if the Secretary upholds an agency's termination of a lender, the Secretary also should rely upon the agency's determination that the lender's failures have been corrected. The commenter suggested adding "guaranty agency" after "Disqualification by the Secretary."

Discussion: Section 432(h)(2)(B) of the Act requires the Secretary, before lifting any limitation, suspension, or termination sanction imposed on a lender, to make an independent determination that the lender has corrected the failures that led to the sanction. The Secretary notes, however, that nothing in the regulations prevents a guaranty agency from continuing a limitation or termination sanction even if the Secretary removes a national disqualification. The Secretary notes that the 1992 Amendments deleted the term "disqualification" as it was previously used to refer to the steps by which a guaranty agency's sanction against a lender or school received national effect. This change is a change in terminology and not in substance. However, the Secretary has not made that change to this regulation. The Secretary will issue new regulations to conform to the new statute at a later date.

Changes: None.

Sections 682.712 and 682.713

Comment: One commenter suggested that the Secretary revise the final regulations to provide for an evidentiary hearing by the Department for an institution or lender that has an L, S, or T action taken against it by a guaranty agency. The commenter argued that section 432(h) (2) and (3) of the Act provides that a lender or an institution that has an L, S, or T action taken against it by a guaranty agency is entitled to a trial-type evidentiary hearing.

Discussion: The Secretary does not agree with the commenter. The regulations do not preclude the use of an evidentiary hearing in a disqualification proceeding if the presiding officer determines that such a hearing is necessary. However, the Secretary believes that evidentiary proceedings in disqualification cases will be very rare. The only issues are whether the guaranty agency used the proper standards and procedures. Moreover, under the 1992 Amendments, the Department's review is limited to a review of the written record of the proceedings and the agency's procedures. Thus, the issues in a proceeding under §§ 682.712 and 682.713 should not present any questions requiring an evidentiary hearing.

Changes: A change has been made in §§ 682.712 and 682.713 of the regulations to delete references to a hearing on the record.

Section 682.800 Special Allowance Payments for Loans Financed by Proceeds of Tax-Exempt Obligations

Section 682.800(a)(2)

Comment: Several commenters recommended that the regulations be revised to clarify that an Authority whose Plan for Doing Business was subsequently approved by the Governor is eligible to receive special allowance on obligations issued before the November 16, 1986, date established by the 1986 Amendments.

Discussion: The Secretary agrees with the commenters that this section as currently written does not address special allowance payments for this category of loans.

Changes: A change has been made. The Secretary has revised § 682.800(a)(2) to provide for special allowance payments on obligations issued before November 16, 1986 on the basis of a Plan approved by the Governor after that date.

Section 682.801 Provisions Required in Plan

Section 682.801(h)

Comment: A number of commenters felt that § 682.801(h), which proposed to prohibit an Authority from issuing tax-exempt obligations in excess of the unmet need for student loan credit in its service area, should be deleted because it is not one of the criteria listed in section 438(d)(2) of the Act.

Discussion: The Secretary agrees with the commenters that a demonstration of the need for tax-exempt financing is not required as part of the Plan. In addition, the Department of Treasury regulations governing caps on tax-exempt financing prevent the excessive use of tax-exempt financing.

Changes: Section 682.801(h) has been deleted from the regulations. The Secretary has also deleted the corresponding provision in § 682.802(g).

Sections 682.802 682.805

Comment: Several commenters recommended deleting these sections as the authority for the approval of the Plan for Doing Business was shifted to the Governor of the State in the 1986 Amendments. The commenters questioned the Secretary's authority to (1) regulate the required documentation submitted with the Plan; (2) enforce, suspend, or revoke a Plan that previously was approved by a Governor for the Authority's failure to comply with the Plan; or (3) impose sanctions for material misrepresentations.

Discussion: The Secretary believes that the fact that he does not directly approve the Plan does not prohibit him from enforcing program requirements. Clearly, in revising section 438(d) of the Act to provide the authority to the Governor to approve the Authority's Plan for Doing Business, Congress did not intend for the Secretary to permit non-compliance with the law.

Changes: None.

Section 682.830 Audit Standards

Section 682.830(a)

Comment: Some commenters felt the audit required by § 682.830 should be limited to a financial audit and the requirement that the audit also should cover the Authority's compliance with its Plan for Doing Business should be deleted. The commenters believe that the guaranty agency's program review required under § 682.410(c) addresses the issues normally covered by a compliance audit and that requiring an outside auditor to examine compliance is duplicative. Other commenters argued that if an Authority received a financial and compliance audit from an independent auditor, it should be exempted from review by the guaranty agency.

Discussion: The Secretary does not agree that a guaranty agency's review would duplicate the compliance audit required by § 682.830. Guaranty agency reviews often focus on a single area, e.g., due diligence. The Secretary believes that the familiarity of guaranty agency officials with the FFEL programs provides for a more focused review than the compliance audit would require. Additionally, a determination of the Authority's compliance with its Plan for Doing Business generally is not covered by a guaranty agency program review. The Secretary believes, therefore, that exempting an Authority that has undergone an independent audit from a guaranty agency review would run counter to the best interests of the FFEL programs, even if the review and the audit overlap in some areas.

Changes: None.

Section 682.840 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

Section 682.840(b)

Comment: Several commenters recommended the deletion of § 682.840(b), which prohibits an Authority from receiving special allowance payments on loans guaranteed by an agency or organization that discriminates against borrowers. The commenters believe that an Authority should not be held responsible for the practices of another entity over which the Authority has no direct control. The commenters also noted that section 439(e) of the Act has a similar provision for the Student Loan Marketing Association ("Sallie Mae"), but that no similar provision jeopardizing the special allowance on loans held by Sallie Mae has ever been proposed. Some commenters said that this requirement unfairly penalizes an Authority in a State where the guaranty agency is prohibited by State law from guaranteeing loans to students attending a particular eligible institution.

Discussion: Under section 438(d)(3) of the Act, an Authority may not engage in any pattern or practice that results in a denial of a borrower's access to loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution within the area served by the Authority, the length of the borrower's educational program, or the borrower's academic year in school. The Secretary considers an Authority "to have adopted a practice of denying access to loans" if it does business with an entity (e.g., a guaranty agency) that denies access to loans to eligible students in violation of similar restrictions on the guaranty agency contained in section 428(c)(2)(F) of the Act. Section 438(d)(3) also requires the Secretary to deny special allowance payments to holders of loans that were made or purchased with funds obtained from the Authority if the Authority discriminates. Therefore, the Secretary believes his authority to withhold special allowance payments applies to the Authority and to any holder acting as trustee for the Authority. The Secretary also notes that the Department is specifically prohibited from regulating the activities of Sallie Mae. Nonetheless, Sallie Mae is required to comply with the requirements of section 439(e) of the Act.

Changes: None.

Waiver of Proposed Rulemaking

In addition to the changes made to part 682 based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include technical amendments made by certain legislation enacted subsequent to publication of the notice of proposed rulemaking.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A) and the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory changes into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C.(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: December 4, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Stafford Loan Program and PLUS Program)

The Secretary revises part 682 of title 34 of the Code of Federal Regulations to read as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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Sec.

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Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Federal Family Education Loan programs.

(a) This part governs the following four programs collectively referred to in these regulations as "the Federal Family Education Loan (FFEL) programs," in which lenders use their own funds to make loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools:

(1) The Federal Stafford Loan (Stafford) Program, which encourages making loans to undergraduate, graduate, and professional students.

(2) The Federal Supplemental Loans for Students (SLS) Program, which encourages making loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students.

(4) The Federal Consolidation Loan (Consolidation) Program, which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, PLUS (as in effect before October 17, 1986), and Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act and for parent PLUS borrowers whose loans were made after October 17, 1986.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guaranty agency guarantees a lender against losses due to default by the borrower on a FFEL loan. If the guaranty agency meets certain Federal requirements, the guaranty agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses—

(A) Within the Stafford Loan Program, on loans made under Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program; and

(D) Within the Consolidation Loan Program, on loans made under the Federal Consolidation Loan Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section collectively are referred to in these regulations as the "Federal Guaranteed Student Loan (GSL) programs."

(iii) The Federal GSL programs are authorized to operate in States not served by a guaranty agency program. In addition, the FISL and Federal SLS programs are authorized, under limited circumstances, to operate in States in which a guaranty agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1701 to 1087–2)

§ 682.101 Participation in the FFEL programs.

(a) Eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Eligible educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools may participate as schools, enabling an eligible student or his or her parents to obtain a loan to pay for the student's cost of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford loan and SLS programs. Parents of eligible dependent students may borrow under the PLUS Program. Students borrowers who have at least $7,500 outstanding in Stafford, SLS, FISL, Perkins, HPSL, student PLUS loans or Parent PLUS loans borrowed after October 16, 1986 may borrow under the Consolidation Loan Program.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(b) *SLS loan application.* Generally, to obtain an SLS loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(c) *PLUS loan application.* Generally, to obtain a PLUS loan, both the student and the parent complete an application and submit it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(d) *Consolidation loan application.* Generally, to obtain a Consolidation loan, a borrower completes an application and submits it to a lender holding at least one of the borrower's loans to be consolidated. If all the holders of loans selected for consolidation by the borrower refuse to make a Consolidation loan, the borrower may submit the application to any other lender participating in the Consolidation Loan Program. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(e) *Repaying a loan*—(1) *General.* Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has that obligation discharged in bankruptcy.

(2) *Stafford loan repayment.* Generally, a borrower is not required to make any principal payments on a Stafford loan during the time the borrower is in school. In most cases, the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan.

(3) *SLS loan repayment.* Generally, the repayment period for an SLS loan begins immediately on the day of the last disbursement of the loan proceeds by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower requests that commencement of repayment on the SLS loan be deferred until the borrower's grace period on the Stafford loan expires.

(4) *PLUS loan repayment.* Generally, the repayment period for a PLUS loan begins immediately upon disbursement of the loan by the lender. The first

payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is fully disbursed.

(5) *Consolidation loan repayment.* Generally, the first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(6) *Deferment of repayment.* Repayment of principal on a FFEL program loan may be deferred under the circumstances described in § 682.210.

(7) *Default.* If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.109 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the FFEL programs.

(b) The administration of the FFEL programs by a guaranty agency is subject to subparts C, D, F, and G of this part.

(c) The Federal FFEL programs are subject to subparts C, E, F, and G of this part.

(d) Certain requirements applicable to schools under all the FFEL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 1087–2)

Subpart B—General Provisions

§ 682.200 Definitions.

(a)(1)(i) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
College Work-Study (CWS) Program
Consolidation Loan Program
Dependent student
Eligible program
Eligible student
Enrolled
Guaranteed Student Loan (GSL) Program
Independent student
National of the United States (Referred to as U.S. Citizen or National in 34 CFR 668.2)
Pell Grant Program
Perkins Loan Program
PLUS Program
State
State Student Incentive Grant (SSIG) Program
Supplemental Educational Opportunity Grant (SEOG) Program
Supplemental Loans for Students (SLS) Program

(ii) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Institution of higher education (§ 600.4)
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary
Vocational school

(b) The following definitions also apply to this part:

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 *et seq.*

Actual interest rate. The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate. The maximum annual interest rate that a lender may charge under the Act on a loan.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the making or purchasing of FFEL loans. The term "Authority" also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a FFEL loan is made.

Co-maker. One of two individuals who are joint borrowers on a PLUS loan and who are jointly and severally liable for repayment of the loan.

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS loan, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. Any guaranty agency or other eligible lender that receives the proceeds of a FFEL program loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower's school.

Estimated cost of attendance. The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a FFEL program loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the insurance premium for the loan;

(4) If applicable, the origination fee for the loan;

(5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(6) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(7) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(9) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance. (1) The estimated amount of assistance that a student has been or will be awarded, during the period of enrollment for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Benefits paid under section 156 of title 42 of the United States Code (formerly Social Security Benefits);

(ii) Veterans' educational benefits paid under chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

(iii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iv) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(v) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan for which interest benefits are payable under this part, Pell Grants and campus-based aid, that the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(vi) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior FFEL was received, the amount of Stafford, SLS, and PLUS loan proceeds withheld by the lender on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include those amounts used to replace the expected family contribution, including—

(i) Stafford loan amounts for which interest benefits are not payable;

(ii) SLS and PLUS loan amounts;

(iii) Private and state-sponsored loan programs; and

(iv) Perkins loan and College Work-Study funds that the school determines the student has declined for an acceptable reason.

Expected family contribution. The amount a student and his or her spouse and family are expected to pay toward he student's cost of attendance.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Loan Program.

Federal Insured Student Loan Program. The loan program authorized by Title IV–B of the Act under which the Secretary directly insures lenders against losses.

Foreign school. A school not located in a State.

Full-time student. (1) A student enrolled in an eligible institution (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload, as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock-hours per week or 12 semester or quarter hours per semester or quarter, respectively, of instruction, or its equivalent.

Grace period. The period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins. See also "Post-deferment grace period."

Graduate or professional student. A student who, for a period of enrollment—

(1) Is enrolled in a program above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three academic years of full-time study at an institution of higher education, either before entrance into the program or as part of the program itself; and

(3) Is not receiving aid under Title IV of the Act as an undergraduate student for the same period of enrollment.

Guaranty agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Half-time student. A student who is enrolled in a participating school and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Holder. An eligible lender in possession of a FFEL program loan note that is payable to, or has been assigned to the lender, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Legal guardian. An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)–(4) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, a trust company, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender"; and

(ii) The phrase "does not have as its primary consumer-credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(4) The term "eligible lender" does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has—

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or other party to secure applicants for FFEL loans;

(ii) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a

student's parent who previously has received a FFEL loan from the lender;

(iii) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(iv) Engaged in fraudulent or misleading advertising with respect to its FFEL program loan activities.

National credit bureau. A credit bureau with a service area that encompasses more than a single region of the country.

Origination relationship. A special business relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making FFEL program loans. In this situation, the school is considered to have "originated" a loan made by the lender.

Origination fee. A fee that the lender is required to pay the Secretary to help defray the Secretary's costs of subsidizing the loan. The lender may pass this fee on to the Stafford loan borrower.

Participating school. A school that has in effect a current agreement with the Secretary under § 682.600.

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed. The period of enrollment is also referred to as the loan period.

Post-deferment grace period. For a loan made prior to October 1, 1981, a single period of six consecutive months beginning on the day following the last day of an authorized deferment period.

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2)(i) For a PLUS loan disbursed in more than one installment, the period that begins on the date the first disbursement is made for a loan and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance; for a PLUS loan disbursed in a single installment, the period that begins on the date the loan is disbursed and ending no later than 10 years from that date exclusive of any period of deferment or forbearance.

(ii) For an SLS loan, the repayment period begins on the date of the last disbursement of the loan and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(3) For a Consolidation loan, the period that begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25 or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

School. (1) An "institution of higher education" as that term is defined in section 481 of the Act.

(2) The term includes only those individual units or programs within a school that satisfy the definition of "eligible program" in 34 CFR part 668.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Stafford, SLS, or PLUS loans for attendance at the institution. For this purpose—

(i) A *commissioned salesperson* is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student acceptances for enrollment, student enrollments, or student retention; and

(ii) *Promote the availability* means—

(A) Provide a prospective or enrolled student with FFEL loan application forms, or names of eligible lenders;

(B) Provide other information relating to the FFEL programs to a prospective or enrolled student in order to encourage the student to finance his or her education with a FFEL loan; or

(C) Otherwise use the availability of FFEL loans as a recruiting or retention tool.

(4) The term does not include any educational institution that has a default rate in excess of the threshold rates established under section 435(a)(2) of the Act.

(5) For purposes of an in-school deferment, the term includes an eligible institution, whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL program because of a high default rate.

School lender. A school, other than a correspondence school, that has entered into a contract of guarantee under this part with the Secretary or, a similar agreement with a guaranty agency.

Stafford Loan Program. The loan program authorized by Title IV–B of the Act which encourages the making of loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs. An unsubsidized Stafford loan is a loan that does not qualify for interest benefits under § 682.301(b).

State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary, or a similar agreement with a guaranty agency.

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Totally and permanently disabled. The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student. A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length, and is designed to lead to a degree or certificate at or below the baccalaureate level.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087–2, 1088–1098, 1141)

§ 682.201 Eligible borrowers.

(a) *Student borrower.* Except for a refinanced SLS/PLUS loan made under § 682.209 (e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an SLS loan, if the student meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or SLS loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2)(i) In the case of any student who seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, has received a determination of need for a

Stafford loan, and if determined to have need in excess of $200, has filed an application with a lender for a Stafford loan; and

(ii) In the case of a student who seeks an SLS loan for the cost of attendance at any school that participates in the FFEL programs, the student must have received a certification of graduation from a school providing secondary education or the recognized equivalent;

(3) For purposes of a dependent undergraduate student's eligibility for an SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a PLUS loan does not constitute an exceptional circumstance;

(4)(i) Reaffirms any FFEL loan amount that previously was cancelled due to the borrower's total and permanent disability; or that was discharged in bankruptcy or that was written off.

(ii) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(A) Signing a new promissory note or repayment schedule; or

(B) Making a payment on the loan.

(5)(i) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(ii) Signs a statement acknowledging that any new FFEL loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(6) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such certificate, has passed an independently administered examination approved by the Secretary; and

(7) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan, other than a loan made under § 682.209(e) or (f), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirement of paragraphs (a)(5) and (a)(6) of this section.

(c) *Consolidation Program borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) Has an outstanding indebtedness of not less than $7,500 on loans eligible for consolidation under this part; and

(ii)(A) Is in a grace period preceding repayment;

(B) Is in repayment status; or

(C)(*1*) Is delinquent or has made satisfactory repayment arrangements on a defaulted loan; and

(*2*) Will reenter repayment through consolidation.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Certifies that no other application for a Consolidation loan is pending and agrees to notify the holder of any change in address.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1091)

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest*—(1) *Applicable interest rates under the Stafford Loan Program.* (i) Subject to paragraph (a)(1)(ii) of this section, the applicable interest rate on a Stafford loan for a borrower is—

(A) 7 percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) 9 percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983;

(C) 8 percent for a loan covering a period of instruction beginning on or after September 13, 1983;

(D) For a loan covering a period of instruction beginning on or after July 1, 1988, 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter;

(E) Subject to paragraph (a)(1)(vi) of this section, for a loan for which the first disbursement is made on or after October 1, 1992, a variable rate not to exceed 9 percent; or

(F) Subject to paragraph (a)(1)(v) of this section, for a loan for which the first disbursement is made on or after October 1, 1992, 8 percent.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous Stafford loan the applicable interest rate is the rate charged on that previous Stafford loan.

(iii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988 or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988 the applicable interest rate is the rate provided in paragraph (a)(1)(i)(C) of this section.

(iv) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford, PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the applicable interest rate is the rate provided in paragraph (a)(1)(i)(D) of this section.

(v) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on an SLS, PLUS, or Consolidation loan, for a Stafford loan for which the first disbursement is made on or after October 1, 1992, the applicable interest rate is the rate provided in paragraph (a)(1)(i)(C) of this section.

(vi) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance of principal or interest on any FFEL Program loan, the applicable rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1, plus 3.10 percent; or

(B) 9 percent.

(vii) For a loan with an interest rate of 10 percent, if at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall—

(A) Calculate an adjustment in an amount specified under paragraph (a)(1)(iv) of this section; and

(B) Credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(1)(v) of this section if the borrower's account is not more than 30-days delinquent on December 31.

(viii) The amount of an adjustment for a calendar quarter is equal to—

(A) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(B) Multiplied by the outstanding principal balance of the loan (not including unearned interest added to principal);

(C) Divided by 4.

(ix) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall apply any amount computed under paragraph (a)(1)(iv) of this section to reduce the outstanding principal balance as of December 31.

(2) *Applicable interest rates under the PLUS program.* The applicable interest rate on a PLUS loan is—

(i) 9 percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(ii) 14 percent for a loan made on or after October 1, 1981, but before November 1, 1982;

(iii) Except as provided in paragraphs (a)(2) (iv) and (v) of this section, 12 percent for a loan made on or after November 1, 1982;

(iv) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f), a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction held prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent;

(v) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule; and

(vi) For a loan disbursed prior to July 1, 1987, if provided for in a promissory note, a variable rate, applicable to each January 1–December 31 period, that equals the lesser of—

(A) The average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12-months ending the November 30 preceding the January 1–December 31 period; plus 3.75 percent; or

(B) 12 percent.

(vii) For a loan for which the first disbursement is made on or after October 1, 1992, a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(B) 10 percent.

(3) *Applicable interest rates under the SLS Program.* The applicable interest rate on an SLS Program loan is—

(i) 12 percent for a loan covering a period of enrollment beginning on or after October 17, 1986, but before July 1, 1987;

(ii) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f), a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent; and

(iii) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule; and

(iv) For a loan disbursed prior to July 1, 1987, if provided for in a promissory note, a variable rate, applicable to each January 1–December 31 period, that equals the lesser of—

(A) The average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12-months ending the November 30 preceding the January 1–December 31 period, plus 3.75 percent; or

(B) 12 percent.

(v) For a loan for which the first disbursement is made on or after October 1, 1992, a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(B) 11 percent.

(4) *Applicable interest rates under the Consolidation Program.* A Consolidation Program loan bears interest at the rate that is the greater of—

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) 9 percent.

(5) *Actual interest rates under the Stafford loan, SLS, PLUS, and Consolidation Programs.* A lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1)–(4) of this section.

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with paragraph (b)(2) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) A lender may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) During a period of authorized deferment;

(iv) During a period of authorized forbearance; or

(v) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(ii) through (iv) of this section no more frequently than quarterly, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4) Under the SLS and PLUS programs, the lender shall require the borrower to pay on a monthly or quarterly basis or, with the borrower's written consent, capitalize on a quarterly basis interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period

for which the student has obtained a FFEL loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(5) For all borrowers who are in a period of deferment, a required medical or dental internship forbearance, or the in-school or grace period on a nonsubsidized Stafford loan and have agreed to monthly or quarterly payments of interest, the lender may capitalize past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Origination fee for Stafford, SLS, and PLUS loans.* Except in the case of an unsubsidized Stafford loan, a lender—

(1) May charge a borrower an origination fee on a subsidized Stafford loan not to exceed the maximum rate specified by Federal statute;

(2) Shall charge a borrower an origination fee on an SLS or PLUS loan of 5 percent of the principal amount of the loan;

(3) May deduct the origination fee from the proceeds of the loan;

(4) Shall, in the case of a loan disbursed in multiple installments, deduct a *pro rata* portion of the fee from each disbursement; and

(5) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of that loan that is—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered within 120 days of disbursement.

(d) *Insurance premium.* A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to 3 percent of the principal amount of the Stafford, SLS, or PLUS loan, if that charge is provided for in the borrower's promissory note.

(e) *Administrative charge for a refinanced PLUS or SLS Loan.* A lender may charge a borrower up to $100 to cover the administrative costs of making a loan to a borrower under § 682.209(e) for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) *Late charge.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (f)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower fails to pay all or a portion of a required installment payment within 10 days after it is due.

(g) *Collection charges.* (1) If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower or any endorser pay costs incurred by the lender or its agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs; and

(iii) Telegrams.

(2) The costs referred to in paragraph (g)(1) of this section may not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1087–1, 1091a)

§ 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guaranty agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guaranty agency of its duty to comply with the requirements of the Act and this part.

(b) *Trustee responsibility.* A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) Except as provided in paragraph (a)(2) of this section, the total amount a student may borrow for any academic year of study under the Stafford Loan Program, including the FISL Program, may not exceed—

(i) $2,625, in the case of an undergraduate student who has not successfully completed the first and second years of the undergraduate program of study in which he or she is currently enrolled;

(ii) $4,000, in the case of an undergraduate student who has successfully completed the first and second years of the undergraduate program of study in which he or she is currently enrolled; and

(iii) $7,500, in the case of a graduate or professional student.

(2) In the case of a student who has not successfully completed the first year of a program of undergraduate education, the total amount a student may borrow may not exceed—

(i) $2,625 for enrollment in a program of study of at least a full academic year in length;

(ii) $1,750 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(b) *Stafford Loan Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all Stafford loans made to a student may not exceed—

(1) $17,250, in the case of an undergraduate student for programs of study at the undergraduate level; and

(2) $54,750, in the case of graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limit.* The total amount of all PLUS loans that parents may borrow on behalf of each dependent student for any academic year of study may not exceed $4,000.

(d) *PLUS Program aggregate limit.* The total guaranteed upaid principal amount of PLUS Program loans that parents may borrow on behalf of each dependent student may not exceed $20,000.

(e) *SLS Program annual limit.* (1) The total amount of all SLS loans that a student may borrow for any academic year of study may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to § 682.603 by the school on or after January 1, 1990—

(i) $2,500 for a student enrolled in a program of study of at least ⅔ of an academic year but less than a full academic year in length;

(ii) $1,500 for a student enrolled in a program of study less than ⅔ but at least ⅓ of an academic year in length; and

(iii) $0 for a student enrolled in a program of study that is less than ⅓ of an academic year in length.

(2) The minimum period for which a student may apply for an SLS loan is the greater of—

(i) The length of the institution's academic year; or

(ii) Seven consecutive months.

(f) *SLS Program aggregate limit.* The total guaranteed unpaid principal

amount of SLS Program loans made to a student may not exceed $20,000.

(g) *Treatment of Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford loan, SLS, PLUS, Perkins Loan, or HPSL program must equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(h) In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(Authority: 20 U.S.C. 1075, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1089)

§ 682.205 Disclosure requirements for lenders.

(a) *Initial disclosure statement.* (1) Except in the case of a Consolidation loan, a lender shall disclose the information described in paragraph (a)(2) of this section to a borrower in writing before or at the time of the first disbursement on a FFEL program loan. The written information given to the borrower must prominently and clearly display, in bold print, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) The lender shall provide the borrower with—

(i) The lender's name, the address to which correspondence with the lender and payments should be sent, and a statement that the lender may sell or transfer the loan to another party, in which case the address and identity of the party to which correspondence and payments should be sent may change;

(ii) The principal amount of the loan;

(iii) The amount of any charges, including the origination fee if applicable, and the insurance premium, to be collected by the lender before or at the time of each disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of the loan or paid separately by the borrower;

(iv) The actual interest rate;

(v) The annual and aggregate maximum amounts that may be borrowed;

(vi) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau;

(vii) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(viii) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(ix) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(x) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(xi) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(xii) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2171;

(xiii) The definition of "default" found in § 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to a national credit bureau, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that the borrower's wages will be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs;

(xiv) An explanation of the possible effects of accepting the loan on the student's eligibility for other forms of student financial assistance;

(xv) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(xvi) In the case of a Stafford or SLS loan, other than an SLS loan made under § 682.209 (e) or (f) or a loan made to a borrower attending a school that is not in a State, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower; and

(xvii) A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of, or information that will allow the borrower to estimate, the projected monthly payment amount based on that cumulative outstanding balance.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender shall provide the borrower with a separate statement, written in plain English, at or prior to the time of the first disbursement, that—

(1) Summarizes the rights and responsibilities of the borrower with respect to the loan; and

(2) Indicates the consequences to the borrower of defaulting on the loan described in paragraph (a)(2)(xiii) of this section.

(c) *Disclosure of repayment information.* (1) The lender shall disclose the information described in paragraph (c)(2) of this section in a written statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Stafford or SLS loan, the disclosures required by this paragraph must be made not less than 60 days nor more than 240 days before the first payment on the loan is due from the borrower. In the case of a FISL loan, the lender shall make the disclosures during the grace period. If the borrower enters the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with—

(i) The lender's name and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date the repayment period is to begin;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(vii) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options;

(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(d) *Exception to disclosure requirement.* In the case of an SLS or PLUS loan, the lender is not required to

provide the information in paragraph (c)(2)(viii) of this section if the lender, in lieu of that disclosure, provides the borrower with sample projections of monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the student is in school. Sample projections must disclose the cost to the borrower of capitalizing—

(1) Principal and interest; and

(2) Interest only.

(e) *Borrower may not be charged for disclosures.* The lender shall provide the information required to be disclosed by paragraphs (a), (b), and (c) of this section at no cost to the borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1083(a))

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note.

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school in regard to that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 668, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before the borrower has provided on the form all information requested from the borrower.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may rely on the information provided on the application form or data electronically transmitted to the lender by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought, in determining the borrower's eligibility for a loan.

(2) In determining the amount of the loan to be made, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided by the school. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

(i) The student's estimated financial assistance for the period of enrollment for which the loan is intended; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(3) A lender may not approve a loan for more than the borrower requests, the student's unmet financial need, or the maximum established by § 682.204, whichever is less.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed legally enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) Without the guarantor's prior approval, a lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor.

(3) The lender shall give the borrower and any endorser or co-maker a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISL or Federal PLUS loan must be made without security or endorsement.

(2) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(f) *Additional requirement for Consolidation loans.* (1) Prior to disbursement of a Consolidation loan, the lender shall obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(i) The loan is a legal, valid, and binding obligation of the borrower;

(ii) The loan was made and serviced in compliance with applicable laws and regulations; and

(iii) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1) of this section by the holder of a loan to be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1083, 1085)

§ 682.207 Due diligence in disbursing a loan.

(a) (1) This section prescribes procedures for lenders to follow in disbursing Stafford, SLS, and PLUS loans, other than a refinanced SLS or PLUS Program loan made under § 682.209 (e) or (f). With respect to FISL, Federal SLS, and Federal PLUS loans, references to the "guaranty agency" in this section shall be understood to refer to the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to § 682.408. The lender shall comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b) (1) In disbursing a loan, a lender—

(i) (A) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guaranty agency, except with the agency's prior approval; and

(B) Must disburse a Stafford or SLS loan in accordance with the disbursement schedule provided by the school;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor or lender, is made co-payable to the borrower and the school for attendance at which the loan is intended, and requires the personal endorsement or other written certification of the borrower in order to be cashed or deposited in an account of the borrower at a financial institution; or

(B) If authorized by the guarantor, electronic funds transfer to a separate account maintained by the school as trustee for the lender, the guaranty agency, the Secretary, and the borrower, that requires the written approval of the borrower that is secured and retained by the school for each FFEL program loan for which funds are released from the account;

(iii) May not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and, in no case without the Secretary's prior approval, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll;

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender;

(v) Shall disburse—

(A) Except as provided in paragraph (b)(1)(v)(C)(*1*) of this section, directly to the school;

(B) In the case of a PLUS loan, a check made co-payable to the institution and the borrower or by electronic funds transfer to a separate account maintained by the school as trustee for the lender; or

(C) In the case of a student enrolled in a study-abroad program approved for credit at the home institution in which the student is enrolled, if the student requests—

(*1*) Directly to the student; or

(*2*) To the home institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

(vi) Except as provided in paragraph (d)(2) of this section, may not disburse a second or subsequent disbursement on a Stafford or SLS loan to a student who has ceased to be enrolled.

(2) Except as provided in paragraph (b)(1)(v)(C)(*2*) of this section, neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower pursuant to the borrower's written authorization under paragraph (b)(1)(ii)(A) of this section.

(c) A lender shall disburse any Stafford or SLS loan, as follows:

(1) Disbursement must be in two or more installments.

(2) No installment may exceed one-half of the loan.

(3) At least one-half of the period of enrollment for which the loan is made must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the period of enrollment.

(d)(1) Unless prohibited by the guaranty agency, a lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended, in accordance with paragraphs (d)(2) and (3) of this section.

(2) A disbursement described in paragraph (d)(1) of this section may be made—

(i)(A) Only if the loan proceeds will be used to cover documented educational charges to the student that are normally included in a borrower's cost of attendance under section 472 of the Act for a period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis;

(B) Only if a student completed the first 30 days of the loan period for which the loan was intended, in the case of a first disbursement of a loan obtained by a student to attend the first year of a program of undergraduate education; or

(C) Only if the student successfully completed the period for which the loan was intended, in the case of second or subsequent disbursement; and

(ii) Within 60 days after the date the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was made, whichever is earlier.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (d)(2) of this section at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, and establishing the terms of repayment.

(b) (1) An eligible lender of a FFEL loan shall report to at least one national credit bureau—

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

(iii) Information concerning the repayment status of the loan, within 90 days after a change in that status from current to delinquent;

(iv) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(v) Other information required by law to be reported.

(2) An eligible lender that has acquired a FFEL loan shall report to at least one national credit bureau the information required by paragraph (b)(1)(ii)–(v) of this section within 90 days of its acquisition of the loan.

(c)(1) A lender shall respond within 30 days after receipt to any inquiry from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower is no longer enrolled at an eligible school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in § 682.209(a)(7), (c), and (h), nothing in this part is intended to limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule—

(1) To provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden commensurate with his or her projected ability to pay; or

(2) To provide a single repayment schedule for all FFEL program loans to the borrower held by the lender.

(e)(1) If the assignment of a Stafford, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notice to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee must provide the notice required by paragraph (e)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(3) For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(15)(ii).

(f) (1) Notwithstanding an error by the school or lender, a lender shall follow the procedures in § 682.412 whenever it receives information that can be substantiated that the borrower, or the student on whose behalf a parent has borrowed, provided false or erroneous information or took actions that caused the student or borrower—

(i) To be ineligible for all or a portion of a loan made under this part;

(ii) To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, for which he or she was ineligible; or

(iii) To receive loan proceeds that were not paid to the school or repaid to the lender by or on behalf of a registered student who—

(A) The school notifies the lender under § 682.604(d)(4) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.

(2) For purposes of this section, the term "guaranty agency" in § 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(g) If, during a period when the borrower is not delinquent, a lender receives information indicating it does not know the borrower's address, it may commence the skip-tracing activities specified in § 682.411(g).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.209 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a PLUS loan disbursed in one installment or a Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2) (i) For a PLUS loan disbursed in more than one installment, the repayment period begins on the date of the first disbursement made on the loan. The first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For an SLS loan, the repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(iii) of this section the first payment is due within 60 days after the date the loan is fully disbursed.

(iii) For an SLS borrower who has not yet entered repayment on a Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Stafford loan.

(3)(i) Except as provided in paragraphs (a)(4) and (5) of this section, for a Stafford loan the repayment period begins—

(A) For a borrower with a loan for which the applicable interest rate is 7 percent per year, not less than 9 nor more than 12 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guaranty agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than—

(A) 45 days following the first day that the repayment period begins;

(B) 45 days from the expiration of a deferment or forbearance period;

(C) 45 days following the end of the grace period; or

(D) If the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the date the lender learns that the borrower has entered the repayment period.

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 682.602. However, a school may grant the borrower one restoration to in-school status if the borrower fails to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under § 682.602.

(5) For a Stafford loan, the repayment period begins prior to the end of the grace period if the borrower requests in writing and is granted a repayment schedule that so provides. In this event, a borrower waives the remainder of the grace period.

(6) (i) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period.

(ii) If a graduated or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment. An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(7) (i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 682.210 or § 682.211, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may, by written notice to the lender at any time during the repayment period, extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Prepayment.* (1) The borrower may prepay the whole or any part of a loan at any time without penalty. Except as provided in paragraph (b)(2) of this section, the lender may credit the entire prepayment first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal, unless the borrower requests that the lender credit the prepayment to future installments or a prepayment of principal.

(2) If the prepayment amount equals or exceeds 3 full payments under the repayment schedule established for the loan, unless the borrower requests otherwise, the lender may apply the prepayment to future installments and advance the next payment due date, without the prior request of the borrower. If the lender does apply payments to future installments, it shall notify the borrower that the payments have been so applied, and remind the

borrower of the repayment obligation and the next scheduled payment due date.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1) (ii) and (iii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the 10-year maximum repayment period unless forbearance, as described in § 682.211 or deferment described in § 682.210, has been approved.

(d) *Combined repayment of a borrower's student PLUS and SLS loans held by a lender.* (1) A lender may, at the request of a student borrower, combine the borrower's, student PLUS and SLS loans held by it into a single repayment schedule.

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the beginning of repayment of the most recent included loan.

(3) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

(e) *Refinancing a fixed-rate PLUS or SLS Program loan to secure a variable interest rate.* (1) Subject to paragraph (g) of this section, a lender may, at the request of a borrower, refinance a PLUS or SLS loan with a fixed interest rate in order to permit the borrower to obtain a variable interest rate.

(2) A loan made under paragraph (e)(1) of this section—

(i) Must bear interest at the variable rate described in § 682.202(a)(2)(iv); and

(ii) May not extend the repayment period provided for in paragraph (a)(7)(i) of this section.

(3) The lender may not charge an additional insurance premium on the loan, but may charge the borrower an administrative fee pursuant to § 682.202(e).

(f) *Refinancing of a fixed-rate PLUS or SLS Program loan to secure a variable interest rate by discharge of previous loan.* (1) Subject to paragraph (g) of this section, a borrower who has applied for, but been denied, a refinanced loan authorized under paragraph (e) of this section by the holder of the borrower's fixed-rate PLUS or SLS loan, may obtain a loan from another lender for the purpose of discharging the fixed-rate loan and obtaining a variable interest rate.

(2) A loan made under paragraph (f)(1) of this section—

(i) Must bear interest at the variable interest rate described in § 682.202(a)(2)(iv);

(ii) May not operate to extend the repayment period provided for in paragraph (a)(7)(i) of this section; and

(iii) Must be disbursed to the holder of the fixed-rate loan to discharge the borrower's obligation thereon.

(3) Upon receipt of the proceeds of a loan made under paragraph (f)(1) of this section, the holder of the fixed-rate loan shall, within five business days, apply the proceeds to discharge the borrower's obligation on the fixed-rate loan, and provide the refinancing lender with either a copy of the borrower's original promissory note evidencing the fixed-rate loan or the holder's written certification that the borrower's obligation on the fixed-rate loan has been fully discharged.

(4) The refinancing lender may charge the borrower an insurance premium on a loan made under paragraph (f)(1) of this section, but may not charge a fee to cover administrative costs.

(5) For purposes of deferments under § 682.210, the refinancing loan—

(i) Is considered a PLUS loan if any of the included loans is a PLUS loan made to a parent;

(ii) Is considered an SLS loan if the combined loan does not include a PLUS loan made to a parent; or

(iii) Is considered a loan to a "new borrower" as defined in § 682.210(b)(7), if all the loans that were refinanced were made on or after July 1, 1987, for a period of enrollment beginning on or after that date.

(g) *Conditions for refinancing certain loans.* (1) A lender may not refinance a loan under paragraphs (e) or (f) of this section if that loan is in default, involves a violation of a condition of reinsurance described in § 682.406, or, in the case of a Federal SLS or PLUS loan, is uninsured by the Secretary.

(2)(i) Prior to refinancing a fixed-rate loan under paragraph (f) of this section, the lender shall obtain a written statement from the holder of the loan certifying that—

(A) The holder has refused to refinance the fixed-rate loan under paragraph (e) of this section; and

(B) The fixed-rate loan is eligible for insurance or reinsurance under paragraph (g)(1) of this section.

(ii) The holder of the fixed-rate loan shall, within 10 business days of receiving a lender's written request to provide a certification under paragraph (g)(2)(i) of this section, provide the lender with that certification, or provide the lender and the guarantor on the loan with a written explanation of the reasons for its inability to provide the certification to the requesting lender.

(iii) The refinancing lender may rely in good faith on the certification provided by the holder of the fixed-rate loan under paragraph (g)(2)(ii) of this section.

(h) *Consolidation loans.* (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within 60 days after the date of disbursement.

(2) If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant—

(i) Is equal to or greater than $7,500 but less than $10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(ii) Is equal to or greater than $10,000 but less than $20,000, the borrower shall repay the Consolidation loan in not more than 15 years;

(iii) Is equal to or greater than $20,000 but less than $40,000, the borrower shall repay the Consolidation loan in not more than 20 years;

(iv) Is equal to or greater than $40,000 but less than $60,000, the borrower shall repay the Consolidation loan in not more than 25 years; or

(v) Is equal to or greater than $60,000, the borrower shall repay the Consolidation loan in not more than 30 years.

(3) In order to qualify for a repayment period under paragraph (h)(2)(ii) of this section, the Consolidation loan must include at least $5,000 in Title IV Part B loans.

(4) For the purpose of paragraph (h)(2) of this section the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) Does not include the unpaid balance on any loan on which the borrower is in default, unless the borrower has made satisfactory arrangements with the holder to repay that loan.

(iii) May include loans received prior to the date of the Consolidation loan provided that the loans are included within 180 days after the Consolidation loan is made.

(5) A repayment schedule for a Consolidation loan—

(i) Must be established by the lender;

(ii) Must provide for graduated or income-sensitive repayment; and

(iii) Must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(6) Upon receipt of the proceeds of a loan made under paragraph (h)(2) of this section, the holder of the underlying loan shall promptly apply the proceeds to discharge fully the borrower's obligation on the underlying loan, and provide the consolidating lender with the holder's written certification that the borrower's obligation on the underlying loan has been fully discharged.

(i) *Treatment by a lender of borrowers' refunds received from schools.* (1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under § 682.209(f) or by a Consolidation loan, the lender shall transmit the amount of the refund payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (i)(2)(i) of this section, the holder of the loan promptly shall provide written notice to the borrower that the holder has received the refund.

(j) *Certification on loans to be repaid through consolidation.* Within 10 business days after receiving a written request for a certification from a lender under § 682.206(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1085)

§ 682.210 Deferment.

(a) *General.* (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) of this section.

(2) (i) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installments of principal deferred during the six-month period (post-deferment grace period) that begins after the completion of each deferment period or combination of those periods, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Once a borrower receives a post-deferment grace period following an unemployment deferment, as described in paragraph (b)(1)(v) of this section, the borrower does not qualify for additional post-deferment grace periods following subsequent unemployment deferments.

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary if—

(i) in the case of a Stafford loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made; or

(ii) in the case of a Consolidation loan, during any period the borrower was eligible for a deferment under section 428(b)(1)(m).

(4) As a condition for receiving a deferment, the borrower shall request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists, but not more than six months before the date the lender receives a request and the information and documentation required for the deferment.

(6) An authorized deferment period ends on the earlier of—

(i) The date when the condition establishing the borrower's eligibility for the deferment ends;

(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower's eligibility for the deferment is expected to end;

(iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment;

(iv) In the case of a student deferment for a Stafford or PLUS loan made to a borrower guaranteed by a guaranty agency whose student status confirmation report system includes student status reports for each borrower with a student deferment, and in the case of an SLS loan made to a borrower for a period of enrollment that commences at the same time as the deferment, the student's anticipated graduation date as indicated on the loan application, and as updated by notice to the lender from the school or guaranty agency; or

(v) The date when the condition providing the basis for the borrower's eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish default does not run during the deferment and post-deferment grace periods. Unless the lender has granted the borrower forbearance under § 682.211, when the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower promptly must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (r) of this section.

(b) *Authorized deferments.* (1) Deferment is authorized for a FFEL borrower during any period when the borrower is—

(i) Except as provided in paragraph (c)(4) of this section, engaged in full-time study at a school, or at a school that is operated by the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State;

(ii) Engaged in a course of study under an eligible graduate fellowship program;

(iii) Engaged in a rehabilitation training program for disabled individuals;

(iv) Temporarily totally disabled, or unable to secure employment because the borrower is caring for a spouse or other dependent who is disabled and requires continuous nursing or similar services for up to three years; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years.

(2) For a borrower of a Stafford or SLS loan, and for a parent borrower of a PLUS loan made before August 15, 1983, deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces, or an officer in the Commissioned Corps of the United States Public Health Service, for up to

three years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(i) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years;

(iii) A full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years; or

(v) Engaged in an internship of residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(iii) of this section).

(3) For a borrower of a Stafford or SLS loan who has been enrolled on at least a half-time basis at an eligible institution during the six months preceding the beginning of this deferment, deferment is authorized during a period of up to six months during which the borrower is—

(i) (A) Pregnant;

(B) Caring for his or her newborn child; or

(C) Caring for a child immediately following the placement of the child with the borrower before or immediately following adoption; and

(ii) Not attending a school or gainfully employed.

(4) For a "new borrower," as defined in paragraph (b)(7) of this section, of a Stafford, SLS, or PLUS loan, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school for a period of enrollment for which the borrower received a Stafford or SLS loan, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(5) For a new borrower, as defined in paragraph (b)(7) of this section, of a Stafford or SLS loan, deferment is authorized during any period when the borrower is—

(i) On active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(ii) Up to three years of service as a full-time teacher in a public or non-profit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section.

(iii) Engaged in an internship or residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(iv) A mother who has preschool-age children (i.e., children who have not enrolled in first grade) and who is earning not more than $1 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that full-time employment within one year of entering or re-entering the work force. Full-time employment involves at least 30 hours of work a week and it expected to last at least 3 months.

(6) For a parent borrower of a PLUS loan, deferment is authorized during any period when the student on whose behalf the parent borrower received the loan—

(i) Is not independent as defined in section 480(d) of the Act; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i)–(iii) and (b)(4) of this section.

(7) For purposes of this section, a "new borrower" with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A Stafford, SLS, or PLUS loan made prior to July 1, 1987 for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan that repaid a loan made prior to July 1, 1987 and for a period of enrollment beginning prior to July 1, 1987.

(c) *Student deferment.* (1) Except as provided in paragraph (c)(4) of this section, to document eligibility for a deferment for full-time study or half-time study at a school, the borrower shall provide the lender with—

(i) A completed deferment application or certified loan application; and

(ii) A statement, which may be on the deferment application or a loan application, completed by an authorized official of the school certifying that the borrower is enrolled on a full-time basis, or, in the case of a deferment described in paragraph (b)(4) of this section, on at least a half-time basis; and

(iii) In the case of a deferment described in paragraph (b)(4) of this section for a borrower who is at least half-time but less than full-time, a statement from the financial aid administrator of the school or other documentation evidencing that the borrower has received, or will receive, a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

(2) The lender shall consider a deferment granted on the basis of a certified loan application to cover the period lasting until the anticipated graduation date appearing on the application, unless and until it receives notice that the borrower has ceased the level of study (i.e., full-time or half-time) required for the deferment.

(3) In the case of an SLS or PLUS borrower, the lender shall treat the certified loan application as sufficient documentation for a student deferment for any outstanding SLS or PLUS loan previously made to the borrower that is held by the lender.

(4) A borrower serving in a medical internship residency program, except for an internship in dentistry, is prohibited from receiving or continuing deferment on a Stafford or SLS loan under paragraph (c) of this section.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with a statement from an authorized official of the borrower's fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrower's rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation

training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services program;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled as defined in § 682.200(b).

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition has substantially deteriorated so as to render the borrower temporarily totally disabled, as substantiated by the statement required under paragraph (f)(1) of this section, after the borrower submitted the loan application.

(3) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification.

(g) *Dependent's disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse or other dependent requires continuous nursing or similar services for a period of at least 90 days, the borrower shall provide the lender with a statement—

(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent requires continuous nursing or similar services for a period of at least 90 days; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing continuous nursing or similar services to the borrower's spouse or other dependent. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(2) A lender may not grant a deferment based on a single certification under paragraph (g)(1) of this section beyond the date that is six months after the date of the certification.

(h) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower shall provide the lender with a written certification—

(i) Describing the borrower's conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number;

(C) The name or title of the person contacted; and

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, specifying the agency's name and address and the date of registration.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels over qualified by virtue of education or previous experience.

(4) For the purpose of this paragraph, full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(5) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(6) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(1)(ii) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, provided it shows the same number of contacts and contains the same information the borrower would be required to provide under the Department's regulations.

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower shall provide the lender with—

(i) A written statement from the borrower's commanding or personnel officer certifying—

(A) That the borrower is on active duty in the Armed Forces of the United States;

(B) The date on which the borrower's service began; and

(C) The date on which the borrower's service is expected to end; or

(ii)(A) A copy of the borrower's official military orders; and

(B) A copy of the borrower's military identification.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis that is expected to last for a period of at least one year in length, as evidenced by official military orders, unless an order for national mobilization of reservists is issued.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

(j) *Public Health Service deferment.* To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying—

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(k) *Peace Corps deferment.* To qualify for a deferment for service under the

Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying—

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(l) *Full-time volunteer service in the ACTION programs.* To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying—

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(m) *Deferment for full-time volunteer service for a tax-exempt organization.* To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) Does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(v) Has agreed to serve on a full-time basis for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(n) *Internship or residency deferment.* (1) To qualify for an internship or residency deferment under paragraphs (b)(2)(v) or (b)(5)(iii) of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program; and

(iv) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship deferment under paragraph (b)(2)(v) of this section, the borrower shall provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) *Parental-leave deferment.* (1) To qualify for the parental-leave deferment described in paragraph (b)(3) of this section, the borrower shall provide the lender with—

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower—

(A) Is pregnant, caring for his or her newborn child, or caring for a child immediately following the placement of the child with the borrower in connection with an adoption;

(B) Is not, and will not be, attending school during the deferment period; and

(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement demonstrating the existence of the pregnancy, a birth certificate, or a statement from the adoption agency official evidencing a pre-adoption placement.

(2) For purposes of paragraph (o)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) *NOAA deferment.* To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying—

(1) That the borrower is on active duty service in the NOAA corps;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(q) *Targeted teacher deferment.* (1) To qualify for a targeted teacher deferment under paragraph (b)(5)(ii) of this section, the borrower, for each school year of service for which a deferment is requested, must provide to the lender—

(i) A statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is teaching, certifying that the borrower is employed as a full-time teacher; and

(ii) A certification that he or she is teaching in a teacher shortage area designated by the Secretary as provided in paragraphs (q) (5) through (7) of this section, as described in paragraph (q)(2) of this section.

(2) In order to satisfy the requirement for certification that a borrower is teaching in a teacher shortage area designated by the Secretary; a borrower must do one of the following:

(i) If the borrower is teaching in a State in which the Chief State School Officer has complied with paragraph (q)(3) of this section and provides an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's chief administrative officer.

(ii) If a borrower is teaching in a State in which the Chief State School Officer has not complied with paragraph (q)(3) of this section or does not provide an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower must obtain certification that he or she is teaching in a teacher shortage area from the Chief

State School Officer for the State in which the borrower is teaching.

(3) In the case of a State in which borrowers wish to obtain certifications as provided for in paragraph (q)(2)(i) of this section, the State's Chief State School Officer must first have notified the Secretary, by means of a one-time written assurance, that he or she provides annually to the State's chief administrative officers whose schools are affected by the Secretary's designations and the guaranty agency for that State, a listing of the teacher shortage areas designated by the Secretary as provided for in paragraphs (q) (5) through (7) of this section.

(4) If a borrower who receives a deferment continues to teach in the same teacher shortage area as that in which he or she was teaching when the deferment was originally granted, the borrower shall, at the borrower's request, continue to receive the deferment for those subsequent years, up to the three-year maximum deferment period, even if his or her position does not continue to be within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school that employs the borrower, certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area for which the deferment was received for the previous year.

(5) For purposes of this section a teacher shortage area is—

(i)(A) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(B) A specific grade level or academic, instructional, subject-matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraphs (q)(6) or (q)(7) of this section.

(6)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate officials of the private nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (q)(6)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made, unless that data is not yet available, in which case he or she may use data from the immediately preceding school year, with respect to—

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.

(iii) If the total number of unduplicated full-time equivalent (FTE) elementary or secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation does not exceed 5 percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE elementary and secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation exceeds 5 percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(7) A Chief State School Officer may submit to the Secretary for approval an alternative written procedure to the one described in paragraph (q)(6) of this section, for the Chief State School Officer to use to select the teacher shortage areas recommended to the Secretary for designation, and for the Secretary to use to choose the areas to be designated. If the Secretary approves the proposed alternative procedure, in writing, that procedure, once approved, may be used instead of the procedure described in paragraph (q)(6) of this section for designation of teacher shortage areas in that State.

(8) For purposes of paragraphs (q)(1) through (7) of this section—

(i) The definition of the term *school* in § 682.200(b) does not apply;

(ii) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(iii) *Secondary school* means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade;

(iv) *Teacher* means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) *Chief State School Officer* means the highest ranking educational official for elementary and secondary education for the State;

(vi) *School year* means the period from July 1 of a calendar year through June 30 of the following calendar year;

(vii) *Teacher shortage area* means an area of specific grade, subject matter, or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers; and

(viii) *Full-time equivalent* means the standard used by a State in defining full-time employment, but not less than 30 hours per week. For purposes of counting full-time equivalent teacher positions, a teacher working part of his or her total hours in a position that is designated as a teacher shortage area is counted on a *pro rata* basis corresponding to the percentage of his or her working hours spent in such a position.

(r) *Working-mother deferment.* (1) To qualify for the working-mother deferment described in paragraph (b)(5)(iv) of this section, the borrower shall provide the lender with a statement certifying that she—

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the beginning date of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds $1 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of her child (e.g., a birth certificate) and the rate of her compensation (e.g., a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph—

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

§ 682.211 Forbearance.

(a) (1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower or endorser in order to prevent the borrower or endorser from defaulting on the borrower's or endorser's repayment obligation, or to permit the borrower or endorser to resume honoring that obligation after default. *Forbearance* means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Subject to paragraph (h) of this section, a lender may grant forbearance of payments of principal and interest under paragraphs (b), (c), and (d) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two individuals are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only if the ability of both individuals to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance if the lender and the borrower or endorser agree in writing to the terms of the forbearance, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree in writing to the forbearance.

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the repayment obligation after default. The terms of the forbearance agreement in this situation must include a new signed repayment obligation.

(e) Except in the case of forbearance of interest payments during a deferment period or a forbearance granted under paragraph (g) of this section, if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser by telephone or send a written notice to the borrower or endorser at least once every three months during the period of forbearance to remind the borrower or endorser of the outstanding obligation to repay.

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue—

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify;

(2) Upon the beginning of an authorized deferment period;

(3) For the period beginning when the borrower entered repayment until the first payment due date was established;

(4) For a period as authorized by the Secretary in the event of a national military mobilization or other national emergency; or

(5) For the period prior to the borrower's filing of a bankruptcy petition as provided in § 682.402(d).

(g) Upon the written request of the borrower, a lender shall grant forbearance of principal and, unless otherwise indicated by the borrower, interest, in 12-month intervals to a borrower whose deferment received under § 682.210(n) has expired until the borrower has completed the internship or residency.

(h) In granting a forbearance under this section, a lender shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1080, 1082)

§ 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in

computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1097)

§ 682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principle balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that interest on the loan would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan on which interest benefits are to be paid, a lender shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202). With regard to Regulation B, the Secretary considers the Stafford loan program to be a credit-assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and spouse's financial resources.

(Authority: 20 U.S.C. 1071–1087–2)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on Stafford loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a Stafford loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays a lender the interest that accrues on an eligible Stafford loan—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earliest of—

(i) The date the borrower's loan is repaid;

(ii) The date the disbursement check that represents a portion of a loan is returned uncashed to the lender, or the 120th day after the date of that disbursement, if—

(A) The check for the disbursement has not been negotiated on or before that date; or

(B) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.412 sets forth circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guaranty agency.

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable; or

(2) Interest paid on behalf of the borrower by a guaranty agency.

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender at the actual interest rate on a loan provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to 3 percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.301 Eligibility of borrowers for interest benefits on Stafford loans.

(a) *General.* (1) A borrower must demonstrate financial need in accordance with Part F of the Act to qualify for interest benefits on a Stafford loan.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) (A) Directs the member to pursue the course of study; or

(B) Provides subsistence support to its members.

(b) *Application for interest benefits.* To apply for interest benefits, the student, or the school at the direction of the student, shall submit a loan application to the lender. The application must include a certification from the student's school of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The student's expected family contribution, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(4) The amount of the student's need for a loan, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of an SLS, PLUS, nonsubsidized Stafford loan, State sponsored loan, or private loan program obtained for a period of enrollment to replace the expected family contribution determined under paragraph (b)(3) of this section for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087–1)

§ 682.302 Payment of special allowance on FFEL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special

allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest, computed in accordance with paragraph (c) of this section.

(b) *Eligible loans.* (1) Except for nonsubsidized Stafford loans disbursed on or after October 1, 1981, or as provided in paragraphs (b)(2) or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the SLS or PLUS Program on or after July 1, 1987 or under § 682.209 (e) or (f), no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed 12 percent.

(c) *Rate.* (1) Except as provided in paragraph (c)(2) of this section, the special allowance rate for an eligible loan during a 3-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986;

(B) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(C) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or for a loan described in paragraph (c)(2) of this section; or

(D) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of 1 percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by 4.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(C) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraph (c)(3)(ii) of this section, the special allowance rate is one-half the rate calculated under paragraph (c)(1)(iii)(C) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

(A) The issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1986;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section may not be less than—

(A) 2.5 percent per year on eligible loans for which the applicable interest rate is 7 percent;

(B) 1.5 percent per year on eligible loans for which the applicable interest rate is 8 percent; or

(C) One-half of 1 percent per year on eligible loans for which the applicable rate is 9 percent.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of—

(i) The date a borrower's loan is repaid;

(ii) The date a borrower's loan check is returned uncashed to the lender;

(iii) The date a lender receives payment on a claim for loss on the loan;

(iv) The date a loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 60th day;

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been negotiated on or before that date; or

(B) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date; or

(vii) The 30th day after the date the guaranty agency returns a claim for loss on the loan to the lender due solely to inadequate documentation unless the lender files a claim for loss on the loan with the guarantor, together with all required documentation, prior to the 30th day.

(2) Section 682.413 sets forth the circumstances under which a lender may be required to repay the special allowance received on a loan guaranteed by a guaranty agency.

(e) *Special allowance payments for loans financed by proceeds of tax-exempt obligations.* (1) The Secretary pays a special allowance on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of § 682.800.

(2) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section on a loan described in paragraph (c)(3)(i) of this section—

(i) After the loan is pledged or otherwise transferred in consideration of funds derived from sources other than those described in paragraph (c)(3)(i) of this section; and

(ii) If the authority retains a legal or equitable interest in the loan—

(A) The prior tax-exempt obligation is retired; or

(B) The prior tax-exempt obligation is defeased by means of obligations that the Authority certifies in writing to the Secretary bear a yield that does not exceed the yield permitted under Internal Revenue Service regulations, 26 CFR 1.103–14, with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.303 [Reserved]

§ 682.304 Methods for computing interest benefit and special allowance.

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the

balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, divides the sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or, alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at each applicable interest rate.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.305 Procedures for payment of interest benefits and special allowance.

(a) *General.* (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect and the amount of those fees refunded to borrowers during the quarter covered by the report.

(3) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under § 682.202(c).

(4)(i) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary.

(ii) A lender that makes a loan and any subsequent holder of the loan are jointly and severally liable for payment of the origination fee on the loan to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not pay interest benefits or the special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due by the lender to another Federal agency for credit against a debt that the Federal agency has determined the lender owes.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed by—

(i) Multiplying the daily interest rate applicable to loans on which payment for interest benefits was requested, by the amount of interest benefits due on those loans for each interest rate;

(ii) Multiplying the daily special allowance rate applicable to loans on which special allowance was requested by the amount of special allowance due on those loans for each interest rate and special allowance category;

(iii) Adding the results of paragraphs (b)(2)(i) and (ii) of this section to determine the gross penalty interest to be paid for each day that penalty interest is due;

(iv) Dividing the results of paragraph (b)(2)(iii) of this section by the gross amount of interest benefits and special allowance due to obtain the average penalty interest rate;

(v) Multiplying the rate obtained in paragraph (b)(2)(iv) of this section by the total amount of reduction to gross interest benefits and special allowance due (e.g., origination fees or other debts owed to the Federal government);

(vi) Subtracting the amount calculated in paragraph (b)(2)(v) of this section from the amount calculated under paragraph (b)(2)(iii) of this section to obtain the net amount of penalty interest due per day; and

(vii) Multiplying the amount calculated in paragraph (b)(2)(vi) of this section by the number of days calculated under paragraph (b)(3) of this section.

(3) The Secretary pays penalty interest for the period—

(i) Beginning on the later of—

(A) The 31st day after the final day of the quarter covered by the request for payment; or

(B) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender; and

(ii) Ending on the day the Secretary pays the interest benefits and the special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(4) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(5) A request for interest benefits and special allowance is not considered accurate and complete if it—

(i) Requests payments to which the lender is not entitled under § 682.300 through § 682.302;

(ii) Includes loans that the Secretary, in writing, has directed that the lender exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) *Independent audits.* (1) A lender shall arrange for an independent annual compliance audit conducted by a qualified independent organization or person.

(2) The audit required under paragraph (c)(1) of this section must—

(i) Examine the lender's compliance with the Act and applicable regulations;

(ii) Examine the lender's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) *Government Auditing Standards*. Procedures for audits are contained in an audit guide developed by and available from the Office of the Inspector General of the Department;

(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender's first fiscal year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender's activities for the period beginning no later than the end of the period covered by the preceding audit;

(v) With regard to a lender that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G; and

(vi) With regard to a lender that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with OMB Circular A–133, Audit of Institutions of Higher Education and Other Nonprofit Institutions, as incorporated in 34 CFR 74.61(h)(3). If a nonprofit lender meets the criteria in Circular A–133 for choosing the option for a program-specific audit, and so chooses, the program-specific audit must meet the requirements in paragraphs (c)(1) through (c)(2)(iv) of this section.

(vii) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with 31 U.S.C. 7502 for other purposes, the lender submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

§ 682.400 Agreements between a guaranty agency and the Secretary.

(a) The Secretary enters into agreements with a guaranty agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guaranty agency to participate in the GSL programs and to receive the various payments and benefits related to that participation.

(b) There are three agreements:

(1) *Basic program agreement.* In order to participate in the FFEL programs, a guaranty agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guaranty agency program may receive special allowance payments from the Secretary and have death, disability, and bankruptcy claims paid by the Secretary through the guaranty agency; and

(iii) The guaranty agency may apply for the administrative cost allowance and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guaranty agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guaranty agency must have a reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act, in other applicable Federal statutes, and in regulations that apply to the FFEL programs.

(Authority: 20 U.S.C. 1072, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087–1)

§ 682.401 Basic program agreement.

(a) *General.* In order to participate in the FFEL programs, a guaranty agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guaranty agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford, SLS, and PLUS loans made to a borrower may not exceed the amounts set forth in § 682.204(b), (d), and (f).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in § 682.204(a), (c), and (e).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either—

(A) A period of not less than seven nor more than 12 months; or

(B) A period of not less than seven months in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore) or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iii) The amount of a loan guaranteed may not exceed the amount set forth in § 682.204(h).

(3) *Duration of borrower eligibility.* (i) A student borrower under the Stafford Loan Program or the SLS Program and a parent borrower under the PLUS Program are eligible to receive a guaranteed loan for any year of the student's study at a participating school.

(ii) Loans must be available to or on behalf of any student for at least six academic years of study.

(4) *Borrower responsibilities.* (i) The borrower shall indicate his or her preferred lender on the loan application, if he or she has such a preference.

(ii) The borrower shall give the lender, as part of the application process for a Stafford, SLS, or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) Information demonstrating that the borrower is eligible for the loan;

(C) Information concerning the outstanding FFEL loans of the borrower and, for a parent borrower, of the student, including any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan;

(D) A statement of the sources and amount of the student's estimated financial assistance, as defined in § 682.200, for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan—

(A) Information demonstrating that the borrower is eligible for the loan under § 682.201(c); and

(B) A statement that the borrower does not currently have another application for a Consolidation loan pending.

(iv) The borrower shall promptly notify—

(A) The current holder or the guaranty agency of any change of name, address, student status to less than half-time, employer, or employer's address; and

(B) The school of any change in local address during enrollment.

(5) *School eligibility.* A school that has a program participation agreement in place with the Secretary under § 682.600 is eligible to participate in the program of the agency except to the extent that—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(ii) The school is disqualified by the Secretary under section 432(h)(3) of the Act or § 682.713;

(iii) The school is ineligible under section 435(a)(3) of the Act;

(iv) There is a State constitutional prohibition affecting the school's eligibility;

(v) The school's programs consist of study solely by correspondence; or

(vi) The agency determines that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR part 668.

(6) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part or by the agency under standards and procedures that are substantially the same as those in subpart G of this part; or

(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 435(d)(3), or 435(d)(5) of the Act or § 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(iv) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in a similar Federal, State, or private nonprofit student loan program and the amount and percentage of loans that are currently delinquent or in default under that program.

(7) *Out-of-State schools.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under § 682.404(i)(2) but who attend schools out of that State and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(8) *Out-of-State residents.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under § 682.404(i)(2) but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and who are borrowing for students attending in-State schools.

(9) *Insurance premiums.* (i) Except for a SLS or PLUS loan refinanced under § 682.209 (e) or (f), the guaranty agency may charge the lender an insurance premium on each Stafford, SLS, or PLUS loan it guarantees.

(ii) The guaranty agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guaranty agency in the administration of its loan guarantee program.

(iii) The lender may deduct the amount of the premium from the borrower's loan proceeds. For a loan disbursed in more than one installment, the insurance premium must be deducted proportionately from each disbursement of the loan proceeds.

(iv) The amount of the insurance premium may not exceed 3 percent of the principal balance of the loan.

(v) The guaranty agency shall refund to the lender any insurance premium received for a loan under the circumstances specified in § 682.401(b)(9)(vi) (A) and (B).

(vi) The lender shall refund to the borrower by a credit against the borrower's loan balance all or a part of the insurance premium paid by the borrower on a loan under the following circumstances:

(A) The premium, or the portion attributable to a portion of a loan disbursed in more than one installment, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if within 120 days of disbursement—

(*1*) The loan is repaid in full;

(*2*) The loan check has not been negotiated; or

(*3*) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school.

(10) *Payments for lender referral service.* (i) The guaranty agency may not use insurance premiums to pay incentive fees to lenders, except to those lenders who agree to participate in and make FFEL loans (other than Stafford loans that do not qualify for interest benefits) to all eligible students referred under a qualified lender referral service.

(ii) For purposes of this paragraph, the term *qualified lender referral service* means a lender referral service offered by a guaranty agency under which the agency refers to a participating lender each eligible student applying for the service who is either a resident of the State in which the agency is the principal guaranty agency or attending a school in that State and who has sought and been unable to find a lender willing to make a FFEL loan (other than a Stafford loan that does not qualify for interest benefits) to the student.

(11) *Administrative fee for Consolidation loans.* The guaranty agency may charge a lender a fee, not to exceed $50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it charges the fee, the agency must charge it for all loans made under the agency's Consolidation Loan program.

(12) *Administrative fee for refinancing fixed-rate PLUS or SLS loans.* The guaranty agency may require a lender to pay to the guaranty agency up to 50 percent of the fee the lender charges a borrower under § 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate. If it charges the

fee, the agency must charge the same fee to all lenders that refinance under this paragraph.

(13) *Guarantee liability.* The guaranty agency shall guarantee 100 percent of the unpaid principal balance of each loan guaranteed.

(14) *Guaranty agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(15) *Loan assignment.* (i) The guaranty agency shall allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

(A) An eligible lender;

(B) A guaranty agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition, or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closes;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of a guarantee or a reinsurance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(16) *Transfer of guarantees.* Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(17) *Standards and procedures.* (i) The guaranty agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(d) of the Act and have a written lender agreement with the agency;

(B) School and lender participation in its program;

(C) Limitation, suspension, termination of school and lender participation;

(D) Emergency action against a participating school or lender;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guaranty agency shall ensure that its program and all participants in its program at all times meet the requirements of subparts B, C, D and F of this part.

(18) *Student status confirmation.* (i) The guaranty agency shall establish and use a system and procedures for monitoring the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum—

(A) Transmitting to the school, that according to the guaranty agency's records the student most recently attended, a student status confirmation report for completion at least semi-annually in accordance with a schedule established by the agency;

(B) Reporting to the current holder of the loan within 60 days of the receipt of the completed report from the school any change in the student's enrollment status reported by the school that triggers—

(*1*) The beginning of the borrower's grace period; or

(*2*) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

(ii) The agency shall use the data elements and report format provided in Appendix B to this part, unless the Secretary notifies the guaranty agency that other data elements or a revised format may be used.

(19) *Submission of interest and special allowance information.* Upon the Secretary's request, the guaranty agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(20) *Submission of information for reports.* The guaranty agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.414(b).

(21) *Guaranty agency transfer of information.* (i) A guaranty agency from which another guaranty agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guaranty agency as defined in § 682.800(d) shall provide—

(A) The name and social security number of the student; and

(B) The annual loan amount and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(21)(i) of this section must be paid by the guaranty agency making the request.

(22) *Information of defaults.* The guaranty agency shall upon the request of an eligible institution furnish information with respect to students, including the names and addresses of such students, who were enrolled at the eligible institution and who are in default on the repayment of any loan guaranteed by that agency.

(c)(1) *Lender of last resort.* The guaranty agency shall ensure that it or an eligible lender described in section 435(d)(1)(D) of the Act serves as a lender of last resort in the State in which it is the principal guaranty agency, as defined in § 682.800(d).

(2) The lender of last resort shall make a Stafford loan to any eligible student who satisfies the lender's eligibility requirements and—

(i) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least $200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made by this paragraph to be made by another eligible lender.

(d) *Review of forms and procedures.* (1) The guaranty agency shall submit to the Secretary its write-off criteria and procedures. The agency may not use these materials until the Secretary approves them.

(2) The guaranty agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, agreements, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guaranty agency shall use a common application form, promissory note, and other common forms approved by the Secretary.

(4) The guaranty agency must develop and implement appropriate procedures that provide for the granting of a student deferment as specified in § 682.210(a)(6)(iv) and (c)(3) and require their lenders to use these procedures.

(5) The guaranty agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) *Prohibited inducements.* A guaranty agency may not—

(1) Offer directly or indirectly any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for FFEL loans;

(2) Conduct unsolicited mailings of student loan application forms to students enrolled in secondary school;

(3) Conduct fraudulent or misleading advertising concerning loan availability.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.402 Death, disability, and bankruptcy payments.

(a) *General.* (1) Rules governing the cancellation of loans due to death, total and permanent disability, or discharge in bankruptcy are set forth in paragraphs (a)(2), (b), (c), and (d) of this section.

(2) If a PLUS loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if the loan would not qualify either for payment of a default claim or for reinsurance payments in the event of default.

(b) *Death.* (1) If an individual borrower dies, the obligation of the borrower and any endorser to make any further payments on the loan is canceled.

(2) In determining that a borrower has died, the lender may rely on a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan can be canceled only if the guaranty agency determines that other evidence establishes that the borrower has died.

(3) After receiving information indicating that the borrower has died, the lender, if it believes the information to be reliable, shall suspend any collection activity against the borrower and promptly request that the borrower's representative provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which may not exceed 30 days, the lender shall attempt diligently to obtain documentation verifying the borrower's death. If, despite diligent attempts, the lender is not able to confirm the borrower's death within 30 days, the lender shall resume collection activity from the point that it had been discontinued and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is canceled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled. In the case of a consolidation loan, the condition must not have existed prior to the time the borrower applied for each of the underlying loans, unless the condition substantially deteriorates, so as to render the borrower totally and permanently disabled.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly shall request that the borrower or the borrower's representative submit on a form provided or approved by the Secretary a certification by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State that the borrower is totally and permanently disabled. The lender shall continue collection until it receives either the certification of total disability or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. Except as provided in paragraph (c)(4) of this section, after receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim of total disability.

(4) If the lender determines that a borrower who claims to be totally and permanently disabled is not in fact disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(d) *Bankruptcy*—(1) *General.* If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (d) through (i) of this section.

(2) *Notice of bankruptcy filing.* The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court, other documents showing a petition has been filed, or written notice from the debtor's attorney of the filing date of the petition.

(3) *Suspension of collection activity.* If a lender is notified pursuant to paragraph (d)(2) of this section that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(i) Against the borrower, and

(ii) If the borrower has filed for relief under Chapters 12 or 13, against any co-maker or endorser.

(4) *Proof of claim.* The lender shall file a proof of claim with the bankruptcy court within—

(i) 30 days after the lender receives a notice of first meeting of creditors unless, in the case of a proceeding under Chapter 7, the notice states that the borrower has no assets; or

(ii) 30 days after the lender receives a notice from the court stating that a

Chapter 7 no-asset case has been converted to an asset case.

(5) *Filing of bankruptcy claim with the guaranty agency.* (i) The lender shall file a bankruptcy claim on the loan with the guaranty agency in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under Chapters 7 or 11 of the Bankruptcy Code and the loan has been in repayment for more than seven years (exclusive of any applicable suspension of the repayment period) from the due date of the first payment until the date of the filing of the petition for relief; or

(C) The borrower has begun an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) In cases not described in paragraph (d)(5)(i) of this section, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(e) *Claim procedures for a loan by a lender*—(1) *Documentation.* A lender shall provide the guaranty agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts.

(2) *Filing deadlines.* A lender shall file a death, disability, or bankruptcy claim within the following periods:

(i) A lender shall file a death or disability claim within 60 days of the date on which the lender determines that a borrower has died or is totally and permanently disabled.

(ii) A lender shall file a bankruptcy claim with the guaranty agency by the earlier of—

(A) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in paragraph (d)(2) of this section; or

(B) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or, if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that extended period, whichever is later.

(f) *Payment of death, disability, and bankruptcy claims by the guaranty agency*—(1) *General.* (i) The guaranty agency shall review a death, disability, or bankruptcy claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraph (f) of this section, not later than 45 days after the claim was filed by the lender.

(ii) In the case of a bankruptcy claim, the guaranty agency shall, upon receipt of the claim from the lender, immediately take those actions required under paragraph (g) of this section to oppose the discharge of the loan by the bankruptcy court.

(2) *Amount of loss to be paid on a claim.* (i) The amount of loss payable on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with § 682.202(b).

(3) *Payment of interest.* If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(g) *Guaranty agency participation in bankruptcy proceedings*—(1) *Undue hardship claims.* (i) In response to a petition filed with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8)(B) on the grounds of undue hardship, the guaranty agency shall determine on the basis of reasonably available information—

(A) Whether the first payment on the loan was due less than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of the petition for relief commencing the bankruptcy case; and

(B) Whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(ii) If the agency determines that repayment would not constitute an undue hardship, the agency shall then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iii) If the expected costs of opposing the discharge petition do not exceed one-third of the total amount owed on the loan, the agency shall—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(iv) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) *Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment more than seven years.* The guaranty agency shall take the following actions with regard to a loan that was in repayment for at least seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under Chapter 11, 12, or 13 was filed:

(i) The agency is not required to respond to a proposed plan that—

(A) Provides for repayment of the full outstanding balance of the loan;

(B) Makes no provision with regard to the loan or to general unsecured claims.

(ii) In any other case, the agency shall determine, based on a review of its own

records and documents filed by the debtor in the bankruptcy proceeding—

(A) What part of the loan obligation will be discharged under the plan as proposed;

(B) Whether the plan itself or the classification of the loan under the plan meets the requirements of 11 U.S.C. 1129, 1225, or 1325, as applicable; and

(C) Whether grounds exist under 11 U.S.C. 1112, 1208, or 1307, as applicable, to move for conversion or dismissal of the case.

(iii) If the agency determines that grounds exist to challenge the proposed plan, the agency shall, as appropriate, object to the plan or move to dismiss the case, if—

(A) The costs of litigation of these actions are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan; and

(B) With respect to an objection under 11 U.S.C. 1325, the additional amount that may be recovered under the plan if an objection is successful can reasonably be expected to equal or exceed the cost of litigating the objection.

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrates entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(3) *Response by guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment less than seven years.* The guaranty agency shall take the following actions with regard to a loan that was in repayment for less than seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under chapter 11, 12, or 13 was filed:

(i) If the debtor proposes a plan that is expected to end less than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(ii) If the debtor proposes a plan that is expected to end more than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall take the actions required under paragraph (h)(2) of this section.

(h) *Mandatory repurchase by lender.* (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender promptly after the earliest of the following events:

(i) The entry of an order denying or revoking discharge or dismissing a proceeding under any chapter.

(ii) A ruling in a proceeding under chapter 7 or 11 that the loan is not dischargeable under 11 U.S.C. 523(a)(8)(B) or other applicable law.

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11 in a proceeding begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) on grounds of undue hardship.

(2) The lender may capitalize past-due interest accrued on a loan repurchased under this paragraph.

(i) *Claims for reimbursement from the Secretary on loans held by guarantee agencies.* (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) with respect to a proceeding initiated under chapter 7 or chapter 11 begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan; or

(B) With respect to any other loan, after the agency pays the claim to the lender.

(ii) The guaranty agency shall refund to the Secretary the full amount of reimbursement received from the Secretary on a loan that a lender repurchases under this section.

(2) The Secretary pays a death, disability, or bankruptcy claim in an amount determined under paragraph (i)(3) of this section on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if—

(i) The guaranty agency determines that the borrower has died, become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures set forth in paragraphs (b)–(d) of this section. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b)–(d) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty agency determines that the borrower (or in the case of a PLUS Program loan each of the co-makers) has died, become totally and permanently disabled since applying for the loan, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period;

(iii) In the case of a Consolidation loan, the guaranty agency determines that the borrower has died, become totally and permanently disabled since applying for the Consolidation loan, or has filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x);

(v) The guaranty agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x), until the borrower (or in the case of a PLUS loan each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13 petition, or had the loan discharged in bankruptcy; and

(iv) In the case of a bankruptcy claim, the guaranty agency has complied with the requirements of paragraph (g) of this section.

(3)(i) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during the shorter of—

(A) The period from the date the guaranty agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13

bankruptcy petition, or had the loan discharged in bankruptcy until the Secretary authorizes payment; or

(B) 60 days.

(ii) In addition, the Secretary pays the guaranty agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(j) *Payments received after the Secretary's payment of a death, disability, or bankruptcy claim.* If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall remit 100 percent of these payments to the Secretary.

(k) *Applicable suspension of the repayment period.* For purposes of this section and 11 U.S.C. 523(a)(8)(B) with respect to loans guaranteed under the FFEL programs, an applicable suspension of the repayment period—

(1) Includes any period, including a period of deferment, during which the lender, at the request of the borrower, does not require the borrower to make payments on the loan;

(2) Begins on the date on which the borrower qualifies for the requested deferment or the lender grants the requested forbearance;

(3) Closes on the later of the date on which—

(i) The condition for which the requested deferment or forbearance was received ends; or

(ii) The lender receives notice of the end of the condition for which the requested deferment or forbearance was received, if the condition ended earlier than represented by the borrower at the time of the request and the borrower did not notify timely the lender of the date on which the condition actually ended; and

(4) Includes the period between the end of the borrower's grace period and the first payment due date established by the lender in the case of a borrower who entered repayment without the knowledge of the lender.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

§ 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guaranty agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guaranty agency; or

(2) 1 or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guaranty agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guaranty agency—

(A) Agrees to establish at least 1 office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution and that it does not have any substantial affiliation with an eligible educational institution.

(b) A guaranty agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guaranty agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guaranty agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day that the initial advance was made for each of the four succeeding calendar years.

(ii) An additional advance may be made to a private nonprofit guaranty agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guaranty agency.

(e) In the case of a private nonprofit guaranty agency, the repayment of advances is determined separately for each State for which the agency has received in advance under this section, in accordance with section 422(c)(4) of the Act.

(f) A guaranty agency shall return advances provided under this section in accordance with the provisions of sections 422 (c) and (d) of the Act.

(Authority: 20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty agency for 100 percent of its losses on default claim payments to lenders.

(2) For purposes of this section—

(i) *Losses* means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by or on behalf of the borrower after default but before the Secretary reimburses the agency;

(ii) *Preclaims assistance* means collection assistance provided to the lender by the guaranty agency that includes collection activities that are comparable in intensiveness to the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the agency of at least 3 collection activities, including at least 1 letter to the borrower designed to encourage the borrower to begin or resume repayment; and

(iii) *Supplemental preclaims assistance* means collection assistance provided to the lender by the guaranty agency that involves the initiation by the agency of at least two collection activities designed to encourage the borrower to begin or resume payment that is begun on or after the 120th day of delinquency.

(3)(i) If an account has been subject to supplemental preclaims assistance and is not submitted as a default claim by the lender to the guaranty agency by the 150th day after the loan becomes 120 days delinquent, the Secretary will pay the guaranty agency $50.

(ii) If a guaranty agency contracts with an outside entity to perform any supplemental preclaims assistance activity, that entity may not—

(A) Hold or service the loan;

(B) Own, control, or share common ownership with the holder or servicer of the loan; or

(C) Hold a contract with the agency to perform collection services on the loan in the event of default.

(iii) For purposes of paragraph (a)(3)(i) of this section, an "account" includes 1 or more FFEL programs loans that were—

(A) Made to the same borrower;

(B) Held by the same lender;

(C) Guaranteed by the same guaranty agency;

(D) Subject to preclaims assistance by the same agency; and

(E) Covered by the same supplemental preclaims assistance request.

(4) A guaranty agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(5) If a lender has requested preclaims assistance as described in paragraph (a)(2)(ii) of this section, the agency shall notify the school for attendance at which the borrower received the loan of the lender's request by providing the school with a copy of that request, or by other means.

(b) *Reinsurance rate.* (1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals 90 percent of its losses.

(2) If the total of reinsurance claims paid during a fiscal year by the Secretary to a guaranty agency reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year is 80 percent of its losses.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year does not include amounts paid on claims by the guaranty agency—

(i) On loans considered in default under § 682.412(e);

(ii) Under a policy established by the agency that is consistent with § 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary.

(4) Notwithstanding paragraphs (b) (1) and (2) of this section, for a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary may pay 100 percent of its losses during five consecutive fiscal years beginning with the first year of its operation.

(5) For purposes of this section, *amount of loans in repayment* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was canceled;

(B) The loan guarantee was transferred to another agency;

(C) The borrower has not yet reached the repayment period;

(D) Payment in full has been made by the borrower;

(E) The borrower was in deferment status at the time repayment was scheduled to begin and remains in deferment status;

(F) Reinsurance coverage has been lost and cannot be regained; and

(G) The agency paid claims, excluding the amount of those claims—

(*1*) Paid under § 682.412(e);

(*2*) Paid under a policy established by the agency that is consistent with § 682.509(a)(1); or

(*3*) Paid at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guaranty agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guaranty agency after the date the guarterly report is due until the quaranty agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans made under § 682.209(e), (f) and (h), a guaranty agency shall pay to the Secretary during each fiscal year in quarterly installments a reinsurance fee equal to—

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(3) The guaranty agency shall pay the reinsurance fee required by paragraph (d)(1) of this section due the Secretary for each calendar quarter ending March 31, June 30, September 30, and December 31, within 90 days after the end of the applicable quarter or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) *Initiation or extension of agreements.* In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guaranty agency and the lenders to which it provides guarantees to collect outstanding loans as required by § 682.410(b) (6) or (7), and § 682.411;

(2) Efforts by the guaranty agency to make FFEL loans available to all eligible borrowers; and

(3) Other relevant aspects of the guaranty agency's program operations.

(f) *Application of borrower payments.* Payments made to a guaranty agency by a borrower may, at the agency's option, be applied first to the payment of reinsured interest owed or to defray the agency's collection costs on the loan. The borrower's payments may be applied to other charges, such as late charges, only after the repayment of all principal and interest.

(g) *Federal share of borrower payments.* (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For purposes of this section, *the Secretary's equitable share* means that portion of borrower payments that remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage that was in effect when the reinsurance payment was made by the Secretary; and

(ii) 30 percent of borrower payments.

(3) Unless the Secretary approves otherwise, the guaranty agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 45 days of its receipt of the payments.

(h) *Nondiscrimination.* (1) A guaranty agency may not engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular school within any State served by the guaranty agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guaranty agency is deemed to be serving a State if it guarantees a loan that is—

(i) Made by a lender located in a State not served by the agency;

(ii) Made to a borrower who is a resident of a State not served by the agency; and

(iii) Made for attendance at a school located in the State.

(i) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the FFEL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.405 [Reserved]

§ 682.406 Conditions of reinsurance coverage.

(a) A guaranty agency is entitled to reinsurance payments on a loan only if—

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have been released from the restricted account maintained by the school within 120 days after disbursement;

(3) The lender provided an accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411, including collection efforts against each endorser;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 45 days following payment of a default claim to the lender, which must take place no earlier than 90 days following default in the case of a loan payable in monthly installments, or no earlier than 30 days following default, in the case of a loan payable in less frequent installments;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6) or (7);

(12) The agency and lender complied with all other Federal requirements with respect to the loan including the payment of origination fees; and

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of § 682.409.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(5) of this section is set forth in Appendix D to this part.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.407 Administrative cost allowance for guaranty agencies.

(a)(1) The Secretary pays an administrative cost allowance to a guaranty agency having a basic program agreement.

(2) The administrative cost allowance paid to a guaranty agency for any fiscal year equals 1 percent of the total principal amount of loans, other than Consolidation loans, guaranteed by the agency during that fiscal year.

(b)(1) To receive an administrative cost allowance payment, the guaranty agency shall submit an application to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs to be incurred in that fiscal year that will be eligible for payments under this section;

(iii) Assurances that the agency will use sufficient administrative and fiscal procedures, including an independent audit conducted in accordance with § 682.410(b)(1), to ensure that administrative cost allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit conducted in accordance with § 682.410(b)(1) and submitted in a format and containing information required by the Secretary;

(v) Assurances that the guaranty agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) An estimate of the total amount of new FFEL program loans, other than Consolidation loans, expected to be guaranteed during the fiscal year; and

(vii) Assurances that the agency's program meets and will continue to meet all the requirements contained in § 682.401(b).

(3) The application for an administrative cost allowance by a guaranty agency and the Secretary's payment of that allowance establishes an agreement between the Secretary and the guaranty agency with respect to the assurances contained in the application.

(c)(1) A guaranty agency may use the administrative cost allowance to meet only administrative costs related to the FFEL programs.

(2) A guaranty agency may not use the administrative cost allowance to meet costs—

(i) For which the agency has been or will be reimbursed from the 30 percent retention of collections permitted under § 682.404(g)(2)(ii); or

(ii) For which the agency has been or will be reimbursed from a source other than the payment made under this section.

(d) The Secretary pays an administrative cost allowance on a loan only to the guaranty agency that

originally guaranteed the loan, even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.408 Loan disbursement through an escrow agent.

(a) *General.* (1) A guaranty agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford, SLS, and PLUS loan proceeds disbursed by an eligible lender other than a school, State lender, or a State agency or instrumentality, and transmitting those proceeds to the borrower's school if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that—

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and § 682.207(b)(1)(iv);

(ii) The lender shall promptly notify the borrower's school when funds are escrowed for the borrower; and

(iii) The escrow agent is authorized to—

(A) Transmit the proceeds according to the note evidencing the loan;

(B) Commingle the proceeds of the loans paid to it pursuant to an escrow agreement;

(C) Invest the loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(D) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* Subject to § 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of FFEL loan proceeds by the escrow agent.* (1) The escrow agent shall transmit Stafford and SLS loan proceeds received from a lender under this section to a school in accordance with the requirements of § 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(2) The escrow agent shall transmit PLUS loan proceeds received from a lender under this section to a borrower in accordance with the requirements of § 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after receiving information indicating that the student has not enrolled, or has ceased to be enrolled on at least a half-time basis, for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary may direct a guaranty agency to assign to the Secretary any loan held by the agency on which the agency seeks, or has received, payment under § 682.402(d), § 682.402(i), or § 682.404. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the agency. The Secretary may identify particular loans to be assigned or may require assignment of particular categories of loans that share characteristics that the Secretary determines make those loans appropriate for assignment.

(b)(1) A guaranty agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guaranty agency any compensation for a loan assigned under this section.

(2) The guaranty agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guaranty agency shall assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency shall submit this information and documentation in the form (e.g., computer tape) and in the format specified by the Secretary.

(2) The guaranty agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of the activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application.

(v) A payment history for the loan, as described in § 682.414(a)(1)(ii)(C).

(vi) A collection history for the loan, as described in § 682.414(a)(1)(ii)(D).

(5) The agency may submit certified copies of required documents in lieu of originals if no originals exist.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d)(2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under § 682.410(b)(3).

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements*—(1) *Reserve fund assets.* The guaranty agency shall establish and maintain a reserve fund to be used solely for the FFEL program to

which the guaranty agency shall credit—

(i) Federal advances obtained and matching funds required under section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under section 422(c) of the Act;

(iv) Funds received by the guaranty agency as loan insurance premiums;

(v) Administrative cost allowances received by the guaranty agency under § 682.407;

(vi) Funds received by the guaranty agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on FFEL loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Investment earnings on the reserve fund.

(2) *Uses of reserve fund assets.* Except as provided in paragraphs (a)(3)–(a)(5) of this section, a guaranty agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Pay default claims;

(ii) Pay death, disability, and bankruptcy claims;

(iii) Refund overpayments of insurance premiums;

(iv) Pay to the Secretary the Secretary's equitable share of borrower payments;

(v) Repay advances and other funds owed to the Secretary; and

(vi) Make payments to lenders that participate in the loan referral service under section 428(e) of the Act.

(3) *Special rule for use of certain reserve fund assets.* (i) Except as provided in paragraph (a)(4) of this section, a guaranty agency also may use funds received as insurance premiums, administrative cost allowances, amounts collected on FFEL loans, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for the proper administration of the guaranty agency's FFEL loan guarantee activities.

(ii) The guaranty agency shall use funds received as Federal advances under section 422(c) of the Act, and interest or other earnings on those advances, only to pay default claims.

(iii) The guaranty agency shall account separately for the funds described in paragraph (a)(3)(i) of this section.

(4) The guaranty agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State and shall exercise the level of care in that investment required of a fiduciary charged with the duty of investing the money of others.

(5) If the guaranty agency uses any funds required to be credited to the reserve fund under paragraph (a)(1) of this section to develop or purchase an asset of any kind—

(i) If the agency subsequently sells or otherwise derives revenue from uses of the asset that are unrelated to FFEL program guarantee activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the sale proceeds or revenue equal to the percentage of the original development cost or purchase price of the asset paid with the reserve fund monies; and

(ii) If the agency subsequently converts the asset, in whole or in part, to a use unrelated to its FFEL loan guarantee activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value or, in the case of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use, equal to the percentage of the original development cost or purchase price paid with the reserve fund monies.

(b) *Administrative requirements*—(1) *Independent audits.* The guaranty agency shall arrange for an independent financial and compliance audit of the agency's FFEL program as follows:

(i) With regard to a guaranty agency that is an agency of a State government, an audit must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(ii) With regard to a guaranty agency that is a nonprofit organization, an audit must be conducted in accordance with OMB Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Organizations and 34 CFR 74.61(h)(3). If a nonprofit guaranty agency meets the criteria in Circular A–133 to have a program specific audit, and chooses that option, the program specific audit must meet the following requirements:

(A) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(B) The audit must examine the agency's financial management of its FFEL program activities.

(C) The audit must be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO) Government Auditing Standards. Procedures for audits are contained in an audit guide developed by, and available from, the Office of the Inspector General of the Department.

(D) The audit must be conducted annually and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period that includes July 23, 1992, unless the agency is currently submitting audits on a biennial basis, and the second year of its biennial cycle starts on or before July 23, 1992. Under these circumstances, the agency shall submit a biennial audit that includes July 23, 1992 and submit its next audit as an annual audit.

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note, the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. The amount charged a borrower shall equal the lesser of—

(i) The amount that would be charged for the costs of collection under the formula in 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

(3) *Interest charged by guaranty agencies.* The guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of—

(i) The rate established by the terms of the borrower's original promissory note;

(ii) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(4) *Capitalization of unpaid interest.* The guaranty agency shall capitalize any unpaid interest due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) *Credit bureau reports.* (i) After the completion of the procedures in paragraph (b)(5)(ii) of this section, the guaranty agency shall, after it has paid a default claim, report promptly, but not less than sixty days after completion of the procedures in paragraph (b)(6)(iii) of this section, and on a regular basis, to all national credit bureaus—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;
(C) Information concerning collection of the loan, including the repayment status of the loan;
(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and
(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(ii) The guaranty agency, promptly after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against a borrower, shall provide the borrower with—
(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;
(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;
(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and
(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in 34 CFR 30.20–30.33 (administrative offset) satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request submitted by a borrower, after the deadlines established under agency rules, for access to records, an administrative review, or for an opportunity to enter into a repayment agreement, the agency shall provide the requested relief but may continue reporting the debt to credit bureaus until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—
(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or
(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—
(A) Advise the borrower that the agency has paid a default claim filed by the lender and has taken assignment of the loan;
(B) Identify the lender that made the loan and the school for attendance at which the loan was made;
(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;
(D) Demand that the borrower immediately begin repayment of the loan;
(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;
(F) Notify the borrower that the agency will report the default to all national credit bureaus to the detriment of the borrower's credit rating;
(G) Explain the opportunities available to the borrower under agency rules to request access to the agency's records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency to prevent the agency from reporting the loan as defaulted to credit bureaus and provide deadlines and method for requesting this relief;
(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against State income tax refund or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, for an administrative review, or for agreement to alternative repayment terms;
(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;
(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;
(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation; and
(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for collection by offset against Federal income tax refunds or the filing of a lawsuit against the borrower by the Federal Government.

(6) *Collection efforts on defaulted loans.* (i) The guaranty agency shall engage in at least the collection activities described in paragraphs (b)(6)(iii)–(xii) of this section on a loan on which it pays a default claim filed by a lender, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii)–(vi) of this section.

(ii)(A) The periods of time set forth in paragraphs (b)(6)(iii)–(xii) and (b)(7) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan or on multiple loans for a borrower, or, in the case of a borrower whom the agency locates through the use of skip-tracing under paragraph (b)(6)(xii)(A) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. These periods of time do not include any periods during which the agency is engaged in activities related to administrative wage garnishment, or is receiving a payment through garnishment at least once every 60 days, or during which the agency is engaged in an administrative review of the borrower's indebtedness on the loan pursuant to a request by the borrower under paragraph (b)(5)(iv) of this section. References to the "borrower" in this paragraph and paragraph (b)(7) of this section include all endorsers on a loan.

(B) The agency may institute a civil suit against the borrower earlier than the first day of the period described in paragraph (b)(6)(vii) of this section. Upon instituting suit, the agency is not required thereafter to follow the procedures in paragraphs (b)(6)(iii) or (b)(7) of this section.

(C) Upon receipt of a payment from a borrower during a period described in paragraphs (b)(6)(iii) or (iv) of this section, the agency is not required to follow the specific collection efforts described in paragraphs (b)(6)(iii)–(vii) of this section but shall diligently attempt to collect the loan for 60-day following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume

its use of the collection efforts described in paragraphs (b)(6)(iv)–(ix) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(6)(iv) of this section.

(iii) 1–45 days: During this period, the agency shall—

(A) Send to the borrower the written notice described in paragraph (b)(5)(ii) of this section; and

(B) Diligently attempt to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand payment of the loan.

(iv) 46–180 days: During this period the agency shall—

(A) Engage in at least two diligent attempts to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency") to demand repayment of the loan; and

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately begin repayment of the loan and informing the borrower that the default has been reported to all national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged. The final notice also must indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the possibility of instituting a civil suit, to compel repayment of the loan.

(v) At no point during the periods described in paragraphs (b)(6) (iii) and (iv) of this section may the agency permit the occurrence of a gap in collection activity of more than 60 days.

(vi) For purposes of paragraph (b)(6)(v) of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(A) Beginning on the date that is the day after—

(*1*) The date the agency paid a default claim to the lender thereon;

(*2*) The day on which the agency receives the correct address for a borrower who has made no payment in the preceding 60 days; or

(*3*) The day on which the agency completes a collection activity as defined in § 682.411(k) (1) through (3) (with references to "the lender" therein understood to mean "the agency"); and

(B) Ending on the date of the earliest of—

(*1*) The day on which the agency receives the first subsequent payment;

(*2*) The day on which the agency begins the first subsequent collection activity as defined in § 682.411(k) (1) through (3) (with references to the "lender" understood to mean "the agency"); or

(*3*) The last day of the period described in paragraph (b)(6)(iv) of this section.

(vii) 181–545 days:

(A) Except as provided in paragraphs (b)(6)(vii) (B), (C), and (D) of this section during this period, but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(6)(vii)(C) of this section, in the case of a loan that was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to the 545th day, the agency has 180 days from the date it receives the returned loan to institute the civil suit.

(C) Except as provided in paragraph (b)(6)(vii)(D) of this section, in the case of a loan not assigned to the Secretary, during this period, but not sooner than 30 days after sending the final notice described in paragraph (b)(6) (iv) of this section, the agency shall institute a civil suit against the borrower by the 225th day unless that loan is subsequently assigned to the Secretary by the deadline for the next available opportunity to collect by Internal Revenue Service (IRS) tax refund offset, or a payment is received from the borrower fewer than 120 days before the deadline for the next available opportunity to collect by IRS tax refund offset.

(D) The agency need not file suit if the agency determines and documents in the borrower's file that—

(*1*) The cost of litigation would exceed the likely recovery if litigation was begun; or

(*2*) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion there of.

(viii)(A) If as a result of a determination made pursuant to paragraph (B)(6)(vii)(D)(*2*) of this section the agency does not institute a civil suit against the borrower for repayment of the loan, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy at least a substantial portion of the debt and that the cost of litigation would not exceed the amount likely to be obtained if litigation were begun, then, if subsequent collection efforts are not successful, the agency, no later than 60 days after the determination, shall institute a civil suit against the borrower for repayment of the loan.

(C) The guaranty agency shall document in the borrower's file determinations made pursuant to this paragraph.

(ix)(A) The agency shall attempt diligently to enforce a judgment obtained against a borrower on a loan and shall ensure that the judgment is renewed as permitted by applicable law. If, despite diligent attempts, the agency cannot recover the full amount of the judgment because the borrower lacks sufficient assets or income attachable under applicable law to fully satisfy the judgment, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired sufficient attachable assets or income to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired sufficient attachable assets or income to satisfy the remainder of the judgment and that the cost of enforcing the judgment would not exceed the likely recovery, the agency, not later than 60 days thereafter, shall notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full of all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in paragraph (b)(6)(ix)(B) of this section, the agency, within 30 days thereafter, shall proceed to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(6) (viii) and (ix) of this section only in accordance with criteria and procedures approved by the Secretary.

(xi) Notwithstanding paragraphs (b)(6)(vii)–(x) of this section, the agency shall file a civil suit against the borrower for repayment of the loan, and shall enforce a judgment obtained thereon unless the agency—

(A) Determines and documents in the borrower's file that the cost of litigation would exceed the judgment amount likely to be obtained if litigation were begun, or, in the case of a proceeding to enforce a judgment, that the cost of such a proceeding would exceed the likely recovery from the debtor; or

(B) Previously has discontinued semi-annual inquiries on the debt in accordance with paragraph (b)(6)(x) of this section.

(xii) Not later than 10 days after its receipt of information indicating that it

does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(D) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the loan, whichever is later, the agency shall attempt diligently to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the IRS, credit bureaus, and State motor vehicle departments.

(7) *Alternative collection procedures for defaulted loans.* (i) A guaranty agency may engage in the following collection activities in lieu of the activities described in paragraphs (b)(6)(iii)–(vi) of this section. The regulations in paragraphs (b)(6)(ii) (A) and (B) of this section apply to the periods of time set forth in paragraphs (b)(7)(iii)–(v) of this section.

(ii) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(7)(iii)–(vi) of this section but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(7)(iii)–(vi) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(7)(iv) of this section.

(iii) 1–30 days: During this period the agency shall send to the borrower the written notice described in paragraph (b)(5)(ii) of this section.

(iv)(A) 31–180 days: During this period the guaranty agency shall attempt diligently to collect the loan using such collection tools and activities as it deems appropriate, provided, however, that the agency must make at least one diligent effort to contact the borrower by telephone, as defined in § 682.411(l) (with references to "the lender" understood to mean "the agency"), and send at least two forceful collection letters to the borrower.

(B) By the end of this period or the 30th day after the Secretary's return of the loan to the agency upon completion of the first Federal tax refund offset process available for that loan, whichever is later, the agency shall refer the loan to a collection contractor in accordance with paragraph (b)(7)(iv)(C) of this section.

(C) The collection contractor to whom the agency refers a loan under paragraph (b)(7)(iv)(B) of this section must—

(*1*) Be compensated for its services on all FFEL loans referred by the agency solely on a contingency fee basis;

(*2*) Be one of at least two collection contractors simultaneously providing collection services to the agency on FFEL loans under a competitive system that the agency has established and that includes the periodic assessment by the agency of the performance of the competing contractors and periodic adjustments in the volume of loans referred by the agency to each competing contractor based on those assessments; and

(*3*) Not receive referral of more than 70 percent of the agency's referred loans in any calendar year.

(v) Notwithstanding the deadline for instituting a civil suit set forth in paragraph (b)(6)(vii) of this section, an agency that uses the procedures in paragraphs (b)(7)(i)–(iv) of this section shall institute a civil suit required by that paragraph prior to the earliest of—

(A) The 90th day following the collection contractor's return of the loan to the agency; or

(B) The 365th day following the later of the agency's referral of the loan to the collection contractor, or the contractor's receipt of a payment on the loan.

(8) *Special conditions for agency payment of a claim.* (i) A guaranty agency may adopt a policy under which it pays a claim to a lender on a loan under the conditions described in § 682.509(a)(1).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(8)(i) of this section, the guaranty agency shall—

(A) Perform the loan servicing functions required of a lender under § 682.208, except that the agency is not required to follow the credit bureau reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under § 682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender or becomes delinquent while the agency holds the loan, exercise due diligence in accordance with § 682.411 in attempting to collect the loan from the borrower and any endorser or co-maker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6)(i) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(9) *Preemption of State law.* The provisions of paragraphs (b) (2), (5), (6), and (7) of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements of these provisions.

(c) *Enforcement requirements.* A guaranty agency shall take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty agency requirements, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least—

(i)(A) Each participating lender whose dollar volume of FFEL loans made or held by the lender and guaranteed by the agency in the preceding year—

(*1*) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency;

(*2*) Was one of the ten largest lenders whose loans were guaranteed in that year by the agency; or

(*3*) Equaled or exceeded $10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D) or (J) of the Act that is located in any State in which the agency is the principal guarantor as defined in § 682.800(d), and, at the option of each guaranty agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in § 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under § 668.15 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1)(A)–(C) of this section if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and monitoring the implementation by participants of corrective actions,

including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any case in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation, any correspondence, and any other documentation submitted by that party regarding the repayment.

(4) Adopting procedures for identifying fraudulent loan applications.

(5) Undertaking or arranging with State or local law enforcement agencies for the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants, including violations of Federal law or regulations.

(6) Promptly referring to appropriate State and local regulatory agencies and to nationally recognized accrediting agencies and associations for investigation information received by the guaranty agency that may affect the retention or renewal of the license or accreditation of a program participant.

(7) Promptly reporting all of the allegations and indications of misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof to the Secretary.

(8) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(9) Promptly notifying the Secretary of—

(i) Any action it takes affecting the FFEL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the FFEL program eligibility of a participating lender or school taken by a nationally recognized accrediting agency, association, or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of FFEL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

(10) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(11) Taking prompt action to protect the rights of borrowers and the Federal fiscal interest respecting loans that the agency has guaranteed when the agency learns that a participating school or holder of loans is experiencing problems that threaten the solvency of the school or holder, including—

(i) Conducting on-site program reviews;

(ii) Providing training and technical assistance, if appropriate;

(iii) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency and any refunds due to borrowers on FFEL loans that it has guaranteed when the agency learns that a school has filed a bankruptcy petition;

(iv) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(v) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1091a; 1099)

§ 682.411 Due diligence by lenders in the collection of guaranty agency loans.

(a) *General.* In the event of delinquency on a FFEL programs loan, the lender shall engage in at least the collection efforts described in paragraphs (c)–(1) of this section, except that in the case of a loan made to a borrower who is incarcerated or to a borrower residing outside a State, Mexico, or Canada, the lender may send a forceful collection letter in lieu of each telephone effort required by this section.

(b) *Delinquency.* For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment which is not later made. The due date of the first payment is established by the lender but must occur no later than 45 days following the end of the grace period, or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment which is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(c) *1–10 days delinquent:* Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan. the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) *11–180 days delinquent (11–240 days delinquent for a loan repayable in installments less frequent than monthly):* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur before and another one must occur after the 90th day of delinquency.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan

(3) Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone if the loan is 91–120 days delinquent (121–180 days delinquent for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment of forbearance.

(4) A lender need not attempt to contact by telephone any borrower—

(i) Who is incarcerated;

(ii) Who is residing outside of a State, Mexico or Canada;

(iii) Whose telephone number is unknown;

(iv) Who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of—

(A) A payment on the loan;

(B) A correct address for the borrower;

(C) A dishonored check received from the drawee as a payment on the loan; or

(D) The expiration of an authorized deferment or forbearance.

(5) At no point during this period may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (i) of this section, of more than 45 days (60 days in the case of a transfer).

(e) *Final demand.* On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender shall allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(f) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (f)(1) of this section, the lender is excused from any further efforts to contact the borrower by telephone during the delinquency period in which the unsuccessful effort was made, unless the borrower's number is obtained before the 120th day of delinquency (the 150th day for loans payable repayable in installments less frequent than monthly).

(g) *Skip-tracing.* (1) Unless the letter specified under paragraph (e) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender shall begin to diligently attempt to locate the borrower through the use of normal commercial skip-tracing techniques. These efforts must include, but are not limited to, making a diligent effort to contact each endorser, relative, reference, and individual and entity identified in the borrower's loan file. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator identified on the loan application. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in paragraphs (c)–(e) of this section.

(3) If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in paragraph (g)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c)–(e) and (k) of this section unless it receives communication indicating the borrower's address before the 151st day of delinquency (the 211th day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraphs (l)(1)(A) or (B) of this section (with references to "the borrower" understood to mean endorser, reference, relative, individual or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(h) *Preclaims assistance.* The lender shall request preclaims assistance from the agency that guaranteed the loan within 10 days before or after the date established by the agency that assistance is first available from the agency.

(i) *Gap in collection activity.* For purposes of this section, the term "gap in collection activity" means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The due date of a payment unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

(vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins the first subsequent collection activity; or

(iii) Default.

(j) *Transfer.* For purposes of this section, the term "transfer" with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(k) *Collection activity.* For purposes of this section, the term "collection activity" with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address a collection letter or final demand letter that satisfies the timing and content requirements of paragraphs (c), (d), or (e) of this section;

(2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

(3) Conducting skip-tracing efforts, in accordance with paragraph (g) of this section, to locate a borrower whose correct address is unknown to the lender;

(4) Mailing or otherwise transmitting to the guaranty agency a request for preclaims assistance available from the agency on the loan at the time the request is transmitted; or

(5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(l) *"Diligent effort" for telephone contact.* (1) For purposes of this section, the term "diligent effort" with respect to telephone contact means—

(i) A successful effort to contact the borrower by telephone;

(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and a diligent effort to contact each reference, relative, and individual identified in the most recent loan application for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (l)(1)(iii) of this section, the lender is excused thereafter from attempting to

contact the borrower by telephone unless it receives a communication indicating the borrower's current address before the 120th day of delinquency (the 150th day for loans repayable in installments less frequent than monthly).

(3) The activities specified by paragraphs (l)(1)(i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative or individual identified on the borrower's most recent loan application.

(m) *Due diligence for endorsers.* (1) During the delinquency period the lender shall—

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to "the borrower" understood to mean the endorser).

(2) On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender shall allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan current before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (m)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of normal commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(n) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087–1)

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of § 682.411(e) when it learns and can substantiate that the borrower or the student on whose behalf a parent has borrowed, without the lender or school's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the student or borrower—

(1) To be ineligible for all or a portion of a loan made under this part;

(2) To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301 for which he or she was ineligible; or

(3) To receive loan proceeds for a period of enrollment from which he or she has withdrawn or been expelled prior to the first day of classes or during which he or she failed to attend school and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all special allowance paid by the Secretary thereon up through the most recently ended quarter.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall—

(1) On its next quarterly interest billing submitted under § 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under § 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the loan, whether or not repaid by the borrower; and

(2) Within the time specified in § 682.406(a)(5), file a default claim thereon with the guaranty agency for the entire unpaid balance of principal and accrued interest.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance received on a loan guaranteed by a guaranty agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with any of the requirements set forth in §§ 682.406(a)(1)–(a)(6), (a)(9), and (a)(12);

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(3) For any period in which the lender, with respect to the loan, violates the requirements of Subpart C of this part; and

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(b) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender or the agency failed to meet the requirements of § 682.406(a).

(c) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(1) Require the agency to return payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(4) Suspend or terminate agreements with the agency.

(5) Impose a fine on the agency.

(6) Require repayment from the agency of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1).

(7) Require repayment from the agency of any related payments that the Secretary became obligated to make to

others as a result of the incomplete or incorrect statement or violation of applicable Federal requirement.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender or guaranty agency. References to "the institution" in those regulations shall be understood to mean the lender or guaranty agency, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or a lender.

(e)(1) The Secretary's decision to require repayment of funds, withhold funds, or to limit, suspend, or terminate a lender or agency from participation in the FFEL programs does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon, at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender or guaranty agency requests an opportunity to be heard.

(2)(i) The Secretary may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in § 682.704 applicable to emergency actions against lenders in taking an emergency action against a guaranty agency.

(3) The Secretary follows the procedures in 34 CFR 30.20–30.32 in collecting a debt by offset against payments otherwise due a guaranty agency or lender.

(f) Notwithstanding paragraphs (a)–(e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if in the Secretary's judgment the best interests of the United States so require. The Secretary's waiver policy for violations of § 682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

(g) The Secretary's final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guaranty agency under this section is conclusive and binding on the lender or agency.

Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1, 1097)

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address;

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for preclaims and supplemental preclaims assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) The guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(3)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application;

(B) A copy of the signed promissory note, including the repayment instrument;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;

(J) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time, and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(4) (i) A guaranty agency or lender may store the records specified in paragraphs (a)(3)(ii)(C)–(K) of this section on microfilm, optical disk, or other machine readable format.

(ii) A lender or guaranty agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency shall either return the original note to the borrower or notify the borrower under an alternate procedure that is

acceptable under State law that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guaranty agency shall retain the original loan application and, until the loan is fully repaid, the promissory note.

(b) *Reports.* A guaranty agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program at the time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) By July 1 of each year, a report on—

(i) Its eligibility criteria for schools and lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with § 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) *Inspection requirements.* Upon request, a guarantee agency or its agent shall cooperate with an independent auditor, the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs and records; and

(2) Providing reasonable access to the agency's personnel associated with the agency's administration of its loan insurance program for the purpose of obtaining relevant information. In providing reasonable access, the agency shall not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of agency representatives; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the agency.

(3) A guaranty agency shall require in its agreement with a lender or in its published rules or procedures that the lender or its agent give the Secretary or the Secretary's designee and the guaranty agency access to the lender's records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (19) and (20), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

Subpart E—Federal Guaranteed Student Loan Programs

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISL, Federal SLS, and Federal PLUS loans made by lenders located in a State in which no State or private nonprofit guaranty agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal Consolidation loans made by the Student Loan Marketing Association and Federal Consolidation loans made by any other lender that has applied for and been denied guarantee coverage on Consolidation loans by the guaranty agency that guarantees the largest dollar volume of FFEL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation loans made by lenders located in a State in which a guaranty agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISL, Federal SLS, Federal PLUS and Federal Consolidation loans made by a lender located in a State where a guaranty agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guaranty agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guaranty agency, a student who has previously received from the same lender a FISL loan that has not been repaid; or

(4) All students at a school located in the State if the Secretary finds that—

(i) No single guaranty agency program is reasonably accessible to students at that school as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to FFEL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guaranty agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans but are not recognized as eligible under the guaranty agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has an origination relationship with the school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the Federal FFEL programs, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender that has entered into an agreement with the Secretary under § 682.600, the Secretary denies loan guarantees on the basis of this section only if the Secretary first

determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys that the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078–1, 1078–2, 1078–3, 1082)

§ 682.501 Extent of Federal guarantee under the Federal GSL programs.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any Federal GSL loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.512, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year do not include paid claims filed by the lender under the provisions of § 682.412(e) or § 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a Federal GSL Program lender and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the Federal GSL loans in repayment" means the original principal amount of all loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISL program, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower;

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin and remains in deferment status; or

(D) The Secretary has paid a claim filed under section 437 of the Act; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under § 682.412(e) or § 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate Federal GSL loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1082)

§ 682.502 The application to be a lender.

(a) To be considered for participation in the Federal GSL programs, a lender shall submit an application to the Secretary.

(b) In determining whether to enter into a guarantee agreement with an applicant, and, if so, what the terms of the agreement will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(d) of the Act and the definition of "lender" in § 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d)(1) If the Secretary decides not to approve the application for a guarantee agreement, the Secretary's response includes the reason for the decision.

(2) The Secretary provides the lender an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial or grant the lender an opportunity to appeal if the lender submits its application within six months of a previous denial.

(Authority: 30 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.503 The guarantee agreement.

(a)(1) To participate in the Federal GSL programs, a lender must have a guarantee agreement with the Secretary. The Secretary does not guarantee a loan unless it is covered by such an agreement.

(2) In general, under a guarantee agreement the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the Federal GSL programs. In return, the Secretary agrees to guarantee each eligible Federal GSL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in an agreement a limit on the duration of the agreement and the number or amount of Federal GSL loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee agreement with a school lender limits the Federal GSL loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) The Secretary may on a school-by-school basis impose limits under paragraph (b)(1)(iii) of this section on a school lender that makes loans to students or to parents of students in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees, of those other schools.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee agreement shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan will be guaranteed and of the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a Federal GSL loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in § 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part.

(Authority: 20 U.S.C., 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each Federal GSL Program loan that is guaranteed, except that no insurance premium is charged on a Federal Consolidation loan, or on a Federal SLS or Federal PLUS loan made under § 682.209(f).

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

FISL loans—insurance premium calculation. (1) The insurance premium for FISL loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) If the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS and SLS Loans—insurance premium calculation.* The insurance premium for a Federal PLUS or SLS loan is calculated by—

(1) Using the projected repayment period as a base;

(2) Amortizing the loan in equal monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Computing the total of monthly amounts calculated under paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective if the lender fails to pay the insurance premium within 60 days of the date payment is due. However, the Secretary may excuse late payment of an insurance premium and reinstate the guarantee coverage on a loan if the Secretary is satisfied that at the time the premium is paid—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

Collection from borrowers. The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) *Refund provisions.* The insurance premium is not refundable by the Secretary and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

(a) The Secretary does not guarantee a FISL, Federal SLS, or Federal PLUS loan in an amount that would—

(1) Result in an annual loan amount in excess of the student's estimated cost of attendance for the period of enrollment for which the loan is intended less—

(i) The student's estimated financial assistance; and

(ii) The student's expected family contribution for that period, in the case of a FISL loan; or

(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in § 682.204.

(b) The Secretary does not guarantee a Federal Consolidation loan in an amount greater than that required to discharge loans eligible for consolidation under § 682.100(a)(4).

(Authority: 20 U.S.C. 1075, 1077, 1078–1, 1078–2, 1079, 1082, 1089)

§ 682.507 Due diligence in collecting a loan.

(a) *General.* (1) Except as provided in paragraph (a)(4) of this section, a lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an authorized endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section if a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender receives notice that the borrower has entered the repayment period.

(4) In lieu of the procedures described in this section, a lender may use the due diligence procedures in § 682.411 in collecting a Federal GSL loan.

(b) *Initial delinquency.* If a borrower is delinquent in making a payment, the lender shall remind the borrower within 10 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower—

(1) At last six more times at regular intervals during the remainder of the six-month period that started on the date of delinquency for loans repayable in monthly installments; or

(2) At least eight more times during the remainder of the eight-month period that started on the date of delinquency for loans repayable in installments less frequent than monthly.

(c) *Skip-tracing assistance.* (1) If a lender does not know the borrower's

current address, the lender promptly shall attempt to locate the borrower through normal commercial collection activities, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender promptly shall attempt to learn the borrower's current address through use of the Department's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaims assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown to the lender.

(f) *Litigation.* (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest, together with reasonable attorneys' fees, late charges, and court costs.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that unless the borrower or endorser makes payments sufficient to bring the account out of default the lender will seek a judgment under which the borrower or endorser will be liable for payment of late charges, attorneys' fees, collection agency charges, court costs, and other reasonable collection costs in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its attorneys' fees, court costs, collection agency charges, and other reasonable collection costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1081, 1082, 1085)

§ 682.508 Assignment of a loan.

(a) *General.* A Federal GSL loan may not be assigned except to another eligible lender. For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(b)(1) *Procedure.* If the assignment of a FISL Program loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notices to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee shall provide the notice required by paragraph (b)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(c) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under § 682.503.

(d) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may cover only reductions that are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in § 682.511(e)(3), if—

(1) In the case of a loan that was not made or originated by the school, the lender learns that while the student was enrolled at the school the school terminated its teaching activities for that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not as a result of a claim filed with the Secretary under this section report a borrower's loan as in default to any credit bureau or other third party.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in § 682.402(a)–(d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition apply to the Federal GSL programs.

(b) For purposes of this section, references to the "guaranty agency" in § 682.402(d)(5) shall be understood to refer to the Secretary.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1082, 1087)

§ 682.511 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a Federal GSL loan for any of the following reasons:

(i) The loan is in default, as defined in § 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in § 682.412(e)(2) or § 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with § 682.510.

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, the reason for filing a claim must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender

shall attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) *Documentation required for claims.* (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument.

(iv) A payment history, as described in § 682.414(a)(3)(ii)(I).

(v) A collection history, as described in § 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter if required by § 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department for skip-tracing assistance under § 682.507(c) and for preclaims assistance under § 682.507(d).

(ix) Any additional documentation that the Secretary determines is relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in § 682.402(e)(1) apply to the Federal GSL programs. For purposes of this section, references to the "guaranty agency" in § 682.402(e)(1) mean the Secretary.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim.

(d) *Bankruptcy subsequent to default.* If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) *Claim filing deadlines.* To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after a default has occurred on the loan. For a claim filed by a lender pursuant to § 682.412(e)(2), as directed in § 682.208(f)(2), the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.411(e) if the borrower failed to comply with the terms of the letter within 30 days of the transmission.

(2) *Death, total and permanent disability, or bankruptcy claims.* The claim filing deadlines in § 682.402(e)(2) apply to the Federal GSL programs. For purposes of this section, references to the "guaranty agency" in § 682.402(e)(2) mean the Secretary.

(3) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.509, the lender shall file a claim with the Secretary within 45 days of the date the lender determines that the conditions set forth in § 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.509(a)(2).

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082, 1087)

§ 682.512 Determination of amount payable on a claim.

(a) *Default claims.* (1) *Amount payable.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by § 682.202(b).

(2) *Payment of interest.* If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in § 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, that is required by the Secretary to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(3) *Recovery of outstanding debts.* The Secretary may reduce the amount of loss due to the lender on a claim by the amount the Secretary determines is owed to the Secretary by the lender.

(b) *Death, total and permanent disability, or bankruptcy claims.* (1) In the case of a death or disability claim, the amount to be paid on a valid claim—

(i) Is equal to the unpaid balance of the original principal loan amount disbursed if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with § 682.402(f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with § 682.402(f)(2) and (f)(3).

(3) For purposes of this section, references to the "guaranty agency" in § 682.402(f)(3) mean the Secretary.

(c) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082, 1087)

§ 682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in § 682.509, the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in § 682.511(e); and

(iii) The current holder complies with the requirements for submitting

documents with a claim as established in § 682.511(b).

(b) Except as provided in § 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim.

Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in appendix C to this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082)

§ 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) *Records.* (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in § 682.414(a)(3)(ii). The records must be maintained in a system that allows ready identification of each loan's current status.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in § 682.414(a)(3)(ii)(C)–(K) on microfilm, optical disk, or other machine readable format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner that the Secretary reasonably may require.

(c) *Inspections.* Upon request, a lender or its agent shall cooperate with the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the lender's management; and

(iii) Refuse to permit personnel interviews with those personnel that are not recorded by the lender.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.600 Agreement between an eligible school and the Secretary for participation in the FFEL programs.

(a) *General.* Participation of a school in the FFEL programs means that the school's students are eligible to receive FFEL loans. To participate in the FFEL programs, a school must—

(1) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(1) The Act and the regulations in this part;

(2) The Student Assistance General Provisions, 34 CFR part 668; and

(3) The Institutional Eligibility regulations, 34 CFR part 600.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the FFEL programs by a school, the Secretary's response includes the reason for the decision. The Secretary also provides the school with an opportunity to meet with a designated Department official to appeal that decision.

(2) However, the Secretary does not grant an opportunity for appeal or give reasons for denying the participation or approving only the limited participation of a school if the school submits its request within six months of a previous denial or limited approval.

(d) *Foreign schools.* A foreign school is required to comply with the provisions of the regulations except to the extent that the Secretary states in these regulations or in other official publications or documents that those schools do not have to so comply.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1094)

§ 682.601 Rules for a school that makes or originates loans.

(a) *General.* To make or originate loans under the FFEL programs—

(1) The school shall employ full-time at least one person whose responsibilities are limited to the administration of financial aid programs for students attending the school;

(2) The school may not be a correspondence school;

(3) The school may not make or originate loans that would be outstanding to or on behalf of more than 50 percent of the undergraduates in attendance at that school on at least a half-time basis unless the Secretary waives this rule pursuant to paragraph (c) of this section;

(4) The school shall inform any undergraduate student who has not previously obtained a loan that was made or originated by the school and who seeks to obtain such a loan that he or she must first make a good faith effort to obtain a loan from a commercial lender; and

(5)(i) The school may not make or originate a loan for an academic period to a student described in paragraph

(a)(4) of this section until the student provides the school with evidence under paragraph (b) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set paragraph (a)(5)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (b) of this section that indicate that the school has not given sufficient counseling to students to seek loans from a commercial lender first. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(b) *Establishing a loan denial by a commercial lender.* (1) To verify that a borrower has sought and been denied a loan from a commercial lender pursuant to paragraph (a)(4) of this section, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include—

(i) The name and address of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name and telephone number of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either—

(i) Make or originate a loan to the borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(c) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (a)(3) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering, among other factors—

(1) The extent to which the school provides and expects to continue providing educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll or continue their enrollment at that school without Stafford, SLS, or PLUS loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers educational programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

§ 682.602 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(c) The school's schedule must conform to the requirements in the definition of "vocational school" in 34 CFR part 600.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1085)

§ 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.401(b) (1) and (2);

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought;

(4) For a Stafford loan, the student's eligibility for interest benefits, based on information provided by the student upon which the school can rely and as determined in accordance with § 682.301;

(5) For a Stafford or SLS loan, the schedule for disbursement of the loan proceeds; and

(6) The student's SLS loan amount.

(c) Pursuant to 34 CFR 668.15(i), except for a student who has previously borrowed an SLS loan for a program of study at the school and who seeks an SLS loan to complete the program of study at the school, a school may not certify an SLS loan application for an undergraduate student after the school receives notice from the Secretary that its fiscal year default rate is 30 percent or more.

(d) A school may not certify a Stafford, PLUS, or SLS loan application, or combination of loan applications, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 682.204; or

(2) Exceeds the student's estimated cost of attendance, less—

(i) The student's estimated financial assistance for that period; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(e) A school may refuse to certify a Stafford, SLS, or PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(1) The determination is made on a case-by-case basis;

(2) The documentation supporting the determination is retained in the student's file; and

(3) The school does not engage in any pattern or practice that results in a denial of a borrower's access to FFEL

loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or selection of a particular lender or guaranty agency.

(f)(1) The minimum period of enrollment for which a school may certify a loan application is—

(i) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(ii) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(A) The length of the student's program at the school; or

(B) The academic year as defined by the school in accordance with 34 CFR 668.2. (See paragraphs (b) and (c) of the definition of "Academic year.")

(2) The maximum period for which a school may certify a loan application is generally an academic year, as defined by 34 CFR 668.2, except that a guaranty agency may allow schools to use a longer period of time, not to exceed 12 months, corresponding to the period to which the agency applies the annual loan limits under § 682.401(b)(2)(ii).

(g) A school may not assess the borrower a fee for the completion or certification of any FFEL loan application.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085, 1094)

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Stafford, PLUS, or SLS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) Except as provided in § 682.207(b)(1)(v)(C)(*1*), the proceeds of a Stafford, SLS or PLUS loan disbursed using electronic transfer of funds must be sent directly to the school by the lender.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines, after the school receives those proceeds from the lender, continuously has maintained eligibility in accordance with the provisions of § 682.201, from the beginning of the loan period certified by the school on the student's loan application.

(ii) In the event a student delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirement of paragraph (d)(3) of this section.

(iii) If, after the proceeds of the first disbursement are transmitted to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may transmit the proceeds of the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iv) If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the loan proceeds by the school.* (1) Except as provided in paragraph (c)(3) of this section, if a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended and then follow the procedures in paragraph (c) (2) of this section.

(2)(i) Except as provided in § 682.207(b)(1)(v)(C)(*1*), after the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement of the student only, the school shall deliver the check to the student, subject to paragraph (d)(2) of this section, within 45 days of the school's receipt of the check.

(ii) If the loan proceeds are disbursed by means of a check that requires the endorsement of both the student and the school, the school shall—

(A) In the case of the initial disbursement on a loan, endorse the check on its own behalf, and, after the student has registered, deliver it to the student subject to paragraph (d)(2) of this section, within 45 days of the school's receipt of the check; or

(B) Obtain the student borrower's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, within 45 days of receipt.

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's or parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL program loan to be made, and after the student has registered either—

(i) Deliver the proceeds to the student borrower subject to paragraph (d)(2) of this section not later than 45 days after the school's receipt of the funds; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (d)(2) of this section not later than 45 days after the school's receipt of the funds.

(4) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 682.605(c).

(5) A school may not release the first installment of a Stafford or SLS loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan until 30 days after the first day of the student's program of study.

(d) *Applying the loan proceeds.* (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, a school may not credit a registered student's account earlier than three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii)(A) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(B) The school, as a fiduciary for the benefit of the guaranty agency, the

Secretary, and the student, may hold any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall deposit these funds in a designated trust account and may not commingle them with other funds or use them for any other purpose.

(2)(i) For purposes of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, an institution may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(ii) Notwithstanding the 45-day deadlines set forth in paragraph (c)(2) of this section, in the case of a second or subsequent disbursement on a loan disbursed in more than one installment, the school may hold the loan proceeds until the beginning of the next scheduled semester, trimester, quarter, or similar division in the academic period within the period of enrollment for which the loan is intended, or in the case of a school that does not use semesters, trimesters, quarters, or similar divisions, until the beginning of the second half of the period of enrollment for which the loan was intended, whereupon the school shall transmit the loan proceeds to the student and, if applicable, the student's account within 30 days thereafter.

(3) If a student does not register for the period of enrollment for which the loan was made, or does not begin attendance on a delayed basis as provided in § 682.604(b)(2)(ii), the school shall return the proceeds to the lender no later than 30 days after the first day of that period of enrollment.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school within 30 days of the period described in § 682.607(c) shall notify the lender of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the lender—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(e) *Processing a late disbursement.* (1) For the purpose of this paragraph, a disbursement is late if the school receives the borrower's loan proceeds either—

(i) After the end of the period of enrollment for which the loan was made; or

(ii) Before the end of the period of enrollment for which the loan was made but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school shall follow the procedures described in paragraphs (e)(3)–(4) of this section in processing a late disbursement, except that, notwithstanding those provisions, a school may not—

(i) Deliver the proceeds of a late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended if the loan was subject to delayed delivery under § 682.604(c)(5)(i); or

(ii) Deliver the proceeds of a late second or subsequent disbursement of a Stafford or SLS loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended.

(iii) Deliver to a borrower any portion of the proceeds of a late disbursement that under 34 CFR Part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(3) If a lender makes a disbursement after the earlier of the dates set forth in paragraph (e)(1) of this section and the lender or guaranty agency has informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2), the school shall return the loan proceeds to the lender within 30 days after its determination that one of the conditions described in paragraph (e)(1) of this section exists. The school shall send a notice to the lender with the loan proceeds informing the lender as to which of the conditions described in paragraph (e)(1) of this section exists.

(4) If a disbursement is received by the school within 60 days after the earlier of the dates described in paragraph (e)(1) of this section, if the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2)(i), and if the total amount of the disbursement and all prior disbursements on the loan do not exceed that portion of the student's documented educational charges for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds to the borrower in accordance with this section. If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's documented educational charges, the school shall—

(i) Return the borrower's loan proceeds to the lender with a notice certifying—

(A) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period; and

(B) The borrower's correct financial need for the loan for that period of enrollment; and

(ii) Advise the borrower that the lender may redisburse funds for the borrower's documented educational charges incurred before the earlier of the dates described in paragraph (e)(1) of this section.

(f) *Initial counseling.* (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Stafford and SLS borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first Stafford or SLS loan made to the borrower for attendance at the school and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a borrower of a Stafford or SLS loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not

receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Stafford and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Stafford or SLS Program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (f)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment of a loan for service under the Peace Corps Act, Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer with a tax-exempt organization.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)–(g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* Except in the case of a student attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's SLS, PLUS, nonsubsidized Stafford, or State-sponsored or private loan to cover the expected family contribution, if not already done;

(2)(i) Returning the entire undelivered disbursement to the lender or escrow agent; and

(ii) Providing the lender with a written statement—

(A) Describing the reason for the return of the funds, if any;

(B) Setting forth the student's revised financial need; and

(C) Directing the lender to re-disburse a revised amount and, if necessary, revise subsequent disbursements to eliminate the overaward; or

(3) Returning to the lender only the portion of the disbursement for which the student is ineligible and providing the lender with a written statement explaining the return of the funds.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1082, 1085, 1092, 1094)

§ 682.605 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under § 682.607.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) 45 days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30 days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) 25 days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under § 682.602. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1)–(b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) 60 days; or

(ii) 6 months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board, and other charges to a student who received a Stafford or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for a period of enrollment for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete a period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student before the student's enrollment and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's Stafford, SLS, or PLUS program loans under 34 CFR part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in appendix A to this part or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its cohort default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after 1986, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose last recorded day of attendance is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the beginning of the student's program.

(c)(1) *Pro rata refund,* as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent but never less than 10 percent, of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less—

(i) A reasonable administrative fee not to exceed the lesser of $100 or 5 percent of tuition, fees, room and board, and other charges assessed the student; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks that make up the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of those lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school could reissue to another student be returned by a student once the school determines that the student has withdrawn if the school makes a written request for the return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing before enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.607 Payment of a refund to a lender.

(a) *General.* By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a FFEL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under § 682.605(b)(1)–(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.608 Termination of a school's lending eligibility.

(a) *General.* The Secretary may terminate a school's eligibility to make loans under this part if the school reaches the 15 percent limit on loan

defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary may terminate a school's eligibility to make loans if at the end of each of the 2 most recent consecutive Federal fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section as follows:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all FFEL loans made by the school whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will reduce the school's loan default rate significantly within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide educational opportunities to economically disadvantaged students as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll or continue their enrollment at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers educational programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary notifies the school of the proposed termination of its lending eligibility and provides an opportunity for a hearing before the Secretary terminates the school under this section.

(2) The Secretary or his designee begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed date the termination becomes effective; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request an oral hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request an oral hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested an oral hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the designated official is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part until it has entered into a new guarantee agreement with the Secretary; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determination required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085)

§ 682.609 Remedial actions.

(a) The Secretary may require a school to repay funds paid to other program participants by the Secretary. The Secretary also may require a school to purchase from the holder of a FFEL loan that portion of the loan that is unenforceable, that the borrower was ineligible to receive, or for which the borrower was ineligible to receive interest benefits contrary to the school's certification, and to make arrangements acceptable to the Secretary for reimbursement of the amounts the Secretary will be obligated to pay to program participants respecting that loan in the future. The repayment of funds and purchase of loans may be required if the Secretary determines that the payment to program participants, the unenforceability of the loan, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to another party or to purchase loans from a holder in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or repurchase of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the FFEL programs, in accordance with 34 CFR part 668, subpart G.

(e) A school shall comply with any emergency action, limitation, suspension, or termination imposed by

a guaranty agency in accordance with the agency's standards and procedures. A school shall repay funds to the Secretary or other party or purchase loans from a holder if a guaranty agency determines that the school improperly received or retained the funds in violation of a Federal law or regulation or a guaranty agency rule or regulation.

(Authority: 20 U.S.C. 1077, 1078 , 1078–1, 1078–2, 1082, 1094)

§ 682.610 Administrative and fiscal requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, and PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the lender which can, upon request, produce a hard copy record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of enrollment for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with § 682.200;

(6) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(7) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(8) In the case of a Stafford loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's expected family contribution and the corresponding certification by the school to the lender;

(9) In the case of a Stafford or SLS loan—

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check;

(iii) The date or dates of transmittal of the loan proceeds by the school to the student; and

(iv) For loans delivered by electronic funds transfer, a copy of the student's written authorization required under § 682.604(c)(3) to transfer the initial and subsequent disbursements of each FFEL program loan;

(10) The student's job placement, if known; and

(11) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(c) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any guaranty agency, complete and return that report within 30 days of receipt to the Secretary or the guaranty agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guaranty agency within the next 60 days, notify the guaranty agency or lender within 30 days—

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(d) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1)(i) Shall keep all records required under the regulations in this part for five years following the last day of the borrower's attendance at the school;

(2) Shall keep for five years after completion copies of reports and other forms used by the school relating to the Stafford, SLS, or PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions.

(4) Shall provide in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600 for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, any guaranty agency, the Department's Office of the Inspector General, and the Comptroller General of the United States; or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a lender, or a guaranty agency, a school promptly shall provide a lender or guaranty agency with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Stafford or SLS loan has changed his or her permanent address, the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guaranty agency

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2 1082, 1094)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs. The regulations in this subpart apply to a lender that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guaranty agency program as well as to lenders that participate in the Federal FFEL programs. These regulations also govern the Secretary's disqualification of a lender or school from participation in the FFEL programs under sections 432 (h)(2) and (h)(3) of the Act.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in § 682.200, for any reason other than a violation of the prohibitions set forth in section 435(d)(5) of the Act;

(2) To a school's loss of lending eligibility under § 682.608; or

(3) To an administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act), which is governed by 34 CFR part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders or schools under other authorities.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions apply to terms used in this subpart:

Designated Departmental Official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing disqualification or limitation, suspension, or termination proceedings.

Disqualification: The removal of a lender's or school's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender or school by a guaranty agency.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency or imposed as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time—

(a) By a guaranty agency; or

(b) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary do not affect a lender's responsibilities or rights to benefits and claim payments that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in § 682.709.

(b) A limitation imposes on a lender—

(1) A limit on the number or total amount of loans that a lender may make, purchase, or hold under the FFEL programs;

(2) A limit on the number or total amount of loans a lender may make to, or on behalf of, students at a particular school under the FFEL programs; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) After the date the termination of a lender's eligibility becomes effective, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guaranty agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the FFEL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments by the Secretary and guarantee agencies and to withhold payment of interest benefits and special allowance to a lender if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parent borrowers, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The date the action becomes effective is the date the notice is mailed to the lender.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) Upon the written request of the lender, the Secretary may provide the lender with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs, and the Secretary does not guarantee or reinsure a new loan made by the lender during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed date if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct voluntarily any alleged violations.

(c) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender of the effective date of the suspension.

(2) If the lender requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision based on findings of fact and conclusions of law that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender of the Secretary's decision by mail.

(8) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender, or on the proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender to correct voluntarily any alleged violations; and

(viii) Notifies the lender that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the date the limitation or termination becomes effective.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender or designated

Department official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer is convicted of or pled *nolo contendere* or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL funds, that conviction or guilty plea is automatic grounds for terminating the lender's eligibility to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender of designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9)—

(1) An appeal is made to the Secretary by submitting to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be substantiated by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the date the termination becomes effective.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR part 668 may not be considered for reinstatement as a lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's request or allows reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender whose eligibility to participate in the FFEL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a lender participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the lender of the Secretary's decision by mail.

(b) The Secretary disqualifies a lender from participation in the FFEL programs if—

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the

requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate the lender's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a lender's eligibility only when the guaranty agency's action is final, e.g. the lender is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The lender's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency's action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082)

§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a school participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the school of his decision by mail.

(b) The Secretary disqualifies a school from participation in the FFEL programs if—

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The school has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the school will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a school to the Secretary within 30 days of its final decision to limit, suspend, or terminate the school's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a school's eligibility only when the guaranty agency's action is final, i.e., the institution is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The school's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or program review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the school that the Secretary will review the guaranty agency's action to determine whether to disqualify the school from further participation in the FFEL programs and gives the school an opportunity within 30 days from the date the notice is mailed—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to—

(1) A review of the written record of the agency's proceedings; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures established by the Secretary in 34 CFR part 668, subpart G.

(j) In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082, 1085, 1094)

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

§ 682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.

(a) The Secretary pays a special allowance on a loan that was made or acquired with the proceeds of an obligation exempt from taxation under section 103 of the Internal Revenue Code of 1986 and is held by or on behalf of an Authority if—

(1) For loans financed by an obligation issued after December 31, 1980 and before November 16, 1986, the Secretary approved—

(i) The Plan for Doing Business of the Authority that issued the obligation; and

(ii) The justification of need for the obligation if the obligation was issued after August 14, 1983; or

(2) The Plan for Doing Business of the Authority that issued the obligations has been approved by the Governor of the State from which the Authority received or will seek an allocation under section 103(n) of the Internal Revenue Code of 1986 after consultation with the principal guaranty agency for the State.

(b) The Secretary pays a special allowance—

(1) For loans described in paragraph (a)(1) of this section from the latest of—

(i) The date the Secretary approved the Plan for Doing Business of the Authority;

(ii) The date the Secretary approved the justification of need for the obligation, if issued after August 14, 1983; or

(iii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation.

(2) For a loan described in paragraph (a)(2) of this section, from the latest of—

(i) The date the Governor approved the Plan for Doing Business of the Authority;

(ii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation; or

(iii) November 16, 1986, if the loan was made or acquired with the proceeds of a tax-exempt obligation issued before that date by an Authority that did not receive before that date approval from the Secretary for its Plan for Doing Business, and, if applicable, its justification of need.

(c) The Authority shall submit a copy of the Plan for Doing Business to the Secretary under paragraph (a)(2) of this section within 60 days after receiving the Governor's approval.

(d) As used in this paragraph, the term *principal guaranty agency* means—

(1) The guaranty agency in the State with which the Secretary has signed a Basic Program Agreement under § 682.401; or

(2) If the Secretary has signed agreements with more than one agency in the State, the agency that has issued the majority of loan guarantees for students who are attending school in the State during the most recently ended Federal fiscal year.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.801 Provisions required in Plan.

Each Plan submitted for the approval of the Governor must contain provisions necessary to ensure that—

(a) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(b) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(c) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(d) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of or who seek loans for a student to attend a school within the service area of the Authority; and

(e) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under the FFEL, SLS, and PLUS programs and the maintenance of existing lender commitments to the program; and

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.802 Submission of Plan for approval—required documentation.

An Authority shall submit with or include in each Plan submitted for the approval of the Governor the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority has a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of the loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend a school located within, its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under each of the FFEL programs and the maintenance of existing lender commitments to the programs.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in § 682.830.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and secondary markets information by which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.803 Amendments to Plan for Doing Business.

(a) After a Plan is approved, an Authority shall submit to the Governor or the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that—

(1) An Authority amends any provision of a Plan that had previously been approved by that Governor or the Secretary; or

(2) Any documentation or representation previously submitted pursuant to § 682.802 is revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.804 Failure to comply with Plan for Doing Business.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.805 Sanctions for material misrepresentation.

(a) If at any time the Secretary determines that the submission for approval of a tax-exempt obligation or a Plan for Doing Business contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section—

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in § 682.804 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087–1)

§§ 682.806–682.829 [Reserved]

§ 682.830 Audit standards.

(a) An Authority that is a governmental entity must be audited regarding its lending and loan purchasing program for compliance with its Plan and the provisions of § 682.801 in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(b) An Authority that is a nonprofit organization must undergo an audit of its lending and loan purchasing program for compliance with its Plan and the provisions of § 682.801—

(1) Conducted in accordance with OMB Circular A–133 and any supplementary compliance guidelines issued by OMB and the Secretary; or

(2) If the Authority qualifies to submit a program-specific audit under criteria in OMB Circular A–133 and chooses to have such an audit performed, conducted in accordance with standards issued by the General Accounting Office (GAO) publication, *Government Auditing Standards*, and by the Office of Inspector General of the Department contained in the applicable audit guide.

(c) The audit must be conducted annually and the audit report must be submitted within 30 days of the completion of the audit report but no later than six months after the close of the audit period.

(d) Audits must be submitted to the regional office of the Office of Inspector General of the Department, to the Governor who approved the Plan of the Authority, and to the principal guaranty agency consulted by the Governor in approving that Plan.

(Authority: 20 U.S.C. 1082, 1087–1)

§§ 682.831–682.839 [Reserved]

§ 682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

(a) For an Authority to receive special allowance payments on loans made or acquired with the proceeds of a tax-exempt obligation, the Authority or its agent may not engage in any pattern or practice that results in a denial of a borrower's access to loans under the FFEL programs because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular institution within the area served by the Authority, length of the borrower's education program, or the borrower's academic year in school.

(b) The Secretary considers an Authority that makes or acquires loans guaranteed by an agency or organization that discriminates on one or more grounds listed in paragraph (a) of this section to have adopted a practice of denying access to loans on that ground unless the Authority makes provision for loan guarantees from other sources necessary to serve the borrowers excluded by that discriminatory policy.

(Authority: 20 U.S.C. 1082, 1087–1)

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students. The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) Institutions should seek consumer views in the process of establishing and amending charge and refund structures. Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students. Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules. Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admissions fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students. Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee. It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) The institutional tuition refund policy for an academic period should include the following minimum guidelines:

A. The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.

B. The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period. It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless State law imposes a more restrictive refund policy.

(IX) The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution has assessed charges in error. Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer. A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) Institutions should pay or credit refunds due on a timely basis. The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) Institutions should publicize, as a part of their dissemination of information on

charges and refunds, that an appeal process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible. Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

Appendix B—Student Status Confirmation Report

This appendix sets forth the model format and data elements for guarantee agencies to use in implementing a manual or automated Student Status Confirmation Report system as required by § 682.401(b)(18).

Student Status Confirmation Report

DATE: MM/DD/YY *GUARANTOR/INSTITUTION CODE:* (must accommodate eight numeric characters)

GUARANTOR/INSTITUTION NAME:

SOCIAL SECURITY NUMBER NAME PERMANENT ADDRESS
CORRECTION CORRECTION CORRECTION
**STATUS EFFECTIVE DATE ANTICIPATED GRADUATION DATE*
CORRECTION

*The valid enrollment status codes are as follows:
F=Full-time
H=Half-time or more but less than full-time.
L=Less than half-time. This code is used to specify students enrolled less than half-time.
X=Never attended the institution. This code is to specify those individuals on whose behalf a Stafford, SLS, or PLUS loan was made who enrolled in school but never attended classes.
Z=No record found. A thorough search of the institution's enrolled records revealed no information for this individual.
D=Deceased
A=Approved leave of absence
G=Graduated
W=Withdrawn

COMPLETED BY:
NAME
TITLE
TELEPHONE NUMBER
CERTIFICATION DATE

The following definitions apply to the SSCR data elements.

Data element	Definition
Date: MM/DD/YY	Date report is run and considered to be issued to school.
Social security number.	Valid 9-digit SSN assigned by Social Security Administration to student borrower or student on whose behalf a PLUS loan was borrowed.
Name	Last name, first name and middle initial of student borrower or student on whose behalf a PLUS loan was borrowed.
Address	Last known permanent address of student.
Anticipated graduation date.	Date recorded on agency's system. Please note any corrections to this date.
Effective date	Effective date of status reported, as follows: Full-time status, no record found and never attended—the report certification date. Half-time status—(1) the date the student dropped below full-time, or (2) if half-time status is the original enrollment status, the report certification date. Less than half-time status—the date the student dropped below half-time. Leave of absence—the date the student began a leave of absence approved in accordance with § 682.605(c). Graduated—the date the student completed the course requirements (not the date of the presentation of the diploma). Withdrawn—the date the student officially withdrew as determined by the school in accordance with § 682.605(b).
Certification date	The date the institution completed the SSCR.
Other information	Please note any corrections to SSN, name, or permanent address of which you are aware. Please note the effective date of this information to avoid replacing newer information with old.

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L–77a]

Note: The following is a reprint of Bulletin L–77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to FFELP and PLUS Program loans. Public Law 99–272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.507, 682.511.[1] These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979 regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a)(5), (6), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period, the loan entered repayment prior to September 4, 1985 (see 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. One exception to this rule is as follows: If the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example,

if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, *prior* to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forebearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with original repayment schedule or agreement.)

Reinstatement with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's right to receive interest and special allowance payments is addressed in section I.B.1, below.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. Reservation of the Secretary's Right to Strict Enforcement. While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulations.

3. Applicability of the Cure Procedures to Particular Classes of Loans. The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations *only* of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

4. Excusal of Certain Due Diligence Violations. A lender whose claim was previously denied *solely* for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

5. Treatment of Accrued Interest on "Cured" Claims—a. Due Diligence Violations. For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. Timely Filing Violations. For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan

during the original 120/180 day default period. This deduction must be reflected in Column 15 of the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

6. Documents to be Submitted with "Cured" Claims. The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new ED Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original ED Form 1207 and all documents showing the reason(s) for the original rejection;
- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
- A new ED Form 1207; and
- All documents showing that the lender has complied with the applicable cure procedures and requirements.

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request preclaims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required, or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. Reinstatement of Insurance Coverage. In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) The lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7); or

(b) The lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (e.g., copies of the checks) with the claim.

2. Borrower's Deemed Current As of Date of Cure. On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. Default Claims.—a. Reinstatement of Insurance Coverage. In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "48 hour" collection letter, on the lender's letterhead. (See attachment A.)

b. Borrower Deemed Current Under Certain Circumstances. If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps in 34 CFR 682.507 and the timely filing requirements in 34 CFR 682.511.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.1.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(ii) A completed "Certification of Borrower Location" form (Attachment B).

2. Death, Disability, and Bankruptcy Claims. Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirements (see 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to *bankruptcy* claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements in section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender knows involves a due diligence or timely filing violation must cease doing so immediately. However, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. Due Diligence Violations. In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender *knows* involves a due diligence violation must promptly repay those amounts.

2. Timely Filing Violations. In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender knows involves a timely filing violation must repay those amounts.

3. Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured. Because most due diligence violations, and timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period. In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However, the lender need not repay that interest to the Secretary. See II.C.1. above.

b. Deferment Periods. A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. Loans Made Prior to December 15, 1968. A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A lender must make the repayments of interest and/or special allowance discussed in II.C. above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported on the normal Lender's Interest and Special Allowance Request and Report (ED Form 799). Lenders are requested not to send a check with the adjustment; the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. For five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s), and the date it used for cessation of interest or special allowance eligibility in calculating the overbilled amount. See 34 CFR 682.515(a)(2).

Attachments.

[1] All references to the program regulations are to part 682 of title 34 of the Code of Federal Regulations (34 CFR part 682).

Attachment A

BILLING CODE 4000-01-M

NOTICE

TO: _____ Date

_____ Social Security Number

You have previously been notified that you are severely delinquent in repaying your Federal Family Education Loan. This notice is our final effort to remedy this delinquency. You must contact us at _____ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

_____ Official of Lender

_____ Title

BILLING CODE 4000-01-C

Attachment B

Certification of Borrower Location

As an employee or agent of

Name and Address of Lender

I hereby certify as follows:

1. On (Date), I spoke with or received written communication from (copy attached):

(Circle a or b)

(a) the borrower on the loan underlying the default claim, or

(b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are—_____.

Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L–77a, dated January 7, 1983, to the address set out in 2, above.

4. (Applicable only if 1(b), above, is used.) The letter and agreement referenced in 3, above, has not been returned undelivered.

Name of Borrower

Borrower's SSN

Signature of Employee or Agent

Typed Name of Employee or Agent

Title of Employee or Agent

Date

Lender Identification Number

Appendix D—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88–G–138].

Note: The following is a reprint of Bulletin 88–G–138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

Introduction

This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a) (5) and (6) of the Higher Education Act of 1965 and 34 CFR §§ 682.406(b) and 682.413(f), will waive certain of his rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Programs.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Programs. As a part of this effort, the Secretary published final regulations on November 10, 1986 requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. See 34 CFR 682.406(a)(2), (a)(4), 682.413(b)(1). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline, as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. *See* 34 CFR 682.300(b)(2)(vi), 682.413(a)(1).

The Department has received inquiries regarding the procedures by which a lender may "cure" a violation of § 682.411 regarding diligent loan collection, or of the 45-day deadline for the filing of default claims found in § 682.406(a)(4), in order to reinstate the agency's right to reinsurance, and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§ 682.406(b) and 682.413(f), the Secretary—not the guaranty agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation, or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. See §§ 682.406(a)(5); and 682.413(b). As §§ 682.406(a)(6) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only insofar as they allow for cure of violations of requirements established by the *agency* affecting the loan insurance it provides to lenders. In addition, all such requirements must be submitted to the Secretary for review and approval, under 34 CFR 682.401(d).

References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guaranty Agency to Enforce Its Standards

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guarantee agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; *or*

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1., below. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage,

the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 180 days for loans payable in monthly installments, or for 240 days for loans payable in less frequent installments. The 180/240-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on September 29th, when the April payment becomes 180 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

The 90-day filing period applicable to FFEL Program default claims is set forth in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 180/240-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 270th day of delinquency (180-day default period plus 90-day filing period) if the borrower brings the account less than 180 days delinquent before such 270th day. Thus, in the above example, if the borrower makes the April 1st payment on September 30th, that payment makes the loan 151 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 180 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 180 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if such payments are sufficient to make the loan less than 180 days delinquent.

Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan, and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a "full payment" only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

Reinstatement with respect to reinsurance coverage means the reinstatement of the guaranty agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. "Reinstatement" with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

"Gap" in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;
(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);
(c) The period between the last collection activity and default; or
(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

Note: the concept of "gap" is used herein simply as one measure of collection activity. For loans subject to the FFEL and PLUS programs regulations published on November 10, 1986, not all gaps are violations of the due diligence rules.

Violation with respect to the due diligence requirements in § 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If during the deliquency period, a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

Transfer means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement. While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules, and in cases where the best interests of the United States otherwise require such strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority. The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

(1) The guaranty agency and lender shall ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below, by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency's responsibility in this regard is satisfied by receipt of a

certification from the lender that this repayment has been made in full.

(2) The guaranty agency, on or before October 1, 1988, shall repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below. Pending completion of the repayment described above, a lender or guaranty agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans. The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day default period that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence and/or timely filing requirements. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

5. Excuse of Certain Due Diligence Violations. Except as noted in section II, below, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. In that case, the Secretary will only examine the due diligence performed in the 180 days of delinquency immediately before default. However, an examination of the activity that occurred with respect to the account before it began the 180-day delinquency period may be necessary to verify the repayment status of the loan at the beginning of the delinquency period.

6. Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency's Cure Procedures. If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency, and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on "Cured" Claims. For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., below, for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim. Some cures will not reinstate coverage. For treatment of accrued interest in such cases, see Section I.E.1.c., below.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made.

The special provisions for transfers set forth below apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A., above.

1. Retrospective Period. For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (*See* section I.E.1.d., below, for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period. For due diligence violations occurring on or after May 1, 1988——

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exists not more than 2 violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default.

However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exists 3 violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exists more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations

1. Cures. In the case of a loan involving violations described in section I.C.2.d., above, the lender may utilize either of the two procedures described below for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. *Borrower Deemed Current as of Date of Cure.* On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., above, reinsurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender shall then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. *Default Claims—a. Reinstatement of Insurance Coverage.* Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (See section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5–10 days after completing these efforts, the lender shall again diligently attempt to contact the borrower by telephone. Finally, within 5–10 days after completing these efforts, the lender shall send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default.

In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan, accompanied by acceptable evidence of location (see section I.E.1.d., below), within 30 days after the end of such 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, on unpaid interest as provided in section I.B.7., above, and for reimbursement of eligible supplemental preclaims assistance costs.

In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., above, had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims. The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (see 34 CFR 682.402(e)(2)(i)). However, the Secretary will not reimburse the guaranty agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary had determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§ 682.402(e)(2)(ii)) causes irreparable harm to the guaranty agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy, or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender shall treat the loan as in default. The Secretary will not reimburse the guaranty agency for interest accruing beyond the filing deadline for the bankruptcy claim.

II. Due Date of First Payment

Section 682.411(b) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on a FFEL programs loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment.

In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to

the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice. In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period", a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 20 days of delinquency, and will thus have committed *two* violations of more than five days of that rule.

If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent, and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., above, that only violations occurring during the most recent 180 days of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guarantee agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions are set forth below.

Q: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender shall treat the payment as having never been made for purposes of determining the number of days delinquent that the borrower is at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result obtains when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

[FR Doc. 92–30217 Filed 12–17–92; 8:45 am]

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Friday
December 18, 1992

Part III

Department of Education

34 CFR Part 12
Disposal and Utilization of Surplus Federal Real Property for Educational Purposes; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 12

RIN 1880–AA27

Disposal and Utilization of Surplus Federal Real Property for Educational Purposes

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Disposal and Utilization of Surplus Federal Real Property for Educational Purposes. These amendments are needed to clarify certain provisions in the current regulations. These regulations increase the accountability of recipients of surplus Federal real property to the United States in their use of that property and clarify the requirements of the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David B. Hakola, U.S. Department of Education, Office of the Administrator for Management Services, (room 3005, MS 4532), 400 Maryland Avenue, SW., Washington, DC 20202–4532. Tel. (202) 401–0500. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Disposal and Utilization of Surplus Federal Real Property for Educational Purposes regulations are authorized by the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*) (Act). The Secretary is authorized to request the Administrator of the General Services Administration (GSA) to assign surplus Federal real property to the Secretary for sale or lease to eligible entities for educational purposes. As a credit against the fair market sale or lease value of the property, the transferee or lessee may be granted up to a 100% public benefit allowance (PBA) based upon the type of educational organization it is and the proposed educational use of the surplus Federal real property. Property is conveyed as either off-site or on-site surplus Federal real property. Off-site property is property capable of being removed from the land (e.g., improvements, small buildings, etc.) and does not include the underlying land. In contrast, on-site property generally consists of a parcel of land which is conveyed together with fixtures and other improvements thereon. The conveyance instrument used by the Secretary contains conditions, restrictions, reservations, and covenants with which the transferee or lessee must comply in order to retain title or possession of the surplus Federal real property. The Act directs the Secretary of Education to enforce compliance with the terms and conditions contained in the conveyance instrument and to take corrective action in the case of noncompliance. For on-site property, the Secretary's oversight responsibility may last up to 30 years, while for off-site property it lasts for the useful economic life of the property.

On October 31, 1990 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (55 FR 45971). A discussion of the major issues was addressed in the NPRM at 55 FR 45972.

Since publication of the NPRM, the only changes to the regulations were to correct editorial and technical errors in the PBA table in appendix A. These are discussed in the following section.

Analysis of Comments and Changes

In the NPRM the Secretary invited comments on the proposed regulations. The only substantive comment the Secretary received suggested a change in eligibility to include American Indian tribes. The Secretary is not legally authorized to make this change under 40 U.S.C. 484(k)(1)(A). However, the Secretary has reviewed the regulations since publication of the NPRM and has made changes as follows:

Discussion: Departmental review of the NPRM resulted in editorial and technical revisions to correct errors in the organizational allowances section of Appendix A (Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes).

Changes: The 10% allowance given for accreditation for elementary or high schools has been deleted to remove the impression of preferential treatment between public and nonprofit schools within the same category. The percent allowed for inadequacy of existing school plant facilities is to remain unchanged from the current regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 12

Disposal and utilization of surplus real property, Education, Education Department, Federal buildings and facilities, Government property, Property reporting and recordkeeping requirements, Surplus government property.

(Catalog of Federal Domestic Assistance Number 84.145 Federal Real Property Assistance Program)

Editorial Note. This document was received at the Office of the Federal Register on December 10, 1992.

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 12 to read as follows:

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES

Subpart A—General

Sec.
12.1 What is the scope of this part?
12.2 What definitions apply?
12.3 What other regulations apply to this program?

Subpart B—Distribution of Surplus Federal Real Property

12.4 How does the Secretary provide notice of availability of surplus Federal real property?
12.5 Who may apply for surplus Federal real property?
12.6 What must an application for surplus Federal real property contain?
12.7 How is surplus Federal real property disposed of when there is more than one applicant?
12.8 What transfer or lease instruments does the Secretary use?
12.9 What warranties does the Secretary give?

12.10 How is a Public Benefit Allowance (PBA) calculated?

Subpart C—Conditions Applicable to Transfers or Leases

12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?
12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?
12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

Subpart D—Enforcement

12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

Subpart E—Abrogation

12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

Appendix A to Part 12—Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes

Authority: 40 U.S.C. 471–488; 20 U.S.C. 3401 *et seq.*; 42 U.S.C. 2000d (1) *et seq.*; 20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794 *et seq.*; 42 U.S.C. 4332.

Subpart A—General

§ 12.1 What is the scope of this part?

This part is applicable to surplus Federal real property located within any State that is appropriate for assignment to, or that has been assigned to, the Secretary by the Administrator for transfer for educational purposes, as provided for in section 203(k) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

(Authority: 40 U.S.C. 484(k))

§ 12.2 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 472 of the Act:

Administrator
Surplus property

(b) *Definitions in the Education Department General Administrative Regulations (EDGAR).* The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary
State

(c) *Other Definitions:* The following definitions also apply to this part:

Abrogation means the procedure the Secretary may use to release the transferee of surplus Federal real property from the covenants, conditions, reservations, and restrictions contained in the conveyance instrument before the term of the instrument expires.

Act means the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

Applicant means an eligible entity as described in §12.5 that formally applies to be a transferee or lessee of surplus Federal real property, using a public benefit allowance (PBA) under the Act.

Lessee, except as used in §12.14(a)(5), means an entity that is given temporary possession, but not title, to surplus Federal real property by the Secretary for educational purposes.

Nonprofit institution means any institution, organization, or association, whether incorporated or unincorporated—

(1) The net earnings of which do not inure or may not lawfully inure to the benefit of any private shareholder or individual; and

(2) That has been determined by the Internal Revenue Service to be tax-exempt under section 501(c)(3) of title 26.

Off-site property means surplus buildings and improvements—including any related personal property—that are capable of being removed from the underlying land and that are transferred by the Secretary without transferring the underlying real property.

On-site property means surplus Federal real property, including any related personal property—other than off-site property.

Period of restriction means that period during which the surplus Federal real property transferred for educational purposes must be used by the transferee or lessee in accordance with covenants, conditions, and any other restrictions contained in the conveyance instrument.

Program and plan of use means the educational activities to be conducted by the transferee or lessee using the surplus Federal real property, as described in the application for that property.

Public benefit allowance ("PBA") means the credit, calculated in accordance with Appendix A to this part, given to a transferee or lessee which is applied against the fair market value of the surplus Federal real property at the time of the transfer or lease of such property in exchange for the proposed educational use of the property by the transferee or lessee.

Related personal property means any personal property—

(1) That is located on and is an integral part of, or incidental to the operation of, the surplus Federal real property; or

(2) That is determined by the Administrator to be otherwise related to the surplus Federal real property.

Surplus Federal real property means the property assigned or suitable for assignment to the Secretary by the Administrator for disposal under the Act.

Transfer means to sell and convey title to surplus Federal real property for educational purposes as described in this part.

Transferee means that entity which has purchased and acquired title to the surplus Federal real property for educational purposes pursuant to section 203(k) of the Act.

(Authority: 40 U.S.C. 472 and 20 U.S.C. 3401 *et seq.*)

§ 12.3 What other regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Parts 100, 104, and 106.
(b) 41 CFR Part 101–47.
(c) 34 CFR Part 85.

(Authority: 40 U.S.C. 484(k); 42 U.S.C. 2000d–1 *et seq.*; 29 U.S.C. 794 *et seq.*; 20 U.S.C. 1681 *et seq.*; Executive Order 12549; and 20 U.S.C. 3474)

Subpart B—Distribution of Surplus Federal Real Property

§ 12.4 How does the Secretary provide notice of availability of surplus Federal real property?

The Secretary notifies potential applicants of the availability of surplus Federal real property for transfer for educational uses in accordance with 41 CFR 101–47.308–4.

(Authority: 40 U.S.C. 484(k)(1))

§ 12.5 Who may apply for surplus Federal real property?

The following entities may apply for surplus Federal real property:

(a) A State.
(b) A political subdivision or instrumentality of a State.
(c) A tax-supported institution.
(d) A nonprofit institution.
(e) Any combination of these entities.

(Authority: 40 U.S.C. 484(k)(1)(A))

§ 12.6 What must an application for surplus Federal real property contain?

An application for surplus Federal real property must—

(a) Contain a program and plan of use;

(b) Contain a certification from the applicant that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations;

(c) Demonstrate that the proposed program and plan of use of the surplus

Federal real property is for a purpose that the applicant is authorized to carry out;

(d) Demonstrate that the applicant is able, willing, and authorized to assume immediate custody, use, care, and maintenance of the surplus Federal real property;

(e) Demonstrate that the applicant is able, willing, and authorized to pay the administrative expenses incident to the transfer or lease;

(f) Demonstrate that the applicant has the necessary funds, or the ability to obtain those funds immediately upon transfer or lease, to carry out the proposed program and plan of use for the surplus Federal real property;

(g) Demonstrate that the applicant has an immediate need and ability to use all of the surplus Federal real property for which it is applying;

(h) Demonstrate that the surplus Federal real property is needed for educational purposes at the time of application and that it is so needed for the duration of the period of restriction;

(i) Demonstrate that the surplus Federal real property is suitable or adaptable to the proposed program and plan of use; and

(j) Provide information requested by the Secretary in the notice of availability, including information of the effect of the proposed program and plan of use on the environment.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880–0524)

§ 12.7 How is surplus Federal real property disposed of when there is more than one applicant?

(a) If there is more than one applicant for the same surplus Federal real property, the Secretary transfers or leases the property to the applicant whose proposed program and plan of use the Secretary determines provides the greatest public benefit, using the criteria contained in appendix A to this part that broadly address the weight given to each type of entity applying and its proposed program and plan of use. (See example in § 12.10(d)).

(b) If, after applying the criteria described in paragraph (a) of this section, two or more applicants are rated equally, the Secretary transfers or leases the property to one of the applicants after—

(1) Determining the need for each applicant's proposed educational use at the site of the surplus Federal real property;

(2) Considering the quality of each applicant's proposed program and plan of use; and

(3) Considering each applicant's ability to carry out its proposed program and plan of use.

(c) If the Secretary determines that the surplus Federal real property is capable of serving more than one applicant, the Secretary may apportion it to fit the needs of as many applicants as is practicable.

(d)(1) The Secretary generally transfers surplus Federal real property to a selected applicant that meets the requirements of this part.

(2) Alternatively, the Secretary may lease surplus Federal real property to a selected applicant that meets the requirements of this part if the Secretary determines that a lease will promote the most effective use of the property consistent with the purposes of this part or if having a lease is otherwise in the best interest of the United States, as determined by the Secretary.

(Authority: 40 U.S.C. 484(k))

§ 12.8 What transfer or lease instruments does the Secretary use?

(a) The Secretary transfers or leases surplus Federal real property using transfer or lease instruments that the Secretary prescribes.

(b) The transfer or lease instrument contains the applicable terms and conditions described in this part and any other terms and conditions the Secretary or Administrator determines are appropriate or necessary.

(Authority: 40 U.S.C. 484(c))

§ 12.9 What warranties does the Secretary give?

The Secretary transfers or leases surplus Federal real property on an "as is, where is," basis without warranty of any kind.

(Authority: 40 U.S.C. 484(k)(1))

§ 12.10 How is a Public Benefit Allowance (PBA) calculated?

(a) The Secretary calculates a PBA in accordance with the provisions of appendix A to this part taking into account the nature of the applicant, and the need for, impact of, and type of program and plan of use for the property, as described in that appendix.

(b) The following are illustrative examples of how a PBA would be calculated and applied under Appendix A:

(1) Entity A is a specialized school that has had a building destroyed by fire, and that has existing facilities determined by the Secretary to be between 26 and 50% inadequate. It is proposing to use the surplus Federal real property to add a new physical education program. Entity A would receive a basic PBA of 70%, a 10% hardship organization allowance, a 20% allowance for inadequacy of existing school plant facilities, and a 10% utilization allowance for introduction of new instructional programs. Entity A would have a total PBA of 110%. If Entity A is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA exceeds 100%.

(2) Entity B proposes to use the surplus Federal real property for nature walks. Because this qualifies as an outdoor educational program, Entity B would receive a basic PBA of 40%. If Entity B is awarded the surplus Federal real property, it would be required to pay 60% of the fair market value of the surplus Federal real property in cash at the time of the transfer.

(3) Entity C is an accredited university, has an ROTC unit, and proposes to use the surplus Federal real property for a school health clinic and for special education of the physically handicapped. Entity C would receive a basic PBA of 50% (as a college or university), a 20% accreditation organization allowance (accredited college or university), a 10% public service training organization allowance (ROTC), a 10% student health and welfare utilization allowance (school health clinic), and a 10% service to the handicapped utilization allowance (education of the physically handicapped). Entity C would have a total PBA of 100%. If Entity C is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA is 100%.

(4) Entities A, B, and C all submit applications for the same surplus Federal real property. Unless the Secretary decides to apportion it, the Secretary transfers or leases the surplus Federal real property to Entity A, since its proposed program and plan of use has the highest total PBA.

(Authority: 40 U.S.C. 484(k)(1)(c))

Subpart C—Conditions Applicable to Transfers or Leases

§ 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?

The Secretary directs the transferee or lessee to comply with applicable provisions of the following statutes and Executive Orders prior to, or immediately upon, transfer or lease, as applicable:

(a) National Environmental Policy Act of 1969, 42 U.S.C. 4332.

(b) National Historic Preservation Act of 1966, 16 U.S.C. 470.

(c) National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*

(d) Floodplain Management, Exec. Order No. 11988, 42 FR 26951 (May 25, 1977).

(e) Protection of Wetlands, Exec. Order No. 11990, 42 FR 26961 (May 25, 1977).

(f) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)(1) *et seq.*

(g) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*

(h) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 *et seq.*

(i) Age Discrimination Act of 1975, 42 U.S.C. 1601 *et seq.*

(j) Any other applicable Federal or State laws and Executive Orders.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880–0524)

§ 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?

(a) *General terms and conditions for transfers and leases.* The following general terms and conditions apply to transfers and leases of surplus Federal real property under this part:

(1) For the period provided in the transfer or lease instrument, the transferee or lessee shall use all of the surplus Federal real property it receives solely and continuously for its approved program and plan of use, in accordance with the Act and these regulations, except that—

(i) The transferee or lessee has twelve (12) months from the date of transfer to place this surplus Federal real property into use, if the Secretary did not, at the time of transfer, approve in writing construction of major new facilities or major renovation of the property;

(ii) The transferee or lessee has thirty-six (36) months from the date of transfer to place the surplus Federal real property into use, if the transferee or lessee proposes construction of major new facilities or major renovation of the property and the Secretary approves it in writing at the time of transfer; and

(iii) The Secretary may permit use of the surplus Federal real property at any time during the period of restriction by an entity other than the transferee or lessee in accordance with § 12.13.

(2) The transferee or lessee may not modify its approved program and plan of use without the prior written consent of the Secretary.

(3) The transferee or lessee may not sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of all or a portion of the surplus Federal real property or any interest therein without the prior written consent of the Secretary.

(4) A transferee or lessee shall pay all administrative costs incidental to the transfer or lease including, but not limited to—

(i) Transfer taxes;

(ii) Surveys;

(iii) Appraisals;

(iv) Inventory costs;

(v) Legal fees;

(vi) Title search;

(vii) Certificate or abstract expenses;

(viii) Decontamination costs;

(ix) Moving costs;

(x) Recordation expenses;

(xi) Other closing costs; and

(xii) Service charges, if any, provided for by an agreement between the Secretary and the applicable State agency for Federal Property Assistance.

(5) The transferee or lessee shall protect the residual financial interest of the United States in the surplus Federal real property by insurance or such other means as the Secretary directs.

(6) The transferee or lessee shall file with the Secretary reports on its maintenance and use of the surplus Federal real property and any other reports required by the Secretary in accordance with the transfer or lease instrument.

(7) Any other term or condition that the Secretary determines appropriate or necessary.

(b) *Additional terms and conditions for on-site transfers.* The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period not to exceed thirty (30) years.

(c) *Additional terms and conditions for off-site transfers.* (1) The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period equivalent to the estimated economic life of the property conveyed for a transfer of off-site surplus Federal real property.

(2) In addition to the terms and conditions contained in paragraph (c) of this section, the Secretary may also require the transferee of off-site surplus Federal real property—

(i) To post performance bonds;

(ii) To post performance guarantee deposits; or

(iii) To give such other assurances as may be required by the Secretary or the holding agency to ensure adequate site clearance.

(d) *Additional terms and conditions for leases.* In addition to the terms and conditions contained in paragraph (a) of this section, the Secretary requires, for leases of surplus Federal real property, that all terms and conditions apply to the initial lease agreement, and any renewal periods, unless specifically excluded in writing by the Secretary.

(Authority: 40 U.S.C. 484(k)(1))

(Approved by the Office of Management and Budget under control number 1880–0524)

§ 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

(a) *By eligible entities.* A transferee or lessee may permit the use of all or a portion of the surplus Federal real property by another eligible entity as described in § 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) The Secretary determines that the proposed use would not substantially limit the program and plan of use by the transferee or lessee and that the use will not unduly burden the Department;

(2) The Secretary's written consent is obtained by the transferee or lessee in advance; and

(3) The Secretary approves the use instrument in advance and in writing.

(b) *By ineligible entities.* A transferee or lessee may permit the use of a portion of the surplus Federal real property by an ineligible entity, one not described in § 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) In accordance with paragraph (a) of this section, the Secretary makes the required determination and approves both the use and the use instrument;

(2) The use is confined to a portion of the surplus Federal real property;

(3) The use does not interfere with the approved program and plan of use for which the surplus Federal real property was conveyed; and

(4) Any rental fees or other compensation for use are either remitted directly to the Secretary or are applied to purposes expressly approved in writing in advance by the Secretary.

(Authority: 40 U.S.C. 484(k)(4))

Subpart D—Enforcement

§ 12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

(a) *General sanctions for noncompliance.* The Secretary imposes any or all of the following sanctions, as applicable, to all transfers or leases of surplus Federal real property:

(1) If all or a portion of, or any interest in, the transferred or leased surplus Federal real property is not used or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of the Secretary, the Secretary may require that—

(i) All revenues and the reasonable value of other benefits received by the transferee or lessee directly or indirectly from that use, as determined by the Secretary, be held in trust by the transferee or lessee for the United States subject to the direction and control of the Secretary;

(ii) Title or possession to the transferred or leased surplus Federal real property and the right to immediate possession revert to the United States;

(iii) The surplus Federal real property be transferred or leased to another eligible entity as the Secretary directs;

(iv) The transferee or lessee abrogate the conditions and restrictions in the transfer or lease instrument in accordance with the provisions of § 12.15;

(v) The transferee or lessee place the surplus Federal real property into immediate use for an approved purpose and extend the period of restriction in the transfer or lease instrument for a term equivalent to the period during which the property was not fully and solely used for an approved use; or

(vi) The transferee or lessee comply with any combination of the sanctions described in paragraph (a)(1) or (a)(3) of this section.

(2) If title or possession reverts to the United States for noncompliance or is voluntarily reconveyed, the Secretary may require the transferee or lessee—

(i) To reimburse the United States for the decrease in value of the transferred or leased surplus Federal real property not due to—

(A) Reasonable wear and tear;

(B) Acts of God; or

(C) Reasonable alterations made by the transferee or lessee to adapt the surplus Federal real property to the approved program and plan of use for which it was transferred or leased;

(ii) To reimburse the United States for any costs incurred in reverting title or possession;

(iii) To forfeit any cash payments made by the transferee or lessee against the purchase or lease price of surplus Federal real property transferred;

(iv) To take any other action directed by the Secretary; or

(v) To comply with any combination of the provisions of paragraph (a)(3) of this section.

(3) If the transferee or lessee does not put the surplus Federal real property into use within the applicable time limitation in § 12.12(a), the Secretary may require the transferee or lessee to make cash payments to the Secretary equivalent to the current fair market rental value of the surplus Federal real property for each month during which the program and plan of use has not been implemented.

(Authority: 40 U.S.C. 484(k)(4))

(4) If the Secretary determines that a lessee of a transferee or a sublessee of a lessee is not complying with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, the Secretary may require termination of the lease.

(Authority: 40 U.S.C. 484(k)(4)(A))

(b) *Additional sanction for noncompliance with off-site transfer.* In addition to the sanctions in paragraph (a) of this section, if the Secretary determines that a transferee is not complying with a term or condition of a transfer of off-site surplus Federal real property, the Secretary may require that the unearned PBA become immediately due and payable in cash to the United States.

(Authority: 40 U.S.C. 484(k)(4)(A))

Subpart E—Abrogation

§ 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

(a) The Secretary may, in the Secretary's sole discretion, abrogate the conditions and restrictions in the transfer or lease instrument if—

(1) The transferee or lessee submits to the Secretary a written request that the Secretary abrogate the conditions and restrictions in the conveyance instrument as to all or any portion of the surplus Federal real property;

(2) The Secretary determines that the proposed abrogation is in the best interests of the United States;

(3) The Secretary determines the terms and conditions under which the Secretary will consent to the proposed abrogation; and

(4) The Secretary transmits the abrogation to the Administrator and there is no disapproval by the Administrator within thirty (30) days after notice to the Administrator.

(b) The Secretary abrogates the conditions and restrictions in the transfer or lease instrument upon a cash payment to the Secretary based on the formula contained in the transfer or lease instrument and any other terms and conditions the Secretary deems appropriate to protect the interest of the United States.

(Authority: 40 U.S.C. 484(k)(4)(A)(iii))

APPENDIX A TO PART 12.—PUBLIC BENEFIT ALLOWANCE FOR TRANSFER OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES [1]

Classification	Percent allowed												
	Basic public benefit allowance	Organization allowances							Utilization allowances				Maximum public benefit allowance [4]
		Accreditation	Federal impact	Public service training	Hardship	Inadequacy of existing school plant facilities			Introduction of new instructional programs	Student health and welfare	Research	Service to handicapped	
						10–25%	26–50%	51–100%					
Elementary or high schools	70		10	10	10	10	20	30	10	10	10	10	100
Colleges or Universities	50	20		10	10	10	20	30	10	10	10	10	100
Specialized schools	70			10	10	10	20	30	10	10	10	10	100
Public libraries or educational museums	[2] 100												[2] 100
School outdoor education	40								10	[3] 10	10		70
Central administrative and/or service centers	80												80
Non-profit educational research organizations	50	20		10					10	10		10	100

[1] This Appendix applies to transfers of both on-site and off-site surplus property.
[2] Applicable when this is the primary use to be made of the property. The public benefit allowance for the overall program is applicable when such facilities are conveyed as a minor component of other facilities.
[3] This 10% may include an approvable recreation program which will be accessible to the public and entirely compatible with, but subordinate to, the educational program.
[4] This column establishes the maximum discount from the fair market value for payment due from the transferee at the time of the transfer. This column does not apply for purposes of ranking applicants to determine to which applicant the property will be transferred. Competitive rankings are based on the absolute total of public benefit allowance points and are not limited to the 100% ceiling.

Description of Terms Used in This Appendix

"Elementary or High School" means an elementary school (including a kindergarten), high school, junior high school, junior-senior high school or elementary or secondary school system, that provides elementary or secondary education as determined under State law. However, it does not include a nursery school even though it may operate as part of a school system.

"College or University" means a non-profit or public university or college, including a junior college, that provides postsecondary education.

"Specialized School" means a vocational school, area trade school, school for the blind, or similar school.

"Public Library" means a public library or public library service system, not a school library or library operated by non-profit, private organizations or institutions that may be open to the general public. School libraries receive the public benefit allowance in the appropriate school classification.

"Educational Museum" means a museum that conducts courses on a continuing, not *ad hoc*, basis for students who receive credits from accredited postsecondary education institutions or school systems.

"School Outdoor Education" means a separate facility for outdoor education as distinguished from components of a basic school. Components of a school such as playgrounds and athletic fields receive the basic allowance applicable for that type of school. The outdoor education must be located reasonably near the school system and may be open to and used by the general public, but only if the educational program for which the property is conveyed is given priority of use. This category does not include components of the school such as playgrounds and athletic fields, that are utilized during the normal school year, and are available to all students.

"Central Administrative and/or Service Center" means administrative office space, equipment storage areas, and similar facilities.

Description of Allowances

"Basic Public Benefit Allowance" means an allowance that is earned by an applicant that satisfies the requirements of § 12.10 of this part.

Organization Allowance

"Accreditation" means an allowance that is earned by any postsecondary educational institution, including a vocational or trade school, that is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602.

"Federal Impact" means an allowance that is earned by any local educational agency (LEA) qualifying for Federal financial assistance as the result of the impact of certain Federal activities upon a community, such as the following under Public Law 81–874 and Public Law 81–815: to any LEA charged by law with responsibility for education of children who reside on, or whose parents are employed on, Federal property, or both; to any LEA to which the Federal Government has caused a substantial and continuing financial burden as the result of the acquisition of a certain amount of Federal property since 1938; or to any LEA that urgently needs minimum school facilities due to a substantial increase in school membership as the result of new or increased Federal activities.

"Public Services Training" means an allowance that is earned if the applicant has cadet or ROTC units or other personnel training contracts for the Federal or State governments. This is given to a school system only if the particular school receiving the property furnishes that training.

"Hardship" means an allowance earned by an applicant that has suffered a significant facility loss because of fire, storm, flood, other disaster, or condemnation. This allowance is also earned if unusual conditions exist such as isolation or economic factors that require special consideration.

"Inadequacies of Existing Facilities" means an allowance that is earned on a percentage basis depending on the degree of inadequacy considering both public and nonpublic facilities. Overall plant requirements are determined based on the relationship between the maximum enrollment accommodated in the present facilities, excluding double and night sessions and the anticipated enrollment if the facilities are transferred. Inadequacies may be computed for a component school unit such as a school farm, athletic field, facility for home economics, round-out school site, cafeteria, auditorium, teacherages, faculty housing, etc., only if the component is required to meet State standards. In that event, the State Department of Education will be required to provide a certification of the need. Component school unit inadequacies may only be related to a particular school and not to the entire school system.

Utilization Allowances

"Introduction of New Instructional Programs" means an allowance that is earned if the proposed use of the property indicates that new programs will be added at a particular school. Examples of these new programs include those for vocational education, physical education, libraries, and similar programs.

"Student Health and Welfare" means an allowance that is earned if the proposed program and plan of use of the property provides for cafeteria, clinic, infirmary, bus loading shelters, or other uses providing for the well-being and health of students and eliminating safety and health hazards.

"Research" means an allowance that is earned if the proposed use of the property will be predominantly for research by faculty or graduate students under school auspices, or other primary educational research.

"Service to Handicapped" means an allowance that is earned if the proposed program and plan of use for the property will be for special education for the physically or mentally handicapped.

[FR Doc. 92-30467 Filed 12-17-92; 8:45 am]

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Friday
December 18, 1992

Part IV

Department of Transportation

Coast Guard

33 CFR Parts 155 and 157
46 CFR Part 30, et al.
Double Hull Standards for Vessels Carrying Oil in Bulk; Reopening of Comment Period; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 157; 46 CFR Parts 30, 32, 70, 90, and 172

[CGD 90-051]

RIN 2115-AD61

Double Hull Standards for Vessels Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Interim Final Rule; reopening of comment period.

SUMMARY: The Coast Guard is reopening the public comment period for this rulemaking which was published on August 12, 1992 (57 FR 36222). This action is being taken to provide the public the opportunity to further comment on: (1) Existing double hull vessel design requirements; and (2) double hull requirements for non-traditional tank vessels carrying oil in bulk.

DATES: Comments must be received on or before February 26, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, (G-LRA-2/3406) [CGD 90-051]; U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Merchant Vessel Inspection and Documentation Division (G-MVI-2), telephone (202) 267-1181.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their name, address, identify this rulemaking (CGD 90-051), the specific section of the proposal or related documents to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments currently in the public docket, including comments received after the initial comment period was closed, and all additional comments received during this comment period. The proposal may be changed in view of the comments.

The Coast Guard plans no public hearing. However, persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it is determined that the opportunity to make oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Discussion

Section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90) added section 3703a to title 46 U.S. Code. Section 3703a(a) requires a double hull to be fitted on a vessel carrying oil in bulk as cargo or cargo residue. A vessel that is constructed or undergoes a major conversion under a contract placed on or after June 30, 1990, must have a double hull fitted at the time of construction or major conversion. An existing vessel that is constructed or that undergoes a major conversion under an earlier contract must be fitted with a double hull in accordance with a timetable in 46 U.S.C. 3703a(c)(3), which commences in 1995.

Section 3703a does not provide technical standards for a double hull. The Interim Final Rule (IFR) provided the shipping and shipbuilding industries with standards in order to meet the double hull requirement.

On September 21, 1990, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 2-90. This NVIC provides policy guidance on double hull construction for a vessel undergoing construction or major conversion under a contract awarded prior to the effective date of this rule. A vessel which is built to plans that have been approved in accordance with NVIC 2-90 under a contract awarded before the effective date of this rule, September 11, 1992, will satisfy the double hull requirements in the IFR. NVIC 2-90 may not be used for a vessel which undergoes construction or major conversion under a contract awarded on or after the effective date of the IFR, September 11, 1992.

On December 5, 1990, the Coast Guard published a notice of proposed rulemaking (55 FR 50192) to implement the double hull requirements of OPA 90. This proposal included standards to define the double hulls that OPA 90 requires to be fitted on all tank vessels built or converted under contracts awarded on or after June 30, 1990. OPA 90 requires tank vessels built or converted under earlier contracts to be retrofitted with double hulls according to a timetable that begins in 1995 and ends in 2015. The notice of proposed rulemaking requested comments from the public for a period which closed on April 1, 1991.

On September 6, 1991, the Coast Guard reopened the comment period for the notice of proposed rulemaking (56 FR 44051) until October 7, 1991, due to two subsequent events which had major impact upon the Coast Guard's proposal for rulemaking. These were the publishing of the National Academy of Science's study, "Tanker Spills: Prevention by Design," on February 25, 1991, and the 31st Session of the International Maritime Organization's (IMO) Marine Environment Protection Committee's (MEPC) approval of a draft Regulation 13F (MEPC 31/MP.11, Annex 2) as an amendment to Annex I of MARPOL 73/78 on July 5, 1991. The draft was then circulated to IMO's member states for consideration. Regulation 13F proposed the international standards for new construction or major conversion of vessels to double hull design. Also approved at MEPC 31, was a draft of Regulation 13G (MEPC 31/WP.11, Annex 3, paragraph 2), which proposed requirements for double hull construction or equivalence for existing vessels.

On March 6, 1992, the MEPC adopted Regulations 13F and 13G to Annex I of MARPOL 73/78 at its 32nd Session. The United States reserved its position during the adoption of Regulations 13F and 13G, due to differences with OPA 90 regarding the applicability of double hull requirements to certain categories of vessels and the allowance of the mid-deck concept as an alternative to the double hull. To assist the public in understanding the differences between the adopted international rules and the IFR, the adopted international regulations were reprinted as an appendix in the preamble of the IFR.

On April 2, 1992, the Coast Guard issued NVIC 4-92. This NVIC provides policy guidance on intact and damage stability for the construction of new tank vessels.

On August 12, 1992, the Coast Guard published the IFR on double hull standards for vessels carrying oil in bulk. This rule provided the marine industry with standards, not provided in OPA 90, for new vessels to meet the double hull requirements. The effective date of the IFR was September 11, 1992. The comment period for the IFR closed on October 13, 1992.

As a result of comments received between August 12 and October 13, the Coast Guard is reopening the comment period to allow the public to further comment on the effect double hull standards have on existing double hulled vessels, as discussed in paragraph 15 of the IFR (57 FR 36226). Paragraph 15 states that the Coast Guard concurred with comments that existing double hulled tank vessels be permitted to continue operating even if such vessels do not meet the dimensions adopted in the IFR for new tank vessels. Therefore, the Coast Guard incorporated § 157.10d(c)(1)(iii), (c)(2)(iii), and (d)(3) providing these existing vessels with double hull dimensions consistent with their existing construction. These are double hulled vessels and barges that were built before June 30, 1990, that carry oil in bulk under existing industry design standards. The Coast Guard is specifically interested in knowing how many existing double hull vessels will be effected by the vessel design standards in § 157.10d(c)(1)(iii), (c)(2)(iii), and (d)(3).

As a note, the Coast Guard wishes to again clarify that the IFR also applies to dry or break bulk cargo, or passenger vessels, which carry oil as a secondary cargo. Subject to the exemptions in 46 U.S.C. 3702, the Oil Pollution Act of 1990 applies double hull requirements to a tank vessel, as defined in 46 U.S.C. 2101(39). Section 2101(39) provides that a tank vessel is a vessel constructed or adapted to carry, or that carries, oil or hazardous materials in bulk as cargo or cargo residue, and is a vessel of the United States; operates on the navigable waters of the United States; or transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States. Section 2101(39) includes a vessel that carries any quantity of oil in bulk as cargo, including tank barge, a tanker as defined in 47 U.S.C. 2101(38), and a vessel certified as a cargo or passenger vessel that carries limited quantities of oil in bulk.

On November 4, 1992, the Coast Guard Authorization Act of 1992, was signed into law as title V of Public Law 102–587. Section 5209 of the Coast Guard Authorization Act, titled "Tank Vessel Definition Clarification," referred to offshore supply vessel, fish tender vessel, fishing vessel and tank vessel, as defined in 46 U.S.C. 2101 and provides that offshore supply vessels are not included within the definition of "tank vessels." Additionally, fishing or fish tender vessels of not more than 750 gross tons that make transfers without charge to another vessel owned by the same person are also excluded from the definition of "tank vessels."

Dated: November 29, 1992.

A. E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–30657 Filed 12–17–92; 8:45 am]

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Friday
December 18, 1992

Part V

Department of Education

34 CFR Part 206

Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 206

RIN 1810–AA68

Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP). These regulations implement statutory changes enacted in the Higher Education Amendments of 1992 and make other technical revisions to the existing regulations. These programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal 5 calls for Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. These programs advance this goal by helping migrant youth, through their participation in HEP and CAMP projects, to obtain the skills and competencies needed for their success in and beyond the secondary school level.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Lorraine Wise, Office of Migrant Education, Department of Education, 400 Maryland Avenue, SW, room 2149, Mail Stop 6135, Washington, DC 20202. Telephone: (202) 401–0744. Deaf and hearing impaired individuals may call (202) 401–1985 for TDD services.

SUPPLEMENTARY INFORMATION: These regulations implement changes to HEP and CAMP required by section 405 of the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992, and make other technical revisions to the existing regulations. There are no substantive changes made in these final regulations other than those required by the statute. Significant statutory changes include the following:

Expansion of Program Eligibility

The minimum age for participation in HEP has been lowered from 17 to 16 years of age (§ 206.3(b)). Eligible participants in both the HEP and CAMP now include persons who have participated (in the case of HEP, within the preceding two years) or are eligible to participate in programs funded under 34 CFR part 201 (Chapter 1–Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs (§ 206.3(a)). Definitions of terms that concern eligibility on the basis of these two programs are incorporated into these regulations in § 206.5(d).

Expansion of Program Services

Grantees under CAMP now may not use more than 10 percent of their funding for follow-up services to participants who have completed their first year of college (§ 206.11).

Increase in the Project Period for Awards

The maximum project period for HEP and CAMP awards has been increased from three to five years (§ 206.20(b)).

Other Technical Revisions

These regulations also make other technical revisions to the existing regulations. They clarify, as does the statute, that only a migrant or seasonal farmworker or a farmworker's child can qualify for eligibility (§ 206.3(a)). In addition, 34 CFR parts 81, 82, 85, and 86 of the Education Department General Administrative Regulations (EDGAR), which apply on their own terms to this program, have been added as applicable regulations. Furthermore, 34 CFR part 78 has been deleted as no longer applicable (§ 206.4).

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations incorporate only statutory changes and other technical revisions and public comment would have no effect on these changes. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 206

Colleges and universities, Education, Education of the disadvantaged, Grant programs—education, Migrant labor.

(Catalog of Federal Domestic Assistance Numbers: 84.141 Migrant Education—High School Equivalency Program; and 84.149 Migrant Education—College Assistance Migrant Program)

Dated: November 30, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 206 of title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY AND COLLEGE ASSISTANCE MIGRANT PROGRAM

1. The authority citation for part 206 is revised to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

§ 206.1 [Amended]

2. In § 206.1, paragraphs (a) and (b) are amended by removing "students—who are engaged, or whose families are engaged, in migrant and other seasonal farmwork—" and adding, in its place, "persons who are eligible under § 206.3".

3. Section 206.3 is amended by revising paragraphs (a), (b), introductory text, and (c), to read as follows:

§ 206.3 Who is eligible to participate in a project?

(a) *General.* To be eligible to participate in a HEP or a CAMP project—

(1) A person, or his or her parent, must have spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker; or

(2) The person must have participated (with respect to HEP within the last 24 months), or be eligible to participate, in programs under 34 CFR part 201 (Chapter 1–Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs).

(b) *Special HEP qualifications.* To be eligible to participate in a HEP project, a person also must—

* * * * *

(3) Be 16 years of age or over, or beyond the age of compulsory school attendance in the State in which he or she resides; and

* * * * *

(c) *Special CAMP qualifications.* To be eligible to participate in a CAMP project, a person also must—

* * * * *

4. Section 206.4 is amended by revising paragraph (a) to read as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 81 (General Educational Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 206.

* * * * *

5. Section 206.5 is amended by adding paragraph (d) to read as follows:

§ 206.5 What definitions apply to these programs?

* * * * *

(d) *Other definitions.* For purposes of determining program eligibility under § 206.3(a)(2), the definitions in 34 CFR 201.3 (Chapter 1—Migrant Education Program) and 20 CFR 633.104 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs) apply.

6. Section 206.10 is amended by revising paragraphs (b)(1)(i) and (b)(2)(i) to read as follows:

§ 206.10 What types of services may be provided?

* * * * *

(b) * * *

(1) * * *

(i) Recruitment services to reach persons who are eligible under § 206.3 (a) and (b).

* * * * *

(2) * * *

(i) Outreach and recruitment services to reach persons who are eligible under § 206.3 (a) and (c).

* * * * *

7. A new § 206.11 is added to subpart B to read as follows:

§ 206.11 What types of CAMP services must be provided?

(a) In addition to the services provided in § 206.10(b)(2), CAMP projects must provide follow-up services for project participants after they have completed their first year of college.

(b) Follow-up services may include—

(1) Monitoring and reporting the academic progress of students who participated in the project during their first year of college and their subsequent years in college; and

(2) Referring these students to on- or off-campus providers of counseling services, academic assistance, or financial aid.

(c) Grantees may not use more than 10 percent of funds awarded to them for follow-up services.

(Authority: 20 U.S.C. 1070d-2(c))

§ 206.20 [Amended]

8. Section 206.20(b)(1) is amended by removing the word "three", and adding, in its place, the word "five".

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Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842

RIN 1029-AB60

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites

AGENCY: Office and Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior proposes to amend its regulations governing the inspection of surface coal mining and reclamation operations to change the minimum inspection frequency for minesites defined as "abandoned sites" under the existing regulations. An abandoned site is an incompletely reclaimed surface coal mining and reclamation operation where mining and reclamation activities have permanently ceased. In most instances the operators of these sites have filed for bankruptcy or can not be located and either will not or can not comply with corrective measures ordered in State or Federal enforcement actions which mine inspectors have issued to compel abatement of violations of environmental performance standards or to compel completion of reclamation obligations. These proposed revisions would enable regulatory authorities to eliminate a significant number of ineffective inspections which waste inspection resources and thus, would allow the regulatory authorities to redirect those resources to operations where inspection and enforcement would achieve intended results.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on January 19, 1993.

Public Hearings: Upon request, OSM will hold a public hearing on the proposed rule in Washington, DC on January 19, 1993. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. on January 19, 1993. Individuals wishing to attend, but not testify at the hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St. NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240: Telephone: 202–208–2550 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **ADDRESSES**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **DATES**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The time, date, and address scheduled for the hearing in Washington, DC are (see **DATES** and **ADDRESSES**). The times, dates, and addresses for any hearings at other locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at those locations.

Any person interested in attending or participating at a hearing at a particular location should inform Mr. Stocker (see **FOR FURTHER INFORMATION CONTACT**) either orally or in writing of the desired hearing location by 5 p.m. Eastern time January 19, 1993. If no one has contacted Mr. Stocker to express an interest in participating in a hearing a given location by that date, no hearing will be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit an advance copy of their testimony to OSM at the address previously specified for submission of written comments (see **ADDRESSES**).

II. Background

Section 517(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act) states that the regulatory authority shall inspect on an irregular basis averaging not less than one partial inspection per month and one complete inspection per quarter each surface coal mining and reclamation operation covered by a permit. To implement this requirement, OSM first promulgated rules at 30 CFR 840.11 for State regulatory authorities and at 30 CFR 842.11 for OSM where it is the regulatory authority in a State. 44 FR 15455 (March 13, 1979). These rules required regulatory authorities to inspect each surface coal mining and reclamation operation on an average of not less than one partial inspection per month and not less than one complete inspection per calendar quarter.

These rules were revised on August 16, 1982. 47 FR 35620. Among other things, the 1982 rules defined "inactive" operations as a distinct category of surface coal mining and reclamation operations and reduced the partial inspection frequency requirement for those operations to "as necessary to ensure effective enforcement" of the regulatory program. The rules were again revised in 1988. (53 FR 24872, June 30, 1988). This time the rules defined an "abandoned site" as a distinct category of surface coal mining and reclamation operations and enabled regulatory authorities to reduce the inspection frequency at these sites and to refrain from issuing additional

enforcement actions at abandoned sites under certain conditions. The definition of "abandoned site" specifies that before a site can be considered abandoned it must first meet certain criteria which ensure that the regulatory authority has or is in the process of taking all enforcement action available to it under the applicable regulatory program to compel abatement of violations and completion of reclamation. Sites meeting the definition could then, instead of twelve times per year, be inspected "as necessary to monitor for changes of environmental conditions or operational status at the site."

The 1988 final rule was subsequently challenged in Federal District Court. On August 30, 1990, the United States District Court for the District of Columbia issued an order in the case of *National Wildlife Federation, et al.*, v. *Manuel Lujan, Jr., et al.*, 31 Env't Rep. Cas. (BNR) 2034, 2042 (D.D.C. 1990) (*NWF* v. *Lujan*). Although the district court remanded the rule to the Secretary to be withdrawn or revised on the basis that the Secretary's arguments supporting the rule at that time were inconsistent with expressed requirements of the Act, it conceded that the rule was practical, that it comported with common sense, and that it is not wise to spend a lot of time and effort inspecting abandoned sites every month when nothing changes. However, to implement the court's order, OSM suspended those parts of the 1988 rule that related to inspection frequency at abandoned sites. The definition of "abandoned site" at 30 CFR 840.11(g) and 842.11(e) and the provision at 30 CFR 843.22 allowing regulatory authorities to refrain from issuing additional enforcement actions at abandoned sites were unaffected by the court order and remain intact (56 FR 25036, June 3, 1991).

Since the district court's decision does not stand in the way of the Secretary proceeding with an alternative rulemaking on the subject of inspection frequency at abandoned sites, OSM is proposing this rule today which it believes is consistent with both the Act and the district court's opinion in *NWF* v. *Lujan*, which struck down the previous rule. See *NWF* v. *Lujan*, Civ. Action Nos. 89–0136, 88–3345 & 88–2416, U.S. App. Ct. (DC Cir., December 10, 1991), mem. op. at 10. The proposed rule does not apply to operations "covered by [a] permit," and thus is not subject to section 517(c) of SMCRA.

In promulgating the 1988 rule on abandoned sites, OSM concluded then, as it does now, that repeated inspections of abandoned sites at the frequency required under the existing rules are an ineffective expenditure of resources and that fewer inspections would not result in increased harm to the environment or reduce in any way the likelihood of ultimate compliance at abandoned sites. The time inspectors spend at abandoned sites detracts from the time they can spend at other sites working with operators to abate present violations and prevent future violations, thus improving the overall quality and effectiveness of inspection programs under the Act.

Enforcement actions issued as a result of inspections at abandoned sites have historically proven to be ineffective at the inspector level to compel abatement of violations or to achieve reclamation. Moreover, inspectors normally have cited all significant violations prior to a site being considered abandoned under the current definition. The persons responsible for abating these violations typically are financially insolvent or cannot be located. In such instances, even when diligent efforts are made to enforce the Act, no one is available to abate violations or to perform or pay for the needed reclamation. Continuing regular partial and complete inspection of these sites serves no useful purpose and wastes finite inspection resources. To illustrate the extent of this waste, OSM has in the past conducted approximately 2,900 inspections each year on an average of 236 abandoned sites in Tennessee. This effort comprises approximately 32 percent of the inspections in that State; however, few of these inspections resulted in abatement of the violations or completion of reclamation.

OSM experience has shown that environmental conditions at most abandoned sites will not significantly degrade beyond that which has been observed during prior inspections and violations of substantive performance standards do not necessarily deteriorate to imminent danger or harm situations. While these sites do not comply with the Act, many, due to their age or because they were partially reclaimed prior to abandonment, become reasonably well stabilized through natural settlement and natural plant succession. During one period where approximately 6,000 inspections were conducted at abandoned sites in Tennessee, OSM inspectors observed no condition which posed an imminent danger to the public health or safety or an imminent environmental harm to land, air, or water resources.

While the stated goal of section 517 of the Act is to "enforce the requirements of and carry out the purposes of [the] Act," inspecting abandoned sites as frequently as sites covered by a permit does nothing to achieve, but on the contrary frustrates, this goal. Among the mechanisms provided by the Act to achieve the stated goals of section 517(c) are penalties under section 518, performance bonds under section 509 and 519, citizen suits under section 520, and enforcement under section 521. Each of these mechanisms implicitly has as its underlying premise the existence of a person against whom an action can be taken, or of a bond that can provide the funds to abate violations and secure reclamation. If no such person can be found after diligent effort, or the regulatory authority otherwise is taking appropriate action to ensure that abatement occurs, and any permit has been revoked and any bond is being forfeited, issuance of multiple notices of violation and cessation orders generated by the fixed inspection frequency requirement and the subsequent assessment of the uncollectible penalties are not productive tools to "enforce the requirements of and carry out [the] purposes of the Act." Under these circumstances, inspections of abandoned sites performed at a minimum frequency less than that for other sites based on the particular characteristics of the site are a far more reasonable and realistic alternative.

Section 201(c)(2) of the Act, 30 U.S.C. 1211(c)(2), requires the Secretary of the Interior to publish and promulgate such rules and regulations as may be necessary to carry out its purposes and provisions. Since regular partial and complete inspections of abandoned sites are a counterproductive use of limited inspection and enforcement resources, and since fewer inspections of such sites are not likely to result in increased environmental harm or otherwise secure compliance with the Act, this rule is a necessary and reasonable implementation of the purposes and provisions of the Act.

III. Discussion of Proposed Rule

Since the revisions being proposed for State regulatory authorities at 840.11 are identical to those being proposed at 842.11 where OSM is the regulatory authority, they will be combined for ease of discussion.

Section 840.11(g)(4)(i)/842.11(e)(4)(i)

These sections are being revised to require that before a site could be classified as abandoned, the permit must be expired or must be revoked. Under the existing rules, a site may be classified as abandoned if permit revocation proceedings have been initiated and are being diligently pursued. OSM now believes that before

a site should be able to qualify under the definition of "abandoned site," and therefore be subject to a reduction in inspection frequency, the permit covering the surface coal mining and reclamation operation should no longer be in effect. A person who has not or will not respond to enforcement actions issued by the regulatory authority and who can not or will not meet his obligations to abate violations or complete reclamation should not be entitled any opportunity to resume surface coal mining operations under the permit.

Section 840.11(g)(4)(ii)/842.11(e)(ii)

To qualify under the definition of "abandoned site," the existing rules require that the regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond. These sections are being revised by adding the phrase "any available" before the phrase "performance bond." This change is minor and is intended to recognize that there are some sites that are or were permitted, but a performance bond was never required or no longer exists. The absence of a performance bond has no bearing on whether a site should be classified as abandoned for inspection purposes.

Sections 840.11(h)(1)/842.11(f)(1)

These proposed sections would establish a minimum inspection frequency for abandoned sites of not less than one complete inspection per calendar year. This will enable regulatory authorities to tailor an appropriate inspection frequency for abandoned sites based on the environmental or public health and safety conditions at each site. It would also take into consideration the diversity in terrain, climate, and other unique physical conditions among the various States which may affect the degree of stability or the potential for adverse impacts at such sites. Under these proposed rules, the inspection frequency for abandoned sites may, depending on the nature of the site, vary from one to twelve or more. After an appropriate frequency is selected, regulatory authorities may increase or decrease that frequency as new information becomes available indicating changes in the characteristics of a site.

While enforcement at the inspector level is no longer effective at abandoned sites, the regulatory authority will be required under the definition of "abandoned site" to pursue additional enforcement steps of permit blocking, alternative enforcement, and bond forfeiture. Generally, alternative enforcement beyond the inspector level is the only potentially viable means to achieve reclamation, even if abandoned sites should deteriorate. Where the regulatory authority is taking all appropriate enforcement actions available to it, nothing more can be done through repeated inspections to reclaim a site or abate violations than is already occurring. Thus, while a fixed inspection frequency like that required for active sites under the existing rules might cause the regulatory authority to be informed of a problem at an abandoned site more quickly, it will not provide a new remedy. Accordingly, OSM believes that the inspection frequency proposed under this rule strikes a reasonable balance between the fixed frequency required for active and inactive sites and the need to occasionally, but not less than once per year, inspect abandoned sites to monitor environmental conditions or changes in operational status of a site. Public comments are requested on the appropriateness of, and the need for, a minimum standard of one complete inspection per year for abandoned sites.

Section 840.11(h)(2)/842.11(f)(2)

These proposed sections would enable the regulatory authority to reduce the inspection frequency under paragraph (h)(1) and (f)(1) above if, based on no less than three consecutive complete annual inspections conducted during a three year period before or after the effective date of this rule, the regulatory authority finds in writing that the abandoned site satisfies two criteria. The first criterion is that no conditions or structures exist at the site which could create an imminent danger to the health or safety of the public or an imminent harm to the environment. The second criterion is that the site has become reasonably stable through natural settlement or revegetation processes. Through years of experience, OSM has found that there exists a class of abandoned sites that have become so stable or are so well buffered from any potential to cause an off-site threat to public health and safety or to the environment as to make further inspections completely unnecessary or necessary on only a two or more year cycle. If, after further reducing the inspection frequency under these sections, information becomes available to the regulatory authority that either criterion no longer applies, the site would need to revert to the appropriate inspection frequency required under paragraphs (h)(1) and (f)(1). Public comments are specifically requested with respect to this approach for reevaluating and possibly reducing the inspection frequency at abandoned sites meeting the criteria under this paragraph and with respect to those persons or class of persons that would be adversely affected by the adoption of this provision further reducing the inspection frequency at abandoned sites.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

Proposed § 842.11 would apply through cross-referencing in those States with Federal programs. The programs with Federal programs are California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The proposed rules would also apply through cross-referencing to Indian lands under Federal programs as provided in 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands which should be reflected as changes to the national rules or as specific amendments to any or all of the Federal programs or the Indian lands program.

Executive Order 12778 on Civil Justice Reform

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule if adopted would not preempt State law or regulation.

States would not be required to adopt similar provisions and could continue to inspect abandoned sites at the current frequency if they so choose.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified.

The proposed rule modifies the implementation of the Surface Mining Control and Reclamation Act (SMCRA) as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this proposed rule.

C. Does the rule provides a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

The change to abandoned sites inspection frequency would be prospective only. The basis for determining whether the inspection frequency may be further reduced to less than one complete inspection per year would be three complete inspections conducted over a three year period, all or part of which may be prior to the effective date of the rule.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to the filing of a suit under 30 U.S.C. 1270(b) with regard to any alleged governmental failure to perform a nondiscretionary duty under SMCRA in connection with a matter arising under the proposed rule, the administrative procedures specified in 30 U.S.C. 1270(b)(2) and 30 CFR 700.13 must occur. This statement is not intended to concede that such a suit would be proper following the promulgation of a final rule and does not waive any defense to such a suit.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items.

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of August 10, 1992, the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Federal Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 622,560 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., room 640 N.C., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1029–0051, Washington, DC 20503.

Public comments are specifically requested regarding the reduction of the information collection burden for each State regulatory authority based on the proposed reduction in the inspection frequency for abandoned sites, as defined in this proposed rule.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Orders 12291 (February 17, 1981) and has determined that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rules do not distinguish between small and large entities. This determination is based on the findings that the regulatory additions proposed by the rule would serve to reduce the costs potentially incurred by OSM and State regulatory authorities in making routine inspections of abandoned sites. Therefore, the rule should not add to the cost of operating a mine in compliance with an approved regulatory program.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of the proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSM Administrative Record at the address previously specified (see **ADDRESSES**). A final EA will be completed and a final findings made on the significance of any resulting impacts prior to the promulgation of a final rule.

Author

The authors of this rule are Daniel Stocker and Frederick W. Fox, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone 202–208–2550 (Commercial or FTS).

List of Subjects

30 CFR Part 840

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

Accordingly, it is proposed that 30 CFR parts 840 and 842 be amended as set forth below:

Dated: October 9, 1992.

Richard Roldan,

Deputy Assistant Secretary—Land and Minerals Management.

PART 840—STATE REGULATORY AUTHORITY—INSPECTION AND ENFORCEMENT

1. The authority citation for part 840 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

2. Section 840.11 is amended by revising paragraphs (g) (4) and (h) to read as follows:

§ 840.11 Inspections by State Regulatory Authority.

* * * * *

(g) * * *

(4) Where the site is, or was, permitted and bonded:

(i) The permit has either expired or been revoked; and

(ii) The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(h) (1) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the regulatory authority shall inspect each abandoned site at a rate of no less than one complete inspection per calendar year.

(2) The inspection frequency under paragraph (h)(1) of this section may be reduced if, based on no less than three consecutive annual complete inspections conducted during a three year period before or after the effective

date of this rule, the regulatory authority finds in writing that:

(i) No conditions or structures exist at the site which could create an imminent danger to the health or safety of the public, or that could reasonably be expected to cause significant environmental harm to land, air or water resources; and

(ii) The site is reasonably stable based on the extent of reclamation prior to abandonment, the physical characteristics of the site, or on the extent of settlement or revegetation that has naturally occurred through time.

PART 842—FEDERAL INSPECTIONS AND MONITORING

1. The authority citation for part 842 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

2. Section 842.11 is amended by revising paragraphs (e)(4) and (f) to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(e) * * *

(4) Where the site is, or was, permitted or bonded:

(i) The permit has either expired or been revoked; and

(ii) The Office has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(f)(1) In lieu of the inspection frequency established in paragraphs (c) of this section, the Office shall inspect each abandoned site at a rate of no less than one complete inspection per calendar year.

(2) The inspection frequency under paragraph (f)(1) of this section may be reduced if, based on no less than three consecutive complete annual inspections conducted during a three year period before or after the effective date of this rule, the Office finds in writing that:

(i) No conditions or structures exist at the site which could create an imminent danger to the health or safety of the public, or that could be reasonably expected to cause significant environmental harm to land, air or water resources; and

(ii) The site is reasonably stable based on the extent of reclamation prior to abandonment, the physical characteristics of the site, or on the extent of settlement or revegetation that has naturally occurred through time.

[FR Doc. 92–30595 Filed 12–17–92 8:45 am]

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federal register

Friday
December 18, 1992

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Ophthalmic Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N–145A]

RIN 0905–AA06

Ophthalmic Drug Products for Over-the-Counter Human Use; Ophthalmic Anti-Infective Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that yellow mercuric oxide and certain other ophthalmic anti-infective active ingredients are not generally recognized as safe and effective or are misbranded for over-the-counter (OTC) use. (OTC ophthalmic anti-infectives are drugs applied to the eyelid to treat infections whose symptoms are manifested only in the eyelid.) This final rule evaluates data on yellow mercuric oxide and information concerning OTC availability of ophthalmic anti-infective drug products that were pending review when an earlier final rule on OTC ophthalmic drug products was issued. Also, this final rule lists in a regulation all OTC ophthalmic anti-infective ingredients that have been found to be not generally recognized as safe and effective or are misbranded. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 6, 1980 (45 FR 30002), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC ophthalmic drug products together with the recommendations of the Advisory Review Panel on OTC Ophthalmic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The agency stated it was concerned that, because the symptoms of minor and serious eye infections are often similar, there may be potential for serious harm to the eye if professional treatment is delayed. The agency, therefore, tentatively determined that the benefits to be derived from OTC use of ophthalmic anti-infectives do not outweigh the risks and proposed to classify these ingredients in Category II (not generally recognized as safe and effective). (See 45 FR 30002.)

The agency's tentative final monograph on OTC ophthalmic drug products was published in the **Federal Register** of June 28, 1983 (48 FR 29788). All ophthalmic anti-infective active ingredients reviewed by the Panel, including yellow mercuric oxide, were classified as Category II (48 FR 29788 at 29796). Subsequently, the agency received new data and information concerning the appropriateness of ophthalmic anti-infective drug products for OTC use and the safety and effectiveness of yellow mercuric oxide as an OTC ophthalmic anti-infective active ingredient (Refs. 1 and 2).

The data concerning yellow mercuric oxide and information concerning the appropriateness of ophthalmic anti-infective drug products for OTC use remained under review at the time of the publication of the agency's final rule on OTC ophthalmic drug products in the **Federal Register** of March 4, 1988. (See 53 FR 6997 and 7076.) The agency's evaluation of those data completes the rulemaking on OTC ophthalmic drug products.

In the advance notice of proposed rulemaking for OTC ophthalmic drug products (45 FR 30002), the agency stated that the conditions excluded from the monograph (Category II) should be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the **Federal Register**, regardless of whether further testing is undertaken to justify their future use. The agency also stated that conditions included in the monograph (Category I) should be effective 30 days after the date of publication of the final monograph in the **Federal Register**. In the tentative final monograph, the agency extended this 30-day period to 12 months because of the need to provide a reasonable period of time for relabeling and reformulation of products covered by the monograph (48 FR 29788 at 29789).

In the case of OTC ophthalmic anti-infective drug products, no active ingredient has been determined to be generally recognized as safe and effective for this use. Accordingly, no conditions are being established for this subclass of ingredients in the final monograph for OTC ophthalmic drug products (21 CFR part 349). Thus, there is no need for a 12-month period for relabeling and reformulation of these products. As stated in the advance notice of proposed rulemaking, these conditions should be eliminated from OTC drug products effective 6 months after the date of publication of this final rule. Therefore, on or after June 18, 1993, no OTC drug products containing ophthalmic anti-infective active ingredients that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

References

(1) Comments No. C00989, C00996, C01002, LET003, SUP001, SUP002, SUP003, and SUP004, Docket No. 80N–0145, Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

(2) Comments No. C00001, SUP001, SUP002, and SUP003, Docket No. 80N–145A, Dockets Management Branch.

II. The Agency's Conclusions on the Comments

1. Two comments objected to the agency's reclassification of ophthalmic anti-infective ingredients from Category III to Category II in the tentative final monograph (48 FR 29788 at 29796). The comments contended that the agency's action reversed the Panel's recommendation without the support of factual evidence in the record. The comments also asserted that the agency failed to explain why the labeling warnings recommended by the Panel for this class of drug products were not considered sufficient to ensure safe use on an OTC basis. One of the comments indicated that the reclassification was not warranted because of the long history of safe use of OTC ophthalmic anti-infective drug products, as shown in the submissions made to the Panel. This comment stated that the agency's concerns could be handled by appropriate labeling and suggested the following indications for OTC ophthalmic anti-infectives:

(a) "For the relief of discomfort of styes."

(b) "For the treatment of irritation and minor infection of eyelids."

(c) "Soothes surrounding area."

The other comment contended that the agency—in stating that "symptoms of minor and serious infections are often similar" (48 FR 29788 at 29790)—failed to identify such similar "infections" and "symptoms" and did not distinguish the differences between the symptoms of eye infection and eyelid infection. The comment identified stye and blepharitis as two minor eyelid infections that are self-limiting and not threatening to sight and which, therefore, are amenable to

OTC treatment without the intervention of a physician. The comment argued that any potential problem there may be in delaying treatment of eye infections could reasonably be prevented by a cautionary warning in the labeling for such products stating that if relief is not obtained within 7 days, the consumer should consult a physician. The comment included affidavits from six experts in the field of ophthalmology in support of these statements (Ref. 1).

These experts made the following statements in their affidavits: A stye is an infection of the eyelid and not of the cornea or any other part of the eye. The symptoms of stye infection include a feeling of fullness, swelling of the eyelid, burning, itching, crusting, irritation to the eyelid, and the stye itself, but do not include "red eye." Stye infections do not result in a decrease in vision. Blepharitis is an inflammation (chronic bacterial infection, usually staphylococcal) of the eyelid (lash follicles and meibomian glands). Symptoms include redness of the lid with some swelling and tenderness. Blepharitis does not cause "red eye" and does not affect vision. According to these experts, infections such as stye and blepharitis are self-limiting and not threatening to sight, and their symptoms are easily perceived by consumers such that self-medication with an OTC anti-infective drug product for at least 7 days would not pose any significant risk. One of the experts stated that if symptoms persist or intensify after a few days, the patient should seek medical advice. These experts felt that consumers could easily differentiate between minor eyelid infections and serious eye infections because serious eye infections invariably bring about red eye, pain, and a decrease in vision.

The comment added that the agency's proposed action would increase the cost of medical care because consumers would have to visit a physician before obtaining any treatment for stye or blepharitis. The comment suggested that it would be more appropriate for the agency not to allow the sale of OTC preparations for infections of the eye (the globe area) while permitting, with appropriate warnings, the OTC sale of effective drugs for the treatment of minor infections of the eyelid, such as stye and blepharitis. One of the experts felt it would be valuable to consumers to have available a safe and effective nonantibiotic OTC preparation for the early treatment of stye and blepharitis. This expert stated that frequent use of antibiotics leads to antibiotic resistance, and whenever a nonantibiotic preparation can be used in place of an antibiotic, it should be recommended.

Another comment stated that in the absence of any facts to support its proposal to restrict all ophthalmic anti infective drugs to prescription status, or any reasoned discussion for this position, FDA's proposal is arbitrary and capricious.

In the advance notice of proposed rulemaking (45 FR 30002), the agency stated its initial determination that ophthalmic anti-infectives should be classified in Category II in the tentative final monograph and invited specific comment. Only one comment was received, and that comment did not raise any of the issues offered by the current comments. (See 48 FR 29788 at 29790, paragraph 4.) Therefore, the agency did not find it necessary to present a detailed discussion in the tentative final monograph.

The agency points out that the Panel identified stye, blepharitis, and conjunctivitis as ophthalmic disorders that might be amenable to OTC treatment. However, the Panel also recognized that of the three conditions, self-treatment of conjunctivitis carries the greater risk, because stye and blepharitis are usually self-limiting and complications are rare. The Panel also stated that, while conjunctivitis is usually a self-limiting disorder, if the condition is severe and not responsive to medication, secondary corneal infections and ulcerations may occur (45 FR 30002 at 30012).

The agency has additional concerns, principally related to the similarity between the symptoms of conjunctivitis and those of very serious conditions of the eye, such as uveitis or the presence of a foreign body in the eye. For example, the Panel listed the symptoms of conjunctivitis as a "redness, discharge and the feeling of sand in the eye" (45 FR 30012). These symptoms are very similar to the symptoms of uveitis, which the Panel identified as "a redness of the eye primarily encircling the cornea" (45 FR 30011), or the symptoms of a foreign body imbedded in the cornea, which the Panel characterized as "redness of the eye and sensation of foreign matter in the eye" (45 FR 30010). The Panel recognized both uveitis and a foreign body embedded in the cornea as serious disorders not amenable to OTC treatment. Thus, the agency concludes that OTC treatment is inappropriate for conjunctivitis because its symptoms are similar to those of more serious disorders.

The agency believes that some consumers could distinguish the symptoms of minor eyelid conditions that are manifested only in the eyelid—such as blepharitis and stye—from those of serious eye infections. Nevertheless, the agency concludes that such eyelid conditions may not be amenable to OTC drug treatment with an ophthalmic anti-infective ingredient because consumers may not be able to accurately diagnose infectious blepharitis that could be treated with an ophthalmic anti-infective and stye occurs below the eyelid surface and would not be expected to be effectively treated by a topical anti-infective drug. In addition, no OTC drug product has been found to be safe and effective for ophthalmic anti-infective use.

The term blepharitis refers to an inflammation of the eyelid that may be caused by localized hypersensitivity factors, bacterial infections, skin conditions such as seborrheic dermatitis, or possibly combinations of these conditions. Signs and symptoms such as redness, swelling, burning, itching, crusting, and irritation of the eyelid are not specific for bacterial infections of the eyelid. One comment maintained that consumers could readily differentiate between infectious and noninfectious blepharitis. However, because the signs and symptoms of blepharitis are frequently the same no matter what the cause, it is unlikely that most consumers could make such a distinction. Even health professionals frequently have trouble doing so. For example, the principal investigator of one of the clinical studies submitted in support of yellow mercuric oxide as an OTC ophthalmic anti-infective (Ref. 2) was unable to make this distinction more than 50 percent of the time. Of the 150 subjects randomized into a study, only 79 actually had bacterial colony counts high enough to meet the entrance criteria. The remainder did not have bacterial colony counts high enough to meet the entrance criteria and probably did not have infectious blepharitis. (See comment 3.) If the blepharitis results from a nonbacterial cause, there should be no need for and no expected benefit from using an anti-infective drug.

In addition, a stye or hordeolum is a localized, purulent inflammatory infection of the sebaceous or sweat glands in the eyelids, usually caused by staphylococci. Basically, it is a pustule or abscess within the lumen of the gland. The majority of styes are naturally self-limiting and resolve without treatment. The application of a topical anti-infective ingredient to an existing stye, as to an abscess elsewhere in the body, would be expected to have little, if any, effect on the clinical course of the abscess.

References

(1) Comment No. C00989 Docket No. 80N–0145, Dockets Management Branch.

(2) Comment No. LET003, Docket No. 80N–0145, Dockets Management Branch.

2. One comment objected to what it perceived as an agency requirement that the mechanism of action of yellow mercuric oxide be demonstrated before it can be generally recognized as effective. Based on an agency statement made in a **Federal Register** notice concerning the status of diphenhydramine as an OTC antitussive drug product (44 FR 51512 and 51517), the comment stated that it is not an absolute requirement that a "precise mechanism of action of a drug" be shown for the drug to be considered effective.

The agency agrees with the comment that it is not an absolute requirement to show the precise mechanism of action of a drug. A presumed mechanism based on some evidence is needed, but the specific mechanism is often not known and would not be required in this case for approval. However, as the comment points out, 21 CFR 330.10(a)(4)(ii) states that, "Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug * * * will provide clinically significant relief of the type claimed." In order to determine that a drug provides such relief, information about the pharmacological effect of the drug must be known, and it must be possible to identify a specific target population that matches the claim. If the product claims to "clear scaling (or redness) of the eyelids," then the study population must have scaling (or redness). It would be necessary in the clinical trials to show that the scales (or redness) were cleared. If the product claims to "clear minor eyelid infections," then the population under study must have "minor eyelid infections," and it would be necessary to show that the drug product has cleared the infecting organism. For example, the mere presence of a bacterial organism such as *Staphylococcus epidermidis* on the eyelids is not equivalent to an infection. The role of *S. epidermidis* is not clearly established in blepharitis. (See comment 3.) In addition, there are many forms of blepharitis, including seborrheic blepharitis, which do not have an infective component.

3. One comment submitted three clinical studies in support of the safety and effectiveness of yellow mercuric oxide as an ophthalmic anti-infective ingredient for OTC use in the treatment of styes, blepharitis, and simple eyelid infections (Refs. 1 through 4).

The agency has evaluated these three studies and determined that they are inadequate to support monograph status for yellow mercuric oxide as an OTC ophthalmic anti-infective ingredient for the treatment of minor external eyelid infections, such as stye or blepharitis. The agency has also determined that two additional, independent, well-controlled studies are necessary to establish that yellow mercuric oxide is generally recognized as a safe and effective ophthalmic anti-infective ingredient. In addition, adequate data supporting the ability of consumers to differentiate between infectious and noninfectious blepharitis are necessary to ensure that ophthalmic anti-infective drug products can be used properly on an OTC basis.

The clinical data submitted by the comment included three studies: one by Kastl (Refs. 1 and 2), one by Hyndiuk and Burd (Refs. 1 and 2), and one by Yamamoto (Refs. 3 and 4). In the clinical studies by Kastl and by Hyndiuk and Burd, subjects with a clinical diagnosis of minor external eyelid infections received a random, double-masked treatment with either the test drug containing 1 percent yellow mercuric oxide with 2.5 percent boric acid as a stabilizer in an ophthalmic ointment base or a placebo ointment containing 2.5 percent boric acid in an ophthalmic ointment base. The ointments were applied twice daily for 7 days. The subjects in the studies recorded side effects on a diary card. The microbiological evaluation of cultures from swabs of the affected eyelids was a criterion for the inclusion of subjects in both of these clinical studies as well as for the determination of the success or failure of the treatment.

In the clinical study by Kastl (Refs. 1 and 2), a slit lamp examination was performed on each subject to confirm whether the subject had a stye or blepharitis prior to entry into the program. Specimens for laboratory cultures were taken from affected eyelids on day 0 and then on days 4 and 7 of the treatment. Ten subjects had positive cultures of *Staphylococcus aureus* (*S. aureus*) and all other subjects had cultures of *S. epidermidis*. Of 66 subjects completing the course of treatment, 37 used the test drug and 29 used the placebo. The comment claims that 89 percent of the test subjects showed improvement by the seventh day of treatment as compared with 57 percent of the subjects who used the placebo ointment.

In the study by Hyndiuk and Burd (Refs. 1 and 2), specimens from the affected eyelids were cultured on day 0 and then again on days 3 and 7 of the treatment. The prevalent organism isolated was *S. epidermidis*, with only one subject having a *S. aureus* infection. Of 41 subjects completing the 7 days of treatment, 20 were given the active medication and 21 the placebo. The data summary states that the use of active medication resulted in a significant decrease in the numbers of bacteria by day 3, and these low counts were maintained through day 7; whereas, the placebo group showed no significant difference in bacterial counts between days 0, 3, and 7.

The subjects in this study were also assessed for the clinical symptoms of redness, scaling, and swelling of the eyelid on days 1, 3, and 7, and their symptoms were recorded daily on a diary card. For the clinical evaluation of symptoms, the degree of blepharitis was graded on a scale from 0 to 4+ (0 = no blepharitis; 1+ = erythema; 2+ = erythema and exudation fibrinous scaling; 3+ = erythema, exudation or fibrinous scaling, and edema; 4+ = erythema, exudation or fibrinous scaling, edema, and ulceration) and recorded on a subject record form. The comment contended that for the group receiving active medication, the clinical data show a decrease in the severity of the lid disease of 87 percent (17/20) by day 3, and 95 percent (19/20) by day 7; whereas, the group receiving placebo showed a 52 percent (11/21) improvement by day 3, and 64 percent (14/22) improvement by day 7.

The study by Yamamoto (Refs. 3 and 4) involved 34 subjects with acute simple conjunctivitis, blepharitis, or stye and greater than 20 colony forming units of organisms with pathogenic potential counted on initial culture. The subjects received a random, double-blind treatment with either the test drug containing 1 percent yellow mercuric oxide, cod liver oil, zinc sulfate, and boric acid in a special ophthalmic base or with the ophthalmic base alone. The subjects were initially examined with a slit lamp biomicroscope, and their visual acuities were measured. They were also assessed for the clinical symptoms of lid or conjunctival inflammation, redness, and discomfort. The subjects were instructed to use the ointments three times daily and to maintain a daily record of their symptoms during the course of the study. Return visits were scheduled for the third and seventh days of treatment. Microbial cultures of the affected eyes were taken before starting treatment. After each of the scheduled visits, the subjects' clinical progress, tolerance of the medication, and the bacterial colony counts were assessed and tabulated. The results of the study were reported to

demonstrate that, at day three, the mean bacterial colony count of the treatment group decreased significantly when compared with the decrease of the mean bacterial colony count of the placebo group. The subjective improvement ratings made by the physician and the subject were consistently higher for the treatment group, but the differences were not statistically significant.

The agency determined that these studies were not designed to provide adequate information on the effectiveness of yellow mercuric oxide for relieving the symptoms associated with stye or blepharitis. The studies did not differentiate between subjects with stye or blepharitis. The agency considers stye and blepharitis as different disorders that should be analyzed separately to support the effectiveness of this ingredient.

In addition, the studies depended largely on the analysis of microbiological findings to support the effectiveness of yellow mercuric oxide. However, the agency does not consider microbiological parameters as adequate to use as the primary support of the effectiveness of an anti-infective agent; data demonstrating a corresponding improvement in key symptoms or in the condition of the subject are also needed. The principal basis for demonstrating effectiveness should be the percentage of subjects clinically cured. In the case of an OTC drug with a 7-day limit on use, degrees of improvement without cure are not sufficient evidence of effectiveness, because the subject must discontinue use at the end of the treatment period. Microbiological analyses are necessary to establish that the correct subject population was studied, but are secondary analyses.

Further, the agency questions the role of the two most frequently found microorganisms (*S. epidermidis* and other coagulase-negative staphylococci) in the occurrence of blepharitis and stye. Some of the articles submitted by the comment (Ref. 5) to support the role of *S. epidermidis* in blepharitis questioned the pathogenicity of the organism. Lowy and Hammer (Ref. 6) state that, ordinarily, *S. epidermidis* is an organism with low virulence, and that breaks in the host defense caused by surgery, catheter placement, prosthesis insertion, or immunosuppression are usually a prerequisite for infections. Dougherty and McCulley (Ref. 7) state that it is questionable whether coagulase-negative staphylococci such as *S. epidermidis* play a significant role in blepharitis. The authors added that the role is not obvious, because these species are isolated in such high frequency from all groups and normal persons. Dougherty and McCulley concluded that bacteria do not have a primary role in the pathogenesis of most chronic blepharitides.

The comment also cited: (1) An article by Valenton and Okumoto (Ref. 8) that shows that cell-free filtrates of *S. epidermidis* when injected subconjunctivally will cause an inflammatory response and (2) an article by Kahn, Hoover, and Ide (Ref. 9) that includes two case reports which implicate *S. epidermidis* as the cause of blepharitis in immunosuppressed subjects. The comment also noted the high incidence of *S. epidermidis* in postsurgical ophthalmitis and implied that because *S. epidermidis* can cause disease when the normal defense mechanisms are bypassed, it can also cause disease in an uncompromised host. Seal, Barrett, and McGill (Ref. 10) state that although both *S. aureus* and *S. epidermidis* were isolated from subjects with blepharitis, the significance of the *S. epidermidis* is doubtful because it was present at a higher percentage in the controls than in the subjects (50 percent isolated from controls versus 34 percent isolated from subjects). Additionally, in the Hyndiuk and Burd study (Refs. 1 and 2), several of the subjects in the placebo group were improved even though their colony counts increased. This is additional evidence against the hypothesis that *S. epidermidis* is a major cause of blepharitis. The agency concludes that *S. epidermidis*, the predominant organism cultured in the three clinical studies, has an uncertain role in the disease process associated with blepharitis or stye.

The agency also found methodological problems with these studies: (1) The way colony counts were evaluated in one study, (2) how "noncompliant" subjects and the statistical analysis used were evaluated in another study, and (3) the use of an inappropriate placebo and subject selection criteria in another study. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Ref. 11).

The comment subsequently provided additional information and data (Ref. 5) that included the following: (1) A statistical reanalysis separating the stye and blepharitis subjects in the three clinical studies, (2) subject record forms for the Kastl study (Refs. 1 and 2) from which clinical assessments were collected and used in the statistical reanalysis of these data, and a description of how the clinical signs of blepharitis were assessed in this study, (3) a description of the statistical analysis used in the Hyndiuk and Burd study (Refs. 1 and 2) and the lid culture methods used in this study, and (4) a discussion of the pathogenicity of *S. epidermidis* and the safety of yellow mercuric oxide for use on minor eyelid infections.

Although the comment's reanalysis of the Hyndiuk and Burd study (Ref. 5) demonstrated a statistically significant difference between yellow mercuric oxide and the placebo and the agency's analysis of the adjusted colony counts from day 3 and day 7 demonstrate a statistically significant difference between yellow mercuric oxide and the placebo, the agency's analysis of the adjusted clinical scores for day 3 and day 7 showed no statistically significant difference between yellow mercuric oxide and the placebo. As stated above, the agency does not consider microbiological parameters as adequate to use as the primary support of the effectiveness of an anti-infective agent; clinical data demonstrating a corresponding improvement in key symptoms or in the condition of the subject are also needed.

For the Kastl blepharitis study (Refs. 1, 2, and 5), the day 3 and day 7 adjusted colony counts from blepharitis subjects show no statistically significant difference between yellow mercuric oxide and the placebo. However, the day 3 and day 7 adjusted clinical scores from the blepharitis subjects demonstrate a statistically significant difference between yellow mercuric oxide and the placebo.

For the Yamamoto blepharitis study (Refs. 3, 4, and 5), the day 3 and day 7 unadjusted colony count data were analyzed by the investigator, who found no statistically significant difference between yellow mercuric oxide and the placebo. In the reanalysis of the data (Ref. 5), all the colony counts were changed from 600 to 9,000 without explanation, and the reanalysis of these revised day 3 and day 7 unadjusted colony counts shows a statistically significant difference between yellow mercuric oxide and the placebo. However, the agency's analysis of the day 3 and day 7 colony counts adjusted to the initial colony counts shows no statistically significant difference between yellow mercuric oxide and the placebo. The relevance of these differences between statistically significant clinical scores and colony counts is discussed above.

The agency summarized the blepharitis and stye subjects' microbiological and clinical data from the Kastl and Yamamoto studies (Refs. 1 through 4) according to how many treatments failed, how many subjects

improved, and how many subjects were cured. Analysis of the summarized data using a Wilcoxon Rank Sum test for the microbiological data and the Fisher's Exact test for the clinical data demonstrated that neither of these studies showed a statistically significant difference between yellow mercuric oxide and the placebo.

The submitted reanalysis of the combined stye subjects from the Yamamoto and Kastl studies (Ref. 5) demonstrated no statistically significant difference between treatment with yellow mercuric oxide and the placebo. No details were provided by the comment. The agency analyzed the stye results that were summarized according to failure, improvement, or cure and found that the Yamamoto study clearly shows that sties are as well treated by the placebo as the yellow mercuric oxide, each curing two of four subjects. Also, the Kastl study demonstrated that the placebo was significantly better than the yellow mercuric oxide for the treatment of sties. Yellow mercuric oxide had a failure rate of 21 percent, and the placebo failure rate was 0 percent ($p < .02$). There were no stye subjects in the Hyndiuk and Burd study.

Although none of the three clinical studies submitted shows a significant difference in the clinical cure rates, two of the three demonstrated a significant decrease in the number of *S. epidermidis* cultured from the affected eyelids. However, as discussed above, the clinical significance of this accomplishment is questionable. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Ref. 12).

The comment further reanalyzed the three clinical studies conducted by Hyndiuk and Burd, Kastl, and Yamamoto to substantiate the effectiveness of yellow mercuric oxide for the treatment of blepharitis (Ref. 13). The agency has evaluated the comment's reanalysis of the data and determined that it does not address basic design flaws in the studies as discussed below. Although the comment's proposed method of reanalysis, the modified Wilcoxon test, may be appropriate for the analysis of some specific portions of the data, the agency finds the reanalysis inadequate because the design of these studies is flawed for many reasons. The studies did not separately randomize for different ophthalmic disorders (i.e., stye and blepharitis in the Hyndiuk and Burd and the Kastl studies; stye, blepharitis, and conjunctivitis in Yamamoto's study).

Also, the agency considers it important that subjects selected for clinical studies of effectiveness reflect the population expected to use the drug product. In the three studies submitted by the comment, the inclusion criteria relied on subjects being selected on the basis of medical judgment and the results of laboratory testing. Subjects were excluded if they did not meet specifically identified initial microbial counts (110 colonies in the Hyndiuk and Burd study (Refs. 1 and 2), 50 colonies in the Kastl study (Refs. 1 and 2), and 20 colonies in the Yamamoto study (Refs. 3 and 4)). The microbiological testing criteria were not related to symptoms that can be described in the product's labeling and that a consumer could use to self-diagnose an eyelid condition that would be amenable to treatment with an OTC ophthalmic anti-infective drug product. The results of microbiological tests would not be available to consumers without additional medical advice. Therefore, the subjects in these studies do not correspond to the consumer population that would be expected to use the drug based on the product's OTC labeling.

The degree of blinding may have been incomplete. It is not clear that the placebo and test drugs were identical in appearance. Based on the appearance of samples of placebo used in the clinical studies that were submitted to the agency, an observer would have little difficulty in categorizing the placebo and test drug into two different groups and could easily identify the placebo by comparing the test drug against the currently marketed product.

The dosing of test drug in the Kastl and Yamamoto studies does not match the proposed directions for use. In both of these studies, subjects used the medication three times a day. The labeling of the marketed product directs consumers to apply the product two times a day.

The studies did not include eyelid scrubs as part of the required regimen for the subjects in the studies. As discussed in the reports of the Hyndiuk and Burd and Yamamoto studies, "staphylococcal blepharitis is a chronic condition with periods of exacerbation and remission. It is usually kept under control by a regimen of eyelid hygiene with application of an antibacterial ointment for episodes of exacerbation. Hygiene consists of cleansing the eyelid margins with diluted solution of a mild shampoo. Hot compresses and lid message are sometimes recommended as adjunct." It is the agency's view that a placebo ointment, prescribed in the absence of a regimen of eyelid hygiene, may be expected to adversely affect the condition. In this case, therefore, the placebo may have a negative effect and the active ingredient would be perceived to have a beneficial effect by comparison, even though there was no true beneficial effect. In addition, the studies did not include followup examinations after the subjects stopped the medication to check for "rebounds or exacerbations" of the infection.

The data sets upon which the analyses were performed are not properly and/or specifically identified. The inclusion and exclusion criteria used to determine the data sets in previous analyses are open to question. The agency disagrees with the data sets the comment used for analysis. The data set from the Hyndiuk and Burd study is in question for the following reasons: (1) The original report states that there were 59 subjects. The second revision of the report states that there were 58 subjects. (2) Subjects who stopped using the test product because of an adverse reaction should not have been excluded from the study results. Subjects 37, 38, and 56, each in the active treatment group, were excluded due to adverse reactions. These subjects should have been counted as treatment failures. (3) Subjects should not have been excluded due to noncompliance if the reason for noncompliance was an adverse reaction to the study medication. The subjects in this study who were excluded due to noncompliance reported reasons for noncompliance and, in most cases, these were adverse reactions. This included subjects in both the active group: 5 (burning after the first application), 19 (developed "red eyes" after the first application), 24 (omitted dose on each day because of blurred vision), 59 (ointment caused tearing and blurred vision); and in the placebo group: 17 (subject felt the product was not working) and 43 (omitted two doses because the subject did not want his vision to be blurred). (4) One of the subjects in the active group was listed as "lost to followup" but was known to have discontinued the medication due to an adverse reaction. Although it is true that subject 48 was hospitalized during the study period and did not return for the followup visit on day 7, the investigator was aware that the subject had stopped the test drug on day 4 because of severe burning. This subject should have been included as a treatment failure. (5) Subjects using corticosteroids (known to be effective in treating inflammation) should have been excluded from the analysis but were not (e.g., subject 13). (6) The 7-day followup did not always occur on day-7. Subject 11 had a pretreatment visit on March 29, 1982 and a day-7 visit on April 9, 1982,

which was 11 days afterward. Subject 57 had a pretreatment visit on November 16, 1982 and is recorded as having a day-7 followup on November 18, 1982, which was 2 days afterward. (7) The pretreatment visit date (March 8, 1982) and the culture date (March 9, 1982) do not match for subject 4. (8) Subject 45 was reported as a "no show" for the day-3 visit; however, the subject did report for a day-3 culture. (9) Subject 49 was entered into the study on September 21, 1982 as an 80-year-old white female and then re-entered on September 29, 1982 as an 80-year-old black female. (10) The study used multiple evaluators without identifying the evaluators. For example, as noted by the handwriting on the case report forms for subject 35, one individual evaluated the subject on days 1 and 3 and a second individual evaluated the subject on day 7. Only one evaluator is identified on the case report form. (11) The investigator did not identify how discrepancies between eyes would be handled and did not handle them consistently. Specific examples of such inconsistencies are on file in the Dockets Management Branch (address above) (Ref. 14).

The data set from the Kastl study is in question for the following reasons: (1) The copy of the case report form for subject 99 submitted to the agency on July 8, 1988 has a blank space for the eyelid examination on day 7. Another copy of the same case report form submitted June 26, 1984 has an evaluation recorded in this space. It is unclear why these case report forms are different. (2) The case evaluation forms are frequently not signed by the examining physician (e.g., subjects 90, 93, 95, 96, 97, 98, etc.). The investigator frequently did not sign the case report forms and, in multiple cases, the investigator's signature was signed by another individual (e.g., subjects 20, 22, 40, 46, 55, etc.). (3) Different evaluation scores have been written on top of previous evaluation scores so that it is not possible to tell which is the correct value. For example, the day-3 evaluation for subject 103 has a "1+" and a "2+" written on top of one another. Subject 104 has a "+" and a "0" written on top of one another. Subject 127 has a "1+" and a "0" written on top of one another. Subject 128 has a "1+" and a "2+" written on top of one another. (4) There were multiple evaluators involved using different evaluation systems. Some evaluations listed 0+, +, 2+ blepharitis; others listed 1+, 2+ scaling; while others listed just blepharitis. The comparability of these different evaluators is unclear. (5) The subject diary cards were inconsistently filled out. Although the diary cards had clear instructions, the instructions were rarely followed. (6) Colony counts were summed and recorded as the total number of colonies excluding diphtheroids. The appropriateness of combining all organisms except diphtheroids to produce a single number of colonies is questionable. It is unclear why diphtheroids were the only organisms disregarded. (7) Some subjects with low colony counts were discontinued at the day-3 visit, while others were permitted to complete the study. This inconsistency in discontinuing subjects is questionable, particularly because the investigator listed only 79 of the original 150 subjects as eligible for analysis.

The data set for the Yamamoto study is in question for the following reasons: (1) The colony counts are not always correctly recorded in the data set. For example, subject 76 had a day-3 culture with 55 colonies of staphylococcus and the data set lists 50 colonies. Also, subject 19 had a day-3 culture with 198 colonies of staphylococci and 3 colonies of streptococci. The data set lists 101 colonies. (2) It is not clear how the physician's evaluation score was completed. It appears that the evaluation was made by subtracting the day-7 score from the day-1 score. If this was the case, the evaluations for subjects 31, 41, and 42 are in error. (3) The culturing technique permitted cultures from both the conjunctiva and the eyelids. It is therefore difficult to determine the actual source of the organisms. (4) Colony counts were summed and recorded as the total number of colonies excluding diphtheroids. The appropriateness of combining all organisms except diphtheroids to produce a single number of colonies is questionable. It is unclear why diphtheroids were the only organisms disregarded. (5) The submitted copy of the case report forms was not of sufficient quality to read many of the evaluations.

The culture method used in this study was not sufficiently quantitative to permit reliance on numerical colony counts. An inflamed eyelid with a eyelid culture identified as "too numerous to count" bacteria is suggestive of blepharitis. If the inflammation in that eyelid is noted to resolve, and a followup eyelid culture fails to yield viable bacteria, then that eyelid would be "cured." In situations between these extremes, classifications of infection and cure may be questioned. The fact that each study identified a different lower limit of normal is indicative of variability and a lack of standard agreement.

As stated above, a causal role for *S. epidermidis* has not been resolved. The role of any other organisms in blepharitis has also not been established. There are multiple examples in these studies of subjects getting clinically worse when the colony count of *S. epidermidis* decreases, of subjects getting clinically worse when the colony count increases, of subjects getting clinically better when the colony count decreases, and of subjects getting clinically better when the colony count increases. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above)(Ref. 14).

The agency concludes that any additional re-analyses of these clinical studies should not be conducted. The design flaws are considered too substantial to consider these clinical studies as adequate and well-controlled.

References

(1) Comment No. LET003, Docket No. 80N–0145, Dockets Management Branch.

(2) Comment No. SUP002, Docket No. 80N–0145, Dockets Management Branch.

(3) Comment No. C01002, Docket No. 80N–0145, Dockets Management Branch.

(4) Comment No. SUP004, Docket No. 80N–0145, Dockets Management Branch.

(5) Comments No. C00001 and SUP001, Docket No. 80N–145A, Dockets Management Branch.

(6) Lowy, F. D., and S. M. Hammer, "*Staphylococcus epidermidis* Infections," *Annals of Internal Medicine*, 99:834–839, 1983.

(7) Dougherty, J. M., and J. P. McCulley, "Comparative Bacteriology of Chronic Blepharitis," *British Journal of Ophthalmology*, 68:524–528, 1984.

(8) Valenton, M. J., and M. Okumoto, "Toxin-Producing Strains of *Staphylococcus epidermidis* (*albus*)," *Archives of Ophthalmology*, 89:136–139, 1973.

(9) Khan, J. A., D. Hoover, and C. H. Ide, "Methicillin-Resistant *Staphylococcus epidermidis* Blepharitis," *American Journal of Ophthalmology*, 98:362–363, 1984.

(10) Seal, D. V., S. P. Barrett, and J. I. McGill, "Aetiology and Treatment of Acute Bacterial Infection of the External Eye," *British Journal of Ophthalmology*, 66:357–360, 1982.

(11) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Co., dated November 3, 1987, coded LET007, Docket No. 80N–0145, Dockets Management Branch.

(12) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Co., dated August 25, 1989, coded LET001, Docket No. 80N–0145A.

(13) Comment No. SUP003, Docket No. 80N–145A, Dockets Management Branch.

(14) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Co., dated February 22, 1991, coded LET006, Docket No. 80N–145A, Dockets Management Branch.

4. One comment presented the results of an in vitro study (Ref. 1) as a comparison of the efficacy of 1 percent yellow mercuric oxide ointment with that of several ophthalmic ointments commonly prescribed for eye infections.

The agency has reviewed the in vitro study and determined that it is inadequate to support the effectiveness of yellow mercuric oxide as an ophthalmic anti-infective. The ointments used in this study contained erythromycin, bacitracin, 10 percent sulfacetamide, and a combination of bacitracin, neomycin, and polymyxin. The efficacy of the products was determined by using a "zone of inhibition test" where antibacterial activity of the test drugs was determined by the diameter of the bacteria-free zone that each product created when placed on a culture plate streaked with *S. aureus*. The results of the in vitro effectiveness test indicated that the 1-percent yellow mercuric oxide ointment had an antimicrobial effect against the strains of *S. aureus* tested. However, the test was not adequately designed or standardized to make a valid comparison of the different active drug products used. Further, while the agency considers the results of the in vitro study as a useful indicator of activity, the results cannot be directly related to the relief of the symptoms of minor eyelid infection. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Ref. 2).

References

(1) Comment No. SUP003, Docket No. 80N–0145, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Co., dated November 3, 1987, coded LET007, Docket No. 80N–0145, Dockets Management Branch.

5. One comment submitted the results of two 21-day rabbit eye safety studies (Ref. 1) to support the safety of the use of yellow mercuric oxide as an ophthalmic anti-infective.

In the first study, six new Zealand white rabbits had 0.1 milliliter (mL) per day of the test ointment administered in the lower eyelid of one eye, while two rabbits, as negative controls, received no treatment. The data included a table of initial and weekly bodyweights of the test animals and the amount of mercury in the blood of the animals at the time of sacrifice. The agency finds this study inadequate because it did not include eye irritation scores and thus does not support the safety of yellow mercuric oxide.

In the second study, 30 New Zealand white rabbits were separated into groups of 10. Group I received 0.1 mL of the 1-percent yellow mercuric oxide ointment once daily; Group II received 0.1 mL of the 1-percent yellow mercuric oxide ointment twice daily; and Group III, the control group, received 0.1 mL physiological saline twice daily. The data consisted of daily ocular irritation scores, weekly bodyweights, and the initial and terminal determination of "urinalytical," hematological, and blood chemistry values for the 30 rabbits. The agency finds this study was properly designed and the data indicate that yellow mercuric oxide does not cause serious ocular damage.

However, the agency has also reviewed statements made by the Panel and the submitted clinical data (Refs. 2 through 5) and determined that the available human safety data are inadequate to support the safety of yellow mercuric oxide. The Panel concluded that there was insufficient evidence to determine the safety of this ingredient because of the sensitizing properties of mercuric salts (45 FR 30002 at 30031). Included in the Panel's review were a report of irritation (in the literature) and a practicing ophthalmologist's report of serious problems resulting from the use of yellow mercuric oxide ointment. Data from the submitted clinical studies suggest that a number of subjects may have developed adverse effects from yellow mercuric oxide. Among the compliant subjects in the Kastl study (Refs. 2 and 3), more subjects in the active drug group (53 percent) reported side effects, such as itching, burning, tearing, redness, or gritty feeling, than did subjects in the placebo group (31 percent). In the Hyndiuk and Burd study (Refs. 2 and 3), 10 percent of the subjects using active medication (3 of 30) dropped out of the study because of side effects to the medication (at least two side effects were considered to be allergic reactions). None of the 29 subjects using the placebo dropped out of this study because of a side effect. However, approximately the same number of subjects using the active medication as those using the placebo reported side effects in the study (10 and 9, respectively). No data on adverse reactions were provided in the Yamamoto study (Refs. 4 and 5). It is difficult to draw any firm conclusions from these data, but they suggest that the incidence of side effects resulting from the use of 1 percent yellow mercuric oxide ointment may not be insignificant. Because the submitted data were not sufficient to draw any firm conclusions, it is necessary to submit additional human safety data.

References

(1) Comment No. SUP003, Docket No. 80N–145A, Dockets Management Branch.

(2) Comment No. LET003, Docket No. 80N–0145, Dockets Management Branch.

(3) Comment No. SUP002, Docket No. 80N–0145, Dockets Management Branch.

(4) Comment No. C01002, Docket No. 80N–0145, Dockets Management Branch.

(5) Comment No. SUP004, Docket No. 80N–0145, Dockets Management Branch.

III. The Agency's Final Conclusions on OTC Ophthalmic Anti-Infective Drug Products

The agency has determined that no ophthalmic anti-infective active ingredient has been found to be generally recognized as safe and effective and not misbranded for any use in OTC ophthalmic drug products. The agency reiterates its position that no medication should be used in or near the eye unless it has been shown to be safe and effective for its intended use. The agency concludes: (1) Not all minor eyelid conditions are caused by bacteria, (2) the comments have not provided data to demonstrate that the consumer can differentiate between bacterial and nonbacterial conditions, (3) treatment with an anti-infective ointment would not be expected to hasten the resolution of a stye, and (4) data are inadequate to demonstrate that yellow mercuric oxide is safe and effective for the treatment of styes or blepharitis. Therefore, based on available data, the agency has determined that yellow mercuric oxide is not an appropriate anti-infective ingredient for the OTC treatment of minor eyelid infections. The agency is not including yellow mercuric oxide, or any other anti-infective ingredient, in the monograph for OTC ophthalmic drug products.

Therefore, any ingredient that is labeled, represented, or promoted for OTC use as an ophthalmic anti-infective is considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and is a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)), for which an approved application or abbreviated application under section 505 of the act (21 U.S.C 355) and part 314 of the regulations (21 CFR part 314) is required for marketing. In appropriate circumstances, a citizen petition to amend the monograph (21 CFR part 349) may be submitted in support of ingredients for use as ophthalmic anti-infectives under 21 CFR 10.30 in lieu of an application. Any OTC drug product containing yellow mercuric oxide or any other ingredient for use as an ophthalmic anti-infective active

ingredient initially introduced or initially delivered for introduction into interstate commerce or repackaged or relabeled after the effective date of this final rule is not in compliance with the regulation and is subject to regulatory action.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC ophthalmic anti-infective drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC ophthalmic anti-infective drug products is not expected to pose such an impact on small businesses. This final rule only affects the status of OTC ophthalmic anti-infective drug products. There are a limited number of OTC ophthalmic drug products that contain anti-infective ingredients. The Panel reviewed a limited number of OTC ophthalmic drug products that contained the anti-infective ingredients boric acid, mild silver protein, or yellow mercuric oxide. The agency checked a number of sources and found only one manufacturer of an OTC mild silver protein ophthalmic drug product and one manufacturer of an OTC yellow mercuric oxide ophthalmic drug product. The agency has also checked with a number of manufacturers and been informed that they no longer market ophthalmic drug products containing boric acid or yellow mercuric oxide (Ref. 1). Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Reference

(1) Memoranda of telephone conversations between K. Freeman, FDA, and various drug company representatives, in OTC Vol. 101FM, Docket No. 80N–145A, Dockets Management Branch.

In its final conclusions on OTC ophthalmic drug products (53 FR 7076 at 7089), the agency listed the ophthalmic ingredients that it considered to be monograph and stated that, with the exception of anti-infective drug products, all other ophthalmic active ingredients are considered nonmonograph ingredients. At that time, none of these nonmonograph ingredients was listed in a regulation. Since then, the agency has established 21 CFR 310.545 in which it listed certain active ingredients that are not generally recognized as safe and effective for certain OTC drug uses. The agency is adding § 310.545(a)(21), covering the nonmonograph ophthalmic active ingredients considered as part of the rulemaking for OTC ophthalmic drug products. These ingredients were listed in a summary of ingredient categories in the tentative final monograph (48 FR 29788 at 29796). The date of nonmonograph status for all of the ingredients in the list in § 310.545(a)(21), except ophthalmic anti-infective ingredients, was March 6, 1989. The date of nonmonograph status of yellow mercuric oxide and other ophthalmic anti-infective active ingredients is June 18, 1993.

Therefore, the agency is amending 21 CFR 310.545 by adding new paragraph (a)(21), by revising the introductory text of paragraph (d), and by adding new paragraphs (d)(7) and (d)(8) to establish that yellow mercuric oxide and certain other active ingredients are not generally recognized as safe and effective or are misbranded for OTC use as an ophthalmic anti-infective.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(21), by revising the introductory text of paragraph (d), and by adding new paragraphs (d)(7) and (d)(8), to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(21) *Ophthalmic drug products.*

(i) *Ophthalmic anesthetic drug products.*

Antipyrine

Piperocaine hydrochloride

(ii) *Ophthalmic anti-infective drug products.*

Boric acid

Mild silver protein

Yellow mercuric oxide

(iii) *Ophthalmic astringent drug products.*

Infusion of rose petals

(iv) *Ophthalmic demulcent drug products.*

Polyethylene glycol 6000

(v) *Ophthalmic vasoconstrictor drug products.*

Phenylephrine hydrochloride (less than 0.08 percent)

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(8) of this section.

* * * * *

(7) March 6, 1989, for products subject to paragraph (a)(21) of this section, except those that contain ophthalmic anti-infective ingredients listed in paragraph (a)(21)(ii).

(8) June 18, 1993, for products subject to paragraph (a)(21)(ii) of this section that contain ophthalmic anti-infective active ingredients.

Dated: September 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–30677 Filed 12–17–92; 8:45 am]

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Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

External Analgesic Drug Products for Over-the-Counter Human Use; Diaper Rash Labeling Claims; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 78N-301D]

RIN 0905-AA06

External Analgesic Drug Products for Over-the-Counter Human Use; Diaper Rash Labeling Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) external analgesic drug product for use in the treatment and/or prevention of diaper rash is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's notice of proposed rulemaking, and all new data and information on external analgesic drug products for use in the treatment and/or prevention of diaper rash that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 39412), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking and reopened the administrative record for the rulemaking for OTC external analgesic drug products, to allow for consideration of a statement on OTC drug products for the treatment of diaper rash prepared by the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients used for the treatment of diaper rash. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In the **Federal Register** of December 28, 1982 (47 FR 57738), in response to a request for an extension of time, the comment period and reply comment period for OTC external analgesic drug products were extended to February 4, 1983, and to March 7, 1983, respectively.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's notice of proposed rulemaking for OTC external analgesic drug products for the treatment and/or prevention of diaper rash was published in the **Federal Register** of June 20, 1990 (55 FR 25234). Interested persons were invited to file by December 17, 1990, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by December 17, 1990. New data could have been submitted until June 20, 1991 and comments on the new data until August 20, 1991. Final agency action occurs with the publication of this final rule on OTC external analgesic drug products for the treatment and/or prevention of diaper rash.

In response to the notice of proposed rulemaking for OTC external analgesic drug products for the treatment and/or prevention of diaper rash, one manufacturer submitted two comments. Neither comment discussed active ingredients or labeling claims that would be pertinent to external analgesic diaper rash drug products. Both comments were also submitted to the three other rulemakings that include OTC diaper rash ingredients: OTC topical antifungal, topical antimicrobial, and skin protectant drug products. The comments addressed skin protectant active ingredients and labeling claims and will be discussed in the final monograph for OTC skin protectant drug products for the treatment and/or prevention of diaper rash. Copies of the comments received are on public display in the Dockets Management Branch (address above).

In the notice of proposed rulemaking for OTC external analgesic drug products, published in the **Federal Register** of February 8, 1983 (48 FR 5852 at 5868 and 5869), the agency stated that drug products containing external analgesic active ingredients, which are intended for the relief of pain and/or itching or for the relief of minor aches and pains, should not be used on children under 2 years of age except as recommended by a physician. The agency discussed the possibility of cutaneous absorption due to occlusion of the skin, as from a diaper, and mentioned that analgesic drugs can be corrosive to infants' skin under occlusion (48 FR 5864). The agency added that children at the age of 2 years are just beginning to learn to communicate verbally in expressing their symptoms to a parent, whereas children below the age of 2 years (a major portion of the target population for diaper rash drug products) are more passive and less able to express and localize symptoms to a parent.

The agency reiterated these views in the notice of proposed rulemaking for OTC external analgesic drug products for the treatment and/or prevention of diaper rash and concluded that external analgesic active ingredients should not be present in OTC diaper rash drug products (55 FR 25234 at 25236 and 25237). No comments were submitted in opposition to the agency's proposal.

In the **Federal Register** of August 25, 1992 (57 FR 38568 at 38573), the agency published a notice of proposed rulemaking stating that certain ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. The ingredients listed in this proposal included any external analgesic ingredients labeled with claims or directions for use in the treatment and/or prevention of diaper rash. No comments were received on this diaper rash portion of the proposal.

Based on the above, the agency concludes that no OTC external analgesic drug product labeled for the treatment and/or prevention of diaper rash is generally recognized as safe and effective. Accordingly, the agency is declaring that OTC drug products labeled for use in the treatment and/or prevention of diaper rash should not be formulated to contain any external analgesic active ingredients.

The agency emphasizes that this final rule for OTC external analgesic drug products, as it relates to OTC diaper rash drug products, does not apply to: (1) Active ingredients included in the external analgesic final monograph, to be published in a future issue of the **Federal Register**, that are Category I antipruritics for claims other than diaper rash; and (2) active ingredients included in both the external analgesic and skin protectant rulemakings where the ingredient is a Category I skin protectant making allowable diaper rash skin protectant claims, e.g., sodium bicarbonate.

Any OTC external analgesic drug product bearing any claims or directions

for use of the product for the treatment and/or prevention of diaper rash may not continue to be initially introduced or delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application (hereinafter called application). The agency is amending 21 CFR part 310 by adding to subpart E, new § 310.545(a)(10)(iv) (21 CFR 310.545(a)(10)(iv)) to include any external analgesic drug products labeled for use in the treatment and/or prevention of diaper rash. Any claims or directions for using an OTC external analgesic drug product in the treatment and/or prevention of diaper rash should be eliminated from OTC drug products by June 18, 1993, regardless of whether further testing is undertaken to justify future use. Thereafter, any OTC drug product containing any external analgesic active ingredient and labeled or intended for use in the treatment and/or prevention of diaper rash will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. Therefore, on or after June 18, 1993, no OTC drug product containing any external analgesic active ingredient labeled or intended for use in the treatment and/or prevention of diaper rash may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing any active ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency points out that publication of this final rule does not preclude a manufacturer's testing an external analgesic ingredient for diaper rash uses. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness for these uses such data may be submitted in an appropriate citizen petition to amend the final monograph for OTC external analgesic drug products. (See 21 CFR 10.30.) However, marketing of products containing external analgesic active ingredients and bearing diaper rash claims or directions for use may not begin or continue while the data are being evaluated by the agency.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 25234 at 25237). The agency concludes that there is no basis for the continued marketing of any OTC external analgesic drug products with claims or directions for use in the treatment and/or prevention of diaper rash. As a result of this final rule, manufacturers will need to relabel some external analgesic drug products to delete these claims and/or directions for use prior to promulgation of the final monograph for OTC external analgesic drug products and/or reformulate and relabel some OTC skin protectant drug products prior to promulgation of the final monograph for OTC skin protectant drug products for the treatment and/or prevention of diaper rash, where such products contain both an external analgesic and a skin protectant active ingredient. The final rule for OTC skin protectant drug products for the treatment and/or prevention of diaper rash will be published in a future issue of the **Federal Register**.

Early finalization of the nonmonograph status of external analgesic active ingredients having diaper rash claims will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of product claims for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers of diaper rash drug products will benefit from being able to continue to market products containing other ingredients that have been proposed by the agency as being generally recognized as safe and effective, without manufacturers incurring additional expense of clinical testing to support these claims. (See proposed § 347.10, 48 FR 6820 at 6832 (February 15, 1983), and § 347.10, 55 FR 25204 at 25232.) In addition, external analgesic active ingredients will remain available for other claims that have been proposed by the agency as being generally recognized as safe and effective, without manufacturers incurring additional expense of clinical testing to support these claims. (See proposed § 348.50(b), 48 FR 5852 at 5868.) As noted above, some product reformulation and/or relabeling may be needed. The agency is aware of a limited number of diaper rash drug products that contain external analgesic active ingredients. Based on the above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(10)(iv), by revising the introductory text of paragraph (d), and by adding new paragraph (d)(9), to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(10) * * *

(iv) *Diaper rash drug products.*

Any ingredient(s) labeled with claims or directions for use in the treatment and/or prevention of diaper rash.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(9) of this section.

* * * * *

(9) June 18, 1993, for products subject to paragraph (a)(10)(iv) of this section.

Dated: October 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-30671 Filed 12-17-92; 8:45 am]

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December 18, 1992

Part IX

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Topical Antifungal Drug Products for Over-the-Counter Human Use; Diaper Rash Labeling Claims; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-476D]

RIN 0905-AA06

Topical Antifungal Drug Products for Over-the-Counter Human Use; Diaper Rash Labeling Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) topical antifungal drug product for use in the treatment and/or prevention of diaper rash is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's notice of proposed rulemaking, and all new data and information on topical antifungal drug products for use in the treatment and/or prevention of diaper rash that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 39464), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking and reopened the administrative record for the rulemaking for OTC topical antifungal drug products, to allow for consideration of a statement on OTC drug products for the treatment of diaper rash prepared by the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients used for the treatment of diaper rash. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In the **Federal Register** of December 28, 1982 (47 FR 57738), in response to a request for an extension of time, the comment period and reply comment period for OTC topical antifungal drug products were extended to February 4, 1983, and to March 7, 1983, respectively.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's notice of proposed rulemaking for OTC topical antifungal drug products for the treatment and/or prevention of diaper rash was published in the **Federal Register** of June 20, 1990 (55 FR 25240). Interested persons were invited to file by December 17, 1990, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by December 17, 1990. New data could have been submitted until June 20, 1991 and comments on the new data until August 20, 1991. Final agency action occurs with the publication of this final rule on OTC topical antifungal drug products for the treatment and/or prevention of diaper rash.

In response to the notice of proposed rulemaking for OTC topical antifungal drug products for the treatment and/or prevention of diaper rash, two manufacturers and one manufacturers' association submitted comments. Only one comment discussed active ingredients or labeling claims that would be pertinent to antifungal diaper rash drug products; however, that comment was subsequently withdrawn. The other two comments were also submitted to the three other rulemakings that include OTC diaper rash ingredients: OTC external analgesic, topical antimicrobial, and skin protectant drug products. The comments addressed skin protectant active ingredients and labeling claims and will be discussed in the final monograph for OTC skin protectant drug products for the treatment and/or prevention of diaper rash. Copies of the comments received are on public display in the Dockets Management Branch (address above).

In the notice of proposed rulemaking for OTC topical antifungal drug products for the treatment and/or prevention of diaper rash, the agency stated that topical antifungal active ingredients should not be included in OTC diaper rash drug products because a fungus infection associated with diaper rash in infants and young children (the target population for these products) would not be amenable to proper diagnosis and treatment without the aid of a physician (55 FR 25240 at 25241). No comments were received in opposition to the agency's proposal.

In the **Federal Register** of August 25, 1992 (57 FR 38568 at 38574), the agency published a notice of proposed rulemaking stating that certain ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. The ingredients listed in this proposal included any topical antifungal ingredients labeled with claims or directions for use in the treatment and/or prevention of diaper rash. No comments were received on this diaper rash portion of the proposal.

Based on the above, the agency concludes that no OTC topical antifungal drug product labeled for the treatment and/or prevention of diaper rash is generally recognized as safe and effective. Accordingly, the agency is declaring that OTC drug products labeled for the treatment and/or prevention of diaper rash should not be formulated to contain any topical antifungal active ingredients.

The agency emphasizes that this final rule for topical antifungal drug products, as it relates to OTC diaper rash drug products, does not apply to active ingredients included in the topical antifungal final monograph, to be published in a future issue of the **Federal Register**, that are Category I for claims other than diaper rash.

Any OTC topical antifungal drug product bearing any claims or directions for use of the product for the treatment and/or prevention of diaper rash may not continue to be initially introduced or delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application (hereinafter called application). The agency is amending 21 CFR part 310 by adding to subpart E, § 310.545(a)(22) (21 CFR 310.545(a)(22)) to include any topical antifungal drug products labeled for use in the treatment and/or prevention of diaper rash. Any claims or directions for using an OTC topical antifungal drug product in the treatment and/or prevention of diaper rash should be eliminated from OTC drug products by June 18, 1993, regardless of whether further testing is undertaken to justify future use. Thereafter, any OTC drug product containing any topical antifungal active ingredient and labeled or intended for use in the treatment and/or prevention of diaper rash will be considered nonmonograph and

misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. Therefore, on or after June 18, 1993, no OTC drug product containing any topical antifungal active ingredient labeled or intended for use in the treatment and/or prevention of diaper rash may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing any active ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency points out that publication of this final rule does not preclude a manufacturer's testing a topical antifungal ingredient for diaper rash uses. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness for these uses such data may be submitted in an appropriate citizen petition to amend the final monograph for OTC topical antifungal drug products. (See 21 CFR 10.30.) However, marketing of products containing topical antifungal active ingredients and bearing diaper rash claims or directions for use may not begin or continue while the data are being evaluated by the agency.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 25240 at 25244). The agency concludes that there is no basis for the continued marketing of any OTC topical antifungal drug products with claims or directions for use in the treatment and/or prevention of diaper rash. As a result of this final rule, manufacturers will need to relabel some topical antifungal drug products to delete these claims and/or directions for use prior to promulgation of the final monograph for OTC topical antifungal drug products and/or reformulate and relabel some OTC skin protectant drug products prior to promulgation of the final monograph for OTC skin protectant drug products for the treatment and/or prevention of diaper rash, where such products contain both a topical antifungal and a skin protectant active ingredient. The final rule for OTC skin protectant drug products for the treatment and/or prevention of diaper rash will be published in a future issue of the **Federal Register**.

Early finalization of the nonmonograph status of topical antifungal active ingredients having diaper rash claims will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of product claims for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers of diaper rash drug products will benefit from being able to continue to market products containing other ingredients that have been proposed by the agency as being generally recognized as safe and effective, without manufacturers incurring additional expense of clinical testing to support these claims. (See proposed § 347.10, 48 FR 6820 at 6832, February 15, 1983; and § 347.10, 55 FR 25204 at 25232, June 20, 1990.) In addition, topical antifungal active ingredients will remain available for other claims that have been proposed by the agency as being generally recognized as safe and effective, without manufacturers incurring additional expense of clinical testing to support these claims. (See proposed § 333.210; 54 FR 51136 at 51161, December 12, 1989.) As noted above, some product reformulation and/or relabeling may be needed. The agency is aware of only a few diaper rash drug products that contain an antifungal ingredient. Based on the above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(22), by revising the introductory text of paragraph (d), and by adding new paragraph (d)(10), to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(22) *Topical antifungal drug products.* (i) *Diaper rash drug products.* Any ingredient(s) labeled with claims or directions for use in the treatment and/or prevention of diaper rash.

(ii) [Reserved]

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(10) of this section.

* * * * *

(10) June 18, 1993, for products subject to paragraph (a)(22)(i) of this section.

Dated: October 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–30670 Filed 12–17–92; 8:45 am]

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December 18, 1992

Part X

Department of Health and Human Services

Office of the Secretary

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Program Announcement 13655.911]

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), OS.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act, Title VI, Grants for Native Americans, Part A—Indian Program.

SUMMARY: The Administration on Aging will accept applications for funding in Fiscal Year 1993 under the Older Americans Act, title VI, Grants for Native Americans, part A—Indian Program, from all current title VI, part A grantees, current grantees who wish to leave a consortium and apply as a new grantee, and eligible federally recognized Indian tribal organizations that are not now participating in title VI. Successful applications from new grantees will be funded if funds permit.

DATES: February 16, 1993.

ADDRESSES: See Appendix A.

FOR FURTHER INFORMATION CONTACT: M. Yvonne Jackson, Ph.D., Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, room 4752, 330 Independence Avenue, SW., Washington, DC 20201, telephone (202) 619–2957.

SUPPLEMENTARY INFORMATION:

1. Background and Program Purpose

The Administration on Aging (AoA) is responsible for administering title VI, part A of the Older Americans Act, which provides for grants to Indian tribal organizations representing federally recognized Tribes for the provision of nutritional and supportive services to Indian elders.

The 1978 Amendments to the Older Americans Act created title VI, Grants for Indian Tribal Organizations. The purpose of this title is to promote the delivery of supportive and nutritional services for Indian elders that are comparable to services provided under title III of the Older Americans Act. (Title III of the Older Americans Act, entitled "Grants for State and Community Programs on Aging" is the nationwide program of supportive and nutritional services which serves persons over age 60 of all ethnic groups.)

In the Older Americans Act Amendments of 1987, the name of title VI was changed to Grants for Native Americans, and part B—Native Hawaiian Programs—was added.

Nutritional services and information and referral services are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and referral, transportion, chore services, and other supportive services which contribute to the welfare of older Native Americans.

2. Eligibility of an Indian Tribal Organization or Indian Tribe to Receive a Grant

To be eligible to receive a grant, a tribal organization or Indian tribe must meet the application requirements contained in sections 612(a) and 612(b) of the Act, which are: "(1) The tribal organization represents at least 50 individuals who are 60 years of age or older; and (2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services." For purposes of title VI, part A, the terms "Indian tribe" and "tribal organization" have the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

This announcement concerns all federally recognized Indian tribal organizations, those currently participating in title VI, part A individually or as members of a consortium and those that are not currently participating in title VI, part A.

3. Available Funds

Available funds will be awarded to tribal organizations applying under this announcement based on a formula which considers the number of eligible applicant tribal organizations, and the number of elders over age 60 in each tribal organization's proposed title VI service area. The amounts awarded include funds for both direct and indirect costs. Therefore, since funds are limited by a Tribe's annual allotment, Tribal grantees must carefully plan their programs and consider all costs. No additional funds will be available.

Applications from current grantees who are a part of a consortium and wish to leave the consortium will be treated as new grant applications. Successful new grant applications for both current grantees who are leaving a consortium and tribal organizations who are not current grantees will be funded pending availability of additional funds.

Information on grant levels in Fiscal Year 1991 is given below as a guide to possible funding levels for Tribes representing the following documented numbers of Indian elders over age 60:

Population range (number of older Indians age 60 years and over, represented by the tribal organization)	Amounts of awards in FY 1991
50 to 100	$45,682
101 to 200	53,693
201 to 300	62,115
301 to 400	70,537
401 to 500	78,959
501 +	87,381

4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Indians for project period April 1, 1993–March 31, 1996, as described in section 5 below, "Content of the Application."

A three year project period was chosen in order to reduce the paperwork burden on the grantees. It is the intent of this agency to conduct on site monitoring at least once during the three year project period.

The Program Performance and Financial Status reports, due on a semi-annual basis, will be reviewed for compliance with the program regulations. Failure to submit the required reports during the project period may result in loss of future funds and possibly termination of the grant within the project period.

Ninety days prior to the end of each budget period within the three year project period grantees will be notified of the funding level for the subsequent year by the Regional Office.

One original signed by the principal official of the Tribe and two copies of the application including all attachments, must be submitted to the Administration on Aging, Grants Management Division, Margaret Tolson, Director, 330 Independence Avenue, SW., Washington, DC 20201.

5. Content of the Application

The application must meet the criteria in sections 614(a) and (b) of the Act, and title 45 of the Code of Federal Regulations, § 1326.19. The application may be presented in any format selected by the tribal organization. Contact the AoA Regional Office in your geographic area if you have questions concerning the content of the application. The application must include the following information.

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which

are related to the needs of the service population.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) Nutrition. Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the estimated number of persons to be served. The nutrition services provided, either directly or by way of a grant or contract, must be substantially in compliance with the provisions of part C, title III, which include:

1. Provide at least one hot or other appropriate meal a day, 5 or more days a week in a congregate setting, and any additional meals which the recipient of a grant may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.

2. Provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal per day, 5 or more days a week, and any additional meals which the recipient of a grant may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.

If no title VI, part A funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) Information and Referral. Information and referral services are required. They must be available for older Indians living in the title VI part A service area and there should be a description of what information and referral services will be provided and how they will be provided. The estimated number of individuals to be served should be stated. If no title VI, part A funds are to be used for information and referral services, the application must state how such services are provided in other ways, and how they are financed.

(c) Other Supportive Services. The application must describe any other supportive services to be provided wholly or partly by title VI, part A funds. The description should include what supportive services will be provided and how they will be provided. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be reported as "Supportive Services."

If a tribal organization elects to provide legal services, it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is to be considered as a "Supportive Service."

(d) Coordination with title III. The application should provide a description of how title VI and title III resources are to be coordinated within the title VI service area, including information and referral services.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, based on the objective indicated in Item A above. It will also explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in Item B above are being achieved.

D. Geographic Location

The application must include both a narrative description of the title VI, part A service area, and a map with the service area identified. The area to be served by title VI, part A must have clear geographic boundaries. There is no prohibition, however, on its overlapping with areas served by title III.

E. Additional Information

(1) Older Indians in the Title VI, Part A Service Area

The law requires that a tribal organization must represent at least 50 persons aged 60 years or over in order to be eligible for title VI funding. Therefore, the number of persons aged 60 or over living in the proposed title VI service area must be stated in the application. The tribal organization may develop its own population statistics, with certification from the Bureau of Indian Affairs, in order to establish eligibility. The amount of the grant is based on this number of persons aged 60 years or over.

As a separate matter, the regulations allow a Tribe to define, based on its own criteria, who the Tribe will consider to be an "older Indian" for purposes of eligibility to receive title VI services. If a Tribe selects a different definition of "older Indian" for service delivery, the application must state the age selected, and the number of Indians under age 60 eligible to be served. If more than one Tribe is included in the application, this information must be stated separately for each Tribe. All Tribes in a consortium must use the same age for "older Indian."

(2) Resolution

The tribal organization representing a federally recognized Tribe must submit a copy of the Tribal council resolution authorizing participation in title VI, part A. If the tribal organization represents a consortium of more than one Tribe, a resolution is required from each participating Tribe, specifically authorizing representation by the trial organization for the purpose of title VI, part A of the Older Americans Act.

(3) Program Assurances

Title VI, part A Program Assurances must be included in the application. The title VI, part A Program Assurances are those provisions identified in section 614(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations § 1326.19(d), issued August 31, 1988 (see Appendix B). The tribal organization must state that it agrees to abide by all the provisions for the entire project period being applied for April 1, 1993–March 31, 1996.

Copies of the title III and title VI current law and regulations, and of part 92, may be obtained from the Regional Program Director for the Administration on Aging. (See appendix A)

(4) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(5) Identifying Information

Applications must identify both the principal official of the tribal organization, and the proposed title VI program director: Name, Title, Address including Zip Code, Telephone number, and, if available, the FAX Number. The tribal organization's EIN (Employer Identification Number) must also be included.

If the applicant tribal organization is a consortium, the applicant must list the federally recognized tribes which are included. A copy of each tribal resolution must be enclosed.

6. Closi0g Date for Application

To be eligible for consideration, applications must be received or postmarked on or before February 18, 1993. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

7. Action on Applications

Awards will be made by the Commissioner on Aging. Funding decisions will be announced as soon as possible.

Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.

Dated: December 11, 1992.

Joyce T. Berry,

U.S. Commissioner on Aging.

Appendix A

Regional Offices

Region 1 (CT, MA, ME, NH, RI, VT)
Thomas Hooker, RPD, John F. Kennedy Building, room 2075, Boston, Massachusetts 02203, (617) 565–1158, FAX (617) 565–1111

Region II (NY, NJ, PR, VI)
Judith Rackmill, RPD, 26 Federal Plaza, room 38–102, New York, New York 10278, (212) 264–2976, FAX (212) 264–0114

Region III (DC, MD, VA, DE, PA, WV)
Paul E. Ertel, Jr., RPD, 3535 Market Street, P.O. Box 13716-Stop 23, Philadelphia, Pennsylvania 19101, (215) 596–6891, FAX (215) 596–0614

Region IV (AL, FL, MS, SC, TN, NC, KY, GA)
Frank Nicholson, RPD, 101 Marietta Tower, suite 903, Atlanta, Georgia 30323, (404) 331–5900, FAX (404) 331–2017

Region V (IL, IN, MI, MN, OH, WI)
Eli Lipschultz, RPD, 105 West Adams Street, 20th Floor, Chicago, Illinois 60603, (312) 353–3141, FAX (312) 886–8533

Region VI (AR, LA, OK, NM, TX)
John Diaz, RPD, 1200 Main Tower Building, room 1000, Dallas, Texas 75202, (214) 767–2971, FAX (214) 767–2951

Region VII (IA, KS, MO, NE)
Larry Brewster, RPD, 601 East 12th Street, room 384, Kansas City, Missouri 64106, (816) 426–2955, FAX (816) 426–2959

Region VIII (CO, MT, UT, WY, ND, SD)
Percy Devine, RPD, 1961 Stout Street, room 325, Federal Office Building, Denver, Colorado 80294, (303) 844–2951, FAX (303) 844–2943

Region IX (CA, NV, AZ, HI, GU, TTPI, CNMI, AS)
Alicia Valadez Ors, RPD, 50 United Nations Plaza, room 480, San Francisco, California 94102, (415) 556–6003, FAX (415) 556–7393

Region X (AK, ID, OR, WA)
Chisato Kawabori, RPD, Blanchard Plaza, RX–33; room 1200, 2201 Sixth Avenue, Seattle, Washington 98121, (206) 553–5341; FAX (206) 553–6790

Appendix B

Older Americans Act—Section 614(a)—No grant may be made under this part unless the eligible tribal organization submits an application to the Commissioner which meets such criteria as the Commissioner may by regulation prescribe. Each such application shall—

(1) Provide that the eligible tribal organization will evaluate the need for supportive and nutrition services among older Indians to be represented by the tribal organizations;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide that the tribal organization will make such reports in such form and containing such information, as the Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports;

(4) Provide for periodic evaluation of activities and projects carried out under the application;

(5) Establish objectives consistent with the purposes of this part toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) Provide for establishing and maintaining information and referral services to assure that older Indians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(7) Provide a preference for Indians aged 60 and older for full or part-time staff positions whenever feasible;

(8) Provide assistance that either directly or by way of grant or contact with appropriate entities nutrition services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of title III, except that in any case in which the need for nutritional services for older Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this clause for supportive services;

(9) Contain assurance that the provision of sections 307(a)(14)(A) (i) and (iii), 307(a)(14)(B), and 307(a)(14)(C) will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) Provide that any legal or ombudsman services made available to older Indians represented by the tribal organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(11) Provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

45 CFR 1326.19. The application shall provide for:

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through § 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

BILLING CODE 4130-01-M

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICE
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 US^C 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any

judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll' or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited n the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and,(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation or a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, of every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect

to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (Use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check___if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human services, the, central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature_____Date_____

Title_____

Organization_____

DGMO Form #2 Revised May 1990

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction: If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services" (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and

in all solicitations for lower tier covered actions.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSIONS - LOWER TIER COVERED TRANSACTIONS (To Be Supplied to lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions - Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Signature _____ Date _____
Title _____
Organization _____

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001.

[FR Doc. 92-30694 Filed 12-17-92; 8:45 am]
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federal register

Friday
December 18, 1992

Part XI

Environmental Protection Agency

40 CFR Part 122

National Pollutant Discharge Elimination System; Storm Water Discharges; Permit Issuance and Permit Compliance Deadlines for Phase I Discharges; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL-4546-8]

National Pollutant Discharge Elimination System; Storm Water Discharges; Permit Issuance and Permit Compliance Deadlines for Phase I Storm Water Discharges

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule which specifies deadlines for the issuance of NPDES permits for storm water discharges associated with industrial activity and discharges from municipal separate storm sewer systems serving a population of 100,000 or more, and deadlines by which dischargers shall comply with the terms of their permits. EPA is taking this action in compliance with the mandate of the court in *Natural Resources Defense Council* v. *EPA*, 966 F.2d 1292 (9th Cir. 1992). This action also clarifies that application requirements and deadlines for certain discharges which EPA had previously exempted from the scope of the NPDES storm water regulations are reserved pending further rulemaking. These include discharges from construction sites disturbing less than 5 acres of land and discharges exempt under 40 CFR 122.26(b)(14)(xi) because of a lack of exposure of industrial activity to storm water. This action is also taken in response to the Ninth Circuit decision.

EFFECTIVE DATE: This rule is effective on December 18, 1992. Pursuant to 40 CFR 23.2, EPA is also declaring this rule to be final for purposes of judicial review on the same date.

ADDRESSES: The public record for today's rule may be found at EPA Headquarters, NPDES Permits Division, NE 220, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Appointments to review the record may be made by calling Nancy Cunningham at (202) 260–9535. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: The EPA Storm Water Hotline at (703) 821–4823.

SUPPLEMENTARY INFORMATION:

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I. Authority

Today's rule is promulgated under the authority of sections 301, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1318, 1342, 1361.

II. Background

A. Water Quality Act of 1987

The Water Quality Act (WQA) of 1987 added section 402(p) to the Clean Water Act (CWA) to establish a comprehensive two phased approach for EPA to address storm water discharges. Section 402(p)(1) provides that EPA or States cannot require a permit under the National Pollutant Discharge Elimination System (NPDES) for certain storm water discharges until October 1, 1994,[1] except for storm water discharges listed under section 402(p)(2). Section 402(p)(2) lists five types of storm water discharges which are covered under "Phase I" of the program and are required to apply for a permit prior to October 1, 1994:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge for which the Administrator or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

The WQA clarified and amended the requirements for permits for storm water discharges in the new CWA section 402(p)(3). The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301 including all applicable technology-based requirements such as the Best Available Technology Economically Achievable (BAT) (see section 304(b)(2)) or the Best Conventional Technology (BCT) (see section 304(b)(4)). Permits for discharges from municipal separate storm sewer systems must meet a new statutory standard requiring controls to reduce the discharge of pollutants to the maximum extent practicable (MEP). As with all point source discharges under the CWA, storm water discharges are subject to applicable water quality-based standards.

Section 402(p)(4) established deadlines to implement the permit program for: Storm water discharges associated with industrial activity; discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more); and discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more but less than 250,000). Congress instructed EPA to issue regulations specifying NPDES permit application requirements by February 4, 1989. Congress also required that permit applications for such discharges were to be submitted no later than February 4, 1990 for industrial and large municipal systems, and no later than February 4, 1992 for medium municipal systems. EPA or the State is to issue or deny all permits one year after each of these respective deadlines, and facilities must comply with all permit conditions within three years of permit issuance.

All other storm water discharges fall under Phase II of the program (see section 402(p)(1)), and neither EPA nor a State may require an NPDES permit for such sources until October 1, 1994, unless a permit for the discharge was issued prior to the date of enactment of the WQA (i.e., February 4, 1987), or the discharge is determined to be a significant contributor of pollutants to waters of the United States or is contributing to a violation of water quality standards.

B. November 16, 1990 Rules

EPA promulgated permit application regulations for the storm water discharges identified under section 402(p)(2) (B), (C), and (D) of the CWA, including storm water discharges associated with industrial activity, on November 16, 1990 (55 FR 47990). The regulations defined which discharges are "associated with industrial activity" and thus are subject to permitting under Phase I. EPA included facilities in ten different major industrial categories (40 CFR 122.26(b)(14)(i)–(x)). One of the

[1] As originally adopted, section 402(p)(1) specified that the "moratorium" on permitting of these storm water sources, which EPA refers to as "Phase II" sources, would expire on October 1, 1992. Section 312 of the Water Resource Development Act of 1992, which was signed by the President on October 31, 1992, extended the moratorium to October 1, 1994.

categories included discharges from construction sites larger than 5 acres (40 CFR 122.26(b)(14)(x)). Under the regulations, facilities in these categories were presumed to discharge storm water associated with industrial activity and were required to submit permit applications. EPA also established an eleventh category of industrial facilities in "light" industries (40 CFR 122.26(b)(14)(xi)). For these discharges, by contrast, EPA presumed that there would be no storm water discharge associated with industrial activity, and did not require permit applications unless there was actual exposure of industrial pollutants to storm water at the facility.

The November 16, 1990 regulations also addressed requirements, including deadlines, for two sets of application procedures for those storm water discharges which EPA classified as associated with industrial activity: Individual permit applications and group applications. In addition, the notice recognized a third set of application procedures for storm water discharges associated with industrial activity: those associated with general permits. (EPA has since issued a series of general permits which cover most discharges associated with industrial activities, including construction, in States, at Federal facilities, and on Indian lands, where EPA is the NPDES permitting authority. 57 FR 41176, 57 FR 41236 (Sept. 9, 1992); 57 FR 44412, 57 FR 44438 (Sept. 25, 1992).

The requirements for individual applications for storm water discharges associated with industrial activity are set forth at 40 CFR 122.26(c)(1). Generally, the applicant must provide comprehensive facility specific narrative information and quantitative analytical data based on samples collected on site during storm events. Under § 122.26(e)(1) of the November 16, 1990 rule, individual applications were to have been submitted by November 18, 1991.

The group application process allows for facilities with similar operations and storm water discharges to join together and file a single two part permit application. Part 1 of a group application identifies the facilities within the group and includes qualitative information describing the facilities. Part 1 of the group application was to be submitted to EPA no later than March 18, 1991. The regulation provides that EPA has a 60 day period after receipt to review the Part 1 applications and notify the groups as to whether they have been approved or denied as a properly constituted "group" for purposes of this alternative application process. Part 2 of the group application contains detailed information, including sampling data, on roughly ten percent of the facilities in the group. Under the November 16, 1990 regulations, Part 2 applications were to be submitted no later than 12 months after the date of approval of the Part 1 application.

The November 16, 1990 regulations also established a two part application process for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. The regulations list 220 cities and counties that are defined as having municipal separate storm sewer systems serving a population of 100,000 or more and allow for case-by-case designations of other municipal separate storm sewers to be part of these systems (55 FR 48073, 48074). The regulations provide that Part 1 applications for discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more) were due November 18, 1991. Part 2 applications for discharges from large systems were due on November 16, 1992. Part 1 applications for discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more, but less than 250,000) were due on May 18, 1992. Part 2 applications for discharges from medium systems are due on May 17, 1993.

C. Later Deadline Extensions

In light of substantial concerns raised by the regulated community regarding the complexity of the new storm water regulations, the difficulty in determining whether particular facilities were subject to the new rules, and administrative problems in developing group applications, EPA granted a series of extensions to the permit application deadlines for discharges associated with industrial activity. Initially, the deadline for submitting Part 1 of the group application was extended from March 18, 1991 to September 30, 1991 (56 FR 12098 (March 21, 1991)). Later, EPA also extended the deadline for submitting an individual permit application for storm water discharges associated with industrial activity from November 18, 1991 to October 1, 1992 (56 FR 56548, (November 5, 1991)). EPA also extended the deadline for a facility that is rejected as a member of a group application to submit an individual permit application no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first. (56 FR 56549, (November 5, 1991)). Finally, EPA extended the deadline for Part 2 of group applications for storm water discharges associated with industrial activity to October 1, 1992 (57 FR 11524, (April 2, 1992)). With these extensions, October 1, 1992 was established as the single outside date for any discharge associated with industrial activity to submit either an individual or group application, or to be covered by a promulgated general permit.

Congress has also acted to grant certain extensions to the application deadlines for discharges associated with industrial activity. In March, 1991, Congress adopted section 307 of the Dire Emergency Supplemental Appropriations * * * Act of 1991, which effectively ratified the extension of the Part 1 group application deadline. In December 1991, the President signed the Intermodal Surface Transportation Efficiency Act (or Transportation Act) of 1991 into law. Section 1068 of the Transportation Act addresses NPDES permit application deadlines for storm water discharges associated with industrial activity from facilities that are owned or operated by municipalities. EPA has since codified portions of section 1068 into its rules (57 FR 11524 (Apr. 2, 1992)).

D. Ninth Circuit Decision in NRDC v. EPA

On June 4, 1992, the United States Court of Appeals for the Ninth Circuit issued an opinion granting in part a petition for review of EPA's 1990 storm water regulation implementing Section 402(p) of the Clean Water Act ("CWA"). *Natural Resources Defense Council* v. *EPA*, 966 F.2d 1292 (9th Cir. 1992). The Court upheld several provisions of the regulations, including the definition of "municipal separate storm sewer system," the standards for municipal storm water controls, the scope of the permit exemption for oil and gas operations, and EPA's decision not to provide public comment on Part 1 group industrial permit applications.

The Court did, however, strike down the exemptions from the definition of storm water discharges "associated with industrial activity" for construction sites smaller than 5 acres and for "light" industries and remanded both for further proceedings. With respect to the light industry category, the Court noted that the statutory term "associated with industrial activity" was very broad and concluded that Congress intended only to exempt discharges from non-industrial parts of facilities such as parking lots. The Court rejected EPA's argument that industrial pollutant levels in storm water would be minimal at light industrial facilities, finding nothing in the record to support that

conclusion. The Court thus found the exemption to be arbitrary and capricious. 966 F.2d at 1304–05. As for construction sites, the Court noted that EPA had proposed to exempt only sites smaller than 1 acre. In the final rule, the exemption was increased to 5 acres, based on the Agency's determination that smaller sites would not have levels of activity that were like other industrial activities. The Court ruled, however, that there was nothing in the record "that construction sites on less than five acres are non-industrial in nature." 966 F.2d at 1306. The Court rejected EPA's argument that the 5 acre cutoff constituted a *de minimis* exemption, finding the record lacked information to suggest whether smaller discharges would be *de minimis*. *Id.*

The Court also declared EPA's extension of the statutory deadlines for storm water permit applications to be unlawful, but declined to strike down the deadlines as NRDC had requested. The Court did, however, order EPA to promulgate additional rules specifying dates for permit approval or denial and for permit compliance, as contemplated by the statute. The Court also stated its expectation that EPA would abide by the Court's holding that EPA has no authority to grant further extensions to the statutory deadlines for permit applications. 966 F.2d at 1300.

III. Summary of Today's Rule

A. Deadlines for Phase I Permit Issuance and Compliance

In response to the mandate of the Ninth Circuit, EPA is today issuing rules to specify dates by which Phase I storm water permits are to be issued or denied by EPA or authorized States and to specify the dates by which the discharger shall comply with the permit. Section 402(p)(4) provided that EPA/States were to issue or deny permits by February 4, 1991 for discharges associated with industrial activity or discharges from large municipal separate storm sewer systems, and by February 4, 1993 for discharges from medium municipal separate storm sewer systems. These dates represent one year after the statutory permit application deadline and two years after the deadline for promulgation of permit application regulations. However, as discussed above, EPA was unable to promulgate its regulations by the statutory deadline, and therefore established permit application deadlines which are somewhat later than those specified in the statute. EPA believes that the Court did not expect EPA or authorized States to issue or deny permits prior to receipt of complete permit applications. Therefore, today's rule specifies that permits are to be issued or denied by one year after the regulatory deadline for submitting complete permit applications, i.e., October 1, 1993 for most discharges associated with industrial activity, May 17, 1994 for discharges associated with industrial activity from municipalities with a population less than 250,000 who participated in a group application, November 18, 1993 for discharges from large municipal systems, and May 17, 1994 for discharges from medium municipal systems. For applications for new discharges, existing discharges at facilities which fail to submit a complete permit application by the deadline, EPA or the State shall issue or deny the permit within one year after the actual receipt of the permit application.[2] This one year time frame is consistent with the intent of Congress reflected in section 402(p)(4) that permits be issued or denied one year after the permit application deadline.

Section 402(p)(4) also specifies that permits for Phase I sources shall provide for compliance as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit. Pursuant to the Court's mandate, today's rule codifies this provision in the regulations at 40 CFR 122.42(d) for subsequent inclusion in all initial storm water permits for Phase I sources.

EPA recognizes that the decision of the Ninth Circuit in *Natural Resources Defense Council* v. *EPA*, 966 F.2d 1292, 1299–1300 (9th Cir. 1992) holds the following with respect to EPA's authority to give any further extensions to the permit application deadlines for these storm water discharges: "EPA does not have the authority to ignore unambiguous deadlines set by Congress * * *. EPA does not have the authority to predicate future rules or deadlines in disagreement with this opinion. We presume that the EPA will duly perform its statutory duties. (citations omitted)". EPA will fully comply with the mandate of the Court with respect to permit application deadlines for Phase I storm water discharges, as currently defined.

B. Requirements for "Light Industries" and "Small" Construction Sites

In its opinion, the Ninth Circuit invalidated EPA's exemptions for construction sites less than five acres and for light industry categories where there is no exposure of industrial activity to storm water, and remanded them to the Agency for further proceedings. Members of the regulated community have raised questions regarding whether the Court's action effectively rewrites the regulations, making small construction sites and light industries with no exposure of industrial activity to storm water subject to the current application requirements for discharges associated with industrial activity.

EPA does not believe that the Court's opinion had the effect of automatically subjecting small construction sites and light industries to the existing application requirements and deadlines for storm water discharges associated with industrial activity. The Court's opinion is quite clear that the two exemptions were remanded to EPA for further rulemaking proceedings. 966 F.2d at 1304, 1305, 1310. Thus, EPA believes that the agency must undergo further notice and comment rulemaking to clarify the status of these facilities under the storm water program. Therefore, EPA believes that a specific change to the current definition of "storm water discharge associated with industrial activity" in response to the Court's opinion is unnecessary, and could in fact be confusing to the regulated community. Instead, requirements for discharges from small construction sites and light industries with no exposure are reserved pending the further rulemaking. Such facilities need not submit permit applications until the EPA conducts further rulemaking. If EPA decides to propose that some or all of these discharges are "associated with industrial activity," EPA will propose new application deadlines consistent with the intent of Section 402(p)(4) and the opinion of the Ninth Circuit.

EPA notes that the Court's key concern was that EPA lacked any adequate factual basis in the rulemaking record to distinguish small construction sites from larger construction sites, and to distinguish the discharges from "light" industry facilities without exposure from discharges from facilities in heavy industries or light industries with exposure. EPA solicits comments and any specific factual information to assist it in developing a new proposal to address the light industry and small construction site categories.

IV. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must determine whether this regulation constitutes a "major rule", requiring a regulatory impact analysis. This rule

[2] All of the relevant storm water permit application and permit issuance deadlines are listed in Appendix A at the end of this notice.

imposes no new regulatory requirements; the requirement to submit an NPDES permit application was contained in the November 16, 1990 rule. This rule merely codifies existing statutory deadlines for NPDES storm water permit issuance and compliance. Thus, the rule meets none of the criteria of a "major rule" under E.O. 12291. This rule has been submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act

The requirements of this rule impose no new information collection requirements; the information collection requirements associated with the NPDES storm water permit program already have been assigned OMB control number 2040–0086. Thus, an Information Collection Request for this rule is unnecessary and was not prepared.

C. Regulatory Flexibility Act

This rule imposes no new regulatory requirements, but rather codifies existing statutory deadlines for NPDES storm water permit issuance and compliance. Thus, I certify that this rule will not have a significant impact on a substantial number of small entities.

V. Administrative Procedure Act Requirements

Today's rule is being issued without prior notice and comment. The deadlines for storm water permit issuance and compliance constitute interpretive rules for which notice and comment are not required. 5 U.S.C. 553(b)(A). Alternatively, there is good cause for issuing today's rule without notice and comment, because prior notice is unnecessary. 5 U.S.C. 553(b)(B). Today's rule makes no substantive change to the statutory requirements and deadlines for storm water permit issuance and compliance, but merely codifies the deadline scheme specified in the statute. For these same reasons, there is good cause to make today's rule immediately effective.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Water pollution control.

Dated: December 11, 1992.

William K. Reilly,

Administrator.

APPENDIX A TO THE PREAMBLE—NPDES STORM WATER PERMIT APPLICATION AND ISSUANCE DEADLINES

Type of application/type of discharge	Permit application deadline		Permit issuance deadline
Industrial			
• Individual:			
Existing facilities	October 1, 1992		October 1, 1993.
Facilities rejected from a group application	October 1, 1992		October 1, 1993.
New facilities	180 days prior to commencement of industrial activity which may cause a storm water discharge.		One year after receipt of complete permit application.
New construction facilities	90 days prior to commencement of construction		One year after receipt of complete permit application.
• Group:	Part 1	Part 2	
All industrial activities except those owned or operated by a municipality with a population of less than 250,000.	September 30, 1991	October 1, 1992	October 1, 1993.
Industrial activities owned or operated by a municipality with a population of less than 250,000.	May 18, 1992	May 17, 1993	May 17, 1994.
Municipal	Part 1	Part 2	
• Large Municipal Systems	November 18, 1991	November 16, 1992	November 16, 1993.
• Medium Municipal Systems	May 18, 1992	May 17, 1993	May 17, 1994.

For all initial storm water permits, the permittee must comply with all permit conditions no later than 3 years after the date of permit issuance.

For the reasons set forth in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.26 is amended by adding paragraph (e)(7) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(e) * * *

(7) The Director shall issue or deny permits for discharges composed entirely of storm water under this section in accordance with the following schedule:

(i)(A) Except as provided in paragraph (e)(7)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than October 1, 1993, or, for new sources or existing sources which fail to submit a complete permit application by October 1, 1992, one year after receipt of a complete permit application;

(B) For any municipality with a population of less than 250,000 which submits a timely Part I group application under paragraph (e)(2)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than May 17, 1994, or, for any such municipality which fails to submit a complete Part II group permit application by May 17, 1993, one year after receipt of a complete permit application;

(ii) The Director shall issue or deny permits for large municipal separate storm sewer systems no later than November 16, 1993, or, for new sources or existing sources which fail to submit a complete permit application by November 16, 1992, one year after

receipt of a complete permit application;

(iii) The Director shall issue or deny permits for medium municipal separate storm sewer systems no later than May 17, 1994, or, for new sources or existing sources which fail to submit a complete permit application by May 17, 1993, one year after receipt of a complete permit application.

* * * * *

3. Section 122.42 is amended by adding paragraph (d) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) *Storm water discharges.* The initial permits for discharges composed entirely of storm water issued pursuant to § 122.26(e)(7) of this part shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

[FR Doc. 92-30778 Filed 12-17-92; 8:45 am]

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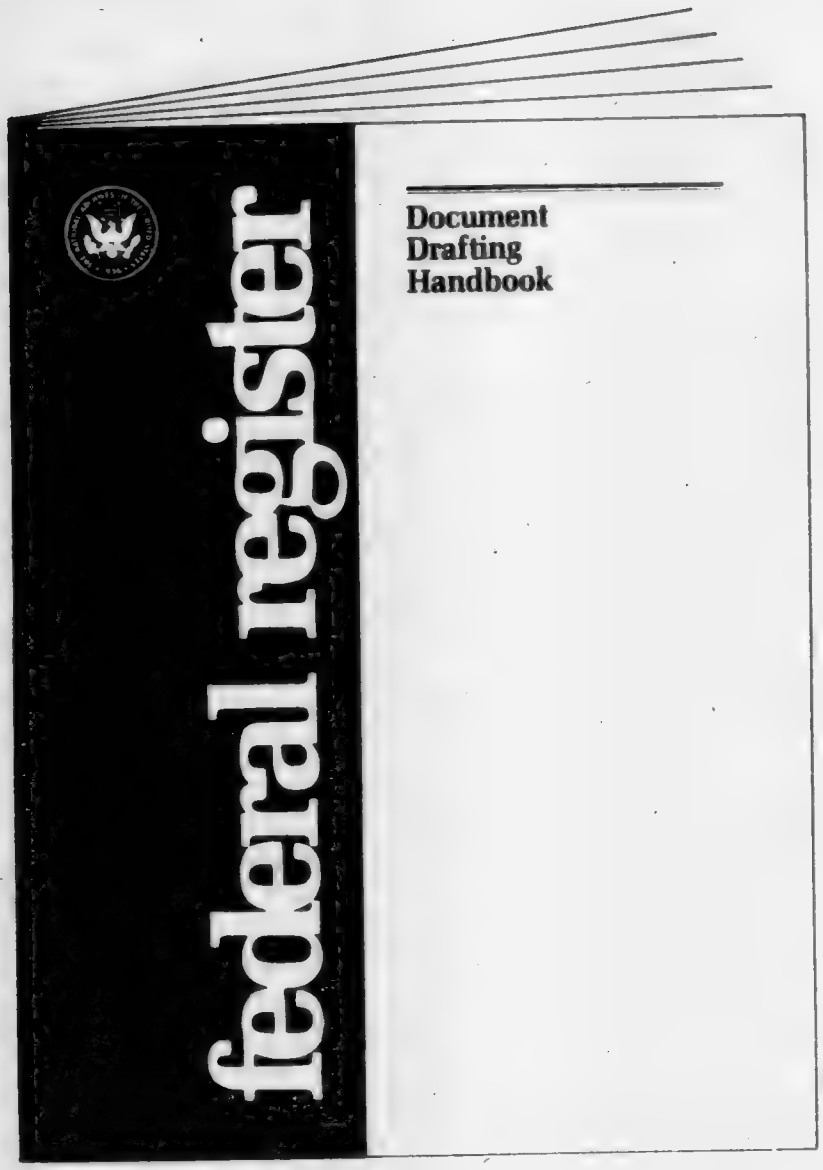

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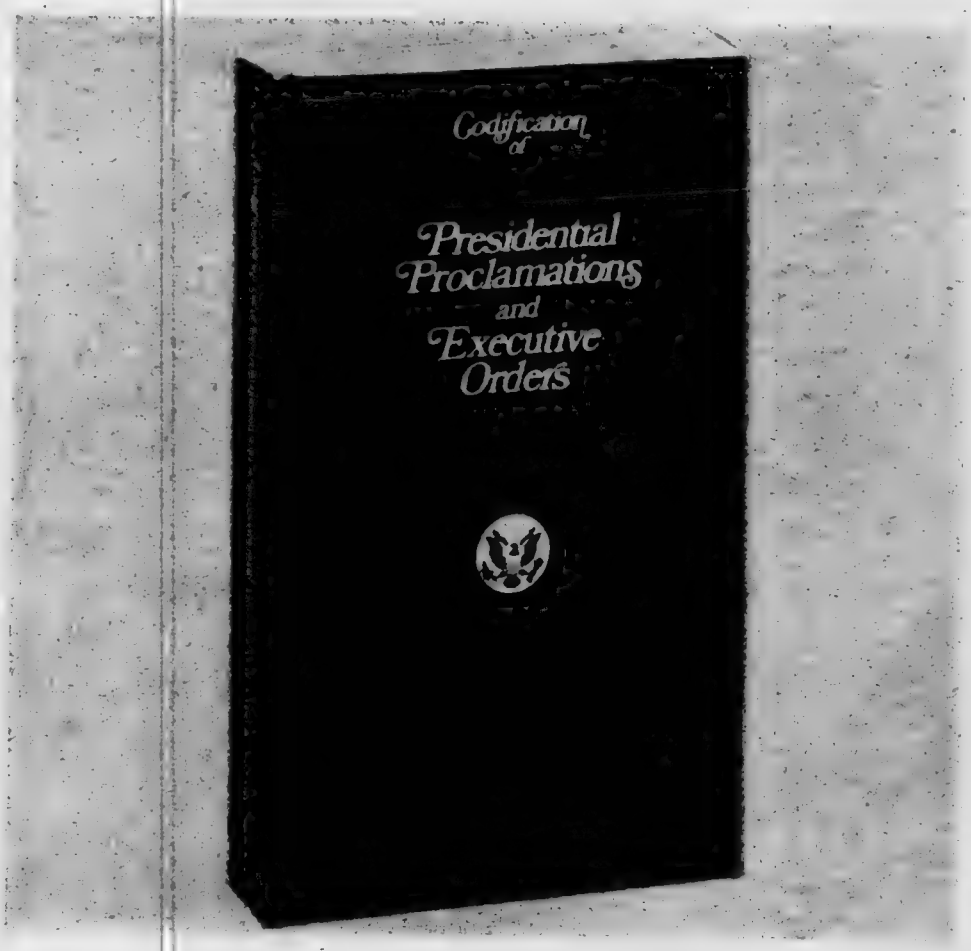

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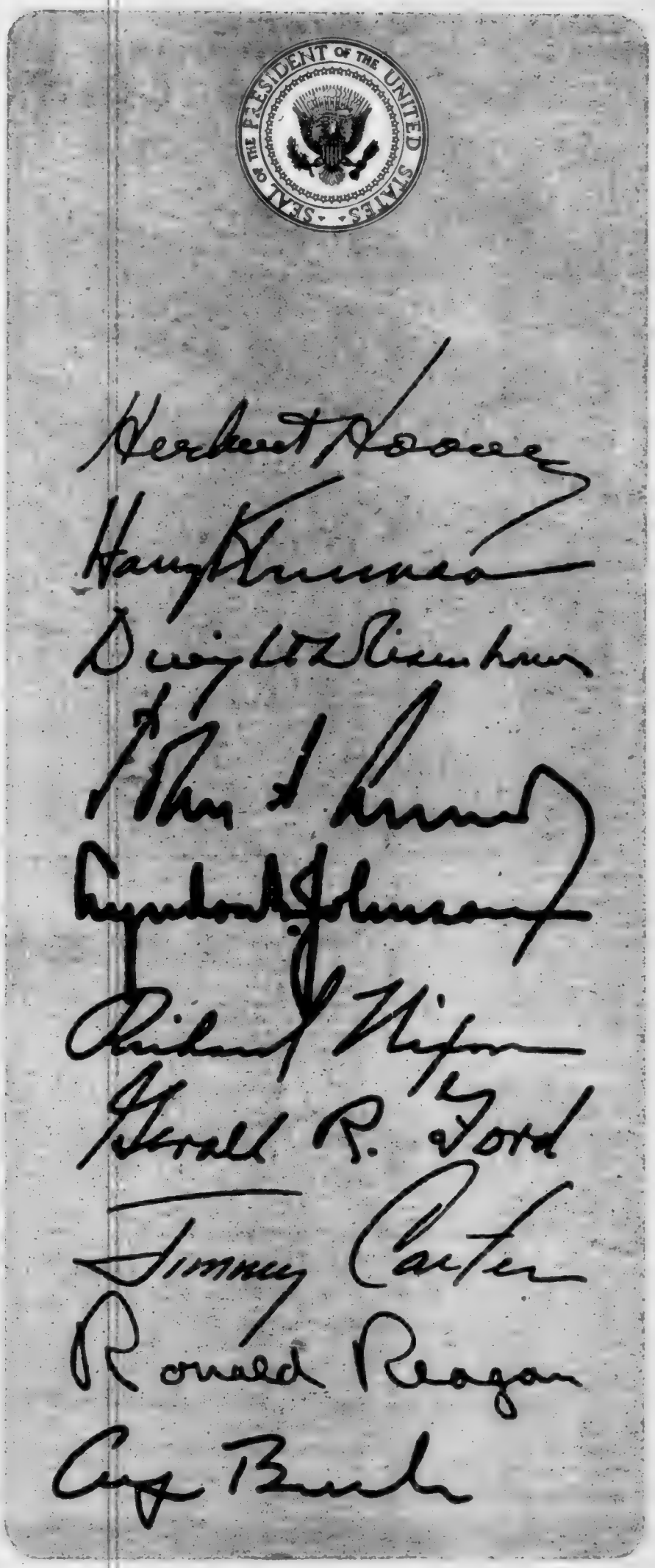

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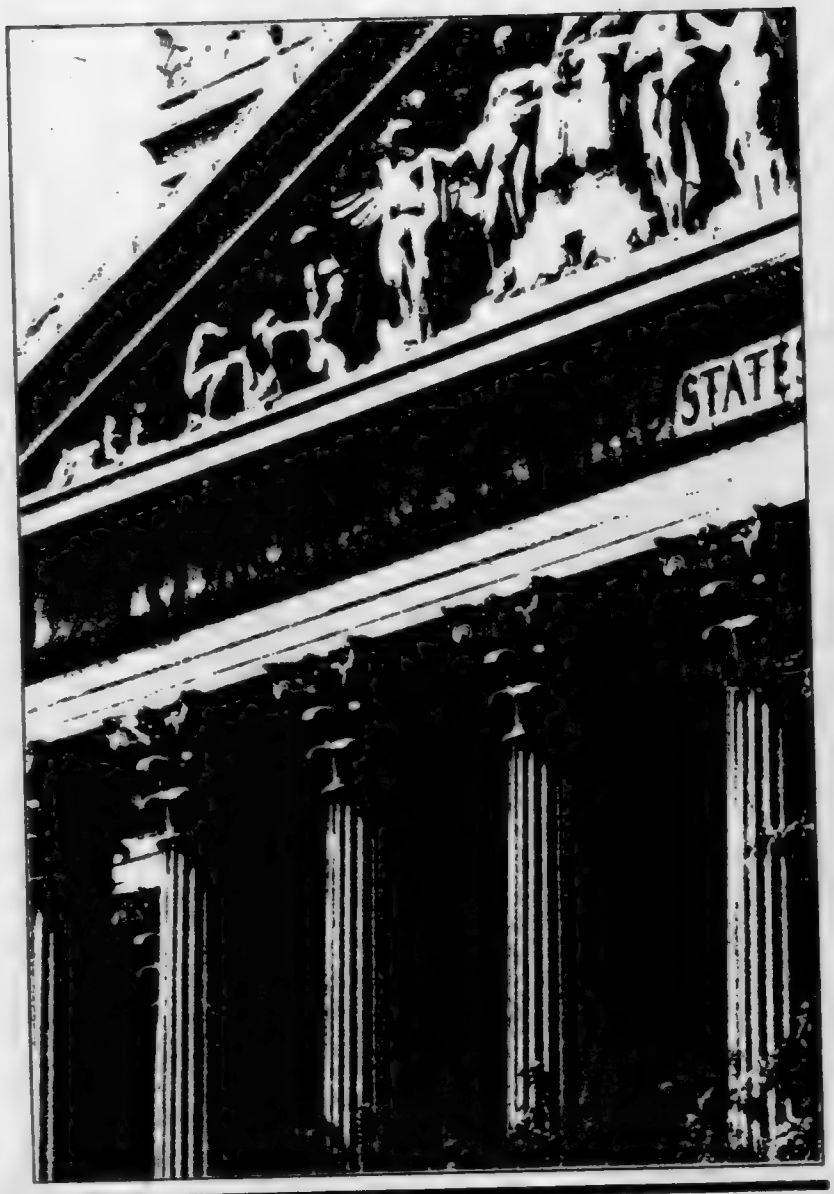

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Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AEA-20]

Establishment of Transition Area; Myerstown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a 700 foot Transition Area at Myerstown, PA, to support the development of a new standard instrument approach procedure (SIAP) to the Decks Airport, Myerstown, PA. This action establishes additional controlled airspace to provide greater segregation between aircraft operating under instrument flight rules from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 u.t.c. February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, FAA Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot Transition Area at Myerstown, PA (57 FR 34530). The amendment would establish that amount of controlled airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules in controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Transition Areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Transition Area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a 700 foot Transition Area at Myerstown, PA, due to the development of a new SIAP to the Decks Airport, Myerstown, PA.

The FAA has determined that the regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Area

* * * * *

AEA PA TA Myerstown, PA [New]
Decks Airport (lat. 40°21'08" N., long. 76°19'51" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Decks Airport.

* * * * *

Issued in Jamaica, New York, on December 1, 1992.

Gary W. Tucker,
Manager, Air Traffic Division.

[FR Doc. 92-30668 Filed 12-18-92; 8:45 am]
BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1211

Final Rules: Requirements for Automatic Residential Garage Door Operators: Amendment and Certification and Recordkeeping Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 1990 provided that, as of January 1, 1991, each automatic residential garage door opener manufactured on or after that date for sale in the United States shall conform to the entrapment protection requirements of the Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, as revised May 4, 1988. Congress stated that these requirements are to be considered a consumer product safety rule issued by the Commission under section 9 of the Consumer Product Safety Act.

Congress further required that as of January 1, 1993, residential garage door openers manufactured on or after that date for sale in this country must comply with additional entrapment protection requirements developed by UL. In this final rule, the Commission is codifying the additional entrapment protection provisions of the revised UL 325 standard.

On March 18, 1992, the Commission issued proposed rules containing certification and recordkeeping requirements for residential garage door operators. This document issues those certification and recordkeeping requirements in final.

DATES: Congress required that the revised entrapment protection requirements stated at subpart A of this rule will apply to automatic residential garage door openers manufactured on or after January 1, 1993 for sale in the United States. The certification and recordkeeping rules at subparts B and C will become effective for automatic residential garage door openers manufactured on or after January 21, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mike Bogumill, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400.

SUPPLEMENTARY INFORMATION: This document amends existing automatic residential garage door entrapment protection requirements and specifies certification and recordkeeping requirements. The three aspects of this document are discussed below.

I. Amended Entrapment Protection Requirements

A. Background

Section 203 of the Consumer Product Safety Improvement Act of 1990 (the "Improvement Act") stated that the entrapment protection requirements of the Underwriters Laboratories, Inc. ("UL") Standards for Safety—UL 325, third edition, as revised May 4, 1988, shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act. [Consumer Product Safety Improvement Act of 1990, Public Law No. 101–608, 203(a), (b), 104 Stat. 3110. Congress provided that automatic residential garage door openers [1] manufactured on or after January 1, 1991 must conform to the 1988 version of the UL 325 entrapment protection requirements. *Id.* 203(b)(1). This standard required that an automatic garage door opener shall reverse within two seconds of contacting a two inch (50.8–mm) test object whose top inch is resilient. In addition, the standard required that the door reopen if the bottom limit switch is not activated within thirty seconds after the control is pressed to start the closing cycle. There are termed inherent entrapment protection measures.

The Commission codified these entrapment protection requirements on June 19, 1991. 56 FR 28050.

Congress also provided that additional entrapment protection requirements issued by UL in the future could become effective as mandatory safety standards. Accordingly, section 203 required that all automatic residential garage door openers manufactured on or after January 1, 1993 for sale in the United States must conform to the additional entrapment protection requirements of UL 325 that are effective on or before January 1, 1992. Improvement Act, section 203(b)(2)(A).

UL has revised the entrapment protection provisions of UL 325. Thus, these provisions will become effective as a mandatory Commission standard and will apply to openers manufactured on or after January 1, 1993. For the convenience of those subject to these requirements, the Commission is codifying the provisions.

Congress also provided that if UL purposes further revisions to UL 325, UL must notify the Commission and the proposed revision shall be incorporated in the consumer product safety rule (unless the Commission notifies UL within 30 days that the revision does not carry out the purposes of the Congressionally mandated requirements). *Id.* section 203(c).

Congress also mandated certain labeling requirements that went into effect on January 1, 1991. These requirements are unchanged under the revised standard. A manufacturer selling or offering for sale in the United States an automatic residential garage door opener on or after that date must clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of subsection (b) [UL 325 entrapment protection provisions]. *Id.* section 203(d). These labeling requirements are satisfied by display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325 on the container and the system. *Id.*

B. The Standard

This notice sets forth the entrapment protection provisions of the most recent revision of UL 325 which Congress mandated as a standard of the Commission. The provisions recounted here are only excerpts from the UL standard for safety—UL 325—for door, drapery, gate, louver, and window operators and systems. This UL standard contains many provisions not stated in this notice because Congress only mandated issuance of the entrapment protection provisions as a Commission regulation. Thus, those provisions of the UL standard that relate to entrapment protection are codified as a Commission regulation.

UL's changes to its 1988 standard, whose entrapment protection provisions were codified as a Commission rule at 16 CFR Part 1211, are fairly extensive. Thus, in codifying the new standard, the Commission is revising and renumbering the sections of the standard previously codified.

Although the revised standard contains many detailed technical requirements, in essence it requires that residential garage door operators contain either an external entrapment protection device, or have a constant contact control button, in addition to the inherent entrapment protection that was required by the earlier standard.

An overview of the revised standard follows.

Section 1211.1 provides that the standard applies to all residential garage door operators manufactured on or after January 1, 1993 for sale in the United States.

Section 1211.2 supplies the following definition of "residential garage door operator": a vehicular door operator which (1) serves a residential building of one to four single family units; (2) is rated 600 volts or less; and (3) is intended to be employed in ordinary locations in accordance with the current National Electrical Code, NFPA 70. This definition includes UL's change in its 1988 definition so that the definition is specifically limited to operators that serve residential buildings with one to four family units. This definition is consistent with the Commission's earlier interpretation that the term excludes garage door operators in apartment building garages.

Section 1211.3 provides an explanation of the units of measurement referred to in the standard.

Section 1211.4 sets out the general requirements for protection against entrapment. Like the previous standard, it provides that an automatically-reset protective device, if used, must not result in a risk of injury to persons. It also provides that electronic or solid-state circuits intended to reduce the risk of injury must comply with the Standard for Safety-Related Controls Employing Solid-State Devices, UL 991.

[1] Congress used the term "garage door opener"; however, the UL standard uses the term "garage door operator." This notice uses the terms interchangeably.

This UL standard and other standards referenced in the rule are available from UL or may be examined at the offices of the Federal Register or at CPSC.

Section 1211.5 sets forth test parameters that should be used in investigating circuits as required by section 1211.4(c).

Section 1211.6 states the general entrapment protection requirements for residential garage door operators. The operator must have inherent entrapment protection that complies with section 1211.7. In addition, the operator must either (1) require constant pressure on a control to lower the door, reverse direction and open the door when constant pressure on a control is removed before the operator reaches its lower limit, and permit a portable transmitter, if supplied, to only function to cause the operator to open the door; or (2) have the means to attach an external entrapment protection device that complies with the specific requirements of this standard. Specific requirements for a switch or relay are also described in section 1211.6.

Section 1211.7 describes the inherent entrapment requirements of the standard. A downward moving operator must initiate reversal of the door within two seconds of contact with a one-inch high solid object. After it reverses the door, the operator must return the door to and stop at its utmost position (unless a control is actuated or an inherent entrapment circuit senses an obstruction). This section specifies tests for compliance with these requirements.

Section 1211.8 requires that an external entrapment protection device must consist of either (1) a photoelectric sensor that causes an operator closing a door to reverse the door's direction and prevents the operator from closing an open door; (2) an edge sensor on the edge of the door that causes an operator closing a door to reverse the door's direction; or (3) another device that provides equivalent entrapment protection.

Section 1211.9 requires that means to manually detach the operator from the door be provided, be colored red, and be easily distinguishable from the rest of the operator.

Section 1211.10 specifies requirements for all entrapment protection devices. It also provides several tests for specific aspects of the devices. These are a current protection test, a splash test, an ultraviolet light exposure test, and a resistance to impact test.

Section 1211.11 contains requirements for photoelectric sensors. These include a normal operation test, a sensitivity test, and an ambient light test.

Section 1211.12 provides requirements for edge sensors. These are a normal operation test, an endurance test, an elastomeric material conditioning test, and a puncture resistance test.

Section 1211.13 requires that an instruction manual must accompany a residential garage door operator and specifies installation instructions and user instructions that must appear in the manual.

Section 1211.14 requires that a residential garage door operator be provided with a label for field installation. The label contains a possible risk and consequence statement, avoidance statements, and instructions.

Section 1211.15 requires permanent marking of the garage door operator. The marking must consist of (1) the manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified; (2) the catalog number or the equivalent; (3) the voltage, frequency, and input in amperes or watts; and (4) the date or other dating period of manufacture not exceeding any three consecutive months (the date may be abbreviated or in an established or otherwise accepted code). If the manufacturer produces or assembles the operator at more than one factory, the marking must identify the particular factory.

This section further provides that the carton and instruction manual for an operator must be marked with the word "WARNING" and a statement indicating that the operator should only be used with the appropriate door. The operator also must be marked to warn that the door's reversal should be tested after adjusting the force or limits of travel. The section also has certain marking requirements for accessories that are intended for installation with garage door operators.

Section 1211.16 restates the labeling requirement established by Congress which requires a manufacturer to identify, on the container of a residential garage door opener and on the system itself, the month or week and the year the system was manufactured and that it conforms with the requirements of this standard. Congress provided that UL marking would satisfy this statutory labeling requirement. These statutory labeling requirements are unchanged from the previous standard.

C. Preemption

Generally, section 26 of the CPSA governs preemption of consumer product safety standards. 15 U.S.C. 2075. That section provides that whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

[15 U.S.C. 2075(a).]

However, in the Improvement Act, Congress issued a special preemption provision pertaining to automatic residential garage door operators. Subsection 203(f) of that Act provides that, with respect to the congressionally required entrapment protection provisions, only those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule provides shall be subject to the preemption provisions of section 26(a) of the CPSA, 15 U.S.C. 2075. *Id.* 203(f). Thus, state law provisions governing, for example, repair and servicing requirements, would not be preempted. *See* H.R. Rep. No. 914, 101st Cong., 2d Sess. 20 (1990).

II. The Certification Rule.

A. Certification Under the CPSA

Section 14(a)(1) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2063(a)(1), requires manufacturers (including importers) and private labelers of a product subject to a consumer product safety standard to issue a certificate which states that the product conforms to all applicable consumer product safety standards, specifies the applicable standard, states the name of the manufacturer or private labeler issuing the certificate, and includes the date and place of manufacture. The certificate must accompany the product or be furnished to any distributor or retailer to whom the product is delivered. Section 14(a) also requires that the certificate be based

on a test of each product or upon a reasonable testing program. 15 U.S.C. 2063(a). Section 14(c) of the CPSA authorizes the Commission to issue rules requiring a product to bear a label containing information similar to that required by section 14(a) for certificates.

The failure to issue a certificate of compliance or the issuance of a certificate which is false or misleading in any material respect violates section 19(a)(6) of the CPSA, *id.* section 2068(a)(6), and may subject the firm to civil and criminal penalties as provided in sections 20 and 21 of the CPSA. *Id.* sections 2069 and 2070.

Thus, the CPSA in conjunction with the Improvement Act currently require that garage door operators manufactured on or after January 1, 1991 certify that they comply with the entrapment protection provisions of UL 325, now codified as a Commission rule, 56 FR 28050. While certification is currently required by section 14(a) of the CPSA, presently, the specific wording and form of the certification may be determined by the manufacturer.

B. The Certification Rule

The Commission issued a proposed certification regulation to specify the certification label that manufacturers, importers, and private labelers will use in the future in certifying that their products comply with the applicable safety standard. 53 FR 9395. The Commission received one comment on the proposed rule, which is discussed below, and is now issuing the rule in final form.

As stated above, section 203(d) of the Improvement Act requires certain labeling on the operator system and its container. (Unlike section 14 of the CPSA, section 203(d) does not specifically discuss the responsibility of private labelers to label operators or containers.) Section 203(d) also states that display of the UL logo or listing mark and compliance with the date marking requirements of UL 325 satisfies the labeling requirements of section 203(d). Accordingly, those manufacturers that have obtained UL certification of their operators may allow the UL logo or listing mark to serve as the "certificate of compliance" required by this certification rule. Those manufacturers that have not obtained UL certification for their operators will be required to issue satisfactory certificates of compliance in the form of permanent labels attached to each operator and its container. Thus, the Commission is not mandating the UL logo or listing mark as a certification label, but will allow them to serve as a certification label since Congress provided that the UL logo or listing mark would satisfy the statutory labeling requirement it prescribed in section 203 of the Improvement Act.

This rule provides guidance to manufacturers concerning the certification required by section 14 of the CPSA, and it describes the certification label that would be required of non-UL listed automatic residential garage door operators upon the effective date of the rule.

C. Comment on the Proposed Rule

The comment received in response to the proposed rule stated that testing laboratories other then UL may use the UL 325 standard to test the safety of garage door operators. The commenter stated the Commission should not make the UL logo or listing mark mandatory.

The Commission recognizes that other organizations may test to the UL 325 standard and would apply their listing mark to indicate conformance with the safety standard. As stated above, the Commission is not mandating the UL logo or listing mark. Rather, it is providing, as Congress did, that the UL logo or listing mark will satisfy labeling requirements. Because Congress provided that display of the UL logo or listing mark would satisfy the statutory labeling requirements of section 203 of the Improvement Act, the Commission is allowing the UL logo or listing mark to serve as a certification label that would satisfy section 14 of the CPSA. Under the certification rule, other listing marks are not prohibited. However, operators that display other listing marks must also have the CPSC certification label specified by the rule. The rationale for this is that the basis for specifying a certification rule is to have conformity. Consumers and CPSC investigators know to look for the specified CPSC label. The certification rule provides the exception for products with the UL logo or listing mark because Congress stated that these symbols would satisfy its statutory labeling requirement. Not allowing this exception for a certification label would only increase confusion.

D. Summary of Certification Provisions

Section 1211.20 of the certification rule explains the purpose, scope, and application of the rule. It restates the requirement of 14(a) of the CPSA that manufacturers (defined to include importers and, for purposes of testing only, assemblers) and/or private labelers must either test each individual operator or devise "reasonable testing programs."

Section 1211.21 provides that the specific labeling requirement of the certification rule will become effective for garage door operators manufactured on or after the effective date which will be 30 days from the date of publication.

Section 1211.22 provides definitions for terms used in the certification rule.

Section 1211.23 provides guidance for establishing a reasonable testing program. A "reasonable testing program" is defined in the rule as one which provides reasonable assurance that the certified operators comply with the standard. The rule allows manufacturers and importers to develop their own reasonable testing programs.

The Commission believes that it is unnecessary to specify the testing program for the manufacturers. An operators's ability to meet the performance requirements is controlled by the operator's design, materials, and method of production. The Commission will test for compliance with the standard by using procedures based on the requirements contained in 16 CFR 1211 subpart A as revised for 1993. A manufacturer's tests may include tests prescribed in 16 CFR 1211 subpart A or other reasonable test procedures that can be demonstrated to provide an equivalent measure of entrapment protection.

Although no particular testing program is specified, the rule describes general principles that should be followed in a "reasonable testing program." For certification testing, the operators should be grouped into "production lots." Production lots are defined as a quantity of operators from which certain operators are selected for testing prior to certifying the lot. All operators in a production lot should be essentially identical in those design, construction, and material features which relate to the ability of an operator to comply with the standard. Sample operators are then selected from the production lot for testing in accordance with the reasonable testing program.

If the production lot has been properly limited as to number and design of operators, it should be possible for a manufacturer to test samples from the lot for certification and not to test again as long as the operators in the production lot are essentially identical to the operators tested for certification in all respects relating to the ability of the operator to meet the requirements of the standard. After a lot has been established, if there are any changes in the specifications for the operator which could affect the operator's performance in relation to the requirements of the standard, the manufacturer should establish a new production lot for testing. Similarly, if there are changes in parts, suppliers of

parts, or production methods which could affect the ability of the operator to comply with the standard, the manufacturer should establish a new production lot for testing. Furthermore, if the testing program shows that an operator does not comply with a requirement of the standard, no operator in the production lot should be certified as complying until all non-complying operators in the lot have been identified and destroyed or altered by repair, redesign, or use of different materials or components to the extent necessary to make the operators conform to the standard.

It should be noted that the obligation to issue a certificate of compliance based on a reasonable testing program is in addition to, and not in place of, the obligation to manufacture, import, distribute, or private label only operators which meet the requirements of the standard.

Consequently, if the Commission tests operators in accordance with the standard and obtains failing results, the Commission may begin enforcement action for violation of section 19(a)(1) of the CPSA, even though the manufacturer or importer of the operator may have issued a certificate of compliance and may have based that certificate on a reasenable testing program which meets the requirements of the regulation below.

Section 22 of the CPSA authorizes the Commission to enjoin any person from violating section 19, and to seize any product which does not comply with an applicable standard. 15 U.S.C. 2071(a)(1). In addition, sections 20 and 21 of the CPSA authorize the Commission to seek civil or criminal penalties for violation of the CPSA in appropriate cases. *Id.* sections 2069 and 2070.

Section 1211.24 of the certification rule requires manufacturers (including importers) and/or private labelers of non-UL listed automatic residential garage door operators manufactured after December 31, 1992, to affix to the operators permanent labels which shall be considered a "certificate" of compliance, as that term is used in section 14(a) of the CPSA. Section 14(a) directs manufacturers and private labelers—if the product bears a private label—to certify that a product conforms to the garage door operator safety rule. *Id.* sec. 2063(a)(1). Even though section 203(d) of the Improvement Act requires only manufacturers to label operator systems and containers in a certain way, the Commission believes that, since the authority for the certification rule rests in section 14 of the CPSA, the rule should apply to private labelers in a manner consistent with the terms of section 14 of the CPSA.

As mentioned above, section 203(d) of the Improvement Act states that display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325, on the operator and its container satisfies the labeling requirements of the garage door safety rule. In view of that provision, the Commission believes that the UL logo or listing mark on the operator and compliance with the date marking requirements of UL 325 (as will be codified at 16 CFR 1211.15), should also satisfy the certificate of compliance/permanent label aspect of the proposed certification rule. Any operator that bears the UL logo or listing mark will not be required to display the separate certification label described below. However, manufacturers and private labelers of UL listed operators may choose to use the certification label on the operator and its container if they wish.

The certification label required on non-UL listed operators (and their containers) must include the following information: (1) The statement: "Meets CPSC _____(insert 1993 or later year of applicable standard) garage door operator entrapment protection requirements," and (2) identification of the production lot. The standard as revised, to be codified at 16 CFR 1211.15, requires the manufacturer's name, the system date code, and the factory location (where more than one factory is used to produce the operator). All of this information may be placed on the same label.

The certification label should be visible and legible to the ultimate consumer. It should be a permanent part of the operator and should remain affixed for the life of the operator. It is expected, however, that the permanent label on the operator will not be immediately visible to the consumer at the time of sale because of packaging or other marketing practices. In that event, a second label stating "Meets CPSC _____(insert 1993 or later year of applicable standard) garage door operator entrapment protection requirements," along with the month or week and year of manufacture as required by § 1211.16, is required on the container, or if the container is not visible, on the promotional material used with the sale of the operators.

Section 1211.25 of the rule provides that importers of operators should issue certification labels, but may rely on the foreign manufacturers' tests to support the certification if the records of the tests are maintained in the United States and the importer is a resident of the U.S. or has a resident agent in the U.S. Requirements that manufacturer's records of the type described above must be maintained in the U.S. and the importer must reside, or maintain a resident agent, in this country are necessary to enable the Commission investigators to inspect the records and monitor compliance with the standard. Importers who certify are responsible for inspecting the test records to determine that all testing has been performed properly, that the records of the tests are accurate and complete, and that the tests provide reliable assurance that all operators imported comply with the standard.

III. The Recordkeeping Rule

The Commission issued a proposed recordkeeping rule on March 18, 1992, and received no comments on it. The Commission is now issuing the rule in final form.

The recordkeeping rule requires that manufactures (including importers) of automatic residential garage door operators subject to the standard maintain written records demonstrating that compliance certificates are based on tests of each operator or a reasonable testing program.

Private labelers of the operators should maintain records which allow them to identify the manufacturer of each operator and relate each operator to a particular manufacturing date code and production lot.

No specific format is prescribed for the records, but the records should contain sufficient information to show the nature of a firm's testing procedures, including the basis for, and identity of, the production lot. The records should also show whether the operators (which are being marketed and certified to comply with the standard) are essentially identical, in every respect that relates to compliance with the standard, to the operators that were tested for conformance with the standard. The records should also indicate exactly which operators or production lots of operators are being certified as a result of a specified test or series of tests. Records should describe the type of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme and the pass/reject criteria. Records of testing results should include the date and location of testing, the identity of passing and failing units, the nature of failure(s) and specific reasons for failure. The records should state the specific actions taken to address any failure and the additional actions taken to assure that corrective actions had the intended effect.

The records must be maintained a minimum of three years from the date of certification of each operator or the last operator in each production lot. This is because the Commission staff estimates that some operators can reasonably be expected to remain in inventory and not reach consumers for a period of three years, and the staff is particularly interested in being able to check the records concerning any operators held in inventory.

In addition to aiding the Commission's enforcement of the standard and the certification rule, these records could be helpful to a manufacturer in limiting the scope of a possible recall order under section 15 of the CPSA. See 15 U.S.C. 2064. The Commission is authorized under section 15 to order a manufacturer of a product which is found, after opportunity for a hearing, to present a "substantial product hazard" to elect one of the following remedies: repair the defective product, replace the product with a non-defective product, or refund the purchase price of the product. "Substantial product hazard" is defined in section 15 to mean a failure to comply with an applicable consumer product safety rule, or a product defect, if either creates a substantial risk of injury to the public.) Records of the date and location of manufacture, dates of changes in specifications, parts, suppliers, or manufacturing procedures, and the dates and results of quality control or recertification testing are examples of the types of information which could serve to identify the period of time during which non-complying or defective operators were manufactured. In the absence of such information, the entire production of a particular type of operator could be subject to a recall order.

The recordkeeping requirements of the rule are issued under the authority of section 16(b) of the CPSA, which authorizes requirements for the establishment and maintenance of records that are necessary to implement the act or to determine compliance with regulations issued under the act. 15 U.S.C. 2065(b). The Commission believes the records required by the proposed rule are necessary to monitor compliance with the garage door operator standard.

Section 16(b) further provides that these records must be made available for inspection by duly designated agents of the Commission upon request. *Id.*

IV. Anticipated Impact of the Rules

A. The Revised Standard

Because Congress mandated the revised UL entrapment protection provisions, the Commission has not made findings concerning the impact of the revised standard.

B. The Certification Rule

The stock of garage door operators in use is estimated to be at least 27 million units (with an average life expectancy of 15 years), of which 19 million were manufactured since 1982, the year the UL voluntary standard was revised to include entrapment protection provisions. In a 1991 industry survey, the Commission staff found that 14 firms manufactured or imported garage door operators, of which 12 are listed as complying with UL 325. Four of these 12 firms account for over 70 percent of the garage door operator market. In 1990, shipments were estimated at up to 2.5 million units with retail revenues of $552 million.

Industry representatives estimated that increases in per unit labeling costs for firms marketing non-UL operators will range from as low as $.10–.25 (when labeling is phased into the production process), to as high as $1.10 (when labeling requires the over-stickering of inventory). Thus, the annual cost for non-UL listed firms will be at least $2,500. These costs are based on an estimate that 99% of all operators are UL-listed and on 1990 levels of production (about 2.48 million UL-listed and 25,000 non UL-listed operators).

It is anticipated that manufacturers of garage door operators will pass any increases in costs resulting from the proposed certification rule directly to the consumer. An estimate of the per unit retail price impact of certification labeling on non-UL listed residential garage door operators would range from $.22 to as high as $2.42. This represents a total annual cost of at least $5,500 based on recent annual sales.

C. The Recordkeeping Rule

The majority of firms manufacturing garage door operators are listed as complying with the UL 325 standard, and these firms have recordkeeping activities related to the UL requirements. The recordkeeping rule will have minimal additional impact on variable costs for these firms. There are no data on the per unit recordkeeping costs for non-UL listed operators. However, since the certification and recordkeeping rule for walk-behind mowers issued in 1979 closely parallels the rules for garage door operators, a rough approximation can be derived by using the per unit retail price impact of the recordkeeping rule estimated for walk-behind mowers. In May 1977, Stanford Research Institute predicted the per unit retail price impact of that recordkeeping to be $.50 ($1.08 in 1990 dollars). Based on 1990 unit sales of about 25,000 non-UL listed operators, this represents a total annual cost to consumers of about $27,000 for the non-UL listed operators.

V. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, agencies are generally required to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities, unless the head of the agency certifies that the rule will not, if promulgated, have a significant effect on a substantial number of small entities.

The Commission staff analyzed the potential effect the proposed certification and recordkeeping rules could have on industry and concluded that the cost to industry is not anticipated to be large. Potential effects on small firms would not be disproportionate to the effects on larger firms. Thus, in the notice of proposed rulemaking, the Commission certified that no significant adverse impact on a substantial number of entities would result from the proposed rules. This remains unchanged.

No regulatory flexibility analysis is required for the revised entrapment protection provisions since they became effective by Congressional mandate.

VI. Environmental Considerations

The Commission's rules at 16 CFR part 1021 provide that product certification or labeling rules normally have no potential for affecting the environment. 16 CFR 1021.5(b)(2). The Commission found that the proposed certification and recordkeeping rules would have no significant effect on the human environment and that no environmental review was necessary. This remains unchanged.

No environmental analysis is required for the revised entrapment protection provisions since they became effective by Congressional mandate.

VII. Effective Dates

As explained above, Congress provided that the revised entrapment protection requirements of UL 325 would become effective as a Commission rule and that residential garage door operators manufactured on or after January 1, 1993 must conform to these additional requirements. Thus,

these entrapment protection requirements will become effective on that date.

Under section 14(a) of the CPSA, residential garage door operators must certify that they comply with the Commission standard applicable to those operators. The specific labeling requirements of this certification rule will become effective on January 21, 1993 for operators manufactured on or after that date. The recordkeeping rule will become effective on January 21, 1993 for operators manufactured on or after that date.

List of Subjects in 16 CFR Part 1211

Consumer protection, labeling, packaging and containers, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Consumer Product Safety Commission is amending title 16, chapter II, by revising part 1211 as follows:

1. The authority citation for part 1211 is revised to read as follows:

Authority: Sec. 203, Pub. L. 101–608, 104 Stat. 3110; Secs. 14 and 16, 15 U.S.C. 2063 and 2065.

2. The existing text of part 1211 is designated as Subpart A—The Standard and is revised to read as follows:

PART 1211—SAFETY STANDARD FOR AUTOMATIC RESIDENTIAL GARAGE DOOR OPERATORS

Subpart A—The Standard

Sec.

1211.1 Effective date.
1211.2 Definition.
1211.3 Units of measurement.
1211.4 General requirements for protection against risk of injury.
1211.5 General testing parameters.
1211.6 General entrapment protection requirements.
1211.7 Inherent entrapment protection requirements.
1211.8 External entrapment protection requirements.
1211.9 Additional entrapment protection requirements.
1211.10 Requirements for all entrapment protection devices.
1211.11 Requirements for photoelectric sensors.
1211.12 Requirements for edge sensors.
1211.13 Instruction manual.
1211.14 Field-installed labels.
1211.15 UL marking requirement.
1211.16 Statutory labeling requirement.

Subpart A—The Standard

§ 1211.1 Effective date.

This standard applies to all residential garage door operators manufactured on or after January 1, 1993 for sale in the United States.

§ 1211.2 Definition.

As used in this part 1211:

"Residential garage door operator" means a vehicular door operator which:

(a) Serves a residential building of one to four single family units;

(b) Is rated 600 volts or less; and

(c) Is intended to be employed in ordinary locations in accordance with the National Electrical Code, NFPA 70, 1993 edition. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Mass. 02269–9101, tel. 1–800–344–3555. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 1211.3 Units of measurement.

If a value for measurement as given in these requirements is followed by an equivalent value in other units, in parentheses, the second value may be only approximate. The first stated value is the requirement.

§ 1211.4 General requirements for protection against risk of injury.

(a) If an automatically reset protective device is employed, automatic restarting of a motor shall not result in a risk of injury to persons.

(b) A residential garage door operator is considered to comply with the requirement in paragraph (a) of this section if some means is provided to prevent the motor from restarting when the protector closes.

(c) An electronic or solid-state circuit that performs a back-up, limiting, or other function intended to reduce the risk of fire, electric shock, or injury to persons, including entrapment protection circuits, shall comply with the requirements in the Standard for Tests for Safety-Related Controls Employing Solid-State Devices, UL 991, 1st ed., dated July 19, 1991, including environmental and stress tests appropriate to the intended usage of the end-product. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Ill.60062–2096. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

§ 1211.5 General testing parameters.

(a) The following test parameters are to be used in the investigation of the circuit covered by § 1211.4(c) for compliance with the Standard for Tests for Safety-Related Controls Employing Solid-State Devices, UL 991, 1st ed., dated July 19, 1991, as incorporated by reference in paragraph (b)(3) of this section:

(1) Electrical supervision of critical components is acceptable if it results in an operator being inoperative with respect to downward movement of the door.

(2) A field strength of 3 volts per meter is to be used for the Radiated EMI Test.

(3) The Composite Operational and Cycling Test is to be used for 14 days at temperature extremes of minus 35° Celsius (minus 31°F) and 70° C (158°F).

(4) Exposure Class H5 is to be used for the Humidity Test.

(5) A vibration level of 5g is to be used for the Vibration Test.

(6) If a Computational Investigation is conducted, λ_p shall not be greater than 6 failures/10^6 hours for the entire system. For external entrapment protection devices that are sold separately, λ_p shall not be greater than 0 failures/10^6 hours. The Operational Test is to be conducted for 14 days.

(7) If the Demonstrated Method test is conducted, the multiplier is to be based on the continuous usage level, and a minimum of 24 units for a minimum of 24 hours per unit are to be tested.

(8) The Endurance test is to be conducted concurrently with the Operational test. The control shall perform its intended function while being conditioned for fourteen days in an ambient air temperature of 60° C (140° F), or 10° C (18° F) greater than the operating temperature of the control, whichever is higher. During the test, the control is to be operated in a manner representing the opening and closing of the door at a rate of one open-close operation per minute.

(b) In the evaluation of entrapment protection circuits used in residential garage door operators, the critical condition flow chart shown in figure 1 shall be used:

(1) To conduct a failure-mode and effect analysis (FMEA);

(2) In investigating the performance during the Environmental Stress Tests; and

(3) During the Power Cycling Tests in accordance with the Standard for Tests for Safety-Related Controls Employing

Solid-State Devices, UL 991, 1st ed., dated July 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062–2096. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5402 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 1211.6 General entrapment protection requirements.

(a) A residential garage door operator system shall be provided with inherent entrapment protection that complies with the requirements as specified in § 1211.7.

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Figure 1

CRITICAL CONDITION FLOW CHART ENTRAPMENT PROTECTION DEVICES AND FUNCTIONS

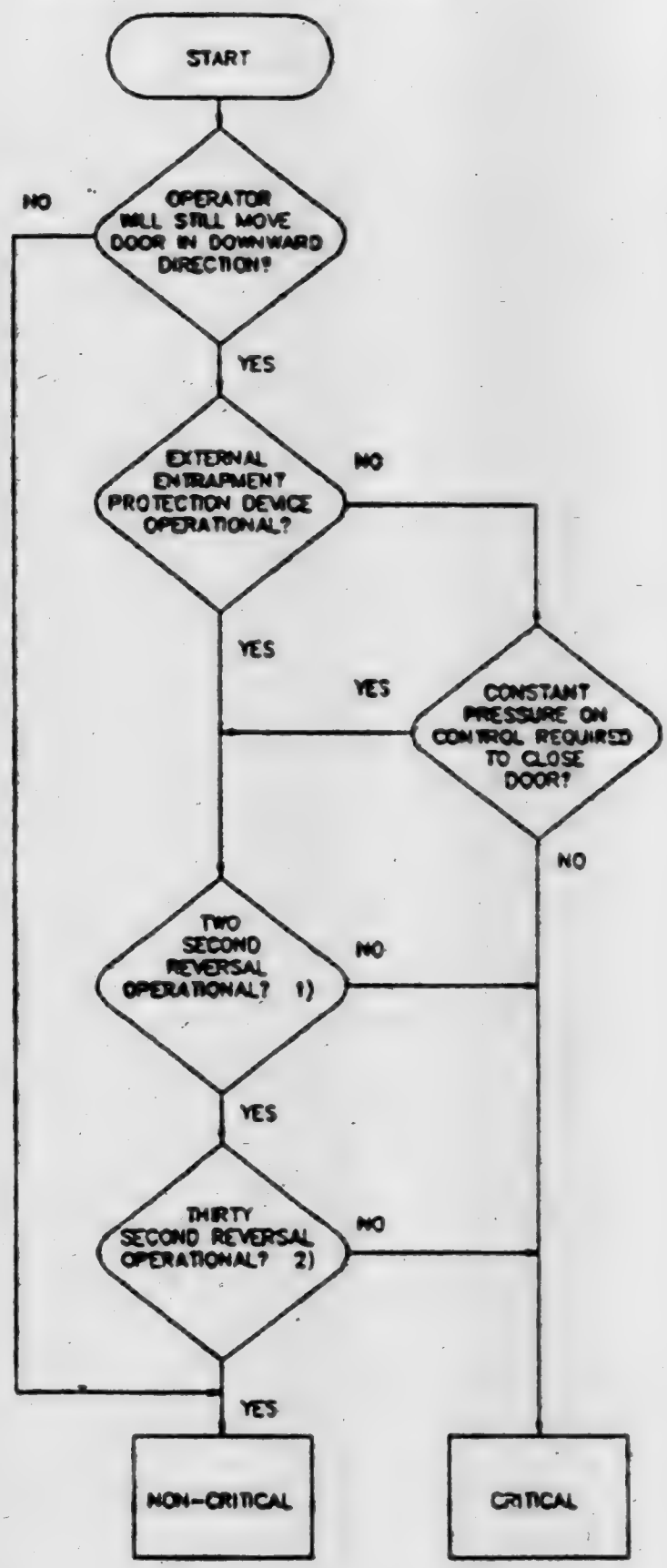

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(b) In addition to the inherent entrapment protection as required by paragraph (a) of this section, a residential garage door operator shall comply with one of the following:

(1) Shall be constructed to:

(i) Require constant pressure on a control to lower the door,

(ii) Reverse direction and open the door to the upmost position if constant pressure on a control is removed prior to operator reaching its lower limit, and

(iii) Permit a portable transmitter, if provided, to only function to cause the operator to open the door.

(2) Shall be provided with a means for connection of an external entrapment protection device as described in §§ 1211.8, 1211.10, 1211.11, and 1211.12.

(c) A mechanical switch or a relay used in an entrapment protection circuit shall withstand 100,000 cycles of operation controlling a load no less severe (voltage, current, power factor, inrush, and the like) than it controls in the operator, and shall function normally upon completion of the test.

(d) If failure of a switch or relay (open or short) described in paragraph (c) of this section results in loss of any entrapment protection required by §§ 1211.7(a), 1211.7(f), or 1211.8(a), the door operator shall result in one of the following conditions:

(1) The door operator becoming inoperative by the end of the open or close operation, or

(2) The door moving to and staying within 1 foot (305 mm) of the uppermost position.

(e) During the closing cycle, the system providing compliance with § 1211.7(a) and 1211.7(f) shall function regardless of a short or open anywhere in the low-voltage external wiring to the control, external entrapment devices, or any other external component.

§ 1211.7 Inherent entrapment protection requirements.

(a) Except for the first 1 foot (305 mm) of travel as measured over the path of the moving door operating member, both with and without any external entrapment protection device functional, a downward moving residential garage door operator shall initiate reversal of the door within 2 seconds of contact with the obstruction as specified in paragraph (b) of this section. After reversing the door, the door operator shall return the door to and stop at the full upmost position, unless a control is actuated or an inherent entrapment circuit senses an obstruction to stop the door during its upward travel. Compliance with this paragraph shall be tested in accordance with paragraphs (b) through (g) of this section.

(b) For the tests described in paragraph (a) of this section, a solid object is to be placed on the floor of the test installation and at various heights under the edge of the door and located in line with the driving point of the operator. When tested on the floor, the object shall be 1 inch (25.4 mm) high. In the test installation, the bottom edge of the door under the driving force of the operator is to be against the floor when the door is fully closed.

(c) An operator is to be tested for compliance with paragraph (a) of this section for 50 open-and-close cycles of operation while the operator is connected to the type of residential garage door with which it is intended to be used or with the doors specified in paragraph (e) of this section. The force adjustment on the operator is to be at the maximum setting or at the setting that represents the most severe operating condition. Any accessories that could have an effect on the intended operation of entrapment protection functions that are intended for use with the operator, are to be attached and the test is to be repeated for one additional cycle.

(d) The operator is to be adjusted (limit and force) according to instructions provided with the operator. The operator is to be tested for 10 additional obstruction cycles using the solid object described in paragraph (b) of this section at these settings.

(e) If an operator is intended to be used with more than one type of door, one sample of the operator is to be tested on a sectional door with a curved track and one sample is to be tested on a one-piece door with jamb hardware and no track. If the Operator is not intended for use on either or both of these types of doors, a one-piece door with track hardware or a one-piece door with pivot hardware, as appropriate, may be used for the tests. See the marking requirements at § 1211.15 of this subpart.

(f) An operator shall initiate reversal of the door and shall return the door to and stop the door at the full upmost position, unless a control is actuated or an inherent entrapment protection circuit senses an obstruction to stop the door during its upward travel, if the lower limiting device is not actuated in 30 seconds or less following the initiation of the close cycle. If the door is stopped manually during its descent, the 30 seconds may be measured from the resumption of the close cycle.

(g) To determine whether an operator complies with the requirement in paragraph (f) of this section, an operator is to be subjected to 10 open-and-close cycles of operation while connected to the door or doors specified in paragraphs (c) and (e) of this section. The cycles of operation while connected to the door or doors need not be consecutive; that is, there may be any number of motor cooling-off periods during the test. The means provided to comply with the requirement in paragraph (a) of this section and § 1211.8(a) are to be inoperative or defeated during the test. An obstructing object is to be provided so that the door cannot activate a lower limiting device.

§ 1211.8 External entrapment protection requirements.

(a) An external entrapment protection device provided with or as an accessory to an operator shall consist of either:

(1) A photoeletric sensor that when activated causes an operator closing a door to reverse direction of the door and prevents an operator from closing an open door,

(2) An edge sensor installed on the edge of the door that when activated causes an operator closing a door to reverse direction of the door and prevents an operator from closing an open door, or

(3) Any other device that provides entrapment protection equivalent to paragraphs (a) (1) or (2) of this section.

(b) With respect to the device mentioned in paragraph (a) of this section, a door operator shall monitor for the presence and correct operation of the device, including the wiring to it, at least once during each close cycle. Should the device not be present or a fault condition occur which precludes the sensing of an obstruction, including an open or short circuit in the wiring that connects the external entrapment protection device to the operator and device's supply source, the operator shall function in one of the following conditions:

(1) A closing door shall open and an open door shall not close more than 1 foot (305 mm) below the upmost position, or

(2) The operator shall function as required by § 1211.6(b)(1).

(c) An external entrapment protection device as mentioned in paragraph (a) of this section shall comply with the applicable requirements specified in §§ 1211.10, 1211.11, and 1211.12 of this subpart.

§ 1211.9 Additional entrapment protection requirements.

(a) A means to manually detach the door operator from the door shall be provided. The means shall be colored red and shall be easily distinguishable

from the rest of the operator. It shall be capable of being adjusted to a height of 6 feet (1.8 m) above the garage floor when the operator is installed according to the instructions specified in § 1211.13(a)(2) of this subpart. The means shall be constructed so that a hand can firmly grip it and detach the operator by applying a maximum of 50 pounds (223 N) of force to the means with the door obstructed in the down position. The obstructing object, as described in § 1211.7(b), is to be located in several different positions. A marking with instructions for detaching the operator shall be provided as required by § 1211.14(i).

(b) Actuation of a control that initiates movement of a door shall stop and may reverse the door on the down cycle. On the up cycle, actuation of a control shall stop the door but not reverse it.

(c) An operator shall be constructed so that adjustment of limit, force or other user controls and connection of external entrapment protection devices can be accomplished without exposing normally enclosed live parts or wiring.

§ 1211.10 Requirements for all entrapment protection devices.

(a) *General requirements.* (1) An external entrapment protection device shall perform its intended function when tested in accordance with paragraphs (a)(2) through (4) of this section.

(2) The device is to be installed in the intended manner and its terminals connected to circuits of the door operator as indicated by the installation instructions.

(3) The device is to be installed and tested at minimum heights and widths representative of recommended ranges specified in the installation instructions. If not specified, devices are to be tested on a minimum 7 foot (2.1 m) wide door and maximum 20 foot (6.1 m) wide door.

(4) If powered by a separate source of power, the power-input supply terminals are to be connected to supply circuits of rated voltage and frequency.

(5) An external entrapment protection device requiring alignment, such as a photoelectric sensor, shall be provided with a means, such as a visual indicator, to show proper alignment and operation of the device.

(b) *Current protection test.* (1) There shall be no damage to the entrapment protection circuitry if low voltage field-wiring terminals or leads are shortened or miswired to adjacent terminals.

(2) To determine compliance with paragraph (b)(1) of this section, an external entrapment protection device is to be connected to a door operator or other source of power in the intended manner, after which all connections to low voltage terminals or leads are to be reversed as pairs, reversed individually, or connected to any low voltage lead or adjacent terminal.

(c) *Splash test.* (1) An external entrapment protection device intended to be installed inside a garage 3 feet or less above the floor shall withstand a water exposure as described in paragraph (c)(2) of this section without resulting in a risk of electric shock and shall function as intended. After exposure, the external surface of the device may be dried before determining its functionality.

(2) An external entrapment protection device is to be indirectly sprayed using a hose having the free end fitted with a nozzle as illustrated in figure 2 and connected to a water supply capable of maintaining a flow rate of 5 gallons (19 liters) per minute as measured at the outlet orifice of the nozzle. The water from the hose is to be played, from all sides and at any angle against the floor under the device in such a manner most likely to cause water to splash the enclosure of electric components. However, the nozzle is not to be brought closer than 10 feet (3.05 m) horizontally to the device. The water is to be sprayed for 1 minute.

Figure 2

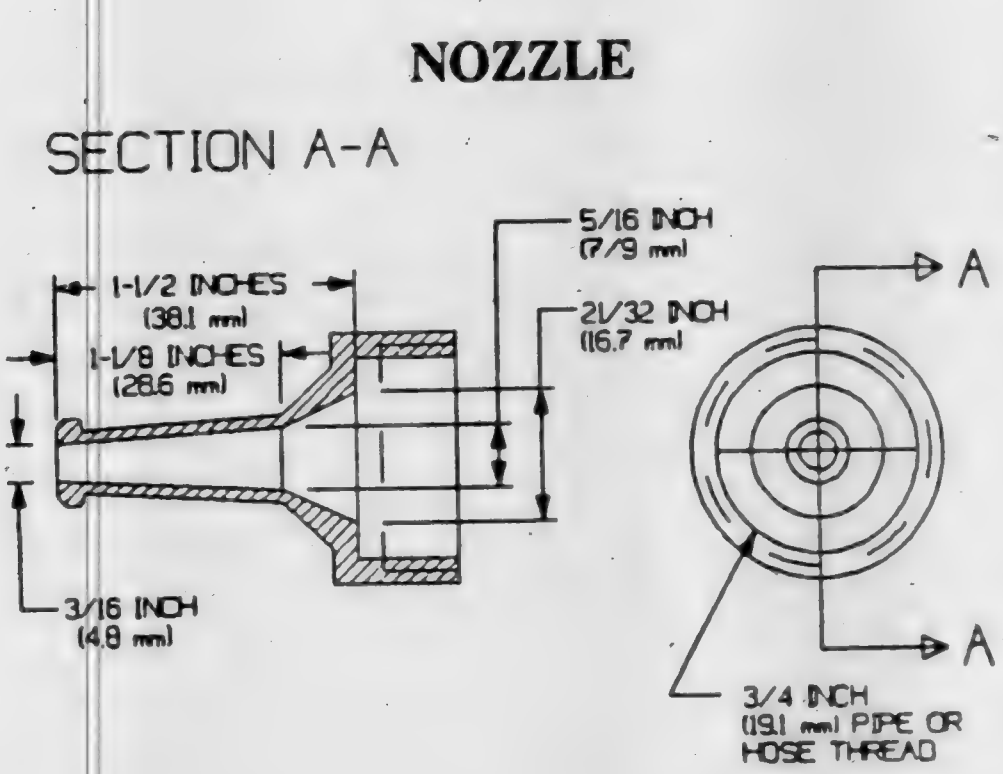

(d) *Ultraviolet light exposure test.* A polymeric material used as a functional part of a device that is exposed to outdoor weather conditions shall comply with the Ultraviolet Light Exposure Test described in the Standard for Polymeric Materials—Use in Electrical Equipment Evaluations, UL 746C, 3rd ed., dated July 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Ill. 60062–2096. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C.

(e) *Resistance to impact test.* (1) An external entrapment protection device employing a polymeric or elastomeric material as a functional part shall be subjected to the impact test specified in paragraph (e)(2) of this section. After being subjected to this test:

(i) There shall be no cracking or breaking of the part, and

(ii) The part shall operate as intended.

(2) Samples of the external entrapment protection device are to be subjected to the Impact Test described in the Standard for Polymeric Materials—Use in Electrical Equipment Evaluations, UL 746C, 3rd ed., dated July 1, 1991, as incorporated by reference in paragraph (d) of this section. The external entrapment protection device is to be subjected to 5 foot-pound (6.8 J) impacts. Three samples are to be tested, each sample being subjected to three impacts at different points.

(3) Each of three additional samples of a device exposed to outdoor weather when the door is the closed position are to be cooled to a temperature of minus 31.0 ± 3.6° F (minus 35.0 ± 2.0° C) and maintained at this temperature for 3 hours. Three samples of a device employed inside the garage are to be cooled to a temperature of 32.0° F (0.0° C) and maintained at this temperature for 3 hours. While the sample is still cold, the samples are to be subjected to the impact test described in paragraph (e)(1) of this section.

§ 1211.11 Requirements for photoelectric sensors.

(a) *Normal operation test.* (1) When installed as described in § 1211.10(a)(1)–(4), a photoelectric sensor shall sense an obstruction as described in paragraph (a)(2) of this section that is to be placed on the floor at three points over the width of the door opening, at distances of 1 foot (305 mm) from each end and the midpoint.

(2) The obstruction noted in paragraph (a)(1) of this section shall consist of a white vertical surface 6 inches (152 mm) high by 12 inches (305 mm) long. The obstruction is to be centered under the door perpendicular to the plane of the door when in the closed position. See figure 3.

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Figure 3

STATIONARY OBSTRUCTION

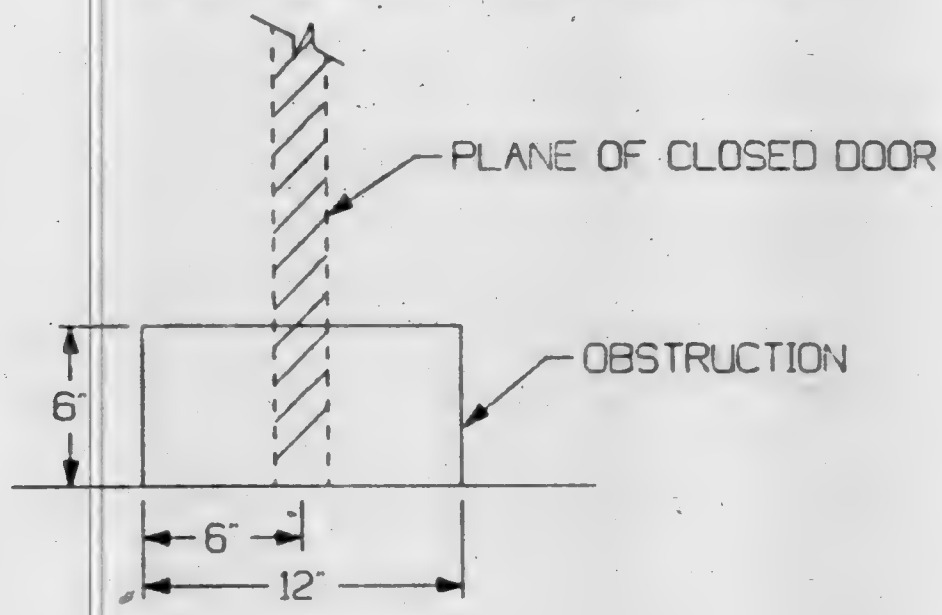

Figure 4

MOVING OBSTRUCTION

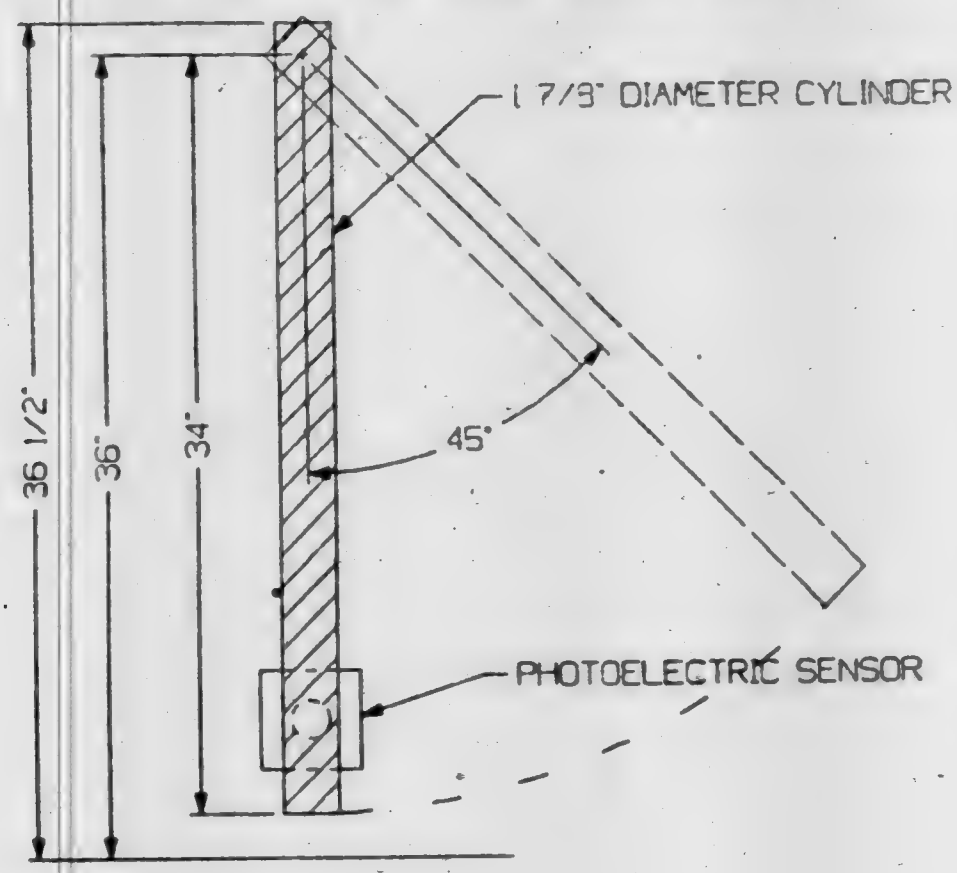

BILLING CODE 6355-01-C

(b) *Sensitivity test.* (1) When installed as described in § 1211.10(a)(1)–(4), a photoelectric sensor shall sense the presence of a moving object when tested according to paragraph (b)(2) of this section.

(2) The moving object is to consist of a 1⅞ inch (47.6 mm) diameter cylindrical rod, 34½ inches (876 mm) long, with the axis point being 34 inches (864 mm) from the end. The axis point is to be fixed at a point centered directly above the beam of the photoelectric sensor 36 inches (914 mm) above the floor. The photoelectric sensor is to be mounted at the highest position as recommended by the manufacturer. The rod is to be swung as a pendulum through the photoelectric sensor's beam from a position 45 degrees from the plane of the door when in the closed position. See figure 4.

(3) The test described in paragraph (b)(2) of this section is to be conducted at three points over the width of the door opening, at distances of 1 foot (305 mm) from each end and the midpoint.

(c) *Ambient light test.* (1) A photoelectric sensor shall operate as specified in § 1211.8 (a) and (b) when subjected to ambient light impinging at an angle of 15 to 20 degrees from the axis of the beam when tested according to paragraph (c)(2) and, if appropriate, paragraph (c)(3) of this section.

(2) To determine compliance with paragraph (c)(1) of this section, a 500 watt, 3600K Photo Floodlamp, type DXC RFL–2, is to be energized from a 120-volt, 60-hertz source.

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Figure 5

AMBIENT LIGHT TEST

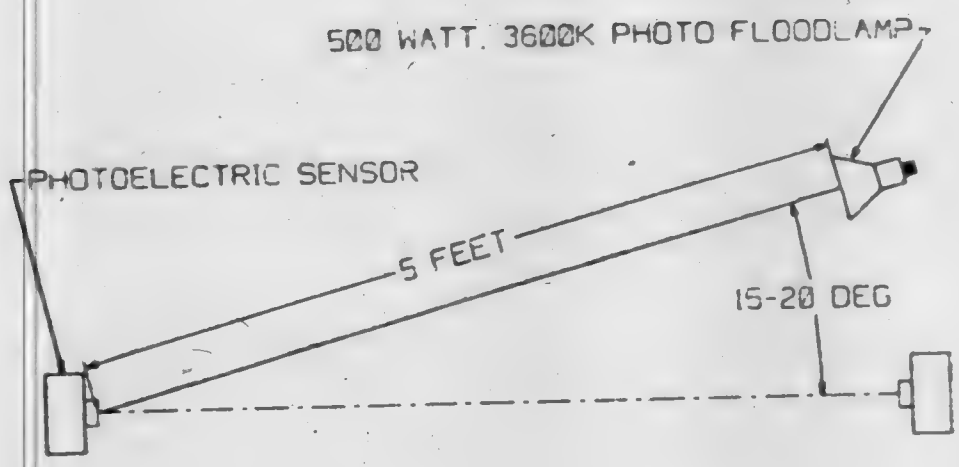

Figure 6

EDGE SENSOR NORMAL OPERATION TEST

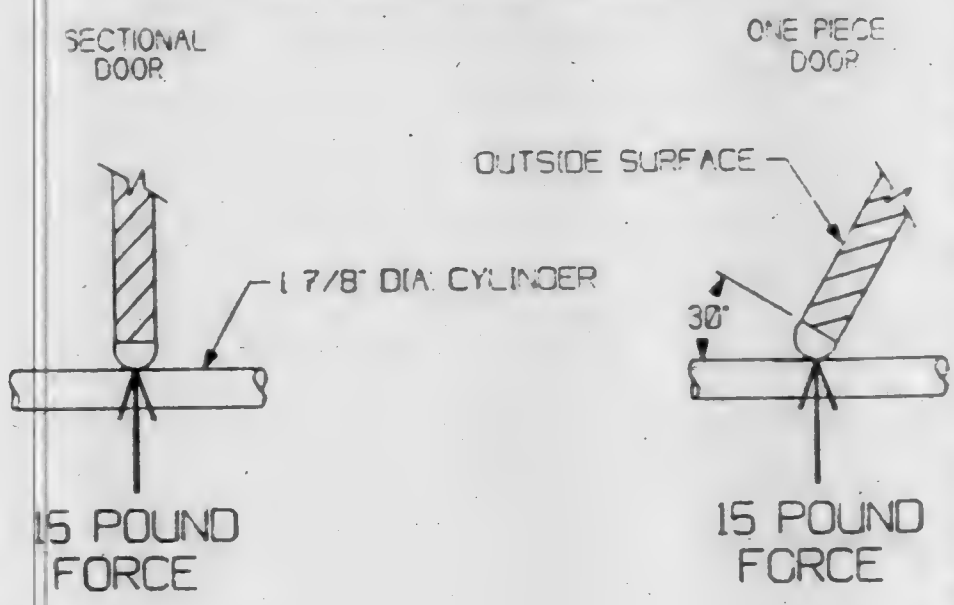

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The lamp is to be positioned 5 feet from the front of the receiver and aimed directly at the sensor at an angle of 15 to 20 degrees from the axis of the beam. See figure 5.

(3) If the photoelectric sensor uses a reflector, this test is to be repeated with the lamp aimed at the reflector.

§ 1211.12 Requirements for edge sensors.

(a) *Normal operation test.* (1) When installed on a representative door edge, an edge sensor shall actuate upon the application of a 15 pounds (66.7 N) or less force in the direction of the application. For an edge sensor intended to be used on a sectional door, the force is to be applied by the longitudinal edge of a 1⅞ inch (47.6 mm) diameter cylinder placed across the switch so that the axis is perpendicular to the plane of the door. For an edge sensor intended to be used on a one piece door, the force is to be applied so that the axis is at an angle 30 degrees from the direction perpendicular to the plane of the door. See figure 6.

(2) With respect to the test of paragraph (a)(1) of this section, the test is to be repeated at various representative points of the edge sensor across the width of the door.

(3) Exception: The edge sensor need not be sensitive to actuation two inches (50.4 mm) or less from each end of the intended width of the door opening.

(b) *Endurance test.* An edge sensor system and associated components shall withstand 30,000 cycles of mechanical operation without failure. For this test, the edge sensor is to be cycled by the repetitive application of the force as described in paragraph (a)(1) of this section. The force is to be applied to the same location for the entire test. For an edge sensor system employing integral electric contact strips, this test shall be conducted with the contacts connected to a load no less severe than it controls in the operator. For the last 50 cycles of operation, the sensor shall function as intended when connected to an operator.

(c) *Elastomeric material conditioning test.* (1) An elastomeric material used as a functional part of an edge sensor shall function as intended when subjected to:

(i) Accelerated Aging Test of Gaskets, stated in paragraph (c)(3) of this section, and

(ii) Puncture Resistance Test, stated in paragraph (d) of this section.

(2) An elastomeric material used for a functional part that is exposed to outdoor weather conditions when the door is in the closed position shall have physical properties as specified in Table 1 after being conditioned in accordance with the Ultraviolet Light Exposure Test described in the Standard for Polymeric Materials—Use in Electrical Equipment Evaluations, UL 746C, 3rd ed., dated July 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096.

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Table 1

PHYSICAL PROPERTIES OF GASKET-ACCELERATED AGING TEST

	Before Accelerated Aging	After Accelerated Aging
Recovery -- Maximum set when 2-inch (50.8-mm) gauge marks are stretched to 5 inches (127 mm), held for 2 minutes, and measured 2 minutes after release	1/2 inch (12.7 mm)	
Elongation -- Minimum increase in distance between 2-inch gauge marks at break	250 percent [2 to 7 inches (50.8—178.8 mm)]	65 percent of original
Tensile Strength -- Minimum force at breaking point	850 pounds per square inch (59 mPa)	75 percent of original

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(3) Rubber compounds forming gaskets that are depended upon for protection from rain shall have physical properties as specified in Table 1, before and after conditioning for 168 hours in an air-circulating oven at 70° C (158° F).

(d) *Puncture resistance test.* (1) After being subjected to the test described in paragraph (d)(2) of this section, an elastomeric material that is a functional part of an edge sensor shall:

(i) Not be damaged in a manner that would adversely affect the intended operation of the edge sensor, and

(ii) Maintain enclosure integrity if it serves to reduce the likelihood of contamination of electrical contacts.

(2) A sample of the edge sensor is to be installed in the intended manner on a representative door edge. The probe described in figure 7 is to be applied with a 20 pound-force (89N) to any point on the sensor that is 3 inches or less above the floor is to be applied in the direction specified in the Edge Sensor Normal Operation Test, figure 6. The test is to be repeated on three locations on each surface of the sensor being tested.

Figure 7

PUNCTURE PROBE

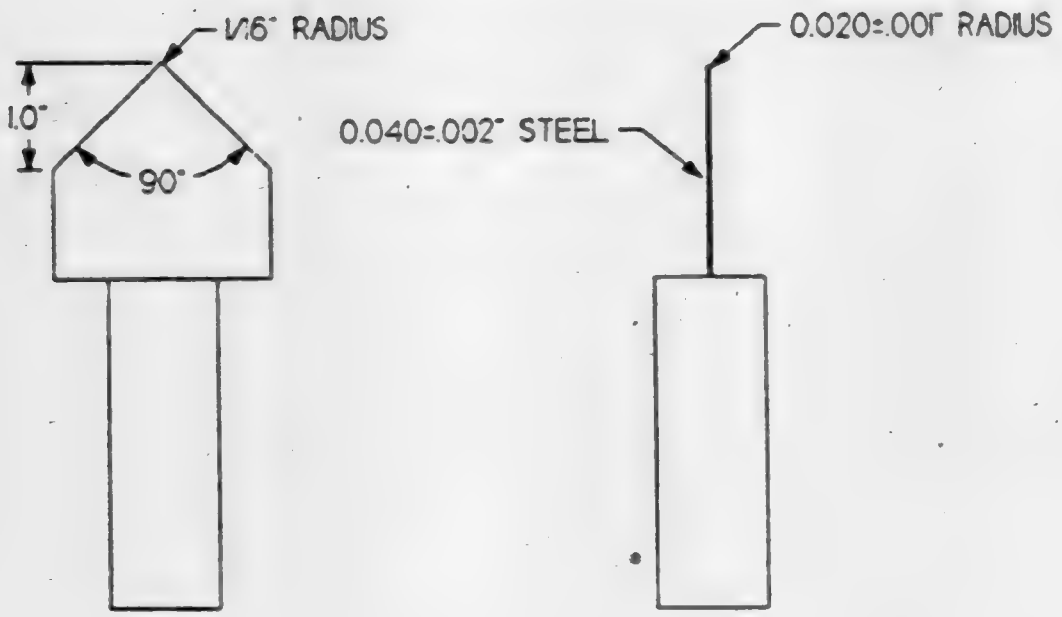

§ 1211.13 Instruction manual.

(a) *General.* (1) A residential garage door operator shall be provided with an instruction manual. The instruction manual shall give complete instructions for the installation, operation, and user maintenance of the operator.

(2) Instructions that clearly detail installation and adjustment procedures required to effect proper operation of the safety means provided shall be provided with each door operator.

(3) A residential garage door or door operator shall be provided with complete and specific instructions for the correct adjustment of the control mechanism and the need for periodic checking and, if needed, adjustment of the control mechanism so as to maintain satisfactory operation of the door.

(4) The instruction manual shall include the important instructions specified in paragraphs (b)(1) and (2) of this section. All required text shall be legible and contrast with the background. Upper case letters of required text shall be no less that 5/64 inch (2.0 mm) high and lower case letters shall be no less than 1/16 inch (1.6 mm) high. Heading such as "Important Installation Instructions," Important Safety Instructions," "Save These Instructions" and the words "Warning—To reduce the risk of severe injury or death to persons": shall be in letters no less than 3/16 inch (4.8 mm) high.

(5) The instructions listed in paragraphs 1211.13(b)(1) and (2) shall be in the exact words specified or shall be in equally definitive terminology to those specified. No substitutes shall be used for the word "Warning." The items may be numbered. The first and last items specified in paragraph (b)(2) of this section shall be first and last respectively. Other important and precautionary items considered appropriate by the manufacturer may be inserted.

(6) The instructions listed in paragraph (b) (1) of this section shall be located immediately prior to the installation instructions. The instructions listed in paragraph (b) (2) of this section shall be located immediately prior to user operation and maintenance instructions. In each case, the instructions shall be separate in format from other detailed instructions related to installation, operation and maintenance of the operator. All instructions, except installation

instructions, shall be a permanent part of the manual(s).

(b) *Specific required instructions.* (1) The Installation Instructions shall include the following instructions:

Important Installation Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and follow all Installation Instructions.

2. Install only a properly balanced garage door. An improperly balanced door could cause severe injury. Have a qualified service person make repairs to cables, spring assemblies and other hardware before installing opener.

3. Remove all ropes and remove or make inoperative all locks connected to the garage door before installing opener.

4. If possible, install door opener 7 feet or more above the floor. Mount the emergency release 6 feet above the floor.

5. Do not connect opener to source of power until instructed to do so.

6. Locate control button: (a) within sight of door, (b) at a minimum height of 5 feet so small children cannot reach it, and (c) away from all moving parts of the door.

7. Install Entrapment Warning Label next to the control button in a prominent location. Install the Emergency Release Marking. Attach the marking on or next to the emergency release.

8. After installing opener, the door must reverse when it contacts a 1½ inch high object (or a 2 by 4 board laid flat) on the floor.

(2) The User Instructions shall include the following instructions:

Important Safety Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and Follow all Instructions.

2. Never let children operate, or play with door controls. Keep the remote control away from children.

3. Always keep the moving door in sight and away from people and objects until it is completely closed. No One Should Cross the Path of the Moving Door.

4. Test door opener monthly. The garage door MUST reverse on contact with a 1 inch object (or a 2 by 4 board laid flat) on the floor. After adjusting either the force or the limit of travel, retest the door opener. Failure to adjust the opener properly may cause severe injury or death.

5. If possible, use the emergency release only when the door is closed. Use caution when using this release with the door open. Weak or broken springs may allow the door to fall rapidly, causing injury or death.

6. Keep Garage Doors Properly Balanced. See owner's manual. An improperly balanced door could cause severe injury or death. Have a qualified service person make repairs to cables, spring assemblies and other hardware.

7. Save These Instructions.

§ 1211.14 Field-installed labels.

(a) A residential garage door operator shall be provided with labels for field installation and constructed as specified in paragraphs (c) through (i) of this section. The labels shall be acceptable for permanent installation. The instruction manual shall specify where the labels are to be located.

(b) If labels secured by adhesive are used, the instruction shall specify that an additional mechanical means shall be used to secure the labels to surfaces to which the adhesive will not adhere.

(c) A residential garage door operator shall be provided with a cautionary label intended for permanent installation to identify the possible risk of entrapment. The instruction manual shall direct that the label be affixed near the wall-mounted control button.

(d) The label required in accordance with paragraph (c) of this section shall be in a vertical layout with three panels:

(1) A signal word panel,

(2) A pictorial panel, and

(3) A message panel, with adjacent panels delineated from each other by a horizontal black line. The entire label shall be surrounded by a black border and shall measure at least 5 inches (127 mm) wide by 6¼ inches (159 mm) long overall.

(e) The signal word panel as specified in paragraph (d) of this section shall contain the word "WARNING," in uppercase letters, preceded by a safety alert symbol consisting of an orange exclamation mark on a black solid equilateral triangle background with the point of the triangle oriented upward. The word "WARNING" and the safety alert symbol shall be centered on one line and shall be in black letters at least 7/16 inch (11.1 mm) high on an orange background.

(f) The pictorial panel as specified in paragraph (d) of this section shall be positioned between the signal word panel and the message panel. The pictorial shall be black on a white background and shall clearly depict a child running toward or under a garage door. A red prohibition symbol (slash, oriented from the upper left to the lower right, through a circle) shall be superimposed over, and totally surround, the pictorial. The pictorial shall have an overall diameter of 1-7⅛ inch (47.6 mm) minimum.

(g) The message panel as specified in paragraph (d) of this section shall include the following text or an equivalent wording:

(1) Possible Risk and Consequence Statement—"A child may become trapped under an automatic garage door resulting in severe injury or death."

(2) Avoidance Statements—

(i) "Do not allow children to walk or run under a closing door."

(ii) "Do not allow children to operate door operator controls."

(iii) "Always keep a closing door within sight."

(iv) "If a person is trapped under the door, push the control button or use the emergency release."

(3) Instructions—

(i) "Test Door Operator Monthly: Use a 1½ inch thick object placed on the floor under the closing door. If the door does not reverse upon contact, adjust, repair, or replace the operator."

(ii) Additional instructions on not removing or painting over the label, mounting the label adjacent to the wall control, and mounting the wall control out of children's reach shall be provided. These additional instruction shall be in less prominent lettering than those in paragraph (g)(3)(i) of this section.

(h) The lettering of the message panel described in paragraph (g) of this section shall be black on a white background and shall be sans serif letters in combinations of upper case and lower case letters. The upper case letters of the Possible Risk and Consequence Statements and Avoidance Statements shall be ⅛ inch (3.18 mm) high minimum. The lettering of the Possible Risk and Consequence Statement shall be in italics, underlined, bold, or the like, and shall be double spaced from the Avoidance Statements. All other instructions shall be in letters less prominent than the Possible Risk and Consequence Statements and shall be separated with at least a single space between individual instructions.

(i) A residential garage door operator shall be provided with a cautionary marking attached to or adjacent at all times to the means provided to detach the operator from the garage door. The marking shall include the following statement or the equivalent: "If the door becomes obstructed, detach door from operator as follows: (The method to detach the operator shall be shown on the marking.)"

§ 1211.15 UL marking requirements.

(a) Unless specifically excepted, marking required in this standard shall be permanent. Ink-printed and stenciled markings, decalcomania labels, and pressure sensitive labels are among the types of marking that are considered acceptable if they are acceptably applied and are of good quality.

(b) Except as provided below, a garage door operator shall be plainly marked, at a location where the marking will be readily visible—after installation, in the case of a permanently connected appliance—with:

(1) The manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified—hereinafter referred to as the manufacturer's name;

(2) The catalog number or the equivalent;

(3) The voltage, frequency, and input in amperes or watts; and

(4) The date or other dating period of manufacture not exceeding any three consecutive months.

(c) The ampere rating shall be included unless the full-load power factor is 80 percent or more, or, for a cord-connected operator, unless the rating is 50 watts or less. The number of phases shall be indicated if an operator is for use on a polyphase circuit. The date code repetition cycle shall not be less than 20 years.

(d) Exception No. 1: The manufacturer's identification may be in a traceable code if the operator is identified by the brand or trademark owned by a private labeler.

(e) Exception No. 2: The date of manufacture may be abbreviated or in an established or otherwise accepted code.

(f) If a manufacturer produces or assembles operators at more than one factory, each finished operator shall have a distinctive marking, which may be in code, to identify it as the product of a particular factory.

(g) The carton and the instruction manual for an operator shall be marked with the word "WARNING" and the following or the equivalent: "To reduce the risk of injury to persons—Use this operator only with (a) _____door(s)."

(h) A residential garage door operator shall be marked with the word "WARNING" and the following or equivalent, "Risk of entrapment. After adjusting either the force or limits of travel adjustments, insure that the door reverses on a 1½ inch (or a 2 by 4 board laid flat) high obstruction on the floor."

(i) A separately supplied accessory, including external entrapment protection device, intended for installation with an appliance or appliances shall be marked with the manufacturer's name and catalog or model number and the type of appliance or appliances with which it is intended to be used—such as a residential garage door operator. Additionally, installation instructions, accompanying specifications sheet, or packaging of the accessory shall identify the appliance or appliances with which it is intended to be used by specifying the manufacturer's name and catalog or model number or by any other positive means to serve the identification purpose.

(j) An appliance provided with terminals or connectors for connection of a separately supplied accessory, such as an external entrapment protection device, shall be marked to identify the accessory intended to be connected to the terminals or connectors. The accessory identification shall be by manufacturer's name and catalog or model number or other means to allow for the identification of accessories intended for use with the appliance.

(k) With reference to paragraph (k) of this section, instructions for installing a separately supplied accessory shall be provided. A statement shall be included in the instructions warning the user that the appliance must be disconnected from the source of supply before attempting the installation of the accessory.

§ 1211.16 Statutory labeling requirement.

(a) A manufacturer selling or offering for sale in the United States an automatic residential garage door operator manufactured on or after January 1, 1991, shall clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of this part.

(b) The display of the UL logo or listing mark, and compliance with the date marking requirements of UL–325 now stated in § 1211.5 of this subpart, on both the container and the system, shall satisfy the requirements of this subpart.

3. Part 1211 is amended by adding new Subpart B, consisting of §§ 1211.20 through 1211.25, and new subpart C, consisting of §§ 1211.30 and 1211.31 to read as follows:

Subpart B—Certification

Sec.

1211.20 Purpose, scope, and application.
1211.21 Effective date.
1211.22 Definitions.
1211.23 Certification testing.
1211.24 Product certification and labeling by manufacturers.
1211.25 Product certification and labeling by importers.

Subpart C—Recordkeeping

1211.30 Effective date.
1211.31 Recordkeeping requirements.

Subpart B—Certification

§ 1211.20 Purpose, scope, and application.

(a) *Purpose.* Section 14(a) of the Consumer Product Safety Act, 15 U.S.C. 2063(a), requires every manufacturer (including importers) and private labeler of a product which is subject to a consumer product safety standard to issue a certificate that the product conforms to the applicable standard, and to base that certificate either on a test of each product or on a "reasonable testing program." The purpose of this subpart is to establish requirements that manufacturers and importers of automatic residential garage door operators subject to the Safety Standard for Automatic Residential Garage Door Operators (16 CFR Part 1211, Subpart A), shall issue certificates of compliance in the form specified.

(b) *Scope and application.* The provisions of this subpart apply to all residential garage door operators which are subject to the requirements of the Safety Standard for Automatic Residential Garage Door Operators that take effect on January 1, 1993 or later.

§ 1211.21 Effective date.

Under the Consumer Product Safety Act, automatic residential garage door operators must certify that they comply with requirements of subpart A of this part. This certification requirement is currently in effect. The specific labeling requirement of the certification rule in this subpart will become effective for any automatic residential garage door operator manufactured on or after January 21, 1993.

§ 1211.22 Definitions.

The following definitions shall apply to this subpart:

(a) *Private labeler* means an owner of a brand or trademark which is used on an operator subject to the standard and which is not the brand or trademark of the manufacturer of the operator, provided the owner of the brand or trademark caused or authorized the operator to be so labeled and the brand or trademark of the manufacturer of such operator does not appear on the label.

(b) *Production lot* means a quantity of garage door operators from which certain operators are selected for testing prior to certifying the lot. All garage door operators in a lot must be essentially identical in those design, construction, and material features which relate to the ability of an operator to comply with the standard.

(c) *Reasonable testing program* means any test or series of tests which are identical or equivalent to, or more stringent than, the tests defined in the standard and which are performed on one or more garage door operators of the production lot for the purpose of determining whether there is reasonable assurance that the operators in that lot comply with the requirements of the standard.

§ 1211.23 Certification testing.

(a) *General.* Manufacturers and importers shall either test each individual garage door operator (or have it tested) or shall rely upon a reasonable testing program to demonstrate compliance with the requirements of the standard.

(b) *Reasonable testing program.* This paragraph provides guidance for establishing a reasonable testing program.

(1) A reasonable testing program for automatic residential garage door operators is one that provides reasonable assurance that the operators comply with the standard. Manufacturers and importers may define their own testing programs. Such reasonable testing programs may, at the option of manufacturers and importers, be conducted by an independent third party qualified to perform such testing programs.

(2) To conduct a reasonable testing program, the garage door operators should be divided into production lots. Sample operators from each production lot should be tested in accordance with the reasonable testing program so that there is a reasonable assurance that if the operators selected for testing meet the standard, all operators in the lot will meet the standard. Where there is a change in parts, suppliers of parts, or production methods that could affect the ability of the operator to comply with the requirements of the standard, the manufacturer should establish a new production lot for testing.

(3) The Commission will test for compliance with the standard by using the test procedures contained in the standard. However, a manufacturer's reasonable testing program may include either tests prescribed in the standard or any other reasonable test procedures.

(4) If the reasonable testing program shows that an operator does not comply with one or more requirements of the standard, no operator in the production lot can be certified as complying until all non-complying operators in the lot have been identified and destroyed or altered by repair, redesign, or use of a different material or components to the extent necessary to make them conform to the standard. The sale or offering for sale of garage door operators that do not comply with the standard is a prohibited act and a violation of section 19(a) of the CPSA (15 U.S.C. 2068(a)), regardless of whether the operator has been validly certified.

§ 1211.24 Product certification and labeling by manufacturers.

(a) *Form of permanent label of certification.* Manufacturers (including importers) shall issue certificates of compliance for automatic residential garage door operators manufactured after the effective date of the standard in the form of a permanent label which can reasonable be expected to remain on the operator during the entire period the operator is capable of being used. Such labeling shall be deemed to be a "certificate" of compliance as that term is used in section 14 of the CPSA, 15 U.S.C. 2063.

(b) *Exception for UL listed operators.* The certification labeling requirement of paragraph (a) of this section shall be satisfied by display of the Underwriters Laboratories, Inc. (UL) logo or listing mark, and compliance with the date marking requirements of UL Standard for Safety 325, on both the operator system and its container. Operators displaying the UL logo or listing mark and complying with the UL standard are exempt from the requirements of paragraphs (c) and (d) of this section.

(c) *Contents of certification label.* The certification labels required by this section shall clearly and legibly contain the following information:

(1) The statement "Meets CPSC _____(insert 1993 or later date of applicable standard) garage door operator entrapment protection requirements."

(2) An identification of the production lot.

(d) *Placement of the label.* The label required by this section must be affixed to the operator. If the label is not immediately visible to the ultimate purchaser of the garage door operator prior to purchase because of packaging or other marketing practices, a second label that states: "Meets CPSC _____ (insert 1993 or later date of applicable standard) garage door operator entrapment protection requirements," along with the month or week and year of manufacture must appear on the container or, if the container is not visible, on the promotional material used with the sale of the operator.

§ 1211.25 Product certification and labeling by importers.

(a) *General.* The importer of any automatic residential garage door operator subject to the standard in subpart A of this part must issue the certificate of compliance required by section 14(a) of the CPSA and § 1211.24 of this subpart. If testing of each operator, or a reasonable testing program, meeting the requirements of this subpart has been performed by or for the foreign manufacturer of the product, the importer may rely in good faith on such tests to support the certificate of compliance provided the importer is a resident of the United States or has a resident agent in the United States and the records of such tests required by § 1211.31 of subpart C of this part are maintained in the United States.

(b) *Responsibility of importer.* If the importer relies on tests by the foreign manufacturer to support the certificate of compliance, the importer bears the responsibility for examining the records supplied by the manufacturer to determine that the records of such tests appear to comply with § 1211.31 of subpart C of this part.

Subpart C—Recordkeeping

§ 1211.30 Effective date.

The recordkeeping requirements in this subpart shall become effective on January 21, 1993, and shall apply to automatic residential garage door operators manufactured on or after that date.

§ 1211.31 Recordkeeping requirements.

(a) *General.* Every person issuing certificates of compliance for automatic residential garage door operators subject to the standard set forth in subpart A of this part shall maintain written records which show that the certificates are based on a test of each operator or on a reasonable testing program. The records shall be maintained for a period of at least three years from the date of certification of each operator or the last operator in each production lot. These records shall be available to any designated officer or employee of the Commission upon request in accordance with section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(b) *Content of records.* Records shall identify the operators tested and the production lot and describe the tests the operators were subjected to in sufficient detail so the tests may be replicated. Records shall also provide the results of the tests including the precise nature of any failures, and specific actions taken to address any failures.

(c) *Format for records.* The records required to be maintained by this section may be in any appropriate form or format that clearly provides the required information.

Dated: December 10, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–30529 Filed 12–18–92; 8:45 am]

BILLING CODE 6355–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendments to Administrative Manual—Rules of Practice and Procedure

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its December 9, 1992 business meeting, the Delaware River Basin Commission amended its Administrative Manual—Rules of Practice and Procedure relating to water quality standards and policies to protect existing water quality in certain waters of the Basin.

By the same action, the Commission amended its Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations. Supplementary background information and a summary of the amendments to the Comprehensive Plan, Water Code and Water Quality Regulations are published elsewhere in this issue of the **Federal Register**. Those amendments set forth an overall framework for providing special water quality protection measures in waters deemed by the Commission to have exceptionally high scenic, recreational, ecological and/or water supply values. The amendments also classify specific stream reaches as Special Protection Waters.

The amendments to the Rules of Practice and Procedure revise certain point source pollution control policies and requirements. They reduce the threshold for point source discharges deemed not to have a substantial effect on the water resources of the Basin and not required to be submitted to the Commission under section 3.8 of the Compact from a daily average rate of 50,000 gallons to 10,000 gallons in the drainage area to Special Protection Waters:

EFFECTIVE DATE: December 9, 1992.

ADDRESSES: Copies of the Commission's Administrative Manual—Rules of Practice and Procedure are available from the Delaware River Basin Commission, P.O. Box 7360, West, Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 X203.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on the proposed amendments on May 5, 1992; May 6, 1992 and May 15, 1992 as noticed in the March 18, 1992 and April 15, 1992 issues of the **Federal Register** (Vol. 57, No. 53 and Vol. 57, No. 73). Based upon testimony received and considerable deliberation, the Commission has amended its Administrative Manual—Rules of Practice and Procedure.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

18 CFR part 401 is amended as follows:

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Section 401.35(a) (4) and (5) are revised to read as follows:

§ 401.35 Classification of projects for review under section 3.8 of the Compact.

(a) * * *

(4) The construction of new municipal sewage treatment facilities or alteration or addition to existing municipal sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems.

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials.

* * * * *

Delaware River Basin Compact, 75 Stat. 688.

Dated: December 14, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92–30855 Filed 12–18–92; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket Nos. 88G–0428 and 91G–0268]

Direct Food Substances Affirmed as Generally Recognized as Safe; Urease Enzyme Derived From Lactobacillus Fermentum

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm as generally recognized as safe (GRAS) the use of urease enzyme preparation derived from *Lactobacillus fermentum* in the alcoholic beverage wine. This action is in response to two petitions filed by Takeda Chemical Industries, Ltd., 12–10 Nihonbashi, 2-Chome, Chuo-ku, Tokyo 103, Japan.

DATES: Effective January 21, 1993. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in new § 184.1924(b), effective January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Vincent Zenger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), Takeda Chemical Industries, Ltd., 12–10 Nihonbashi, 2-Chome, Chuo-ku, Tokyo 103, Japan, submitted two petitions (GRASP 8G0342 and GRASP 0G0358) requesting that the urease enzyme preparation derived from *Lactobacillus fermentum* be affirmed as GRAS for use in the alcoholic beverages sake and wine, respectively, to prevent the formation of ethyl carbamate.

To avoid confusion between urease, the enzyme, and urease, the enzyme preparation (in which urease is the principal active component, but which also contains other components derived from the production organism or the fermentation media), this document will use the term "urease" to refer to the former and "urease enzyme preparation" to refer to the latter.

FDA published a notice of filing of GRASP 8G0342 in the **Federal Register** of January 26, 1989 (54 FR 3854) and gave interested parties an opportunity to

submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. (The docket number for this notice has been changed from 88F–0428 to 88G–0428.) FDA received no comments in response to that notice.

FDA published a notice of filing of GRASP 0G0358 in the **Federal Register** of July 31, 1991 (56 FR 36162) and interested persons were given until September 30, 1991, to submit comments. FDA received seven comments in response to that notice. All seven comments, from members of the wine industry and academia, supported the action requested in the petition. All comments stated that urease added to wine has been shown to reduce the concentration of urea, which is a precursor to ethyl carbamate.

The term "wine" as defined by the Bureau of Alcohol, Tobacco, and Firearms in 27 CFR 2.5 and 4.10 includes alcoholic beverages made in the manner of wine from agricultural products other than grapes and containing not less than 7 percent and not more than 24 percent alcohol by volume. This definition includes the alcoholic beverage sake (Ref. 1). Therefore, the agency has concluded that affirmation as GRAS of the use of the urease enzyme preparation from *L. fermentum* in wine, as defined in 27 CFR 2.5 and 4.10, would be responsive to both petitions. In addition, in this document, references to the use of urease enzyme preparation in wine include the use of urease enzyme preparation in sake.

II. Standards for Gras Affirmation

Pursuant to § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of food substances. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, through experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive, but ordinarily is to be based upon generally available data and information concerning the pre-1958 history of use of the food ingredient (§ 170.30(c)(1)).

In its petitions, Takeda Chemical Industries, Ltd., relies on scientific procedures, primarily published scientific papers and books, to demonstrate the safety and identity of the urease enzyme preparation and the production strain from which it was derived. Takeda Chemical Industries, Ltd., provided published and unpublished information documenting that urease derived from nontoxicogenic, nonpathogenic *L. fermentum* is safe and suitable for use in preventing the formation of ethyl carbamate in wine.

In evaluating these petitions, the agency reviewed information concerning: (1) The safety of the production organism, (2) the safety of the urease enzyme preparation, (3) the production and purification of the urease enzyme preparation, (4) the natural occurrence or presence of the *L. fermentum* organism in many foods, and (5) the residual levels of the urease enzyme preparation in wine.

III. Identity, Specifications, and Technical Effect

Urease is the accepted name for the enzyme that facilitates the hydrolysis of urea to ammonia and carbon dioxide. It is a metalloenzyme containing nickel (Refs. 2 and 3). Urease produced from *L. fermentum* is optimally active at acidic pH and belongs to a group of ureases collectively called "acid ureases." (Ref. 4) According to the Nomenclature Committee of the International Union of Biochemistry, urease has the following designation: Urease, E.C. 3.5.1.5. (Ref. 5). The Chemical Abstracts Service (CAS) Registry Number for urease is 9002–13–5. The agency finds that the petitioned preparation meets the general and additional requirements for enzyme preparations found in the "Food Chemicals Codex," 3d ed. (1981), which is incorporated by reference in new § 184.1924(b).

The function of urease in wine is to prevent the formation of ethyl carbamate. Ethyl carbamate is known to be mutagenic and carcinogenic in experimental animals (Ref. 6). Urea, a natural byproduct of fermentation, is believed to be the major precursor of ethyl carbamate in alcoholic beverages, including wine (Refs. 7 and 8). Urease facilitates the hydrolysis of urea found in wine to ammonia and carbon dioxide. The petitioner presented published information that the urease enzyme preparation performs its intended technical effect in wine (Refs. 7 and 9 through 17).

IV. Production and Purification of Urease Preparation

The petitioner presented evidence that the production organism satisfies the definition for *L. fermentum* in "Bergey's Manual of Systematic Bacteriology" (Ref. 18). The production process for urease enzyme preparation from *L. fermentum* is described in GRASP 8G0342 (the sake petition) and is summarized below.

A pure culture of *L. fermentum* is aseptically grown in fermenters in a medium containing dextrose, casein digest, meat extract, yeast extract, sodium chloride, sodium acetate, and manganese sulfate. The fermentation is conducted statically at 36 to 38 °C without aeration because the strain is a facultative anaerobe. Cell growth is monitored by measuring the optical density at 590 nanometers. The culture is periodically checked microscopically for the presence of foreign microorganisms. After 36 to 48 hours, the culture broth is circulated through a ceramic filter. The concentrated cell suspension is washed with water, and again concentrated to approximately 1/30 of the original volume. If necessary, the cells are disrupted by hyper-homogenization. Food-grade ethyl alcohol is then added to the slurry to make its concentration 50 percent by volume. The slurry is mixed for several hours to assure that all cells are killed. The ethyl alcohol is then evaporated under vacuum, and the suspension is dried to powder either by spray drying or lyophilization. The enzyme preparation consists of killed whole cells of the *L. fermentum* organism containing the urease enzyme.

V. Safety Information

Takeda Chemical Industries, Ltd., provided published information demonstrating that *L. fermentum*, the urease-producing organism, is commonly found in many kinds of foods such as dairy products (including yogurt), sour-dough, sausages, and pickled vegetables (Refs. 18 through 22). For example, in "dosa" a fermented food indigenous to India, *L. fermentum* is one of the predominant bacteria responsible for souring and leavening of the batter (Ref. 19). *L. fermentum* has also been isolated from malt whiskey distillery fermentations (Ref. 20). *Lactobacillus* species (including *L. fermentum*) also have a long history of use in meat (Ref. 21) and are the subject of a prior sanction by the United States Department of Agriculture (Ref. 22). Consumers of these products have been

exposed to cells of *L. fermentum* and accompanying urease for many years, with no reports of adverse effects.

The petitions also contain published information that shows that the microorganism, *L. fermentum*, is a normal inhabitant of the gastrointestinal tract of humans (Ref. 23) as well as rats (Ref. 4). The petitioner has also provided published evidence that the source organism is not a pathogenic microbe for humans (Ref. 24). "Bergey's Manual of Systematic Bacteriology," which describes the pathogenicity of the *Lactobacillus* species, contains no reference to pathogenicity of *L. fermentum* (Ref. 18). In addition, in its sake petition, Takeda Chemical Industries, Ltd., submitted a search of the literature from 1977 to 1987 made via TOXLINE, a computer data base of toxicological references produced by the National Library of Medicine, for references to *L. fermentum* and pathogenicity, pathogen formation, toxicology, toxins, and disease or infection. The search did not identify a single report that *L. fermentum* is the etiological agent of a disease in man or animals. The sake petition also contains the results of a manual literature search for references to the pathogenicity of *L. fermentum* in Chemical Abstracts from 1947 to 1981. No references to pathogenicity of *L. fermentum* were found in that search.

Further, the petitioner provided unpublished, corroborative studies of the safety of the organism and urease enzyme preparation. In one study, viable cells of *L. fermentum* were administered at maximum dosage levels (250×10^8 cells/kilogram (kg)) to male mice and rats; the study showed that the production organism is nonpathogenic.

In addition, a 4-week subacute oral toxicity study of crude urease powder (2,000 milligrams (mg)/kg body weight) was performed in rats. Gross and microscopic pathological examination revealed no adverse effects from treatment with the urease powder preparation. The petitioner also provided a bacterial mutagenicity study on crude acid urease powder and in vivo tests of mutagenicity of crude acid urease powder with *Drosophila* somatic systems. There was no evidence of mutagenicity of the urease enzyme preparation in any of these studies. Finally, it is generally considered that no *Lactobacillus* species produces antibiotic substances (Ref. 18). Tests for antibiotic activity of the culture broth of *L. fermentum* were negative.

VI. Proposed Use in Food and Exposure Estimate

The amounts of urease enzyme preparation used will vary based on the catalytic activity of the enzyme in any one batch of enzyme preparation. Estimates of enzyme use level and intake are usually based on the Total Organic Solids (TOS) content of the enzyme preparation (Ref. 25). Urease derived from *L. fermentum* is proposed for use as an inhibitor of ethyl carbamate formation in wine at a maximum use level of 88 mg, expressed as TOS per liter of wine. According to information presented in the petitions, wine treated with the urease enzyme preparation is filtered prior to final packaging. The filtration process removes most of the urease enzyme preparation and other proteinaceous material from the wine. Based on current information on wine consumption and on the maximum proposed use level of the urease preparation in wine, the estimated daily intake (EDI) of urease preparation from *L. fermentum* expressed as TOS at the 90th percentile is 20 mg/person/day. This is equivalent to 0.3 mg TOS/kg body weight/day for a 60 kg person. (For comparison, the 90th percentile EDI for the TOS of *Lactobacillus*, including *L. fermentum*, from yogurt consumption is 490 mg/person/day equivalent to 8 mg/kg body weight/day).

Moreover, based on data obtained in the corroborative 4-week rat feeding study, which showed no adverse effects of treatment with 200 mg/kg body weight of urease enzyme preparation (the highest dose tested), the acceptable daily intake (ADI) of urease TOS from *L. fermentum* is 2 mg/kg body weight/day. This is well above the 90th percentile EDI from wine consumption of 0.3 mg/kg body weight/day.

VII. Conclusions

The agency has evaluated the information in the petitions along with other available information and finds that urease enzyme preparation from *L. fermentum* is effective for reducing levels of urea, a precursor of the animal carcinogen ethyl carbamate, in the alcoholic beverage wine. The agency concludes, based on the evaluation of published information, corroborated by unpublished data and information, that the use of the urease enzyme preparation from *L. fermentum* in wine is GRAS. Therefore, the agency is affirming that the use of urease enzyme preparation from *L. fermentum* in wine, as defined in 27 CFR 2.5 and 4.10, is GRAS under current good manufacturing practice conditions (§ 184.1(b)(1)). However, the agency is specifying the technical effect and the food use in wine in the regulation to make clear that the affirmation of the GRAS status of this material is based on the evaluation of this limited use.

VIII. Environmental Effects

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's findings of no significant impact and the evidence supporting these findings, contained in environmental assessments, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IX. Economic Effects

FDA has examined the economic implications of the final rule affirming the GRAS status of urease enzyme derived from *L. fermentum* for use in wine, as required by Executive Orders 12291 on Federal regulations, Executive Order 12612 on federalism, and the Regulatory Flexibility Act. The agency finds that this final rule is not a major rule as defined by Executive Order 12291. Since no current activity is prohibited by this final rule, the compliance cost to firms is zero. Because no increase in the health risks faced by consumers will result from this final rule, total costs are also zero. Potential benefits include the wider use of this enzyme because of reduced uncertainty concerning its GRAS status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this enzyme for this use. FDA finds that there is no substantial federalism issue which would require an analysis under Executive Order 12612. Finally, in accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has also determined that this final rule will not have a significant adverse impact on a substantial number of small businesses.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. 27 CFR 2.5 and 4.10.

2. Hausinger, R. P., "Nickel Utilization by Microorganisms," *Microbiological Reviews*, pp. 22–42, March, 1987.

3. GRASP 8G0342, Table G–2, Vol. 1, p. 36.

4. "Method for Producing Acid Urease, and Use Thereof," Inventor: Kobashi, K., T.

Kobayashi, K. Kusai, S. Takebe, S. Honda, H. Mishima. Assignee: Nagase and Co., Ltd.; European Patent Application: EP 0 280 398 A2., August 31, 1988.

5. "Enzyme Nomenclature 1984," Academic Press, Inc., Orlando, FL, 1984, pp. 366–367.

6. International Agency for Research on Cancer, "Monographs on the Evaluation of Cancer Risks of Chemicals to Man," Vol. 7: 111–140, 1974.

7. Ough, C. S., E. A. Crowell, and L. A. Mooney, "Formation of Ethyl Carbamate Precursors During Grape Juice (Chardonnay) Fermentation. I. Addition of Amino Acids, Urea, and Ammonia: Effects of Fortification on Intracellular and Extracellular Precursors," *American Journal of Enology and Viticulture*, 39(3):243–249, 1988.

8. Tegmo-Larsson, I. M. and T. Henic-Kling, "Ethyl Carbamate Precursors in Grape Juice and the Efficiency of Acid Urease on their Removal," *American Journal of Enology and Viticulture*, 41(3):189–192, 1990.

9. Ough, C. S. and G. Trioli, "Urea Removal from Wine by an Acid Urease," *American Journal of Enology and Viticulture*, 39(4):303–307, 1988.

10. Fujinawa, S., H. Todoroki, N. Ohashi, J. Toda, M. Terasaki, "Application of an Acid Urease to Wine: Determination of Trace Urea in Wine," *Journal of Food Science*, 55(4):1018–1022 and 1038, 1990.

11. Fujinawa, S., G. Burns, and P. De La Teja, "Application of Acid Urease to Reduction of Urea in Commercial Wines," *American Journal of Enology and Viticulture*, 41(4):350–354, 1990.

12. Famuyiwa, O. O. and C. S. Ough, "Modification of Acid Urease by Fluoride Ions and Malic Acid in Wine," *American Journal of Enology and Viticulture*, 42(1):79–80, 1991.

13. "Acid Urease Preparations for Alcoholic Beverages," Inventor: Fujinawa, S., S. Kodama, H. Iisuka, H. Yada. Applicant: Takeda Chemical Industries, Ltd.; European Patent Application: EP 0 368 564 A1, May 16, 1990.

14. "Quality Improvement of Alcoholic Liquors," Inventor: Kakimoto, S., Y. Sumino, H. Yamada, I. Mayasu, E. Ichikawa, T. Suizu. Applicant: Takeda Chemical Industries, Ltd.; European Patent Application: EP 0 266 089 A1., May 4, 1988.

15. Trioli, G. and C. S. Ough, "Causes for Inhibition of an Acid Urease from *Lactobacillus fermentus*," *American Journal of Enology and Viticulture*, 40(4):245–252, 1989.

16. Kodama, S., T. Suzuki, S. Fujinawa, P. Del La Teja, and F. Yotsuzuka, "Prevention of Ethyl Carbamate Formation in Wine by Urea Degradation Using Acid Urease," in *Proceedings of the International Symposium on Nitrogen in Grapes and Wine*, pp. 270–273, 1991.

17. "Quality Improvement of Alcoholic Liquors," Inventor: S. Kakimoto, et al., Assignees: Takeda Chemical Industries, Ltd., and Gekkeiken Sake Co., Ltd.; U.S. Patent No. 4,844,911; July 4, 1989.

18. "Bergey's Manual of Systematic Bacteriology," Vol. 2., P. H. A. Sneath, editor, Williams and Wilkins, pp. 1208–1234, Baltimore, 1984.

19. Soni, S. K., D. K. Sandhu, K. S. Vilkhu., and N. Kamra, "Microbiological Studies on *Dosa* Fermentation," *Food Microbiology*, 3:45–53, 1986.

20. Makarjuola, D. B. and D. G. Springham, "Identification of Lactic Acid Bacteria Isolated from Different Stages of Malt Whiskey Distillery Fermentations," *Journal of the Institute of Brewing*, 90:13–19, 1984.

21. Sharpe, M. E., "Lactobacilli in Meat Products," *Food Manufacture*, pp. 582–589, December, 1962.

22. 9 CFR 318.7.

23. Suzuki, K., Y. Benno, T. Mitsuoka, S. Takebe, K. Kobashi, and J. Hase, "Urease-Producing Species of Intestinal Anaerobes and Their Activities," *Applied and Environmental Microbiology*, 37(3):379–382, March, 1979.

24. Kunkee, R. E., "Malo-lactic Fermentation," *Advances in Applied Microbiology*, 9:235–246, 1967.

25. "The 1978 Enzyme Survey Summarized Data," National Research Council/National Academy of Sciences, U.S. Department of Commerce, National Technical Information Service PB81–216897, Washington DC, pp. i-iii, 1981.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1924 is added to read as follows:

§ 184.1924 Urease enzyme preparation from Lactobacillus fermentum.

(a) This enzyme preparation is derived from the nonpathogenic, nontoxicogenic bacterium *Lactobacillus fermentum*. It contains the enzyme urease (CAS Reg. No. 9002–13–5), which facilitates the hydrolysis of urea to ammonia and carbon dioxide. It is produced by a pure culture fermentation process and by using materials that are generally recognized as safe (GRAS) or are food additives that have been approved for this use by the Food and Drug Administration (FDA).

(b) The ingredient meets the general and additional requirements for enzyme preparations in the "Food Chemicals Codex," 3d ed. (1981), pp. 107–110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used in wine, as defined in 27 CFR 2.5 and 4.10, as an enzyme as defined in § 170.3(o)(9) of this chapter to convert urea to ammonia and carbon dioxide.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Current good manufacturing practice is limited to use of this ingredient in wine to inhibit formation of ethyl carbamate.

Dated: December 7, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–30805 Filed 12–18–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8437]

RIN 1545–AF58

Limitations on Percentage Depletion in the Case of Oil and Gas Wells; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8437), which were published Wednesday, September 23, 1992, (57 FR 43897). The amendments to final regulations clarify the circumstances under which percentage depletion is available in the case of oil and gas wells.

EFFECTIVE DATE: September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Brenda M. Stewart, 202–622–3120 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections clarify the circumstances under which percentage depletion is available in the case of oil and gas wells under section 613A.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8437), which was the subject of FR Doc. 92–23097, is corrected as follows:

Paragraph 1. On page 43897, columns 1 and 2, the portion of the preamble, entitled "Paperwork Reduction Act" is corrected to read as follows:

Paperwork Reduction Act

The collection of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1251. The estimated burden per recordkeeper varies from 1 minute to 3 minutes, depending on individual circumstances, with an estimated average of 2 minutes.

These estimates are an approximation of the average time expected to be necessary to collect information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require more time or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Par. 2. On page 43899, column 1, in the preamble under the heading "Special Analyses", line 10, the language "regulations, and, therefore, an initial" is corrected to read "regulations, and, therefore a final".

Par. 3. On page 43901, column 3, in § 1.613A–3, paragraph (e)(7), *Example 1*, line 3, the language "1990, the partnership acquired a producing" is corrected to "1992, the partnership acquired a producing".

Par. 4. On page 43901, column 3, in § 1.613A–3, paragraph (e)(7), *Example 3*, line 2, the language "*Example 1* with the exception that in 1990 C" is corrected to read "*Example 1* with the exception that in 1992 C".

Par. 5. On page 43902, column 1, in § 1.613a–3, paragraph (e)(7), *Example 5*, line 1, the language "*Example 5*. On January 1, 1993, G has an" is corrected to read "*Example 5*. On January 1, 1990, G has an".

Par. 6. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 5*, line 5, the language "1993 G sells G's partnership interest to I for" is corrected to read "1990 G sells G's partnership interest to I for".

Par. 7. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 6*, line 3, the language "property. On January 1, 1993, the" is corrected to read "property. On January 1, 1990, the".

Par. 8. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 6*, line 5, the language "was zero. On January 1, 1993, L is admitted as" is corrected to read "was zero. On January 1, 1990, L is admitted as".

Par. 9. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 7*, line 3, the language "1993, the partnership acquired an unproven" is corrected to read "1991, the partnership acquired an unproven".

Par. 10. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 7*, line 9, the language "partnership capital. For the 1993 taxable year," is corrected to read "partnership capital. For the 1991 taxable year,".

Par. 11. On page 43902, column 1, in § 1.613–A, paragraph (e)(7), *Example 7*, line 12, the language "Accordingly, at the end of the 1993 taxable" is corrected to read "Accordingly, at the end of the 1991 taxable".

Par. 12. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 6*, line 15, the language "$75x. On January 1, 1994, Q is admitted as an" is corrected to read "$75x. On January 1, 1992, Q is admitted as an".

Par 13. On page 43903, column 1, in § 1.613A–3, paragraph (h)(2)(v), *Example 5*, line 13, the language "allocated to E under the DE partnership" is corrected to read "allocated to D under the DE partnership".

Par. 14. On page 43903, column 1, in § 1.613A–3, paragraph (h)(2)(v), *Example 6*, line 4, the language "Under § 1.613–7(n)(4), the contribution is not" is corrected to read "Under § 1.613A–7(n)(4), the contribution is not".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30809 Filed 12–18–92; 8:45 am]

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26 CFR Part 1 and 602

[T.D. 8454]

RIN 1545–AP58

Adjusted Current Earnings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the alternative minimum tax (AMT) for corporations. The Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989 and the Revenue Reconciliation Act of 1990 all made changes to the applicable law. These regulations affect corporate taxpayers and provide them with guidance necessary to determine their alternative minimum tax.

DATES: These regulations are effective for taxable years beginning after December 31, 1989. However, the paragraphs relating to the LIFO recapture adjustment, § 1.56(g)–1(f)(3), are effective for taxable years beginning after December 18, 1992, although a taxpayer may choose to apply that paragraph for all taxable years beginning after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos of the Office of the Assistant Chief Counsel (Income Tax and Accounting) (202) 622–4960 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1233. The estimated annual burden per respondent varies from one-half hour to one and one-half hours, depending on individual circumstances, with an estimated average of one hour. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based upon such information as is available to the

Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:P, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 56 of the Internal Revenue Code of 1986 (Code). The amendments will conform the regulations to section 701 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2320), sections 1007 and 6079 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342), sections 7205 and 7611 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106), and sections 11301 and 11531 of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508).

On March 15, 1991, the Internal Revenue Service published in the **Federal Register** a Notice of Proposed Rulemaking (56 FR 11122) regarding the computation of adjusted current earnings (ACE). The Service received four written comments. No public hearing was requested and none was held. The amendments to the regulations contained in this document are adopted after consideration of the written comments.

Comments on Proposed Regulations

A. LIFO Recapture Adjustment: § 1.56(g)–1(f)(3)

Section 56(g)(4)(D)(iii) of the Code requires taxpayers to compute adjusted current earnings (ACE) with the adjustments in section 312(n)(4). Section 312(n)(4) requires taxpayers to increase or decrease their earnings and profits by the increase or decrease in their LIFO (last-in, first-out) reserve during the taxable year.

The proposed regulations provide that ACE is increased or decreased by the increase or decrease in the LIFO recapture amount as of the close of the taxable year. The proposed regulations also provide that ACE is not decreased to the extent of any decrease in the LIFO recapture amount below the baseline LIFO recapture amount. Further, increases in the LIFO recapture amount will increase ACE only to the extent of any increase above the baseline LIFO recapture amount. The baseline LIFO recapture amount is defined in the proposed regulations as the excess, if any, of the taxpayer's beginning FIFO inventory amount for the first taxable year beginning after December 31, 1989, over the taxpayer's beginning LIFO inventory amount for the first taxable year beginning after December 31, 1989.

Commentators asked whether a taxpayer with more than one category of LIFO inventory computes a single LIFO recapture amount or a separate LIFO recapture amount for each grouping or pool of LIFO inventory. If each grouping or pool had its own LIFO recapture amount, the proposed regulations' baseline LIFO recapture limitation could result in a positive ACE adjustment for a taxpayer that experienced a $100 increase in one pool's LIFO recapture amount in the same year that another pool's LIFO recapture amount decreased by $200. The final regulations clarify that a taxpayer (*i.e.*, a corporation) computes a single LIFO recapture amount for all of its assets that are accounted for under LIFO.

Commentators also suggested that: (1) A partner in a partnership that uses LIFO should be permitted to include its share of any change in the partnership's LIFO recapture amount in its LIFO recapture adjustment, and (2) corporations that file a consolidated return should be permitted to compute a single LIFO recapture adjustment for the consolidated group. Implementing these suggestions without eliminating the proposed regulations' baseline LIFO recapture limitation, however, would be unduly complex.

Therefore, for purposes of computing ACE, the final regulations do not limit the LIFO recapture adjustment by the baseline LIFO recapture amount. Thus, the full amount of any increase or decrease in the LIFO recapture amount will increase or decrease the taxpayer's ACE for the taxable year regardless of whether the increase or decrease is below the taxpayer's beginning LIFO recapture amount for the first taxable year beginning after December 31, 1989. This change significantly simplifies the computation of the ACE LIFO recapture adjustment.

The removal of the baseline LIFO recapture limitation also allows a consolidated group to net all changes in its members' LIFO recapture amounts in determining the group's ACE LIFO recapture adjustment. Thus, increases or decreases in a member's LIFO recapture amount below that member's beginning LIFO recapture amount for the first taxable year beginning after December 31, 1989, are taken into account in determining the group's LIFO recapture adjustment. This treatment furthers the single entity view of the consolidated group by treating the group the same as a single corporation with several divisions or multiple groupings or pools of LIFO inventory. Similarly, a corporate partner takes into account its proportionate share of the partnership's LIFO inventory assets for the partnership taxable year that ends within or with the corporation's taxable year.

Some commentators requested that the final regulations provide guidance on the ACE LIFO recapture implications of a transfer of LIFO inventory in an exchange qualifying under section 351 or section 721. For example, they expressed concern that in the absence of further regulatory guidance, a new company formed in a section 351 transaction would potentially experience a large and unwarranted ACE LIFO recapture adjustment due solely to the interaction of that adjustment with the rules governing exchanges under section 351. In response to these comments, the final regulations provide a special adjustment, only for purposes of computing ACE, to the LIFO recapture adjustments of both the transferor and the transferee in the case of an exchange under section 351 or 721.

These changes to paragraph (f)(3) of § 1.56(g)–1 from the proposed regulations are effective for taxable years beginning after December 18, 1992. However, a taxpayer may choose to apply the final regulations for all taxable years beginning after December 31, 1989.

One commentator was concerned about the interaction of transfers of LIFO inventory subject to the deferred intercompany transaction rules of § 1.1502–13 with the ACE LIFO adjustment. Issues relating to these transfers arise only in the context of consolidated groups and are not addressed in these final regulations. The Service expects to address the treatment of deferred intercompany transactions in forthcoming proposed regulations on the AMT and consolidated groups.

B. Election to Use Regular Tax Inventories for Alternative Minimum Tax: § 1.56(g)–1(r)

Section 1.56 (g)–1(r) of the proposed regulations provides that taxpayers may elect to use their regular tax inventory amounts to compute pre-adjustment alternative minimum taxable income ("AMIT") and ACE, including the ACE

LIFO adjustment of § 1.56(g)–1(f)(3). The election eliminates the need to compute separate inventory amounts for pre-adjustment AMTI and ACE. Taxpayers making the election, however, determine each adjustment under sections 56 and 58 and each tax preference item under section 57 without reduction for that portion of the adjustment or preference that would have been capitalized in inventory but for the election.

Some commentators questioned whether only LIFO taxpayers could make the election under § 1.56(g)–1(r). The final regulations make it clear that the election is available to any taxpayer that properly follows the procedures required to make the election.

Some commentators were unsure about which taxpayers could make a prospective election, and which could make only a retroactive election. The final regulations clarify that taxpayers that have computed their AMT and ACE inventories for all prior taxable years using the elective method may make a prospective election. Additionally, taxpayers that have not used the elective method to compute their AMT and ACE inventories, if any, in prior taxable years may make a prospective election if their tax liability in all open prior taxable years would not have changed had the elective method been used in all prior taxable years. The regulations require all other taxpayers who wish to make the election to make a retroactive election.

One commentator suggested that the Service allow taxpayers to elect to use pre-adjustment AMTI inventories for ACE (while using regular tax inventories only for regular tax). The commentator argued that taxpayers that have already set up accounting systems to compute their pre-adjustment AMTI inventories should not be required to use their regular tax inventories for AMT purposes in order to avoid having to compute ACE inventories. The final regulations thus provide an election to use pre-adjustment AMTI inventories for ACE, using rules similar to those for electing to use regular tax inventories for pre-adjustment AMTI and ACE. Taxpayers who make this election will continue to use regular tax inventories for regular tax purposes only.

Finally, one commentator thought that taxpayers subject to the Coordinated Examination Program (CEP) should be allowed to make retroactive elections without amending their prior year returns for open years. While the Service appreciates the unique scope of CEP examinations, the Service feels that all taxpayers under examination should be able to make the simplified inventory election in the same manner. The final regulations therefore include procedures for taxpayers to follow if their return for any year for which they want to make the simplified inventory election is under examination and they otherwise would be required to file amended returns to make the election. In all cases, however, it is the taxpayer's responsibility to make a timely election, either by filing an amended return or by proposing an examination adjustment.

C. Adjustment for Alternative Tax Energy Preference Deduction: § 1.56(g)–1(s)

Section 1.56(g)–1(s) of the proposed regulations provides taxpayers with guidance on adjustments they must make for ACE if the taxpayer claims a deduction under section 56(h) (the alternative tax energy preference deduction). The proposed regulations require taxpayers to adjust basis by the portion of the deduction allowed under section 56(h) that is attributable to adjustments under section 56(g)(4). The purpose of the basis adjustment is to ensure that no double benefit is allowed by reason of the section 56(h) deduction. Commentators expressed concern that any precise method of adjusting basis would be complex and difficult to administer.

On October 24, 1992, the President signed H.R. 776 (Pub. L. 102–486), which repealed section 56(h) effective for taxable years beginning after December 31, 1992. Thus, the deduction under section 56(h) is allowed only for taxable years beginning after December 31, 1990, and before January 1, 1993. Because of the short time period for which section 56(h) is effective, § 1.56(g)–1(s) of the proposed regulations is being finalized without change.

D. Other Matters

A clarification has been made to § 1.56(g)–1(d)(2)(ii)(B) of the regulations to conform the example at the end of the text to the rule provided in the regulation.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nicholas G. Bogos of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. Other personnel from the Service and the Treasury, however, assisted in developing these regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.56–0 Through 1.58–9

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * * Section 1.56(g)–1 also issued under section 7611(g)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2373) * * *

Par. 2. In section 1.56(g)–0, the entry for § 1.56(g)–1 is amended as follows:

1. Paragraphs (a)(7), (r) and (s) are added;
2. Paragraphs (f)(3) and (m) are revised;
3. The additions and revisions read as follows:

§ 1.56(g)–0 Table of contents.

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* * * * * *
(f) Certain other earnings and profits adjustments.
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* * * * * *

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* * * * *
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(D) Treatment of additional tax liability.
(iv) Election as method of accounting.
(v) Untimely election to use simplified inventory method.
(4) Example.
(5) Election to use alternative minimum tax inventories to compute adjusted current earnings.
(s) Adjustment for alternative tax energy preference deduction.
(1) In general.
(2) Example.

Par. 3. Section 1.56(g)–1 is amended as follows:

1. The text of paragraph (a)(6)(i) is revised.

2. Paragraph (a)(7) is added.

3. The text of paragraph (d)(2)(ii)(B) is revised.

4. The text of paragraphs (f)(3) and (m) are added.

5. Paragraphs (r) and (s) are added.

6. The additions and revisions read as follows:

§ 1.56(g)–1 Adjusted current earnings.

(a) * * *

(6) * * *

(i) * * * Pre-adjustment alternative minimum taxable income is the alternative minimum taxable income of the taxpayer for the taxable year, determined under section 55(b)(2), but without the adjustment for adjusted current earnings under section 56(g) and this section, without the alternative tax net operating loss deduction under section 56(a)(4), and without the alternative tax energy preference deduction under section 56(h).

* * * * *

(7) *Application to foreign corporations.* See paragraph (m) of this section for rules relating to the application of this section to foreign corporations.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(B) * * * For example, assume that a section 936 corporation earns $100 of income in its current taxable year, $10 of which is not eligible for the credit under section 936. If the section 936 corporation makes a distribution of $50 during that year, $5 of that distribution ($10 of income not eligible for the section 936 credit divided by $100 of income, times $50 distributed) is deemed to be attributable to earnings of the paying corporation that are subject to federal income tax.

* * * * *

(f) * * *

(3) *LIFO recapture adjustment*—(i) *In general.* Adjusted current earnings are generally increased or decreased by the increase or decrease in the taxpayer's LIFO recapture amount (as defined in paragraph (f)(3)(iii)(A) of this section) as of the close of each taxable year.

(ii) *Beginning LIFO and FIFO inventory.* For purposes of computing the increase or decrease in the LIFO recapture amount, the beginning LIFO and FIFO inventory amounts for the first taxable year beginning after December 31, 1989, are—

(A) The ending LIFO inventory amount used in computing pre-adjustment alternative minimum taxable income for the last year beginning before January 1, 1990; and

(B) The ending FIFO inventory amount for the last year beginning before January 1, 1990, computed with the adjustments described in section 56 (other than the adjustment described in section 56(g)) and section 58, the items of tax preference described in section 57 and using the methods used in computing pre-adjustment alternative minimum taxable income.

(iii) *Definitions*—(A) *LIFO recapture amount*—(*1*) *Definition.* The taxpayer's LIFO recapture amount is the excess, if any, of—

(*i*) the inventory amount of its assets under the FIFO method, computed using the rules of this section; over

(*ii*) the inventory amount of its assets under the LIFO method, computed using the rules of this section.

(*2*) *Assets included.* Only the assets for which the taxpayer uses the LIFO method to compute pre-adjustment alternative minimum taxable income are taken into account in determining the LIFO recapture amount.

(B) *FIFO Method.* For purposes of this paragraph, the LIFO method is the first in, first out method described in section 471, determined by using—

(*1*) The retail method if that is the method the taxpayer uses in computing pre-adjustment alternative minimum taxable income; or

(*2*) The lower of cost or market method for all other taxpayers.

(C) *LIFO method.* The LIFO method is the last in, first out method authorized by section 472.

(D) *Inventory amounts.* Except as otherwise provided, inventory amounts are computed using the methods used in computing pre-adjustment alternative minimum taxable income. To the extent inventory is treated as produced or acquired during taxable years beginning after December 31, 1989, the inventory amount is determined with the adjustments described in sections 56 and 58 and the items of tax preference described in section 57. Thus, for example, the amount of depreciation to be capitalized under section 263A with respect to inventory produced in taxable years beginning after December 31, 1989, is based on the depreciation allowed under the rules of paragraph (b) of this section. See paragraph (a)(5) of this section.

(iv) *Exchanges under sections 351 and 721.* For purposes of this section, any decrease in a transferor's LIFO recapture amount that occurs as a result of a transfer of inventories in an exchange to which section 351 or section 721 applies cannot be used to decrease the adjusted current earnings of the transferor. A decrease that is disallowed under the preceding sentence is instead carried over to reduce any LIFO recapture adjustment that the transferee (or its corporate partners, if section 721 applies) would otherwise make (in the absence of this paragraph (f)(3)(iv)) solely by reason of its carryover basis in inventories received in the section 351 or section 721 exchange. Nothing in this paragraph (f)(3)(iv), however, alters the computation of the LIFO recapture amount of the transferor or transferee as of the close of any taxable year.

(v) *Examples.* The following examples illustrate the provisions of this paragraph (f)(3).

Example 1. M Corporation, a calendar-year taxpayer, uses the LIFO method of accounting for its inventory for purposes of computing pre-adjustment alternative minimum taxable income. M's ending LIFO inventory for all of its pools for purposes of

computing pre-adjustment alternative minimum taxable income on December 31, 1989, is $300. M computes a $500 FIFO inventory amount on that date, after applying the provisions of section 263A along with the adjustments and preferences required in computing pre-adjustment alternative minimum taxable income. M's FIFO and LIFO ending inventory amounts at the close of its taxable years, its LIFO reserves, and its adjustment under this paragraph (f)(3), are as follows:

	1989	1990	1991	1992
Ending inventory:				
A. FIFO	[1] $500	$360	$560	$600
B. LIFO	[2] 300	180	320	440
LIFO recapture amount:				
A–B	200	180	240	160
Change in LIFO recapture amount and adjustment under paragraph (f)(3)	.....	(20)	60	(80)

[1] Beginning FIFO inventory amount under paragraph (f)(3)(ii).
[2] Beginning LIFO inventory amount under paragraph (f)(3)(ii).

Example 2. (A) X Corporation, a calendar-year taxpayer, uses the LIFO method for purposes of computing pre-adjustment alternative minimum taxable income. X's LIFO recapture amount is $300 as of December 31, 1992, and is $200 as of December 31, 1993. Immediately prior to calculating its LIFO recapture amount as of December 31, 1993, X transfers inventory with an adjusted current earnings (ACE) basis of $500 to Y Corporation in an exchange to which section 351 applies. X determines that the $100 decrease in its LIFO recapture amount occurred as a result of its transfer of inventories to Y in the section 351 exchange. Thus, under paragraph (f)(3)(iv) of this section, X cannot decrease its adjusted current earnings by that amount. In computing its 1994 LIFO recapture adjustment, X will use $200 as its LIFO recapture amount as of December 31, 1993, even though it was not entitled to reduce adjusted current earnings by the $100 decrease in its LIFO recapture amount in 1993.

(B) For purposes of computing its ACE, Y takes a $500 carryover basis in the inventories received from X. If Y, a newly formed calendar-year taxpayer, engages in no other inventory transactions in 1993 and adopts the LIFO inventory method on its 1993 tax return, it will have a LIFO recapture amount of $0 as of December 31, 1993 (because its FIFO inventory amount and its LIFO inventory amount are both $500). Assume that at December 31, 1994, Y has a LIFO recapture amount of $200 ($1,000 FIFO inventory amount–$800 LIFO inventory amount). Under paragraph (f)(3)(i) of this section, Y computes a LIFO recapture adjustment for 1994 of $200 ($200–$0). If any portion of Y's $200 LIFO recapture adjustment occurs solely by reason of its carryover basis in the inventories it received from X, Y reduces its $200 LIFO recapture adjustment by that portion under paragraph (f)(3)(iv). In any event, however, Y will use its $200 LIFO recapture amount as of December 31, 1994, in computing its 1995 LIFO recapture adjustment.

(vi) *Effective date.* Paragraph (f)(3) is effective for taxable years beginning after December 18, 1992. A taxpayer may choose to apply this paragraph, however, to all taxable years beginning after December 31, 1989.

* * * * *

(m) *Adjusted current earnings of a foreign corporation*—(1) *In general.* The alternative minimum taxable income of a foreign corporation is increased by 75 percent of the excess of—

(i) Its effectively connected adjusted current earnings for the taxable year; over

(ii) Its effectively connected pre-adjustment alternative minimum taxable income for the taxable year.

(2) *Definitions*—(i) *Effectively connected pre-adjustment alternative minimum taxable income.* Effectively connected pre-adjustment alternative minimum taxable income is the effectively connected taxable income of the foreign corporation for the taxable year, determined with the adjustments under sections 56 and 58 (except for the adjustment for adjusted current earnings, the alternative tax net operating loss and the alternative tax energy preference deduction) and increased by the tax preference items of section 57, but taking into account only items of income of the foreign corporation that are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States, and any expense, loss or deduction that is properly allocated and apportioned to that income.

(ii) *Effectively connected adjusted current earnings.* Effectively connected adjusted current earnings is the effectively connected pre-adjustment alternative minimum taxable income of the foreign corporation for the taxable year, adjusted under section 56(g) and this section, but taking into account only items of income of the foreign corporation that are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States, and any expense, loss or deduction that is properly allocated and apportioned to that income.

(3) *Rules to determine effectively connected pre-adjustment alternative minimum taxable income and effectively connected adjusted current earnings.* The principles of section 864(c) (and the regulations thereunder) and any other applicable provision of the Internal Revenue Code apply to determine whether items of income of the foreign corporation are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States, and whether any expense, loss or deduction is properly allocated and apportioned to that income.

(4) *Certain exempt amounts.* Effectively connected adjusted current earnings and effectively connected pre-adjustment alternative minimum taxable income do not include any item of income, or any expense, loss or deduction that is properly allocated and apportioned to income that is exempt from United States taxation under section 883 or an applicable income tax treaty. See section 894.

* * * * *

(r) *Elections to use simplified inventory methods to compute alternative minimum tax*—(1) *In general.* If a taxpayer makes an election under this paragraph (r) (and does not make the election in paragraph (r)(5) of this section), the rules of paragraph (r)(2) of this section apply in computing the taxpayer's pre-adjustment alternative minimum taxable income and adjusted current earnings.

(2) *Effect of election*—(i) *Inventories.* The taxpayer's inventory amounts as determined for purposes of computing taxable income are used for purposes of computing pre-adjustment alternative minimum taxable income and adjusted current earnings. Subject to the further modification described in paragraph (r)(2)(ii) of this section, the taxpayer's cost of sales as determined for purposes of computing taxable income is also used for purposes of computing pre-adjustment alternative minimum taxable income and adjusted current earnings.

(ii) *Modifications required*—(A) *In general.* If a taxpayer makes an election under this paragraph (r), pre-adjustment alternative minimum taxable income and adjusted current earnings are computed with the modifications described in this paragraph. The items of adjustment under sections 56 and 58 and the items of tax preference under section 57 are computed without regard to the portion of those adjustments and preferences which, but for the election described in this paragraph, would have been capitalized in ending inventory. For example, pre-adjustment alternative minimum taxable income is increased by the excess of the depreciation allowable for the taxable year under section 168 for purposes of computing taxable income (determined without regard to section 263A) over the depreciation allowable for the taxable year under section 56(a)(1) and section 57 for purposes of computing pre-adjustment alternative minimum taxable income (determined without regard to section 263A). Similarly, adjusted current earnings is further increased by the excess of the depreciation allowable for the taxable year under section 56(a)(1) and section 57 for purposes of computing pre-adjustment alternative minimum taxable income (determined without regard to section 263A) over the depreciation allowable for the taxable year under section 56(g)(4)(A) for purposes of computing adjusted current earnings (determined without regard to section 263A). Thus, the modifications described in the preceding sentence do not duplicate amounts that are taken into account in computing pre-adjustment alternative minimum taxable income. See paragraph (a)(6)(ii) of this section.

(B) *Negative modifications allowed.* An election under this paragraph (r) does not affect the taxpayer's ability to make negative adjustments. Thus, if an election is made under this paragraph (r) and the amount of any adjustment under section 56 or 58, determined after modification under paragraph (r)(2)(ii)(A) of this section, is a negative amount, then this amount reduces pre-adjustment alternative minimum taxable income or adjusted current earnings. However, no negative adjustment under this paragraph (r)(2)(ii)(B) is allowed for the items of tax preference under section 57.

(iii) *LIFO recapture adjustment.* If a taxpayer makes an election under this paragraph (r) and uses the LIFO method for some assets, for purposes of computing the LIFO recapture adjustment under paragraph (f)(3) of this section for taxable years beginning after December 31, 1989—

(A) The LIFO inventory amount as determined for purposes of computing taxable income is used in lieu of the LIFO inventory amount as determined under paragraph (f)(3)(iii) of this section;

(B) The FIFO inventory amount is computed without regard to the adjustments under sections 56 (including the adjustments of section 56(g)(4)) and 58 and the items of tax preference of section 57: and

(C) The beginning LIFO and FIFO inventory amounts under paragraph (f)(3)(ii) of this section are the ending LIFO inventory amount as determined for purposes of computing taxable income and the ending FIFO inventory amount computed without regard to the adjustments under sections 56 (including the adjustments of sections 56(g)(4)) and 58 and the items of tax preference of section 57 for the last taxable year beginning before January 1, 1990.

(3) *Time and manner of making election*—(i) *Prospective election.* (A) A prospective election under this paragraph (r) may be made by any taxpayer—

(*1*) That has computed pre-adjustment alternative minimum taxable income and adjusted current earnings for all prior taxable years in accordance with the method described in this paragraph (r); or

(*2*) That has not computed pre-adjustment alternative minimum taxable income and adjusted current earnings for all prior tax years in accordance with the method described in this paragraph (r), but for which the use of the method described in this paragraph (r) for all prior taxable years would not have changed the taxpayer's tax liability (as shown on returns filed as of the date the election is made) for any prior taxable year for which the period of limitations under section 6501(a) has not expired (as of the date the election is made).

(B) A prospective election under this paragraph (r) may only be made by attaching a statement to the taxpayer's timely filed (including extensions) original Federal income tax return for any taxable year that is no later than its first taxable year to which this paragraph (r) applies and in which the taxpayer's tentative minimum tax (computed under the provisions of this paragraph (r)) exceeds its regular tax. However, in the case of a taxpayer described in paragraph (r)(3)(i)(A)(*1*) of this section that had tentative minimum tax in excess of its regular tax for any prior taxable year, the election may only be made by attaching a statement to its timely filed (including extensions) original Federal income tax return for the first taxable year ending after December 18, 1992. The statement must—

(*1*) Give the name, address and employer identification number of the taxpayer; and

(*2*) Identify the election as made under this paragraph (r).

(C) The determination of whether a taxpayer is described in paragraph (r)(3)(i)(A)(*2*) of this section is to be made as of the time the taxpayer makes a prospective election in accordance with the procedures in paragraph (r)(3)(i)(B) of this section.

(D) Any taxpayer described in paragraph (r)(3)(i)(A)(*2*) of this section that makes a prospective election will be deemed to have used the method described in this paragraph (r) in computing pre-adjustment alternative minimum taxable income and adjusted current earnings for all prior taxable years.

(ii) *Retroactive election*—(A) A retroactive election under this paragraph (r) may be made by any taxpayer not described in paragraph (r)(3)(i)(A) (*1*) or (*2*) of this section. Except as provided in paragraph (r)(3)(iii) of this section, a retroactive election may only be made by attaching a statement to the taxpayer's amended Federal income tax return for the earliest taxable year for which the period of limitations under section 6501(a) has not expired and which begins after December 31, 1986. The amended return to which the election under this paragraph (r)(3)(ii) is attached must be filed no later than June 21, 1993.

(B) The amended return must contain the statement described in paragraph (r)(3)(i)(B) of this section. In addition, the statement must contain a representation that the taxpayer will modify its pre-adjustment alternative minimum taxable income and adjusted current earnings for all open taxable years in accordance with paragraph (r)(2) of this section. Upon this change in method of accounting, the taxpayer must include the entire adjustment required under section 481(a), if any, in preadjustment alternative minimum taxable income and adjusted current earnings on the amended return for the year of the election. The taxpayer must also reflect the method of accounting described in paragraph (r)(2) of this section on amended returns filed for all taxable years after the year of the election for which returns were originally filed before making the election (and for which the period of limitations under section 6501(a) has not expired).

(C) Provided a taxpayer meets the requirements of this paragraph (r), any change in method of accounting arising as a result of making a retroactive election will be treated as made with the advance consent of the Commissioner.

(D) Any retroactive election under this paragraph (r) that is made without filing amended returns required under this paragraph (r)(3)(ii) shall constitute a change in method of accounting made without the consent of the Commissioner.

(iii) *Taxpayers under examination*—(A) *In general.* A taxpayer that wishes to make a retroactive election under section (r)(3)(ii) of this section may use the procedures in paragraph (r)(3)(iii)(A) (*1*) or (*2*) in lieu of filing an amended return for any taxable year that is under examination by the Internal Revenue Service.

(*1*) *Year of change under examination.* If the year of the change is under examination at the time the taxpayer timely makes the election, the taxpayer may (in lieu of filing an amended return for the year of the change) furnish the written statement described in paragraph (r)(3)(iii)(B) of this section to the revenue agent responsible for examining the taxpayer's return no later than June 21, 1993. It is the taxpayer's responsibility to make a timely election either by furnishing the statement to the revenue agent or by filing amended returns by June 21, 1993.

(*2*) *Other open years under examination.* If any other year for which the taxpayer must modify its pre-adjustment alternative minimum taxable income and adjusted current earnings (see paragraph (r)(3)(ii)(B) of this section) is examined, the taxpayer may (in lieu of filing an amended return) furnish the amount of the conforming adjustment to the revenue agent responsible for examining the taxpayer's return. It is the taxpayer's responsibility to timely modify its pre-adjustment alternative minimum taxable income and adjusted current earnings for each year other than the year of change, either by furnishing the amount of the adjustment to the revenue agent or by filing amended returns.

(B) *Statement required.* The statement required under paragraph (r)(3)(iii)(A)(*1*) of this section must include all of the items required under paragraph (r)(3)(ii)(B) of this section, as well as—

(*1*) The caption "Election to use regular tax inventories for AMT purposes;"

(*2*) A description of the nature and amount of all items that would result in adjustments and that the taxpayer would have reported if the taxpayer had used the method described in this paragraph (r) for all prior taxable years for which the period of limitations under section 6501(a) has not expired and which begin after December 31, 1986; and

(*3*) The following declaration signed by the person authorized to sign the return for the taxpayer: "Under penalties of perjury, I declare that I have examined this written statement, and to the best of my knowledge and belief this written statement is true, correct, and complete."

(C) *Year of change.* The year of change is the earliest taxable year for which the period of limitations under section 6501(a) has not expired at the time the statement is submitted to the appropriate revenue agent and that begins after December 31, 1986. Thus, the adjustments required to be included on the statement must include any adjustment under section 481(a) determined as if the method described in this paragraph (r) had been used in all taxable years prior to the year of change that begin after December 31, 1986.

(D) *Treatment of additional tax liability.* Any additional tax liability that results from the adjustments identified in the written statement described in paragraph (r)(3)(iii)(B) of this section is treated as an additional amount of tax shown on an amended return.

(iv) *Election as method of accounting.* The elections provided in paragraphs (r)(3) (i) and (ii) of this section constitute either adoptions of, or changes in, methods of accounting. These elections, once made, may be revoked only with the consent of the Commissioner in accordance with the rules of section 446(e) and § 1.446–1(e).

(v) *Untimely election to use simplified inventory method.* If a taxpayer makes an election described in this paragraph (r) after the times set forth in paragraph (r)(3) (i) or (ii) of this section, the taxpayer must comply with the requirements of § 1.446–1(e)(3) in order to secure the consent of the Commissioner to change to the method of accounting prescribed in this paragraph (r). The taxpayer generally will be subject to terms and conditions designed to place the taxpayer in a position no more favorable than a taxpayer that timely complied with paragraph (r)(3) (i) and (ii) of this section, whichever is applicable.

(4) *Example.* The following example illustrates the provisions of this paragraph (r).

Example. (i) Corporation L is a calendar year manufacturer of baseball bats and uses the LIFO method of accounting for inventories. During 1987, 1988, and 1989, L's cost of goods sold in computing taxable income was as follows:

	1987	1988	1989
Beginning LIFO inventory	$3,000	$4,000	$5,000
Purchases and other costs	9,000	9,000	9,000
Ending LIFO inventory	(4,000)	(5,000)	(6,000)
Cost of goods sold	8,000	8,000	8,000

(ii) L has no preferences under section 57 during 1987, 1988, and 1989. L's sole adjustment in computing alternative minimum tax during 1987, 1988, and 1989 was the depreciation adjustment under section 56(a)(1). Depreciation determined for both production and non-production assets under section 168 and under section 56(a)(1) during 1987, 1988, and 1989 was as follows:

	1987	1988	1989
Section 168 depreciation	$1,800	$1,800	$1,800
Section 56(a)(1) depreciation	(900)	(900)	(900)
Depreciation difference	900	900	900
Portion of difference capitalized in the increase in inventory	(100)	(100)	(100)
Adjustment required under section 56(a)(1)	800	800	800

(iii) In computing taxable income, a portion of each year's section 168 depreciation attributable to production assets is deducted currently and a portion is capitalized into the increase in ending inventory. For 1987, 1988, and 1989, L computed alternative minimum tax by deducting the cost of goods sold which was reflected in taxable income ($8,000) in accordance with paragraph (r)(2)(i) of this section. For 1987, 1988, and 1989, L also modified its adjustments under sections 56 and 58 and its preferences under section 57 to disregard the portion of any adjustment or preference that was capitalized in inventory. Thus, under section 56(a)(1), L increased alternative minimum taxable income during each year by $900.

(iv) L is eligible to make the election under paragraph (r)(1) of this section in accordance with paragraph (r)(3)(i) of this section (a prospective election).

(v) L must compute its LIFO recapture adjustment for each year by reference to—

(A) The FIFO inventory amount after applying the provisions of section 263A but before applying the adjustments of sections 56 and 58 and the items of preference in section 57; and

(B) The LIFO inventory amount used in computing taxable income.

(5) *Election to use alternative minimum tax inventories to compute adjusted current earnings.* A taxpayer may elect under this paragraph (r)(5) to use the inventory amounts used to compute pre-adjustment alternative minimum taxable income in computing its adjusted current earnings. Rules similar to those of paragraphs (r)(2) and (r)(3) of this section apply for purposes of this election.

(s) *Adjustment for alternative tax energy preference deduction*—(1) *In general.* For purposes of computing adjusted current earnings, any taxpayer claiming a deduction under section 56(h) must properly decrease basis by the portion of the deduction allowed under section 56(h) which is attributable to adjustments under section 56(g)(4). In taxable years following the taxable year in which the section 56(h) deduction is claimed, basis recovery (including amortization, depletion, and gain on sale) must properly take into account this basis reduction.

(2) *Example.* The following example illustrates the provisions of this paragraph (s):

Example. Corporation A, a calendar year taxpayer, incurs $100 of intangible drilling costs on January 1, 1994 and as a result of these intangible drilling costs A claims a deduction under section 56(h) of $40. Assume that $20 of A's deduction under section 56(h) is attributable to the adjustment under paragraph (f)(1) of this section. A must reduce by $20 the amount of intangible drilling costs to be amortized under paragraph (f)(1) of this section in 1995 through 1998 (the balance of the 60-month amortization period).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. The table in § 602.101(c) is amended by adding the entry "1.56(g)–1 . . . 1545–1233".

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved October 29, 1992.

Fred T. Goldberg, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 92–30811 Filed 12–18–92; 8:45 am]
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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 92-5]

Renewal Copyright Registration

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is amending the regulations governing renewal registration practices and procedures under section 304(a) of the Copyright Act of 1976, title 17 of the United States Code, as amended by the Copyright Amendments Act of 1992, Public Law 102-307, 106 Stat. 264. The Act provides for automatic renewal of copyrights secured between January 1, 1964, and December 31, 1977, if renewal registration is not made during the twenty-eighth year of the original term of copyright. The Act also permits renewal registration during the twenty-eighth year of the first term of copyright or anytime during the renewal term. These final regulations will implement the changes in section 304(a) of the Copyright Act.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540; Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 304(a) of the Copyright Act of 1976, title 17 of the United States Code, establishes the duration of copyright for works in which copyright already subsisted on January 1, 1978, the effective date of the 1976 Copyright Act. As enacted, the section provided generally that copyright, the first term of which is subsisting on January 1, 1978, endures for 28 years from the date it was originally secured, and that a second term of copyright lasting 47 years, can be secured by certain designated claimants if an acceptable application for renewal is made to the Copyright Office during the last year of the original term of copyright.

2. Automatic Renewal Act

The Copyright Amendments Act of 1992, Public Law 102-307, 106 Stat. 264 (Act of June 26, 1992) (hereafter "Automatic Renewal Act") amends section 304(a) to provide for the automatic renewal of copyright for works originally copyrighted between January 1, 1964, and December 31, 1977. The Automatic Renewal Act also permits renewal registration to be made during the last year of the original term of copyright or at anytime during the renewal term, whether or not original term registration was made. Original term registration can only be made before the expiration of the original twenty-eight year term of copyright. Renewal registration is not a condition of the renewal and extension of the copyright.

If a claim to the renewal term is made within one year before expiration of the original term of copyright and the claim is registered, the renewal term vests in the person or entity entitled to make the renewal claim on the effective date of registration. If no such claim is made and registered, the renewal term vests in the person or entity entitled to claim the renewal term on the last day of the original term of copyright.

The Automatic Renewal Act makes no change in the statutory renewal claimants or in their order of priority.

Renewal registration may be made at anytime during the renewed and extended term whether or not registration was made for the original term of copyright. If no original term registration is made, the Register is authorized to request information with respect to the existence, ownership, or duration of the copyright for the original term.

If renewal registration is made during the last year of the original term, registration vests the legal ownership of the second term in the statutory renewal

claimant who is living on the date of registration. The subsequent death of the author-renewal claimant, for example, during the last year of the original term would have no effect on ownership of the second term.

If renewal registration is made during the last year of the original term of copyright, the certificate of such renewal registration constitutes prima facie evidence as to the validity of the copyright during the renewal term and of the facts stated in the certificate. The evidentiary weight accorded to the certificate of a registration entered during the renewal term is at the discretion of the court.

If a renewal registration is not made within one year before expiration of the original term of copyright, a first-term derivative work prepared under authority of a grant of a transfer or license of copyright may continue to be used under the terms of the grant during the renewal term without infringing the copyright, but no new derivative works may be made under the grant.

Statutory damages and attorney's fees are withheld for unregistered works, that is, if neither original term nor renewal registration is made. All of the remedies are available with respect to infringements occurring after registration is made.

3. Renewal Registration Changes.

The Copyright Office is amending its renewal registration regulation, 37 CFR 202.17, to provide the conditions and requirements for registration of renewal claims during the last year of the original term of copyright or during the renewal term and to provide for the information and deposit material which must be submitted with a renewal registration claim in those cases where no original registration is made.

These regulations make clear that renewal registration is optional for works originally copyrighted between January 1, 1964, and December 31, 1977, but that, although the copyright may be renewed automatically, different legal consequences follow from the fact of registration or the time when registration is made. The regulations generally require timely registration in the last year of the original term in order to vest the renewal copyright by registration. If renewal registration is not made in the last year of the original term, the copyright is renewed automatically by law. In that case, renewal registration may be made at any time during the already renewed term of copyright.

The regulations no longer require original term registration as a pre-condition of renewal registration, although original term registration is encouraged before expiration of the original term. Once the original term expires, it is no longer possible to make original term registration.

If original term registration is not made, the regulations prescribe a new procedure, which is based on a modification of the Universal Copyright Convention Affidavit procedure of the former regulations. The renewal application Form RE must be accompanied by an Addendum and an appropriate deposit of the work in accordance with the requirements of 37 CFR 202.20 and 202.21. The information in the Addendum to Form RE is necessary to establish to the satisfaction of the Examiner that copyright subsists in the original term which is capable of renewal. The deposit copy facilitates the examination of the claim to copyright which is submitted for renewal, and is available for accession by the Library of Congress to its collections for the benefit of the Nation.

Since these final regulations make technical adjustments in registration practices reflecting the Automatic Renewal Act and since the adjustments benefit the public by making renewal registration easier, the regulations are issued in final form and take effect upon publication.

4. The Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all" actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

List of Subjects in 37 CFR Parts 201 and 202

Copyright registration.

Final Rules

In consideration of the foregoing, 37 CFR parts 201 and 202 are amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows.

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §1A201.7 is also issued under 17 U.S.C. 408, 409, and 410; §1A210.16 is also issued under 17 U.S.C. 116. §1A201.24 is also issued under Public Law 101-650, 104 Stat. 5089, 5134. §1A201.6 is also issued under 17 U.S.C. 708; §1A201.17 is also issued under 17 U.S.C. 111; §1A201.19 is also issued under 17 U.S.C. 115.

2. Section 201.5(b)(2)(iv) is revised to read as follows:

§ 201.5 Corrections and amplifications of copyright registrations; applications for supplementary registration.

* * * * *

(b) * * *

(2) * * *

(iv) Where a basic renewal registration has been made for a work during the last year of the relevant first-term copyright, supplementary registration to correct the renewal claimant or basis of claim or to add a renewal claimant is ordinarily possible only if the application for supplementary registration and fee are received in the Copyright Office within the last year of the relevant first-term copyright. If the error or omission in a basic renewal registration is extremely minor, and does not involve the identity of the renewal claimant or the legal basis of the claim, supplementary registration may be made at any time. In an exceptional case, however, supplementary registration may be made to correct the name of the renewal claimant and the legal basis of the claim at any time if clear, convincing, objective documentation is submitted to the Copyright Office which proves that an inadvertent error was made in failing to designate the correct living statutory renewal claimant in the basic renewal registration.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§1A202.3, 202.19, 202.20, 202.21, and 202.22 are also issued under 17 U.S.C. 407 and 408.

4. Section 202.17 is amended by revising paragraphs (a) through (f) in their entirety and by adding new paragraphs (g) through (h) as follows:

§ 202.17 Renewals.

(a) *General.* This section prescribes rules pertaining to the application for renewal copyright under section 304(a) of title 17 of the United States Code, as amended by Public Law 102-307.

(b) *Definition.* For purposes of this section, the term *posthumous work* means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(c) *Renewal registration optional.* For works originally copyrighted between January 1, 1964 and December 31, 1977 renewal registration is optional and not a condition for securing copyright for the new and extended forty-seven year second term. As provided in Public Law 102-307, 106 Stat. 264 (Act of June 26, 1992), however, renewal of copyright by registration during the last year of the original term and renewal registration during the forty-seven year extended term of a copyright renewed without registration by operation of Public Law 102-307 differ in legal effect. Among other effects, renewal of copyright by registration during the last year of the original term vests the renewal copyright in the statutory renewal claimant(s) living on the date of registration.

(d) *Original term registration.* (1) Registration of a claim to copyright in the original twenty-eight year term is not a pre-condition for making a renewal registration, provided the renewal application is accompanied by an Addendum to Form RE and the deposit copy, phonorecord, or identifying material specified in paragraph (h) of this section.

(2) Original term registration can only be made before the expiration of the original term of copyright in the work.

(e) *Renewal time limits.* (1) For works originally copyrighted between January 1, 1964, and December 31, 1977, claims to renewal copyright may be registered within the last year of the original term, which begins on December 31 of the 27th year of the copyright, and runs through December 31 of the 28th year of the copyright, or at anytime during the extended forty-seven year second term, if the second term is renewed by operation of Public Law 102-307, 106 Stat. 264. The original copyright term for a published work is computed from the date of first publication; the term for a work originally registered in unpublished form is computed from the date of registration in the Copyright Office. To vest the renewal copyright by registration, the required renewal application, fee, and, if original term registration has not been made, the Addendum specified in paragraph (h) of this section must be received in the Copyright Office during the prescribed period before the first term of copyright expires. The Copyright Office has no discretion to extend the renewal time limits for vesting of the renewal copyright by registration.

(2) The provisions of paragraph (e)(1) of this section are subject to the following qualification: In order to vest the renewal copyright by registration in any case where the year date in the notice on copies distributed by authority of the copyright owner is earlier than the year of first publication, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year from the year contained in the notice, and runs through December 31 of the 28th year from the year contained in the notice.

(3) Whenever a renewal applicant has cause to believe that a formal application for renewal, which is intended to vest the renewal copyright by registration, and any accompanying Addendum relating to subsistence of first-term copyright, if sent to the Copyright Office by mail, might not be received in the Copyright Office before expiration of the time limits provided by 17 U.S.C. 304(a) for vesting of the renewal copyright by registration, he or she may apply for renewal registration by telegraphic, telefacsimile, or similar written communication. An application made by this method will be accepted only if:

(i) The message is received in the Copyright Office within the specified time limits for vesting by registration;

(ii) The applicant adequately identifies the work involved, the date of first publication or original registration, the name and address of the renewal claimant, and the statutory basis of the renewal claim;

(iii) The fee for renewal registration, if not already on deposit, is received in the Copyright Office before the time for renewal registration has expired; and

(iv) A formal application for renewal (Form RE) (or a fax copy) and in the case of works under paragraph (h) of this section, an accompanying Addendum relating to the subsistence of first-term copyright are also received in the Copyright Office before April 1 of the following year.

(f) *Renewal claimants.* (1) Except as otherwise provided by paragraphs (f)(2) and (3) of this section, renewal claims may be registered only in the name(s) of the eligible person(s) falling within one of the following classes of renewal claimants specified in section 304(a) of the copyright law. If the work was a new version of a previous work, renewal may be claimed only in the new matter. If the renewal claim is submitted during the last year of the original term of copyright, the renewal must be made in the name(s) of the statutory claimant(s) entitled to claim the renewal on the date the renewal claim is submitted to the Copyright Office for registration. If the renewal claim is submitted during the forty-seven year renewal term, the renewal claim can only be registered in the name(s) of the statutory claimant(s) entitled to claim the renewal on the last day (December 31st) of the original term of copyright.

(i) In the case of any posthumous work or of any periodical, encyclopedia, or other composite work upon which the copyright was originally secured by the proprietor thereof, the renewal claim may be registered in the name of the proprietor;

(ii) In the case of any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author) or by an employer for whom such work is made for hire, the renewal claim may be registered in the name of the proprietor; and

(iii) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the renewal claim may be registered in the name(s) of the following person(s) in descending order of eligibility:

(A) The author of the work, if still living;

(B) The widow, widower, or children of the author, if the author is not living;

(C) The author's executors, if there is a will and neither the author nor any widow, widower, or child of the author is living;

(D) The author's next of kin, in the absence of a will and if neither the author nor any widow, widower, or child of the author is living.

(2) The provisions of paragraph (f)(1) are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b) of this section, a renewal claim may be registered in the name of the proprietor of the work, as well as in the name of the appropriate claimant under paragraph (f)(1)(iii), in any case where a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of the claim.

(3) The provisions of paragraphs (f)(1)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where:

(A) The author has left a will which names no executor;

(B) The author has left a will which names an executor who cannot or will not serve in that capacity; or

(C) The author has left a will which names an executor who has been discharged upon settlement of the estate or removed before the estate has been completely administered, the renewal claim may be registered either in the name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction.

(ii) In any case described in paragraph (f)(3)(i) of this section, except in the case where the author has left a will without naming an executor and a court appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of the conflicting renewal claims in these cases should not be interpreted as evidencing the validity of either claim.

(g) *Application for renewal registration.* (1) Each application for renewal registration shall be submitted on Form RE. Copies of Form RE, and if applicable, the Addendum to Form RE, are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, DC 20559.

(2)(i) An application for renewal registration may be submitted by any eligible statutory renewal claimant as specified in paragraph (f) of this section or by the duty authorized agent of any such claimant.

(ii) An application for renewal registration shall be accompanied by a fee of $20. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(A) A designation of whether the applicant is the renewal claimant, or the duly authorized agent of such claimant (whose identity shall also be given);

(B) The handwritten signature of such claimant or agent, accompanied by the typewritten or printed name of that person;

(C) A declaration that the statements made in the application are correct to the best of that person's knowledge; and

(D) The date of certification.

(iii) In the case of an application for renewal registration of a work for which no original registration was made, the application shall be accompanied by an Addendum and deposit material in accordance with paragraph (h) of this section.

(3) Once a renewal registration has been made, the Copyright Office will not accept a duplicate application for renewal registration on behalf of the same renewal claimant.

(h) *Addendum for an unregistered work.*–(1) *Content.* If original term registration is not timely made for a work, the renewal application Form RE must be accompanied by an Addendum to Form RE which must contain the following information:

(i) The title of the work;

(ii) The name of the author(s);

(iii) The date of first publication of the work;

(iv) The place of first publication of the work;

(v) The citizenship of the author(s) on the date of first publication of the work;

(vi) The domicile of the author(s) on the date of first publication of the work;

(vii) An averment that, at the time of first publication, all the copies of the work published under the authority of the author or other copyright proprietor bore the copyright notice required by the Copyright Act of 1909, title 17 of the United States Code in effect on December 31, 1977, and that United States copyright subsists in the work; and

(viii) For works of United States origin which were subject to the manufacturing provisions of section 16 of the Copyright Act of 1909 as it existed at the time the work was published, the Addendum must also contain information about the country of manufacture and the manufacturing processes.

(2) *Signature.* The Addendum must contain the handwritten signature of the renewal claimant or the duly authorized agent of the renewal claimant. The signature shall (i) be accompanied by the printed typewritten name of the person signing the Addendum and by the date of the signature; and (ii) shall be immediately preceded by the following printed or typewritten statement in accordance with section 1746 of title 28 of the United States Code: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(3) *Deposit requirement for an unregistered work.* In addition to the Addendum to Form RE, an application for renewal registration of a work for which no original term registration is made must be accompanied by one copy or phonorecord or identifying material of the work as first published in accordance with the deposit requirements set out in sections 202.20 and 202.21 of the Copyright Office regulations for basic registration.

(4) *Waiver of the deposit requirement.* In a case where the renewal applicant asserts that it is either physically impossible or otherwise an undue hardship to satisfy the deposit requirements of §§1A202.20 and 202.21, the Copyright Office, at its discretion, may, upon receipt of an acceptable explanation of the inability to submit such copy or identifying material, permit the deposit of the following in the descending order of preference:

(i) A reprint, photocopy, or identifying reproduction of the work as first published; or

(ii)(A) A photocopy of the title page of the work as first published;

(B) A photocopy of the page of the work as first published bearing the copyright notice;

(C) A specification as to the location, relative to each other, of the title and notice pages of the work as first published, if the pages are different; and

(D) A brief description of the copyrightable content of the work, which is sufficient to enable the Copyright Office to examine the work. The Examining Division of the Copyright Office may request deposit of additional descriptive material if the original submission is inadequate.

Dated: November 24, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-30586 Filed 12-18-92; 8:45 am]

Billing Code 1410-07-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT3–5448; FRL–4543–6]

Approval and Promulgation of State Implementation Plans; Montana; Open Burning Regulation Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, EPA is disapproving revisions to the Montana State Implementation Plan (SIP) that were submitted by the Governor of Montana on April 9, 1991. The revisions were made to the Administrative Rules of Montana (ARM) 16.8.1302 and 16.8.1307 to allow the open burning of creosote-treated railroad ties, which was previously prohibited in ARM 16.8.1302.

EPA is disapproving the revisions because they are in direct conflict with the Montana Clean Air Act as approved in the SIP, which states that it is the policy of the State to "achieve and maintain such levels of air quality as will protect human health and welfare." In addition, the revisions did not meet many provisions of the amended Clean Air Act (CAA). Specifically, the regulation revision did not contain enforceable emissions limitations and a plan for determining compliance with the emissions limitations, nor did the State address the impacts of the relaxation of the open burning regulation on the State's PM–10 nonattainment areas.

Any source for which a permit was issued under the State's revised open burning rules may become subject to EPA enforcement of the previous version of the open burning rule approved in the SIP, which strictly prohibits the open burning of creosote-treated railroad ties.

EFFECTIVE DATE: This rule will become effective on January 21, 1993.

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Montana Department of Health and Environmental Services, Air Quality Bureau, Cogswell Building, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

A. History

Montana has revised its open burning regulations several times. The original version, which was effective November, 1968, did not specifically prohibit the burning of treated wood. However, the regulation did prohibit the burning of "chicken litter, animal droppings, garbage, dead animals, tires, waste oil, tar paper and similar materials creating dense smoke when burned." This regulation was submitted in the 1972 SIP submittal, which was approved by EPA.

A 1978 version of the open burning regulation strictly prohibited the burning of railroad ties, as follows: "Chicken litter, animal droppings, garbage, dead animals or parts of dead animals, tires, pathogenic wastes, explosives, oil, railroad ties, tar paper, or toxic wastes shall not be disposed of by open burning." This version was also approved by EPA, thus amending the federally-approved Montana SIP to prohibit these open burning activities.

On April 22, 1982, the State submitted a revision to the SIP, which included a revision to the open burning regulation. In this version of the open burning regulation, under ARM 16.8.1302, "Prohibited Open Burning," the State prohibited the burning of "treated lumber and timbers." This regulation was approved by EPA as a SIP revision on July 15, 1982 (47 FR 30762).

B. 1991 Submittal

On April 9, 1991, the Governor of Montana submitted revisions to the SIP. A revision was made to ARM 16.8.1302 to prohibit the burning of treated lumber and timbers, "except creosote-treated railroad ties * * *." Revisions were also made to ARM 16.8.1307 to provide for the permitting of the disposal of railroad ties through open burning. Other revisions were made to ARM 16.8.1307 to include additional provisions for all conditional air quality open burning permits.

The State was notified, on June 12, 1991, that the submittal was administratively and technically complete. In that letter, however, EPA raised several concerns about the toxicity and hazards associated with the burning of creosote-treated wood products and requested further information from the State on how Montana would ensure protection of human health and welfare with the regulation revision. The State indicated that it would not be able to respond to EPA's concerns until a much later date. In order to meet statutory deadlines for processing SIP submittals, EPA decided to continue processing the submittal. EPA determined that the State submittal was in direct conflict with section 75–2–102 of the Montana Clean Air Act, which states that it is the public policy of the State to "achieve and maintain such levels of air quality as will protect human health and welfare," because the submittal did not adequately show how the public health and welfare would be protected during the open burns of creosote-treated railroad ties. Since the Montana Clean Air Act is in the approved SIP, the regulation revision was found to be in direct conflict with the existing SIP.

For additional information, EPA reviewed an open burn permit which the State had issued to Burlington Northern Railroad on June 24, 1991 to burn creosote-treated railroad ties in accordance with its revised open burning regulations. EPA's review found that the conditions of the permit did not clearly define any specific procedures for open burning to reduce emissions. In addition, under subtitle C of the Resource Conservation and Recovery Act (RCRA), material that is disposed of, burned, or treated before being burned is defined as solid waste pursuant to 40 CFR 261.2, and a generator of solid waste must determine if the solid waste meets a determination of hazardous waste, as defined in 40 CFR 261, subparts C and D. The State, however, did not require that the source make a determination of whether the material to be burned constituted hazardous waste. The State did require that railroad ties must not be burned within two miles of any community. However, due to the toxicity and hazards associated with the burning of creosote-treated railroad ties, EPA was concerned that this requirement may not fully ensure adequate protection of human health and welfare.

On September 12, 1991, EPA notified the State that EPA would be proposing to disapprove the SIP revision on the basis that the open burning regulation lacked the specific requirements to adequately ensure the protection of human health and welfare, in direct conflict with the approved SIP. Additional review of the open burn permit issued to Burlington Northern Railroad substantiated EPA's concerns about protection of the public health.

However, EPA also provided the State with further opportunity to submit any additional information which might address EPA's concerns by October 1,

1991. In a letter dated September 30, 1991, the State notified EPA that it was unable to respond to EPA's concerns within the timeframe given. The State indicated that it would continue to examine its options, and would keep EPA informed of any decisions. Therefore, on January 2, 1992, EPA published its proposal to disapprove the revisions to the State's open burning regulations (57 FR 23). Since no comments were received pursuant to the proposed disapproval, EPA is proceeding with its final disapproval.

In addition to the reasons described above, EPA notes that this SIP revision must be disapproved as provided under sections 110(l) and 193 of the CAA. Many areas in the State of Montana are currently designated as nonattainment for the PM–10 national ambient air quality standards (NAAQS) (see 56 FR 56694, 56794, published on November 6, 1991). Further, as provided in section 107(d)(4)(B)(iii) of the CAA, those areas in the State not designated nonattainment for PM–10 are designated as unclassifiable for PM–10.

Section 110(l) of the CAA provides that EPA shall not approve a SIP revision if the revision interferes with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. The State of Montana has not adequately addressed the impact of the proposed SIP revision on, among other things, continued maintenance of the PM–10 NAAQS in those areas of the State currently designated unclassifiable for PM–10. Similarly, the State has not adequately addressed the impact of the relaxation on reasonable further progress and timely attainment of the PM–10 NAAQS in those areas in the State currently designated nonattainment for PM–10.

Section 193 of the CAA prohibits the modification in any manner of any control requirement in effect, or required to be adopted by a plan in effect before November 15, 1990, in any area which is nonattainment for any pollutant unless the modification insures equivalent or greater emission reductions of such air pollutant. This provision evinces an antibacksliding principle—a Congressional intent to keep emissions reductions in nonattainment areas at least at their November 15, 1990 levels. The State has not adequately addressed the potential impact of the proposed relaxation on PM–10 nonattainment areas in the State. Moreover, the State has not demonstrated that the relaxation is accompanied with at least equivalent emission reductions of PM–10 in any affected PM–10 nonattainment area in Montana.

Final Action

EPA is disapproving revisions to the open burning regulations in the Montana SIP, submitted by the Governor of Montana on April 9, 1991. The disapproval pertains to those revisions made to ARM 16.8.1302 and 16.8.1307, which allow the open burning of creosote-treated railroad ties.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 1992. Filing a petition for reconsideration by the Administrator of the final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 16, 1992.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1384 is amended by designating the existing text as paragraph(a) and by adding paragraph (b) to read as follows:

§ 52.1384 Emission control regulation.

* * * * *

(b) The provisions for the open burning of creosote-treated railroad ties in the Administrative Rules of Montana (ARM) 16.8.1302 and 16.8.1307, which were submitted by the Governor on April 9, 1991, are disapproved because:

(1) The regulations do not adequately demonstrate how public health and welfare will be protected, in direct conflict with section 75–2–102 of the Montana Clean Air Act, as approved in the SIP;

(2) The regulations do not satisfy the enforcement imperatives of section 110(a)(2) of the Clean Air Act, which require that a plan contain enforceable emission limitations and a program for determining compliance; and

(3) The revised regulations relax the control of emissions without any accompanying analysis demonstrating that these relaxations will not interfere with attainment and maintenance of the PM–10 national ambient air quality standards, and without any accompanying analysis demonstrating the potential impact on PM–10 nonattainment areas in the State and whether equivalent or greater emission reductions are insured in such areas, per the requirements of sections 110(1) and 193 of the amended Clean Air Act.

[FR Doc. 92–30005 Filed 12–18–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7558]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of

property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State	Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
NEW ELIGIBLES—Regular Program:				
North Carolina	Windfall, Town of Perquimans County.	370345	November 5, 1992	July 3, 1985.
REINSTATEMENT—Regular Program:				
West Virginia	Charles Town, City of Jefferson County.	540066	April 24, 1975, Emerg.; December 4, 1979, Reg.; September 30, 1992, Susp.; November 2, 1992, Rein.	September 30, 1992.
Pennsylvania	Montgomery, Township of Franklin County.	422426	August 1, 1979, Emerg.; August 1, 1986, Reg.; November 4, 1992, Susp.; November 12, 1992, Rein.	November 4, 1992.
Kansas	Cowley County Unincorporated Areas.	200563	February 26, 1979, Emerg.; August 5, 1991, Reg.; August 19, 1991, Susp.; November 12, 1992, Rein.	August 5, 1991.
New Hampshire	Stark, Town of Coos County	330038	March 30, 1976, Emerg.; April 2, 1986, Reg.; April 2, 1986, Susp.; November 19, 1992, Rein.	April 2, 1986.
New York	Ellenburg, Town of Clinton County.	361382	May 23, 1984, Emerg.; March 4, 1986, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	March 4, 1986.
Do	Genesee, Town of Allegany County.	361101	October 18, 1978, Emerg.; July 30, 1992, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	July 30, 1992.
Do	Humphrey, Town of Cattaraugus County.	360078	April 13, 1981, Emerg.; August 13, 1992, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	August 13, 1992.
Do	Maryland, Town of Otsego County.	361272	August 30, 1976, Emerg.; June 3, 1986, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	June 3, 1986.
Do	Moira, Town of Franklin County.	361125	May 23, 1984, Emerg.; April 15, 1992, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	April 15, 1986.
Do	Morris, Town of Otsego County.	361273	April 12, 1976, Emerg.; January 3, 1986, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	January 3, 1986.
Do	Steuben, Town of Oneida County.	360555	June 13, 1983, Emerg.; September 24, 1984, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	September 24, 1984.
West Virginia	Chapmanville, Town of Logan County.	540092	January 29, 1971, Emerg.; August 27, 1971, Reg.; April 15, 1973, Susp.; January 3, 1975, Rein.; November 18, 1992, Susp.; November 27, 1992, Rein.	November 16, 1983.

State	Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Do	Delbarton, Town of Mingo County.	540134	October 13, 1972, Emerg.; March 15, 1977, Reg.; November 18, 1992, Susp.; November 27, 1992, Rein.	November 1, 1985.
Do	Gilbert, Town of Mingo County.	540135	July 7, 1972, Emerg.; May 2, 1977, Reg.; November 18, 1992, Susp.; November 27, 1992, Rein.	November 15, 1985.
Do	Henderson, Town of Mason County.	540251	May 27, 1975, Emerg.; May 15, 1978, Reg.; November 18, 1992, Susp.; November 27, 1992, Rein.	May 15, 1978.
Do	Kermit, Town of Mingo County.	540136	December 1, 1972, Emerg.; March 1, 1978, Reg.; November 18, 1992, Susp.; November 27, 1992, Rein.	November 15, 1985.
Region III:				
Pennsylvania	Ashland, Borough of Schuylkill County.	420765	November 4, 1992; Suspension Withdrawn	September 17, 1992.
Region IV:				
Florida	Clay County Unincorporated Areas.	120064	do	November 4, 1992.
Mississippi	Terry, Town of Hinds County	280073	do	November 4, 1992.
Region VI:				
Oklahoma	Noble County Unincorporated Areas.	400132	do	November 18, 1992.
Region VII:				
Iowa	Polk County Unincorporated Areas.	190091	do	November 18, 1992.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 16, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-30864 Filed 12-18-92; 8:45 am]

BILLING CODE 6718-21-M

Proposed Rules

Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 273

[Amendment No. 347]

Food Stamp Program: Technical Amendments Concerning Disabled in Group Homes and Income Exclusion for Plans for Achieving Self-Support (Pub. L. 102–237)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Food Stamp Program regulations as a result of certain provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237, December 13, 1991 (105 Stat. 1818)). This rule addresses technical amendments concerning certain disabled persons in group homes and income exclusions for plans for achieving self-support.

DATES: Comments on this proposed rulemaking must be received on or before February 19, 1993, in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or FAX (703) 305–2454. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) in room 720 at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Seymour, at the above address or, by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and has been classified as non-major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This proposed rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service (FNS), has certified that this rule would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients and State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237, enacted December 13, 1991) contained several technical amendments to the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101–624). This proposed rulemaking concerns two of the technical amendments.

Expanded Opportunity for Using Food Stamps To Pay for Meals in Certain Group Homes

Under current regulations, many, but not all, blind or disabled persons living in a group home may be certified for food stamps. In this rule we are proposing to amend the regulations to expand the provisions governing the eligibility of blind or disabled persons living in group homes to include all persons defined as blind or disabled under the Food Stamp Act of 1977, as amended (7 U.S.C. 2012).

Requirements for participation in the Food Stamp Program by blind or disabled residents of certain group homes are defined by sections 3(g) and 3(i) (7 U.S.C. 2012 (g) and (i)) of the Food Stamp Act (the Act). Section 3(g) concerns the purchase of prepared

meals with food stamps, and section 3(i) concerns residents of institutions.

Under section 3(g), food stamps can only be used to purchase prepared meals under certain circumstances. Blind or disabled (as defined in section 3(i) of the Act) residents of certain group homes can use food stamps to pay for meals provided by their group living arrangement facility if the group living arrangement is: (a) A public or nonprofit residential setting that serves no more than 16 residents and (b) is certified by the appropriate agency or agencies of the State under regulations issued at section 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)) or under standards determined by the Secretary of Agriculture to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act.

Under section 3(i) of the Act, persons who are considered to be residents of institutions or boarding houses cannot receive food stamps. However, the Act excludes certain blind or disabled individuals who reside in some types of group homes from consideration as residents of institutions for purposes of food stamp eligibility. Thus, these individuals are eligible to receive food stamps in certain circumstances.

Prior to passage of the Mickey Leland Act (Pub. L. 101–624), a resident of a group living arrangement had to be blind or disabled and receiving benefits under Title II (Federal Old Age, Survivors, and Disability Insurance Benefits, (Social Security)), or Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act (42 U.S.C. 301 et seq.) in order to be eligible for food stamps. The Mickey Leland Act added residents of group living arrangements who are blind or disabled and receiving benefits under Title I (Old Age Assistance), Title X (Aid to the Blind), and Title XIV (Aid to the Permanently and Totally Disabled) of the Social Security Act. This change was incorporated into the regulations at 7 CFR 271.2 (which defines "Eligible foods" and "Group living arrangement") and 7 CFR 273.1(e)(1)(iii) (which contained eligibility rules for residents of institutions) in a December 4, 1991 rulemaking entitled "Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act and Food Stamp Certification Policy" (56 FR 63592).

However, for other purposes in the Food Stamp Program, there is an additional definition of "blind" or "disabled" in section 3(r)(2)–(7) of the Food Stamp Act (7 U.S.C. 2012(r)(2)–(7)). Some persons who do not receive benefits under Titles I, II, X, XIV, or XVI of the Social Security Act are nonetheless considered disabled for purposes of qualifying for the medical deduction and for the uncapped shelter deduction. Under current food stamp regulations, however, these persons are not eligible to participate in the Food Stamp Program if they live in a group home.

Section 901 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237) amended section 3(g)(7) and 3(i) of the Act of 1977 to expand eligibility to receive food stamps and to use them to purchase meals provided by certified group living arrangements, to all individuals who meet the Act's definition of "disabled" contained in section 3(r)(2)–(7).

Accordingly, this proposed rule would amend 7 CFR 271.2 to change the definitions of "Eligible foods" and "Group living arrangement" to expand food stamp eligibility to all blind or disabled persons (as defined by the Food Stamp Act) who live in certain group living arrangements and to include meals served to these blind or disabled persons as eligible for purchase with food stamps. In order to implement this change, it is also necessary to amend 7 CFR 273.1(e)(1)(iii) and 273.11(f) so that disabled or blind persons as (defined in 7 CFR 271.2) may apply for and receive food stamps and use their food stamps to pay for meals provided by a group living arrangement.

Exclude Plans for Achieving Self-Support (PASS) From Income

Under 7 CFR 273.9(c) of the food stamp regulations, certain items are excluded from income in determining food stamp eligibility and calculating benefits. These items were expanded by section 903 of Public Law 102–237 and by Public Law 102–265. (Pub. L. 102–265 corrects an oversight in section 903 that omitted blind individuals by expanding the provision in section 903 to the blind.)

One portion of section 903 concerns Plans for Achieving Self-Support (PASS) administered by the Social Security Administration (42 U.S.C. 1382a(b)(4)). The PASS program is designed to help Supplemental Security Income (SSI) recipients become self-supporting. The plans must be approved by the Social Security Administration, and permit an individual to set aside a specified amount of money to be used or deposited into a special account for an approved purpose. Amounts necessary for the fulfillment of the PASS plan are excluded from income and resources under the SSI program.

Under existing regulations, PASS funds are not counted as food stamp resources because the resources of a household member who receives SSI are excluded for food stamp purposes. However, such funds are not excluded from income calculations for food stamp purposes. Section 903 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and Public Law 102–265 changes this. Under the new provision, funds provided for a PASS plan will now be excluded from income for food stamp purposes.

Accordingly, 7 CFR 273.9 is proposed to be amended to exclude PASS funds from income in determining food stamp eligibility and benefits.

Implementation

The provisions extending food stamp eligibility to all blind or disabled persons (as defined by the Food Stamp Act) who live in certain group living arrangements to include meals served to these blind or disabled persons as eligible for purchase with food stamps were effective and had to be implemented no later than February 1, 1992 in accordance with a December 27, 1991 memorandum to all Regional Administrators of the Food and Nutrition Service.

Also in accordance with that memorandum and the provisions of Public Law 102–237, the income exclusion for PASS accounts is effective on the earlier of: (1) December 13, 1991, the date enactment of Pub. L. 102–237, (2) October 1, 1990, for food stamp households for which the State agency knew, or had notice, that a household member had a PASS, or (3) beginning on the date that a fair hearing was requested contesting the denial of an income exclusion for amounts provided for a PASS. State agencies are not required to do file searches for cases relating to PASS households unless the question of an income exclusion for PASS had been raised with the State agency prior to December 13, 1991.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant program-social programs.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271 and 273 are proposed to be amended as follows:

1. The authority citation for parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2,

a. The definition of "Eligible foods" is amended by revising paragraph (5); and

b. The definition of "Group living arrangement" is amended by revising the second sentence.

The revisions read as follows:

§ 271.2 Definitions.

* * * * *

Eligible foods * * * (5) meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member" contained in this section;

* * *

* * * * *

Group living arrangement * * * To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member" contained in this section.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

3. In § 273.1, paragraph (e)(1)(iii) is amended by removing the words "and who receive benefits under title I, title II, title X, title XIV, or title XVI of the Social Security Act" and adding the words "(as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member," contained in § 271.2)" after "individuals".

4. In § 273.9, a new paragraph (c)(16) is added to read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

(16) Income of an SSI recipient which has been determined necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under sections 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

* * * * *

5. In § 273.11,

a. The heading of paragraph (f) is revised;

b. The first sentence of paragraph (f)(1) is amended by removing the words, "who receive benefits under title II or title XVI of the Social Security Act"; and

c. Paragraph (f)(3) is amended by removing the words, "who receive benefits under Title II or Title XVI of the Social Security Act".

The revision reads as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(f) *Residents of a group living arrangement.*

* * * * *

Dated: December 8, 1992.

Phyllis R. Gault,

Acting Administrator.

[FR Doc. 92–30839 Filed 12–18–92; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 91N–0404]

Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations to implement the provisions of the Safe Medical Devices Act of 1990 regarding humanitarian use devices (HUD's). A HUD, i.e., a device which is designed for use in the treatment or diagnosis of a disease or condition that affects fewer than 4,000 individuals in the United States, is exempt from the effectiveness requirements of sections 514 and 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d and 360e). In order to implement this exemption, FDA is proposing to amend the investigational device exemption (IDE) regulations. These proposed revisions prescribe the procedures and conditions for obtaining an IDE for a HUD and provide for certain waivers from the IDE regulation for a HUD.

DATES: Written comments by February 19, 1993. The agency is proposing that any final rule based upon this proposal become effective 30 days after publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION:

I. Background

On November 28, 1990, the President signed into law the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629). In enacting the SMDA, Congress sought to improve the Medical Device Amendments of 1976 (the amendments). The amendments were the first legislation to put in place a comprehensive framework to regulate medical devices and ensure their safety and effectiveness. With regard to diseases and conditions affecting small populations, Congress recognized that the market for devices intended to benefit fewer than 4,000 persons in the United States was limited and that the cost of research and development of these devices makes the recovery of costs by the sponsor unlikely. In the SMDA, Congress enacted an amendment to section 520 of the act (21 U.S.C. 360j) to provide for the needs of these people by creating an incentive for potential sponsors to develop devices for them in the form of a relaxation of the requirements for an investigative study. The purpose of this "humanitarian device exemption" (HDE) is to encourage the development and use of devices intended to benefit patients in the treatment and diagnosis of diseases and conditions that affect fewer than 4,000 individuals in the United States consistent with the protection of the public health and safety and within ethical standards.

Accordingly, section 520(m) of the act (21 U.S.C. 360j(m)) authorizes FDA, by regulation, to exempt a HUD from the effectiveness requirements of sections 514 and 515 of the act. This proposed regulation sets forth the procedures and conditions for the implementation of section 520(m) of the act.

The agency believes that the intent of Congress to facilitate widespread access to HUD's is most effectively implemented by amending the IDE regulations and not by adding a discrete new regulation. The IDE regulations provide the mechanism for institutional review board (IRB) review and approval, patient informed consent, and prohibitions on profit making. Also, the IDE regulations provide flexibility for reviewing various types of investigational studies (e.g., feasibility studies). The proposed regulation would expand somewhat the range of

exemptions envisioned by Congress to include other exemptions offered by the IDE regulations.

Several alternative options were considered and rejected. One option was the revision of the premarket approval (PMA) regulation. If FDA were to follow this course, it would have to create new requirements for IRB review and approval, and patient informed consent would need to be added to the PMA regulation to meet the SMDA provisions. Further, the PMA sponsor would be precluded from making a profit on the device, and the approval for distribution would be limited to a period of 18 months with possible extensions of 18-month increments. All of these constraints are inconsistent with the PMA approval process and its purpose.

A second option was to create a separate regulation for HUD's. However, FDA believes that creation of a new regulation would be unnecessary and duplicative, since a means of implementation separate from IDE procedures would need to be developed for a separate regulation.

FDA is specifically soliciting comments on the advantages or disadvantages of using the IDE regulation as the means to implement section 520(m) of the act, as well as the desirability of using other alternative methods of implementation.

II. Proposed Amendments

A. Scope

Proposed § 812.1(b) (21 CFR 812.1(b)) would expand the scope of the IDE regulations to include provisions for HUD's and would, thus, implement section 520(m) of the act.

B. Applicability

Proposed § 812.2(e) sets forth the circumstances under which the waiver provisions for HUD would be implemented.

This proposed provision would replace current § 812.2(e) (21 CFR 812.2(e)), which is now obsolete. Current § 812.2(e) covers studies on devices formerly regulated as new drugs that had been conducted under an investigational new drug application (IND) before the effective date of the IDE regulations. Because there are now no ongoing device studies under an IND, current § 812.2(e) is no longer applicable. FDA realizes that it is conceivable that there still may be study data collected under the requirements of part 312 (IND regulations) that may be offered in support of a device's commercial distribution. If a sponsor now wishes to use these data to bring a device to market, FDA will evaluate the data on a case-by-case basis in accordance with applicable statutes and regulations.

FDA is proposing to allow humanitarian use status for devices that FDA would classify as "significant risk" devices within the meaning of § 812.3(m), as well as for devices that FDA would classify as "nonsignificant risk" devices. The agency is proposing to do so despite the fact that Congress specifically provided for HDE's for devices that will not expose patients to "an unreasonable or significant risk of illness or injury." (section 520(m)(2)(c) of the act). FDA believes that Congress' purpose in creating HDE's different from the agency's purpose in defining "significant risk devices." This is evidenced by the emphasis that FDA placed in § 812.3 on a "significant risk device" being used in "supporting or sustaining human life" and "for a use of substantial importance is diagnosing * * * or treating disease." These concepts are absent from both the SMDA and its legislative history.

C. Definitions

Proposed § 812.3(d) defines a HUD in accordance with its intended use. The same device may have an approved IDE or be a marketed device for other uses and still be considered a HUD for the purposes of § 812.3(d) if it is also intended for a humanitarian use.

D. Waivers

Proposed § 812.10(d) allows a sponsor of a HUD to request a waiver of certain requirements normally applicable to device investigations. FDA is proposing to amend the IDE regulation to prescribe not only how HUD's may be exempted from the effectiveness requirements of sections 514 and 515 of the act, but also to provide for HUD's with certain waivers from the IDE regulation. By creating waivers specific to HUD's, the agency believes that the safety and integrity of investigational studies of HUD's would be maintained. In addition to the exemptions afforded a sponsor of an approved IDE under § 812.30, a sponsor of a HUD could request that FDA waive other requirements of part 812. All requests for waivers would have to contain information required by proposed §§ 812.20(e) and 812.25(c), and, of course, FDA cannot grant waivers of statutory requirements.

Congress provided that a HUD may be exempted from the effectiveness requirements of sections 514 and 515 of the act only where it is likely to provide some benefit to the individual in the treatment or diagnosis of a rare disease or condition or where it is likely to benefit the individual's quality of life. Because a HUD cannot be fully evaluated in clinical trials due to the limited population, Congress stipulated the conditions under which an exemption may be granted. These conditions are enumerated in proposed § 812.20(e).

E. Applications

Proposed § 812.20(e) sets forth the additional information that the sponsor of an IDE application for a HUD must provide. These requirements would be consistent with Congressional intent concerning HUD's. The evidence needed to document the HUD eligibility is obtainable from numerous sources, i.e., from polls, surveys, medical literature, and data bases. Under the proposal, evidence that the disease or condition affects fewer than 4,000 affected individuals in the United States should be determined as of the time of submission of the application for the HUD. Although proposed § 812.30(e)(1) would allow FDA to withdraw an application's approval if it is found to have been unapprovable under law or regulation, or if an IRB-imposed condition is not met, proposed § 812.30(e)(2) provides that the exemption will not be revoked solely because the prevalence of a disease or condition subsequently exceeds 4,000 individuals in the United States if the applicable requirements of the IDE regulations are otherwise being met. However, the increased prevalence would result in FDA's disapproving an extension request for the HUD and directing the sponsor to comply fully with the IDE regulations. This is proposed in order to add stability and predictability to the HUD process.

Section 812.20(b)(8) of the IDE regulation is not waived for a HUD. This section provides that, if the device is to be sold, the sponsor must include in the application the amount to be charged and an explanation of why the sale does not constitute commercialization of the device. Section 520(m) of the act provides that the sponsor of a HUD may not charge an amount that exceeds the costs of research and development, fabrication, and distribution of the device. The sponsor must address this provision under § 812.20(b)(8) in an application and in a request for extension. The sponsor must make its records pertaining to cost recovery available to FDA for inspection.

FDA believes that Congress provided for cost recovery as an incentive for manufacturers to develop these devices. FDA also believes that reimbursement

by insurance carriers for a HUD would help to fulfill the Congressional intent.

Although FDA is not prepared at this time to accept HUD applications in a computer readable format, the agency intends to have procedures for handling such submissions established in the future. FDA will announce the availability of such procedures when they are established.

F. Investigational Plan

Proposed § 812.25(c)(2) contains a requirement that the investigational plan provide a statement describing the disease or condition that the HUD is intended to be used to treat or diagnose, other demographic characteristics of the patient population, including size and justification of patient population selection, and reference sources.

G. FDA Action on Applications

Proposed § 812.30(d) states that an application for a HUD must be submitted in accordance with §§ 812.20 and 812.25. FDA will notify the sponsor of the duration of the exemption (§ 812.30(d)(2)) and of the sponsor's opportunity to obtain an extension (§ 812.30(d)(3)). These procedures would be in addition to the procedures (§ 812.30(a), (b), and (c)) applicable to any other IDE application.

Under proposed § 812.30(d)(4), FDA enumerates the reasons why it may disapprove an application for a HUD. Proposed § 812.30(e) prescribes the criteria for withdrawal of approval for an IDE application for a HUD granted under proposed §§ 812.10 and 812.30(a). If FDA determines that the application does not meet the requirements of this part, FDA may issue an order of withdrawal of approval. The order would include a statement of reasons for the action.

H. Extensions

Proposed § 812.35(c) describes the conditions under which a sponsor may obtain extensions of exemptions. A request for an exemption extension which would allow the continuation of the investigation would have to contain any relevant new information as to the safety and effectiveness of the HUD or the prevalence of the disease or condition for which the exemption was first approved, in accordance with § 812.35(a) and proposed §§ 812.20(e) and 812.25(c), and must be submitted at least 30 days prior to the expiration of the original or current term of the exemption.

This proposed regulation also implements Congress' mandate (section 520(m)(2) and (m)(3) of the act) that the HUD exemptions be for a period of 18 months initially, with extensions for periods of 18 months each, provided that the requirements of proposed §§ 812.20 (e) and 812.7(b) are met.

I. Confidentiality of Data and Information

Proposed § 812.38(e) prescribes the rules governing confidentiality of data and information in an application for a HUD. For the most part, the rules on confidentiality of data and information in IDE's, generally, would apply to HUD IDE's. However, FDA proposes to publicize both the existence of HUD IDE's and to make available limited information about the IDE so that physicians and patients may benefit from the devices. This proposed disclosure would go beyond what the agency usually releases concerning IDE's and most IND's but is consistent with how the agency releases information concerning treatment IND's and concerning efficacy studies for AIDS drugs. The information that FDA proposes to disclose under § 812.38(e) would include, for example, the identity of the product, disease or condition to be treated, patient inclusion criteria, and the contract person within the sponsoring firm where further information is available.

J. Certification

FDA is proposing to require that each sponsor who submits an application for a HUD certify to the truthfulness and accuracy of the submission.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (Pub. L. 96–353).

The purpose of this proposed rule is to reduce the requirements imposed on sponsors for conducting research and development activities on devices intended for use in diagnosing or treating small populations. This objective was specified in section 14 of the provisions of the SMDA. Congress believed that full application of the current IDE requirements may be hindering the development of devices intended for use in populations of 4,000 patients or fewer. This proposal sets forth the IDE requirements which can be waived by sponsors of HUD's, including certain recordkeeping and reporting requirements normally applied to investigational devices. These waivers will lead to significant cost savings for the sponsor of HUD's. The agency expects to receive HUD waiver requests for about 10 devices per year, on the average.

In sum, the impact of this rule would be to reduce the burdens of sponsors of humanitarian devices. Therefore, the rule would have no adverse impact on industry, and it would not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The title, description, and respondents of the information collection are shown below with an estimate of the annual recordkeeping and periodic reporting burden.

Title: Medical Devices; Humanitarian Use Devices.

Description: FDA is proposing regulations to implement the provisions of the SMDA regarding HUD's. A HUD, i.e., a device which is designed for use in the treatment or diagnosis of a disease or condition that affects fewer than 4,000 individuals in the United States, is exempt from the effectiveness requirements of sections 514 and 515 of the act. In order to implement this exemption, FDA is proposing to amend the IDE regulations. These proposed regulations prescribe the procedures and conditions for obtaining an IDE for a HUD and provide for certain waivers from the IDE regulation for a HUD.

Description of Respondents: Businesses or other for profit.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual No. of respondents/ recordkeepers	Responses per respondent	Total responses/hours per recordkeeper	Annual hours per response	Annual burden hours
812.20 and 812.25	10	1	10	56	560
812.35	10	1	10	56	560
Total					1,120

VI. Effective Date

FDA proposes that any final rule based on this proposal would become effective 30 days after the date of publication of the final rule in the **Federal Register.**

VII. Request for Comments

Interested persons may, on or before February 19, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 812 be amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation of 21 CFR part 812 is revised to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 530–542, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 360gg–360ss, 371, 372, 374, 376, 381); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

2. Section 812.1 is amended by redesignating paragraph (b) as paragraph (c) and by adding new paragraph (b) to read as follows:

§ 812.1 Scope.

* * * * *

(b) This part also provides procedures for the use of humanitarian use devices (HUD's) intended to benefit patients in the treatment and diagnosis of diseases or conditions that affect fewer than 4,000 individuals in the United States, and, as such, implements section 520(m) of the act with respect to HUD's.

* * * * *

3. Section 812.2 is amended by revising paragraph (e) to read as follows:

§ 812.2 Applicability.

* * * * *

(e) *Humanitarian use devices.* Use of HUD's is subject to those requirements of this part that have not been waived under § 812.10(b).

4. Section 812.3 is amended by redesignating paragraphs (d) through (s) as paragraph (e) through (t), respectively, and by adding new paragraph (d) to read as follows:

§ 812.3 Definitions.

* * * * *

(d) *Humanitarian use device* (HUD) means a device that is intended for use in the treatment or diagnosis of a disease or condition that affects fewer than 4,000 individuals in the United States and that otherwise meets the requirements in 21 U.S.C. 360j(m)(2). A device may qualify as a HUD whether or not it also qualifies as a "significant risk device." The device may have other uses than humanitarian uses, but a waiver of requirements listed in § 812.10(d)(2) may be obtained only for humanitarian uses.

* * * * *

5. Section 812.10 is amended by adding new paragraph (d) to read as follows:

§ 812.10 Waivers.

* * * * *

(d) *HUD waivers.* A sponsor may request that FDA waive the requirements of those provisions listed in paragraph (d)(2) of this section for HUD's.

(1) Any application submitted under this section for a HUD shall, on its face, be presumed to include a request for a HUD waiver if it includes all the information listed in §§ 812.20 and 812.25 specific to HUD's.

(2) An application for a HUD is exempted from the following provisions of this part:

(i) Section 812.20 (b)(4), (b)(5), (b)(6), and (b)(7).

(ii) Section 812.25 (h), (i), and (j).

(iii) Section 812.35(b).

(iv) Section 812.140 (a)(1), (a)(2), (a)(4), and (a)(5).

(v) Section 812.150 (a)(4), (b)(4), (b)(6), and (b)(9).

6. Section 812.20 is amended by adding new paragraph (e) to read as follows:

§ 812.20 Application.

* * * * *

(e) *Information required for HUD's.* A sponsor of an application for a HUD who wishes a waiver pursuant to the provisions of the Safe Medical Devices Act of 1990 shall submit evidence that:

(1) The device is designed to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States as of the date of submission of the application;

(2) The device would not be available to a person with a rare disease or condition unless the Secretary of Health and Human Services grants such an exemption and there is no comparable device, other than under this exemption, available to treat or diagnose such disease or condition; and

(3) The device will not expose patients to an unreasonable or significant risk of illness or injury and the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

7. Section 812.25 is amended by redesignating the existing text of paragraph (c) as paragraph (c)(1) and by adding new paragraph (c)(2) to read as follows:

§ 812.25 Investigational plan.

* * * * *

(c) *Risk analysis.* (1) * * *

(2) For HUD's a statement:

(i) Describing the disease or condition the humanitarian device is intended to be used to treat or diagnose,

(ii) The size and other known demographic characteristics of the patient population affected,

(iii) The source of the information (documentation, with copies of authoritative references), and

(iv) The justification for the patient population selected.

* * * * *

8. Section 812.30 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 812.30 FDA action on applications.

* * * * *

(d) *Application for a HUD.* (1) An application for a HUD must be submitted in accordance with proposed §§ 812.20 and 812.25.

(2) If FDA approves the application, the period of the exemption or approval will be for 18 months.

(3) FDA may, by letter, approve an extension of the investigation more than once by 18-month increments. The investigation may be extended after the expiration of the 5-year period that begins on the effective date of this regulation, as provided for in section 520(m)(5) of the act.

(4) FDA shall approve an application for a HUD unless it makes one or more of the findings set forth in paragraph (b) of this section or one or more of the following findings:

(i) The device does not meet the requirements of section 520(m)(1) of the act for a HUD.

(ii) The device is indicated for an artificially small group or narrow indication that is not medically justified.

(iii) The report of prior investigations of the device is inadequate to support a conclusion that it is reasonably safe to begin or continue the proposed investigational study for a HUD.

(iv) The sponsor's proposed use of the device is not intended solely for an investigational study and is being or is to be sold or otherwise commercially distributed in a manner not justified by the requirements of the investigational study and not permitted by this part.

(e) *Revocation of an application for a HUD.* (1) FDA may withdraw approval of an application for a HUD at any time if the agency makes one or more of the findings in paragraph (b) of this section or one or more of the following findings:

(i) There has been failure to comply with any requirement of section 520(m) of the act, or of any condition of approval imposed by the IRB or FDA.

(ii) The device was ineligible for humanitarian use at the time the application was submitted.

(2) FDA will not withdraw approval of an application for a HUD solely because the prevalence of the disease or condition for which it is intended subsequently exceeds 4,000 people in the United States, but this fact would serve as a basis for disapproving an extension request and for directing the sponsor to comply fully with the requirements of this part.

9. Section 812.35 is amended by adding new paragraph (c) to read as follows:

§ 812.35 Supplemental applications.

* * * * *

(c) *Request for an extension of a HUD investigation.* (1) A sponsor of an application for a HUD may request FDA to approve an extension under this part. A sponsor shall submit three copies of the extension request with supporting documentation in accordance with § 812.35(a). The supplemental application must also include any new information required in §§ 812.20 and 812.25(c).

(2) The extension request shall be submitted in writing at least 30 days prior to the expiration date of the original term of the investigation approval or of the previous extension.

(3) The extension request shall include, in the following order:

(i) The name and address of the sponsor.

(ii) The IDE identification number.

(iii) The name of the device.

(iv) The reason for the extension request, including any changes or modifications anticipated in the study.

(v) A summary of the current investigation, including safety data, adverse reactions and complications, device failures, and patient benefit assessment.

(4) FDA will approve an extension for a period of 18 months if it finds that the IDE status is still applicable under § 812.30(e) but not if prevalence of the disease exceeds 4,000 individuals in the United States as of the time of submission of the extension application.

10. Section 812.38 is amended by adding new paragraph (e) to read as follows:

§ 812.38 Confidentiality of data and information.

* * * * *

(e) *Availability of data and information in HUD applications.* (1) Except as provided in paragraph (e)(2) of this section, FDA will follow paragraphs (a) through (d) of this section in determining the public availability of data and information on IDE applications for HUD's.

(2) Upon final FDA approval of the IDE application for a HUD, FDA will make publicly available such information on the application as the identity of the device, the disease or condition to be treated, patient exclusion criteria, and the name, address, and telephone number of the sponsor's contact person.

11. New § 812.39 is added to subpart B to read as follows:

§ 812.39 Certification.

Any sponsor who submits an application for a HUD shall certify to the truthfulness and accuracy of the submission with the following statement:

I certify that, to the best of my knowledge, the data and information provided in this submission are true and accurate.

Dated: August 21, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 92-30877 Filed 12-18-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-049-88]

RIN 1545-AL58

Allocation of Income and Loss to Periods Before and After the Change Date for Purposes of Section 382; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to proposed regulations (CO-049-88), which were published Thursday, November 19, 1992 (57 FR 54535). The proposed regulations provide rules for allocating net operating loss or taxable income and net capital loss or gain between the period ending on the change date and the period beginning on the day after the change date.

FOR FURTHER INFORMATION CONTACT: Roberta F. Mann, 202-622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking that is the subject of these corrections relates to section 382 of the Internal Revenue Code.

Need for Correction

As published, the proposed rulemaking contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (CO–049–88), which was the subject of FR Doc. 92–27742, is corrected as follows:

On page 54539, column 1, in § 1.382–6(f), line 1, the language "*Examples.* The rules of section are" is corrected to read "*Examples.* The rules of this § 1.382–6 are".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30810 Filed 12–18–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN: 1024–AB10

Everglades National Park; Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rulemaking set forth below completely revises the special regulations for Everglades National Park and accomplishes the following: Deletes obsolete mining and commercial fishing regulations; enables the park to adopt State fishing regulations; clarifies the authority of the Superintendent to closely regulate fishing, boating, and significant wildlife habitat sites; specifically closes accessible marine wilderness areas to the use of motorized vessels; prohibits the use of personal watercraft and hovercraft; prohibits the possession as well as the taking of any marine life (including lobster species, ornamental tropical fish, or conch species) other than shrimp, bait or recreational finfish and shellfish species in the park; addresses the activities of commercial guide fishing within the park; and redefines "commercial fishing" to include the commercial taking of sponges and other non-edible marine life.

This rulemaking will be beneficial in that it will eliminate obsolete regulations, remove expired material from the Code of Federal Regulations pertaining to commercial fishing which is now prohibited, will provide for consistency with State fishing rules, and will ensure protection of park resources.

It should be noted that on August 5, 1986, the National Park Service published an earlier version of this proposal as a proposed regulation in the Federal Register (51 FR 28108).

Due to the six year lapse which has occurred since that publication, and due to several changes which have since been incorporated into these proposed regulations, it is felt that a new publication as a proposed rule is warranted, which will allow for greater public comment.

DATES: Written comments, suggestions, or objections will be accepted until January 21, 1993.

ADDRESSES: Comments should be directed to: Superintendent, Everglades National Park, PO Box 279, Homestead, FL 33030.

FOR FURTHER INFORMATION CONTACT: Ken Morgan, Everglades National Park, PO Box 279, Homestead, FL 33030. Telephone (305) 242–7730.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service is proposing to revise the special regulations of the park in order to, among other things, delete obsolete mining rules found in the special regulations for Everglades National Park.

Provisions of the acts of October 10, 1949 (63 Stat. 733), and July 2, 1958 (72 Stat. 280), which will be referred to as "the acts of 1949 and 1958", allowed mineral owners within Everglades National Park to explore for and develop their mineral properties until October 9, 1967. The acts of 1949 and 1958 also provided that if any production of oil or gas occurred during that period, the right to explore and develop would be extended for all mineral owners for the life of such production. At least four exploratory oil and gas wells were drilled during this period, but no discovery was made and no production occurred. Therefore, the provision allowing these activities expired on October 9, 1967.

The acts of 1949 and 1958 also provided that former mineral owners were entitled to customary royalties from any production of their former mineral properties should the Federal government so authorize anytime before January 1, 1985. The Federal government made no such authorization.

The National Park Service adopted special regulations found at 36 CFR 7.45(a) "* * * to govern the exploration, development, extraction, and removal of oil, gas, and other minerals on lands acquired for Everglades National Park * * *" The suspense dates authorized by the acts of 1949 and 1958 for former mineral owners to explore or develop their properties or to benefit from any production by the Federal government have passed. Since Everglades National Park is not at risk from such mineral development, these regulations are no longer necessary and should be deleted.

The National Park Service is also proposing to revise the paragraph at 7.45(c) on prohibited conveyances within Everglades National Park. Sections prohibiting the use of glades buggies and amphibious wheeled vehicles have been deleted as unnecessary and duplicative. The Service's general regulation found at 36 CFR 4.10 prohibits the use of all motor vehicles off established roads and parking areas. This provision provides Everglades with adequate authority to enforce its prohibition.

This paragraph has been further revised, at proposed 7.45(b), to provide clarification to the existing prohibition on the use of vessels or other conveyances with underwater propellers or jets in the water of any grass or marsh area of the park. The existing provision prohibits such use in the "grass area of glades". This phrase is ambiguous and clarification was determined to be necessary. The park believes this proposed prohibition remains necessary to prevent jet skis and small motor boats from operating in marsh areas. Such operation can be destructive to vegetation and disturbing to wildlife.

Three definitions have been revised and three added, at a new § 7.45(d), (existing section is designated as § 7.45(e)). The definition of "guide fisherman" has been revised to delete the phrase "interpretation of the natural resources" in order to drop the requirement for reporting data from persons who are not fishing. Since the current definition was adopted, a number of persons have begun providing birdwatching and sightseeing service, but do not offer fishing trips within the park. By eliminating them from the requirement of obtaining guide fishing permits, the fishing data from monthly guide reports will remain accurate and reflective purely of fishing effort. The term "commercial fishing" has been revised in order to conform with state law which includes all individuals harvesting marine products and to provide additional protection to the marine resources of the park, including commercially attractive sponges. The term "ornamental tropical fish" has been revised to provide consistency with state laws and to provide a definition more easily understood by persons unfamiliar with latin names. A definition of oysters has been added, as the park wishes to adopt state regulations to provide for the

protection of these marine mollusks. Definitions of "hovercraft" and "personal watercraft" have been added since both these activities are proposed to be prohibited by the special regulations of the park. The use of either hovercraft or personal watercraft over emergent vegetation, shallow grass flats, and mud flats commonly used by feeding shore birds is deemed to be inconsistent with the purpose and values for which the park was established. These types of activity are damaging to vegetation and disturbing to the life cycles of the wildlife this park protects.

Several paragraphs at existing § 7.45(f) concerning commercial fishing activities are proposed for deletion because they regulate an activity which has been eliminated from the park since December 31, 1985. The changes remove obsolete language and delete existing §§ 7.45(f)(5), (7), (8), (10), (12), and (14). A new paragraph, § 7.45(e)(5), prohibits commercial fishing, replacing the existing § 7.45(h).

Several paragraphs regulating recreational fishing are also proposed for revision. One proposed change deletes the existing restriction at § 7.45(f)(6) that cast nets may not exceed 12 feet in diameter. There appears to be no sound ecological or environmental reason to restrict the size of cast nets. The proposed change, at § 7.45(e)(10) would bring this park regulations into conformity with existing State regulation and common fishing practice.

Another proposed revision, at § 7.45(e)(12), will allow the staff of Everglades National Park to enforce more restrictive state bag limits for saltwater species. The State of Florida's Marine Fisheries Commission asked the National Park Service to propose this regulatory change and the Service acknowledges that this change would benefit the marine resource and the public by bringing the park into conformity with state laws.

Pursuant to Chapter 80–162, Laws of Florida, a Saltwater Fisheries Study and Advisory Council was appointed by the Governor to recommend to the State Legislature a comprehensive saltwater fishery conservation and management policy. In keeping with this charge, the Council holds public hearings and drafts rules to govern fishing activities within the fisheries of the State of Florida. To date, rules have been promulgated setting seasons, size limits, and bag limits for various species of saltwater gamefish. However, there is concern among fishermen, the park, and the State over the apparent conflict of bag limits set by the Council and those prescribed in the existing regulations which limits possession to ten (10) fish of one species, excluding bait fish, and not totally more than twenty (20) fish of all species. Specifically, in the cases of such popular and stressed species as snook, tarpon, red drum, bonefish, grouper, snapper, and tarpon, the State of Florida has acted, based on professional fisheries management principles, to restrict possession of these species to limits far lower than the park's ten fish per species limit. The National Park Service does not wish to retain unmodified, a regulation that conflicts with such State regulatory actions, and fails to provide appropriate protection to species under great fishing pressure. The proposed regulation provides a more direct avenue for the National Park Service to assimilate and enforce more restrictive State bag limits.

The taking of both oysters and shrimp for personal consumption are traditional uses of the resources of the salt waters of the park. The state has recently developed regulations to further protect these species throughout the state. The assimilation of these rules, again through the proposed revision at § 7.45(e)(12), would produce conformity with state regulations and provide protection to the resource while still permitting this use which is deemed to be consistent with fishing and marine recreation.

Another proposed change is the addition of a prohibition against possession of marine animals which are already protected from taking. The existing regulation at § 7.45(f)(2) prohibits the taking, but not the possession of seahorses, starfish, spiny lobster, ornamental tropical fish, and nonfood fish as defined by the State of Florida. The park believes that to allow for effective enforcement and protection of the resource, possession must be included in the new paragraph, designated as § 7.45(e)(6). This change also makes this provision consistent with the paragraph which prohibits the taking or possession of fish in excess of established bag limits.

Existing § 7.45(f)(13) allowing for the non-commercial taking of oysters by hand and rake, has been amended by the addition of tongs as an approved method of harvest at a new § 7.45(e)(9). Depending upon local vernacular, rake and tongs are often used interchangeably and in any case, are hand-operated devices posing no threat to the resource.

Three separate paragraphs have been added at § 7.45(c)(1), (e)(1), and (f)(1) to clarify the authority of the Superintendent to more closely regulate three of the most significant and popular visitor uses within the park. Service-wide regulation changes in 1983 (48 FR 30252) established a uniform administrative framework for the exercise of a Superintendent's closure and public use control authority. Fishing and boating are probably the two most popular activities for visitors to the park with the potential to adversely affect the resource. Furthermore, viewing the wading-bird and coastal-bird populations of the Everglades is one of the most popular activities within the park. All three of these uses requires close and attentive management in order to provide the delicate balance of protecting the resources while providing for recreation, enjoyment and educational opportunities for the public. Since bird and wildlife populations migrate throughout the seasons and from year to year, the ability to close or limit access to certain areas is essential to the sound and flexible management of the resource.

Additionally, the Service feels that the use of a flexible closure authority, as specified in the paragraph above, would provide more efficient protection to the American Crocodile, an endangered species. The Service could then easily close or limit access to areas the crocodile migrates to, or open an area the crocodile no longer uses. The current regulations (existing § 7.45(g)(4)), established in February, 1980, (45 FR 10350) totally closed many of the small bays, sounds, and creeks in upper Florida Bay to all public entry in order to provide protection for endangered species, primarily the American Crocodile. Other endangered species which may occasionally inhabit these areas include the Kemp's Riddley sea turtle and West Indian manatee. At the time this "sanctuary" type closure was enacted, the American alligator and Loggerhead sea turtle, were also listed as endangered; the Loggerhead sea turtle is now listed as threatened and the alligator is no longer on either list. When this closure was enacted, commercial net fishing was still permitted and would remain permitted for another six (6) years. In addition to protecting the crocodile, this "sanctuary" type protection was deemed necessary at that time in order to provide strong protection to all endangered species from the possibility of being entangled in the nets of fishermen who might unknowingly enter these areas. Commercial fishing was prohibited in all waters of the park after December 31, 1985, and the need to keep these areas closed in order to provide protection to endangered species from fishing nets has dissipated.

During the printing of the existing regulations in the **Federal Register** (45 FR 10350), the Service recognized that a "sanctuary" for the crocodile was an untested concept and that additional long-term observations and study would need to be conducted to evaluate this level of protection. During the intervening time period, there have been several studies of the crocodile within Everglades National Park which have resulted in publications. These include: F.J. Mazzotti's "The Ecology of *Crocodylus acutus* in Florida" (1983), D.L. Stoneburner and J.A. Kushlan's "Heavy Metal Burdens in American Crocodile eggs from Florida Bay, Florida, USA" (1984), J.A. Kushlan's "Conservation and Management of the American Crocodile" (1988), J.A. Kushlan and F.J. Mazzotti's "Population Biology of the American Crocodile" (1989), and F.J. Mazzotti and L.A. Brandt's "Evaluating the Effects of Ground Water Levels on the Reproductive Success of American Crocodiles in Everglades National Park" (1989). These studies and a further assessment of the crocodile sanctuary are discussed in "A Draft Assessment of Recreational Boating and its Potential Impact on Resources Within the Crocodile Sanctuary of Everglades National Park" (1992), by National Park Service employee Skip Snow.

During this period, the National Park Service has observed the crocodile population expand out of the sanctuary, to other areas such as Flamingo and Cape Sable, which experience high visitor use. During numerous human/crocodile encounters in the part, it appears that nonaggressive human activity has little affect on crocodiles except during the reproductive months from nest preparation to the dispersal of hatchlings. Accordingly, the Service is proposing to delete existing § 7.45(g)(4) which closed specific areas and instead protect the species with proposed §§ 7.45(c)(1) and (f)(1). These proposed paragraphs would provide the Superintendent with a practical method to provide for the protection of this species, by easily closing or limiting access to areas the crocodile migrates to, or by opening an area the crocodile no longer uses.

It is anticipated that the Superintendent will immediately use this authority to close the areas of Snag Bay, Joe Bay, Mud Creek, Mud Bay, East Creek, East Creek Ponds, and Taylor River from March 1 to November 15 of each year, during the stages of nest preparation, nesting, and hatchling dispersal. Currently, those areas are closed to all entry and the proposed regulation would allow for those areas to again be open to public use from mid-November through February. The areas of Little Madeira Bay and the creeks inland from the northern shoreline of Long Sound would be opened year-round. Davis Creek and the mainland shoreline from Terrapin Point eastward to Highway U.S. 1 are expected to remain closed year round. The exact areas and the specific time periods of this closure may be altered to provide the protection necessary for the crocodile. Additionally, some of these previously closed waters would be subject to other limitations, such as "no wake zones" or the prohibition against the use of motors in areas of wilderness designation.

The Service proposes to add a new paragraph at § 7.45(f)(4) which prohibits the use of motorized vessels within the accessible marine wilderness areas. Most of these waters have been closed to motorized vessels based on wilderness designation (established by Pub. L. 95–625) but these closed areas have not been specifically codified. Other areas have enjoyed additional protection by virtue of the regulations designed to protect the crocodile population. While the need to manage closures to protect wildlife requires flexibility, the closure of the marine wilderness areas can, and the Service believes should, be accomplished through a specific regulation. The waters of Mud, Bear, East Fox, Middle Fox, Little Fox, and Gator Lakes, Homestead Canal, Cuthbert, Henry, Little Henry, and Long Lakes, the Lungs Lakes, Alligator Creek form the shoreline of Garfield Bight, all associated small lakes on Cape Sable inland from Lake Ingraham, and all of the creeks and inland lakes north of Long Sound, Joe Bay, and Little Madeira Bay except those ponds and lakes associated with Taylor River have been closed in the past to all vessels or to motorized vessels and are proposed to remain closed to motorized vessels. The waters of Monroe Lake, Oyster Creek, Middle Lake, and Seven Palm Lake were included in the wilderness plan approved in Pub. L. 95–625 but have not been posted as closed to motorized vessels in the past. The National Park Service proposes to close these waters to motorized vessels through these regulations.

The freshwater lakes and ponds immediately adjacent to the park's visitor contact stations and two other ponds have long been closed, by the authority of the Superintendent, to all vessels. This has helped provide the wildlife with a relatively undisturbed habitat at areas where a large number of visitors can readily observe them. Since these areas will not change, the Service wishes to provide these areas with the protection offered by specific regulations. The Service proposes, at § 7.45(f)(2), to prohibit the use of boats at Eco Pond and Mrazek Pond, two locations along the Main Park Road where bird life tends to congregate, and at the ponds around Royal Palm Visitor Center, Parachute Key Visitor Center, and the two lakes at Chekika.

The Service wishes to modify the existing regulation at § 7.45(g)(3) which prohibits motorized vessels from several inland freshwater areas. The proposed regulation, at § 7.45(f)(3), would delete Parachute Key Ponds, Royal Palm Ponds, and Mrazek Pond from this prohibition, since those areas are proposed for inclusion in the paragraph prohibiting all vessel use. Additionally, two small lakes, Tower Lake and Hidden Lake are proposed to be included within this use restriction. Both of these areas are small, easily accessible lakes which are not conducive to frequent use by motorized vessels.

The Service proposes to modify existing regulations limiting the use of motorized vessels on the waters of two small lakes. The present regulations at § 7.45(g)(1) provide the Superintendent with authority to close West Lake and West Lake Pond to the use of all motorized vessels. This regulation also allows the Superintendent to open these two bodies of water to vessels powered by no greater than 5½ horsepower motors. Due to the existence of current industry wide standards, which did not exist at the time the present regulations were drafted, almost all manufacturers build small outboards of 6 horsepower instead of 5½. The Service wishes to revise this paragraph at the proposed § 7.45(f)(6) to allow for the use of motors not to exceed 6 horsepower. This revision still provides for the protection of the resource by preventing motors from being used which are large enough to disturb the fish or bottoms of the lakes. At the same time, this revision would allow for the use of modern motors which meet the intent, but not the definition of the present regulation.

The Service also proposes to modify the existing regulation at § 7.45(f)(1) requiring persons engaged in guide fishing in the park to obtain a park permit. The proposed new paragraph at § 7.45(e)(4) deletes references to obsolete commercial fishing references as well as providing a prohibition against guide fishing without a permit. The Service is also proposing a new § 7.45(e)(12) to limit the number of fish which may be taken by persons engaged in guide fishing within the park. The

Service has received numerous verbal comments by park users complaining that guides frequently keep the allowable bag limit of fish for all of their clients as well as themselves. While the Service does not wish to prevent guides from catching or keeping fish, there does not seem to be any need for guides to keep large numbers of fish on a daily or routine basis for their personal consumption. Further, the Service believes that the primary benefit of a guide within the National Park is to offer a professional service to the visitor, providing the visitor with the opportunity to recreationally enjoy the resources of the park. The Service proposes to allow guides to continue fishing, while at the same time preserving the resource, by limiting the number of fish allowed aboard a guide's vessel to the number of fish legally allowed by the clients on board at the time.

Public Participation

The policy of the Department of Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed special regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of these regulations: Mark Lewis, Hank Blatt, Rick Dawson and Maureen Finnerty, formerly of Everglades National Park; and Cordell Roy, formerly of Big Cypress National Preserve.

Paperwork Reduction Act

The information collection requirements contained in proposed paragraph (f)(1) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance #1024–0026.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

This conclusion is based on the fact that the deletion of obsolete and duplicative regulations will have no economic effect. The fishing regulation changes would be minimal, with no negative impact on fishing-related industries adjacent to Everglades National Park. Lower bag limits will improve the available stock in park waters, and consistency with State rules will avoid confusion among visitors fishing in park waters.

The Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health, and safety. However, this proposed rulemaking does have the potential to affect public access to habitat of the American crocodile, and endangered species. In accordance with the procedural requirements of the National Environmental Policy Act (NEPA) and the Departmental regulations in 516 DM 6, (49 FR 21438), an Environmental Assessment concerning recreational access into the current crocodile sanctuary has been prepared and is undergoing public review.

Pursuant to the section 7 requirements of the Endangered Species Act, the National Park Service has consulted with the U.S. Fish and Wildlife Service regarding the proposed changes in the crocodile sanctuary. The U.S. Fish and Wildlife Service has concurred with these proposals.

List of Subjects in 36 CFR Part 7

National Parks; Reporting and record keeping requirements.

For the reasons set out in the preamble, title 36, chapter I, § 7.45 of the Code of Federal Regulations is proposed to be revised as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 7.45 is revised as follows:

§ 7.45 Everglades National Park.

(a) *Information collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*, and assigned clearance number 1024–0026. This information is being collected to solicit information necessary for the superintendent to issue permits used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

(b) *Prohibited conveyances.* Only hand-propelled vessels may be operated upon those areas of emergent vegetation commonly called marshes, wetlands, or "the glades". Operation of a motorized vessel in such areas is prohibited.

(c) *Closures.* (1) The Superintendent may close an area to all persons, in accordance with section 1.5 of this chapter. Notice of the closing shall be given by the posting of appropriate signs.

(2) Entering any area closed to public entry is prohibited.

(d) *Definitions.* The following definitions shall apply to this section:

(1) The term *ballyhoo* means a member of the genus *Hemiramphus* (family: Exocoetidae).

(2) The term *cast net* means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand.

(3) The term *commercial fishing* means the activity of taking or harvesting or attempting to take or harvest any edible or non-edible form of sea life for the purpose of sale or barter.

(4) The term *dipnet* means a hand-held device for obtaining bait, the netting of which is fastened in a frame.

(5) The term *guide fishing* means the activity, by a person, group of people, firm, or corporation, to provide a service for hire to visitors of the park for the purpose of fishing.

(6) The term *hovercraft* means a vessel or craft which is supported by a fan or turbine generated cushion of air.

(7) The term *minnow* means a fish used for bait from the family Cyprinodontidae, Poeciliidae, or Atherinidae.

(8) The term *mojarra* or *goats* means a member of the family Gerreidae.

(9) The term *mullet* means a member of the family Mugilidae.

(10) The term *ornamental tropical fish* means a fish of minimal sport or food value, usually brightly colored, often used for aquarium purposes and which live in close relationship to coral communities, belonging to the families Syngathidae, Apogonidae, Pomacentridae, Scaridae, Blennidae, Callionymidae, Godiidae, Ostraciidae, or Diodontidae.

(11) The term *oyster* means a mollusk of the suborder Ostreecea.

(12) The term *personal watercraft* means a vessel designed to be powered by a water-jet or an enclosed propeller or impeller system, and where persons ride primarily on or behind the vessel, as opposed to inside; sometimes referred to as "thrill craft".

(13) The term *pilchard* means a member of the herring family (Clupeidae), generally used for bait.

(14) The term *pinfish* means a member of the genus *Lagodon* (family: Sparidae).

(15) The term *shrimp* means a member of the invertebrate family Penaeidae.

(16) The term *spiny lobster* (crawfish) means an invertebrate of the genus *Panulirus*.

(e) *Fishing.* Except as otherwise provided in this section or in § 2.3 of this chapter, fishing is governed by applicable State law, including State licensing requirements.

(1) The Superintendent may close an area to all fishing, in accordance with § 1.5 of this chapter. Notice of the closing of the area shall be given by the posting of appropriate signs.

(2) The following described areas are closed to all fishing.

(i) All waters of T. 58 S., R. 37 E., sections 10 through 15, inclusive, measured from Tallahassee meridian and base, in the vicinity of Royal Palm Visitor Center, except Donut or Hidden Lake and Pine Island Lake.

(ii) All waters in T. 54 S., R. 36 E., sections 19, 30, and 31, and in T. 55 S., R. 36 E., sections 6, 7, 18, 19, and 30, measured from Tallahassee meridian and base, in the vicinity of Shark Valley Loop Road from Tamiami Trail south.

(3) Fishing in any area closed to fishing is prohibited.

(4) A person, firm, or corporation engaged in guide fishing in the waters of the park open for this purpose must possess a guide fishing permit issued by the Superintendent and administered under the terms of § 1.6 of this chapter. Guide fishing without a valid permit is prohibited.

(5) Commercial fishing is prohibited.

(6) Except for taking of finfish, shrimp, bait, crabs, and oysters as provided in this section, the taking, possession, or disturbance of any marine life is prohibited.

(7) The taking, possessing, or disturbance of any ornamental tropical fish is prohibited.

(8) Recreational crabbing for stone or blue crabs may be conducted using attended gear only and no more than five (5) traps per person. Persons using traps must remain within one hundred (100) feet of those traps. Unattended gear or use of more than five (5) traps per person is prohibited.

(9) The taking of oysters from the waters of the park is prohibited, except by hand, rake, or tongs, for personal use.

(10) Shrimp, mullet, and bait fish (minnows, pilchards, pinfish, mojarras, ballyhoo or bait mullet (less than 8 inches in total length) may be taken with hook and line, dipnet (not exceeding 3 feet at its widest point) or by cast net, for use as bait or for personal consumption.

(i) No live bait may be taken for the purpose of sale.

(ii) A dipnet or cast net may not be dragged, trawled, or held suspended in the water.

(iii) Mullet taken for personal consumption must meet bag limits specified in paragraph (e)(12) of this section.

(11) Except as provided in this section, no nets, seines, traps, spears, explosives, or other devices for the trapping, catching, taking, harvesting or killing of any edible or nonedible form of marine life, may be placed, used or possessed within the boundaries of the park, except that closely attended hook and line may be used in recreational fishing activities.

(12) Bag Limits:

(i) No person shall take, harvest, or unnecessarily destroy during any one (1) day, or have in his possession at any time, more than:

(A) Ten (10) fish of any one species, excluding bait fish as stated in paragraph (e)(10) of this section.

(B) Twenty (20) fish total, of all species, excluding bait fish as stated in paragraph (e)(10) of this section.

(ii) State regulations for fish species, oysters, and shrimp that are more restrictive than those provided in this section are hereby adopted and supersede the less restrictive provisions of this section.

(iii) A guide fisherman, as stated in paragraph (e)(4) of this section, while engaged in guiding clients, may not have aboard their vessel a greater number of fish than legally allowed by the number of clients aboard their vessel at the time.

(iv) The Superintendent may designate specific bag limits for any other fish species, or may establish limits more restrictive than state law, when necessary to protect the resource, in accordance with § 1.5 of this chapter.

(v) Violating a provision of this section, a State fishing law assimilated, or Superintendent's order adopted, is prohibited.

(13) All fish which do not meet size or species restrictions or which the person chooses not to keep must be returned carefully and immediately to the water. The intentional disturbing of the fish, other than releasing in an expeditious manner, is prohibited. The tagging, marking, fin clipping, mutilation or other disturbance to a fish, prior to release is prohibited without written authorization from the Superintendent.

(14) Fish may not be fileted while on or adjacent to the waters of the park, except that:

(i) Persons may possess up to four (4) filets per person while eating or preparing the filets for immediate cooking and consumption at designated campsites or on board vessels equipped with cooking facilities.

(ii) Persons may possess a greater number of filets while at the designated fish cleaning facility located at Flamingo.

(15) Nets, gear, and fish or other edible or non-edible forms of sea life that are legally possessed in State waters but are illegally possessed in park waters may be transported through the park only over Indian Key Pass, Sand Fly Pass, Rabbit Key Pass, Chokoloskee Pass and across Chokoloskee Bay along the most direct route to or from Everglades City or Chokoloskee Island en route to or from Fakahatchee Bay.

(i) Boats traveling through these passageways with such nets, gear, fish, or other edible products of the sea must remain in transit unless disabled or unless weather and sea conditions combine to make safe passage obviously impossible, at which time the boats may be anchored to await assistance or better conditions.

(ii) Possession of nets, gear, fish, or other edible products of the sea, not otherwise permitted in this section, in waters not specified in paragraph (e)(15) of this section is prohibited.

(f) *Boating.* (1) The Superintendent may close an area to all vessels or to all motorized vessels, or to all motors greater than a specified horsepower or the Superintendent may impose other restrictions as necessary, in accordance with § 1.5 of this chapter. Notice of the closing of the area shall be given by the posting of appropriate signs.

(2) The following areas are closed to all vessels:

(i) Sections 19, 30, 31, Township 54 South, Range 36 East and sections 6, 7, 18, 19, and 30, Township 55 South, Range 36 East, bordering the Shark Valley Loop Road from the Tamiami Trail south.

(ii) Eco Pond, Mrazek Pond, Royal Palm Ponds except for Hidden Lake, Parachute Key Ponds north of the Main Park Road, and Lake Chekika.

(3) The following inland fresh water areas are closed to the use of motorized vessels: Coot Bay Pond, Nine Mile Pond; Paurotis Pond, Sweetbay Pond, Big Ficus Pond, Sisal Pond, Pine Glade Lake, Long Pine Key Lake, Tower Lake, Hidden Lake, Pine Island Pond, and L–67 canal.

(4) The following coastal waters are designated as wilderness and are closed to the use of motorized vessels: Mud, Bear, East Fox, Middle Fox, Little Fox, and Gator Lakes; Homestead Canal; all associated small lakes on Cape Sable inland from Lake Ingraham; Cuthbert, Henry, Little Henry, Seven Palm,

Middle, Monroe, Long, and the Lungs Lakes; Alligator Creek from the shoreline of Garfield Bight to West Lake; all inland creeks and lakes north of Long Sound, Joe Bay, and Little Madeira Bay except those ponds and lakes associated with Taylor River.

(5) Except to effect a rescue, or unless otherwise officially authorized, no person shall land on keys of Florida Bay except those marked by signs denoting the area open, nor on the mainland shorelines from Terrapin Point eastward to U.S. Highway 1, including the shores of all inland bays and waters and those shorelines contiguous with Long Sound, Little Blackwater Sound, and Blackwater Sound.

(6) West Lake Pond and West Lake shall be closed to all vessels during those periods, determined by the Superintendent, that these areas are being used by feeding birds. At all other times, these areas shall be open only to hand-propelled vessels or to Class A motorboats powered by motors not to exceed 6 horsepower that can be launched by hand. Notice of closing shall be given by the posting of appropriate signs at these areas.

(7) Operating, launching or using a motorized vessel in any area closed to the use of motorized vessels is prohibited, except that vessels with motors are not prohibited if the motor(s) are removed from the transom and gunnels of the vessel and stored so as to be temporarily inoperable.

(8) Launching, operating, or using a vessel in any area closed to vessels is prohibited.

(9) Launching, operating or riding behind a personal watercraft is prohibited in the park.

(10) Launching, operating, or using a hovercraft is prohibited in the park.

(11) Vessels used as living quarters shall not remain in or be operated in the waters of the Park for more than 14 days without a permit issued by the Superintendent. Said permit will prescribe anchorage location, length of stay, sanitary requirements and such other conditions as considered necessary.

Dated: November 19, 1992.

Jennifer A. Salisbury,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92-30916 Filed 12-18-92; 8:45 am]

BILLING CODE 4310-70-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PP Docket No. 92-234; DA 92-1692]

Inquiry into Encryption Technology for Satellite Cable Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of reply comment deadline.

SUMMARY: This action extends the deadline for filing comments in PP Docket No. 92-234 (57 FR 53307, November 9, 1992), an inquiry into encryption technology for satellite cable programming. The new reply comment deadline is January 22, 1993.

DATES: Comments must be filed on or before December 24, 1992 and reply comments must be filed on or before January 22, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

Order Extending Deadline for Filing Reply Comments

Adopted: December 11, 1992;
Released: December 14, 1992.

Comment Date: December 24, 1992.
Reply Comment Date: January 22, 1993.

By the Chief, Office of Plans and Policy.

1. The Commission has received a "Request for Extension of Time for Reply Comments" in the above-captioned proceeding. The Satellite Broadcasting and Communications Association (SBCA) filed this request on November 24, 1992, asking for an extension from January 8, 1993 to January 25, 1993.

2. In support of its request, SBCA states that this proceeding, "addresses an issue of substantial interest to the satellite industry" and suggests that the reply comment interval is "a sufficiently compressed period so as to create a serious burden on the parties to the NOI who wish to review carefully the comments filed and prepare their reply comments diligently." Good cause for an extension having been shown, *It is ordered* that the deadline for reply comments in PP Docket No. 92-234 is extended to January 22, 1993. This additional filing time will enhance the ability of commenters in general, and SBCA in particular, to obtain and analyze pleadings in order to submit reply comments that include comprehensive analyses of the issues raised in the Commission's *Notice of Inquiry* in PP Docket No. 92-234. This action is taken pursuant to section 4(i) of the Communications Act of 1934, as amended, under authority delegated to the Chief, Office of Plans and Policy by § 0.271 of the Commission's Rules, 47 CFR 0.271.

Federal Communications Commission.

Robert Pepper,

Chief, Office of Plans and Policy.

[FR Doc. 92-30872 Filed 12-18-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 92-262; FCC 92-540]

Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 (Buy-Through Prohibition)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC invites comment on interpretation and implementation of the buy-through prohibition of section 623(b)(8) of the Communications Act of 1934, as amended, 47 U.S.C. 543(b)(8). This notice is prompted by section 3 of the Cable Television Consumer Protection and Competition Act of 1992, which became law on October 5, 1992, adding this prohibition to the Communications Act. This action is intended to implement the 1992 Act.

DATES: Comments must be submitted on or before January 13, 1993, and reply comments on or before January 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, Cable Television Branch, Mass Media Bureau, (202) 632-7480.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in MM Docket No. 92-262, adopted December 10, 1992 and released on December 11, 1992.

The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422.

Summary of Notice of Proposed Rulemaking

1. In this notice of proposed rulemaking, the Commission seeks comment on the appropriate interpretation of the buy-through prohibitions of the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102–385, 106 Stat. 1460 (1992) (1992 Cable Act). The 1992 Cable Act prohibit cable operators from requiring subscribers to purchase any tier or service, other than the basic service tier, as a prerequisite for purchasing programming on a per channel or per program basis. Certain exceptions to the prohibition are set forth, and the Commission is granted waiver authority under certain circumstances.

2. In order to fashion effective regulations, the Commission seeks information on the current state of industry capabilities to comply with the statute. The Commission seeks information on how widespread various kinds of channel access-relevant equipment are, and how, if at all, particular equipment relates to other system characteristics.

3. The Commission seeks comment upon the types of equipment which would present technological limitations upon compliance with the statute, other than the lack of addressable converter boxes, particularly in the context of cable systems serving multiple community units of varying addressable capabilities, or varying levels of service.

4. The Commission seeks comment on how to implement that portion of the 1992 Cable Act which prohibits per channel and per program price discrimination between basic service tier subscribers and other subscribers, including how to define such discrimination and to determine its existence. The Commission also seeks comment on how to apply the statute's prohibition of evasions in this area, particularly with regard to retiering practices.

5. The 1992 Cable Act provides cable operators who, by reason of non-addressability or other technological limitation, cannot comply with the buy-through prohibition, a 10-year period to come into compliance. The Commission believes that this exemption encompasses non-addressable systems, and seeks comment upon this interpretation. The 1992 Cable Act also provides that should the limitation be eliminated, however, the exemption ceases. The Commission seeks comment on the nature and scope of modifications that would remove a system from the exemption's scope, including modifications to be made over a long period of time, and whether simple or inexpensive modifications can or should be required.

6. The 1992 Cable Act grants the Commission authority to waive the buy-through prohibitions if enforcement would cause a significant rate increase, and if waiver is in the public interest. The Commission seeks comment on what regulations or guidelines, if any, for evaluating such waiver requests should be promulgated at this time. The Commission also seeks comment upon whether cable systems constructed during the 10-year exception period can or must be required to comply immediately with the buy-through prohibition.

7. Finally, the Commission seeks comment upon how to accomplish the statute's directive to design regulations to reduce administrative burdens and costs of compliance for cable systems serving 1000 or fewer subscribers.

Initial Regulatory Flexibility Analysis

8. *Reason for Action:* This proceeding is being initiated to seek comments on the best way to implement section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, relating to prohibitions on buy-through marketing practices.

9. *Objective of this Action:* The Commission's goal is to provide notice and opportunity to comment to members of the public regarding efficacious implementation of section 3(a) of the 1992 Cable Act.

10. *Legal Basis:* Authority for this proposed rule making is contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), and section 3(a) of the Cable Consumer Protection and Competition Act of 1992, Pub. L. 102–385 (1992).

11. *Number and Type of Small Entities Affected by the Proposed Rules:* Approximately 30,000 existing cable systems of all sizes may be affected by the proposals contained in this notice.

12. *Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rules:* The Commission is asking for comment on what information should be reported and maintained in order to ensure compliance with the Act.

13. *Federal Rules that Overlap, Duplicate, or Conflict with the Rules:* None.

14. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objective of the Action:* None. The proceeding does, however, seek comment on how to minimize compliance burdens, if any, on cable systems serving 1000 or fewer subscribers.

15. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 13, 1993, and reply comments on or before January 28, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

17. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.* (1981)).

18. For further information concerning this proceeding, contact Barrett L. Brick, Cable Television Branch, Video Services Division, Mass Media Bureau (202) 632–7480.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-30876 Filed 12-18-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Defense Federal Acquisition Regulation Supplement; Joint Ventures

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Defense Acquisition Regulations (DAR) Council published a proposed rule with request for comments on December 1, 1992 (57 FR 56895). The rule proposed amending parts 219 and 252 of the Defense FAR Supplement to incorporate DOD policy on eligibility of joint ventures including small disadvantaged businesses for small disadvantaged business evaluation and award preferences. The original date for receipt of comments expires on December 31, 1992. This document extends the comment period based on numerous requests from the public.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 31, 1992, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062. FAX (703) 697-9845. Please cite DAR Case 91-054 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697-7266.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 92-30913 Filed 12-18-92; 8:45 am]

BILLING CODE 3810-01-M

OFFICE OF MANAGEMENT AND BUDGET

48 CFR Parts 9903, 9905

Office of Federal Procurement Policy; Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations to Educational Institutions

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Cost Accounting Standards Board (CASB) invites public comments on proposed amendments to the regulatory provisions contained in chapter 99 of title 48. The proposed amendments would apply to educational institutions receiving a negotiated Federal contract or subcontract award, in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers which are already subject to CASB regulations), and require that such educational institutions comply with certain proposed CASB regulations and Cost Accounting Standards (CAS).

DATES: Requests for a copy of the Board's proposed rule and disclosure statement must be in writing and must be received by February 19, 1993. Comments on the proposed rule must be in writing and must be received by March 5, 1993.

Educational institutions that previously requested a copy of the Board's Advance Notice of Proposed Rulemaking (ANPRM) on this subject are already on the Board's mailing list and will automatically receive a copy of this NPRM.

ADDRESSES: Requests for a copy of the proposed rule and disclosure statement, or comments upon their contents, should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-07.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone 202-395-3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a Final Rule.

The proposal being released today represents step three of the four step process.

B. Summary Background and Report

Prior Promulgations: Based on recent information that some institutions of higher education were improperly allocating indirect costs to Federal programs, the Board initiated a case to consider issues related to the application of CAS to educational institutions. On October 8, 1991, the CASB published a Notice in the **Federal Register**, 56 FR 50737, requesting public comments from interested parties concerning a Staff Discussion Paper on the topic of applying CAS to educational institutions. On June 2, 1992, after consideration of the public comments received in response to the Staff Discussion Paper, the CASB published an ANPRM in the **Federal Register**, 57 FR 23189, requesting public comments from interested parties concerning proposed amendments to Chapter 99 of Title 48 that, when issued as a final rule, would require educational institutions to comply with certain specified CASB regulations and Standards.

The Board and the CASB staff express their appreciation for the constructive suggestions and criticisms provided by the commenters, particularly those offered to clarify and improve the proposed language in Parts 9903 and 9905, and the content of the proposed Disclosure Statement.

After consideration of the comments received, the Board continues to believe that the application of selected CAS provisions, as set forth in the NPRM, will improve the cost accounting practices followed by educational institutions when estimating, accumulating and reporting costs deemed allocable to Federal contracts, and that the costs of implementation will be minimal. Costs associated with the initial preparation of a Disclosure

Statement and subsequent efforts to ensure compliance with CAS should be offset by comparable reductions in the administrative costs associated with the establishment of Memorandums of Understandings (MOUs) and related auditors' inquiries as evidenced by the comments received from a major university on this topic. The use of the Disclosure Statement being proposed should reduce the potential for disagreements between the contracting parties regarding the institution's cost accounting practices. Thus, the Board believes the potential benefits to the audit, negotiation and general contract administration processes accruing from the increase in visibility and in uniformity of cost accounting treatment will be substantial and will greatly outweigh any added costs.

Proposed Amendments: A brief description of the proposed amendments follows:

Part 9903, Contract Coverage: In Subpart 9903.2, CAS Program Requirements, existing subparagraph 9903.201–1(b)(10), exempting educational institutions from CAS, is deleted. Subsections 9903.201–1 and 9903–201–2 are amended to identify which Standards shall continue to be applied to contractors other than educational institutions, and a new paragraph (9903.201–2(c)) is added to establish the unique CAS requirements to be applied to educational institutions. Subsection 9903.201–3 is amended to conform the prescribed solicitation notice for use by educational institutions. Subsection 9903.201–4 is amended to establish unique contract clause language for inclusion in contracts awarded to educational institutions. Section 9903.202 is amended to prescribe the Disclosure Statement to be used by educational institutions. In Subpart 9903.3, Section 9903.301 is amended to incorporate cross-references to definitions for certain new and existing terms. Section 9903.304 is amended to clarify applicability to educational institutions.

Part 9905, Cost Accounting Standards For Educational Institutions: A new Part 9905 is added to incorporate four new Cost Accounting Standards to be applied to educational institutions, i.e., one requiring consistency in estimating, accumulating and reporting costs (Section 9903.501), one requiring consistency in allocating costs (Section 9903.502), one requiring contractor identification of specific unallowable costs (Section 9903.505), and one requiring consistency in the selection and use of a cost accounting period (Section 9903.506).

Summary Description of Proposed CAS Coverage: The proposed amendments generally require that a CAS contract clause be incorporated in any negotiated Federal contract or subcontract awarded, in excess of $500,000, to an educational institution. An institution receiving a CAS-covered award will be contractually required to (1) consistently follow its cost accounting practices when estimating (proposed costs), accumulating, and reporting costs under that and any subsequent CAS-covered award(s), (2) consistently allocate costs incurred for the same purpose, (3) identify costs that are not reimbursable as allowable costs, (4) consistently use the same cost accounting period for purposes of estimating, accumulating and reporting costs, and (5) formally disclose, in writing, and consistently follow its disclosed cost accounting practices, when the institution:

(a) receives a CAS-covered contract or subcontract of $25 million, or more, during the current fiscal year,

(b) received more than $25 million of CAS-covered contracts and subcontracts in a prior fiscal year, or

(c) receives a CAS-covered contract or subcontract of $500,000, or more, *and* is listed in Exhibit A of OMB Circular A–21.

Institutions, or a business unit of an institution, receiving a CAS-covered award in excess of $500,000 that did not meet one of the above threshold criteria may be contractually required to (1) consistently follow their established cost accounting practices when estimating (proposed costs), accumulating, and reporting costs under that and any subsequent CAS-covered award(s), (2) consistently allocate costs incurred for the same purpose, and (3) identify costs that are not reimbursable as allowable costs. A Disclosure Statement would only be required if a different business unit of the institution otherwise met the threshold criteria listed above.

The newly proposed higher thresholds for "Modified Coverage" and the proposed inclusion of proposed CAS 9905.505 under "Modified Coverage" is based on a similar CASB proposal, for application to all CAS-covered contractors, that was promulgated in the **Federal Register**, 57 FR 47438 (Oct. 16, 1992).

The proposed contract clauses further provide for price adjustments in the event the institution changes its established or disclosed cost accounting practices, fails to consistently follow established or disclosed cost accounting practices, or fails to comply with applicable Standards. Proposed parts 9903, as amended, and 9905 will apply to educational institutions.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 92–30925 Filed 12–18–92; 8:45 am]

BILLING CODE 3110–01–M

Notices

Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

List of Performance Review Board Members

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 1100 Vermont Avenue, NW., room 5101, Washington, DC 20525, (202) 606–5263.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA) requires that each agency establish one or more Performance Review Boards to review and evaluate the initial appraisal of a senior executive's performance and to make recommendations to the appointing authority concerning the performance of the senior executive and to make recommendations for bonuses.

The incumbents of the following positions will serve as members of the ACTION Performance Review Board.

1. Deputy Director—Chairman
2. Associate Director for Management and Budget
3. Commissioner, Federal Property Asset Management Service, General Services Administration
4. Comptroller
5. Deputy Assistant Secretary for Administration, Department of Transportation

Issued in Washington, DC on December 15, 1992.

Jane A. Kenny,

Director.

[FR Doc. 92–30900 Filed 12–18–92; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92–187–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of October 1992. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For copies of the list or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of October 1992. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 16th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–30905 Filed 12–18–92; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Eastern Region; Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On April 17, 1992, the Eastern Region published a list of newspapers in which decisions would be published in accordance with 36 CFR 217.5(d). The regulation requires that this list be updated twice annually.

The April 17, 1992, Eastern Region list will remain unchanged. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

FOR FURTHER INFORMATION CONTACT: Corbin L. Newman, Jr., Regional Appeals Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, Area Code 414–297–3181.

Dated: November 24, 1992.

James R. Jordan,

Deputy Regional Forester Resources.

[FR Doc. 92–30862 Filed 12–18–92; 8:45 am]

BILLING CODE 3410–11–M

Spirit Fire Recovery Project, Willamette National Forest, Lane County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service will prepare an environmental impact statement (EIS) on a proposal to conduct resource recovery projects which include salvage of fire-killed and associated green standing trees, reforestation, fuels reduction, and road construction within the High Spirit fire area. The High Spirit fire burned approximately 140 acres of predominately true-fir and mountain hemlock forest in August of 1992. Within the fire area approximately 100 acres were totally killed and an estimated 40 acres were underburned or partially killed. The Spirit Fire Recovery Project EIS will be consistent with the Willamette National Forest Land and Resource Management Plan (Forest Plan), and tier to the final EIS for spotted owl habitat management recently prepared by the Forest Service.

The legal description of the project area is: Sections 13, 14, 23 and 24, T.21S., R.5E., W.M. The project area is entirely within the 4,970 acre Koch parcel of the Waldo Roadless Area identified in Appendix C of the Forest Plan. This inventoried roadless area is currently modified by recent road construction within the project area. The proposed project will be implemented during fiscal years 1993 and 1994.

DATES: Comments concerning the scope of the analysis should be received in writing by January 30, 1993.

ADDRESSES: Send written comments to Robert L. Barstad, District Ranger, Oakridge Ranger District, 46375 Highway 58, Westfir, Oregon 97492.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and EIS to Leon Mork, Acting Plans Assistant, or Al Brown, Project Coordinator, phone: (503) 782–2291.

SUPPLEMENTARY INFORMATION: The resource recovery project will propose the following projects: Salvage of fire-killed and associated green standing trees, reforestation, fuels reduction, and road construction.

The EIS will document decisions on which, if any, of the above proposed projects will be implemented within the 140 acres burned during the High Spirit fire. The proposed project area is located on the Oakridge Ranger District in the Ranger Creek drainage. The fire area is located approximately 15 miles east of the City of Oakridge, Oregon and approximately 60 miles southeast of Eugene, Oregon.

Salvage of fire-killed and harvest of green standing trees may occur on some portion of the fire affected area at an intensity yet to be determined. Implementation of selected activities will occur during fiscal year 1993 and 1994.

The EIS will develop a range of management alternatives for fire recovery in the High Spirit fire area. Approximately 5 acres of the fire area is within a Northern Spotted Owl Habitat Conservation Area (HCA 0–10) as designated by the Final EIS on Management of the Northern Spotted Owl in the National Forests, recently approved. In addition, the Spirit Fire Recovery Project and all proposed connected actions will be in compliance with the same for that affected area. The fire recovery will follow standards and guidelines contained in the Willamette National Forest Land and Resource Management Plan and may modify a limited number of these standards and guidelines which are pertinent to or necessary for fire recovery activities in the fire affected portion of HCA 0–10.

Initial scoping began on September 21, 1992. Preliminary analysis and alternative formulation are currently being conducted. The Forest Service will be seeking additional information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. Additional input will be used to help identify significant issues and develop alternatives. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identification of potential issues;
2. Identification of issues to be analyzed in depth;
3. Elimination of insignificant issues or those which have been covered by a relevant previous environment process;
4. Exploration of additional alternatives based on the issues identified during the scoping process; and
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

The following significant issues have been identified:

1. Roadless Area Development. The construction of permanent or temporary roads to access fire damaged timber would continue to modify the former undeveloped character of the Koch parcel of the Waldo Roadless Area.

2. Reforestation/Plantation Management. Salvage may delay reforestation by reducing shade, damaging natural regeneration, or creating soil disturbance. Reforestation may also be delayed through competition from beargrass and sedge if areas with particularly harsh microclimate conditions and nutrient deficient soils are not immediately planted with seedlings.

3. Soils and Long Term Site Productivity. Salvage may affect soil organic material sources. Removal of trees may also affect material which stabilizes surface erosion. Long-term soil moisture and nutrient reservoirs could be altered.

4. Timber. Delay in salvaging fire-killed timber may allow deterioration processes from insect and fungi activity to occur reducing product value, as well as increasing the potential for reburn of the area.

There are no permits or licenses required to implement any of the proposed activities.

Analysis of the effects of prescriptions for resource recovery will be done in consultation with the U.S. Fish and Wildlife Service (USFWS). The Willamette National Forest will serve as lead agency in this analysis with the Oregon Department of Fish and Wildlife and the USFWS as potential cooperating agencies.

The Willamette National Forest invites written comments and suggestions on the scope of analysis and concerns. It is estimated that a draft EIS will be ready for review in March of 1993. The comment period on the draft EIS will be 45 days from the date the

Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in June of 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Spirit Fire Recovery Project. Darrel L. Kenops, Forest Supervisor, is the Responsible Official. As the Responsible Official, he will decide whether to implement the project. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: December 11, 1992.

Robert L. Leonard,

Acting Forest Supervisor.

[FR Doc. 92-30851 Filed 12-18-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: State of Connecticut

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $188,867 in Federal funds, and a minimum of $33,329 in non-Federal (cost sharing) contributions, from May 1, 1993 to April 30, 1994. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Connecticut SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDC will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for application is January 22, 1993. Applications must be postmarked on or before January 22, 1993.

ADDRESSES: The mailing address for submission is: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278.

Area Code/Telephone Number: (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Dated: December 14, 1992.

John F. Iglehart,

Regional Director, New York Regional Office.

[FR Doc. 92–30881 Filed 12–18–92; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 920933–2233]

RIN 0693–AB06

Approval of Federal Information Processing Standard (FIPS) 178, Video Teleconferencing Services at 56 to 1,920 KB/S

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a new standard, which will be published as FIPS Publication 178. The specifications for this standard are International Telegraph and Telephone Consultative Committee (CCITT) Recommendations H.320, H.221, H.242, H.261, and H.230.

SUMMARY: On June 26, 1991 (56 FR 29264), a notice was published in the **Federal Register** that video teleconferencing standards were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NIST and the National Communications System (NCS). On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW. Washington, DC 20230.

This FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective June 1, 1993.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications portions, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Rekstad, National Communications System, 701 South Court House Road, Arlington, VA 22204–2198, Telephone (703) 692–2124.

Dated: December 11, 1992.

John W. Lyons,

Director.

Federal Information Processing Standards Publication 178

(Date)

Announcing the Standard for Video Teleconferencing Services at 56 to 1,920 KB/S

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Video Teleconferencing Services at 56 to 1,920 kb/s (FIPS PUB 178).

2. Category. Telecommunications Standards, Video Teleconferencing.

3. Explanation. This standard, by adoption of International Telegraph and Telephone Consultative Committee (CCITT) Recommendations H.320, H.221, H.242, H.261, and H.230, defines the specifications for video teleconferencing and video telephony systems.

This document provides Federal departments and agencies a comprehensive description of the interoperability criteria for audiovisual systems used in video teleconferencing and videophone applications.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Cross Index. The recommendations listed below are adopted and referenced by this standard.

a. CCITT Recommendation H.320, Narrow-band Visual Telephone Systems and Terminal Equipment, 1990.

b. CCITT Recommendation H.221, Frame Structure for a 64 to 1,920 kbit/s Channel in Audiovisual Teleservices, 1990.

c. CCITT Recommendation H.242, System for Establishing Communication Between Audiovisual Terminals Using Digital Channels up to 2 Mbit/s, 1990.

d. CCITT Recommendation H.261, Video Codec for Audiovisual Services at p×64 kbit/s, 1990.

e. CCITT Recommendation H.230, Frame Synchronous Control and Indication Signals for Audiovisual Systems, 1990.

7. Related Documents. a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

The standards listed below are for information only.

b. ANSI T1.306–1990, American National Standard for Telecommunications—Digital Processing of Audio Signals—Algorithm and Line Format for Transmission of 7 Khz Audio Signals at 64/56 kbit/s.

c. ANSI T1.314–1991, American National Standard for Telecommunications—Video Coder/Decoder for Audiovisual Services at 56 to 1,536 kbit/s.

d. CCITT Proposed Recommendation AV.253, Audio coding at 24/32 kbit/s.

e. CCITT Recommendation G.711, Pulse Code Modulation (PCM) of Voice Frequencies, (1989).

f. CCITT Recommendation G.722, 7 kHz Audio-coding within 64 kbit/s, (1989).

g. CCITT Recommendation G.725, System Aspects for the Use of the 7 kHz Audio Codec within 64 kbit/s, (1989).

h. Proposed CCITT Recommendation G.728, Speech coding at 16 kbit/s.

i. CCITT Recommendation G.821, Error Performance of an International Digital Connection Forming Part of an Integrated Services Digital Network, (1989).

j. CCITT Recommendation H.200, Framework for Recommendations for Audiovisual Services, (1989).

k. CCITT Recommendation I.464, Multiplexing, Rate Adaption and Support of Existing Interfaces for Restricted 64 kbit/s Transfer Capability, (1989).

l. CCITT Recommendation T.35, Procedure for the Allocation of CCITT Member's Codes, (1989).

m. CCITT Recommendation V.120, Support of an ISDN of Data Terminal Equipment with V-Series Type Interfaces with Provision for Statistical Multiplexing.

n. CCITT Recommendation V.35, Data Transmission at 48 Kilobits Per Second Using 60–108 kHz Group Band Circuits, (1989).

o. Military Standard 188–131, Interoperability and Performance Standard for Video Teleconferencing.

8. Abbreviations and Definitions. The abbreviations and definitions contained in this section are for terms contained in this document, and documents referenced by this document.

ANSI	American National Standards Institute.
BAS	Bit-Rate Allocation Signal.
BCH	Bose-ChaudhuriHocquenghem.
C&I	Control & Indication.
CBP	Coded-Block Pattern.
CCIR	International Radio Consultative Committee.
CCITT	International Telegraph and Telephone Consultative Committee.
CIF	Common Intermediate Format.
CODEC	Coder/Decoder.
CRC	Cyclic Redundancy Check.
DCT	Discrete Cosine Transform.
ECS	Encryption Control Signal.
EOB	End of Block.
FAS	Frame Alignment Signal.
FAW	Frame Alignment Word.
FIL	Loop Filter.
FLC	Fixed Length Code.
GBSC	Group of Blocks Start Code.
GEI	GOB Extra Insertion information.
GN	Group Number.
GOB	Group of Blocks.
GQUANT .	GOB Quantizer information.
GSPARE ...	GOB Spare information.
HRD	Hypothetical Reference Decoder.
HSD	High-Speed Data.
IDCT	Inverse Discrete Cosine Transform.
INTER	Inter-picture prediction.
INTRA	Intrapicture prediction.
ISDN	Integrated Services Digital Network.
LSD	Low-Speed Data.
MB	Macroblock.
MBA	Macroblock Address.
MBE	Multiple Byte Extension.
MC	Motion Compensation.
MCU	Multipoint Control Unit.
MF	Multiframe.
MLP	Multilevel Protocol.
MMI	Man-Machine Interface.
MPI	Minimum Picture Interval.
MQUANT	Macroblock Quantizer.
MTYPE	Macroblock Type information.
MVD	Motion Vector Data.
PEI	Picture Extra Insertion information.
PSC	Picture Start Code.
PSPARE ...	Picture Spare information.
PTYPE	Picture Type information.
QCIF	Quarter-CIF.
QUANT	Quantizer.
REC	Reconstruction level.
SBE	Single Byte Extension.
SC	Service Channel.
SMF	Sub-Multiframe.
TCOEFF ...	Transform Coefficient.
TEA	Terminal Equipment Alarm.
TR	Temporal Reference.
TS	Time Slot.
VLC	Variable Length Code.

BAS: Bit-rate Allocation Signal. Bit position within the frame structure of H.221 to transmit, e.g. commands, control and indication signals, capabilities.

C&I: End-to-end signalling between terminals consisting of "control" which causes a state change in the receiver and 'indication' which provides for information as to the functioning of the system, see also H.230.

Data Port: Input/output gate for the user data transmitted within Service Channel or sub-channels according to H.221.

FAS: Frame Alignment Signal. Bit position within the frame structure of H.221 to provide a means to achieve and maintain synchronization between multiple channels, and another system.

Lip Synchronization: Operation to provide feeling that speaking motion of the displayed person is synchronized with the voice the person makes.

In-band Signalling: Signalling via BAS of the H.221 frame structure.

MCU (Multipoint Control Unit): A piece of equipment located in a node of the network or in a terminal which receives several channels from access ports and, according to certain criterions, processes audiovisual signals and distributes them to the connected channels.

MMI: Man-machine interface between user and terminal/system which consists of a physical section (electro-acoustic, electro-optic transducer, keys, * * *) and a logical section

dealing with functional operation states.

Narrow-band: Bit rates ranging from 56 kb/s to 1,920 kb/s. This channel capacity may be provided as a single B/H0/H11/H12 channel or multiple B/H0 channels in ISDN.

Outband Signalling: Signalling via a channel not being part of the B/H0/H11/H12 channel (due to I.400-Series Recommendations of CCITT).

Visual Telephone Services: A group of audiovisual services including videophone defined in F.721 and videoconferencing to be defined in H.200/AV.112.

9. Objectives. The objective of this standard is to improve the Federal acquisition process by providing Federal departments and agencies a comprehensive, authoritative source for video teleconferencing terminals used in video teleconferencing and videophone applications.

10. Applicability. This standard is intended to assure interoperability among Federal video teleconferencing and videophone systems employing video codecs at rates between 56 kb/s and 1,920 kb/s.

This standard shall be used by all Federal departments and agencies in the design and procurement of video teleconferencing and videophone systems. This standard is mandatory only for those audiovisual systems operating at rates between 56 kb/s and 1,920 kb/s. The standard shall be used in the planning, design, and procurement, including lease and purchase, of all new video communications systems that utilize video codecs.

Recommendation H.261 specifies service from 64 kb/s through 1,920 kb/s, and technically equivalent ANSI standard T1. 314–1991 specifies service from 56 kb/s through 1,536 kb/s. To avoid confusion on applications within the Federal Government involving both national and international interoperability, this standard encompasses both ranges of data rates to specify service from 56 kb/s through 1,920 kb/s. It should be noted that most standard data networks in the United States carry data from 56 kb/s to 1,536 kb/s.

In an Integrated Services Digital Network (ISDN), the overall transmission channel may consist of 1 to 6 B (64 kb/s channels, 1 to 4 HO (384 kb/s) channels, an H10 (1,472 kb/s) channel, or an H11 (1,536 kb/s) channel. The framed video signal can also be carried on other switched or dedicated digital transmission facilities, such as 1 to 6 56 kb/s connections, a DS1 connection, or a fractional DS1 connection.

The technical parameters of this document may be exceeded in order to satisfy certain specific requirements, provided that interoperability is maintained. That is, the capability to incorporate features such as additional standard and nonstandard interfaces is not precluded.

Neither this nor any other standard in high technology fields such as telecommunications can be considered complete and ageless. Periodic revisions will be made as required.

The standard is not intended to hasten the obsolescence of equipment currently existing in the Federal inventory; nor is it intended to provide systems engineering or applications guidelines.

11. Specifications. The specifications for this standard are International Telegraph and Telephone Consultative Committee (CCITT) Recommendations H.320, H.221, H242, H.261, and H.230. The following sections specify the requirements for video teleconferencing and videotelephony terminals.

11.1 Overall Description. Specific requirements for different types of video terminals are defined in CCITT Recommendation H.320. All terminals that meet this standard shall follow the specifications of H.320. Two classes of terminals are defined for Federal use. The specifications defined below are a minimum for each class.

Class 1 terminals are for services that are limited to lower data rates, such as provided by a basic rate ISDN. An example is desk-top video telephone. Terminals acquired for Class 1 applications shall be capable of operation at a minimum of p=1 and 2 using QCIF.

Class 2 terminals are for services requiring higher quality than Class 1 such as needed for full video teleconferencing. Terminals acquired for Class 2 applications shall contain the functionality of Class 1 terminals, plus at a minimum, be capable of operation at p=6. All Class 2 terminals shall be capable of operation at Full CIF at rates equal to and above p=2.

Examples of terminal configurations are given below:

—Class 1 terminal operating over 1 or 2 B channels of an ISDN using QCIF.

—A Class 2 terminal capable of operating using 1–6 B channels of an ISDN using full CIF at rates equal or greater to p=2.

—A Class 2 terminal capable of operating using 1 or 2 B channels and an HO channel. The terminal is capable of operation using full CIF.

—A Class 2 terminal capable of operating using 1 or 2 B channels, an HO channel, and an H11 channel. The terminal is capable of operation using full CIF.

11.2 Frame Structure. All terminals that meet this standard shall use all the specifications defined in CCITT Recommendation H.221. The H.221 framing structure multiplexes subchannels for audio, video, data, and telematic transmission, as well as in-channel terminal-to-terminal signalling information, within an overall transmission channel of 56 to 1,920 kb/s.

This standard addresses data channels at nominal bit rates of px64 kb/s, where p is an integer that can range from 1 to 30. For unrestricted networks, such as provided by ISDN, each increment of data rate may actually be 64 kb/s, but in restricted networks each increment may be only 56 kb/s. Equipment that meets this standard shall be capable of operating with unrestricted or restricted networks. Restricted networks are discussed in Annex 2 of H.221.

The recommendations which this standard references were designed primarily for use with an ISDN. In an ISDN, the overall transmission channel may consist of 1 to 6 B (64 kb/s) channels, 1 to 4 HO (384 kb/s) channels, an H10 (1,472 kb/s) channel, or an H11 (1,536 kb/s) channel. The framed signals can also be carried on other switched or dedicated digital transmission facilities, such as 1 to 6 56 kb/s connections, a DS1 connection, or a fractional DS1 connection.

11.3 System for Establishing Communication Between Audiovisual Terminals. All terminals that meet this standard shall use all specifications of CCITT Recommendation H.242 for establishing communication between two audiovisual terminals. H. 242 describes the in-channel terminal-to-terminal communication control procedures. These procedures allow audiovisual terminals with different capabilities to interwork with each other and with existing telephone equipment. These procedures also allow terminals to switch among compatible modes of operation to support additional applications, for example, sending a facsimile or connecting two personal computers.

11.4 Video Codec. All terminals that meet this standard shall be capable of color and near-full motion operation using, at a minimum, the QCIF format defined in CCITT Recommendation H.261. All terminals shall meet all specifications of H.261. An encoder shall be capable of coding at an

minimum average of 6 frames per second. The decoder shall be capable of decoding at least 7.5 frames per second. This is the minimum picture interval and is discussed in H.261, H.221, and H.242. Higher rates can be negotiated using the procedures in H.242.

A terminal is not precluded from using coding algorithms other then H.261, but for every video coding rate the terminal is capable of, the terminal shall be capable of using the H.261 coding algorithm. The purpose of this requirement is to prevent two terminals which are capable of communicating at a high transmission rate such as p=24 having to communicate at p=6 to be interoperable.

Motion Compensation (MC) is optional in the encoder. Motion compensation is required in the decoder, where the reconstruction of the motion is relatively simple. The decoder shall accept one vector per macroblock.

Note: The video coding algorithm described in this standard is a variable-rate algorithm. Video transmission is not fixed at multiples of 56 or 64 kb/s, but instead occupies all bandwidth available for video within an overall audiovisual communications system. "Px64 kb/s" are the nominal transmission rates of the overall system. CCITT Recommendation H.221 provides for operating at multiples of 56 and 64 kb/s.

11.5 Audio Algorithms. This standard does not mandate any audio algorithm, other than those that are mandated in CCITT Recommendation H.320.

Note: CCITT Recommendations H.320 and H.221 reference AV.254. AV.254 was a temporary designation used to reference speech coding work at 16 kb/s. Since the approval of H.320 and H.221, AV.254 has been given the designation G.728. Users of this document are advised that at the time of the writing of this document, G.728 has not yet been approved. The intended use for G.728 is for video teleconferencing terminals operating at a low transmission rate such as the Class 1 terminals specified in this document.

11.6 Frame-Synchronous Control and Indication Signals for Audiovisual Systems. All terminals that meet this standard shall use CCITT Recommendation H.230. H.230 provides additional frame-synchronous control and indication signals such as freeze picture, video loopback, and simple multipoint controls. These control and indication signals are necessary to provide additional functionality and to provide extensibility to future standards.

12. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the acquisition of new equipment and services, effective June 1, 1993, except as noted in Section 10.

13 Conflict with Referenced Documents. Where the requirements stated in this standard conflict with any requirements in the referenced specifications, the requirements of this standard shall apply. The nature of the conflict between this standard and the referenced specifications shall be submitted in duplicate to the Director, Computer Systems Laboratory, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such an agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

15 Where to Obtain Copies. Copies of this publication including CCITT Recommendations H.320, H.221, H.242, H.261, and H.230 are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 178 (FIPSPUB178), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

In addition, CCITT Series H Recommendations are available individually from NTIS. When ordering, specify:

H.221–1990—PB93–979101
H.230–1990—PB93–979102
H.242–1990—PB93–979103
H.261–1990—PB93–979104
H.320–1990—PB93–979105

[FR Doc. 92–30812 Filed 12–18–92; 8:45 am]
BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 16, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the

Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348 is being increased by application of swing, reducing the limit for Categories 342/642 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14389, published on April 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on December 16, 1992, you are directed to amend further the directive dated April 14, 1992, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Costa Rica:

Category	Adjusted twelve-month limit [1]
347/348	1,185,232 dozen.
342/642	166,514 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-30653 Filed 12-18-92; 8:45 am]
BILLING CODE [illegible]

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

December 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Jamaica have agreed to extend their Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, for a one-year period beginning on January 1, 1993 and extending through December 31, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels (GALs) for the period January 1, 1993 and through December 31, 1993.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended and extended, between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	350,000 dozen pairs.
336/636	118,000 dozen.
338/339/638/639	930,066 dozen.
340/640	434,923 dozen of which not more than 368,012 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340-Y/640-Y [1].
341/641	546,130 dozen.
342/642	175,000 dozen.
345/845	134,759 dozen.
347/348/647/648	1,003,890 dozen.
352/652	600,000 dozen.
445/446	49,891 dozen.
447	10,000 dozen.
632	100,000 dozen pairs.

[1] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1993 and extends through December 31, 1993.

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648	2,000,000 dozen.
352/652	3,250,000 dozen.
447	30,000 dozen.
632	3,300,000 dozen pairs.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels or specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30854 Filed 12–18–92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0054]

Clearance Request for U.S.-Flag Air Carriers Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0054).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning U.S.–Flag Air Carriers Certification.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation. The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than a U.S.-flag air carrier.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents, 150; responses per respondent, 2; total annual responses, 300; preparation hours per response, .25; and total response burden hours, 75.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0054, U.S.–Flag Air Certification, in all correspondence.

Dated: December 9, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30610 Filed 12–18–92; 8:45 am]

BILLING CODE 6820-34-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, 13–14 January 1993.

ADDRESSES: The meeting will be held at Eglin Air Force Base, Ft. Walton Beach, FL.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: December 15, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30895 Filed 12–18–92; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 12 January 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: December 15, 1992.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30896 Filed 12–18–92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 11 January 1993.

Time of Meeting: 0830–1630.

Place: Pentagon.

Agenda: The Army Science Board's Ad Hoc Panel on "Technology for The Future Land Warrior" will meet to analyze data provided by the users and developers and to write the final report on advanced technology for the future land warrior. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C. specifically subparagraph (4) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary and nonproprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–30817 Filed 12–18–92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 27 January 1993.

Time of Meeting: 0830–1630.

Place: Pentagon.

Agenda: The Army Science Board's Issue Group on "Analysis, Test and Evaluation" will meet for discussion focussed on risk management in the test and evaluation process. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–30818 Filed 12–18–92; 8:45 am]

BILLING CODE 3710-08-M

DELAWARE RIVER BASIN COMMISSION

Amendments to Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its December 9, 1992 business meeting, the Delaware River Basin Commission amended its Comprehensive Plan, Water Code and Water Quality Regulations relating to water quality standards and policies to protect existing water quality in certain waters of the Basin. The amendments set forth an overall framework for providing special water quality protection measures in waters deemed by the Commission to have exceptionally high scenic, recreational, ecological and/or water supply values. The amendments also classify specific stream reaches as Special Protection Waters, thus activating the provisions of the Special Protection Waters policies in these reaches. In addition, the amendments define the institutional structure within which the Commission, that state environmental agencies and others will share overall water quality management responsibilities. The amendments also include numerical definitions of Existing Water Quality and the locations of monitoring points which will be used to manage water quality.

By the same action, the Commission amended its Administrative Manual—Rules of Practice and Procedure, revising certain point source pollution control policies and requirements to protect existing water quality in certain Basin waters. Those amendments are published elsewhere in the Rules and Regulations section of this issue of the **Federal Register**. In sum, the amendments reduce the threshold for point source discharges deemed not to have a substantial effect on the water resources of the Basin and not required to be submitted to the Commission under section 3.8 of the Compact from a daily average rate of 50,000 gallons to 10,000 gallons in the drainage area to Special Protection Waters.

EFFECTIVE DATE: December 9, 1992.

ADDRESSES: Copies of the Commission's Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations, and the full text of the amendments are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 X203.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on the proposed amendments on May 5, 1992; May 6, 1992 and May 15, 1992 as noticed in the March 18, 1922 and April 15, 1992 issues of the **Federal Register** (Vol. 57, No. 53 and Vol. 57, No. 73). Based upon testimony received and considerable deliberation, the Commission has amended its Comprehensive Plan, Water Code of the Delaware River Basin and

Administrative Manual—Part III Water Quality Regulations.

Delaware River Basin Compact, 75 Stat. 688.

Dated: December 14, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92-30856 Filed 12-18-92; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-283-006, et al.]

Cambridge Electric Light Co. et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

December 14, 1992.

Take notice that the following filings have been made with the Commission:

1. Cambridge Electric Light Co.

[Docket No. ER90-283-006]

Take notice that on November 25, 1992, Cambridge Electric Light Company (Cambridge) tendered for filing a fully executed copy of the Service Agreement between Cambridge and the Town of Belmont, Massachusetts.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Cambridge Electric Light Co.

[Docket No. ER93-246-000]

Take notice that on November 25, 1992, Cambridge Electric Light Company tendered for filing its compliance refund report pursuant to the Commission's order issued on December 6, 1990.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Washington Water Power Co.

[Docket No. ER93-15-000]

Take notice that on December 4, 1992, Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment to its filing of the Capacity and Energy Sales Agreement between The Washington Water Power Company (WWP) and Northern California Power Agency (NCPA). WWP states that the purposes of the amendment is to make changes requested by Commission staff.

A copy of the filing was made to Northern California Power Agency.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Co.

[Docket No. ER93-269-000]

Take notice that on December 9, 1992, Southern California Edison Company (Edison) tendered for filing the Letter Agreement for Expansion Services rendered by Edison for the City of Pasadena's T.M. Goodrich Receiving Station (Letter Agreement).

On July 24, 1992 Pasadena and Edison executed an amendment which provides for certain new 230-kV facilities added to the T.M. Goodrich Receiving Station by Pasadena to be subject to Edison's written approval and Edison will operate and maintain those new facilities. In conjunction with that amendment, Pasadena has requested Edison to perform certain engineering services for the expansion of Goodrich.

The Letter Agreement contains the services that were performed by Edison and the costs associated with the services.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Co. of New Hampshire

[Docket No. ER93-230-000]

Take notice that on November 23, 1992, Public Service Company of New Hampshire (PSNH) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 140 between Connecticut Light and Power Company, Western Massachusetts Electric Company and PSNH.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Co.

[Docket No. ER92-725-000]

Take notice that on December 9, 1992, Maine Public Service Company (Maine Public) tendered an amended filing of a proposed initial rate schedule, originally filed July 14, 1992, pertaining to the short term, non-firm sale of capacity and energy. The rate will be negotiated between Maine Public and the purchaser at the time of the transaction, but not to exceed Maine Public's cost of service for the units available for sale. A Service Agreement will be executed prior to the time of a purchase by a particular utility and submitted to the Commission. An amended filing is being made to include modifications suggested by the Commission Staff.

Additionally, Maine Public has included with the amended filing an executed Service Agreement with Bangor-Hydro-Electric Company.

Maine Public has requested that the rate schedule become effective no later than November 16, 1992, corresponding with the commencement of the initial transaction under said rate schedule, and requests waiver of the Commission's regulations regarding filing.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30821 Filed 12-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-102-000, et al.]

Sea Robin Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Co.

[Docket No. CP93-102-000]

December 11, 1992.

Take notice that on December 8, 1992, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP93-102-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service under its Rate Schedule X-23 which was authorized in Docket No. CP78-7-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin proposes to abandon a transportation service performed for Natural Gas Pipeline Company of

America (NGPL) pursuant to an agreement dated August 16, 1977, as amended. Sea Robin states that the service currently involves the transportation of up to 3,799 Mcf of gas per day from Block 127, South Marsh Island Area, to a point onshore near Erath, Vermilion Parish, Louisiana. Sea Robin explains that NGPL has notified it that NGPL desires to terminate the agreement effective as of the expiration of the primary term of the agreement, April 22, 1993, and has requested that Sea Robin seek appropriate abandonment authorization. Sea Robin advises that the abandonment would relieve NGPL of demand charges resulting from reserved firm capacity no longer needed. Further, Sea Robin advises that no facilities are to be abandoned.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP93–99–000]

December 11, 1992.

Take notice that on December 8, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–99–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon storage and transportation services performed under Panhandle's Rate Schedule E–9 in conjunction with Michigan Consolidated Gas Company (MichCon) and ANR Pipe Line Company (ANR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the services which were carried out under an agreement between Panhandle, MichCon and ANR.[1] It is stated that Panhandle was authorized in Docket No. CP77–253, *et al.*, to provide storage services for its customers utilizing storage contracts with MichCon and transportation contracts with ANR. These services are no longer needed, because they have been replaced by storage and transportation services authorized by the Commission in Docket No. CP77–253–026. Panhandle asserts that it will cancel Rate Schedule E–9 on receipt of the requested abandonment authorization. It is stated that no customers would lose service as a result of the proposed abandonment. No facilities are proposed to be abandoned.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP93–90–000]

December 11, 1992.

Take notice that on December 4, 1992, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–90–000 an application pursuant to sections 7(b) and 157.5 of the Natural Gas Act for permission and approval to abandon certain certificated transportation, exchange and sales services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that the specific services to be abandoned and the rate schedules under which the service was performed are: special Rate Schedule Z–6 sales to the City of Rankin, Texas; exchange with Northern Natural Gas Company (Northern) under Rate Schedule X–10; transportation service for Northern, under Rate Schedule X–11; and an exchange with Northern under Rate Schedule Z–1. El Paso further states that all such rate schedules are contained in its FERC Gas Tariff, Third Revised Volume No. 2. El Paso indicates that El Paso and the parties referenced above have entered into specific letter agreements which terminate the subject gas transportation, gas exchange or gas sales agreements.

El Paso reports that no facilities would be abandoned as a result of the instant proposal to abandon services. El Paso further states that it will continue to operate all of the related facilities to the extent necessary to provide part 284 transportation service.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of the notice.

4. ANR Pipeline Co.

[Docket No. CP93–87–000]

December 11, 1992.

Take notice that on December 2, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP 93–87–000 a prior notice request with the Commission pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate under section 7 of the NGA the Stag Lake facilities [which ANR constructed under section 311 of the Natural Gas Policy Act of 1978 (NGPA) in Stag Lake, St. Joseph County, Michigan, under the blanket certificate issued in Docket No. CP82–480–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

ANR states that the Stag Lake facilities consist of 3.5 miles of 24-inch pipe metering and appurtenant facilities, which ANR built in 1990 and placed in service on February 2, 1990, under section 311 of the NGPA. ANR spent a total of $4,338,000 to construct these facilities for delivering gas to the Consumers Power Company at Stag Lake. ANR now proposes to operate the Stag Lake facilities under authority of section 7 of the NGA. ANR states that it currently delivers approximately 253,500 dekatherms per day of natural gas via the Stag Lake facilities. ANR also states that it does not request sales authority in this proceeding. ANR further states that certification of the Stag Lake facilities would have no impact on ANR's gas supply situation and that deliveries via these facilities would not result in any detriment or disadvantage to ANR's other customers.

Comment date: January 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Sea Robin Pipeline Co.

[Docket No. CP93–103–000]

December 11, 1992.

Take notice that on December 8, 1992, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–103–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service under its Rate Schedule X–22 which was authorized in Docket No. CP77–618–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin proposes to abandon a transportation service performed for Natural Gas Pipeline Company of America (NGPL) pursuant to an agreement dated August 16, 1977, as amended. Sea Robin states that it is currently authorized to transport up to 44,271 Mcf of gas per day from the Eugene Island Block 305 Area, to a point onshore near Erath, Vermilion Parish, Louisiana. Sea Robin explains that NGPL has notified it that NGPL desires to terminate the agreement effective as of the expiration of the primary term of the agreement, April 8, 1993, and has requested that Sea Robin seek appropriate abandonment authorization. Sea Robin advises that the abandonment would relieve NGPL of demand charges resulting from reserved firm capacity no

[1] The original agreement was with Michigan Wisconsin Pipe Line Company, predecessor of ANR.

longer needed. Further, Sea Robin advises that no facilities are to be abandoned.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

6. ANR Storage Co.

[Docket No. CP93–97–000]

December 14, 1992.

Take notice that on December 7, 1992, ANR Storage Company (ANR Storage), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–97–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the storage of natural gas, as permitted by subpart A of part 284 of the Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR Storage requests the issuance of the blanket certificate in order to provide storage service on behalf of interstate pipelines and other customers. It is stated that on receipt of the requested part 284 blanket certificate, ANR Storage would terminate its existing part 157 blanket certificate. It is asserted that ANR Storage will comply with the requirements of § 284.221(c) of the Regulations. It is further asserted that no customers of ANR Storage would be affected by the proposed replacement of the part 157 blanket certificate with the part 284 blanket certificate.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30820 Filed 12–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–01654T; Louisiana-16]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 15, 1992.

Take notice that on December 11, 1992, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Lower Haynesville Formation, Reservoir A, underlying parts of the Arkana and North Carterville Fields in Bossier Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers all of sections 1–5 and the north half of sections 9–11 of Township 23 North, Range 12 West.

The notice of determination also contains Louisiana's findings that the referenced part of the Lower Haynesville Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30917 Filed 12–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–106–000]

Arkla Energy Resources; Notice of Request Under Blanket Authorization

December 15, 1992.

Take notice that on December 10, 1992, Arkla Energy Resources, a division of Arkla, Inc., (Arkla), P.O. Box 21734, Shreveport, LA 71151, filed in Docket No. CP93–106–000, a request pursuant to §§ 157.205 and 157.211, 212, and 216 of the Commission's Regulations under the Natural Gas Act, for authority to construct and operate certain facilities and to abandon certain facilities in Louisiana, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla specifically proposes to (1) abandon in place its FM–28 Line serving Arkansas Louisiana Gas Company's (ALG's) Gulftown border because the line is corroded and it leaks around the clamps and collars and (2) relocate the meter station from its FM–28 Line to an existing inactive tap on its F–2 Line to continue to delivery to ALG.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30918 Filed 12-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES93-16-000]

Century Power Corp.; Notice of Application

December 11, 1992

Take notice that on December 11, 1992, Century Power Corporation ("Century") filed an application under section 204 of the Federal Power Act seeking authorization to modify the terms of its existing debt obligations with CITIBANK, N.A. ("CITIBANK") which were initially undertaken in connection with Century's guarantee in 1987 of an issue of Variable Rate Demand Pollution Control Bonds in the principal amount of $86,500,000. Century requests authority to revise its payment obligations to CITIBANK, to issue a substitute promissory note evidencing its indebtedness to CITIBANK and to secure its obligations through applicable mortgage amendments.

Century requests expedited action on its application so that an order can be issued as soon as possible but, in no event, later than December 28, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1992. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30822 Filed 12-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-101-000]

United Gas Pipe Line Co.; Notice of Request Under Blanket Authorization

December 11, 1992

Take notice that on December 8, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP93-101-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to install a 2-inch sales tap and meter station at the existing Baxterville 4-inch line to provide a delivery point to serve Oryx Energy Company (Ornx) in Lamar County, Mississippi under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with Commission and open to public inspection.

United states that upon execution of an open-access transportation agreement it will be authorized to provide natural gas transportation service to Oryx. United further states that the service provided to Oryx will be interruptible and will therefore have no impact on United's curtailment plan.

United further states that the proposed activities will not affect United's ability to serve its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30823 Filed 12-18-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-152-NG]

TexPar Energy, Inc., Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting TexPar Energy, Inc., blanket authorization to import and/or export up to an aggregate of 200 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., December 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-30912 Filed 12-18-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of November 20 Through November 27, 1992

During the Week of November 20 through November 27, 1992, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 14, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals

List of Cases Received by the Office of Hearings and Appeals

[Week of November 20 through November 27, 1992]

Date	Name and location of applicant	Case No.	Type of submission
11/20/92	Gulf/Grand Prix Oil Corporation Atlantic Beach, FL	RR300–212	Request for Modification/Rescission in the Gulf Refund Proceeding.

If Granted: The March 17, 1992 Dismissal Letter (Case No. RF300–11862) issued to Grand Prix Oil Corporation would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

11/23/92	Arco/Dan Bavuso's Arco Atlantic Beach, FL	RR304–53	Request for Modification/Rescission in the Arco Refund Proceeding.

If Granted: The October 28, 1992 Dismissal Letter (Case No. RF304–13314) issued to Dan Bavuso's Arco would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.

11/25/92	Texaco/Bay Service Station Washington, DC	RR321–122	Request for Modification/Rescission in the Texaco Refund Proceeding.

If Granted: The July 22, 1992 Decision and Order (Case No. RF21–11430) issued to Bay Service Station regarding the firm's application for refund submitted in the Texaco refund proceeding would be modified.

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case no.
11/20/92 Thru 11/27/92	Texaco Oil Refund Applications Received	RF321–19454 Thru RF321–19477
11/20/92 Thru 11/27/92	Gulf Oil Refund Applications Received	RF300–20714 Thru RF300–20733
11/20/92 Thru 11/27/92	Atlantic Richfield Applications Received	RF304–13400 Thru RF304–13414
11/20/92 Thru 11/27/92	Crude Oil Refund Applications Received	RF272–63964 Thru RF272–63977
11/20/92	Benson County Highway Dept.	RC272–165
11/23/92	Jeanerette Canal	RF346–8
11/23/92	Charles Canal	RF346–9
11/23/92	Broadmoor Canal Center	RF346–10
11/23/92	Samuel Tab Higginbotham	RF346–11
11/23/92	Dallas Distributors, Inc.	RF343–11
11/25/92	Cajun Energy, Inc.	RF346–12
11/27/92	John's Clark Super 100	RF342–312

[FR Doc. 92–30911 Filed 12–18–92; 8:45 am]
BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of November 9 Through November 13, 1992

During the week of November 9 through November 13, 1992 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Barton J. Bernstein, 11/13/92, *LFA–0013*

Barton J. Bernstein filed an Appeal from a denial by the Director of the Office of Executive Secretariat, of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Professor Bernstein challenged the Director's withholding of portions of two letters written in 1950 and 1952 in the possession of the DOE. As the result of an appellate review of the documents, the DOE determined that some of the deleted information could now be declassified and released, while other withheld portions must continue to be withheld as Restricted Data under the Atomic Energy Act of 1954 concerning nuclear weapons design, which are exempt from mandatory disclosure under Exemption 3 of the FOIA. Accordingly, the Appeal was granted in part and denied in part.

James L. Schwab, 11/12/92, *LFA–0245*

James L. Schwab filed an Appeal from a partial denial by the Office of the Inspector General (IG) of a Request for Information submitted pursuant to the Freedom of Information Act. In considering the Appeal, the DOE found that the absence of a descriptive index rendered the requester unable to formulate a meaningful appeal. As a result, the determination was remanded to the IG for preparation of a descriptive index of the withheld documents.

WPC Companies, 11/09/92, *LFA–0241*

The WPC Companies filed an Appeal from a determination issued by the Acting Director of the Information and Administrative Services Division of the Strategic Petroleum Reserve Project Management Office (SPRMO) of the Department of Energy (DOE) in response to its Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE determined that SPRMO permissibly invoked the deliberative process privilege of Exemption 5 to withhold an audit report on an SPRMO contractor which was prepared by the management and operations contractor at SPRMO pursuant to its DOE contract. The audit report was prepared to assist in ongoing negotiations over a disputed contract amount. Thus, the DOE determined that the contractor was operating on behalf and at the behest of the Agency and that the audit report was part of the deliberative process. The DOE also determined, however, that SPRMO had not determined whether any non-exempt material could be reasonably segregated and released as required by the FOIA. Accordingly, the Appeal was denied in part, granted in part, and remanded with instruction to either release non-exempt material or issue a new determination in accordance with the guidance in the Decision and Order.

Requests for Exception

Gallup-Silkworth Petroleum Products, 11/09/92, *LEE–0044*

Gallup-Silkworth Petroleum Products filed an Application for Exception from the requirement that it file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering Gallup-Silkworth's request,

the DOE found that the firm was not adversely affected by the reporting requirements in a way that was significantly different from the burden borne by similar reporting firms. Therefore, the DOE denied Gallup-Silkworth's Application for Exception.

Smith Wholesalers, Inc., 11/10/92, *LEE-0040*

Smith Wholesalers, Inc. filed an Application for Exception from the requirement that it file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Crescent Refining & Oil Company, Petroleum Fuel Company, 11/12/92 *LEF-0044*

The DOE issued a Decision and Order implementing procedures for the distribution of $288,327, plus accrued interest, obtained from Crescent Refining and Oil Company and Petroleum Fuel Company (Crescent). These funds were remitted by Crescent to the DOE to settle possible pricing violations with respect to specific sales of No. 2-D diesel fuel, fuel oil, and bunker fuel during the period September 1, 1973 through October 31, 1975 to customers listed in a Remedial Order (R.O.) issued to Crescent. The DOE determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V. Applications for Refund will be accepted from the customers named in the R.O. and for the specific transactions covered by the R.O. The specific information to be included in the Applications for Refunds, which must be submitted by June 30, 1993, is included in the Decision.

Refund Applications

Atlantic Richfield Company/Westfield ARCO, 11/13/92 *RF304-3953, RF304-13252*

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Atlantic Richfield Company Subpart V special refund proceeding on behalf of Westfield ARCO and its owner, Mr. Steven P. Stawinski, Jr. Noting that the firm had filed a previous refund claim which was granted and then rescinded, the DOE found that the firm falsely stated that it had filed no other ARCO refund claims. Because of this misrepresentation, the DOE denied the two Applications, with prejudice to a refiling.

Shell Oil Company/The Tennessean Truckstop et al., 11/13/92 *RF315-10214 et al.*

The DOE issued a Decision and Order concerning 5 Applications for Refund in the Shell Oil Company special refund proceeding. Since all were filed after the April 1, 1992 deadline, the claims were denied.

Texaco Inc./Trotti Thompson, Inc., 11/12/92 *RF321-16151*

The DOE issued a Decision and Order denying the Application for Refund filed on behalf of Trotti Thompson, Inc. in the Texaco Inc. special refund processing. Ashland Oil, Inc., the parent company of Trotti Thompson, Inc., had already received the $50,000 maximum refund under the medium-range presumption of injury at the time Trotti Thompson, Inc. application was filed. Consequently, the DOE determined that Trotti Thompson, Inc. is ineligible to receive any refund based on its purchases of Texaco products during the consent order period.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/Basil Oil Field Service, Inc.	RF300-20673	11/09/92
Gulf Oil Corporation/Lake's Gulf.	RF300-17060	11/10/92
Gulf Oil Corporation/Strickland Transportation Co.	RF300-12909	11/09/92
Wilson Freight Co ...	RF300-12910	
Parkersburg Community School.	RF272-81325	11/13/92
School Administrative District #20 Oil Corporation.	RF272-81327	11/13/92
Shell Oil Corporation/Crawford Petroleum, Inc.	RF315-8388	11/13/92
Stanley J. Clark, Inc.	RF315-10274	
St. Francis Hospital	RF272-83508	11/10/92
Texaco Inc./Jordan's Texaco et al.	RF321-15258	11/12/92
Texaco Inc./Stokes' Texaco et al.	RF321-1404	11/12/92
Texaco Inc./Victory Drive Texaco et al.	RF321-1454	11/10/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Boston Edison Company	RR307-14
Combs Oil Company	RF304-3445
James Petroleum Corp	RF304-3455
Leroy's Texaco	RF321-19349
Lincoln County, Wisconsin	RF272-85948
Northwest Oil Company, Inc	RF321-15807
Stauffer Chemical Company	RF304-7686
The Jackson Oil Company	RF304-3454

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 14, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-30910 Filed 12-18-92; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,786,696.83 in principal, plus accrued interests, in alleged crude oil violation amounts obtained by the DOE under the terms of a consent order entered into with Texas International Company and Texas International Petroleum Corporation (Case No. LEF-0045). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for Refund must be filed by June 30, 1994, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c),

notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Texas International Company and Texas International Petroleum Corporation. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by June 30, 1994, and should be sent to the address set forth in the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows: Any claimant that has already filed a crude oil refund application need not file again.

Dated: December 14, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 14, 1992.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Texas International Co.; Texas International Petroleum Corp.
Date of Filing: May 5, 1992
Case Number: LEF–0045

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.81. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

I. Background

On September 14, 1984 the DOE entered into a consent order with Texas International Co. (TIC) and its wholly owned subsidiary, Texas International Petroleum Corp. (TIPCO) (hereinafter referred to collectively as the consent order firms). During the period September 1, 1973 through December 31, 1975, TIPCO was engaged in the production and sale of crude oil. The DOE audited the companies' compliance during the period with the Mandatory Petroleum Pricing and Allocation Regulations (the regulations) and issued a Proposed Remedial order (PRO) to the consent order firms requiring refunds for alleged crude oil overcharges. Thereafter, the firms entered into a consent order which resolved the issues raised by the PRO.

On May 5, 1992, the ERA filed a Petition for the Implementation of Special Refund Procedures for alleged crude oil overcharges obtained from the consent order firms. In the present case, the consent order firms have remitted a total of $1,786,696.83 to the DOE in accordance with Consent Order 640C00181. An additional $845,791.35 in interest has accrued on that amount as of October 31, 1992. This Decision and Order sets forth the OHA's plan to distribute these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situation where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, See Office of Enforcement, 9 DOE ¶ 82,508 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from TIPCO and TIC, and have determined that such procedures are appropriate in the present case.

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement In re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of all crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 19871 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See City of Columbus, Georgia, 16 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel).

II. The Proposed Decision and Order

On July 8, 1992, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from TIPCO. OHA tentatively concluded that the funds in that case should be distributed in accordance with the MSRP and the April 10, 1987 Notice. Pursuant to the MSRP, OHA proposed to initially reserve twenty percent of the alleged crude oil violation amounts for direct restitution to qualified applicants who are able to establish that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, OHA proposed to require applicants for refunds to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PD&O stated that end users of petroleum products whose businesses were unrelated to the petroleum industry could rely upon the end user presumption to establish that they absorbed the alleged crude oil overcharges, and therefore need not submit any further proof of injury to receive a refund. OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10, 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O. No comments were received.

III. Refund Claims

We have concluded that the alleged crude oil violation amount of $1,786,696.83 in

principal, plus accrued interest, covered by this Decision shall be distributed in accordance with the procedures described in the PD&O. Accordingly, we will adopt the DOE's standard procedures to distribute the consent order funds. We have chosen to initially reserve twenty percent of these funds, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See Mountain Fuel, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h (1982) In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. Id. These applicants may, however, use econometric evidence of the type found in the OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. 4502(b)(2).

If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for subpart V crude oil refund monies. See Mid-America Dairymen v. Herrington, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989), 3 Fed. Energy Guidelines ¶ 26,617 (1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267 (D. Kan. 1983), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($2,632,488.18) by the total consumption of petroleum products in the United States during the period of price controls. (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868, n.4. This yields a volumetric refund amount of $0.000001302568852719 per gallon.

As has been stated in prior decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., A. Tarricone, Inc., 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The deadline for filing an Application for Refund from the TIPCO funds is June 30, 1994. It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $.0008 per gallon. While we anticipate that applicants which filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds.

IV. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, the name and address of the person who should receive any refund check.[1] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the Subpart V crude oil refund proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations, or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is June 30, 1994. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

D. Payments to the Federal Government and the States

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Decision, plus accrued interest, will be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H

[1] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditingor archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,667. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That: (1) Applications for Refund from the crude oil monies, remitted to the Department of Energy by Texas International Co. and Texas International Petroleum Corporation pursuant to the Consent Order dated September 14, 1984, may now be filed.

(2) All crude oil refund applications submitted pursuant to Paragraph (1) above must be postmarked no later than June 30, 1994.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Controller's Office, Department of Energy, shall transfer 40% of the funds in the subaccount denominated "Texas International Petroleum Corporation" (Consent Order No. 640C00181Z) into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.

(4) The Director of Special Accounts and Payroll shall transfer 40% of the funds in the subaccount denominated "Texas International Petroleum Corporation" into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(5) The Director of Special Accounts and Payroll shall transfer 20% of the funds in the subaccount denominated "Texas International Petroleum Corporation" into the subaccount denominated "Crude Tracking-Claimants 4," Account No. 999DOE010Z.

Dated: December 14, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-30909 Filed 12-18-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4545-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Pre-Certification and Testing Exemption--Recordkeeping and Reporting Requirements (EPA ICR No. 0095.04; OMB No. 2060-0007). This ICR requests renewal of the existing clearance.

Abstract: To apply for pre-certification or testing exemptions, vehicle, engine and parts manufacturers must provide EPA with information demonstrating that the exempted items will be used primarily in product development, method assessment, market promotion or research. EPA uses the information to guarantee that uncertified or untested vehicles, engines or parts are not used commercially.

Burden Statement: The public reporting burden for this collection of information is estimated to average 4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle, engine and parts manufacturers.

Estimated Number of Respondents: 155.

Estimated Total Annual Burden on Respondents: 725 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: December 11, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30903 Filed 12-18-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 15, 1992

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0289.
Title: Section 76.601, Performance tests.
Action: Revision of a currently approved collection.
Respondents: State or local governments and businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 10,704 recordkeepers; 26.36 hours average burden per recordkeeper; 285,047 hours total annual burden.
Needs and Uses: Section 76.601 requires every cable system operator to maintain a current listing of the cable television channels which that system delivers to its subscribers. Section 76.601(c) and (d) requires cable systems with over 1,000 subscribers to conduct semi-annual proof of performance tests and triennial proof of performance tests for color testing. On 2/13/92, the Commission adopted a Report and Order, MM Docket No. 91-169, Cable Television Technical and Operational Requirements. On 6/15/92, OMB approved new testing requirements adopted in this proceeding for this rule section. Eight Petitions for Reconsideration/Clarification were filed in this proceeding. On 11/10/92, the Commission adopted a Memorandum of Opinion and Order, MM Docket No. 19-169. On reconsideration, the Commission revised Section 76.601 to reduce the number of test points from six to one for each portion of a system served by a technically integrated microwave hub. This test point can be

counted against the total number of test points required as well. Additionally, the Commission reduced the number of channels required (a minimum of four) for hum testing in 76.601(a) to one and allowed for the use of a single unmodulated carrier for testing which would allow the use of existing testing equipment on the system. The above relaxations would result in an average annual burden reduction of three hours (from 73 to 70 hours) for cable system with over 1,000 subscribers. The data is used by FCC staff in field inspections and franchise authorities to ensure that an acceptable quality signal is being provided to cable subscribers, and to ensure that there are no single leakage problems which could cause interference with over-the-air radio frequencies involving safety-of-life functions (i.e., police, fire, forestry, aeronautical, amateur radio). The list of channels would be used to determine what program services are carried on which class of cable channel.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-30873 Filed 12-18-92; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 14, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0436

Title: Sections 15.214(d)(3) and 68.200(k), Cordless telephone security coding.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 200 responses; 1 hour average burden per response; 200 hours total annual burden.

Needs and Uses: Cordless telephone security features protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dialing of calls in response to signals other than those from the owner's handset and the unintentional ringing of a cordless telephone's handset. Use for the cordless telephone security features reduces the harm cause by some cordless telephones to the "911" Emergency Services Telephone System and to the telephone network in general. The rules require that a statement of the means and procedures used to achieve the protection set forth in the technical regulations for security coding of cordless telephones accompany a FCC Form 731, Application for Equipment Authorization. In addition, any FCC Form 730, Registration of Telephone and Data Terminal Equipment, must be accompanied by a statement indicating that the proposed device contains appropriate provision for protection of the public switched network, pursuant to the requirements of § 15.214. The information will be used to determine compliance of the proposed equipment with the Commission's Rules. Following authorization of the equipment for marketing, the information may be used to determine that the operation of the equipment is consistent with the information supplied at the time of grant, and the equipment marketed complies with the terms of the equipment authorization. The information collected is essential to controlling potential interference to the public switched telephone network, and to establishing compliance of an applicant for equipment authorization with the Commission's technical regulations for the subject devices.

OMB Number: 3060-0402.

Title: Application for a New or Modified Microwave Radio Station License Under Part 21.

Form Number: FCC Form 494.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 10,000 responses; 2 hours average burden per response; 20,000 hours total annual burden.

Needs and Uses: FCC Form 494 is used by telecommunication entities to request authorization to construct and operate a microwave facility. The form is a multipurpose application form used to request Commission authorization for new or modified radio station facilities in the following part 21 services: Point-to-Point Microwave; Local Television Transmission Service; Multipoint Distribution Service; Digital Electronic Message Service; and Fixed Subsidiary Communications Authorization. The form is used to apply for a license for a new radio station; to amend a pending license application; to modify a granted license; and to notify the Commission of certain changes. Several questions on the form require applicants to submit further information in the form of exhibits. Applicants are advised to refer to part 21 of the Commission's Rules before completing the form to determine whether other showings are necessary in addition to those specified in the form. The information collected in the application is used by FCC staff to determine whether the applicant is qualified legally, technically and financially to be licensed to use microwave radio frequencies.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 92-30874 Filed 12-18-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before February 19, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections

Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Revision to 3067–0009.

Title: Disaster Assistance Registration.

Abstract: The Disaster Assistance Registration form, FEMA Forms 90–69 (English) and 90–69A (Spanish), is used only in Presidentially declared major disasters or emergencies to register individuals for and refer them to such Federal disaster assistance programs as temporary housing, individual and family grants, and Small Business Administration disaster loans for individuals and businesses. Eligibility for these disaster assistance programs can not be determined without this information collection. The information is collected by FEMA personnel who interview applicants in person or by telephone.

Type of Respondents: Individuals and households, farms, businesses or other for-profit, non-profit institutions, and small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping

Burden: 33,750 hours.

Number of Respondents: 135,000.

Estimated Average Burden Time per Response: 15 minutes.

Frequency of Response: Other. Only in Presidentially declared major disasters or emergencies.

Dated: December 7, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92–30865 Filed 12–18–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200165–010.

Title: Maryland Port Administration/ Ceres Corporation, Marine Terminal Leasing Agreement.

Parties: The Maryland Port Administration, Ceres Corporation.

Synopsis: The modification extends the terms of the Agreement for an additional thirty days beginning December 8, 1992.

By Order of the Federal Maritime Commission.

Dated: December 15, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–30838 Filed 12–18–92; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this noticed appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement Nos.: 224–003800–010, 224–003800–011, 224–003800–12.

Title: Long Beach/California United Terminals, Terminal Agreement.

Parties: City of Long Beach ("City"), California United Terminals.

Synopsis: The amendments correct mistakes in previous amendment filings regarding the purchase price of two cranes and clarify the City's rights concerning usage of the cranes.

By Order of the Federal Maritime Commission.

Dated: December 16, 1992

Joseph C. Polking,

Secretary.

[FR Doc. 92–30866 Filed 12–18–92; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Backup Contracting

AGENCY: Federal Supply Service, GSA.

ACTION: Notice.

SUMMARY: This notice invites comments on proposed clauses that will implement a contracting method known as backup contracting. FSS is dedicated to satisfying the needs of its customer agencies in an efficient and economical manner. To do this, FSS is continuously identifying and eliminating internal and external barriers to the delivering of services. Awarding a backup contract in the event the primary contractor fails to perform has been identified as one contracting method that ensures continued supply support for critical items.

DATES: Comments are due in writing on January 21, 1993.

ADDRESSES: Comments should be addressed to Nicholas Economou, FSS Acquisition Management Center (FCO), Crystal Mall Building #4, room 716, Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Gail Klopfer, Acquisition Policy and Regulations Division (703–305–6413).

SUPPLEMENTARY INFORMATION:

Background

Under a requirements type contract, it a contractor experiences performance problems, the contracting officer may either extend the delivery schedule, terminate individual orders, or terminate the contract and reprocure. These options often result in lapses of contract coverage. Lack of contract coverage often adversely impacts the safety and security aspects of various Federal programs. When a primary contractor is unable to perform, backup contracts can ensure continued supply support.

Backup contracting may be used in the procurement of essential business and weapons critical items. Backup contracting may also be used in procurements for items that have a history of high and unpredictable demand and items that have a history of poor supplier performance.

When this contracting method is used in FSS the following clauses will apply:

Backup Requirements Contract for

FSC Class: *_____*
Commodity: *_____*
Period: *_____* or date contract is activated, whichever is later, through *_____*
(End of Provision)

Provision for Backup Contracts

Items covered by this solicitation may be awarded to more than one contractor under the conditions set forth in the solicitation Award of Backup Contracts provision (M–FSS–XXX). (End of Provision)

Agreement To Be Considered for Award as Backup Contractor

If the offeror agrees to consideration for award of a backup contract at the prices contained in this offer, check "yes" below. If not, check "no".

_____Yes _____No
(End of Provision)

Award of Backup Contracts: (applicable to items _____)

(a) For the items identified above, additional awards (to be referred to as backup contracts) may also be made to the next low responsible and responsive (acceptable) offeror; provided, the price offered is considered to be fair and reasonable the contractor has checked "yes" to clause, H–FSS–XXX, Agreement To Be Considered for Award as Backup Contractor.

(b) In order to qualify for an award as a "backup" contractor, an offeror must have the production capacity to supply the total estimated requirements for each item to be awarded and be capable of complying with all the terms and conditions of this solicitation.

(c) An offeror awarded a backup contract will be identified as the "backup" contractor. When an item(s) is awarded to a "backup" contractor, the offeror who received the basic award for that item(s) shall be identified as the "primary" contractor.
(End of Clause)

Backup Contracts—Additional Terms and Conditions

The following provisions apply to contracts for items for which both a "primary" and "backup" contractor have received an award. Unless otherwise noted, all other clauses contained in this solicitation apply to both the primary and backup contract.

(a) *Placement of orders*—The "primary" contractor is entitled to all requirements required to be purchased by mandatory users under the contract. The "backup" contractor is entitled to receive orders for contract items that either (1) are not placed with the "primary" contractor in accordance with the applicable Monthly Supply Potential (MSP) clause, which the "primary" contractor has refused under that clause; or (2) result from the "primary" contractor's default on individual orders or the entire contract.

(b) *Status Report of Orders and Shipments*—Reports required by the class at 552.242–70, Status Report of Orders and Shipments, are not required from the "backup" contractor until the calendar month in which it receives the first order.

(c) *First article approval*—For any item awarded to the "backup" contractor requiring first article approval, the number of days indicated in paragraph (b) of the First Article Testing clause for submission of the time for testing or the test report is from receipt of written notification from the Contracting Officer that the Government has requirements requiring delivery under the contract.

(d) *Subcontracting plan requirements*—Reports required by the clause at 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, are not required from the "backup" Contractor or its subcontractor until the first period following receipt of the first order.

(e) *Economic Price Adjustment*—If this contract contains an Economic Price Adjustment (EPA) clause, the terms and conditions of the EPA clause apply equally to the "backup" contractor even though the backup contract has not been activated.

(f) *Default*—The following provisions are in addition to standard Default clause of this contract:

(i) In the event of default in performance of the contract either in whole or in part by the "primary" contractor, the "backup" contractor will be used to fulfill the defaulted requirements. The "primary" contractor will be held liable for any resulting excess costs incurred in procuring the defaulted requirements from the "backup" contractor.

(ii) In the event the "backup" contractor defaults, in whole or in part on any requirements that the "primary" contractor was otherwise obligated to deliver but on which he subsequently defaulted, the "backup" contractor will be liable for reprocurement costs which exceed the backup contract price.
(End of Clause)

Dated: December 8, 1992.

Nicholas M. Economou,

CPPO, Director, FSS Acquisition Management Center (FCO).

[FR Doc. 92–30816 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–65]

Quarterly Public Health Assessments Completed and Public Health Assessments To Be Conducted in Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following: 1. A list of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period July-September 1992. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and non-NPL sites for which ATSDR has prepared public health assessments in response to requests from the public (petitioned sites). 2. A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a public health assessment (petitioned public health assessment). Acceptance for a request for the conduct of a public health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during April-June 1992 was published in the **Federal Register** on September 16, 1992, (57 FR 42757). The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)), and appeared in the **Federal Register** on February 13, 1990, [55 FR 5136].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail

through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Public Health Assessments or Addenda Completed or Issued

Between July 1, 1992 and September 30, 1992, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

California: Advanced Micro Devices #915—Sunnyvale—(PB92–217876), Westinghouse (Sunnyvale Plant)—Sunnyvale—(PB93–112571).
Florida: American Creosote Works, Inc. (Pensacola)—Pensacola—(PB92–217868), Anaconda Aluminum/Milgo Electronics—Miami—(PB92–226380), City Industries—Orlando—(PB92–229137), Florida Steel Corporation—Indiantown—(PB92–239342), Sydney Mine Sludge Pond—Valrico—(PB92–239656), Whitehouse Waste Oil Pits—Whitehouse—(PB92–239623).
Michigan: G & H Landfill—Shelby Township—(PB92–239508).
Nebraska: Cornhusker Army Ammunition Plant—Grand Island—(PB93–113231), 10th Street Site—Columbus—(PB92–224526).
New Hampshire: Mottolo Pig Farm—Raymond—(PB92–214915).
Pennsylvania: Delta Quarries/Stotler Landfill—Antis and Logan Townships—(PB92–209451), Dorney Road Site—Mertztown—(PB92–215011).
Utah: Ogden Defense Depot—Ogden—(PB93–113249).
Wisconsin: Algoma Municipal Landfill—Algoma—(PB92–217850), Wausau Groundwater Contamination—Wausau—(PB92–204031).

Petitioned Sites (Non-NPL Sites)

Connecticut: Air Quality—Wallingford—(PB93–112563), Solvents Recovery Services of New England—Southington—(PB92–214907).
Massachusetts: Groton/Gratuity Road—Groton—(PB93–112555).
Pennsylvania: Lackawanna County—(PB92–209469).

2. Petition for Public Health Assessment Accepted

Between July 1, 1992, and September 30, 1992, ATSDR determined that there was a reasonable basis to conduct a public health assessment for the site listed below in response to requests from the public. As of September 30, 1992, ATSDR initiated a public health assessment at this site.

Tennessee: Chattanooga Creek—Chattanooga.

Dated: December 14, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–30850 Filed 12–18–92; 8:45 am]
BILLING CODE 4160–70–M

Centers for Disease Control and Prevention

[Program Announcement Number 310]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control and Prevention (CDC), the Nation's prevention agency, announces the availability of funds in fiscal year (FY) 1993 for the Public Health Conference Support Cooperative Agreement Program related to Human Immunodeficiency Virus (HIV) educational and prevention programs. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301 [42 U.S.C. 241] and 317 [42 U.S.C. 247b] of the Public Health Service Act, as amended. Program regulations are set forth in 42 CFR part 52, entitled "Grants for Research Projects," as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, public and private organizations, community-based, national, and regional organizations, state and local governments or their bona fide agents or instrumentalities, federally recognized Indian Tribal governments, Indian tribes or organizations, and small, minority- and/or woman-owned businesses are eligible for these cooperative agreements.

Availability of Funds

Approximately $500,000 will be available in FY 1993 to fund approximately 10 to 15 awards. The awards will average $22,000 and will be funded with a 12-month budget and project period. The funding estimate outlined above may vary and is subject to change, based on the availability of funds. Awards will initially be made on a contingency basis as described below under "Purpose." The following are examples of the most frequently encountered costs that may or may not be charged to the cooperative agreement:

A. As approved, funds may be used for direct cost expenditures: salaries, speaker fees, rental of equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-federal employees.

B. Funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment/personal expenses, cost of travel and payment of a full-time Federal employee, per diem, or expenses other than local mileage for local participants.

C. Funds may not be used for reimbursement of indirect costs.

D. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

Purpose

The purpose of the HIV-related conference support cooperative agreement is to provide partial support for non-federal conferences in order to stimulate efforts to prevent the transmission of HIV. CDC will collaborate in conferences that specifically focus on preventing HIV transmission. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. In addition, the CDC will reserve the right to approve or reject the content of the full agenda, speaker selection, and site selection. The CDC funds will not be expended for non-approved portions of meetings. Contingency awards will be made allowing usage of only 10% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with

preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

Program Requirements

The CDC will provide support for conferences that are: (1) Directed to local, state, national, or international personnel contributing to HIV prevention efforts; and (2) focused on the application of research/evaluation findings to intervention efforts or the application of these prevention efforts to groups whose behaviors place them at risk for HIV infection. For topics concerned with CDC issues and areas other than HIV prevention, refer to Program Announcement number 313, "Public Health Conference Support Grant Program," published in the **Federal Register** on December 4, 1992, [57 FR 57464].

The activities related to the development of HIV prevention conference require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Manage all activities related to program content (e.g., objectives, topics, attenders, session design, workshops, special exhibits, speakers, fees, agenda composition and printing). Many of these items may be develop in concert with assigned CDC project personnel.

2. Provide draft copies of the agenda and proposed ancillary activities to CDC for approval. Submit copy of final agenda and proposed ancillary activities to CDC for review and approval.

3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve of any materials with reference to CDC involvement or support.

4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and handouts, badges, registration procedures).

5. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

6. Develop and conduct education and training programs on HIV prevention.

7. Participate in the analysis of data from conference activities that pertain to the impact on HIV prevention.

8. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention education and training information to appropriate Federal, state, and local agencies, health care providers, HIV/AIDS prevention/service organizations, and the general public.

B. CDC Activities

1. Provide technical assistance through telephone calls, correspondence and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.

3. Approve draft agendas and the final agenda and proposed ancillary activities prior to release to funds.

4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, state, and local agencies, health care providers, the scientific community, and HIV/AIDS prevention and service organizations.

Letter of Intent

Potential applicants must submit a letter of intent (not to exceed one type-written page) that briefly describes the title, location, purpose, and date of the proposed conference and the intended audience (number and profession). This letter should also include the estimated total cost of the conference and the percentage of the total cost being requested from CDC. Letters of intent will be reviewed by program staff for consistency with CDC's health promotion and disease prevention goals and priorities and the purpose of this program. An invitation to submit a final application will be made on the basis of the proposal's relationship to the CDC strategic plan for health promotion and disease prevention and on the availability of funds.

Evaluation Criteria

Letters of intent will be reviewed by program staff for consistency with CDC's HIV prevention goals and priorities and the purpose of this program. An invitation to submit a final application will be made on the basis of the proposal's relationship to the CDC strategic plan for HIV prevention and on the availability of funds. Applications will be reviewed and evaluated according to the following criteria (Total=100 Points):

A. Proposed Program and Technical Approach (50 points)

Evaluation will be based on: 1. The applicant's description of the proposed conference as it relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. The extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.

2. The applicant's description of conference objectives in terms of quality and specificity, feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference will be able to adequately assess increased knowledge, attitudes, and behaviors of the target attenders.

3. The quality of the proposed agenda in addressing the chosen HIV prevention/education topic.

4. The degree to which all conference activities stricty adhere to the prevention of HIV transmission.

B. Applicant Capability (40 points)

Evaluation will be based on: 1. The adequacy and commitment of institutional resources to administer the program; and

2. The degree to which the applicant has established and used critical linkages with health and education agencies with the mandate for HIV prevention (letters of support from such agencies should demonstrate linkages specific to the conference).

C. The Qualifications of Program Personnel (10 Points)

Evaluation will be based on: 1. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership;

2. The competence of associate staff persons, discussion leaders, and speakers to accomplish the proposed conference; and

3. The degree to which the application demonstrates the knowledge of all key personnel about the transmission of HIV, as well as nationwide information and education efforts currently underway that may affect, and be affected by, the proposed conference.

D. Budget Justification and Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of cooperative agreement funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting conference activities.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance (CFDA) Number

The Catalog of Federal Domestic Assistance Number is 93.118, *Acquired Immunodeficiency Syndrome (AIDS) activities.*

Other Requirements—HIV/AIDS Requirements

Recipients must comply with the document entitled, "Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's AIDS/HIV prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of an government health department consisted with the content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113 which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Letter of Intent and Application Submission and Deadline

The original and two copies of the letter of intent must be submitted by close of business on the below listed due dates in order to be considered in the application cycles. Facsimiles are not acceptable.

Letter of intent due date	Application deadline
February 1, 1993	April 1, 1993.
March 15, 1993	May 14, 1993.

Following submission of a letter of intent, successful applicants will receive a written notification to submit an application for funding. Applications may be submitted *only* after the letter of intent has been reviewed and written invitation from the CDC has been received by the prospective applicant. An invitation to submit an application does not constitute a commitment to fund the applicant. The original and two copies of the application must be submitted on PHS Form 5161–1 and in accordance with the schedule below. The schedule also sets forth the earliest possible award date.

Application deadline	Earliest possible award date	Earliest possible conference date
April 1, 1993.	June 2, 1993	August 1, 1993.
May 14, 1993.	August 13, 1993	October 11, 1993.

Applications must be submitted on or before the deadline date to: Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications for the first cycle that do not meet the criteria in 1.A or 1.B. above are considered late applications and will be placed into consideration for the next cycle. Applications for the second cycle that do not meet the criteria in 1.A or 1.B. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 310. You will receive a complete program description, information on application procedures, a listing of the relevant Healthy People 2000 HIV objectives and an application package containing the addresses and phone numbers for the contact personnel. Mr. Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, will provide the business management and technical assistance. Programmatic technical assistance may be obtained from Mr. Dave Brownell, Program Analyst, Office of the Associate Director for HIV AIDS, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, GA 30333, (404) 639–2918. Please refer to Announcement Number 310 when requesting information and when submitting your application in response to the announcement.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–0473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: December 14, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–30849 Filed 12–18–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[FDA–225–91–8000]

Memorandum of Understanding Between the Food and Drug Administration and the Centers for Disease Control for Radiation Emergency Response Planning and Radiation Emergency Response Action

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a revised memorandum of

understanding (MOU) between FDA and the Centers for Disease Control. The purpose of the revision is to update and extend a previous MOU describing the responsibilities of each agency in the event of peacetime radiological emergencies. This MOU describes how emergency planning and action will be coordinated with regard to radiological accidents that may have an impact on public health and safety.

DATES: The agreement became effective on September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Donald L. Thompson, Office of Health Physics (HFZ–60), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2850.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: December 4, 1992.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Centers for Disease Control and the Food and Drug Administration for Radiation Emergency Response Planning and Radiation Emergency Response Action

Preamble

Preamble

Over the past decade, the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA) have taken cooperative action to implement the Assistant Secretary for Health's (ASH) May 30, 1979, directive designating CDC as the lead agency within the Public Health Service (PHS) for health management of toxic environmental emergencies. This directive facilitates intramural communications and liaison with outside groups and ensures a prompt coordinated Federal response to environmental emergencies that endanger public health and safety. CDC's lead responsibility encompasses emergencies involving potential exposure to radiation, e.g., the accident at Three Mile Island. In a September 5, 1979, memorandum to the then Acting Commissioner of Food and Drugs, the Assistant Secretary for Health endorsed an active role for the Bureau of Radiological Health of FDA in radiation emergencies because of its specialized expertise for radiation emergency response planning. (In 1984 the Bureau was merged with the Bureau of Medical Devices of FDA and renamed the Center for Devices and Radiological Health.) The CDC and the FDA, in 1980, developed a memorandum of understanding (MOU) to describe the respective responsibilities of each agency with regard to peacetime radiological emergencies and how emergency planning and action will be coordinated.

Purpose and Scope

The purpose of the present memorandum of understanding is to revise and extend the previous MOU to reflect current activities and responsibilities of each agency. This document is concerned with radiological accidents which might have an impact on public health and safety. It does not include nonemergency environmental radiation problems (e.g., the dose reconstruction at the Hanford site).

Authority

FDA and CDC shall continue to act under existing delegations of authority, and no transfer of statutory functions or authority is implied by this MOU.

1. Both CDC and FDA derive authority from the Public Health Service Act (42 U.S.C. 241 *et seq.*), which provides authority for the conduct of health studies and the provision of guidance, assistance, and information on both health matters and for health emergencies. The Secretary of HHS is authorized to provide for cooperative planning to cope with health problems resulting from disasters, for participation in carrying out such planning, and, at the request of state and local authorities, in meeting health emergencies.

2. The FDA is responsible for enforcement of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394), the Radiation Control for Health and Safety Act (21 U.S.C. 360gg-360ss), the Public Health Service Act as it pertains to regulation of biological products (21 U.S.C. 262 *et seq.*), other sections of the PHS Act, and other laws. In fulfilling its responsibility under these laws, FDA protects the public health and safety by, inter alia, preventing the adulteration of or controlling adulterated products such as foods, drugs, cosmetics, medical devices, animal feeds, and human biologicals. It also protects the public from the dangers of electronic product radiation.

3. On December 7, 1979, the President directed the Federal Emergency Management Agency (FEMA) to take the lead in activities associated with the off-site planning and response to all peacetime radiological accidents at nuclear facilities. Because of its leadership role, he further directed FEMA to undertake a series of activities including the development and issuance of updated interagency assignments delineating respective agency capabilities and responsibilities. FEMA outlined such responsibilities in 44 CFR Part 351. Planning and response activities were gradually extended to address sources of potential exposure other than nuclear power facilities, e.g., terrorist nuclear devices, and nuclear powered orbital and space vehicles. In 1988, the Federal Radiological Emergency Response Plan (FRERP) was identified as a component of the President's National Security Emergency Preparedness Policy (E.O. 12656).

FDA Responsibilities

1. *Response Planning*

FDA will be responsive to CDC's request for representation on task forces and coordinating committees relating to the FRERP.

The FDA Regional Offices will each appoint a representative to serve on Regional Advisory Committees, and participate in Federal Radiological Monitoring and Assessment Center activities. (A second representative will be appointed by each PHS Regional Office.)

FDA will coordinate the development of FEMA guidance for HHS responsibilities that clearly fall under FDA's jurisdiction and expertise. Specifically, FDA will maintain the responsibility for the following:

A. Provide guidance to state and local governments on the use of radioprotective substances (e.g., thyroid blocking agents) to include dosage and also projected radiation doses at which such drugs should be used.

B. Provide guidance to State and local governments on protective action guides for foods and animal feeds.

FDA will keep CDC regularly informed, and CDC will be requested to provide, as deemed appropriate, review and comments on the overall PHS perspective on the items mentioned above.

FDA will in cooperation with CDC work with Regional Advisory Committees to provide appropriate technical review and comment in areas of FDA responsibility.

FDA will provide technical assistance to CDC in developing and implementing HHS Radiological Emergency Preparedness Training Programs.

2. *Emergency Response Actions*

When FDA is alerted to a radiation emergency, it will immediately alert CDC.

In accordance with specific state, regional, or national plans, this MOU, and specific requests by CDC, FDA will:

A. As part of the HHS team, participate in the radiological emergency exercises, tests, and responses.

B. Establish appropriate emergency response liaison with the on-site CDC designated coordinator and keep CDC headquarters advised.

C. Provide technical support to State, local and other Federal agencies.

FDA will implement and coordinate its own Emergency Response Procedures as set forth in Chapter 5–10 of the FDA Regulatory Procedures Manual. Radiological emergency responses include such actions as:

A. Environmental monitoring and sampling of milk, foods, and animal feed following a radiological incident.

B. Analysis and interpretation of food and environmental monitoring data.

C. Taking appropriate compliance actions and implementing protective actions for contaminated food and feed under the statutory authority of the Federal Food, Drug, and Cosmetic Act and other Acts administered by FDA.

FDA will provide technical suppport to CDC for the preparation of HHS news releases, for coordination with other agencies, and for informing the public media about health significance of a radiological incident.

FDA will give CDC emergency contact telephone numbers for maintaining close liaison in case an emergency response action becomes necessary and for implementing HHS resources.

CDC Responsibilities

1. *Response Planning*

CDC has the lead role within PHS for planning the HHS role in the FEMA national response to radiation emergencies. This includes the following activities:

A. CDC is responsible for arranging HHS representation on the Federal Radiological Preparedness Coordinating Committee (FRPCC) and designating membership on relevant FRPCC subcomittees (e.g., FDA represents HHS on five task forces).

B. CDC arranges for appropriate PHS representation at meetings of all Regional Advisory Committees (RAC).

C. CDC participates in FEMA activities related to planning for radiation emergencies including coordinating the HHS response to review of FEMA documents relating to radiation emergencies.

D. CDC arranges for consultations between appropriate HHS components and state and local agencies and officials to help them plan for radiation emergencies in their jurisdiction.

E. CDC has the lead role for developing specific PHS response for implementation of the FRERP.

2. *Emergency Response Actions*

CDC has the PHS lead role to coordinate PHS response to radiological emergencies.

When notified of a radiological emergency, CDC:

A. Obtains sufficient information to allow a determination to be made of whether or not an emergency requiring HHS action exists.

B. Alerts all appropriate HHS agencies.

C. Consults with other HHS agencies to determine availability of resources required under the FRERP.

D. Requests mobilization of resources of PHS agencies.

CDC serves as the focal point for communication and coordination of information within PHS and between PHS and other Federal agencies, including designation of an on-site PHS coordinator at the scene of the emergency.

CDC develops and maintains epidemiological surveillance of populations exposed to radiological accidents and emergencies at local, State, and national levels for purposes of disease prevention.

As coordinator for PHS emergency response and liaison with FEMA, CDC consults with other HHS agencies, State and local authorities to:

A. Identify segments of the population which may be at high risk of harm from exposure (e.g., people with predisposing clinical conditions, children, pregnant women, the elderly).

B. Arrange for collection and analysis of appropriate biological specimens.

C. Consult on recommendations for decontamination and prophylactic procedures.

Names and Addresses of Participating Agencies:

Centers for Disease Control, 1600 Clifton Road NE., Atlanta, GA 30333,

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Liaison Officers:

CDC: Emergency Response Coordinator, Office of the Director, Center for Environmental Health and Injury Control

FDA: Health Physicist, Office of Health Physics, Center for Devices and Radiological Health

Approved and Accepted for the Centers for Disease Control:

Elvin Hilyer

Title: Associate Director for Policy Coordination, Centers for Disease Control

Date: September 10, 1992

Approved and Accepted for the Food and Drug Administration:

Ronald G. Chesemore

Title: Associate Commissioner for Regulatory Affairs, Food and Drug Administration

Date: September 10, 1992.

[FR Doc. 92-30806 Filed 12-18-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Notice of Availability of the HHS Report on the Management of Research Costs

Department of Health and Human Services (HHS) Secretary Sullivan has released to the public the report, Management of Research Costs: Indirect Costs, that was prepared under the auspices of the HHS Working Group on the Costs of Research. The Working Group was composed of Dr. Bernadine Healy, Director, National Institutes of Health (NIH); Mr. Arnold Tompkins, Assistant Secretary for Management and Budget, HHS; and Mr. Richard Kusserow, then HHS Inspector General.

Secretary Sullivan formally accepted the report on October 14, 1992, and transmitted it to the Office of Management and Budget (OMB) for consideration within the context of the ongoing study of the costs of research being carried out by OMB and the Office of Science and Technology Policy.

Copies of the report are available to the public. Interested parties should send a telefax to Editorial Experts Inc. on (703) 683-4915. (If a telefax is unavailable, direct requests may be made by telephone on (703) 683-0683.) The telefax should include the requestor's name, address, and telephone number. The report will be sent via regular U.S. mail. There is a limit of one copy per requestor. Previous requests were distributed as of November 25, 1992 (one copy only).

Dated: December 8, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92-30846 Filed 12-18-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Heart, Lung, and Blood Special Emphasis Panel on Institutional National Research Service Awards (T32), December 17, 1992, 5333 Westbard Avenue, room 550, Bethesda, Maryland, which was published in the **Federal Register** on December 10, 1992. (57 FR 58512).

The meeting was canceled due to complications of other commitments of several members of the Panel and will be rescheduled at a later date.

Dated: December 15, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-30845 Filed 12-18-92; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Privacy Act of 1974; Report of Altered System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Altered system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to alter the system of records entitled "Disability Insurance and Supplemental Security Income Demonstration Projects and Experiments System HHS/SSA/ORSIP, 09-60-0218." The proposed alterations will expand the categories of individuals covered by, and the categories of records maintained in, the system. We also are making other editorial and technical revisions to the system to make it more accurate and up to date. We invite public comments on this publication.

DATES: We filed a report of an altered system of records with the Chairman, Committee on Government Operations of the House of Representatives; the Chairman, Committee on Governmental Affairs of the Senate; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 11, 1992. We have requested OMB to waive the 60-day advance notice period for this system. If OMB does not agree to waive the advance notice period, the proposed altered system will become effective on February 11, 1993, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Brenner, Program Analyst, Office of Disability, Social Security Administration, Room 545 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–9181.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Alterations

A. Background

Section 505 of Pub. L. 96–265, as amended, requires SSA to test alternative methods of stimulating the return to work of disabled Social Security beneficiaries and Supplemental Security Income (SSI) recipients and applicants. One such alternative method SSA is testing is Project NetWork.

Project NetWork is a randomized field experiment testing four different service delivery models that are designed to increase opportunities for SSA clients with disabilities to receive the services they need to work. Through the establishment of case management-based systems, Project NetWork will provide access to an entire range of services necessary for a work attempt, including job placement and services on the job. It is a significant effort by SSA to take direct responsibility for helping people with disabilities to enter or reenter the workforce.

Case/referral managers, working in or near SSA field offices (FO), will collaborate with other public and private organizations to arrange for the rehabilitation services and employment for project participants. In two of the models, the case/referral managers are SSA employees. In the remaining two models, the case managers are under contract to SSA and are either State vocational rehabilitation agency counselors or private sector case managers. In addition, a private sector contractor will conduct an evaluation of the project. This contractor's responsibility will include interviewing samples of participants (treatment and control) and nonparticipants in each model.

Social Security Disability Insurance (DI) beneficiaries and individuals who apply for or receive SSI payments on the basis of a disability or blindness and applicants who concurrently apply for DI and SSI benefits/payments on the basis of disability or blindness who live in the FO service areas will be eligible to volunteer for participation in Project NetWork. Volunteers will be randomly assigned to either a treatment group or a control group.

B. Proposed Alterations

We propose to make two major alterations to the DI and SSI Demonstration Projects and Experiments System to provide for Project NetWork and other demonstration projects and experiments that SSA has undertaken and plans to implement and test in the future. Project NetWork is a new demonstration project designed to serve a wider population than this system of records currently covers.

1. Expansion of Categories of Individuals Covered by the System

The system currently covers the following categories of individuals:

- Sample groups of title II DI applicants and DI beneficiaries who are newly awarded or longer term (those on the rolls for 3–5 years) and their auxiliary beneficiaries; persons selected from temporary State DI programs; and the representative payees of these individuals; and
- Title XVI individuals receiving benefits on the basis of disability who are medically determined to be drug addicted or alcoholic, mentally retarded or developmentally disabled, and their representative payees.

In order to provide for Project NetWork as well as for additional projects and experiments that SSA has undertaken and plans to implement and test in the future, we are proposing to expand the categories of individuals covered by the system to include:

- Title II DI beneficiaries (regardless of the length of time they have been on the rolls); and their representative payees; and
- Individuals who apply for or receive title XVI payments on the basis of a disability or blindness (regardless of their disabilities) and their representative payees.

2. Expansion of Categories of Records in the System

The system currently contains various data relating to employment demographics, education, family history, medical and rehabilitation history and other data SSA collects and uses in demonstration projects to encourage disabled SSA clients to work. We are expanding the categories of records maintained to include earnings information subject to the provisions of section 6103 of the Internal Revenue Code (IRC).

II. Collection and Maintenance of Data

Information regarding Project NetWork clients will be obtained by the case/referral managers via interviews, meetings, telephone conversations, and correspondence with the clients, their families and caregivers, service providers, and employers. The Project NetWork data base also will maintain data obtained from other SSA data bases regarding project participants. The contractor performing the project evaluation also will obtain information regarding a sample of project participants and nonparticipants via personal interviews with participants and nonparticipants.

Information collected regarding these individuals will be maintained and retrieved by the Social Security number.

III. Proposed New/Amended Routine Use Disclosure of Data in the System

We are proposing to establish the following routine use of information which will be maintained in the system: *Disclosure may be made to the Internal Revenue Service (IRS), for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.*

This routine use will allow SSA to disclose information from the proposed system to IRS to permit IRS to audit SSA's maintenance of tax return information subject to the Internal Revenue Code (IRC).

Other routine uses in the system also are amended to clarify that SSA disclosures of tax return information will be subject to IRC restrictions.

IV. Effect of the Proposed Alteration on the Rights of Individuals

We are taking every precaution to ensure that the proposed alterations to the system do not have an adverse effect on the privacy or other rights of the individuals covered by the system. Project NetWork and additional demonstration projects and experiments SSA has undertaken and plans to implement and test in the future will be conducted in accordance with the requirements of the Privacy Act. We have guaranteed that no beneficiary or recipient will suffer any disadvantage by his or her participation in Project NetWork. This includes the data collection efforts that are conducted as part of the project. We will inform project participants of the types of information being disclosed, to whom, and for what reasons. Likewise, we will ensure that individuals/organizations to whom personal information is released, understand the rights of the individual and penalties for violating the Privacy

Act requirements. Furthermore, we will not share with the public or any other Federal agencies the information that is collected except to serve SSA's purposes directly related to this project. In light of the above, we do not anticipate any adverse effect of the proposed alterations on the rights of individuals.

V. Editorial and Technical Revisions to the Notice of the System

We have made editorial changes throughout the notice. We also have revised the sections of the notice of the system noted below to make it more accurate and up to date.

System name: Deleted the abbreviations "DI" and "SSI" and replaced "ORSIP" with "ORS" to reflect the acronym of the component (Office of Research and Statistics) that now has responsibility for the system.

System location: Updated the addresses of the components that maintain records and added information reflecting an additional records location.

Authority for maintenance of the system: Included additional legal authorities for maintenance of records in the system.

Purposes: Revised the language in this section to reflect the additional legal authorities for demonstration projects conducted by SSA and the restrictions imposed by the IRC on the disclosure of some types of records added to the system.

Safeguards: Revised this section to reflect the correct citation of the manual which specifies the safeguards SSA employs to protect records in the system.

System manager(s) and addresses: Revised this section to reflect the correct title and address of the system manager.

Notification procedures: Revised the language in this section to reflect the current Agency practice.

Record source categories: Revised this section to reflect the source of the "earning records" (tax return information) that will be maintained in the system.

Dated: December 11, 1992.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

09-60-0216

SYSTEM NAME:

Disability Insurance and Supplemental Security Income Demonstration Projects and Experiments System, HHS/SSA/ORS.

SYSTEM LOCATION:

Social Security Administration, Office of System Operations, 6201 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Research and Statistics, 4301 Connecticut Avenue, NW., Washington, DC 20008

Certain SSA field locations: Addresses may be obtained by writing to the system manager at the address below.

Contractor sites: Contractor addresses may be obtained by writing to the system manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Persons in sample groups of Social Security title II applicants, disability insurance (DI) beneficiaries and their auxiliary beneficiaries; persons selected from State temporary DI programs; other persons who are representative payees of these persons and temporarily disabled persons receiving State benefits (nonapplicants) in comparison groups for the vocational rehabilitation (VR) demonstrations.

B. Persons in sample groups of individuals who apply for or receive Social Security title XVI Supplemental Security Income (SSI) payments on the basis of a disability or blindness in general and particularly those who are medically determined to be drug addicted or alcoholic, mentally retarded or developmentally disabled, and representative payees of those individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains records which are used for statistical and research analysis only, as well as other records which will be used to conduct program functions involving the demonstrations and experiments. Tax return information, the disclosure of which would violate section 6103 of the Internal Revenue Code (IRC), will be used solely for internal Social Security Administration (SSA) purposes and will not be disclosed to other entities. Participants will be informed at the time of data collection that information obtained by survey or interview exclusively for statistical and research purposes will be protected from disclosure for other purposes to the fullest extent permissible by law.

Records in the system consist of data relating to the following: Demographic characteristics, education, marital status, military service, dependents, family and household composition; medical history (mental and physical); medical expenses, disability characteristics and health information; living arrangements, health insurance coverage and use; medical and rehabilitation services; employment; occupation and industry classification; income (including tax return information subject to section 6103 of the IRC); earnings and expenditures; referrals to and participation in the SSI and related Federal/State welfare programs; benefits received; types of cost of services under DI, SSI and related Federal/State welfare programs; reasons or circumstances of closure; attitudes toward work, rehabilitation or treatment programs; impairment-related work expenses; workers' compensation benefits; job search methods; knowledge and understanding of provisions affecting entitlement to benefits; also, for SSI projects only, driver's license and alcohol and drug use (disclosure of this information may be restricted by 21 U.S.C. 1175 and 42 U.S.C. 4582).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 222, 702 and 1110 of the Social Security Act and section 505 of Public Law (Pub. L.) 96-265 (the Social Security Disability Amendments of 1980), as amended by section 12101 of Pub. L. 99-272, section 10103 of Pub. L. 101-239 and section 5120 of Pub. L. 101-508.

PURPOSE(S):

The purpose of this system is to provide SSA with data necessary to carry out and evaluate demonstrations and experiments for testing alternative approaches to continuing benefit eligibility during employment and to the rehabilitation of title II DI beneficiaries and individuals who apply for or receive title XVI SSI payments on the basis of a disability or blindness and, to report to Congress as required by section 505 of Public Law 96-265, as amended by section 12101 of Public Law 99-272, section 10103 of Public Law 101-239 and section 5120 of Public Law 101-508.

Except for tax return information, and records collected by means of surveys or interviews for use solely for research and statistical purposes, SSA may also provide information from this system to other components of the Department of Health and Human Services (HHS), e.g., the HHS Health Care Financing Administration (HCFA) for the purpose of determining eligibility for Hospital Insurance (HI) benefits or Supplementary Medical Insurance (SMI) benefits under the demonstrations and experiments and for the purpose of obtaining data from HCFA on HI and SMI utilization during the demonstrations and experiments; to State disability determination units for the purpose of making disability

determinations; and to State VR agencies for the purpose of screening DI beneficiaries and SSI recipients for VR potential and designing and implementing a plan of VR services for accepted beneficiaries and recipients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES FOR USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below:

1. With respect to any records, including those collected by means of survey or interview to be used solely for research and statistical purposes, disclosure may be made:

(a) To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

(b) Subject to any restrictions imposed by section 6103 of the IRC, to a contractor under contract to SSA, for the performance of research and statistical activities directly related to this system of records in conducting the demonstrations and experiments and to provide a statistical data base for research studies.

2. With respect only to records that are not collected by means of surveys or interviews for use solely for research and statistical purposes, disclosure may be made subject to any restrictions imposed by section 6103 of the IRC:

(a) To a third party organization under contract to SSA for the performance of project management activities directly related to this system of records.

(b) To a State VR agency in the State in which the disabled individual resides, for the purpose of assisting the agency in providing rehabilitation counseling and service to the individual that are necessary in carrying out the demonstrations and experiments.

3. To the IRS, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system may be stored in paper form (e.g., hard copy questionnaires, punch cards and computer printouts), on microfilm and in magnetic media (e.g., magnetic tape and disc).

RETRIEVABILITY:

Records in this system are indexed and retrieved by the Social Security number (SSN).

SAFEGUARDS:

Safeguards have been established for automated records in accordance with the HHS Information Management Manual, Part 6, Automated Information Systems Security Program Handbook. This includes maintaining the records in a secured building, such as the SSA National Computer Center (NCC). Entry into the NCC is restricted to employees whose duties require such entry. Special passes including the employees' photographs are issued to all personnel authorized to enter the NCC. The employees are required to wear their passes at all times. Marshals are stationed in the lobby of the center to ensure that only those employees authorized to enter the NCC do so.

Manually maintained records are kept in locked cabinets or in otherwise secure areas. Access to the records is limited to those employees who require the information to perform their assigned duties. SSA employees and employees of contractors having access to the records in this system have been notified of criminal sanctions for unauthorized disclosure of information about individuals.

Contractor use of records is restricted to performing the duties of the contract, and contractors are required to establish adequate safeguards to protect personal information. Additionally, contractors and their employees are subject to criminal penalties for violations of the Privacy Act.

RETENTION AND DISPOSAL:

Magnetic tapes or other files with personal identifiers are retained in secured storage areas accessible only to authorized personnel.

Microdata files prepared for purposes of research and analysis are purged of personal identifiers and are subject to procedural safeguards to assure anonymity.

Hardcopy questionnaires will be destroyed when survey reports are completed. Records with identifiers will be held in secure storage areas and will be disposed of as soon as they are determined to be no longer needed for SSA analysis.

Means of disposal are appropriate to the storage medium (e.g., erasure of tapes, shredding of paper records). Records used in administering the demonstration and experimental programs are retained indefinitely.

System manager(s) and addresses: Associate Commissioner, Office of Research and Statistics, Social Security Administration, 4301 Connecticut Avenue, NW., Washington, DC 20008.

Notification procedures: An individual can determine if this system contains a record about him or her by writing to the system manager at the above address and providing name, address and SSN. (Furnishing the SSN is voluntary, however, it would make searching for the individual's record easier and avoid delay. An individual who is unable or unwilling to furnish his or her SSN will be required to provide other information such as date and place of birth and both parents' names to enable us to locate the record.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he or she would normally carry on his or her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his or her name, date of birth and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

Record access procedures: Same as notification procedures. Also, requesters should reasonably identify the record and specify the information they are attempting to obtain. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

Contesting record procedures: Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

Record source categories: Records in this system are derived in part from other SSA systems of records (e.g., the Earnings Recording and Self-Employment Income System (09–60–0059), the Claims Folders System (09–60–0089) (disability case folders), the Master Beneficiary Record (09–60–0090) and the Supplemental Security Income Record (09–60–0103)); other SSA administrative records; program records of other Federal/State welfare programs survey data collected by contractors or SSA personnel; from the individual; the Health Insurance Master Record (09–70–0502) of HHS/HCFA; case service reports of VR agencies and referral and monitoring agencies; and employers.

Systems exempted from certain provisions of the Privacy Act: None.

[FR Doc. 92–30878 Filed 12–18–92; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-5101-10-YBEA, CA-24661]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to assess environmental impacts of a natural gas pipeline.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is initiating an Environmental Assessment of a natural gas pipeline. The Southern California Gas Company (The Gas Company) has applied for an amendment to their Right-of-Way Grant under 43 CFR 2880 to construct, operate, and maintain a 36 inch natural gas pipeline to deliver natural gas to its load center south of the Riverside-Imperial County line. The California Desert Conservation Area (CDCA) Plan identified two pipelines along the proposed alignment across Federal land, but is silent on amending existing Grant's where substantial changes are involved. If approved, the BLM would allow construction of a new natural gas pipeline to replace one of the existing pipelines that will either be abandoned or removed.

DATES: Written comments must be submitted by January 21, 1993.

ADDRESSES: Written comments should be sent to: District Manager, ATTN: SCG Pipeline Project, Bureau of Land Management, California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714.

FOR FURTHER INFORMATION CONTACT: Stephen L. Johnson, Special Projects Manager, California Desert District Office, (714) 697-5234.

SUPPLEMENTARY INFORMATION: The Gas Company is a privately-owned natural gas utility regulated by the State of California with a service territory that includes Imperial County and most of Southern California south of Fresno, California. The Gas Company conducted planning studies to determine capacity requirements for its transmission system and, as a result, these studies indicated a need for this project.

Initial engineering and environmental studies determined that the proposed pipeline should start from the existing natural gas transmission pipelines which parallel Interstate 10 at a location approximately 3 miles west of Eagle Mountain Road and proceed south. The proposed alignment of the new pipeline will follow a route parallel to two existing natural gas pipelines. This proposed 32 mile pipeline segment will be 36 inches in diameter and will cross both public lands administered by the BLM and the U.S. Navy's Chocolate Mountains Aerial Gunnery Range. The initial environmental studies identified both desert tortoise habitat along the route and unexploded ordinance on the Range as issues.

The proposed pipeline will replace the older of the two existing natural gas pipelines that presently serve multiple communities south of the Riverside County line. The aforementioned existing pipeline, which will be removed from service after installation of the new line, was installed in 1948 and will require increasingly significant significant maintenance and repairs if it is to be kept in service.

The route of the proposed pipeline will closely follow the existing pipeline patrol road and will be installed and operated in accordance with all applicable State and Federal pipeline safety regulations and environmental requirements. Furthermore, if approved, this new pipeline will improve existing gas service to customers in the Imperial Valley by providing a higher level of service to them.

The Environmental Assessment (EA) will evaluate the effects of constructing, operating and maintaining this proposed natural gas pipeline from its point of origin to its initial point of termination. The EA will also address the abandonment or removal of the existing pipeline which will be replaced by this new 36 inch line. It is anticipated that this Environmental Assessment will be completed by the second quarter of 1993.

Dated: December 15, 1992.

Molly S. Brady,

Acting California Desert District Manager.

[FR Doc. 92-30919 Filed 12-18-92; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32182]

CSX Corporation and CSX Intermodal, Inc.—Control—Customized Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts CSX Corporation (CSX) and its subsidiary, CSX Intermodal, Inc. (CSXI), from the regulatory requirements of 49 U.S.C. 11343, *et seq.*, for the acquisition by CSX, CSXI, and other CSX carrier affiliates of control of Customized Transportation, Inc. (CTI).

DATES: This exemption is effective on December 24, 1992. Petitions to reopen must be filed by January 11, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32182 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives: Peter J. Shudtz, One James Center, Richmond, VA 23219. Robert B. Allen, 200 International Circle, Hunt Valley, MD 21030.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5621].

Decided: December 9, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-30870 Filed 12-18-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-382X]

Floydada & Plainview Railroad—Abandonment—In Hale and Floyd Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission pursuant to 49 U.S.C. 10505 exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.* the abandonment by the Floydada & Plainview Railroad of 22.4 miles of rail line between milepost 4+3160 near Plainview and milepost 27+158.4 at Floydada, in Hale and Floyd Counties, TX subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 31, 1992. Formal expressions of intent to file offers of financial

assistance [1] under 49 CFR 1152.27(c)(2) must be filed by December 31, 1992. Petitions to stay must be filed by December 31, 1992. Petitions to reopen must be filed by January 11, 1993. Requests for a public use condition must be filed by January 11, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–382X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: John D. Heffner, Gerst, Heffner, Carpenter & Precup, suite 1107, 1700 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 10, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30871 Filed 12–18–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Cable Television Laboratories, Inc.; National Cooperative Research

Notice is hereby given that, on October 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and Les Enterprises Videoway Inc. ("Videoway") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are CableLabs, Boulder, CO; and Videoway, Montreal, Quebec, Canada.

The area of planned activity is cooperation in the development of data stream protocols concerning the delivery of data over cable television system facilities to cable television subscribers.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–30814 Filed 12–18–92; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research; Cable Television Laboratories, Inc.

Notice is hereby given that, on October 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and Sony Corporation of America ("Sony") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are CableLabs, Boulder, CO; and Sony, Montvale, NJ.

The area of planned activity is cooperation in the exchange of information about cable network architecture and design and digital transmission of cable television signals.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–30813 Filed 12–18–92; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs; Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel Cubans

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse States for partial expenses incurred by the incarceration of certain Mariel Cubans.

SUMMARY: The Department of Justice Appropriations Act, 1993, Title I of Public Law 102–395, allocates up to $2.5 million to implement the State Reimbursement Program for Incarcerated Mariel Cubans. The State Reimbursement Program for Incarcerated Mariel Cubans provides assistance to the States to defray expenses associated with the incarceration of Mariel Cubans in State facilities. Mariel Cubans affected by the Act are those individuals incarcerated after conviction of a felony, following their parole by the Attorney General. The 1980 Mariel Cuban Boatlift placed an added burden upon the criminal justice systems of many states with the additional costs of incarceration. For reimbursement purposes, the period of incarceration is October 1, 1992, to September 30, 1993.

DATES: The State applications (S.F. 424) must be postmarked no later than February 1, 1993. All inmate data must be electronically transmitted by the applicant to the Bureau of Justice Assistance for verification purposes no later than February 1, 1993.

ADDRESSES: Bureau of Justice Assistance, Special Programs Division, 633 Indiana Avenue, NW., room 1058, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Telephone Louise Lucas, BJA, at (202) 307–1065.

SUPPLEMENTARY INFORMATION: On October 18, 1991, BJA mailed to all State departments of corrections a survey to determine the feasibility of establishing an electronic data entry system for the Mariel Cuban Reimbursement Program. Based on the completed surveys from 46 States, BJA determined that the electronic data entry system would enhance the operation of the program as well as reduce the paper flow of documents from the States. BJA, under separate cover, will provide to the States the necessary information needed to access the automated data entry system.

I. General Provisions

Eligible Applicants

All States are eligible to apply for and receive grants. "State" means any State of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States

BJA expects that the 38 States that participated in the State Reimbursement Program last year will participate again this year. States participating in 1992 included: Alaska, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland,

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Massechusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Some additional States may participate in 1993.

II. Allocations and Use of Funds

Fund Availability

The Act provides a total of $2.5 million for the purpose of making grants to States. Awards will be calculated by taking the aggregate number of verified inmate months from all applications submitted and dividing the months into the appropriation. The verified number of months for each application will then be multiplied by the average inmate cost per month. The amount of reimbursement per prisoner, per annum, will not exceed $12,000.

Fund Use

The intent of the public law is to reimburse the States for partial expenses incurred by them for Mariel Cubans incarcerated in State facilities. A budget or expenditure plan is not required, as the award will be used solely for reimbursement purposes. Matching funds are not required.

III. Application Content

(a) All State applicants must submit Standard Form 424 (Application for Federal Assistance), and a certified listing of incarcerated Mariel Cuban prisoners. The certified listing shall be a "hard copy" of the electronically transmitted inmate data to BJA. The automated data entry system is designed to include information in the following sequence:

(1) Name (last name first).
(2) AKA (also known as).
(3) Alien Identification Number (e.g., A24 456 789).
(4) Inmate Number.
(5) Date of Birth.
(6) Date of Incarceration.
(7) Probable Earliest Release Date.

Submission of Mariel Cuban data in an alternative format must be approved by BJA prior to submission of an application.

(b) The certified listing must be signed by the Governor or one of his or her authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1992, to September 30, 1993. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the State will be reimbursed the equivalent of the full amount for one prisoner for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel Cubans. States will not be reimbursed for those Cubans who Entered Without Inspection (EWI), or who were earlier arrivals (pre-boatlift), or later arrivals (post-boatlift).

(e) State law will prevail when a determination is required as to what constitutes a State facility and/or a State prisoner.

IV. Review of State Applications

State applications must be submitted in the required format within the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be completed no later than April 1, 1993, and grants will be made to the States immediately thereafter.

(b) Compliance is required with executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR part 30. At the same time applications (S.F. 424) are submitted to BJA, states must submit grant applications to the State's Single Point of Contact, if there is a Single Point of Contact, and if this program has been selected for coverage by the State process. State processes last 60 days starting from the application deadline to comment on applications.

(c) Certification is required regarding 28 CFR part 69, "New Restrictions on Lobbying" and 28 CFR part 67, "Government-wide Debarment and Suspension and Government-wide Requirements for Drug-Free Workplace" (OJP Form 4061/6). This form should be submitted by the State as part of its application.

(d) Upon completion of a review of a State application, BJA will notify the applicant, in writing, of any specific reasons for disapproval of the application, in whole or in part.

V. Civil Rights Assurances

The applying State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;
(b) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d;
(c) Section 504 of the Rehabilitation Act of 1973, as amended;
(d) Subtitle A, Title I of the American With Disabilities Act (ADA) (1990);
(e) Title IX of the Education Amendments of 1972;
(f) The Age Discrimination Act of 1975; and,
(g) The Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G, and Disability Non-discrimination Regulations, 28 CFR part 35 and part 39.

Any application for $500,000 or more must be accompanied by a copy of the current Equal Employment Opportunity Program in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and have also received an Office of Justice Programs approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program to meet this requirement.

Jack A. Nadol,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 92-30901 Filed 12-18-92; 8:45 am]
BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may

request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 4, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 4, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this December 7, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Baroid Management Corp (Co)	Houston, TX	12/07/92	11/20/92	28,076	Drilling Fluids.
Kezar Falls Woolen Co (Wkrs)	Kezar Falls, ME	..... do	11/19/92	28,077	Woolen Yarns.
Beaver Dam Products Corp (AIW)	Beaver Dam, WI	..... do	11/18/92	28,078	Auto Parts, Engines.
Hallmark Fishery's (Wkrs)	Charleston, OR	..... do	11/20/92	28,079	Fresh and Frozen Seafood.
Blue Bird East (Wkrs)	Buena Vista, VA	..... do	11/23/92	28,080	Bus Bodies.
Lodge and Shipley, Inc (Wkrs)	Cincinnati, OH	..... do	11/23/92	28,081	Lathes.
Hadson Energy Resources Corp (Wkrs)	Oklahoma City, OK	..... do	11/20/92	28,082	Oil and Gas Services.
Beaver Lumber Co (Wkrs)	Beaver, WA	..... do	11/24/92	28,083	Lumber for Construc. of Doors and Windows.
Sutton Shirt Corp (Wkrs)	Sparta, TN	..... do	11/25/92	28,084	Sutton Garment Warehouse and Distribution.
Weatherford Petco Oilfield Service (Wkrs)	Lindsay, OK	..... do	11/25/92	28,085	Oil and Gas Services.
Ortech Co (Co)	Kirksville, MO	..... do	11/20/92	28,086	Electro-Mechanical Auto Components.
Atron, Inc., of Michigan (Wkrs)	Saranac, MI	..... do	11/20/92	28,087	Electrical Wire Harness for Autos.
Northwest Shingle Co (Wkrs)	Bogachiel Park, WA	..... do	11/24/92	28,088	Shingles and Shakes.
Carter Steel and Fabricating Co (Wkrs)	Bellefontaine, OH	..... do	11/17/92	28,089	Fabricated Structural Steel.
Acustar, Inc (Wkrs)	Dayton, OH	..... do	11/23/92	28,090	Auto Heaters & Air Conditioners.
TRW Vehicle Safety Systems, Inc (UAW)	Washington, MI	..... do	11/20/92	28,091	Seat Belt Components.
Cyprus Thompson Creek Mining Co (Wkrs)	Clayton, ID	..... do	11/30/92	28,092	Mine & Process Molybdenum Ores.

[FR Doc. 92-30897 Filed 12-18-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,807]

Carter Jasper Company; Jasper, GA

Notice of Revised Determination on Reconsideration

On December 4, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Carter Jasper Company in Jasper, Georgia. This notice will soon be published in the **Federal Register**.

A company official claims that a major customer of Carter Jasper decreased its purchases of canvas footwear from Carter Jasper and increased its imports of canvas footwear in 1992.

The investigation findings show that the workers at Jasper produced injection molded canvas footwear. The findings also show that all production at Jasper ceased in October, 1992 and all production workers were laid off.

Other findings show that U.S. aggregate imports of non-rubber footwear increased absolutely and relative to domestic shipments in 1991 compared to 1990 and in the first six months of 1992 compared to the same period in 1991.

On reconsideration, the Department conducted a survey of Carter Jasper's customers. The survey showed that a major customer, accounting for a substantial portion of Jasper's sales in 1992, substantially reduced its purchases from Carter Jasper in mid-1992 and increased its imports of canvas footwear in 1992.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the Carter Jasper workers in Jasper, Georgia were adversely affected by increased imports of articles like or directly competitive with the canvas footwear produced at Carter Jasper in Jasper, Georgia. In accordance with the provisions of the Act, I make the following revised certification for the Carter Jasper workers in Jasper, Georgia.

"All workers of Carter Jasper Company in Jasper, Georgia who became totally or partially separated from employment on or after August 1, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 9th day of December 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-30893 Filed 12-18-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation, and approval of certain products manufactured for use in underground mines. These fees are based on Fiscal Year 1992 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1993, through December 31, 1993. Approval applications postmarked January 1, 1993, or after will be chargeable under these fee schedules.

FOR FURTHER INFORMATION CONTACT: Peter M. Turcic, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the

specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

New approval programs, expected to be issued during 1993, and associated fees are listed in this notice. These include two subparts under part 7, Applicant or Third Part Testing, scheduled for issuance as final regulations in 1992: (1) Electric Motor Assemblies and (2) Electric Cables and Splice Kits. Fees for applications under these rules will be applicable on the effective dates as published in the final rules.

Fees under part 18, Action numbers 45 and 46, Shearer Evaluation and Shearer Evaluation Extension, represent programs previously in effect under approval programs for longwall equipment. Part 00, Action number 35, Administrative Records Update Program, is a new program representing a means for securing services to update changes in applicants' records, such as company transfers. These programs are in place and subject to the 1993 fee rates.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE 01-01-93

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
7	Product testing by third party:			
12	Approval Evaluation—Battery Assemblies	$37		$100
12	Approval Evaluation—Brattice and Ventilation Tubing	43		100
12	Approval Evaluation—Multiple-Shot Blasting Units	41		100
12	Approval Evaluation—Electric Motor Assemblies*	41		100
12	Approval Evaluation—Electric Cables and Splice Kits*	40		100
14	Approval Extension—Battery Assemblies	41		100
14	Approval Extension—Brattice and Ventilation Tubing	41		100
14	Approval Extension—Multiple-Shot Blasting Units	41		100
14	Approval Extension—Electric Motor Assemblies*	41		100
14	Approval Extension—Electric Cables and Splice Kits	40		100
40	Stamped Notification Acceptance Program (SNAP)		$314	
15	Explosives:			
12	Approval Evaluation[1]	43		100
	Permissibility Tests for Explosives:			
	Weigh-In		420	
	Physical Exam: First Size		295	
	Chemical Analysis		1,797	
	Air Gap—Minimum Product Firing Temperature		418	
	Air Gap—Room Temperature		320	
	Pendulum Friction Test		148	
	Detonation Rate		320	
	Gallery Test 7		6,760	
	Gallery Test 8		5,030	
	Toxic Gases (Large Chamber)		732	
	Permissibility Tests for Sheathed Explosives:			
	Physical Examination		128	
	Chemical Analysis		1,044	
	Gallery Test 9		1,944	
	Gallery Test 10		1,944	
	Gallery Test 11		1,944	
	Gallery Test 12		1,944	
	Drop Test		648	
	Temperature Effects/Detonation		672	
	Toxic Gases		560	
14	Approval Extension		45	100
18	Electric motor driven equipment and accessories:			
12	Approval—Machine Evaluation[1]	43		100
	Approval—Machine Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
12	Approval—Instruments (testing included)	42		100
12	Approval—Shearer Evaluation	43		100
14	Approval Extension—Machine Evaluation[1]	41		100
	Approval Extension—Machine Testing			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
14	Approval Extension—Instruments (testing included)	36		100
14	Approval Extension—Shearer Evaluation	40		100
15	Acceptance Evaluation[1]	40		100
	Acceptance Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	Cable/Splice Test	43		

FEE SCHEDULE EFFECTIVE 01-01-93—Continued

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
	Cable Flame Test	42		
	Dielectric Test	45		
	Compressibility Test (asbestos substitutes)	45		
	16 Certification Evaluation[1]	38		100
	Certification Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	17 Acceptance Extension	40		100
	18 Certification Extension[1]	37		100
	Certification Extension Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	21 Field Modification	44		100
	23 Field Approval		88	
	26 Permit—Machines[1]	43		100
	Permit Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	26 Permit—Instruments (testing included)	43		100
	30 Intrinsic Safety Determination (testing included)	44		100
	31 Intrinsic Safety Determination Extension (testing included)	44		100
	32 Simplified Certification[1]	38		100
	Simplified Certification Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	34 Simplified Certification Extension[1]	37		100
	Simplified Certification Ext. Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	40 Stamped Noification Acceptance Program (SNAP)		314	
	41 Longwall Approval	43		100
	42 Longwall Approval Extension	43		100
	45 Shearer Evaluation	45		
	46 Shearer Evaluation Extension	40		
19	Electric cap lamps:			
	12 Approval (testing included)	41		100
	14 Approval Extension (testing included)	38		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
20	Electric mine lamp:			
	12 Approval (testing included)	42		100
	14 Approval Extension (testing included)	40		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
21	Flame safety lamps:			
	12 Approval (testing included)	41		100
	14 Approval Extension (testing included)	41		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
22	Portable methane detectors:			
	12 Approval (testing included)	40		100
	14 Approval Extension (testing included)	38		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
23	Telephones and signaling devices:			
	12 Approval (testing included)	42		100
	14 Approval Extension (testing included)	40		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
24	Single-shot blasting units:			
	12 Approval (testing included)	44		100
	14 Approval Extension (testing included)	44		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
26	Lighting equipment for illumination:			
	12 Approval (testing included)	44		100
	14 Approval Extension (testing included)	44		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
27	Methane monitoring systems:			
	16 Certification (testing included)	42		100

FEE SCHEDULE EFFECTIVE 01–01–93—Continued

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
	18 Certification Extension (testing included)	38		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
28	D.C. current fuses:			
	12 Approval (testing included)	45		100
	14 Approval Extension (testing included)	45		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
29	Portable dust analyzers and methane monitors:			
	12 Approval (testing included)	41		100
	14 Approval Extension (testing included)		314	
31	Diesel mine locomotives:			
	12 Approval	41		100
	14 Approval Extension	41		100
32	Mobile diesel-powered equipment for noncoal mines:			
	12 Approval	41		100
	14 Approval Extension	41		100
	16 Certification Evaluation[1]	43		100
	Certification Testing:			
	Emissions Test	44		
	Pre/post Test Preparation	42		
	18 Certification Extension Evaluation[1]	43		100
	Certification Extension Testing:			
	Emissions Test	44		
	Pre/post Test Preparation	42		
33	Dust Collectors:			
	12 Approval Evaluation without Cert. of Performance[1]	45		100
	Approval Testing:			
	Dust Collector Test	48		
	14 Approval Extension Evaluation[1]	44		100
	Approval Extension Testing:			
	Dust Collector Test	48		
	16 Certification Evaluation[1]	44		100
	Certification Testing:			
	Dust Collector Test	48		
	18 Certification Extension[1]	43		100
	Certification Extension Testing:			
	Dust Collector Test	48		
	21 Field Modification	47		100
	29 Dust Collector Approval with Cert. of Performance	45		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
35	Fire-resistant hydraulic fluids:			
	12 Approval (testing included)[1]	40		100
	14 Approval Extension (testing included)	40		100
36	Mobile diesel-powered equipment:			
	12 Approval	45		100
	14 Approval Extension	45		100
	16 Certification—Engine Evaluation[1]	43		100
	Certification—Engine Testing:			
	Emissions Test	44		
	Explosion Test	42		
	Surface Temperature/Safety Controls Test	45		
	Pre/post Test Preparation	41		
	18 Certification Extension—Engine Evaluation[1]	40		100
	Certification Extension—Engine Testing:			
	Emissions Test	44		
	Explosion Test	42		
	Surface Temperature/Safety Controls Test	45		
	Pre/post Test Preparation	41		
	21 Field Modification	45		100
	27 Certification—Diesel Components Evaluation[1]	44		100
	Certification—Diesel Components Testing:			
	Emissions Test	44		
	Explosion Test	42		
	Water Consumption/Cooling Efficiency Test	41		
	Surface Temperature/Safety Controls Test	45		
	Pre/post Test Preparation	41		
	28 Certification Extension—Diesel Components Evaluation[1]	45		100
	Certification Extension—Diesel Components Testing:			
	Emissions Test	44		
	Explosion Test	42		
	Water Consumption/Cooling Efficiency Test	41		
	Surface Temperature/Safety Controls Test	45		
	Pre/post Test Preparation	41		
	40 Stamped Notification Acceptance Program (SNAP)		314	
74	Coal mine dust personal sampler units:			
	12 Approval	41		100
00	Other A&CC services:			
	15 Acceptance—Overcurrent Relays (testing included)	41		100
	15 Statement of Test and Evaluation (ST&E)		38	
	15 Monitor and Power System (MAPS) (testing included)	42		100

FEE SCHEDULE EFFECTIVE 01-01-93—Continued

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
	15 Acceptance—Ground Check Monitor/Ground Wire Devices (testing included)	41		100
	17 Acceptance Extension—Overcurrent Relays	41		100
	17 Acceptance Extension—Interim Criteria	40		100
	17 Statement of Test and Evaluation (ST&E) Extension		32	
	17 Acceptance Extension—Ground Check Monitor/Gr. Wire Devices	43		100
	20 Stamped Revision Acceptance (SRA)[2]		194	
	24 Acceptance—Panic Bar	41		100
	33 Generic Statement of Test and Evaluation (ST&E)	41		100
	35 Admin. Records Update	10		None
	37 Acceptance—Interim Criteria	40		100
	Interim Criteria Testing:			
	Product Flame Test	40		
	40 Stamped Notification Acceptance (SNAP)/Gr. Check Monitor, Ground Wire Device, and Overcurrent Relay.		314	
	40 Stamped Notification Acceptance (SNAP) ST&E		32	
	41 Approval—Longwall Area Lighting	43		100
	42 Approval Extension—Longwall Area Lighting	41		100
	50 Mine Wide Monitoring System (MWMS) evaluation		283	
	52 Mine Wide Monitoring System (MWMS) Barrier Classification		248	
	54 Mine Wide Monitoring System (MWMS) Sensor Classification		320	
	00 Retesting for Approval as a Result of Post-approval Product Audit[3]			

[1] Fees will be applicable upon implementation of these Part 7 regulations; Final Rule expected during 1992.
[2] Note: Full approval fee consists of evaluation cost plus applicable test costs.
[3] Note: Fee covers SRA application accompanied by up to 5 documents.
[4] Note: Fee based upon the approval schedule in effect at the time of retest.

Note: When testing and evaluation is required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidence expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 92-30841 Filed 12-18-92; 8:45 am]
BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated October 19, 1992, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to amendments, corrections, and revisions to: (1) 29 CFR 1926.58, pertaining to the Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite Standard for the Construction Industry as published in the **Federal Register** of June 8, 1992 (57 FR 24330); (2) 29 CFR 1910.1001 and 1910.1101, pertaining to the Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite Standard for General Industry as published in the **Federal Register** of June 8, 1992 (57 FR 24330); and (3) CFR 1910.1048, pertaining to the Occupational Exposure to Formaldehyde Standard as published in the **Federal Register** of May 27, 1992 (57 FR 22307), June 10, 1992 (57 FR 24701), and June 18, 1992 (57 FR 27161). These standards are contained in COMAR 09.12.31. Maryland occupational safety and health standards were promulgated after a public hearing on September 22, 1992. These standards became effective on October 12, 1992.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, room N3700, 3rd Street and Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Maryland State plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal

law including meeting the requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 21, 1992.

(Section 18, Public Law 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 3rd day of November 1992.

Linda R. Anku,

Regional Administrator.

[FR Doc. 92–30892 Filed 12–18–92; 8:45 am]

BILLING CODE 4510–30–M

MERIT SYSTEMS PROTECTION BOARD

Opportunity To Comment on the 1993 Research Agenda of the U.S. Merit Systems Protection Board

December 1992.

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of opportunity to comment on the 1993 research agenda of the U.S. Merit Systems Protection Board.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is required by law to conduct special studies of the civil service and other Federal merit systems to determine whether they adhere to the merit principles governing the Federal civil service. MSPB is also required by law to report annually to the President and the Congress on the "significant actions" of the Office of Personnel Management (OPM). Based on this research, MSPB reports to the Congress and the President on whether the public interest in a civil service free of prohibited personnel practices is being adequately protected. MSPB is in the process of determining its 1993 research agenda. This notice invites public comment on personnel management issues to be considered as topics for merit systems studies, and solicits suggestions regarding OPM programs and activities to be included in the annual review and analysis of OPM signficant actions.

DATES: To ensure full consideration, comments should be received on or before January 25, 1993.

ADDRESSES: Comments must be made in writing and sent to the Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 20419, Attention: Mrs. Ligaya Fernandez.

FOR FURTHER INFORMATION CONTACT: Mrs. Ligaya Fernandez, Research Analyst, Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 20419, (202) 653–8737.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 established a list of statutory merit principles and prohibited personnel practices as standards for personnel management in the Federal Government. MSPB is responsible for protecting the public interest in a civil service administered according to these standards. The Office of Policy and Evaluation has principal responsibility within MSPB for OPM oversight and merit systems studies.

(a) What Is a Merit System Study?

The law does not specify criteria for MSPB to use in determining the scope and nature of merit systems studies. In exercising its discretion as to which studies to conduct, MSPB relies on its internal research staff as well as input from a broad range of outside individuals and organizations. In conducting any study, MSPB is also authorized to make such inquiries as may be necessary and, unless otherwise prohibited by law, to have access to personnel records or information from OPM or other agencies as needed.

(b) What Is an OPM Significant Action?

The law also does not specify criteria for MSPB to use in determining which actions of OPM are significant for purposes of preparing its report. In exercising its discretion as to which actions of OPM to study, MSPB considers the following:

(1) Any OPM policy or program which might conflict with the statutory merit principles or contribute to the commission of a prohibited personnel practice;

(2) The extent to which other major decisions made or actions taken by OPM are in accord with and promote the merit principles; and

(3) OPM's overall impact on personnel management within the merit systems of the Federal civil service.

(c) Public Comment on MSPB's 1993 Research Agenda

MSPB invites any interested person or organization to comment on any systemic personnel management issues or practices the examination of which would assist MSPB in determining adherence to the merit principles and the absence of prohibited personnel practices. Individual personnel actions are outside the scope of the research agenda.

Interested persons or organizations are further invited to comment on which recent actions of OPM were "significant" for the civil service, and whether those actions were consistent with merit system principles and free from prohibited personnel practices.

(d) Format for Comments

The comments should contain for each topic a short statement of the issue being raised, a brief explanation as to why it should be studied, and a description of the impact of the issue on the Federal service.

(e) Acknowledgement of Comments

Due to the nature of this notice (i.e., a request for suggestions), no acknowledgement or response will be provided to those who submit comments.

(f) Confidentiality

MSPB will protect the identity of persons submitting comments and the confidentiality of such comments to the extent permitted by law.

Dated: December 15, 1992.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 92–30842 Filed 12–18–92; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Challenge/Advancement Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Design Arts Advancement Section) to the National Council on the Arts will meet on January 8, 1993 from 9 a.m.–5 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 15, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30906 Filed 12–18–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Atmospheric Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: Wednesday, January 6, 1993; 8 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed

Contact Person: Dr. Richard S. Greenfield, Section Head, Lower Atmosphere Research, Division of Atmospheric Sciences, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7645.

Purpose of Meeting: To provide advice and recommendations concerning proposal submitted to NSF for financial support.

Agenda: To review and evaluate the NCAR Research Aircraft Fleet Restructuring proposal as part of the selection process for an award.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–30902 Filed 12–18–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

In the Biweekly Notice beginning on page 53781 in the issue of Thursday, November 12, 1992, make the following correction:

On page 53792, in the third column, under the Southern California Edison Company, et. al. heading, "*Date of issuance:* April 2, 1992" should read "*Date of issuance:* October 23, 1992."

For the Nuclear Regulatory Commission.

James W. Clifford,

Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30858 Filed 12–18–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424–OLA–3 50–425–OLA–3

Georgia Power Co., et al.; (Vogtle Electric Generating Plant, Units 1 and 2)

Atomic Safety and Licensing Board

Before Administrative Judges:
Peter B. Bloch, Chair
Dr. James H. Carpenter
Thomas D. Murphy

Re: License Amendment (Transfer to Southern Nuclear)

ASLBP No. 96–671–01–OLA–3

December 14, 1992.

(Limited Appearances; Prehearing Conference)

Pursuant to 10 CFR 2.715 and 2.752 [1], we will hold a public limited appearance session from 7 pm to up to 10 pm (as required), January 11, 1993, and a public prehearing conference from 9 am until 11 am on January 12, at the Law Enforcement Center, room 240, 401 Walton Way, Augusta, Georgia 30911.

Limited appearances may be written or oral. People wishing to speak at the limited appearance session may obtain priority by mailing a letter on or before January 5 to: Licensing Board (Georgia Power), U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written appearances may be mailed to the same address or submitted at the Limited Appearance session. Limited Appearances will be listened to or read carefully but are not part of the decisional record and may not, therefore, form a basis for the opinion of the Board. Each appearance will be limited to from five to ten minutes, depending on the number of speakers; the time limit will be announced at the beginning of the session.

For the Atomic Safety and Licensing Board, Bethesda, Maryland.

Peter B. Bloch,

Chair.

[FR Doc. 92–30859 Filed 12–18–92; 8:45 am]

BILLING CODE 7590–01–M

[1] See also § 2.751a.

[Docket No. 50–445]

TU Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–87 issued to TU Electric Company (the licensee) for operation of the Comanche Peak Steam Electric Station, Unit 1 (CPSES) located in Somervell County, Texas.

The proposed amendment would revise the Unit 1 Technical Specifications to include revised heatup and cooldown curves for the reactor coolant system, revised limits for the power-operated relief valve (PORV) setpoints, and the addition of a specification for feedwater isolation valve pressure/temperature limits. These changes are required to support the licensing of Comanche Peak Steam Electric Station Unit 2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The following changes affect the pressure/temperature limits which define the acceptable regions of operation:

- The 50 psi decrease in heatup/cooldown curve;
- The 39 psi decrease in a portion of the PORV setpoint curve;
- The addition of the 20°F/hour heatup curve; and

• The 1°F increase in the criticality limit.

As such, these changes do not affect the probability that overpressure events (the events of concern) would occur. These changes only affect the conditions from which events could be initiated.

The consequences of overpressure events are limited by assuring that the applicable stress limits for the Reactor Coolant System pressure boundary (e.g., ASME Boiler and pressure Vessel Code, section III, appendix G and 10 CFR part 50, appendix G) are not exceeded. Because the revised acceptable regions of operation still assure that these limits are not exceeded, these changes have no impact on the consequences of an overpressure event.

The change of terminology to use the adjusted reference temperature (ART) is editorial only.

The changes in the ART values are updates based on the results from the reactor material irradiation surveillance program. The ART values on these figures are informational only and do not directly affect plant operation or performance.

The margin for instrumentation error described in the text above the heatup and cooldown curves is changed to reflect the additional 50 psi of measurement uncertainty which is incorporated into the curves. The margin for instrumentation error as noted on these figures is informational only and does not directly affect plant operation or performance.

In summary, these changes are either editorial or descriptive or only affect the limits which define the acceptable range for operation. As such, these changes do not change the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are either editorial or descriptive or only affect the limits which define the acceptable regions for operation. No changes are proposed which could result in a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is determined by the failure point for a particular system, structure, or component and the acceptance criteria which are established to ensure that the failure point is not reached during the events of concern. For these specifications, the failure points of concern are the points at which brittle fracture failures could occur in the Reactor Coolant System (RCS) pressure boundary. The acceptance criteria are, in part, the pressure/temperature limits provided by Figures 3.4–2 and 3.4–3 and the PORV setpoint limits in Figure 3.4–4.

For the Reactor Coolant System, the severity of the stresses which can exist are determined by the actual temperature, pressure, and heatup/cooldown rates which are allowed. The method of determining the pressure/temperature limit curves for various heatup and cooldown rates is based on approved calculational methodologies which establish an acceptable margin between the actual stresses and the failure point of the materials. An allowance for measurement uncertainties of the instruments is then combined with the actual stresses to produce the heatup/cooldown limit curves.

The different heatup/cooldown rate curves are calculated by the same methodologies and the same instrument uncertainties apply. Therefore, the curve for each heatup/cooldown rate provides essentially the same margin of safety. For example, for each heatup curve, the maximum stress, and therefore the minimum margin of safety, exists at the heatup rate designed for that curve. Consequently, the margin of safety for a 60°F/hour heatup while operating on the 60°F/hour curve is essentially the same as the margin of safety for a 100°F/hour heatup while operating on the 100°F/hour curve.

The new 20°F/hour heatup curve was determined using the same calculational methodologies as the new 60°F/hour and 100°F/hour heatup curves. The same instrument uncertainties were applied to develop all of these curves and therefore each provides essentially the same margin of safety.

The instrumentation used to assure operation within the allowed range for these curves has not been changed and therefore the uncertainty of the instrumentation has not changed. However, a previously unrecognized 50 psi uncertainty has been incorporated into all of the heatup/cooldown and PORV setpoint curves. Because the actual instrument uncertainty is unchanged but the existing curves are being lowered to incorporate an allowance for the additional 50 psi uncertainty, the maximum stress conditions allowed to exist have been reduced and the margin of safety has been increased.

As with the heatup and cooldown curves discussed above, the maximum allowable PROV setpoints specified in Figure 3.4–4 are selected to assure that pressure/temperature limits are not exceeded. The transients of concern are analyzed including factors such as equipment time delays, instrumentation uncertainties, valve opening times, etc., to ensure that the pressure overshoot does not exceed the limits established by appendix G of section III of the ASME Boiler and Pressure Vessel code. The PORV setpoint curve is determined by combining the results of the analysis with the limits determined by the ASME code. The account for the additional 50 psi uncertainty, the analysis was revised. When the analysee was revised, some overly conservative assumptions were replaced with acceptable but less conservative assumptions. As a result, the PORV setpoint curve has decreased when below 237°F by 39 psi instead of 50 psi. The other 11 psi was absorbed by the revised assumptions.

No changes were made to the installed plant hardware or instrumentation. Thus, an actual plant transient will progress in the same manner following this change in PORV setpoint curve except for the initial conditions. In other words, the actual pressure overshoot for the limiting transient is not expected to change. The pressure limits per the ASME code remains essentially unchanged. Therefore, the 39 psi reduction in the setpoint limit (i.e., initial conditions) increases the margin of safety.

The change in the terminology to use "ART" and the descriptive change in the pressure margin have no direct effect on either plant operations or on the actual margin.

The changes in the ART values are the results of an update of existing calculations and are based on the actual neutron fluence obtained from the reactor vessel material irradiation surveillance program. The revised ART values are used in the calculations of the revised heatup and cooldown curves. The effects of the changes to the ART values are reflected in the heatup and cooldown curves, but do not directly affect any margins or plant operations. The fact that the art values decreased indicates that the reactor vessel is more resistant to brittle fracture; however, the change is so small as to be inconsequential.

The revised criticality limits reflected on Figure 3.4–2 specify pressure/temperature limits for critical core operation in order to provide additional margin during actual power production, in accordance with 10 CFR part 50, appendix G. The curves are applicable for RCS temperatures below approximately 350°F. However, because criticality below an average RCS temperature of 551°F is prohibited by Technical Specification 3.1.1.4, the

changes to these limits are descriptive, and have no effect on margin or plant operation.

In summary, the proposed changes are either editorial or descriptive in nature with no effect on margin, or represent an increase in the actual margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:14 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 21, 1992, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a currently copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/ Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged factors or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those factors or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene became parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where

petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 31, 1992, as supplemented by letters dated October 29, 1992, and December 14, 1992, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/ Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 16th day of December 1992.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Acting Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30857 Filed 12–18–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Review of OPM Form 1417 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed information collection, Combined Federal Campaign Results Code Sheet, OPM Form 1417. This form is completed annually by the local Principal Combined Fund Organizations, and is used by the Office of Personnel Management to compute the campaign contributions.

Approximately 500 forms are completed annually, each requiring an estimated one hour to complete, for a total public burden of 500 hours. For copies of this proposal call C. Ronald Trueworthy, (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, OIRA, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dennis A. Matteotti, (202) 606–2564.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–30907 Filed 12–18–92; 8:45 am]

BILLING CODE 6325–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget for review and are available for public review and comment. A copy of the information collection may be obtained from Mr. Chris Kent, Office of Associate Director for Volunteer Recruitment and Selection, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Mr. Kent may be called at 202–606–3994. Comments on these forms should be addressed to Lin Liu, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Volunteer Application.

Need for and Use of the Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to determine qualifications and potential for placement of applicants.

Respondents: Individuals who apply for Peace Corps Volunteer service.

Burden on the Public:

a. Annual reporting burden: 15,000 hours
b. Annual recordkeeping burden: 0 hours
c. Estimated average burden per response: 1 hour
d. Frequency of response: on occasion
e. Estimated number of likely respondents: 15,000

Title: Peace Corps Reference Form.

Need for Use of the Information: The Peace Corps needs this information in order to evaluate applicants for Volunteer service. The information is used to select and place applicant/ nominees to Peace Corps Volunteer programs.

Respondents: Individuals listed as references by applicants for Volunteer service.

Burden on the Public:

a. Annual reporting burden: 18,000 hours
b. Annual recordkeeping burden: 0 hours
c. Estimated average burden per response: 30 minutes
d. Frequency of response: on occasion
e. Estimated number of likely respondents: 36,000 hours

Elwin Guild,

Director of Planning and Policy Analysis.

[FR Doc. 92–30844 Filed 12–18–92; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31597; File No. SR–NASD–92–37]

December 14, 1992.

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Transaction Reporting Procedures

The National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NASD–92–37) on August 31, 1992, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder. The purpose of the proposed rule change is

[1] 15 U.S.C. 78s.

to amend the NASD rules governing real-time transaction reporting.[2]

The Commission provided notice of the proposed rule change in Securities Exchange Act Release No. 31241 (September 25, 1992), 57 FR 45646. The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends the NASD rules governing real-time transaction reporting in NASDAQ/NMS securities, NASDAQ Small-Cap securities, and exchange-listed securities.[3] The proposed rule change extends real-time transaction reporting,[4] deletes the *de minimis* thresholds for non-registered reporting members for real-time transaction reporting, and makes technical amendments to the transaction reporting rules.

The proposed rule change will extend real-time transaction reporting for NASDAQ/NMS and NASDAQ Small-Cap securities executed after normal market hours.[5] For NASDAQ/NMS and NASDAQ Small-Cap securities, the proposed rule change will require that members transmit last sale reports of transactions executed between the hours of 4 p.m. and 5:15 p.m. Eastern Time[6] through the Automated Confirmation Transaction System ("ACT") within 90 seconds after execution.[7] The proposed rule change also will require the use of the indicator, ".T," for trades reported after 4 p.m. to designate such trades as after hours.[8] For transactions in NASDAQ/NMS and NASDAQ Small-Cap securities executed outside the hours of 9:30 a.m. and 5:15 p.m., NASD members will be required to submit last sale reports weekly on Form T.

The proposed rule change deletes the *de minimis* thresholds for real-time trade reporting in NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities. Currently, NASD rules do not subject the non-registered market maker to real-time reporting in a specific security if the member's trading activity in that security satisfies the *de minimis* exemption. NASD rules exempt non-registered market makers with trading activity that, during the trading day, does not exceed 1,000 shares and $25,000, and has not exceeded these limits on five or more of the previous ten trading days. The proposed rule change will require non-registered market makers to submit, within ninety seconds of execution, last sale reports of transactions in NASDAQ/NMS and NASDAQ Small-Cap, and exchange-listed securities notwithstanding the number's transaction activity.

The proposed rule change also makes technical amendments to the NASD's transaction reporting rules. The proposed rule change amends Schedule D to delete references to the Transaction Reporting System which has been replaced by the NASD's ACT system.[9] The proposed rule change also amends the transaction reporting rules to replace certain terms with terms more commonly used. For example, the proposal adds the term "Market" Operations Department to replace "NASDAQ" Operations Department.[10]

Under Schedule G, the proposed rule change replaces the term "designated" reporting member with the term "registered" reporting member.[11] The proposal also clarifies that an NASD member is a "registered" reporting market maker in only those eligible securities for which it has registered as a CQS market maker and that the member shall cease being a registered reporting market maker when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of the NASD. The proposal also amends Schedule G to clarify that ACT is the service that, among other things, accommodates reporting and dissemination of last sale reports in eligible securities.

II. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act, and in particular, with sections 15A(b)(6) and 11A(a) (1) (C) of the Act. Section 15A(b) (6) of the Act requires that the NASD's rules be designed to prevent fradulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system. Section 11A(a)(1)(C) sets forth the objective of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and tansactions in securities.[12]

Real-time transaction reporting is essential to the efficient and fair operation of the securities markets and to the establishment of an NMS. It is critical for those who trade to have access to accurate, up-to-the second information as to the prices at which transactions in particular securities are taking place.[13] Benefits of real-time transaction reporting include efficient pricing of securities, effective monitoring of the quality of executions, and enhanced liquidity of the market for securities.[14] Real-time transaction

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[2] On November 2, 1992, the NASD amended the proposal to require real-time trade reporting of NASDAQ/National Market System ("NASDAQ/NMS") and NASDAQ Small-Cap securities for trades executed between 9:00 a.m. and 9:30 a.m. Letter from Richard G. Ketchum, Executive Vice President, NASD, to Elizabeth H. MacGregor, Branch Chief, Division of Market Regulation ("Division"), Commission, dated November 2, 1992.

The NASD subsequently withdrew the amendment and will file it as a separate proposed rule change pursuant to section 19(b)(2) of the Act. Letter from Robert E. Aber, Vice President and Deputy General Council, NASD, to Anthony R. Bosch, Attorney, Division, Commission, dated November 30, 1992.

[3] The proposed rule change amends parts XII and XIII of Schedule D, and amends Schedule G to the NASD By-Laws. See Securities Exchange Act Release No. 31241 (September 25, 1992), 57 FR 45646.

[4] NASD rules that require "real-time transaction reporting, required NASD members to report trades within 90 seconds of execution. NASD Rules, Schedule D, Part XII, Section 2, and Part XIII, section 2; and Schedule G, Section 2.

[5] The NASD rules defines normal market hours as 9:30 a.m. through 4 p.m. See NASD Rules, Schedule D, Part VI, Section 6, and Part VII, Section 3.

The proposal does not extend real-time transaction reporting for exchange-listed securities. NASD rules currently require members to submit real-time last sale reports of exchange-listed securities executed between 9:30 a.m. and 5:15 p.m. (the Consolidated Tape currently operates between 9:30 a.m. and 5:15 p.m.). For transactions in exchange-listed securities executed outside the hours of 9:30 a.m. and 5:15 p.m., NASD members are required to submit last sale reports weekly on Form T. NASD rules, Schedule G. Section 2.

[6] All times referred to are Eastern Time, unless otherwise noted.

[7] Currently, NASD rules requires real-time trade reporting in NASDAQ/NMS and NASDAQ Small-Cap securities through 5 p.m.

[8] Currently, transactions in NASDAQ Small-Cap securities reported between 4:10 p.m. and 5:00 p.m. are designated by the .T indicator. The .T indicator currently is not used for NASDAQ/NMS securities.

[9] ACT is the NASD's post-trade comparison system that among other things, accommodates reporting and dissemination of last sale reports in NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities. The instant rule change will not affect the member's rights and responsibilities under ACT.

[10] Among other things, NASD members report weekly on Form T to the Market Operations Department last sale reports executed after 5:15 p.m.

[11] A "registered reporting member" is an NASD member that is registered as a CQS market maker in a particular eligible security pursuant to NASD Rules, Schedule D, Part VII.

[12] The proposed rule change amends Schedule D, Part XII, which the Commission approved as a National Market System ("NMS") plan pursuant to section 11A of the Act and Rule 11Aa3-2 thereunder.

[13] See Senate Comm. on Banking, Housing, and Urb. Affairs, Report to Accompany S. 249; Securites Acts Amendments of 1975, S. rep. No. 75, 94th Cong., 1st Sess. 7-9 [Comm. Print 1975], reprinted in [1975] U.S. Code Cong. & Ad. News 179, 187.

[14] See Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13398.

reporting also captures an audit trail that provides regulatory information for market surveillance and for investigating questionable conduct, such as insider trading and manipulative activity.

The proposed rule change will extend real-time reporting of NASDAQ/NMS and NASDAQ Small-Cap securities to 5:15 p.m. and will make the NASD's real-time trade reporting rules for NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities more consistent. The proposed rule change also will increase real-time trade reporting of non-registered market markers and thus, will reduce the usage of Form T as a reporting vehicle for transactions in NASDAQ/NMS, NASDAQ Small-Cap, and exhange-listed securities effected between 9:30 a.m. and 5:15 p.m.

Thus, the proposed rule change will enhance real-time trade reporting of NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities. Real-time trade reports submitted to the NASD pursuant to the proposed rule change will be disseminated through the NASD's NASDAQ system and securities information vendors for NASDAQ/NMS and NASDAQ Small-Cap securities, and through the Consolidated Tape and securities information vendors for exchange-listed securities. This will provide broker-dealers and investors information necessary to make informed judgments about the securities offered for purchase or sale.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change in consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, sections 15A(b)(6) and 11A(a)(1)(C) of the Act.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change described above be, and thereby is, proposed.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR. Doc. 92–30828 Filed 12–18–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31596; File No. SR–NYSE–92–14]

December 14, 1992.

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Amendments to the Specialist Performance Evaluation Questionnaire

I. Introduction

On June 18, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Specialist Performance Evaluation Questionnaire. Notice of the proposal appeared in the **Federal Register** on August 20, 1992.[3] No comments were received. This order approves the proposed rule change.

II. Description of the Proposal

The Specialist Performance Evaluation Questionnaire ("SPEQ") is an important tool in the Exchange's continuing effort to improve specialist performance and the stock allocation process.[4] Exemplary specialist performance may be rewarded with an improved chance to receive a stock allocation. The Exchange reviews the SPEQ process periodically in order to ensure that the instrument maintains its vitality and effectiveness.[5] The proposed amendments, described below, are the result of the Exchange's latest study of the SPEQ process.[6]

The amendments will restructure the SPEQ so that each of the five functions considered—dealer, service, competitiveness, communications, and administrative functions—will be weighted equally. Currently, the first three functions are weighted at 30% each and the last two functions are weighted at 5% each. The NYSE believes that an equal distribution of weight would be more appropriate to the importance of the functions and would lead to more objective evaluations of specialists as the weight given to a particular question or function would not be considered by brokers when evaluating a unit's performance.

The NYSE will use two versions of the questionnaire during each quarter's evaluation process and continue the practice of dispersing positively and negatively worded questions throughout the instrument.

In order to avoid any conflict of interest, the NYSE will preclude brokers from rating specialist units which maintain Exchange Rule 325(e) financial responsibility guarantees for them or have lease agreements with them.

The SPEQ will also be amended to provide space for voluntary signing by rating brokers. Specialists would not be informed which brokers signed the questionnaires. The signing would indicate a broker's willingness to discuss an evaluation with a Floor Governor. As a result of this proposal, the NYSE will use Floor Governors as liaisons to facilities communication between specialists and the brokers who rate them. In addition, under the proposal, specialists would be provided with an alphabetized list of brokers that rated their unit.[7]

The questionnaire would also be amended to permit a rating broker to indicate the percentage of the business he conducts (*e.g.*, retail or institutional) in the unit's stock. This information would not be used in connection with the calculation of a unit's score, but would accompany the broker's comments to assist specialists in their performance improvement efforts.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Securities Exchange Act Release No. 31032 (August 13, 1992), 57 FR 37859.

[4] The SPEQ is a quarterly survey on specialist performance completed by eligible floor brokers. The SPEQ consists of 21 questions and requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

NYSE Rule 103A contains standards for evaluating specialist performance and authorizes an Exchange committee to reallocate stocks assigned to a specialist unit whose performance is found to be substandard as determined by the Rule. Under Rule 103A, a specialist's performance is measured by a combination of SPEQ scores and objective standards of performance. Specialist performance, as measured by the SPEQ or the other objective criteria, is also he primary factor in allocating new stocks to specialists. See NYSE Allocation Policy and Procedures.

[5] The Exchange last revised the SPEQ in February, 1990 Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (File No. SR–NYSE–89–32), among other things, by adopting a new scoring methodology for the SPEQ that provides specialists with their overall rank among all specialist units as well as a range of ranks, which shows their comparability to other units. Rule 103A, which sets forth performance standards for specialists, was last amended in February, 1991, when the new scoring methodology for the SPEQ was incorporated into the Rule so that specialists who are regularly among the lowest ranked units on a relative basis would be subject to performance improvement actions. Securities Exchange Act Release No. 28923 (February 27, 1991), 56 FR 9993 (File No. SR–NYSE–90–44).

[6] This proposed rule change does not amend the rating scale used on the SPEQ or the performance standards applicable to the SPEQ specified in Rule 103A.

[7] The NYSE indicated that typically thirty to thirty-five brokers rate each specialist unit.

In order to ensure that each specialist unit's pool of selected evaluators is roughly comparable and that the most qualified brokers, in terms of activity (*i.e.*, trades, share volume and days), are assigned to evaluate each unit, the NYSE will implement a guideline which would enable eligible brokers from order-generating firms to rate the same unit(s) in consecutive quarters and eligible two-dollar brokers to rate the same unit(s) in three out of every four quarters. The NYSE will require that at least 40% of every unit's assigned evaluators must be brokers from order-generating firms and, if necessary to meet the 40% minimum, assign such brokers as many as four units to evaluate each quarter.

Finally, the SPEQ would be amended to provide a space for comments on specialist performance by the head of a member organization's upstairs trading desk. These individual's input may be useful as a communications tool and as n additional perspective on specialist performance.

III. Discussion

After careful consideration of the applicable statutory provisions, the Commission believes the NYSE's proposal to amend the SPEQ is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission therefore is approving the proposed rule change.

The Commission agrees that the SPEQ is an important tool in evaluating the quality of, and improving, specialists' performance, and aids the Exchange in its decisions to allocate stocks to specialists. The Commission appreciates the Exchange's efforts continually to refine the questionnaire and to change it periodically so that floor brokers who respond to the questionnaire four times a year do not become so accustomed to the document that their responses are stale.

The Commission believes that some of the changes approved today are designed to ensure that floor traders will give appropriate attention to answering the questions on the questionnaire. For example, the decision to issue two versions of the questionnaire, one with questions positively worded and the other with questions negatively worded, will force floor brokers to treat each questionnaire as unique. In addition, the questionnaire now gives floor brokers the choice to sign the questionnaires, indicating the broker's willingness to discuss the evaluation with a Floor Governor. Providing a space for comments by the member's upstairs trading desk also is designed to elicit additional views on a specialist's performance.[8]

The Commission supports those amendments that are designed to avoid a conflict of interest by precluding brokers from rating specialist units which maintain Exchange Rule 325(e) financial responsibility guarantees for them or who have lease agreements with them. Avoiding even the appearance of a conflict of interest can strengthen the specialist system and the Exchange and instill confidence in the Exchange's SPEQ process.

The Commission believes that other changes to the SPEQ are reasonably designed to enhance the value of the questionnaire. For example, there is a new guideline that would enable eligible brokers from order-generating firms to rate the same specialist unit(s) in consecutive quarters, and a requirement that at least 40% of every unit's assigned evaluators must be brokers from order-generating firms. This would ensure input by brokers having the most relevant history with the specialist unit being evaluated. Moreover, based on recent experience, the Exchange has determined to give equal weight to the five functions evaluated in the questionnaire. The Commission believes it is reasonable for the NYSE to determine that the equal weighting of each category will more accurately reflect a specialist's performance.[9]

For the foregoing reasons, the Commission is approving the proposed rule change. The Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act[10] because it promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change can result in enhancing the Exchange's specialist evaluation process and that the proposal is likely to encourage improved specialist performance consistent with the protection of investors and the public interest. In this regard, the changes should help ensure the integrity of the specialist evaluation process, in addition to providing an opportunity for brokers in firms to provide more information on the evaluations which may be useful for both specialists and the Exchange in evaluating their performance. Further, the Commission finds that the proposal is consistent with section 11(b)[11] of the Act and Rule 11b–1[12] thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system.

IV. Conclusion

For the foregoing reasons, the Commission has determined to approve the proposed rule change.

It is therefore ordered, Pursuant to section 19(b)(1) of the Act, that the proposed rule change (NYSE–92–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30827 Filed 12–18–92; 8:45 am]

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[8] As noted above, specialists will also, under the proposal being approved herein, be provided with an alphabetized list of floor brokers that rated their unit, but would not be provided with the actual ratings from each broker. Because usually thirty to thirty-five brokers rate each unit, we do not believe providing this limited information to specialists should unduly inhibit brokers from honestly evaluating specialist.

[9] In Release No. 34–27675 (note 5, *supra*), the Commission first approved the current differential weighing scale for the five functions. Based on several review periods experience, the Exchange now believes that two of the functions were underweighted, and has determined to revert to equal weights. Telephone conversation between Brian McNamara, Managing Director, NYSE, and Sandra Sciole, Special Counsel, SEC, on October 13, 1992.

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] 15 U.S.C. 78k(b) (1988).

[12] 17 CFR 240.11b–1 (1992).

[13] 17 CFR 200.30–3(a)(12) (1989).

[Investment Company Act Release No. 19153; 811–5048]

National Global Allocation Fund; Application for Deregistration

December 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: National Global Allocation Fund.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on November 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 11, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, D.C. 20549. Applicant, Two Pickwick Plaza, Greenwich, Connecticut 06830.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management investment company registered under the Act. Until October 12, 1992, when it filed a dissolution of trust with the Massachusetts Secretary of State, applicant was a Massachusetts business trust.

2. On March 5, 1987, applicant filed a registration statement on form N-1A under the Securities Act of 1933 and section 8(b) of the Act to register an unlimited number of shares. The registration statement became effective on June 15, 1987, and the initial public offering commenced immediately thereafter.

3. On March 13, 1992 and June 12, 1992, applicant's board of trustees authorized an agreement and plan of reorganization (the "Plan") whereby applicant would transfer all of its assets and liabilities to National Worldwide Opportunities Fund ("Worldwide"), a registered investment company (File No. 811–945) organized under the laws of the Commonwealth of Massachusetts. On that same date, applicant's board of trustees also approved the proxy materials pursuant to which shareholder approval of the Plan was solicited.

4. Applicant had 3,542,154.491 shares outstanding, with each share having a net asset value of $11.69 as of July 31, 1992. On or about August 24, 1992, applicant distributed to its shareholders proxy materials relating to the proposed reorganization. At a special meeting held on September 25, 1992, a majority of applicant's shareholders approved the Plan.

5. Pursuant to the Plan and in compliance with rule 17a-8, at the end of the business day on September 25, 1992, applicant transferred to Worldwide all of its existing assets and liabilities in exchange for Worldwide shares, both full and fractional, having an aggregate net asset value equal to applicant's aggregate net asset value. Applicant then distributed pro rata the Worldwide shares to applicant's record shareholders in complete liquidation and termination of applicant.

6. Applicant and Worldwide respectively assumed the expenses applicable to the Plan. Such expenses consisted of legal fees, registration fees, transfer taxes (if any), the fees of banks and the transfer agent, the cost of preparing, printing, copying, and mailing proxy solicitation materials, and the cost of the proxy solicitor. No brokerage commissions were paid in connection with the Plan.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[Release No. 35–25707]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 14, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. all interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 7, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Hope Gas, Inc.

[70–8091]

Hope Gas, Inc. ("Hope Gas"), 600 Union National Center West, Clarksburg, West Virginia 26302, a wholly owned gas public-utility subsidiary company of Consolidated Natural Gas Company, a registered holding company, has filed an application under section 9(c)(3) of the Act.

Hope Gas proposes to acquire before December 31, 1993, a limited partner interest in Vandalia Capital Limited Partnership (the "Partnership"), a West Virginia limited partnership, by acquiring 10 Class B Units of the Partnership for an aggregate purchase price of $1 million. The Partnership, which will have a ten-year term, will be qualified as a West Virginia Capital Company under the West Virginia Capital Company Act, part of a program to encourage private venture capital investments in West Virginia businesses by providing certain state tax credits equal to 50% of their venture capital investment. The Partnership also intends to form and seek federal approval for a Small Business Investment Corporation as the primary investment vehicle for the Partnership. The Partnership may also participate jointly in pooled investments with other capital companies.

Hope Gas will be the sole owner of the Class B Units, holding 25% of the equity of the Partnership. The Class B Units entitle Hope Gas to certain tax credits, which it estimates will result in net tax savings of $650,000.

The general partner of the Partnership will be responsible for the management and investment decisions of the Partnership. Hope Gas' voting power will be limited to dissolving the Partnership and amending certain Partnership provisions; Hope Gas, however, will have no power to remove the general partner, or elect a new general partner.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30826 Filed 12-18-92; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Terra Industries, Inc., Common Shares, No Par Value) File No. 1-8520

December 15, 1992.

Terra Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, it decided to withdraw the above-specified security from listing on the PSE because the Company believes that its trading volume of the Shares on the Exchange is limited. The Company's major stockholders see no advantage in retaining such listing. Also, according to the Company, it has adequate liquidity in the Shares as a result of the listing of the Shares on the New York Stock Exchange, Inc. ("NYSE") and Toronto Stock Exchange, Inc. ("TSE"). The Company believes that continued listing of the Shares on the Exchange would involve unnecessary expense.

Any interested person may, on or before January 7, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-30824 Filed 12-18-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Acting Secretary of State

[Public Notice 1744]

Cross Border Transportation Facilities

AGENCY: Department of State.

ACTION: Notice of application.

SUMMARY: Notice is hereby given that the Department of State has received as application for a Presidential permit to build and operate a railway tunnel connecting the United States and Canada between Sarina, Ontario and Port Huron, Michigan.

DATES: Interested parties are invited to submit, in duplicate, comments relative to the proposal on or before January 21, 1993.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport (EB/TRA/MA), room 5828, Department of State, Washington, DC 20520-5816.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport, Department of State, Washington, DC 20520-5820 (202) 647-6961.

SUPPLEMENTARY INFORMATION: The Department of State has received an application from the Canadian National Railway Company ("CN"), a Canadian corporation, and three of its wholly owned U.S. subsidiaries, Grand Trunk Corporation, St. Clair Tunnel Company and the St. Clair Tunnel Construction Company, for a Presidential permit to construct and operate a railway tunnel which will connect the United States and Canada under the St. Clair River between Sarnia, Ontario and Port Huron, Michigan.

The new tunnel would be built approximately 80 feet to the north of an existing tunnel currently operated by CN. It would be used to transport railcars containing freight and passengers. The existing tunnel is not large enough to accommodate modern railroad cars such as bi- and tri-level cars used extensively by the automotive industry and double-stacked intermodal container cars. The applicants propose to take the existing tunnel out of service and fill it in once the new tunnel is in service.

Dated: December 14, 1992.

Arnold Kanter,

Acting Secretary of State.

[FR Doc. 92-30843 Filed 12-18-92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 11, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of the date of filing.

Docket Number: 48529
Date filed: December 7, 1992
Parties: Members of the International Air Transport Association
Subject: Telex TC31 Mail Vote 605 Add-on Amounts (in USA)
Proposed Effective Date: April 1, 1993

Docket Number: 48534
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: PSC/Reso/067 dated November 23, 1992, Expedited Resolution—Issue 2, 14 IATA PSC-13th Joint IATA/ATA PSC
Proposed Effective Date: Expedited January 1, 1993

Docket Number: 48535
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: PSC/Reso/066 dated November 23, 1992, Finally Adopted Resos r-1 to r-63, 14th PSC-13th Joint IATA/ATA PSC
Proposed Effective Date: June 1, 1993

Docket Number: 48536
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1341 dated December 1, 1992, Europe-Africa Expedited Resos, r-1-021 r-2-003b
Proposed Effective Date: Expedited January 1, 1993

Docket Number: 48538
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/C 0895 dated May 1, 1991, North Atlantic Areawide Cargo Resos r-1, to r-2, TC12 Reso/C 0897 dated May 1, 1991, North Atlantic-Africa Cargo Resos r-3 to r-5, TC12 Reso/C 0899 dated May 1, 1991, North Atlantic-Middle East Cargo Resos r-6, TC12 Reso/C 0901 dated May 8, 1991, Europe to US/UST Cargo Resos r-11
Proposed Effective Date: Upon Government Approval

Docket Number: 48539
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0470 dated May 8, 1991, Composite Reso 004z,

(Summary attached.)
Proposed Effective Date: Upon Government Approval
Docket Number: 48540
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0462 dated February 11, 1991, Composite Reso 025b as it pertains to Area 12 and Area 123
Proposed Effective Date: Upon Government Approval
Docket Number: 48541
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: TC123 Reso/C 0026 dated April 22, 1991, TC1-South Asian subcontinent via Atlantic, TC123 Rates 0013 dated May 27, 1991—Tables r–l–554d r–2–590 r–3–015aa
Proposed Effective Date: Upon Government Approval
Docket Number: 48542
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0521 dated September 15, 1992 Resolution 003rr
Proposed Effective Date: October 1, 1992
Docket Number: 48543
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0529 dated November 3, 1992, Composite Reso 002oo as it pertains to U.S. markets
Proposed Effective Date: December 1, 1992
Docket Number: 48544
Date filed: December 9, 1992
Parties: Members of the International Air transport Association
Subject: Comp Reso/C 0528 dated October 30, 1992, North Atlantic US–Europe cargo resos, TC12 Rates 0481 dated October 30, 1992—Tables, TC12 Rates 0482 dated October 30, 1992—Tables
Proposed Effective Date: December 1, 1992

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–30894 Filed 12–18–92; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 11, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48547
Date filed: December 11, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1992
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal and amendment of its certificate of public convenience and necessity for Route 543 to authorize foreign air transportation of persons, property and mail between any point in the United States and any point in Venezuela.

Docket Number: 48548
Date filed: December 11, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1992
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 542 (Puerto Rico-Caracas).

Docket Number: 48550
Date filed: December 11, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1993
Description: Application of Air Ukraine, pursuant to section 402 of the Act and subpart Q of the Regulations requests a foreign air carrier permit authorizing it to engage in foreign scheduled air transportation of persons, property and mail as follows: From a point or points in Ukraine to New York, New York, Chicago, Illinois, and Washington, DC, United States of America.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–30891 Filed 12–18–92; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Control of Parts Shipped Prior to Type Certificate Issuance

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice of availability.

SUMMARY: This notice announces the availability of an Advisory Circular (AC) concerning the Control of Parts Shipped Prior to Type Certificate Issuance. This Advisory Circular provides information and guidance to the general public and the aviation industry concerning compliance with the Federal Aviation Regulation concerning certification procedures for products and parts.

ADDRESSES: Copies of AC 21–32 can be obtained from the following: Federal Aviation Administration, Department of Transportation, Utilization and Storage Section, M443.2, 400 Seventh Street SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Aircraft Manufacturing Division, Production Certification Branch, AIR–220, room 333, 800 Independence Avenue SW., Washington, DC 20591, phone: (202) 267–8361.

SUPPLEMENTARY INFORMATION: This AC provides information and guidance concerning the control of parts proposed to be shipped by manufacturers with an approved production inspection system (APIS) or production certificate (PC) (production approval holders) in advance of type certification of a new aircraft, aircraft engine, or propeller (product).

Issued in Washington, DC on October 16, 1992.

Janice W. Elrod,
Acting Assistant Manager, Aircraft Manufacturing Division.
[FR Doc. 92–30889 Filed 12–18–92; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–92–37]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified

requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 11, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 14, 1992.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26440.
Petitioner: Falcon Jet Corporation.
Sections of the FAR Affected: 14 CFR 47.65 and 47.69(b).
Description of Relief Sought: To allow the extension of the termination date of Exemption No. 5315, which expires on May 30, 1993, and which permits Falcon Jet Corporation to obtain a Dealer's Aircraft Registration Certificate without meeting the United States citizenship requirements, and to conduct limited flights outside of the United States under the certificate, subject to conditions and limitations.

Docket No.: 110CE
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 23.53(c)(1).
Description of Relief Sought: To allow Beech Aircraft Corporation to use the ground minimum control speed to determine the takeoff decision speed for its Beech Models B300 and B300C.

Docket No.: 110CE.
Petitioner: Advanced Aerodynamics and Structures, Inc.
Sections of the FAR Affected: 14 CFR 23.903(e)(2).
Description of Relief Sought: To allow the Advanced Aerodynamics and Structures, Inc.'s Jetcruzer 450 to operate with a PT6A–27 Turboprop engine without complying with the stop rotation requirement of the rule.

Dispositions of Petitions

Docket No.: 25636.
Petitioner: International Aero Engines AG.
Sections of the Far Affected. 14 CFR 21.325(b)(1) and (3).
Description of Relief Sought/ Disposition: To allow export airworthiness approvals to be issued for Class I products (engines) assembled and tested in the United Kingdom, and for Class II and III products manufactured in the International Aero Engines consortium countries of Italy, West Germany, Japan, and the United Kingdom.
Grant, December 7, 1992, Exemption No. 4991B

Docket No.: 25743.
Petitioner: Mr. Ted Rutherford.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To allow Mr. Rutherford to serve as a pilot on an airplane engaged in operations under this part after his 60th birthday.
Denial, November 30, 1992, Exemption No. 5564

Docket No.: 26548.
Petitioner Mr. Joseph S. Davis, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To allow Mr. Joseph S. Davis, Jr. to serve as a pilot on an airplane engaged in part 121 operations after his 60th birthday.
Denial, December 3, 1992, Exemption No. 5571

Docket No: 26593.
Petitioner: Mr. Robert M. Orr.
Sections of the FAR Affected: 14 CFR 121.383 (c).
Description of Relief Sought/ Disposition: To allow Mr. Orr to serve as a pilot after his 60th birthday on an airplane engaged in operations under this part during the en route cruise portion of flight, pursuant to the duties and limitations of 14 CFR 121.543(b) of the FAR, entitled "Flight Crewmember at Controls".
Denial, November 30, 1992, Exemption No. 5563

Docket No: 26686.
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(2).
Description of Relief Sought/ Disposition: To allow Evergreen International Airlines, Inc., to transport persons who are not company employees in its airplanes without complying with certain passenger-carrying airplane requirements, operation requirements, and certain passenger requirements.
Denial, November 30, 1992, Exemption No. 5565

Docket No: 27015.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.311(b) and (c).
Description of Relief Sought/ Disposition: To allow member airlines of the Air Transport Association of America and other similarly situated part 121 operators to extend the effective date by which they must comply with the portions of this section that address the use of child restraint systems on aircraft.
Denial, November 30, 1992, Exemption No. 5566

[FR Doc. 92–30879 Filed 12–18–92; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–92–38]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitioners.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 11, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 14, 1992.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27039.
Petitioner: William A. McCullough.
Sections of the FAR Affected: 14 CFR 61.103(a).
Description of Relief Sought: To allow Mr. McCullough an exemption from the regulation that requires a person to be at least 17 years of age to be eligible for a private pilot certificate, and to allow him to accrue Pilot-in-Command flight time in cross-country flights in a powered aircraft with other than a student pilot certificate in order to apply for an instrument rating. Mr. McCullough is a 16-year-old student pilot who currently meets the knowledge, proficiency, and experience requirements to apply for a private pilot certificate.

[FR Doc. 92–30882 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Systems Design and Analysis Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Systems Design and Analysis Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Systems Design and Analysis Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)–Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Systems Design and Analysis Harmonization Working Group.

Specifically, the Working Group's task is the following: The Systems Design and Analysis Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Equipment, Systems and Installations: Develop guidance material concerning the evaluation and control of certification maintenance requirements created to satisfy the requirements of FAR 25.1309 for newly certificated transport category airplanes (AC 25.1309–1A; ref. FAR 25.1309).

Reports: A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C, below.

C. Draft a change to Advisory Circular 25.1309–1A providing appropriate guidance material.

D. Give a status report on each task at each meeting of the Subcommittee.

The Systems Design and Analysis Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory

Committee Act. Meetings of the Systems Design and Analysis Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30884 Filed 12-18-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Subcommittee: International Certification Procedures Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the International Certification Procedures Working Group.

SUMMARY: Notice is given of the establishment of the International Certification Procedures Working Group by the Aircraft Certification Procedures Subcommittee. This notice informs the public of the activities of the Aircraft Certification Procedures Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Aircraft Certification Procedures Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Aircraft Certification Procedures Subcommittee was established subsequently meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the aircraft certification procedures in part 21 of the Federal Aviation Regulations (57 FR 39267; August 28, 1992).

The FAA announced at the Joint Aviation Authorities (JAA)–Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2-5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Aircraft Certification Procedures Subcommittee those rulemaking projects related to international certification procedures for type certification of new and derivative aircraft which were then in the process of being coordinated between the JAA and the FAA. The Harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Aircraft Certification Procedures Subcommittee, consequently, established the International Certification Procedures Working Group.

Specifically, the Working Group's tasks are the following: The International Certification Procedures Working Group is charged with making recommendations to the Aircraft Certification Procedures Subcommittee concerning the FAA disposition of the following rulemaking subject recently coordinated between the JAA and the FAA:

The International Certification Procedures Working Group is charged with making recommendations to the Aircraft Certification Procedures Subcommittee concerning the FAA disposition of rulemaking subjects recently coordinated between the JAA and the FAA concerning the type certification procedures for changes to aeronautical products. Specifically, considering factors such as safety benefits, resources, and service experience, the working group should address the following issues:

1. Can later revisions of the airworthiness standards be used for the certification basis of changes to aeronautical products?

2. Can later revisions of the airworthiness standards be incorporated into the existing fleet?

3. Can new revisions of the airworthiness standards be incorporated into aeronautical products in production and in operation, as well as in new designs?

Reports: A. Recommend time line(s) for completion of the task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on the task to the Subcommittee before proceeding with the work stated under item C through E, below.

C. Draft a Notice of Proposed Rulemaking for the tasks proposing new or revised requirements, a supporting economic analysis, and other required analysis.

D. Draft an advisory circular to provide guidance complementing the rules proposed in the Notice of Proposed Rulemaking, and any other collateral documents the working group determines to be needed.

E. Recommend a training syllabus for FAA employees charged with administering the rule, including videotapes and other training support.

F. Give a status report on the task at each meeting of the Subcommittee.

The International Certification Procedures Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Aircraft Certification Procedures Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should *write* the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the International Certification Procedures Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Aircraft Certification Procedures Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30887 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Certification Procedures Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aircraft Certification Procedures Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 14, 1993, at 9 a.m. Arrange for oral presentations by December 29, 1992.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1 , 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aircraft Certification Procedures Subcommittee to be held on January 14, 1993, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda will include:

- Organization of the subcommittee.
- Report from the International Certification Procedures Harmonization Working Group.
- Report from other working groups established before the meeting.
- A discussion of future meeting dates, activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by December 29, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Aircraft Certification Procedures Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30885 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–3–M

Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 12, 1993, at 9 a.m. Arrange for oral presentations by December 29, 1992.

ADDRESSES: The meeting will be held at the Holiday Inn, 1600 South Country Club Drive, Mesa, AZ 85210.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Rotorcraft Subcommittee to be held on January 12, 1993, at the Holiday Inn, 1600 South Country Club Drive, Mesa, AZ 85210. The agenda will include:

- Report from the External Load Working Group.
- Report from the JAR/FAR 27 and 29 Harmonization Working Group.
- Report from the Occupant Restraint Working Group.
- Review of planned FAA rulemaking and advisory circular projects.
- Discussion of subcommittee procedures.
- A discussion of activities and future plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by December 29, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 16 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Rotorcraft Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30886 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–3–M

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 28, 1993, at 9 a.m. Arrange for oral presentations by January 14, 1993.

ADDRESSES: The meeting will be held in the Boardroom, Air Transport Association of America, suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20046–1707.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II). notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on January 28, 1993, in the Boardroom, Air Transport Association of America, suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004–1707. The agenda for this meeting will include:

- A status report by the Performance Standards Working Group.
- A report by the Special Task Group recommending approaches to take in developing performance standards.
- A discussion of future activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 14, 1993, to present oral statement at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed

under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30883 Filed 12-18-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In November 1992, there were 11 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Westchester, White Plains, New York.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $27,883,000.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: June 1, 2022.

Class of Air Carriers Not Required to Collect PFC'S: Air charter operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Construct peripheral safety road,
Construct parallel taxiways and taxiway system,
Heated snow removal equipment and materials storage building,
Construct general aviation infrastructure,
Land acquisition.

Brief Description of Project Disapproved: Construct new aircraft and firefighting (ARFF) training facility.

Determination: The new ARFF training facility project has been reviewed under AIP criteria (paragraph 301b and 500 of FAA Order 5100.38A), which, respectively, permit projects to be reviewed on a case-by-case basis and preclude AIP eligiblity for any development which exceeds standards or requirements established by the Secretary of Transportation. Such standards and requirements as are applicable to ARFF training facilities were established in guidance distributed by the FAA on June 4, 1991. Pursuant to that guidance, the FAA has implemented criteria under which only regional ARFF training facilities are eligible under the AIP. Inasmuch as two regional ARFF training facilities are located within 50 miles of Westchester County Airport (HPN), the proposed facility at HPN would exceed standards and is not eligible for either AIP or PFC funding. In addition, the FAA has determined that this project does not enhance safety, security, or capacity, mitigate noise impacts or furnish opportunities for enhanced competition between or among carriers. Therefore, this project is not PFC eligible.

Decision Date: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (718) 917-1882.

Public Agency: Yakima Air Terminal Board, Yakima, Washington.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $416,256.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: April 1, 1995.

Class of Air Carriers Not Required to Collect PFC'S:

Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators operating public or private charters in aircraft with a seating capacity of 60 or more.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Master plan update,
Rehabilitate runway 9-27 high intensity runway light system,
Update airport electrical system,
Purchase snow removal equipment, snow blower,
Taxiway guidance sign modifications,
Air cargo apron, design phase,
Construct air cargo ramp,
Security improvements, automatic gates, fence, and signs,
Airport access road, Circle Drive renovation,
Purchase of passenger access lift for mobility-impaired passengers,
Install elevator for handicapped access, terminal building, second floor,
Heating, ventilation, and air conditioning, terminal building, lobby and concourses,
Renovation of baggage claim area,
Purchase of a runway vacuum sweeper,
Consultant services for environmental assessment, project formulation, scope of work, and cost estimates for runway 9-27 rehabilitation.

Brief Description of Projects Disapproved: Snow removal equipment, ramp plow/loader.

Determination: Section 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving approval to use PFC revenue on that project. Therefore, all projects approved in this application must begin implementation by no later than November 1994. The schedule submitted with the application shows an implementation date of October 1995 for this project.

Radio Equipment.

Determination: This type of equipment is included as a nonallowable item in Appendix 2 of FAA Order 5100.38A, AIP Handbook. The project does not meet the criteria included in section 158.15(b); therefore, it is not PFC eligible.

Decision Date: November 10, 1992.

FOR FURTHER INFORMATION CONTACT: Paul F. Johnson, Seattle Airports District Office, (206) 227-2655.

Public Agency: Guam Airport Authority, Tamuning, Guam.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $5,632,000.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: June 1, 1994.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Conduct environmental assessment,
Runway improvements, 1992,
Environmental assessment for Navy land acquisition,
Apron 1 through 9 rehabilitation,
Apron 11 through 13 construction reimbursement (sponsor share).

Decision Date: November 10, 1992.

FOR FURTHER INFORMATION CONTACT: Henry A. Sumida, Honolulu Airports District Office, (808) 541-1230.

Public Agency: City of Tallahassee, Tallahassee, Florida.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $8,617,154.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: December 1, 1998.

Class of Air Carriers not Required to Collect PFC's:

Part 135 air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Overlay runway 9/27 and taxiway, upgrade taxiway lighting,
Construct perimeter security fence and security access system,
Update airport master plan and noise study,
Construct covered walkway and handicap ramp, other terminal improvements for Americans with Disabilities Act compliance,
Overlay south apron,
Overlay runway 18/36 and taxiways, associated projects,
Construct service road west of runway 9/27 and construct perimeter road east and south of runway 9/27,
Overlay old terminal ramp for general aviation,
Purchase quick response aircraft rescue and firefighting (ARFF) vehicle,
Purchase a 3,000 gallon ARFF vehicle,
Construct taxiway for T-hanger access.

Brief Description of Project Approved in Part for Collection: Construct 10,000 square foot ARFF building.

Determination: The amount of approved PFC revenue reflects a decrease from the requested amount of $950,000. This reduction limits the approved PFC amount to a three bay facility rather than the four bay facility requested. The reduction is based on the current and projected ARFF index for the airport. As such, only a three bay facility is AIP eligible and, accordingly, the PFC approved amount is limited to this level.

Brief Description of Projects Disapproved for Collection: Acquire property (6.85 acres).

Determination: The public agency did not provide information to show that the project meets the project eligibility criteria of section 158.15(a). As such, the FAA is unable to determine that the project would preserve or enhance safety, security, or capacity at Tallahassee Regional Airport (TLH); reduce noise or mitigate noise impacts; or furnish opportunities for enhanced competition between or among air carriers.

Relocate airport surveillance radar (ASR) site.

Determination: The relocation of air traffic facilities, including ASR facilities, are eligible under the definition of airport development contained in the Airport and Airway Improvement Act of 1982 (503(a)(2)), provided that the relocation is necessitated by AIP-eligible development. However, the public agency did not demonstrate that the relocation is necessitated by AIP-eligible development, therefore, this project is not PFC eligible under section 158.15(b).

Construct new ARFF training facility.

Determination: The FAA has determined that this project does not enhance safety, security, or capacity, mitigate noise impacts, or furnish opportunities for enhanced competition between or among carriers. The FAA is currently implementing a policy of funding only regional ARFF training facilities. TLH is located within reasonable proximity to a previously designated regional ARFF facility at Ocala, Florida.

Decision Date: November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Carlos Maeda, Orlando Airports District Office, (407) 648–6583.

Public Agency: Grand Forks Regional Airport Authority, Grand Forks, North Dakota.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,016,509.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: February 1, 1997.

Class of Air Carriers not Required to Collect PFC'S: Part 135 operators providing unscheduled passenger/charter services operating aircraft with a passenger capacity of less than 30 seats.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Terminal building expansion,
Reconstruction of runway 8–26 and taxiway B,
Rejuvenation of runway 35L–17R porous friction course,
Purchase of self-propelled broom,
T-hanger taxiway,
Construction of general aviation ramp for aircraft maintenance facility.

Brief Description of Projects Approved to Impose Only:

Reconstruct/widen taxiway A,
Snow plow replacement,
Expansion of general aviation ramp,
Expand air cargo ramp,
Construction of high-speed exists on runway 17L–35R and runway 8–26.

Decision Date: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Irene Porter, Bismarck Airports District Office, (701) 250–4385.

Public Agency: County of Delta, Escanaba, Michigan.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approval Net PFC Revenue: $158,325.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: August 1, 1996.

Class of Air Carriers not Required to Collect PFC's: Air taxi and charter operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved to Impose Only:

Acquire land (26.5 acres) including relocation assistance,
Professional engineering services for rehabilitation, widening extension, and installation of porous friction course of runway 18/36 including medium intensity runway lights (MIRL), and new parallel taxiway including medium intensity lights (MITL),
Rehabilitate, widen, and extend runway 18/36, construct runway 18/36 porous friction, course, rehabilitate MIRL, construct north/south parallel taxiway and MITL.

Decision Date: November 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dean Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: Telluride Regional Airport Authority, Telluride, Colorado.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $200,000.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: November 1, 1997.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose and Use: Construct terminal building.

Decision Date: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Dakota L. Chamberlain, Denver Airport District Office, (303) 286–5537.

Public Agency: City of Pensacola, Pensacola, Florida.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $4,715,000.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: April 1, 1996.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved to Impose and Use: Land acquisition.

Brief Description of Projects Approved to Impose Only:

Extend passenger terminal,
Provide a vegetation barrier,
Purchase navigation easements.

Brief Description of Project Approved in Part to Impose and Use: Construct a midfield service road.

Determination: A portion of this road, from the perimeter road to the ARFF facility, is AIP eligible and will preserve safety at Pensacola Regional Airport (PNS). The remainder of the road, from the ARFF facility to the air traffic control tower is not AIP eligible; therefore, that portion of the road is not PFC eligible and the approved amount has been reduced from the requested amount accordingly.

Brief Description of Project Disapproved: Conduct a master plan drainage study.

Determination: The state has asked the city of Pensacola to conduct a drainage study to obtain "conceptual permits"; however, the state has not been specific as to what is required. The city of Pensacola has not provided sufficient information in the application to permit an FAA determination that this project is AIP eligible as a stand-alone project.

Decision Date: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Carlos Maeda, Orlando Airports District Office, (407) 648–6583.

Public Agency: Humboldt County, Arcata, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $188,500.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: May 1, 1994.

Class of Air Carriers Not Required to Collect PFC's. None.

Brief Description of Projects Approved to Impose and Use:

Overlay and groove runway 14/32,
Rehabilitate aircraft rescue and firefighting vehicle, Runway, taxiway, and ramp area seal coat; reconstruct transient apron; construct tiedown apron and access area (including hangar demolition); replace wind sock; and replace perimeter fence.

Decision Date: November 24, 1992.

FOR FURTHER INFORMATION CONTACT: Joe Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: County of San Luis Obispo, San Luis Obispo, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $502,437.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: February 1, 1995.

Class of Air Carriers Not Required to Collect PFC's. Part 135 air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual employments.

Brief Description of Projects Approved to Impose and Use:

Acquire runway protection zone and approach protection land,
Extend perimeter fencing and gates; improve fire station apron; replace segmented circle; improve and replace rotating beacon,
Acquire approach protection land; update airport master plan; grade runway safety area; acquire wheelchair lift device,
Expand air carrier apron,
Expand air carrier terminal building—phase I (professional services).

Decision Date: November 24, 1992.

FOR FURTHER INFORMATION CONTACT: Joe Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $167,574,527.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: February 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose and Use:

Roadway to southern connector,
International passenger terminal,
Airside 1 expansion and rehabilitation,
West ramp rehabilitation,
Runway 18L/36R rehabilitation.

Brief Description of Project Approved in Part to Impose and Use:
Environmental planning and approvals for the north crossfield taxiway.

Determination: The scope of this project includes preliminary design work which is beyond what is required for the environmental planning and is disapproved. The remainder of the project is AIP eligible and development which may be undertaken following completion of the environmental process would enhance capacity at MCO. The approved amount has been reduced from the requested amount to only those costs related to the approved portion of the project.

Decision Date: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Pablo Affant, Orlando Airport District Office, (407) 648–6583.

Issued in Washington, D.C. on December 14, 1992.

Donna P. Taylor,

Manager, Passenger Facility Charge Branch.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge, effective date	Estimated charge, expiration date[1]
ALABAMA					
Huntsville Intl-Carl T. Jones Field, Huntsville	03/06/1992	$3	$20,831,051	06/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge, effective date	Estimated charge, expiration date [1]
ARIZONA					
Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
CALIFORNIA					
Metropolitan Oakland International, Oakland	06/26/1992	3	8,736,000	09/01/1992	09/01/1993
Palm Springs Regional, Palm Springs	06/25/1992	3	44,612,350	10/01/1992	06/01/2019
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
COLORADO					
Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
FLORIDA					
Southwest Florida Regional, Fort Myers	08/31/1992	3	257,673,262	11/01/1992	06/01/2015
Sarasota-Bradenton, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
GEORGIA					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
IDAHO					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	.....
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
ILLINOIS					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
ILLINOIS					
Capital, Springfield	03/27/1992	3	682,306	06/01/1992	05/01/1994
IOWA					
Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
LOUISIANA					
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
MARYLAND					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
MASSACHUSETTS					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
MICHIGAN					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
MICHIGAN					
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
MINNESOTA					
Minneapolis-St Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
MISSISSIPPI					
Golden Triangle Regional, Columbus	05/06/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Laurel-Hattiesburg	04/15/1992	3	119,153	07/01/1992	01/01/1998
Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
MISSOURI					
Lambert-St Louis International, St Louis	09/30/1992	3	131,453,450	12/01/1992	12/01/1997
MONTANA					
Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge, effective date	Estimated charge, expiration date[1]
NEVADA					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
NEW HAMPSHIRE					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
NEW JERSEY					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
NEW YORK					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
John F Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
OHIO					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Fort Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
OKLAHOMA					
Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
OREGON					
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
PENNSYLVANIA					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
TENNESSEE					
Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
TEXAS					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
VIRGINIA					
Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
WASHINGTON					
Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
WEST VIRGINIA					
Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 92-30890 Filed 12-18-92; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with title 49, Code of Federal Regulations, §§ 211.9 and 211.41, (49 CFR) notice is hereby given that the Federal Railroad Administration (FRA) has received from Southeastern Pennsylvania Transportation Authority (SEPTA) a request for exemptions from or waivers of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Southeastern Pennsylvania Transportation Authority

Waiver Petition, Docket Number LI-92-9

SEPTA is seeking a waiver of compliance from § 229.29(a) of the Railroad Locomotive Safety Standards, 49 CFR part 229. SEPTA is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 736 days (24 months) to 1104 days

(36 months) on 304 electric multiple unit cars equipped with 26–R and PS–68 air brake equipments. This equipment utilizes the same control and relay valves as the 26–L locomotive system for which a waiver was granted in January 29, 1985.

SEPTA states that the air supply system on the subject cars is equipped with a desiccant dryer with a coalescer filter which will be maintained on an annual basis. This will ensure a clean, dry air supply to all valves. The railroad states the change will utilize manpower more efficiently, and conserve scarce resources while maintaining a safe operation.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–92–9) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before January 19, 1993, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on December 14, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–30804 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Docket No. 92–50; Notice 2

Autokraft Limited; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the petition by Autokraft Limited of Weybridge, Surrey, England, for a temporary exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*. The basis of the petition was that compliance would cause it substantial economic hardship.

Notice of receipt of the petition was published on October 1, 1992, and an opportunity afforded for comment (57 FR 45416).

Petitioner sought a two-year exemption for its A.C. Mark IV ("MkIV" herein) passenger car. The basis for the petition was that immediate compliance with the automatic restraint requirements of Standard No. 208 would cause the petitioner substantial economic hardship, within the meaning of 49 CFR 555.6(a). Petitioner's total motor vehicle production in the 12 months preceding the filing of the petition was 45 units. It projected sales of 50 vehicles per year.

The Autokraft A.C. MkIV, according to petitioner, "is the only Cobra-like vehicle which is produced from original Cobra tooling. The original A.C. Cobras, both 289 and 427 versions, manufactured by A.C. Cars in Thames Ditton, Surrey, England, are no longer in production." Further, "Because of public interest, the A.C. Cobra is reported to be the most duplicated vehicle of all time." In August 1991, the petitioner decided to introduce the MkIV into the American market. In the year preceding the filing of its petition, it expended approximately 1,200 man hours and 64,000 Pounds Sterling on the project. It examined both automatic belt systems and air bags in its review of Standard No. 208, and was unable to identify any automatic belt system that it could install in the MkIV that would allow it to conform to the automatic restraint requirements. It also examined available air bag systems because designing a proprietary system is cost and time prohibitive.

The modifications required to adapt an existing air bag system to the MkIV were estimated to total in cost $790,000. The components of this cost are modifications to the steering column ($50,000), modifications to the underhood packaging, etc. ($40,000), design and development of a knee bolster system and tooling, and dashboard modifications ($200,000), and all relevant testing costs ($500,000). In order not to duplicate its costs, the petitioner wished to develop a passenger-side air bag system at the same time, at an estimated additional cost of $300,000. These costs were said to be prohibitive without the sale of vehicles to fund the development program. The two-year period requested would provide time for Autokraft to develop and implement its fully-complying air bag systems, and to generate sufficient income to fund the project. In the interim, the MkIV will be equipped "with a four point belt system on the driver and passenger side of the vehicle." In substantiation of its hardship argument, petitioner submitted its balance sheets and income statements for the past three fiscal years, plus the first six months of 1992. It reported a net loss of 186,318 Pounds Sterling in the first half of 1992 (or $348,415 at a rate of $1.87 to 1 Pound), a net profit of 604,487 Pounds Sterling in 1991 (or $1,130,391 at the same rate), and a cumulative net profit as of June 30, 1992, of 1,073,752 Pounds Sterling (or $2,007,916).

According to the petitioner, a temporary exemption would be in the public interest because it would allow sale of a vehicle that is "the only true alternative" to the original Cobra vehicles, and result "in the establishment of dealer and service networks which would increase stateside employment and generate tax revenues." An exemption would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act "since they meet all FMVSS and NHTSA standards, except for the passive restraint portion of standard 208 and are equipped with a superior four point seat belt system which ensures the safety of the driver and passenger."

NHTSA observed that Standard No. 208, through its incorporation by reference of Standard No. 209, specifies requirements for two and three point non-automatic occupant restraint systems, but does not include the four point system that the petitioner installs in the MkIV. Thus, any exemption would be from Standard No. 208 in its entirety, not just paragraph S4.1.4. NHTSA invited the petitioner to comment on the extent to which its four point system and its installation may otherwise conform to the requirements of Standard No. 208 and Standard No. 209.

No comments were received on the petition.

In granting a petition of this nature, the Administrator must find that the petitioner has made a good faith effort to conform to the standard, that immediate compliance with it would cause the petitioner substantial economic hardship, and that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act ("the Act").

The petition indicates that, in the year preceding its filing, the petitioner spent 1,200 man hours and $119,680 on researching the means to comply with

the automatic restraint requirements, and reaching an understanding of the costs involved in achieving compliance. Therefore, NHTSA find that Autokraft has made the requisite good faith effort.

Reasonably, Autokraft seeks to achieve air bag protection for both driver and passenger at the same time. The total costs estimated for compliance are $1,090,000. This is almost equal to the company's net income for 1991 of $1,130,391.

Although the company had a reasonably comfortable cumulative net profit as of June 30, 1992, Autokraft suffered a net loss for the first six months of this year. This could indicate continuing losses without the availability of the American market. To implement an automatic restraint development program on a crash basis might affect the company's reserves while a phased-in program over the next two years would allow more flexibility in budgetary planning and allocations. NHTSA therefore finds that immediate compliance would cause Autokraft substantial economic hardship.

The sales and service facilities, and tax revenues, that might result form an exemption would appear to be small, but real nonetheless. Further, in enacting the act, Congress intended that the public be afforded a continuing wide choice of vehicles. Finally, the petitioner has informed NHTSA that the Mk IV vehicles to be sold in the U.S. will be equipped with a three-point restraint system for both driver and passenger that complies with the requirements of Standards Nos. 208 and 209. Therefore, NHTSA finds that a temporary exemption would be in the public interest and consistent with the objectives of the Act.

In consideration of the foregoing, Autokraft Ltd. is hereby granted NHTSA Temporary Exemption No. 92–6, expiring January 1, 1995, from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50).

Issued on December 14, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92–30803 Filed 12–18–92; 8:45 am]

BILLING CODE 4910-59-M

Docket No. 92–55; Notice 2

Isis Imports Ltd.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Standard No. 208

This notice grants the petition by Isis Imports Ltd. of San Francisco, California, for a temporary exemption from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the petition was that compliance would cause substantial economic hardship, and that the petitioner has, in good faith, attempted to meet the requirements of the standard.

Notice of receipt of the petition was published on October 13, 1992, and an opportunity afforded for comment (57 FR 46896).

Petitioner was previously granted a 3-year exemption from paragraphs S4.1.2.1 and S4.1.2.2 of Standard No. 208, which expired October 1, 1992 (54 FR 43647).

The make and type of passenger car for which exemption was requested is the Morgan convertible. The British manufacturer of the Morgan has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In recent years, however, Isis has bought a small number of disassembled vehicles from Morgan, imported the parts, assembled the vehicles, and sold them in the United States. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their engines, which are propane fueled. As the assembler of the vehicle, Isis certifies conformance to all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The vehicle assembled by Isis in the U.S. is deemed sufficiently different from the one produced by Morgan in England that Isis may be regarded as its manufacturer, not its converter, even though the brand names are the same.

Isis assembled 11 Morgans for sale in the U.S. in the 12-month period preceding the filing of its petition. It asked for a further 3-year exemption from the automatic restraint requirements of Standard No. 208, during which time it would continue to provide protection through its current three-point lap-shoulder belt system. However, before the end of that time, it hopes to be able to offer an air bag system.

In arguing that compliance would cause it substantial economic hardship and that it had in good faith attempted to meet the requirements of the standard, Isis related its efforts to conform while the previous exemption was in effect. Initially, it had continued to pursue research on automatic belt systems, obtaining seat belt hardware and motor drive assemblies, and created a mock-up. However, both petitioner and Morgan's engineering staff concluded that this system was not feasible because, over time, the seat belt track would deform, rendering it unusable. Further, modelling of the path of belt travel over the legs of the driver and passenger indicated an unacceptable degree of contract between the belt and occupant legs. It also noted simultaneously a growing level of consumer resistance to the use of automatic belt systems. Consequently, in the Spring of 1991, it once again began to seek out air bag suppliers. The petition recounts in considerable detail the unsuccessful efforts of Isis to obtain air bag systems from Jaguar, Rover, Rolls-Royce and Lotus. The proposals that it received from Lotus and Breed to develop a vehicle-specific air bag system were prohibitive in cost.

However, according to Isis, two possible sources are awaiting development. The petitioner hopes to obtain eventual access to a system that Range Rover is developing for its vehicles. It has heard from the British Department of Transport that some retrofit components will be coming on the market over the next 2 years. Until these developments materialize, it will be unable to offer an air bag system, and will require an exemption.

The petitioner's net income in 1991 was $10,698. For the 4-year period 1988–91, it had a cumulative net loss of $4,414. The company states that it will have to cease business if its petition is denied. Sales of spare parts and service would be inadequate to fund development of an automatic restraint system without new car sales.

Petitioner argued that an exemption would be in the public interest and consistent with the objectives of The National Traffic and Motor Vehicle Safety Act because it would allow it to continue to support existing owners of Morgan cars (it has been the major supplier of Morgans in the U.S. since 1975, and supplies parts for older cars). An exemption would also allow it to contribute toward the diversity of vehicles for sale in the U.S. The small number of vehicles likely to be produced during the time that the exemption is in effect will not materially affect safety. Finally, the petitioner enclosed photographs showing the effect on a Morgan of a collision at an estimated closing speed of 90 mph, after which the Morgan's driver, restrained by the 3-point belt system, walked away from the accident with only a cracked rib caused by the seat belt crushing a ball point pen in his shirt pocket.

No comments were received on the petition.

It is apparent from the Isis petition that the slender volume of vehicles it imports and sells afford it only a marginal existence under the best of circumstances, and have over the past four years resulted in a slight cumulative net loss. Its petition indicates that, in the three years since its original exemption was granted, it has explored avenues of conformance with the automatic restraint requirements. Isis has decided that an airbag system is most feasible for the design of its car, and that an automatic belt system will not be practicable for it. Thus it is manifest that to require immediate compliance with the automatic restraint requirements would cause it substantial economic hardship, and that it has, in good faith, attempted to comply with the standard.

NHTSA is also able to find that an exemption is in the public interest. The use of a propane-fueled power source is consistent with the national effort to promote alternate fuels, even if the volume is not significant.

An exemption is also consistent with the objectives of the Vehicle Safety Act. If the present rate of importation is maintained, less than three dozen vehicles will be manufactured under the exemption. Further, they will be equipped with a restraint system that complied with Standard No. 208 before September 1, 1989.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that compliance would cause it substantial economic hardship, and that it has, in good faith, attempted to comply with Standard No. 208. It is further found that an exemption would be in the public interest and consistent with the objectives of the Vehicle Safety Act. Accordingly, Isis Imports is granted NHTSA Temporary Exemption 92–7, expiring November 1, 1995, from sections S4.1.2.1 and S4.1.2.2 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.*

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on December 14, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92–30802 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 16, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OBM Number: 1512–0192.
Form Number: ATF REC 5110/02 and ATF F 5110.11.
Type of Review: Extension.
Title: Distilled Spirits Plants Warehousing Records and Reports
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides date to analyze trends in audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 224
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours
Frequency of Response: Monthly
Estimated Total Reporting/ Recordkeeping Burden: 5,376 hours

OMB Number: 1512–0205
Form Number: ATF REC 5110/01 and ATF F 5110.40
Type of Review: Extension
Title: Distilled Spirits Records (ATF REC 5110/01) and Month Report of Production Operations (ATF F 5110.40)
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 145
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Monthly
Estimated Total Reporting Burden: 3,480 hours

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–30868 Filed 12–18–92; 8:45 am]

BILLING CODE 4810–31–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences; Notice Regarding Review of Thailand's Eligibility Under the GSP

AGENCY: Office of the United States Trade Representative.

ACTION: Notice regarding review of Thailand's eligibility under the Generalized System of Preferences.

SUMMARY: The purpose of this notice is to announce the continuation of the review of the worker rights practices of Thailand for the purpose of determining Thailand's eligibility under the Generalized System of Preferences (GSP) until the conclusion of the 1992 GSP Annual Review.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: During the 1991 Annual Review of the GSP program, a petition regarding the beneficiary status of Thailand based on its practices in the area of internationally recognized worker rights practices in the area of internationally recognized worker rights was accepted for review. 56 FR 42080 (August 26, 1991). On July 8, 1992, the Trade Policy Staff Committee (TPSC) announced that the review of Thai worker rights was being continued until December 15, 1992. 57 FR 30286 (July 8, 1992). One of the reasons for this extension was to provide a newly-elected Thai government with an opportunity to address the issues of particular concern to the TPSC, *i.e.* Thailand's practices regarding state enterprise workers and child labor.

Because the TPSC continues to have concerns about the worker rights

situation in key areas cited in the 1991 petition, *e.g.*, restrictions on the right of association for state enterprise workers, it was unable to recommend that Thailand is "taking steps" to afford internationally recognized worker rights as required by the GSP statute. However, the TPSC noted that the new government of Thailand has initiated actions to address these key issues. To allow time to determine what the outcome of these actions might be, the TPSC has decided to extend the review until the conclusion of the 1992 GSP Annual Review, *i.e.*, on or about April 1, 1993.

The GSP Subcommittee of the TPSC will publish a more detailed explanation of the current status of this review shortly.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92-30860 Filed 12-18-92; 8:45 am]

BILLING CODE 3190-01-M

Implementation of the Accelerated Tariff Elimination Provision of the United States—Canada Free-Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of and request for comments concerning additional articles under consideration for negotiations with the Canadian Government for accelerated tariff elimination.

SUMMARY: Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice is intended to inform the public of additional articles that may be the subject of negotiations between the United States and Canada for accelerated tariff elimination.

DATES: Public comments are due by December 31, 1992.

ADDITIONAL INFORMATION: Further information on this subject may be found in the Federal Register notice of September 4, 1992, Volume 57, Number 173, at page 40720 through 40727, which listed articles that may be the subject of the third round of negotiations between the United States and Canada for accelerated tariff elimination. Inquiries regarding aspects of this notice or relating to the implementation of accelerated tariff elimination under the FTA should be directed to Mr. P. Claude Burcky, Office of North American Affairs, Office of the United States Trade Representative, Room 502, 600 17th Street, NW, Washington, DC 20506, telephone (202) 395-3412.

Additional Articles That May Be Considered in Negotiations

In addition to the articles listed in the notice of September 4, 1992, as amended by the notice of October 23, 1992, (F.R. Vol. 57, No. 206, 48407), articles in the subheadings of the Harmonized Tariff Schedule of the United States listed below may again be subject to negotiations with Canada for reciprocal accelerated duty elimination. All of the articles listed below were considered during a previous round of negotiations with Canada, at which time the President received advice from the United States International Trade Commission regarding the probable economic effect of accelerated elimination of United States duties on industries producing like or directly competitive articles and on consumers. Advice also was received from the appropriate private sector advisory committees.

5804.21.00
5806.20.00
5806.31.00
5806.32
5808.10
5808.90.00
6002.10
6002.20
6002.30
6002.43.00
6002.92.00
6002.93.00
6302.22
6302.53.00
6302.60.00
6307.60
9999.00.15 (Sec. 466 of the Tariff Act of 1930)

A description of the articles provided for in the tariff subheadings can be obtained by consulting the "Harmonized Tariff Schedule of the United States (1992)", U.S. International Trade Commission Publication 2449.

Request for Comments

Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles provided for in the tariff subheadings listed above will be accepted until December 31, 1992, if submitted in accordance with 15 CFR part 2003 and the requirements set forth in the notice of September 4, 1992, referred to above.

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

[FR Doc. 92-30832 Filed 12-18-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., Friday, January 8, 1993.
PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–31023 Filed 12–17–92; 3:17 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., Friday, January 15, 1993.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–31024 Filed 12–17–92; 3:17 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., Friday, January 22, 1993.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–31025 Filed 12–17–92; 3:17 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., Friday, January 29, 1993.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–31026 Filed 12–17–92; 3:17 pm]
BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION
Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 21, 1992.

A closed meeting will be held on Tuesday, December 22, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 22, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: December 16, 1992.

Jonathan G. Katz,
Secretary.
[FR Doc. 92–30992 Filed 12–17–92; 3:16 pm]
BILLING CODE 8010–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Editorial Note: This notice was originally published in the issue of Wednesday, December 16, 1992 (57 FR 59857). Due to printing errors it is being republished.

TIME AND DATE: Full Board 9:00 a.m., February 1, 1993.
PLACE: Uniformed Services University of the Health Sciences, room A1005, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.
STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552(e)(3)).
MATTERS TO BE CONSIDERED:

9:00 a.m. Meeting—Board of Regents.

(1) Approval of Minutes—November 2, 1992; (2) Faculty Matters; (3) Departmental Reports; (4) Financial Report; (5) Report—President, USUHS; (6) Comments—Members, Board of Regents; (7) Comments—Chairman, Board of Regents; (8) Reports of Subcommittees on Planning and Oversight; New Business.

CONTACT PERSON FOR MORE INFORMATION: David S. Trump, M.D., Executive Secretary of the Board of Regents, 301/295–3886.

Dated: December 14, 1992.

Linda Bynum,
OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 92–30656 Filed 12–14–92; 3:08 pm]
BILLING CODE 3810–01–M

Corrections

Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-041-N]
RIN 0938-AF95

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rates Beginning January 1, 1993

Correction

In notice document 92-29145 beginning on page 56919 in the issue of Tuesday, December 1, 1992, make the following correction: On page 56923, in the table, under the heading "This projection", in the 3rd entry under 1993, "7.0" should read "7.1".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31492; File No. SR-MBS-92-04]

Self-Regulatory Organizations; MBS Clearing Corp.; Relating to the Limitation or Elimination of a Director's Liability in Certain Instances

Correction

In notice document 92-29033 beginning on page 56939 in the issue of Tuesday, December 1, 1992, in the heading, the Release No. should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31285; File No. SR-NYSE-92-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 421 (Periodic Reports)

Correction

In notice document 92-24611 beginning on page 46611 in the issue of Friday, October 9, 1992, make the following correction: On page 46611, in the first column, in the heading, the date was omitted. It should have read "October 5, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8451]

RIN 1545-AR03

Employee Business Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances

Correction

In rule document 92-29700 beginning on page 57668, in the issue of Monday, December 7, 1992, make the following corrections:

§ 1.62-1 [Corrected]

1. On page 57668, in the third column, in § 1.62-1(c), in the first line, "*Deduction*" should read "*Deductions*".

§ 1.162-25 [Corrected]

2. On page 57669, in the first column, in § 1.162-25(b), in the fourth line from the end of the paragraph, "cent" should read "cents".

BILLING CODE 1505-01-D

federal register

Monday
December 21, 1992

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1 et al.
Federal Acquisition Regulations; Miscellaneous Amendments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–16]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final rules with request for comment.

SUMMARY: This document introduces the documents set forth below which comprise Federal Acquisition Circular (FAC) 90–16. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing FAC 90–16 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	DAR case	Analyst
I	Contractor Establishment Code	91–81	91–72	Scott.
II	Technical Changes to FAR Part 4, Administrative Matters	91–89	90–38	McGuire.
III	Publicizing Subcontract Opportunities	91–90	91–13	Scott.
IV	Metrics	92–611	90–301	O'Neill.
V	Contractor versus Government Performance, FAR Subpart 7.3 and Part 52	91–26	90–414	O'Neill.
VI	Change in Government Specified Source for Strategic and Critical Materials from Excess GSA Inventories.	91–76	91–049	Klein.
VII	List of Parties Excluded from Procurement Programs	91–65	91–77	Loeb.
VIII	Use of Small Purchase Procedures for Personal Services	91–80	91–24	O'Neill.
IX	OMB Circular A–133, Audits of Institutions of Higher Learning and Other Non-Profit Institutions	91–38	91–11	Olson.
X	Clarify Increased Cost or Pricing Data Threshold (Interim)	91–96	91–309	Olson.
XI	Nonmanufacturer Rule (Interim)	91–50	90–335	O'Neill.
XII	Bundling of Requirements	91–49	90–334	Scott.
XIII	Part 22 Threshold, Compensation Plans for Professional Employees	90–68	89–410	O'Neill.
XIV	Determination and Finding of Nonavailability	92–3		Loeb.
XV	Part 25, Thresholds	91–64	89–412	Loeb.
XVI	Severance Pay, Foreign Nationals	90–30	89–302	Olson.
XVII	GAO Bid Protest Regulations	91–86	91–6	O'Neill.
XVIII	Use of Indicia Mail	91–88	91–23	Klein.
XIX	Thresholds, Part 45	90–12	89–426	Klein.
XX	Government Property	90–41	90–454	Klein.
XXI	Inventory Schedules	91–74	90–503	Klein.
XXII	Threshold Change to FAR 51.106(b)	91–55	90–461	Klein.
XXIII	Standard Forms 254 and 255, Architect-Engineer Questionnaire	91–69	91–45	O'Neill.
XXIV	Technical Amendments.			

DATES: For effective dates, see separate documents which follow. Please cite FAC 90–16 and the appropriate FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–16 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–16 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Contractor Establishment Code (FAR Case 91–81)

FAR 4.602 is amended by revising paragraph (d) to reflect the new Contractor Establishment Code (CEC) numbering system; FAR 4.603 and the solicitation provision at 52.204–4, Contractor Establishment Code, are removed.

Item II—Technical Changes to FAR Part 4, Administrative Matters (FAR Case 91–89)

FAR 4.805 (b) and (e) are revised to clarify retention periods for contracts.

Item III—Publicizing Subcontract Opportunities (FAR Case 91–90)

FAR 5.206 is revised to stress the importance of prime contractors using the Commerce Business Daily to seek additional small, small disadvantaged, and women-owned business subcontracting sources, and to meet subcontracting goals.

Item IV—Metrics (FAR Case 92–611)

FAR 7.103, Agency-head responsibilities, is amended to encourage the use of the metric system of measurement in Government procurements.

Item V—Contractor Versus Government Performance (FAR Case 91–26)

Changes are made to FAR 7.302(d) to alert the contracting officer to the possibility of performing a cost comparison for the specific reason that commercial prices were believed to be unreasonable; and to make more general the language that pertains to when a cost comparison study must be made, so that future changes to statutes or regulations concerning cost comparisons will not require a change to the FAR. Minor editorial changes are made to the solicitation provisions at FAR 52.207–1 and 52.207–2.

Item VI—Change in Government Specified Source for Strategic and Critical Materials From Excess GSA Inventories (FAR Case 91–76)

FAR 8.002(f) is revised to change the Government specified source for excess strategic and critical materials from GSA to DOD.

Item VII—List of Parties Excluded From Procurement Programs (FAR Case 91–65)

FAR 9.404(d) is revised to provide additional guidance on accessing the List of Parties Excluded from Procurement Programs.

Item VIII—Use of Small Purchase Procedures for Personal Services (FAR Case 91–80)

The word "nonpersonal" is deleted from FAR 13.000, and from the definitions of "purchase order" and "small purchase" in FAR 13.101. A new paragraph (c) is also added to FAR 13.103 to emphasize that specific statutory authority is required to purchase personal services. A reference to FAR 37.104 is included.

Item IX—OMB Circular A–133, Audits of Institutions of Higher Learning and Other Nonprofit Institutions (FAR Case 91–38)

Guidance to contracting officers and a contract clause are added to implement the requirements of OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions".

The threshold is increased to the level of the small purchase threshold from $10,000 for application of the Examination of Records by Comptroller General clause and for application of the Audit-Negotiation clause to subcontracts.

Item X—Clarify Increased Cost or Pricing Data Threshold (FAR Case 91–96)

This interim rule amends FAR 15.804–2 to clarify application of the $500,000 threshold for submission of certified cost or pricing data for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard. This rule implements section 804 of the FY 92 Defense Authorization Act, Public Law 102–190.

Item XI—Nonmanufacturer Rule (FAR Case 91–50) (Interim Rule)

This interim rule revises FAR 19.001 and 19.102 to add a definition for the term "nonmanufacturer rule", to address Small Business Administration waiver of the nonmanufacturer rule for specific items, and to remove the partial listing of classes for which a waiver has been granted.

Item XII—Bundling of Requirements (FAR Case 91–49)

This converts the interim rule on Bundling of Requirements, published in the **Federal Register** at 56 FR 67132 on December 27, 1991, as Item VI of FAC 90–9, to a final rule with one minor revision, which is the addition of the word "realistic" at FAR 19.202–1(e)(2)(ii). FAR 19.202–1 was revised to require contracting officers to forward proposed acquisitions meeting specified criteria to the SBA's procurement center representatives for review. FAR 19.402 was revised to require that procurement center representatives recommend alternative contracting methods for acquisitions which have increased or consolidated requirements that make it unlikely that small businesses can compete.

XIII—Part 22 Threshold, Compensation Plans for Professional Employees (FAR Case 90–68)

FAR 22.1101 and 22.1103 are amended to raise the threshold from $250,000 to $500,000 for imposition of the requirement for offerors on acquisitions for negotiated service contracts to submit total compensation plans for professional employees. The provision at FAR 52.222–45 is removed and its language is combined with the provision at FAR 52.222–46 for purposes of simplification.

Item XIV—Determination and Finding of Nonavailability (FAR Case 92–3)

FAR 25.108(d)(1) is amended by adding "wire glass" to the list of items that one or more Federal agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

Item XV—Part 25 Thresholds (FAR Case 91–64)

The FAR is revised to remove the threshold in FAR 25.202(b) and change the approval level to allow contracting officers, unless agency regulations prescribes otherwise, to make nonavailability determinations in accordance with FAR 25.202(a)(3), if the acquisition is made under full and open competition, is synopsized in accordance with FAR 5.302, and offers for domestic construction materials are not received.

XVI—Severance Pay, Foreign Nationals (FAR Case 90–30)

This final rule removes restrictions on allowability of certain severance payments to foreign nationals, in anticipation of promulgation of the restrictions in the DFARS for DOD use only. This case supersedes FAR case 89–13, which was published in the **Federal Register** at 54 FR 13022 on March 29, 1989.

XVII—GAO Bid Protest Regulations (FAR Case 91–86)

FAR 33.104 is revised to implement the General Accounting Office's revised bid protest procedures which went into effect on April 1, 1991.

Item XVIII—Use of Indicia Mail (FAR Case 91–88)

The text at FAR 42.1404–1, Parcel post eligible shipments, and the clause at FAR 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, are revised to clarify the procedure agencies use to obtain authority for contractors to use indicia mail and requires contracting officers to furnish a completed Postal Service Form 3601, Application to Mail Without Affixing Postage Stamps, to contractors. This will make the FAR language consistent with current U.S. Postal Service regulations.

Item XIX—Thresholds, FAR Part 45 (FAR Case 90–12)

FAR 45.105, 45.106, 45.302–3, 45.307–2, and 45.506 are revised, and the clause at FAR 52.245–18 is amended to raise or delete outdated dollar thresholds and to clarify existing policy.

Item XX—Government Property (FAR Case 90–41)

FAR 45.301 and 45.302–3(c) are amended to clarify the Government's policy regarding fee or profit in the acquisition of general purpose components of special tooling and special test equipment. The policy states that the prohibition on profit or fee on the cost of facilities when purchased under other than a facilities contract does not apply to general purpose components of special tooling and special test equipment.

Item XXI—Inventory Schedules, Authority of Contractor's Representative; Withdrawal of FAR Coverage (FAR Case 91–74)

FAR 45.606–1(b) is revised to remove language requiring that the contractor's inventory schedule certificate be signed by a representative having the authority to commit the contractor in contractual matters. This change is a result of adverse industry comments in response to implementation of the language in FAC 90–4. Development of a new Plant Clearance Automated Reutilization Screening System at the Defense Contract Management Command (DCMC), which eliminated hard-copy inventory schedules for contractors under DOD cognizance, will minimize problems the language was intended to address.

Item XXII—Threshold Change to 51.106(b) (FAR Case 91–55)

FAR 51.106(b), Title, is revised by raising the threshold listed therein from $1,000 to $5,000, in order to be consistent with the threshold listed in FAR 52.245–2, Alternate II, and FAR 52.245–5, Alternate I, to which FAR 51.106(b) refers.

Item XXIII—Standard Forms 254 and 255, Architect-Engineer Questionnaires

Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project have been revised to delete the obsolete definition of Architect-Engineer services on the forms and will reference the definition in FAR part 36. Corresponding changes are made to the prescriptive language for the forms at FAR 53.236–2 (b) and (c).

Item XXIV—Technical Corrections

Technical revisions have been made to FAR parts 15, 19, 31, 33, and 52 for clarification and to correct references and terms.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–16 is effective February 19, 1993, except for the following items:

Item I, which is effective October 1, 1992;

Items X and XI, which are effective December 21, 1992; and

Item XVII, which is effective April 1, 1993.

Dated: December 3, 1992.

Eleanor R. Spector,

Director, Defense Procurement, DOD.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, GSA.

Dated: November 13, 1992.

Don G. Bush,

Assistant Administrator for Procurement, NASA.

[FR Doc. 92–30560 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 90–16; FAR Case 91–81; Item I]

Federal Acquisition Regulation; Contractor Establishment Code

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 4.602, Federal Procurement Data System (FPDS), and to remove the solicitation provision at 52.204–4, Contractor Establishment Code, and its prescriptive language at 4.603. These revisions implement the new Government-owned, contractor-operated contractor establishment code (CEC) numbering system to identify Federal contractors. This system replaces the Dun and Bradstreet Data Universal Numbering System which is currently being phased out.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16/FAR case 91–81.

SUPPLEMENTARY INFORMATION:

A. Background

On September 5, 1991, the General Services Administration awarded a contract for contractor identification services in the Federal Procurement Data System. The contract requires the establishment of a Government-owned, contractor-operated contractor establishment code (CEC) numbering system to identify Federal contractors. This new system (a nine-position alpha-numeric numbering system) replaces the Dun and Bradstreet Data Universal Numbering System (DUNS) that is currently being used in the data system.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C 610. Such comments must be submitted separately and cite 5 U.S.C 610, *et seq.* (FAC 90–16, FAR case 91–81), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 52

Government Procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.602 is amended by revising paragraph (d) to read as follows:

4.602 Federal Procurement Data System.

* * * * *

(d) The contracting officer shall obtain and report a Contractor Establishment Code for each awardee from information on file or available to the contracting office. The contracting office or other designated agency office shall request a code using the procedures in the FPDS Reporting Manual or in accordance with agency procedures. Requests for codes shall be made by Government offices and only for the apparent awardees.

4.603 [Removed]

4. Section 4.603 is removed.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–4 [Removed]

5. Section 52.204–4 is removed.

[FR Doc. 92–30562 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 90–16; FAR Case 91–89; Item II]

Federal Acquisition Regulation; Technical Changes to FAR Part 4, Administrative Matters

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to clarify FAR 4.805, Disposal of contract files, with respect to the retention period for certain contracts.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia McGuire at (202) 501–4787 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–16, FAR case 91–89.

SUPPLEMENTARY INFORMATION:

A. Background

The two Councils agreed that the existing language at FAR 4.805 (b) and (e) does not accurately reflect the files disposition instructions contained in the National Archives and Records Administration's General Records Schedule (GRS) 3 dated June 1988. This change will bring FAR language in line with the GRS.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–89), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 4 is amended as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 4 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 4.805 is amended by revising the introductory paragraph and paragraphs (b) and (e) of the "Document" column to read as follows:

4.805 Disposal of contract files.

Agencies shall prescribe procedures for the handling, storing, and disposing of contract files. However, such procedures shall include provisions that the documents specified below shall not be destroyed before the times indicated. If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents covered by these schedules are part of a subject or case file which documents activities different from those covered by the schedules, they should be treated in the same manner as the files of which they are a part.

Document	Retention period
(a) • • •	• • •
(b) Signed originals of construction contracts over $2,000 and all other contracts over $25,000.	• • •
• • • • •	•
(e) Signed originals of construction contracts of $2,000 or less and all other contracts of $25,000 or less.	• • •
• • • • •	•

[FR Doc. 92–30561 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

[FAC 90–16; FAR Case 91–90; Item III]

Federal Acquisition Regulation; Publicizing Subcontract Opportunities

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise FAR 5.206 to stress the importance of prime contractors using the Commerce Business Daily to seek additional small, small disadvantaged, and women-owned business subcontracting sources, and to meet subcontracting goals.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–90.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–90), in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subject in 48 CFR Part 5

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 5 is amended as set forth below:

PART 5—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 5.206 is revised to read as follows:

5.206 Publicizing subcontract opportunities.

Prime contractors may use the CBD to publicize subcontracting opportunities stemming from receipt of a Government contract. The CBD can be used to seek competition for subcontracts, to increase participation by small, small disadvantaged, and women-owned business firms, and to meet established subcontracting plan goals. Synopses of subcontract opportunities should be prepared and submitted in accordance with 5.207.

[FR Doc. 92-30563 Filed 12-18-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 7

[FAC 90-16; FAR Case 92-611; Item IV]

Federal Acquisition Regulation; Metrics

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending FAR 7.103, Agency-head responsibilities, to encourage the use of the metric system of measurement in Government procurements.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-16, FAR Case 92-611.

SUPPLEMENTARY INFORMATION:

A. Background

15 U.S.C. 205b and Executive Order 12770 require all Federal agencies to use the metric system of measurement in their procurements. This revision to FAR 7.103 supplements the existing metric guidance at FAR 10.002(c) by requiring agencies to establish procedures for addressing metrics at the start of the acquisition process.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-16, FAR case 92-611), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 7

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 7 is amended as set forth below:

PART 7—ACQUISITION PLANNING

1. The authority citation for 48 CFR part 7 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 7.103 is amended by adding paragraph (l) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(l) Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with 15 U.S.C. 205b (see 10.002(c)) and agency metric plans and guidelines.

[FR Doc. 92-30564 Filed 12-18-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 52

[FAC 90-16; FAR Case 91-26; Item V]

Federal Acquisition Regulation; Contractor Versus Government Performance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to this final rule which (a) alerts the contracting officer to the possibility of performing a cost comparison for the specific reason that commercial prices were believed to be unreasonable; and (b) makes more general the language that pertains to when a cost comparison study must be made, so that future changes to statutes or regulations concerning cost comparisons will not require a change to FAR language. The proposed rule was published for public comment in the **Federal Register** at 55 FR 29556 on June 27, 1991.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-16, FAR Case 91-26.

SUPPLEMENTARY INFORMATION:

A. Background

This change was generated as part of the Department of Defense effort to streamline its acquisition regulations, and is made to correct inconsistencies between FAR Subpart 7.3 and Office of Management and Budget OMB Circular A-76.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes merely remove inconsistencies between the FAR and OMB Circular A–76.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements, or collections of information from offerors, contractors, or members of the public which require OMB approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 7 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 7 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 7 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.300 is revised to read as follows:

7.300 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions of commercial or industrial products and services subject to (a) OMB Circular No. A–76 (Revised) (the Circular), Performance of Commercial Activities, and (b) the Supplement to the Circular.

3. Section 7.302 is amended by revising paragraph (d) to read as follows:

7.302 General.

* * * * *

(d) Provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies when the full-time equivalent Government employees involved are fewer than those specified by law, the Circular, and implementing agency guidance. Cost comparisons may be conducted in these instances if there is reason to believe that commercial prices are unreasonable.

4. Section 7.303 is amended in paragraph (b)(1) by revising the second sentence and removing the third sentence; and by adding paragraph (b)(3) to read as follows:

7.303 Determining availability of private commercial sources.

* * * * *

(b) * * *

(1) * * * If necessary, synopsis shall be submitted up to three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them).

(2) * * *

(3) If sufficient sources are not identified through synopses or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled.

5. Section 7.304 is amended in paragraph (b)(1) by removing the hyphen from the words "cost-comparison"; and in paragraph (c)(1) by revising the first sentence to read as follows:

7.304 Procedures.

* * * * *

(c) *Solicitation.* (1) The contracting officer shall issue a solicitation based on the performance work statement prepared in accordance with paragraph (a) of this section.

* * *

* * * * *

7.306 [Amended]

6a. Section 7.306 is amended by removing the hyphen from the words "cost-comparison" in the following places: (a)(1)(i) through (a)(1)(iii); (a)(1)(v); (a)(2); (a)(4); (b) introductory text; (b)(1)(ii); (b)(2)(ii); and (b)(3).

7.306 [Amended]

6b. In addition to the amendments set forth above, section 7.306 is amended in paragraph (b)(3) in the last sentence by removing the words "subparagraph (1) above" and "subparagraph (2) above" and inserting "subparagraph (b)(1) of this section" and "subparagraph (b)(2) of this section" in their places, respectively.

7. Section 7.307 is amended by revising paragraph (a) to read as follows:

7.307 Appeals.

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost comparison result. The appeals procedure shall provide for an independent, objective review of the initial result by an official at a higher level than the official who approved that result. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8a. Section 52.207–1 is amended by removing in the clause heading the date "(JUL 1990)" and inserting "(FEB 1993)" in its place; removing the last sentence in paragraph (b) of the clause; and revising the first sentence of paragraph (c) of the clause to read as follows:

52.207–1 Notice of Cost Comparison (Sealed-Bid).

* * * * *

(c) The abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review for a period of _____[*insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv)*] working days, beginning with the date the documents are available to interested parties.

* * * * *

8b. Section 52.207–2 is amended in the clause heading by revising the date; in paragraph (c) by removing the hyphen in the words "cost-estimate"; and revising paragraph (d) to read as follows:

52.207–2 Notice of Cost Comparison (Negotiated).

* * * * *

Notice of Cost Comparison (Negotiated) (Feb. 1993)

* * * * *

(d) During the public review period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

* * * * *

(End of provision)

52.207–1 and 52.207–2 [Amended]

8c. In addition to the amendments set forth above in FAR part 52, remove the hyphen from the words "cost-comparison" in the following places: (a) 52.207–1(b); (b) 52.207–2(c) introductory text, (c)(1), and (c)(2); and (c) 52.207–2(d).

* * * * *

[FR Doc. 92–30565 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 90–16; FAR Case 91–76; Item VI]

Federal Acquisition Regulation; Change in Government Specified Source for Strategic and Critical Materials from Excess GSA Inventories

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise FAR 8.002(f) to change the Government specified source for excess strategic and critical materials from the General Services Administration to the Department of Defense.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–76.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 8.002(f) is revised to change the specified Government source for excess strategic and critical materials from the General Services Administration to the Department of Defense. Executive Order 12626, dated February 25, 1988, transferred management of the stockpile from GSA to DOD and designated the Secretary of Defense as National Defense Stockpile Manager. In May 1988, the authority to manage the Stockpile under Executive Order 12626 was delegated to the Assistant Secretary of Defense (Production and Logistics). Authority to operate the Stockpile was further delegated to the National Defense Stockpile Center, Defense Logistics Agency.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with section 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–76), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 8 is amended as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for 48 CFR part 8 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 8.002 is amended by revising paragraph (f) to read as follows:

8.002 Use of other Government supply sources.

* * * * *

(f) Strategic and critical materials (e.g., metals and ores) from inventories exceeding National Defense Stockpile requirements (detailed information is available from the Defense National Stockpile Center, 1745 Jefferson Davis Highway, Crystal Square Building #4, Suite 100, Arlington, VA 22202); and

* * * * *

[FR Doc. 92–30566 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAC 90–16; FAR Case 91–65; Item VII]

Federal Acquisition Regulation; List of Parties Excluded from Procurement Programs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to revise section 9.404(d) to include additional guidance on accessing the list of Parties Excluded from Procurement Programs. The purpose of such guidance is to inform contracting officers and other users of the list of Parties Excluded from Procurement Programs of the means of obtaining information from the list.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–65.

SUPPLEMENTARY INFORMATION:

A. Background

Information concerning parties on the list of Parties Excluded from Procurement Programs is available electronically, in hard copy form, and by telephone. The FAR is being revised to provide guidance on the means of accessing the list.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–65), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 9 is amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.404 is amended by revising paragraph (d) to read as follows:

9.404 Parties excluded from procurement programs.

* * * * *

(d) Information on the list of Parties Excluded from Procurement Programs is available as follows:

(1) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.

(i) Federal agencies may subscribe to the list through their organization's printing and distribution office.

(ii) The public may subscribe by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238.

(2) The electronic version is updated daily and provides access to the names of firms and individuals on the list by using an asynchronous ASCII terminal (e.g., a word processor or microcomputer). Users can access the system 24 hours a day, 7 days a week using FTS 2000, or commercial telephone lines and the equipment described in the user's manual. Aside from the normal costs of local or long-distance telephone calls, access is free of charge to the user. To obtain a copy of the user's manual for accessing the system, contact GSA at (202) 501–4740.

(3) A telephone inquiry service to answer general questions about entries on the list of Parties Excluded from Procurement Programs is also available by calling GSA at (202) 501–0688. The inquiry will be answered within one working day.

[FR Doc. 92–30567 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 90–16; FAR Case 91–80; Item VIII]

Federal Acquisition Regulation; Use of Small Purchase Procedures for Personal Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to remove the word "nonpersonal" from Federal Acquisition Regulation (FAR) 13.000, and from the definitions of "purchase order" and "small purchase" in section 13.101 to permit the use of small purchase procedures for the acquisition of personal services.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–80.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense has granted deviations to FAR part 13 to defense agencies that regularly contract for professional health care personal services to permit them to use simplified purchase procedures when the total amount of the contract is less than the small purchase limitation in FAR 13.000. The statutes which govern the acquisition of personal services do not restrict the contracting method, which can be used to acquire services, and the Civilian Agency Acquisition Council agree there is no reason to impose a restriction in the FAR.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–80), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 13 is amended as set forth below:

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

13.000 [Amended]

2. Section 13.000 is amended by removing the word "nonpersonal".

13.101 [Amended]

3. Section 13.101 is amended in the definitions of "purchase order" and "small purchase" by removing the word "nonpersonal".

4. Section 13.103 is amended by adding paragraph (c) to read as follows:

13.103 Policy.

* * * * *

(c) Small purchase procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services by contract (see 37.104).

[FR Doc. 92–30568 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 90–16; FAR Case 91–38; Item IX]

Federal Acquisition Regulation; OMB Circular A–133, Audits of Institutions of Higher Learning and Other Nonprofit Organizations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation to add guidance and a contract clause to implement the requirements of OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions" and to increase the $10,000 threshold for application of access to records clauses to the small purchase threshold.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–38.

SUPPLEMENTARY INFORMATION:

A. Background

OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions" establishes a policy for efficient and effective use of audit services for awards made to certain institutions. The final rule provides that the circular will apply to cost-reimbursement contracts with those institutions.

The Examination of Records by Comptroller General clause 52.215–1, previously applied to negotiated contracts and subcontracts exceeding $10,000 and the Audit-Negotiation clause, 52.215–2, applied to subcontracts over $10,000. The final rule raises those amounts to the level of the small purchase threshold (currently $25,000).

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule implementing OMB Circular A–133 does not create or change any responsibilities. It facilitates implementation of the already existing requirements of the OMB Circular. The portions of the rule which increase the threshold for applications of the Examination of Records by Comptroller General clause and Audit-Negotiation clause do not have a significant impact on a substantial number of small businesses because most contracts awarded to small businesses are awarded on the basis of sealed bids and the clauses do not apply. No small entities commented on the proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule contains information collection requirements. Accordingly, a request for approval of a revision to an information collection requirement concerning OMB Control No. 9000–0034, Examination of Records by Comptroller General and Audit–Negotiation, was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Approval of the reduced burden was granted on October 10, 1991, by the Office of Information and Regulatory Affairs, Office of Management and Budget. Public comments concerning this request were invited through a subsequent **Federal Register** notice at 56 FR 33272 on July 19, 1991.

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.106–2 is amended by revising paragraph (a) and adding a third sentence to paragraph (b) to read as follows:

15.106–2 Audit—Negotiation clause.

(a) This subsection implements 10 U.S.C. 2313(a), 41 U.S.C. 254(b), 10 U.S.C. 2306(f), and OMB Circular No. A–133.

(b) * * * In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215–1 [Amended]

3. Section 52.215–1 is amended in the clause heading by removing the date "(APR 1984)" and inserting "(FEB 1993)" in its place; in paragraph (a) by removing the dollar amount "$10,000" and inserting the words "the small purchase limitation in Part 13 of the Federal Acquisition Regulation (FAR)" in its place; in paragraph (b) by removing the words "Federal Acquisition Regulation (FAR)" and inserting "FAR" in their place; and in paragraph (c)(1) by removing the dollar amount "$10,000" and inserting the words "the FAR Part 13 small purchase limitation" in its place.

4. Section 52.215–2 is amended in the clause heading by removing the date "(DEC 1989)" and inserting "(FEB 1993)" in its place; in paragraph (d) by adding the acronym "(FAR)" after the words "Federal Acquisition Regulation"; by revising paragraph (f); by removing the derivation lines "(R 7–104.41(b) 1978 AUG)", "(R 7–702.48)", "(R 7–703.41)" and "(R 7–704.33)" appearing at the end of the Alternate I; and by adding Alternate II to read as follows:

52.215–2 Audit—Negotiation.

* * * * *

(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts under this contract that are over the small purchase limitation in FAR Part 13, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.
(End of clause)

Alternate I * * *

Alternate II (FEB 1993). In cost-reimbursement contracts with educational and other nonprofit institutions, add the following paragraph (g) to the basic clause:

(g) The provisions of OMC Circular No. A–133, "Audits of Institutions of Higher

Learning and Other Nonprofit Institutions," apply to this contract.

[FR Doc. 92-30569 Filed 12-18-92; 8:45 am]
BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 90-16; FAR Case 91-96; Item X]

Federal Acquisition Regulation; Clarify Increased Cost or Pricing Data Threshold

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule revising FAR 15.804-2 to clarify application of the $500,000 threshold for submission of certified cost or pricing data.

DATES: Effective Date: December 21, 1992.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 19, 1993 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Attn: Ms. Deloris Baker, Washington, DC 20405.

Please cite FAC 90-16, FAR case 91-96 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-16, FAR case 91-96.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 90-10 increased the threshold for submission of cost or pricing data to $500,000 for DOD, NASA, and the Coast Guard. This interim rule implements section 804 of the FY 92 Defense Authorization Act, which amends 10 U.S.C. 2306a(a)(1), to specify that the $500,000 threshold for DOD, Coast Guard, and NASA, also applies to subcontracts entered into after December 5, 1991, under prime contracts entered into on or before December 5, 1990, if the prime contract is modified to incorporate the $500,000 threshold. It also specifies that the $500,000 threshold applies to changes or modifications made after December 5, 1991, when the prime contract is modified to incorporate the $500,000 threshold.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the requirements for certified cost or pricing data do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.* (FAC 90-16, FAR Case 91-96), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies. This rule clarifies a rule previously promulgated under FAR Case 91-53, Increase in Cost or Pricing Data Threshold. A request for approval of a revision to reduce the burden of a currently approved information collection requirement concerning Increase in Cost or Pricing Data Threshold was submitted to the Office of Management and Budget (OMB) and approved under OMB control number 9000-0013.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 804 of Public Law 102-190 amended section 2306a(a)(1) of title 10, United States Code, to clarify revised thresholds for contractor certification of cost or pricing data. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 15 is amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.804-2 is amended in paragraph (a)(1)(ii) by removing the first sentence and adding in its place two sentences as set forth below; revising paragraphs (a)(1)(iii) and (a)(1)(iv); and redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5) and adding a new paragraph (a)(2) to read as follows:

15.804-2 Requiring certified cost or pricing data.

(a)(1) * * *

(ii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for modifications involving a price adjustment expected to exceed $500,000, if the contract includes or has been modified in accordance with 15.804-2(a)(2) to include the $500,000 threshold. Price adjustment amounts shall consider both increases and decreases * * *.

(iii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts expected to exceed $500,000 if the contract includes, or has been modified to include, the $500,000 threshold per 15.804-2(a)(2). (But see 15.804-3(i).)

(iv) The modification of any subcontract covered by subdivision (a)(1)(iii) of this subsection, when the price adjustment (see subdivision (a)(1)(ii) of this subsection) is expected to exceed $100,000, or for the Department of Defense, the National

Aeronautics and Space Administration, and the Coast Guard, for subcontracts when the modification involves a price adjustment expected to exceed $500,000 if the contract includes or has been modified to include the $500,000 threshold per 15.804–2(a)(2).

(2) Department of Defense, National Aeronautics and Space Administration, and Coast Guard contracting officers shall, if requested by the contractor, modify contracts entered into on or before December 5, 1990, to incorporate the $500,000 threshold without requiring consideration. Contracting officers shall comply with contractors' requests for the threshold increase unless a contracting officer determines in accordance with the criteria at 15.804–2(a)(3) that a change in the threshold is not in the best interests of the Government. The requirement to submit certified cost or pricing data shall be determined by the threshold in the contract at the time of agreement on price regardless of when an undefinitized modification, change order or subcontract is issued.

* * * * *

[FR Doc. 92–30570 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90–16; FAR Case 91–50; Item XI]

Federal Acquisition Regulation; Nonmanufacturer Rule

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are amending FAR 19.001 and 19.102 to add a definition for the term "Nonmanufacturer rule", to address the Small Business Administration (SBA) waiver of the rule, and to remove the partial listing of classes listed in the FAR for which a waiver has been granted.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–50.

SUPPLEMENTARY INFORMATION:

A. Background

Section 210 of Public Law 101–574 authorizes the SBA to waive the nonmanufacturer rule as it applies to a specific product, as well as to classes of products. Heretofore, SBA waivers were not issued on a contract-by-contract basis but, rather, waivers were issued for classes of products.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it may mean that more small business set-asides will be possible. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

Section 210 of Public Law 101–574, the Small Business and Reauthorization and Amendments Act of 1990, amends the Small Business Act as to the Small Business Administration's authority to waive the requirement for offerors under a small-business set-aside or 8(a) award to provide the product of a small business concern. Section 210 provides for waivers of a specific product, as well as a class of products. Accordingly, this rule could have a favorable impact on small businesses.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the SBA. A copy of the analysis may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite FAR case 91–50 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement section 210 of Public Law 101–574, which was effective upon enactment November 15, 1990.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 19 is amended as set forth below:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.001 is amended by adding the definition of "Nonmanufacturer rule" in alphabetical order to read as follows:

19.001 Definitions.

* * * * *

Nonmanufacturer rule means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own produce or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.906).

* * * * *

3. Section 19.102 is amended by revising the first sentence in paragraph (f)(1) and revising paragraph (f)(5) to read as follows:

19.102 Size standards.

* * * * *

(f) * * *

(1) Except as provided in subparagraphs (f)(2) through (f)(5) of this section, in the case of Government acquisitions set aside for small businesses, such nonmanufacturer must furnish in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. * * *

* * * * *

(5) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific

product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—

(i) In such cases, section 637(a)(17)(A) of the Small Business Act provides that the nonmanufacturer may furnish any domestic product if such nonmanufacturer is primarily engaged in the wholesale or retail trade and is a regular dealer, as defined pursuant to 41 U.S.C. 35(a) (see 22.601), in the product to be offered unless specifically exempted by section 7(j)(13)(C) of the Small Business Act. For the most current listing of classes for which SBA has granted a waiver, contact the regional SBA office.

(ii) Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

(iii) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if the contracting officer determines that no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(iv) Requests for waivers shall be sent to the Chairman of the Size Standards Policy Board, SBA Central Office, 409 Third Street, SW., Washington, DC 20416.

* * * * *

[FR Doc. 92–30571 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90–16; FAR Case 91–49; Item XII]

Federal Acquisition Regulation; Bundling of Requirements, FAR Part 19

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising FAR 19.202–1 to require contracting officers to forward proposed acquisitions meeting specified criteria to the Small Business Administration's procurement center representatives for review, and FAR 19.402 to require that procurement center representatives recommend alternative contracting methods for acquisitions which have increased or consolidated requirements that make it unlikely that small businesses can compete.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–49.

SUPPLEMENTARY INFORMATION:

A. Background

Section 208 of Public Law 101–574 requires, whenever a proposed procurement of supplies or services currently being provided by a small business is of a quantity or estimated dollar value which makes small business prime contracting unlikely or when discrete construction projects are consolidated, that the procurement activity provide a copy of the proposed acquisition to the Small Business Administration's procurement center representative (PCR) for review and that the PCR recommend alternative contracting methods.

An interim rule was published in Federal Acquisition Circular (FAC) 90–9 in the **Federal Register** at 56 FR 67131 on December 27, 1991. This interim rule is hereby adopted as final with one change; the word "realistic" was added in 19.202–1(e)(2)(ii).

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule may benefit small business contractors in that it may provide additional opportunities for them to compete for Government contracts. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final With One Change

Accordingly, the interim rule amending 48 CFR part 19 which was published at 56 FR 67131 on December 27, 1991, is hereby adopted as a final rule with the following change:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

19.202–1 [Amended]

2. Section 19.202–1 is amended in paragraph (e)(2)(ii) by inserting the word "realistic" after the word "a".

* * * * *

[FR Doc. 92–30572 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

RIN 9000–AE45

[FAC 90–16; FAR Case 90–68; Item XIII]

Federal Acquisition Regulation; Part 22 Threshold, Compensation Plans for Professional Employees

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending Federal Acquisition Regulation (FAR) 22.1101 and 22.1103 to raise the threshold from $250,000 to $500,000 for imposition of

a requirement for offerors on acquisitions for negotiated service contracts to submit total compensation plans. The provision at FAR 52.222–45 is removed and reserved and its language is combined with the provision at FAR 52.222–46 for purposes of simplification.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 90–68.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 22.1101 and 22.1103 are amended to raise the threshold from $250,000 to $500,000 for imposition of a requirement for offerors on acquisitions for negotiated service contracts to submit total compensation plans. The provision at FAR 52.222–45 is removed and reserved and its language is combined with the provision at FAR 52.222–46 for simplification. The threshold is raised to reflect inflation.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule reduces the number of instances in which offerors, as part of a cost proposal, will have to submit compensation plans for professional employees.

C. Paperwork Reduction Act

This final rule contains reduced information collection requirements. Accordingly, a revised burden estimate was approved by the Office of Management and Budget (OMB) on February 18, 1992 for OMB Clearance No. 9000–0066 for use through February 28, 1995.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1101 [Amended]

2. Section 22.1101 is amended in the last sentence by removing the amount "$250,000" and inserting in its place "$500,000".

3. Section 22.1103 is revised to read as follows:

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222–46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated service contracts when the contract amount is expected to exceed $500,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employees compensation may be assessed adversely as one of the factors considered in making an award.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222–45 [Reserved]

4. Section 52.222–45 is removed and reserved.

5. Section 52.222–46 is amended in the introductory text by inserting a colon after the word "provision" and removing the remainder of the sentence; removing the date "(APR 1984)" in the provision title and inserting in its place "(FEB 1993)"; removing the derivation line reading "(R 7–2003.79 1978 JUN)" following "(End of provision)" after paragraph (c); and adding paragraph (d) to read as follows:

52.222–46 Evaluation of compensation for professional employees.

As prescribed in 22.1103, insert the following provision:

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)

* * * * *

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

[FR Doc. 92–30573 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 90–16; FAR Case 92–3; Item XIV]

Federal Acquisition Regulation; Determination and Finding of Nonavailability

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending FAR 25.108(d)(1) to add "wire glass" to the list of items that one or more Federal agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–16, FAR Case 92–3.

SUPPLEMENTARY INFORMATION:

A. Background

The addition of "wire glass" to the list in FAR 25.108(d)(1), of articles, materials, and supplies that are determined not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, was based on an agency's determination of nonavailability under the Buy American Act.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 92–3), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.108 [Amended]

2. Section 25.108 is amended in paragraph (d)(1) by adding in alphabetical order "wire glass" to the list of "articles, materials, and supplies".

[FR Doc. 92–30574 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 90–16; FAR Case 91–64; Item XV]

Federal Acquisition Regulation; Part 25 Thresholds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending Federal Acquisition Regulation (FAR) 25.202(b) to lower the approval level for determinations of nonavailability on construction materials.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–64.

SUPPLEMENTARY INFORMATION:

A. Background

Dollar thresholds in FAR part 25 were reviewed for currency, clarity, and necessity. The $100,000 threshold in FAR 25.202(b) has been removed and the language revised to permit delegation of authority below the level of head of the contracting activity for determinations of nonavailability of construction materials.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–64) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.202 [Amended]

2. Section 25.202 is amended in paragraph (a)(3) by adding after the word "The" the words "head of the contracting activity or designee determines the"; removing paragraph (b); and redesignating paragraph (c) as paragraph (b).

[FR Doc. 92–30575 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 37, and 52

[FAC 90–16; FAR Case 90–30; Item XVI]

Federal Acquisition Regulation; Severance Pay, Foreign Nationals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule that supersedes two interim rules. Restrictions on allowability of certain severance payments to foreign national contractor employees have been removed.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 90–30.

SUPPLEMENTARY INFORMATION:

A. Background

The first interim rule under FAR case 89–13 was published in the **Federal Register** at 54 FR 13022 on March 29, 1989, as Federal Acquisition Circular (FAC) 84–44 and included restrictions on allowability of severance pay for foreign nationals pursuant to statutory requirements under Section 322 of Public Law 100–456. Use of those restrictions was mandatory on DOD

contracts and optional on civilian agency contracts. The second interim rule under FAR case 90–30 amended the first interim rule (FAR Case 89–13) to incorporate additional statutory requirements of section 311(a) of Public Law 101–189, regarding base closures. FAR Case 90–30 (the second interim rule) was published in the Federal Register at 55 FR 52782 on December 21, 1990, as FAC 90–3. Use of the revised restrictions was made mandatory for covered contracts for all agencies. This final rule removes both restrictions on severance pay from the Governmentwide FAR in anticipation of promulgation of the restrictions in the DOD supplement, the DFARS. This final rule also supersedes FAR Case 89–13 in the Federal Register at 54 FR 13022 on March 29, 1989, and FAR cases 90–30 in the Federal Register at 55 FR 52782 on December 21, 1990.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31, 37, and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 31, 37, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 31, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

2. Section 31.205–6 is amended in paragraph (g)(2)(i)(D) by removing the parenthetical "(but see 37.110(f) regarding services performed outside the United States)".

PART 37—SERVICE CONTRACTING

37.110 [Amended]

3. Section 37.110 is amended by removing paragraph (f).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.237–8 [Removed and reserved]

4. Section 52.237–8 is removed and reserved.

[FR Doc. 92–30576 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 90–16; FAR Case 91–86; Item XVII]

Federal Acquisition Regulation; GAO Bid Protest Regulations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising FAR 33.104 to implement the General Accounting Office's revised bid protest procedures which went into effect on April 1, 1991.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–86.

SUPPLEMENTARY INFORMATION:

A. Background

This rule is being published as a final rule without prior publication as a proposed rule because it is not a significant revision within the meaning of FAR 1.501 and involves only internal agency operating procedures.

The General Accounting Office (GAO) revised its bid protest rules (4 CFR part 21) effective April 1, 1991. This FAR final rule implements only those changes in GAO's rules which are essential to the contracting officer. The most significant of these address the information an agency is required to provide to GAO, protective orders issued by GAO, and formal fact-finding hearings. FAR 33.104 has been substantially rewritten to implement GAO's revised rules and to revise the coverage to present a more logical order and make other editorial improvements.

"All evaluation documents" are added to the list of documents an agency report must now include (33.104(a)(3)(ii)(D)); in addition to the documents contained in the report, agencies must also make available to GAO any relevant document specifically requested by the protestor (33.104(a)(3)(iii)). GAO's new rules provide interested parties with easier access to documents, and FAR 33.104(a)(5) addresses requests for, and GAO issuance of, protective orders to limit the right to use and disclose released documents. FAR 33.104(e) provides notice of the GAO's formal fact-finding hearings, with minimal discussion of GAO's detailed procedures. In addition, in lieu of defining the term "day" in this section of the FAR, the terms "work day" or "calendar day" have been used throughout 33.104, consistent with the usage of those terms in 31 U.S.C. 3551 and 4 CFR part 21.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. The rule implements GAO's revised bid protest procedures (4 CFR part 21) by incorporating those revised procedures which are essential to contracting officers; it does not impact the involvement of small entities in the GAO bid protest process. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 610, *et seq.* (FAC 90–16, FAR case 91–86), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office

of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 33 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 33.104 is revised to read as follows:

33.104 Protests to GAO.

This section implements the GAO's Bid Protest Regulations as set forth at 4 CFR part 21.

(a) *General procedures.* (1) A protestor is required to furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 work day after the protest is filed with the GAO. The GAO may dismiss the protest if the protestor fails to furnish a complete copy of the protest within 1 work day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a substantial and reasonable prospect of receiving award if the protest is denied. The agency shall furnish copies of the protest submissions to such parties with instructions to (i) communicate directly with the GAO, and (ii) provide copies of any such communication to the agency and to other participating parties when they become known.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 25 work days after the GAO notifies the agency by telephone that a protest has been filed, or within 10 work days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) Advises the agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency's written request for an extension. Any new date shall be documented in the agency's protest file.

(ii) The agency report to the GAO shall include, as appropriate, a copy of—

(A) The protest;

(B) The offer submitted by the protesting offeror;

(C) The offer which is being considered for award or which is being protested;

(D) All evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions;

(G) Any other documents that the agency determines are relevant to the protest;

(H) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section;

(I) A list identifying the other parties who are being provided copies of the report; and

(J) A list of the documents withheld from the protestor and other interested parties, and the reasons for withholding them. The list shall identify any documents specifically requested by, and withheld from, the protestor.

(iii) In addition to the documents contained in the report, the agency shall make available to the GAO any documents specifically requested by the protestor.

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protestor and other interested parties who have responded to the notice given under subparagraph (a)(2) of this section. A party shall receive all relevant documents, except—

(A) Those that the agency has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; and information that would give the party a competitive advantage; and

(B) Protestor's documents which the agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If, within 2 work days after receipt of the agency report, the protestor requests additional documents, the agency shall provide the requested documents, if relevant, to the GAO within 5 work days of receipt of the request.

(B) The additional documents shall also be provided to the protestor and other interested parties within this 5-workday period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order. A request for a protective order to cover the additional documents shall be made in accordance with 33.104(a)(5) within this 5-workday period.

(C) The agency shall notify the GAO of any documents withheld from the protestor and other interested parties and shall state the reasons for withholding them.

(5) The GAO may issue a protective order to limit the release of particular documents to counsel for the protestor and to counsel for the other interested parties entitled to receive the documents if the documents contain information that is privileged, or if their release would create a competitive advantage.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, but not more than 20 work days after the protest filing date, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 work days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties. Within 1 work day after receipt of a copy of the request, any rebuttal shall be filed with GAO, with copies furnished simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not

already covered by the protective order be included in the order. Request shall be filed with the GAO, with copies furnished simultaneously to all parties. Any rebuttal to such a request must be filed within 1 work day after receipt of a copy of the request.

(iv) *Sanctions and remedies.* The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against an agency which fails to provide documents designated in a protective order.

(6) The protestor and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 10 work days, 5 work days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 7 work days after the hearing.

(7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact who are knowledgeable about the subject matter of the protest. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials.

(b) *Protests before award.* (1) When the agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 calendar days of the written finding.

(2) A contract award shall not be authorized until the agency has notified the GAO of the finding in subparagraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under subparagraph (b)(1) of this section.

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO after award of a contact, but within 10 calendar days after award, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in subparagraphs (c) (2) and (3) of this section.

(2) In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the agency has notified the GAO of the finding in subparagraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the agency receives notice of a protest filed with the GAO more than 10 calendar days after award of the protested acquisition, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protestor and other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protestor, or other interested party who has responded to the notice in 33.104(a)(2). The GAO may designate representatives of the parties to attend the hearing. The attending parties and the hearing official may question representatives of the parties at the hearing. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO for a fee. All parties may file comments on the hearing and report within 7 work days of the hearing.

(f) *GAO decision time.* GAO will issue its recommendation on a protest within 90 work days from the date of filing of the protest with the GAO, or within 45 calendar days under the express option, unless GAO establishes a longer period of time.

(g) *Notice to GAO.* The head of the agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 calendar days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g) of this section) may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the agency if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional. Before paying a recommended award of protest costs (as defined under paragraph (g) of this section), agency personnel should consult the General Counsel's office of the agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g) of this section) which have not yet been paid.

[FR Doc. 92–30577 Filed 12–18–92; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAC 90-16; FAR Case 91-88; Item XVIII]

Federal Acquisition Regulation; Use of Indicia Mail

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 42.1404–1, Parcel post eligible shipments, and the clause at 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, to conform the language to the U.S. Postal Service Domestic Mail Manual. The final rule clarifies the procedures agencies use to obtain authority for contractors to use indicia mail.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–88/FAC 90–16.

SUPPLEMENTARY INFORMATION:

A. Background

A recent review of the text at FAR 42.1404–1 and the clause at 52.242–11 indicated that the citations needed updating to clarify agency procedures and responsibilities in obtaining authorization for contractors to use indicia mail and to conform the FAR to language in the U.S. Postal Service Domestic Mail Manual.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–88), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 42 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

2. Section 42.1404–1 is amended by revising paragraph (b) to read as follows:

42.1404–1 Parcel post eligible shipments.

* * * * *

(b)(1) Authority for contractors to use indicia mail may be obtained by submitting Postal Service (PS) Form 3601, Application to Mail Without Affixing Postage Stamps, to the U.S. Postal Service for approval, following agency procedures. If approval is granted, the agency shall follow the U.S. Postal Service permit requirements.

(2) When indicia mail is used, the contractor will be provided with a completed PS Form 3601 and official penalty permit imprint mailing labels, envelopes, or cards printed on the top right side in a rectangular box: Postage and Fees Paid (first line); Government Agency Name (second line); and, the proper permit imprint number (G–000) on the third line. These must also bear in the upper left corner in every case the printed return address of the agency concerned above the printed phrases "Official Business" and "Penalty for Private Use, $300." The name and address of a private person or firm shall not be shown.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.242–11 is amended by revising the date of the clause to read "(FEB 1993)"; the introductory text and paragraph (a) of the clause; and removing the derivation line reading "(R7–104.85(b) 1973 APR)" following "(End of clause)" to read as follows:

52.242–11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

As prescribed in 42.1404–2(b), insert the following clause:

F.O.B. Origin—Government Bills of Lading or Indicia Mail (Feb. 1993)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal System, using "Penalty Permit Imprint" indicia labels.

* * * * *

[FR Doc. 92–30578 Filed 12–18–92; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAC 90–16; FAR Case 90–12; Item XIX]

Federal Acquisition Regulation; Thresholds, FAR Part 45

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising sections in FAR subparts 45.1, 45.3, and 45.5 and amending the clause at 52.245–18 to raise or delete outdated dollar thresholds and to clarify existing policy.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 90–12.

SUPPLEMENTARY INFORMATION:

A. Background

Dollar thresholds in FAR part 45 and the clause at FAR 52.245–18 were reviewed for currency, consistency, clarity, and necessity. The approved revisions are intended to balance prudent control and efficient oversight of Government property, while streamlining operations. Giving

consideration to inflation and the resulting increased costs of property, several thresholds were found to be outdated and were raised or removed. The revised thresholds were published in a proposed rule published in the **Federal Register** at 55 FR 32586 on August 9, 1990. The 13 responses received consisted of 10 concurrences with no comment and three comments.

As a result of the comments, FAR 45.506 of the proposed rule has been further revised. The sequence of paragraphs in FAR 45.506 have been revised as follows: Paragraph (a) remains the same, former paragraph (c) becomes the new paragraph (b) with the deletion of the second sentence. Former paragraph (b) is redesignated as paragraph (c). Former paragraph (d) and coverage in former paragraph (c), covering identification of plant equipment and special tooling and special test equipment, respectively, are deleted as the two methods of identification were made uniform under a separate case. Former paragraph (e) is relocated in the new paragraph (c) and a new paragraph (d) is added to describe marking procedures.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it applies either to the internal operating procedures of the Government or generally to large contractors. When this was published as a proposed rule in the **Federal Register** at 55 FR 32586 on August 9, 1990, comments were requested and none were received concerning this issue.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a new information collection requirement concerning OMB Control No. 9000–0075, Thresholds, part 45, is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* for approval. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 45 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

2. Section 45.105 is amended by revising paragrapn (b) to read as follows:

45.105 Records of Government property.

(a) * * *

(b) Contracts may provide for the contracting office to maintain the Government's official Government property records when the contracting office retains contract administration and Government property is furnished to a contractor—(1) for repair or servicing and return to the shipping organization, (2) for use on a Government installation, (3) under a local support service contract, (4) under a contract with a short performance period, or (5) when otherwise determined by the contracting officer to be in the Government's interest.

3. Section 45.106 is amended in paragraph (d) by removing the amount "$50,000" and inserting "$100,000" in its place; and by revising paragraph (e) to read as follows:

45.106 Government property clauses.

* * * * *

(e) When the cost of the item to be repaired does not exceed the small purchase limitation in section 13.000, purchase orders for property repair need not include a Government property clause.

* * * * *

4. Section 45.302–3 is amended by revising paragraph (a); and removing in paragraph (b) the words "(a)(3) above" and inserting "subparagraph (a)(5) of this subsection" in their place to read as follows:

45.302–3 Other contracts.

(a) Facilities may be provided to a contractor under a contract other than a facilities contract when one of the following exceptions applies:

(1) The actual or estimated cumulative acquisition cost of the facilities provided by the contracting activity to the contractor at one plant or general location does not exceed $1,000,000;

(2) The number of items of plant equipment provided is ten or fewer;

(3) The contract performance period is twelve months or less;

(4) The contract is for construction;

(5) The contract is for services and the facilities are to be used in connection with the operation of a Government-owned plant or installation; or

(6) The contract is for work within an establishment or installation operated by the Government.

* * * * *

45.307–2 [Amended]

5. Section 45.307–2 is amended in paragraph (a) by removing the amount "$1,000" and inserting "$5,000" in its place.

6. Section 45.506 is revised to read as follows:

45.506 Identification.

(a) Upon receipt of Government property, the contractor shall promptly—

(1) Identify the property in accordance with agency regulations;

(2) Mark the property in accordance with this section; and

(3) Record the property in its property control records.

(b)(1) Except for the following, all Government property shall be marked with an indication of Government ownership:

(i) Items issued to individuals for use in their work (e.g., protective clothing or tool crib tools) where adequate physical control is maintained over the items.

(ii) Property of a bulk type, or where its general nature of packing or handling precludes adequate marking.

(iii) Material that is commingled, as authorized by 45.507.

(iv) Where the property administrator agrees that marking is impractical.

(2) Exempted items shall be entered and described on the accountable property records.

(c)(1) In addition to marking with an indication of Government ownership, the following property shall be marked with a serial number in accordance with procedures approved by the property administrator:

(i) Special tooling.

(ii) Special test equipment.

(iii) Components of special test equipment that have an acquisition cost of $5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

(iv) Plant equipment.

(v) Accessory or auxiliary equipment associated with a specific item of plant equipment that is recorded on the property records, if necessary to assure return with the associated basic item.

(2) The contractor shall record assigned numbers on all applicable documents pertaining to the property control system.

(3) If the property is located in a standard agency registration system, the contractor may use the property's registration number as the serial number. The contractor should obtain the registration number through the property administrator from the owning agency.

(d) The markings in paragraphs (b) and (c) of this section shall be—(1) securely affixed to the property, (2) legible, and (3) conspicuous. Examples of appropriate markings are bar coding, decals, and stamping. If marking will damage the property or is otherwise impractical, the contractor shall promptly notify the property administrator and ask for the item to be exempted (see paragraph (b) of this section). Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.245–18 [Amended]

7. Section 52.245–18 is amended by removing in the clause heading the date "(AUG 1988)" and inserting "(FEB 1993)" in its place; and removing in paragraph (b) the amounts "$1,000" every time they appear and inserting "$5,000" in their place.

[FR Doc. 92–30579 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45

RIN 9000–AE13

[FAC 90–16; FAR Case 90–41; Item XX]

Federal Acquisition Regulation; Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition and Defense Acquisition Regulations Councils have agreed on a final rule amending FAR 45.301 and 45.302–3(c) to clarify the policy regarding fee or profit in the acquisition of general purpose components of special tooling and special test equipment. The prohibition on profit or fee on the cost of facilities when purchased under other than a facilities contract does not apply to general purpose components of special tooling or special test equipment.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 90–41.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule was published for public comment in the **Federal Register** on August 9, 1990 (55 FR 32587). Thirteen comments were received and considered in development of this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is a clarification of existing Government policy and does not impose burdens on the small business community. None of the comments received addressed the Regulatory Flexibility Act statement published with the proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 45 is amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

45.301 [Amended]

2. Section 45.301 is amended in the definition "Facilities" by removing the last sentence.

3. Section 45.302–3 is amended in paragraph (c) by adding a second sentence to read as follows:

45.302–3 Other contracts.

* * * * *

(c) * * * General purpose components of special tooling or special test equipment are not facilities.

[FR Doc. 92–30580 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45

[FAC 90–16; FAR Case 91–74; Item XXI]

Federal Acquisition Regulation; Inventory Schedules, Authority of Contractor's Representative

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule deleting language at FAR 45.606–1(b) which was published in Federal Acquisition Circular 90–4 in the **Federal Register** at 56 FR 15148 on April 15, 1991. The deleted language required that the contractor's inventory schedule certificate be signed by a representative having the authority to commit the contractor in contractual matters.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–74.

SUPPLEMENTARY INFORMATION:

A. Background

The language at FAR 45.606–1(b), which was added by FAC 90–4, is removed because of objections from Industry that the rule imposed an undue burden on contractors. Further, the

Defense Contract Management Command's implementation of their Plant Clearance Automated Reutilization Screening System (PCARSS) eliminated hard-copy schedules for contractors under DOD cognizance and will eliminate, through procedures established under PCARSS, the need for which the former language was developed.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule revises to make less burdensome a procedure normally associated with large businesses having Government property in their possession.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 45 is amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.606–1 is amended by revising paragraph (b) to read as follows:

45.606–1 Submission.

* * * * *

(b) The certificate on the inventory schedule must be executed when contractor inventory is reported. The prime contractor shall execute this certificate, except that for subcontractor termination inventory the subcontractor shall execute the certificate.

[FR Doc. 92–30581 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 51

[FAC 90–16; FAR Case 91–55; Item XXII]

Federal Acquisition Regulation; Threshold Change to 51.106(b)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition and Defense Acquisition Regulations Councils have agreed on a final rule amending paragraph (b) of FAR 51.106, Title, which raises the threshold listed therein from $1,000 to $5,000. The revision is consistent with the threshold listed in FAR 52.245–2, Alternate II, and 52.245–5, Alternate I, to which FAR 51.106(b) refers. The revised paragraph will state that if contracts are with educational institutions using the Government Property clause at FAR 52.245–2, Alternate II, or FAR 52.245–5, Alternate I, then title to property having an acquisition cost of less than $5,000 shall vest in the contractor, as provided in the clause. Agencies may provide higher thresholds, if appropriate.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–55.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense requested that the threshold referenced in FAR 51.106(b) be raised from $1,000 to $5,000 to be consistent with the threshold listed in FAR 52.245–2, Alternate II, and 52.245–5, Alternate I, to which it refers.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. The case revises paragraph (b) of 51.106, Title, by raising the dollar threshold from "$1,000" to "$5,000" to be consistent with the threshold specified in FAR 52.245–2, Alternate II, and 52.245–5, Alternate I, which it references. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–55), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 51

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 51 is amended as set forth below:

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

1. The authority citation for 48 CFR part 51 continues to read as foll ows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

51.106 [Amended]

2. Section 51.106 is amended in paragraph (b) by removing the amount "$1,000" and inserting "$5,000" in its place.

[FR Doc. 92–30582 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAC 90–16; FAR Case 91–60; Item XXIII]

Federal Acquisition Regulation; Standard Forms 254 and 255, Architect-Engineer Questionnaires

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project. The rule deletes the obsolete definition of "Architect-Engineer and related services" on the forms and refers to the definition in FAR part 36. Corresponding changes will be made to the prescriptive language for the forms at FAR 53.236–2(b) and (c).

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–69.

SUPPLEMENTARY INFORMATION:

A. Background

The changes were determined to be necessary by the two Councils because the definition of "Architect-Engineer and related services" at FAR 36.102 was recently revised and the forms and prescriptive language contain an obsolete definition.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–69), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 53 is amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 53.236–2 is amended by revising paragraphs (b) and (c) to read as follows:

53.236–2 Architect-engineer services (SF's 252, 254, 255, and 1421).

* * * * *

(b) *SF 254 (REV. 11/92), Architect-Engineer and Related Services Questionnaire.* SF 254 is prescribed for use to obtain information for architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1).

(c) *SF 255 (REV. 11/92), Architect-Engineer and Related Services Questionnaire for Specific Project.* SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in 36.702(b)(2), whenever an agency requires information to supplement the SF 254 regarding the prospective firm's qualifications for a particular architect-engineer project.

* * * * *

BILLING CODE 6820–34–M

STANDARD FORM (SF) **254**

Architect-Engineer and Related Services Questionnaire

Form Approved
OMB No. 9000-0004
Expires 7-31-94

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0004), Washington, D.C. 20503.

Purpose:

The policy of the Federal Government in acquiring architectural, engineering, and related professional services is to encourage firms lawfully engaged in the practice of those professions to submit annually a statement of qualifications and performance data. Standard Form 254, "Architect-Engineer and Related Services Questionnaire," is provided for that purpose. Interested A-E firms (including new, small, and/or minority firms) should complete and file SF 254's with each Federal agency and with appropriate regional or district offices for which the A-E is qualified to perform services. The agency head for each proposed project shall evaluate these qualification resumes, together with any other performance data on file or requested by the agency, in relation to the proposed project. The SF 254 may be used as a basis for selecting firms for discussions, or for screening firms preliminary to inviting submission of additional information.

Definitions:

"Architect-Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.

"Parent Company" is that firm, company, corporation, association or conglomerate which is the major stockholder or highest tier owner of the firm completing this questionnaire; i.e., Firm A is owned by Firm B which is, in turn, a subsidiary of Corporation C. The "parent company" of Firm A is Corporation C.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Consultant," as used in this questionnaire, is a highly specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

"Prime" refers to that firm which may be coordinating the concerted and complementary inputs of several firms, individuals or related services to produce a completed study or facility. The "prime" would normally be regarded as having full responsibility and liability for quality of performance by itself as well as by subcontractor professionals under its jurisdiction.

"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Type accurate and complete name of submitting firm, its address, and zip code.
   1a. Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.)
2. Provide date the firm was established under the name shown in question 1.
3. Show date on which form is prepared. All information submitted shall be current and accurate as of this date.
4. Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.).

   Check appropriate boxes indicating if firm is (a) a small business concern; (b) a small business concern owned and operated by socially and economically disadvantaged individuals; and (c) Woman-owned (See 48 CFR 19.101 and 52.219-9).
5. Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and address of highest-tier owner.
   5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their original establishment.
6. List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters.
7. Beginning with the submitting office, list name, location, total number of personnel, and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A-E and related services.
   7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.)
8. Show total number of employees, by discipline, in submitting office. (*If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines--sociologists, biologists, etc. -- and number of people in each, in blank spaces.

STANDARD FORM (SF) 254

Architect-Engineer and Related Services Questionnaire

9. Using chart (below) insert appropriate index number to indicate range of professional services fees received by submitting firm each calendar year for last five years, most recent year first. Fee summaries should be broken down to reflect the fees received each year for (a) work performed directly for the Federal Government (not including grant and loan projects) or as a sub to other professionals performing work directly for the Federal Government; (b) all other domestic work, U.S. and possessions, including Federally-assisted projects, and (c) all other foreign work.

Ranges of Professional Services Fees

INDEX		INDEX	
1.	Less than $100,000	5.	$1 million to $2 million
2.	$100,000 to $250,000	6	$2 million to $5 million
3.	$250,000 to $500,000	7.	$5 million to $10 million
4.	$500,000 to $1 million	8.	$10 million or greater

10. Select and enter, in numerical sequence, **not more than thirty** (30) "Experience Profile Code" numbers from the listing (next page) which most accurately reflect submitting firm's demonstrated technical capabilities and project experience. **Carefully review list.** (It is recognized some profile codes may be part of other services or projects contained on list; firms are encouraged to select profile codes which best indicate type and scope of services provided on past projects.) For each code number, show total number of projects and gross fees (in thousands) received for profile projects performed by firm during past few years. If firm has one or more capabilities not included on list, insert same in blank spaces at end of list and show numbers in question 10 on the form. In such cases, the filled-in listing **must** accompany the complete SF 254 when submitted to the Federal agencies.

11. Using the "Experience Profile Code" numbers in the same sequence as entered in item 10, give details of at least one recent (within last five years) representative project for each code number, up to a **maximum** of thirty (30) separate projects, or portions of projects, for which firm was responsible. (Project examples may be used more than once to illustrate different services rendered on the same job. Example: a dining hall may be part of an auditorium or educational facility.) Firms which select less than thirty "profile codes" may list two or more project examples (to illustrate specialization) for each code number so long as total of all project examples does not exceed thirty (30). After each code number in question 11, show: (a) whether firm was "P," the prime professional, or "C," a consultant, or "JV," part of a joint venture on that particular project (new firms, in existence less than five (5) years may use the symbol "IE" to indicate "Individual Experience" as opposed to firm experience); (b) provide name and location of the specific project which typifies firm's (or individual's) performance under that code category; (c) give name and address of the owner of that project (if government agency indicate responsible office); (d) show the estimated construction cost (or other applicable cost) for that portion of the project for which the firm was primarily responsible. (Where no construction was involved, show approximate cost of firm's work); and (e) state year work on that particular project was, or will be, completed.

12. The completed SF 254 should be signed by a principal of the firm, preferably the chief executive officer.

13. Additional data, brochures, photos, etc. should not accompany this form unless specifically requested.

NEW FIRMS (not reorganized or recently-amalgamated firms) are eligible and encouraged to seek work from the Federal Government in connection with performance of projects for which they are qualified. Such firms are encouraged to complete and submit Standard Form 254 to appropriate agencies. Questions on the form dealing with personnel or experience may be answered by citing experience and capabilities of individuals in the firm, based on performance and responsibility while in the employee of others. In so doing, notation of this fact should be made on the form. In question 9, write in "N/A" to indicate "not applicable" for those years prior to firm's organization.

Experience Profile Code Numbers for use with questions 10 and 11

001 Acoustics, Noise Abatement
002 Aerial Photogrammetry
003 Agricultural Development; Grain Storage; Farm Mechanization
004 Air Pollution Control
005 Airports; Navaids; Airport Lighting; Aircraft Fueling
006 Airports; Terminals & Hangars; Freight Handling
007 Arctic Facilities
008 Auditoriums & Theatres
009 Automation; Controls; Instrumentation
010 Barracks; Dormitories
011 Bridges
012 Cemeteries *(Planning & Relocation)*
013 Chemical Processing & Storage
014 Churches; Chapels
015 Codes; Standards; Ordinances
016 Cold Storage; Refrigeration; Fast Freeze
017 Commercial Building *(low rise)*; Shopping Centers
018 Communications Systems; TV; Microwave
019 Computer Facilities; Computer Service
020 Conservation and Resource Management
021 Construction Management
022 Corrosion Control; Cathodic Protection; Electrolysis
023 Cost Estimating
024 Dams *(Concrete; Arch)*
025 Dams *(Earth; Rock)*; Dikes; Levees
026 Desalinization *(Process & Facilities)*
027 Dining Halls; Clubs; Restaurants
028 Ecological & Archeological Investigations
029 Educational Facilities; Classrooms
030 Electronics
031 Elevators; Escalators; People-Movers
032 Energy Conservation; New Energy Sources
033 Environmental Impact Studies, Assessments or Statements
034 Fallout Shelters; Blast-Resistant Design
035 Field Houses; Gyms; Stadiums
036 Fire Protection
037 Fisheries; Fish Ladders
038 Forestry & Forest Products
039 Garages; Vehicle Maintenance Facilities; Parking Decks
040 Gas Systems *(Propane; Natural, Etc.)*
041 Graphic Design
042 Harbors; Jetties; Piers, Ship Terminal Facilities
043 Heating; Ventilating; Air Conditioning
044 Health Systems Planning
045 Highrise; Air-Rights-Type Buildings
046 Highways; Streets; Airfield Paving Parking Lots
047 Historical Preservation
048 Hospital & Medical Facilities
049 Hotels; Motels
050 Housing *(Residential, Multi-Family; Apartments; Condominiums)*
051 Hydraulics & Pneumatics
052 Industrial Buildings; Manufacturing Plants
053 Industrial Processes; Quality Control
054 Industrial Waste Treatment
055 Interior Design; Space Planning
056 Irrigation; Drainage
057 Judicial and Courtroom Facilities
058 Laboratories; Medical Research Facilities
059 Landscape Architecture
060 Libraries; Museums; Galleries
061 Lighting *(Interiors; Display; Theatre, Etc.)*
062 Lighting *(Exteriors; Streets; Memorials; Athletic Fields, Etc.)*
063 Materials Handling Systems; Conveyors; Sorters
064 Metallurgy
065 Microclimatology; Tropical Engineering
066 Military Design Standards
067 Mining & Mineralogy
068 Missile Facilities *(Silos; Fuels; Transport)*
069 Modular Systems Design; Pre-Fabricated Structures or Components
070 Naval Architecture; Off-Shore Platforms
071 Nuclear Facilities; Nuclear Shielding
072 Office Buildings; Industrial Parks
073 Oceanographic Engineering
074 Ordnance; Munitions; Special Weapons
075 Petroleum Exploration; Refining
076 Petroleum and Fuel *(Storage and Distribution)*
077 Pipelines *(Cross-Country - Liquid & Gas)*
078 Planning *(Community, Regional, Areawide and State)*
079 Planning *(Site, Installation, and Project)*
080 Plumbing & Piping Design
081 Pneumatic Structures, Air-Support Buildings
082 Postal Facilities
083 Power Generation, Transmission, Distribution
084 Prisons & Correctional Facilities
085 Product, Machine & Equipment Design
086 Radar; Sonar; Radio & Radar Telescopes
087 Railroad; Rapid Transit
088 Recreation Facilities *(Parks, Marinas, Etc.)*
089 Rehabilitation *(Buildings; Structures; Facilities)*
090 Resource Recovery; Recycling
091 Radio Frequency Systems & Shieldings
092 Rivers; Canals; Waterways; Flood Control
093 Safety Engineering; Accident Studies; OSHA Studies
094 Security Systems; Intruder & Smoke Detection
095 Seismic Designs & Studies
096 Sewage Collection, Treatment and Disposal
097 Soils & Geologic Studies; Foundations
098 Solar Energy Utilization
099 Solid Wastes; Incineration; Land Fill
100 Special Environments; Clean Rooms, Etc.
101 Structural Design; Special Structures
102 Surveying; Platting; Mapping; Flood Plain Studies
103 Swimming Pools
104 Storm Water Handling & Facilities
105 Telephone Systems *(Rural; Mobile; Intercom, Etc.)*
106 Testing & Inspection Services
107 Traffic & Transportation Engineering
108 Towers *(Self-Supporting & Guyed Systems)*
109 Tunnels & Subways
110 Urban Renewals; Community Development
111 Utilities *(Gas & Steam)*
112 Value Analysis; Life-Cycle Costing
113 Warehouses & Depots
114 Water Resources; Hydrology; Ground Water
115 Water Supply; Treatment and Distribution
116 Wind Tunnels; Research/Testing Facilities Design
117 Zoning; Land Use Studies
201 _____
202 _____
203 _____
204 _____
205 _____

STANDARD FORM (SF)

254

Architect-Engineer and Related Services Questionnaire

1. Firm Name/Business Address:

1a. Submittal is for ☐ Parent Company ☐ Branch or Subsidiary Office

2. Year Present Firm Established

3. Date Prepared:

4. Specify type of ownership and check below, if applicable.

- A. Small Business
- B. Small Disadvantaged Business
- C. Woman-owned Business

5. Name of Parent Company, if any:

5a. Former Parent Company Name(s), if any, and Year(s) Established:

6. Names of not more than Two Principals to Contact: Title/Telephone

1)

2)

7. Present Offices: City / State / Telephone / No. Personnel Each Office

7a. Total Personnel_____

8. Personnel by Discipline: (List each person only once, by primary function.)

___ Administrative	___ Electrical Engineers	___ Oceanographers	___ _____
___ Architects	___ Estimators	___ Planners: Urban/Regional	___ _____
___ Chemical Engineers	___ Geologists	___ Sanitary Engineers	___ _____
___ Civil Engineers	___ Hydrologists	___ Soils Engineers	___ _____
___ Construction Inspectors	___ Interior Designers	___ Specification Writers	___ _____
___ Draftsmen	___ Landscape Architects	___ Structural Engineers	___ _____
___ Ecologists	___ Mechanical Engineers	___ Surveyors	___ _____
___ Economists	___ Mining Engineers	___ Transportation Engineers	___ _____

9. Summary of Professional Services Fees Received: (Insert index number)

	Last 5 Years (most recent year first)				
	19___	19___	19___	19___	19___
Direct Federal contract work, including overseas					
All other domestic work					
All other foreign work*					

*Firms interested in foreign work, but without such experience, check here: ☐

Ranges of Professional Services Fees
INDEX
1. Less than $100,000
2. $100,000 to $250,000
3. $250,000 to $500,000
4. $500,000 to $1 million
5. $1 million to $2 million
6. $2 million to $5 million
7. $5 million to $10 million
8. $10 million or greater

STANDARD FORM 254 PAGE 4 (REV. 11-92)

10. Profile of Firm's Project Experience, Last 5 Years

Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)
1)			11)			21)		
2)			12)			22)		
3)			13)			23)		
4)			14)			24)		
5)			15)			25)		
6)			16)			26)		
7)			17)			27)		
8)			18)			28)		
9)			19)			29)		
10)			20)			30)		

11. Project Examples, Last 5 Years

Profile Code	"P," "C," "JV," or "IE"	Project Name and Location	Owner Name and Address	Cost of Work (in thousands)	Completion Date (Actual or Estimated)
		1			
		2			
		3			
		4			
		5			
		6			
		7			

		20				
		21				
		22				
		23				
		24				
		25				
		26				
		27				
		28				
		29				
		30				
12. The foregoing is a statement of facts Signature: _____ Typed Name and Title: _____					Date:	

STANDARD FORM 254 PAGE 67 (REV. 11-92)

STANDARD FORM (SF) **255**

Architect-Engineer and Related Services Questionnaire for Specific Project

Form Approved
OMB No. 9000-0005
Expires 7-31-94

Public reporting burden for this collection of information is estimated to average 1.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0005), Washington, D.C. 20503.

Purpose:

This form is a supplement to the "Architect-Engineer and Related Services Questionnaire" (SF 254). Its purpose is to provide additional information regarding the qualifications of interested firms to undertake a specific Federal A-E project. Firms, or branch offices of firms, submitting this form should enclose (or already have on file with the appropriate office of the agency) a current (within the past year) and accurate copy of the SF 254 for that office.

The procurement official responsible for each proposed project may request submission of the SF 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" in accord with applicable civilian and military procurement regulations and shall evaluate such submissions, as well as related information contained on the Standard Form 254, and any other performance data on file with the agency, and shall select firms for subsequent discussions leading to contract award in conformance with Public Law 92-582. This form should only be filed by an architect-engineer or related services firm when requested to do so by the agency or by a public announcement. Responses should be as complete and accurate as possible, contain data relative to the specific project for which you wish to be considered, and should be provided, by the required due date, to the office specified in the request or public announcement.

This form will be used only for the specified project. Do not refer to this submittal in response to other requests or public announcements.

Definitions:

"Architect-Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Key Persons, Specialists, and Individual Consultants," as used in this questionnaire, refer to individuals who will have major project responsibility or will provide **unusual or unique** capabilities for the project under consideration.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Give name and location of the project for which this form is being submitted.

2. Provide appropriate data from the *Commerce Business Daily* (CBD) identifying the particular project for which this form is being filed.

   2a. Give the date of the *Commerce Business Daily* in which the project announcement appeared, or indicate "not applicable" (N/A) if the source of the announcement is other than the CBD.

   2b. Indicate Agency identification or contract number as provided in the CBD announcement.

3. Show name and address of the individual or firm (or joint venture) which is submitting this form for the project.

   3a. List the name, title, and telephone number of that principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the programs and procedures of the agency to which this form is directed.

   3b. Give the address of the specific office which will have responsibility for performing the announced work.

4. Insert the number of consultant personnel by discipline proposed for subject project on line (A). Insert the number of in-house personnel by discipline proposed for subject project on line (B). While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines -- sociologists, biologists, etc. -- and number of people in each, in blank spaces.

5. Answer only if this form is being submitted by a joint venture of two or more collaborating firms. Show the names and addresses of all individuals or organizations expected to be included as part of the joint venture and describe their particular areas of anticipated responsibility (i.e., technical disciplines, administration, financial, sociological, environmental, etc.).

   5a. Indicate, by checking the appropriate box, whether this particular joint venture has worked together on other projects.

Each firm participating in the joint venture should have a Standard Form 254 on file with the contracting office receiving this form. Firms which do not have such forms on file should provide same immediately along with a notation at the top of page 1 of the form regarding their association with this joint venture submittal.

STANDARD FORM (SF) 255

Architect-Engineer and Related Services Questionnaire for Specific Project

Standard Form 255
General Services Administration
Washington, D.C. 20405

6. If respondent is not a joint venture, but intends to use outside (as opposed to in-house or permanently and formally affiliated) consultants or associates, he should provide names and addresses of all such individuals or firms, as well as their particular areas of technical/professional expertise, as it relates to this project. Existence of previous working relationships should be noted. If more than eight outside consultants or associates are anticipated, attach an additional sheet containing requested information.

7. Regardless of whether respondent is a joint venture or an independent firm, provide brief resumes of key personnel expected to participate on this project. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities. Each resume must include: (a) name of each key person and specialist and his or her title, (b) the project assignment or role which that person will be expected to fulfill in connection with this project, (c) the name of the firm or organization, if any, with whom that individual is presently associated, (d) years of relevant experience with present firm and other firms, (e) the highest academic degree achieved and the discipline covered (if more than one highest degree, such as two Ph.D.'s, list both), the year received and the particular technical/professional discipline which that individual will bring to the project, (f) if registered as an architect, engineer, surveyor, etc., show only the field of registration and the year that such registration was first acquired. If registered in several states, do not list states, and (g) a synopsis of experience, training, or other qualities which reflect individual's potential contribution to this project. Include such data as: familiarity with Government or agency procedures, similar type of work performed in the past, management abilities, familiarity with the geographic area, relevant foreign language capabilities, etc. Please limit synopsis of experience to directly relevant information.

8. List up to ten projects which demonstrate the firm's or joint venture's competence to perform work similar to that likely to be required on this project. The more recent such projects, the better. Prime consideration will be given to projects which illustrate respondent's capability for performing work similar to that being sought. Required information must include: (a) name and location of project, (b) brief description of type and extent of services provided for each project (submissions by joint ventures should indicate which member of the joint venture was the prime on that particular project and what role it played), (c) name and address of the owner of that project (if Government agency, indicate responsible office), and name and phone number of individual to contact for reference (preferably the project manager), (d) completion date (actual when available, otherwise estimated), (e) total construction cost of completed project (or where no construction was involved, the approximate cost of your work) and that portion of the cost of the project for which the named firm was/is responsible.

9. List only those projects which the A-E firm or joint venture, or members of the joint venture, are currently performing under direct contract with an agency or department of the Federal Government. Exclude any grant or loan projects being financed by the Federal Government but being performed under contract to other non-Federal Governmental entities. Information provided under each heading is similar to that requested in the preceding Item 8, except for (d) "Percent Complete." Indicate in this item the percentage of A-E work completed upon filing this form.

10. Through narrative discussion, show reason why the firm or joint venture submitting this questionnaire believes it is especially qualified to undertake the project. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by a firm or individuals for similar work, required security clearances, special approaches or concepts developed by the firm relevant to this project, etc. Respondents may say anything they wish in support of their qualifications. When appropriate, respondents may supplement this proposal with graphic material and photographs which best demonstrate design capabilities of the team proposed for this project.

11. Completed forms should be signed by the chief executive officer of the joint venture (thereby attesting to the concurrence and commitment of all members of the joint venture), or by the architect-engineer principal responsible for the conduct of the work in the event it is awarded to the organization submitting this form. Joint ventures selected for subsequent discussions regarding this project must make available a statement of participation signed by a principal of each member of the joint venture. ALL INFORMATION CONTAINED IN THE FORM SHOULD BE CURRENT AND FACTUAL.

STANDARD FORM (SF) **255** Architect-Engineer and Related Services Questionnaire for Specific Project	1. Project Name/Location for which Firm is Filing:	2a. *Commerce Business Daily* Announcement Date, if any:	2b. Agency Identification Number, if any:

3. Firm (or Joint-Venture) Name & Address	3a. Name, Title & Telephone Number of Principal to Contact
	3b. Address of office to perform work, if different from Item 3

4. Personnel by Discipline: (List each person only once, by primary function.) Enter proposed consultant personnel to be utilized on this project on line (A) and In-house personnel on line (B).

(A)	(B)	Administrative	(A)	(B)	Electrical Engineers	(A)	(B)	Oceanographers	(A)	(B)					
(A)	(B)	Architects	(A)	(B)	Estimators	(A)	(B)	Planners: Urban/Regional	(A)	(B)					
(A)	(B)	Chemical Engineers	(A)	(B)	Geologists	(A)	(B)	Sanitary Engineers	(A)	(B)					
(A)	(B)	Civil Engineers	(A)	(B)	Hydrologists	(A)	(B)	Soils Engineers	(A)	(B)					
(A)	(B)	Construction Inspectors	(A)	(B)	Interior Designers	(A)	(B)	Specification Writers	(A)	(B)					
(A)	(B)	Draftsmen	(A)	(B)	Landscape Architects	(A)	(B)	Structural Engineers	(A)	(B)					
(A)	(B)	Ecologists	(A)	(B)	Mechanical Engineers	(A)	(B)	Surveyors	(A)	(B)					
(A)	(B)	Economists	(A)	(B)	Mining Engineers	(A)	(B)	Transportation Engineers	(A)	(B)	Total Personnel				

5. If submittal is by JOINT-VENTURE list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm: (Attach SF 254 for each if not on file with Procuring Office.)

5a. Has this Joint-Venture previously worked together? ☐ Yes ☐ No

6. If respondent is not a joint-venture, list outside key Consultants/Associates anticipated for this project (Attach SF 254 for Consultants/Associates listed, if not already on file with the Contracting Office).

Name & Address	Specialty		Worked with Prime before (Yes or No)
1)			
2)			
3)			
4)			
5)			
6)			
7)			
8)			

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

8. Work by firms or joint-venture members which best illustrates current qualifications relevant to this project (list not more than 10 projects).

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Project Owner's Name & Address and Project Manager's Name & Phone Number	d. Completion Date (actual or estimated)	e. Estimated Cost (In Thousands)	
				Entire Project	Work For Which Firm Was/Is Responsible
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

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9. All work by firms or joint-venture members currently being performed directly for Federal agencies.					
				e. Estimated Cost (In Thousands)	
a. Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name and Address and Project Manager's Name & Phone Number	d. Percent Complete	Entire Project	Work For Which Firm Is Responsible

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10. Use this space to provide any additional information or description of resources (including any computer design capabilities) supporting your firm's qualifications for the propcsed project.

11. The foregoing is a statement of facts.

Signature: _____ Typed Name and Title: _____

Date:

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[FR Doc. 92-30583 Filed 12-18-92; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 19, 31, 33 and 52

[Federal Acquisition Circular 90–16; Item XXIV]

Federal Acquisition Regulation; Technical Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical corrections.

SUMMARY: The following technical corrections have been made to FAR parts 15, 19, 31, 33, and 52 to correct references and terms.

DATES: *Effective Date:* December 21, 1992.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–16; Technical Corrections.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 15, 19, 31, 33, and 52 is amended as set forth in the technical corrections appearing below:

1. The authority citation for 48 CFR parts 15, 19, 31, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

15.804–4 [Amended]

2. Section 15.804–4 is amended in the "Certificate of Current Cost or Pricing Data" following paragraph (a) by adding below the word "Firm", "Signature _____".

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.102 [Technical amendment]

3a. Section 19.102 is amended in the table consisting of the industry size standards in Major Group 37 by removing the size standard "500" for "Motor Vehicle Parts and Accessories" and inserting "750" in its place; and in Major Group 55 by removing the size standard "$11.5" for "Motor Vehicle Dealers (New and Used)" and inserting "$17.0".

3b. In addition to the amendments set forth above, section 19.102 is also amended in footnote number 5 in the "Footnotes" section following the Industry Size Standard Tables by removing the amount "50,000" and inserting "75,000" every time it appears.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–33 [Technical amendment]

4. Section 31.205–33 is amended in paragraph (f) by removing the reference "31.205–38(g)" and inserting "31.205–38(f)" in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.215 [Technical amendment]

5. Section 33.215 is amended by adding "(b)" at the end of the reference "33.203".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.301 [Amendment]

6. Sections 52.301 is amended in the Matrix table at sections 52.214–34 and 52.214–35 by removing from the IBR column the words "No" and inserting "Yes" in their place.

[FR Doc. 92–30584 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

federal register

Monday
December 21, 1992

Part III

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans With Disabilities Act Accessibility Guidelines; State and Local Government Facilities; Proposed Rulemaking

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 92–2]

RIN 3014 AA12

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; State and Local Government Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board is issuing proposed guidelines to provide additional guidance to the Department of Justice in establishing accessibility standards for new construction and alterations of State and local government facilities covered by title II of the Americans with Disabilities Act (ADA) of 1990. The guidelines will ensure that newly constructed and altered State and local government facilities are readily accessible to and usable by individuals with disabilities in terms of architecture and design, and communication. The standards established by the Department of Justice must be consistent with and may incorporate the guidelines.

DATES: Comments should be received by March 22, 1993. Comments received after this date will be considered to the extent practicable. Where possible, the comments should reference specific sections in the proposed guidelines. The Board will hold public hearings on the proposed guidelines on the dates and times listed under **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Comments should be sent to the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Comments which are six (6) pages or less may be faxed to (202) 272–5447. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m. on regular business days. The Board will hold public hearings on the proposed guidelines at the locations listed under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Stewart, Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 (Voice) or (202) 272–5449 (TDD). This is not a toll-free number. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION:

Public Hearings

To ensure broad public input into the rulemaking, the Board has scheduled five hearings around the country to hear from all those affected by the proposed guidelines. The hearings will be held on the following dates and times at the locations listed below:

February 22, 1993—Charlotte, North Carolina, 1 p.m. to 5 p.m., Marriott City Center, 100 West Trade Street.

February 22, 1993—Denver, Colorado, 1 p.m. to 5 p.m., Westin Hotel, Taber Center, 1672 Lawrence Street.

March 2, 1993—St. Louis, Missouri, 1 p.m. to 5 p.m., Marriott Pavilion Hotel, One Broadway.

March 9, 1993—Washington, DC, 1 p.m. to 5 p.m., Sheraton City Center, 1143 New Hampshire Avenue.

March 15, 1993—San Francisco, California, 1 p.m. to 5 p.m., San Francisco Hilton on Hilton Square, One Hilton Square.

Persons who wish to present oral comments on the proposed guidelines may register at the hearing location beginning one hour before the start of the hearings. Persons will be heard in the order in which they register. Oral comments should be concise and limited to five (5) minutes. A written copy of the comments should be submitted for the official record. If more people register to present comments than can be heard in the time scheduled for the hearing, the Board reserves the right to select among those persons who register to ensure that the various interested parties are given an opportunity to speak. The Board is particularly interested in receiving comments on the specific questions identified in the preamble to the proposed guidelines.

All hearing sites are accessible to individuals with disabilities. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments.

Statutory Background

The Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 *et seq.*) extends to individuals with disabilities comprehensive civil rights protections similar to those provided to persons on the basis of race, sex, national origin, and religion under the Civil Rights Act of 1964.

Title II of the ADA, which became effective on January 26, 1992, prohibits discrimination on the basis of disability in services, programs and activities provided by State and local government entities, and the National Railroad Passenger Corporation (Amtrak). Section 202 of the ADA extends the nondiscrimination policy of section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794) which prohibits discrimination on the basis of disability in federally assisted programs and activities to all State and local governmental entities regardless of whether such entities receive Federal funds. Most programs and activities of State and local governments are recipients of financial assistance from one or more Federal agencies and are already covered by section 504 of the Rehabilitation Act of 1973.

Title III of the ADA, which became effective on January 26, 1992, prohibits discrimination on the basis of disability by private entities who own, lease, lease to, or operate a place of public accommodation. Title III establishes accessibility requirements for new construction and alterations in places of public accommodation and commercial facilities.

Section 504 of the ADA requires that the Architectural and Transportation Barriers Compliance Board (Board) issue minimum guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards under titles II and III. Under sections 204(a) and 306(b) of the ADA, the Department of Justice is responsible for issuing final regulations, consistent with the guidelines issued by the Board, to implement titles II and III (except for transportation vehicles and facilities). Sections 229 and 306(a) of the ADA provide that the Department of Transportation is responsible for issuing regulations to implement the transportation provisions of titles II and III of the ADA. Those regulations must also be consistent with the Board's guidelines.

Rulemaking History

On July 26, 1991, the Board published the Americans with Disabilities Act Accessibility Guidelines (ADAAG) to assist the Department of Justice in establishing accessibility standards for new construction and alterations in places of public accommodation and commercial facilities. See 56 FR 35408, as corrected at FR 38174 (August 12, 1991) and 57 FR 1393 (January 14, 1992), 36 CFR part 1191. ADAAG contains scoping provisions and technical specifications generally

applicable to buildings and facilities (sections 1 through 4.35) and additional requirements specifically applicable to certain types of buildings and facilities covered by title III of the ADA: Restaurants and cafeterias (section 5); medical care facilities (section 6); mercantile and business facilities (section 7); libraries (section 8); and transient lodging (section 9).[1]

On July 26, 1991, the Department of Justice published its final regulations implementing title III of the ADA which incorporated ADAAG as the accessibility standards for newly constructed and altered places of public accommodation and commercial facilities covered by title III. See 56 FR 35544, 28 CFR part 36. On that same date, the Department of Justice published its final regulations implementing title II of the ADA. See 56 FR 35694, 28 CFR part 35. The Department of Justice's title II regulations give State and local governments the option of choosing between designing, constructing or altering their facilities in conformance with the Uniform Federal Accessibility Standards (UFAS)[2] (Appendix A to 41 CFR 101–19.6) or with ADAAG (Appendix A to 28 CFR part 36), except that if ADAAG is chosen, the elevator exemption contained in title III of the ADA does not apply.[3] See 28 CFR 35.151.

When the Board published its notice of proposed rulemaking (NPRM) for ADAAG, State and local governments were informed that the guidelines would, at a later date, apply to State and local government facilities and were encouraged to comment on how the proposed ADAAG would affect those facilities. See 56 FR 2299 (January 26, 1991). Additionally, a number of the questions in the NPRM were directed at issues particularly affecting State and local government facilities. In all, the Board received over 12,000 pages of comments and testimony on the proposed ADAAG from a broad range of interested individuals and groups, as well as from representatives of State and local governments. Comments received pertaining to State and local government facilities are discussed under General Issues below and in Section by Section Analysis.

When the Department of Justice published its title II regulations, it noted that the Board would be supplementing ADAAG in the future to include additional guidelines for State and local government facilities. The Department of Justice further stated that it anticipated that it would amend its title II regulations to adopt ADAAG as the accessibility standards for State and local government facilities after the Board supplemented ADAAG. 56 FR 35694, 35711 (July 26, 1991). Adopting essentially the same accessibility standards for titles II and III of the ADA will ensure consistency and uniformity of design in the public and private sectors throughout the country.

To further the goal of uniform standards, the Board intends to use ADAAG as the accessibility guidelines for Federally financed facilities covered by the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) since the Federal government owns or operates many of the same type of facilities as State and local governments which are addressed in this NPRM. Under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792), the Board is responsible for establishing guidelines for accessibility standards issued by other Federal agencies pursuant to the Architectural Barriers Act of 1968. See note 2 *supra*. The Board anticipates that when this rulemaking is completed, it will initiate action to adopt ADAAG as supplemented for State and local government facilities with special provisions as appropriate for Federal buildings (e.g., post offices, military facilities) in place of its current guidelines for Federally financed facilities. Standards issued by other Federal agencies pursuant to the Architectural Barriers Act must be consistent with the Board's guidelines. Those Federal agencies responsible for issuing accessibility standards under the Architectural Barriers Act will initiate separate rulemaking to adopt standards consistent with ADAAG as supplemented in place of UFAS. Federal agencies, and other interested persons, are encouraged to comment on this NPRM in the context of how the proposed guidelines will also affect Federal facilities and to specify any particular Federal building types which would require special provisions.

Since the Board issued ADAAG in July 1991, additional comments have been received on allowing the use of incised letters on certain signs. This NPRM asks several questions on this issue in order to assist the Board in developing appropriate requirements for State and local government facilities. The Board will also use the information that it receives during this rulemaking to guide it in determining whether to amend other provisions of ADAAG. Therefore the Board strongly encourages individuals and entities concerned about allowing the use of incised letters on certain signs to submit detailed comments to the questions in this NPRM relating to this issue.

General Issues

Alterations

Where substantial alterations occur to a building or facility, UFAS 4.1.6(3) establishes additional requirements for an accessible route, an accessible entrance, and accessible toilet facilities when the total cost of all alterations within any twelve month period amounts to 50 percent or more of the full and fair cash value of the building. ADAAG 4.1.6(2) provides that where alterations affect or could affect usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are accessible to the extent that the costs of these accessibility features are not disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Attorney General. The Department of Justice's title III regulations provide that alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alterations when the cost exceeds 20 percent of the cost of the alterations to the primary function area. See 28 CFR 36.403(f). The Department of Transportation regulations contain a similar requirement for publicly operated transit facilities. See 49 CFR 37.43.

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[1] On September 6, 1991, the Board amended ADAAG to include additional requirements specifically applicable to transportation facilities (section 10). See 56 FR 45500, 36 CFR 1191.1. On that same date, the Board also published separate final guidelines to assist the Department of Transportation in establishing accessibility standards for transportation vehicles. See 56 FR 45530, 36 CFR part 1192. The Department of Transportation has incorporated ADAAG and the Board's guidelines for transportation vehicles and facilities in its final regulations. See 56 FR 45584 (September 6, 1991), 49 CFR parts 37 and 38.

[2] UFAS was developed by the General Services Administration, Department of Defense, Department of Housing and Urban Development, and the United States Postal Service to implement the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) which requires certain Federally financed buildings to be accessible. Most Federal agencies reference UFAS in the accessibility standards for buildings and facilities constructed or altered by recipients of Federal financial assistance for purposes of section 504 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 794).

[3] In new construction and alterations, title III of the ADA does not require elevators if a facility is less than three stories or has less than 3,000 square feet per story, unless the facility is a shopping center or mall; a professional office of a health care provider; or a terminal, depot or other situation used for specified public transportation or an airport terminal. See 28 CFR 36.401(d) and 36.404.

In the NPRM for ADAAG, the Board sought comment on whether the UFAS substantial alterations provision or the ADAAG primary function area provision should be applied to alterations in State and local government facilities. (See 56 FR 2319, January 22, 1991.) The overwhelming majority of comments received in response to this question supported the application of ADAAG 4.1.6(2) to buildings and facilities owned or operated by State and local governments. A few commenters stated that 100 percent accessibility should be the standard without regard to cost. In light of the response received to the question concerning alterations requirements and to make the standards consistent, the Board believes that the primary function area provision of ADAAG 4.1.6(2) should apply to facilities owned or operated by State and local governments and not the substantial alterations provision of UFAS 4.1.3(3).

Exempt Spaces and Structures

ADAAG 4.1.1(5) contains certain exceptions from the requirements for accessibility.

ADAAG 4.1.1(5)(a) provides an exception in new construction based on structural impracticability. Structural impracticability pertains to those rare circumstances when unique characteristics of terrain prevent the incorporation of accessibility features.

ADAAG 4.1.1(5)(b) excepts certain spaces that by their nature and use are not required to be accessible. This exception was provided in response to a question in the initial rulemaking which asked whether there were specific types of spaces which should be exempted from the guidelines. The exception includes: (1) Observation galleries used primarily for security purposes and (2) non-occupiable spaces that are accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators; and frequented only by service personnel for repair purposes.

Exceptions under ADAAG 4.1.1(5) prevail over the other requirements of ADAAG, including those in ADAAG 4.1.1(3) pertaining to work areas. Thus, the requirement that work areas be designed and constructed so that individuals with disabilities can approach, enter and exit the areas, does not apply to an area that is exempt under ADAAG 4.1.1(5).

In addition to the spaces listed in ADAAG 4.1.1(5), some commenters recommended that structures such as air traffic control towers, fire towers, boat traffic and draw bridge towers, fixed life guard stands, lock and dam control stations and toll booths be exempt from the guidelines. Those structures were not addressed in the initial rulemaking because they are generally owned and operated by State and local government entities and are not places of public accommodation or commercial facilities under title III of the ADA. However, as part of this rulemaking for State and local government facilities, the Board is considering adding an exception in ADAAG 4.1.1(5) for those structures where providing access might significantly alter the nature or design of the facility or greatly increase construction cost of the facility. For example, providing vertical access to fire towers might only be accomplished by substantially altering their design. Other structures such as fixed life guard stands, draw bridge towers, and toll booths may have similar constraints. Another example is air traffic control towers which require a 360 degree clear view that cannot be obstructed by an elevator shaft. All of the structures have certain features in common: (1) The nature of the work performed in the structures requires that they be elevated or accessed by tunnels and (2) they are used for fire or rescue assistance, traffic control, or toll collection.

Question 1: Despite these constraints, are there design solutions which would achieve accessibility in any of the following structures: Air traffic control towers, fire towers, boat traffic and draw bridge towers, lock and dam control stations, toll booths, and fixed life guard stands? Where possible, responses should include cost information for such design solutions and, where appropriate, address any health or safety concerns.

Question 2: Should any of the structures listed in Question 1 be exempt from the requirements for accessibility? Are there any other spaces or structures which should be exempt? Responses should include a rationale for exempting the space or structure. What is the cost impact of not providing an exception for the space or structure?

During the initial rulemaking, the Board asked whether certain areas of State and local government facilities should be exempt from the requirement for passenger elevators such as the second floor of a firehouse which contains sleeping accommodations but not office space. Some of the responses to this question recommended that the guidelines include an exemption from accessibility requirements based on the presumed physical abilities of the occupants. Specifically, commenters suggested that areas used only by "able-bodied" personnel should be exempt. Many of these commenters recommended that such an exception be narrowly drawn and include examples, but they did not provide any specific guidance.

Question 3: Are there areas of State or local government facilities where an exemption from the requirement for a passenger elevator is justified based solely on the presumed physical abilities of the occupants? What would be the specific prerequisites for allowing such areas to be exempt? Commenters should give consideration to whether supervisory, maintenance or clerical personnel, visitors, or other persons doing business (e.g., sales representatives), who might have a disability, would need to have access to any of the areas recommended for the exemption. Commenters should also take into consideration if such areas would have a dual purpose which would require them to be accessible to persons with disabilities, (e.g., a conference room or classroom which is also used for public meetings) or whether the occupancy of such areas is likely to change over time.

UFAS allows a military exception from accessibility for "those portions of National Guard facilities which are designed and constructed primarily for use by able-bodied military personnel only." UFAS 4.1.4(2)(b). Commenters should note that the UFAS exception "does not apply to those portions of a building or facility which may be open to the public or which may be used by the public during the conduct of normal business or which may be used by physically handicapped persons employed or seeking employment at such building or facility." UFAS 4.1.4(2)(b). These portions of the building or facility must be accessible.

Question 4: Are there National Guard facilities which were built by or on behalf of a State government, or which are operated by State governments? Should ADAAG include a military exception, similar to the one in UFAS 4.1.4(2)(b), for National Guard facilities? Are there other facilities that are owned or operated by State or local governments where such a military exception should apply? If so, what are these areas and what would be the cost impact of not providing such an exception?

Entrances

Principal or Primary Entrances

ADAAG 4.1.3(8) requires that, at a minimum, 50 percent of all public entrances be accessible. In addition, where provided, one direct entrance to an enclosed parking garage and one

entrance to a pedestrian tunnel or elevated walkway, must be accessible. The provision also states that, "where feasible, accessible entrances shall be those used by the majority of the people visiting or working in the building" (i.e., a principal or primary entrance). State or local governments that receive Federal funds are required by section 504 of the Rehabilitation Act of 1973 to construct all new facilities in accordance with UFAS. UFAS 4.1.2(8) requires at least one principal entrance at each grade floor level to be accessible. UFAS defines a principal entrance as the main door through which most of the people enter.

Thirty State codes and the District of Columbia code require at least one principal or primary entrance to State buildings to be accessible. Many of these States have a specific definition of a principal or primary entrance. For example, the Texas Administrative Code states that: "Principal or Primary entrances—Are building and facility entrances that are recognized by the occupants and visitors as the main points of entry and exit and are used as such." (Texas Administrative Code title 16, section 68.112 (1992)). Therefore, as a result of the operation of both State law and section 504 of the Rehabilitation Act of 1973 as applied to recipients of Federal financial assistance, the majority of State buildings are already subject to the requirement that a principal or primary entrance be constructed in an accessible manner.

Architects and designers have historically recognized the principal entrance of a building as a focal point of its design. Thomas Thiis-Evensen states in his book "Archetypes in Architecture" that:

> The symbolic value of entering and of the entrance is revealed in both the rituals and behavior of most cultures. * * * By comparing the most diverse buildings throughout architectural history we find certain specific motifs which through constant recurrence accentuate the very action of entering. They appear with varying degrees of strength, alone or together, and are found in both monumental and folk architecture. (T. Thiis-Evensen, "Archetypes in Architecture" at 283 (1987)).

Entrances have been visually reinforced by varying their size, shape or ornamentation. American architects have given particular attention to the principal entrances of public government buildings because these buildings represent important principles and values of the democratic system of government. The power behind this system resides in the people and not the leaders. One of the rights that comes with this power is the right to have access to the government and the governmental process. This right of access is reflected in the way architects have designed public government buildings, specifically with respect to the principal entrances of those buildings.

Generally, entrances to public government buildings, particularly those with ceremonial uses, have been made larger and more ornate to draw attention to their importance, their significance and their difference from other buildings in the community. "A large door opening is both generous and public; generous because it lays bare the interior and extends toward the person entering and public because the opening seems calculated for the passage of large crowds or socially important people." (*Id.* at 291). In the case of American architecture, those "socially important people" are the American public. The ability to enter a public government building through the principal entrance carries the symbolic implication of access to the governmental process and may justify the application of a higher standard of accessibility to such buildings with respect to a principal or primary entrance.

In designing entrances to public government buildings, American architects have used various styles and motifs to enhance their importance. The use of monumental stairs to further enhance entrances in order to imply a greater level of importance has been common. Stairs, by their nature, exclude most persons with mobility impairments. However, accessibility and public architecture are not mutually exclusive. There are many good examples of civic architecture with grand entrances which are also accessible (e.g., the Harold Washington Library Center in Chicago, Illinois; the Pleasant Hill City Hall in Pleasant Hill, California). Requiring one principal entrance to be accessible will ensure that accessibility and good design of public buildings will coexist. Another factor to be taken into consideration is building security. Since the principal entrance is the one most used by the public, most of the security and information services of the building are focused there. If this entrance is also accessible, the job of maintaining security and providing information is easier.

Question 5: The Board is considering several options for requiring accessible entrances in legislative, judicial, and regulatory facilities which are owned or operated by State and local governments. These options include:

Option 1: Retaining the requirements in ADAAG 4.1.3(8) as written without additional requirements for principal or primary entrances;

Option 2: Specifying that at least one principal or primary entrance must be among those entrances required to be accessible by ADAAG 4.1.3(8);

Option 3: Requiring at least one principal or primary entrance to be accessible in addition to the number of entrances required to be accessible by ADAAG 4.1.3(8) (assuming that the entrances which are being made accessible under ADAAG 4.1.3(8) are not principal or primary entrances);

Option 4: Requiring 50 percent of the principal or primary entrances to be accessible and allowing those principal or primary entrances to be counted towards satisfying the requirements of ADAAG 4.1.3(8);

Option 5: Requiring 50 percent of principal or primary entrances to be accessible in addition to the number of entrances required to be accessible by ADAAG 4.1.3(8) (assuming that the entrances which are being made accessible under ADAAG 4.1.3(8) are not principal or primary entrances);

Option 6: Requiring all principal or primary entrances to be accessible and allowing those principal or primary entrances to be counted towards satisfying the requirements of ADAAG 4.1.3(8);

Option 7: Requiring all principal or primary entrances to be accessible in addition to the number of entrances required to be accessible under ADAAG 4.1.3(8), (assuming that the entrances which are being made accessible under ADAAG 4.1.3(8) are not principal or primary entrances); and

Option 8: Requiring that all entrances be accessible.

The Board seeks comments on each of these options. Commenters should state the preference and justification for a particular option and, where possible, should include information concerning the costs associated with such a requirement. Are there State and local government buildings, other than legislative, judicial, and regulatory, which should be included in this requirement? The Board also seeks information about how local codes (e.g., county and municipal) address the accessibility of entrances to local government buildings and facilities.

Restricted and Secured Entrances

In proposed ADAAG 11.5 (Judicial, Legislative and Regulatory Facilities) at least one restricted entrance and at least one secured entrance in judicial, legislative and regulatory facilities must be accessible. Proposed ADAAG 11.5

defines a restricted entrance as one used by judges, court personnel and other parties on a controlled basis. Secured entrances are used by detainees and detention officers. Additionally, under proposed ADAAG 11.5, if direct access is provided for pedestrians from an enclosed parking garage to a restricted entrance, at least one direct entrance from the garage to the restricted entrance must be accessible.

In proposed ADAAG 12.2 (Detention and Correctional Facilities), at least one secured entrance in detention and correctional facilities must be accessible. A secured entrance is one which is used only by detainees, inmates and security personnel.

Question 6: These proposed requirements for restricted and secured entrances are in addition to ADAAG4.1.3(8). The Board seeks comments on whether there may be other types of State and local government facilities which may also have restricted and secured entrances. If so, should the guidelines require that one or more of the restricted or secured entrances in those facilities be accessible? The Board also seeks information on the cost impact of the requirements for accessible restricted and secured entrances in proposed ADAAG 11.5 and 12.2 and of requirements for accessible restricted and secured entrances in other types of State and local government facilities.

Distribution or Location of Accessible Entrances

Some government buildings such as legislative and judicial facilities are very large and may occupy an entire city block. Although ADAAG 4.1.3(8)(a)(i) requires at least 50 percent of entrances to be accessible and an accessible route to connect them with parking, transportation stops, and the public way or sidewalk on the site, accessible entrances may not always be the closest entrance to these elements.

Question 7: Should the guidelines include a distribution requirement for accessible entrances? If so, should such a provision require that an accessible entrance be located on each side of a building where entrances are provided? Such a requirement would help facilitate incorporating accessibility in any future development on the site. For example, a new government office building may be constructed adjacent to unimproved property. If the adjacent property is improved at a later date to include a new parking structure, or bus stop, a convenient accessible entrance would already be provided. Another option would be to require accessible entrances to be in close proximity to certain areas such as elevators, information centers (e.g., building directories), accessible parking and passenger loading zones, transportation stops, public streets or sidewalks. Should a distribution requirement apply only to buildings above a certain size, and, if so, what criteria should be followed to identify the minimum size of a facility? Finally, should the distribution requirement apply only to certain types of buildings or facilities, such as judicial, legislative, regulatory, and detention and correctional facilities, or should it apply to all types of facilities owned or operated by State and local governments? What additional cost, if any, would be associated with such a requirement?

Automatic Door Openers

ADAAG does not specify a maximum opening force for exterior hinged doors. ANSI A117.1—1986 limits the opening force of such doors to 8.5 pounds-force (lbf). See ANSI A117.1 1986, section 4.13.11(2)(a). This maximum opening force was not included in ADAAG because of the many factors which affect the opening and closing force required at exterior doors (e.g., wind pressure, weight of door, heating and ventilation systems, and positive or negative pressure within a building). These factors can make it difficult for an individual with a disability to operate exterior doors. The Board, however, believes that a provision for an automatic or power operated door may resolve the difficulties created by these factors. An automatic or power operated door will also provide accessibility to persons who have difficulty in opening, or who cannot open, a door manually. There are currently many types of automatic and power operated doors available in a range of costs. The Board is currently sponsoring research aimed at obtaining data about automatic doors and accessibility issues. This research is intended to identify, among other things, (1) the need and appropriateness for automated doors in various building and facility types in new construction, alterations to existing facilities, and alterations to historic buildings; (2) the technical issues of opening force and maneuvering space related to automated doors; (3) the types of automated doors and operating controls; and (4) the advantages, disadvantages and costs associated with each automated door system. Although research is being conducted, the Board believes that the current body of information, including industry standards, is sufficient to establish a performance standard that enables independent operation by persons with disabilities. This would be similar to the performance standard used in ADAAG 4.34.4 (Automated Teller Machines) which provides that instructions and information for use of automated teller machines shall be made accessible to and be independently usable by persons with vision impairments.

The Board may consider adding a provision to ADAAG which requires that an automatic or power operated door be located in at least one accessible entrance in all State and local government facilities.

Question 8: Should automatic or power operated doors be required at entrances to State and local government facilities? If so, should this provision be limited to specific types of State and local government facilities? What would be the justification for limiting the requirements to certain types of State and local government facilities? Information is also sought about alternative methods of providing accessibility at exterior doors (e.g., balanced doors, accessible revolving doors, etc.), including cost information about exterior door accessibility and cost data on heating and cooling loss related to automatic and power operated door timing requirements. The Board also requests comments on appropriate power operated door activating mechanisms (i.e., pressure and motion sensors versus manual activating mechanisms, such as push plates). If manual activating mechanisms are used with a power operated door, should that mechanism (button, push plate, or other method) be required to be a certain size? Should the mechanism be located at 42 inches (1065 mm) above the finished floor similar to the requirement for elevator call buttons in ADAAG 4.10.3? Since automatic and power operated doors must be operated manually during a power failure or malfunction, should they be required to meet ADAAG 4.13.6 (Maneuvering Clearances at Doors) or should they only be required to have a specific maximum opening force when they must be opened manually? What should this maximum opening force be?

Building Signage

The Department of Justice title II regulations require State and local governments to ensure that persons with visual impairments can obtain information about the existence and location of accessible services, activities and facilities. See 28 CFR 35.163(a). Such information is normally obtained through the use of building directories and other temporary signs. ADAAG 4.1.3.(16) (Building Signage), however, exempts these types of signs from accessibility requirements. Building

directories usually cannot comply with ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs) because the minimum character height requirement would make the directories too large to be practical. Furthermore, ADAAG 4.30.6 (Mounting Height and Location) would require the information to be compressed into a small, specified area. One solution to this problem may be to provide alternative means of communication, such as a building directory with a telephone handset that connects to an information desk.

Question 9: Should the guidelines include provisions for tactile or audible directories, audible signs or other wayfinding devices for State and local government buildings in order to provide for the needs of persons with visual impairments? Should these requirements be restricted to specific State and local government building types? The Board seeks information about technologies that are currently available which would provide persons with visual impairments information about services, activities and facilities of State and local government buildings. Information is also sought about the cost, availability and reliability of such technologies.

Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)

ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)) requires that letters and numerals shall be raised 1/32 inch, upper case, sans serif or simple serif type, and accompanied with Grade 2 Braille. This provision is based on ANSI A117.1–1986, section 4.28.4. ANSI A117.1–1980, section 4.28.4 originally provided that tactile letters on signs were permitted to be either raised or incised. In 1986, the ANSI provision was revised so that tactile letters were required to be raised and, in 1989, this revision was incorporated in the Board's Minimum Guidelines and Requirements for Accessible Design (MGRAD). See 36 CFR 1190.40.[4]

Additionally, a Board sponsored research project report, "A Multidisciplinary Assessment of the State of the Art of Signage for Blind and Low Vision Persons" (September 1985), concluded:

> All tactile signage should use raised rather than incised (indented) characters. For example, for upper case Helvetica Medium type, incised characters produced average success rates from 10–18% lower than those of raised characters. In addition almost every subject had every strong negative comments regarding the use of incised signage. (at 47).

Copies of this research report are available from the National Technical Information System, Springfield, Virginia.

Section 504 of the ADA provides that the Board supplement the existing MGRAD for purposes of titles II and III of the ADA. The legislative history further explains: "In no event shall the minimum guidelines issued under this legislation reduce, weaken, narrow, or set less accessibility standards than those included in the existing MGRAD." H. Rept. 101–485, pt. 2, at 139. Consequently, the Board did not deviate from MGRAD by including a technical provision for incised letters in ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)).

Following the adoption of ADAAG, the Board heard from representatives of the engraving industry regarding the requirement for raised letters in ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)). The engraving industry representatives question the advisability of restricting tactile signs to raised letters and believe that incised letters can be designed so as to be readable by persons with vision impairments. Secondly, engraving industry representatives claim that not allowing incised letters has had a disproportionate impact on those companies that cannot convert to technologies which produce raised lettering.

Question 10: The Board is interested in consumers' experiences with both raised and incised letters on tactile signs. Specifically, is one type generally more readable than the other? Comments regarding individual preferences are welcome. If available, supporting data including research on success rates (readability) and factors influencing success is also requested.

Section 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)) of ANSI A117.1–1980 required that incised letters must be sans serif, a minimum of 1/32 inch incised, and have a stroke width of at least 1/4 inch. A minimum height of 5/8 inches is required only for raised letters.

Question 11: If incised tactile signs are permitted, is the ANSI A117.1–1980 specification sufficient to ensure readability? If not, what minimum specifications for depth of lettering, stroke width, height of characters and typeface is recommended for such signs? Commenters are asked to provide supporting data or research, where possible. The terms incised and indented have been used to describe this type of signage lettering. The Board seeks information on industry standards for these terms. Are they interchangeable or are they distinct from one another?

As discussed earlier, ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)) does not permit incised letters on signs that are required to be tactile. ADAAG 4.1.2(7) and 4.1.3(16) require only those building signs that identify permanent rooms and spaces to be tactile. Informational and directional signs as well as temporary signs, including personal name plaques, building directories, menus, and company logos are not required to be tactile and these could use incised letters. Considering that not all signs must be tactile, the Board seeks information regarding the financial impact of the requirement for certain signs to have raised tactile lettering.

Question 12: What percentage of engraving businesses primarily manufacture building signage? Of these, how many have already acquired or have been unable to acquire technologies that enable them to produce raised tactile signs? What is the cost and availability of such technologies? What sort of training is required for businesses to convert to these technologies? The Board seeks information on the cost of producing and maintaining raised letter tactile signs as compared to producing and maintaining incised tactile signs.

The Department of Justice has issued a technical assistance letter stating that the only signs subject to the tactile sign requirements of ADAAG 4.1.3(16)(a) are men's and women's rooms (including locker rooms and dressing rooms if they contain men's or women's restrooms), room numbers, and exit signs. In light of this interpretation, the Board is considering including an additional requirement for tactile signs in State and local government facilities. Under consideration are signs which provide information about the function, or use of a room or space, such as "Courtroom", "Council Chambers", "Classroom", "Auditorium", "Accounting Department" and other identifying signs provided at the entrance to a room or space. If such a provision is added, such signs would be required to comply with

[4] Also in 1989, the General Services Administration amended UFAS by deleting the words "indented" and "incised" where they appear in UFAS 4.30.4 which resulted in requiring tactile letters to be raised. See 41 CFR 101–19.6. This change was consistent with the ANSI A117.1–1986 provision. It should be noted that the other three standard setting agencies (the Department of Defense, the Department of Housing and Urban Development, and the U.S. Postal Service) did not make similar amendments with respect to section 4.30.4 of UFAS.

ADAAG 4.30.4 (Raised and Brailled Characters and Symbol Signs (Pictograms)), 4.30.5 (Finish and Contrast), and 4.30.6 (Mounting Location and Height).

Question 13: Should State and local government facilities be required to provide tactile signs when such signs provide information about the function or use of a room or space? If so, which informational signs should be included in this provision?

Audible Announcements and Effective Communication for Persons With Hearing Impairments

ADAAG 10.3.1(14) and 10.4.1(6) (Transit Facilities) require that when transportation facilities provide information through a public address system, equivalent information be provided to persons who are deaf or hearing-impaired. The Board is considering a requirement similar to this for State and local government facilities which also provide audible announcements to the public. For example, some courthouses use public address systems in calling cases to come before the court. Correctional facilities use public address systems to control prisoners and detainees.

Question 14: The Board seeks information on what other State and local government building types or facilities typically provide audible announcements to the public and what alternative means (such as visual paging systems, using video monitors, and computer technology) are available for providing this information to persons who are deaf or hearing-impaired. The Board is interested in cost data about such systems if available.

Assistive Listening Systems

ADAAG 4.1.3(19)(b) (Assembly Areas) requires permanently installed assistive listening systems to be provided where audible communications are integral to the use of an assembly area, if the assembly area (1) accommodates at least 50 persons or has an audio-amplification system and (2) has fixed seating. Proposed ADAAG 11.9 would require that permanently installed assistive listening systems be provided in judicial, legislative and regulatory facilities based on the type of room in lieu of criteria in ADAAG 4.1.3(19)(b).

Question 15: Are there additional types of State and local government facilities where the scoping requirements for permanently installed assistive listening systems should be based on the facility or occupancy type in lieu of criteria in ADAAG 4.1.3(19)(b)?

Certain areas or spaces in State or local government facilities may need to be secure from electronic eavesdropping. Conference rooms, hearing rooms, and courtrooms are examples. Some assistive listening systems may be incompatible with electronic security.

Question 16: Are there areas or spaces in State or local government facilities which may require protection from electronic eavesdropping? What are the technical options for solving these security-related problems with respect to certain assistive listening systems? Is one type of system more secure than another? What are the costs involved in providing a secure assistive listening system? Is it appropriate to exempt such areas from the requirement of an assistive listening system?

Assembly Areas

During the initial rulemaking, the Board requested information on lines of sight at seating locations for persons who use wheelchairs. See 56 FR 2296 (January 22, 1991). The Board received a number of comments which recommended that ADAAG 4.33 (Assembly Areas) be expanded to address other issues such as companion seating, integration and dispersal, and transfer seating. An overwhelming majority of responses favored including a provision requiring lines of sight over standing spectators in sports arenas and other similar assembly areas. A few commenters opposed such a provision because it would be either unenforceable, add significant cost or reduce seating capacity. Some commenters felt that an entry level or front row seating location was acceptable if companion seating was available for more than one person.

After careful review of comments and of State accessibility codes and standards, the Board modified the scoping provisions in the final ADAAG for wheelchair seating, added requirements for transfer seats and companion seating, and clarified the dispersal requirement. See 56 FR 35408 (July 26, 1991). Additionally, the Board felt it was essential to conduct further research on assembly areas with respect to other recommendations received in response to the rulemaking. The Board is currently sponsoring a research project on accessibility in assembly areas which will provide additional information for future revisions of ADAAG. The Board intends to address the issue of lines of sight over standing spectators in the guidelines for recreational facilities which will be proposed at a future date.

Question 17: The Board is seeking comments on the design issues associated with providing integrated and dispersed accessible seating locations with a clear line of sight over standing spectators in arenas, stadiums or other sports facilities. Clearly, not all seats in sports facilities afford clear lines of sight over standing spectators. Tall persons, guard railings or other fixed elements in the facility may block one's view of the playing field. However, since persons with disabilities have fewer choices of seating locations, should all the accessible seating locations be required to have lines of sight over standing spectators? Would such a requirement compromise the requirement for dispersed wheelchair seating by providing seating in fewer locations? If maximum dispersal of accessible seating locations is provided, what percentage of such locations can be provided with a clear line of sight over standing spectators? The Board encourages commenters to provide cost information and examples (including drawings, pictures or slides) of sports facilities where the accessible seating locations are dispersed, integrated and provide clear lines of sight over standing spectators. Additionally, the Board is seeking comments on how the dispersal requirement is achieved in arenas or stadiums where fixed seating is on different levels within a tier having steps. How should dispersal be defined in such facilities? If the same definition of dispersal cannot be applied to all types of facilities, is there a way to categorize different facilities and apply a specific dispersal requirement to each category? What are the design issues associated with providing accessible seating locations within one tier on different levels?

Other Issues

Swimming Pools

During the initial rulemaking, the Board sought information on whether swimming pools should provide more than one means of water access, since not all means of providing access are equally useful. While there were few responses to this question, the majority of the comments received stated that more than one means of water access should be provided. A few commenters stated that if more than one pool was located on a site, differing means of access would be appropriate.

The Board is considering developing a guideline that would require access to the water for persons with disabilities in swimming pools owned or operated by State or local governments. There are various means of providing access to the

water for persons with disabilities. These may include raised pool edge copings with grab bars, wheelchair ramps, slides, stairs with raised transfer platforms, wide treads and low risers, pool lifts (hydraulic, pneumatic or electric), zero grade entry and movable pool floors.

Question 18: Should the Board develop guidelines that require access to the water in swimming pools owned or operated by State and local governments? Given the wide range of types of disabilities which need to be accommodated, is there one means of access what would be usable by all or a majority of persons with disabilities? If not, should more than one means of access be provided? What are ways, other than those listed above, which could provide access to pools to persons with disabilities? Where possible, commenters should include information regarding independent operation versus operation by a pool attendant, as well as cost and maintenance information.

Polling Places, Voting Booths, and Equipment

The Board recognizes that, in most cases, voting booths and equipment are portable in nature and therefore may not come under the jurisdiction of these guidelines. However, to the extent that a State or local government building which houses a polling booth or equipment is considered new construction or an alteration, that facility is covered by the accessibility requirements of ADAAG. Furthermore, polling places which are located in buildings or facilities which are owned or operated by State or local governments are covered by the Department of Justice's regulations implementing title II of the ADA which provide that individuals with disabilities shall not be excluded from participation in, or be denied the benefits of services, programs, or activities of a public entity. See 28 CFR 35.149.

The Board is proposing to issue advisory guidelines for voting booths and equipment in the form of a Technical Assistance Bulletin.

Question 19: The Board is seeking information regarding new and existing technologies which would facilitate the independent use of voting equipment and booths by persons with disabilities. The Board is particularly interested in technologies that would meet the needs of persons with visual impairments, reach range limitations, and limitations in manipulating or operating controls in voting booths. What are the costs that would be associated with technologies? Commenters should bear in mind that those technologies recommended must maintain the confidentiality of the voting process.

Question 20: Are there polling places controlled by State or local governments which utilize fixed voting booths and devices? How do these fixed voting booths and devices currently meet the access needs of persons with visual impairments, reach range limitations, and limitations in manipulating or operating controls?

Section-by-Section Analysis

This section of the preamble contains a concise summary of the changes and additions which the Board is proposing to ADAAG.

1. Purpose

The Board is proposing additional special application sections to ADAAG and anticipates that more sections will be added in the future. Accordingly, the Board proposes to amend the purpose section to delete the reference to specific special application sections currently in ADAAG and replace it with a general reference to special application sections.

3. Miscellaneous Instructions and Definitions

3.5 Definitions

A reference to the location of the definitions for "Continuous Passage", "Public Improvement Project", "Sidewalk", and "Site Infeasibility" was added to this section. These definitions pertain to proposed ADAAG 14 (Public Rights of Way) and are located in that section.

The definition of "alteration" has been revised to include a specific reference to State and local government entities.

The existing ADAAG definition of "dwelling unit" includes references to facilities used on a transient basis, such as group homes, shelters, and hotel guestrooms providing both sleeping accommodations and food preparation areas. ADAAG 9 (Accessible Transient Lodging) addresses these types of facilities but does not contain the term "dwelling unit." Since this term appears only in proposed ADAAG 13 (Accessible Residential Housing), the definition of "dwelling unit" has been removed from ADAAG 3.5 (Definitions) and placed in proposed ADAAG 13 and was revised to reflect a more limited application to that section. To assist readers, a reference to the location of the term "Dwelling Unit" is inserted in ADAAG 3.5 (Dwelling Unit).

The definition of "transient lodging" has been modified by removing the term "dwelling unit," which is used in ADAAG only in reference to residential facilities covered by proposed ADAAG 13 (Accessible Residential Housing). Further, the change clarifies that "transient lodging" applies to facilities used on a transient basis and not to residential facilities.

4. Accessible Elements and Spaces: Scope and Technical Requirements

4.1 Minimum Requirements

4.1.1 Application

Specific references in ADAAG 4.1.1(1) to the scoping requirements for accessible sites and exterior facilities (4.1.2), newly constructed buildings (4.1.3), and alterations (4.1.6) have been deleted. This modification does not change the substance of this provision but merely removes unnecessary references for clarity.

The Board is proposing additional special application sections to ADAAG and anticipates that more sections will be added in the future. Accordingly, ADAAG 4.1.1(2) is amended to delete the reference to specific special application sections currently in ADAAG.

4.1.3 Accessible Buildings: New Construction

4.1.3(5) Exception 1 Elevators

Section 303(b) of the ADA provides that an elevator shall not be required in facilities that are less than three stories or have less than 3,000 square feet per story, unless the building is a shopping center or mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General. ADAAG 4.1.3(5) Exception 1 applies only to places of public accommodation and commercial facilities subject to title III of the ADA and not to State or local government facilities covered by title II of the ADA. The Board has clarified this distinction by adding a specific reference to places of public accommodation and commercial facilities in the exception.

4.1.3(17)(c) Public Telephones—Text telephones

ADAAG 4.1.3(17)(c) provides scoping requirements for text telephones in new construction. When ADAAG was published on July 26, 1991, the Board noted in the preamble that scoping provisions for State and local government buildings would be incorporated into this section at a later date (56 FR 35424). ADAAG 4.1.3(17)(c)(1) currently requires that buildings or facilities with four or more public pay telephones (at least one of which is located in an interior location) must have at least one interior public

text telephone. ADAAG 4.1.3(17)(c) (2) and (3) and also contain additional requirements for certain types of facilities, including stadiums, arenas, convention centers, and hospitals. These facilities are required to have an interior public text telephone if an interior public pay telephone is provided. The Board is proposing a similar requirement for State and local government buildings subject to proposed ADAAG 11 (Judicial, Legislative, and Regulatory Facilities) and 12 (Detention and Correctional Facilities). Based on responses to questions (21) through (24) below, the Board may: (1) Increase the existing scoping requirements for public text telephones as they apply to public entities or (2) include other types of State and local government facilities in this scoping section as part of the final rulemaking.

Under proposed ADAAG 4.1.3(17)(c)(iv), at least one interior public text telephone must be provided in judicial, legislative, and regulatory facilities if an interior public pay telephone is provided. Proposed ADAAG 4.1.3(17)(c)(v) addresses detention and correctional facilities and requires at least one interior public text telephone in the public areas of these facilities if an interior public pay telephone is provided. Further, if a public pay telephone is provided in the secured areas of these facilities, then at least one public text telephone is required in a secured area of the facility. A text telephone is not required in every secured area with a public pay telephone, but in just one secured area of the facility. Since detainees or inmates are limited to the secured areas of these facilities, this requirement ensures equal access to telecommunication for those inmates or detainees with hearing impairments.

Question 21: Are proposed ADAAG 4.1.3(17)(c) (iv) and (v) adequate to address the need for public text telephones in judicial, legislative, and regulatory facilities and detention and correctional facilities? For example, in prisons where inmates are separated and housed in areas with different levels of security, would the provision of one public text telephone ensure accessible telecommunication to the inmates from different housing areas? The Board also requests information on the cost impact of these requirements on the design and construction of these types of facilities.

In view of concerns about vandalism to permanently installed public text telephones, the Board notes that ADAAG 4.31.9 (Text Telephones Required by 4.1), which contains the technical requirements for text telephones, includes a provision for equivalent facilitation. This provision allows use of portable devices in lieu of permanently installed public text telephones if the portable device is readily available to users. For example, a portable text telephone could be used in the secured area of a prison instead of a permanently installed public text telephone as long as it was conveniently available during the times at which inmates are allowed use of public telephones.

ADAAG 4.1.3(17)(d) requires that interior phone banks with three or more public pay telephones must have at least one phone that is equipped with a shelf and electrical outlet for use of a portable text telephone. However, since outlets may be a security hazard in the secured areas of detention and correctional facilities, the Board has exempted these areas from this requirement.

ADAAG 4.1.3(17)(c) (ii) and (iii) (Public Telephones) currently requires the provision of one text telephone when an interior public pay telephone is provided in the following locations: A stadium or arena, a convention center, a hotel with a convention center, a covered mall, or the area serving a hospital emergency room, a hospital recovery room or a hospital waiting room.

Question 22: Are the existing requirements in ADAAG 4.1.3(17)(c) (ii) and (iii) sufficient with respect to these building occupancies owned or operated by State or local government entities? Comments suggesting an alternative scoping requirement should include a justification and, if possible, estimates of any additional associated cost.

Question 23: Are there other specific State and local government building types which should be required to have a public text telephone if an interior public pay telephone is provided? Should all State and local government facilities be required to provide a public text telephone if an interior public pay telephone is provided?

Question 24: ADAAG 4.1.3(17)(c) (ii) and (iii) currently require only one public text telephone regardless of building size. Should the scoping for public text telephones take into account the size of buildings or facilities? If so, how should the requirement be delineated?

4.1.6 Accessible Buildings: Alterations

4.1.6(1)(k) Elevator Exception

As discussed under ADAAG 4.1.3(5) Exception 1 above, this section has been revised to reflect the limited application of the elevator exception to places of public accommodation or commercial facilities.

4.1.7 Accessible Buildings: Historic Preservation

4.1.7(1)(a) Exception

During the initial rulemaking, the Board received comments recommending that an exception be established under ADAAG 4.1.7(1)(a) for a small group of historic properties such as a historic house museum that has only one entrance and where modifying the doorway or cutting out a window to create an accessible entrance would destroy the characteristics that qualify the building as an historic property. The Board stated that it would consult with the National Park Service and Advisory Council on Historic Preservation on this issue and propose an exception in the next phase of rulemaking. 56 FR 35430 (July 26, 1991). An exception was reserved under ADAAG 4.1.7(1)(a) for this purpose.

When the Department of Justice issued its final regulations for titles II and III of the ADA, it included sections in each of those regulations on alterations to historic properties which permitted alternative methods of access to be provided (e.g., using audio-visual materials and devices to depict portions of an historic property that cannot otherwise be made accessible) where providing physical access would threaten or destroy the historic significance of a building or facility. See 28 CFR 35.151(d)(2) and 28 CFR 36.405(b). In effect, the Department of Justice regulations have created an exception. The Board proposes to incorporate this exception in ADAAG 4.1.7(1)(a). The Department of Justice regulations for title III of the ADA provide that the exception may only be used if the procedures in ADAAG 4.1.7(2) are followed which require the State Historic Preservation Officer and, in certain cases the Advisory Council on Historic Preservation, to be consulted. The State Historic Preservation Officer and, where applicable the Advisory Council on Historic Preservation, are responsible for determining whether complying with ADAAG will threaten or destroy the characteristics that qualify a building as an historic property and whether physical access can be achieved using the alternative minimum requirements for historic preservation in ADAAG 4.1.7(3). Historic properties covered by title II of the ADA should be treated in the same manner as historic properties under title III of the ADA and the exception made

subject to following the consultation procedures in ADAAG 4.1.7(3).

7.2 Sales and Service Counters, Teller Windows, Information Counters

ADAAG 7 (Business and Mercantile) contains requirements for sales and service counters, teller windows, and information counters (7.2); check-out aisles (7.3); and security bollards (7.4). These requirements are applied to "the design of all areas used for business transactions with the public" and apply to business and mercantile facilities. State and local government buildings and facilities may also be equipped with service and information counters and teller windows. However, as currently written, ADAAG 7.2 makes reference to places of public accommodation such as department stores and hotels. Consequently, the Board has proposed an additional provision which specifically applies to State and local government buildings and facilities as well. This new section found at ADAAG 7.2(3) and replaces an existing reserved requirement for assistive listening devices which is renumbered ADAAG 7.2(4).

The Board considers access to service counters and windows in State and local government facilities to be particularly critical for several reasons. First, State and local government entities provide a variety of services that may only be received by individuals appearing in person. For example, application for a driver's license or for certain benefits, such as unemployment, usually must be completed in person with proper forms of identification. Second, State or local laws and regulations may actually obligate a person to receive certain services or complete various transactions in person, such as registration of a firearm. Third, these services are often provided at designated locations, such as courthouses, police stations, or social service agencies. Members of the public usually have less choice in where they may go to receive government services than they do in receiving services from public accommodations. In some cases, there may be only one location or building in a geographic area where government services are provided. For example, a county courthouse may be the only location for receiving certain county permits. These factors underscore the need for both mobility access and communication access at these types of service counters and windows.

Proposed ADAAG 7.2(3)(i) clarifies that the existing requirements in ADAAG 7.2(1) for counters with cash registers apply to the same type of counters provided in State or local government facilities. ADAAG 7.2(1) requires at least one of each type of counters with cash registers to have a portion at least 36 inches in length with a maximum height of 36 inches.

Proposed ADAAG 7.2(3)(ii) states that the requirements of ADAAG 7.2(2) apply to State and local government buildings as well. ADAAG 7.2(2) covers counters and teller windows that do not have a cash register but at which goods or services are sold or distributed. These types of counters are also required to have a portion that is at least 36 inches in length with a maximum height of 36 inches. Under ADAAG 7.2(2), an auxiliary counter in close proximity to the main counter with a maximum height of 36 inches may be provided instead of making a portion of the main counter accessible. ADAAG 7.2(2) also contains an example of equivalent facilitation that may be provided in lieu of an accessible main counter or auxiliary counter. This example notes that at a hotel registration counter, equivalent facilitation might consist of (1) providing a folding shelf attached to the main counter upon which a person with a disability can write and (2) use of the space aside the counter or at the concierge desk for handing materials back and forth. Proposed ADAAG 7.2(3)(ii) would apply this example of equivalent facilitation to counter or teller windows in State or local government facilities.

Question 25: In view of the importance of access to services provided by public entities, should the example of equivalent facilitation in ADAAG 7.2(2) for the provision of a folding shelf, apply to State and local government facilities? If not, what other examples of equivalent facilitation, if any, should be provided for counters and windows in State and local government facilities?

Counters and windows in State and local government buildings often are equipped with physical barriers or partitions that separate service personnel from the public. These barriers or partitions can impair voice communication and make it more difficult for persons to conduct a conversation, particularly those persons with hearing impairments. According to the Bureau of Census, it is estimated that 7,213,000 individuals have difficulty hearing what is said in a normal conversation with another person (not including those without any hearing at all). "Bureau of Census, Disability Functional Limitation and Insurance Coverage: 1984–85." Other surveys indicate that this figure represents a conservative estimate.

Since State and local governments provide many important services at counters or windows with partitions that separate service personnel from the public, the Board is proposing that a means of facilitating voice communication be provided at counters or windows equipped with solid partitions or safety glass. Proposed ADAAG 7.2(3)(iii) applies this requirement to those windows or portions of counters required to be accessible by ADAAG 7.2(3)(i) or (ii). This provision is a performance requirement which lists some acceptable alternatives for meeting the requirement. These alternatives include elements as simple as grills, or openings in the partition to more sophisticated devices such as intercom devices or two-way telephone handsets. The method of facilitating voice communication must be accessible to both persons who use wheelchairs and persons who have difficulty bending or stooping. This language is consistent with an existing requirement in ADAAG 4.1.3(10) which pertains to accessible drinking fountains. An appendix note states that consideration should be given to the placement of communication devices in the partition, such as grills or talk-thru baffles. When such elements are used, they should be designed or mounted to accommodate persons who use wheelchairs and persons who have difficulty bending or stooping. One possible solution would be mounting a grill at both the standard height and one at a lower height appropriate for a person in a seated position. See A7.2(3)(iii).

Consistent with ADAAG 4.1.3(17) (Telephones), proposed ADAAG 7.2(3)(iii) also requires telephone handset devices, if provided, to be equipped with a volume control. In order to accommodate persons who use wheelchairs, those devices operated by hand, such as the speak button on an intercom, must comply with the requirements of ADAAG 4.27 (Control and Operating Mechanisms).

Question 26: Are there other design solutions that can facilitate voice communication at solid partitions or safety glass? The Board also seeks cost information on those solutions noted in proposed ADAAG 7.2(3)(iii) or any other recommended alternatives.

Counters and windows sometimes contain equipment that presents information such as display screens provided at point of sales terminals and information kiosks, and equipment for testing eyesight. If such equipment is permanently installed, it should be accessible to persons who use wheelchairs. Figure A3 in the appendix

of ADAAG recommends an eye level range of 43 to 51 inches for wheelchair user.

Question 27: Should the Board include specific requirements for mounting equipment that displays information? If so, is the 43 to 51 inch eye level range sufficient to provide access to persons using wheelchairs or mobility aids?

10.4 Airports

ADAAG 10.4.1(8) was previously reserved to address security barriers at airports. Where the security barrier is a fixed element within a facility, the Board proposes to require that, in airports owned or operated by State or local governments, at least one accessible route complying with ADAAG 4.3 shall be provided at each single barrier or group of security barriers (i.e., two or more security barriers, adjacent to each other, at a single location). The requirements for an accessible route in ADAAG 4.3.9 provide that doors on such a route be accessible according to ADAAG 4.13. Consequently, an exception has been included for doors or gates on the accessible route which, for security reasons, are not intended to be opened or closed by other than security personnel. These doors are exempt from the requirements pertaining to maneuvering clearances (4.13.6), door hardware (4.13.9), opening force (4.13.11), and automatic or power-assisted operation (4.13.12).

The accessible route for passengers with disabilities should coincide with that of other passengers. Persons with disabilities should not have to pass through one security barrier and then be required to travel through a restricted, service, or employee area to reach their destination. This provision would provide passengers with disabilities the ability to travel with the same ease and convenience as other members of the public. This provision further provides that passengers with disabilities will not be separated from their carry-on items. Where passengers are separated from their personal items, they are subject to increased potential for loss or theft of their personal items while they are screened separately in a location which is not within the view of the passenger.

Although an accessible route may be provided, security and screening equipment may still be inaccessible because certain aids and mobility devices, including canes, leg braces, and wheelchairs sometimes interfere with metal detection devices. As a result, individuals with disabilities must be screened and searched individually. Some persons may consider such methods to be inconvenient or embarrassing. Since the Board's guidelines do not cover the operational aspects of accessibility, proposed ADAAG 10.4.1(8) does not address the security or screening procedures implemented at airports. Such procedures are addressed by regulations issued by the Department of Transportation under the Air Carrier Access Act which prohibits discrimination by air carriers on the basis of disability. See 14 CFR part 382. The Board is aware of the necessity for effective screening of air travelers, however, it believes that consideration should be given to installing equipment that by design and new technology can accommodate most persons with disabilities and reduce the frequency of personal screenings.

Appendix note A10.4.1(8) recommends that, where barriers consist of movable equipment, they should comply with the provisions of this section so that passengers with disabilities can travel with the same ease and convenience as other members of the public.

Question 28: The Board seeks information on types of fixed security and screening equipment that is accessible or that may accommodate a greater number of persons using mobility aids which would limit the need to individually search and screen such persons. This information is sought for advisory purposes and possible inclusion in the appendix note at A10.4.1(8).

11. Judicial, Legislative, and Regulatory Facilities

This section addresses those facilities where judicial, legislative, and regulatory functions occur. Judicial facilities consist of courthouses which are further discussed below. Legislative facilities include a town hall, city council chambers, county commissioners' meeting room, and State capitols. Typically, a State capitol would contain Senate and House chambers if bicameral, or one chamber if unicameral; and committee rooms, public meeting rooms, and other assembly areas. Regulatory facilities are those which house State and local entities whose functions include regulating, governing, or licensing activities. For example, this section would address those rooms where school board meetings, zoning appeals, and adjudicatory hearings (e.g., drivers license suspensions) are held.

The organization of State and local government legislative and regulatory functions differs widely from one State to another and from one city to another, as does the location and juxtaposition of such spaces. State governments may separately house legislative and regulatory functions. Smaller localities may choose to cluster legislative and regulatory functions within a single building or facility. For example, a city hall or town hall may house regulatory functions such as building, fire, and zoning functions, and legislative functions such as the city council.

Because the structure of judicial, legislative and regulatory facilities varies so widely from State to State and locality to locality, these proposed guidelines address the activities that take place in these facilities such as debate, deliberation or the taking of testimony. Proposed ADAAG 11.2 addresses courtrooms, hearing rooms, chambers and meeting rooms designated for public use. Many of these rooms share common elements and similar accessibility issues and, therefore, the Board has combined judicial, legislative and regulatory areas under one section. For example, where a courtroom would contain a raised judge's bench, a legislative chamber would include a speaker's rostrum which is situated in a similar fashion to the bench. The judge, like the presiding officer of a legislative body, is an authority figure. As such, they are positioned on raised platforms located in prominent places at the front of the room.

In addition to architectural considerations, the Board believes that access to information and participation in the governmental process is vitally important to all citizens. In judicial, legislative and regulatory facilities, the taking of testimony, and public debate and deliberation on local issues, laws or ordinances is an integral part of that process. Therefore, as communication is essential, the Board has proposed guidelines which address permanently installed assistive listening systems and require that these facilities take advantage of current and emerging technologies for providing information to persons with vision or hearing impairments by installing duplex outlets and wiring, conduits or raceways to facilitate future communication cabling. The proposals for each of these areas are discussed below.

With respect to judicial facilities, laws affecting accessibility to courthouses vary throughout the country. See Wood, "Court-Related Needs of the Elderly and Persons with Disabilities, Toward a Barrier Free Courthouse: Equal Access to Justice for Persons with Disabilities" American Bar Association (1991). While UFAS, State laws, and courthouse facilities guidelines require accessibility to the public areas of the courthouse

(e.g., parking, entrance, restrooms), few specify access to elements in the courtroom itself such as the jury box, witness stand, or the judge's bench.

UFAS classifies the public areas of courtrooms as an assembly occupancy and requires accessibility in "all areas for which the intended use will require public access or which may result in employment of physically handicapped persons." See UFAS 4.1.4(4). The "U.S. Courts Design Guide" published by the U.S. Administrative Office of the Courts, recommends that "courtroom space and circulation paths in the vicinity of the judge's bench, deputy clerk, law clerk, court reporter/recorder stations, and the witness box should be designed to accommodate handicapped ramps, lifts, or other required apparatus as they are needed." ("U.S. Courts Design Guide" at 97 (1991)). The National Center for State Courts published "The Courthouse", a planning and design guide for court facilities which recommends accessibility to the judge's bench, the clerk's station, the court reporter's station, the witness stand, the attorney tables, and the juror box. ("The Courthouse" at 64–70 (1991)).

General requirements for accessibility to courthouses may be found in State and local building codes and in guidelines developed by judicial committees. For example, the California Accessibility Standards require courtrooms (including the jury box, witness stand, public seating and other areas) to be accessible. California Accessibility Standards, title 24 part 2 section 712 (1989). Similar requirements are contained in the New Jersey Administrative Code which provides for courtrooms in new construction to be accessible in accordance with the requirements for "large buildings" and "small buildings". N.J. Admin. Code title 5, section 23–7.2(a) (1)–(2) (1991). Similarly, the Virginia Courthouse Facility Guidelines state that "handicapped citizens and court staff should enjoy convenient entry to all court facilities and barrier-free internal access to all appropriate spaces." See Virginia Courthouse Facility Guidelines, section 1.5 Handicapped Access. The Board is proposing requirements consistent with these State codes and guidelines.

Courthouse facilities are rich in tradition and symbolism and pose unique challenges due to complex, interwoven requirements, and the symbolic relationship of elements peculiar to courtrooms. The acoustics and the spatial relationship and sightlines between the judge, jury, witness, litigants, and spectators must all be carefully balanced to ensure that everyone will be able to adequately see, hear, and participate in the proceedings. (See Greenberg, "Symbolism in Architecture: Courtrooms" Architectural Record at 114–116 (May 1979)). As stated by Allen Greenberg,

> The judge is an impartial arbitrator and is therefore positioned on a raised podium in the center of the front of the room. Defense and prosecution are equal adversaries and, as such, are each provided with seats at assigned tables in the well of the courtroom facing the judge * * *. The jury box is placed at the side of the room, deliberately divorced from the axial relationship of judge, counsel and public. This placement reflects the impartiality of the jurors, who must decide guilt or innocence. The witness stand is located adjacent to the judge's bench facing the two parties. This provides the latter with their constitutional right to confront the opposing counsel's witnesses. Seen in this light, the traditional American courtroom layout is notable for its marked orientation toward the rights of the accused. (*Id.* at 115).

While the Board recognizes the significance of symbolism in the courtroom, it is very important that all citizens be able to participate equally in the legal process. In proposing these guidelines, the Board believes that accessibility can be incorporated into the design of the courtroom without adversely affecting the spatial or symbolic relationship between the participants.

During the initial rulemaking, the Board requested information on access to jury boxes, witness stands, and judges' benches. See 56 FR 2296 (January 26, 1991). An overwhelming majority of responses favored including provisions in ADAAG for jury boxes, witness stands and judges' benches. One commenter disagreed, stating that access to such areas is a workplace issue more properly addressed under title I of the ADA.[5] Several commenters distinguished between the different areas, taking the position that jury boxes and witness stands should be accessible, but judges' benches should be covered under title I. One commenter recommended that judges' benches should be adaptable and only 5 percent of the seating in jury boxes should be accessible. Comments received from the American Bar Association addressed both program and architectural issues. The American Bar Association supported more accessibility in courtrooms and within the judicial process as a whole.

Some of the comments received suggested the use of scheduling procedures as an alternative to requiring all courtrooms to be accessible (e.g., 30 percent of the courtrooms should be accessible in combination with scheduling procedures). With respect to judges' benches, a concern was raised that the judge's bench should remain at a higher level to signify authority and to provide sightlines. The Board has taken these comments into consideration and has developed guidelines for judges' benches, jury boxes and witness stands, as well as other courthouse areas. The requirements for those areas are discussed below.

Additionally, many of the comments addressed communication accessibility for individuals with hearing impairments. A third of the commenters stated that courthouses should be equipped with assistive listening systems. A few of those commenters suggested use of "real time captioning" by the courts. Some commenters took the position that 50 percent of the courtrooms should be accessible to individuals with hearing impairments. One commenter suggested sound absorbent materials in walls would be appropriate, as well as assistive listening devices with receivers for 8 percent of the seating capacity, use of a visual announcement system, interpreter services, and the availability of transcripts. In response to the comments received and in accordance with section 504 of the ADA, the Board has also included provisions for persons with vision and hearing impairments in this section.[6]

11.1 Judicial, Legislative and Regulatory Facilities

This section is a scoping provision which applies all the provisions of ADAAG 4 (Accessible Elements and Spaces: Scope and Technical Requirements) for buildings and facilities to judicial, legislative and regulatory facilities, in addition to the applicable requirements of this section. All public and common use areas would be subject to the applicable requirements contained in ADAAG 4.1 through 4.35. Examples of public and common use areas are given in the appendix note. See A11.1.

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[5] Modifications to an individual workstation would be covered by reasonable accommodation under title I of the ADA which prohibits discrimination in employment on the basis of disability. The Equal Employment Opportunity Commission (EEOC) is responsible for issuing regulations to implement title I of the ADA.

[6] Section 504 of the ADA requires that the guidelines issued by the Board "establish additional requirements, consistent with this Act, to ensure that buildings [and] facilities * * * are accessible in terms of architecture and design * * * and communication, to individuals with disabilities."

11.2 Courtrooms, Hearing Rooms, Chambers and Meeting Rooms

This section requires that where doors or gates, jury boxes, witness stands, fixed seating, judges' benches, clerks', litigants', court reporters', and bailiffs' stations, and lecterns are provided, each must be accessible and on an accessible route complying with ADAAG 4.3 (Accessible Route). It further requires that the accessible route to each element coincide with the circulation path provided for all persons using the element. For example, often there are different circulation paths provided for jurors, witnesses, and spectators. This section would require each circulation path to be accessible.

Paragraph (1) requires doors or gates designed to allow passage into the well of the courtroom, the witness stand, the jury box, and the speaker's rostrum and other areas to comply with ADAAG 4.13 (Doors). This provision is consistent with ADAAG 4.1.3(7) (Doors) and will ensure that minimum maneuvering clearances are provided to approach, operate, enter and exit through the door or gate.

Paragraph (2) requires all jury boxes and witness stands to be accessible and that each jury box have at least one accessible wheelchair space. Accessible spaces must be provided within the defined area of the jury box or witness stand. Jurors are selected at the outset of each trail and thus it is impossible to predict when an accessible courtroom will be needed. Accordingly, the Board is proposing at least one accessible seating space in each jury box. This provision allows readily removable seats to be installed in the jury box and witness stand so that the accessible spaces may also be used by persons not using wheelchairs. Paragraph (2) further requires minimum maneuvering clearances for the approach to the accessible spaces, referencing ADAAG 4.33.2 (Size of Wheelchair Locations). Although Figure 46 illustrates space requirements for two wheelchair seating spaces, this provision only requires a minimum of one accessible seating space. Where a fixed counter is provided in the witness stand (e.g., for a microphone), it must comply with ADAAG 4.32 (Fixed or Built-in Seating and Tables) to ensure sufficient knee clearance. Clear floor space for a forward approach must also be provided. The maximum height of controls and operating mechanisms must be 48 inches and comply with 4.27.3 (Height) and 4.27.4 (Operation). Although ADAAG 4.27.3 allows controls to be placed at either a forward or a side reach range, the Board has specified the forward reach range as it is presumed that in jury boxes and witness stands, the seated individual must be facing forward and a forward reach to controls is necessary. The 48 inches specified for such a forward reach is a maximum height requirement. If a desk or other writing surface is provided, the individual must reach over an obstruction to operate controls. Therefore, ADAAG 4.2.5 provides that controls are to be mounted at a maximum height of 48 inches only when they are located less than 20 inches from the leading edge of the obstruction (i.e., shelf). When controls are located between 20 to 25 inches from the obstruction they must be mounted at a maximum height of 44 inches as required in ADAAG 4.2.5 which is referenced by ADAAG 4.27.3. When controls are placed over an obstruction, they may never be further than 25 inches from the leading edge of that obstruction for a forward reach.

Paragraph (2) contains an exception for alterations where it is technically infeasible to provide a fixed means of vertical access to the witness stand or jury box. For example, if providing a fixed ramp to a jury box would result in reducing seating needed to meet the minimum legal requirements for jurors in a criminal courtroom, only clear floor space to accommodate a portable ramp would be required. Or, in an alteration to a witness stand, if physical constraints would require an alteration of the judge's bench, jury box or enlarging the courtroom, only clear floor space to accommodate a portable ramp would be required. This exemption only applies to the fixed means of vertical access. All other requirements in paragraph (2) (i.e., knee clearance) would still apply. As in new construction, accessible spaces must be provided within the defined area of the jury box or witness stand.

There are several options in designing an accessible jury box and witness stand. In Federal courthouses, the General Services Administration is experimenting with a multi-tiered jury box, where the accessible spaces are incorporated with other seating located on the floor level and additional seating is provided in raised tiers. Other acceptable tiered jury box designs may incorporate a ramp or lift in the courtroom or outside the courtroom from a restricted corridor.

Many persons using wheelchairs entering and exiting a platform lift in one direction can be accommodated on a minimum 30 inch by 48 inch (760 mm×1220 mm) lift. However, if a person is required to make a 90 degree turn either entering or exiting the platform lift, additional maneuvering clearances at the lift gate, and an increase in the platform size will need to be provided. Applying the minimum maneuvering clearances at doorways and gates illustrated in Figures 25 and 26 show that the required clear floor space depends on whether the lift door can be approached straight on or at right angles. For a direct approach, straight through the lift, Figure 26 shows that a lift platform with a minimum clear space of 48 inches (1220 mm) in the direction of travel is required. If a right angle turn must be made on the platform to exit, Figure 25(b) shows that a minimum clear width of 54 inches (1370 mm) perpendicular to the direction of approach is needed to accommodate the turn. However, these minimum clearances only illustrate the clearances needed to operate the gate from a front approach, and do not take into account the difficulty of making a 90 degree turn while backing out of the lift, a particularly difficult maneuver for a person who uses a motorized wheelchair. Ideally, the platform lift should allow sufficient space for a person to make a 360 degree turn. Widening the gates to provide a 36 inch to 42 inch (915 mm×1065 mm) clear width will provide additional maneuvering clearance.

The Board is considering requiring maneuvering clearances complying with ADAAG 4.2.3 (Wheelchair Turning Space) to ensure independent use in areas that are likely to be raised so that persons using wheelchairs do not have to exit the areas backwards. The areas the Board is considering adding this requirement include the jury box, witness stand, judge's bench, clerk's station, speaker's rostrum, raised dais, and the bailiff's and court reporter's stations.

Question 29: Should the guidelines require maneuvering spaces in the jury box, witness stand, judge's bench, clerk's station, speaker's rostrum, raised dais, and the bailiff's and court reporter's stations? What would be the costs associated with such a requirement? Additionally, the Board encourages commenters to submit drawings, slides, photographs and cost information of other design alternatives used in making the jury box, witness box or judge's bench accessible. How has the concern for maneuvering space been addressed?

Paragraph (3) specifies the number of wheelchair spaces required where spectator, press, or other areas with fixed seats are provided. This section references the scoping provisions in ADAAG 4.1.3(19)(a) (Assembly Areas). The Board is proposing that where the

spectator seating capacity exceeds 50 and is located on one level that is not sloped or tiered, the accessible spaces must be provided in more than one seating row.

ADAAG requires seating dispersal only when the seating capacity exceeds 300 because most fixed seats in small movie theaters are situated to provide a clear line of sight to the screen. Furthermore, these theaters have tiered or sloped aisles, which make it more difficult to provide accessible seating in more than one location. Courtrooms, however, differ in this regard in that most spectator seating areas are on a single level that is not sloped or tiered, which facilitates locating accessible seating spaces in more than one location. Where the seating is not on one level, but is sloped or tiered, the provision does not require dispersal. The provision for dispersal applies only to the total seating capacity in the spectator seating area, not the combined total of fixed seats in a courtroom.

Paragraph (4) requires all fixed judges' benches, clerks' stations, speakers' rostrums and a minimum of one raised dais to be adaptable. This provision references ADAAG 4.32 (Fixed or Built-in Seating and Tables) and requires a front approach to the bench, station or rostrum. The maximum height of controls and operating mechanisms must be 48 inches and comply with 4.27.3 (Height) and 4.27.4 (Operation). If the high forward reach is over an obstruction, reach and clearances must be as shown in Figure 5(b). This requirement is further discussed in paragraph (2). An appendix note further recommends that equipment such as a portable ramp, be on hand so that accessibility can be accomplished to at least one judge's bench and clerk's station within a few hours to accommodate court proceedings. See A11.2.1(4).

Although the areas identified in paragraph (4) are work stations, due to the complexity of courtroom and legislative chamber design and the difficulty of accommodating subsequent physical change, the Board believes that requiring adaptable judges' benches, clerks' stations, speakers' rostrums and a minimum of one raised dais, where provided, will significantly facilitate a reasonable accommodation for an employee in the future. Consistent with the definition of "adaptability" in ADAAG 3.5 (Definitions), the guidelines clarify the term "adaptable" and describe how it is applied to these areas. Adaptability means that maneuvering clearances and other features (e.g., fixed controls) are designed into the space so that accessibility can be easily provided at a later date. For example, an adaptable judge's bench which is designed for a future installation of a ramp would have the required maneuvering clearances to approach, enter, and exit the ramp, to maneuver at the bench (e.g., knee clearance), and to reach any fixed controls (e.g., alarm buttons) already designed into the space. The ramp would be installed at a later date when a reasonable accommodation is needed. An appendix note further recommends that equipment such as a ramp, be on hand so that accessibility can be accomplished to at least one judge's bench and clerk's station to accommodate court proceedings. This provision is particularly important in courtrooms where judges and clerks are assigned on a temporary or rotating basis. See A11.2.1(4).

Paragraph (5) specifies minimum clear floor space, table height, and knee clearance requirements for fixed or built-in stations, including tables for bailiffs', court reporters', and litigants' stations. This provision is consistent with UFAS 4.1.2(17) which requires fixed or built-in seating, tables or work surfaces in accessible spaces to have 5 percent, but not less than one seating space(s), tables or work surfaces complying with UFAS 4.32 (Seating, Tables and Work Surfaces). This provision references ADAAG 4.32 (Fixed or Built-in Seating and Tables) and requires a front approach to the station or table. The maximum height of controls and operating mechanisms must be 48 inches and comply with ADAAG 4.27.3 (Height) and ADAAG 4.27.4 (Operation). If the high forward reach is over an obstruction, reach and clearances must be as shown in Figure 5(b). However, as the bailiffs', court reporters' and litigants' stations are usually designed with movable furniture (which is not covered by ADAAG but rather the Department of Justice's regulations) this provision may apply in few situations. Where furniture is provided, an appendix note recommends appropriate maneuvering clearances such as clear floor space and knee clearance under tables when such furniture will be utilized by the public (e.g., the litigant's station). See A11.2.1(5).[7]

[7] In its NPRM for regulations implementing title III of the ADA, the Department of Justice included a proposed section 36.309 which would have required that newly purchased furniture or equipment made available for use at a place of public accommodation be accessible, to the extent such furniture or equipment is available, unless this requirement would fundamentally alter the goods, services, facilities, privileges, advantages, or accommodations offered, or would not be readily achievable. See 56 FR 7452 (February 22, 1991). In its final rule, proposed section 36.309 was omitted because the Department of Justice determined that its requirements were more properly addressed under other sections including sections 36.201 and 36.202 which set out general prohibitions against discrimination based on disability. Title II of the ADA provides similar prohibitions for state and local government entities. See 42 U.S.C. 12132 and 28 CFR 35.130.

Paragraph (6) requires fixed lecterns to be a maximum height and have knee clearance to accommodate litigants and speakers who use wheelchairs. This provision references ADAAG 4.32 (Fixed or Built-in Seating and Tables) and requires a front approach to the lectern. The maximum height of controls and operating mechanisms shall be 48 inches and comply with ADAAG 4.27.3 (Height) and 4.27.4 (Operation). Similar to paragraph (5), this provision may apply in relatively few situations as portable lecterns are more common. Where portable lecterns are specified, the Board encourages the selection of lecterns with adjustable heights and knee clearance underneath. Such lecterns will help facilitate use of the lectern and approaching the microphone.

11.3 Jury Assembly Areas and Jury Deliberation Areas

This section requires all jury assembly areas and jury deliberation rooms to be accessible. Since the jury deliberation room is a controlled area, where amenities such as refreshment areas, fixed tables and drinking fountains are provided, they must comply with the provisions in this section. Where restroom facilities are provided, they are covered by ADAAG 4.1.3(11) (Toilet Facilities) which requires each public and common use toilet room to comply with ADAAG 4.22 (Toilet Rooms).

Paragraph (1) references technical specifications for refreshment areas or kitchenettes in ADAAG 9.2.2 which specifies maximum counter height, clear floor area, reach ranges, and mounting height. The technical specifications would also apply to fixed refreshment dispensers where provided. For example, a wall mounted microwave would have to comply with 9.2.2(7) which references 4.2.4 (Clear Floor or Ground Space for Wheelchairs), 4.2.5 (Forward Reach), 4.2.6 (Side Reach) and 4.27 (Controls and Operating Mechanisms).

Paragraph (2) requires 5 percent but not less than one, fixed or built-in seating and tables to be accessible and comply with ADAAG 4.32. As discussed in proposed ADAAG 11.2.1(5) relative to litigants' stations, tables in jury deliberation rooms and assembly areas are usually movable furniture, and

therefore this provision may apply in few situations. Where movable furniture is provided, an appendix note recommends providing appropriate maneuvering clearances in the room and choosing furniture that would allow appropriate knee clearance under tables. See A11.3.1(2).

Paragraph (3) requires drinking fountains to be accessible to persons using wheelchairs and those who have difficulty bending or stooping. This provision is consistent with ADAAG 4.1.3(10)(a).

11.4 Courthouse Holding Facilities

11.4.1 Holding Cells: Minimum Number

This section applies to courthouse holding facilities including central holding cells and court-floor holding cells (i.e., those serving courtrooms). Where provided, at least one adult male, juvenile male, adult female, and juvenile female central holding cell must comply with the requirements in this section. Central holdings facilities are typically designed with sight and sound separation between men, women and juveniles. Where such cell separation is provided, the guidelines require at least one of each type of cell to be accessible. While there may be additional "types" of cells (i.e., isolation, group or individual cells) the Board's definition of "type" is limited to adult male, juvenile male, adult female, and juvenile female holding facilities. Court-floor holding cells, however, are not necessarily designed with sight and sound separation between adult males, juvenile males, adult female, and juvenile females. Therefore, in such instances, this provision would permit only one accessible cell to serve a courtroom.

11.4.2 Requirements for Accessible Cells

This section contains the minimum requirements for accessible cells. In proposing these requirements, the Board has taken into account various security considerations which are further discussed below. Accessible cells and the elements or spaces serving them must be on an accessible route.

Paragraph (1) requires that doors to accessible spaces and on an accessible route comply with ADAAG 4.1.3(7) (Doors). However, doors to accessible spaces and on an accessible route are exempt from the requirements pertaining to maneuvering clearances (4.13.6), door hardware (4.13.9), opening force (4.13.11), and automatic or power-assisted operation (4.13.12) in those areas where detainees are escorted by security personnel at all times.

Paragraph (2) requires toilet facilities to comply with ADAAG 4.22 (Toilet Rooms) and bathing facilities to comply with ADAAG 4.23 (Bathrooms, Bathing Facilities, and Shower Rooms). Where privacy screens are provided, they may not intrude on the clear floor space required for fixtures. The Board recognizes that typical cell design often does not provide a separate room for water closets or shower stalls. Water closets and lavatories are usually provided within individual cells behind privacy screens. The references to ADAAG 4.22 (Toilet Rooms) and ADAAG 4.23 (Bathrooms, Bathing Facilities, and Shower Rooms) do not require that separate toilet rooms or shower rooms be provided. For example, a facility may choose to provide individual fixtures and a privacy screen instead of a separate toilet or shower room. In that instance, the applicable clear floor space and mounting height requirements should be followed in ADAAG 4.22 and ADAAG 4.23 as it applies to each fixture provided.

Typical cell design includes a combination stainless steel water closet and lavatory unit which may also include a drinking fountain. The Board understands that some courthouse design guidelines may recommend a combined unit to maximize the limited amount of space within cells. However, the Board is not aware of standard combination units which fully meet ADAAG requirements for water closets and lavatories. For example, some existing "accessible" designs, such as those where the water closet projects out from the unit, would actually prohibit the installation of a 36-inch grab bar behind the water closet and would not allow for appropriate positioning of the grab bar in relation to the centerline of the water closet. See Figure 29. Additionally, some units provide a drinking fountain spout behind the wash basin which would not be usable by a person with a disability because they do not meet ADAAG 4.15.3 (Spout Location). Separate stainless steel lavatories, water closets, and drinking fountains are readily available that do meet ADAAG requirements.

Question 30: Are there standard combination units available which meet the requirements of the proposed guidelines? If so, what are the specifications of these types of combination units? Are combination units required to the exclusion of separate fixtures by any State, local or other codes?

The ADAAG requirements for water closets, bathtubs and showers require grab bars, which are considered essential for use of such elements by persons with disabilities. However, grab bars may be prohibited in some holding or detention facilities in order to reduce the risk of suicide. While the Board is not aware of a specific case in which a person has committed suicide using grab bars, there are numerous cases where persons have asphyxiated themselves by hanging underneath beds and chairs. "The Training Curriculum on Suicide Detection and Prevention in Jails and Lockups" developed by Jail Suicide Prevention Information Task Force describes how typical steel beds with holes in the bottom have been used to attach suicide nooses. The task force was sponsored by the National Center on Institutions and Alternatives, in cooperation with Juvenile, Criminal, Justice International Inc., with assistance from the National Sheriffs' Association. The training curriculum further recommends:

> * * * cells and rooms to be protrusion-free. While it is more common for suicide nooses to be affixed to bars and grills, all fixtures should be given attention, since beds, shelves, sprinklers, door handles, towel racks and water faucet lips have been used for this purpose. (Chap. 16–3B).

A grab bar without any open surfaces that is recessed in the wall is one possible alternative that would meet the ADAAG requirements as shown in Figures 39 (c) and (d). Although these figures illustrate handrail designs, the Board feels similar designs can be used for grab bars in security areas. Also, the Minnesota Regional Treatment Center Design Consortium recommends an infill welded plate at the bottom of the grab bar which would not be prohibited by ADAAG requirements. (See "Mental Health-Master Specification for Safety and Suicide Resistant Design at Minnesota Psychiatric Hospitals" at 14 (1990)). In view of these design alternatives, the Board is not inclined to provide an exception for grab bars at water closets and bathing facilities serving accessible cells.

Question 31: What are the experiences with suicide in detention and correctional facilities relative to providing accessibility features? The Board seeks further information on whether certain grab bar design solutions, including those discussed above, can be used to provide access but which do not facilitate suicide attempts. Where possible, responses should include any available information on these and other design solutions and their costs.

Concern has also been raised as to whether or not grab bars create a security risk in that they may be torn from the wall and used as a weapon. The Board feels that such concerns can be addressed by the structural strength and securement of the grab bars. Grab bars are currently required to comply with the structural strength requirements in ADAAG 4.26.3 (Structural Strength). However, these are minimum guidelines which may be exceeded where necessary.

Question 32: The Board seeks comment on whether grab bars can be installed without creating a security risk.

Paragraph (3) requires that accessible clear floor space be provided on one side of beds. Upper bunks, which often may be installed due to crowding, may interfere with the transfer between the lower bed and a wheelchair due to the insufficient vertical distance between the upper and lower bunk. While not requiring a specific distance, the Board recommends that the necessary vertical distance between the upper and lower bunk be sufficient to allow a person to sit upright during a transfer.

Paragraph (4) requires drinking fountains and water coolers serving accessible cells to be accessible to individuals who use wheelchairs and those who have difficulty bending or stooping. This provision is consistent with ADAAG 4.1.3(10(a).

Paragraph (5) requires fixed or built-in seating and tables to be accessible. This would pertain to fixed seating or table provided in the cell and is consistent with ADAAG 4.1.3(18) which requires fixed seating and tables where provided in a public or common use area to be accessible. Because the cell is a secured area, the guidelines require compliance with ADAAG 4.32 (Fixed or Built-in Seating or Tables) in each accessible cell.

Paragraph (6) requires that fixed benches be mounted at a specific height and be a minimum of 24 inches by 48 inches. It further requires compliance with the structural strength requirements in ADAAG 4.26.3 (Structural Strength). The height requirements are consistent with those for water closets (ADAAG 4.16.3 Height), shower seats (ADAAG 4.21.3 Seat), and benches in dressing rooms (ADAAG 4.35.4 Bench), and would allow for a transfer from a wheelchair.

11.4.3 Visiting Areas

This section requires that where fixed cubicles are provided, at least 5 percent but not less than one, on each side must have the maximum counter height and knee clearance underneath as required by ADAAG 4.32 (Fixed or Built-in Seating or Tables). It also requires a method to facilitate voice communication if solid partitions or safety glass separate visitors from detainees.

The scoping and technical specification in paragraph (1) is consistent with ADAAG 4.1.3(18) which requires in public and common use areas that 5 percent, but not less than one, of the built-in seating areas or tables and counters to have a maximum height of 34 inches and knee clearance underneath. Although this requirement applies to both sides of the fixed cubicles, it does not require that one particular cubicle be accessible on both sides.

Question 33: Should the guidelines require at least one cubicle to be accessible on both sides to accommodate those situations where both the detainee and visitor require accessible features?

Where counters are provided without a cubicle, a portion of the counter on both sides which is a minimum 36 inches in length must be accessible. The latter requirement is consistent with ADAAG 7.2 which also defines a portion of a counter as 36 inches in length.

Paragraph (2) requires a method to facilitate voice communication if solid partitions or safety glass separate visitors from detainees. This provision is further discussed under ADAAG 7.2(3).

Paragraph (3) requires accessible cubicles and counters to be identified by the International Symbol of Accessibility on both sides to be visible by both visitors and detainees. This provision is consistent with ADAAG 4.1.2(7) and 4.1.3(17)(b) which requires elements and spaces of accessible facilities to be identified by the international Symbol of Accessibility.

An appendix note clarifies that accessible cubicles may have fixed seats if the required clear floor space is provided within the area defined by the cubicle. See A11.4.3. This design would allow the "accessible" cubicle to be utilized by all persons. Where both the floor space and the fixed seat are provided in one cubicle, a method to facilitate voice communication would need to be usable from both areas. A wire mesh barrier typically provided in holding facilities to separate visitors from detainees would be one way to satisfy this requirement. If a glass partition is utilized, one centrally located telephone handset can be provided. The appendix note further recommends that when assistive listening systems are provided, the needs of the intended user and characteristics of the setting should be considered as described in A4.33.7 and Table A2.

11.5 Restricted and Secured Entrances

This section requires at least one restricted entrance and at least one secured entrance to be accessible where provided. Restricted entrances are defined as those used by judges, court personnel and other parties on a controlled basis; and secured entrances as those used by detainees and detention officers. In addition, if direct access is provided for pedestrians from an enclosed parking garage to a restricted entrance, at least one direct entrance from the garage to the restricted entrance shall be accessible.

ADAAG 4.1.3(8) requires at least 50 percent of all public entrances to be accessible and, in addition, accessible entrances to enclosed parking garage, pedestrian tunnels and elevated walkways. This section only addresses restricted and secured entrances. Therefore, the requirements of ADAAG 4.1.3(8) must be satisfied independently of this section. Typical courthouse design contains three distinct entrances and interior circulation routes which do not cross one another: public, restricted and secured. This section requires at least one restricted entrance and at least one secured entrance to be accessible. In addition, if direct access is provided for pedestrians from an enclosed parking garage to a restricted entrance, at least one direct entrance from the garage to the restricted entrance shall be accessible.

Question 34: What is the cost impact of requiring at least one restricted entrance and at least one secured entrance to be accessible?

In Question 6, the Board has requested comments on other types of State and local government facilities which may also have restricted and secured entrances and the appropriate number which should be accessible.

11.6 Security Systems

This provision requires an accessible route complying with ADAAG 4.3 to be provided through fixed security barriers. Where the security barriers incorporate equipment which cannot be made accessible, an alternate accessible route must be provided adjacent to the fixed security screening devices. For example, metal detectors may be triggered automatically by wheelchairs or braces and therefore cannot be made accessible. In most cases, the security devices consist of movable equipment or furniture and may not be covered under the guidelines. However, where

the security barrier is a fixed element within a facility, an accessible fixed barrier or an accessible route adjacent to the fixed security device must be provided to facilitate an equivalent path of travel. The path of travel must permit persons with disabilities passing through security barriers to maintain visual contact with their personal items to the same extent as do other members of the public. An exception is provided so that doors and gates which are designed to be opened solely by security personnel need not comply with the requirements for maneuvering clearances at doors (4.13.6), door hardware (4.13.9), door opening force (4.13.11), and automatic doors and power assisted doors (4.13.12).

11.7 Two-Way Communication Systems

This section requires two-way communication systems to provide both visible and audible signals so that person with hearing and speech impairments can utilize the systems. It further requires that such systems comply with the clear floor space, height and operating requirements for controls in ADAAG 4.27 (Controls and Operating Mechanisms). This provision is consistent with ADAAG 4.3.11.4 (Two-way Communication in Areas of Rescue Assistance) and ADAAG 4.10.14 (Emergency Communications in Elevators). An appendix note clarifies that this requirement can be met with a device that would allow security personnel to respond to a caller with a light indicating that assistance is on the way. This requirement would enable a person with hearing and speech impairments to communicate with security personnel to gain access to restricted areas.

11.8 Electrical Outlets, Wiring and Conduit for Communication Systems

This section requires that duplex electrical outlets be provided to support communication equipment for persons with vision and hearing impairments in all courtrooms, hearing rooms (including judges' chambers when used as hearing rooms), jury deliberation and orientation rooms, and meeting rooms designated for public use. In addition to duplex electrical outlets, this section requires appropriate wiring, conduit, or raceways to support equipment and systems to accommodate participants with vision and hearing impairments in judicial, legislative and regulatory proceedings.

The Board feels that this provision will assist State and local governments to comply with Department of Justice's regulations implementing title II which require public entities to take such steps as may be necessary to ensure effective communication with individuals. See 28 CFR 35.160.

"Meeting rooms designated for public use" refers to those areas of a facility in which public debate or discussion on local issues, laws or ordinances, or regulations takes place. "Hearing rooms", refers to those areas where hearings are held, other than courtrooms. Judge's chambers are included in this section when such chambers are used as hearing rooms.

In courtrooms, duplex electrical outlets are required in specified locations. State and local codes may contain provisions for the number and general placement of convenience duplex outlets. Therefore, the Board is proposing to require additional outlets to accommodate specific use requirements for communication access. Where State and local codes specifically require outlets to support communication equipment, this provision would be satisfied if such outlets are provided in the specific locations required in this provision.

Some states have developed guidelines which recommend that courthouses be designed with the flexibility to accept audio-visual and data systems. (See Courthouse Facility Guidelines, State of New Jersey, 1989, Section 3.21 Technology; and Virginia Courthouse Facility Guidelines, 1987, Section 2.7 Sound and Video Recording). The "U.S. Courts Design Guide" published by the Administrative Office of the U.S. Courts in 1991, recommends that electrical duplex outlets be provided at the judge's bench; deputy clerks' stations; witness stand; jury box and law clerk's, bailiff's, court reporters', and litigants' stations. (Chapter 3: Courtrooms, at 147). See also, "The Courthouse" National Center for State Courts at 62 (1992). Additionally, the "U.S. Courts Design Guide" suggests that data transmission outlets should be located at the judge's bench, deputy clerk's station; court reporter's/recorder's station, attorneys' and litigants' stations, and law clerk's station. (Id. at 152). The "U.S. Courts Design Guide" further recommends that a provision should be made for both present and future needs for power and data cabling at each attorney's table and at the court reporter's station. (Id. at 135–136). Although the recommendations in these guides do not necessarily pertain to accessibility, the trend in courtroom design is to provide for maximum future utilization of all types of technology. The provisions in proposed ADAAG 11.8 extend the application of this trend to include technology for persons with hearing and vision impairments.

The Board is aware that permanent wiring for all future technology cannot be anticipated, however, conduit or raceways can be provided to support a variety of current and future uses. For example, so-called "smart" technology often includes bundled wiring harnesses which can be easily installed in new construction. Examples of current technology which assists persons with hearing impairments may include assistive listening systems, or computer assisted real-time transcription. Examples of current technology which assists persons with vision impairments may include computerized reading devices with braille or magnification capability or closed circuit television reading or viewing devices.

Question 35: The Board believes that providing supplementary wiring, conduits or raceways at the construction phase can be done for minimal additional cost. The Board requests specific examples and cost information where supplementary wiring, conduits or raceways have been provided in newly built judicial, legislative and regulatory facilities.

This section does not mandate any specific system or technology, but only the physical capacity to accommodate future connections and systems that may be appropriate. Concern has been raised regarding the potential conflict between technology used in the jury deliberation room and the right to a jury trial which requires that jury deliberations are kept confidential. Jurors need to know that what they say in the jury room will not be revealed. There is a concern that the use of transcription systems, which may record the conversation in the jury deliberation room, will inhibit jurors and deny individuals the right to a jury trail. Similarly, the use of transcription systems in order to enable a client or attorney with a hearing impairment to communicate, raises similar questions regarding the confidentiality of attorney-client communications. Attorneys, clients and jurors need to be confident that their communications will not be heard by other persons at the time of the communication or later. The right to confidentiality of litigants who use computer aided transcription or other systems should be as secure as that of other litigants. The issue of whether a particular system or technology is appropriate for a specific application should be based on full consideration of the variables, including the need for privacy.

Question 36: The Board seeks comment on how issues of

confidentiality and privacy can be addressed while providing accessibility for persons with vision and hearing impairments.

11.90 Permanently Installed Assistive Listening Systems

This section requires that certain areas in judicial, legislative and regulatory facilities have a permanently installed assistive listening system comply with ADAAG 4.33.6 and 4.33.7. This provision is similar to ADAAG 4.1.3(19)(b) (Assembly Areas) which requires permanently installed assistive listening systems where audible communications are integral to the use of assembly areas, if the assembly area (1) accommodates at least 50 persons or has an audio-amplification system and (2) has fixed seating. However, the facilities covered by this section would rarely meet the threshold requirements of ADAAG 4.1.3(19)(b) (Assembly Areas) as typically there are no fixed seats and, in many instances the occupant load is fewer than 50 people. Accordingly, the Board has proposed basing the threshold requirement for permanently installed assistive listening systems on the type of room.

An appendix note references proposed ADAAG 11.8 (Electrical Outlets, Wiring, Conduit for Communication Systems) which requires that courtrooms, hearing rooms, jury deliberation and jury orientation rooms, and all meeting rooms designated for public use in judicial, legislative or regulatory facilities have a duplex outlet and wiring, conduit or raceways to support communication equipment. this requirement is in addition to the requirement in this section for permanently installed assistive listening systems and is intended to facilitate the use of portable assistive listening systems.

Paragraph (1) applies to judicial facilities, and requires 50 percent, but not less than one, of each type of courtroom (at least one of which shall have a jury box, where available) to have a permanently installed assistive listening system. "Courtrooms" refers to those areas which are generally open to the public (such as a room where a criminal trail is conducted), as opposed to smaller "hearing rooms" where admittance is generally restricted (for example where a domestic case is heard). An appendix note acknowledges the large variation in the assignment of courtrooms among jurisdictions and the difficulty in listing each "type" of courtroom or courtroom use. However, where multiple courtrooms are available, they typically fall into three "types". The appendix note defines these "types" as family (or domestic) courtroom, civil courtroom, and criminal courtroom. This definition is very broad; for example it does not distinguish between a criminal court used for adults and one used for juveniles. Proceedings such as juvenile or probate would generally fall under the three categories. For example, a courthouse has ten courtrooms: Six are assigned primarily to criminal matters (including one courtroom assigned to handle juvenile cases); one to family or domestic matters; and three to civil proceedings. Permanently installed assistive listening systems would be required in a total of six courtrooms, dispersed as follows: Three courtrooms assigned to criminal or juvenile matters, one courtroom assigned to family or domestic matters, and two courtrooms handling civil proceedings. The Board would suggest that one of the required permanently installed assistive listening systems be placed in the courtroom assigned to handle juvenile proceedings (as one of the criminal courtrooms) even though the Board does not regard courtrooms that handle juvenile cases as a different type of courtroom. See A11.9(1).

In some jurisdictions, courtrooms are assigned to accommodate more than one type of proceeding. For example, in a single courtroom, a civil trail may be in progress one day and a criminal matter the next day. In those facilities where courtrooms are not dedicated to a single type of proceeding, the guidelines would require that 50 percent of all courtrooms provided have a permanently installed assistive listening system.

In addition, paragraph (1) requires 50 percent, but not less than one, of each of the following types of rooms to have a permanently installed assistive listening system: judicial hearings rooms, jury deliberation rooms, and juror orientation rooms. "Hearing rooms", refers to those areas where hearings are held, other than courtrooms. Typically, these rooms consist of a conference table and chairs and admittance is generally restricted to the participants in the proceedings.

Paragraph (2) applies to legislative and regulatory facilities and requires 50 percent, but not less than one, of each of the following types of rooms to have a permanently installed assistive listening system: chambers and hearing or meeting rooms designated for public use where legislative or regulatory business is conducted.

"Chambers" refers to areas such as the council chambers in a city hall where public debate over proposed ordinances may occur. In addition to the requirement for 50 percent of the total number of chambers, in State legislative facilities where separate chambers are provided for a bicameral legislature (i.e., House and Senate), the guidelines require each to have a permanently installed assistive listening system.

"Hearing rooms or meeting rooms designated for public use" refers to those areas of a facility in which public debate or discussion on local issues, laws, ordinances, or regulations takes place. In this section, the terms "hearing rooms" and "meeting rooms" are used interchangeably. Hearing rooms in legislative and regulatory facilities differ from hearing rooms in judicial facilities in that they are open to the public and are usually much larger. Examples of hearing rooms or meeting rooms would include areas in which hearings on zoning applications or waivers are held; or where town council meetings or school board meetings are conducted. It would also include adjudicatory administrative hearings (e.g., drivers license suspension hearings). On the State level, a hearing or meeting room might be the Joint Committee Room in a State legislative facility as well as smaller committee hearing rooms. As provided in the appendix note, it is not the intention of the Board to require permanently installed assistive listening systems in conference rooms restricted to use by employees, consultants and other invited guests. Nor is it the Board's intention to require such systems in a space which is only occasionally or sporadically used for legislative or regulatory business such as a town meeting held in a high school cafeteria. However, the note references the Department of Justice's title II regulations which require effective communication to be provided. See A11.9(2). This may entail use of a portable assistive listening system.

Question 37: Is the proposed requirement for permanently installed assistive listening systems appropriate to meet the needs of persons with hearing impairments in judicial, legislative and regulatory facilities? What are the costs associated with providing permanently installed assistive listening systems in all courtrooms, chambers, and hearing or meeting rooms designated for public use?

During its initial rulemaking, the Board requested comment regarding which types of assistive listening systems (induction loop, FM, infra red) work best in particular environments. Each of the three types of systems received some support for all applications. Many commenters described their personal experiences

with particular types of systems. Those who provided extensive information on the advantages and disadvantages of the various systems recommended that a specific type should be selected only after consultation with experts in the field. The appendix contains additional information at A4.33.6 (Assembly Areas: Placement of Listening Systems) on the various types of assistive listening systems. As in ADAAG 4.1.3(19)(b) (Assembly Areas), the Board is not mandating a specific type of assistive listening system for judicial, legislative or regulatory facilities. However, the Board suggests that in choosing the most appropriate assistive listening system, due consideration be given to the confidentiality constraints discussed in proposed ADAAG 11.8.

Paragraph (3) requires that the minimum number of receivers shall be 4 percent of the occupant load of each covered room, as determined by applicable State or local codes, but not less than two, whichever is greater. As with ADAAG 4.1.3(19)(b) (Assistive Listening Systems), the 4 percent figure is based on a Bureau of the Census estimate of the number of persons aged 15 and over who have difficulty hearing what is said in a normal conversation with another person, excluding those who cannot hear at all. See "Bureau of Census, Disability Functional Limitation and Insurance Coverage" (1984–85). ADAAG 4.1.3(19)(b) (Assistive Listening Systems) requires that the minimum number of receivers to be provided shall be equal to 4 percent of the total number of fixed seats. As these facilities may not have fixed seats, the requirement for 4 percent receivers is based on the occupant load of the room rather than the number of fixed seats.

Paragraph (4) requires that an information sign be posted in a prominent place indicating the availability of assistive listening systems, computer-aided transcription systems, or other equipment to provide information and services to persons with vision or hearing impairments. This provision is consistent with ADAAG 4.1.3(16)(b) (Building Signage) and ADAAG 4.1.3(19)(b) (Assembly Areas) and specifies technical provisions relevant to informational signs. The Board recommends that the signage also indicate the location of such systems and equipment.

12. Detention and Correctional Facilities

During the initial rulemaking, the Board requested information on various State and local government facilities, including detention and correctional facilities. See 56 FR 2296 (January 28, 1991). Specifically, the Board sought information regarding the number of cells that should be made accessible. Commenters took the position that correctional facilities should be accessible but were divided over the number or percentage of cells that should be accessible. These comments are further discussed in proposed ADAAG 12.4. Since the Board has received limited information concerning the need for accessible cells in detention and correctional facilities, those sections concerning the percentage of accessible cells are reserved in this NPRM. However, the Board intends to specify a minimum number or percentage in the final guidelines.

Question 38: The Board seeks additional information or survey results of the number of persons with disabilities housed in detention and correctional facilities.

During the initial rulemaking, commenters also addressed concerns about security considerations in relation to certain elements of accessibility, such as grab bars, which, if loosened and removed from walls, could be used as weapons. This issue is further discussed in proposed ADAAG 12.5.

12.1 General

This section applies to those detention facilities where persons apprehended or arrested for alleged violations of law are temporarily detained and to correctional facilities where persons convicted and sentenced for such violations are housed. This section covers facilities that contain holding facilities such as police stations and sheriff's offices, and facilities housing persons for security reasons, including jails, prisons, reformatories, and juvenile detention centers. This section contains specific requirements for accessible cells or rooms and access to non-contact visiting areas. Other areas, including all public and common use areas, are subject to applicable requirements contained in ADAAG 4.1 through 4.35. An appendix note addresses common use areas that serve only a limited number of housing cells or rooms, such as dayrooms, which are provided in proximity to a particular cluster or group of cells. In this situation, not all dayrooms would have to be accessible, but only those serving accessible cells or rooms.

Question 39: The Board seeks comments on the application of "common use areas" to detention and correctional facilities. Specifically, is additional clarification needed in regard to the areas considered to be common use areas and thus required to be accessible? Further, are there other areas not specifically listed in the appendix that should be addressed?

ADAAG 5 through 9 also apply to detention and correctional facilities. For example cafeterias would have to comply with the applicable provisions of ADAAG 5 (Restaurants and Cafeterias).

In some cases, individuals are sentenced to institutional facilities for persons with mental illness instead of prisons due to reasons of insanity or determined mental disorders. While this section covers "other institutional occupancies where the occupants are under some degree of restraint or restriction for security reasons," mental institutions have not been specifically referenced.

Question 40: Should mental institutions, such as those for the criminally insane, be specifically addressed by this section or are these types of occupancies more appropriately addressed by ADAAG 6 (Medical Care Facilities)? Where possible, responses should include information about the procedures used by a State or locality in committing individuals to these types of facilities.

12.2 Entrances

12.2.1 Secured Entrances

12.2.2 Security Systems

Detention and correctional facilities typically provide secured entrances used only by inmates and security personnel and not the public. ADAAG 4.1.3(8) does not address secured entrances but only public entrances. Consequently, proposed ADAAG 12.2.1 (Secured Entrances) would require at least one secured entrance to be accessible. Since inmates are required to use such entrances, it is essential that at least one be accessible in order to ensure an accessible secured route into the facility for inmates. This requirement would be in addition to those public entrances required to be accessible by ADAAG 4.1.3(8).

Question 41: The Board seeks information on the new construction cost of providing one accessible secured entrance in addition to those public entrances required to be accessible by ADAAG 4.1.3(8).

Proposed ADAAG 12.2.2 (Security Systems) addresses security systems, such as metal detectors, which the public is required to pass through when visiting the facility. According to this provision, which is similar to a requirement in proposed ADAAG 11 (Judicial, Legislative, and Regulatory Facilities), if security systems are provided at public entrances, an accessible route either through or

around the device shall be provided. The Board does not intend this requirement to conflict with any security or screening procedures employed by the operators of detention or correctional facilities.

Question 42: Are there any existing security or screening procedures which could not be effectively carried out under the requirement for an accessible route through or around security systems?

12.3 Visiting Areas

This section addresses visiting areas where inmates are separated from visitors. These requirements are identical to those proposed in ADAAG 11.4.3 (Visiting Areas) for similar areas in judicial facilities and are discussed in that section. This requirement would pertain to all non-contact visiting areas provided in a detention or correctional facility where the elements addressed are provided.

Non-contact visiting areas are commonly provided in detention and correctional facilities, especially at higher security levels. Family and legal visits, which are very important for both inmates, family members, and lawyers, frequently occur in non-contact booths. Non-contact visiting areas are intended to provide increased comfort and privacy to both categories of users. The "Small Jail Design Guide," prepared by the National Institute of Corrections in 1988 found that only six percent of the facilities surveyed did not provide any non-contact visiting space and recommended counter surfaces in booths for leaning or writing, with sufficient dimension to allow access by inmates or visitors with disabilities. ("Small Jail Design Guide" 4–132, 4–133).

12.4 Holding and Housing Cells or Rooms: Minimum Number

12.4.1 Holding Cells and General Housing Cells or Rooms [Reserved]

This section is reserved for specifying the minimum number or percentage of required accessible cells. UFAS 4.1.4(9)(c) requires that five percent of the available residential units, but not less than one, be accessible. During the initial rulemaking, the Board requested comment on the experience of detention and correctional facilities in meeting this requirement. The response to this question was mixed. A slight majority of the comments favored a requirement of five percent but other commenters considered it excessive. Some commenters suggested a ten percent requirement, and others recommended a two percent requirement or a one percent requirement. Only one commenter, from the State of New Mexico property control division, provided information relating to the number of individuals with disabilities who are in detention facilities, estimating that two to three percent of the population in the prison system is permanently or temporarily disabled.

In addition to UFAS, several State codes, including Delaware, Illinois, and North Carolina's, currently require five percent or at least one, whichever is greater, of cells to be accessible. Other States, including California and New York, require a minimum of one detention cell or holding area. Some State codes, including Michigan and Florida, contain scoping requirements that pertain only to accessible toilet facilities serving cells, not housing or holding cells.

The Federal Bureau of Prisons (Bureau) conducted an informal survey of prisons under its jurisdiction, which are subject to the Architectural Barriers Act and section 504 of the Rehabilitation Act. According to this survey, less than one percent of the Federal prison population was identified as having a permanent disability or needing special housing accommodations. Given these initial results, the staff at the Bureau has informally stated that no more than one to two percent of the cells under the jurisdiction of the Bureau need to be accessible. The basis for identifying persons with disabilities that was used in this survey has not been determined.

The Board intends to specify a minimum number or percentage of accessible cells or rooms as part of this rulemaking. These cells or rooms would be subject to the requirements of proposed ADAAG 12.5.

Question 43: The Board requests comments on the number or percentage of housing cells or rooms that should be made accessible. In particular, the Board is interested in any information or survey results on the percentage of inmates with disabilities in State or local prisons and jails. Are there any instances where an inmate with a disability is housed in other areas of the prison or jail (e.g., infirmaries), instead of among the general population due to the fact than an accessible cell or room is not available? Are there any instances when a person with a disability is sentenced to locations other than a prison or jail (e.g., halfway house), due to the lack of an accessible cell or room? If so, what is the frequency of either of these practices? Responses should include, if possible, the working definition of "disability" used for purposes of the survey and a breakdown of the number of persons with mobility impairments and the number of persons with hearing impairments identified by the survey. Further, any available information on the cost impact in new construction of providing cells or rooms that are accessible as specified in proposed ADAAG 12.5 is also requested.

Various types or categories of housing are usually found in detention and correctional facilities. These different types include minimum, medium, and maximum security; work release; and trustee. Housing for male and female inmates, and juveniles is typically segregated. The Board is considering a requirement that accessible cells or rooms be dispersed among the various types or categories of housing provided at the facility. This would ensure that all available types of housing cells or rooms are accessible to persons with disabilities. Under such a requirement, a facility that provided minimum and maximum security housing for both men and women, would have to provide accessible cells in both the male minimum and maximum housing units and the female minimum housing units.

The Board understands that the safety of inmates or detainees with disabilities may be at greater risk in some prison environments. Consequently, some prison operators may house inmates or detainees with disabilities in safer areas of the facility. For example, an inmate with a disability may be housed in a medical facility or other area in the facility where violence may occur less frequently instead of a regular housing unit. Further, such a policy may also be based on a presumption that some individuals with disabilities may pose less of a security risk.

Question 44: Are inmates with disabilities generally at greater risk than other inmates? Do inmates with disabilities present less of a security risk? If so, should this section include an exception providing that accessible cells do not need to be dispersed among all categories of housing? Should this exception apply only to maximum security areas and facilities or are there other areas where inmates or detainees with disabilities are particularly at risk?

In addition to requiring cells to be dispersed among different categories of housing, the Board is considering whether accessible cells should be required to be dispersed within a category of housing. For example, if minimum security housing is provided in three housing units, and three accessible cells are required in that category of housing, an accessible cell would have to be provided in each of the three units. The Board recognizes,

however, that there may be certain security or safety factors that would justify grouping accessible cells or rooms in one area or building, such as in the case of emergency evacuation.

Question 45: Should accessible cells or rooms be required to be dispersed throughout housing units or buildings? If so, should an exception be added based on any security or safety considerations? Commenters should explain in detail specific safety or security considerations upon which such an exception might be based. In addition, the Board requests information on the design and cost impact of providing dispersed, as opposed to grouped or clustered, accessible cells or rooms in new construction.

Correctional facilities are sometimes designed with "shift areas" which are housing areas that can serve different security needs according to the current prison population. For example, a housing area intended for minimum security inmates might be designed and constructed so that it can easily be converted into a medium security housing area when needed. The Board believes that placement of accessible cells in these areas would provide greater flexibility in accommodating inmates with disabilities. An appendix note recommends that consideration be given to the placement of accessible cells in such areas. See A12.4.1.

12.4.2 Special Holding and Housing Cells or Rooms [Reserved]

In addition to general housing, detention and correctional facilities often provide housing units that serve special purposes and house inmates or detainees for shorter periods of time. These special types include cells or rooms used for disciplinary detention, protective custody, medical isolation, detoxification, and suicidal inmates or detainees. Since inmates with disabilities might require or necessitate the services provided in these facilities, the Board believes it is essential that some of each type be accessible. The Board is considering such a requirement and a minimum number or percentage has been reserved in proposed ADAAG 12.4.2.

Question 46: Should special housing cells or rooms be held to the same scoping requirement as general categories of housing cells or rooms or should the scoping requirement be different? Further, should each type of special housing cell or room be accessible or could one or a limited number of cells or rooms be accessible and serve as different types of special housing? For example, could a single accessible cell be used for either protective custody, medical isolation, or detoxification? What effect would this have on access to the services provided by special facilities? Where possible, commenters should include cost information.

12.4.3 Accessible Cells or Rooms for Persons with Hearing Impairments [Reserved]

This section reserves a requirement for a minimum number of cells or rooms that are accessible to persons with hearing impairments. The Board intends to require in the final rule that a certain number or percentage of cells or rooms be accessible to persons with hearing impairments according to requirements in proposed ADAAG 12.6. Accessibility requirements for persons with hearing impairments apply only to cells where certain elements such as permanently installed phones are provided in cells or rooms. (See proposed ADAAG 12.6). Generally, most correctional facilities do not provide these kinds of elements in cells, but some facility types, such as minimum security prisons, may in fact be equipped with such devices. If permanently installed phones are provided in one category of housing, the minimum number or percentage, if specified, would be based on the total number of cells or rooms provided within that category of housing, not on the total number of cells or rooms of the facility.

ADAAG 9.1.3 (Transient Lodging: Sleeping Accommodations for Persons with Hearing Impairments) requires that one of every 25 sleeping rooms be accessible to persons with hearing impairments. This scoping requirement was based in part on demographic information from the Bureau of Census indicating that 7,213,000 individuals (slightly more than 4 percent of the total population aged 15 or older) have difficulty hearing what is said in a normal conversation with another person. This figure does not include those who cannot hear at all. Bureau of Census, Disability Functional Limitation and Insurance Coverage: 1984–85. Other studies indicate that this percentage may in fact be greater. The National Center for Health Statistics determined that 7.9 percent of the population has a hearing impairment. National Health Interview Survey 1979–80. Further, an analysis of demographic data indicates that there are at least as many persons with hearing impairments as there are persons with mobility impairments. Although the Board had originally proposed requiring additional sleeping rooms in transient lodging to be accessible to persons with hearing impairments equal to the number which are totally accessible, this number was slightly reduced based on statistical data on travelers with hearing impairments provided by commenters during the initial rulemaking.

Question 47: The Board requests information on the percentage of persons with hearing impairments in detention or correctional facilities.

12.4.4 Medical Care Facilities

This section provides that if medical facilities with cells or rooms for patients are provided, an accessible number [percentage specified for new construction] of those cells or rooms shall comply with ADAAG 6 (Medical Care Facilities). Facilities providing medical treatment or care are required to comply only if persons may need assistance in emergencies and the period of stay may exceed twenty-four hours. These cells or rooms would be required to be accessible in addition to the number of general and special housing cells or rooms required to be accessible. This provision is intended to address the same range of medical facilities in accordance with the scoping requirements in ADAAG 6.1 (Medical Care Facilities; General) that are part of a detention or correctional facility. For example, if a prison contained a detoxification facility, 10 percent of the patient bedrooms would have to be accessible according to ADAAG 6.1(1). Other medical areas that do not meet this definition (e.g., that do not provide overnight stay for patients) would be required to be accessible to the extent required for common use areas. Thus, a medical clinic that did not have patient bedrooms would have to be accessible according to the requirements of ADAAG 4, which address public and common use areas.

Question 48: Is further clarification needed on the types of medical facilities addressed by this provision? Are there other kinds of medical facilities provided in detention or correctional facilities that are not clearly addressed by those covered by ADAAG 6?

Question 49: Proposed ADAAG 12.4.2 will address special housing cells and rooms, which may include those provided for medical isolation. If a correctional facility contains a medical unit subject to proposed ADAAG 12.4.4 which provides medical isolation cells, should such cells be counted as part of the percentage of patient bedrooms required to be accessible or should accessible isolation cells be required in addition to accessible patient bedrooms?

12.4.5 Alterations to Cells or Rooms

Since correctional and detention facilities are usually built to have long

life-spans, the Board has proposed a scoping provision for the alteration of cells. This provision requires that the number or percentage of cells which must be made accessible as part of the alteration, be based on the total number of rooms altered, not the total number of cells in the facility. This requirement would be in effect for each future alteration undertaken until the total number of accessible cells required for new construction was achieved. This provision is generally consistent with similar requirements in ADAAG 9 (Accessible Transient Lodging).

12.5 Requirements for Accessible Cells or Rooms

12.5.1 General

12.5.2 Minimum Requirements

This section outlines the minimum requirements for accessible cells or rooms. These requirements are based in part on specifications in ADAAG 9 for rooms in transient lodging. In proposing these requirements, the Board has taken into account various security considerations which have been discussed in proposed ADAAG 11.4 (Courthouse Holding Facilities). These issues, which are also applicable to detention and correctional facilities, include the possible security and suicide risks of grab bars, as well as the accessibility of combined watercloset and lavatory units which are a standard feature of prison cell design. [See questions 30, 31 and 32]. As noted in the beginning of this section, the Board received several comments during the initial rulemaking expressing concern about grab bars which could be loosened from the walls and used as weapons. The Board seeks information on grab bars, but notes that removal of grab bars is dependent primarily on the securement and structural strength of grab bars. ADAAG 4.26 (Handrails, Grab bars, and Tub and Shower Seats) provides minimum criteria for grab bars and handrails but does not limit their structural strength or level of securement.

Question 50: The Board requests information on any conflicts (in addition to those raised in the questions noted above) between these proposed guidelines and any security requirements inherent in the design of detention or correctional facilities. Commenters should specify both the relevant section of the guidelines and the security design requirement or feature with which it conflicts.

This section requires that accessible cells or rooms and the elements or spaces serving them must be on an accessible route. It also requires that the same common areas, amenities, spaces, and elements serving other cells or rooms in the same type of housing be accessible. For example, if dayrooms or recreation facilities are available to occupants of a medium security housing unit, then such areas must be accessible and connected by an accessible route to accessible cells or rooms within the unit. These requirements would apply either to elements provided within accessible cells or rooms or those elements that may be provided in other areas but that serve accessible cells or rooms.

Paragraphs (1) through (6) are similar to provisions previously discussed under proposed ADAAG 11.4 (Courthouse Holding Facilities). Paragraph (5) requires fixed or built-in seating and tables to be accessible according to the general scoping requirement in ADAAG 4.1.3(18), which requires five percent, but not less than one, of the fixed or built-in seating or tables to be accessible according to ADAAG 4.32 (Fixed or Built-in Seating and Tables). This requirement would apply to fixed or built-in seating or tables provided within the accessible cells and those areas where such seating or tables are provided in other areas directly serving accessible cells, such as a dayrooms. Other public or common use areas serving the facility in general, such as exercise yards, vocational or instructional areas, and visiting areas, are subject to the requirements of ADAAG 4.1 through 4.35.

Paragraphs (7) and (8), which are based on requirements in ADAAG 9 for transient lodging, contain requirements pertinent to elements found primarily in housing, as opposed to holding cells or rooms. Paragraph (7) requires accessible fixed or built-in storage facilities, and paragraph (8) specifies that controls and operating mechanisms operated by inmates must be accessible.

Under paragraph (9), cells required to be accessible must also provide accommodations for persons with hearing impairments. This provision is based on a similar requirement for transient lodging in ADAAG 9.2 (Requirements for Accessible Units, Sleeping Rooms and Suites) which requires rooms accessible to persons with mobility impairments to also be accessible to persons with hearing impairments. This provision was included under transient lodging facilities so that persons with both mobility and hearing impairments could be accommodated.

Question 51: Is the requirement in paragraph (9) for accommodations for persons with hearing impairments appropriate or necessary with respect to detention or correctional facilities?

12.6 Visual Alarms and Telephones

12.6.1 General

12.6.2 Equivalent Facilitation

This section addresses the accommodation of inmates with hearing impairments and is derived from requirements for transient lodging in ADAAG 9.3 (Visual Alarms, Notification Devices and Telephones). The requirement for a visual alarm pertains only to those cells or rooms served by audible emergency alarms and from which inmates may evacuate independently. The term "audible emergency alarm" is intended to apply only to systems used to alert occupants of the cell or room of emergencies such as fire and would pertain to systems used only to notify security personnel, such as in cases of inmate escape or riot. Where inmates are evacuated from housing cells or rooms by security personnel, this requirement would not apply even if an emergency warning system is provided. Permanently installed telephones are required to have volume controls.

The equivalent facilitation provision in proposed ADAAG 12.6.2 allows use of portable devices in lieu of permanent ones as long as the cell or room has appropriate electrical wiring for the use of such devices. This section is consistent with a similar provision in ADAAG 9 for accessible transient lodging.

13. Accessible Residential Housing

Title II of the ADA covers all State and local government programs, services, and newly constructed facilities, including residential housing. Examples of housing covered under title II include, but are not limited to, public housing projects and apartments and official residences, such as those provided for governors or State university presidents. Proposed ADAAG 13 (Accessible Residential Housing) outlines minimum requirements for these residential facilities.

In proposing these requirements, the Board took into consideration existing Federal laws and regulations pertaining to residential facilities in the public sector. Specifically, these include section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Fair Housing Amendments Act of 1988 (Fair Housing Act) (42 U.S.C. 3604 *et seq.*), and regulations issued pursuant to both of these laws. Many residential facilities owned or operated by State governments are subject to both section

504 of the Rehabilitation Act and the Fair Housing Act.

Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability in Federally funded programs and services. The Department of Housing and Urban Development (HUD) has issued regulations implementing section 504 as it applies to housing and other programs and services which receive HUD assistance. (See 24 CFR part 8). HUD's regulations implementing section 504 reference UFAS (24 CFR 8.32). In new construction and substantial alterations, UFAS 4.1.4(11) requires five percent of the dwelling units to be accessible according to the requirements in UFAS 4.34. HUD's section 504 regulations also require that two percent of the dwelling units be accessible to persons with hearing impairments and persons with vision impairments. (See 24 CFR 8.22).

The Fair Housing Act prohibits discrimination on the basis of disability in multifamily housing and requires that new multifamily housing units be adaptable to the access needs of persons with disabilities. Section 804(f)(3)(C) of the Act requires covered multifamily dwellings to be designed and constructed in accordance with certain accessibility requirements. (See 56 FR 9473). Pursuant to this Act, HUD issued the Fair Housing Accessibility Guidelines which contain minimum requirements for adaptability in multifamily dwelling units containing four or more units. (See 24 CFR 100.205). Title II of the ADA applies to State and local government facilities containing dwelling units without respect to the number of dwelling units. Thus, coverage of title II of the ADA and the Fair Housing Act overlap.

This section outlines requirements for accessible dwelling units which are based, with modification, on requirements in UFAS 4.34 for dwelling units. Additionally, the Board has sought to ensure that these requirements do not conflict with the minimum requirements of the Fair Housing Accessibility Guidelines for adaptable dwelling units. Except as otherwise provided in this section, all public and common use areas are subject to ADAAG 4.1 through 4.35. This provision is consistent with the Fair Housing Accessibility Guidelines which require all public and common use areas to be accessible in buildings covered by the Fair Housing Act. This would include those public and common use areas provided on upper or lower floors of facilities that do not contain elevators. In requiring this provision, the Board notes that the absence of an elevator is not a barrier to all individuals with disabilities. The guidelines include requirements for access for persons with hearing impairments and persons with vision impairments. Further, some individuals with mobility impairments, such as those using crutches or braces, may be able to use stairs to access other floors. The Board also notes that an elevator may be installed at a future date, or an addition to a building or a second building which is later connected may include an elevator. Furthermore, the legislative history of the ADA states that the exception for elevators in certain private sector facilities "does not obviate or limit in any way the obligation to comply with the other accessibility requirements established by this legislation, including requirements applicable to floors which, pursuant to the exception, are not served by an elevator." H. Rept. 101–485, pt. 2 at 114.

An exception has been included for public or common use areas that serve a recreational purpose. Under this exception, where multiple recreational facilities, such as tennis courts, are provided, at least one of each type must be accessible. This is consistent with the Fair Housing Accessibility Guidelines which state: "Where multiple recreational facilities (e.g., tennis courts) are provided, sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps" is required. (24 CFR Ch. 1, App. II, sec. 5, req. 2).

This section defines "public use areas" and "common use areas." "Public use area" is defined according to the definition in ADAAG 3.5. The definition of "common use area" is consistent with the definition in ADAAG 3.5, but is more specific to residential facilities covered by this section. This definition of "common use areas" is derived from the Fair Housing Accessibility Guidelines and applies to rooms, spaces or elements used by residents or their guests, such as hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings. (24 CFR Ch. 1, App. II, sec. 2).

13.1 General

Proposed ADAAG 13.1 outlines the types of residential facilities addressed by the section. These facilities include single family and multifamily dwelling units constructed or altered by, or on behalf of, a State or local government entity. The definition of "dwelling unit" in this section is derived from the definition previously included in ADAAG 3.5 (Definitions). The definition has been incorporated here and revised to apply only to residential housing and not transient lodging since this term is used only in this section and not in ADAAG 9 (Accessible Transient Lodging).

The term "dwelling unit" as used in ADAAG 13 specifically applies only to those facilities used as a residence which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, and sleeping. Examples include public housing projects and apartments and official residences. Proposed appendix note A13.1 discusses certain characteristics that distinguish residential dwelling units addressed by this section from those considered transient lodging. Specifically, residential dwelling units contain full accommodations, including kitchens, bathrooms, living and sleeping areas. Often, all of these spaces are not provided within units which are used on a transient basis.

Question 52: UFAS 4.1.4(2)(a) provides for a military exclusion for residential housing for unaccompanied military personnel, when their job descriptions cannot be filled by persons with disabilities. The Board has not included such an exemption in the proposed guidelines but seeks comment on whether such an exemption is appropriate under title II of the ADA. For example, should this section exclude unaccompanied military housing located within a State National Guard facility? Are there other types of residential housing which should be exempted from this section? Responses should include discussion of the justification upon which any recommended exemption might be based.

13.2 Minimum Number and Dispersion

13.2.1 New Construction: Minimum Number

Proposed ADAAG 13.2.1(2) requires two percent, but not less than one, of the total number of dwelling units to be accessible to persons with hearing impairments, as well as to persons with visual impairments. Thus, five percent of the dwelling units are required to be accessible to persons with mobility impairments as well as persons with hearing or visual impairments and an additional two percent of the dwelling units (seven percent total) are required to be accessible to persons with hearing or visual impairments. In developing the requirements of proposed ADAAG 13.2.1 (1) and (2), the Board considered HUD's section 504 regulation, its Fair

Housing Accessibility Guidelines, and existing provisions in ADAAG, as discussed below.

HUD's section 504 regulations reference UFAS. UFAS 4.1.4(11)(b) requires that five percent of the dwelling units be accessible for persons with mobility impairments. HUD's section 504 regulation also requires that an additional two percent of the dwelling units be "accessible for persons with hearing or vision impairments." See 24 CFR 8.22.

The Fair Housing Act requires that all dwelling units in elevator buildings and all ground floor dwelling units in non-elevator buildings be adaptable. It does not require that any dwelling unit be fully accessible by design or construction. In general, adaptable dwelling units, as defined by HUD, allow for certain elements, such as grab bars, to be provided by the tenant.

Consequently, housing facilities subject to both HUD's section 504 regulations and its Fair Housing Accessibility Guidelines must be constructed so that five percent of the dwelling units are accessible for persons with mobility impairments, two percent are accessible to persons with hearing or visual impairments, and 100 percent of the dwelling units in elevator or 100 percent of the ground floor dwelling units in non-elevator buildings are adaptable. The requirement in proposed ADAAG 13.2.1(1) that a percentage of the dwelling units be accessible for persons with mobility impairments and the requirement in 13.2.1(2) that a percentage of the dwelling units be accessible to persons with hearing and visual impairments are derived from HUD's section 504 regulations.

ADAAG 9 (Accessible Transient Lodging) contains scoping requirements for accessible transient lodging in the form of a chart. The first chart, at ADAAG 9.1.2, contains requirements for the minimum number of accessible rooms. These rooms must be accessible to persons with mobility impairments according to the requirements in ADAAG 9.2 and contain accommodations for persons with hearing impairments according to the requirements in ADAAG 9.3. In addition, it also specifies a number of accessible rooms with roll-in showers. These requirements are to be satisfied independently. For example, a facility containing between 76 and 100 rooms must have a total of five accessible rooms, one of which must be equipped with a roll-in shower.

The second chart, at ADAAG 9.1.3, specifies a minimum number of rooms that must provide accommodations for persons with hearing impairments only. This number is in addition to those required to be accessible in the first chart. The requirement is based on the total number of rooms provided and ranges from two percent to four percent.

The requirement in ADAAG 13.2.1(1) that five percent of dwelling units required to be accessible also be accessible to persons with hearing or visual impairments is based in part on existing requirements for transient lodging in ADAAG 9.

While proposed ADAAG 13.2 does not require any percentage of dwelling units to be adaptable, it does not conflict with the Fair Housing Accessibility Guidelines and may facilitate compliance with the Fair Housing Accessibility Guidelines by ensuring a certain level of access in new construction and reducing the need for future adaptability.

Proposed ADAAG 13.2.1(1)(a) reserves the requirement that a certain number of accessible dwelling units provide roll-in showers. In the final guidelines, the Board intends to provide scoping for the number of dwelling units required to provide roll-in showers. Such a provision would be similar to the requirement in ADAAG 9 (Accessible Transient Lodging). In ADAAG 9, a roll-in shower stall is required in certain accessible sleeping rooms on a sliding scale according to the table in ADAAG 9.1.2. (Accessible Units, Sleeping Rooms, and Suites). According to this table, transient lodging facilities with more than fifty rooms must have roll-in showers in one to two percent of the rooms.

The roll-in showers required by these provisions are shown in Figure 57 (a) and (b) and differ from the accessible shower stalls in ADAAG 4.21 (Shower Stalls). ADAAG 4.21 allows use of a 36 inch by 36 inch transfer shower stall or a larger roll-in shower stall at least 30 inches by 60 inches. The requirement for roll-in showers was based on comments received in response to the initial rulemaking.

Question 53: What percentage of the accessible residential dwelling units should contain roll-in showers? Where possible, responses should include information on the benefits, as well as estimates on the cost and design impact, of providing roll-in shower stalls in residential dwelling units.

With respect to transient lodging, accessible rooms with roll-in showers are required only in facilities with over 50 rooms. Given the trend toward integrating a number of smaller public housing facilities within communities, as opposed to providing large isolated facilities comprised of a greater number of units, the Board is concerned that State and local government entities may not construct residential facilities that trigger the requirement for roll-in showers.

Question 54: Should the requirement for roll-in showers parallel that for transient lodging in ADAAG 9.1.2 which applies only to facilities with over 50 units or should it apply to smaller residential facilities? If so, how many dwelling units should a facility contain to trigger the requirement for roll-in showers.

Proposed ADAAG 13.2.1(1)(b) reserves the requirement for a minimum number of dwelling units with bathtubs. Persons with certain disabilities, such as severe arthritis, may have greater need for bathtubs than showers for therapeutic reasons. Consequently, the Board is considering requiring that a portion of accessible dwelling units contain accessible bathtubs.

Question 55: Should a provision for bathtubs complying with ADAAG 4.20 be included in 13.2.1(1)? If so, what portion of a facility's accessible units should contain such bathtubs? How many dwelling units should a facility contain to trigger the requirements for bathtubs complying with ADAAG 4.20?

As stated in proposed ADAAG 13.2.1(3), these requirements are not intended to increase the total number of dwelling units planned for a facility. If a facility contains only one dwelling unit, both scoping requirements could be met by making that unit accessible for persons with mobility impairments, as well as for persons with hearing and visual impairments.

Question 56: The Board seeks comment on whether the percentages specified in proposed ADAAG 13.2.1 (1) and (2) provide for an appropriate level of accessibility in residential facilities. In particular, the Board is interested in any information or survey results on the need for accessible units in existing residential facilities which are owned or operated by public entities. Public entities that have followed the UFAS scoping requirements are encouraged to comment on their experiences in providing this level of access. Responses should include, where possible, any available cost estimates or data.

The scoping percentages in proposed ADAAG 13.2.1 (1) and (2) are based on the total number of dwelling units in a facility. The term "facility" in ADAAG, as noted above, would include all buildings on a single site. However, UFAS 4.1.1 (11) requires five percent, or at least one, whichever is greater, of the "total" of Federally owned multi-family and single family dwelling units to be accessible but does not specify whether this means the total number of dwelling

units in a facility or the total number of dwelling units in each building in a facility. With respect to Federally assisted multi-family housing, UFAS bases this percentage on the total "in projects of 15 or more dwelling units, or as determined by the appropriate Federal agency following a local needs assessment conducted by local government bodies or States under applicable regulations." The term "project" is not defined in UFAS. Consequently, the Board sought guidance from HUD's section 504 regulation, which defines the term "project" as: "Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site." 24 CFR 8.3.

Basing the minimum number on projects instead of facilities may lead to a decrease in the number of accessible dwelling units required, since projects may include more than one facility or site. For example, in a project that involved construction of three different facilities at different sites each providing 15 dwelling units, a minimum number based on the project total (five percent of 45) would require at least two accessible dwelling units, whereas a minimum number based on each facility total (five percent, but not less than one, of 15) would require three accessible dwelling units.

Question 57: The Board seeks information on whether basing the minimum number on the number of dwelling units in each facility is the most appropriate means of determining an adequate level of accessibility. Should another basis, such as the total number of dwelling units in a project be used? If an alternative is recommended, commenters should state, where possible, the impact the recommendation would have on the minimum number of accessible dwelling units required.

13.2.2 New Construction: Dispersion

Proposed ADAAG 13.2.2 requires that accessible dwelling units be dispersed so as to provide people with disabilities a choice of housing types comparable to and integrated with those available to other members of the public. This section provides that the factors to be considered in dispersing units include unit size and configuration, cost, the amenities provided within or serving dwelling units, and location with respect to amenities. This requirement is based on a similar provision for transient lodging in ADAAG 9.1.4 (Classes of Sleeping Accommodations). The Department of Justice regulations implementing title II of the ADA provide that a public entity may not "afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others". See 28 CFR 35.130(b)(1)(ii).

In addition, accessible dwelling units cannot be grouped or clustered but must be dispersed so that they are integrated within the facility. The principle of integration underlies the ADA as evidenced in the legislative history:

> As with Section 504 of the Rehabilitation Act, integrated services are essential to accomplishing the purposes of Title II. As stated by Judge Mansmann in *ADAPT* v. *Skinner*, "the goal [is to] eradicat[e] the 'invisibility of the handicapped'." Separate-but-equal services do not accomplish this central goal and should be rejected.
>
> The fact that it is more convenient, either administratively or fiscally, to provide services in a segregated manner, does not constitute a valid justification for separate or different services under Section 504 of the Rehabilitation Act, or under this title. Nor is the fact that the separate service is equal to or better than the services offered to others sufficient justification for involuntary different treatment for persons with disabilities * * * (H. Rept. 101–485, Part 3, at 50).

Thus, it is essential that tenants with disabilities are not segregated from the overall facility population. An appendix note clarifies the level of dispersion required by this provision.

Question 58: The Board seeks comment on the factors that constitute an acceptable level of dispersion of accessible units. In particular, the Board seeks comment on whether there are overriding factors which are more significant than a dispersed location for certain types of facilities. For example, should accessible units be located as close as possible to entrances, amenities such as parking, or common use areas such as laundry facilities? Where possible, commenters are asked to provide cost data which takes into consideration that both these guidelines and the Fair Housing Act require all public and common use areas to be accessible.

These proposed guidelines are intended to be consistent with HUD's section 504 regulations, as previously discussed. UFAS 4.1.3(1) provides that all the accessible dwelling units may be located on one accessible level if at least one of each type of common area and amenity provided for use of residents and visitors is available on the accessible level. A similar allowance has not been included in these proposed guidelines because of the requirement for dispersion and integration of accessible dwelling units. Thus, under these proposed guidelines, a low-rise garden style apartment building may need an elevator serving all floors so that accessible dwelling units can be dispersed and integrated.

Question 59: Should the guidelines include an allowance similar to that in UFAS with respect to low-rise structures? Responses should include a discussion of the justification upon which such an allowance would be based and information on the cost impact of providing elevators in low-rise buildings in new construction.

13.2.3 Alterations: Minimum Number and Dispersion

Proposed ADAAG 13.2.3 addresses the alteration of residential dwelling units. Proposed ADAAG 13.2.3(1) provides that the minimum number of dwelling units required to be accessible to persons with mobility, vision and hearing impairments (five percent but not less than one) and the minimum number of dwelling units required to be accessible for persons with hearing or visual impairments (two percent but not less than one) is based on the total number of units being altered. This requirement would remain in effect and apply to subsequent alterations of other units until such time as the total number of accessible dwelling units required for the facility overall was achieved. Appendix note A.13.2.2. provides an illustration of this requirement by illustrating how this might affect a facility undergoing ten alterations in ten consecutive years. This requirement is consistent with similar provisions in ADAAG 6 (Medical Care Facilities) and 9 (Accessible Transient Lodging). Both of these sections cover facilities similar to residential facilities, which are often altered or renovated in phases with only a portion of units or rooms renovated at a time.

Proposed ADAAG 13.2.3(2) takes into account that existing conditions or the scope of the alteration may limit the ability to fully disperse accessible units throughout the facility. This provision only requires altered units that are made accessible to be dispersed to the maximum extent feasible in accordance with ADAAG 13.2.2.

13.3 Requirements for Accessible Dwelling Units

13.3.1 General

Proposed ADAAG 13.3 contains the technical requirements for accessible dwelling units. This section is

consistent with UFAS 4.34 (Dwelling Units) except where discussed below. Specifically, the proposed requirements do not include all the provisions allowing adaptability which are in UFAS 4.34. Under provisions of adaptability, dwelling units may be designed and constructed so that certain elements necessary for accessibility, such as grab bars, can be installed at a later date. The effectiveness of adaptability depends on operational factors which are not within the purview of these guidelines. The Board has sought to ensure a level of accessibility for dwelling units that is consistent with the statutory mandate of the ADA to ensure that buildings and facilities are accessible to persons with disabilities.

In addition to ensuring a minimum level of accessibility as part of the actual design, construction or alteration of publicly owned dwelling units covered under title II of the ADA, these requirements will facilitate compliance with section 504 of the Rehabilitation Act. Further, accessible dwelling units complying with this section will satisfy the requirements in HUD's Fair Housing Act regulations, which require all units to be adaptable.

This section includes requirements for the areas, spaces, and elements of accessible dwelling units (13.3.2), and specific sections on bathrooms (13.3.3), kitchens (13.3.4), and laundry facilities (13.3.5).

13.3.2 Minimum Requirements

Consistent with UFAS 4.34.2, proposed ADAAG 13.3.2 requires accessible dwelling units to be on an accessible route and to provide accessible elements, spaces, and areas complying with paragraphs (1) through (14).

Paragraph (1) applies the requirements of ADAAG 4.1 through 4.35 to those spaces and facilities serving accessible dwelling units. These include entry walks, trash disposal facilities, and mail boxes. The provision applies only where such spaces and facilities are provided.

Paragraph (2) requires wheelchair turning space complying with ADAAG 4.2.3 and ground and floor spaces complying with ADAAG 4.5 in accessible spaces. The UFAS requirement at 4.34.2(2) for wheelchair passing space was not included here since such a requirement could not be met within a dwelling unit. The requirement for wheelchair passing space is applicable to public and common use areas under the accessible route requirements at ADAAG 4.3.4.

Paragraph (3) requires an accessible route complying with ADAAG 4.3 to connect all accessible spaces and elements within accessible dwelling units. A provision has been added clarifying that an elevator is not required within multi-level dwelling units as long as the following accessible elements are provided on an accessible level: one full bathroom; a kitchen; a living room; a dining room; one bedroom in a dwelling unit with one bedroom, or two bedrooms in a dwelling unit with more than two bedrooms; and, where provided, patios, decks, terraces, balconies, carports, garages. This provision is derived from UFAS 4.34.2(15)(c) and there is a similar provision for transient lodging in ADAAG 9.2.2(2).

Paragraph (4)(a) requires an accessible parking space complying with ADAAG 4.6 for each accessible dwelling unit if resident parking is provided. An exception is provided regarding signage for the required accessible parking spaces. Where parking spaces are assigned to specific dwelling units, the parking sign identifying the space as accessible required at ADAAG 4.6.4 is not required to be provided until the dwelling unit is occupied by a resident with a disability. UFAS 4.1.1(5)(d) requires an accessible space for each accessible dwelling unit only where parking is provided for all residents. Where parking is provided for only a portion of residents, the same UFAS provision requires that an accessible space be provided upon the request of the occupants of accessible dwelling units. Since redesigning a parking lot to provide accessible spaces at a later date may be extremely costly, the Board has proposed applying the provision of accessible spaces for each accessible dwelling unit even when parking is provided for only a portion of residents. However, the exception for signage designating the space would allow for the space to be used by persons without disabilities until such time as a tenant with a disability requires the accommodation. Paragraph 4(b) is consistent with UFAS 4.1.1(5)(d) in requiring that where visitor spaces are provided, two percent, but not less than one, are to be accessible.

The Board is considering a requirement for accessible van parking. The Board recognizes that tenants will want to park as close as possible to their units, however, it is impossible to predict which accessible dwelling unit might be occupied by a person having a van. Therefore, the Board is considering requiring every accessible parking space in tenant lots to be van accessible. Universal design which also can be used either by cars or vans is another alternative. A Universal space, as shown in ADAAG A4.6.3, Figure A5(b) is 132 inches wide with a 60 inch access aisle. Spaces designed specifically for vans must be 96 inches wide and have a 96 inch access aisle. When only one space is provided at a location, the van and universal spaces are the same overall size, 192 inches. When spaces are paired, two universal spaces with a shared access aisle measure 324 inches and two van spaces with a shred access aisle measure 288 inches. However, given that accessible dwelling units will be dispersed within a facility, it seems unlikely that spaces will be paired.

Question 60: Should accessible van parking spaces be provided for tenants? If so, should all accessible parking spaces be van accessible or are there other design or scoping solutions? Should the Board specify the universal design parking space or the van accessible type? Responses should include, where possible, cost information.

Paragraph (5) requires that elevators serving accessible dwelling units comply with the requirements for elevators in ADAAG 4.10. This provision is reserved in UFAS. The Board feels that elevators are essential for access in some residential facilities covered by ADAAG13. This requirement would apply to accessible dwelling units provided on the upper floors of a high-rise apartment building. It may also apply to elevators located within a dwelling unit that connects levels required to be accessible. However, under paragraph (3), an elevator would not be required in an accessible dwelling unit if the required accessible spaces are on an accessible level. In providing for equivalent facilitation under paragraph (5)(ii), the Board has taken into consideration the cost and design impact of providing elevators complying with ADAAG 4.10 within accessible dwelling units and has proposed a provision allowing for the installation of a platform lift complying with ADAAG 4.11 to connect levels that are required to be accessible.

Paragraph (6) requires doors provided for passage in and to accessible spaces to comply with ADAAG 4.13. This provision is consistent with the requirements for accessible units in transient lodging in ADAAG 9.2.2(3).

Paragraph (7) requires at least one accessible entrance to the dwelling unit complying with ADAAG 4.14. This requirement is consistent with UFAS 4.34.2(7).

Paragraph (8) addresses storage facilities provided in accessible spaces.

including cabinets, shelves, closets, and drawers; and requires one of each type to be accessible in compliance with ADAAG 4.25. This provision applies to one of each type of storage facility, and is consistent with the general scoping for storage facilities in UFAS 4.1.2(11) and ADAAG 4.1.3(12), as well as a requirement specific to transient lodging in ADAAG 9.2.2(4).

Paragraph (9) requires all controls, including those used in the regular and periodic adjustment of heating, ventilating, and air conditioning, to be accessible in compliance with ADAAG 4.27. An exception provides that this requirement does not apply to controls such as air distribution registers, required to be placed in or close to ceilings for proper air circulation. This provision is consistent with UFAS 4.34.2.(9).

Paragraph (10) requires audible alarms complying with ADAAG 4.28.2 and auxiliary alarms complying with ADAAG 4.28.4 if emergency warning systems are provided. This is consistent with UFAS 4.34.2(10). Otherwise, visual alarms complying with ADAAG 4.28.3 are not required within dwelling units because they are required to be connected to a building central alarm system and currently, many residential facilities are constructed without a central alarm system.

Paragraph (11) requires at least one full bathroom complying with proposed ADAAG 13.3.3, including a water closet, lavatory, and bathtub or shower. This is consistent with UFAS 4.34.2(12).

Paragraph (12) requires kitchens to be accessible in compliance with proposed ADAAG 13.3.4 and is consistent with UFAS 4.34.2(13).

Paragraph (13) requires the following spaces to be accessible and to be on an accessible route: Living areas; dining areas; sleeping areas; and, if provided, patios, terraces, balconies, carports, and garages. This is consistent with UFAS 4.34.2(15). The Board has included an exemption based on ADAAG 9.2.2(6)(d) for transient lodging to allow for a higher threshold at doors on patios, decks, and balconies when it is necessary to protect the integrity of the unit from wind or water damage if equivalent facilitation is provided. Some local building codes require higher door thresholds or a change in the level of balconies to prevent structural damage from water.

Paragraph (14) requires laundry facilities to be accessible in compliance with proposed ADAAG 13.3.5 and is consistent with UFAS 4.34.2(15).

13.3.3 Bathrooms

This section contains requirements for bathrooms and is based on UFAS 4.34.5 with modification. The UFAS requirements for bathrooms are based in part on the concept of adaptability. Under this concept, certain elements necessary for access, such as grab bars, may be installed later instead of as part of new construction. These proposed requirements do not include adaptability in order to ensure full bathroom accessibility in the design and construction of dwelling units. The differences between the proposed requirements and those in UFAS 4.34.5 are further discussed below.

Paragraph (1) prohibits doors from swinging into the clear floor space required for any fixture. This is consistent with UFAS 4.34.5.1. The Board has also applied the requirements for doors in ADAAG 4.13 to doors leading to accessible bathrooms.

Paragraph (2) requires water closets to be accessible in compliance with ADAAG 4.16 and allows a water closet height range of 15 to 19 inches measured to the top of the seat. ADAAG 4.16 includes requirements for a grab bar 36 inches in length behind the water closet and a grab bar 42 inches in length aside the water closet. UFAS 4.34.5.2(3) requires only that bathrooms be designed so that grab bars can be installed as a feature of adaptability. ADAAG 4.16 also contains requirements for toilet paper dispensers similar to those in UFAS 4.34.5.2(4) and requirements for flush controls not included in UFAS 4.34.5.2.

Paragraph (3) requires lavatories and mirrors to be accessible in compliance with ADAAG 4.19. If medicine cabinets are provided, at least one must have a usable shelf no higher than 44 inches and provide clear floor space complying with ADAAG 4.2.4. This provision is consistent with UFAS 4.34.5.3, except that UFAS addresses only those medicine cabinets located above lavatories. The Board expanded this requirement to medicine cabinets not located above the lavatory because such cabinets are often provided elsewhere within accessible bathrooms.

Paragraph (4) requires bathtubs, if provided, to comply with ADAAG 4.20. This provision is consistent with UFAS 4.34.5.4, except that UFAS allows grab bars to be installed under the concept of adaptability.

Paragraph (5) requires shower stalls, if provided, to comply with ADAAG 4.21 and is consistent with UFAS 4.34.5.5. However, ADAAG 4.21 includes requirements for seats in roll-in shower stalls where provided, specifications for curbs, and requirements for grab bars which are not included in UFAS.

Paragraph (6) contains requirements for bathtub and shower enclosures that are derived from UFAS 4.34.5.6.

Paragraph (7) notes that the clear floor space at fixtures and controls may overlap and is based on UFAS 4.34.5.7. The Board has also clarified that those fixtures and controls required in accessible bathrooms shall be on an accessible route.

Paragraph (8) requires a turning space complying with ADAAG 4.2.3 and has been added as a restatement of a similar requirement in proposed ADAAG 13.3.2(2) which is consistent with UFAS 4.34.2(2).

13.3.4 Kitchens

This section contains requirements for accessible kitchens, which are required to be located on an accessible route. In general, this section is consistent with UFAS 4.34.6. However, where UFAS allows certain elements to be either accessible or adaptable, this proposed section requires full accessibility and does not address adaptability. Differences between these requirements and those of UFAS are further discussed below.

Paragraph (1) provides for minimum clearances between all opposing base cabinets, counter tops, appliances, or walls. This provision is identical to UFAS 4.34.6.1.

Paragraph (2) provides for clear floor space of at least 30 by 48 inches at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Clear floor spaces must comply with ADAAG 4.2.4 and allow for either a forward or a parallel approach. Laundry equipment provided in the kitchen must comply with proposed ADAAG 13.3.5. All of the above requirements are the same as those in UFAS 4.34.6.2. A clarifying provision has been added requiring maneuvering space complying with ADAAG 4.2.3. UFAS 4.34.2(2) and proposed ADAAG 13.3.2(2) require that accessible spaces shall have maneuvering spaces complying with 4.2.3 in UFAS or ADAAG.

Paragraph (3) requires that all controls in the kitchen comply with ADAAG 4.27. This provision is identical to UFAS 4.34.5.3.

Paragraph (4), like UFAS 4.34.5.4, requires that at least one 30 inch section of counter provide an accessible work surface. Paragraph (4)(a) allows the accessible work surface to be either adjustable or mounted at a fixed height and is similar to UFAS 4.34.6.4(1). However, consistent with ADAAG

4.32.4, the proposed requirement provides a range of height for fixed counters from 28 to 34 inches whereas UFAS requires a counter height of 34 inches maximum. Paragraph (4)(b) requires that counter thickness and supporting structure be 2 inches maximum over the required knee clearance and is consistent with UFAS 4.34.6.4(3). Paragraph (4)(c) requires a clear floor space at the accessible work surface of 30 by 48 inches, and provides for a forward approach. This provision limits the amount of clear floor space that may be provided under the work surface to 19 inches, and specifies that knee space must be 30 inches wide and 19 inches deep. This section is consistent with UFAS 4.34.6.4(4).

Paragraph (4)(d) requires that there shall be no sharp or abrasive surfaces under work surfaces and is consistent with UFAS 4.34.6.4(5).

The provision in UFAS 4.34.6.4(2), which allows use of removable base cabinets, has not been included because those adaptable features that may obstruct accessible elements are not included in this section.

Paragraph (5) requires that the sink and surrounding counter comply with ADAAG 4.24. With respect to mounting height, this paragraph is consistent with UFAS 4.34.6.5(1) in that it allows for the sink to be capable of being adjusted to alternative heights. However, while UFAS requires that the sink be capable of being mounted at 28, 32, and 36 inches, this section requires that an adjustable sink be capable of being mounted at 28, 32, 34, and 36 inches. This action has been taken to provide consistency with the requirements for a fixed sink and it takes into consideration the clearances required for a sink with a 6½ inch deep bowl while maintaining the required knee clearances. ADAAG 4.24 contains provisions which are consistent with UFAS 4.34.6.5 with regard to minimum knee clearances, the depth of the sink, clear floor space, protection from exposed pipes, faucet controls and rough-in plumbing for adjustable sinks. This paragraph includes an appendix note similar to UFAS A4.34.6.5, recommending the provision of a rear drain in order to prevent garbage disposals and other plumbing from obstructing the required clear floor space.

Paragraph (6) requires that cooktops have accessible controls which do not require reaching across burners and a clear floor space allowing either a front or side approach. Cooktops with knee space underneath must be insulated or otherwise protected on the exposed contact surface to prevent burns, electrical shock, and abrasion. This section and its appendix note recommending counter top ranges with adjustable heights is similar to UFAS 4.34.6.6. The reference to ranges, as used in UFAS, was not included because this section only applies to cooktops. Ovens and ranges are included in the following section.

Paragraph (7) requires ovens to be of the self-cleaning type or to be located adjacent to an adjustable height counter with knee space below. For side opening ovens, the door latch side is required to be configured so that the oven interior is accessible to the counter space. This paragraph requires a pull-out shelf under a side opening oven extending the full width of the oven and pulling out not less than 10 inches. Ovens are also required to have controls on front panels or on either side of the door. This paragraph and its appendix note explaining the rationale for the provisions are similar to UFAS 4.34.6.7. This section clarifies the difference between floor ovens and wall ovens.

Paragraph (8) provides for refrigerators and freezers to be either: 1) the side-by-side type or, 2) the over and under type, with fifty percent of the freezer within 54 inches and 100 percent of the refrigerator below 54 inches. If the above requirements are not met, the freezer shall be a self-defrosting type of mechanism. The appendix note provided with this section is similar to UFAS, except that the Board has clarified that having the ability to open the door 180 degrees provides greater maneuvering space at the opening by allowing knee and toe clearances at the hinge side by a parallel reach.

Paragraph (9) requires that dishwashers have accessible controls, clear floor space allowing either a front or side approach, and that all rack space be accessible from the front of the machine for loading and unloading dishes. This paragraph is the same as UFAS 4.34.6.9.

Paragraph (10) covers kitchen storage and is identical to UFAS 4.34.6.10. It requires that storage cabinets, drawers and shelf areas comply with ADAAG 4.25. At least one shelf in all cabinets and storage shelves mounted above work counters shall have a maximum height of 48 inches. Additionally, door pulls and handles are required to be mounted at the top of a base cabinet and at the bottom of a cabinet over a counter. As in UFAS, an appendix note recommends pantry style storage for greater accessibility.

The Board is considering a requirement that a portion of the kitchen storage cabinets be provided with pull-out shelving that will facilitate access to the rear of the unit.

Question 61: Should pull-out shelving the required in kitchen storage? If so, what are the costs associated with such a requirement?

13.3.5 Laundry Facilities

This section contains requirements for accessible laundry facilities which are essentially the same as UFAS 4.34.5.7. Paragraph (1) requires laundry facilities and equipment to be on an accessible route. Paragraph (2) requires a minimum of one washing machine and clothes dryer provided in each common use laundry room to be front loading. Under paragraph (3), laundry equipment controls must comply with ADAAG 4.27.

13.4 Requirements for Dwelling Units Accessible to Persons with Hearing Impairments

13.4.1 General

13.4.2 Equivalent Facilitation

This section addresses accommodations for persons with hearing impairments and is based on requirements for transient lodging in ADAAG 9.3 (Visual Alarms, Notification Devices and Telephones). Proposed ADAAG 13.4.1 requires auxiliary alarms complying with ADAAG 4.28.4 (Auxiliary Alarms); devices providing visual notification of incoming telephone calls and door knocks in living and sleeping rooms; volume controls complying with ADAAG 4.31.5 (Hearing Aid Compatible and Volume Control Telephones Required by 4.1) for permanently installed phones; and electrical outlets in proximity to telephone connections to facilitate use of portable text telephone devices. Proposed ADAAG 13.4.2 allows, as a means of equivalent facilitation, use of portable devices in lieu of permanent devices if appropriate electrical wiring for their use is provided. This section is consistent with ADAAG 93.3.

13.5 Requirements for Dwelling Units Accessible to Persons with Visual Impairments: Reserved

This section reserves requirements for persons with visual impairments. UFAS 4.34 which addresses dwelling units, is the main basis for the requirements in proposed ADAAG 13.3, does not include any specifications pertaining to access for persons with visual impairments. HUD's section 504 regulations require that two percent of the dwelling units in new construction be accessible to persons with visual impairments (24 CFR 8.22). The Board is considering including specific

requirements for persons with visual impairments as part of its final guidelines. Requirements that are under consideration are discussed below.

HUD has recommended certain accommodations for persons with visual impairments under section 504 with regard to its section 202 program, which provides rental subsidies for elderly persons and persons with disabilities. (See Memorandum from James E. Schoenberger, HUD General Deputy Assistant Secretary for Housing, to all Regional Administrators, July 3, 1989). These recommendations are: lighting fixtures which can accommodate 150 watt bulbs for tenants with residual vision; the mounting of cooktop controls on the front and side of ranges; tactile markings for controls; and colors for baseboards, doors, door frames, and windows that contrast with the color of walls and floors.

A number of publications have identified additional recommendations. One publication recommends use of a contrasting color to mark the leading edge of steps. (See "Making Life More Livable", American Foundation for the Blind at 59 (1983)). Another suggested decals placed on sliding glass doors and other large areas of glass at face and chest height (See Duncan, et. al., "Environmental Modifications for the Visually Impaired: A Handbook," Visual Impairment and Blindness at 444 (December 1977)). Another study recommended that doors to upper kitchen cupboards be of the sliding type to reduce the risk of injury posed by doors left ajar. (See Braf, "The Physical Environment and the Visually Impaired", Swedish Institute for the Handicapped at 24 (March 1974)).

Question 62: The Board seeks comment on what provisions, if any, are appropriate and should be included in this section. In particular, information is sought on what provisions, if any, are necessary in residential housing to accommodate persons with low vision as well as those who are blind. Where possible, responses should identify any supporting data or other sources, including building codes and State or local requirements and include cost information. Individuals and organizations representing persons who are blind or visually impaired are requested to provide recommendations based on their experience or expertise.

14. Public Rights-of-Way

The need to complement and connect accessible public and private sites and facilities with accessible pedestrian components is recognized in the House Education and Labor Committee Report on the ADA: ". . . the employment, transportation, and public accommodation sections of this Act [the ADA] would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets." (H. Rept. 101–485, pt. 2, at 84)

Standards directed toward the elimination of architectural barriers have been largely focused on buildings and facilities located on easily defined sites and on the accessible routes that ensure access within buildings and sites. Pedestrian circulation systems in the public right-of-way have not been explicitly addressed, although individual elements, such as walks and curb ramps, are covered by UFAS and ADAAG.

Travel between buildings, districts, and transportation modes requires the connection of individual pedestrian elements such as the public sidewalks, curb ramps, and street crossings of a jurisdiction into an accessible network. The transportation planning and development process offers the most useful model for the development of guidelines for connecting accessible pedestrian elements, components, and networks for a number of reasons. The purpose of a transportation system is to move an individual from one location to another and to provide the major origin/destination linkages that pedestrian routes connect to and from. Transportation systems are not site-specific and they are largely a public service. A pedestrian circulation system performs similar functions. For the most part, transportation facilities and services and pedestrian circulation networks operate within an environment limited by the constraints of topography and existing adjacent development. Both systems are part of the infrastructure of a municipality. They are complementary in that pedestrian routes complete the origin/destination linkages of public transportation.

Research sponsored by the Department of Transportation developed guidelines for the individual elements of the pedestrian circulation network and proposed the first nationwide guidelines for accessible pedestrian networks.[8] Municipalities that applied these planning and implementation strategies developed accessible networks within districts and along routes that served significant local destinations.[9] A subsequent study conducted by the Department of Transportation and the Federal Transit Administration (formerly the Urban Mass Transportation Administration) followed with an assessment of the physical and operational barriers associated with getting to and from the transportation stops and facilities.[10] This study demonstrates that the goals of accessibility are not adequately served if the design of individual elements such as curb ramps or pedestrian overpasses do not consider the planning context of the sidewalk and intersections they connect.

Accordingly, this section addresses the overall framework for a pedestrian circulation system, as well as the elements and components of such a system. Standards are proposed for sidewalks, curb ramps, crosswalks, and crossing controls with special provisions for drinking fountains, telephones, toilet facilities, and tables, seating and benches located along the pedestrian route. It also covers vehicular elements which are related to the pedestrian network such as on-street parking and roadside emergency communication systems. In addition to addressing the individual elements, this section provides for the connection of those elements within the sidewalk to ensure that pedestrians with disabilities are afforded the opportunity to travel on and between the streets.

14.1 General

This section generally applies ADAAG provisions for buildings and facilities to new construction in public rights-of-way, subject to the modifications contained in this section. It covers work: (1) that is undertaken by or on behalf of a State or local government entity, and (2) that involves elements for pedestrian access, circulation, and use whether by intention or as a consequence of other work. Such elements include sidewalks, curb ramps, crosswalks, crossing controls, drinking fountains, telephones, toilet facilities, fixed tables, seating, benches, and related on-street parking and roadside communication systems that are constructed or installed on or adjacent to a sidewalk or roadway within the limits or scope of a public improvement project. These elements are discussed in the sections that follow.

[8] "Provisions for Elderly and Handicapped Pedestrians" DOT/FHWA (1979); "Guidelines for Making Pedestrian Crossing Structures Accessible" DOT/FHWA (1984); "Planning, Design and Maintenance of Pedestrian Facilities" DOT/FHWA (1984), "Priority Accessible Networks" DOT/FHWA (1980).

[9] "Accessibility for Elderly and Handicapped Pedestrians—A Manual for Cities" DOT/FHWA (1987).

[10] "Planning, Implementing, and Maintaining Accessible Accessways to and from Bus Stops: Existing Problems and Possible Solutions for the Wheelchair Traveler" DOT/UMTA (1983).

An appendix note clarifies that this section is intended to apply special provisions to those pedestrian facilities that are constrained by terrain, vehicular roadways, and existing buildings or elements of the pedestrian network. Other areas or sites constructed or altered as part of a public improvement project, such as plazas or courts where the constraints listed above do not apply, are subject to the applicable provisions of ADAAG 4.1.1 through 4.35.

Where an improvement to the public right-of-way includes a plaza or court, those facilities are subject to the requirements of ADAAG 4.1.1 through 4.35. For example, an accessible route complying with ADAAG 4.3 must be provided connecting accessible elements within the site such as public transportation stops, accessible parking spaces, accessible entrances and other accessible elements provided on the site. Proposed ADAAG 14.2 requires that sidewalks or a continuous passage connect to the accessible route. Where the accessible route exceeds 1:20 (e.g., walks leading to the accessible entrance), and is constructed on a site not covered by proposed ADAAG 14, it must meet the requirements for handrails, level landings, and all other requirements in ADAAG 4.8. See A14.1.

Although the general section applies to new construction, most public improvement projects will occur within limits established by existing adjacent sidewalks, buildings, curbing, and roadway paving. Therefore, it may be difficult to distinguish between new construction and alterations in many public improvement projects. For example, the construction of a new sidewalk for an entire city block must connect on both ends to the existing sidewalks. The sidewalk is new construction even though it occurs within the boundaries of existing sidewalks. Therefore, this section contains provisions for site infeasibility which would normally apply only to alterations.

Vehicular and pedestrian planning within a new subdivision may seem less constrained, but in fact will be subject to limits of grading and filling, and may not always be able to meet all criteria for sidewalk slope. However, curb ramps and adjacent level landings should rarely, if ever, require exception.

Many public improvement projects may involve elements not covered by this section, such as new decorative lighting standards and lanterns, but which may involve altering the sidewalk. When the sidewalk is replaced following construction, it must comply with the provisions of this section for new construction.

Moreover, structural alterations undertaken in accordance with a jurisdiction's ADA transition plan must comply with the provisions of this section. See 28 CFR 35.150(b)(i).

14.1.1 Definitions

This section defines the key terms used in ADAAG 14.

Continuous passage is defined as a continuous unobstructed pedestrian circulation path within a sidewalk connecting pedestrian elements, systems, and facilities covered by ADAAG 14.

The definitions in ADAAG 3.5 for marked crossing and walk have been included here for reference.

Public improvement project is defined as a public works project consisting of the construction, alteration or installation of site improvements or amenities in the public right-of-way by or on behalf of a State or local government. This definition is derived from common terminology within the planning profession. Examples of public improvement projects include: (1) the construction or installation of site improvements and pedestrian amenities, landscaping, street furniture, and decorative paving, often as part of a downtown revitalization program; (2) the widening or realignment of a street which frequently involves new sidewalk and curb ramp construction; (3) the addition of transit shelters, pedestrian walkways, or bicycle paths for public circulation; (4) the upgrading of a storm or sanitary sewer, surface drainage system, or other utility; (5) the burial of overhead power or telephone lines; and (6) the installation of new area lighting. These projects are largely concerned with the infrastructure of a jurisdiction and are typically planned and budgeted for in a multi-year capital improvements program or as an annual maintenance and repair line item. Federal support may be provided through Community Development Block Grants or Federal Highway Act funding and may already require compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151, *et seq.*) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Projects may be undertaken within clearly defined boundaries or may consist of the installation of a typical item dispersed throughout an area or jurisdiction such as drinking fountains, toilets, benches, or curb ramps.

An appendix note recommends that public entities ensure that developers who provide sidewalks, curb ramps and other pedestrian improvements in the public right-of-way as part of the scope of a private project comply with the provisions of this section. Similarly, the suburban residential developer who constructs streets and sidewalks as part of a new subdivision in anticipation of a later annexation or donation of public ways to a local government should also comply with these guidelines. Most jurisdictions will already require conformance to their street and highway specifications as a condition of acceptance. See A14.1.1.

Sidewalk is defined as a walk in the public right-of-way bordering a vehicular way as part of an interconnected pedestrian circulation network. This definition is consistent with UFAS 3.5 (Definitions: Walk) and ADAAG 3.5 (Definitions: Walk), and incorporates the definition of "walk" but is limited to those walks that are in the public right-of-way along vehicular ways. Unlike the definition of "walk", the definition of "sidewalk" does not include general pedestrian areas such as plazas and courts which can be designed, altered, and constructed to meet the requirements of 4.1 through 4.35. Sidewalks covered by this section are constrained by the slope of vehicular ways, topography, and existing facilities and pedestrian circulation routes which limit the ability to meet ADAAG 4.1 through 4.35.

The definition is also consistent with the language in the Department of Justice regulations implementing title II of the ADA which address pedestrian walks and walkways in relation to requirements for curb ramps. See 24 CFR 35.150(d)(2) and 35.151(e). It is also consistent with the definition of sidewalk in the California Accessibility Standards. (See title 24, part 2, section 3325 (1989).)

Site infeasibility means, with respect to construction in the public right-of-way, that there are existing physical or site constraints prohibiting the incorporation of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility. This definition is derived from the definition of technically infeasible in ADAAG 4.1.6(1)(j) (Accessible Buildings: Alterations) and is applied to new construction because public improvement projects most frequently will occur within limits established by existing adjacent sidewalks, buildings, curbing, and roadway paving.

14.2 Sidewalks

14.2.1 Minimum Requirements

Proposed ADAAG 14.2 requires that sidewalks have a continuous passage along their length at least 36 inches in width which connects to building entrances and curb ramps, marked crossings, telephones, drinking fountains, toilet facilities, and other elements addressed in this section. The sidewalk or continuous passage must comply with requirements for width, slope, passing space, surface and separation.

The requirements of this section are derived from ADAAG 4.3 (Accessible Route). However, the provisions relating to handrails, level landings on ramps and at doors are not applicable to sidewalks except where the accessible route is coincident with the sidewalk. Therefore, the Board has applied only the requirements for width, passing space, surfaces and slope. In addition, this section requires that a 36 inch continuous passage connect to curb ramps or other sloped areas at street crossings and to the accessible routes on sites as specified in ADAAG 4.1.2(1). ADAAG 4.1.2(1) requires accessible sites to be connected to public transportation stops, sidewalks, and accessible building entrances. A provision requiring the separation of the sidewalk from the vehicular way has been added.

The Board is proposing a requirement for a 36 inch continuous passage along a sidewalk. The Board is not specifying an overall sidewalk width. Sidewalk design and construction, where regulated, is typically the province of a State transportation or highway department, most of which follow Department of Transportation and Federal Highway Administration recommendations. A 1988 study for the Federal Highway Administration proposed that central business district sidewalks be sized according to level of service and that other sidewalks be a minimum of 5 feet in width with a 2-foot planting strip or parkway except in low-density residential areas, where 4 feet was recommended.[11] The Board's proposal for a 36 inch continuous passage can be easily accommodated within these recommendations without special or additional construction. The Board's proposal is consistent with sidewalk requirements in several States, such as California, Massachusetts and North Carolina.

This provision is consistent with ADAAG 4.3.3 (Width), which requires a 36 inch clear width for an accessible route, and is derived from the space required for a comfortable gait by persons using walking aids. ADAAG 4.1.2(1) requires an accessible route to connect accessible elements within a site. This section permits use of the sidewalk, or a portion of it, to satisfy the requirements for an accessible route in ADAAG 4.1.2(1) only if the sidewalk meets all the requirements of 4.3 (Accessible Route).

An appendix note explains that where a required accessible route is coincident with that of the sidewalk or continuous passage along it, the sidewalk or passage must comply with ADAAG 4.3. See A14.2.1. The appendix note further explains that these provisions do not preclude sidewalk segments at different levels or sidewalks with stairs (which are sometimes advantageous in providing access to building entrances on or along steeply sloping sites) provided that a continuous passage serves each accessible entrance and is connected to a continuous accessible sidewalk. Where a sidewalk contains steps or where sidewalk levels diverge, a railing, planter or other barrier separating the levels is recommended. Stairs abutting a sidewalk should have uniform riser heights and uniform tread widths. See A14.2.1.

The appendix note also explains that the cross slope requirements pertain only to the portion of the sidewalk that is required to be 36 inches wide. Cross slopes on portions of sidewalks adjacent to the continuous passage required by proposed ADAAG 14.2 may exceed 2 percent, provided that the adjacent portions are smoothly blended. This may facilitate connecting the clear passage to building entrances, facilities or elements. See A14.2.1.

The appendix note also illustrates how narrow sidewalks immediately adjacent to the curb or roadway can be offset to avoid a non-conforming cross slope at driveway aprons by diverting the sidewalk around the apron. See Fig. A9. Sidewalks separated from the curb or roadway by a planted parkway can accommodate an apron within the width of the parkway. See A14.2.1.

Paragraph (1) requires the least possible running slope to be provided. The maximum slope shall be 1:12. It further requires that the cross slope of the minimum 36 inch passage not exceed 1:50. Handrails are not required. This provision is consistent with ADAAG 4.8.2 (Slope and Rise) and ADAAG 4.3.7 (Slope). Cross slopes are difficult for wheelchair users to manage on relatively flat routes of travel. When combined with steep running slopes, a 1:50 (2 percent) limit is important for safe travel. Although ADAAG 4.8 (Ramps) requires handrails where the slope of a ramp exceeds 1:20, this exception for handrails on sidewalks is consistent with ADAAG 4.8.5 (Handrails) which does not require handrails on curb ramps.

Due to a variety of existing conditions, it may not be possible for sidewalk slopes to meet all the requirements of ADAAG 4.3.7 (Slope). Therefore, the Board proposes an exception to paragraph (1) where site infeasibility precludes a maximum running slope of 1:12. Site infeasibility is derived from ADAAG 4.1.6(1)(j) and in this section applies to both new construction and alterations. This exception permits a jurisdiction to use site infeasibility where the public right-of-way may be physically constrained by existing construction or extremes of terrain. The Board recognizes that the gradients of pedestrian and vehicular circulation within the boundaries of a jurisdiction are directly tied to topography and the finish grades already established by existing adjacent building and public way construction. In such instances, this provision would require the least possible running slope to be provided.

Paragraph (2) requires sidewalks less than 60 inches in width to provide passing space at reasonable intervals. Passing space must provide a 60 inch by 60 inch minimum clear space or a T-shaped space and have a cross slope not exceeding 1:50. This provision is consistent with ADAAG 4.3.4 (Passing Space). Passing space will typically occur well within the more generous widths of standard urban sidewalks. Passing spaces along narrower sidewalks can generally be accommodated without special construction at building entrances or sidewalk intersections within the 200-foot limitation given a typical municipal block length.

Question 63: Is the 200 foot distance between passing spaces appropriate in all areas or should the distance be different for urban, suburban, and rural areas? If not, what should the distances be? Should the volume of pedestrian traffic be a determining factor? If so, how would future development and volume increase be accommodated? What would be the cost of the additional width required to permit a 60 by 60 inch passing space along a 36 inch wide sidewalk?

Question 64: California requires level landings at 400 foot intervals along some sidewalks where the slope is extreme. Should the Board include a similar provision in this section? If so, how can it be achieved without

[11] "Planning, Design and Maintenance of Pedestrian Facilities" DOT/FHWA (1988).

increasing the slope of the sidewalk? What increased cost would result?

Question 65: The natural terrain in many developed areas such as parts of San Francisco, Seattle, and Pittsburgh, will preclude, in many instances, construction of sidewalks with a running slope of less than 1:12. The Board is interested in local solutions and accommodations for persons with mobility impairments who need access to buildings and facilities on or along steeply sloping sidewalks. How can passing space, cross slope, and level landing provisions be satisfied in such areas? Commenters are encouraged to submit details and figures demonstrating approaches to pedestrian access under such conditions and to provide cost data where available.

Paragraph (3) requires sidewalk surfaces to be firm, stable, and slip resistant and that differences in level between ¼ and ½ inch be beveled. It further requires that gratings with elongated openings be placed so that the long dimension is perpendicular to the dominant direction of travel. This provision is consistent with ADAAG 4.5.1 (General), ADAAG 4.5.2 (Changes in Level), and ADAAG 4.5.4 (Gratings).

Paragraph (4) requires a separation between pedestrian walkways and vehicular ways. Separations may include but are not limited to curbs, grass or other plantings, or gravel. Components such as curbs, parkways, or other barriers which separate the pedestrian way from the roadway will not be continuous where driveways, or the continuous passage required by ADAAG 14.2.1, cross the separation. This provision is to ensure that edges of the sidewalk are detectable by persons who are blind or who have low vision. These types of separations are usually provided for drainage and safety to separate the pedestrian paths from roadways.

Paragraph (5) requires that where bus passenger loading areas or shelters are provided on or adjacent to sidewalks, they shall comply with ADAAG 10.2.

14.2.2 Historic and Special Use Sidewalks (Reserved)

The Board is considering treating historic sidewalks in a manner similar to ADAAG 4.1.7. A qualified historic sidewalk is one that is listed in, or eligible for listing in, the National Register of Historic Places or designated as historic under an appropriate State or local law. However, special scoping and technical provisions must be developed.

Many historic districts have areas where sidewalks are raised several steps above the roadway or are constructed of materials such as brick, cobblestones, Belgian blocks, or loose pea gravel on a consolidated base, that are difficult to traverse. Many historic neighborhoods have narrow sidewalks where passage is limited by large, mature trees, raised entrance porches or stairs, and other impediments to pedestrian circulation. Older brick and stone pavings have settled or heaved beyond acceptable limits.

Problems may arise if a portion of a historic sidewalk is removed and replaced as a consequence of a public improvement project. In such cases, historic preservation requirements would generally mandate that the new work match existing adjacent construction.

Special use sidewalks may include boardwalks constructed along beaches or areas which are subject to alternating tides or flooding. Such sidewalks have unique problems and characteristics similar to historic sidewalks.

Question 66: How can requirements for historic preservation be reconciled with the provisions of this section for new construction? The Board seeks comment on appropriate scoping and technical provisions for new construction and alterations to historic and special use sidewalks.

Should there be an alternate route provision similar to the exception provided in ADAAG 4.1.7(3)(b)? What means of equivalent facilitation might be appropriate? Is this an issue more properly addressed by program accessibility?

14.2.3 Street Identification and Pedestrian Signage

This provision requires pedestrian informational and directional signage and street identification signs to meet the minimum requirements for character proportion (ADAAG 4.30.2), character height (ADAAG 4.30.3), and finish and contrast (ADAAG 4.30.5).

Although some jurisdictions provide raised and brailled street names and bus stop and route information, the Board has not proposed a requirement for tactile or braille signage at this time because emerging technologies piloted in projects in this country and in Europe suggest that tactile signage may not be the most effective way of providing such information.

Pedestrian information and directional signs, such as markers along the route of an historic trail, the identification of historic elements and buildings on that route, and pedestrian advisory and warning signs can be useful in orientation only if users know where to find them. Signage directing pedestrians around temporary construction or hazards may also need to be provided. The Board is not aware of research which addresses issues of sign size, location, and standardization with respect to pedestrians with vision impairments. Providing some information in raised letters, such as Pittsburgh's "Boulevard of the Allies" street name sign, could be a protruding object if mounted at a 60 inch height due to the length of the street name (see 14.2.4 below). The Board may include a provision for some tactile signage in the final rule and is seeking information.

Question 67: If raised and brailled signage is provided, what pedestrian signs should be covered and how can issues such as sign size, location, and standardization be addressed? What are the costs involved? Is the absence of street name information a significant barrier to persons with visual impairments? Should applications vary according to location, such as urban, suburban, and rural areas?

New developments in audible and radio-transmitted wayfinding information suggest that communications technology may present options preferable to tactile signage such as the transmission of street names. A "smart intersection" pilot project in California is currently testing similar systems for providing information to vehicle drivers. Such technologies may be appropriate for pedestrian use.

Question 68: The Board seeks comment on how to provide orientation information contained in pedestrian signage accessible to persons with vision impairments. An audible system may provide access for persons who cannot read because of other disabilities, such as learning disabilities and mental retardation, but would be inaccessible to those who are both deaf and blind. Are there technologies that could accommodate all users? Should applications vary according to location, such as urban, suburban, and rural areas? Where possible, commenters should include cost information.

14.2.4 Protruding Objects

This section parallels ADAAG 4.4 (Protruding Objects) and applies it to public sidewalks and the areas adjacent to them. The provisions for a continuous passage within the sidewalk are intended to accommodate persons with mobility impairments. However, provisions for protruding objects apply to the entire width of a sidewalk because pedestrians with vision impairments will use all portions of the sidewalk.

Paragraph (1) permits objects projecting from walls to protrude a maximum of 4 inches into any portion

of the sidewalk when their leading edges are between 27 inches and 80 inches above the finished surface. Wall mounted objects that are located below 27 inches or above 80 inches may project any amount into the sidewalk provided they do not reduce the continuous passage required by proposed ADAAG 14.2. Free-standing objects mounted on posts or pylons are permitted to overhang their mountings a maximum of 12 inches within the same neight limits.

Paragraph (2) requires guardrails or other barriers where headroom along a sidewalk is less than 80 inches. The leading edge of such protective barriers must be at or below 27 inches above the finished surface of the sidewalk.

Pedestrians with vision impairments may be forced to adopt a restricted cane sweep technique on crowded sidewalks. Additionally, the speed with which people walk outdoors may cause them to encounter protruding objects before the cane sweep can detect them. Comments received during the initial rulemaking indicated that the 27-inch maximum requirement is insufficient for cane detection under many circumstances and may constitute a particular hazard along sidewalks. Several comments recommended various heights, but none provided any data as a basis for those suggestions. Commenters also suggested that the Board conduct additional research on the issue of protruding objects.

Question 69: Is the maximum 27-inch height for protruding objects sufficient to provide adequate warning to individuals who use canes and those who do not use canes? If adequate warning is not given, what changes should be made to these provisions and what research supports such changes? Should all protrusions between 0 and 80 inches be prohibited? Should post-mounted objects continue to be permitted to overhang their mountings up to 12 inches, instead of the 4-inch limitation applied to wall-mounted objects?

Paragraph (3) provides that fixed objects not covered by paragraph (1) and placed on or along a sidewalk shall not reduce the continuous 36-inch clear passage required by proposed ADAAG 14.2.1. Such objects may include permanently installed trash receptacles, fire hydrants, utility poles, or mail boxes.

14.2.5 Sidewalk Curb Ramps and Other Sloped Areas

This section addresses the technical requirements for curb ramps or other sloped areas. The technical provisions of ADAAG 4.7 (Curb Ramps) have been modified for applications in the public right-of-way because of constraints imposed by existing conditions.

The Department of Justice regulations implementing title II require that: (1) newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway; and (2) newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. See 28 CFR 35.151(e).

The regulations further provide that program accessibility requirements apply to curb ramps at existing crossings. That is, each public entity is required to ensure the accessibility of the program of providing a pedestrian circulation system by undertaking a self-evaluation (28 CFR 35.105). If structural changes are needed, the public entity must develop its transition plan, identifying locations where curb ramps will be installed at existing street and highway crossings. (28 CFR 35.150(d)(2)). In making alterations to existing sidewalks or facilities, public entities must meet the new construction and alterations requirements of 28 CFR 35.151 (New Construction and Alterations). See 28 CFR 35.150(b)(1).

Paragraph (1) requires a curb ramp or other sloped area to be provided wherever a sidewalk crosses a curb or other barrier (e.g., parkway, berm, or gutter) to a street crossing and requires that it be connected to a continuous passage. This provision is consistent with ADAAG 4.7.1 (Location) and has been modified to incorporate the language in the Department of Justice title II regulations and the concept of continuous passage of this section.

"Other sloped areas" is a term used in Department of Justice title II regulations and is being defined here as an alternative to sidewalk curb ramps where severe slopes and constrained rights-of-way may preclude the installation of conventional curb ramps at pedestrian street crossings. This is further discussed below.

Paragraph (2) requires all curb ramps and other sloped areas to be constructed with the least possible slope. The maximum slope of a curb ramp is 1:12 when measured according to Fig. 59(a). This provision is consistent with ADAAG 4.7.2 (Slope) except that the reference to ADAAG 4.8.2 (Ramp: Slope and Rise) and ADAAG 4.1.6(3)(a) has been eliminated. Two new exceptions addressing severe site constraints have been incorporated in proposed ADAAG 14.2.5(2) and 14.2.5(4). Transitions and slopes of adjoining surfaces have been incorporated into proposed ADAAG 14.2.5(8).

Other sloped areas is applied in this section to one of two exceptions. The first exception under paragraph (2) (Slope) permits a parallel curb ramp. The second exception in paragraph (4) (Landings) allows an alternative method of measuring the slope.

The exception in paragraph (2) (Slope) permits a ramp to be installed parallel to the run of the sidewalk and curb when site unfeasibility precludes construction of a standard curb ramp. This exception will permit access to a street crossing from narrow rights-of-way or steeply sloping sidewalks. Three figures (58 (a) (b) and (c)) illustrate possible applications. The running slope and cross slope provisions are unchanged. This exception requires a level landing area the width of the ramp and minimum of 60 inches in length at the bottom of the ramp to accommodate a 90 degree turn when entering the perpendicular street crossing, in accordance with ADAAG 4.2.3 (Wheelchair Turning Space). The parallel ramp is taken from the "Illustrated Handbook of the Handicapped Section of the North Carolina State Building Code" (1982).

Paragraph (3) requires a 36 inch minimum width for sidewalk curb ramps and other sloped areas connecting to street crossings. This provision is consistent with the continuous passage width of proposed ADAAG 14.2 and ADAAG 4.7.3 (Width) for accessible routes.

Paragraph (4) proposes a requirement for level landings at curb ramps and other sloped areas at street crossings to provide safe stopping places along these sloping routes. Curb ramps and other sloped areas running in the primary direction of travel must have a level landing at the top that is the width of the ramp or other sloped area and a minimum of 48 inches in length.

Where severe slopes occur in the direction of pedestrian and vehicular travel, perpendicular cross-streets, alleys, and sidewalks typically afford level landing space. Building entrances may provide level landings. Relatively level platforms are normally provided at cross streets to keep water from entering buildings on the lower side of the street. However, level areas will not generally be available at mid-block crossings.

Exception 1 to paragraph (4) allows a landing to be a minimum of 36 inches in length where site infeasibility precludes a 48 inch landing. (See Fig. 60). Where site infeasibility also precludes exception 1, an alternative is provided in exception 2. Exception 2

proposes an alternative method of measuring the slope of a curb ramp or other sloped area (see Fig. 59(b)) where site infeasibility precludes a level landing at the top in accordance with proposed ADAAG 14.2.5(4) or exception 1, or a parallel ramp permitted by proposed ADAAG 14.2.5(2) cannot be provided. The alternative method of measuring slope applies to the side flares and cross slope as well as to the running slope. This is especially relevant to mid-block crossings.

Where there is no level area at an intersection, and the adjoining roadway slope equals or exceeds 1:12 (as permitted by the exception in proposed ADAAG 14.2(1)), it is impossible to provide a curb ramp with a maximum slope of 1:12, Where site infeasibility precludes a curb ramp with a narrow landing at the top or a parallel ramp, the Board is proposing an alternative method of measuring slope relative to the slope of the adjoining roadway. An alternative method is proposed because the traditional method of measuring the slope as shown in Fig. 59(a) cannot be used where the area around the curb ramp is not level. Cross slope and other provisions are unchanged. The Board intends the alternative measuring method to be used only in those limited instances where other provisions and exceptions cannot accommodate site constraints. The Board notes that this alternative method may result in steep slopes but believes it is necessary to provide access. Neither the ADA nor the regulations exempt steeply sloped areas from a requirement to provide curb ramps or other sloped areas at street crossings. Such slopes may not be negotiable by persons using manual wheelchairs but could be negotiated by persons using motorized wheelchairs, scooters and similar conveyances.

Question 70: Is the exemption proposed an acceptable solution to providing curb ramps in such steeply sloped areas? If not, is there a better way to ensure accessibility such as a different ramp configuration? Are there situations in which this exception should not be permitted?

Some cities have provided an alternate path as part of a "priority accessible network" to allow persons with disabilities to bypass a steep hill or other barrier.

Question 71: Does the designation of an alternate path provide equivalent facilitation? Are there other methods which have been found useful in providing access to facilities on steeply sloping sidewalks? Where possible, commenters should include cost information.

Paragraph (5) requires flared sides on curb ramps and other sloped areas where pedestrians must walk across the ramp, or where curb ramps are not protected by returned curbs. This provision applies ADAAG 4.7.5 (Sides of Curb Ramps) to curb ramps or other sloped areas in the public right-of-way. This provision is consistent with proposed ADAAG 14.2.5(4) which requires a landing at the top of the curb ramp and clarifies that the flared sides shall be 1:12 maximum where the landing length at the top of the curb ramp is at least 36 inches but less than 48 inches. See Figure 12(b).

Paragraph (6) requires curb ramps or other sloped area surfaces to be firm, stable and slip resistant. This provision is consistent with ADAAG 4.5.1 (General).

Paragraph (7) (Detectable Warnings) has been reserved. The Board plans to conduct additional research on detectable warnings and will be issuing a separate notice of proposed rulemaking to suspend certain ADAAG provisions for detectable warnings until January 26, 1995. The Board will consider public comments on that notice, as well as the results of the additional research, before proposing specific requirements for detectable warnings at curb ramps along a circulation route in the public right-of-way.

Paragraph (8) requires counter slopes of adjoining gutters and road surfaces connecting to the curb ramp or sloped area to be 1:20 maximum. This provision applies the requirements of ADAAG 4.7.2 (Slope) for counter slope to the roadway surfaces adjoining curb ramps or other sloped areas. Curb ramps and other sloped areas may not have lips where they meet the gutter or roadway. Transition and gratings provisions found in ADAAG 4.5 (Ground and Floor Surfaces) and 4.7 (Curb Ramps) are also incorporated to cover gratings which may be located in the roadway and otherwise would not be covered by proposed ADAAG 14.2.1(3).

Paragraph (9) requires curb ramps or other sloped areas at marked crossings to be wholly contained within the markings, excluding flared sides. This provision is consistent with ADAAG 4.7.9 (Location at Marked Crossings).

Paragraph (10) requires curb ramps or other sloped areas to be protected and located to prevent their obstruction by parked vehicles. This is consistent with ADAAG 4.7.8 (Obstructions).

Paragraph (11) requires built-up curb ramps or other raised sloped areas to be located so that they do not project into vehicular traffic lanes or into parking spaces or access aisles. This is consistent with ADAAG 4.7.6 (Built-up Curb Ramps) and ADAAG 4.6.3 (Parking Spaces).

Paragraph (12) contains provisions for diagonal curb ramps or other sloped areas and is identical to ADAAG 4.7.10 (Diagonal Curb Ramps).

Paragraph (13) contains provisions for islands and is identical to ADAAG 4.7.11 (Islands).

14.2.6 Crossing Controls

This section requires crossing controls to have a minimum size control button close to the curb ramp, mounted at a 48 inch height adjacent to a firm, stable, slip resistant surface 30 inches by 48 inches.

Pedestrian-actuated crossing controls are typically provided at intersections based upon traffic conditions and location characteristics that establish the minimum requirements necessary for such an installation. They are generally mounted on the traffic signal pole of the dominant traffic direction. When activated, they interrupt the standard signal cycle in order to provide an interval for pedestrian crossing. In some areas, signals have no regular crossing interval unless activated by pedestrians.

Paragraph (1) requires the button control to be raised or flush and ¾ inches in the smallest dimension. This requirement is consistent with ADAAG 4.10.3 (Hall Call Buttons) which requires hall call buttons in elevators to be a minimum of ¾ inches in the smallest dimension. It further requires that the force required to activate the controls may not exceed 5 lbf. This provision is consistent with ADAAG 4.1.3(13) which requires controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements to comply with ADAAG 4.27 (Controls and Operating Mechanisms). Some crossing control buttons are very small or require extreme pressure to depress, making them difficult to operate for persons with limited hand dexterity. Other devices have large buttons which may be easier to use. The Board's proposal requires a control button to be a minimum of ¾ inches.

Question 72: Should pedestrian crossing control buttons be required to be larger than ¾ inches? If so, what size should they be? Should the Board require the controls for pedestrian crossings to be two inch square raised buttons that permit activation from any angle? Are such controls available for pedestrian crossings? Are there cost differences between larger and smaller buttons? Are there any problems with

vandalism or maintenance associated with larger control buttons?

Paragraph (2) requires the crossing controls to be located as close as possible to a curb ramp and, to the maximum extent feasible, operable from a level area adjacent to the controls rather than from the sloped surface of the curb ramp itself. This requirement is to ensure that people with disabilities do not have to travel out of their way to activate the signal before crossing the street, and allows a maximum crossing time for those who may travel more slowly.

The technical provisions referenced in paragraphs (3) (Mounting Height) and (4) (Surface) depart slightly from ADAAG 4.2.5 (Forward Reach) and ADAAG 4.2.6 (Side Reach), which allow a maximum reach range of either 48 inches or 54 inches depending on the approach to the object. Paragraph (4) requires a firm, stable and slip resistant surface a minimum of 30 inches by 48 inches to be provided to allow for a forward or parallel approach to the controls. However, paragraph (3) limits the controls to a maximum height of 48 inches. The Manual on Uniform Traffic Control Devices recommends a mounting height between 42 and 48 inches. In proposing a maximum reach range of 48 inches, the Board took into consideration that in inclement weather and colder temperatures people will be wearing coats and jackets which may limit their reach ranges.

Question 73: Is a 48 inch mounting height appropriate for persons who use wheelchairs or would a lower height be more useful? Would a lower height be difficult for a person who uses crutches or a person with short stature?

Audible signal, vibro-tactile controls, and radio frequency transmissions to make "WALK/DON'T WALK" indicators accessible to pedestrians with vision impairments are being tested in some communities. Other detectable technologies and applications may be under development. Comments during the initial rulemaking suggested that the Board should require auditory or vibro-tactile crossing signals. The Board is considering a provision for audible or vibro-tactile crossing signals and is seeking additional information.

Question 74: The Board is interested in appropriate scoping and technical requirements for auditory or vibro-tactile crossing signals and the experience of jurisdictions that have used such signals. Should there be differences between requirements for noisy urban streets and quiet residential neighborhoods? Should applications vary according to location, such as in urban, suburban, and rural areas or by levels of pedestrian use? What technology is currently available or under development for such applications? What are the advantages, disadvantages, costs and user preferences of each system?

14.2.7 Marked Crossings

This section requires marked crossings to be delineated with contrasting markings or materials (e.g., paint, brick, tile). An appendix note recommends marked crossings at State and local government buildings and facilities, transportation facilities, places of public accommodation, at irregular intersections, and at mid block crossings.

Locating marked crossings in these areas is also recommended in the Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration (FHWA) and "A Policy on the Geometric Design of Highways and Streets" (1990) published by the American Association of State Highway and Transportation Officials (AASHTO).

Where provided, markings legally establish a crosswalk and therefore function as traffic control devices. They may be needed where high traffic volume makes crossings difficult. They clearly facilitate pedestrian crossing on vehicular ways. Since persons with certain disabilities may take longer to cross traffic lanes, marked crossings may be a critical portion of an accessible circulation path. They are of particular benefit to persons with low vision and may assist them in crossing an intersection. This is especially important where there are irregular crossings such as Y-shaped intersections or mid block crossings.

The greatest number of pedestrian accidents involve children, but the most severe pedestrian accidents involve elderly persons and persons with disabilities. Marked crossings are the single most recommended provision in research conducted on the needs of pedestrians who are elderly or who have disabilities. Elderly persons are involved in a large number of pedestrian accidents. As population, they do more walking than other age groups, both because of less access to vehicles and greater leisure time. Several researchers have found that poor eyesight is the cause of many accidents involving elderly pedestrians; poor hearing is a significant but lesser factor.[12]

The MUTCD observes that:

> Crosswalk markings at signalized intersections and across intersectional approaches on which traffic stops, serve primarily to guide pedestrians in the proper paths. Crosswalk markings across roadways on which traffic is not controlled by traffic signals or STOP signs must also serve to warn the motorist of a pedestrian crossing point * * *. Marked crosswalks should also be provided at other appropriate points of concentration, such as at loading islands, midblock pedestrian crossings, or where pedestrians could not otherwise recognize the proper place to cross. (MUTCD 3B–18).

Further, AASHTO's "A Policy on Geometric Design of Highways and Streets" (1990) indicates that the major pedestrian-vehicular conflict usually occurs at intersections and indicates that crosswalks are usually necessary at every intersecting street in business districts. (page 545).

MUTCD recommends that street crossings be marked:

> * * * at all intersections where there is substantial conflict between vehicle and pedestrian movements * * * [and] * * * at other appropriate points of pedestrian concentration, such as at loading islands, midblock pedestrian crossings, or where pedestrians would not otherwise recognize the proper place to cross. (MUTCD, 3B–23).

A similar recommendation covers established routes to school. (MUTCD, 7C–3). Local jurisdictions may have standard criteria for high pedestrian use areas, including requirements based on pedestrian and traffic flow, special districts, or central business districts.

In some jurisdictions, citizens may request that a marked crossing be installed to facilitate pedestrian crossing. Such a program may be a part of the overall program accessibility requirements of Department of Justice regulations implementing title II. (28 CFR 35.151(d)).

Question 75: Should the Board recommend locating marked crossings in areas other than those listed in the appendix, such as at traffic signals? Are there areas where marked crossings should be required? Commenters should provide cost and safety data where possible.

14.2.8 Pedestrian Overpasses and Underpasses

This section requires grade separated pedestrian overpasses and underpasses to be accessible by means of a ramp, elevator, or where permitted by ADAAG 4.1.3(5), a platform lift (wheelchair lift) and to connect to a sidewalk or other pedestrian circulation path.

Overpasses and underpasses built with funds from FHWA have generally been designed with ramps. However, many facilities have not been built with FHWA funds and some of those have

[12] Templer, "Accidents: Causes and Countermeasures" Pedestrian Research Laboratory, Georgia Institute of Technology (1975).

been constructed with a circular ramp. Circular ramps do not meet ADAAG 4.8 and are a particular problem for persons using wheelchairs because they have non-uniform cross slopes which does not permit all wheels to be on the ground at the same time. Also, the lack of level landings does not provide any rest area for persons with limited stamina.

Question 76: Are there constraints specific to overpasses and underpasses that could affect accessibility and which are not accommodated by the general provision for site infeasibility? Should there be a specific exception for certain conditions peculiar to overpasses and underpasses?

ADAAG 4.1.3(4) requires stairs to comply with ADAAG 4.9 only where no ramp or elevator is provided. Some ramped crossings may provide both stairs and ramps. Persons with mobility impairments may find lengthy ramps more difficult than stairs complying with ADAAG 4.9 (Stairs).

Question 77: Where stairs are provided in addition to a ramp at an overpass or underpass, should the guidelines require such stairs to comply with ADAAG 4.9 (Stairs)? What is the cost differential between stairs complying with ADAAG 4.9 and those which comply with local applicable building codes?

14.3 Drinking Fountains, Telephones, Toilet Facilities, Fixed Seating, Tables and Benches

14.3.1 Minimum Requirements

This section contains scoping provisions for drinking fountains, telephones, toilet facilities, fixed seating, tables and benches where provided on or adjacent to a sidewalk as part of a public improvement project. These elements must be reasonably dispersed within the project area, taking into consideration the proximity and number of existing accessible elements. An appendix note clarifies the dispersal requirement. See A14.3.

Paragraph (1) requires at least 50 percent, but not less than one, of drinking fountains to comply with ADAAG 4.15 (Drinking Fountains and Water Coolers). Where only one drinking fountain is provided it must be accessible to individuals who use wheelchairs in accordance with ADAAG 4.15 (Drinking Fountains and Water Coolers) and to those who have difficulty bending or stooping. This scoping provision is consistent with ADAAG 4.1.3(10) (Drinking Fountains).

Paragraph (2) requires at least 50 percent, but not less than one, of single unit public pay telephones to comply with ADAAG 4.31.2 through 4.31.8 (Telephones). Where banks of telephones are provided, this provision requires at least one accessible telephone per bank to be provided. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control. Signage complying with applicable provisions of ADAAG 4.30.7 (Symbols of Accessibility) is also required. This scoping provision is consistent with ADAAG 4.1.3(17)(a) and (b).

Paragraph (3) requires at least 50 percent, but not less than one, of fixed single user toilet facilities provided on a public right-of-way as part of a public improvement project to comply with ADAAG 4.22 (Toilet Rooms). This is a departure from ADAAG 4.1.2(6) which requires all public and common use toilet facilities to comply with ADAAG 4.22. Proposed ADAAG 14.3(3) is intended to cover individual fixed single-user toilet units connected to sanitary sewer lines and not portable units covered by 4.1.2(6). Signage complying with ADAAG 4.30.7 is required to be provided on the accessible units consistent with ADAAG 4.1.2(7). Signage on inaccessible units must indicate the location of the nearest accessible unit.

In some European cities, publicly-provided toilet facilities include permanent installations of prefabricated single-user units dispersed throughout a central business district on street corners. Both kiosk-sized inaccessible and larger accessible units are manufactured. Several U.S. cities are considering similar installations and at least one has initiated a pilot program to test the facilities in use, providing paired installations of inaccessible and accessible units. However, concerns have been raised that the larger accessible toilets could be used for shelter or for illicit activities. The Board is aware of one pilot project that was discontinued because the installation of a universal design accessible unit was reported to have resulted in a high rate of vandalism and abuse, particularly by drug dealers.

Question 78: Given such public safety concerns, is the proposed requirement to 50% accessible fixed single-user toilet units appropriate to meet the needs of persons with disabilities? Are there design solutions that would allow for a safe and universally accessible public toilet that could be used by everyone? Are there operational approaches, such as limiting the hours of use, that would allow all units to be accessible without raising concerns about vandalism and illicit activities?

Question 79: What are the manufacturing, installation, and maintenance cost differentials of providing and servicing a single standard type of unit versus two types of units?

Card, token, or key access to accessible units have been proposed as a way of avoiding vandalism and other abuses of the larger accessible units. In a pilot project that provided both accessible and non-accessible units, non-accessible units could be entered using coins or tokens, while accessible units required the use of an access card by persons with disabilities. This required special control and distribution procedures that may be viewed as discriminatory. Further, the Board is concerned that restricted access procedures may be subject to abuse and misuse, resulting in the same levels of vandalism and illicit activity as would uncontrolled or coin-operated access to accessible units. If this is so, then limiting access may prove ineffective as a preventive measure.

Question 80: How effective have limited access procedures been in similar situations? If restricting access by requiring card, token, or key operation is necessary, in what ways could equivalent facilitation be provided? Should the state or local government having jurisdiction be required to provide cards at all hours the units are operable and within a specified distance from the units?

Paragraph (4) requires at least five percent, but not less than one, of fixed seating and tables to comply with ADAAG 4.32 (Fixed or Built-in Seating and Tables) and five percent, but not less than one, of fixed benches to comply with 4.35.4. This provision is consistent with ADAAG 4.1.3(18).

Question 81: Should fixed benches, or some percentage thereof, be required to have armrests? Should some benches be required to have backrests? What technical situations would be appropriate for back height, seat slope, and arm rests? Are the specifications in ADAAG 4.35.4 adequate? Where possible, commenters should provide cost data.

14.4 Vehicular Ways and Facilities

14.4.1 On-Street Parking

Proposed ADAAG 14.4.1 contains provisions for new on-street parking resulting from construction that is part of a public improvement project in areas zoned for business uses, including mixed-use zoning that contains business occupancies. This provision covers parking spaces that are metered, time-limited, or similarly regulated by a

jurisdiction and that are designated by signage. It does not apply to areas in which on-street parking is simply permitted, such as residential neighborhoods and developments.

On-street parking is often more convenient to facilities than off-street parking lots. In small towns and business districts, such parking may be the only public parking that a State or local government provides. Therefore, the Board is proposing a provision that requires a percentage of on-street parking to be accessible where on-street parking is provided.

Proposed ADAAG 14.4.1 requires on-street parking to be provided according to the table in ADAAG 4.1.2(5)(a). The provision requires a minimum 60 inch access aisle to be provided clear of the driving lane. This provision references figures from Texas [13] and the Department of Transportation.[14] The access codes of New Jersey and North Carolina contain similar technical specifications, as does the Board-sponsored UFAS Retrofit Manual (1991). Accessible parallel parking spaces are designed and constructed much like passenger loading zones referenced in ADAAG 4.6.6. The Board is not requiring designated van accessible spaces because side lift vans can exit onto the sidewalk from a standard parking space, provided that access to the sidewalk is not obstructed by fixed or movable objects. Vans with rear lifts should be able to use the spaces shown in Figures 61 (a) and (b), provided that the space is at least 26 feet long.

Question 82: What is an appropriate basis for determining the numbers of accessible parking spaces required within the inventory of designated on-street spaces provided by a public entity? The Board is seeking information on the requirements in other States and intends to provide a scoping provision in the final rule. Should the requirements be different for a central business district, a mixed-use area, or near medical and other special facilities? Should the requirement apply only where the sidewalk is a minimum width or where there is a parkway or a space not intended for pedestrian circulation, such as segments normally occupied by trees, benches or other amenities where the accessible aisle could be most easily accommodated? Should the requirement be different for alterations, such as where a street is widened or pedestrian amenities, such as planters, trees, or benches, as well as parking, are provided as part of a downtown improvement project? What technical and scoping requirements have been developed for accessible or van accessible parallel, angled, or perpendicular on-street parking spaces based upon the total number of spaces provided by a jurisdiction in parking districts or at special uses and facilities? What cost data are available on the provision of accessible on-street parking spaces?

Paragraph (1) requires a curb ramp or other sloped area to be provided to connect the access aisle to the sidewalk and references proposed ADAAG 14.2.5. This provision is consistent with ADAAG 4.6.3 (Parking Spaces).

Paragraph (2) requires accessible parking spaces to be dispersed throughout the project area. An appendix note clarifies that accessible on-street parking spaces provided immediately adjacent to intersections may be served by sidewalk curb ramps, provided that the required access aisle connects to the pedestrian crossing. It also recommends that accessible on-street parking spaces be located in relatively level areas. It should be noted that program accessibility requirements may not be satisfied if a majority of accessible parking spaces are located along steeply-sloping roadways.

Question 83: Where a city expands its incorporated limits or provides new on-street parking spaces in outlying areas, the new accessible spaces may be the furthest from business districts. Should there be a provision permitting or requiring the State or local government to provide additional spaces in an existing municipal parking lot if it provides greater accessibility to business districts than does the remote on-street parking? Commenters are encouraged to provide cost data when possible.

Paragraph (3) requires accessible parking spaces to be designated as reserved by a sign showing the symbol of accessibility. It further requires that the sign be located to be visible from a driver's seat. This provision is consistent with ADAAG 4.6.4 (Parking Spaces).

Paragraph (4) requires parking meter controls, including the coin slot, to be located a maximum 48 inches above the sidewalk and that the controls be easy to operate. A firm, stable slip resistance surface must be provided at the controls and connect to a sidewalk. This provision is consistent with ADAAG 4.27.4 (Operation) and ADAAG 4.2.5 (Forward Reach). As discussed under proposed ADAAG 14.2.6 (Crossing Controls), the proposed reach range of 48 inches anticipates that people will be wearing coats and jackets in inclement and cold weather which may limit their reach ranges.

Question 84: Is a 48 inch control height appropriate for persons who use wheelchairs or would a lower height be more useful? Would a lower height be difficult for a person who uses crutches? Is there an additional cost associated with a lower control height?

Question 85: Currently, 24 States permit no-charge parking at meters for vehicles displaying an authorized parking plate or placard for a person with a disability. In these jurisdictions, parking meters may not need to be accessible unless reciprocity with other jurisdictions is not guaranteed. The Department of Transportation encourages States to extend reciprocal recognition. See 23 CFR 1235.8. Should parking meters be required to be accessible in those jurisdictions that both: (a) exempt vehicles displaying the appropriate plate or placard from parking fees and (b) recognize plates or placards from other jurisdictions?

14.4.2 Roadside Emergency Communications Systems

Roadside call boxes are essential for emergency situations, such as engine failure or accidents, in which it is especially important for all people to get immediate assistance. In particular, some persons with disabilities have extreme sensitivity to cold and cannot wait for assistance in an unheated automobile. The Board is aware of concerns raised about the safety of persons with disabilities getting out of their cars or vans on the highway where uneven terrain and high speed traffic may be a problem, but considers the need for accessible roadside emergency communication to be equally important. People in emergency situations need to have the choice to remain in the vehicle or call for help.

Paragraph (1) requires controls and operating mechanisms to be operable by one hand and not require tight grasping, twisting or pinching of the wrist. It further requires that the force to operate the controls not exceed 5 lbf (22.2N). This provision is consistent with ADAAG 4.1.3(13) which requires controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements to comply with ADAAG 4.27 (Controls and Operating Mechanisms). This paragraph further requires the maximum mounting height of such controls to be 54 inches. This provision is consistent with ADAAG 4.2.6 (Side Reach).

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[13] Texas Admin. Code title 16 section 68.112(i)1.5.

[14] "Provisions for Elderly and Handicapped Pedestrians" DOT/FHWA (1980).

In August 1985, the Delaware Architectural Accessibility Board conducted a study in response to complaints by the disability community that the call boxes were mounted too high and blocked by curbs, guard rails and poles. Subject testing and subsequent pole crash testing resulted in a recommendation that controls be mounted at a maximum height of 54 inches, adjacent to a concrete pad. The call boxes tested had a pull requirement of 12 lbs. On this issue, the study noted that it was not possible, "* * * to evaluate the mechanical arrangement to determine whether gearing changes or other modifications could reduce the necessary pull force * * *" and that further study was required. See "Report on the Accessibility and Usability of the Sig Com Motorist Aid Communication System" Delaware Architectural Accessibility Board at 6 (1985).

Additionally, the specific device tested required pulling a handle through a specified range to activate the transmission of a signal. The study suggested that lowering the box below 54 inches could interfere with this operation. Also, the study raised issues regarding snow removal and build-up covering the call boxes.

Question 86: The Board seeks information on whether the 5 lbf requirement can be met. Are there existing devices or systems that currently comply?

Question 87: The Board is considering a requirement for a mounting height of 48 inches and is seeking information on whether it can be achieved.

Paragraph (2) requires the system to provide both visual and auditory acknowledgement of call receipt and not require voice communication. This provision is consistent with ADAAG 4.10.14 (Emergency Communications). The system studied by Delaware did not require voice communication and provided an auditory call confirmation (beep) feature. The study recommended that future models incorporate a visual indicator as well.

Paragraph (3) requires that a firm, stable, slip resistant surface that is a minimum of 30 inches by 48 inches be provided immediately adjacent to the call box. Typically this will consist of a concrete pad with a level surface. ADAAG 4.2.6 (Side Reach) specifies a maximum depth of 10 inches for a side reach height at 54 inches. The Delaware study noted that such pads were frequently placed a significant distance from the pole on which the call box was mounted and recommended that the pads be placed a maximum distance of 21 inches from the mounting, which is consistent with the 48 inch maximum height requirement in ADAAG 4.25.3 (Height).

This provision requires the level area to be connected to the roadway shoulder, sidewalk or pedestrian path, but does not require that paved shoulders or sidewalks be provided. However, it does require that a person using a wheelchair be able to reach the level area from the roadway shoulder. This would prohibit the level area from being separated from the roadway by a ditch, gutter, curb, or other barrier.

Question 88: Some jurisdictions have considered providing persons with disabilities cellular phones in lieu of providing accessible call boxes. How can such a distribution be accomplished especially for non-residents? How can communication be provided in areas (country or rural areas) where there is no cellular phone capability and limited, if any, call boxes provided? Should such a system be permitted as an alternative to making roadside emergency communication systems accessible? What are the costs associated with such systems?

14.5 Alterations

This section requires elements that are altered in the scope of a public improvement project, to be altered to comply with the applicable provisions of ADAAG 4.1.6 Accessible Buildings: Alterations and proposed ADAAG 14.

An alteration, as defined in ADAAG 3.5, means any change to a building or facility that affects or could affect the usability of the building or facility or any part thereof.

Alteration sections of the guidelines typically follow new construction provisions and include provisions that are somewhat less stringent. An alteration section would also typically include exceptions for technical infeasibility to allow for existing constraints that might preclude strict compliance with the provisions for new construction. However, construction in the public right-of-way has characteristics that are not usually found in the construction of buildings and facilities on well-defined sites. As explained in the preamble to proposed ADAAG 14.1, new construction in the public right-of-way has many of the characteristics of an alteration because it must fit within the confines of roadways and buildings and must connect to an existing pedestrian circulation network. For this reason, an allowance for site infeasibility has been included in the provisions for new construction in this section. Therefore, the allowances for site constraints are not confined only to alterations and the alteration section here simply references the guidelines for new construction.

When a pedestrian route is modified, each element that is a part of the modification must be brought into compliance with the applicable sections of these requirements. Additionally, the Board encourages jurisdictions to consider each project as an opportunity to further the accessibility of its pedestrian network and should not unnecessarily restrict the scope of work so as to avoid the requirements for new accessible elements or construction. For example, utility work that removes part of a sidewalk adjacent to an intersection might not involve breaking through the curb face. Therefore, no curb ramp would be installed. In such a case, however, there is an opportunity to install a curb ramp with very little additional cost. The replacement of a length of sidewalk, removed to permit the installation of new curbs and gutters, presents an opportunity to bring at least a continuous passage into compliance with new construction standards.

Furthermore, ADAAG 4.1.6(1)(a) requires that alterations not decrease accessibility. For example, the installation of decorative lighting, lanterns, or other elements such as street furniture, landscaping, hydrants, transformers, signals, or kiosks located within a sidewalk or right-of-way shall not restrict a required width of passage.

Replacing a section of sidewalk damaged by the encroachment of tree roots will fall into the category of repair and maintenance and the replaced section must meet adjacent existing surfaces at its edges. However, the replacement of a block-long sidewalk segment removed for the installation of below-grade piping should be treated as new construction if it affords the opportunity to remedy the slope, cross slope, surface or other deficiency in accessibility.

The Board recommends that jurisdictions review their standard contract language and specifications to ensure that such considerations supersede the requirement to "restore to existing conditions" where the work is performed by outside contractors.

14.6 Temporary Work

This section applies ADAAG 4.1.1(4) (Temporary Structures) to temporary work in the public right-of-way, whether it be new construction, alterations, or maintenance and repair. It requires (1) barriers to protect pedestrians from hazards along the circulation path and (2) appropriate identification of an alternate accessible

circulation path around any obstructions.

Temporary work may be a particular hazard to pedestrians with vision impairments who may have memorized the circulation routes and are not provided with accessible directions to the proper path. Jurisdictions and their contractors should ensure that barriers meet the specific needs of pedestrians as detailed in proposed ADAAG 14.2.4 Protruding Objects.

Further, the removal, even for only a short time, of a curb ramp or other accessible element may preclude access to buildings, facilities, or areas by a person using a wheelchair or require a lengthy, circuitous route to bypass such barriers in order to reach regular destinations. The alternate route should be equally convenient and accessible for all sidewalk users and should be clearly marked to avoid extra travel distance.

Regulatory Process Matters

Preliminary Regulatory Impact Analysis

These guidelines are issued to provide guidance to the Department of Justice in establishing accessibility standards for new construction and alterations of State and local government facilities covered by title II of the ADA. The standards established by the Department of Justice must be consistent with these guidelines. These guidelines meet the criteria for a major rule under Executive Order 12291 and this Notice of Proposed Rulemaking has been reviewed by the Office of Management and Budget pursuant to that order.

The Board has prepared a Preliminary Regulatory Impact Analysis (PRIA) which has been placed in the docket and is available for public inspection at the Board's office. The PRIA includes a cost impact analysis for certain accessibility elements and a discussion of the regulatory alternatives considered. The Board encourages comment on the PRIA as well as the submission of any data that would assist the Board in estimating the costs and benefits of the proposed rule.

Accessibility does not generally add features to a building or a facility but rather simply requires that features commonly provided have certain characteristics. Some of the characteristics may add marginally to the cost of an element; however, the costs for installation are not usually increased. In addition, accessibility generally adds little or no space to buildings and facilities. Several studies discussed in the Regulatory Impact Analysis prepared for the initial rulemaking have shown that designing buildings and facilities to be accessible, from the conceptual phase onward, adds less than one percent to the total construction costs.

For purposes of the PRIA, the Board analyzed those provisions that pertain only to buildings and facilities constructed or operated by State and local governments which are covered by title II of ADA. Included in the analysis were: Jury boxes and witness stands, adaptability to fixed judges' benches, clerks' stations, speakers' rostrums and raised daises, drinking fountains, security systems, two-way communication systems, electrical outlets, wiring and conduit for communication systems, grab bars in bathrooms, visual alarms and notification devices, platform lifts and elevators, passing space on sidewalks, crossing controls, and on-street parking. The PRIA also discusses the indirect costs of the accessibility elements such as maintenance, operation and opportunity costs.

Preliminary Regulatory Flexibility Act Analysis

Under the Regulatory Flexibility Act, the publication of a proposed rule requires the preparation of a preliminary regulatory flexibility analysis if such rule could have a significant economic impact on a substantial number of small entities. These guidelines will have such an impact. Section 605(A) of the Regulatory Flexibility Act permits an agency to satisfy the flexibility analysis requirement by addressing the impacts of the rule on small entities in the agency's PRIA. The Board has chosen to exercise that option and will thus address the impact of the guidelines on small entities as part of the PRIA.

The Board would also like to point out that the economic impacts imposed upon the small entities subject to the guidelines are the necessary result of the ADA statute itself. Every effort has been made by the Board to lessen the economic impact of this rule on small entities, but little discretion was reserved to the Board in this area.

Federalism Statement

These guidelines will have some Federalism impacts. The Board would point out that the impacts imposed upon State and local government entities are the necessary result of the ADA statute itself. Every effort has been made by the Board to lessen the impact of these guidelines on State and local government entities, but little discretion was reserved to the Board in this area. The PRIA discusses the impacts of these guidelines on public entities. This discussion serves the purposes of a Federalism Statement under Executive Order 12612 for purposes of this rule.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authorized by vote of the Board on July 15, 1992.

Kathleen Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, it is proposed to amend part 1191 of title 36 of the Code of Federal Regulations as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: Americans with Disabilities Act of 1990, Pub. L. 101–336, 104 Stat. 370 (42 U.S.C. 12204).

Appendix to Part 1191—Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

2. The Appendix to part 1191 is amended as follows:

a. In section 1. Purpose, the second paragraph is amended by removing the words "sections 5 through 10" and adding in their place "the special application sections" and by adding "-1980" after "ANSI A117.1" in the last sentence.

b. In section 1. Purpose, the third paragraph is amended by adding "-1980" after "ANSI A117.1" in the first sentence.

c. In section 3.5 Definitions, the definition for "Alteration" is amended by adding the words "place of" immediately following "for the use of a" in the first sentence; by adding a comma after the word "accommodation" in the first sentence; by removing the word "or" which follows the word "accommodation" in the first sentence; and by adding "or a State or local government entity" in the first sentence to follow "commercial facility,".

d. Section 3.5 Definitions, by adding a definition for "Continuous Passage" in alphabetical order.

e. Section 3.5 Definitions, by revising a definition for "Dwelling Unit".

f. Section 3.5 Definitions, by adding a definition for "Public Improvement Project" in alphabetical order.

g. Section 3.5 Definitions, by adding a definition for "Sidewalk" in alphabetical order.

h. Section 3.5 Definitions, by adding a definition for "Site Infeasibility" in alphabetical order.

i. In section 3.5 Definitions, the definition for "Transient Lodging" is amended by adding the words "and residential facilities" immediately following the words "medical care facilities" in the first sentence; by removing the words "one or more dwelling units or" in the first sentence; and by adding the words "and other facilities used on a transient basis" in the last sentence immediately following the words "and dormitories".

j. In section 4.1.1 Application, paragraph (1) General is amended by removing the words "required to be accessible by 4.1.2 and 4.1.3," in the first sentence; by removing the words "required to be accessible by 4.1.6" in the first sentence; and by removing the words "these guidelines," in the first sentence.

k. In section 4.1.1 Application, paragraph (2) Application Based on Building Use is amended by removing the words "5 through 10" in the first sentence; by removing the words "for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, accessible transient lodging, and transportation facilities" and adding in their place the words "based on building use".

l. In section 4.1.3 Accessible Buildings: New Construction, Exception 1 in paragraph (5) is amended by adding the words "places of public accommodation and commercial" in the first sentence immediately following the words "Elevators are not required in".

m. Section 4.1.3(17) Public Telephones, paragraph (c), by adding new paragraphs (c)(iv) and (c)(v).

n. Section 4.1.3(17) Public Telephones, by adding an exception to paragraph (d).

o. In section 4.1.6 Accessible Buildings: Alterations, paragraph (k)(i) is amended by adding the words "place of public accommodation or commercial" in the first sentence immediately following the words "an elevator in an altered".

p. In section 4.1.7 Accessible Buildings: Historic Preservation, paragraph (1)(a) is amended by removing the words "5 through 10" in the first sentence and by revising the exception in paragraph (1)(a).

q. Section 7.2 Sales and Service Counters, Teller Windows, Information Counters, by redesignating paragraph (3) as paragraph (4) and by adding new paragraph (3).

r. Section 10.4.1 New Construction, by revising paragraph (8) Security Systems.

s. By adding new sections 11 through 14.

t. In the appendix to the appendix, by redesignating note A7.2(3) as note A7.2(4) and by adding new note A7.2(3)(iii).

u. In the appendix to the appendix, by adding note A10.4.1(8).

v. In the appendix to the appendix, by adding notes A11.0 through A14.4.2(3).

The additions and revisions of the appendix to part 1191 are published and other parts of the appendix are republished to read as follows:

Appendix to Part 1191—Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

* * * * *

BILLING CODE 8150-01-M

1. PURPOSE.

This document sets guidelines for accessibility to buildings and facilities by individuals with disabilities under the Americans with Disabilities Act (ADA) of 1990. These guidelines are to be applied during the design, construction, and alteration of buildings and facilities covered by titles II and III of the ADA to the extent required by regulations issued by Federal agencies, including the Department of Justice and the Department of Transportation, under the ADA.

The technical specifications 4.2 through 4.35, of these guidelines are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text by italics. However, sections 4.1.1 through 4.1.7 and the special application sections are different from ANSI A117.1-1980 in their entirety and are printed in standard type.

The illustrations and text of ANSI A117.1-1980 are reproduced with permission from the American National Standards Institute. Copies of the standard may be purchased from the American National Standards Institute at 1430 Broadway, New York, New York 10018.

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3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

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3.5 Definitions.

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Alteration. *An alteration is a change to a building or facility made by, on behalf of, or for the use of a place of public accommodation, commercial facility, or a State or local government entity that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

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Continuous Passage. See 14.1.1.

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Dwelling Unit. See 13.1.

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Public Improvement Project. See 14.1.1.

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Sidewalk. See 14.1.1.

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Site Infeasibility. See 14.1.1.

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Transient Lodging. *A building, facility, or portion thereof, excluding inpatient medical care facilities and residential facilities, that contains sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories and other facilities used on a transient basis.*

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4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements

4.1.1* Application.

(1) General. All areas of newly designed or newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with 4.1 through 4.35, unless otherwise provided in this section or as modified in a special application section.

(2) Application Based on Building Use. Special application sections provide additional requirements based on building use. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

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4.1.3 Accessible Buildings: New Construction.

Accessible buildings and facilities shall meet the following minimum requirements:

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(5)* One passenger elevator complying with 4.10 shall serve each level, including mezza-

nines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10.

EXCEPTION 1: Elevators are not required in places of public accommodation and commercial facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

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(17) Public Telephones:

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(c) The following shall be provided in accordance with 4.31.9:

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(iv) If an interior public pay telephone is located in a judicial, legislative, or regulatory facility subject to section 11, then at least one interior public text telephone shall be provided.

(v) If an interior public pay telephone is located in a public area in a detention or correctional facility subject to section 12, then at least one interior public text telephone shall be provided in at least one public area. In addition, if an interior public pay telephone is provided in the secured area of such a facility, then at least one public text telephone shall also be provided in at least one secured area. Secured areas are those areas used only by detainees or inmates and security personnel.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

EXCEPTION: This requirement does not apply to the secured areas of detention or correctional facilities where outlets are prohibited for purposes of security or safety.

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4.1.6 Accessible Buildings: Alterations.

(1) General•••

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(k) EXCEPTION:

(i) These guidelines do not require the installation of an elevator in an altered place of public accommodation or commercial facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General.

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4.1.7 Accessible Buildings: Historic Preservation.

(1) Applicability:

(a) General Rule. Alterations to a qualified historic building or facility shall comply with 4.1.6 Accessible Buildings: Alterations, the applicable technical specifications of 4.2 through 4.35 and the applicable special application sections unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirement in 4.1.7(3) may be used for the feature.

EXCEPTION: If it is determined in accordance with the procedures in 4.1.7(2) that it is not feasible to provide physical access to a qualified historic building or facility in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided as required by 28 CFR 35.151(d)(2) for State and local government programs and 28 CFR 36.405(b) for places of public accommodation and commercial facilities.

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7.2 Sales and Service Counters, Teller Windows, Information Counters.

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(3) In buildings or facilities owned or operated by a State or local government:

(i) Where counters have cash registers and are provided for the sales or distribution of goods or services to the public, at least one of each type shall comply with 7.2(1).

(ii) At teller windows, service counters, or other counters that do not have a cash register but at which goods or services are sold or distributed, at least one of each type shall comply with 7.2(2).

(iii)* In addition, at counters or teller windows with solid partitions or safety glass separating personnel from the public, at least one of each type shall provide a method to facilitate voice communication. Such methods may include, but are not limited to, grilles, talk-thru baffles, intercoms, or telephone handset devices. The method of communication shall be accessible to both individuals who use wheelchairs and individuals who have difficulty bending or stooping. If provided, at least one telephone communication device shall be equipped with volume control complying with 4.31.5. Hand-operable communication devices, if provided, shall comply with 4.27.

(4)* Assistive Listening Devices. (Reserved)

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10.4 Airports.

10.4.1 New Construction.

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(8)* Security Systems. In airports owned or operated by State or local government entities, at least one accessible route complying with 4.3 shall be provided through fixed security barriers at each single barrier or group of security barriers. A group is two or more security barriers immediately adjacent to each other at a single location. Where security barriers incorporate equipment such as metal detectors, fluoroscopes, or other similar devices which cannot be made accessible, an accessible route shall be provided adjacent to such security screening devices to facilitate an equivalent path of travel. The path of travel shall permit persons with disabilities passing through security barriers to maintain visual contact with their personal items to the same extent provided other members of the general public.

EXCEPTION: Doors, doorways, and gates designed to be operated only by security personnel shall be exempt from 4.13.6, 4.13.9, 4.13.11, and 4.13.12.

* * * * *

11. JUDICIAL, LEGISLATIVE, AND REGULATORY FACILITIES.

11.1* In addition to the requirements in 11, judicial, legislative and regulatory facilities shall comply with the applicable provisions of 4.1 through 4.35. All public and common use areas are required to be designed and constructed to comply with section 4.

11.2 Courtrooms, Hearing Rooms, and Chambers.

11.2.1 Where the following elements are provided, each shall be on an accessible route complying with 4.3 which coincides with the circulation path provided for all persons using the element. The elements shall comply with the following provisions.

(1) Doors or Gates. Doors or gates designed to allow passage into the well of the courtroom, the witness stand, the jury box, the speaker's rostrum, or other areas shall comply with 4.13.

(2)* Jury Boxes and Witness Stands. Each jury box and witness stand shall have at least one accessible wheelchair space complying 4.33.2. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users. Accessible spaces shall be provided in the defined area of the jury box or witness stand. Fixed counters in the witness stand shall comply with 4.32. Clear floor space for a front approach shall be provided. The maximum height of controls and operating mechanisms shall be 48 in (1220 mm) and comply with 4.27.3 and 4.27.4.

EXCEPTION: In alterations to existing facilities where it is technically infeasible to provide a fixed means of vertical access to the witness stand or jury box, clear floor space shall be provided to accommodate a portable ramp as long as jurors or witnesses with disabilities are inside the defined area of the jury box or witness stand.

(3) Spectator, Press, and Other Areas with Fixed Seats. Where spectator, press or other areas with fixed seats are provided, each area shall comply with 4.1.3(19)(a). In addition, where the spectator seating capacity exceeds 50 and is located on one level that is not tiered or sloped, wheelchair spaces shall be provided in more than one seating row.

(4)* Fixed Judges' Benches, Clerks' Stations, Speakers' Rostrums, and Raised Daises. Fixed judges' benches, clerks' stations, speakers' rostrums and a minimum of one raised dais shall be adaptable and comply with 4.32. Clear floor space for a front approach shall be provided. The maximum height of controls and operating mechanisms shall be 48 in (1220 mm) and comply with 4.27.3 and 4.27.4. If the high forward reach is over an obstruction, reach and clearances shall be as shown in Figure 5(b).

Adaptable means that maneuvering clearances and other features (e.g., fixed controls) shall be designed into the space so that accessibility can easily be provided. For example, the judge's bench may be designed so that a ramp complying with 4.8 or a lift complying with 4.11 can easily be installed at a later date provided that the required maneuvering clearances are provided to approach, enter, and exit the ramp or lift. Maneuvering clearances must also allow an individual to open gates, maneuver at the bench (e.g., knee clearance), and reach any fixed controls (e.g., alarm buttons) and electrical outlets that are integral components of the design.

(5)* Fixed Bailiffs' Stations, Court Reporters' Stations and Litigants' Stations. Fixed or built-in stations, including tables for bailiffs, court reporters and litigants, shall provide clear floor space for a front approach and shall comply with 4.32. The maximum height of controls and operating mechanisms shall be 48 in (1220 mm) and comply with 4.27.3 and 4.27.4. If the high forward reach is over an obstruction, reach and clearances shall be as shown in Figure 5(b).

(6) Fixed Lecterns. Fixed lecterns shall comply with 4.32 and clear floor space for a front approach shall be provided. The maximum height of controls and operating mechanisms shall be 48 in (1220 mm) and comply with 4.27.3 and 4.27.4.

11.3 Jury Assembly Areas and Jury Deliberation Areas.

11.3.1 Where the following elements or spaces are provided in areas used for jury assembly or deliberation, each element or space shall be accessible and on an accessible route complying with 4.3:

(1) Refreshment Areas. Refreshment areas, kitchenettes and fixed refreshment dispensers shall comply with 9.2.2(7).

(2)* Fixed or Built-in Seating and Tables. At least 5 percent, but not less than one fixed or built-in seating and tables shall comply with 4.32. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.

(3) Drinking Fountains. Where provided in rooms covered under 11.3, there shall be a drinking fountain accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. This can be accomplished by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by other such means as would achieve the required accessibility for each group.

11.4 Courthouse Holding Facilities.

11.4.1 Holding Cells - Minimum Number. Where provided, facilities for detainees, including central holding cells and court-floor holding cells, shall comply with the following:

(1) Central Holding Cells. Where separate central holding cells are provided for adult male, juvenile male, adult female, and juvenile female, one of each type shall comply with 11.4.

(2) Court-Floor Holding Cells. Where separate court-floor holding cells are provided for adult male, juvenile male, adult female, and juvenile female, one of each type shall comply with 11.4. Where court-floor holding cells are provided, and are not separated by age or sex, courtrooms shall be served by at least one cell complying with 11.4.

11.4.2 Requirements for Accessible Cells. Accessible cells shall be on an accessible route complying with 4.3. Where provided, the following elements or spaces serving accessible cells shall be accessible and on an accessible route:

(1) Doors and Doorways. All doors and doorways to accessible spaces and on an accessible route shall comply with 4.13.

EXCEPTION: Doors and doorways shall be exempt from 4.13.6, 4.13.9, 4.13.11 and 4.13.12 in those areas where detainees are escorted by security personnel at all times.

(2) Restrooms. Toilet facilities shall comply with 4.22 and bathing facilities shall comply with 4.23. Where privacy screens are provided, they shall not intrude on the clear floor space required for fixtures or the accessible route.

(3) Beds. Beds shall have a minimum 36 in (915 mm) clear width maneuvering space located along one side. Where more than one bed is provided in a cell, the clear space provided at adjacent beds may overlap.

(4) Drinking Fountains and Water Coolers. Where provided, there shall be a drinking fountain accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. This can be accomplished by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by other such means as would achieve the required accessibility for each group.

(5) Fixed or Built-in Seating and Tables. At least one fixed or built-in seating and table or counter shall comply with 4.32.

(6) Fixed Benches. Fixed benches shall be a minimum of 24 in by 48 in (610 mm x 1220 mm) and be mounted at 17 in to 19 in (430 mm to 485 mm) above the finish floor. The structural strength of the bench attachments shall comply with 4.26.3.

11.4.3* Visiting Areas. The following elements, where provided, shall be accessible and located on an accessible route complying with 4.3.

11.5 Restricted and Secured Entrances

(1) Cubicles and Counters. If fixed cubicles are provided, at least five percent, but not less than one, of each side of the fixed cubicle shall comply with 4.32. Where a counter is provided without cubicles, a portion on both sides at least 36 in (915 mm) in length shall comply with 4.32.

(2) Partitions. Solid partitions or safety glass that separate visitors from detainees shall comply with 7.2(3).

(3) Signage. Accessible cubicles or counters shall be identified on each side by the International Symbol of Accessibility. This symbol shall be displayed as required in 4.30.7.

11.5 Restricted and Secured Entrances. Where provided, at least one restricted entrance and at least one secured entrance to the facility shall comply with 4.14, in addition to the entrances required by 4.1.3(8). Restricted entrances differ from public entrances in that they are used by judges, court personnel and other parties on a controlled basis. Secured entrances are used by detainees and detention officers. In addition, if direct access is provided for pedestrians from an enclosed parking garage to a restricted entrance, at least one direct entrance from the garage to the restricted entrance shall be accessible.

11.6 Security Systems. An accessible route complying with 4.3 shall be provided through fixed security barriers. Where security barriers incorporate equipment such as metal detectors, fluoroscopes, or other similar devices which cannot be made accessible, an accessible route shall be provided adjacent to such security screening devices to facilitate an equivalent path of travel.

EXCEPTION: Doors and doorways designed to be operated only by security personnel shall be exempt from 4.13.6, 4.13.9, 4.13.11 and 4.13.12.

11.7* Two-Way Communication Systems. Where a two-way communication system is provided to gain admittance to a facility or to restricted areas within the facility, the system shall provide both visible and audible signals and shall comply with 4.27.

11.8* Electrical Outlets, Wiring, and Conduit for Communication Systems.

(1) In judicial, legislative, or regulatory facilities, all courtrooms, hearing rooms, jury deliberation and jury orientation rooms, and meeting rooms designated for public use shall be provided with the following to support communication equipment for persons with vision and hearing impairments:

(a) Duplex electrical outlets; and

(b) Wiring, conduit, or raceways.

(2) Within the courtroom, electrical outlets and wiring, conduit, or raceways shall be provided to serve the litigants' stations, clerk's station, court reporter's station, jury box, witness stand, and the judge's bench.

(3) These electrical outlets shall be provided in addition to those convenience outlets required by applicable State or local codes.

11.9* Permanently Installed Assistive Listening Systems. Permanently installed assistive listening systems complying with 4.33.6 and 4.33.7 shall be provided in judicial, legislative and regulatory facilities as follows:

(1)* Judicial Facilities. In judicial facilities, 50 percent, but not less than one, of each type of courtroom (at least one of which shall have a jury box, where one is provided) shall have a permanently installed assistive listening system. In addition, 50 percent, but not less than one, of each of the following types of rooms shall have a permanently installed assistive listening system: hearing rooms, jury deliberation rooms, and juror orientation rooms.

(2)* Legislative and Regulatory Facilities. In legislative and regulatory facilities, 50 percent, but not less than one, of each of the following types of rooms shall have a permanently installed assistive listening system: chambers, and hearing or meeting rooms which are designated for public use and where legislative or regulatory business is conducted. In addition, where separate chambers are provided for a bicameral legislature (i.e., house and senate), each chamber shall have a permanently installed assistive listening system.

(3) Receivers. The minimum number of receivers shall be 4 percent of the room occupant load, as determined by applicable State or local codes, but not less than two, whichever is greater.

(4) Signage. An informational sign complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5 and 4.30.7(4) shall be posted in a prominent place indicating the availability of assistive listening systems, computer-aided transcription system, or other communication equipment for persons with vision or hearing impairments.

12. DETENTION AND CORRECTIONAL FACILITIES.

12.1* General. This section applies to jails, holding cells in police stations, prisons, juvenile detention centers, reformatories, and other institutional occupancies where the occupants are under some degree of restraint or restriction for security reasons. Except as specified in this section, detention and correctional facilities shall comply with the applicable requirements of 4.1 through 4.35. All public and common use areas serving accessible cells or rooms are required to be designed and constructed to comply with section 4.

12.2 Entrances.

12.2.1 Secured Entrances. Where provided, at least one secured entrance shall comply with 4.14. This requirement is in addition to the entrances that are required to be accessible by 4.1.3(8). Secured entrances are those entrances used only by inmates or detainees and security personnel and not the general public.

12.2.2 Security Systems. Where security systems are provided at public entrances required to be accessible by 4.1.3(8), an accessible route complying with 4.3 shall be provided through fixed security barriers. Where security barriers incorporate equipment such as metal detectors, fluoroscopes, or other similar devices which cannot be made accessible, an accessible route shall be provided adjacent to such security screening devices to facilitate an equivalent path of travel.

EXCEPTION: Doors and doorways designed to be operated only by security personnel shall be exempt from 4.13.6, 4.13.9, 4.13.11 and 4.13.12.

12.3* Visiting Areas. In non-contact visiting areas where inmates or detainees are separated from visitors, the following elements, where provided, shall be accessible and located on an accessible route complying with 4.3:

(1) Cubicles and Counters. If fixed cubicles are provided, at least five percent, but not less than one, of each side of the fixed cubicle shall comply with 4.32. Where a counter is provided without cubicles, a portion on both sides at least 36 in (915 mm) in length shall comply with 4.32.

(2) Partitions. Solid partitions or safety glass separating visitors from inmates or detainees shall comply with 7.2(3).

(3) Signage. Accessible cubicles or counters shall be identified on each side by the International Symbol of Accessibility. This symbol shall be displayed as required in 4.30.7.

12.4 Holding and Housing Cells or Rooms: Minimum Number.

12.4.1* Holding Cells and General Housing Cells or Rooms. [Reserved]

12.4.2 Special Holding and Housing Cells or Rooms. [Reserved]

12.4.3 Accessible Cells or Rooms for Persons with Hearing Impairments. [Reserved]

12.4.4 Medical Care Facilities. Medical care facilities providing physical or medical treatment or care shall comply with the applicable requirements of section 6, if persons may need assistance in emergencies and the period of stay may exceed twenty-four hours.

12.4.5 Alterations to Cells or Rooms. When cells or rooms are being altered in an existing facility, or portion thereof, at least [percentage specified for new construction] of the number being altered shall be made accessible according to 12.4.1 until the number of accessible cells or rooms equals the total number of accessible cells or rooms required for the facility.

12.5 Requirements for Accessible Cells or Rooms.

12.5.1 General. Cells or rooms required to be accessible by 12.4 shall comply with 12.5.

12.5.2 Minimum Requirements. Accessible cells or rooms shall be on an accessible route complying with 4.3. Where provided, the following elements or spaces serving accessible cells or rooms shall be accessible and connected by an accessible route. At least one of each type of common area, amenity, space, or element provided for other housing cells or rooms in the same category of housing shall be accessible.

(1) Doors and Doorways. All doors and doorways on an accessible route shall comply with 4.13.

EXCEPTION: Doors and doorways in those areas where detainees or inmates are escorted by security personnel at all times shall be exempt from 4.13.6, 4.13.9, 4.13.11 and 4.13.12.

(2) Restrooms. At least one toilet facility shall comply with 4.22 and one bathing facility shall comply with 4.23. Where privacy screens are provided, they shall not intrude on the clear floor space required for fixtures and the accessible route.

(3) Beds. Beds shall have a minimum 36 in (915 mm) clear width maneuvering space located along one side. Where more than one bed is provided in a room or cell, the clear space provided at adjacent beds may overlap.

(4) Drinking Fountains and Water Coolers. Where provided, there shall be a drinking fountain accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. This can be accomplished by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by providing other such means as would achieve the required accessibility for each group.

(5) Fixed or Built-in Seating or Tables. Fixed or built-in seating or tables within, or serving, accessible cells or rooms shall comply with 4.1.3(18).

(6) Fixed Benches. Fixed benches shall be a minimum of 24 in by 48 in (610 mm x 1220 mm) and be mounted at 17 in to 19 in (430 mm to 485 mm) above the finish floor. The structural strength of the bench attachments shall comply with 4.26.3.

(7) Storage. At least one of each type of fixed or built-in storage facility provided, such as cabinets, shelves, closets, and drawers, shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

(8) Controls. All controls intended for operation by inmates shall comply with 4.27.

(9) Room accommodations for persons with hearing impairments required by 12.4.3 and complying with 12.6 shall be provided in accessible cells or rooms.

12.6 Visual Alarms and Telephones.

12.6.1 General. Auxiliary visual alarms complying with 4.28.4 shall be provided in cells or rooms which are served by audible emergency warning systems and which house inmates or detainees who are allowed independent means of egress. Permanently installed telephones shall have volume controls complying with 4.31.5.

12.6.2 Equivalent Facilitation. For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in the cell or room to enable inmates or detainees with hearing impairments to utilize portable visual alarms and communication devices made available by the operator of the facility.

13. ACCESSIBLE RESIDENTIAL HOUSING.

Except as specified in this section, accessible residential housing shall comply with the applicable requirements of 4.1 through 4.35. All public and common use areas shall be designed and constructed to comply with

section 4. "Public use areas" pertains to interior or exterior spaces of a building or facility that are made available to the general public. As used in this section, "common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof; these areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

EXCEPTION: Where multiple recreational facilities, such as tennis courts, are provided for public or common use, then at least one of each type shall be designed and constructed to comply with section 4.

13.1* General. This section applies to single-family and multifamily dwelling unit facilities constructed or altered by, for, or on behalf of a State or local government entity. For purposes of this section, the term "dwelling unit" means a single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing and sleeping.

13.2 Minimum Number and Dispersion.

13.2.1 Minimum Number. Accessible dwelling units shall be provided as follows:

(1) Five percent of the total number of dwelling units in a facility, but not less than one, shall comply with 13.3, 13.4, and 13.5.

(a) Dwelling Units with Roll-in Showers. [Reserved]

(b) Dwelling Units with Bathtubs. [Reserved]

(2) In addition to those accessible dwelling units required by 13.2.1(1), two percent of the total number of dwelling units in a facility, but not less than one, shall comply with 13.4 and 13.5.

(3) This paragraph does not require an increase in the total number of dwelling units planned for a facility. If the total number of dwelling units is one, that dwelling unit shall meet the requirements of 13.2.1(1).

13.2.2* New Construction: Dispersion. Accessible dwelling units shall be dispersed throughout the facility so as to provide people with disabilities a choice of housing types comparable to and integrated with those available to other members of the public. In dispersing accessible units, the following factors are to be considered: unit size and configuration, cost, amenities within or serving dwelling units, and location with respect to amenities.

13.2.3* Alterations: Minimum Number and Dispersion.

(1) Minimum Number: When dwelling units are altered in an existing facility, five percent, but not less than one, of the dwelling units altered shall comply with the requirements of 13.3, 13.4 and 13.5 for each alteration until the number of accessible dwelling units in each facility equals the number required to be accessible by 13.2.1(1). In addition, two percent but not less than one of the altered dwelling units shall comply with the requirements of both 13.4 and 13.5 until the number of accessible dwelling units equals the number required to be accessible by 13.2.1(2).

(2) Dispersion: When existing dwelling units are altered and are required to be accessible they shall be dispersed according to 13.2.2, to the maximum extent feasible.

13.3 Requirements for Accessible Dwelling Units.

13.3.1 General. The requirements of 13.3 apply to dwelling units required to be accessible by 13.2.

13.3.2* Minimum Requirements. An accessible dwelling unit shall be on an accessible route complying with 4.3 and shall have the following accessible elements and spaces:

(1) Ancillary Areas. Spaces and facilities serving individual accessible dwelling units, including but not limited to, entry walks, trash disposal facilities, and mail boxes, where provided, shall comply with 4.1 through 4.35.

(2) Maneuvering Space. Accessible spaces shall have maneuvering space complying with 4.2.3 and surfaces complying with 4.5.

(3) Accessible Route. At least one accessible route complying with 4.3 shall connect the accessible entrances with all accessible spaces and elements within the accessible dwelling

13.3 Requirements for Accessible Dwelling Units

unit. This is not intended to require an elevator within an accessible dwelling unit as long as the spaces identified in 13.3.2 (11), (12), and (13) are connected by an interior accessible route.

(4) Parking. Parking spaces complying with 4.6 shall be on an accessible route and shall be provided in accordance with the following:

(a) Where parking is provided for residents, one accessible parking space shall be provided for each dwelling unit required to be accessible by 13.2.1(1); and

(b) Where parking is provided for visitors, 2 percent of the spaces, but not less than one, shall be accessible.

EXCEPTION: Where parking spaces are assigned to specific dwelling units, the requirements for signage under 4.6.4 apply only during the tenancy of a person with a disability.

(5) (i) Elevators. If provided, elevators shall comply with 4.10.

(ii) Equivalent Facilitation. A platform lift complying with 4.11 may be used in lieu of an elevator complying with 4.10 to connect levels within an individual dwelling unit.

(6) Doors. Doors intended for passage to and in accessible spaces shall comply with 4.13.

(7) Entrances. At least one accessible entrance to the dwelling unit shall comply with 4.14.

(8) Storage. At least one of each type of fixed or built-in storage facility in accessible spaces in dwelling units, including cabinets, shelves, closets, and drawers shall comply with 4.25.

(9) Controls. All controls in accessible spaces shall comply with 4.27. Those portions of heating, ventilating, and air conditioning equipment requiring regular or periodic maintenance and adjustment by the resident of a dwelling unit shall comply with 4.27.

EXCEPTION: This requirement shall not apply to controls, such as air distribution registers, which must be placed in or close to ceilings for proper air circulation.

(10) Alarms. If emergency warning systems are provided, they shall include audible alarms complying with 4.28.2 and auxiliary alarms complying with 4.28.4.

(11) Bathrooms. At least one full bathroom shall comply with 13.3.3. A full bathroom shall include a water closet, a lavatory, and a bathtub or a shower.

(12) Kitchens. The kitchen shall comply with 13.3.4.

(13) Living Spaces. The following spaces shall be accessible and shall be on an accessible route:

(a) The living area.

(b) The dining area.

(c) The sleeping area or bedroom as follows:

(i) In dwelling units with one bedroom, one bedroom.

(ii) In dwelling units with more than one bedroom, at least two bedrooms.

(d) Patios, decks, terraces, balconies, carports, and garages, if provided on an accessible level within the dwelling unit.

EXCEPTION: The requirements of 4.13.8 and 4.3.8 do not apply to patios, decks, terraces, or balconies where it is necessary to utilize a higher door threshold or a change in level to protect the integrity of the unit from wind or water damage. Where the exception results in level changes at patios, decks, terraces or balconies, equivalent facilitation shall be provided. Equivalent facilitation in residential housing may consist of providing raised decking or a ramp to provide accessibility.

(14) Laundry Facilities. If laundry facilities are provided, they shall comply with 13.3.5 and shall be located on an accessible route complying with 4.3.

13.3.3 Bathrooms. Accessible bathrooms shall be on an accessible route and shall comply with the following:

(1) Doors. All doors to accessible bathrooms shall comply with 4.13 and shall not swing into the clear floor space required for any fixture.

(2) Water Closets. Water closets shall comply with 4.16, except that the height of the water closet shall be between 15 in (380 mm) and 19 in (485 mm) measured to the top of the toilet seat.

(3) Lavatories and Mirrors. Lavatories and mirrors shall comply with 4.19. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor. Clear floor space complying with 4.2.4 shall be provided at the medicine cabinet.

(4) Bathtubs. If a bathtub is provided, it shall comply with 4.20.

(5) Showers. If a shower is provided, it shall comply with 4.21.

(6) Bathtub and Shower Enclosures. Enclosures for bathtubs or shower stalls shall not obstruct controls or transfer from wheelchairs onto shower or bathtub seats. Enclosures on bathtubs shall not have tracks mounted on their rims.

(7) Fixtures and Controls. The accessible fixtures and controls required in an accessible bathroom shall be on an accessible route. The clear floor space at fixtures and controls and the accessible route may overlap.

(8) Maneuvering Space. Maneuvering space complying with 4.2.3 shall be provided.

13.3.4 Kitchens. Accessible kitchens and their components shall be designed to allow for the operation of cabinet and/or appliance doors so that all cabinets and appliances are accessible and usable. Accessible kitchens shall be on an accessible route complying with 4.3 and shall comply with the following:

(1) Maneuvering Clearance. Clearances between all opposing base cabinets, counter tops, appliances, or walls shall be 40 in (1015 mm) minimum, except in U-shaped kitchens, where such clearance shall be 60 in (1525 mm) minimum.

(2) Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or a parallel approach by a person using a wheelchair shall be provided at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Maneuvering space complying with 4.2.3 shall be provided. Laundry equipment located in the kitchen shall comply with 13.3.5.

(3) Controls. All controls in kitchens shall comply with 4.27.

(4) Counters. At least one 30 in (760 mm) length of counter shall provide a work surface that complies with the following requirements:

(a) The counter shall be mounted at a maximum height between 28 in to 34 in (710 to 865 mm) above the floor, measured from the floor to the top of the counter surface, or shall be adjustable to provide alternative heights of 28 in, 32 in, 34 in and 36 in (710 mm, 815 mm, 865 mm and 915 mm) measured from the floor to the top of the counter surface.

(b) Counter thickness and supporting structure shall be 2 in (50 mm) maximum over the required clear floor space.

(c) A clear floor space of 30 in by 48 in (760 mm by 1220 mm) shall allow a forward approach to the counter. Nineteen inches (485 mm) maximum of the clear floor space may extend underneath the counter. The knee space shall have a minimum clear width of 30 in (760 mm) and a minimum clear depth of 19 in (485 mm).

(d) There shall be no sharp or abrasive surfaces under such counters.

(5)* Sinks. The sink and its surrounding counter shall comply with 4.24. The sink may be adjustable to provide alternative heights of 28 in, 32 in, 34 in, and 36 in (710 mm, 815 mm, 865 mm and 915 mm), measured from the floor to the top of the counter surface or sink rim. The total length of the sink and counter area shall be 30 in (760 mm) minimum. If the sink is adjustable, rough-in plumbing shall be located to accept connections of supply and drain pipes for alternative mounting heights.

(6)* Cooktops. Cooktops shall comply with 13.3.4(2) and 13.3.4(3). If cooktops have knee spaces underneath, they shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electric shock. The clear floor space may overlap

the knee space, if provided, by 19 in (485 mm) maximum. The location of controls for cooktops shall not require reaching across burners.

(7)* Ovens. Ovens, including those with cooktops, shall comply with 13.3.4(2) and 13.3.4(3). Ovens shall be of the self-cleaning type or be located adjacent to an adjustable height counter with knee space below. (See Fig. 52). For side opening ovens, the door latch side shall be next to the open counter space, and there shall be a pull-out shelf under the oven extending the full width of the oven and not less than 10 in (255 mm) when fully extended. Wall ovens having knee spaces underneath shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electric shock. Where knee space is provided, the clear floor space may overlap the knee space by 19 in (485 mm) maximum. Ovens shall have controls on front panels and may be located on either side of the door.

(8)* Refrigerators and Freezers. Refrigerators and freezers shall comply with 13.3.4(2) and 13.3.4(3). Provision shall be made for refrigerators which are:

(a) Of the vertical side-by-side refrigerator and freezer type; or

(b) Of the over-and-under type and meet the following requirements:

(i) Have at least 50 percent of the freezer space no higher than 54 in (1370 mm) above the floor.

(ii) Have 100 percent of the refrigerator space and controls no higher than 54 in (1370 mm) above the floor.

Freezers with less than 100 percent of the storage volume within the limits specified in 4.2.5 and 4.2.6 shall be the self-defrosting type.

(9) Dishwashers. Dishwashers shall comply with 13.3.4(2) and 13.3.4(3). Dishwashers shall have all rack space accessible from the front of the machine for loading and unloading dishes.

(10)* Kitchen Storage. Kitchen storage cabinets, drawers, and shelf areas shall comply with 4.25 and shall have the following features:

(a) Maximum height shall be 48 in (1220 mm) for at least one shelf of all cabinets and storage shelves mounted above work counters.

(b) Door pulls or handles for wall cabinets shall be mounted as close to the bottom of cabinet doors as practicable. Door pulls or handles for base cabinets shall be mounted as close to the top of cabinet doors as possible.

13.3.5 Laundry Facilities. If laundry equipment is provided within individual accessible dwelling units, or if separate laundry facilities serve one or more accessible dwelling units, then they shall meet the following requirements:

(1) Location. Laundry facilities and laundry equipment shall be on an accessible route.

(2) Washing Machines and Clothes Dryers. A minimum of one washing machine and clothes dryer in each common use laundry room shall be front loading.

(3) Controls. Laundry equipment controls on front loading machines shall comply with 4.27.

13.4 Requirements for Dwelling Units Accessible to Persons with Hearing Impairments.

13.4.1 General. In dwelling units required to be accessible by 13.2.1, auxiliary visual alarms complying with 4.28.4 shall be provided if an emergency warning system or single station emergency alarm is provided. Visual notification devices shall also be provided in living and sleeping rooms to alert occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to auxiliary visual alarm signal appliances. Permanently installed telephones shall have volume controls complying with 4.31.5. An accessible electrical outlet within 48 in (1220 mm) of each telephone connection shall be provided to facilitate the use of a text telephone.

13.4.2 Equivalent Facilitation. For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in sleeping rooms to enable persons with hearing impairments to utilize portable visual alarms and communication devices provided by the operator of the facility.

13.5 Requirements for Dwelling Units Accessible to Persons with Visual Impairments: Reserved.

14. PUBLIC RIGHTS-OF-WAY.

14.1* General. In addition to the requirements of 4.1 through 4.35, unless otherwise provided in this section, all areas, elements, and facilities in the public right-of-way intended for pedestrian access, circulation, and use that are constructed or installed on or adjacent to a sidewalk within the limits or scope of a public improvement project shall comply with 14.

14.1.1 Definitions.

Continuous Passage. A continuous unobstructed pedestrian circulation path within a sidewalk connecting pedestrian areas, elements, and facilities covered by Section 14.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

***Public Improvement Project.** A public works project consisting of the construction, alteration or installation of site improvements or amenities in the public right-of-way by or on behalf of a State or local government.

***Sidewalk.** A walk in the public right-of-way along a vehicular way that is part of a pedestrian circulation network.

Site Infeasibility. Existing physical or site constraints which prohibit the incorporation of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction in the public right-of-way and which are necessary to provide accessibility.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

14.2 Sidewalks.

14.2.1* Minimum Requirements. Sidewalks, or a continuous passage along their length, shall provide a clear width of 36 in (915 mm) minimum, connect to the accessible route required by 4.1.2(1) and elements covered by section 14, and shall comply with the following requirements:

(1)* Slope. The least possible running slope shall be provided and shall not exceed 1:12. Cross slopes shall not exceed 1:50 (2 percent). Handrails are not required on sidewalks.

EXCEPTION: Where site infeasibility precludes a running slope of 1:12, the least possible running slope shall be provided.

(2) Passing Space. Sidewalks less than 60 in (1525 mm) in continuous width shall provide passing space at reasonable intervals not to exceed 200 ft (61 m). Passing space shall provide a 60 in by 60 in (1525 mm by 1525 mm) minimum clear space or a T-shaped turning space as shown in Figure 3 and may be provided at landings at new building entrances required by ADAAG 4.1.2(1) or at the intersection of two sidewalks. The passing space at the intersection of two sidewalks shall have the minimum possible running slope and a cross slope that does not exceed 1:50 (2 percent).

(3) Surfaces. Surfaces shall be firm, stable and slip resistant. Differences in level up to 1/4 in (6.5 mm) may be vertical and without edge treatment. (See Fig. 7(c)). Differences in level between 1/4 in and 1/2 in (6.5 mm and 13 mm) shall be beveled with a slope no greater than 1:2. (See Fig. 7(d)). Gratings shall have spaces no greater than 1/2 in (13 mm) wide in one direction. (See Fig. 8(g)). Gratings with elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel. (See Fig. 8(h)).

(4)* Separation. Sidewalks shall be separated from vehicular ways by curbs, planted parkways, or other barriers, which shall be continuous except where interrupted by driveways, alleys, or connections to accessible elements.

(5) Bus stops. Where bus passenger loading areas or bus shelters are provided on or adjacent to sidewalks, they shall comply with 10.2.

14.2.2 Historic and Special Use Sidewalks (Reserved).

14.2.3 Street Identification and Other Pedestrian Signage. Where provided for pedestrian use, informational and directional

14.2 Sidewalks

signage, and street identification signs shall comply with 4.30.2, 4.30.3, and 4.30.5.

14.2.4* Protruding Objects.

(1) General. Objects projecting from walls (e.g., signs, telephones, canopies) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished sidewalk shall protrude no more than 4 in (100 mm) into any portion of a sidewalk. Objects mounted with their leading edges located less than 27 in (685 mm) or more than 80 in (2030 mm) above the finished sidewalk may project any amount provided that they do not reduce the required continuous passage along the sidewalk. Free-standing objects mounted on posts or pylons may overhang their mountings a maximum of 12 in (305 mm) when located between 27 in and 80 in (685 mm and 2030 mm) above the ground or finished sidewalk provided that they do not reduce the required continuous passage along the sidewalk.

(2) Head Room. Guardrails or other barriers shall be provided when the vertical clearance of an area along or adjoining a sidewalk or continuous passage is less than 80 in (2030 mm) high. Leading edges of such barriers shall be located a maximum of 27 in (685 mm) above the finished sidewalk, as shown in Figure 8(c-1).

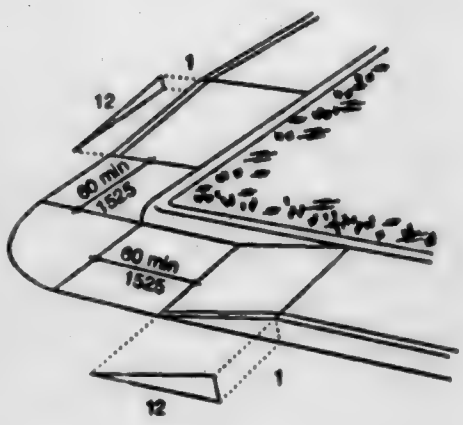

(a)
Parallel curb ramp in narrow sidewalk at intersection

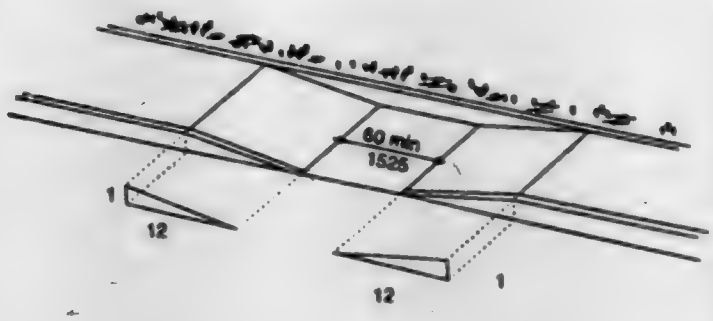

(b)
Parallel curb ramp in narrow sidewalk at midblock crossing

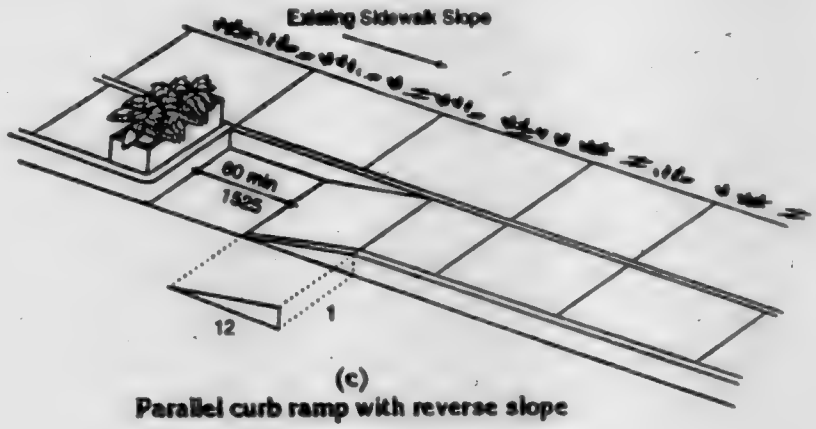

(c)
Parallel curb ramp with reverse slope

Fig. 58
Examples of Parallel Curb Ramps

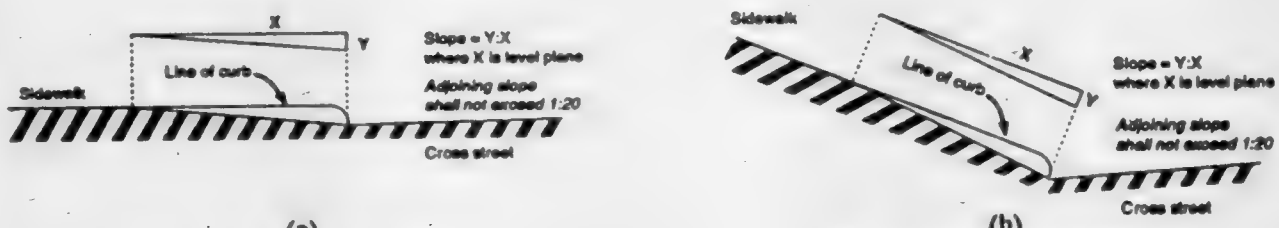

(a)
Slope measurement relative to level sidewalk/street

(b)
Slope measurement relative to sloping sidewalk/street

Fig. 59
Measurement of Curb Ramp Slopes

(3) Clear Width. Fixed objects not covered by paragraph (1) shall not reduce the continuous passage required by 14.2.1.

14.2.5 Sidewalk Curb Ramps and Other Sloped Areas.

(1) Location. A curb ramp or other sloped area complying with 14.2.5 shall be provided wherever a pedestrian circulation path crosses a curb or other barrier (e.g., parkway, berm, or gutter) to a street crossing and shall be connected to a continuous passage. Handrails are not required on sidewalk curb ramps or other sloped areas connecting to street crossings.

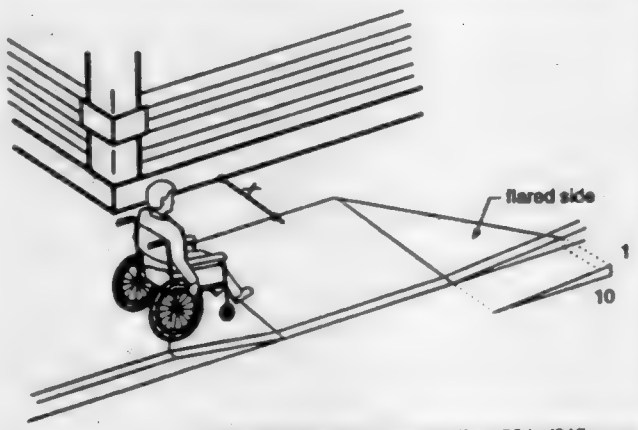

1. X shall be equal to or greater than 36 in (915 mm).
2. If X is less than 48 in (1220 mm), then the slope of the flared sides shall not exceed 1:12.

Fig. 60
Level Landing at Top of Curb Ramp

(2) Slope. The least possible slope shall be used for any curb ramp or other sloped area. The maximum slope shall be 1:12 when measured as shown in Figure 59(a).

EXCEPTION: Where site infeasibility (e.g., steeply sloped roadways or constrained right-of-way) precludes the installation of a curb ramp, a sloped area parallel to the curb with its gradient measured according to Figure 59(a), may be provided. (See Fig. 58). The least possible slope shall be provided for any parallel sloped area. The maximum slope shall be 1:12. The cross slope shall be no greater than 1:50 (2 percent). A landing which has a minimum of 60 in (1525 mm) clear in the direction of the running slope shall be provided at the bottom of the sloped area. The surface slope of the landing shall not exceed 1:50 (2 percent) in all directions.

(3) Width. Curb ramps or other sloped areas shall be 36 in (915 mm) wide minimum, exclusive of flared sides.

(4) Landings. A landing the width of the curb ramp and 48 in (1220 mm) in length shall be provided at the top of the curb ramp or other sloped area and shall be connected to the continuous passage. The surface slope of landings shall not exceed 1:50 (2 percent) in all directions.

EXCEPTION 1: Where site infeasibility precludes the installation of a 48 in (1220 mm) landing length at the top of the curb ramp or other sloped area, a landing a minimum of 36 in (915 mm) in length may be provided. (See Fig. 60).

14.2 Sidewalks

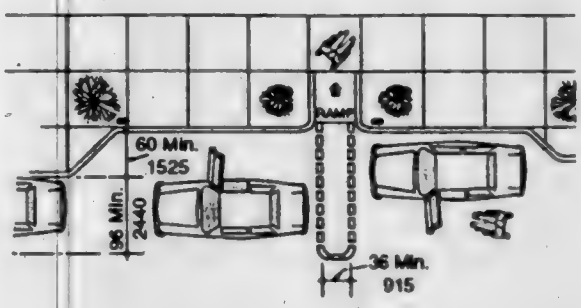

(a)

Two accessible parallel parking spaces in series, separated by an access aisle, with both driver-side and passenger-side access demonstrated.

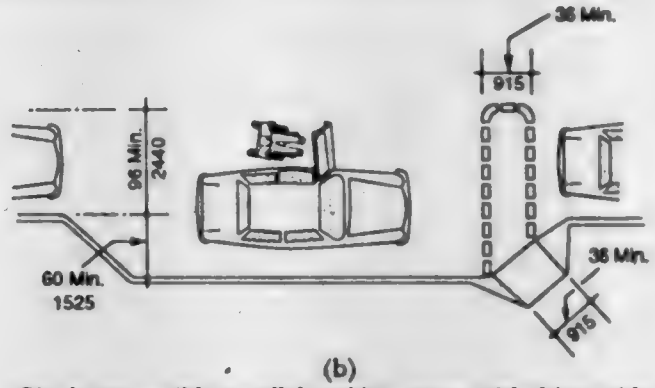

(b)

Single accessible parallel parking space with driver-side access demonstrated; passenger side access can be provided by parking in line with standard on-street spaces.

Fig. 61

Examples of Parallel On-Street Parking

EXCEPTION 2: Where the 36 in (915 mm) level landing allowed in Exception 1 above, or a parallel ramp complying with 14.2.5(2) Exception cannot be provided, a sloped area connecting to the street crossing with its gradients (i.e., running slope, cross slope, side flare slope) measured from a plane parallel to that of the street, as shown in Figure 59(b), may be provided. The least possible slope shall be used for any sloped area connecting to a street crossing. The maximum slope shall be 1:12. The cross slope shall be no greater than 1:50 (2 percent).

(5) Sides of Curb Ramps or Other Sloped Areas. Curb ramps or other sloped areas located where pedestrians must walk across the ramp, or where curb ramps are not protected by returned curbs, shall have flared sides. The slope of the flare shall be 1:10 maximum. Where the landing at the top is at least 36 in (915 mm) but less than 48 in (1220 mm), the slope of the flares shall be 1:12 maximum. (See Fig. 60). Curb ramps or other sloped areas with returned curbs may be used where pedestrians would not normally walk across the ramp from the side. (See Fig. 12(b)).

(6) Surface. The surfaces of curb ramps or other sloped areas shall be firm, stable and slip resistant.

(7) Detectable Warnings. [Reserved]

(8) Adjacent Surfaces. Counter slopes of adjoining gutters and road surfaces connecting to the curb ramp or sloped area shall be 1:20 maximum. (See Fig. 59(a)). Transitions from curb ramps to gutters or streets shall be flush and free of abrupt changes. Gratings located in adjacent walking surfaces shall have spaces no greater than 1/2 in (13 mm) wide in one direction. (See Fig. 8(g)). Gratings with elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel. (See Fig. 8(h)).

(9) Location at Marked Crossings. Curb ramps and other sloped areas at marked crossings shall be wholly contained within the markings, excluding any flared sides. (See Fig. 15).

(10) Obstructions. Curb ramps and other sloped areas shall be protected or located to prevent their obstruction by parked vehicles.

(11) Built-up Curb Ramps or Other Sloped Areas. Built-up curb ramps or other sloped areas shall be located so that they do not project into vehicular traffic lanes or into parking spaces or access aisles. (See Fig. 13).

(12) Diagonal Curb Ramps or Other Sloped Areas. Diagonal (or corner-type) curb ramps or other sloped areas with returned curbs or other well-defined edges shall have the edges parallel to the direction of pedestrian flow. Bottoms of

diagonal curb ramps or other sloped areas shall have a 48 in (1220 mm) minimum clear space as shown in Figure15(c) and (d). Diagonal curb ramps or other sloped areas provided at marked crossings shall have the 48 in (1220 mm) minimum clear space within the markings. (See Fig. 15(c) and (d)). Diagonal curb ramps or other sloped areas with flared sides shall have a segment of straight curb at least 24 in (610 mm) long located on each side of the curb ramp or other sloped area and within the marked crossing. (See Fig. 15(c)).

(13) Islands. Raised islands in crossings shall be cut through level with the street or have curb ramps or other sloped areas at both sides and a level area 48 in (1220 mm) long minimum and a minimum of 36 in (915 mm) wide in the part of the island intersected by the crossings. (See Fig. 15(a) and (b)).

14.2.6 Crossing Controls.

(1) Controls. Where provided, buttons shall be raised or flush and be a minimum of 3/4 in (19 mm) in the smallest dimension. The force required to activate controls shall be no greater than 5 lbf (22.2N).

(2) Location. Where provided, controls shall be located as close as possible to the curb ramp and, to the maximum extent feasible, shall permit operation from a level area immediately adjacent to the controls.

(3) Mounting Height. Where provided, pedestrian-actuated crossing controls shall be a maximum of 48 in (1220 mm) above the sidewalk.

(4) Surface. A firm, stable and slip resistant area a minimum of 30 in by 48 in (915 mm by 1220 mm) shall be provided to allow for a forward or parallel approach to the controls.

14.2.7* Marked Crossings. Where provided, marked crossings shall be delineated with contrasting markings or materials (e.g., paint, brick, tile).

14.2.8 Pedestrian Overpasses and Underpasses. Grade-separated pedestrian overpasses and underpasses shall be connected to a sidewalk or other pedestrian circulation path by means of a ramp or elevator complying with 4.8 or 4.10 or, where permitted by 4.1.3(5), a platform lift (wheelchair lift) complying with 4.11.

14.3* Drinking Fountains, Telephones, Toilet Facilities, Fixed Seating, Tables and Benches. Where provided on or adjacent to a sidewalk as part of a public improvement project, the following elements shall be reasonably dispersed within the project area, taking into consideration the proximity and number of existing accessible elements:

(1) Drinking Fountains. At least 50 percent, but not less than one, of each drinking fountain provided shall comply with 4.15. Where only one drinking fountain is provided it shall be accessible to individuals who use wheelchairs in accordance with 4.15 and to those who have difficulty bending or stooping. This can be accomplished by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler, or by other such means as would achieve the required accessibility for each group.

(2) Public Pay Telephones. Where single unit public pay telephones are provided, at least 50 percent, but not less than one, shall comply with 4.31.2 through 4.31.8. Where a bank of telephones (two or more adjacent public telephones, often installed as a unit) is provided, at least one telephone per bank shall comply with 4.31.2 through 4.31.8. Where two or more banks of telephones are provided, at least one telephone complying with 4.31.2 through 4.31.8 shall be mounted with the highest operable part no higher than 48 in (1220 mm). In addition, 25 percent, but not less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones. Signage complying with applicable provisions of 4.30.7 shall be provided.

(3) Single User Toilet Facilities. At least 50 percent, but not less than one, of fixed single user toilet facilities shall comply with 4.22. Signage complying with 4.30.7 shall be provided on accessible units. In addition, signage complying with 4.30.2, 4.30.3, and 4.30.5 shall be provided on the inaccessible units indicating the location of the nearest accessible unit.

14.4 Vehicular Ways and Facilities

(4) Fixed Seating, Tables, and Benches. At least five percent, but not less than one, of the fixed seating and tables provided in a public improvement project shall comply with 4.32. At least five percent of fixed benches provided in a public improvement project shall have a minimum 24 in by 48 in (610 mm by 1220 mm) seating area, mounted 17 in to 19 in (430 mm to 485 mm) above the finished surface. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3.

14.4 Vehicular Ways and Facilities.

14.4.1 On-Street Parking. Where new on-street paid or time-limited parking is provided and designated in districts zoned for business uses, accessible on-street parking spaces shall be provided in accordance with the table in 4.1.2(5)(a). A 60 in (1525 mm) wide minimum access aisle shall be provided. The driving lane shall not encroach on the required access aisle. (See Fig. 61).

(1) Curb Ramps. A curb ramp or other sloped area complying with 14.2.5 shall connect the access aisle to the sidewalk by a continuous passage which is a minimum of 36 in (915 mm) wide.

(2)* Location. Accessible on-street parking spaces shall be dispersed throughout the project area.

(3) Signage. Accessible parking spaces shall be designated as reserved by a sign that complies with 4.30.7. Such signs shall be located so as to be visible from a driver's seat.

(4) Parking Meters. Where provided, parking meter controls shall be a maximum of 48 in (1220 mm) above the sidewalk or pedestrian circulation path. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2N). A firm, stable and slip-resistant area a minimum of 30 in by 48 in (760 mm by 1220 mm), with the least possible slope, shall be provided at the controls and shall be connected to the sidewalk by a continuous passage that is a minimum of 36 in (915 mm) wide.

14.4.2 Roadside Emergency Communications Systems.

(1) Controls. Where provided, controls and operating mechanisms at roadside emergency communications system call boxes shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The highest operable part shall be at 54 in (1370 mm) above the finished grade at the call box location. The force required to activate controls shall be no greater than 5 lbf (22.2N).

(2) Communications. The system shall accommodate both visual and auditory acknowledgement of call receipt and shall not require voice communication.

(3)* Surface. A firm, stable, slip resistant surface a minimum of 30 in by 48 in (760 mm by 1220 mm) shall be provided a maximum of 10 in (255 mm) from the vertical plane of the face of the call box and shall be connected to the roadway shoulder, sidewalk, or pedestrian path by a continuous passage that is a minimum of 36 in (915 mm) wide.

14.5 Alterations. If existing elements are altered in the scope of a public improvement project, they shall be altered to comply with the applicable provisions of 4.1.6 and section 14.

14.6 Temporary Work. Construction and repair projects within the public right-of-way that affect pedestrian circulation elements, routes, or facilities shall comply with 4.1.1(4).

(1) Construction sites in the public right-of-way shall be protected with barriers to warn of hazards on the circulation path.

(2) The temporary circulation path from building entrances along a sidewalk or continuous passage to the nearest accessible street crossing shall be clearly marked.

Appendix

APPENDIX:

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A7.0 Business and Mercantile.

A7.2(3)(iii) Counter or Teller Windows with Partitions. Methods of facilitating voice communication may include grills, talk-thru baffles, and other devices mounted directly into the partition which users can speak directly into for effective communication. Such methods should be designed or placed so that they can be used at both a standard height and a lower height appropriate for a person in a seated position.

A7.2(4) Assistive Listening Devices. *At all sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers, it is recommended that at least one permanently installed assistive listening device complying with 4.33 be provided at each location or series. Where assistive listening devices are installed, signage should be provided identifying those stations which are so equipped.*

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A10.4 Airports.

A10.4.1(8) Security Systems. This provision requires that, at a minimum, an accessible route or path of travel be provided but does not require security equipment or screening devices to be accessible. However, where barriers consist of movable equipment, it is recommended that they comply with the provisions of this section to provide passengers with disabilities the ability to travel with the same ease and convenience as the general public.

A11.0 Judicial, Legislative and Regulatory Facilities.

A11.1 All public use and common use areas are required to be accessible. In judicial, legislative and regulatory facilities, these include, but are not limited to, press rooms, conference rooms, and attorney lounges.

A11.2 Courtrooms, Hearing Rooms, and Chambers.

A11.2.1(2) Jury Boxes and Witness Stands. Figure 46 illustrates space requirements for two wheelchair seating spaces.

A11.2.1(4) Fixed Judges' Benches, Clerks' Stations, Speakers' Rostrums, and Raised Daises. Where courtrooms are assigned on a temporary basis, equipment should be on hand so that accessibility can be accomplished to at least one judge's bench and clerk's station within a few hours to accommodate court proceedings.

A11.2.1(5) Fixed Bailiffs' Stations, Court Reporters' Stations and Litigants' Stations. Providing appropriate maneuvering clearances such as knee clearance under tables should be considered when selecting furniture for accessible areas that will be utilized by the public such as the litigants' stations in a courtroom.

A11.3 Jury Assembly Areas and Jury Deliberation Areas.

A11.3.1(2) Fixed or Built-in Seating and Tables. Providing appropriate maneuvering space in the room and knee clearance under tables should be considered when selecting furniture for accessible areas that will be used by jurors.

A11.4 Courthouse Holding Facilities.

A11.4.3 Visiting Areas. Accessible cubicles or portions of counters may have fixed seats if the required clear floor space is provided within the area defined by the cubicle. Consideration should be given to the placement of grills, talk-thru baffles, intercoms, telephone handsets or other communication devices which should be usable from both the fixed seat and from the accessible seating area. If an assistive listening system is provided, the needs of the intended user and characteristics of the setting should be considered as described in A4.33.7 and Table A2.

A11.7 Two-Way Communication Systems. Two-way communication entry systems must provide both voice and visual display so that persons with hearing or speech impairments can utilize the system. This requirement may be met with a device that would allow security personnel to respond to a caller with a light indicating that assistance is on the way.

A11.8 Electrical Outlets, Wiring, and Conduit for Communication Systems. All courtrooms, hearing rooms (including

judges' chambers when used as hearing rooms), jury deliberation and jury orientation rooms, and meeting rooms designated for public use should be designed to take advantage of current and emerging technologies for providing information to persons with vision and hearing impairments. Since such persons may be litigants, jurors, witnesses, attorneys or courtroom personnel, it is important that the designated rooms be wired to support appropriate systems or that conduits or raceways be provided to facilitate future wiring as systems are added. For example, the use of so-called "smart" technology often includes bundled wiring harnesses which can be easily installed in new construction and can support a variety of current and future uses.

A11.9 Permanently Installed Assistive Listening Systems. In addition to the requirement for permanently installed assistive listening systems, section 11.8 (Electrical Outlets, Wiring, Conduit for Communication Systems) requires that all courtrooms, hearing rooms, jury deliberation and jury orientation rooms, and meeting rooms designated for public use in judicial, legislative or regulatory facilities have a duplex outlet and wiring, conduit or raceways to support communication equipment. This requirement is to facilitate the use of portable assistive listening systems.

A11.9(1) Judicial Facilities. Due to the large variation in the methods of assignment of courtrooms among jurisdictions, it is impossible to include an exhaustive list of each "type" of courtroom. "Type" is generally meant to include such distinct categories as civil courtroom(s), criminal courtroom(s), and family courtroom(s). For example, if a courthouse has 7 courtrooms and 3 are assigned to criminal matters, 2 are assigned to civil matters and 2 are assigned to family law matters, then section 11.9 would require that at least two criminal courtrooms, one civil courtroom and one family law courtroom have a permanently installed assistive listening system. In those facilities where courtrooms are not dedicated to a single type of proceeding, section 11.9 would require that 50 percent of all courtrooms provided have a permanently installed assistive listening system.

A11.9(2) Legislative and Regulatory Facilities. Permanently installed assistive listening systems are not required in conference rooms restricted to use by employees, consultants, and other invited guests or areas which are only occasionally or sporadically used for legislative or regulatory business such as a school board meeting held in a high school cafeteria. However, the Department of Justice's regulations implementing title II require public entities to take such steps as may be necessary to ensure effective communication with individuals with hearing impairments. See 28 CFR 35.160. Accordingly, a portable assistive listening system may be needed to provide communication access in the school board meeting held in the cafeteria.

A12.0 Detention and Correctional Facilities.

A12.1 General. All public and common use areas serving accessible cells or rooms are required to be accessible. In detention and correctional facilities, public areas would include visiting areas and other areas available to the general public. Common use areas include those areas serving a group of inmates or detainees, including, but not limited to, exercise yards and recreation areas, workshops and areas of instruction or vocational training, counseling centers, cafeterias, commissaries, and medical facilities. Detention and correctional facilities also contain areas that may be regarded as common use areas which specifically serve a limited number of housing cells or rooms. Where this occurs, only those common use areas serving accessible cells or rooms would need to be accessible as required by 12.5. For example, several housing cells may be located at and served by a dayroom or recreation room. In this instance, only those dayrooms serving accessible housing cells or rooms would need to be accessible.

A12.3 Visiting Areas. Accessible cubicles or portions of counters may have fixed seats if the required clear floor space is provided within the area defined by the cubicle. Consideration should be given to the placement of grills, talk-thru baffles, intercoms, telephone handsets or other communication devices which should be usable from both the fixed seat and from the accessible seating area. If an assistive listening system is provided, the needs of the intended user and characteristics of the setting should be considered as described in A4.33.7 and Table A2.

A12.4 Holding and Housing Cells or Rooms: Minimum Number.

A12.4.1 Holding Cells and General Housing Cells or Rooms. Many detention and correctional facilities are designed so that certain areas (e.g., "shift" areas) can be adapted to serve as different types of housing according to need. For example, a shift area serving as a medium security housing unit might be redesignated for a period of time as a high security housing unit to meet capacity needs. Consequently, it is recommended that consideration be given to the placement of some accessible cells or rooms in shift areas to allow for the greatest flexibility in housing persons with disabilities.

A13.0 Accessible Residential Housing.

A13.1 General. The requirements for transient lodging in section 9 differ from residential housing in this section. Residential housing includes, but is not limited to, single family homes, which may be a facility consisting of one dwelling unit, and multifamily dwelling facilities, which are those facilities consisting of more than one dwelling unit. A facility may consist of more than one building within a single site, such as garden apartments and townhouses. Examples of single family dwelling units include official residences, such as those provided for governors and state university presidents and single family housing provided as public housing. Multifamily dwelling units include public housing projects and apartments. Residential housing also includes dwelling units that are used to accommodate live-in employees such as faculty, visiting fellows, care-takers, rangers and curators. With respect to colleges and universities, student apartments containing dwelling units are considered residential housing.

A13.2 Minimum Number and Dispersion.

A13.2.2 New Construction: Dispersion. When dispersing accessible dwelling units throughout a facility, persons with disabilities must have the same choices regarding the type of unit as other members of the public. For instance, it would not be acceptable to offer only one bedroom accessible units when units with two and three bedrooms are also offered in the same facility. In addition, the availability of amenities such as view or the proximity to fitness facilities must also be comparable. For example, it is not acceptable to locate all accessible units on a side of a building overlooking an interior courtyard while inaccessible units are provided with exterior views.

A13.2.3 Alterations: Minimum Number and Dispersion. The following example illustrates the requirements of 13.2.3(1). An existing facility containing one hundred multifamily residential dwelling units is the subject of ten consecutive alterations over a period of ten years. Each year, ten units are altered. During the first five years, at least one unit of the ten altered units must comply with 13.3, 13.4 and 13.5 (five percent but not less than one) until the total number, five percent, required for the facility overall is achieved. Similarly, as part of the alterations during the first two years, one unit complying with sections 13.4 and 13.5 must be provided in addition to those which are accessible to people with mobility, hearing and vision impairments until the two percent minimum is achieved in units accessible to persons with hearing impairments and persons with visual impairments.

A13.3 Requirements for Accessible Dwelling Units.

A13.3.2 Minimum Requirements. An accessible second exit from dwelling units is recommended for emergency evacuation purposes.

A13.3.4(5) Sinks. Installing a sink with a drain at the rear so that plumbing is as close to the wall as possible can prevent garbage disposal units from obstructing the required clear knee space.

A13.3.4(6) Ranges and Cooktops. Although not required for minimum accessibility, countertop range units in a counter with adjustable heights can be an added convenience for wheelchair users.

A13.3.4(7) Ovens. Countertop or wall-mounted ovens with side-opening doors provide greater access. Clear space at least 30 in (760 mm) wide under counters at the side of ovens are an added convenience. The pull-out board or fixed shelf under side-opening oven doors provides a resting place for heavy items being moved from the oven to a counter.

A13.3.4(8) Refrigerator and Freezers. Side-by-side refrigerators and freezers provide the most usable freezer compartments. Locating refrigerators so that their doors can swing 180 degrees provides greater access by increasing maneuvering space so that knee and toe clearance is provided on the hinge side. Reaching items placed far back on the hinge side will be easier if the door arrangement permits the optimal maneuvering space.

A13.3.4(10) Kitchen Storage. Pantry type cabinets or tall cabinets can be provided rather than cabinets mounted over work counters. Additional storage space located conveniently adjacent to kitchens can be provided to make up for space lost when cabinets are not provided under sinks and work surfaces.

A14.0 Public Rights-of-Way.

A14.1 General. This section applies access provisions to pedestrian areas, elements, and facilities constrained by terrain, vehicular roadways, and existing buildings or elements of the pedestrian circulation network. Other areas or sites constructed or altered as part of a public improvement project such as plazas or courts where the constraints listed above do not apply are subject to the applicable provisions of ADAAG 4.1.1 through 4.35. (See appendix note A14.2.1).

A14.1.1 Definitions.

Public Improvement Project. Public improvement projects undertaken by or on behalf of a State or local government include, but are not limited to, work in the public right-of-way such as the construction or installation of site improvements and pedestrian amenities; the widening or realignment of a street, and the upgrading of a sewer, drainage system, or other utility. These projects are largely concerned with the infrastructure of a jurisdiction and are typically planned and budgeted in a multi-year capital improvements program or as an annual maintenance and repair line item. Projects may be undertaken within clearly defined boundaries or may consist of the installation of a typical item (e.g., drinking fountains, toilets, benches, curb ramps) dispersed throughout an area or jurisdiction.

Public entities which may later accept pedestrian circulation elements and networks constructed by private entities should ensure, through the permit process, that such elements and systems meet the requirements of this section.

Sidewalk. Unlike the definition of "walk", the definition of "sidewalk" does not include general pedestrian areas such as plazas and courts which can be designed, altered, and constructed to meet the requirements of 4.1 through 4.35. A court or plaza within the public right-of-way may be surrounded by sidewalks. While the sidewalk must conform to adjacent road slope and connect to existing sidewalks, which limits the ability to fully comply with 4.1 through 4.35, a newly-constructed court or plaza, like public sites generally, can be graded so that walks within it can either provide a slope less than 1:20 or meet the requirements for ramps in ADAAG 4.8.

A14.2 Sidewalks.

A14.2.1 Minimum Requirements. Section 4.1.2(1) requires accessible elements on a site to be connected by an accessible route. Where the required accessible route is coincident with that of the sidewalk or continuous passage along it required by 14.2.1, the requirements of 4.3 prevail. The provisions of section 14 do not preclude sidewalk segments at different levels or sidewalks with stairs (which are sometimes advantageous in providing access to building entrances on or along steeply sloping sites) provided that a continuous passage within the sidewalk serves each accessible entrance and is connected to a continuous accessible sidewalk. Where a sidewalk contains steps or where sidewalk levels diverge, a railing, planter or other barrier separating the levels is recommended. Stairs abutting a sidewalk should have uniform riser heights and uniform tread widths.

A14.2.1(1) Slope. Cross slopes on portions of sidewalks adjacent to the continuous passage required by 14.2 may exceed 1:50 (2 percent) provided that the adjacent portions are smoothly blended. This may facilitate connecting the clear passage to building entrances, facilities or other pedestrian circulation elements.

A14.2.1(4) Separation. Narrow sidewalks immediately adjacent to the curb or roadway may be offset to avoid a non-conforming cross slope at driveway aprons by diverting the sidewalk around the apron. Sidewalks separated from the curb or roadway by a planted

A14.2 Sidewalks

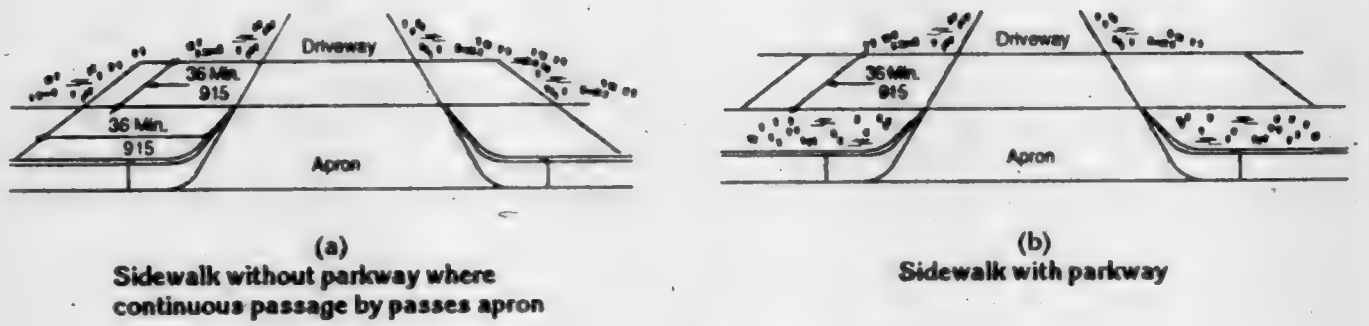

(a)
Sidewalk without parkway where continuous passage by passes apron

(b)
Sidewalk with parkway

Fig. A9
Sidewalks at Driveway Aprons

parkway can accommodate an apron within the width of the parkway. (See Fig. A9).

A14.2.4 Protruding Objects. These provisions apply to the entire width of a sidewalk. Many objects on or along a sidewalk, such as newspaper vending machines, trash receptacles and construction barricades, are not fixed and thus are not subject to these guidelines but may nevertheless be covered under the Department of Justice rule regarding maintenance of accessible features. (See 28 CFR 35.133). Tree branches should also be trimmed periodically to comply with provisions for required head room.

A14.2.7 Marked Crossings. Marked crossings should be provided at the following areas: State and local government buildings and facilities, transportation facilities, places of public accommodation, at irregular intersections, and at mid block crossings.

A14.3 Drinking Fountains, Telephones, Toilet Facilities, Fixed Seating, Tables and Benches. Drinking fountains, telephones, toilet facilities and fixed seating, tables, and benches shall be reasonably dispersed within the project area. However, where one area of the project already has more existing accessible elements than another area, the new accessible elements should be dispersed within a portion of the project area where there are fewer or none, or at project boundaries with areas not served by existing accessible elements. Where there are no existing accessible elements, the distribution may be uniformly dispersed or dispersed in the same proportion as all units as required by the public improvement project.

A14.4 Vehicular Ways and Facilities.

A14.4.1(2) Location. Accessible on-street parking spaces located immediately adjacent to intersections may be served by sidewalk curb ramps, provided that the path of travel from the access aisle to the curb ramp is within the pedestrian crossing area. To the maximum extent feasible, accessible on-street parking should be located in level areas.

A14.4.2(3) Surface. The level surface at the call box must be connected to the roadway shoulder, sidewalk or pedestrian path. This does not require that paved shoulders or sidewalks be provided, but it does require that a person using a wheelchair be able to reach the level surface from the roadway shoulder. This would prohibit the level surface from being separated from the roadway by a ditch, gutter, curb, or other barrier.

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federal register

Monday
December 21, 1992

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 205
Rules and Procedures for Funds Transfers; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN Number—1510–AA19

Rules and Procedures for Funds Transfers

AGENCY: Treasury, Fiscal, Financial Management Service.

ACTION: Final Rule: Revision.

SUMMARY: On September 24, 1992, the Financial Management Service published in the **Federal Register** (57 FR 44272) a Final Rule (31 CFR part 205) implementing the interest accrual provisions of the Cash Management Improvement Act of 1990 for the transfer of funds between Federal agencies and States. The effective date of those provisions was amended by the Cash Management Improvement Act Amendments of 1992 (Pub. L. 102–589). This Final Rule only revises part 205 to reflect the amended compliance date provisions; it does not make any other changes to part 205. However, in order to facilitate the implementation of part 205 by States and affected Federal agencies, the complete text of part 205, as amended, is published by this final rule.

EFFECTIVE DATE: December 21, 1992.

ADDRESSES: Financial Management Service, CMIA Program Manager, Room 521C, 401 14th Street SW, Washington, DC 20227.

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SUPPLEMENTARY INFORMATION:

Background

On September 24, 1992, the Financial Management Service issued a Final Rule to implement the Cash Management Improvement Act of 1990, Public Law 102–453, codified at 31 U.S.C. 3335 and 6503. 57 FR 44272. Subsequently, the Cash Management Improvement Act Amendments of 1992, Public Law. 102–589, amended the 1990 Act by changing the effective date of the interest accrual provisions of the 1990 Act, codified at subsections (c) and (d) of § 6503 of title 31, United States Code, from October 24, 1992 to July 1, 1993, or the first day of a State's 1994 fiscal year, whichever is later.

The final rule published on September 24, 1992, implemented the statutory requirement that then existed for the interest liability to begin to accrue as of October 24, 1992, by including a section, 31 CFR 205.5, that described the period from October 24, 1992, to the later of June 30, 1993, or the last day of a State's 1993 fiscal year as the Onset Period. During the Onset Period, special rules would have applied to minimize the disruption and inconvenience resulting from the commencement of interest accrual liability on October 24, 1992.

The enactment of the Cash Management Improvement Act Amendments of 1992 changed the effective date of the interest accrual provisions of the 1990 Act from October 24, 1992, to the later of July 1, 1993, or the first day of a State's 1994 fiscal year. The Onset Period section, 31 CFR 205.5, in the final rule has been removed, and references to the Onset Period section throughout the final rule have been removed to make the rule consistent with the amended statute.

Section 205.5 has been reserved due to the removal of the Onset Period from the final rule.

Regulatory Analysis

Because this rule merely conforms the effective date provisions of part 205 to a change in the law, it is a rule of agency management not subject to Executive Order 12291. Because no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

Notice and Comment

Because this rule merely conforms the effective date provisions of part 205 to the 1992 Act, notice and public procedure are not required pursuant to 5 U.S.C. 553 (a)(2) and (b)(B). For this reason, and because this rule merely grants an exemption by deferring the October 24, 1992, effective date of the existing regulations, a delayed effective date is not required pursuant to 5 U.S.C. 553(d) (1) and (3).

List of Subjects in 31 CFR Part 205

Electronic Fund Transfers, Grant Administration, Grant programs, Intergovernmental relations.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 205 is revised to read as follows.

PART 205—RULES AND PROCEDURES FOR FUNDS TRANSFERS

Sec.

205.1 Purpose
205.2 Scope of part.
205.3 Definitions.

Subpart A—Negotiation of Intergovernmental Agreements for Financing Federal Assistance Programs—Interest Liabilities on Intergovernmental Funds Transfers

205.4 Scope of subpart.
205.5 [Reserved]
205.6 Funding techniques.
205.7 Requesting and transferring funds.
205.8 Clearance patterns.
205.9 Treasury-State Agreements.
205.10 Funding of indirect costs and administrative cost grants.
205.11 Federal interest liabilities.
205.12 State interest liabilities.
205.13 Interest calculation.
205.14 Direct costs of implementation.
205.15 Annual reports.
205.16 Interest payment.
205.17 Compliance and oversight.
205.18 Appeals and dispute resolution.

Appendix A to Subpart A of Part 205—Definition of Major Federal Assistance Program

Subpart B—Potential Liabilities on Intergovernmental Funds Transfers Included in the Catalog of Federal Domestic Assistance but Otherwise Generally Excluded From Subpart A

205.19 Scope of subpart.
205.20 Cash advances.
205.21 Federal agency oversight responsibilities.
205.22 State noncompliance.
205.23 Failure to make funds available.

Subpart C—[Reserved]

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

§ 205.1 Purpose.

Subparts A and B of this part implement the Cash Management Improvement Act and prescribe rules and procedures for the transfer of funds between the Federal Government and the States for Federal grant and other programs. Subpart C of this part is reserved and, if issued, may implement other authorities and govern transactions outside the scope of subparts A and B.

§ 205.2 Scope of part.

(a) Subparts A and B apply to programs listed in the Catalog of Federal Domestic Assistance, Pursuant to chapter 61 of title 31, United States Code.

(b) This Part does not generally apply to direct loan programs.

(c) This Part does not apply to payments made to States acting as vendors on Federal contracts, which are

subject to the Prompt Payment Act of 1982, as amended, 31 U.S.C. 3901 *et seq.*, Office of Management and Budget (OMB) Circular A–125 "Prompt Payment," and 48 CFR part 32.

(d) This Part does not apply to the Tennessee Valley Authority (TVA) or programs administered by the TVA.

§ 205.3 Definitions.

For the purpose of this part:

Administrative cost grant means a grant exclusively for administrative expenses under a program with separate grant awards for benefit payments and administrative expenses.

Auditable means the sources of data and information for a calculation are readily available, fully documented, and verifiable, such that the calculation can be replicated and proven to comply with all pertinent standards.

Authorized State official means a person with the authority under the laws of a State to make commitments on behalf of the State for the purposes of this regulation, or that person's official designee as certified in writing.

Check means a negotiable demand draft or warrant.

Clearance pattern means a frequency distribution showing the proportion of a total amount disbursed that is debited against the payor's bank account each day after the disbursement.

Current project cost means a cost for which the liability has been recorded on or after the day on which a State last requested funds for the project.

Day means a calendar day unless otherwise specified.

Disburse means to issue a check or initiate an electronic funds transfer payment.

Discretionary grant project means a project for which a Federal agency is statutorily authorized to exercise judgment in awarding a grant and in selecting a grantee, generally through a competitive process.

Drawdown means a process whereby a State requests and receives Federal funds.

Electronic funds transfer (EFT) means, in the context of Federal payments to States, the delivery of funds through wire transfer or the Automated Clearing House.

Equivalent rate means auction average equivalent yield, also known as the auction average investment rate of 13-week Treasury bills.

Federal agency means an executive agency as defined by section 102 of title 31, United States Code, exclusive of the TVA.

Federal-State agreement means an agreement between a State and a Federal program agency specifying terms and conditions for carrying out a program or group of programs, but does not mean a Treasury-State Agreement described in § 205.9.

Fiscal year means, unless otherwise indicated, a State's budget year ending in the specified calendar year.

Issue checks means to release or distribute checks to the payees.

Major Federal assistance program is defined in appendix A to subpart A of this part.

Obligational authority means the existence of a definite commitment on the part of the Federal Government to provide appropriated funds to a State to carry out specified programs, whether the commitment is executed before or after a State pays out funds for program purposes. This term means that an obligation to a State has been executed and does not refer to the amount of budgetary resources available.

Pay out means to debit the payor's bank account.

Pay out funds for program purposes means, in the context of State payments, to debit a State account for the purpose of making a payment to:

(1) A person or entity that is not considered part of the State pursuant to the definition of "State" in this section, or

(2) A State entity for the procurement of goods or services for the direct benefit or use of the payor State entity or the Federal Government.

Program means the range of activities encompassed under, and classified by, a Catalog of Federal Domestic Assistance number (CFDA #).

Refund means a recovery of funds previously paid out for program purposes.

Related banking costs means stand-alone, non-credit services which are considered necessary and/or customary for sustaining an account in a financial institution, whether in commercial financial institutions or State Treasurer accounts. Investment service fees are not related banking costs.

Request for funds means a solicitation for funds that is completed and submitted in accordance with Federal agency guidelines.

Secretary means the Secretary of the United States Department of the Treasury. The Financial Management Service (FMS) is the Secretary's representative in all matters concerning this Part, unless otherwise specified.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and an agency, instrumentality, or fiscal agent of a State so defined, but does not mean a local government or an Indian tribal government.

A State agency or instrumentality is any organization or component unit of the State reporting entity as defined by Generally Accepted Accounting Principles.

A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal program, exclusive of a private nonprofit community organization.

Trust fund for which the Secretary is the trustee means a trust fund administered by the Secretary.

Subpart A—Negotiation of Intergovernmental Agreements for Financing Federal Assistance Programs—Interest Liabilities on Intergovernmental Funds Transfers

§ 205.4 Scope of subpart.

(a) *Initial programs.* From the later of July 1, 1993, or the first day of a State's 1994 fiscal year, to the end of a State's 1994 fiscal year, this Subpart applies, at a minimum, to the following programs, provided they meet the threshold for major Federal assistance programs in the State:

Alcohol and Drug Abuse and Mental Health Services Block Grant (CFDA 93.992);
Chapter 1 Programs—Local Educational Agencies (CFDA 84.010);
Child Support Enforcement (CFDA 93.023);
Family Support Payments to States (CFDA 93.020);
Foster Care—Title IV–E (CFDA 93.658);
Highway Planning and Construction (CFDA 20.205);
Job Opportunities and Basic Skills Training (CFDA 93.021)
Job Training Partnership Act (CFDA 17.250);
Low-Income Home Energy Assistance (CFDA 93.028);
Medical Assistance Program (CFDA 93.778);
National School Lunch Program (CFDA 10.555);
Nutrition Assistance for Puerto Rico (CFDA 10.566).
Pell Grant Program (CFDA 84.063);
Rehabilitation Services—Basic Support (CFDA 84.126);
Social Services Block Grant (CFDA 93.667);
Special Education—State Grants (CFDA 84.027);
Special Supplemental Food Program for Women, Infants, and Children (CFDA 10.557);
State Administration Matching Grants—Food Stamp Program (CFDA 10.561);

Supplemental Security Income (CFDA 93.807);
Unemployment Insurance (CFDA 17.225);

(b) *Threshold of materiality.* From the beginning of a State's 1995 fiscal year and thereafter, this Subpart applies, at a minimum, to all programs that meet the threshold for major Federal assistance programs in a State.

(c) *Determining major Federal assistance programs.* Unless otherwise specified in a Treasury-State Agreement, major Federal assistance programs will be determined from the most recent Single Audit data available from the U.S. Bureau of the Census and, if necessary, other data from the most recent fiscal year for which funding can be documented.

(d) *Covering additional programs.* A State and the FMS may agree, in a Treasury-State Agreement, to cover additional programs under this subpart. However, the FMS has unilateral authority to require a State and a Federal agency to cover additional programs under this subpart if a State or a Federal agency fails to comply with subpart B of this Part, as set forth in §§ 205.22 and 205.23.

(e) *Programs not covered by this subpart.* Programs in the Catalog of Federal Domestic Assistance that are not covered by this subpart are subject to subpart B of this Part.

(f) *Grace period for colleges and universities.* Unless otherwise specified in a Treasury-State Agreement, this subpart does not apply to a State institution of higher education prior to a State's 1995 fiscal year, notwithstanding any other provision of this section.

§ 205.5 [Reserved].

§ 205.6 Funding techniques.

(a) *Zero balance accounting.* Zero balance accounting is a method of transferring Federal funds to a State based on the actual amount of funds that are paid out by the State each day after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

(b) *Estimated clearance.* Estimated clearance is a method of transferring Federal funds to a State based on the estimated amount of funds that are paid out by the State each day after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

Example: A State mails $1 million in checks to benefit recipients under a Federally funded program. The State has developed the following clearance pattern for the program, based on when checks historically have been presented for payment:

Day	Percentage of dollars paid out
0 (checks mailed)	0
1	0
2	0
3	0
4	40
5	30
6	15
7	10
8	5

On Day 3, the State requests 40 percent of the funds disbursed, or $400,000, and the Federal agency deposits funds in the State account on Day 4 to coincide with the expected presentment of 40 percent of the total disbursement. On Day 4, the State requests 30 percent of the funds to pay for checks presented on Day 5, and so on. Furthermore, if the State draws down $400,000 to pay for checks presented on Day 4, neither the State nor the Federal Government will incur an interest liability if the amount of checks actually presented is more or less than $400,000. Over the long term, the amounts drawn down and the amounts of checks presented for payment will converge to the historical clearance pattern.

(c) *Pre-issuance funding.* Pre-issuance funding is a method of transferring Federal funds to a State prior to the day the State issues checks or initiates EFT payments. When this funding technique is applied, a State will incur an interest liability to the Federal Government from the day Federal funds are credited to a State account to the day the State pays out the funds for programs purposes.

Example: Three business days before a State issues $1 million in checks, it requests $1 million from a Federal agency, which deposits the funds in a State account the next day. The State has developed the following clearance pattern, based on when the State's checks historically have been presented for payment:

Day	Percent of dollars paid out
0 (funds deposited)	0
1	0
2 (checks issued)	0
3	0
4	0
5	40
6	30
7	15
8	10
9	5

The State will owe the Federal Government 5 days of interest on 40 percent of the funds, or $400,000, since that amount will be paid out for checks presented 5 days after Federal funds are deposited in a State account. The State will owe 6 days of interest on 30 percent of the funds, or $300,000, 7 days of interest on 15 percent of the funds, and so on.

(d) *Average clearance.* Average clearance is a method of transferring funds to a State based on the dollar-weighted average number of days required for funds to be paid out by the State after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

Example: A State mails $1 million in checks to contractors for a Federally funded program. The State has developed the following clearance pattern, based on when checks historically have been presented for payment, and has determined the average day of clearance, weighted by dollar amount, to be 5 days after checks are issued:

Day	Percent of dollars paid out	Factor (day x percentage)
0 (checks issued)	0	
1	0	
2	0	
3	0	
4	40	1.60
5	30	1.50
6	15	0.90
7	10	0.70
8	5	0.40
Average day of clearance		5.10

The State requests $1 million on day 4 and receives that amount on day 5, which is the dollar-weighted average number of days required for checks to be presented at the State's bank, and neither the State nor the Federal Government incurs an interest liability.

(1) In determining a dollar-weighted average day of clearance, fractions of days are rounded to the nearest whole number.

(2) The standards and maintenance requirements for clearance patterns, as set forth in § 205.8, apply for average day of clearance calculations.

(e) *Reimbursable funding.* Reimbursable funding is a method of transferring Federal funds to a State after the State has paid out its own funds for program purposes. After June 30, 1994, reimbursable funding is prohibited, except where mandated by Federal law.

§ 205.7 Requesting and transferring funds.

(a) *Electronic funds transfer.* To the maximum extent practicable, a Federal agency shall use EFT for transfers of funds to a State.

(b) *Minimizing the time between transfer and payment.* A State and a Federal agency shall minimize the time

elapsing between the transfer of funds from the United States Treasury and the pay out of funds for program purposes by a State, whether the transfer occurs before or after the pay out.

(c) *Procedures for funding techniques.* Unless otherwise specified in a Treasury-State Agreement, a State and a Federal agency shall adhere to the following procedures for each funding technique:

(1) *Zero balance accounting.* A State shall request funds the same day it pays out funds for program purposes, and a Federal agency shall deposit funds in a State account the same day it receives a request for funds.

(2) *Estimated clearance.* A State shall request funds 1 business day prior to the day it expects to pay out funds, in accordance with a clearance pattern, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(3) *Average clearance.* A State shall request funds 1 business day prior to the dollar-weighted average number of days required for funds to be paid out after a disbursement, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(4) *Pre-issuance funding.* A State shall request funds not more than 3 business days prior to the day on which it makes a disbursement, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(5) *Reimbursable funding.* A State shall request funds only after it has paid out its own funds for programs purposes, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(d) *Limiting the amount transferred.* Consistent with a funding technique and with funds transfer procedures in a Treasury-State Agreement, a State and a Federal agency shall limit the amount of funds transferred to a State to the minimum required to meet a State's actual, immediate cash needs.

(e) *Frequency of requests for funds.* A Federal agency shall allow a State to submit requests for funds, or bills, as often as daily. However, this requirement shall not be construed to change Federal agency guidelines defining a properly completed request for funds.

(f) *Prohibition of reimbursable funding requirements.* A Federal agency may not require a State to use reimbursable funding, unless mandated by Federal law.

§ 205.8 Clearance patterns.

(a) *Use and basis of development.* When required by a funding technique, a clearance pattern will be used to schedule the transfer of funds to a State and to support the calculation of interest. A State may:

(1) Develop a separate clearance pattern for an individual program; or

(2) Develop a composite clearance pattern for a logical group of programs that have the same disbursement method and that reasonably can be expected to have comparable clearance activity. A composite clearance pattern for a group of programs must be applied separately to each program in the group when scheduling funds transfers or calculating interest; or

(3) Develop a clearance pattern on another basis that is agreed upon by the FMS.

(b) *Standards for clearance patterns.* A State shall ensure that a clearance pattern accurately represents the flow of Federal funds and that a clearance pattern reflects seasonal or other periodic variations in clearance activity. A State shall ensure that a clearance pattern is auditable.

(c) *Maintaining clearance patterns.*

(1) If a State has actual or constructive knowledge, at any time, that a clearance pattern does not correspond to a program's clearance activity, or if a program undergoes operational changes that may affect clearance activity, the State shall:

(i) Immediately notify the FMS in writing of the program requiring a new clearance pattern, and

(ii) Develop a new clearance pattern and certify that it corresponds to a program's clearance activity.

(2) If a Federal agency has actual or constructive knowledge, at any time, that a State's clearance pattern does not correspond to a program's clearance activity, the agency shall notify the FMS in writing of the State and the program. The FMS shall immediately notify the State of the programs, and the State shall either:

(i) Develop a new clearance pattern and certify that it corresponds to a program's clearance activity, or

(ii) Re-certify the accuracy of the existing clearance pattern.

(d) *Certification for accuracy.* An authorized State official shall certify that a clearance pattern corresponds to a program's clearance activity. If a State develops a clearance pattern for a program or a group of programs, as set forth in paragraphs (a)(1) and (a)(2) of this section, an authorized State official shall re-certify the accuracy of the clearance pattern at least every 5 years. If a State develops a clearance pattern on another basis, as set forth in paragraph (a)(3) of this section, the FMS may prescribe requirements for re-certifying the accuracy of the clearance pattern.

§ 205.9 Treasury-State agreements.

(a) *Purpose.* A State may enter into a Treasury-State Agreement with the FMS to set forth terms and conditions for implementing this Subpart.

(b) *Components.* A Treasury-State Agreement pursuant to this Subpart must include, but will not be limited to, the following:

(1) *Programs.* Consistent with § 205.4, a Treasury-State Agreement must indicate the programs subject to this Subpart.

(2) *Funding techniques.* A Treasury-State Agreement must indicate the funding techniques to be applied to the programs subject to this Subpart, in accordance with the following:

(i) Zero Balance Accounting, Estimated Clearance, and Pre-Issuance Funding are techniques available for selection by a State, subject to the approval of the FMS.

(ii) A State may request approval to use the Average Clearance funding technique, but must provide the FMS with adequate justification for its use in lieu of Estimated Clearance.

(iii) Reimbursable funding is available for selection by a State, subject to the approval of the FMS, only for a program for which the State used reimbursable funding prior to the later of July 1, 1993, or the first day of a State's 1994 fiscal year. However, reimbursable funding is not available for selection by a State for the programs listed in § 205.4(a).

(iv) A State and the FMS may negotiate the use of other mutually agreed upon funds transfer procedures.

(v) A State may apply more than one funding technique or funds transfer procedure to a program with multiple cash flows.

(3) *Interest calculation method.* Consistent with § 205.13, a Treasury-State Agreement must indicate the method a State will use to calculate and document interest liabilities pursuant to this Subpart.

(4) *Clearance pattern method.* Consistent with § 205.8, a Treasury-State Agreement must indicate the method and standards a State will use to develop and maintain clearance patterns pursuant to this Subpart.

(5) *Direct costs.* Consistent with § 205.14, a Treasury-State Agreement must specify the types of direct costs a State expects to incur.

(6) *Reverse flow programs.* Consistent with §§ 205.8 and 205.13, with respect to programs for which the Federal

Government makes payments on behalf of a State, a Treasury-State Agreement must indicate the methods a Federal agency will use to calculate and document interest liabilities and to develop and maintain clearance patterns pursuant to this Subpart.

(c) *Consultation with Federal agencies.* The FMS will consult with Federal program agencies as necessary and appropriate when negotiating a Treasury-State Agreement.

(d) *Amendment.* A Treasury-State Agreement may be amended by the mutual written consent of the State and the FMS.

(e) *Five-year expiration.* A Treasury-State Agreement expires if it is not amended for 5 years.

(f) *Default provisions for a State without a Treasury-State Agreement.* With respect to a State that does not have a Treasury-State Agreement in effect after the later of June 30, 1993, or the last day of the State's 1993 fiscal year, the following apply:

(1) The FMS shall prescribe funds transfer procedures to be used by the State and the Federal agency in implementing this subpart, consistent with Federal and State law.

(2) The FMS shall prescribe the method for calculating interest liabilities pursuant to this subpart.

§ 205.10 Funding of indirect costs and administrative cost grants.

(a) A State and the FMS may agree, in a Treasury-State Agreement, to the following funding conventions for indirect costs and administrative cost grants:

(1) The State will draw down a prorated amount of an administrative cost grant on the date of the State payday. For example, the State would draw one-third of a quarterly administrative cost grant if payroll is monthly, or one-sixth of a quarterly administrative cost grant if payroll is semi-monthly.

(2) If an indirect cost rate is applied to a program, the State will include a proportionate share of the indirect cost allowance in each drawdown by applying the indirect cost rate to the appropriate direct costs of each drawdown.

(3) If costs must be allocated to various programs pursuant to a labor distribution or other system under an approved cost allocation plan, the State will draw down funds to meet cash outlay requirements based on the most recent, certified cost allocations, with subsequent adjustments pursuant to the actual allocation of costs.

(b) A State and the FMS may agree, in a Treasury-State Agreement, that no interest liabilities will be incurred or calculated for indirect costs and administrative cost grants, notwithstanding any other provision of this subpart.

§ 205.11 Federal interest liabilities.

(a) *General.* The Federal Government will incur an interest liability to a State if the State pays out its own funds for program purposes with valid obligational authority under Federal law, Federal regulation, or Federal-State agreement. A Federal interest liability will accrue from the day a State pays out its own funds for program purposes to the day Federal funds are credited to a State account.

(b) *Late appropriations.* If a State pays out its own funds for program purposes due to delay in passage of a Federal appropriations act, the Federal Government will incur an interest liability if an appropriations act, as enacted, covers the period of the State's expenditure and permits payment for expenses already incurred by the State.

(c) *Lack of obligational authority other than occurring through late appropriations.* If a State pays out its own funds for program purposes without obligational authority, the Federal Government will incur an interest liability if the lack of obligational authority is not the result of limitation, reduction, or termination of the program and where obligational authority is subsequently established to permit payment for the State's expenditure.

(d) *Federal Highway Trust Fund.* The following applies to programs and projects funded out of the Federal Highway Trust Fund, notwithstanding any other provision of this section:

(1) If a State does not request funds at least weekly for current project costs, a Federal interest liability will not accrue prior to the day a State submits a request for funds.

(2) If a State pays out its own funds in the absence of a project agreement or in excess of the Federal obligation in a project agreement, the Federal Government will not incur an interest liability.

(e) *Discretionary grant project approval.* If a State pays out its own funds prior to the earlier of:

(1) The day a Federal agency officially notifies the State in writing that a discretionary grant project has been approved, or

(2) The date that a Federal agency is otherwise obligated in law to pay the discretionary grant project to the State, the Federal Government will not incur an interest liability, notwithstanding any other provision of this section.

(f) *Authorizations and appropriations for future years.* If a State pays out its own funds prior to the availability of Federal funds that have been authorized or appropriated for a future Federal fiscal year, the Federal Government will not incur an interest liability, notwithstanding any other provision of this section.

(g) *Reverse flow programs.* With respect to programs for which the Federal Government makes payments on behalf of a State, such as Supplemental Security Income, the Federal Government will incur an interest liability if State funds are in a Federal Government account prior to the day a Federal agency pays out funds for program purposes. A Federal interest liability will accrue from the day State funds are credited to the Federal Government's account to the day the Federal agency pays out the State funds for program purposes.

§ 205.12 State interest liabilities.

(a) *General.* A State will incur an interest liability to the Federal Government if Federal funds are in a State account prior to the day the State pays out funds for program purposes. A State interest liability will accrue from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for program purposes.

(b) *Refunds.* A State will incur an interest liability to the Federal Government on a refund transaction of Federal funds. A State interest liability will accrue from the day the refund is credited to a State account to the day the refund is either paid out for program purposes or credited to a Federal Government account. However, a State may adopt a transaction threshold not exceeding $10,000, below which the State will not incur an interest liability on a refund transaction.

(c) *Reverse flow programs.* With respect to programs for which the Federal Government makes payments on behalf of a State, such as Supplemental Security Income, a State will incur an interest liability to the Federal Government if a Federal agency pays out Federal funds for program purposes on behalf of the State. A State interest liability will accrue from the day the Federal agency pays out Federal funds for program purposes to the day State funds are credited to the Federal Government's account.

(d) *Exception.* Notwithstanding any other provision in this section, a State will not incur an interest liability to the Federal Government if Federal law requires that the interest a State earns on Federal funds must be retained by

the State or used for program purposes. This exception shall not be construed to exempt a program from any other provision of this Subpart.

§ 205.13 Interest calculation.

(a) *State responsibilities.* A State shall calculate Federal interest liabilities and State interest liabilities for each program subject to this subpart, except as provided for in paragraph (b) of this section.

(b) *Reverse flow programs.* A Federal agency shall calculate Federal interest liabilities and State interest liabilities for a program subject to this subpart for which the Federal agency makes payments on behalf of a State, such as Supplemental Security Income.

(c) *Start date.* Interest liabilities begin accruing the later of July 1, 1993, or the first day of a State's 1994 fiscal year.

(d) *Interest rate.* The interest rate for all interest liabilities pursuant to this Subpart is the annualized rate equal to the average equivalent yields of 13-week Treasury Bills auctioned during a State's fiscal year, except as provided for in paragraph (i) of this section. The FMS will provide this rate to each State.

(e) *Interest calculation method and standards.* A State shall calculate and report interest liabilities on the basis of its fiscal year. A State shall ensure that its interest calculations are auditable. As set forth in § 205.9, a Treasury-State Agreement must include the method a State will use to calculate and document interest liabilities pursuant to this Subpart.

(f) *Statistical sampling.* If a State uses statistical sampling to calculate interest, the State must randomly sample transactions for each program subject to this Subpart to ensure, at a minimum, a 95 percent confidence interval subject to a .3 dollar-weighted day bound of error estimate.

(g) *Transactions prior to a State's 1994 fiscal year.* A State shall not include in an interest calculation a transaction in which either the transfer of funds to the State or the pay out of funds for program purposes by the State occurs prior to the later of July 1, 1993, or the first day of the State's 1994 fiscal year.

(h) *Funds withdrawn from a State account in the Unemployment Trust Fund (UTF).* A State shall account for the actual interest earnings and the related banking costs attributable to funds withdrawn from the State's account in the UTF.

(1) If funds withdrawn from the several accounts in the UTF are commingled in the State's Unemployment Insurance benefit payment account, the funds withdrawn from the State's account must be allocated a pro rata share of the actual interest earnings and related banking costs of the benefit payment account. Funds withdrawn from the State's account in the UTF that are included in investment pools must be allocated a pro rata share of interest earnings of the investment pool.

(2) Notwithstanding any other provision of this subpart, a State's interest liability on funds withdrawn from its account in the UTF consists of the actual interest earnings less the related banking costs of such funds, and shall be deposited in the State's account in the UTF.

(3) This paragraph (h) does not apply to funds withdrawn from the Federal Employees Compensation Account and the Extended Unemployment Compensation Account in the UTF.

§ 205.14 Direct costs of implementation.

(a) *Definition.* Direct costs of implementing this Subpart are those costs necessary for the development and maintenance of clearance patterns and those costs necessary to perform the actual calculation of interest liabilities. Direct costs do not include expenses incurred for upgrading or modernizing of accounting systems.

(b) *Reimbursement of direct costs.* A State will be compensated annually for the direct costs of implementing this Subpart, subject to the following conditions and limitations.

(1) *Treasury-State Agreement.* A State must have a Treasury-State Agreement with the FMS, as set forth in § 205.9.

(2) *Direct cost claim.* A State must submit a claim for direct costs with its Annual Report, as set forth in § 205.15(c).

(3) *Documentation.* A State must maintain documentation to substantiate its claim for direct costs.

(4) *Eligibility of costs.* Direct costs in excess of $50,000 in any year are not eligible for reimbursement, unless a State can justify to the FMS that it would be unable to develop clearance patterns or perform the actual calculation of interest without incurring such costs.

(5) *Costs incurred in prior years.* Direct costs incurred prior to a State's most recently completed fiscal year are not eligible for reimbursement, excepting costs incurred prior to the first day of a State's 1994 fiscal year and claimed for reimbursement with the State's first Annual Report submitted pursuant to this Subpart.

(6) *Costs incurred prior to July 22, 1991.* Direct costs incurred prior to July 22, 1991, are not eligible for reimbursement, unless a State makes separate application for such costs, with adequate justification and documentation.

(7) *Review by the FMS.* The FMS will review all direct cost claims for reasonableness. Unreasonable cost claims, as determined by the FMS, will not be reimbursed, notwithstanding any other provision of this section.

(8) *Method of reimbursement.* The FMS will effect direct cost reimbursement by reducing the State interest liability and adjusting the Federal interest liability for each State, to the extent allowed by the following limitations:

(i) Interest liabilities for programs funded out of trust funds for which the Secretary is trustee may not be reduced or adjusted; and

(ii) The aggregate Federal interest liability for all States may not increase.

(c) *Application of cost principles.* A State shall not include direct costs of implementing this Subpart, as defined in paragraph (a) of this section, in the development of its Statewide cost allocation plan, as provided for in OMB Circular A–87. All other costs incurred by a State to implement this Subpart are subject to the procedures and principles of OMB Circular A–87.

(d) *Sunset review.* By July 1, 1996, the FMS will review the policies in this section to determine their effectiveness.

§ 205.15 Annual reports.

(a) A State shall submit an Annual Report to the FMS by December 31 accounting for the interest liabilities of the State's most recently completed fiscal year. The format of the Annual Report will be prescribed by the FMS and will include, at a minimum, the following:

(1) the Federal interest liability for each program subject to this subpart;

(2) the State interest liability for each program subject to this subpart, with the State interest liability on refunds for each program reported separately;

(3) the total Federal interest liability for all programs subject to this subpart;

(4) the total State interest liability for all programs subject to this subpart;

(5) the net total interest owed by the State or the Federal Government;

(6) for information purposes, not for the calculation of interest, the actual interest earnings on and the related banking costs for funds drawn from the State's account in the UTF.

(b) A State shall submit its Annual Report both in hard copy and either on computer diskette or by other electronic means prescribed by the FMS.

(c) A State may submit as part of its Annual Report a claim for reimbursement of the direct costs of

implementing this Subpart, in accordance with § 205.14. An authorized State official shall certify the accuracy of a State's direct cost claim.

(d) An authorized State official shall certify the accuracy of a State's Annual Report.

(e) *Reverse flow programs.* With respect to a program for which the Federal Government makes payments on behalf of a State, a Federal agency shall provide an interest report to a State by December 1 for the State's most recently completed fiscal year. The interest report will include the State interest liability and the Federal interest liability for the program, including the Federal interest liability on refund transactions of $10,000 or more. The Federal agency shall certify the accuracy of the interest report. A State shall incorporate the interest report in its Annual Report.

(f) The FMS will distribute Annual Reports to Federal agencies.

§ 205.16 Interest payment.

(a) *Adjusted interest liabilities.* The FMS will adjust a State's total interest liability and the Federal Government's total interest liability to a State to effect direct cost reimbursement, as set forth in § 205.14(b)(8).

(b) *Net interest payment.* The adjusted total State interest liability and the adjusted total Federal interest liability for each State will be offset to determine the net interest payable to or from a State. The payment of net interest to or from a State for its most recently completed fiscal year will occur no later than March 1.

(c) *Disputed amounts.* If the amount of interest payable is disputed according to the provisions of § 205.18, payment must occur for any undisputed portions. The interest in dispute must be paid within 14 days of receipt of the decision by the Assistant Commissioner, Federal Finance, as set forth in § 205.18.

§ 205.17 Compliance and oversight.

(a) *State coordinator.* A State shall designate an official representative with the statutory or administrative authority to coordinate all interaction with the Federal Government concerning this Subpart, and shall notify the FMS of the representative's name and title in writing.

(b) *Federal agency coordinator.* A Federal Agency shall designate an official representative to coordinate all interaction with the FMS and the States concerning this Subpart, and shall notify the FMS of the representative's name and title in writing.

(c) *Recordkeeping.* A State shall maintain records supporting interest calculations, clearance patterns, direct costs, and other functions directly pertinent to the implementation and administration of this Subpart.

(d) *Record retention.* A State shall retain the records related to implementation of this Subpart of each fiscal year for 3 years from the date the State submits its Annual Report, or until any dispute or action involving the records and documents is completed, whichever is later.

(e) *Availability of records.* The FMS, the Comptroller General, and a Federal agency shall have the right of access to all records for the purpose of verifying interest calculations, clearance patterns, direct cost claims, and the State's accounting for Federal funds.

(f) *Records for reverse flow programs.* With respect to programs for which the Federal Government makes payment on behalf of a State, a Federal agency shall maintain records supporting interest calculations and clearance patterns. A Federal agency shall retain such records for 3 years from the date the Federal agency submits its interest calculations to a State, as set forth in § 205.15(e), or until any dispute or action involving the records is completed, whichever is later. The FMS, the Comptroller General, and a State shall have the right of access to all records for the purpose of verifying interest calculations, clearance patterns, and the Federal agency's accounting for State funds.

(g) *State audits.* A State's implementation of this Subpart is subject to audit in accordance with chapter 75 of title 31, United States Code, "Requirements for Single Audits."

(h) *Federal agency compliance reviews.* A Federal agency's implementation of this Subpart is subject to review pursuant to procedural instructions issued by the FMS.

(i) *Reviewing Annual Reports.* The FMS will distribute Annual Reports to Federal agencies, as set forth in § 205.15(f). Upon request by the FMS, a Federal agency shall review a State's Annual Report for accuracy and reasonableness and shall report its findings to the FMS.

(j) *Federal agency noncompliance.* If a Federal agency egregiously or repeatedly causes Federal interest liabilities or fails to comply with this Subpart, the FMS may collect a charge from the Federal agency in an amount the FMS determines to be the cost to the general fund of the Treasury caused by such noncompliance, in accordance with the following:

(1) The FMS will issue a Notice of Assessment to the Federal agency, indicating the nature of the noncompliance, the amount of the charge, the manner in which it was calculated, and the right to file an appeal.

(2) A charge for noncompliance, to the maximum extent practicable, will be paid out of appropriations available for the Federal agency's operations and will not be paid from amounts available for funding the programs of the Federal agency.

(3) If a Federal agency does not pay a charge for noncompliance within 45 days after receiving a Notice of Assessment, the FMS will debit the appropriate Federal agency account.

(4) A Federal interest liability resulting from circumstances beyond the control of a Federal agency does not constitute noncompliance.

(k) *State noncompliance.* If a State materially fails to comply with this Subpart, the FMS may take one or more of the following actions, as appropriate in the circumstances:

(1) Request a Federal agency or the General Accounting Office to conduct an audit of the State to determine interest owed to the Federal Government, and implement procedures to recover such interest; or

(2) Deny the reimbursement of all or a part of the State's direct cost claim; or

(3) Take other remedies legally available.

(l) *Failure to request funds.* If a State repeatedly or deliberately fails to request funds in accordance with the procedures established for its funding techniques, as set forth in § 205.7 or in a Treasury-State Agreement, the FMS may deny the State payment or credit for any resultant Federal interest liability, notwithstanding any other provision of this part.

§ 205.18 Appeals and dispute resolution.

(a) *Appeal by a Federal agency.* A Federal agency may appeal any charge assessed by the FMS for noncompliance by submitting an appeal in writing to the Assistant Commissioner, Federal Finance (hereinafter Assistant Commissioner), of the FMS, within 45 days of the date of the Notice of Assessment. The appeal shall include a concise factual statement of the conditions leading to the Notice of Assessment, the basis of the appeal, and the action requested by the agency. In the event of an appeal, the charge imposed under the Notice of Assessment will be deferred pending the results of the appeal.

(1) *Appeal review process.* The Assistant Commissioner will review the Notice of Assessment, any documentation supporting the Notice, and the written appeal from the agency.

If based on this review, the Assistant Commissioner finds that additional information is required, the Assistant Commissioner may request to meet with the agency, as well as other parties selected by the Assistant Commissioner, as part of the review process.

(2) *Decision.* The Assistant Commissioner will issue a written decision within 30 days of receipt of the appeal. The Assistant Commissioner may unilaterally extend this period for an additional 30 days if required. The decision of the Assistant Commissioner whether to uphold the Notice of Assessment, to overturn the Notice, or to mandate some other action will be stated in the written decision. Other actions mandated may include a reduced charge, a deferral of the charge, an alternate solution to cash management improvement, or any combination thereof. The basis of the decision, the amount of the charge and the effective date of the charge will be stated in the written decision. The effective date of the charge may be retroactive to the date indicated in the Notice of Assessment.

(b) *Resolution of disputes.* If a dispute arises from the implementation or administration of this Subpart, the following resolution mechanism is available:

(1) The aggrieved party may submit a written appeal to the Assistant Commissioner. The aggrieved party shall concurrently serve a copy of the written appeal to the other concerned parties.

(2) Within 20 days of the submission of the written appeal, the aggrieved party shall submit to the Assistant Commissioner a written statement not exceeding 15 pages, with supporting documentation in appendices, that articulates the dispute, the aggrieved party's position, and the relief sought. The aggrieved party shall concurrently serve its statement upon the other concerned parties.

(3) Within 30 days of receipt of the aggrieved party's statement, the responding party may submit a response statement not exceeding 15 pages, with supporting documentation in appendices, to the Assistant Commissioner. The responding party shall concurrently serve its response statement to the other concerned parties.

(4) The Assistant Commissioner will issue a written decision within 30 days after the period for the submission of the response statement. The Assistant Commissioner may unilaterally extend the deadline for issuing a decision by 30 days if required. The Assistant Commissioner's decision shall be the final agency action on the part of the FMS for the purposes of judicial review procedures under the Administrative Procedures Act, 5 U.S.C. 701–706, unless either party invokes the provisions of the Administrative Dispute Resolution Act of 1990, 5 U.S.C. 581–593 (ADRA), in accordance with the following.

(i) Either party may seek to invoke the assistance of a neutral party appointed under the provisions of the ADRA within 30 days of receipt of the Assistant Commissioner written decision. The party invoking the ADRA shall notify both the Assistant Commissioner and the responding party in writing. With the written mutual consent of the parties and the Assistant Commissioner, a neutral party appointed under the provisions of the ADRA may assist in resolving the dispute through the use of alternate means of dispute resolution as defined in the ADRA.

(ii) If the party invoking the ADRA is unable to reach a satisfactory resolution of the problem using the ADRA, the Assistant Commissioner's decision shall be the final agency action on the part of the FMS for purposes of the judicial review procedures under the Administrative Procedure Act, 5 U.S.C. 701–706.

Appendix A to Subpart A of Part 205—Definition of Major Federal Assistance Program

"Major Federal Assistance Program," for State governments having Federal assistance expenditures between $100,000 and $100,000,000 means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures. Where total expenditures during the applicable year exceed $100,000,000, the following criteria apply:

Total expenditure of Federal financial assistance for all programs		Major Federal Assistance Program means any program that exceeds (million)
More than	But less than (billion)	
$100 million	$1	$3
1 billion	2	4
2 billion	3	7
3 billion	4	10
4 billion	5	13
5 billion	6	16
6 billion	7	19
Over 7 billion		20

Subpart B—Potential Liabilities on Intergovernmental Funds Transfers Included in the Catalog of Federal Domestic Assistance but Otherwise Generally Excluded From Subpart A

§ 205.19 Scope of subpart.

This subpart applies to programs in the Catalog of Federal Domestic Assistance that are not subject to subpart A.

§ 205.20 Cash advances.

(a) Cash advances to a State shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the State in carrying out a program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual cash outlay by the State for direct program costs and the proportionate share of any allowable indirect costs.

(b) Neither a State nor the Federal Government will incur an interest liability on the transfer of funds for a program subject to this Subpart.

§ 205.21 Federal agency oversight responsibilities.

(a) A Federal agency shall review the practices of States as necessary to ensure compliance with this Subpart. A Federal agency shall notify the FMS if a State demonstrates an unwillingness or inability to comply with this Subpart.

(b) A Federal agency shall formulate procedural instructions specifying the methods for carrying out the responsibilities of this section.

§ 205.22 State noncompliance.

If a State demonstrates an unwillingness or inability to comply with this Subpart, the FMS may require the State and a Federal agency to cover additional programs under subpart A of this part, notwithstanding any other provision of this part.

§ 205.23 Failure to make funds available.

Consistent with program purposes and regulations, if a Federal agency demonstrates an unwillingness or inability to make Federal funds available to a State as needed to carry out a program, the FMS may require the State and the Federal agency to cover additional programs under subpart A of this part, notwithstanding any other provision of this part.

Subpart C—[Reserved]

Dated: November 19, 1992.

Russell D. Morris,

Commissioner.

[FR Doc. 92-30757 Filed 12-18-92; 8:45 am]

BILLING CODE 4810-26-M

federal register

Monday
December 21, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Standing Rock Sioux Tribe, North Dakota; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Standing Rock Sioux Tribe, North Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Control of Class III Games of Chance for the Standing Rock Sioux Tribe and the State of North Dakota, which was enacted on August 31, 1992.

DATES: This action is effective December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: December 8, 1992.

Ross Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–30833 Filed 12–18–92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
December 21, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Standing Rock Sioux Tribe, South Dakota; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Standing Rock Sioux Tribe, South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Gaming Compact Between the Standing Rock Sioux Tribe and the State of South Dakota, which was enacted on August 6, 1992.

DATES: This action is effective December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: December 8, 1992

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92-30834 Filed 12-18-92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
December 21, 1992

Part VII

Department of Labor

Mine Safety and Health Administration

30 CFR Part 100
Criteria and Procedures for Proposed Assessment of Civil Penalties; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AA44

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises the Mine Safety and Health Administration's (MSHA) procedures in 30 CFR part 100 for proposing civil penalties under the Federal Mine Safety and Health Act of 1977 (Mine Act). The rule is responsive to a November 21, 1989, Order of the United States Court of Appeals for the District of Columbia Circuit. The rule applies a regular assessment, rather than a single penalty, to a timely abated non-significant and -substantial (non-S&S) violation at a mine with an excessive history of violations. This change will induce greater overall mine operator compliance with MSHA's safety and health standards, thereby improving miner safety and health.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The rule contains no information collection requirements subject to the Paperwork Reduction Act of 1980.

II. Rulemaking History

MSHA initially had two types of assessments: regular assessments and special assessments. The computer-generated regular assessments used, and continue to use, a formula system, based on the criteria in the Mine Act for the assessment of penalties, to compute penalty points which are then converted to a dollar amount. These criteria include mine and company size, history of violations, negligence, gravity of the hazard, and good faith on the part of the operator in abating the hazard within the time set by the inspector. The individually prepared special assessments were, and continue to be, for violations of such a nature or seriousness that an appropriate penalty cannot be determined under the regular assessment formula.

On May 21, 1982, MSHA revised its penalty regulations to include a $20 single penalty assessment for timely abated non-S&S violations (47 FR 22286). Non-S&S violations are violations that are not reasonably likely to result in a reasonably serious injury or illness. The regular formula system continued to address significant and substantial (S&S) violations, which are those that are reasonably likely to result in a reasonably serious injury or illness. Special assessments continued to deal with many of the most serious violations. For regular assessment purposes, history of violations was defined as the average number of violations per inspection day (VPID) for mine operators and as the average number of violations assessed per year at all mines for independent contractors; i.e., contractor violation history points (CVHP). Timely paid single penalty violations were not included in the history computation.

On February 17, 1988, the Coal Employment Project and the United Mine Workers of America (UMWA) challenged the Secretary of Labor's authority to assess a $20 single penalty for timely abated non-S&S violations. On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit upheld MSHA's authority to assess the $20 single penalty, *Coal Employment Project et al.* v. *Dole*, 889 F.2d 1127, but ordered MSHA to revise its civil penalty regulations to: (1) Take a mine operator's history of violations specifically into account in determining whether a non-S&S violation qualifies for a single penalty assessment; and (2) include single penalty violations in the history of violations computation for regular assessments. The Court further ordered MSHA to take immediate interim steps to correct these defects in the assessment system and remanded the record to MSHA to revise part 100 to comply with the Court's order. The Court retained jurisdiction of the case.

In response to the remand, MSHA published an interim action on December 29, 1989 (54 FR 53609), that temporarily suspended the sentence in 30 CFR 100.3(c) by which timely paid single penalty violations were excluded from an operator's history of violations for regular assessment purposes. Thus, in calculating penalties proposed for S&S violations, MSHA now includes all final violations, both S&S and non-S&S, in an operator's history. At the same time, the Agency also revised its assessment policies by instructing MSHA enforcement personnel to review non-S&S violations involving high negligence and an excessive history of the same type of violation for possible special assessment. While these interim provisions were in effect, the Agency would begin rulemaking to develop a final rule, thereby complying with the Court's order.

On March 12, 1990, the Coal Employment Project, *et al.*, filed a motion to enforce compliance with the order of remand with the Court, stating that MSHA's interim actions were an inappropriate response to the Court order.

On April 12, 1990, the Court found the "high negligence" requirement in MSHA's new assessment policy for non-S&S violations to be inconsistent with the November 21, 1989, order. Accordingly, the Court gave MSHA 45 days to respond to the Court's expressed concerns and, on May 29, 1990, MSHA issued a program policy letter implementing a program of increased penalties for both S&S and non-S&S violations at a mine with an "excessive history" of violations.

On December 28, 1990, MSHA published a proposed revision to its civil penalty regulations (55 FR 53482) that included: (1) an across-the-board increase in all of the Agency's penalties; and (2) increased penalty assessments when a mine has an excessive history of violations. The excessive history proposal was based on the May 1990 program policy letter. The comment period on the proposal was initially scheduled to close on March 1, 1991, but it was extended to March 18, 1991 (56 FR 8171), and then to April 2, 1991 (56 FR 11130), at which time it closed. MSHA received comments from all sectors of the mining industry. Subsequently, based on these comments, MSHA separated the rulemaking into a final rule and a reproposal.

The final rule published on January 24, 1992 (57 FR 2968), revised the penalty table in accordance with the Omnibus Budget Reconciliation Act of 1990 and increased the single penalty from $20 to $50. It also made permanent the interim action of December 29, 1989, that included single penalty violations in an operator's history of violations for regular penalty assessments.

As a result of comments received, MSHA issued a reproposal of the excessive history program on January 24, 1992 (57 FR 2972). These comments and MSHA's experience had persuaded the Agency that the excessive history program criteria should be substantively revised. Consequently, in order to obtain public comment on the proposed new criteria, MSHA reproposed an excessive history program containing these substantively revised criteria.

On January 24, 1992, simultaneously with the final rule and reproposal, MSHA issued a new program policy

letter to replace the May 1990 policy letter. This new program policy letter implemented the revised excessive history criteria contained in the January 1992 reproposal.

The comment period for the January 1992 reproposal, initially scheduled to close on March 24, 1992, was extended to April 24, 1992 (57 FR 9518). Once again, MSHA received comments from all sectors of the mining industry.

III. Discussion and Summary of the Final Rule

A. General Discussion

With this final rule, MSHA accomplishes two basic objectives: (1) It encourages mine operators who have an excessive history of violations to improve compliance; and (2) it responds to the Court of Appeals order by evaluating an operator's history of violations in determining whether a timely abated non-S&S violation is eligible for a single penalty assessment.

MSHA received numerous and extensive comments on both of its excessive history proposals. All of these comments were carefully reviewed and evaluated and the significant issues raised are discussed in this preamble.

In addition, commenters raised several other assessment-related issues such as: A general revision of part 100; a revision of enforcement policies as they pertain to assessments; a definition of inspection day; and some issues that were outside the specific scope of the proposed excessive history program. The scope of this final rule, however, is specifically limited to only those issues related to the excessive history program addressed in the proposals.

B. Section-By-Section Analysis of the Rule

The following section-by-section analysis addresses the public comments on the proposals and describes the resulting final rule.

Section 100.3 Determination of Penalty Amount; Regular Assessment

In this section, MSHA revises paragraph (c) to insert the word "Overall" as the first word in this paragraph. This will clarify the distinction between overall history and excessive history.

Section 100.4 Determination of Penalty Amount, Single Penalty Assessment

In this section, MSHA establishes an excessive history assessment program in which a timely abated non-S&S violation cited at a mine with an excessive history of violations will not be eligible for a single penalty assessment but will, instead, receive a regular penalty assessment. This increased assessment will more effectively deter violations and should help to reduce the number of both S&S and non-S&S violations at those mines, thereby providing a safer and more healthful work environment.

Consistent with the Court of Appeals order, the final rule establishes an excessive history assessment program for only non-S&S violations. The excessive history criteria and penalty assessment increases are specifically included in the final rule. This excessive history program is based upon § 100.3(c), overall history of violations for a preceding 24-month period as determined by VPID or CVHP. In addition, a mine must have more than 10 violations in a preceding 24-month period in order to receive any excessive history assessment. Upon payment or final adjudication, citations and orders are counted in history and, therefore, included in determining excessive history. Only citations and orders issued on or after January 1, 1991, are used in determining excessive history. The Agency will use the available history data starting on January 1, 1991, when determining excessive history until the full 24 months of history are available on January 1, 1993. Thereafter, the calculation of excessive history will be based on a preceding 24-month period.

In establishing this excessive history program, MSHA has complied with the Court of Appeals order, evaluated its experience gained under the May 1990 and the January 1992 program policy letters, examined the most recent violation and enforcement data, and responded to the public comments submitted on the December 1990 proposal and the January 1992 reproposal.

Since the issuance of the initial Court order in November 1989, the Agency has reviewed a number of options for an excessive history program and the appropriate criteria. In every option reviewed, however, the one constant requirement was the incorporation of history of violations in determining whether a timely abated non-S&S violation would be eligible for a single penalty assessment.

One commenter to the December 1990 proposal recommended the abolition of the single penalty in favor of a regular penalty assessment for all non-S&S violations. Another commenter to the December 1990 proposal recommended a minimum $500 penalty for all non-S&S violations, while a few commenters suggested that the increase in the single penalty from $20 under the old penalty table to $50 under the new penalty table was a sufficient penalty increase for all non-S&S violations and that an additional assessment was unnecessary.

The single penalty assessment for timely abated non-S&S violations was established in 1982 to permit the mining community and MSHA to focus their resources on S&S violations that have the greatest impact on miner safety and health. As noted in the preamble to the January 1992 reproposal (57 FR 2976), the single penalty assessment continues to serve an important safety and health purpose by reducing the amount of time spent on violations that have a minimal impact on safety and health. The suggested elimination of the single penalty assessment or the increase in the single penalty to $500 may lead to a substantial increase in the number of non-S&S violations contested and a refocusing of inspector and mine operator time from the S&S violations to the non-S&S violations.

However, MSHA did not intend the single penalty assessment to suggest that non-S&S violations were unimportant as long as they were promptly abated. In addition, a high level of noncompliance would indicate that the single penalty has not provided adequate compliance incentive. Further, the Court order requires the single penalty assessment program to include consideration of an operator's history of violations. As a result, the Agency has determined that certain non-S&S violations should not be eligible for a $50 single penalty assessment.

MSHA's experience with excessive history programs under the program policy letters and the public comments on the proposed rules indicate that the Agency should resolve 10 issues in order to construct an excessive history program that would equitably affect all mines. The first two of these issues, (1) whether S&S violations should be subject to excessive history assessments, and (2) whether repeat violations should be subject to excessive history assessments received considerable comment and are discussed at some length in this preamble.

The first issue is whether S&S violations should be subject to excessive history assessments. The most significant difference among this final rule and MSHA's December 1990 proposal, the January 1992 reproposal, and the two program policy letters is that this final rule does not provide for S&S violations to receive excessive history assessments. Although the Court of Appeals did not address S&S violations, the Agency had included S&S violations in the excessive history programs because it believed that applying excessive history assessments

to S&S violations would increase the deterrent effect of a civil penalty, leading to greater compliance and ultimately resulting in greater safety and health.

Therefore, MSHA initially instituted an excessive history program for S&S violations in the May 1990 program policy letter. This program subjected an S&S violation to an excessive history assessment when either: (1) There was an excessive number of violations per inspection day; or (2) there was an excessive number of repeat violations of the same safety or health standard. The excessive history program for S&S violations was continued—albeit with different criteria—in the December 1990 proposal, the January 1992 reproposal, and the January 1992 program policy letter.

On May 5, 1992, the Federal Mine Safety and Health Review Commission (Commission) ruled in *Drummond Co. Inc.*, 14 FMSHRC 661, (*Drummond*) that MSHA had exceeded its authority when it implemented an excessive history assessment for S&S violations under a program policy letter rather than through notice and comment rulemaking. The Commission held that MSHA's use of the Court of Appeals order as justification for instituting an excessive history program for S&S violations was inappropriate because the Court order had only addressed non-S&S violations. The Agency did not appeal the *Drummond* decision. However, the Commission decision affected only the excessive history program contained in the program policy letter. This rulemaking, having gone through public notice and comment, is not subject to the same procedural defect ascribed to the policy letter in the *Drummond* case.

The second and related issue is whether repeat violations should be used as a criterion for an excessive history assessment. The final rule does not subject violations to excessive history assessments based on repeat violations, whereas both proposals did. The December 1990 proposal and the May 1990 policy letter subjected all violations, under certain criteria, to excessive history assessments based on repeat violations, while the January 1992 reproposal and policy letter subjected only S&S violations, under certain revised criteria, to excessive history assessments based on repeat violations. Excessive history was applied, based on repeat violations of the same safety or health standard, as MSHA's response to a recommendation in the September 30, 1988, Department of Labor Inspector General (IG) final audit of MSHA entitled "The Mine Plan Approval and Selected Enforcement Activities." In this report, the IG recommended that progressive penalties be automatically assessed for repeated violations of the same safety or health standard. As the excessive history assessment program was based on repeat violations and would have been applied automatically, this program would have been in accord with the IG recommendation.

The comments received in response to the December 1990 proposal and the January 1992 reproposal addressed: (1) The general concept of applying the excessive history program to S&S violations; and (2) the specific criteria found in the May 1990 program policy letter and in the January 1992 reproposal and policy letter.

With respect to the general concept of applying the excessive history program to S&S violations, industry commenters had three opposing arguments. The first opposing argument was that MSHA already has a special assessment program that can be used to impose additional penalties on mines with excessive numbers of S&S or repeat violations. These commenters asserted that a computer-generated excessive history program cannot account for the unique situations at individual mines that may cause them to have high numbers of violations, but which may not be indicative of the overall level of safety and health of those work environments. They also asserted that the number of citations issued would depend on the MSHA district in which the mine is located. Consequently, the excessive history program would often wrongly target mines for additional penalties. They stated that a better approach would be to rely upon the District Manager, who is in a position to take these circumstances into account, to determine whether a mine has an excessive history of violations and who would refer those violations for special assessment.

The second opposing argument was that MSHA has nearly completed the initial violations documentation record for its pattern of violations rule. This rule took effect on October 1, 1990, and the violation history necessary for a pattern notice to be given to a specific mine is now being reached. These commenters contended that the impact of this pattern of violations rule upon compliance should be evaluated before the Agency implements an additional assessment program that would target excessive history violations.

The third opposing argument was that the new regular assessment penalty table took effect on March 1, 1992, and that the impact of these substantial increases in regular assessments on compliance should be analyzed before a new assessment program is instituted.

Commenters, including labor, although supporting the principle of an excessive history program, tied their support for such a program to MSHA revising its enforcement policies. They asserted that the current enforcement system treats mines unequally and that any excessive history program based on current enforcement practices will exacerbate the unequal treatment. They supported the industry comment that different MSHA districts have different citation issuance practices. They also stated that as mines with an "effective" miner walkaround participation receive more citations and orders because the inspector receives more help in spotting violations, an excessive history program should adjust the raw violation data to account for an "effective" miner walkaround presence.

Finally, there were some commenters who supported the general inclusion of S&S violations in the excessive history program because they believed that a systematic increase in penalty assessments would result in greater compliance with MSHA standards and, thus, greater safety and health.

With respect to comments on the specific criteria in the May 1990 program policy letter and in the January 1992 reproposal and program policy letter, nearly all industry commenters stated that both sets of proposed excessive history criteria were too inclusive and were poorly designed. As the preamble to the January 1992 reproposal contained MSHA's discussion of the comments on the May 1990 program policy letter and the Agency's reasons for changing these criteria in the reproposal, this preamble will not repeat that discussion. However, upon reviewing those comments, the Agency determined that the May 1990 program policy letter excessive history criteria should be revised in order to make the program more equitable. The Agency also decided to continue to use an excessive history assessment based on repeat violations as the response to the IG recommendation. Thus, in the January 1992 reproposal and program policy letter, an excessive history assessment would be given: (1) To all violations (both S&S and non-S&S) at mines with 20 penalty points for VPID or CVHP; and (2) to S&S violations only, when a mine had accumulated at least 10 violations of the same safety or health standard in a previous twelve month period and had a repeat violations per inspection day (RPID) greater than 0.20.

In response to this January 1992 reproposal of the specific excessive history criteria, industry commenters reiterated their general comments that the excessive history program for S&S violations was unnecessary because MSHA has its special assessment program and its pattern of violations program. With respect to their comments on the specific proposed criteria, they asserted that the reproposal criteria were still inequitable because: (1) Large mines would continue to receive a disproportionate share of excessive history assessments; and (2) the RPID criteria excluded contractor violations from an excessive history based on repeat violations because MSHA does not record the number of inspection days for a contractor. In addition, they commented that the revised excessive history criteria had significantly complicated the existing part 100 regulations, making it difficult for an operator to determine how a particular penalty would be calculated.

Commenters representing labor made similar remarks with respect to the inequity of the revised excessive history criteria, and reiterated their statements concerning the need for MSHA to revise its enforcement policies before a fair and effective excessive history program could be enacted.

In response to these commenters, MSHA re-evaluated the disaggregated assessment data by commodity, type of mine, and mine size. In this re-evaluation, MSHA found that the impact of the reproposed excessive history criteria continued to be greater on large mines than on small mines. For example, although the percentage of large underground coal mine violations that would have received an excessive history assessment would have decreased from 45 percent under the May 1990 excessive history criteria to about 8 percent under the January 1992 reproposal criteria, the percentage of small underground coal mine violations that would have received an excessive history assessment would have similarly decreased from about 6 percent to about 2 percent. Thus, although the January 1992 reproposal criteria reduced the inequity resulting from the May 1990 criteria, the excessive history program derived from the computer-generated criteria still produced an inequitable result.

A joint industry and labor comment suggested that the ultimate goal of an excessive history assessment program should be to reduce miner fatalities and injuries. In order to realize that goal, these commenters asserted that the excessive history program should target mines with higher fatality rates to improve compliance in the most effective way and to reduce the potential for fatalities. At their request, MSHA calculated the average 1991 fatality rates for mines: (1) That would have received an excessive history assessment based on the criteria in the January reproposal; and (2) that would not have received such an excessive history assessment. These average fatality rates were separately calculated for the four mining categories of: (1) Underground coal; (2) surface coal; (3) underground metal and nonmetal; and (4) surface metal and nonmetal. The results indicated that (except for underground coal) the fatality rates within each category between excessive history mines and non-excessive history mines exhibited no significant statistical difference. In underground coal, however, the fatality rate for the non-excessive history mines was substantially higher than the fatality rate for the excessive history mines. On that basis, therefore, these commenters contended that the proposed excessive history criteria and program were inherently flawed because they did not target the appropriate mines.

As a result of these comments and MSHA's analysis of several different excessive history criteria, the Agency has decided to limit the excessive history assessment program to non-S&S violations and to base it only on VPID or CVHP. MSHA agrees with the commenters that the Agency should evaluate the effect of the new penalty table and the pattern of violations rule upon compliance before it adopts an additional civil penalty program.

Nevertheless, the Agency will continue to make "excessive history" information on non-S&S violations, as well as information reflecting overall history on a mine-specific basis, available to its District Managers. This information will aid District Managers in deciding which mines may need closer monitoring and more frequent inspections. It will also aid inspectors in targeting the individual standards with which a specific mine may be having compliance difficulty. Further, this information may also be used by the District Manager to help in determining whether to request a special assessment for certain violations at individual mines. By providing excessive history information to its District Managers, the Agency will provide a useful enforcement aid to the District Manager who, in fact, is the individual best qualified to identify a special history problem.

The third issue to be resolved in order to develop an equitable excessive history program is which violations to count in determining excessive history. In the proposal, reproposal, and the program policy letters, MSHA counted all violations (S&S as well as non-S&S) in the computation for excessive history. The Agency rationale was that the general compliance level at a mine is indicated by the overall history of violations (including both S&S and non-S&S) and, therefore, the overall history of violations should be used to determine whether a mine has an excessive history of violations. In addition, with an excessive history for non-S&S violations based on the overall history of violations, operators will have more incentive to reduce the number of S&S violations because that will lower their VPID and, thereby, lessen the potential of receiving an excessive history assessment for a non-S&S violation.

MSHA received relatively few comments on this position. Some of these comments were supportive. One commenter, however, asserted that compliance with the Court of Appeals order requires MSHA to use a history of only non-S&S violations for determining history for non-S&S violations. The American Mining Congress, in support of this position in *American Mining Congress* v. *Department of Labor* (D.C. Cir. No. 92–1067) asserted that MSHA had exceeded the Court order in the May 1990 program policy letter by including S&S violations in determining excessive history for non-S&S violations. On September 14, 1992, the Court of Appeals upheld MSHA's policy of including S&S violations in the history of violations for determining excessive history for non-S&S violations. Therefore, on the basis of the rulemaking record, the Agency concludes that, as all violations are counted in the overall history for regular formula assessments for S&S violations, all violations should also be counted in determining whether a non-S&S violation is eligible for a single penalty. Thus, the determination of whether a non-S&S violation will receive an excessive history assessment is based on the overall history of all violations.

The fourth issue is the appropriate criterion to use for violation history. Since its inception, MSHA has used VPID as the measure for history of violations. MSHA uses VPID rather than the total number of violations to adjust for inspector presence in order to place all mines on a more equal basis. Some industry commenters argued that VPID should not be used for violation history for the previously cited reasons that the enforcement policies lead to differences among mines. In addition, some

commenters criticized this criterion because part 100 does not define "inspection day." Nevertheless, despite the possible differences across mines, MSHA believes that VPID is the best measure available for history of violations. Furthermore, no commenter suggested an alternative to VPID. As a result of all these considerations, the final rule retains VPID for mines as the violation history criterion for excessive history.

For contractor operations, however, the concept of average violations per inspection day cannot be used because MSHA does not record inspection days for contractors. Consequently, the previous regulations, and the proposal, reproposal, and program policy letters used average number of violations per year (CVHP) as the violation history criterion for establishing overall and excessive history, respectively. MSHA received a few comments critical of this criterion for contractors but there were no alternative suggestions. As the use of this approach has proved to be both successful and practical, the final rule retains CVHP for contractors as the violation history criterion for excessive history.

The fifth issue is the appropriate VPID or CVHP value to trigger an excessive history assessment. Although the December 1990 proposal did not contain any such specific VPID value, the May 1990 program policy letter used a VPID value of at least 1.7 (16 penalty points) to trigger an excessive history assessment. Several commenters to the December 1990 proposal stated that an excessive history assessment should be limited to only the highest penalty point category; i.e., mines with VPID equal to 20 penalty points. On the basis of these comments, MSHA reconsidered the VPID value used for an excessive history assessment and, in the January 1992 reproposal and program policy letter, used the highest penalty point category of 20 points to trigger an excessive history assessment. All of the comments on this issue supported the reproposal VPID value. An excessive history assessment applied to those mines with the highest category of penalty points continues the progressive penalty concept in the VPID and CVHP penalty point tables and provides further economic motivation for these operators to devote additional effort and resources to comply with MSHA standards. Further, the greatest penalties will be incurred by mines that have the highest non-compliance levels. Therefore, in this final rule a VPID greater than 2.1 (20 penalty points) is needed for a non-S&S violation to receive an excessive history assessment.

For contractors, although the December 1990 proposal did not contain any specific number of violations, the May 1990 program policy letter used a CVHP of 16 penalty points (more than 40 violations) to trigger an excessive history assessment. Although MSHA received no comments on the appropriateness of this CVHP value, as a consequence of shifting the VPID criterion for mines to the highest VPID category, MSHA similarly shifted the CVHP value for an excessive history assessment to the highest CVHP category of 20 points (more than 50 violations) in the January 1992 reproposal and program policy letter. MSHA received no comments on this reproposal CVHP value. Consistent with the reproposal and the VPID value for mines, the final rule requires CVHP to be 20 penalty points for a contractor violation to receive an excessive history assessment.

The sixth issue is whether a minimum number of violations should be required before an excessive history assessment is made. For example, a small surface mine may receive only three inspections during any specific two year period even though it has received its requisite semiannual inspections. In such small operations, a total of 7 or 8 non-S&S violations may be cited during these 3 inspections over a two-year period and that number of violations could result in a VPID greater than 2.1. Notwithstanding that VPID value, those operators are not necessarily the type the Agency views as having exhibited an "excessive history" of noncompliance and, thus, should not categorically receive an excessive history assessment. In order to reduce the potential for a mine to receive an excessive history assessment based on a minimal number of violations, MSHA determined in the May 1990 and January 1992 policy letters and the January 1992 reproposal to exclude a mine with fewer than 11 violations in a preceding two year period from receiving an excessive history assessment. This number, therefore, has been available for public comment since the December 1990 proposal. All of the few comments on this issue supported the concept of a minimum number of violations being a necessary criterion for an excessive history assessment. One commenter suggested that this minimum number be normalized by mine size. Normalization by mine size, however, would duplicate the effect of violations per inspection day and it would significantly complicate part 100. Thus, the final rule incorporates the approach taken in the program policy letters and the reproposal because it has proven to be both successful and practical.

The seventh issue is the type and amount of penalty associated with an excessive history assessment. In the program policy letters, the December 1990 proposal, and the January 1992 reproposal, a non-S&S violation that was ineligible for a single penalty assessment received a regular penalty assessment. A comment on the January 1992 reproposal recommended that the single penalty be a graduated penalty dependent only on the overall history of violations. They proposed a $70 single penalty for an operation with 16 penalty points for overall history, an $80 single penalty for an operation with 18 penalty points for overall history, and a $90 single penalty for an operation with 20 penalty points for overall history. They contended that their alternative would maintain the original intent of the single penalty for all timely abated non-S&S violations to receive an equal penalty regardless of the mine size, size of controlling entity, etc. while explicitly allowing overall history of violations to determine whether a violation is eligible for a single penalty. The other commenters on this issue, however, agreed with MSHA's proposal.

In resolving this issue, MSHA carefully evaluated these comments, its experience under the program policy letters, the intent of the May 1982 rule that instituted the single penalty, and the Court of Appeals order. MSHA has not adopted the recommended sliding scale single penalty for two reasons. The first reason is that the Agency's intent is to affect the overall compliance at mines that have the highest overall history of violations. Based on Agency experience, the commenter's recommended graduated scale single penalty amounts would not provide sufficient economic penalties for operators to reduce the numbers of violations. Thus, in order to encourage mines with the highest overall histories of violations to reduce both their S&S and non-S&S violations, MSHA has determined that timely abated non-S&S violations at a mine with an overall history of 20 penalty points will receive a regular penalty assessment rather than a single penalty assessment. The second reason is that the graduated scale single penalty would significantly complicate part 100. As noted earlier, the Agency agrees with commenters that an unduly complex part 100 would not aid safety and health.

The eighth issue is whether the specific excessive history criteria should be contained in part 100. The December 1990 proposal did not contain these

criteria, and all commenters on this issue stated that these criteria should be incorporated into the rule because the public has a right to notice and comment on rules that affect them. Further, some commenters stated that any changes to these criteria should be subject to notice and comment rulemaking. In response to these comments, MSHA specifically included these criteria in the January 1992 reproposal. All of the comments on this issue supported this inclusion of the criteria in part 100. In light of these reasons, the final rule remains as proposed in the January 1992 reproposal and includes the specific excessive history assessment criteria.

The ninth issue was the date from which violations would be counted for excessive history assessments. In both the December 1990 proposal and the January 1992 reproposal, MSHA proposed a starting date of January 1, 1991. Until January 1, 1993, the VPID and CVHP calculations would be based on fewer than 2 years of data. However, no excessive history assessment would be proposed until a mine had accumulated more than 10 fully paid or finally adjudicated violations.

Many industry commenters criticized the January 1, 1991, date as imposing a retroactive penalty on mine operators. They contended that violations should not be counted for the purposes of excessive history assessments until a final rule is promulgated because operators need to be given fair and adequate notice of this change in assessments. These commenters asserted that many mine operators would have contested more of their violations had they known that these violations could be a factor in determining that a future non-S&S violation would not be eligible for a single penalty assessment. It was further asserted that mine operators do not now contest every violation that they believe to be improperly cited—particularly those involving the $50 single penalty assessment—because the time and labor cost of contesting the violation is substantially greater than the penalty itself. If, however, operators had known that these violations could result in a future excessive history assessment that could raise the $50 single penalty to a $200 regular assessment (for example), then they would have contested more of these violations. In support of these assertions, one commenter noted that the contested violation rate went from an historical average of about 3 percent to about 6 percent after the publication of the pattern of violations rule in July 1990 and the May 1990 program policy letter establishing the excessive history assessment program. Thus, they concluded that to provide mine operators with adequate notice of this penalty assessment change, the violation history for an excessive history assessment would have to start no sooner than 30 days after the final rule is promulgated.

Other commenters criticized the January 1, 1991, date because the May 1990 program policy letter had already established an excessive history assessment program with retroactive starting dates back to May 1988. Thus, these commenters stated that the issue of retroactive criteria in assessing penalties is not relevant because mine operators have received adequate notice, and, therefore, the final rule should continue the policy started in the May 1990 program policy letter. They contended that continuing the existing system would minimize industry confusion about the date from which violations will be counted for excessive history when the final rule becomes effective.

Based on its review of the comments and its experience under the program policy letters, MSHA has determined that publication in the December 1990 **Federal Register** of the proposed January 1, 1991, starting date for counting violations for excessive history assessment purposes provided sufficient notice to operators of MSHA's intention. Furthermore, all violations, including non-S&S violations, have been counted in history since the interim action of December 29, 1989, and operators have been on notice of the importance of this approach since the original Court order of November 21, 1989. Thus, MSHA has determined that an effective date of January 1, 1991, for including violations in history of violations for excessive history assessments is appropriate.

The tenth issue concerns whether excessive history should be based on all violations or only on those paid or finally adjudicated. In the December 1990 proposal, the January 1992 reproposal, and the program policy letters, MSHA took the position that excessive history should be based only on violations paid or finally adjudicated. Of the few commenters on this issue, all but one supported MSHA's position that an operator has the right to exhaust all legal avenues of appeal before the Agency's authority to penalize can be invoked.

One commenter, however, noted that under certain circumstances, a mine operator may be able to avoid an excessive history assessment by contesting violations from previous inspections. This commenter suggested that in order to discourage widespread filing of notices of contest solely to minimize the length of time a violation would be included in the history compilation, all violations (including those contested) should be counted as of the date they were cited, and contested violations would be eliminated from the history of violations only if they were vacated.

Based on the comments and experience under the program policy letters, the Agency's final rule retains the proposed concept that the excessive history program should be based on violations paid or finally adjudicated because the Agency believes that it is neither appropriate nor fair to include violations in an excessive history computation that are not final and could possibly be vacated. In addition, there are substantial economic costs associated with contesting violations, and the average amount of time during which the contested violation is pending and not counted for history has been too brief for the potential financial gain to be greater than this cost. Finally, this concept is consistent with MSHA's historical practice, which has been to calculate overall history using only violations paid or finally adjudicated, and the Agency has found no evidence that operators have filed notices of contest solely to reduce the amount of time a violation is counted in overall history of violations.

Section 100.5 Special Assessments

The wording change in this section references § 100.4(b) in which an excessive history program is established for non-S&S violations. As a result, violations that are processed under the special assessment provision (§ 100.5) and that meet the excessive history criteria will receive an additional dollar penalty to reflect excessive history. Under the previous proposals and program policy letters, MSHA had included an increased penalty for excessive history for violations that receive special assessments. A few commenters contended that the additional excessive history penalty was unnecessary for a violation that has already received an increased penalty from being special-assessed. The Agency disagrees with these commenters because the circumstances governing excessive history are separate from those governing a special assessment. A special-assessed violation occurring at a mine with excessive history should receive a higher penalty than an identical special-assessed violation occurring at a mine without excessive history. On that basis, MSHA will consider excessive history, where

appropriate, on special-assessed non-S&S violations.

III. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis (RIA) be completed for any regulation that would have an impact of at least $100 million on the economy or would have a major impact on an industry sector. As this rule does not have a major impact on the economy or the industry, MSHA has not prepared a separate RIA but the analysis contained in this preamble meets the Agency's responsibilities under the Executive Order and the Regulatory Flexibility Act.

The number of non-S&S violations with excessive history and the resulting amount assessed will be exactly the same under this rule as they would have been under the criteria in the January 1992 reproposal. The only assessment differences would be those resulting from this rule's exclusion of S&S violations from receiving an excessive history assessment.

In order to estimate the economic impact of the rule, MSHA used 1991 assessment data to estimate the number of mines and the number of non-S&S violations that would have been affected by the excessive history criteria. On that basis, MSHA determined that 109 coal mines (about 2.8 percent of all active coal mines, including mines that are intermittently active) would have received an excessive history assessment. Of these 109 coal mines, 47 would have been small mines (2.0 percent of all small coal mines), 54 would have been medium-sized mines (4.3 percent of all medium-sized coal mines), and 8 would have been large mines (3.2 percent of all large coal mines). On that same basis, MSHA also determined that 370 metal and nonmetal mines (about 3.2 percent of all metal and nonmetal mines, including a substantial number of mines that are intermittently active) would have received an excessive history assessment. Of these 370 metal and nonmetal mines, 262 would have been small mines (2.8 percent of all small metal and nonmetal mines), 106 would have been medium-sized mines (5.3 percent of all medium-sized metal and nonmetal mines), and 2 would have been large mines (2.4 percent of all large metal and nonmetal mines).

With respect to the number of violations in 1991 that would have received an excessive history assessment, MSHA determined that 872 coal mine violations (2.1 percent of all coal non-S&S violations) would have received an excessive history assessment. On the basis of mine size, 204 of these violations would have occurred at small mines (2.1 percent of all small coal mine non-S&S violations), 599 would have occurred at medium-size mines (3.5 percent of all medium-size coal mine non-S&S violations), and 69 of these violations would have occurred at large mines (0.6 percent of all large coal mine non-S&S violations). MSHA also determined that 1,999 metal and nonmetal mine violations (6.9 percent of all metal and nonmetal mine non-S&S violations) would have received an excessive history assessment. On the basis of mine size, 943 of these metal and nonmetal mine violations would have occurred at small mines (6.0 percent of all small metal and nonmetal mine non-S&S violations), 825 would have occurred at medium-sized mines (7.7 percent of all medium-sized metal and nonmetal mine non-S&S violations), and 231 would have occurred at large mines (8.7 percent of all large metal and nonmetal mine non-S&S violations).

Summarizing the cost of compliance using the violation data for calendar year 1991 and the new penalty table that became effective March 1, 1992, MSHA estimates the amounts that would have been assessed: (1) Under no excessive history program; (2) under the May 1990 program policy letter excessive history criteria; (3) under the January 1992 reproposal excessive history criteria; and (4) under the final rule excessive history criteria. A similar table that had been prepared for the January 1992 reproposal preamble was based on the old penalty table.

WHAT WOULD HAVE BEEN ASSESSED UNDER THE NEW PENALTY TABLE

Baseline	(In $ millions)	
	Total	Increase
No Excessive History	44.3	—
Excessive History (May 1990 Policy)	49.8	5.5
Excessive History (January 1992 Reproposal)	46.6	2.3
Excessive History (Final Rule)	45.3	1.0

NOTE: The amounts in the "Increase" column are based on a comparison with the baseline of "No Excessive History."

As can be calculated from this table, the rule's excessive history criteria would generate a 2.3 percent increase in penalty assessments compared to a 5.2 percent increase in penalty assessments under the January 1992 reproposal excessive history criteria and a 12.4 percent increase in penalty assessments under the May 1990 program policy letter excessive history criteria.

On a per mine basis, the average non-S&S excessive history penalty assessment in 1991 would have been about $435, an increase of about $385 above the $50 single penalty. As a result, a few of the small operations that will receive an excessive history assessment may experience some resultant financial difficulties. Nevertheless, although MSHA has not performed a financial analysis of every potentially affected small mine, the Agency has determined that this increase for non-S&S violations would be unlikely to contribute significantly to a mine's closing. As a result, the Secretary has determined that this rule would not have a significant economic impact upon a substantial number of small entities.

Another consideration in determining the overall economic impact of this rule is its affect upon the rate of contested citations and orders. Several commenters asserted that the previous excessive history criteria had been a significant factor in the increased rate of contested citations and orders that has gone from a pre-1990 historical average of about 3 percent to about 6 percent in 1990, and, excluding contested citations issued from dust sample tampering, to 10.5 percent in 1991, and 9 percent through mid-1992. Although the operator's decision to contest a citation or order is discretionary and, hence, not a cost of the rule, the expected reduction in the number of contested violations due to the new excessive history criteria will reduce some operators' (as well as MSHA's) expenditures.

The preambles to the December 1990 and January 1992 proposed rules presented some 1989 and 1990 fatality and injury rate statistics for mines that: (1) Would have received an excessive history assessment; and (2) would not have received an excessive history assessment. In response to commenters, MSHA has reviewed these data in more detail. On the basis of this more detailed review, the Agency concludes that the data cannot support the argument that mines that would have received an excessive history assessment under the previous or new criteria had a statistically significant higher incidence of fatalities and injuries than mines that would not have received an excessive history assessment. However, MSHA's experience indicates that mines with higher numbers of violations have a greater potential for accidents and injuries. Consequently, MSHA has qualitatively concluded that this rule's excessive history criteria will increase overall compliance, resulting in safer mining environments and fewer fatalities and injuries.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: December 14, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Therefore, part 100, subchapter P, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, and 957.

§ 100.3 [Amended]

2. Section 100.3(c) is amended by revising the first word "History" to read "Overall history" in the first sentence.

3. Section 100.4 is revised to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

(a) An assessment of $50 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness (non-S&S) and is abated within the time set by the inspector. If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $50 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5). If the violation meets the criteria for excessive history under § 100.4(b), the violation will not be eligible for the $50 single penalty and will be processed through the regular assessment provision (§ 100.3).

(b) Excessive history shall be based on overall history from paragraph (c) of § 100.3. Excessive history is defined as 20 penalty points for overall history. Mines having 10 or fewer assessed violations in a preceding 24-month period will be excluded from any excessive history determination. Only violations that are paid or finally adjudicated will be included in determining excessive history. Only citations and orders issued on or after January 1, 1992, shall be considered in determining excessive history.

§ 100.5 [Amended]

4. The concluding text of § 100.5 is amended by revising the phrase "the criteria enumerated in § 100.3(a)." to read "the criteria enumerated in § 100.3(a) and § 100.4(b)."

[FR Doc. 92–30840 Filed 12–18–92; 8:45 am]

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December 21, 1992

Part VIII

Department of Education

34 CFR Part 674, et al.
Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN: 1840–AB22

Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs. These programs are known collectively as the campus-based programs and are authorized by the Higher Education Act of 1965, as amended (HEA). These regulations modify provisions governing the campus-based programs, clarify existing policy, and make other necessary changes.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Sylvia Ross or Gwendolyn Dockett-Morris, Loans Branch, Division of Policy Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 4018, Washington, DC 20202–5446, Telephone (202) 708–4690. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time).

SUPPLEMENTARY INFORMATION: On November 13, 1990, the Secretary published a notice of proposed rulemaking for the campus-based programs in the **Federal Register** (55 FR 47438–47443). The regulations have been revised in accordance with public comments on the proposed rule and reflect changes required by the Higher Education Amendments of 1992 (Pub. L. 102–325). These changes required by the Higher Education Amendments of 1992 include program name changes in part 674, part 675, and part 676 as well as the addition of the definition of "community services" in the Federal Work-Study Program.

The Secretary believes that these regulatory changes complement the President's national education strategy of AMERICA 2000 by providing flexibility to institutions in exchange for more accountability in administering the campus-based programs.

The NPRM included a discussion of the major issues surrounding the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which discussion of those issues may be found:

A change in definition of "low-income individual" under § 674.33(c) of the Federal Perkins Loan Program for Federal Perkins and Direct loans (pages 47438–47439).

Clarification under § 674.47(d) that an institution does not need to have a written repayment agreement with a borrower as a precondition for waiving collection costs if a borrower makes a lump-sum payment of the full amount of principal and interest outstanding on a loan (page 47439).

An amendment in § 674.47(e) to change the limits on the amount of collection costs that may be charged to the Fund (pages 47439–47440).

A change in § 674.47(g) to increase the ability of an institution to write off small balance accounts on defaulted loans of less than $25.00 (page 47440).

A revision was made to § 674.50 to allow institutions to assign a borrower's account of at least $25.00 to the Department for collection after following regulatory requirements (pages 47440–47441).

Codification of the definition of student services under the FWS Program in § 675.2(b) for FWS students enrolled in proprietary institutions (page 47441).

A new requirement in § 676.14 for institutions that are seeking but are unable to recover FSEOG overpayments to refer to the Department those cases where the overpayment equals $25.00 or more.

Major Changes to the NPRM

As a result of the comments received in response to the NPRM, the Secretary made three changes to the proposed regulations. The write-off provisions in 674.47(g) have been amended to reduce the steps involved for an institution to write off small balance accounts of less than $25.00. Additionally, in order to make the write-off provisions consistent with the assignment provisions, the Secretary amended § 674.50 of the regulations to cover the assignment of accounts with balances of at least $25.00 to the Department for collection. Also, as a result of public comments, the Secretary increased the amount of collection costs chargeable to the Fund in § 674.47(e) from 25 percent to 30 percent for first collection efforts and from 35 percent to 40 percent for litigation and second collection efforts.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 60 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Federal Perkins Loan Program

Section 674.33(c)—Low-Income Individual

Comments: The Secretary received several comments on the proposed provision in § 674.33(c) that would redefine the term "low-income individual." Several commenters generally supported the modifications proposed here and stated that the change to the Standard Maintenance Allowance (SMA) as a benchmark would simplify the identification procedure for institutions, because SMA amounts should be easily accessible to any institution. However, a few commenters suggested adding language to the regulations to allow institutions to use professional judgment in the computation of a family's ability to pay and to allow latitude in unusual circumstances if an individual does not qualify under SMA criteria. Several commenters stated that while efforts to move toward consistency with Part F of the HEA would normally be applauded, the proposal to extend to the collection area the standards used to award financial aid is overly restrictive and without merit. Some commenters stated that, in practice, borrowers served by the extended repayment period do not want to default, but instead want to repay their student loans. Another commenter stated that the new limits would be unrealistically low for many urban areas and that those who become ineligible will continue to be unable to make larger payments than were required by the original repayment schedule in order to pay out the loan within that original 10-year repayment period. The commenters suggested that extending the borrower's repayment period an additional 10 years will not decrease default rates or reduce the cost of collection.

Discussion: Pursuant to the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the term "Standard Maintenance Allowance" has been renamed "Income

Protection Allowance" (IPA) and will be used throughout the remainder of this document. The Secretary determined that the IPA is the best indicator of a "low-income individual" and that use of IPA charts effectively reduces any burden associated with individual low-income computations being performed in the financial aid office. IPA charts are more accessible within the institution than are the annual updates of the survey issued by the Bureau of Labor Statistics and, by far, less burdensome. The Secretary maintained provisions in the regulations that permit an institution to reduce a borrower's scheduled repayments as provided in § 674.33(b)(9), to extend a borrower's repayment period as provided in § 674.33(c), and to defer a borrower's payments as provided in § 674.34(i) if the borrower is unable to make the scheduled payments due to hardship. These provisions allow institutions latitude in unusual circumstances in cases where an individual does not qualify as a low-income individual under the new requirements. The Secretary believes that student default rates, institutional default rates, and collection costs will decrease, as a result of the revised definition of a low-income individual.

Changes: None.

Comments: One commenter indicated that the proposal fails to recognize that, while student need is determined in the financial aid office, repayment is generally handled through the business office and the business office does not have access to components used in need analysis or the IPA in particular. Another commenter stated that the proposal appears designed to ease the burden of the U.S. Department of Education, which would no longer be required to develop guidelines for low-income borrowers.

Discussion: It is the responsibility of an institution, in accordance with § 668.14 of the Student Assistance General Provisions regulations, to administer adequately its Title IV student financial aid programs. The institution's administration must be coordinated in such a way that all pertinent information relative to student aid from any institutional office is communicated appropriately. In accordance with section 478 of the HEA, the Secretary publishes annually in the **Federal Register** the revised IPA table that is mailed to all institutions participating in Title IV Programs. This distribution is sufficient to provide IPA information to all institutional officials.

Changes: None.

Comments: One commenter questioned whether the new definition of a low-income individual affects student loan borrowers who were counseled and who signed promissory notes prior to the enactment of these regulations.

Discussion: The new definition of the term "low-income individual" is applicable to all Federal Perkins and Direct loans made on or after October 1, 1980.

Changes: None.

Section 674.47(d)—Waiver of Collection Costs

Comments: The majority of the commenters strongly supported the proposal in § 674.47(d) which clarifies that the institution does not need to have a written repayment agreement with a borrower as a precondition for waiving collection costs if the borrower makes a lump-sum payment of the full amount or principal and interest outstanding on a loan.

One commenter recommended that the 30-day period in which the institution may waive collection costs that are applicable to a past due balance a borrower pays after the execution of a new written repayment agreement be increased to 60 days to permit institutions and borrowers greater flexibility.

Discussion: The Secretary believes that 30 days allows sufficient time for a borrower to make payment based on a new written repayment agreement. Institutions should bear in mind that only that portion of the past due loan balance paid by the borrower within the 30-day period is subject to the provision of the waiver of collection costs.

Changes: None.

Section 674.47(e)—Limitation on costs charged to the Fund

Comments: Numerous commenters strongly objected to the proposal in § 674.47(e) to reduce the amount of collection costs that may be charged to the Fund. Several commenters suggested that rates should be a by-product of the marketplace and should be based on net results and competitive practices within the industry as opposed to being dictated by regulations. A few other commenters recommended that industry standards be used for first placements, second placements, and litigation efforts.

Additionally, a few other commenters recommended that the Department continue to allow the 33⅓ percent ceiling for first placements and the 50 percent ceiling for second placements, because these percentages reflect reasonable collection costs. Several commenters stated that in their opinion the Secretary defined "reasonable" collection costs during the development of the regulations that were published in the **Federal Register**, dated December 1, 1987, and this provision severely reduced the financial drain of the collection expenses from the Federal Perkins Loan Fund by mandating that these costs be passed on to the borrower. Several more commenters stated that there is no evidence to demonstrate that current rates are unreasonable and, therefore, no justification to limit further the amount the institution may charge the Fund. One commenter stated that it would be contradictory to state that it is reasonable for the borrower to pay current collection costs but unreasonable for the Fund to bear those expenses. A few commenters indicated that the circumstances under which those costs exceeding the proposed percentages would not be covered by the borrower are those in which either direct benefit is afforded to the Fund through prompt payment of an outstanding delinquent debt or those in which the institution has no control over costs as is the case with bankruptcy or litigation expenses. Several commenters stated that the proposed reductions are excessive and unaffordable to most institutions and would have a significantly negative impact financially. A few other commenters suggested that the reductions would prove burdensome for institutions and servicers if institutions were to have to make up the difference in the amounts collected. In addition, several commenters suggested that, considering the extensive collection efforts accounts go through, including first referral efforts, second referral agencies are usually beset with very difficult collection accounts and simply will not have the monetary incentive to pursue these accounts as necessary. As a result there will be decreases in collection returns to the Federal Government. A few commenters stated that the Department should be concerned with achieving the greatest yield rather than be preoccupied with collection rates. Some commenters questioned whether the Department has data indicating that the proposed reductions in caps on collection costs will increase high yields and thus help to preserve the Fund. These commenters suggested that if the Department has that data, it should justify its position by sharing that data with institutions before acting as proposed. Otherwise, the Department should not implement the proposal until it has the data. A few commenters objected to the Secretary's statement that excess collection costs

could be waived without affecting the contractor's, attorney's, or school's ability to receive a "fair recovery" for their efforts. These commenters stated that regardless of all the rhetoric to the contrary, the judicial system will interpret this statement in defense of the borrower, thus undercutting the Department's original position of what reasonable collection costs are. They went on to state further that a precedent has not yet been established within the judicial system supportive of the original cap and that a precedent should be established before a change is considered.

Discussion: The Secretary determined, based on public comment and a review of Departmental collection efforts, that reasonable collection costs that may be charged to the Fund should be increased from 25 percent for first placement and 35 percent for litigation and second placement (as stated in the November 13, 1990 proposed rule) to 30 percent and 40 percent respectively. Under the previous regulations, the rates were 33⅓ percent and 50 percent respectively. The Department has been successful in collection efforts at contingent fee rates that did not exceed 35 percent. Thus, the Secretary believes that collection agencies can be as successful in collecting on defaulted loans at the 30 to 40 percent rates specified above.

The Secretary believes that it is the borrower's responsibility to repay his or her loan prior to default. If the borrower does not repay prior to default, then it is reasonable to expect the borrower to pay any costs associated with collecting past due amounts. The Secretary believes that the taxpayer should not have to bear the costs for the borrower's failure to pay his or her debts. The Secretary has determined that the 33⅓ percent and 50 percent rates have been used for a long enough period of time to show that they do not significantly increase recoveries. Collection agencies do little more at the 50 percent rate than at the 33⅓ percent rate. In light of scarce Federal dollars and the Secretary's desire for all eligible students to have access to student financial aid, the Secretary believes that the Fund must not bear the expense of collection costs of a borrower who will not repay a loan. The revolving Fund will be depleted and deserving students will be denied loans, if institutions continue to charge the Fund for expenses that should rightfully be borne by a borrower who has defaulted. The Secretary has reduced the collection costs based on a balancing of factors affecting the management of the Funds.

As stated previously in this discussion section, the Secretary believes that collection agencies can be successful in collecting defaulted loans at the 30 to 40 percent contingency fee rates. At the same time, the Secretary also believes that the reduction in collection costs chargeable to the Fund will not be burdensome or have a negative impact on the institutions or the servicers. The Secretary did state on page 47440 of the NPRM that "* * * the proposed reduction in the amount of collection costs that can be waived as to the borrower and paid from Fund assets still provides a fair recovery for the contractor or attorney * * *." The Secretary advanced this proposal to limit the amount of waived collection costs that may be charged to the Fund. The Secretary does not intend to prescribe a limit on the collection cost rate or to imply that the imposition of a collection cost at a rate in excess of that proposed here be available as a defense to a borrower. The Secretary recognizes that the amount that can be recovered from the Fund may not provide a complete recovery for the contractor or attorney, but believes that the amount recovered from the Fund still provides a fair recovery of the expenses involved in these accounts, while at the same time lessening the drain to the Fund. Furthermore, when interpreting these regulations, the judicial system should give deference to the Secretary's statement of intent in adopting the regulations. The Secretary is not just amending the regulations to change the amount of contingent fee collection costs that may be paid from Fund assets. The Secretary is also amending the regulations to permit the institution to use Fund assets to pay the actual amount of those court costs specified in 28 U.S.C. 1920. Those court costs were previously included in the amount chargeable against the percent limits on contingent fees.

Changes: The Secretary is amending § 674.47(e) by increasing the costs chargeable to the Fund to 30 percent for the first placement and 40 percent for litigation and second placements.

Comments: Several commenters indicated that unlike most schools, the Department is not restricted in its efforts to collect on assigned loans. For example, the Department is allowed to waive costs, compromise, or accept repayment terms for whatever time frame it so chooses. A few commenters suggested that if the regulations allowed for some institutional discretion in settling accounts, such as permitting the waiver of some portion of interest, the reduction in the collection costs chargeable to the Fund would not be nearly as problematic.

Discussion: The Secretary believes that while institutions have some flexibility in settling Federal Perkins Loan accounts, including the authority to waive a percentage of collection cost under § 674.47(d), a provision that would allow institutions to compromise, forgive, or forget some portion of the amount due would be detrimental to the intent of the Federal Perkins Loan Program (replenishing the Fund). At this time, the Department is not considering any proposals to allow an institution to compromise or accept repayment terms other than those allowed in the regulations at § 674.33.

Changes: None.

Comments: One commenter indicated that the Secretary's statement in the preamble to the NPRM, that said that borrowers in advanced stages of delinquency enter repayment promptly after initial demand by a new collector, is inaccurate and suggested that the Secretary obtain valid data from institutions and contractors who perform collection functions daily.

Discussion: As previously stated on page 47440 of the preamble contained in the November 13, 1990 NPRM, the Secretary has over the past 10 years negotiated over a dozen major collection contracts on defaulted student loans. Based on the Department's experience in collecting defaulted loans, which were typically in advanced states of delinquency (approximately three to five years in default), the Secretary believes that a significant portion of those defaulters who enter repayment do so promptly after initial demand by a new collector. Generally, borrowers in advanced stages of delinquency have begun to earn a substantial income, enabling them to begin repayment. These borrowers are, therefore, in a better position to repay their student loan debts on a regular basis. Opinions by guarantee agencies support the Department's position regarding borrowers in advanced stages of delinquency. Based on a study conducted by the American Management Systems, Inc., for the Department of Education (February 1989), guarantee agencies revealed that: "Most individuals involved in student loan collections (such as lenders and collection agents) recognize that student loans become more collectible over time because borrowers become more responsible—they find jobs, establish credit, and gain assets, and are in a better position to repay the loans. Most guarantors conclude that their recovery rate on accounts older than five years is from 25 percent to 70 percent. In the

first six to eight months after default, guarantors find that many borrowers are financially unable to pay."

Changes: None.

Comments: A few commenters stated that the Department should recognize that the Federal Perkins Loan Program is well managed at the institutional level and that management has resulted in a declining default rate. A few other commenters suggested that current regulations governing the area of collection costs are very complex and that the proposed regulations add further complexity. Several commenters strongly urged simplification of the regulations. Several other commenters suggested that, if the Department must make reductions in the caps on collection costs chargeable to the Fund, they be implemented through a sliding scale of reductions to allow the impact to be felt the most by institutions with the highest default rates; i.e., the higher the default rate, the lower the cap. In addition, a few commenters suggested that since the Secretary offers an incentive to the borrower in the form of waiving collection costs, an incentive should be offered to institutions to collect on accounts in the form of a graduated cap. Additionally, a graduated cap related to default rates versus an across the board cap might be viewed more favorably by the judicial system.

Discussion: The proposed regulations serve to reduce complexities in the Federal Perkins Loan Program regulations. For example, a requirement pertaining to the waiver of collection costs chargeable to the Fund under § 674.47(d) will be eliminated from the collection procedures. Institutions and borrowers will no longer be required to enter into a new written repayment agreement in order to waive collection costs for lump sum payments made on defaulted loan accounts. In addition, for institutions that hold small balance accounts, the rule under § 674.47(g) will reduce many of the write-off requirements. A sliding scale or a graduated cap concept for collection costs purposes would prove burdensome for institutions and would create unnecessary complexities in the regulations and in the overall collection process. The Secretary believes there are other less complex ways of providing incentives to institutions to collect loan payments and keep defaults down. The provisions contained in the current regulations governing the area of collection costs provide the necessary guidance that allows institutions to manage properly the Federal Perkins Loan Program.

Changes: None.

Comments: Several commenters indicated that there appears to be confusion regarding the circumstances under which reduced contingency fees can be charged to the Fund. The commenters further stated that the preamble indicates three occasions, while the proposed regulatory language implies that the new caps placed on costs chargeable to the Fund affect all collection costs incurred more than 30 days after the execution of a new repayment agreement. In addition, one commenter stated that the proposed regulations recognize that, for amounts paid later than 30 days after signing a new repayment agreement, current rate structures are justified. Therefore, the proposed regulations would only affect accounts that qualify for the waiver of collection costs. The commenter did not believe the factors listed in the proposed regulations provide a compelling argument to justify a rate reduction for this waiver period.

Discussion: The Secretary believes that it is necessary to clarify that the new limitations on the amount of contingency fee costs chargeable to the Fund apply to collection costs that have been waived by the institution in conjunction with a borrower signing a new written repayment agreement and making payments within 30 days under § 674.47(d) and to collection costs incurred by the institution more than 30 days after the execution of a new repayment agreement. The preamble (55 FR 47439) describes three instances in which an institution may charge the Fund for collection costs arising in connection with contingency fee charges. In the first situation described in the preamble, the institution, pursuant to § 674.47(d), may have agreed to waive the enforcement of some or all of the collection costs, including contingency fees. For example, if the borrower enters a new repayment agreement with the institution and repays one-half of the past-due outstanding principal and interest balance on his or her defaulted loan account within 30 days of the date of the execution of the agreement, the institution may waive the collection of one-half of the collection costs that have been incurred through the date of the payment. Payment in full can permit a full waiver of collection costs that may be charged to the Fund. To the extent that these accrued costs have been waived under § 674.47(d), the institution may charge the costs against the Fund, subject to the limitations applicable under § 674.47(e).

As under the current regulations, an institution must assess against the borrower the full amount of any collection costs incurred in collecting the remaining balance of the loan under the repayment agreement after the expiration of the 30-day waiver period. An institution may not charge the Fund for collection costs arising in connection with contingency fee charges for amounts paid more than 30 days after the signing of the repayment agreement, unless the second or third situation described in the preamble is applicable. Specifically, the institution may not charge the Fund for collection costs arising in connection with contingent fee charges for amounts paid more than 30 days after the signing of the repayment agreement unless the institution is legally barred from assessing the full amount of these costs against the borrower or unless the institution has demanded that the borrower pay these costs but the amount recovered from the borrower is insufficient to satisfy both the contingency fees and other collection costs.

Furthermore, the new limitations on the amount chargeable against the Fund do not affect an institution's ability to negotiate contingency fee arrangements and assess the borrower at a rate in excess of the limits under § 674.47(e) with respect to those amounts paid more than 30 days after the signing of the new repayment agreement. By establishing the new limitations on the amounts chargeable against the Fund, the Secretary does not intend to reduce directly or indirectly the contingency fee rate charged on recoveries outside that 30-day period.

Changes: None.

Comments: One commenter suggested that the Secretary allow institutions sufficient time to make a transition from the old limits to the new ones.

Discussion: The Secretary, by virtue of the 45 days between the publication of the regulations and their effective date, will allow sufficient time for institutions to implement these regulations and to make the transition from old to new limits.

Changes: None.

Comments: Several commenters stated that it will be necessary to renegotiate contracts with agencies in order to reduce the amount of collection costs to be retained by the agency. In addition, if the agency refuses to renegotiate the original contract, institutions could be forced to pay the difference to meet due diligence requirements. One commenter pointed out that ongoing surveys by the American Collectors Association show that fee cuts ultimately and absolutely mean substantial cuts in performance and could ultimately reduce the ability

of an agency to service accounts properly. Several commenters stated that institutions will be unable to find collection agencies willing to undertake collection responsibilities at the lower rates and that many reputable and proven collection firms will leave the student loan market forcing institutions to use less expensive collection agencies with unproven collection records. Several other commenters stated that many firms represent student loan clients in bankruptcy court, file proofs of claim, attend meetings of creditors, review bankruptcy court documents, attend confirmation hearings, object to confirmation, conduct discovery in various bankruptcy court proceedings, and contest requests for hardship discharge. A few commenters stated that it will become necessary for some firms, should institutions wish them to continue to represent them in bankruptcy cases, to charge an hourly fee for bankruptcy representation.

Discussion: Institutions must make a diligent effort to negotiate better contracts with collection firms in order to receive the best service possible. Institutions should have at least two or three collection firms from which to choose and should demand quality service and not allow agencies to dictate to them.

Changes: In response to the comments, the Secretary has amended § 674.47(e) of the regulations by increasing the amount of collection costs that may be charged to the Fund to 30 percent for first placements and 40 percent for litigation and second placements.

Section 674.47(g)—Write-offs

Comments: Several commenters fully supported the Secretary's proposal in § 674.47(g) to allow institutions to write off accounts of less than $25.00 and stated that the change makes good business sense. A few commenters stated that this change will make it much simpler to assign accounts to the Department. A few other commenters stated that while the reduction in the number of accounts subject to write-off will ease the paperwork and administrative burden on institutions it will not be cost effective to be required to comply with the provisions of § 674.47(g)(1) (i) through (iii). A commenter suggested that, rather than restricting institutional write-offs to balances under $25, the Secretary make a change to include balances under $200.

Discussion: The Secretary agrees with the commenters and does not intend for institutions to continue carrying out all of the procedures contained in current regulations in order to write off small balance accounts. Under current regulations, an institution is encouraged to assign to the Department accounts over $200. Further, it is encouraged to make those assignments before the statute of limitation period has run, since the institution need not complete the course of semiannual collection efforts prior to assigning the accounts. The new regulation is intended to increase the number of defaulted loans assigned to the Department by lowering the minimum amount that qualifies for assignment from $200 to $25 and to give institutions added incentives to assign the loans by lowering the authority to write off defaulted accounts with minimum balances from $200 or less to balances under $25.

Changes: The Secretary is revising § 674.47(g) of the regulations by removing paragraphs (g)(1)(i) through (g)(1)(iii) of this section to reduce the due diligence steps required by institutions to write off small balance amounts of less than $25.00. Further, § 674.50 is amended to include requirements for institutions to follow before assigning a borrower's account of at least $25.00 to the Department for collection.

Federal Work-Study Program

Section 675.2—Definitions

Section 675.21—Institutional Employment

Comments: The proposed change to codify the definition of "student services" to include areas in which the student employee provides direct and personal services to other students that are incidental to the training or education being offered seemed reasonable to most commenters. Another commenter felt that while there may be additional service categories not listed in the definition, the "not limited to" language would permit an institution to employ students in that service if appropriate. One commenter suggested that "reasonable accommodation services" be added to the list to comply with the new Americans with Disabilities Act (ADA). Another commenter suggested that campus clerical functions that provide direct and personal services be included. Two commenters felt that the proposal fails to address the student population at most proprietary schools that offer short-term training in a specific skill. As a result, students would be denied on-the-job experience. By limiting the types of employment permitted under the FWS Program, commenters felt that the Department is also limiting the types of job experiences students can obtain. A number of commenters believe that the areas that are proposed to be eliminated from the program can provide valuable experiences to students in their chosen field of study. These commenters further stated that the types of jobs in question actually do provide a service to students, some more directly than others. One commenter felt that work experiences should not necessarily be required to provide direct and personal services to other students in order to assist the student in obtaining future employment in his or her chosen field. The commenter felt the focus should be on work that is beneficial to the student since employers generally seek prospective employees with work experience. One commenter thought that the interpretation and language of the proposed rule went beyond the intent of the statute, which he felt was only to address the solicitation of potential students.

Discussion: Pursuant to the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary has revised the definition of "student services" to allow proprietary institutions to employ students in jobs furnishing student services only when these services are directly related to the work-study student's education. Also, in carrying out the provisions of the amendments to the HEA, the Secretary is amending § 675.21 of the regulations to allow proprietary institutions to employ students to work for the institution off campus, provided the student is employed in "community services" as defined in § 675.2.

Changes: Changed as noted above.

Federal Supplemental Educational Opportunity Grant Program

Section 676.14 Overawards

Comments: Most commenters supported the Secretary's proposal to recover the overpayments from students in cases in which the Federal share of FSEOG overpayment is $25.00 or more. However, they suggested that funds recovered by the Secretary, minus the reasonable fee, be remitted to the institution to assist other financially needy students. Two commenters indicated that a provision should be added to the regulations stating that, if an overpayment occurs that did not result from student error, the student is not held liable and the institution cannot recover the overpayment from the student. A typical example of this circumstance would be if a student reports his resources and needs accurately and, due to the fault of the

institution, the amount of his grant is not recalculated, resulting in an overpayment. Several commenters stated that recovery in such an instance can prove burdensome and unjust to the student already living on a meager income. Four commenters expressed concern over the timeframes required for institutions to notify the student. One commenter stated that requiring a second notification to recover overpayments within a 30-day period is redundant. According to the commenter, the time expenditure and additional mailing costs incurred are not warranted and would prove to be counter-productive to the intent of recovery.

Another commenter would like to see a 120-day period instead of the 90-day limitation. One commenter stated that students generally do not make serious arrangements until the beginning of the next term when they want to return to school. A third commenter stated that the 30-day period is restrictive and unreasonable during some time periods, such as semester breaks when it may be difficult to contact a student. In addition, the student is only permitted a 10-day time period to make repayment arrangements and, if he or she fails to do so, would become ineligible for additional Title IV funds. The commenter suggested that consideration should be given to allow for two reasonable attempts within a 60-day period and allow for a 120-day period for the student to make repayment arrangements. One commenter suggested that the restrictive 30-day period be omitted and the institution should be given the option to submit the minimum $25.00 if all other attempts to collect have been futile. One commenter felt the proposal would restrict flexibility and force some students out of eligibility because of $25.00 overpayment. The commenter stated that the current regulations appear reasonable because they allow the student and institution to work together to resolve the overaward situation without undue hardship on either party.

Several commenters suggested patterning the proposed FSEOG overpayment system more closely after the Federal Pell Grant system, especially in the areas of institutional errors and institutional discretion. According to a commenter, the Federal Pell Grant overpayment system has a "floor" of $100.00 and the commenter felt the $100.00 floor was more appropriate than the $25.00 floor that is being proposed. Another commenter stated that FSEOG overpayments will, as a rule, be much smaller than Federal Pell Grant overpayments; therefore, mandating the referral of FSEOG overpayments to the Department raises the question of cost effectiveness. One commenter did not believe it would be a useful expenditure of scarce institutional resources to have to make reports to the Secretary. Another commenter felt that this proposal would be paper intensive for just $25.00.

Discussion: Pursuant to section 413D of the HEA, the Secretary must allocate funds to each eligible institution for use in each fiscal year. Similarly, an institution may not use funds allocated for a given award year to make FSEOG disbursements to students in any subsequent award year, or to satisfy any other obligation incurred after the end of the designated award year.

In the majority of instances, any funds recovered by the Secretary will not be recovered in the award year that the FSEOG was disbursed to the student. Therefore, those recovered funds cannot be returned to the institution that made the award to use in a subsequent award year. In cases where an institution recovers FSEOG funds from students made in a prior award year, the institution must adjust award expenditures and administrative cost allowances for the year that the award was made. In fact, as a result of a recovery by an institution of a prior year award or grant, the institution is obligated to repay money to the Federal Government. The FISAP is the mechanism by which repayment is reported to the Department.

If, however, an institution is able to recover an overaward in the award year in which the award was disbursed, the institution may keep and reuse that amount.

The Secretary agrees with the commenters that the number of notifications and timeframes during which notification must be sent by an institution to a borrower to recover an overpayment may be counter-productive to the intent of recover. The Secretary, therefore, has eliminated this provision in the final rule.

The Secretary believes that when a student receives the benefit of an increased award amount, the student is obligated to repay that amount regardless of whether the institution is also liable for the overpayment. This requirement is prescribed in § 676.14(d)(1). In cases where the institution is liable for an overpayment because the institution failed to follow the procedures set forth in the regulations, the institution must follow the procedures prescribed in § 674.14(d)(2).

The proposed FSEOG overpayment provisions are closely patterned after the Federal Pell Grant "Recovery of overpayments" provisions found in 34 CFR 690.79 of the Federal Pell Grant Program regulations. The Federal Pell Grant Program regulations do not provide for institutional discretion when an institutional error has caused an overpayment. In addition, the Federal Pell Grant Program regulations do not provide a "floor" of $100.00 as one commenter suggested. If an institution makes an overpayment for which the institution is liable in the Federal Pell Grant Program, regardless of the amount, Federal Pell Grant Program regulations require the institution to restore those funds to its Federal Pell Grant account whether or not it collects from the student.

If an institution makes an overpayment for which it is not liable, the institution must help the Secretary recover the overpayment regardless of the amount. The Secretary believes that the proposed requirements for recovery of FSEOG overpayments are less stringent than those required by the Federal Pell Grant Program, in part because institutions are not required to notify the Secretary regarding overpayments of less than $25.00.

Changes: In response to the comments, the Secretary has amended § 676.14(d)(3) of the regulations by removing the time-frames in which an institution would be required to contact the student and the Secretary following the initial written notification to the student requesting payment in full.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Most of the changes in these final regulations were published for public comment on November 13, 1990 (55 FR 47438–47443). However, some of these changes are needed to conform the regulations to statutory changes made by Public Law 102–325. Public comment would have no effect on the content of these changes. Therefore, the Secretary has determined that publication of a proposed rule for these changes is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for

major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education, Loan programs—education, Student aid reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.003 Federal Work-Study Program; and 84.038 Federal Perkins Loan Program)

Dated: December 15, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

PART 674—[AMENDED]

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

2. The heading of Part 674 "PERKINS LOAN PROGRAM" is revised to read "FEDERAL PERKINS LOAN PROGRAM".

3. Section 674.33 is amended by revising paragraph (c)(2) to read as follows:

§ 674.33 Repayment

* * * * *

(c) * * *

(2) *Low-income individual.* (i) For Federal Perkins loans and Direct loans made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a "low-income individual." The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraph (c)(2)(i) (A) or (B) of this section. The term *low-income individual* means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Income Protection Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family that includes the borrower and any spouse or legal dependents, an individual whose total family income for the preceding calendar year did not exceed 125 percent of the Income Protection Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Income Protection Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a "low-income individual."

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

4. Section 674.47 is amended by revising paragraphs (d), (e), and (g) to read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(d) *Waiver: collection costs.* Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive the percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following collection costs waived under paragraph (d) of this section or not paid by the borrower:

(1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

(2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).

(3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 40 percent of the amount of principal, interest and late charges collected.

(5) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of—

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under § 674.49;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 40 percent of the total amount of judgment obtained on the loan; and

(iv) 40 percent of the total amount recovered from the borrower in any other proceeding.

(6) If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 40 percent of the amount of principal, interest and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

* * * * *

(g) *Write-offs.* (1) An institution may write off an account with a balance of less than $25.00, including outstanding principal, accrued interest, collection costs and late charges.

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

5. Section 674.50 is amended by revising paragraph (a)(2) to read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

(a) * * *

(2) The amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges is $25.00 or greater; and

* * * * *

PART 675—[AMENDED]

1. The authority citation for Part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

2. The heading of Part 675 "COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS" is revised to read "FEDERAL WORK-STUDY PROGRAM AND JOB LOCATION AND DEVELOPMENT PROGRAM".

3. Section 675.2(b) is amended by adding, in alphabetical order, definitions of "Community services" and "Student services" to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Community services: Services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include—

(1) Such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

(2) Work in service opportunities or youth corps as defined in section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in section 124(a) of that Act;

(3) Support to students with disabilities; and

(4) Activities in which a student serves as a mentor for such purposes as—

(i) Tutoring;

(ii) Supporting educational and recreational activities; and

(iii) Counseling, including career counseling.

* * * * *

Student services: Services that are offered to students that are directly related to the work-study student's training or education and that may include, but are not limited to, financial aid, library, peer guidance counseling, and social, health, and tutorial services.

* * * * *

4. Section 675.21(b) is revised to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that—

(1)(i) Are on campus; or

(ii) Are in community service;

(2) Involve the provision of student services as defined in § 675.2;

(3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(4) Do not involve the solicitation of potential students to enroll at the proprietary institution.

PART 676—[AMENDED]

1. The authority citation for Part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

2. The heading of Part 676 "SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM" is revised to read "FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM".

3. Section 676.14 is amended by revising paragraph (d)(3) to read as follows:

§ 676.14 Overawards.

* * * * *

(d) * * *

(3)(i) If the institution makes an overpayment for which it is not liable, it shall promptly attempt to recover the overpayment by sending a written notice to the student requesting payment in full. Failure to make repayment of the overawarded funds renders the student ineligible for further Title IV aid until final resolution of the overpayment.

(ii) If a student objects to the institution's overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted prior to referring the overpayment to the Secretary.

(iii)(A) If an institution fails to collect the overpayment after taking the action required by paragraphs (d)(3)(i) and, if applicable, (ii), of this section, and the Federal share of the overpayment is $25.00 or more, it shall notify the Secretary identifying the Federal share of the overpayment, the student's name, most recent address, telephone number, and other relevant information. After notifying the Secretary under this section, the institution need make no further recovery efforts.

(B) If an institution fails in its attempt to collect the overpayment and the Federal share of the overpayment is less than $25.00, the institution need make no further recovery efforts.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

[FR Doc. 92–30869 Filed 12–18–92; 8:45 am]

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federal register

Monday
December 21, 1992

Part IX

Department of Education

Chapter 1—Migrant Education Coordination Programs for State Educational Agencies; Notices

DEPARTMENT OF EDUCATION

Chapter 1—Migrant Education Coordination Program for State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1992.

SUMMARY: The Secretary amends the notice of final funding priorities for fiscal year (FY) 1992 grant competitions under the Chapter 1—Migrant Education Coordination Program for State Educational Agencies, by adding an additional absolute priority to the list of priorities that may be used in the FY 1992 competition for funds. Under this priority, the Secretary will support projects to expand State efforts to recruit currently migratory children so that more children can be served by the Migrant Education Program (MEP). Funds will be reserved for State educational agencies (SEAs), whose MEP funds are insufficient to support adequate recruitment into the program of currently migratory children throughout their States, to expand their recruitment efforts in coordination with other States. The Secretary also announces a competitive preference and other considerations to direct the use of these funds.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ann Weinheimer, Office of Migrant Education, U.S. Department of Education, room 2149, 400 Maryland Avenue, SW., Washington, DC 20202–6135. Telephone: (202) 401–0744. Deaf and hearing impaired individuals may call (202) 401–1985 or, if unavailable, the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

Authority for the Chapter 1–Migrant Education Coordination Program for SEAs is contained in section 1203 of the Elementary and Secondary Education Act of 1965. Under this program, awards are made to SEAs to improve the interstate and intrastate coordination of educational programs available for migratory students. The statute directs the Secretary to make awards to SEAs in consultation with, and with the approval of, the States.

On February 28, 1991, the Secretary published in the **Federal Register** (56 FR 8610) a notice of eight final funding priorities from which the Secretary could select in conducting competitions for funds appropriated in FY 1991 and FY 1992. For FY 1991, the Secretary awarded grants under two of those priorities—a national project for a system of credit exchange and accrual for secondary students and a migrant stop-over site service center—and, for FY 1992, the Secretary made continuation awards to these grant recipients.

Since publication of the notice of absolute priorities, migrant education officials in many States have asked the Department to determine whether section 1203 funds could be made available to enhance their efforts to recruit currently migratory children (those who have migrated across school district boundaries during the past 12 months). These officials believe that there may be significant numbers of currently migratory children residing in their States who do not benefit from the MEP because the SEAs have inadequate funds for identifying these children and recruiting them into the program. These officials have indicated that the problem is particularly acute in States with relatively small MEP formula allocations.

Currently migratory children are among the Nation's neediest populations, and a more concerted effort is needed to identify and recruit these children. Large numbers of children who could benefit from the supplemental educational services that the MEP offers are never identified in any of the several States in which they reside during the year. Data provided to the Department by the Migrant Student Record Transfer System (MSRTS) also suggest that many other currently migratory children are identified in only one State, even though they have crossed State boundaries.

This priority seeks to help States to provide appropriate supplemental MEP assistance to currently migratory children, thereby helping to ensure that those children reach the higher levels of achievement called for in AMERICA 2000, the President's strategy to help the Nation move itself toward the six National Education Goals. MEP programs for preschool and school-aged children are designed to help migratory children enter school ready to learn (Goal 1), increase their high school graduation rate (Goal 2), and demonstrate competency in challenging subjects such as English, mathematics, science, history, and geography (Goal 3). In addition, MEP programs help young adults attain full literacy, increase their ability to compete in a global economy, and exercise the rights and responsibilities of citizenship (Goal 5).

So that greater numbers of currently migratory children may benefit from the MEP and the assistance it provides in helping the Nation to meet these goals, the Secretary announces this new funding priority. Under this priority, the Secretary will reserve a portion of funds available for the FY 1992 Migrant Education Coordination projects for competitive grants to SEAs whose MEP allocations are inadequate to enable them to identify and recruit all the currently migratory children who move to or pass through their States, and to expand and strengthen the capacity of State recruitment efforts in ways that may yield long-term benefits for the State and, at the same time, promote activities that enhance interstate or intrastate coordination. Publication of this notice of final priority follows discussions at a meeting in December, 1991, of the National Association of State Directors of Migrant Education (NASDME) about the need to find ways to identify and recruit more currently migratory children. At that meeting, NASDME concurred with a proposal to use section 1203 funds to support the kinds of projects described in this final priority.

The Secretary published a notice of proposed priority to include the new final priority for the Migrant Education Coordination Program on June 16, 1992 (57 FR 26832). That notice solicited comments from the public, which have been considered in development of this notice of final priority. Funding of particular projects under this priority will depend upon the availability of funds and the quality of the applications received. The publication of this final priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register.**

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, the Department received comments from four State educational agency officials in three States. The major concerns raised by these officials were about the priority's purpose and usefulness, and about the requirement that awarded funds be used for supplemental identification and

recruitment activities. In addition, several alternative suggestions were offered.

The final priority is an appropriate activity under the Migrant Education Coordination Program and will serve to benefit migratory children who reside both in small and large allocation States that compete successfully for funds by enabling those States to carry out expanded identification and recruitment activities and provide services to newly recruited migratory children. No changes have been made based on the comments received.

A more detailed analysis of the comments received in response to the notice of proposed priority is published as an appendix to this final priority notice.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference under the Migrant Education Coordination Program for SEAs for the following priority. Assuming the availability of funds, the Secretary will reserve funds under section 1203 of the Act for competitive grants to SEAs only for projects that implement this priority.

Absolute Priority

Under this priority, SEAs will compete for grants to cover the costs of supplemental efforts to identify and recruit currently migratory children who are found to be residing in their States during portions of the grant period. Funds will be made available to SEAs whose 1991–92 or 1992–93 MEP project year allocations are insufficient to permit full recruitment of currently migratory children in their States. The Secretary will consider only applications from SEAs that establish the likelihood that a State's proposed activities will address unmet national needs by increasing the number of identified currently migratory children beyond levels now permitted by its MEP allocations.

Aside from recruiting these children and entering data on them into the MSRTS, recipients will undertake activities to enhance the likelihood that currently migratory children found in one locality will subsequently be identified in other localities to which the children migrate, so that MEP services on an interstate or intrastate basis can become more available to these children.

At a minimum, project activities must include—

(1) Development of a plan of operation that promotes the most efficient and effective use of program funds for supplemental activities designed to recruit additional currently migratory children into the MEP under 34 CFR 201.20(a)(3) and 201.30;

(2) Assessment of these children's special educational needs, as required by 34 CFR 201.32 and, where possible, provision of necessary instructional or support services to them; and

(3) Special activities designed to enhance the likelihood that these children will continue to be recruited and served by the MEP as they migrate within the State or to other States. These special activities must include, but need not be limited to—

(a) Advance notification, on the basis of information gathered during the recruitment and any follow-up interviews, to other States and localities of the locations to which the children are expected later to move and their expected dates of arrival;

(b) Communication with those other States and localities to determine whether the children made those moves and were subsequently recruited;

(c) Use of the recruitment interview to determine whether the children's families have migrated previously to the location in which they were identified, and whether they are likely to do so in the future;

(d) Development and distribution of information to parents and guardians of migratory children about the MEP and its parental involvement components, and on how to contact school officials and service agencies in all other locations to which they migrate; and

(e) Recruitment efforts planned for future years, using the SEA's allocation of MEP funds, in those areas of the State in which currently migratory children are found to be likely to return.

SEAs that receive grants will be required to coordinate, to the extent possible, all recruitment and other activities supported by this project with other States to or from which identified children migrate and to seek appropriate assistance from the MEP Coordination Centers, the Chapter 1 Technical Assistance Centers, and the Rural Technical Assistance Centers.

Restrictions on the Use of Project Funds

To ensure that activities funded under this priority are devoted to recruiting migratory children whom an SEA otherwise would not identify, program funds may be used only for recruitment activities that supplement, rather than supplant, resources that the SEA otherwise would expend on the State's recruitment activities. Moreover, since all activities must be designed to promote interstate or intrastate coordination, funds awarded under this competition may not be targeted for identifying or recruiting formerly migratory children.

Competitive Preference and Other Considerations

The Secretary gives a competitive preference under 34 CFR 75.105(c)(2) of up to 15 additional points to applicants that establish, under the selection criterion in 34 CFR 205.31(a)(2) (yielding a maximum of 25 points), the likelihood that their States' "proposed activities address unmet national needs" by increasing the number of identified currently migratory children beyond levels now permitted by their MEP allocations.

Depending on the availability of funds, the Secretary will allocate up to $1.2 million from funds appropriated in FY 1992 only for projects that meet this priority. In keeping with the belief that insufficient recruitment may be particularly severe in States that receive relatively small MEP allocations, the Secretary will award grants from two different applicant pools. One pool will consist of SEAs whose MEP allocations for either the 1991–92 or 1992–93 program years were $500,000 or less. Fourteen States qualify for this pool on this basis. The other applicant pool would be open to all other SEAs. Of the total amount made available to the Secretary, up to two-thirds will be available for awards to the smaller allocation SEAs. The remainder will be available for awards to the larger allocation SEAs. The actual amounts awarded to SEAs in each pool of applicants will depend on both the total amount available to fund activities that support this priority and the number and quality of applications. The Secretary believes that these procedures will permit program funds to be concentrated in States with the most limited means to recruit migratory children, and at the same time, allow SEAs with larger MEP allocations, but with a demonstrable need for additional funds with which to recruit these children, the opportunity to benefit from the program.

Intergovernmental Review:

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early

notification of the Department's specific plans and actions for this program.

APPLICABLE PROGRAM REGULATIONS: 34 CFR part 205

Program Authority: 20 U.S.C. 2783.

Dated: November 24, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.144, Chapter 1—Migrant Education Coordination Program for State Educational Agencies)

Appendix—Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, four State officials from three States submitted comments. An analysis of the comments and of the significant changes, if any, since publication of the notice of proposed priority follows. The comments are grouped into four areas—the purpose of the priority; the usefulness of the priority; why activities supported by the priority must be supplemental to those supported by State Migrant Education Program (MEP) allocations; and suggestions for alternatives to the priority.

Purpose of the Priority

Comment: Three commenters questioned the purpose of the proposed priority. For the most part, these commenters criticized the priority as not addressing the particular problems that States receiving very small MEP allocations have in operating their migrant programs. In this regard, two commenters expressed opinions that the notice of proposed priority inaccurately claimed that the proposal had been approved by the meeting in December, 1991, of the National Association of State Directors on Migrant Education (NASDME), and that NASDME had approved a more general project to address MEP funding inequities faced by small allocation States. In addition, one commenter thought that activities to identify eligible, but previously unidentified, children would probably not increase a State's funding sufficiently to provide meaningful educational services to the newly identified children. Finally, one commenter expressed concern that the proposed priority completely prohibited the use of project funds to recruit formerly migratory children.

Discussion: This priority was discussed publicly with State officials at the 1991 meeting of NASDME. The written proposal that the Office of Migrant Education provided to all State officials at that meeting, and that NASDME overwhelmingly approved, outlined the same project purpose and basic requirements as the proposed priority published in the **Federal Register** on June 16, 1992. The priority is intended to assist States to conduct more comprehensive Statewide identification and recruitment in order to locate and provide services to previously unidentified currently migratory children. The purpose of the priority is not to alleviate the special needs of States with relatively small MEP allocations. That can only be done through a change in the formula for allocating MEP funds found in section 1201 of the Chapter 1 statute. The Secretary has reserved up to two-thirds of the funds available for this priority for States with relatively small allocations in the belief that, because of the costs of required administrative activities and myriad demands placed upon their small MEP budgets, these States may have particular problems finding adequate MEP resources with which to conduct Statewide identification and recruitment activities.

In addition, the priority permits the recruitment of formerly migratory children provided that these children are identified and recruited only in the process of identifying and recruiting currently migratory children. The priority does not permit States to target their identification and recruitment activities on formerly migratory children because doing so would be inconsistent with the purposes of the Migrant Education Coordination Program, which is to promote interstate or intrastate coordination of migrant education programs and projects. There are no interstate or intrastate issues involved with the education of formerly migratory children.

Changes: None.

Usefulness of the Priority

Comment: Two commenters expressed doubts about the usefulness and cost-effectiveness of targeting supplemental Federal funds for additional identification and recruitment in States with small MEP allocations. They argued that the identification and recruitment of few migratory children in those States are due to factors such as small migrant populations, short growing seasons, and poor State leadership, that are beyond the scope of the project. In addition, the commenters expressed the opinion that reserving the majority of funding for States with small MEP allocations would result in projects focused on interstate rather than intrastate migratory children. Finally, one commenter expressed concern that many grantees would be likely to focus their efforts on recruiting children from families employed in less mobile agricultural activities such as food processing and dairy farming.

Discussion: The Secretary agrees that the inability of small allocation States, to date, to identify and recruit more currently migratory children may be due to the factors that the commenters suggests rather than to difficulties associated with the small size of their MEP grants. This is why the Secretary, in evaluating project applications, will consider only those State applications that establish the likelihood that funded activities will increase the number of identified currently migratory children who reside in those States, beyond the level identified with their regular MEP allocations. States that cannot demonstrate a legitimate basis for conducting these activities will not be eligible for awards. However, the Secretary does not believe that any State's agricultural growing season is so short that migratory children who reside for short periods in those States cannot benefit from the availability of needed MEP services.

Moreover, while ineffective State leadership may contribute to inadequate identification and recruitment efforts in certain States, unidentified migratory children still suffer from a lack of access to MEP services. The Secretary does not believe that these children should be denied those services merely because States in which they reside have not been sufficiently aggressive in identifying and recruiting them. To the extent that these project funds can stimulate those States both to recruit and serve more migratory children and to focus more attention on previously unidentified children, the projects will have addressed the intent of the priority. The selection criteria in 34 CFR 205.31 and the competitive preference announced as part of this priority provide the Secretary with an adequate basis to evaluate whether a State's application is well considered and has a sound plan of operation. If the Secretary is not satisfied with the quality of a State's application, the application will not be funded.

The Secretary finds no reason to distinguish in this project between interstate and intrastate migratory children. The two groups of unidentified but eligible migratory children suffer from the same lack of MEP services. Similarly, the Secretary finds no reason to exclude from the project efforts to recruit previously unidentified migratory children whose parents or guardians work in less mobile activities like food processing and dairy farming. If that employment is properly

determined to be temporary or seasonal, and children have moved with family members employed in these industries, the children are migratory and warrant the program's attention.

Changes: None.

Supplemental Nature of Project Funds

Comment: Two commenters raised questions about the requirement that identification and recruitment activities supported with project funds would have to supplement activities supported by the States' MEP allocation. One of the commenters also requested that the final priority include language that would allow a State to borrow from their regular MEP allocation to finance additional identification and recruitment activities, and then reimburse its MEP account for the cost of those additional activities out of a grant awarded under this priority.

Discussion: The purpose of this priority is to provide one-time financial assistance to States that can demonstrate that they can use these funds for a special effort to identify, recruit, and serve significant numbers of previously unidentified migratory children. Accordingly, grants awarded under this priority must be used only to supplement a State's regularly planned identification and recruitment efforts. States that, in the past year, have spent disproportionate amounts of their section 1201 funds on additional one-time identification and recruitment efforts would not be expected to continue to spend those additional sums in developing their overall plans for use of project funds. The Secretary anticipates that potential grantees will fully understand and accept the scope of the priority and expects that, except in situations described in the preceding sentence, they will not diminish their planned section 1201 identification and recruitment activities in anticipation of receiving an award under this priority. Moreover, since the section 1203 funds that will support these projects must be expended for interstate and intrastate coordination activities, they also cannot be used, as the commenter proposed, to replace section 1201 funds that a State had planned to expend to augment its identification and recruitment efforts.

Changes: None.

Alternative Suggestions

Comment: Some commenters suggested several alternatives to the proposed priority. These alternatives included a priority for activities to improve the recruitment of currently migratory intrastate children only, and a priority for establishment of a migrant child identification network that would rely on electronic technology and multi-State staff efforts.

Discussion: The Secretary believes that the priority announced in this notice is preferable to both proposals. The purpose of these grants is to increase and serve as many previously unidentified currently migratory children as possible. As noted in response to a comment on the usefulness of the priority, the Secretary sees no reason to differentiate between unidentified interstate and intrastate migratory children. With regard to the proposal for a multi-State migrant child identification network, the technological aspects of the proposal appear to be partially duplicative of the Migrant Student Record Transfer System (MSRTS), a computerized database that maintains detailed information on identified migrant children nationwide and serves to facilitate the transfer of those children's records from school to school. Other portions of the suggested network would appear to rely upon the collective commitments and efforts of individuals throughout the Nation, and would require further study to determine their efficiency and potential usefulness. While the Secretary welcomes bi-State or multi-State proposals that might advance the goals of this priority more efficiently than would single State proposals, activities to support this priority should not be delayed while that study occurs.

Changes: None.

[FR Doc. 92-30898 Filed 12-18-92; 8:45 am]
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[CFDA No.: 84.144A-3]

Chapter 1—Migrant Education Coordination Program for State Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: Provide financial assistance for projects designed to improve interstate and intrastate coordination of migrant education program activities among State educational agencies and local educational agencies. This program seeks to help States to provide appropriate supplemental assistance to currently migratory children, thereby helping to ensure that those children reach the higher levels of achievement called for in AMERICA 2000, the President's strategy to help the Nation move itself toward the six National Education Goals.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: February 12, 1993.

Deadline for Intergovernmental Review: April 13, 1993.

Applications Available: December 21, 1992.

Available Funds: $1,200,000.

Estimated Range of Awards: $60,000–$250,000.

Estimated Average Size of Awards: $85,000.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 15 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR part 205.

Priority: The absolute priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Applications or Information Contact: Dr. Ann Weinheimer, U.S. Department of Education, 400 Maryland Avenue, SW., room 2149, FOB #6, Washington, DC 20202–6135. Telephone (202) 401–0744. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2783

Dated: December 14, 1992.

John T. MacDonald,

Assistant Secretary Elementary and Secondary Education.

[FR Doc. 92-30899 Filed 12-18-92; 8:45 am]
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CFR CHECKLIST

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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Rules and Regulations

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Tuesday, December 22, 1992

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432, and 540

RIN 3206–AE76

Performance Management and Recognition System

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the Performance Management and Recognition System (PMRS) reflecting changes authorized by the "Performance Management and Recognition System Amendments of 1991," Public Law 102–22, dated March 28, 1991, which extends the PMRS to September 30, 1993. This Act also made two changes that authorized agencies to use work objectives in addition to, or in lieu of, critical elements and standards and deleted the required 2 percent of basic pay performance award for PMRS employees rated at level 5. In issuing this regulation, OPM emphasizes that agency adoption of these two changes is optional. However, if agencies choose to implement either or both of these changes, their revised performance management plans must be submitted to OPM for approval.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Rachel Steed (202) 606–2720, concerning questions about the changes in 5 CFR parts 430 and 540; and Sharon C. Snellings (202) 606–1259, concerning questions about the changes in 5 CFR part 432.

SUPPLEMENTARY INFORMATION: On June 1, 1992, at 57 FR 23043, OPM published interim regulations with a 30-day comment period that (1) extended the PMRS to September 30, 1993; (2) allowed agencies to use statements of work objectives for an employee's position to evaluate job performance instead of, or in addition to, critical elements and standards; and (3) deleted the mandatory performance award for employees rated at level 5. Consistent with the deletion of the required 2 percent performance award for a level 5 performance rating and in an effort to provide agencies with greater flexibility, the interim regulations deleted the requirement that stipulates higher awards for higher performance ratings with respect to employees in the same grade and pool.

During the comment period, which ended July 1, 1992, OPM received nine comments: Four from Federal agencies and five from a group of individual employees from one Federal agency. Two Federal agencies asked for clarification regarding several aspects of work objectives. One agency expressed concern over removing the requirement that higher rated employees in the same grade receive higher awards, while two other agencies expressed their support for the elimination of this requirement. The individuals responding expressed concern about the performance management system at their agency and, for the most part, did not address the changes published in the interim regulations.

An editorial change is being made at § 540.109 (b)(1)(i) to correct an erroneously designated paragraph published in the interim regulations.

Following are the identification of the major issues raised, a summary of comments, and a discussion of OPM rationale for any changes being made.

1. The use of work objectives in addition to, or in lieu of, critical elements and standards.

Summary of Comments: Two agencies asked about the definition of all work objectives as being critical in the same way as critical elements. One agency expressed concern over the additional regulatory language that requires agencies to describe work objectives in two parts: Performance requirements and performance objectives. One agency also suggested that additional references to work objectives be included in several sections of Part 540 for consistency.

Discussion: The questions regarding whether all work objectives must be critical in the same way that critical elements are caused OPM to re-examine this issue. This question stems from the legislative language which states that an agency performance appraisal system may utilize a written statement of the work objectives of the employee's position to establish performance requirements related to the position and to evaluate job performance against such requirements. Such statement of work objectives may be used in lieu of, or in addition to, critical elements and performance standards, thus implying that agencies may not establish non-critical work objectives. However, this language does not preclude an agency from establishing non-critical work objectives. Just as they may establish non-critical elements and performance standards, even though non-critical elements and performance standards are not specifically provided for in law, so may they establish non-critical work objectives. The interim regulations do not make clear that agencies may establish both critical and non-critical work objectives. Therefore, we are providing in the final regulations that agencies may do so.

One agency noted that although the interim regulations state how work objectives are the same as critical elements and standards, they do not state how they differ. By allowing agencies to use work objectives in addition to, or in lieu of, critical elements and standards to describe work, Congress clearly intended agencies to have increased flexibility in the methods used to describe work. Therefore, OPM believes it inappropriate to restrict this flexibility by adding additional regulatory language. The same agency also noted that Congress may have intended to simplify the process of developing performance standards by allowing agencies to use work objectives describing the Fully Successful level without necessarily describing the performance requirements at other levels. For clarification, agencies currently have the flexibility to describe performance only at the Fully Successful level for all critical and non-critical elements (5 CFR 430.405(e)).

In response to one agency's suggestion that additional references to work objectives be included in part 540, we have adopted this suggestion and have added the appropriate references.

One agency objected to being bound by regulatory language in the interim

regulations that require work objectives to be composed of two identifiable parts—*performance requirements and performance objectives*. However, OPM believes that the regulatory language tracks the legislative language which states work objectives must establish what the major duties are (performance requirements) as well as the expectations management will establish to evaluate job performance of those duties (performance objectives). Consequently, OPM believes that these regulations should clearly provide that work objectives are composed of two identifiable parts—what the performance requirements (duties and responsibilities) of an employee's job are and what the performance objectives (expectations) are that will be used to evaluate performance.

Change: Sections 430.404, 430.405, 430.406, 430.407, 432.103, 432.105, 432.107, and 540.102 have been revised to include references to both critical and non-critical work objectives. Sections 540.108 (a)(1) and (a)(1)(i), which were not included in the interim regulations, have been revised to include additional references to work objectives.

2. Deletion of the requirement that stipulates higher awards for higher performance ratings with respect to employees in the same grade and pool.

Summary of Comments: One agency expressed concern with removing the requirement that agencies must pay higher awards for higher performance ratings to employees in the same grade and pool. They felt that the requirement should be left in place to ensure that the system continues to reward higher ratings with larger awards in keeping with the philosophy of pay-for-performance. Another agency commented that they support the elimination of the requirement that higher awards be paid for higher performance ratings because they believe this change will provide more flexibility to adjust awards based on management needs. Several individual commentors also felt that employees with higher performance ratings should receive higher awards.

Discussion: OPM supports the policy that higher performance should normally receive higher awards and expects agencies to follow this course in most cases. As stated in the supplementary information accompanying the interim regulations, "* * * we expect that agencies will, in most cases, continue to give higher awards to employees in the same grade level receiving higher performance ratings." Many agencies have indicated they will continue the policy of awarding higher performance with higher awards but, at the same time, have commended the additional flexibility this change provides. In addition, this policy is consistent with the performance award policy for non-PMRS employees, whereby any employee rated Fully Successful and above is eligible for a performance award, with no requirement that higher ratings require larger awards.

Change: No change.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

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Decorations, medals, awards; Government employees.

5 CFR Part 432

Administrative practice and procedure; Government employees.

5 CFR Part 540

Government employees; Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the interim rule amending 5 CFR parts 430, 432, and 540 published on June 1, 1992, at 57 FR 23043 is adopted as final with the following changes:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43, 45, 53, and 54.

2. In § 430.404, the definitions of appraisal, appraisal system, performance, performance plan, and summary rating are revised, the definition of work objective is removed, and the new definitions of critical work objective and non-critical work objectives are added to read as follows:

§ 430.404 Definitions.

* * * * *

Appraisal means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s) and/or performance objective(s).

* * * * *

Appraisal system means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C., and this subpart which provides for identification of critical and non-critical elements, and/or critical and non-critical work objectives; establishment of performance standards; communication of elements, standards, and/or work objectives to employees; establishment of methods and procedures to appraise performance against established standards and/or performance objectives; and appropriate use of appraisal information in making personnel decisions.

* * * * *

Critical work objective means a component of a position consisting of one or more performance requirements of such importance that unacceptable performance on the work objective would result in unacceptable performance in the position. Work objectives are written statements that contain one or more performance requirements of a PMRS employee's position and one or more performance objectives used to evaluate job performance against such requirements.

* * * * *

Non-critical work objective means a component of an employee's position that does not meet the definition of a critical work objective, but is of sufficient importance to warrant written appraisal. Non-critical work objectives are written statements that contain one or more performance requirements of a PMRS employee's position and one or more performance objectives used to evaluate job performance against such requirements. Non-critical work objectives are optional and may be used at agency discretion.

Performance means an employee's accomplishment of assigned work as specified in the critical and non-critical elements and/or critical and non-critical work objectives of the employee's position.

* * * * *

Performance plan means the aggregation of all of an employee's written critical elements, non-critical elements, performance standards, and/or critical and non-critical work objectives.

* * * * *

Summary rating means the written record of the appraisal of each critical and non-critical element, and/or critical and non-critical work objective and the assignment of a summary rating level (as specified in § 430.405(h) of this subpart).

3. In § 430.405, paragraphs (b), (e), (g), (i) introductory text, (i)(1), and (j)(1) are revised to read as follows:

§ 430.405 Agency performance appraisal systems.

* * * * *

(b) Under each appraisal system, critical elements and/or critical work objectives must be included, and non-critical elements and/or non-critical work objectives may be included in individual performance plans. An employee must be appraised on each critical element, non-critical element, critical work objective, and non-critical work objective in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element/work objective. A summary rating level, as specified in § 430.405(h), must be assigned.

* * * * *

(e) Each appraisal system shall provide for a minimum of three rating levels for each critical element or critical work objective. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. Performance objectives must be written at the "Fully Successful" level for each performance requirement of each critical and non-critical work objective and may be written at other levels. The absence of a written standard or performance objective at a given rating level should not preclude the assignment of a rating at that level.

* * * * *

(g) Each appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and/or critical work objectives and, at agency discretion, appraisals of non-critical elements and/or non-critical work objectives. If appraisals of non-critical elements and/or non-critical work objectives are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements and critical work objectives than to critical elements and non-critical work objectives.

* * * * *

(i) Each appraisal system shall provide for a performance improvement plan (PIP) for each employee whose performance has been determined to be below fully successful on one or more critical elements or critical work objectives. The PIP must:

(1) Notify the employee of the critical element(s) and/or critical work objective(s) in which he or she is performing below the fully successful level;

* * * * *

(j) * * *

(l) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee who fails to attain at least the fully successful level, but only after affording the employee a reasonable period to improve performance to at least the fully successful level on the critical element(s) and/or critical work objective(s) determined to be below fully successful, as required in 5 U.S.C. 4302a(b)(6).

* * * * *

4. Section 430.406 is amended by revising paragraphs (c) and (d) (1) to read as follows:

§ 430.406 Appraisal of performance.

* * * * *

(c) *Appraisal of each element/work objective.* An employee must be appraised on each critical element, non-critical element, critical work objective, and non-critical work objective in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element or work objective.

(d) * * *

(1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards and/or critical work objectives to the employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements and/or critical work objectives must be prepared for these details and temporary promotions and must be considered in deriving an employee's next rating of record.

* * * * *

5. Section 430.407 is amended by revising paragraph (b) to read as follows:

§ 430.407 Ratings.

* * * * *

(b) *Appraisal of each critical element, non-critical element, critical work objective, and non-critical work objective.* Employees must be appraised on each critical element, non-critical element, critical work objective, and non-critical work objective of the performance plan(s) on which the employee has had a chance to perform.

* * * * *

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

6. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4302a, 4303, and 4305

7. Section 432.103 is amended as follows:

a. Paragraph (j) is removed;

b. Paragraphs (c) through (i) are redesignated (d) through (j) respectively;

c. Paragraphs (a), newly redesignated (e), (f), and (j), are revised; and

d. A new paragraph (c) is added.

§ 432.103 Definitions.

* * * * *

(a) *Acceptable performance* means performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above "unacceptable" in the critical element(s) at issue where the employee is not covered by the Performance Management and Recognition System (PMRS). For those employees covered by the PMRS, acceptable performance is performance determined to be at the fully successful level or above in the critical element(s) and/or critical work objective(s) at issue.

* * * * *

(c) *Critical work objective* means a component of a position consisting of one or more performance requirements of such importance that unacceptable performance on the work objective would result in unacceptable performance in the position. Work objectives are written statements that contain one or more performance requirements of a PMRS employee's position and one or more performance objectives used to evaluate job performance against such requirements.

* * * * *

(e) *Opportunity to demonstrate acceptable performance* means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements or in one or more critical work objectives to demonstrate acceptable performance in the critical element(s) and/or critical work objective(s) at issue.

(f) *Performance improvement plan* means the plan agencies are required to provide to a PMRS employee whose performance in one or more critical elements or in one or more critical work objectives has been determined to be below the fully successful level. As part of the plan, agencies shall notify the employee of the critical element(s) and/or critical work objective(s) in which he or she is performing below the fully

successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate.

* * * *

(j) *Unacceptable performance* means performance of an employee that fails to meet established performance standards in one or more critical elements or fails to meet the performance objectives in one or more critical work objectives of such employee's position.

8. Section 432.105 is revised to read as follows:

§ 432.105 Addressing below fully successful performance by PMRS employees.

At any time during the performance appraisal cycle that a PMRS employee's performance is determined to be below fully successful in one or more critical elements or in one or more critical work objectives, the agency shall afford the employee an opportunity to improve through a performance improvement plan. As part of the plan, the agency shall notify the employee of the critical element(s) and/or critical work objective(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate. The agency should also inform the employee that, unless his or her performance in the critical element(s) and/or critical work objective(s) improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed.

9. In § 432.107, paragraphs (a)(1), (a)(2), and (a)(4)(i)(A), are revised to read as follows:

§ 432.107 Proposing and taking action based on performance below the fully successful level for PMRS employees.

(a) * * *

(1) Once an employee has been afforded an opportunity to improve performance to the fully successful level through a performance improvement plan pursuant to § 432.105, an agency may propose a reduction in grade or removal action if the employee's performance during or following the performance improvement plan is below fully successful in one or more critical elements or one or more critical work objectives for which the employee was afforded an opportunity to improve through a performance improvement plan.

(2) If an employee has performed at the fully successful level for 1 year from the beginning of a performance improvement plan in the critical element(s) and/or critical work objective(s) for which the employee was afforded a performance improvement plan and the employee's performance again is determined to be below fully successful, the agency shall afford the employee an additional performance improvement plan before determining whether to propose a reduction in grade or removal under this part.

* * * * *

(4) * * *

(i) *Advance notice.* (A) The agency shall afford the employee a 30-day advance notice of the proposed action that identifies both the specific instances of below fully successful performance by the employee on which the proposed action is based and the critical element(s) and/or critical work objective(s) of the employee's position involved in each instance of below fully successful performance.

* * * * *

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

10. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. chapters 43 and 54.

11. In § 540.102, the definitions of rating and summary rating, are revised:

§ 540.102 Definitions.

* * * * *

Rating (See *Summary rating*).

* * * * *

Summary rating means the written record of the appraisal of each critical and non-critical element, and/or critical and non-critical work objective and the assignment of a summary rating level (as specified in § 430.405(h) of this chapter).

12. In § 540.108, paragraphs (a)(1) and (a)(1)(i) are revised to read as follows:

§ 540.108 Special provisions for pay administration.

(a)(1) This paragraph applies when an employee cannot be rated for the current appraisal period under elements and standards and/or work objectives established under 5 U.S.C. 4302a, under the following circumstances:

(i) An employee who is not under elements and standards and/or work objectives, established under 5 U.S.C. 4302a, for the agency's minimum appraisal period, except as provided in § 540.107 (d) and (e) of this part; or

* * * * *

13. Section 540.109 is amended by removing the two current paragraphs designated as (b)(1)(i) and adding a new paragraph (b)(1)(i) to read as follows:

§ 540.109 Performance awards.

* * * * *

(b)(1) * * *

(i) In accordance with 5 U.S.C. chapter 54, each agency is required to pay a minimum of 1.15 percent of the estimated aggregate amount of PMRS employees' basic pay for each fiscal year during which this section is in effect for performance awards.

* * * * *

[FR Doc. 92–30908 Filed 12–21–92; 8:45 am]
BILLING CODE 6325–01–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0776]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is modifying its risk-based capital guidelines for state member banks and bank holding companies to include the European Bank for Reconstruction and Development (EBRD), the International Finance Corporation (IFC), and the Nordic Investment Bank (NIB) in the list of named multilateral lending institutions that are eligible for a 20 percent risk weight. This modification would conform the Board's risk-based capital guidelines more closely to interpretive guidance adopted by the other G-10 countries that are signatories to the Basle Accord.

EFFECTIVE DATE: The final rule is effective as of December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Norah Barger, Manager, Policy Development (202/452-2402), Ali Emran, Financial Analyst (202/452-2208), Division of Banking Supervision and Regulation; and Brian E. J. Lam, Attorney (202/452-2067), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544) Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Under the risk-based capital framework established by the Basle Accord, claims on, and claims guaranteed by, multilateral lending institutions and regional development banks in which G-10 countries are shareholding members may be accorded, at national discretion, a 20 percent risk weight. Like the Basle Accord, the Board's risk-based capital guidelines specify five multilateral lending institutions and regional development banks[1] that are eligible for the 20 percent risk weight. The guidelines further state that other multilateral lending institutions and regional development banks may be accorded a 20 percent risk weight if the U.S. government is a shareholder or contributing member.

On September 16, 1992, the Board proposed clarifying that bank holding companies and state member banks may assign a 20 percent risk weight to claims on, or guaranteed by, the EBRD, the IFC, or the NIB. The U.S. is a contributing shareholder of the EBRD, but this organization was established after the original publication of the capital adequacy guidelines. Since the IFC is a subsidiary of the World Bank, an organization that the guidelines specifically names as an institution eligible for the 20 percent risk weight, it implicitly is included in the 20 percent risk category. Although the U.S. is neither a shareholder nor a contributing member of the NIB, the Basle Committee on Banking Supervision has interpreted the criteria in the Basle Accord for assigning a multilateral lending institution to the 20 percent risk category to mean that any country may include the NIB in this preferential risk category since Sweden, a G-10 country, is a shareholder in the NIB. Thus, adding the NIB to the list of named multilateral lending institutions eligible for a 20 percent risk weight would serve to conform the Board's risk-based capital guidelines more closely to the interpretative guidance adopted by the other G-10 countries that are signatories to the Basle Accord.

The proposed modifications to the risk-based capital guidelines would have the effect of also including in the 20 percent risk category portions of claims collateralized by securities issued by the EBRD, IFC, and NIB.

The Board's proposal on multilateral lending institutions took the form of an interim rule that was effective immediately. The comment period ended October 23, 1992. The Board received no public comments and, thus, is now issuing in final form an amendment to the risk-based capital guidelines to include in the 20 percent category claims on and claims guaranteed by the EBRD, IFC, and NIB as well as portions of claims collateralized by securities issued by those multilateral lending institutions.

Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe adoption of this proposal would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In this regard, the proposed revision would reduce certain regulatory burdens on bank holding companies as it would reduce the capital charge on certain transactions. In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844 (b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board is amending 12 CFR parts 208 and 225 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 is revised to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321-338, 248(a), 248(c), 461, 481-486, 601 and 611, respectively); sections 4, 13(j), and 18(o) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), and 1828(o), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907-910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906-3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101-1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331-3351).

2. Appendix A to part 208 is amended by revising the second sentence of the second paragraph in III.C.2 to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines For State Member Banks: Risk-Based Measure

* * * * *

III. * * *

C. * * *

2. * * * In addition, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. government-sponsored[32] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Interamerican Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, the European Bank for Reconstruction and Development, the Nordic Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member.* * *

* * * * *

[1] International Bank for Reconstruction and Development (World Bank), Interamerican Development Bank, Asian Development Bank, African Development Bank, and the European Investment Bank.

[32] For this purpose, U.S. government-sponsored agencies are defined as agencies originally established or chartered by the Federal government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA). Claims on U.S. government-sponsored agencies include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that Bank.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j) (13), 1818(b), 1828(o), 18311, 1843(c) (8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, 3331-3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)).

2. Appendix A to part 225 is amended by revising the second sentence of the second paragraph in III.C.2 to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

2. * * * In addition, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. government-sponsored[38] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Interamerican Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, the European Bank for Reconstruction and Development, the Nordic Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member. * * *

* * * * *

Board of Governors of the Federal Reserve System, December 16, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-30982 Filed 12-21-92; 8:45 am]

BILLING CODE 6210-01-F

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

Reserves

AGENCY: National Credit Union Administration (NCUA).

[38] For this purpose, U.S. government-sponsored agencies are defined as agencies originally established or chartered by the Federal government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA). Claims on U.S. government-sponsored agencies include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that Bank.

ACTION: Final rule.

SUMMARY: The NCUA is amending its regulations to modify the valuation of the allowance for loan losses to better conform with generally accepted accounting principles (GAAP). This change will require credit unions to provide an allowance for loan losses sufficient to cover specifically identified loans, as well as estimated losses inherent in the loan portfolio, such as loans and pools of loans for which losses are probable, but not identifiable on a specific loan-by-loan basis.

EFFECTIVE DATE: January 21, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Accounting Officer, Office of Examination and Insurance (202) 682–9640, or Michael McKenna, Staff Attorney, Office of General Counsel (202) 682–9630, at the above address.

SUPPLEMENTARY INFORMATION:

Discussion

Section 116 of the FCU Act (12 U.S.C. 1762) sets forth reserve requirements for federal credit unions. Section 702.3 of the NCUA Rules and Regulations addresses full and fair disclosure concerning reserves. Section 741.9(a)(1) of the Rules and Regulations requires that federally insured state-chartered credit unions comply with statutory reserves (Section 116 of the Federal Credit Union Act) and with full and fair disclosure requirements of the Rules and Regulations (§ 702.3). Therefore this final amendment applies to all federally insured credit unions.

Section 116(a) of the Federal Credit Union Act requires that federal credit unions set aside a certain percentage of gross income at the end of each accounting period as a Regular Reserve. According to § 702.2(a) of the Rules and Regulations, the totals of the Regular Reserve, the Allowance for Loan Losses account and the Allowance for Investment Losses are combined for determining the applicable percentage of gross income to be transferred to the Regular Reserve.

Historically, credit unions have established a valuation for the allowance for loan losses based strictly on nonperforming or delinquent loans. This practice, however, is inconsistent with generally accepted accounting principles (GAAP). The NCUA Board believes that greater emphasis needed to be placed upon complying with GAAP through estimating probable losses inherent in the total loan portfolio when calculating a valuation of the allowance for loan losses. This modified valuation would present a more accurate reflection of the expected loan losses.

In light of this concern, in September 1991, NCUA issued *Letter to Credit Unions No. 126*, and in July 1992, issued *Accounting Bulletin No. 92–1*, to provide interim guidance on how examiners would test the adequacy of a credit union's allowance for loan losses. On June 23, 1992, the NCUA Board issued a proposed amendment (57 F.R. 29050, 6/30/92) to § 702.3(c)(2) to require credit unions to provide an allowance for loan losses sufficient to cover specifically identified loans, as well as estimated losses inherent in the loan portfolio, such as loans and pools of loans for which losses are probable, but not identifiable on a specific loan-by-loan basis.

Presently, § 702.3(c)(2) reads in part that the:

> Valuation allowance established fairly presents the value of loans and anticipated losses resulting from (i) uncollectable loans and notes and contracts receivable including, where applicable, any uncollectable accrued interest receivable thereon, (ii) assets acquired in liquidation of loans, and (iii) loans purchased from other credit unions.

NCUA proposed three changes to the above-cited provisions. First, the phrase "the value of loans and anticipated losses" was proposed to read "the value of loans and probable losses" since the term "probable" is the term used and understood under GAAP. Second, the three sub-points setting forth what the allowance must encompass are changed to read simply, "the value of loans and probable losses for all categories of loans." The change shifts the emphasis from nonperforming or classified loans only to categories of loans within the total portfolio, classified or unclassified. The third change provides additional guidance as to the necessary components of the allowance to meet the "all categories of loans" standard, i.e., estimates of probable losses consistent with guidance adopted from the American Institute of Certified Public Accountants (AICPA) "*Exposure Draft to the Audit and Accounting Guide, Audits of Credit Unions*"

Comments

Sixty-one comment letters were received. Thirty-six comments were received from federal credit unions, thirteen comments from state-charted credit unions, seven comments from state credit union leagues, and two comments from national credit union trade associations. Comments were also received from a state regulatory agency, an accounting firm, and a national accounting trade association.

In general, the commenters disapproved of the proposed amendment. Although many commenters stated that they objected to the amendment, the substance of their remarks indicated that they were really objecting to the examination testing methodology set forth in Letter to Credit Unions No. 126, and more recently, Accounting Bulletin No. 92–1. Eight commenters approved of the amendment as proposed although two of these commenters did have concerns about the examination testing portion of Accounting Bulletin 92–1 which would implement the proposed amendment. Fifty-three commenters objected to the amendment in part or in its entirety.

Sixteen commenters believe the amendment is overly conservative because it provides for the double counting of anticipated losses on delinquent and nonperforming loans. The Board disagrees. The amendment, which adopts GAAP language, does not provide for double counting. It simply requires estimating probable losses in the total loan portfolio. In a similar vein, nine commenters object to the amendment because they believe it will grossly overstate the allowance for loan losses (ALL) account. The Board believes, as does the accounting standards-setters who also commented on the amendment, if properly applied, the amendment should not overstate the allowance.

Nine commenters believe the amendment will have a detrimental effect on small credit unions. Some of these commenters believe small credit unions will have to spend a substantial amount of time setting up the listed loan classifications, as well as modifying their loan review timelines to conform to the amendment. Again, the Board disagrees. The amendment allows great latitude to large and small credit unions alike to develop their own methodology for estimating probable losses in the total loan portfolio.

Another commenter believes that credit unions most likely to require significant increases in the ALL account may not have significant bad loans in relation to their total portfolio. The Board takes exception to this argument. If a credit union does not have significant bad loans in relation to their total portfolio, the assessment of probable loss will reflect this and, correspondingly, the ALL will also.

Two commenters believe the amendment would result in a decrease in dividends. The Board recognizes the amendment may affect a credit union's ability to pay dividends, but only to the extent that a credit union does not have current or accumulated earnings to cover declared dividends. Again, GAAP requires the periodic recognition of estimated "bad debts" expense relative to loans and this does effect net income. Still, NCUA believes GAAP reporting must be the priority.

Three commenters believe the amendment takes authority away from credit union management and the board of directors. Again, the Board believes the amendment, as written, allows a great deal of latitude to large and small credit unions alike to develop their own methodology for estimating probable losses in the total loan portfolio under the umbrella of GAAP. It does not set forth a required methodology for estimating the allowance.

Nine commenters believe the amendment lacks specificity and will subject credit unions to the whims and interpretations of the examiner. This is not the Board's intent. Examiners have been instructed to first, examine the credit union's methodology for estimating the allowance, apply a test check, and only take exception if there are material differences. If a licensed independent accountant has rendered an opinion, examiners are encouraged not to take exception, except in rare circumstances. One commenter recommends that the credit union's historical trends in delinquency ratios, charge-offs and recoveries be considered when there is a difference between the credit union's valuation and that of the examiner. The Board intends that the examiner would consider these factors in their evaluation.

Transition Issues

Five commenters suggested a reasonable transition period for credit unions to bring their reserves into compliance. One of these commenters suggests credit unions make partial transfers to the ALL account until an acceptable balance is attained. Another commenter suggests that credit unions should be allowed to make a one-time accounting adjustment to their reserve account. Another commenter requests that credit unions required to increase the ALL due to the initial application of this amendment be given the option of charging the initial increase against retained earnings. One commenter recommends that credit unions be allowed to make transfers for up to 3 years after the effective date of the amendment to level out any year with unusually large charge-offs, as well as to fine-tune the valuation process. One commenter suggests that NCUA find a way to increase the ALL account without requiring a quarterly review of the total loan portfolio. Again, the Board will look to GAAP and encourage credit unions to do the same. However, the Board has instructed examiners to be lenient in the initial periods of application, i.e., to consider the affects of this NCUA change. Examiners have been instructed to be reasonable.

Proposal in Relation to GAAP

One commenter was concerned about the "pools of loans" wording in proposed § 702.3(c)(2)(ii). The commenter believes that this wording implies that a credit union would have to perform as many calculations of pools as it has loan classifications. The commenter believes that this would not only be time consuming, but that it would be nearly impossible to develop historic loss ratios. The commenter states that if these pools and losses on the pools have not been tracked in the past, an accurate loss ratio would be difficult to determine. One commenter objects to the inclusion of commitments to lend or letters of credit as a component of the valuation estimate in proposed § 702(c)(2)(iii). This commenter believe the valuation should be based on the balance of the loan portfolio without consideration of the aggregate lines of credit that can be accessed.

One commenter believes the proposal exceeds GAAP requirements and suggests that instead credit unions should use an individual classification of delinquent loans and pools of loans for possible losses. This commenter believes that this would be adequate under GAAP. Another commenter recommends that NCUA withdraw this proposed amendment and instead require credit unions to conform to GAAP, to conduct an annual audit by a licensed independent accountant, and to obtain an opinion on the credit union's financial statements.

The language used in the regulation has been adopted from the AICPA. The Board can not agree, therefore, that the amendment exceeds GAAP requirements. The "pools of loans" language is very general and allows credit unions flexibility in determining how to pool loans, develop trending information, assess risk, estimate probable loss, etc.—in other words, develop their own methodology within the framework of GAAP. And GAAP requires the inclusion of commitments to lend and letters of credit in probable loss estimates. The Board is not prepared, at this time, to require credit unions to obtain an opinion audit because such a requirement would be overly burdensome for many credit unions.

One commenter believes if credit unions are required to adjust the

valuation account based upon end-of-period balances and prior to distribution of dividends, a major change in the data processing software and processing schedules would be required. The Board does not agree. This does not represent a change from current practice. Another commenter believes the amendment would force credit unions to delay the posting of dividends to the beginning of the next period. To avoid this result, the commenter recommends that the phrase "prior to the distribution or posting of any dividend to the accounts of members" be deleted in the final amendment. Again, the Board is not swayed—under GAAP estimated bad debts must be expensed before the determination of earnings available for the payment of dividends, thus the amendment's wording. Another commenter foresees unnecessary work and calculations in converting to the requirements of the proposal. The Board believes this is an overstatement. GAAP reporting must be the priority.

Examination Testing of the ALL

The balance of the comments received referred specifically to a related, but different topic—the examination approach used by NCUA examiners to test the adequacy of the credit union's allowance, as initially set forth in Letter to Credit Unions No. 126 and as incorporated in Accounting Bulletin 92–1. While we welcome these comments and accept that they are valuable for our consideration in possibly amending our ALL examination testing approach, the comments really do not relate to the reserve regulation itself, or to the advisability or inadvisability of adopting the regulation. We have not specifically addressed those comments here but the Board intends to ensure consideration is given to these comments in NCUA deliberations leading to the setting of/revision to, examination policies and procedures.

Additionally, the wording of the final amendment has been changed slightly to reflect recent changes in the AICPA's proposed wording in the *Exposure Draft to the Industry Audit and Accounting Guide, "Audits of Credit Unions."* The intent and meaning of the amendment remains unchanged as a result.

Paperwork Reduction Act

The amendment does not change the paperwork requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets).

The NCUA Board has determined that the amendment is necessary to meet existing requirements for full and fair disclosure although it could significantly impact some small credit unions.

Of the items required to be contained in the final regulatory flexibility analysis by 5 U.S.C. 604(a), the first ("a succinct statement of the need for, and the objectives of, the rule") and the second ("a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues and a statement of any changes made in the proposed rule of such comments") are found elsewhere in the supplementary information.

The modified definition will be applicable to all federally insured credit unions regardless of size. Approximately 3,059 small credit unions could be affected by this amendment. An exemption for small credit unions from this definition would provide for an inaccurate reflection of the true financial condition of small credit unions. While the generally accepted accounting principles (GAAP) governing the establishment of an allowance for loan losses have remained constant, as a result of the savings and loan and banking industry crises, there has grown in accounting practice a greater emphasis on the allowance for loan losses representing inherent losses in the entire portfolio. This amendment must be applied to all federally insured credit unions regardless of size, because it ensures that the allowance for loan losses will be within the framework established by GAAP and, therefore, within the requirements of full and fair disclosure.

The only alternative to the amendment is to retain the present method of valuing the allowance for loan losses. This alternative is unacceptable considering the shifting emphasis in accounting practice. No other method, including the current method of valuation, is within the GAAP framework or meets the complete requirements for full and fair disclosure.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interest. Section 702.3 already applies to federally insured state-chartered credit unions. The amendment will affect the way these credit unions account for loan losses. The fact that the change will bring credit unions closer to GAAP ameliorates any minimal effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements, Reserves.

By the National Credit Union Administration Board on December 15, 1992.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA to amends 12 CFR part 702 follows:

PART 702—RESERVES

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1762 and 1766.

2. Section 702.3(c)(2) is revised to read as follows:

§ 702.3 Full and fair disclosure required.

* * * * *

(c) * * *

(2) As a minimum, adjustments to the valuation allowance for loan losses shall be made prior to the distribution or posting of any dividend to the accounts of members so that the valuation allowance established fairly presents the value of loans and probable losses for all categories of loans. The valuation allowance must encompass:

(i) Specifically identified doubtful or troubled loans;

(ii) Pools of classified loans;

(iii) Pools of loans (e.g., consumer, credit card, etc.); and

(iv) A general portion for all other loans.

* * * * *

[FR Doc. 92–30924 Filed 12–21–92; 8:45 am]

BILLING CODE 7535–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS92–4]

Appraisal Subcommittee; Appraisal Regulation; Freedom of Information Act Implementation

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Final rule.

SUMMARY: The Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council ("FFIEC") today announced the adoption of 12 CFR part 1102, subpart

D ("subpart" or "subpart D"), implementing the ASC's separate procedures pertaining to compliance with the Freedom of Information Act ("FOIA").

EFFECTIVE DATE: December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634–6520, Appraisal Subcommittee, 2100 Pennsylvania Avenue NW., suite 200, Washington, DC 20037.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On August 9, 1989, Congress adopted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [1] ("FIRREA"), including section 1102 [2] of Title XI, which established the ASC and placed it within the FFIEC. The ASC consists of representatives appointed by the heads of the Federal Financial Institutions Regulatory Agencies ("regulatory agencies") [3] and the Department of Housing and Urban Development. Congress intended Title XI of FIRREA and the ASC, the regulatory agencies and the Resolution Trust Corporation ("RTC") (collectively, "Agencies") to protect federal financial and public policy interests [4] in real estate-related financial transactions [5] requiring the services of an appraiser.[6]

The ASC has several statutory duties under Title XI. First, it must monitor the appraisal regulations adopted by the Agencies. Those regulations set out appraisal standards for federally related transactions [7] and define those federally related transactions requiring the services of a State certified or State licensed appraiser. Second, the ASC must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. Third, the ASC must monitor the certification and licensing programs for real estate appraisers in each State, territory, commonwealth, and the District of Columbia (collectively "States") [8] and must review the State's compliance with the requirements of title XI. It also is authorized by title XI to take action against non-complying States.[9] And lastly, each State with an appraiser certifying and licensing agency is responsible for transmitting to the ASC a roster of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions, along with an annual registry fee, and the ASC must maintain a national registry of these appraisers.[10]

II. Statutory Authority

FOIA [11] generally requires each Federal agency to make available to the public information regarding its organization and operation and rules of procedure and all substantive rules and interpretations of general applicability and statements of general policy.[12]

In addition, each agency, in accordance with published rules, must "make available for public inspection and copying—(A) final opinions * * * as well as orders, made in the adjudication of cases; (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; and (C) administrative staff manuals and instructions to staff that affect a member of the public. * * *"[13] Certain documents and portions thereof, however, can be withheld from disclosure under one or more statutory exemptions set out in FOIA.[14]

Even though the ASC is within the FFIEC, the ASC is separately subject to FOIA as an "agency" of the Federal Government. In 5 U.S.C. 552(e), an "agency" is defined, in pertinent part, as "any * * * establishment in the executive branch of the Government * * *, or any independent regulatory agency." This definition supplements the definition of "agency" in 5 U.S.C. 551(1), which includes "each authority of the Government of the United States, whether or not it is within or subject to review by another agency * * *, includ[ing] any * * * establishment in the executive branch of the Government * * *, or any independent regulatory agency." There is no doubt of the ASC's status, especially because the ASC is funded independently from the FFIEC as an appropriated entity of the Federal Government, has its own facilities and staff and has its own unique statutory mission and purpose under Federal law.

III. Description of the Subpart

In general, the ASC has determined to adopt by incorporation by reference the FFIEC's FOIA regulations set out in 12 CFR 1101.4 and 1101.5. These regulations were initially adopted by the FFIEC in 1980 and were amended by the FFIEC in 1988.[15] On both occasions, the FFIEC's FOIA regulations were adopted after full exposure to public comment. The ASC is not incorporating by reference 12 CFR 1101.1, 1101.2 and 1101.3, which pertain respectively to the FFIEC's regulations' scope and purpose, authority and functions and organization and methods of operation. Instead, in compliance with 5 U.S.C. 552(a), the ASC is adopting 12 CFR 1102.300, 1102.301, 1102.302 and 1102.303, which are specifically tailored to the ASC.

The FFIEC's FOIA regulations which are being incorporated are unremarkable and provide the expected features of FOIA compliance. For example, 12 CFR 1101.4(a), which is incorporated by reference in new 12 CFR 1102.304(a), implements the general rule of document availability to the public in 5 U.S.C. 552 (a)(1) and (a)(2), and 12 CFR 1101.4(b), which is incorporated by reference in new 12 CFR 1102.304(a), implements FOIA's:

(1) Exemptions from general availability;

(2) Procedures for requesting and obtaining copies of documents and appealing initial adverse FOIA decisions; and

(3) Fee schedule for FOIA services.

New § 1102.304(a) also incorporates by reference 12 CFR 1101.5, which is entitled "Testimony and production of

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[1] Pub. L. 101–73, 103 Stat. 511 (1989), as amended by Pub. L. 102–233, 105 Stat. 1761 (1991), Pub. L. 102–242, 105 Stat. 2236 (1991), Pub. L. 102–485, 106 Stat. 2771 (1992), and Pub. L. 102–550, 106 Stat. 3672 (1992).

[2] 12 U.S.C. 3310.

[3] The regulatory agencies are the Board of Governors of the Federal Reserve System ("FRS"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA"). *See* section 1122(6) of title XI, 12 U.S.C. 3350(6).

[4] Title XI's general purpose is "to provide that Federal financial and public policy interests * * * will be protected by requiring that [certain] real estate appraisals are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." Section 1101 of title XI, 12 U.S.C. 3331.

[5] *See* section 1121(5) of Title XI, 12 U.S.C. 3350(5), for the definition of "real estate-related financial transaction."

[6] The agencies have adopted appraisal regulations that, among other things, clarify the phrase "requires the services of an appraiser." *See* 12 CFR part 34 (OCC); part 225, subpart G (FRS); part 323 (FDIC); part 564 (OTS); part 722 (NCUA); and part 1608 (1992) (RTC).

[7] *See* section 1121(4) of Title XI, 12 U.S.C. 3350(4), which defines a "federally related transaction."

[8] The ASC is required to "monitor State appraiser certifying and licensing agencies for the purpose of determining whether the * * * agency's policies, practices, and procedures are consistent with [Title XI]." Section 1118(a) of title XI, 12 U.S.C. 3347(a)(1990). *See also*, section 1103(a)(1) of title XI, 12 U.S.C. 3332(a)(1).

[9] *See* section 1118 of title XI, 12 U.S.C. 3347.

[10] Sections 1103(a)(3) and 1109(a) of title XI, 12 U.S.C. 3332(a)(1) and 3338(a), respectively.

[11] 5 U.S.C. 552.

[12] 5 U.S.C. 552(a)(1).

[13] 5 U.S.C. 552(a)(2).

[14] *See* 5 U.S.C. 552(b).

[15] *See* 45 FR 46794 (July 11, 1980), as amended at 53 FR 7341 (March 8, 1988).

documents in response to subpoena, order, etc." This section generally provides that only persons with written authorization of the ASC: (1) Can testify, in court or otherwise (except before Congress in official matters), as a result of activities on behalf of the agency; or (2) can provide documents in compliance with judicial process. Persons not authorized to testify or produce documents must appear in court and respectfully state that he or she is unable to comply further with the subpoena or order by reason of this provision.

New § 1102.304(b) generally contains conforming, non-substantive changes designed to tailor 12 CFR 1101.4 and 1101.5, as incorporated by reference into subpart D of part 1102, to the ASC's separate administration and organizational structure. The only arguably substantive amendment to the FFIEC's rules, as incorporated into new § 1102.304(b), is a reduction of the per page copying fee from $.25 to $.15. The ASC believes that this $.15 fee will be sufficient to recover its direct per page copying costs.

IV. Adoption Without Public Comment and Immediate Effectiveness

The ASC is adopting subpart D to provide the public with its disclosure rights under FOIA, as required by FOIA, with as little delay as possible. In that regard, the ASC has determined that good cause exists for the immediate effectiveness of subpart D without notice and public procedure ordinarily required by 5 U.S.C. 553 because such notice and public procedure and the usual 30-day delay of effectiveness is impracticable, unnecessary, or contrary to the public interest. By adopting subpart D and making it effective immediately, the ASC will put in place definitive ways for the public to obtain information from the ASC, an agency of the U.S. Government, as contemplated by FOIA. Moreover, the ASC believes that notice and public procedure is unnecessary because new subpart D's significant portions and features are identical to those in 12 CFR 1101.4 and 1101.5, which, as noted above, have been fully exposed to notice and public procedure by the FFIEC, of which the ASC is a part.

V. Conclusion

The ASC is adopting subpart D of part 1102 to implement FOIA without public comment, and subpart D is immediately effective upon publication of this release in the **Federal Register.**

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980,[16] forms, reporting and recordkeeping requirements included in 12 CFR part 1102, subpart D, were submitted for review and approval to the Office of Management and Budget for review and approval on October 6, 1992.[17] OMB approved subpart D on December 3, 1992, through December 31, 1995, and assigned it control number 3139–0006. Subpart D will fully implement FOIA at the ASC. The estimated number of respondents is 11, each submitting one response per year, with an estimated average reporting burden of .33 hour per response and an estimated annual reporting burden of 3.67 hours.

VII. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the ASC certifies that part 1102, subpart D, is not expected to have a significant economic impact on a substantial number of small entities. The subpart implements FOIA, which provides a general right to the public to obtain copies of certain records of a Federal agency. FOIA does not address business or corporate entities. Accordingly, a regulatory flexibility analysis is not required.

VIII. Executive Order 12291 Statement

The ASC has determined that subpart D does not constitute a "major rule" within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this subpart:

(1) Would not have an annual effect on the economy of $100 million or more;

(2) Would not result in a major increase in the cost of financial institution operations or governmental supervision; and

(3) Would not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity or innovation, within the meaning of the Executive Order.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

Text of the Rule

Chapter XI, title 12, part 1102 of the Code of Federal Regulations is amended as set forth below:

[16] 44 U.S.C. 35.

[17] 57 FR 46855 (October 13, 1992).

1. New subpart D is added to read as follows:

PART 1102—APPRAISAL REGULATION

Subpart D—Description of Office, Procedures, Public Information

Sec.

1102.300 Authority, scope and purpose.
1102.301 Definitions.
1102.302 ASC authority and functions.
1102.303 Organization and methods of operation.
1102.304 General requirements, exemptions, procedures and other matters.

Subpart D—Description of Office, Procedures, Public Information

Authority: 12 U.S.C. 552.

§ 1102.300 Authority, scope and purpose.

This subpart implements the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, with respect to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and establishes related information disclosure procedures and fees.

§ 1102.301 Definitions.

(a) *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) *FFIEC* means the Federal Financial Institutions Examination Council.

§ 1102.302 ASC authority and functions.

(a) *Authority.* The ASC was established on August 9, 1989, pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("FIRREA"), 12 U.S.C. 3331 and 3310 through 3351. Title XI is intended "to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." 12 U.S.C. 3331.

(b) *Functions.* The ASC's statutory functions are generally set out in 12 U.S.C. 3332. In summary, the ASC must:

(1) Monitor the requirements established by the States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility;

(2) Monitor the requirements of the Federal financial institutions regulatory agency and Resolution Trust

Corporation with respect to appraisal standards for federally related transactions and determinations as to which federally related transactions require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) Monitor and review the practices, procedures, activities and organizational structure of the Appraisal Foundation; and

(4) Maintain a national registry of State certified and licensed appraisers eligible to perform appraisals in federally related transactions.

§ 1102.303 Organization and methods of operation.

(a) *Statutory and other guidelines.* Statutory requirements relating to the ASC's organization are stated in 12 U.S.C. 3310, 3333 and 3334. The ASC has adopted and published Rules of Operation guiding its administration, meetings and procedures. These Rules of Operation were published at 56 FR 28561 (June 21, 1991) and 56 FR 33451 (July 22, 1991).

(b) *ASC members and staff.* The ASC is composed of six members, each being designated by the head of their respective agencies: the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Department of Housing and Urban Development. Administrative support and substantive program, policy and legal guidance for ASC activities are provided by a small, full-time, professional staff supervised by the Executive Director, Associate Director for Administration, Associate Director for Policy and Programs and the General Counsel.

(c) *FFIEC.* Title XI placed the ASC within FFIEC as a separate, appropriated agency of the United States Government with specific statutory responsibilities under Federal law.

(d) *ASC Address.* ASC offices are located at 2100 Pennsylvania Avenue NW., suite 200, Washington, DC 20037.

§ 1102.304 General requirements, exemptions, procedures and other matters.

(a) *In general.* The ASC, as part of the FFIEC, has determined that the FFIEC's regulations at 12 CFR 1101.4 and 1101.5 pertaining to the implementation of FOIA will guide the ASC's implementation of, and compliance with, FOIA. Therefore, the ASC is incorporating by reference into this subpart the FFIEC's regulations at 12 CFR 1101.4 and 1101.5, subject to the following conforming changes.

(b) *Exceptions.* Because the ASC is an appropriated U.S. Government agency with specific statutory responsibilities, the FFIEC's regulations at 12 CFR 1101.4 and 1101.5, as incorporated by reference into this subpart, are amended as follows:

(1) All references to the term "Council" in 12 CFR 1101.4 and 1101.5 shall be deleted, and the term "ASC" shall be inserted;

(2) All references to the term "Executive Secretary" in 12 CFR 1101.4 and 1101.5 shall be deleted, and the term "Executive Director" shall be inserted;

(3) All references to "§ 1101.3(e)" in 12 CFR 1101.4 (a) and (b)(3) (i) and (iii) shall be deleted, and new references to "§ 1102.303(d)" shall be inserted; and

(4) The reference to "$.25" in 12 CFR 1101.4(b)(5)(ii)(C)(1) shall be deleted and "$.15" shall be inserted.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: December 14, 1992.

Fred D. Finke,

Chairman.

[FR Doc. 92-30726 Filed 12-21-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Federal Aviation Administration

Federal Highway Administration

Federal Transit Administration

National Highway Traffic Safety Administration

Maritime Administration

Coast Guard

Research and Special Programs Administration

14 CFR Parts 61, 91, 121, 149, 153, 154, 199, 228, 235, 270, 292, 310a, 320, 326, 384, and 387

23 CFR Parts 1, 12, 17, 140, 470, 490, 642, 650, 655, 661, 666, 770, 920 and 922

33 CFR Parts 24, 105

46 CFR Parts 154a, 237, 250, 262, 278, 279, 292, 294, 310, 316, 318, 319, 320, 321, 322, 323, 333, and 334

49 CFR Parts 81, 101, 527, 571, 590, 603, 623, 635 and 670

[Docket 48146; Notice 92-28]

RIN No. 2105-AB88

Removal of Obsolete and Redundant Regulations

AGENCY: Office of the Secretary, Federal Aviation Administration, Federal Highway Administration, Federal Transit Administration, National Highway Traffic Safety Administration, Maritime Administration, Unites States Coast Guard, and Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: In connection with the President's Regulatory Moratorium and Review, the Department of Transportation has reviewed all its existing regulations. This review identified numerous regulations that are obsolete, redundant, or can be reissued as non-regulatory guidance. This document removes these rules from the Code of Federal Regulations.

DATES: This final rule is effective on December 22, 1992. Petitions for reconsideration of the final rule must be received by January 21, 1993.

ADDRESSES: Petitions for reconsideration should be sent to Docket Clerk, Att: Docket No. 48146, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. For

the convenience of persons who wish to review the docket, it is requested that petitions be sent in duplicate. Persons who wish to receive acknowledgment of their petitions should enclose a stamped, self-addressed postcard with their petition. The docket clerk will date-stamp the postcard and return it to the sender. Petitions may be reviewed at the above address from 9 a.m. through 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590, 202–366–9306.

SUPPLEMENTARY INFORMATION: The Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 20, 1992 (57 FR 21362) in which it proposed these removals, with a 45-day comment period that closed on July 6, 1992. The Department received nineteen comments in response to the NPRM.

Background

On January 28, 1992, President Bush directed all Federal agencies to review their existing regulations, in order to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. The Department of Transportation has done so. In the course of this review, the Department identified various regulations that were obsolete (e.g., referred to organizations, programs, or requirements that no longer exist), redundant (e.g., duplicate other DOT regulations), or that can be deleted and reissued as non-regulatory guidance. By removing these unnecessary regulations, the Department substantially reduces the size of its portion of the Code of Federal Regulations, and thus reduces the administrative burdens on the public.

Discussion of Comments

Virtually all of the comments received by the Department concerned proposed deletions of Federal Highway Administration (FHWA) regulations. Several commenters, including the U.S. Department of Labor (DOL), opposed removal of the Transportation of Migrant Workers regulations contained in 49 CFR part 398. They commented that the standards in part 398 are important to the welfare of tens of thousand of migrant farm workers. DOL enforces the Migrant and Seasonal Agricultural Protection Act, and has promulgated regulations concerning the transportation of migrant farm workers. However, the Department agrees with the commenters that not all of the standards in 49 CFR part 398 are contained in the DOL regulations and that the Department's continued guidance in this area is necessary to ensure the maximum protection for migrant workers. Therefore, the Department will not remove part 398.

The FHWA proposal that attracted the greatest number of comments was the proposed removal of a number of rules from the Federal Motor Carrier Safety (FMCS) regulations. Many of the rules listed in the NPRM for removal are related to a rulemaking currently under development concerning a proposed change to the jurisdictional weight threshold for a "commercial motor vehicle" (CMV) from a gross vehicle weight rating (GVWR) of 10,001 pounds or more to a GVWR of 26,001 pounds or more. If this definition were adopted, many of the current rules, which were proposed for deletion in the NPRM, would be obsolete, redundant, or otherwise unnecessary. The draft regulation redefining CMV is not yet ready for publication, however. Since that rulemaking provides the factual and legal context for most of the proposed FHWA deletions from Title 49 listed in the NPRM, the Department is not now taking final action with respect to all of the FHWA proposed deletions from Title 49. FHWA will address the comments concerning specific FMCS provisions as necessary in the planned rule redefining CMV. The Department may delete the FMCS rules in question simultaneous with or following the issuance of a formal CMV rule.

In addition to commenting on the FHWA proposals, one commenter expressed concern about the proposed deletion of the Federal Transit Administration (FTA) rule in 49 CFR part 603 regarding claims under the Federal Claims Collection Act. The FTA rule duplicates the Department's regulation on the same topic at 48 CFR part 89, which became effective in early 1989. Accordingly, the FTA rule is redundant and is removed. Two commenters objected to the proposed removal of 49 CFR part 590, the Motor Vehicle Emission Inspections rule and 49 CFR 571.100, the Controls and Displays rule. The National Highway Traffic Safety Administration intended part 590 to be used by State diagnostic inspection demonstration projects. Since the demonstration program has now ended, this part currently has no effect and therefore is removed. The Controls and Displays rule also is removed because it is obsolete. Prior to July 1, 1989, vehicle manufacturers had the option to comply with the controls and displays requirements contained in either 49 CFR 571.100 or 49 CFR 571.101. Effective July 1, 1989, however, manufacturers are required to comply with the controls and display requirements contained in 49 CFR 597.101. Thus, § 571.100 no longer has any relevance.

One commenter expressed concern about the proposed removal of 49 CFR part 101, the Research and Special Programs Administration's Cargo Security Advisory Standards. As the commenter noted, these standards are guidelines and not binding regulatory requirements. Publication of these guidelines in the Code of Federal Regulations gives the impression that they are binding, which could burden businesses that are attempting to comply with the standards. Accordingly, the Department is removing this section from the regulations.

Several commenters noted that the NPRM did not explain the precise reason for the proposed removal of each regulation listed in the NPRM. As the Department explained in the NPRM and above, only those regulations that are obsolete, redundant or can be published in a non-regulatory format are being deleted. Since the Department has accommodated all of the comments filed by the public in response to the NPRM, it has decided to proceed with the removal of those rules which were not the subject of public comment based on the general rationale provided above.

The following is a list, by DOT operating administration, of the regulations the Department hereby removes:

Office of the Secretary

Reinvestment of gains derived from the sale or other disposition of flight equipment (14 CFR part 235)
Criteria for designating eligible EAS points (14 CFR part 270)
Classification and exemption of Alaskan air carriers (14 CFR part 292)
Cross-reference to Privacy Act for Aviation Proceedings. (14 CFR part 310a)
Japanese charter authorization proceedings (14 CFR part 320)
Procedures for bumping subsidized air carriers from eligible points (14 CFR part 326)
CAB rules of internal organization (14 CFR part 384)
CAB operations during emergencies (14 CFR part 387)
Recommendations to the President under section 801 of the Federal Aviation Act (49 CFR part 81)

Federal Aviation Administration

SFAR 21, which provides sanctions and recordkeeping requirements for persons operating to Southern Rhodesia
SFAR 44–5 and 44–6, which responded to the air traffic controllers' strike in 1981
SFAR 47, which prescribes rules for special authorization to fly certain noise-restricted aircraft
SFAR 57, which barred the transport of the remains of Ferdinand Marcos from the United States to the Philippines
SFAR 61, which formerly restricted certain cargo flights between the United States and Iraq or Kuwait
SFAR 34, which established procedures to apply for compensation for required security measures in foreign air transportation
Conversion to New System of Flight Instructor Ratings (14 CFR 61.201(b)–(g))
Parachute Lofts (14 CFR part 149)
Acquisition of U.S. Land for Public Airports (14 CFR part 153)
Acquisition of U.S. land for public airports under the Airport and Airway Development Act of 1970 (14 CFR part 154)
Aircraft Loan Guarantee Program (14 CFR part 199)

Federal Highway Administration

General Management (23 CFR 1.4, 1.11(d), 1.31, 1.34, 1.37, and 1.38)
Single Audit Requirements (23 CFR part 12)
Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies (23 CFR part 17)
Reimbursement Vouchers (23 CFR part 140, subpart A)
Priority Primary Route Selection (23 CFR part 470, subpart C)
Special Programs; Economic Growth Center Development Highways (23 CFR part 490)
Secondary Road Plan (23 CFR part 642)
Water Supply and Sewage Treatment at Safety Rest Areas (23 CFR part 650, subpart E)
Concrete Bridge Decks (23 CFR part 650, subpart F)
Topics (23 CFR part 655, subpart A)
Motorist Aid Systems (23 CFR part 655, subpart G)
Great River Road (23 CFR part 661)
Defense Bridges and Critical Highway Facilities (23 CFR part 666)
Air Quality, Conformity, and Priority Procedures (23 CFR part 770)
Pavement Marking Demonstration Program (23 CFR part 920)
Safer Off-System Roads Program (23 CFR part 922)

National Highway Traffic Safety Administration

Reduction of Passenger Automobile Average Fuel Economy Standards (49 CFR part 527)
Controls and displays (49 CFR part 571.100)
Motor Vehicle Emission Inspections (49 CFR part 590)

Maritime Administration

Repairs to Vessels Under Bareboat Charter (46 CFR part 237)
Participation By Vessels Built With Construction-Differential Subsidy in the Carriage of Domestic Trade (46 CFR part 250)
Minimum-wage, Minimum Manning and Reasonable Working Conditions (46 CFR part 262)
Employment in the Foreign Trade of Liquid and Dry Bulk Vessels Constructed With the Aid of Construction-Differential Subsidy (CDS) (46 CFR part 278)
Operating-Differential Subsidy for Bulk Cargo Vessels in United States Foreign Commerce with Great Lakes, Connecting Rivers, St. Lawrence River, and Gulf of St. Lawrence (46 CFR part 279)
Procedure to be followed by Operators in the Rendition to the Maritime Administration of Annual and Final Accountings (46 CFR part 292)
Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Carrying Bulk Raw and Processed Agricultural Commodities from the United States to the Union of Soviet Socialist Republics (46 CFR part 294)
Regulations for the Government of the U.S. Maritime Service (46 CFR part 310, subpart B)
Application Procedures for Agents (46 CFR part 316)
Compensation Payable to Agents, General Agents and Berth Agents (46 CFR part 318)
Duties of Berth Agents and General Agents (46 CFR part 319)
Certificate of Ownership and Operation for General Agency Vessels (46 CFR part 320)
Authority of General Agents to Provide for American Merchant Marine Library Service (46 CFR part 321)
Applicability of Regulations of Former Maritime Commission and War Shipping Administration to National Shipping Authority and Allowability of Expenses Under Service Agreements with NSA (46 CFR part 322)
Maximum Brokerage Commission Applicable to NSA Vessels (46 CFR part 323)
Authority and Responsibility of General Agents to Decommission Tankers to be Withdrawn from Operation and Placed in the Reserve Fleet (46 CFP part 333)
Radar Observer Certificates, Ship's Safety and Use of Radar (46 CFR part 334)

United States Coast Guard

Nondiscrimination in Federally Assisted Programs of the United States Coast Guard—Effectuation of Title VI of the Civil Rights Act of 1964. (33 CFR part 24)
North Atlantic Passenger Routes. (33 CFR part 105)
Special Interim Regulations for Issuance of Letters of Compliance to Barges and Existing Liquefied Gas Vessels. (46 CFR part 154a)

Research and Special Programs Administration

Embargoes on Property (14 CFR part 228)
Cargo Security Advisory Standards (49 CFR part 101)

Federal Transit Administration

Federal Claims Collection Act (49 CFR part 603)
Joint FTA/FHWA Air Quality Requirements (49 CFR part 623)
Section 5 Requirements (49 CFR part 635)
Transfer Commuter Services (49 CFR part 670)

Regulatory Analyses and Notices

Effective Date

Because this final rule eliminates unnecessary rules that could be confusing to the public, the Department has determined that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days after publication.

This final rule is not major under the terms of Executive Order 12291 or significant under the Department of Transportation's Regulatory Policies and Procedures. It does not impose costs on anyone, and further regulatory evaluation is not needed. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. Because there are no costs involved and the benefits are not significant, the Department certifies that the final rule will not have a significant economic effect on a substantial number of small entities.

issued this 23rd day of Nov., 1992, at Washington DC.

Andrew H. Card, Jr.,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation is taking the following actions:

1. The authority for the final action is 49 CFR part 322.

1a. The authority for 14 CFR part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449; Jan 12, 1983).

1b. The authority for 23 CFR part 1 continues to read as follows:

Authority: 23 U.S.C. 315; 49 CFR part 1.48(b.)

1c. The authority for 23 CFR part 140 continues to read as follows:

Authority: 23 U.S.C. 101(e), 114(a), 120, 121, 122 and 315; and 49 CFR 1.48(b).

1d. The authority for 23 CFR part 470A continues to read as follows:

Authority: 23 U.S.C. 103(b)(2), (103(c)(2), 103(d)(2), 103(e)(1), (103(e)(3), 103(f), and 315; 49 CFR 1.48(b)(2) and (b)(35), unless otherwise noted.

1e. The authority for 23 CFR part 470C continues to read as follows:

Authority: 23 U.S.C. 147 and 315; 49 CFR 1.48(b)(28) and (35).

1f. The authority for 23 CFR part 650 continues to read as follows:

Authority: 23 U.S.C.; 109(a) and (h), 144, 151, 351, 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988-Floodplan Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); sec. 161 of Public Law 97–424, 96 Stat. 2097, 3135; Public Law 97–134, 95 Stat. 1699; and 33 U.S.C. 401, 491 et seq., 511 et seq.

1g. The authority for 23 CFR part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a) 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 48 CFR 1.48(b).

1h. The authority for 46 CFR part 310 is revised to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

1. The authority for 49 CFR part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

TITLE 14

PARTS 61, 91, 121—[AMENDED]

PARTS 149, 153, 154, 199, 228, 235, 270, 292, 310a, 320, 326, 384, 387 AND SUBCHAPTER O—[REMOVED]

2. In title 14 of the Code of Federal Regulations, remove parts 149, 153, 154, 199 and subchapter O of chapter I, 228, 235, 270, 292, 310a, 320, 326, 384, and 387; paragraphs (b) through (g) and the designation for paragraph (a) in § 61.201; and Special Federal Aviation Regulations 21, 44–5, 44–6, 47, 57, and 61 in 14 CFR part 91 and Special Federal Aviation Regulation 34 in 14 CFR part 121.

TITLE 23

PARTS 12, 17, 490, 642, 661, 666, 770, 920, 922—[REMOVED]

PARTS 1, 140, 470, 650, 655—[AMENDED]

3. In title 23 of the Code of Federal Regulations, remove and reserve subpart A of part 140, subpart C of part 470, subparts E and F of part 650, subparts A and G of part 655, and remove parts 12, 17, 490, 642, 661, 666, 770, 920, and 922.

§§ 1.4, 1.31, 1.34, 1.37, 1.38 [Removed and Reserved]

§ 1.11 [Amended]

4. In title 23 of the Code of Federal Regulations, in part 1, remove §§ 1.4, 1.31, 1.34, 1.37, and 1.38, and remove and reserve § 1.11(d).

TITLE 33

PARTS 24, 105—[REMOVED]

5. In title 33 of the Code of Federal Regulations, remove parts 24 and 105 and remove and reserve subchapter H of chapter I.

TITLE 46

PARTS 154a, 237, 250, 262, 278, 279, 292, 294, 316, 318, 319, 320, 321, 322, 323, 333, 334—[REMOVED]

PART 310—[AMENDED]

6. In title 46 of the Code of Federal Regulations, remove parts 154a, 237, 250, 262, 278, 279, 292, 294, 316, 318, 319, 320, 321, 322, 323, 333, and 334, and remove and reserve subpart B of part 310.

TITLE 49

PARTS 81, 101, 527, 590, 603, 623, 635, 670—[REMOVED]

PART 571—[AMENDED]

CHAPTER I, SUBCHAPTER A—[REMOVED AND RESERVED]

7. In title 49 of the Code of Federal Regulations, remove parts 81, 101, 527, 590, 603, 623, 635, and 670 and remove and reserve Subchapter A of Chapter I.

§ 571.100 [Removed]

8. In title 49 of the Code of Federal Regulations, part 571, remove § 571.100.

[FR Doc. 92–29990 Filed 12–21–92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AEA–02]

Alteration of Transition Area; College Park, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** on August 25, 1992. The final rule modifies the 700 foot Transition Area established at College Park, MD, due to the development of a new instrument approach procedure to College Park Airport, College Park, MD. This correction updates the coordinates and altitude used for the base of the Transition Area in the description.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 92–20346, Airspace Docket No. 92–AEA–02, published on August 25, 1992 (57 FR 38436), revised the 700 foot Transition Area at College Park, MD. The coordinates used in the description were based upon old geographic data (NAD 27 instead of NAD 83) and the base of the Transition Area was incorrectly stated. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on August 25, 1992 (Federal Register Document 92–20346) and the description in FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§71.1 [Corrected]

1. On page 38436, column 3, and page 38437, column 1, the description for the College Park, MD, Control Zone is corrected to read as follows:

Section 71.181 Designation of Transition Areas

* * * * *

AEA MD TA College Park, MD [Revised]
College Park Airport, MD (lat. 38°58'50" N., long. 76°55'21" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the College Park Airport and within 2 miles either side of a 303° (T) 313° (M) bearing extending from a point located at lat. 38°58'56" N., long. 76°55'28" W., extending northwest from said point and the 6.4-mile radius to 9.1 miles northwest of said point.

* * * * *

Issued in Jamaica, New York, on December 8, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–30998 Filed 12–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–AEA–03]

Alteration of Control Zone and Transition Area; Du Bois, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Control Zone and 700 foot Transition Area established at Du Bois, PA. This action is due to unsuccessful flight checks of a relocated Nondirectional Radio Beacon (NDB) and reflects the actual amount of controlled airspace needed by the FAA to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

History

On September 19, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the control zone and 700 foot transition area located at Du Bois, PA, due to unsuccessful flight checks of a relocated NDB (57 FR 44713). The proposed action was to modify the controlled airspace needed for aircraft operations conducted under instrument flight rules.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received on the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Control Zones and Transition Areas are published in §§ 71.171 and 71.181, respectively, of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Control Zone and Transition Area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Control Zone and 700 foot Transition Area located at Du Bois, PA, due to unsuccessful flight checks of a relocated NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

AEA PA CZ Du Bois, PA [Revised]
Du Bois-Jefferson County Airport, Du Bois, PA (lat. 41°10'42" N., long. 78°53'55" W.)
Clarion, PA, VORTAC (lat. 41°08'47" N., long. 79°27'29" W.)
Du Bois ILS northeast course OM (lat. 41°13'11" N., long. 78°48'08" W.)

That airspace extending upward from the surface within a 4-mile radius of the Du Bois-Jefferson County Airport and within 2.6 miles each side of the Du Bois-Jefferson County Airport ILS localizer northeast course, extending from the 4-mile radius to 7.4 miles northeast of the OM and within 2.2 miles each side of the Clarion, PA, VORTAC 086° (T) 092° (M) radial, extending from the 4-mile radius zone to 20 miles east of the VORTAC and within 2.2 miles each side of a 242° (T) 248° (M) bearing from a point at lat. 41°10'30" N., long. 78°54'29" W., extending from said point to 4.8 miles southwest of said point.

* * * * *

Section 71.181 Designation of Transition Areas

* * * * *

AEA PA TA Du Bois, PA [Revised]
Du Bois-Jefferson County Airport, Du Bois, PA (lat. 41°10'42" N., long. 78°53'55" W.)
Du Bois ILS localizer northeast course (lat. 41°10'28" N., long. 78°54'31" W.)
Du Bois ILS northeast course OM (lat. 41°13'11" N., long. 78°48'08" W.)

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Du Bois-Jefferson County Airport and within 3.1 miles either side of the Du Bois ILS localizer northeast course extending from the 8.5-mile radius to 10 miles northeast of the OM.

* * * * *

Issued in Jamaica, New York, on December 8, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-30999 Filed 12-21-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASW-25]

Revision of Transition Area; Gruver, TX; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action amends the legal description of the Transition Area located at Gruver, TX, by converting the mileages from statute to nautical and by updating the Gruver Municipal Airport coordinates from North American Datum 27 to North American Datum 83.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76 193-0530, telephone (817) 624-5535.

SUPPLEMENTARY INFORMATION:

History

Since the final rule establishing a transition area at Gruver, Texas, was published in the **Federal Register** on August 25, 1992 (57 FR 38437), the criteria used in the development of transition areas have changed. The new criteria became effective on October 15, 1992. As a result of these changes, mileage will be expressed in terms of nautical miles rather than statute miles. This action amends the legal description of the Gruver, Texas, transition area in this final rule to conform to this new standard. Additionally, the Gruver Municipal Airport coordinates in the proposal were North American Datum 27. This action revises these coordinates to North American Datum 83.

Correction of Publication

Accordingly, the publication on August 25, 1992, of the final rule that was the subject of Federal Register Docket 92-19112, is corrected as follows:

§71.1 [Corrected]

1. On page 38437, in the second column, the paragraph beneath the heading "Gruver, TX [Revised]" is corrected to read as follows:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Gruver Municipal Airport (latitude 36°14'01" N., longitude 101°25'56" W.), excluding that airspace within the Spearman, TX, transition area.

Issued in Fort Worth, TX, on December 9, 1992.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 92-31000 Filed 12-21-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASO-3]

Alteration of VOR Federal Airways and Revocation of V-515; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of six Very High Frequency Omnidirectional Range (VOR) Federal airways and revokes one VOR Federal airway located in the vicinity of Nashville, TN. The Nashville VOR has been relocated north of its former location and the airway structure in the Nashville area has been realigned to reduce congestion within the terminal area and to decrease the en route traffic in the arrival and departure areas. This amendment also reflects the action taken in Airspace Docket Nos. 92-ASO-6 and 92-ASO-7, which changes the names of the Knoxville, TN, VOR to the Volunteer, TN, VOR and the Chattanooga, TN, VOR to the Choo Choo, GA, VOR, respectively.

EFFECTIVE DATE: 0901 u.t.c., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On September 2, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of six VOR Federal airways and to revoke one airway located in the vicinity of Nashville, TN (57 FR 40151). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, the removal of the airspace exclusion in V-136 concerning the Gamecock A Military Operations Area (MOA), and the inclusion of the name changes to the Chattanooga, TN, VOR to the Choo Choo, GA, VOR and the Knoxville, TN, VOR to the Volunteer, TN, VOR, this amendment is the same as that proposed in the notice. Domestic VOR Federal Airways are published in § 71.123 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of six VOR Federal airways and revokes one airway located in the vicinity of Nashville, TN. The Nashville VOR has been relocated north of its former location. The airway structure in the Nashville area will be realigned to reduce congestion within the terminal area and to decrease the en route traffic in the arrival and departure areas. The description of V-136 no longer contains the airspace exclusion concerning the Gamecock A MOA. The airspace for the airway remains in existence even if the Gamecock A MOA is activated, air traffic control may be unable to clear nonparticipating aircraft through the airspace when the MOA is activated.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O.10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–5 [Revised]

From Pecan, GA, via Vienna, GA; Dublin, GA; Athens, GA; INT Athens 340° and Electric City, SC, 274° radials; INT Electric City 274° and Choo Choo, GA, 127° radials; Choo Choo; Bowling Green, KY; New Hope, KY; Louisville, KY; Cincinnati, OH; Appleton, OH; Mansfield, OH; Dryer, OH; London, ON, Canada. The airspace within Canada is excluded.

* * * * *

V–16 [Revised]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; El Paso, TX; Salt Flat, TX; Wink, TX; Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Millsap, TX; Acton, TX; Scurry, TX; Quitman, TX; Texarkana, AR; Pine Bluff, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

* * * * *

V–52 [Revised]

From Des Moines, IA; Ottumwa, IA; Quincy, IL; St. Louis, MO; Troy, IL; INT Troy 099° and Pocket City, IN, 311° radials; Pocket City; Central City, KY; Bowling Green, KY; to Livingston, TN.

* * * * *

V–124 [Revised]

From Blue Ridge, TX, via Paris, TX; Hot Springs, AR; Little Rock, AR; Gilmore, AR; Jacks Creek, TN; to Graham, TN.

* * * * *

V–136 [Revised]

From Hinch Mountain, TN; INT Hinch Mountain 100° and Volunteer, TN, 243° radials; Volunteer; Snowbird, TN; Holston Mountain, TN; Pulaski, VA; INT Pulaski 094° and South Boston, VA, 295° radials; South Boston; Raleigh-Durham, NC; Fayetteville, NC; to Grand Strand, SC.

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V–362 [Revised]

From Brunswick, GA, via Alma, GA; Vienna, GA; to Macon, GA.

* * * * *

V–515 [Removed]

* * * * *

Issued in Washington, DC, on December 11, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–31004 Filed 12–21–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 921100–2300]

RIN 0691–AA08

Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1992

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules revise 15 CFR 806.17 to set forth reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1992, and to delete the rules now in § 806.17, which were for the last benchmark survey covering 1987. Section 4(b) of the International Investment and Trade in Services Survey Act requires that a benchmark survey of foreign direct investment in the United States be conducted covering 1980, 1987, and every fifth year thereafter.

Forms for the 1992 benchmark survey are scheduled to be mailed out at the end of February 1993. Completed reports will be due to BEA on May 31, 1993.

EFFECTIVE DATE: These rules will be effective January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 523–0659.

SUPPLEMENTARY INFORMATION: In the September 18, 1992 **Federal Register**, Volume 57, No. 182, 57 FR 43158, the Bureau of Economic Analysis published a notice of proposed rulemaking to revise 15 CFR 806.17 to set forth reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1992. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The benchmark survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that "With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter * * *" Reporting in the survey is mandatory. The responsibility for conducting benchmark surveys of foreign direct investment in the United States has been delegated to the Secretary of Commerce, who has redelegated it to the Bureau of Economic Analysis (BEA).

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in value terms. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States. The data from the survey will be used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They will also be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment. They will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and

national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on foreign direct investment needed for policy purposes. As specified in the Act, policy areas of particular interest that should be addressed by the survey include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

The survey consists of an instruction booklet, a claim for not filing the BE–12, and the following report forms:

1. Form BE–12(LF) (Long Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $50 million (positive or negative);

2. Form BE–12(SF) (Short Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $1 million, but not more than $50 million (positive or negative);

3. Form BE–12 Bank for reporting by U.S. affiliates that are banks with assets, sales, or net income of more than $1 million (positive or negative).

Although the survey is intended to cover the universe of foreign directinvestment in the United Sates, in order to minimize the reporting burden, U.S. affiliates with assets, sales, and net income each equal to or less than $1 million (positive or negative) are exempt from reporting on Forms BE–12(LF), BE–12(SF), and BE–12 Bank, but are required to file, on Form BE–12(X), a claim for exemption from filing in the benchmark survey.

Two changes from the last (1987) survey have been made to the 1992 survey, primarily to minimize reporting burden on respondents. They are:

1. Nonbank affiliates with assets, sales, or net income greater than $50 million (positive or negative) are required to file the BE–12 long form; all other nonbank affiliates file the BE–12 short form. In the 1987 benchmark survey, the long-form exemption level was $20 million. This change shifts approximately 1,600 affiliates from the long form to the short form, reducing both reporting and editing burden from what it would otherwise be. Because of growth in the foreign direct investment universe since 1987, however, the total number of long forms to be filed should remain roughly the same as in the 1987 survey.

2. A new BE–12 Bank form was designed for reporting by all foreign-owned U.S. banks. In the 1987 benchmark survey, bank affiliates reported on the BE–12 short form, as did nonbank affiliates below a certain size. This approach did not work well because short form questions were not written with banks in mind. The new, separate bank form has questions that are specifically targeted at banks, which should substantially reduce the need for follow-up contact with bank reporters. In addition, BEA has broadened the definition of "banking" to include savings institutions and credit unions, to be consistent with the 1987 revision of the Standard Industrial Classification System.

Paper Reduction Act

The collection of information required in these final rules has been approved by OBM (OMB No. 0608–0042).

The public reporting burden for this collection of information is estimated to vary from 2 to 750 hours per response, with an average of 15.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to the Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0042, Washington, DC 20503.

Executive Order 12291

BEA has determined that these final rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rulemaking will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report in the benchmark survey because their assets, sales, and net income are each equal to or less than the $1 million exemption level below which reporting is not required. Also, companies with assets, sales, or net income above $1 million, but not above $50 million (positive or negative), will report on the abbreviated BE–12 short form, rather than on the BE–12 long form. This provision significantly reduces the reporting burden on smaller companies.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting requirements.

Dated: November 9, 1992.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR part 806 is amended as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1992.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1992. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given below.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1992, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by

completing and returning either Form BE–12(X) within 30 days of its receipt if Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank do not apply, or by completing and returning Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank, whichever is applicable, by May 31, 1993.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1992 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE–12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1992 (Long Form) must be completed and filed by May 31, 1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $50 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(A) Total assets (do not net out liabilities)

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(2) Form BE–12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1992 (Short Form) must be completed and filed by May 31, 1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $1 million, but no one item exceeded $50 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(A) Total assets (do not net out liabilities)

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(3) Form BE–12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—1992 BANK must be completed and filed by May 31, 1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

(i) The U.S. affiliate is a bank or a bank holding company, and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $1 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(A) Total assets (do not net out liabilities)

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(4) Form BE–12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1992, Claim for Exemption from Filing BE–12(LF), BE–12(SF), and BE–12 Bank must be completed and filed within 30 days of the date it was received, or by May 31, 1993, whichever is sooner, by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 1992 benchmark survey), but is exempt from filing Form BE–12(LF), Form BE–12(SF), and Form BE–12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 1992 benchmark survey but that is not otherwise required to file the Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed $1 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(i) Total assets (do not net out liabilities)

(ii) Sales or gross operating revenues, excluding sales taxes, and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 1992 fiscal year but is exempt from filing a completed Form BE–12(LF), BE–12(SF), or Form BE–12 Bank, it must nevertheless file a completed and certified Form BE–12(X).

(f) *Due date.* A fully completed and certified Form BE–12(LF), Form BE–12(SF), or BE–12 Bank is due to be filed with BEA not later than May 31, 1993. A fully completed and certified Form BE–12(X) is due to be filed with BEA within 30 days of the date it was received, or by May 31, 1993, whichever is sooner.

[FR Doc. 92–30852 Filed 12–21–92; 8:45 am]
BILLING CODE 3510–EA–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Other Assessable Penalties with Respect to the Preparation of Income Tax Returns for Other Persons

CFR Correction

In title 26 of the Code of Federal Regulations, part 1, section 1.1401 to end, revised as of April 1, 1992, on page 794 paragraph (f) was inadvertently removed from section 1.6695-1. As reinstated the text of paragraph (f) reads as follows:

§ 1.6695-1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(f) *Negotiation of check.* (1) No person who is an income tax return preparer may endorse or otherwise negotiate, directly or through an agent, a check for the refund of tax under subtitle A of the Internal Revenue Code of 1954 which is issued to a taxpayer other than the preparer if the person was a preparer of the return or claim for refund which gave rise to the refund check.

(2) Section 6695(f) and paragraph (f)(1) and (3) of this section do not apply to a preparer-bank which–

(i) Cashes a refund check and remits all of the cash to the taxpayer or accepts a refund check for deposit in full to a taxpayer's account, so long as the bank does not initially endorse or negotiate the check (unless the bank has made a

loan to the taxpayer on the basis of the anticipated refund); or

(ii) Endorses a refund check for deposit in full to a taxpayer's account pursuant to a written authorization of the taxpayer (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund).

A preparer-bank may also subsequently endorse or negotiate a refund check as a part of the check-clearing process through the financial system after initial endorsement or negotiation.

(3) The preparer shall be subject to a penalty of $500 for each endorsement or negotiation of a check prohibited under section 6695(f) and paragraph (f)(1) of this section.

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AG02

Active Military Service Certified Under Section 401 of Public Law 95-202

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from recent decisions of the Secretary of the Air Force that the World War II service of members of U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division) Who Served Overseas as a Result of a Contract With the Air Transport Command; members of U.S. Civilian Flight Crew and Aviation Ground Support Employees of Pan American World Airways and Its Subsidiaries and Affiliates, Who Served Overseas as a Result of Pan American's Contract With the Air Transport Command and Naval Air Transport Service; and Honorably Discharged Members of the American Volunteer Guard, Eritrea Service Command constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by VA. The effect of this action is to confer veteran status for VA benefit purposes on former members of these groups who were discharged under honorable conditions.

EFFECTIVE DATES: The effective date for § 3.7(x)(24) and (26) is June 29, 1992, the date on which the Secretary of the Air Force determined that such service constitutes active duty. The effective date for § 3.7(x)(25) is July 16, 1992, the date on which the Secretary of the Air Force determined that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Lance Peterson, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 401 of Public Law 95-202 authorized the Secretary of Defense to determine whether the service of members of civilian or contractual groups shall be considered active duty for the purposes of all laws administered by VA.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of August 6, 1992, 57 FR 34765: U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division) Who Served Overseas as a Result of a Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.

A notice of certification of the following group by the Secretary of the Air Force also appeared in the **Federal Register** of August 6, 1992, 57 FR 34765-66: U.S. Civilian Flight Crew and Aviation Ground Support Employees of Pan American World Airways and Its Subsidiaries and Affiliates, Who Served Overseas as a Result of Pan American's Contract With the Air Transport Command and Naval Air Transport Service During the Period December 14, 1941 through August 14, 1945.

A notice of certification of the following group by the Secretary of the Air Force also appeared in the **Federal Register** of August 6, 1992, 57 FR 34766: Honorably Discharged Members of the American Volunteer Guard, Eritrea Service Command During the Period June 21, 1942 to March 31, 1943.

VA is issuing a final rule to amend the provisions of 38 CFR 3.7(x). Because this change implements determinations of the Secretary of the Air Force in accordance with Pub. L. 95-202, which are binding on VA, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C., 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 4, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 3.7, paragraphs (x)(24), (25), and (26) are added to read as follows:

§ 3.7 Persons included.

* * * * *

(x) *Active military service certified as such under section 401 of Pub. L. 95-202.* * * *

* * * * *

(24) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division) Who Served Overseas as a Result of a Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.

(25) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Pan American World Airways and Its Subsidiaries and Affiliates, Who Served Overseas as a Result of Pan American's Contract With the Air Transport Command and Naval Air Transport Service During the Period December 14, 1941 through August 14, 1945.

(26) Honorably Discharged Members of the American Volunteer Guard,

Eritrea Service Command During the Period June 21, 1942 to March 31, 1943.

* * * * *

[FR Doc. 92-30830 Filed 12-21-92; 8:45 am]

BILLING CODE 6320-01-M

38 CFR Part 21

RIN 2900-AF91

Dependents' Education; Determining the Eligibility Period

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: Eligible surviving spouses have a ten-year period during which they must use their Dependents' Educational Assistance. After a review of the Department of Veterans Affairs' (VA's) administrative experience and a careful reading of the governing statute, VA is revising the criteria for determining the beginning of surviving spouses' eligibility periods.

EFFECTIVE DATE: December 22, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 33473 and 33474 of the **Federal Register** of July 29, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to change the criteria for determining the beginning of surviving spouses' eligibility periods for Dependents' Educational Assistance. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the proposal final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulation directly affects only individuals. It will have no significant economic impact on small entities, i.e., small business, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 5, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart C is amended as set forth below.

PART 21-VOCATIONAL REHABILITATION AND EDUCATION

Subpart C-Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C is revised to read as follows:

Authority: 38 U.S.C. 501(a), 3500-3566.

2. In § 21.3046 paragraph (b)(5) is revised and its authority citation is added to read as follows.

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

* * * * *

(b) *Beginning date of eligibility period-surviving spouses.* * * *

* * * * *

(5) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents educational assistance after October 27, 1986, VA will determine the beginning date of the 10-year period as follows.

(i) If the surviving spouse's eligibility is based on the veteran's death while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is the date of death.

(ii) If the surviving spouse's eligibility is based on the veteran's death from a service-connected disability, the surviving spouse will choose the beginning date of the 10-year period. That date will be no earlier than the date of death and no later than the date of the VA determination that the veteran's death was due to a service-connected disability.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99-576)

* * * * *

[FR Doc. 92-30829 Filed 12-21-92; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 92-13; FCC 92-494; FCC 92-524]

Tariff Filing Requirements for Interstate Common Carriers

AGENCY: Federal Communications Commission [FCC].

ACTION: Final rule; delay of effective date.

SUMMARY: The Commission is amending its rules to provide that a domestic carrier classified as nondominant that is subject to forbearance is not required to file tariffs. The Report and Order in this proceeding reaffirms the Commission's prior conclusions that its permissive detariffing rules are lawful and serve the public interest. However, the Report and Order is stayed until further notice as a result of the decision by the U.S. Court of Appeals for the District of Columbia Circuit in *AT&T* v. *FCC*, No. 92-1053 (D.C. Cir Nov. 13, 1992) (*AT&T* v. *FCC*).

EFFECTIVE DATE: The effective date of the Report and Order is stayed until further notice.

FOR FURTHER INFORMATION CONTACT: Donna N. Lampert, (202) 632-6365, or John S. Morabito, (202) 632-1290, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposals have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501-20, and found to impose no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase burden hours imposed on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by that Act.

Background

Common Carrier Docket 92–13: Tariff Filing Requirements for Interstate Common Carriers, Notice of Proposed Rulemaking, 7 FCC Rcd 804 (1992) (57 FR 6487 (2/25/92)).

Summary

1. This is a summary of a Report and Order in Common Carrier Docket 92–13, Tariff Filing Requirements for Interstate Common Carriers, adopted November 5, 1992 and released November 25, 1992 (FCC 92–494), and a summary of an Order staying the effectiveness of the Report and Order, Tariff Filing Requirements for Interstate Common Carriers, adopted November 25, 1992 and released November 25, 1992 (FCC 92–524). The full texts of the Commission's decisions are available for inspection and copying, Monday through Friday, 9 a.m.–4:30 p.m., in the FCC Reference Room (room 239), 1919 M Street, N.W., Washington, DC 20554. The complete text of the Report and Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

2. The Commission initiated this rulemaking proceeding in response to a complaint filed by AT&T challenging, in effect, the lawfulness and future application of the tariff forbearance rules adopted nearly a decade ago in the Competitive Carrier proceeding. In the Competitive Carrier proceeding, the Commission concluded that because nondominant domestic carriers lacked market power, they would be unable to charge unjust and unreasonable rates in violation of section 201(b) of the Communications Act, or to discriminate unreasonably in violation of section 202(a) of the Communications Act. Under these circumstances, the Commission determined that traditional tariff regulation of nondominant carriers was not necessary and thus that it should no longer require nondominant carriers to file tariffs. After soliciting and reviewing comments on this matter, the Commission concludes that its policy of not requiring domestic nondominant carriers to file tariffs is both lawful and in the public interest.

3. Section 203(a) of the Communications Act generally requires every common carrier, except connecting carriers, to file tariffs with the Commission. Section 203(b)(2) of the Communications Act, however, authorizes the Commission to modify any requirement of that section except the notice period. Because Congress intended for the FCC to have broad powers in its implementation of the Communications Act and the statutory language does not specifically limit the FCC's authority in this respect, the Commission finds that it may lawfully allow carriers to engage in permissive detariffing so long as doing so serves the public interest. The Commission also notes that Congress is aware of, and several times has referred to, the FCC's forbearance rules, without repealing, altering or expressing any reservations about them.

4. In addition, the Report and Order determines that permissive detariffing has served its intended purpose in promoting the goals of the Communications Act. Under forbearance, the FCC remains committed to enforcing the requirements of the Communications Act that carriers' rates and practices be just, reasonable and not unreasonably discriminatory. The Commission reaffirmed that because nondominant carriers do not have market power, competitive market forces will serve to ensure compliance with these substantive requirements. Moreover, the section 208 complaint process remains available to enforce sections 201(b) and 202(a) of the Communications Act.

5. The Report and Order explains that without forbearance the goals of the Communications Act would be frustrated due to the burdens imposed upon nondominant carriers. It states that permissive detariffing has stimulated competition and given consumers more flexibility with respect to the price and type of services available and greater choice regarding the selection of carriers.

6. On November 13, 1992, the U.S. Court of Appeals for the District of Columbia Circuit vacated our permissive detariffing rules as applied in the Fourth Report and Order in the Competitive Carrier proceeding, 95 FCC 2d 554 (1983); *AT&T* v. *FCC*. In light of the court's decision, the Commission has determined that it will stay the Report and Order, pending any further litigation of the matters decided in *AT&T* v. *FCC*.

Final Regulatory Flexibility Analysis Statement

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–12, the Commission's final analysis with respect to the Report and Order is as follows:

Need and purpose of this action

This rulemaking proceeding was initiated to review the continuing lawfulness of the Commission's existing permissive detariffing rules in light of a complaint filed by AT&T alleging, in effect, that these rules violate the Communications Act. This Report and Order sustains those rules as being consistent with the Communications Act and the public interest.

Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Act Analysis

The Initial Regulatory Flexibility Analysis stated that any change in existing rules could have a significant impact on a broad range of telecommunications common carriers. We did not receive any comments that specifically addressed our Initial Regulatory Flexibility Analysis.

Significant alternatives considered and rejected

The Notice of Proposed Rulemaking did not propose new rules or alternative policies, but sought comment on the lawfulness of our existing permissive detariffing rules and on how they should be changed in the event they are found unlawful. This item reaffirms and codifies our existing rules that minimize regulatory burdens on nondominant carriers.

8. Copies of the final regulatory flexibility analysis are available for inspection and copying, Monday through Friday, 9 a.m.–4:30 p.m., in the FCC Dockets Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554. The final regulatory flexibility analysis may also be purchased, as part of the Report and Order, from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036. See 5 U.S.C. 604(b).

Ordering Clause

9. *It is ordered* that, pursuant to the authority contained in sections 1, 4, and 201–05 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 and 201–05, the Report and Order is adopted amending part 61 of the Commission's Rules, 47 CFR part 61.

10. *It is further ordered* that, the Report and Order in this proceeding, FCC 92–494, adopted November 5, 1992, is stayed until further notice.

List of Subjects in 47 CFR Part 61

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, and Telephone.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Final Rule Changes

Part 61 of title 47 of the Code of Federal Regulations is amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.50 is added to read as follows:

§ 61.50 Carriers subject to forbearance.

Notwithstanding the rules set forth herein, no domestic carrier classified as nondominant that is subject to forbearance is required to file tariffs.

[FR Doc. 92-30926 Filed 12-21-92; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-199; RM-8050]

Radio Broadcasting Services; Smiths, AL

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots FM Channel 267A to Smiths, Alabama, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Smiths Communications. *See* 57 FR 42536, September 15, 1992. Coordinates used for Channel 267A at Smiths are 32-28-42 and 85-08-06, with a site restriction 7.4 kilometers (4.6 miles) southwest of the community. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 28, 1993. The window period for filing applications on Channel 267A at Smiths, Alabama, will open on January 29, 1993, and close on March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-199, adopted November 24, 1992, and released December 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 267A, Smiths.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-30931 Filed 12-21-92; 8:45 am]
BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1804

Changes to Contractor Performance Summary Guidance

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).
ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the NASA Federal Acquisition Regulation Supplement (NFS), chapter 18 of the Federal Acquisition Regulation System in title 48 of the Code of Federal Regulations. This rule sets forth NASA's policy on Contractor Performance Summaries and revises the rating system on NASA Form 1651, Contractor Performance Summary (CPS).

DATES: Comments must be received on or before February 22, 1993.

ADDRESSES: Submit comments to the Assistant Administrator for Procurement, NASA, Code HP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Deback, Code HP, Telephone: (202) 358-0431.

SUPPLEMENTARY INFORMATION:

Background

The Contractor Performance Summary System was initiated by Procurement Notice (PN) 89-27, dated January 28, 1992, and subsequently incorporated into the NASA FAR Supplement. The changes to the system initiated by this rule result from center comments following the preparation of the initial series of reports and a change to the Award Fee adjectival rating system.

Impact

The Director, Office of Management and Budget (OMB) by memorandum, dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This regulation falls in this category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*) because most of the changes impact internal procedures. This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1804

Government procurement.
Don G. Bush,
Assistant Administrator for Procurement.

PART 1804—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 1804 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

1804.677-1 [Amended]

2. In section 1804.677-1, paragraph (c) is revised to read as follows:

1804.677-1 Applicability and coverage.

* * * * *

(c) The CPS will be completed once annually for award fee contracts in excess of $25M (total contract value including options) and for award fee contracts awarded after January 1, 1992, regardless of dollar value, for which at least one award fee evaluation has been completed during the year prior to January 1 of the year in which the report is due. CPS's may also be submitted for significant non-award fee contracts at the center's discretion.

3. In section 1804.677-4, paragraph (b) is revised to read as follows:

1804.677-4 Distribution of CPS's and interagency requests.

* * * * *

(b) The Assistant Administrator for Procurement (Code HK) is the agency focal point for processing CPS requests from Government activities outside the agency. All such requests are to be forwarded to Code HK for action.

4. In section 1804.677-6, paragraphs (n)(2), (n)(4), and (q) are revised to read as follows:

1804.677–6 Instructions for completing NASA Form 1651, Contractor Performance Summary Report—CPS.

* * * * *

(n) * * *

(2) Each applicable evaluation area will be evaluated as Excellent, Very Good, Good, Satisfactory, or Poor/Unsatisfactory. The following definitions are provided as guidance in determining the appropriate rating:

Excellent: Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance (Point Range: 91–100).

Very Good: Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part. Only minor deficiencies (Point Range: 81–90).

Good: Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance (Point Range: 71–80).

Satisfactory: Meets or slightly exceeds minimum acceptable standards; adequate results. Reportable deficiencies with identifiable, but not substantial, effects on overall performance (Point Range: 61–70).

Poor/Unsatisfactory: Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance (Point Range: 0–60).

"N/A" will be indicated for any area clearly not evaluated by the PEB.

* * * * *

(4) If any area is rated "Satisfactory" or below, the contracting officer will provide a brief explanation of each such rating in Item 16.

* * * * *

(q) Item 16, Contracting Officer Comments. The contracting officer will briefly discuss the causes and rationale for any ratings of "Satisfactory" or below.

* * * * *

[FR Doc. 92–30799 Filed 12–21–92; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM–215; Amdt. No. 171–117]

International Maritime Dangerous Goods Code and ICAO Technical Instructions; Matter Incorporated by Reference

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule updates a reference in the Hazardous Materials Regulations to the International Maritime Dangerous Goods Code (IMDG Code) to include the most recent amendment to the Code. This rule also implements the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by vessel and aircraft when these two international regulations become effective.

DATES: January 1, 1993.

The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of the Federal Register as of January 1, 1993.

ADDRESSES: Address comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m. Monday through Friday, except for legal Federal holidays.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The Research and Special Programs Administration (RSPA) is revising the regulations in 49 CFR 171.7 to recognize Amendment 26 to the IMDG Code, which has recently been published by the International Maritime Organization (IMO). This amendment promulgates numerous miscellaneous changes to the IMDG Code and addresses such matters as classification, labeling, packaging, and documentation. IMO has established January 1, 1993, as the implementation date for these amendments. In § 171.12, the Hazardous Materials Regulations (HMR) authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations.

This rule also incorporates by reference the 1993–1994 edition of the ICAO Technical Instructions, which becomes effective on January 1, 1993, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation. The offering, acceptance and transportation of hazardous materials by aircraft, and by motor vehicle either before or after being transported by aircraft, is authorized in § 171.11 as fully equivalent to the HMR (with certain exceptions) if in conformance with the ICAO Technical Instructions. RSPA is considering certain other amendments to part 175 to improve consistency between 49 CFR and the ICAO Technical Instructions under a separate rulemaking action, Docket HM–184.

This rule is intended to facilitate the international transportation of hazardous materials by aircraft and vessel by ensuring a basic consistency between the HMR and the international regulations. Because this rule provides for the continued use of international standards without adversely affecting safety or imposing additional requirements on persons subject to the HMR, notice and public procedure are considered unnecessary. For these same reasons, these amendments are being made effective without the customary 30-day delay following publication. This will allow use of these two international regulations when they become effective on January 1, 1993. Because this final rule is published without prior notice, RSPA is requesting comments by February 15, 1993. If warranted, a future notice will be published in the Federal Register addressing substantive comments.

Rulemaking Analyses and Notices

A. Executive Order 12291

This interim final rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule and is not a significant rule under the regulatory procedures of the Department of Transportation (44 U.S.C. 11034). This interim final rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). It also imposes no additional requirements on any person; therefore, a regulatory evaluation was not prepared.

B. Executive Order 12612

This interim final rule has been analyzed in accordance with Executive Order 12612. This final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State and local requirements on certain covered subjects (including the designation, description, and classification of hazardous materials) unless the State or local requirement is substantively the same in the Federal requirement on that subject. Thus, RSPA lacks discretion in this area.

C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR part 1.

§ 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. The entry "International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition" is amended by adding the wording ", as amended by Amendment 26 thereto" immediately after the word "Edition".

b. For the entry "Technical Instructions for the Safe Transport of Dangerous Goods" under ICAO, the date "1991–1992" is revised to read "1993–1994".

Issued in Washington, DC on December 15, 1992 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92–30861 Filed 12–21–92; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 57, No. 246
Tuesday, December 22, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

8 CFR Part 3

[AG Order No. 1639–92]

Executive Office for Immigration Review; Criminal Conviction Records

AGENCY: Department of Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: The proposed rule outlines the types of documentary evidence and records which will be admissible in proceedings before an Immigration Judge to prove a criminal conviction. It expands the class of documents and records which will be accepted by an Immigration Judge, and includes the use of abstracts of convictions and records which are electronically transferred by individual states to the Immigration and Naturalization Services (INS). These proposed changes are necessary to implement section 507 of the Immigration Act of 1990 (IMMACT).

DATES: Written comments must be submitted on or before January 21, 1993.

ADDRESSES: Please submit written comments to Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: Section 507 of IMMACT amended the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(11)) by requiring individual states which receive grants under the Omnibus Act to provide, without fee to the INS, certified records of conviction of aliens who have been convicted of violating the criminal laws of the state. The records provided to the INS to prove a criminal conviction may vary from state to state; therefore, the proposed rule sets forth provisions which will recognize and allow different types of conviction records to be admitted in immigration proceedings.

The proposed rule will expand the types of documents and records admissible to prove a criminal conviction. Those documents and records which are most frequently provided to the INS by the states to prove a criminal conviction will continue to be accepted, *i.e.*, a record of judgment and conviction, and a plea, verdict and sentence record. Additionally, docket entry records, court transcripts and minutes of court proceedings will be admissible if the document or record evidences a criminal conviction. The list of admissible documents and records specified in the proposed rule will not be exclusive; it will merely identify those most commonly available to the INS at present.

Additionally, the states may electronically transfer records of convictions and abstracts of records to the INS from the state record repositories. However, before these electronic records may be used, they must be certified as official records by a state official associated with the state's repository of criminal justice records. Further, the INS official who receives the record must certify in writing that such record has been received electronically from the state's record repository. These procedures will assure the accuracy and reliability of the records admitted into the proceedings by the Immigration Judge. The proposed rule anticipates that other evidence may be used to demonstrate a criminal conviction, if in the discretion of the Immigration Judge, it is deemed probative and relevant.

The proposed rule provides that a document or record which is offered into evidence must be a certified copy of an official document or record, or a photocopy certified by an immigration official to be a true and correct copy of the original record. This provision will allow the INS to offer photocopies of records into evidence when it is too costly or burdensome to obtain certified records.

In addition to the safeguards built into this proposed rule concerning the accuracy of documents and records, the hearing process offers additional safeguards. An individual will have an opportunity to challenge the accuracy of any document or record presented. The proposed rule speaks to admissibility only; it does not state that the document or record is dispositive of the existence of a criminal conviction. Furthermore, when the record of a criminal conviction is not dispositive of the deportation or exclusion ground or of the underlying issue, the Immigration Judge may require the submission of additional evidence.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. This proposed rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this proposed rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612. The proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, title 8, chapter I of the code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2 Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953 Comp., p. 1002.

2. Section 3.41 is added to part 3 as follows:

§ 3.41 Record of conviction.

In any proceeding before an Immigration Judge,

(a) Any of the following documents or records shall be admissible as evidence in providing a criminal conviction:

(1) A record of judgment and conviction;

(2) A record of plea, verdict and sentence;

(3) A docket entry from court records that indicates the existence of a conviction;

(4) Minutes of a court proceeding or a transcript of a hearing that indicate the existence of a conviction;

(5) An abstract of a record of conviction prepared by the court in which the conviction was entered, or by a state law enforcement official associated with the state's repository of criminal justice records, that indicates the following: the charge or section of law violated, the disposition of the case, the existence and date of conviction, and the sentence;

(6) Any document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(b) Any document or record of the types specified in paragraph (a) of this section may be submitted if it complies with the requirements of § 287.6(a) of this chapter, or a copy of any such document or record may be submitted if it is attested in writing by an immigration officer to be a true and correct copy of the original.

(c) Any record of conviction or abstract that has been submitted by electronic means to the INS from a state shall be admissible as evidence to prove a criminal conviction if it:

(1) Is certified by a state law enforcement official associated with the state's repository of criminal justice records as an official record from its repository; and,

(2) Is certified in writing by an INS official as having been received electronically from the state's record repository.

(d) Any other evidence that reasonably indicates the existence of a criminal conviction may be admissible as evidence thereof.

Dated: December 14, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-30952 Filed 12-21-92; 8:45 am]

BILLING CODE 1531-29-GF

Immigration and Naturalization Service

8 CFR Part 235

[INS No. 1512-92]

RIN 1115-AD17

Inspection of Persons Applying for Admission

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule provides for the reimbursement to the Immigration and Naturalization Service (Service) for certain direct salary costs and administrative overhead charges in its overtime billing for arriving trains and vessels under 8 U.S.C. 1353b, for all immigration inspection services rendered to crews, and for those services rendered to passengers that are not exempt under 8 U.S.C. 1353b or 8 U.S.C. 1356(q). This change is proposed in order to comply with the provisions of 31 U.S.C. 9701, the User Charges Statute, which requires that the cost, both direct and indirect, of providing special services be recovered from the benefitting parties. This rule will help ensure that the Service can provide sufficient administrative support to its overtime billing function.

DATES: Written comments must be submitted on or before January 21, 1993.

ADDRESSES: Please submit comments in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 2001D, Washington, DC 20536. To ensure proper and timely handling please reference the INS No. 1512-92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Jeff Cohen, Systems Accountant, Financial Policy and Special Projects Section, Immigration and Naturalization Service, 425 I Street, NW., room 6321, Washington, DC 20536, telephone (202) 376-2804.

SUPPLEMENTARY INFORMATION: On October 30, 1986, Congress passed section 205 of the Department of Justice Appropriation Act, 1987 (codified at 8 U.S.C. 1356 (d) through (p)), which provides for the collection of a user fee from arriving air and sea passengers. On July 3, 1991, the Immigration and Naturalization Service published a notice at 56 FR 30597 announcing the resumption of overtime billing on September 3, 1991, for arriving aircraft, trains, and vessels under 8 U.S.C. 1353b.

This proposed rule clarifies those costs that are billable by including direct Medicare and Social Security (FICA) costs of inspection overtime of 6 percent and an administrative overhead charge of 15 percent.

In Comptroller General Decision B-114898 dated November 13, 1975, (55 Comp. Gen. 456), the propriety of charging for administrative overhead costs on inspectional extra compensation bills was addressed and affirmed. This decision states that in the absence of a provision in an agency's accounting system for determining administrative overhead, a charge of 15 percent of the identified costs of providing the service should be included in its charges for reimbursable services. Paragraph (e)(1) of 49 app. U.S.C. 1741 precludes adding an administrative overhead charge for inspections of arriving aircraft.

With regard to employees hired before January 1, 1984, the Service pays 1.45 percent of their gross income up to $130,200 for the Medicare portion of the social security tax. With regard to employees hired after December 31, 1983, the Service pays 6.2 percent of their gross income up to $55,500 for FICA, and 1.45 percent for Medicare on gross income up to $130,200. Based on our analysis, six percent represents an average rate that will recoup the expenses for social security tax on billable inspectional extra compensation assignments.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 235

Administrative practice and procedure, Inspections, Ports of entry, Transportation.

Accordingly, part 235 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252, 1353a and 1353b; 31 U.S.C. 9701.

2. A new § 235.13 is added to read as follows:

§ 235.13 Billing for inspection services.

(a) *Reimbursement for Inspection Services.* (1) Owners, operators, and agents of vessels and railroad trains arriving from foreign ports, except when they are operating on regular schedules at designated ports of entry, will be liable for extra compensation paid under 8 U.S.C. 1353b to immigration officers when inspections of the passengers and crews of those conveyances are performed on Sundays and holidays, or between 5 p.m. and 8 a.m. on days other than Sundays and holidays.

(2) Owners operators, and agents of aircraft operating on a schedule which was not approved by the Immigration and Naturalization Service thirty (30)

days prior to arrival will be liable for extra compensation paid, under 8 U.S.C. 1353b, to immigration officers when inspections of the passengers and crews are performed between the hours of 5 p.m. and 8 a.m. The Service shall provide required immigration services, at no expense to airlines or its passengers (except those fees imposed by 8 CFR part 286), to those passengers arriving on scheduled U.S. flights at immigration serviced airports and other ports of entry.

(b) *Recovery of administrative overhead and Social Security Tax on reimbursable inspection services.* In computing extra compensation bills, a rate of 25 percent will be applied to the extra compensation paid to immigration officers performing inspections for arriving trains and vessels to recover the cost of administrative overhead associated with the inspection services. An additional six percent will be applied to the extra compensation to recover the Service's contribution for social security tax for arriving aircraft, trains, and vessels.

Dated: November 17, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-30964 Filed 12-21-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket No. 92-26]

Fiduciary Powers of National Banks and Collective Investment Funds

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is proposing to amend its regulations governing the exercise of fiduciary powers by national banks. The intent of this amendment is to clarify the requirement at 12 CFR 9.18(b)(6), consistent with the long established interpretation of the OCC, that all in-kind distributions of collective investment fund assets must be made on a ratable basis. This action is necessary in light of a recent Federal district court decision that has called into question the clarity of this current requirement.

DATES: Written comments must be submitted on or before February 22, 1993.

ADDRESSES: Comments should be directed to: Communications Division, 9th Floor, 250 E Street SW., Washington, DC 20219; Attention: Karen Carter; Docket No. 92-26. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Dean E. Miller, Senior Adviser, Fiduciary Activities, (202) 874-4810; Donald W. Lamson, Assistant Director, Securities, Investments, and Fiduciary Practices Division, (202) 874-5210; Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION: The OCC is proposing to amend 12 CFR 9.18,[1] which governs the administration of collective investment funds[2] by national banks.[3]

Background

Collective investment funds held by national banks as trustee or otherwise consist of assets of retirement, pension, profit-sharing, stock bonus or other trusts exempt from taxation under the IRC. A trustee acting pursuant to a declaration of trust invests collective investment fund assets for the benefit of participants in liquid and illiquid assets. Illiquid assets can include real estate and other assets that are not readily marketable. Participants in collective investment funds own a pro rata interest in each asset held by the fund, thus gaining the benefit of investment diversification. Twelve CFR 9.18(b)(3) provides that the interests of all participants "* * * shall be on the basis of a proportionate interest in all the assets."

Distributions from collective investment funds are governed in part by 12 CFR 9.18(b)(6). That section allows fund distributions to be made "* * * in cash or ratably in kind, or partly in cash and partly in kind." The OCC has interpreted this provision to require that all types of distributions must be made ratably, whether all in kind or partly in kind, to give effect to the requirement that participants' pro rata interests in the trust corpus shall reflect a proportionate interest in all the fund assets.

Current § 9.18(b)(6) was adopted in 1963. Previously, the regulation allowed distributions to be made "* * * in cash or ratably in kind, or partly in cash and partly ratably in kind." The word "ratably" in the second clause was redundant. In 1963 the OCC deleted this word. 28 FR 3309 (Apr. 5, 1963). The word "partly" in the second clause could be mistakenly read to modify the word "ratably." The second clause then could be misinterpreted to mean that some portion of an in-kind distribution must be made ratably and some portion of the in-kind distribution need not be made ratably. Although the OCC changed the language of § 9.18(b)(6) in this manner, its interpretation of the ratability requirement for total and partial in-kind distributions has remained constant throughout this period.

A recent decision of the United States District Court for the Northern District of Illinois has called into question the clarity of § 9.18(b)(6). In *First National Bank of Chicago* v. *Robert L. Clarke and the Office of the Comptroller of the Currency*, Civil Action No. 90-C-5963, the district court held that § 9.18(b)(6) did not require the in-kind portion of combined cash and in-kind distributions to be made on a ratable basis. As a result, participants in collective investment funds holding real estate or other illiquid assets could receive in-kind distributions of whole real estate parcels and other illiquid assets scattered throughout the country, rather than distributions of cash and other instruments reflecting their proportionate interests in the entire asset base of the fund.

This decision was overturned by the U.S. Court of Appeals for the Seventh Circuit. *First National Bank of Chicago* v. *Robert L. Clarke and the Office of the Comptroller of the Currency*, 956 F.2d 1360 (7th Cir. 1992) In turn, the U.S. Supreme Court has declined to review this case on appeal by denying certiorari. _____U.S. _____(October 5, 1992). Although the Comptroller's longstanding interpretation of this regulation was upheld, this litigation

[1] The OCC previously issued a separate notice of proposed rulemaking concerning the fiduciary activities of national banks and collective investment funds. Docket No. 90-3, 55 FR 4184 (February 7, 1990) (covering several provisions of 12 CFR 9.18). Although the comment period for Docket No. 90-3 has closed, the OCC has not yet taken action concerning that proposal. This rulemaking proposal is unrelated to and does not purport to affect Docket No. 90-3.

[2] The term "collective investment fund" is used throughout this preamble to denote both common trust funds for private trusts and collective trusts for pension, profit-sharing, and other tax-exempt accounts. The latter collective trusts, also referred to as "employee benefit funds", are established under the authority of 12 CFR 9.18(a)(2). Accounts eligible for commingling in employee benefit funds may, if held in trust, alternatively be commingled with private trusts in a common trust fund. See 12 CFR 9.18(b)(2).

[3] This proposal would also affect collective investment activities undertaken by federally-chartered savings and loan associations, under existing regulations of the Office of Thrift Supervision ("OTS"). Similarly, the proposal would affect state-chartered banks, since common trusts funds of state-chartered banks qualifying for tax-exempt status are required by section 584 of the International Revenue Code of 1986, as amended ("IRC"), to comport with 12 CFR 9.18.

has demonstrated that it is appropriate to clarify the provision to prevent further confusion.

Should the district court's decision be adopted in subsequent litigation, situations could arise where trustees could evade the ratability requirement of § 9.18(b)(6) by combining a minimal amount of cash with in-kind distributions of fund assets. The OCC believes that a distribution of unmarketable stock or real estate to a participant conflicts with the § 9.18(b)(3) requirement that participants share on a proportionate basis in the assets of a fund. Nonratable in-kind distributions made in reliance on the court's reading of § 9.18(b)(6) may create hardships on participants who are not prepared to manage or sell real estate or other distributed assets. Non-ratable in-kind distributions would defeat the goal of diversification that participation in a collective investment fund is intended to achieve.

Distributions to participants of illiquid or unmarketable assets, such as parcels of real estate, which by their very nature are unique, can lead to instances where participants' distributions could appreciate or depreciate at markedly different rates. In such cases, some participants who believe they are harmed by the type and manner of distributions might sue the trustee. Clarification of the requirement in § 9.18(b)(6) that all in-kind distributions must be made ratably would help insure that all fund participants share proportionately in fund assets.

Proposal

The OCC is proposing to revise § 9.18(b)(6) to clarify that all in-kind distributions of fund assets, including those that are combined with cash distributions, must be made on a ratable basis. This proposal is consistent with the OCC's long-held interpretation that distributions of fund assets limited solely to in-kind assets, rather than cash, be made on a ratable basis.[4]

The OCC is aware that the ratability requirement can result in a property being distributed to and held by multiple owners. The OCC also is aware that multiple ownership of real property or other illiquid assets can adversely affect a property's marketability. The OCC believes, however, that this effect is outweighed by the requirement that all participants must share proportionately in fund assets. Moreover, the potentially adverse effect of multiple ownership is one with which trustees have been confronted for nearly thirty years. Thus, this proposal does not increase the burden that trustees face when required to dispose of assets with limited marketability.

The OCC believes that this proposal is necessary to prevent a trustee from making an in-kind distribution rather than devoting the effort necessary to manage properly the properties and other illiquid assets with which it has been entrusted for the benefit of fund participants. As a matter of prudence, trustees traditionally have disposed of assets with limited marketability rather than make in-kind distributions. This proposal merely requires trustees to continue observing this practice.

Comment

In connection with this proposal, the OCC requests comments from any interested party.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. This proposal clarifies an OCC regulation and merely requires trustees to continue observing a long-established practice.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. No. 96–354–94 Stat. 1164, 5 U.S.C. 601–612), it is certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The effect of this proposal is minimal. This proposal clarifies an OCC regulation and merely requires trustees, regardless of size, to continue observing a long-established practice.

Lists of Subjects in 12 CFR Part 9

Collective investment funds, Estates, Fiduciary powers, Investments, National banks, Reporting and recordkeeping requirements; Trusts and trustees.

Authority and Issuance

For the reasons set out in the preamble, part 9 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 9—FIDUCIARY POWERS OF NATIONAL BANKS AND COLLECTIVE INVESTMENT FUNDS

1. The authority citation for 12 CFR part 9 is revised to read as follows:

Authority: 12 U.S.C. 92a, 93a, and 481.

2. Section 9.18 is amended by revising paragraph (b)(6) to read as follows:

§ 9.18 Collective investment.

* * * * *

(b) * * *

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind on a ratable basis: *Provided,* That all distributions as of any one valuation date shall be made on the same basis.

* * * * *

Dated: November 4, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92–30937 Filed 12–21–92; 8:45 am]

BILLING CODE 4810–33–M

[4] The OCC for nearly thirty years has interpreted the current language of § 9.18(b)(6) governing combined in-kind and cash distributions in this manner. For example the OCC stated in letter (unpublished) of April 1, 1986:

Units of participation in a collective investment fund are based upon a proportionate interest in all the assets of the Fund . . . If there is insufficient cash and liquid assets to satisfy all withdrawals, the available cash and/or assets should be distributed to withdrawing accounts based upon their proportionate interest in such cash and/or assets.

Therefore, any distributions made as of March 31 should be made on a pro rata basis in accordance with 12 CFR 9.18.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–44–AD]

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Airbus Industrie Model A300–600 series airplanes, that would have required repetitive high frequency eddy current (HFEC) inspections to detect cracks in the center spar sealing angles adjacent to the pylon rear attachment, cold work, and replacement of any cracked parts. That proposal was prompted by reports of cracks in the vertical web of the center spar sealing angles of the wing. This action revises the proposed rule by reducing the compliance time for the initial HFEC inspection for certain airplanes; extending the grace period for the initial HFEC inspection for certain airplanes; and adding inspections of the adjacent butt strap and skin panel, and repair, if necessary. The actions specified by this proposed AD are

intended to prevent crack formation in the sealing angles; such cracks could rupture and lead to subsequent crack formation in the bottom skin of the wing, resulting in reduced structural integrity of the center spar section.

DATES: Comments must be received by February 2, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–44–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all Airbus Industrie Model A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 1, 1992 (57 FR 18840). That NPRM would have required repetitive high frequency eddy current (HFEC) inspections to detect cracks in the center spar sealing angles adjacent to the pylon rear attachment, cold work, and replacement of any cracked parts. That NPRM was prompted by reports of cracks in the vertical web of the center spar sealing angles of the wing. That condition, if not corrected, could result in crack formation in the sealing angles; such cracks could rupture and lead to subsequent crack formation in the bottom skin of the wing, resulting in reduced structural integrity of the center spar section.

Since the issuance of that NPRM, two commenters request that the compliance time for the initial HFEC inspection be reduced from the proposed 14,000 landings to 12,000 landings, except for those airplanes that have already exceeded 12,000 landings, in order to comply with the provisions of Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991. The FAA concurs with this request. The FAA has determined that the compliance time for the initial inspection of the center spar sealing angles adjacent to Rib 8 must be reduced in order to ensure that (1) fatigue cracks are found, (2) the pair of sealing angles on the affected wing are replaced, and (3) the attachment holes are cold worked, prior to any significant reduction in the structural integrity of the center spar section. Paragraph (a) of this Supplemental NPRM has been changed to reflect the revised compliance time.

The manufacturer has provided additional crack growth data which substantiate an increase in the grace period currently proposed from 500 landings to 2,000 landings for airplanes that have accumulated fewer than 14,000 total landings. The FAA has evaluated this data and has determined that the increase in certain grace periods, as recommended by the manufacturer, may be made without adversely affecting safety. Paragraph (a) of this Supplemental NPRM has been changed accordingly.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the repetitive inspection intervals be extended from the proposed 6,000 landings to 15,000 landings for airplanes that have already been modified in accordance with Airbus Repair Drawing R571–40588, since the referenced Airbus Service Bulletin contains this provision. The FAA concurs partially. The manufacturer has provided additional crack growth data substantiating that, for those airplanes that have been modified in accordance with Airbus Repair Drawing R571–40588, the initial inspection should be performed within 15,000 landings after accomplishment of the modification. The FAA has evaluated this data and has determined that the increase in the initial inspection interval for airplanes already modified in accordance with the Airbus repair drawing, as recommended by the manufacturer, may be made without adversely affecting safety. Therefore, the FAA now considers that 15,000 landings for the recommended initial inspection interval, followed by repetitive inspections at intervals of 6,000 landings thereafter, is warranted for those airplanes that have already been modified in accordance with the referenced Airbus repair drawing. Accordingly, paragraph (b) has been added to this Supplemental NPRM.

Since issuance of the proposal, the FAA has determined that if any sealing angle is found to be cracked through entirely, additional inspections must be performed, prior to further flight, to detect cracks in the adjacent butt strap and skin panel. If any cracks are found in the adjacent butt strap and skin panel, they must be repaired, prior to further flight, in accordance with Airbus Repair Drawing R571–40589. Accordingly, paragraph (d) has been added to this Supplemental NPRM.

Also since issuance of the proposal, the FAA has determined that an unnecessary reporting requirement was included in paragraph (c) of the notice. The reporting requirement has been omitted from this Supplemental NPRM.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,800, or $660 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92–NM–44–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the center spar section of the wing, accomplish the following:

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracks in the center spar sealing angles adjacent to Rib 8, in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991, at the times specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable:

(1) For airplanes that have accumulated less than 12,000 total landings as of the effective date of this AD: Prior to the accumulation of 12,000 total landings or within 2,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 6,000 landings.

(2) For airplanes that have accumulated 12,000 total landings or more, but less than 14,000 total landings as of the effective date of this AD: Prior to the accumulation of 14,000 total landings or within 2,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 6,000 landings.

(3) For airplanes that have accumulated 14,000 total landings or more as of the effective date of this AD: Prior to the accumulation of 500 landings after the effective date of this AD; and thereafter at intervals not to exceed 6,000 landings.

(b) For those airplanes on which the modification described in Airbus Repair Drawing R571–40588 has been accomplished: Prior to the accumulation of 15,000 landings after accomplishing the modification, or within 500 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 6,000 landings, perform a HFEC inspection to detect cracks in the center spar sealing angles adjacent to Rib 8, in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991.

(c) If any crack is found in the center spar sealing angles, including cracking entirely through the sealing angle, as a result of the inspections required by paragraph (a), (b), or (d) of this AD, prior to further flight, replace the pair of sealing angles on the affected wing and cold work the attachment holes, in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991; and perform the repetitive inspections required by paragraph (b) of this AD.

(d) If any sealing angle is found to be cracked through entirely as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, perform additional inspections to detect cracks in the adjacent butt strap and skin panel, in accordance with paragraph 2.B.(5) of Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991. If any crack is found in the adjacent butt strap and skin panel, prior to further flight, repair it in accordance with Airbus Repair Drawing R571–40589.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 16, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31033 Filed 12–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–189–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes. This proposal would require a one-time visual inspection to ensure that the bolt and nut assemblies on the flanged-coupling assembly on the right flap gearbox drive have split pins installed, and if split pins are missing, repetitive check tightening of the bolts until split pins are installed. This proposal is prompted by reports that during production, split pins may have been omitted from the bolt and nut assemblies on the flanged-coupling assembly. The actions specified by the proposed AD are intended to prevent possible loss of integrity and security of the flap drive system.

DATES: Comments must be received by February 18, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–189–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP series airplanes. The CAA advises that during production of these airplanes, split pins may have been omitted from the bolts and self-locking nuts installed on the splined flanged-coupling assembly of the primary drive torque tube located at station 0 on the right flap gearbox drive. This condition, if not corrected, could result in possible loss of integrity and security of the flap drive system.

British Aerospace has issued Service Bulletin ATP–27–55, dated August 14, 1992, which describes procedures for a one-time visual inspection to ensure that each of the four bolt and nut assemblies on the flanged-coupling assembly have split pins installed, and if split pins are missing, repetitive check tightening of the bolts until split pins are installed. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to ensure that the bolt and nut assemblies on the flanged-coupling assembly have split pins installed, and if split pins are missing, repetitive check tightening of the bolts until split pins are installed. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The FAA has confirmed that split pins have been installed in the bolt and nut assemblies on the flanged-coupling assembly on all 10 airplanes of U.S. registry. Based on these figures, there will be no cost impact of the proposed AD on U.S. operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–189–AD.
Applicability: Model ATP series airplanes; serial numbers 2001 through 2049, inclusive; certificated in any category.
Compliance: Required as indicated, unless accomplished previously.

To prevent possible loss of integrity and security of the flap drive system, accomplish the following:

(a) Within 14 days after the effective date of this AD, perform a one-time visual inspection of the primary flap drive torque tubes to ensure that the four bolt and nut assemblies on the splined flanged-coupling assembly on the right gearbox drive at station 0 have split pins installed, in accordance with British Aerospace Service Bulletin ATP–27–55, dated August 14, 1992.

(1) If split pins are installed, no further action is necessary.

(2) If any split pin is missing, accomplish the requirements of both paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Prior to further flight, check tighten each of the four bolts to 8 to 10 foot pounds torque. Repeat this check tightening thereafter at intervals not to exceed 14 days.

(ii) Within 6 months after the effective date of this AD, install split pins in the bolt and nut assemblies in accordance with British Aerospace Service Bulletin ATP–27–55, dated August 14, 1992. Installation of these split pins constitutes terminating action for the inspections and check tightening requirements of this paragraph.

(b) Installation of split pins in the bolt and nut assemblies in accordance with British Aerospace Service Bulletin ATP–27–55, dated August 14, 1992, constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 16, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31032 Filed 12–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–180–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require inspection of the end-cap of the horizontal stabilizer dual actuator servo valve manifold to detect moisture, and removal of moisture, if necessary; and modification of the end-cap of the servo valve of the horizontal stabilizer hydraulic actuator. This proposal is prompted by reports of water ingression in the end-cap of the dual actuator servo valve manifold. The actions specified by the proposed AD are intended to prevent jamming of the servo and to ensure that the stabilizer can be repositioned after an uncommanded trim movement.

DATES: Comments must be received by February 18, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–180–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that a small number of Model F28 Mark 0100 series airplane operators have reported that the manual stabilizer trim jammed and "STAB 1" and "2 FAULT" messages were displayed on the Multi Function Display Unit (MFDU) and the overhead panel. Investigation showed that this may have been caused by water collecting inside the end-cap of the servo valve, which subsequently froze and restricted the servo valve. However, in these incidents, stabilizer control was still possible with the use of the alternate electrical trim control.

In another incident, a significant nose down pitch occurred with the crew exerting pressure on the control column, after the "STAB 1" and "2 FAULT" messages displayed on the MFDU and the overhead panel. The crew reset the stabilizer switch and engaged the autopilot, which subsequently became disengaged. The stabilizer remained jammed, despite the crew's attempt to use the manual trim and the alternate electrical trim. The crew then received subsequent "STAB 1" and "2 FAULT" messages. Using "jammed-stabilizer" procedures, the crew declared an emergency and made an uneventful landing. The cause of the failure that precipitated the nose down trim has not been established. A jammed servo, if not detected and corrected, could prohibit

repositioning of the stabilizer after an uncommanded trim movement.

Fokker has issued Service Bulletin F100–27–029, dated January 29, 1991, that describes procedures for inspection of the end-cap of the horizontal stabilizer dual actuator servo valve manifold to detect and remove moisture. Fokker has also issued Service Bulletin F100–27–032, dated September 20, 1991, that describes procedures for modification of the end-cap of the servo valve of the horizontal stabilizer hydraulic actuator. This modification, which prevents the buildup of water in the end-cap, has been accomplished, prior to delivery, on airplanes having serial number 11357 and subsequent. Fokker has issued Service Bulletin Change Notification SBF100–27–032/01, dated October 19, 1992, that corrects part numbers referenced in that service bulletin. The RLD classified the service bulletins as mandatory and issued Netherlands Airworthiness Directive BLA 91–015, Issue 2, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection of the end-cap of the horizontal stabilizer dual actuator servo valve manifold to detect moisture, and removal of moisture, if necessary; and modification of the end-cap of the servo valve of the horizontal stabilizer hydraulic actuator. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 38 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided to the operators at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $85,690, or $2,090 per airplane. The FAA has been advised that the proposed requirements of this AD action have already been accomplished on 8 affected airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92–NM–180–AD.

Applicability: Model F28 Mark 0100 airplanes, serial numbers 11244 through 11356, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent jamming of the servo and to ensure that the stabilizer can be repositioned after an uncommanded trim movement, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, unless accomplished previously within the last 1,600 hours time-in-service, inspect the end-cap of the horizontal stabilizer dual actuator servo valve manifold to detect moisture in accordance with Fokker Service Bulletin F100–27–029, dated January 29, 1991. Prior to further flight, remove any moisture found in accordance with the service bulletin.

(b) Within 2,000 hours time-in-service or one year after the effective date of this AD, whichever occurs first, modify the end-cap of the servo valve of the horizontal stabilizer hydraulic actuator in accordance with Fokker Service Bulletin F100–27–032, dated September 20, 1991, as revised by Fokker Service Bulletin Change Notification SBF100–27–032/01, dated October 19, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 16, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31031 Filed 12–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AEA–03]

Proposed Change of Operating Hours for Control Zone; Hagerstown, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 5, 1992. The NPRM proposed to change the operating hours of the Hagerstown, MD, Control Zone to be effective via a Notice to Airmen. The NPRM is being withdrawn as a result of another regulatory airspace action which duplicates the purpose intended in this proposal.

DATES: The withdrawal of the proposed rule is effective on December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On August 5, 1992 (57 FR 34531), a Notice of Proposed Rulemaking was published in the **Federal Register** to change the effective operating hours of the Hagerstown, MD, Control Zone to those established by a Notice to Airmen. A separate rulemaking action under Airspace Reclassification, effective October 15, 1992, has already made this change. This proposal is therefore unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 92–AEA–03, as published in the **Federal Register** on August 5, 1992 (57 FR 34531), is hereby withdrawn.

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issues in Jamaica, New York, on December 8, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–31003 Filed 12–21–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–189–84]

RIN 1545–AH46

Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations relating to the tax treatment of debt instruments with original issue discount and the imputation of interest on deferred payments under certain contracts for the sale or exchange of property.

DATES: The public hearing will be held on Tuesday, February 16, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, January 26, 1993.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI–189–84), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–8452 or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 483, 1271 through 1275 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, January 26, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30428 Filed 12–21–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[CO–99–91]

RIN 1545–AQ59

Proposed Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to proposed regulations (CO–99–91), which were published Thursday, November 5, 1992 (57 FR 52798). The proposed regulations modify existing rules that require segregation of public groups following stock issuances for purposes of determining whether an ownership change has occurred.

FOR FURTHER INFORMATION CONTACT: Roberta F. Mann, 202–622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections relates to section 382 of the Internal Revenue Code.

Need for Correction

As published, the proposed rulemaking contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (CO–99–91), which was the subject of FR Doc. 92–26159, is corrected as follows:

§ 1.382–3 [Corrected]

Paragraph. 1. On page 52741, column 2, in § 1.382–3, paragraph (j)(1), line 4, the language "*Introduction.* This section exempts, in" is corrected to read "*Introduction.* This paragraph (j) exempts, in". In line 9, the language "used in this section, and not otherwise" is corrected to read "used in this paragraph (j), and not otherwise".

Par. 2. On page 52741, column 3, in § 1.382–3, paragraph (j)(2)(iii)(D), line 3,

the language "on a per share basis if, during the" is corrected to read "on a class-by-class basis if, during the".

Par. 3. On page 52742, column 2, in § 1.382–3, paragraph (j)(7), line 4, the language "section, the transitory ownership of" is corrected to read "paragraph (j), the transitory ownership of".

Par. 4. On page 52742, column 2, in § 1.382–3, paragraph (j)(8), line 2, the language "purposes of this section, two or more" is corrected to read "purposes of this paragraph (j), two or more".

Par. 5. On page 52742, column 2, in § 1.382–3, paragraph (j)(8)(ii), last line, the language "this section." is corrected to read "this paragraph (j).".

Par. 6. On page 52742, column 2, in § 1.382–3, paragraph (j)(9), line 2, the language "principles of this section apply for" is corrected to read "principles of this paragraph (j) apply for".

Par. 7. On page 52742, column 2, in § 1.382–3, paragraph (j)(10), line 3, the language "section apply to issuances of stock by a" is corrected to read "paragraph (j) apply to issuances of stock by a".

Par. 8. On page 52742, column 2, in § 1.382–3, paragraph (j)(11), last line, the language "as stock for purposes of this section" is corrected to read "as stock for purposes of this paragraph (j).".

Par. 9. On page 52743, column 1, in § 1.382–3, paragraph (j)(13)(i), line 2, the language "This section applies to issuances of" is corrected to read "This paragraph (j) applies to issuances of".

Par. 10. On page 52743, column 1, in § 1.382–3, paragraph (j)(13)(ii), line 1, the language "(ii) *Election to apply this section*" is corrected to read "(ii) *Election to apply this paragraph (j)*". In line 3, the language *"Election to apply this section"* is corrected to read *"Election to apply this paragraph (j)"*. In line 5, the language "elect to apply this section to all" is corrected to read "elect to apply this paragraph (j) to all".

Par. 11. On page 52743, column 1, in § 1.382–3, paragraph (j)(13)(ii)(B), last line, the language "years applying this section." is corrected to read "years applying this paragraph (j).".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30808 Filed 12–21–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[FI–189–84]

RIN 1545–AH46

Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the tax treatment of debt instruments with original issue discount and the imputation of interest on deferred payments under certain contracts for the sale or exchange of property. The proposed regulations in this document revise some of the proposed regulations that were published in the **Federal Register** on April 8, 1986. The proposed regulations would provide needed guidance to holders and issuers of debt instruments with original issue discount and to buyers and sellers of property.

DATES: A public hearing on these proposed regulations is scheduled for 10 a.m. on February 16, 1993, in room 3313 at 1111 Constitution Avenue NW., Washington, DC. Requests to appear at the public hearing and outlines of oral comments must be received by January 26, 1993. Written comments must be received by January 26, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI–189–84), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Frederick S. Campbell-Mohn, (202) 622–3940 (not a toll-free number), William E. Blanchard, (202) 622–3950 (not a toll-free number), or Andrew C. Kittler, (202) 622–3940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The required collections of information in this regulation are in §§ 1.1272–(d)(2)(iii), 1.1272–3, 1.1273–2(f)(2), 1.1274–3(d), 1.1274–5(b), 1.1274A–1(c), and 1.1275–3(b). This information is required by the Internal Revenue Service in connection with tracking the accrual of original issue discount. This information will be used for audit and examination purposes. The likely respondents are businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total reporting burden: 289,500 hours.

The estimated burden per respondent varies from .3 to .5 hours, depending on individual circumstances, with an estimated average of .4 hours.

Estimated number of respondents: 750,000.

Estimated annual frequency of responses: 1.

Background

On April 8, 1986, the **Federal Register** published a notice of proposed rulemaking (51 FR 12022) relating to original issue discount (OID) under section 163(e) and sections 1271 through 1275, unstated interest under section 483, and the accrual of interest under section 446. The notice also included proposed amendments to the regulations under related provisions of the Internal Revenue Code. The proposed regulations were subsequently amended on September 7, 1989 (54 FR 37125), February 28, 1991 (56 FR 8308), May 7, 1991 (56 FR 21112) and July 12, 1991 (56 FR 31887). The proposed regulations that were issued in 1986, as amended in 1989 and 1991, are hereinafter referred to as the 1986 proposed regulations.

Explanation of Provisions

Numerous written comments were made on the 1986 proposed regulations. In addition, on November 17, 1986, the Internal Revenue Service held a public hearing on the 1986 proposed regulations. In general, commentators criticized the complexity and length of the 1986 proposed regulations, as well as the narrow definitions of certain terms, including the definitions of accrual period, qualified periodic

interest payment, variable rate debt instrument, and de minimis OID.

In response to these comments, the proposed regulations simplify the rules that were in the 1986 proposed regulations and, as explained below, provide more flexible definitions of certain terms for purposes of these rules. The proposed regulations attempt to conform the rules to normal commercial practices and to exclude from their application debt instruments with limited potential to defer or accelerate interest.

The proposed regulations are significantly shorter in length than the 1986 proposed regulations. The shorter length is generally attributable to the simplification of the rules and the elimination of rules that are also in the statute. In addition, because the proposed regulations are proposed to be effective for debt instruments issued on or after the date that is 60 days after the date the regulations are finalized, the proposed regulations do not include the numerous transitional rules that were in the 1986 proposed regulations.

The proposed regulations do not amend the rules for contingent payments that are in § 1.1275–4 of the 1986 proposed regulations. These rules will be addressed in future regulations.

In general, the major changes from the 1986 proposed regulations are noted as follows:

Section 1.163–7 Deduction for OID on Certain Debt Instruments

The proposed regulations allow the issuer of a debt instrument with a de minimis amount of OID to deduct the OID using a straight line method rather than a constant yield method. In addition, if an issuer redeems a debt instrument for the issuer's newly issued debt instrument, the proposed regulations provide rules to determine the amount of the repurchase premium, if any, on the redemption and the timing of the issuer's deduction for the repurchase premium. To determine the amount of the repurchase premium, the issuer's repurchase price for the debt instrument is the issue price of the newly issued debt instrument (reduced by any unstated interested). However, if the issue price of the newly issued debt instrument is determined under either section 1273(b)(4) or section 1274, any repurchase premium on the redemption is amortized by the issuer over the term of the newly issued instrument in the same manner as if it were OID on the instrument.

Section 1.446–2 Method of Accounting for Interest

The proposed regulations clarify that unstated interest, as determined under section 483, is taken into account by the buyer and the seller based on their respective methods of accounting for stated interest.

Request for comments: In general, the proposed regulations require the use of the constant yield method to determine interest accruals. However, the proposed regulations generally respect the allocation of payments under a lending or sales contract if (1) the aggregate amount of payments due under the contract does not exceed $250,000, (2) the contract does not have unstated interest, and (3) the debt instrument evidencing the contract is not issued at a discount. This small transaction exception was also in the 1986 proposed regulations. The exception, however, has a limited scope, and taxpayers must still determine whether interest is prepaid under their allocation. Comments are requested as to whether the final regulations should keep this exception. Comments are also requested as to whether the final regulations should allow the use of the Rule of 78's (or any other method) to allocate interest on consumer loans that are not within the small transaction exception, including loans issued for cash.

Section 1.483–1 through 1.483–3 Unstated Interest

For purposes of the lower test rate under section 483(e) for certain sales or exchanges of land between related individuals, the proposed regulations allow the use of the lower rate for a single debt instrument to the extent the stated principal amount of the instrument does not exceed $500,000. For example, if the stated principal amount of the debt instrument is $700,000, the proposed regulations treat the instrument as two instruments: A $500,000 debt instrument, which is eligible for the lower test rate, and a $200,000 debt instrument. The 1986 proposed regulations only allowed the lower rate if a separate debt instrument was issued for the principal amount in excess of $500,000.

Sections 1.1001–1(g) and 1.1012–1(g) Amount Realized and Basis

The proposed regulations provide that the issue price of a debt instrument issued in a sale or exchange of property determines the seller's amount realized and the buyer's basis in the property. However, the proposed regulations provide that if the issue price of the debt instrument equals the instrument's stated redemption price at maturity under section 1273(b)(4), the issue price is reduced by any unstated interest for purposes of sections 1001 and 1012.

Section 1.1271–1 Special Rules Applicable to Amounts Received on Retirement, Sale or Exchange of Debt Instruments

Under section 1271, if there is an intention to call a debt instrument prior to maturity, the gain on the sale, exchange, or retirement of the debt instrument is treated as ordinary income to the extent of any unaccrued OID. The proposed regulations add rules to determine when there is an intention to call the debt instrument prior to maturity. An intention to call exists only if there is an agreement not provided for in the debt instrument that the issuer will redeem the instrument prior to maturity. For example, a mandatory sinking fund provision or call option is not evidence of an intention to call under section 1271. The proposed regulations also provide that the intention to call rules do not apply to publicly offered debt instruments or to debt instruments subject to section 1272(a)(6).

Section 1.1272–1 Current Inclusion in Income of OID

The proposed regulations provide that the amount of OID that accrues during an accrual period is determined using the constant yield method. For purposes of this determination, the 1986 proposed regulations required that all accrual periods on a debt instrument (other than a short initial or final accrual period) be of equal length. The proposed regulations, however, allow the use of accrual periods of different lengths of not more than one year. In determining the amount of OID accruals, the yield of the debt instrument must be adjusted to take into account the length of the particular accrual period if accrual periods of different lengths are used.

The proposed regulations also provide new rules to determine the yield and maturity of a debt instrument with a stated contingency that could result in the acceleration or deferral of payments if the amounts payable upon the occurrence of the contingency are fixed. In general, the contingency is ignored. However, if, based on all the facts and circumstances, the contingency is more likely than not to occur, it is assumed that the contingency will occur. In addition, special rules that were in the 1986 proposed regulations for a debt instrument with a put option, call option, or option to extend are retained,

and extended to a debt instrument with an option to pay interest in the form of additional debt instruments of the issuer.

If a debt instrument is partially prepaid, the proposed regulations provide that the payment is subject to the payment ordering rule under § 1.1275–2. In general, the payment reduces the adjusted issue price of the debt instrument. For purposes of OID accruals after the prepayment, the yield of the debt instrument is not adjusted for the prepayment. However, any shortfall created as a result of the prepayment is treated as OID and allocated to the final accrual period. See § 1.1272–1(c)(2).

Section 1.1272–2 Treatment of Debt Instruments Purchased at a Premium

The proposed regulations define the term purchase as any acquisition of a debt instrument. In addition, the proposed regulations provide new rules to determine the adjusted basis of a debt instrument for purposes of determining whether a holder has acquired a debt instrument at a premium or at an acquisition premium.

Section 1.1272–3 Election by Accrual Method Holder To Treat All Interest on a Debt Instrument as OID

Under the proposed regulations, a holder that uses an accrual method of accounting may elect to treat all interest on a debt instrument as OID. For purposes of the election, interest includes stated interest, OID, market discount, de minimis OID and market discount, acquisition discount, and unstated interest, as adjusted for any acquisition premium or amortizable bond premium. In effect, the election simplifies the calculation of interest income for the holder by applying a single method (constant yield method) to determine the timing and amount of interest income on the debt instrument (e.g., a holder that acquires a debt instrument with acquisition premium need not calculate and use the acquisition premium fraction).

Request for comments: The proposed regulations impose certain conditions on the use of the election. In general, the conditions are similar to those in the market discount and amortizable bond premium rules. For example, if the election is made for a debt instrument with amortizable bond premium or with market discount, the holder becomes subject to the conformity requirements of section 171 or section 1278(b), whichever is applicable. Comments are requested as to whether the final regulations should retain the conformity requirements and other conditions.

Section 1.1273–1 Definition of OID

OID is defined as the excess of a debt instrument's stated redemption price at maturity over the instrument's issue price. Under the 1986 proposed regulations, a debt instrument's stated redemption price at maturity was defined as the sum of all payments due under the instrument other than qualified periodic interest payments. In general, qualified periodic interest payments were defined as a series of payments equal to the product of the outstanding principal balance of the debt instrument and a single fixed rate of interest that is actually and unconditionally payable at fixed periodic intervals of one year or less during the entire term of the debt instrument (including short periods).

The proposed regulations, by providing a more flexible approach to the treatment of stated interest, generally exclude from their application debt instruments with limited potential to defer or accelerate interest. Under the proposed regulations, "qualified stated interest" is the term used to refer to stated interest that is not includible in the debt instrument's stated redemption price at maturity. Qualified stated interest for a fixed-rate debt instrument is stated interest that is unconditionally payable in cash or in property (other than debt instruments of the issuer) at least annually at a single fixed rate. Interest is payable at a single fixed rate only if the rate appropriately takes into account the length of the interval between payments.

The proposed regulations provide that no stated interest on a short-term obligation is qualified stated interest. Therefore, all stated interest payments on a short-term obligation are included in its stated redemption price at maturity. In response to comments made on the 1986 proposed regulations, which had the same rule, the rule applies for purposes of sections 871 and 881.

The proposed regulations provide an additional rule to determine when a debt instrument with an interest holiday or a teaser rate has a de minimis amount of OID. Under this rule, the amount of OID resulting from an interest holiday or a teaser rate is generally the amount of interest foregone during the holiday or teaser period. The instrument is then tested under the general de minimis rules to determine whether the debt instrument has a de minimis OID. For example, under this rule, a 30-year self-amortizing mortgage loan with a fixed interest rate of 8.5 percent, compounded monthly, but a 2-year teaser rate of 6 percent, compounded monthly, would have only a de minimis amount of OID.

The proposed regulations also add rules for the treatment of de minimis OID by the holder. A holder includes de minimis OID in income on a pro rata basis as principal payments are made on the debt instrument. In addition, any gain attributable to de minimis OID that is recognized upon the sale or exchange of a debt instrument is capital gain if the instrument is a capital asset in the hands of the holder. A similar rule was provided in § 1.1232–3(b)(1)(ii).

Section 1.1273–2 Determination of Issue Price

The proposed regulations provide new rules to determine when a debt instrument is publicly traded or is issued for property that is publicly traded for purposes of determining the issue price of the debt instrument. In general, a debt instrument or property (stock, security, contract, commodity, or currency) is publicly traded if, at any time during a 60-day period ending 30 days after the issue date of the debt instrument, the debt instrument or property is traded on an established market. A debt instrument or property is traded on an established market if (1) it is listed on certain securities exchanges, interdealer quotation systems, or designated foreign exchanges or boards of trade, (2) it is traded on a designated contract market or an interbank market, (3) it appears on a system of general circulation that provides a reasonable basis to determine fair market value by disseminating either recent price quotations of identified brokers and dealers or actual prices of recent sales transactions, or (4) price quotations with respect to the debt instrument are readily available from dealers and brokers. Price quotations are deemed not readily available if (1) no other outstanding debt of the issuer is traded on an established market, (2) the original stated principal amount of the issue is less than $25 million, (3) all other issues of the issuer's debt that are traded on an established market impose materially more restrictive covenants or conditions on the issuer, or (4) the maturity date of the debt instrument is more than 3 years after the latest maturity date of all other issues of the issuer that are traded on an established market.

The proposed regulations allocate the issue price of an investment unit between the components of the unit based on their relative fair market values. The 1986 proposed regulations provided allocation rules that generally restated common law valuation principles. Unlike the 1986 proposed

regulations, the proposed regulations do not provide specific allocation rules. Under the proposed regulations, however, the holder of an investment unit must use the issuer's allocation unless the holder discloses on its Federal income tax return that it plans to use an allocation that is inconsistent with the issuer's allocation.

The 1986 proposed regulations provided that no portion of the issue price of a debt instrument is allocated to a right to convert the instrument into stock of the issuer. However, after the amendments proposed on February 28, 1991, if the conversion right could be satisfied in cash, the 1986 proposed regulations allocated a portion of the issue price of the debt instrument to the conversion right. The proposed regulations modify these rules by providing that no portion of the issue price of a debt instrument is allocated to a right to convert the instrument into stock of the issuer or a party related to the issuer, even if the conversion right may be satisfied in cash.

The proposed regulations change the lender's treatment of a payment of points made incident to a lending transaction. Under the proposed regulations, a payment of points (including a payment of points that is deductible by the borrower under section 461(g)(2)) reduces the issue price of the debt instrument, thereby creating OID on the instrument. If the amount of OID created under this rule is de minimis, the proposed regulations treat the OID in the same manner as any other amount of de minimis OID. By contrast, the 1986 proposed regulations required that the lender include the payment in income when received, regardless of the lender's method of accounting. See § 1.446–2(e) of the 1986 proposed regulations.

Sections 1.1274–1 Through 1.1274–5 Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

The proposed regulations restructure and simplify the rules that were in sections 1.1274–1 through 1.1274–7 of the 1986 proposed regulations.

The proposed regulations modify the 1986 proposed regulations by providing that the issue price of a debt instrument issued for nonpublicly traded property in a potentially abusive situation is the fair market value of the property. In addition, the proposed regulations treat a debt instrument with clearly excessive interest as issued in a potentially abusive situation. The proposed regulations also provide that, for purposes of the potentially abusive rules, the term nonrecourse financing does not include a sale or exchange of a real property interest financed by a nonrecourse debt instrument, if, in addition to the instrument, the purchaser provides a down payment that is at least 20 percent of the total stated purchase price of the interest.

The proposed regulations provide new rules to determine the imputed principal amount of a debt instrument if the instrument provides for contingent payments. Under the proposed regulations, the imputed principal amount generally is the sum of the present values of the noncontingent payments and the fair market value of the contingent payments. If the fair market value of the contingent payments cannot be determined when separated from the noncontingent payments, the imputed principal amount is the fair market value of the debt instrument. Only in rare and extraordinary cases will the fair market value of the debt instrument be treated as not reasonably ascertainable.

The proposed regulations provide new rules to determine the test rate of interest for an installment obligation. Unlike the 1986 proposed regulations, which had three alternative rules, the proposed regulations use a single rule that uses the weighted average maturity of the debt instrument to determine the test rate.

The proposed regulations no longer contain the transitional rule in the 1986 proposed regulations that provided that section 1274 applied to a modified debt instrument only if the original debt instrument was subject to section 1274.

The proposed regulations limit the use of a test rate that is lower than the applicable Federal rate to debt instruments having a maturity of six months or less (or to debt instruments with a qualified floating rate of interest that is reset at least every six months). For debt instruments having a maturity of less than three months, the proposed regulations modify the 1986 proposed regulations and provide that the allowable Treasury index rate is the market yield on U.S. Treasury bills with the same maturity as the debt instrument.

The proposed regulations provide new rules for debt instruments that are materially modified in connection with an assumption of a debt instrument as part of a sale or exchange of property. In general, the modification is treated as a separate transaction that takes place immediately before the sale or exchange and is attributed to the seller. The seller and buyer, however, may jointly elect to treat the transaction as one in which the buyer first assumed the unmodified debt instrument and subsequently modified the debt instrument.

Request for comments: The proposed regulations provide rules to determine the issue price of a debt instrument subject to an option that allows a holder or issuer the unconditional right to accelerate or defer payments (including a put option, call option, or option to extend the maturity of an instrument). These rules are similar to rules contained in the 1986 proposed regulations. Comments are requested regarding the appropriateness of these rules and regarding whether these rules should be extended to options subject to contingencies that affect the right to exercise or the amounts payable in the event of exercise.

The proposed regulations do not provide any limitations on "recent sales transactions" that are subject to the potentially abusive situation rules. Comments are requested on the limitations, if any, that should be included in the final regulations.

Section 1.1274A–1 Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed $2,800,000

The proposed regulations revise the rules for making a cash method election. The proposed regulations also allow a cash method election for a debt instrument that was issued in a debt-for-debt exchange, subject to an anti-abuse rule, if the instrument otherwise qualifies as a cash method debt instrument. The 1986 proposed regulations only allowed the election if the "old" debt instrument was a cash method debt instrument. In addition, the proposed regulations disallow interest deductions for a debt instrument that is incurred or continued to purchase or carry a cash method debt instrument.

Section 1.1275–1 Definitions

The term "debt instrument" is defined as any instrument or contractual arrangement that constitutes indebtedness under general principles of Federal income tax law. Based on this definition, the proposed regulations treat a payment of stock pursuant to a contingent stock payout under section 483, rather than under the OID provisions. See Example 3 in § 1.446–2(h).

Section 1.1275–2 Special Rules Relating to Debt Instruments

The proposed regulations revise the aggregation rules that were in the 1986 proposed regulations. In general, only debt instruments that are issued by a single issuer to a single holder are

aggregated. The Commissioner, however, may aggregate debt instruments that are issued by more than one issuer or that are issued to more than one holder if the debt instruments are issued in an arrangement that is designed to avoid the aggregation rule. In addition, if under the terms of a debt instrument the holder may receive one or more additional debt instruments of the issuer, the additional debt instruments are aggregated with the original debt instrument.

The proposed regulations also provide a specific payment ordering rule for purposes of the OID provisions. In addition, the proposed regulations add rules for qualified reopenings of Treasury securities.

Section 1.1275–3 OID Information Reporting Requirements

The 1986 proposed regulations generally required an issuer of a debt instrument with OID to legend the instrument with certain information. The proposed regulations provide that debt instruments do not have to be legended if the instruments are publicly offered or are issued by individuals. In addition, the proposed regulations except a debt instrument from legending if the instrument is not evidenced by a physical document. In the case of a debt instrument that has to be legended, the proposed regulations provide new rules that should simplify compliance with the legending requirement. As an alternative to detailed legending of OID information, the proposed regulations permit the issuer to provide the address or telephone number of a representative of the issuer who will promptly give the OID information to the holder upon request.

Section 1.1275–5 Variable Rate Debt Instruments

The proposed regulations substantially expand the definition of the term "variable rate debt instrument." In general, a variable rate debt instrument is a debt instrument that provides for stated interest (compounded or paid at least annually) at a qualified floating rate, an objective rate, a fixed rate followed by a qualified floating rate, or a qualified floating rate followed by another qualified floating rate. A qualified floating rate generally is an interest-like rate, such as the applicable Federal rate or LIBOR. An objective rate generally is a rate based on the price of property that is actively traded (other than foreign currency) or an index of the prices of such property. An objective rate is also a rate that is based on one or more qualified floating rates (unless the rate itself is a qualified floating rate). For example, a multiple of a qualified floating rate is an objective rate.

For purposes of determining whether a variable rate debt instrument has OID, the proposed regulations generally treat all stated interest on the instrument that is unconditionally payable at least annually as qualified stated interest. If, however, the debt instrument provides for stated interest at a fixed rate followed by a qualified floating rate or a qualified floating rate followed by a different qualified floating rate, the instrument may have accelerated or deferred interest, which is not qualified stated interest. For example, if a ten-year debt instrument provides for annual interest payments for the first five years equal to the value of one-year LIBOR on each payment date and for the last five years equal to the value of one-year LIBOR on each payment date plus 200 basis points, the 200 basis points in the last five years is deferred interest.

The proposed regulations also provide rules for the accrual of OID on variable rate debt instruments. In general, if the OID is attributable to accelerated or deferred interest or to "true discount" (the excess of a debt instrument's stated principal amount over its issue price), the OID is allocated to an accrual period under the rules of section 1272. The allocation, however, is determined by assuming that the debt instrument provided for qualified stated interest payments at the end of each accrual period based on a reasonable fixed rate.

The proposed regulations provide a special rule for certain tax-exempt debt instruments that provide for stated interest at an objective rate. If the issuer of a tax-exempt debt instrument, contemporaneously with the issuance, enters into one or more financial contracts that substantially offset the variations in the objective rate, the debt instrument is not a variable rate debt instrument. The Treasury Department and the Internal Revenue Service are considering the appropriate treatment of tax-exempt debt instruments with embedded options, forwards, and swaps.

Request for comments: The 1986 proposed regulations did not provide clear guidance on the treatment of a debt instrument that provided for one or more variable interest rates or a combination of a fixed and a variable interest rate. The proposed regulations provide guidance for the treatment of these debt instruments. In general, the proposed regulations attempt to provide rules that reflect the economics of these debt instruments and limit the acceleration or deferral of interest. Comments are requested on the appropriateness of these rules, including the rules for accelerated and deferred interest.

As noted above, the proposed regulations provide a special rule for certain tax-exempt debt instruments with stated interest at an objective rate. Comments are requested on the appropriateness of this rule.

Comments are requested on whether there should be a consistency rule for debt instruments with accelerated interest or deferred interest.

Effective Dates

The proposed regulations are proposed to be effective for debt instruments issued on or after the date that is 60 days after the date the regulations are finalized. The proposed regulations are also proposed to be effective for lending transactions, sales and exchanges that occur on or after the date that is 60 days after the date the regulations are finalized. The rules for qualified reopenings of Treasury securities, however, will be effective for reopenings on or after March 25, 1992.

The Internal Revenue Service intends to treat the 1986 proposed regulations that are withdrawn in this document as authority under section 6662 for debt instruments issued prior to their withdrawal and for lending transactions, sales and exchanges that occurred prior to their withdrawal.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

A public hearing on these proposed regulations will be held on February 16,

1993, at 10 a.m. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal authors of these regulations are Frederick S. Campbell-Mohn, William E. Blanchard, and Andrew C. Kittler of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.161–1 Through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.446–1 Through 1.448–2T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1001–1 Through 1.1002–1

Income taxes.

26 CFR 1.1011–1 Through 1.1021–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1231–1 Through 1.1297–3T

Income taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Sections 1.483–1 through 1.483–3 also issued under 26 U.S.C. 483(g). Sections 1.1271–1 through 1.1275–5 also issued under 26 U.S.C. 1275(d). Section 1.1274A–1 also issued under 26 U.S.C. 1274A(e).

Par. 2. Section 1.163–7, as proposed on April 8, 1986 (51 FR 12030), is revised to read as follows:

§ 1.163–7 Deduction for OID on certain debt instruments.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, the amount of OID that an issuer (or transferee) deducts each year under section 163(e)(1) is determined in accordance with section 1272 without regard to section 1272(a)(7) (relating to acquisition premium). An issuer (or transferee) is permitted a deduction under section 163(e)(1) only to the extent the issuer (or transferee) is primarily liable on the debt instrument. For certain limitations on the deductibility of OID by the issuer (or transferee), see sections 163(e)(2)(C), 163(e)(3), 163(e)(4), 163(e)(5), and 1275(b)(2).

(b) *Special rules for de minimis OID*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, a debt instrument has OID for purposes of section 163(e) even if the amount of OID is de minimis within the meaning of section 1273(a)(3) and the regulations thereunder.

(2) *Stated interest.* If a debt instrument has a de minimis amount of OID (within the meaning of § 1.1273–1(d)), all stated interest on the debt instrument is treated as qualified stated interest. See § 1.446–2(b) for the treatment of qualified stated interest.

(3) *Deduction of de minimis OID on straight-line basis.* The issuer of a debt instrument with a de minimis amount of OID (other than a de minimis amount treated as qualified stated interest under paragraph (b)(2) of this section) may choose to deduct the OID on a straight-line basis over the term of the debt instrument. The issuer must make this choice on the issuer's timely filed Federal income tax return for the taxable year in which the debt instrument is issued.

(c) *Deduction upon repurchase.* Except to the extent disallowed by any other section of the Internal Revenue Code (*e.g.*, section 249), or this paragraph (c), if a debt instrument is repurchased by the issuer for a price in excess of its adjusted issue price (as defined in § 1.1275–1(b)), the excess (repurchase premium) is deductible as interest for the taxable year. If the issuer repurchases a debt instrument in a debt-for-debt exchange, the repurchase price is the issue price of the newly issued debt instrument (reduced by any unstated interest within the meaning of section 483). However, if the issue price of the newly issued debt instrument is determined under either section 1273(b)(4) or section 1274, any repurchase premium is not deductible in the year of the repurchase, but is amortized over the term of the newly issued debt instrument in the same manner as if it were OID.

Par. 3. Section 1.446–2, as proposed on April 8, 1986 (51 FR 12031), is revised to read as follows:

§ 1.446–2 Method of accounting for interest.

(a) *Applicability*—(1) *In general.* This section provides rules for determining the amount of interest that accrues during an accrual period (other than interest described in paragraph (a)(2) of this section). For purposes of this section, "interest" includes amounts treated as interest (whether stated or unstated) in any lending or deferred payment transaction. Accrued interest determined under this section is taken into account by a taxpayer under the taxpayer's regular method of accounting (e.g., an accrual method or the cash receipts and disbursements method). Application of an exception described in paragraph (a)(2) of this section to one party to a lending or deferred payment transaction does not affect the application of this section to any other party to the transaction.

(2) *Exceptions*—(i) *Interest included or deducted under certain other provisions.* This section does not apply to interest that is taken into account under—

(A) Sections 1272(a), 1275, and 163(e) (income and deductions relating to original issue discount);

(B) Section 467(a)(2) (certain payments for the use of property or services);

(C) Sections 1276 through 1278 (market discount);

(D) Sections 1281 through 1283 (discount on certain short-term obligations);

(E) Section 7872(a) (certain loans with below-market interest rates); or

(F) Section 1.1272–3 (an election by a holder that uses the accrual method of accounting to treat all interest on a debt instrument as original issue discount).

(ii) *De minimis original issue discount.* This section does not apply to de minimis amounts of original issue discount as determined under section 1273(a)(3) and the regulations thereunder. See §§ 1.1273–1(d)(6) and 1.1272–3 for the treatment of de minimis original issue discount by the holder.

(b) *Accrual of qualified stated interest.* Qualified stated interest (as defined in § 1.1273–1(c)) accrues ratably over the accrual period to which it is attributable and accrues at the stated rate for that period.

(c) *Accrual of interest other than qualified stated interest.* Subject to the modifications in paragraph (d) of this section, the amount of interest that accrues for any accrual period is determined under rules similar to those in §§ 1.1272–1, 1.1275–4, and 1.1275–5. The preceding sentence applies regardless of any contrary formula agreed to by the parties.

(d) *Modifications*—(1) *Issue price.* The issue price of the loan or contract is equal to—

(i) In the case of a deferred payment contract to which section 483 applies,

the amount described in § 1.483–2(a)(1)(i) or (ii), whichever is applicable; or

(ii) In any other case, the amount loaned.

(2) *Adjusted issue price.* The adjusted issue price of the loan or contract is modified in the case of a contract to which section 483 applies by excluding from the calculation any principal payment that is not a deferred payment.

(3) *Qualified stated interest.* No interest payments are treated as qualified stated interest payments.

(e) *Allocation of interest to payments*—(1) *In general.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, each payment under a loan (other than payments of additional interest or similar charges provided with respect to amounts that are not paid when due) is treated as a payment of interest to the extent of the accrued and unpaid interest as of the date the payment becomes due. Any remaining amount is treated as a payment of principal.

(2) *Special rule for points deductible under section 461(g)(2).* If a payment of points is deductible by the borrower under section 461(g)(2), the payment is treated by the borrower as a payment of interest.

(3) *Allocation respected in certain small transactions*—(i) *In general.* If the aggregate amount of interest and principal payable under a contract does not exceed $250,000 and section 483 does not apply to the loan, an express allocation of the payments between interest and principal by the parties is respected. Similarly, if section 483 applies to a contract under which the aggregate amount payable does not exceed $250,000, but does not apply to a party to the contract (as, for example, in the case of an obligor under a debt instrument given in consideration for the sale or exchange of personal use property), an express allocation of the payments between interest and principal by the parties is respected for purposes of determining the tax liability of the party not subject to section 483.

(ii) *Prepaid interest.* The amount of interest allocated to any payment under this paragraph (e)(3) is treated as prepaid interest to the extent the amount exceeds—

(A) The aggregate amount of accrued interest as of the date the payment becomes due; reduced (but not below zero) by

(B) The aggregate amount of interest allocated to prior payments under this paragraph (e)(3).

(iii) *Accounting for prepaid interest.* Prepaid interest must be included in income by a lender when received, regardless of the lender's method of accounting. Except as otherwise provided in section 461(g)(2), prepaid interest is not deductible before such interest accrues (as determined under paragraph (c) of this section).

(f) *Aggregation rule.* For purposes of this section, all sales or exchanges that are part of the same transaction (or a series of related transactions) are treated as a single sale or exchange and all contracts calling for deferred payments arising from the same transaction (or a series of related transactions) are treated as a single contract.

(g) *Debt instruments denominated in a currency other than the U.S. dollar.* The rules of this section apply to debt instruments that provide for payments denominated in, or determined by reference to, the functional currency of the taxpayer or qualified business unit of the taxpayer (even if that currency is other than the U.S. dollar). *See* § 1.988–2(b) to determine interest income or expense for debt instruments that provide for payments denominated in, or determined by reference to, a nonfunctional currency.

(h) *Examples.* The principles of this section are illustrated by the following examples.

Example 1. Allocation of unstated interest to deferred payments—(i) *Facts.* On July 1, 1996, A sells his personal residence to B for a stated purchase price of $1,297,143.66. The property is not personal use property (within the meaning of section 1275(b)(3)) in the hands of B. Under the loan agreement, B is required to make two installment payments of $648,571.83, the first due on June 30, 1998, and the second due on June 30, 2000. Both A and B use the cash receipts and disbursements method of accounting and use a calendar year for their taxable year.

(ii) *Amount of unstated interest.* Under section 483, the agreement does not provide for adequate stated interest. Thus, the loan's yield is the test rate of interest determined under § 1.483–3. Assume that both A and B use annual accrual periods and that the test rate of interest is 9.2 percent, compounded annually. Under § 1.483–2, the present value of the deferred payments is $1,000,000. Thus, the agreement has unstated interest of $297,143.66.

(iii) *First two accrual periods.* Under paragraph (d)(1) of this section, the issue price at the beginning of the first accrual period is $1,000,000 (the amount described in § 1.483–2(a)(1)(i)). Under paragraph (c) of this section, the amount of interest that accrues for the first accrual period is $92,000 ($1,000,000×.092) and the amount of interest that accrues for the second accrual period is $100,464 ($1,092,000×.092). Thus, $192,464.00 of interest has accrued as of the end of the second accrual period. Under paragraph (e)(1) of this section, the $648,571.83 payment made on June 30, 1998, is treated first as a payment of interest to the extent of $192,464.00. The remainder of the payment ($456,107.83) is treated as a payment of principal. Both A and B take the payment of interest ($192,464.00) into account in 1998.

(iv) *Second two accrual periods.* The adjusted issue price at the beginning of the third accrual period is $543,892.17 ($1,092,000+$100,464–$649,571.83). The amount of interest that accrues for the third accrual period is $50,038.08 ($543,892.17×.092) and the amount of interest that accrues for the final accrual period is $54,641.58, the excess of the amount payable at maturity ($648,571.83), over the adjusted issue price at the beginning of the accrual period ($593,930.25). As of the date the second payment becomes due, $104,679.66 of interest has accrued. Thus, of the $648,571.83 payment made on June 30, 2000, $104,679.66 is treated as interest and $543,892.17 is treated as principal. Both A and B take the payment of interest ($104,679.66) into account in 2000.

Example 2. Small transaction allocation—(i) *Facts.* On July 1, 1996, A sells nonpublicly traded property to B for a stated purchase price of $100,000. The property is not personal use property (within the meaning of section 1275(b)(3)) in the hands of B. Under the loan agreement, B is required to make two installment payments of $64,857.18, each consisting of $50,000 of principal and $14,857.18 of interest. The first payment is due on June 30, 1998, and the second payment is due on June 30, 2000. Both A and B use the cash receipts and disbursements method of accounting and use a calendar year for their taxable year. Assume that the test rate of interest is 9.2 percent, compounded annually.

(ii) *Loan has adequate stated interest.* Under § 1.483–2, the loan has adequate stated interest. Because the loan provides for adequate stated interest and the total amount payable is less than $250,000, the allocation of principal and interest by A and B is respected even though A and B have allocated less interest to the first installment payment than the amount that has accrued as of the date the payment becomes due ($19,246.40).

Example 3. Contingent stock payout—(i) *Facts.* M Corporation and N Corporation each owns one-half of the stock of O Corporation. On December 31, 1994, pursuant to a reorganization qualifying under section 368(a)(1)(B), M contracts to acquire the one-half interest held by N for an initial distribution on that date of 30,000 shares of M voting stock, and a non-assignable right to receive up to 10,000 additional shares of M's voting stock during the next 3 years, provided the net profits of O exceed certain amounts specified in the contract. No interest is provided for in the contract. No additional shares are received in 1995 or in 1996, but in 1997 the annual earnings of O exceed the specified amount and on December 31, 1997, an additional 3,000 M voting shares are transferred to N. Assume that the fair market value of the 3,000 shares on December 31, 1997, is $300,000.

(ii) *Allocation of unstated interest.* The transfer of the 3,000 M voting shares to N is a deferred payment subject to section 483. Because the contract does not provide for any interest on the payment, a portion of the

shares is treated as unstated interest. The amount of the unstated interest allocable to the shares is an amount equal to the excess of $300,000 (the fair market value of the shares on the payment date) over the present value of $300,000, which is determined by discounting the payment at the test rate of interest applicable to the contract from the date of the payment to the date of the exchange. Assume that, under § 1.483–3, the test rate of interest is 10 percent, compounded annually. The amount of unstated interest allocable to the payment of the shares is $74,605.56 ($300,000–$225,394.44).

Par. 4. Sections 1.483–1 through 1.483–5, as proposed on April 8, 1986 (51 FR 12038), are revised to read as follows:

§ 1.483–1 Interest on certain deferred payments.

(a) *Amount constituting interest in certain deferred payment transactions*—(1) *In general.* Except as provided in paragraph (c) of this section, section 483 applies to a contract for the sale or exchange of property if the contract provides for payments due more than one year after the date of the sale or exchange, and the contract does not provide for adequate stated interest. In general, a contract has adequate stated interest if the contract provides for a stated rate of interest that is at least equal to the test rate (determined under § 1.483–3) and the interest is paid or compounded at least annually. Section 483 may apply to a contract whether the contract is express (written or oral) or implied. For purposes of section 483, "sale or exchange" includes any transaction treated as a sale or exchange for tax purposes. In addition, for purposes of section 483, "property" includes debt instruments and investment units, but does not include U.S. currency, services, or the right to use property. For the treatment of certain payments for the use of property or services, see sections 404 and 467.

(2) *Treatment of contracts to which section 483 applies*—(i) *Treatment of unstated interest.* If section 483 applies to a contract, unstated interest under the contract is treated as interest for tax purposes. Thus, for example, unstated interest is not treated as part of the amount realized from the sale or exchange of property (in the case of the seller), and is not included in the purchaser's basis in the property acquired in the sale or exchange.

(ii) *Method of accounting for interest on contracts subject to section 483.* Any stated or unstated interest on a contract subject to section 483 is taken into account by a taxpayer under the taxpayer's regular method of accounting (e.g., an accrual method or the cash receipts and disbursements method). See §§ 1.446–1, 1.451–1, and 1.461–1. For purposes of the preceding sentence, the amount of interest (including unstated interest) allocable to a payment under a contract to which section 483 applies is determined under § 1.446–2(e).

(iii) *Certain transactions between related parties.* For rules relating to the determination of the basis of property in certain transactions between related parties, see § 1.1012–2.

(b) *Definitions*—(1) *Deferred payments.* For purposes of the regulations under section 483, a deferred payment means any payment that constitutes all or a part of the sales price (as defined in paragraph (b)(2) of this section), and that is due more than six months after the date of the sale or exchange. A payment may be made in the form of cash, stock or securities, or other property (except as provided in section 483(c)(2)).

(2) *Sales price.* For purposes of section 483, the sales price with respect to any sale or exchange is the amount due under the contract (other than stated interest), and the amount of any liability included in the amount realized from the sale or exchange (see § 1.1001–2). Thus, the sales price with respect to any sale or exchange includes any amount of unstated interest under the contract.

(c) *Exceptions to and limitations on the application of section 483*—(1) *In general.* Sections 483(d), 1274(c)(4), and 1275(b) contain exceptions to and limitations on the application of section 483.

(2) *Sales price of $3,000 or less.* Section 483(d)(2) applies only if it can be determined at the time of the sale or exchange that the sales price cannot exceed $3,000, regardless of whether the sales price eventually paid for the property is less than $3,000.

(3) *Other exceptions and limitations*—(i) *Certain transfers subject to section 1041.* Section 483 does not apply to any transfer of property subject to section 1041 (relating to transfers of property between spouses or incident to divorce).

(ii) *Treatment of certain obligees.* Section 483 does not apply to an obligee under a contract that—

(A) Is given in consideration for the sale or exchange of property that is personal use property (within the meaning of section 1275(b)(3)) in the hands of the obligor; and

(B) Evidences a below-market gift loan (described in section 7872(c)(1)(A)), a below-market compensation-related loan (described in section 7872(c)(1)(B)), or a below-market corporation-shareholder loan (described in section 7872(c)(1)(C)).

(iii) *Transactions involving certain demand loans.* Section 483 does not apply to any payment under a contract that evidences a demand loan that is either a gift loan (described in section 7872(c)(1)(A)), a compensation-related loan (described in section 7872(c)(1)(B)), or a corporation-shareholder loan (described in section 7872(c)(1)(C)).

(iv) *Transactions involving certain annuity contracts.* Section 483 does not apply to any payment under an annuity contract described in section 1275(a)(1)(B) (relating to annuity contracts excluded from the definition of debt instrument).

(v) *Options subject to section 1234.* Section 483 does not apply to any payment under an option to buy or sell property.

(d) *Assumptions.* If a debt instrument is assumed, or property is taken subject to a debt instrument, in connection with a sale or exchange of property, the debt instrument is treated for purposes of section 483 in a manner consistent with the rules of § 1.1274–5.

(e) *Aggregation rule.* For purposes of section 483, all sales or exchanges that are part of the same transaction (or a series of related transactions) are treated as a single sale or exchange, and all contracts calling for deferred payments arising from the same transaction (or a series of related transactions) are treated as a single contract. This rule, however, generally only applies to contracts and to sales or exchanges involving a single buyer and a single seller.

§ 1.483–2 Unstated interest.

(a) *In general*—(1) *Adequate stated interest.* A contract subject to section 483 has unstated interest if the contract does not provide for adequate stated interest. A contract does not provide for adequate stated interest if the sum of the deferred payments exceeds—

(i) The sum of the present values of the deferred payments and the present values of any stated interest payments due under the contract; or

(ii) In the case of a cash method debt instrument (within the meaning of section 1274A(c)(2)) received in exchange for property in a potentially abusive situation (as defined in § 1.1274–3), the fair market value of the property reduced by the fair market value of any consideration other than the debt instrument, and reduced by the sum of all principal payments that are not deferred payments.

(2) *Amount of unstated interest.* For purposes of section 483, the term "unstated interest" means an amount equal to the excess of the sum of the

deferred payments over the amount described in paragraph (a)(1)(i) or (a)(1)(ii) of this section, whichever is applicable.

(b) *Operational rules*—(1) *In general.* For purposes of paragraph (a) of this section, rules similar to those in paragraphs (c), (d), and (e) of § 1.1274–2 apply to determine whether a contract has adequate stated interest and the amount of unstated interest, if any, on the contract.

(2) *Present value.* For purposes of paragraph (a) of this section, the present value of any deferred payment or interest payment is determined by discounting the payment from the time it becomes due to the date of the sale or exchange at the test rate of interest applicable to the contract in accordance with § 1.483–3.

(c) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. Contract that does not have adequate stated interest. On January 1, 1994, A sells B nonpublicly traded property under a contract that calls for a $100,000 payment of principal on January 1, 2004 and 10 interest payments of $9,000 on January 1 of each year, beginning on January 1, 1995. Assume that the test rate of interest is 9.20 percent, compounded annually. The contract does not provide for adequate stated interest because it does not provide for interest equal to 9.20 percent, compounded annually. The present value of the deferred payments is $98,727.69. As a result, the contract has unstated interest of $1,272.31.

Example 2. Contract that does not have adequate stated interest; no interest for initial short period. On May 1, 1996, A sells B nonpublicly traded property under a contract that calls for B to make a principal payment of $200,000 on December 31, 1998, and semiannual interest payments of $9,000, payable on June 30 and December 31 of each year, beginning on December 31, 1996. Assume that the test rate of interest is 9 percent, compounded semiannually. Even though the contract calls for a stated rate of interest no lower than the test rate of interests, the contract does not provide for adequate stated interest because the stated rate of interest does not apply for the short period from May 1, 1986, through June 30, 1986.

Example 3. Potentially abusive situation—(i) *Facts.* Assume that in a potentially abusive situation, a contract for the sale of nonpublicly traded personal property calls for the issuance of a cash method debt instrument (as defined in section 1274A(c)(2)) with a stated principal amount of $700,000, payable in five years. No other consideration is given. The debt instrument calls for annual payments of interest over its entire term at a rate of 9.20 percent, compounded annually (the test rate of interest applicable to the debt instrument). Thus, the present value of the deferred payment and the interest payments is $700,000. Assume that the fair market value of the property is $500,000.

(ii) *Amount of unstated interest.* A cash method debt instrument received in exchange for property in a potentially abusive situation provides for adequate stated interest only if the sum of the deferred payments under the instrument does not exceed the fair market value of the property. Because the deferred payment ($700,000) exceeds the fair market value of the property ($500,000), the debt instrument does not provide for adequate stated interest. The debt instrument has unstated interested of $200,000.

Example 4. Variable rate debt instrument with adequate stated interest; variable rate as of the issue date greater than test rate—(i) *Facts.* A contract for the sale of nonpublicly traded property calls for the issuance of a debt instrument in the principal amount of $75,000 due in ten years. The debt instrument calls for interest payable semiannually at a rate of 3 percentage points above the yield on 6-month Treasury bills for the mid-point of the semiannual period immediately preceding the interest payment. Assume that the interest rate is a qualified floating rate and that the debt instrument is a variable rate debt instrument within the meaning of § 1.1275–5.

(ii) *Adequate stated interest.* Under paragraph (b)(1) of this section, the rules of § 1.1274–2(d) apply to determine whether the debt instrument has adequate stated interest. Assume that the test rate of interest applicable to the debt instrument is 9 percent, compounded semiannually, and that the yield on 6-month Treasury bills on the date of the binding written contract for the sale is 8.89 percent. Under § 1.1274–2(d), the debt instrument is tested for adequate stated interest as if it provided for a stated rate of interest of 11.89 percent (3 percent plus 8.89 percent), compounded semiannually, payable over its entire term. Because the test rate of interest is 9 percent, compounded semiannually, and the debt instrument is treated as providing for stated interest of 11.89 percent, compounded semiannually, the debt instrument provides for adequate stated interest.

§ 1.483–3 Test rate of interest applicable to a contract.

(a) *General rule.* Except as provided in paragraph (b) of this section, the test rate of interest for purposes of section 483 is the applicable Federal rate (based on the appropriate compounding period).

(b) *Special rates of interest applicable to certain sales or exchanges*—(1) *Qualified debt instruments.* In the case of a qualified debt instrument (as defined in section 1274A(b)), the test rate is not greater than 9 percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period.

(2) *Sale-leaseback transactions.* In the case of a sale or exchange of property, all or a portion of which, pursuant to a plan, is leased by the transferor of the property or a person related to the transferor (within the meaning of sections 267(b) or 707(b)(1)) after the sale or exchange, the test rate is 110 percent of the applicable Federal rate.

(3) *Lower rate for certain sales or exchanges of land between related individuals*—(i) *Test rate.* In the case of a qualified sale or exchange of land between related individuals (described in section 483(e)), the test rate is not greater than 6 percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period.

(ii) *Special rules.* The following rules and definitions apply in determining whether a sale or exchange is a qualified sale under section 483(e):

(A) *Definition of family members.* The members of an individual's family are determined as of the date of the sale or exchange. The members of an individual's family include those individuals described in section 267(c)(4) and the spouses of those individuals. In addition, for purposes of section 267(c)(4), full effect is given to a legal adoption, "ancestor" means parents and grandparents, and "lineal descendants" means children and grandchildren.

(B) *$500,000 limitation.* Section 483(e) does not apply to the extent that the stated principal amount of the debt instrument given in the sale or exchange, when added to the aggregate stated principal amount of any other debt instruments to which section 483(e) applies that were issued in prior qualified sales between the same two individuals during the same calendar year, exceeds $500,000. See *Example 3* of paragraph (b)(3)(iii) of this section.

(C) *Other limitations.* Section 483(e) does not apply if the parties to a contract include persons other than the related individuals and the parties enter into the contract with an intent to circumvent the purposes of section 483(e). In addition, if the property sold or exchanged includes any property other than land, section 483(e) applies only to the extent that the stated principal amount of the debt instrument given in the sale or exchange is attributable to the land (based on the relative fair market values of the property and the land).

(iii) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples.

Example 1. On January 1, 1994, A sells land to B, A's child, for $650,000. The contract for sale calls for B to make a $250,000 downpayment and issue a debt instrument with a stated principal amount of $400,000. The sale is a qualified sale and section 483(e) applies to the debt instrument.

Example 2. The facts are the same as in *Example 1*, except that on June 1, 1994, A

sells additional land to B under a contract that calls for B to issue a debt instrument with a stated principal amount of $100,000. The stated principal amount of this debt instrument ($100,000) when added to the stated principal amount of the prior debt instrument ($400,000) does not exceed $500,000. Thus, section 483(e) applies to both debt instruments.

Example 3. The facts are the same as in *Example 1*, except that on June 1, 1994, A sells additional land to B under a contract that calls for B to issue a debt instrument with a stated principal amount of $150,000. The stated principal amount of this debt instrument when added to the stated principal amount of the prior debt instrument exceed $500,000. Thus, for purposes of section 483(e), the debt instrument issued in the sale of June 1, 1994, is treated as two separate debt instruments: a $100,000 debt instrument (to which section 483(e) applies) and a $50,000 debt instrument (to which section 1274, if otherwise applicable, applies).

(c) *Determination of applicable Federal rate.* For purposes of determining the test rate of interest, the applicable Federal rate with respect to a contract is the rate that would apply under § 1.1274–4 if the contract were a debt instrument subject to section 1274.

Par. 5. Section 1.1001–1, paragraph (g), as proposed on April 8, 1986 (51 FR 12046), is revised to read as follows:

§ 1.1001–1 Computation of gain or loss.

* * * * *

(g) *Debt instruments issued in exchange for property.* In the case of any debt instrument issued in exchange for property, the amount realized attributable to the debt instrument is the issue price of the debt instrument as determined under paragraphs (c) or (e) of § 1.1273–2, or § 1.1274–2(b). For purposes of the preceding sentence, if the issue price of a debt instrument is determined under § 1.1273–2(e), the issue price is reduced by the portion of any payments treated as unstated interest (as determined under section 483).

Par. 6. In § 1.1012–1, paragraph (f) is amended by removing the last sentence, and paragraph (g) is added to read as follows:

§ 1.1012–1 Basis of property.

* * * * *

(g) *Debt instruments issued in exchange for property.* In the case of any debt instrument that is issued in exchange for property, the amount of the basis of the property attributable to the debt instrument is the issue price of the debt instrument as determined under paragraphs (c) or (e) of § 1.1273–2, or § 1.1274–2(b). For purposes of the preceding sentence, if the issue price of a debt instrument is determined under § 1.1273–2(e), the issue price is reduced by the portion of any payments treated as unstated interest (as determined under section 483).

Par. 7. Sections 1.1271–1 through 1.1275–3, as proposed on April 8, 1986 (51 FR 12048) and further proposed to be amended on September 7, 1989 (54 FR 37125), May 7, 1991 (56 FR 21112) and July 12, 1991 (56 FR 31887), are amended as follows:

1. Sections 1.1271–1 through 1.1275–3 are revised.
2. Section 1.1272–3 is added.
3. The added and revised provisions read as follows:

§ 1.1271–1 Special rules applicable to amounts received on retirement, sale or exchange of debt instruments.

(a) *Intention to call before maturity*—(1) *In general.* For purposes of section 1271(a)(2), all or a portion of gain realized on a sale or exchange of a debt instrument to which section 1271 applies is treated as ordinary income if there was an intention to call the debt instrument before maturity. "Intention to call a debt instrument before maturity" means a written or oral agreement or understanding not provided for in the debt instrument between the issuer and the original holder of the debt instrument that the issuer will redeem the debt instrument before maturity. In the case of debt instruments that are part of an issue, the agreement or understanding must be between the issuer and the original holders of a substantial amount of the debt instruments in the issue. An intention to call before maturity can exist even if the intention is conditional (*e.g.*, the issuer's decision to call depends on the financial condition of the issuer on the potential call date) or is not legally binding. For purposes of this section, "original holder" means the first holder (other than an underwriter or dealer that purchased the debt instrument for resale in the ordinary course of its trade or business).

(2) *Exceptions.* In addition to the exceptions provided in sections 1271(a)(2)(B) and 1271(b), section 1271(a)(2) does not apply to—

(i) A debt instrument that is publicly offered (as defined in § 1.1273–2(a)(2)); or

(ii) A debt instrument to which section 1272(a)(6) applies (relating to certain interests in or mortgages held by a REMIC, and certain other debt instruments with payments subject to acceleration).

(b) *Short-term obligations*—(1) *In general.* Under sections 1271(a)(3) and (a)(4), all or a portion of the gain realized on the sale or exchange of a short-term government or nongovernment obligation is treated as ordinary interest income. Sections 1271(a)(3) and (a)(4), however, do not apply to any short-term obligation subject to section 1281.

(2) *Method of making elections.* Elections to accrue on a constant yield basis under sections 1271(a)(3)(E) and (a)(4)(D) are made on an obligation by obligation basis by reporting the transaction on the basis of daily compounding on the taxpayer's timely filed Federal income tax return for the year of the sale or exchange. These elections are irrevocable.

(3) *Counting conventions.* In computing the ratable share of acquisition discount under section 1271(a)(3) or OID under section 1271(a)(4), any reasonable counting convention may be used (*e.g.*, 30 days per month/360 days per year).

§ 1.1272–1 Current inclusion in income of OID.

(a) *Overview*—(1) *In general.* Under section 1272(a)(1), a holder of a debt instrument includes accrued OID in gross income (as interest), regardless of the holder's regular method of accounting. A holder includes qualified stated interest (as defined in § 1.1273–1(c)) in income under the holder's regular method of accounting. See §§ 1.446–2 and 1.451–1.

(2) *Debt instruments not subject to OID inclusion rules.* Sections 1272(a)(2) and 1272(c) list exceptions to the general inclusion rule of section 1272(a)(1). For purposes of section 1272(a)(2)(E) (relating to certain loans between natural persons), "loan" does not include a stripped bond or stripped coupon within the meaning of section 1286(e), and the rule in section 1272(a)(2)(E)(iii), which treats a husband and wife as one person, does not apply to loans made between a husband and wife.

(b) *Accrual of OID*—(1) *Constant yield method.* Except as provided in paragraph (b)(2) of this section, the amount of OID includible in the income of a holder of a debt instrument for any taxable year is determined using the constant yield method as described under this paragraph (b)(1).

(i) *Step one: Determine the debt instrument's yield to maturity.* The "yield to maturity" or "yield" of a debt instrument is the discount rate that, when used in computing the present value of all principal and interest payments to be made under the debt instrument, produces an amount equal to the issue price of the debt instrument. The yield must be constant over the term of the debt instrument and, when

expressed as a percentage, must be calculated to at least two decimal places. *See* paragraph (d) of this section for rules relating to the yield of certain debt instruments subject to contingencies.

(ii) *Step two: Determine the accrual periods.* An accrual period is an interval of time with respect to which the accrual of OID is measured. Accrual periods may be of any length and may vary in length over the term of the debt instrument, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs at the end of an accrual period. In general, the computation of OID is simplest if accrual periods correspond to the intervals between payment dates provided by the terms of the debt instrument. In computing the length of accrual periods, any reasonable counting convention may be used (*e.g.*, 30 days per month/360 days per year).

(iii) *Step three: Determine the OID allocable to each accrual period.* Except as provided in paragraph (c) of this section, the OID allocable to an accrual period equals the product of the adjusted issue price of the debt instrument (as defined in § 1.1275–1(b)] at the beginning of the accrual period and the yield of the debt instrument, less the amount of any qualified stated interest allocable to the accrual period. In performing this calculation, the yield must be stated appropriately taking into account the length of the particular accrual period. *Example 1* in paragraph (j) of this section provides a formula for converting a yield based upon an accrual period of one length to an equivalent yield based upon an accrual period of a different length.

(iv) *Step four: Determine the daily portions of OID.* The daily portion of OID is determined by allocating to each day in an accrual period the ratable portion of the OID allocable to the accrual period. The holder of the debt instrument includes in income the daily portions of OID for each day during the taxable year on which the holder held the debt instrument.

(2) *Exceptions and modifications*—(i) The rules of paragraph (b)(1) of this section do not apply to—

(A) A debt instrument to which section 1272(a)(6) applies (certain interests in or mortgages held by a REMIC, and certain other debt instruments with payments subject to acceleration);

(B) A debt instrument to which § 1.1275–4 applies (debt instruments with contingent payments), except as provided in § 1.1275–4; or

(C) A variable rate debt instrument to which § 1.1275–5 applies, except as provided in § 1.1275–5.

(ii) The amount of OID includible in income by a holder is adjusted for any acquisition premium or is eliminated in the case of a debt instrument purchased at a premium. See sections 1272(a)(7) and 1272(c) and § 1.1272–2.

(c) *Special rules for determining the OID allocable to an accrual period*—(1) *Unpaid qualified stated interest allocable to an accrual period.* In determining the OID allocable to an accrual period under paragraph (b)(1)(iii) of this section, if an interval between payments of qualified stated interest contains more than one accrual period—

(i) The amount of qualified stated interest payable at the end of the interval is allocated on a pro rata basis to each accrual period in the interval; and

(ii) The adjusted issue price must be increased by the amount of any qualified stated interest that has accrued prior to the beginning of the accrual period but is not payable until a later date. *See Example 2* of paragraph (j) of this section for an example illustrating the rules in this paragraph (c)(1).

(2) *Special rule for final accrual periods.* The OID allocable to the final accrual period is the difference between the amount payable at maturity (other than a payment of qualified stated interest) and the adjusted issue price at the beginning of the final accrual period.

(3) *Special rule for certain instruments with an initial short accrual period.* If all accrual periods are of equal length, except for an initial shorter accrual period, the amount of OID allocable to the initial accrual period may be computed using any reasonable method. See *Example 3* in paragraph (j) of this section.

(4) *Cross-reference. See* § 1.1272–3 for an election by an accrual method holder to treat all interest income (including any market discount, acquisition discount, or qualified stated interest) on a debt instrument as OID.

(d) *Yield and maturity of certain debt instruments subject to contingencies*—(1) *In general.* The yield and maturity of a debt instrument are determined by assuming that payments will be made according to the instrument's stated payment schedule, even if the debt instrument provides for a contingency that could result in the acceleration or deferral of one or more payments.

However, the rule in the preceding sentence only applies if, as of the issue date, the amounts payable upon the occurrence of the contingency are fixed. See § 1.1275–4 for the treatment of a debt instrument with payments contingent as to amount.

(2) *Contingencies that are likely to occur*—(i) *Contingency taken into account.* Notwithstanding the rule in paragraph (d)(1) of this section, if, based on all the facts and circumstances as of the issue date, it is more likely than not that the contingency will occur, then the yield and maturity of the debt instrument are computed by assuming that the contingency will occur.

(ii) *Mandatory sinking fund provision.* Paragraph (d)(2)(i) of this section does not apply to a mandatory sinking fund provision if the terms of the provision meet reasonable commercial standards.

(iii) *Consistency rule.* The determination by the issuer that a contingency will or will not occur under paragraph (d)(2)(i) of this section is binding on all holders of the debt instrument. However, the issuer's determination is not binding on a holder that explicitly discloses that its determination of the yield and maturity of the instrument is different from the issuer's determination. The disclosure must be made on the form prescribed by the Commissioner and attached to the holder's timely filed Federal income tax return for the tax year that includes the acquisition date of the debt instrument.

(3) *Treatment of options.* Notwithstanding paragraphs (d)(1) and (d)(2) of this section, this paragraph (d)(3) provides rules for determining the yield and maturity of a debt instrument that provides the holder or issuer with unconditional options to accelerate or defer payments on one or more dates during the term of the debt instrument if, as of the issue date, the amounts payable upon the exercise of the options are fixed. For purposes of calculating yield and maturity, an issuer is treated as exercising any such option if its exercise would lower the yield of the debt instrument. A holder is treated as exercising any such option if its exercise would increase the yield of the debt instrument. See *Example 5* through *Example 7* in paragraph (j) of this section.

(4) *Subsequent adjustments.* If a contingency described in this paragraph (d) (including the exercise of an option described in paragraph (d)(3) of this section) actually occurs or does not occur, contrary to the assumption made pursuant to this paragraph (d) (a "change in circumstances"), the debt instrument is treated as follows—

(i) If the change in circumstances defers a payment (*e.g.*, failure to exercise a put or call option treated as exercised, or exercise of an option to extend treated as not exercised), then,

solely for purposes of sections 1272 and 1273, the debt instrument is treated as reissued on the date of exercise or non-exercise for an amount equal to its adjusted issue price on that date. See *Example 5* in paragraph (j) of this section.

(ii) If the change in circumstances accelerates a payment (*e.g.*, failure to exercise an option to extend or to issue additional debt instruments in lieu of cash interest payments treated as exercised, or exercise of a put or call option treated as not exercised), the debt instrument is treated as if the issuer made a prepayment in the amount of the accelerated payment. See section 1271 and the regulations thereunder if the debt instrument is retired or § 1.1275–2(a) in all other cases. See *Example 6* and *Example 7* in paragraph (j) of this section.

(5) *Certain debt instruments with indefinite maturities.* The yield of a debt instrument payable on demand or with an indefinite maturity is its stated interest rate if its issue price is equal to its stated principal amount and interest is paid or compounded at a fixed rate over the entire term of the debt instrument at intervals of one year or less.

(e) *Convertible debt instruments.* For purposes of section 1272, an option to convert a debt instrument into the stock of the issuer or a related party (as defined in section 267(b) or section 707(b)(1)) is ignored, even if the privilege may be satisfied or exercised for the cash value of the stock.

(f) *Special rules for determining whether a debt instrument is a short-term obligation.* For purposes of sections 871(g), 1271(a)(3), 1271(a)(4), 1272(a)(2)(C), and 1283(a)(1), the term of a debt instrument is the longest length of time possible that the instrument could be outstanding under the terms of the debt instrument. In addition, the term of the instrument includes either the issue date or the maturity date, but not both dates.

(g) *Basis adjustment.* The basis of a debt instrument in the hands of the holder is increased by the amount of OID included in the holder's gross income and decreased by the amount of any payment from the issuer to the holder under the debt instrument other than a payment of qualified stated interest.

(h) *Debt instruments denominated in a currency other than the U.S. dollar.* The rules of section 1272 and this section apply to debt instruments that provide for payments denominated in, or determined by reference to, the functional currency of the taxpayer or qualified business unit of the taxpayer (even if that currency is other than the U.S. dollar). See § 1.988–2(b) to determine interest income or expense for debt instruments that provide for payments denominated in, or determined by reference to, a nonfunctional currency.

(i) [*Reserved*]

(j) *Examples.* The rules of this section are illustrated by the following examples. Each example assumes that all taxpayers use the calendar year as the taxable year. In addition, each example assumes a 30-day month, 360-day year, and that the first accrual period begins on the issue date and the final accrual period ends on the day before the stated maturity date. Although, for purposes of simplicity, the yield as stated is rounded to two decimal places, the computations do not reflect any such rounding convention.

Example 1. Accrual of OID on zero coupon debt instrument; choice of accrual periods—(i) *Facts.* On July 1, 1994, A purchases at original issue, for $675,564.17, a debt instrument that matures on July 1, 1999, and provides for a single payment of $1,000,000 at maturity.

(ii) *Determination of yield.* Under paragraph (b)(1)(i) of this section, the yield of the debt instrument is eight percent, compounded semiannually.

(iii) *Determination of accrual period.* Under paragraph (b)(1)(ii) of this section, accrual periods may be of any length, provided that each accrual period is no longer than one year and each payment of principal or interest occurs at the end of an accrual period. The yield to maturity to be used in computing OID accruals in any accrual period, however, must reflect the length of the accrual period chosen. A yield based on compounding b times per year is equivalent to a yield based on compounding c times per year as indicated by the following formula:

$$r=c\{(1+i/b)^{b/c}-1\}$$

In which:

i=The yield based on compounding b times per year expressed as a decimal

r=The equivalent yield based on compounding c times per year expressed as a decimal

b=The number of compounding periods in a year on which i is based (for example, 12, if i is based on monthly compounding)

c=The number of compounding periods in a year on which r is based

(iv) *Determination of OID allocable to each accrual period.* Assume that A decides to compute OID on the debt instrument using semiannual accrual periods. Under paragraph (b)(1)(iii) of this section, the OID allocable to the first accrual period is $27,022.56: the product of the issue price ($675,564.17) and the yield properly adjusted for the length of the accrual period (eight percent/2), less qualified stated interest allocable to the accrual period ($0). The daily portion of OID for the first semiannual accrual period is $150.13 ($27,022.56/180).

(v) *Determination of OID if monthly accrual periods are used.* Alternatively, assume that A decides to compute OID on the debt instrument using monthly accrual periods. Using the above formula, the yield on the debt instrument reflecting monthly compounding is 7.87 percent, compounded monthly ($12\{(1+.08/2)^{2/12}-1\}$). Under paragraph (b)(1)(iii) of this section, the OID allocable to the first accrual period is $4,430.48: the product of the issue price ($675,564.17) and the yield properly adjusted for the length of the accrual period (7.87 percent/12), less qualified stated interest allocable to the accrual period ($0). The daily portion of OID for the first monthly accrual period is $147.68 ($4,430.48/30).

Example 2. Accrual of OID on debt instrument with qualified stated interest—(i) *Facts.* On September 1, 1994, A purchases at original issue, for $90,000, B corporation's debt instrument that matures on September 1, 2004, and has a stated principal amount of $100,000, payable on that date. The debt instrument provides for semiannual payments of interest of $3,000, payable on September 1 and March 1 of each year, beginning on March 1, 1995.

(ii) *Determination of yield.* The debt instrument is a ten-year debt instrument with an issue price of $90,000 and a stated redemption price at maturity of $100,000. The semiannual payments of $3,000 are qualified stated interest payments. Under paragraph (b)(1)(i) of this section, the yield is 7.44 percent, compounded semiannually.

(iii) *Accrual of OID if semiannual accrual periods are used.* Assume that A decides to compute OID on the debt instrument using semiannual accrual periods. Under paragraph (b)(1)(iii) of this section, the OID allocable to the first accrual period equals the product of the issue price ($90,000) and the yield properly adjusted for the length of the accrual period (7.44 percent/2), less qualified stated interest allocable to the accrual period ($3,000). Therefore, the amount of OID for the accrual period equals $345.78 ($3,345.78–$3,000).

(iv) *Adjustment for accrued but unpaid qualified stated interest if monthly accrual periods are used.* Assume, alternatively, that A decides to compute OID on the debt instrument using monthly accrual periods. The yield, compounded monthly, is 7.32 percent. Under paragraph (b)(1)(iii) of this section, the OID allocable to the first accrual period equals the product of the issue price ($90,000) and the yield properly adjusted for the length of the accrual period (7.32 percent/12), less qualified stated interest allocable to the accrual period. Under paragraph (c)(1)(i) of this section, the qualified stated interest allocable to the accrual period is the pro rata amount of qualified stated interest allocable to the accrual period ($3,000 × 1/6, or $500). Therefore, the amount of OID for the accrual period is $49.18 ($549.18–$500).

Example 3. Accrual of OID for debt instrument with short first accrual period—(i) *Facts.* On May 1, 1994, G purchases at original issue, for $80,000, H corporation's debt instrument maturing on July 1, 2004. The debt instrument provides for a single payment at maturity of $250,000. G computes

its OID assuming six-month accrual periods ending on January 1 and July 1 of each year and an initial short two-month accrual period from May 1, 1994 through June 30, 1994.

(ii) *Determination of yield.* The yield on the debt instrument is 11.53 percent, compounded semiannually.

(iii) *Determination of OID allocable to short first accrual period.* Under paragraph (c)(3) of this section, G may use any reasonable method to compute OID for the initial accrual period. One reasonable method is to calculate the amount of OID pursuant to the following formula:

$OID_{short}=IP\times(i/k)\times f$

In which:

OID_{short}=The amount of OID allocable to the initial short accrual period
IP=The issue price of the debt instrument
i=The yield to maturity expressed as a decimal
k=The number of accrual periods in a year
f=A fraction whose numerator is the number of days in the short first accrual period, and whose denominator is the number of days in a full accrual period

(iv) *Amount of OID for the short period.* Under this method, the amount of OID for the initial short accrual period equals $1,537 ($80,000 × (11.53 percent/2) × (60/180)).

(v) *Alternative method.* Another reasonable method is to calculate the amount of OID for the initial short period using the yield based on bi-monthly compounding, computed pursuant to the formula set forth in *Example 1* of paragraph (j) of this section. Under this method, the amount of OID for the initial short period equals $1,508.38 ($80,000 × (11.31 percent/6).

Example 4. Impermissible accrual of OID using a method other than constant yield method—(i) *Facts.* On July 1, 1994, B purchases at original issue, for $100,000, C corporation's debt instrument that matures on July 1, 1999, and has a stated principal amount of $100,000. The debt instrument provides for a single payment at maturity of $148,024.43. The yield of the debt instrument is eight percent, compounded semiannually.

(ii) *Determination of yield.* Assume that C uses six monthly accrual periods to compute its OID for 1994. The yield must reflect the monthly compounding (as determined using the formula described in *Example 1* of paragraph (j) of this section). As a result, the monthly yield of the debt instrument is 7.87 percent, divided by 12. C may not compute its monthly accruals of OID for the last six months in 1994 by dividing eight percent by 12.

Example 5. Debt instrument subject to put option—(i) *Facts.* On January 1, 1994, G purchases at original issue, for $70,000, H corporation's debt instrument maturing on January 1, 2009, with a stated principal amount of $100,000, payable at maturity. The debt instrument provides for semiannual payments of interest of $4,000, payable on January 1 and July 1 of each year, beginning on July 1, 1994. The debt instrument gives G a right to put the bond back to H, exercisable on January 1, 2004, in return for $85,000 (exclusive of the $4,000 of stated interest payable on that date).

(ii) *Determination of yield and maturity.* Yield determined without regard to the put option is 12.47 percent, compounded semiannually. Yield determined by assuming that the put option is exercised (*i.e.*, by using January 1, 2004, as the maturity date and $85,000 as the stated principal amount payable on that date) is 12.56 percent, compound semiannually. Thus, under paragraph (d)(3) of this section, it is assumed that G will exercise the put option, because exercise of the option would increase the yield of the debt instrument. Thus, for purposes of calculating OID, the debt instrument is assumed to be a ten-year debt instrument with an issue price of $70,000, a stated redemption price at maturity of $85,000, and a yield of 12.56 percent, compounded semiannually.

(iii) *Consequences if put option is, in fact, not exercised.* If the put option is, in fact, not exercised, then, under paragraph (d)(4)(i) of this section, the debt instrument is treated, solely for purposes of sections 1272 and 1273, as if it were reissued on January 1, 2004 for an amount equal to its adjusted issue price on that date, $85,000. The new debt instrument matures on January 1, 2009, with a stated principal amount of $100,000 payable on that date and provides for semiannual payments of interest of $4,000. The yield of the new debt instrument is 12.08 percent, compounded semiannually.

Example 6. Debt instrument subject to partial call option—(i) *Facts.* On January 1, 1994, H purchases at original issue, for $95,000, J corporation's debt instrument that matures on January 1, 1999, and has a stated principal amount of $100,000, payable on that date. The debt instrument provides for semiannual payments of interest of $4,000, payable on January 1 and July 1 of each year, beginning on July 1, 1994. On January 1, 1997, J has a right to call 50 percent of the principal amount of the debt instrument for $55,000 (exclusive of the $4,000 of stated interest payable on that date).

(ii) *Determination of yield and maturity.* Yield determined without regard to the call option is 9.27 percent, compounded semiannually. Yield determined by assuming J exercises its call option is 10.75 percent, compounded semiannually. Thus, under paragraph (d)(3) of this section, it is assumed that J will not exercise the call option because exercise of the option would increase the yield of the debt instrument. Thus, for purposes of calculating OID, the debt instrument is assumed to be a five-year debt instrument with a single principal payment at maturity of $100,000, and a yield of 9.27 percent, compounded semiannually.

(iii) *Consequences if the call option is, in fact, exercised.* If the call option is, in fact, exercised, then under paragraph (d)(4)(ii) of this section, the debt instrument is treated as if the issuer made a prepayment of $55,000 that is subject to § 1.1275–2(a). Consequently, under § 1.1275–1(b), the adjusted issue price immediately after the call option is exercised equals the issue price of the debt instrument ($95,000) increased by the OID previously includable in gross income ($2,725.12) and decreased by any payment (other than a qualified stated interest payment) ($55,000). The yield of the debt instrument continues to be 9.27 percent, compounded semiannually. Under paragraph (c)(2) of this section, the OID for the final accrual period is $7,357.22 (the difference between the amount payable at maturity and the adjusted issue price at the beginning of the final accrual period).

Example 7. Debt instrument providing for payment of interest "in kind"—(i) *Facts.* On January 1, 1994, T purchases at original issue, for $75,000, U corporation's debt instrument maturing on January 1, 1999, at a stated principal amount of $100,000, payable on that date. The debt instrument provides for semiannual payments of interest of $2,000 on January 1 and July 1 of each year, beginning on July 1, 1994. The debt instrument gives U the right to issue, in lieu of the first interest payment, a second debt instrument maturing on January 1, 1999 with a stated principal amount of $2,000. This debt instrument would provide for semiannual payments of interest of $40 on January 1 and July 1 of each year, beginning on January 1, 1995.

(ii) *Determination of yield and maturity.* Under § 1.1275–2(c)(3), the issuance of the subsequent debt instrument is not considered a payment made on the original debt instrument, and the subsequent debt instrument is aggregated with the original debt instrument. As a result, the right to issue the subsequent debt instrument is treated as an option to defer the initial interest payment until maturity. Yield determined without regard to the option to defer is 10.41 percent, compounded semiannually. Yield determined by assuming U exercises its option to defer is 10.28 percent, compounded semiannually. Thus, under paragraph (d)(3) of this section, it is assumed that U will exercise the option to defer by issuing the subsequent debt instrument because exercise of the option would decrease the yield of the debt instrument. For purposes of calculating OID, the debt instrument is assumed to be a five-year debt instrument with a single principal payment at maturity of $102,000 and nine semiannual interest payments of $2,040 beginning on January 1, 1995. As a result, the yield is 10.28 percent, compounded semiannually.

(iii) *Consequences if the initial interest payment is made.* Under paragraph (d)(4)(ii) of this section, if U pays $2,000 on July 1, 1994, the debt instrument is treated as if the issuer made a prepayment of $2,000. Consequently, the adjusted issue price of the debt instrument immediately after the prepayment is $77,380.22. The yield continues to be 10.28 percent, compounded semiannually. Under paragraph (c)(2) of this section, the OID for the final accrual period of six months is $4,255.56 (the difference between the amount payable at maturity and the adjusted issue price at the beginning of the final accrual period).

Example 8. Debt instrument with stepped interest rate—(i) *Facts.* On July 1, 1994, G purchases at original issue, for $85,000, H corporation's debt instrument maturing on July 1, 2004. The debt instrument has a stated principal amount of $100,000, payable on the maturity date and provides for semiannual interest payments on January 1 and July 1 of each year, beginning on January 1, 1995. For the first five years, the amount of each payment is $2,000 and for the final five years the amount of each payment is $5,000.

(ii) *Determination of OID.* Assume that G computes its OID using six-month accrual periods ending on January 1 and July 1 of each year. The yield of the debt instrument, determined under paragraph (b)(1)(i) of this section, is 8.65 percent, compounded semiannually. Interest is unconditionally payable at a fixed rate of at least four percent, compounded semiannually, for the entire term of the debt instrument. Consequently, under § 1.1273–1(c)(1), the semiannual payments are qualified stated interest payments to the extent of $2,000. The amount of OID for the first six-month accrual period is $1,674.34 (the issue price of the debt instrument ($85,000) times the yield of the debt instrument for that accrual period (.0865/2) less the amount of any qualified stated interest allocable to that accrual period ($2,000)).

Example 9. Debt instrument with an indefinite maturity that provides for interest at a constant rate—(i) *Facts.* On January 1, 1994, V purchases at original issue, for $100,000, W corporation's debt instrument. The debt instrument calls for interest to accrue at a rate of nine percent, compounded annually. The debt instrument is redeemable at any time at the option of the holder for an amount equal to $100,000, plus accrued interest.

(ii) *Amount of OID.* Pursuant to paragraph (d)(5) of this section, the yield of the debt instrument is nine percent, compounded annually. If the debt instrument is not redeemed during 1994, the amount of OID allocable to the year is $9,000.

§ 1.1272–2 Treatment of debt instruments purchased at a premium.

(a) *In general.* Under section 1272(c)(1), if a holder purchases a debt instrument at a premium, the holder does not include any OID in gross income. Under section 1272(a)(7), if a holder purchases a debt instrument at an acquisition premium, the holder reduces the amount of OID includible in gross income by the fraction determined under paragraph (b)(4) of this section.

(b) *Definitions and special rules*—(1) *Purchase.* For purposes of section 1272 and this section, "purchase" means any acquisition of a debt instrument, including the acquisition of a newly issued debt instrument in a debt-for-debt exchange or the acquisition of a debt instrument in a transferred basis transaction (e.g., under section 362 (a) or (b) or section 1015).

(2) *Premium.* A debt instrument is purchased at a premium if its adjusted basis, immediately after its purchase by the holder, exceeds the sum of all amounts payable on the instrument after the purchase date other than payments of qualified stated interest (as defined in § 1.1273–1(c)).

(3) *Acquisition premium.* A debt instrument is purchased at an acquisition premium if it is not purchased at a premium and immediately after its purchase (including a purchase at original issue) its adjusted basis is greater than its adjusted issue price (as defined in § 1.1275–1(b)).

(4) *Acquisition premium fraction.* In applying section 1272(a)(7), the cost of a debt instrument is its adjusted basis immediately after its acquisition by the purchaser. Thus, the numerator of the fraction determined under section 1272(a)(7)(B) is the excess of the adjusted basis of the debt instrument immediately after its acquisition by the purchaser over the adjusted issue price of the debt instrument. The denominator of the fraction determined under section 1272(a)(7)(B) is the excess of the sum of all amounts payable on the debt instrument after the purchase date, other than payments of qualified stated interest, over the instrument's adjusted issue price.

(5) *Election to accrue discount on a constant yield basis.* Rather than apply the acquisition premium fraction, a holder of a debt instrument purchased at an acquisition premium may elect under § 1.1272–3 to compute OID accruals by treating the purchase as a purchase at original issuance and applying the mechanics of the constant yield method.

(6) *Special rules for determining basis*—(i) *Debt instruments acquired in exchange for other property.* For purposes of section 1272(a)(7), section 1272(c), and this section, if a debt instrument is acquired in an exchange for other property (other than in a reorganization defined in section 368) and the basis of the debt instrument is determined, in whole or in part, by reference to the basis of the other property, the basis of the debt instrument will not exceed its fair market value immediately after the exchange. For example, if a debt instrument is distributed from a partnership to a partner and the distribution is subject to section 731, the partner's basis in the debt instrument may not exceed its fair market value for purposes of this section.

(ii) *Purchases of debt instruments with accrued but unpaid qualified stated interest.* For purposes of this section, if the adjusted basis of a debt instrument immediately after its purchase is equal to the cost of the instrument under section 1012, the adjusted basis is reduced by any amount of qualified stated interest that is accrued but unpaid as of the purchase date.

(iii) *Acquisition by gift.* For purposes of this section, a donee's adjusted basis in a debt instrument is the donee's basis for determining gain under section 1015(a).

(c) *Examples.* The following examples illustrate the application of this section.

Example 1. Debt instrument purchased at an acquisition premium—(i) *Facts.* On July 1, 1992, A purchased at original issue, for $500, a debt instrument issued by Corporation X. The debt instrument matures on July 1, 1997, and calls for a single payment at maturity of $1,000. Under section 1273(a), the debt instrument has a stated redemption price at maturity of $1,000 and, thus, OID of $500. On July 1, 1994, when the debt instrument's adjusted issue price is $659.75, A sells the debt instrument to B for $750 in cash.

(ii) *Acquisition premium fraction.* Because the cost to B of the debt instrument is less than the amount payable on the debt instrument after the purchase date, but is greater than the debt instrument's adjusted issue price, B has paid an acquisition premium for the debt instrument. Accordingly, the daily portion of OID for any day that B holds the debt instrument is reduced by a fraction the numerator of which is $90.25 (the excess of the cost of the debt instrument over its adjusted issue price), and the denominator of which is $340.25 (the excess of the sum of all payments after the purchase date over its adjusted issue price).

Example 2. Debt-for-debt exchange where holder is considered to purchase new debt instrument at a premium—(i) *Facts.* On January 1, 1994, H purchases at original issue, for $1,000, a debt instrument issued by Corporation X. On July 1, 1996, when H's adjustable basis in the debt instrument is $1,000, Corporation X issues a new debt instrument with a stated redemption price at maturity of $750 to H in exchange for the old debt instrument. Assume that the issue price of the new debt instrument is $600. Thus, under section 1273(a), the debt instrument has OID of $150. The exchange qualifies as a recapitalization under section 368(a)(1)(E), with the consequence that, under sections 354 and 358, H recognizes no loss on the exchange and has an adjusted basis in the new debt instrument of $1,000.

(ii) *Application of section 1272(c)(1).* Under paragraphs (b)(1) and (b)(2) of this section, H purchases the new debt instrument at a premium of $250. Accordingly, under section 1272(c)(1), H is not required to include OID in income with respect to the new debt instrument.

Example 3. Debt-for-debt exchange where holder is considered to purchase new debt instrument at an acquisition premium—(i) *Facts.* The facts are the same as in *Example 2*, except that H purchases the old debt instrument from another holder on July 1, 1994, and on July 1, 1996, H's adjusted basis in the old debt instrument is $700. Under section 1273(a), the new debt instrument is issued with OID of $150.

(ii) *Application of section 1272(a)(7).* Under paragraphs (b)(1) and (b)(3) of this section, H purchases the new debt instrument at an acquisition premium of $100. Accordingly, the daily portion of OID that is includible in H's income is reduced by the daily portion of acquisition premium determined under section 1272(a)(7).

Example 4. Treatment of acquisition premium for debt instrument acquired by gift—(i) *Facts.* On July 1, 1994, D receives as

a gift a debt instrument with a stated redemption price at maturity of $1,000 and an adjusted issue price of $800. The fair market value of the debt instrument on that date is $900. The donor purchased the debt instrument on July 1, 1993 at an acquisition premium and had an adjusted basis of $950 in the debt instrument.

(ii) *Application of section 1272(a)(7).* Under paragraphs (b)(1), (b)(3) and (b)(6)(iii) of this section, D is considered to have purchased the debt instrument at an acquisition premium of $150. Accordingly, the daily portion of OID that is includible in D's income is reduced by the daily portion of acquisition premium determined under section 1272(a)(7).

§ 1.272–3 Election by accrual method holder to treat all interest on a debt instrument as OID.

(a) *Election.* A holder that uses an accrual method of accounting may elect to include in gross income all interest that accrues on a debt instrument by using the constant yield method described in paragraph (c) of this section. For purposes of this election, interest includes stated interest, acquisition discount, OID, de minimis OID, market discount, de minimis market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium.

(b) *Scope of election*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, a holder may make the election for any debt instrument.

(2) *Exceptions, limitations, and special rules*—(i) *Debt instruments with amortizable bond premium (as determined under section 171).* (A) A holder may make the election for a debt instrument with amortizable bond premium only if the instrument qualifies under section 171(d).

(B) If a holder makes an election under this section for a debt instrument with amortizable bond premium, the holder is deemed to have made the election under section 171(c)(2) for all of the holder's other debt instruments with amortizable bond premium. If the holder has previously made the election under section 171(c)(2), the requirements of that election with respect to any debt instrument are satisfied by electing to amortize the bond premium under the rules provided by this section.

(ii) *Tax-exempt debt instruments.* A holder may not make the election for a tax-exempt obligation as defined in section 1275(a)(3).

(iii) *Market discount debt instruments.* If a holder makes the election under this section for a debt instrument with market discount, the holder is deemed to have made the election under section 1278(b) for all of the holder's other debt instruments with market discount. If the holder has previously made the election under section 1278(b), the requirements of that election with respect to any debt instrument are satisfied by electing to include the market discount in income in accordance with the rules provided by this section.

(c) *Mechanics of the constant yield method*—(1) *In general.* For purposes of this section, the amount of interest that accrues during an accrual period is determined under rules similar to those under section 1272 (the constant yield method). In applying the constant yield method, however, a debt instrument subject to the election is treated as if—

(i) The instrument is issued for the holder's adjusted basis immediately after its acquisition by the holder;

(ii) The instrument is issued on the holder's acquisition date; and

(iii) None of the interest payments provided for in the instrument are qualified stated interest payments.

(2) *Special rules to determine adjusted basis.* For purposes of paragraph (c)(1)(i) of this section—

(i) If the debt instrument is acquired in an exchange for other property (other than in a reorganization defined in section 368) and the basis of the debt instrument is determined, in whole or in part, by reference to the basis of the other property, the adjusted basis of the debt instrument may not exceed its fair market value immediately after the exchange; and

(ii) If the debt instrument was acquired with amortizable bond premium (as determined under section 171), the adjusted basis of the debt instrument is reduced by the value attributable to any conversion feature, unless that amount is de minimis.

(d) *Basis adjustments.* The holder's basis in each debt instrument is adjusted for amounts taken into account by the holder under this section.

(e) *Time and manner of making the election.* The election must be made for the taxable year in which the holder acquires the debt instrument. The election is made by attaching to the holder's timely filed Federal income tax return a statement that the holder is making an election under this paragraph and that identifies the debt instruments subject to the election. A holder may make the election for a class or group of debt instruments by attaching a statement describing the type or types of debt instruments being designated for the election. If applicable, this election satisfies the election requirements under sections 171(c)(2), 1276(b)(2), 1278(b), and 1283(b)(2).

(f) *Revocation of election.* The election may not be revoked unless approved by the Commissioner. However, the holder will still be required to use the constant yield method to compute accrued market discount and acquisition discount for debt instruments that were acquired on or before the revocation and that were subject to the election.

§ 1.1273–1 Definition of OID.

(a) *In general.* Section 1273(a)(1) defines OID as the excess of a debt instrument's stated redemption price at maturity over its issue price. Section 1.1273–2 defines issue price and paragraphs (b) and (c) of this section define stated redemption price at maturity. Paragraph (d) of this section provides de minimis rules under which the amount of OID is treated as zero. Although the total amount of OID with respect to a debt instrument with an indefinite maturity date (including an instrument payable on demand) may be indeterminate, § 1.1272–1(d)(5) provides rules to determine the yield of certain debt instruments with indefinite maturities. See Example 9 in § 1.1272–1(j).

(b) *Stated redemption price at maturity.* A debt instrument's stated redemption price at maturity is the sum of all payments provided by the debt instrument other than qualified stated interest payments. The rules of § 1.1272–1(d) apply in determining the stated redemption price at maturity of certain debt instruments subject to contingencies.

(c) *Qualified stated interest.*—(1) *In general.* "Qualified stated interest" is stated interest that is unconditionally payable in cash or in property (other than debt instruments of the issuer) at least annually at a single fixed rate. Interest is payable at a single fixed rate only if the rate appropriately takes into account the length of the interval between payments. See Example 1 in paragraph (f) of this section. Interest is considered to be unconditionally payable only if late payment or nonpayment is penalized or reasonable remedies exist to compel payment. Notwithstanding the preceding sentence, interest is not considered to be unconditionally payable if the lending transaction does not reflect arm's length dealing and the holder does not intend to enforce such remedies. Interest payable upon the occurrence of a contingency (such as the existence of profits) is not unconditionally payable.

(2) *Variable rate debt instrument.* In the case of a variable rate debt instrument, "qualified stated interest" is defined in § 1.1275–5(e)

(3) *Stated interest in excess of qualified stated interest.* To the extent

that stated interest payable under a debt instrument exceeds qualified stated interest, the excess is included in the debt instrument's stated redemption price at maturity.

(4) *Short-term obligations.* In the case of a short-term obligation (as defined in section 1283(a)(1)(A)), no payments of interest are considered to be qualified stated interest.

(d) *De minimis OID*—(1) *In general.* If the amount of OID with respect to a debt instrument is less than the de minimis amount, the amount of OID is treated as zero, and all stated interest is treated as qualified stated interest.

(2) *De minimis amount.* The de minimis amount is an amount equal to 0.0025 multiplied by the product of the stated redemption price at maturity and the number of complete years to maturity from the issue date.

(3) *Installment obligations.* In the case of an installment obligation (as defined in paragraph (e)(1) of this section), paragraph (d)(2) of this section is applied by substituting for the "number of complete years to maturity" the weighted average maturity (as defined in paragraph (e)(3) of this section). Alternatively, in the case of a debt instrument that provides for payments of principal no more rapidly than a self-amortizing installment obligation (as defined in paragraph (e)(2) of this section), the de minimis amount defined in paragraph (d)(2) of this section may be calculated by substituting 0.00167 for 0.0025.

(4) *Special rule for variable rate debt instruments.* If a variable rate debt instrument (within the meaning of § 1.1275–5(a)) has stated interest that is not unconditionally payable at least annually, the amount of OID on the debt instrument is considered to be greater than the de minimis amount.

(5) *Special rule for interest holidays, teaser rates, and other interest shortfalls*—(i) *In general.* Solely for the purpose of determining whether OID is de minimis, the rule in this paragraph (d)(5) generally treats teaser rates, interest holidays, and certain other interest shortfalls as resulting in OID equal to the amount of interest foregone during the period of the teaser, holiday, or shortfall. This rule applies if—

(A) The amount of OID is more than the de minimis amount as otherwise determined under paragraph (d) of this section; and

(B) All stated interest provided for in the debt instrument would be qualified stated interest under paragraph (c) of this section except that for one or more accrual periods the interest rate is below the rate applicable for the remainder of the instrument's term (*e.g.*, if as a result of an interest holiday, all stated interest is not qualified stated interest).

(ii) *Redetermination of stated redemption price at maturity.* For purposes of determining whether a debt instrument described in paragraph (d)(5)(i) of this section has de minimis OID, the stated redemption price at maturity is treated as equal to the stated principal amount plus the amount of additional stated interest that would be necessary to be payable on the instrument in order for all stated interest to be qualified stated interest under paragraph (c) of this section. In applying the preceding sentence, the additional amount that is added to the stated redemption price at maturity is reduced (but not below zero) by the difference between the debt instrument's issue price and its stated principal amount. See Example 3 of paragraph (f) of this section. In addition, the weighted average maturity of the debt instrument under paragraph (e)(3) of this section is determined by ignoring the stated interest payments.

(6) *Treatment of de minimis OID by holders*—(i) *Allocation of de minimis OID to principal payments.* The holder of a debt instrument includes any de minimis OID in income as stated principal payments are made. The amount includible in income with respect to each principal payment equals the product of the total amount of de minimis OID on the instrument and a fraction, the numerator of which is the amount of the principal payment made and the denominator of which is the stated principal amount of the instrument. Any amount of de minimis OID includible in income under the preceding sentence is treated as an amount received in retirement of the debt instrument for purposes of section 1271.

(ii) *Character of de minimis OID.* Any gain attributable to de minimis OID that is recognized on the sale or exchange of a debt instrument is capital gain if the debt instrument is a capital asset in the hands of the seller.

(iii) *Cross-reference.* See § 1.1272–3 for an election by an accrual method holder to treat de minimis OID as OID.

(e) *Definitions*—(1) *Installment obligation.* An installment obligation is a debt instrument that provides for the payment of any amount other than qualified stated interest before maturity.

(2) *Self-amortizing installment obligation.* A self-amortizing installment obligation is an obligation that provides for equal payments composed of principal and qualified stated interest that are unconditionally payable at least annually during the entire term of the debt instrument with no significant additional payment required at maturity.

(3) *Weighted average maturity.* The weighted average maturity of a debt instrument is the sum of the amounts obtained by multiplying the amount of each payment under the instrument (other than a payment of qualified stated interest) by a fraction, the numerator of which is the number of complete years from the issue date until the payment is made and the denominator of which is the stated redemption price at maturity.

(f) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. Qualified stated interest—(i) *Facts.* On January 1, 1994, A purchases at original issue, for $100,000, a debt instrument that matures on January 1, 1998 and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for interest payments of $8,000 on January 1, 1995 and January 1, 1996, and quarterly interest payments of $1,943, beginning on April 1, 1996.

(ii) *Amount of qualified stated interest.* The annual payments of $8,000 and the quarterly payments of $1,943 reflect interest payable at a single fixed rate because 8 percent, compounded annually, is equivalent to 7.77 percent, compounded quarterly. Consequently, all stated interest payments under the debt instrument are qualified stated interest payments.

Example 2. Stated interest in excess of qualified stated interest—(i) *Facts.* On January 1, 1994, B purchases at original issue, for $100,000, C corporation's five-year debt instrument. The debt instrument provides for a principal payment of $100,000 payable at maturity, and calls for annual interest payments of $10,000 for the first 3 years and annual interest payments of $10,600 for the last two years.

(ii) *Payments in excess of qualified stated interest.* All of the first three interest payments and $10,000 of each of the last two interest payments are qualified stated interest payments within the meaning of paragraph (c)(1) of this section. Under paragraph (c)(3) of this section, the remaining $600 of each of the last two interest payments is included in the stated redemption price at maturity, so that the stated redemption price at maturity is $101,200. Pursuant to paragraph (e)(3) of this section, the weighted average maturity of the debt instrument is 4.994 years {(4 years × $600/$101,200) + (5 years × $100,600/$101,200)}. The de minimis amount, or one-fourth of one percent of the stated redemption price at maturity multiplied by the weighted average maturity, is $1,263.50. Because the actual amount of discount, $1,200, is less than the de minimis amount, the instrument is treated as having no OID, and, under paragraph (d)(1) of this section, all of the interest payments are considered to be qualified stated interest.

Example 3. De minimis OID: interest holiday—(i) *Facts.* On January 1, 1994, C purchases at original issue, for $97,561, a debt instrument that matures on January 1, 2006 and has a stated principal amount of

$100,000, payable at maturity. The debt instrument provides for an initial interest holiday of one quarter and quarterly interest payments of $2,500 thereafter (beginning on July 1, 1994). The issue price of the debt instrument is $97,561.

(ii) *De minimis amount of OID.* But for the interest holiday, all stated interest on the debt instrument would be qualified stated interest. Under paragraph (d)(5) of this section, for purposes of determining whether the debt instrument has de minimis OID, the stated redemption price at maturity of the instrument is $100,061 ($100,000 (stated principal amount) plus $2,500 (additional interest for the initial period) minus $2,439 (the difference between the instrument's stated principal amount and issue price)). Thus, the debt instrument is treated as having OID of $2,500 ($100,061 minus $97,561). Because this amount is less than the de minimis amount of $3,000 (0.0025 multiplied by $100,000 multiplied by 12 complete years to maturity), the debt instrument is treated as having no OID, and all stated interest is treated as qualified stated interest.

(iii) *If debt instrument had greater than de minimis OID.* If the issue price were $97,000 or less, the debt instrument would not have de minimis OID. In that case, none of the stated interest would be qualified stated interest. If, for example, the issue price were $97,000, the stated redemption price at maturity would be $217,500 ($100,000 plus all stated interest), and the debt instrument would have $120,500 of OID to be accounted for under the rules of § 1.1272–1.

§ 1.1273–2 Determination of issue price.

(a) *Publicly offered debt instruments not issued for property*—(1) *In general.* Except as provided in paragraph (a)(3) of this section, the issue price of a debt instrument that is part of an issue of publicly offered debt instruments not issued for property is the first price at which a substantial amount of the debt instruments included in the issue is sold to the public. For this purpose, the public does not include bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. The issue price does not change if part of the issue is subsequently sold at a different price.

(2) *Publicly offered debt instruments defined.* A debt instrument is publicly offered if it is part of an issue of debt instruments the initial offering of which—

(i) Is registered with the Securities and Exchange Commission; or

(ii) Would be required to be registered under the Securities Act of 1933 but for an exemption from registration—

(A) Under section 3 of the Securities Act of 1933 (relating to exempted securities);

(B) Under sections 2 or 4 of the Securities Act of 1933 because of the identity of the issuer or the nature of the security; or

(C) Because the issue is intended for distribution to persons who are not United States persons.

(3) *Publicly offered Treasury securities.* The issue price of an issue of publicly offered Treasury securities is the average price of the debt instruments sold. See § 1.1275–2(d) for rules regarding additional Treasury securities issued in the qualified reopening.

(b) *Other debt instruments not issued for property*—(1) *In general.* The issue price of an issue of debt instruments not issued for property and not publicly offered is the price paid by the first buyer of an instrument that is part of the issue. For this purpose, the first buyer does not include any bond house, broker, or similar person or organization acting in the capacity of an underwriter, placement agent, or wholesaler. Typically, the issue price of a debt instrument evidencing a loan to a natural person is determined under this paragraph (b)(1).

(2) *Below-market loans subject to section 7872(b).* The issue price of a below-market loan subject to section 7872(b) (a term loan other than a gift loan) is the issue price determined under this section, reduced by the excess amount determined under section 7872(b)(1).

(c) *Debt instruments issued for property where there is trading on an established market*—(1) *Publicly traded debt instruments.* The issue price of a debt instrument issued for property is the debt instrument's fair market value, as of the issue date, if the debt instrument is part of an issue a portion of which is traded on an established market.

(2) *Non-publicly traded debt instruments issued for publicly traded property.* The issue price of a debt instrument issued for property is the property's fair market value, as of the issue date, if the debt instrument—

(i) Is not part of an issue a portion of which is traded on an established market; and

(ii) Is issued for property that is traded on an established market.

(3) *Definition of property.* For purposes of this section, "property" means a debt instrument, stock, security, contract, commodity, or currency.

(d) *Traded on an established market*—(1) *In general.* Property is traded on an established market for purposes of section 1273(b)(3) if, at any time during the 60-day period ending 30 days after the issue date (as defined in § 1.1275–1(e)), the property is described in paragraph (d)(2), (d)(3), (d)(4), or (d)(5) of this section.

(2) *Exchange listed property.* Property is described in this paragraph if it is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934; or

(iii) The International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited, the Luxembourg Stock Exchange, the Frankfurt Stock Exchange, the Tokyo Stock Exchange, or any other foreign exchange or board of trade that is designated by the Commissioner in a revenue ruling or revenue procedure (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(3) *Market traded property.* Property is described in this paragraph if it is traded either on a board of trade that is designated as a contract market by the Commodities Futures Trading Commission or on an interbank market.

(4) *Property appearing on a quotation medium.* Property is described in this paragraph if it appears on a system of general circulation (a quotation medium) that provides a reasonable basis to determine fair market value by disseminating either recent price quotations of identified brokers and dealers (including those of a single, identified broker or dealer) or actual prices of recent sales transactions. A quotation medium includes a computer listing of recent sales prices that is disseminated to subscribing brokers, dealers, or traders. A quotation medium does not include a directory of listing of brokers or dealers for specific securities that provides neither quotations nor actual prices of recent sales transactions, such as the "yellow sheets."

(5) *Readily quotable debt instruments*—(i) *In general.* A debt instrument is described in this paragraph if price quotations are readily available from dealers and brokers.

(ii) *Safe harbors.* A debt instrument is not considered to be described in paragraph (d)(5)(i) of this section if—

(A) No other outstanding debt instrument of the issuer (or of any person who guarantees the debt instrument) is described in paragraphs (d)(2), (d)(3), or (d)(4) of this section (such debt collectively being "other traded debt");

(B) The original stated principal amount of the issue that includes the debt instrument does not exceed $25 million;

(C) The conditions and covenants relating to the issuer's performance with respect to the debt instrument are materially less restrictive than the conditions and covenants included in all of the issuer's other traded debt (*e.g.*, the debt instrument is subject to an economically significant subordination provision whereas the issuer's other traded debt is senior); or

(D) The maturity date of the debt instrument is more than three years after the latest maturity date of the issuer's other traded debt.

(6) *Effect of certain temporary restrictions on trading.* If there is any temporary restriction on trading a purpose of which is to avoid the characterization of the property as one that is traded on an established market for Federal income tax purposes, then the property is treated as traded on an established market. For purposes of the preceding sentence, a temporary restriction on trading need not be imposed by the issuer.

(7) *Convertible debt instruments.* A debt instrument is not treated as traded on an established market solely because the debt instrument is convertible into property which is so traded.

(e) *Other debt instruments.* Under section 1273(b)(4), the issue price of a debt instrument that is not determined under paragraphs (a) through (d) of this section and that is not determined under section 1274 is the instrument's stated redemption price at maturity.

(f) *Investment units*—(1) *In general.* Under section 1273(c)(2), the issue price of an investment unit that is publicly traded or that is issued for cash or publicly traded property is determined in accordance with the rules of section 1273 and this section as if the investment unit were a debt instrument. The issue price is allocated between the debt instrument and the property right (or rights) that comprise the unit based on their relative fair market values.

(2) *Consistent allocation by holders and issuer.* The issuer's allocation of the issue price of the investment unit is binding on all holders of the investment unit. However, the issuer's determination is not binding on a holder that explicitly discloses that its allocation of the issue price of the investment unit is different from the issuer's allocation. The disclosure must be made on the form prescribed by the Commissioner and attached to the holder's timely filed Federal income tax return for the tax year that includes the acquisition date of the investment unit.

(g) *Convertible debt instruments* The issue price of a debt instrument that is convertible into another debt instrument or stock of either the issuer or a related party (as defined in section 267(b) or section 707(b)(1)) includes any amount paid with respect to the conversion privilege, even if the privilege may be satisfied or exercised for the cash value of the other debt instrument or stock.

(h) *Treatment of amounts representing pre-issuance accrued interest*—(1) *Applicability.* Paragraph (h)(2) of this section provides an optional rule for determining the issue price of a debt instrument if—

(i) A portion of the initial purchase price of the instrument is allocable to interest that has accrued prior to the issue date (pre-issuance accrued interest); and

(ii) The instrument provides for a payment of stated interest on the first payment date within one year of the issue date that equals or exceeds the amount of the pre-issuance accrued interest.

(2) *Exclusion of pre-issuance accrued interest from issue price.* If a debt instrument meets the requirements of paragraph (h)(1) of this section, the instrument's issue price may be computed by subtracting from the issue price (as otherwise computed under the rules of this section) the amount of pre-issuance accrued interest. If the issue price of the instrument is computed in this manner, a portion of the stated interest payable on the first payment date must be treated as a return of the excluded pre-issuance accrued interest, rather than as an amount payable on the debt instrument.

(i) [*Reserved*]

(j) *Treatment of certain cash payments incident to lending transactions*—(1) *Applicability.* The provisions of this paragraph (j) apply to cash payments made incident to private lending transactions (including seller financing).

(2) *Payments from borrower to lender.* In a lending transaction to which section 1273(b)(2) applies, a payment from the borrower to the lender (other than a payment for services provided by the lender, such as commitment fees or loan processing costs) reduces the issue price of the debt instrument evidencing the loan. In a transaction to which section 1274 applies, a payment from the buyer to the seller that is designated as interest or points reduces the stated principal amount of the debt instrument evidencing the loan. However, solely for purposes of the borrower (buyer), this paragraph (j)(2) does not apply to a payment of points that is deductible by the borrower (buyer) under section 461(g)(2).

(3) *Payments from lender to borrower.* A payment from the lender to the borrower in a lending transaction is treated as an amount loaned.

(4) *Payments between lender and third party.* If, as part of a lending transaction, a party other than the borrower (the third party) makes a payment to the lender, that payment is treated in appropriate circumstances as made from the third party to the borrower followed by a payment in the same amount from the borrower to the lender and governed by the provisions of paragraph (j)(2) of this section. If, as part of a lending transaction, the lender makes a payment to a third party, that payment is treated in appropriate circumstances as an additional amount loaned to the borrower and then paid by the borrower to the third party. The character of the deemed payment between the borrower and the third party depends on the substance of the transaction.

(5) *Examples.* The provisions of this paragraph (j) are illustrated by the following examples.

Example 1. Payments from borrower to lender in a cash transaction—(i) *Facts.* A lends $100,000 to B for a term of 10 years. At the time the loan is made, B pays $4,000 in points to A. Assume that the points are not deductible by B under section 461(g)(2) and that the stated redemption price at maturity of the debt instrument is $100,000.

(ii) *Payment results in OID.* Under paragraph (j)(2) of this section, the issue price of B's debt instrument evidencing the loan is $96,000. As a result, the debt instrument has $4,000 of OID. Because the $4,000 is more than a de minimis amount of OID, the points are accounted for by both A and B as OID under section 1272 and the regulations thereunder.

Example 2. Payments from borrower to lender in a section 1274 transaction—(i) *Facts.* A sells property to B for $1,000,000 in a transaction that is not a potentially abusive situation (within the meaning of § 1.1274–3). In consideration therefor, B gives A $300,000 and issues a five-year debt instrument with a stated principal amount of $700,000, payable at maturity, and that calls for semiannual payments of interest at a rate of 8.5 percent. In addition to the cash downpayment, B pays A $14,000 designated as points on the loan. Assume that the points are not deductible under section 461(g)(2).

(ii) *Issue price.* Under paragraph (j)(2) of this section, the stated principal amount of B's debt instrument is $686,000 ($700,000 minus $14,000). Assuming a test rate of 9 percent, compounded semiannually, the imputed principal amount of B's debt instrument under § 1.1274–2(c)(1) is $686,153. Under § 1.1274–2(b)(1), the issue price of B's debt instrument is the stated principal amount of $686,000. As a result, the debt instrument has $14,000 of OID. Because the $14,000 is more than a de minimis amount of OID, the points are accounted for by both A and B as OID under section 1272 and the regulations thereunder B's basis in the property purchased is

$1,000,000 ($686,000 debt instrument plus $314,000 cash payments).

Example 3. Payments between lender and third party—(i) *Facts.* A sells Blackacre to B for $500,000 in a transaction that is not a potentially abusive situation (within the meaning of § 1.1274–3). B makes a cash down payment of $100,000 and borrows $400,000 of the purchase price from a lender, L, repayable in annual installments over a term of 15 years calling for interest at a rate of 9 percent, compounded annually. As part of the transaction, A makes a payment of $8,000 to L to facilitate the loan to B.

(ii) *Payment results in a de minimis amount of OID.* Under the provisions of paragraphs (j)(2) and (j)(4) of this section, B is treated as having made an $8,000 payment directly to L and a payment of only $492,000 to A for Blackacre. Thus, B's basis in Blackacre is $492,000. The payment to L reduces the issue price of B's debt instrument to $392,000, resulting in $8,000 of OID ($400,000–$392,000). Because the amount of OID is de minimis under § 1.1273–1(d), L must account for the de minimis OID under § 1.1273–1(d)(6). *But see* § 1.1272–3 (election to treat de minimis OID as OID). B must account for the de minimis OID under § 1.163–7.

§ 1.1274–1 Debt instruments to which section 1274 applies.

(a) *Types of debt instruments to which section 1274 applies.* Subject to the exceptions and limitations in paragraph (b) of this section, section 1274 and this section apply to any debt instrument given in consideration for the sale or exchange of property. For purposes of section 1274, "property" includes debt instruments and investment units, but does not include U.S. currency, services, or the right to use property. For the treatment of certain payments for the use of property or services, see sections 404 and 467.

(b) *Exceptions*—(1) *Debt instrument with adequate stated interest and no OID.* Section 1274 does not apply to a debt instrument if—

(i) All interest payable on the instrument is qualified stated interest;

(ii) The stated rate of interest is at least equal to the test rate of interest (as defined in § 1.1274–4); and

(iii) The debt instrument is not issued in a potentially abusive situation (as defined in § 1.1274–3).

(2) *Exceptions under sections 1274(c)(1)(B), 1274(c)(3), 1274(c), and 1275(b)(1)*—(i) *In general.* Sections 1274(c)(1)(B), 1274(c)(3), 1274A(c), and 1275(b)(1) describe certain transactions to which section 1274 does not apply. This paragraph provides certain rules to be used in applying those exceptions.

(ii) *Special rules for certain exceptions under section 1274(c)(3)*—(A) *Determination of sales price for certain sales of farms.* For purposes of section 1274(c)(3)(A), the determination as to whether the sales price cannot exceed $1,000,000 is made without regard to any other exception to, or limitation on, the applicability of section 1274 (*e.g.*, without regard to the special rules regarding sales of principal residences and land transfers between related persons). In addition, the sales price is determined without regard to section 1274 and without regard to any stated interest. The sales price includes the amount of any liability included in the amount realized from the sale or exchange (see § 1.1001–2).

(B) *Sales involving total payments of $250,000 or less.* Under section 1274(c)(3)(C), the determination of the amount of payments due under all debt instruments and the amount of other consideration to be received is made as of the date of the sale or exchange or, if earlier, the contract date. If the precise amount due under any debt instrument or the precise amount of any other consideration to be received cannot be determined as of that date, section 1274(c)(3)(C) applies only if it can be determined that the maximum of the aggregate amount of payments due under the debt instruments and other consideration to be received cannot exceed $250,000. For purposes of determining the aggregate amount of payments due, if a liability is assumed or property is taken subject to a liability, the outstanding principal balance or adjusted issue price (in the case of an obligation originally issued at a discount) of the obligation assumed or taken subject to is taken into account.

(3) *Other exceptions to section 1274*—(i) *Holders of certain below-market instruments.* Section 1274 does not apply to any holder of a debt instrument that—

(A) Is given in consideration for the sale or exchange of property that is personal use property (within the meaning of section 1275(b)(3)) in the hands of the issuer; and

(B) Evidences a below-market gift loan (described in section 7872(c)(1)(A)), a below-market compensation-related loan (described in section 7872(c)(1)(B)), or a below-market corporation-shareholder loan (described in section 7872(c)(1)(C)).

(ii) *Transactions involving certain demand loans.* Section 1274 does not apply to any debt instrument that evidences a demand loan that is either a gift loan (described in section 7872(c)(1)(A)), a compensation-related loan (described in section 7872(c)(1)(B)), or a corporation-shareholder loan (described in section 7872(c)(1)(C)).

(iii) *Certain transfers subject to section 1041.* Section 1274 does not apply to any debt instrument issued in consideration for a transfer of property subject to section 1041 (relating to transfers of property between spouses or incident to divorce).

(c) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. Single stated rate paid semiannually. A debt instrument issued in consideration for the sale of nonpublicly traded property in a transaction that is not a potentially abusive situation calls for the payment of a principal amount of $1,000,000 at the end of a ten-year term and 20 semiannual interest payments of $60,000. Assume that the test rate of interest is 12 percent, compounded semiannually. The debt instrument is not subject to section 1274 because it provides for interest equal to the test rate and all interest payable on the instrument is qualified stated interest.

Example 2. Sale of farm for debt instrument with contingent interest—(i) *Facts.* On July 1, 1995, A, an individual, sells to B land used as a farm within the meaning of section 6420(c)(2). As partial consideration for the sale, B issues a debt instrument calling for a single $500,000 payment due in ten years unless profits from the land in each of the ten years preceding maturity of the debt instrument exceed a specified amount, in which case B is to make a payment of $1,200,000. No interest is provided for in the debt instrument.

(ii) *Total payments may exceed $1,000,000.* Even though the total payments ultimately payable under the contract may be less than $1,000,000, at the time of the sale or exchange it cannot be determined that the sales price cannot exceed $1,000,000. Thus, the sale of the land used as a farm is not an excepted transaction described in section 1274(c)(3)(A).

Example 3. Sale between related parties subject to section 483(e)—(i) *Facts.* On July 1, 1995, A, an individual, sells land (not used as a farm within the meaning of section 6420(c)(2)) to A's child B for $650,000. In consideration for the sale, B issues a debt instrument to A that calls for a payment of $650,000. No other consideration is given. The debt instrument is due in ten years. No interest is provided for in the debt instrument.

(ii) *Bifurcation of debt instrument.* For purposes of section 483(e), the $650,000 debt instrument is treated as two separate debt instruments: a $500,000 debt instrument and a $150,000 debt instrument. The $500,000 debt instrument is subject to section 483(e), and accordingly is covered by the exception from section 1274 described in section 1274(c)(3)(F). Because the amount of the payments due as consideration for the sale exceeds $250,000, the $150,000 debt instrument is subject to section 1274.

§ 1.1274–2 Treatment of debt instruments to which section 1274 applies.

(a) *In general.* If section 1274 applies to a debt instrument, section 1274 and this section determine the issue price of the debt instrument. For rules relating to the determination of the amount and

timing of OID to be included in income, see section 1272 and the regulations thereunder.

(b) *Issue price*—(1) *Debt instruments that provide for adequate stated interest; stated principal amount.* The issue price of a debt instrument that provides for adequate stated interest is the stated principal amount of the debt instrument. For purposes of section 1274, the stated principal amount of a debt instrument is the aggregate amount of all payments due under the debt instrument, excluding any amount of stated interest.

(2) *Debt instruments that do not provide for adequate stated interest; imputed principal amount.* The issue price of a debt instrument that does not provide for adequate stated interest is the imputed principal amount of the debt instrument (as determined under paragraphs (c), (d), and (e) of this section).

(3) *Debt instruments issued in a potentially abusive situation; fair market value.* Notwithstanding paragraphs (b)(1) and (b)(2) of this section, in the case of a debt instrument issued in a potentially abusive situation (as defined in § 1.1274–3), the issue price of the debt instrument is the fair market value of the property received in exchange for the debt instrument, reduced by the fair market value of any consideration other than the debt instrument given in consideration for the sale or exchange.

(c) *Determination of whether a debt instrument provides for adequate stated interest*—(1) *In general.* A debt instrument provides for adequate stated interest if its stated principal amount is less than or equal to its imputed principal amount. "Imputed principal amount" means the sum of the present values, as of the issue date, of all payments, including payments of stated interest, due under the debt instrument (determined by using a discount rate equal to the test rate of interest as determined in § 1.1274–4). If a debt instrument has a single stated rate of interest that is paid or compounded at least annually, and that rate is equal to or greater than the test rate, the debt instrument has adequate stated interest.

(2) *Determination of present value.* The present value of a payment is the amount that, if invested on the computation date at a compound rate of interest equal to the test rate, would increase in value to the amount of the future payment on the payment date. To determine present value, a compounding period must be selected, and the test rate must be based on the same compounding period.

(3) *Treatment of certain options*—(i) *In general.* This paragraph (c)(3) provides rules for determining the issue price of a debt instrument to which section 1274 applies (other than a debt instrument issued in a potentially abusive situation) that is subject to one or more options described in paragraph (c)(3)(ii) of this section. The holder of a debt instrument with an option is presumed to exercise the option if the imputed principal amount of the debt instrument, assuming exercise of the option, exceeds the imputed principal amount of the debt instrument, assuming the option is not exercised. The issuer of a debt instrument with an option is presumed to exercise the option if the imputed principal amount of the debt instrument, assuming exercise of the option, is less than the imputed principal amount of the debt instrument, assuming the option is not exercised. See § 1.1272–1(d)(3) to determine the debt instrument's yield and maturity for purposes of determining the accrual of OID with respect to the instrument.

(ii) *Described options.* An option is described in this paragraph if it is not separately alienable from the debt instrument and allows a holder or issuer the unconditional right to accelerate or defer payments on one or more dates during the term of the debt instrument. However, an option is not described in this paragraph (c)(3) if, as of the issue date, the amounts payable on the debt instrument upon exercise of the option are not fixed. See paragraph (e) of this section for the treatment of a debt instrument with payments contingent as to amount.

(4) *Examples.* The provisions of paragraph (c) of this section are illustrated by the following examples. Each example assumes a 30-day month, 360-day year. In addition, each example assumes that the debt instrument is not a qualified debt instrument (as defined in section 1274A(b)) or issued in a potentially abusive situation.

Example 1. Debt instrument without a fixed rate over its entire term—(i) *Facts.* On January 1, 1994, A sells nonpublicly traded property to B for a stated purchase price of $3,500,000. In consideration for the sale, B makes a down payment of $500,000 and issues a ten-year debt instrument with a stated principal amount of $3,000,000, payable at maturity. The debt instrument calls for no interest in the first two years and interest at a rate of 15 percent payable annually over the remaining eight years of the debt instrument. The first interest payment of $450,000 is due on December 31, 1996, and the last interest payment is due on December 31, 2003, together with the $3,000,000 payment of principal. Assume that the test rate of interest applicable to the debt instrument is 10.5 percent, compounded annually.

(ii) *Determination of present value.* Because the debt instrument does not call for a fixed rate of interest no lower than the test rate of interest for its entire term, the debt instrument has adequate stated interest only if the stated principal amount is less than or equal to the imputed principal amount. To compute the imputed principal amount, all payments due under the debt instrument must be discounted back to the issue date at 10.5 percent, compounded annually, as follows:

(A) The present value of the $3,000,000 principal payment payable on December 31, 2003, is $1,105,347, determined as follows:

$$\$1{,}105{,}347 = \frac{\$3{,}000{,}000}{(1 + .105/1)^{10}}$$

(B) The present value of the eight interest payments of $450,000 as of January 1, 1996, (the interim date) is $2,357,635, determined as follows:

$$\$2{,}357{,}635 = \$450{,}000 \times \frac{1-(1 + .105/1)^{-8}}{(.105/1)}$$

(C) The present value of this interim amount as of January 1, 1994, the computation date, is $1,930,865, determined as follows:

$$\$1{,}930{,}865 = \frac{\$2{,}357{,}635}{(1 + .105/1)^{2}}$$

(iii) *Determination of issue price.* The debt instrument's imputed principal amount (that is, the total present value of all payments due under the debt instrument) is $3,036,212 ($1,105,347 + $1,930,865). Because the stated principal amount ($3,000,000) is less than the imputed principal amount, the debt instrument provides for adequate stated interest. However, because none of the interest on the debt instrument is qualified stated interest, the instrument's stated redemption price at maturity (as defined in section 1273(a)(2)) exceeds the instrument's stated principal amount by $3,600,000 ($450,000 × 8). Therefore, the debt instrument is subject to section 1274. The issue price of the debt instrument is its stated principal amount ($3,000,000).

Example 2. Debt instrument subject to issuer call option—(i) *Facts.* On January 1, 1994, in partial consideration for the sale of nonpublicly traded property, H corporation issues to G a ten-year debt instrument, maturing on January 1, 2004, with a stated principal amount of $10,000,000, payable on that date. The debt instrument provides for annual payments of interest of eight percent for the first five years and 14 percent for the final five years, payable on January 1 of each year, beginning on January 1, 1995. In addition, the debt instrument provides H with the option to call (prepay) the debt instrument at the end of five years for its full face amount of $10,000,000. Assume that the applicable Federal mid-term and long-term

rates applicable to the sale based on annual compounding are nine percent and ten percent, respectively.

(ii) *Option presumed exercised.* Assuming exercise of the call option, the imputed principal amount as determined under paragraph (c)(1) of this section is $9,611,034.87 (the present value of all of the payments due within a five-year term discounted at a test rate of nine percent, compounded annually). Assuming nonexercise of the call option, the imputed principal amount is $10,183,354.78 (the present value of all of the payments due within a ten-year term discounted at a test rate of ten percent, compounded annually). For purposes of determining the imputed principal amount, the option is presumed exercised because the imputed principal amount assuming exercise of the option is less than the imputed principal amount assuming the option is not exercised. If the option is presumed exercised, the debt instrument fails to provide adequate stated interest. Thus, the issue price of the instrument is $9,611,034.87.

(d) *Treatment of variable rate debt instruments*—(1) *Stated interest at a qualified floating rate*—(i) *In general.* For purposes of paragraph (c) of this section, the imputed principal amount of a variable rate debt instrument (within the meaning of § 1.1275–5(a)) that provides for stated interest at a qualified floating rate (or rates) is determined by assuming that the instrument provides for a fixed rate of interest for each accrual period to which a qualified floating rate applies. For purposes of the preceding sentence, the assumed fixed rate in each accrual period is the value of the qualified floating rate as of the date of the sale or exchange (or, if earlier, the contract date). See § 1.1274–4(c) to determine the test rate for a variable rate debt instrument that provides for stated interest at a qualified floating rate (or rates).

(ii) *Interest rate limitations.* Notwithstanding paragraph (d)(1)(i) of this section, if, as a result of interest rate limitations (such as an interest rate cap), the expected yield of the debt instrument taking the limitations into account is significantly less than the expected yield of the debt instrument without regard to the limitations, the interest payments on the debt instrument (other than any fixed interest payments) are treated as contingent payments subject to paragraph (e) of this section. Generally, reasonably symmetric interest rate caps and floors do not result in the debt instrument being subject to this rule.

(2) *Stated interest at a single objective rate.* For purposes of paragraph (c) of this section, the imputed principal amount of a variable rate debt instrument (within the meaning of § 1.1275–5(a)) that provides for stated interest at a single objective rate is determined by treating the interest payments as contingent payments subject to paragraph (e) of this section.

(e) *Contingent payments*—(1) *General rule.* For purposes of paragraph (c)(1) of this section, the stated principal amount of a debt instrument that provides for contingent payments is the maximum amount of the contingent and noncontingent payments, excluding any amount of stated interest (whether or not contingent). The imputed principal amount of such a debt instrument is the sum of the present values of the noncontingent payments as determined under paragraph (c) of this section, and the fair market value of the contingent payments as of the issue date. If the fair market value of the contingent payments cannot be determined when separated from the noncontingent payments, the imputed principal amount of the debt instrument is its fair market value. Only in rare and extraordinary cases will the fair market value of the debt instrument be treated as not reasonably ascertainable. For additional rules relating to contingent payments, see § 1.1275–4.

(2) *Special rule for earn-outs.* Notwithstanding paragraph (e)(1) of this section, the imputed principal amount of a debt instrument that provides for contingent interest payments is its stated principal amount if—

(i) All or a portion of the contingent interest payments are conditioned on a return from the exploitation of the property acquired for the debt instrument (including payments conditioned on profits, sales, rents, production, or royalties);

(ii) The debt instrument would provide for adequate stated interest under paragraph (c) of this section at a test rate of interest equal to 80 percent of the test rate applicable to the debt instrument; and

(iii) It is reasonable to expect that contingent payments of interest described in paragraph (e)(2)(i) of this section will raise the total yield on the debt instrument to at least the test rate of interest applicable to the debt instrument.

(f) *Examples.* The provisions of paragraph (d) of this section are illustrated by the following examples. Each example assumes a 30-day month, 360-day year. In addition, each example assumes that the debt instrument is not a qualified debt instrument (as defined in section 1274A(b)) or issued in a potentially abusive situation.

Example 1. Variable rate debt instrument with a single rate over its entire term—(i) *Facts.* On January 1, 1994, A sells B nonpublicly traded property. In partial consideration for the sale, B issues a debt instrument in the principal amount of $1,000,000, payable in five years. The debt instrument calls for interest payable monthly at a rate of one percentage point above the average prime lending rate of a major bank for the month preceding the month of the interest payment. Assume that the test rate of interest applicable to the debt instrument is 10.5 percent, compounded monthly. On the date the test rate of interest is determined, one percentage point above the prime lending rate of the designated bank is 12.5 percent, compounded monthly.

(ii) *Debt instrument has adequate stated interest.* The debt instrument is a variable rate debt instrument within the meaning of § 1.1275–5. Under paragraph (d)(1)(i) of this section, the debt instrument is treated as if it provided for a fixed rate of interest equal to 12.5 percent, compounded monthly. Because the test rate of interest is 10.5 percent, compounded monthly, the debt instrument provides for adequate stated interest.

Example 2. Debt instrument with a capped variable rate. On July 1, 1995, A sells nonpublicly traded property to B in return for a debt instrument with a stated principal amount of $10,000,000 payable on July 1, 2005. Interest is payable on July 1 of each year, beginning on July 1, 1996, at the Federal short-term rate for June of the same year. The debt instrument provides, however, that the interest rate cannot rise above 8.5 percent, compounded annually. Assume that as of the date the test rate of interest with respect to the debt instrument is determined, the Federal short-term rate is eight percent, compounded annually. Assume further that as a result of the interest rate cap of 8.5 percent, compounded annually, the expected yield of the debt instrument is significantly less than the expected yield of the debt instrument if it did not include the interest rate cap. Under paragraph (d)(1)(ii) of this section, the variable payments are treated as contingent payments for purposes of this section.

§ 1.1274–3 Potentially abusive situations defined.

(a) *In general.* For purposes of section 1274, a "potentially abusive situation" means—

(1) A tax shelter (as defined in section 6662(d)(2)(C)(ii)); or

(2) Any other situation involving—

(i) A recent sales transaction;

(ii) Nonrecourse financing;

(iii) Financing with a term in excess of the useful life of the property; or

(iv) A debt instrument with clearly excessive interest.

(b) *Operating rules*—(1) *Debt instruments exchanged for nonrecourse financing.* "Nonrecourse financing" does not include an exchange of a nonrecourse debt instrument for an outstanding recourse or nonrecourse debt instrument.

(2) *Nonrecourse debt with substantial down payment.* The term "nonrecourse

financing" does not include a sale or exchange of a real property interest financed by a nonrecourse debt instrument, if, in addition to the nonrecourse debt instrument, the purchaser provides a down payment that equals or exceeds 20 percent of the total stated purchase price of the real property interest. For purposes of the preceding sentence, a "real property interest" means any interest, other than an interest solely as a creditor, in real property.

(3) *Clearly excessive interest.* Interest on a debt instrument is clearly excessive if the interest, in light of the terms of the debt instrument and the creditworthiness of the borrower, is clearly greater than the arm's length amount of interest that would have been charged in a cash lending transaction between the same two parties.

(c) *Other situations to be specified by ruling.* The Commissioner may designate by revenue ruling or revenue procedure situations that, although described in paragraph (a)(2) of this section, will not be treated as potentially abusive because they do not have the effect of significantly misstating basis or amount realized.

(d) *Consistency rule.* The issuer's determination that the debt instrument is or is not issued in a potentially abusive situation is binding on all holders of the debt instrument. However, the issuer's determination is not binding on a holder who explicitly discloses a position that is inconsistent with the issuer's determination. The disclosure must be made on the form prescribed by the Commissioner and attached to the holder's timely filed Federal income tax return for the tax year that includes the acquisition date of the debt instrument.

§ 1.1274–4 Test rate.

(a) *Determination of test rate of interest*—(1) *In general.* Except as otherwise provided in sections 1274(e) and 1274A, the test rate of interest is the applicable Federal rate based on an appropriate compounding period.

(2) *Sale-leaseback transactions.* For purposes of section 1274(e)(3), "related party" means a person related to the transferor within the meaning of sections 267(b) or 707(b)(1).

(b) *Applicable Federal rate defined.* Except as otherwise provided in this section, the applicable Federal rate is defined in section 1274(d). The applicable Federal rates are published monthly in revenue rulings (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(c) *Certain variable rate debt instruments*—(1) *In general.* Except as otherwise provided in paragraph (c)(2) of this section, in the case of a variable rate debt instrument (as defined in § 1.1275–5(a)) with stated interest at a qualified floating rate (or rates), the applicable Federal rate is determined by reference to the longest interval between interest adjustment dates of the qualified floating rate, or, if the variable rate debt instrument provides for an initial fixed rate, the interval during which the fixed rate of interest applies, if it is longer.

(2) *Limitations on adjustments.* If, due to significant limitations on variations in a qualified floating rate of interest (such as those imposed by periodic or permanent limitations in the amount by which the variable rate can increase or decrease), the qualified floating rate in substance resembles a fixed rate, the applicable Federal rate is determined by reference to the term of the debt instrument.

(d) *Lower rate permitted in certain cases*—(1) *In general.* The applicable Federal rate with respect to certain debt instruments having a maturity of 6 months or less is the allowable Treasury index rate (as defined in paragraph (d)(2) of this section), if the issuer provides on the face of the debt instrument (or, if applicable, in the master advance agreement) that the debt instrument qualifies as having adequate stated interest under section 1274(d)(1)(D) and if the issuer and holder agree to treat the debt instrument as having adequate stated interest. All successors and assignees thereof are bound by this agreement.

(2) *Allowable Treasury index rates.* The allowable Treasury index rates are based on the rates published periodically by the Federal Reserve (*i.e.*, Federal Reserve Statistical Releases G.13 and H.15) and, at any given time, are the lowest of the following rates for any day within (or for any weekly period ending within) the preceding 15 days. In the case of debt instruments having a maturity of 3 or 6 months, the allowable Treasury index rates are the auction average yield (investment) on the most recently auctioned U.S. Treasury bills of the same maturity as the debt instrument. In the case of debt instruments having a maturity between 3 and 6 months, the allowable Treasury index rate is a linear interpolation of the auction average yield (investment) on the most recently auctioned U.S. Treasury bills with maturities of 3 and 6 months. In the case of debt instruments having a maturity of 3 months or less, the allowable Treasury index rate is the market yield on U.S. Treasury bills of the same maturity as the debt instrument.

(e) *Foreign currency loans.* In the case of a debt instrument that is denominated in a foreign currency, the applicable Federal rate is a foreign currency rate of interest analogous to the applicable Federal rate described in this section. An analogous foreign currency rate of interest is a rate of interest based on yields (with an appropriate compounding period) of the highest grade of outstanding marketable obligations denominated in such currency (excluding any obligations that benefit from special tax exemptions or preferential tax rates not available to debt instruments generally) with due consideration given to the maturities of the obligations.

(f) *Installment obligations.* For purposes of determining the test rate of interest for an installment obligation (as defined in § 1.1273–1(e)(1)), the term of the obligation is its weighted average maturity (as defined in § 1.1273–1(e)(3)).

(g) *Date for determining the applicable Federal rate of interest.* For purposes of section 1274, the applicable Federal rate with respect to a debt instrument is the lowest of the applicable Federal rates in effect during the three-month period ending with the first month in which there is a binding contract (including an irrevocable option) in writing that substantially sets forth the terms under which the sale or exchange is ultimately consummated. If there is no binding contract in writing for the sale or exchange, the three-month period described in the preceding sentence ends with the month in which the sale or exchange occurs.

(h) *Examples.* The provisions of this section are illustrated by the following examples. Each example assumes that the debt instrument is not issued in a potentially abusive situation.

Example 1. Variable rate debt instrument that limits the amount of increase and decrease in the rate—(i) *Facts.* On July 1, 1996, A sells nonpublicly traded property to B in return for a five-year debt instrument that provides for interest to be paid on July 1 of each year, beginning on July 1, 1997, based on the prime rate of a local bank on that date. However, the interest rate cannot increase or decrease from one year to the next by more than .25 percentage points (25 basis points).

(ii) *Significant limitation.* The debt instrument is a variable rate debt instrument as defined in § 1.1275–5. Assume that based on all the facts and circumstances, the limitation is a significant limitation on the variations in the rate of interest. Under paragraph (c)(2) of this section, the applicable Federal rate is determined by reference to the term of the debt instrument, and the applicable Federal rate is the Federal mid-term rate.

Example 2. Installment obligation—(i) *Facts.* On January 1, 1996, A sells

nonpublicly traded property to B in exchange for a debt instrument that calls for a payment of $500,000 on January 1, 2001, and a payment of $1,000,000 on January 1, 2006. The debt instrument does not provide for any stated interest.

(ii) *Determination of term.* The debt instrument is an installment obligation. Under paragraph (f) of this section, the term of the debt instrument is its weighted average maturity (as defined in § 1.1273–1(e)(1)). The debt instrument's weighted average maturity is 8.33 years, which is the sum of (A) the ratio of the first payment to total payments (500,000/1,500,000), multiplied by the number of complete years from the issue date until the payment is due (five years), and (B) the ratio of the second payment to total payments (1,000,000/1,500,000), multiplied by the number of complete years from the issue date until the second payment is due (ten years).

(iii) *Applicable Federal rate.* Based on the calculation in paragraph (ii) of this example, the term of the debt instrument is treated as 8.33 years. Consequently, the test rate is the mid-term applicable Federal rate.

§ 1.1274–5 Assumptions.

(a) *In general.* Section 1274 does not apply to a debt instrument if the debt instrument is assumed, or property is taken subject to the debt instrument, in connection with a sale or exchange of property, unless the terms of the debt instrument, as part of the sale or exchange, are modified in a manner that would constitute an exchange under section 1001.

(b) *Modification of debt instruments*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, if a debt instrument is assumed, or property is taken subject to a debt instrument, in connection with a sale or exchange of property, the terms of the debt instrument are modified as part of the sale or exchange, and the modification triggers an exchange under section 1001, the modification is treated as a separate transaction taking place immediately before the sale or exchange and is attributed to the seller of the property. For purposes of this paragraph, a debt instrument is not considered to be modified as part of the sale or exchange unless the seller knew or had reason to know about the modification.

(2) *Election to treat buyer as modifying the debt instrument.* Rather than having the rules in paragraph (b)(1) of this section apply, the seller and buyer may jointly elect to treat the transaction as one in which the buyer first assumed the original (unmodified) debt instrument and then subsequently modified the debt instrument. For this purpose, the modification is treated as a separate transaction taking place immediately after the sale or exchange. The buyer and seller may only make this election before the last day (including extensions) for filing the Federal income tax returns of both the buyer and seller for the taxable year reporting the sale or exchange of the property and must attach the prescribed statement to their Federal income tax returns. The buyer and seller make the election by jointly signing the statement, which includes the following information—

(i) The names, addresses, and taxpayer identification numbers of the seller and buyer; and

(ii) A clear indication that the election is being made under paragraph (b)(2) of this section.

(c) *Wraparound indebtedness.* For purposes of paragraph (a) of this section, the issuance of wraparound indebtedness is not considered an assumption.

(d) *Consideration attributable to assumed debt.* If, as part of the consideration for the sale or exchange of property, the buyer assumes or takes subject to an indebtedness that was issued at a discount (including a debt instrument issued in a prior sale or exchange to which section 1274 applied), the portion of the buyer's basis in the property and the seller's amount realized attributable to the debt instrument equals the adjusted issue price of the debt instrument as of the date of the sale or exchange.

(e) *Example.* The provisions of paragraph (b)(2) of this section are illustrated by the following example.

Example. Assumption of a debt instrument in conjunction with a modification—(i) *Facts.* On July 1, 1996, B sells Blackacre to C for $40,000,000 subject to an existing debt instrument held by A with a face amount of $10,000,000 and a remaining term of ten years. The debt instrument provides for annual interest payments at eight percent, compounded annually. As part of the sale, C assumes the debt instrument and the debt instrument is materially modified within the meaning of section 1001.

(ii) *Modification occurs before the sale.* Unless B and C jointly elect under paragraph (b)(2) of this section, the modification is treated as taking place immediately before the sale in a transaction involving B and A. C is treated as having assumed the modified debt instrument.

§ 1.1274A–1 Special rules for certain transactions where stated principal amount does not exceed $2,800,000.

(a) *Overview.* Section 1274A allows the use of a lower test rate for purposes of sections 483 and 1274 in the case of a qualified debt instrument (as defined in section 1274A(b)) and, if elected by the borrower and the lender, the use of the cash receipts and disbursements method of accounting for interest on a cash method debt instrument (as defined in section 1274A(c)(2)). This section provides special rules for qualified debt instruments and cash method debt instruments.

(b) *Rules for both qualified and cash method debt instruments*—(1) *Sale-leaseback transactions.* A debt instrument issued in a sale-leaseback transaction (within the meaning of section 1274(e)) cannot be either a qualified debt instrument or a cash method debt instrument.

(2) *Debt instruments calling for contingent payments.* A debt instrument cannot be a qualified debt instrument unless it can be determined at the time of the sale or exchange that the maximum amount of the stated principal due under the debt instrument cannot exceed the amount specified in section 1274A(b). Similarly, a debt instrument cannot be a cash method debt instrument unless it can be determined at the time of the sale or exchange that the maximum amount of the stated principal due under the debt instrument cannot exceed the amount specified in section 1274A(c)(2)(A).

(3) *Aggregation of transactions*—(i) *General rule.* The aggregation rules of section 1274A(d)(1) are applied using a facts and circumstances test.

(ii) *Examples.* The following examples illustrate the application of section 1274A(d)(1) and paragraph (b)(3)(i) of this section.

Example 1. Aggregation of two sales to a single person. In two transactions evidenced by separate sales agreements, A sells undivided half interests in Blackacre to B. The sales are pursuant to a plan for the sale of a 100 percent interest in Blackacre to B. These sales or exchanges are part of a series of related transactions and, thus, are treated as a single sale for purposes of section 1274A.

Example 2. Aggregation of two purchases by unrelated individuals. Pursuant to a plan, unrelated individuals X and Y purchase undivided half interests in Blackacre from A and subsequently contribute these interests to a partnership in exchange for equal interests in the partnership. These purchases are treated as part of the same transaction and, thus, are treated as a single sale for purposes of section 1274A.

Example 3. Aggregation of sales made pursuant to a tender offer. Fifteen unrelated individuals own all the stock of X Corporation. Y Corporation makes a tender offer to these 15 shareholders. The terms offered to each shareholder are identical. Shareholders holding a majority of the shares of X Corporation elect to tender their shares pursuant to Y Corporation's offer. These sales are part of the same transaction and, thus, are treated as a single sale for purposes of section 1274A.

Example 4. No aggregation for separate sales of similar property to unrelated persons. Pursuant to a newspaper advertisement, X Corporation offers for sale similar condominiums in a single building.

The prices of the units vary due to a variety of factors, but the financing terms offered by X Corporation to all buyers are identical. The units are purchased by unrelated buyers who decided whether to purchase units in the building at the price and on the terms offered by X Corporation, without regard to the actions of other buyers. Because each buyer acts individually, the sales are not part of the same transaction or a series of related transactions and, thus, are treated as separate sales.

(4) *Inflation adjustment of dollar amounts.* Under section 1274A(d)(2), the dollar amounts specified in sections 1274A(b) and 1274A(c)(2)(A) are adjusted for inflation. The dollar amounts, adjusted for inflation, will be published in revenue rulings or other administrative pronouncements (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(c) *Rules for cash method debt instruments*—(1) *Time and manner of making cash method election.* The borrower and lender must each make the election described in section 1274A(c)(2)(D) on or before the last day (including extensions) for filing each of their Federal income tax returns for the taxable year in which the debt instrument is issued and must attach the prescribed statement to their timely filed returns. The borrower and lender make the election by jointly signing the statement, which includes the following information—

(i) The names, addresses and taxpayer identification numbers of the borrower and lender;

(ii) A clear indication that an election is being made under section 1274A(c)(2); and

(iii) A statement that the debt instrument with respect to which the election is being made fulfills the requirements of a cash method debt instrument.

(2) *Successors of electing parties.* Except as otherwise provided in this paragraph (c)(2), the cash method election under section 1274A(c) applies to any successor of the electing lender or borrower (or any transferee thereof). Thus, for any period after the transfer of a cash method debt instrument, the successor takes into account the interest (including unstated interest) thereon under the cash receipts and disbursements method of accounting. Nevertheless, if the lender (or any successor thereof) transfers the cash method debt instrument to a taxpayer who uses an accrual method of accounting, section 1272 rather than section 1274A(c) applies to the successor of the lender (or a successor thereof) with respect to the debt instrument for any period after the date of the transfer. The borrower (or any successor thereof), however, remains on the cash receipts and disbursements method of accounting with respect to the cash method debt instrument.

(3) *Modified debt instrument.* In the case of a debt instrument issued in a debt-for-debt exchange that qualifies as an exchange under section 1001, the debt instrument is eligible for the election to be a cash method debt instrument if the other prerequisites to making the election in section 1274A(c) are met. However, if a principal purpose of the modification is to defer interest income or deductions through the use of the election, then the debt instrument is not eligible for the election.

(4) *Debt incurred or continued to purchase or carry a cash method debt instrument.* No interest deduction is allowed for interest on a debt instrument that is incurred or continued to purchase or carry a cash method debt instrument. For purposes of the preceding sentence, rules similar to those under section 265(a)(2) apply to determine whether a debt instrument is incurred or continued to purchase or carry a cash method debt instrument.

§ 1.1275–1 Definitions.

(a) *Applicability.* The definitions contained in this section apply for purposes of sections 163(e) and 1271 through 1275 and the regulations thereunder.

(b) *Adjusted issue price.* The adjusted issue price of a debt instrument at the beginning of the first accrual period is the issue price. Thereafter, the adjusted issue price of the debt instrument is the issue price of the debt instrument—

(1) Increased by the amount of OID previously includible in the gross income of any holder (determined without regard to section 1272(a)(7) and section 1272(c)(1)); and

(2) Decreased by the amount of any payment previously made on the debt instrument other than a payment of qualified stated interest.

(c) *OID.* "OID" means original issue discount (as defined in section 1273(a) and §§ 1.1273–1 and 1.1273–2).

(d) *Debt instrument.* Except as provided in section 1275(a)(1)(B) (relating to certain annuity contracts), "debt instrument" means any instrument or contractual arrangement that constitutes indebtedness under general principles of Federal income tax law.

(e) *Issue date*—(1) *Publicly offered debt instruments.* In the case of debt instruments that are publicly offered (as defined in § 1.1273–2(a)(2)), "issue date" means the first settlement date for the sale to the public (within the meaning of § 1.1273–2(a)(1)) of a substantial amount of the debt instruments included in that issue. See § 1.1275–2(d) for rules relating to reopenings of Treasury securities.

(2) *Non-publicly offered debt instruments not issued for property.* The issue date of an issue of debt instruments not issued for property and not publicly offered is the date on which the first buyer purchases an instrument that is part of the issue.

(3) *Debt instruments distributed by corporations with respect to stock.* The issue date of a debt instrument distributed by a corporation with respect to its stock is the date of the distribution.

(4) *Other debt instruments issued for property.* In the case of a debt instrument not described in paragraph (e)(1), (e)(2), or (e)(3) of this section, the issue date is the date on which the debt instrument is issued in a sale or exchange.

(f) *Tax-exempt obligations.* For purposes of section 1275(a)(3)(B), "exempt from tax" means exempt from Federal income tax.

(g) *Issue.* Two or more publicly offered debt instruments (as described in § 1.1273–2(a)(2)) are part of the same issue if they have the same credit and payment terms and are sold at substantially the same time pursuant to a common plan of marketing. Two or more debt instruments that are not publicly offered are part of the same issue if they have the same credit and payment terms and are issued as part of a single transaction or a series of related transactions. See § 1.1275–2(d) for rules relating to reopenings of Treasury securities.

(h) *Debt instruments issued by a natural person.* If an entity is a primary obligor under a debt instrument, the debt instrument is considered to be issued by the entity and not by a natural person even if a natural person is a co-maker and is jointly liable for the debt instrument's repayment. A debt instrument issued by a partnership is considered to be issued by the partnership as an entity even if the partnership is composed entirely of natural persons.

§ 1.1275–2 Special rules relating to debt instruments.

(a) *Payment ordering rule.* Each payment under a debt instrument (other than a payment of qualified stated interest or, in the case of the issuer, a payment of points deductible under section 461(g)(2)) is treated first as a payment of OID to the extent of the OID that has accrued as of the date of payment and has not been allocated to prior payments and second as a

payment of principal. Thus, no portion of any payment (other than, in the case of the issuer, a payment of points deductible under section 461(g)(2)) is treated as prepaid interest.

(b) *Debt instruments distributed by corporations with respect to stock.* A debt instrument distributed by a corporation with respect to its stock is treated as issued by the corporation for property. See section 1275(a)(4). Thus, under section 1273(b)(3), the issue price of a distributed debt instrument that is traded on an established market is its fair market value. The issue price of a distributed debt instrument that is not traded on an established market is determined under section 1274 or section 1273(b)(4). See also § 1.1275–1(e)(3) (issue date of distributed debt instrument).

(c) *Aggregation of debt instruments*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, debt instruments issued in connection with the same transaction or related transactions (determined based on all the facts and circumstances) are treated as a single debt instrument for purposes of sections 1271 through 1275 and the regulations thereunder. This rule ordinarily applies only to debt instruments of a single issuer that are issued to a single holder. The Commissioner may, however, aggregate debt instruments that are issued by more than one issuer or that are issued to more than one holder if the debt instruments are issued in an arrangement that is designed to avoid the aggregation rule (e.g., debt instruments issued by or to related parties or debt instruments originally issued by different issuers or to different holders with the understanding that the debt instruments will be assumed by a single issuer or transferred to a single holder).

(2) *Exception if separate issue price established.* Paragraph (c)(1) of this section does not apply to a debt instrument if—

(i) The debt instrument is part of an issue a portion of which is separately traded on an established market within the meaning of § 1.1273–2(c); or

(ii) The debt instrument is part of an issue a substantial portion of which is issued for cash (or for property traded on an established market within the meaning of § 1.1273–2(c)) to parties who are not related to the issuer or holder and who do not purchase other debt instruments of the same issuer in connection with the same transaction or related transactions.

(3) *Special rule for debt instruments that provide for the issuance of additional debt instruments.* If under the terms of a debt instrument (the original debt instrument) the holder may receive one or more additional debt instruments of the issuer, the additional instrument or instruments are aggregated with the original debt instrument. Thus, the payments made pursuant to an additional instrument are treated as made on the original debt instrument, and the distribution by the issuer of the additional instrument is not considered to be a payment made on the original debt instrument. See § 1.1272–1(d) for the treatment of certain rights to issue additional debt instruments in lieu of cash payments.

(4) *Examples.* The rules set forth in paragraphs (c)(1) and (c)(2) of this section are illustrated by the following examples.

Example 1. Exception for debt instruments issued separately to other purchasers. On January 1, 1994, Corporation M issues two series of bonds, Series A and Series B. The two series are sold for cash and have different terms. Although some holders purchase bonds from both series, a substantial portion of the bonds are issued to different holders. H purchases bonds from both series. Under the exception in paragraph (c)(2)(ii) of this section, the Series A and Series B bonds purchased by H are not aggregated.

Example 2. Tiered REMICs. Z forms a dual tier real estate mortgage investment conduit (REMIC). In the dual tier structure, Z forms REMIC A to acquire a pool of real estate mortgages and to issue a residual interest and several classes of regular interests. Contemporaneously, Z forms REMIC B to acquire as qualified mortgages all of the regular interests in REMIC A. REMIC B issues several classes of regular interests and a residual interest, and Z sells all of those interests to unrelated parties in a public offering. Under the general rule set out in paragraph (c)(1) of this section, all of the regular interests issued by REMIC A and held by REMIC B are treated as a single debt instrument for purposes of section 1271 through 1275.

(d) *Special rules for reopenings of Treasury securities*—(1) *Treatment of additional Treasury securities.* Additional Treasury securities issued in a qualified reopening are part of the same issue as the original Treasury securities and have the same issue date as the original Treasury securities. The issue price of both the original Treasury securities and the additional Treasury securities is the average price at which the original Treasury securities were sold.

(2) *Definitions*—(i) *Additional Treasury securities.* Additional Treasury securities are Treasury securities with terms that are in all respects identical to the terms of the original Treasury securities and that are issued (without regard to paragraph (d)(1) of this section) not more than twelve months after the original Treasury securities were first issued to the public.

(ii) *Original Treasury securities.* Original Treasury securities are securities comprising any issue of outstanding Treasury securities.

(iii) *Qualified reopening.* A qualified reopening is a reopening of Treasury securities intended to alleviate an acute, protracted shortage of the original Treasury securities.

§ 1.1275–3 OID information reporting requirements.

(a) *In general.* This section provides legending and information reporting requirements intended to facilitate the reporting of OID.

(b) *Information required to be set forth on face of debt instruments that are not publicly offered*—(1) *In general.* Except as provided in paragraph (b)(4) or paragraph (d) of this section, the requirements of this paragraph (b) apply to any debt instrument that is not publicly offered (within the meaning of § 1.1273–2(a)(2)), is issued in physical form, and has OID. The issuer of any such debt instrument must legend the instrument by stating on the face of the instrument that the debt instrument was issued with OID. In addition, the issuer must either—

(i) Set forth on the face of the debt instrument the issue price, the amount of OID, the issue date, and the yield to maturity; or

(ii) Provide the name and either the address or telephone number of a representative of the issuer who will, beginning no later than 10 days after the issue date, promptly make available to holders upon request the information described in paragraph (b)(1)(i) of this section.

(2) *Time for legending.* An issuer may satisfy the requirements of this paragraph by legending the debt instrument when it is first issued in physical form. Legending is not required, however, before the first holder of the debt instrument disposes of the instrument.

(3) *Legend must survive reissuance upon transfer.* Any new physical security that is issued (for example, upon registration of transfer of ownership) must contain any required legend.

(4) *Exceptions.* The requirements of paragraph (b)(1) of this section do not apply to debt instruments described in section 1272(a)(2) (relating to debt instruments not subject to the periodic OID inclusion rules), debt instruments issued by natural persons (as defined in § 1.6049–4(f)(2)), REMIC regular interests or other debt instruments

subject to section 1272(a)(6), or stripped bonds and coupons within the meaning of section 1286.

Par. 8. Section 1.1275–5, as proposed on April 8, 1986 (51 FR 12094), is revised to read as follows:

§ 1.1275–5 Variable rate debt instruments.

(a) *Applicability*—(1) *In general.* This section provides rules for variable rate debt instruments. For purposes of section 163(e) and sections 1271 through 1275, a variable rate debt instrument is a debt instrument that meets the conditions described in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Principal payments.* The debt instrument must provide for total noncontingent principal payments that are at least equal to the instrument's issue price.

(3) *Stated interest.* The debt instrument must provide for stated interest (compounded or paid at least annually) at—

(i) A single qualified floating rate;

(ii) A single qualified floating rate followed by a second qualified floating rate;

(iii) A single fixed rate followed by a single qualified floating rate; or

(iv) A single objective rate.

(4) *Current value.* The debt instrument must provide that each qualified floating rate or objective rate in effect during an accrual period is set at a current value of that rate. A current value is the value of the rate on any day occurring during the interval that begins three months prior to the first day on which that value is in effect under the debt instrument and ends one year following that day.

(b) *Qualified floating rate*—(1) *In general.* For purposes of this section, a floating rate is a qualified floating rate if variations in the rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. A multiple of a qualified floating rate is generally not a qualified floating rate.

(2) *Restrictions on the stated rate of interest.* Notwithstanding paragraph (b)(1) of this section, restrictions on the maximum or minimum stated interest rate, restrictions on the amount of increase or decrease in the stated interest rate, or other similar restrictions generally do not result in a rate failing to be treated as a qualified floating rate. However, a rate is not a qualified floating rate if it is subject to a cap (or similar restriction) that is very likely to cause the interest rate in one or more accrual periods, known as of the issue date, to be significantly less than the overall expected return on the debt instrument. In addition, a rate is not a qualified floating rate if it is subject to a floor (or similar restriction) that is very likely to cause the interest rate in one or more accrual periods, known as of the issue date, to be significantly more than the overall expected return on the debt instrument.

(c) *Objective rate*—(1) *In general.* For purposes of this section, an objective rate is a rate (other than a qualified floating rate) based on the price of property that is actively traded (within the meaning of section 109(d)(1)), or on an index of the prices of such property. An objective rate is also a rate that is based on one or more qualified floating rates, but that is not itself a qualified floating rate under paragraph (b)(1) of this section. For example, a multiple of a qualified floating rate is an objective rate. An objective rate, however, must be determined using a single formula that is fixed throughout the term of the debt instrument.

(2) *Exceptions*—(i) *Restrictions on the stated rate of interest.* Notwithstanding paragraph (c)(1) of this section, a restriction described in paragraph (b)(2) of this section or a formulation of the objective rate that is substantially similar to such a restriction generally does not result in the rate failing to be an objective rate. However, a rate is not an objective rate if it is subject to a cap (or similar restriction or a formulation of the objective rate that is substantially similar to a cap) that is very likely to cause the interest rate in one or more accrual periods, known as of the issue date, to be significantly less than the overall expected return on the debt instrument. In addition, a rate is not an objective rate if it is subject to a floor (or similar restriction or a formulation of the objective rate that is substantially similar to a floor) that is very likely to cause the interest rate in one or more accrual periods, known as of the issue date, to be significantly more than the overall expected return on the debt instrument.

(ii) *Tax-exempt debt.* Notwithstanding paragraph (c)(1) of this section, a debt instrument governed by section 103 does not provide for stated interest at an objective rate if the issuer, contemporaneously with the issuance, enters into one or more financial contracts (other than a debt instrument of the issuer) that substantially offset the variations in the stated interest.

(iii) *Nonfunctional currency.* Notwithstanding paragraph (c)(1) of this section, an objective rate does not include a rate based on the price of nonfunctional currency of the taxpayer or a qualified business unit (as defined in section 989(a)).

(d) *Examples.* The provisions of paragraph (b) and (c) of this section are illustrated by the following examples. For purposes of these examples, assume that the exceptions in paragraphs (b)(2) and (c)(2) of this section do not apply.

Example 1. Rate is based on LIBOR. X issues a debt instrument that provides for annual payments of interest at a rate equal to the one-year London Interbank Offered Rate (LIBOR) at the end of each year. Variations in one-year LIBOR over the term of the instrument can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds over that term. Accordingly, the rate is a qualified floating rate.

Example 2. Rate increased by a fixed amount. X issues a debt instrument that provides for annual payments of interest at a rate equal to 200 basis points (two percent) plus the current value, at the end of each year, of the average yield on one-year Treasury securities as published in Federal Reserve bulletins. This rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is a qualified floating rate.

Example 3. Rate is based on commercial paper rate. X issues a debt instrument that provides for a rate of interest that is periodically adjusted to equal the current interest rate of Bank's commercial paper. This rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is a qualified floating rate.

Example 4. Rate is based on an inflation index. X issues a debt instrument that provides for annual payments of interest at a rate equal to 400 basis points (four percent) plus the annual percentage change in a general inflation index (*e.g.* the Consumer Price Index, U.S. City Average, All Items, for all Urban Consumers, seasonally unadjusted). Because inflation is a component of borrowing costs, this rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is a qualified floating rate.

Example 5. Changes in the price of a commodity index. X issues a debt instrument that provides for annual interest payments at the end of each year at a rate equal to the percentage increase, if any, in the price of an actively traded commodity for the year immediately preceding the payment. The rate of interest on this debt instrument is not reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the stated rate is not a qualified floating rate. However, because the rate is based on the price of actively traded property, the rate is an objective rate.

Example 6. Changes based on issuer profits. Z issues a debt instrument that provides for annual interest payments equal to 20 percent of Z's net profits earned during the year immediately preceding the payment. This rate is not reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly,

the rate is not a qualified floating rate. In addition, because the stated rate is neither based on the price of actively traded property nor based on a qualified floating rate, the rate is not an objective rate.

Example 7. Changes based on a multiple of an interest index. Z issues a debt instrument with annual interest payments at a rate equal to the excess of three times annual LIBOR over ten percent. Changes in the rate are not reasonably expected to measure changes in the cost of newly borrowed funds (*e.g.*, a one percent increase in LIBOR results in a three percent increase in the rate, which does not measure changes in the costs of newly borrowed funds). Accordingly, the rate is not a qualified floating rate. However, because the stated rate is based on a qualified floating rate using a formula that is fixed over the term of the debt instrument, the rate is an objective rate.

Example 8. Inverse floater. Z issues a debt instrument that provides for monthly interest payments equal to the stated principal amount times a rate equal to ten percent, compounded monthly, less the value of one-month LIBOR as of the payment date. This rate is not reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is not a qualified floating rate. However, because the stated rate is based on a qualified floating rate, the rate is an objective rate.

(e) *Qualified stated interest on a variable rate debt instrument.* In general, stated interest on a variable rate debt instrument is qualified stated interest if the interest is unconditionally payable in cash or in property (other than debt instruments of the issuer) at least annually. *See* § 1.1273–1(c)(1) to determine whether interest is unconditionally payable.

However, if a variable rate debt instrument provides for a fixed rate followed by a qualified floating rate or a qualified floating rate followed by another qualified floating rate, any accelerated interest or deferred interest on the debt instrument (as described in paragraph (f) of this section) is not qualified stated interest.

(f) *Accelerated and deferred interest*—(1) *Debt instruments that provide for a fixed rate followed by a qualified floating rate*—(i) *In general.* A variable rate debt instrument that provides for a fixed rate followed by a qualified floating rate has accelerated interest or deferred interest unless the fixed rate is a reasonable substitute for the qualified floating rate during the interval for which the fixed rate is applicable (the initial interval). The fixed rate is a reasonable substitute for the qualified floating rate if the variable rate debt instrument would have approximately the same fair market value as a hypothetical debt instrument with identical terms except that the hypothetical debt instrument provides for the qualified floating rate during the initial interval. If, based on this comparison, the variable rate debt instrument would be more valuable than the hypothetical debt instrument, the variable rate debt instrument has accelerated interest. Conversely, if the variable rate debt instrument would be less valuable than the hypothetical debt instrument, the variable rate debt instrument has deferred interest.

(ii) *Accelerated interest*—(A) *Amount of accelerated interest.* Accelerated interest is the stated interest accruing in the initial interval that is attributable to the number of percentage points that must be subtracted from the fixed rate to make the fixed rate a reasonable substitute for the qualified floating rate.

(B) *Example of accelerated interest.* The rule in paragraph (f)(1)(ii)(A) of this section is illustrated by the following example.

Example. A five-year debt instrument provides for annual payments of interest. For the first two years, the rate of interest is five percent, compounded annually. For the final three years, the rate of interest is the current value of one-year LIBOR on each payment date. The debt instrument is a variable rate debt instrument. If the fair market value of the variable rate debt instrument would be greater than the fair market value of an otherwise identical hypothetical debt instrument that provides for one-year LIBOR during the first two years, the variable rate debt instrument has accelerated interest. Assume that the fair market value of the variable rate debt instrument would be the same as that of the hypothetical debt instrument if the fixed rate on the variable rate debt instrument was four percent, rather than five percent. The amount of accelerated interest on the variable rate debt instrument is the amount of stated interest during the first two years that corresponds to 100 basis points (one percent) per year. The remainder of the stated interest (four percent, compounded annually, for the first two years and one-year LIBOR for the last three years) is qualified stated interest if it is unconditionally payable at least annually.

(iii) *Deferred interest*—(A) *Amount of deferred interest.* Deferred interest is the stated interest accruing in the subsequent interval that is attributable to the number of percentage points that must be subtracted from the qualified floating rate to make the fixed rate a reasonable substitute for the qualified floating rate.

(B) *Example of deferred interest.* The rule in paragraph (f)(1)(iii)(A) of this section is illustrated by the following example.

Example. A five-year debt instrument provides for annual payments of interest. For the first two years, the rate of interest is three percent, compounded annually. For the final three years, the rate of interest is the current value of one-year LIBOR on each payment date. The debt instrument is a variable rate debt instrument. If the fair market value of the variable rate debt instrument would be less than the fair market value of an otherwise identical hypothetical debt instrument that provides for one-year LIBOR during the first two years, the debt instrument has deferred interest. Assume that the fair market value of the variable rate debt instrument would be the same as that of the hypothetical debt instrument if the qualified floating rate on the variable rate debt instrument was one-year LIBOR less 100 basis points (one percent), rather than one-year LIBOR. The amount of deferred interest on the variable rate debt instrument is the amount of stated interest during the last three years that corresponds to 100 basis points (one percent) per year. The remainder of the stated interest (three percent, compounded annually, for the first two years and one-year LIBOR less 100 basis points (one percent) for the last three years) is qualified stated interest if it is unconditionally payable at least annually.

(2) *Debt instruments that provide for one qualified floating rate followed by a second qualified floating rate.* If a variable rate debt instrument provides for one qualified floating rate followed by a second qualified floating rate, the amount of accelerated interest or deferred interest is determined in accordance with the principles of paragraph (f)(1) of this section. For example, if the interest rate of a variable rate debt instrument during the initial interval is less than the interest rate during the subsequent interval by a fixed number of percentage points (*e.g.*, LIBOR followed by LIBOR plus three percentage points), the amount of deferred interest is the stated interest in the subsequent interval that is attributable to that fixed number of percentage points.

(g) *General principles for accrual of OID with respect to a variable rate debt instrument*—(1) *In general.* A variable rate debt instrument may have OID because all stated interest is not unconditionally payable at least annually, because the stated principal amount exceeds the issue price (true discount), or because a portion of the stated interest is accelerated or deferred interest. OID must be recognized in a manner that reasonably reflects the principles described in paragraphs (g)(2) and (g)(3) of this section. See § 1.1273–1(d) to determine whether the amount of OID is de minimis.

(2) *Accrual of stated interest other than qualified stated interest, accelerated interest or deferred interest.* OID for an accrual period arising from stated interest that is not unconditionally payable at least annually (other than accelerated or deferred interest) is the amount of this stated interest that actually accrues

under the terms of the debt instrument during the accrual period.

(3) *Accrual of true discount, accelerated interest, and deferred interest.* Any true discount, accelerated interest, or deferred interest on a variable rate debt instrument must be allocated to an accrual period using the constant yield method (described in § 1.1272–1). A reasonable application of the constant yield method is to disregard all stated interest with respect to the variable rate debt instrument (other than any accelerated or deferred interest) and assume that the instrument provides for qualified stated interest payments at the end of each accrual period computed at a reasonable fixed rate. For purposes of the preceding sentence, qualified stated interest payments are generally computed at a reasonable fixed rate if the payments, combined with any true discount, accelerated interest or deferred interest, provide a yield to maturity that approximates the applicable Federal rate.

(h) *Examples.* The provisions of paragraphs (e), (f), and (g) of this section are illustrated by the following examples.

Example 1. Variable rate debt instrument with qualified stated interest. On January 1, 1994, A purchases at original issue, for $100,000, B corporation's debt instrument that matures on January 1, 2004, and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for semiannual payments of interest payable on January 1 and July 1 of each year, beginning on July 1, 1994. The rate on which each interest payment is based is the Federal short-term rate in effect at the beginning of each semiannual period that immediately precedes the payment. Under paragraph (b)(1) of this section, the interest rate is a qualified floating rate. Under paragraph (e) of this section, all stated interest payments are qualified stated interest payments.

Example 2. Variable rate debt instrument with an initial fixed rate and no accelerated or deferred interest—(i) *Facts.* On January 1, 1994, E purchases at original issue, for $100,000, F corporation's debt instrument that matures on December 31, 2003, and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for annual payments of interest on December 31 of each year, beginning on December 31, 1994. For the first five years, the interest rate is five percent, compounded annually. For the final five years, the interest rate is the value of one-year LIBOR on each payment date plus 100 basis points (one percent).

(ii) *Qualified stated interest.* The debt instrument is a variable rate debt instrument. Assume that, based on all the facts and circumstances, the variable rate debt instrument has approximately the same fair market value as an otherwise identical hypothetical debt instrument that provides for annual payments of one-year LIBOR plus 100 basis points (one percent) for the first five years. The fixed rate of five percent, compounded annually, is a reasonable substitute for one-year LIBOR plus 100 basis points (one percent), compounded annually. Under paragraph (f)(1) of this section, the debt instrument does not provide for accelerated or deferred interest. Thus, all of the stated interest payments are qualified stated interest payments.

Example 3. Variable rate debt instrument with an initial fixed rate and with deferred interest—(i) *Facts.* On January 1, 1994, E purchases at original issue, for $100,000, F corporation's debt instrument that matures on December 31, 2003, and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for annual payments of interest on December 31 of each year, beginning on December 31, 1994. For the first five years, the rate of interest is four percent, compounded annually. For the final five years, the rate of interest is the value of one-year LIBOR on each payment date plus 200 basis points (two percent).

(ii) *Determination of deferred interest.* The debt instrument is a variable rate debt instrument. Under paragraph (f)(1) of this section, the variable rate debt instrument provides for accelerated or deferred interest if the fixed rate is not a reasonable substitute for the qualified floating rate during the initial period. Assume that, based on all of the facts and circumstances, four percent, compounded annually, is not a reasonable substitute for one-year LIBOR plus 200 basis points (two percent), compounded annually, and that four percent, compounded annually, is a reasonable substitute for one-year LIBOR, compounded annually. The debt instrument has deferred interest. The amount of the deferred interest is the amount of stated interest accruing in years six through ten that corresponds to two hundred basis points (two percent) per year. Under paragraph (e) of this section, for the first five years, all of the stated interest payments are qualified stated interest, and for the last five years, stated interest payments at a rate equal to one-year LIBOR are qualified stated interest payments.

(iii) *Accrual of deferred interest on a variable rate debt instrument.* Under paragraph (g)(3) of this section, the amount of deferred interest allocable to an accrual period is determined using the constant yield method. A reasonable application of the constant yield method is to disregard all qualified stated interest on the variable rate debt instrument and assume that the instrument provides for qualified stated interest at a reasonable fixed rate. Assume that a reasonable fixed rate of interest is five percent because this rate, in combination with the 200 basis points (two percent) per year of deferred interest in years six through ten, produces a yield that approximates the applicable Federal rate. The constant yield method is applied as if the debt instrument provided for stated interest at five percent for the initial five years and stated interest at seven percent for the final five years (of which 200 basis points is not qualified stated interest), with a corresponding yield of 5.86 percent, compounded annually. The yearly OID accruals attributable to the deferred interest are described below:

Year	Assumed payments	Adjusted issue price beginning	OID	Assumed qualified stated interest	Adjusted issue price ending
1994	$5,000	$100,000.00	$858.62	$5,000	$100,858.62
1995	5,000	100,858.62	908.92	5,000	101,768.54
1996	5,000	101,768.54	962.17	5,000	102,729.71
1997	5,000	102,729.71	1,018.54	5,000	103,748.25
1998	5,000	103,748.25	1,078.21	5,000	104,826.47
1999	7,000	104,826.47	1,141.38	5,000	103,967.85
2000	7,000	103,967.85	1,091.08	5,000	103,058.93
2001	7,000	103,058.93	1,037.83	5,000	102,096.76
2002	7,000	102,096.76	981.46	5,000	101,078.21
2003	107,000	101,078.21	921.79	5,000	0
	.....	.....	10,000.00	.....	.....

Example 4. Variable rate debt instrument with an initial qualified floating rate and deferred interest—(i) *Facts.* On January 1, 1994, C purchases at original issue, for $100,000, D corporation's debt instrument that matures on December 31, 2003, and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for annual payments of interest on December 31 of each year, beginning on December 31, 1994. For the first five years, the interest rate is the value of one-year

LIBOR on each payment date less 100 basis points (one percent). For the subsequent five years, the interest rate is the value of one-year LIBOR on each payment date plus 200 basis points (two percent).

(ii) *Determination of deferred interest.* The debt instrument is a variable rate debt instrument. Interest on the debt instrument is stated at a qualified floating rate followed by another qualified floating rate. Under paragraph (f)(2) of this section, the variable rate debt instrument has deferred interest equal to 300 basis points (three percent) per year for years six through ten. Under paragraph (e) of this section, payments based on a rate equal to one-year LIBOR less 100 basis points (one percent) are qualified stated interest payments.

(iii) *Accrual of deferred interest.* Under paragraph (g)(3) of this section, the amount of deferred interest allocable to an accrual period is determined using the constant yield method. A reasonable application of the constant yield method is to disregard all qualified stated interest on the variable rate debt instrument and assume that the instrument provides for qualified stated interest at a reasonable fixed rate. Assume that a reasonable fixed rate of interest is five percent because this rate, in combination with the 300 basis points (three percent) per year of deferred interest in years six through ten, produces a yield that approximates the applicable Federal rate. The constant yield method is applied as if the debt instrument provided for stated interest at five percent for the initial five years and stated interest at eight percent for the final five years (of which 300 basis points is not qualified stated interest), with a corresponding yield of 6.27 percent, compounded annually. The yearly OID accruals attributable to the deferred interest are described below:

Year	Assumed payments	Adjusted issue price beginning	OID	Assumed qualified stated interest	Adjusted issue price ending
1994	$5,000	$100,000.00	$1,273.57	$5,000	$101,273.57
1995	5,000	101,273.57	1,353.47	5,000	102,627.04
1996	5,000	102,627.04	1,438.38	5,000	104,065.42
1997	5,000	104,065.42	1,528.62	5,000	105,594.03
1998	5,000	105,594.03	1,624.52	5,000	107,218.55
1999	8,000	107,218.55	1,726.43	5,000	105,944.98
2000	8,000	105,944.98	1,646.53	5,000	104,591.51
2001	8,000	104,591.51	1,561.62	5,000	103,153.13
2002	8,000	103,153.13	1,471.38	5,000	101,624.52
2003	108,000	101,624.52	1,375.49	5,000	0
	.....	.....	15,000.00	.....	.....

Example 5. Variable rate debt instrument with interest paid at maturity. On January 1, 1994, A lends B $100,000 in exchange for B's note having an issue price of $100,000 repayable in ten years. Interest compounds on June 30 and December 31 of each year, at a rate equal to the Federal short-term rate in effect on the compounding date, but the payment of interest is deferred until maturity. Assume that on June 30, 1994, the Federal short-term rate for that date is 5 percent, compounded semiannually. Because the stated interest is not payable at least annually, the stated interest is not qualified stated interest and its accrual is determined under paragraph (g)(2) of this section. The amount of OID that accrues under the debt instrument for the first semiannual accrual period is $2,500.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-30431 Filed 12-21-92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-4547-3]

National Emissions Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: EPA is publishing a Memorandum of Understanding (MOU) Between the Environmental Protection Agency and the Nuclear Regulatory Commission Concerning Clean Air Act Standards for Radionuclide Releases from Facilities other than Nuclear Power Reactors Licensed by NRC or its Agreement States. This MOU was supposed to be published as an attachment to the Proposed Rule to Rescind subpart I for Facilities Other than Nuclear Power Reactors, which was published on December 1, 1992, 57 FR 56877; however, the MOU was accidently omitted from publication in the **Federal Register.**

The proposal to rescind subpart I for NRC licensees other than nuclear power reactors was issued pursuant to section 112(d)(9) of the Clean Air Act, which allows the EPA to decline to regulate NRC licensees if the Administrator determines by rule that the NRC regulatory program provides an ample margin of safety to protect the public health. The proposal to rescind is based on an extensive survey of these licensees which found that all surveyed facilities are presently in compliance with the quantitative emission limit in subpart I and on commitments made by NRC in the MOU with EPA.

FOR FURTHER INFORMATION CONTACT: Fran Jonesi, Air Standards and Economics Branch, Criteria and Standards Division, Office of Radiation and Indoor Air (6602J), Environmental Protection Agency, Washington, DC 20460, (202) 233-9229.

Dated: December 11, 1992.

Michael Shapiro,

Acting Assistant Administrator, Air and Radiation.

Memorandum of Understanding Between the Environmental Protection Agency and Nuclear Regulatory Commission Concerning Clean Air Act Standards for Radionuclide Releases from Facilities Other Than Nuclear Power Reactors Licensed by NRC or Its Agreement States

Subpart I, 40 CFR Part 61

In accordance with sections 112(d)(9) and 122(c)(2) of the Clean Air Act, as amended in 1990, and in order to minimize regulatory duplication and conserve resources in the control of radionuclide emissions to air from facilities other than nuclear power reactors, licensed by the Nuclear Regulatory Commission (NRC) or its Agreement States under the Atomic Energy Act of 1954, as amended, NRC and the Environmental Protection Agency (EPA) agree as follows:

General Goal of Agreement

EPA and NRC are entering into this MOU to ensure that facilities other than nuclear power reactors, licensed by the NRC, will continue to limit air emissions of radionuclides to levels that result in protection of the public health with an ample margin of safety. The guiding objective is that the actions under this MOU provide assurance that

public health is being and will continue to be protected with an ample margin of safety.

NRC will ensure that facilities licensed by Agreement States will also continue to limit air emissions of radionuclides to levels that result in protection of the public health with an ample margin of safety. NRC will accomplish this through its established procedures for continuous oversight of Agreement States' radiation control programs. Under the Atomic Energy Act, as amended, NRC is required to periodically review Agreement State programs for adequacy and compatibility with NRC's programs. Routine reviews are complete, in-depth examinations of Agreement State regulatory programs and are conducted every other calendar year. NRC review visits are usually conducted between routine reviews and maintain familiarity with the Agreement State program. Through this established process, NRC can provide adequate assurance that Agreement State-licensed facilities will continue to provide an ample margin of safety in protecting the public from air emissions of radionuclides.

NRC Lead Actions

1. NRC agrees to develop and issue a regulatory guide on designing and implementing a radiation protection program to ensure that doses resulting from effluents from licensed facilities will remain as low as is reasonably achievable (ALARA). The guide will establish a specific goal of 10 millirem per year total effective dose equivalent to the maximally exposed individual from radionuclide air emissions from licensed facilities and operations. The guide will also describe the types of administrative programs and objectives for environmental radiation protection programs that the NRC staff finds to be acceptable in satisfying the requirement in 10 CFR 20.1101(b).

The regulatory guide will be published for public comment and will be revised in response to comments, as appropriate, prior to finalization. NRC will publish a draft of the regulatory guide in October 1992, and after public comments have been incorporated, issue a final guide by April 1993. Once compliance with the revised 10 CFR part 20 is mandatory, and the final guide is available, NRC will review licensee compliance with the revised 10 CFR part 20 radiation protection program requirement through license renewals and ongoing inspection efforts. If any licensee fails to comply with the ALARA requirements of the revised 10 CFR part 20 and license conditions, NRC will take enforcement action in accordance with NRC's Enforcement Policy in Appendix C of 10 CFR part 2.

2. NRC agrees to develop inspection guidance on ALARA considerations for effluents and incorporate ALARA considerations in Standard Review Plans. Thus, license reviewers and inspectors will have comprehensive guidance and review criteria for assessments of ALARA at various licensed facilities. NRC will develop these documents based on the ALARA Regulatory Guide, which will be prepared with the benefit of public comment. NRC intends to complete the inspection guidance and Standard Review Plan shortly after completing the Regulatory Guide on ALARA for environmental effluents of radionuclides.

3. Pursuant to NRC's existing oversight authority for Agreement State programs described in the general goal of this MOU, NRC will work with Agreement States to adopt and implement regulations compatible with NRC's regulations in the revised 10 CFR part 20. These efforts will include maintenance of effluents, including air emissions, at ALARA levels.

4. Five years from the execution of the MOU, NRC will undertake a survey of a subset of NRC-licensees to verify that the NRC regulatory program is continuing to provide an ample margin of safety.

EPA Lead Actions

1. By November 15, 1992, EPA will develop and publish in the **Federal Register** a Notice of Proposed Rulemaking, pursuant to its authority under Clean Air Action Section 112(d)(9), to rescind its existing regulations in 40 CFR part 61, subpart I, as applied to licensed facilities other than nuclear power reactors. This proposal, which will occur only if the purposes and provisions of this MOU are proceeding effectively, requires that the Administrator find that the regulatory program implemented by NRC will protect public health with an ample margin of safety. It is expected, subject to public notice and comment, that the basis for this finding will ultimately be provided through the final report of EPA's survey of NRC and Agreement State licensees and through implementation of the commitments of this MOU. Final action on the rulemaking will be taken as soon as practicable after completion of the Notice of Proposed Rulemaking to rescind subpart I, as described in this paragraph.

2. In anticipation of issuance of the proposed rescission of 40 CFR part 61, subpart I for licensed facilities other than nuclear power reactors, EPA will propose a rule to further stay the effectiveness of subpart I for these facilities during the pendency of the rulemaking on rescission. The final rule staying the effectiveness of subpart I will be issued on or before the date EPA proposes rescission and is contingent upon the provisions of this MOU proceeding effectively.

Effective Date, Revision, and Termination

This memorandum shall be effective immediately and shall continue in effect until revised by mutual agreement, unless terminated by any party after 120 days notice in writing.

Dated: August 28, 1992.

Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

Dated: September 4, 1992.

Environmental Protection Agency.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

[FR Doc. 92-30904 Filed 12-21-92; 8:45 am]

BILLING CODE 6560-50-M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2500, 2501, 2502, 2503, 2504, 2505, and 2506

National and Community Service Grant Programs; Amendments

AGENCY: Commission on National and Community Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission on National and Community Service proposes to amend its regulations concerning the programs authorized by the National and Community Service Act of 1990, as amended. The majority of these proposed changes reflect Congressional amendments to our original Act, while others result from experience gained from our first year of grant-making. The changes concern definitions, selection criteria, eligibility for grant awards and program participation, confidentiality of information about participants, and the amount of post-service benefits in the National Service Program. The Commission feels that these proposed amendments to its regulations will contribute to an easier grant process, from the perspective of both prospective grantees and the Commission.

DATES: Comments must be received on or before January 5, 1993.

ADDRESSES: Comments should be sent to Terry Russell, Commission on National and Community Service, 529 14th Street, NW., suite 452, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Terry Russell at (202) 724–0600.

SUPPLEMENTARY INFORMATION: These proposed rule changes would amend 45 CFR chapter XXV to clarify the definition of administrative costs, reflect Congressionally mandated changes to the Commission's enabling legislation, and provide the Commission the freedom to make changes in program focus or emphasis through application forms and notices of availability of funds in the **Federal Register**.

Administrative Costs

Under our Act and regulations, only 5% of Commission funds provided a grantee may be used for "administrative costs." Since our Act does not define administrative costs, the Commission provided a definition in its regulations. Consistent with the Commission's desire that program funds not pay for indirect costs, applicants in our first year of operation were advised that although indirect costs could be included in the match requirement, they could not be included in administrative costs unless they were directly apportioned to the program to be funded by the Commission. This proved problematic, especially for institutions of higher education, since their accounting systems were geared to determining indirect costs, and not "administrative costs."

The Commission desires to simplify as much as possible the administrative burdens on its grantees. Therefore the Commission proposes to modify the definition of administrative costs to include indirect costs in order to reflect the realities of accounting systems of many grantees that already classify "administrative costs" as indirect costs.

Conservation and Youth Service Corps

Technical amendments to the National and Community Service Act of 1990 (Pub. L. 102–384) call for three changes in the regulations with respect to Conservation and Youth Service Corps. First, in § 2500.2 paragraph (36) the time frame during which summer youth corps programs can be funded by the Commission has been expanded from June through August to April 30 through October 1.

Second, § 2503.1 is expanded to allow the Commission to fund part-time as well as full-time corps. During our first year of operation, we had numerous requests from corps for funding of part-time corps.

Third, in § 2503.21 the lower age limit for participation in summer programs is lowered from 15 to 14 years of age in order to include all high school students.

Program Focus and Emphasis

In its first year, the Commission awarded grants to a number of different types and models of programs, leaving others that the Commission was unable to fund, due either to lack of funds or lack of qualifying applications. The Commission also found that certain program elements or focuses were particularly beneficial. As a result, in its second year the Commission has elected to emphasize certain types of programs, or provide examples, as in Subtitle D. These should provide helpful guidance to applicants by narrowing somewhat the focus of grant awards.

In order to avoid confusion caused by having criteria for funding and program emphases partially described in the regulations and partially in applications and other notices, it has been determined that all criteria should be published in one place. The Commission, like other government agencies, does not wish to delineate the criteria for awarding grants too specifically in its regulations. Therefore the Commission proposes to modify the Criteria for Funding in §§ 2501.16, 2502.5, 2503.4, 2504.13 by referring to more specific information about program criteria, focuses, and emphases in notices of availability of funds in the **Federal Register** and in grant applications. Statutory criteria will, of course, continue to apply and will be referred to in notices of availability of funds and the Commission's application forms, as will the Commission's criteria of quality, innovation, replicability and sustainability.

National Service (Subtitle D) Post-Service Benefits

In accordance with the Higher Education Amendments of 1992 (Pub. L. 102–325), § 2504.10 now provides that the non-transferable post-service benefits of $2500 per year of full-time service shall be increased in conjunction with increases in the maximum Pell grant each year.

Assistance for Head Start

In accordance with the technical amendments, § 2505.41 is amended to expand the eligibility criteria for grant awards under Head Start to include organizations working under memoranda of agreement with ACTION as well as organizations who have received grants from ACTION to operate Foster Grandparent programs.

Confidentiality of Information

Also due to changes made by the technical amendments, regulations concerning the confidentiality of information acquired about participants through evaluation are modified (§ 2506.8). All information about individuals will still be kept confidential except in the case of prior written consent by the participant concerned. disclosure of information about participants in the aggregate will be permitted.

List of Subjects

45 CFR Part 2500

Grant programs—Social programs, Organization and functions.

45 CFR Part 2501

Grant programs—Social programs, Elementary and secondary education.

45 CFR Part 2502

Grant programs—Social programs, Colleges and universities.

45 CFR Part 2503

Grant programs—Social programs, Youth.

45 CFR Part 2504

Grant programs—Social programs, Community development block grants. Community action programs.

45 CFR Part 2505

Grant programs—Social programs, Community development.

45 CFR Part 2506

Grant programs—Social programs, Grants administration.

For the reasons set forth in the preamble, the Commission on National and Community Service proposes to amend Chapter XXV, parts 2500–2506, in title 45 of the Code of Federal Regulations to read as follows:

1. The authority citation for Chapter XXV continues to read as follows:

Authority: 42 U.S.C. 12501 et seq.

2. Section 2500.2 is amended by revising paragraphs (a)(2) and (a)(36) to read as follows:

§ 2500.2 Definitions.

* * * * *

(a) * * *

(2) *Administrative Costs or expenses* include: costs associated with overall program administration; salaries and benefits for directors and administrative staff of existing organizations that sponsor funded programs; and insurance that protects the grantee (e.g., liability insurance). Non-administrative (direct service) Costs include: costs

relating to service delivery (services that directly benefit participants); salaries and benefits of staff who train, place, and supervise such staff; costs of providing living allowances and usual in-service education and training for participants; and evaluation of the program as required by the terms and conditions of the grant. Particular costs charged to the program might be pro-rated (with documentation) between direct services and administration. Indirect costs may be included in administrative costs.

* * * * *

(36) *Summer Program* means a youth corps program authorized under this chapter that is limited to the period beginning after April 30 and ending before October 1.

* * * * *

2. Section 2501.16 is revised to read as follows:

§ 2501.16 Criteria for funding.

All criteria for funding can be found in the National and Community Service Act of 1990, as amended, (42 U.S.C. 12525 (a) & (b)). The grant application itself will also refer to the statutory criteria and delineate additional criteria for the selection process.

3. section 2502.5 should be revised to read as follows:

§ 2502.5 Criteria for evaluating applications.

All criteria for funding can be found in the National and Community Service Act of 1990, as amended, (42 U.S.C. 12531). The grant application itself will also refer to the statutory criteria and delineate additional criteria for the selection process..

4. Section 2503.1 should be revised to read as follows:

§ 2503.1 Purpose.

The purpose of this program is to provide grants for the creation or expansion of full-time, part-time, summer and year-round youth service or conservation corps programs, including grants for the addition of participants, an increase in the number of hours or weeks during which the program operates, the involvement of an existing program in new types of service, or the improvement of an existing program consistent with this part.

5. Section 2503.4 is revised to read as follows:

§ 2503.4 Selection criteria.

All criteria for funding can be found in the National and Community Service act of 1990, as amended, (42 U.S.C. 12541–12555). The grant application itself will also refer to the statutory criteria and delineate additional criteria for the selection process.

6. Section 2503.21(a)(1)(i) is revised to read as follows:

§ 2503.21 Age, citizenship, and other criteria for enrollment.

(a) * * *

(1) * * *

(i) Not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 14 years of age nor more than 21 years of age at the time of enrollment of such individuals; and

* * * * *

7. Section 2504.10 is amended by revising paragraph (b)(1) to read as follows:

§ 2504.10 Value of post-service benefits.

* * * * *

(b)(1) The Commission, through the State, shall annually provide to each full-time participant a non-transferable post-service benefit for each year of service that such participant provides to the program, which benefit shall be equal in value to $2,500 for each such year, and which benefit shall be adjusted to match any increases in the maximum Pell Grant as provided by the annual appropriation. Funds for this benefit shall be included in the budget for the program and reflected in the grant request.

* * * * *

8. Section 2504.13 is revised to read as follows:

§ 2504.13 Criteria for evaluating applications.

All criteria for funding can be found in the National and Community Service Act of 1990, as amended, (42 U.S.C. 12572 (a) & (b)). The grant application itself will also refer to the Statutory criteria and delineate additional criteria for the selection process.

9. Section 2505.41 is revised to read as follows:

§ 2505.41 Eligibility.

Only those organizations which have a grant from ACTION, the Federal Domestic Volunteer Agency, to operate a Foster Grandparent program, or those organizations operating under memoranda of agreement with ACTION, are eligible to receive awards.

10. Section 2506.8 is amended by revising paragraph (d) to read as follows:

§ 2506.8 Program evaluation.

* * * * *

(d) The Commission shall keep confidential the information acquired about individual participants or members of control groups from evaluations under paragraph (c) of this section, except that

(1) The content of any information described in (d) may be disclosed with the prior written consent of the individual participant with respect to whom the information is maintained; and that

(2) The Commission may disclose information about the aggregate characteristics of such participants.

Dated: December 14, 1992.

Catherine Milton,

Executive Director.

[FR Doc. 92–30594 Filed 12–21–92; 8:45 am]

BILLING CODE 6820–BA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 92–166]

MSS Above 1 GHZ Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of advisory committee establishment and meetings.

SUMMARY: The Federal Communications Commission has established the MSS Above 1 GHz Negotiated Rulemaking Committee (Committee). The Committee will provide expert advice and recommendations on technical matters related to the establishment and regulation of a mobile satellite service in the 1610–1626.5/2483.5–2500 MHz frequency bands. The establishment of this Committee is necessary and is in the public interest.

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice also advises interested persons of the initial and proposed subsequent meetings of the Committee.

DATES:

Wednesday, January 6, 1993, at 9:30 a.m.
Tuesday, January 12, 1993, at 9:30 a.m.
Tuesday, January 26, 1993, at 9:30 a.m.
Wednesday, February 3, 1993, at 9:30 a.m.
Monday, February 8, 1993, at 9:30 a.m.
Wednesday, February 17, 1993, at 9:30 a.m.
Thursday, February 25, 1993, at 9:30 a.m.
Wednesday, March 3, 1993, at 9:30 a.m.
Tuesday, March 9, 1993, at 9:30 a.m.
Thursday, March 18, 1993, at 9:30 a.m.
Wednesday, March 24, 1993, at 9:30 a.m.

Tuesday, March 30, 1993, at 9:30 a.m.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., room 856, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Committee was established by the Federal Communications Commission to bring together applicants, existing users of the frequency bands, and other affected entities, to discuss and to recommend approaches to resolve technical sharing and coordination issues involved in the establishment and regulation of a new satellite service. The FCC has solicited nominations for membership on the Committee pursuant to the Negotiated Rulemaking Act of 1990, Public Law 101–648, November 28, 1990, and will select members to achieve a balanced membership given the purposes and objectives of the Committee. See Public Notice in CC Docket No. 92–166, 57 FR 39661 (September 1, 1992), 7 FCC Rcd 5241 (1992).

The agenda for the first meeting is as follows:

1. Introductory Comments: Gerald P. Vaughan, Deputy Chief Common Carrier Bureau; Thomas S. Tycz, Designated Federal Officer and Deputy Chief, Domestic Facilities Division
2. Selection of Facilitator
3. Approval of Agenda
4. Committee Charter
5. Committee Membership
6. Work Program
   —Tasks
   —Schedule
   —Report
7. Organization of Work
   —Identification of Available Information
   —Informal Working Groups
8. Agenda for Next Meeting
9. Other Business

At subsequent meetings, the Committee will seek to determine and to recommend approaches to resolve the domestic sharing problems among the applicants and to resolve potential coordination problems with existing users of the spectrum and with users in adjacent frequencies. The Committee will also discuss international sharing and coordination issues.

Members of the general public may attend the meetings. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Fern J. Jarmulnek, Staff Attorney, Satellite Radio Branch, before each meeting.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Campbell, Administrative Assistant of the MSS Above 1 GHz Negotiated Rulemaking Committee, at (202) 634–1952.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–30927 Filed 12–21–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–291, RM–8133]

Radio Broadcasting Services; Cambridge and St. Michaels, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by C.W.A. Broadcasting, Inc., proposing the reallotment of Channel 232A from Cambridge, Maryland, to St. Michaels, Maryland, and modification of the construction permit for Station WFBR(FM) to specify Channel 232A at St. Michaels. The coordinates for Channel 232A at St. Michaels are 38–49–17 and 76–17–27.

DATES: Comments must be filed on or before February 4, 1993, and reply comments on or before February 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles W. Adams, Jr., President, C.W.A. Broadcasting, Inc., 35 Solomon's Island Road, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–291, adopted November 25, 1992, and released December 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30902 Filed 12–21–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–293, RM–8128]

Radio Broadcasting Services; Stillwater, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Kenneth R. Greenwood seeking the allotment of Channel 251A to Stillwater, Oklahoma, as the community's third local commercial FM service. Channel 251A can be allotted to Stillwater in compliance with the Commission's minimum distance separation requirements with a site restriction of 9 kilometers (6 miles) northwest to avoid a short-spacing to Stations KMOD-FM, Channel 248C, and KVOO-FM, Channel 253C, Tulsa, Oklahoma. The coordinates for Channel 251A at Stillwater are North Latitude 36–09–27 and West Longitude 97–09–20.

DATES: Comments must be filed on or before February 4, 1993, and reply comments on or before February 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brent Weingardt, Esq., Comsultants, Inc., 4500 West Virginia Avenue, NW., Bethesda, Maryland 20814 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–293, adopted November 30, 1992.

and released December 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30928 Filed 12–21–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

(MM Docket No. 92–294, RM–8129)

Radio Broadcasting Services; Seaside, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ken's Corporation seeking the allotment of Channel 255A to Seaside, Oregon, as the community's second local FM service. Channel 255A can be allotted to Seaside in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4 miles) southwest to avoid a short-spacing to Station KEZX–FM, Channel 255C, Seattle, Washington, at coordinates North Latitude 45–59–15 and West Longitude 124–00–34. Canadian concurrence in the allotment is required since Seaside is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before February 4, 1993, and reply comments on or before February 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret L. Tobey, Esq., Akin, Gump, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue, NW., suite 400, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–294, adopted November 30, 1992, and released December 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–30929 Filed 12–21–92; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 6101

Amendments to GSA Board of Contract Appeals Rules of Procedure

AGENCY: Board of Contract Appeals, GSA.

ACTION: Request for comments.

SUMMARY: This notice invites written comments on proposed amendments to the rules of procedure of the GSA Board of Contract Appeals, which will govern all proceedings before the Board. These include protests of procurements involving acquisitions of automatic data processing (ADP) equipment and services, and contract disputes. The amendments are intended to clarify the Board's existing rules of procedure, as well as to increase the efficiency of proceedings at the Board. The rules have not been amended since June 1985, shortly after the Board first began hearing ADP protests. The Board intends to issue final, revised rules after considering all comments to the proposed amendments.

DATES: Comments must be submitted on or before February 12, 1993.

ADDRESSES: Copies of the proposed rules may be obtained from and written comments submitted to: Office of the Clerk of the Board, c/o Ms. Beatrice Jones, GSA Board of Contract Appeals, 18th & F Streets, NW., Washington DC 20504. (202) 501–0116.

FOR FURTHER INFORMATION CONTACT: Wilbur T. Miller, Chief Counsel, GSA Board of Contract Appeals. (202) 501–0890.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2713 of the Competition in Contracting Act of 1984, 40 U.S.C. 759(f), provides that protests involving ADP procurements may be filed with the Board. The Act also provides that the Board is to adopt and issue rules and procedures necessary for the expeditious resolution of such protests. In addition, the Administrator of General Services has delegated to the Board the authority to adopt and issue rules necessary for the resolution of contract disputes under the Contract Disputes Act of 1978, 41 U.S.C. 601–613. The proposed rules have been approved by majority vote of the Board's members.

B. Regulatory Flexibility Act

The General Services Administration certifies that these proposed revisions will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions to not impose recordkeeping or information collection requirements, or collection of information from

offerors, contractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 6101

Administrative Practice and Procedure, Government Procurement.

Dated: December 14, 1992.

Vincent A. LaBella,

Acting Chairman and Chief Judge, GSA Board of Contract Appeals.

[FR Doc. 92-30696 Filed 12-21-92; 8:45 am]

BILLING CODE 6820-AL-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Chapter III

[FHWA Docket No. MC-92-33]

Zero-Based Review of the Federal Motor Carrier Safety Regulations; Additional Public Outreach Session

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public outreach session; request for comments; closing of public docket.

SUMMARY: In September 1992, the FHWA successfully completed an initial series of four public outreach sessions in St. Paul, Minnesota; Portland, Oregon; San Antonio, Texas; and Los Angeles, California, pursuant to the notice published in the **Federal Register** on August 18, 1992 (57 FR 37392). On November 6, 1992 (57 FR 53089), the FHWA announced six additional public outreach sessions in Albany, New York; Atlanta, Georgia; Albuquerque, New Mexico; Casper, Wyoming; Kansas City, Missouri; and Washington, DC, to obtain comments and recommendations for improvement of the Federal Motor Carrier Safety Regulations (FMCSRs) as they relate to the commercial motor carrier industry.

This notice announces one additional public outreach session to be held January 20, 1993. This outreach session will be held in conjunction with the United Bus Owners of America (UBOA)/ American Bus Association (ABA) Bus Expo. The outreach sessions are an essential part of FHWA's zero-base regulatory review project. The zero-base review is intended to develop a performance-based regulatory system that will best enhance commercial motor vehicle safety. These sessions will be held to obtain information, views, and opinions from representatives of the motor carrier industry and other interested persons. The FHWA will continue to accept written comments on the zero-base program until April 1, 1993. After the comment period has closed and the comments have been analyzed, the FHWA will continue the rulemaking process with the goal of developing a regulatory structure that is more performance-oriented.

DATES: Written comments must be received on or before April 1, 1993. The outreach session will be held from 1:30 p.m. to 5:30 p.m., local time, on January 20, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket MC-92-33, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

The outreach session will be held at the following location: Hyatt Regency Downtown Miami, 400 SE Second Avenue, Miami, Florida 33131, 305/ 358-1234.

FOR FURTHER INFORMATION CONTACT: Ms. Paula R. Robinson, telephone (202) 366-2984, or Mr. Robert Redmond, telephone (202) 366-5014, Federal Highway Administration, Office of Motor Carriers, 400 Seventh Street, SW., room 3404, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays. In advance of the session, all individuals desiring to appear or planning to present information should contact Mr. Stan Hamilton, Office of Motor Carriers, telephone (202) 366-0665.

SUPPLEMENTARY INFORMATION: The Federal Motor Carrier Safety Regulations were enacted under the Motor Carrier Act of 1935, Ch. 498, 49 Stat. 546 (codified as amended at 49 U.S.C. 3102 and 3104). The regulations have been incrementally modified ever since. The authority for the current regulations has been vested in the Department of Transportation since 1966 (49 U.S.C. 1655(e)). All private, exempt commodity, common, and contract motor carriers of property and all for-hire carriers of passengers, as defined in the FMCSRs, are currently subject to these regulations. Additionally, the FHWA has proposed making private motor carriers of passengers subject to certain minimum safety requirements (54 FR 7362; notice of proposed rulemaking (1989)).

The FHWA recently completed a review of the FMCSRs in accordance with the President's January 28, 1992, Memorandum to Heads of Certain Executive Departments and Agencies to identify and eliminate any unnecessary regulatory burdens. Having completed that review, the FHWA believes it is appropriate to reconsider the underlying basis for all safety rules and to identify a performance-oriented regulatory structure that would enhance safety while minimizing the burdens placed on industry.

The FHWA believes the motor carrier industry will benefit from a regulatory structure that is more performance-oriented as opposed to prescriptive. Many of the basic provisions of the FMCSRs have remained unchanged for more than 50 years while others have been amended numerous times. The FHWA believes this has led to a set of regulations which can be difficult to understand and enforce. The FHWA plans to use the comments and recommendations gathered from all outreach sessions as the foundation to develop a comprehensive, unified set of performance-oriented safety requirements designed to ensure maximum safety on the Nation's highways. Discussion at the sessions will focus on identifying "who," "what," and "how" the FHWA should regulate commercial motor carriers and drivers to improve highway safety.

The goals and objectives of the zero-base review project are to: (1) Focus on those areas of enforcement and compliance which are most effective in reducing motor carrier accidents; (2) reduce compliance costs; (3) encourage innovation; (4) clearly and succinctly describe what is required; and (5) facilitate enforcement. The resulting regulatory system would apply to all appropriate segments of the motor carrier industry and would be enforceable by Federal, State and local authorities.

The performance-based regulations would be responsive to the needs of the industry and would enhance the safe operation of commercial motor vehicles.

Concurrent with the outreach effort, the FHWA has opened a public docket, MC-92-33, to allow commenters and interested parties who might be unable to attend the outreach sessions the opportunity to respond to the zero-base effort.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 14, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-31007 Filed 12-21-92; 8:45 am]

BILLING CODE 4910-22-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR PART 826

Equal Access to Justice Act Fees

AGENCY: National Transportation Safety Board.

ACTION: Notice of proposed rule and request for comment.

SUMMARY: The NTSB is proposing to adopt a cost-of-living adjustment to the standard $75 cap for the calculation of attorneys fees permitted under the Equal Access to Justice Act (EAJA). The agency proposes to use the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, All Items, as the inflator. It intends that the cap may be inflated to the year of the provision of service by an inflation factor equal to the ratio of the index for the year of service over the index for the base year. The agency requests comments on this methodology.

DATES: Comments are invited by January 21, 1992.

ADDRESSES: An original and two copies of any comments must be submitted to: Office of General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Washington, DC 20594, Attention: EAJA Rules.

Comments may be inspected at the above address, Room 6333, from 8 a.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–1952.

SUPPLEMENTARY INFORMATION: The NTSB currently has rules, at 49 CFR part 826, that specify the procedures and standards that govern applications for attorneys fees and expenses in proceedings arising out of the Board's jurisdiction to hear appeals from actions taken by the Administrator of the Federal Aviation Administration. To the extent that fees and expenses are available in these proceedings, the awards are the result of the enactment in 1981 (and subsequent permanent reenactment in 1985) of the Equal Access to Justice Act, the relevant portion of which is codified at 5 U.S.C. 504. EAJA, as it is commonly called, was designed to diminish the deterrent effect of high legal costs on challenges to unjustified legal action by the government, though the Act was not designed to reimburse fees, even reasonable fees, without limit. The Act provides that, where fees are awarded, they shall be based on prevailing market rates for the kind and quality of service furnished, but that they shall not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living or some special factor justifies a higher fee.

It is beyond dispute that a $75 fee cap would not have permitted full recovery of all attorneys fees even in 1981, and this was understood by Congress. Yet, to the extent that the value of the capped amount has diminished in real terms over time, so too is diminished the subsidy's ability to act as an inducement to a citizen to pursue vindication of legal rights against improper government action. There is no reason to believe that Congress intended an inflation-driven erosion of the utility of its enactment. It is, therefore, the purpose of this rulemaking to restore the original vitality of the EAJA process in NTSB procedures.

This agency has received several petitions requesting an adjustment to the EAJA fee cap.[1] Our inaction on these petitions has been based, in part, on the fact that no other agency had taken the opportunity afforded by clear statutory language to offer an inflation-based adjustment to the original cap. (The Administrative Conference of the United States, which has been charged by Congress with oversight of agency practice under EAJA, reported in 1991 that no agency had even initiated a fee adjustment rulemaking.) However, when EAJA was enacted its provisions were made simultaneously effective for agency and court proceedings alike. Perhaps because of their experience with other fee shifting arrangements, the courts have never hesitated to authorize cost-of-living based adjustment to the $75 cap. As the erosion of inflation compounds over time, we think that it has become imperative to follow the lead of the courts and announce by rule an inflation-based adjustment to our cap. As one court put it:

> Congress, by specifying the market rate for fees * * * intended to ensure that adequate representation would be available * * * for oftentimes "a party who chooses to litigate an issue against the Government is not only representing his or her own vested interest but is also refining and formulating public policy." * * * Congress did not think, however, that extraordinary fees were needed to ensure adequate representation; consequently, it limited public reimbursement * * * to $75 per hour * * * Congress was aware, however, that increases in the cost of living (inflation) might erode the fee-reimbursement scheme of EAJA; this is evidenced by inclusion in the Act of a cost-of-living escalator * * * By allowing district courts to adjust upwardly the $75 cap to account for inflation, Congress undoubtedly expected that the courts would use the cost-of-living escalator to insulate EAJA fee awards from inflation * * *.

Meyer v. *Sullivan*, 958 F.2d 1029 (11th Cir. 1992) (holding that courts must consider awarding inflation-adjustment fees). Citation omitted.

Reference to several leading court decisions is also informative as to the issues we can expect regarding what the new cap should be. Our examination of these decisions leads us to the view that the new cap should be self-adjusting, that is, based on reference to a known index that can be used prospectively for continual adjustment. We believe that this index should be the Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, unless a more specific geographic index is published for the locality. This "CPI" is the generally understood "cost of living" index that is widely used as a price inflator in labor and contract matters. We recognize that there may be price inflators that are more specifically geared to the cost of legal services, but the statutory language under which we act speaks broadly to inflation adjustment for the cost of living, and we believe Congress must be understood to have said what it meant. See *Sullivan* v *Sullivan*, 958 F.2d 574 (4th Cir. 1992) (rejecting use of a CPI sub-category geared to legal services).

We also recognize that there could be controversy over the selection of the base year, because Congress has (arguably) twice chosen $75 as the fee cap, first in 1981 and then again in 1985. Our initial impression, supported by judicial precedent, is that 1981 should be the base, and that is our proposal here. See *Perales* v. *Casillas*, 950 F.2d 1066 (5th Cir. 1992). Additionally, we believe that the cost-of-living adjustments, if warranted, should be made only up to the year of provision of the service in question. Inflation to the year of decision represents an impermissible interest charge against the government. See Perales, *supra*.

The Board does not now intend to consider by rule any other specific adjustment to the fee cap, although the statute does contemplate that so-called "special factor" considerations must also be addressed by rule. (Our existing rule inexplicably refers to this issue as "special circumstances," a term which is used elsewhere in EAJA with entirely different consequences. We will make

[1] Petitions have been filed by Richard B. Thompson, George O. Grant, Harold M. Gay, John W. Cronin, David L. Ebershoff, Mark S. Kahan (on behalf of C and M Airways, Inc, d/b/a Armadillo Air Associates), and Robert V. Stewart. These petitions are granted to the extent discussed in this notice, and they are incorporated into and will be included in the record in this proceeding.

editorial amendment to our rule so that it conforms to the statutory usage.) The Board's experience with its docket does not lead to the conclusion that enforcement cases tried at the administrative level are of the type that warrant a "special factors" exception, at least not one based on considerations so certain of description that they can be captured in a standard rule. However, because of the statutory requirement for a regulation-based exception for special factors—that is, because our administrative law judges may not address this issue solely in the context of specific adjudication—the Board will consider the creation by rule of an additional exception to the standard fees to be exercised in its discretion, if satisfactory parameters for a special factor award can be developed. Given the problematic nature of this undertaking, the Board does not intend to postpone final adoption of a rule in this docket pending resolution of this separate question.

Finally, we do not propose to authorize supplemental filings in cases where EAJA fees have already been the subject of a Board order. We do, however, contemplate allowing petitioners in pending cases to supplement their filings to reflect the proposed standards, and intend any subsequent awards to be premised on the revised standard, if adopted. We caution all applicants to recall that inflation-adjusted rates would be available only after a finding that the prevailing market rate is in excess of $75.

As required by the Regulatory Flexibility Act, we certify that the proposed rules will not have a substantial impact on a significant number of small entities. What effect they may have, however, would be beneficial to small entities. The rules are not major rules for the purposes of Executive Order 12291. We also conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will this action impose any information collection requirements requiring approval under the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 826

Claims, Equal access to justice, Lawyers.

Accordingly, 49 CFR part 826 is proposed to be amended as set forth below.

PART 826—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

1. The authority citation for part 826 continues to read as follows:

Authority: Section 203(a)(1) Pub. L. 99–80, 99 Stat. 186 (5 U.S.C. 504).

2. Section 826.6 is proposed to be amended by revising paragraph (b) to read as follows:

§ 826.6 Allowable fees and expenses.

* * * * *

(b)(1) No award for the fee of an attorney or agent under this part may exceed $75 indexed as follows:

$$\frac{X}{\$75/hr} = \frac{CPI\text{–}New}{CPI\text{–}1981}$$

The CPI to be used is the CPI, All Urban Consumers, U.S. City Average, All Items, except where a more pertinent local, All Item index is available. The numerator of that equation is the yearly average for the year(s) the services were provided, with each year calculated separately. This formula increases the $75 statutory cap by indexing it to reflect cost of living increases, as authorized in 5 U.S.C. 504(b)(1)(A)(ii). Application of these increased rate caps requires affirmative findings under § 821.6(c). For ease of application, available U.S. City figures are reproduced as follows:

1981	90.9
1982	96.5
1983	99.6
1984	103.9
1985	107.6
1986	109.6
1987	113.6
1988	118.3
1990	130.7
1991	136.2

(2) No award to compensate an expert witness may exceed the highest rate at which the agency pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness originarily charges clients separately for such expenses.

* * * * *

3. Section 826.7 is proposed to be revised to read as follows:

§ 826.7 Rulemaking on maximum rates for attorney fees.

(a) In addition to increases based on cost of living (*see* § 826.6), attorney fees in some or all of the proceedings covered by this part may also be increased beyond the statutory cap of $75 if warranted by special factors (such as limited availability of attorneys qualified to handle certain types of proceedings). The Board will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) any person may file with the Board a petition for rulemaking to increase the maximum rate for attorney fees by demonstrating that a special factor(s) justifies a higher fee. The petition shall identify the rate the petitioner believes the Board should establish and the proceeding(s) or types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Board will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

Issued in Washington, DC on this 14th day of December.

Carl W. Vogt,

Chairman.

[FR Doc. 92–30940 Filed 12–21–92; 8:45 am]

BILLING CODE 7533–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 921221–2321]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed initial specifications for the 1993 and 1994 Atlantic mackerel, squid, and butterfish fisheries and request for comment.

SUMMARY: NMFS issues these proposed initial specifications for the 1993 and 1994 fishing years for Atlantic mackerel, squid, and butterfish. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish specifications for the upcoming fishing year. This action is intended to fulfill this requirement and promote the development of the U.S. Atlantic mackerel, squid, and butterfish fisheries.

DATES: Public comments must be received on or before January 21, 1993.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's "quota paper" and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New

Street, Dover, DE 19901. Copies of the draft environmental assessment for this action are available from Richard B. Roe, Regional Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, (508) 281–9104 or Richard Seamans, (508) 281–9244.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 655. These regulations stipulate that the Secretary will publish a notice specifying the initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC) domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to three consecutive years.

Since an update of the Atlantic mackerel stock assessment will be forthcoming in 1994, the Council has chosen to recommend specifications for 1993 and 1994, only. Procedures for determining the initial annual amounts are found in § 655.22.

The following table contains the proposed initial specifications for Atlantic mackerel, *Loligo* squid, *Illex* squid, and butterfish. These specifications are based on the recommendations of the Mid-Atlantic Fishery Management Council (Council).

TABLE.—PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEARS, JANUARY 1 THROUGH DECEMBER 31, 1993 AND JANUARY 1 THROUGH DECEMBER 31, 1994

[In metric tons (mt)]

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	Illex		
Max OY[1]	44,000	30,000	[2] N/A	16,000
ABC[3]	44,000	30,000	850,000	16,000
IOY	44,000	30,000	100,000	10,000
DAH	44,000	30,000	[4] 100,000	10,000
DAP	44,000	30,000	50,000	10,000
JVP	0	0	35,000	0
TALFF	0	0	0	0

[1] Max OY as stated in the FMP;
[2] Not applicable; see the FMP;
[3] IOY can rise to this amount;
[4] Contains 15,000 mt. projected recreational catch based on the formula contained in the regulations (50 CFR part 666).

Atlantic Mackerel

The FMP provides that ABC in U.S. waters for the upcoming fishing year is that quantity of mackerel that could be caught in U.S. and Canadian waters minus the estimated catch in Canadian waters, while still maintaining a spawning stock size in the year following the year for which catch estimates and quotas are being prepared, equal to or greater than 600,000 mt. Using an estimated spawning stock biomass of 1,500,000 mt and an estimated Canadian catch of 50,000 mt, the Council derived an ABC of 850,000 mt.

The proposed IOY for the 1993 and 1994 Atlantic mackerel fisheries is set at 100,000 mt, equal to the specified DAH. The proposed specification for DAH is computed by adding the estimated recreational catch, the proposed specified DAP, and the proposed specified JVP. The recreational component of DAH is estimated at 15,000 mt using a formula found at § 655.21(b)(2)(ii). DAP and JVP components of DAH are estimated using the Council's annual processor survey. The U.S. processors projected a U.S. production of 46,105 mt for the upcoming fishing year. Based upon responses from the annual processor survey and inquiries from Estonia, the Council has recommended and the Regional Director proposes a specification of 35,000 mt of JVP for the 1993 and 1994 fisheries. The Council also recommended and the Regional Director proposes a DAP of 50,000 mt yielding a DAH of 100,000 mt, which includes the 15,000 mt recreational component.

Zero TALFF is proposed for the 1993 and 1994 Atlantic mackerel fisheries. The exclusion of directed foreign fishing is recommended by the Council and proposed by the Regional Director as described in the draft environmental assessment. However, the final TALFF specification will also be based on public comment.

The Council used testimony from both the domestic fishing and processing industries and analysis of nine economic factors found at § 655.21(b)(2)(ii) to determined that Atlantic mackerel produced from directed foreign fishing would directly compete with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the continued growth of the U.S. fishery. The Council believes that an expanding mackerel market and uncertainty regarding world supply, due to the economic and political restructuring in Eastern Europe, may substantially increase opportunities for U.S. producers to increase sales to new markets abroad. Also, the Department of Agriculture has accepted the Department of Commerce's recommendation to include Atlantic mackerel on the list of eligible commodities for fiscal year 1993 under the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480). This may provide a market opportunity for U.S. produced Atlantic mackerel.

As a supplement to its regulations, a benefit-cost analysis was prepared by the Council. Results of the analysis indicate that after eight to ten years, a specification of zero TALFF will yield positive benefits to the fishery and to the Nation.

The Council also recommended and the Regional Director proposes four special conditions to be imposed on the 1993 and 1994 Atlantic mackerel fisheries as follows: (1) Joint ventures are allowed, but river herring bycatch south of 37°30′ N. latitude may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Director should reduce

impacts on marine mammals, whenever possible, in prosecuting the Atlantic mackerel fisheries; (3) IOY may be increased during the year, but the total should not exceed 200,000 mt; and (4) applications from a particular nation for joint ventures for 1993 or 1994 will not be decided on until the Regional Director determines, based on an evaluation of performances, any purchase obligations for 1992 and previous years have been fulfilled.

Atlantic Squids

The maximum OY for *Loligo* is 44,000 mt. The recommended ABC for the 1993 and 1994 fisheries is 44,000 mt, representing an increase of 7,000 mt over the 1992 ABC of 37,000 mt. This level of ABC is based on the most recent stock assessments and is determined to be at a level that will not harm the continued growth of the resource.

An IOY of 44,000 mt, equal to DAH and DAP, is recommended by the Council and proposed by the Regional Director. Since the U.S. industry intends to fully utilize the IOY, there is no opportunity for JVP or TALFF.

Results of the 1992 Council processor survey indicate that the U.S. processing sector plans to process 57,836 mt of *Loligo* in the upcoming year. Therefore, the Council recommends and the Regional Director proposes a DAP of 44,000 mt.

Based on the results of the processor survey, the Council recommended and the Regional Director proposes zero JVP and zero TALFF for the 1993 and 1994 fisheries for *Loligo*. The expansion of the U.S. freezer trawler and refrigerated sea water fleets participating in this fishery, and the substantial increase in U.S. landings, indicate that there is no longer a justification for foreign participation. TALFF and JVP have been absent from this fishery since 1987. Since TALFF and JVP are set at zero, DAH of 44,000 mt equals DAP for the 1993 and 1994 fisheries for *Loligo*. Maximum OY for these fisheries can only be increased by an amendment to the FMP.

The maximum OY for *Illex* squid is 30,000 mt. Based on the best available scientific information, the Council recommended and the Regional Director proposes an ABC of 30,000 mt equal to the maximum OY.

The Council also recommended and the Regional Director proposes that the IOY for *Illex* be set at 30,000 mt because U.S. harvesters intend to utilize the entire IOY. Consequently, there is no TALFF available. No directed foreign fishery has been allowed for *Illex* since 1986. Given the current economic situation, zero TALFF is recommended by the Council and proposed by the Regional Director.

Based on the 1992 Council processor survey, *Illex* squid processors plan to process 40,737 mt of *Illex* in 1993. Therefore, the DAP for the 1993 fishery is specified at 30,000 mt. This reflects the large increases in the capacity of the east coast freezer trawler fleet and projected increases in the number of vessels using refrigerated seawater systems capable of landing high quality *Illex*. Much of the increase in capacity is a function of a general increase in prices in the range of 20 percent for 1990 and 1991. Prices continue to remain strong in the 1992 fishery. The continued strength in *Illex* prices is related to decreases in world supply including a closing of 30,000 square miles of traditional squid grounds east of the Falklands/Malvinas, a decrease in *Loligo* squid landings in Thailand, and reduction in fishing efforts of Eastern European fleets. Although *Illex* is primarily a bait squid, it has been used as a substitute for *Loligo*, a food squid, in many markets.

Butterfish

The FMP sets the maximum OY for butterfish at 16,000 mt. Based on the most current stock assessments, the Council recommends and the Regional Director proposes an ABC of 16,000 mt for the 1993 and 1994 fisheries, unchanged from the 1992 specification. Commercial landings of butterfish have decreased in the past 3 years from 4,000 mt to 2,285 mt. Estimated landings for the first five months of 1992 were 1,704 mt, up 64 percent from the same period in 1991. Difficulty in locating schools of market-size fish and market limitations have caused severe reductions in both supply of and demand for butterfish. Fishermen and processors feel that the size and fat content of butterfish will improve in the 1993 and 1994 fisheries.

The Council recommended and the Regional Director proposes an IOY for butterfish of 10,000 mt. The U.S. industry intends to fully utilize this IOY. Thus, there is no TALFF available. The Council recommends and the Regional Director proposes a DAH of 10,000 mt based on the Council processor survey of 8,283 mt with an allowance of approximately 2,000 mt for non-responses. There has been no interest expressed in joint ventures, thus, the IOY is proposed at a level that does not allow for a JVP. The Council recommended and the Regional Director proposes that both JVP and TALFF be specified at zero for the 1993 and 1994 fisheries. However, a 6,000 mt difference between ABC and IOY is set aside to accommodate an increase in IOY if economic conditions dictate.

Classification

This action is authorized by 50 CFR part 655 and complies with Executive Order 12291 and the National Environmental Policy Act.

Authority: 6 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: December 16, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-30975 Filed 12-21-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 921220-2320]

RIN 0648-AD18

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; notice of proposed 1993 specifications of Pacific halibut bycatch allowances; request for comments.

SUMMARY: Pending approval by the Secretary of Commerce (Secretary) of Amendment 21 to the Fishery Management Plan (FMP) for the Groundfish fishery of the Bering Sea and Aleutian Islands (BSAI), NMFS proposes regulations that would establish halibut bycatch mortality limits for trawl and non-trawl gear fisheries in the BSAI. Apportionments of the bycatch mortality limits as bycatch allowances among fisheries and seasons for 1993 also are proposed. This action is intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMP.

DATES: Comments are invited on or before January 19, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 (Attn. Lori Gravel). The proposed rule was analyzed as part of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for Amendment 21. Individual copies of Amendment 21 and the EA/RIR/IRFA may be obtained from the

North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, at 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the BSAI are managed by the Secretary in accordance with the BSAI FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery.

General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Halibut bycatch limits for trawl and non-trawl gear fisheries that were established for 1992 under Amendment 19 to the FMP (57 FR 43926, September 23, 1992) expire at the end of 1992. Without further regulatory action, no halibut bycatch restrictions would be in effect for BSAI non-trawl gear fisheries in 1993 and beyond, and the halibut bycatch limit for trawl gear fisheries will revert back to the 1991 level of 5,333 metric tons (mt).

During its January 15–17, 1992, meeting, the Council requested that a draft EA/RIR/IRFA be prepared to analyze alternatives for Pacific halibut bycatch limits for trawl and non-trawl gear fisheries in the BSAI during 1993 and beyond. These limits would replace those that expire at the end of 1992 under Amendment 19. A draft analysis was prepared under the National Environmental Policy Act (NEPA), E.O. 12291, and NOAA policy. The Council reviewed this document at its April 22–26, 1992, meeting, and decided to send the analysis to the interested public for review. At its June 23–28, 1992, meeting, the Council considered the testimony and recommendations of its Advisory Panel (AP), Scientific and Statistical Committee (SSC), Plan Teams, fishing industry representatives, and the general public on alternative halibut bycatch limits and how those limits were to be established and managed. The following measures were approved for inclusion in Amendment 21 for review under section 304(b) of the Magnuson Act:

(1) Establish Pacific halibut bycatch limits in terms of halibut mortality rather than halibut bycatch;

(2) Establish Pacific halibut bycatch mortality limits for trawl and non-trawl gear fisheries in regulations rather than in the FMP to allow for changes in bycatch mortality limits through a regulatory amendment process rather than an FMP amendment; and

(3) Establish FMP authority to annually apportion the non-trawl halibut bycatch mortality limit among fisheries and seasons as bycatch allowances. This authority would be similar to existing FMP provisions for annual specification of bycatch allowances of prohibited species catch limits among trawl gear fisheries.

Consistent with its recommendation of Amendment 21, the Council recommended a 3,775-mt halibut bycatch mortality limit for trawl gear fisheries at its June 1992 meeting. The Council delayed action on a Pacific halibut bycatch mortality limit for the non-trawl gear fisheries until its September 22–27, 1992, meeting. At that meeting, the Council recommended a 900-mt mortality limit for the non-trawl gear fisheries and specified the non-trawl gear fisheries that would be eligible to receive separate halibut bycatch allowances. During the September meeting, the Council also proposed bycatch allowances of the trawl and non-trawl halibut mortality limits among fisheries and seasons.

Amendment 21 is under Secretarial review. A notice of availability was published on November 16, 1992 (57 FR 54045). Secretarial approval of Amendment 21 is necessary in order for NMFS to issue this proposed rule as a final rule.

Reasons for, and a description of, this proposed rule follow:

FMP Authority to Establish Pacific Halibut Bycatch Mortality Limits in Regulations

Under Amendment 21, annual BSAI-wide Pacific halibut bycatch mortality limits for trawl and non-trawl gear fisheries would be established in regulations and revised by regulatory amendment. When developing a regulatory amendment to change a halibut bycatch mortality limit, the Secretary, after consultation with the Council, would consider information that includes:

1. Estimated change in halibut biomass and stock condition;
2. Potential impact on the halibut stock and fisheries;
3. Potential impact on groundfish fisheries;
4. Estimated bycatch mortality during prior years;
5. Expected halibut bycatch mortality;
6. Methods available to reduce halibut bycatch mortality;
7. The cost of reducing halibut bycatch mortality; and
8. Other biological and socioeconomic factors that affect the appropriateness of a specific bycatch mortality limit in terms of FMP objectives.

Fishery bycatch allowances of Pacific halibut, and seasonal apportionment of those allowances, would be annually specified and published in the **Federal Register** as required under § 675.20(a)(7). This apportionment process is further discussed below under "Apportionment of Halibut Bycatch Mortality Limits." When a fishery reaches its specified bycatch allowance or seasonal apportionment thereof, the entire BSAI would be closed to that fishery for the remainder of the year or for the remainder of the season.

The Council maintained the existing FMP provision for a "two-step" closure of the BSAI to specified trawl gear fisheries that take their halibut bycatch mortality allowance. When a specified portion of a fishery's halibut bycatch allowance is reached (primary bycatch allowance), Zones 1 and 2H are closed. When the entire bycatch allowance has been reached (secondary bycatch allowance), the entire BSAI is closed to that fishery.

Proposed Halibut Bycatch Mortality Limits Authorized Under Amendment 21

At its June 1992 meeting, the Council recommended a 3,775-mt halibut bycatch mortality limit for trawl gear fisheries and recommended the primary limit be maintained at a level equivalent to 3,300 mt of mortality. The proposed primary and secondary mortality limits assume a mortality rate of 75 percent in BSAI trawl operations and reflect the same level of mortality that resulted from the 1992 primary and secondary bycatch limits of 4,400 mt and 5,033 mt, respectively, established under Amendment 19 to the FMP. The assumed mortality rate for BSAI trawl fisheries was recommended in the 1992 Stock Assessment and Fishery Evaluation (SAFE) report dated November 1991, and was the rate used by the International Pacific Halibut Commission in establishing Pacific halibut quotas for the 1992 setline fisheries.

At its September 1992 meeting, the Council recommended a 900-mt bycatch mortality limit for the BSAI non-trawl gear fisheries. For purposes of the proposed rule, non-trawl gear means hook-and-line, jig, longline, and pot-and-line gear. The proposed limit of 900-mt is higher than the 1992 limit established under Amendment 19 (750 mt), but is less than the actual amount

of bycatch mortality experienced in the 1992 non-trawl fisheries (1,100 mt). The overage of the 1992 limit resulted from a delay in the effective date of the 750-mt mortality limit implemented under Amendment 19. This delay was requested by the Council at its August 13–15, 1992, meeting to minimize the effect of halibut bycatch restrictions on the hook-and-line fishery for Pacific cod.

The Council's proposed 900-mt mortality limit for non-trawl gear fisheries is intended to provide a total limit on bycatch mortality without imposing undue constraints on the increasing fishing effort for Pacific cod by vessels using hook-and-line gear. This increased fishing effort is attributed to continued displacement of fishing effort for Pacific cod from trawl gear to hook-and-line and pot gear due to trawl closures caused by halibut bycatch restrictions.

The Council believes the 900-mt limit should not prematurely close the hook-and-line fishery for Pacific cod during 1993 and beyond because additional management measures are being considered to reduce further halibut mortality rates and overall mortality in this fishery. These measures include mandatory cutting of ganglions, other careful release techniques, and a reduction in fishing effort for Pacific cod during summer months when halibut bycatch rates are high. The Council is scheduled to take final action on these measures during its December 1992 meeting.

For purposes of monitoring the 3,775-mt and 900-mt mortality limits proposed for trawl and non-trawl gear fisheries, respectively, the Director, Alaska Region, NMFS (Regional Director) would use groundfish catch and observed halibut bycatch rates to project when the mortality limits are reached. The Regional Director would use assumed mortality rates to monitor the bycatch mortality limits that are based on the best information available, including that contained in the final annual SAFE report. Based on analysis of 1990 observer data, the current assumed halibut mortality rates are 75 percent for BSAI trawl gear fisheries, 16 percent for hook-and-line gear and jig fisheries, and 10 percent for groundfish pot gear fisheries. The final 1993 SAFE report will be available to the Council during its December 7–11, 1992, meeting, and will include an analysis of 1991 observer data that may support alternative bycatch mortality rate assumptions for 1993.

Apportionment of the Halibut Bycatch Mortality Limits

Under proposed Amendment 21, the trawl and non-trawl halibut bycatch mortality limits would be apportioned among specified fisheries as bycatch allowances that may be further apportioned into seasonal allowances. When making these recommendations, the Council must review the need to control the bycatch of halibut and recommend appropriate apportionment of the halibut mortality limits to fishery categories. These apportionments are intended to optimize total groundfish harvest under established bycatch mortality limits, taking into consideration the anticipated amounts of incidental catch of halibut in each fishery category. The Council may recommend to exempt specified non-trawl fisheries from the non-trawl halibut bycatch mortality limit restrictions after considering the eight factors listed above for setting of halibut bycatch mortality limits.

Trawl gear fisheries that are eligible to receive separate bycatch allowances are set forth in existing regulations (§ 675.21(b)) and are categorized by target species or species groups. This provision would remain unchanged under Amendment 21. The trawl fisheries would be eligible to receive separate apportionments of the 3,775-mt halibut bycatch mortality limit as bycatch mortality allowances are yellowfin sole, rock sole/other flatfish, Greenland turbot/sablefish/arrowtooth flounder, Pacific cod, rockfish, and pollock/Atka mackerel/"other species."

Under Amendment 21, non-trawl gear fisheries that are eligible to receive separate bycatch mortality allowances also would be defined in regulations and categorized by target species or species groups and gear types. At its September 1992 meeting, the Council proposed that the following three non-trawl fisheries be eligible to receive separate halibut bycatch mortality allowances.

(1) Pacific cod hook-and-line fishery. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of Pacific cod that is greater than the retained amount of any other groundfish species.

(2) Groundfish pot gear fishery. Fishing with pot gear under restrictions set forth in § 675.24(b) during any weekly reporting period that results in a retained catch of groundfish.

(3) Other non-trawl fishery. Fishing for groundfish with non-trawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line fishery or a groundfish pot gear fishery.

To implement the halibut bycatch mortality limits proposed under this action, proposed apportionments of those limits must be published in the **Federal Register** for public review and comment. Normally, annual apportionments of halibut bycatch limits among fisheries are established through the annual total allowable catch (TAC) specification process undertaken by NMFS and the Council during the September and December Council meetings each year (§§ 675.20(a)(2) and 675.21(b)(3)). Pending approval of Amendment 21, the halibut mortality limits proposed under this action would become effective after the start of the 1993 fishing year. The proposed 1993 apportionments of these mortality limits among fisheries are included with the proposed rule. Public comment and testimony on the proposed apportionments will be reviewed by the Council during its December 1992 meeting. The Council is scheduled to recommend final apportionments during the December meeting that, pending approval by the Secretary, would be published with the final rule implementing the revised mortality limits authorized under Amendment 21.

During its September 1992 meeting, the Council recommended that the 3,775-mt halibut mortality limit established for trawl gear fisheries be apportioned to fisheries in the same relative manner as those specified for 1992 under Amendment 19. These apportionments also were implemented early in 1992 under a March 30, 1992, emergency rule (57 FR 11433, April 3, 1992) that was extended for an additional 90-day period (57 FR 29223, July 1, 1992). The proposed fishery apportionments, and seasonal apportionments thereof, are listed in Table 1 of this preamble. The preamble to the March 30 emergency rule and the final rule implementing Amendment 19 set forth the record in support of the proposed trawl fishery bycatch specifications listed in Table 1.

At its September 1992 meeting, the Council recommended that the groundfish pot gear fishery be exempted from halibut bycatch restrictions during 1993. It further recommended that the 900-mt halibut bycatch mortality limit proposed for non-trawl gear be seasonally apportioned between the Pacific cod hook-and-line and "other non-trawl" fisheries as shown in Table 2 of this preamble.

The Council proposed to exempt pot gear from halibut bycatch restrictions after considering that the groundfish catches by pot gear have been small to

date. Furthermore, observer information suggests that bycatch rates of halibut are low with pot gear, and the mortality of incidentally-caught halibut is only 10 percent. During 1992, the total estimated halibut mortality experienced by the groundfish pot gear fisheries was 8 mt.

TABLE 1.—APPORTIONMENT OF THE PROPOSED HALIBUT BYCATCH MORTALITY LIMIT FOR TRAWL GEAR AMONG FISHERIES AND SEASONS

Fishery allowance	Seasonal by catch (mt halibut)
Yellowfin sole:	
May 01–Aug. 02	318
Aug. 03–Dec. 31	319
Total	637
Rock sole/"other flatfish":	
Jan. 01–Mar. 29	424
Mar. 30–Jun. 28	71
Jun. 29–Sep. 27	71
Sep. 28–Dec. 31	(1)
Total	566
Turbot/arrowtooth flounder/sablefish:	
Jan. 01–Dec. 31	0
Rockfish:	
Jan. 01–Mar. 29	15
Mar. 30–Jun. 28	45
Jun. 29–Sep. 27	90
Sep. 28–Dec. 31	(1)
Total	150
Pacific cod:	
Jan. 01–Jun. 28	976
Jun. 29–Sep. 27	177
Sep. 28–Dec. 31	(1)
Total	1,153
Pollock/Atka mackerel/"other species":	
Jan. 01–Apr. 15	916
Apr. 16–May 31	0
Jun. 01–Dec. 31	353
Total	1,269
Total 1992 Halibut Bycatch Mortality Limit	3,775

[1] Remainder

TABLE 2.—PROPOSED 1993 APPORTIONMENTS OF THE 900-MT HALIBUT BYCATCH MORTALITY LIMIT PROPOSED FOR NON-TRAWL GEAR FISHERIES AMONG FISHERIES AND SEASONS [1]

Fishery	Annual and seasonal bycatch allowances, metric tons and percent annual allowance
Pacific cod hook-and-line:	
January 1–May 14	536 (65%)
May 15–August 31	83 (10%)
Sept. 1–Dec. 31	206 (25%)
Total annual allowance	825 (100%)

TABLE 2.—PROPOSED 1993 APPORTIONMENTS OF THE 900-MT HALIBUT BYCATCH MORTALITY LIMIT PROPOSED FOR NON-TRAWL GEAR FISHERIES AMONG FISHERIES AND SEASONS [1]—Continued

Fishery	Annual and seasonal bycatch allowances, metric tons and percent annual allowance
Other non-trawl fisheries:	
Jan. 1–Dec. 31	75 (100%)
Total bycatch mortality limit	900

[1] Groundfish pot gear fisheries are exempt from 1993 bycatch restrictions.

The proposed seasonal halibut mortality allowances specified for the Pacific cod hook-and-line fishery were based on recommendations by representatives for the freezer longliner industry and are intended to reduce fishing effort for cod during summer months when halibut bycatch rates are highest. The market value of cod also is lowest during this period, because the quality of cod deteriorates in the post-spawning summer months and associated recovery rates are low. The distribution of fishing effort for Pacific cod during the past 3 years supports the Council's recommendation to allocate most of the halibut bycatch allowance specified for the Pacific cod hook-and-line fishery to the first 5 months of the year. During 1991–1992, the percentage of the total annual cod harvest in directed fisheries by all gear types during this 5-month period has ranged between 60 and 70 percent. The percentage of the total annual cod harvest during this period by vessels participating in the directed fishery using hook-and-line gear ranged from 38 percent in 1990 to about 52 percent in 1992. Although the 1992 fishery took 42 percent of its harvest of Pacific cod between mid May and the end of August, halibut bycatch rates peaked during this period, resulting in higher bycatch mortality of halibut than would occur if more Pacific cod were taken during the winter months.

Halibut bycatch mortality allowances and the seasonal apportionment of those allowances will be subject to change at the December 1992 Council meeting, pending public comment, year-to-date information on bycatch performance, and updated information on anticipated fishing patterns in 1993.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the groundfish fishery off Alaska and that, pending Secretarial approval of Amendment 21, would be consistent with the Magnuson Act and other applicable laws.

The Council prepared an EA for Amendment 21 and this proposed rule that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR prepared for this proposed rule. The proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an IRFA as part of the RIR, which concludes that this proposed rule, if adopted, could have significant effects on small entities. A copy of this analysis is available from the Council (see **ADDRESSES**). More than 2,400 vessels may fish for groundfish off Alaska in 1993 and future years. The operators of all vessels fishing for groundfish in the BSAI could potentially be affected by fishery closures that are implemented when halibut bycatch allowances are reached. These closures could result in foregone gross or net wholesale revenues that approach or exceed 5 percent of an individual vessel's annual revenues. Estimated costs of the proposed halibut bycatch mortality limits to the groundfish industry are based on a bycatch model that ignores any costs associated with actions the groundfish industry takes to reduce bycatch mortality rates. These costs are unknown, but they are assumed to be lower than the costs of foregone revenues to the groundfish industry that would result from reducing halibut bycatch mortality through reduced opportunity to harvest available groundfish.

NMFS has determined that, if the groundfish fishery were conducted in accordance with the management measures proposed under this rule, the fishery would not be likely to adversely affect endangered or threatened species. Therefore, formal consultation pursuant

to section 7 of the Endangered Species Act is not required for the approval of Amendment 21 or the implementation of the proposed rule.

This rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule does not affect the coastal zone of any state with an approved coastal management program. This determination had been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping.

Dated: December 17, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.2, a new definition of "non-trawl gear" is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Non-trawl gear means hook-and-line, jig, longline, and pot-and-line gear.

3. In § 675.21, paragraph (b)(4) is removed, existing paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively, new paragraph (b)(2) is added, and paragraph (b) heading, redesignated paragraphs (b)(3) (ii) and (iii), and existing paragraphs (a), (b)(1), (c)(1), and (d) are revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) *PSC limits.* (1) The PSC limit of red king crab caught while conducting any trawl fishery for groundfish in Zone 1 during any fishing year is 200,000 red king crabs.

(2) The PSC limit of Tanner crabs (*C. bairdi*) caught while conducting any trawl fishery for groundfish in Zone 1 during any fishing year is one million animals.

(3) The PSC limit of Tanner crabs (*C. bairdi*) caught while conducting any trawl fishery for groundfish in Zone 2 during any fishing year is three million animals.

(4) The primary PSC limit of Pacific halibut caught while conducting any trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 3,300 mt of halibut mortality.

(5) The secondary PSC limit of Pacific halibut caught while conducting any trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 3,775 mt of halibut mortality.

(6) The PSC limit of Pacific herring caught while conducting any domestic trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area is 1 percent of the annual eastern Bering Sea herring biomass. The PSC limit will be apportioned into annual herring PSC allowances, by target fishery, and will be published along with the annual herring PSC limit in the **Federal Register** with the proposed and final specifications defined in Sec. 675.20(a)(7) of this part.

(7) The PSC limit of Pacific halibut caught while conducting any non-trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 900 mt of halibut mortality.

(b) *Apportionment of PSC limits to fisheries*—(1) *Apportionment to trawl fishery categories.* NMFS, after consultation with the Council, will apportion each PSC limit set forth in paragraphs (a)(1) through (a)(6) of this section into bycatch allowances for fishery categories specified in paragraph (b)(1)(iii) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

(i) For purposes of this section, the trawl PSC limits for red king crab, *C. bairdi* Tanner crab, and Pacific halibut will be apportioned to the fishery categories listed at paragraphs (b)(1)(iii)(B) through (F) of this section. Any amount of red king crab, *C. bairdi* Tanner crab, or Pacific halibut that is incidentally taken in the midwater pollock fishery, as defined at paragraph (b)(1)(iii)(A) of this section, will be counted against the bycatch allowances specified for the pollock/Atka mackerel/"other species" category defined at paragraph (b)(1)(iii)(F) of this section.

(ii) For purposes of this section, the PSC limit for Pacific herring will be apportioned to the fishery categories listed at paragraphs (b)(1)(iii) (A) through (F) of this section.

(iii) For purposes of apportioning trawl PSC limits among fisheries, the following fishery categories are specified and defined in terms of round weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 675.20.

(A) *Midwater pollock fishery.* Fishing with trawl gear during any weekly reporting period that results in a catch of pollock that is 95 percent or more of the total amount of groundfish caught during the week.

(B) *Flatfish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rock sole, "other flatfish," and yellowfin sole that is greater than the retained amount of any other fishery category defined under paragraph (b)(1)(iii) of this section.

(*1*) *Yellowfin sole fishery.* Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under paragraph (b)(1)(iii)(B) of this section and results in a retained amount of yellowfin sole that is 70 percent or more of the retained aggregate amount of rock sole, "other flatfish," and yellowfin sole.

(*2*) *Rock sole/"other flatfish" fishery.* Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under paragraph (b)(1)(iii)(B) of this section and is not a yellowfin sole fishery as defined under paragraph (b)(1)(iii)(B) (*1*) of this section.

(C) *Greenland turbot/arrowtooth flounder/sablefish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, and sablefish that is greater than the retained amount of any other fishery category defined under paragraph (b)(1)(iii) of this section.

(D) *Rockfish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rockfish species of the genera *Sebastes* and *Sebastolobus* that is greater than the retained amount of any other fishery category defined under paragraph (b)(1)(iii) of this section.

(E) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting

period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under paragraph (b)(1)(iii) of this section.

(F) *Pollock/Atka mackerel/"other species."* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of pollock other than pollock harvested in the midwater pollock fishery defined at paragraph (b)(1)(iii)(A) of this section, Atka mackerel, and "other species" that is greater than the retained amount of any other fishery category defined under paragraph (b)(1)(iii) of this section.

(2) *Apportionment to non-trawl fishery categories.* (i) The Secretary, after consultation with the Council, may apportion the halibut PSC limit for non-trawl gear set forth in paragraph (a)(7) of this section into bycatch allowances for fishery categories specified in paragraph (b)(2)(ii) of this section, based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the non-trawl halibut PSC limit. The sum of all halibut bycatch allowances will equal the halibut PSC limit specified at paragraph (a)(7) of this section.

(ii) For purposes of apportioning the non-trawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round weight equivalents of those groundfish species for which a TAC has been specified under § 675.20.

(A) *Pacific cod hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of Pacific cod that is greater than the retained amount of any other groundfish species.

(B) *Groundfish pot gear fishery.* Fishing with pot gear under restrictions set forth in § 675.24(b) during any weekly reporting period that results in a retained catch of groundfish.

(C) *Other non-trawl fisheries.* Fishing for groundfish with non-trawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line fishery or a groundfish pot gear fishery.

(3) * * *

(ii) Unused seasonal apportionments of fishery bycatch allowances made under paragraph (b)(3)(i) of this section will be added to its respective fishery bycatch allowance for the next season during a current fishing year.

(iii) If a seasonal apportionment of a fishery bycatch allowance made under paragraph (b)(3)(i) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year.

* * * * *

(c) * * *

(1) *Attainment of a trawl bycatch allowance for red king crab, C. bairdi Tanner crab, or Pacific halibut.*

(i) *Zone 1 red king crab or C. bairdi Tanner crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of Zone 1 to directed fishing for aggregate species within that fishery category, for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(ii) *Zone 2 red king crab or C. bairdi crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* crab specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of Zone 2 to directed fishing for aggregate species within that fishery category, for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(iii) *Primary halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii)(B) through (F) of this section in the Bering Sea and Aleutian Islands Management Area will catch the primary halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of Zones 1 and 2H to directed fishing for aggregate species within that fishery category, for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(iv) *Secondary halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section in the Bering Sea and Aleutian Islands Management Area will catch the secondary halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands Management Area to directed fishing for aggregate species within that fishery category, for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(2) *Attainment of a trawl bycatch allowance for Pacific herring.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (A) through (F) of this section in the Bering Sea and Aleutian Islands Management Area will catch the herring bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the Herring Savings Areas to directed fishing for aggregate species within that fishery category, except that:

(i) When the midwater pollock fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock with trawl gear; and

(ii) When the pollock/Atka mackerel/"other species" fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, only

the Herring Savings Areas are closed to directed fishing for pollock by trawl vessels using non-pelagic trawl gear.

(d) *Attainment of a Pacific halibut non-trawl fishery bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the non-trawl fishery categories listed in paragraphs (b)(2)(ii) (A) through (C) of this section will catch the Pacific halibut bycatch allowance, or season apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands Management Area to directed fishing for aggregate species within that fishery category.

[FR Doc. 92-30974 Filed 12-17-92; 2:18 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 246
Tuesday, December 22, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 92-027N]

FLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public a memorandum which was issued by the Food Labeling Division (FLD), (formerly the Standards and Labeling Division), Regulatory Programs, Food Safety and Inspection Service (FSIS), and contains significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205-0042.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Federal Meat Inspection Act (12 U.S.C. 607 *et seq.*) and section 8 of the Poultry Products Inspection Act (21 U.S.C. 457 *et seq.*), and the regulations promulgated thereunder (9 CFR 301.1 *et seq.* and 9 CFR 381.1 *et seq.*), meat and poultry products which do not bear approved labels or other labeling may not be distributed in commerce for use as human food. Accordingly, FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on or in conjunction with federally inspected meat and poultry products.

FSIS's prior labeling approval program is conducted by labeling review experts within FLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which FLD must resolve a part of the prior labeling approval process. In interpreting the Acts and regulations to resolve these issues, FLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations of determinations made by FLD are issued in writing in memorandum form. This document lists one FLD policy memorandum which was issued during the period of April 1, 1992, through October 1, 1992.

Persons interested in obtaining copies of the following FLD policy memorandum, or in being included on a list for automatic distribution of future FLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
122	Meat Content Requirements for Meat Soups, August 11, 1992 ...	What are the meat content requirements for meat soups?	9 CFR 381.167

The FLD policy specified in this memorandum will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency actions. Applications retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on: December 16, 1992.

Ashland L. Clemons,

Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service.

[FR Doc. 92-30936 Filed 12-21-92; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Telecommunications.

Agency Form Number: No form number but requirements will be found in Supplement 1 to Section 799.1 of Export Administration Regulations.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 92 reporting/recordkeeping hours.

Number of Respondents: 75.

Avg Hours Per Response: Ranges between one and two hours for reporting requirements — 1 minute for recordkeeping.

Needs and Uses: These reporting and recordkeeping requirements are needed to allow for increased exports of telecommunications equipment to proscribed destinations. The requirements place conditions on approved export licenses.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340, Room 3208, New Executive Office Building, Washington, DC 20230.

Agency: Bureau of Export Administration (BXA).

Title: Application for Export License.

Agency Form Number: BXA-622P.

OMB Approval Number: 0694-0005.

Type of Request: Revision.
Burden: 11,763 hours.
Number of Respondents: 28,211.
Avg Hours Per Response: 25 minutes for reporting; 2 minutes for recordkeeping.
Needs and Uses: This collection is required to be in compliance with U.S. export regulations. The information given by U.S. exporters provides the basis for decisions to grant export licenses for exports of goods and technology that are controlled for reasons of national security and foreign policy. The collection is being slightly revised to require more specific information on end use of certain items that are now being allowed to be exported to the People's Republic of China and former Bloc countries.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Gary Waxman, (202) 395-7340, Room 3208, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Marine Fisheries Initiative (MARFIN).
Agency Form Number: NOAA 88-205.
OMB Approval Number: 0648-0175.
Type of Request: Extension of the expiration date.
Burden: 390 hours.
Number of Respondents: 60.
Avg Hours Per Response: Ranges between 1 and 4 hours.
Needs and Uses: The purpose of the MARFIN grant program is to develop, rejuvenate, and maintain Gulf of Mexico fisheries. Information provided by grant applicants is used by the National Marine Fisheries Service to evaluate applications and make funding decisions.
Affected Public: Individuals; state or local governments; businesses or other for-profit institutions; federal agencies or employees; non-profit institutions; and, small businesses or organizations.
Frequency: On occasion, quarterly, annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Ron Minsk, (202) 395-3084, Room 3019, New Executive Office Building, Washington, DC 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N W , Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: December 16, 1992

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR DOC 92-30965 Filed 12-21-92; 8:45am]

BILLING CODE 3510-CW-F

International Trade Administration

[A-559-806]

Resumption of Antidumping Duty Proceeding: Portable Electric Typewriters From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie Hager or Ross L. Cotjanle, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-5055 or 482-3534, respectively.

Resumption of Proceeding

On September 3, 1992, Slip Op. 92-152, the United States Court of International Trade (CIT) reversed the Department's determination that Brother Industries (USA) Inc. (BIUSA) was not an interested party and thus did not have standing to file a petition against portable electric typewriters from Singapore. Both the Smith Corona Corporation (Smith Corona) and the United States Government have filed notices of appeal of Slip Op. 92-152.

On October 13, 1992, BIUSA sought enforcement of the Court's decision. On October 29, 1992, the Department published Portable Electric Typewriters From Singapore: Notice of Court of International Trade Decision (57 FR 49071, October 29, 1992), in accordance with the "publication" requirement in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"). The Department stated in the notice that because the decision of the CIT was not a "conclusive" decision, there was no requirement in Timken that the Department implement the decision. The Department stated further that "upon a 'conclusive' decision by the Court of Appeals for the Federal Circuit affirming the CIT, the Department will consider whether BIUSA filed the petition 'on behalf of' the domestic industry; if so, the Department will proceed with the investigation."

The CIT, however, on November 30, 1992, granted BIUSA's Motion to Enforce, and stated that "in the absence of a stay Timken requires Commerce to proceed at once with implementation of the court decision, and if the investigation results in a preliminary affirmative determination, to suspend liquidation."

On December 7, 1992, Smith Corona filed an Application for a Stay Pending Appeal. On December 14, 1992, the United States Government agreed with Smith Corona's Application for a Stay Pending Appeal.

As there has been no ruling to date on the Application for a Stay Pending Appeal, the Department is hereby announcing its schedule for the implementation of the Court's decision On or before January 29, 1993, the Department will determine whether the antidumping petition in this proceeding was filed on behalf of the relevant domestic industry. If the Department's determination is affirmative, it will simultaneously issue its preliminary antidumping determination. Subsequent determinations will be issued in accordance with the procedures and deadlines established in the Department's regulations. The Department will not be requesting additional information from any interested party in this proceeding for either of these determinations.

Dated: December 15, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-30143 Filed 12-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Request for Revocation in Part of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of request for revocation in part of countervailing duty order.

SUMMARY: The Department of Commerce has received a request from the Government of Mexico for revocation of forty-six firms covered by the countervailing duty order on ceramic tile from Mexico for the administrative review period January 1, 1991, through December 31, 1991.

EFFECTIVE DATE: December 22, 1992.

FOR FURTHER INFORMATION CONTACT:

Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1992, the Department of Commerce initiated an administrative review of the countervailing duty order for ceramic tile from Mexico for the period January 1, 1991, through December 31, 1991. Initiation of Antidumping and Countervailing Duty Administrative Reviews. 57 FR 27212 (June 18, 1992). Prior to the initiation, the Government of Mexico had submitted a request on May 29, 1992, for revocation of the countervailing duty order for forty-six of the companies being reviewed.

The forty-six companies for which revocation was requested are:

(1) Azuelejos Decorativos Carrillo, S.A.
(2) Azuelejos Orion, S.A.
(3) Ceramica Santa Julia, S.A. de C.V.
(4) Eduardo S. Garcia de la Pena
(5) Jesus Garza Arocha
(6) Ladrillera Monterrey, S.A.
(7) Pisos Coloniales de Mexico, S.A. de C.V.
(8) Reynol Martinez Chapa
(9) Teofilo Covarrubias Villarreal
(10) Agustin Cedillo Ruiz
(11) Alfonso Cortez Coronel
(12) Aurelio Cedillo Ruiz
(13) Benjamin Chavez Torres
(14) Ernesto Cortez
(15) Francisco Almanza Estrada
(16) Fernando Espinosa Sanchez
(17) Francisco Gallegos Garcia
(18) Francisco Gallegos Olivares
(19) Francisco Rincon Leija
(20) Idelfonso Chavez Parga
(21) Ines Bustos Vargas
(22) Isabel Cortez Coronel
(23) Jesus Ambrosio Garcia R.
(24) Jesus Gallegos Olivares
(25) Jesus Hernandez T.
(26) Jesus Jimenez Lucio
(27) Jose Angel Hernandez Martinez
(28) Jose Arellano Valdez
(29) Jose Davila Torres
(30) Jose Dolores Hernandez
(31) Jose S. Vazquez Garcia
(32) Juan Cortez Coronel
(33) Juan Rodriguez Rocha
(34) Julio Ulloa Rodriguez
(35) Leopoldo Montiel Rincon
(36) Manuel Alvarez Ramon
(37) Pablo Cortez Coronel
(38) Pedro Lopez Alonso
(39) Ramon Jimenez de Leon
(40) Raul Leija
(41) Rosendo Rodriguez Hernandez
(42) Santos Rivera Tovar
(43) Sergio Garcia de las Fuentes
(44) Sotelo Jalomo Reyna
(45) Vicente Jalomo Reyna
(46) Zenon Cortez Coronel

Thirty-nine of the firms requesting revocation did not participate in all four consecutive reviews prior to the current administrative review. We note that only seven firms have been reviewed in the last four consecutive administrative reviews by the Department and found to have neither applied for nor received a net subsidy: Azuelejos Orion, S.A., Eduardo S. Garcia de la Pena, Jesus Garcia Arocha, Ladrillera Monterrey, S.A., Pisos Coloniales de Mexico, S.A. de C.V., Reynol Martinez Chapa, and Teofilo Covarubias Villarreal.

This notice is issued pursuant to 19 CFR 355.25(c)(2)(i) (1992).

Dated: December 16, 1992.

[FR Doc. 92–31044 Filed 12–21–92; 8:45 am]
BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Minneapolis/St. Paul SMSA (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $169,125 in Federal funds, and a minimum of $29,846 in non-federal (cost-sharing) contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from June 1, 1993 to May 31, 1994. The MBDC will operate in the Minneapolis/St. Paul geographic service area. The award number of this MBDC will be 05–10–93001–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by Regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodolgy) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate, after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if

funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Award recipients and subrecipients under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying:"

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applicable/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

The Departmental Grants Officer may terminate any grants/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements: unsatisfactory performance of MBDC work requirements: And reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Government to cover pre-award costs.

If an application is selected for funding, the U.S. Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity; and a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

CLOSING DATE: The closing date for applications is January 29, 1993. Applications must be postmarked on or before January 29, 1993.

ADDRESSES: Chicago Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 55 East Monroe, Suite 1440, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

Address: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603. 312/353–0182.

Statutory Authority: 15 U.S.C. 1512.
Funding Authority: Executive Order 11625, October 13, 1971.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. A pre-bid conference will be held on January 11, 1993, at 10 a.m. at the MBDA Chicago Regional Office. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 16, 1992.

David Vega,
Regional Director, Chicago Regional Office.

[FR Doc. 92–31027 Filed 12–21–92; 8:45 am]
BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 921191–2291]

Opportunity To Join a Cooperative Research and Development Consortium for Development of New Dental Materials

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks industrial parties interested in entering into a cooperative research consortium to develop a metallic, mercury-free, direct filling replacement for dental amalgam. Under 15 U.S.C. 3710a(c)(4), NIST will give preference to business units located in the United States that agree that products embodying any invention made in the consortium will be manufactured substantially in the United States. Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, intellectual property and facilities—but no funds—to the cooperative research program. NIST intends to conduct a meeting in January, 1993 for interested parties. The

meeting will discuss the possible formation of a research consortium including NIST, The American Dental Association Health Foundation and industry to conduct research in this area. This is not a grant program.

DATES: Interested parties should contact NIST at the address or telephone number shown below no later than January 11, 1993.

ADDRESSES: Dr. David Lashmore, Bldg. 224, room B–166, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. David Lashmore, (301) 975–6405.

SUPPLEMENTARY INFORMATION: NIST seeks qualified United States industrial parties interested in entering into a cooperative consortium research program to develop a metallic, mercury-free, direct-filling replacement for dental amalgam. NIST has filed for a patent for a "Process for Forming Alloys in situ in Absence of Liquid-Phase Sintering" which may be useful in the development of such new direct-filling replacements for dental amalgams. Members will receive a time-limited, royalty bearing, co-exclusive license, limited to the dental field, for any patent issuing from the current application. In addition, it is anticipated that participating companies will receive time-limited, royalty bearing co-exclusive licenses, limited to the dental field, for any new materials developed by the consortium.

Companies should be prepared to invest $50,000 per year in the collaboration and be firmly committed to the goal of developing a new dental restorative material that would be a viable alternative to silver-mercury amalgams.

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which authorizes government owned and operated federal laboratories, including NIST, to enter into cooperative research and development agreements ("CRADAs") with qualified parties. Under the law, a CRADA may provide for contributions from the federal laboratory of personnel, equipment, intellectual property and facilities, but not direct funding. NIST intends to hold a planning meeting in January, 1993 for interested parties.

Dated: December 16, 1992.

John W. Lyons,

Director.

[FR Doc. 92–31042 Filed 12–21–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone in 1993 under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Specifically, the Russian Federation has submitted an application which requests 10,000 metric tons (mt) of Atlantic mackerel for directed fishing and 10,000 mt of Atlantic mackerel for joint venture purchases. The large stern trawler/processors GISSAR and PIONER NIKOLAEV are identified as the vessels that will fish and receive fish from U.S. vessels. Send comments on this application to: NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910 and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 671/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management, (301) 713–2337.

Dated: December 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–30921 Filed 12–21–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 2 to Permit No. 634.

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 634 issued to Marine World Africa, USA, Marine World Parkway, Vallejo, California 94589, on April 29, 1988 (53 FR 16307), modified on January 18, 1991 (56 FR 3542) is further modified as follows:

Section B.4, first sentence is changed to read:

4. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through June 30, 1993.

This modification becomes effective upon publication in the **Federal Register**.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD, 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Long Beach, CA 90802–4213 (310/980–4016).

Dated: December 16, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30958 Filed 12–21–92; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Authorization of the National Futures Association To Implement the Direct Electronic Entry Registration Program on a Permanent Basis; Approval of Proposed New Registration Rule 801

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order authorizing the National Futures Association (NFA) to offer its current pilot Program for the Direct Electronic Entry of Registration Data on a permanent basis. Under the program, specified registrants may enter registration data electronically into the NFA computer system with respect to associated person (AP) applicants and NFA may grant temporary AP licenses on the basis of such electronic filings.

SUMMARY: Section 8a(1) of the Commodity Exchange Act (Act) provides, in part, that the Commodity Futures Trading Commission (Commission or CFTC) may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt. 7

U.S.C. 12a(1) (1988), as amended by the Futures Trading Practices Act of 1992, Pub. L. No. 102–546, 106 Stat. 3590 (October 28, 1992). The direct entry pilot program was established in 1990 to expedite the temporary licensing process. As discussed below, NFA has submitted, and the Commission has approved, new NFA Registration Rule 801 which will permit NFA to offer the direct entry program on a permanent basis. As proposed to be operated under the new rule, the direct entry program should expedite and increase the efficiency of the temporary licensing process and other aspects of registration processing.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

By Commission order of August 28, 1990 (1990 Order), for the past nineteen months NFA has operated a program for the direct entry of certain registration information on a pilot basis. Under the pilot program, a limited number of firms have access to registration data in NFA's computer database, the Membership Registration Receivables System (MRRS). The program also permits certain participating firms to enter registration data concerning AP applicants sponsored by such firms directly into the MRRS database via computer terminals in their offices for the purpose of obtaining temporary licenses for their employees.[1]

NFA now seeks Commission approval to terminate the pilot status of and make permanent the direct entry program, expand the types of filings for which direct entry may be used and make various procedural modifications to the operation of the program.[2] Under NFA's Proposed Rule 801, registrant sponsors would electronically enter into MRRS all information required to be filed on Form 8–R (application for registration for individuals), Form 3–R (supplemental statement to application for registration), Form 8–T (notice of termination) or Form U–5 (uniform termination notice for securities industry registration) for all AP applicant's, APs, principals and branch office managers[3] of such sponsors and of any introducing brokers (IBs) guaranteed by such sponsors for whom the sponsors have assumed registration responsibilities.

As set forth in the Submission, NFA also proposes to modify the procedures followed under the pilot program in a number of respects designed to increase the efficiency of the program, including: (1) Elimination of the notice to the Commission and approval requirements for adding firms to the program; (2) reduction of the period of Phase II operational experience required before firms may advance to Phase III of the program; (3) reduction of line-by-line review by NFA of electronically filed forms; (4) reduction of statistics provided to the Commission; (5) elimination of the requirement that all forms be entered electronically by each participating firm; (6) expansion of the program to permit electronic filings of Forms 8–R and 8–T for principals and of Forms 3–R updating Forms 7–R; and (7) elimination of certain paper filings.

B. History of the Direct Entry Program[4]

NFA's direct entry procedures were developed to expedite the temporary licensing process by allowing direct input of data by firms into NFA's MRRS database, thereby permitting applicants to act as APs sooner than if their applications were mailed or delivered to NFA and the data entered into the NFA database by NFA personnel. This mechanism is fully consistent with the primary purpose of the temporary license procedure—to enable apparently qualified applicants to begin work as soon as possible prior to completion of a full fitness check.[5]

The direct entry program had its genesis in a 1987 proposal by NFA to provide certain member firms the capability to access and query the MRRS database. This access capability, which later became known as Phase I of the direct entry pilot program, simply provided firms with computer access to registration information concerning their own employees and public information concerning other registrants without having to obtain such information from NFA's Registration Department or Information Center. This procedure became operational on November 10, 1987 when the Commission approved NFA's proposal to provide two futures commission merchants (FCMs) with direct inquiry access to NFA's registration database.[6] NFA states that this phase of the program has enabled it to reduce the resources required to respond to member firm inquiries and provide improved service to members of the public requesting information from the NFA Information Center.

On January 5, 1989, NFA petitioned the Commission for authorization to implement a program for direct entry of AP registration data into NFA's MRRS system by the sponsors of APs (Phase II) and ultimately the electronic granting of temporary licenses for APs following such direct entry of registration data (Phase III).[7] By order dated August 28, 1990, the Commission authorized NFA to implement Phases II and III of the direct entry program as a pilot program subject to certain conditions which generally incorporated procedures proposed by NFA.[8] These conditions included the following: (1) Sponsors would continue to be required to file with NFA the required paper registration forms, fingerprint cards and sponsor certifications, which would be compared with electronically entered data material to the granting of a temporary license and used to complete the fitness processing for final registration determinations; (2) all participating firms would be required to sign NFA's Agreement For Firm Direct Entry Privileges to MRRS (Direct Entry Agreement), setting forth the conditions, responsibilities and obligations of pilot program participants; (3) NFA would comply with its responsibilities under the direct entry pilot program as set forth in its January 5, 1989 petition; (4) any firm not specified in the Commission's order would be required to receive permission to participate in Phase II; (5) implementation of Phase III of the pilot program would be subject to Commission approval; (6) NFA would provide the Commission with monthly statistical reports relating to the pilot

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[1] A temporary AP license allows an applicant who is eligible for registration to act as an AP of his sponsoring firm without waiting for completion of a full fitness screening which, due to the necessity to have fingerprint cards processed by the Federal Bureau of Investigation, may take six to eight weeks. The applicant may not be granted AP registration until the fitness screening is concluded.

[2] Request for an Order Granting NFA Permission to Offer the Direct Entry Registration Program on a Permanent Basis Pursuant to Proposed New Registration Rule 801, submitted by NFA, July 9, 1992 (Submission), as supplemented by submissions dated August 27, 1992, October 8, 1992, November 13, 1992, November 25, 1992 and December 8, 1992. Submission at 2.

[3] Branch office managers are APs but also are required to disclose their status as branch office managers on Forms 8–R, 3–R and 8–T.

[4] A more detailed discussion of the direct entry pilot program is provided in the Federal Register release accompanying the Commission's order approving the pilot program. 55 FR 35925 (September 4, 1990).

[5] 49 FR 8208, 8210 (March 5, 1984).

[6] See letter from Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, CFTC to Daniel J. Roth, Vice President, General Counsel and Secretary, National Futures Association, dated November 10, 1987 responding to letters dated October 6 and 29, 1987 from Daniel J. Roth to Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC.

[7] This petition was supplemented by a letter dated July 17, 1990 from Daniel J. Roth, Vice President, General Counsel and Secretary, NFA, to the Division of Trading and Markets, CFTC, which identified the firms seeking authorization to participate in Phase II.

[8] See 55 FR 35925, 35934 (September 4, 1990).

program; and (7) NFA would terminate any temporary license granted under the pilot program if NFA did not receive all required follow-up paper filings or if NFA's review of the paper filings revealed that an applicant was not eligible for a temporary license or the temporary license had been granted by mistake or as a result of fraudulent means.

Currently, the direct entry pilot program operated by NFA pursuant to the Commission's Order consists of three phases. Under Phase I, as noted above, participating FCMs are provided with direct inquiry access, via computer terminals at those firms, to all registration information in the MRRS database to which they are entitled under NFA Registration Rules 701 (b) and (c). This information includes all registration information relating to a firm's own employees and prospective employees and public information regarding all registrants. As of October 31, 1992, 25 firms were participating in Phase I.[9]

Phases II and III of the pilot program permit participating firms to enter electronically into NFA's registration computer system, through terminals located in their offices, information required to be filed on Form 8–R, Form 3–R, Form 8–T or Form U–5 for all AP applicants, APs and branch office managers. Under Phase II, although the participating firm enters the AP application data by computer, only NFA personnel are authorized to instruct the NFA computer system to process an application and, if appropriate, grant a temporary license. The Commission's 1990 Order authorized participation by ten firms in Phases II and III of the program but provided that additional firms could be added with prior approval. The 1990 Order also required that Commission staff be provided an opportunity to review data concerning the accuracy, timeliness and completeness of data entry during Phase II and to raise any concerns or objections deemed appropriate based upon the Phase II data and other experience prior to implementation of Phase III of the pilot program. See 55 FR 35925 (September 4, 1990). As of October 31, 1992, three firms were participating in Phase II of the program: Refco, Inc., Prudential Securities Inc., and Shearson Lehman Brothers Inc. Another Phase I participant, Cargill Investor Services, Inc., has been approved but is not yet participating in Phase II. The 1990 Order also provided that a participating Phase II firm would not become eligible for participation in Phase III until completion of ninety days in Phase II.

Under Phase III of the pilot program, participating firms continue to enter AP registration data directly into NFA's registration computer system. However, under Phase III, qualifying AP applicants are issued a temporary license upon entry of a computer command by the participating firm when the application data entered by the firm indicate that the AP is eligible for a temporary license.[10] The participating firm must file the hardcopy Form 8–R, together with the applicant's fingerprint card and evidence of the applicant's satisfaction of the NFA proficiency requirements,[11] by mailing it to NFA on the same day on which the firm directs MRRS to process the application. A temporary license is issued by NFA immediately when the data entered in MRRS by the participating firm indicate that the AP applicant is eligible for a temporary license. NFA immediately terminates any previously issued temporary license if the applicant's Form 8–R, fingerprint card or proof of passage of the Series 3 examination are not received by NFA within five business days of the date on which the application was filed electronically. NFA registration staff compare the information on the hardcopy Form 8–R with the application information previously entered into MRRS by the sponsoring firm. If such comparison discloses different information from that entered directly by the sponsoring firm and that information indicates that the applicant is not eligible for a temporary license because of, for example, derogatory information indicating a statutory disqualification, NFA terminates the temporary license. Subsequent FBI fitness reports or fitness checks with the Securities and Exchange Commission (SEC) revealing disqualifications not previously disclosed result in termination of the temporary license upon five days notice.[12] Currently, four firms are participating in Phase III of the program: LIT America, Inc., Merrill Lynch, Pierce, Fenner & Smith, Index Futures Group and Brokers Resource Corp.[13]

As of October 31, 1992, 1,078 filings had been processed under Phase II of the pilot program and 1,094 filings had been processed under Phase III of the pilot program.[14] Filings under Phases II and III represent about four percent of all registration filings received by NFA during the same period. Of the 1,078 forms filed under Phase II, 376 were Forms 8–R, 75 were Forms 3–R, and 627 were termination notices (either Form 8–T or Form U–5). Of the 1,094 forms filed under Phase III, 489 were Forms 8–R, 158 were Forms 3–R and 447 were termination notices.

Based upon its item-by-item comparison of the data entered into MRRS and the information on the registration forms submitted by participating firms, NFA describes the performance of participating firms during the pilot program as

[9] As of October 31, 1992, the firms participating in Phase I are: ADM Investor Services, Inc., Advest, Inc., Brody White & Co., Inc., BT Futures Corp., Cargill Investor Services, Inc., Colorado Commodities Management Corp., Commodities Corp., Daiwa Securities America, Inc., Dean Witter Reynolds, Inc., ED&F Mann International Futures, Inc., First American Discount Corporation; Goldermann Inc., Goldman Sachs & Co., J.P. Morgan Futures, Inc., Kemper Securities Group, Inc., Lind-Waldock & Company, Linnco Futures, Inc., Nomura Securities, Inc., Paine Webber Inc., Rodman & Renshaw, Inc., R.J. O'Brien Associates, Inc., Rosenthal Collins Group, Salomon Brothers, Inc., UBS Securities, Inc.; and Vision Limited Partnership.

[10] In order for an applicant to qualify for a temporary license, the applicant must submit a completed registration application which includes a fingerprint card and sponsor's certification. In addition, in order for the applicant to qualify for a temporary license, the application may not contain a "Yes" answer to any of the disciplinary history questions on the application (questions 14–18) (self-declared derogatory information). In addition, the applicant may not have a conditional, suspended or revoked registration and must not be the subject of a current NFA investigation. Finally, the applicant must provide proof of successful completion of the National Commodity Futures Examination (Series 3).

[11] NFA Bylaw 401(b) provides that no person may be associated with an NFA member (i.e., as an AP) unless the person is registered with NFA as an associate. NFA Registration Rule 401 requires as a condition for associate registration evidence that the applicant has taken and passed the National Commodity Futures Examination no more than two years prior to the date the application is received by NFA, has been duly registered in another capacity within that two-year period, or is registered with the National Association of Securities Dealers (NASD) as a general securities representative and the applicant's activities will be limited to the solicitation of funds for commodity pools or referring clients to an AP who has satisfied the proficiency requirements.

[12] If a firm were to make a data entry error that was potentially adverse to the applicant's registration status, there would be an opportunity for correction of the error prior to any adverse action being taken. Before any action is taken to deny registration, the affected applicant usually is notified by a letter from the NFA Director of Compliance, or the Director's designee, of the contemplated action and the basis for it and provided with an opportunity to withdraw the registration application. Registrants are provided with a notice of commencement of a revocation proceeding and an opportunity for a hearing before any adverse action is taken with respect to their registration status.

[13] Index Futures Group and Brokers Resource Corp. are treated as one firm for the purpose of compiling performance data.

[14] The Submission cites 1,037 as the total number of filings received during the pilot program, representing electronic filings from April 12, 1991 through April 12, 1992. The number cited in the text represents the total number of electronic filings filed from April 12, 1991 through October 31, 1992.

"outstanding."[16] Specifically, NFA reports that since the implementation of Phase II of the pilot program, of the 2,172 direct entry filings received, only one contained a material discrepancy between the electronic filing and the paper filing.[16] Fewer than five percent of these filings contained non-material discrepancies, primarily typographical errors.[17] NFA submits that these data demonstrate that the reliability of registration data has not been affected by use of direct entry procedures.[18] NFA also notes that during the nineteen months that the pilot program has been in operation, all paper filings have been timely received.

With regard to the fitness screening process during the pilot program, when an applicant disclosed a potential disqualification, a temporary license was not issued and the applicant was accorded the same fitness review applicable where a potential disqualification was disclosed in a paper filing. During Phases II and III of the pilot program, any filings deemed not qualified for a temporary license due to a disciplinary history disclosure were referred to NFA's fitness review staff, and potentially to NFA's Registration Compliance Legal Committee, for a full fitness review. As of October 31, 1992, thirty-one applications had resulted in such referrals. In addition, all FBI fingerprint cards were received within one day of the electronic filing, enabling the FBI background checks to begin virtually immediately. NFA reports that it identified no instances during the pilot program in which an individual ineligible for registration received a temporary license.[19]

NFA states that its experience with the pilot program demonstrates that neither fitness screening nor any other aspect of the registration process is compromised by the substitution of electronic filing for paper filing. NFA also reports that due to the transfer to the clerical data entry responsibility from NFA to sponsoring firms under the direct entry program, it has experienced a significant decrease in the resources required for registration processing functions. NFA notes that soon after the start of Phase I, NFA's registration processing staff was reduced by more than fifty percent, a reduction it attributes to the efficiencies of the MRRS system as well as the decrease in NFA processing activities due to the direct entry program. NFA also notes that since the direct entry program became operational the number of calls received at its Information Center has remained steady and in some years has decreased, whereas prior to the direct entry program the number of calls to the Information Center had increased substantially each year. NFA represents that the firms participating in Phase II of the program receive temporary licenses for their AP applicants approximately four business days sooner than those firms using paper filings.

II. Discussion

A. The Proposed Rule

NFA Registration Rule 801 would make the direct entry program permanent.[20] Subject to certain conditions, the rule allows, but does not require, all sponsoring firms to file Forms 8–R, 3–R, 8–T and U–5 electronically by direct dial-up transmission to NFA's registration and membership database. With respect to the electronic filing of Forms 8–R, a sponsoring registrant must send to NFA,[21] on the same day it has directed the computer to process the electronic filing, the applicant's disciplinary history on a hardcopy form provided by NFA and signed by the applicant, together with the applicant's fingerprints and proof of successful completion of the proficiency examination, as provided by NFA Registration Rule 206(a)(3). The disciplinary history section of Form 8–R contains important information concerning the applicant's background which directly relates to eligibility for registration. The disciplinary history form required to be signed by the applicant and provided in hardcopy to NFA will contain the applicant's signature certifying to the truthfulness and accuracy of the disciplinary history set forth therein and all other certifications and agreements by the applicant currently required by the Form 8–R.[22] By signing the disciplinary history form, the applicant will further certify: (1) That all information he has provided to his sponsoring firm in connection with the electronically filed portion of the application is true and not misleading, and (2) that he understands that a willfully false or misleading statement or omission made to his sponsoring firm and electronically transmitted by the firm to NFA will have the same effect as a willfully false or misleading statement or omission made in a hard copy application signed by him.

With respect to the remainder of the Form 8–R, which comprises the bulk of the form and includes information relating to the applicant's residential, employment and educational history, no paper filing requirement would exist, and thus no handwritten signature by the AP applicant attesting to the accuracy and completeness of the information, would be incorporated in the submission to NFA. Proposed Rule 801(b), however, provides that by authorizing the computer to process an electronically filed form, the registrant firm electronically certifies that it has complied with all requirements of the rule and has made all reasonable efforts to ensure that the applicant information

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[16] Submission at 8.

[16] In that case, one of the Form 8–R disciplinary history questions was not answered on the hardcopy Form 8–R although the electronic filing indicated a "no" answer. As soon as NFA discovered the discrepancy, it terminated the temporary license. That same day, however, NFA learned that the "no" response was the appropriate answer and the temporary license was reissued. Submission at 8, n.1.

[17] Submission at 8.

[18] NFA also notes that it receives completed applications more expeditiously from firms participating in the direct entry program, as evidenced by a significantly lower number of deficiency letters being issued as a result of direct entry filings than for paper filings. Approximately thirty-eight percent of paper filings result in a deficiency letter being sent to the firm as compared to less than one percent issued as a result of direct entry filings.

[19] Submission at 7.

[20] NFA Registration Rules 701 (Disclosure of Information from Registration Records Maintained by NFA) and 702 (Certification of the Authenticity of Registration Records Maintained by NFA) make reference to "registration records" and "application forms". With the adoption of Registration Rule 801, the terms "registration records" and "application forms" will encompass any forms filed electronically pursuant to that rule. Thus, NFA will consider a registration form filed electronically to be a registration record and/or an application form pursuant to NFA Registration Rules 701 and 702.

[21] Rule 801 would require that such filing be made by first-class mail, hand-delivery or any other standard means of conveyance including a generally recognized overnight delivery service.

[22] A Form 8–R currently requires certifications by the individual applicant as to, among other things, his understanding that he is subject to the imposition of criminal penalties for any false statements or omissions made in the application, that he will at all times keep accurate and current the answers to the items required to be updated, and that his answers and statements on the Form 8–R are true and not misleading. Form 8–R currently incorporates, and the disciplinary history form to be employed under Rule 801 will also incorporate, certain agreements by the applicant relating to application for membership as an Associate member of NFA. (Letter from Daniel J. Roth, dated November 25, 1992 to Jean A. Webb, Secretariat, CFTC). As noted above, Rule 801 will not require filing with NFA of the hardcopy of the complete Form 8–R including the applicant's employment and educational history. Therefore, absent action by the sponsoring firm to maintain hardcopy records of information on the latter topics supplied by the applicant, no hardcopy record of the applicant's employment and educational history to support the firm's electronic filing will be preserved. The requirements of Commission rules as to the necessary support for the sponsors certifications required under Rule 3.12 are discussed *infra*.

entered by electronic filing is accurate.[23] Rule 801 requires a firm to make all of the certifications required by Rule 3.12(c) and the current Form 8–R.[24] The Rule also provides that these electronic certifications "shall have the same force and effect as a certification on the Form itself signed by an authorized officer of the registrant."[25] Proposed Registration Rule 801(b).[26]

The applicant's disciplinary history, with all required attachments, must be received by NFA within five business days after the electronic filing is processed. If the applicant's disciplinary history and required attachments indicate that the applicant does not qualify for a temporary license or NFA fails to receive the form with all required attachments and certifications within five days after the electronic filing was processed, NFA will terminate immediately, upon notice to the sponsoring firm, any temporary license previously granted. Proposed Registration Rule 801(a)(2).

Proposed Rule 801 also provides that no registrant may electronically file registration forms until NFA has assigned it an identifying code and password and that each registrant is responsible for maintaining the security and confidentiality of its identifying code and for controlling access to all terminals that have inquiry or data entry access to NFA's MRRS database. Proposed Registration Rule 801 (c) and (d). Finally, the rule states that electronic filing "is a privilege and not a right" and that NFA may disable a registrant's identifying code and password, thereby terminating the registrant's ability to file forms electronically, as opposed to in hard copy, at any time, without notice or hearing, in NFA's sole discretion. Proposed Registration Rule 801(f).

B. Consistency With Commission Rule 3.12(c)

The direct entry of registration data, pursuant to proposed Rule 801, would substantially modify the manner of submitting registration application data from that contemplated by paper filing systems such as were in use at the time of the promulgation of the Commission's requirements for registration applications. The Commission has reviewed proposed Rule 801 to assure that it is consistent with the requirements of the Commission's registration rules, in particular, Rule 3.12 (c) governing applications for registration as an AP of an FCM or IB, and to determine whether any modifications of Commission rules are needed to accommodate the use of direct entry procedures. Based upon this review, the Commission has determined that no rule changes are necessary and that existing requirements can be applied in the direct entry context.

Commission Rule 3.12(c) requires that an application for registration as an AP of an FCM or IB must be on Form 8–R, completed and filed in accordance with the instructions thereto and that specified certifications "in writing" and signed and dated by the sponsor must be submitted concurrently with the Form 8–R. Rule 3.12(c) also requires that each Form 8–R filed pursuant to that rule must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the NFA. Rule 3.12(e) provides that the sponsor must retain in

[23] The certification required by the rule is accomplished by electronic data entry. After all the information required on the Form 8–R, 3–R, 8–T or U–8 has been entered into the computer, a question will appear on the screen asking the data entry operator whether he or she is ready to process the form. A "yes" answer to this question means that the firm is certifying, and in effect, verifying all of the previously entered data. In addition, by answering "yes" to the question, the firm is also certifying that it is forwarding the fingerprint card and proof of the applicant's successful completion of the National Commodity Futures Examination. Proposed Registration Rule 801(a)(1).

[24] Under proposed Rule 801, the sponsoring firm must certify that: (1) the information supplied by the applicant in response to questions contained in the electronically filed Form 8–R relating to the applicant's employment and education history for the past three years has been verified; (2) the applicant has been hired or is employed by the firm or that it is the intention of the firm to hire or otherwise employ the applicant as an AP within thirty days after the firm receives notification that the applicant has received a temporary license; (3) the applicant will not be permitted to act as an AP until a temporary license has been issued or he has been registered pursuant to the electronically filed application; (4) the firm understands that it is under a duty not to employ a person subject to a statutory disqualification under Section 8a(2) of the Act, to notify the Commission when any employee becomes subject to such a disqualification and to supervise applicants named in electronic filings with a view towards preventing applicants from violating the Act; (5) in the case of an applicant answering items 14 or 16 on the Form 8–R in the affirmative, the firm has received a copy of the complaint or letter issued by the Commission or NFA; and (6) the information contained in the electronically filed Form 8–R has been obtained by the firm for the sole purpose of verifying the information contained in the applicant's Form 8–R and the firm will seek to prevent the wrongful dissemination of any of the information contained in the electronically filed Form 8–R and of any records and documents retained in support thereof.

[25] Although the validity of an electronic certification as an authorized "signature" of a firm or its officers has not been established as yet by judicial precedent, there is precedent establishing the validity of "signatures" other than handwritten signatures. *See Cam* v. *Bessemer Cement Company*, 558 F. Supp. 706 (W.D. Pa. 1983) (holding pre-printed company name constituted company's signature on a bill of lading for purposes of exercising the consignor's "non-recourse" option under such bill of lading and noting that it "appears to be settled under the common law that a printed name on an instrument which is intended to have the force of a signature is valid and thus will have the intended effect"). See also, Uniform Commercial Code § 1–201(39) which provides that the term "signature" means any symbol executed or adopted by a party with the present intention to authenticate a writing. On August 7, 1992, the SEC published for comment in the Federal Register proposed rules and procedures to implement the operational phase of its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. See 57 FR 35070 (August 7, 1992). The proposed regulation, Regulation S–T, will apply to electronic submissions processed by the SEC's Division of Corporation Finance, and in some cases, to those processed by the Division of Investment Management. The proposed rules provide that:

Signatures to or within any electronic filing shall be in typed form rather than manual format. For purposes of Regulation S–T (part 232 of this chapter), the term "signature" means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters comprising a name, executed, adopted or authorized as a signature. Proposed § 232.13 of Regulation S–T.

The SEC is proposing to require that essentially all documents, including filings, correspondence and supplemental information submitted by or relating to registrants under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939 and the Investment Company Act of 1940, be submitted electronically. This would include periodic and other filings by domestic companies on Forms 10–K, 10–Q, 8–K, 10 and definitive proxy statements, annual and quarterly reports of domestic companies on Forms 10–K and 10–Q, Securities Act registration statements, filings made in connection with tender offers on Schedules 13D, 13G, 14D–1, 14D–9, 13E–3, and 13E–4, stock ownership reports on Forms 3, 4, 5, 144 and 13F, and Schedules 13D, 13G and 14D–1, and periodic reports filed under the Investment Company Act on Forms N–SAR–A, N–SAR–B and N–SAR–U. Although such filings do not involve licenses, the NASD currently permits electronic filing of certain information relating to licenses of securities professionals. With respect to electronic filing of registration information, see note 46 *infra*.

[26] Rule 801 also requires that each firm filing registration information electronically make available its data entry personnel having duties relating to filing under the direct entry program for testimony in court or before the Commission, NFA or any contract market regarding the authenticity, integrity or accuracy of any electronic filing. Proposed Registration Rule 801(e).

accordance with Rule 1.31 "such records as are necessary to support the certifications required by this section."

The Commission believes that the requirement of "signed and dated" written certifications by the applicant's sponsor may be satisfied by electronically filed certifications of the sponsor pursuant to Rule 801, which establishes that by directing the computer to process an electronically filed form, the sponsoring registrant makes the certifications required as part of the current Form 8–R, including the certifications required by Rule 3.12(c), and that these certifications "shall have the same force and effect as a certification on the form itself signed by an authorized officer of the registrant." These certifications are in written text submitted electronically and are "signed" by the firm by typewritten rendering of the firm name on the electronic filing and by the firm's affirmative action authorizing the computer to process the electronically filed form. As noted above, each registrant using direct entry procedures must be assigned an identifying code and password and is responsible for maintaining the confidentiality of its identifying code and for controlling access to terminals that are used for electronic filing. Consequently, the sponsoring firm is properly charged with responsibility for data entered pursuant to its identifying code and password. Thus, under the terms of Rule 801, a firm that has directed the computer to process an electronically filed form is fully responsible for the submission of that information and for the certifications included therein.

Rule 3.12(e) further requires that the sponsor retain such records as are necessary to support the certifications required by this section. The Commission emphasizes that the required certification under Rule 801 by the applicant's sponsor that it has verified the information supplied by the applicant in response to questions contained in the electronically filed Form 8–R relating to the applicant's employment and education history for the past three years would necessitate that the firm retain either in hardcopy, optical disc format, or comparable recordkeeping system the information supplied it by the applicant, certified by the applicant's signature, and such further records as are necessary to evidence verification of this information from other sources.[27]

C. Fitness Screening

The direct entry program substitutes instantaneous electronic transmission of information for mailed transmission of hardcopy forms, effectively transferring the clerical data entry function for registration information from NFA to the sponsoring firm. The direct entry program does not change the content of the information required or the nature of NFA's review of that information; the only change is in the manner in which data are supplied to NFA and entered into the MRRS system. The evaluation of potential registration disqualifications is not modified by reason of the electronic filing of registration data.[28] Under the proposed Rule, temporary licenses granted on the basis of an electronic filing terminate immediately upon notice to the sponsoring registrant that the applicant's disciplinary history, with all required attachments, has not been received by NFA within five business days after the electronic filing was processed or that the Form 8–R or required attachments indicate that the applicant does not qualify for a temporary license.[29] All information critical to temporary license eligibility will continue to be reviewed by NFA staff, as under the pilot program. NFA will conduct the same fitness review of electronically filed information and will retain the same ability to terminate a temporary license based upon electronically filed applications as in the case of paper applications. As noted above, NFA has identified no instance under the pilot program in which an individual ineligible for registration received a temporary license.

D. Reliability of Registration Data in the MRRS System

In approving the direct entry pilot program, the Commission addressed the potential impact of the program upon the reliability of the MRRS data due to the performance by sponsoring firms of data entry functions, noting that applicants and their sponsors would have the same incentives to provide accurate registration information as under preexisting procedures. 55 FR 35925, 35930 (September 4, 1990). Firms and individual applicants continue to be bound by section 8a(2)(G) and section 8a(3)(G) of the Act, 7 U.S.C. 12a(2)(G) and 12a(3)(g) (1988), as amended by the Futures Trading Practices Act of 1992, which make the willful submission of inaccurate registration information grounds for denial, revocation, restriction, conditioning or suspension of registration. In addition, firms could be sanctioned under NFA Compliance Rule 2–2(f)[30] for the willful submission of materially false or misleading information through direct entry of such data into MRRS. Further, unintentional but frequent data entry errors could subject a firm to disciplinary action under NFA Compliance Rule 2–9 for lack of appropriate supervision.[31] Finally, a participating firm's failure to diligently supervise the operation of direct entry filings of registration data would constitute a violation of Commission Rule 166.3, 17 CFR 166.3 (1992), which generally requires diligent supervision of all activities of the firm's partners, officers, employees or agents relating to the firm's business as a Commission registrant.[32] The direct entry program, therefore, should not provide any unique incentive for a firm to falsify data in order to obtain a temporary license or a materially greater opportunity to do so than under current procedures in which a temporary license is granted or denied on the basis of self-declared information filed in hard copy.[33]

NFA developed extensive review procedures to detect data entry errors and to assure the accuracy of the information in MRRS during the pilot program. These review procedures included the line-by-line comparison of all hardcopy registration forms received as follow-ups to the electronic filings. NFA has proposed to change its line-by-line review procedure from a review of all information on the Form 8–R

[27] The requirement of Rule 3.12(c) that fingerprint cards for the applicant be filed with the Form 8–R is satisfied by filing of such cards with the disciplinary history portion of the Form 8–R, which is required to be submitted in hardcopy under Rule 801.

[28] Submission at 7.

[29] Notice of termination may be given by electronic transmission to a terminal on the sponsoring registrant's premises, by United States mail, by hand delivery, or by "any other standard means of conveyance including a generally recognized overnight delivery service." Proposed Registration Rule 801(a)(2).

[30] NFA Compliance Rule 2–2(f) provides that no NFA member or associate shall willfully submit materially false or misleading information to NFA or its agents.

[31] NFA Compliance Rule 2–9 provides that each NFA member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the member.

[32] Commission Rule 166.3, 17 CFR 166.3 (1992), provides that:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

[33] See 55 FR 35925, 35931 (September 4, 1990).

program to a review of only that information critical to the granting of a temporary license, *i.e.*, the applicant's disciplinary history. However, NFA will review all Forms 8–R on a line-by-line basis during a firm's training period (currently Phase II). Once NFA is satisfied that the firm has become proficient at the data entry function it will allow that firm to proceed to Phase III, in which only an applicant's disciplinary information will be required in hardcopy and reviewed on a line-by-line basis. NFA states that this change in its review procedures will not reduce the thoroughness of fitness screening or the reliability of the MRRS registration data. The statistics provided by NFA during the pilot program indicate that the firms participating in the program are entering data accurately and there appears to be no reason why firms would enter data less accurately if NFA alters its review procedures as proposed. As previously noted, repeated problems in entering accurate data by a firm operating under the direct entry program could lead to loss of that privilege (See Rule 801(f)), as well as sanctions under NFA Compliance Rule 2–9 or Commission Rule 166.3.

E. Computer Security

A further concern relevant to the proposal to make the direct entry program generally available to all sponsoring registrants is the potential impact upon the integrity of MRRS data as a result of unauthorized access to the MRRS system. NFA represents, however, that its state of the art security system makes a breach of security almost impossible. NFA states that its security practices make unauthorized access extremely difficult, limit exposure if unauthorized access is gained, and give NFA the ability to reconstruct data prior to the point of unauthorized access.[34] NFA's security procedures include membership in both IBM's Resource Access Control Facility (RACF), which protects access to MRRS by identifying and verifying the person attempting to gain access to MRRS and tracks unauthorized attempts to gain access to MRRS, and the IBM Information Network, which affords remote access to MRRS.

In order to obtain access to MRRS, other than from a terminal on NFA's premises, a user would need to have five different pieces of information: NFA's IBM Information Network account number, a user ID and a password for access to the IBM Information Network, and a user ID and password for access to NFA's computer system. Every authorized user is given a security profile by NFA's Security Administrator which is made unique by assigning the user his or her own individualized user ID. The security profile determines which systems, screens and fields the user is allowed to view and the systems, screens and fields to which the user is allowed access. For example, based on its security profile, a Phase II/Phase III user would not be allowed to update information in the files of an unaffiliated firm. All attempts to breach security are recorded by the computer. As a security safeguard, any terminal which remains inactive for fifteen minutes is automatically signed off by the computer. Member firms will not have programming access to NFA's computer system.

NFA states that the chance of a computer virus entering the system through a participating firm's terminal are "practically non-existent." In the unlikely event of unauthorized access, the access gained would be limited and NFA has the ability to reconstruct data prior to the point of contamination. NFA uses the Journaling Facility of the Computer Associates' Integrated Database Management System DATA BASE product to record all changes to the data in the system. This journal shows the data in existence before the change, the data as changed, and the cause of the change. By use of the journal, NFA personnel can determine when any damage occurred.[35]

Although NFA acknowledges that no security system is completely failsafe, it represents that the chances of unauthorized access to the MRRS system are extremely small and will be virtually unchanged by the limited access to be gained through off-site terminals in the offices of participating firms.[36] Moreover, NFA states that it is virtually impossible to cause damage to the MRRS system or the data stored on MRRS.

III. Proposed Procedural Changes to the Pilot Program

NFA has proposed certain changes to the direct entry program to facilitate making the program generally available to all sponsoring registrants and to increase the benefits of the program to participating firms. These changes are discussed below.

A. Preconditions to Participation

Under the pilot program procedures, NFA is required to notify the Commission before it provides inquiry access to a firm and to obtain Commission approval before it provides direct entry access to a firm. Proposed Rule 801 would eliminate these notification and approval requirements. NFA will provide the Commission with quarterly updates to identify those firms with inquiry and direct entry access.[37]

A further procedural modification proposed by NFA is a reduction in the time period that a firm must participate in Phase II prior to becoming eligible for participation in Phase III from ninety days to two weeks. NFA states that it takes approximately two weeks for a firm to demonstrate its proficiency at the data entry function. NFA would have the discretion to require a longer period of training for firms processing only a small number of applications during the two-week period.[38]

Finally, Rule 801 will supplant the Direct Entry Agreement for firms filing information electronically by codifying in the rule the conditions of direct entry participation.[39] Consequently, following

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[34] Submission at 9. See also Description of Security Measures Presently in Use at National Futures Association's Data Center, Supplemental Submission to NFA's Petition for an Order Granting NFA Permission to Conduct a Pilot Program for the Direct Entry of Registration Data by a Sponsoring Registrant, July 16, 1990.

[35] For a more detailed description of the security procedures currently in place at NFA, see 55 FR 35925, 35932–35933 (September 4, 1990).

[36] NFA represents that there have been no instances of unauthorized access or attempts at such access or of any breach of security during the pilot program. Submission at 12.

[37] Submission at 14.

[38] NFA will make a determination in each case as to when a firm has demonstrated that it has become proficient at the data entry aspects of the program but in no event will a firm be moved from Phase II to Phase III prior to the completion of the two-week training period.

[39] Among other things, the Direct Entry Agreement requires that firms: (1) enter into NFA's MRRS database all information required to be filed on Forms 8–R, 3–R and 8–T for all APs of the participating firm and of the participating firm's guaranteed IBs for whom the participating firm has assumed registration responsibilities; (2) mail by first class mail or hand deliver to NFA, on the day that the firm enters a command in MRRS to process an application, the corresponding registration form with all required attachments; (3) adopt and enforce procedures to ensure the integrity and confidentiality of all individual filings; and (4) make its data entry personnel available for testimony in court, before the Commission, NFA or any contract market, in regard to the authenticity, integrity or accuracy of any paper or electronic filing covered by the agreement. The Direct Entry Agreement also requires that firms make certain certifications as part of its electronic filing as provided in Commission Rule 3.12(c)(1) (i)–(iv). The agreement further provides that the entry of an instruction by the participating firm to NFA to process an electronic filing constitutes a certification that the electronic filing accurately reflects the information on the paper filing and that the firm acknowledges that the willful submission of a false special certification constitutes cause for denial, suspension or revocation of the firm's registration under Sections 8a(2) and 8a(3) of the Act. In addition, the agreement provides that temporary licenses granted on the basis of an electronic filing shall terminate immediately upon notice to the firm that the paper filing was not

Continued

the approval of Registration Rule 801, firms will not be required to sign the Direct Entry Agreement.

B. Line-by-Line Review

Under current procedures, NFA reviews for accuracy on a line-by-line basis all forms filed electronically by firms participating in Phases II and III of the program by comparing the electronic filing to the hard copy. As noted above, NFA proposes to revise this procedure such that upon completion of a firm's training period (Phase II), during which time NFA will continue to review all Forms 8–R on a line-by-line basis, NFA will perform a line-by-line comparison of only the information critical to the granting of a temporary license, the applicant's disciplinary history, which will be required to be submitted separately on the paper form provided by NFA. Other information would be spot-checked for accuracy. As noted above, during the nineteen months the pilot program has been in operation, NFA staff has made a line-by-line comparison of 2,172 registration forms, which revealed a total of 83 errors, only one of which was material.[40]

As all information critical to temporary license eligibility will continue to be reviewed on a line-by-line basis, this procedural modification should not reduce the efficacy of the fitness screening process as it now exists. Reliability of registration data also should not be materially reduced. The data generated under the pilot program to date demonstrate the proficiency of the participating firms performing the data entry function and continuation of the line-by-line review of the information critical to the granting of a temporary license should be sufficient to assure data reliability.

C. Electronic Filing of All Forms

Under the current pilot program, participating firms are required to electronically enter every Form 8–R, Form 3–R, Form 8–T and Form U–5. NFA believed this requirement to be necessary in the early stages of the program in order to provide NFA staff with sufficient data for meaningful evaluation of the program. NFA states that it is no longer necessary to require that each participating firm file all of these forms electronically and proposes that participating firms have the option of filing either by mail or electronically.

D. Elimination of Paper Filing Requirement

NFA notes that the single most important aspect of the direct entry program to its members is the reduction of the amount of paper filings with NFA. NFA reports that its members have emphasized that having to file hard copy forms with NFA after completing the electronic filing significantly reduces the benefits of the program. NFA recognizes that the elimination of all paper filings is not possible due to the potentially important role in judicial or administrative proceedings of the certifications contained in certain filing signed by individuals. As discussed above, Rule 801 would still require the submission of a hardcopy form containing the information that directly bears upon the individual's eligibility to become registered, *i.e.*, the disciplinary history information, certified by the applicant. By signing this paper form, the individual applicant certifies the truthfulness and completeness of the information on the form. Rule 801 will allow firms to file electronically the bulk of the information required by Form 8–R, which relates to the applicant's residential, employment and educational history, for AP applicants sponsored by the firm, without submitting a corresponding paper filing.[41] Rule 801 also states that the registrant is deemed to make the certifications specified therein when it files the Form 8–R electronically. See note 24 *supra*.

Certain registration forms do not require individual certifications. Forms 8–T (notice of termination), U–5 (uniform termination notice for securities industry registration) and 3–R (except a Form 3–R amendment amending a Form 8–R) are certified by the firm and not the individual. The paper filing requirement with respect to these forms will be eliminated. The required certification for these forms is made when the firm directs the computer to process these forms due to the status accorded the electronic certification as a binding signature under proposed Rule 801. Although a Form 3–R updating a Form 8–R is certified by the individual registrant, the information certified on the Form 3–R is less likely to be critical to an individual's registration eligibility than the information on the original Form 8–R. The only circumstances in which information material to registration fitness would be involved is where an individual changed a "no" answer to a disciplinary history question to a "yes" answer by means of the Form 3–R. NFA notes that in this example, there is little likelihood that the change is not truthful and accurate due to the detrimental effect such change would have on the individual's registration status.[42] Proposed Registration Rule 801, therefore, provides for Forms 3–R and 8–T filings to be made exclusively by means of electronic filings. The Commission notes, however, that if a disciplinary history question answer is being changed from "no" to "yes" this may require the filing of supplementary documents in hardcopy form.[43]

NFA represents that elimination of the paper filing requirement for these forms will not impair NFA's ability to perform its delegated duties as the official custodian of the Commission's registration records or to provide accurate certifications concerning the authenticity and completeness of the records maintained. With respect to the forms for which electronic filing is substituted for paper filing, the computer records maintained in MRRS will constitute the registration record maintained on behalf of the Commission since there will be no hard copy form.[44] Furthermore, NFA will continue to certify the authenticity of the record and the accuracy of any computer printout.

The modifications of the direct entry program to reduce the number of paper filings have the potential to significantly reduce the number of paper filings received by NFA.[45] In the last year NFA received almost 14,000 Forms 3–R and more than 9,000 Forms 8–T. NFA notes that the elimination of the paper filing requirement for these forms is consistent with the Paperwork

received by NFA within five business days after the electronic filing or that the paper filing contains information different from the information in the electronic filing that indicates that the applicant does not qualify for a temporary license.

[40] See note 16 *supra*.

[41] See letter dated August 27, 1992 from Daniel J. Roth, General Counsel, NFA, to Jean Webb, Secretary, CFTC and letter dated October 8, 1992 from Carol Wooding, Attorney, NFA to Mary Cademartori, Staff Attorney, Division of Trading and Markets.

[42] As noted above, in the event that a firm erroneously entered data negatively affecting an AP's registration eligibility, NFA would undertake further review before taking any adverse registration action.

[43] The instructions to the Disciplinary History section of Form 8–R that if a person answers "yes" to any of the questions in that section, he must supply a certified copy of any applicable documents, such as any complaint, plea, order, agreement of settlement, verdict or other findings made, and sanctions or sentences imposed. If such documents are not obtainable must be furnished.

[44] See note 20 *supra*.

[45] NFA members who choose to prepare hard copy forms prior to completing the electronic filing will be required under NFA Compliance Rule 2–10 to maintain these forms as a business record. See also Commission Rules 3.12(e) and 1.31 (1992). NFA will not, however, require member firms to prepare and retain hard copies of these forms. See letter from Carol A. Wooding, Staff Attorney, NFA, to Mary Cademartori, Attorney, Division of Trading and Markets, CFTC, dated October 8, 1992.

Reduction Act. Further, NFA notes that the NASD is developing a program which will permit its member firms to file registration forms by computer without any follow-up paper filings.[46]

E. Statistical Information

Under the pilot program, NFA is required to provide the Commission on a monthly basis with certain statistics to provide a factual basis for evaluation of the pilot program. Statistics classified by type of filing, phase of the program in which the filing was made, and firm, are provided with respect to the time required to grant temporary licenses to the APs of participating firms and to APs of non-participating firms, the average time between the electronic filing and NFA's receipt of the complete filing, and the number and type of material and non-material discrepancies between the electronic filing and paper filings.

NFA proposes to provide the Commission with similar statistics on a quarterly rather than on a monthly basis.[47] The Commission believes that quarterly statistics will provide it with sufficient opportunity to monitor and review the direct entry program and, after further experience is gained with the direct entry program, may consider further reduction of the frequency of statistical data filings.

IV. Benefits of Direct Entry

NFA submits that the direct entry pilot program has proved that the electronic filing of registration forms has benefitted both the futures industry and the public without any negative impact on the registration process. Benefits cited include a significant decrease in the time within which temporary licenses for AP applicants are granted and reduction in the number of NFA staff required to process registration filings, permitting reallocation of staff to customer protection efforts and potentially leading to cost savings that could be reflected in reduced registration fees. The modifications of the program set forth herein should increase the efficiency of the registration process and reduce costs.[48]

Conclusion and Order

Based upon the foregoing, the Commission believes that the direct entry program can be implemented in a manner consistent with NFA's registration responsibilities under prior Commission orders and with the required degree of accuracy, reliability and security for NSFA registration processing and fitness screening.

Accordingly, pursuant to sections 8a(1), 8a(10), 17(j) and 17(*o*) of the Commodity Exchange Act, 7 U.S.C. 12a(1), 12a(10), 21(j) and 21(*o*) (1988), the Commission hereby authorizes NFA to put into effect NFA Registration Rule 801, which implements the direct entry program as described herein, subject to the conditions set forth below:

a. The direct entry pilot program is described in NFA's Submission dated July 9, 1992, as supplemented by submissions dated August 27, 1992, October 8, 1992, November 13, 1992, November 25, 1992 and December 8, 1992. The representations set forth in the foregoing submissions, as well as those contained in the Commission September 4, 1990 Order authorizing NFA to implement Phases II and III of the direct entry pilot program, as modified by the foregoing submissions, constitute the responsibilities of NFA unless otherwise stated or modified by this order.

b. In addition to providing the statistics described herein on a quarterly basis, NFA will provide the Commission with such data as may be requested from time to time concerning the direct entry program.

Issued in Washington, DC on December 16, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-30922 Filed 12-21-92; 8:45 am]

BILLING CODE 6351-01-M

[46] Currently, the NASD permits the electronic filing of all Form U-4s for the transfer of account representatives. The member firm must submit the hard copy of the Form U-4 and the fingerprint card within twenty-one days of the electronic filing. The NASD is developing a proposal to permit member firms to file transfer applications electronically without having to follow-up with the hard copy U-4. NASD also is in the process of implementing a procedure for electronic filing of updates of Form U-4 without submitting paper follow-ups. Currently, this is permitted for page one of Form U-4. NASD is in the process of implementing this procedure for pages two through four of Form U-4. NASD permits its member firms to file employee terminations electronically without follow-up paper filings.

[47] See 55 FR 35925, 35928 (September 4, 1990). In a telephone conversation with Division staff on October 14, 1992, Daniel Roth, NFA's General Counsel, represented to the Division that NFA will provide these statistics on a quarterly basis.

[48] The Commission has previously allowed the substitution of electronic filings for paper filings in the context of large trader reporting. See CFR 17.00(a)(1) and 17 CFR 17.02(a) (1992).

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Architecture & Assessment Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 11 January 1993, at Langley AFB, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-31015 Filed 12-21-92; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The Boost Phase Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 22 January 1993, at the RAND Corporation, 1700 Main Street, Santa Monica, CA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-31019 Filed 12-21-92; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The C3 Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 27 January 1993, at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense through the year 2020.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-31021 Filed 12-21-92; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The Cruise Missile Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 19 January 1993, at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–31016 Filed 12–21–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Information Architecture That Enhance Operational Capability In Peacetime and Wartime Committee will meet on 13–15 January 1993 from 8 a.m. to 5 p.m. at ANSER Corporation, Arlington, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Information Architectures. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30955 Filed 12–21–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The Mid Course Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 14 January 1993, at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–31017 Filed 12–21–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 12–13 January 1993, at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–31018 Filed 12–21–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The Pre-Launch Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 5 January 1993, at Lincoln Laboratories, Bedford, MA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to gather information on issues related to theater air defense capabilities, and requirements for theater air defense through the year 2020.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–31022 Filed 12–21–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Space Mission Panel will meet on 27–28 January 1993, at AFSPACECOM, Colorado Springs, CO from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive space related briefings and to prepare advice for AFSPACECOM Commander.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–31020 Filed 12–21–92; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Notice of Non-Competitive Financial Assistance Award

AGENCY: Bartlesville Project Office and Pittsburgh Energy Technology Center, U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance (Grant) Award with the American Geological Institute.

SUMMARY: The U.S. Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) criterion (H), it intends to make a non-competitive Financial Assistance (Grant) award through the Pittsburgh Energy Technology Center to the American Geological Institute for a four month feasibility study, which will include a feasibility and assessment study for the establishment of a national geoscience data repository.

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: John R. Columbia, Contract Specialist, (412) 892–6219.

SUPPLEMENTARY INFORMATION:

Grant No.: DE–FG22–93BC14968

Title of Research Effort: "National Geoscience Data Repository"

Awardee: American Geological Institute

Term of Assistance Effort: Four (4) months

Cost of Assistance Effort: The total estimated value is $136,360.

Objective: Based upon the authority of 10 CFR 600.7(b)(2)(i) criterion (H), the objective of this Grant is to permit the American Geological Institute to conduct the assessment and feasibility study that would document the quantity and quality of geological and geophysical data available for transfer to a national Geoscience Data Repository. The results of this effort will contribute to the achievement of the overall goals of the DEO Program in establishing a repository of data which will aid in identifying specific technology transfer methods in order to provide a critical new source of information for independent oil and gas producers and in meeting the National Energy Strategy goal of arresting the U.S. vulnerability to oil supply disruptions by increasing the domestic crude oil resource base.

Dated: December 9, 1992.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 92–30988 Filed 12–21–92; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center; Non-Competitive Financial Assistance Award

AGENCY: Bartlesville Project Office and Pittsburgh Energy Technology Center, U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance (grant) award with ParaMagnetic Logging, Inc.

SUMMARY: The U.S. Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) (A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to ParaMagnetic Logging, Inc. for the continuation of their effort entitled "Fabrication and Downhole Testing of Moving Through Casing Resistivity Apparatus".

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: Eric T. Bell, Contract Specialist, (412) 892–5802.

SUPPLEMENTARY INFORMATION:

Grant No.: DE–FG22–93BC14966

Title of Research Effort: "Fabrication and Downhole Testing of Moving Through Casing Resistivity Apparatus"

Awardee: ParaMagnetic Logging, Inc.

Term of Assistance Effort: Twelve (12) months

Cost of Assistance Effort: The total estimated value is $822,435. The DOE share is anticipated at $109,000. The remaining portion of $713,435 will be funded by the Gas Research Institute.

Objective: Based upon the authority of 10 CFR 600.7(b)(2)(i) (A) and (D), the objective of this Grant is for ParaMagnetic Logging, Inc. to continue research fabrication and downhole testing of an apparatus that continuously measures resistivity while moving through well casing. The studies offer technology that will allow operators to go back into oil wells and inexpensively evaluate the well bore for additional missed oil and gas potential left behind in the pipe. Fabrication and downhole testing of the Moving Thorough Casing Resistivity Apparatus is the main objective of this grant. The results of much of this research will be useful for locating and recovering bypassed oil and gas and further recovery evaluations.

The intended research will:

(1) Finish the fabrication of the Second Type Moving Through Casing Resistivity Apparatus ("MTCRA"),

(2) Test the operation principle of the Slider Method of Measurement,

(3) Analyze and verify that the data obtained using the Second Type MTCRA reproduced open-hole laterlogs,

(4) Test and debug the up-hole electronics and the Second Type MTCRA,

(5) Log a cased well and reproduce open-hole laterlogs, and

(6) Verify data against open-hole logs and transfer the learned technology.

Dated: December 9, 1992.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 92–30989 Filed 12–21–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center

Financial Assistance Award; Cooperative Agreement

AGENCY: Morgantown Energy Technology Center, DOE.

ACTION: Notice of noncompetitive financial assistance application for a cooperative agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2), the DOE Morgantown Energy Technology Center gives notice of its plans to award a five year Cooperative Agreement to the University of Wyoming's Western Research Institute, Laramie Wyoming, in the approximate amount of $10,000,000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Martin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880. Telephone: (304) 291–4087. Cooperative Agreement No.: DE–FC21–93MC30126.

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Cooperative Agreement. The pending award is based on an application for renewal of a portion of work begun under a Cooperative Agreement presently being funded by DOE. The work to be continued under this renewal will address: Oil and gas research to advance technologies of petroleum and gas production processes and to develop methods for cleanup of wastes. Advanced systems applications to develop and evaluate improved process systems for utilization of fossil fuels. Environmental technologies needed for remediation and waste management related to fossil energy utilization. Applied energy science to understand and evaluate applied energy technologies. The work is necessary to ensure continuity of the work currently being performed.

Issued: December 14, 1992.

Randolph L. Kesling,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–30991 Filed 12–21–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Award (Cooperative Agreement)

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a cooperative agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2), the DOE Morgantown Energy Technology Center gives notice of its plans to award a five year Cooperative Agreement to the University of Wyoming's Western Research Institute, in Laramie Wyoming, in the approximate amount of $25,000,000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Martin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880. Telephone: (304) 291–

4087. Cooperative Agreement No.: DE–FC21–93MC30127.

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Cooperative Agreement. The pending award is based on an application for renewal of a portion of work begun under a Cooperative Agreement presently being funded by DOE. The work to be continued under this renewal will address the Jointly Sponsored Research Program. Under this program the participant will solicit research opportunities in conjunction with private industry which will enhance the fossil energy mission. The work is necessary to ensure continuity of the work currently being performed.

Dated: December 14, 1992.

Randolph L. Kesling,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–30990 Filed 12–21–92; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee To Develop On-Site Innovative Technologies for Environmental Restoration and Waste Management; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Federal Advisory Committee to Develop On-Site Innovative Technologies for Environmental Restoration and Waste Management (DOIT Committee).

Date and Time: January 5, 1993 1 p.m. to 4:30 p.m.

Place: Hyatt Regency, 1750 Welton Street, Denver, Colorado 80202.

Contact: Dr. Clyde Frank, Deputy Assistant Secretary, Technology Development, EM–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6382.

Purpose of the Committee: The DOIT Committee will serve as the primary vehicle for recommending a program that can be adopted to implement a Memorandum of Understanding (MOU) regarding Environmental Restoration and Waste Management in western states. This memorandum of understanding was signed in July 1991 by representatives from the U.S. Departments of Defense, the Interior, and Energy, the U.S. Environmental Protection Agency and the Western Governors' Association (WGA) the latter representing twenty western states and territorial governors. The DOIT Committee will help to improve Federal environmental restoration and waste management efforts by identifying technology needs at Federal facilities in western states; identifying/ assessing emerging technologies within the Federal and private sectors; identifying regulatory, institutional, or other government barriers to technology development; and identifying workforce planning/education requirements.

Agenda

Tuesday, January 5, 1993

12 p.m.—Lunch
1 p.m.—Dr. Clyde Frank, Designated Federal Official for the DOIT Committee Opens Meeting
1:15 p.m.—Briefing from DOD representative on status of DOD, DOE, EPA proposal to the Strategic Environmental Research and Development (SERDP) Science Advisory Board
1:45 p.m.—Discussion of need for and authorization to establish interagency/ state staff coordinating group for support purposes
2:15 p.m.—Discussion of requirements for a public stakeholder participation plan as called for in the DOIT charter
2:45 p.m.—Discussion of need for and authorization to establish public stakeholder work groups
3:15 p.m.—Break
3:30 p.m.—Public Comment Session
4:30 p.m.—Meeting Adjourns

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Clyde Frank's office at the address or telephone number listed above. Such statements will be subject to a 10 minute rule. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Committee Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 17, 1992.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 92–30986 Filed 12–21–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Application Tendered for Filing With the Commission

December 16, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 11365–000.

c. *Date filed:* December 2, 1992.

d. *Applicant:* Swan Falls Corporation.

e. *Name of Project:* Swan Falls Hydroelectric Project.

f. *Location:* On the Saco River in Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Lawrence J. Keddy, 5 Gambo Road, P.O. Box 40, South Windham, Maine 04082–0040, (202) 892–4000.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* January 31, 1993.

k. *Description of Project:* The proposed project consists of the following features: (1) An existing dam approximately 630 feet long and 10 feet high; (2) an existing impoundment with a surface area of 150 acres, a length of 4.1 miles, and a storage capacity of 450 acre-feet; (3) an existing powerhouse containing one operable and two proposed turbine-generator units, thus increasing the installed capacity of the project from 350 to 820 kilowatts; (4) an existing 34.5-kilovolt transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 4 million kilowatthours.

l. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30938 Filed 12–21–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93-55-000]

Southern California Edison Co.; Filing

December 16, 1992.

Take notice that on November 19, 1992, Southern California Edison Company (SCE) tendered for filing an amendment to its October 30, 1992 filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30996 Filed 12-21-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Use of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(SW)-84, for the transfer of 150 grams of uranium depleted in the isotope uranium-235 from Sweden to France for chemical analysis.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on December 17, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92-30997 Filed 12-21-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4647-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data instrument.

DATE: Comments must be submitted on or before January 11, 1993.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: (EPA ICR #1614.01). This ICR requests approval for a new collection.

Abstract: Green Lights is a voluntary EPA program that encourages organizations to adopt energy efficient lighting as a profitable means of preventing pollution and improving lighting quality. Green Lights "Partners" include corporations, state and local governments, colleges and universities, and other private and public organizations. Green Lights "Allies" include lighting manufacturers, lighting service providers, and utilities.

All participants in the Green Lights program must complete, sign, and submit to EPA a Memorandum of Understanding (MOU) that outlines the responsibilities of both the Green Lights participant and EPA. The MOU commits a Green Lights participant to survey all of its U.S. facilities and consider a full set of lighting options that maximize energy savings while being profitable and not compromising lighting quality. The participant agrees to complete lighting upgrades within five years of signing the MOU in 90 per cent of the square footage of its facilities that meet these criteria. EPA needs to collect initial information in the MOU to formally establish participation in the Green Lights program and to obtain general information on Green Lights participants. EPA uses this information to identify a Green Light implementation manager at the participating organization and to obtain initial data on the size and type of buildings subject to the Green Lights agreement.

Upon completion of a lighting upgrade (or annually if the project is not completed within one year), all Green Lights participants complete and submit to EPA an implementation progress report that documents energy efficiency improvements and cost savings. The information provided includes the fixture, lamp, and ballast types, lighting controls, maintenance methods and implementation methods most commonly utilized. EPA needs information on implementation to evaluate each participant's progress in meeting Green Lights commitments and to determine if there is a need to provide technical or other assistance to that participant in completing their upgrades. In addition, overall program progress must be evaluated to determine aggregate energy savings and pollution prevention.

In addition to agreeing to survey lighting and implement upgrades, Green Lights Allies work with EPA to increase awareness of the benefits of energy efficient lighting and to develop a technical support program. Specifically, they agree to provide case studies of successful energy efficient lighting investments and provide EPA, upon request, with information on the lighting related products and/or services that the organization offers. EPA uses this information to develop a directory and provide program participants with this information.

Burden Statement: The public reporting burden for this collection of information will vary, depending upon whether the respondent is a Green Lights Partner or a Green Light Ally and the length of time the respondent has participated in the Green Lights program.

Respondents: Green Light Partners include corporations, state and local governments, colleges and universities, and other organizations, while Green Lights Allies include lighting manufacturers, lighting management companies, and utilities.

Estimated Number of Respondents: There are currently 624 participants in the Green Lights program. EPA expects the program to expand by approximately 240 new participants per year for the period covered by this ICR.

Estimated Total Annual Burden of Respondents: The estimated total annual burden of respondents will vary, depending on whether the respondent is a Green Lights Partner or Green Lights Ally and the length of time the respondent has participated in the Green Lights program.

Frequency of Collection: The Memorandum of Understanding (MOU) is completed and submitted once, upon joining the Green Lights program. The implementation progress report is submitted upon project completion or annually if the project is not completed within one year. Case studies and other information on products and services from lighting manufacturers, lighting service providers, and utilities are obtained upon joining the Green Lights program.

Send comments regarding the burden estimate or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,
and
Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: December 11, 1992.

Edward Callahan,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 92–31013 Filed 12–21–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPT–53315A; FRL–4180–2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–93–3. The test marketing conditions are described below.

EFFECTIVE DATE: (December 8, 1992).

FOR FURTHER INFORMATION CONTACT: Edna G. Pleasants, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 260–7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–93–3. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–93–3: A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–93–3

Date of Receipt: October 30, 1992.

Notice of Receipt: November 17, 1992 (57 FR 54233).

Applicant: Confidential.

Chemical: (G) Aliphatic Polyamide.

Use: (S) Hot Melt for Bonding Industrial Parts.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Five (5) months, commencing on the first day of nonexempt commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 8, 1992.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–31008 Filed 12–21–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4547–7]

Water Pollution Control; Sole Source Aquifer Determinations; MO

ACTION: Notice of decision to deny sole source aquifer petition.

Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region 7 Administrator is denying the petition submitted by the National Park Service to designate the Big Spring Recharge Area as a Sole Source Aquifer. The Big Spring Recharge Area encompasses portions of Shannon, Carter, Oregon, Howell, and Ripley counties in south-central Missouri.

Based on an extensive review of the water resources in the area, and a thorough review of alternative water supplies, EPA has determined that alternative sources of drinking water are available to residents living in the petitioned area. A Decision Support Document is available upon request.

For more information, contact J. Patrick Costello, geologist, Office of Groundwater Protection, EPA Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101, phone (913) 551–7407.

Dated: December 15, 1992.

Morris Kay,

Regional Administrator, EPA, Region VII.

[FR Doc. 92–31014 Filed 12–21–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 15, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.
Title: FM Broadcast Station Self-Inspection Survey
Action: New Collection
Respondents: Non-profit institutions and businesses or other for-profit (including small businesses)
Frequency of Response: Each station will be surveyed every five years
Estimated Annual Burden: 1,220 responses; 8 hours average burden per response; 9,760 hours total annual burden
Needs and Uses: Collection of this information is needed to establish and maintain the highest rate of compliance possible in the FM Broadcast Service and to educate licensees about current FCC Rules, specifically those with which strict compliance is expected. Due to limited resources available to the Commission field offices, traditional broadcast station inspections have occurred less frequently. The self-inspection method of collecting the data reduces the need to make regular field inspections to determine compliance. The information will be used by the FCC to gauge compliance with its rules. Without such information, the FCC will be unable to make accurate determinations of overall compliance rates and unable to identify trends in compliance.

Federal Communications Commission.
onna R. Searcy,
ecretary.
[R Doc. 92–30967 Filed 12–21–92; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Century Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 15, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Century Bancorp, Inc., Milledgeville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Century Bank and Trust, Milledgeville, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Shelby County Bancorp, Inc., Shelbyville, Illinois; to acquire 100 percent of the voting shares of Bank of Findlay, Findlay, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Area Bancshares Corporation, Owensboro, Kentucky; to acquire 100 percent of the voting shares of Commonwealth Bancorp, Glasgow, Kentucky, and thereby indirectly acquire Bowling Green Bank & Trust Company, N.A., Bowling Green, Kentucky, and New Farmers National Bank, Glasgow, Kentucky.

2. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of First National Bank of Flora, Flora, Illinois.

3. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of First State Bancshares, Inc., Somerville, Tennessee, and thereby indirectly acquire First State Bank of Fayette County, Somerville, Tennessee.

4. Union Planters - FSB Acquisition Company, Memphis, Tennessee; to become a bank holding company by acquiring First State Bancshares, Inc., Somerville, Tennessee, and thereby indirectly acquire First State Bank of Fayette County, Somerville, Tennessee.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Central Service Corporation, Enid, Oklahoma; to acquire 100 percent of the voting shares of Ponca Bankshares, Inc., Ponca City, Oklahoma, and thereby indirectly acquire 84.07 percent of the voting shares of Security Bank & Trust Company, Ponca City, Oklahoma. In connection with this application, CSC Merger, Inc., a nonoperating subsidiary of Central Service Corporation, will become a bank holding company as the survivor of a merger with Ponca Bancshares, Inc., and will directly own 84.07 percent of the voting shares of Security Bank & Trust Company.

E. Federal Reserve Bank of Dallas (W Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Bancshares of Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 83.8 percent of the voting shares of The Hamilton National Bank, Hamilton, Texas, and Bank of Tyler, Tyler, Texas.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Sumitomo Bank, Limited, Osaka, Japan; to acquire shares in order to maintain its current 13.73 percent interest in the voting shares of CPB, Inc., Honolulu, Hawaii, and thereby indirectly acquire Central Pacific Bank, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, December 16, 1992.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 92-31034 Filed 12-21-92; 8:45 am]
BILLING CODE 6210-01-F

First of America Bank Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to engage *de novo* through its subsidiary, First of America Mortgage Company, Kalamazoo, Michigan, in performing appraisals of real estate, pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Newberry Bancorp, Inc., Sault Ste. Marie, Michigan; to engage *de novo* through its subsidiary, Northern Michigan Bidco, Inc., Sault Ste. Marie, Michigan, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Sanwa Bank, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary, Sanwa-BKG Futures Inc., Chicago, Illinois, in the execution and clearance of, and provision of advisory services with respect to, trades in the NIKKEI Stock Average futures contracts and options thereon on the Chicago Mercantile exchange, pursuant to §§ 225.25(b)(18) and (19) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31035 Filed 12-21-92; 8:45 am]

BILLING CODE 6210-01-F

Paul Douglas Freedle, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 11, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Paul Douglas Freedle, Tampa, Florida; to acquire 60.74 percent of the voting shares of Public Bank Corporation, Saint Cloud, Florida, and thereby indirectly acquire Public Bank, Saint Cloud, Florida.

2. Edwin Joseph Leonards, Morganza, Louisiana; to acquire an additional 18.33 percent of the voting shares of Great Guaranty Bancshares, Inc., New Roads, Louisiana, for a total of 18.39 percent, and thereby indirectly acquire Team Bank & Trust Company, New Roads, Louisiana.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Terry M. Carley, to acquire an additional 91.1 percent of the voting shares of Avoca Financial Services, Inc., Avoca, Iowa, for a total of 100 percent, and thereby indirectly acquire Peoples National Bank, Avoca, Iowa.

2. James F. Schwertley, Missouri Valley, Iowa; Donald F. Schwertly, Council Bluffs, Iowa; and James R. King, Mondamin, Iowa; to acquire 80.1 percent of the voting shares of Overton Bank Shares, Inc., Mondamin, Iowa, and thereby indirectly acquire Mondamin Savings Bank, Mondamin, Iowa.

3. Marvin R. Selden, Jr., Melvin H. Nielsen, Dennis L. Gallagher, Robert F. McLaughlin and Doris R. Olson, as trustees for the Hugh N. Gallagher Trust; to acquire 55.86 percent of the voting shares of Iowa State Bank Holding Company, Des Moines, Iowa, and thereby indirectly acquire Iowa State Bank, Des Moines, Iowa.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. William Cotulla, Cotulla, Texas, to acquire an additional 14.37 percent, for a total of 17.02 percent; Carl Huddleston, Cotulla, Texas, to acquire an additional 7.18 percent, for a total of 7.94 percent; Andrew Lewis, III, San Antonio, Texas, to acquire an additional 14.37 percent, for a total of 17.63 percent; Daniel Kinsel, III, Cotulla, Texas, to acquire an additional 14.37 percent, for a total of 17.40 percent; and John Northcut, Cotulla, Texas, to acquire an additional 14.37 percent, for a total of 16.83 percent, of the voting shares of Stockmens Financial Corporation, Cotulla, Texas, and thereby indirectly acquire Stockmens National Bank, Cotulla, Texas.

2. Fred Ronnie Myrick, Monroe, Louisiana, and Joe Kenneth Newton, Ruston, Louisiana; to acquire 7.73 percent of the voting shares of First Capital Bancorp, Inc., Delhi, Louisiana, for a total of 20.43 percent, and thereby indirectly acquire Capital Bank, Delhi, Louisiana.

Board of Governors of the Federal Reserve System, December 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31036 Filed 12-21-92; 8:45 am]

BILLING CODE 6210-01-F

Resource Bancshares Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 15, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Resource Bancshares Corporation, Columbia, South Carolina; to acquire Resource Mortgage Group, Inc., Columbia, South Carolina, and thereby engage in the purchase, sale and servicing of residential first mortgage loans, and the purchase and sale of servicing rights associated with such loans; servicing of mortgage loans in its portfolio and of loans held by third parties as to which the company will own servicing rights or will have a contractual obligation to perform servicing; and collection of past due accounts, pursuant to §§ 225.25(b)(1) and (23) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia, and Sun Banks, Inc., Orlando, Florida; to acquire Coast Bank, Federal Savings Bank, Sarasota, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Valley Bancorporation, Appleton, Wisconsin; to acquire Valley Securities, Inc., Appleton, Wisconsin, and thereby engage in full service securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire Norwest Insurance Wyoming, Inc., Wheatland, Wyoming, and thereby engage in general insurance agency activities, pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. **Comments on this application must be received by January 5, 1993.**

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Brooke Holdings, Inc., Jewell, Kansas, parent of Brooke Corporation, Jewell, Kansas; to indirectly acquire Smith Insurance Agency, Inc., Beloit, Kansas, through Brooke Agency, Inc., a nonbank subsidiary, and thereby engage in insurance activities, pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y. **Comments on this application must be received by January 5, 1993.**

Board of Governors of the Federal Reserve System, December 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31037 Filed 12-21-92; 8:45 am]

BILLING CODE 6210-01-F

United Missouri Bancshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than January 15, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Missouri Bancshares, Inc., Kansas City, Missouri, and United Subsidiary, Inc., Kansas City, Missouri; to acquire CNB Financial Corporation, Kansas City, Kansas, and thereby indirectly acquire Commercial National Bank, Kansas City, Kansas; First Bank and Trust, N.A., Concordia, Kansas; City National Bank, Atchison, Kansas; and Security State Bank, Fort Scott, Kansas.

In connection with this application, Applicants will also acquire Monetary Transfer Systems, Inc., St. Louis, Missouri, and thereby engage in providing ATM-relating data processing services to banks pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31038 Filed 12-21-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[G-92-2]

Delegation of Authority to the Attorney General

Pursuant to the authority vested in me by section 3726 of title 31, United States Code, I have determined that it is both cost-effective and in the public interest to delegate authority to the Attorney General to conduct a prepayment audit of domestic and foreign household goods/personal effects transportation; overseas transportation of privately owned vehicles; and overseas unaccompanied air baggage transportation, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, Subpart 101–41, and amendments thereto. This prepayment audit will be conducted by a General Services Administration's (GSA's) contractor, at the contractor's site, for the Relocation Management Office, FBI Headquarters in Washington, DC.

The Attorney General may redelegate this authority to any officer, official, or employee of the Federal Bureau of Investigation.

The Attorney General shall notify GSA in writing of these additional delegations and their basis. This delegation is effective upon publication in the **Federal Register**.

Dated: November 13, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–30948 Filed 12–21–92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Times and Dates: 7 p.m.-9:30 p.m., January 10, 1993, 8 a.m.-6 p.m., January 11, 1993, 8 a.m.-12 noon, January 12, 1993

Place: Swissotel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open 7 p.m.-9 p.m., January 10, 1993, Closed 8 a.m., January 11, 1993, through 12 noon, January 12, 1993

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters To Be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 8 a.m., January 11, through 12 noon, January 12, the committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Director, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, Mailstop K58, Atlanta, Georgia 30341–3724, telephone 404/488–4265.

Dated: December 15, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–30957 Filed 12–21–92; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (codified at 5 U.S.C. 552a), we are proposing to establish a new system of records, "The Medicaid Necessity, Appropriateness, and Outcomes of Care Study," HHS/HCFA/ORD No. 09–70–0059. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the systems be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

DATES: HCFA filed a new system of records report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on December 18, 1992. The new system of records will become effective 60 days subsequent to the date of publication in the **Federal Register** (February 22, 1993), unless HCFA receives comments which would necessitate alterations to the system.

ADDRESSES: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, room 2–H–4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Ms. Penelope Pine, Office of Research, Office of Research and Demonstrations, Health Care Financing Administration, room 2502, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, Telephone (410) 966–7718.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 9432(c) of Public Law 99–509, the Ombibus Budget Reconciliation Act of 1986. The purpose of this system of records is to provide data required to evaluate differences in

the necessity, appropriateness, and outcomes of care provided to Medicaid and privately insured patients. This study will assess the nature and outcomes of care provided to these two subpopulations through an extensive examination of detailed clinical data. The study will be conducted using data obtained from 250 hospitals located in three States: California, Georgia, and Michigan. The system will furnish information necessary to determine differences in the nature and outcomes of care provided to Medicaid and privately insured patients who receive treatment for the following conditions: Hysterectomy, complicated delivery, and pediatric asthma.

A pilot test of the data abstraction instrument is scheduled to begin in winter 1992, and the full study to commence in spring 1992. The system of records is expected to include data collected from hospital discharge abstracts, medical records, business office records, and emergency room logs and records. Information will be collected on approximately 16,340 individuals. This information will be collected and assessed by the study's contractor. In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Because this system of records will be established and used strictly in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purposes for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for the purpose of administering the Medicaid program for which HCFA is responsible. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 14, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

09-70-0059

SYSTEM NAME:

The Medicaid Necessity, Appropriateness, and Outcomes of Care Study.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Data will be maintained at the contractor site and at HCFA. Contact system manager for location of contractor. See "System Manager(s) and Address" for system manager location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicaid enrollees and privately insure individuals who receive hospital services at 250 hospitals in the three States (California, Georgia, and Michigan) chosen to participate in the study.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information concerning a patient's name, medical record number, demographic characteristics (e.g., age, sex), medical diagnoses and conditions, receipt of services, treatment protocols, outcomes of care, and other characteristics associated with the medical care rendered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This proposed system of records is authorized by section 9432(c) of Public Law 99-509, the Omnibus Budget Reconciliation Act of 1986.

PURPOSE OF THE SYSTEM:

To provide data necessary to evaluate differences in the nature and outcomes of care received by Medicaid and privately insured patients for selected conditions and treatments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To contractor(s), for the purposes of collating, analyzing, aggregating, or otherwise refining or processing records in the system or for developing, modifying, and/or manipulating automatic data processing (ADP) software. Data may also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance of ADP or telecommunication system containing or supporting records in the system. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

2. To a congressional office, from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components); is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that each disclosure is compatible with the purpose for which the records were collected.

4. To an individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration or maintenance of health if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished.

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Makes no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual,

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA,

(c) For disclosure to a properly identified person for the purpose of an

audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the recipient's understanding of a willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Information will be retrieved by person's name and medical record number, or Social Security number.

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the contractor will initiate ADP system security procedures required by HHS *Information Resources Manual* Circular #10, Automated Information Systems Security Program (e.g., use of passwords) (REF: HCFA Automated Information Systems Guide, HCFA.g:0805.1, "Systems Security Policies") and the National Institute of Standards and Technology Federal Information Processing Standards. Similar safeguards will be provided if any records are transferred to HCFA central office.

RETENTION AND DISPOSAL:

Hard copy data collection forms and magnetic tapes (or equivalent media) with identifiers will be retained in secure storage areas. Records will be retained for as long as needed for program research. Records will be disposed of 5 years after research is completed. The disposal techniques of degaussing will be used to strip magnetic tape (or equivalent media) of identifying names and numbers.

SYSTEM MANAGER AND ADDRESS:

The responsible agency official (System Manager) is the Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

NOTIFICATION PROCEDURE:

Notification of a record to be maintained in this system of records is governed by Department regulations at 45 CFR 5b.5 and 5b.6.

The request for notification must either be notarized or must contain a statement certifying that the requestor is who he claims to be, and that he understands that the knowing and willful request for or acquisition of a record under false pretenses is a criminal offense subject to a $5,000 fine. Also, the request must further verify the requestor's identity with information which parallels the record to which notification is being sought. Such further verification may include such particulars as the individual's years of attendance at a particular educational institution, rank attained in the uniformed services, date or place of birth, names of parents, an occupation, or the specific times an individual received medical treatment.

Only a parent or guardian of a minor, or the legal guardian of an individual declared incompetent by a court, is authorized to request access to a record on behalf of the minor or the incompetent individual, respectively. The requestor, in addition to verifying his own identity, must verify his relationship to the minor or incompetent individual by providing a copy of the minor's birth certificate, a court order, or other competent evidence of guardianship.

The requestor must identify the name and address of a designated representative who may be a physician, other health professional, or other responsible individual who would be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

To obtain access to a record follow the instruction for procedure. Requestors should reasonably specify the record contents being sought.

The request for access must either be notarized or must contain a statement certifying that the requestor is who he claims to be, and that he understands that the knowing and willful request for or acquisition of a record under false pretenses is a criminal offense subject to a $5,000 fine. Also, the request must further verify the requestor's identity with information which parallels the record to which access is being sought. Such further verification may include such particulars as the individual's years of attendance at a particular educational institution, rank attained in the uniformed services, date or place of birth, names of parents, an occupation, or the specific times an individual received medical treatment.

Only a parent or guardian of a minor or the legal guardian of an individual declared incompetent by a court, is authorized to request access to a record on behalf of the minor or the incompetent individual by providing a copy of the minor's birth certificate, a court order, or competent evidence of guardianship.

The requestor must identify the name and address of a designated representative who may be a physician, other health professional, or other responsible individual who would be willing to review the record and inform the subject individual of its contents at the representative's discretion. To determine if a record exists, write to the System Manager at the address indicated above, specifying the name, address, and health insurance number or Social Security number.

CONTESTING RECORD PROCEDURE:

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Department regulation 45 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system are expected to include: hospital discharge abstracts, medical records, hospital business office data on source of payment, and hospital emergency room logs and records.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 92–30961 Filed 12–21–92; 8:45 am]
BILLING CODE 4120–03–M

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for existing system of records.

SUMMARY: HCFA is proposing to revise the system notice for the "Group Health Plan (GHP) System," System No. 09–70–4001, by adding a new routine use for release of GHP data to State Medicaid agencies. The purpose of this new routine use is to allow State Medicaid agencies to determine which of their Medicaid recipients are dual eligible Medicare beneficiaries who are enrolled

in Medicare prepaid health plans, in order to coordinate the delivery of medical care and to determine proper payment responsibilities. A dual eligible beneficiary is a Medicare beneficiary who is either also eligible for Medicaid benefits or eligible for State payment of Medicare cost sharing expenses. Release of these data to the States would also help the States avoid making duplicate payments of claims paid by Medicare.

EFFECTIVE DATE: The proposed new routine use shall take effect without further notice 30 days from the date of publication (January 21, 1993) unless comments received on or before that date would warrant changes.

ADDRESSES: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Officer, Office of Budget and Administration, Health Care Financing Administration, Room 2–H–4 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mrs. Marla K. Kilbourne, Office of Prepaid Health Care Operations and Oversight, Division of Payment and Operations Support, Enrollment Operations Branch, Health Care Financing Administration, Room 1–G–2, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Her number is (410) 966–7622.

SUPPLEMENTARY INFORMATION: The GHP System, No. 09–70–4001, contains a master file of group health plan Medicare members used to expedite the exchange of data with group health plans, and to control the posting of pro rata amounts to the Part B deductible of currently enrolled GHP members. This system was last published in the **Federal Register** (52 FR 13525) on April 23, 1987. Currently, disclosure of the information in this system may be made to six different types of individuals and/or organizations for a variety of reasons, the majority of which relate to the timely and accurate processing of Medicare claims, the accurate and timely enrollment and disenrollment of Medicare GHP members, and for research purposes.

There are numerous safeguards, as described in the safeguard section of the notice, in place to protect the data which have been developed in accordance with part 6 of the HHS Information Resource Management Manual and the National Institute of Standards and Technology Information Process Standards.

We are proposing to add a new routine use for release of data to State Medicaid agencies to coordinate in the delivery of medical care and to determine proper payment. The new routine use number (7) will read as follows:

(7) To a Medicaid State agency to coordinate the delivery of medical care and to determine proper payment responsibilities when certain conditions, as provided below, are met:

(a) HCFA receives in writing a request for a copy of the monthly GHP System from the Director of the State Medicaid agency on the agency's letterhead. The request must state that the data are needed to identify dual eligible Medicaid/Medicare HMO members for coordination of medical care and payments.

(b) The request must state that the confidentiality of the data will be maintained and that the data will be used only for the stated purposes.

(c) The agency must establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of any of the data on the GPH System file.

We are proposing that the States' Medicaid agencies have access to these data for several reasons. Many States are now expanding the number of enrollees in Medicaid managed care programs, and are developing statewide programs covering all Medicaid recipients. As these programs grow, it is essential that the managers of Medicaid programs know who is enrolled in Medicare HMOs. When the State does not know this, dual eligibles can be enrolled in both a Medicare HMO and a Medicaid HMO. Recipients then have two sets of providers, two cards, and two sets of rules and procedures to deal with. Consequently, plans are often providing and receiving payment for duplicative care. Because the main function of managed care is to effectively coordinate care, sharing data between Medicare and Medicaid is essential. Beneficiaries can be eligible both for Medicare and Medicaid HMOs. Providers in both Medicare and Medicaid may not be aware of a recipients dual eligibility. It would be a tremendous benefit to beneficiaries if this basic communication between Medicare and Medicaid was improved. It would also help reduce the billing confusion and cost for Medicaid providers. Finally, the Government has an interest in avoiding the wasteful practice of paying twice, through a Medicare capitation payment and through Medicaid capitation or fee-for-service payments, for the same services.

The provision of Medicare HMO enrollment data, as contained in the GHP System, will provide this link between both programs, thereby facilitating the coordination of the delivery of care to beneficiaries and avoiding duplicate payments.

The proposed new routine use for the GHP System is consistent with the Privacy Act, 5 U.S.C. 552(a)(7), since it is compatible with the purpose for which the information is collected. Because this addition of a routine use will not change the purposes for which the information is to be used or otherwise alter the system, we are not required to prepare a report of altered system of records under 5 U.S.C. 552a(r). In addition, we are publishing the notice in its entirety below for the convenience of the reader.

Dated: December 14, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

09–70–4001

SYSTEM NAME:

Group Health Plan System HHS/HCFA/OPHCOO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, Bureau of Data Management and Strategy, Division of Capitation Systems, 6325 Security Boulevard, Baltimore, Maryland 21207–5187

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of Part A (Hospital Insurance) and Part B (supplementary medical) Medicare services enrolled in a group health plan.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information about a beneficiary's health insurance entitlement and supplementary medical benefits usage. Contact System Manager for location of Contractor(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1833(a)(1)(A), 1866 and 1876 of Title XVIII of the Social Security Act (42 U.S.C. 1395(a)(1)(A), 1395cc, and 1395mm).

PURPOSE(S):

To maintain a master file of Group Health Plan members for accounting control; to expedite the exchange of data with the Group Health Plans; and to control the posting of pro-rata amounts to the Part B deductible of currently enrolled Group Health Plan members.

Group Health Plan include the following: Health Maintenance

Organizations (HMO), Competitive Medical Plans (CMP), and Health Care Prepayment Plans (HCPP).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made: (1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. (2) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) Any HHS employee in his or her official capacity; or (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case; HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(3) To an individual or organizations for a research evaluation, or epidemiologic project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose; for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of a willingness to abide by the provisions.

(4) To providers and suppliers of services directly or dealing through contractors, fiscal intermediaries or carriers for administration of Title XVIII. Providers and suppliers:

a. Will have access only through a CRT terminal.

b. Will have access to only one record at a time.

c. Must enter both beneficiary name and Health Insurance Claim Number to access a record.

d. Must have a claim for services for the beneficiary.

e. Must enter a password in order to get access to the file.

5. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications system containing or supporting records in the system.

6. To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. The contractor must agree:

a. Not to publish or otherwise disclose data in a form in which beneficiaries could be identified (except to plans, providers, suppliers, carriers, and intermediaries as authorized by HCFA), and,

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(7) To a Medicaid State Agency to coordinate the delivery of medical care and to determine proper payment responsibilities when certain conditions, as provided below, are met before the release of data.

(a) HCFA receives in writing a request for a copy of the monthly Group Health Plan System from the Director of the state Medicaid agency on the agency's letterhead. The request must state that the data is needed to identify dual eligible Medicaid/Medicare HMO members for coordination of medical care and payments.

(b) The request must state that the confidentiality of the data will be maintained and that the data will be used only for the stated purposes. (c) The agency must establish reasonable administrative, technical and physical safeguards to prevent unauthorized use or disclosure of any of the data on the Group Health Plan System file.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and microfilm.

RETRIEVABILITY:

The system is indexed by health insurance claim number.

SAFEGUARDS:

Only authorized personnel have direct access to information in the Group Health Plan systems. In addition, Groups Health Plan personnel are advised that information is confidential.

Offices containing records are locked when not in use. Computer terminals are in secured areas. All buildings are locked at night.

Employees who maintain records in this system are instructed to grant access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords/numbers known only to the authorized personnel. These passwords are changed as needed. Contractor(s) who maintain records in this system are instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer and contract officer oversee compliance with these requirements.

The particular safeguards implemented are developed in accordance with Part 6, "ADP Systems Security," of the HHS ADP Systems Manual and the National Bureau of Standards Federal Information Process Standards.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Director, Office of Prepaid Health Care Operations and Oversight, 6325 Security Boulevard, Baltimore, Maryland 21207–5187

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the system manager named above and directed to the attention of the Office of Financial Management. The individuals should furnish his or her health insurance claim number as shown on social security records.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).))

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained from the group health plans (which obtained the data from the individual concerned, and the Health Insurance Master record.)

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 30960 Filed 12–21–92; 8:45 a.m.]

BILLING CODE 4120–3–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Migrant Health

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Mr. Jack Egan, Executive Secretary, National Advisory Council on Migrant Health, room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Dated: December 16, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–30920 Filed 12–21–92; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

Revision of Park Boundary; Adams National Historic Site

Whereas, Section 5 of Public Law 95–42 (91 Stat. 210) amended the Land and Water Conservation Fund Act of 1965 to authorize the Secretary of the Interior to acquire, by donation, land adjacent to an area of the National Park System; and

Whereas, Section 303 of the Act of April 11, 1972 (86 Stat. 120) authorizes the acquisition of certain lands in Quincy, Massachusetts, for Adams National Historic Site; and

Whereas, The Commonwealth of Massachusetts has expressed its intention to donate an interest in the lands immediately adjacent to the Park;

Therefore, Pursuant to section 5 of Public Law 95–42, notice is given that the boundary of Adams National Historic Site has been revised to include an additional 3.92 acres identified as Tract 01–104 on Land Status Map 01. Drawing No. 386/92,001, dated February 1992.

The map is on file and available for inspection in the office of the Land Resources Division Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106 and in the office of the National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

Dated: August 20, 1992.

Marie Rust,

Regional Director, North Atlantic Region.

[FR Doc. 92–30984 Filed 12–21–92; 8:45 am]

BILLING CODE 4310–70–M

Big Thicket National Preserve; Revision of Preserve Boundary at Little Pine Island—Pine Island Bayou Corridor Unit

Section 1 of the Act of October 11, 1974 (88 Stat. 1254), provides for the establishment of Big Thicket National Preserve and authorizes the United States to accept title to any lands, or interests in lands, located outside the boundaries of the preserve which any private person, organization, or public or private corporation may offer to donate to the United States, if the Secretary finds that such lands would make a significant contribution to the purposes for which the preserve was created and he may administer such lands as part of the preserve. The specific lands proposed for addition are described as follows:

All those certain tracts or parcels of land situated in the Daniel Easley Survey, A–20, and the Wesley Dikes Survey, A–17, Jefferson County, Texas, said tracts or parcels being more particularly described as follows:

Tract No. 176–22

All that certain tract or parcel of land lying and situate in the County of Jefferson, Texas, being 20.44 acres more or less, out of the Daniel Easely Survey, A–20, and being more particularly described as follows:

Beginning at the most easterly corner of the lands of grantor, said corner being South 60° 25′ 41″ West 3596.67 feet, more or less, from the northeast corner of the Daniel Easley Survey, A–20, said Point of Beginning having Texas Central Zone Grid Co-ordinates of North 241,389.39 and East 3,936,298.69;

Thence with the lands of grantor and the northwest right-of-way line of Loop Road and with the Boundary Line of Big Thicket National Preserve South 28° 41′ 29″ West 567.86 feet, more or less;

Thence with the dividing line between the lands of grantor and the lands, now or formerly, or O.B. Land and continuing with said Boundary Line North 60° 58′ 21″ West 1435.50 feet, more or less, to a Government marker;

Thence crossing the lands of grantor as follows: North 07° 02′ 11″ East 612.97 feet, more or less, to a Government marker; North 57° 19′ 33″ East 28.62 feet, more or less, to a Government marker; and North 57° 28′ 55″ East 38.98 feet, more or less;

Thence leaving said line and with the dividing line between the lands of grantor and the lands, now or formerly, of E. S. Westmoreland and with the Boundary Line of Big Thicket National Preserve South 60° 58′ 21″ East 165.00 feet, more or less, to the northwest right-of-way line of Stonetown Road;

Thence with the right-of-way line of said Stonetown Road and continuing with said Boundary Line as follows: South 29° 09′ 39″ West 60.00 feet, more or less; and South 60° 58′ 21″ East 1464.70 feet, more or less, to the Point of Beginning. Containing 20.44 acres of land, more or less.

Tract No. 176–23

All that certain tract or parcel of land lying and situate in the County of Jefferson, Texas, being 8.25 acres, more or less, out of the Wesley Dikes Survey, A–17, and the Daniel Easley, A–20, and being more particularly described as follows:

Beginning at a north corner of the lands of grantor, also being the intersection of a southeast right-of-way line of Best Road with the southwest line of the lands, now or formerly, of Annie L. Sheffield, said corner being South 07° 48′ 03″ East 657.44 feet, more or less, from the northwest corner of the Wesley Dikes Survey, A–17, and the northeast corner of the Daniel Easley Survey, A–20, said Point of Beginning having Texas Central Zone Grid Coordinates of North 241,336.12 and East 3,939,934.52;

Thence with the dividing line between the lands of grantor and the lands of said Annie L. Sheffield and with the Boundary Line of Big Thicket National Preserve as follows: South 60°31′10″ East 130.00 feet, more or less; and North 61°05′26″ East 363.39 feet, more or less, to a Government marker;

Thence leaving said Boundary Line and crossing the lands of grantor as follows: South 11°38′03″ and West 957.31 feet, more or less, to a Government marker; and South 72°58′55″ West 250.72 feet, more or less, in the northeast right-of-way line of Best Road;

Thence with right-of-way line of said Best Road and with said Boundary Line as follows: North 17°00′22″ West 608.31 feet, more or less, and North 29°27′52″ East 364.80 feet, more or less, to the Point of Beginning.

Containing 8.25 acres of land, more or less.

Tract No. 176–24

All that certain tract or parcel of land lying and situate in the County of Jefferson, Texas, being 4.32 acres, more or less, out of the Wesley Dikes Survey, A–17, and the Daniel Easley Survey, A–20, and being more particularly described as follows:

Beginning at the most southerly south corner of the lands of grantor in the northeast right-or-way line of Stonetown Road, said corner being South 01°43′19″ East 2570.97 feet, more or less, from the northeast corner of the Wesley Dikes Survey, A–17, and the northeast corner of the Daniel Easley Survey, A–20, said Point of Beginning having Texas Central Zone Grid Coordinates of North 239,417.66 and East 3,939,922.54.

Thence with the right-of-way line of said Stonetown Road and with the Boundary Line of the Big Thicket National Preserve North 60°31′10″ West 274.62 feet, more or less;

Thence with the southeast right-or-way line of Best Road and continuing with said Boundary Line North 29°27′52″ East 685.70 feet, more or less, to a Government marker;

Thence crossing the lands of grantor South 60°31′10″ East 274.62 feet, more or less, to a Government marker in the Southeast line of the lands of grantor; Thence with said southeast line and with said Boundary Line South 29°27′52″ West 685.70 feet, more or less, to the Point of Beginning.

Containing 4.32 acres of land, more or less.

Tract No. 176–25

All that certain tract or parcel of land lying and situate in the County of Jefferson, Texas, being 14.51 acres, more or less, out of the Wesley Dikes Survey, A–17, and the Daniel Easley Survey, A–20, and being more particularly described as follows:

Beginning at the most southerly west corner of the lands of grantor, also being the south corner of Block 27 of the Beaumont Irrigating Company's Subdivision, said corner being South 12°36′00″ West 2298.08 feet, more or less, from the northwest corner of the Wesley Dikes Survey, A–17, and the northeast corner of the Daniel Easley Survey, A–20, said Point of Beginning having Texas Central Zone Grid Co-ordinates of North 239,744.74 and East 3,939,343.97;

Thence with the dividing line between the lands of grantor and the lands the Beaumont Irrigating Company's Subdivision and with the Boundary Line of the Big Thicket National Preserve as follows: North 29°27′52″ East 660.00 feet, more or less; North 60°31′10″ West 660.00 feet, more or less; and North 29°27′52″ East 630.00 feet, more or less, to a point in the southwest right-of-way line of Best Road;

Thence leaving said dividing line and with the right-of-way line of said road and continuing with said Boundary Line as follows: South 60°12′25″ East 328.50 feet, more or less; South 17°00′22″ East 912.40 feet, more or less; and South 29°27′52″ West 660.00 feet, more or less; and

Thence leaving said right-of-way line and with the northeast right-of-way line of Stonetown Road and continuing with said Boundary Line North 60°31′10″ West 330.00 feet, more or less, to the Point of Beginning.

Containing 14.51 acres of land, more or less.

All bearings are based on Grid North.

Notice is hereby given that in accordance with the Act of October 11, 1974, the boundary of the Little Pine Island—Pine Island Bayou Corridor Unit of Big Thicket National Preserve is revised as described above, and as shown on Big Thicket National Preserve land acquisition status map, segment 176. This map is on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Southwest Region, National Park Service; and the Office of the Superintendent, Big Thicket National Preserve.

Dated: December 8, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92–30985 Filed 12–21–92; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 12, 1992. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by

_____.

[15 days after publication date]

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Mendocino County

Willits Carnegie Library (California Carnegie Libraries), 85 E. Commercial St., Willits, 92001756

Sacramento County

Eastern Star Hall, 2719 K St., Sacramento, 92001757

San Benito County

Monterey Street Historic District, Monterey St. and intersecting streets between 5th and B Sts., Hollister, 92001740

San Diego County

Bandy House, 638 S. Juniper, Escondido, 92001754

Hotel Charlotte, 637 S. Upas, Escondido, 92001752

Santa Barbara County

Campbell No. 2 Archeological Site, Address Restricted, Goleta vicinity, 92001755

Stanislaus County

Turlock Carnegie Library (California Carnegie Libraries), 250 N. Broadway, Turlock, 92001753

FLORIDA

Indian River County

Vero Beach Community Building, Old, 2146 14th Ave., Vero Beach, 92001746

Lake County

Clermont Woman's Club, 655 Broome St., Clermont, 92001747

Wakulla County

Wakulla Springs Archeological and Historic District, 1 Spring Dr., Wakulla Springs vicinity, 92001760

HAWAII

Hawaii County

Volcano Block Building, 27–37 Wianuenue Ave., Hilo, 92001748

IOWA

Muscatine County

Wilton Candy Kitchen, 310 Cedar St., Hilton, 92001742

Sioux County

Fleshman, Charles M. and Emma M. Fischer, House, 919 9th St., Hawarden, 92001743

Wright County

Burlington, Cedar Rapids & Norern Passenger Depot—Dows (Advent & Development of Railroads in Iowa MPS), 200 Railroad St., Dows, 92001744

MISSOURI

Osage County

Bonnots Mill Historic District, Roughly Old Mill Rd., Riverside Dr., Highwater Rd., Iris Ave., Wildwood Ln., Hwy. A and Main, Short and Church Hill Sts., Bonnots Mill, 92001738

Phelps County

Phelps County Courthouse, Jct. of Third and Main Sts., Rolla, 92001745

Shannon County

Round Spring Archeological District, Address Restricted, Eminence vicinity, 92001749
Two Rivers Site, Address Restricted, Eminence vicinity, 92001750

SOUTH CAROLINA

Greenville County

West End Commercial Historic District, Roughly, jct. of Pendleton, River, Augusta and S. Main Sts. and E along Main to Camperdown Way, Greenville, 92001751

TENNESSEE

Fentress County

Davidson School (Fentress County MPS), TN 85, Davidson, 92001739

Williamson County

Maplewood Farm (Williamson County MPS), 3085 Duplex—Spring Hill Rd., Spring Hill vicinity, 92001758

TEXAS

El Paso County

Mission Socorro Archeological Site, Address Restricted, Socorro, 92001741

Harris County

House at 943½ Cortlandt Street (Houston Heights MRA), 943½ Cortlandt St., Houston, 84003972

Nacogdoches County

Zion Hill Historic District (Nacogdoches MPS), Roughly bounded by Park St., Lanana Cr., Oak Grove Cemetery and N. Lanana St., Nacogdoche, 92001759

[FR Doc. 92–30915 Filed 12–21–92; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–564 (Final)]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan; Institution and Scheduling of a Final Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–564 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202–205–3198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain stainless steel butt-weld pipe fittings from Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on may 20, 1992, by Flowline Division, Markovitz Enterprises, Inc., New Castle, PA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission not later than seven (7) days after publication of this notice in the **Federal Register**. Section 201.11 of the Commission's rules is hereby waived. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

The Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. Section 207.7(a) of the Commission's rules is hereby waived. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on December 31, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 14, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 5, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 8, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the

investigation as possible any requests to present a portion of their hearing testimony *in camera.*

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 8, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 22, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 22, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: December 18, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31211 Filed 12–21–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32203]

ISS Rail, Inc.—Operation Exemption—Lawrence County, PA; Notice of Exemption

ISS Rail, Inc. (ISS), a noncarrier, has filed a notice of exemption to operate 1.9 miles of rail line located in the City of New Castle and the Township of Union, Lawrence County, PA. This line was abandoned by Consolidated Rail Corporation (Conrail) and sold to the Penn Power Company (PPC) on June 5, 1985. Subsequently, PPC, on September 19, 1991, sold the right-of-way to ISS. ISS, after its purchase, reinstalled track and on March 1, 1992, began private contract service to the Ellwood Quality Steel Corp. of Ellwood City, PA. On August 6, 1992, ISS obtained a Certificate of Public Convenience from the Pennsylvania Public Utility Commission and began intrastate common carrier operations. ISS can interchange with both CSX Transportation, Inc. and Conrail over the involved rail line.

To participate in the origination and termination of freight moving in interstate commerce, ISS seeks an exemption from the requirement under 49 U.S.C. 10901 for authorization to provide interstate rail freight service as a common carrier. ISS will commence interstate rail service, to all shippers on the line requesting service, upon publication of the involved exemption.

ISS states that it does not own or operate any other rail lines and that its revenues will not exceed those of a class III rail carrier.

Any comments must be filed with the Commission and served on: Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30983 Filed 12–21–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32187]

Missouri & Northern Arkansas Railroad Company, Inc.—Lease Acquisition and Operation Exemption—Missouri Pacific Railroad Company and Burlington Northern Railroad Company; Notice of Exemption

Missouri & Northern Arkansas Railroad Company, Inc. (MNA), a noncarrier, has filed a notice of exemption: (1) To acquire by lease or purchase and to operate seven rail lines of Missouri Pacific Railroad Company (MPRR) for a total distance of 491.27 miles in the States of Arkansas, Kansas and Missouri; and (2) to acquire incidental trackage rights over two rail lines of MPRR in the States of Arkansas and Missouri and two rail lines of Burlington Northern Railroad Company (BN) in the State of Missouri for a total distance of 60.33 miles. MNDA will become a class III rail carrier. The transaction was to be consummated on or after December 13, 1992.[1]

The seven rail lines involved in the acquisition by lease or purchase are described as follows:

(1) Lease from MP 643.13, near Pleasant Hill, MO, to MP 415.00, near Bergman, AR, a distance of 228.13 miles;

(2) Purchase from MP 415.00, near Bergman, AR, to MP 313.00, at Guion, AR, a distance of 102.00 miles;

(3) Lease from MP 313.00, at Guion, AR, to MP 259.05, at Diaz Jct., AR, a distance of 53.95 miles;

(4) Lease from MP 527.94, near Carthage, MO, to MP 544.66, near Joplin, MO, known as the Webb City Branch, a distance of 16.72 miles;

(5) Lease from MP 0.07, near Webb City, MO, to MP 6.43, near Atlas, MO, known as the Atlas Branch, a distance of 6.36 miles;

(6) Lease from MP 512.40, near Springfield, MO, to MP 506.59, near Wallis, MO, known as the Wallis Spur, a distance of 5.81 miles; and

(7) Lease from MP 340.50, near Griffith, KS, to MP 262.60, near North Clinton, MO, known as the Clinton Branch, a distance of 78.30 miles (which includes a 1.4-mile equation between MP 272.00 and MP 273.00).

The incidental trackage rights that MNA will acquire as part of the proposed transaction will be over the following lines:

(1) MPRR's line from MP 643.13, near Pleasant Hill, MO, to MP 276.80, at Neff Yard in Kansas City, MO, a distance of 27.83 miles;

(2) MPRR's line from MP 259.05, near Diaz Jct., AR, to MP 261.5, near Newport, AR, a distance of 2.45 miles;

(3) BN's line from MP 512.02 to MP 512.13 in Springfield, MO, a distance of .11 miles; and

(4) BN's line from Chaining Station 14187+07, near Aurora, MO, to Chaining Station 10637+09+2354 feet, near Springfield, MO, a distance of 29.94 miles.

MPRR currently has trackage rights over the BN lines and will assign its

[1] This proceeding is related Finance Docket No. 32188, wherein RailTex, Inc., the parent company of MNA has concurrently filed a notice of exemption for its continuance in control of MNA when MNA becomes a carrier upon consummation of the transaction described in this notice.

rights to MNA to operate over these BN lines.

All comments must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, suite 1000, 1025 Connecticut Avenue, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice of exemption contains false or misleading information, the exemption is void *ab inito*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 30981 Filed 12–21–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32188]

Railtex, Inc.—Continuance in Control Exemption—Missouri & Northern Arkansas Railroad Company, Inc.; Exemption

RailTex, Inc. (RailTex) has filed a notice of exemption to continue to control Missouri & Northern Arkansas Railroad Company, Inc. (MNA) upon MNA's becoming a carrier. MNA has concurrently filed a notice of exemption pursuant to 49 CFR 1150.31: (1) To acquire by lease or purchase and to operate 491.27 miles of rail line from Missouri Pacific Railroad Company (MPRR) in the States of Arkansas, Kansas and Missouri; and (2) to acquire 60.33 miles of incidental trackage rights over MPRR lines in the States of Arkansas and Missouri and of Burlington Northern Railroad Company in the State of Missouri.[1] MNA expected the transaction to be consummated on or after December 13, 1992.

RailTex also controls 10 other class III railroads operating in 13 states as follows: The Chesapeake and Albermarle Railroad Company, Inc.; the North Carolina & Virginia Railroad Company, Inc.; the Mid-Michigan Railroad Company, Inc.; The Austin Railroad Company, Inc. (d/b/a Austin & Northwestern Railroad); the South Carolina Central Railroad Company, Inc.; the Dallas, Garland & Northeastern Railroad Company, Inc.; the San Diego & Imperial Valley Railroad; the New Orleans Lower Coast Railroad; the Michigan Shore Railroad, Inc.; and the Indiana Southern Railroad. RailTex states that: (1) None of these railroads connect with MNA; (2) the proposed transaction is not part of a series of anticipated transactions that would connect MNA with any railroad in the RailTex corporate family; and (3) no class I railroad is involved. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, suite 1000, 1025 Connecticut Avenue, NW., Washington, DC 20036.

Decided: December 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30982 Filed 12–21–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 432X]

CSX Transportation, Inc.—Abandonment Exemption—Wake County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 5.55 miles of its Aberdeen Subdivision, Florence Division, in Wake County, NC, between mileposts SDS–20.65 at Apex and SDS–26.2 near Holly Springs, subject to environmental, public use, and standard labor protective conditions. In addition, a notice of interim trail use has been issued for the line.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 21, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 4, 1993, petitions to stay must be filed by January 4, 1993, and petitions to reopen must be filed by January 11, 1993. Requests for a public use condition must be filed by January 11, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No 432X) to:

(1) Office of the Secretary, Case Control Branch; Interstate Commerce Commission; Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5712].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927–5712.]

Decided: December 10, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30979 Filed 12–21–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–380X]

Huron and Eastern Railway Company, Inc.; Abandonment Exemption—Sanilac County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the Huron and Eastern Railway Company, Inc. (H&E), from the prior approval requirements of 49 U.S.C. 10903–10904 to permit H&E to abandon an approximately 4.6-mile line of railroad between milepost 2.33, west of Carsonville, MI, and milepost 6.9, at Sundusky, in Sanilac County, MI, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and the condition that H&E obtain a permit under the Michigan land/water interface statutes prior to salvaging bridges or culverts on the right-of-way or spreading ballast.

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[1] Finance Docket No. 32187, Missouri & Northern Arkansas Railroad Company, Inc.—Lease, Acquisition and Operation Exemption)—Missouri Pacific Railroad Company and Burlington Northern Railroad Company.

[1] See Exempt. of Rail Adandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 21, 1993. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 1, 1993. Petitions for stay must be filed by January 6, 1993. Requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by January 11, 1993. Petitions to reopen must be filed by January 19, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–380X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: John D. Heffner, suite 1107, 1700 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 14, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30980 Filed 12–21–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3; Sub–No. 105X]

Missouri Pacific Railroad Company—Abandonment Exemption—In Harris County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by the Missouri Pacific Railroad Company of its 27.92-mile line of railroad between milepost 156.99, near Katy, and milepost 184.91 at North GH&H Junction, near Houston, in Harris County, TX, subject to standard labor protection conditions and certain other conditions. The Commission also exempts this transaction from the offer of financial assistance procedures of 49 U.S.C. 10905.

DATES: These exemptions will be effective on December 22, 1992. Petitions to reopen must be filed by January 16, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–3 (Sub-No. 105X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Linda D. Fienberg, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 16, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30994 Filed 12–21–92; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreements for Mayors' Institute on City Design

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of two separate Cooperative Agreements to assist in planning, organizing, and implementing two three-day conferences to sensitize and educate mayors to be better patrons and decision-makers in matters of urban design. One award will be to a school of architecture located in a southern state (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia), and one award will be to a school of architecture located in a midwestern state (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin). Applicants must be a University with a graduate program school of architecture in urban design. funding is limited to $35,000 for each Institute. The initial period of the Cooperative Agreements will be one year with potential renewal for an additional two years.

Those interested in receiving the Solicitation package for the Midwestern Region Mayors' Institute should reference Program Solicitation PS 92–05 in their written request. Those interested in receiving the Solicitation package for the Southern Region Mayors' Institute should reference Program Solicitation PS 92–06 in their written request. Requests must be accompanied by two (2) self-addressed labels. Verbal requests for the Solicitations will not be honored.

DATES: Program Solicitations PS 92–05 and PS 92–06 are scheduled for release approximately January 7, 1993 with proposals due February 7, 1993.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave. NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92–30959 Filed 12–21–92; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Section) to the National Council on the Arts will be held on January 27, 1993 from 9 a.m.–5:30 p.m. and January 28 from 9 a.m.–5 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 25 from 9 a.m.–10 a.m. and January 28 from 4 p.m.–5 p.m. for opening remarks and policy discussion.

The remaining portions of this meeting on January 27 from 10 a.m.–5:30 p.m. and January 28 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the

[1] See Exempt. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TTY (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 15, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30954 Filed 12–21–92; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United State Code.

1. *Date:* January 11, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Reference Materials applications in Literature and General Bibliography, submitted to the Division of Research Programs, for projects beginning after July 1, 1993.

2. *Date:* January 13, 1993.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for a Special Opportunity in Archival Research, submitted to the Division of Research Programs, for projects beginning after February 1, 1993.

3. *Date:* January 14–15, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: M–14.
Program: To review applications submitted to the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.

4. *Date:* January 15, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Reference Materials applications in American Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1993.

5. *Date:* January 22, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Reference Materials applications in Visual Arts, Architecture and Performing Arts, submitted by the Division of Research Programs, for projects beginning after July 1, 1993.

6. *Date:* January 25–26, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Preservation of Material Culture Collections, submitted to the Division of Preservation and Access, for projects beginning after June 1, 1993.

7. *Date:* January 25–26, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: M–09.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organization, submitted to the Division of Public Programs, for projects beginning after July 1, 1993.

8. *Date:* January 26, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Reference Materials applications in Ancient Studies, submitted to the Division of Public Programs, for projects beginning after July 1, 1992.

9. *Date:* January 28, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications in Documentation of Collections Projects, submitted to the Division of Presentation and Access, for projects beginning after June 1, 1993.

10. *Date:* January 28–29, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of Public Programs, for projects beginning after July 1, 1993.

11. *Date:* January 28, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for projects in Humanities Studies of Science and Medicine in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after July 1, 1993.

Date: January 29, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Preservation of Material Culture Collections, submitted to the Division of Preservation and Access, for projects beginning after June 1, 1993.

13. *Date:* January 29, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Reference Materials applications in Modern History and the Social Sciences, submitted to the Division of Research Programs, for projects beginning after July 1, 1993.

David C. Fisher,

Advisory Committee, Management Officer.

[FR Doc. 92–31006 Filed 12–21–92; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Modification to NRC Enforcement Policy, 10 CFR part 2, Appendix C, Exercise of Discretion for an Operating Facility.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Nuclear Reactor Licensees.

6. *An estimate of the number of responses:* 36 annually.

7. *An estimate of the total number of hours required annually to complete the requirement or request:* 1,440 hours (40 hours per request).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Applicable.

9. *Abstract:* The proposed change to Appendix C, 10 CFR part 2, modifies NRC's Enforcement Policy to more fully describe the circumstances in which the NRC may exercise enforcement discretion. This provision relates to circumstances which may arise when a licensee's compliance with a Technical Specification Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. A licensee seeking the exercise of enforcement discretion must provide a written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0136), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 11th day of December 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–31028 Filed 12–21–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31609; File No. SR–NASD–91–73]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Failures to Comply with Arbitration Awards

December 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article VI, Section 3 of the NASD By-Laws. New language is italicized; deleted language is in brackets.

[1] The NASD has amended the proposed rule change three times subsequent to its original filing on December 26, 1991. Amendment No. 1, submitted on May 6, 1992, provided the results of a vote of the NASD membership on the proposed rule change. The proposal was approved with 2,070 voting in favor, 204 opposed and 9 not voting, out of 2,283 ballots received. On July 2, 1992, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 was submitted to add additional descriptive language to the filing. Amendment No. 3 was submitted on November 19, 1992 to conform the language of the filing to that of section 15A(h)(3) of the Act. As originally filed by the NASD, the proposal provided for the suspension or cancellation of membership or registration on a summary basis. Amendment No. 3 provides that such suspensions or cancellations will be in accordance with revocations proceedings provided under Article VI of the NASD's Code of Procedure. The substance of these amendments is included in this notice. Copies of all three amendments are available in the Commission's Public Reference Room.

Article VI of the NASD By-Laws Dues, Assessments and Other Charges

Suspension or Cancellation of Membership or Registration [for Non-Payment of Dues]

Sec. 3. The Corporation after fifteen (15) days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments or other charges, or for failure to furnish any information or reports requested pursuant to section 2 of this Article, *or for failure to comply with an award of arbitrators properly rendered pursuant to section 41 of the Code of Arbitration Procedure, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend Article VI, section 3 of the NASD By-Laws to permit the NASD to suspend the membership or registration of a party that has failed to comply with a valid arbitration award, where the award is not the subject of a motion to vacate or modify the award or where such a motion has been denied.

The NASD is concerned regarding the significant number of referrals made to District Business Conduct Committees for failure to pay arbitration awards, and the impact such referrals have had on the Districts' complaint dockets. In order to address this problem, the NASD is proposing to extend its suspension and cancellation procedures (hereinafter referred to jointly as "revocation proceedings") to include situations in which members or registered persons fail to comply with arbitration awards.

Currently, the NASD's Code of Arbitration Procedure contains a Resolution of the Board of Governors

("Resolution") (paragraph 3744, page 3726 of the NASD Manual) which states that failure to pay an arbitration award properly rendered by any one of several arbitration forums may be deemed "conduct inconsistent with just and equitable principles of trade and a violation of Article III, section 1 of the Rules of Fair Practice" of the NASD. The Resolution contemplates the bringing of a disciplinary action against a member firm or associated person for failing to pay an arbitration award rendered by the NASD, or a self-regulatory organization which administers the Securities Industry Conference on Arbitration's Uniform Code ("Uniform Code"), or by the American Arbitration Association ("AAA").

The NASD's Arbitration Department has referred numerous cases to the NASD's District Business Conduct Committees for disciplinary action for failing to pay an arbitration award.[2] The NASD also routinely investigates and brings disciplinary actions for failing to pay arbitration awards whenever such violations are discovered, whether through referrals from other NASD departments, referrals from other self-regulatory organizations, through routine or non-routine investigations or through customer complaints.

In addition to enforcing arbitration awards rendered in NASD arbitrations, the intent of the Resolution was to permit the NASD to enforce awards rendered by other self-regulatory organizations that administer the Uniform Code, as well as to the AAA. The NASD regarded the broad scope of the resolution as necessary and appropriate if the NASD were to recommend arbitrations forums other than its own, such as AAA, as appropriate for resolution of disputes. The recommendation of alternative forums by securities industry self-regulatory organizations was encouraged by the SEC to alleviate the perception of unfairness in mandatory securities industry arbitration.

The NASD has determined, however, that bringing formal disciplinary actions for failure to pay an arbitration award rendered by the NASD's arbitration forum may not be the most efficient method of disposing of such matters. The proposal would allow the NASD, in addition to bringing a formal disciplinary action, to employ its revocation proceedings for a member's or associated person's failure to pay an arbitration award rendered by an NASD arbitration panel. Thus, with respect to arbitration awards rendered in the NASD's arbitration forum, and which are subject to the NASD's administrative control, the NASD will not be required to initiate a formal disciplinary action against a member or associated person for failing to pay an arbitration award.[3] As with formal disciplinary actions brought pursuant to the Resolution, such revocation proceedings are proposed to be available only where a timely motion to vacate or modify the arbitration award has not been failed.

The Resolution also provides that the failure to submit a dispute to arbitration as required by the NASD's Arbitration Code or failure to appear or to produce documents as directed pursuant to the NASD's Arbitration Code may be deemed "conduct inconsistent with just and equitable principles of trade" in violation of Article III, section 1 of the Rules of Fair Practice. These provisions also contemplate the bringing of a disciplinary action against a firm or associated person for failing to submit a claim to arbitration as required or for failing to appear or produce documents as required. The NASD's Arbitration Department will continue to evaluate cases for referral for disciplinary action where a member or associated person has failed to submit a claim to arbitration as required or where a member or associated person has failed to appear or produce documents as required. Finally, the NASD also will continue to evaluate cases for referral for disciplinary action where it is discovered that a member or associated person has failed to pay an arbitration award validly rendered by an arbitration forum other than the NASD or failure to pay NASD awards entered against it in a timely manner in accordance with section 41(h) of the Code.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act. The proposed rule change is designed to encourage member firms and associated persons to pay duly rendered arbitration awards and to ease the burden on the District Business Conduct Committee's complaint docket. The payment of arbitration awards and the facilitation of the arbitration process, in general, will assist in the protection of investors and further the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 12, 1993.

[2] In 1991 the Arbitration Department referred 122 cases to the NASD's district offices for investigation of failure to pay an arbitration award rendered in the NASD's arbitration forum. In 1990 the Arbitration Department referred 82 cases for failure to pay arbitration awards.

[3] Revocation proceedings implemented under Article VI, Section 3 of the By-Laws or subject to review by a hearing panel upon written request of the aggrieved member or associated person. See Article VI or the NASD's Code of Procedure.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30993 Filed 12–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

December 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

New York State Electric & Gas Corp.
3.75% Cum. Pfd., $100.00 Par Value (File No. 7–9820)
New York State Electric & Gas Corp.
8.80% Pfd. Cum. Ser., $100.00 Par Value (File No. 7–9821)
New York State Electric & Gas Corp.
8.48% Cum. Pfd. Ser., $25.00 Par Value (File No. 7–9822)
Niagra Mohawk Power Corp.
3.40% Pfd. Ser., $100.00 Par Value (File No. 7–9823)
Niagra Mohawk Power Corp.
3.60% Pfd. Ser., $100.00 Par Value (File No. 7–9824)
Niagra Mohawk Power Corp.
3.90% Pfd. Ser., $100.00 Par Value (File No. 7–9825)
Niagra Mohawk Power Corp.
4.10% Pfd. Ser., $100.00 Par Value (File No. 7–9826)
Niagra Mohawk Power Corp.
5.25% Pfd. Ser., $100.00 Par Value (File No. 7–9827)
Niagra Mohawk Power Corp.
4.85% Pfd. Ser., $100.00 Par Value (File No. 7–9828)
Niagra Mohawk Power Corp.
6.10% Pfd. Ser., $100.00 Par Value (File No. 7–9829)
Niagra Mohawk Power Corp.
7.72% Pfd. Ser., $100.00 Par Value (File No. 7–9830)
Niagra Mohawk Power Corp.
Adj. Rte. Pfd. Ser. A, $25.00 Par Value (File No. 7–9831)
Niagra Mohawk Power Corp.
8.75% Pfd. Ser., $25.00 Par Value (File No. 7–9832)
Norfolk Southern Railway Co.
$2.60 Com. Pfd., Ser. A, No Par Value (File No. 7–9833)
Northern Indiana Public Service, Co.
Adj. Rte. Cum. Pfd., Ser. A, $50.00 Par Value (File No. 7–9834)
Northern States Power Co.
$3.60 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9835)
Northern States Power Co.
$4.08 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9836)
Northern States Power Co.
$4.10 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9837)
Northern States Power Co.
$4.11 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9838)
Northern States Power Co.
$4.16 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9839)
Carter Hawley Hale Stores
Common Stock, $.01 Par Value (File No. 7–9840)
Charles Schwab Corp.
Common Stock, $.01 Par Value (File No. 7–9841)
El Paso Refinery, L.P.
Pfd. Units, No Par Value (File No. 7–9842)
Reading & Bates Corp.
Common Stock, $.05 Par Value (File No. 7–9843)
Resource Mortgage Capital, Inc.
Common Stock, $.01 Par Value (File No. 7–9844)
Central Maine Power Co.
Div. Ser. Pfd., 7 7/8% Ser., $100.00 Par Value (File No. 7–9845)
Northern States Power Co.
$4.56 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9846)
Northern States Power Co.
$6.80 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9847)
Northern States Power Co.
$7.00 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9848)
Northern States Power Co.
$7.84 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9849)
Northern States Power Co.
$8.80 Ser. Cum. Pfd., $100.00 Par Value (File No. 7–9850)
NS Group, Inc.
Common Stock, No Par Value (File No. 7–9851)
Nuveen California Select Quality Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9852)
Nuveen Municipal Advantage Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9853)
Nuveen Municipal Market Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9854)
Nuveen Municipal Value Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9855)
Nuveen New Jersey Investment Quality Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9856)
Nuveen New York Select Quality Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9857)
Nuveen Pennsylvania Investment Quality Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9858)
Nuveen Premium Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9859)
Ogden Projects, Inc.
Common Stock, $.50 Par Value (File No. 7–9860)
Ohio Edison Co.
3.90% Pfd., $100.00 Par Value (File No. 7–9861)
Ohio Edison Co.
4.40% Pfd., $100.00 Par Value (File No. 7–9862)
Ohio Edison Co.
4.56% Pfd., $100.00 Par Value (File No. 7–9863)
Ohio Edison Co.
4.44% Pfd., $100.00 Par Value (File No. 7–9864)
Ohio Edison Co.
7.24% Pfd., $100.00 Par Value (File No. 7–9865)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 8, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30935 Filed 12–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Chart Industries, Inc.

Common Stock, $.01 Par Value (File No. 7–9798)
First Colony Corporation
Common Stock, No Par Value (File No. 7–9799)
Maybelline, Inc.
Common Stock, $.01 Par Value (File No. 7–9800)
Tejas Gas Corporation
Common Stock, $.25 Par Value (File No. 7–9801)
Uni-Marts, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–9802)
Betz Laboratories, Inc.
Common Stock, $.10 Par Value (File No. 7–9803)
Santa Fe Energy Trust
Depositary Shares (evidenced by Secure Principal Energy Receipts consisting of interests in Santa Fe Energy Trust and a United States Treasury Obligation): No Par Value (File No. 7–9804)
Sunair Electronics, Inc.
Common Stock, $.10 Par Value (File No. 7–9805)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 8, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30933 Filed 12–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Chiquita Brands International, Inc.
$1.32 Dep. Shares (rep. ⅛ share of Series C Mand. Exch. Cum. Pref. Stock) (File No. 7–9791)
Hibernia Corporation
Rights (expires December 10, 1992) (File No. 7–9792)
NTN Communications, Inc.
Common Stock, $0.005 Par Value (File No. 7–9793)
Terra Industries, Inc.
Common Stock, No Par Value (File No. 7–9794)
Thermo Fibertek, Inc.
Common Stock, $.01 Par Value (File No. 7–9795)
UDC Homes, Inc.
Common Stock, $.01 Par Value (File No. 7–9796)
Worldtex, Inc.
Common Stock, $.01 Par Value (File No. 7–9797)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 8, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30932 Filed 12–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Digitran Systems Incorporated
8% Cum. Pfd Stock (File No. 7–9806)
First Chicago Corporation
Depositary Shares, 1/28 of a share of 8.45 Pc. Cum. Pfd Stock Series E (File No. 7–9807)
Tejas Gas Corporation
Common Stock, $0.25 Par Value (File No. 7–9808)
First Colony Corporation
Common Stock, $0.01 Par Value (File No. 7–9809)
Bank of New York Company, Inc.
Depositary Shares, 8.60 Cum. Pfd Stock (File No. 7–9810)
Chart Industries, Inc.
Common Stock, $0.01 Par Value (File No. 7–9811)
Wellsford Residential Property Trust
Common Shares of Beneficial Interest, $0.01 Par Value (File No. 7–9812)
Maybelline, Inc.
Common Stock, $0.01 Par Value (File No. 7–9813)
Sunair Electronics, Inc.
Common Stock, $.10 Par Value (File No. 7–9814)
Health Care Reit
Common Stock, $1 Par Value (File No. 7–9815)
General Motors Corporation
Series G 9.12 Pc Depositary Shares (File No. 7–9816)
MuniYield New York Insured Fund III
Common Stock, $.10 Par Value (File No. 7–9817)
Banco Bilbao Vizcaya International Gibraltar Limited
American Depositary Shares, Non Cum. Guaranteed Pfd Stock (File No. 7–9818)
Betz Laboratories, Inc.
Common Stock, $.10 Par Value (File No. 7–9819)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 8, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-30934 Filed 12-21-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1740]

U.S. Organizations for the International Radio Consultative Committee (CCIR) and International Telegraph and Telephone Committee (CCITT); Meeting

The Department of State announces that the U.S. Organizations for the International Radio Consultative Committee (CCIR National Committee) and International Telegraph and Telephone Consultative Committee (CCITT National Committee) will hold a joint open meeting, January 12, 1993 at the Department of State, 2201 C Street, NW., Washington, DC, in room 1105, from 9:30 a.m. to 12:30 p.m.

During the afternoon the two National Committees will hold separate meetings—the CCIR National Committee will meet in room 1207; at the same time, the CCITT National Committee will hold its open meeting in room 1105, beginning at 1:30 p.m.

The CCIR and CCITT are permanent organs of the International Telecommunication Union (ITU), a specialized agency of the United Nations, established by the International Telecommunication Convention.

The agenda for the meetings will consist of a briefing of the recently concluded ITU's Additional Plenipotentiary Conference, a review of the issues related to the January meetings of the CCIR Resolution 106 and CCITT Resolution 18 Groups, and the joint meeting between those two international groups scheduled for January 22 in Geneva.

Entrance to the Department of State is controlled but can be facilitated by making attendance arrangements in advance. Persons planning to attend the meeting should so advise this office at: (202) 647-0201, (fax (202) 647-7407) no later than two days before the meeting. Notification should include name, date of birth and Social Security number. All attendees must use the C Street entrance.

Dated: December 7, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

[FR Doc. 92-30949 Filed 12-21-92; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice 1739]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Tuesday, January 26, 1993, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, telephone (703) 875-7800, prior to January 26. All attendees must use the C Street entrance to the building.

Dated: December 7, 1992.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 92-30950 Filed 12-21-92; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 1741]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m on February 17, April 21, May 19, and June 16, 1993. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 39th Session of the Internal Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for late 1993 at the IMO headquarters in London, England.

Agenda items include preparation for the 39th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G-TTM), 2100 Second Street, SW., Washington, DC 20593-0001. Telephone: (202) 267-1389.

Dated: December 1, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-30947 Filed 12-21-92; 8:45 am]

BILLING CODE 4710-79-M

Office of the Secretary

[Public Notice No. 1742]

McAllen/Mission/Hidalgo, Texas, (Anzalduas International Crossings), Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a vehicle bridge and a railroad bridge across the Rio Grande River from McAllen/Mission/Hidalgo, Texas, to Reynosa, Tamaulipas, Mexico.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding the application in writing by January 21, 1993, to Mr. Irwin Rubenstein, Coordinator, U.S. Mexico Border Affairs, ARA/MEX, room 4258, U.S. Department of State, Washington, DC 20520.

The application and related documents made part of the record to be

considered by the Department of State in connection with this application are available for inspection in the Office of Mexican Affairs during normal business hours.

Any questions relating to this notice may be addressed to the Coordinator, U.S.-Mexico Border Affairs, at the above address or by telephone, No. (202) 647-9894.

Dated: December 14, 1992.

Irwin Rubenstein,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 92-30953 Filed 12-21-92; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 92-10-7, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning December 1, 1992, we have projected non-fuel costs based on the year ended September 30, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92-12-20 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982, level:

Atlantic—1.2782

Western Hemisphere—1.1872

Pacific—1.5854

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: December 16, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-31040 Filed 12-21-92; 8:45 am]

BILLING CODE 4910-62-M

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA) Public Law 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 92-10-4 established the currently effective two-month SFFL applicable through November 30, 1992.

In establishing the SFFL for the two-month period beginning December 1, 1992, we have projected non-fuel costs based on the year ended September 30, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92-12-19 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.5633

Latin America—1.4406

Pacific—2.0465

Canada—1.4570

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: December 16, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-31039 Filed 12-21-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sioux Gateway Airport, Sioux City, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sioux Gateway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101-508 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 21, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO. 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Randall S. Curtis, Executive Director, Sioux Gateway Airport, at the folowing address: Sioux Gateway Airport Authority, Sioux Gateway Airport, 2403 Ogden Ave., Sioux City, IA 51110.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Sioux Gateway Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, PFC Coordinator, FAA, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106, (816) 426-7425. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sioux Gateway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 8, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Sioux Gateway Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 12, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1993.

Proposed charge expiration date: May 1, 1994.

Total estimated PFC revenue: $200,824.

Brief description of proposed projects: Taxiway "C" Extension; Installation of Fencing and Purchase of Snow Removal Equipment; Security Access System Installation; Runway Sweeper Acquisition; Taxiway 'A" and "E" Rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: none.

Any person may inspect the application in person at the FAA office

listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sioux Gateway Airport, Sioux City, IA.

Issued in Kansas City, Missouri on December 8, 1992.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 92-31001 Filed 12-21-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 92-20; Notice 1]

Petition for Approval of Alternate Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of preliminary determination.

SUMMARY: The odometer disclosure requirements set forth procedures (49 CFR 580.11) by which a State may petition for approval of alternate requirements to those in §§ 580.5 and 580.7 which identify the required elements of the disclosure statement. The State of Oregon has submitted a petition pursuant to 49 CFR 580.11 for approval of alternate disclosure requirements. On balance, NHTSA believes that the proposed system poses some threat to the integrity of the current system without sufficient benefit to outweigh that threat. Accordingly, NHTSA preliminarily denies Oregon's petition for approval of the proposed alternate disclosure requirements.

DATES: Comments are due no later than January 21, 1993.

ADDRESSES: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Kathleen DeMeter, Office of the Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-1834.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Mileage Act of 1986 (Pub. L. 99-579), 15 U.S.C. 1981, *et seq.* (TIMA) requires each person transferring ownership of a motor vehicle to disclose the vehicle's mileage on the vehicle's title. The law directs the States to conform their titles and titling procedures to enable the titles to be used for odometer disclosure. The implementing regulations, 49 CFR part 580, set forth specific procedures and requirements which must be followed by States and those involved with commercial transactions.

The TIMA permits the administrative approval by NHTSA of alternate methods of odometer disclosure, provided those alternate methods are consistent with the purposes of the Act. The original final rule issued by NHTSA (53 FR 29464, August 5, 1988), set forth procedures (49 CFR 580.11) by which a State could petition for approval of alternate requirements to those in §§ 580.5 and 580.7 which identify the required elements of the disclosure statement.

The State of Oregon has submitted a petition pursuant to 49 CFR 580.11 for approval of alternate disclosure requirements.

Basis for the Petition

Oregon seeks approval for alternative procedures to those in 49 CFR 580.5(c) which require the titled owner of a vehicle to disclose the mileage on the title and not on a separate reassignment form. Oregon proposes to allow a titled owner to use a secure separate disclosure/reassignment document when the Motor Vehicle Division of the Oregon Department of Transportation (MVD) has possession of the title certificate because it has been submitted to perfect the security interest of the vehicle.

The Oregon petition states:

> In Oregon, perfecting a security interest in a vehicle is accomplished by applying for a title reflecting that interest. The title certificate must be surrendered to us * * *. It is not always possible * * * to meet all requirements for title within the 10 days allowed [to perfect a security interest] under federal bankruptcy law. In some cases, incomplete requests for title [where the odometer disclosure has not been completed] are submitted to us solely to perfect a security interest in a timely manner * * *. If a transaction is returned, perfection does not occur * * *.

The petition further states that "[u]nder current Oregon law, we cannot return a title certificate where there is a security interest holder, even though the seller and buyer have not completed the required odometer disclosure."

Accordingly, Oregon proposes to "adopt rules that would allow sellers and buyers (including persons in whose name the title was issued) to use a separate secure odometer disclosure/reassignment form when [the Oregon MVD has] and retain[s] possession of, the title certificate." Under the proposed alternative, the title certificate would be retained in division headquarters. When the completed secure odometer disclosure/reassignment form is received, it would be processed with the title certificate, and would become part of the title history of the vehicle.

NHTSA requested that Oregon provide a copy of applicable State laws and regulations and additional information supporting the petition. In an addendum to the petition, Oregon provides an example of how the alternative process would work. Party A (titled owner) sells a vehicle with the title. Party A fails to complete the required odometer disclosure on the title. The title is given to Party B (the buyer). Party B finances the purchase of the vehicle and surrenders the title to the lender. The lender submits the title to the MVD in order to receive a new title showing Party B as owner and lender as holder of a security interest in the vehicle. The title is submitted without the required odometer disclosure. The title is retained by the MVD, which sends a secure odometer disclosure/reassignment to Party B requesting the odometer disclosure be made on the form by party A and signed by both A and B. When the completed secure odometer disclosure/reassignment form is submitted back to MVD, it is matched with the title and the title application is processed.

Preliminary Determination

NHTSA has various substantive concerns regarding Oregon's proposal. NHTSA's central concern is that there does not appear to be sufficient justification for deviating from Congress' intent that odometer disclosures be made on the titles to vehicles and that separate disclosures be used as little as possible. Oregon provides no reason why, to follow the example set forth above, Party A cannot make the required disclosure. The example states merely that A does not make the disclosure. The remaining rationale behind the proposed alternative is that once A has failed to make the disclosure, B is allowed to avail himself of the alternate procedure to protect the security interest of B's financing lender.

This system appears to reward both A and B for being negligent—A for not making the disclosure and B for accepting a title without a proper disclosure. Moreover, since the seller's signature block is normally used for

both odometer disclosure and transfer of ownership of the vehicle, once A signs the title to accomplish the transfer of ownership, A has also, in effect, signed an incomplete, and therefore, false odometer disclosure statement.

In addition, NHTSA is concerned about the efficacy of the proposed system. If B could not get A to complete the title properly at the time of transfer of the title, why will B be any more successful in getting A to complete a separate form at some later date when A no longer has any stake in the process?

Oregon argues that its proposed system conforms to the intent of the Federal requirements because by the time the parties complete Oregon's proposed assignment form, the title will have been submitted to the State, which will issue a new title after the submission of the proposed separate form. Thus, any benefit to having the disclosure on the title, (i.e., protection and information for future buyers and access of buyer to title) will be reduced. The proposed procedure, it is further claimed, is consistent with Federal intent because the process will be controlled by MVD, and MVD's ability to detect odometer fraud will not be hampered.

NHTSA agrees that because of the immediate issuance of a new title, the proposed system would not have an adverse impact on the protection afforded to future buyers. NHTSA also respects MVD's commitment to control the forms and enforce the odometer laws. NHTSA disagrees, however, that there will be no effect on buyer access to title. In the example above, A could get B to give A a regular power of attorney to effect title transfer, in which case B might not see the title until the sale is complete and the title is signed, contrary to Congressional intent. Further, even if B does sign the title, a system that does nothing to discourage A from failing to provide the proper written mileage disclosure undermines Congressional intent that buyers receive written, accurate mileage information useful in the decision-making process on whether to purchase and how much to pay for a vehicle. For example, A could intentionally neglect to execute the written disclosure on the title because A has verbally misrepresented the mileage of the vehicle to B. When B contacts A to obtain a written disclosure on the proposed assignment form provided by MVD, A may still refuse to execute the disclosure because of the earlier verbal misrepresentation of the mileage. B would then have to convince A to negate the transfer and refund payment, and if unable to do so, would be forced to take legal action.

On balance, NHTSA believes that the proposed system introduces a potential threat to the integrity of the current system without a sufficient countervailing benefit. Rather than encouraging parties to obey the law while accommodating the lender's security interests, the proposed system permits parties to vehicle transactions to avoid the law with questionable justification, and without any adverse consequences. Accordingly, NHTSA preliminarily denies Oregon's petition for approval of alternate disclosure requirements.

Written Comments

Interested persons are invited to comment on this notice. It is requested, but not required, that ten copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by January 21, 1993. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments received after the comment closing date will also be considered. However, action on the petition may proceed at any time after that date. Following the close of the comment period, NHTSA will publish a final determination on the petition responding to the comments. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments should enclose, in the envelope with their comments, a self-addressed, stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 92–20, Notice 1 of the NHTSA Docket Section in room 5109, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

Issued on: December 17, 1992.

Paul Jackson Rice,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 92–30697 Filed 12–21–92; 8:45 am]

BILLING CODE 4910-59-M

Announcing the Tenth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the tenth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. At this meeting the Committee will discuss offset frontal research, biomechanics, harm analysis, and NHTSA's Plan for Intelligent Vehicle Highway Systems. A status report on the recent activities of the Crashworthiness and Crash Data Subcommittees will also be presented.

DATE AND TIME: The meeting is scheduled to begin at 10:30 a.m. on Friday, January 15, 1993, and conclude at 4 p.m. that afternoon.

ADDRESSES: The meeting will be held in room 6248 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street SW.,

Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Mary Coyle, Office of Research and Development, 400 Seventh Street SW., room 6206, Washington, DC 20590, telephone: (202) 366–5926.

Issued on: December 16, 1992.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 92–30939 Filed 12–21–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92–52; Notice 1]

Tentative Determinations That Certain Nonconforming Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Tentative determinations that certain nonconforming vehicles are eligible for importation.

SUMMARY: This notice requests comments on tentative determinations by the National Highway Traffic Safety Administration (NHTSA) that certain BMW, Mercedes-Benz, and Porsche passenger cars that were not originally manufactured to comply with the Federal motor vehicle safety standards are nevertheless eligible for importation into the United States because they

(1) Are substantially similar to motor vehicles which were originally manufactured to conform to the Federal standards and to be imported into and sold in the United States, and

(2) Are capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

DATES: The closing date for comments on these tentative determinations is January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined, either pursuant to a petition or on its own initiative, that the motor vehicle is

> substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards,

(section 108(c)(3)(A)(i)(I)) or that, "where there is no substantially similar United States motor vehicle," the agency has determined that

> the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate * * *

(section 108(c)(3)(A)(i)(II)).

The phrases "substantially similar" and "capable of being readily modified" are not defined in Public Law 100–562, the statute that added the import eligibility requirements to the Act. In the absence of a statutory definition, NHTSA takes the position that a vehicle is "substantially similar" to one that was originally manufactured and certified for importation into and sale in the United States if there are no more than minor differences between the two vehicles in visual appearance and structural detail, aside from any differences attributable to the noncompliance of one vehicle with the Federal motor vehicle safety standards.

NHTSA regards a vehicle as "capable of being readily modified" if its components that are subject to the Federal motor vehicle safety standards may be easily replaced with parts intended as replacements for conforming parts on substantially similar certified vehicles. These include, but are not limited to, components such as tires (Standard No. 109), rims (Standard No. 110), wheel covers (Standard No. 211), glazing (Standard No. 205), reflecting surfaces (Standard No. 107), controls and displays (Standard No. 101), lighting devices (Standard No. 108), brake hoses (Standard No. 106) and brake fluid (Standard No. 116).

To address compliance with standards that apply to the vehicle itself, as opposed to any of its equipment items, NHTSA focuses on whether the modifications necessary for conformance are "readily" achievable. Information demonstrating that compliance can be achieved without major structural modifications or destructive component testing is relevant to this issue. An example of a major structural modification would be strengthening of the rear frame rails or rear body structure to achieve conformance with Standard No. 301 *Fuel System Integrity*. An example of a non-major structural modification would be installation of windshield retaining clips to achieve conformance with Standard No. 212 *Windshield Mounting*, or installation of reinforcing beams in doors to achieve conformance with Standard No. 214 *Side Door Strength*. In determining whether a vehicle is "capable of being readily modified," NHTSA finally presumes that a non-conforming vehicle that has a substantially similar U.S. certified counterpart will be more likely to incorporate structural features that are capable of being modified to conform than will a vehicle for which there is no substantially similar U.S. certified counterpart.

Over the years, the typical practice of manufacturers outside the United States who wish to sell passenger cars in the American market has been to offer versions of their home market products that they have re-engineered to conform to the Federal motor vehicle safety standards. To so-called "gray market" is comprised of foreign motor vehicles not originally manufactured to conform to the U.S. standards. In many instances, these vehicles are equipped with a body whose visual appearance, other than lighting equipment, bumpers, and rear view mirrors, is identical to that of U.S. certified vehicles, and share with those vehicles a large number of identical structural components.

In making a determination of eligibility for importation, NHTSA is required by section 108(c)(3)(C)(iii) of the Act to give due consideration to any test data or other information available to it. The primary information available to the agency consists of its own records pertaining to the importation of noncomplying motor vehicles under bond over the years, and data submitted by the importers of those vehicles to substantiate statements that they had been brought into compliance with all applicable Federal motor vehicle safety standards.

On November 13, 1990, NHTSA published a Notice of Final Determinations (55 FR 47418) identifying 172 separate models of nonconforming passenger cars as eligible for importation into the United States. Those determinations were based on the finding that each of the covered vehicles is substantially similar to a vehicle of the same model year that was originally manufactured for importation into and sale in the United States and that was certified under section 114 of the Act, and that each of the covered vehicles is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Of the passenger cars for which final

determinations were made, 59 were BMW models, 83 were Mercedes-Benz models, and 19 were Porsche models. These accounted for all but 11 of the vehicles that were the subject of the first Final Determinations that NHTSA made upon its own initiative. A complete listing of these vehicles, by make, model, and model year, appears in an Annex to the Notice of Final Determinations at 55 FR 47421–22.

NHTSA continued to review manufacturers' records of vehicles certified for sale in this country and its enforcement files to identify vehicles for which a sufficient number of acceptable compliance statements had been submitted to permit a determination of import eligibility to be made. On November 30, 1991, the agency published a second Notice of Final Determinations (56 FR 58603), identifying an additional 95 models of passenger cars as eligible for importation into the United States. Of those passenger cars, 37 were BMW models, 47 were Mercedes-Benz models, and 3 were Porsche models, accounting for all but 8 of the vehicles that were the subject of those Final Determinations. A complete listing of these vehicles, by make, model, and model year, appears in Annex A to the Notice of Final Determinations at 56 FR 58604.

In addition to the final determinations of import eligibility that it made on its own initiative under section 108(c)(3)(C)(i)(II) of the Act, NHTSA has also made a number of final determinations under section 108(c)(3)(C)(i)(I), based on petitions submitted by importers of motor vehicles who have registered with the agency pursuant to 49 CFR part 592. Of the 17 such determinations that have been made to date, 6 have pertained to BMW vehicles, and 4 to Mercedes-Benz vehicles.

Based on the volume of import eligibility determinations that it has made with respect to BMW, Mercedes-Benz, and Porsche passenger cars, as well as its understanding that a U.S. certified counterpart exists for virtually every such vehicle manufactured for sale in other countries, NHTSA believes that justification exists for the agency to make a blanket determination that, with certain limited exceptions, all BMW, Mercedes-Benz, and Porsche passenger cars manufactured before September 1, 1989, are eligible for importation. September 1, 1989, was selected as the cutoff date because all passenger cars manufactured after that date must comply with the automatic restraint requirements of Standard No. 208 *Occupant Crash Protection*. NHTSA has denied several import eligibility petitions for passenger cars manufactured after September 1, 1989, because the importer has failed to submit adequate data to verify that the car is capable of being readily modified to conform to the standard's automatic restraint requirements. NHTSA also selected September 1, 1989, as the cutoff date because a decision as to whether a passenger car equipped with an air bag meets the automatic restraint requirements would impose an undue burden on U.S. customs inspectors.

As specified in the Annex to this notice, the blanket import eligibility determinations that NHTSA has tentatively made do not include Model ID 114 and 115 Mercedes-Benz vehicles with sales designations "long," "station wagon," or "ambulance," BMW vehicles in the M1 and Z1 series, and the Porsche 959. These vehicles have been excluded from the blanket determinations because they do not appear to have any substantially similar U.S. certified counterparts.

If these tentative determinations are ultimately made final, they have the potential for reducing the administrative burden and costs associated with NHTSA's processing of individual import eligibility petitions on the vehicles covered while eliminating the hardship faced by importers in awaiting decisions on those petitions. Additionally, these tentative determinations would promote efficiency by producing a comprehensive list of BMW, Mercedes-Benz, and Porsche passenger cars manufactured prior to September 1, 1989, that are eligible for importation, supplanting the need for importers to rely on **Federal Register** notices of final determination that would otherwise be issued on an individual basis as petitions for the covered vehicles are received and processed by NHTSA.

Tentative Determinations

Accordingly, on the basis of the foregoing, NHTSA hereby tentatively determines that each of the passenger cars listed in the Annex to this notice is substantially similar to a passenger car originally manufactured for importation into and sale in the United States, certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and of the same model year, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Proposed Importation Code Numbers for Vehicles Covered by These Tentative Determinations

The importer of a vehicle admissible under any final determination must indicate on the Form HS–7 accompanying entry the appropriate importation code number indicating that the vehicle is eligible for entry. Proposed importation code numbers for the vehicles that are covered by these tentative determinations appear in the first column of the list in the Annex to this notice under the heading "Proposed VSA#." If these tentative determinations are ultimately made final, the import eligibility numbers that NHTSA has proposed would replace any individual numbers that NHTSA has assigned in final determinations that it has previously made on all covered BMW, Mercedes-Benz, and Porsche vehicles. The agency invites comments on this aspect of the proposal.

Comments

Section 108(c)(3)(C)(iii) requires NHTSA to provide a minimum period for public notice and comment on the determinations made on its own initiative consistent with ensuring expeditious, but full consideration and avoiding delay by any person. NHTSA believes that a minimum comment period of 30 days is appropriate for this purpose. Interested persons are invited to submit comments on the tentative determinations described above. It is requested, but not required, that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of NHTSA's final determination will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 21, 1993.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and 1397(c)(3)(C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on: December 15, 1992.

Marion C. Blakey,

Administrator.

ANNEX A.—PASSENGER CARS MANUFACTURED BEFORE SEPTEMBER 1, 1989, COVERED BY TENTATIVE DETERMINATIONS

Proposed VSA#	Make	Models covered
77	Mercedes-Benz.	All except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance."

ANNEX A.—PASSENGER CARS MANUFACTURED BEFORE SEPTEMBER 1, 1989, COVERED BY TENTATIVE DETERMINATIONS—Continued

Proposed VSA#	Make	Models covered
78	BMW	All except the M1 and Z1 series.
79	Porsche	All except Model 959.

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DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 40-92]

Treasury Notes of December 31, 1994, Series AH-1994 (CUSIP No. 912827 H9 6)

Washington, December 16, 1992.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent to the highest yield bid at which bids were accepted. The interest rate on the Notes and the price equivalent to the highest yield at which bids were accepted will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in oook-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book entry from, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and the Bureau of the Public Debt, Washington, DC 20239-1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and

forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amounts of bids received and accepted, the highest yield accepted, and the interest rate on the notes. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest yield at which bids were accepted will be prorated if necessary. All successful competitive bidders, regardless of the yields they each bid, will be awarded securities at the highest yield at which bids were accepted. After the determination is made as to which bids are accepted, an interest rate will generally be established, at a ⅛ of one percent increment, which produces a price equivalent to the highest yield at which bids were accepted and is closest to, but not above, par. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price equivalent to the highest yield at which bids were accepted will be determined, and each noncompetitive bidder and each successful competitive bidder will be required to pay such price for their securities. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb most or all of the public offering, competitive bids would be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the highest yield for the securities being auctioned. Bids received from Federal Reserve Banks for their own account or for foreign and international monetary authorities will be accepted at the price equivalent to the highest yield at which bids were accepted.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the highest yield at which bids were accepted is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not over-due as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under part, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment

for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships—*

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries—*

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts—*

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions—*

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds—*

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds—*

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers—*

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds—*

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2-Year and 5-Year Notes Totaling $26,750 Million

The Treasury will auction $15,500 million of 2-year notes and $11,250 million of 5-year notes to refund $20,954 million of securities maturing December 31, 1992, and to raise about $5,800 million new cash. The $20,954 million of maturing securities are those held by the public, including $1,331 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

Both the 2-year and 5-year note auctions will be conducted in the single-price auction format. All competitive and noncompetitive awards will be at the highest yield of accepted competitive tenders.

The $26,750 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,570 million of the maturing securities that may be refunded by issuing additional amounts of the new securities.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED DECEMBER 31, 1992

[December 16, 1992]

Amount Offered to the Public	$15,500 million	$11,250 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series AH–1994 (CUSIP NO. 912827 H9 6)	Series U–1997 (CUSIP No. 912827 J2 9).
Maturity date	December 31, 1994	December 31, 1997.
Interest rate	To be determined based on the highest accepted bid	To be determined based on the highest accepted bid.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined at auction	To be determined at auction.
Interest payment dates	June 30 and December 31	June 30 and December 31.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full up to $5,000	Accepted in full up to $5,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, December 22, 1992	Wednesday, December 23, 1992.
(a) noncompetitive	Prior to 12 noon, EST	Prior to 12 noon, EST.
(b) competitive	Prior to 1 p.m., EST	Prior to 1 p.m., EST.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED DECEMBER 31, 1992—Continued

[December 16, 1992]

Settlement (final payment due from institutions):		
(a) funds immediately available to the Treasury.	Thursday, December 31, 1992	Thursday, December 31, 1992.
(b) readily-collectible check	Tuesday, December 29, 1992	Tuesday, December 29, 1992.

[FR Doc. 92-30972 Filed 12-17-92; 12:31 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 41-92]

Treasury Notes of December 31, 1997, Series U-1997 (CUSIP No. 912827 J2 9)

Washington, December 16, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, Unites States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent to the highest yield bid at which bids were accepted. The interest rate on the Notes and the price equivalent to the highest yield at which bids were accepted will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), and reference to the document creating the trust with the date of execution, and the employer

identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amounts of bids received and accepted, the highest yield accepted, and the interest rate on the notes. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest yield at which bids were accepted will be prorated if necessary. All successful competitive bidders, regardless of the yields they each bid, will be awarded securities at the highest yield at which bids were accepted. After the determination is made as to which bids are accepted, an interest rate will generally be established, at a ⅛ of one percent increment, which produces a price equivalent to the highest yield at which bids were accepted and is closest to, but not above, par. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price equivalent to the highest yield at which bids were accepted will be determined, and each noncompetitive bidder and each successful competitive bidder will be required to pay such price for their securities. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb most or all of the public offering, competitive bids would be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the highest yield for the securities being auctioned. Bids received from Federal Reserve Banks for their own account or for foreign and international monetary authorities will be accepted at the price equivalent to the highest yield at which bids were accepted.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account of for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the highest yield at which bids were accepted is over par. No later than 12:00 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased.

In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2-Year and 5-Year Notes Totaling $26,750 Million

The Treasury will auction $15,500 million of 2-year notes and $11,250 million of 5-year notes to refund $20,954 million of securities maturing December 31, 1992, and to raise about $5,800 million new cash. The $20,954 million of maturing securities are those held by the public, including $1,331 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

Both the 2-year and 5-year note auctions will be conducted in the single-price auction format. All competitive and non-competitive awards will be at the highest yield of accepted competitive tenders.

The $26,750 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,570 million of the maturing securities that may be refunded by issuing additional amounts of the new securities.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED DECEMBER 31, 1992

[December 16, 1992]

Amount offered to the public	$15,500 million	$11,250 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series AH–1994 (CUSIP No. 912827 H9 6)	Series U–1997, CUSIP No. 912827 J2 9).
Maturity date	December 31, 1994	December 31, 1997.
Interest rate	To be determined based on the highest accepted bid.	To be determined based on the highest accepted bid.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	June 30 and December 31	June 30 and December 31.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full up to $5,000,000	Accepted in full up to $5,000,000.
Accured interest payable by investor	None	None.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED DECEMBER 31, 1992—Continued

[December 16, 1992]

Key Dates		
Receipt of tenders	Tuesday, December 22, 1992	Wednesday, December 23, 1992.
(a) noncompetitive	Prior to 12 noon, EST	Prior to 12 noon, EST.
(b) competitive	Prior to 1 p.m., EST	Prior to 1 p.m., EST.
Settlement (final payment due from institutions):		
(a) funds immediately available to the Treasury	Thursday, December 31, 1992	Thursday, December 31, 1992.
(b) readily-collectible check	Tuesday, December 29, 1992	Tuesday, December 29, 1992.

[FR Doc. 92-30973 Filed 12-17-92; 12:32 pm]
BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: December 15, 1992.
By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

New Collection

1. Application for Supplemental Service Disabled Veterans (RH) Life Insurance, VA Forms 29-0188, 29-0189, and 29-0190.

2. The forms are used by veterans to apply for Supplemental Service Disabled Veterans Insurance. The information is used to establish eligibility for coverage.

3. Individuals or households.

4. 3,333 hours.

5. 20 minutes.

6. On occasion.

7. 10,000 respondents.

Extension

1. Electrical Systems Inspection Report (Manufactured Home), VA Form 26-8731b.

2. The form is completed by inspectors to record findings for electrical systems of used manufactured homes proposed as security for guaranteed loans. The information is used to determine acceptability of units for VA financing.

3. Individuals or households; businesses or other for-profit; small businesses or organizations.

4. 240 hours.

5. 2 hours.

6. On occasion.

7. 120 respondents.

Extension

1. Court Appointed Fiduciary's Account, VA Form 27-4706c.

2. This form is used by VA Fiduciary and Field Examination Program to provide the court appointed fiduciary of a VA beneficiary an acceptable format for providing accountings to the appointing court. The information will be used to determine whether VA benefits have been properly managed.

3. Individuals or households; State or local governments; Federal agencies or employees; non-profit institutions.

4. 1,968 hours.

5. 30 minutes.

6. On occasion.

7. 3,936 respondents.

Extension

1. Financial Statement, VA Form 26-6807.

2. This form is used to determine the financial condition of original veteran obligors for release from personal liability arising from original guaranty of their home loans or the making of a direct loan; to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan; and to determine the eligibility of homeowners for aid under the Homeowners Assistance Program.

3. 30,000 hours.

4. 45 minutes.

5. On occasion.

6. Individuals or households.

7. 40,000 respondents.

[FR Doc. 92-30969 Filed 12-21-92; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 246
Tuesday, December 22, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 21, 28, 1992 and January 4, and 11, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 21

Monday, December 21

10:00 a.m.
Briefing on Waste Management—International Safety Convention (Closed—Ex. 9)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)

1:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on Status of General Atomic-Sequoyah Fuels Facility (Public Meeting) (Contact: Richard Cunningham, 301–504–3426)

Tuesday, December 22

2:30 p.m.
Briefing on Status of U.S. Nuclear Initiatives with Russia and Ukraine (Closed—Ex. 1)

Week of December 28—Tentative

Tuesday, December 29

11:30 a.m.
Affirmation/ Discussion and Vote (Public Meeting) (if needed)

Week of January 4—Tentative

Tuesday, January 5

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 11—Tentative

Monday, January 11

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: December 18, 1992.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 92–31182 Filed 12–18–92; 3:19 pm]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote on December 15, 1992, a majority of the members contacted and voting, the Board of Governors voted to close to public observation a meeting held in Washington, DC, to consider possible actions to take in Docket 91–1073 before the United States Court of Appeals for the District of Columbia Circuit.

The meeting was attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Elcano.

The Board determined that prior public notice was not possible and pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion of this matter was exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)].

The Board further determined that the public interest did not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(10) of title 5, United States Code; and section 7.3(j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 92–31095 Filed 12–18–92. 11.38 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 57, No. 246
Tuesday, December 22, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-5-92]
RIN 1545-AQ50

Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals

Correction

In proposed rule document 92-26677 beginning on page 53300 in the issue of Monday, November 9, 1992, make the following corrections:

1. On page 53301, in the first column, under **SUPPLEMENTARY INFORMATION**, in the third full paragraph, in the last line, "response" should read "responses".

§ 1.1398-2 [Corrected]

2. On page 53303, in the third column, in § 1.1398-2(d)(2), in the first line "*456*" should read "*465*"; and in paragraph (f)(2)(i), in the second line from the bottom, "of" should read "for".

3. On page 53304, in the first column, in § 1.1398-2(f)(2)(i), in the first line, "esta e's" should read "estate's".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8447]
RIN 1545-AP27

Determination of Rate of Interest—Increase in Rate of Interest Payable on Large Corporate Underpayments

Correction

In rule document 92-27145 beginning on page 53550 in the issue of Thursday, November 12, 1992, make the following corrections:

§ 301.6621-3 [Corrected]

1. On page 53556, in the first column, in § 301.6621-3(d), *Example 3*(i), in the ninth line from the bottom, "90-days" should read "90-day".

2. On the same page, in the third column, in § 301.6621-3(d), *Example 5*(ii), in the third line from the bottom, insert "Y" after "that".

BILLING CODE 1505-01-D

federal register

Tuesday
December 22, 1992

Part II

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-4543-9]

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule promulgates for 14 States, the chemical-specific, numeric criteria for priority toxic pollutants necessary to bring all States into compliance with the requirements of section 303(c)(2)(B) of the Clean Water Act (CWA). States determined by EPA to fully comply with section 303(c)(2)(B) requirements are not affected by this rule.

The rule addresses two situations. For a few States, EPA is promulgating a limited number of criteria which were previously identified as necessary in disapproval letters to such States, and which the State has failed to address. For other States, Federal criteria are necessary for all priority toxic pollutants for which EPA has issued section 304(a) water quality criteria guidance and that are not the subject of approved State criteria.

When these standards take effect, they will be the legally enforceable standards in the named States for all purposes and programs under the Clean Water Act, including planning, monitoring, NPDES permitting, enforcement and compliance.

EPA is also withdrawing today the human health criteria published in the 1980 Ambient Water Quality Criteria documents for: Beryllium, Cadmium, Chromium, Lead, Methyl Chloride, Selenium, Silver, and 1,1,1 Trichloroethane. A summary of the criteria recommendation and the notice of availability of each criteria document were published at 45 FR 79318, November 28, 1980.

EFFECTIVE DATE: This rule shall be effective February 5, 1993.

ADDRESSES: The public may inspect the administrative record for this rulemaking, including documentation supporting the aquatic life and human health criteria, and all public comments received on the proposed rule at the Environmental Protection Agency, Standards and Applied Science Division, Office of Science and Technology, room 919 East Tower, Waterside Mall, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–1315) on weekdays during the Agency's normal business hours of 8 a.m. to 4:30 p.m. A reasonable fee will be charged for photocopies. Inquiries can be made by calling 202–260–1315.

FOR FURTHER INFORMATION CONTACT: David K. Sabock or R. Kent Ballentine, Telephone 202–260–1315.

SUPPLEMENTARY INFORMATION:

This preamble is organized according to the following outline:

A. Introduction and Overview
1. Introduction
2. Overview
B. Statutory and Regulatory Background
1. Pre-Water Quality Act Amendments of 1987 (Pub. L. 100–4)
2. The Water Quality Act Amendments of 1987 (Pub. L. 100–4)
a. Description of the New Requirements
b. EPA's Initial Implementing Actions for sections 303(c) and 304(l)
3. EPA's Program Guidance for section 303(c)(2)(B)
C. State Actions Pursuant to section 303(c)(2)(B)
D. Determining State Compliance with section 303(c)(2)(B)
1. EPA's Review of State Water Quality Standards for Toxics
2. Determining Current Compliance Status
E. Rationale and Approach For Developing the Final Rule
1. Legal Basis
2. Approach for Developing the Final Rule
3. Approach for States that Fully Comply Subsequent to Issuance of this Final Rule
F. Derivation of Criteria
1. Section 304(a) Criteria Process
2. Aquatic Life Criteria
3. Criteria for Human Health
4. Section 304(a) Human Health Criteria Excluded
5. Cancer Risk Level
6. Applying EPA's Nationally Derived Criteria to State Waters
7. Application of Metals Criteria
G. Description of the Final Rule and Changes from Proposal
1. Changes from Proposal
2. Scope
3. EPA Criteria for Priority Toxic Pollutants
4. Applicability
H. (Reserved)
I. Response to Public Comments
1. Legal Authority
2. Science
3. Economics
4. Implementation
5. Timing and Process
6. State Issues
J. Executive Order 12291
K. Regulatory Flexibility Act
L. Paperwork Reduction Act

A. Introduction and Overview

1. Introduction

This section of the Preamble introduces the topics which are addressed subsequently and provides a brief overview of EPA's basis and rationale for promulgating Federal criteria for priority toxic pollutants. Section B of this Preamble presents a description of the evolution of the Federal Government's efforts to control toxic pollutants beginning with a discussion of the authorities in the Federal Water Pollution Control Act Amendments of 1972. Also described in some detail is the development of the water quality standards review and revision process which provides for establishing both narrative goals and enforceable numeric requirements for controlling toxic pollutants. This discussion includes the changes enacted in the 1987 Clean Water Act Amendments which are the basis for this rule. Section C summarizes State efforts since 1987 to comply with the requirements of section 303(c)(2)(B). Section D describes EPA's procedure for determining whether a State has fully complied with section 303(c)(2)(B). Section E sets out the rationale and approach for developing the final rule, including a discussion of EPA's legal basis. Section F describes the development of the criteria included in this rule. Section G summarizes the provisions of the final rule. (Section H is reserved.) Section I contains the response to major public comments received on the proposal. Sections J, K, and L address the requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act, respectively. Section M provides a list of subjects covered in this rule.

A public hearing on the proposed rule was held on December 19, 1991, in Washington, DC. A total of 26 non-EPA people registered at the hearing. The public comment period closed on December 19, 1991. EPA received a total of 153 written comments on the proposed rule.

2. Overview

This rule, which establishes Federal criteria for certain priority toxic pollutants in a number of States, is important for several environmental, programmatic and legal reasons.

First, control of toxic pollutants in surface waters is an important priority to achieve the Clean Water Act's goals and objectives. The most recent National Water Quality Inventory indicates that one-third of monitored river miles, lake acres, and coastal waters have elevated levels of toxics. Forty-seven States and Territories have reported elevated levels of toxic pollutants in fish tissues. States have issued a total of 586 fishing advisories and 135 bans, attributed mostly to industrial discharges and land disposal.

The absence of State water quality standards for toxic pollutants undermines State and EPA toxic control efforts to address these problems. Without clearly established water quality goals, the effectiveness of many of EPA's water programs is jeopardized. Permitting, enforcement, coastal water quality improvement, fish tissue quality protection, certain nonpoint source controls, drinking water quality protection, and ecological protection all depend to a significant extent on complete and adequate water quality standards. Numeric criteria for toxics are essential to the process of controlling toxics because they allow States and EPA to evaluate the adequacy of existing and potential control measures to protect aquatic ecosystems and human health. Formally adopted standards are the legal basis for including water quality-based effluent limitations in NPDES permits to control toxic pollutant discharges. The critical importance of controlling toxic pollutants has been recognized by Congress and is reflected, in part, by the addition of section 303(c)(2)(B) to the Act. Congressional impatience with the pace of State toxics control programs is well documented in the legislative history of the 1987 CWA amendments. In order to protect human health, aquatic ecosystems, and successfully implement toxics controls, EPA believes that all actions which are available to the Agency must be taken to ensure that all necessary numeric criteria for priority toxic pollutants are established in a timely manner.

Second, as States and EPA continue the transition from an era of primarily technology-based controls to an era in which technology-based controls are integrated with water quality-based controls, it is important that EPA ensures timely compliance with CWA requirements. An active Federal role is essential to assist States in getting in place complete toxics criteria as part of their pollution control programs. While most States recognize the need for enforceable water quality standards for toxic pollutants, their recent adoption efforts have often been stymied by a variety of factors including limited resources, competing environmental priorities, and difficult scientific, policy and legal challenges. Most water quality criteria for toxic pollutants have been available since 1980. Section 303 of the CWA requires States to review, revise, and adopt updated water quality standards every three years as part of a continuing triennial review process. The water quality standards regulation has required State adoption of numeric criteria for toxic pollutants since 1983 (see 40 CFR 131.11). Despite the availability of scientific guidance documents and clear statutory and regulatory requirements, a preliminary assessment of the water quality standards for all States in February of 1990 showed that only six States had established fully acceptable criteria for toxic pollutants. This rate of toxics criteria adoption is contrary to the CWA requirements and is a reflection of the difficulties faced by States. In such circumstances, it is EPA's responsibility to exercise its CWA authorities to move forward the toxic control program in concert with the statutory scheme.

EPA's action will also help restore equity among the States. The CWA is designed to ensure all waters are sufficiently clean to protect public health and the environment. The CWA allows some flexibility and differences among States in their adopted and approved water quality standards, but it was not designed to reward inaction and inability to meet statutory requirements.

Although most States have made important progress toward satisfying CWA requirements, some have still failed to fully comply with section 303(c)(2)(B). The CWA authorizes EPA to promulgate standards where necessary to meet the requirements of the Act. Where States have not satisfied the CWA requirement to adopt water quality standards for toxic pollutants, which was reemphasized by Congress in 1987, it is imperative that EPA take action.

EPA's ability to oversee State standards-setting activities and to correct deficiencies in State water quality standards is critical to the effective implementation of section 303(c)(2)(B). This rule is a necessary and important component of EPA's implementation of section 303(c)(2)(B) as well as EPA's overall efforts to control toxic pollutants in surface waters.

On February 26, 1992, EPA's Deputy Administrator issued "Guidance on Risk Characterization for Risk Managers and Risk Assessors" which addresses a problem that affects public perception regarding the reliability of EPA's scientific assessments and related regulatory decisions. The guidance noted that "when risk information is presented to the * * * public, the results have been boiled down to a point estimate of risk * * * which do not fully convey the range of information considered and used in developing the assessment." The guidance lays out principles and implementation procedures to address risk assessments in future EPA presentations, reports and decision packages. The guidance specifically notes, "However, we do not expect risk assessment documents that are close to completion to be rewritten."

The proposal for this final rule was published in November, 1991, three months prior to the risk assessment guidance being issued. Since the Agency was striving to meet a mid-February statutory deadline for final publication, when the risk guidance was issued the rulemaking package was essentially complete. The specifics of the aquatic life and human health guidelines are discussed in the preamble and in the response to public comments. The actual methodology and criteria documents describe in detail the risk assessment process involved in deriving a water quality criteria and the water quality standards contained in this rule and the resulting risk characterization. The water quality criteria methodology and individual criteria documents are part of the record for this rule. Therefore, while all the specifics of the new risk characterization guidance were not followed in this preamble, the spirit of the guidance is reflected.

Moreover, EPA has initiated a review and update of these criteria methodologies. These updates will be conducted in conformance with the risk characterization guidance and include public involvement and review.

B. Statutory and Regulatory Background

1. Pre-Water Quality Act Amendments of 1987 (Pub. L. 100–4)

Section 303(c) of the 1972 Federal Water Pollution Control Act Amendments (FWPCA) (33 U.S.C. 1313(c)) estabiished the statutory basis for the current water quality standards program. It completed the transition from the previously established program of water quality standards for interstate waters to one requiring standards for all surface waters of the United States.

Although the major innovation of the 1972 FWPCA was technology-based controls, Congress maintained the concept of water quality standards both as a mechanism to establish goals for the Nation's waters and as a regulatory requirement when standardized technology controls for point source discharges and/or nonpoint source controls were inadequate. In recent years, these so-called water quality-based controls have received new emphasis by Congress and EPA in the continuing quest to enhance and maintain water quality to protect the public health and welfare.

Briefly stated, the key elements of section 303(c) are:

(a) A water quality standard is defined as the designated beneficial uses of a water segment and the water quality criteria necessary to support those uses;

(b) The minimum beneficial uses to be considered by States in establishing water quality standards are specified as public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation;

(c) A requirement that State standards must protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act;

(d) A requirement that States must review their standards at least once each three year period using a process that includes public participation;

(e) The process for EPA review of State standards which may ultimately result in the promulgation of a superseding Federal rule in cases where a State's standards are not consistent with the applicable requirements of the CWA, or in situations where the Agency determines Federal standards are necessary to meet the requirements of the Act.

Another major innovation in the 1972 FWPCA was the establishment of the National Pollutant Discharge Elimination System (NPDES) which requires point source discharges to obtain a permit before legally discharging to the waters of the United States. In addition to the permit limits established on the basis of technology (e.g. effluent limitations guidelines), the Act requires discharges to meet instream water quality standards. (See section 301(b)(1)(C), 33 U.S.C. 1311(b)(1)(C)).

The water quality standards serve a dual function under the Clean Water Act regulatory scheme. Standards establish narrative and numeric definitions and quantification of the Act's goals and policies (see section 101, 33 U.S.C. 1251) which provide a basis for identifying impaired waters. Water quality standards also establish regulatory requirements which are translated into specific discharge requirements. In order to fulfill this critical function, adopted State criteria must contain sufficient parametric coverage to protect both human health and aquatic life.

In its initial efforts to control toxic pollutants, the FWPCA, pursuant to section 307, required EPA to designate a list of toxic pollutants and to establish toxic pollutant effluent standards based on a formal rulemaking record. Such rulemaking required formal hearings, including cross-examination of witnesses. EPA struggled with this unwieldy process and ultimately promulgated effluent standards for six toxic pollutants, pollutant families or mixtures. (See 40 CFR part 129.) Congress amended section 307 in the 1977 Clean Water Act Amendments by endorsing the Agency's alternative procedure of regulating toxic pollutants by use of effluent limitations guidelines, by amending the procedure for establishing toxic pollutant effluent standards to provide for more flexibility in the hearing process for establishing a record, and by directing the Agency to include sixty-five specific pollutants or classes of pollutants on the toxic pollutant list. EPA published the required list on January 31, 1978 (43 FR 4109). This toxic pollutant list was the basis on which EPA's efforts on criteria development for toxics was focused.

During planning efforts to develop effluent limitations guidelines and water quality criteria, the list of sixty-five toxic pollutants was judged too broad as some of the pollutants were, in fact, general families or classes of organic compounds consisting of many individual chemicals. EPA selected key chemicals of concern within the 65 families of pollutants and identified a more specific list of 129 priority toxic pollutants. Two volatile chemicals and one water unstable chemical were removed from the list (see 46 FR 2266, January 8, 1981; 46 FR 10723, February 4, 1981) so that at present there are 126 priority toxic pollutants. This list is published as appendix A to 40 CFR part 423.

Another critical section of the 1972 FWPCA was section 304(a) (33 U.S.C. 1314(a)). Section 304(a)(1) provides, in pertinent part, that EPA

> * * * shall develop and publish * * * criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, * * * and (C) on the effects of pollutants on biological community diversity, productivity, and stability, * * *

In order to avoid confusion, it must be recognized that the Clean Water Act uses the term "criteria" in two separate ways. In section 303(c), which is discussed above, the term is part of the definition of a water quality standard. That is, a water quality standard is comprised of designated uses and the criteria necessary to protect those uses. Thus, States are required to adopt regulations or statutes which contain legally achievable criteria. However, in section 304(a), the term criteria is used in a scientific sense and EPA develops recommendations which States consider in adopting regulatory criteria.

In response to this legislative mandate and an earlier similar statutory requirement, EPA and a predecessor agency have produced a series of scientific water quality criteria guidance documents. Early Federal efforts were Water Quality Criteria (1968 "Green Book") and Quality Criteria for Water (1976 "Red Book"). EPA also sponsored a contract effort with the National Academy of Science—National Academy of Engineering which resulted in Water Quality Criteria, 1972 (1973 "Blue Book"). These early efforts were premised on the use of literature reviews and the collective scientific judgment of Agency and advisory panels. However, when faced with the list of 65 toxic pollutants and the need to develop criteria for human health as well as aquatic life, the Agency determined that new procedures were necessary. Continued reliance solely on existing scientific literature was deemed inadequate, since for many pollutants essential information was not available. EPA scientists developed formal methodologies for establishing scientifically defensible criteria. These were subjected to review by the Agency's Science Advisory Board of outside experts and the public. This effort culminated on November 28, 1980, when the Agency published criteria development guidelines for aquatic life and for human health, along with criteria for 64 toxic pollutants. (See 45 FR 79318.) Since that initial publication, the aquatic life methodology was slightly amended (50 FR 30784, July 29, 1985) and additional criteria was proposed for public comment and finalized as Agency criteria guidance. EPA summarized the available criteria information in Quality Criteria for Water 1986 (1986 "Gold Book") which is updated from time-to-time. However, the individual criteria documents, as updated, are the official guidance documents.

EPA's criteria documents provide a comprehensive toxicological evaluation of each chemical. For toxic pollutants, the documents tabulate the relevant acute and chronic toxicity information for aquatic life and derive the criteria maximum concentrations (acute criteria) and criteria continuous concentrations (chronic criteria) which the Agency recommends to protect aquatic life resources. For human health criteria, the document provides the appropriate reference doses, and if appropriate, the carcinogenic slope factors, and derives recommend criteria. The details of this process are described more fully in a later part of this Preamble.

Programmatically, EPA's initial efforts were aimed at converting a program focused on interstate waters into one addressing all interstate and intrastate surface waters of the United States. Guidance was aimed at the inclusion of traditional water quality parameters to protect aquatic life (e.g., pH, temperature, dissolved oxygen and a narrative "free from toxicity" provision), recreation (e.g., bacteriological criteria) and general aesthetics (e.g., narrative "free from nuisance" provisions). EPA also required State adoption of an antidegradation policy to maintain existing high quality or ecologically unique waters as well as maintain improvements in water quality as they occur.

The initial water quality standards regulation was actually a part of EPA's water quality management regulations implementing section 303(e) (33 U.S.C. 1313(e)) of the Act. It was not comprehensive and did not address toxics or any other criteria specifically. Rather, it simply required States to adopt appropriate water quality criteria necessary to support designated uses. (See 40 CFR 130.17 as promulgated in 40 FR 55334, November 28, 1975).

After several years of effort and faced with increasing public and Congressional concerns about toxic pollutants, EPA realized that proceeding under section 307 of the Act would not comprehensively address in a timely manner the control of toxics through either toxic pollutant effluent standards or effluent limitations guidelines because these controls are only applicable to specific types of discharges. EPA sought a broader, more generally applicable mechanism and decided to vigorously pursue the alternative approach of EPA issuance of scientific water quality criteria documents which States could use to adopt enforceable water quality standards. These in turn could be used as the basis for establishing State and EPA permit discharge limits pursuant to section 301(b)(1)(C) which requires NPDES permits to contain

> * * * any more stringent limitation, including those necessary to meet water quality standards * * *, or required to implement any applicable water quality standard established pursuant to this Act.

Thus, the adoption by States of appropriate toxics criteria applicable to their surface waters, such as those recommended by EPA in its criteria documents, would be translated by regulatory agencies into point source permit limits. Through the use of water quality standards, all discharges of toxics are subject to permit limits and not just those discharged by particular industrial categories. In order to facilitate this process, the Agency amended the water quality standards regulation to explicitly address toxic criteria requirements in State standards. The culmination of this effort was the promulgation of the present water quality standards regulation on November 8, 1983 (40 CFR part 131, 48 FR 51400).

The current water quality standards regulation (40 CFR part 131) is much more comprehensive than its predecessor. The regulation addresses in detail both the beneficial use component and the criteria component of a water quality standard. Section 131.11 of the regulation requires States to review available information and,

> * * * to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use.

The regulation provided that either or both numeric and narrative criteria may be appropriately used in water quality standards.

EPA's water quality standards emphasis since the early 1980's reflected the increasing importance placed on controlling toxic pollutants. States were strongly encouraged to adopt criteria in their standards for the priority toxic pollutants, especially where EPA had published criteria guidance under section 304(a) of the Act.

Under the statutory scheme, during the 3-year triennial review period following EPA's 1980 publication of water quality criteria for the protection of human health and aquatic life, States should have reviewed those criteria and adopted standards for many priority toxic pollutants. In fact, State response to EPA's criteria publication and toxics initiative was disappointing. A few States adopted large numbers of numeric toxics criteria, although primarily for the protection of aquatic life. Most other States adopted few or no water quality criteria for priority toxic pollutants. Some relied on a narrative "free from toxicity" criterion, and so-called "action levels" for toxic pollutants or occasionally calculated site-specific criteria. Few States addressed the protection of human health by adopting numeric human health criteria.

In support of the November, 1983, water quality standards rulemaking, EPA issued program guidance entitled, Water Quality Standards Handbook (December 1983) simultaneously with the publication of the final rule. The foreword to that guidance noted EPA's two-fold water quality based approach to controlling toxics: chemical specific numeric criteria and biological testing in whole effluent or ambient waters to comply with narrative "no toxics in toxic amounts" standards. More detailed programmatic guidance on the application of biological testing was provided in the Technical Support Document for Water Quality Based Toxics Control (TSD) (EPA 440/4–85–032, September 1985). This document provided the needed information to convert chemical specific and biologically based criteria into water quality standards for ambient receiving waters and permit limits for discharges to those waters. The TSD focused on the use of bioassay testing of effluent (so-called whole effluent testing or WET methods) to develop effluent limitations within discharge permits. Such effluent limits were designed to implement the "free from toxicity" narrative standards in State water quality standards. The TSD also focused on water quality standards. Procedures and policy were presented for appropriate design flows for EPA's section 304(a) acute and chronic criteria. In 1991, EPA revised and expanded the TSD. (Technical Support Document for Water Quality-based Toxics Control, EPA 505/2–90–001, March 1991.) A Notice of Availability was published in the **Federal Register** on April 4, 1991 (56 FR 13827). All references in this Preamble are to the revised TSD.

The Water Quality Standards Handbook and the TSD are examples of EPA's efforts and assistance that were intended to help, encourage and support the States in adopting appropriate water quality standards for the protection of their waters against the deleterious effects of toxic pollutants. In some States, more and more numeric criteria for toxics were being adopted as well as more aggressive use of the "free from toxics" narratives in setting protective NPDES permit limits. However, by the time of Congressional consideration and action on the CWA reauthorization, most States had adopted few, if any, water quality standards for priority toxic pollutants.

State practices of developing case-by-case effluent limits using procedures that were not standardized in State regulations made it difficult to ascertain whether such procedures were consistently applied. The use of approaches to control toxicity that did not rely on the statewide adoption of numeric criteria for the priority toxic

pollutants generated frustration in Congress. Senator Robert T. Stafford, first chairman and then ranking minority member of the authorizing committee, noted during the Senate debate:

> An important problem in this regard is that few States have numeric ambient criteria for toxic pollutants. The lack of ambient criteria [for toxic pollutants] make it impossible to calculate additional discharge limitations for toxics * * *. It is vitally important that the water quality standards program operate in such a way that it supports the objectives of the Clean Water Act to restore and maintain the integrity of the Nation's Waters. (bracketed material added). A Legislative History of the Water Quality Act of 1987 (Pub. L. 100–4), Senate Print 100–144, USGPO, November 1988 at page 1324.

Other comments in the legislative history similarly note the Congressional perception that the States were failing to aggressively address toxics and that EPA was not using its oversight role to push the States to move more quickly and comprehensively. Thus Congress developed the water quality standards amendments to the Clean Water Act for reasons similar to those strongly stated during the Senate debate by a chief sponsor, Senator John H. Chafee,

> A cornerstone of the bill's new toxic pollution control requirements is the so called beyond-BAT program * * *. Adopting the beyond BAT provisions will assure that EPA continues to move forward rapidly on the program * * *. If we are going to repair the damage to those water bodies that have become highly degraded as a result of toxic substances, we are going to have to move forward expeditiously on this beyond-BAT program. The Nation cannot tolerate endless delays and negotiations between EPA and States on this program. Both entities must move aggressively in taking the necessary steps to make this program work within the time frame established by this Bill * * *. Ibid, at page 1309.

This Congressional impatience with the pace of State and EPA progress and an appreciation that the lack of State standards for toxics undermined the effectiveness of the entire CWA-based scheme, resulted in the 1987 adoption of stringent new water quality standard provisions in the Water Quality Act amendments.

2. The Water Quality Act Amendments of 1987 (Pub. L. 100–4)

a. Description of the New Requirements

The 1987 Amendments to the Clean Water Act added Section 303(c)(2)(B) which provides:

> Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

b. EPA's Initial Implementing Actions for Sections 303(c) and 304(l)

The addition of this new requirement to the existing water quality standards review and revision process of section 303(c) did not change the existing procedural or timing provisions. For example, section 303(c)(1) still requires that States review their water quality standards at least once each 3 year period and transmit the results to EPA for review. EPA's oversight and promulgation authorities and statutory schedules in section 303(c)(4) were likewise unchanged. Rather, the provision required the States to place heavy emphasis on adopting numeric chemical-specific criteria for toxic pollutants (i.e., rather than just narrative approaches) during the next triennial review cycle. As discussed in the previous section, Congress was frustrated that States were not using the numerous section 304(a) criteria that EPA had developed, and was continuing to develop, to assist States in controlling the discharge of priority toxic pollutants. Therefore, for the first time in the history of the Clean Water Act, Congress took the unusual action of explicitly mandating that States adopt numeric criteria for specific toxic pollutants.

In response to this new Congressional mandate, EPA redoubled its efforts to promote and assist State adoption of water quality standards for priority toxic pollutants. EPA's efforts included the development and issuance of guidance to the States on acceptable implementation procedures for several new sections of the Act, including sections 303(c)(2)(B) and 304(l).

The 1987 CWA Amendments added to, or amended, other CWA Sections related to toxics control. Section 304(l) (33 U.S.C. 1314(l)) was an important corollary amendment because it required States to take actions to identify waters adversely affected by toxic pollutants, particularly those waters entirely or substantially impaired by point sources. Section 304(l) entitled "Individual Control Strategies for Toxic Pollutants," requires in part, that States identify and list waterbodies where the designated uses specified in the applicable water quality standards cannot reasonably be expected to be achieved because of point source discharge of toxic pollutants. For each segment so identified, the State is required to develop individual control strategies to reduce the discharge of toxics from point sources so that in conjunction with existing controls on point and nonpoint sources, water quality standards will be attained. To assist the States in identifying waters under section 304(l), EPA's guidance listed a number of potential sources of available data for States to review. States generally assembled data for a broad spectrum of pollutants, including the priority toxic pollutants, which could be useful in complying with sections 304(l) and 303(c)(2)(B). In fact, between February 1988 and October 1988, EPA assembled pollutant candidate lists for section 304(l) which were then transmitted to each jurisdiction. Thus, each State had a preliminary list of pollutants that had been identified as present in, or discharged to, surface waters. Such lists were limited by the quantity and distribution of available effluent and ambient monitoring data for priority toxic pollutants. This listing exercise further emphasized the need for water quality standards for toxic pollutants. Lack of standards increased the difficulty of identifying impaired waters. On the positive side, the data gathered in support of the 304(l) activity proved helpful in identifying those pollutants most obviously in need of water quality standards.

EPA, in devising guidance for section 303(c)(2)(B), attempted to provide States the maximum flexibility that complied with the express statutory language but also with the overriding congressional objective: Prompt adoption and implementation of numeric toxics criteria. EPA believed that flexibility was important so that each State could comply with section 303(c)(2)(B) and to the extent possible, accommodate its existing water quality standards regulatory approach. The options EPA identified are described in the next Section of this Preamble. EPA's program guidance was issued in final form on December 12, 1988 but was not

substantially different from earlier drafts available for review by the States. The availability of the guidance was published in a Federal Register Notice on January 5, 1989 (54 FR 346).

3. EPA's Program Guidance for Section 303(c)(2)(B)

EPA's section 303(c)(2)(B) program guidance identified three options that could be used by a State to meet the requirement that the State adopt toxic pollutant criteria "* * * the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses."

Option 1. Adopt statewide numeric criteria in State Water Quality Standards for all section 307(a) toxic pollutants for which EPA has developed criteria guidance, regardless of whether the pollutants are known to be present.

This option is the most comprehensive approach to satisfy the statutory requirements because it would include all of the priority toxic pollutants for which EPA has prepared section 304(a) criteria guidance for either or both aquatic life protection and human health protection. In addition to a simple adoption of EPA's section 304(a) guidance as standards, a State must select a risk level for those toxic pollutants which are carcinogens (i.e., that cause, or may cause cancer in humans).

Many States found this Option attractive because it ensured comprehensive coverage of the priority toxic pollutants with scientifically defensible criteria without the need to conduct a resource-intensive evaluation of the particular segments and pollutants requiring criteria. This option would also not be more costly to dischargers than other options because permit limits would only be based on the regulation of the particular toxic pollutants in their discharges and not on the total listing in the water quality standards. Thus, actual permit limits should be the same under any of the options.

Option 2. Adopt chemical-specific numeric criteria for priority toxic pollutants that are the subject of EPA section 304(a) criteria guidance, where the State determines based on available information that the pollutants are present or discharged and can reasonably be expected to interfere with designated uses.

This option results in the adoption of numeric water quality standards for some subset of those pollutants for which EPA has issued section 304(a) criteria guidance based on a review of current information. To satisfy this Option, the guidance recommended that States use the data gathered during the section 304(l) water quality assessments as a starting point to identify those water segments that need water quality standards for priority toxic pollutants. That data would be supplemented by a State and public review of other data sources to ensure sufficient breadth of coverage to meet the statutory objective. Among the data available to be reviewed were: (1) Ambient water monitoring information, including those for the water column, sediment, and aquatic life (e.g., fish tissue data); (2) NPDES permit applications and permittee self-monitoring reports; (3) effluent guideline development documents, many of which contain priority toxic pollutant scans; (4) pesticide and herbicide application information and other records of pesticide or herbicide inventories; (5) public water supply source monitoring data noting pollutants with maximum contaminant levels (MCLs); and (6) any other relevant information on toxic pollutants collected by Federal, State, industry, agencies, academic groups, or scientific organizations. EPA also recommended that States selecting this option adopt a translator provision similar to that described in Option 3 but applicable to all chemicals causing toxicity, and not just priority toxic pollutants.

This Option 2 review resulted in a State proposing new or revised water quality standards and providing an opportunity for public review and comment on the pollutants, criteria, and water bodies included. Throughout this process, EPA's Regional Offices were available to assist States by providing additional guidance and technical assistance on applying EPA's recommended criteria to particular situations in the States.

Option 3. Adopt a procedure to be applied to a narrative water quality standard provision prohibiting toxicity in receiving waters. Such procedures would be used by the State in calculating derived numeric criteria which must be used for all purposes under section 303(c) of the CWA. At a minimum, such criteria need to be developed for section 307(a) toxic pollutants, as necessary to support designated uses, where these pollutants are discharged or present in the affected waters and could reasonably be expected to interfere with designated uses.

The combination of a narrative standard (e.g., "free from toxics in toxic amounts") and an approved translator mechanism as part of a State's water quality standards satisfies the requirements of section 303(c)(2)(B). As noted above, such a procedure is also a valuable supplement to either option 1 or 2. There are several regulatory and scientific requirements EPA's guidance specifies are essential to ensure acceptable scientific quality and full involvement of the public and EPA in this approach. Briefly stated these are:

- The procedure (i.e., narrative criterion and translator) must be used to calculate numeric water quality criteria;
- The State must demonstrate to EPA that the procedure results in numeric criteria that are sufficiently protective to meet the goals of the Act;
- The State must provide for full opportunity for public participation during the adoption of the procedure;
- The procedure must be formally adopted as a State rule and be mandatory in application; and
- The procedure must be submitted for review and approval by EPA as part of the State's water quality standards regulation.

The scientific elements of a translator are similar to EPA's 304(a) criteria methodologies when applied on a site-specific basis. For example, aquatic criteria are developed using a sufficient number and diversity of aquatic species representative of the biological assemblage of a particular water body. Human health criteria focus on determining appropriate exposure conditions (e.g. amount of aquatic life consumed per person per day) rather than underlying pollutant toxicity. The results of the procedures are scientifically defensible criteria that are protective for the site's particular conditions. EPA's review of translator procedures includes an evaluation of the scientific merit of the procedure using the section 304(a) methodology as a guide.

Ideally, States adopting option 3 translator procedures should prepare a preliminary list of criteria and specify the waters the criteria apply to at the time of adoption. Although under option 3 the State retains flexibility to derive new criteria without revising the adopted standards, establishing this preliminary list of derived criteria at the time of the triennial review will assist the public in determining the scope of the adopted standards, and help ensure that the State ultimately complies with the requirement to establish criteria for all pollutants that can "reasonably be expected" to interfere with uses. EPA believes that States selecting solely option 3 should prepare an analysis (similar to that required of option 2 States) at the time of the triennial review identifying pollutants needing criteria.

EPA's December 1988 guidance also addressed the timing issue for State compliance with section 303(c)(2)(B). The statutory directive was clear: All State standards triennial reviews initiated after passage of the Act must include a consideration of numeric toxic criteria.

The structure of section 303(c) is to require States to review their water quality standards at least once each three year period. Section 303(c)(2)(B) instructs States to include reviews for toxics criteria whenever they initiate a triennial review. EPA initially looked at February 4, 1990, the 3-year anniversary of the 1987 CWA amendments, as a convenient point to index State compliance. The April 1990 **Federal Register** Notice used this index point for the preliminary assessment. However, some States were very nearly completing their State administrative processes for ongoing reviews when the 1987 amendments were enacted and could not legally amend those proceedings to address additional toxics criteria. Therefore, in the interest of fairness, and to provide such States a full 3-year review period, EPA's FY 1990 Agency Operating Guidance provided that "By the end of the FY 88–90 triennium, States should have completed adoption of numeric criteria to meet the section 303(c)(2)(B) requirements." (p.48.) The FY 88–90 triennium ended on September 30, 1990.

Clean Water Act section 303(c) does not provide penalties for States that do not complete timely water quality standards reviews. In no previous case has the EPA Administrator found that State failure to complete a review within three years jeopardized the public health or welfare to such an extent that promulgation of Federal standards pursuant to section 303(c)(4)(B) was justified. The pre-1987 CWA never mandated State adoption of priority toxic pollutants or other specific criteria. EPA generally relied on its water quality standards regulation (40 CFR 131.11) and its criteria and program guidance to the States on appropriate parametric coverage in State water quality standards to encourage State adoption of water quality standards. However, since the 1987 statutory amendments, the programmatic environment has changed. Beyond the increased Congressional and public concern, about the relative importance of toxic pollutant controls, there is increased evidence of toxic pollution problems in our Nation's waters. In response, the Agency in this rulemaking is proceeding pursuant to section 303(c)(4)(B) and 40 CFR 131.22(b) to rectify a longstanding program deficiency.

The current regulation at 40 CFR Part 131 in conjunction with the statutory language provides a clear and unambiguous basis and process for today's Federal promulgation.

C. State Actions Pursuant to Section 303(c)(2)(B)

In recent years, there has been substantial progress by many States in the adoption, and EPA approval, of water quality standards for toxic pollutants. Virtually all States have at least proposed new toxics criteria for priority toxic pollutants since section 303(c)(2)(B) was added to the CWA in February of 1987. Unfortunately, not all such State proposals address, in a comprehensive manner, the requirements of section 303(c)(2)(B). For example, some States have proposed to adopt criteria to protect aquatic life, but not human health; other States have proposed human health criteria which do not address major human exposure pathways. In addition, in some cases final adoption of proposed State toxics criteria which would be approvable by EPA has been substantially delayed due to controversial and difficult issues associated with the toxics criteria adoption process. For purposes of today's rulemaking, it is EPA's judgment that 43 States completed actions which fully satisfy the requirements of section 303(c)(2)(B).

In sum, States have devoted substantial resources, and have made substantial progress, in adopting new or revised numeric criteria for priority pollutants. In so doing, they have addressed a number of significant and difficult issues. These efforts have generated extensive examination by dischargers, States, environmental groups and the public on all aspects of the CWA water quality criteria and related issues. It amounts to a multi-year consideration of the issues that are central to this proposed and final rulemaking.

D. Determining State Compliance With Section 303(c)(2)(B)

1. EPA's Review of State Water Quality Standards for Toxics

The EPA Administrator has delegated the responsibility and authority for review and approval or disapproval of all State water quality standards actions to the 10 EPA Regional Administrators (see 40 CFR 131.21). State section 303(c)(2)(B) actions are thus submitted to the appropriate EPA Regional Administrator for review and approval. This de-centralized EPA system for State water quality standards review and approval is guided by EPA Headquarters Office of Water, which issues national policies and guidance to the States and Regions such as the annual Office of Water Operating Guidance and various technical manuals.

For purposes of evaluating State compliance with CWA section 303(c)(2)(B), EPA relied on the statutory language, the existing water quality standards regulation, and section 303(c)(2)(B) national guidance to provide the basis for EPA review. In some cases, individual Regions also used Regional policies and procedures in reviewing State section 303(c)(2)(B) actions. The flexibility provided by the national guidance, coupled with subtle differences in Regional policies and procedures, contributed to some differences in the approaches taken by States to satisfy section 303(c)(2)(B) requirements.

As discussed previously, EPA's final guidance on compliance with section 303(c)(2)(B) was developed to provide States with the necessary flexibility to allow State standards revisions that would complement the State's existing water quality standards program and still comply with section 303(c)(2)(B). As guidance, it described the range of acceptable approaches and EPA's recommendations. Some innovative State approaches were expected as well as differences in terms of criteria coverage, stringency and application procedures.

Although the guidance provided for State flexibility, it was also consistent with existing water quality standards regulation requirements of 40 CFR 131.11 that explicitly require State criteria to be sufficient to protect designated uses. Such water quality criteria also must be based on sound scientific rationale and support the most sensitive use designated for a water body.

The most complicated EPA compliance determinations involve States that selected EPA Options 2 or 3. Since most States use EPA's section 304(a) criteria guidance, where States select Option 1, EPA normally is able to focus Agency efforts on verifying that all available EPA criteria are included, appropriate cancer risk levels are selected, and that sufficient application procedures are in place (e.g. laboratory analytical methods, mixing zones, flow condition, etc.).

However, for States using EPA's Option 2 or 3, substantially more EPA evaluation and judgment was required because the Agency must evaluate which priority pollutants and, in some

cases, segments or designated uses, require numeric criteria. Under these options, the State must adopt or derive numeric criteria for priority toxic pollutants for which EPA has section 304(a) criteria, "* * * the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State * * *." The necessary justification and the ultimate coverage and acceptability of a State's actions vary State-to-State because of differences in the adequacy of available monitoring information, local waterbody use designations, the effluent and nonpoint source controls in place, and different approaches to the scientific basis for criteria.

In submitting criteria for the protection of human health, States were not limited to a 1 in 1 million risk level (10^{-6}). EPA generally regulates pollutants treated as carcinogens in the range of 10^{-6} to 10^{-4} to protect average exposed individuals and more highly exposed populations. If a State selects a criterion that represents an upper bound risk level less protective than 1 in 100,000 (i.e., 10^{-5}), however, the State needed to have substantial support in the record for this level. This support focused on two distinct issues. First, the record must include documentation that the decision maker considered the public interest of the State in selecting the risk level, including documentation of public participation in the decision making process as required by the water quality standards regulation at 40 CFR 131.20(b). Second, the record must include an analysis showing that the risk level selected, when combined with other risk assessment variables, is a balanced and reasonable estimate of actual risk posed, based on the best and most representative information available. The importance of the estimated actual risk increases as the degree of conservatism in the selected risk level diminishes. EPA carefully evaluated all assumptions used by a State if the State chose to alter any one of the standard EPA assumption values.

Where States selected Option 3, EPA reviews must also include an evaluation of the scientific defensibility of the translator procedure. EPA must also verify that a requirement to apply the translator whenever toxics may reasonably be expected to interfere with designated uses (e.g., where such toxics exist or are discharged) is included in the State's water quality standards. Satisfactory application procedures must also be developed by States selecting Option 3.

In general, each EPA Region made compliance decisions based on whatever information was available at the time of the triennial review. For some States, information on the presence and discharge of priority toxic pollutants is extremely limited. Nevertheless, during the period of February 1988 to October 1990, to supplement State efforts, EPA assembled the available information and provided each State with various pollutant candidate lists in support of the section 304(l) and section 303(c)(2)(B) activities. These were based in part on computerized searches of existing Agency data bases.

Beginning in 1988, EPA provided States with candidate lists of priority toxic pollutants and water bodies in support of CWA Section 304(l) implementation. These lists were developed because States were required to evaluate existing and readily available water-related data in order to comply with Section 304(l). 40 CFR 130.10(d). A similar "strawman" analysis of priority pollutants potentially requiring adoption of numeric criteria under Section 303(c)(2)(B) was furnished to most States in September or October of 1990 for their use in on-going and subsequent triennial reviews. The primary differences between the "strawman" analysis and the section 304(l) candidate lists were that the "strawman" analysis: (1) Organized the results by chemical rather than by water body, (2) included data for certain STORET monitoring stations that were not used in constructing the candidate lists, (3) included data from the Toxics Release Inventory database, and (4) did not include a number of data sources used in preparing the candidate lists (e.g. those, such as fish kill information, that did not provide chemical specific information).

In its 1988 section 303(c)(2)(B) guidance, EPA urged States, at a minimum, to use the information gathered in support of section 304(l) requirements as a starting point for identifying which priority toxic pollutants require adoption of numeric criteria. EPA also encouraged States to consider the presence or potential construction of facilities that manufacture or use priority toxic pollutants as a strong indication of the need for toxics criteria. Similarly, EPA indicated to States that the presence of priority pollutants in ambient waters (including those in sediments or in aquatic life tissue) or in discharges from point or nonpoint sources also be considered as an indication that toxics criteria should be adopted. A limited amount of data on the effluent characteristics of NPDES discharges was readily available to States. States were also expected to take into account newer information as it became available, such as information in annual reports from the Toxic Chemical Release Inventory requirements of the Emergency Planning and Community Right-To-Know Act of 1986. (Title III, Pub. L. 99–499.)

In summary, EPA and the States had access to a variety of information gathered in support of section 304(l), section 303(c)(2)(B), and section 305(b) activities. For some States, as noted above, such information for priority toxic pollutants is extremely limited. In the final analysis, the Regional Administrator made a judgment on a duly submitted State standards triennial review based on the State's record and the Region's independent knowledge of the facts and circumstances surrounding the State's actions. These actions, taken in consultation with the Office of Water, determined which State actions were sufficiently consistent with the coverage contemplated in the statute to justify approval. These approval actions include allowable variations among State water quality standards. EPA approval indicates that, based on the record, the State water quality standards met the requirements of the Act.

2. Determining Current Compliance Status

The following summarizes the process generally followed by the Agency in assessing compliance with section 303(c)(2)(B).

A State was determined to be in full compliance with the requirements of section 303(c)(2)(B) if,

a. The State had submitted a water quality standards package for EPA review since enactment of the 1987 Clean Water Act amendments or was determined to be already in compliance, and,

b. The State adopted water quality standards are effective under State law and consistent with the CWA and EPA's implementing regulations (EPA's December 1988 guidance described three Options, any one, or a combination of which EPA suggested States could adopt for compliance with the CWA and EPA regulations), and

c. EPA has issued a formal approval determination to the State.

States meeting these criteria are not included in this final rulemaking.

States which adopted standards following Option 1 generally have been found to satisfy section 303(c)(2)(B). An exception exists for selected States which attempted to follow Option 1 by adopting all EPA section 304(a) criteria by reference. EPA has withheld

approval for one State which has adopted such a reference into their standards because the adopted standards did not specify application factors necessary to implement the criteria (e.g., a risk level for carcinogens). Other States have achieved full compliance following options 1, 2, 3, or some combination of these options.

As of the date of signature of today's rule, the Agency has determined that 43 States and Territories are in full compliance with the requirements of section 303(c)(2)(B). Compliance status for all States and Territories is set forth in Table 1.

TABLE 1.—ASSESSMENT OF STATE COMPLIANCE WITH CWA SECTION 303(C)(2)(B)

State	Is State in compliance with section 303(c)(2)(B)?
Alabama	Yes.
Alaska	No.
Arizona	Yes.
Arkansas	No.
California	No.
Colorado	Yes.
Connecticut	Yes.
Delaware	Yes.
Florida	No.
Georgia	Yes.
Hawaii	Yes.
Idaho	No.
Illinois	Yes.
Indiana	Yes.
Iowa	Yes.
Kansas	No.
Kentucky	Yes (1).
Louisiana	Yes.
Maine	Yes.
Maryland	Yes.
Massachusetts	Yes.
Michigan	No.
Minnesota	Yes.
Mississippi	Yes.
Missouri	Yes.
Montana	Yes.
Nebraska	Yes.
Nevada	No.
New Hampshire	Yes.
New Jersey	No.
New Mexico	Yes (2).
New York	Yes.
North Carolina	Yes.
North Dakota	Yes.
Ohio	Yes.
Oklahoma	Yes.
Oregon	Yes.
Pennsylvania	Yes.
Rhode Island	No.
South Carolina	Yes.
South Dakota	Yes.
Tennessee	Yes.
Texas	Yes.
Utah	Yes.
Vermont	No.
Virginia	Yes.
Washington	No.
West Virginia	Yes.
Wisconsin	Yes.
Wyoming	Yes.
American Samoa	Yes.
Commonwealth of the Northern Mariana Islands.	Yes.
District of Columbia	No.
Guam	Yes.
Puerto Rico	No.
Tr. Territories	Yes.
Virgin Islands	Yes.

Notes to Table 1

(1) At the initiation of this rulemaking, Kentucky was determined to be in compliance with the Act. On January 27, 1992, the Commonwealth of Kentucky deleted the water quality criteria for dioxin from the Kentucky water quality standards. Although EPA has not formally acted to disapprove Kentucky's action to delete the criteria, information is available which documents the need for dioxin criteria for the Commonwealth of Kentucky. Any potential EPA promulgation arising from a future EPA action to disapprove the deletion of the dioxin criteria for Kentucky will be through a rulemaking independent of today's rule.

(2) At the initiation of this rulemaking, New Mexico was determined to be in compliance with the Act. On October 8, 1991, New Mexico adopted revisions to its standards which affected compliance with acute toxicity criteria. On January 13, 1992, EPA disapproved the State's action, thus initiating the possibility of Federal promulgation should the State fail to adopt acceptable standards within 90 days from the EPA notice. Any potential EPA promulgation arising from this disapproval will be through a rulemaking independent of today's rule. EPA policy has been and continues to be that we prefer States and Territories to adopt their own standards consistent with the requirements of the Clean Water Act.

(3) EPA has become aware that several of the State water quality standards approved as complying with section 303(c)(2)(B) have been challenged in State courts for various reasons. Additional such challenges may occur in the future. In cases where such State rules are remanded or otherwise set aside, or intentionally withdrawn by the State for any reason, and the State does not pursue in good faith correcting such defects in a timely manner, it is EPA's intention to initiate appropriate rulemaking to put in place appropriate criteria for priority toxic pollutants to bring State water quality standards into compliance with the Clean Water Act.

E. Rationale and Approach for Developing the Final Rule

The addition of section 303(c)(2)(B) to the Clean Water Act was an unequivocal signal to the States that Congress wanted toxics criteria in the State's water quality standards. The legislative history notes that the "beyond BAT" program (i.e., controls necessary to comply with water quality standards that are more stringent than technology-based controls) was the cornerstone to the Act's toxic pollution control requirements.

The major innovation of the 1972 Clean Water Act Amendments was the concept of effluent limitation guidelines which were to be incorporated into NPDES permits. In many cases, this strategy has succeeded in halting the decline in the quality of the Nation's waters and, often, has provided improvements. However, the effluent limitation guidelines for industrial discharges and the similar technology-based secondary treatment requirements for municipal discharges are not capable, by themselves, of ensuring that the fishable-swimmable goals of the Clean Water Act will be met for all waters.

The basic mechanism to accomplish this in the Act is water quality standards. States are required to periodically review and revise these standards to achieve the goals of the Act. In the 1987 CWA amendments, Congress focused on addressing toxics in several sections of the Act, but special attention was placed on the section 303 water quality standards program requirements. Congress intended that the adoption of numeric criteria for toxics would result in direct improvements in water quality by forcing, where necessary, effluent limits more stringent than those resulting from technology-based effluent limitations guidelines.

As the legislative history demonstrates, Congress was dissatisfied with the piecemeal, slow progress being made by States in setting standards for toxics. Congress reacted by legislating new requirements and deadlines directing the States to establish toxics criteria for pollutants addressed in EPA section 304(a) criteria guidance, especially for those priority toxic pollutants that could reasonably be expected to interfere with designated uses. In today's action, EPA is exercising its authority under section 303(c)(4) to promulgate criteria where States have failed to act in a timely manner.

The previous section of this preamble explains EPA's approach to evaluating the adequacy of State actions in response to section 303(c)(2)(B). This section explains EPA's legal basis for issuing today's rule, and discusses EPA's general approach for developing the State-specific requirements in Section 131.36(d).

In addition to the Congressional directive and the legal basis for this action, there are a number of environmental and programmatic reasons why further delay in

establishing water quality standards for toxic pollutants is no longer acceptable.

Prompt control of toxic pollutants in surface waters is critical to the success of a number of Clean Water Act programs and objectives, including permitting, enforcement, fish tissue quality protection, coastal water quality improvement, sediment contamination control, certain nonpoint source controls, pollution prevention planning, and ecological protection. The decade long delay in State adoption of water quality standards for toxic pollutants has had a ripple effect throughout EPA's water programs. Without clearly established water quality goals, the effectiveness of many water programs is jeopardized. For too long, the absence of water quality standards has had a chilling effect on toxic control progress in many State and Federal programs.

Failure to take prompt action at this juncture would also undermine the continued viability of the current statutory scheme to establish standards. Excessive delay subverts the entire concept of the triennial review cycle which is intended to combine current scientific information with the results of previous environmental control programs to direct continuing progress in enhancing water quality.

Finally, another reason to proceed expeditiously is to bring closure to this long-term effort and allow State attention and resources to be directed towards important, new national program initiatives. Until standards for toxic pollutants are in place, neither EPA nor the States can fully focus on the emerging, ecologically-based water quality activities such as wetlands criteria, biological criteria and sediment criteria.

1. Legal Basis

Clean Water Act Section 303(c) specifies that adoption of water quality standards is primarily the responsibility of the States. However, Section 303(c) also describes a role for EPA of overseeing State actions to ensure compliance with CWA requirements. If the Agency's review of the State's standards finds flaws or omissions, then the Act authorizes EPA to initiate promulgation to correct the deficiencies (see section 303(c)(4)). The water quality standards promulgation authority has been used by EPA to issue final rules on nine separate occasions. These actions have addressed both insufficiently protective State criteria and/or designated uses and failure to adopt needed criteria. Thus, today's action is not unique, although it would affect more States and pollutants than previous actions taken by the Agency.

The Clean Water Act in section 303(c)(4) provides two bases for promulgation of Federal water quality standards. The first basis, in paragraph (A), applies when a State submits new or revised standards that EPA determines are not consistent with the applicable requirements of the Act. If, after EPA's disapproval, the State does not promptly amend its rules so as to be consistent with the Act, EPA must promulgate appropriate Federal water quality standards for that State. The second basis for EPA's action is paragraph (B), which provides that EPA shall promptly initiate promulgation "* * * in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act." EPA is relying on both section 303(c)(4)(A) and section 303(c)(4)(B) as the legal basis for this rule.

Section 303(c)(4)(A) supports today's action for several States. These States have submitted criteria for some number of priority toxic pollutants and EPA has disapproved the State's adopted standards. The basis for EPA's disapproval generally has been the lack of sufficient criteria or particular criteria that were insufficiently stringent. In these cases, EPA has, by letter to the State, noted the deficiencies and specified the need for corrective action. Not having received an appropriate correction within the statutory time frame, EPA is today promulgating the needed criteria. The action in today's rule pursuant to section 303(c)(4)(A) may differ from those taken pursuant to section 303(c)(4)(B) by being limited to criteria for specific priority toxic pollutants, particular geographic areas, or particular designated uses.

Section 303(c)(4)(B) is the basis for EPA's requirements for most States. For these States, the Administrator has determined that promulgating criteria is necessary to bring the States into compliance with the requirements of the CWA. In these cases, EPA is promulgating, at a minimum, criteria for all priority toxic pollutants not addressed by approved State criteria. EPA is also promulgating criteria for priority toxic pollutants where any previously-approved State criteria do not reflect current science contained in revised criteria documents and other guidance sufficient to fully protect all designated uses or human exposure pathways, or where such previously-approved State criteria are not applicable to all appropriate designated uses. EPA's action pursuant to section 304(c)(4)(B) may include several situations.

In some cases, the State has failed to adopt and submit for approval any criteria for those priority toxic pollutants for which EPA has published criteria. This includes those States that have not submitted triennial reviews. In other cases, the State has adopted and EPA has approved criteria for either aquatic life or human health, but not both. In yet a third situation, States have submitted some criteria but not all necessary criteria. Lastly, one State has submitted criteria that do not apply to all appropriate geographic sections of the waters of the State.

The use of section 303(c)(4)(B) requires a determination by the Administrator "* * * that a revised or new standard is necessary to meet the requirements of * * *" the Act. The Administrator's determination could be supported in different ways.

One approach would be for EPA to undertake a time-consuming effort to research and marshall data to demonstrate the need for promulgation for each criteria for each stream segment or waterbody in each State. This would include evidence for each Section 307(a) priority toxic pollutant for which EPA has Section 304(a) criteria and that there is a "discharge or presence" which could reasonably "be expected to interfere with" the designated use. This approach would not only impose an enormous administrative burden, but would be contrary to the statutory scheme and the compelling Congressional directive for swift action reflected in the 1987 addition of section 303(c)(2)(B) to the Act.

An approach that is more reasonable and consistent with Congressional intent focuses on the State's failure to complete the timely review and adoption of the necessary standards required by section 303(c)(2)(B) despite information that priority toxic pollutants may interfere with designated uses of the State's waters. This approach is consistent with the fact that in enacting section 303(c)(2)(B) Congress expressed its determination of the necessity for prompt adoption and implementation of water quality standards for toxic pollutants. Therefore, a State's failure to meet this fundamental 303(c)(2)(B) requirement of adopting appropriate standards constitutes a failure "to meet the requirements of the Act." That failure to act can be a basis for the Administrator's determination under section 303(c)(4)(B) that new or revised criteria are necessary to ensure designated uses are adequately protected. Here, this determination is buttressed by the existence of evidence of the discharge or presence of priority toxic pollutants in

a State's waters for which the State has not adopted numeric water quality criteria. The Agency has compiled an impressive volume of information in the record for this rulemaking on the discharge or presence of toxic pollutants in State waters. This data supports the Administrator's determination pursuant to section 303(c)(4)(B). The record was available to the public for review during this rulemaking period and continues to be on file.

The Agency's choice to base the determination on the second approach is supported by both the explicit language of the statutory provision and by the legislative history. Congress added subsection 303(c)(2)(B) to section 303 with full knowledge of the existing requirements in section 303(c)(1) for triennial water quality standards review and submission to EPA and in section 303(c)(4)(B) for EPA promulgation. There was a clear expectation that these provisions be used in concert to overcome the programmatic delay that many legislators criticized and achieve the Congressional objective of the rapid availability of enforceable water quality standards for toxic pollutants. As quoted earlier, chief Senate sponsors, including Senators Stafford, Chaffee and others, wanted the provision to eliminate State and EPA delays and force aggressive action.

In normal circumstances, it might be argued that to exercise section 303(c)(4)(B) the Administrator might have the burden of marshalling conclusive evidence of "necessity" for Federally promulgated water quality standards. However, in adopting section 303(c)(2)(B), Congress made clear that the "normal" procedure had become inadequate. The specificity and deadline in section 303(c)(2)(B) were layered on top of a statutory scheme already designed to achieve the adoption of toxic water quality standards. Congressional action to adopt a partially redundant provision was driven by their impatience with the lack of State progress. The new provision was essentially a Congressional "determination" of the necessity for new or revised comprehensive toxic water quality standards by States. In deference to the principle of State primacy, Congress, by linking section 303(c)(2)(B) to the section 303(c)(1) three-year review period, gave States a last chance to correct this deficiency on their own. However, this Congressional indulgence does not alter the fact that section 303(c)(2)(B) changed the nature of the CWA State/EPA water quality standard relationship. The new provision and its legislative background indicate that the Administrator's determination to invoke his section 303(c)(4)(B) authority in this circumstance can be met by a generic finding of inaction on the part of a State and without the need to develop data for individual stream segments. Otherwise, the Agency could face a heavy data gathering burden of justifying the need for each Federal criterion and the process could stretch for years and never be realized. To interpret the combination of subsections (c)(2)(B) and (c)(4) as an effective bar to prompt achievement of statutory objectives would be a perverse conclusion and render section 303(c)(2)(B) essentially meaningless.

A second strong argument against requiring EPA to shoulder a heavy burden to exercise section 303(c)(4)(B) authority is that it would invert the traditional statutory scheme of EPA as national overseer and States as the entity with the greatest local expertise. The CWA provides States the flexibility to tailor water quality standards to local conditions and needs based upon their wealth of first-hand experience, knowledge and data. However, this allowance for flexibility is based on an assumption of reasoned and timely State action, not an abdication of State responsibility by failure to act. EPA does not possess the local expertise or resources necessary to successfully tailor State water quality standards. Therefore, the fact that the CWA allows States flexibility in standards development does not impose an inappropriate burden on EPA in the exercise of its oversight promulgation responsibilities. A broad Federal promulgation based on a showing of State inaction coupled with basic information on the discharge and presence of toxic pollutants meets the statutory objective of having criteria in places that are protective of public health and the environment. Without local expertise to help accurately narrow this list of pollutants and segments requiring criteria, there is no assurance of comparable protection. Nothing in the overall statutory water quality standards scheme anticipates EPA would develop this expertise in lieu of the States. EPA's lack of familiarity with local conditions argues strongly for a simple "determination" test to trigger section 303(c)(4)(B) promulgations. It also supports the concept of an across-the-board rulemaking for all priority toxic pollutants with section 304(a) criteria.

A final major reason supporting a simple determination to trigger 303(c)(4)(B) action is that comprehensive Federal promulgation imposes no undue or inappropriate burden on States or dischargers. It merely puts in place standards for toxic pollutants that are utilized in implementing Clean Water Act programs. Under this rulemaking, a State still retains the ability to adopt alternative water quality standards simply by completing its standards adoption process. Upon EPA approval of those standards, EPA will take actions to withdraw the Federally-promulgated criteria.

Federal promulgation of State water quality standards should be a course of last resort. It is symptomatic of something awry with the basic statutory scheme. Yet, when it is necessary to exercise this authority, as the compelling evidence suggests in this case, there should be no undue impediments to its use. Section 303(c)(4) is replete with deadlines and Congressional directives for the Administrator to act "promptly" in these cases. The statute indicates that the Administrator of EPA, is to "* * * promptly prepare and publish proposed regulations setting forth a revised or new water quality standard * * *" and "* * * shall promulgate any revised or new standard * * * not later than 90 days after he published such proposed standards, unless prior to such promulgation, such State has adopted a revised or new standard which the Administrator determines to be in accordance with the Act." The adoption of section 303(c)(2)(B) reinforced this emphasis on expeditious actions. EPA has demonstrated extensive deference to State primacy and a willingness to provide broad flexibility in their adoption of State standards for toxics. However, to fulfill its statutory obligation requires that EPA's deference and flexibility cannot be unlimited.

For the reasons just discussed, EPA does not believe it is necessary to support the criteria promulgated today on a pollutant specific, State-by-State, waterbody-by-waterbody basis. Nonetheless, over the course of the past several years in working with and assisting the States, the Agency has reviewed the readily-available data on the discharge and presence of priority toxic pollutants. While this data is not necessarily complete, it constitutes a substantial record to support a strong *prima facie* case for the need for numeric criteria for most priority toxic pollutants with section 304(a) criteria guidance in most States. In the absence of final State actions to adopt criteria pursuant to either Option 2 or 3 which meet the requirements for EPA approval, this evidence strongly supports EPA's decision to promulgate, pursuant to section 303(c)(4)(B), criteria

for all priority toxic pollutants not fully addressed by State criteria. The EPA data supporting this assertion is discussed more fully in the next section.

2. Approach for Developing the Final Rule

The State-specific requirements in § 131.36(d) were developed using one of two approaches. In the formal review of the adopted standards for certain States, EPA determined that specific numeric toxics criteria are lacking. For some, criteria were omitted from the State standards, even though in EPA's judgment, the pollutants can reasonably be expected to interfere with designated uses. In these cases where EPA specifically identified deficiencies in a State submission, this rule establishes Federal criteria for that limited number of priority toxic pollutants necessary to correct the deficiency.

For the balance of the States, EPA applies, to all appropriate State waters, the section 304(a) criteria for all priority toxic pollutants which are not the subject of approved State criteria. EPA also is promulgating Federal criteria for priority toxic pollutants where any previously-approved State criteria do not reflect current science contained in revised criteria documents and other guidance sufficient to fully protect all designated uses or human health exposure pathways, where such previously-approved State criteria do not protect against both acute and chronic aquatic life effects, or where such previously-approved State criteria are not applicable to all appropriate State designated uses.

Absent a State-by-State pollutant specific analysis to narrow the list, existing data sources strongly support a comprehensive rulemaking approach. Information in the rulemaking record from a number of sources indicates the discharge, potential discharge or presence of virtually all priority toxic pollutants in all States. The data available to EPA was assembled into a "strawman" analysis designed to identify priority toxic pollutants that potentially require the adoption of numeric criteria. Information on pollutants discharged or present was identified by accessing various national data sources:

—Final section 304(l) short lists identifying toxic pollutants likely to impair designated uses;
—Water column, fish tissue and sediment observations in the Storage Retrieval (STORET) data base (i.e., where the pollutant was *detected*);
—The National Pollutant Discharge Elimination System's (NPDES) Permit Compliance System data base to identify those pollutants limited in direct dischargers' permits;
—Pollutants included on Form 2(c) permit applications which have been submitted by wastewater dischargers;
—Information on discharges to surface waters or POTWs from the Toxics Release Inventory required by the Emergency Planning and Community Right-To-Know Act of 1986 (Title III, P.L. 99–499);
—Pollutants predicted to be in the effluent of NPDES dischargers based on industry-specific analyses conducted for the Clean Water Act effluent guideline program.

The extent of this data supports a conclusion that promulgation of Federal criteria for all priority toxic pollutants with section 304(a) criteria guidance documents is appropriate for those States that have not completed their standards adoption process. This conclusion is supported by several other factors.

First, many of the available data sources have limitations which argue against relying on them solely to identify all needed water quality criteria. For example, the section 304(l) short lists only identified water bodies where uses were impaired by point source discharges; State 304(l) long lists did not generally identify pollutants causing use impairment by nonpoint sources. Other available data sources (i.e., NPDES permit limits) have a similar narrow scope because of their particular purposes. Even the value of those data bases designed to identify ambient water problems is restricted by the availability of monitoring data. In many States, the quantity, spatial and temporal distribution, and pollutant coverage of monitoring data is severely limited. For example, the most recent Water Quality Inventory Report to Congress included an evaluation of use attainment for only one-third of all river miles and less than one-half of lake acres. Even for those waters where use attainment status was reported, many assessments were based on data which did not include the chemical-specific information necessary to identify the priority toxic pollutants which pose a threat to designated uses. After evaluating this data, EPA concluded that it most likely understates the adverse presence or discharge of priority toxic pollutants.

Further evidence justifying a broad promulgation rulemaking can be found in the State actions to date in their standards adoption process. While many have not come to completion, the initial steps have led many States to develop or propose rulemaking packages with extensive pollutant coverage. The nature of these preliminary State determinations argues for a Federal promulgation of all section 304(a) criteria pollutants to ensure adequate public health and environmental protection against priority toxic pollutant insults.

The detailed assumptions and approach followed by EPA in writing the § 131.36(d) requirements for all jurisdictions are described below. In the following discussions, EPA refers to these assumptions and approach as "rules."

(1) No criteria are promulgated for States which have been fully approved by EPA as complying with the section 303(c)(2)(B) requirements.

(2) For States which have not been fully approved, if EPA has not previously determined which specific pollutants criteria/waterbodies are lacking from a State's standards (i.e., as part of an approval/disapproval action only), all of the criteria in Columns B, C, and D of the § 131.36(b) matrix are promulgated for statewide application to all appropriate designated uses, except as provided for elsewhere in these rules. That is, EPA brought the State into compliance with section 303(c)(2)(B) via an approach which is comparable to option 1 of the December 1988 national guidance for section 303(c)(2)(B).

(3) If EPA has previously determined which specific pollutants/criteria/waterbodies are needed to comply with CWA section 303(c)(2)(B) (i.e., as part of an approval/disapproval action only), the criteria in § 131.36(b) are promulgated for only those specific pollutants/criteria/waterbodies (i.e., EPA brought the State into compliance via an approach which is comparable to option 2 of the December 1988 national guidance for section 303(c)(2)(B)).

(4) For aquatic life, except as provided for elsewhere in these rules, all waters with designated aquatic life uses providing even minimal support to aquatic life are included in the rule (i.e., fish survival, marginal aquatic life, etc.)

(5a) For human health, except as provided for elsewhere in these rules, all waters with designated uses providing for public water supply protection (and therefore a potential water consumption exposure route) or minimal aquatic life protection (and therefore a potential fish consumption exposure route) are included in the rule.

(5b) Where a State has determined the specific aquatic life segments which provide a fish consumption exposure route (i.e., fish or other aquatic life are being caught and consumed) and EPA approved this determination as part of

a standards approval/disapproval action, the rule includes the fish consumption (Column D2) criteria for only those aquatic life segments, except as provided for elsewhere in these rules. In making a determination that certain segments do not support a fish consumption exposure route, a State must have completed, and EPA approved, a use attainability analysis consistent with the provisions of 40 CFR 131.10(j). In the absence of such an approved State determination, EPA promulgated fish consumption criteria for all aquatic life segments.

(6) Uses/Classes other than those which support aquatic life or human health are not included in the rule (e.g., livestock watering, industrial water supply), unless they are defined in the State standards as also providing protection to aquatic life or human health (i.e., unless they are described as protecting multiple uses including aquatic life or human health). For example, if the State standards include a use such as industrial water supply, and in the narrative description of the use the State standards indicate that the use includes protection for resident aquatic life, then this use is included in this rule.

(7) For human health, the "water + fish" criteria in Column D1 of § 131.36(b) are promulgated for all waterbodies where public water supply and aquatic life uses are designated, except as provided for elsewhere in these rules (e.g., rule 9).

(8) If the State has public water supplies where aquatic life uses have not been designated, or public water supplies that have been determined not to provide a potential fish consumption exposure pathway, the "water + organisms only" criteria in Column D1 of § 131.36(b) are promulgated for such waterbodies, except as provided for elsewhere in these rules (e.g., rule 9).

(9) EPA is generally not promulgating criteria for priority toxic pollutants for which a State has adopted criteria and received EPA approval. The exceptions to this general rule are described in rules 10 and 11.

(10) For priority toxic pollutants where the State has adopted human health criteria and received EPA approval, but such criteria do not fully satisfy section 303(c)(2)(B) requirements, the rule includes human health criteria for such pollutants. For example, consider a case where a State has a water supply segment that poses an exposure risk to human health from both water and fish consumption. If the State has adopted, and received approval for, human health criteria based on water consumption only (e.g., Safe Drinking Water Act Maximum Contaminant Levels (MCLs)) which are less stringent than the "water + fish" criteria in Column D1 of § 131.36(b), the Column D1 criteria are promulgated for those water supply segments. The rationale for this is to ensure that both water and fish consumption exposure pathways are adequately addressed and human health is fully protected. If the State has adopted water consumption only criteria which are more stringent or equal to the Column D1 criteria, the "water + fish" criteria in Column D1 criteria are not promulgated.

(11) For priority toxic pollutants where the State has adopted aquatic life criteria and previous to the 1987 CWA Amendments received EPA approval, but such criteria do not fully satisfy section 303(c)(2)(B) requirements, the rule includes aquatic life criteria for such pollutants. For example, if the State has adopted not-to-be-exceeded aquatic life criteria which are less stringent than the 4-day average chronic aquatic life criteria in § 131.36(b) (i.e., in Columns B2 and C2), the acute and chronic aquatic life criteria in § 131.36(b) are promulgated for those pollutants. The rationale for this is that the State-adopted criteria do not protect resident aquatic life from both acute and chronic effects, and that Federal criteria are necessary to fully protect aquatic life designated uses. If the State has adopted not-to-be-exceeded aquatic life criteria which are more stringent or equal to the chronic aquatic life criteria in § 131.36(b), the acute and chronic aquatic life criteria in § 131.36(b) are not promulgated for those pollutants.

(12) Under certain conditions discussed in rules, 9, 10, and 11, criteria listed in § 131.36(b) are not promulgated for specific pollutants; however, EPA made such exceptions only for pollutants for which criteria have been adopted by the State and approved by EPA, where such criteria are currently effective under State law the appropriate EPA Region concluded that the State's criteria fully satisfy section 303(c)(2)(B) requirements.

3. Approach for States that Fully Comply Subsequent to Issuance of this Final Rule

As discussed in prior Sections of this Preamble, the water quality standards program has been established with an emphasis on State primacy. Although this rule was developed to Federally promulgate toxics criteria for States, EPA prefers that States maintain primacy, revise their own standards, and achieve full compliance. EPA is hopeful this rule will provide additional impetus for non-complying States to adopt the criteria for priority toxic pollutants necessary to comply with section 303(c)(2)(B).

Removal of a State from the rule will require another rulemaking by EPA according to the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). EPA will withdraw the Federal rule without a notice and comment rulemaking when the State adopts standards no less stringent than the Federal rule (i.e., standards which provide, at least, equivalent environmental and human health protection). For example, see 51 FR 11580, April 4, 1986, which finalized EPA's removal of a Federal rule for the State of Mississippi.

However, if a State adopts standards for toxics which are less stringent than the Federal rule but, in the Agency's judgment, fully meet the requirements of the Act, EPA will propose to withdraw the rule with a Notice of proposed rulemaking and provide for public participation. This procedure would be required for partial or complete removal of a State from this rulemaking. An exception to this requirement would be when a State adopts a human health criterion for a carcinogen at a 10^{-5} risk level where the Agency has promulgated at a 10^{-6} risk level. In such a case, the Agency believes it would be appropriate to withdraw the Federal criterion without notice and comment because the Agency has considered in this rule that criteria based on either 10^{-5} or 10^{-6} risk levels meet the requirements of the Act. A State covered by this final rule could adopt the necessary criteria using any of the three Options or combinations of those Options described in EPA's 1989 guidance.

EPA cautions States and the public that promulgation of this Federal rule removes most of the flexibility available to States for modifying their standards on a discharger-specific or stream-specific basis. For example, variances and site-specific criteria development are actions sometimes adopted by the States. These are optional policies under terms of the Federal water quality standards regulation. Except for the water-effect ratio for certain metals, EPA has not incorporated either optional policy, in general, in this rulemaking; that is, EPA has not generally authorized State modification of Federal water quality standards. Each of these types of modifications will, in general, require Federal rulemaking on a case-by-case basis to change the Federal rule. Because of the time consuming nature of reviewing such requests, limited Federal resources, and the need for the Agency to move into other priority programs

areas in establishing environmental controls, EPA alerts the States and the public that a prompt Agency response to requests for variances and site-specific modifications to the Federal criteria is unlikely. The best course of action, if such provisions are desired in a State, is for a State to adopt its own standards and take advantage, if it so chooses, of the flexibility offered by these optional provisions.

The Federal criteria published today are effective in 45 days. However, this action does not change existing applicable State and EPA provisions related to permit issuance or reissuance as they affect schedules of compliance. EPA and the States may continue issuing permits containing enforceable compliance schedules for these Federally established water quality standards if it is consistent with State policy.

F. Derivation of Criteria

1. Section 304(a) Criteria Process

Under the authority of CWA section 304(a), EPA has developed methodologies and specific criteria to protect aquatic life and human health. These methodologies are intended to provide protection for all surface water on a national basis. As described below, there are site-specific procedures for more precisely addressing site-specific conditions for an individual water body. However, the water quality criteria are scientifically sound and will achieve the statutory objective of protecting designated uses even in the absence of these modification procedures. Although the site-specific procedures may allow for more precise criteria for certain waterbodies, these procedures are infrequently used because the Section 304(a) criteria recommendations are designed to protect all waterbodies and have proven themselves to be appropriate. The methodologies have been subject to public review, as have the individual criteria documents. Additionally, the methodologies have been reviewed and approved by EPA's Science Advisory Board of external experts. Additional comments on the methodologies were taken as part of this action and have been considered and responded to in developing this final rule. In addition, these comments will be considered in the Agency's ongoing effort to propose revised methodologies for public review and comment in fiscal year 1993.

EPA incorporated by reference into the record of this rule the aquatic life methodology as described in "Appendix B—Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses" (45 FR 79341, November 28, 1980) as amended by "Summary of Revisions to Guildlines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" (50 FR 30792, July 29, 1985).

Note: Throughout the remainder of this rule, this reference is described as the 1985 Guidelines. Any page number references are to the actual guidance document, not the notice of availability in the **Federal Register**. The actual guidelines document was available through the National Technical Information Service (PB85–227049), is in the record of this rulemaking, and is abstracted in Appendix A of Quality Criteria for Water, 1986.

EPA also incorporated by reference into the record of this rule the human health methodology as described in "Appendix C—Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents" (45 FR 79347, November 28, 1980).

Note: Throughout the remainder of this Preamble, this reference is described as the Human Health Guidelines or the 1980 Guidelines.

EPA also recommends that the following be reviewed: "Appendix D—Response to Comments on Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses," (45 FR 79357, November 28, 1980); "Appendix E—Responses to Public Comments on the Human Health Effects Methodology for Deriving Ambient Water Quality Criteria" (45 FR 79368, November 28, 1980); and "Appendix B—Response to Comments on Guidelines for Deriving Numerical National Water quality Criteria for the Protection of Aquatic Organisms and Their Uses" (50 FR 30793, July 29, 1985). EPA also placed into the record the most current individual criteria documents for the priority toxic pollutants included in today's rule.

The primary focus of this rule is the inclusions of the water quality criteria for pollutant(s) in State standards as necessary to support water quality-based control programs. The Agency accepted comment on the criteria proposed for inclusion in this rule. However, Congress established a very ambitious schedule for the promulgation of the final criteria. The statutory deadline in section 303(c)(4) clearly indicates that Congress intended the Agency to move very expeditiously when Federal action is warranted.

The methodology used to develop the criteria and the criteria themselves (to the extent not updated through IRIS) have previously undergone scientific peer review and public review and comment, and have been revised as appropriate. For the most part, this review occurred before Congress amended the Act in 1987, to require the inclusion of numeric criteria for certain toxic pollutants in State standards. Congress acted with full knowledge of the EPA process for developing criteria and the Agency's recommendations under section 304(a). EPA believes it is consistent with Congressional intent to rely in large part on existing criteria rather than engage in a time-consuming reevaluation of the underlying basis for water quality criteria. Accordingly, the Agency stands by its prior decisions regarding its published methodology and criteria even after review of the comments received. It is the Agency's belief that this approach will best achieve the purpose of moving forward in promulgating criteria for States not in compliance with section 303(c)(2)(B) so that environmental controls intended by Congress can be put into place to protect public health and welfare and enhance water quality.

It should be noted that the Agency is initiating a review of the basic guidelines for developing criteria and that comments received during this rulemaking will be considered in that effort. Future revisions to the criteria guidelines will be reviewed by the Agency's Science Advisory Board and submitted to the public for review and comment following the same process that was used in issuing the existing methodological guidelines. Subsequent revisions of criteria documents and the issuance of any new criteria documents will also be subject to the public review.

2. Aquatic Life Criteria

Aquatic life criteria may be expressed in numeric or narrative forms. EPA's 1985 Guidelines describe an objective, internally consistent and appropriate way of deriving chemical-specific, numeric water quality criteria for the protection of the presence of, as well as the uses of, both fresh and marine water aquatic organisms.

An aquatic life criterion derived using EPA's section 304(a) method "might be thought of as an estimate of the highest concentration of a substance in water which does not present a significant risk to the aquatic organisms in the water and their uses." (45 FR 79341.) The term "their uses" refers to consumption by humans and wildlife (1985 Guidelines, page 48). EPA's guidelines are designed to derive criteria that protect aquatic communities by protecting most of the species and their uses most of the time, but not necessarily all of the species all of the time (1985 Guidelines, page 1). Aquatic communities can tolerate some

stress and occasional adverse effects on a few species so that total protection of all species all of the time is not necessary. EPA's 1985 Guidelines attempt to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or underprotection. As discussed in detail below, there are several individual factors which may make the criteria somewhat overprotective or underprotective. The approach EPA is using is believed to be as well balanced as possible, given the state of the science.

Numerical aquatic life criteria derived using EPA's 1985 Guidelines are expressed as short-term and long-term numbers, rather than one number, in order that the criteria more accurately reflect toxicological and practical realities. The combination of a criteria maximum concentration (CMC), a one-hour average acute limit, and a criteria continuous concentration (CCC), a four-day average concentration chronic limit, provide protection of aquatic life and its uses from acute and chronic toxicity to animals and plants, and from bioconcentration by aquatic organisms, without being as restrictive as a one-number criterion would have to be. (1985 Guidelines, pages 4–5.)

The two-number criteria are intended to identify average pollutant concentrations which will produce water quality generally suited to maintenance of aquatic life and their uses while restricting the duration of excursions over the average so that total exposures will not cause unacceptable adverse effects. Merely specifying an average value over a time period is insufficient unless the time period is short, because excursions higher than the average can kill or cause substantial damage in short periods.

A minimum data set of eight specified families is required for criteria development (details are given in the 1985 Guidelines, page 22). The eight specific families are intended to be representative of a wide spectrum of aquatic life. For this reason it is not necessary that the specific organisms tested be actually present in the water body. States may develop site-specific criteria using native species, provided that the broad spectrum represented by the eight families is maintained. All aquatic organisms and their common uses are meant to be considered, but not necessarily protected, if relevant data are available.

EPA's application of guidelines to develop the criteria matrix in the final rule is judged by the Agency to be applicable to all waters of the United States, and to all ecosystems (1985 Guidelines, page 4). There are waters and ecosystems where site-specific criteria could be developed, as discussed below, but it is up to States to identify those waters and develop the appropriate site-specific criteria.

Fresh water and salt water (including both estuarine and marine waters) have different chemical compositions, and freshwater and saltwater species rarely inhabit the same water simultaneously. To provide additional accuracy, criteria developed recently are developed for fresh water and for salt water.

Assumptions which may make the criteria underprotective include the fact that not all species are protected, the use of criteria on an individual basis, with no consideration of additive or synergistic effects, and the general lack of consideration of impacts on wildlife, due principally to a lack of data. Chemical toxicity is often related to certain receiving water characteristics, (pH, hardness, etc.) of a waterbody. Adoption of some criteria without consideration of these parameters could result in the criteria being overprotective.

3. Criteria for Human Health

EPA's section 304(a) human health guidelines attempt to provide criteria which minimize or specify the potential risk of adverse human effects due to substances in ambient water (45 FR 79347). EPA's section 304(a) criteria for human health are based on two types of biological endpoints: (1) Carcinogenicity and (2) systemic toxicity (i.e., all other adverse effects other than cancer). Thus, there are two procedures for assessing these health effects: one for carcinogens and one for non-carcinogens.

EPA's human health guidelines assume that carcinogenicity is a "non-threshold phenomenon," that is, there are no "safe" or "no-effect levels" because even extremely small doses are assumed to cause a finite increase in the incidence of the response (i.e., cancer). Therefore, EPA's water quality criteria for carcinogens are presented as pollutant concentrations corresponding to increases in the risk of developing cancer.

For pollutants that do not manifest any apparent carcinogenic effects in animal studies (i.e., systemic toxicants), EPA assumes that the pollutant has a threshold below which no effects will be observed. This assumption is based on the premise that a physiological mechanism exists within living organisms to avoid or overcome the adverse effects of the pollutant below the threshold concentration.

The human health risks of a substance cannot be determined with any degree of confidence unless dose-response relationships are quantified. Therefore, a dose-response assessment is required before a criterion can be calculated. The dose-response assessment determines the quantitative relationships between the amount of exposure to a substance and the onset of toxic injury or disease. Data for determining dose-response relationships are typically derived from animal studies, or less frequently, from epidemiological studies in exposed populations.

The dose-response information needed for carcinogens is an estimate of the carcinogenic potency of the compound. Carcinogenic potency is defined here as a general term for a chemical's human cancer-causing potential. This term is often used loosely to refer to the more specific carcinogenic or cancer slope factor which is defined as an estimate of carcinogenic potency derived from animal studies or epidemiological data of human exposure. It is based on extrapolation from test exposures of high dose levels over relatively short periods of time to more realistic low dose levels over a lifetime exposure period by use of linear extrapolation models. The cancer slope factor, q1*, is EPA's estimate of carcinogenic potency and is intended to be a conservative upper bound estimate (e.g. 95% upper bound confidence limit).

For non-carcinogens, EPA uses the reference dose (RfD) as the dose response parameter in calculating the criteria. The RfD was formerly referred to as an "Acceptable Daily Intake" or ADI. The RfD is useful as a reference point for gauging the potential effects of other doses. Doses that are less than the RfD are not likely to be associated with any health risks, and are therefore less likely to be of regulatory concern. As the frequency of exposures exceeding the RfD increases and as the size of the excess increases, the probability increases that adverse effects may be observed in a human population. Nonetheless, a clear conclusion cannot be categorically drawn that all doses below the RfD are "acceptable" and that all doses in excess of the RfD are "unacceptable." In extrapolating non-carcinogen animal test data to humans to derive an RfD, EPA divides a no-observed-effect dose observed in animal studies by an "uncertainty factor" which is based on profession judgment of toxicologists and typically ranges from 10 to 10,000.

For section 304(a) criteria development, EPA typically considers only exposures to a pollutant that occur through the ingestion of water and contaminated fish and shellfish. This is

the exposure default assumption although the human health guidelines provide for considering other sources where data are available (see 45 FR 79354). Thus the criteria are based on an assessment of risks related to the surface water exposure route only.

The assumed exposure pathways in calculating the criteria are the consumption of 2 liters per day at the criteria concentration and the consumption of 6.5 grams per day of fish/shellfish contaminated at a level equal to the criteria concentration but multiplied by a "bioconcentration factor." The use of fish consumption as an exposure factor requires the quantification of pollutant residues in the edible portions of the ingested species. Bioconcentration factors (BCFs) are used to related pollutant residues in aquatic organisms to the pollutant concentration in ambient waters. BCFs are quantified by various procedures depending on the lipid solubility of the pollutant. For lipid soluble pollutants, the average BCF is calculated from the weighted average percent lipids in the edible portions of fish/shellfish, which is about 3%; or it is calculated from theoretical considerations using the octanol/water partition coefficient. For non-lipid soluble compounds, the BCF is determined empirically. The assumed water consumption is taken from the National Academy of Sciences publication "Drinking Water and Health" (1977). (Referenced in Human Health Guidelines, 45 FR 79356). The 6.5 grams per day contaminated fish consumption value is equivalent to the average per-capita consumption rate of all (contaminated and non-contaminated) freshwater and estuarine fish for the U.S. population. (See Human Health Guidelines, 45 FR 79348.)

EPA also assumes in calculating water quality criteria that the exposed individual is an average adult with body weight of 70 kilograms. The issue of concern is dose per kilogram of body weight. EPA assumes 6.5 grams per day of contaminated fish consumption and 2 liters per day of contaminated drinking water consumption for a 70 kilogram person in calculating the criteria. Persons of smaller body weight are expected to ingest less contaminated fish and water, so the dose per kilogram of body weight is generally expected to be roughly comparable. There may be subpopulations within a State, such as subsistence fishermen, who as a result of greater exposure to a contaminant, are at greater risk than the hypothetical 70 kilogram person eating 6.5 grams per day of maximally contaminated fish and shellfish and drinking 2 liters per day of maximally contaminated drinking water.

For example, individuals that ingest ten times more of a pollutant than is assumed in derivation of the criteria at a 10^{-6} risk level will be protected to a 10^{-5} level, which EPA has historically considered to be adequately protective. There may, nevertheless, be circumstances where site-specific numeric criteria that are more stringent than the State-wide criteria are necessary to adequately protect highly exposed subpopulations. Although EPA intends to focus on promulgation of appropriate State-wide criteria that will reduce risks to all exposed individuals, including highly exposed subpopulations, site-specific criteria may be developed subsequently by EPA or the States where warranted to provide necessary additional protection. (See Human Health Guidelines, Issue 8, 45 FR 79369.)

For non-carcinogens, oral RfD assessments (hereinafter simply "RfDs") are developed based on pollutant concentrations that cause threshold effects. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. (See Human Health Guidelines, 45 FR 79348.)

Criteria are calculated for individual chemicals with no consideration of additive, synergistic or antagonistic effects in mixtures. If the conditions within a State differ from the assumptions EPA used within the constraints of the Federal rule, the States have the option to perform the analyses for their conditions.

EPA has a process to develop a scientific consensus on oral reference dose assessments and carcinogenicity assessments (hereinafter simply cancer slope factors or slope factors). Reference doses and slope factors are validated by two Agency work groups (i.e., one work group for each) which are composed of senior Agency scientists from all of the program offices and the Office of Research and Development. These work groups develop a consensus of Agency opinion for RfDs and slope factors which are then used throughout the Agency for consistent regulation and guidance development. EPA maintains an electronic data base which contains the official Agency consensus for oral RfD assessments and carcinogenicity assessments which is known as the Integrated Risk Information System (IRIS). It is available for use by the public on the National Institutes of Health's National Library of Medicine's TOXNET system, and through diskettes from the National Technical Information Service (NTIS). (NTIS access number is PB 90–591330).

For the criteria included in today's rule, EPA used the criteria recommendation from the appropriate Section 304(a) criteria document. (The availability of EPA's criteria documents has been announced in various **Federal Register** Notices. These documents are also placed in the record for today's rule.) However, if the Agency has changed any parameters in IRIS used in criteria derivation since issuance of the criteria guidance document, EPA recalculated the criteria recommendation with the latest information, invited comment on the updating procedure and the numbers that would be derived from it. (This information is included in the record.) Thus, there may be differences between the original criteria guidance document recommendation, and those in this rule, but this rule presents the Agency's most current section 304(a) criteria recommendation. The recalculated human health numbers are denoted by an "a" in the criteria matrix in subsection 131.36(b) of today's rule.

A difficult and controversial problem facing both the States and EPA in attempting to comply with the requirements of section 303(c)(2)(B) involved selecting a criterion for 2,3,7,8–TCDD (dioxin). EPA, the States, dischargers, environmental groups and the public at large have been involved in discussions concerning the ambient level of protection that is protective of public health. At issue during the State debates on selecting criterion for dioxin and in comments to this rulemaking are scientific questions specific to dioxin such as determining the carcinogenic potency of the pollutant and the extent to which the pollutant tends to accumulate in fish tissues. Other issues are raised that are more generic to EPA's human health criteria. Most of these issues relate, directly or indirectly, to concerns expressed by dischargers regarding the cost of complying with water quality-based effluent limits for dioxin.

In order to base its regulatory decisions on the best available science, EPA continuously updates its assessment of the risk from exposure to contaminants. On September 11, 1991, EPA's Office of Research and Development (ORD) began reassessing the scientific models and exposure scenarios used to predict the risks of biological effects from exposure to low levels of dioxin. This reassessment has the potential to alter the risk assessment for dioxin and accordingly the Agency's

regulatory decisions related to dioxin. At this time, EPA is unable to say with any certainty what the degree or directions of any changes in risk estimates might be. Moreover, the results of the assessment and any potential impact on the criteria limit will not be known for quite some time.

Considerable comment was received that the Agency not include dioxin in the rule pending the results of the dioxin reassessment. However, no additional data was submitted by the commenters that adds to the information available upon which to make a decision. Based on information currently available to the Agency and in the face of known uncertainties, the limit promulgated today is within the range of scientific defensibility.

A State may adopt a different limit subsequent to this rule, following the normal procedures for adopting or revising water quality standards (40 FR 131). The adoption by a State of a new or revised criterion for dioxin, whether more or less stringent than the existing section 304(a) guidance, will be accepted by the Agency based on the results of the Agency's reassessment without any further justification. Once a State adopts a new dioxin criterion, the permitting authority, either EPA or the State (if authorized to administer a permit program), may change the effluent limitation for dioxin in a permit subject to the antibacksliding requirements of sections 402(o) and 303(d)(4) of the CWA and the antidegradation policy of the State.

This final rule includes criteria for dioxin. This action encourages and supports the ongoing efforts of fourteen States actively considering adopting criteria for dioxin. Most of these States are relying on the same data used by EPA in deriving its criterion for dioxin. In addition, dioxin limits are included as appropriate in Individual Control Strategies (ICS's) developed under section 304(l), so there should be no immediate regulatory action that will be based upon the promulgation of Federal criteria.

Moreover, as discussed in more detail in Section J, Executive Order 12291, example 5, it is unlikely that the practical impact of including dioxin at the 0.013 ppq level in this rule will affect the need for treatment and thus, is unlikely to be the basis for any incremental costs for pulp and paper mills to reduce dioxin discharges.

4. Section 304(a) Human Health Criteria Excluded

Today's rule does not contain certain of the section 304(a) criteria for priority toxic pollutants because those criteria were not based on toxicity. The basis for these particular criteria are organoleptic effects (e.g., taste and odor) which would make water and edible aquatic life unpalatable but not toxic. Because the basis for this rule is to protect the public health and aquatic life from toxicity consistent with the language and intent in section 303(c)(2)(B), EPA is promulgating criteria only for those priority toxic pollutants whose criteria recommendations are based on toxicity. The Section 304(a) human health criteria based on organoleptic effects for copper, zinc, 2,4-dimethylphenol, and 3-methyl-4-chlorophenol are excluded for this reason.

5. Cancer Risk Level

EPA's section 304(a) criteria guidance documents for priority toxic pollutants that are based on carcinogenicity present concentrations for upper bound risk levels of 1 excess cancer per 100,000 people (10^{-5}), per 1,000,000 people (10^{-6}), and per 10,000,000 people (10^{-7}). However, the criteria documents do not recommend a particular risk level as EPA policy.

In the April, 1990, **Federal Register** notice of preliminary assessment of State compliance, EPA announced its intention to propose this rule with an incremental cancer risk level of one in a million (10^{-6}) for all priority toxic pollutants regulated as carcinogens (55 FR 14351). This risk level was in fact proposed in the November 19, 1991 **Federal Register** Notice of proposed rulemaking. However, EPA's Office of Water's guidance to the States has consistently reflected the Agency's policy of accepting cancer risk policies from the States in the range of 10^{-6} to 10^{-4} (see 45 FR 79323, November 28, 1980; Guidance for State Implementation of Water Quality Standards for CWA section 303(c)(2)(B), November 12, 1988 (54 FR 346); see also document described in footnote 3 of this preamble). EPA reviews individual State policies as part of its water quality standards oversight function and determines if States have appropriately consulted their citizenry and applied good science in adopting water quality criteria.

In the proposal, EPA not only sought public comment on its decision to propose criteria based on a 10^{-6} risk level, but also specifically solicited comment on an alternate risk level of 10^{-5}. EPA received extensive comments that the proposed application of the criteria at the 10^{-6} risk level was contrary to Agency policy, contradicted other risk levels accepted by EPA in States included in the proposal, oversteps EPA authority by failing to recognize that such a decision more properly should be a State decision, given their primary authority to establish water quality standards, and that EPA should not include a risk level in the final rule.

Upon consideration of these comments, EPA agrees that establishing a single risk level for all States departs from Agency policy in the standards program. The application of the human health criteria in today's rule, on a State-by-State basis, therefore, has been changed. In today's rule, the risk level for each State is based on the best information available to the Agency as to each State's policy or practice regarding what risk level is, or should be, used in regulating carcinogens in surface waters. In most cases the risk levels were based on a State-adopted or formally proposed risk level, or in the case of Idaho, Rhode Island, and Nevada on an expression of State policy preference. EPA is therefore promulgating criteria at either the 10^{-5} or 10^{-6} risk level, either of which is consistent with EPA policy and with the requirements of the Clean Water Act.

The Agency recognizes that it made some of its decisions regarding the appropriate risk level on limited data. However, in the time available to the Agency, we relied on the best available information. The Agency believes it is important to move forward with this rule based on available information. To ensure that the Agency has selected the appropriate risk level for each State, the Agency is providing a final opportunity for the Governor of each State (or other official with authority to determine risk levels with respect to water quality criteria) to inform EPA if they believe a different risk level should be selected for their State.

Today's regulation will become effective 45 days from publication in the **Federal Register**. However, if within 30 days of publication of this rule in the **Federal Register**, the Governor or other appropriate official determines that the final rule is not based on the correct State policy or practice with regard to risk levels, the Governor (or other appropriate official) may request the Administrator in writing to adopt a different risk level for the State.

Note: The Governor is not constrained to requesting the Administrator to adopt a single risk level for all carcinogenic compounds. It is also acceptable for a State to select more than one risk level. For example, New Jersey is proposing to adopt 10^{-6} for Class A and B carcinogens, and 10^{-5} for Class C carcinogens. In this rule, EPA is promulgating the two risk level concept for New Jersey. The Governor must explain the basis for the request to change the risk level.

If EPA determines, after receipt of such a letter from the Governor or other appropriate State official, the State's preference is consistent with EPA policy, as set out in this rulemaking, and the requirements of the Clean Water Act, EPA will amend the rule accordingly.

As noted above, in this rulemaking EPA is adopting risk levels that it believes best reflects the expressed preferences of the covered States (10^{-6} or 10^{-5} for all carcinogens). If there were, however, no clear expression of preference by a State, EPA also believes it is reasonable for States to adopt a risk level of 10^{-5} for many of the covered carcinogens and a more stringent risk level of 10^{-6} for those carcinogens with substantially higher bioconcentration factors. Recognizing the current limitations of the scientific data available for this rulemaking, EPA believes it would be reasonable to conclude that carcinogens that bioaccumulate, particularly given the exposure of fishermen to such carcinogens, may justify a more protective risk level of 10^{-6} for the average fish consumer, but for other carcinogens a less conservative level (10^{-5}) may be appropriate.

6. Applying EPA's Nationally Derived Criteria to State Waters

To assist States in modifying EPA's water quality criteria, the Agency has provided guidance on developing site specific-criteria for aquatic life and human health (see Chapter 4, Water Quality Standards Handbook, Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, and the Guidelines and Methodology Used in the Preparation of Health Effect Assessment Chapters of the Consent Decree Water Criteria Documents). This guidance can be used by the appropriate regulatory authority to develop alternative criteria. Where such criteria are more stringent than the criteria promulgated today, Section 510 of the Clean Water Act (33 U.S.C. 1370) allows their implementation and enforcement in lieu of today's promulgated criteria.

EPA's experience with such site-specific criteria has verified that the national criteria are generally protective and appropriate for direct use by the States. (See Response to Comments on the 1985 Aquatic Life Guidelines, Comment 57, 50 FR 30796, July 29, 1985.)

7. Application of Metals Criteria

A substantial number of comments were received requesting Agency guidance on the implementation of metals criteria for aquatic life. In response, the Agency has prepared guidance on this issue, which is described in general terms below, and which is being applied to the metals criteria being promulgated today. Responses to individual comments may be found in section I, comments 19 to 53.

In selecting an approach for implementing the metals criteria, the principal issue is the correlation between metals that are measured and metals that are biologically available and toxic, as discussed more fully in EPA's Interim Guidance on Interpretation and Implementation of Aquatic Life Criteria for Metals, U.S. EPA, 1992, Office of Science and Technology, May 1992. (Notice of availability published at 57 FR 24041, June 5, 1992.

In order to assure that the metals criteria are appropriate for the chemical conditions under which they are applied, EPA is promulgating the criteria in terms of total recoverable metal and providing for adjustment of the criteria through application of the "water-effect ratio" procedure as described and recommended in the above Guidance document. This procedure was developed in the early 1980's, and was originally set forth, along with several case study applications, as the Indicator Species procedure in Chapter 4 of the Water Quality Standards Handbook (U.S. EPA 1983 at page 4–12). EPA notes that performing the testing to use site-specific water-effect ratios is optional on the part of the States.

In natural waters metals may exist in a variety of dissolved and particulate forms. The bioavailability and toxicity of metals depend strongly on the exact physical and chemical form of the metal. Generally, dissolved metal has greater toxicity than particulate metal, and for some metals, such as copper, certain dissolved forms have greater toxicity than other dissolved forms. Because the speciation among the various forms of a particular metal may vary from place to place, the same metal concentration may cause different toxicity from place to place.

With one exception (selenium), EPA's metals criteria for aquatic life protection are developed from laboratory toxicity data. Use of laboratory toxicity testing is usually much more cost-effective for obtaining data on (1) the toxicity of substances to a variety of species, and (2) the effect of various water quality characteristics on toxicity. (See 1980 Aquatic Life guidelines, comment 21, 45 FR 79360. See also responses to comments 17, 18, 19, 20.) The dilution water used in laboratory toxicity tests is ordinarily low in particulate matter (i.e. suspended solids), and low in organic matter compared to many ambient waters. As a result, laboratory toxicity tests are ordinarily more likely to overestimate the toxicity than underestimate the toxicity of metals in some ambient waters, particularly fresh waters.

Because of the complexity of metals speciation and its effect on toxicity, the relationship between measured concentrations and toxicity is not precise. Consequently, any method that could be recommended would not guarantee precise comparability between concentrations measured in the field and concentrations employed in the toxicity tests underlying the criteria.

For metals criteria derived from laboratory toxicity tests, the best approach is to use a biological method to compare bioavailability and toxicity in receiving waters versus laboratory test waters (the water-effect ratio) and to adjust the criteria values accordingly. This involves running toxicity tests for at least two species, each preferably from a different family, measuring acute (and possibly chronic) toxicity values for the pollutant using (a) the local receiving water, and (b) standard laboratory toxicity testing water, which is also the source of toxicity test dilution water. A water-effect ratio is the acute (or chronic) value in site water divided by the acute (or chronic) value in standard laboratory water. An acute value is an LC50 from a 48–96 hour test, as appropriate for the species. A chronic value is a concentration resulting from hypothesis testing or regression analysis of measurements of survival, growth, or reproduction in life cycle, partial life cycle, or early life stage tests on aquatic species.

Chemical approaches for defining and comparing bioavailable metal are subject to greater uncertainty than the above biological approach.

Chemical approaches, such as dissolved and total recoverable metals are easier to apply than biological approaches. One approach that EPA has approved in State standards is to measure metals in ambient waters in terms of dissolved metal, and to compare such measurements to criteria appropriate for dissolved metal. Since effluent limits, for both technical and legal (see NPDES permits regulation, 40 CFR 122.45) reasons, should be expressed in terms of total recoverable metal, it is necessary to translate between the dissolved and total recoverable concentrations. EPA has not incorporated the alternative of dissolved

metals criteria into this rule, because the use of the water-effect ratio accomplishes the same ends but is technically superior and subject to fewer uncertainties than implementation of the criteria as dissolved concentrations.

The simplest approach for ambient metals standards is the use of the total recoverable analytical method without a water-effect ratio adjustment. This is a reasonable, albeit environmentally conservative strategy, for applying EPA's aquatic life criteria. Where the toxicity testing necessary to develop an alternative water-effect ratio has not been performed, this rule will apply the total recoverable analytical method without a water-effect ratio adjustment. This occurs because EPA assigns the water-effect ratio a value of 1.0, subject to being rebutted by toxicity testing results.

Because of the comments received, and because of the desire to achieve the greatest possible degree of accuracy, EPA has chosen to apply the total recoverable metals criteria unadjusted for site-specific water chemistry, unless the State adjusts the criteria through the use of a water-effect ratio as provided for in this rule. Allowance for water-effect ratio adjustment also satisfies the concerns of comments requesting consideration of dissolved criteria.

The water-effect ratio approach compares bioavailability and toxicity of a specific pollutant in receiving waters and in laboratory test waters. It involves running toxicity tests for at least two species an appropriate number of times, as determined by the States, ordinarily on samples collected in at least two seasons (or more where large metal loadings are involved). As with other site-specific procedures, the basic analysis or testing may be performed by the State, a permittee, or any other interested party. Acute or chronic toxicity for the pollutant are measured using (a) the local receiving water where the criterion is being implemented, and (b) standard laboratory toxicity testing water, as the sources of toxicity test dilution water. The water-effect ratio is calculated as the acute or chronic value in site water divided by respective acute or chronic values in standard laboratory water. Ordinarily, the geometric mean water-effect ratio from the valid tests is used for calculation of the criterion, except where protection of sensitive species requires a more stringent value. Because the metal's toxicity in standard laboratory water is the basis for EPA's criterion, this comparison is used to adjust the national criterion to a site-specific value. Because the procedure is a biological measure of differences in water chemistry, the water-effect ratio, even when derived from acute tests, usually may be assumed to also apply to chronic criteria.

For criteria that do not vary with hardness, the criterion for a specific site equals the acute or chronic value tabulated in the rule (i.e., the matrix in 40 CFR 131.36(b)) multiplied by the site-specific water-effect ratio for that pollutant. The result may either reduce or increase the stringency of the criteria.

For criteria whose toxicity varies with hardness, the criterion for a specific site equals the criterion calculated at the design hardness (see 40 CFR 131.36(c)(4)), multiplied by the site-specific water-effect ratio.

The water-effect ratio is assigned a value of 1.0, unless scientifically defensible data clearly demonstrate that a value less than 1.0 is necessary or a value greater than 1.0 is sufficient to fully protect the designated uses of the water body from the toxic effects of the pollutant. Any data accepted for calculation of the water-effect ratio is to be generated through standard toxicity testing protocols (EPA recommends the methodology in Annual Book of ASTM Stds. 1991. Vol 11.04. ASTM. Philadelphia, PA.), using sampled ambient water representative of conditions in the affected water body, and using laboratory dilution water comparable to that used in toxicity tests underlying the criteria. The guidance documents cited at the beginning of this section provides more guidance on generating the information necessary to determine the correct value of the water-effect ratio. However, EPA intends within the next few months to provide additional guidance or performing the analyses necessary to develop scientifically defensible water-effect ratios for metals. As envisioned at this time, EPA will expand Chapter 4 in the Handbook to apply the appropriate procedures described there specifically to metals. EPA will look at the chemical characteristics of the laboratory water used in the toxicity tests included in the metals criteria data base, appropriate test organisms, analytical methods, safeguards against unintended metals contamination during toxicity testing, and appropriate data handling and statistics. While EPA believes the current guidance is adequate for application of the water-effect ratio, the additional guidance should help standardize procedures and make results more comparable and defensible.

The rule as promulgated is constructed as a rebuttable presumption. The water-effect ratio is assigned a value of 1.0 but provides that a State may assign a different value derived from suitable tests. As EPA has noted elsewhere, the actual decision as to the numeric value assigned to a water-effect ratio may be made during a State or EPA NPDES permit proceeding provided that adequate notice and opportunity for public participation is provided. It is the responsibility of the permit writing authority to determine whether to apply the water-effect ratio in an NPDES permit. However, EPA believes use of the ratio will lead to more appropriate permit limits. States may wish to allow permittees to fund State-administered studies necessary to develop the ratio for particular waterbodies.

EPA reviews State issued NPDES permits. To facilitate EPA consideration of a State-developed water-effect ratio, a State should specify in documentation supporting that action what decisions were made for critical parameters such as toxicity testing protocols used, frequency of testing, critical periods for sampling and testing, and analytical quality control and assurance. Each of the factors must be articulated in a record as a basis for a determination that the water-effect ratio is scientifically defensible.

The procedure applies only to aquatic life criteria derived from laboratory toxicity data. That is, it applies to the acute and chronic criteria (Columns B and C in 40 CFR 131.36(b)) for arsenic, cadmium, chromium, copper, lead, nickel, and zinc. It also applies to the acute criteria for mercury and silver, and the saltwater acute and chronic criteria for selenium. It does not apply to the chronic criteria for mercury, because they are residue based, or to the freshwater acute and chronic criteria for selenium, because they are field based.

The water-effect ratio is affected not only by speciation among the various dissolved and particulate forms, but also by additive, synergistic, and antagonistic effects of other materials in the affected site waters. As such, the water-effect ratio is a rather comprehensive measure of the effect of water chemistry on the toxicity of a pollutant. Because the procedure accounts for any reduction in bioavailability resulting from binding of the metal to particulate matter, all metals criteria have been appropriately expressed as total recoverable metal in this rule.

Where measured water-effect ratios are used in deriving NPDES permit limits, data from appropriate testing during the term of the permit should be accumulated so that the value of the water-effect ratio can be reevaluated each time the permit is reissued. Thus, were measured water-effect ratios are

involved, EPA recommends that NPDES permits establish monitoring requirements that include periodic determinations of water-effect ratios.

G. Description of the Final Rule and Changes From Proposal

1. Changes From Proposal

Several changes were made in the final rule from the proposal both as a result of Agency and State action with respect to the ongoing adoption of water quality standards by the States and because of the Agency's consideration of issues raised in specific public comments.

The States of Arizona, Colorado, Connecticut, Louisiana, New Hampshire, Virginia, the Commonwealth of the Northern Mariana Islands, and Hawaii are not included in the final rule as their standards were duly adopted and approved by EPA as fully meeting the requirements of section 303(c)(2)(B). Arizona's water quality standards were approved on March 2, 1992; Colorado's standards were approved by EPA on December 10, 1991; Connecticut on May 15, 1992; Louisiana on January 24, 1992; New Hampshire on June 25, 1992; Virginia on June 30, 1992; CNMI on January 13, 1992; and Hawaii on November 4, 1992. Copies of the approval letters are included in the record to this final rulemaking.

In addition, human health criteria adopted by the State of Arkansas were approved by EPA on January 24, 1992, and such criteria were removed from today's rule as it affects Arkansas. EPA is not promulgating and aquatic life criterion in Arkansas for arsenic because a review of monitoring data from 1985 to the present reveals no reason to conclude that arsenic will interfere with designated aquatic life uses. Additional details on EPA's action with respect to Arkansas may be found in Section I—Response to Public Comments, subsection 6.

Except for dioxin, criteria for the State of Florida for both human health and protection of aquatic life were approved by EPA on February 25, 1992. Florida is included in the rule only for the purposes of establishing a criterion for dioxin. More details on Florida's action are included in the Florida section of subsection 6 of the Response to Comments section of this preamble.

The criteria applicable to California have been revised to reflect a partial approval of the State's water quality standards on November 6, 1991. Additional comments with respect to California may be found in subsection 6 of Section I—Response to Public Comments.

The rule as it applies to the State of Washington was revised after discussion with the State as to EPA's interpretation of the uses designated by the State. The rule is now based on use categories rather than use classes. Additional details on this change may be found in subsection 6 of Section I—Response to Public Comments.

The rule as it applies to Alaska was modified to delete the assignment of criteria to a seafood processing use. This use falls under the standards program. However, because it applies to food preparation only, it is not appropriate to apply to it aquatic life or human health criteria. Additional aquatic life and human health criteria were added to several use classifications after discussions with the State clarified the State's use classifications. Additional details on this change may be found in subsection 6 of Section I—Response to Public Comments.

The rule as it applies to Idaho was modified to add additional criteria for the protection of primary contact recreation after discussions with the State concerning that use. Additional details may be found in subsection 6 of Section I—Response to Public Comments.

The rule as it applies to Kansas was changed by removing the promulgation of silver for sections (2) (A), (B), (C), and (6)(C) as the State has an EPA approved aquatic life criterion more stringent than the EPA criterion. The human health criterion for silver was removed because EPA has withdrawn its silver human health criterion.

The rule as it applies to New Jersey was revised to reflect comments received from the New Jersey Department of Environmental Protection and Energy to add waters classified as Pinelands and to extend coverage of the criteria to the mainstem Delaware River and Delaware Bay (zones 1C–6). Additional details on this change may be found in subsection 6 of Section I—Response to Public Comments.

Clarifications on several aspects of the rule with respect to implementation procedures are addressed in the response to public comments section of this preamble (section I).

Language was added in § 131.36(c)(4) dealing with the application of metals criteria as discussed in section F–7 of this preamble. We also added requirements to clarify how hardness should be handled in doing water-effect ratio determinations (see 131.36(c)(4)(iii), footnotes "e" and "m" to 131.36(b)).

The criteria for carcinogenic compounds included in this rule are applied at a risk level based on State preference as reflected by adopted or proposed standards, or in the case of Idaho, Nevada, and Rhode Island, on expression of State policy preference, rather than at an across-the-board 10^{-6} risk level as was proposed by the Agency. The rationale for this change is discussed in detail in section F–5 and there is additional discussion in the Response to Public Comment Section. The basis for EPA's selection of a risk level for an individual State is described in the following paragraphs:

Alaska: Risk Level: 10^{-5}

In July 1992, the State proposed human health water quality based on achieving a 10^{-5} risk level for two carcinogens: Dioxin and chloroform. Also, on November 16, 1992, the Commissioner of the Alaska Department of Environmental Conservation wrote the Director, Water Division, in EPA Region X, and indicated that ". . . I also had this matter reviewed by our Attorney General's Office, and hereby confirm the appropriateness of utilizing a 10^{-5} risk level for Alaska in the National Toxics Rule."

California: Risk Level: 10^{-6}

Standards adopted by the State contained in the Enclosed Bays and Estuaries Plan, and the Inland Surface Waters Plan, approved by EPA on November 6, 1991, and the Ocean Plan approved by EPA on June 28, 1990, contain a risk level of 10^{-6} for carcinogens. The total number of toxic pollutants differs in each plan but approximately 60–65 pollutants are covered.

District of Columbia: Risk Level: 10^{-6}

In 1985 the District adopted water quality criteria for human health, based solely on exposure through water consumption. The criteria were based on a 10^{-6} risk level. See D.C.M.R. title 21, chapter 1102.8(I).

Florida: Risk Level: 10^{-6}

The State adopted human health criteria for all toxic pollutants, except dioxin, and received EPA approval on February 25, 1992, at a risk level of 10^{-6}.

Idaho: Risk Level: 10^{-6}

On November 12, 1992, the Administrator of the Division of Environmental Quality, Idaho Department of Health and Welfare, indicated in a letter to the EPA Assistant Administrator for Water that while Idaho would be publishing proposed standards for public review and

comment in the next several months. . . . "Until we know what standard the public in Idaho prefers, we believe it is prudent to adopt the more protected standards of ten to the minus six."

EPA Region X is the permit issuing authority for the State and applies 10^{-6} for water quality based human health requirements. These permits have been certified by the State under section 401 as meeting water quality standards.

Kansas: Risk Level: 10^{-6}

The State completed a series of public hearings in August 1992 on proposed water quality standards revisions and is now processing public comments leading to the final, formal adoption hearing scheduled for January 1993. Formal adoption is scheduled for February 1993. The risk level in the current proposed standards is 10^{-6}. See proposed K.A.R. 28–16–28e(c)(4)(B).

Michigan: Risk Level: 10^{-5}

For several years Michigan has been controlling toxics through application of the Guidelines for Rule 57. These guidelines are applied at a 10^{-5} risk level. See R 323, 1057(2)(d).

Nevada: Risk Level: 10^{-5}

On November 3, 1992, EPA received a letter from the Administrator of the Division of Environmental Protection, Department of Conservation and Natural Resources, ". . . that the public health risk level that DEP would prefer to see in federal regulations is 10^{-5} (one in one hundred thousand), unless a state can provide substantial support in the record that a risk level of 10^{-4} (one in ten thousand) is appropriate and protective. This gives states the flexibility to use a more conservative 10^{-6} risk level if they see fit, but without requiring it when it is not necessary."

New Jersey: Risk Level: 10^{-6} For Class A and B Carcinogens, 10^{-5} For Class C Carcinogens

New Jersey, on October 20, 1992, solicited public comment on proposed surface water quality standards. The comment period is to close on December 18, 1992. The proposed human health criteria for carcinogens are established on a two-tiered system for risk levels. See proposed N.J.A.C. 7:9B–1,5(a)4. The State previously had indicated their intention to do this in a letter to EPA on December 19, 1991.

Puerto Rico: Risk Level: 10^{-5}

In 1990, the State proposed and held public hearings on criteria for human health using a 10^{-5} risk level. Subsequently, the proposed standards were revised. Just recently the State completed public hearings on the most recent revision to standards. The standards are under review by the Environmental Quality Board. The risk level remains at 10^{-5}.

Rhode Island: Risk Level: 10^{-5}

On November 2, 1992, the EPA Regional Administrator received a letter from the Director, Department of Environmental Management, that, along with the Department of Health, the State's "* * * policy choice on the promulgation of the human health criteria is for the adoption of a cancer risk level of 10^{-5}." The Director also indicated that "* * * future modifications of this risk level, whether it be to 10^{-4} or 10^{-6}, could be considered on a pollutant and subpopulation basis to produce a site specific risk assessment and protection of human health."

Vermont: Risk Level: 10^{-6}

On May 27, 1991, State submitted to EPA final water quality standards which reference the EPA section 304(a) criteria to be applied at a 10^{-6} risk level. However, the effective date of these standards is not until January 1, 1995. This delayed effective date was the reason Region I advised the State that the State did not comply with section 303(c)(2)(B).

Washington: Risk Level: 10^{-6}

During the summer of 1992, the State formally proposed and held public hearings on revisions to its water quality standards. The standards, scheduled for adoption in late November 1992, include a risk level of 10^{-6}.

On December 18, 1991, in its official comments on the proposed rule, the Department of Ecology urged EPA to promulgate human health criteria at 10^{-6}. Specifically, "The State of Washington supports adoption of a risk level of one in one million for carcinogens. If EPA decides to promulgate a risk level below one in one million, the rule should specifically address the issue of multiple contaminants so as to better control overall site risks."

The final phrase in § 131.36(c)(2) relating to the applicability of the rule was amended by deleting the text beginning "but only * * *" EPA received numerous comments that the Federal criteria should be implemented consistently with current State practices. EPA amended the language because the Agency had not intended to be inconsistent with the provisions of the water quality standards regulation (40 CFR 131.21(c)), which provides that a State water quality standard remains in effect even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standards.

Although not directly resulting in a change to the rule, this preamble clarifies, at the public's request, whether schedules of compliance were applicable to this rule. In Section E–3 EPA clarifies that schedules of compliance for these criteria are not provided for in these rules, but that such schedules of compliance are available in NPDES permits if authorized by State regulations. See *In the Matter of Star-Kist Caribe, Inc.*, NPDES Appeal No. 88–5, Before the Environmental Appeals Board, EPA. May 26, 1992.

Several deletions were made to the proposed human health criteria as a result of the Agency's review of data submitted in public comments and to reflect the pertinent impact of other relevant Agency actions. The revisions are as follows:

(1) Criteria for three pollutants included in the matrix of the proposed rule are not included in the final rule for (A) acenaphthylene, (B) benzo(ghi)perylene, and (C) phenanthrene. The criteria for these pollutants were removed because they are not recognized by the Agency as carcinogenic compounds nor do they have a reference dose that would allow the Agency to calculate a criterion level.

(2) Silver: The human health criteria for silver were deleted from this final rule because the criteria were developed based on a cosmetic effect impact and not a toxicity endpoint.

(3) Cadmium, Chromium, Selenium and Beryllium: As described below, the Agency has determined that the proposed criteria for these contaminants are no longer scientifically defensible and accordingly has withdrawn these criteria pending evaluation of relevant data regarding their toxicity. EPA notes that the criteria promulgated for aquatic life will provide adequate protection for human health in most instances.

(4) Methyl Chloride, Lead and 1,1,1, Trichloroethane: As described below, the Agency has determined that there is currently an insufficient basis for calculating human health criteria for these three contaminants. Accordingly, EPA has withdrawn the proposed criteria for these contaminants pending further analysis.

In addition to the above changes, the Agency is today withdrawing the human health criteria recommendations previously published in the 1980 Ambient Water Quality Criteria Documents for silver, cadmium, chromium, selenium, beryllium, lead,

methyl chloride, and 1,1,1, Trichloroethane. Summaries of the human health criteria were also published in Quality Criteria for Water, 1986. These summaries are also being officially withdrawn today.

EPA's final rule establishes a new § 131.36 in 40 CFR part 131 entitled, "Toxics Criteria for Those States Not Fully Complying with Clean Water Act, section 303(c)(2)(B)."

2. Scope

Subsection (a), entitled "Scope", clarifies that this Section is not a general promulgation of the section 304(a) criteria for priority toxic pollutants but is restricted to specific pollutants in specific States.

3. EPA Criteria for Priority Toxic Pollutants

As proposed, subsection (b) presents a matrix of the applicable EPA criteria for priority toxic pollutants. Section 303(c)(2)(B) of the Act addresses only pollutants listed as "toxic" pursuant to section 307(a) of the Act. As discussed earlier in this preamble, the section 307(a) list of toxics contains 65 compounds and families of compounds, which potentially include thousands of specific compounds. The Agency uses the list of 126 "priority toxic pollutants" for administrative purposes (see 40 CFR 131.36(b) herein). Reference in this rule to priority toxic pollutants, toxic pollutants, or toxics refers to the 126 priority toxic pollutants.

However, EPA has not developed both aquatic life and human health section 304(a) criteria for all of the 126 priority toxic pollutants. The matrix in paragraph (b) contains human health criteria in Column D for 91 priority toxic pollutants which are divided into criteria (Column 1) for water consumption (i.e., 2 liters per day) and aquatic life consumption (i.e., 6.5 grams per day of aquatic organisms), and Column 2 for aquatic life consumption only. The term aquatic life includes fish and shellfish such as shrimp, clams, oysters and mussels. The total number of priority toxic pollutants with criteria promulgated today differs from the total number of priority toxic pollutants with section 304(a) criteria because EPA has developed and is promulgating chromium criteria for two valence states with respect to aquatic life criteria. Thus, although chromium is a single priority toxic pollutant, there are two criteria for chromium for aquatic life. However, the human criterion is based on total chromium consistent with Agency policy. See pollutant 5 in § 131.36(b).

The matrix contains aquatic life criteria for 30 priority pollutants. These are divided into freshwater criteria (column B) and saltwater criteria (Column C). These columns are further divided into acute and chronic criteria. The aquatic life criteria are considered by EPA to be protective when applied under the conditions described in the section 304(a) criteria documents and in the "Technical Support Document for Water Quality-based Toxics Control." For example, waterbody uses should be protected if the criteria are not exceeded, on average, once every three year period. It should be noted that the criteria maximum concentrations (the acute criteria) are one-hour average concentrations and that the criteria continuous concentrations (the chronic criteria) are four-day averages. It should also be noted that for certain of the metals, the actual criteria are equations which are included as footnotes to the matrix. The toxicity of these metals are water hardness dependent and may be adjusted by determining appropriate water-effect ratios. The values shown in the table are based on a hardness expressed as calcium carbonate of 100 mg/l and a water-effect ratio of 1.0. Finally, the criterion for pentachlorophenol is pH dependent. The equation is the actual criterion and is included as a footnote. The value shown in the matrix is for a pH of 7.8 units.

Several of the freshwater aquatic life criteria are incorporated into the matrix in the format used in the 1980 criteria methodology which uses a final acute value instead of a continuous maximum concentration. This distinction is noted in footnote (g) to the table.

4. Applicability

Section 131.36(c) establishes the applicability of the criteria for each included State. It provides that the criteria promulgated for each State supersede and/or complement any State criteria for that toxic pollutant. EPA believes it has not superseded any State criteria for priority toxic pollutants unless the State-adopted criteria are disapproved or otherwise insufficient. The approach followed by the Agency in preparing § 131.36(d) is described in section E.2, and further rationale is provided in section E.3 of this preamble.

EPA's principal purpose today is to promulgate the toxics criteria necessary to comply with section 303(c)(2)(B). However, in order for such criteria to achieve their intended purpose the implementation scheme must be such that the final results protect the public health and welfare. In section F of this preamble a discussion focused on the factors in EPA's assessment of criteria for carcinogens. For example, fish consumption rates, bioaccumulation factors, and cancer potency slopes were discussed. When any one of these factors is changed, the others must also be evaluated so that, on balance, resulting criteria are adequately protective.

Once an appropriate criterion is selected for either aquatic life or human health protection, then appropriate conditions for calculating water quality-based effluent limits for that chemical must be established in order to maintain the intended stringency and achieve the necessary toxics control. EPA has included in this rule appropriate implementation factors necessary to maintain the level of protection intended. These factors are included in subsection (c).

For example, in order to do steady state waste load allocation analyses, most States have low flow values for streams and rivers which establish flow rates below which numeric criteria may be exceeded. These low flow values became design flows for sizing treatment plants and developing water quality-based effluent limits. Historically, these so-called "design" flows were selected for the purposes of waste load allocation analyses which focused on instream dissolved oxygen concentrations and protection of aquatic life. With the publication of the 1985 Technical Support Document for Water Quality Based Toxics Control (TSD), EPA introduced hydrologically and biologically based analyses for the protection of aquatic life and human health.[1] EPA recommended either of two methods for calculating acceptable low flows, the traditional hydrologic method developed by the U.S. Geological Survey and a biological based method developed by EPA. The results of either of these two methods may be used.

Some States have adopted specific low flow requirements for streams and rivers to protect designated uses against the effects of toxics. Generally these have followed the guidance in the TSD. However, EPA believes it is essential to include design flows for steady state analyses in today's rule so that, where

[1] These concepts have been expanded subsequently in guidance entitled "Technical Guidance Manual for Performing Wasteload Allocations, Book 6, Design Conditions," USEPA, Office of Water Regulations and Standards, Washington, DC. (1986). These new developments are included in Appendix D of the revised TSD. The discussion here is greatly simplified and is provided to support EPA's decision to promulgate baseline application values for instream flows and thereby maintain the intended stringency of the criteria for priority toxic pollutants.

States have not yet adopted such design flows, the criteria promulgated today would be implemented appropriately. The TSD also recommends the use of three dynamic models to perform wasteload allocations. Dynamic wasteload models do not generally use specific steady state design flows but accomplish the same effect by factoring in the probability of occurrence of stream flows based on the historical flow record. For simplicity, only steady state conditions will be discussed here. Clearly, if the criteria were implemented using inadequate design flows, the resulting toxics controls would not be fully effective, because the resulting ambient concentrations would exceed EPA's criteria.

In the case of aquatic life, more frequent violations than the once in 3 years assumed exceedences would result in diminished vitality of stream ecosystems characteristics by the loss of desired species such as sport fish. Numeric water quality criteria should apply at all flows that are equal to or greater than flows specified below. The low flow values are:

Aquatic Life
- acute criteria (CMC) 1 Q 10 or 1 B 3
- chronic criteria (CCC) 7 Q 10 or 4 B 3

Human Health
- non-carcinogens 30 Q 5
- carcinogens harmonic mean flow

Where:
- 1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years deteremined hydrologically;
- 1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);
- 7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;
- 4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);
- 30 Q 5 is the lowest average 30 consecutive day low flow with an average recurrence frequency of once in 5 years determined hydrologically; and
- the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows.

EPA is promulgating the harmonic mean flow to be applied with human health criteria for carcinogens. The concept of a harmonic mean is a standard statistical data analysis technique. EPA's model for human health effects assumes that such effects occur because of a long-term exposure to low concentration of a toxic pollutant. For example, two liters of water per day for seventy years. To estimate the concentrations of the toxic pollutant in those two liters per day by withdrawal from streams with a high daily variation in flow, EPA believes the harmonic mean flow is the correct statistic to use in computing such design flows rather than other averaging techniques.[2]

All waters, whether or not suitable for such hydrologic calculations but included in this rule (including lakes, estuaries, and marine waters), must attain the criteria promulgated today. Such attainment must occur at the end of the discharge pipe, unless the State has a mixing zone regulation. If the State has a mixing zone regulation, then the criteria would apply at the locations stated in that regulation. For example, the chronic criteria (CCC) must apply at the geographically defined boundary of the mixing zone. Discussion of and guidance on these factors are included in the revised TSD in chapter 4.

EPA is aware that the criteria promulgated today for some of the priority toxic pollutants are at concentrations less than EPA's current analytical detection limits. Analytical detection limits have never been an acceptable basis for setting standards since they are not related to actual environmental impacts. The environmental impact of a pollutant is based on a scientific determination, not a measuring technique which is subject to change. Setting the criteria at levels that reflect adequate protection tends to be a forcing mechanism to improve analytical detection methods. (See 1985 Guidelines, page 21.) As the methods improve, limits closer to the actual criteria necessary to protect aquatic life and human health became measurable. The Agency does not believe it is appropriate to promulgate criteria that are not sufficiently protective.

EPA does believe, however, that the use of analytical detection limits are appropriate for determining compliance with NPDES permit limits. This view of the role of detection limits was recently articulated in guidance for translating dioxin criteria into NPDES permit limits which is the principal method used for water quality standards enforcement.[3] This guidance presents a model for addressing toxic pollutants which have criteria recommendations less than current detection limits. This guidance is equally applicable to other priority toxic pollutants with criteria recommendations less than current detection limits. The guidance explains that standard analytical methods may be used for purposes of determining compliance with permit limits, but not for purposes of establishing water quality criteria or permit limits. Under the Clean Water Act analytical methods are appropriately used in connection with NPDES permit limit compliance determinations. Because of the function of water quality criteria, EPA has not considered the sensitivity of analytical methods in deriving the criteria promulgated today.

EPA has added provisions in paragraph (c)(3) to determine when fresh water or saltwater aquatic life criteria apply. In response to comments, this provision was expanded to incorporate a time parameter to better define the critical condition. The structure of the paragraph is to establish presumptively applicable rules and to allow for site-specific exceptions where the rules are not consistent with actual field conditions. Because a distinct separation generally does not exist between fresh water and marine water aquatic communities, EPA is establishing the following: (1) The fresh water criteria apply at salinities of 1 part per thousand and below at locations where this occurs 95% or more of the time; (2) marine water criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% more of the time; and (3) at salinities between 1 and 10 parts per thousand the more stringent of the two apply unless EPA approves the application of the freshwater or saltwater criteria based on a biological assessment. The percentiles included here were selected to minimize the chance of overlap, that is, one site meeting both criteria. Determination of these percentiles can be done by any reasonable means such as interpolation between points with measured data or by the application of calibrated and verified mathematical models (or hydraulic models). It is not EPA's intent

[2] For a description of harmonic means see "Design Stream Flows Based on Harmonic Means," Lewis A. Rossman, J. of Hydraulics Engineering, Vol. 116, No. 7, July, 1990. This article is contained in the record for this proposal.

[3] Strategy for the Regulation of Discharges of PHDDs and PHDFs from Pulp and Paper Mills to Waters of the United States, memorandum from the Assistant Administrator for Water to the Regional Water Management Division Directors and NPDES State Directors, May 21, 1990.

to require actual data collection at particular locations.

In the brackish water transition zones of estuaries with varying salinities, there generally will be a mix of freshwater and saltwater species. Generally, therefore, it is reasonable for the more stringent of the freshwater or saltwater criteria to apply. In evaluating appropriate data supporting the alternative set of criteria, EPA will focus on the species composition as its preferred method.

This assignment of criteria for fresh, brackish and marine waters was developed in consultation with EPA's research laboratories at Duluth, Minnesota and Narragansett, Rhode Island. The Agency believes such an approach is consistent with field experience.

In paragraph (c)(4)(i) EPA included a limitation on the amount of hardness that EPA can allow to antagonize the toxicity of certain metals (see footnote (e) in the criteria matrix in paragraph (b) of the rule). The data base used for the Section 304(a) criteria documents for metals do not include data supporting the extrapolation of the hardness effects on metal toxicity beyond a range of hardness of 25 mg/l to 400 mg/l (expressed as calcium carbonate). Thus, the aquatic life values for the CMC (acute) and CCC (chronic) criteria for these metals in waters with a hardness less than 25 mg/l, must nevertheless use 25 mg/l when calculating the criteria; and in waters with a hardness greater than 400 mg/l, must nevertheless use 400 mg/l when calculating the criteria.

In paragraph (c)(4), subparagraphs (i) and (ii) are the same as proposed. Subparagraph (iii) was added to incorporate the water-effect ratio guidance described in Section F–7 of this preamble.

Subsection (d) lists the States for which rules are being promulgated. For each identified State, the designated water uses impacted (and in some cases the specific waters covered) and the criteria are identified. In all cases, the criteria are applied to use designations adopted by the States; EPA has not promulgated any new use classifications in this rule although the Agency has the authority to do so.

H. (Reserved)

I. Response to Public Comments

The Response to Public Comment Section is organized into several subsections, as follows:

1. Legal Authority
2. Science
3. Economics
4. Implementation
5. Timing and Process
6. State Issues

I. Legal Authority

1. *Comment:* Several comments were received that in various ways suggested that EPA exceeded its authority in proposing to establish Federal water quality standards for States because it was alleged standards are to be developed by the States. These comments tended to emphasize the primary role attributed to States under the Clean Water Act in establishing standards with some going so far as to indicate that States should have full and unrestrained authority to act. In this mode, a comment was offered that all the Clean Water Act requires is a good faith effort on the part of a State to meet the statutory requirement. A related comment suggested that EPA can promulgate standards only after specifically disapproving a State's standard. There were opposing views offered suggesting that EPA not only has the authority to act, it is obliged to act.

Response: The Clean Water Act assigns States the primary role in establishing water quality standards and EPA has continually supported that role before Congress in reauthorization hearings on the Clean Water Act. The Act, however, also defines a role for EPA in terms of reviewing and either approving or disapproving State-adopted standards and of promulgating Federal standards. Sections 303(c) (3) and (4) of the Act clearly indicate that Congress did not intend States to have full and unrestrained authority to set standards. EPA's action in developing this rulemaking is not to be taken as a change in EPA policy in dealing with the States. Our policy continues to be that we prefer States to adopt their own standards but we will use our promulgation authority when warranted. EPA believes that the need to control the discharge of toxic pollutants to protect human health and the environment, the establishment of the statutory requirement for addressing toxic pollutants, and the responsibility for EPA review of State water quality standards for consistency with the Clean Water Act coupled with the inclusion of a process for Federal promulgation in the Act strongly supports EPA's promulgation authority. Moreover, this elaborate process also makes clear that Congress intended that States do more than just evidence a good faith effort.

As described in detail in section E of this Preamble, the Clean Water Act authorizes and establishes a timetable for Federal promulgation action. Under the Clean Water Act, States must adopt water quality standards to protect public health and welfare and enhance the quality of water. Section 303(c)(4) of the Clean Water Act authorizes the Administrator of EPA to promulgate Federal standards applicable to a State when: (1) The State submits standards for EPA approval and EPA determines that the State standards fail to meet the requirements of the Act, or (2) in any case where the Administrator determines a new or revised standard is necessary to meet the requirements of the Act. EPA's implementing regulations also make clear that the Administrator may take action to promulgate either when a State fails to adopt changes specified in a disapproval or in any case where the Administrator determines a new or revised standard is necessary (40 CFR 131.22). Both these provisions are used to support this action. Although in fact EPA did notify the States in a **Federal Register** notice of April 19, 1990, and in a letter to the Administrator of the responsible State agency of each potentially affected State on April 9, 1990, the Administrator is not required in exercising the authority of section 303(c)(4) to specifically disapprove a State's standard when exercising the authority to promulgate Federal standards. Historically, in eight of the nine Federal promulgation actions completed, the Agency based its action on disapproval of State standards but in the ninth instance, a criterion for chloride in the Commonwealth of Kentucky, there was no disapproval involved (see 52 FR 9102, March 20, 1987).

2. *Comment:* Closely related to the above comments were others that asserted that EPA is empowered to promulgate Federal standards only on a State-by-State, waterbody-by-waterbody, pollutant-by-pollutant approach, and that Congress did not intend that national standards be developed. In the same vein, it was suggested that it would be easier for the public to respond if each State were proposed in a separate rule.

Response: Neither EPA nor the States are directed by either the statute or the implementing water quality standards regulation to establish standards in the manner suggested by the first comment. EPA's implementing regulation and policies certainly allow EPA to act in this way but it is not required to do so. Section 131.22(b) of the water quality standards regulation specifically indicates that the Administrator "* * * may propose and promulgate a regulation applicable to one or more states * * *."

We do not see this action as establishing national standards as it

expressly limits the application of the criteria in the final rule to the States named in the rule. (40 CFR 131.36(a))

As explained more fully in the preamble, water quality standards consist of designated beneficial uses of a State's waters and the criteria necessary to protect those uses. The comment urges a waterbody-by-waterbody approach. For purposes of this rulemaking, EPA is presuming that the States have adequately made such designated use determinations for its waters. EPA is merely adding criteria for priority toxic pollutants on a State-by-State basis sufficient to protect the State's designated uses. EPA believes its approach accomplishes the commenters objectives but in a more comprehensive manner. Moreover, EPA doesn't believe this approach is more burdensome on dischargers in affected States. Because permit limits are incorporated into NPDES permits only for constituents having a reasonable potential to exceed State water quality standards, a discharger does not receive a limit in its permit unless its discharge contains the pollutant. Thus, comprehensive criteria coverage in water quality standards does not translate into unnecessary permit limits.

EPA is unpersuaded that somehow it would have been easier or more efficient for the public to comment on twenty-two separate rules covering the same issues than to deal with the issues in a single rulemaking. It would most likely result in EPA receiving the same type comments on each separate rule which would do nothing other than increase the administrative burden to EPA and further delay getting water quality standards in place.

3. *Comment:* A comment was made that several proposals for reauthorizing the Clean Water Act considered by Congress in 1991 contemplated giving EPA authority to promulgate Federal standards thus indicating that EPA does not have such authority now.

Response: A response to a comment above describes EPA's current authority to act under terms of the Clean Water Act. The principal CWA reauthorization bills considered by Congress in 1991 would neither question nor limit this existing authority. Rather they would alter the water quality standards program as it now exists by providing specific deadlines for States to act in adopting standards based on recommendations published by EPA and then mandating Federal promulgation by a date certain. Rather than suggesting that EPA does not now have such authority, these proposals support EPA's view that Congress is becoming increasingly impatient with the slow pace at which States adopt new criteria recommendations issued by EPA under section 304(a) and is willing to consider supplementing EPA's current discretionary promulgation authority.

4. *Comment:* Several comments suggested that EPA's promulgation action should be limited to the waterbodies and pollutants reported on the section 304(l) lists or information contained in section 305(b) Water Quality Inventory Reports. The basic thrust of these comments were that such lists, prepared by the States, contain sufficient information necessary to identify all potential toxic problem areas within the State. Some of these commenters also suggested these limited sources were more accurate than the broader approach relied on in EPA's proposal.

Response: A detailed description of the approach the Agency followed in developing this final rule is included in section E–2 of this preamble. As indicated in that section, EPA used information from a variety of sources in determining which criteria to include in the rule for each State. The Agency did not rely on a single source, such as 304(l), 305(b), or any other set of information.

Each of the data sources suggested by the commenters are valuable tools which serve specific purposes under the Clean Water Act. However, as described in section E–2, each source has limitations either as to coverage of waterbodies or sources of pollution, extent of information included, or a narrow focus because of their particular purpose. Even when information from a variety of sources is used as described as the Agency's "strawman", there remain inherent weaknesses in the underlying data.

EPA believes there is a greater possibility of achieving the statutory purpose of protecting water uses by relying on a range of available data sources rather than selecting one or two narrow databases. EPA believes that by not directing the Agency to use the results of the other statutory sections the commenters identified, and by use of the "could reasonably be expected to interfere" language, Congress directed the Agency to be more inclusive rather than less inclusive in the applicable criteria coverage. Thus, EPA urged a low threshold for inclusion of priority toxic pollutants in the guidance transmitted to the States.

5. *Comment:* One commenter argued that EPA's strawman systematically overestimates the presence of priority toxic pollutants because of its use of industry wide default assumptions for particular SIC codes. The commenter further argues that comparisons between the number of toxics adopted in States who evaluated available data for toxics and established criteria based on that data to the results of the strawman predictions show that a substantially smaller number of pollutants resulted. The commenter urged that only section 304(l) short list pollutants should be used for this rule.

Response: EPA's strawman analysis was designed to use all of the Agency's data bases to develop candidate lists of toxics on a State specific basis. States were urged to use this information as a starting point in evaluating the need for particular priority toxic pollutants.

EPA intentionally designed the analysis to yield a list of suspected priority toxic pollutants that would not understate the potential presence of such pollutants. As noted in the preamble, State monitoring information, for example, as used in the section 305(b) water quality reports, is not comprehensive in either geographic or parametric coverage. That is the reason EPA used the industry profile data—to maximize the data base.

Thus, EPA was providing the States with a listing that identified potential toxics and where those were potentially located. The State was encouraged to verify the lists. EPA has not used the list to identify pollutants for States included in this rulemaking. Rather EPA has viewed the analysis as supporting its contention that priority toxics exist in State waters and therefore, a broad promulgation for priority toxic pollutants is justified.

In arguing for limiting the promulgation to the section 304(l) short list pollutants, the commenter failed to compare the criteria the example State adopted in its water quality standards versus the pollutants identified in its section 304(l) short list. The State used as an example placed substantially more criteria in their standards than in their section 304(l) short list. The reason for this disparity is because the threshold for inclusion in water quality standards is much lower than for inclusion in the section 304(l) short list.

6. *Comment:* EPA solicited comment concerning the acceptability of the review process used by EPA to determine compliance with the Act—this process is described in section D of this preamble. EPA received few public comments in response to this request, beyond the general comment that EPA exceeded its authority to promulgate Federal standards, an issue addressed earlier in this section. One view offered was that the review process used by the Agency makes it difficult to evaluate whether adequate consistency was

applied by the Regions in evaluating acceptability of State standards.

Response: Each State's water quality standards submission is different. They require case specific review for adequacy and consistency with environmental and human health requirements and statutory and regulatory provisions. The statute allows for State flexibility. Given these factors, EPA established broad guidance parameters and Regional Offices reviewed each submission for consistency. EPA Headquarters staff exercised oversight on this process to assure appropriate inter-Regional consistency. This process did not produce identical standards in each State but that is not required. All State standards that were approved were judged by EPA to meet the twin tests of protection of water body uses and scientific defensibility.

Both the criteria development and the standards programs are iterative programs and EPA expects to request States to continue to focus on adopting criteria for additional toxic pollutants and revising existing criteria in future triennial reviews which new information indicates is appropriate. In no sense should States or the regulated community assume that the task of addressing pollution from toxics is completed by what the States have adopted or EPA is promulgating in the way of criteria for toxic pollutants.

7. *Comment:* EPA did not propose criteria for inclusion in State standards when the criteria were based on organoleptic effects. The Agency specifically solicited comment on this issue. Most of the comments received indicated that EPA was correct in not including such criteria in the rule. There were several comments to the contrary indicating that such criteria should be included because the pollutants are on the section 307(a) list and EPA did issue a criteria recommendation for the pollutant under section 304(a). Therefore, they argue that the requirements of section 303(c)(2)(B) apply.

Response: In the final rule, EPA has not included criteria for pollutants where the section 304(a) criteria recommendation was based on organoleptic effects. Such effects cause taste and odor problems which may increase treatment costs in drinking water or the selection by the public of alternative but less protective sources of drinking water and may cause tainting of or off flavors in fish flesh and other edible aquatic life reducing their marketability and resource value. EPA is also aware that some States have adopted such criteria in their standards. Nonetheless, because section 303(c)(2)(B) focuses on toxicity of the priority toxic pollutants, EPA believes its rule should likewise focus on toxicity. The 304(a) criteria documents for these pollutants do not recommend a criteria based on toxicity and therefore such criteria are outside the intent of a rulemaking for section 303(c)(2)(B).

This decision notwithstanding, it should be noted that the criteria based on organoleptic effects still represent the Agency's best scientific recommendations at this time and are within the range of scientific acceptability for a State's use.

8. *Comment:* One commenter asserted that EPA's Option 3 (i.e. adoption of a narrative standard coupled with a translator mechanism to compute a derived numeric limit) of its December 1988 guidance on complying with the Act does not meet the legal requirements of section 303(c)(2)(B). It is argued that EPA should therefore disapprove all State water quality standards which rely solely on a narrative "free from" toxics water quality standard and a translator mechanism. A related comment is that this translator procedure may be appropriate as a supplement to adopting specific numeric criteria.

Response: The legality of Option 3 is not an issue in this rulemaking. We are not promulgating any water quality standards based on Option 3. Option 3 is only a potential issue in the subsequent approval of standards for those States which are not included in this rule.

Nevertheless, as noted in the December 1988 guidance, EPA believes the combination of a narrative standard along with a translator mechanism as a part of a State's water quality standards can satisfy the substantive requirements of the Clean Water Act. Such translators would need to be subject to all the State's legal and administrative requirements for adoption of standards plus review and either approval or disapproval by EPA, and result in the development of derived numeric criteria for specific section 307(a) toxic pollutants.

EPA's guidance presented several factors that EPA expected to be incorporated into a translator process in order to comply with the Act. In essence, EPA expected that the technical mechanism used would need to be equivalent to a criteria development protocol. That is, it would need to include an appropriate number of sensitive species using suitable testing and analytical methodologies. If established and applied correctly, EPA has indicated that it could meet the legal requirements of section 303(c)(2)(B). The central objective of section 303(c)(2)(B)—establishing chemical specific numeric limits—is achieved by this approach. There is no statutory bar to it and the Agency sees no reason not to continue to support this approach by States.

Ultimately, EPA believes all State toxic control programs will be strengthened by adoption of both chemical specific standards and a translator mechanism for those pollutants where water quality criteria have yet to be developed.

9. *Comment:* EPA invited comment on whether to promulgate a translator mechanism for the States in this final rule. A translator mechanism would enable the States to derive numeric limits for pollutants beyond those in this promulgation based on a State's general narrative criterion. The Agency received comments both supporting and opposing this approach.

Response: While a translator mechanism could be a valuable supplement to State standards to deal with toxics for which no section 304(a) criteria recommendation is available, it is not necessary for EPA to promulgate a translator at this time to meet the objectives of section 303(c)(2)(B). Today's promulgation of chemical specific criteria fulfills that obligation. For that reason a translator mechanism is not included in today's final action. However, EPA believes that such a mechanism should be available in all States. Therefore, in revisions to the basic water quality standards regulation, EPA may propose a requirement for a translator mechanism which would be applicable to all jurisdictions included in the standards program.

10. *Comment:* Comments were received that EPA is attempting to establish use classifications in this rule and that such action is a right belonging to a State.

Response: The use classifications to which Federal criteria are applied in this rule are the classifications established and defined by each State affected by the rule. EPA is not creating State use classifications nor assigning use classifications to any water bodies in this rule. In the few instances described in Section G of this preamble, appropriate adjustments to uses and criteria were made as necessary to accurately reflect State use classifications. Further, EPA believes the regulated community is fully aware of the uses adopted by a State and to which water bodies the uses apply. Specific revisions in the rule pertaining to State use classifications are discussed

in subsection 6 of the Response to Public Comments Section.

11. *Comment:* During the pendency of this rulemaking, several States asked if adopting an emergency rule would be sufficient to allow removal of the State from the final promulgation. Several States also indicated they should be removed from the rule because they had plans to adopt standards.

Response: Emergency rulemaking actions by States are not judged by EPA as sufficient basis for removal from this rulemaking. In most cases, State emergency rules have a limited duration and expire at a date certain. There is no assurance that enforceable permanent water quality standards would be in-place at that time. If EPA were to allow emergency rulemakings to be the basis for removal from this package, given the long delays to date by these States, there is the strong possibility promulgation action would have to be commenced again by EPA in the near future. The delays and related program disruptions experienced by EPA have already been too great. There has to be closure on the standards adoption portion of our toxic control efforts. Reliance on temporary emergency State actions would not produce that closure.

There is also the question of legal vulnerability to the adoption of emergency rules and whether the State emergency rule procedures allow for sufficient public review. Moreover, the emergency rules adopted would have to fully comply with the Act. States which contend they should be dropped from this rule because they now plan to adopt standards remain in this rule because EPA has no reasonable means of being assured standards will be adopted as planned. Since passage of the amendments in 1987, many State plans for standards adoption have not been completed as anticipated. When States complete approvable adoptions, EPA will take timely action to remove the promulgation as applicable to that State.

12. *Comment.* One commenter asserted that States do not have the necessary legal authority under State law to use national water quality standards in State permits.

Response. Without more information, we cannot determine the precise concerns of this commenter. However, section 402(b) of the Clean Water Act requires that States approved to administer the National Pollutant Discharge Elimination System (NPDES) program must have adequate authority to issue permits which comply with any applicable requirements of section 301 of the Act. Among those requirements are limitations to meet water quality standards, and the criteria promulgated today are "* * * applicable water quality standard(s) established pursuant to this Act." Section 301(b)(1)(C).

Once promulgated, Federal standards will be the basis of all environmental control programs designed to meet water quality standards. States which had inadequate criteria for toxics will have a much more complete basis for determining if there are toxic contamination problems in their waters. If problems are identified, the State and EPA will need to work together to see if the sources of these problems can be identified and controlled. The most direct impact will be on NPDES permits for individual point source discharges. The permitting agency, whether it be the State or EPA will have to determine on a case-by-case basis whether to re-open an individual permit or wait until a permit expires before introducing new limits.

13. *Comment.* One commenter described ongoing judicial and administrative proceedings to establish the authority of the state to set permit limits for dioxin by interpreting the state's narrative criterion using EPA's section 304(a) dioxin guidance. The commenter indicated that the state has consistently implemented its narrative water quality criterion to control dioxin discharges by interpreting that criterion using EPA's guidance. It is the commenter's view that if the state prevails in the ongoing litigation, it will effectively have a numeric criterion for dioxin.

Response The critical flaw in the commenter's argument is that the State does not have in-place an EPA-approved numeric criterion for dioxin, or an approved translator to generate a numeric criteria for dioxin. Moreover, conclusion of the litigation would not establish an approved numeric criterion, even if the State were to prevail. EPA understands that States often implement their narrative criteria by interpreting those criteria using EPA guidance. EPA supports this process by the States. However, section 303(c)(2)(B) is clear that States are to adopt numeric water quality criteria for toxic pollutants. The purpose of this rulemaking is to finally establish the necessary numeric toxic criteria in all States, and only those states with the necessary approved numeric criteria are excluded from the rule.

2. Science

The response to comments in this subsection are included under the following headings: (A) General Comment, (B) Aquatic Life Criteria, and (C) Human Health Criteria.

A. General Comments

14. *Comment:* Numerous comments were received that EPA's water quality criteria were published as scientific guidance and were never intended to be used as regulatory provisions without modification to reflect local environmental conditions. Related comments indicated that because the criteria were published as guidance, the public comment received on the draft water quality criteria documents were restricted since reviewers did not anticipate their use as enforceable limits.

Response: Water quality criteria are published as scientific information or guidance under section 304(a) of the Act because that is what the Clean Water Act specifies. EPA's implementing water quality standards regulation recognizes that the section 304(a) criteria may be used as a basis for States to establish enforceable standards. See 40 CFR 131.11(b). To imply that the section 304(a) criteria are merely informational and not directly related to establishing water quality standards under section 303(c) is not only reading the Act in an crabbed manner, it also ignores 26 years of program history which demonstrates that States generally rely on the criteria recommended by EPA in establishing standards. Moreover, this rulemaking is the process which transforms these recommendations into enforceable regulatory requirements for specific States. Any specific issues related to establishing these criteria as applicable to State standards could have been raised during this rulemaking even if the issues were raised or considered in the earlier publication of criteria documents.

Furthermore, although the EPA water quality standards regulation allows State modification of water quality criteria to reflect local, site-specific conditions, it is not a requirement to do so. EPA is also not obligated to modify criteria to reflect local environmental conditions although ideally EPA would consider any data submitted in support of establishing a site-specific criterion in determining whether site-specific criteria would be appropriate. In addition, EPA believes the methodology and the extensive data base used by the Agency results in deriving national criteria that will be protective for most species in virtually all waterbodies throughout the country. (See 1985 Guidelines, page 4.)

Congress has given substantial credibility to the section 304(a) criteria as well. For example, in section 301(h)(9) applicants must meet the

section 304(a) criteria as if they were regulatory.

Finally, it should be noted that when announcing the availability of draft and final criteria documents, it is stated in the EPA announcement that such criteria may form the basis for enforceable standards. EPA believes that adequate notice of the uses of the section 304(a) criteria has been provided to the public.

15. *Comment:* Commenters suggested in general that the EPA criteria are outdated and need to be revised extensively to reflect the latest scientific information available before they can be appropriately used in rulemaking. For a few pollutants data were submitted to substantiate this claim. (See response to comments on specific pollutants below.)

Response: EPA does not agree with these comments for several scientific, programmatic, and statutory reasons. Scientific information is constantly evolving. Additional research is always being done, test methods and theories improve, and more precise analytical methods become available. There can be a long lag time between conducting the research, analyzing the data, issuing the criteria documents for review, revising the documents, and working through the State or Federal administrative processes to adopt standards. There comes a point in this process, where the administering agencies, both EPA and the States, have to act using the existing criteria recommendations based on the methodology by which they are derived, and put standards into place so that control programs can be implemented to protect the health of the public and the environment. One basic reason why criteria and standards is an iterative process is to continuously evaluate and incorporate new information. Through this process, many of EPA's criteria have been updated since issuance of the formal criteria documents.

Moreover, once standards are in place, applications can be made through the mathematical models used to derive total maximum daily loads and wasteload allocations. These determinations are associated with the NPDES permits process and result in permit limits being established that have sufficient latitude to adequately account for other than major adjustments to individual criteria recommendations.

Finally, it must be recognized that Federal promulgation is the end of the process to establish water quality standards, not the beginning. In this case, the beginning was in 1980 when most of the criteria and the first generation criteria development methodologies were issued. By 1983, due to lack of response by the States, EPA revised its basic water quality standards regulation to put primary emphasis on the adoption of water quality criteria and control of toxic pollutants. This too failed to engender adequate State response which in turn led to the directive from Congress contained in section 303(c)(2)(B). Now, five years later, and two years after the States should have taken action, this final rule completes the process of establishing the first set of comprehensive standards for toxic pollutants. This final Federal promulgation ends this current effort but the revision of criteria based on new research, the revision of applicable standards, alterations in analytical methods, and the evolution of control technologies will continue.

EPA asserts, as we have elsewhere in this preamble, that the promulgation process established under the Clean Water Act is a process designed to bring to closure the act of putting enforceable standards into place as basis for environmental control programs designed to protect public health and the environment. The promulgation process is not designed or intended to be the vehicle for a reevaluation of the scientific underpinnings of water quality criteria. It is also not the process for protracting the debates about the scientific merits of various pollutants. That debate is essential, necessary, and is constantly ongoing but as a separate activity. The promulgation process envisioned must go forward and the Agency must make decisions based on the available data. It is clearly a means to end such debates and to get environmental controls started based on available information.

EPA believes the criteria promulgated today are scientifically sound as they are based upon a technically and scientifically acceptable methodology. Detailed descriptions of the formulation of aquatic life criteria and human health criteria are included in section F (1,2, and 3). As discussed below, we have made some revisions to the criteria based on public comments. Our criteria for both human health and aquatic life provide a reasonable amount of protection with only a small possibility of substantial overprotection or underprotection.

To completely review all the criteria as some suggested would take a minimum of several years during which time the human health and environmental problems associated with the continued discharge of toxic pollutants would worsen. There is no predetermined result from an extended review—some criteria might become more stringent, some less, some might remain the same. In the meantime, the States that failed to comply with the Act are rewarded for their failure. These States have delayed while 43 of the jurisdictions included in the program have adopted water quality standards for the most part relying on EPA's section 304(a) criteria guidance.

As indicated in this preamble, we are currently re-examining our basic criteria development methodology, which is a normal course of action for the Agency We anticipate some changes will be made and we assume some changes in the criteria will be made over the years. This, however, is no reason to suspend action now.

16. *Comment:* The use of information contained in the Agency's Integrated Risk Information System (IRIS) to update human health criteria was questioned by several commenters. The central concerns were that the information contained in the system was not subject to external peer and public review, the background information contained in IRIS is not readily available for review, and the public had little chance to review the results of the recalculations.

Response. A detailed discussion of the IRIS may be found in Section F–3 of this preamble. To summarize the salient points: (1) Reference doses and cancer classifications are validated by two Agency work groups composed of senior Agency scientists from all other program offices (i.e., internal peer review), (2) the consensus opinion for reference doses and slope factors are then used throughout EPA for consistent regulation and guidance development, (3) the data are available through the TOXNET System maintained by NIH and through diskettes available from the National Technical Information Service (NTIS), (4) the information used to recalculate the section 304(a) criteria in today's rule was included in the record of this rulemaking, and (5) through the proposal of this rule, the public had an opportunity to review and comment on the revised criteria. In addition, some of the RfD values and the cancer potency slope factors undergo public review during rulemaking for other Agency programs such as drinking water, pesticides, and Superfund. Thus, EPA believes that adequate notice about IRIS and its use in Agency programs has been provided to the public, at least as it concerns its use in this rulemaking.

17. *Comment:* Several commenters indicated that the criteria should be subjected to a peer and public review process similar to that followed by the Agency in issuing proposed criteria

under section 405 of the Act concerning the disposal of wastewater solids.

Response: The proposed regulations for the disposal of wastewater solids represented the first time EPA proposed such standards, and was the first time a methodology and specific criteria were proposed by EPA for wastewater solids. Therefore, the extensive review for that proposed regulation was appropriate. The situation is not the same for the criteria promulgated in today's rule. EPA and the States have been regulating the discharge of pollutants into surface waters for many years. The methodologies for deriving criteria for the protection of both human health and aquatic life were peer and publicly reviewed in 1980. The aquatic life guidelines were revised with peer and public review in 1985. Both methodologies are currently being reviewed for possible revisions. As discussed elsewhere in this section, this rulemaking makes use of the existing criteria and therefore is not the most effective vehicle for revising either the methodologies or the actual criteria.

18. *Comment:* Several commenters objected that applying criteria as standards when the criteria are below analytical detection limits is unreasonable because this may force the imposition of unreasonable permit limits and "false positive" indications of non-compliance. Others suggested that it was not clear how detection limits affect permit limits and compliance. There were also comments supporting EPA's position as described in the proposal.

Response: In consideration of statutory requirements that water quality standards are to be protective of designated stream uses, EPA has determined that consideration of analytical detectability would not be an appropriate factor to consider when calculating the water quality criteria component of water quality standards. This has been the Agency's position since the inception of the water quality standards program in 1965.

Although the sensitivity of analytical methods are not appropriate for setting water quality criteria, they may be appropriate in determining compliance with permit limits based water quality standards. It should also be noted that by the time standards are converted into permit limitations after calculating total maximum daily load and wasteload allocations, the actual permit limit may be in the range of standard analytical methods cited by EPA in 40 CFR part 136.

EPA's criteria development methods for aquatic life are generally based on laboratory bioassays with sensitive equatic life. The results from these tests are analyzed by mathematical procedures outlined in EPA's criteria methodology guidelines. EPA human health criteria are developed from protocols generally using toxicity studies on laboratory animals such as mice and rats. Thus, EPA's criteria are effect-based without regard to chemical analytical methods or techniques.

Because water quality standards developed pursuant to section 303(c) of the Clean Water Act are not self-enforcing, the measurement of these chemicals in a regulatory sense is generally in the context of an NPDES permit limitation. The permit issuing authority, either a State or EPA, in conjunction with the permittee establishes the analytical methodology to be used in determining compliance with the permit limit.

As noted in footnote 3 of this preamble, EPA has issued guidance on how constituents with water quality criteria specified at less than the sensitivity of official analytical methods (i.e., those listed in 40 CFR part 136) are established in permits.

EPA's water quality standards regulation at 40 CFR 131.11 requires that criteria be adopted by States at concentrations necessary to protect designated uses. The criteria promulgated today meet that requirement while EPA's policy with respect to regulatory compliance takes analytical sensitivity and precision into consideration.

B. Aquatic Life

19. *Comment:* A few comments questioned the role of biological criteria in the standards program with one commenter suggesting that establishing numeric limits is contrary to achieving the biological goals of the Clean Water Act.

Response: Together, chemical and physical characteristics and biological integrity define the overall ecological integrity of an aquatic ecosystem. State regulatory agencies should strive to fully integrate all three approaches since each has its respective capabilities and limitations. EPA's position is that each approach as represented by whole effluent toxicity testing, chemical specific criteria, and bioassessment approaches is independently applicable (see Policy on Use of Biological Assessments and Criteria in the Water Quality Program, U.S. EPA, May 1991). A description of the integration of these approaches along with a detailed analysis of the capabilities and limitations of each approach may be found in the Technical Support Document for Water Quality-based Toxics Control, March 1991. See TSD Section 1.5 beginning on page 20, and references cited therein.

20. *Comment:* A commenter argued that EPA's proposed national aquatic life criteria will be overprotective for many surface waters because they do not account for site-specific conditions. At a minimum, any federal water quality criteria must take into account broad aquatic life categories.

Response: The development of EPA's criteria is based on a broad aquatic life data set. The 1985 guidelines recommend that eight species from eight separate families be used in the development of the freshwater and saltwater criteria. While it is always beneficial to have more data, EPA's peer reviewed guidelines establish that criteria developed from this minimum data set adequately protect aquatic communities (1985 Guidelines, see section III, p. 22). The apparent level of protection is different for each kind of effect (acute or chronic toxicity to animals, toxicity to plants, etc.) because of the quality and quantity of information. An attempt was made to take into account such things as the importance of the effect, the quality of the available data, and the probable ecological relevance of the test methods. The present approach to aquatic toxicity allows conclusions to be made about the ability of a substance to adversely affect aquatic organisms and their uses whenever the minimum data set are satisfied. See also the discussion on metals speciation in Section F–7 and the response to comment below.

21. *Comment:* One commenter asserted that EPA has incorrectly concluded that the Section 304(a) criteria are appropriate for most waters because there have been few occasions where site-specific water quality criteria have been applied.

Response: EPA's determination that Section 304(a) criteria are generally applicable is not based on a lack of site-specific criteria modification studies as asserted by the commenter. EPA has conducted a series of field applicability studies to determine the correlation between chemical specific criteria and receiving water impacts. (Technical Support Document for Water Quality-based Toxics Control, March, 1991 at p. 2). These test results indicate a good correlation between the laboratory concentrations and expected field results. The water quality criteria are not threshold values. One should not expect that once these values are exceeded, the result is a measurable impact on aquatic life. The aquatic life criteria embody conservative assumptions so that small excursions

above the criteria will not result in adverse impacts. The data indicate that if ambient water quality criteria are met, organisms in the receiving water are protected from adverse impacts.

22. *Comment:* Comment was received that EPA should clarify that the aquatic life water quality criteria for arsenic are based on the trivalent form of arsenic.

Response: The arsenic criteria promulgated today are applied on total recoverable inorganic arsenic. The 1985 arsenic criteria document is derived from data on Arsenic (III). However, because there is no readily available or practical analytical method to quantify the various forms of arsenic in monitoring applications for aquatic life, EPA has concluded that it is reasonable to quantify environmental arsenic concentrations as total recoverable inorganic arsenic. (EPA Methods 206.2, 206.3, 206.4, 206.5.)

In addition, EPA reevaluated the acute and chronic toxicity data on the two most prevalent forms of arsenic in aquatic systems (trivalent and pentavalent arsenic) in the Arsenic criteria document. These data show that arsenic (III) and arsenic (V) toxicity is similar for both sensitive freshwater and saltwater species. For five of the six freshwater species and all of the saltwater species used in the arsenic calculation where there was comparable information on acute and chronic toxicity, values were within a factor of two or three. Certain plants, for example *Selenastrum capricornutum* (alga), are 45 times more sensitive to arsenic (V) than to arsenic (III). Therefore, it is reasonable to combine forms of arsenic to specify the criteria. The measurement of total recoverable arsenic has both toxicological and practical advantages and appropriately represents the aquatic life toxicities of arsenic compounds.

23. *Comment:* Several commenters asserted that criteria based on laboratory tests are overprotective when applied in the field. Another commenter quoted laboratory study reports stating that the results are applicable only to the particular water tested.

Response: EPA agrees that waters used for laboratory toxicity testing are generally cleaner than many natural systems. In cases where ambient waters contain constituents which alter the toxicity of chemicals, an increase in accuracy may be provided by rerunning the toxicity tests in site water. (For example, the water-effect ratio approach for metals promulgated today.) In most instances, this correction will be small. (TSD, March 1991, p.2). Therefore, applying the criteria values developed from laboratory testing provides an acceptable level of accuracy, and this approach is used by most States. In the context of this rule it represents a technically acceptable approach to cover a variety of waters, and the only feasible one. (See also the response to comments for the 1980 Guidelines, Nos. 17 and 19, 45 FR 79359, November 28, 1980.)

In response to the second comment, the scientist running the specific toxicity test referenced by the comment noted that its accuracy is only guaranteed for the specific water tested. However, applying these tests to other waters is an acceptable approximation. (See response to public comments for the 1980 Guidelines, 45 FR 79359–79360, comment #20 and #21.) Additionally, laboratory toxicity testing is the most reasonable and practical way to develop a database which is large enough to develop criteria, and diverse enough in species, which generally represent a larger source of variability.

While most States have not chosen to perform site-specific toxicity tests, any State may develop site specific-criteria. These criteria will be more appropriate and tailored to the site for setting NPDES permit limits than EPA's national criteria. Because they are amended water quality standards, site specific criteria are subject to EPA review. Other than the water-effect ratio for metals which is promulgated today, State developed site specific-criteria do not replace the criteria promulgated in today's rule unless the site specific-criteria are approved by EPA as meeting the requirements of the Act and EPA amends the rule adopted today.

24. *Comment:* Comment was received that the proposed rule includes some aquatic life criteria computed using the 1980 guidelines methodology and others were computed using the 1985 guidelines methodology. It was asserted that the simplistic approach of the 1980 methodology ignores the scientific improvements of the 1985 guidelines. The commenter urged that these criteria should be updated to provide consistent methodology and adherence to the statutory requirement of section 304(a).

Response: As the commenter noted, some of the aquatic life criteria in this rule are based on 1980 guidelines. EPA reviewed the data base for these criteria and determined that in general they could not be recalculated by the 1985 guidelines because of differences in data base requirements between the two guidelines used species specific requirements whereas the 1985 guidelines expanded this to broader taxonomic categories.) EPA believes that the data used in the 1980 criteria document are sound. As a practical matter, a reasonable approximation to a criteria maximum concentration can be obtained by simply dividing the final acute values in the matrix by 2. The criteria in the matrix in today's rule were not changed from the results of the respective 1980 and 1985 methodologies. Therefore, EPA has reconsidered these aquatic life criteria at the commenter's request and considers them to be within the acceptable range based on uncertainties associated with computing water quality criteria. These criteria are protective of aquatic life and are scientifically sound.

The development of aquatic life criteria is a dynamic process which responds to the influence of improved science. It is expected that this science will be constantly evolving as new analytical techniques become available and new studies are evaluated. To this end, EPA is also reviewing the current methodology for developing aquatic life criteria. The current methodology will be reviewed, and if needed, revised to incorporate the latest concepts of aquatic toxicology.

25. *Comment:* A commenter asserted that the proposed aquatic life criteria may be underprotective since they fail to account for synergism and additivity and fail to consider wildlife impacts.

Response: EPA agrees that the aquatic life criteria do not deal with simultaneous exposure to more than one pollutant. This is largely because few data are available, the data which are available do not allow for development of useful principles and there are so many possible combinations of pollutants present to prevent development of appropriate guidance. EPA has considered the effects of multiple toxics discharged into receiving waters. (Technical Support Document for Water Quality-based Toxics Control; March 1991.) The studies cited in the TSD indicate that the median combined effect of a mixture of acutely toxic pollutants in receiving water is additive. EPA recommends, that in the absence of site-specific data, regulatory authorities consider combined acute toxicity to be additive. Thus, the combined acutely lethal toxicity to fish and other aquatic organisms is approximately the simple addition of the proportional contribution from each toxicant.

However, available data do not indicate additivity for chronic toxicity. EPA further recommends that chronic toxicity not be considered additive, and that each toxic be considered individually.

Synergism has not been demonstrated to be an important factor in the toxicity of effluents. Field studies or effluent toxicity and laboratory tests with

specific chemicals support an inference that synergism is a rare phenomenon. (See TSD, page 24.) (See also response to comments in the 1980 Guidelines, Comment #9, 45 FR 79358, November 28, 1980.) Theoretically, antagonism is just as likely to occur, which might suggest that the criteria are overly protective in an environment exposed to contaminant mixtures.

EPA considers the criteria, when applied with the appropriate frequency and duration of exposure, to adequately protect wildlife. Three of the aquatic life criteria in this rulemaking are based on wildlife toxicity and exposure, (Selenium, DDT and Polychlorinated Biphenyls). EPA is in the process of developing a wildlife criteria development methodology to provide further guidance for wildlife concerns. Once this tool is developed, EPA will have a method of focusing criteria on wildlife issues.

26. *Comment:* Several commenters argue that the criteria do not apply to semi-arid ecosystems. None of the guidance issued to date expressly address the means to apply those criteria to semi-arid ecosystems found in Arizona. Ephemeral streams and effluent dominated waters are distinct classes of waters that should be regulated to protect the aquatic species that typically inhabit them.

Response: Water quality criteria are toxicity based values, usually chemical specific. The criteria are based on toxic effects to a broad taxonomic group and do not consider the types of water bodies, such as semi-arid ecosystems, they may be applied to. Aquatic life criteria, when implemented as part of water quality standards, are meant to be protective of aquatic life. These standards are applied to specific waterbodies through designated uses. For this rulemaking, EPA assumes that States correctly define designated uses and the specific waterbodies to which those uses apply. EPA agrees that ephemeral streams and effluent dominated waters are distinct classes of waters. If a State feels an aquatic life use designation is appropriate for these waterbodies, then the aquatic life criteria will apply to protect that use. If not, then they will not apply. EPA is not promulgating designated uses for State waters. EPA is only applying appropriate aquatic life criteria to waters that States designated for aquatic life protection.

27. *Comment:* Comment was made that EPA should allow an alternate methodology for calculating the Final Acute Value when dealing with small data sets.

Response: EPA has considered alternate methods for calculating the Final Acute Value (FAV). The present methodology was developed by the Agency's guidelines committee, subjected to outside peer and public review, and is a reasonable technique. EPA develops a Final Acute Value on as large a data set as available. The guidelines generally require eight separate families for derivation of acute values (1985 Guidelines, p. 23). EPA considers this to be an adequate data set for calculation of the FAV. As the data set grows it only provides additional confidence of the scientific basis for calculating the Final Acute Value. The present methodology has been reviewed both within and outside the EPA for scientific merit. EPA considers the present methodology to be sound. The guidelines are presently under review. The method suggested by the commenter is relatively new, and it and other statistical bases for criteria development are being reviewed in the Agency's current effort in reviewing the criteria development guidelines. It is intended that the guidelines reflect the best science and to that end EPA will consider all aspects to continue to provide a sound and scientifically based methodology.

28. *Comment:* Comment was received that the aquatic life criteria and guideline methodology, contrary to EPA's assertions, have not undergone sufficient scientific peer review.

Response: EPA does not agree. The criteria and underlying methodology guidelines were widely distributed to interested parties. These drafts were made available to and thoroughly discussed with experts within EPA, industry, and academia. These interactions have provided many useful comments and information which greatly improved the scientific basis of the criteria and methodologies. The methodologies were further reviewed by an independent Science Advisory Board which EPA considers to constitute external peer review. (SAB Water Quality Criteria, A Report of the Water Quality Criteria Subcommittee, April 1985). The SAB noted that since EPA's initial efforts in developing water quality criteria, the process has undergone considerable evolution. The SAB felt that each revision represented a more sophisticated and realistic approach. EPA encourages and makes every reasonable attempt to include as much of the scientific community as practical in carrying out its responsibility under the Clean Water Act.

29. *Comment:* Comment was received that EPA states in the proposal that the methodology for developing aquatic life criteria have been approved by the Science Advisory Board (SAB); however this approval was not unqualified.

Response: In its comments on EPA's 1985 guidelines, the SAB committee noted that EPA had developed a more scientifically sophisticated and realistic set of guidelines. (SAB Water Quality Criteria, A Report of the Water Quality Criteria Subcommittee, April 1985.) It noted approvingly that EPA considers such issues as mode of exposure, level of protectiveness and ecosystem protection. It further noted that the guidelines took advantage of advances in recent scientific research. The report, being a critique, did note areas where the guidelines could be improved and areas where additional research might be helpful. Overall the SAB report was supportive of the Agency's aquatic life criteria development guidelines.

30. *Comment:* Numerous comments were received with regard to the metals criteria. It was noted that the draft rule did not make clear what analytical method was to be used for implementation and that metals criteria should not be interpreted in terms of total recoverable or acid soluble metal. It was asserted that dissolved criteria would be more appropriate, and in many cases effluent limits based on dissolved metals only would be more appropriate. Many commenters urged that the rule should implement the metals criteria using the site-specific water-effect ratio, in order to target the bioavailable fraction of pollutant.

Moreover, it was asserted that the copper criteria document states that organic carbon has a strong effect in reducing copper toxicity, and that the copper criterion should be recalculated for waters having TOC greater than 2–3 mg/L. Furthermore, it was argued, the toxicity of several metals are related to pH, total organic carbon (TOC), speciation, as well as the hardness.

The commenters asserted that the criteria are overly protective when applied to the field, and are overly protective because they are not site-specific.

Another commenter argued that the criteria are underprotective because they do not account for synergism or additive effects.

Response: These diverse and recurring comments have been aggregated above because they deal in large measure with the phenomenon that the same metal concentration may cause different toxicity from place to place due to chemical differences from place to place. In natural waters metals may exist in a variety of dissolved and particulate forms. As discussed

elsewhere in the preamble, the bioavailability and toxicity of a metal depends strongly on its exact physical and chemical form. See Section F.7. It also depends on the site-specific chemistry of the water, and on the other materials contained in the water.

Because of (a) the complexity of metals speciation, (b) the varying degrees of bioavailability and toxicity of the many forms and complexes, and (c) the additive, synergistic, and antagonistic influences of other materials in the water, there is no one chemical method that can assure that a unit of concentration measured in the field would always be toxicologically equivalent to a unit of concentration occurring in the laboratory toxicity tests underlying the criteria. Consequently, simply choosing a particular chemical method (such as total recoverable metal or dissolved metal) to measure attainment of the metals criteria would not assure the appropriateness of the criterion for the water chemistry of the various sites at which the criteria apply.

In response to comments, EPA is implementing the criteria in terms of total recoverable metal while calculating the criteria value using the water chemistry adjustment provided by the "water-effect ratio" procedure for certain metals as described and reocmmended in its current Guidance on Interpretation and Implementation of Aquatic Life Criteria for Metals, May 1992. This approach takes into account, directly, water characteristics such as total organic carbon, pH, metals speciation and hardness, as suggested by the commenter.

The water-effect ratio approach compares bioavailability and toxicity of a specific pollutant in receiving waters and in laboratory test waters. It involves running toxicity tests for at least two species, measuring LC50s for the pollutant using (a) the local receiving water collected from the site where the criterion is being implemented, and (b) laboratory toxicity testing water made comparable to the site water in terms of chemical hardness. Because the water-effect ratio procedure, described in the above referenced guidance, provides a biological measure of differences in water chemistry, the ratio between site water and lab water LC50s is used to adjust the national acute and chronic criteria to site-specific values.

Because the water-effect ratio is a comprehensive measure of differences in bioavailability and toxicity, including the differences between dissolved and particulate bioavailability, it will produce a more appropriate criterion than simply expressing the criteria as dissolved metal. Some metals, such as copper and silver, can exist in a variety of dissolved forms that differ greatly in toxicity. The water-effect ratio is the best procedure EPA currently has for measuring such differences.

The water-effect ratio is also a reasonable method now available for accounting for synergistic and additive effects of pollutants. Regardless of whether a value less than or greater than one is measured for the water-effect ratio, synergistic and additive effects of other pollutants in the site water are working against the antagonistic effects of any metal binding agents present.

EPA recognizes that the comprehensive qualities of the water-effect ratio do come at a cost. The procedure will yield results that are locally the most appropriate, but it is more difficult and expensive than a purely chemical approach. Consequently, performing such an analysis is not mandatory. In the absence of acceptable data, the rule assigns the ratio a value of 1.0, which yields no change in the national criteria. The rule also stipulates that the water-effect ratio cannot be set at a value different than 1.0 unless such value protects the water body from the toxic effects of the pollutant, and is derived from suitable tests on samples appropriately representative of the water body. Consequently, inadequacies, uncertainties, or ambiguities in the data will also result in the water-effect ratio being set at 1.0.

The type of specific data needed to implement the method is described in guidance: The 1992 Guidance on Interpretation and Implementation of Aquatic Life Criteria for Metals, and the 1983 Water Quality Standards Handbook. As discussed in Section 7 of the preamble, EPA is currently developing more specific procedures and methods to assist States in implementing the water-effect ratio approach.

31. *Comment:* A commenter asserted that laboratory tests using artificial testing conditions have little or no direct applicability to actual discharges and receiving water situations, therefore the criteria are overprotective.

Response: Laboratory tests are not conducted in pure water and pollutants are not solely in a free ionic form (complexed by nothing but water). (For example, laboratory waters are described in some detail in various standard protocols for doing toxicity testing, e.g., American Society for Testing Materials (ASTM), Standard E729, "Practice for Conducting Acute Toxicity Tests with Fishes, Macroinvertebrates and Amphibians.") Laboratory waters have low, but still significant, levels of organic carbon and suspended particles that are in the range of a significant number of receiving waters. In the case of heavy metals, for example, certain particulate forms may be partially bioavailable and particulate forms in effluents may become dissolved after discharge into receiving waters. It is not appropriate to attribute toxicity solely to a particular form of metal: This has never been clearly demonstrated for any metal, being only questionably inferred under very restrictive conditions. (See response to public comment for the 1980 Guidelines, comment nos. 17, 19 & 20, 45 FR 79359.)

Because water quality criteria are derived to be protective in almost all situations, they may be overprotective in some situations. Moreover, site water effects may be most prevalent for heavy metals, this rule thus provides for site-specific determination of criteria values for metals based on local water-effect ratios.

32. *Comment:* EPA's aquatic life criteria for metals do not take into account the effect that water chemistry and metals speciation has on toxicity. EPA should withdraw criteria (such as zinc and copper), and provide criteria that vary with pH, total organic carbon (TOC), and other factors that affect speciation and toxicity.

Response: While it is true that speciation and site water chemistry can modulate toxicity and that the national criteria do not account for most of these factors, we do not agree with the comment that we should withdraw the criteria. There is inadequate data on enough species and conditions to adjust for all important factors in the national criteria, although current work is trying to address this situation. However, this uncertainty is insufficient reason to not issue and apply criteria; criteria are sufficiently applicable without modification to most receiving waters and can be appropriately adjusted for other waters by the water-effect ratio approach. The purpose of water effect calculation is to provide a means for setting the value appropriate for the site-specific water chemistry, where sufficient data are available. By providing for such a calculation in the rule, the criteria thereby appropriately incorporate such factors.

33. *Comment:* EPA's aquatic life criteria do not take into account acclimation. As a result, the criteria are overly protective.

Response: Acclimation is the ability of organisms to tolerate higher concentrations or pollutants or other conditions, developed through an exposure to such chemical or condition

without apparent adverse effects. Studies with fish have not documented large changes in sensitivity because of acclimation effects, the typical factor being about two. Furthermore, significant changes have usually been reported under very restrictive and unusual exposure conditions—a prolonged exposure in a narrow concentration range near chronic toxicity values followed by a sharp rise to acutely toxic concentrations. Acclimation of individuals under most exposure conditions would be less and does not persist for long once exposures drop significantly below toxic levels. To try to account for such conditions in nationally applicable criteria is not feasible. Adaptation of populations can occur due to natural selection, but is not well described; in any event, it cannot be accounted for in any generally applied presumptive standard but only documented on a site specific basis.

34. *Comment:* Several commenters asserted that the metals criteria are below natural background levels, as shown by EPA's own studies. Thus, such criteria are overprotective and invalid.

Response: EPA studies which examine USGS data, appear to indicate that the natural background concentrations in undisturbed watersheds at times exceed the criteria for copper, lead, zinc, iron, and aluminum. However, recent work by USGS and by others (for example, Windom et al. in Environ. Sci. Technol. Vol. 25, 1137) indicates that much of this data, that is the copper, lead, and zinc data, are not valid. The measured concentrations of these metals are largely artifacts of external contamination of the sample during collection and processing. At this time USGS has suspended collecting data on these metals nationwide, until improved methods can be implemented in their central laboratories.

EPA notes that USGS generates a large portion of the data available for the nation's ambient waters, and that the federally approved protocols are used by a variety of other agencies that collect ambient data. Consequently, it appears likely that many waters may be improperly determined not to be attaining the metals criteria.

Based on USGS results, the data for the metals on the priority toxic pollutant list most likely to be affected by external contamination are arsenic, beryllium, cadmium, copper, mercury, lead, and zinc. The nickel data is unlikely to be affected. USGS suspects that filtering artifacts, rather than contamination, may produce anomalies in dissolved data for other metals not in today's rule. USGS has not yet ascertained quality of its selenium and silver data. Moreover, EPA has reviewed the data used in establishing the EPA metals criteria and does not believe these criteria are affected by the analytical problems noted by USGS. (Erickson, 1992, personal communication, in EPA's record).

To assure the reliability of the data in the lower microgram per liter range, priority toxic pollutant metals should be sampled and analyzed using protocols that involve ultra-clean reagents, ultra-clean Teflon or polyethylene labware, and ultra-clean laboratory environments.

EPA is not aware of reliable analytical data showing excursion of aquatic life criteria by natural background concentrations of the metals covered by this rule.

35. *Comment:* Commenters asserted that the acute and chronic averaging periods are unnecessarily restrictive, and were set in an arbitrary manner. As the acute criteria are derived from 48–96 hour tests, the EPA's one-hour averaging period for acute criteria cannot be correct. As the chronic criteria are derived from 30–360 day tests, the EPA's four-day period for chronic criteria cannot be correct. Pollutant specific averaging periods should be used, based on the latest scientific information, including the 1983 work of Mancini (Water Res. 17: 1355), which dealt with the effects of time varying concentrations.

Response: The quality of ambient water typically varies in response to variations in effluent quality, stream flow, and other factors. Organisms in the receiving water are not experiencing essentially constant exposure as in laboratory bioassays, but fluctuating exposures which may include short periods of high concentrations potentially causing adverse effects. EPA's criteria formulations therefore include an exposure period for concentration averaging which must be sufficiently short to limit elevated concentrations that might cause harm to aquatic life.

The 1-hour average exposure for the criteria maximum concentration (CMC) was derived to protect against the effects of fast acting toxicants like ammonia and cyanide. Thus, short-term spike increases in certain of these toxicants have been observed to cause toxic effects. (See 1991 Technical Support Document, appendix D.)

The 4-day averaging period for the criteria continuous concentration (CCC) is based on the shortest duration in which chronic effects are sometimes observed for certain species and toxicants. The most important consideration in establishing duration criteria is how long the exposure concentrations can exceed the criterion without affecting the endpoint of the test (e.g., survival, growth or reproduction). EPA believes 4 days should be fully protective even for the fastest acting toxicants.

The approach of Mancini (or similar modeling cited in Chapter 2 of EPA's Technical Support Document) is certainly a promising one for establishing averaging periods. It and similar methods are being evaluated for incorporation as options into new water quality criteria guidelines. However, the validity and applicability of these methods are still not completely resolved. Applying Mancini's model to available toxicity data forces an analyst to immediately deal with problems of delayed mortality and limitations on observation times. The fit of the model to data is also only approximate and requires professional judgment in appropriately applying it.

Because of such considerations, EPA's current approach remains reasonably protective and is therefore appropriate.

36. *Comment:* Commenters asserted that the three-year return interval is too stringent for marginal excursions of water quality criteria. As a result the criteria are overprotective. It is argued that: EPA's Technical Support Document has cited information on recovery from severe or catastrophic acute stresses as the basis for its recommended return interval for both acute and chronic criteria; EPA's criteria, however, are intended to avoid even slight stresses; and cites on EPA draft staff analysis showing that a three-year return interval for slight excursions results in a billion-year return interval for a severe stress.

Response: EPA is promulgating its proposed general rules of applicability (40 CFR 131.36(c)(2)) for the return interval based on guidance contained in chapter 2 and appendix D of the TSD. As discussed in the TSD, EPA expects the three-year return interval to provide "a very high degree of protection" (TSD at page 36). The three-year return interval approximates the same degree of protection as a once-in-ten-year seven-day average low flow design condition (7Q10), the use of which has historical precedent and is in many State water quality standards. (*Id.*)

Given the state of the science, and the limitations of available data, EPA as a matter of policy, takes the position that it should assure adequate protection and takes a conservative approach. This policy is also consistent with and recognizes historic program practices

and procedures used by both the Agency and the States in implementing the water quality standards and related implementation programs. (Guidelines for Developing or Revising Water Quality Standards, April 1973, p.7.)

The draft EPA staff analysis referred to by the commenter was prepared solely as background information for discussions by the committee reviewing the methodological guidelines. EPA neither confirms or rejects the calculations.

37. *Comment:* The Guidelines indicate that criteria may be derived using data that have not undergone formal peer review, but the Guidelines do not offer meaningful guidance to determine the acceptability of test results. Inappropriate data are used to derive criteria.

Response: Toxicity tests methods have changed over time to improve precision and accuracy. This requires use of judgment in evaluation of test acceptability and results. EPA utilizes the Guidelines and professional judgment to reject unacceptable data (see Unused Data sections of Criteria Documents). Reservations about data are considered when judging acceptability of results in the context of criteria development. EPA also receives public comments on the criteria documents.

EPA's criteria for accepting or rejecting data do not depend on whether the data were published in peer-reviewed journals. The guidance provided in the 1985 Guidelines is predicated on more explicit review considerations than may be provided by most publishers of peer-reviewed journals addressing toxicity tests with aquatic organisms. EPA has observed that the public comments have also raised specific technical issues regarding the validity of peer-reviewed results.

Occasionally values in publications are not used because they are not biologically important or statistically different. In addition, recalculation of authors raw data may occur. This is part of the judgment required by criteria document preparers.

All published and unpublished references cited in aquatic life criteria documents are on file at EPA's Duluth or Narragansett laboratories.

38. *Comment:* A commenter asserted that analysis indicates that databases that have few genus mean acute valves (GMAVs) produce significantly more restrictive final acute valves (FAVs). The commenter asserts that EPA needs to increase the size of such databases to avoid promulgation of excessively restrictive water quality criteria.

Response: This comment summarizes hypothetical calculations in which the effect of the number of tested genera on the FAV were examined. It concludes that because the FAV changes as this number changes, the database size is insufficient.

EPA disagrees with the commenter's interpretation of the analysis. The commenter studied the effect of database size by changing the insensitive species while keeping the four most sensitive species the same (Commenter number 133, Appendix A., page 26). It is therefore quite expected and proper that the FAV would change as indicated. The FAV is designed to protect the fifth percentile in the sensitivity of organisms (see 1985 Guidelines, section IV, p. 26) (also 50 FR 30784, at pg. 30794; July 29, 1985). Using available suitable tests as representative of the species that are to be protected is the most reasonable feasible approach to establishing criteria values. If the sample size is 8, the four most sensitive values must be considered representative of half of the species that are to be protected and the fifth percentile would be expected to be somewhat below the lowest value. If the sample size is 32, the four most sensitive values are representative of the lowest 12.5% of the species and the fifth percentile would be expected to be near the middle of these values. And it is not just the fifth percentile that is expected to change but the entire distribution—for a sample size of 8 the mean will be near the highest of the four most sensitive values; for a sample size of 32 the mean would be far above the four most sensitive values (near the sixteenth most sensitive value).

Therefore, the response of the FAV cited in this comment is fully expected and appropriate; it in no way indicates a deficiency in the procedure or the database requirements. Similarly, the response of the FAV cited in site-specific calculations is also reasonable. If site calculations are based on fewer species and if these species tend to be more sensitive on average than the total dataset, the FAV should be lower.

39. *Comment:* A comment was received that most of the data used to derive the criteria were not developed for that purpose.

Response: The reason a toxicity test was originally conducted is not important. If the data are considered to be pertinent, of acceptable quality, and meet our protocols and other data requirements in the 1985 Guidelines, they should be used in the derivation of water quality criteria. Moreover, as stated in the 1985 Guidlines, p. 26, "confidence in a criterion usually increases as the amount of pertinent data increases."

40. *Comment:* A commenter asserted that since EPA has acknowledged that species can exhibit a significant substance tolerance range and inter-laboratory variability, the databases for many of the criteria must be significantly improved before they can be considered suitable for use in the promulgation of water quality standards. The commenter cited Schimmel, S.C., 1981. Results: Interlaboratory Comparison—Acute Toxicity Tests Using Estuarine Organisms (EPA–600/4–81–001).

Response: Inter- and intra-laboratory variation is expected and unavoidable. Variation that causes imprecision is undesirable, but is not nearly as undesirable as is error that causes bias (Lemke, A.E.; 1981; Inter-Laboratory Acute Testing; EPA 600/3–87–005). More data are always desirable, and EPA welcomes the submission of additional high quality pertinent data, whether or not they have been peer-reviewed. The guidelines for deriving water quality criteria for aquatic life specify minimum data requirements that are intended to ensure reasonable confidence in the appropriateness of the resulting criteria.

The Science Advisory Board review referenced earlier at comment 29 accepted the EPA aquatic life 1985 Guidelines which permit the use of a single test to fulfill the minimum data base requirement. The results cited by the commenter when referring to a study conducted by Schimmel, 1981, were used by the Agency in developing the revised aquatic life guidelines in 1985. The guidelines specifically allow the use of a single-species test to fulfill the requirement for a species mean acute value. (1985 Guidelines, p. 29.)

41. *Comment:* A commenter asserted that very few of the studies used to develop the criteria cited any assessment of precision or accuracy and there was no standardization of testing protocols. Consequently, the commenter believes that the data are inadequate for the promulgation of water quality standards; and that only data from current testing protocols should be used.

Response: There is no way to fully assess the accuracy of a toxicity test because the "real" toxicity of the test material cannot be known. Various lines of evidence including results of toxicity tests and correlations between species and between test materials can help increase confidence in an estimate of toxicity. Studies of inter- and intra-laboratory variation are conducted to allow assessments of precision. Very

few, if any, studies are perfect, even if they exactly followed a "current testing protocol"; the acceptability of each study must be judged individually. Studies that follow approved methodology are more likely to be high quality, but some are not; some studies that deviate from approved methodology do provide useful information.

42. *Comment:* A commenter suggested that EPA provided no data to support its contention that acute-chronic ratios are similar in fresh and salt water.

Response: As quoted by the commenter, the 1985 Guidelines, p. 15, states that "When data are available to indicate that these ratios and factors are probably similar, they are used interchangeably." The guidelines do not contend that acute-chronic ratios are similar; the guidelines state that the ratios should be considered similar only when data are available to support the decision of similarity. Ratios are usually considered to be dissimilar if the range is greater than a factor of 10 (1985 Guidelines, p. 45).

43. *Comment:* A commenter asserted that EPA should establish a separate warm-water cadmium criterion, because the national criterion is set based on rainbow trout, a cold-water fish.

Response: The commenter misconstrues EPA's criteria development protocol. EPA's aquatic life guidelines require data for the family Salmonidae as one of the minimum eight species required to calculate a water quality criterion (1985 Guidelines, Section III, p. 23). EPA did not base its criteria for cadmium solely on rainbow trout data. (Rainbow trout is a member of the family Salmonidae.) EPA used this data to meet one of the requirements for tested species required by the guidelines (Ambient Water Quality Criteria for Cadmium-1984, Table 2, p. 6). Moreover, a review of toxicity data in EPA's criteria document does not indicate that the sensitivities of so-called coldwater for warmwater species differ significantly (Ambient Water Quality Criteria for Cadmium-1984, Table 2, pp. 46–47). EPA had no scientific basis to develop separate cadmium criteria based on the division of aquatic species into coldwater or warmwater types.

44. *Comment:* A commenter argued that because EPA did not follow its own Guidelines, EPA should withdraw the lead criteria document, update and complete the species database, and recalculate an appropriate freshwater lead criterion.

Response: EPA recognizes that the lead criterion is based on seven rather than eight freshwater acute tests as recommended in the aquatic life guidelines. EPA has determined that the criteria are valid and that an additional test would not cause a sufficiently large change in the criteria (in the computation formula [see page 97, appendix 2 of the Aquatic Life Guidelines] increasing N, the number of species tested, by one with an LC50 value that is higher than the four most sensitive values only increases the acute criterion from 34 to 37 µg/l, at a hardness of 50). (See Memorandum to the Record, Kennard Potts, March 12, 1992.) This change does not warrant withdrawing the current criteria. This decision to establish the criterion based on seven tests is consistent with Section 12—Final Review, paragraph B, page 57 of the Guidelines, which allow "On the basis of all available pertinent laboratory and field information, determine if the criterion is consistent with sound scientific evidence. If it is not, another criterion, either higher or lower, should be derived using appropriate modifications of these Guidelines."

45. *Comment:* A commenter asserted that there is a significant error in the lead saltwater acute database, and it has implications on the validity (or lack thereof) of the saltwater acute-chronic ratio for lead.

Response: EPA recognized the error in the ambient water quality criteria document for lead in the genus mean acute value (GMAV) for *Fundulus* and corrected that error in the criteria matrix included in the proposed rule. The result of this correction was to increase the criteria maximum concentration (CMC) to 220 µg/l and criteria continuous concentration (CCC) to 8.5 µg/l.

The use of the acute-chronic ratio (ACR) of 51.29 for lead is reasonable, given the available information (see p. 9, Ambient Water Quality Criteria for Lead). The GMAV for *Mysidopsis* included in the criteria document for lead (p. 26), is ranked 7th of the 11 genera tested for lead toxicity. Therefore, *Mysidopsis* might be considered among the less sensitive genera as suggested by the commenter. However, the GMAV for *Mysidopsis* is less than 10 times the value for *Mytilus* suggesting the acute sensitivities of two genera are not greatly different. (*Ibid.*)

Other factors are more important than species sensitivity in selecting the final acute to chronic ratio (FACR) for lead. EPA did not believe that the data from chronic tests with freshwater species clearly demonstrated that acute-chronic ratios changed with acute sensitivity for the following reason. Acute values for the copepod (*Acartia*), amphipod (*Ampelisca*) and dungeness crab (*Cancer*) are within a factor of less than 2 times the value for *Mytilus*. EPA then assumed that the ratio was not related to acute sensitivity. Even if an ACR of 2.0 could be justified for larval molluscs and lead, this value should not be applied to crustaceans when an experimentally derived value for *Mysidopsis* and *Daphnia* are available. See Table 3, Ambient Water Quality Criteria for Lead.

The commenter felt EPA was inconsistent in its use of ACR values from toxicity tests and the ACR of 2.0, when the most acutely sensitive organism is larval molluscs. EPA used acute-chronic ratios from toxicity tests for lead and silver and the value of 2.0 for copper (see ambient water quality criteria documents for lead and copper, and the draft water quality criteria document for silver, 55 FR 19988, May 14, 1990. The reason experimental ACR values were selected for lead instead of the value of 2.0 are described above.

46. *Comment:* A commenter suggested that the saltwater silver criterion is not valid and submitted test results to support this claim.

Response: Some of the data presented by the commenter (Number 80) to show problems in the silver data base actually supports its validity. Acute and chronic values for *Mysidopsis* are within the range reported by others. Silver's acute toxicity to sheepshead minnows is at silver's solubility. This probably accounts for the large range in reported silver toxicity. For these species only flow-through tests with measured silver concentrations were used. The data submitted in the public comment did not include information on the test conditions, and would not be used in criteria derivation without that information. See Ambient Water Quality Criteria Document for Silver, 1980; see also draft criteria document referenced in 55 FR 19988, May 14, 1990.

Results from silver tests from Cardin (1986) where control mortalities exceeded 10% were not used. In tests with copepods and larval silversides and flounder, control mortality of <20% is judged acceptable by those who conduct tests with fragile life stages of these species. Control survival requirements for chronic tests (ASTM protocol) are more liberal than those for acute tests.

EPA's rapid chronic toxicity protocols are not appropriate test methods for deriving chronic values for water quality criteria derivation because they are not true chronic tests. Only early life-stage tests with fish and partial and entire life-cycle tests with fishes and invertebrates are acceptable as provided

for in the 1985 Guidelines, section VI, part E, pages 37–39.

47. *Comment:* Comment was received that the proposed silver numeric standards should be revised to apply to the free silver ion. The commenter asserted that available information demonstrates that only the free silver ion is highly toxic to aquatic organisms while most other common forms of silver, whether soluble or insoluble, are several orders of magnitude less toxic.

Response: It would be appropriate to interpret the criterion in terms of the free silver ion only if all the silver that was included in the measured or nominal concentrations of silver in the pertinent toxicity tests would have been measured as free silver ion. Some silver would be complexed by such things as chloride, hydroxide, or carbonate in acute toxicity tests. Moreover, the feeding of the organisms in the chronic tests would result in complexation of at least some silver. This has been postulated as the explanation as to why (a) the addition of food to an acute toxicity test raises the EC50 for daphnids and (b) silver has appeared to be more toxic to daphnids in some acute toxicity tests than in comparable chronic tests. Absent a criterion that correctly applies to the free silver ion, the water-effect ratio procedure incorporated into today's rule is an appropriate means to deal with differences in toxicity caused by silver speciation.

48. *Comment:* A comment was made that the numeric silver standards should not be proposed until EPA's May 14, 1990 proposed revisions to the current ambient silver water quality criteria are finalized to reflect comments about the current science as submitted for the record of that proposal.

Response: EPA agrees with some of the comments on the May 14, 1990 proposed silver criteria. As a result, additional testing is planned and a revised document for silver will be prepared, but this is not anticipated in the near future. With this rule, EPA is promulgating its 1980 criteria for silver, because the Agency believes the criteria is protective and within the acceptable range based on uncertainties associated with deriving water quality criteria. In addition, the water-effect ratio promulgated in this rule offers development of appropriate site-specific criteria.

49. *Comment:* A commenter asserted that in the studies of Calabrese and Nelson 1974, Calabrese et al. 1973, and Coglianese 1982, the properties of the dilution water significantly affected the metals toxicity.

Response: EPA agrees that there may be differences in metals toxicity between laboratory test waters and ambient waters. For this reason, EPA has incorporated use of water-effect ratios in this rule (see Section F–7 of this preamble and an earlier response to public comment).

50. *Comment:* A comment was made that EPA should not use the metals toxicity data from Dinnel et al. 1983, who were evaluating alternative conditions in order to refine the testing protocol.

Reponse: EPA disagrees. Valid toxicity data can come from tests used to develop test methodologies and EPA determined that the Dinnel, et al. toxicity data was valid toxicity data. For example, see draft Ambient Water Quality Criteria for Silver, September 24, 1987.

51. *Comment:* A commenter argued that the metals toxicity data from Eisler 1977 are not valid because they involve 168-hour static tests. The currently recommended maximum duration for such tests is 48 hours.

Reponse: EPA disagrees. Most values reported in criteria documents are 96-hour LC50s for adult clams. EPA considers the Eisler data to be from valid and reliable tests even though they were based on other than 96-hour tests.

52. *Comment:* Comment was received that the 20–25 degree Celsius temperatures and 12:12 hour light cycle used to obtain the metals toxicity data of Lussier 1985, do not match current mysid protocol's 26–27 degree Celsius temperature and 16 hour light:8 hour dark light cycle.

Response: The submitted comments provided no data to show the effect of temperature or lighting on the chronic value. EPA does not consider Lussier's results to be artifacts because test conditions duplicate conditions found in nature.

53. *Comment:* The zinc and chromium toxicity data of Nelson 1972 should not be used because it involves an endpoint not recognized by EPA approved protocols.

Reponse: EPA disagrees. The test endpoint (the development of a hinge after 48 hours) is the same as that of the American Society for Testing Materials (ASTM), which is a standard, recognized protocol.

C. Human Health Criteria

The guideline references in the sub-section refer to Guidelines and Methodology Used in the Preparation of Health Effect Assessment Chapters of the Consent Decree Water Quality Criteria Documents, 45 FR 79347, November 28, 1980. The short reference in this sub-section is "the 1980 Guidelines."

54. *Comment:* A comment was received that use of the harmonic mean flow is a new technique and is not consistent with the way sampling is in fact done.

Response. Harmonic mean flow determinations have been adopted because the underlying hydrology support this analytical procedure. Such flows are applied only to human health criteria where human exposure is expected over a long period of time. It is derived by analyzing the pollutant mass a consumer would received by, for example, consuming a uniform amount of water everyday from a natural waterbody receiving a uniform mass loading of a pollutant.

Theoretical development as shown in the reference cited in footnote 2 of the preamble of the proposed rule (56 FR 58438) demonstrates that actual human exposure is best ascertained by using harmonic mean flow to account for concentration variation in computing the actual exposure to a pollutant.

55. *Comment:* The exposure assumptions used by EPA in developing human health criteria do not account for the variability of the population nor the consideration of exposure to more than one chemical and more than one exposure route.

Response: The EPA assumed exposure model was based on estimates or measures of national norms (see preamble discussion on human health criteria, Section F–3 and 1980 Guidelines, 45 FR 79347. Nov. 28, 1980). EPA has suggested in these and other documents that States select more appropriate fish and other aquatic life consumption rates for local populations. Some States have done so.

EPA's risk calculations aim to protect individuals exposed at an average level (*Ibid*). Thus, EPA does the calculation for average daily consumption of 2 liters of water and 6.5 grams of aquatic life for a 70 kg size individual over a 70-year lifetime. Then the Agency selects a conservative risk level (e.g., 10^{-6} or 10^{-5}) for such an average person.

People who do not fit this norm are subjected to more or less exposure to the pollutants of concern. For example, assuming a criterion based on a 10^{-6} risk level, a person who consumes 65 grams of contaminated aquatic life per day from ambient water at the criterion level would be protected at the 10^{-5} risk level, still well within EPA's desired risk range.

The effects of multiple toxicants is a more difficult problem. The science of toxicology has not developed generic ways to combine multiple risks. For

specific chemicals, analysis would focus on whether the same organ and mode of toxicity were implicated. For example, it may be more significant if two chemicals both caused liver cancer as compared with a situation where one chemical was carcinogenic and the other caused other systemic effects. Thus, a case-by-case approach is currently the only feasible approach available.

EPA has clearly delineated the human health models it uses. That is, one for systemic toxicity and one for carcinogenicity. The Agency's accepted factors are available in the Integrated Risk Information System (IRIS) and in the section 304(a) water quality criteria documents, and in the 1980 Guidelines, page 79353. Locally specific risk can be estimated using the readily available information based on monitoring data for local public water supplies or fish tissue analysis for specific chemicals.

However, in a rule affecting large areas of the country, EPA's view is that it should focus on the average exposure, as a protective basis for this rule. States may take subsequent action to provide the means to account for specific cases. This rule attains that goal.

56. *Comment:* Since EPA is undertaking a dioxin reassessment, it should not be included in this rule.

Response: We believe there are sound reasons for proceeding to promulgate dioxin criteria. First, the dioxin criteria are within the range of scientific defensibility. EPA's action will also encourage and support the fourteen States now considering adopting a dioxin criterion to complete their action. Most of those States are relying on the same data used by EPA to derive its criterion. Individual Control Strategies developed under section 304(l) of the Act contain limits on dioxin as appropriate, so there will be no immediate impact from this promulgation. It is too early in the process of scientific reassessment to support major changes in either the substance or timing of regulatory decisions related to dioxin.

It should also be pointed out that 42 states and territories have adopted criteria or translator procedures for dioxin; EPA approved 40 of those actions.

57. *Comment:* Several commenters raised questions concerning the methodology used to develop the human health criteria. Some stated that the CWA methodology did not reflect changes in risk assessment and therefore was obsolete. Some commenters noted the differences between the risk ranges under the CWA and the SDWA and argued that the acceptable range of cancer risk should be the same under both statutes. Several commenters discussed specific contaminants and argued that the regulatory levels under the CWA and SDWA should be the same. One commenter provided a list of contaminants where drinking water standards were more stringent than the proposed criteria and urged that criteria should be established equal to drinking water MCLs.

Response: EPA has developed risk assessment methodologies to protect human health from contaminants in drinking water and ambient waters. Although there are some differences in the methodologies, both are scientifically defensible. Both methodologies stem from Agency risk assessment values for noncancer effects (the Reference Dose or Rfd) and for cancer effects (the cancer potency factor, q1*). See Water Quality Criteria documents (the 1980 Guidelines), 45 FR 793180 (November 28, 1980) and 56 FR 3526 (January 30, 1991) (SDWA Phase II regulations).

Both methodologies follow the Agency's Guidelines for Carcinogen Risk Assessment (the Cancer Guidelines). 51 FR 33992 (September 24, 1986). Under both programs, the Agency takes the position that there is no threshold for carcinogenic effect unless there is convincing evidence to the contrary. Both programs therefore recommend that contaminant concentration for carcinogens should be zero based on this "no threshold" presumption. See SDWA Phase II regulations at 56 FR 3533 and the 1980 Guidelines at 45 FR 79324.

The nature of the human exposure to contaminants is somewhat different in the two programs, and the assumptions used in the methodologies reflect those differences. Under the SDWA, it is protection from exposure to contaminants in drinking water that is the concern. The maximum contaminant level goals (MCLGs) reflect the level of contamination where "no known or anticipated adverse effects on the health of persons occurs and which allows an adequate margin of safety." 42 U.S.C. 300g–1(b)(4). For those contaminants that are not suspected of posing carcinogenic risk for drinking water, the Agency bases the MCLG on noncancer effects and adjusts the RfD to reflect drinking water consumption of an average of two liters of tap water per day by a 70 kg adult. This value is further adjusted by exposure assumptions; the key assumption in the drinking water program is that significant exposure to a contaminant comes from sources other than drinking water (*e.g.*, ingestion of food, inhalation), and it is prudent to allow for the contingency that other exposure may occur. While EPA uses actual exposure data where they are available, the Agency assumes, as a default position, that drinking water contributes 20%–80% of the total exposure to a contaminant. 56 FR 3532. MCLs can also be adjusted for non-health reasons, such as treatability and detectability.

Under CWA section 304(a), EPA developed human health criteria to protect for exposure to ambient water contaminants. In this case, exposure comes from ingestion of surface water and consumption of aquatic organisms which are assumed to have bioconcentrated pollutants from the water in which they live. Accordingly, the 1980 Guidelines assumes the consumption of two liters of water and the ingestion of 6.5 grams of fish per day, and the bioconcentration potential of a contaminant in fish tissue may be a significant factor in the human health criteria value. The exposure assumption in the 1980 Guidelines differs from that in the drinking water program. If data were available on exposure to a contaminant from other media such as air or non-aquatic diet, such data could be used in setting criteria. Absent such data, EPA assumes, as a default position, that ambient water (i.e., aquatic exposure and organism ingestion) contributes 100% of the exposure to a contaminant. 1980 Guidelines, 45 FR 79323. EPA considers both methods to be protective of human health for their respective exposure scenarios.

EPA agrees with commenters that the Agency has chosen somewhat different risk levels in the two programs for determining MCLs and criteria for carcinogens, but does not agree that the different levels indicate major scientific differences. Under the SDWA, it is EPA policy to establish MCLs at a range associated with excess risks of one in ten thousand (10^{-4}) to one in one million (10^{-6}). In the CWA water quality criteria documents, the Agency presents a range of concentrations corresponding to incremental cancer risks of one in one hundred thousand (10^{-5}) to one in ten million (10^{-7}); the risk ranges are presented only as information. Under the usual process in which States develop water quality criteria, the risk management decision on an appropriate risk level is made by each State. In these circumstances, States have the flexibility to choose a risk level as long as the decision is well documented, was subject to public notice and comment, and protects water uses. In this rulemaking, EPA proposed criteria with an incremental cancer risk level of one

in a million (10^{-6}) for carcinogens. Today's action promulgates a risk level for each State to reflect the State's risk management decision where such a decision is discernable. See discussion in section F–5 of the preamble. In the Agency's view, the considerable overlap between the risk ranges in the two programs indicates that they are not significantly different.

Accordingly, EPA does not agree with commenters' arguments that the Agency must have identical risk assessments under the CWA and SDWA. At the same time, the Agency is studying the extent to which both methodologies might start with the same presumptions. If any changes to the methodologies seem appropriate, the changes would be proposed for public comment. In the meantime, because both methodologies stem from the same Agency risk assessment values, RfD and q1*, they are considered appropriate for deriving human health criteria for water contaminants. Therefore, as a general matter, EPA does not intend to revise the human health criteria unless and until there are changes in the 304(a) methodology.

One commenter urged the Agency to establish human health criteria equal to MCLs when the 304(a) methodology resulted in less stringent criteria. The commenter provided a list of contaminants for which the proposed criteria are less stringent than proposed or promulgated drinking water regulations for the contaminants (MCLs), and recommended that EPA promulgate water quality criteria equal to the MCLs for antimony, cadmium, nickel, selenium, silver, thallium, cyanide, ethylbenzene, toluene, 1,1,1-trichloroethane, benzylbutylphthalate, hexachlorocyclopentadiene, and 1,2,4-trichlorobenzene. EPA notes that there are five other contaminants in this proposed rulemaking for which the SDWA regulatory levels (either final or proposed) are more stringent than the proposed human health criteria; these are chromium, lead, chlorobenzene, trans-1, 2-dichloroethylene, and o-dichlorobenzene.

The fact that the numeric standards for these contaminants are different under the two programs is not a sufficient basis for replacing the proposed human health criteria with criteria equal to the MCLs. As discussed above, the methods used to derive the human health values under both the SDWA and the CWA are generally considered protective of human health. The differences that occur in the regulatory standards under the two statutes result from the assumptions used in their respective methodologies, particularly the default values chosen to estimate exposure. These assumptions are reasonable policy choices for implementing the statutory directives of the two programs. Since the CWA section 1980 Guidelines are adequately protective of human health, EPA does not consider it necessary to undertake a large scale revision of the proposed criteria in this rule to make them correspond to the SDWA standards. Moreover, EPA does not agree that MCLs are an appropriate value for a human health criterion since MCLs are partially based on feasibility considerations, including the availability of technology to achieve the regulatory level and the cost of such treatment. It is the MCLG that reflects solely health considerations. Accordingly, the Agency will not promulgate criteria equal to MCLs in lieu of less stringent proposed human health criteria. Except as noted below, the human health criteria are promulgated as proposed.

The Agency does find it necessary to withdraw the proposed human health criteria for seven contaminants pending further consideration. In the case of three contaminants—1,1,1-trichloroethane, methyl chloride, and lead—there is currently an insufficient basis for calculating human health criteria. For cadmium, chromium, selenium, and beryllium, the proposed criteria are no longer scientifically defensible. EPA is withdrawing the criteria while it evaluates all relevant data regarding the toxicity of these contaminants. The Agency's basis for deferring action on the human health criteria for these contaminants is discussed further below. For several of these contaminants, the Agency is today promulgating aquatic life criteria that are more stringent than the proposed human health criteria. However, the Agency recognizes that in limited circumstances, there might be regulatory voids in the absence of promulgated human health criteria. To minimize this potential problem, the Agency has added a footnote, footnote n, to the table setting out the criteria in § 131.36(b) that directs permit authorities to specifically address these contaminants in NPDES permit actions using the States' existing narrative "free from toxicity" criteria.

(A). 1,1,1-Trichloroethane

No public comments were received on the proposed human health criteria for this contaminant. However, in response to other comments, EPA evaluated the proposed criteria and has decided not to promulgate human health criteria. EPA proposed the human health criteria using an RfD based on inhalation data. However, the Agency has withdrawn that RfD from the IRIS database since it is generally not appropriate to use inhalation data to estimate oral risk. As noted above, EPA bases the proposed criteria on Agency-wide RfDs in IRIS. Since no such RfD currently exists, there is no basis to support the proposed values.

(B). Methyl Chloride

58. *Comment:* A commenter stated that the criteria should not be based on carcinogenicity but on systemic toxicity. Another commenter stated that it is inappropriate to establish criteria for methyl chloride based on the carcinogenicity for chloroform.

Response: EPA agrees there are now data available on methyl chloride itself, and it is no longer scientifically defensible to rely on surrogate data for chloroform. EPA is currently evaluating a q1* and RfD for methyl chloride for developing an RfD. In view of the availability of chemical specific data and the ongoing risk assessment process, EPA does not believe it is appropriate to promulgate human health criteria for methyl chloride at this time.

(C). Selenium

59. *Comment:* One commenter noted that in the case of selenium, EPA proposed a human health criterion of 100 ug/l even though the current MCL for selenium if 50 ug/l (the same as the MCLG). The commenter believes the numbers should be the same and urged EPA to set the human health criterion at the MCL.

Response: As discussed above, EPA does not intend to replace proposed criteria with criteria equal to the MCL solely because the latter is the more stringent level. However, in the case of selenium, the Agency has determined that further consideration should be given to recent data on selenium before setting the human health criteria. Selenium is an essential nutrient in humans and plays a vital role in cell metabolism. See Health Criteria Document for Selenium, (May 1989). In such instances, the Agency must evaluate evidence of the compound's essentiality as well as evidence of toxicological effects. The Agency's Science Advisory Board has noted that synergistic effects—the interaction between selenium and other inorganic chemicals—are an important consideration in determining regulatory standards. Moreover, there are individuals who, whether from diet or supplements, consume significantly more selenium than EPA estimates of average consumption levels.

During the development of drinking water regulations for selenium, the Agency discussed new epidemiological data that were becoming available. See 56 FR 3526 at 3538–39 (January 30, 1991). In view of these new data, the numerous complex issues concerning essentiality, the consumption of elevated levels by some members of the population, and the need to ensure a protective level, EPA is unable to determine the scientific defensibility of the human health criteria, and therefore will not promulgate human health criteria for selenium at this time.

(D). Beryllium

60. *Comment:* One commenter stated that EPA's beryllium criterion is too low (i.e., 0.0077 ug/l). The commenter alleged three serious flaws in the proposed criterion for beryllium. These are: (1) Beryllium does not pose a carcinogenic risk by ingestion; (2) EPA's use of animal inhalation and injection data to support a cancer risk by human ingestion is arbitrary and capricious and is not consistent with EPA's methodology in setting human health criteria for other metals; and (3) the proposed criteria are less than natural ambient levels as well as EPA's proposed drinking water standards and would have very significant and unwarranted economic impacts.

The commenter further argued the defects in the data upon which EPA relies are so fundamental that the classification of beryllium as a Group B2 substance is unreasonable; and the EPA should classify beryllium in Group D for purposes of its potential ingestion carcinogenicity, and should adopt a human health criterion for beryllium of 1.6 mg/l, based upon a no-observed adverse effects calculation for a non-carcinogenic substance. Information on the Agency's classification system for carcinogens is included in U.S. Environmental Protection Agency (EPA), 1986, Guidelines for Carcinogen Risk Assessment. 51 FR 33992, September 24, 1986.

Response: EPA does not agree with the commenter's argument that the Agency's weight of evidence classification of beryllium as a B2 carcinogen is incorrect. There is clear evidence of carcinogenicity through inhalation or injection in monkeys, rats and rabbits, and animal studies showing tumors at sites different from the route of exposure. On this basis, the Agency has concluded that the overall weight of evidence in beryllium studies proves sufficient evidence of carcinogenicity to support a B2 classification. Drinking Water Criteria Document for Beryllium, September 1991. However, the Agency has determined that it is necessary to give further consideration to the toxicity and carcinogenicity of beryllium through ingestion before promulgating human health criteria. In the final drinking water rulemaking regarding beryllium (see 57 FR 31776, July 17, 1992), Agency analysis of the ingestion route of exposure failed to provide definitive evidence that correlates ingestion with tumor appearance. Drinking Water Criteria Document at I–7. The Agency has determined that these ingestion analyses are relevant in this rulemaking and therefore the proposed criteria are not scientifically defensible. The Agency will give additional consideration to the question of whether beryllium in water could pose a carcinogenic risk to humans before issuing criteria and accordingly, will not promulgate criteria for beryllium.

(E). Lead

61. *Comment:* A commenter noted that EPA proposed a 50 ppb lead human health criteria for consumption of water and organisms. The commenter argued that a 50 ppb criteria is not compatible with EPA's overall lead control strategy reflected under the drinking water standards, and recommended a 5 ppb lead health criteria.

Response: As noted above, differences in the proposed human health criteria and regulatory levels under the SDWA methodology are not, in themselves sufficient basis for revising the criteria. In this case, the original basis for the 1980 Guidelines and, in turn, the proposed criteria was however the MCL. In 1991, EPA promulgated a zero MCLG and treatment technique for lead in drinking water, which will, when effective, replace the current MCL. The treatment technique includes a 15 ppb lead action level at the tap.

In view of drinking water regulatory action, EPA has determined that it is not appropriate to promulgate a human health criteria based on a drinking water MCL that no longer reflects the Agency's position. The Agency has given preliminary consideration to other numeric values but has not yet reached a consensus on an appropriate human health criteria. Accordingly, EPA is not promulgating human health criteria for lead at this time.

(F). Cadmium

62. *Comment:* A commenter noted that EPA had proposed criteria for cadmium that were less stringent than the MCLs. The commenter urged EPA to set the criteria at the MCL level.

Response: As noted above, differences in the two regulatory levels is not a sufficient basis for using the more stringent MCL. However, the Agency has determined that it is necessary to give further consideration to the toxicity of cadmium from exposure to water in terms of the bioconcentration potential of this contaminant. As discussed earlier, one of the factors used to calculate the human health criteria is consumption of aquatic organisms. It is, therefore, particularly important that the Agency ensure that the criteria adequately reflect the bioconcentration of cadmium. EPA is currently addressing this issue in other regulatory actions (*e.g.*, sewage sludge and the Great Lakes initiative) and expects that the data and analyses being developed in these efforts will be of value in further examination of the human health criteria. Accordingly, the proposed criteria are not scientifically defensible and EPA will not promulgate human health criteria for cadmium.

(G). Chromium

63. *Comment:* A commenter noted that in the case of chromium with valences of plus VI and III, EPA proposed human health criteria of 170 and 33,000 µg/l, but that the Agency had promulgated a total chromium MCL of 100 µg/l. The commenter urged the Agency to take a similar position here.

Response: As noted above, the fact that the numeric values for CWA and SDWA regulatory actions are different is not a sufficient basis for revising the CWA criteria. However, in this instance, EPA has determined that the proposed criteria are not scientifically defensible. New information concerning the conversion of chromium III to a more toxic chromium VI during the chlorination process should be considered in setting the criteria as well. (See 56 FR 3526 at 3737, January 30, 1991). Accordingly, EPA will not promulgate the proposed human health criteria for chromium.

For other reasons, proposed human health criteria were withdrawn for four pollutants.

(H). Silver

64. *Comment:* Several commenters stated that silver should no longer be classified as a toxic pollutant for human health concerns and that no further regulation for silver is appropriate. Commenters also addressed the issue that the proposed silver criteria should be revised to delete human health as a toxicity-based criterion to be consistent with the recent deletion of the MCL for silver under the Safe Drinking Water Act. (56 FR 3526, January 30, 1991.)

Response: EPA deleted the human health criteria for silver, because the

only potential adverse effect from exposure to silver in drinking water is argyria (a discoloration of the skin). EPA considers argyria a cosmetic effect since it does not impair body function. However, free silver ion is highly toxic to fish. Therefore, to protect aquatic life, silver will be regulated with aquatic life criteria as promulgated in today's rule.

(I). Acenaphthylene, Phenanthrene, Benzo(g,h,i)Perylene

65. *Comment:* Several comments were received which stated that (1) the EPA has expanded the list of polynuclear aromatic hydrocarbon (PAH) compounds to be regulated as carcinogens. Specifically, the commenters do not agree with the Agency that acenaphthylene, phenanthrene, benzo(g,h,i)perylene, and chrysene should be treated as carcinogens, and (2) the proposed rule establishes human health criteria for a diverse class of compounds (such as polynuclear aromatic hydrocarbons) based solely on structural similarity, and the assumption that all of the compounds are of equal toxicity to the most potent compound within the "class."

Response: The Agency agrees with the several comments that the water quality criteria for acenaphthylene, phenanthrene, and benzo(g,h,i)perylene should be based on non-carcinogenic effects of these chemicals since inadequate toxicity data are available to assess carcinogenic potential of these chemicals. However, there are insufficient toxicity data available to provide risk assessment for these three compounds at this time. Therefore, they have been deleted from this rule.

The Agency does not agree with the comment regarding chrysene. Chrysene has shown carcinogenicity in several animal studies. (U.S. EPA, 1991. Drinking Water Criteria Document for Polynuclear Aromatic Hydrocarbons (PAH's) Office of Water.) Chrysene produced tumors (as did other PAHs included in this rule) in several mouse strains when applied topically in assays for complete skin carcinogenicity or in initiation/promotion protocols. Several early studies employing intramuscular or subcutaneous injection of mice and rats produced negative or equivocal results. Three studies wherein neonatal mice of two strains were exposed intraperitoneally reported increased tumor incidence in liver and other sites (*Ibid*). Chrysene produced mutations in *Salmonella* and chromosome aberrations and morphologic transformation in mammalian cells.

The Agency recognizes that carcinogenicity of various PAHs vary with each PAH, however, Benzo(a)pyrene being the most potent carcinogen of this class, was used to develop criteria for all the PAHs.

(J). Other Pollutants

66. *Comment:* A commenter requested that EPA explain the origin of the use of safety (uncertainty) factors.

Response: The safety factors (now referred to as uncertainty factors [UF]) used in calculation of the Acceptable Daily Intake (now referred to as the Reference Dose [RfD]) were developed from the National Academy of Science guidelines (1977) with modification by the EPA. These factors are similar to those used by the World Health Organization (Food Chemistry Toxicology, Vol. 27, No. 4, pp. 273–274, 1989). The EPA is presently working on new approaches to calculation (estimation) of a RfD (ADI).

The term "safety factor" (now UF) was initially used by the Food and Drug Administration (FDA). They used no-effect levels (in mg/kg of diet) from chronic animal feeding studies and divided by 100 to get an Acceptable Daily Intake (ADI) level. For less-than-lifetime (or sub-chronic) studies, they divided the no-effect level by 1000. The National Academy of Science recommended that EPA use a similar approach and outlined the use of 10-fold UFs for intra- and interspecies variation. An additional 10-fold UF is also included to calculate a lifetime number from a less-than-lifetime study. The term "RfD (Reference Dose)" is now used by the EPA instead of the ADI. The above referenced information is included in the Agency's Risk Assessment Guidelines published at 51 FR 33992, September 24, 1986.

67. *Comment:* A commenter stated that EPA should not use Structure-Activity Relationships (SAR) techniques to regulate chemicals, such as methyl chloride, when data on the specific chemical are available.

Response: The EPA uses SAR only when data on specific chemicals of a chemical group are lacking (see 1980 Guidelines, Section D, page 79355). SAR is a technique used to compare the toxicity of individual chemical in the group with the known toxicity of one member of the group based on chemical structural similarities. For example, SAR was used in criteria development for polynuclear aromatic hydrocarbons (PAHs), polychlorinated bi-phenyls (PCBs), and tri-halomethanes (THMs) because the EPA does not have adequate health data on most of the chemicals in the class under review. For a detailed discussion on methyl chloride, see previous comment.

68. *Comment:* A commenter stated that the toxicities of inorganic arsenic (As) and the organic arsenic derivatives present in fish may be quite different.

Response: EPA agrees with the commenter—the organic arsenic forms are known to be less acutely toxic then inorganic arsenic forms ("Threshold Carcinogenicity Using Arsenic as an Example," Advances In Modern Environmental Toxicology, 15:133–158, 1988). In addition, since the organic forms found in fish appear to be excreted as the parent molecules, they are likely to have less long-term toxicity. A footnote has been added to section 131.36(b) stating that the criteria for arsenic refers to the inorganic form only.

69. *Comment:* A commenter stated that the arsenic standard is based on an IRIS recalculation that has never been open for public inspection.

Response: The 0.018 µg/l (water and aquatic life consumption) and 0.14 µg/l (aquatic life consumption) criteria were calculated from the unit risk factor of $5x10^{-5}$ $(\mu g/l)^{-1}$. The unit risk factor of $5x10^{-5}$ $(\mu g/l)^{-1}$ is on IRIS and available for public inspection. Although EPA incorrectly indicated in the proposal that the criterion was calculated using an addendum to the prior criteria document and not IRIS, in fact the addendum included the IRIS information and this information was in the record. There is an IRIS submission desk for public comments. Moreover, this rulemaking provided an opportunity for public comment.

70. *Comment:* A commenter claims that the EPA's Science Advisory Board (SAB) is critical of EPA's criteria for arsenic.

Response: The SAB stated that "at doses below 200 to 250 µg As^{+3}/person/day there is a possible detoxication mechanism" and recommended that EPA "develop a revised risk assessment based on estimates of the delivered dose on non-detoxified arsenic." (EPA–SAB–EHC–89–038. Letter from SAB to William Reilly, September 28, 1989.)

Since it is not known exactly when and how arsenic can be considered to be detoxified, EPA cannot, at present, calculate this "delivered non-detoxified" dose. It has been postulated by Marcus and Rispin ("Threshold carcinogenicity using arsenic as an example" Adv. Modern Environ. Toxicol. 15:133–158, 1988) that methylation is a detoxification process. While methylation certainly decreases the acute lethality of arsenic, we do not have enough toxicity data to regard the mono- and dimethylated methobolites as "non-toxic".

71. *Comment:* A commenter noted that no significant health effects from

arsenic exposure has been found in the U.S., as compared to the effects seen in Taiwan.

Response: The cancer potency for arsenic is calculated using standard Agency methods. The available U.S. epidemiology studies are small and do not have the statistical power to state whether the effects and risks in the U.S. are dissimilar to those that have been reported in Taiwan.

72. *Comment:* A commenter questioned the effects of arsenic at low dose and states that a threshold for arsenic may exist. The Marcus and Rispin paper is cited as justification. (Threshold Carcinogenicity Using Arsenic as an Example", "Advances in Modern Toxicology, 15:133–158, 1988.)

Response: There are no adequate data on whether arsenic exerts the same effects at low doses that it does at higher doses. To extrapolate to low dose effects, the EPA uses the linearized multistage model. At the present time, there is no substantial database which demonstrates that arsenic has a threshold for adverse effects. Marcus and Rispin theorized that there is a threshold for arsenic. However, there is no adequate proof that such a threshold exists. In addition, it should be noted that there is not an adequate epidemiology study on U.S. populations. Accordingly, at the present time, there is no way to establish the presence or absence of a threshold level for arsenic.

73. *Comment:* Arsenic causes skin cancer, and not all forms of skin cancer are equally lethal.

Response: The EPA knows that the form of skin cancer induced by Arsenic is treatable and agrees with the commenter that not all forms of cancer are equally lethal. However, the EPA is aware of data showing that arsenic can cause internal cancer and is reluctant to change the risk assessment based on skin cancer until the recent data can be evaluated (the Taiwan data).

74. *Comment:* EPA assumes that all forms of arsenic are equally carcinogenic and therefore the proposed criteria are overly conservative.

Response: The Agency does not consider all forms of arsenic to be equally carcinogenic and has clarified this issue by adding footnote "b" to the matrix in this rule.

75. *Comment:* Several commenters stated that the exposure assumptions or models used to generate ambient water quality criteria are extremely conservative for the following reasons: (1) 6.5 g/d reflects consumption of both contaminated and non-contaminated fish, (2) given the mobility of the population, drinking water from the same source over an average lifetime is extremely remote, (3) the supposition that a person will be drinking water from a surface stream in the first place is questionable, and (4) criteria assume that the same person would actually be consuming "contaminated" water which should have been prohibited under the Safe Drinking Water Act.

Response: The EPA exposure model was based on estimates or measures of national averages (Seafood consumption data analysis, U.S. EPA. 1980—see Guidelines, page 79356). Data indicate that fish consumption rates for recreational and subsistence anglers can exceed 6.5 g/day. EPA has suggested that States select more appropriate fish and other aquatic life consumption rates for local populations. Some States have done so. (See TSD, p.37.) The commenter is correct that the 6.5 grams data reflects consumption of both contaminated and non-contaminated fish. The 6.5 grams is the quantitative daily aquatic life consumption used by EPA. However, EPA's methodology assumes that the 6.5 grams per day of aquatic life were taken from waters meeting the criteria level (see 1980 Guidelines, Section A, page 79348).

In EPA's view, the assumption that an individual may drink from the same surface water for their lifetime is reasonable and meets the goal of the CWA. Drinking water directly from surface supplies is not always regulated under the SDWA: There are many circumstances which are not regulated by the SDWA. SDWA regulations are only applicable to public water supplies serving populations of 25 people or more or in which there are 15 or more service connections.

76. *Comment:* Several commenters questioned the fish and water consumption rates of humans as related to the dioxin criteria.

Response: The Agency is reviewing the scientific basis for the human fish consumption factor used in the derivation of dioxin criteria. (56 FR 50903; October 9, 1991.) When these reviews are completed and the findings critically evaluated, the Agency will initiate a process to determine whether the criteria for dioxin should be revised.

77. *Comment:* Bioconcentration factors (BCFs) should be based on the proportion and type of organisms that would be non-migratory and likely to be caught and consumed by recreational fishermen.

Commenters disagreed with the way the BCF's were derived for 8 chemicals:

Antimony
Arsenic
Beryllium
Cadmium
Chromium
Mercury
Selenium
Thallium

Response: BCFs for all of the criteria, including the above cited metals were supplied by EPA's Duluth laboratory and were used to calculate the promulgated criteria (i.e., from the list above, antimony, arsenic, mercury and thallium which are still in today's rule. The other four metals have been deleted. See comment number 57). (See 1980 Guidelines, pp. 79348–49.) EPA has suggested that States may select more appropriate fish species such as non-migratory and recreational species in developing BCF values which would more appropriately reflect local conditions and aquatic species (see response to comment earlier regarding BCFs and the Technical Support Document for Water Quality-based Toxics Control, EPA/505/2–90–001; March, 1991 at pp. 36–41.) Some States have chosen to do so.

78. *Comment:* A commenter stated that EPA utilized a high degree of overprotection in developing criteria for antimony. The commenter requested EPA to update the IRIS and Health Effects Assessment Summary Tables by using available data to provide toxicity information for various antimony compounds that more appropriately reflects such factors as differences in gastrointestinal absorption rates.

Response: In developing a criteria for antimony the Agency relied upon the available data which is very limited for antimony compounds. The greatest volume of information in terms of chronic exposures to antimony salts was for potassium antimony tartrate. This compound is also the most toxic antimony compound tested. In order to be protective of antimony in all its possible forms, organic and inorganic, the Agency relied upon data from potassium antimony tartrate. Therefore, the IRIS-listed reference dose (RfD) for antimony tartrate is used in the criteria development.

It is true that this criterion may be conservative in some cases. EPA is promulgating this antimony criterion because the criteria must protect human health and it has not been established which antimony compounds may be produced under natural conditions in ambient waters.

79. *Comment:* A commenter stated that EPA should establish separate criteria for the less soluble and commercially more important antimony oxides. The IRIS database indicates a much higher NOAEL for antimony trioxide than for antimony tartrate.

Response: As stated above, the Agency is setting criteria which would result in protection from all soluble forms of antimony, not just the most common forms. It is true that antimony oxide is much less toxic than potassium antimony tartrate. However, the Agency is taking a conservative approach and assuming that there is the potential for toxic organic antimony compounds, such as the tartrate compound, to form under ambient water conditions. For this reason, the Agency chose the more stringent of the two RfDs listed on IRIS for antimony compounds. (See 1980 Guidelines discussion, p. 79355.)

80. *Comment*: A commenter stated that EPA should use a less conservative application of uncertainty factors in developing the RfD for antimony.

Response: The RfD for antimony, based on the lifetime rat study by Schroeder et al. cited in IRIS (1992), includes an uncertainty factor of 1000 since the study resulted in a Lowest Observed Adverse Effect Level (LOAEL). A No Observed Adverse Effect Level (NOAEL) could not be determined from this study. It is Agency policy to assign an uncertainty factor of 1000 to a LOAEL from an animal study of lifetime duration. If there had been a higher degree of certainty that this LOAEL was indeed close to an observed NOAEL, then the uncertainty factor assigned may have been reduced. However, given the paucity of data on antimony, the Agency assigned the full 1000 uncertainty factor in developing an RfD. (See discussion in the 1980 Guidelines, pp. 79353–54.)

81. *Comment*: A commenter stated that EPA should use the revised bioconcentration factor (BCF) of 0.5 recently developed by EPA for antimony instead of the outdated BCF (1.0) used in calculating the criteria.

Response: It is not true that the BCF for antimony has been officially revised since the 1980 ambient water quality criteria (AWQC) was developed. There are draft updated BCFs under development by the Agency. However, the Agency has not provided the public an opportunity for comment on the new BCF as it has for the revised RfD values which were derived from IRIS. Information on IRIS is considered public information, easily accessed and open to public review. The Agency decided it would be unfair to include revised BCF values into this rulemaking without giving all interested parties a chance to comment on them. For this reason the Agency has presented criteria with 1980 BCF values. EPA will revise the criteria for human health once a revised methodology is developed. At that time we will also include all updated BCF values.

82. *Comment*: Several commenters stated that the polychlorinated biphenyls (PCBs) criteria needed revisions. These included: (1) Revising the cancer potency factor estimated by EPA, (2) setting criteria for each of the Aroclor mixtures separately rather than for a single Aroclor mixture, (3) translating the animal evidence of carcinogenicity into human risk values.

In support of their argument concerning the cancer potency of PCBs, the commenters cited from the report, "Reassessment of Liver Findings in PCB Studies in Rats by Pathology Working Group" prepared by the Institute for Evaluating Health Risk (IEHR). The report reviewed five chronic studies in rats using Aroclor 1260, Aroclor 1254, Clophen A–60 and Clophen A–30. PCBs with chlorine content of less than 60% i.e., Aroclor 1254 and Clophen A–30 had little or no evidence of carcinogenicity. With respect to Aroclor 1260 study, the commenter recommended that the EPA should use a cancer potency factor of either 5.1 or 1.8 $(mg/kg/day)^{-1}$. The EPA potency factor of Aroclor 1260 is 7.7 $(mg/kg/day)^{-1}$. The cancer potency factor of 5.1 $(mg/kg/day)^{-1}$ was calculated from the same study (Norback and Wellman) as used by the EPA. Use of geometric means of all the studies with chlorine content of 60% resulted in the cancer potency factor of 1.9 $(mg/kg/day)^{-1}$.

The commenter argues since there is no evidence that the PCBs with chlorine content of less than 60%, are carcinogenic, the Agency should set a separate criterion for each of the mixtures i.e., Aroclor 1242, Aroclor 1254, etc.

Response: EPA disagrees with the commenter concerning the cancer potency calculations using geometric means of several studies resulting in value of 1.9 $(mg/kg/day)^{-1}$. Utilization of a geometric means approach for the calculation of potency estimates from the available studies is not reasonable because different animal strains and age levels were used in these studies. In addition, the study of Norback and Wellman, cited in IRIS (1992), from which EPA calculated its potency factor of 7.7 $(mg/kg/day)^{-1}$, was much superior in its design and conduct than the other studies. Therefore, the Norback and Wellman study is expected to provide a more precise criterion. The re-examination of slides from the Norback and Wellman study by a group of private pathologists and the use of the revised data is alleged to a yield cancer potency factor of 5.1 $(mg/kg/day)^{-1}$. This potency factor is not very different from that calculated by the Agency.

The Agency believes that it is not reasonable to develop a criterion for each of the PCB Aroclor mixtures. PCBs are mixtures of chlorinated biphenyls. Each mixture may contain up to 209 possible individual compounds. These mixtures are prepared by treating biphenyls and chlorine under alkaline conditions and are characterized by the chlorine contents of the mixtures. For example Aroclor 1242, 1254 and 1260 contain 42, 54 and 60 percent chlorine contents respectively. These mixtures are not characterized by the occurrence of each possible compound in the mixture. Each of the mixtures would be expected to contain all combinations of chlorinated compounds even though some of them in small or trace amounts. In summation, all the Aroclors are expected to contain chlorinated carcinogenic PCB isomers. Besides expecting carcinogenic compounds in each mixture, these mixtures cannot adequately be analyzed with commonly available methods.

The Agency believes that the evidence of carcinogenicity observed in animals can be used to estimate risk values. The Agency has used this approach in this regulation based on the existing Agency 1980 Guidelines (51 FR 33992).

83. *Comment:* One commenter noted that there is a marked range of carcinogenic potencies between the various nitrosamines with some nitrosamines exhibiting no carcinogenic activity. The commenter argued that reliance on structural similarity methodology could therefore result in misclassification errors as to whether specific compounds should be treated as carcinogens.

Response: EPA agrees that there is a marked range of carcinogenic potencies between the various nitrosoamines with some nitrosoamines exhibiting no carcinogenic activity. If there are adequate data available for a specific nitrosoamine, EPA uses such data in evaluating the health risks that such a chemical may present. However, such data are often not available. As a consequence, EPA must, as a practical matter, infer the toxicity of one compound from the toxicity of a chemically similar analogue.

84. *Comment:* A commenter submitted a document entitled, "Biological Risk Assessment of N-Nitrosodimethylamine." While this document does not recommend a specific human health criteria for N-nitrosodimethylamine (NDMA), it does conclude that: 0.0044 µg NDMA/kg/day will present the public with a lifetime 10^{-5} risk level of cancer.

Response: It is not at all clear how the author(s) of "Biological Risk Assessment

of N-Nitrosodimethylamine" arrived at the 0.0044 µg NDMA/kg/day with 10^{-5} risk level. Assuming the ingestion of 2 L of water/day by a 70 kg adult, 0.0044 µg NDMA/kg/day is equivalent to a level of NDMA in drinking water of 0.28 µg NDMA/L. Based on the same data, IRIS concluded that the 10^{-5} risk level for NDMA in drinking water is 0.007 µg/L (i.e, 1/40 the value of "Biological Risk Assessment of N-Nitrosodimethylamine"). Thus, EPA disagrees with the comment since inadequate data and analysis were provided.

85. *Comment:* A commenter noted that the human health criteria presented in the table (in parentheses) are for pollutants which had *no* health based criteria in the 1980 criteria documents (45 FR 79318). The commenter urged EPA to not include these criteria in the final rulemaking.

Response: The proposed rule indicated these values presented with parentheses in the matrix were *not* being proposed as regulatory criteria but were presented as notice for inclusion in future State triennial reviews. So as not to confuse these values with the criteria being promulgated today, those values were deleted from the matrix and presented below.

Compound	Water and organisms (µg/L)	Organisms only (µg/L)
Copper	1300	
1,2-Dichloropropane	0.52	39
1,2-Trans-Dichloroethylene	700	
2-Chlorophenol	120	400
2,4-Dimethylphenol	540	2300
Acenaphtene	1200	2700
Butyl Benzene Phthalate	3000	5200
2-Chloronaphthalene	1700	4300
n-Nitrosodi-n-Propylamide	0.005	1.4

3. Economics

86. *Comment:* Many commenters objected to the Agency's decisions not to develop detailed cost estimates and not to conduct a comprehensive Regulatory Impact Analysis. The objections were presented in terms of (a) EPA's obligation pursuant to Executive Order 12291 to conduct an analysis; (b) the need to use benefit-cost analysis to make effective public policy decisions, and (c) EPA's error in relying on the difficulty of the task as a reason for not conducting the analysis.

Response: EPA's decision not to provide detailed cost estimates was based on the unusually complex characteristics of this rule with respect to projecting the burden on dischargers. Section J of this preamble includes a discussion of EPA's effort to estimate costs for the rule. As a very brief summary, cost estimates for compliance with water quality-based permits would be based on numerous assumptions; results are sensitive to these assumptions; and consequently, the results would not provide meaningful information to the rulemaking process.

For the final rule, the Agency has undertaken a cost assessment to express a range of compliance costs for several combinations of industries and pollutants. The Agency has also estimated and/or described a range of health and ecological benefits for the rule. While this information about costs and benefits does not constitute a comprehensive Regulatory Impact Analysis, the assessment provides descriptive information about the types of costs that might be incurred as new water quality standards are translated into specific NPDES permits. Also, the ranges illustrate the uncertainties inherent in any estimate of costs.

In addition to the compliance costs to dischargers, other types of cost impacts may occur as a result of EPA-imposed numeric criteria in State water quality standards. For example, nonpoint sources of pollution may incur costs to the extent that best management practices need to be modified to meet water quality standards. In addition, States may incur increased monitoring costs, but only if there is some reasonable expectation that the pollutants are manufactured or actually used in the State.

Several commenters, representing the interests of industrial and municipal dischargers, provided cost estimates; others provided cost data for various compliance strategies. These cost estimates cannot form the basis of an economic impact analysis. Insufficient information is presented in the comments to determine whether these costs reflect the most cost-effective means of achieving the required pollutant reductions. Similarly, EPA cannot confirm whether the cost estimates reflect the incremental cost to comply with water quality-based standards beyond the cost to comply with technology-based regulations. It is the incremental costs that are relevant to this assessment. In addition, the information supplied in the comments is not sufficient to measure the impact of these costs on the financial condition of the dischargers (whether industrial or households).

Due to the uncertainties, a Regulatory Impact Analysis would not alter the Agency's decision to fulfill its statutory responsibilities and promulgate numeric criteria for toxic pollutants. The same conclusion applies to detailed compliance cost estimates.

U.S. Government Standard Form 83, Request for OMB Review, includes a section for OMB to waive the requirements to conduct a Regulatory Impact Analysis, so OMB does have such authority.

87. *Comment:* Several commenters asserted that EPA has not demonstrated that the costs and operating inefficiencies of complying with federal criteria are commensurate with environmental benefits.

Response: The provisions in the Clean Water Act covering water quality standards and specifically, establishing numeric water quality criteria for toxic pollutants, do not include consideration of costs or benefit-cost comparisons. As explained above in section J, economic factors are considered at some points in the process (such as establishing water body use classifications), but not as a component of adopting water quality criteria. The statutory requirements covering water quality criteria focus instead of protection of human health and the environment.

EPA has considered the ability and value of estimating the benefits associated with revised water quality criteria. A summary of the human health and ecological benefits is included in Section J of this preamble.

Briefly, the Agency finds that reduced pollutant discharges are feasible at reasonable costs for several examples. In addition, the national toxics rule has the potential to reduce excess cancer cases. Other ecological benefits, such as protection of wildlife and aquatic organisms, are also projected as an outcome of States adopting numeric pollutant criteria in their water quality standards.

88. *Comment:* Several commenters argued that EPA should conduct a Regulatory Flexibility Analysis because not to do so is a violation of the Regulatory Flexibility Act, and an agency cannot abrogate its statutory duty by pleading hardship.

Response: EPA finds that meaningful results from extensive cost and regulatory impact analyses for this rule are unlikely to be achieved. The same conclusion applies to a detailed analysis conducted in response to the Regulatory Flexibility Act. Briefly, the numerous assumptions and analytical difficulties that are inherent to this rulemaking yield information about the scope of costs, but not detailed cost estimates for specific groups of discharges, such as small entities. Nonetheless, as described above, EPA's evaluation does not find that there will be a significant impact on a substantial number of small entities; therefore, a final Regulatory Flexibility Analysis is not required.

89. *Comment:* Several commenters asserted that EPA should consider current economic conditions in determining whether to promulgate Federal criteria.

Response: While EPA acknowledges that prevailing economic conditions affect individual business decisions concerning investment in pollution control, Congress clearly intended the Agency to move expeditiously when Federal action is warranted. In compliance with congressional intent, EPA is promulgating these criteria at this time.

In addition, it is not clear which "current economic conditions" should be taken into account in establishing federal criteria. The limitation of toxic discharges is intended to be a continuing process, with this rule a part of the on-going control process. Since the criteria will be in effect during all phases of business cycles, current conditions cannot be the sole determinant of economic conditions when analyzing the economic impact of a regulation. Likewise, the impact of this rule will not be incurred immediately because the criteria will be written into new discharge permits as the current permits expire.

90. *Comment:* Several commenters, representing industrial and municipal dischargers, asserted that the economic impacts of complying with EPA-imposed criteria will be substantial and will be burdensome.

Response: While it is likely that some dischargers will incur compliance costs when the EPA-imposed numeric toxic pollutant criteria are translated into specific NPDES permits, it is not certain that such costs or their impacts will be unreasonable. For several industries, as described in the Agency's cost assessment, large segments of the discharging community will not be affected by this rule because, for example, costs to comply are very small, or technology-based limitations are a sufficient basis for effluent control that will also control pollutants to the level needed to comply with in-stream water quality criteria.

91. *Comment:* Commenters representing municipal interests stated that EPA is incorrect in the assumption that industrial sources are the primary source of toxics discharges by POTWs.

Response: EPA recognizes that there are several sources of toxic pollutant contributions to POTWs. Industrial indirect dischargers, while not the only source, are often the primary source, and the toxic influent from these sources can often be controlled through pretreatment programs.

92. *Comment:* Several commenters stated that promulgation of Federal criteria removes the flexibility to reduce impacts that States would have had by adopting their own standards. Further, they argue, EPA is incorrect in its assumption that impacts are no different than what would occur if States had acted to adopt their own standards.

Response: States continue to have the opportunity to adopt their own standards that include numeric criteria for toxic pollutants. As they adopt and EPA approves their water quality standards, the flexibility provided in the standards-implementation and permit-writing phases of the standards process will return to the States. For a discussion of the effect of this promulgation on various implementation questions, including flexibility, see subsection 4 of this section.

In the cost assessment, EPA has investigated the potential incremental effects of EPA setting standards instead of States. Briefly, EPA finds that for certain dischargers, incremental costs may be incurred in States where toxic pollutant criteria are adopted at EPA's levels. If a State were to adopt less stringent criteria, it is possible that the impacts would be reduced. It is important to consider that in some of the examples, EPA's criteria did not result in incremental costs.

As discussed elsewhere in this preamble, EPA encourages States to adopt their own standards and make use of site-specific criteria as appropriate.

4. Implementation

93. *Comment:* The Agency received substantial comment on 40 CFR 131.36(c) which described the proposed implementation procedures for priority toxic pollutant criteria. Comments divided on whether such factors should be included or left to the discretion of the States.

Response: For reasons stated in the preamble to the proposed rule (56 FR 58437, section 3, Applicability), EPA believes that baseline application conditions must be included in order to provide the intended environmental and human health protection of the criteria. These criteria consist of more than quantitative concentrations. EPA's section 304(a) criteria methodology clearly presents the criteria as criteria maximum concentrations (CMC) and criteria continuous concentrations (CCC) which contain averaging periods and return frequencies. The implementing hydrological conditions merely provide minimum conditions to meet these definitions. The salinity conditions delineating when and where the freshwater and saltwater criteria apply are also necessary. EPA must specify where each of these sets of criteria apply. Likewise the hardness limitations for applying the metals criteria. Each of these paragraphs will be discussed in more detail below but are mentioned here to demonstrate their necessity for implementation of the criteria. Without these generic application conditions NPDES permit writers, the principal users of the criteria, would be unable to develop conditions and limits for inclusion in NPDES permits within the requisite ranges of consistency and predictability.

94. *Comment:* The ability of States to develop site-specific criteria and to grant variances and exceptions to standards received several comments generally indicating that EPA should not constrain the ability of States to use such implementation procedures.

Response: The development of site-specific criteria and the use of variances to standards are optional procedures made available to States that adopt State criteria (40 CFR 131.11(b)(ii) and 131.13). It is neither a statutory nor a regulatory requirement to develop site-specific criteria or to issue variances.

The preamble language to this final rule clarifies EPA's statement on this subject in the proposal. Since the criteria in this rule are Federal criteria applicable to the State, a State cannot unilaterally establish site-specific criteria or grant variances to the Federal rule. That is what EPA meant in the proposal when we indicated that actions pursuant to State law for Federally promulgated criteria are precluded. Such procedures are still available to the State, but are much more cumbersome as it requires the State to meet all the regulatory requirements for developing such procedures, but then EPA would need to undertake a Federal rulemaking process in order to effectuate changes to the Federal rule in accordance with the requirements of the Administrative Procedures Act. EPA continues to emphasize that this is another strong reason for States to act to adopt their own standards even after Federal promulgation action is taken.

95. *Comment:* One EPA Region questioned whether the specification of the applicable hydrological baseline mandated the use of steady state models and eliminated the use of dynamic models for wasteload allocations.

Response: The proposed rule did *not* intend to eliminate the use of dynamic models for wasteload allocations and total maximum daily load determinations. Generally the low flows specified explicitly contain duration and frequency of occurrence which

represent certain probabilities of occurrence. Likewise the criteria for the priority toxic pollutants are defined with duration and frequency components. Dynamic modeling techniques explicitly predict the effects of variability in receiving water, effluent flow, and pollutant concentration. EPA has recommended and described three dynamic modeling techniques for performing waste load allocations in section 4.5 of the 1991 Technical Support Document: Continuous simulation, Monte Carlo simulation and lognormal probability modeling. These procedures allow for calculating wasteload allocations that meet the criteria for priority toxic pollutants without using a single, worst-case concentration based on a critical condition.

Thus, EPA believes that either dynamic modeling or steady State modeling can be used to implement the criteria adopted today.

96. *Comment:* Several commenters in addressing implementation conditions argued that EPA should defer entirely to State discretion including the applicable design flows. Other commenters urged removal of design flows from the rule and rely on the guidance in the TSD and/or other EPA guidance. Another commenter agreed that flow requirements were necessary but that the harmonic mean flow requirement was flawed.

Response. As noted in the preamble to the proposed rule, implementation requirements that include limitations on flow values are required in order to achieve the intended environmental and human health protection. The applicable discussion of this issue is found in the preamble to the proposed rule on pages 58437–58438 and footnotes 1 and 2. The hydrological or biological basis for the proposed low flows were taken directly from EPA's Technical Support Document for Water-Quality-based Toxics Control. (See TSD, Appendix D for aquatic life and section 4.6 for human health.)

The argument by the commenter on the harmonic mean flow was in reality a disagreement on EPA's assumed long-term dose assumption for toxics. The commenter believes short-term effects are more relevant, and therefore requires a different flow, especially for bioaccumulative pollutants. However, EPA continues to support the human health protocol used in the proposed rulemaking and notes that it explicitly accounts for bioaccumulation in the criteria development protocols. For such long-term human assumed consumption of water and aquatic life from such waters containing a pollutant, EPA's best scientific judgment is that the harmonic mean flow is the correct flow to apply in order to correctly estimate the exposure dosage of the average exposed individual.

97. *Comment:* One commenter questioned the applicability of the specified design flows in waters downstream from impoundments which have minimum release rates specified, as for example hydroelectric dams.

Response: EPA's proposed rule in § 131.36(c)(2)(ii) specifies that the low flows are applicable to "waters suitable for the establishment of low flow return frequencies." Thus, free flowing streams and rivers were the types of receiving waters contemplated. In cases where legally specified low flows exist, as for example under FERC licenses, these become the applicable minimum flows. In future State water quality standards reviews, EPA encourages the States to take into account these specified flows and adjust the criteria appropriately to provide equivalent protection of human health and the environment to that applied in today's rule.

98. *Comment:* One commenter noted that "rules" 5(a) and (b) are inconsistent with "rule" 8 in the "Assumptions and Rules Followed by EPA in Writing the proposed § 131.36(d) Requirements for All Jurisdictions." (See the appendix at page 58451 in the proposed rulemaking package.)

Response: "Rules 5(a), 5(b) and rule 8" as stated in the appendix are correct. An incorrect statement of "rule 8" is contained in the preamble to the proposed rule at page 58432. Briefly stated, these rules provide:

—Rule 5(a) applies appropriate human health criteria to all waters in a State classified for either public water supply or for minimal aquatic life protection;

—Rule 5(b) provides that where a State has determined the specific segments where aquatic life are caught and consumed, the human health fish consumption only criteria (Column D2) are being applied to those specific segments;

—Rule 8 provides that where drinking water uses are designated, and even though the State has determined that no potential fish consumption uses exist, the human health criteria for "water + fish" in column D1 are applied. EPA applies these criteria because no "water only" column is available in the section 304(a) criteria methodology and drinking water uses must be protected.

99. *Comment:* Several commenters claimed that EPA was applying the criteria too broadly; that is, to waters where aquatic life propagation or public water supply uses were either not designated or did not constitute existing uses. In contrast, another commenter urged EPA to apply the criteria to all waters of the State where an EPA-approved use attainability analysis did not exist.

Response: Water quality standards contain both a designated use and the criteria necessary to support those designated uses. In this rulemaking EPA is not addressing the designated use component at all, but only the criteria component for the priority toxic pollutants. EPA has relied entirely on the existing State water quality standards to determine the waters to which the criteria apply. In § 131.36(d) EPA refers to all waters within particular designated use classifications.

Because EPA is not addressing the State designated uses here, EPA has not attempted to review State application of designated use classification through use attainability analyses or the other requirements of 40 CFR 131.10. Any identified deficiencies will be handled during the State triennial water quality standard review process with any necessary Federal actions being taken on a State by State basis.

100. *Comment:* One commenter objected to EPA specifying that EPA-approved State mixing zone regulations could be applied to the priority toxic pollutant criteria promulgated today. Others stated that EPA should include procedures to define appropriate mixing zones, that EPA should allow mixing zones in all States and that EPA should require mixing zones in all States.

Response: Mixing zones are one of the general discretionary policies specifically authorized for State adoption by EPA's water quality standards regulation at 40 CFR 131.13. Mixing zones have most recently been defined by EPA in the revised TSD (see page "xx") as "an area where an effluent discharge undergoes initial dilution and is extended to cover the secondary mixing in the ambient waterbody. A mixing zone is an allocated impact zone where water quality criteria can be exceeded as long as acutely toxic conditions are prevented." Although mixing zones are discretionary for the States, they are part of the State's water quality standards and therefore subject to EPA review and approval pursuant to CWA section 303(c) and 40 CFR 131.

Mixing zones recognize ambient water dilution and therefore larger mixing zones generally would reduce the stringency of discharge permit limits established to meet ambient water quality criteria. It would be inconsistent with CWA section 501 (33 U.S.C. 1370)

for EPA to impose a less stringent mixing zone policy in a State than is currently authorized. Therefore, in this rulemaking EPA recognizes State mixing zones and provides for their application in implementing the criteria promulgated by this rule. However it does not impose mixing zone requirements on States which do not have such policies.

101. *Comment:* Comments were received that the Federal toxics criteria are not viable because they have never been subject to public comment and review and that the criteria should be subject to continuing peer review and study in order to ensure technical viability. Commenters stated that it is improper to require development of permit limitations on the basis of technically flawed criteria which may not be relaxed in the future due to the anti-backsliding requirements of the CWA and regulations, and that EPA must find that criteria changes which result from peer reviews constitute new information which qualify as an exemption from the anti-backsliding requirements.

Response: We disagree with the premise of this comment that provision for public review and comment on the federal toxics criteria has been inadequate. The criteria methodology and documents were the subject of public review when issued. See the discussion of this issue in the preamble to the proposed rule as well as discussion of EPA's plans to revise criteria guidelines in the future and solicit public comment, 56 FR at 58433. (See also Section F of this preamble.) To the extent we received specific information concerning the criteria in this rulemaking, we have reviewed and responded to that information. Indeed, certain of the promulgated criteria have been changed to reflect public comments. EPA rejects the assertion that the criteria are "technically flawed." EPA believes the criteria are scientifically defensible and would not promulgate criteria that were technically flawed regardless of the anti-backsliding implications. With respect to the comment that revised criteria resulting from peer reviews should constitute "new information" which is exempt from the anti-backsliding requirements, that is not an issue to be decided in this rulemaking. EPA is developing proposed amendments to the NPDES regulations that will interpret and implement the provisions of section 402(o). The commenter's concerns can be addressed in that rulemaking or possibly in a prior permit proceeding if the issue is relevant.

102. *Comment:* One commenter argued that the rule will adversely affect implementation of the NPDES program by diverting resources to deal with permitting and enforcement issues arising from the use of unscientific water quality criteria. It is argued further that no discharger will accept permit conditions that are unreasonable, have no scientific basis, and do not reflect the naturally occurring environmental conditions in the receiving water.

Response: Federally promulgated water quality criteria will be implemented in NPDES permits issued by EPA Regional Offices or authorized States. Dischargers are free to challenge requirements implementing federally promulgated criteria contained in modified, reopened, or reissued permits according to established NPDES permit appeal procedures and as permitted by law. EPA, however, disagrees that the federally promulgated criteria lack a scientific basis and has explained in the preamble to this rule and elsewhere in response to comments why promulgation of the criteria as provided in this rule is necessary to meet the requirements of section 303(c)(2)(B). We anticipate that many dischargers will accept permit requirements based upon the federally promulgated criteria. Dischargers may be permitted to backslide from water-quality based permit limitations where revised criteria are developed if they meet the requirements of CWA sections 402(o) or 303(d)(4) for allowing backsliding in attained and non-attained waters.

103. *Comment:* Comments were received that either the proposed Federal or State standards should provide for a schedule of compliance so that permittees affected by the new federal criteria could have sufficient time to come into compliance.

Response: The proposed rule did not directly provide for a schedule of compliance, however, it also did not change existing applicable State and EPA provisions related to permit issuance or reissuance. EPA agrees with the commenters that some compliance implementation time may, in certain situations, be necessary and appropriate for permittees to meet new permit limits based on the new standards. EPA has not removed this flexibility in the permitting process by this rulemaking. Under the Administrator's April 16, 1990 decision in an NPDES appeal (Star-Kist Caribe Inc., NPDES Appeal No. 88–5), the Administrator stated that the only basis in which a permittee may delay compliance after July 1, 1977 (for a post July 1977 standard), is pursuant to a schedule of compliance established in the permit which is authorized by the State in the water quality standard itself or in other State implementing regulations. (This decision did not affect compliance schedules in individual control strategies issued under section 304(e) of the CWA.)

Standards are made applicable to individual dischargers through NPDES permits which reflect the applicable Federal or State water quality standards. When a permit is issued, a schedule of compliance for water quality-based limitations may be included, as necessary, and EPA assumes this is the case for permits issued to meet these new Federal criteria where States do not have existing statutes, regulations or policy prohibiting compliance schedules. EPA notes that some permits contain a "reopener" clause which may be exercised by the permitting agency on a case-by-case basis to control toxics earlier than the normal re-issuance cycle. However, EPA does not generally contemplate nor does it intend to ask States to undertake permit reissuance related to these new criteria for toxics through anything other than the normal permit reissuance cycle, except in rare instances.

104. *Comment:* EPA's section 304(a) criteria may not be appropriate when applied to non-conventional discharge situations such as stormwater discharges and discharge to ephemeral streams.

Response: EPA's criteria for priority toxic pollutants were developed to protect beneficial designated uses. The criteria are independent of considerations about kinds of dischargers whether point or nonpoint sources. If a State finds that the criteria for the current ambient water designated uses are inappropriate, then EPA's water quality standards regulations provide for a use attainability analysis and establishment of appropriate designated uses. Thus the commenter's concerns are misplaced and focus on the wrong part of the water quality standard.

105. *Comment:* Two comments addressed the salinity and effects on determining which criteria apply at particular locations in estuaries. One commenter, a State agency, supported the concept of clarifying the salinity ranges within which the various freshwater and marine water criteria apply. The State was concerned because the salinity ranges selected by EPA were different from those the State had recently placed in sediment standards. The second commenter asserted that the proposed rule created an untenable situation where fresh and salt waters mix. This commenter suggested that rather than using the more stringent of

the fresh or saltwater criteria, EPA should interpolate between the two on the basis of salinity.

Response: The range of salinities incorporated into this rule at 40 CFR 131.36(c)(3) are appropriate, especially in light of the guidance for the applications of the metals criteria addressed elsewhere in this package.

EPA's proposed rulemaking on salinity, however, was silent on the percentage of the time that the proposed salinity limits could be exceeded but the respective fresh or saltwater criteria still apply. It could be inferred that EPA intended 100% of the time as the appropriate limit. It is EPA's position that a reasonable exceedence should be specified or otherwise the intermediate brackish water zone becomes unnecessarily large. It is EPA's judgment that a factor of 95% of the time provides reasonable cut off points. Thus, for the freshwater criteria to apply, the salinity should be less than 1 ppt 95% of the time. Likewise for the marine water criteria to apply the salinity should be greater than 10 ppt 95% of the time.

EPA recognizes that judgment is required in providing guidance on the appropriateness of freshwater and saltwater water quality criteria across a salinity gradient. This is because a fundamental understanding is lacking of metals form, bioavailability and toxicity along with the relative sensitivities at appropriate salinities of species that occupy this gradient. EPA's recommendations are reasonable given that (1) the database for most metals includes tests with saltwater and freshwater species that tolerate these salinities; (2) that salinities at a particular location change daily with tide and wind and seasonally; and (3) that at low salinities, freshwater and saltwater species mix. It is reasonable that the presence of both types of species in this transition zone require application of both freshwater and saltwater water quality criteria. Given the temporal variability of salinity in both the short and long term and the judgmental basis for EPA's recommendations, knowledge of the kinds of organisms at a site of concern will be particularly helpful in being confident that the appropriate criterion has been applied to the site.

The second commenter's suggestion is not supported by data or professional experience of EPA's scientists. For many metals, toxicity to saltwater species increases at low salinities. Therefore, underprotection would result from the use of an interpolation approach that would result in higher criteria at low or intermediate salinities.

5. Timing and Process

106. *Comment:* EPA should delay Federal promulgation until current State efforts to adopt water quality standards have been completed.

Response: Without sufficiently protective and defensible water quality standards, EPA and the States cannot effectively control discharges of toxic pollutants. While the Clean Water Act clearly gives primary authority for adopting water quality standards to the States, Congress clearly signaled its frustration with State delays in adopting criteria for toxics in the 1987 Clean Water Act amendments. Since the 1987 amendments, the States have had over five years to meet the statute's requirements for adopting water quality standards for toxic pollutants. Further delay is unacceptable. It is now time for EPA to exercise its oversight authority to ensure that human health and the environment are adequately protected.

107. *Comment:* Several comments were received relating to the general subject of State action during or subsequent to this rulemaking and on the processes EPA would use to withdraw Federal criteria applicable to a State. A related comment was that EPA should clarify that partial withdrawals are possible. Another comment questioned which criteria would apply in a situation where EPA approves State standards subsequent to the Federal promulgation.

Response: EPA is fully aware that several States are actively involved in reviewing and possibly revising their standards to meet the requirements of the Act simultaneously with the Agency's action to promulgate Federal standards. It is an objective of the Federal action to spur State action to complete their own administrative procedures so as to obviate the need for Federal promulgation. However, for the reasons stated earlier in the preamble as the basis for this rulemaking, EPA believes States have already had more than adequate time to respond to the statutory requirement and that EPA has a responsibility to act to put standards in place to serve as a basis for environmental control programs. Nevertheless, EPA encourages States to continue to adopt their own standards and thereby enabling themselves to make use of the flexibility inherent in the program through use of the various implementation processes even if such action will not be completed until after promulgation of this rule. EPA is committed to timely withdrawal of the Federal standards after State adoption and EPA approval of State standards.

The assertion that upon adoption of standards by the State, EPA's Federal criteria are no longer applicable within the State is not correct. The Federal criteria will continue to be the applicable water quality standards until withdrawn. Where the State standards are less stringent than the Federal standards, the Federal standards will be controlling until final action is taken to withdraw the Federal standards. In this situation, the permitting agency must use the more stringent standards in issuing permits. As a practical matter, it is assumed that permit holders would seek a stay of permit requirements pending the final decision of the Federal standards. While there may be a period in which there are both State and Federal standards in effect, the most stringent standards (either the State's or EPA's) would be controlling.

As described earlier in the preamble, EPA will act to withdraw this rule as applicable to a State, if the State completes action on adopting standards that adequately protect their waterbodies from toxic contamination and EPA approves those standards. The standards do not necessarily have to be exactly as those promulgated by EPA but they must meet the requirements of the Act and 40 CFR 131.11.

Many comments were received that EPA should not be required to receive comment and execute a rulemaking in order to withdraw State-adopted and EPA-approved standards that are less stringent than those promulgated by EPA. As described in Section E–3 of this preamble, EPA withdrawal action differs depending upon whether the State standards are equal to or more or less stringent than those promulgated in this rule.

While it would be administratively less cumbersome not to provide notice and comment in withdrawing a more stringent Federal water quality standard, EPA, however, is constrained by the provisions of the Administrative Procedures Act, 5 U.S.C. Section 551 (4) and (5) which we believe preclude the Agency from withdrawing a rule as suggested by the commenters. EPA will take timely action to withdraw the Federal rule in these cases. EPA has had experience in withdrawing the Federal rule covering each situation, i.e. standards equal to or more or less stringent than the Federal rule (51 FR 11581, April 4, 1986; 47 FR 53372, November 26, 1982; 56 FR 13592, April 3, 1991). It has not proven to be a practical problem. Consistent with the water quality standards guidance and historical operating policies, EPA confirms that partial approval of State standards and partial withdrawal of the

Federal rule is allowable. (See generally, Chapter 2, Water Quality Standards Handbook, December 1983)

There is an exception to this process. If a State adopts a 10^{-5} risk level when EPA promulgated 10^{-6}, the rule can be withdrawn without notice and comment because we raised the possibility of different risk levels in the proposal and we have accepted both risk levels as meeting the requirements of the Act.

108. *Comment:* EPA received comment that there is no procedural necessity for this rule because Congress did not set a specific deadline for State action to comply with section 303(c)(2)(B).

Response: For the reasons set forth elsewhere in this preamble, EPA has the requisite statutory authority to promulgate these criteria and that such criteria are necessary as a basis for water quality-based control programs designed to protect the public health and the environment.

Section 303(c)(2)(B) of the Act requires States action to address toxic pollutants "whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection * * *". Paragraph (1) refers to the requirements to review and revise, if necessary, standards at least once each three year period—the triennial review cycle for standards.

Notwithstanding arguments concerning timeliness of EPA and State actions, the Agency has made a decision that toxics criteria for priority toxic pollutants should be in place. The Administrator's action has started the process described in CWA section 303(c)(4) for Federal promulgation. Thus, because of the Agency's action, the comment at this point is moot.

109. *Comment:* EPA received numerous comments concerning the 30-day public comment period. Some industries and municipalities expressed concern that the rulemaking was too extensive to allow meaningful comment within 30 days. Some commenters requested extensions up to six additional months. Several commenters noted that EPA had never before promulgated a final water quality standards rule within 90 days of proposal.

Response: EPA appreciates that 30 days is a short comment period but believes that it is fully consistent with section 303(c)(4) (33 U.S.C. 1313(c)(4)) which requires EPA to promulgate a final regulation within 90 days of proposal. The fact that EPA only met this requirement once in its nine final promulgation actions does not change the statutory requirement.

In most of those previous cases (and in 2 cases today) the Agency was in fact superseding a State rule. Pursuant to the Agency's regulation at 40 CFR 131.21(c) the State rule stayed in effect until EPA's final rule took effect. Today's action is different. Here, by and large, there are no State criteria for priority toxic pollutant in place and EPA is acting to fill that void. This EPA action has a greater sense of urgency and justifies the Agency's effort to meet the 90 day statutory time schedule in CWA section 303(c)(4).

The addition of section 303(c)(2)(B) to the Clean Water Act was a clear and unequivocal signal from Congress that it was dissatisfied with the slow pace at which States were adopting numeric criteria for toxic pollutants. This intent is made clear in the legislative history of that provision. It is the only time in the 26-year history of the program that Congress explicitly directed the States to address certain pollutants in their standards. Moreover, section 303(c)(4), which authorizes Federal promulgation has explicit deadlines and Congressional directives to act promptly. The intent of the Federal promulgation section of the Act is to accelerate human health and ecological protection by establishing water quality standards as a basis for pollution control programs. To achieve these objectives and meet the statutory deadline, we need sufficient time to review public comments and make any necessary revisions.

Although the State and pollutant coverage of this final rule is large, the issues involved are neither new nor numerous. The primary focus of this rule is the narrow issue of whether a State has adopted sufficient water quality criteria for toxic pollutants in State standards as necessary to support water quality-based control programs.

EPA alerted the public to its intentions and the planned contents of the proposal on April 19, 1990, in an announcement in the **Federal Register**. In addition, we notified the administrators of the State agencies responsible for the water quality standards program of each potentially affected State of our plans on April 9, 1990. In the April 19, 1990, notice, EPA described what would be in the proposal, including: Which pollutants, which States, the cancer risk level, and EPA's intention to update criteria using publicly available information in the Integrated Risk Information System. Since that notice, EPA has apprised the public of its intentions and status of its action through State and Regional meetings and quarterly newsletters on the criteria and standards program. EPA, through both its Headquarters and Regional Offices have met with the States, and the regulated community individual and public meetings and public hearings to discuss EPA's plans and progress. This lengthy lead time has allowed potential commenters to prepare for the proposal and should have facilitated preparation and submission of meaningful comments within the 30-day public comment period.

As discussed previously in this preamble and the preamble to the proposed rule, the methodology used to develop the criteria and the criteria themselves have previously undergone scientific peer and public review and comment and were revised as appropriate. Some human health criteria were updated by recalculating the criteria using revised reference dose information contained and publicly available in the Agency's Integrated Risk Information System. Information in this system was peer reviewed within EPA and, as a matter of policy, is the information which was recommended to the States for their use. Most of these reviews occurred before 1987. Congress acted to amend the Act with full knowledge of the EPA process for developing criteria and the Agency's recommendations under section 304(a). EPA believes it is consistent with Congressional intent to rely on existing criteria rather than engage in a time-consuming reevaluation of the underlying basis for water quality criteria. At some point in the standards setting process the States and EPA must act recognizing that scientific research leading to improved water quality information is an ongoing process. In the case of this rulemaking, EPA affirms that in addition to all the environmental, programmatic, and statutory factors supporting the rule, the basic criteria methodologies are scientifically sound as are the resulting criteria.

In the five years since the February 1987 enactment of section 303(c)(2)(B), most States have worked extensively to adopt water quality standards for toxics pollutants. The issues in this proposal are the same ones that States, dischargers, public interest groups, and EPA have discussed and debated in-depth during those deliberations. The comments prepared for State and EPA meetings and hearings are to a great extent the same as those to be made on this Federal action and made it easier for the commenters to prepare submissions on this rule. The arguments presented in the public comments that EPA's action is new or that the States are not in compliance because they are

carefully reviewing their standards all tend to ignore the fact that many of the criteria were available as early as 1980. Because of a lack of State action, EPA made it a priority emphasis in the revision to the water quality standards regulation in 1983 and, most importantly of all, that section 303(c)(2)(B) was not the start of the process but the signal from Congress that delays had to cease. It is now eleven years after the criteria were first made available to the States, five years after Congress specifically directed the States to Act. Given this background, 30 days was sufficient for commenters to prepare and submit meaningful comments. The extensive nature of the comments submitted support this position. Further delay in the process is totally unwarranted for all of the above programmatic, health, ecological, and statutory reasons.

110. *Comment:* EPA should promulgate criteria only for those pollutants clearly shown to be interfering with designated uses.

Response: The record supporting this proposal contains extensive data on the toxic pollutant problem in each State. It shows the presence of numerous toxics in State waterbodies and it also contains information on impaired waterbodies. Earlier in this preamble, in section E–2 of this preamble, we described that rationale for why EPA could not undertake extensive studies in each State.

In responses to previous comments earlier in this section, we described EPA's legal authority to undertake this promulgation action including why it is not necessary for EPA to promulgate standards pollutant-by-pollutant, waterbody-by-waterbody. In summary: (1) EPA has sufficient data to indicate the widespread presence of toxic pollutants, (2) administratively, given the statutory schedule for promulgation, Congress clearly never intended EPA to conduct in-depth State analysis, (3) EPA, in its December 1988 guidance on options to meet the statutory requirement of section 303(c)(2)(B) indicated a policy position that "* * * the presence or potential construction of facilities that manufacture or use priority toxic pollutants or other information indicating that such pollutants are or may be discharged strongly suggests that States should set standards since such pollutants have the potential to or could be interfering with attaining designated uses", (4) neither the Act nor EPA's regulation limits the establishment of standards to a waterbody-by-waterbody, pollutant-by-pollutant approach, (5) as a matter of public policy to protect human health and the environment, it is the Agency's position that a more conservative approach is warranted, and (6) actual dischargers of such pollutants should expect to have control limits placed in their permits for such pollutants while other dischargers will not be affected.

111. *Comment:* Since EPA published a range of risk levels in its water quality criteria documents, it should allow a range in this rule or allow States to select the appropriate risk level.

Response: EPA's publication of a range of risk levels in individual water quality criteria documents was simply an illustration of how the criteria recommendations would be affected by adopting various risk levels. It was not intended to nor did it, in fact, establish a policy on risk levels.

Consistent with recognizing the primary authority of States to adopt water quality standards and that Agency policy allows States to select an appropriate risk level within the general range of 10^{-4} to 10^{-6}, EPA modified this final rule to apply the human health criteria at the risk level adopted or proposed by the State for all or a majority of toxic pollutants under applicable State water quality standards regulations, or in the case of Idaho, Nevada, and Rhode Island, on an expression of State preference. EPA notes that in a majority of cases, the 10^{-6} risk level is the one adopted by the States. In order for the human health criteria to be implemented in water quality programs, a single risk level must be chosen so that a specific numeric limit is established for a pollutant. The rationale for EPA's choice of a risk level for each State in this rule is contained in section G–1 of this preamble.

Any State adopting its own standards that meet the requirements of the Act may adopt a risk level other than that used by EPA in this rule. The ability of a State to select an alternative risk level is one of the reasons EPA encourages each State to adopt its own water quality standards rather than rely on Federal promulgation.

6. State Issues

Alaska, Washington, and Idaho

112. *Comment:* Alaska, Washington and Idaho have noted errors in the proposed rules. In some cases these errors were improper citations, or the inclusion of, or failure to include, certain criteria.

Response: EPA sought comments on the interpretation it had made of the various State water quality standards that were potentially affected by the proposed rulemaking. EPA expected and received comments on the appropriateness of the individual criteria groups applied to the State beneficial use designations.

In deciding which changes it can make to the proposed rules EPA notes that the preamble to the proposed rule laid out the intent and purposes of this action extensively. Beginning on page 58431 of the preamble to the proposed rule, EPA described the 12 "rules" or logic used to derive the criteria applicable to States judged not in compliance with CWA section 303(c)(2)(B). The gist of this rationale was for EPA to apply aquatic life criteria to State-defined designated uses providing even minimal support to aquatic life survival; and human health criteria to State-defined designated uses providing for public water supply and/or aquatic life consumption. Moreover, EPA provided in the matrix in proposed 40 CFR 131.36(b) all of the numeric levels that it proposed for application to the designated uses. Thus, EPA believes that sufficient notice was provided as to the purpose of the proposed rule, the types of affected State designated uses and the identification and stringency of the section 304(a) criteria to provide the Agency some latitude in deleting and adding criteria, especially when these changes are made because of comments made by the affected States and are necessary to correct unintended mistakes.

After discussing this comment with the State of Alaska, it was agreed that the following changes to the rule were necessary. These changes occur in 40 CFR 131.36(d)(16)(ii).

The State's current water quality standards (WQS) reference "Gold Book" criteria for all uses included in the rule except secondary contact recreation. Because the promulgated numbers are, in essence, revised Gold Book criteria, to be consistent with State WQS, EPA applied aquatic life and human health numbers to all uses except secondary contact. Secondary contact recreation is included because it is defined in the State's standards as including fishing. D1 criteria are applied to the drinking water use. D2 criteria are applied to all uses except drinking water for both fresh and marine waters. All acute aquatic life criteria are included in this rule. (See correspondence between the State and EPA in the record.) Also, all human health criteria for carcinogens based on the fact that the State has not adopted a risk level and therefore, cannot calculate or apply appropriate criteria for carcinogens. The chronic aquatic life criterion for selenium as it has been updated since publication of the Gold Book and made more stringent.

The seafood processing use (2)(A)(ii) was deleted from rule because it is an industrial use category to which the criteria promulgated today do not appropriately apply.

Additionally, in 40 CFR 131.36(13)(iii), the risk level for carcinogens was changed to 10^{-5} to reflect the State's July 1992, proposal to amend its water quality standards and to reflect an indication of State policy preference received on November 16, 1992.

The following changes were made with respect to the State of Washington. After discussion with the State, EPA has assigned appropriate criteria to use categories rather than to classes. The rule was revised as follows (see 40 CFR 131.36(d)(17)):

(22)(i) Fish and Shellfish
Fish
Water Supply (domestic)
Recreation
(22)(ii) Fish and Shellfish; Fish
B1 and B2—#2, 10
C1—#2, 10
C2—#2, 6, 10, 14
Water supply (domestic)
D1—All
Recreation
D2—All marine waters
D2—freshwaters not protected for domestic water supply

The following changes were made with respect to the State of Idaho. After discussion with the State, EPA renumbered the use classifications to reflect the reorganization of the State standards and made the following changes in the criteria assigned (see 40 CFR 131.36(d)(18)):

1.b Domestic Water Supplies
Remove cyanide and asbestos
3.a Primary Contact Recreation
Remove B1—All
Remove B2—All
Add D1—All
3.b Secondary Contact Recreation
Remove B1—All
Remove B2—All

Alaska

113. *Comment:* EPA has incorrectly included CMC (acute) aquatic life criteria for freshwater and saltwater for Alaska in the proposed rule.

Response: EPA's inclusion of CMC aquatic life criteria in the rule is appropriate. Alaska's water quality standards state that, "Substances shall not * * * exceed criteria cited in EPA, Quality Criteria for Water." Whether or not the State has adopted both acute and chronic criteria by reference is ambiguous and requires clarification through this rulemaking, especially in light of language included in the following three documents issued by the State:

1. The State's Water Quality Standards Workbook, published in July 1991, and widely distributed in order to "understand what water quality standards and criteria are, how to interpret the Alaska water quality standards regulation * * *", states that, "* * * EPA has developed a two-number criterion for acute and chronic conditions. The state adopts only the chronic criterion."

In the same state WQS workbook, Table 1, "Alaska's Water Quality Criteria for Toxic Substances in Freshwater and Saltwater", is said to "represent the toxic substances criteria adopted by reference in the AWQS." This table does not include any acute values for the priority toxic pollutants.

2. An August 30, 1991 letter from John A. Sandor, Commissioner of ADEC, to Harold Geren, Chief of EPA Region 10's Water Permits and Compliance Branch, states, "The Department affirms its decision to continue to use "Gold Book" *chronic* criteria to establish receiving water criteria and effluent limits in NPDES permits." (emphasis added)

114. *Comment:* Alaska was not informed of EPA's intention to include acute criteria in this rulemaking.

Response: On November 4, 1991, EPA Region 10's Water Division Director sent via fax and hard copy, a letter to ADEC's Chief of Water Quality Management, notifying the State of EPA's intention to include acute criteria in this rulemaking. The letter stated, "These letters affirm Alaska's use of "Gold Book" chronic criteria for freshwater and marine systems and have convinced us that Alaska is in compliance * * * with the following exceptions: * * * Acute aquatic life criteria for all pollutants * * *."

115. *Comment:* The statement included in the rule that, "Alaska is included in today's proposal because although the State had previously adopted all section 304(a) criteria by reference, the State Attorney General has decided that the adoption by reference is invalid", is in error and should be deleted from the final rule.

Response: EPA concurs that the statement was in error and no such statement is included in this final rule.

Arkansas

116. *Comment:* Any promulgation of human health criteria for the State of Arkansas should be withdrawn from the rulemaking because the state has adopted such criteria.

Response: A State's standard must be reviewed and approved by EPA before the State can be removed from the rule. Arkansas formally submitted their water quality standards containing human health criteria to EPA on December 17, 1991. EPA's review found that the human health criteria were supportive of designated uses and therefore no human health criteria are promulgated in this rule. The State's criteria to protect human health were approved by EPA on January 24, 1992. EPA also disapproved Arkansas' water quality standards for failing to adopt the criteria for priority pollutants to protect aquatic life as required by section 303(c)(2)(B). Necessary aquatic life criteria are promulgated today and include the following: Cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, zinc, and cyanide.

117. *Comment:* Arkansas is not required by the Act to adopt numeric criteria for metals because it has not been established that the metals listed "could reasonably be expected to interfere with those designated uses adopted by the State."

Response: EPA's policy is that the presence of any Section 307(a) pollutants raises an issue as whether they could reasonably be expected to interfere with designated uses. The presence in ambient waters and the discharge of metals is documented in several databases, including the Toxic Release Inventory, STORET, and discharge monitoring reports. The State could have submitted supporting documentation that demonstrates that the presence or discharge of these metals is not expected to interfere with designated uses. The State submitted no such information. In the absence of any demonstration to the contrary, EPA must conclude that the metals can reasonably be expected to interfere with designated uses.

118. *Comment:* The documentation on which EPA based its assertion that designated uses "could reasonably be expected to be interfered with" should be provided under this rulemaking process.

Response: The documentation that showed the widespread occurrence of metals in Arkansas' waters in concentrations exceeding EPA's recommended levels was part of the record for this rulemaking and was available for review at the Region 6 office as well as at EPA headquarters.

119. *Comment:* All pertinent data developed by EPA under the 304(1) process should be made available without special request to ensure its availability to potentially affected parties.

Response: The material developed by the States with respect to section 304(l)

was publicly available at the time the list was compiled. A complete discussion of the relationship between the 304(l) list and today's rule is included earlier in this section. Moreover, because EPA did not rely on the State's section 304(l) materials for this rulemaking, it was unnecessary to place such materials in the record.

California

120. *Comment:* A commenter urged that the national rule should clarify that no criterion continuous concentration for selenium less stringent than 5 µg/l will be allowed in California's San Francisco Bay. Commenters suggested that the National Rule should direct Region IX to develop site-specific criteria for selenium in San Francisco Bay. It was further suggested that the National Rule should state that the 5 µg/l selenium criterion (B2) applies only to fish and aquatic invertebrates, not to more sensitive uses such as wildlife. The narrative standards should govern for the more sensitive uses.

Response: This rule promulgates EPA's freshwater criteria for selenium of a CCC of 5 µg/l (4 day average) and a CMC of 20 µg/l (1 hour average) for San Francisco Bay and Delta. In EPA's November 6, 1991 approval letter on California's Enclosed Bays and Estuaries Plan, EPA approved California's decision to allow regional water quality control boards (Regional Boards) to determine where in an estuary it is appropriate to apply freshwater or saltwater criteria. Although most Regional Boards have not yet specified the appropriate standard, EPA generally agrees with this process. However, the EPA standards approval letter specifically found that utilization of the saltwater criteria for selenium in the San Francisco Bay/Delta would be inappropriate. This finding is based on substantial scientific evidence that there are high levels of selenium bioaccumulation in San Francisco Bay and the saltwater criteria fails to account for food chain effects. Accordingly, in the absence of Regional Board action consistent with EPA's approval letter, EPA is promulgating the freshwater criteria for selenium for the San Francisco Bay/Delta. EPA's criteria for selenium in freshwater are derived from laboratory and field data on the effects of selenium on aquatic vertebrates, invertebrates and plants and should be protective of aquatic organisms under most conditions. The selenium criteria were not developed with the intent to address protection of wildlife such as waterfowl. EPA is in the process of developing wildlife criteria for selenium. Recent studies and analyses have enhanced our understanding of avian exposure to selenium in the field and have clarified the importance of food chain biomagnification and low level toxic effects on avian reproduction. Such information is, for the most part, new information available after the Water Quality Criteria for Selenium was published in 1987. EPA supports the efforts of the State to develop selenium criteria based upon food chain biomagnification. However, in the absence of a final wildlife criteria document, or other sufficient information, EPA is unable to promulgate a criterion more stringent than 5 µg/l as part of this rulemaking. The purpose of this rule is to establish Federal criteria for all waters that do not have EPA-approved state criteria. It is not appropriate to use this Federal rule as a mechanism for directing promulgation efforts of a region. Further, EPA's regulations, guidance documents, and the Preamble to the Federal rule clearly specify the steps to be taken when a state wishes to adopt site specific criteria. EPA believes that it is already clear that both the numeric and the narrative standards apply in all cases. This information is contained in EPA's guidance documents and does need not be reiterated in this rulemaking.

121. *Comment:* EPA should promulgate freshwater selenium criteria in California for the Sacramento-San Joaquin Delta, the inland surface waters including the San Joaquin River, and the Central Valley Wildlife refuges.

Response: The draft rulemaking proposed the national selenium criteria for all water bodies in California and included those listed above. On November 6, 1991, EPA approved California's Inland Surface Waters Plan which adopted EPA's selenium criteria for freshwater bodies with the exception of Salt Slough, Mud Slough, and the upper San Joaquin River. EPA approved the State's selenium criteria but did not approve these exceptions. Accordingly, the final national rule promulgates the EPA freshwater criteria for selenium for Salt Slough, Mud Slough, and the upper San Joaquin River. The State's freshwater selenium criteria will apply elsewhere in the Sacramento-San Joaquin Delta and San Joaquin River. The California Inland Surface Waters Plan also included a selenium criterion of 2 ppb for the inflow to Grasslands Area Wildlife Refuge in the Central Valley that is more protective than EPA's criteria. This selenium criterion was approved by EPA and, therefore, today's promulgation will not apply to the inflow to Grasslands Valley Wildlife Refuge.

122. *Comment:* Several commenters asserted that: (1) Past efforts to develop site specific objectives for San Francisco Bay demonstrate the technical difficulties, costs, and uncertainty of developing site specific criteria and; (2) those difficulties make site-specific criteria ineffective in amending inappropriate national criteria.

Response: EPA approved the water quality criteria adopted by California in the Enclosed Bays and Estuaries Plan on November 6, 1991. EPA has revised today's rule so that it does not include pollutants covered by those state-adopted, EPA-approved criteria, except for selenium as described in the previous comment and response. The San Francisco Bay is a highly complex estuarine system. In such cases, developing site specific criteria may be difficult. In October 1991, EPA made technical comments on the site specific objectives proposed for San Francisco Bay. The site specific criteria for San Francisco Bay have not yet been adopted by the State and, therefore, it is premature to evaluate their effectiveness. EPA has approved site specific criteria in several States and recommends that site specific criteria be developed where physical or chemical characteristics of the site alter the biological availability of the chemical or where species at the site are more or less sensitive than those species used in the development of national criteria. Please see Science and Implementation under general comments.

123. *Comment:* A commenter indicated that Region IX has placed impediments on the adoption of site-specific criteria which make future adoption of site-specific criteria an unrealistic alternative.

Response: There is no indication what "impediments" the commenter refers to, or the action by which Region 9 allegedly created such impediments. Please see Implementation under general comments about requirements for site-specific criteria.

124. *Comment:* EPA also received comments that the proposed rule would establish inappropriate and technically unsupported criteria for copper, nickel, lead, and mercury for South San Francisco Bay.

Response: The final rule has been amended to reflect EPA's November 6, 1991 action on California's Enclosed Bays and Estuaries Plan and does not include criteria for copper, nickel, mercury or lead for San Francisco Bay. EPA generally approved California's approach directing regional boards to choose between two sets of criteria

(freshwater or saltwater) in an estuary. California's saltwater and freshwater criteria are approved by EPA. At this point, EPA does not have sufficient information to conclude that this approach of allowing Regional Boards to choose between the two sets of criteria is inappropriate for copper, nickel, lead, and mercury in the South Bay. Therefore, criteria for these metals are not included in this final rule.

125. *Comment:* Several commenters questioned the appropriateness of promulgating EPA criteria for special water bodies such as ephemeral streams, constructed agricultural drains, effluent-dominated streams, irrigation-flow dominated streams, or evaporation ponds.

Response: The criteria contained in this rule apply to all "waters of the United States" as defined in the Clean Water Act and implementing regulations except where State-adopted/EPA-approved criteria apply. Waters of the U.S. may include human-constructed water bodies. Waters of the U.S. does not include waters that fall under EPA's waste treatment system exemption. California deferred adopting water quality standards for certain effluent-dominated streams and irrigation-flow dominated streams. This deferral was disapproved by EPA in its letter dated November 6, 1991 on the basis that it did not protect the water bodies from toxics that are reasonably expected to interfere with designated uses. EPA Region IX agrees with California that site specific criteria would be appropriate for many waters in these categories. If California adopts and EPA approves site-specific criteria that protect the designated uses, criteria for those waters will be removed from this final rule.

126. *Comment:* Several commenters found it impossible to comment on the proposed rule in the short comment period provided. Specifically, commenters noted that the thirty-day comment period is unreasonable and unfair for California given Region IX's delay in acting on California's own water quality standards.

Response: Commenters had more than five weeks to review Region IX's November 6, 1991 action, including thirty days to compare it to the proposed Federal rule. Also, please see general comments under Timing and Process.

127. *Comment:* EPA was not mandated to propose standards for California at this time, especially in light of Region IX's November 6, 1991 action on California's standards. The Clean Water Act contains no specific deadline for EPA to propose standards and does not require standards to be proposed for the entire nation at once. California could be separated from other states in order to allow reasonable time to evaluate both actions.

Response: On November 6, 1991, Region IX disapproved California's failure to adopt numerical criteria for all 307(a) pollutants for all "waters of the U.S." in California. According to EPA's water quality standards regulations (40 CFR part 131), the State has a 90-day opportunity to correct any deficiencies and EPA may then approve adequate corrections. If the State does not adopt the necessary corrections (or additions) within that period, then EPA must "promptly" propose and promulgate Federal standards in place of those deficient State standards. (Clean Water Act, section 303(c)(4)(A); 40 CFR 131.22.) In this instance, Federal promulgation occurred more than 90 days after November 6, 1991, and took into account any and all changes adopted by the State during those ninety days. To further delay promulgation for California when EPA is prepared to act on California's standards concurrent with other States is unnecessary. As to the adequacy of time to evaluate both actions, see response to preceding comment.

128. *Comment:* California commenters stated that it is unclear whether Federal or State criteria would apply to waters which California exempted, since EPA disapproved this exemption.

Response: California, by exempting certain waters from its 303(c)(2)(B) criteria, failed to adopt such criteria for those waters. EPA's disapproval of the exemptions did not bring about an adoption which the State never made. With this rulemaking, EPA adopts criteria for all 307(a) priority pollutants for those exempted waters which are Waters of the U.S. See additional comments below.

129. *Comment:* It is unclear which of California's use classifications are considered aquatic life or human health classifications. The proposed rule equates aquatic life protection with aquatic life consumption and states that waters with any aquatic life designation must meet human health criteria. A commenter indicated that assigning fish consumption for any aquatic life segment is equivalent to Federal promulgation of new designated uses and should not be done in this rulemaking.

Response: California's basin plans identify specific aquatic life and human health uses that are to be protected in a particular waterbody. EPA has no intention of changing designated uses in this rulemaking. As stated in the proposed rulemaking, States may remove the human health use classification for waters which have aquatic life but no existing aquatic life consumption uses. California, however, applies human health protection for fish consumption statewide to all navigable waters through the Inland Surface Waters Plan, Enclosed Bays and Estuaries Plan, and Ocean Plan. Therefore, the Federal rule is based on the presumption that, for all navigable waters of the State, aquatic life is present, fish or other aquatic life are being caught and consumed, and human health protection for fish consumption is necessary. It is consistent with EPA's established water quality standard regulations to require States to include all uses identified in Section 101(a) of the Act for all waters unless removed through an approved use attainability analysis. (See 40 CFR 131.10(j)). In this rulemaking EPA has not included the human health criteria (based on fish consumption) for any segments for which a State has conducted, and EPA has approved, a use attainability analysis to remove fish consumption as a use. Please see Legal Authority under general comments.

130. *Comment:* EPA's claim on 56 FR 58422 at p. 58431 that comprehensive Federal promulgation of standards place "no undue or inappropriate burden on States or dischargers" is unsubstantiated and believed to be untrue in California. The economic impacts of complying with Federal criteria are believed to be enormous particularly for publicly owned treatment works (POTWs) and are likely to discourage water reclamation projects.

Response: The commenter provides no explanation as to why complying with Federal criteria will discourage water reclamation projects. EPA is unconvinced that this would be the case. Please see Economics under general comments in response to economic impact concerns.

131. *Comment:* The commenter is concerned about the use of 10^{-6} risk level criteria as opposed to MCLs for protection of drinking water.

Response: California does not have any water bodies where drinking water is the sole exposure pathway. Therefore, MCLs may not be sufficient to protect human health from exposure to toxics from combined drinking water and fish consumption pathways. See section F–5 for a more detailed discussion of risk levels included in this rule.

132. *Comment:* The commenter is concerned that State schedules of compliance will not apply to Federal criteria.

Response: Federal criteria will be implemented in accordance with existing state adopted compliance schedules. For a detailed discussion of this subject see a response to comment in subsection 4 of this section.

133. *Comment:* A commenter asserted that EPA did not do enough to educate the State early on of the 303(c)(2)(B) requirements and that EPA's final 303(c)(2)(B) guidance was not transmitted to the States until December 12, 1988, almost two years after the 1987 amendments. This delay left California with inadequate time to adopt criteria on a pollutant-by-pollutant and water body-specific basis, and consider the scientific uncertainties relating to the Federal data and methodologies.

Response: As stated in the Preamble to the proposed rule, the December, 1988 guidance was not substantially different from earlier drafts which were available for review by the states. That guidance proposed a pollutant-by pollutant and waterbody specific approach as an acceptable option. While recommending certain approaches, the guidance also made it clear that States retained flexibility to implement their own preferred approaches. Please see Science and Timing and Process under general comments.

134. *Comment:* One commenter stated that Region IX's requirement that California adopt criteria for all priority pollutants is erroneously based on statements in California's Functional Equivalent Documents and is inconsistent with national guidance. Another commenter stated that this requirement was unfounded.

Response: Region IX has consistently advised California that it must adopt criteria for all pollutants for which EPA has section 304(a) criteria recommendations, with the exception of any pollutants which cannot reasonably be expected to interfere with designated uses. Omission of any such pollutant must be based on evidence concerning the presence and effect of that pollutant in any given waterbody. This policy is consistent with national guidance, the history of which is set forth in Part B2 of the Preamble of November 19, 1991. None of the guidance options has ever allowed the exclusion of any such pollutant from the requirements of section 303(c)(2)(B) without a factual scientific basis. In the absence of such scientific basis, EPA relied on California's draft Functional Equivalent Document which stated that "it is likely that priority pollutants not covered in this plan will be found [in the State] in a more extensive analytical survey." This statement is sufficient basis for EPA to have determined that all priority pollutants would reasonably be expected to interfere with designated uses in all waters of the State.

135. *Comment:* The Federal criteria are more stringent than necessary for some water bodies in California.

Response: Without specific information about which pollutants and which water bodies the commenter is referencing, EPA has difficulty responding to this comment. In the absence of such specific information, EPA determined that it was appropriate to adopt EPA's section 304(a) criteria for all "waters of the U.S." that lack State-adopted, EPA-approved criteria. If, based on further scientific information, the State adopts site-specific criteria which are less stringent than the Federal criteria but, in EPA's judgment, fully meet the requirements of the Act, EPA will undertake a rulemaking to remove the affected pollutants from the Federal rule. For additional information, please see Science under general comments.

136. *Comment:* Major wastewater dischargers in California have filed a petition in State court to restrain the State from utilizing its section 303(c)(2)(B) standards for inland waters, bays, and estuaries. They filed the petition out of concern over significant economic impacts caused by blanket imposition of the [EPA] criteria. The filing of the petition illustrates the concerns of many public agencies over use of EPA criteria as national standards.

Response: The petition referred to in this comment is a challenge to section 304(a) criteria which have been adopted by the State. It is a pending proceeding in State court and does not affect today's rulemaking. The commenter states that this matter reflects a widespread concern over adoption of section 304(a) criteria as national standards. That concern is apparent in the comments received from several entities, particularly in California, and they are addressed in the Economics under general comments.

137. *Comment:* A commenter stated that "only marine criteria should be selected for enclosed bays in California since these are, by definition, indentations along the coast which enclose an area of oceanic water. It is not appropriate to apply freshwater criteria to these water bodies." The commenter also indicated that States should be given the discretion to determine when freshwater or salt water criteria should apply in an estuary.

Response: State standards in California's Inland Surface Waters and Enclosed Bays and Estuaries Plans have been approved for most of the priority toxic pollutants. These standards include both freshwater and saltwater uses and leave the selection of appropriate criteria to the regional boards. EPA approved the two sets of criteria on November 6, 1991. The Federal rule has been amended to reflect this approval. The final Federal rule applies to those parameters and also to water bodies where State standards are lacking or not protective. The regional boards shall determine for both State and Federal criteria whether freshwater or saltwater criteria are appropriate at the confluence of the water bodies with different water quality objectives.

District of Columbia

138. *Comment:* The adequacy of new human health criteria has not been proven to be germane to the District of Columbia.

Response: As a general proposition, EPA is applying criteria for all priority toxic pollutants not addressed by approved State criteria for those States not in full compliance with section 303(c) of CWA. EPA's reasoning behind this approach (and the exceptions) are discussed fully in the preamble. However, two reasons deserve repeating here. First, existing data sources indicate the discharge, potential discharge or presence of substantial numbers of priority toxic pollutants in most States. With the failure of some States to adopt toxic criteria in a timely fashion, coupled with the evidence of the discharge or potential presence of priority toxic pollutants for which the State has failed to adopt criteria, the Agency believes there is a need for numeric criteria for most priority toxic pollutants in most States. Second, the support of each criterion on a state-by-state and waterbody-by-waterbody basis by EPA would be an enormous administrative burden on EPA and would be contrary to the statutory scheme and Congressional directive for swift action. Congress directed EPA to accomplish the promulgation within 90 days and EPA has made every effort to expedite this rulemaking. Providing the adequacy for all criteria for all States would take years and would be counter to the directive of swift action.

Florida

139. *Comment:* One commenter stated that, since the State of Florida adopted numeric criteria on December 7, 1990 based on Option II of EPA's section 303(c)(2)(B) guidance, the Federal rule should not include criteria for all priority toxic pollutants.

Response: Since the time that the proposed rulemaking was published, Florida formally requested EPA's review of the criteria adopted by the State on

December 7, 1990. EPA approved these criteria, with the exception of the absence of criteria for 2,3,7,8 TCDD (i.e., dioxin) on February 25, 1992. Therefore, EPA has only included criteria for 2,3,7,8 TCDD for the State of Florida in the final rulemaking.

Kentucky

140. *Comment:* One commenter stated that Kentucky has proposed and adopted a revision to 401 KAR 5:031 which deletes the previously adopted numeric human health criteria for dioxin. A request was made by the commenter that EPA's determination of full compliance for Kentucky for the section 303(c)(2)(B) requirement be considered and a Federal water quality criteria be promulgated through this Federal rulemaking. Alternatively, a request was made that such criteria be established as an interim final rule in a separate rulemaking.

Response: At the time EPA published the proposed rulemaking, the State-adopted criteria for 2,3,7,8, TCDD for the State of Kentucky was in effect as part of 401 KAR 5:031 (Surface water standards). EPA is aware that the proposed deletion of 2,3,7,8 TCDD criteria was put into effect on January 29, 1992. EPA's position on Kentucky's proposed deletion of the State-adopted dioxin criteria was transmitted to Kentucky by letter dated November 21, 1991. In that letter, EPA's Region IV Water Management Division Director stated, "Should the State complete adoption of the proposed amendment without replacing the adopted dioxin criteria with approvable criteria values, I will recommend to the Regional Administrator that the dioxin criteria, or absence of dioxin criteria, be disapproved by EPA. If the State does not adopt criteria within 90 days of EPA's disapproval action, EPA will initiate a promulgation of Federal water quality criteria for dioxin for the State." This continues to be EPA's position on this issue.

Louisiana

141. *Comment:* EPA should not promulgate dioxin standards for Louisiana.

Response: Louisiana submitted to EPA criteria to protect human health for dioxin on December 18, 1991. EPA's review found that the criteria adopted by the State were scientifically defensible and supported the designated uses. EPA approved the State standard on January 24, 1992. Therefore, Louisiana is not included in today's rule.

Nevada

142. *Comment:* A Nevada commenter suggested that Column D1 criteria should apply only at the point of intake of any municipal or domestic supply.

Response: Column D1 criteria are to apply to all waters designated by the State of Nevada for municipal or domestic supply. In the case of Lake Mead, that is the entire lake except for the segment at the end of Las Vegas Bay recognizing that Las Vegas Wash enters there. All of Lake Mead is subject to human consumption of water either directly from the lake or downstream.

143. *Comment:* It was stated that the State of Nevada has already considered and rejected criteria similar to the proposed amendments, and Nevada's decision is not contrary to the requirements of the Clean Water Act.

Response: The State excluded criteria similar to those in the proposed rulemaking from the water quality standard amendments considered for adoption by the Nevada State Environmental Commission (SEC). The State did not provide an adequate justification for this exclusion; therefore, on January 16, 1991, EPA disapproved this portion of the SEC action as being inconsistent with section 303(c)(2)(B). Without substantive justification (such as evidence of lack of presence of particular pollutants in waters of the State) for excluding any of the priority pollutants from State standards, all of them must be added.

144. *Comment:* A Nevada commenter stated that Las Vegas Wash should be excluded from any human health protection for consumption of aquatic organisms under the Federal rule.

Response: The general issue of the applicability of column D2 (consumption of aquatic organisms) criteria is discussed in the preamble and in the Science portion of general comments. Human health protection is required where a fishery, or other aquatic life that can be consumed, is present. Las Vegas Wash has been designed by the State for the use of "Propagation of aquatic life, excluding fish." State regulations clarify that this designation does not preclude the establishment of a fishery. Although the commenter offers anecdotal information that no one fishes in (or eats any kind of aquatic organism from) Las Vegas Wash, no evidence is provided supporting that anecdotal information. No use attainability analysis has been conducted to justify removal or amendment of this use. Also, the State has already adopted (and EPA approved) standards for protection of aquatic life in Las Vegas Wash. Because of the existing aquatic life use and the potential for consumption of aquatic organisms, EPA has applied column D2 criteria to Las Vegas Wash.

145. *Comment:* A Nevada commenter stated that the proposed rule does not provide sufficient notice as to why certain criteria were included and others excluded from the proposed rulemaking for Nevada.

Response: The rulemaking includes criteria only for parameters that Nevada did not adopt, or, if the State did adopt criteria for a parameter, for parameters that were specifically disapproved. This information was all part of the administrative record associated with Nevada's adoption of numeric standards for toxics in May 1990 and EPA's approval/disapproval on January 16, 1991 and was available to the public prior to the notice of EPA's proposed rule, and during the public comment period for the proposed rule.

New Jersey

146. *Comment:* A commenter argues that New Jersey is in compliance with section 303(c)(2)(B) of the Clean Water Act because the State incorporates section 304(a) criteria, by reference, in their Water Quality Standards Regulation for actions involving the development of water quality based effluent limitations for point sources.

Response: While the State Water Quality Standards Regulation does incorporate section 304(a) criteria by reference, the standards do not specify the application factors necessary to implement criteria (e.g., a risk level for carcinogens). Further, the reference in the water quality standards regulation limits application of these criteria to actions involving the development of water quality-based controls for point sources while water quality standards must serve as the basis for controls on all sources, point and nonpoint.

147. *Comment:* A commenter noted that water quality criteria were not proposed in the promulgation for New Jersey waters classified as PL (Pinelands), or as mainstem Delaware River and Delaware Bay (zones 1C–6).

Response: EPA agrees that, due to EPA oversight, criteria were not proposed in the promulgation for New Jersey waters classified as PL (Pinelands) or as mainstem Delaware River and Delaware Bay (zones 1C–6).

Appropriate criteria for New Jersey waters classified as PL (Pinelands), and as mainstem Delaware River and Delaware Bay (zones 1C–6) are now included in this final rule.

Puerto Rico

148. *Comment:* A commenter stated that EPA's proposed rule presents serious problems regarding its implementation, specifically in determining the waters to which such criteria would be applicable in the Commonwealth of Puerto Rico.

Response: The Puerto Rico Water Quality Standards Regulations is clear regarding the designated uses of all waters of the Commonwealth of Puerto Rico. EPA is assigning necessary and appropriate criteria to support those uses in order to satisfy the requirements of section 303(c)(2)(B) of the Clean Water Act.

149. *Comment:* A commenter stated that the Puerto Rico Water Quality Standards Regulation, which establishes the classifications and designated uses, does not comply with the Federal Water Quality Standards Regulation in terms of the adoption of subcategories of uses, the need to conduct use attainability analyses when standards are exceeded, the adoption of a variety of uses for a single waterbody, and in considering the social and economic needs of the Commonwealth.

Response: While the Federal Water Quality Standards Regulation authorizes the adoption of subcategories of uses, States are not required to adopt subcategories of uses in the establishment of standards. States are not required to complete use attainability analyses (UAAs) when designated uses are not met. Section 131.10(j) of the water quality standards regulation requires that States must complete UAAs when removing designated uses that are not existing uses, or when specifying uses inconsistent with the goals of the Clean Water Act. States may not remove designated uses if they are existing uses. In the establishment of water quality standards and water body classifications, including requisite public participation, Puerto Rico has taken social and economic needs of the Commonwealth into consideration, as well as the inherent differences in levels of protection and water quality required by the various designated uses. Notwithstanding this discussion, the rule only addresses appropriate criteria for priority toxic pollutants. Other elements of State water quality standards are not addressed.

150. *Comment:* It was commented that the Puerto Rico Water Quality Standards Regulation does not recognize the uses of waterbodies that are actually attained.

Response: Designated uses of waterbodies are not required to only reflect those uses that are actually attained. While the Puerto Rico Water Quality Standards Regulation defines Class SD waters as surface waters intended for use as a raw water source for public water supply and the preservation and propagation of desirable species, not all Class SD waters presently meet these goals. Designated uses need not be existing uses. Consolidation of various uses (i.e., fishing and swimming) into one classification is an acceptable approach for designating uses of waterbodies, and a necessary one in order to meet the goal of the Clean Water Act. Federal regulations require that waters have designated uses that provide for fishable/swimmable water quality where attainable. When establishing criteria to protect these various designated uses, criteria may be specified to protect each use.

Washington

151. *Comment:* The term "water supplies" should be deleted from the Class AA listing in (22)(i) because it is incorrect.

Response: EPA concurs, it was a misprint.

152. *Comment:* Comments were received that EPA should not promulgate criteria for dioxin in the State of Washington. The commenters expressed concerns that EPA's actions would be disruptive and unnecessarily interfere with ongoing State administrative and judicial actions involving Department of Ecology's decisions in establishing effluent limitations in permits issued to numerous pulp and paper mills. The Department of Ecology had established the permit effluent limitations based on the State's existing narrative water quality criterion. The commenters urged EPA to defer action pending the conclusion of the ongoing State actions challenging the State's authority to establish permit limitations based on its narrative criterion. In addition commenters said that the current State regulations met the requirements of section 303(c)(2)(B) and that the State's regulations were equivalent to another State's water quality standards that an EPA region had approved as being in compliance with section 303(c)(2)(B).

Response: EPA carefully considered the comments on this issue and has decided to exercise its discretionary authority under section 303(c)(4)(B) to promulgate human health criteria for dioxin and the other toxic pollutants to be applicable to waters in the State of Washington. This action will ensure that there are numeric water quality criteria applicable in the State as required by section 303(c)(2)(B).

EPA's review of the current Washington water quality standards for toxic pollutants indicates that those standards do not include the necessary water quality criteria to satisfy the requirements of section 303(c)(2)(B). While WAC 173–201–047(1) includes numeric aquatic life criteria, protection of human health is only addressed through a narrative criterion that provides that toxic substances not be introduced at levels which "adversely affect public health, as determined by the department * * *." WAC 173–201–047(4). EPA believes that this limited narrative criterion does not satisfy the requirements of section 303(c)(2)(B).

EPA acknowledges that the Department of Ecology relied upon its narrative criterion to establish effluent limitations for dioxin in State NPDES permits. EPA supported the Department's reliance in its narrative criterion in developing necessary effluent limitations for the control of discharge of dioxin. EPA encourages all States to have narrative criteria for protection of aquatic life, wildlife and human health in instances when the State does not have an applicable numeric criterion. However, section 303(c)(2)(B) is clear in its directive that States adopt numeric criteria for toxic pollutants if EPA has issued section 304(a) guidance and the discharge or presence of such pollutants could reasonably be expected to interfere with designated uses in the State.

In the notice of proposed rulemaking, EPA discussed the basis for its decision to include Washington in the rule. 56 FR at 58477. The absence of any numeric criteria for human health and the acknowledged discharge and presence of toxic pollutants being expected to interfere with designated used supported inclusion of Washington in the rule. With respect to dioxin, the issuance of permits with discharge limitations was further evidence that the discharge or presence of dioxin could reasonably be expected to interfere with designated basis.

EPA does not believe that promulgation of numeric criteria for the State of Washington should be delayed pending resolution of the ongoing litigation challenging the Department of Ecology's authority to establish effluent limitations based on the State's narrative criterion. The State's narrative criterion, while it may be the basis for deriving effluent limitations, is not adequate to satisfy the requirements of Section 303(c)(2)(B). Some commenters argued that Washington had in effect incorporated by reference EPA's Section 304(a) water quality criteria guidance as the basis for interpreting and

implementing the State's narrative criterion. The Washington water quality standards, however, merely provide that for toxic substances not listed in the standards, concentrations shall be determined "in consideration of USEPA's Quality Criteria for Water, 1986, and as revised, and other relevant information." WAC 173–201–047(3). The State standards neither require use of EPA's criteria nor limit the State's decision to use of such criteria. Therefore, even a decision by the Washington Supreme Court that the Department of Ecology is authorized to use its narrative criterion to develop permit effluent limitations would not address the specific requirement of section 303(c)(2)(B) that the State adopt numeric criteria.

In response to the comments that the current Washington regulations are equivalent to regulations adopted by the Commonwealth of Massachusetts which is not included in today's rulemaking, EPA believes there is a important difference between the two State regulations. The Massachusetts regulations provide that in deriving criteria for unlisted pollutants, the State "shall use the recommended limit published by EPA pursuant to section 304(a) * * *." Code of Massachusetts Regulations, Title 314, section 4.05(5)(e). Pursuant to an Implementation Policy adopted on February 23, 1990, Massachusetts stated that it would use a risk management goal of 10^{-6} for individual chemicals and 10^{-5} for mixtures of chemicals in deriving criteria for carcinogens. The regulations contain a specificity regarding what the applicable criteria will be that is not present in the Washington regulations. EPA's Region I determined that the Massachusetts regulations complied with section 303(c)(2)(B) and approved those regulations on December 20, 1990. See 56 FR 58452.

EPA's decision to promulgate appropriate human health criteria for the State of Washington is consistent with the Agency's prior statements regarding the status of Washington's compliance with Section 303(c)(2)(B). In the **Federal Register** notice of April 17, 1990, EPA identified Washington as not being in compliance with section 303(c)(2)(B). 55 FR 14350. By letter dated March 27, 1990, from the Department of Ecology to EPA, the Department listed the adoption of human health criteria as an action for its triennial review that had been requested by EPA. By letter dated March 21, 1991, from EPA to the Department of Ecology, EPA explained that the State would remain in noncompliance under section 303(c)(2)(B) for human health criteria even if the State proceeded to adopt aquatic life criteria and a human health risk level. These documents are in the record of this rulemaking.

Executive Order 12291

1. Introduction and Rationale for Estimating Costs

Executive Order 12291 requires EPA to prepare a Regulatory Impact Analysis for major regulations, which are defined by certain levels of costs or impacts. For example, the Executive Order specifies that a regulation imposing an annual cost to the economy of $100 million or more is considered major. According to the Executive Order, the Regulatory Impact Analysis should contain descriptions of both potential costs and benefits. While the Executive Order calls for an estimate of costs, the Statute mandating today's rule does not allow cost to be a consideration in setting water quality criteria. The following discussion describes the Agency's consideration of costs in the rulemaking and decision process even though cost considerations are not included in the development of numeric criteria for toxic pollutants.

In developing the proposed rule, EPA considered various perspectives regarding the potential incremental costs that might be incurred as a result of the Agency promulgating numeric criteria for individual States. The Agency concluded that the costs incurred by individual dischargers as a result of complying with water quality-based permits might be large enough to designate the rule as "major," according to the definitions included in Executive Order 12291. The Agency did not include a quantitative estimate of the costs due to the uncertainties of such an estimate, but instead, described the types of costs that were expected.

There are certain characteristics of the rule that make the estimation of costs particularly complicated and difficult. Since the rule imposes requirements only until the State submits, and EPA approves, the State's own numeric standards, the cost estimates should be calculated on a per State and per pollutant basis, so that State/pollutant combinations can be removed as numeric standards are approved. Additionally, an analysis of the incremental costs attributed to the rule should reflect information on specific impaired stream segments and the dischargers on those segments.

Because a detailed analysis of all affected stream segments is not practical given the available resources, the development of compliance cost estimates for this rule would require numerous assumptions about pollutant loadings, impacts of technology-based regulations on loadings, combinations of pollutants handled by a given treatment approach, and the costs of each treatment train. The many sources of uncertainty associated with estimating the costs would produce an estimate with limited value for evaluating the merits of the rule. In addition, the rule does not remove the responsibility of States to adopt numeric criteria for toxic pollutants. As the remaining States submit their own standards and EPA approves those standards, the costs attributed to the rule will decline. Hence, EPA, with the concurrence of OMB, proceeded with the proposed rulemaking without a quantitative estimate of compliance costs.

2. Overview of Projected Costs

EPA acknowledges that there will be a cost to some dischargers for complying with new water quality standards as those standards are translated into specific NPDES permit limits. The addition of Federally promulgated criteria for toxic pollutants could affect the wasteload allocations developed for each waterbody segment in affected States to the extent the pollutant is discharged into the stream. Revised wasteload allocations may result in adjustments to individual NPDES permit limits for point source dischargers, and these adjustments could result in increased wastewater treatment costs or other pollution control activities such as recycling or process changes. The magnitude of these costs depends on the types of treatment or other pollution control, the number and type of pollutants being treated, and the level of control that can be achieved by technology-based effluent limits for each industry.

Similar sources of costs and the variables affecting costs may also apply to indirect industrial dischargers to the extent that the industrial discharger is a source of toxic pollutants discharged by the POTW. The POTW may incur costs for expansion, operational changes, additional treatment, modified pretreatment programs, and increased operator training.

Nonpoint sources of toxic pollutants may also incur increased costs to the extent that best management practices need to be modified or applied to more sources to reflect the revised water quality standards. Although there is no Federal permit program for nonpoint sources comparable to that for point sources, there are State regulatory programs to control nonpoint source discharges.

Monitoring programs are another source of potential incremental costs to dischargers and States. Monitoring programs to generate information on the existing quality of water and the types and amount of pollutants being discharged are potentially affected by the imposition of EPA criteria. The addition of Federal criteria for toxic pollutants does not require the State to engage in a program to monitor ambient waters for such pollutants. Unless there is some reasonable expectation that the pollutants are manufactured or actually used in the State with the likelihood that those pollutants will be discharged into surface waters, NPDES permittees also would not have to monitor for these pollutants.

3. Comments and EPA's Response

EPA received numerous comments regarding the potential cost impacts of the rule; most of these comments contend that a Regulatory Impact Analysis is required. Specifically, many commenters asserted that EPA should estimate the costs that dischargers would incur and include such cost estimates in all decision-making aspects of the rule. Some of these comments argued the qualitative discussion of costs did not fulfill the requirements of E.O. 12291.

EPA does not concede that its rationale for *not* estimating costs was flawed. Rather than appear nonresponsive, however, the Agency recognizes that further discussion is warranted and has undertaken an assessment of potential costs that might be incurred for several types of dischargers.

This cost assessment is not a Regulatory Impact Analysis, nor is it a comprehensive cost analysis. The following discussion is intended to describe the scope and range of costs that might occur. Many analytical assumptions were necessary to conduct this cost assessment, which is presented in the form of four examples. Each example was conducted independently with no common data sources. The examples are not intended to represent an estimate of the total costs of the rule.

The Agency maintains that a comprehensive analysis of costs would not provide enough additional information to assist Agency management with decisions concerning the rule. A complete analysis of costs for this rule would likely include differential costs to comply with various levels of regulatory control. Similarly, an RIA would likely evaluate alternative options for structuring the rule, where the options might reflect various level of stringency. Due to the complexities of analyzing the impacts of this rule, however, a meaningful cost estimate would be extremely difficult and costly, and it is uncertain whether an RIA would lend reliable information to the decision-making process.

4. Scope of Cost Impacts

Since this rule directly affects only those States that have not adopted their own numeric criteria for toxic pollutants, the cost impacts are limited to dischargers in those States. The cost impacts are further limited by several other factors. First, the potential impact of the rule is limited to treating discharges of only those pollutants included in the rulemaking for each State. In other words, if today's rule imposes criteria for only one pollutant (assuming criteria were adopted and approved for all other pollutants—a situation which occurs for several States), the number of dischargers in that State that might incur compliance costs are limited to dischargers for which that single pollutant drives the treatment needed to comply with their NPDES permit. This situation significantly reduces the number of dischargers with a cost impact. The number of pollutants that could be the basis for additional treatment may be reduced from the number actually included in the rule due to the overlap of controls for groups of pollutants. For example, discharges of several of the metals can be reduced by a single treatment system (generally lime precipitation and clarification) without additional treatment for each additional pollutant in that group.

In some cases, the controls in place—whether installed to comply with technology-based limitations or to comply with a discharge permit issued pursuant to section 304(l) of the Clean Water Act—may be sufficient to provide compliance with water quality criteria. In other cases, controls implemented to meet whole effluent toxicity permit requirements may preclude the need to implement additional controls to reduce a toxic pollutant discharge covered by the rule.

Finally, flow levels, receiving stream conditions, and wasteload allocations are likely to cause variation in the need to install additional treatment technology. For all of these reasons, the Agency believes that the number of dischargers with potential incremental costs is significantly lower than the total number of dischargers in the controlled States.

An estimate of the number of point sources that could be affected begins with the major dischargers from the 14 States included in today's rule.[5] The focus on major dischargers (where the term "major" refers to the distinction used in the NPDES program for facilities with the potential for a significant impact on water quality) is consistent with the rulemaking's focus on toxic pollutants. Any point source with a significant discharge of toxic pollutants is likely to be included in this category.

The number of major facilities for the 18 States is 2,055. (See Footnote 5.) This is a subset of the approximately 7,000 major dischargers in the entire country (3,000 industrial, 4,000 municipal). Of these, 229 facilities already have Individual Control Strategies (ICS) that were established in response to section 304(l) of the Clean Water Act. These facilities have effluent limitations for toxic pollutants sufficient to achieve water quality standards in the receiving water. Thus, the number of major facilities that potentially could be subject to incremental requirements is 1,826. The exact number is likely to be lower because of the number of regulated pollutants in each State and the current discharges of the facilities.

All of the analytical difficulties described above, such as estimating pollutant loadings and compliance costs, would need resolution to accurately estimate the cost impacts for this group of dischargers. In place of attempting to estimate total costs, the following four examples illustrate the range of costs likely to be incurred in specific situations, and some of the problems involved in developing potential compliance costs for this rule.

5. Example: Regulating Dioxin for the Pulp and Paper Industry

As an example of the range of costs that could be associated with the imposition of EPA's numeric criteria, we considered the pulp and paper industry and the pollutant dioxin.

Dioxin (i.e., 2,3,7,8–TCDD, listed as Compound #16 at § 131.35(b) of the proposed rule) is a likely by-product from chlorine bleaching of chemically-pulped wood. Chlorine bleaching is used by approximately 100 pulp mills in the United States. Of those bleach mills, 22 are located in States that had not adopted human health criteria for dioxin as of the date of the proposed

[5] When this assessment was prepared, the Agency contemplated that 18 States would be included in the rule. Thus, the estimated costs described in this preamble are based on a "universe" of 18 States. Since then, four States have adopted and EPA has approved priority toxic pollutant criteria. In the examples that follow, the assessment has not been revised from 18 States to 14 States because the objective of the assessment—to describe the scope and range of impacts—is met even with the higher number of States.

rule. (See Footnote 5.) Thus, this rule could potentially serve as the basis for establishing dioxin limitations in the NPDES permits for those facilities. Of the 22 bleach mills in "unapproved" States, however, 13 already have dioxin limitations in their discharge permits, established in response to section 304(l) of the Clean Water Act. Only for the remaining nine facilities, then, will this rule be a potential reason for establishing dioxin limitations in the discharge permits.

For those nine facilities, however, the effluent levels of dioxin, as reported by the facilities, are all equal to or less than 10 parts per quadrillion (ppq).[6] This effluent data has important implications for projecting costs and impacts. Today's rule will result in water quality standards that contain EPA's human health criteria of 0.013 ppq for dioxin at a 10^{-6} incremental risk level (or 0.13 ppq for States that have expressed a preference for a 10^{-5} incremental risk level). This value would then be reflected in the permits for the facilities that discharge dioxin, after conducting a wasteload allocation and accounting for stream dilution. If the resulting permit limitation is less than 10 ppq, compliance with the permit is likely to be determined at 10 ppq, because that is level of detection for dioxin for the EPA analytical method.

The practical interpretation of the effluent data for these nine facilities is that promulgation of this rule is unlikely to affect the need for treatment and thus, the costs of compliance for water quality-based permits.

These conclusions are very much a function of the laboratory analytical methods and their levels of detection for dioxin. If more precise and reliable measurement becomes available and is incorporated into the monitoring requirements in the permits for these facilities, the small differences between their effluent levels and the more stringent water quality-based limitations could present the need for additional treatment or revised production processes.

The Agency has collected extensive information about the pulp industry's efforts to reduce dioxin discharges from chlorine-bleaching facilities. The industry has responded to the need to reduce dioxin (and related chemicals) discharges with a variety of technological advancements. These include process refinements, such as changing input chemicals or altering the bleaching process. These types of changes are not necessarily prohibitive in terms of investment cost or operating costs. Substantial dioxin reductions have been achieved at little or no incremental compliance costs by changing certain process chemicals. For example, a change to dioxin precursor-free brownstock defoamers has been successful in reducing dioxin discharges at virtually no change in chemical cost and with no additional equipment. Other process chemical changes, however, can result in increased costs. For example, increased chlorine dioxide substitution, which is often accompanied by increased chlorine dioxide generation on-site, has been adopted by various facilities at on investment cost of approximately $20 million each. At the costly extreme, dioxin discharge reductions at other facilities reflect major renovations, not only to reduce dioxin discharges, but to modernize or otherwise restructure the facility. For example, a facility might choose to rebuild its bleach plant and adopt an entirely new bleaching process. Costs for this type of rebuilding may reach $100 million.

In summary, the costs associated with meeting an EPA-imposed dioxin limit can be estimated only with information on the bleaching process currently used at each facility, its wastewater characteristics, the characteristics of the receiving stream, and the level of control mandated by a new water quality-based permit. Based on reported effluent levels, however, this rule is unlikely to be the basis for any incremental compliance costs for Pulp and Paper mills to reduce dioxin discharges.

6. Example: Regulating Copper in the Metal Finishing Industry

As a second example of the range of costs that might be incurred as a result of complying with water quality-based permits issued in response to the imposition of EPA's criteria for toxic pollutants, we considered the metal finishing category for the control of the pollutant copper.

Effluent guidelines limitations and standards, which are technology-based regulations developed by the Agency pursuant to section 304 of the Clean Water Act, were promulgated for this industry in July 1983. Briefly, the effluent guidelines for the metal finishing industry set national standards for all dischargers to surface waters and to wastewater treatment plants (sometimes called publicly-owned treatment works, or POTW). The effluent guidelines for the metal finishing industry include numeric limitations for copper, based on the Best Available Technology Economically Achievable (BAT), for direct dischargers. The limitations for copper, as promulgated, are a daily maximum of 3.38 mg/l and a monthly average of 2.07 mg/l. The technology basis for these limitations is generally lime precipitation and clarification.

When the Agency promulgated effluent guidelines for this industry, the estimated number of direct dischargers subject to the regulation was approximately 2,900. In the Agency's permit compliance database, which reflects a more recent assessment, there are approximately 4,000 metal finishing direct dischargers. The higher, and more conservative number (in terms of projecting the number of affected facilities) is used in this assessment.

Of the 18 States included in this assessment, only six will receive EPA's aquatic criteria for copper; the remainder have already adopted aquatic criteria for copper in their standards.[7] (See Footnote 5.) Approximately 530 of the direct dischargers are located in these six States (where two States account for 93 percent of the facilities).

The number of potentially affected facilities is further reduced for several reasons. First, the number of facilities that would actually be considered for water quality-based permits could be lower, after subtracting any facilities that have individual control strategies (ICSs) to control the discharge of copper. In addition, the Agency has provided a formula in today's rule to allow the permitting authority to determine a water-effect ratio to account for metals speciation. The practical result is that, where determined, the water quality criteria for copper in certain waterbodies is likely to increase. This adjustment will have the effect of bringing the water quality-based limitation closer to the BAT limitation; for some facilities, this water-effect adjustment could eliminate the need for incremental treatment.

Finally, depending on site-specific conditions at each facility, such as the actual discharge concentration of copper, treatment-in-place, and the dilution provided by the receiving stream, complying with the in-stream concentration specified in the rule could be achieved by merely complying with BAT limitations. Alternatively,

[6] U.S. Environmental Protection Agency, Engineering and Analysis Division, "1990 National Census of Pulp, Paper, and Paperboard Manufacturing Facilities—Preliminary Summary Report of Questionnaire Responses for Mills Which Bleach Chemical Pulps," October 31, 1991.

[7] For metal pollutants, such as copper, the aquatic criteria tend to be more stringent than the criteria based on protecting human health. For purposes of this assessment, EPA is estimating impacts related to the aquatic life protection criteria because those criteria are more relevant for establishing water quality standards

since the in-stream water quality criteria is more stringent than the discharge limitation established by BAT, it is possible that a facility complying with BAT would need additional treatment to comply with a water quality-based limitation.

For purposes of this assessment, EPA investigated whether BAT would be sufficient to meet water quality criteria. Many simplifying assumptions are incorporated into the following discussion. The investigation focused on metal finishing facilities with water releases of the metal pollutants (including, but not limited to copper) as reported in the Toxic Release Inventory.[8] The facilities included in this assessment were limited to those for which plant and stream flow data were readily accessible. While the number of facilities meeting all of these criteria was small, the results were indicative of both scenarios described above. In Connecticut (which is used for illustrative purposes only because it is not included in the final rule), EPA has identified a facility for which BAT will be sufficient for controlling discharges of copper to the level needed to comply with a water quality-based limitation for copper, assuming EPA's criteria level. At that site, the stream dilution is such that meeting the BAT limitation at the discharge point will also likely meet the water quality criteria within the stream. We have also identified another facility in Connecticut for which BAT will not be sufficient—that is, the effluent levels needed to comply with the water quality criteria in the stream are lower than the level that BAT will provide. Thus, additional treatment controls, and incremental compliance costs, are potentially needed for the second facility.

Without a detailed water quality and stream dilution analysis for all dischargers, the number of facilities where BAT will be sufficient to also meet water quality criteria is unknown. For purposes of this assessment, the distribution of facilities where additional treatment may be necessary is assumed to be between 25 and 75 percent. Additionally, the distribution of facility and stream characteristics for metal finishers in Connecticut is assumed to be representative of the distribution of characteristics in the other States. Using these simplifying assumptions, EPA estimates that 130 to 400 facilities are potentially subject to additional treatment requirements.

During the development of the effluent guidelines for this industry, EPA considered several treatment technologies that control pollutant discharges. In addition to the precipitation and clarification technology that was used as the basis for effluent limitations, EPA investigated and published information about effluent filtration, which provides more stringent control of copper discharges.[9] Filtration was not selected as the basis for BAT because of its high cost when considered on a nationwide basis.[10] The removal efficiency for filtration is substantially higher than that for precipitation and clarification. Based on engineering judgment, if filtration were installed at a facility in addition to the technology used as the basis for BAT, meeting the in-stream water quality criteria for copper would be technologically feasible. Hence, the incremental costs for filtration are used here to estimate the range of costs that might be attributable to this rule.

During development of BAT, the Agency estimated total annual costs to add filtration to precipitation and clarification for various sizes of facilities. The incremental cost estimates used here reflect one of several combinations of manufacturing processes and conditions. The costs are likely to be an overestimate because they reflect the upper bound of each flow size range. The potential incremental total annual costs used to estimate the compliance burden for meeting a water quality-based permit are approximately $20,000 for small plants, $43,000 for medium plants, and $146,000 for large plants. To estimate the costs that might be incurred by the dischargers potentially affected by the rule, we assume that the distribution of facility sizes for those dischargers is the same as the distribution used for BAT development. While specific cost estimates depend on many site-specific factors, the range of costs that could be expected for 130 to 400 facilities are approximately $7 million to $20 million.

It is likely that the assessment presented here for copper will include meeting aquatic criteria for other metals due to the similarity in treatment technology. Thus, the cost impacts estimated here will likely provide sufficient treatment to comply with the aquatic criteria for most of the metals.

Another means of considering the potential costs is to evaluate the cost-effectiveness of the additional treatment, where cost-effectiveness is defined by the ratio of incremental cost to incremental pollutant removal. The cost-effectiveness of filtration for those facilities projected to need additional treatment is based on the cost estimates shown above and the pollutant removals for not only copper, but five additional metals that will be removed by filtration. Cost-effectiveness ratios are expressed as "dollars per pound-equivalent removed," where a pound-equivalent is a pound of pollutant weighted by the relative toxicity of that pollutant. The cost-effectiveness of filtration for these facilities is $22 per pound-equivalent removed. This result suggests that filtration is a cost-effective technology.

In summary, the actual burden to dischargers in the metal finishing industry ranges from no impact, where BAT is sufficient to protect the receiving stream, to an incremental cost impact of 5 to 13 percent above the cost of BAT, where filtration is needed. In addition, treatment to comply with more stringent standards appears to be cost-effective.

7. Example: Regulating Priority Pollutants in the Organic Chemicals, Synthetic Fibers, and Plastics Industry

A third example of the range of costs that might be incurred as a result of complying with EPA's criteria for toxic pollutants is based on several segments of the organic chemicals manufacturing industry, where EPA considered the control of all priority pollutant discharges.

Technology-base effluent limitations guidelines and standards were promulgated for this industry in November 1987. The Agency is still engaged in rulemaking activities for this industry in response to litigation and court remands. The following discussion is based on the regulation and supporting documentation from the 1987 final rulemaking.[11]

[8] U.S. Environmental Protection Agency, Toxic Release Inventory, 1989. A search of the inventory for direct dischargers in the metal finishing industry in the six States yielded 41 facilities. Two of the six States have zero facilities matching that description. The comparisons of BAT and water quality criteria are drawn from that subset of the inventory.

[9] U.S. Environmental Protection Agency, Effluent Guidelines Division, Development Document for Effluent Limitations Guidelines and Standards for the Metal Finishing Point Source Category, June 1983.

[10] When establishing BAT, the Clean Water Act requires specific consideration of cost and economic achievability; such consideration is not required when establishing water quality standards. This is not to say that economic considerations are completely outside of the water quality standards process, but that such factors are considered at other points in the process, such as establishing waterbody use classifications. Here, the focus is adopting water quality criteria that are protective of human health and the environment.

[11] U.S. Environmental Protection Agency, Industrial Technology Division, Development Document for Effluent Guidelines and Standards for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category, Volume I, EPA 440/1-87-009, October 1987.

During development of the effluent guidelines for the organic chemicals industry, the Agency considered the potential for pollutant discharges from all of the priority pollutants. Approximately half of the priority pollutants were detected in effluents from chemical manufacturing facilities, and the effluent guidelines for this industry include limitations for most of these pollutants. The technology basis for establishing BAT varies by pollutant and by industry subcategory, but for many subcategory/pollutant combinations is steam stripping and/or biological treatment.

The promulgated effluent guidelines for the organic chemicals industry were expected to control discharges from more than 700 facilities. Of these, 275 are located in the 18 States used in this assessment to analyze the economic impacts of EPA's human health criteria. (See Footnote 5.) The human health criteria are likely to be the more significant values (compared to aquatic life criteria) for purposes of controlling organic pollutant discharges. The number of direct dischargers in the 18 States is estimated to be 90, based on the total industry proportion of direct dischargers. These dischargers are potentially subject to incremental requirements as a result of today's rule.

The key question for estimating the effect of the rule is whether BAT is sufficient to protect water quality to the levels that would be mandated by imposition of the criteria promulgated today. Water quality modelling results suggest very few exceedances of the water quality criteria, after the imposition of BAT requirements.

The level of control provided by the effluent guideline reflects the analytical laboratory level of detection for nearly half of the regulated pollutants. While the maximum monthly average expressed in the effluent guidelines may be higher than the detection limit (to account for variability), the level of detection corresponds to the long-term average of the treatment's removal efficiency. No water quality exceedances were projected among the pollutants that are regulated at levels higher than the detection limit.

The practical effect of the BAT limitations, combined with levels of detection and water quality assessments, is that this rule is unlikely to affect the behavior of chemical manufacturers in terms of pollution control investments. By complying with BAT limitations, the facilities are likely to also comply with more stringent, water quality-based limitations. Even though EPA's human health criteria suggest that permit requirements for some dischargers will be lower than the level of detection, a facility that cannot demonstrate compliance with the lower permit value is unlikely to add treatment or change processes in response to the revised permit.

In summary, BAT requirements for this industry control nearly half of the regulated pollutants to the level of detection for each pollutant. It is unlikely that the rule will result in incremental economic impacts for direct dischargers in the organic chemicals, plastics, and synthetic fibers industry.

8. Example: Regulating Priority Pollutant for POTWs

The final example of the range of costs that might be incurred as a result of EPA-imposed numeric criteria is for POTWs. An important aspect of regulatory impact for sewage treatment plants is that increases in investment and operating costs are often passed on to consumers in the form of user fees or taxes. For purposes of this assessment, however, we have not extended the cost impacts to household burden.

For POTWs, the choice of treatment technology is dependent on many factors; one of the most important is the pollutant (or group of pollutants) of concern and the source of that pollutant. For example, different technologies are recommended if the pollutants of concern are dissolved organic compounds as opposed to suspended solids. For this assessment, we relied on summary cost information presented in comments the Agency received during development of the Great Lakes Water Quality Initiative and on summary information from a rulemaking that focused on the incremental cost for POTWs to upgrade wastewater treatment.[12] The pollutants of concern and levels of control in those sources are similar to the additional controls that might be imposed by compliance with water quality standards following adoption of EPA's numeric criteria for priority toxic pollutants.

Several comments to the proposed rule contended that reverse osmosis is needed to comply with EPA's criteria for metals. According to commenters, this technology is likely to be very expensive when applied to the high flows found at many POTWs. EPA believes that POTWs often have alternatives to installing this type of treatment technology. These alternatives may be attractive from an overall water quality perspective because they prevent pollution at the source. For example, it may be less expensive for a small number of indirect dischargers to reduce their metals contribution to the POTW's wastestream than for the POTW to treat all of its effluent.

Copper discharges are another potential source of difficulty for POTWs in meeting water quality criteria. Many drinking water systems use copper to control algae growth. The copper is then discharged to the POTW and then to the receiving stream. Other algae controls, such as potassium permanganate, may be effective for some drinking water systems. This example of an alternative would reduce the copper loading to the POTW's receiving stream without requiring expensive treatment such as reverse osmosis at the POTW. Reverse osmosis was not used in either of the cost sources noted above; nor is it used here. The pollution control technology selected for a POTW depends on various engineering judgments and site-specific conditions. The incremental costs used in this assessment are based on activated carbon for some POTWs and on polymer addition for others. Engineering judgment suggests that many of the organic and metal compounds of concern will be removed in the final effluent with these types of treatment technologies.

The following cost assessment is likely to be an overestimate due to the simplifying assumptions used in this procedure. The number of POTWs that possibly could be subject to incremental costs that are attributable to this rule is first limited to POTWs in those States that had not adopted their own numeric criteria by the time of the proposed rulemaking. A total of 18 States was used to project the number of POTWs (See Footnote 5.) Of the approximately 15,000 POTWs in the U.S., 3,942 are identified as "majors" in the Permit Compliance System. Of these, 952 are located in the 18 States. Even as of the proposed rule, however, this number of POTWs is an overestimate of the number that might incur increased costs because it includes *all* States projected to receive *any* pollutant criteria. In fact, many of the 18 states need only a limited number of pollutant criteria (for some States, as few as one).

The number of POTWs that might be subject to new or more stringent permit requirements is further reduced because some portion of those permits already include limitations for some of the pollutants of concern. Such permit limitations and the ICSs were established in response to section 304(l) of the Clean Water Act. Another factor that may eliminate the need for additional treatment by the POTW is the use of whole effluent toxicity limits,

[12] Best Conventional Pollutant Control Technology; Effluent Limitations Guidelines; Final Rule, 51 FR 24974, July 9, 1986.

which are possibly already controlling toxic discharges. In addition, existing treatment and pretreatment may obviate the need for more stringent permit requirements. Other site-specific analyses, such as wasteload allocations and dilution studies are likely to affect the reasonable expectation that a pollutant is discharged. Also, as mentioned earlier, the water-effect ratio calculation is likely to eliminate the need for incremental treatment in certain waterbodies.

For purposes of this assessment, the number of POTWs that will need additional treatment has been estimated by focusing on the results of section 304(l) reviews. During each State's review of dischargers to identify sources that were discharging toxic pollutants at a level that could potentially cause water quality impairments, less than 5 percent of the major municipal dischargers were listed. Applying this proportion to the number of municipal dischargers covered by today's rule yields an estimated 46 POTWs that could potentially cause water quality criteria violations. The provisions of section 304(l) required States to respond to these projected violations by developing Individual Compliance Strategies and permit limitations for toxic pollutants.

The Agency acknowledges that the discharger reviews conducted in response to section 304(l) were not comprehensive and probably undercounted the number of dischargers, including POTWs, that were discharging toxic pollutants. Some of the reasons for undercounting include the lack of monitoring information, quickly-conducted reviews, varying methodologies among States, and out-of-date discharge information. For purposes of this assessment, the number of sources that potentially cause water quality criteria problems is assumed to be three times the number actually listed; in other words, the number of POTWs subject to additional controls is conservatively estimated to be triple the 46 actually identified, or 138 POTWs.

As mentioned, there are various alternatives that an individual POTW might undertake to comply with more stringent permit requirements. While the most costly alternatives involve additional pollution control equipment to the POTW, there are other mechanisms to improve the quality of the POTW's effluent. For example, a pretreatment program could require an industrial discharger to reduce or eliminate its contribution of toxic pollutants to the POTW's wastestream. Alternatively, nonpoint sources could undertake better management practices to reduce runoff. Many of these alternatives have little or no incremental cost impact to the POTW. While some of the alternatives involve a shift in costs, the overall effect is likely to be a lower cost than if incurred solely by the POTW. Even with the availability of alternatives for compliance, this assessment assumes that half of the POTWs will install additional treatment. Hence, 50 percent, or 69, of the potentially affected POTWs are assumed to incur additional compliance costs.

The costs of additional pollution controls are derived from the two sources mentioned above. The cost calculations for activated carbon include capital costs, O&M costs, source controls, and studies (such as mixing zone demonstrations, toxicity testing, monitoring, and fish bio-uptake tests). For purposes of this assessment, simplifying assumptions were then applied to those cost calculations to estimate total annual costs for various sizes of POTWs. The incremental total annual costs for activated carbon are estimated to be $0.4 million for a small POTW, $1.4 million for a medium POTW, and $12.8 million for a large POTW. The cost estimates for improved secondary treatment by polymer addition include annualized capital costs and O&M expenses. The incremental total annual costs for this technology are estimated to be less than $0.1 million for a small POTW, $0.4 million for a medium POTW, and $1.5 million for a large POTW.

Based on engineering judgment, 75 percent of the POTWs are assumed to rely on chemical addition to meet permit limits. The remaining 25 percent are assumed to rely on activated carbon adsorption. To estimate costs for each group of POTWs, the facilities are categorized according to flow groups, assuming that the size distribution of the POTWs in the affected States is the same as those used in each cost source. Then, the incremental costs for each type of treatment are applied to the number of POTWs in each size category. This procedure results in an incremental cost estimate of approximately $30 million.

To summarize, some POTWs may be subject to additional treatment requirements as a result of this rule. The number of POTWs and the types of treatment are dependent on many site-specific conditions and on the pollutants included in today's rule. For many of the POTWs that are major discharges in the States that will need to adopt new water quality standards, there is likely to be no incremental cost. Using a conservative estimate of the remaining POTWs, the upper bound of an incremental cost estimate is approximately $30 million for POTWs to comply with new discharge permit requirements.

9. Conclusions of EPA's Cost Assessment

Today's rule establishes a legal minimum standard where States have failed to comply with the statutory mandate to adopt numeric criteria for toxic pollutants. The impacts to dischargers are difficult to estimate because of the numerous assumptions and unknowns. While the Agency acknowledges that some dischargers may incur compliance costs due to new water quality standards, a meaningful cost estimate that covers the entire rule is not feasible.

In the absence of a cost estimate, per se, the Agency has described the types of costs that may be incurred by various types of dischargers. In addition, this cost assessment includes four examples of potential compliance cost scenarios: reducing dioxin discharges from pulp mills, reducing copper discharges for metal finishing, controlling priority pollutant discharges for organic chemical manufacturing, and reducing discharges from POTWs.

EPA finds that the costs to comply with toxic pollutant criteria may be less than anticipated at the time the rule was proposed. Many States have adopted their own numeric criteria and are therefore excluded from today's rulemaking. In addition, for some point source categories, where technology-based controls have been established, more stringent water quality-based controls will result in no incremental compliance costs. Further, EPA concludes that additional analysis is not warranted because the uncertainty of such an analyses would not provide enough reliable information to assist decision-makers in evaluating the regulatory strategy for this statutorily-mandated rule.

10. Introduction to Benefits Assessment

The numeric criteria for toxic pollutants promulgated in today's rule are essential in implementing toxics controls and protecting human health and aquatic ecosystems. Under this Rule, a total of 15 States and Territories will receive criteria for human health and aquatic life (14 for human health and 13 for aquatic life). The adopted standards will result in decreased toxic pollutant loading discharges which will result in improved protection of human health and aquatic life.

The Agency did not include a quantitative estimate of the benefits in the proposed rule for reasons similar to those cited above for not including a detailed cost estimate. The environmental benefits associated with this promulgation are difficult to assess and quantify. A comprehensive analysis of human health and ecological benefits is not practical given the available resources and inherent limitations such as (1) assuming a linear relationship between pollutant loading reductions and benefits attributed to the clean-up of surface waters; (2) underestimating the benefits or reducing toxics due to the complexity of assessing impacts on aquatic ecosystems; and (3) the uncertainty in estimating the magnitude of intermedia transfers of pollutants. Such uncertainties limit the value of using such estimates to evaluate the net benefits of this rule. However, the Agency has undertaken a preliminary assessment of potential human health and ecological benefits that might be accrued through promulgation of the rule.

11. Human Health Assessment Scope

The potential benefits to human health of establishing toxic criteria include: (1) Reducing the potential health risks to persons eating fish contaminated with toxic pollutants, (2) reducing the potential health risks to persons drinking contaminated drinking water, and (3) reducing the potential health risks to swimmers from dermal exposure to contaminated surface waters. EPA's qualitative assessment is limited to assessing (1) potential benefits from reducing pollutant levels in fish that may be caught by sport and subsistence fishermen and subsequently consumed by them and their families; and (2) potential benefits that may also result from lowering pollutant levels in commercially caught fish consumed by the general population. This assessment is limited to assessing only the potential reduction in cancer risk; no attempt has been made to assess potential reductions in risks due to reproductive, developmental, or other chronic and subchronic toxic effects.

12. Ecological Assessment Scope

Some of the ecological benefits are difficult to assess due to the complexity of ecological interactions, the limited amount of ecological risk information available, and the lack of an established methodology for evaluating ecological benefits. In addition, difficulties arise in estimating the exposure of aquatic ecosystems due to the large size of ecosystems, wide geographical distribution, heterogeneous characteristics and the wide range of populations with differing sensitivities to impacts. While the benefits of promulgating this rule were not quantified due to such uncertainties and limitations, the potential benefits of establishing toxic criteria for the protection of aquatic life can be described qualitatively.

The most recent National Water Quality Inventory indicates that one-third of monitored river miles, lake acres, and coastal waters have elevated levels of toxic pollutants. After evaluating these data, the Agency concluded that the data most likely understate the presence or discharge of toxic pollutants because of the limited amount of monitoring data for some States and inconsistencies among the States in how the data were generated. Thus, it is likely that significant portions of water bodies in some States exceed water quality criteria for the protection of aquatic life. These criteria were developed to protect most aquatic organisms, as well as wildlife that consume aquatic organisms, from acute and chronic toxic effects that adversely affect survival, growth or reproduction. These effects will vary due to the diversity of species with differing sensitivities to impacts. For example, lead exposure can cause spinal deformities in rainbow trout. Nickel exposure can affect spawning behavior of shrimp. Nickel, mercury, and copper exposure can affect the growth activity of algae. In addition, copper, mercury, and cadmium can be acutely toxic to aquatic life including finfish. These types of ecological effects are expected to be reduced because this rule should reduce ambient pollutant levels. In addition, this rule will reduce continuous discharges of toxics which will allow for a natural recovery of the ecosystems.

13. Qualitative Benefits Assessment

Human health benefits that can be attributed to this rule are expressed in terms of the reduction in cancer risk. The analysis performed was limited to assessing only the potential reduction in cancer risk; no assessment of potential reductions in risks due to reproductive, developmental, or other chronic and subchronic toxic effects was conducted. However, given the number of pollutants, there could be: (1) Decreased incidence of systemic toxicity to vital organs such as liver and kidney; (2) decreased extent of learning disability and intellectual impairment due to the exposure to such pollutants as lead; and (3) decreased risk of adverse reproductive effects and genotoxicity.

The ecological benefits that can be expected from today's rule include protection of both fresh and salt water organisms, as well as wildlife that consume aquatic organisms. Today's rule will result in a reduction in the presence and discharge of toxic pollutants in the water bodies of these States thereby protecting those aquatic ecosystems currently under stress, providing the opportunity for the reestablishment of productive ecosystems in damaged water bodies, and protection of resident endangered species.

In addition, the rule would result in the propagation and productivity of fish and other organisms, maintaining fisheries for both commercial and recreational purposes. Recreational activities such as boating, water skiing, and swimming would also be preserved along with the maintenance of an aesthetically pleasing environment. Both recreational and commercial activities contribute, in turn, to the support of local and State economies.

K. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96–354) requires EPA to assess whether its regulations create a disproportionate effect on small entities. Among its provisions, the Act directs EPA to prepare and publish an initial regulatory flexibility analysis at the time a rule is proposed if the rule will have a significant impact on a substantial number of small entities. In the preamble to the proposed rule, EPA discussed the possibility that the rule could result in treatment costs to some dischargers to comply with water quality standards that incorporate new criteria for toxic pollutants. The Agency did not conclude, however, that the rule would have a significant impact on a substantial number of small entities due to the uncertainties associated with estimating total costs and impacts. The difficulties of cost estimation for specific groups of dischargers (such as small businesses or governments) were described in the preamble section that outlined EPA's response to Executive Order 12291. Similarly, in today's final rulemaking, the details of EPA's findings concerning the costs and impacts of this rule are presented in section J, above.

Briefly, the complexities and difficulties associated with estimating costs for purposes of economic or regulatory analysis similarly apply to estimating impacts to small entities. For purposes of this rulemaking, small entities are small dischargers, whether industrial or municipal. Regardless of

the parameters used to define small dischargers (for example, discharge flow, number of employees, population served), EPA's expression of costs and impacts for this rulemaking is limited to the descriptions in section J. EPA does not find that there will be a significant impact on a substantial number of small entities because impacts on specific dischargers cannot be predicted with certainty, and based on several examples in the cost assessment, it appears that potential impacts will not be concentrated among small dischargers.

In addition, EPA again finds that the impacts on small entities are best considered during standards development and implementation when site-specific costs can be estimated, and any resulting impacts can be minimized or alleviated as part of writing the discharge permit. It is not the Agency's intent to ignore the consequences of incorporating toxic pollutant criteria, but instead, that these consequences are more appropriately defined and accounted for in the permit-writing context. The water quality standards regulation provides several means (such as adjusting designated uses, setting site-specific criteria, or granting variances) to consider costs and adjust standards to account for the impacts on small dischargers.

While the imposition of EPA's numeric criteria for toxic pollutants may limit the flexibility that States will have to use these procedures to modify standards, EPA's expectation is that impacts will not be concentrated on small dischargers. Although there can be site-specific cases of water quality violations due to toxic discharges from low-flow point sources, EPA generally finds that priorities for NPDES permits focus on major dischargers. Small entities are less likely to be included in this group.

Other requirements of the Regulatory Flexibility Act are fulfilled in other sections of this preamble. Specifically, the Agency's explanation for taking this action and the legal basis for the rule are found in section E. The number of small entities that will be affected by the rule is not estimated for the reasons expressed above. The projected reporting and recordkeeping requirements are discussed in Section L. There is no anticipated duplication, overlap, or conflict with other Federal rules, except to the extent that technology-based standards (such as BAT) are sufficient to also meet water quality standards. Alternatives to the final rule include any of the opportunities that States had to adopt their own standards, incorporating any of the procedures to limit the compliance burden; these alternatives are discussed in Sections B and C.

The Agency concludes that this rulemaking, *per se*, will not result in a significant impact on a substantial number of small entities, and a final regulatory flexibility analysis is not required.

L. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. These requirements will not be effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 0988.04) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20460 or by calling (202) 260–2740.

Public reporting burden for this collection of information is estimated to average 725 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments must be submitted by January 21, 1993.

List of Subjects in 40 CFR Part 131

Water pollution control, Water quality standards, Toxic pollutants.

Dated: December 1, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble title 40, chapter I, part 131 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 is revised to read as follows:

Authority: 33 U.S.C. 1251 et seq.

Subpart D—[Amended]

2. Section 131.36 is added to subpart D to read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act section 303(c)(2)(B).

(a) *Scope.* This section is not a general promulgation of the section 304(a) criteria for priority toxic pollutants but is restricted to specific pollutants in specific States.

(b)(1) *EPA's Section 304(a) Criteria for Priority Toxic Pollutants.*

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(#) COMPOUND	CAS Number	A	B FRESHWATER Criterion Maximum Conc. d (ug/L) B1	B FRESHWATER Criterion Continuous Conc. d (ug/L) B2	C SALTWATER Criterion Maximum Conc. d (ug/L) C1	C SALTWATER Criterion Continuous Conc. d (ug/L) C2	D HUMAN HEALTH (10^{-6} risk for carcinogens) For Consumption of: Water & Organisms (ug/L) D1	D HUMAN HEALTH (10^{-6} risk for carcinogens) For Consumption of: Organisms Only (ug/L) D2
1 Antimony	7440360						14 a	4300 a
2 Arsenic	7440382		360 m	190 m	69 m	36 m	0.018 a,b,c	0.14 a,b,c
3 Beryllium	7440417						n	n
4 Cadmium	7440439		3.9 e,m	1.1 e,m	43 m	9.3 m	n	n
5a Chromium (III)	16065831		1700 e,m	210 e,m			n	n
b Chromium (VI)	18540299		16 m	11 m	1100 m	50 m	n	n
6 Copper	7440508		18 e,m	12 e,m	2.9 m	2.9 m		
7 Lead	7439921		82 e,m	3.2 e,m	220 m	8.5 m	n	n
8 Mercury	7439976		2.4 m	0.012 i	2.1 m	0.025 i	0.14	0.15
9 Nickel	7440020		1400 e,m	160 e,m	75 m	8.3 m	610 a	4600 a
10 Selenium	7782492		20	5	300 m	71 m	n	n
11 Silver	7440224		4.1 c,m		2.3 m			
12 Thallium	7440280						1.7 a	6.3 a
13 Zinc	7440666		120 e,m	110 e,m	95 m	86 m		
14 Cyanide	57125		22	5.2	1	1	700 a	220000 a,j
15 Asbestos	1332214						7,000,000 fibers/L k	
16 2,3,7,8-TCDD (Dioxin)	1746016						0.000000013 c	0.000000014 c
17 Acrolein	107028						320	780
18 Acrylonitrile	107131						0.059 a,c	0.66 a,c
19 Benzene	71432						1.2 a,c	71 a,c
20 Bromoform	75252						4.3 a,c	360 a,c
21 Carbon Tetrachloride	56239						0.25 a,c	4.4 a,c
22 Chlorobenzene	108907						680 a	21000 a,j
23 Chlorodibromomethane	124481						0.41 a,c	34 a,c
24 Chloroethane	75003							
25 2-Chloroethylvinyl Ether	110758							
26 Chloroform	67663						5.7 a,c	470 a,c
27 Dichlorobromomethane	75274						0.27 a,c	22 a,c

			A	B		C		D	
				FRESHWATER		SALTWATER		HUMAN HEALTH (10^{-6} risk for carcinogens)	
(#)	COMPOUND	CAS Number		Criterion Maximum Conc. d (ug/L) B1	Criterion Continuous Conc. d (ug/L) B2	Criterion Maximum Conc. d (ug/L) C1	Criterion Continuous Conc. d (ug/L) C2	For Consumption of: Water & Organisms (ug/L) D1	Organisms Only (ug/L) D2
28	1,1-Dichloroethane	75343							
29	1,2-Dichloroethane	107062						0.38 a,c	99 a,c
30	1,1-Dichloroethylene	75354						0.057 a,c	3.2 a,c
31	1,2-Dichloropropane	78875							
32	1,3-Dichloropropylene	542756						10 a	1700 a
33	Ethylbenzene	100414						3100 a	29000 a
34	Methyl Bromide	74839						48 a	4000 a
35	Methyl Chloride	74873						n	n
36	Methylene Chloride	75092						4.7 a,c	1600 a,c
37	1,1,2,2-Tetrachloroethane	79345						0.17 a,c	11 a,c
38	Tetrachloroethylene	127184						0.8 c	8.85 c
39	Toluene	108883						6800 a	200000 a
40	1,2-Trans-Dichloroethylene	156605							
41	1,1,1-Trichloroethane	71556						n	n
42	1,1,2-Trichloroethane	79005						0.60 a,c	42 a,c
43	Trichloroethylene	79016						2.7 c	81 c
44	Vinyl Chloride	75014						2 c	525 c
45	2-Chlorophenol	95578							
46	2,4-Dichlorophenol	120832						93 a	790 a,j
47	2,4-Dimethylphenol	105679							
48	2-Methyl-4,6-Dinitrophenol	534521						13.4	765
49	2,4-Dinitrophenol	51285						70 a	14000 a
50	2-Nitrophenol	88755							
51	4-Nitrophenol	100027							
52	3-Methyl-4-Chlorophenol	59507							
53	Pentachlorophenol	87865		20 f	13 f	13	7.9	0.28 a,c	8.2 a,c,j
54	Phenol	108952						21000 a	4600000 a,j
55	2,4,6-Trichlorophenol	88062						2.1 a,c	6.5 a,c
56	Acenaphthene	83329							

	A		B		C		D	
			FRESHWATER		SALTWATER		HUMAN HEALTH (10^{-6} risk for carcinogens)	
#)	COMPOUND	CAS Number	Criterion Maximum Conc. d (ug/L) B1	Criterion Continuous Conc. d (ug/L) B2	Criterion Maximum Conc. d (ug/L) C1	Criterion Continuous Conc. d (ug/L) C2	For Consumption of: Water & Organisms (ug/L) D1	Organisms Only (ug/L) D2
57	Acenaphthylene	208968						
58	Anthracene	120127					9600 a	110000 a
59	Benzidine	92875					0.00012 a,c	0.00054 a,c
60	Benzo(a)Anthracene	56553					0.0028 c	0.031 c
61	Benzo(a)Pyrene	50328					0.0028 c	0.031 c
62	Benzo(b)Fluoranthene	205992					0.0028 c	0.031 c
63	Benzo(ghi)Perylene	191242						
64	Benzo(k)Fluoranthene	207089					0.0028 c	0.031 c
65	Bis(2-Chloroethoxy)Methane	111911						
66	Bis(2-Chloroethyl)Ether	111444					0.031 a,c	1.4 a,c
67	Bis(2-Chloroisopropyl)Ether	108601					1400 a	170000 a
68	Bis(2-Ethylhexyl)Phthalate	117817					1.8 a,c	5.9 a,c
69	4-Bromophenyl Phenyl Ether	101553						
70	Butylbenzyl Phthalate	85687						
71	2-Chloronaphthalene	91587						
72	4-Chlorophenyl Phenyl Ether	7005723						
73	Chrysene	218019					0.0028 c	0.031 c
74	Dibenzo(a,h)Anthracene	53703					0.0028 c	0.031 c
75	1,2-Dichlorobenzene	95501					2700 a	17000 a
76	1,3-Dichlorobenzene	541731					400	2600
77	1,4-Dichlorobenzene	106467					400	2600
78	3,3'-Dichlorobenzidine	91941					0.04 a,c	0.077 a,c
79	Diethyl Phthalate	84662					23000 a	120000 a
80	Dimethyl Phthalate	131113					313000	2900000
81	Di-n-Butyl Phthalate	84742					2700 a	12000 a
82	2,4-Dinitrotoluene	121142					0.11 c	9.1 c
83	2,6-Dinitrotoluene	606202						
84	Di-n-Octyl Phthalate	117840						
85	1,2-Diphenylhydrazine	122667					0.040 a,c	0.54 a,c

(#)	COMPOUND	CAS Number	B FRESHWATER Criterion Maximum Conc. d (ug/L) B1	B FRESHWATER Criterion Continuous Conc. d (ug/L) B2	C SALTWATER Criterion Maximum Conc. d (ug/L) C1	C SALTWATER Criterion Continuous Conc. d (ug/L) C2	D HUMAN HEALTH (10^{-6} risk for carcinogens) For Consumption of: Water & Organisms (ug/L) D1	D HUMAN HEALTH (10^{-6} risk for carcinogens) For Consumption of: Organisms Only (ug/L) D2
86	Fluoranthene	206440					300 a	370 a
87	Fluorene	86737					1300 a	14000 a
88	Hexachlorobenzene	118741					0.00075 a,c	0.00077 a,c
89	Hexachlorobutadiene	87683					0.44 a,c	50 a,c
90	Hexachlorocyclopentadiene	77474					240 a	17000 a,j
91	Hexachloroethane	67721					1.9 a,c	8.9 a,c
92	Indeno(1,2,3-cd)Pyrene	193395					0.0028 c	0.031 c
93	Isophorone	78591					8.4 a,c	600 a,c
94	Naphthalene	91203						
95	Nitrobenzene	98953					17 a	1900 a,j
96	N-Nitrosodimethylamine	62759					0.00069 a,c	8.1 a,c
97	N-Nitrosodi-n-Propylamine	621647						
98	N-Nitrosodiphenylamine	86306					5.0 a,c	16 a,c
99	Phenanthrene	85018						
100	Pyrene	129000					960 a	11000 a
101	1,2,4-Trichlorobenzene	120821						
102	Aldrin	309002	3 g		1.3 g		0.00013 a,c	0.00014 a,c
103	alpha-BHC	319846					0.0039 a,c	0.013 a,c
104	beta-BHC	319857					0.014 a,c	0.046 a,c
105	gamma-BHC	58899	2 g	0.08 g	0.16 g		0.019 c	0.063 c
106	delta-BHC	319868						
107	Chlordane	57749	2.4 g	0.0043 g	0.09 g	0.004 g	0.00057 a,c	0.00059 a,c
108	4-4'-DDT	50293	1.1 g	0.001 g	0.13 g	0.001 g	0.00059 a,c	0.00059 a,c
109	4,4'-DDE	72559					0.00059 a,c	0.00059 a,c
110	4,4'-DDD	72548					0.00083 a,c	0.00084 a,c
111	Dieldrin	60571	2.5 g	0.0019 g	0.71 g	0.0019 g	0.00014 a,c	0.00014 a,c
112	alpha-Endosulfan	959988	0.22 g	0.056 g	0.034 g	0.0087 g	0.93 a	2.0 a
113	beta-Endosulfan	33213659	0.22 g	0.056 g	0.034 g	0.0087 g	0.93 a	2.0 a

(#)	COMPOUND	CAS Number	A	B FRESHWATER Criterion Maximum Conc. d (ug/L) B1	B FRESHWATER Criterion Continuous Conc. d (ug/L) B2	C SALTWATER Criterion Maximum Conc. d (ug/L) C1	C SALTWATER Criterion Continuous Conc. d (ug/L) C2	D HUMAN HEALTH (10^{-6} risk for carcinogens) For Consumption of: Water & Organisms (ug/L) D1	D HUMAN HEALTH (10^{-6} risk for carcinogens) For Consumption of: Organisms Only (ug/L) D2
114	Endosulfan Sulfate	1031078						0.93 a	2.0 a
115	Endrin	72208		0.18 g	0.0023 g	0.037 g	0.0023 g	0.76 a	0.81 a,j
116	Endrin Aldehyde	7421934						0.76 a	0.81 a,j
117	Heptachlor	76448		0.52 g	0.0038 g	0.053 g	0.0036 g	0.00021 a,c	0.00021 a,c
118	Heptachlor Epoxide	1024573		0.52 g	0.0038 g	0.053 g	0.0036 g	0.00010 a,c	0.00011 a,c
119	PCB-1242	53469219			0.014 g		0.03 g	0.000044 a,c	0.000045 a,c
120	PCB-1254	11097691			0.014 g		0.03 g	0.000044 a,c	0.000045 a,c
121	PCB-1221	11104282			0.014 g		0.03 g	0.000044 a,c	0.000045 a,c
122	PCB-1232	11141165			0.014 g		0.03 g	0.000044 a,c	0.000045 a,c
123	PCB-1248	12672296			0.014 g		0.03 g	0.000044 a,c	0.000045 a,c
124	PCB-1260	11096825			0.014 g		0.03 g	0.000044 a,c	0.000045 a,c
125	PCB-1016	12674112			0.014 g		0.03 g	0.000044 a,c	0.000045 a,c
126	Toxaphene	8001352		0.73	0.0002	0.21	0.0002	0.00073 a,c	0.00075 a,c
	Total No. of Criteria (h) =			24	29	23	27	91	90

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Footnotes:

a. Criteria revised to reflect current agency q_1^* or RfD, as contained in the Integrated Risk Information System (IRIS). The fish tissue bioconcentration factor (BCF) from the 1980 criteria documents was retained in all cases.

b. The criteria refers to the inorganic form only.

c. Criteria in the matrix based on carcinogenicity (10^{-6} risk). For a risk level of 10^{-5}, move the decimal point in the matrix value one place to the right.

d. Criteria Maximum Concentration (CMC) = the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (1-hour average) without deleterious effects. Criteria Continuous Concentration (CCC) = the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. ug/L = micrograms per liter

e. Freshwater aquatic life criteria for these metals are expressed as a function of total hardness (mg/L), and as a function of the pollutant's water effect ratio, WER, as defined in § 131.36(c). The equations are provided in matrix at § 131.36(b)(2). Values displayed above in the matrix correspond to a total hardness of 100 mg/L and a water effect ratio of 1.0.

f. Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the matrix correspond to a pH of 7.8.

CMC = exp(1.005(pH) – 4.830) CCC = exp(1.005(pH) – 5.290)

g. Aquatic life criteria for these compounds were issued in 1980 utilizing the 1980 Guidelines for criteria development. The acute values shown are final acute values (FAV) which by the 1980 Guidelines are instantaneous values as contrasted with a CMC which is a one-hour average.

h. These totals simply sum the criteria in each column. For aquatic life, there are 30 priority toxic pollutants with some type of freshwater or saltwater, acute or chronic criteria. For human health, there are 91 priority toxic pollutants with either "water + fish" or "fish only" criteria. Note that these totals count chromium as one pollutant even though EPA has developed criteria based on two valence states. In the matrix, EPA has assigned numbers 5a and 5b to the criteria for chromium to reflect the fact that the list of 126 priority toxic pollutants includes only a single listing for chromium.

i. If the CCC for total mercury exceeds 0.012 ug/L more than once in a 3-year period in the ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (1.0 mg/kg). If the FDA action level is exceeded, the State must notify the appropriate EPA Regional Administrator, initiate a revision of its mercury criterion in its water quality standards so as to protect designated uses, and take other appropriate action such as issuance of a fish consumption advisory for the affected area.

j. No criteria for protection of human health from consumption of aquatic organisms (excluding water) was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow a calculation of a criterion, even though the results of such a calculation were not shown in the document.

k. The criterion for asbestos is the MCL (56 FR 3526, January 30, 1991).

l. This letter not used as a footnote.

m. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in 40 CFR 131.36(c).

CMC = column B1 or C1 value × WER
CCC = column B2 or C2 value × WER

n. EPA is not promulgating human health criteria for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics.

General Notes:

1. This chart lists all of EPA's priority toxic pollutants whether or not criteria recommendations are available. Blank spaces indicate the absence of criteria recommendations. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. EPA has added the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

2. The following chemicals have organoleptic based criteria recommendations that are not included on this chart (for reasons which are discussed in the preamble): copper, zinc, chlorobenzene, 2-chlorophenol, 2,4-dichlorophenol, acenaphthene, 2,4-dimethylphenol, 3-methyl-4-chlorophenol, hexachlorocyclopentadiene, pentachlorophenol, phenol

3. For purposes of this rulemaking, freshwater criteria and saltwater criteria apply as specified in 40 CFR 131.36(c).

(2) *Factors for Calculating Metals Criteria*

CMC=WER exp{m_A[ln(hardness)]+b_A} CCC=WER exp{m_C[ln(hardness)]+b_C}

	m_A	b_A	m_C	b_C
Cadmium	1.128	–3.828	0.7852	–3.490
Copper	0.9422	–1.464	0.8545	–1.465
Chromium (III)	0.8190	3.688	0.8190	1.561
Lead	1.273	–1.460	1.273	–4.705
Nickel	0.8460	3.3612	0.8460	1.1645
Silver	1.72	–6.52	.....	.....
Zinc	0.8473	0.8604	0.8473	0.7614

Note: The term "exp" represents the base e exponential function.

(c) *Applicability.* (1) The criteria in paragraph (b) of this section apply to the States' designated uses cited in paragraph (d) of this section and supersede any criteria adopted by the State, except when State regulations contain criteria which are more stringent for a particular use in which case the State's criteria will continue to apply.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are the other numeric toxics criteria when applied to the same use classifications including mixing zones, and low flow values below which numeric standards can be exceeded in flowing fresh waters.

(i) For all waters with mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones; otherwise the criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point.

(ii) A State shall not use a low flow value below which numeric standards can be exceeded that is less stringent than the following for waters suitable for the establishment of low flow return frequencies (i.e., streams and rivers):

Aquatic Life	
Acute criteria (CMC)	1 Q 10 or 1 B 3
Chronic criteria (CCC)	7 Q 10 or 4 B 3
Human Health	
Non-carcinogens	30 Q 5
Carcinogens	Harmonic mean flow

Where:

CMC—criteria maximum concentration—the water quality criteria to protect against acute effects in aquatic life and is the highest instream concentration of a priority toxic pollutant consisting of a one-hour average

not to be exceeded more than once every three years on the average;

CCC—criteria continuous concentration—the water quality criteria to protect against chronic effects in aquatic life is the highest instream concentration of a priority toxic pollutant consisting of a 4-day average not to be exceeded more than once every three years on the average;

1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically;

1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);

7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;

4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);

30 Q 5 is the lowest average 30 consecutive day low flow with an average recurrence frequency of once in 5 years determined hydrologically; and the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows.

(iii) If a State does not have such a low flow value for numeric standards compliance, then none shall apply and the criteria included in paragraph (d) of this section herein apply at all flows.

(3) The aquatic life criteria in the matrix in paragraph (b) of this section apply as follows:

(i) For waters in which the salinity is equal to or less than 1 part per thousand 95% or more of the time, the applicable criteria are the freshwater criteria in Column B;

(ii) For waters in which the salinity is equal to or greater than 10 parts per thousand 95% or more of the time, the applicable criteria are the saltwater criteria in Column C; and

(iii) For waters in which the salinity is between 1 and 10 parts per thousand as defined in paragraphs (c)(3) (i) and (ii) of this section, the applicable criteria are the more stringent of the freshwater or saltwater criteria. However, the Regional Administrator may approve the use of the alternative freshwater or saltwater criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the waterbody is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the waterbody is dominated by saltwater aquatic life and that saltwater criteria are more appropriate.

(4) *Application of metals criteria.* (i) For purposes of calculating freshwater aquatic life criteria for metals from the equations in paragraph (b)(2) of this section, the minimum hardness allowed for use in those equations shall not be less than 25 mg/l, as calcium carbonate, even if the actual ambient hardness is less than 25 mg/l as calcium carbonate. The maximum hardness value for use in those equations shall not exceed 400 mg/l as calcium carbonate, even if the actual ambient hardness is greater than 400 mg/l as calcium carbonate. The same provisions apply for calculating the metals criteria for the comparisons provided for in paragraph (c)(3)(iii) of this section.

(ii) The hardness values used shall be consistent with the design discharge conditions established in paragraph (c)(2) of this section for flows and mixing zones.

(iii) The criteria for metals (compounds #1–#13 in paragraph (b) of this section) are expressed as total recoverable. For purposes of calculating aquatic life criteria for metals from the equations in footnote M. in the criteria matrix in paragraph (b)(1) of this section and the equations in paragraph (b)(2) of this section, the water-effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of 1.0, except where the permitting authority assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in paragraph (c)(2) of this section. For purposes of this paragraph, the term acute toxicity value is the toxicity test results, such as the lethal concentration of one-half of the test organisms (i.e., LC50) after 96 hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after 48 hours of exposure (e.g., daphnia toxicity tests). For purposes of this paragraph, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in paragraph (b)(2) of this section shall be as required in paragraph (c)(4)(ii) of this section. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in standard laboratory toxicity testing water as in the site water.

(d) *Criteria for Specific Jurisdictions*—(1) *Rhode Island, EPA Region 1.* (i) All waters assigned to the following use classifications in the Water Quality Regulations for Water Pollution Control adopted under Chapters 46–12, 42–17.1, and 42–35 of the General Laws of Rhode Island are subject to the criteria in paragraph (d)(1)(ii) of this section, without exception:

6.21 Freshwater	6.22 Saltwater:
Class A	Class SA
Class B	Class SB
Class C	Class SC

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(1)(i) of this section:

Use classification	Applicable criteria
Class A Class B waters where water supply use is designated Class B waters where water supply use is not designated; Class C; Class SA; Class SB; Class SC	These classifications are assigned the criteria in: Column D1—all Each of these classifications is assigned the criteria in: Column D2—all

(iii) The human health criteria shall be applied at the 10^{-5} risk level, consistent with the State policy. To determine appropriate value for carcinogens, see footnote c in the criteria matrix in paragraph (b)(1) of this section.

(2) *Vermont, EPA Region 1.* (i) All waters assigned to the following use classifications in the Vermont Water Quality Standards adopted under the authority of the Vermont Water Pollution Control Act (10 V.S.A., Chapter 47) are subject to the criteria in paragraph (d)(2)(ii) of this section, without exception:

Class A
Class B
Class C

(ii) The following criteria from the matrix in paragraph (b)(1) of this sectiou

apply to the use classifications identified in paragraph (d)(2)(i) of this section:

Use classification	Applicable criteria
Class A Class B waters where water supply use is designated	This classification is assigned the criteria in: Column B1—all Column B2—all Column D1—all
Class B waters where water supply use is not designated Class C	These classifications are assigned the criteria in: Column B1—all Column B2—all Column D2—all

(iii) The human health criteria shall be applied at the State-proposed 10^{-6} risk level.

(3) *New Jersey, EPA Region 2.* (i) All waters assigned to the following use classifications in the New Jersey Administrative Code (N.J.A.C.) 7:9–4.1 et seq., Surface Water Quality Standards, are subject to the criteria in paragraph (d)(3)(ii) of this section, without exception.

N.J.A.C. 7:9–4.12(b): Class PL
N.J.A.C. 7:9–4.12(c): Class FW2
N.J.A.C. 7:9–4.12(d): Class SE1
N.J.A.C. 7:9–4.12(e): Class SE2
N.J.A.C. 7:9–4.12(f): Class SE3
N.J.A.C. 7:9–4.12(g): Class SC
N.J.A.C. 7:9–4.13(a): Delaware River Zones 1C, 1D, and 1E
N.J.A.C. 7:9–4.13(b): Delaware River Zone 2
N.J.A.C. 7:9–4.13(c): Delaware River Zone 3
N.J.A.C. 7:9–4.13(d): Delaware River Zone 4
N.J.A.C. 7:9–4.13(e): Delaware River Zone 5
N.J.A.C. 7:9–4.13(f): Delaware River Zone 6

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(3)(i) of this section:

Use classification	Applicable criteria
PL (Freshwater Pinelands), FW2	These classifications are assigned the criteria in: Column B1—all except #102, 105, 107, 108, 111, 112, 113, 115, 117, and 118. Column B2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125.
PL (Saline Water Pinelands), SE1, SE2, SE3, SC	These classifications are each assigned the criteria in: Column C1—all except #102, 105, 107, 108, 111, 112, 113, 115, 117, and 118. Column C2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125. Column D2—all at a 10^{-6} risk level except #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105; #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105, at a 10^{-5} risk level.
Delaware River zones 1C, 1D, 1E, 2, 3, 4, 5 and Delaware Bay zone 6	These classifications are each assigned the criteria in: Column B1—all. Column B2—all. Column D1—all at a 10^{-6} risk level except #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105; #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105, at a 10^{-5} risk level. Column D2—all at a 10^{-6} risk level except #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105; #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105, at a 10^{-5} risk level.
Delaware River zones 3, 4, and 5, and Delaware Bay zone 6	These classifications are each assigned the criteria in: Column C1—all. Column C2—all. Column D2—all at a 10^{-6} risk level except #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105; #23, 30, 37, 38, 42, 68, 89, 91, 93, 104, 105, at a 10^{-5} risk level.

(iii) The human health criteria shall be applied at the State-proposed 10^{-6} risk level for EPA rated Class A, B_1, and B_2 carcinogens; EPA rated Class C carcinogens shall be applied at 10^{-5} risk level. To determine appropriate value for carcinogens, see footnote c. in the matrix in paragraph (b)(1) of this section.

(4) *Puerto Rico, EPA Region 2.* (i) All waters assigned to the following use classifications in the Puerto Rico Water Quality Standards (promulgated by Resolution Number R–83–5–2) are subject to the criteria in paragraph (d)(4)(ii) of this section, without exception.

Article 2.2.2—Class SB
Article 2.2.3—Class SC
Article 2.2.4—Class SD

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(4)(i) of this section:

Use classification	Applicable criteria
Class SD	This Classification is assigned criteria in: Column B1—all, except: 10, 102, 105, 107, 108, 111, 112, 113, 115, 117, and 126. Column B2—all, except: 105, 107, 108, 112, 113, 115, and 117. Column D1—all, except: 6, 14, 105, 112, 113, and 115. Column D2—all, except: 14, 105, 112, 113, and 115.
Class SB, Class SC	These Classifications are assigned criteria in:

Use classification	Applicable criteria
	Column C1—all, except: 4, 5b, 7, 8, 10, 11, 13, 102, 105, 107, 108, 111, 112, 113, 115, 117, and 126.
	Column C2—all, except: 4, 5b, 10, 13, 108, 112, 113, 115, and 117.
	Column D2—all, except: 14, 105, 112, 113, and 115.

(iii) The human health criteria shall be applied at the State-proposed 10^{-5} risk level. To determine appropriate value for carcinogens, see footnote c, in the criteria matrix in paragraph (b)(1) of this section.

(5) *District of Columbia, EPA Region 3.*

(i) All waters assigned to the following use classifications in chapter 11 Title 21 DCMR, Water Quality Standards of the District of Columbia are subject to the criteria in paragraph (d)(5)(ii) of this section, without exception:

1101.2 Class C waters

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classification identified in paragraph (d)(5)(i) of this section:

Use classification	Applicable criteria
Class C	This classification is assigned the additional criteria in: Column B2—#10, 118, 126. Column D1—#15, 16, 44, 67, 68, 79, 80, 81, 88, 114, 116, 118. Column D2—all.

(iii) The human health criteria shall be applied at the State-adopted 10^{-6} risk level.

(6) *Florida, EPA Region 4.*

(i) All waters assigned to the following use classifications in Chapter 17–301 of the Florida Administrative Code (i.e., identified in Section 17–302.600) are subject to the criteria in paragraph (d)(6)(ii) of this section, without exception:

Class I
Class II
Class III

(ii) The following criteria from the matrix paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(6)(i) of this section:

Use classification	Applicable criteria
Class I	This classification is assigned the criteria in: Column D1—#16
Class II Class III (marine)	This classification is assigned the criteria in:
Class III (freshwater)	This classification is assigned the criteria in: Column D2—#16

(iii) The human health criteria shall be applied at the State-adopted 10^{-6} risk level.

(7) *Michigan, EPA Region 5.*

(i) All waters assigned to the following use classifications in the Michigan Department of Natural Resources Commission General Rules, R 323.1100 designated uses, as defined at R 323.1043. Definitions; A to N, (i.e., identified in Section (g) "Designated use") are subject to the criteria in paragraph (d)(7)(ii) of this section, without exception:

Agriculture
Navigation
Industrial Water Supply
Public Water Supply at the Point of Water Intake
Warmwater Fish
Other Indigenous Aquatic Life and Wildlife
Partial Body Contact Recreation

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(7)(i) of this section:

Use classification	Applicable criteria
Public Water supply	This classification is assigned the criteria in: Column B1—all, Column B2—all, Column D1—all.
All other designations	These classifications are assigned the criteria in: Column B1—all, Column B2—all, and Column D2—all.

(iii) The human health criteria shall be applied at the State-adopted 10^{-5} risk level. To determine appropriate value for carcinogens, see footnote c in the criteria matrix in paragraph (b)(1) of this section.

(8) *Arkansas, EPA Region 6.*

(i) All waters assigned to the following use classification in section 4C (Waterbody uses) identified in Arkansas Department of Pollution Control and Ecology's Regulation No. 2 as amended and entitled, "Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas" are subject to the criteria in paragraph (d)(8)(ii) of this section, without exception:

Extraordinary Resource Waters
Ecologically Sensitive Waterbody
Natural and Scenic Waterways
Fisheries:
(1) Trout
(2) Lakes and Reservoirs
(3) Streams
(a) Ozark Highlands Ecoregion
(b) Boston Mountains Ecoregion
(c) Arkansas River Valley Ecoregion
(d) Ouachita Mountains Ecoregion
(e) Typical Gulf Coastal Ecoregion
(f) Spring Water-influenced Gulf Coastal Ecoregion
(g) Least-altered Delta Ecoregion
(h) Channel-altered Delta Ecoregion
Domestic Water Supply

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classification identified in paragraph (d)(8)(i) of this section:

Use classification	Applicable criteria
Extraordinary Resource Waters Ecologically Sensitive Waterbody Natural and Scenic Waterways Fisheries: (1) Trout (2) Lakes and Reservoirs (3) Streams (a) Ozark Highlands Ecoregion (b) Boston Mountains Ecoregion (c) Arkansas River Valley Ecoregion (d) Ouachita Mountains Ecoregion (e) Typical Gulf Coastal Ecoregion (f) Spring Water-influenced Gulf Coastal Ecoregion (g) Least-altered Delta Ecoregion (h) Channel-altered Delta Ecoregion	These uses are each assigned the criteria in— Column B1—#4, 5a, 5b, 6, 7, 8, 9, 10, 11, 13, 14 Column B2—#4, 5a, 5b, 6, 7, 8, 9, 10, 13, 14

(9) *Kansas, EPA Region 7.*

(i) All waters assigned to the following use classification in the Kansas Department of Health and Environment regulations, K.A.R. 28–16–28b through K.A.R. 28–16–28f, are subject to the criteria in paragraph (d)(9)(ii) of this section, without exception.

Section 28–16–28d
Section (2)(A)—Special Aquatic Life Use Waters
Section (2)(B)—Expected Aquatic Life Use Waters
Section (2)(C)—Restricted Aquatic Life Use Waters
Section (3)—Domestic Water Supply
Section (6)(c)—Consumptive Recreation Use.

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(9)(i) of this section:

Use classification	Applicable criteria
Sections (2)(A), (2)(B), (2)(C), (6)(C)	These classifications are each assigned all criteria in: Column B1, all except #9, 11, 13, 102, 105, 107, 108, 111–113, 115, 117, and 126; Column B2, all except #9, 13, 105, 107, 108, 111–113, 115, 117, 119–125, and 126; and Column D2, all except #9, 112, 113, and 115.
Section (3)	This classification is assigned all criteria in; Column D1, all except #9, 12, 112, 113, and 115.

(iii) The human health criteria shall be applied at the State-proposed 10^{-6} risk level.

(10) *California, EPA Region 9.*

(i) All waters assigned any aquatic life or human health use classifications in the Water Quality Control Plans for the various Basins of the State ("Basin Plans"), as amended, adopted by the California State Water Resources Control Board ("SWRCB"), except for ocean waters covered by the Water Quality Control Plan for Ocean Waters of California ("Ocean Plan") adopted by the SWRCB with resolution Number 90–27 on March 22, 1990, are subject to the criteria in paragraph (d)(10)(ii) of this section, without exception. These criteria amend the portions of the existing State standards contained in the Basin Plans. More particularly these criteria amend water quality criteria contained in the Basin Plan Chapters specifying water quality objectives (the State equivalent of federal water quality criteria) for the toxic pollutants identified in paragraph (d)(10)(ii) of this section. Although the State has adopted several use designations for each of these waters, for purposes of this action, the specific standards to be applied in paragraph (d)(10)(ii) of this section are based on the presence in all waters of some aquatic life designation and the presence or absence of the MUN use designation (Municipal and domestic supply). (See Basin Plans for more detailed use definitions.)

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the water and use classifications defined in paragraph (d)(10)(i) of this section and identified below:

Water and use classification	Applicable criteria
Waters of the State defined as bays or estuaries except the Sacramento-San Joaquin Delta and San Francisco Bay	These waters are assigned the criteria in: Column B1—pollutants 5a and 14; Column B2—pollutants 5a and 14; Column C1—pollutant 14; Column C2—pollutant 14; Column D2—pollutants 1, 12, 17, 18, 21, 22, 29, 30, 32, 33, 37, 38, 42–44, 46, 48, 49, 54, 59, 66, 67, 68, 78–82, 85, 89, 90, 91, 93, 95, 96, 98
Waters of the Sacramento—San Joaquin Delta and waters of the State defined as inland (i.e., all surface waters of the State not bays or estuaries or ocean) that include a MUN use designation	These waters are assigned the criteria in: Column B1—pollutants 5a and 14; Column B2—pollutants 5a and 14; Column D1—pollutants 1, 12, 15, 17, 18, 21, 22, 29, 30, 32, 33, 37, 38, 42–48, 49, 59, 66, 68, 78–82, 85, 89, 90, 91, 93, 95, 96, 98
Waters of the State defined as inland without an MUN use designation	These waters are assigned the criteria in: Column B1—pollutants 5a and 14; Column B2—pollutants 5a and 14; Column D2—pollutants 1, 12, 17, 18, 21, 22, 29, 30, 32, 33, 37, 38, 42–44, 46, 48, 49, 54, 59, 66, 67, 68, 78–82, 85, 89, 90, 91, 93, 95, 96, 98
Waters of the San Joaquin River from the mouth of the Merced River to Vernalis	In addition to the criteria assigned to these waters elsewhere in this rule, these waters are assigned the criteria in: Column B2—pollutant 10

Water and use classification	Applicable criteria
Waters of Salt Slough, Mud Slough (north) and the San Joaquin River, Sack Dam to the mouth of the Merced River	In addition to the criteria assigned to these waters elsewhere in this rule, these waters are assigned the criteria in: Column B1—pollutant 10 Column B2—pollutant 10
Waters of San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta	These waters are assigned the criteria in: Column B1—pollutants 5a, 10* and 14 Column B2—pollutants 5a, 10* and 14 Column C1—pollutant 14 Column C2—pollutant 14 Column D2—pollutants 1, 12, 17, 18, 21, 22, 29, 30, 32, 33, 37, 38, 42–44, 46, 48, 49, 54, 59, 66, 67, 68, 78–82, 85, 89, 90, 91, 93, 95, 96, 98
All inland waters of the United States or enclosed bays and estuaries that are waters of the United States that include an MUN use designation and that the State has either excluded or partially excluded from coverage under its Water Quality Control Plan for Inland Surface Waters of California, Tables 1 and 2, or its Water Quality Control Plan for Enclosed Bays and Estuaries of California, Tables 1 and 2, or has deferred applicability of those tables. (Category (a), (b), and (c) waters described on page 6 of Water Quality Control Plan for Inland Surface Waters of California or page 6 of its Water Quality Control Plan for Enclosed Bays and Estuaries of California.)	These waters are assigned the criteria for pollutants for which the State does not apply Table 1 or 2 standards. These criteria are: Column B1—all pollutants Column B2—all pollutants Column D1—all pollutants except #2
All inland waters of the United States that do not include an MUN use designation and that the State has either excluded or partially excluded from coverage under its Water Quality Control Plan for Inland Surface Waters of California, Tables 1 and 2, or has deferred applicability of these tables. (Category (a), (b), and (c) waters described on page 6 of Water Quality Control Plan for Inland Surface Waters of California.)	These waters are assigned the criteria for pollutants for which the State does not apply Table 1 or 2 standards. These criteria are: Column B1—all pollutants Column B2—all pollutants Column D2—all pollutants except #2
All enclosed bays and estuaries that are waters of the United States and that the State has either excluded or partially excluded from coverage under its Water Quality Control Plan for Inland Surface Waters of California, Tables 1 and 2, or its Water Quality Control Plan for Enclosed Bays and Estuaries of California, Tables 1 and 2, or has deferred applicability of those tables. (Category (a), (b), and (c) waters described on page 6 of Water Quality Control Plan for Inland Surface Waters of California or page 6 of its Water Quality Control Plan for Enclosed Bays and Estuaries of California.)	These waters are assigned the criteria for pollutants for which the State does not apply Table 1 or 2 standards. These criteria are: Column B1—all pollutants Column B2—all pollutants Column C1—all pollutants Column C2—all pollutants Column D2—all pollutants except #2

*The fresh water selenium criteria are included for the San Francisco Bay estuary because high levels of bioaccumulation of selenium in the estuary indicate that the salt water criteria are underprotective for San Francisco Bay.

(iii) The human health criteria shall be applied at the State-adopted 10^{-6} risk level.

(11) *Nevada, EPA Region 9.* (i) All waters assigned the use classifications in Chapter 445 of the Nevada Administrative Code (NAC), Nevada Water Pollution Control Regulations, which are referred to in paragraph (d)(11)(ii) of this section, are subject to the criteria in paragraph (d)(11)(ii) of this section, without exception. These criteria amend the existing State standards contained in the Nevada Water Pollution Control Regulations. More particularly, these criteria amend or supplement the table of numeric standards in NAC 445.1339 for the toxic pollutants identified in paragraph (d)(11)(ii) of this section.

(ii) The following criteria from matrix in paragraph (b)(1) of this section apply to the waters defined in paragraph (d)(11)(i) of this section and identified below:

Water and use classification	Applicable criteria
Waters that the State has included in NAC 445.1339 where Municipal or domestic supply is a designated use	These waters are assigned the criteria in: Column B1—pollutant #118 Column B2—pollutant #118 Column D1—pollutants #15, 16, 18, 19, 20, 21, 23, 26, 27, 29, 30, 34, 37, 38, 42, 43, 55, 58–62, 64, 66, 73, 74, 78, 82, 85, 87–89, 91, 92, 96, 98, 100, 103, 104, 105, 114, 116, 117, 118
Waters that the State has included in NAC 445.1339 where Municipal or domestic supply is not a designated use	These waters are assigned the criteria in: Column B1—pollutant #118 Column B2—pollutant #118 Column D2—all pollutants except #2.

(iii) The human health criteria shall be applied at the 10^{-5} risk level, consistent with State policy. To determine appropriate value for carcinogens, see footnote c in the criteria matrix in paragraph (b)(1) of this section.

(12) *Alaska, EPA Region 10.*

(i) All waters assigned to the following use classifications in the Alaska Administrative Code (AAC), Chapter 18 (i.e., identified in 18 AAC 70.020) are subject to the criteria in paragraph (d)(12)(ii) of this section, without exception:

70.020.(1) (A) Fresh Water
70.020.(1)(A) Water Supply
(i) Drinking, culinary, and food processing,
(iii) Aquaculture;
70.020.(1) (B) Water Recreation
(i) Contact recreation,
(ii) Secondary recreation;
70.020.(1) (C) Growth and propagation of fish, shellfish, other aquatic life, and wildlife
70.020.(2) (A) Marine Water
70.020.(2) (A) Water Supply
(i) Aquaculture,
70.020.(2) (B) Water Recreation
(i) contact recreation,
(ii) secondary recreation;
70.020.(2) (C) Growth and propagation of fish, shellfish, other aquatic life, and wildlife;
70.020.(2) (D) Harvesting for consumption of raw mollusks or other raw aquatic life.

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(12)(i) of this section:

Use classification	Applicable criteria
(1)(A) i	Column B1—all Column B2—#10 Column D1 #'s 2, 16, 18–21, 23, 26, 27, 29, 30, 32, 37, 38, 42–44, 53, 55, 59–62, 64, 66, 68, 73, 74, 78, 82, 85, 88, 89, 91–93, 96, 98, 102–105, 107–111, 117–126
(1)(A) iii	Column B1—all Column B2—#10 Column D1 #'s 2, 14, 16, 18–21, 22, 23, 26, 27, 29, 30, 32, 37, 38, 42–44, 46, 53, 54, 55, 59–62, 64, 66, 68, 73, 74, 78, 82, 85, 88–93, 95, 96, 98, 102–105, 107–111, 115–126
(1)(B)i, (1)(B) ii, (1)(C)	Column B1—all Column B2—#10 Column D2 #'s 2, 14, 16, 18–21, 22, 23, 26, 27, 29, 30, 32, 37, 38, 42–44, 46, 53, 54, 55, 59–62, 64, 66, 68, 73, 74, 78, 82, 85, 88–93, 95, 96, 98, 102–105, 107–111, 115–126
(2)(A) i, (2)(B)i, and (2)(B)ii, (2)(C), (2)(D)	Column C1—all Column C2—#10 Column D2 #s 2, 14, 16, 18–21, 22, 23, 26, 27, 29, 30, 32, 37, 38, 42–44, 46, 53, 54, 55, 59–62, 64, 66, 68, 73, 74, 78, 82, 85, 88–93, 95, 96, 98, 102–105, 107–111, 115–126

(iii) The human health criteria shall be applied at the State-proposed risk level of 10^{-5}. To determine appropriate value for carcinogens, see footnote c in the criteria matrix in paragraph (b)(1) of this section.

(13) *Idaho, EPA Region 10.*

(i) All waters assigned to the following use classifications in the Idaho Administrative Procedures Act (IDAPA), Chapter 16 (i.e., identified in IDAPA 16.01.2100,02–16.01.2100,07) are subject to the criteria in paragraph (d)(13)(ii) of this section, without exception:

16.01.2100.01.b. Domestic Water Supplies
16.01.2100.02.a. Cold Water Biota
16.01.2100.02.b. Warm Water Biota
16.01.2100.02cc. Salmonid Spawning
16.01.2100.03.a. Primary Contact Recreation
16.01.2100.03.b Secondary Contact Recreation

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(13)(i) of this section:

Use classification	Applicable criteria
01.b	This classification is assigned the criteria in: Column D1—all *except* #14 and 115
02.a 02.b 02cc	These classifications are assigned the criteria in: Column B1—all Column B2—all Column D2—all
03.a	This classification is assigned the criteria in: Column D2—all
03.b	This classification is assigned the criteria in: Column D2—all

(iii) The human health criteria shall be applied at the 10^{-6} risk level, consistent with State policy.

(14) *Washington, EPA Region 10.*

(i) All waters assigned to the following use classifications in the Washington Administrative Code (WAC), Chapter 173–201 (i.e., identified in WAC 173–201–045) are subject to the criteria in paragraph (d)(14)(ii) of this section, without exception:

173–201–045
Fish and Shellfish
Fish
Water Supply (domestic)
Recreation

(ii) The following criteria from the matrix in paragraph (b)(1) of this section apply to the use classifications identified in paragraph (d)(14)(i) of this section:

Use classification	Applicable criteria
Fish and Shellfish; Fish	These classifications are assigned the criteria in: Column B1 and B(2)—#2, 10 Column C1—#2, 10 Column C2—#2, 6, 10, 14 Column D2—all
Water Supply (domestic)	These classifications are assigned the criteria in: Column D1—all
Recreation	This classification is assigned the criteria in: Column D2—Marine waters and freshwaters not protected for domestic water supply

(iii) The human health criteria shall be applied at the State proposed risk level of 10^{-6}.

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Part III

Environmental Protection Agency

Draft NPDES General Permits; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FR–4546–7; LAG290000 and TXG290000]

Proposed NPDES General Permits for Produced Water and Produced Sand Discharges From the Oil and Gas Extraction Point Source Category To Coastal Waters In Louisiana and Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft NPDES general permit.

SUMMARY: EPA Region 6 is proposing to issue general NPDES permits prohibiting discharges of produced water and produced sand derived from Oil and Gas Point Source Category Facilities to coastal waters of Louisiana and Texas. Facilities covered by these permits include those in the Coastal Subcategory (40 CFR Part, 435, subpart D), the Stripper Subcategory (40 CFR part 435, subpart F) that discharge to coastal waters of Louisiana and Texas, and the Offshore Subcategory (40 CFR part 435, subpart A) which discharge to coastal waters of Louisiana and Texas. As proposed, the permits' prohibitions will become effective 30 days after their final publication. Region 6 may also issue an administrative order requiring that permittees discharging produced water from existing Coastal, Stripper or Offshore Subcategory wells to other than "upland area" waters in Louisiana and to other than "inland and fresh" waters in Texas comply with the permits' produced water discharge prohibitions within three years after final publication of the permits.

DATES: Comments on the proposed permits must be submitted by February 5, 1993.

ADDRESSES: Comments on these proposed permits should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202. Telephone (214) 655–7190.

SUPPLEMENTARY INFORMATION: Supplementary information (fact sheet) provided in this notice is organized as follows:

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I. Legal Basis

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), renders it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401, 33 U.S.C. 1311, 1314, and 1341. Those statutory provisions require that NPDES permits include effluent limitations requiring that authorized discharges:

(1) Meet standards reflecting levels of technological capability.

(2) Comply with EPA-approved state water quality standards and

(3) Comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

Two types of technology-based effluent limitations must be included in the permits proposed here. With regard to conventional pollutants, i.e., pH, BOD, oil and grease, TSS, and fecal coliform, CWA section 301(b)(1)(E) requires effluent limitations based on "best conventional pollution control technology" (BCT). With regard to nonconventional and toxic pollutants, CWA section 301(b)(2) (A), (C), and (D) require effluent limitations based on "best available pollution control technology economically achievable" (BAT), a standard which generally represents the best performing existing technology in an industrial category or subcategory. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges prior to March 31, 1989 under CWA 301(b)(1)(A).

Frequently, EPA adopts nationally applicable guidelines identifying the BPT, BCT, and BAT standards to which specific industrial categories and subcategories are subject. Until such guidelines are published, however, CWA section 402(a)(1) requires that EPA determine appropriate BCT and BAT effluent limitations in its NPDES permitting actions on the basis of its best professional judgment (BPJ). BPT standards for the Oil and Gas Extraction Point Source Category are codified at 40 CFR part 435, with BPT standards which were applicable to the Coastal Subcategory at subpart D. Because EPA has not promulgated BAT or BCT

guidelines for the Oil and Gas Extraction Point Source Category or any of its Subcategories, the BAT and BCT effluent limitations Region 6 proposes here are based on BPJ, after consideration of factors listed at 40 CFR 125.3(d) (2) and (3). As explained hereinafter, those limitations will prohibit any discharge of produced water or produced sand to "coastal" waters in Louisiana and Texas.

Although the Agency typically issues NPDES permits to the operators of individual facilities, it may also issue "general permits" applicable to a class of similar dischargers within a discreet geographical area. See generally *NRDC* v. *Costle,* 568 F.2d 1369 (D.C. Cir. 1977); 40 CFR 122.28. Issuance of such permits is not controlled by the procedural rules EPA uses for individual permits, but is instead subject to section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, as supplemented by EPA regulations, e.g., 40 CFR 124.58. EPA must, however, comply with the substantive requirements of the CWA without regard to whether it is issuing an individual or general NPDES permit.

II. Regulatory Background

Because operations within the Oil and Gas Extraction Point Source Category vary widely, EPA has subcategorized it for the purpose of developing technology-based effluent guidelines. Those subcategories now codified at 40 CFR part 435, are the "Offshore," "Onshore," "Coastal," "Stripper," and "Agricultural and Wildlife Water Use" subcategories.

As codified at 40 CFR part 435, EPA guidelines based on the application of best practicable technology (BPT) prohibit the discharge of produced water and produced sand from the Onshore Subcategory, but allow such discharges subject to various limitations from facilities in all other subcategories. BPT guidelines for the Coastal Subcategory, for instance, allow the discharge of produced water subject to an oil and grease limitation of 72 milligrams per liter (mg/l) daily maximum and 48 mg/l monthly average, representing the performance of oil-water separation technology in 1979. See 40 CFR 435.42.

On December 27, 1983, Region 6 proposed a general permit for "Inland Waters," covering in part the same geographical area as the permits proposed today. 48 FR 57001. That proposed permit, which was based on the Agency's BPT guidelines, was never issued in final form. Nor could Region 6 now issue that permit as proposed. Since March 31, 1989, CWA section 301 has required EPA to apply industrial effluent limitations based on the more stringent BAT and BCT standards, rendering the Agency's BPT guidelines obsolete.

EPA has been developing BAT guidelines for the Oil and Gas Extraction Point Source Category for several years, but to date has not promulgated such guidelines. The most recent guidelines development action potentially affecting the Coastal Subcategory occurred on November 8, 1989, when the Agency published a notice discussing possible amendment to the current definition of "coastal" and alternative approaches to developing BAT guidelines. 54 FR 46919. In developing today's proposal, Region 6 has considered information on which that notice was based, together with information the Agency received in response to its publication.

On June 7, 1990, Region 6 proposed general permits for discharges from drilling activities of Coastal Subcategory facilities in Texas and Louisiana. 55 FR 23348. Because produced water and produced sand are normally associated with production, not drilling, activities, those draft permits included no proposed effluent limitations on those waste streams. EPA will probably promulgate the final Coastal "drilling" permits before it promulgates the Coastal produced water and sand permits proposed today, but reserves the option of issuing unified general permits covering all discharges from Coastal Subcategory drilling and production activities in a single final publication.

III. Coverage

The part 435 guideline definition of "coastal" was promulgated in a final rule on April 13, 1979. See 40 CFR 435.31(e); 44 FR 22069. Under that definition, "coastal"means "(1) any body of water landward of the territorial seas as defined in 40 CFR 125.1(gg), or (2) any wetlands adjacent to such waters." There are three ambiguities associated with this definition. First, it fails to indicate whether a Coastal Subcategory facility is one which discharges to a "coastal" water or one which is constructed in a "coastal" water. Second, "40 CFR 125.1(gg)" is no longer an EPA regulation, having been deleted in a June 7, 1979 revision to part 125. See 44 FR 32948. Third, the "wetlands adjacent" term of the definition suggests to some that wetlands which are not adjacent to other waters may not be "coastal."

In Region 6, these ambiguities were resolved on February 25, 1991, when the Region issued four final NPDES permits prohibiting discharges from Onshore Subcategory facilities in Louisiana, Texas, New Mexico, and Oklahoma. 56 FR 7698. After examining the regulatory history that indicates that the basis for subcategorization lay in technological differences associated with facility location, not discharge location, EPA determined that a Coastal Subcategory facility was one in which the wellhead was located over a surface waterbody. 56 FR 7698–7699. Noting that former 40 CFR 125.1(gg) had been a verbatim recitation of CWA section 502(3), Region 6 relied on that statutory definition of "territorial seas." 56 FR 7699. In a somewhat similar vein, Region 6 found the part 435 reference to "adjacent wetlands" was adopted before the Agency's jurisdictional definition included a reference to "wetlands" and had thus been intended to indicate all "waters of the United States" shoreward of the territorial seas were "coastal." 56 FR 7699.

Region 6 continues to interpret the part 435 "coastal" definition in that fashion. As proposed, the permits thus apply to all Louisiana and Texas facilities with wellheads located in "waters of the United States," as defined at 40 CFR 122.2. Facilities which would be considered "Onshore' but for the decision in *API* v. *EPA,* 661 F.2d 340 (5th Cir. 1981) will also be subject to the permits if EPA issues them as proposed. See 47 FR 31554 (July 21, 1982).

In addition, Region 6 is proposing to prohibit the discharge of produced water derived from Offshore Subcategory facilities to "coastal" waters. As discussed later in this Fact Sheet, the discharge of these produced waters, as well as produced waters from other Subcategory facilities to "coastal" waters would violate state water quality standards and certain state regulations.

The Minerals Management Service (MMS91–004) has identified eleven major produced water disposal facilities which treat both Offshore and Coastal Subcategory produced water, then discharge it to Louisiana coastal waters. If the permits are promulgated as proposed, they will prohibit such facilities from discharging Coastal Subcategory produced water at any location and prohibit the discharge of Offshore Subcategory produced water to "coastal" waters, i.e., any water of the United States shoreward of the territorial seas. They will not, however, prohibit the discharge of Offshore Subcategory produced water to offshore waters, even if it has first been treated at a shore-based facility. Otherwise, the permits would operate as a disincentive for the voluntary onshore treatment of that produced water.

The Stripper Subcategory applies to those onshore facilities producing no more that ten barrels of oil per day while operating at the maximum feasible rate of production and in accordance with recognized conservation practices. See 40 CFR 435.60. EPA has developed no BPT effluent limitation guidelines for the Stripper Subcategory, reasoning that such low production rates provide insufficient capital for retrofitting pollution control technology, but has also suggested that further study of joint disposal options might result in BPT guidelines prohibiting the discharge of produced water from Stripper Subcategory facilities. See 42 FR 44942, 44948 (October 13, 1976). Given the less stringent cost analysis involved in BAT determinations, it seems possible BAT effluent limitations for strippers would prohibit the discharge of produced water. Indeed, according to verbal communications from the Oklahoma Corporation Commission, it appears the State of Oklahoma has already eliminated all stripper well discharges to surface water over which it has jurisdiction. Region 6 has not to date, however, done an independent cost analysis for making a BAT determination for the Stripper Subcategory.

Nevertheless, Stripper Subcategory facilities which discharge into "coastal" waters of Louisiana and Texas will also be subject to the general permits' no discharge limitations for produced sands and water if the permits are issued as proposed. As applied to Stripper Subcategory wells, those limitations are required to assure compliance with state water quality standards and other requirements Louisiana and Texas have adopted pursuant to authority they retain under CWA section 510. Those standards and requirements are discussed in a later section of this notice.

Under CWA, an NPDES permittee's "discharges" include discharges performed on its behalf by another party, including a contractor. EPA Region 6 recently learned that some operators subject to the discharge prohibitions of one of its Onshore Subcategory general permits nevertheless believed they were not liable for discharges by parties with whom they contracted for produced water disposal. To avoid such confusion in the future, the general permits EPA Region 6 today proposes prohibit permittees from "causing or contributing" to discharges prohibited by the permits. Causing or contributing to such a discharge includes contracting with another party which actually discharges the pollutants or transports them to a third party which actually discharges them. In addition, disposal contractors have been listed as a class of permittees under the proposed permits, a provision which will render operators and their disposal contractors jointly and severally liable for permit violations. These provisions, which are necessary to assure compliance with the discharge prohibitions of the permits, are authorized by CWA section 402(a)(2).

In summary, the permits will, if issued as proposed, prohibit discharges of produced water and produced sand derived from facilities in the Coastal, Offshore, and Stripper Subcategories to all waters of the United States shoreward of the inner boundary of the Territorial Seas in Louisiana and Texas. In addition, the permits will prohibit the discharge of produced water and produced sand derived from facilities in the Coastal Subcategory to any other water of the United States. It is the responsibility of the permittee to determine if his discharge is covered by this permit. Current National Oceanic and Atmospheric Administration (NOAA) nautical charts can be of assistance in locating the outer boundary of the general permit area. These charts cover the entire coasts of Texas and Louisiana at a 1:80,000 scale, although certain ports and bays have more detailed coverage. They are available from NOAA charts agents, such as marinas and marine supply stores.

Similar discharges from Onshore Subcategory facilities are already prohibited by Onshore Subcategory General NPDES Permits LAG320000 and TXG320000, published at 56 FR 7698 (February 25, 1991). Issuance of the permits proposed today will thus lead to elimination of virtually all produced water and produced sand discharges in Louisiana and Texas, with the exception of Agricultural and Wildlife Water Use Subcategory facilities West of the 98th parallel.

IV. Types of Discharges Covered

Only two waste streams are specifically covered under the general permits proposed here. They are:

(1) Produced water, which is water and particulate matter associated with oil and gas producing formations. Produced water, sometimes called "formation water" or "brine water," includes small volumes of source water and treatment chemicals that return to the surface with the produced formation fluids and pass through the produced water treating systems currently used by many oil and gas operators.

(2) Produced sand, which is sand and other particulate matter from the producing formation and production piping (including corrosion products), as well as source sand and hydrofrac sand. Produced sand comes to the surface mixed with crude oil and produced water, from which it is generally separated by a produced water desander and treatment system. Produced sand also includes sludge generated by any chemical polymer used in a produced water treatment system.

Other waste streams associated with Coastal Subcategory oil and gas activities include drilling fluids (muds), well treatment fluids, blowout preventer fluids, well completion fluids, formation test fluids, workover fluids, treated waste water from dewatered drilling fluids and cutting, drill cuttings, cement, deck drainage, desalinization discharges, domestic and sanitary wastes, uncontaminated ballast/bilge water, uncontaminated seawater, and uncontaminated freshwater. As noted above, Region 6 proposed general NPDES permits regulating those waste streams at 55 FR 23348 (June 7, 1990).

V. Compliance Delays

The reinjection technology on which the permits' produced water discharge prohibitions are based is fully available and has been successfully used by oil and gas operators for many years. Information from the Louisiana Department of Environmental Quality (LDEQ) shows that, as of September 1991, there were 1500 oil and gas wells in "upland areas" that either had ceased or were to cease discharge of (reinject) produced water no later than July 1992, and that out of a total of 464 wells in non-"upland areas" (and excluding territorial seas), 130 were reinjecting produced water and 32 more were on a schedule to reinject. Information from the Texas Railroad Commission (TRC) shows that, as of October 1989, out of a total of 7613 active oil an gas wells in Texas, 6464 were inland of the Chapman Line and 1149 were seaward of the Chapman Line. The Chapman Line is a rough boundary separating "inland and fresh" waters (to which produced water cannot be discharged according to state regulations) from saline waters. This means that of 7613 wells, about 6400 were reinjecting produced water in October 1989.

As a practical matter, some operators, who will be subject to this permit and are not already prohibited by state regulations from discharging produced water, will not be able to employ that technology during the 30 day period between the final publication of the

permits and their effective date. They will have to construct injection wells to eliminate their produced water discharges and will moreover be required to obtain Class II Underground Injection Control (UIC) Permits from the appropriate State regulatory agencies, e.g., the LDEQ and TRC, each of which is authorized to administer a Class II UIC program under the Safe Drinking Water Act in its own state. Even if they started today, it is unlikely these regulatory agencies could process the number of Class II UIC permit applications the oil industry would require for complying with the proposed NPDES general permits by 30 days after the final permits are published. Region 6 also doubts there are enough drilling contractors doing business in Texas and Louisiana to physically construct such a potentially large number of injection wells at a reasonable cost in time for short term compliance with final general permit prohibitions on the discharge of produced water. In addition, time will be required for some facilities to reroute produced water collection lines in order to transport the produced water to injection wells. Accordingly, Region 6 anticipates wide scale noncompliance with the produced water discharge prohibitions as soon as the permits become effective.

Past experience with general NPDES permitting in Region 6 suggests that imposing new requirements on an industry-wide basis may lead to chaotic situations in the absence of a phase-in period. In 1986, for instance, EPA issued a general permit regulating discharges from offshore Subcategory oil and gas facilities on the outer continental shelf of the Gulf of Mexico. See 51 FR 24897 (July 9, 1986). That permit required, *inter alia*, that all offshore operators test their drilling fluids for toxicity before discharge, using *Mysidopsis bahia* as test organisms. Although mysids had been previously used for aquatic toxicity testing in a number of state environmental programs, never before had there been a demand for them as great as this permit feature created. When the permit became effective, there was simply not a great enough supply of mysids to meet this new demand and Region 6 was thus compelled to stay the Offshore general permit's limitation on drilling fluid toxicity until suppliers were able to react. 51 FR 33130 (September 18, 1986).

Providing a phase in period is, however, somewhat problematic. Pursuant to CWA section 301 and 40 CFR 122.47(a)(1), NPDES permits may not include provisions allowing dischargers to achieve compliance with BAT limitations past March 31, 1989. Accordingly, the Region plans to issue a general administrative order under authority of CWA 309(a)(3) when it publishes the final permits. Although the order will not authorize discharges of produced water, EPA will not generally initiate an enforcement action against an operator to whom the order applies as long as that operator complies with the order's terms.

As now envisioned, a draft of the general administrative order is published as Appendix A to this notice. Because this is a somewhat unusual situation, Region 6 is taking the somewhat unusual measure of soliciting comment on the prospective terms of an administrative compliance order. It should be noted, however, that this will not render the general order judicially reviewable in the same manner as the final permit. It is well settled that EPA-issued administrative compliance orders are not ripe for judicial review until the Agency enforces them. See, e.g., *City of Baton Rouge* v. *U.S. EPA*, 620 F 2d 478 (5th Cir. 1980).

As drafted, the administrative order will apply to only those discharges from existing wells to "coastal" waters of Louisiana other than "upland area waters" and to "coastal" waters of Texas other than "inland or fresh waters", and from existing Coastal Subcategory wells to other Waters of the United States. The LDEQ has adopted LAC:33, IX, 7.708, regulating discharges of produced water. That State rule, which is more fully described later in this notice, prohibits discharges to "upland waters," a term generally denoting those Louisiana surface waters located north of the nine coastal parishes contiguous to the Gulf of Mexico, cease by July 1, 1992. Regulations of the TRC (Statewide Rule 8(e)) likewise prohibit the discharge of produced water to inland and fresh surface waters in Texas.

EPA moreover perceives no reason that the order should apply to discharges from new facilities, i.e., wells spudded after the effective date of the permits. If such wells are currently envisioned, they are still in the planning stage, so obtaining access to reinjection facilities should at most merely delay the time at which they can be drilled and operated.

EPA Region 6 also solicits comment on the final compliance date of the draft order. In adopting LAC. 33, IX, 7.708, LDEQ has already considered this issue and established a schedule under which facilities discharging produced water to saline coastal waters must either cease discharge or meet specified State effluent limitations. That schedule, which appears to be only indirectly based on water quality considerations, will require all Louisiana operators to comply with the rule no later than January 1, 1997, except for operators discharging to certain open bays along the Gulf coast, who may seek exemptions from the rule. In addition, operators may continue to discharge to major deltaic passes of the Mississippi River or to the Atchafalaya River if authorized by a State-issued permit. Because it has adopted no prohibition on discharges of produced water to saline surface waters, TRC has not adopted a corresponding schedule for cessation of such discharges.

Region 6 has no desire to work at cross purposes to either LDEQ or TRC. It must, however, exercise independent judgment in including a final compliance date in the administrative order. As drafted, the administrative order requires final compliance three years after its issuance. The degree to which this would require faster compliance in Louisiana is uncertain, depending on the date of EPA's final action on this proposal. EPA does not, on the other hand, intend to allow any discharger more time to comply with Louisiana's limitations than the State allows. See CWA 301(b)(1)(C). The proposed Louisiana permit thus mandates compliance with the requirements of LAC. 33, IX, 7.708 *via* narrative limitation and the draft administrative order does not affect that permit provision.

EPA usually includes interim limits in the administrative compliance orders it issues and Region 6 is considering imposing interim limits on produced water discharges which would be subject to the administrative order. It might for example base such a limit on the BPT Coastal Subcategory guidelines (40 CFR 435 42). Because those guidelines are based on a treatment technology that has been available and widely used for many years, its adoption would arguably require little operator effort. Region 6 believes, however, that a number of operators now discharging produced water to coastal waters of Louisiana and Texas may not have installed separation equipment capable of complying with a BPT limit. To comply with an interim BPT limit, such operators may have to make a substantial short-term investment in new oil/water separation equipment which might be rendered obsolete at the end of the administrative order's delayed compliance period. The increased cost of purchasing and installing that equipment appears unreasonable to EPA Region 6 in view of the short-term and relatively modest

water quality improvements in which its application would result.

This does not, of course, mean that operators subject to the permits and administrative order can simply fail to control their discharges until they comply with final permit limits. The draft administrative order contains a provision requiring operation and maintenance of existing pollution control equipment, including oil/water separators, at all times. Requiring some form of discharge monitoring and/or reporting in the administrative order would render those operation and maintenance provisions more enforceable, but the draft order contains no such monitoring and reporting requirement. Region 6 will carefully consider all suggestions for such monitoring and reporting requirements in view of its competing desire to avoid unnecessary paperwork.

Dated: December 9, 1992.

W. B. Hathaway,

Acting Regional Administrator, Region 6.

VI. Specific Permit Conditions

Appropriate permit conditions are based on

(A) Best Conventional Pollutant Control Technology (BCT) to control conventional pollutants,

(B) Best Available Treatment to control toxic and nonconventional pollutants,

(C) Louisiana Produced Water Regulations

(D) Louisiana Water Quality Standards

(E) Texas State regulations, and

(F) Texas Water Quality Standards.

Discussions of the rationale for specific effluent limitations for produced water and produced sands appear below For convenience, these requirements and their regulatory basis are cross-referenced by the type of discharge in Table 1.

A Best Conventional Pollutant Control Technology (BCT) Conditions

Since no Coastal Subcategory effluent guidelines beyond BPT exist, the Region is establishing BCT effluent limitations on a best professional judgment basis (BPJ). The BPJ evaluations include a review of produced water treatment options developed by the Agency for the proposed Offshore Subcategory guidelines (50 FR 34591, August 26, 1985; 55 FR 49094, November 26, 1990; and 56 FR 10664, March 13, 1991), since those treatment options will be applicable to coastal produced waters. As explained in the following pages, BCT requirements for produced water are the same as existing BPT limitations (48 mg/1 daily average, 72 mg/1 daily maximum oil and grease), because a more stringent treatment option did not pass the BCT cost test. The Region is proposing as a BCT requirement that the discharge of produced sand be prohibited, because the zero discharge requirement passes the BCT cost test.

1. Produced Water

As explained in the following pages, BCT requirements for produced water are the same as existing BPT limitations (48 mg/1 daily average, 72 mg/1 daily maximum oil and grease) because a more stringent treatment option did not pass the BCT cost test.

As discussed below, the technology evaluated for possible produced water BCT controls more stringent than BPT include improved performance of BPT technology, filtration, biological treatment and reinjection. Due to the similarities between Coastal and Offshore produced water characteristics and control technologies, the same BCT produced water control technologies are evaluated for Coastal that were evaluated in the proposed Offshore Subcategory guidelines (50 FR 34591; 55 FR 49094, November 26, 1990; and August 26, 1985; 56 FR 10664, March 13, 1991). The BPT limitations, 49 mg/1 daily average and 72 mg/1 daily maximum, on oil and grease have been promulgated at 44 FR 22069 (April 13, 1979) and codified at 40 CFR part 435, Subpart D.

a. Improved performance of BPT technology. This technology consists of improved operation and maintenance of existing gas flotation equipment, more operator attention to treatment system operation, and possibly resizing of certain treatment system components for better treatment efficiency. The 1985 Offshore guidelines action, which included results from a 30 platform study, found that improved BPT performance could achieve a 59 mg/1 oil and grease maximum concentration for discharged produced water.

The March, 1991, proposed Offshore guidelines reanalyzed the 30 platform data related to improved BPT performance evaluation, and found that oil and grease limitations achieved through improved BPT performance would be 38 mg/1 as a daily maximum and 27 mg/1 as a monthly average. Because of a lack of adequate documentation on samples used in the original 30 platform study upon which the improved BPT performance test was conducted, this treatment was not listed as a preferred Agency option in the 1991 proposed Offshore Guidelines. EPA, however, received additional data on performance of improved gas flotation technology in response to the 1991 proposal, and as part of a petition requesting that the method for determining compliance with the oil and grease limits be one that measures only "insoluble" oil & grease. The data now being used in arriving at the final decision on produced water limits in the Offshore Guidelines is EPA's 30 Platform Study, the OOC's 42 Platform Study (1990), the OOC's 83 Platform Composite Study (1991) and EPA's "Oil Content in Produced Brine on Ten Louisiana Production Platforms" (1981). EPA is, therefore, reconsidering improved performance gas flotation treatment for produced water for the Offshore Guidelines, and as will be discussed later in this Fact Sheet, is expected to have this treatment as the preferred BAT option for the final Offshore Guidelines. The improved performance gas flotation, however, does not pass the BCT cost test for the Offshore Guidelines. The Region is taking the position that improved performance gas flotation will also not pass the BCT cost test for the Coastal Subcategory wells.

b. Granular filtration. Granular filtration removes suspended matter, as well as oil and grease from produced water. The 1985 Offshore guidelines proposal indicates that granular filtration can reduce total suspended solids (TSS) and oil and grease beyond the BPT level of control treatment for offshore and coastal produced water. It found, however, that granular filtration systems are not useful in the removal of soluble materials and priority pollutants. Both the above cited 1985 and 1991 Offshore guidelines proposals found that granular filtration technology warranted further consideration for new source performance standards (NSPS) and BCT and reserved this option. The 1991 proposed Offshore guidelines suggest that granular filtration could achieve oil and grease discharge limits of 16 mg/l daily average and 29 mg/l daily maximum.

The Region has not adopted granular filtration as an add-on BPT technology option for BCT in these coastal permits. Although granular filtration is effective in reducing discharge concentration levels of oil and grease below BPT, the 1991 proposed Offshore guidelines showed that this technology does not pass the BCT cost test (i.e., the POTW comparison test).

c. Membrane filtration. In considering add-on technology to BPT, the Agency also considered membrane filtration in the 1991 proposed Offshore guidelines. In this proposed rule, it was found membrane filtration technology reflected adequate treatment beyond

BPT for the offshore and was more efficient in the removal of organic compounds than either BPT or granular filtration technologies. The proposed guidelines found that membrane filtration as a BPT add-on was capable of achieving oil and grease discharge limits of 7 mg/l monthly average and 13 mg/l daily maximum.

Membrane filtration, at this time, does not appear practicable as an add-on option to BPT in the Coastal Subcategory because of the lack of an adequate data base derived from facilities located in the area and because the current data have not yet demonstrated the technology to be readily available at facilities in the Coastal Subcategory. In addition, the 1991 proposed Offshore guidelines found that this technology did not pass the BCT cost test.

d. Biological treatment. In the 1985 Offshore Guidelines proposal, the Agency considered biological treatment for produced water as add-on technology to BPT as a means to reduce the content of oil and grease in produced water. Investigations showed that there are severe problems with acclimating and maintaining biological cultures in produced waters in effluents with high dissolved solids concentrations (brines). Consequently, in the 1991 proposed Offshore guidelines, EPA rejected this technology from further consideration as an add-on BPT option for BCT.

e. Reinjection. In the 1991 proposed Offshore guidelines, EPA also evaluated reinjection, which may also include the removal of oil and suspended matter, as a treatment option for produced water. The removal of oil and suspended material prior to injection may be required to prevent pressure build-up in the receiving formation. The application of reinjection technology results in no discharge.

Reinjection has not been adopted as a BCT level of control for conventional pollutants by the Region because this technology does not pass the BCT cost test (see Section VI.A.1.f, below).

f. Evaluation of options using BCT cost test. The BCT treatment technologies considered in the 1991 proposed Offshore guidelines (or reconsidered as a result of comments) and outlined above involve either improved gas flotation (improved performance BPT), filtration as add-on to BPT (granular or membrane) or reinjection. In the 1991 proposed Offshore guidelines (and in reconsideration as a result of comments), all of these treatment technology options were evaluated according to the BCT cost tests. The parameters used in those analyses were TSS, and oil and grease. All of the BCT options failed BCT cost tests except for BCT equal to BPT. On the basis of the test results, the Agency set BCT=BPT for produced waters in the offshore in both the cited 1985 and 1991 actions and is expected to maintain this position in the final decision on the Offshore guidelines.

For this permit, the BCT cost test results will be the same as for the proposed Offshore guidelines. The Region, however, has recalculated the BCT cost tests for reinjection because a recent Region 6 survey of production statistics and disposal cost data for the Coastal Subcategory shows that the cost is significantly higher than the $3.47 to $3.71 per pound of conventional pollutant removed developed from the data set used in the 1991 proposed Offshore guidelines.

The Regions BCT cost test for oil and grease removal was based on the current BPT limitation of 48 mg/1 monthly average. The oil and grease concentration per barrel of produced water is, therefore, 48 mg/1 X 159 1/bbl, or 7,632 mg oil and grease per barrel. In pounds this amount is equivalent to 0 0167 pounds per barrel. The cost of injection was found to vary according to location (i.e., costs related to facilities located over land, marsh or water). The range of these costs has been determined by industry (Walk & Haydel, 1989) to be $0.20 to $0.52 per barrel (1991 dollars). Per barrel costs reevaluated from the data base used by Walk and Haydel (M. Kavanaugh for Avanti to EPA, 1/17/92) was found to range from $0.15 (for a large land-based injection facility with 100% capacity utilization) to $1.02 (for a small bay-based facility with 50% capacity utilization) per barrel (1991 dollars). Utilizing the lowest costs from the reevaluated Walk and Haydel data, the cost for reinjection of produced water is $0.15 per barrel, or $8.96 per pound of oil and grease removed. This cost significantly exceeds the BCT base-line cost of $0.46 per pound of pollutant removed and, therefore, reinjection fails the BCT cost test. The failure of this first portion of the BCT cost test (the POTW comparison) obviates the need to perform the second portion of the test (Internal Cost Ratio Test).

g. Summary of BCT for produced water: The treatment options evaluated for BCT are: Improved performance of BPT technology, add-on granular filtration to BPT, add-on membrane filtration, add-on biological treatment and reinjection. These options are the same as those considered in the 1991 proposed Offshore guidelines, since the appropriateness of these treatment technologies should be the same for both offshore and coastal produced water treatment. As with the proposed offshore guidelines, all of the technologically promising treatment options beyond BPT were rejected because they did not pass the BCT cost test. Therefore, the BCT level of control for produced water remains the same as BPT, 48 mg/1 daily average and 72 mg/1 daily maximum for oil and grease.

2. Produced Sand

Produced sand, after being separated from the produced water, is either transported in drums to approved non-hazardous waste disposal sites, or washed with water or solvent and then discharged. The primary pollutant of concern under BCT is oil and grease. No BPT, BCT and BAT guidelines limits for produced sand have been promulgated for the Coastal or Offshore Subcategories. The 1991 proposed offshore guidelines did select BCT for proposed sand as "no free oil" without, however, evaluating the no discharge option under the BCT cost test. The available options for BCT are either the no discharge or the "no free oil" levels of control. Since the no discharge option is the most effective at reducing the discharge of conventional pollutants, this option was selected for evaluation under the BCT cost test.

a. BCT cost analysis for no Discharge. This BCT cost analysis for produced sands is based on the following assumptions: Disposal costs will be similar to those for muds and cuttings; specific gravity of produced sand will range from 2.6 g/ml to a high of 2.8 g/ml, porosity of "settled" produced sand will range from 30% to 50% (the unlikely higher value is used to test low sand to water volume ratio); all sands are measured as TSS as per 40 CFR part 136 (Standard Method, 209 C (filtration)). The following calculations were made:

—One barrel (159 liters) of sand at 30 to 50% porosity yields 79.5 to 111.3 liters of produced sand;

—Specific gravities of 2.6 to 2.8 g/ml yields produced sand weights of 455 to 684 pounds per barrel.

A per barrel cost for land disposal of a barrel of drill cuttings and drilling mud has been calculated in the proposed 1991 Offshore guidelines to be $35 to $51 per barrel. Of these costs, $7 to $10 per barrel had been allocated to land disposal cost, with the remainder being allocated to transportation costs. Using a worst case scenario ($51 per barrel disposal cost) and the lowest estimates of pounds of pollutants removed per barrel (estimated highest

porosity 50%), the cost of land disposal of produced sand is $0.11 per pound of TSS removed. This cost is well below the BCT/POTW benchmark cost of $0.46 per pound of conventional pollutant removed. Alternatively, the Development Document for the proposed 1991 Offshore subcategory guidelines (EPA 440/1–91–055, March 1991, page VI–28) estimates land disposal of muds and cuttings costs to be $33 to $111 per barrel. A "worst case" analysis, using the higher disposal cost ($111/barrel) and the lowest amount of TSS removed (445 lbs derived from the highest porosity/barrel of sand) results in a $0.24/pound conventional pollutant removal cost, also well below the POTW benchmark of $0.46 per pound. Both cost exercises, therefore, meet the BCT cost test for conventional pollutants.

The above cost estimates are definitely "worst case" because the transportation costs, which are a large part of the disposal costs for muds and cuttings, are expected to be minimal for produced sand. This is due to the small volumes of sand produced per well and the fact that, for the most part, they are infrequently discharged. This is the case for Coastal Subcategory wells as well as Offshore Subcategory wells.

The Internal Cost Ratio (ICR) test is the second part of a BCT cost test. This test assesses the ratio of current-to-BPT incremental cost ratios. Quantification of BPT costs for disposal of produced sand are not available because the BPT guidelines for the Coastal Subcategory do not specifically deal with this waste stream. Onshore disposal of some of this waste is a current industry practice. The Offshore Operators Committee (OOC) estimates that 32% of the produced sands in the offshore (a 1991 May survey indicates 13,225 barrels of a total 41,627 barrels) were disposed of onshore. Therefore, it is assumed that the disposal costs under BPT are approximately the same as has been calculated for BCT, above, and the Industry Cost Ratio (ICR) will approximate unity. Thus, this portion of the BCT cost test also is passed by the zero discharge limitation for coastal facilities.

b. Summary of BCT for produced sand. The zero discharge limitation on the discharge of produced sand is proposed for these permits because onshore disposal costs fall significantly below the BCT benchmark removal cost for conventional pollutants.

B Best Available Technology Economically Achievable (BAT) Conditions

1. Produced Water

As explained in the following pages, BAT for Coastal produced water is determined to be no discharge, based on best professional judgement.

a. Sources of data and information. Information used in determining BAT for produced water includes EPA reports, guidelines documents, responses to formal requests for information, data and information from state regulatory agencies, Minerals Management Service (MMS) environmental impact and technical reports, American Petroleum Institute (API) studies, data provided by the Offshore Operators Committee (OOC), proceedings from industry conferences and symposia, and published technical journal reports. In addition, a number of individuals in state agencies provided, through personal communications, a variety of data used preparing this section. The references cited in portions of the text, are listed at the end of this fact sheet.

b. Characteristics of produced water as related to BAT. The pollutants contained in produced water have been characterized as including oil and grease, dispersed and dissolved hydrocarbons, heavy metals, treating chemicals and radionucleides. Boesch and Rabalis (1989) have estimated produced water discharged into Coastal Subcategory waters and territorial seas waters of Louisiana to be 1,952,386 barrels per day, revised in 1991 (MMS 91–004) to 1,954,049 barrels per day. The same authors report that daily, 721,745 barrels of produced water are discharged to the Coastal Subcategory Waters of Texas.

In the proposed 1991 Offshore guidelines a 30 platform study which gave the concentrations of toxic pollutants in produced water. The study showed flow-weighted oil and grease effluent concentrations averaging 89.8 mg/l. Priority organics present in significant amounts were benzene, bis (2-ethylhexyl) phthalate, ethylbenzene, napthalene, phenol, toluene and 2,4-dimethylphenol. The proposed Offshore guidelines reported that produced water also contains priority metals, particularly cadmium, copper, lead, nickel, silver and zinc, as well as variable amounts of biocides, corrosion and scale inhibitors, emulsion breakers, treating chemicals (reverse emulsion breakers, coagulants, flocculants), antifoams and paraffin/asphaltine treating chemicals. In a study of OCS produced water routed to coastal areas for treatment and discharge, Rabalais et al. (1989) listed 31 selected organic compounds in the produced water, including significant levels of benzene, toluene and phenol. Produced water from gas processing units may also utilize hydrate inhibition chemicals. The Region has concluded that the above offshore produced water characteristics will also apply to produced waters in the Coastal Subcategory.

A recent review (Avanti for EPA, April 18, 1992) of DMR's provided by LDEQ has indicated a list of 44 organic compounds and metals, including priority pollutants, are present in Coastal Subcategory produced water (see Table 2). It is assumed that the list of contaminants in produced water within the Coastal Subcategory will be similar in both Louisiana and Texas.

c. Derivation of BAT (BPJ) permit requirements. In this discussion, oil and grease is being used as an indicator pollutant controlling the discharge of toxic pollutants under BAT. EPA considered, in the request for comments, Offshore guidelines (50 FR 34591, August 26, 1985) as well as the proposed Offshore guidelines (56 FR 10664, March 13, 1991), add-on technology to BPT for the removal of toxics and nonconventional pollutants under BAT. In these 1985 and 1991 actions, the Agency considered several add-on technology options for possible BAT control of toxics and priority pollutants. Most of these add-on treatment options are the same ones that were considered in deriving the BCT level of treatment for produced water. These options of carbon adsorption, biological treatment, chemical precipitation, granular filtration, membrane filtration, improved performance of BPT technology, and reinjection are discussed below.

(1) Carbon adsorption. In the 1985 above cited action, one BAT option the Agency considered was carbon adsorption as a BPT add-on to remove priority pollutants from produced water. This option was rejected in the 1985 action and again in the 1991 proposed Offshore guidelines because of the unknown effects that brines may exert on the adsorption process and because of the Agency's limited data on cost and performance data of this process. This BAT option is also being rejected for this Coastal Subcategory permit for the same reasons.

(2) Biological treatment. The 1985 guidelines action considered the BAT option of biological treatment as add-on technology to BPT; however it found severe problems with acclimating and maintaining biological cultures to treat

brine wastes. Additionally, this technology has not been tested with waters having total dissolved solids concentration levels encountered in produced water. The Agency rejected this option for the Offshore Subcategory, and the Region is also rejecting this option for this Coastal permit for the same reasons.

(3) Chemical precipitation. The 1985 and 1991 Offshore guidelines actions considered the BAT option of chemical precipitation as a possible add-on BPT technology for produced water. This technology can be useful in removing soluble metallic ions from solution by converting them to an insoluble form. Hydroxide precipitation and sulfide precipitation were found to remove virtually no zinc, the priority pollutant found in most samples, from BPT-treated produced water because of the low concentrations of the metal. The use of sulfide precipitation was found to be problematic due to sulfide gas generation, requirements for large settling facilities and problems with the disposal of large quantities of sludge generated by the process. The Agency rejected this option for Offshore guidelines, and the Region is also rejecting it for the Coastal permit.

(4) Granular filtration. In the 1985 and 1991 proposed Offshore guidelines actions, the Agency considered the BAT option of granular filtration as an add-on to BPT. The Agency rejected this option because most priority pollutants or metals contained in produced hydrocarbons and entrained in produced water are in solution or in a soluble form; therefore, no quantifiable reductions in these pollutants are obtained by granular filtration technology alone. For these reasons, the Region also is rejecting this option as being BAT for produced water.

(5) Membrane filtration. In the 1991 proposed Offshore guidelines, the Agency considered the BAT option of membrane filtration as an add-on to BAT for produced water facilities located 4 miles or less from shore. Membrane filtration technology is relatively new as applied to the oil industry; although, it has been applied to a number of other industries for some time. For example, membrane filters are used to separate oil, bacteria, solids and emulsified material from water in dairy, pharmaceutical and beverage industries. Although membrane filter technology can reduce oil and grease to concentrations of 13 mg/l daily maximum and 7 mg/l monthly average, the filter units require periodic chemical cleaning and blow down. There is a lack of data on filter characteristics and filter configurations needed to treat the priority organic and metallic pollutants known to be present in produced water, as well as a lack of data on the levels of priority pollutants remaining after treatment with membrane filtration. In spite of these unknowns, the 1991 proposed Offshore Guidelines considered membrane filtration to be the preferred BAT option for produce water for facilities located 4 miles or less from shore. EPA has, however, reconsidered the use of membrane filtration as BAT for the Offshore Guidelines as a result of comments received on the 1991 proposal, and as a result of additional data obtained by EPA in April, 1991. For the Offshore Guidelines, EPA has found that membrane filtration is not technically available as a BAT treatment option at this time. The region is, therefore, rejecting the BAT option of membrane filtration as an add-on to BPT for these Coastal permits.

(6) Improved performance of BPT technology. As discussed previously in the BCT section of this Fact Sheet, EPA has reconsidered, based on additional data, the use of improved performance BPT (improved gas flotation) as BAT for produced water for the Offshore Guidelines. EPA has now found that improved performance BPT is economically and technologically achievable for Offshore Subcategory facilities.

Compared with the other BAT options, the most effective means of removing oil and gas industry produced water discharges of non-conventional and toxic pollutants to waters of the U.S. continues to be reinjection. As discussed below, the 1991 proposed Offshore Guidelines rejected produced water reinjection as BAT for Offshore facilities. As shown by the following discussion, the reasons given in the 1991 proposed Offshore Guidelines for not adopting reinjection as BAT are not applicable to the Coastal Subcategory areas of Texas and Louisiana.

(7) Reinjection. In the 1985 proposed Offshore guidelines action, EPA considered reinjection for all wells located in shallow waters as the preferred treatment option to define BAT. In this action, reinjection was found to be technologically feasible for meeting a zero discharge standard for platforms located in water depths of 20 meters or less. The Agency considered reinjection for all shallow water structures except for gas wells, which were found to discharge considerably less produced water (1/15 of oil well discharges). When EPA evaluated this reinjection option for all wells located in the Offshore Subcategory (sum of both shallow and deep water wells) the Agency found reinjection to be technologically feasible and economically achievable for new sources but deferred a similar opinion regarding reinjection for existing wells because of lack of data and estimated cost (50 FR 34591). In considering zero discharge for new sources the Agency was prompted by studies which indicated injection would provide the most protection for environmentally sensitive marine areas. These factors prompted the Agency to consider variable depth limits and conditions which would allow for alternative onshore reinjection by an offshore facility.

In the 1991 proposed Offshore Guidelines, the Agency stated that while reinjection is generally technologically feasible in all offshore areas nation wide (i.e., suitable formations and conditions are available for disposal operations), some specific areas may experience problems in being able to inject due to formation characteristics or the proximity to seismically active areas. There were also concerns about higher air emissions and fuel use associated with the large pumps used to reinject fluids. The 1991 proposed Offshore Guidelines also stated that reinjection for all offshore wells nationwide would result in a 4.9% production loss.

The reasons given in the 1991 proposed Offshore Guidelines for not adopting reinjection as BAT are not applicable to the Coastal Subcategory areas of Texas and Louisiana. The Coastal Subcategory areas of Texas and Louisiana are not seismically active. Numerous geological studies have shown that there are ample numbers of injection horizons with favorable formation characteristics in the Coastal Subcategory areas of Texas and Louisiana.

In the 1985 proposed Offshore Guidelines, the Agency indicated that the additional energy requirements imposed by zero discharge are due primarily to the filtration and pumping of produced water into injection wells. It was found that there would be small incremental energy requirements for reinjection of produced water and this would not significantly affect the costs of pollution control nor measurably affect energy supplies. The 1985 action also found that when additional pumping is required, additional air emissions would be created due to the use of diesel or gas engines for generating power and this concern was reiterated in the 1991 proposed Offshore guidelines. In contrast to these findings for Offshore, power for reinjection from many Coastal Subcategory wells would be obtained from local power companies

or generated from power take-offs from existing equipment, with no significant increase in emissions from onsite-power generation.

The Region finds that reinjection of produced water in the Coastal Subcategory areas of Texas and Louisiana is technologically feasible. When compared with other BAT options, it is the most effective means of removing oil and gas industry discharges of non-conventional and toxic pollutants to waters of the U.S. These findings are supported by the Agency's proposed 1985 and 1991 proposed Offshore guidelines actions when the differences between Texas and Louisiana Coastal Subcategory areas and Offshore areas nationwide are considered. In addition, as discussed in section V of this Fact Sheet, about 6,400 of 7,600 oil and gas wells in Texas and about 1,660 of 1,960 oil and gas wells in Louisiana are already reinjecting their produced water.

d. BAT cost analysis for no discharge

The BAT cost analysis for the produced water no discharge requirement (Avanti, July, 1992. Economic Analysis—Produced Water) consists of three parts: The financial impact of compliance with the no discharge requirement on companies involved in Texas and Louisiana Coastal production, the impact of compliance with the no discharge requirement on loss of future oil production in Texas and Louisiana Coastal areas, and a cost effectiveness analysis.

(1) Basis of analysis. Since Louisiana State Regulation LAC:33,IX,7.708 (discussed fully in section VI.C.1.b of this Fact Sheet) prohibits the discharge of produced water to upland fresh waters after July, 1992, EPA assumed that the permit's BAT No Discharge requirement for those areas would have no further cost to companies and no incremental loss of future production.

Texas Statewide Rule 8 (discussed in section VI.C.1.c of this Fact Sheet) prohibits the discharge of produced water to inland and fresh waters in Texas. The BAT cost analysis, therefore, assumes that for those areas there will be no additional cost to companies and no additional loss of future reserves. For these analyses, it was assumed that all Texas waters inland from the Chapman Line are fresh. The State's prohibition on discharges of produced water to inland and fresh water areas was also factored into the cost effectiveness analysis.

As will be shown later in this Fact Sheet, one of the bases for requiring no discharge of produced water is that such discharges would violate water quality standards in both Texas and Louisiana, and that such discharges in Texas would violate the Texas Hazardous Metals Regulation. The BAT cost analysis does not, however, assume compliance with state water quality standards and the Hazardous Metals Regulation (i.e., no discharge of produced water into state coastal waters), thereby making the cost estimate conservative.

(2) Financial impact on companies. Determining the potential financial impact of the BAT No Discharge requirement on Coastal Subcategory operators involved three steps. The first step was to identify the operators, their produced water discharge volume, and their financial characteristics. The second step was estimating compliance costs for each operator. The third step measuring compliance costs relative to short-run (working capital) and long-run (equity) financial measures.

(i) Identification of Operators—According to Louisiana Department of Environmental Quality and Texas Railroad Commission records, there are 101 companies operating in coastal waters of Louisiana and Texas that discharge into intermediate, brackish or saline waters. These companies discharge 350 million barrels of produced water annually. This discharge volume is distributed unevenly among operators. Fifty five per cent of the 101 companies discharge less than 1000 bbl/day with the average discharge among these companies being 950 bbl/day. Eighteen of the 101 companies discharge 90% of the total volume of produced water, and 10 of the 101 companies account for 80% of the total volume discharged. There are 27 of these 101 companies with publicly available information. These 27 companies, therefore, were used as the basis for the financial impact analysis which measured compliance cost relative to short-run and long-run financial measures. The 27 companies represent a mix of large and small companies and produced water dischargers. The range of asset size of the 27 companies is $23 million to $87 billion and the range of produced water discharge rates is 32,000 bbl/year to 59.5 million bbl/year. These 27 companies discharge 73% of the produced water volume discharged by the total 101 coastal companies.

(ii) Compliance Cost to Operators—Compliance costs of meeting the BAT produced water No Discharge requirement were calculated for each of the 101 companies operating in Louisiana and Texas coastal waters using estimated reinjection costs from Kerr Associates and the produced water volumes from the above-noted State agency records. The Kerr study is a reevaluation of a produced water reinjection cost study by Walk, Haydel & Associates (1989) conducted for Mid-Continent Oil and Gas Association on the impact of Louisiana regulations on the oil industry. The Kerr study estimated after-tax cost of injecting a barrel of produced water using a new well (and assuming 75% capacity utilization). These costs are presented in Table 3. These costs are a refinement of the Walk, Haydel study and are somewhat lower; although, they do not reflect one of Kerr's major concerns of the Walk Haydel study that the pretreatment assumptions (filtration of the produced water prior to injection) represents an excessive cost. The Kerr study said that a more realistic pretreatment assumption, at considerably lower cost, would be the use of tank batteries to settle solids prior to injection. The cost of the filtration is still used in the Table 3 costs because of the lack of cost data on tank batteries. For this compliance cost analysis, it was assumed that most operators will use 3,000 bbl/day land-based (in Texas) or marsh-based (in Louisiana) wells for reinjection of produced water. It was assumed, however, that dischargers with the larger produced water volumes will use larger wells to capture available economies of scale. In this regard, the 5 largest dischargers in Texas are assumed to use 6,000 bbl/day land-based wells. In Louisiana, it was assumed that 7 large dischargers will use 9,000 bbl/day marsh-based wells and 3 other large dischargers will use 6,000 bbl/day marsh-based wells. In addition, 3 Louisiana operators in bays will use 9,000 bbl/day bay-based wells and 2 Louisiana operators in bays will use 6,000 bbl/day bay-based wells. These compliance costs represent, of course, a worst case scenario since it will not be necessary to drill all new injection wells. Instead, dry holes and abandoned wells can be used in a number of instances or the produced water can be used for secondary recovery projects in other instances. The results of this compliance cost analysis shows that the annual state wide pollution control cost for the Coastal BAT no discharge requirement is $73.9 million in Louisiana and $13.8 million in Texas.

(iii) Compliance Cost Relative to Long-run and Short-run Financial Measures—Measuring compliance costs relative to long-run (equity) and short-run (working capital) financial measures for the 27 companies used in the financial impact analysis showed a very small equity change, ranging from less

than 0.001% to 0.24%, as a result of the BAT No Discharge compliance costs.

The one exception was a company that had a 28% equity change. This company was an anomaly among the group used in the analysis in that it had the smallest assets of the 27 companies, but was one of the largest produced water dischargers among the total 101 companies. There was working capital information for 17 of the 27 companies. The analysis also showed a very small working capital change (0.001% to 3.1%) as a result of the BAT No Discharge requirement.

(3) Impact on loss of future production. This analysis estimates the oil production lost (oil not produced) because of the added cost of complying with BAT produced water No Discharge requirements. At some point in the life of every field, the cost of producing the oil will become greater than the profits to be made from producing it. The cost of complying with the BAT No Discharge requirements may, therefore, cause this point to be arrived at sooner, shortening the life of the field. This may result in more oil being left in the formation than would be the case if there were no additional cost of complying with BAT.

This analysis was performed for 36 Coastal Subcategory fields in Louisiana. These fields were selected because there was available data both on produced water discharge rates and produced oil rates for these fields. Although there was produced water discharge information for all of the Louisiana Coastal fields there was produced oil rate information on only part of them. These 36 fields (4 bay fields and 32 marsh fields) discharge 59.5 million bbl/year of produced water, which is 19.6% of the produced water discharged to coastal Louisiana. These fields represent a variety of fields in bays and marshes, and are representative of the types of Coastal Subcategory wells in Louisiana and Texas. The water-oil ratios for these fields range from .04 to 24.4, the produced water discharge rates range from 7,300 bbl/year to 15.1 million bbl/year, and the energy production rates range from 8,700 bbl of oil equivalent (BOE) per year to 4.25 million BOE/year.

The oil production loss analysis estimates the amount of recoverable oil production from the field without the additional cost of BAT No Discharge compliance, and subtracts from it the estimated amount of recoverable oil production with the additional BAT compliance cost. To determine the amount of recoverable oil without the additional compliance cost it is necessary to know what the total remaining recoverable reserves are for the field; that is, where the field is in its production life. That information was not available for the 36 fields used in this analysis. The amount of recoverable oil production was, therefore, estimated by using recent oil production rates and assuming a constant 15% oil production decline rate for each of the fields.

Other factors involved in the analysis are oil prices, oil production costs, BAT compliance costs, and tax rates. All of these factors were assumed to remain constant throughout the production life of the field. The price of oil was projected to be $21 per bbl. Oil production costs, excluding the produced water reinjection costs, was based on "Costs and Indices for Domestic Oil and Gas Field Equipment and Production Operations 1987, 1988, 1989" published by the Energy Information Administration (EIA). Production costs were scaled down from EIA's cost estimates for a 12-slot Gulf of Mexico platform. Costs for three model oil production facility sizes were developed. The largest model facility (used to analyze the large bay fields) was scaled down to approximately ⅛ of the Gulf-12 platform cost. The intermediate size facility (used for small bay and large marsh fields) was assumed to be ½ of this largest model facility's cost. The small size production facility (used for small marsh fields) was assumed to be ¼ of this largest model facility's cost. These production costs are presented in Table 4. A field may contain both large and small production facilities. The number and size of production facilities in each of the 36 fields was approximated from information on the number and size of their produced water outfalls. A very conservative BAT compliance cost was assumed to be $0.41/bbl (Table 3). This compliance cost is conservative because it is based on the cost for a small, marsh-based injection well with no allowance for economy of scale, use of produced water for secondary recovery or use of abandoned wells. A combined state and local tax rate of 38.5% was used.

The production loss analysis for the 36 Louisiana fields showed that the average loss of oil production for these fields due to the cost of complying with BAT (reinjection of the produced water) was 8.2 percent of the estimated coastal oil production without this compliance cost. It is reasonable to assume that the same percent loss of estimated oil production would occur in coastal Texas fields, because similar geological conditions occur in both state coastal areas. It should be noted that this estimated percentage loss of oil production is not meant to represent the percent loss of oil production for all coastal oil production facilities covered by these permits. Such a percentage production loss, if the information was available to calculate it, would be much lower, since the produced water BAT requirement of No Discharge does not have an additional compliance cost to production facilities that might potentially discharge to fresh waters in Texas and to fresh waters in Louisiana. Such produced water discharges are already prohibited by state rules or regulations described in sections VI.C.1.b and c of this Fact Sheet. It should also be noted that for Louisiana production facilities currently discharging to intermediate, brackish and saline waters (except possibly large bays) the BAT requirement would have only a small impact, since they will have to cease discharge by January, 1997 anyway (see section VI.C.1.b of this Fact Sheet).

(4) Cost effectiveness analysis. The cost effectiveness analysis estimates the cost of pollution control per pound equivalent (PE) removed annually. This cost is then compared with the cost per PE for BAT requirements for other industries. Pollutant PE's are calculated to represent a weighted quantity of pollutants that would have entered the environment without the proposed regulations or permits. PE's are calculated by multiplying each pollutant concentration by the annual volume of produced water discharged and by a weighing factor that puts each pollutant quantity on an equivalent scale by accounting for varying degrees of toxicity. For example, a pound of radium is considered more toxic than a pound of silver; therefore, the toxic weighing factor for radium is higher. The toxic weighing factors are based on a methodology that uses human health and aquatic life criteria developed by EPA (Quality Criteria for Water, 1986) for each pollutant. For these permits, marine toxic weighing factors were used (resulting in a higher cost/PE) since the receiving waters for which there will be an additional compliance cost due to these permits will be mainly marine or estuarine. The complete methodology and derivation of the toxic weighing factors used for this analysis are presented in Verser (1992).

The BAT cost per PE for these permits, as well as those for a number of other industries, is listed in Table 5. The cost per PE for these permits were calculated by multiplying the cost of disposal (from section d.(1), above) by the total volume of produced water for coastal Texas and Louisiana and divided by the total PE. These costs per

PE represent a worst case, in that they used the disposal costs for small injection wells (highest cost/bbl) with no allowance for economy of scale, use of produced water for secondary recovery or use of abandoned wells. The comparison with BAT cost per PE for these permits with BAT guidelines for other industries shows that the BAT cost for these permits is among the lowest of the BAT costs for various industries.

(5) Summary of BAT cost analysis for No Discharge. As demonstrated above, the BAT No Discharge of produced water requirement in these proposed permits is economically achievable. The financial impact of compliance with the No Discharge requirement on most companies involved in Texas and Louisiana Coastal production is minimal. The estimated loss of production due to compliance with the No Discharge requirement is small compared with total coastal production. In addition, a comparison of the cost effectiveness of BAT (No Discharge) for these permits with BAT for other industries shows the No Discharge requirement to be among the lowest BAT costs per pound equivalent for any of these industries.

e. BAT option selection

The Region has selected reinjection of produced water as the appropriate BAT effluent control for toxic and nonconventional pollutants in these Coastal Subcategory permits. The above review indicated that the other add-on technologies to BPT provide for less removal of these pollutants from produced water than does reinjection. Reinjection provides total removal from Waters of the U.S. in Louisiana and Texas of non-conventional and toxic pollutants due to produced water discharge. In addition, the reinjection is shown, as discussed above, to be technologically available and economically achievable.

2. Produced Sand

As explained in the following pages, BAT for produced sand is no discharge.

a. Derivation of BAT (BPJ) permit requirements

As stated previously in section VI.A.2 of this Fact Sheet there are no promulgated guidelines for produced sand discharges. Currently, produced sands are either transported to waste disposal sites onshore, or washed with either water or solvent and then discharged. Other than the water or solvent washing of produced sand or its disposal in waste disposal sites, the Agency is unaware of any other feasible technology capable of routinely cleaning produced sand except for a system developed by Shell Oil Company (comments from Shell Oil Company to EPA on proposed rule, Offshore Guidelines, 56 FR 10664, March 13, 1991). The Shell system is reported to have reduced the oil content of produced sand to 5% to 0%, but this system is only a prototype system, untried by and may be unavailable to the industry in general.

b. Selection of "No Discharge" BAT limitation

Using BPJ, the Region has selected a BAT "no discharge" requirement for produced sand as the most effective means of controlling the discharge of nonconventional and toxic pollutants into waters of the U.S. The prohibition on discharges of produced sand in the Coastal Subcategory areas of Texas and Louisiana is technologically feasible, and in the following section is shown to be economically achievable.

c. BAT cost evaluation of produced sand

The BAT cost evaluation for no discharge of produced sand consists of two parts: A calculation of the average compliance cost per facility and a cost effectiveness analysis.

As will be shown later in this Fact Sheet, the discharge of produced sand would be in violation of the General Criteria of the Louisiana Water Quality Standards. The BAT cost analysis does not, however, assume compliance with these General Criteria (i.e., no discharge of produced sand to Louisiana coastal waters), thereby making the cost estimate conservative.

(1) Compliance cost analysis. The volume of produced sand generated in the coastal subcategory is not well documented. The volume of sand requiring disposal was estimated using a database developed by the Offshore Operators Committee (OOC) and submitted to the EPA for the development of Offshore Guidelines (OOC, 1991). According to the database, the total volume of produced sand generated in a twelve-month period is 41,627 bbls. The produced water associated with this volume of sand is 309,631,000 bbls. This is an average of 7440 bbls of water per bbl of sand. The region estimates that a similar ratio applies to Coastal Subcategory producing facilities.

The volume of produced water generated in the coastal subcategory is 304,312,000 per year in Louisiana and 218,075,000 bbls per year in Texas (Avanti, April 18, 1992). Using the average volume of produced sand per barrel of produced water that was derived from the OOC's offshore data, the volume of produced sand requiring disposal under the proposed general permits approximates 41,000 bbls per year in Louisiana and 29,000 bbls per year in Texas.

The OOC states that produced sand often is handled like cuttings in that it is sent for disposal as nonhazardous oil field waste under state regulations. Walk, Haydel & Associates (1989) provides disposal costs for oil field wastes as $9.86/bbl of cuttings on the Gulf of Mexico coast. This cost includes barging costs for offshore facilities at $1.50/bbl to $2.00/bbl. The use of costs for cuttings disposal from offshore for estimating the disposal cost of produced sand in coastal areas results in an inflated cost for produced sand. For one thing, the transportation (barging) costs for produced sand will be minimal at most. Nevertheless, based on a high estimate of $10.00/bbl for disposal of produced sand (which includes barging costs), the total annual costs for disposal of produced sand under the proposed general permits are $409,000 for Louisiana and $293,000 for Texas. This is an average annual cost per facility of only $1,800 in Louisiana and $1,850 for Texas.

(2) Cost effectiveness analysis. A cost effectiveness test estimates the cost of pollution control per pound equivalent removed. Pollutant pound equivalents (PE) are calculated to represent a weighted quantity of pollutants that would have entered the environment without the proposed permits. PE's are calculated by multiplying the pollutant concentration by a weighing factor that puts each pollutant quantity on an equivalent scale by accounting for varying degrees of toxicity using copper as the standard. For example, because a pound of radium is considered more toxic than a pound of silver, the toxic weighing factor for radium is higher. The toxic weighing factors are calculated based on a methodology that uses human health and aquatic life criteria developed by EPA for each pollutant. The complete methodology and derivation of the toxic weighing factor used for this analysis are presented in Versar (1992).

For produced sand, pollutant concentration data were available only for radium. The radium concentration of produced sand was derived from two data sources. The first data source is the OOC's produced sand database submitted in response to the proposed Offshore Guidelines (OOC, 1991). The database includes ^{226}Ra and ^{228}Ra concentrations for 19 produced sand samples collected by member

companies from offshore facilities. The second data source was submitted by Shell Offshore Inc. also for the effluent guidelines effort (Shell Offshore Inc., 1991). The 29 samples reported by Shell Offshore were taken as part of a monitoring study for a produced sand treatment technology (Continental Shelf Associates, 1991). A data set of the combined results of these two studies produces average concentrations of 37 pCi/g ^{226}Ra (range of 0 pCi/g to 172 pCi/g) and 37 pCi/g ^{228}Ra (range of 0 pCi/g to 180 pCi/g) for 48 produced sand samples.

In the calculation of PE's for the No Discharge requirement of produced sand (Avanti, June, 1992), the Region made the reasonable assumption that the produced sand Radium concentrations offshore will be similar to those of the Coastal area since produced sands are derived from similar geological formations. The total pound equivalents for both ^{226}Ra and ^{228} are divided by the total cost of compliance for each state. The resultant removal cost per pound equivalent of ^{226}Ra and ^{228} is $106 for both Louisiana and Texas.

(3) Summary, BAT cost analysis for produced sand

Because the average cost of disposal per facility for produced sand are minimal (approximately $1,800 per facility), analyses of specific companies were not conducted. This disposal cost per facility represents a high-end estimate of the total costs. The cost appears to be reasonable and acceptable for waste disposal under BAT.

The cost effectiveness results are compared to the cost effectiveness of previous rule makings in Table 5. This Table shows a range of cost per pound equivalent from $0 to $404 (In 1981 $) for a number of promulgated BAT industry guidelines. For these Coastal permits the cost is $106 ($71 in 1981 $) per pound equivalent.

The cost of produced sand removal falls below the middle of the range of costs. This analysis considered only radium in calculating cost effectiveness because of a lack of data on other pollutants occurring in produced sand. For example, limited data on oil and grease concentrations show levels at or around 1 mg/l (Continental Shelf Associates, 1991). Thus organic priority pollutants are almost certain to be found in produced sand. If these organic pollutants were added to this cost effectiveness analysis, costs per pound equivalent would be lower. With the present analysis the cost appears to be within the acceptable range of costs per pound of pollutant removed, and is considered a reasonable BAT cost of permit compliance.

C. State Rules and Regulations, and State Water Quality Standards

EPA is required under 40 CFR 122.44(d) to include conditions as necessary to achieve State requirements and water quality standards as established under section 303 of the Clean Water Act. Discussed below are produced water characteristics, State rules and regulations that apply to produced water, and the produced water requirements based on State Water Quality Standards. Then produced sand characteristics and produced sand requirements based on State Water Quality Standards are discussed.

1. Produced Water

a. Characteristics of produced water as related to water quality standards and regulations. The pollutants contained in produced water have been generally categorized as including oil and grease, dispersed and dissolved hydrocarbons and entrained priority pollutants, heavy metals, treating chemicals and, to varying degrees, radionuclides.

(1) Volume. Boesch and Rabalais (1989) have estimated that 1,952,386 barrels of produced water are discharged daily into all Louisiana State waters. This figure was recently revised to 1,954,049 barrels daily by MMS (MMS 91–004). Boesch and Rabalais (1989), also estimated that 23% of this produced water is discharged into fresh water areas, 22% into brackish water areas, 17% into saline areas and 28% into open bay areas. The remaining 10% is derived from offshore.

EPA has recently completed a reevaluation of volumes of produced water discharged to Coastal Subcategory areas of Louisiana and Texas (Bowler & Petrazzuollo to EPA, March 17, 1992). This report, based on a review of Louisiana Department of Environmental Quality (LDEQ) and the Railroad Commission of Texas (TRC) discharge monitoring reports (DMR's), indicates that a total produced water discharges to coastal areas of 1.4 million barrels per day. Due to the large volumes of produced water involved, and because these water volumes can be expected to increase in time with the aging of the producing fields, continued discharges and the environmental impact of produced water on these shallow water environments is viewed with concern.

(2) Characteristics. Produced waters are usually of greater salinity than normal sea water (35 ppt), and range from 3 ppt in some restricted areas to 300 ppt (Rittenhouse et al. 1969). In coastal produced waters, MMS (MMS 91–0004) reported salinity ranges of 43 to 192 ppt and Boesch and Rabalais (MMS 89–0031) reported 50 to 150 ppt. While the salinity of brines can have severe negative effects on local biological communities, produced waters also contain relatively high concentrations of organic compounds including entrained volatile aromatic hydrocarbons (VAH's), alkanes, metals and, to varying degrees, radionuclides (NORM). Some VAH's (benzene, ethylbenzene, Toluene), as well as oil and grease, TOC, TSS, pH, temperature, chlorides, dissolved oxygen, and toxicity are limited by state regulations.

A 30 platform Gulf of Mexico offshore study by Burns and Roe (for EPA, 1982) reported average effluent concentrations for VAH's at 2.4 mg/l for benzene, .263 mg/l for ethylbenzene and 2.6 mg/l for toluene; phenol average concentrations are reported at 2.1 mg/l. Priority pollutants, in addition to the preceding, contain significant amounts of bis (2-ethylhexyl) phthalate, naphthalene. One would expect similar values for produced waters would be exhibited by facilities in the Coastal Subcategory areas of Texas and Louisiana. Indeed, MMS (MMS 91–0004) reports some VAH Louisiana coastal area concentrations exceed 5 mg/l and some effluents exhibit similar phenol concentrations. Rabalais et al. (1989) have listed 31 organic compounds in produced water, including those indicated above. The report also indicates that produced waters exhibit concentrations of 10 to 100 mg/l aliphatic fatty acids, approximately 1 to 35 mg/l aromatic acids and up to 35 mg/l saturated hydrocarbons. Rabalais (1990) and St. Pe et al. (1990), also report that toxic metals are present in produced waters with nickel, vanadium and barium in the highest concentrations with zinc, copper and chromium also being present in most discharges. EPA indicated (proposed Offshore guidelines, March 13, 1991) that produced water contains significant concentrations of priority metals, particularly cadmium, copper, lead, nickel, silver and zinc. Additionally, produced water was also found to contain variable amounts of biocides, corrosion and scale inhibitors, emulsion breaker, treating chemicals, antifoams, paraffine/asphaltine treating chemicals, and possibly anhydrate inhibition chemicals.

Concentrations of NORM (Ra–226,Ra–228) in coastal waters have been found to have wide variability related to geography and oil type. Studies have reported NORM levels ranging from 605

to 1,215 pCi/l (Proposed Offshore guideline, March 13, 1991). Schlenker and St. Pe (1990) report Radium 226 contents in produced waters that range from 131 to 393 pCi/l. An LDEQ study of state waters (primarily coastal areas) has found that Ra–226 and R–228 occur primarily in the soluble phase and data from approximately 450 discharging sites indicate that produced water from half of these sites exceeds 300 pCi/l. The data reported by a recent MMS study (OCS Study, MMS 91–001) indicates that produced waters sampled in the Louisiana coastal area (Coastal Subcategory as well as Territorial Seas portion of the Offshore Subcategory) had 136.8 to 1040 pCi/l with increases in radioactivity linked to increases in salinity.

(3) Fate and environmental impact of produced water. In the past, produced water has been discharged into Coastal Subcategory waters. Although much has been written on the environmental effects of discharges of these waters over the years, the attempt here will only be to review updated syntheses of some of the more significant data sets. Boesch and Rabalais (1989) indicated that contamination caused by discharges of dense water plumes (brines) extends beyond the region in which acutely lethal concentrations of contaminants were expected to be found. MMS (MMS 91–0001–4) has reported that some of the pollutants in discharges of produced water in coastal and open bay areas had a persistent effect on benthic communities and have had a resistance to degradation. These conclusions also reflect the views of others (e.g., Daniels and Means, 1989; Rabalais, 1991; Rabalais, et al., 1989; St. Pe et al., 1990), with St. Pe et al. concluding that continued produced water discharges into the shallow water, low energy, unique hydrological inner coastal environments will likely result in an increase in both the level and extent of conventional and nonconventional pollutant contamination in areas of the discharges. In support of these claims, Rabalais (1991) indicated that the largest component of the organic load of produced water is the fatty acids and aromatic acids. Saturated hydrocarbons were found to be the next most abundant. Volatiles and phenols comprise the third most abundant class of pollutants present in produced water with benzene and toluene comprising 75% to 85% of these compounds. These compounds, although water soluble and easily dispersed within the water column, are acutely toxic to organisms in high concentrations. Polynuclear aromatic hydrocarbons (PAH's) constitute the smallest fraction of organic pollutants found in produced water. PAH's, however, are the heaviest, most toxic and environmentally stable component in produced water and are most likely to be accumulated in sediments of the discharge area.

St. Pe et al. (1991) indicated that the factors determining the degree of impact of produced water upon the environment is related to discharge rate (amount), quantity of pollutants and trace metals present in the produced water, local hydrology, sediment disruption (dredging activities, etc.) and sediment type (especially organic content and texture). As in the case of produced water discharges into Coastal Subcategory areas, dense water plumes will tend to have cumulative long term environmental effects due to the low energy, low mass exchange waters which typify areas in the Coastal Subcategory. The chemicals and trace metals found within produced waters discharged into these coastal areas have been judged to have both a potential ecological as well as human health risk (Daniels and Means, 1989).

(4) Biological Toxicity. St. Pe et al. (1991) report a mean LC_{50} 96-hour mysid shrimp acute toxicity from produced water at four sites in the Louisiana coastal area at 4.3% with the range of LC_{50}'s being 2.6% to 5.8% of the effluent. Sheepshead 96-hour LC_{50} acute toxicity tests yield a mean value of 20.1%, with a range of 7.2% to 33.8% of the effluent. Utilizing the Agency's method of determining an equivalent chronic toxicity value from acute values by means of acute/chronic ratios (EPA/505/2–90–001, p.18), the sheepshead chronic toxicity range reported by St. Pe et. al. as indicated above is equivalent to chronic values of .72% and 3.38% of effluents. St. Pe et. al. also ran the 96 hour acute test on elutriates from sediments in the area which indicated a 73.3% mortality of the test organism *Hyalella azteca*. In a separate study, Enviro-Lab, Inc., conducted biological acute and chronic toxicity tests on produced water from West Delta Block 52 facility, Plaquemines Parish, Louisiana for L.G.S. Exploration, Harvey, Louisiana. Enviro-Lab's 7-day chronic test of no observable effect concentration (NOEC), Utilizing *Mysidopsis* and *Cyprinodon*, indicated the following: *Mysidopsis* survival, growth and fecundity to be, respectively, 2.875%, 1.437% and 2.875% effluent, *Cyprinodon* survival at 1.437% effluent and growth value of <1.437% effluent. The 96-hour acute lethality LC_{50} tests for *Mysidopsis* were 5.8% to 15.8% effluent and for *Cyprinodon* were 1.5% to 8.1% effluent. Boesch and Rabalais (1989) also indicated that produced water assays on crustaceans had LC_{50}'s of less than 10% produced water. Additionally, Rose and Ward (1981) indicated that shrimp larvae LC_{50}'s were less than 1% produced water.

Produced water toxicity data from offshore wells was submitted in October, 1992 by the Offshore Operators Committee to the Region. These data showed that the produced water was highly toxic. Seven-day chronic survival data from one company showed a mean NOEC survival for mysids of 0.86% effluent (with a minimum of 0.32% and a maximum of 1.86% effluent) and a mean NOEC survival for sheepshead minnows of 1.0% effluent (with a minimum of 0.26% and a maximum of 2.7% effluent). Seven-day chronic survival data from another company showed a mean NOEC survival for mysids of 0.95% effluent (with a minimum of <0.1% and a maximum of 5% effluent).

The largest produced water toxicity data base (Avanti, 1992) used in these permits consists of self-monitoring compliance data required by Louisiana Department of Environmental Quality discharge permits. The data base has results from 241 96-hr LC_{50} tests using msyids, 239 96-hr LC_{50} tests using sheepshead minnows, 226 chronic toxicity tests using mysids and 223 chronic tests using sheepshead minnows. The 96-hr LC_{50} mysids tests had a mean of 12% effluent and a 95 percentile value of 1.3% effluent. The 96-hr LC_{50} sheepshead minnow tests had a mean of 27% effluent and a 95 percentile value of 2.7%. For the chronic toxicity tests, the mysid survival mean value was 4.5% effluent and the 95 percentile value was 0.2%. The sheepshead minnow survival mean value was 8% effluent and the 95 percentile value was 0.5%. The toxicity tests summarized in this Section indicate that discharges of produced waters from coastal facilities are sufficiently toxic that their discharges into Coastal Subcategory water is of great concern and, as discussed later in this Fact Sheet, water quality standards will not be met if their discharge is allowed.

b. Louisiana state regulations for produced water discharges. (1) Discharge to fresh water. Louisiana State Regulation LAC:33, IX, 7.708 prohibits discharges of produced water to fresh water areas characterized as "upland" after July 1, 1992. The Regulation defines "upland" as "any land not normally inundated with water and that would not, under normal circumstances, be characterized as swamp or fresh,

intermediate, brackish or saline marsh" and states "the land and water bottoms of all parishes north of the nine parishes contiguous with the Gulf of Mexico will be considered in toto as upland areas." This Regulation does, however, allow discharge to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, if the discharge has been authorized by a State permit.

(2) Discharges to intermediate, brackish or saline waters. This same Regulation (LAC 33:IX,7.708) addresses the discharge of produced water into intermediate, brackish or saline waters inland of the inner boundary of the Territorial Seas by requiring that either discharges cease, or comply with a specific set of effluent limits. Allowance is made for a schedule to either cease discharge or comply with the limitations. The schedule will be based on the number of discharges (one to three or more) an operator may have. An operator with three or more discharges of produced water must be in compliance with one-third of the discharges by January 1, 1993, two-thirds by 1994 and be in full compliance by January 1, 1995. Operators with no more than two discharges must be in compliance by January 1, 1995, and operators with a single discharge must be in compliance by January 1, 1994. In addition, facilities with produced water discharges of 250 barrels a day or less and a maximum oil production of 100 barrels per day, or the monetary equivalent of gas, have an additional year to comply with the above requirements. In any event, discharges must be either eliminated or be in compliance by January 1, 1997. The Regulation does, however, allow dischargers to certain open bays the opportunity to show, on a case-by-case basis, that their discharge should be exempt from these Regulations. Specifically, "Operators discharging to the open waters and at least one mile from any shoreline in Chandeleur Sound, Breton Sound, Barataria Bay, Caminada Bay, Timbalier Bay, Terrebonne Bay, East Cote Blanche Bay, West Cote Blanche Bay, or Vermilion Bay from production originating in these areas will have two years after the effective date of these regulations or one year after completion of the U.S. Department of Energy's (DOE) study concerning Louisiana coastal bays, whichever comes first, to show on a case-by-case basis that their particular discharge should be exempt from these regulations, if the DOE study, after scientific peer review, shows minimal acceptable environmental impacts."

The above noted produced water effluent limits for daily maximum undiluted effluent concentrations, in mg/l, allowed are: Benzene, .0125; ethylbenzene, 4.380; toluene, .475; oil and grease, 15; total organic carbon, 50; total suspended solids, 45; dissolved oxygen 4.0 (minimum). In addition, the Regulation requires the effluent to have no visible sheen, a pH of 6–9 standard units, chloride dilution ratios of 1:10 with ambient waters, and soluble radium at no more than 60 picocuries per liter. The Regulation also requires that discharges meet acute and chronic toxicity limits of one toxicity unit (TU).

Produced water is not expected to meet the limitations required for discharges to intermediate, brackish and saline water areas inland of the territorial seas. Louisiana State permit DMR data for produced water shows that the Regulation's limits for benzene, toluene, Radium 226 and 228, as well as the acute and chronic toxicity limits of 1.0 TU will be violated (see Table 6). The Region is, therefore, requiring no discharge of produced water into these areas on the basis that these discharges will be prohibited by, or unable to meet the requirements of, the Louisiana Regulation 33.IX.7.708. In addition, the Region is requiring no discharge of produced water into fresh water upland areas, since the Louisiana Produced Water Regulation prohibits the discharge of produced water into fresh water upland areas after July 1, 1992. The Region is not using this Louisiana Regulation as a basis for "no discharge" to the above discussed waters of major deltaic passes of the Mississippi River or Atchafalaya River, and to the areas of open bays subject to the case-by-case exemption from this Regulation.

c. Texas rules for produced water discharges. Statewide Rule 77(d)(3) (16 TAC § 3.75) states that no permit may be issued when the discharge will cause violation of water quality standards. Statewide Rule 8(b) states that no person subject to regulation by the Railroad Commission of Texas may cause or allow pollution of classified surface waters of the state, while Rule 8(e)(1,2, and 4) charges that (1) operators shall not pollute waters of the Texas offshore and adjacent estuarine waters as well as inland and fresh waters or damage the aquatic life therein and (2) operations are to be conducted in such a manner to preclude the pollution of the waters of the offshore and adjacent estuarine zones as well as inland and fresh waters. This Rule is interpreted by the State as prohibiting the discharge of produced water to inland and fresh waters of the State of Texas. The Region is using this Rule as an additional basis for requiring no discharge of produced water to inland and fresh waters of the State of Texas.

d. Louisiana water quality standards. The Louisiana Water Quality Standards (LAC 33:IX,11) contain narrative and specific numerical criteria for listed water bodies according to their designated uses. Unlisted water body designated uses are determined by the uses listed for the water body to which the unlisted water body is a tributary or distributary.

(1) Narrative standards. LAC 33:IX,1113(B)(5) states that no substances shall be present in the waters of the state or the sediments underlying said waters in quantities that alone or in combination will be toxic to human, plant, or animal life or significantly increase health risks due to exposure to the substances or consumption of contaminated fish or other aquatic life. Region 6 has interpreted (EPA letter to LDEQ dated 12/6/90) this narrative to require no chronic toxicity at the edge of the mixing zone, and no acute toxicity at the edge of the Zone of Initial Dilution (ZID).

(2) Numerical criteria. LAC 33:IX, 1113(C) states the Numerical Criteria identified in the Numerical Criteria Table I apply to the specified water bodies, and to their tributaries, distributaries, and interconnected streams and water bodies if they are not specifically named therein. The implementing procedures are spelled out in the EPA letter to LDEQ dated 12/6/90.

(3) Mixing zones. The mixing zones established in the Louisiana Water Quality Standards are: 200 foot radius for coastal bays and lakes. These mixing zones are used for both aquatic life and human health protection.

(4) Modeling of produced water discharges. Dispersion modeling was done to determine whether produced water discharges will violate Louisiana Water Quality Standards Numeric Criteria for Toxic Substances (LAC33:IX,1113(C)(6)), or General Criteria for Toxic Substances (LAC33:IX1113(B)(5)). The dispersion model used was the CORMIX 1 model. The model was run using a water depth of 3 meters. This is a reasonable estimate of the greatest depth of bays in Louisiana. This modeling will approximate the dispersion for produced water discharges into open bays in the Coastal Subcategory areas of Louisiana waters. It represents a reasonable case of the most dilution to be found in Louisiana Coastal Subcategory waters. It will, therefore, be assumed that if the discharge of produced water in this scenario will

cause a violation of a numeric or general Water Quality Standard, then a produced water discharge will cause a violation of that Standard in any of the Louisiana Coastal Subcategory waters.

The modeling was done using two produced water discharge rates: the average discharge rate (3363 bbl/day) from Louisiana state permit compliance data for coastal facilities, and the median discharge rate (813 bbl/day) from the same data set. The average produced water effluent concentrations for the various pollutants was also from this Louisiana data base. The comparison of the produced water pollutants at this appropriate mixing zone with the Water Quality Standards' Numeric Criteria is shown in Tables 7–A and 7–B, and summarized below.

Using the average discharge rate and the average effluent concentrations, Table 7–a shows that the Numeric Marine Acute Criteria for Copper, Lead, Mercury, Nickel and Zinc will be violated at the edge of the ZID. The Marine Chronic Criteria for the same pollutants, plus Arsenic, were also violated at the edge of the mixing zone. In addition, the Human Health Criteria for Benzene was violated at the edge of the mixing zone.

Using the median discharge rate and the average effluent concentration, Table 7–a shows that the Numeric Marine Acute Criteria for Copper, Lead Mercury and Nickel were violated at the edge of the ZID. The Marine Chronic Criteria for these same pollutants were violated at the edge of the mixing zone. In addition, the Human Health Standards for Benzene was violated at the edge of the mixing zone. Table 7–a shows that the violations were very significant for Lead, Mercury, Nickel and, for human health, Benzene, even when using the median discharge rate.

Using the median discharge rate and the median effluent concentrations, Table 7–b shows that there were still significant violations of the Numeric Standards. The Marine Acute and Chronic Criteria for Copper were violated, as were the Marine Chronic Criteria for Lead, Mercury and Nickel. In addition, the Human Health Criteria for Benzene was violated.

Tables 7–A and 7–B show that the Narrative Water Quality Standards will also be violated. The same scenarios were used as for the comparison with the Numeric Criteria. Produced water chronic toxicity data was taken from the Louisiana State Permit Discharge Monitoring Report data base. In order for the Narrative Criteria to be met, the effluent, when diluted to 13.3% (the concentration at the edge of the mixing zone using the mean discharge rate) must not exhibit chronic toxicity. If the produced water shows chronic toxicity at a lower percent effluent, this would be a violation of the Criteria. The chronic toxicity data, using lethality only, show that 95.6% of the 226 mysid tests and 85% of the 221 Sheepshead minnow tests violate the Criteria at the edge of the mixing zone when the mean discharge rate was used. Even when using the median discharge rate, where 6.6% effluent must not be toxic, the chronic lethality data show that 85% of the mysid tests and 63% of the Sheepshead minnow tests violate the criteria at the edge of the mixing zone.

In summary, the large body of produced water effluent data shows that allowing the discharge of produced water, even in the case providing the most dilution in Louisiana coastal waters, would cause substantial violations of the Louisiana Water Quality Standards Numeric and Narrative Criteria. This finding forms yet another basis for the permit requirement of No Discharge for produced water.

e. Texas water quality standards Texas Water Quality Standards (31 TAC §§ 307.2–307.10) include specific numerical criterion values for specific pollutants and narrative standards for the purpose of enhancing or maintaining water quality and to provide for and fully protect waters of the state. The standards assign numerical limits to classified water bodies on the basis of their State designated use.

The implementing procedures are spelled out in a letter entitled "Implementation Document for the Revised Water Quality Standards", addressed to EPA from the Texas Water Commission, dated 11/20/1991 and "Implementation of the Texas Water Commission Standards via Permiting", dated February, 1992.

(1) Narrative standards: 31 TAC § 307.6(b) states that waters of the state shall not be acutely toxic to aquatic life except in small zones of initial dilution at discharge points. Waters in the state with designated or existing uses shall not be chronically toxic to aquatic life, except in mixing zones and below critical low flow conditions.

(2) Numerical criteria: Numerical criteria for waters of the state are established (31 TAC §§ 307.2–307.10) for specific toxic substances and are identified in Tables 1 and 3 at § 307.6.

(3) LC50 acute toxicity effluent standard. Section 307.6(e)(2)(B) of the Texas Water Quality Standards requires that effluent discharges shall not be acutely lethal to representative species of aquatic life as demonstrated by tests on 100% effluent. Criterion for lethality shall be mortality of 50% or more of the test organisms after 24 hours of exposure. This means that a 24-hr LC50 of less than 100% effluent will be in violation of this Water Quality Standard Requirement.

The Region has obtained toxicity data on produced water at coastal facilities from the Louisiana Department of Environmental Quality (LDEQ). This data was generated as a permit compliance requirement for a number of LDEQ-issued produced water discharge permits. The data being used are for discharges into Louisiana State waters (including the territorial seas). The data set includes 241 acute 96-hr LC50 tests for mysids, and 239 acute 96-hr LC50 tests for sheepshead minnows. In addition, the data set includes 226 chronic survival tests for mysids and 221 chronic survival tests for sheepshead minnows. The Agency assumes that the toxicity of produced water from the Coastal Subcategory areas of Texas will be the same or very similar to the toxicity of produced water from the Coastal Subcategory areas of Louisiana.

From the 96–hr LC50 acute tests, information on the lethality after 24 hours was obtained to generate a 24-hr LC50 data set (Avanti, June, 1992). An analysis of the 223 24-hr LC50 generated data points for mysids and 226 24-hr LC50 generated data points for sheepshead minnows shows that at least 88%, and as high as 94%, of the mysid tests, and at least 30%, and as high as 91%, of the sheepshead minnow tests failed to achieve the Texas Water Quality Standards requirement of a 24-hr LC50. These data were from diluted samples, not 100% effluent, which means that if this 24-hr LC50 generated data was for 100% effluent, the exceedance of this water quality standard (24-hr LC50 in 100% effluent) would have been even more significant.

A further breakdown of the 24-hr LC50 generated data shows that, of the total of 223 24-hr LC50 mysid tests, 199 (88%) and 50% or greater mortality at 24 hours, even with the average effluent concentration for these tests being only 22%. This indicates that if these tests had been run using 100% effluent, the per cent mortality would have been even greater than the data currently shows.

Of the total of 226 sheepshead minnow 24-hr LC50 generated tests, 67 (30%) had 50% or greater mortality at 24 hours, even though the average effluent concentration for these tests was only 34% effluent. Of the remaining 159 tests, 138 probably would have had greater than 50% mortality if they had

been run at 100% effluent. 99 of these 138 tests were run at less than 25% effluent and the remaining 39 were run at between 25% and 50% effluent.

This data demonstrates that produced water discharges in Texas will probably violate the Texas § 307.6(e)(2)(B) Water Quality Standard. The Region is therefore using probable violation of the Standards as a basis for requiring no discharge of produced water in Coastal Subcategory areas of Texas.

(4) Mixing zones: The mixing zones established for implementing the Texas Water Quality Standards are: aquatic life protection—100 foot radius for lakes and reservoirs, 200 foot radius for bays, estuaries and tidal rivers; human health protection—200 foot radius for lakes and reservoirs, 400 foot radius for bays, estuaries and tidal rivers.

(5) *Modeling of produced water discharges:* Dispersion modeling was done to determine whether produced water discharges will violate Texas Water Quality Standards Numeric Criteria for Toxic Materials (Section 307.6), or General Criteria for Toxic Parameters (307.4). The dispersion model used was the CORMIX 1 model. The model was run using a water depth of 3 meters. This modeling approximates the dispersion for produced water discharges into open bays in the Coastal Subcategory areas of Texas waters. It represents a reasonable case of the most dilution to be found in Texas Coastal Subcategory waters. It is, therefore, assumed that if the discharge of produced water in this scenario causes a violation of numeric or general Water Quality Standard, then such a discharge would cause a violation of that Standard in any of the Texas Coastal Subcategory waters.

The produced water discharge rates used were the average discharge rate from Louisiana State Permit Discharge Monitoring Report (DMR) data base for coastal facilities (3362 bbl/day) and the median discharge rate (813 bbl/day). The Texas Implementation Plan requires that Daily Average (Monthly Average) and Daily Maximum effluent limits be calculated from the Numeric water quality standards using a specified procedure. The effluent data are then compared with these water quality-based limits. This comparison is given in Table 8. For the comparison, the mean of all the values from the Louisiana State Permit DMR data base (using 0 for those data below detection) was used to compare with the Daily Average limits, and the 95 percentile values (of the DMR detected values) was used to compare with the Daily Max limits. It is assumed that the Louisiana produced water flow and effluent concentration data is representative of produced water for Texas coastal operations.

A comparison of the effluent data with the water quality-based limits calculated using the median effluent flow (which results in higher limits) shows substantial violations of Daily Max limit for 8 metals and benzene. There are also substantial violations of the Daily Average limit for 6 metals.

Table 8 shows that the Narrative Water Quality Standards will also be violated. The same dispersion scenario was used as for the Numeric Standards. Produced water chronic toxicity data were taken from the Louisiana permit Discharge Monitoring Report data base. It is assumed that these data are representative of produced water from coastal Texas facilities. In order for the Narrative Standards to be met, the effluent, when diluted to 13.7% (the concentration of effluent at the edge of the mixing zone when using the mean discharge rate) must not exhibit chronic toxicity. If the produced water shows chronic toxicity at a lower percent effluent, it violates the Narrative Standards.

The chronic toxicity data, using lethality only, show that 95.6% of the 226 mysid tests and 85% of the 221 Sheepshead minnow tests violate the Standards at the edge of the mixing zone when the mean discharge rate was used. Even when using the median discharge rate, where 6.6% effluent must not be toxic, the chronic lethality data show that 85% of the mysid tests and 63% of the Sheepshead minnow tests violate the Standards at the edge of the mixing zone.

In summary, produced water effluent data show that allowing the discharge of produced water, even in the case of the most dilution in Texas coastal waters, would cause substantial violations of the Texas Water Quality Standards Numeric and Narrative Criteria. This finding forms yet another basis for the permit requirement of No Discharge for produced water.

f. Texas hazardous metals regulation. The Texas Hazardous Metals Regulation, 31 TAC 319, lists the allowable concentrations of hazardous metals for discharge into State waters. Table 9 compares the mean produced water concentrations with the Texas Hazardous Metals limits listed in 31 TAC 319.22 and 319.23. This comparison shows violations of the Regulation for Arsenic, Barium, Lead and Mercury. This finding forms yet another basis for the permit requirement of No Discharge for produced water.

g. Summary of produced water requirements based on state regulations and water quality standards. (1) Louisiana. Section VI.C.1.b of this Fact Sheet discusses the Louisiana State Regulations which prohibit the discharge of produced water into Louisiana upland fresh waters. That Section also demonstrated that the discharge to intermediate, brackish or saline waters (except for discharges to some large bays) which requires no discharge or meet certain limits, would violate the limits imposed by those Regulations. These State Regulations, therefore, furnish a basis for the proposed permit's requirement of No Discharge of produced water to those State waters. Section VI.C.1.d demonstrated that the discharge of produced water to any Louisiana coastal waters addressed by this proposed permit will violate both the Narrative Criteria and a number of the Numeric Criteria of the Louisiana Water Quality Standards. The potential violation of these Standards furnishes a basis for the proposed permit's requirement of No Discharge of produced water.

(2) Texas. Section VI.C.1.c discussed that Texas Rules prohibit the discharge of produced water to inland and fresh waters of the State. This prohibition furnishes a basis for the proposed permit's No Discharge requirement to those waters. Section VI.C.1.e demonstrated that the discharge of produced water to any Texas coastal waters addressed by this proposed permit will violate both the Narrative Standards and a number of the Numeric Standards of the Texas Water Quality Standards. The potential violation of these Standards furnishes a basis for the proposed permit's requirement of No Discharge of produced water. Section VI.C.1.f. showed that the discharge of produced water to Texas waters will violate the Hazardous Metals Regulation, 31 TAC 319.

2. Produced Sand

a. State regulations for produced sand. There are no Louisiana regulations comparable to the previously discussed Louisiana Regulation LAC 33:IX.7 for produced water which specifically address produced sand. Also, Texas does not have rules or regulations which specifically address produced sand.

b. Louisiana water quality standards. The Louisiana Water Quality Standards establish general and numeric criteria for discharges to state waters. General criteria apply at all times to the surface waters of the state (i.e., including waters within a mixing zone), and apply to, among other parameters, settleable solids. The General Criteria for Settleable Solids requires that "there

shall be no substances present in concentrations sufficient to produce distinctly visible solids or scum, nor shall there be any formation of long term bottom deposits of slimes or sludge banks attributable to waste discharges from municipal, industrial, or other sources including agricultural practices, mining, dredging and the exploration for and the production of oil and natural gas". The General Criteria are clearly appropriate for regulating produced sand discharges.

It is the Region's opinion that the discharge of produced sand into the shallow Coastal Subcategory waters in Louisiana would result in the cumulative formation of long term bottom deposits because of inadequate water depth for dispersion. The geographic area covered by the Louisiana Coastal permit is predominately one of very shallow water. Numerous studies have been conducted and papers written on the dispersion of drilling fluids and cuttings from rigs that show that the bulk of the discharge (even in deep water environments) remains relatively near the discharge point. Thus it is obvious that the discharge of solids such as proposed sand in very shallow water areas will have much less of a dispersion pattern and will be concentrated near the discharge point.

The region is, therefore, prohibiting the discharge of produced sand on the basis that the discharge of produced sand to Louisiana Coastal Subcategory waters would be in violation of the above-cited General Criteria.

The Region is not basing the prohibition of produced sand on the Louisiana Standards numeric criteria or the General Criteria for Toxic Substances, because of the lack of data on pollutants associated with the discharge of produced sand. Produced sand will be a potential source of pollutants addressed by the Louisiana Standards numeric criteria, as well as the general toxic criteria because of entrained and adsorbed hydrocarbons. The Region, therefore, solicits the submission of any data on produced sand relevant to Louisiana Standards numeric criteria or the General Criteria for Toxic Substances.

c. Texas water quality standards. The Texas Water Quality Standards contain both general criteria and numeric criteria. The general criteria remain in effect inside mixing zones. The Standards contain general criteria addressing both toxic parameters and solids which affect benthic biota. The latter general criteria states: "Surface water shall be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms or putrescible sludge deposits or sediment layers which adversely affect benthic biota or any lawful uses." As stated in Section VI.C.2.b, above, the discharge of produced sand into shallow waters will result in a concentration near the discharge point. It is the Region's opinion that the discharge of produced sand into Coastal Subcategory waters of Texas will result in the production of sediment layers which adversely affect benthic biota and, therefore, will violate the above cited Texas Standards General Criteria.

As stated in Section VI.C.2.b; above, The Region does not have sufficient data on the pollutants associated with the discharge of produced sand to use the violation of the Standards (for Texas, in this case) for numeric criteria or the general criteria for toxic parameters as a basis for prohibiting the discharge of produced sand. The Region, therefore, solicits data on pollutants associated with produced sand relevant to these criteria.

d. Summary of produced sand requirements based on state water quality standards. As stated in Sections VI.C.2.b. and c, the Region is using the probable violation of the States' Water Quality Standards General Criteria on settleable solids or production of sediment layers as a basis for the prohibition of the discharge of produced sand.

D. Summary of Produced Water Requirements

This Fact Sheet has demonstrated why these proposed permits' requirement of No Discharge of produced water and produced sand is Best Available Treatment Economically Achievable. In addition the Fact Sheet has shown that the No Discharge of produced water requirement is necessary to comply with State Rules and Regulations, and State Water Quality Narrative and Numeric Standards, and that the No Discharge of produced sand requirement is necessary to comply with State Water Quality Narrative Standards.

VII. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue a NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The Region has solicited certification from the Railroad Commission of Texas and the Louisiana Department of Environmental Quality.

B. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. In the 1978 amendments to section 311, Congress clarified the relationship between this section and discharges permitted under section 402 of the Act. EPA interprets the CWA to mean that routine discharges permitted under section 402 be excluded from section 311. Discharges permitted under section 402 are not subject to section 311 if they are:

(1) In compliance with a permit under section 402 of the Act;

(2) Resulting from circumstances identified, reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit; or,

(3) Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act that are caused by events occurring within the scope of the relevant operating or treatment system.

To help clarify the relationship between a spill, regulated under section 311, and a discharge regulated under section 402 permit, EPA developed the following list of spills and has included this list in all previous Gulf of Mexico oil and gas discharge permits as guidance (Note: this list is not all-inclusive):

(1) Discharges from burst or ruptured pipelines, manifolds, pressure vessels or atmospheric tanks;

(2) Discharges from uncontrolled wells;

(3) Discharges from pumps or engines;

(4) Discharges from oil gauging or measuring equipment;

(5) Discharges from pipeline scrapers, launching, and receiving equipment;

(6) Spills of diesel fuel during transfer operations;

(7) Discharges from faulty drip pans;

(8) Discharges from well heads and associated valves;

(9) Discharges from gas-liquid separators; and

(10) Discharges from flare lines.

C. Endangered Species Act

Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, requires that federal agencies determines, in consultation with the U.S. Fish and Wildlife Service (FWS) and National

Marine Fisheries Service (NMFS), that their actions are not likely to jeopardize the continued existence of listed threatened or endangered species or result in the destruction or adverse modification of their critical habitats. Because it will eliminate the discharge of toxic produced water and produced sand to sensitive aquatic environments, issuance of these general permits as proposed is unlikely to adversely affect any listed species or their critical habitat. The Region has forwarded a copy of this notice to FWS and NMFS, requesting their written concurrence in that conclusion.

D. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR part 930, subpart D) require that any Federally licensed or permitted activity affecting the coastal zone of a State with an approved Coastal Zone Management Program (CZMA) be consistent with the CZMP (Section 307(c)(3)(A)). The State of Louisiana has a CZMP that has been approved by the National Oceanic and Atmospheric Administration (NOAA). The Region has reviewed Louisiana's Coastal Use Guidelines (including guidelines 10.1–10.14 for oil and gas and other mineral activities) and has determined that this proposed permit action is consistent with the intent of those guidelines. A copy of the draft permit, along with a consistency certification, will be submitted to Louisiana for a consistency determination.

E. The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by NOAA, which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values.

Section 302(i) of MPRSA requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other Federal agencies, and issue necessary regulations to control any activities permitted within the boundaries of the marine sanctuary. It also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purpose of the marine sanctuaries program and/or can be carried out within its promulgated regulations. There are presently no existing marine sanctuaries in the coastal waters of Louisiana and Texas.

F. Economic Impact (Executive Order 12291)

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant of section 8(b) of that order.

G. The Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated by this general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et. seq.* The information collection requirements of this permit have been approved by the Office of Management and Budget in prior submissions. Facilities affected by this permit will not need to submit a request for coverage under the Louisiana Coastal Waters general permit for produced water and produced sand. The information collection requirements of this permit have been approved by the Office of Management and Budget in submissions made for the NPDES permit program under provisions of the Clean Water Act.

The public is invited to send comments regarding this burden estimate for any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M Street SW., Washington, DC 20460; and the Office of Water Management and Budget, Paperwork Reduction Project (2040–0086 and 2040–0004), Washington, DC 20503, marked "Attention: Desk Officer for EPA".

H. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (RFA) generally requires that federal agencies prepare an initial regulatory flexibility analysis (IFRA) for any proposed rule which may have a significant impact on a substantial number of small entities. EPA's current policy on RFA implementation requires preparation of an IFRA whenever a proposed rule may have any adverse economic effect on any small business, even when RFA would not require it. IFRAs need not be encyclopedic; however, their scope must be tailored to the level of resources available for the analysis, the quality and quantity of available data, and the severity of the rule's anticipated impacts on small entities. In the instant case, EPA Region 6 has few resources available for the analysis, its data base is far from complete, and the severity of anticipated impacts is subject to considerable question.

The facilities to be regulated under the permits Region 6 proposes today are classified as Major Group 13—Oil and Gas Extraction, SIC 1311 Crude Petroleum and Natural Gas. In accordance with Small Business Administration regulations promulgated at 49 FR 5024 (February 9, 1984), businesses in that classification are "small" if they employ no more than 500 employees and have a yearly gross income of no more than 3.5 million dollars. Because it has never issued a general permit to the Coastal and Stripper Subcategory facilities which will be affected by today's proposal and thus has not been receiving reports from them, Region 6 has no information with which it might base a reasonable estimate of the number of small businesses which may be affected to some degree. Nevertheless, the number may be significant.

Even if it had an extensive historical data base, EPA could not accurately predict the consequences of the proposed permits on small businesses in the oil and gas industry because the industry as a whole appears to be in a major structural transition. There are now more favorable economic opportunities for overseas oil and gas investments, and major oil and gas operators appear to be abandoning domestic exploration and development in favor of overseas operations. This suggests major operators will drill fewer new wells in the States of Louisiana and Texas, providing additional business opportunities for smaller operators who can obtain the necessary financing. Whether or not development and production of reserves in Louisiana and Texas will continue at a pace approaching historical rates (regardless of the relatively minor effects the proposed permits may have) remains to be seen.

There are, moreover, significant differences between the operations of small and large operators in the oil and gas industry. Because large operators have greater access to capital, they have historically tended to acquire and operate the larger producing properties until they become uneconomic. The present economic climate has shortened the date by which properties have become uneconomic for large operators. Smaller operators frequently operates oil and gas properties at a profit when larger operators cannot. The reason is that larger operators have higher home office overhead costs than smaller operators. In the life of most oil fields, there thus comes a time at which leases

are transferred from large to smaller operators who are capable of operating them at a profit despite declining production. This transfer of leases from large to smaller operators is currently occurring with increasing frequency in the United States. It is thus fair to conclude that small businesses usually tend to operate older wells and fields in which oil production has declined, including most Stripper Subcategory wells.

Paradoxically, the less oil (and corresponding income) an oil well produces, the more brine it produces. Wells generating the least profit are thus generally responsible for a disproportionately large share of the environmental problems associated with discharges of produced water. From an overall perspective, the costs of ceasing existing discharges of produced water will not, as shown earlier in this notice, be significant, but it seems likely that smaller operators, *vis a vis* larger operators, will sustain relatively greater economic impacts if the permits are issued as proposed.

Most of the small businesses to be regulated under the proposed permits would incur the cost of complying with the no discharge requirement whether or not these permits were issued. The proposed permits' prohibition on discharging produced water and produced sand is largely based on existing state water quality standards and, for produced water, on state regulatory requirements, which must be complied with under State law. In some cases, particularly in Louisiana, the proposed permit requires the elimination of produced water discharges to intermediate and saline waters more quickly and universally than required by the state regulations. The permit will prohibit the discharge of produced water up to 1½ to 2 years sooner than would be required of some dischargers by the Louisiana produced water regulations, potentially affecting some small businesses adversely. As a practical matter, some small businesses will be unable to continue oil and gas production from some existing wells after the permits' prohibitions on the discharge of produced water to saline surface waters becomes effective. As pointed out earlier in this notice, the exact point at which this loss of reserves will occur depends on numerous variables, not the least of which is the fluctuating price of crude oil.

On an industry-wide basis, the economic losses small businesses may suffer from ceasing production at an earlier date will probably be mitigated by the fact that the moderately increased operating costs incurred for all existing wells subject to the permits will result in earlier conveyances of leases from large to small operators. Although some small businesses may have to shut in older wells nearing the end of their production life, they will also have increased opportunity to obtain leases on less mature fields at an earlier stage of their production, when they are more profitable to operate. It would not be fair, however, to claim that every small operator who has to shut in an existing well will seek and obtain offsetting production.

As stated previously in this fact sheet, the no discharge limits for produced water and produced sand are largely based on state water quality standards and regulatory requirements. In addition, the prohibition on discharging produced water and sand from Coastal Subcategory wells covered by these permits is based on BAT. The CWA provides EPA with little flexibility to address the impacts that BAT limits may have on small businesses. Pursuant to CWA §§ 301 and 402 and EPA's implementing regulations, the Agency must adopt and impose uniform BAT effluent limitations on an industry-wide basis after considering (1) the age of equipment and facilities involved (2) the process employed (3) the engineering aspects of the application of various types of control techniques, and non-water quality related environmental impacts (including energy requirements). 40 CFR 125.3(d)(3). None of these factors provides a rationale for adopting less stringent or alternate BAT effluent limitations on small entities. Similarly, EPA must require compliance with state water quality standards and regulatory requirements in issuing permits, regardless of whether the discharger is a large or small entity. See generally *Arkansas* v. *Oklahoma*, _____ U.S. _____, 112 S. Ct. 1046 (1992). The Region has not, therefore, considered imposing different effluent limitations on small and large entities.

As described elsewhere in this notice, Region 6 considered a number of alternative technologies, hoping one might form the basis for effluent limitations that might accomplish the stated objectives of the CWA while minimizing the economic impacts of the permits on both small and large businesses. The proposed No Discharge requirements are based on reinjection of produced water and onshore disposal of produced sand. These are the least expensive of the alternative technologies which proved effective in accomplishing the objectives of BAT and allowing compliance of state water quality standards and applicable state regulations.

In proposing these permits, Region 6 has moreover considered the increased costs that record keeping and reporting requirements may impose on the entire regulated community, including small businesses. In an effort to reduce such costs, it has pared such requirements to the absolute minimum necessary to enforce these permits. For instance, Region 6 is not proposing to require that operators file notices of intent to be covered; although, receipt of such notices would provide EPA with a means of tracking those entities subject to the permit and avoid jurisdictional disputes in potential enforcement actions. Likewise, it is not proposing to establish a manifest system to ensure that produced water and sand is actually disposed of in a manner compliant with the permits. Region 6 is only proposing to require that operators report any discharge of a pollutant subject to this permit within 24 hours. Compliance with this reporting requirement should not require technical skills beyond those possessed by most small operators.

If the produced water discharge prohibitions of these permits became federally enforceable 30 days after final publication, impacts to small businesses would probably be exacerbated. The Region regards it unlikely that small businesses could successfully compete with the major oil companies in obtaining currently inadequate injection well capacity, particularly inasmuch as more acute demands for that capacity could raise the price of injection. Generally, it appears that the severity of such economic impacts is probably directly related to the length of the transition period, with longer periods producing reduced impacts. Under the administrative compliance order Region 6 intends to issue, the permits' produced water discharge prohibition will therefore become EPA-enforceable 30 days after final publication only for those produced water discharges already prohibited by state regulations and for new wells. The three year transition period reflected by the draft administrative order is the longest Region 6 now regards reasonable and consistent with Congressional policies expressed in CWA.

There is, of course, an alternative to issuing any permit, i.e., EPA could fail to propose or issue it. It does not appear that this "no action" alternative is practical in the instant matter. CWA prohibits the discharge of produced water and sand, or any other pollutant, to surface waters of the United States in the absence of an NPDES permit and the oil and gas industry has been discharging those pollutants in violation

of the Act for a considerable period. As a matter of policy, Region 6 has not taken enforcement action on those violations because the operators' failure to obtain the necessary permits has been largely due to the Agency's inability to issue them, given its limited resources and competing priorities. EPA is not, however, the only entity entitled to bring an action to enforce CWA. CWA section 505 authorizes affected citizens to bring a civil action against any unpermitted discharger, seeking injunctive relief and penalties, after providing 60 day notice to the discharger, the State in which the discharge occurs, and EPA.

Historically, there have been few citizen enforcement actions against oil and gas operators discharging to coastal waters in Louisiana and Texas. In recent months, however, a public interest environmental organization in New Orleans has provided notice to EPA Region 6 that it will file suit against identified oil and gas operators for discharging produced water without an NPDES permit. Region 6 understands that one of the announced targets of the proposed citizen suits ceased its discharges and another has agreed to a schedule for ceasing its coastal produced water discharges. Spurred by the possibility of such suits (and increasingly stringent state regulatory requirements), other oil and gas operators have begun eliminating their discharges of produced water, even where such actions are not required under current state regulations.

Unless these permits are issued, EPA expects the same organization to begin challenging more and more operators, and other public interest groups may also commence citizen suits as public concern over the adverse environmental consequences of produced water discharges increases. Neither EPA nor any other entity can reliably predict which of the many thousands of Louisiana and Texas production operations would become targets for such citizen suits, a factor which might well have a chilling effect on future investment in the domestic oil and gas industry. By accomplishing the goals of such citizen suits on an industry-wide basis in Louisiana and Texas, EPA's permits and administrative order will probably eliminate the incentive for such actions and the uncertainties they pose for individual oil and gas operators.

In summary, these permits will have some impact on a number of small entities in the oil and gas production industry. The permit requirements are, however, necessary to comply with the Clean Water Act, Louisiana and Texas Water Quality Standards and other applicable State regulations. In only a limited number of instances will compliance with these permits require costs beyond those necessary to comply with state law the state water quality standards and other state regulations). There is no alternative to the prohibition on discharging produced water and produced sand while complying with applicable federal and state statutes. The permits do, however, keep reporting and record keeping requirements to the absolute minimum necessary for their enforcement.

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TABLE 1.—PERMIT REQUIREMENTS AND STATUTORY BASIS

Discharge and permit condition	Basis
Produced Water:	
No discharge	BAT. La. Regs. Tx. Regs. La. WQ Stds. Tx. WQ Stds.

TABLE 1.—PERMIT REQUIREMENTS AND STATUTORY BASIS—Continued

Discharge and permit condition	Basis
Produced Sand:	
No discharge	BCT. BAT. La. WQ Stds. Tx. WQ Stds.

TABLE 2.—AVERAGE PRODUCED WATER EFFLUENT CONCENTRATIONS[a]

Pollutant	Concentration (ug/l)
Antimony	1,360
Arsenic	4,071
Barium	54,410
Benzene	2,650
Cadmium	77
Chromium	77
Copper	148
Ethylbenzene	138
Lead	12,600
Mercury	130
Nickel	1,100
Phenol	3,400
Radium 226	132 pCi/l.

TABLE 2.—AVERAGE PRODUCED WATER EFFLUENT CONCENTRATIONS[a]—Continued

Pollutant	Concentration (ug/l)
Radium 228	160 pCi/l.
Selenium	34
Silver	41
Toluene	1,580
Zinc	1,090

[a] Average concentration derived from discharge monitoring reports to Louisiana Department of Environmental Quality (LDEQ) involving a survey of 336 permits issued since 1988 and for which 120 priority pollutant scans had been submitted. For samples below detection limit, values assumed equal to zero. Records compiled by Avanti, Corp.

TABLE 3.—REINJECTION COSTS FOR MODEL INJECTION WELLS

[Reinjection Well Capacity (bbl/day)]

Site	3,000	6,000	9,000
Land	$0.36	$0.26	$0.21
Marsh	0.41	0.27	0.22
Bay		0.30	0.24

(In 1991 dollars. From Kerr & Associates, per Avanti, July, 1992)

TABLE 4.—COSTS FOR MODEL OIL PRODUCTION FACILITIES

	Gulf-12[a]	Large bay[b]	Small bay/ large marsh[c]	Small marsh[d]
Labor	$1,786,700	$192,611	$96,306	$48,150
Equipment & Supplies	114,000	37,620	18,810	9,405
Workover	624,300	206,019	103,010	51,505
Total (1989$)	$2,507,000	$436,250	$218,125	$109,063
Total (1992$)		$466,569	$233,284	$116,642

[a] Gulf-12 (12 slot Gulf of Mexico platform) costs from Energy Information Administration, "Costs and Indices for Domestic Oil and Gas Field Equipment and Production Operations, 1987, 1988, 1989", Table G-1.
[b] Large Bay scaled from Gulf-12 by: 0.11 for labor (0.33 x 0.33 of time), 0.33 for equipment and supplies, 0.33 for workover.
[c] Small Bay/Large Marsh = ½ of Large Bay.
[d] Small Marsh = ¼ of Small Bay/Large Marsh.
(From Avanti, July, 1992)

TABLE 5.—BAT COST EFFECTIVENESS SUMMARY FOR VARIOUS INDUSTRIES

Industry	Cost effectiveness ($/pound equivalent)
Aluminum Forming	$121
Battery Manufacturing	2
Can Making	10
Coal Mining	[a]0
Coil Coating	49
Electronics I	404
Foundries	84
Metal Finishing	12
Nonferrous Metals Forming	69

TABLE 5.—BAT COST EFFECTIVENESS SUMMARY FOR VARIOUS INDUSTRIES—Continued

Industry	Cost effectiveness ($/pound equivalent)
Organic Chemicals (air and water pollutants)	5
Pesticides	15
Pulp and Paper (PCB control for De-Ink Subcategory only)	18
La and Tx Coastal Oil and Gas Produced Water	12

TABLE 5.—BAT COST EFFECTIVENESS SUMMARY FOR VARIOUS INDUSTRIES—Continued

Industry	Cost effectiveness ($/pound equivalent)
	(In Louisiana). 14 (In Texas).
Produced Sand	71

(All costs in 1991 $, Avanti, July, 1992)

[a] BAT = BPT, therefore no additional cost.

TABLE 6.—COMPARISON OF PRODUCED WATER POLLUTANT CONCENTRATIONS WITH LOUISIANA PRODUCED WATER REGULATIONS[a]

Pollutant	Effluent concentration		Louisiana regulation limit
	Mean	Median	
Benzene (mg/l)	[b]2.55	1.4	0.0125
Ethylbenzene (mg/l)	[b]0.14	0.082	4.38
Toluene (mg/l)	[b]1.58	1.02	0.475
Oil and Grease (mg/l)	20	17	15
Radium-226(pCi/l)	[b]132	120	60
Radium-228(pCi/l)	[b]160	159	60

TABLE 6.—COMPARISON OF PRODUCED WATER POLLUTANT CONCENTRATIONS WITH LOUISIANA PRODUCED WATER REGULATIONS[a]—Continued

Pollutant	Effluent concentration		Louisiana regulation limit
	Mean	Median	
Toxicity (Toxicity units)[c]			
Mysid Acute	8.3	12.3	1
Sheepshead Acute	3.7	5.6	1
Mysid Chronic	22.1	46.3	1
Sheepshead Chronic	12.2	40	1

[a] All effluent data from LDEQ DMR's. Also see Table 2. Regulation from LAC: 33.IX, 7.
[b] Mean of all values. If sample below detection limit, values assumed equal to zero.
[c] Effluent toxicity data are survival values for chronic toxicity and are LC_{50} values for acute toxicity.

TABLE 7–A.—COMPARISON OF MEAN PRODUCED WATER EFFLUENT CONCENTRATIONS AT EDGE OF ZID AND MIXING ZONE WITH LOUISIANA WATER QUALITY STANDARDS[1]

Pollutant	Effluent conc.	Conc. at ZID[2,4]	Conc. at MZ[3,4]	Louisiana standards		
				Marine acute	Marine chronic	Human health[5]
Arsenic	407	57(30)	54(27)	69	36	
Benzene	2550	360(191)	347(173)	2700	1370	12.5
Cadmium	77	11(6)	10(5)	45.6	10	
Coppper	148	21(11)	20(10)	4.4	4.4	
Lead	12600	1750(927)	1680(835)	220	8.5	
Mercury	130	18(10)	18(9)	2.1	0.025	
Nickel	1100	153(81)	147(73)	75	8.3	
Zinc	1090	153(81)	147(73)	95	86	
Toxicity:						
Mysid Chronic (% effluent)			[6]4.5	13.3	(6.6)	
Sheepshead Chronic (% effluent			[6]8.0	13.3	(6.6)	

[1] Comparison uses mean produced water pollutant concentration and mean chronic survival toxicities from LDEQ DMR's. All values are in ug/1, except toxicity.
[2] Dilutions available at edge of 50 foot zone of initial dilution (ZID) = 7.2 using mean discharge rate (and 13.8 using median discharge rate).
[3] Dilutions available at edge of 200 foot mixing zone (MZ) = 7.5 using mean discharge rate (and 15.1 using median discharge rate).
[4] Concentration values at ZID and MZ were calculated using mean discharge flow rate, and concentration values, in parentheses, at ZID and MZ were calculated using median discharge flow rate.
[5] Applies to surface water bodies not designed as drinking water supply and protects for fish consumption.
[6] These % effluent values must be greater (i.e., less toxic) than 13.3% using mean discharge rate (or greater than 6.6% using median discharge rate) in order to be in compliance with Louisiana Water Quality Standards, which require no chronic toxicity at the edge of the mixing zone.

TABLE 7–B.—COMPARISON OF MEDIAN PRODUCED WATER EFFLUENT CONCENTRATIONS AT EDGE OF ZID AND MIXING ZONE WITH LOUISIANA WATER QUALITY STANDARDS[1]

Pollutant	Effluent conc.	Conc. at ZID[2]	Conc. at MZ[3]	Louisiana standards		
				Marine acute	Marine chronic	Human health[4]
Arsenic	11	0.8	0.7	69	36	
Benzene	1400	103	93	2700	1370	12.5
Cadmium	40	2.9	2.6	45.6	10	
Copper	159	12	11	4.4	4.4	
Lead	500	37	33	220	8.5	
Mercury	1.3	0.1	0.9	2.1	0.025	
Nickel	310	23	21	75	8.3	
Phenol (T)	738	54	49	580	290	60
Zinc	150	11	10	95	86	
Toxicity:						
Mysid Chronic (% effluent)			[5]2.2	6.6		
Sheepshead Chronic (% effluent)			[5]2.2	6.6		

[1] Comparison uses median produced water pollutant concentration and median chronic survival toxicities from LDEQ DMR's. All values are in terms of ug/1, except toxicity.
[2] Dilutions available at edge of 50 foot zone of initial dilution (ZID)=13.8 using median discharge rate.
[3] Dilutions available at edge of 200 foot mixing zone (MZ)=15.1 using median discharge rate.
[4] Applies to surface water bodies not designated as drinking water supply and protects for fish consumption.
[5] These % effluent values must be greater (i.e., less toxic) than 6.6% (using median discharge rate) in order to be in compliance with Louisiana Water Quality Standards, which require no chronic toxicity at the edge of the mixing zone.

TABLE 8.—COMPARISON OF PRODUCED WATER EFFLUENT CONCENTRATIONS WITH TEXAS WATER QUALITY-BASED EFFLUENT LIMITS[1]

Pollutant	Mean[2]	95 percentile[3]	Limits[4]		Limits[5]	
			Daily average	Daily maximum	Daily average	Daily maximum
Arsenic	407	4,230	953	2,017	498	1,053
Benzene	2,550	12,000	4,806	10,167	2,133	4,512
Cadmium	77	510	136	287	66	139
Chromium	77	779	677	1,432	327	692

TABLE 8.—COMPARISON OF PRODUCED WATER EFFLUENT CONCENTRATIONS WITH TEXAS WATER QUALITY-BASED EFFLUENT LIMITS [1]—Continued

Pollutant	Mean [2]	95 percentile [3]	Limits [4]		Limits [5]	
			Daily average	Daily maximum	Daily average	Daily maximum
Copper	148	470	67	142	33	69
Lead	12,600	34,000	199	421	96	203
Mercury	130	2,100	[6]0.58	[6]1.2	[6]0.26	[6]0.54
Nickel	1,100	2,100	179	378	86	183
Selenium	34	500	1,841	3,896	890	1,883
Silver	41	260	29	61	14	30
Zinc	1,090	4,630	1,061	2,244	551	1,172

[1] All values in terms of ug/l.
[2] Mean of all LDEQ DMR values. Zero used for values below detection.
[3] 95 percentile of detected values.
[4] Limits calculated using median produced water discharge rate.
[5] Limits calculated using mean produced water discharge rate.
[6] Limits based on human health Water Quality Standards.

TABLE 9.—COMPARISON OF PRODUCED WATER EFFLUENT CONCENTRATIONS WITH TEXAS HAZARDOUS METALS REGULATION, 31 TAC 319

Pollutant	Mean [1]	Regulation limits, mg/l		
	mg/l	Average	Daily composite	Grab
Arsenic	0.407	0.1	0.2	0.3
Barium	54.4	1.0	2.0	4.0
Lead	12.6	0.5	1.0	1.5
Mercury	0.13	0.005	0.005	0.01

[1] Produced Water concentration values from Table 2.

Appendix A United States Environmental Protection Agency Region 6—Administrative Order

[Docket No. VI–{DNO}]

In the matter of NPDES General Permits for Produced Water and Produced Sand Discharges from the Oil and Gas Extraction Point Source Category to Coastal Waters of Louisiana and Texas; Proceedings Under Section 309(a)(3), Clean Water Act [33 U.S.C. 1319(a)(3)], In re: NPDES Permit Nos. LAG290000 and TXG290000

The following findings are made and order issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 309(a)(3) of the Clean Water Act [hereinafter "the Act"], 33 U.S.C. 1319(a)(3), and duly delegated to the Regional Administrator, Region 6, and duly redelegated to the undersigned Director, Water Management Division, Region 6. Failure to comply with the interim requirements established in this order constitutes a violation of this order and the NPDES permits.

Findings

I

Pursuant to the authority of section 402(a)(1) of the Act, 33 U.S.C. 1342, Region 6 issued National Pollutant Discharge Elimination System (NPDES) Permits Nos. LAG290000 and TXG290000 with an effective date of [*EFFECTIVE DATE*]. These permits prohibit the discharge of produced water and produced sand derived from Oil and Gas Point Source Category facilities to "coastal" waters of Louisiana and Texas in accordance with effluent limitations and other conditions set forth in Parts I and II of these permits. Facilities covered by these permits include those in the Coastal Subcategory (40 CFR part 435, subpart D), the Stripper Subcategory (40 CFR part 435, subpart F) that discharge to "coastal" waters of Louisiana and Texas, and the Offshore Subcategory (40 CFR 435, subpart A) which discharge to "coastal" waters of Louisiana and Texas.

II

Respondents herein are permittees subject to General NPDES Permit Nos. LAG290000 and/or TXG290000 and who:

A. Currently discharge produced water derived from an existing Coastal, Stripper or Offshore Subcategory well or wells to "coastal" waters of Texas, other than "inland and fresh waters", or

B. Currently discharge produced water derived from an existing Coastal, Stripper or Offshore Subcategory well or wells to "coastal" waters of Louisiana, other than "upland area waters",

C. Currently discharge produced water derived from a Coastal Subcategory well or wells located in Louisiana or Texas to waters of the United States outside Louisiana or Texas "coastal" waters.

The term "waters of the United States" is defined at 40 CFR 122.2. The term "coastal" waters is defined in NPDES Permits LAG290000 and TXG290000. The term "inland and fresh waters" is defined in NPDES Permit TXG290000. The term "upland area waters" is defined in NPDES Permit LAG290000. The term "existing" means spudded prior to the effective date of NPDES Permits LAG290000 and TXG290000.

III

To maintain oil and gas production and comply with the permits' prohibition on the discharge of produced water, a significant number of Respondents will have to reinject their produced water. A lack of access to the finite number of existing Class II disposal wells, state UIC permit writers, and drilling contractors may cause non-compliance for a significant number of Respondents. In addition, time will be required for some Respondents to reroute produced water collection lines to transport the produced water to injection wells.

IV

Respondents may reasonably perform all actions necessary to cease their discharges of produced water within three years.

Order

Based on the foregoing FINDINGS, it is *Ordered* that Respondents:

A. Fully comply with all conditions of NPDES Permits Nos. LAG290000 and TXG290000 except for their prohibitions on the discharge of produced water and requirements that all discharges of produced water be reported within twenty-four hours.

B. Complete all activities necessary to attain full and continuance compliance with NPDES Permits No. LAG290000 and TXG290000 as soon as possible, but in no case longer than three (3) years from the effective dates of said permits.

C. Operate and maintain all existing pollution control equipment, including existing oil/water separation equipment, in such a manner as to minimize the discharge of pollutants contained in produced water at all times until such time as respondents cease their discharges of produced water.

It is further *Ordered* that respondents subject to NPDES Permit LAG290000 comply at all times with Part I. Section B.1.d of said permit, requiring that Respondents meet any more stringent requirements contained in Louisiana Water Quality Regulation, LAC: 33,IX,7.708.

The effective date of this ORDER shall be [EFFECTIVE DATE].

DATED: _____

Director, Water Management Division (6W).

NPDES General Permits for Produced Water and Produced Sand Discharges From the Oil and Gas Extraction Point Source Category to Coastal Waters of Louisiana and Texas

Permit No. LAG290000, Permit No. TXG290000.

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq: the "Act"), these permits prohibit the discharge of produced water and produced sand derived from Oil and Gas Point Source Category facilities to "coastal" waters of Louisiana and Texas, as described below, in accordance with effluent limitations and other conditions set forth in Parts I and II.

Facilities covered by these permits include those in the Coastal Subcategory (40 CFR part 435, subpart D), the Stripper Subcategory (40 CFR part 435, subpart F) that discharge to "coastal" waters of Louisiana and Texas, and the offshore Subcategory (40 CFR part 435, subpart A) which discharge to "coastal" waters of Louisiana and Texas.

These permits do not authorize discharges from "new sources" as defined in 40 CFR 122.2.

These permits, except for certain portions listed in Part I.B., shall become effective_____, and expire at midnight on *(Five years from effective date).*

Signed this _____day of _____, 1992

Director, Water Management Division, EPA, Region 6.

Part I

Section A. General Permit Coverage and Notification Requirements

1. Permittees covered

Permittees include:

(1) Operators of facilities in the Coastal Subcategory (40 CFR part 435, subpart D) located in Louisiana and Texas. Location of a Coastal Subcategory facility is determined by the location of the wellhead associated with that facility.

(2) Operators of facilities in the Offshore Subcategory (40 CFR part 435 subpart A) and the Stripper subcategory (40 CFR part 435 subpart F) which discharge to "coastal" waters of Louisiana or Texas.

(3) Persons who dispose of produced water or produced sand for operators of Coastal Subcategory facilities located in Louisiana or Texas.

(4) Persons who dispose of pollutants to "coastal" waters of Louisiana or Texas for operators of Stripper or Offshore Subcategory facilities.

2. Notification Requirements

Permittees covered by these permits are automatically covered; a written notification of intent to be covered by these permits is not required. Since these permits cover only produced water and produced sand, discharges of other waste waters from Coastal Subcategory wells in these States must apply to be covered by NPDES Permits LAG330000 or TXG330000.

Section B. General Permit Limits

1. Permit Conditions Applicable to LAG290000

a. Prohibitions. Permittees shall not discharge nor shall they cause or contribute to the discharge of produced water and produced sand.

b. Other requirements. All dischargers must comply with any more stringent requirements contained in Louisiana Water Quality Regulations, LAC: 33,IX,7.708.

2. Permit Conditions Applicable to TXG290000

a. Prohibitions. Permittees shall not discharge nor shall they cause or contribute to the discharge of produced water or produced sand.

Part II (Applicable to LAG290000 and TXG290000)

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR 122.41 et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended (hereinafter known as the "Act") as well as all applicable EPA regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action and/or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause, in accordance with 40 CFR 122.62–64. The filing for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

4. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privileges nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

5. Duty To Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish the Regional Administrator, upon request, copies of records required to be kept by this permit.

6. Criminal and Civil Liability

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act or applicable CFR regulations which avoids or effectively defeats the regulatory purpose of the Permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under section 311 of the Clean Water Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Clean Water Act.

9. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need to Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed and used by the permittee to achieve compliance with the conditions of this permit. This provision requires the operation of backup or auxiliary facilities of similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

4. Bypass of Facilities

a. *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to be inoperable, or substantial and permanent loss of natural resources than can reasonably be expected to occur in the absence of bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Notice. (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.2.

c. Prohibition of bypass. (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and (c) The permittee submitted notices as required by Part II.B.4.b. (2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet three conditions listed at Part II.B.4.c.(1).

5. Upset Conditions

a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate facilities, lack of preventive maintenance, or careless or improper operation.

b. Effects of an upset. An upset constitutes an affirmative defense of an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.c. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. The permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.2; and

(4) The permittee complied with Part II.B.2.

d. Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of waste waters shall be disposed of in a manner such as to prevent any pollution from such materials from entering waters of the United States.

Section C. Monitoring and Records

The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, those records that are kept to assure compliance with the permit (i.e., zero discharge). These records shall be kept for a period of at least three years from the date of sampling measurement or reporting and at a specified shore-based site.

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

2. Twenty-Four Hour Reporting

The permittee shall report any noncompliance with this permit, bypass or upset. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or plans to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in any report to the Regional Administrator, it shall promptly submit such facts or information.

4. Changes in Discharges of Toxic Substances

The permittee shall notify the Regional Administrator as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(1).

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(2).

5. Signatory Requirements

All reports, or information submitted to the Regional Administrator shall be signed and certified as follows:

a. For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principle business function, or decision making functions for the corporation, or

(2) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a partnership or sole proprietorship. By a general partner or the proprietor, respectively.

c. For a municipality, State, Federal or other public agency. Either a principle executive office or ranking elected official. For purposes of this section, a principle executive officer of a Federal agency includes:

(1) The chief executive officer of the agency, or

(2) A senior executive officer having responsibility for the overall operations of a principle geographic unit of the agency.

d. Alternatively, all reports required by the permit and other information requested by the Regional Administrator may be signed by a person described above or by a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a positive having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or oil field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either an individual or an individual occupying a named position; and

(3) The written authorization is submitted to the Regional Administrator.

e. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for the gathering of the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

6. Availability of Reports

Except for applications, effluent data, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

a. Negligent violations. The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307 or 308 of the Act is subject to a fine of not less than $2500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing violations. The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307 or 308 of the Act is subject to a fine of not less than $5,000 per day of violation nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing endangerment. The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307 and 308 of the Act and who knows at the time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. False statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 per day, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such a person under this paragraph, punishment shall be by a fine or not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both (See section 309(c)(4) of the Clean Water Act).

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307 or 308 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

a. Class I penalty. Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

b. Class II penalty. Not to exceed $10,000 per day for each day during which the violations continues nor shall the maximum amount exceed $125,000.

Section F. Definitions

All definitions in section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions words or phrases used in this permit are as follows:

1. "Act" means the Clean Water Act (33 U.S.C. 1251 et seq.) as amended.

2. "Applicable effluent standards and limitations" means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

3. "Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act and which have been (a) approved or permitted to remain in effect by the Administrator following submission to him/her, pursuant to section 303(a) of the Act, or (b) promulgated by the Administrator pursuant to section 303(b) or 303(c) of the Act.

4. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

5. "Coastal waters" are defined as waters of the United States as defined at 40 CFR 122.2, located landward of the territorial seas.

6. "Environmental Protection Agency" means the U.S. Environmental Protection Agency.

7. "Inland and fresh waters" are defined in Texas Statewide Rule 8(e) and include those Texas waters that are not offshore or in adjacent estuarine waters.

8. "National Pollutant Discharge Elimination System" means the national program for issuing, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402 and 405 of the Act.

9. "Produced sand" means sand and other particulate matter from the producing formation and production piping (including corrosion products), as well as source sand and hydrofrac sand. Produced sand also includes sludges generated by any chemical polymer used in a produced water treatment system.

10. "Produced water" means water and particulate matter associated with oil and gas producing formations. Produced water includes small volumes of source water and treatment chemicals that return to the surface with the produced formation fluids and pass through the produced water treating systems currently used by many oil and gas operators.

11. "Regional Administrator" means the Administrator of the U.S. Environmental Protection Agency, Region 6.

12. "Severe property damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of bypass. Severe property damage does not mean economic loss caused by delays in production.

13. Territorial seas refers to "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles."

14. "Upland area waters" are defined in Louisiana Water quality Regulation LAC:33,IX,7.708 and includes "any land not normally inundated with water and that would not, under normal circumstances, be characterized as swamp or fresh, intermediate, brackish or saline marsh". "The land and water bottoms of all parishes north of the nine parishes contiguous with the Gulf of Mexico will be considered in toto as upland areas." Major deltaic passes of the Mississippi River and the Atchafalyaya River, including Wax Lake Outlet, below Morgan City are not upland area waters for purposes of this permit.

15. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

[FR Doc. 92-30779 Filed 12-21-92; 8:45 am]
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Part IV

Copyright Royalty Tribunal

37 CFR Part 304
Public Broadcasting Royalty Rates and Terms; 1992 Adjustment; Final Rule

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

[Docket No. 92-2-PBRA]

1992 Adjustment of the Public Broadcasting Royalty Rates and Terms

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule; notice of final determination.

SUMMARY: This notice announces the adoption of final rules governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works. The terms and rates shall apply for the five-year period of 1993–1997.

DATES: The effective date of these rules is January 1, 1993, pursuant to 17 U.S.C. 118(b).

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202–606–4400).

SUPPLEMENTARY INFORMATION: Section 118 of the Act establishes a copyright compulsory license for the use by public broadcasting entities of published nondramatic musical works and published pictorial, graphic and sculptural works. 17 U.S.C. 118. The Act specifically provides that between June 30 and December 31 of 1982, and at five-year intervals thereafter, the Tribunal "shall" conduct a proceeding for the determination of reasonable rates and terms for the use of the works. 17 U.S.C. 118(b).

Accordingly, the Tribunal commenced the 1992 public broadcasting rate adjustment proceeding on June 30, 1992. 57 FR 29066 (1992). On November 25, 1992, the Tribunal published a Notice of Proposed Rule Making in the **Federal Register**. 57 FR 55494 (1992).[1] Comments were due by December 4, 1992.

The Comments

The Tribunal received two comments in response to its Notice of Proposed Rule Making. Comments were filed by: American Society of Composers, Authors and Publishers (ASCAP); and Broadcast Music, Inc. (BMI).

ASCAP and BMI support the Tribunal's proposed rules to the degree that they affect ASCAP and BMI. ASCAP and BMI also note that the rates for the performance of music by "college stations," which the Tribunal is proposing to adjust based upon a change in the Consumer Price Index (CPI), during the period between the first CPI published subsequent to December 1, 1991, and the last CPI published prior to December 1, 1992, are $189 (ASCAP); $189 (BMI); $45 (SESAC); and $1 (other). The Tribunal agrees with ASCAP and BMI. Therefore, since the above-referenced change in the CPI was 3% (1991's figure was 137.9; 1992's figure was 142, based on 1982–1984 equalling 100), the rates are adjusted, to the nearest dollar, as follows: (1) For all such compositions in the repertory of ASCAP, $195 annually; (2) For all such compositions in the repertory of BMI, $195; (3) For all such compositions in the repertory of SESAC, $46 annually; (4) For the performances of any other such composition. $1.

Accordingly, part 304 of the Tribunal's rules is revised as follows:

[1] The Notice of Proposed Rule Making, 57 FR 55494 (1992), and the Notice of Final Determination together constitute the final determination of the 1992 Public Broadcasting Rate Adjustment Proceeding.

PART 304—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING

Sec.

304.1 General.
304.2 Definition of public broadcasting entity.
304.3 [Reserved].
304.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).
304.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.
304.6 Performance of musical compositions by other public broadcasting entities.
304.7 Recording rights, rates and terms.
304.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.
304.9 Unkown copyright owners.
304.10 Cost of living adjustment.
304.11 Notice of restrictions on use of reproductions of transmission programs.
304.12 Amendment of certain regulations.
304.13 Issuance of interpretative regulations.

Authority: 17 U.S.C. 118.801(b)(1) and 804.

§ 304.1 General.

This part 304 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 1993 and ending on December 31, 1997. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

§ 304.2 Definition of public broadcasting entity.

As used in this part, the term *public broadcasting entity* means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(d)(2).

§ 304.3 [Reserved]

§ 304.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 304.5 and 304.6, and except for compositions which are the subject of voluntary license agreements, such as the PBS/NPR/ASCAP, the PBS/NPR/BMI and the PBS/NPR/SESAC license agreements.

(a) *Determination of royalty rate.* (1) For the performance of such a work in a feature presentation of PBS:

1993–1997.....$199.18

(2) For the performance of such a work as background or theme music in a PBS program:

1993–1997.....$50.46

(3) For the performance of such a work in a feature presentation of a station of PBS:

1993–1997.....$17.02

(4) For the performance of such a work as background or theme music in a program of a station of PBS:

1993–1997.....$3.59

(5) For the performance of such a work in a feature presentation of NPR:

1993–1997.....$20.19

(6) For the performance of such a work as background or theme music in an NPR program:

1993–1997.....$4.90

(7) For the performance of such a work in a feature presentation of a station of NPR:

1993–1997.....$1.43

(8) For the performance of such a work as background or theme music in a program of a station of NPR:

1993–1997.....$.51

(9) For the purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.

(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

(b) *Payment of royalty rate.* The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that is required by paragraph 4b of the PBS/NPR/ASCAP license agreement dated October 19, 1992 to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

(d) *Terms of use.* The fees provided in this schedule for the performance of a musical work in a program shall cover performances of such work in such program for a period of three years following the first performance.

§ 304.5 Performance of musical compositions by public broadcasting entities licensed to colleges or universities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, $195 annually.

(2) For all such compositions in the repertory of BMI, $195 annually.

(3) For all such compositions in the repertory of SESAC, $46 annually.

(4) For the performance of any other such composition, $1.00.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC shall not in any one calendar year request more than 10 stations to furnish such reports.

§ 304.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 1993, $295; in 1994, $310; in 1995, $325; in 1996, $340; in 1997, $360.

(2) For all such compositions in the repertory of BMI, in 1993, $295; in 1994, $310; in 1995, $325; in 1996, $340; in 1997, $360.

(3) For all such compositions in the repertory of SESAC, in 1993, $63; in 1994, $66; in 1995, $69; in 1996, $72; in 1997, $75.

(4) For the performance of any other such compositions, in 1988 through 1992, $1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calender year request more than 5 stations to furnish such reports.

§ 304.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1) (i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in the PBS-distributed program:

	1993–1997
Feature	$99.85
Concert feature (per minute)	29.98
Background	50.46
Theme:	
Single program or first series program	50.46
Other series program	20.48

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	1993–1997
Feature	$8.25
Concert feature (per minute)	2.17
Background	3.59
Theme:	
Single program or first series program	3.59
Other series program	1.43

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule "National Public Radio" programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	1993–1997
Feature	$10.81
Concert feature (per minute)	15.87
Background	5.41
Theme:	
Single program or first series program	5.41
Other series program	2.16

(3) For the purposes of this schedule, a "Concert Feature" shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in a NPR-produced radio program:

Feature	.70
Feature (concert) (per half hour)	1.45
Background	.35

(5) The schedule of fees covers broadcast use for a period of three years following the first broadcast. Succeeding broadcast use periods will require the following additional payment: second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 1997 shall be subject to the royalty rates established in this schedule.

(c) *Payment of royalty rates.* The required royalty rates shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use.* (1) Maintenance of cue sheets. PBS and its stations, NPR, or other television public broadcasting entities shall maintain and make available for examination pursuant to subsection (e) copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) Content of cue sheets or summaries. Such cue sheets or summaries shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) *Filing of use reports with the Copyright Royalty Tribunal (CRT). Deposit of cue sheets or summaries.* PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the CRT copies of their standard music cue sheets or summaries of same (which may be in the form of hard copy of computerized reports) listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the CRT upon its request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

§ 304.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) *Scope.* This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

(A) For a featured display of a work.

1993–1997 ..... $61.00

(B) For background and montage display.

1993–1997 ..... $29.75

(C) For use of a work for program identification or for thematic use.

1993–1997 ..... $120.25

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1993–1997 ..... $39.50

(ii) For such uses in other than PBS-distributed programs:

(A) For a featured display of a work.

1993–1997 ..... $39.50

(B) For background and montage display.

1993–1997 ..... $20.25

(C) For use of a work for program identification or for thematic use.

1993–1997 ..... $80.75

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1993–1997 ..... $20.25

For the purposes of this schedule the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a "background or montage display".

(3) "Thematic use" is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(4) "Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced" means a transparency or other reproduction of an underlying work of fine art.

(c) *Payment of royalty rate.* PBS or other public broadcasting entity shall pay the required royalty fees to each copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use.* (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the CRT.* (1) PBS and its stations or other public broadcasting entity shall deposit with the CRT copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited broadcast use for a period of three years from the date of the first broadcast use of the work under this schedule. Succeeding broadcast use periods will require the following additional payment: Second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 1997 shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118 (f), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

§ 304.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this Part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the CRT, upon request, information concerning fees deposited in trust funds.

§ 304.10 Cost of living adjustment.

(a) On December 1, 1993 the CRT shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1992 to the most recent Index published prior to December 1, 1993. On each December 1 thereafter the CRT shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the CRT shall publish in the **Federal Register** a revised schedule of rates for § 304.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates for § 304.5 shall become effective thirty days after publication in the **Federal Register**.

§ 304.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

§ 304.12 Amendment of certain regulations.

Subject to 17 U.S.C. 118, the Administrative Procedure Act and the Rules of Procedure of the Copyright Royalty Tribunal, the CRT may at any time amend, modify or repeal regulations in this Part adopted pursuant to 17 U.S.C. 118(b)(3) by which "copyright owners may receive reasonable notice of the use of their works" and "under which records of such use shall be kept by public broadcasting entities."

§ 304.13 Issuance of interpretative regulations.

Subject to 17 U.S.C. 118, the Administrative Procedure Act and the Rules of Procedure of the Copyright Royalty Tribunal, the CRT may at any time, either on its own motion or the motion of a person having a significant interest in the subject matter, issue such interpretative regulations as may be necessary or useful to the implementation of this part. Such regulations may not prior to January 1, 1998, alter the schedule of rates and terms of royalty payments by this part.

Dated: December 16, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-30914 Filed 12-21-92; 8:45 am]

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Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92
HOME Investment Partnerships Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R-92-1518; FR-2937-I-03]

RIN 2501-AB12

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends the existing interim rule for the HOME Investment Partnerships Program by correcting omissions, providing additional guidance, and making adjustments in response to comments and the Department's experience in administering the program. This rule also implements certain related amendments enacted by the Housing and Community Development Act of 1992.

DATES: *Effective date:* January 21, 1993

Comment due date: Comments on these amendments to the interim rule must be submitted on or before February 22, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, and have been assigned OMB Control Number 2501-0013. This rule also contains an additional information collection requirement that has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410-0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Information on the estimated public reporting burden is provided below:

Reg. Sec. and paperwork requirement	Record-keeping hours	Reporting hours	No. of Juris.	Total hours
92.150—Program Description, including certifications	0	11	51	561

II. Background

On March 19, 1991, the Department published a proposed rule (56 FR 11592) to implement the HOME Program, which had been enacted under title II (42 U.S.C. 12701-12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, approved November 28, 1990). The Department received 119 public comments in response to the proposed rule. After reviewing and considering these comments, HUD published an interim rule on December 16, 1991 (56 FR 65313), inviting additional comments on the program.

Since the publication of the interim rule, the Department has had some experience, albeit brief, in administering the program; has received 118 public comments on the interim rule, and has conducted 30 HOME Program training sessions across the country which also served as forums for airing issues and comments concerning the rule. In addition, the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992) included a substantial number of amendments to the HOME Program. A two step process for issuing a final rule emerged as the proper way to proceed, based on the information the Department has received from these sources. First, it was apparent that there were a few aspects of the rule that needed immediate correction or clarification so that the program could function as intended, and, second, there were other issues that would require additional consideration before they could be resolved, but which did not impede the basic operation of the program. As a result, the Department has determined that it is necessary, appropriate and in the public interest to make some immediate adjustments in the December 16, 1991 interim rule before waiting to address, in a final rule, all of the issues raised by the comments.

The necessary adjustments to the program are being implemented in this interim rule. Proposed rulemaking is unnecessary, since these changes, including some that implement amendments made by HCDA 1992, are made in response to public comment on the December 16, 1991 interim rule. The use of an interim rule provides the flexibility needed to implement quickly the needed changes while still leaving the door open for a final rule that will address all of the issues raised in the comments.

The changes made by this amending interim rule will assist program participants and permit the HOME program to function as intended by correcting omissions, clarifying the intent of certain sections, making adjustments that recognize the difference between urban and rural settings, and providing additional guidance to facilitate the purpose and operation of the HOME Program.

At § 92.2, language is added to the definition of Community Housing Development Organization (CHDO) to make clear that, for State of locally chartered organizations, board members appointed by the unit of government may not appoint the remaining board members. This requirement parallels that for nonprofit organizations that are sponsored or created by a for-profit entity, but the requirement was not made explicit for government-sponsored

entities in the interim rule. This change clarifies the Department's existing policy.

The Department has received indications that the requirement in the CHDO definition that rural multi-county CHDOs have low-income resident representation from each county would impede the ability of rural nonprofit housing developers to participate in the HOME Program. This requirement would necessitate the establishment of very large governing boards in some cases. In addition, the long distances that board members from some counties would have to travel to meetings would discourage board participation and, thus, make it difficult for some rural nonprofit organizations to maintain their CHDO designation. In response to these concerns, the Department is amending the CHDO definition at § 92.2 to eliminate this requirement. This change also implements section 217 of HCDA 1992.

Section 92.2 is amended to add definitions of "moderate-income families" (identical to that used in the Comprehensive Housing Affordability Strategy rule) and "impact fee."

The Department has received comments noting that the definition of reconstruction at § 92.2, which requires that the housing be rebuilt on the same foundation, poses problems for participating jurisdictions in many areas of the country where much of the housing stock is not built upon foundations or where an existing foundation is not usable for reconstruction. The Department did not intend that its definition preclude the reconstruction of housing in these areas. In response to this concern, the reconstruction definition is amended to include the rebuilding of housing that does not have a foundation or whose foundation is not usable. The amended definition also makes clear that the new housing must be substantially similar to the original structure, must consist of the same number of units, and must be built on the same location. In addition, language is added to indicate that the replacement of a substandard manufactured housing unit with a new or standard manufactured unit is considered reconstruction.

Also at § 92.2, the definition of "project" is revised to clarify the four block area exception for scattered site projects. Many participating jurisdictions have expressed uncertainty about the applicability of this definition to areas that do not have "blocks," particularly rural areas. The general rule is that each site must be administered as a single project. The exception is that multiple sites within four blocks of each other are permitted to constitute a single project. In areas without blocks, the four block exception cannot apply, and structures on various sites must be set up as separate HOME projects. For the purposes of Subpart M—Home Funds for Indian Tribes, the general rule also does not apply, and scattered site projects are permitted.

The procedure for designating consortia as participating jurisdications is revised to permit the Department to provide more guidance in the application process. Previously, all of the documents necessary for participating jurisdiction designation were prepared by the applying consortium without any HUD participation and submitted along with a notice of intention to be considered a consortium under the program. The submissions usually required additional refinement before they were considered acceptable by the Department. To streamline this procedure, § 92.101 is amended to require first only the submission to HUD of a notice of intention to be considered a consortium. HUD will then contact the consortium and provide instruction on the form of the qualification documents and the manner and time of their submission.

As part of the documentation process for consortia (see § 92.101(a)(2)), beginning with consortia considered for FY 1994, local governments within non-urban counties will be required to sign an agreement that they are joining as part of a consortium. This new requirement will only apply to new consortia and renewals of existing consortia for purposes of the HOME Program.

Section 92.150(b) is amended to provide greater detail on the program description requirements for State participating jurisdictions. The regulation now reflects the requirement that States specify activities and tenure groups based on their approved housing strategies. For statutorily required elements of the program description (i.e. resale guidelines, forms of investments not specified in the regulation and affirmative marketing procedures), States are given the option to describe the requirements they plan to impose upon State recipients or describe the requirements being proposed by State recipients for HUD approval.

Section 92.151 is amended to clarify that the participating jurisdiction must have a current approved housing strategy or current annual plan (the one year update for the fiscal year) before it receives its allocation.

Variations in the language regarding the start date for the various deadlines for funds commitment or expenditure have resulted in uncertainty among many participating jurisdictions. Consequently, the language in §§ 92.204(a) and 92.500(d) has been standardized to provide consistency throughout the rule and to clarify that the timeframes for the 24-month commitment deadline, the 5-year expenditure deadline, and the CHDO set-aside reservation deadline (extended from 18 to 24 months by section 212(a) of HCDA 1992), all begin after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement. This change will facilitate the tracking of these deadlines by participating jurisdictions.

Based on comments that pointed out the difficulty in making the necessary calculation, the provision in § 92.205(c) regarding the minimum amount of HOME funds that must be invested in tenant-based rental assistance is being deleted.

Numerous comments have indicated that initial operating reserves are essential to the viability of substantial rehabilitation projects as well as new construction. Consequently, § 92.206 is amended to make initial operating reserves for substantial rehabilitation projects a HOME-eligible soft cost.

Section 92.211(a)(2) is amended to implement a HCDA 1992 amendment that replaces the use of the Section 8 waiting list as the selection criterion for families eligible to receive HOME-funded tenant-based rental assistance. This assistance is now provided in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the Housing Act of 1937.

Section 92.211(a)(2) is also amended to permit participating jurisdictions to provide HOME-funded tenant assistance to eligible families residing in housing acquired with HOME funds without requiring that the families meet the written tenant selection policies and criteria. The rule previously allowed this only in the case of housing to be rehabilitated with HOME funds.

The Department has received a large number of comments regarding the substantial burden to participating jurisdictions of administering a program as large and complex as the HOME Program. However, HOME funds were prohibited by statute from being used to defray any administrative cost of a participating jurisdiction. Section 207 of HCDA 1992 has removed this prohibition and permits the limited use

of HOME funds for administrative and planning costs. In each fiscal year, a participating jurisdiction may expend for administrative and planning costs an amount of HOME funds that is up to ten percent of that fiscal year's HOME basic formula allocation plus or minus any money transferred or received in accordance with § 92.102(b) to meet or exceed participation threshold requirements. Section 92.206 is being amended to permit administrative and planning costs within this ten percent limit. The § 92.214 prohibition on the use of HOME funds for administrative costs is also being deleted.

Many participating jurisdictions, particularly States, have proposed, in their program descriptions and through other means, the imposition of application fees, monitoring fees, servicing fees and origination fees on HOME project owners. While participating jurisdictions may charge nominal application fees to project owners to discourage frivolous applications, the imposition of monitoring, servicing or origination fees is inconsistent with statutory intent. These fees would represent a payment for the participating jurisdiction's program administration costs. Attempts to recoup these costs would inevitably lead project developers to inflate project costs. Further, payment of such fees by the developer is inappropriate as it would create the appearance that the developer is "paying" for the HOME funds that he/she has received. Of equally great concern are the disadvantage that these fees would create for nonprofit housing developers and the potential impact of such fees on the financial feasibility of otherwise workable projects. Thus, § 92.214 is amended to prohibit monitoring, servicing and origination fees in HOME-assisted projects.

The Department has also received numerous questions regarding the eligibility of impact fees for HOME funding. They are not eligible, and to make this clear, they are added to the list of prohibited activities as § 92.214(a)(8). As noted above, a definition of impact fees is added to § 92.2.

Section 92.220(a) is amended to make it clear that only waiver of fees that a participating jurisdiction customarily charges for all transactions or projects may be counted as a matching contribution. Participating jurisdictions may not count the forgiveness of fees charged only for HOME-assisted projects toward their match requirements.

Also in § 92.220, Rental Rehabilitation Program (RRP) program income is explicitly recognized as an eligible form of matching funds. It is worth noting that a participating jurisdiction's entire RRP program, not just the fiscal year grant, must be closed out for these funds to be considered nonfederal funds.

To correct a common misunderstanding, contributions from builders, contractors or investors involved with HOME-assisted projects are added to the list of ineligible match sources in § 92.220(b).

The Department received numerous comments regarding the maximum per unit subsidy limits established in § 92.250. It was contended that these limits would impede successful implementation of the program, particularly in high cost areas. The method of calculating these limits is to multiply the 24 CFR 221(d)(3) per unit dollar limits by a factor of .67, which reflects the presumed HOME share of combined HOME and match funds in a new construction project. The comments pointed out that this procedure assumes that the match will be made on a project-by-project basis. Since participating jurisdictions are required to make their match on a program-wide basis rather than by project, it was argued that the reduction of the § 221(d)(3) per unit limits is not appropriate. The comments further pointed out that in high cost areas this limit would seriously impede the ability to carry out both substantial rehabilitation and new construction of rental housing. Section 206 of HCDA 1992 addresses this issue and establishes the HOME maximum per unit subsidy limit at 100 percent of the § 221(d)(3) per unit dollar limits. The Department is amending § 92.250 to conform to this amendment.

The Department also received numerous comments regarding its decision not to permit waivers of the § 221(d)(3) limits to 240 percent of the basic limit for high cost areas that are "capped" at 210 percent of the limit. These comments indicated that, in high cost areas, there is a significant gap between the cost of constructing or substantially rehabilitating a unit and the maximum per unit subsidy limit. The comments contended it would be extremely difficult under the current rules for participating jurisdictions in these areas to provide sufficient subsidies to make these projects financially viable, given the HOME Program rent requirements. The Department has determined that, in certain high cost areas, this situation will not be sufficiently ameliorated by its decision to increase the maximum per unit subsidy limit to 100 percent of the § 221(d)(3) per unit limits. Consequently, § 92.250 is amended to permit participating jurisdictions capped at 210 percent of the basic § 221(d)(3) limit to apply for an increase of their maximum per unit subsidy limit on a program-wide basis up to 240 percent, based on the costs of multifamily housing construction in the area. Section 206 of HCDA 1992 also addresses this issue, in a manner consistent with the Department's determination.

Concerning § 92.251, comments have pointed out that the requirement that a HOME-assisted property meet health and safety standards at the time of transfer of ownership will impede participating jurisdictions' ability to include housing in need of rehabilitation in HOME first-time homebuyer programs. The Department agrees that this provision poses an undue administrative burden, and § 92.251 is amended to allow purchase of a property, but not occupancy, before health and safety violations are corrected, provided that certain procedures are followed.

The requirement at § 92.252(a)(2) that in order to qualify as affordable housing a rental housing project must have not less than 20 percent of the units occupied by very low-income families is clarified by specifying that it applies only to projects consisting of three or more rental units and to owners of multiple one or two unit projects with a total of three or more rental units. It has been noted that without this clarifying change, every unit in all single unit projects and half the units in every two unit project in this category would be restricted to occupancy by very low-income families. Such a requirement would too severely limit the flexibility of the program and could impede its successful implementation. Therefore, the amendment recognizes a minimal exception to the very low-income family occupancy requirement. At the same time, the goal of emphasizing assistance to very low-income families is underscored by not exempting owner of multiple projects with a total of three or more rental units from the not less than twenty percent occupancy requirement.

In §§ 92.252(a)(5) and 92.254(a)(4)(ii)(B), covenants running with the land have been added to deed restrictions as acceptable mechanisms for ensuring long-term affordability of HOME rental and first-time homebuyer projects. Section 92.504(c)(13), which cross-references § 92.252 deed restrictions, is amended by adding conforming language.

Numerous comments have contended that the continuance of HOME long-

term affordability requirements upon foreclosure will act as a significant disincentive to private lending institutions to make loans to HOME projects, thereby diminishing the HOME Program's effectiveness in increasing the supply of affordable housing. Section 208 of HCDA 1992 addresses this issue, and §§ 92.252 and 92.254 are amended to provide that the required affordability periods for rental housing and first-time homebuyers' assistance will be suspended upon foreclosure by a lender or other transfer in lieu of foreclosure, if the foreclosure by a lender or other transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability. However, if at any time following foreclosure by a lender or other transfer in lieu of foreclosure, but still during the term of the affordability period, the owner of record prior to the foreclosure or deed-in-lieu of foreclosure, or any newly formed entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property, the affordability period shall be revived according to its original terms.

The language at § 92.254(a)(1)(ii) is revised to clarify that it is applicable where HOME funds are used to acquire standard housing for homeownership activities. In cases where housing is acquired and rehabilitation is not needed, the appraised value at the time of acquisition may not exceed the section 203(b) limit for the area and type of housing.

The first-time homebuyer resale provisions in § 92.254(a)(4) are amended to increase the maximum monthly housing payment (principal, interest, taxes and insurance) allowable for subsequent purchasers who have an income between 76 and 80 percent of median to 30 percent of adjusted gross income. This change results in greater equity by eliminating the situation where low-income families with income greater than 75 percent of median will pay less than 30 percent of income while families with lower incomes pay a greater percentage of income for housing.

Section 92.254(a)(4) is also revised to incorporate an amendment made by section 209 of HCDA 1992, which provides for an alternative resale restriction that requires the recapture of the HOME subsidy, in addition to the present restriction which requires resale within certain conditions to a low-income family.

Sections 92.252(e) and 92.254(c) are being added to explain the requirements that manufactured housing units must meet to qualify as affordable rental or homeownership housing under the HOME Program. This change responds to numerous inquiries received by the Department regarding the eligibility of various manufactured housing projects.

To clarify the requirements applicable to community housing development organization (CHDO) set-aside funds, the Department has deleted the language at § 92.300(c) which stated that HOME funds reserved for CHDOs may be used for activities eligible under § 92.205. The HOME CHDO set-aside is required to be invested in housing that is owned, developed or sponsored by a CHDO. Not all activities recognized as eligible under § 92.205 meet the criteria for ownership, development or sponsorship of a project. For instance, when a CHDO undertakes tenant-based rental assistance or, in most instances, homeowner rehabilitation assistance, it is operating as a participating jurisdiction's subrecipient. Thus, CHDO set-aside funds may not be used for these activities.

Several comments have stated that the requirement that participating jurisdictions establish local HOME accounts separate from their general fund will result in an increased administrative workload. They noted that the fund accounting techniques used by most units of government will provide for adequate tracking of HOME funds and that the use of general fund accounts will ease administration of the program. In response to these comments, language is added to § 92.500(a) to provide that participating jurisdictions may use either a separate account or a subsidiary account within its general fund (or other appropriate fund) as the local HOME account.

Section 92.502(d) has been revised to reflect that participating jurisdictions are not required to submit to HUD payment certifications documenting each drawdown of funds from the United States Treasury account. The revised language now requires participating jurisdictions to keep payment certifications for each drawdown in their project files.

Section 92.502(g) has been added to permit a State to contribute funds to a HOME project within the boundaries of a local participating jurisdiction. This procedure was established so that a State and local participating jurisdiction may jointly fund a project. Further, this change makes it clear that this new procedure must be followed if a State and local participating jurisdiction wish jointly to fund a HOME project.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

Although the HOME Program interim rule was found to be a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981, and a regulatory impact analysis (RIA) was prepared, this amending interim rule does not constitute a "major rule". Analysis of this rule, which only makes limited adjustments to the rule for which a RIA was prepared, indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This rule was listed as item number 1369 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have federalism implications concerning the division of

local, State, and federal responsibilities. While the HOME Program interim rule amended by this rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under the rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. The rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if the rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under the rule is required by statute, and is not subject to agency discretion.

List of Subjects in 24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends part 92 of title 24 of the Code of Federal Regulations as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. In part 92, the authority citation continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.2, the newly defined terms *impact fee* and *moderate-income families* are added in alphabetical order; the definitions of *project* and *reconstruction* are revised; and in the definition for *Community housing development organization* the introductory text is republished, paragraph (5) is revised, paragraph (8) introductory text is republished and paragraph (8)(i) is revised to read as follows:

§ 92.2 Definitions.

* * * * *

Community housing development organization means a private nonprofit organization that—

* * * * *

(5) Does not include a public body (including the participating jurisdiction). An organization that is State or locally chartered may qualify as a community housing development organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials. Board members appointed by the State or local government may not appoint the remaining two-thirds of the board members;

* * * * *

(8) Maintains accountability to low-income community residents by—

(i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and

* * * * *

Impact fee means a fee or charge, levied by a government against a property, to cover wholly or partly the cost of providing capital improvements or public services necessitated by the construction or alteration of a residential or commercial development, or to control growth.

* * * * *

Moderate income families means families whose incomes are between 80 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

* * * * *

Project means a site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or (when permissible) sites on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under this part. Project includes all the activities associated with the site and building. A project may include more than one site only if the sites are within a four block area of each other or if the project is undertaken pursuant to subpart M (HOME Funds for Indian Tribes) of this part.

* * * * *

Reconstruction means the rebuilding, on the same foundation, of housing standing on a site at the time of project commitment. If the housing has no foundation, or if it is not possible to rebuild on the existing foundation, then the foundation is considered to be the same location as the housing being reconstructed. Rooms may be added outside the foundation or footprint of the housing being reconstructed, but the reconstructed housing must be substantially similar to the original housing and the number of housing units may not be decreased or increased as part of a reconstruction project. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

* * * * *

3. In § 92.101, paragraph (a) is revised to read as follows:

§ 92.101 Consortia.

(a) A consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if—

(1) The proposed consortium or a member jurisdiction in a potential consortium, provides written notification by March 1 to the appropriate HUD Field Office of its intent to participate as a consortium in the HOME Program for the following fiscal year; (Provided that subsequent deadlines could be met, the Field Office may accept notification at a later date.);

(2) The proposed consortium provides, at such time and in a manner and form prescribed by HUD, the qualification documents, which will include submission of:

(i) A written certification by the State that the consortium will direct its activities to alleviation of housing problems within the State; and

(ii) Documentation which demonstrates that the consortium has executed a legally binding cooperation agreement among its members authorizing one member unit of general local government to act in a

representative capacity for all member units of general local government for the purposes of this part and providing that the representative member assumes overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the requirements of this part; (For new consortia and renewal of existing consortia which include a non-urban county, the county cannot on its own include the whole county in the consortium; any unit of local government in the non-urban county that wishes to participate as a member of the consortium must sign the HOME consortium agreement.); and

(3) Before the end of the fiscal year in which the notice of intent and documentation are submitted, HUD determines that the consortium has sufficient authority and administrative capability to carry out the purposes of this part on behalf of its member jurisdictions. HUD will endeavor to make this determination as quickly as practicable after receiving the consortium's documentation in order to provide the consortium an opportunity to correct its submission, if necessary. If the submission is deficient, HUD will work with the consortium to resolve the issue, but will not delay the formula allocations.

* * * * *

4. In § 92.150, paragraphs (b)(3) and (c)(7) are revised to read as follows:

§ 92.150 Submission of program description and certifications.

* * * * *

(b) * * *

(3) For a State, a description of how the State will distribute funds (consistent with priorities identified in its approved housing strategy) i.e., transferring funds to other participating jurisdictions that do not meet the participation threshold allocation level in § 92.102, administering a competitive process, or directly administering HOME funds. To the extent known, States should identify the areas in which HOME funds will be used. In addition, States should specify the activities to be undertaken and the tenure groups to be assisted based on their approved housing strategy regardless of the manner of distribution. For those program description items in paragraphs (b)(5), (b)(7), and (b)(8) of this section that must be approved by HUD, a State may either describe the requirements it plans to follow or, if distributing funds to State recipients, expects its recipients to follow. Alternatively, States may wish to submit to HUD the proposed requirements of its State recipients after they have submitted their applications to the State;

* * * * *

(c) * * *

(7) A certification that the participating jurisdiction and, if applicable, State recipients, will use HOME funds pursuant to the participating jurisdiction's current approved housing strategy and in compliance with all requirements of this part;

* * * * *

5. In § 92.151, paragraph (a) is revised, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 92.151 Review of program description and certifications.

(a) The responsible HUD Field Office will review a participating jurisdiction's program description and will approve the description unless it is not consistent with its current approved housing strategy, or if the participating jurisdiction has failed to submit information sufficient to allow HUD to make the necessary determinations required by § 92.150 (b)(5), (b)(7), and (b)(8), if applicable. If the information submitted is not consistent with its current approved housing strategy or the participating jurisdiction has not submitted information in accordance with § 92.150 (b)(5), (b)(7), and (b)(8), if applicable, the participating jurisdiction may be required to furnish any information or assurance HUD may consider necessary to approve the program description and certifications.

* * * * *

(d) A participating jurisdiction must have a current approved housing strategy before funds are made available.

(e) HOME Investment Partnership Agreement. After Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the participating jurisdiction. The funds are obligated on the date HUD notifies the participating jurisdiction of HUD's execution of the agreement in accordance with this section and § 92.501.

6. In § 92.204, paragraph (a)(2)(i) (A) and (B) are revised to read as follows:

§ 92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

(a) * * *

(2) * * *

(i) * * *

(A) Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds that are not expended within five years after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement; and

* * * * *

7. In § 92.205, paragraph (c) is revised to read as follows:

§ 92.205 Eligible activities: General.

* * * * *

(c) *Minimum amount of assistance.* The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is $1,000 times the number of HOME-assisted units in the project.

* * * * *

8. In § 92.206, paragraph (a)(4) is redesignated as paragraph (c)(5) and revised, and paragraph (f) is added to read as follows:

§ 92.206 Eligible costs.

* * * * *

(c) * * *

(5) For new construction or substantial rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay operating expenses, reserve for replacement payments, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended when the reserve terminates must be returned to the participating jurisdiction's local HOME Investment Trust Fund Account.

* * * * *

(f) *Administrative and planning costs.* A participating jurisdiction may, in each fiscal year, expend for its HOME administrative and planning costs, including the salaries of persons engaged in administering and managing its HOME activities, an amount of HOME funds that is not more than ten percent of the HOME basic formula allocation plus any funds, received in accordance with § 92.102(b) to meet or exceed participation threshold requirements, made available to it in that fiscal year. A state that transfers any funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs.

9. In § 92.211, paragraph (a)(2) is revised to read as follows:

§ 92.211 Tenant-based rental assistance.

(a) * * *

(2) The participating jurisdiction selects families in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the Housing Act of 1937. The participating jurisdiction may select eligible families currently residing in units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program without requiring that the family meet the written tenant selection policies and criteria. Families so selected may use the tenant-based assistance in the rehabilitated or acquired unit or in other qualified housing. A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

* * * * *

10. Section 92.214 is revised to read as follows:

§ 92.214 Prohibited activities.

(a) HOME funds may not be used to—

(1) Provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies;

(2) Provide tenant-based rental assistance for the special purposes of the existing section 8 program, including the activities specified in § 791.403(b)(1) of this title, or preventing displacement from projects assisted with rental rehabilitation grants under part 511 of this title;

(3) Provide nonfederal matching contributions required under any other federal program;

(4) Provide assistance authorized under part 965 (PHA-Owned or Leased Projects—Maintenance and Operation) of this title;

(5) Carry out activities authorized under part 968 (Public Housing Modernization) of this title;

(6) Provide assistance to eligible low-income housing under part 248 (Prepayment of Low Income Housing Mortgages) of this title; or

(7) Provide assistance (other than tenant-based rental assistance or assistance to a first-time homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction under § 92.502 or § 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

(8) Pay impact fees.

(b) Participating jurisdictions may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications.

11. In § 92.220, paragraphs (a)(1)(i) and (a)(2) are revised, the word "and" is removed at the end of paragraph (b)(3) and the period at the end of paragraph (b)(4) is removed and is replaced by "; and", and paragraph (b)(5) is added, to read as follows:

§ 92.220 Form of matching contribution.

(a) * * *

(1) * * *

(i) A cash contribution may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals. A cash contribution may be made from program income (as defined by § 85.25(b) of this title) from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G) and the Housing Development Grant Program (24 CFR part 850), and from the Rental Rehabilitation Grant Program (24 CFR part 511) after all fiscal year Rental Rehabilitation grants have been closed out.

* * * * *

(2) The value, based on customary and reasonable means for establishing value, of State or local taxes, fees, or other charges that are normally and customarily imposed or charged by the participating jurisdiction on all transactions or projects in the conduct of State or local government operations but are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of housing assisted with HOME funds. Fees or charges that are associated with the HOME Program only (rather than normally and customarily imposed or charged on all transactions or projects) are not eligible forms of matching contributions. The amount of any real estate taxes may be based on post-improvement property value, using customary and reasonable means of establishing value. For taxes, fees, or charges that are given for future years, the value is the present discounted cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, forgone, or deferred.

* * * * *

(b) * * *

(5) Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for, assistance for a HOME-assisted project.

12. Section 92.250 is revised to read as follows:

§ 92.250 Maximum per-unit subsidy amount.

The amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD under § 221.514(b)(1) and (c) of this title for elevator-type projects, involving nonprofit mortgagors, insured under section 221(d)(3) of the National Housing Act that apply to the area in which the housing is located. These limits are available from HUD. If the participating jurisdiction's per unit subsidy amount has already been increased to 210% as permitted in § 221.514(c) of this title, upon request to the Field Office, HUD will allow the per unit subsidy amount to be increased on a program-wide basis to an amount, up to 240% of the original per unit limits.

13. Section 92.251 is revised to read as follows:

§ 92.251 Property standards.

(a) Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The participating jurisdiction must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39.

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the homeownership interest, the participating jurisdiction must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.

(3) The housing must meet the applicable property standards (at a minimum, the housing quality standards in § 882.109 of this title) not later than 2 years after transfer of the ownership interest.

14. In § 92.252, paragraphs (a)(1)(ii, (a)(2) introductory text, (a)(5) text preceding table and (c) are revised, and paragraph (e) is added, to read as follows:

§ 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) * * *

(1) * * *

(ii) A rent that does not exceed 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for number of bedrooms in the unit, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this paragraph (a)(1)(ii);

(2) Has, in the case of projects with three or more rental units, or in the case of an owner of multiple one or two unit projects with a total of three or more rental units, not less than 20 percent of the rental units—

* * * * *

(5) Will remain affordable, pursuant to deed restrictions or covenants running with the land, for not less than the appropriate period, beginning after project completion, as specified in the following table, without regard to the term of the mortgage or to transfer of ownership, except that upon foreclosure by a lender or other transfer in lieu of foreclosure, the affordability period shall be suspended if the foreclosure by a lender or other transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the term of the affordability period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property, the affordability period shall be revived according to its original terms. * * *

* * * * *

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraph (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated at low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 (26 U.S.C. 42).

* * * * *

(e) *Manufactured housing.* Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit—

(1) Is situated on a permanent foundation;

(2) Is connected to permanent utility hook-ups;

(3) Is located on land that is held in a fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;

(4) Meets the construction standards established under 24 CFR 3280;

(5) Meets all requirements of this section.

15. In § 92.254, paragraphs (a)(1)(ii) and (a)(4) are revised, and paragraph (c) is added, to read as follows:

§ 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(1) * * *

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in § 92.251, that does not exceed the appropriate mortgage limit described in paragraph (a)(1)(i) of this section;

* * * * *

(4) Is subject, for a period of 20 years for newly constructed housing or otherwise for 15 years, to resale restrictions that are established by the participating jurisdiction and determined by HUD to be appropriate to either:

(i) Make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence and—

(A) Provide the owner with a fair return on investment, including any improvements; and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms, to a reasonable range of low-income homebuyers except that upon foreclosure by a lender or other transfer in lieu of foreclosure, the affordability period shall be suspended if the foreclosure by a lender or other transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability. However, if at any time following foreclosure by a lender or other transfer in lieu of foreclosure, but still during the term of the affordability period, the owner of record prior to the foreclosure or deed-in-lieu of foreclosure, or any newly formed entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property, the affordability period shall be revived according to its original terms (Housing remains affordable if the subsequent purchaser's monthly payments of principal, interest, taxes, and insurance do not exceed 30 percent of the gross income of a family with an income equal to 75 percent of the area's median income, as determined by HUD. If the subsequent purchaser's income is between 76 percent and 80 percent of the area's median income, as determined by HUD, the participating

jurisdiction may charge up to 30 percent of the gross income, as determined by HUD. HUD will provide the average occupancy per unit assumption to be used in determining the family size.); or

(ii) Recapture of the full HOME subsidy, or if the net proceeds are less than the full amount of the HOME subsidy, recapture of the net proceeds, to be used to assist other first-time homebuyers. Net proceeds means the sales price minus loan repayment and closing costs.

* * * * *

(c) *Manufactured housing.* Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit—

(1) Is situated on a permanent foundation (except when assisting existing unit owners who rent the lot on which their unit sits);

(2) Is connected to permenent utility hook-ups;

(3) Is located on land that is held in a fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;

(4) Meets the construction standards established under 24 CFR 3280 if produced after June 15, 1976. If the unit was produced prior to June 15, 1976, it must comply with applicable State or local codes;

(5) Meets all requirements of Section 92.254(a) and (b), as applicable. In cases where the owner of a manufactured housing unit does not hold fee-simple title to the land on which the unit is located, the owner may be assisted to purchase the land under paragraph (b) of this section.

* * * * *

16. In § 92.300, paragraph (c) is revised to read as follows:

§ 92.300 Set-aside for community housing development organizations.

* * * * *

(c) Up to 10 percent of the HOME funds reserved may be used for activities specified under § 92.301.

* * * * *

17. In § 92.500, paragraphs (a) and (d)(1), (2), (3) and (4) are revised, and (d)(5) is removed, to read as follows:

§ 92.500 The HOME Investment Trust Fund.

(a) *General.* A HOME Investment Trust Fund consists of the accounts described in this section solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part. HUD will establish a HOME Investment Trust Fund United States Treasury account for each participating jurisdiction. Each participating jurisdiction may use either a separate local HOME Investment Trust Fund account or, a subsidiary account within its general fund (or other appropriate fund) as the local HOME Investment Trust Fund account.

* * * * *

(d) * * *

(1) Any funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not reserved for a community housing development organization pursuant to a written agreement within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement);

(2) Any funds in the United States Treasury account (except rental housing production set-aside funds under § 92.51) that are not committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement);

(3) Any funds in the United States Treasury account that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement); and

(4) Any penalties assessed by HUD under § 92.551 of this part.

18. In § 92.502, paragraph (d) is revised and paragraph (g) is added to read as follows:

§ 92.502 Cash and Management Information System; disbursement of HOME funds.

* * * * *

(d) *Payment certification.* As post-documentation of each drawdown of funds from the United States Treasury account, a participating jurisdiction must keep in its project files a payment certification, for each drawdown, in the form required by HUD.

* * * * *

(g) *Projects funded jointly by State and local participating jurisdiction.* A State and local participating jurisdiction may jointly fund a project within the boundaries of the local participating jurisdiction only in accordance with the following procedure:

(1) The State must designate the local participating jurisdiction as a State recipient pursuant to § 92.201(b)(2) of this part, and allocate State funds to the local participating jurisdiction;

(2) The local participating jurisdiction must then set up the project in the Cash and Management Information System in accordance with § 92.502(b) of this part, and must draw down funds for the project in accordance with § 92.502(c) of this part.

* * * * *

19. In § 92.504, paragraph (c)(13) is amended by revising the first two sentences to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; monitoring.

* * * * *

(c) * * *

(13) *Enforcement of the agreement.* The agreement must provide for a means of enforcement by the participating jurisdiction or the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. * * *

* * * * *

Dated: September 30, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92–30723 Filed 12–21–92; 8:45 am]

BILLING CODE 4210-32-M

federal register

Tuesday
December 22, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Esselen Tribe of Monterey County, 38655 Tassajara Road, Carmel Valley, California 93924, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on November 16, 1992, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Michael Lawson, (202) 208–3592.

Dated: December 9, 1992.

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–30951 Filed 12–21–92; 8:45 am]

BILLING CODE 4310–02–M

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Tuesday
December 22, 1992

Part VII

The President

Executive Order 12825—Half-Day Closing of Executive Departments and Agencies of the Federal Government on Thursday, December 24, 1992

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Title 3—

The President

Executive Order 12825 of December 18, 1992

Half-Day Closing of Executive Departments and Agencies of the Federal Government on Thursday, December 24, 1992

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive departments and agencies of the Federal Government shall be closed and their employees excused from duty for the last half of the scheduled workday on Christmas Eve, December 24, 1992, except as provided in section 2 below.

Sec. 2. The heads of executive departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must remain on duty for the full scheduled workday on December 24, 1992, for reasons of national security or defense or for other essential public reasons.

Sec. 3. Thursday, December 24, 1992, shall be considered as falling within the scope of Executive Order No. 11582 and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 4. This order shall apply to executive departments and agencies of the Federal Government only and is not intended to direct or otherwise implicate departments or agencies of State or local governments.

George Bush

THE WHITE HOUSE,
December 18, 1992.

[FR Doc. 92-31238
Filed 12-21-92; 10:33 am]
Billing code 3195-01-M

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AE42

Combined Construction Permits and Operating Licenses; Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission ("NRC" or "Commission") is amending its regulations governing the issuance of combined construction permits and operating licenses for nuclear power plants. The final rule incorporates all the changes to these provisions that are necessary because of the enactment of licensing reform legislation. The amendments serve to conform the regulations to the provisions of title XXVIII of Public Law 102–486, the "Energy Policy Act of 1992," signed into law on October 24, 1992.

DATES: The rule becomes effective January 22, 1993. Submit comments by February 22, 1993.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–504–1966.)

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: L. Michael Rafky, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–504–1606.

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II. Section-by-section analysis.
III. Environmental impact: Categorical exclusion.
IV. Paperwork Reduction Act Statement.
V. Regulatory analysis.
VI. Backfit analysis.

I. Background

Title XXVIII of Public Law 102–486, the "Energy Policy Act of 1992," signed into law on October 24, 1992; amends the Atomic Energy Act to facilitate the standardization of nuclear power plants and to provide explicit authority for the issuance of combined construction permits and operating licenses. The legislation largely codifies the Commission's regulations in 10 CFR part 52. However, the legislation also makes several changes to the licensing process set forth in those regulations.

The purpose of this rule is to make those changes necessary to conform the language of part 52 to the provisions of the newly enacted Public Law. Because these changes are limited to incorporating the language of that statute into the regulations, the NRC finds, pursuant to 5 U.S.C. 553(b)(B), that there is good cause not to seek public comment on this rule, as such comment is unnecessary. The rule will become effective 30 days after the date of publication in the **Federal Register**. Nevertheless, any interested member of the public who believes that the Commission has not accurately conformed part 52 to title XXVIII of Public Law 102–486, the Energy Policy Act of 1992, is invited to submit comments on this matter within 60 days of the date of publication of this rule.

The final rule incorporates all necessary changes resulting from enactment of licensing reform legislation. The significant changes—

(1) Provide that the Commission may authorize a plant to operate during the pendency of a post-construction hearing on a combined construction permit and operating license (combined license) if it makes certain specified safety findings. Previously, under part 52, a post-construction hearing had to be completed prior to operation;

(2) Provide the Commission with the discretion to order use of either formal or informal procedures for a post-construction hearing on a combined license. Previously, under part 52, only formal procedures were permitted;

(3) Provide the Commission with the discretion to permit post-construction license amendments to a combined license, notwithstanding the pendency of a hearing request, to become effective if the Commission makes a finding of "no significant hazards considerations." Previously, part 52 required that hearings be completed prior to commencement of operation;

(4) Eliminate the requirement that there be a pre-operational antitrust review by the Department of Justice of a combined license if there have been significant developments from an antitrust perspective arising since the issuance of the combined license; and

(5) Eliminate the requirement that a combined license include the earliest and latest construction completion dates.

The amendments to the rule incorporate these changes as well as other less significant changes to ensure that part 52 conforms as closely as possible to the statutory language.

In addition, 10 CFR 52.8 is being amended to correct a typographical error and to make revisions of a minor administrative nature.

II. Section-by-Section Analysis

The following analysis of those sections that are affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Section 52.8 Information Collection Requirements: OMB Approval

This section is revised to correct data provided in accordance with an Office of Management and Budget (OMB) regulation regarding the information collection requirements contained in this part. In paragraph (a), a typographical error in the OMB approval number is corrected. In paragraph (b), four sections are added to the list of sections containing approved information collection requirements. These revisions are of a minor administrative nature and are made to improve the accuracy of the information in this section and to comply with OMB regulations.

Section 52.79 Contents of Applications; Technical Information

The language of this section provides explicitly that the inspections, tests, analyses, and acceptance criteria must

include those applicable to emergency planning and that the objective of the inspections, tests, analyses, and acceptance criteria is to provide reasonable assurance that the facility was constructed and will operate in conformity with the combined license, the Atomic Energy Act, and the Commission's rules and regulations.

Section 52.83 Applicability of Part 50 Provisions

This section has been revised to remove the applicability of certain provisions of part 50 which are no longer required under the legislation. These include § 50.55 (a), (b) and (d), which had required a construction permit for a nuclear power reactor to state the earliest and latest dates for the completion of the facility's construction, and other conditions thereof; and § 50.58, which had required applications for construction permits or operating licenses to be reviewed by the Advisory Committee on Reactor Safeguards (ACRS). A final change to § 52.83 is the substitution of a reference to "§ 52.99" for "§ 52.103." This was done because the findings to which § 52.83 refers are now contained in § 52.99.

Section 52.97 Issuance of Combined Licenses

This section has been amended with regard to making amendments to a combined license immediately effective under the so-called "Sholly Amendment." Under the Energy Policy Act, an amendment to a combined license can be made immediately effective if the Commission determines there are no significant hazards considerations. This section of the rule has been revised to incorporate the statutory provisions and previously issued Commission regulations implementing the "Sholly" amendment. The Commission, however, stresses that it will not look with favor upon license amendments to a combined license filed shortly before planned operation that could have the effect of undermining standardization or changing the scope of imminent or pending hearings on conformance issues.

Section 52.99 Inspection During Construction

Like the other amended sections of part 52, this section has been changed to track the language of the Energy Policy Act. In this case, the only change is to require explicitly that, prior to operation under a combined license, the Commission shall find that the prescribed acceptance criteria are met.

Section 52.101 Pre-Operational Antitrust Review

This section, which has been deleted as a result of the new legislation, had provided for a pre-operational antitrust review of a combined license by the Department of Justice if there had been significant antitrust-related developments arising after the issuance of that license.

Section 52.103 Operation Under a Combined License

In an effort to adhere as closely as possible to the new statutory requirements of the Energy Policy Act, the NRC has replaced most of its old § 52.103 with the text of section 2802 of that Act. Under the revised language, any request for a post-construction hearing must show, prima facie, both that one or more of the acceptance criteria are not or will not be met, and those specific operational consequences of nonconformance that would be contrary to providing reasonable assurance that the public health and safety will be adequately protected. The Commission may permit interim operation of a facility pending a hearing if it determines that this assurance exists. The Commission has the discretion to decide if any post-construction hearing will use formal or informal hearing procedures, and it must state publicly the reasons for choosing either set of procedures. The Commission must find, prior to operation of the facility, that the acceptance criteria have been met. The procedures with regard to § 2.206 petitions remain the same. Additionally, there is now a new paragraph (g), which is a modified version of old § 52.103(c). The Commission has done nothing in this section other than to incorporate the language of the Energy Policy Act into its rule.

Commissioner Curtiss' Separate Views on Final Rules Amending 10 CFR Part 52 To Incorporate Provisions of the Energy Policy Act

With one exception, I approve the above final rulemaking changes to incorporate the provisions of the Energy Policy Act. The one exception concerns the proposed amendment to 10 CFR 52.97(b) to incorporate the so-called "Sholly" authority. For the reasons set forth below, I cannot agree with the recommendation to amend 10 CFR 52.97(b) for the purpose of extending the provisions of the "Sholly" amendment contained in section 189a.(2) of the Atomic Energy Act to amendments to combined licenses (COLs) prior to authorization to operate. Indeed, I believe that the adoption of this provision will serve to detract from the overall objective that we have established in Part 52 to achieve and maintain a high degree of standardization.

When § 52.97(b) was originally enacted by the Commission, it was adopted for the sole purpose of ensuring that the level of standardization reflected in a COL, once issued, would not be diluted by subsequent changes that a COL holder might seek during construction. Recognizing that such changes should not be foreclosed altogether, the approach taken by the Commission in § 52.97(b) was to establish a stringent procedural hurdle for the COL holder who wishes to seek a change in its COL, once issued: Section 52.97(b) provides that any such changes would be treated as amendments to the COL (thereby requiring a hearing upon request), and that the hearing on any such amendments would have to be completed before operation of the facility.

This approach, the Commission reasoned at the time, would serve to provide yet another strong disincentive against a COL holder seeking changes to a COL, once issued.[1] Indeed, it was exactly this point that the Commission emphasized in its response to a question on this matter from one of our oversight Committees:

> The Commission did not extend Sholly *as a policy choice* because it wanted to discourage late changes to combined licenses or to the ITAAC therein. Such changes could have the effect of undermining standardization or changing the scope of imminent or pending hearings on conformance issues.

Hearing Before the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, United States Senate, on the Nuclear Licensing Provision in S.1220, the National Energy Security Act of 1991, January 23, 1992 (Committee Print), p. 56 (emphasis added).

This same point was set forth quite persuasively by Chairman Selin in that same hearing:

> The Commission specifically did not put [the "Sholly" provision] into part 52. We are not interested in encouraging design changes, particularly in the standardization area * * * .
>
> We want to discourage changes—random changes—even if they don't, in themselves,

[1] It should be noted that a COL holder is permitted to make certain changes in its COL, if those changes satisfy the criteria of the § 50.59-type change procedure. These § 50.59-type changes are not considered amendments, and hence would not be subject to the requirements of § 52.97(b).

have a health and safety impact, because we believe the totality of the configuration has a health and safety impact * * * so we consciously did not put that in part 52.

Remarks of Chairman Selin, *id.* p. 22.

In my view, the fundamental policy of § 52.97(b) remains equally sound today. Hence, the only question that remains, in my judgment, is whether the recently-enacted Energy Policy Act of 1992 dictates a different result. In this regard, I would note that the Act gives the Commission the discretion to decide whether to modify part 52 in a manner that would permit COL amendments to be made immediately effective where such amendments involve no significant hazards considerations. Of particular note, section 2803 of the Energy Policy Act provides that—

The Nuclear Regulatory Commission *shall modify* part 52 of title 10, Code of Federal Regulations, *to conform with sections 185b. and 189.(1)(B) of the Atomic Energy Act of 1954, as amended by sections 2801 and 2802 of this Act,* not later than 1 year after the date of the enactment of this Act (emphasis added).

This provision, which enumerates those sections of the Act for which we must adopt conforming regulations, is limited by its terms to sections 2801 and 2802 of the Act. It does not reference section 2804, the section of the Act containing the "Sholly" provision. As a consequence, I read the Act as giving the Commission the discretion to decide whether we wish to extend the "Sholly" authority to COL amendments.

In light of the discretion that we have, and based upon the reasons set forth above, I would not modify section 52.97(b), as proposed in this rulemaking.[2] In all other respects, I approve the changes to part 52 that are proposed herein.

Additional Views of Commissioners Rogers, Remick, and de Planque

If the Commission were to leave § 52.97(b) as it stood before enactment of the Energy Policy Act, requiring a prior hearing on every proposed postconstruction amendment to a combined license, our regulations would have been inconsistent with the Act. This is the view of the Commission's General Counsel, and we adopt it as our own. It is clear that Congress intended that the Sholly amendment be available for use with each combined license, because Congress did in fact amend section 189a.(2) of the Atomic Energy Act to make the Sholly provisions available for use with each combined license. Congress thereby gave us the discretion in each individual case to decide, according to the Sholly provisions, whether to make an amendment immediately effective, but Congress did not give us the discretion to write rules which directly contradict the newly amended Sholly provisions. Standardization is afforded considerable protection by part 52. We have no cause to try to protect it further by, in effect, trying to rewrite the newly amended Sholly provisions.

We would emphasize that the statutory provisions merely give us the discretion to make an amendment to a combined license immediately effective if it satisfies the criteria of section 189(a) of the Atomic Energy Act. The Commission would retain the discretion to require a prior hearing in a specific case.

[2] In the alternative, if it is the will of the majority of the Commission to modify § 52.97(b), I believe this is a matter that deserves—and indeed requires—public comment. I say this not only because of the significant policy considerations involved here, but more importantly because, as a legal matter, if Congress has conferred upon the Commission the discretion to decide what approach to take in the regulations that we adopt to implement the statute, the justification for publishing this change as a final rule (*i.e.* that we are simply adopting the language of the newly-passed Act) no longer obtains.

III. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

IV. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0151.

V. Regulatory Analysis

The Nuclear Regulatory Commission has made statutorily mandated changes in 10 CFR part 52 in order to conform it to the language of the Energy Policy Act of 1992. These changes reflect Congressionally mandated changes to the NRC's licensing process for power reactors. Only future applicants for combined construction permits and operating licenses will be affected by the changes to the regulations.

VI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments are required by law and do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is amending 10 CFR Chapter I as follows:

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

1. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. Section 52.8 is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150–0151.

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.45, 52.47, 52.57, 52.63, 52.75, 52.77, 52.79, 52.91 and 52.103.

3. In § 52.79 paragraph (c) is revised to read as follows:

§ 52.79 Contents of applications; technical information.

* * * * *

(c) The application for a combined license must include the proposed inspections, tests and analyses, including those applicable to emergency planning, which the licensee shall perform and the acceptance criteria therefor which are necessary and sufficient to provide reasonable assurance that, if the inspections, tests and analyses are performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the combined license, the provisions of the Atomic Energy Act, and the NRC's regulations. Where the application references a certified standard design, the inspections, tests, analyses and acceptance criteria contained in the certified design must apply to those portions of the facility design which are covered by the design certification.

* * * * *

4. Section 52.83 is revised to read as follows:

§ 52.83 Applicability of part 50 provisions.

Unless otherwise specifically provided for in this subpart, all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits for nuclear power reactors also apply to holders of combined licenses issued under this subpart. Similarly, all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses issued under this subpart, once the Commission has made the findings required under § 52.99, provided that, as applied to a combined license, 10 CFR 50.51 must require that the initial duration of the license may not exceed 40 years from the date on which the Commission makes the findings required under § 52.99. However, any limitations contained in part 50 regarding applicability of the provisions to certain classes of facilities continue to apply. Provisions of 10 CFR part 50 that do not apply to holders of combined licenses issued under this subpart include §§ 50.55 (a), (b) and (d), and 50.58.

5. In § 52.97 paragraph (b) is revised to read as follows:

§ 52.97 Issuance of combined licenses.

* * * * *

(b)(1) The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the atomic Energy Act, and the Commission's rules and regulations.

(2)(i) Any modification to, addition to, or deletion from the terms of a combined construction and operating license, including any modification to, addition to, or deletion from the inspections, tests, analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on these amendments.

(ii) The Commission may issue and make immediately effective any amendment to a combined construction and operating license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. The amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. The amendment will be processed in accordance with the procedures specified in 10 CFR 50.91.

6. Section 52.99 is revised to read as follows:

§ 52.99 Inspection during construction.

After issuance of a combined license, the Commission shall ensure that the required inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Holders of combined licenses shall comply with the provisions of 10 CFR 50.70 and 50.71. At appropriate intervals during construction, the NRC staff shall publish in the Federal Register notices of the successful completion of inspections, tests, and analyses.

§ 52.101 [Removed]

7. Section 52.101 is removed.

8. Section 52.103 is revised to read as follows:

§ 52.103 Operation under a combined license.

(a) Not less than one hundred and eighty days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under subpart C of this part, the Commission shall publish in the **Federal Register** notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within sixty days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(b) A request for hearing under paragraph (a) of this section shall show, *prima facie*, that—

(1) One or more of the acceptance criteria in the combined license have not been, or will not be met; and

(2) The specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(c) After receiving a request for a hearing, the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(d) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under paragraph (a) of this section, and shall state its reasons therefor.

(e) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within one hundred and eighty days of the publication of the notice provided by paragraph (a) of this section or the anticipated date for initial loading of fuel into the reactor, whichever is later.

(f) A petition to modify the terms and conditions of the combined license will be processed as a request for action in accord with 10 CFR 2.206. The petitioner shall file the petition with the Secretary of the Commission. Before the licensed activity allegedly affected by the petition (fuel loading, low power testing, etc.) commences, the Commission shall determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Fuel loading and operation under the combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(g) Prior to operation of the facility, the Commission shall find that the acceptance criteria in the combined license are met. If the combined license

is for a modular design, each reactor module may require a separate finding as construction proceeds.

Dated at Rockville, Maryland this 16th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-30970 Filed 12-22-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0784]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation O to implement recent amendments to section 22(h) of the Federal Reserve Act, contained in the Housing and Community Development Act of 1992. The revision will provide that loans to a holding company parent and its affiliates are not subject to Regulation O inasmuch as these transactions are governed by section 23A of the Federal Reserve Act.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550, 106 Stat. 3672 (1992), effective October 28, 1992, has amended section 22(h) of the Federal Reserve Act (Act), 12 U.S.C. § 375b, to exempt from the definition of "principal shareholder" any holding company of which the member bank is a subsidiary and any other subsidiary of that holding company. The Board is revising Regulation O (12 CFR part 215), effective December 17, 1992, to conform to the amendment.

Background

In response to a recommendation of the Board, Congress in HCDA amended section 22(h) to exclude from coverage under that section and Regulation O lending transactions by a member bank with its parent holding company and that company's subsidiaries, inasmuch as these transactions are governed comprehensively by section 23A of the Act.

The Board has revised the definition of "principal shareholder" in Regulation O to exclude from the definition of "principal shareholder" a "company of which a member bank is a subsidiary." This has the effect of excluding from the coverage of Regulation O loans to a company that owns, controls, or exercises a controlling influence over a member bank, as those relationships are defined in section 2(d) of the Bank Holding Company Act, as well as the related interests of such a parent bank holding company. *See* 12 CFR 215.2(n); 12 U.S.C. § 1841(d). Covered transactions between a member bank and its holding company and the other subsidiaries of the holding company continue to be governed by section 23A, which the Board believes comprehensively regulates such transactions.

Need for Final Rule Without Comment

The amendment of the statutory definition of "principal shareholder" was effective immediately upon enactment of HCDA, and required no action on the part of the Board to take effect. The amendment also removed the authority of the Board to maintain a definition of the term that did not contain the exception contained in section 22(h). The Board therefore believes that it is necessary to revise Regulation O in order to eliminate a prohibition on lending transactions that is not authorized by the Act, and to clarify that member banks may take immediate advantage of the recent amendment to section 22(h).

The Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on December 17, 1992, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. § 603(b)), are contained in the supplementary information above.

The Board's proposed rule imposes no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed rule will apply to all member banks, regardless of size. The proposed rule should not have a negative economic impact on small institutions. Instead, the rule should relieve the regulatory burden on all member banks, and will increase their ability to make loans and other extensions of credit, while such transactions remain subject to the comprehensive regulatory provisions of section 23A of the Act.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 955 of the Housing and Community Development Act of 1992 (Pub. L. No. 102-550, 106 Stat. 3895 (1992)), the Board is amending 12 CFR part 215, part A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 is revised to read as follows:

Authority: Sections 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)), 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi), and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.2 is amended by revising paragraph (l) to read as follows:

§ 215.2 Definitions.

* * * * *

(l)(1) *Principal shareholder* means a person (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

(2) A principal shareholder of a member bank includes:

(i) a principal shareholder of a company of which the member bank is a subsidiary, and

(ii) a principal shareholder of any other subsidiary of that company.

(3) A principal shareholder of a member bank does not include a company of which a member bank is a subsidiary.

Board of Governors of the Federal Reserve System, December 17, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-31124 Filed 12-22-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-205-AD; Amendment 39-8443; AD 92-27-09]

Airworthiness Directives; British Aerospace Model BAe/HS/DH/BH 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe/HS/DH/BH 125 series airplanes, that requires replacement of certain components associated with the main landing gear (MLG) in accordance with maximum life limits. This amendment is prompted by an engineering analysis, which revealed that the expected life limit of the MLG sidestay upper arms before cracking or failure is likely to occur is 12,000 landings. The actions specified by this AD are intended to prevent reduced structural capability of the MLG.

DATES: Effective on January 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe/HS/DH/BH 125 series airplanes was published in the **Federal Register** on June 2, 1992 (57 FR 23168). That action proposed to require replacement of certain components associated with the main landing gear (MLG) in accordance with maximum life limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that Model BAe 125-800A series airplanes be excluded from the applicability of the AD, since the life limit for the sidestay upper arm assembly of the MLG will be added to the mandatory life Limitations Section of the British Aerospace aircraft maintenance schedule for those airplanes. The FAA does not concur. Airworthiness directives are the means by which accomplishment of procedures and adherence to specific compliance times are made mandatory. In the absence of an AD, operators are not required to insert later revisions of the Limitations Section of the Instructions for Continued Airworthiness (IFCA) into the maintenance manual or to operate airplanes thereafter in accordance with those revisions. Therefore, the FAA must issue an AD to ensure that these actions are accomplished in a timely manner.

A "Note" has been added to paragraph (a) of the final rule to clarify the definition of a "serviceable" MLG sidestay upper arm assembly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 420 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $10,130 per airplane (2 sidestays per airplane at $5,065 per sidestay). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,809,000, or $11,450 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-27-09. British Aerospace: Amendment 39-8443. Docket 91-NM-205-AD.

Applicability: Model BAe/HS/DH/BH 125 series airplanes, excluding Model BAe 125–1000A series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of the main landing gear (MLG) sidestay upper arm assembly, accomplish the following:

(a) Prior to the accumulation of 12,000 landings on any MLG sidestay upper arm assembly, or within 9 months after the effective date of this AD, whichever occurs later, replace the assembly with a serviceable assembly, in accordance with British Aerospace Service Bulletin S.B. 32–216, Revision 1, dated March 21, 1988.

Note: A "serviceable" MLG sidestay upper arm assembly is defined as one that is in compliance with the requirements of this AD, and one on which an overhaul has been accomplished as specified in the applicable aircraft maintenance schedule.

(b) Following the accomplishment of paragraph (a) of this AD, replace any MLG sidestay upper arm assembly prior to the accumulation of 12,000 landings on that assembly.

(c) For purposes of this AD, overhauled sidestay upper arm assemblies for which the total number of landings is not recorded must be assumed to have accumulated 8,000 landings at the time of installation.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The replacement shall be done in accordance with British Aerospace Service Bulletin S.B. 32–216, Revision 1, dated March 21, 1988, which includes the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3–4	1	Mar. 21, 1988.
2	Original	Feb. 29, 1988.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 27, 1993.

Issued in Renton, Washington, on December 11, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31069 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–6]

Alteration to VOR Federal Airways, Reporting Points, and Jet Routes; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reflects the name change of the Knoxville, TN, very high frequency omnidirectional range (VOR) to the Volunteer, TN, VOR within the legal descriptions of airways, jet routes, and reporting points located in Tennessee. The Knoxville VOR is not located on the Knoxville Municipal Airport, and the FAA has determined that the current name could confuse pilots as to their desired destination. The Knoxville VOR is actually located near the Knoxville Downtown Island Airport, which is a satellite airport. The descriptions of V–115, V–16, V–136 and V–267 have been removed from this docket because they were included in Airspace Docket Nos. 92–ASO–7, 92–ASO–3, and 92–ASO–21, respectively, which become effective at the same time as this docket.

EFFECTIVE DATE: 0901 U.T.C., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On September 2, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to change the name of the Knoxville, TN, VOR to the Volunteer, TN, VOR in all airways, jet routes, and reporting points that have Knoxville in their text (57 FR 40154). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the removal of the proposed amendments to V–16, V–115, V–136 and V–267, this amendment is the same as that proposed in the notice. Domestic VOR Federal Airways, domestic low and high altitude reporting points and jet routes are published, respectively, in §§ 71.123, 71.203, 71.207 and 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways, low and high altitude reporting points and jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations reflects the name change of the Knoxville, TN, VOR to the Volunteer, TN, VOR. The Knoxville VOR is not located on the Knoxville Municipal Airport and the FAA has determined that the current name could confuse pilots as to their desired destination.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic high altitude reporting points, Domestic low altitude reporting points, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways.

* * * * *

V–97 [Revised]

From Miami, FL, via La Belle, FL; St. Petersburg, FL; Tallahassee, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN, INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–185 [Revised]

From Savannah, GA; Colliers, SC; Greenwood, SC; Sugarloaf Mountain, NC; Snowbird, TN; INT Snowbird 301° and Volunteer, TN, 069° radials; to Volunteer. The airspace within R–6004 is excluded.

* * * * *

V–466 [Revised]

From Volunteer, TN, via INT Volunteer 050° and Glade Spring, VA, 246° radials; Glade Spring; to Pulaski, VA.

* * * * *

V–517 [Revised]

From Volunteer, TN, INT Volunteer 019° and London, KY, 141° radials; London; INT London 004° and Falmouth, KY, 164° radials; Falmouth; Cincinnati, OH; INT Cincinnati 336° and Richmond, IN, 190° radials; Richmond; to Dayton, OH.

* * * * *

V–519 [Revised]

From Volunteer, TN, via INT Volunteer 050° and Glade Spring, VA, 246° radials; Glade Spring; Bluefield, WV; to Beckley, WV.

* * * * *

Section 71.203 Domestic Low Altitude Reporting Points.

* * * * *

Knoxville, TN [Remove]

Volunteer, TN [New]

* * * * *

Section 71.207 Domestic High Altitude Reporting Points.

* * * * *

Knoxville, TN [Remove]

Volunteer, TN [New]

* * * * *

Section 71.607 Jet Routes.

* * * * *

J–22 [Revised]

From Nuevo Laredo, Mexico, via Laredo, TX; Corpus Christi, TX; Palacios, TX; Lake Charles, LA; McComb, MS; Meridian, MS; Vulcan, AL; Volunteer, TN; Pulaski, VA; to Montebello, VA. The airspace within Mexico is excluded.

* * * * *

J–43 [Revised]

From Miami, FL, via LaBelle, FL; St Petersburg, FL; Tallahassee, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste Marie, MI.

* * * * *

J–46 [Revised]

From Tulsa, OK, via Walnut Ridge, AR; Nashville, TN; to Volunteer, TN.

* * * * *

J–91 [Revised]

From INT Orlando, FL 274° and Cross City, FL, 133° radials; Cross City; INT Cross City 338° and Atlanta, GA, 169° radials; Atlanta; Volunteer, TN; Henderson, WV; to Bellaire, OH.

* * * * *

J–99 [Revised]

From Colliers, SC, via Volunteer, TN; to Louisville, KY.

* * * * *

Issued in Washington, DC, on December 16, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–31005 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–7]

Alteration to VOR Federal Airways, Reporting Points, and Jet Routes; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reflects the name change of the Chattanooga, TN, very high frequency omnidirectional range (VOR) to Choo Choo, GA. The Chattanooga VOR is not located on the Chattanooga Airport and the FAA has determined that the name "Chattanooga" could confuse pilots as to their desired destination. The Chattanooga VOR is located approximately 2 miles southeast of the airport in the State of Georgia. FAA guidelines recommend that navigational aids (NAVAID's) not located on the airport surface not have the same name as the primary airport. This action changes the descriptions in all airways, jet routes, and reporting points that have Chattanooga in their text. The descriptions of V–5, V–362 and V–515 have been removed from this docket because they were included in Airspace Docket No. 92–ASO–3 which becomes effective at the same time as this docket. This amendment also reflects the action proposed in Airspace Docket No. 92–ASO–6, but made final in this docket, which changes the name of the Knoxville, TN, VOR to the Volunteer, TN, VOR.

EFFECTIVE DATE: 0901 UTC, February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On October 6, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to change the descriptions of all airways, jet routes, and reporting points that have Chattanooga in their text (57 FR 45997). This amendment also reflects the action proposed in Airspace Docket No. 92–ASO–6, but made final in this docket, which changes the name of the Knoxville VOR to the Volunteer VOR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes indicating that the Choo Choo VOR is located in Georgia instead of Tennessee, the removal of V–5, V–362 and V–515, the inclusion of the name change of the Knoxville VOR to the Volunteer VOR in V–115, and including the NELLO low altitude reporting point, this amendment is the same as that proposed in the notice. Domestic VOR Federal Airways, domestic low altitude reporting points and jet routes are published, respectively, in sections 71.123, 71.203 and 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways, low altitude reporting points and jet routes

listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations reflects the name change of the Chattanooga, TN, VOR to the Choo Choo, GA, VOR. This action also reflects the name change of the Knoxville, TN, VOR to the Volunteer, TN, VOR. The Chattanooga VOR is not located on the Chattanooga Airport and the FAA has determined that the name "Chattanooga" could confuse pilots as to their desired destination. This action, where necessary, reflects the name change of the Chattanooga VOR to the Choo Choo VOR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic low altitude reporting points, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–54 [Revised]

From Waco, TX; Scurry, TX; Quitman, TX; Texarkana, AR; INT Texarkana 052° and Little Rock, AR, 235° radials; Little Rock; Holly Springs, MS; Muscle Shoals, AL; Rocket, AL; Choo Choo, GA; Harris, GA; Spartanburg, SC; Charlotte, NC; Sandhills, NC; INT Sandhills 146° and Fayetteville, NC, 267° radials; Fayetteville; to Kinston, NC.

* * * * *

V–67 [Revised]

From Choo Choo, GA; Shelbyville, TN; Graham, TN; Cunningham, KY; Marion, IL; Centralia, IL; INT Centralia 010° and Vandalia, IL, 162° radials; Vandalia; Capital, IL; Burlington, IA; Iowa City, IA; Cedar Rapids, IA; Waterloo, IA; Rochester, MN.

* * * * *

V–115 [Revised]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery; INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; Choo Choo, GA; Volunteer, TN; Hazard, KY; Charleston, WV; Parkersburg, WV; Newcomerstown, OH; INT Newcomerstown 038° and Franklin, PA, 239° radials; Franklin; Tidioute, PA; Jamestown, NY; Buffalo, NY.

* * * * *

V–209 [Revised]

From Semmes, AL, via INT Semmes 356° and Eaton, MS, 080° radials; Kewanee, MS; Brookwood, AL; Vulcan, AL; INT Vulcan 097° and Gadsden, AL, 233° radials; Gadsden; and INT Gadsden 042° and Choo Choo, GA, 214° radials; Choo Choo.

* * * * *

V–243 [Revised]

From Craig, FL, via Waycross, GA; Vienna, GA; LaGrange, GA; INT LaGrange 342° and Choo Choo, GA, 189° radials; Choo Choo; Bowling Green, KY; Huntingburg, IN; to Terre Haute, IN.

* * * * *

V–333 [Revised]

From INT Rome, GA, 133° and Gadsden, AL, 091° radials via Rome; Choo Choo, GA; Hinch Mountain, TN; Lexington, KY.

* * * * *

V–415 [Revised]

From Montgomery, AL, via INT Montgomery 029° and Choo Choo, GA, 189° radials; INT Choo Choo 189° and Rome, GA, 252° radials; Rome; INT Rome 060° and Foothills, SC, 258° radials; Foothills; Spartanburg, SC; to INT Spartanburg 101° and Charlotte, NC, 229° radials.

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Section 71.203 Domestic Low Altitude Reporting Points

* * * * *

Chattanooga, TN [Removed]
Choo Choo, GA [New]

* * * * *

NELLO: [Revised]

INT of Atlanta, GA, 001°, Choo Choo, GA, 127° radials.

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Section 71.607 Jet Routes

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J–118 [Revised]

From Memphis, TN, via Choo Choo, GA: to Spartanburg, SC.

* * * * *

Issued in Washington, DC, on December 16, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–31002 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8459]

RIN 1545–A099

Settlement Funds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax treatment of transfers to funds, accounts, and trusts used in the settlement of certain controversies, the taxation of income earned by these funds, and the tax treatment of distributions made by these funds. Changes to the applicable law were made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The regulations affect these settlement funds, taxpayers who make transfers to these funds, and taxpayers who receive distributions from these funds. The regulations are necessary to provide these taxpayers with guidance needed to comply with these changes.

DATES: These regulations are effective January 1, 1993. Thus, the regulations apply to transfers to, income earned by, and distributions made by a qualified settlement fund after December 31, 1992. The regulations provide transition rules for funds, accounts, and trusts established after August 16, 1986.

FOR FURTHER INFORMATION CONTACT: Linda M. Kroening of the Office of Assistant Chief Counsel (Income Tax & Accounting), telephone (202) 622–4910 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1299.

The estimated total annual reporting burden is 3,751 hours. The estimated annual burden per respondent varies from 25 minutes to 12 hours and 45 minutes, depending on individual circumstances, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224 and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On February 14, 1992, the Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** (57 FR 5399) regarding settlement funds. The preamble to that notice contains an explanation of the proposed rules. A public hearing was held on May 27, 1992. After consideration of the public comments regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Statutory Provisions

Section 468B (a) through (d) provides rules for the taxation of designated settlement funds and for taxpayers that make qualified payments to such funds. Section 468B(e) provides that section 468B (other than subsection (g)) does not apply with respect to any liability of a taxpayer arising under a workers compensation act or any contested liability (within the meaning of section 461(f)) of a taxpayer. Section 468B(f) provides that, except as provided in regulations, any payment in respect of a liability arising out of personal injury, death, or property damage (and not described in section 468B(e)) that is made to a trust fund or escrow fund that is not a designated settlement fund does not constitute economic performance.

Section 468B(g) provides that "[n]othing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax." In addition, section 468B(g) provides that "[t]he Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise." Section 468B(g) was enacted, in part, to reverse the finding in Rev. Rul. 71–119, 1971–1 C.B. 163. See § 601.601(d)(2)(ii)(*b*) of this Chapter. (Some taxpayers argued that Rev. Rul. 71–119 was authority for avoiding the current taxation of income earned on the assets of an escrow account, settlement fund, or other similar fund.) See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–845 n. 2 (1986). In accordance with section 468B(g), Rev. Rul. 92–51, 1992–27 I.R.B. 9, obsoletes Rev. Rul. 71–119 (and modifies or obsoletes related revenue rulings) for funds established after August 16, 1986. Accordingly, no authority exists for the position that the income of an escrow account, settlement fund, or other similar fund is not subject to current taxation.

The provisions applicable to designated settlement funds are generally effective after July 18, 1984, under rules applicable to section 461(h). Section 468B(g) is effective for funds established after August 16, 1986.

Public Comments

Section 1.468B–1 Qualified Settlement Funds

In General

The proposed regulations mandate qualified settlement fund treatment for a fund, account, or trust that satisfies the requirements of a qualified settlement fund. Commentators recommended that the final regulations make the application of the qualified settlement fund rules elective. The Service and the Treasury Department believe that inconsistent tax treatment for similar funds, claimants, or transferors, as well as the accompanying complexity, is undesirable. Therefore, the final regulations do not provide electivity.

The proposed regulations invited comments regarding the extent to which qualified settlement funds should be available for the claims of general creditors and security holders in bankruptcy. Generally, commentators stated that the qualified settlement fund rules should not be imposed in the bankruptcy context. Some commentators recommended that the qualified settlement fund rules be applied to a bankruptcy fund on an elective basis.

The Service and the Treasury Department have concluded that the application of the regulations should not be elective. The final regulations exclude claims of general trade creditors and debtholders that relate to a title 11 or similar case, or to a workout. However, qualified settlement fund treatment remains available for other liabilities such as tort liabilities irrespective of whether the liability, for example, relates to a title 11 case. For instance, if a corporation is a defendant in a class action involving a tort liability and subsequently files a petition for bankruptcy, the defendant's bankruptcy will not affect the qualified settlement fund treatment of a fund, account, or trust established to resolve or satisfy the tort liability.

Coordination With Other Entity Classifications

The final regulations continue to provide that, for all purposes of the Internal Revenue Code (Code), the status of a fund, account, or trust as a qualified settlement fund overrides its possible classification as a trust, a § 1.461–2(c)(1) contested liability fund, or, if it is organized as a trust under applicable state law, an association or partnership. Unless it is organized as a trust under state law, however, an association or partnership does not qualify as a qualified settlement fund.

Requirements of a Qualified Settlement Fund

Under the proposed regulations, a fund, account, or trust is a qualified settlement fund only if it satisfies three requirements. The first requirement is that it must be established pursuant to an order of, or be approved by, a governmental authority and must be subject to the continuing supervision or jurisdiction of that governmental authority. A governmental authority is defined as the United States, any state, territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing. The second requirement under the proposed regulations is that the fund, account, or trust must be established to resolve or satisfy one or more claims that result from an event, or series of events, that has occurred and that gives rise to liabilities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); out of a

tort, breach of contract (which is not defined in the same manner as in § 1.461–4(g)(2)(i)), or violation of law; or designated by the Commissioner in a revenue ruling or revenue procedure.

The third requirement under the proposed regulations is that the fund, account, or trust must be a trust under state law or its assets must otherwise be segregated from other assets of the transferor (and related persons).

Governmental Order or Approval Requirement

Commentators have asked whether the first requirement is met if a court enters a dismissal of a lawsuit pursuant to a settlement between the parties but does not order the establishment of, or approve, a fund, account, or trust that is established by the parties to the lawsuit in connection with the settlement. In such cases, the fund, account, or trust would not meet the governmental order or approval requirement because it was neither established pursuant to an order of, nor approved by, the governmental authority.

One commentator requested that arbitration panels be included as a governmental authority. To further the goals of alternative dispute resolution procedures, the final regulations treat certain arbitration panels as governmental authorities. Another commentator requested the elimination of the requirement in the proposed regulations that a fund, account, or trust be subject to the continuing supervision of the governmental authority. Accordingly, the final regulations do not require continuing supervision but retain the requirement that the fund, account, or trust be subject to the continuing jurisdiction of the governmental authority that either ordered its establishment or approved it.

Resolve or Satisfy Requirement

One commentator requested that the final regulations clarify whether all potential claims must be asserted before a fund, account, or trust satisfies the requirement of § 1.468B–1(c)(2). In response to this comment, the final regulations clarify that even a single claim satisfies the requirement. In addition, as requested by another commentator, the final regulations clarify that a declared finding of liability is not required. The final regulations also clarify that a § 1.461–2(c)(1) contested liability fund satisfies the "resolve or satisfy requirement" by providing that qualified settlement fund treatment is available for both contested and uncontested liabilities.

Commentators requested that the final regulations allow additional types of qualified settlement fund liabilities to be designated by private letter ruling. This comment was not adopted. The Service and the Treasury Department believe that designating additional types of liabilities only by revenue ruling or revenue procedure will ensure efficient and consistent administration of the qualified settlement fund rules.

Commentators requested that, in addition to CERCLA liabilities, the final regulations also apply to other similar environmental liabilities arising under state law or other federal laws. Certain state and federal environmental laws vary significantly from CERCLA. Therefore, the Service and the Treasury Department will consider adding other categories of environmental liabilities by revenue ruling or revenue procedure after the different laws are individually studied.

Consistent with the rules in section 461(h)(2)(B) (regarding economic performance for liabilities to provide property or services), the final regulations also provide that qualified settlement fund treatment is not available with respect to a liability to provide property or services to the extent a transfer to the fund does not extinguish that liability. However, the final regulations provide an exception to this rule for CERCLA liabilities, if, after a transferor makes a transfer to a fund, account, or trust, the transferor's only remaining liability to the Environmental Protection Agency is a remote, future obligation to provide property or services.

Trust or Segregation Requirement

As requested by some commentators, the final regulations clarify that a separate bank account satisfies the segregation requirement. Commentators also requested clarification as to whether a trust or segregated assets can qualify as a qualified settlement fund if, under state or federal law, the trust or segregated assets may be reached by creditors of the transferor. This contingency does not affect the status of a fund, account, or trust as a qualified settlement fund.

Classification of a Fund Established to Resolve or Satisfy Allowable and Non-allowable Liabilities

Commentators requested clarification as to the proper treatment of a fund, account, or trust that is established to resolve or satisfy claims for liabilities described in § 1.468B–1(c)(2) as well as other types of liabilities. In response to these comments, the final regulations provide that a qualified settlement fund may be used to resolve or satisfy both allowable and non-allowable claims. However, a transfer to a qualified settlement fund with respect to non-allowable claims does not constitute economic performance.

Section 1.468B–2 Taxation of Qualified Settlement Funds and Related Administrative Requirements

Modified Gross Income

The proposed regulations provide that a qualified settlement fund is subject to tax on its modified gross income, which is defined as gross income computed with certain modifications. One modification excludes amounts transferred to the qualified settlement fund by, or on behalf of, the transferor. The other modifications are deductions for administrative costs and other incidental expenses incurred in connection with the operation of the fund; losses sustained by the fund in connection with the sale, exchange, or worthlessness of property; and specially defined net operating losses. One commentator was uncertain as to whether section 382 limitations apply to a qualified settlement fund net operating loss. Taxpayers should note that, since qualified settlement funds are only treated as corporations for purposes of subtitle F, the net operating loss deduction is applied without regard to section 382.

Commentators requested that a qualified settlement fund be allowed to deduct all expenses incurred in operating a trade or business, including its distributive share of partnership expenses. The Service and the Treasury Department believe that the operation of a trade or business is inconsistent with the general nature of a qualified settlement fund. Therefore, the final regulations do not adopt the suggested modification. However, because some previously established qualified settlement funds may hold illiquid partnership interests, the final regulations provide a 10-year transition rule for partnership interests acquired by a qualified settlement fund prior to February 15, 1992. Subject to certain limitations, a qualified settlement fund that holds one of these partnership interests may generaliy deduct its distributive share of the partnership's items of loss, deduction, or credit, but only to the extent of its distributive share of that partnership's items of income and gain for the same taxable year.

Commentators also requested that a qualified settlement fund be allowed to deduct payments made on behalf of claimants, such as payments for claimants' legal expenses. The Service and the Treasury Department believe

such payments are properly viewed as distributions to the claimants. Accordingly, the final regulations do not allow qualified settlement funds to deduct payments made on behalf of claimants.

The proposed regulations invited comments regarding whether a qualified settlement fund should be taxable on its modified gross income if the transferor is exempt from tax and the distributions are excludable from the claimants' income. Commentators generally recommended that the income of such funds not be taxable. Some commentators also recommended that the final regulations go further and not tax the income of a qualified settlement fund if either the transferor is exempt from tax or the distributions to claimants are excludable from their gross income.

The final regulations do not adopt these suggestions. The Service and the Treasury Department believe that basing the taxation of a qualified settlement fund's income on the tax status of the transferor and the claimants would lead to complex rules that would be difficult for taxpayers and the Service to apply and administer. In many settlement funds with multiple transferors, only some of the transferors are tax exempt. Similarly, many claims allege multiple liabilities only some of which will result in distributions to claimants that are excludable from gross income. Thus, the regulations would have to require burdensome tracing and allocation rules for tax-exempt transferors and excludable liabilities. However, the Service and the Treasury Department agree with the suggestion of some commentators that a longer transition rule will alleviate certain concerns of tax-exempt transferors. Accordingly, the final regulations permit funds to continue to use, until January 1, 1996, a reasonable, consistently applied method of taxation. A tax exempt transferor that has established a fund could, therefore, reasonably continue to take the position until January 1, 1996, that the fund is a grantor trust and the income is exempt from tax.

Taxable Year and Accounting Method

The proposed regulations provide that the taxable year of a qualified settlement fund is the calendar year and that the fund must use the accrual method of accounting. One commentator requested that qualified settlement funds, or at least small qualified settlement funds, be permitted to use the cash receipts and disbursement method of accounting. In the alternative, the commentator requested that the final regulations treat the use of the cash receipts and disbursement method of accounting as a reasonable method of accounting through 1992. The final regulations provide that for a qualified settlement fund established prior to January 1, 1993, the Service will not challenge the fund's use of the cash receipts and disbursement method of accounting prior to 1996.

Treatment as a Corporation for Purposes of Subtitle F

The proposed regulations provide that a qualified settlement fund is treated as a corporation for purposes of subtitle F of the Code. Thus, a qualified settlement fund must file an income tax return for the period it is in existence. This period begins on the first date it satisfies the requirements of § 1.468B–1, and ends on the earlier of the date it no longer meets those requirements or the date it no longer has any assets and will not receive any more transfers. A commentator requested that, to facilitate the "winding up" of a qualified settlement fund, a fund's existence end if the only remaining assets are reserves for certain contingencies, such as taxes. To accommodate this concern, the final regulations permit a qualified settlement fund whose only remaining assets are reserves for potential tax liabilities and related professional fees to request the prompt assessment of tax under section 6501(d).

The proposed regulations designate certain persons, in order of priority, as the administrator of a qualified settlement fund. In response to commentators' requests, the final regulations provide that the administrator may be approved (and not just designated) by the governmental authority, the trustee of a trust that is the qualified settlement fund may be the administrator, and the "default" administrator is the transferor rather than the escrow agent.

The proposed regulations provide that a qualified settlement fund must make an information return for, or withhold on, a distribution to a claimant if the transferor would have been required to if it had made the distribution directly to the claimant. Several commentators stated that the administrator of a qualified settlement fund may lack sufficient information to make this determination. A suggested alternative was to require gross proceeds reporting on distributions to claimants. Another suggested alternative was to allow the administrator to reasonably rely on information provided by the transferor.

The Service and the Treasury Department believe that the proposed regulations generally do not impose a greater burden with respect to information reporting or withholding than existed with respect to funds, accounts, or trusts before the enactment of section 468B. In addition, the Service and the Treasury Department believe that administrators generally have the ability to require transferors to provide the information needed to comply with the reporting and withholding requirements. Nevertheless, in response to commentators' concerns, the final regulations make some revisions to the information reporting and withholding rules. For example, the final regulations provide that if one or more transferors to a qualified settlement fund would have been required to make a return, the fund must make a return. This eliminates some of the difficulties an administrator would encounter in determining how to report payments if some, but not all, transferors would have been required to report a direct distribution.

The Service and the Treasury Department believe that gross proceeds reporting would impose an undue burden on claimants and the Service because the reported information will not identify a claimant's gross income from a distribution. Therefore, except as otherwise required under subtitle F, qualified settlement funds are not subject to gross proceeds reporting.

Section 1.468B–3 Rules Applicable to the Transferor

Transfer of Property—In General

The proposed regulations provide that a transferor must treat a transfer of property to a qualified settlement fund as a sale or exchange of that property for purposes of section 1001(a). One commentator was uncertain whether, under this rule, the transfer of a transferor's obligation to provide services or property at a reduced price in the future would result in gain or loss to the transferor. Under general principles of federal income tax law, the issuance of a transferor's debt, obligation to provide services or property in the future, or obligation to make a payment described in § 1.461–4(g), is generally not a transfer of property by the transferor. Thus, it generally does not result in a sale or exchange by the transferor. The final regulations clarify this.

Transfer of Transferor's Stock or Partnership Interests

The proposed regulations reserve on the treatment of transfers to a qualified settlement fund of a transferor's stock and of a partnership interest in a partnership that is controlled by the transferor. Commentators recommended

that such transfers be treated the same as transfers of other property but that to prevent valuation abuses the final regulations could require appraisals of the stock or partnership interests and disclosure of such transfers by the transferor.

Accordingly, the final regulations generally treat transfers of a transferor's stock, an interest in a transferor that is a partnership, or a partnership interest in which the transferor is a direct or indirect partner the same as transfers of other property. However, the final regulations require the transferor to obtain an appraisal for partnership interests and its stock if it is not publicly traded, to attach a copy of the appraisal to its income tax return, and to provide a copy of the appraisal to the administrator of the qualified settlement fund.

Statement to the Qualified Settlement Fund and the Internal Revenue Service

The proposed regulations provide that for each year in which a transferor transfers cash or property to a qualified settlement fund, the transferor must provide to the administrator a statement indicating the cash or property transferred and also attach a copy of the statement to its income tax return. A commentator requested that transferors be allowed to use a combined statement to maintain the confidentiality of the amounts they contributed to a settlement fund.

Accordingly, the final regulations allow any two or more transferors to provide a combined statement to the administrator. A transferor that uses a combined statement, however, must attach a schedule to its income tax return that describes each asset the transferor transferred to the qualified settlement fund.

Distributions to Transferors

The proposed regulations provide that a distribution from a qualified settlement fund to a transferor is excluded from the gross income of the transferor to the extent the transferor has been denied economic performance with respect to a transfer to the fund. Commentators requested that the final regulations expand the tax benefit rule to any distribution to a transferor that relates to a prior transfer for which the transferor did not receive a tax benefit. The final regulations provide that a distribution is excluded from the gross income of the transferor to the extent provided by section 111(a).

In response to another commentator's request, the final regulations clarify that information reporting or withholding rules apply with respect to distributions to transferors. The final regulations provide that a qualified settlement fund is deemed to be in a trade or business and to have made the distribution to the transferor in the course of its trade or business for purposes of sections 6041 and 6041A.

Section 1.468B–4 Taxability of Distributions to Claimants

Under the proposed regulations, the inclusion of a distribution in the claimant's gross income is determined by reference to the claim for which the distribution is made and as if the distribution were made directly by the transferor. Several commentators stated that, to avoid double taxation, a claimant should not be taxed on a distribution to the extent it is attributable to income earned by and taxed to a qualified settlement fund. As shown by the following examples, the Service and the Treasury Department believe that the proposed regulations do not generally impose double taxation.

Facts. Corporation X, a defendant in a class action alleging tort liabilities, is subject to a 34% tax rate. The claimants and the qualified settlement fund are subject to a 31% tax rate. Corporation X and the qualified settlement fund it establishes earn a 10% rate of return on investments.

Example 1. On January 1, 1993, Corporation X establishes a qualified settlement fund and transfers $93.55 to the fund. The qualified settlement fund earns $9.35 of interest during 1993 and pays $2.90 of tax. On January 1, 1994, the fund makes a taxable distribution of the remaining $100 to the claimants.

Example 2. On January 1, 1993, Corporation X establishes a reserve and deposits $93.55 in a separate bank account. The account is neither ordered nor approved by a governmental authority and, therefore, is not a qualified settlement fund. Corporation X earns $9.35 of interest during 1993 and pays $3.18 of tax. On January 1, 1994, Corporation X makes a taxable distribution of the remaining $99.72 to the claimants.

Thus, under the rule in the proposed regulations, not only is there no double taxation but, if the transferor is subject to tax at the maximum corporate tax rate, the overall combined tax with respect to the earnings component of distributions to claimants could be slightly less if the fund is a qualified settlement fund rather than an account that is the transferor's property. In addition, as shown in *Example 3* below, the result in Example 1 is the same (on an after-tax basis) as if the defendant pays the claimant directly on January 1, 1993, instead of either depositing money in a bank account or transferring money to a qualified settlement fund. The final regulations, therefore, retain the rule in the proposed regulations.

Example 3. On January 1, 1993, Corporation X makes a taxable settlement payment of $93.55 directly to a claimant. The claimant deposits $64.55 ($93.55 less $29 of tax) in a bank account. The claimant earns $6.46 of interest during 1993 and pays $2 of tax. On January 1, 1994, the claimant has $69.01. Thus, on January 1, 1994, the claimant has the same amount on an after-tax basis (approximately $69) as the claimant in Example 1 does after it pays $31 of tax on the $100 distribution it receives from Corporation X.

Section 1.468B–5 Effective Dates and Transition Rules

In General

In general, the final regulations are effective on January 1, 1993. Thus, the final regulations apply to income of a qualified settlement fund earned after, transfers to a fund after, and distributions from a fund after, December 31, 1992.

Request for Alternative Taxation of Post-1992 Fund Income

The proposed regulations provide that a qualified settlement fund in existence on February 14, 1992, and its transferor, may jointly request a ruling from the Service permitting the fund to be taxed in a manner other than that required by the regulations for taxable years ending after December 31, 1992. To obtain a favorable ruling, the proposed regulations require the transferor and the qualified settlement fund to demonstrate that the method of taxation requested is reasonable and is consistent with prior tax positions, and that the fund will exist after 1992 for only a reasonably short period of time.

A commentator requested that a ruling not be required and that instead transferors and qualified settlement funds be allowed to jointly elect to continue to use their current, reasonable method of taxation for the remainder of the fund's existence. As an alternative, the commentator requested that transferors and qualified settlement funds be allowed to continue to use their current, reasonable method of taxation for at least three additional years.

In response to these comments, the final regulations have eliminated the need for a ruling and provide that for funds established after August 16, 1986, but prior to February 15, 1992, the Service will not challenge a reasonable, consistently applied method of taxation for transfers to, income earned by, and distributions made by a fund, account, or trust after August 16, 1986, but prior to 1996.

Taxation of Pre-1993 Fund Income

The proposed regulations provide that the Service will not challenge a reasonable, consistently applied method of taxation for transfers to a fund or income earned by the fund prior to 1993. As discussed above, this safe-harbor rule has been extended to apply to reasonable, consistently applied methods of taxation used prior to 1996.

With respect to a fund, account, or trust that is eligible for this safe-harbor rule, commentators requested that penalties be waived during the period a reasonable, consistently applied method of taxation is used. The final regulations provide that for taxable years beginning prior to January 1, 1993, penalties will generally not be imposed with respect to the use of a reasonable, consistently applied method of taxation.

The proposed regulations provide that transferors to a fund, account, or trust and the person who would be the administrator if the fund were a qualified settlement fund may jointly elect to retroactively apply the qualified settlement fund rules to the fund, account, or trust. Commentators requested, and the final regulations permit, a unilateral election by the person who would be the administrator of the fund, account, or trust.

Section 130 Qualified Assignments

Several commentators requested that the final regulations provide that a designated or qualified settlement fund may enter into a structured settlement agreement with a claimant and may make a section 130 qualified assignment to extinguish the fund's liability to make a distribution to that claimant. The Service and the Treasury Department are considering these and related comments and anticipate providing guidance with respect to the interaction of section 130 qualified assignments and section 468B(g) in the future.

Other Escrow Accounts, Settlement Funds, or Similar Funds

Commentators requested that additional rules under section 468B(g) be provided for the tax treatment of funds, accounts, or trusts that are not qualified settlement funds, such as escrow accounts used in the sale of property and section 1031 qualified escrow accounts. The Service and the Treasury Department are aware of the need for guidance in this area. In order that the final qualified settlement fund regulations not be delayed, however, the Service and the Treasury Department have decided to address these other issues in future projects.

Special Analyses

It has been determined that these final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, a copy of the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Linda M. Kroening of the Office of Assistant Chief Counsel (Income Tax & Accounting), Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.461–1 through 1.469–11T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.468B also issued under 26 U.S.C. 461(h) and 468B. §§ 1.468B–0 through 1.468B–5 also issued under 26 U.S.C. 461(h) and 468B. * * *

Par. 2. Sections § 1.468B and 1.468B–0 through 1.468B–5 are added to read as follows:

§ 1.468B Designated settlement funds.

A designated settlement fund, as defined in section 468B(d)(2), is taxed in the manner described in § 1.468B–2. The rules for transferors to a qualified settlement fund described in § 1.468B–3 apply to transferors to a designated settlement fund. Similarly, the rules for claimants of a qualified settlement fund described in § 1.468B–4 apply to claimants of a designated settlement fund. A fund, account, or trust that does not qualify as a designated settlement fund is, however, a qualified settlement fund if it meets the requirements of a qualified settlement fund described in § 1.468B–1.

§ 1.468B–0 Table of contents.

This section contains a listing of the headings of §§ 1.468B–1 through 1.468B–5.

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§ 1.468B–1 Qualified settlement funds.

(a) *In general.* A qualified settlement fund is a fund, account, or trust that satisfies the requirements of paragraph (c) of this section.

(b) *Coordination with other entity classifications.* If a fund, account, or trust that is a qualified settlement fund could be classified as a trust within the meaning of § 301.7701–4 of this chapter, it is classified as a qualified settlement fund for all purposes of the Internal Revenue Code (Code). If a fund, account, or trust, organized as a trust under applicable state law, is a qualified settlement fund, and could be classified as either an association (within the meaning of § 301.7701–2 of this chapter) or a partnership (within the meaning of § 301.7701–3 of this chapter), it is classified as a qualified settlement fund for all purposes of the Code. If a fund, account, or trust, established for contested liabilities pursuant to § 1.461–2(c)(1) is a qualified settlement fund, it is classified as a qualified settlement fund for all purposes of the Code.

(c) *Requirements.* A fund, account, or trust satisfies the requirements of this paragraph (c) if—

(1) It is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;

(2) It is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability—

(i) Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter referred to as CERCLA), as amended, 42 U.S.C. 9601 et seq.; or

(ii) Arising out of a tort, breach of contract, or violation of law; or

(iii) Designated by the Commissioner in a revenue ruling or revenue procedure; and

(3) The fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor (and related persons).

(d) *Definitions.* For purposes of this section—

(1) *Transferor.* A "transferor" is a person that transfers (or on behalf of whom an insurer or other person transfers) money or property to a qualified settlement fund to resolve or satisfy claims described in paragraph (c)(2) of this section against that person.

(2) *Related person.* A "related person" is any person who is related to the transferor within the meaning of sections 267(b) or 707(b)(1).

(e) *Governmental order or approval requirement*—(1) *In general.* A fund, account, or trust is "ordered by" or "approved by" a governmental authority described in paragraph (c)(1) of this section when the authority issues its initial or preliminary order to establish, or grants its initial or preliminary approval of, the fund, account, or trust, even if that order or approval may be subject to review or revision. Except as otherwise provided in paragraph (j)(2) of this section, the governmental authority's order or approval has no retroactive effect and does not permit a fund, account, or trust to be a qualified settlement fund prior to the date the order is issued or the approval is granted.

(2) *Arbitration panels.* An arbitration award that orders the establishment of, or approves, a fund, account, or trust is an order or approval of a governmental authority described in paragraph (c)(1) of this section if—

(i) The arbitration award is judicially enforceable;

(ii) The arbitration award is issued pursuant to a bona fide arbitration proceeding in accordance with rules that are approved by a governmental authority described in paragraph (c)(1) of this section (such as self-regulatory organization-administered arbitration proceedings in the securities industry); and

(iii) The fund, account, or trust is subject to the continuing jurisdiction of the arbitration panel, the court of law that has jurisdiction to enforce the arbitration award, or the governmental authority that approved the rules of the arbitration proceeding.

(f) *Resolve or satisfy requirement*—(1) *Liabilities to provide services or property.* Except as otherwise provided in paragraph (f)(2) of this section, a liability is not described in paragraph (c)(2) of this section if it is a liability for the provision of services or property, unless the transferor's obligation to provide services or property is extinguished by a transfer or transfers to the fund, account, or trust.

(2) *CERCLA liabilities.* A transferor's liability under CERCLA to provide services or property is described in paragraph (c)(2) of this section if

following its transfer to a fund, account, or trust the transferor's only remaining liability to the Environmental Protection Agency (if any) is a remote, future obligation to provide services or property.

(g) *Excluded liabilities.* A liability is not described in paragraph (c)(2) of this section if it—

(1) Arises under a workers compensation act or a self-insured health plan;

(2) Is an obligation to refund the purchase price of, or to repair or replace, products regularly sold in the ordinary course of the transferor's trade or business;

(3) Is an obligation of the transferor to make payments to its general trade creditors or debtholders that relates to a title 11 or similar case (as defined in section 368(a)(3)(A)), or a workout; or

(4) Is designated by the Commissioner in a revenue ruling or a revenue procedure (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(h) *Segregation requirement*—(1) *In general.* If it is not a trust under applicable state law, a fund, account, or trust satisfies the requirements of paragraph (c)(3) of this section if its assets are physically segregated from other assets of the transferor (and related persons). For example, cash held by a transferor in a separate bank account satisfies the segregation requirement of paragraph (c)(3) of this section.

(2) *Classification of fund established to resolve or satisfy allowable and non-allowable claims.* If a fund, account, or trust is established to resolve or satisfy claims described in paragraph (c)(2) of this section as well as other types of claims (*i.e.*, non-allowable claims) arising from the same event or related series of events, the fund is a qualified settlement fund. However, under § 1.468B–3(c), economic performance does not occur with respect to transfers to the qualified settlement fund for non-allowable claims.

(i) [Reserved]

(j) *Classification of fund prior to satisfaction of requirements in paragraph (c) of this section*—(1) *In general.* If a fund, account, or trust is established to resolve or satisfy claims described in paragraph (c)(2) of this section, the assets of the fund, account, or trust are treated as owned by the transferor of those assets until the fund, account, or trust also meets the requirements of paragraphs (c) (1) and (3) of this section. On the date the fund, account, or trust satisfies all the requirements of paragraph (c) of this section, the transferor is treated as transferring the assets to a qualified settlement fund.

(2) *Relation-back rule*—(i) *In general.* If a fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) of this section prior to the time it meets the requirements of paragraph (c)(1) of this section, the transferor and administrator (as defined in § 1.468B–2(k)(3)) may jointly elect (a relation-back election) to treat the fund, account, or trust as coming into existence as a qualified settlement fund on the later of the date the fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) of this section or January 1 of the calendar year in which all the requirements of paragraph (c) of this section are met. If a relation-back election is made, the assets held by the fund, account, or trust on the date the qualified settlement fund is treated as coming into existence are treated as transferred to the qualified settlement fund on that date.

(ii) *Relation-back election.* A relation-back election is made by attaching a copy of the election statement, signed by each transferor and the administrator, to (and as part of) the timely filed income tax return (including extensions) of the qualified settlement fund for the taxable year in which the fund is treated as coming into existence. A copy of the election statement must also be attached to (and as part of) the timely filed income tax return (including extensions), or an amended return that is consistent with the requirements of §§ 1.468B–1 through § 1.468B–4, of each transferor for the taxable year of the transferor that includes the date on which the qualified settlement fund is treated as coming into existence. The election statement must contain—

(A) A legend, "§ 1.468B–1 Relation-Back Election", at the top of the first page;

(B) Each transferor's name, address, and taxpayer identification number;

(C) The qualified settlement fund's name, address, and employer identification number;

(D) The date as of which the qualified settlement fund is treated as coming into existence; and

(E) A schedule describing each asset treated as transferred to the qualified settlement fund on the date the fund is treated as coming into existence. The schedule of assets does not have to identify the amount of cash or the property treated as transferred by a particular transferor. If the schedule does not identify the transferor of each asset, however, each transferor must include with the copy of the election statement that is attached to its income tax return (or amended return) a schedule describing each asset the transferor is treated as transferring to the qualified settlement fund.

(k) *Examples.* The following examples illustrate the rules of this section:

Example 1. In a class action brought in a United States federal district court, the court holds that the defendant, Corporation X, violated certain securities laws and must pay damages in the amount of $150 million. Pursuant to an order of the court, Corporation X transfers $50 million in cash and transfers property with a fair market value of $75 million to a state law trust. The trust will liquidate the property and distribute the cash proceeds to the plaintiffs in the class action. The trust is a qualified settlement fund because it was established pursuant to the order of a federal district court to resolve or satisfy claims against Corporation X for securities law violations that have occurred.

Example 2. (i) Assume the same facts as in *Example 1*, except that Corporation X and the class of plaintiffs reach an out-of-court settlement that requires Corporation X to establish and fund a state law trust before the settlement agreement is submitted to the court for approval.

(ii) The trust is not a qualified settlement fund because it neither is established pursuant to an order of, nor has it been approved by, a governmental authority described in paragraph (c)(1) of this section.

Example 3. On June 1, 1994, Corporation Y establishes a fund to resolve or satisfy claims against it arising from the violation of certain securities laws. On that date, Corporation Y transfers $10 million to a segregated account. On December 1, 1994, a federal district court approves the fund. Assuming Corporation Y and the administrator of the qualified settlement fund do not make a relation-back election, Corporation Y is treated as the owner of the $10 million dollars, and is taxable on any income earned on that money, from June 1 through November 30, 1994. The fund is a qualified settlement fund beginning on December 1, 1994.

Example 4. (i) On September 1, 1993, Corporation X, which has a taxable year ending on October 31, enters into a settlement agreement with a plaintiff class for asserted tort liabilities. Under the settlement agreement, Corporation X makes two $50 million payments into a segregated fund, one on September 1, 1993, and one on October 1, 1993, to resolve or satisfy the tort liabilities. A federal district court approves the settlement agreement on November 1, 1993.

(ii) The administrator of the fund and Corporation X elect to treat the fund as a qualified settlement fund prior to governmental approval under the relation-back rule of paragraph (j)(2) of this section. The administrator must attach the relation-back election statement to the fund's income tax return for calendar year 1993, and Corporation X must attach the election to its original or amended income tax return for its taxable year ending October 31, 1993.

(iii) Pursuant to the relation-back election, the fund begins its existence as a qualified

settlement fund on September 1, 1993, and Corporation X is treated as transferring $50 million to the qualified settlement fund on September 1, 1993, and $50 million on October 1, 1993.

(iv) With respect to these transfers, Corporation X must provide the statement described in § 1.468B–3(e) to the administrator of the qualified settlement fund by February 15, 1994, and must attach a copy of this statement to its original or amended income tax return for its taxable year ending October 31, 1993.

Example 5. Assume the same facts as in *Example 4*, except that the court approves the settlement on May 1, 1994. The administrator must attach the relation-back election statement to the fund's income tax return for calendar year 1994, and Corporation X must attach the election statement to its original or amended income tax return for its taxable year ending October 31, 1994. Pursuant to this election, the fund begins its existence as a qualified settlement fund on January 1, 1994. In addition, Corporation X is treated as transferring to the qualified settlement fund all amounts held in the fund on January 1, 1994. With respect to the transfer, Corporation X must provide the statement described in § 1.468B–3(e) to the administrator of the qualified settlement fund by February 15, 1995, and must attach a copy of this statement to its income tax return for its taxable year ending October 31, 1994.

Example 6. Corporation Z establishes a fund that meets all the requirements of section 468B(d)(2) for a designated settlement fund, except that Corporation Z does not make the election under section 468B(d)(2)(F). Although the fund does not qualify as a designated settlement fund, it is a qualified settlement fund because the fund meets the requirements of paragraph (c) of this section.

Example 7. Corporation X owns and operates a landfill in State A. State A requires Corporation X to transfer money to a trust annually based on the total tonnage of material placed in the landfill during the year. Under the laws of State A, Corporation X will be required to perform (either itself or through contractors) specified closure activities when the landfill is full, and the trust assets will be used to reimburse Corporation X for those closure costs. The trust is not a qualified settlement fund because it is established to secure the liability of Corporation X to perform the closure activities.

§ 1.468B–2 Taxation of qualified settlement funds and related administrative requirements.

(a) *In general.* A qualified settlement fund is a United States person and is subject to tax on its modified gross income for any taxable year at a rate equal to the maximum rate in effect for that taxable year under section 1(e).

(b) *Modified gross income.* The "modified gross income" of a qualified settlement fund is its gross income, as defined in section 61, computed with the following modifications—

(1) In general, amounts transferred to the qualified settlement fund by, or on behalf of, a transferor to resolve or satisfy a liability for which the fund is established are excluded from gross income. However, dividends on stock of a transferor (or a related person), interest on debt of a transferor (or a related person), and payments in compensation for late or delayed transfers, are not excluded from gross income.

(2) A deduction is allowed for administrative costs and other incidental expenses incurred in connection with the operation of the qualified settlement fund that would be deductible under chapter 1 of the Internal Revenue Code in determining the taxable income of a corporation. Administrative costs and other incidental expenses include state and local taxes, legal, accounting, and actuarial fees relating to the operation of the qualified settlement fund, and expenses arising from the notification of claimants and the processing of their claims. Administrative costs and other incidental expenses do not include legal fees incurred by, or on behalf of, claimants.

(3) A deduction is allowed for losses sustained by the qualified settlement fund in connection with the sale, exchange, or worthlessness of property held by the fund to the extent the losses would be deductible in determining the taxable income of a corporation under section 165 (f) or (g), and sections 1211(a) and 1212(a).

(4) A deduction is allowed for the amount of a net operating loss of the qualified settlement fund to the extent the loss would be deductible in determining the taxable income of a corporation under section 172(a). For purposes of this paragraph (b)(4), the net operating loss of a qualified settlement fund for a taxable year is the amount by which the deductions allowed under paragraphs (b)(2) and (b)(3) of this section exceed the gross income of the fund computed with the modification described in paragraph (b)(1) of this section.

(c) *Partnership interests held by a qualified settlement fund on February 14, 1992*—(1) *In general.* For taxable years ending prior to January 1, 2003, a qualified settlement fund that holds a partnership interest it acquired prior to February 15, 1992, is allowed a deduction for its distributive share of that partnership's items of loss, deduction, or credit described in section 702(a) that would be deductible in determining the taxable income (or in the case of a credit, the income tax liability) of a corporation to the extent of the fund's distributive share of that partnership's items of income and gain described in section 702(a) for the same taxable year. For purposes of this paragraph (c)(1), a distributive share of a partnership credit is treated as a deduction in an amount equal to the amount of the credit divided by the rate described in paragraph (a) of this section.

(2) *Limitation on changes in partnership agreements and capital contributions.* For purposes of paragraph (c)(1) of this section, changes in a qualified settlement fund's distributive share of items of income, gain, loss, deduction, or credit are disregarded if—

(i) They result from a change in the terms of the partnership agreement on or after December 18, 1992, or a capital contribution to the partnership on or after December 18, 1992, unless the partnership agreement as in effect prior to December 18, 1992, requires the contribution; and

(ii) A principal purpose of the change in the terms of the partnership agreement or the capital contribution is to circumvent the limitation described in paragraph (c)(1) of this section.

(d) *Distributions to transferors and claimants.* Amounts that are distributed by a qualified settlement fund to, or on behalf of, a transferor or a claimant are not deductible by the fund.

(e) *Basis of property transferred to a qualified settlement fund.* A qualified settlement fund's initial basis in property it receives from a transferor (or from an insurer or other person on behalf of a transferor) is the fair market value of that property on the date of transfer to the fund.

(f) *Distribution of property.* A qualified settlement fund must treat a distribution of property as a sale or exchange of that property for purposes of section 1001(a). In computing gain or loss, the amount realized by the qualified settlement fund is the fair market value of the property on the date of distribution.

(g) *Other taxes.* The tax imposed under paragraph (a) of this section is in lieu of any other taxation of the income of a qualified settlement fund under subtitle A of the Internal Revenue Code. Thus, a qualified settlement fund is not subject to the alternative minimum tax of section 55, the accumulated earnings tax of section 531, the personal holding company tax of section 541, or the maximum capital gains rate of section 1(h). A qualified settlement fund is, however, subject to taxes that are not imposed on the income of a taxpayer, such as the tax on transfers of property to foreign entities under section 1491.

(h) *Denial of credits against tax.* The tax imposed on the modified gross

income of a qualified settlement fund under paragraph (a) of this section may not be reduced or offset by any credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(i) [Reserved]

(j) *Taxable year and accounting method.* The taxable year of a qualified settlement fund is the calendar year. A qualified settlement fund must use an accrual method of accounting within the meaning of section 446(c).

(k) *Treatment as corporation for purposes of subtitle F.* Except as otherwise provided in §§ 1.468B–5(b), for purposes of subtitle F of the Internal Revenue Code, a qualified settlement fund is treated as a corporation and any tax imposed under paragraph (a) of this section is treated as a tax imposed by section 11. Subtitle F rules that apply to qualified settlement funds include, but are not limited to—

(1) A qualified settlement fund must file an income tax return with respect to the tax imposed under paragraph (a) of this section for each taxable year that the fund is in existence, whether or not the fund has gross income for that taxable year.

(2) A qualified settlement fund is in existence for the period that—

(i) Begins on the first date on which the fund is treated as a qualified settlement fund under § 1.468B–1; and

(ii) Ends on the earlier of the date the fund—

(A) No longer satisfies the requirements of § 1.468B–1; or

(B) No longer has any assets and will not receive any more transfers. (See paragraph (m) of this section for procedures for the prompt assessment of tax.)

(3) The income tax return of the qualified settlement fund must be filed on or before March 15 of the year following the close of the taxable year of the qualified settlement fund unless the fund is granted an extension of time for filing under section 6081. The return must be made by the administrator of the qualified settlement fund. The "administrator" (which may include a trustee if the qualified settlement fund is a trust) of a qualified settlement fund is, in order of priority—

(i) The person designated, or approved, by the governmental authority that ordered or approved the fund for purposes of § 1.468B–1(c)(1);

(ii) The person designated in the escrow agreement, settlement agreement, or other similar agreement governing the fund;

(iii) The escrow agent, custodian, or other person in possession or control of the fund's assets; or

(iv) The transferor or, if there are multiple transferors, all the transferors, unless an agreement signed by all the transferors designates a single transferor as the administrator.

(4) The administrator of a qualified settlement fund must obtain an employer identification number for the fund.

(5) A qualified settlement fund must deposit all payments of tax imposed under paragraph (a) of this section (including any payments of estimated tax) with an authorized government depositary in accordance with § 1.6302–1.

(6) A qualified settlement fund is subject to the addition to tax imposed by section 6655 in the case of an underpayment of estimated tax computed with respect to the tax imposed under paragraph (a) of this section. For purposes of section 6655(g)(2), a qualified settlement fund's taxable income is its modified gross income and a transferor is not considered a predecessor of a qualified settlement fund.

(l) *Information reporting and withholding requirements*—(1) *Payments to a qualified settlement fund.* Payments to a qualified settlement fund are treated as payments to a corporation for purposes of the information reporting requirements of part III of subchapter A of chapter 61 of the Internal Revenue Code.

(2) *Payments and distributions by a qualified settlement fund*—(1) *In general.* Payments and distributions by a qualified settlement fund are subject to the information reporting requirements of part III of subchapter A of chapter 61 of the Internal Revenue Code (Code), and the withholding requirements of subchapter A of chapter 3 of subtitle A and subtitle C of the Code.

(ii) *Special rules.* The following rules apply with respect to payments and distributions by a qualified settlement fund—

(A) A qualified settlement fund must make a return for, or must withhold tax on, a distribution to a claimant if one or more transferors would have been required to make a return or withhold tax had that transferor made the distribution directly to the claimant;

(B) For purposes of sections 6041(a) and 6041A, if a qualified settlement fund makes a payment or distribution to a transferor, the fund is deemed to make the payment or distribution to the transferor in the course of a trade or business;

(C) For purposes of sections 6041(a) and 6041A, if a qualified settlement fund makes a payment or distribution on behalf of a transferor or a claimant, the fund is deemed to make the payment or distribution to the recipient of that payment or distribution in the course of a trade or business;

(D) With respect to a distribution or payment described in paragraph (1)(2)(ii)(C) of this section and the information reporting requirements of part III of subchapter A of chapter 61 of the Internal Revenue Code, the qualified settlement fund is also deemed to have made the distribution or payment to the transferor or claimant.

(m) *Request for prompt assessment.* A qualified settlement fund is eligible to request the prompt assessment of tax under section 6501(d). For purposes of section 6501(d), a qualified settlement fund is treated as dissolving on the date the fund no longer has any assets (other than a reasonable reserve for potential tax liabilities and related professional fees) and will not receive any more transfers.

(n) *Examples.* The following examples illustrate the rules of this section:

Example 1. On June 30, 1993, a United States federal district court approves the settlement of a lawsuit under which Corporation X must transfer $10,833,000 to a qualified settlement fund on August 1, 1993. The $10,833,000 includes $10 million of damages incurred by plaintiffs on October 1, 1992, and $833,000 of interest calculated at 10 percent annually from October 1, 1992, to August 1, 1993. The $833,000 of interest is not a payment to the qualified settlement fund in compensation for a late or delayed transfer to the fund within the meaning of paragraph (b)(1) of this section because the payment of $10,833,000 to the fund is not due until August 1, 1993.

Example 2. Assume the same facts as in *Example 1* except that the settlement agreement also provides for interest to accrue at a rate of 12 percent annually on any amount not transferred to the qualified settlement fund on August 1, 1993, and the only transfer Corporation X makes to the fund is $11,374,650 on January 1, 1994. The additional payment of $541,650 ($11,374,650 paid on January 1, 1994, less $10,833,000 due on August 1, 1993) is a payment to the qualified settlement fund in compensation for a late or delayed transfer to the fund within the meaning of paragraph (b)(1) of this section.

§ 1.468B–3 Rules applicable to the transferor.

(a) *Transfer of property*—(1) *In general.* A transferor must treat a transfer of property to a qualified settlement fund as a sale or exchange of that property for purposes of section 1001(a). In computing the gain or loss, the amount realized by the transferor is the fair market value of the property on the date the transfer is made (or is treated as made under § 1.468B–1(g)) to the qualified settlement fund. Because

the issuance of a transferor's debt, obligation to provide services or property in the future, or obligation to make a payment described in § 1.461–4(g), is generally not a transfer of property by the transferor, it generally does not result in gain or loss to the transferor under this paragraph (a)(1). If a person other than the transferor transfers property to a qualified settlement fund, there may be other tax consequences as determined under general federal income tax principles.

(2) *Anti-abuse rule.* The Commissioner may disallow a loss resulting from the transfer of property to a qualified settlement fund if the Commissioner determines that a principal purpose for the transfer was to claim the loss and—

(i) The transferor places significant restrictions on the fund's ability to use or dispose of the property; or

(ii) The property (or substantially similar property) is distributed to the transferor (or a related person).

(b) *Qualified appraisal requirement for transfers of certain property*—(1) *In general.* A transferor must obtain a qualified appraisal to support a loss or deduction it claims with respect to a transfer to a qualified settlement fund of the following types of property—

(i) Nonpublicly traded securities (as defined in § 1.170A–13(c)(7)(ix)) issued by the transferor (or a related person); and

(ii) Interests in the transferor (if the transferor is a partnership) and in a partnership in which the transferor (or a related person) is a direct or indirect partner.

(2) *Provision of copies.* The transferor must provide a copy of the qualified appraisal to the administrator of the qualified settlement fund no later than February 15 of the year following the calendar year in which the property is transferred. The transferor also must attach a copy of the qualified appraisal to (and as part of) its timely filed income tax return (including extensions) for the taxable year of the transferor in which the transfer is made.

(3) *Qualified appraisal.* A "qualified appraisal" is a written appraisal that—

(i) Is made within 60 days before or after the date the property is transferred to the qualified settlement fund;

(ii) Is prepared, signed, and dated by an individual who is a qualified appraiser within the meaning of § 1.170A–13(c)(5);

(iii) Includes the information required by paragraph (b)(4) of this section; and

(iv) Does not involve an appraisal fee of the type prohibited by § 1.170A–13(c)(6).

(4) *Information included in a qualified appraisal.* A qualified appraisal must include the following information—

(i) A description of the appraised property;

(ii) The date (or expected date) of the property's transfer to the qualified settlement fund;

(iii) The appraised fair market value of the property on the date (or expected date) of transfer;

(iv) The method of valuing the property, such as the comparable sales approach;

(v) The specific basis for the valuation, such as specific comparable sales or statistical sampling, including a justification for using comparable sales or statistical sampling and an explanation of the procedure employed;

(vi) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the transferor (or a related person) or the qualified settlement fund that relates to the use, sale, or other disposition of the transferred property, including, for example, the terms of any agreement or understanding that temporarily or permanently—

(A) Restricts the qualified settlement fund's right to use or dispose of the property; or

(B) Reserves to, or confers upon, any person other than the qualified settlement fund any right (including designating another person as having the right) to income from the property, to possess the property (including the right to purchase or otherwise acquire the property), or to exercise any voting rights with respect to the property;

(vii) The name, address, and taxpayer identification number of the qualified appraiser; and if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person, or an independent contractor engaged by a person other than the transferor, the name, address, and taxpayer identification number of the partnership or the person who employs or engages the qualified appraiser;

(viii) The qualifications of the qualified appraiser, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations; and

(ix) A statement that the appraisal was prepared for income tax purposes.

(5) *Effect of signature of the qualified appraiser.* Any appraiser who falsely or fraudulently overstates the value of the transferred property referred to in a qualified appraisal may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

(c) *Economic performance*—(1) *In general.* Except as otherwise provided in this paragraph (c), for purposes of section 461(h), economic performance occurs with respect to a liability described in § 1.468B–1(c)(2) (determined with regard to § 1.468B–1(f) and (g)) to the extent the transferor makes a transfer to a qualified settlement fund to resolve or satisfy the liability.

(2) *Right to a refund or reversion*—(i) *In general.* Economic performance does not occur to the extent—

(A) The transferor (or a related person) has a right to a refund or reversion of a transfer if that right is exercisable currently and without the agreement of an unrelated person that is independent or has an adverse interest (e.g., the court or agency that approved the fund, or the fund claimants); or

(B) Money or property is transferred under conditions that allow its refund or reversion by reason of the occurrence of an event that is certain to occur, such as the passage of time, or if restrictions on its refund or reversion are illusory.

(ii) *Right extinguished.* With respect to a transfer described in paragraph (c)(2)(i) of this section, economic performance is deemed to occur on the date, and to the extent, the transferor's right to a refund or reversion is extinguished.

(3) *Obligations of a transferor.* Economic performance does not occur when a transferor transfers to a qualified settlement fund its debt (or the debt of a related person). Instead, economic performance occurs as the transferor (or related person) makes principal payments on the debt. Similarly, economic performance does not occur when a transferor transfers to a qualified settlement fund its obligation (or the obligation of a related person) to provide services or property in the future, or to make a payment described in § 1.461–4(g). Instead, economic performance with respect to such an obligation occurs as services, property or payments are provided or made to the qualified settlement fund or a claimant.

(d) *Payment of insurance amounts.* No deduction is allowed to a transferor for a transfer to a qualified settlement fund to the extent the transferred amounts represent amounts received from the settlement of an insurance claim and are excludable from gross income. If the settlement of an insurance claim occurs after a transferor makes a transfer to a qualified settlement fund for which a deduction has been taken, the transferor must

include in income the amounts received from the settlement of the insurance claim to the extent of the deduction.

(e) *Statement to the qualified settlement fund and the Internal Revenue Service*—(1) *In general.* A transferor must provide the statement described in paragraph (e)(2) of this section to the administrator of a qualified settlement fund no later than February 15 of the year following each calendar year in which the transferor (or an insurer or other person on behalf of the transferor) makes a transfer to the fund. The transferor must attach a copy of the statement to (and as part of) its timely filed income tax return (including extensions) for the taxable year of the transferor in which the transfer is made.

(2) *Required statement*—(i) *In general.* The statement required by this paragraph (e) must provide the following information—

(A) A legend, "§ 1.468B–3 Statement", at the top of the first page;

(B) The transferor's name, address, and taxpayer identification number;

(C) The qualified settlement fund's name, address, and employer identification number;

(D) The date of each transfer;

(E) The amount of cash transferred; and

(F) A description of property transferred and its fair market value on the date of transfer.

(ii) *Combined statements.* If a qualified settlement fund has more than one transferor, any two or more of the transferors may provide a combined statement to the administrator that does not identify the amount of cash or the property transferred by a particular transferor. If a combined statement is used, however, each transferor must include with its copy of the statement that is attached to its income tax return a schedule describing each asset that the transferor transferred to the qualified settlement fund.

(f) *Distributions to transferors*—(1) *In general.* A transferor must include in gross income any distribution (including a deemed distribution described in paragraph (f)(2) of this section) it receives from a qualified settlement fund. If property is distributed, the amount includible in gross income and the basis in that property, is the fair market value of the property on the date of the distribution.

(2) *Deemed distributions*—(i) *Other liabilities.* If a qualified settlement fund makes a distribution on behalf of a transferor to a person that is not a claimant, or to a claimant to resolve or satisfy a liability of the transferor (or a related person) other than a liability described in § 1.468B–1(c)(2) for which the fund was established, the distribution is deemed made by the fund to the transferor. The transferor, in turn, is deemed to have made a payment to the actual recipient.

(ii) *Constructive receipt.* To the extent a transferor acquires a right to a refund or reversion described in paragraph (c)(2) of this section of all or a portion of the assets of a qualified settlement fund subsequent to the transfer of those assets to the fund, the fund is deemed to distribute those assets to the transferor on the date the right is acquired.

(3) *Tax benefit rule.* A distribution described in paragraph (f)(1) or (f)(2) of this section is excluded from the gross income of a transferor to the extent provided by section 111(a).

(g) *Example.* The following example illustrates the rules of this section:

Example. On March 1, 1993, Individual A transfers $1 million to a qualified settlement fund to resolve or satisfy claims against him resulting from certain violations of securities laws. Individual A uses the cash receipts and disbursements method of accounting. Since Individual A does not use the accrual method of accounting, the economic performance rules of paragraph (c) of this section are not applicable. Therefore, whether, when, and to what extent Individual A can deduct the transfer is determined under applicable provisions of the Internal Revenue Code, such as sections 162 and 461.

§ 1.468B–4 Taxability of distributions to claimants.

Whether a distribution to a claimant is includible in the claimant's gross income is generally determined by reference to the claim in respect of which the distribution is made and as if the distribution were made directly by the transferor. For example, to the extent a distribution is in satisfaction of damages on account of personal injury or sickness, the distribution may be excludable from gross income under section 104(a)(2). Similarly, to the extent a distribution is in satisfaction of a claim for foregone taxable interest, the distribution is includible in the claimant's gross income under section 61(a)(4).

§ 1.468B–5 Effective dates and transition rules.

(a) *In general.* Section 468B, including section 468B(g), is effective as provided in the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. Except as otherwise provided in this section, §§ 1.468B–1 through 1.468–4 are effective on January 1, 1993. Thus, the regulations apply to income of a qualified settlement fund earned after December 31, 1992, transfers to a fund after December 31, 1992, and distributions from a fund after December 31, 1992. For purposes of § 1.468B–3(c) (relating to economic performance), previously transferred assets held by a qualified settlement fund on the date these regulations first apply to the fund (i.e., January 1, 1993, or the earlier date provided under paragraph (b)(2) of this section) are treated as transferred to the fund on that date, to the extent no taxpayer has previously claimed a deduction for the transfer.

(b) *Taxation of certain pre-1996 fund income*—(1) *Reasonable method*—(i) *In general.* With respect to a fund, account, or trust established after August 16, 1986, but prior to February 15, 1992, that satisfies (or, if it no longer exists, would have satisfied) the requirements of § 1.468B–1(c), the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for transfers to the fund, income earned by the fund, and distributions made by the fund after August 16, 1986, but prior to January 1, 1996. A method is generally considered reasonable if, depending on the facts and circumstances, all transferors and the administrator of the fund have consistently treated transfers to the fund, income earned by the fund, and distributions made by the fund after August 16, 1986, as if the fund were—

(A) A grantor trust and the transferors are the grantors;

(B) A complex trust and the transferors are the grantors; or

(C) A designated settlement fund.

(ii) *Qualified settlement funds established after February 14, 1992, but before January 1, 1993.* With respect to a fund, account, or trust established after February 14, 1992, but prior to January 1, 1993, that satisfies the requirements of § 1.468B–1(c), the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation as described in paragraph (b)(1)(i) of this section for transfers to, income earned by, and distributions made by the fund prior to January 1, 1993. However, pursuant to paragraph (a) of this section, sections 1.468B–1 through 1.468B–4 apply to transfers to, income earned by, and distributions made by the qualified settlement fund after 1992.

(iii) *Use of cash method of accounting.* For purposes of paragraphs (b)(i) and (b)(ii) of this section, for taxable years beginning prior to January 1, 1996, the Internal Revenue Service will not challenge the use of the cash receipts and disbursement method of accounting by a fund, account, or trust.

(iv) *Unreasonable position.* In no event is it a reasonable position to assert, pursuant to Rev. Rul. 71–119 (see § 601.601(d)(2)(ii)(*b*) of this chapter), that there is no current taxation of the income of a fund established after August 16, 1986.

(v) *Waiver of penalties.* For taxable years beginning prior to January 1, 1993, if a fund, account or trust is subject to section 468B(g) and the Internal Revenue Service does not challenge the method of taxation for transfers to, income earned by, and distributions made by, the fund pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, penalties will not be imposed in connection with the use of such method. For example, the penalties under section 6655 for failure to pay estimated tax, section 6651(a)(1) for failure to file a return, section 6651(a)(2) for failure to pay tax, section 6656 for failure to make deposit of taxes, and section 6662 for accuracy-related underpayments will generally not be imposed.

(2) *Election to apply qualified settlement fund rules*—(i) *In general.* The person that will be the administrator of a qualified settlement fund may elect to apply §§ 1.468B–1 through 1.468B–4 to transfers to, income earned by, and distributions made by, the fund in taxable years ending after August 16, 1986. The election is effective beginning on the first day of the earliest open taxable year of the qualified settlement fund. For purposes of this paragraph (b)(2), a taxable year is considered open if the period for assessment and collection of tax has not expired pursuant to the rules of section 6501. The election statement must provide the information described in paragraph (b)(2)(ii) of this section and must be signed by the person that will be the administrator. Such person must also provide each transferor of the qualified settlement fund with a copy of the election statement on or before March 15, 1993.

(ii) *Election statement.* The election statement must provide the following information—

(A) A legend, "§ 1.468B–5(b)(2) Election", at the top of the first page;

(B) Each transferor's name, address, and taxpayer identification number;

(C) The qualified settlement fund's name, address, and employer identification number; and

(D) The date the qualified settlement fund was established within the meaning of § 1.468B–1(j).

(iii) *Due date of returns and amended returns.* The election statement described in paragraph (b)(2)(ii) of this section must be filed with, and as part of, the qualified settlement fund's timely filed tax return for the taxable year ended December 31, 1992. In addition, the qualified settlement fund must file an amended return that is consistent with the requirements of §§ 1.468B–1 through 1.468B–4 for any taxable year to which the election applies in which the fund took a position inconsistent with those requirements. Any such amended return must be filed no later than March 15, 1993, and must include a copy of the election statement described in paragraph (b)(2)(ii) of this section.

(iv) *Computation of interest and waiver of penalties.* For purposes of section 6601 and section 6611, the income tax return for each taxable year of the qualified settlement fund to which the election applies is due on March 15 of the year following the taxable year of the fund. For taxable years of a qualified settlement fund ending prior to January 1, 1993, the income earned by the fund is deemed to have been earned on December 31 of each taxable year for purposes of section 6655. Thus, the addition to tax for failure to pay estimated tax under section 6655 will not be imposed. The penalty for failure to file a return under section 6651(a)(1), the penalty for failure to pay tax under section 6651(a)(2), the penalty for failure to make deposit of taxes under section 6656, and the accuracy-related penalty under section 6662 will not be imposed on a qualified settlement fund if the fund files its tax returns for taxable years ending prior to January 1, 1993, and pays any tax due for those taxable years, on or before March 15, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding the entries to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
§ 1.468B–1(j)	1545–1299
§ 1.468B–2(k)	1545–1299
§ 1.468B–2(l)	1545–1299
§ 1.468B–3(b)	1545–1299
§ 1.468B–3(e)	1545–1299
§ 1.468B–5(b)	1545–1299

CFR part or section where identified and described	Current OMB control No.

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: October 30, 1992.

Fred T. Goldberg, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 92–31054 Filed 12–18–92; 8:45 am]

BILLING CODE 4830–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Anderson, Indiana; designated and notice agencies

CFR Correction

In title 29 of the Code of Federal Regulations, parts 1600 to 1899, revised as of July 1, 1992, on page 180, the entry for Anderson, Indiana was inadvertently removed from paragraph (a) of § 1601.74. The reinstated text reads as follows:

§ 1601.74 Designated and notice agencies.

(a) * * *

Anderson (IN) Human Relations Commission

* * * * *

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–103]

Special Local Regulations for Marine Events; New Year's Eve Fireworks; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of special local regulations.

SUMMARY: This notice implements special local regulations for the New Year's Eve Fireworks Display. The display will be launched from barges anchored off Penns Landing, Delaware River, Philadelphia, Pennsylvania on December 31, 1992. The regulations are needed to control vessel traffic in the immediate vicinity of the event due to the confined nature of the waterway and expected spectator craft congestion during the event. The regulations restrict general navigation in the area for

the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.509 are effective from 11 p.m., December 31, 1992 until 1 a.m., on January 1, 1993. If inclement weather causes the postponement of the event, the regulations are effective from 5 p.m. until 7 p.m., on January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group, Hampton Roads (804) 483–8559.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT John B. Gately, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Delaware River Port Authority submitted an application to hold a New Years Day fireworks display. The display will be launched from barges anchored off Penns Landing, Delaware River, Philadelphia, Pennsylvania. Since many spectator vessels are expected to be in the area to watch the fireworks, the regulations in 33 CFR 100.509 are being implemented for this event. The fireworks will be launched from within the regulated area. The waterway will be closed during the display. Since the closure will not be for an extended period, commercial traffic should not be severely disrupted.

Dated: December 11, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92–31086 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CDG1 92–130]

Safety Zone: South Street Seaport New Years Eve Fireworks, Lower East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a temporary safety zone for a fireworks display within all waters of the Lower East River south of the Brooklyn Bridge and north of a line drawn from Manhattan's Wall Street Heliport, to Pier 5, Brooklyn. The fireworks display will take place on Thursday, December 31st, 1992 from 11:30 p.m. to 1 a.m. on January 1, 1993, with a rain date of the 1st. Temporary closure of the waters surrounding the launching barges is needed to protect the boating public from the safety hazards associated with a pyrotechnic fireworks display in these waters.

EFFECTIVE DATE: This regulation will be effective from 11:30 p.m. on December 31, 1992 through 1 a.m. on January 1, 1993. (Rain date of January 1, 1993).

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J.E. Peschel, Waterways Management Officer, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J.E. Peschel, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. Publishing an NPRM and delaying its effective date would be contrary to public interest since the event takes place on a public holiday where immediate action is needed to respond to any potential hazards and sufficiently protect the boating public. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event.

Background and Purpose

This regulation is required to protect the maritime public from possible dangers and hazards from falling debris or unexploded pyrotechnics associated with a fireworks display in the waters of the Lower East River. The safety zone will surround a barge based program directed over the waters of the Lower East River. This one and one half hour zone allows time for Coast Guard personnel to clear vessels from the area both before and during the display, and ensure all pyrotechnics have been extinguished prior to reopening the area to maritime traffic. No vessel will be permitted to enter or move within the safety zone unless permitted to do so by Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Due to the limited duration of the display within this one and one half hour window, the extensive advisories made to the affected maritime community, and the fact that the event is taking place at night on a holiday weekend which typically experiences minimal commercial marine traffic, the impact of this regulation is expected to be minimal. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary section, 165.T01–130 is added to read as follows:

§ 165.T01–130 South Street Seaport New Years Eve Fireworks, Lower East River, New York.

(a) *Location.* The safety zone will include all waters bank to bank of the Lower East River south of the Brooklyn Bridge and north of a line drawn from Manhattan's Wall Street Heliport, to Pier 5, Brooklyn.

(b) *Effective period.* This regulation will be effective from 11:30 p.m. on December 31, 1992 through 1 a.m. on January 1, 1993. (Rain date of January 1, 1993)

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port (COTP), New York. The COTP will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(2) All persons and vessels shall comply with the instructions of the COTP NY or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed.

Dated: December 14, 1992.

R. M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92–31097 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

RIN 3095–AA19

Use of Motion Picture Research Room; Self-Service Copying

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the fees for self-service copying of videotapes on NARA-provided equipment that were established as an interim rule on October 8, 1992 (57 FR 46304). Self-service copying of videotapes is available in the Motion Picture, Sound, and Video Research Room in the National Archives Building.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT:

Mary Ann Palmos or Nancy Allard at 202–501–5110.

SUPPLEMENTARY INFORMATION: The interim rule on part 1258 was published with the final rule implementing revised policies for self-service copying in the Motion Picture, Sound, and Video Research Room. No comments were received on the interim rule during the 30-day public comment period.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in Part 1258

Archives and records.

For the reasons set forth in the preamble, 36 CFR part 1258 is amended to read as follows:

PART 1258—FEES

1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c).

2. Section 1258.12 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and adding a new paragraph (g) to read as follows:

§ 1258.12 Fee schedule.

* * * * *

(g) *Self-service video copying in the Motion Picture, Sound and Video Research Room:*

(1) Initial 90-minute use of video copying station with 120-minute videocassette: $15.25.

(2) Additional 90-minute use of video copying station with no videocassette: $8.75.

(3) Blank 120-minute videocassette: $6.75.

* * * * *

Dated: December 9, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92–31112 Filed 12–22–92; 8:45 am]

BILLING CODE 7515–01–M

POSTAL SERVICE

39 CFR Part 601

Procurement Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service announces that it is making numerous miscellaneous amendments to the Procurement Manual, including, for example, raising the simplified purchasing ceiling from $50,000 to $100,000. This change has also raised the competitive threshold (which is ten percent of the simplified ceiling) to $10,000. In addition, this change has raised the thresholds for the annual procurement plan requirement and for publicizing in the Commerce Business Daily. Other changes clarify that additional competition is not required when using Federal Supply Schedules. A new section has been added discussing the General Service's Administration's Information Resource Management Service and nonmandatory schedule contracts for Federal Information Processing (FIP) Resources. Another change allows, at the contracting officer's discretion, and when adequate competition is expected, the release of a solicitation mailing list to any firm or individual who has been sent a solicitation.

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Paul D. McGinn, (202) 268–4638.

SUPPLEMENTARY INFORMATION: The Procurement Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PM Circular 92–1, dated December 15, 1992.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Procurement Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Incorporation by reference, Postal Service.

PART 601—[AMENDED]

The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

§ 601.100 [Amended]

Explanation of Changes

Procurement Manual Circular 92–1 contains several changes recently approved by the Procurement Policy Committee. A list and short description of the changes follow. The full text of the changes follows this explanation.

A. Various Parts. The simplified purchasing ceiling has been raised from $50,000 to $100,000. This change has also raised the competitive threshold (which is ten percent of the simplified ceiling) to $10,000. In addition, this change has raised the thresholds for the annual procurement plan requirement and for publicizing in the Commerce Business Daily. Except for the text changes required by the new publicizing threshold, these revisions will require pen-and-ink changes throughout parts of the PM. These parts are listed on page 2 of this PM Circular.

B. Part 3.1.5.b, General Services Administration (Other Government Sources). Subsection 3.1.5.b.2 has been revised to clarify that additional competition is not required when using Federal Supply Schedules. A new subsection 3.1.5.b.3 has been added discussing the General Services Administration's Information Resource Management Service and nonmandatory schedule contracts for Federal Information Processing (FIP) Resources.

C. Part 3.2.1, Policy (Publicizing Purchasing Actions) has been revised to state that contracts which will be awarded using simplified procedures, and that solicitations which will result in contracts valued at $100,000 and under need not be publicized.

D. Part 4.1.2, Solicitations. Subsection 4.1.2.k.4, Release of Solicitation Mailing Lists, has been revised to allow, at the contracting officer's discretion, and when adequate competition is expected, the release of a solicitation mailing list to any firm or individual who has been sent a solicitation.

Pen-and-Ink Changes

Use pen and ink to change "$50,000" to "$100,000" in the following PM citations:

Part 2.1.4, Annual Procurement Summary Plans, Paragraph a.
Part 2.3.2, Use (Specifications and Statements of Work) Paragraph c, Product Descriptions, Subparagraph 5.
Part 3.1.5, Other Government Sources, Paragraph b, General Services Administration, Subparagraph e.2, Oral Orders.
Part 3.1.6, Commercial Sources, Paragraph c, Determining Responsibility and Nonresponsibility.
Part 4.2.1, Simplified Purchasing, General, Paragraph b, Ceiling.
Part 4.2.2, Solicitations, Paragraph e, Posting and Synopsis.
Part 11.5.2, Minor Repairs and Alterations, Paragraphs a, Applicability, and b, Purchase Method.

Text Changes

3.1.5.b.2 Federal Supply Schedules

(a) General. Federal Supply Schedules (FSS) are summaries of ordering contracts negotiated by GSA's Federal Supply Service. They include Single-Award, Multiple-Award, and New Item Introductory Schedules. GSA (FSS) terms and conditions, rather than those used by the Postal Service, apply to orders placed against FSS. Purchasing organizations may order against FSS when they meet their quality and delivery requirements. Additional competition is not required when using FSS.

* * * * *

3.1.5.b.3 Information Resources Management Service (IRMS) Nonmandatory Schedule Contracts for Federal Information Processing (FIP) Resources

Nonmandatory schedule contracts for Federal Information Processing (FIP) Resources are established by GSA's Information Resources Management Service (IRMS). FIP resources include telecommunications and FIP equipment, software, support services, maintenance, related supplies, and systems. GSA refers to these contracts as "Group 70 Schedule Contracts (ADP Equipment)" and Group 58 Schedule Contracts (Telecommunications Equipment)". GSA contract terms and conditions, rather than those used by the Postal Service, apply to orders placed against these contracts. GSA requires that needs be synopsized and that competition be obtained when these contracts are used. The procedures of 3.2.1 and 4.2.1.d satisfy the GAS requirement.

3.2.1 Policy

a. All solicitations valued at over $100,000 must be publicized unless (1) precluded by urgency, (2) they fall within the exceptions dealing with leased space set out in Chapter 11 (3) advance notice of sources sought was previously published in the market research phase of the procurement or (4) approval has been given to simplified procedures for the procurement.

* * * * *

4.1.2 Solicitations

* * * * *

k.4 Release of Solicitation Mailing Lists. When a procurement is deemed highly competitive (i.e., five or more potential offerors) and no harm to competition is anticipated from releasing the specific source list, the contracting officer may consider it advantageous to the Postal Service to release the source list to anyone who is sent a copy of that solicitation. If the source list has not been released and is requested under the Freedom of Information Act (FOIA) it is not necessary to release it to all prospective offerors, but only to the specific FOIA requestor. The source list, in this instance, is considered general information that should not give the recipient any advantage over other offerors.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 92–31041 Filed 12–22–92; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD–FRL–4548–5]

National Emission Standards for Hazardous Air Pollutants; Amendment to Vinyl Chloride Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations originally published on October 21, 1976 (41 FR 46564). The regulations are found in title 40, chapter I, part 61, subpart F of the Code of Federal Regulations. They control vinyl chloride emissions resulting from production of ethylene dichlorides, vinyl chloride, or one or more polymers containing any fraction of polymerized vinyl chloride.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION: For further information about this correction notice contact Ms. Lynn Hutchinson (919) 541–5624, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of this correction notice supersede § 61.60 on the effective date. Section 61.60 deals with the applicability of the regulations for research and

development reactors. The appropriate exemption criteria for a research and development reactor should be equal to 4.17 cubic meters or 1100 gallons. The standard was originally published equating 4.07 cubic meters to 1100 gallons. Effective September 23, 1988 (41 FR 36972), § 61.10 was amended to make the metric units and English units of volume equivalent under the research and development reactor applicability exemption. Since 4.07 cubic meters is actually equal to 1075 gallons, the amendment resolved the inequality by changing the exemption threshold to 4.07 cubic meters or 1075 gallons. However, the appropriate exemption threshold should have remained equal to 1100 gallons, and 4.07 cubic meters should have been changed to 4.17 cubic meters.

Need for Correction

As published, the final regulations contain an error that causes the applicability criteria for a research and development reactor to be more stringent than was originally intended.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

For the reason set out in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

PART 61—NATIONAL EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, 301 of the Clean Air Act as amended (43 U.S.C. 7401, 7412, 7414, 7416, 7601).

§ 61.60 [Amended]

2. In § 61.60, paragraph (c), the phrase "4.07 m^3 (1075 gal)" is revised to read "4.17 m^3 (1100 gal)".

Dated: December 11, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–31157 Filed 12–22–92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP–300265A; FRL–4177–4]

RIN 2070–AB78

Ascorbic Acid; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of ascorbic acid (CAS Reg. No. 50-81-7) when used as an inert ingredient (stabilizer and preservative) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This regulation was requested by Monsanto Co. and DowElanco.

EFFECTIVE DATE: This regulation becomes effective December 23, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300265A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 28, 1992 (57 FR 48769), EPA issued a proposed rule that gave notice that the Monsanto Co., 700 14th St., NW., Suite 1100, Washington, DC 20005, and DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, had submitted pesticide petitions (PP's) 1E4000 and 2E4136 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of ascorbic acid (CAS Reg. No. 50-81-7) when used as an inert ingredient (stabilizer and preservative) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carregeenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant

economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Ascorbic acid (CAS Reg. No. 50-81-7)		Stabilizer, preservative

* * * * *

[FR Doc. 92-31009 Filed 12-22-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300266A; FRL-4175-1]

RIN 2070-AB78

Nonyl, Decyl, and Undecyl Glycosides; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of a mixture of nonly, decyl, and undecyl glycosides when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This regulation was requested by the Henkel Corp.

EFFECTIVE DATE: This regulation becomes effective December 23, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300266A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry B. Leifer, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711L, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5180.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1992 (56 FR 48009), EPA issued a proposed rule that gave notice that at the request of the Henkel Corp., 300 Brookside Ave., Ambler, PA 19002, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), had proposed to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of a nonyl, decyl, and undecyl glycoside mixture when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals.

Inert ingredients are all active ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification

statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 1992.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 by amending paragraphs (c) and (e) by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Nonly, decyl, and undecyl glycoside mixture with a mixture of nonly, decyl, and undecyl oligosaccharides and related reaction products (primarily decanol and undecanol) produced as an aqueous-based liquid (50 to 65 percent solids) from the reaction of primary alcohols (containing 15 to 20 percent secondary alcohol isomers) in a ratio of 20 percent C_{9}, 40 percent C_{10}, and 40 percent C_{11} with carbohydrates (average glucose to alkyl chain ratio 1.3 to 1.8).		Surfactant
* * *	*	* * *

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Nonly, decyl, and undecyl glycoside mixture with a mixture of nonly, decyl, and undecyl oligosaccharides and related reaction products (primarily decanol and undecanol) produced as an aqueous-based liquid (50 to 65 percent solids) from the reaction of primary alcohols (containing 15 to 20 percent secondary alcohol isomers) in a ratio of 20 percent C_{9}, 40 percent C_{10}, and 40 percent C_{11} with carbohydrates (average glucose to alkyl chain ratio 1.3 to 1.8).		Surfactant
* * *	*	* * *

[FR Doc. 92-31010 Filed 12-22-92; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300259A; FRL-4172-6]
RIN 2070-AB78

Alkyl Acrylate/Methacrylate Copolymers; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of certain copolymers when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities, and animals. This regulation was requested by Landec Corp.

EFFECTIVE DATE: This regulation becomes effective December 23, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300259A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry B. Leifer, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5180.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 16, 1992 (57 FR 42727), EPA issued a proposed rule that gave notice that the Landec Corp., 3603 Haven Ave., Menlo Park, CA 94025, had requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of tetradecyl acrylate-acrylic acid copolymer, hexadecyl acrylate-acrylic acid copolymer, octadecyl acrylate-acrylic acid copolymer, docosyl methacrylate-acrylic acid copolymer, hexadecyl acrylate-butyl acrylate-acrylic acid copolymer, hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-butyl acrylate-acrylic acid copolymer, octadecyl methacrylate-hexyl acrylate-acrylic acid copolymer, octadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl methacrylate-acrylic acid copolymer,

and docosyl methacrylate-octadecyl methacrylate-acrylic acid copolymer when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 152.3(m), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be biologically active.

The Agency received a comment which stated that the value of the minimum average molecular weight given in the proposed rule was in error. The commenter noted that the range of number average molecular weight for the 12 alkyl acrylate/methacrylate copolymers is 3,000 - 80,000; therefore, the minimum number average molecular weight specified in the proposed rule should be 3,000 rather than 20,000. The Agency agrees with the commenter. This correction does not materially affect the basis for the establishment of the tolerance exemption because the Agency has modified § 180.1112 of the final rule accordingly.

There were no requests for referral to an advisory committee recieved in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1112, to read as follows:

§ 180.1112 Alkyl acrylate/methacrylate copolymers; exemptions from the requirement of a tolerance.

Tetradecyl acrylate-acrylic acid copolymer, hexadecyl acrylate-acrylic acid copolymer, octadecyl acrylate-acrylic acid copolymer, docosyl methacrylate-acrylic acid copolymer, hexadecyl acrylate-butyl acrylate-acrylic acid copolymer, hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-butyl acrylate-acrylic acid copolymer, octadecyl methacrylate-hexyl acrylate-acrylic acid copolymer, octadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl methacrylate-acrylic acid copolymer, and docosyl methacrylate-octadecyl methacrylate-acrylic acid copolymer, minimum number average molecular weight 3,000, are exempted from the requirement of a tolerance when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals.

[FR Doc. 92-31011 Filed 12-22-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 0F3885/R1170; FRL-4170-5]

RIN 2070-AB78

Pseudomonas Cepacia Type Wisconsin; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. This exemption was requested by Stine Microbial Products.

EFFECTIVE DATE: This regulation becomes effective December 23, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 0F3885/R1170], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-6900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 3, 1991 (56 FR 13642), EPA issued a notice that Stine Microbial Products, 4722 Pflaum Rd.,

Madison, WI 53704, had submitted pesticide petition (PP) 0F3885 to EPA, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 346a and 371), to exempt from the requirement of a tolerance the residues of the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

There were no comments received in response to the notice.

The organism is a naturally occurring biotype of the bacterial species *Pseudomonas cepacia* which is found world-wide. The original isolates of *Pseudomonas cepacia* type Wisconsin were identified as colonizers of the roots and rhizospheres of maize. Further testing indicated that this biotype will colonize roots of many crop plants. *Pseudomonas cepacia* type Wisconsin has been shown to produce antibiotics which are effective against a diverse range of plant pathogenic fungi. *Pseudomonas cepacia* is not generally regarded as a human or animal pathogen. Products containing this organism are intended to be used for formulating other end-use products or as a seed treatment. When applied to seeds, the bacteria colonize the developing root system, and by producing antibiotics, protect the seedling from a range of plant pathogenic fungi and nematodes.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study, an acute dermal toxicity study, an acute pulmonary toxicity/pathogenicity study, and an acute intravenous toxicity/pathogenicity study. All studies were conducted with the rat as the test animal. A review of these studies indicated that the organism was not toxic to test animals when administered via dermal and intravenous routes. The active ingredient was not infective or pathogenic to test animals when administered via the oral, pulmonary, or intravenous route. No reports of hypersensitivity have been recorded from personnel working with this organism. All of the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable health hazards to humans or domestic animals likely to arise from the use of this organism as a seed treatment.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biological control agent.

Pseudomonas cepacia type Wisconsin is considered useful for the purposes for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1115, to read as follows:

§ 180.1115 Pseudomonas cepacia type Wisconsin; exemption from the requirement of a tolerance.

The biological pesticide *Pseudomonas cepacia* type Wisconsin is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

[FR Doc. 92-31012 Filed 12-22-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 271

[FRL-4548-2]

Michigan: Schedule of Compliance for Modification of Michigan's Hazardous Waste Program

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of Michigan's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, the Environmental Protection Agency promulgated amendments to the deadlines for modifications to State Resource Conservation and Recovery Act (RCRA) programs and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications. EPA is today publishing a compliance schedule for Michigan to modify its program in accordance with § 271.21(g) to adopt Federal program modifications

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Judy Feigler, Michigan Regulatory Specialist, RCRA Program Management Branch, U.S. Environmental Protection Agency, Region V, HRM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Michigan hazardous waste program within the State in lieu of the Federal RCRA program is granted by U.S. EPA if the Agency finds the State program: (1) Is "equivalent" to the Federal program; (2) is "consistent" with the Federal program and other State programs; and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). U.S. EPA regulations for final authorization appear at 40 CFR 271.1–271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 272.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Michigan

Michigan received final authorization of its hazardous waste program on October 30, 1986 (see 51 FR 36804, October 16, 1986), and subsequent revisions on January 23, 1990 (see 54 FR 48608, November 24, 1989), and June 24, 1991 (see 56 FR 18517, April 23, 1991). On August 12, 1992, Michigan submitted a request under the provisions of 40 CFR 271.21(g)(1)(iii) for an extension of time to obtain necessary program revisions contained in RCRA Cluster 1. Today, U.S. EPA is publishing a compliance schedule pursuant to 40 CFR 271.21(g)(1)(v) for Michigan to complete program revisions for the following Federal RCRA Cluster 1 regulations:

1. Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038), 55 FR 46354, November 2, 1990;

2. Wood Preserving Listings, 55 FR 50450, December 6, 1990;

3. Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings; Correction, 55 FR 51707, December 17, 1990;

4. Land Disposal Restrictions for Third Scheduled Wastes; Technical Correction, 56 FR 3864, January 31, 1991;

5. Toxicity Characteristic; Hydrocarbon Recovery Operations, 56 FR 3978, February 1, 1991;

6. Burning of Hazardous Waste in Boilers and Industrial Furnaces, 56 FR 7134, February 21, 1991;

7. Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment, 56 FR 7567, February 25, 1991;

8. Toxicity Characteristic; Hydrocarbon Recovery Operations, 56 FR 13406, April 2, 1991;

9. Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment, 56 FR 19290, April 26, 1991;

10. Mining Exclusion III, 56 FR 27300, June 13, 1991;

The deadline under 40 CFR 271.21 for Michigan to adopt the Federal RCRA Cluster 1 regulations was July 1, 1992. However, the State's work on RCRA Cluster 1 rulemaking was postponed until after the State could finish promulgating rules for non-HSWA Clusters V and VI and HSWA Clusters I and II.

The State has agreed to complete the needed program revisions to its authorized program according to the following schedule:

1. The Department of Natural Resources will open public comment on the draft rules package by August 1, 1993. The comment period will end on September 15, 1993.

2. Once the proposed rule package is approved by the Michigan Legislative Service Bureau, the Michigan Attorney General, and the Michigan Joint Committee on Administrative Rules, the rules will be submitted to the Michigan Secretary of State for codification in the Act 64 Administrative Rules. The State expects to complete this process and finally adopt the rules by December 31, 1993.

4. Michigan expects to submit an application to U.S. EPA requesting authorization for the Federal regulations listed above by March 1, 1994.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: December 9, 1992.

William H. Sanders III,

Acting Regional Administrator.

[FR Doc. 92–31153 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–60–M

40 CFR Part 300

[FRL–4545–6]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Metal Working Shop Superfund Site in Lake Ann, Michigan from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Michigan have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Michigan have determined that no remedial action is necessary at the site. The response is protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT:

Samuel Borries, Remedial Project Manager, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3156.

Phillip Schutte, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8685.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Metal Working Shop, Lake Ann, Michigan.

A notice of intent to delete the site was published September 10, 1992 (57 FR 41452). The closing date for comments on the Notice of Intent to Delete was October 13, 1992. EPA received no comments and will therefore prepare no responsiveness summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial action in the unlikely event that conditions at the site warrant such action. Section 300.425(e) of the NCP states that Fund-financed actions

may be taken at sites deleted from the NPL.

Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: November 17, 1992.

Valdas V. Adamkus,

Regional Administrator, USEPA Region V.

For the reasons set out in the preamble 40 CFR, part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site for "Metal Working Shop, Lake Ann, Michigan".

3. The total number of sites in Table 1, of Appendix B to part 300, "1085" is revised to read "1084".

[FR Doc. 92–30509 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 300

[FRL–4545–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the ARRCOM site in Rathdrum, Idaho from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Idaho have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Idaho have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Fran Allans, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 422 W. Washington, Boise, Idaho 83702, (208) 334–9047.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: ARRCOM, Rathdrum, Idaho.

A notice of intent to delete for this site was published October 2, 1992 (57 FR 45599). The closing date for comments on the Notice of Intent to Delete was November 2, 1992. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: November 16, 1992.

Dana A. Rasmussen,

Regional Administrator, U.S. EPA Region 10.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for "ARRCOM (Drexler Enterprises), Rathdrum, Idaho."

3. The total number of sites in Table 1 of Appendix B to part 300, "1084" is revised to read "1083".

[FR Doc. 92–30510 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52a

RIN 0905–AC27

National Institutes of Health Center Grants

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending its center grant regulations to: indicate their general applicability to all center grant programs statutorily authorized in title IV of the Public Health Service (PHS) Act; incorporate program changes and changes in PHS Act section numbers which resulted from the enactment of the Health Research Extension Act of 1985 (Pub. L. 99–158), the National Deafness and Other Communication Disorders Act of 1988 (Pub. L. 100–553), and the Health Omnibus Programs Extension of 1988 (Pub. L. 100–607); and make minor language and technical changes.

EFFECTIVE DATE: Effective December 23, 1992.

FOR FURTHER INFORMATION CONTACT: John Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B–11, Bethesda, Maryland 20892—telephone (301) 496–4606. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Regulations governing National Institutes of Health (NIH) center grants were published in the **Federal Register** on December 4, 1985 (50 FR 49692). On November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99–158) was enacted, reauthorizing the authorities and programs of the National Institutes of Health. As a result of the law, the sections of the PHS Act that authorized various center grant programs were renumbered, thus requiring a change of the legal citations in the "Authority" section of these regulations. Later, Public Laws 100–553 and 100–607 were enacted, authorizing new center grants programs. The NIH is amending the current regulations at 42 CFR part 52a to incorporate these changes into its center grants regulations.

In addition, since the basic policies governing the award of center grants under the authorities of sections 414, 422, 431, 441, 445, 445A, 464, and 23216 of the PHS Act are substantially similar, the NIH is revising its current regulations to encompass all center

grant programs authorized statutorily in title IV of the PHS Act including: Alzheimer's Disease Research Centers; Centers for Acquired Immunodeficiency Syndrome Research; Diabetes Research and Training Centers; Claude D. Pepper Older Americans Independence Centers; Kidney and Urologic Diseases Centers; Multipurpose Arthritis and Musculoskeletal Diseases Centers; Multipurpose Deafness and Other Communication Disorders Centers; National Cancer Research and Demonstration Centers; National Research and Demonstration Centers for Heart, Blood Vessel, Lung and Blood Diseases and Blood Resources; and National Research and Demonstration Centers for Sickle Cell Anemia.

The NIH is also revising its current regulations to include references to several additional HHS policies and regulations affecting its center grant regulations. Section 52a.8 is being revised to include:

(1) References to new HHS regulations at 42 CFR part 50, subpart A, regarding the responsibilities of PHS awardees and applicant institutions for dealing with and reporting possible misconduct in science published on August 8, 1989 (54 FR 32446);

(2) New HHS regulations at 45 CFR part 93 regarding new restrictions on lobbying published on February 26, 1990 (55 FR 6736);

(3) New HHS regulations at 45 CFR part 76, subpart F, on drug-free workplace requirements published on May 25, 1990 (55 FR 21677); and

(4) PHS policy on humane care and use of laboratory animals.

As stated in section 52a.1, this final rule does not apply to grants for construction, unless specifically noted, traditional research projects, or general research support. Although certain types of research project grants have been commonly referred to as "center grants," those grants differ from the support programs specifically authorized by sections 414, 422, 431, 441, 445, 464, and 2316 the PHS Act and are governed by the research project grant regulations at 42 CFR part 52.

This final rule does not repeat provisions of the authoring legislation, and thus must be read in conjunction with the cited sections of the PHS Act, as appropriate for the particular center grants program.

The NIH announced its intention to amend the regulations at 42 CFR part 52a and invited public comment on the regulations in a Notice of Proposed Rulemaking published in the **Federal Register** on May 13, 1991 (56 FR 21974). The public was given 60 days to comment. No comments were received. Consequently, these final regulations are, except for minor editorial changes, the same as the proposed regulations.

Information Collection Requirements

Sections 52a.4 and 52a.6 of this final rule contain information collections which are subject to OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The information collections have been approved by OMB under OMB Control No. 0925–0001. The applications (Standard Form PHS 398 Application for Public Health Service Grant and PHS 2590 Application for Continuation of Public Health Service Grant) used in the information collections specified in sections 52a.4 and 52a.6 and the burden hours associated with the application requirements in these regulations are included with the approval of the applications in OMB Control No. 0925–0001.

Regulatory Impact and Regulatory Flexibility Analysis

This final rule extends existing policies and procedures governing the award and administration of discretionary grants to eligible institutions to support certain health research centers. While these centers benefit those segments of the public afflicted by the health problems addressed by the centers, and physicians and other health professionals who receive training in those health areas, the centers do not have a significant economic or policy impact on a broad cross-section of the public. Therefore, the Secretary has determined that the regulations do not constitute a "major rule" as defined under Executive Order No. 12291. Furthermore, these regulations only affect those few institutions interested in obtaining assistance to carry out a center's authorized programs, subject to the normal accountability requirements for grant funds. No entity is obligated to apply for grant support.

Additionally, the Secretary has determined that this final rule does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6).

Family and Federalism Impact

This final rule has been reviewed under the requirements of Executive Order 12606, "The Family", and Executive Order 12612, "Federalism", and the Secretary has determined that it will not have a significant potential negative impact on family well-being, States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by this final rule are:

93.173 Multipurpose Deafness and Other Communication Disorders Centers;
93.397 Cancer Centers Support;
93.837 Heart and Vascular Diseases Research;
93.838 Lung Diseases Research;
93.839 Blood Diseases and Resources Research;
93.846 Arthritis, Musculoskeletal, and Skin Diseases Research;
93.847 Diabetes, Endocrinology, and Metabolism Research
93.848 Digestive Diseases and Nutrition Research;
93.849 Kidney Diseases, Urology and Hematology Research;
93.855 Allergy, Immunology, and Transplantation Research; and
93.866 Aging Research.

List of Subjects in 42 CFR Part 52a

Acquired Immunodeficiency Syndrome; Alzheimer's disease; Arthritis; Cancer; Diabetes; Grant programs-Health; Medical research; Sickle Cell Anemia.

For the reasons set out in the preamble, subchapter D of chapter 1 of title 42 of the Code of Federal Regulations, part 52a, is revised to read as set forth below.

Dated: November 29, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: January 28, 1992.

Louis W. Sullivan,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register December 18, 1992.

PART 52a—NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

Sec.

52a.1 To which programs do these regulations apply?
52a.2 Definitions.
52a.3 Who is eligible to apply?
52a.4 What information must each application contain?
52a.5 How will NIH evaluate applications?
52a.6 Information about grant awards.
52a.7 For what purposes may a grantee spend grant funds?
52a.8 Other HHS regulations that apply.
52a.9 Additional conditions.

Authority: 42 U.S.C. 216, 285a–3, 285b–4, 285c–5, 285d–6, 285e–2, 285e–3, 285m–3, and 300cc–16.

§ 52a.1 To which programs do these regulations apply?

(a) This part applies to grants by the National Institutes of Health and its organizational components to support the planning, establishment, expansion and operation of research and demonstration, multipurpose, and other centers. Specifically, this part applies to National Cancer Research and Demonstration Centers (including payments for construction), as authorized by section 414 of the Act; National Research and Demonstration Centers for Heart, Blood Vessel, Lung, and Blood Diseases, Sickle Cell Anemia, and Blood Resources (including payments for construction), as authorized by section 422 of the Act; Research and Training Centers (including diabetes mellitus, and digestive, endocrine, metabolic, kidney and urologic diseases), as authorized by section 431 of the Act; Multipurpose Arthritis and Musculoskeletal Disease Centers (including payments for alteration, but not construction), as authorized by section 441 of the Act; Alzheimer's Disease Centers, as authorized by section 445 of the Act; Claude D. Pepper Older Americans Independence Centers, as authorized by section 445A of the Act; Multipurpose Deafness and Other Communication Disorders Centers, as authorized by section 464C of the Act; and Centers for Acquired Immunodeficiency Syndrome Research, as authorized by section 2316 of the Act.

This part does not apply to:

(1) Grants for construction (see 42 CFR part 52b), except as noted above;

(2) Grants covered by 42 CFR part 52 (grants for research projects); or

(3) Grants for general research support under section 301(a)(3) of the Act (42 U.S.C. 241(a)(3)).

(b) This part also applies to cooperative agreements made to support the centers specified in paragraph (a) of this section. When a reference is made in this part to "grants," the reference shall include "cooperative agreements."

§ 52a.2 Definitions.

As used in this part:

"Act" means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

"Center" means:

(1) For purposes of grants authorized in section 414 of the Act, an agency or institution which provides for planning and conducting basic and clinical research into, training in, and demonstration of advanced diagnostic, control, prevention and treatment methods for cancer;

(2) For purposes of grants authorized in section 422 of the Act, an agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of, management of blood resources and advanced diagnostic, prevention, and treatment methods (including emergency medical services) for heart, blood vessel, lung, or blood diseases, including sickle cell anemia;

(3) For purposes of grants authorized in section 431 of the Act, a single institution or a consortium of cooperating institutions, which conducts research, training, information programs, epidemiological studies, data collection activities, and development of model programs in diabetes mellitus and related endocrine and metabolic diseases;

(4) For purposes of grants authorized in section 441 of the Act, a facility which conducts basic and clinical research as well as research into arthritis and musculoskeletal diseases, orthopedic procedures, training, and information programs for the health community and the general public;

(5) For purposes of grants authorized in section 445 of the Act, an agency or institution (including university medical centers) which conducts basic and clinical research (including multidisciplinary research) into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease;

(6) For purposes of grants authorized in section 445A of the Act, an agency or institution which conducts: (i) Research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals; and (ii) programs to develop individuals capable of conducting such research;

(7) For purposes of grants authorized in section 464C of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research into, training in, information and continuing education programs for the health community and the general public about, and demonstration of advanced diagnostic, prevention, and treatment methods for, disorders of hearing and other communication processes and complications resulting from such disorders; or

(8) For purposes of grants authorized in section 2316 of the Act, an entity for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immunodeficiency.

As required in a section of the Act cited in this part or at the determination of the Director of the NIH awarding organizational component, a center may include the facilities of a single institution or a consortium of cooperating institutions and, if practical, may be part of an equitable geographical distribution of centers, or an environment with proven research capabilities.

"NIH" means the National Institutes of Health and its organizational components that award grants.

"Nonprofit" as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

§ 52a.3 Who is eligible to apply?

(a) Any public or private non-profit agency, institution, or consortium of agencies or institutions is eligible to apply for a grant under sections 414, 422, 441, 445, and 445A and 2316 of the Act.

(b) Any public or private non-profit or for-profit agency, institution or consortium of agencies or institutions is eligible to apply for a grant under sections 431 and 464C of the Act.

(c) Any applicant under this part must be located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor States of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

§ 52a.4 What information must each application contain?

Each application under this part must include detailed information as to the following:

(a) The personnel, facilities, and other resources available to the applicant with which to initiate and maintain the proposed center grants program;

(b) Any research, training, demonstration, or information dissemination activities in which the applicant is currently engaged; the sources of funding for these activities; and the relevance of these activities to the proposed center grants program;

(c) Proposed research, training, demonstration, and information dissemination activities;

(d) The proposed organizational structure of the center and the relationship of the proposed center to the applicant organization(s);

(e) The names and qualifications of the center director and key staff members who would be responsible for conducting the proposed activities;

(f) Proposed methods for monitoring and evaluating individual activities and the overall center program;

(g) Proposed methods for coordinating the center's activities, where appropriate, with similar efforts by other public and private organizations;

(h) The availability of any community resources necessary to carry out proposed activities; and

(i) Efforts to be made to generate and collect income from sources other than NIH to be used to further the purposes of the center program. NIH encourages these efforts. Income may include, but is not limited to, that generated from the sale or rental of products or services produced by grant-supported activities, such as laboratory tests, computer time, and payments received from patients or third parties, where appropriate (the disposition of grant-related income is governed by 45 CFR 74.40 through 74.47 and 45 CFR 92.25);

(j) The proposed budget for the center and a justification for the amount of the grant funds requested; and

(k) Any other information that the Director of the awarding institute may request.

[Approved under OMB Control Number 0925–0001]

§ 52a.5 How will NIH evaluate applications?

(a) NIH considers the following in evaluating Center grant applications:

(1) The scientific and technical merit of the proposed program;

(2) The qualifications and experience of the center director and other key personnel;

(3) The statutory and program purposes to be accomplished;

(4) The extent to which the various components of the proposed program would be coordinated into one multi-disciplinary effort within the center;

(5) The extent to which the center's activities would be coordinated with similar efforts by other organizations;

(6) The administrative and managerial capability of the applicant;

(7) The reasonableness of the proposed budget in relation to the proposed program; and

(8) Other factors which the awarding institute, center, or division considers appropriate in light of its particular statutory mission.

(b) Where required by statute or NIH policy, applications are reviewed by appropriate national advisory councils or boards before awards are made. NIH grants may be awarded generally only after approval recommendations from both appropriate scientific peer review groups and national advisory councils or boards.

§ 52a.6 Information about grant awards.

(a) The notice of grant award specifies how long NIH intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 1–5 years.

(b) Generally, the grant will initially be for one year, and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the NIH that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application, nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

[Approved under OMB Control Number 0925–0001]

§ 52a.7 For what purposes may a grantee spend grant funds?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, the terms and conditions of the award, the applicable cost principles prescribed in subpart Q of 45 CFR part 74 and 45 CFR 92.22, and the regulations of this part.

§ 52a.8 Other HHS regulations that apply.

Several other regulations and policies apply to this part. These include, but are not necessarily limited to:

42 CFR Part 50, Subpart A—Responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedures

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR Part 93—New restrictions on lobbying

51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules

Public Health Service Policy on Humane Care and Use of Laboratory Animals.

§ 52a.9 Additional conditions.

NIH may, with respect to any grant award, impose additional conditions prior to or at the time of any award when, in NIH's judgment, the conditions are necessary to assure or protect advancement of the approved program, the interests of the public health, or the conservation of grant funds.

[FR Doc. 92–31105 Filed 12–22–92; 8:45 am]

BILLING CODE 4140–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 91–169 and 85–38; FCC 92–508]

Cable Television Technical and Operational Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In response to petitions for reconsideration of the Report and Order in MM Dockets Nos. 91–169 and 85–38, 57 FR 11000 (April 1, 1992), in which the Commission adopted technical standards for cable television systems, the Commission clarifies the Report and Order, and modifies certain of the technical standards adopted. The Commission clarifies the location of tests for compliance with the standards, the majority of which tests must still be made after a signal passes through a converter. The Commission modifies, with conditions, testing for the amplitude characteristic standard, so that testing may be conducted prior to a signal passing through a converter. Such manner of testing is allowable only for seven years from the rule's effective date. The Commission reduces the number of test points required for technically integrated cable systems utilizing microwave hubs. The Commission affirms the need to ensure that cable subscribers' privacy rights are protected as part of complaint resolution processes. The Commission declines to adopt specific rules addressing co-channel interference. This action is intended to define a basic quality to be expected by cable subscribers, without unnecessarily burdening cable operators.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, Cable Television Branch, Mass Media Bureau, (202) 632–7480 [legal issues], or John Wong, Cable Television Branch, Mass Media Bureau, (202) 254–3420 [technical issues].

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in MM Docket Nos. 91–169 and 85–38, FCC 92–508, adopted November 10, 1992, and released November 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422.

Summary of Memorandum Opinion and Order

1. In this Memorandum Opinion and Order, the Commission clarifies and modifies, in part, its technical standards for cable television systems. These standards were adopted in the Commission's Report and Order in MM Docket Nos. 91–169 and 85–38, 7 FCC Rcd 2021, 57 FR 11000 (1992). The intent of this action is to define a basic quality of service cable subscribers are entitled to receive, without unnecessarily burdening cable operators.

2. The Commission retains its amplitude characteristic standard as adopted. However, prior to December 30, 1999, cable operators may measure this standard prior to a signal's passing through a converter. Nevertheless, during this time period, should subscriber complaints arise from a system failing to meet this standard, the cable operator will be required to provide a converter that will allow the system to meet the standard at the subscriber's terminal. Should complaints be systemic, the Commission may order a system-wide converter replacement.

3. The Commission retains its requirement that proof-of-performance tests be made at each nonmechanically continuous section of cable plant. However, the Commission requires only one test point for each portion of a cable system served by a technically integrated microwave hub. In addition, the test points for each microwave hub may be counted against the total number of test points required for a system, so long as at least one point for each portion of the system is tested. The Commission defines "technically integrated" as having 75% or more of the video channels received from a common headend.

4. The Commission clarifies the location of testing for proof-of-performance tests, the majority of which still must be made after a signal passes through a converter. Converters used in testing must reflect the types supplied to nearby subscribers. Visual signal level variations shall be tested prior to a converter. Aural carrier levels can be maintained between 6.5 and 17 dB below the associated visual carrier level for baseband converters. Only a single channel need be measured for hum modulations at each test point, and a single unmodulated carrier may be used to demonstrate compliance. The Commission clarifies that for tests of channels made prior to a trap, a statement detailing the effects of the device on the trapped channel and, if necessary, on adjacent channels must be included. The Commission also clarifies that color measurements need only be made at the output of the modulating or processing equipment (generally, the headend).

5. The Commission declines to adopt specific rules concerning co-channel interference, but notes that cable operators are expected to make reasonable efforts to ensure signal quality, and to use good engineering practices and proper equipment in signal processing.

6. The Commission requires cable operators to provide governmental authorities aggregate data on complaints received, rather than individual complaints containing protected personally identifiable information, to accommodate privacy concerns.

7. The Commission clarifies that signal leakage enforcement is the sole responsibility of the Commission, and is not delegated to state or local authorities. The Commission also clarifies that franchising authorities should afford cable operators notice of signal quality problems and an opportunity to come into compliance prior to ordering retesting.

Paperwork Reduction

8. Public recordkeeping burden for this collection of information is estimated to average 26 hours and 22 minutes per recordkeeper, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0289), Washington, DC 20503.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—Cable Television Service

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.5 is amended by adding paragraph (kk) to read as follows:

§ 76.5 Definitions.

* * * * *

(kk) Technically Integrated. Having 75% or more of the video channels received from a common headend.

3. Section 76.601 is amended by revising paragraphs (c)(1), (c)(2) and (c)(4) and by adding a note to read as follows:

§ 76.601 Performance tests.

* * * * *

(c) * * *

(1) For cable television systems with 1000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (*e.g.*, 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, *etc.*). In addition, for technically integrated portions of cable systems that are not mechanically continuous (*i.e.*, employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (*e.g.*, 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, *etc.*). The channels selected for testing must be representative of all the channels within the cable television system.

* * * * *

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

* * * * *

Note: Prior to requiring any additional testing pursuant to § 76.601(d), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected. The Commission may request cable operators to test their systems at any time.

4. Section 76.605 is amended by revising paragraphs (a)(3), (a)(4) introductory text, (a)(5), (a)(6), (a)(10), (a)(11), and (a)(12), by revising Note (2), and by adding Notes (4), (5) and (6) to read as follows:

§ 76.605 Technical standards.

(a) * * *

(3) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of 0.0133(Z) millivolts and, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall be 2 times the square root of 0.00662(Z) millivolts, where Z is the appropriate impedance value).

(4) The visual signal level on each channel, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall not vary more than 8 decibels within any six-month interval, which must include four tests performed in six-hour increments during a 24-hour period in July or August and during a 24-hour period in January or February, and shall be maintained within:

* * * * *

(5) The rms voltage of the aural signal shall be maintained between 10 and 17 decibels below the associated visual signal level. This requirement must be met both at the subscriber terminal and at the output of the modulating and processing equipment (generally the headend). For subscriber terminals that use equipment which modulate and remodulate the signal (*e.g.*, baseband converters), the rms voltage of the aural signal shall be maintained between 6.5 and 17 decibels below the associated visual signal level at the subscriber terminal.

(6) The amplitude characteristic shall be within a range of ±2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries.

(i) Prior to December 30, 1999, the amplitude characteristic may be measured after a subscriber tap and before a converter that is provided and maintained by the cable operator.

(ii) As of December 30, 1999, the amplitude characteristic shall be measured at the subscriber terminal.

* * * * *

(10) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 3 percent of the visual signal level. Measurements made on a single channel using a single unmodulated carrier may be used to demonstrate compliance with this parameter at each test location.

(11) As of June 30, 1995, the following requirements apply to the performance of the cable television system as measured at the output of the modulating or processing equipment (generally the headend) of the system:

(i) The chrominance-luminance delay inequality (or chroma delay), which is the change in delay time of the chrominance component of the signal relative to the luminance component, shall be within 170 nanoseconds.

(ii) The differential gain for the color subcarrier of the television signal, which is measured as the difference in amplitude between the largest and smallest segments of the chrominance signal (divided by the largest and expressed in percent), shall not exceed ±20%.

(iii) The differential phase for the color subcarrier of the television signal which is measured as the largest phase difference in degrees between each segment of the chrominance signal and reference segment (the segment at the blanking level of O IRE), shall not exceed ±10 degrees.

(12) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the type of signals carried by the cable television system, signal leakage from a cable television system shall be measured in accordance with the procedures outlined in § 76.609(h) and shall be limited as follows:

* * * * *

Note 2: For systems serving rural areas as defined in § 76.5, the system may negotiate with its local franchising authority for standards less stringent than those in §§ 76.605(a)(3), 76.605(a)(7), 76.605(a)(8), 76.605(a)(10) and 76.605(a)(11). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

* * * * *

Note 4: Should subscriber complaints arise from a system failing to meet § 76.605(a)(6) prior to December 30, 1999, the cable operator will be required to provide a converter that will allow the system to meet the standard immediately at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order all converters on the system be changed to meet the standard.

Note 5: Should subscriber complaints arise from a system failing to meet § 76.605(a)(10), the cable operator will be required to remedy the complaint and perform test measurements on § 76.605(a)(10) containing the full number of channels as indicated in § 76.601(c)(2) at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order that the full number of channels as indicated in § 76.601(c)(2) be tested at all required locations for future proof-of-performance tests.

Note 6: A franchising authority may apply to the Commission for a waiver to impose cable technical standards that are more stringent than the standards prescribed by the Commission.

5. Section 76.607 is revised to read as follows:

§ 76.607 Resolution of complaints.

Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. These records shall be maintained for at least a one-year period. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. Subscribers shall be advised, at least once each calendar year, of the procedures for resolution of complaints by the cable system operator, including the address of the responsible officer of the local franchising authority.

Note: Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

6. Section 76.609 is amended by revising paragraph (h)(2) to read as follows:

§ 76.609 Measurements.

* * * * *

(h) * * *

(2) Field strength shall be expressed in terms of the rms value of synchronizing peak for each cable television channel for which signal leakage can be measured.

* * * * *

[FR Doc. 92-30875 Filed 12-22-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[FCC 92-532]

Implementation of Changes to Bridge-to-Bridge Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an *Order* to implement recent minor statutory changes to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (Bridge-to-Bridge Act) and changes in the Coast Guard's Rules pertaining to same.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, (202) 632-7175, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, FCC 92-532, adopted November 30, 1992, and released December 14, 1992. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452-1422.

Summary of Order

1. In response to a request from the Coast Guard, this *Order* adopts minor amendments to the Commission's Maritime Services Rules, 47 CFR part 80, to reflect a recent change to the Coast Guard's Rules, 33 CFR 1201-1208, pertaining to vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (Bridge-to-Bridge Act). The Bridge-to-Bridge Act requires certain classes of vessels to carry marine VHF radio equipment capable of interoperability. The purpose of the Bridge-to-Bridge Act is to prevent ship collisions in harbors and navigable waters of the United States by providing common marine VHF channels to communicate from one ship's bridge to another ship's bridge.

2. The Coast Guard adopted new rules, effective August 19, 1992, requiring vessels subject to the Bridge-to-Bridge Act to be equipped with radio installations capable of operating on certain additional marine VHF channels. In addition, the Coast Guard implemented a recent statutory amendment to the Bridge-to-Bridge Act which broadened the statute's applicability to power driven vessels. By this action, the Commission conforms its rules to the recent changes to the Coast Guard's Rules.

3. Section 1.412(c) of the Commission's Rules, 47 CFR 1.412(c), provides that rule changes may be adopted without prior notice where the Commission for good cause finds that notice and comment procedures are unnecessary, so long as the basis for the good cause finding is published with the rules changes. Section 1.412(c) of the Rules reflects the requirements contained in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B).

4. We find that a notice and comment rule making proceeding in this matter is unnecessary. The changes to our rules merely reflect changes the Coast Guard previously made to its rules, effective August 19, 1992, pursuant to the notice and comment requirements of the APA. None of the changes to our rules are intended to create, alter, or revoke substantive rights and duties. See *United States* versus *United States Trucking Corp.*, 317 F.Supp. 69 (S.D.N.Y. 1970). Further, most U.S. vessels and approximately half of the foreign flag vessels subject to the Bridge-to-Bridge Act were already equipped with radio equipment in compliance with the requirements of the Coast

Guard's Final Rule at the time it was adopted.[1] Therefore, the burden of compliance with the changes to our rules which implement the Final Rule is not substantial, nor do these changes add to the burden already imposed by the Coast Guard. Accordingly, we conclude that these changes constitute minor, noncontroversial amendments to the rules. Therefore, it is unnecessary to comply with the notice and comment requirements of the APA.

5. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities for reasons given above.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

7. Accordingly, *It is Ordered* That part 80 of the Commission's Rules is amended as set forth below; effective thirty days after publication in the **Federal Register**.

Donna R. Searcy,

Secretary, Federal Communications Commission.

List of Subjects in 47 CFR Part 80

Marine safety.

Final Rule

Part 80 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

[1] See Final Rule, 57 FR at 14485.

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.309 is amended by revising the first sentence to read as follows:

§ 80.309 Watch required by the Bridge-to-Bridge Act.

In addition to the watch requirement contained in § 80.148, all vessels subject to the Bridge-to-Bridge Act must keep a watch on the designated navigational frequency. * * *

* * * * *

3. Section 80.1001 is amended by revising paragraph (a) to read as follows:

§ 80.1001 Applicability.

* * * * *

(a) Every power-driven vessel of 20 meters or over in length while navigating;

* * * * *

4. Section 80.1011 is revised to read as follows:

§ 80.1011 Transmitter.

(a) The bridge-to-bridge transmitter must be capable of transmission of G3E emission on the navigational frequency 156.650 MHz (Channel 13) and the Coast Guard liaison frequency 157.100 MHz (Channel 22A). Additionally, the bridge-to-bridge transmitter must be capable of transmission of G3E emission on the navigational frequency of 156.375 MHz (Channel 67) while transiting any of the following waters:

(1) The lower Mississippi River from the territorial sea boundary, and within either the Southwest Pass safety fairway or the South Pass safety fairway specified in § 166.200 of the U.S. Coast Guard's Rules, 33 CFR 166.200, to mile 242.4 AHP (Above Head of Passes) near Baton Rouge;

(2) The Mississippi River-Gulf Outlet from the territorial sea boundary, and within the Mississippi River-Gulf outlet Safety Fairway specified in Section 166.200 of the U.S. Coast Guard's Rules, 33 CFR 166.200, to that channel's junction with the Inner Harbor Navigation Canal; and

(3) The full length of the Inner Harbor Navigation Canal from its junction with the Mississippi River to that canal's entry to Lake Pontchartrain at the New Seabrook vehicular bridge.

(b) [Reserved]

5. Section 80.1013 is revised to read as follows:

§ 80.1013 Receiver.

The bridge-to-bridge receiver must be capable of reception of G3E emission on the navigational frequency 156.650 MHz (Channel 13) and the Coast Guard liaison frequency 157.100 MHz (Channel 22A). In addition, the bridge-to-bridge receiver must be capable of reception of G3E emission on the navigational frequency of 156.375 MHz (Channel 67) while transiting in the waters of the lower Mississippi River as described in §§ 80.1011(a)(1), (a)(2) and (a)(3) of this part.

[FR Doc. 92–30968 Filed 12–22–92; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 57, No. 247
Wednesday, December 23, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AC07

Availability of Official Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to the availability of official records to conform the regulations to existing case law and agency practice. The proposed amendments would have three aspects: It would inform the public of three additional exceptions to a submitter's right to withdraw submitted information; it would provide more specific guidance for marking proprietary information; and it would inform the public of agency practice regarding reproduction and distribution of submitted copyrighted material.

DATES: The comment period expires March 8, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for those comments received on or before this date.

ADDRESSES: Comments may be mailed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch. Comments may be hand-delivered to Docketing and Service Branch, One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:45 am and 4:15 pm Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Patricia Siemien, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–1565.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is proposing to amend 10 CFR 2.790 to conform its regulations pertaining to the availability of official records to existing case law and agency practice.

Document Withdrawal

10 CFR 2.790(c) currently provides that if the Commission (or an NRC official with delegated authority) denies a request to withhold information from public disclosure which an applicant seeks to have withheld under 10 CFR 2.790(a)(4), the applicant has a right to withdraw the information unless the information has been submitted in a rulemaking proceeding and subsequently forms the basis for a final rule. In this case, the information will not be withheld from public disclosure and will not be returned to the applicant. The NRC is proposing to amend 10 CFR 2.790(c) to add three additional circumstances where information submitted to the NRC will not be returned to the applicant.

The first exception would provide that a document submitted to NRC will not be returned nor may it be withdrawn if it has been made available to or prepared for a Federal Advisory Committee. Section 10(b) of the Federal Advisory Committee Act (FACA) requires that, subject to the FOIA, these records be available for public inspection and copying until the Committee is abolished. Although the Federal Advisory Committee Act permits the closing of Federal Advisory Committee meetings (FACA, sec. 10(d)), all reports received by the committee must be contained in the minutes of the meeting to which they pertain (FACA, sec. 10(c)). The FACA has no provision for withdrawal of a document that has been provided to an advisory committee. In this connection it is important to note that a copy of many of the documents submitted to NRC is provided routinely to the Commission's Advisory Committee on Reactor Safeguards (ACRS) and the Commission's Advisory Committee on Nuclear Waste (ACNW).

The second exception would provide that when information contained in a record submitted to the NRC has been requested pursuant to the Freedom of Information Act (5 U.S.C. 552(b)), the record will not be returned to the submitter. When the NRC receives a FOIA request for a record, that record is "captured" as an agency record. The NRC is then obligated under the FOIA to determine whether to disclose the record or to withhold it, in part or in its entirety, under one of nine exemptions specified in the Act. If the agency discloses the information in a record which a submitter seeks to have withheld from public disclosure, the return of the submitted document provides no protection. Therefore, there generally is no reason for its return. If the record is withheld from public disclosure in response to a FOIA request, the agency is obligated to retain the record for six years under the record retention provisions of its Records Retention and Disposal Schedule, which has been approved by the National Archives and Records Administration. This schedule reflects a decision of the District of Columbia Circuit Court that the statute of limitations for appealing the denial of information requested under the FOIA is six years and ten days from the agency's receipt of the request. (*Spannaus* v. *Department of Justice*, 824 F. 2d (D.C. Cir. 1987)).

The third exception would relate to documents considered in connection with an open Commission meeting held in accordance with the Commission's Sunshine Act regulations, 10 CFR part 9, subpart C. Information discussed at a Sunshine Act meeting is generally subject to the same openness requirements as the meetings themselves. To the extent that proprietary information may be involved in matters discussed by the Commission, 10 CFR 9.104 provides that the meetings may be closed. However, after balancing the interests, if the Commission determines to release the information, there is no reason to provide for its return to the submitter, except for any material that may have been extraneous to the submittal officially before the Commission and that may easily be segregated from the remainder.

Document Marking

The Commission is proposed to amend 10 CFR 2.790(b)(1)(i) to require that any document that contains information which a submitter seeks to have withheld from public disclosure because it contains "Trade secrets and commercial or financial information obtained from a person and privileged

or confidential" (10 CFR 2.790(a)(4)), be clearly marked, on the first page and on every other page that contains this information, to indicate that this type of information is contained within the document. The Commission has a centralized operation for receiving incoming mail relating to its licensing activities. When mail is opened, a determination is made as to whether the information is to be made public. To ensure that information which a submitter seeks to be withheld from public disclosure under 10 CFR 2.790(a)(4) is not placed in the NRC Public Document Room, any document containing this type of information must be clearly marked to indicate that it contains information that the submitter considers company confidential (proprietary) information. The Commission will not be accountable for the public release of a document that is not marked in accordance with the Commission's regulations. Further, to avoid unnecessary delay and wasted effort, if withholding from public disclosure is not intended, any markings that could be misinterpreted as indicating a desire for withholding from public disclosure must be removed before submitting the document to NRC.

Material Subject to Copyright Protection

The rule proposes to redesignate the current 10 CFR 2.790(e) as 10 CFR 2.790(f). The rule proposes a new 10 CFR 2.790(e) that would provide notice to persons submitting copyrighted information to the NRC, that by submitting the material, the submitter authorizes NRC to reproduce sufficient copies of the copyrighted information to carry out its regulatory and public information responsibilities under the Atomic Energy Act of 1954, as amended, and other applicable Federal laws, including the Freedom of Information Act. This authorization includes NRC's reproduction contractor acting within the scope of the reproduction contract with NRC.

Current Commission regulations do not specify how copyrighted material submitted to the NRC in connection with licensing or regulatory activities is handled. Recent submissions of material bearing copyright notices led the Commission's staff to consider this issue. This in turn led to a recognition of the recent changes in U.S. copyright law (Title 17 United States Code), which no longer require a copyright notice on a document in order for that document to be subject to copyright protection. Thus, a much larger quantity of documents may be affected and identifying documents entitled to protection against copying is no longer a matter that the NRC can determine simply by looking for a copyright notice. Because the NRC regularly reproduces and distributes copies of material submitted to the NRC in connection with its licensing and regulatory activities, it has become important to describe explicitly how the Commission will handle material submitted to it that may be subject to protection against copying under the copyright law. Although NRC's copying activities may well be encompassed by the "fair use" provisions of the copyright law, the Commission believes it is preferable to state clearly in its regulations the Commission's policy with respect to copying and distributing documents submitted to the agency.

Specifically, the proposed regulation provides notice that the submission of a document to the NRC in connection with NRC licensing and regulatory activities authorizes NRC to reproduce and distribute copies required for its regulatory and public information responsibilities. Another provision of the proposed rule provides that the submission of a document to the NRC in connection with its licensing or regulatory activities is deemed to be a representation to the NRC by the submitter that the submitter has the authority to submit the document and to authorize the NRC to make copies of the document, whether or not the document bears a copyright notice.

The proposed regulation is designed to assure that copyright restrictions do not limit public access to information submitted to the NRC in connection with its licensing and regulatory activities. The Commission's practice has been to provide broad public access to this information and thus meet its responsibility to keep the public informed of its activities relating to licensing and regulation of nuclear facilities and materials. The Commission believes that making these documents available to the public is essential to satisfy its regulatory and public information responsibilities.

The proposed regulation authorizes only the NRC to copy and distribute the document and does not extend these rights to other persons receiving copies from NRC. The proposed rule provides that if the document bears a copyright notice or is accompanied by an explicit statement that the document is protected under the copyright law, a notice would be placed on the document indicating that the NRC has the authority to copy the document; however, all copyright markings contained on the submitted document would be retained.

The proposed rule states that the NRC would not accept documents submitted in connection with NRC licensing or regulatory activities which bear or are accompanied by a statement that purports to restrict the copying of these documents by the NRC or that indicates that the submitter lacks the authority to permit the NRC to copy and distribute the document. These documents would not be considered by the Commission and would be returned to the submitter unless the Commission has granted a waiver of the regulation. However, with respect to distribution of documents to the general public, only one copy per request will be made of documents bearing a copyright notice or documents accompanied by an explicit statement indicating that the document is protected under the copyright law. In the absence of such an explicit statement, the Commission will continue its customary reproduction practices.

In addition to the provisions included in this proposed rule, the NRC intends to post near each copying machine on NRC premises a copyright notice. This notice will inform users and persons obtaining copies from the NRC that, although NRC has been authorized to copy the material pursuant to 10 CFR 2.790(e), this authorization does not extend to persons obtaining copies or access to documents from NRC and that these persons are responsible for any copyright infringement that may result from their activities.

Submitters of copyrighted information are on notice that, in order to meet its routine regulatory and public information responsibilities under the Atomic Energy Act of 1954, as amended, NRC reproduces sufficient paper and microfiche copies to meet its staff and contract needs, the needs of users of its headquarters Public Document Room (PDR) and Local Public Document Rooms (LPDRs), and to service subscribers of microfiche copies by the Department of Commerce National Technical Information Service (NTIS). As part of its normal practice, the NRC reproduces an average of 35 additional paper copies of written submittals made to the Commission. The copies are dispatched to the NRC staff; one copy is placed in the NRC Public Document Room, and, on occasion, a copy may be provided to an NRC contractor or an organization having an information exchange agreement with the NRC. In many instances, a copy of a document submitted to NRC is also routinely provided to the Advisory Committee on Reactor Safeguards (ACRS) and the Advisory Committee on Nuclear Waste (ACNW). The NRC films each record on

48X, (360-framed, packed) microfiche and currently duplicates 167 microfiche copies, which are made available to the staff, contractors and public users, if any, of the NRC's Nuclear Documents System (NUDOCS). Of these 167 microfiche copies, 71 copies are provided for agency staff use at locations in NRC headquarters and regional offices. Four microfiche copies are placed in the PDR, and one in each of the NRC's 76 power-reactor LPDRs, which are maintained in facilities accessible to the public, such as local and university libraries. An additional microfiche copy is provided to the NTIS, which provides microfiche copies to 20 subscribers in the United States and various foreign countries. Three copies are provided to NRC contractors. One copy is provided to the Institute for Nuclear Power Operations. Ten microfiche copies are maintained for archival reserve and replacement purposes.

The Commission also contracts with a private reproduction company to reproduce copies of records in the PDR collection in response to requests by individuals and organizations, including the processing of standing orders for copies of certain types of public records. Reproduction fees for the contractor service and use of the onsite copying machines are published at 10 CFR 9.35. Billing is handled directly between the contractor and the person or organization ordering the copy and payment is made directly to the contractor. Reference librarians assist users in this interface as needed. In addition, the PDR maintains an electronic on-line system, the Bibliographic Retrieval System (BRS) which permits both retrieval of document citations and subject data and the ordering of desired copies. NRC also maintains an electronic document control system entitled NUDOCS which, for certain documents, has full-text search and retrieval capability. Written submittals to NRC, other than proprietary information, are accessible to the public through the NUDOCS system.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The current regulations in § 2.790 provide submitters of information the right to have the information returned to them upon their request. The amendment proposed in this rule would conform NRC's regulations concerning the availability of official records to existing case law and current agency practice. The proposed amendments would inform the public of three additional exceptions to an applicant's right to withdraw submitted information and of current agency practice concerning the reproduction and distribution of submitted copyright material.

The proposed amendments reflect current agency administrative and procedural practice and would have only minor impact on the benefits or costs associated with the Commission's regulations. Some submitters currently mark documents as specified in the proposed amendments. For others, the proposed amendments shift some responsibility to the submitter for ensuring that privileged material is protected. While actual benefits would accrue to the Commission, they are largely intangible and difficult to quantify. The foregoing constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule clarifies the right of the submitter of information to have that information returned on request and informs the public of the additional exceptions to the right of withdrawal and of agency practice concerning the reproduction and distribution of copyrighted material. The proposed rule does not impose any obligation or have any financial impact on entities including any regulated entities that may be "small entities" as defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)) or under the size standards adopted by the NRC (50 FR 50241; December 9, 1985).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, a backfit analysis is not required for the proposed rule because these amendments do not impose any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICES FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2012b et seq.).

2. In § 2.790, paragraph (e) is redesignated as paragraph (f); the introductory text of paragraph (b)(1) and paragraph (c) are revised; and a new paragraph (e) is added to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

* * * * *

(b)(1) A person who proposes that a document or a part of a document be withheld in whole or part from public disclosure on the ground that it contains trade secrets, privileged or confidential commercial or financial information shall mark the first page of the document and every other page containing this information "Confidential Information Submitted Under 10 CFR 2.790" or "Proprietary Information Submitted under 10 CFR 2.790", to indicate that it contains information the submitter seeks to have withheld. The person shall also submit an application for withholding accompanied by an affidavit which:

* * * * *

(c)(1) If a request for withholding information under paragraph (b) of this section is denied, the Commission shall notify the applicant of the denial and state the reasons for the denial. The notice of denial will specify a time, not less than 30 days after the date of the notice, when the document will be placed in the Public Document Room. If the applicant requests withdrawal of the document within the time specified in the notice, the document will not be placed in the Public Document Room and will be returned to the applicant unless the information—

(i) Was submitted in a rulemaking proceeding and subsequently forms the basis for a final rule;

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was discussed at an open Commission meeting held in accordance with 10 CFR part 9, subpart C; or

(iv) Is subject to a request submitted pursuant to the Freedom of Information Act.

(2) If a request for withholding information under paragraph (b) of this section is granted, the Commission shall notify the applicant of this determination.

* * * * *

(e)(1) Any person submitting information to NRC to be considered in connection with NRC licensing or regulatory activities, whether or not such information bears a copyright notice, shall be deemed to authorize the NRC, including NRC's reproduction contractor acting within the scope of the reproduction contract with NRC, to reproduce and to distribute fficient copies to carry out the Commission's regulatory and public information responsibilities. Any person submitting such information to NRC shall be deemed to represent to the NRC that such person has the authority to submit such document and the authority to authorize NRC to reproduce and distribute such document and shall hold the Commission harmless from damages that result from the Commission's reproduction or distribution of such documents.

(2) The Commission shall return to the submitter a document bearing or accompanied by a statement purporting to restrict the NRC from copying the document in accordance with this regulation or a document which bears or is accompanied by a statement representing that the submitter lacks the authority to permit NRC to copy and distribute the document. These documents will not be considered by the Commission in the absence of a waiver of this regulation. The Commission may waive the requirements of this paragraph when requested, or by its own initiative, in circumstances the Commission deems appropriate.

* * * * *

Dated at Rockville, MD, this 17th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-31088 Filed 12-22-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0785]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for comment.

SUMMARY: The Board is proposing to revise Regulation O to implement recent amendments to section 22(h) of the Federal Reserve Act, contained in the Housing and Community Development Act of 1992. The Board is requesting public comment on three exceptions to the aggregate insider lending limit in Regulation O and is inviting suggestions on additional transactions that would meet the statutory exemptive criteria.

DATES: Comments should be submitted on or before January 19, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0785, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550, 106 Stat. 3672 (1992), effective October 28, 1992, amended section 22(h) of the Federal Reserve Act (Act), 12 U.S.C. § 375b, to authorize the Board to adopt exceptions from the definition of "extension of credit" that pose minimal risk to the lending bank. The Board is proposing three exceptions to the aggregate lending limit in Regulation O (12 CFR part 215) to implement this amendment.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, 105 Stat. 2355 (1991), amended section 22(h) of the Act, effective May 18, 1992, by establishing a new 100 percent of capital limit on the aggregate amount of credit a member bank may extend to its insiders and their related interests as a class.[1] Unlike the single borrower lending limit under section 22(h), the new aggregate lending limit did not

[1] FDICIA also authorized the Board by regulation to make exceptions to this limit, subject to certain requirements and restrictions, for member banks with less than $100 million in deposits. *See* 12 U.S.C. § 375b(5)(C). The Board has exercised this authority for the one-year period ending May 18, 1993. 12 CFR 215.4(d)(2).

incorporate the exceptions from the loan to one borrower rule found in the National Bank Act. *See* 12 U.S.C. § 84. In addition, FDICIA eliminated the flexibility the Board previously had enjoyed under section 22(h) to exclude from coverage credit transactions that posed no risk to the bank. As a result, a bank was required to include certain loans when calculating its aggregate insider lending limit under Regulation O that it was not required to include when calculating its single borrower lending limit under Regulation O.

In order to reduce this inconsistency between the individual and aggregate lending limits in Regulation O, the Board recommended that Congress restore to the Board the ability to make exceptions to the lending limit. Congress responded in HCDA by granting the Board the authority to make exceptions by regulation to the definition of "extension of credit" in section 22(h) of the Act for transactions that the Board determines pose minimal risk. The legislative history of this provision states that the Board should make a "zero-based review" of all exceptions, rather than to adopt the exceptions under the National Banking Act as a whole. *See* 138 Cong. Rec. S17,914-15 (daily ed. Oct. 8, 1992).

Discussion of Issues

Under the concentration of credit rules of the National Bank Act, certain categories of loans or extensions of credit are deemed, as a result of the manner in which they are collateralized, to pose minimal risk of loss to a bank, and the ability of a national bank to engage in such transactions is made subject to relaxed quantitative limitations or is not subject to any quantitative limitations at all. *See* 12 U.S.C. § 84. The Board proposes to adopt three of these categories as exceptions from the definition of "extension of credit" as it applies to the aggregate lending limit at section 215.4(d) of Regulation O. These three categories are:

(1) Extensions of credit secured by obligations of the United States or other obligations fully guaranteed as to principal and interest by the United States;

(2) Extensions of credit to or secured by commitments or guarantees of the United States or its agencies; and

(3) Extensions of credit secured by a segregated deposit account with the lending bank.

The Board therefore proposes and requests public comment on these three categories as an initial group of exceptions to the aggregate lending limit under Regulation O. The Board also requests public comment on any other categories of extensions of credit which should be included, either with or without quantitative limitations, as additional exceptions to the aggregate lending limit.

By making these exceptions effective only with respect to the aggregate lending limit, the general prohibitions in Regulation O on extensions of credit to insiders, found in §§ 215.4(a) and (b), remain in effect as safeguards against abuse of these exceptions.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. § 603(b)), are contained in the supplementary information above.

The Board's proposed rule imposes no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed rule will apply to all member banks, regardless of size. The proposed rule should not have a negative economic impact on small institutions. Instead, the rule should relieve their regulatory burden and will increase the ability of small institutions to make loans and other extensions of credit that pose little or no risk of loss to the member bank, and to attract and retain outside directors to whom such loans and other extensions of credit may be made in the same manner and to the same extent as they may be made to persons who are not insiders of the bank.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)), the Board is amending 12 CFR part 215, part A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 is revised to read as follows:

Authority: Sections 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)), 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi), and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.4 is amended by adding a new subparagraph (d)(3) to read as follows:

§ 215.4 General prohibitions.

(a) * * *

* * * * * *

(d) * * *

(3) *Exceptions.* The general limit specified in paragraph (d)(1) of this section does not apply to:

(i) Extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(iii) Extensions of credit secured by a segregated deposit account in the member bank.

Board of Governors of the Federal Reserve System, December 17, 1992.

Williams W. Wiles,

Secretary of the Board.

[FR Doc. 92-31125 Filed 12-22-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-59-92]

RIN 1545-AR06

Earnings and Profits of Regulated Investment Companies and Real Estate Investment Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to regulated investment companies (RICs) and real estate investment trusts (REITs). The proposed regulations provide guidance to RICs and REITs that have earnings and profits accumulated by a corporation during a taxable year when the corporation was not taxable as a RIC or REIT. This guidance is needed to clarify the requirements for maintaining RIC or REIT status after a merger or other reorganization. The proposed regulations also provide procedural guidance to REITs that distribute non-REIT earnings and profits.

DATES: Written comments must be received by February 8, 1993. Requests to appear (with outlines of oral comments to be presented) at the public hearing scheduled for March 1, 1993, must be received by February 8, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI–59–92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Nellie Howard, 202–622–3018 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 852 and 857 of the Internal Revenue Code (Code). Section 1071(a)(3) and (4) of the Tax Reform Act of 1984, Pub. L. No. 98–369, 98 Stat. 1049–50, added section 852(a)(2) and (e) of the Code to provide rules relating to certain earnings and profits of RICs. Section 1878(j)(1) of the Tax Reform Act of 1986 (the 1986 Act), Public Law No. 99–514, 100 Stat. 2905, redesignated section 852(a)(3) of the Code as section 852(a)(2) of the Code. Section 852(a)(2) and (e) of the Code is generally effective for taxable years beginning after December 31, 1982. Section 661(b) of the 1986 Act added section 857(a)(3) of the Code to provide rules relating to certain earnings and profits of REITs. Section 857(a)(3) of the Code is effective for taxable years beginning after December 31, 1986.

Explanation of Provisions

This document provides guidance to a RIC or REIT that has non-RIC or non-REIT earnings and profits (that is, earnings and profits that were accumulated by a corporation during a taxable year when the corporation was not taxable as a RIC or REIT). The proposed regulations clarify that a company is not taxable as a RIC or REIT for a taxable year if it has those earnings and profits at the close of the taxable year, even if the earnings and profits were succeeded to in a reorganization.

The legislative history of section 852(a)(2) of the Code indicates a concern that earnings and profits of certain operating companies were not being taxed at the shareholder level. The focus was on operating companies that sold their assets, invested the proceeds in passive investment assets, and obtained conduit treatment without distributing the earnings from the operating activities. H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, at 1744 ff. (1984). Congress had been informed that these companies would have little incentive to pay dividends out of their accumulated earnings from the discontinued business or to liquidate the corporation and subject the shareholders to tax on the liquidation. This could result in a large volume of tax-motivated sales and a substantial reduction in income tax revenues from corporations and their shareholders. *See* Miscellaneous Tax Bills: Hearings Before the Subcomm. on Select Revenue Measures of the House Comm. on Ways and Means, 98th Cong., 1st Sess. 203, 207 and 215 (1983) (statement of Mikel M. Rollyson, Deputy Tax Legislative Counsel, United States Department of the Treasury). To avoid this result, Congress enacted section 852(a)(2), which prevents the corporations from being taxable as RICs if they have these earnings and profits at the end of the taxable year.

In H.R. Rep. No. 432, Congress focused on non-RIC earnings and profits that are carried over when a non-RIC elects RIC status. There is no indication, however, that Congress intended to limit the application of the statute to that fact situation. The same concerns arise no matter how the non-RIC earnings and profits come to be held by a RIC.

The legislative history of section 857(a)(3) of the Code indicates that section 857(a)(3) serves a purpose similar to that of section 852(a)(2) of the Code: Congress did not want companies to be taxable as REITS if they had non-REIT earnings and profits. S. Rep. No. 313, 99th Cong., 2d Sess. 769, 775 (1986). As with RICs, the same principles apply to non-REIT earnings and profits, whether they are carried over when the company converts to REIT status or are succeeded to when a REIT reorganizes with a corporation that is not taxable as a REIT.

Congress has indicated that a company that has non-RIC or non-REIT earnings and profits that prevent it from being taxable as a RIC or a REIT may qualify for taxation as a RIC or a REIT in certain cases by distributing those earnings and profits. H.R. Rep. No. 432, *supra*, at 1746–47 and S. Rep. No. 313, *supra*, at 775. Congress has specified the procedures for making such a distribution in section 852(e) of the Code. Section 852(e) provides rules to allow a company to be eligible to be treated as a RIC for any taxable year subsequent to a taxable year with respect to which it is determined that the RIC qualification requirements were not met. Under these rules, the company can qualify as a RIC if it distributes an amount equal to the accumulated earnings and profits attributable to the non-RIC year, less an interest charge. The proposed regulations clarify that distribution rules similar to those in section 852(e) are to apply to REITs.

The proposed regulations prescribe identical rules for both RICs and REITs. Under the proposed regulations, a RIC that succeeds to non-RIC earnings and profits is generally required to distribute those earnings and profits if the RIC is to continue to be taxable as a RIC. Similarly, a REIT that succeeds to non-REIT earnings and profits is generally required to distribute those earnings and profits if the REIT is to continue to be taxable as a REIT.

Proposed Effective Dates

The proposed regulations are proposed to be effective for taxable years ending on or after December 22, 1992.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original

and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

A public hearing on these proposed regulations will be held on March 1, 1993. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is Nellie Howard of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.851–1 through 1.855–1
Income Taxes, Investment companies, Securities.
26 CFR 1.856–0 through 1.860–5
Income taxes, Investments, Trusts and trustees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.852–12 and 1.857–11 are added to read as follows:

§ 1.852–12 Non-RIC earnings and profits.

(a) *Applicability of section 852(a)(2)(A)*—(1) *In general.* An investment company does not satisfy section 852(a)(2)(A) unless—

(i) Part I of subchapter M applied to the company for all its taxable years ending on or after November 8, 1983; and

(ii) For each corporation to whose earnings and profits the investment company succeeded by the operation of section 381, part I of subchapter M applied for all the corporation's taxable years ending on or after November 8, 1983.

(2) *Special rule.* See section 1071(a)(5)(D) of the Tax Reform Act of 1984, Pub. L. No. 98–369, for a special rule which treats part I of subchapter M as having applied to an investment company's first taxable year ending after November 8, 1983.

(b) *Applicability of section 852(a)(2)(B)*—(1) *In general.* An investment company does not satisfy section 852(a)(2)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that—

(i) Were earned by a corporation in a year to which part I of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part I of subchapter M applied;

(ii) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part I of subchapter M applied and at all times thereafter were the earnings and profits of a corporation to which part I of subchapter M applied;

(iii) Were accumulated in a taxable year ending before January 1, 1984, by a corporation to which part I of subchapter M applied for any taxable year ending before November 8, 1983; or

(iv) Were accumulated in the first taxable year of an investment company that began business in 1983 and that was not a successor corporation.

(2) *Prior law.* For purposes of paragraph (b) of this section, a reference to part I of subchapter M includes a reference to the corresponding provisions of prior law.

(c) *Effective Date.* This regulation is effective for taxable years ending on or after December 22, 1992.

§ 1.857–11 Non-REIT earnings and profits.

(a) *Applicability of section 857(a)(3)(A).* A real estate investment trust does not satisfy section 857(a)(3)(A) unless—

(i) Part II of subchapter M applied to the trust for all its taxable years beginning after February 28, 1986; and

(ii) For each corporation to whose earnings and profits the trust succeeded by the operation of section 381, part II of subchapter M applied for all the corporation's taxable years beginning after February 28, 1986.

(b) *Applicability of section 857(a)(3)(B)*—(1) *In general.* A real estate investment trust does not satisfy section 857(a)(3)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that—

(i) Were earned by a corporation in a year to which part II of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part II of subchapter M applied; or

(ii) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part II of subchapter M applied and at all times thereafter were the earnings and profits of a corporation to which part II of subchapter M applied.

(c) *Distribution procedures similar to those for regulated investment companies to apply.* Distribution procedures similar to those in section 852(e) for regulated investment companies apply to non-REIT earnings and profits of real estate investment trusts.

(d) *Effective date.* This regulation is effective for taxable years ending on or after December 22, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–30308 Filed 12–22–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[FI–59–92]

RIN 1545–AR06

Earnings and Profits of Regulated Investment Companies and Real Estate Investment Trusts; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to regulated investment companies (RICs) and real estate investment trusts (REITs).

DATES: The public hearing will be held on Monday, March 1, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by February 8, 1993.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:Corp:T:R (FI–59–92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 852 and 857 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have

submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, February 8, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-30309 Filed 12-22-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[IA-003-89]

RIN 1545-AN02

Recovery of Reasonable Administrative Costs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 7430(a)(1). These regulations relate to the recovery of reasonable administrative costs incurred by taxpayers in connection with an administrative proceeding within the Internal Revenue Service. Changes to the applicable law were made by section 6239(a) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100-647, 102 Stat. 3342). The proposed regulations affect all taxpayers involved in an administrative proceeding within the Internal Revenue Service, and provide guidance regarding the definition of "reasonable administrative costs" and the period within which the costs must be incurred in order to be recoverable. The proposed regulations also set forth the requirements and procedures for the recovery of such costs, and the definitions of prevailing party, administrative proceeding and administrative proceeding date. A table of contents to the regulations under section 7430 is provided in section 301.7430-0.

DATES: Written comments and requests for a public hearing must be received by February 8, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:T:R (IA-003-89), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Thomas D. Moffitt of the Office of Assistant Chief Counsel (Field Service), Internal Revenue Service, (202) 622-7900 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, 1111 Constitution Ave., NW., Washington, DC 20224.

The collection of information requirement in these proposed regulations is in § 301.7430-2(c). This information is required by the Internal Revenue Service to process requests for awards of reasonable administrative costs. This information will be used to determine whether a taxpayer is entitled to recover reasonable administrative costs under section 7430(a)(1). The likely respondents are individual taxpayers, businesses and other organizations, including small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary to collect required information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 16,000 hours. The estimated annual burden per respondent varies from 90 minutes to 150 minutes, depending on individual circumstances, with an estimated average of 120 minutes.

Estimated annual number of respondents: 8,000.

Estimated annual frequency of responses: One.

Background

This document provides proposed regulations under section 7430 regarding the circumstances under which taxpayers may recover reasonable administrative costs incurred with respect to an administrative proceeding within the Internal Revenue Service with respect to the determination, collection, or refund of any tax, interest or penalty. These regulations reflect amendments made to Internal Revenue Code section 7430 by TAMRA.

Explanation of Regulatory Provisions

In General

Section 7430 (a) of the Internal Revenue Code provides for the recovery of reasonable administrative costs incurred by taxpayers in any administrative proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty. Administrative proceedings regarding any type of tax under title 26, including income taxes, estate and gift taxes, employment taxes, and excise taxes, are covered by the proposed regulations.

The Internal Revenue Service has received numerous requests from taxpayers regarding the procedures for requesting reasonable administrative costs and the limitations on such awards. To provide guidance for these and similarly situated taxpayers, § 301.7430-0, and §§ 301.7430-2 through 301.7430-6 are added to the regulations.

In order for the Internal Revenue Service to award reasonable administrative costs a taxpayer must meet the requirements set forth in § 301.7430-2(b). First, the Internal Revenue Service will not make an award of reasonable administrative costs where the underlying substantive issues are or were before a court. Second, in order to be eligible for an award a taxpayer must satisfy the conditions necessary to be a prevailing party. Third, the taxpayer must not have unreasonably protracted the portion of the proceeding for which a recovery is sought. Fourth, the taxpayer must follow the application procedures set forth in § 301.7430-2(c) in order to be eligible for an award of reasonable administrative costs by the Internal

Revenue Service. The prerequisites for being a prevailing party are explained in § 301.7430–5.

The Internal Revenue Service will not consider a request for reasonable administrative costs where the underlying substantive issues are or were before a court as the court may award reasonable administrative costs in its disposition of the case. However, if the court dismisses the case for lack of jurisdiction the fact that the issues were before a court does not bar the Internal Revenue Service from awarding reasonable administrative costs. This is so even though the court in such a situation would have jurisdiction to award reasonable litigation costs. Where the case is not dismissed by the court for lack of jurisdiction, the court may also award reasonable litigation costs incurred in pursuing the claim for reasonable administrative costs in court.

Procedure for Requesting an Award of Costs

Section 301.7430–2(c) sets forth the procedures for recovering reasonable administrative costs. These procedures require that a written request be filed with the Internal Revenue Service personnel that considered the underlying substantive claim, or if that person is unknown to the taxpayer, with the district director for the district that considered the underlying matter. In order to be complete, a request must satisfy seven requirements. First, it must state that neither the underlying substantive issues nor the issue of reasonable administrative costs are before a court or have been before a court. Second, it must contain a clear and concise statement of the reasons why the taxpayer alleges that the position of the Internal Revenue Service was not substantially justified. Third, it must state that the taxpayer substantially prevailed with regard to the amount in controversy, or the most significant issue or set of issues presented. Fourth, it must state that the taxpayer has not unreasonably protracted the portion of the proceeding for which costs are being requested. Fifth, the request must contain a statement supported by a detailed affidavit setting forth the nature and amount of each item sought to be recovered and must be accompanied by a copy of the billing records for requested fees of a representative. Sixth, it must contain an affidavit signed by the taxpayer stating that the taxpayer meets the net worth and size limitations. Seventh, the request must provide an address at which the taxpayer can be contacted.

In addition, if more than $75 per hour, as adjusted for an increase in the cost of living, is requested, the request must contain an affidavit establishing that a special factor such as a limited availability of specially qualified representatives justifies such a rate.

This written request must be made within ninety days following the mailing of the final decision of the Internal Revenue Service to the taxpayer. This period is greater than the 30 days allowed by Rule 231(c)(2)(A) of the Tax Court Rules of Practice and Procedure for filing a motion for reasonable litigation costs after service of a written opinion in an unagreed case, and more closely matches the 90 day period allowed under section 6213(a) for the filing of a petition with the Tax Court in response to a notice of deficiency.

If the Internal Revenue Service denies the taxpayer's request for reasonable administrative costs in whole or in part, the taxpayer may appeal that denial to the Tax Court. If the Internal Revenue Service does not respond to the taxpayer's request within six months of its filing, that failure to respond may be considered by the taxpayer as a denial of the request and the taxpayer may appeal to the Tax Court. This six-month period matches the period allowed by section 6532(a)(1) for the consideration of a claim for refund by the Internal Revenue Service before an action may be filed in the courts.

Administrative Proceeding

Section 301.7430–3(a) defines an administrative proceeding for which reasonable administrative costs are recoverable as any procedure or other action before the Internal Revenue Service commenced after November 10, 1988, except proceedings involving items of general application, private letter rulings and similar requests, technical advice requests unless submitted after the administrative proceeding date, and proceedings in connection with collection actions.

The conference report to TAMRA states that "with respect to a collection action, only reasonable litigation costs are recoverable under this provision." The proposed regulations follow the legislative intent by excluding collection actions from the definition of the administrative proceedings for which costs are recoverable.

Section 301.7430–3(b) defines collection actions for purposes of the exclusion from the definition of administrative proceeding. Collection actions include those taken to collect taxes, interest, additions to tax, penalties and costs. Similarly, for purposes of the proposed regulations, actions under Code sections 7432 and 7433, regarding civil causes of action for damages for failure to release a lien and for unauthorized collection actions, respectively, are collection actions. Thus, reasonable administrative costs for such proceedings are not recoverable under section 7430. Treas. Reg. §§ 301.7432–1(j) and 301.7433–1(h). Actions taken by taxpayers to remedy the failure of the Internal Revenue Service to release a lien under section 6325 and to remedy any unauthorized collection actions as defined by section 7433, are also collection actions. In contrast, proceedings directly relating to a claim for refund filed with the Service Center's Collection Branch or District Director's Collection Division after payment of an assessed tax are not included in the definition of collection action.

Administrative Proceeding Date

The "administrative proceeding date," which determines both when the position of the Internal Revenue Service is first established and when costs may first qualify as reasonable administrative costs, is defined in § 301.7430–3(c) as the earlier of the receipt by the taxpayer of the notice of the decision of the Office of Appeals or the date of the notice of deficiency. The proposed regulations define the notice of the decision of the Office of Appeals as a document which is signed by an individual with authority to settle the dispute on behalf of the Commissioner and which states that it is the final determination of the case. For purposes of these regulations, a notice of claim disallowance issued by the Office of Appeals is included in the definition of a notice of the decision of the Office of Appeals. However, a notice of the final decision of the Office of Appeals does not include a notice of deficiency, even if issued by the Office of Appeals.

For purposes of establishing the administrative proceeding date, the definition of a notice of deficiency includes a notice of final partnership administrative adjustment and a notice of final S corporation administrative adjustment. A notice of deficiency for this purpose also includes a notice rescinded pursuant to section 6212(d).

Reasonable Administrative Costs

Section 301.7430–4 describes the reasonable administrative costs that may be the subject of an award. These costs are the reasonable and necessary amount of costs incurred by the taxpayer in the administrative proceeding. Reasonable administrative costs include administrative fees or

similar charges imposed by the Internal Revenue Service, reasonable expenses of expert witnesses, reasonable costs of any study, analysis, engineering report, test or project for the preparation of the taxpayer's case, and reasonable fees for the services of a representative in the administrative proceeding. A "representative," whose fees may be recovered, is defined as any person compensated for services rendered in connection with the administrative proceeding who is authorized to practice before the Internal Revenue Service or the Tax Court.

Fees for a representative are limited by section 7430(c)(1)(B)(iii) to $75 per hour increased by a cost of living adjustment measured from January 1986, and increased in the case of a special factor such as the limited availability of specially qualified representatives for the administrative proceeding. Specially qualified representatives are defined as those representatives possessing specialized skills or distinctive knowledge uniquely necessary for the representation of the taxpayer in the administrative proceeding. Mere credentials, a specialty or experience in taxation, knowledge available through the use of an expert, or general professional skill do not constitute specialized skills or distinctive knowledge for this purpose. Limited availability is defined as an inability to obtain specially qualified representatives within a reasonable distance from the taxpayer's residence or office at a rate less than or equal to the hourly rate as increased by the cost of living adjustment.

Section 301.7430–4(c) excludes certain costs from the definition of reasonable administrative costs. Reasonable administrative costs do not include costs incurred in connection with a proceeding which is not an administrative proceeding within the meaning of the regulations. An example of such costs is litigation costs. Litigation costs are defined for this purpose as costs enumerated in section 7430(c)(1) incurred in connection with the commencement of tax litigation in any court of the United States, including the preparation and filing of a petition in the Tax Court. Litigation costs also include costs incurred subsequent to the commencement of the litigation. Costs normally included in hourly rates by the representative's profession (e.g., secretarial service) are not recoverable separate and apart from the representative's hourly rate. Costs normally billed separately from the representative's hourly rate (e.g., travel expenses) are reasonable administrative costs which may be recovered in addition to the representative's hourly rate.

Costs for expert witnesses on the subject of prevailing market rates for representatives generally are not reasonable administrative costs. The prevailing market rates for representatives may be initially established by affidavit. Only where it is demonstrated that a specially qualified representative was necessary for the proceeding and the Internal Revenue Service challenges this affidavit are such costs reasonable administrative costs.

Prevailing Party

The taxpayer is a prevailing party, as set forth in § 301.7430–5, where three requirements are met. First, the taxpayer must establish that the position of the Internal Revenue Service was not substantially justified. Second, the taxpayer must substantially prevail with respect to the amount in controversy, or the most significant issue or set of issues presented. Third, the taxpayer must satisfy the net worth and size limitations.

The position of the Internal Revenue Service which the taxpayer must establish was not substantially justified is that taken in the notice that establishes the administrative proceeding date. The position of the Internal Revenue Service also includes any position taken by the Internal Revenue Service subsequent to that date. However, the position of the Internal Revenue Service is never established prior to the Administrative proceeding date.

Whether the position of the Internal Revenue Service was not substantially justified depends in part on whether the taxpayer has provided the Internal Revenue Service with all relevant information and arguments available to the taxpayer. For each cost sought to be awarded, whether the position of the Internal Revenue Service was not substantially justified is scrutinized as of the date the cost was incurred (but not earlier than the administrative proceeding date).

Under section 7430(c)(4)(A)(ii), to be a prevailing party a taxpayer must substantially prevail with respect to the amount in controversy or with respect to the most significant issue or set of issues presented. The determination of whether a taxpayer prevailed with respect to the amount in controversy is determined without increasing or reducing the amount in controversy for amounts carried over from years not in issue.

Section 301.7430–5(e) describes the most significant issue or set of issues presented as those which objectively represent the most significant issues for the taxpayer or the Internal Revenue Service. Such an issue can exist due to the effect of the issue on other transactions or future years not in issue. Not all cases contain a most significant issue or set of issues. In those cases, the amount in controversy will necessarily control.

Under the net worth and size limitations of section 7430(c)(4)(A)(iii), individual taxpayers and estates are eligible for an award of reasonable administrative costs only if their net worth does not exceed two million dollars on the administrative proceeding date. Spouses filing a joint return are treated as one taxpayer for this purpose unless one spouse is relieved from liability under the innocent spouse provision.

Other taxpayers, including owners of unincorporated businesses, partnerships, corporations, units of local government, or organizations (other than section 501(c)(3) organizations and certain cooperative associations) are eligible for an award of reasonable administrative costs only if their net worth as of the administrative proceeding date does not exceed seven million dollars and the taxpayer does not have more than 500 employees. Section 501(c)(3) organizations and those certain cooperative associations are not subject to the seven million dollar limitation; however, they are subject to the 500 employee limitation.

The status of a taxpayer as a prevailing party should be determined by agreement of the parties. If no such agreement is reached then such status is determined by the Internal Revenue Service. However, if the taxpayer disagrees with the Internal Revenue Service's determination, the taxpayer may appeal to the Tax Court.

Proposed Effective Date

The proposed regulations contained in § 301.7430–0 and §§ 301.7430–2 through 301.7430–6 would be effective for claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992 with respect to costs incurred in administrative proceedings commenced after November 10, 1988. However, § 301.7430–6 contains a transition rule which provides that the ninety-day time period for filing a claim for reasonable administrative costs contained in § 301.7430–2(c)(5) would not be effective until March 23, 1993. Thus, taxpayers who have not filed a claim for an award of reasonable administrative costs in connection with an administrative proceeding commenced

after November 10, 1988, have ninety days from December 23, 1992 to file a claim. After this transition period, claims must be filed within the ninety-day period contained in § 301.7430–2(c)(5).

Special Analyses

These rules are not major rules as defined in Executive Order 12291 because the economic or other consequences are a direct result of a statute. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments on the proposed regulations. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child Support, Continental Shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR part 301 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 301.7430–0 and 301.7430–2 through 301.7430–6 are added to read as follows:

§ 301.7430–0 Table of contents.

This section lists the captions that appear in §§ 301.7430–1 through 301.7430–6.

§ 301.7430–1 Exhaustion of Administrative Remedies

(a) In general.
(b) Tax, penalty, and addition to tax.
(1) In general.
(2) Participates.
(c) Revocation of a determination that an organization is described in section 501(c)(3).
(d) Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.
(e) Tax matter.
(f) Exception to requirement that party pursue administrative remedies.
(g) Examples.
(h) Effective date.

§ 301.7430–2 Requirements and Procedures for Recovery of Reasonable Administrative Costs

(a) Introduction.
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§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.

(a) *Introduction.* Section 7430(a)(1) provides for the recovery, under certain circumstances, of reasonable administrative costs incurred in connection with an "administrative proceeding" before the Internal Revenue Service. Paragraph (b) of this section lists the requirements that a taxpayer must meet to be entitled to an award of reasonable administrative costs.

(b) *Requirements for recovery*—(1) *Determination by the Internal Revenue Service.* The Internal Revenue Service will grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with an administrative proceeding under section 7430 and this section only if—

(i) *Jurisdiction.* The underlying substantive issues or the issue of reasonable administrative costs are not, and have never been, before any court of the United States (including the Tax Court or United States Court of Federal Claims) with jurisdiction over those issues;

(ii) *Administrative proceeding.* The costs were incurred in connection with an administrative proceeding as defined in § 301.7430–3(a);

(iii) *Administrative proceeding date.* The costs were incurred on or after the administrative proceeding date as defined in § 301.7430–3(c);

(iv) *Reasonable administrative costs.* The costs were reasonable administrative costs as defined in § 301.7430–4;

(v) *Prevailing party.* The taxpayer is a prevailing party as defined in § 301.7430–5;

(vi) *Not unreasonably protracted.* The administrative proceeding was not unreasonably protracted by the taxpayer as discussed in paragraph (d) of this section; and

(vii) *Procedural requirements.* The taxpayer follows the procedures set forth in paragraph (c) of this section.

(2) *Determination by court.* Although the Internal Revenue Service will not grant a request for reasonable administrative costs where the requirements of paragraph (b)(1)(i) of this section are not met, a taxpayer may file a claim for reasonable administrative costs with the court with jurisdiction over the judicial proceeding. The court may award the taxpayer reasonable administrative costs under section 7430(a). Under section 7430(c)(4)(B)(ii), where the final determination with respect to the tax, interest, or penalty at issue is made by a court, the court determines whether the taxpayer qualifies as a prevailing party. Thus, where the requirements of paragraph (b)(1)(i) of this section are not met, the taxpayer's only possibility of obtaining an award of reasonable administrative costs is to obtain an award of such costs from the court. In the event the court awards reasonable administrative costs, it may also award litigation costs for the reasonable costs of pursuing the claim for reasonable administrative costs, provided the requirements under section 7430 regarding an award of reasonable administrative costs are satisfied with respect to such costs. A claim filed with the court should be made in accordance with the rules of the court.

(c) *Procedure for recovering reasonable administrative costs*—(1) *In general.* The Internal Revenue Service will not award administrative costs under section 7430 unless the taxpayer files a written request to recover reasonable administrative costs in accordance with the provisions of this section.

(2) *Where request must be filed.* A request required by paragraph (c)(1) of this section must be filed with the Internal Revenue Service personnel who have jurisdiction over the tax matter underlying the claim for the costs. However, if that person is unknown to the taxpayer making the request, the taxpayer may send the request to the district director for the district that considered the underlying matter.

(3) *Contents of request.* The request must be in writing and must contain the following statements, affidavits, documentation, and information with regard to the taxpayer's administrative proceeding:

(i) *Statements*—

(A) A statement that the underlying substantive issues or the issue of reasonable administrative costs are not, and have never been, before any court of the United States (including the Tax Court or United States Court of Federal Claims) with jurisdiction over those issues;

(B) A clear and concise statement of the reasons why the taxpayer alleges that the position of the Internal Revenue Service in the administrative proceeding was not substantially justified;

(C) A statement sufficient to demonstrate that the taxpayer has substantially prevailed as to the amount in controversy or with respect to the most significant issue or set of issues presented in the proceeding;

(D) A statement that the taxpayer has not unreasonably protracted the portion of the administrative proceeding for which the taxpayer is requesting costs; and

(E) A statement supported by a detailed affidavit executed by the taxpayer or the taxpayer's representative that sets forth the nature and amount of each specific item of reasonable administrative costs for which the taxpayer is seeking recovery.

(ii) *Affidavit or affidavits*—

(A) An affidavit executed by the taxpayer stating that the taxpayer meets the net worth and size limitations of § 301.7430–5(h);

(B) An affidavit meeting the requirements of paragraph (c)(3)(i)(E) of this section; and

(C) If more than $75 per hour, as adjusted by an increase in the cost of living as set forth in § 301.7430–4(b)(3), is claimed for the fees of a representative in connection with the administrative proceeding, then an affidavit that specialized skills and distinctive knowledge as described in that section were necessary in the representation of the taxpayer in the proceeding and that there is a limited availability of representatives possessing such skills and knowledge as described in that section, or an affidavit that another special factor is applicable.

(iii) *Documentation and information*—

(A) A copy of the billing records of the representative for the requested fees; and

(B) An address at which the taxpayer wishes to receive notice of the determination of the Internal Revenue Service with regard to the request for reasonable administrative costs.

(4) *Form of Request.* No specific form is required for the request other than one which satisfies the requirements of paragraph (c)(3) of this section. Where practicable the required statements may be included in a single document. Similarly, where practicable, the required affidavits may be combined in a single affidavit to the extent they are to be executed by the same person.

(5) *Period for requesting costs from the Internal Revenue Service.* To recover reasonable administrative costs pursuant to section 7430 and this section, the taxpayer must file a request for costs no later than 90 days after the date the final decision of the Internal Revenue Service with respect to all tax, additions to tax and penalties at issue in the administrative proceeding is mailed, or otherwise furnished, to the taxpayer. The final decision of the Internal Revenue Service for purposes of this section is the document which resolves the tax liability of the taxpayer with regard to all tax, additions to tax and penalties at issue in the administrative proceeding (such as a Form 870 or closing agreement), or a notice of assessment for that liability (such as the notice and demand under section 6303), whichever is earlier mailed, or otherwise furnished, to the taxpayer. For purposes of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term "legal holiday" means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia but within an internal revenue district, the term "legal holiday" also means a Statewide legal holiday in the State where such office is located.

(6) *Notice.* The Internal Revenue Service is authorized, but not required, to notify the taxpayer of its decision to grant or deny (in whole or in part) an award for reasonable administrative costs under section 7430 and this section by certified mail or registered mail. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of

reasonable administrative costs filed under paragraph (c)(1) of this section within 6 months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a decision of the Internal Revenue Service denying an award for reasonable administrative costs.

(7) *Appeal to Tax Court.* A taxpayer may appeal a decision by the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs under section 7430 and this section by filing a petition for reasonable administrative costs with the Tax Court. The petition must be in accordance with the Tax Court's Rules of Practice and Procedure and must be filed with the Tax Court after the Internal Revenue Service denies (in whole or in part) the taxpayer's request for reasonable administrative costs.

(d) *Unreasonable protraction of administrative proceeding.* An award of reasonable administrative costs will not be made where the taxpayer unreasonably protracted the administrative proceeding. However, a taxpayer that unreasonably protracted only a portion of the administrative proceeding, but not other portions of the administrative proceeding, may recover reasonable administrative costs for the portion(s) of the administrative proceeding that the taxpayer did not unreasonably protract, if the requirements of paragraph (b)(1) of this section are otherwise satisfied.

(e) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A requests and is granted Appeals office consideration. Appeals requests that A submit certain documents as substantiation for the tax matters at issue. Although A complies with this request, the information is lost by the Internal Revenue Service and not considered by Appeals. Appeals then issues a notice of deficiency. A does not file a petition with the Tax Court. After receiving the notice of deficiency, A convinces Appeals that the notice of deficiency is incorrect and that A owes no tax. Appeals then closes the case showing a zero deficiency and mails A a notice to this effect. Assuming that the other requirements of this section are satisfied, A may recover reasonable administrative costs incurred after the date of the notice of deficiency (the administrative proceeding date). To recover these costs, A must file a request for costs with the Appeals office personnel who settled A's tax matter, or if that person is unknown to A, with the district director of the district which considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that A owes no tax.

Example 2. Assume the same facts as in *Example 1*, except that after receipt of the notice of deficiency, A meets with an Appeals officer, but no agreement is reached on the tax matters at issue. A then files a petition with the Tax Court and prevails. Since the underlying tax issues have been determined by a court, the Internal Revenue Service will not grant a request for recovery of the reasonable administrative costs incurred by A. To recover reasonable administrative costs, A must file a claim with the Tax Court as prescribed under the Tax Court's Rules of Practice and Procedure.

§ 301.7430–3 Administrative proceeding and administrative proceeding date.

(a) *Administrative proceeding.* For purposes of section 7430, "administrative proceeding" generally means any procedure or other action before the Internal Revenue Service that is commenced after November 10, 1988. However, "administrative proceeding" does not include—

(1) Proceedings involving matters of general application, including hearings on regulations, comments on forms, or proceedings involving revenue rulings or revenue procedures;

(2) Requests for private letter rulings or similar determinations;

(3) Technical advice memoranda, except those submitted after the administrative proceeding date (as defined in paragraph (c) of this section); and

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under sections 7432 or 7433.

(b) *Collection action.* A "collection action" generally includes any action taken by the Internal Revenue Service to collect a tax (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) or any action taken in response to the Internal Revenue Service's failure to act in connection with the collection of a tax (including any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax). For example, a collection action for purposes of section 7430 and this section includes any action taken by the Internal Revenue Service under Chapter 64 of Subtitle F to collect a tax. Collection actions also include those actions taken by a taxpayer to remedy the Internal Revenue Service's failure to release a lien under section 6325 and to remedy any unauthorized collection action as defined by section 7433. However, an action or procedure directly relating to a claim for refund filed with the Service Center's Collection Branch or District Director's Collection Division after payment of an assessed tax is not a collection action.

(c) *Administrative proceeding date—*

(1) *General rule.* For purposes of section 7430 and the regulations thereunder, the term "administrative proceeding date" means the earlier of—

(i) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; or

(ii) The date of the notice of deficiency.

(2) *Notice of the decision of the Internal Revenue Service Office of Appeals.* For purposes of section 7430 and the regulations thereunder, a notice of the decision of the Internal Revenue Service Office of Appeals is the final written document, mailed or delivered to the taxpayer, that is signed by an individual in the Office of Appeals who has been delegated the authority to settle the dispute on behalf of the Commissioner, and states or indicates that the notice is the final determination of the entire case. A notice of claim disallowance issued by the Office of Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals. A notice of deficiency issued by the Office of Appeals is not a notice of the decision of the Internal Revenue Service Office of Appeals.

(3) *Notice of deficiency.* A notice of deficiency is a notice described in section 6212(a), including a notice rescinded pursuant to section 6212(d). For purposes of determining reasonable administrative costs under section 7430 and the regulations thereunder, a notice of final partnership administrative adjustment described in section 6223(a)(2) will be treated as a notice of deficiency. A notice of final S corporation administrative adjustment issued pursuant to section 6223(a)(2) as made applicable to subchapter S items by section 6244 will also be treated as a notice of deficiency.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference, an agreement is reached on the tax matters at issue. A cannot recover any costs because they were not incurred on or after the administrative proceeding date, which is the earlier of the date of receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or the date of the notice of deficiency.

Example 2. Taxpayer B receives a notice of proposed deficiency (30-day letter). B pays the amount of the proposed deficiency and files a claim for refund. B's claim is disallowed and a notice of proposed disallowance is issued by the district director. B does not request an Appeals office

conference and the district director issues a notice of claim disallowance. B then files suit in a United States District Court. B cannot recover reasonable administrative costs because, although the district director issued a notice of claim disallowance, the Internal Revenue Service did not issue either a notice of decision of the Internal Revenue Service Office of Appeals or a notice of deficiency.

Example 3. Assume the same facts as in *Example 2*, except that after B files a claim for refund and receives the notice of proposed disallowance, B requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of claim disallowance. B does not file suit in District Court but instead contacts the Appeals office to attempt to reverse the decision. B convinces the Appeals officer that the notice of claim disallowance is in error. The Appeals officer then abates the assessment. Because a notice of claim disallowance issued by Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals, B may recover reasonable administrative costs incurred on or after the receipt of the notice of claim disallowance (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied. B cannot recover the costs incurred prior to receipt of the notice of claim disallowance because they were incurred before the administrative proceeding date.

Example 4. Taxpayer C receives a notice of proposed deficiency (30-day letter). C files a request for and is granted an Appeals office conference. At the Appeals conference no agreement is reached on the tax matters at issue. The Internal Revenue Service then issues a notice of deficiency. Upon receiving the notice of deficiency C does not file a petition with the Tax Court. Instead, C pays the deficiency and files a claim for refund. The claim for refund is considered by the Internal Revenue Service and the district director issues a notice of proposed disallowance. C requests and is granted Appeals office consideration. C convinces Appeals that C's claim is correct and Appeals allows C's claim. C may recover reasonable administrative costs incurred on or after the date of the notice of deficiency (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied.

Example 5. Taxpayer D receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (100% penalties) pursuant to section 6672. D requests and is granted Appeals office consideration. Upon consideration, Appeals upholds D's position. D cannot recover reasonable administrative costs because the costs were not incurred on or after the administrative proceeding date.

Example 6. Taxpayer E files an individual income tax return showing a balance due. No payment is made with the return and the Internal Revenue Service assesses the amount shown on the return. The Internal Revenue Service issues a notice and demand for tax pursuant to section 6303. E contacts the Collection Division regarding E's outstanding liability. No agreement is reached with respect to the timing of E's payment, and the Collection Division issues a notice of intent to levy pursuant to section 6331(d). Prior to the levy, E enters into an installment agreement with the Collection Division. The costs that E incurred in connection with the notice and demand were not incurred on or after the administrative proceeding date, nor in an administrative proceeding, but rather in a collection action. Accordingly, E may not recover those costs as reasonable administrative costs under section 7430 and the regulations thereunder.

Example 7. Taxpayer F receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (100% penalties) pursuant to section 6672. F requests and is granted Appeals office consideration. Appeals considers the issues and decides to uphold Collection's recommended assessment. Appeals notifies F of this decision in writing. Collection then assesses the tax. Pursuant to section 6672(b), within 30 days after the notice and demand is made, F pays the minimum amount required to commence a court proceeding, files a claim for refund, and furnishes the required bond. Collection then considers and disallows the claim. Appeals then reconsiders the claim and reverses its original position, thus upholding F's position. Appeals then abates the assessment. F may recover reasonable administrative costs incurred after the receipt of the original decision of Appeals (the administrative proceeding date) that Appeals was upholding Collection's recommended assessment, but only if the other requirements of section 7430 and the regulations thereunder are satisfied. F cannot recover costs that are attributable to any procedure or other action before the Collection Division prior to filing his administrative claim for refund.

§ 301.7430–4 Reasonable administrative costs.

(a) *In general.* For purposes of section 7430 and the regulations thereunder, "reasonable administrative costs" are any costs described in paragraph (b) of this section that are incurred in connection with an administrative proceeding (as defined in § 301.7430–3(a)) and incurred on or after the administrative proceeding date (as defined in § 301.7430–3(c)).

(b) *Costs described*—(1) *In general.* The costs described in this paragraph are the reasonable and necessary amount of costs incurred by the taxpayer to present the taxpayer's position with respect to the merits of the tax controversy or the recovery of reasonable administrative costs. These costs include—

(i) Any administrative fees or similar charges imposed by the Internal Revenue Service;

(ii) Reasonable expenses of expert witnesses;

(iii) Reasonable costs of any study, analysis, engineering report, test or project that is necessary for, and incurred in preparation of, the taxpayer's case; and

(iv) Reasonable fees paid or incurred for the services of a representative (as defined in paragraph (b)(2) of this section) in connection with the administrative proceeding.

(2) *Representative and specially qualified representative*—(i) *Representative.* A "representative" is a person compensated for services rendered in connection with the administrative proceeding, who is authorized to practice before the Internal Revenue Service or the Tax Court.

(ii) *Specially qualified representative.* A specially qualified representative is a representative (as defined in paragraph (b)(2)(i) of this section) possessing a distinctive knowledge or a unique and specialized skill that is necessary to adequately represent the taxpayer in the proceeding. Examples of a unique and specialized skill or distinctive knowledge would be an identifiable practice specialty such as patent law or knowledge of a foreign law or language where such specialty or knowledge is necessary to adequately represent the taxpayer in the proceeding. For purposes of this paragraph, neither knowledge of tax law nor experience in representing taxpayers before the Internal Revenue Service is considered distinctive knowledge or a unique and specialized skill. An extraordinary level of general representational knowledge and ability that is useful in all proceedings is not considered, in and of itself, distinctive knowledge or a unique and specialized skill. Specially qualified representatives also do not include those who have a distinctive knowledge of the underlying subject matter of the controversy in circumstances where such distinctive knowledge could reasonably be supplied through the use of an expert, or could readily be obtained through literature pertaining to the subject.

(3) *Limitation on fees for a representative*—(i) *In general.* Except as otherwise provided in this section, fees described in paragraph (b)(1)(iv) of this section that are recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may not exceed $75 per hour increased by a cost of living adjustment (and if appropriate, a special factor adjustment).

(ii) *Cost of living adjustment*—(A) *In general.* The Internal Revenue Service will make a cost of living adjustment to the $75 per hour limit by using the Consumer Price Index of All-Urban Consumers (CPI–U) published by the Department of Labor, Bureau of Labor

Statistics and referenced in Internal Revenue Code section 1(f)(5). If the CPI–U is no longer published, a comparable index will be used, and any reference in this section to the CPI–U will be considered to refer to such comparable index.

(B) *Percentage adjustment.* For purposes of paragraph (b)(30)(ii)(A) of this section, the base year for determining the cost of living adjustment is the calendar year 1986. The cost of living adjustment for fees incurred in any calendar year subsequent to 1986 is the percentage (if any) by which the yearly average CPI–U for the calendar year immediately prior to the year in which the fees are incurred exceeds the January CPI–U for the calendar year 1986.

(iii) *Special factor adjustment*—(A) *In general.* If the presence of a special factor is demonstrated by the taxpayer, the amount reimbursable is the amount of reasonable fees paid or incurred by the taxpayer in connection with the proceeding for the services of a representative as defined in paragraph (b)(2)(i) of this section.

(B) *Special factor.* A special factor is a factor, other than an increase in the cost of living, which justifies an increase in the $75 per hour limitation of section 7430(c)(1)(B)(iii). The novelty and difficulty of the issues, the undesirability of the case, the work and the ability of counsel, the results obtained, and customary fees and awards in other cases, are factors applicable to a broad spectrum of litigation and do not constitute special factors for the purposes of increasing the $75 per hour limitation. The limited availability of a specially qualified representative for the proceeding does constitute a special factor justifying an increase in the $75 per hour limitation.

(C) *Limited availability.* Unless disputed by the Internal Revenue Service, limited availability of a specially qualified representative is established by demonstrating that a specially qualified representative for the proceeding is not available at the $75 per hour rate (as adjusted for the cost of living). Initially, this showing may be made by submission of an affidavit signed by the taxpayer or by the taxpayer's counsel that in a case similar to the taxpayer's, a specially qualified representative that practices within a reasonable distance from the taxpayer's principal residence or principal office would normally charge a client similar to the taxpayer at a rate in excess of this amount. If the Internal Revenue Service challenges this initial showing, the taxpayer may submit additional evidence to establish the limited availability of a specially qualified representative at the rate specified above.

(D) *Example.* The provisions of this section are illustrated by the following example:

Example. Taxpayer A is represented by B, a CPA and attorney with an LL.M. Degree in Taxation with Highest Honors and who regularly handles cases dealing with TEFRA partnership issues. B represents A in an administrative proceeding involving TEFRA partnership issues and subject to the provisions of this section. Assuming the taxpayer qualifies for an award of reasonable administrative costs by meeting the requirements of section 7430, the amount of the award attributable to the fees of B may not exceed the $75 per hour limitation (as adjusted for the cost of living), absent a special factor. Under these facts alone, B is not a specially qualified representative since even extraordinary knowledge of the tax laws does not constitute distinctive knowledge or a unique and specialized skill constituting a special factor.

(c) *Certain cost excluded*—(1) *Costs not incurred in an administrative proceeding.* Costs that are not reasonable administrative costs for purposes of section 7430 include any costs incurred in connection with a proceeding that is not an administrative proceeding within the meaning of § 301.7430–3.

(2) *Costs incurred in an administrative proceeding but not reasonable*—(i) *In general.* Costs incurred in an administrative proceeding that are incurred on or after the administrative proceeding date, and that are otherwise described in paragraph (b) of this section, are not recoverable unless they are reasonable in both nature and amount. For example, costs normally included in the hourly rate of the representative by the custom and usage of the representative's profession, when billed separately, are not recoverable separate and apart from the representative's hourly rate. Such costs typically include costs such as secretarial and overhead expenses. In contrast, costs which are normally billed separately may be reasonable administrative costs that may be recoverable in addition to the representative's hourly rate. Therefore, necessary costs incurred for travel, expedited mail delivery, messenger service, expenses while on travel, long distance telephone calls, and necessary copying fees imposed by the Internal Revenue Service, any court, bank or other third party, when normally billed separately from the representative's hourly rate, may be reasonable administrative costs.

(ii) *Special Rule for Expert Witness' Fees on Issue of Prevailing Market Rates.* Under paragraph (b)(3)(iii)(C) of this section, the taxpayer may initially establish a limited availability of specially qualified representatives for the proceeding by submission of an affidavit signed by the taxpayer or by the taxpayer's representative. The Internal Revenue Service may endeavor to rebut the affidavit submitted on this issue by demonstrating either that a specially qualified representative was not necessary to represent the taxpayer in the proceeding, that the taxpayer's representative is not a specially qualified representative or that the prevailing rate for specially qualified representatives does not exceed $75 per hour (as adjusted for inflation). Unless the Internal Revenue Service endeavors to demonstrate that the prevailing rate for specially qualified representatives does not exceed $75 per hour (as adjusted for inflation), fees for expert witnesses used to establish prevailing market rates are not included in the term "reasonable administrative costs."

(3) *Litigation costs.* Litigation costs are not reasonable administrative costs because they are not incurred in connection with an administrative proceeding. Litigation costs include—

(i) Costs incurred in connection with the preparation and filing of a petition with the United States Tax Court or in connection with the commencement of any other court proceeding; and

(ii) Costs incurred after the filing of a petition with the United States Tax Court or after the commencement of any other court proceeding.

(4) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30–day letter). A files a request for and is granted an Appeals office conference. At the conference no agreement is reached on the tax matters at issue. The Interal Revenue Service then issues a notice of deficiency. Upon receiving the notice of deficiency, A discontinues A's administrative efforts and files a petition with the Tax Court. A's costs incurred in connection with the preparation and filing of a petition with the Tax Court are litigation costs and not reasonable administrative costs. Furthermore, A's costs incurred before the administrative proceeding date (date of the notice of deficiency as set forth in § 301.7430–3(c)(3)), are not reasonable administrative costs.

Example 2. Assume the same facts as in *Example 1* except that after A receives the notice of deficiency, A recontacts Appeals. Again, A's costs incurred before the administrative proceeding date (the date of the notice of deficiency as set forth in § 301.7430–3(c)(3)), are not reasonable administrative costs. A's costs incurred in recontacting and working with Appeals after the issuance of the notice of deficiency, and up to and including the time of filing of the

petition, are reasonable administrative costs. A's costs incurred in connection with the filing of a petition with the Tax Court are not reasonable administrative costs because those costs are litigation costs. Similarly, A's costs incurred after the filing of the petition are not reasonable administrative costs, as those are litigation costs.

§ 301.7430–5 Prevailing party.

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430, a taxpayer is a prevailing party only if the taxpayer—

(1) Establishes that the position of the Internal Revenue Service was not substantially justified;

(2) Substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(3) Satisfies the net worth and size limitations referenced in paragraph (g) of this section.

(b) *Position of the Internal Revenue Service.* The position of the Internal Revenue Service in an administrative proceeding is the position taken by the Internal Revenue Service as of the administrative proceeding date (as defined in § 301.7430–3(c)) or thereafter.

(c) *Substantially justified*—(1) *In general.* The position of the Internal Revenue Service is substantially justified if it has a reasonable basis in both fact and law. A significant factor in determining whether the position of the Internal Revenue Service is substantially justified as of a given date is whether, on or before that date, the taxpayer has presented all relevant information under the taxpayer's control and relevant legal arguments supporting the taxpayer's position to the appropriate Internal Revenue Service personnel. The appropriate Internal Revenue Service personnel are personnel responsible for reviewing the information or arguments, or personnel who would transfer the information or arguments in the normal course of procedure and administration to the personnel who are responsible.

(2) *Exception.* If the position of the Internal Revenue Service was substantially justified with respect to some issues in the proceeding and not substantially justified with respect to the remaining issues, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to those issues with respect to which the position of the Internal Revenue Service was not substantially justified. If the position of the Internal Revenue Service was substantially justified for only a portion of the period of the proceeding and not substantially justified for the remaining portion of the proceeding, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to that portion during which the position of the Internal Revenue Service was not substantially justified. Where an award of reasonable administrative costs is limited to that portion of the administrative proceeding during which the position of the Internal Revenue Service was not substantially justified, whether the position of the Internal Revenue Service was substantially justified is determined as of the date any cost is incurred.

(d) *Amount in controversy.* The amount in controversy shall include the amount in issue as of the administrative proceeding date as increased by any amounts subsequently placed in issue by any party. The amount in controversy is determined without increasing or reducing the amount in controversy for amounts of loss, deduction, or credit carried over from years not in issue.

(e) *Most significant issue or set of issues presented.* Where the taxpayer has not substantially prevailed with respect to the amount in controversy the taxpayer may nonetheless be a prevailing party if the taxpayer substantially prevails with respect to the most significant issue or set of issues presented. The issues presented include those raised as of the administrative proceeding date and those raised subsequently. Only in a multiple issue proceeding can a most significant issue or set of issues presented exist. However, not all multiple issue proceedings contain a most significant issue or set of issues presented. An issue or set of issues constitute the most significant issue or set of issues presented if, despite involving a lesser dollar amount in the proceeding than the other issue or issues, if objectively represents the most significant issue or set of issues for the taxpayer or the Internal Revenue Service. This may occur because of the effect of the issue or set of issues on other transactions or other taxable years of the taxpayer or related parties.

(f) *Net worth and size limitations*—(1) *Individuals and estates.* An individual taxpayer or an estate meets the net worth and size limitations of this paragraph if, on the administrative proceeding date, the taxpayer's net worth does not exceed two million dollars. For this purpose, individuals filing a joint return shall be treated as 1 taxpayer, except in the case of a spouse relieved of liability under section 6013(e).

(2) *Others.* A taxpayer that is an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization (other than an organization described in paragraph (f)(3) of this section) meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date—

(i) The taxpayer's net worth does not exceed seven million dollars; and

(ii) The taxpayer does not have more than 500 employees.

(3) *Special rule for charitable organizations and certain cooperatives.* An organization described in Internal Revenue Code section 501(c)(3) exempt from taxation under Internal Revenue Code section 501(a), or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a) (as in effect on October 22, 1986), meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date, the organization or cooperative association does not have more than 500 employees.

(g) *Determination of prevailing party.* If the final decision with respect to the tax, interest, or penalty is made at the administrative level, the determination of whether a taxpayer is a prevailing party shall be made by agreement of the parties, or absent such agreement, by the Internal Revenue Service. See § 301.7430–2(c)(7) regarding the right to appeal the decision by the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs, to the Tax Court.

(h) *Example.* The provisions of this section are illustrated by the following examples:

Example 1. The Internal Revenue Service, in the conduct of a correspondence examination of taxpayer A's individual income tax return, requests substantiation from A of claimed medical expenses. A does not respond to the request and the Service Center issues a notice of deficiency. After receiving the notice of deficiency, A presents sufficient information and arguments to convince a revenue agent that the notice of deficiency is incorrect and that A owes no tax. The revenue agent then closes the case showing no deficiency. Although A incurred costs after the issuance of the notice of deficiency, A is unable to recover these costs because, as of the date these costs were incurred, A had not presented relevant information under A's control and relevant legal arguments supporting A's position to the appropriate Internal Revenue Service personnel. Accordingly, the position of the Internal Revenue Service was substantially justified at the time costs were incurred.

Example 2. In the purchase of an ongoing business, taxpayer B obtains from the previous owner of the business a covenant not to compete for a period of five years. On audit of B's individual income tax return for

the year in which the business is acquired the Internal Revenue Service challenges the basis assigned to the covenant not to compete and a deduction taken as a business expense for a seminar attended by B. Both parties agree that the covenant not to compete is amortizable over a period of five years. However, the Internal Revenue Service asserts that the proper basis of the covenant is $2X while the taxpayer asserts the basis is $4X. Thus, under the Internal Revenue Service's position, B is entitled to a deduction of two-fifths $X in the year under audit and for each of the subsequent four years. B's position, however, would result in a deduction of four-fifths $X for the year under audit and each of the subsequent four years. The deduction for the seminar attended by B was reported on the return in question in the amount of $X. The Internal Revenue Service's position is that the deduction for the seminar should be disallowed entirely. In the notice of deficiency, the Internal Revenue Service determines adjustments of two-fifths $X (the difference between the Internal Revenue Service's position of two-fifths $X and the reported four-fifths $X) regarding the basis of the covenant not to compete, and $X resulting from disallowance of the seminar expense. Thus, of the two adjustments determined for the year under audit, that attributable to the disallowance of the seminar is larger than that attributable to the covenant not to compete. However, due to the impact on the next succeeding four years the covenant not to compete adjustment is objectively the most significant issue to both B and the Internal Revenue Service.

Example 3. The Collection Branch of a service center of the Internal Revenue Service determines from the information provided by various Forms 1099 and W–2 that taxpayer C has not filed an individual income tax return. The Internal Revenue Service sends notices to C requesting that C file an income tax return. C does not file a return, so the service center's Collection Branch prepares a substitute return pursuant to section 6020(b). The calculation is sent to C requesting that C either sign the return pursuant to section 6020(a) or file a tax return prepared by C. C does not respond to the Internal Revenue Service's request and the service center's Collection Branch issues a notice of deficiency based on information in its possession. C does not file a petition with the Tax Court and does not pay the asserted deficiency. The Internal Revenue Service then assesses the tax shown on the notice of deficiency and issues a notice and demand for tax pursuant to section 6303. After receiving notice and demand, C contacts the Collection Branch and convinces Collection to stay the collection process because C does not owe any taxes. The Collection Branch recommends that the Examination Division examine the tax liability and make an adjustment to income. The Examination Division then redetermines the tax and abates the assessment due to information and arguments presented by C at that time. The costs C incurred before the Collection Branch are incurred in connection with an action taken by the Internal Revenue Service to collect a tax. Therefore, these costs are incurred with respect to a collection action and not an administrative proceeding. Accordingly, they are not recoverable as reasonable administrative costs. Costs incurred before the Examination Division are reasonable administrative costs; however, C may not recover any reasonable administrative costs with respect to the proceeding before the Examination Division because, as of the date the costs were incurred, C had not previously presented all relevant information under C's control and all relevant legal arguments supporting C's position to the Collection Branch or Examination Division personnel (the appropriate Internal Revenue Service personnel under § 301.7430–5(c), and thus, the position of the Internal Revenue Service was substantially justified based upon the information it had.

§ 301.7430–6 Effective date.

Sections 301.7430–0, and 301.7430–2 through 301.7430–6, other than § 301.7430–2(c)(5), apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992 with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430–2(c)(5) is effective March 23, 1993.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–30525 Filed 12–22–92; 8:45 am]

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26 CFR Part 301

[FI–55–91]

RIN 1545–AP98

Taxable Mortgage Pools

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to taxable mortgage pools. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986. The proposed regulations provide guidance to entities for determining whether they are subject to the taxable mortgage pool rules

DATES: Written comments and requests to speak (with outlines of oral comments) must be received by March 22, 1993. A public hearing on these proposed regulations will be held on April 12, 1993, beginning at 10 a.m. See the notice of public hearing on these proposed regulations published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests, and outlines of oral comments to be presented at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI–55–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Susan E. Overlander or Carol E. Schultze, (telephone 202–622–3960) (not a toll-free number), of the Office of Assistant Chief Counsel, Financial Institutions and Products, 1111 Constitution Avenue, NW., Washington, DC 20224. Attention: CC:FI&P (FI–55–91).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed income tax regulations (26 CFR part 301) under section 7701(i) of the Internal Revenue Code of 1986 (Code). Section 673 of the Tax Reform Act of 1986 (the 1986 Act), Public Law No. 99–514, 100 Stat. 2319, added to the Code new section 7701(i) to provide rules relating to taxable mortgage pools.

EXPLANATION OF PROVISIONS

I. Introduction

Section 7701(i) defines the term "taxable mortgage pool" and requires an arrangement classified as a taxable mortgage pool to be treated as a separate corporation that is not an includible corporation for purposes of section 1501. The statue is directed at the type of real estate mortgage pool that is used to collateralize and service multiple class securities. For tax purposes, the income accruing on the mortgages in this type of pool may initially exceed the deductions accruing on the securities, resulting in what is often referred to as "phantom income." Section 7701(i) was enacted to prevent this phantom income from being diverted to persons that can offset the income or otherwise avoid the tax attributable to the income.

The real estate mortgage investment conduit (REMIC) provisions address the problem of phantom income through the excess inclusion rules of section 860E(c). Section 7701(i), therefore, does not cover arrangements that elect to be treated as REMICs under section 860D(a). Nonetheless, the proposed regulations apply to any entity or portion of an entity that meets the definition of a taxable mortgage pool regardless of whether the entity or portion is eligible to elect REMIC treatment.

The proposed regulations provide rules that: (1) Define the elements of a taxable mortgage pool; (2) define the term "portion of an entity;" (3) create special rules for certain entities; and (4) determine whether a transfer made on

or after the effective date of the regulations will be treated as a "substantial transfer" for purposes of section 675(c) of the 1986 Act.

II. Definition of a Taxable Mortgage Pool

Under section 7701(i), an entity or portion of an entity (other than a REMIC) is a taxable mortgage pool if: (1) Substantially all of the entity's assets consist of debt obligations (or interests therein) and more than 50 percent of those obligations (or interests) consist of real estate mortgages; (2) the entity is the obligor of debt obligations with two or more maturities; and (3) payments on the debt obligations on which the entity is obligor bear a relationship to payments on the debt obligations that the entity holds as assets.

A. Asset Composition Tests

1. In General

To be classified as a taxable mortgage pool, substantially all of an entity's assets must consist of debt obligations and more than 50 percent of its debt obligations must consist of real estate mortgages (or interests therein). Under the proposed regulations, these tests are applied using the tax bases of the entity's assets.

2. Substantially All

Whether substantially all of an entity's assets consist of debt obligations generally depends on all the facts and circumstances. The proposed regulations, however, provide a safe harbor. If less than 80 percent of the assets of an entity or portion consist of debt obligations (or interests therein), the entity or portion is not classified as a taxable mortgage pool.

3. Real Estate Mortgages

The term "real estate mortgages (or interests therein)" includes: (1) Any obligation (including any participation or certificate of beneficial ownership in an obligation) that is principally secured by an interest in real property; (2) any regular or residual interest in a REMIC; and (3) any stripped bond or stripped coupon (as defined in section 1286(e)(2) and (3)) if the bond (as defined in section 1286 (e)(1)) from which such stripped bond or stripped coupon arose would have qualified as a real estate mortgage or interest therein.

The proposed regulations provide that an obligation is "principally secured by an interest in real property" only if either (1) the fair market value of the interest in real property securing the obligation was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated, or (2) substantially all of the proceeds of the obligation were used to acquire, improve or protect an interest in real property that, at the origination date, was the only security for the obligation. For purposes of the first test, the fair market value of the real property interest is to be determined after taking into account other liens encumbering the property.

Under the proposed regulations, obligations secured by other obligations are principally secured by interests in real property if the underlying obligations are principally secured by interests in real property. Thus, a collateralized mortgage obligation may qualify as a real estate mortgage (or interest therein). However, this rule is applicable only to obligations issued after December 31, 1991.

4. Credit Enhancement Arrangements Not Treated as Assets

For purposes of the asset composition tests, credit enhancement arrangements are generally treated as incidents of the pooled debt obligations and not as separate assets of the entity. Thus, the proposed regulations treat payments received under credit enhancement arrangements as payments on the debt obligations.

5. Certain Assets Not Treated as Debt Obligations

For purposes of the asset composition tests, real estate mortgages that are seriously impaired are not treated as debt obligations. Whether real estate mortgages are seriously impaired generally depends on all the facts and circumstances. The proposed regulations, however, provide two safe harbors. Under those provisions, whether mortgages are seriously impaired depends only on the number of days the payments on the mortgages are delinquent. The safe harbors are not available if an entity is receiving or anticipates receiving certain payments on the mortgages such as payments of principal and interest that are substantial and relatively certain as to amount.

B. Two or More Maturities

To be classified as a taxable mortgage pool, an entity must be an obligor on debt obligations having two or more maturities. Under the proposed regulations, debt obligations have two or more maturities if they have different stated maturities or if the holders of the obligations possess different rights concerning the acceleration of or delay in the maturities of the obligations. Allocating credit risk unequally to debt obligations does not, of itself, cause the obligations to have two or more maturities.

C. Relationship

1. In General

For an entity to be classified as a taxable mortgage pool, payments on the debt obligations on which the entity is the obligor (liability obligations) must bear a relationship to payments on the debt obligations that the entity holds as assets (asset obligations). The proposed regulations provide that such a relationship exists if, under the terms of the liability obligations (or underlying arrangement), the timing and amount of payments on the liability obligations are in large part determined by the timing and amount of payments or projected payments on the asset obligations. Thus, a one-to-one relationship of amounts received to amounts paid is not necessary. An indirect relationship, such as one based on a pool of assets with a payment experience similar to that of the asset obligations, satisfies the relationship test.

Under the proposed regulations the term "payments on the asset obligations" generally includes: Payments of principal and interest; prepayments of principal; and payments under credit enhancement arrangements. Other debt-related receipts are included, but under limited circumstances.

2. Safe Harbor for Liquidating Entities

Entities formed to liquidate assets produce greater cash flows from sales of assets than from regular payments of principal and interest on real estate mortgages. Thus, the proposed regulations provide that payments on liability obligations do not bear a relationship to payments on asset obligations if an entity is liquidating the asset obligations. However, an entity must meet all four requirements set forth in the proposed regulations to be considered a liquidating entity.

D. Anti-Avoidance Rule

An anti-avoidance rule in the proposed regulations authorizes the Commissioner to disregard or make other adjustments to any transaction if the transaction is entered into with a view of achieving the same economic effect as that of an arrangement subject to section 7701(i) while avoiding the application of that section. The anti-avoidance authority includes treating equity interests issued by a non-REMIC as debt if the entity issues equity interests that correspond to maturity classes of debt. However, notwithstanding this authority,

ownership interests in entities that are classified as trusts under § 301.7701–4(c) are not treated as debt.

III. Portion of an Entity

Section 7701(i)(2)(B) treats as a taxable mortgage pool any portion of an entity that satisfies the definition of a taxable mortgage pool. This rule was intended to apply the taxable mortgage pool rules to any arrangement under which mortgages are segregated from a debtor's business activities (if any) for the benefit of creditors whose loans are of varying maturities. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–240. Consistent with this intent, the proposed regulations define a portion of an entity as including all the assets that support one or more of the same issues of debt obligations. For this purpose, an asset supports a debt obligation if, under terms of the debt obligation (or underlying arrangement), the timing and amount of payments on the debt obligation are in large part determined, either directly or indirectly, by the timing and amount of payments or projected payments on the asset or a group of assets that includes the asset. As used in this context, the term "payments" includes all proceeds and receipts from an asset. Once a portion is identified, the rules of § 301.7701(i)–1 apply to determine whether the portion is classified as a taxable mortgage pool. Each portion of an entity that is classified as a taxable mortgage pool is treated as a separate corporation.

IV. Proposed Effective Dates and Transitional Rules

The proposed regulations will be effective thirty days after they are published as final regulations. Section 675(c)(2) of the 1986 Act provides that section 7701(i) applies to an entity in existence on December 31, 1991, if a substantial transfer is made to the entity after December 31, 1991. After December 31, 1991, and before the effective date, the meaning of the term "substantial transfer" is based on the statutory language and legislative history of section 675(c)(2). Beginning on the effective date, the term "substantial transfer" means a transfer that is significant in amount and connected to the entity's issuance of related debt obligations with different maturities. The proposed regulations define a related debt obligation as one whose payments "bear a relationship" (as defined in the proposed regulations) to debt obligations that the entity holds as assets.

V. Special Rules for Certain Entities

The proposed regulations provide rules for exempting certain entities from the application of the regulations. Specifically, an entity is not classified as a taxable mortgage pool if: (1) The entity issuing the debt obligations is a State, the District of Columbia or a political subdivision within the meaning of § 1.103–1(b), or is empowered to issue obligations on behalf of one of the foregoing; (2) the entity issues the debt obligations in the performance of a governmental purpose; and (3) the entity holds the remaining interest in any asset that supports the outstanding debt obligations until those obligations are satisfied.

The proposed regulations also provide that a taxable mortgage pool may not elect S corporation status nor maintain S corporation status. This section prevents taxpayers from circumventing the taxable mortgage pool rules by using a pass-through corporation.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. A hearing with respect to these proposed regulations will be held on April 12, 1993, beginning at 10 a.m. Written comments and requests to speak (with outlines of oral comments) must be received by March 22, 1993. See the notice of hearing published elsewhere in this issue of the Federal Register.

Comments are specifically requested as to whether a de minimis exception to the rule regarding the treatment of equity interests in pass-through arrangements is needed.

All written comments will be available for public inspection and copying in their entirety.

Drafting Information

The principal authors of these proposed regulations are Susan E. Overlander, Carol E. Schultze, and Marshall D. Feiring, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child Support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CRR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 301.7701(i)–1(g)(1) also issued under 26 U.S.C. 7701(i)(2)(D). Section 301.7701(i)–4(b) also issued under 26 U.S.C. 7701(i)(3).

Par. 2. Sections 301.7701(i)–0 through 301.7701(i)–4 are added to read as follows.

§ 301.7701(i)–0 Outline of taxable mortgage pool provisions.

This section lists the major paragraphs contained in §§ 301.7701(i)–1 through 301.7701(i)–4.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) Purpose.
(b) In general.
(c) Asset composition tests.
(1) Determination of amount of assets.
(2) Substantially all.
(i) In general.
(ii) Safe harbor.
(3) Equity interests in pass-through arrangements.
(4) Treatment of certain credit enhancement contracts.
(i) In general.
(ii) Credit enhancement contract defined.
(5) Certain assets not treated as debt obligations.
(i) In general.
(ii) Safe harbors.
(d) Real estate mortgages or interests therein defined.
(1) In general.

(2) Interests in real property and real property defined.
(i) In general.
(ii) Manufactured housing.
(3) Principally secured by an interest in real property.
(i) Tests for determining whether an obligation is principally secured.
(A) The 80 percent test.
(B) Alternative test.
(ii) Obligations secured by other obligations.
(e) Two or more maturities.
(1) In general.
(2) Obligations that are allocated credit risk unequally.
(3) Examples.
(f) Relationship test.
(1) In general.
(2) Payments on asset obligations defined.
(3) Safe harbor for entities formed to liquidate assets.
(g) Anti-avoidance rules.
(1) In general.
(2) Certain investment trusts.
(3) Examples.

§ 301.7701(i)–2 Special rules for portions of entities.

(a) Portion defined.
(b) Certain assets and rights to assets disregarded.
(1) Credit enhancement assets.
(2) Assets unlikely to service obligations.
(3) Recourse.
(c) Portion as obligor.
(d) Example.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) Effective dates.
(b) Entities in existence on December 31, 1991.
(1) In general.
(2) Special rule for certain transfers.
(3) Related debt obligation.
(4) Example.
(c) Duration of taxable mortgage pool classification.
(1) Commencement.
(2) Termination.
(d) Section 708(b)(1)(B) terminations.

§ 301.7701(i)–4 Special rules for certain entities.

(a) States and Municipalities.
(1) In general.
(2) Governmental purpose.
(3) Determinations by the Commissioner.
(b) REITs. [Reserved]
(c) Subchapter S corporations.
(1) In general.
(2) Portion of an S corporation treated as a separate corporation.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) *Purpose.* This section provides rules for applying section 7701(i), which defines taxable mortgage pools. The purpose of section 7701(i) is to prevent income generated by a pool of real estate mortgages from escaping Federal income taxation when the pool is used to issue multiple class mortgage-backed securities. The regulations in this section and in §§ 301.7701(i)–2 through 301.7701(i)–4 are to be applied in accordance with this purpose. The taxable mortgage pool provisions apply to entities that qualify for REMIC status but do not elect to be taxed as REMICs as well as to certain entities or portions of entities that do not qualify for REMIC status.

(b) *In general*—(1) A taxable mortgage pool is any entity or portion of an entity (as defined in § 301.7701(i)–2) that satisfies the requirements of section 7701(i)(2)(A) and this section as of any testing day, as defined in § 301.7701(i)–3(c)(1). An entity or portion of an entity satisfies the requirements of section 7701(i)(2)(A) and this section if substantially all of its assets are debt obligations, more than 50 percent of those debt obligations are real estate mortgages, the entity is the obligor under debt obligations with two or more maturities, and payments on the debt obligations under which the entity is obligor bear a relationship to payments on the debt obligations the entity holds as assets.

(2) Paragraph (c) of this section provides the tests for determining whether substantially all of an entity's assets are debt obligations and for determining whether more than 50 percent of its debt obligations are real estate mortgages. Paragraph (d) of this section defines real estate mortgages for purposes of the 50 percent test. Paragraph (e) of this section defines "two or more maturities" and paragraph (f) of this section provides rules for determining when debt obligations "bear a relationship" to the assets held by an entity. Paragraph (g) of this section provides anti-avoidance rules. Section 301.7701(i)–2 provides rules for applying section 7701(i) to portions of entities and § 301.7701(i)–3 provides effective dates. Section 301.7701(i)–4 provides special rules for certain entities. For purposes of the regulations under section 7701(i), any reference to "entity" includes a reference to "portion of an entity" within the meaning of section 7701(i)(2)(B), unless the context clearly indicates otherwise.

(c) *Asset composition tests*—(1) *Determination of amount of assets.* An entity must use the Federal income tax basis of an asset for purposes of determining whether substantially all of its assets consist of debt obligations (or interests therein) and whether more than 50 percent of those debt obligations (or interests) consist of real estate mortgages (or interests therein).

(2) *Substantially all*—(i) *In general.* Whether substantially all of the assets of an entity consist of debt obligations (or interests therein) is based on all the facts and circumstances.

(ii) *Safe harbor.* Notwithstanding paragraph (c)(2)(i) of this section, if less than 80 percent of the assets of an entity consist of debt obligations (or interests therein), then less than substantially all of the assets of the entity consist of debt obligations (or interests therein).

(3) *Equity interests in pass-through arrangements.* The equity interest of an entity in a partnership, S corporation, trust, REIT, or other pass-through arrangement is deemed to have the same composition as the entity's share of the assets of the pass-through arrangement. For example, if an entity's stock interest in a REIT has an adjusted basis of $20,000, and the assets of the REIT consist of equal portions of real estate mortgages and other real estate assets, then the entity is treated as holding $10,000 of real estate mortgages and $10,000 of other real estate assets.

(4) *Treatment of certain credit enhancement contracts*—(i) *In general.* A credit enhancement contract (as defined in paragraph (c)(4)(ii) of this section) is not treated as a separate asset of an entity for purposes of the asset composition tests set forth in section 7701(i)(2)(A)(i), but instead is treated as part of the asset to which it relates. Furthermore, any collateral supporting a credit enhancement contract is not treated as an asset of an entity solely because it supports the guarantee represented by that contract.

(ii) *Credit enhancement contract defined.* For purposes of this section, a credit enhancement contract is any arrangement whereby a person agrees to guarantee full or partial payment of the principal or interest payable on a debt obligation (or interest therein) or on a pool of such obligations (or interests), or full or partial payment on one or more classes of debt obligations under which an entity is the obligor, in the event of defaults or delinquencies on debt obligations, unanticipated losses or expenses incurred by the entity, or lower than expected returns on investments. Types of credit enhancement contracts may include, but are not limited to, pool insurance contracts, certificate guarantee insurance contracts, letters of credit, guarantees, or agreements whereby an entity, a mortgage servicer, or other third party agrees to make advances (regardless of whether, under the terms of the agreement, the payor is obligated, or merely permitted, to make those advances). An agreement by a debt servicer to advance to an entity out of its own funds an amount to make up for delinquent payments on debt obligations is a credit enhancement

contract. An agreement by a debt servicer to pay taxes and hazard insurance premiums on property securing a debt obligation, or other expenses incurred to protect an entity's security interests in the collateral in the event that the debtor fails to pay such taxes, insurance premium, or other expenses, is a credit enhancement contract.

(5) *Certain assets not treated as debt obligations*—(i) *In general.* For purposes of section 7701(i)(2)(A), real estate mortgages that are seriously impaired are not treated as debt obligations. Whether a mortgage is seriously impaired is based on all the facts and circumstances.

(ii) *Safe harbors.* Single family residential real estate mortgages are seriously impaired if payments on the mortgages are more than 89 days delinquent. Multi-family residential and commercial real estate mortgages are seriously impaired if payments on the mortgages are more than 59 days delinquent. However, this paragraph (c)(5)(ii) does not apply if an entity is receiving, or anticipates receiving—

(A) Any payments on the obligation as defined in paragraph (f)(2)(i) of this section if those payments are substantial and relatively certain as to amount; or

(B) Any payments on the obligation as defined in paragraph (f)(2) (ii) or (iii) of this section.

(d) *Real estate mortgages or interests therein defined*—(1) *In general.* For purposes of section 7701(i)(2)(A)(i), the term "real estate mortgages (or interests therein)" includes all—

(i) Obligations (including participations or certificates of beneficial ownership therein) that are principally secured by an interest in real property (as defined in paragraph (d)(3) of this section);

(ii) Regular and residual interests in a REMIC; and

(iii) Stripped bonds and stripped coupons (as defined in section 1286(e)(2) and (3)) if the bonds (as defined in section 1286(e)(1)) from which such stripped bonds or stripped coupons arose would have qualified as real estate mortgages or interests therein.

(2) *Interests in real property and real property defined*—(i) *In general.* The definition of "interests in real property" set forth in § 1.856–3(c) and the definition of "real property" set forth in § 1.856–3(d) apply to define those terms for purposes of paragraph (d) of this section.

(ii) *Manufactured housing.* For purposes of this section, the definition of "real property" includes manufactured housing, provided the properties qualify as single family residences under section 25(e)(10) and without regard to the treatment of the properties under state law.

(3) *Principally secured by an interest in real property*—(i) *Tests for determining whether an obligation is principally secured.* For purposes of paragraph (d)(1) of this section, an obligation is principally secured by an interest in real property only if it satisfies either the test set in paragraph (d)(3)(i)(A) of this section or the test set out in paragraph (d)(3)(i)(B) of this section.

(A) *The 80 percent test.* An obligation is principally secured by an interest in real property if the fair market value of the interest in real property (as defined in paragraph (d)(2) of this section) securing the obligation was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated. For purposes of this test, the fair market value of the real property interest is first reduced by the amount of any lien on the real property interest that is senior to the obligation being tested, and is reduced further by a proportionate amount of any lien that is in parity with the obligation being tested.

(B) *Alternative test.* An obligation is principally secured by an interest in real property if substantially all of the proceeds of the obligation were used to acquire, improve, or protect an interest in real property that, at the origination date, is the only security for the obligation. For purposes of this test, loan guarantees made by Federal, state, local governments or agencies, or other third party credit enhancement, are not viewed as additional security for a loan. An obligation is not considered to be secured by property other than real property solely because the obligor is personally liable on the obligation.

(ii) *Obligations secured by other obligations.* Obligations secured by other obligations are treated as principally secured by interests in real property if the underlying obligations are principally secured by interests in real property. Thus, for example, a collateralized mortgage obligation may be an obligation principally secured by an interest in real property. This section is applicable only to obligations issued after December 31, 1991.

(e) *Two or more maturities*—(1) *In general.* For purposes of section 7701(i)(2)(A)(ii), debt obligations have two or more maturities if they have different stated maturities or if the holders of the obligations possess different rights concerning the acceleration of or delay in the maturities of the obligations.

(2) *Obligations that are allocated credit risk unequally.* Debt obligations that are allocated credit risk unequally do not have, by that reason alone, two or more maturities. Credit risk is the risk that payments of principal or interest will be reduced or delayed because of a default on an asset that supports the debt obligations.

(3) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1. (i) Corporation M transfers a pool of real estate mortgages to a trustee in exchange for Class A bonds and a certificate representing the residual beneficial ownership of the pool. All Class A bonds have a stated maturity of March 1, 2002, but if cash flows from the real estate mortgages and investments are sufficient, the trustee may select one or more bonds at random and redeem them earlier.

(ii) The Class A bonds do not have different maturities. Each outstanding Class A bond has an equal chance of being redeemed because the selection process is random. The holders of the Class A bonds, therefore, have identical rights concerning the maturities of their obligations.

Example 2. (i) Corporation N transfers a pool of real estate mortgages to a trustee in exchange for Class C bonds, Class D bonds, and a certificate representing the residual beneficial ownership of the pool. The Class D bonds are subordinate to the Class C bonds so that cash flow shortfalls due to defaults or delinquencies on the real estate mortgages are borne first by the Class D bond holders. The terms of the bonds are otherwise identical in all relevant aspects except that the Class D bonds carry a higher coupon rate because of the subordination feature.

(ii) The Class C bonds and the Class D bonds share credit risk unequally because of the subordination feature. However, neither this difference, nor the difference in interest rates, causes the bonds to have different maturities. The result is the same if, in addition to the other terms described in paragraph (i) of this *Example 1*, the Class C bonds are accelerated as a result of the issuer becoming unable to make payments on the Class C bonds as they become due.

(f) *Relationship test*—(1) *In general.* For purposes of section 7701(i)(2)(A)(iii), payments on debt obligations under which an entity is the obligor (liability obligations) "bear a relationship" to payments (as defined in paragraph (f)(2) of this section) on debt obligations an entity holds as assets (asset obligations) if under the terms of the liability obligations (or underlying arrangement) the timing and amount of payments on the liability obligations are in large part determined by the timing and amount of payments or projected payments on the asset obligations. For purposes of the relationship test, any payment arrangement that achieves a substantially similar result is treated as satisfying the test. For example, any

arrangement where the timing and amount of payments on liability obligations are determined by reference to a group of assets (or an index or other type of model) that has an expected payment experience similar to that of the asset obligations is treated as satisfying the relationship test.

(2) *Payments on asset obligations defined.* For purposes of section 7701(i)(2)(A)(iii) and this section, payments on asset obligations include—

(i) Payments of principal and interest on asset obligations, including prepayments of principal and payments under credit enhancement contracts (as defined in § 301.7701(i)–1(c)(4)(ii)), but excluding settlements at a substantial discount;

(ii) Payments from settlements at a substantial discount and foreclosures on asset obligations if the settlement or foreclosure was arranged, whether in writing or otherwise, prior to the issuance of the liability obligations; and

(iii) Proceeds from sales of asset obligations, if the sales were arranged, whether in writing or otherwise, prior to the issuance of the liability obligations.

(3) *Safe harbor for entities formed to liquidate assets.* Payments on liability obligations of an entity do not bear a relationship to payments on asset obligations of the entity if—

(i) the entity's organizational documents manifest clearly that the entity is formed for the primary purpose of liquidating its assets and distributing proceeds of liquidation;

(ii) The entity's activities are all reasonably necessary to and consistent with the accomplishment of liquidating assets;

(iii) The entity plans to satisfy at least 50 percent of the total issue price of each of its liability obligations having a different maturity with proceeds from liquidation and not with scheduled payments on its asset obligations; and

(iv) The terms of the entity's liability obligations or other arrangement provide that either the entity liquidates within three years of the time it first acquires assets to be liquidated or, if the entity does not liquidate within that time, the payments the entity receives on its asset obligations after that time are paid through to the holders of its liability obligations in proportion to their adjusted issue prices.

(g) *Anti-avoidance rules*—(1) *In general.* For purposes of determining whether an entity meets the definition of a taxable mortgage pool, the Commissioner may disregard or make other adjustments to a transaction (or series of transactions) if the transaction (or series) is entered into with a view to achieving the same economic effect as that of an arrangement subject to section 7701(i) while avoiding the application of that section. The Commissioner's authority includes treating equity interests issued by a non-REMIC as debt if the entity issues equity interests that correspond to maturity classes of debt.

(2) *Certain investment trusts.* Notwithstanding paragraph (g)(1) of this section, an ownership interest in an entity that is classified as a trust under § 301.7701–4(c) will not be treated as a debt obligation of the trust.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

Example 1. (i) Partnership P, in addition to its other investments, owns $10,000,000 of mortgage pass-through certificates guaranteed by FNMA (FNMA Certificates). On May 15, 1997, Partnership P transfers the FNMA Certificates to Trust 1 in exchange for 100 Class A bonds and Certificate 1. The Class A bonds, under which Trust 1 is the obligor, have a stated principal amount of $5,000,000 and bear a relationship to the FNMA Certificates (within the meaning of § 301.7701(i)–1(f)). Certificate 1 represents the residual beneficial ownership of the FNMA Certificates.

(ii) On July 5, 1997, with a view to avoiding the application of section 7701(i), Partnership P transfers Certificate 1 to Trust 2 in exchange for 100 Class B bonds and Certificate 2. The Class B bonds, under which Trust 2 is the obligor, have a stated principal amount of $5,000,000, bear a relationship to the FNMA Certificates (within the meaning of § 301.7701(i)–1(f)), and have a different maturity than the Class A bonds (within the meaning of § 301.7701(i)–1(e)). Certificate 2 represents the residual beneficial ownership of Certificate 1.

(iii) For purposes of determining whether Trust 1 is classified as a taxable mortgage pool, the Commissioner may disregard the separate existence of Trust 2 and treat Trust 1 and Trust 2 as a single trust.

Example 2. (i) Corporation Q files a consolidated return with its two wholly-owned subsidiaries, Corporation R and Corporation S. Corporation R is in the business of building and selling single family homes. Corporation S is in the business of financing sales of those homes.

(ii) On August 10, 1998, Corporation S transfers a pool of its real estate mortgages to Trust 3, taking back Certificate 3 which represents beneficial ownership of the pool. On September 25, 1998, with a view to avoiding the application of section 7701(i), Corporation R issues bonds that have different maturities (within the meaning of § 301.7701(i)–1(e)) and that bear a relationship (within the meaning of § 301.7701(i)–1(f)) to the real estate mortgages in Trust 3. The holders of the bonds have an interest in a credit enhancement contract that is written by Corporation S and collateralized with Certificate 3.

(iii) For purposes of determining whether Trust 3 is classified as a taxable mortgage pool, the Commissioner may treat Trust 3 as the obligor of the bonds issued by Corporation R.

Example 3. (i) Corporation X, in addition to its other assets, owns $110,000,000 in Treasury securities. From time to time, Corporation X acquires pools of real estate mortgages, which it immediately uses to issue multiple-class debt obligations.

(ii) On October 1, 1996, Corporation X transfers $11,000,000 in Treasury securities to Trust 4 in exchange for Class C bonds, Class D bonds, Class E bonds, and Certificate 4. Trust 4 is the obligor of the bonds. The different classes of bonds have the same stated maturity date, but if cash flows from the Trust 4 assets exceed the amounts needed to make interest payments, the trustee uses the excess to retire the classes of bonds in alphabetical order. Certificate 4 represents the residual beneficial ownership of the Treasury securities.

(iii) With a view to avoiding the application of section 7701(i), Corporation X reserves the right to replace any Trust 4 asset with real estate mortgages or guaranteed mortgage pass-through certificates. In the event the right is exercised, cash flows on the real estate mortgages and guaranteed pass-through certificates will be used in the same manner as cash flows on the Treasury securities. Corporation X exercises this right of replacement on February 1, 1997.

(iv) For purposes of determining whether Trust 4 is classified as a taxable mortgage pool, the Commissioner may treat February 1, 1997, as a testing day (within the meaning of § 301.7701(i)–3(c)(1)). The result is the same if Corporation X has an obligation, rather than a right, to replace the Trust 4 assets with real estate mortgages and guaranteed pass-through certificates.

§ 301.7701(i)–2 Special rules for portions of entities.

(a) *Portion defined.* Except as provided in paragraph (b) of this section and § 301.7701(i)–1, a portion of an entity includes all assets that support one or more of the same issues of debt obligations. For this purpose, an asset supports a debt obligation if, under the terms of the debt obligation (or underlying arrangement), the timing and amount of payments on the debt obligation are in large part determined, either directly or indirectly, by the timing and amount of payments or projected payments on the asset or a group of assets that includes the asset. Indirect payment arrangements include, for example, arrangements where the timing and amount of payments on the debt obligations are determined by reference to an index that has an expected payment experience similar to that of the assets. For purposes of this paragraph, the term "payments" includes all proceeds and receipts from an asset.

(b) *Certain assets and rights to assets disregarded—(1) Credit enhancement assets.* A portion does not include assets that primarily serve the same function as credit enhancement contracts.

(2) *Assets unlikely to service obligations.* A portion does not include assets that are unlikely to produce any significant cash flows for the holders of the debt obligations. This paragraph applies even if the holders of the debt obligations are legally entitled to cash flows from the assets. Thus, for example, even if the sale of a building causes a series of debt obligations to be redeemed, the building is not included in a portion if it is not likely to be sold.

(3) *Recourse.* An asset is not included in a portion solely because the holders of the debt obligations have recourse to the holder of that asset.

(c) *Portion as obligor.* For purposes of section 7701(i)(2)(A)(ii), a portion of an entity is treated as the obligor of all debt obligations supported by the assets in that portion.

(d) *Example.* The following example illustrates the principles of this section.

Example. (i) Corporation Z owns $1,000,000,000 in assets including an office complex and $90,000,000 of real estate mortgages.

(ii) On November 30, 1998, Corporation Z issues eight classes of bonds, Class A through Class H. Each class is secured by a separate letter of credit and by a lien on the office complex. One group of the real estate mortgages supports Class A through Class D, another group supports Class E through Class G, and a third group supports Class H. It is anticipated that the cash flows from each group of mortgages will service its related bonds.

(iii) Each of the following constitutes a separate portion of Corporation Z: the group of mortgages supporting Class A through Class D; the group of mortgages supporting Class E through Class G; and the group of mortgages supporting Class H. No other asset is included in any of the three portions notwithstanding the lien of the bonds on the office complex and the fact that Corporation Z is the issuer of the bonds. The letters of credit are treated as incidents of the mortgages to which they relate.

(iv) For purposes of section 7701(i)(2)(A)(ii), each portion described above is treated as the obligor of the bonds of that portion, notwithstanding the fact that Corporation Z is the legal obligor with respect to the bonds.

§ 301.7701(l)–3 Effective dates and duration of taxable mortgage pool classification.

(a) *Effective dates.* Except as otherwise provided, the regulations under section 7701(i) are effective and applicable [insert date that is thirty days after this regulation is published as a Final Regulation].

(b) *Entities in existence on December 31, 1991*—(1) *In general.* For transitional rules concerning the application of section 7701(i) to entities in existence on December 31, 1991, see section 675(c) of the Tax Reform Act of 1986.

(2) *Special rule for certain transfers.* A transfer made to an entity on or after [insert date that is thirty days after this regulation is published as a Final Regulation] is a substantial transfer for purposes of section 675(c)(2) of the Tax Reform Act of 1986 only if—

(i) The transfer is significant in amount; and

(ii) The transfer is connected to the entity's issuance of related debt obligations (as defined in paragraph (b)(3) of this section) that have different maturities (within the meaning of § 301.7701–1(e)).

(3) *Related debt obligation.* A related debt obligation is one whose payments bear a relationship (within the meaning of § 301.7701–1(f)) to payments on debt obligations that the entity holds as assets.

(4) *Example.* The following example illustrates the principles of this paragraph (b).

Example. On December 31, 1991, Partnership Q holds a pool of real estate mortgages that it acquired through retail sales of single family homes. Partnership Q raises $10,000,000 on October 25, 1996, by using this pool to issue related debt obligations with multiple maturities. The transfer of the $10,000,000 to Partnership Q is a substantial transfer within the meaning of § 301.7701(i)–3(b)(2).

(c) *Duration of taxable mortgage pool classification*—(1) *Commencement.* An entity is classified as a taxable mortgage pool on the first testing day that it meets the definition of a taxable mortgage pool. A "testing day" is any day on or after [insert date that is thirty days after this regulation is published as a Final Regulation], on which an entity issues a related debt obligation (as defined in paragraph (b)(3) of this section) that is significant in amount.

(2) *Termination.* Once an entity is classified as a taxable mortgage pool, that classification continues through the day the entity retires its last related debt obligation.

(d) *Section 708(b)(1)(B) terminations.* An entity is not treated as issuing a related debt obligation solely because the entity is terminated pursuant to section 708(b)(1)(B).

§ 301.7701(l)–4 Special rules for certain entities.

(a) *States and Municipalities*—(1) *In general.* Regardless of whether an entity satisfies any of the requirements of section 7701(i)(2)(A), an entity is not classified as a taxable mortgage pool if—

(i) The entity is a State, the District of Columbia, or a political subdivision within the meaning of § 1.103–1(b), or is empowered to issue obligations on behalf of one of the foregoing;

(ii) The entity issues the debt obligations in the performance of a governmental purpose; and

(iii) Until the debt obligations issued by the entity are satisfied, the entity holds the remaining interest in any asset that supports those debt obligations.

(2) *Governmental purpose.* The term "governmental purpose" means an essential governmental function within the meaning of section 115. A governmental purpose does not include the mere packaging of debt obligations for re-sale on the secondary market even if any profits from the sale are used in the performance of an essential governmental function.

(3) *Determinations by the Commissioner.* If an entity is not described in paragraph (a)(1) of this section, but has a similar purpose, then the Commissioner may determine that the entity is not classified as a taxable mortgage pool.

(b) *REITs.* [Reserved]

(c) *Subchapter S corporations*—(1) *In general.* An entity that is classified as a taxable mortgage pool may not elect to be an S corporation under section 1362(a) or maintain S corporation status.

(2) *Portion of an S corporation treated as a separate corporation.* An S corporation is not treated as a member of an affiliated group under section 1361(b)(2)(A) solely because a portion of the S corporation is treated as a separate corporation under section 7701(i).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–31060 Filed 12–22–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[FI–55–91]

RIN 1545–AP98

Taxable Mortgage Pools; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to taxable mortgage pools.

DATES: The public hearing will be held on Monday, April 12, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, March 22, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue,

NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [FI–55–91], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7701(i) of the Internal Revenue Code of 1986.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, March 22, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–31061 Filed 12–22–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI24–1–5587; FRL–4547–9]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove rule packages AM–2–88 and AM–22–88 as revisions to Wisconsin's State Implementation Plan (SIP) for Particulate Matter (PM). USEPA's action is based upon a revision request submitted by the State to satisfy the requirements of the Clean Air Act. The SIP revisions were submitted March 13, 1989, and May 10, 1990.

DATES: Comments on this proposed revision and on the proposed USEPA action must be received by January 22, 1993.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Daniel Meyer at (312) 886–9401, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to:

Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Daniel Meyer, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On July 1, 1987, USEPA adopted regulations revising the national ambient air quality standard for PM. In its revision, USEPA replaced total suspended particulates (TSP) as an indicator for the PM standard with a new indicator that only includes those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. To implement the revised ambient standards, USEPA requires that states revise their SIPs in accordance with the revised Federal regulations.

On March 13, 1989, Wisconsin Department of Natural Resources (WDNR) submitted rule package AM–2–88. AM–2–88 pertains to changes in definitions for the establishment of an ambient air quality standard for PM. The rule package also includes a modification to the criteria which are used to exempt sources from a Prevention of Significant Deterioration review. The rule package is being submitted as a revision to the SIP. Similarly on May 10, 1990, WDNR submitted rule package AM–22–88. AM–22–88 pertains to particulate matter standards, including the addition of ambient air quality standards for PM, and the deletion of TSP as an indicator of particulate matter. These rules are also being submitted as a revision to the SIP. USEPA has prepared two technical support documents (TSDs) dated November 21, 1990, and August 11, 1992, to support this proposed rulemaking action. These documents provide a detailed evaluation of the proposed Wisconsin PM SIP revision. Copies of these TSDs are available from the contact person identified above.

II. Analysis of State Submittal

The two packages or revisions are being considered for disapproval as interrelated revisions to the SIP. AM–2–88 modifies Chapter NR, sections 400.02, 404.02, 405.02, 406.04, and 484.06 of the Wisconsin Administrative Code (WAC); AM–22–88 modifies Chapter NR, sections 404.04 and 484.03 of the WAC. Essentially, AM–2–88 defines PM, while AM–22–88 establishes standards for PM. Many of the definitions presented in AM–2–88 incorporate determinations to be made in the future by the exercise of WDNR discretion, without allowing for USEPA review and approval of any resulting determination. Specifically, AM–2–88 allows for the PM attainment status to be determined not only by monitoring methodology approved by USEPA, but also by the use of monitoring methodology established by WDNR, but not approved by USEPA. In order for a SIP revision addressing PM to be approvable, any monitoring methodology allowed for the purpose of determining PM attainment status must be approved by USEPA. Without USEPA approval of this monitoring methodology, USEPA is unable to assure this SIP revision will provide for the State of Wisconsin to meet Clean Air Act requirements such as attainment and maintenance of the NAAQS for PM. Therefore, USEPA is unable to approve Wisconsin's revisions to the SIP.

III. Proposed Rulemaking Action

Based upon USEPA's evaluation of Wisconsin's March 13, 1989, and March 10, 1990, submittals, USEPA is proposing to disapprove AM–2–88 and AM–22–88 as revisions to Wisconsin's SIP.

IV. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each

request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table Two and Three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under 5 U.S.C. 605(b), I certify that disapproving this submittal will not have a significant economic impact on a number of small entities because it imposes no new requirements on anyone. (See 46 FR 8709).

Public comments are solicited on the requested SIP revision and on USEPA's proposal to disapprove. Public comments received by January 22, 1993) will be considered in the development of USEPA's final rulemaking action.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this proposed action confirms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air Pollution control, Environmental protection, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7671(q).

Dated: December 8, 1992.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 92–31155 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–292, RM–8135]

Radio Broadcasting Services; Milton-Freewater, Oregon

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Alexandra Communications seeking the substitution of Channel 250C2 for Channel 250C3 at Milton-Freewater, Oregon, and the modification of Station KLKY (FM)'s construction permit to specify operation on the higher class channel. Channel 250C2 can be allotted to Milton-Freewater in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.8 kilometers (11 miles) northeast to accommodate petitioner's desired transmitter site, at coordinates North Latitude 45–59–04 and West Longitude 118–10–08. In accordance with Section 1.420(g) of the Commission's rules, we will not accept competing expressions of interest in use of the channel at Milton-Freewater or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 4, 1993, and reply comments on or before February 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter W. Lechman, Lechman & Johnson, Inc., 16201 Trade Zone Avenue, suite 108, Upper Marlboro Maryland 20772 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–292, adopted November 30, 1992, and released December 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permission *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–31047 Filed 12–22–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–290, RM–8127]

Radio Broadcasting Services; Colfax, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Livingston County Broadcasters, Inc. requesting the allotment of Channel 299A as that community's first local FM service. The proposed coordinates are North Latitude 40–33–54 and West Longitude 88–36–54.

DATES: Comments must be filed on or before February 4, 1993, and reply comments on or before February 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Matthew P. Zinn, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1125 (Counsel for Livingston County Broadcasters, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–290, adopted November 24, 1992, and released December 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-31048 Filed 12-22-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 92-263; FCC No. 92-541]

Cable Television Services; Cable Television Consumer Protection and Competition Act of 1992—Cable Consumer Protection and Customer Service Provisions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, is taking the first step toward implementing section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). This Notice of Proposed Rule Making (NPRM), solicits comment concerning implementation of the cable protection and customer service provisions of the 1992 Cable Act. Section 8 of the new Cable Act amends section 632 of the Communications Act of 1934, to require the Commission to establish Federal customer service standards 180 days after enactment, by April 3, 1993. Such standards must address, at a minimum, cable system office hours, telephone availability, installations service calls, billing and refunds. The Act permits a franchising authority or State to enact and enforce either the Commission's standards or more extensive customer service requirements. This action is taken in order to bring the Commission's rules in statutory compliance with the 1992 Cable Act.

DATES: Comments must be filed on or before January 11, 1993, and reply comments must be filed on or before January 26, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Ellen Schned, Office of Legislative Affairs, (202) 632-6405, or Alan Aronowitz, Mass Media Bureau, (202) 632-7092.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Notice of Proposed Rule Making in MM Docket No. 92-263, adopted December 10, 1992, and released December 11, 1992. The full text of this document is available for inspection and copying, Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, Downtown Copy Center, 202-452-1422, 1990 M Street, NW., room 640, Washington, DC 20554.

Synopsis of the Notice of Proposed Rule Making

1. On October 5, 1992, Congress enacted the "Cable Television Consumer Protection and Competition Act of 1992," Public Law 102-385, 106 Stat. 1469 (1992). Section 8 of the new Cable Act amends section 632 of the Communications Act of 1934, by requiring the Commission to establish Federal cable consumer protection and customer service standards. Such standards must address, at a minimum, cable system office hours, telephone availability, installations, outages, service calls, and communications between the cable operator and subscriber, including billing and refund policies. The Act allows a franchising authority to enact and enforce either the Commission's standards or other customer service requirements. Further, the Act permits a franchising authority and cable operator to negotiate and to agree to customer service requirements that exceed the Commission's standards. It also permits a State or franchising authority to enact any consumer protection laws that exceed the Federal standards, that are not otherwise preempted by the Act.

2. *Implementation and Enforcement:* The Commission, in this NPRM, seeks comment on a series of questions regarding the implementation and enforcement of customer service standards. As a threshold matter, we seek comment on how and when customer service standards shall take effect. Since it is not addressed in the Act or clear in the legislative history, we seek comment on whether the Federal standards are self-executing, becoming effective automatically, or whether they take effect only if State or local authorities act to implement them. If the standards are not self-executing, we seek comment on what action a franchising authority should be required to take in order to enact either the Commission's standards or other standards. For instance, should the franchising authority be required to, at a minimum, provide adequate notice to cable operators and subscribers prior to customer service standards being enforceable?

3. The Commission also requests comment on how the new rules will affect existing franchise agreements. We ask whether such agreements can or should be grandfathered or whether a franchising authority may modify existing agreements prior to renewal in order to impose new customer service requirements. To the extent the Act permits a franchising authority to modify existing franchise agreements, we seek comment on when new customer service standards can be imposed, i.e., when the self-executing provisions of the Act take effect, on December 3, 1992 (60 days after the date of enactment), or after the Commission's standards are adopted?

4. While the statute explicitly allows local or State regulations that "exceed" the Federal Standards, we seek comment on whether the Act should be read to preempt franchise authorities from adopting standards that fall below the Federal Standards. Further, we question whether exemptions or waivers could or should be provided for small systems, and if so, on what basis should waivers be permitted and how should "small systems" be defined for the purpose of this proceeding.

5. The Act appears to provide enforcement authority to State and local governments, not the FCC. Accordingly, we solicit comment on what role, if any, the FCC should have with regard to customer service obligations once it has established Federal standards. Further, the NPRM asks whether it is appropriate for local governments to establish such enforcement matters as: (1) Time frames for compliance; (2) standards for measuring compliance; (3) specific billing and refund procedures, and (4) penalties and remedies for violations of the standards, or, whether guidance should be provided in the Federal standards concerning these matters.

6. *Alternative Approaches for Federal Standards:* Congress, in the legislative history, stated "the Commission's standards should be flexible in nature and should allow a local franchising authority to tailor the requirements to

meet the needs of the local community." Accordingly, the Commission seeks comment on what particular standards it should adopt. The NPRM does not propose specific customer service standards, but uses the voluntary standards established by the National Cable Television Association ("NCTA") in February 1990 as a basis for comment. The NCTA standards were referenced in the legislative history and address each of the major customer service issues which the Act requires be included in the Federal standards, including cable system office hours, telephone responsiveness, installations, outages, service calls, and billing and refunds.

7. In addition to seeking comment on the NCTA standards, or some modification thereof, we also ask whether other standards that have been established by various cable, government, or consumer groups should be used in some fashion. Additionally, we solicit information on State or local customer service requirements of more general applicability that apply to all businesses in the competitive market, in order to determine whether such general laws can be used as guidance in setting Federal cable customer service standards.

8. With respect to the NCTA standards, the first area addressed relates to office and telephone availability. These standards place a limit on the duration of busy signals, and generally require that under "normal operating conditions" the telephone must be answered by a customer service representative within 30 seconds or by an automated answering service within four rings. While these standards address the difficulties that subcribers have in communicating with their local cable operators, they are directed toward communications during "normal operating hours" and "normal operating conditions". Because a majority of television viewing is outside of these hours, we seek comment on how communications outside of normal operating hours should be addressed. We also ask parties to define these and other terms that may warrant clarification in order that the standards be clearly understood and uniformly measurable. Since many terms may vary based on the size of the cable systems or by factors either within the operators' control (such as peak promotional demand periods) or outside of the operators' control (such as weather conditions or power outages), we question whether the standards could or should reflect such varying factors or conditions.

9. The second area under the NCTA standards relates to installations, outages, and service calls. The NCTA standards that service interruptions, (95 percent of the time measured on an annual basis) be responded to within 24 hours, and that other service problems be responded to within 36 hours during the normal work week. Cable service operators are directed to set service appointments during specific times of the day, and, if running late, shall attempt to contact the customer to reschedule at a time convenient to the customer. Finally, the NCTA standards require cable bills to be "clear, concise, and understandable", and they require that a minimum of 30 days advance notice be provided for any rate or channel change.

10. While the aforementioned standards address issues of considerable importance to customers, it is important that the Commission's standards not be so stringent that they result in dramatic increases in rates or a reduction of other services, which may be contrary to Congressional intent or consumer desire. Thus, the right balance here is of considerable importance—system operators should not be imposing undue costs and inconveniences on individual subscribers but undue costs should not be imposed on system operators.

11. Further, it is particularly important that the substance of the Commission's standards be appropriate for a broad range of communities and economic conditions. Accordingly, the NPRM suggests a series of approaches for Federal standards on which we seek comment. In particular, we seek comment on whether the Commission should adopt (1) a single set of standards, (2) a series of standards based upon size or other characteristics of the cable system and community, or (3) a range in which a franchising authority and cable operator can negotiate. For example, a range of 30 seconds to one minute could be established for cable operators to respond to telephone calls. A cable operator and franchising authority may mutually agree upon a duration within that range which is appropriate for a particular franchise area. In the absence of a mutual agreement, we seek comment on what the Federal standard should be, e.g., the midpoint (45 seconds), the more stringent standard in the range (30 seconds), or the less stringent standard (1 minute). This approach would be aimed at affording local authorities and cable operators flexibility to customize appropriate standards.

Administrative Matters

12. *Ex Parte Rules—Non-Restricted Proceeding:* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

13. *Comment Information:* Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 11, 1993, and reply comments on or before January 26, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send your comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554.

14. *Initial Regulatory Flexibility Analysis—Reason for action:* This proceeding is being implemented in order to seek comment on the best way to implement section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102–385, relating to cable consumer protection and customer service.

Objectives: The Commission's goal is to provide notice and opportunity to comment to members of the public regarding implementation of section 8 of the new Act, which concerns Federal standards of customer service for cable system operators.

Legal Basis: Authority for this proposed rule making is contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, and section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385 (1992).

Reporting, Recordkeeping and Other Compliance Requirements: The Commission is asking for comment concerning what Federal standards to adopt to govern cable consumer protection and customer service.

Federal Rules that Overlap, Duplicate or Conflict with Proposed Rule: None.

Description, Potential Impact, and Number of Small Entities Involved: The rules proposed in this proceeding could impose new burdens on cable operators, including small systems, if the Federal

customer service standards proposed in this rule or other, more extensive standards, are enacted and enforced by State or local governments.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: Undetermined at this time. Comment is specifically sought on this matter.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-31046 Filed 12-22-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 247
Wednesday, December 23, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Alternative Agricultural Research & Commercialization (AARC) Center; Request for Proposals to Host Regional Centers

AGENCY: Alternative Agricultural Research & Commercialization (AARC) Center, USDA.

ACTION: Request for proposals to host regional centers.

SUMMARY: The AARC Center seeks proposals from organizations interested in hosting a regional center for the AARC Center. An application under this request must be submitted in order to be considered as a host institution for a regional center. Awards will be made on a competitive basis.

BACKGROUND: Subtitle G of the Food, Agriculture, Conservation, and Trade Act of 1990 created the alternative Agricultural Research & Commercialization (AARC) Center as an independent entity within the U.S. Department of Agriculture. The AARC Center's activities are guided by a nine member board of directors that establishes policy and program direction.

The mission of the AARC Center is to generate widespread interest and profitable investment in developing and commercializing new industrial and consumer products that use farm and forestry materials. Preference is given to projects that benefit rural communities and that are environmentally friendly. The AARC Center is authorized to provide financial assistance, through a competitive process, to projects that will help achieve the AARC Center's mission.

Subtitle G also provides for the establishment of up to six regional centers around the country to help the Center carry out its mission and to provide grass roots interaction within regions. The AARC Center Board envisions these regional centers as extensions of the national AARC Center. The regional centers will help identify promising projects and build networks involving government, industry, and universities to support and encourage new products from agricultural materials.

Regional centers will be headed by a full-time director selected by the Board. A regional center director must have experience in the development and commercialization of new products or processes in the public or private sector and have a strong business and/or technical background. Regional directors will be expected to work closely within a region to develop partnerships and to monitor projects.

The AARC Center program is basically a pre-commercialization endeavor to help move new products into the marketplace and this may require targeted development or research. The regional centers also will provide ongoing technical and business support to the AARC Center funded projects in their region.

Selection Process

The location of regional centers will be selected through a competitive process. At least two regional centers will be established. Applications to host a regional center may be submitted by a single organization or by a group of organizations. The statute requires that host institutions be able and willing to match any federal funds with funds or in-kind services of its own.

In selecting host institutions and locations for regional centers, the AARC Board will consider the following along with other related factors:

—Ability of the applicants(s) to carry out the responsibilities of a regional center as described in section 1663(e) of the enabling AARC Center legislation; note that the AARC Center program is skewed much more in the direction of processing and product development than in production of agricultural materials.

—Experince and skills of the applicant(s) in moving technology and products from the research stage through development and into the marketplace.

—Geographical area that the applicant proposes to serve.

—Level of private sector support and participation in the proposed regional center.

—Willingness and ability to contribute funds and in-kind services to regional center activities—preference will be given to proposals where the ratio of AARC Center funds to host institution funds are lowest.

Proposal Submission

The original and three copies of the proposal must be received by 3 p.m. on February 19, 1993. One of the following addresses should be used, as applicable:

Regular U.S. Mail USDA AARC Center, 14th & Independence Ave, SW., 342 Aerospace Center, Washington, DC. 20250–2200.

Overnight Delivery USDA AARC Center, 901 D. St., SW., 342 Aerospace Center, Washington, DC 20250–2200.

To obtain an application form and to get additional information, please contact Patricia Dunn of the AARC Center staff at (202) 401–4860.

Activities of Regional Centers Required by Section 1663(c) of Subtitle G

Each regional center shall:

—Closely coordinate the activities of the regional center with the AARC Center staff to meet the overall mission of the AARC Center.

—Reflect different climatic conditions and rural economic stress.

—Encourage interaction among private and Federal laboratories, National Science Foundation centers, Department of Agriculture research programs, other Federal resources, State and local regional economic development programs, universities, colleges, the private sector, and the financial community for the purpose of evaluating and commercializing new nonfood, nonfeed uses of agricultural commodities.

—Identify broad areas where commercialization of new nonfood, nonfeed, products and processes can contribute to economic growth in rural areas of the United States, through the development of new nonfood, nonfeed uses for agricultural commodities by private firms and businesses.

—Provide technical assistance and related business and financial counseling for small domestic businesses to commercialize new nonfood, nonfeed uses of agricultural commodities.

—Identify and evaluate new nonfood, nonfeed products and processes that are worthy of financial assistance.
—Make use of existing programs in scientific, engineering, technical, business, and management education that will support the accelerated commercialization of new nonfood, nonfeed products and processes using agricultural materials.
—Advise the AARC Center Board on the viability of specific applications submitted for financial assistance and on the type of assistance, if any, to be provided.
—Coordinate the activities of the regional center with the Small Business Development Centers.

Done at Washington, DC on December 18, 1992.

Paul F. O'Connell,

Director, Alternative Agricultural Research & Commercialization Center.

[FR Doc. 92–31141 Filed 12–22–92; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Winding Stair Tourism and Recreation Advisory Council Meeting

AGENCY: Ouachita National Forest, USDA.

ACTION: Winding Stair Tourism and Recreation Advisory Council meeting.

SUMMARY: January 14, 1993, field trip for council members. Meet 1 p.m. at the Choctaw Ranger District Office, 2 mi. south of Heavener, OK, on Hwy. 59. Transportation for the trip will be provided for council members. The tour will conclude at 5 p.m. The meeting will reconvene that evening at 7 p.m. at the Heavener School Administration Building in Heavener. Please call Choctaw District Ranger Thomas Horner, (918) 653–2991, to reserve your attendance.

EFFECTIVE DATE: December 14, 1992.

Cheryl G. Chatham,

Staff Officer, Public Affairs (501) 321–5202.

[FR Doc. 92–31050 Filed 12–22–92; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Brazos Electric Power Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has prepared an environmental assessment (EA) and has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Brazos Electric Power Cooperative, Inc. (Brazos) to construct and operate a combustion turbine generation facility at a site within Brazos' service territory. This action has been taken in accordance with REA Environmental Policies and Procedures, 7 CFR 1794.34. The preferred site is the Randle Miller Generating Plant on Palo Pinto Lake in Palo Pinto County, Texas.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: As part of its environmental review process, REA held an interagency meeting and two public scoping meetings in August 1991. Brazos was required by REA to develop an environmental analysis (EVAL) and other documentation to support its proposal. The documentation provided by Brazos, input from the three meetings, and input from certain Federal and state agencies have been used by REA to develop its EA. REA has concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that the impacts are acceptable.

The Randle Miller Plant site (75.7 acres) is located approximately 9.0 miles northeast of Gordon, approximately 7.0 miles northwest of Santo and 10.0 miles south of Palo Pinto, in Palo Pinto County. The site contains three existing gas-fired steam turbines with a total output of 391 MW. The proposed project would impact approximately 7 acres of land within the site. It consists of two simple cycle gas turbine generating units with a total net capacity of 200 megawatts and associated facilities. The units would have dual fuel capability. Natural gas would be obtained from existing pipelines that serve the plant. Fuel oil, the secondary fuel, would be delivered by tanker truck and stored in an above ground tank. Water would be obtained from Lake Palo Pinto through existing intake facilities and treated wastewater would be returned to the lake through existing discharge facilities. The electrical output of the facility would be routed through existing transmission lines serving the plant. These lines would be upgraded to carry the capacity.

Alternatives considered to the project as proposed were no action, conservation and load management options and purchased capacity from both utility and non-utility generators. Alternative generation technologies and alternative sites were also evaluated. REA has considered these alternatives and concludes that the development of a combustion turbine generation project at the Miller site is the preferred alternative for Brazos to meet peak load capacity requirements beginning in 1994.

Based upon an independent analysis of the EVAL and other information available, as defined in the EA, REA has concluded that the construction and operation of the proposed combustion turbine generation facility utilizing the Miller site will have no significant impact on air quality, water quality, noise, wetlands, the 100-year floodplain, existing land uses, prime farmland, cultural resources, or flora and fauna. In addition, REA has determined that the construction and operation of the proposed project should have no effect on federally-listed proposed threatened and endangered species, designated critical habitat, or candidate species.

No other potential significant impacts resulting from the construction and operation of the proposed project have been identified.

Copies of the environmental analysis, environmental assessment and finding of no significant impact are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Richard E. McCaskill, Executive Vice President and General Manager, Brazos Electric Power Cooperative, Inc., 2404 La Salle Avenue, Waco, Texas 76706, during normal business hours. Copies of the documents have also been sent to various Federal, state and local agencies and will also be available for review at local libraries in Palo Pinto and Parker Counties, Texas.

REA will take no final action with respect to approval for the proposed project for at least thirty (30) days after publication of this notice in the **Federal Register** and in newspapers of general circulation in the counties previously identified.

Any comments should be sent to REA at the address given previously. All comments received will be considered.

Dated: December 16, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92–31067 Filed 12–22–92; 8:45 am]

BILLING CODE 3410–15–F

Soil Conservation Service

Lower Little River and South Yadkin River Watershed; Alexander County, NC

AGENCIES: North Carolina Department of Environment, Health, and Natural Resources and the United States Department of Agriculture, Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Division of Soil and Water Conservation, North Carolina Department of Environment, Health, and Natural Resources and the Soil Conservation Service, United States Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Lower Little River and South Yadkin River Watershed, Alexander County, North Carolina.

FOR FURTHER INFORMATION CONTACT: David W. Sides, Director, Division of Soil and Water Conservation, North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611, Telephone (919) 733–2302 or Coy Garrett, State Conservationist, Soil Conservation Service, 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609, Telephone (919) 790–2888.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant adverse local, regional, or national impacts on the environment. As a result of these findings, Coy Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 3,100 acres of cropland and install 21 animal waste management systems.

The Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting David W. Sides.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

("This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.")

Dated: December 15, 1992.

Coy Garrett,

State Conservationist.

[FR Doc. 92–31081 Filed 12–22–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Extension of Public Comment Period for National Security Investigation of Imports of Integrated Circuit Ceramic Packages

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of extension of public comment period for investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

SUMMARY: This notice is to advise the public that the Department of Commerce will extend until February 1, 1993 the formal public comment period for its investigation of the effects on the national security of imports of integrated circuit ceramic packages being conducted under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

ADDRESSES: Send all comments to Brad I. Botwin; Director, Strategic Analysis Division; Office of Industrial Resource Administration; Attention: Section 232 Comments; room 3878; U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward Levy, Section 232 Program Manager, Strategic Analysis Division, Office of Industrial Resource Administration, room 3878, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3795.

SUPPLEMENTARY INFORMATION: In the November 25, 1992 **Federal Register** (Vol. 57, No. 228, p. 55507), the Department of Commerce announced its initiation of a Section 232 investigation of the effects on the national security of imports of integrated circuit ceramic packages under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). This case was initiated November 18, 1992 in response to a petition jointly submitted by Coors Electronic Package Company and Ceramic Process Systems Corporation. The Department has decided to extend the formal public comment period until February 1, 1993 in order to allow interested parties a sufficient time to prepare their comments while ensuring that the investigation proceeds expeditiously.

Interested parties are invited to submit written comments, opinions, data, information, or advice relevant to this investigation. The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the regulations (15 CFR 705.4) as they affect national security, including the following:

(a) Quantity of and circumstances related to the importation of the articles subject to the investigation;

(b) Domestic production and productive capacity needed for these articles to meet projected national security requirements;

(c) Existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce these items;

(d) Growth requirements of domestic industries to meet national security requirements and/or requirements to assure such growth;

(e) The impact of foreign competition on the economic welfare of the domestic industry; and

(f) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects.

All materials should be submitted with 10 copies. Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information will be exempted from public disclosure as provided for by § 705.6 of the regulations (15 CFR 705.6). Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission which can be placed in the public file.

Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this investigation will be maintained in the Bureau of Export Administration's Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: December 17, 1992.

John A. Richards,

Deputy Assistant Secretary for Industrial Resource Administration.

[FR Doc. 92–31113 Filed 12–22–92; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 612]

Resolution and Order Approving the Application of the Indianapolis Airport Authority for Special-Purpose Subzone Status; Endress + Hauser, Inc. (Process Control Instruments) Greenwood, IN

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indianapolis Airport Authority, grantee of FTZ 72, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on October 15, 1991, and amended on October 5, 1992 (to indicate steel mill products will not be admitted to the proposed subzone in foreign status), requesting special-purpose subzone status for the industrial control instrumentation manufacturing facility of Endress + Hauser, Inc., in Greenwood, Indiana, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal, as amended, is in the public interest, approves the application, as amended.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Indianapolis Airport Authority, Grantee of Foreign-Trade Zone No. 72, for authority to establish a special-purpose subzone at the industrial control instrumentation manufacturing facility of Endress + Hauser, Inc., in Greenwood, Indiana, was filed by the Board on October 15, 1991, and notice inviting public comment was given in the **Federal Register** on October 31, 1991 (FTZ Docket 60–91, 56 FR 56053, 10–31–91);

Whereas, the application was amended on October 5, 1992, to indicate that steel mill products will not be admitted to the proposed subzone in foreign status; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 72J) at the Endress + Hauser, Inc., plant in Greenwood, Indiana, at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31169 Filed 12–22–92; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 614]

Expansion of Foreign-Trade Zone 22, Chicago, IL

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, an application from the Illinois International Port District, Grantee of Foreign-Trade Zone No. 22, for authority to expand its general-purpose zone in the Chicago, Illinois, area, within the Chicago Customs port of entry, was filed by the Board on September 16, 1991, and notice inviting public comment was given in the **Federal Register** on September 24, 1991 (Docket 53–91, 56 FR 48157);

Whereas, the application was amended on September 14, 1992 to request a time extension of authority (to 12/31/94) for FTZ 22-Site 4 (57 FR 43693, 9/22/92);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Chicago area; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval is in the public interest;

Now, Therefore, the Board hereby orders:

That the grantee is authorized to expand its zone in accordance with the application filed on September 16, 1991 and amended on September 14, 1992, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of December, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31167 Filed 12–22–92; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 611]

Resolution and Order Approving the Application of the Illinois International Port District for Special-Purpose Subzone Status; Abbott Laboratories, Inc. (Pharmaceutical and Medical Products) North Chicago, IL, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Illinois International Port District, grantee of FTZ 22, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on October 22, 1991, and amended on April 10, 1992 (to delete 2 proposed sites), requesting special-purpose subzone status at the pharmaceutical and medical products manufacturing plant of Abbott Laboratories, Inc., in the North Chicago, Illinois, area, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, as amended.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Illinois International Port District, grantee of Foreign-Trade Zone 22, for authority to establish a special-purpose subzone for the pharmaceutical and medical products manufacturing plant (six sites) of Abbott Laboratories, Inc., in the North Chicago, Illinois, area, was filed by the Board on October 22, 1991, and notice inviting public comment was given in the **Federal Register** on October 31, 1991 (FTZ Docket 62–91, 56 FR 56052);

Whereas, the application was amended on April 10, 1992, to delete proposed Sites 4 and 6; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal, as amended, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 22F) for the manufacture of pharmaceuticals and medical products at the Abbott Industries, Inc., facilities in the North Chicago, Illinois, area, at the locations described in the amended application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 14th day of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31168 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 615]

Extension of Authority With Restrictions Subzone 23B; CPS Corp. (Formerly, Greater Buffalo Press) (Printing Ink) Chautauqua County, NY

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the FTZ Board Regulations (15 CFR Part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, in 1986, the Board (the Board) granted authority to the County of Erie, New York, to establish Foreign-Trade Subzone 23B at the ink manufacturing facilities of the CPS division of Greater Buffalo Press, Inc. (GBP), Chautauqua County, New York, for a period of 5 years (ending 8/25/91) subject to extension, and subject to restrictions requiring the election of privileged foreign status (19 CFR 146.41) on pigments used in the production of ink sold to domestic printing plants not affiliated with GBP and on ink produced in excess of 21 million pounds annually (Board Order 332, FR 18468, 5/20/86);

Whereas, the ink manufacturing facilities of GBP were sold, and are now owned and operated as CPS Corporation, a subsidiary of INX International, Inc.;

Whereas, on July 2, 1991, the County of Erie made application to the Board for an indefinite extension of authority for Subzone 23B;

Whereas, notice of said application was given in the **Federal Register** and public comment was invited (56 FR 34171, 7/26/91), and a hearing was held on April 16, 1992;

Whereas, subzone status for SZ 23B was temporarily extended to December 31, 1992, because of the time needed to complete a review (56 FR 42309, 8/27/91 and 57 FR 7367, 3/2/92);

Whereas, the applicant amended the application on June 10, 1992, to limit its request to an extension for a five year period subject to all other existing restrictions;

Whereas, the Board has completed its review, taking into account the views of all interested parties;

Whereas, the Board has found that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if the extension approval were limited to five years beyond the original period and subject to existing restrictions;

Now, therefore, the Board hereby orders that the authority for Subzone 23B is extended, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28, and subject to the following restrictions:

(1) Subzone status shall terminate on August 25, 1996.

(2) CPS shall elect privileged foreign (19 CFR 146.41) or domestic status, as appropriate, with respect to pigment prior to its use in the production of ink to be sold in commercial quantities in the domestic market for use at any plant other than by the six domestic Sullivan Graphics, Inc. plants, identified in appendix D of the Examiners Committee report.

(3) CPS shall elect privileged foreign or domestic status, as appropriate, with respect to pigment prior to its use in the production of ink, once shipments of ink containing foreign pigment to Sullivan Graphics, Inc. exceed 21 million pounds on an annual basis.

(4) CPS will make available to the Customs Service on request its records, or the records of any of its subsidiaries that relate to the production, shipment, and sale of ink;

(5) Because of the special circumstances of this case, this action will not be considered a precedent for other FTZ Board actions involving printing ink or pigments.

Signed at Washington, DC, this 11th of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31170 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 617]

Resolution and Order Approving the Application of the Puerto Rico Commercial and Farm Credit and Development Corp. for Special-Purpose Subzone Status; Searle & Co. (Pharmaceuticals) Caguas, Puerto Rico

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the FTZ Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on October 22, 1991, and amended on August 3, 1992, requesting special-purpose subzone status at the pharmaceutical manufacturing plant of Searle & Company, in Caguas, Puerto Rico, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, as amended.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Office of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of Foreign-Trade Zone 61, for authority to establish a special-purpose subzone at the pharmaceutical manufacturing plant of Searle & Company in Caguas, Puerto Rico, was filed by the Board on October 22, 1991, and notice inviting public comment was given in the **Federal Register** on November 1, 1991 (FTZ Docket 63–91, 56 FR 56187);

Whereas, the application was amended on August 3, 1992 (57 FR 38667, 8/26/92 and 57 FR 43695, 9/22/92) to expand the range of manufacturing to be conducted under zone procedures; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal, as amended, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61A) for the manufacture of pharmaceuticals at the Searle & Company facility in Caguas, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31171 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 613]

Expansion of Foreign-Trade Zone 39, Dallas/Fort Worth, TX

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, an application from the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone No. 39, for authority to expand its general-purpose zone at the Dallas/Fort Worth International Airport, within the Dallas/Fort Worth Customs port of entry, was filed by the Board on November 6, 1991, and notice inviting public comment was given in the **Federal Register** on November 27, 1991, (Docket 76–91, 56 FR 60087);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Dallas/Fort Worth area; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval is in the public interest;

Now Therefore, the Board hereby orders:

That the grantee is authorized to expand its zone in accordance with the application filed on November 6, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of December, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31172 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–122–701]

Potassium Chloride From Canada; Intent To Terminate Suspended Investigation

AGENCY: Interational Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended antidumping investigation on potassium chloride from Canada. Interested parties who object to this termination must submit their comments in writing not later than February 1, 1993.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: James Doiye or Wendy Frankel, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1988, the Department of Commerce (the Department) published a notice suspending the investigation on potassium chloride (potash) from Canada (53 FR 1393). The Department has not received a request to conduct an administrative review of the suspended investigation for four consecutive anniversary months.

The Department may interminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Commerce Department's regulations (19 CFR 353.25(d)(4)), the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity To Object

No later than February 1, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the following address: U.S. Department of Commerce, Import Administration, Central Records Unit, room B–099, Washington, DC 20230, Attn: Office of Agreements Compliance.

If interested parties do not request an administrative review by February 1, 1993, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to terminate by February 1, 1993, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with section 19 CFR 353.25(d) of the Department's regulations.

Dated: December 12, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–31173 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–816]

Preliminary Determination of Sales at Less Than Fair Value: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger or Raphiel Hampton, Office of Antidumping Investigations, Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2778 or (202) 482–0176.

Preliminary Determination

We preliminarily determine that certain stainless steel butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on June 9, 1992 (57 FR 26645, June 15, 1992), the following events have occurred.

On July 7, 1992, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On June 18, 1992, Tru-Flow Industrial Co., Ltd. (Tru-Flow) stated that it wished to participate in the investigation as a voluntary respondent if not selected as a mandatory respondent. On June 30, 1992, Tru-Flow provided the volume and value of its U.S. sales during the period of investigation (POI), December 1, 1991, through May 31, 1992. On July 16 and 21, 1992, Tru-Flow revised its POI volume and value figures. Based on the data reported in those submissions, on July 27, 1992, the Department issued an antidumping questionnaire to Tru-Flow. However, at that time, we informed Tru-Flow that the Department would conduct an early verification of its reported volume and value figures. The Department stated that if it found significant errors, we would no longer investigate Tru-Flow, but instead use best information available (BIA) in our determinations. In August 1992, the Department conducted a vertification of Tru-Flow's volume and value data. Tru-Flow was unable to tie its sales to its books. (See Tru-Flow volume and value verification report dated September 2, 1992.)

On August 20, 1992, Tru-Flow filed its response to Section A which contained different volume and value numbers than observed at vertification. The Department then informed Tru-Flow on August 28, 1992, that, because it was unable to tie the reported volume and value data to its books, it was to suspend compilation and reporting of its sections B and C responses until we decided whether to continue investigating Tru-Flow. On August 28, Tru-Flow filed a submission requesting that the Department reconsider its decision. On September 1, 1992, petitioner also submitted comments questioning the veracity of Tru-Flow's volume and value reporting. On September 25, 1992, based on Tru-Flow's inability to link volume and value data with its accounting books, we discontinued the investigation of Tru-Flow, and recommended using BIA, as provided for in section 776(c) of the Act. Moreover, we recommended applying to Tru-Flow, as BIA at the preliminary determination, the higher of (1) the margins in the petition or (2) the highest calculated margin of any respondent within that country that supplied adequate and verified responses. (See "Continuation of Investigation of Tru-Flow" memorandum to Alan M. Dunn, dated September 25, 1992.) On December 11, 1992, Tru-Flow submitted its comments with respect to the Department discontinuing its participation in this investigation.

On July 1, 1992, the Department issued antidumping questionnaires to Ta Chen Stainless Pipe Company, Ltd. (Ta Chen) and Tachia Yung Ho Machine Co., Ltd. (TYH), requesting additional information on their volume and value of sales during the POI. On July 16, 1992, the Department presented its antidumping questionnaire to Ta Chen and TYH, as they accounted for at least 60 percent of known sales to the United States during the POI, in accordance with 19 CFR 353.42(b).

Ta Chen and TYH submitted responses to the sales questionnaire in August and September 1992. We issued supplemental sales questionnaires in September and October 1992, and received the responses in October 1992.

On September 11, 1992, petitioner alleged that Ta Chen and TYH were selling the subject merchandise in the home market at prices below the cost of production (COP). On October 5, 1992, the Department initiated COP investigations with respect to these two companies.

On October 5, 1992, petitioner requested that the Department postpone the preliminary determination in this investigation for 50 days in accordance with 19 CFR 353.15(c). Accordingly, on October 7, 1992, we postponed the preliminary determination until December 16, 1992 (57 FR 47324, October 15, 1992).

The Department issued Section D of our questionnaire to Ta Chen and TYH on October 9, 1992, and received responses on November 9 and 13, 1992, respectively. On December 3 and 7, 1992, petitioner submitted comments to the section D responses from both Ta Chen and TYH. The Department issued deficiency letters to these companies on

December 15, 1992, requesting clarification of certain areas in the responses. Since these responses were deficient, we were unable to use the responses for purposes of this preliminary determination. However, we will analyze and verify the COP deficiency responses, if properly completed, for use in the Department's final determination.

Scope of Investigation

The products subject to this investigation are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Certain stainless steel butt-weld pipe fittings (pipe fittings) are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system:

(1) Corrosion of the piping system will occur if material other than stainless steel is used;

(2) Contamination of the material in the system by the system itself must be prevented;

(3) High temperatures are present;

(4) Extreme low temperatures are present;

(5) High pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes being the most basic: "elbows", "tees", "reducers", "stub ends", and "caps". The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from these investigations. The pipe fittings subject to these investigations are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is December 1, 1991, through May 31, 1992.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the products covered by this investigation comprise a single category of "such or similar" merchandise.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the products covered by this investigation comprise a single category of "such or similar" merchandise.

Fair Value Comparisons

Since the Section D responses for both Ta Chen and TYH were not complete and accurate, we were unable to determine whether home market sales were above or below COP, nor were we able to calculate FMV pursuant to section 773 of the Act. For these reasons, we have based this preliminary determination on BIA. As BIA we assigned the simple average of the margins reported in the petition, 48.05 percent. (See Best information Available section of this notice.)

Best Information Available

After a complete analysis of TYH's and Ta Chen's section D cost responses, we concluded that we could not use these responses for our preliminary determination. Both Ta Chen and TYH requested numerous extensions throughout this investigation for responses to sections A, B, C, and D of the Department's questionnaire. In our responses to these requests, we informed respondents that in the case of inadequate or incomplete responses, we may have to use BIA. The section D responses of Ta Chen and TYH contain major deficiencies. Since the section D responses are both incomplete and inaccurate, we cannot reasonably test the home market sales databases to determine whether sales were made above or below cost. The deficiencies requiring the Department to preliminarily use BIA include the following: (1) Ta Chen reported its cost data on an aggregate basis only; therefore, we could not determine whether its costs were fully reported; (2) Ta Chen reported only one input unit for weight-average price; there is no cost information on caps anywhere in its response, also an input unit; and, (3) Both TYH and Ta Chen did not properly address the Department's questions concerning its related party transactions. (For a full discussion of our decision, see December 14, 1992, Cost Deficiency Memorandum to Richard W. Moreland). In addition, we are unable to use the cost data provided by the petitioner in this investigation as BIA because petitioner reported cost data only on one type of fitting.

As stated above, for BIA we are applying the average of the margins reported in the petition for both TYH and Ta Chen (*i.e.*, 48.05 percent). We are not applying the highest dumping margin reported in the petition because, even though TYH's and Ta Chen's cost responses were too deficient for us to use for the preliminary determination, the respondents appear to have been cooperative during the investigation. A deficiency questionnaire was sent on December 15, 1992, to Ta Chen and TYH and the information will be due prior to verification. If the information in the revised questionnaire response is accurate and verifiable, it will be used for the final determination. As noted in the Case History section of this notice, we are also using BIA with respect to Tru-Flow. As BIA, we are applying the highest margin contained in the petition, which is 76.2 percent.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of pipe fittings from Taiwan. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

It has been the Department's practice to consider estimated margins of 25 percent or greater on sales to unrelated parties and estimated margins of 15 percent or greater on sales to related parties as sufficient proof to impute knowledge of dumping. (See, e.g., Final Determination of Sales at Less than Fair Value: Extruded Rubber Thread from Malaysia, 57 FR 38465 August 25, 1992).

Therefore, since the margins assigned to Ta Chen and TYH are greater than 25 percent, we find that there is sufficient proof to impute knowledge of dumping.

In order to determine whether there have been massive imports of fittings from Taiwan, we examined the company specific shipment data submitted by Ta Chen and TYH. Pursuant to 19 CFR 353.16(f) of the Department's regulations, we analyzed shipments during the three months after the month on which the petition was filed, compared to shipments in the three months prior to this period. Based on this analysis, we found that there were massive imports over a relatively short period of time. Therefore, we preliminarily determine that there is a

reasonable basis to believe or suspect that critical circumstances exist with respect to imports from Ta Chen and TYH.

With respect to Tru-Flow, because its margin is greater than 25 percent, we find that there is sufficient proof to impute knowledge of dumping. We could not determine if massive imports exist using company-specific shipment data, since the investigation of Tru-Flow was discontinued. (See the Case History section of this notice). Therefore, as BIA, we have determined that imports from Tru-Flow have been massive over a relatively short period. Accordingly, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports from Tru-Flow.

We have used U.S. Department of Commerce import statistics to determine whether massive imports exist with respect to those firms covered by the "All Other" rate. Based on our analysis, we preliminarily determine that imports of pipe fittings have been massive over a relatively short period of time. We are using a simple average of the BIA margins for Ta Chen, TYH, and Tru-Flow for determining the "All Other" rate. Because this rate is 57.43 percent, we find that there is sufficient proof to impute knowledge of dumping. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances do exist for firms covered by the "All Other" rate.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from Taiwan, that are entered, or withdrawn from warehouse, for consumption 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Ta Chen Stainless Pipe Co., Ltd.	49.05
Tachia Yung Ho Machine Industry Co., Ltd.	48.05
Tru-Flow Industrial Co., Ltd.	76.20
All Others	57.43

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 12, 1993, and rebuttal briefs no later than February 19, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 26, 1993, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f) and 19 CFR 353.15(a)(4).

Dated: December 16, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-31174 Filed 12-22-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Notice of Solicitation for Sea Grant Review Panelists

SUMMARY: This notice responds to section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by January 22, 1993.

ADDRESSES: Dr. David B. Duane, Director, National Sea Grant College Program, 1335 East-West Highway, Room 5459, (DS), Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane of the National Sea Grant College Program at the address given above; telephone (301) 713-2448.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a sea grant review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under section 205, and section 3 of the Sea Grant Program Improvement Act of 1976;

(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under section 204 (a) and (c)(1); and,

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension services, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an

applicant for or beneficiary (as determined by the Secretary) of, any grant or contract under section 205, or (c) a full-time officer or employee of the United States. The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Two positions on the panel will become vacant during 1993. Candidates who are selected to fill these vacancies will be appointed for a 3-year term.

Dated: December 17, 1992.

Alan R. Thomas,

Deputy Assistant Administrator, OAR.

[FR Doc. 92–31128 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–12–M

Fishery Management Plan; Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval.

SUMMARY: NMFS announces the approval of Amendment 22 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands and Amendment 27 to the FMP for Groundfish of the Gulf of Alaska. The amendments authorize the establishment of trawl test areas for the testing of trawl gear in preparation for the opening of fishing seasons. The action is intended to promote the efficiency of trawl fishing for groundfish and further the goals and objectives of the FMPs that govern these fisheries.

ADDRESSES: Copies of the environmental assessment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

SUPPLEMENTARY INFORMATION: During its January 13–18, 1992, meeting the North Pacific Fishery Management Council (Council) recommended Amendment 22 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands and Amendment 27 to the FMP for Groundfish of the Gulf of Alaska. The amendments authorize the establishment of areas for the testing of trawl gear, subject to certain conditions. A notice of availability of the amendments was published in the **Federal Register** on September 25, 1992 (57 FR 44355).

The Council also recommended the establishment of three specific trawl test areas. The justification for these areas and their locations are described in a proposed rule that was published in the **Federal Register** on December 14, 1992 (57 FR 59072).

The Secretary has determined that Amendments 22 and 27 are consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable laws as authorized under section 304 of the Magnuson Act.

Dated: December 17, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–31126 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Shrimp Advisory Panel (Panel) on January 12, 1993, from 8:30 a.m. until 3 p.m., at the Ramada Airport Hotel and Conference Center, 5303 West Kennedy Boulevard, Tampa, FL; telephone: (813) 877–0534.

The Panel will discuss a Status Report on Shrimp Amendment #6; review the 1992 Texas Shrimp Closure and develop its recommendations to the Council; and discuss Options to Enhance White Shrimp Production.

For more information contact Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: December 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–31070 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Reef Fish Management Committee (Committee) on January 13–15, 1993, at the Ramada Airport Hotel and Conference Center, 5303 West Kennedy Boulevard, Tampa, FL; telephone: (813) 877–0534, The meeting will be held on January 13 from 1 p.m. until 5 p.m., on January 14 from 8 a.m. until 5 p.m., and January 15 from 8 a.m. until 3 p.m.

The Committee will meet to develop its recommendations to the Council on Reef Fish Amendment #6; Longline/Buoy Area Changes; and the Red Snapper Effort Management Options Paper.

For more information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: December 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–31071 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on January 18–22, 1993, at the Corpus Christi Marriott Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, TX; telephone: (512) 887–1600. The agenda is as follows:

Council

The Council will convene on January 19 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

From 8:45 a.m. to 9:15 a.m.: Consider Committee Membership Appointments.

From 9:15 a.m. to 12 p.m.: Hear public testimony on the Texas Shrimp Closure for 1993; Reef Fish Amendment #6; and Grouper Longline/Buoy Areas. (**Note:** Testimony cards must be turned in to staff before the start of public testimony.)

From 1:30 p.m. to 2 p.m.: Receive the Shrimp Management Committee report.

From 2 p.m. to 2:30 p.m.: Discuss Final Action on Reef Fish Amendment #6.

From 2:30 p.m. to 3 p.m.: Discuss Final Action on Longline/Buoy Area Changes; and

From 3 p.m. to 5 p.m.: Discuss the Red Snapper Effort Management Options Paper.

The Council will reconvene at 8:30 a.m. on January 20 with adjournment at 5 p.m.

From 8:30 a.m. to 5 p.m.: Continue discussion on the Red Snapper Effort Management Options Paper.

The Council will reconvene at 8:30 a.m. on January 21 with adjournment at 5 p.m.

From 8:30 a.m. to 5 p.m.: Complete discussion on the Red Snapper Effort Management Options Paper.

The Council will reconvene at 8:30 a.m. on January 22 to review the following reports:

1. U.S. Coast Guard's Fishery Enforcement Study (8:30 a.m. to 9 a.m.);
2. Habitat Protection Committee (9 a.m. to 9:30 a.m.);
3. Budget Committee (9:30 a.m. to 9:45 a.m.);
4. International Commission for the Conservation of Atlantic Tunas Advisory

Committee (9:45 a.m. to 10 a.m.) on the meeting held in Silver Spring, Maryland, on October 19, 1992; and

5. Enforcement reports and the Director's reports and adjournment at 11:15 a.m.

Committees

The Budget Committee, the Habitat Protection Committee, and the Shrimp Management Committee, will meet on January 18 from 12 p.m. with adjournment at 5:30 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: December 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–31072 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

The Mid-Atlantic Fishery Management Council's Squid, Mackerel, and Butterfish Committee (Committee) will hold a meeting on January 7, 1993, at the Ramada Inn, 76 Industrial Highway, Essington, PA. The meeting will begin at 10 a.m.

The purpose of the meeting is to discuss entry limitation into the Atlantic Mackerel Fishery and to discuss the Council's policy on directed foreign fishing for Atlantic mackerel. There will be a Scoping meeting for Amendment #5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan at 1 p.m. The Committee may reconvene after the Scoping meeting to make recommendations to the Council on the Scoping Document.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: December 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–31073 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

The North Pacific Fishery Management Council's (NPFMC) Pacific Northwest Crab Industry Advisory Committee (Committee) will meet on January 5, 1993, at the National Marine Fisheries Service (NMFS) Alaska Fisheries Science Center, Building 4, room 2079, 7600 Sand Point Way, NE., Seattle, WA. The meeting will begin at 8:30 a.m. and is to conclude at 5 p.m. The meeting is open to the public and notice of this meeting has been given through the December issue of the North Pacific Fishery Management Council's newsletter.

The Committee will review Alaska Board of Fisheries proposals for shellfish; review recommendations on revised pot limits; and receive staff reports on Tanner crab size limits and identification, exclusive and superexclusive registration proposals, crab observer program proposals, and 14-day pre- and post-season use of groundfish pots in the Bering Sea crab registration areas.

For more information contact Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (970) 271–2809.

Dated: December 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–31074 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Settlement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Lesotho

December 17, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: DECEMBER 28, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated December 9, 1992, the Governments of the United States and the Kingdom of Lesotho agreed to establish import limits for cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648 for two one-year periods beginning on December 1, 1992 and extending through November 30, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991; and 57 FR 54976, published on November 23, 1992). Also see 57 FR 54059, published on November 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 17, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on December 28, 1992, you are directed to cancel the directive dated November 9, 1992, which directed you to count imports of cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Lesotho and exported during the period beginning on October 28, 1992 and extending through October 27, 1993.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding (MOU) dated December 9, 1992 between the Governments of the United States and the Kingdom of Lesotho; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 28, 1992, entry into the United States for consumption and withdrawal from

warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Lesotho and exported during the twelve-month period beginning on December 1, 1992 and extending through November 30, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
338/339/638/639	810,225 dozen.
347/348/647/648	300,000 dozen.

Imports charges will be provided at a later date.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated December 9, 1992 between the Governments of the United States and the Kingdom of Lesotho.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31080 Filed 12-22-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMISSION ON IMMIGRATION REFORM[1]

Meeting

AGENCY: Commission on Immigration Reform.

ACTION: Announcement of meeting.

SUMMARY: This notice announces the second formal meeting of the Commission. The Commission was established by the Immigration Act of 1990 under section 141. The public meeting is being held to discuss issue priorities with a panel of immigration policy experts.

DATE: 10 a.m.–3 p.m., January 5, 1993.

ADDRESS: Dupont Plaza Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Susan Forbes Martin, Telephone: (202) 673–5348.

Dated: December 17, 1992.

Susan Forbes Martin,

Executive Director.

[FR Doc. 92-31116 Filed 12-22-92; 8:45 am]

BILLING CODE 6820-97-M

[1] The name of Commission on Legal Immigration Reform was changed by Pub. L. 102-232, December 12, 1991.

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 22, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: December 18, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Application under the School Dropout Demonstration Assistance Program.
Frequency: One time.
Affected Public: State or local governments, business or other for profit, non-profit institutions.
Reporting Burden:
Responses: 500.
Burden Hours: 10,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The information will be used by local educational agencies, educational partnership, and community-based organizations. The information will be used to make awards and to insure that statutory and regulatory requirements are met.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Revision.
Title: Study of Content for English as a Second Language.
Frequency: One time.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 940.
Burden Hours: 470.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will gather information about programs in public schools that provide instruction in English as a second language (ESL) simultaneously integrated with other school subjects.

Office of Educational Research and Improvement

Type of Review: New.
Title: Fast Response Survey System—Survey on Teacher Performance Evaluations.
Frequency: One time only.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1500.
Burden Hours: 625.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This survey of public elementary teachers is being conducted for the Office of Research as part of the Department's efforts to improve measurement criteria,

instruments, and procedures used for evaluating the performance of teachers. The purpose is to collect information on current practices in the schools, and information on teachers' view about the purposes and uses of the evaluations. The data will be used to promote evaluation standards.

Office of Educational Research and Improvement

Type of Review: New.
Title: Application for Grants under the Dwight D. Eisenhower National Program for Mathematics and Science Education—Regional Mathematics and Science Education Consortiums.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 60.
Burden Hours: 4,320.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies to apply for funding under the Dwight D. Eisenhower National Program for Mathematics and Science Education. The Department will use the information to make grant awards.

[FR Doc. 92-31165 Filed 12-22-92; 8:45 am]
BILLING CODE 4000-1-M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: January 7, 1993, 9 a.m. until 5 p.m. Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Hazel Mingo, Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB-3, Washington, DC 20202. Telephone # (202) 708-8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

The full Board will convene to address its mandate of providing advice to the President regarding historically black colleges and universities. The President's Board of Advisors will continue its discussion of recommendations to be made to the President on the varied issues raised in the recent *United States* versus *Fordice* Supreme Court case. These issues include funding, admission standards, and academic mission for historically black colleges and universities. Other topics to be discussed include the new Historically Black Colleges and Universities Capital Financing Act of 1992 and the Office of Personnel Management's implementation of section 11 of Executive Order 12677. The agenda will also include time for a discussion of efforts to lessen the impact of the current student loan default legislation on historically black colleges and universities. Advisory board members will vote on the final language for inclusion in the annual report to the President. Interested parties will be given time to comment on issues discussed during the Board meeting.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, ROB-3, room 3682, Washington, DC from the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Carolynn Reid-Wallace,
Assistant Secretary for Postsecondary Education.

[FR Doc. 92-31166 Filed 12-22-92; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Notice Extending the Public Review and Comment Period on the Draft Environmental Impact Statement for the Proposed Healy (Alaska) Clean Coal Project (HCCP)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice to extend the public review and comment period on the Draft Environmental Impact Statement (DEIS) to assess the environmental effects of the construction and operation of the proposed Healy Clean Coal Project (HCCP), a new 50 Megawatt-electric (MWe) coal-fired power generating facility at Healy, Alaska.

SUMMARY: The Department of Energy (DOE) announced the availability of the HCCP DEIS (DOE/EIS-0186) in the **Federal Register** of November 20, 1992 (57 FR 54775). On this same date, the Environmental Protection Agency (EPA) also published in the **Federal Register** (57 FR 54789) a Notice of Availability for this DEIS, thereby initiating the public comment period. The HCCP would demonstrate the combined removal of sulfur dioxide, oxides of nitrogen, and particulate matter from a 50-MWe power plant using innovative integration of advanced combustion and flue gas cleanup technologies. As stated in the foregoing DOE and EPA Notices, the end of the period for public review and comment was defined as January 5, 1993. DOE hereby extends this comment period to January 20, 1993.

INVITATION TO COMMENT AND DATES: DOE will continue to solicit comments on the DEIS from all interested parties. Written comments or suggestions regarding the adequacy, accuracy, and completeness of the DEIS will be considered in preparing the final EIS and should be postmarked by January 20, 1993. Written comments postmarked after that date will be considered to the degree practicable.

ADDRESSES: Written comments on the DEIS should be postmarked by January 20, 1993, with the envelopes labeled "HCCP Draft EIS." Written comments or questions concerning the HCCP, should be directed to: Dr. Earl W. Evans, Environmental Coordinator, HCCP, Mail Stop 920L, Pittsburgh Energy

Technology Center, U.S. Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236, Telephone: (412) 892–5709. Facsimile: (412) 892–4775.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process and other matters related to the National Environmental Policy Act (NEPA), please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: In addition to announcing the availability of the DEIS, DOE published in the aforementioned **Federal Register** (57 FR 54775) its intention to hold public hearings in Healy, Fairbanks, and Anchorage, Alaska. A letter to interested parties was prepared, notices were sent to local news media, and DOE held public hearings as scheduled on December 7, 1992, in Healy, December 9, 1992, in Fairbanks, and December 10, 1992, in Anchorage, Alaska, as part of the NEPA review process. At the Anchorage hearing, two commenters requested additional time to review and comment on the DEIS. Additionally, one written comment has been received to date expressing the desire for more time to review and comment. Accordingly, the comment period will now close on January 20, 1993. All comments and suggestions submitted during the extended period will be considered in preparing the final EIS. Written comments received after that date will be considered to the degree practicable.

Signed in Washington, DC, this 17th day of December 1992, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92–31130 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Grant Award to Solar Energy Research and Education Foundation

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to award a grant to Solar Energy Research and Education Foundation (SEREF) to accelerate the adoption and commercialization of photovoltaics in the U.S. electric utility industry which will be accomplished by creating sustainable market growth in utility applications having high market potential.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Under the grant, SEREF will facilitate the formation of stakeholder state working groups consisting of local stakeholder representatives from the utility/PV industrial, state regulatory/consumer advocate, and state energy office sectors and form a PV4U steering committee consisting of representatives of nine national organizations sponsoring the Tucson Project. This committee will facilitate interaction between the Utility Photovoltaic Group (UPVG), the state working groups and other PV4U activities.

The DOE evaluation of the unsolicited application determined that the applicant offers an exclusive domestic capability to perform the project successfully, and that the application offers an innovative approach to a DOE program. Additionally, the activity is considered to be an appropriate use of public funds.

Funding in the amount of an estimated $260,000 is to be provided by DOE and the term of the proposed agreement will be twelve (12) months.

Issued in Chicago, Illinois on December 10, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92–31131 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; University of North Dakota

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Application for a Cooperative Agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2), the DOE Morgantown Energy Technology Center gives notice of its plans to award a five year Cooperative Agreement to the University of North Dakota, Energy and Environmental Research Center, in Grand Forks, North Dakota in the approximate amount of $10,000,000.

FOR FURTHER INFORMATION CONTACT: Diane L. Roth, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4090, Cooperative Agreement No.: DE–FC21–93MC30097.

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Cooperative Agreement. The pending award is based on an application for renewal of a portion of work begun under a Cooperative Agreement presently being funded by DOE. The work to be continued under this renewal will address: Oil and gas research to advance technologies of petroleum and gas production processes and to develop methods for cleanup of wastes. Advanced systems applications to develop and evaluate process systems for utilization of fossil fuels. Environmental technologies needed for remediation and waste management related to fossil energy utilization. Applied energy science to understand and evaluate applied energy technologies. The work is necessary to ensure continuity of the work currently being performed.

Issued: December 15, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–31132 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Cooperative Agreement Award to Utility Photovoltaic Group

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application.

SUMMARY: The U.S. Department of Energy (DOE), Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to award a cost sharing Cooperative Agreement to Utility Photovoltaic Group (UPVG) for acceleration of the adoption and commercialization of photovoltaics in the U.S. electric utility industry. The purpose of the Cooperative Agreement is to provide a mechanism for collective utility action to facilitate the deployment of current cost-effective and emerging high-value utility applications of photovoltaics for the benefit of electric utilities and their customers.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The UPVG will interact with PV manufacturers and the development of hardware programs by: (i) Establishing appropriate selection criteria for projects, (ii) developing cost-sharing formulas between utilities and co-funders, (iii) developing standardized specification and procurement documents and procedures, and (iv) providing a clearinghouse for information reporting and exchange. The education plan also attacks a key barrier to market development by providing access to information to a broad cross-section of the utility industry, from field engineers to system planners, all of whom play a role in making technology decisions.

Information which will be developed includes: (i) Market potential and applications, (ii) total PV system costs, (iii) criteria for integration of PV systems into the existing power system, (iv) utility grade PV performance criteria, and (v) knowledge of PV suppliers and their capabilities.

The DOE evaluation determined that the applicant offers an exclusive domestic capability to perform the project, and that the application offers an innovative approach to a DOE program. Additionally, the activity is considered to be an appropriate use of public funds. The estimated value of the agreement is $993,880. Funding in the amount of $800,000 is to be provided by DOE with the remainder being provided by UVPG. The term of the proposed agreement will be eighteen (18) months.

Issued in Chicago, Illinois on December 16, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-31133 Filed 12-22-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-82-NG]

Prairielands Energy Marketing, Inc.; Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Prairielands Energy Marketing, Inc. to import from and export to Canada up to an aggregate total of 100 Bcf of natural gas over a two-year period beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31134 Filed 12-22-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-149-NG]

Renaissance Energy Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Renaissance Energy (U.S.) Inc. (Renaissance), authorization to import from and export to Canada a combined total of 200 Bcf of natural gas over a two-year term beginning on January 19, 1993, or upon the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 16, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 92-31135 Filed 12-22-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RM87-5-011; CP87-238-002]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

December 18, 1992.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for expedited Office of Management and Budget (OMB) review of data request.

SUMMARY: Pursuant to § 1320.15 and § 1320.18 of OMB's regulations, the Federal Energy Regulatory Commission (Commission) is submitting to OMB a request for expedited review of an information collection requirement concerning the transactions between interstate pipelines and their affiliated pipelines (FERC Form 592, OMB Control No. 1902-0157). The Commission requires this information in order to administer regulatory programs that implement mandates of the Natural Gas Policy Act of 1978 (NGPA) and the Natural Gas Act (NGA) of 1938. The information is used by the Commission to monitor the transportation transactions of interstate pipelines and their marketing affiliates or brokering companies to deter undue discrimination by pipeline companies in favor of their marketing affiliates.

DATES: Comments are due to OMB by December 28, 1992. The Commission is requesting OMB clearance of the data collection by no later than 5 p.m., December 31, 1992.

ADDRESSES: Send Comments to:

Michael Miller, Federal Energy Regulatory Commission, Information Policy and Standards Branch, 941 North Capitol St., NE., Washington, DC 20426.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Faerberg, (202) 208-1275, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1320.15 and 1320.18 of OMB's regulations, the Commission is seeking expedited OMB approval of an information collection requirement concerning the transactions involving interstate pipelines and their affiliate pipelines (FERC Form 592). These reporting requirements were extended by the Commission in Order 497-D from December 31, 1992 to December 31, 1993. Order 497-D issued on December 4, 1992 responds to the U.S. Court of Appeals of the District of Columbia remand of the Commission's orders which upheld in substantial part Order Nos. 497 and 497-A, the Commission's final rule governing the relationship between interstate natural gas pipelines and their marketing or brokering affiliates. The court also remanded for further consideration the Commission's extension of the rule's contemporaneous disclosure requirement to gas sales and marketing information and whether a joint-venture, project-financed, pipeline company should be considered "affiliated" with marketing affiliates of

parent pipeline companies and therefore subject to the rule. The Commission's order narrows the scope of the contemporaneous disclosure requirement with respect to sales and marketing information. The order also recognizes the fundamental restructuring of the interstate natural gas industry mandated by the Commission's Order 636 and provides for the gradual phase out of FERC Form 592 as individual pipelines come into full compliance with Order No. 636. Further, Order 636's Electronic Bulletin Board's requirements will ensure certain minimum standards for maintaining and communicating information about a pipeline's available capacity, current capacity release offers, and affiliate marketing-related information.

The respondents are 61 interstate natural gas pipeline companies. The current annual reporting burden is estimated to be 7,882 hours for FERC Form No. 592. This burden is based on an estimated average of 9.94 hours per filing for the respondents to complete 793 filings of FERC Form 592. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and obtaining data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information to Mr. Michael Miller, Information Policy and Standards Branch, Federal Energy Regulatory Commission, 941 N. Capitol Street, NE., Washington, DC 20426 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503. The telephone number for the OMB Desk Officer is (202) 395–3084, the facsimile number is (202) 395–5167. Comments to OMB should be submitted on or before December 28, 1992 in order to provide adequate time for OMB to review the comments on the data request.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31194 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST93–001–000 Through ST93–476–000]

Williston Basin Interstate Pipeline Co.; Self-Implementing Transactions

December 17, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-001	Williston Basin Inter. P/L Co	South Dakota State Cement Plant.	10-01-92	G-S	438	A	F	09-01-92	09-31-93
ST93-002	Williston Basin Inter. P/L Co	Amerada Hess Corp	10-01-92	G-S	25,000	N	F	09-01-92	10-31-92
ST93-003	Williston Basin Inter. P/L Co	Chevron USA, Inc	10-01-92	G-S	2,750	A	I	09-01-92	09-31-94
ST93-004	Transco-Louisiana Intra. P/L Co.	Texas Gas Transmission Corp	10-01-92	C	15,000	N	I	06-01-92	Indef.
ST93-005	Transco-Louisiana Intra. P/L Co.	Texas Gas Transmission Corp	10-01-92	C	30,000	N	I	06-01-92	Indef.
ST93-006	Kern River Gas Transmission Co.	Meridian Oil Trading Inc	10-01-92	G-S	50,000	N	I	08-31-92	Indef.
ST93-007	Channel Industries Gas Co	Tennessee Gas Pipeline Co	10-01-92	C	10,000	Y	I	09-01-92	Indef.
ST93-008	Seagull Shoreline System	O&R Energy, Inc	10-01-92	C	15,000	N	I	07-01-92	Indef.
ST93-009	Louisiana Resources Pipeline Co.	Florida Gas Transmission Co	10-01-92	C	75,000	N	I	08-30-92	01-31-93
ST93-010	Rotherwood Eastex Gas Storage.	Central Illinois Public Service Co.	10-01-92	G-ST	10,000	N	I	09-01-92	03-31-94
ST93-011	Northern Natural Gas Co	Nebraska Public Gas Agency	10-01-92	G-S	10,000	N	F/I	09-01-92	Indef.
ST93-012	Northern Natural Gas Co	Enron Gas Marketing, Inc	10-01-92	G-S	23,000	A	F/I	09-01-92	Indef.
ST93-013	Northern Natural Gas Co	Associated Natural Gas, Inc	10-01-92	G-S	50,000	N	F/I	08-01-92	Indef.
ST93-014	Rotherwood Eastex Gas Storage.	Northern Indiana Public Service Co.	10-01-92	G-ST	20,000	N	I	04-01-92	03-31-02
ST93-015	Enogex Inc	Phillips Gas Pipeline Co	10-02-92	C	50,000	N	I	09-04-92	Indef.
ST93-016	North Penn Gas Co	New York State Elect. & Gas Co.	10-02-92	G-HS	100	N	I	08-05-92	03-31-02
ST93-017	Channel Industries Gas Co	Transcontinental Gas Pipeline Corp.	10-02-92	C	100,000	N	I	09-16-92	09-15-93
ST93-018	Kern River Gas Transmission Co.	Mobil Natural Gas Inc	10-02-92	B	85,000	N	I	09-03-92	04-22-07
ST93-019	Trunkline Gas Co	American Central Gas Cos., Inc.	10-02-92	G-S	100,000	N	I	08-18-92	Indef.
ST93-020	Trunkline Gas Co	Panhandle Trading Co	10-02-92	G-S	25,000	Y	I	08-19-92	Indef.
ST93-021	Trunkline Gas Co	Triumph Gas Marketing Co	10-02-92	G-S	10,000	N	I	08-17-92	Indef.
ST93-022	Natural Gas P/L Co. of America.	Woodward Marketing, Inc	10-02-92	G-S	20,000	N	I	03-16-92	Indef.
ST93-023	United Gas Pipe Line Co	Aquila Energy Marketing Corp	10-02-92	G-S	52,400	N	I	09-21-92	01-19-93
ST93-024	United Gas Pipe Line Co	Polaris Pipeline Corp	10-02-92	G-S	20,960	N	I	09-24-92	01-22-93
ST93-025	United Gas Pipe Line Co	NGC Transportation, Inc	10-02-92	G-S	157,200	N	I	09-24-92	01-22-93
ST93-026	United Gas Pipe Line Co	CNG Trading Co	10-02-92	G-S	31,440	N	I	09-21-92	01-19-93
ST93-027	United Gas Pipe Line Co	Chevron U.S.A. Inc	10-02-92	G-S	104,800	N	I	09-21-92	01-19-93
ST93-028	United Gas Pipe Line Co	Western Gas Resources, Inc	10-02-92	G-S	75,000	N	I	09-24-92	01-22-93
ST93-029	United Gas Pipe Line Co	Entrade Corp	10-02-92	G-S	104,800	N	I	09-23-92	01-21-93
ST93-030	Columbia Gas Transmission Corp.	Border Resources, Inc	10-02-92	G-S	30,000	N	I	09-22-92	Indef.
ST93-031	Transcontinental Gas P/L Corp	NGC Transportation, Inc	10-02-92	G-S	1,950,000	N	I	06-01-89	Indef.
ST93-032	Transcontinental Gas P/L Corp	Mississippi Fuel Co	10-02-92	B	3,942,420	N	I	11-26-91	Indef.
ST93-033	CNG Transmission Corp	Centran Corp	10-02-92	G-S	1,500	N	I	08-22-92	Indef.
ST93-034	CNG Transmission Corp	Clinton Gas Marketing	10-02-92	G-S	15,000	N	I	08-07-92	Indef.
ST93-035	CNG Transmission Corp	Centran Corp	10-02-92	G-S	1,500	N	I	07-31-92	Indef.
ST93-036	CNG Transmission Corp	Riley Natural Gas Co	10-02-92	G-S	1,000	N	I	08-02-92	Indef.
ST93-037	Gas Co. of New Mexico	Transwestern Pipeline Co	10-05-92	G-HT	1,000	N	I	09-02-92	08-31-93
ST93-038	Gas Co. of New Mexico	El Paso Natural Gas Co	10-05-92	G-HT	3,000	N	I	09-01-92	07-31-93
ST93-039	U-T Offshore System	Transcontinental Gas P/L Corp	10-05-92	K	319,320	N	I	09-05-92	06-20-93
ST93-040	Lone Star Gas Co	Transcontinental Gas P/L Corp	10-05-92	C	75,000	N	I	09-16-92	Indef.
ST93-041	Black Marlin Pipeline Co	Marathon Oil Co	10-05-92	G-S	40,000	A	I	09-23-92	Indef.
ST93-042	Black Marlin Pipeline Co	Oryx Gas Marketing L.P	10-05-92	G-S	50,000	A	I	09-05-92	Indef.
ST93-043	Northern Natural Gas Co	Unigas Energy Inc	10-05-92	G-S	50,000	N	F/I	08-15-92	Indef.
ST93-044	Northern Natural Gas Co	Natural Gas, Inc	10-05-92	B	400	N	F	09-01-92	09-01-97
ST93-045	High Island Offshore System	Citrus Marketing, Inc	10-05-92	K-S	305,000	N	I	09-26-92	Indef.
ST93-046	High Island Offshore System	Nomeco Oil and Gas Co	10-05-92	K-S	120,000	N	I	09-10-92	Indef.
ST93-047	High Island Offshore System	Transcontinental Gas P/L Corp	10-05-92	K	106,440	N	I	09-05-92	Indef.
ST93-048	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-07-92	B	75,000	N	I	09-01-92	Indef.
ST93-049	Florida Gas Transmission Co	City of Tallahassee	10-07-92	G-S	10,625	N	F	09-08-92	Indef.
ST93-050	Florida Gas Transmission Co.	City of Tallahassee	10-07-92	G-S	7,088	N	F	09-07-92	Indef.
ST93-051	Northern Natural Gas Co	Wilson Foods Corp	10-07-92	G-S	200	N	F	09-24-92	Indef.
ST93-052	Northern Natural Gas Co	David M. Munson, Inc	10-07-92	G-S	50	N	F/I	09-16-92	Indef.
ST93-053	CNG Transmission Corp	Anheuser-Busch Co	10-07-92	G-S	7,500	N	I	09-04-92	Indef.
ST93-054	CNG Transmission Corp	AGF Direct Gas Sales, Inc	10-07-92	G-S	5,000	N	I	09-01-92	Indef.
ST93-055	CNG Transmission Corp	Equitable Resources Marketing	10-07-92	G-S	100,000	N	I	09-04-92	Indef.
ST93-056	CNG Transmission Corp	Equitable Resources Marketing	10-07-92	G-S	20,000	N	I	09-01-92	Indef.
ST93-057	CNG Transmission Corp	Equitable Resources Marketing	10-07-92	G-S	100,000	N	I	09-02-92	Indef.
ST93-058	El Paso Natural Gas Co	Continental Natural Gas, Inc	10-08-92	G-S	30,900	N	I	09-20-92	Indef.
ST93-059	Tennessee Gas Pipeline Co	Nerco Oil & Gas, Inc	10-08-92	G-S	200,000	N	I	09-09-92	Indef.
ST93-060	Arida Energy Resources	Aquila Energy Marketing Corp	10-08-92	G-S	100,000	N	I	05-01-92	Indef.
ST93-061	Arida Energy Resources	Wasikom Gas Marketing	10-08-92	G-S	20,000	N	I	05-01-92	Indef.
ST93-062	Arida Energy Resources	Ward Gas Marketing	10-08-92	G-S	50,000	N	I	04-02-92	Indef.
ST93-063	Transok, Inc	Williams Natural Gas Co	10-08-92	C	50,000	N	I	09-19-92	Indef.
ST93-064	Algonquin Gas Transmission Co.	Texas Ohio Gas, Inc	10-08-92	G-S	120,000	N	I	09-01-92	Indef.
ST93-065	Algonquin Gas Transmission Co.	Santana Natural Gas	10-08-92	G-S	100,000	N	I	09-18-92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-066	Algonquin Gas Transmission Co.	Colonial Gas Co	10-08-92	G-S	52	N	I	08-26-92	Indef.
ST93-067	Algonquin Gas Transmission Co.	Tenngasco Corp	10-08-92	G-S	3,750,000	N	I	08-08-92	Indef.
ST93-068	Algonquin Gas Transmission Co.	Tenngasco Corp	10-08-92	G-S	960,000	N	I	09-26-92	Indef.
ST93-069	Colorado Interstate Gas Co	Montana Power Co	10-09-92	B	25,000	N	I	09-01-92	Indef.
ST93-070	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co.	10-09-92	G-S	10,000	N	I	09-01-92	Indef.
ST93-071	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-09-92	B	14,000	N	F	09-11-92	Indef.
ST93-072	Tennessee Gas Pipeline Co	Tenngasco Corp	10-09-92	G-S	2,000,000	A	I	09-10-92	Indef.
ST93-073	Tennessee Gas Pipeline Co	Nashvill Gas Co	10-09-92	B	24,000	N	F	09-25-92	Indef.
ST93-074	ANR Pipeline Co	Niagara Mohawk Power Corp	10-09-92	B	17,800	N	F	09-01-92	Indef.
ST93-075	ANR Pipeline Co	Universal Resources Corp	10-09-92	G-S	5,000	Y	I	09-09-92	Indef.
ST93-076	ANR Pipeline Co	Onondga Cogeneration, L.P	10-09-92	G-S	18,275	N	F	08-01-92	Indef.
ST93-077	ANR Pipeline Co	Tejas Power Corp	10-09-92	G-S	50,000	N	I	09-15-92	Indef.
ST93-078	ANR Pipeline Co	Michigan Consolidated Gas Co	10-09-92	B	30,000	N	I	09-15-92	Indef.
ST93-079	ANR Pipeline Co	Acadian Gas Pipeline System	10-09-92	B	100,000	N	I	09-16-92	Indef.
ST93-080	K N Energy, Inc	Nebraska Public Gas Agency	10-09-92	G-S	188	N	F	09-10-92	11-01-93
ST93-081	Transcontinental Gas P/L Corp	Consolidated Edison Co	10-09-92	B	7,880,000	N	I	09-11-92	Indef.
ST93-082	Southern Natural Gas Co	Panhandle Trading Co	10-09-92	G-S	100,000	N	I	09-17-92	Indef.
ST93-083	Southern Natural Gas Co	Williams Gas Marekting	10-09-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-084	Southern Natural Cas Co	City of Trussville	10-09-92	G-S	9,250	N	I	09-26-92	08-01-50
ST93-085	Sea Robin Pipeline Co	Murphy Oil U.S.A. Inc	10-09-92	G-S	60,000	N	I	10-01-92	Indef.
ST93-086	Sea Robin Pipeline Co	Energy Development Corp	10-09-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-087	Sea Robin Pipeline Co	Arco Natural Gas Marketing	10-09-92	G-S	10,000	N	I	10-01-92	06-30-93
ST93-088	Sea Robin Pipeline Co	Sonat Marketing Co	10-09-92	G-S	11,985	A	F	10-01-92	10-31-92
ST93-089	Great Lakes Gas Transmission Co.	Western Gas Marketing Inc	10-09-92	G-S	500,000	Y	I	09-01-92	Indef.
ST93-090	Westar Transmission Co	El Paso Natural Gas Co	10-13-92	C	42,000	N	I	07-01-92	Indef.
ST93-091	Webb/Duval Gatherers	Tennessee Gas Transmission	10-13-92	C	10,000	N	I	07-01-92	Indef.
ST93-092	Northern Natural Gas Co	Midwest Natural Gas, Inc	10-13-92	B	3,439	N	F	09-01-92	Indef.
ST93-093	Northern Natural Gas Co	Martin Exploration Management Co.	10-13-92	G-S	5,000	N	F/I	09-11-92	Indef.
ST93-094	Florida Gas Transmission Co	Rinker Materials Corp	10-13-92	G-S	4,315	N	I	09-28-92	Indef.
ST93-095	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co.	10-13-92	G-S	4,000	N	F	09-01-92	08-31-93
ST93-096	El Paso Natural Gas Co	Southern California Edison Co	10-13-92	G-S	200,000	N	I	09-28-92	Indef.
ST93-097	Trunkline Gas Co	Enron Gas Marketing, Inc	10-13-92	G-S	100,000	N	I	09-23-92	Indef.
ST93-098	Trunkline Gas Co	Entrade Corp	10-13-92	G-S	500,000	N	I	09-23-92	Indef.
ST93-099	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp.	10-13-92	C	45,000	N	I	09-10-92	Indef.
ST93-100	Enogex Inc	Arkla Energy Resources	10-13-92	C	5,300	N	I	10-01-92	Indef.
ST93-101	Enogex Inc	Ozark Gas Transmission System.	10-13-92	C	15,000	N	I	10-01-92	Indef.
ST93-102	Enogex Inc	Northern Natural Gas Co	10-13-92	C	50,000	N	I	09-17-92	Indef.
ST93-103	Enogex Inc	Arkla Energy Resources	10-13-92	C	10,000	N	I	10-01-92	Indef.
ST93-104	Egnogex Inc	ANR Pipeline Co	10-13-92	C	5,000	N	I	09-15-92	Indef.
ST93-105	Natural Gas P/L Co. of America.	Conco, Inc	10-13-92	G-S	3,000	N	I	10-01-92	Indef.
ST93-106	Natural Gas P/L Co. of America.	American Central Gas Cos., Inc.	10-13-92	G-S	200,000	N	I	11-04-91	Indef.
ST93-107	Natural Gas P/L Co. of America.	Chevron U.S.A., Inc	10-13-92	G-S	50,000	N	I	11-04-91	Indef.
ST93-108	Natural Gas P/L Co. of America.	Midcon Marketing Corp	10-13-92	G-S	50,000	A	F	11-04-91	03-31-93
ST93-109	Natural Gas P/L Co. of America.	Access Energy Corp	10-13-92	G-S	1,100	N	F	11-04-91	09-30-92
ST93-110	Natural Gas P/L Co. of America.	Centennial Natural Gas Corp	10-13-92	G-S	100,000	N	I	11-04-91	Indef.
ST93-111	Natural Gas P/L Co. of America.	Vesta Energy Co	10-13-92	G-S	50,000	N	I	11-04-91	Indef.
ST93-112	Natural Gas P/L Co. of America.	Peoples Gas Light and Coke Co.	10-13-92	G-S	102,600	N	F	11-04-91	11-30-95
ST93-113	Natural Gas P/L Co. of America.	Tennessee Gas Pipeline Co	10-13-92	G	48,000	N	F	11-04-91	06-29-98
ST93-114	Natural Gas P/L Co. of America.	Inland Steel Co	10-13-92	G-S	10,000	N	F	11-04-91	05-31-93
ST93-115	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc	10-13-92	G-S	60,000	N	F	11-04-91	10-31-93
ST93-116	Natural Gas P/L Co. of America.	Highland Energy Co	10-13-92	G-S	5,000	N	I	11-04-91	Indef.
ST93-117	Natural Gas P/L Co. of America.	Tex/Con Gas Marketing Co	10-13-92	G-S	25,487	N	F	11-04-91	Indef.
ST93-118	Natural Gas P/L Co. of America.	Boyd Rosene and Associates, Inc.	10-13-92	G-S	25,000	N	I	11-04-91	Indef.
ST93-119	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc	10-13-92	G-S	20,000	N	F	11-04-91	Indef.
ST93-120	Natural Gas P/L Co. of America.	Equitable Resources Marketing Co.	10-13-92	G-S	50,000	N	I	11-04-91	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93–121	Natural Gas P/L Co. of America.	Arco Natural Gas Marketing, Inc.	10–13–92	G–S	500,000	N	I	11–04–91	Indef.
ST93–122	Natural Gas P/L Co. of America.	Bridgegas U.S.A., Inc	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–123	Natural Gas P/L Co. of America.	Columbia Gas Development Corp.	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–124	Natural Gas P/L Co. of America.	Access Energy Corp	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–125	Natural Gas P/L Co. of America.	M G Natural Gas Corp	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–126	Natural Gas P/L Co. of America.	Energy Marketing Exchange, Inc.	10–13–92	G–S	20,000	N	I	11–04–91	Indef.
ST93–127	Natural Gas P/L Co. of America.	Polaris Corp	10–13–92	G–S	500,000	N	I	11–04–91	Indef.
ST93–128	Natural Gas P/L Co. of America.	Quantum Chemical Corp	10–13–92	G–S	15,076	N	F	11–04–91	09–30–94
ST93–129	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–130	Natural Gas P/L Co. of America.	Midcon Marketing Corp	10–13–92	G–S	100,000	A	I	11–04–91	Indef.
ST93–131	Natural Gas P/L Co. of America.	Midcon Marketing Corp	10–13–92	G–S	20,000	A	I	11–04–91	Indef.
ST93–132	Natural Gas P/L Co. of America.	Access Energy Corp	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–133	Natural Gas P/L Co. of America.	Anthem Energy Co	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–134	Natural Gas P/L Co. of America.	Reynolds Pipeline Systems, Inc..	10–13–92	G–S	4,000	N	F	11–04–91	08–31–94
ST93–135	Natural Gas P/L Co. of America.	Arcadian Corp	10–13–92	G–S	45,000	N	F	11–04–91	08–31–94
ST93–136	Natural Gas P/L Co. of America.	Nipsco Energy Trading Co	10–13–92	G–S	25,000	N	I	11–04–91	Indef.
ST93–137	Natural Gas P/L Co. of America.	Inland Steel Co	10–13–92	G–S	10,000	N	F	11–04–91	05–31–93
ST93–138	Natural Gas P/L Co. of America.	K N Gas Marketing, Inc	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–139	Natural Gas P/L Co. of America.	Centennial Natural Gas Corp	10–13–92	G–S	300,000	N	I	11–04–91	Indef.
ST93–140	Natural Gas P/L Co. of America.	Arkla Energy Marketing Co	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–141	Natural Gas P/L Co. of America.	Texaco Gas Marketing	10–13–92	G–S	200,000	N	I	11–04–91	Indef.
ST93–142	Natural Gas P/L Co. of America.	Colorado Interstate Gas Co	10–13–92	G	100,000	N	I	11–04–91	Indef.
ST93–143	Natural Gas P/L Co. of America.	Grain Processing Corp	10–13–92	G–S	4,000	N	F	11–04–91	09–30–96
ST93–144	Natural Gas P/L Co. of America.	North Canadian Marketing Corp.	10–13–92	G–S	150,000	N	I	11–04–91	Indef.
ST93–145	Natural Gas P/L Co. of America.	Vesta Energy Co	10–13–92	G–S	10,000	N	I	11–04–91	Indef.
ST93–146	Natural Gas P/L Co. of America.	Hadson Gas System, Inc	10–13–92	G–S	150,000	N	I	11–04–91	Indef.
ST93–147	Natural Gas P/L Co. of America.	Shell Gas Trading Co	10–13–92	G–S	300,000	N	I	11–04–91	Indef.
ST93–148	Natural Gas P/L Co. of America.	Oryx Gas Marketing L.P	10–13–92	G–S	150,000	N	I	11–04–91	Indef.
ST93–149	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–150	Natural Gas P/L Co. of America.	Access Energy Corp	10–13–92	G–S	20,000	A	F	11–04–91	Indef.
ST93–151	Natural Gas P/L Co. of America.	Tejas Power Corp	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–152	Natural Gas P/L Co. of America.	Arcadian Corp	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–153	Natural Gas P/L Co. of America.	Arkla Energy Marketing Co	10–13–92	G–S	10,000	A	F	11–04–91	05–31–97
ST93–154	Natural Gas P/L Co. of America.	Archer-Power-Midland Co	10–13–92	G–S	55,050	N	F	11–04–91	11–30–96
ST93–155	Natural Gas P/L Co. of America.	Power Gas Ventures Corp	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–156	Natural Gas P/L Co. of America.	Chevron U.S.A., Inc	10–13–92	G–S	20,000	N	I	11–04–91	Indef.
ST93–157	Natural Gas P/L Co. of America.	Shell Gas Trading Co	10–13–92	G–S	10,000	N	F	11–04–91	12–31–96
ST93–158	Natural Gas P/L Co. of America.	Midcon Marketing Corp	10–13–92	G–S	1,000	A	F	11–04–91	Indef.
ST93–159	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co	10–13–92	G–S	100,000	N	I	09–13–92	Indef.
ST93–160	Columbia Gulf Transmission Co.	Coastal Gas Marketing Co	10–13–92	G–S	100,000	N	I	09–11–92	Indef.
ST93–161	Transcontinental Gas P/L Corp	UGI Corp	10–13–92	B	610,000	A	I	09–10–92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-162	Tennessee Gas Pipeline Co	Berkshire Gas Co	10-13-92	B	11,010	N	F	10-01-92	Indef.
ST93-163	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-13-92	B	100,000	N	I	09-17-92	Indef.
ST93-164	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-13-92	B	150,000	N	I	09-17-92	Indef.
ST93-165	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-13-92	B	100,000	N	I	09-16-92	Indef.
ST93-166	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-13-92	B	300,000	N	I	09-12-92	Indef.
ST93-167	Columbia Gas Transmission Corp.	Lindsey & Elliott	10-13-92	G-S	4,036	N	F	10-01-92	Indef.
ST93-168	Columbia Gas Transmission Corp.	Mead Corp	10-13-92	G-S	2,150	Y	F	10-01-92	Indef.
ST93-169	Columbia Gas Transmission Corp.	Entrade Corp	10-13-92	G-S	500	Y	F	10-01-92	Indef.
ST93-170	Columbia Gas Transmission Corp.	Chevron U.S.A., Inc	10-13-92	G-S	60,000	Y	I	10-01-92	Indef.
ST93-171	Ong Transmission Co	Panhandle Eastern Pipe Line Co.	10-14-92	C	50,000	N	I	09-15-92	Indef.
ST93-172	Transcontinental Gas P/L Corp	Sun Co., Inc	10-14-92	G-S	30,000	N	I	09-21-92	Indef.
ST93-173	Transcontinental Gas P/L Corp	Piedmont Natural Gas Co., Inc	10-14-92	G-S	45,000	N	I	09-21-92	Indef.
ST93-174	Tennessee Gas Pipeline Co	Tennessee River Intrastate Gas Co.	10-14-92	B	100,000	N	I	09-19-92	Indef.
ST93-175	Florida Gas Transmission Co ..	Gold Bond Building Products ...	10-14-92	G-S	1,918	N	I	09-18-92	Indef.
ST93-176	Columbia Gulf Transmission Co.	Diamond Shamrock Offshore L.P.	10-14-92	G-S	100,000	N	I	09-19-92	Indef.
ST93-177	Natural Gas P/L Co. of America.	Gasmark, Inc	10-14-92	G-S	100,000	N	I	06-02-92	Indef.
ST93-181	Tennessee Gas Pipeline Co	O&R Energy Inc	10-15-92	G-S	300,000	N	I	10-01-92	Indef.
ST93-182	Lone Star Gas Co	United Gas Pipe Co	10-15-92	C	15,000	N	I	09-16-92	Indef.
ST93-183	Transwestern Pipeline Co	New Mexico Natural Gas, Inc ..	10-15-92	G-S	1,000	N	I	10-01-92	Indef.
ST93-184	Transwestern Pipeline Co	New Mexico Natural Gas, Inc ..	10-15-92	G-S	1,000	N	I	09-21-92	Indef.
ST93-185	Transwestern Pipeline Co	Meridian Oil Trading, Inc	10-15-92	G-S	200,000	N	I	09-26-92	Indef.
ST93-186	Transwestern Pipeline Co	Enron Gas Marketing, Inc	10-15-92	G-S	100,000	A	I	10-01-92	Indef.
ST93-187	Pacific Gas Transmission Co ..	Kimball Energy Corp	10-16-92	G-S	25,000	N	I	09-22-92	Indef.
ST93-188	United Gas Pipe Line Co	O&R Energy, Inc	10-16-92	G-S	20,960	N	I	10-06-92	02-03-93
ST93-189	United Gas Pipe Line Co	Shell Gas Trading Co	10-16-92	G-S	209,600	N	I	09-25-92	01-23-93
ST93-190	Panhandle Eastern Pipe Line Co.	Delhi Gas Pipeline Corp	10-16-92	B	10,000	N	I	08-12-92	Indef.
ST93-191	Panhandle Eastern Pipe Line Co.	Amgas, Inc	10-16-92	G-S	100	N	I	08-22-92	Indef.
ST93-192	Panhandle Eastern Pipe Line Co.	Amgas, Inc	10-16-92	G-S	130	N	I	08-01-92	Indef.
ST93-193	Florida Gas Transmission Co ..	Florida Public Utilities Co	10-16-92	G-S	14,452	N	F	10-01-92	Indef.
ST93-194	Florida Gas Transmission Co ..	Fort Pierce Utilities Authority ...	10-16-92	G-S	2,750	N	F	10-01-92	Indef.
ST93-195	Florida Gas Transmission Co ..	Fort Pierce Utilities Authority ...	10-16-92	G-S	6,572	N	F	10-01-92	Indef.
ST93-196	Ong Transmission Co	Panhandle Eastern Pipe Line Co.	10-16-92	C	50,000	N	I	09-18-92	Indef.
ST93-197	Ong Transmission Co	Arkla Energy Resources	10-16-92	C	50,000	N	I	09-16-92	Indef.
ST93-198	Ong Transmission Co	Arkla Energy Resources	10-16-92	C	75,000	N	I	09-25-92	Indef.
ST93-199	Valero Transmission, L.P	Transcontinental Gas P/L Corp	10-16-92	C	25,000	N	I	09-17-92	Indef.
ST93-200	Columbia Gas Transmission Corp.	United States Gypsum Co	10-16-92	G-S	50,000	Y	I	10-01-92	Indef.
ST93-201	Columbia Gas Transmission Corp.	Stand Energy Corp	10-16-92	G-S	150	Y	F	10-01-92	03-31-93
ST93-202	Columbia Gas Transmission Corp.	O & R Energy, Inc	10-16-92	G-S	2,000	N	F/I	10-01-92	10-31-93
ST93-203	Columbia Gas Transmission Corp.	O & R Energy, Inc	10-16-92	G-S	2,467	N	F/I	10-01-92	10-31-93
ST93-204	Columbia Gas Transmission Corp.	O & R Energy, Inc	10-16-92	G-S	3,000	N	F/I	10-01-92	10-31-93
ST93-205	Columbia Gas Transmission Corp.	R. Gene Brasel	10-16-92	G-S	1,000	N	I	09-17-92	Indef.
ST93-206	Columbia Gas Transmission Corp.	Triangle Resource Group	10-16-92	G-S	1,878	N	I	10-01-92	Indef.
ST93-207	CNG Transmission Corp	KCS Energy Mktg (EME)	10-16-92	G-S	20,000	N	I	10-01-92	Indef.
ST93-208	CNG Transmission Corp	Transport Gas, Inc	10-16-92	G-S	1,100	N	I	09-30-92	Indef.
ST93-209	CNG Transmission Corp	Transport Gas, Inc	10-16-92	G-S	1,100	N	I	09-30-92	Indef.
ST93-210	CNG Transmission Corp	O & R Energy, Inc	10-16-92	G-S	1,600	N	I	09-24-92	Indef.
ST93-211	CNG Transmission Corp	O & R Energy, Inc	10-16-92	G-S	1,600	N	I	09-24-92	Indef.
ST93-212	Tennessee Gas Pipeline Co	Commonwealth Gas Co	10-16-92	G-S	10,000	N	F	09-23-92	Indef.
ST93-213	Tennessee Gas Pipeline Co	Chevron U.S.A., Inc	10-16-92	G-S	450,000	N	I	10-01-92	Indef.
ST93-214	Tennessee Gas Pipeline Co	Texaco Gas Marketing, Inc	10-16-92	G-S	10,000	N	F	10-01-92	10-01-93
ST93-215	Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co.	10-16-92	B	21,400	N	F	09-16-92	Indef.
ST93-216	Tennessee Gas Pipeline Co	West Virginia Power Gas Service.	10-16-92	B	9,455	N	I	09-16-92	Indef.
ST93-217	Exxon Gas System, Inc	United Gas Pipe Line Co	10-07-92	C	50,000	A	I	08-25-92	Indef.
ST93-218	Arkla Energy Resources	Delhi Gas Pipe Line Corp	10-16-92	B	25,000	N	I	08-28-92	Indef.
ST93-219	Arkla Energy Resources	Apache Corp	10-16-92	G-S	20,000	N	I	08-01-92	Indef.
ST93-220	Arkla Energy Resources	Transok Gas Co	10-16-92	G-S	50,000	N	I	08-13-92	Indef.

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ST93-221	Arkla Energy Resources	International Paper Co	10-16-92	G-S	50,000	N	I	09-03-92	Indef.
ST93-222	Texas Gas Transmission Corp	Western Kentucky Gas Co	10-16-92	B	625	N	I	09-30-92	Indef.
ST93-223	Texas Gas Transmission Corp	Western Kentucky Gas Co	10-16-92	B	6,150	N	I	09-30-92	Indef.
ST93-224	Texas Gas Transmission Corp	Chevron U.S.A. Inc	10-16-92	G-S	150,000	Y	I	09-30-92	Indef.
ST93-225	Natural Gas P/L Co. of America.	ONG Transmission Co	10-16-92	B	1,350	N	F	10-01-92	09-30-93
ST93-226	United Gas Pipe Line Co	Conoco, Inc	10-19-92	G-S	20,000	N	I	09-29-92	01-27-93
ST93-227	United Gas Pipe Line Co	Gulf Gas Utilities Co	10-19-92	G-S	5,000	N	I	09-24-92	01-22-93
ST93-228	Enogex Inc	Ozark Gas Transmission System.	10-19-92	C	50,000	N	I	10-07-92	Indef.
ST93-229	Florida Gas Transmission Co	Citrus Marketing, Inc	10-19-92	G-S	100,000	N	I	10-01-92	Indef
ST93-230	Channel Industries Gas Co	Moss Bluff Gas Storage Systems.	10-19-92	C	100,000	N	I	09-18-92	Indef
ST93-231	Kern River Gas Transmission Co.	Bonneville Fuels Marketing Corp.	10-19-92	G-S	40,000	N	I	09-19-92	Indef.
ST93-232	Kern River Gas Transmission Co.	Chevron U.S.A. Inc	10-19-92	G-S	100,000	N	F	09-19-92	Indef.
ST93-233	Kern River Gas Transmission Co.	Canwest Gas Supply U.S.A. Inc.	10-19-92	G-S	300,000	N	I	09-19-92	Indef.
ST93-234	Kern River Gas Transmission Co.	Windward Energy & Marketing Co.	10-19-92	G-S	75,000	N	I	09-19-92	Indef.
ST93-235	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc	10-19-92	G-S	150,000	N	I	09-19-92	Indef.
ST93-236	Kern River Gas Transmission Co.	Gasmark, Ltd	10-19-92	G-S	100,000	N	I	09-19-92	Indef.
ST93-237	Kern River Gas Transmission Co.	Southwest Gas Corp	10-19-92	G-S	14,000	N	F	09-19-92	Indef.
ST93-238	Kern River Gas Transmission Co.	Mobil Natural Gas Inc	10-19-92	G-S	85,000	N	F	09-19-92	Indef.
ST93-239	Kern River Gas Transmission Co.	Tenngasco Marketing Corp	10-19-92	G-S	100,000	N	I	09-19-92	Indef.
ST93-240	Enogex Inc	Ozark Gas Transmission System.	10-19-92	C	150,000	N	I	10-08-92	Indef.
ST93-241	Florida Gas Transmission Co	MG Natural Gas Corp	10-19-92	G-S	100,000	N	I	10-01-92	Indef.
ST93-242	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	10-19-92	C	5,000	N	I	09-17-92	Indef.
ST93-244	Northern Natural Gas Co	Westbrook Municipal Light & Power.	10-19-92	B	290	N	F	09-25-92	Indef.
ST93-245	Northern Natural Gas Co	Sioux Pointe, Inc	10-19-92	G-S	40,000	N	F/I	08-01-92	Indef.
ST93-246	Northern Natural Gas Co	Enron Gas Processing Co	10-19-92	G-S	20,000	Y	F/I	10-01-92	Indef.
ST93-247	United Gas Pipe Line Co	Texas School Land Board	10-19-92	B	1,000	N	I	10-01-92	Indef.
ST93-248	National Fuel Gas Supply Corp	Columbia Gas Transmission Corp.	10-20-92	G-S	15,000	N	I	10-10-92	10-31-93
ST93-249	National Fuel Gas Supply Corp	Northern Consolidated Power	10-20-92	G-S	16,837	N	F	08-13-92	07-31-11
ST93-250	National Fuel Gas Supply Corp	Progas U.S.A., Inc	10-20-92	G-S	30,000	N	I	07-17-92	01-15-93
ST93-251	National Fuel Gas Supply Corp	Louis Dreyfus Energy Corp	10-20-92	G-S	100,000	N	I	08-01-92	11-29-92
ST93-254	Channel Industries Gas Co	Northern Natural Gas Co	10-20-92	C	40,000	N	I	09-24-92	Indef.
ST93-255	Channel Industries Gas Co	United Gas Pipeline Co	10-20-92	C	50,000	N	I	10-10-92	Indef.
ST93-256	Colorado Interstate Gas Co	Grand Valley Gas Co	10-20-92	G-S	10,000	N	I	10-10-92	Indef.
ST93-257	Colorado Interstate Gas Co	Helmerich & Payne, Inc	10-20-92	G-S	20,000	N	I	10-03-92	Indef.
ST93-258	Colorado Interstate Gas Co	Ideal Cement Div., Holnem Inc	10-20-92	G-S	125	N	I	09-29-92	09-30-93
ST93-259	Colorado Interstate Gas Co	Oxy USA, Inc	10-20-92	G-S	60,000	N	I	09-01-92	12-01-00
ST93-260	Sabine Pipe Line Co	Neches Gas Distribution Co	10-20-92	G-S	30,000	N	I	09-01-92	Indef.
ST93-261	Sabine Pipe Line Co	Calcasieu Gas Gathering System.	10-20-92	G-S	220,000	N	I	08-01-92	Indef.
ST93-262	Sabine Pipe Line Co	Olympic Fuels Co	10-20-92	G-S	5,000	N	F	09-01-92	Indef.
ST93-263	Sabine Pipe Line Co	Amoco Gas Co	10-20-92	G-S	100,000	N	I	08-29-92	Indef.
ST93-264	Sabine Pipe Line Co	Energy Development Corp	10-20-92	G-S	150,000	N	I	09-03-92	Indef.
ST93-265	Sabine Pipe Line Co	Pontchartrain Natural Gas System.	10-20-92	G-S	220,000	N	I	08-01-92	Indef.
ST93-266	Sabine Pipe Line Co	American Central Gas Cos., Inc.	10-20-92	G-S	50,000	N	I	09-02-92	Indef.
ST93-267	Arkla Energy Resources	TXG Gas Marketing Co	10-20-92	G-S	50,000	N	F	08-01-92	Indef.
ST93-268	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc	10-20-92	G-S	150,000	N	I	09-23-92	Indef.
ST93-269	Transcontinental Gas P/L Corp	Elizabethtown Gas Co	10-20-92	B	900,000	N	I	09-24-92	Indef.
ST93-270	El Paso Natural Gas Co	Richardson Products Co	10-21-92	G-S	103,000	N	I	10-03-92	Indef.
ST93-217	Natural Gas P/L Co. of America.	Alumax Extrusions, Inc	10-21-92	G-S	1,200	N	I	08-12-92	Indef.
ST93-272	ANR Pipeline Co	Columbia Gas of Ohio, Inc	10-21-92	B	100,000	N	I	10-01-92	Indef.
ST93-273	ANR Pipeline Co	Trade & Development Corp	10-21-92	G-S	30,000	N	I	10-01-92	Indef.
ST93-274	ANR Pipeline Co	Northern Illinois Gas Co	10-21-92	B	50,000	N	I	10-01-92	Indef.
ST93-275	ANR Pipeline Co	Ohio Gas Co	10-21-92	B	5,000	N	F	10-01-92	Indef.
ST93-276	Colorado Interstate Gas Co	Fuel Resources Development Co.	10-21-92	G-S	2,300	N	F	10-01-92	12-31-08
ST93-277	Colorado Interstate Gas Co	Fuel Resources Development Co.	10-21-92	G-S	1,700	N	F	10-01-92	12-31-08
ST93-278	Colorado Interstate Gas Co	Western Sugar Co	10-21-92	G-S	700	N	F	10-01-92	03-31-93
ST93-279	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co.	10-21-92	G-S	10,000	N	F	10-01-92	09-30-97
ST93-280	United Gas Pipe Line Co	Energy International Market. Corp.	10-21-92	G-S	20,000	N	I	10-16-92	02-13-93

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ST93-281	United Gas Pipe Line Co	Entrade Corp	10-21-92	G-S	104,800	N	I	10-12-92	02-09-93
ST93-282	United Gas Pipe Line Co	Midcon Marketing Corp	10-21-92	G-S	74,198	N	F	10-12-92	02-09-93
ST93-283	Transcontinental Gas P/L Corp	AGIP Petroleum Co., Inc	10-21-92	G-S	150,000	N	I	10-01-92	Indef.
ST93-284	Transcontinental Gas P/L	Union Gas Co	10-21-92	B	3,865	N	F	10-01-92	11-15-95
ST93-285	Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co.	10-21-92	G	10,000	N	F	09-16-92	Indef.
ST93-286	Tennessee Gas Pipeline Co	Continental Natural Gas, Inc	10-21-92	G-S	10,000	N	I	10-06-92	Indef.
ST93-287	Viking Gas Transmission Co	Peoples Natural Gas Co	10-21-92	B	100,000	N	I	09-21-92	Indef.
ST93-288	Channel Industries Gas Co	Moss Bluff Gas Storage Systems.	10-21-92	C	75,000	N	I	10-01-92	Indef.
ST93-290	United Texas Transmission Co	Natural Gas P/L Co. of America.	10-22-92	C	200,000	Y	I	01-01-92	Indef.
ST93-291	Valero Transmission, L.P	Tennessee Gas Pipeline Co	10-22-92	C	13,000	N	I	10-01-92	Indef.
ST93-292	Valero Transmission, L.P	Natural Gas P/L Co. of America.	10-22-92	C	10,000	N	I	09-25-92	Indef.
ST93-293	Valero Transmission, L.P	United Gas Pipe Line Co	10-22-92	C	6,000	N	I	10-07-92	Indef.
ST93-294	Valero Transmission, L.P	Texas Eastern Transmission Co.	10-22-92	C	3,800	N	I	10-06-92	Indef.
ST93-295	Questar Pipeline Co	Colorado Interstate Gas Co	10-22-92	G	200,000	N	I	10-01-92	Indef.
ST93-296	Tennessee Gas Pipeline Co	Quivira Gas Co	10-22-92	G-S	204,000	N	I	09-23-92	Indef.
ST93-297	Tennessee Gas Pipeline Co	American Central Gas Marketing Co.	10-22-92	G-S	200,000	N	I	09-25-92	Indef.
ST93-298	Tennessee Gas Pipeline Co	City of Decatur	10-22-92	G-S	5,400	N	F	10-01-92	Indef.
ST93-299	Tennessee Gas Pipeline Co	NGC Transportation, Inc	10-22-92	G-S	600,000	N	I	10-10-92	Indef.
ST93-300	Tennessee Gas Pipeline Co	Superior Natural Gas Corp	10-22-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-301	Northern Natural Gas Co	Enron Gas Marketing, Inc	10-22-92	G-S	250,000	A	F/I	09-01-92	Indef.
ST93-302	Texas Gas Transmission Corp	NGC Transportation, Inc	10-22-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-303	Texas Gas Transmission Corp	Hadson Gas Systems, Inc	10-22-92	G-S	15,000	N	I	10-03-92	Indef.
ST93-304	Texas Gas Transmission Corp	Indiana Gas Co., Inc	10-22-92	G-S	10,000	N	F	10-09-92	Indef.
ST93-305	Texas Gas Transmission Corp	Energy Development Corp	10-22-92	G-S	75,000	N	I	10-06-92	Indef.
ST93-306	Mississippi River Trans. Corp	Twister Transmission Co	10-23-92	G-S	3,500	N	I	09-26-92	Indef.
ST93-307	Tennessee Gas Pipeline Co	City of Holyoke Gas & Elect. Dept.	10-23-92	B	1,871	N	F	10-10-92	Indef.
ST93-308	Tennessee Gas Pipeline Co	Yankee Gas Services Co	10-23-92	G-S	15,861	N	F	09-24-92	Indef.
ST93-309	Delhi Gas Pipeline Corp	ANR Pipeline Co	10-23-92	C	250,000	N	I	10-07-92	Indef.
ST93-310	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp.	10-23-92	C	20,000	N	I	10-01-92	Indef.
ST93-311	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	10-23-92	C	20,000	N	I	10-10-92	Indef.
ST93-312	Delhi Gas Pipeline Corp	Arkla Energy Resources	10-23-92	C	4,000	N	I	10-01-92	Indef.
ST93-313	Enogex, Inc	Phillips Gas Pipeline Co	10-23-92	C	50,000	N	I	09-01-92	Indef.
ST93-314	Enogex, Inc	Natural Gas P/L Co. of America.	10-23-92	C	50,000	N	I	09-01-92	Indef.
ST93-315	Williston Basin Inter. P/L Co	Amoco Production Co	10-23-92	G-S	590	A	I	09-25-92	01-25-93
ST93-316	Texas Eastern Transmission Corp.	North Jersey Energy Associates.	10-23-92	G-S	75,000	N	I	10-01-92	Indef.
ST93-317	Texas Eastern Transmission Corp.	Direct Gas Supply Corp	10-23-92	G-S	70,000	N	I	10-01-92	Indef.
ST93-318	Trunkline Gas Co	Grand Prairie Co-op, Inc	10-23-92	G-S	2,500	N	I	10-01-92	Indef.
ST93-319	Trunkline Gas Co	Tylex, Inc	10-23-92	G-S	5,000	N	I	10-01-92	Indef.
ST93-320	Trunkline Gas Co	Arcola Co-op Grain Co	10-23-92	G-S	2,500	N	I	10-01-92	Indef.
ST93-321	Trunkline Gas Co	Tenaska Marketing Ventures	10-23-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-322	Trunkline Gas Co	Coastal Gas Marketing Co	10-23-92	G-S	75,000	N	I	10-04-92	Indef.
ST93-323	Trunkline Gas Co	Amerada Hess Corp	10-23-92	G-S	200,000	N	I	10-05-92	Indef.
ST93-324	Trunkline Gas Co	Ultramar Oil and Gas Limited	10-23-92	G-S	10,000	N	I	10-05-92	Indef.
ST93-325	Texas Gas Transmission Corp	Aquila Energy Marketing Corp	10-23-92	G-S	20,000	N	I	10-01-92	Indef.
ST93-326	Florida Gas Transmission Co	Citrus World, Inc	10-23-92	G-S	1,200	N	I	10-01-92	09-30-93
ST93-327	Northern Natural Gas Co	Highland Energy Co	10-23-92	G-S	2,500	N	I	10-01-92	03-31-93
ST93-328	Northern Natural Gas Co	Seagull Marketing Services, Inc.	10-23-92	G-S	5,000	N	F	10-01-92	09-30-93
ST93-329	ANR Pipeline Co	Clinton Gas Transportation Inc	10-23-92	G-S	15,000	N	I	10-04-92	Indef.
ST93-330	ANR Pipeline Co	Coast Energy Group, Inc	10-23-92	G-S	5,000	N	I	10-07-92	Indef.
ST93-331	ANR Pipeline Co	Access Energy Corp	10-23-92	G-S	100,000	N	I	10-01-92	Indef.
ST93-332	Tennessee Gas Pipeline Co	Fitchburg Gas and Elect. Light Co.	10-26-92	B	8,000	N	F	10-01-92	Indef.
ST93-333	K N Energy, Inc	Koch Hydrocarbon Co	10-26-92	G-S	780	N	F	10-01-92	02-28-93
ST93-334	Tennessee Gas Pipeline Co	Essex County Gas Co	10-26-92	B	10,000	N	F	10-01-92	Indef.
ST93-335	Channel Industries Gas Co	Sabine Pipe Line Co	10-26-92	C	30,000	N	I	10-01-92	Indef.
ST93-336	K N Energy, Inc	New Mexico Natural Gas Co., Inc.	10-26-92	B	12,000	N	I	10-01-92	Indef.
ST93-337	K N Energy, Inc	Interenergy Corp	10-26-92	G-S	6,100	N	F	10-01-92	Indef.
ST93-338	K N Energy, Inc	Tenaska Marketing Ventures	10-26-92	G-S	5,000	N	F	10-02-92	Indef.
ST93-339	K N Energy, Inc	New Mexico Natural Gas Co., Inc.	10-26-92	G-S	12,000	N	I	10-01-92	Indef.
ST93-340	Transamerican Natural Gas Corp.	United Gas Pipe Line Co	10-26-92	C	20,000	N	I	05-08-92	Indef.
ST93-341	Tejas Gas Corp	Mississippi River Trans. Corp	10-26-92	C	20,000	N	I	09-01-92	Indef.
ST93-342	Phillips Gas Pipeline Co	Phillips Texas Border Pipeline Co.	10-26-92	B	100,000	N	I	01-01-98	Indef.
ST93-343	Valero Transmission, L.P	Texas Eastern Transmission Corp.	10-26-92	C	14,000	N	I	10-06-92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-344	U-I Offshore System	Unigas Energy, Inc	10-26-92	K-S	40,000	N	I	10-01-92	Indef.
ST93-345	Colorado Interstate Gas Co	Mountain Cement Co	10-27-92	G-S	10,000	N	I	10-15-92	Indef.
ST93-346	Tennessee Gas Pipeline Co	Inland Gas Co	10-27-92	G	1,000	N	F	10-01-92	Indef.
ST93-347	Tennessee Gas Pipeline Co	Aquila Southwest Marketing Corp.	10-27-92	G-S	385,887	N	I	10-07-92	Indef.
ST93-348	Tennessee Gas Pipeline Co	Energynorth Natural Gas, Inc	10-27-92	G-S	12,624	N	F	09-30-92	Indef.
ST93-349	Tennessee Gas Pipeline Co	Canadianoxy Offshore Production Co.	10-27-92	G-S	892	N	I	10-06-92	Indef.
ST93-350	Tennessee Gas Pipeline Co	Direct Gas Supply Corp	10-27-92	G-S	51,550	N	I	10-01-92	Indef.
ST93-351	Tennessee Gas Pipeline Co	T.W. Phillips Gas and Oil Co	10-27-92	G-S	10,000	N	I	10-14-92	Indef.
ST93-352	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	10-27-92	G-S	9,408	N	F	9:30	Indef.
ST93-353	Tennessee Gas Pipeline Co	Anadarko Trading Co	10-27-92	G-S	50,000	N	I	10-02-92	Indef.
ST93-354	Tennessee Gas Pipeline Co	Cranberry Pipeline Co	10-27-92	G-S	30,000	N	I	10-01-92	Indef.
ST93-355	Tennessee Gas Pipeline Co	Meridian Marketing & Trans. Corp.	10-27-92	G-S	2,000	N	I	10-01-92	Indef.
ST93-356	Tennessee Gas Pipeline Co	Transcontinental Gas P/L Corp	10-27-92	G-S	276,490	N	I	04-27-92	Indef.
ST93-357	Tennessee Gas Pipeline Co	ANR Gathering Co	10-27-92	G-S	300,000	N	I	10-07-92	Indef.
ST93-358	Tennessee Gas Pipeline Co	Rochester Gas and Electric Corp.	10-27-92	G-S	15,000	N	I	10-02-92	Indef.
ST93-359	Tennessee Gas Pipeline Co	Piedmont Natural Gas Co., Inc	10-27-92	G-S	55,900	N	F	09-29-92	Indef.
ST93-360	Tennessee Gas Pipeline Co	Unigas Energy, Inc	10-27-92	G-S	5,000	N	I	10-07-92	Indef.
ST93-361	Channel Industries Gas Co	Northern Natural Gas Co	10-27-92	C	50,000	N	I	10-01-92	Indef.
ST93-362	Channel Industries Gas Co	United Gas Pipe Line Co	10-27-92	C	50,000	N	I	10-17-92	Indef.
ST93-363	Ozark Gas Transmission System.	Oxley Petroleum	10-27-92	G-S	15,000	N	I	09-28-92	Indef.
ST93-364	Columbia Gulf Transmission Co.	AGIP Petroleum Co	10-27-92	G-S	45,000	N	I	10-01-92	Indef.
ST93-365	Columbia Gulf Transmission Co.	Aquila Energy Marketing Corp	10-27-92	G-S	100,000	N	I	10-06-92	Indef.
ST93-366	Columbia Gulf Transmission Co.	CNG Trading Co	10-27-92	G-S	20,000	N	I	10-01-92	Indef.
ST93-367	Columbia Gulf Transmission Co.	Columbia Gas Development Corp.	10-27-92	G-S	315,900	A	I	10-02-92	Indef.
ST93-368	Columbia Gulf Transmission Co.	Columbia Gas of Kentucky, Inc	10-27-92	B	10,000	Y	I	03-01-91	Indef.
ST93-369	Columbia Gulf Transmission Co.	Exxon Corp	10-27-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-370	Columbia Gulf Transmission Co.	O & R Energy, Inc	10-27-92	G-S	80,000	N	I	10-15-92	Indef.
ST93-371	Columbia Gulf Transmission Co.	Mobil Natural Gas, Inc	10-27-92	G-S	60,000	N	I	10-03-92	Indef.
ST93-372	Columbia Gulf Transmission Co.	Williams Gas Marketing Co	10-27-92	G-S	100,000	N	I	10-10-92	Indef.
ST93-373	Columbia Gulf Transmission Co.	Woodward Marketing, Inc	10-27-92	G-S	50,000	N	I	09-25-92	Indef.
ST93-374	Columbia Gulf Transmission Co.	Union Oil Co. of California	10-27-92	G-S	400	N	I	10-01-92	Indef.
ST93-375	Houston Pipe Line Co	Tennessee Gas Pipeline Co	10-27-92	C	100,000	N	I	09-06-92	Indef.
ST93-376	Houston Pipe Line Co	Texas Eastern Transmission Corp.	10-27-92	C	50,000	N	I	07-22-92	Indef.
ST93-377	Houston Pipe Line Co	Sabine Pipeline Co	10-27-92	C	50,000	N	I	08-01-92	Indef.
ST93-378	Houston Pipe Line Co	Trunkline Gas Co	10-27-92	C	100,000	N	I	07-13-92	Indef.
ST93-379	Houston Pipe Line Co	Transcontinental Gas P/L Corp	10-27-92	C	100,000	N	I	08-06-92	Indef.
ST93-380	Houston Pipe Line Co	Trunkline Gas Co	10-27-92	C	150,000	N	I	08-19-92	Indef.
ST93-381	Houston Pipe Line Co	Texas Eastern Transmission Corp.	10-27-92	C	150,000	N	I	08-21-92	Indef.
ST93-382	Houston Pipe Line Co	Northern Natural Gas Co	10-27-92	C	10,000	N	I	08-01-92	Indef.
ST93-383	Houston Pipe Line Co	Trunkline Gas Co	10-27-92	C	10,000	N	I	08-26-92	Indef.
ST93-384	Houston Pipe Line Co	Florida Gas Transmission Co	10-27-92	C	100,000	N	I	08-27-92	Indef.
ST93-385	Houston Pipe Line Co	Northern Natural Gas Co	10-27-92	C	10,000	N	I	07-28-92	Indef.
ST93-386	Channel Industries Gas Co	Natural Gas P/L Co. of America.	10-28-92	C	75,000	N	I	10-10-92	Indef.
ST93-387	Channel Industries Gas Co	THC Pipeline Co	10-28-92	C	75,000	Y	I	10-01-92	Indef.
ST93-388	Kern River Gas Transmission Co.	Salmon Resources Limited	10-28-92	G-S	30,000	N	F	10-01-92	Indef.
ST93-389	Kern River Gas Transmission Co.	Petro Canada Hydrocarbons, Inc.	10-28-92	G-S	60,000	N	F	10-01-92	Indef.
ST93-390	Tennessee Gas Pipeline Co	Catex Energy, Inc	10-28-92	G-S	20,000	N	I	10-16-92	Indef.
ST93-391	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	10-28-92	B	52,412	N	I	10-01-92	Indef.
ST93-392	Westar Transmission Co	Natural Gas P/L Co. of America.	10-28-92	C	50,000	N	I	08-01-92	Indef.
ST93-393	Pacific Gas Transmission Co	Western Gas Marketing U.S.A. Ltd.	10-28-92	G-S	180,579	N	I	08-30-92	Indef.
ST93-394	Pacific Gas Transmission Co	American Hunter Exploration Ltd.	10-28-92	G-S	103,960	N	I	10-19-92	Indef.
ST93-395	Pacific Gas Transmission Co	Pacific Gas & Electric Co	10-28-92	B	180,579	N	I	07-19-92	Indef.
ST93-396	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc	10-28-92	B	100	N	F	10-01-92	09-30-93
ST93-397	Columbia Gas Transmission Corp.	Mark Resources Corp	10-28-92	G-S	450	N	F	10-01-92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-398	Columbia Gas Transmission Corp.	Direct Gas Supply Corp	10-28-92	G-S	150,000	Y	I	10-01-92	Indef.
ST93-399	Columbia Gas Transmission Corp.	Petrobank Operating Co	10-28-92	G-S	1,750	N	I	10-15-92	Indef.
ST93-400	Columbia Gas Transmission Corp.	College of West Virginia	10-28-92	G-S	30	N	I	10-01-12	Indef.
ST93-401	Trailblazer Pipeline Co	North American Resources Co	10-28-92	G-S	353,000	N	I	10-01-92	Indef.
ST93-402	Trailblazer Pipeline Co	Amoco Production Co	10-28-92	G-S	353,000	N	I	10-01-92	Indef.
ST93-403	Natural Gas P/L Co. of America.	Arcadian Corp	10-28-92	G-S	5,000	N	F	10-06-92	10-31-92
ST93-404	Williston Basin Inter. P/L Co	Hiland Partners	10-28-92	G-S	78,350	N	I	10-13-92	05-31-93
ST93-405	Delhi Gas Pipeline Corp	Arkla Energy Resources	10-28-92	C	375,000	N	I	10-01-92	Indef.
ST93-406	Delhi Gas Pipeline Corp	Panhandle Eastern Gas Pipeline Co.	10-28-92	C	375,000	N	I	10-01-92	Indef.
ST93-407	Delhi Gas Pipeline Corp	United Gas Pipeline Co	10-28-92	C	3,000	N	I	10-01-92	Indef.
ST93-408	Arkla Energy Resources	El Dorado Chemical Co	10-28-92	G-S	1,500	N	I	04-01-92	Indef.
ST93-409	Arkla Energy Resources	Ledco, Inc	10-28-92	G-S	75,000	N	I	09-01-92	Indef.
ST93-410	Arkla Energy Resources	Excel Gas Marketing Inc	10-28-92	G-S	150,000	N	I	09-22-92	Indef.
ST93-411	Panhandle Eastern Pipe Line Co.	Citizens Gas Fuel Co	10-28-92	G-S	5,247	N	I	10-01-92	Indef.
ST93-412	Arkla Energy Resources	Arkla Exploration Co	10-28-92	G-S	45,000	Y	I	09-01-92	Indef.
ST93-413	Panhandle Eastern Pipe Line Co.	Brooklyn Interstate Nat. Gas Corp.	10-28-92	G-S	30,000	N	I	10-01-92	Indef.
ST93-414	Panhandle Eastern Pipe Line Co.	Access Energy Corp	10-28-92	G-S	7,775	N	I	10-01-92	Indef.
ST93-415	Panhandle Eastern Pipe Line Co.	Premier Gas Co	10-28-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-416	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	10-28-92	B	1,500	N	I	10-01-92	Indef.
ST93-417	Delhi Gas Pipeline Corp	Northern Natural Gas Co	10-28-92	C	375,000	N	I	10-01-92	Indef.
ST93-418	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	10-28-92	C	375,000	N	I	10-01-92	Indef.
ST93-419	Channel Industries Gas Co	Transcontinental Gas P/L Corp	10-29-92	C	75,000	N	I	10-15-92	Indef.
ST93-420	Tennessee Gas Pipeline Co	Kc's Energy Marketing, Inc	10-29-92	G-S	6,000	N	F	10-01-92	Indef.
ST93-421	Tennessee Gas Pipeline Co	Trans Louisiana Gas Co., Inc	10-29-92	G-S	450	N	F	09-30-92	Indef.
ST93-422	Tennessee Gas Pipeline Co	Berkshire Gas Co	10-29-92	G-S	7,222	N	F	10-01-92	Indef.
ST93-423	Transtexas Pipeline	Meridian Oil Storage, Inc	10-29-92	C	20,000	N	F	09-29-92	Indef.
ST93-424	Alabama-Tennessee Nat. Gas Co.	North Alabama Gas District	10-29-92	B	2,407	A	F	07-01-92	11-01-00
ST93-425	Alabama-Tennessee Nat. Gas Co.	City of Tuscumbia (Water & Gas).	10-29-92	B	1,500	A	F	07-01-92	11-01-93
ST93-426	Transcontinental Gas P/L Corp	City of Richmond	10-29-92	B	160,000	A	I	07-13-91	Indef.
ST93-427	Alabama-Tennessee Nat. Gas Co.	City of Decatur Gas Dept	10-29-92	B	5,400	A	F	07-01-92	11-01-93
ST93-428	Arkla Energy Resources	Universal Oil Products	10-29-92	G-S	4,500	A	F	08-01-92	Indef.
ST93-429	Arkla Energy Resources	Arkla Energy Marketing Co	10-29-92	G-S	1,500	A	F	09-01-92	Indef.
ST93-430	Colorado Interstate Gas Co	Western Gas Resources, Inc	10-30-92	G-S	1,500	N	I	10-01-92	06-31-93
ST93-431	ANR Pipeline Co	Northern Illinois Gas Co	10-30-92	B	100,000	N	I	10-10-92	Indef.
ST93-432	ANR Pipeline Co	Louisiana Resources Co	10-30-92	B	100,000	N	I	10-06-92	Indef.
ST93-433	ANR Pipeline Co	Tejas Hydrocarbons Co	10-30-92	B	100,000	N	I	10-10-92	Indef.
ST93-434	ANR Pipeline Co	Wisconsin Public Service Corp	10-30-92	B	250,000	N	I	10-01-92	Indef.
ST93-435	Iroquis Gas Transmission System.	Continental Energy Marketing Ltd.	10-30-92	G-S	75,000	N	I	10-03-92	10-31-92
ST93-436	Valero Transmission, L.P	Natural Gas P/L Co. of America.	10-30-92	C	50,375	N	I	10-01-92	Indef.
ST93-437	Transcontinental Gas P/L Corp	Maplesville, Water & Gas Board.	10-30-92	B	4,800	A	I	09-02-87	Indef.
ST93-438	Transcontinental Gas P/L Corp	City of Lexington	10-30-92	B	50,000	N	I	09-14-90	Indef.
ST93-439	Transcontintenal Gas P/L Corp	Commonwealth Gas Services Co.	10-30-92	B	300,000	A	I	07-13-91	Indef.
ST93-440	Orange & Rockland Utilities Inc	Columbia Gas Transmission Corp.	10-30-92	G-LS	15,000	N	I	10-10-92	10-07-93
ST93-441	Sonat Intrastate-Alabama Inc	Tennessee Gas Pipeline Co	10-30-92	C	5,000	N	I	10-01-92	Indef.
ST93-442	Transok, Inc	Arkla Energy Resources	10-30-92	C	100,000	N	I	10-01-92	Indef.
ST93-443	Transok, Inc	Black Marlin Pipeline Co	10-30-92	C	100,000	N	I	10-06-92	Indef.
ST93-444	Transok, Inc	Black Marline Pipeline Co	10-30-92	C	20,000	N	I	10-01-92	Indef.
ST93-445	Transok, Inc	Arkla Energy Resources	10-30-92	C	100,000	N	I	10-01-92	Indef.
ST93-446	Transok, Inc	Arkla Energy Resources	10-30-92	C	50,000	N	I	10-01-92	Indef.
ST93-447	Equitrans, Inc	Phoenix Diversified Ventures, Inc.	10-30-92	G-S	10,121	N	I	10-01-92	Indef.
ST93-448	Channel Industries Gas Co	Florida Gas Transmission Co	10-30-92	C	45,000	N	I	10-03-92	Indef.
ST93-449	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-30-92	G-S	200,000	N	I	10-04-92	Indef.
ST93-450	Tennessee Gas Pipeline Co	Kentucky-Ohio Gas Acquisition Group.	10-30-92	G-S	1,500	N	I	10-01-92	Indef.
ST93-451	Tennessee Gas Pipeline Co	Xenergy, Inc	10-30-92	G-S	7,500	N	I	10-23-92	Ident.
ST93-452	Houston Pipe line Co	United Gas Pipe Line Co	10-30-92	C	100,000	N	I	08-28-92	Indef.
ST93-453	Houston Pipe Line Co	Trunkline Gas Co	10-30-92	C	100,000	N	I	08-30-92	Indef
ST93-454	Transwestern Pipeline Co	Sioux Pointe, Inc	10-30-92	G-S	10,000	N	I	10-03-92	Indef.
ST93-455	Transwestern Pipeline Co	NGC Transportation, Inc	10-30-92	G-S	400,000	N	I	10-24-92	Indef.
ST93-456	FRM, Inc	Transcontinental Gas P/L Corp	10-30-92	C	10,000	N	I	10-02-92	09-30-93

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ST93-457	Columbia Gas Transmission Corp.	J.M.L. Oil and Gas	10-30-92	G-S	1,610	N	F	10-01-92	Indef.
ST93-458	Columbia Gas Transmission Corp.	Transfuel Marketing Co	10-30-92	G-S	10,000	N	F	10-01-92	Indef.
ST93-459	Columbia Gas Transmission Corp.	TeJas Power Corp	10-30-92	G-S	100,000	A	I	10-16-92	Indef.
ST93-460	Columbia Gas Transmission Corp.	Columbia Gas Development Corp.	10-30-92	G-S	3,250	A	F	10-01-92	04-30-93
ST93-461	Columbia Gulf Transmission Co.	Amoco Production Co	10-30-92	G-S	100,000	N	I	10-16-92	Indef.
ST93-462	Williams Natural Gas Co	Texaco Gas Marketing, Inc	10-30-92	G-S	5,000	N	I	10-02-92	Indef.
ST93-463	Williams Natural Gas Co	DNR Oil & Gas, Inc	10-30-92	G-S	100	N	I	10-01-92	Indef.
ST93-464	Williston Basin Inter. P/L Co	Prairielands Energy Marketing, Inc.	10-30-92	G-S	124,000	A	I	10-01-92	09-30-94
ST93-465	Williston Basin Inter. P/L Co	Retex Gathering Co., Inc	10-30-92	G-S	32,012	N	I	10-01-92	09-30-94
ST93-466	Williston Basin Inter. P/L Co	Wyoming Gas Co	10-30-92	B	1,920	N	I	10-01-92	09-30-93
ST93-467	Williston Basin Inter. P/L Co	Texaco Gas Marketing, Inc	10-30-92	G-S	56,100	N	I	10-01-92	09-30-94
ST93-468	Williston Basin, Inter. P/L Co	KN Gas Marketing, Inc	10-30-92	G-S	120,000	N	I	09-30-92	12-31-92
ST93-469	Arkansas Western Gas Co.	Texas Eastern Transmission Co.	10-30-92	G-LT	25,000	N	I	10-01-92	Indef.
ST93-470	Arkansas Western Gas Co	Natural Gas P/L Co. of America.	10-30-92	G-LT	25,000	N	I	10-01-92	Indef.
ST93-471	Arkansas Western Gas Co	Mississippi River Transmission Co.	10-30-92	G-LT	25,000	N	I	10-01-92	Indef.
ST93-472	Arkansas Western Gas Co	Natural Gas P/L Co. of America.	10-30-92	G-LT	12,000	N	I	10-01-92	Indef.
ST93-473	Arkansas Western Gas Co	Arida Energy Resources	10-30-92	G-LT	12,000	N	I	10-01-92	Indef.
ST93-474	Arkansas Western Gas Co	Natural Gas P/L Co. of America.	10-30-92	G-LT	25,000	N	I	10-01-92	Indef.
ST93-475	Arkansas Western Gas Co	Mississippi River Transmission Co.	10-30-92	G-LT	12,000	N	I	10-01-92	Indef.
ST93-476	Arkansas Western Gas Co	Arida Energy Resources	10-30-92	G-LT	2,000	N	I	10-01-92	Indef.

[1]Notice of Transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2]Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3]Affiliation of Reporting Company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[Docket No. PL93-1-000]

Post-Employment Benefits Other Than Pensions, Statement of Policy

Issued December 17, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Statement of Commission Policy.

SUMMARY: This Statement of Policy addresses the Commission's general policy regarding the recovery through rates of the cost of post-employment benefits other than pensions of employees of natural gas companies and public utilities subject to the Commission's jurisdiction, as well as certain accounting issues related thereto. The Statement is premised upon the Statement of Financial Accounting Standards No. 106, Employers Accounting for Post-Retirement Benefits Other Than Pensions (SFAS 106).

The Commission's policy shall be to recognize, as a component of jurisdictional cost-based rates of natural gas pipeline companies and public utilities under its jurisdiction, and oil pipelines should they elect to comply with this statement, allowances for prudently incurred costs of such benefits of company employees when determined on an accrual basis that are consistent with the accounting principles set forth in SFAS 106 provided the following conditions are met: (1) The company must agree to make cash deposits to an irrevocable external trust fund equal to the annual test period allowance for the cost of such benefits; and (2) the company must maximize the use of income tax deductions for contributions to the trust fund. If tax deductions are not available for some portion of currently funded amounts, deferred income tax accounting must be followed for the tax effects of such transactions.

The company must file within three years of its adoption of SFAS 106 accounting a general rate change and seek inclusion of these costs in its rate levels. The company may defer the jurisdictional portion of the difference between the costs determined pursuant to accounting principles previously followed and SFAS 106 accruals from the time it adopts SFAS 106 until the company files such general rate case and places such rates into effect. The regulatory asset (or liability) thus created is to be amortized over a period not to exceed twenty years beyond the SFAS 106 adoption date. Amortization of the regulatory asset (or liability) will be eligible for recovery in future rates.

EFFECTIVE DATE: This order is effective December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0696.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS) an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the

Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

The Federal Energy Regulatory Commission (Commission) announces a general policy regarding the recovery through rates of the cost of post-employment benefits (other than pensions) (PBOPs) [1] of employees of natural gas pipeline companies and public utilities subject to its jurisdiction, as well as certain accounting issues related thereto. This Statement of Policy is premised upon the Statement of Financial Accounting Standards No. 106, Employers' Accounting for Post-retirement Benefits Other Than Pensions (SFAS 106). The term "PBOPs" is intended to encompass arrangements whereby a jurisdictional company promises to exchange future post-retirement benefits other than pensions for employees' current services.

I. Background

In December 1990 the Financial Accounting Standards Board (FASB) [2] issued SFAS 106 which requires that, for fiscal years beginning after December 15, 1992, employers reflect in current expense an accrual for post-retirement benefits other than pensions during the working lives of covered employees. That Statement essentially finds that PBOP plans are deferred compensation arrangements whereby an employer promises to exchange future benefits for employees' current service and that their cost should be recognized over the employees' service periods for financial accounting and reporting purposes. The specifics of the accounting standards for current cost recognition of the benefits and the transition from the previous accounting are set forth in SFAS 106 and are not restated here. However, for regulated industries, SFAS 106 must be read in conjunction with Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation (SFAS 71). SFAS 71 recognizes that actions of rate regulators have an economic effect on regulated enterprises and requires accounting that may be different than that required to be followed by a non-regulated enterprise if certain criteria are met.

On October 16, 1992, the Interstate Natural Gas Association of America (INGAA) filed a petition for issuance of a policy statement addressing the appropriate rate and accounting treatment of PBOPs. INGAA maintained in its petition that the change in accounting required by SFAS 106 will result in a reduction in income and equity for natural gas pipelines unless the Commission acts expeditiously to remove regulatory uncertainty regarding rate treatment of PBOPs and to allow regulated entities to recover PBOP accruals in rates on a current basis.

On October 21, 1992, the Commission issued a Request for Public Comments generally on the INGAA petition. Public comments were requested by November 12, 1992, and 77 comments were received.[3] The Commission has reviewed those comments and is issuing this policy statement to address the concerns raised by the commenters.

II. The Policy

It shall be the policy of the Commission to recognize, as a component of jurisdictional cost-based rates of natural gas pipeline companies and public utilities under its jurisdiction, and oil pipelines should they elect to comply with this statement, allowances for prudently incurred costs of PBOPs of company employees when determined on an accrual basis (and supported by independent actuarial studies) that are consistent with the accounting principles set forth in SFAS 106 provided that the following conditions are met:

(1) The company must agree to make cash deposits to an irrovocable external trust fund,[4] no less frequently than quarterly, in amounts that are proportional and, on an annual basis equal, to the annual test period allowance for PBOPs. The trust must provide that any disbursements made from the trust are limited to payments for the benefit of employees pursuant to the company's postretirement plans, payments for expenses of the trust, and refunds to customers pursuant to a Commission approved refund plan in the event the funds are not to be paid to employees. The trustee must be independent of the company and authorized to make only those investments which are consistent with sound investment policies for funds of this nature.

(2) The company must agree, when it is consistent with good business practices to do so, to maximize the use of income tax deductions for contributions to funds of this nature. If tax deductions are not available for some portion of currently funded amounts, deferred income tax accounting must be followed for the tax effects of such transactions.

The jurisdictional company must file within three years of its adoption of SFAS 106 accounting a general rate change under section 4 of the Natural Gas Act or Section 205 of the Federal Power Act (or in the case of oil pipeline companies which elect to do so, section 6 of the Interstate Commerce Act),[5] as appropriate, and seek inclusion of these costs in its rate levels, in order to obtain rate recovery of PBOPs on an accrual basis. The company may defer the jurisdictional portion of the difference between PBOPs determined pursuant to accounting principles previously followed and SFAS 106 accruals from the time it adopts SFAS 106 unitl the company files such general rate case which includes costs related to SFAS 106 and places such rates into effect. The regulatory asset (or liability) thus created and attributable to its jurisdicational cost-based rates is to be amortized over a period to be determined in the rate proceeding, but in no event to exceed twenty years beyond the SFAS 106 adoption date. Amortization of the regulatory asset (or liability) will be eligible for recovery in future rates.

The purpose of this policy statement is to provide guidance for the efficient disposition of pending or future cases which include PBOPs as a component of

[1] In the Commission's October 21, 1992 Request for Comments in this proceeding, the acronym "OPEB" was used to denote these costs. Contemporaneously with this Statement of Policy, the Commission is issuing an order in Docket No. ER91-565-000, *New England Power Company*. That order refers to these same costs as post-retirement benefits other than pensions, or "PBOPs." For consistency, the acronym "PBOP" will be used in this Statement instead of "OPEB."

[2] Since 1973, the FASB has been the designated organization in the private sector for establishing standards of financial accounting and reporting. The mission of the FASB, which is funded by the accounting profession and industry, is to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors, and users of financial information. These standards are, in effect, rules governing the preparation of financial reports. They are officially recognized as authoritative by the Securities and Exchange Commission (Accounting Series Release No. 150) and the American Institute of Certified Public Accountants (AICPA) (See Rule 203 and appendix A of the AICPA's Code of Professional Conduct, as amended May 20, 1991).

[3] See the appendix for a list of comments received.

[4] An "external trust fund," or "external funding," used herein means a fund under the direction of a trustee independent of and external to the company. Contrast this with establishing an internal reserve account, or "internal funding."

[5] Section 6 of the Interstate Commerce Act, 49 App. U.S.C. 6(3) (1988). Rate authority over oil pipelines was transferred to the Department of Energy from the Interstate Commerce Commission and further transferred to this Commission pursuant to the Department of Energy Organization Act, 42 U.S.C. 7155, 7172(b) (1988).

the cost of service and to provide a statement of the Commission's intent to permit recovery in future rates of PBOP costs appropriately deferred. The Commission is mindful that a general policy statement is an articulation of the Commission's intention, which will be followed unless particular circumstances demonstrate the policy to be inappropriate. Where, as here, the Commission has adopted a general statement of Commission policy, both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration in individual cases.

III. Discussion

A. General Principles

1. Ratemaking

It is self-evident that where a jurisdictional company's rates are to be judged just and reasonable based upon its cost of providing service, the Commission must prescribe the accounting principles it will use to define and measure the cost to track ratemaking. One of the primary purposes of the Commission's Uniform Systems of Accounts is to assist in this regard. When an authoritative body prescribes changes in accounting principles (or new principles come into being when none existed before) the Commission may examine those principles to see if they are compatible for ratemaking purposes as well. The Commission has examined SFAS 106 in this regard and finds the following:

(a) PBOPs are a form of deferred compensation to employees for the services that they provide during their working years. Therefore, the costs of providing these benefits are properly included in the cost of service during the period that the benefits are earned.

(b) Measurement of PBOPs for a given rate test period is a process of allocating accrued costs between periods in a rational manner so that each period bears its equitable portion of such costs. SFAS 106 provides a reasonable convention for measurements of accrued costs including the transitional treatment of prior service costs.

(c) Uniform principles of cost measurements between similarly situated regulated companies and between time periods are beneficial for carrying out the Commission's regulatory programs.

(d) Ratepayers can be adequately protected from overly compensating a company for PBOPs by the imposition of a requirement for placing amounts collected for such purposes in an irrevocable trust.

(e) If there are special circumstances for a specific company which dictate that PBOPs should be recovered in rates through use of a different method, a case-specific review will be permitted.

2. Commission Accounting Requirements

The Commission requires in its ratemaking and other regulatory activities that financial information be obtained from statements that are prepared in accordance with the requirements of the Commission's Uniform System of Accounts. The accounting principles embodied in the Uniform System are, in the main, consistent with generally accepted accounting principles (GAAP)[6] that apply to non-regulated enterprises. Any differences are due either to the Commission's needs for financial measurements to be accomplished in a specific manner to enable it to meet its regulatory responsibilities or are necessary, in the view of the Commission, to permit recognition of the economic effects that regulation itself imposes on the enterprise.[7]

The instances where the Commission has required the adoption of accounting principles that are outside of GAAP are rare. There may be occasions, however, where a regulatory need overrides the potential harm that may result from having a regulated enterprise present to the public two different financial statements both of which purport to be comprehensive financial statements that report the results of operations. However, by reason of the policy statement that the Commission is issuing today, the Commission's prescribed accounting and ratemaking treatment of PBOPs does not, in the Commission's view, create such a situation.

In the event of special circumstances where the Commission finds it appropriate to use a different method of allocating PBOPs for rate purposes than required by SFAS 106 for accounting purposes, the Commission will require natural gas companies and public utilities subject to its regulation to recognize a regulatory-created asset or liability for the prudently incurred dollar differences between the two methods. Over the life-cycle of a company, the cost of PBOPs is unchanged by the method of accounting. The differences between the cost reported for a particular period within that life-cycle is due only to allocation methods[8] and therefore the cost deferrals will be eligible for rate recovery in future periods.

3. Funding Requirements

The Commission will require that an irrevocable trust be established to insure that the amounts that the customers are paying for PBOPs will, in fact, be utilized for such purpose, or in the event that they are not, that customers obtain refunds of the funds accrued in the trust account, including any earnings thereon, for the excess amounts paid. The Commission believes that such protection is necessary for several reasons.

There may be long periods between the time that rates reflect the cost of PBOPs and the time that payments are made to employees. During such periods many events could occur that would affect the ultimate payments or the amounts required to make such payments. For instance, there could be major changes in a company's post-retirement plans due to the advent of new governmental programs or for other reasons. Also, there could be significant changes from what was anticipated in the factors that affect annual accruals, such as inflation rates and investment earnings, thereby enabling settlement of post-retirement obligations through

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[6] The phrase "generally accepted accounting principles" is a technical accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations. Statement on Auditing Standards No. 69, a pronouncement of the Auditing Standards Board, the senior technical body of the American Institute of Certified Public Accountants, designates FASB Statements as constituting the highest level in the GAAP hierarchy.

[7] There are basically three types of differences that may occur between GAAP applicable to enterprises in general and Commission accounting requirements. Some of these differences potentially may cause a conflict in financial reporting and some will not. One type relates to optional accounting. GAAP may permit optional accounting for certain types of transactions but for regulatory purposes, the Commission may require a uniform method for all jurisdictional companies (or a more limited number of options). Another type of difference pertains to the definition of cost. Under the Commission's regulatory scheme, return on equity captial is a component of the costofservice and in certain instances the Commission will require such cost to be deferred for later recovery in rates. Equity return is not a cost under GAAP. Further, SFAS 71 specifically restricts allowable deferrals for regulated enterprises to "incurred cost" which excludes equity return. A third type of difference is where a valid regulatory purpose is served by requiring that a particular type of cost is allocated to different time periods for ratemaking purposes than under GAAP.

[8] The ratepayer's cumulative cost in nominal dollar terms through use of different allocation methods may not be the same however, but this is due to factors relating to cash flows, time values of monies and availability of investment earnings, and not to total life-cycle cost. The amount that will ultimately be paid to employees is a finite sum.

alternative means and to realize a gain on plan assets after settlement.

FASB statements permit in certain instances gains realized on settlements and curtailments of post-retirement plans to be taken to income. Recognition of income by the regulated company without a concurrent reduction in rates would not be fair to ratepayers, particularly if any shortfalls in fund assets are to be made up through increased future rates. That would be the effect of adopting the accounting principles of SFAS 106 for ratemaking purposes. A mandatory requirement to establish an irrevocable trust will prevent the company from realizing income not intended to be earned when the rates were originally established by the Commission. The Commission recognizes that the earning rate for external funding may be lower than the effective earning rate that could be realized from internal funds. However, the Commission believes that fund security is more important than earning rates in this instance and will therefore require external funding.

4. Income Taxes

As a general statement, companies can expect to realize tax deductions for pension plans when they make contributions to qualified funds.[9] Therefore, ratepayers receive the benefit of the tax deductions at the time that they pay for service. This may not always be the case with PBOPs. There are some tax effective vehicles[10] available as funding arrangements for PBOPs, but they may not be sufficient to obtain current tax deductions equal to the total required contributions to the trust when the contributions are determined on an accrual basis. The tax deductions in such cases will not be allowed until a later period, perhaps until the payments are made to retired employees. In such instance, companies should follow deferred tax accounting for the portion that is not tax advantaged. The resulting accumulated deferred tax balance will be eligible for inclusion in the jurisdictional rate base of the company until such time as the timing difference reverses.

B. Issues Raised in Comments Received

Persons representing all segments of the natural gas, electric and oil pipeline industries; state commissions and public power authorities; consumers and users of oil, electricity and gas; and public accounting firms and rate consultants responded to the Commission's Request for Comments in this proceeding. The Commission has considered these comments and discusses the major issues raised below.

1. Applicability to Oil Pipelines

The Association of Oil Pipelines has requested that any statement of general policy adopted by the Commission respecting SFAS 106 costs exclude oil pipelines from its coverage. The Commission is mindful of the differences between most oil pipelines and natural gas pipelines under its jurisdiction. While, as contemplated by this statement of policy, rate recovery will be limited only to those companies which file a general rate increase applicable to cost-based rates (absent a special exception being granted), and then only to the extent that such company seeks to include such costs in rates, the Commission believes that the differences between oil pipeline companies and other regulated entities justify a departure from the Commission's general policy. Therefore, recovery of PBOP costs by oil pipelines will be considered on a case-by-case basis.[11] Of course, to the extent that oil pipelines desire to comport with the policy enunciated here, they may do so.

2. Accrual or Pay-As-You-Go Rate Treatment

Some commenters[12] state that a change in the method of accounting for PBOPs does not require or justify a change in the rate treatment of such expense. They argue that FASB recognizes in paragraph 364 of SFAS 106 that, pursuant to SFAS 71, regulators may choose not to change the treatment of post-retirement benefits for ratemaking purposes. Paragraph 364 would then require the utility to adopt an accounting treatment consistent with the regulatory treatment. They assert that the Commission could continue to use the pay-as-you-go rate method, and that the regulated company would record a regulatory asset for the difference between the accounting expense and the ratemaking allowance. Creation of the regulatory asset would, they argue, assure eventual recovery in rates. They state that, under this scenario, continuation of the pay-as-you-go policy would have no adverse effect on earnings and equity of the regulated companies.

This Commission chooses to adopt the accural method in this Statement of Policy because the accrual method better matches cost recovery in rates with the cost of providing service than does the pay-as-you-go method. The fact that all post-retirement benefits are earned by employees during their working careers, not after they retire, is undisputed. Therefore, the Commission will adopt as its policy the accrual method for rate purposes.

3. Establishment of a Funding Mechanism

Most, if not all, jurisdictional companies urged that the Commission issue a policy statement similar to that requested by INGAA, with some variations, must notably in the funding of PBOP liability. Those entities opposed to the issuance of the policy statement nonetheless asked that any funding of such liabilities be accomplished through the vehicle of an external irrevocable trust.[13] Many public utilities and some gas pipelines sought no restrictions on the manner in which funding would occur, citing alleged cost benefits from flexibility in the funding of the liabilities.

The Commission is persuaded that regulated entities should be required to set up an irrevocable trust into which the amounts included in rates attributable to PBOPs will be placed for the benefit of employees who retire in the future.[14]

Disbursements from the trust must be limited to payments for the benefit of employees pursuant to the company's post-retirement plans, payments for expenses of the trust and refunds to customers pursuant to a Commission-approved refund plan in the event the funds are not to be paid to employees.[15] In this way, customers can be assured that the element of rates which are designed for PBOP costs are in fact utilized for that purpose. Further, the Commission requires that the trustee be independent of the company and authorized to make only those investments which are consistent with sound investment policies for funds of this nature.[16]

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[9] *I.e.*, qualified for special tax treatment under the Internal Revenue Code.

[10] *I.e.*, tax deductible funding arrangements.

[11] This exclusion of oil pipelines from this policy statement applies only to rate recovery as articulated herein. Oil pipelines must still comply, as appropriate, with SFAS 106.

[12] Joint Consumer Advocates, the Industrial Groups, Electricity Consumer Resource Council.

[13] See fn. 4, *supra*.

[14] Fina Natural Gas Company alleges that the accrual method of treating PBOP expense for rate purposes places utilities in an excess cash flow position. Since the Commission is requiring companies to contribute the amount included in rates for PBOP to an external trust, there will be no excess cash flow.

[15] There are costs involved in start-up as well as maintaining irrevocable trusts. There are no data in this record upon which the Commission can base a determination that such costs are excessive. If the company believes that such costs are prohibitively high, it may request a waiver of this external funding requirement.

[16] Some regulated entities already have converted to the accrual method and have used

4. Limited Rate Filings

INGAA requested that the Commission specifically allow a special Natural Gas Act section 4 rate filing limited to reflect the SFAS 106 costs in rates coincident with the company's adoption of SFAS 106. Most gas pipeline companies supported this request, but some electric utilities and customer groups opposed. Opponents argue that all parties and the Commission should be allowed to examine the companies' cost of service for offsetting decreases in costs which may exist. Upon consideration, the Commission believes that it is not necessary to prescribe in this policy statement a rate change methodology based solely on this item. The Commission believes its action in allowing deferrals will permit companies to file general rate increases for rate recovery of PBOPs without incurring financial penalties. Of course, if the item is of a magnitude to require a change in rates, a company may request consideration of a stand-alone PBOP rate filing and such a request will be considered on a case-by-case basis. Moreover, the Commission anticipates that due to Order No. 636 pipelines will be filing new rate cases or will have ongoing rate cases where rate issues that flow from restructuring are being considered. The Commission will consolidate any stand-alone rate filing with these ongoing cases.

5. Transition Period Costs

Several commenters [17] in opposition to the issuance of a policy statement have claimed that to allow regulated companies to recover costs for PBOPs on an accrual basis attributable to benefits already earned but not paid would violate the "filed rate" doctrine and constitute retroactive ratemaking. The Commission rejects this argument. Under the historical pay-as-you-go, or cash, method, the only PBOP costs recovered in rates are costs for retired employees and their beneficiaries when actually paid. Because use of the cash method for ratemaking only permits recovery of PBOP costs as paid, the PBOB costs related to benefits which had been earned by employees but not yet expensed were deferred. Those PBOPs earned in a prior period which were not immediately recovered in rates, because there had been no recognized expense under GAAP or the Commission's accounting or ratemaking requirements, were deferred under the legitimate expectation that such costs would be allowed in rates in future periods. Companies are now required to recognize this expense during the working life of employees, well in advance of the payment of PBOPs. Recovery of prior period PBOP costs under the cash method or under the accrual method does not violate the filed rate doctrine. There simply is a different timing of recovery under the different methods.

6. Tax Normalization vs. Immediate Recovery

A number of commenters have argued that tax normalization of non-deductible amounts funded for PBOPs will result in a cash drain to regulated companies in that the companies would need to use internally generated funds to finance the increased income tax cost. Others argue that the Commission should allow only income tax normalization.

Under the Internal Revenue Code, regulated companies may be able to deduct only a portion of the amount which they are required to fund for PBOBs. Regulated companies will have taxable income from the collection of PBOP accruals in their rates for that portion funded into the trust that is not deductible. There are two alternatives for dealing with this resulting tax liability. The first alternative is to provide a specific tax allowance in the company's cost of service to reimburse the company for the income tax expense. The second alternative is to require companies to use tax normalization, which would result in the income tax liability being included in rate base until a valid tax deduction is available.

PBOP accruals reflected in rates will be constant between rate cases; however, the taxable portion of the PBOP accruals will change from year to year depending on the level which can be tax effectively funded. Because of the constant change it is difficult to determine the appropriate level of income tax allowance to include in cost of service if the Commission employed the first alternative. With the second alternative, however, whatever income tax effect is incurred by the company is accumulated and included in rate base. Further, income tax effects of PBOP accruals included in rates are due to a book-tax timing difference. All similar timing differences are normalized as required by Commission Order No. 144, FERC Statutes and Regulations, ¶ 30,254 (1981). The Commission is not persuaded that it should deviate from this policy. Therefore, regulated companies will be required to utilize the second alternative and normalize the differences related to non-deductibility of PBOP accruals funded.

7. Other Issues

Some commenters [18] have also objected to issuance of a Statement of Policy respecting the proper regulatory rate treatment of SFAS 106 requirements, claiming that there may be factual differences which would require another method of treatment of these costs. As previously stated herein, the purpose of this policy statement is to provide guidance for the efficient disposition of existing and future cases which include PBOPs as a component of cost of service and to indicate the Commission's intent to permit recovery in future rates of PBOP cost appropriately deferred. In individual cases, the application of the policy to particular facts may be challenged upon demonstration that particular circumstances dictate a different treatment.

IV. Conclusion

The Commission, in adopting this Statement of Policy, is providing for a fair method of cost recovery for regulated companies and consumers alike. Adding a measure of certainty to the ratemaking methodology is to the benefit of all. Therefore, this Statement of Policy shall be effective immediately for all natural gas pipeline companies and public utilities under the jurisdiction of this Commission for fiscal years beginning after December 15, 1992.

By the Commission, Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Appendix—Post-Employment Benefits Other Than Pensions

Comments Received

Alabama PSC
Allegheny Power Systems, Inc.
American Electric Power Companies
American Gas Association
American Institute of Certified Public Accountants

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internal funding for a portion of PBOPs. Other regulated entities are currently funding PBOPs in compliance with slightly different requirements imposed by state commissions. Amounts collected prior to issuance of this policy statement and already "booked" will be subject to review by the Commission to determine whether additional conditions should be placed on the existing funding mechanisms before recovery in rates will be allowed. Where it can be demonstrated that it will not be cost effective and that it will cause an undue administrative burden to create a separate funding mechanism, specific waivers of external funding as required by this policy statement will be considered on a case-by-case basis.

[17] Joint Consumer Advocates, National Association of Gas Consumers, Iowa Consumer Advocate, Old Dominion Electric Cooperative.

[18] Blue Ridge Power Agency, *et al.*, Electric Consumers.

American Public Power Association
ANR Pipeline Company, et al.
Arizona Public Service Company
Arthur Anderson
Association of Oil Pipelines
Blue Ridge Pwr. Agcy., City of Danville, VA
Central Power & Light Company
Central and South West Service, Inc., et al.
CNG Transmission Corporation
Commonwealth Edison Company
Columbia Gas Transmission Company, et al.
Consumers Power Company, et al.
Coopers & Lybrand
Deloitte & Touche
Delmarva Power & Light Company
Detroit Edison Company
Duke Power Company
Edison Electric Institute
Electric Consumers (consisting of Electric Co-operatives and Municipal Utilities)
Electricity Consumers Resource Council
El Paso Electric Company, et al.
El Paso Natural Gas Company
ENRON Interstate Pipeline Companies
Entergy Corp.
Fina Natural Gas Company
Florida Municipal Power Agency, et al.
Florida Power & Light Company
Great Lakes Gas Transmission, LP
Gulf States Utilities Company
Idaho Power Company
Indiana Gas Company, et al.
The Industrial Groups (Process Gas Consumers Group, American Iron & Steel Inst., Georgia Industrial Group)
Interstate Natural Gas Association of America
Iowa Office of Consumer Advocate
Joint Consumer Advocates (numerous state consumer agencies)
Kentucky Utilities Company
K N Energy, Inc.
KPMG Peat Marwick
Minnesota Power & Light Company
National Association of Gas Consumers
National Fuel Gas Company
Natural Gas Pipeline Company of America
Natural Gas Supply Association
New England Power Company
New York PSC
New York Public Power Authority
Northern Illinois Gas Company
Northern States Power Company
Northwest Pipeline Corporation
Ohio Edison Company
Old Dominion Electric Cooperative
Pacific Gas Transmission Company
Pacific Interstate Company
Panhandle Eastern Pipeline Company, et al.
Pennsylvania Power Company
Peoples Gas, Light & Coke Company, et al.
Potomac Electric Power Company
Price Waterhouse
Questar Pipeline Company
Southern California Gas Company
Southern Company Services, Inc.
Southern Natural Gas Company
Southwestern Public Service Company
Tampa Electric Company
Texas Utilities Electric Company
UtiliCorp United, Inc.
Virginia Electric & Power Company
Williams Natural Gas Company
Williston Basin Interstate Pipeline Company
Wisconsin Utilities Association, Inc.
Wisconsin Wholesale Customers
Zinder Companies, Inc.

TRABANDT, Commissioner, *concurring:*

I support the instant Statement of Policy. I concur and write separately to express a concern about any stand-alone post-employment benefits (other than pensions) (PBOPs) rate filings, as discussed at page 16 and 17 of the slip opinion. My strong preference would be that interstate natural gas pipelines seek to recover the SFAS 106 PBOP cost increases in general Section 4 rate filings, either those general rate cases now pending or those new general rate cases that otherwise inevitably will be filed as a result of the Order No. 636 restructuring process. I agree with many commenters that all parties and the Commission should be allowed to examine the company's costs of service for offsetting decreases in costs which may exist, as well as the fundamental changes in the nature and associated costs of restructured operations under Order No. 636. Consequently, I believe that the Commission should not accept stand-alone PBOP rate filings for separate processing outside for general rate cases. However, I have no objection to the appropriate consolidation of the SFAS 106 PBOP issue by amendment into a pending general rate case.

For that reason, I concur.

Charles A. Trabandt,

Commissioner.

[FR Doc. 92-31103 Filed 12-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-14-003]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 11, 1992, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the following revised tariff sheets, to be effective May 1, 1993:

1 Rev Fifth Revised Sheet No. 20
17 Rev Sheet No. 21
17 Rev Sheet No. 22
13 Rev Sheet No. 25
17 Rev Sheet No. 26
17 Rev Sheet No. 27
17 Rev Sheet No. 28
17 Rev Sheet No. 29
15 Rev Sheet No. 41
15 Rev Sheet No. 42
Sheet Nos. 69-79
Sheet Nos. 81-90
Second Revised Sheet No. 123
Second Revised Sheet No. 125
Second Revised Sheet No. 141
Second Revised Sheet No. 142
Third Revised Sheet No. 143
Third Revised Sheet No. 144
Third Revised Sheet No. 145
Third Revised Sheet No. 146
Second Revised Sheet No. 151
Second Revised Sheet No. 152
Third Revised Sheet No. 153
Third Revised Sheet No. 154
Third Revised Sheet No. 155
Third Revised Sheet No. 156
Second Revised Sheet No. 157
Second Revised Sheet No. 161
Second Revised Sheet No. 162
Second Revised Sheet No. 163
Second Revised Sheet No. 164
Sub. Second Revised Sheet No. 166
Second Revised Sheet No. 372
Second Revised Sheet No. 392
Second Revised Sheet No. 631
Third Revised Sheet No. 632
Third Revised Sheet No. 633
Third Revised Sheet No. 634
Second Revised Sheet No. 636
Second Revised Sheet No. 637
Second Revised Sheet No. 639
Second Revised Sheet No. 639A
Sub. Original Sheet No. 639B
Second Revised Sheet No. 654
First Revised Sheet No. 655
Second Revised Sheet No. 694
Third Revised Sheet No. 695
Third Revised Sheet No. 696
Sub. First Revised Sheet No. 1100
Sub. First Revised Sheet No. 1101
Sub. First Revised Sheet No. 1102
Sub. First Revised Sheet No. 1103
Sub. First Revised Sheet No. 1104
Sub. First Revised Sheet No. 1105
Sub. First Revised Sheet No. 1106
Sub. First Revised Sheet No. 1107
Sub. First Revised Sheet No. 1108
Original Sheet No. 1109
Original Sheet No. 1110
Original Sheet No. 1111

Algonquin states that the purpose of this filing is to comply with the Commission's "Order Accepting and Suspending Certain Tariff Sheets Subject to Refund and Conditions, Establishing a Hearing, and Denying Consolidation" issued on November 27, 1992 (November 27, 1992 Order) in Docket No. RP93-14-000. As directed in part E of the November 27, 1992 Order, Algonquin has corrected the tariff sheets listed as incorrectly paginated in appendix B of the November 27, 1992 Order. In addition, as required in part F of the November 27, 1992 Order, Algonquin has updated and revised the Index of Purchasers in compliance with the Commission's regulations §§ 154.41 and 284.7.

Algonquin states that copies of this filing were mailed to all affected customers, interested state commissions, and other parties to Docket No. RP93-14-000.

Any person desiring to protest said filing should file a protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31108 Filed 12-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-48-001]

ANR Pipeline Company; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that ANR Pipeline Company ("ANR"), on December 14, 1992 tendered for filing as part of its F.E.R.C. Gas Tariff, First Revised Volume No. 1 Substitute Original Sheet No. 78B, which ANR proposes to become effective January 1, 1993. Such tariff sheet is being submitted to amend ANR's filing of December 1, 1992 in the referenced docket. ANR proposes no changes to any of the other tariff sheets submitted at Docket No. TM93-2-48-000.

ANR states that this tariff sheet is being submitted to amend the terms and conditions under which surcharges will be collected and remitted to Gas Research Institute ("GRI"). As more fully described in its filing, the tariff sheet reflects a change in the underlying agreement between ANR and GRI for purposes of funding the 1993 GRI research and development program which agreement conforms to the Modified Funding Mechanism approved by the Commission in its Order issued August 28, 1992 at Docket No. RP92-133-000.

ANR states that all of its Volume Nos. 1, 1-A, 2 and 3 customers and interested State Commissions have been apprised of this filing via. U.S. Mail.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31118 Filed 12-22-92; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. PR93-7-000]

Consumers Power Company; Petition for Rate Approval

December 17, 1992.

Take notice that on December 1, 1992, Consumers Power Company (Consumers) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1275 per Mcf for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Consumers is a Hinshaw pipeline subject to the jurisdiction of the Michigan Public Service Commission. By Commission order issued February 7, 1990 in Docket No. CP90-272-000, Consumers was granted a § 284.224 blanket certificate of public convenience and necessity to engage in the sale, transportation or assignment of natural gas subject to the Commission's jurisdiction under the Natural Gas Act. By Commission letter order issued June 21, 1990 in Docket No. ST90-567-000, Consumers was authorized to charge a maximum rate of $0.1314 per Mcf for section 311(a)(2) transportation.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before January 4, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31109 Filed 12-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-95-005]

Colorado Interstate Gas Company; Compliance Filing

December 17, 1992.

Take notice that Colorado Interstate Gas Company ("CIG"), on December 11, 1992, tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion of transportation credits in the instant docket.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31119 Filed 12-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-51-001]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on December 14, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective January 1, 1993:

First Revised Volume No. 1

Substitute Original Sheet No. 56-B1

Great Lakes states that Substitute Original Sheet No. 56-B1 was filed to amend section 16.4, "Remittance to GRI", to reflect the latest agreement reached between GRI and its pipeline members.

Great Lakes requested that the Commission grant any necessary waivers such that the above tariff sheets become effective January 1, 1993 to coincide with the effective date of the GRI funding unit rates approved per the

Commission's Order in Docket No. RP92–133–000.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31120 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–35–001]

Northwest Pipeline Corporation; Proposed Change in FERC Gas Tariff

December 17, 1992.

Take notice that on December 10, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Second Revised Sheet No. 139
Third Revised Sheet No. 140
Third Revised Sheet No. 141

First Revised Volume No. 1–A

Second Revised Sheet No. 435
Second Revised Sheet No. 436

Northwest states that the purpose of this filing is to update Northwest's Supplier Settlement Payment Mechanism tariff provisions. The filing proposes to delete references to the outdated "sunset date" requirements relating to Order No. 500, *et al.* Those requirements became obsolete as a result of actions taken by the courts in *American Gas Ass'n* v. *FERC*, 888 F.2d 136,151 (D.C. Cir. 1989) (AGA–I) and the Commission in Order No. 528–A.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31115 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–212–001]

Questar Pipeline Company; Compliance Filing

December 17, 1992.

Take notice that Questar Pipeline Company (Questar) on September 14, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 2–A, to become effective August 29, 1992 in compliance with the Commission's Letter Order issued August 28, 1992:

Substitute First Revised Sheet No. 25
Original Sheet No. 25A
Substitute First Revised Sheet No. 28
Original Sheet No. 28A

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31110 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–140–014]

Questar Pipeline Company; Report of Refunds

December 17, 1992.

Take notice that Questar Pipeline Company (Questar) on November 9, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with the Commission's order issued November 3, 1992, in Docket No. RP91–140, which accepted a settlement with conditions.

Questar states that on November 6, 1992, Questar refunded $5,812,524.70 inclusive of interest calculated in accordance with 18 CFR 154.67(c), to its transportation, storage and sales customers. Questar also states that the refunds are for the period November 1, 1991, through September 30, 1992, with the exception of storage Rate Schedule FSS which includes October 1992. Service rendered after September 30, 1992, will be billed at the rates set out in the settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31114 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–104–021]

Texas Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that on December 10, 1992, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets:

FERC Gas Tariff

Original Volume No. 1

Substitute Original Sheet No. 133D

FERC Gas Tariff

First Revised Volume No. 2–A

Substitute First Revised Sheet No. 28
Substitute First Revised Sheet No. 51
Substitute Original Sheet No. 121
Substitute Original Sheet No. 123
Substitute First Revised Sheet No. 134
Substitute First Revised Sheet No. 154

Texas Gas states that the supplemental filing is making technical corrections to certain tariff sheets that were included in Texas Gas's filing to comply with the provisions outlined in the "Order Approving Contested Partial Settlement as Modified" issued November 21, 1991, the "Order on Rehearing and Clarification" issued May 21, 1992, and the "Order Granting Reconsideration" issued October 21, 1992.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional sales customers, all parties on the Commission's official restricted service list and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31107 Filed 12-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-165-004]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that Trunkline Gas Company (Trunkline) on October 22, 1992, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Sub Second Revised Sheet No. 9-CX

Trunkline proposes that this revised tariff sheet become effective November 1, 1992.

Trunkline states that this revised tariff sheet is being filed in compliance with the Commission's Order dated October 7, 1992 in Docket No. RP92-165-000. Specifically, the revised tariff sheet reflects the clarification of the terms of Trunkline's termination provision under Rate Schedule PT-Firm to enable Trunkline, after an appropriate notice period, to terminate a shipper's transportation agreement for nonpayment.

Trunkline states that a copy of this filing is being served on all jurisdictional customers, applicable state regulatory agencies and parties to the above-referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31121 Filed 12-22-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 23 Through November 27, 1992

During the week of November 23 through November 27, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Gulf Oil Corp./Pate's Gulf, 11/23/92 *RF300-16154*

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Pate's Gulf, Inc. The applicant, Cecil Pate, owned 51% of the corporate stock of Pate's Gulf, Inc. The corporation was voluntarily dissolved in 1979. The OHA has determined that in the case of a voluntary dissolved corporation, the refund should be awarded to the former stockholders according to their respective ownership interests in the corporation at the time of dissolution. Therefore, Mr. Pate was granted a refund based on his allocable share of 51% of the total 634,570 gallons. The total refund granted in the Decision was $346.

Shell Oil Co./Parkway Shell, Inc., Pici Shell, Doddtown Shell, Marco Shell, 11/24/92 *RF315-7304, RF315-7305, RF315-7306, RF315-7307*

The DOE issued a Decision and Order granting three Applications for Refund and denying one Application for Refund in the Shell Oil Company special refund proceeding. In the case of Parkway Shell, Inc., the owner, Marco Pici, stated that he sold all of the outstanding stock of the corporation in 1988. In general, the DOE has held that the purchaser of all of a corporation's stock acquires all of the assets of the corporation, including the right to a refund, unless otherwise specified in the stock purchase agreement. Because the purchase agreement pertaining to the sale was unavailable, the DOE determined that the Application for Refund filed on behalf of Parkway Shell, Inc., be denied. Conversely, ownership of Mr. Pici's other three stations, Pici Shell, Doddtown Shell, and Marco Shell, had been transferred in a sale of assets only. Consequently, the DOE granted the applicant refunds totalling $4,680, representing $3,191 principal and $1,489 interest.

Texaco Inc./United Service Center, Huffy Gas, Inc., 11/23/92 *RF321-14710, RF321-14808, RF321-19293, RF321-19294*

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Texaco Inc. special refund proceeding. One applicant, Huffy Gas, Inc. included in its application a request that its refund be divided equally between it and Mid-States Petroleum, Inc., a corporation which purchased Huffy's assets at the time of Huffy's dissolution. This request was rejected because to do so would have been to abdicate the DOE's statutory responsibility to identify injured claimants and contrary to the standards used to evaluate claims when a change of ownership has occurred. Applying the standards set forth in a prior case, the DOE found that the former owner of Huffy, and not Mid-States Petroleum, was the proper recipient of an oil overcharge refund based on Huffy's petroleum product purchases during the price control period. Accordingly, in the present case, the refund was granted to Huffy Gas, Inc.

Time Oil Co./Washington, 11/23/92, *RQ334-584*

The Department of Energy issued a Decision and Order granting a request by the State of Washington to use $397,023, plus accumulated interest, in Time Oil monies to fund the Energy Matchmakers Program, a weatherization program for low-income residences.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Kellam Energy, Inc. et al.	RR304-15	11/23/92
Atlantic Richfield Co./Ralph's Grocery Co.	RF304-13207	11/27/92
Atlantic Richfield Co./Ray's Arco Service Station et al.	RF304-13163	11/23/92
Beacon Oil Co./King Currie Co., Inc.	RF238-27	11/27/92
City of Brent et al	RF272-83463	11/24/92

City of Doraville et al.	RF272–86670	11/25/92
Frederick County, Maryland.	RF272–67439	11/25/92
Idaho County, Idaho	RF272–88133	.....
El Paso County, Texas.	RF272–69549	.....
Gulf Oil Corporation/Mathis Gulf Station #1 et al.	RF300–14207	11/23/92
Miami East Local School Dist. et al.	RF272–81802	11/27/92
P.W. Gillibrand Co. .	RF272–85525	11/24/92
P.W. Gillibrand Co. .	RD272–85525	.....
P.J. Keating Co.	RF272–67862	.....
P.J. Keating Co.	RD272–67862	.....
Schloss Paving Co. ..	RF272–69946	.....
Schloss Paving Co. ..	RD272–69946	.....
Rosemont College ...	RF272–83413	11/25/92
Barstow Unified School District.	RF272–83511	.....
Shelby County C–I Schools.	RF272–83517	.....
North Andover School System.	RF272–83561	.....
Shell Oil Co./Mong. Wyoming Shell et al.	RF315–327	11/25/92
Shell Oil Co./U-Serve and Save et al.	RF315–5221	11/24/92
St. Johns County et al.	RF272–85813	11/25/92
Texaco Inc./Fountain Oil Co.	RF321–16899	11/27/92
Texaco Inc./Fred's Eastside Texaco et al.	RF321–16600	11/24/92
Texaco Inc./Freeway Texaco No. 1 et al.	RF321–13607	11/24/92
Texaco Inc./Mallard Oil Co. et al.	RF321–9296	11/27/92
Texaco Inc./Robert Johnson's Texaco et al.	RF321–16214	11/25/92
Town of Normandy et al.	RF272–84303	11/25/92
Washington County et al.	RF272–86671	11/25/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Barrett Mobile Home Transport	RF272–13994
Central Vermont Public Service Corp.	RF272–48036
Circle G. Petroleum	RF304–13149
Dembeck's Sparrow's Point Gulf ...	RF300–147
George Bando's Arco	RF304–3710
Teague Industries	RR300–197
Town & River Texaco	RF321–16942
Xaverian High School	RF272–75883

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 16, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–31136 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Boulder Canyon Project; Notice of Rate Order No. WAPA–58

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order—Boulder Canyon Project power rate adjustment.

SUMMARY: Notice is given of the confirmation and approval by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of Rate Order No. WAPA–58 and Rate Schedule BCP–F4 placing the proposed ratesetting methodology and increased power rates for the Boulder Canyon Project (BCP) of the Western Area Power Administration (Western) into effect on an interim basis. The new ratesetting methodology will be submitted to the Federal Energy Regulatory Commission (FERC) for a 5-year approval subject to subsequent annual rate adjustments by the Administrator of Western as provided for by the ratesetting methodology. These rates, hereafter called the provisional rates, will remain in effect on an interim basis until the FERC confirms, approves, and places them in effect on a final basis or until they are superseded.

The provisional rates for BCP power are based on a composite rate of 14.56 mills per kilowatthour (mills/kWh). This composite rate consists of an energy charge of 7.28 mills/kWh and a capacity charge of $1.28 per kilowatt per month ($/kW/month).

The Deputy Secretary, U.S. DOE, approved the existing rate schedule (BCP–F3) on an interim basis, effective on July 1, 1991. FERC approved BCP–F3 on a final basis by Order dated November 10, 1992.

A comparison of existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

	Existing rate (FY 1992)	Provisional rate (FY 1993)*
Rate Schedule	BCP–F3	BCP–F4
Composite Rate (mills/kWh)	10.21	14.56

COMPARISON OF EXISTING AND PROVISIONAL RATES—Continued

	Existing rate (FY 1992)	Provisional rate (FY 1993)*
Energy Rate (mills/kWh)	5.11	7.28
Capacity Rate ($/kW/month)	$1.06	$1.28

*The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The rates will change annually.

DATES: Rate Schedule BCP–F4 will be placed into effect on an interim basis beginning on January 1, 1993, and will be in effect until FERC confirms, approves, and places the rate schedule in effect on a final basis for a 5-year period or until superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453

Ms. Deborah M. Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1535

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such ratesetting methodology and rates into effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such ratesetting methodology and rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

These power rates are established pursuant to the DOE Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), the

Colorado River Project Act of 1965 (43 U.S.C. 620 *et seq.*), the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), the Boulder Canyon Project Act of 1940 (43 U.S.C. 618 *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, Final Rule (10 CFR part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986, the procedures for public participation in rate adjustments for power and transmission service marketed by Western (10 CFR part 903) published in the **Federal Register** at 50 FR 37835 on September 18, 1985, and the DOE financial reporting policies, procedures, and methodology (DOE RA 6120.2 dated September 20, 1979).

The Power Repayment Spreadsheet Study (PRSS) has incorporated new methodology which is different from the power repayment study (PRS). The comparison of the methodologies is set forth in the rate order of this FERC package. The Fiscal Year 1992 Ratebase PRSS filed with FERC has changed from the PRSS in the BCP Rate Adjustment Brochure (Brochure) and the PRSS that determined the rates that were filed in a **Federal Register** notice dated June 10, 1992. These changes are also explained in the rate order of this FERC package. As a result of these changes, the provisional rates are set by the first year in the 5-year window, which is greater than an average of the 5-year window. The rates in the Brochure were set by the average of the 5-year window.

During the 110-day comment period, Western received 29 written comments. In addition, 11 speakers commented during the September 10, 1992, public comment forum. All comments and responses are addressed in the rate order.

On October 15, 1992, Overton Power District No. 5 and Valley Electric Association (Overton/Valley) filed a Motion for Preliminary Injunction and a Verified Complaint praying for a declaratory judgment against the DOE and FERC. The Motion for Preliminary Injunction was heard and denied by the Court on December 2, 1992. We anticipate that Overton/Valley will file their Motion for Summary Judgment in the near future. The Plaintiffs allege that the existing BCP rate based on Rate Order No. WAPA–49 is too high and contains components which are illegal and unreasonable, and the rate adjustment currently in progress should be delayed. By Order of November 10, 1992, FERC approved WAPA–49 on a final basis.

Western will present a vigorous defense to the allegations.

Rate Order No. WAPA–58, confirming, approving, and placing the BCP proposed ratesetting methodology and rates into effect on an interim basis, is issued, and Rate Schedule BCP–F4 will be promptly submitted to FERC for conformation and approval on a final basis.

Issued in Washington, DC, December 14, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Order Confirming, Approving, and Placing the Boulder Canyon Project Power Rates Into Effect on an Interim Basis

In the matter of: Western Area Power Administration, Rate Adjustment for Phoenix Area Office, Boulder Canyon Project.

[Rate Order No. WAPA–58]

December 14, 1992.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No.2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for Public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

1941 General Regulations: General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act, May 20, 1941.

1984 Act: Hoover Power Plant Act of 1984, August 17, 1984 (43 U.S.C. 619 *et seq.*).

$/kW/month: Monthly charge for capacity (usage—$ per kilowatt per month).

Additions: A unit of property constructed or acquired which enhances or improves a project or system and which is properly allocated to power or the joint features allocated to power.

Adjustment Act: Boulder Canyon Project Adjustment Act, July 19, 1940 (43 U.S.C. 618 *et seq.*).

BCP: Boulder Canyon Project.

Bathtub curve: See definition of Replacement Study.

CRSS: Colorado River Simulation Study

Capacity Rate: Shown in the PRSS as a $/kW/year charge. Billed on a $/kW month basis. Applied each billing period to each kW of rated output to which each contractor is entitled by contract.

Colorado River Basin Project Act: The Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501 *et seq.*).

Colorado River Dam Fund (CRDF): A fund established by section 2 of the Boulder Canyon Project Act of 1928 which is to be used only for the purposes specified in the Boulder Canyon Project Adjustment Act of 1940, the Colorado River Basin Project Act of 1968, and the Hoover Power Plant Act of 1984.

Composite Rate: Combination of an energy and a capacity component.

Conformed Criteria: Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984) beginning on June 1, 1987.

Cost Evaluation Period (CEP): The first 5 future years in the PRSS.

Contractors: The Boulder Canyon Project Power Customers.

Crosswalk: A reconciliation between a project PRSS and the Western and Reclamation financial statements.

CSRS: Civil Service Retirement System.

Current PRSS: The PRSS included in this rate order based on the existing rates.

Customer Brochure: A document prepared for public distribution

explaining the background of the rate proposal contained in this rate order. Also referred to as the Boulder Canyon Project proposed rate Adjustment Brochure.

DOE: Department of Energy.

DOE Order No. RA 6120.2: An order dealing with Power Marketing Administration Financial Reporting.

E&OC: Engineering and Oversight Committee consisting of members from BCP contractors, Western, and Reclamation. Their function is to establish a regular review process of Western's and Reclamation's planned O&M, additions, and replacements.

Energy Rate: Expressed in mills per kWh. Applied to each kWh made available to each contractor.

FY 1992 Ratebase PRSS: FY 1992 Revised PRSS.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year.

Guide Service: This is service provided to the visitors at the Hoover Dam site.

Hoover Dam: The dam on the Colorado River which forms Lake Mead.

Hoover Rates Committee: The Hoover Power Rates Methodology Review Standing Committee made up of BCP contractors who developed the new proposed ratesetting methodology (Settlement Agreement).

Interior: U.S. Department of the Interior.

kW: Kilowatt.

kW/month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery.

kWh: Kilowatthour.

LCRBDF: Lower Colorado River Basin Development Fund—a fund established by the Colorado River Basin Project Act of 1968.

Master Schedule: This is an 18-month schedule of projected BCP hydrology.

mills/kWh: Mills per kilowatthour.

Multiproject Costs: These are costs for facilities being charged to one project that benefits other projects.

MW: Megawatt.

MWh: Megawatthour.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

OMB: Office of Management and Budget.

O&M: Operations and maintenance.

P–DP: Parker-Davis Project.

pinch-point: The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.

Project Act: The Boulder Canyon Project Act authorizing the construction of Boulder Canyon Project dated December 21, 1928 (43 U.S.C. 617 *et seq.*).

PRS: Power Repayment Study.

PRSS: Power Repayment Spreadsheet Study.

Proposed rate: A rate revision that the Administrator of Western recommends to the Assistant Secretary for Conservation and Renewable Energy for approval.

Provisional rate: A rate which has been confirmed, approved, and placed in effect on an interim basis by the Assistant Secretary for Conservation and Renewable Energy.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Reclamation's 1986 General Regulations: General Regulations for Power Generation, Operation, Maintenance, and Replacement at BCP, Arizona/Nevada 43 CFR part 431 (51 FR 23960, July 1, 1986).

Replacements: A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project or the joint features properly allocated to power.

Replacement Study: The cyclical analysis of replacement service lives. A high level of replacement activity for a few consecutive years will re-occur in future years at a similar high level with the years in between tending to be at a lesser level of replacement.

Secretary: Secretary of Energy.

Schedule A: Boulder Canyon Project Contractors that receive capacity and energy. Contractors are Arizona Power Authority (APA), Boulder City, Burbank, Colorado River Commission of Nevada (CRC), Glendale, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Pasadena, and Southern California Edison.

Schedule B: Boulder Canyon Project Contractors that receive Hoover capacity and energy and who also advanced the funds for the Uprating Program. These Contractors include Anaheim, APA, Azusa, Banning, Burbank, CRC, Colton, Glendale, Pasadena, Riverside, and Vernon.

Schedule C: Both the Schedule A and Schedule B Contractors (All Contractors).

Settlement Agreement: See Hoover Rates Committee.

Treasury: Secretary of the Department of the Treasury.

Uprating Contractors: Contractors who contributed to advance of funds for financing the upgrading of the BCP system.

Uprating Credits: The payments/credits that are returned to the Uprating Contractors in repayment for the advancement of funds.

Uprating Program: Non-federally financed work to increase the capacity of the existing generating and associated electrical equipment at the BCP.

Western: Western Area Power Administration, DOE.

Western's 1986 General Regulations: General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, 10 CFR part 904 (51 FR 43154, November 28, 1986).

Working Capital Fund: Reserve of funds contributed by the Contractors to be used when the Colorado River Dam Fund has no money available.

Effective Date

The new ratesetting methodology is effective January 1, 1993, pending FERC approval on a final basis, through September 30, 1997.

The rates in Rate Schedule BCP–F4 will be in effect pending FERC approval of these or substitute rates on a final basis from January 1, 1993, through September 30, 1993. For all other FYs of the ratesetting methodology approval period (through FY 1997) the rates will be set in accordance with the new ratesetting methodology approved and placed into effect by the Administrator of Western.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of the ratesetting methodology and power rates. The provisional rates for power represent an increase of approximately 43 percent in the composite rate; therefore, it is a major rate adjustment as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. A **Federal Register** notice was published on June 10, 1992 (57 FR 24641), officially announcing the proposed power rate adjustment,

initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

2. A letter was mailed to all BCP customers and other interested parties on June 22, 1992, providing a copy of the BCP proposed rate Adjustment Brochure and announcing an informal customer meeting, and public information forum. The informal customer meeting was held on June 29, 1992, in Phoenix, Arizona. At this informal meeting, Western and Reclamation representatives explained the need for the increase and answered questions from those attending.

3. At the public information forum held on July 7, 1992, Western and Reclamation representatives explained the need for the rate increase in greater detail and answered questions.

4. On August 6, 1992, a **Federal Register** notice was published (57 FR 34776) formally announcing the consultation and comment period would be extended through September 28, 1992, for the proposed rate adjustment for the BCP.

5. The public comment forum was held on September 10, 1992, to give the public an opportunity to comment for the record. Eleven people representing customers and customer groups made oral comments.

6. Twenty-nine written comment letters were received during the 110-day consultation and comment period. The consultation and comment period ended September 28, 1992.

Project History

The BCP was authorized for construction by the Project Act. The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona/Nevada border. The dam was built for the express purposes of: (1) Controlling the flooding in the lower regions of the Colorado River drainage system; (2) improving navigation of the Colorado River and its tributaries; (3) regulating the Colorado River, while providing storage and delivery of the stored water for the reclamation of public lands; and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Congress authorized Treasury to advance up to $165 million to the Secretary of the Interior to provide for the construction of the dam, powerplant, and related features; $25 million of the $165 million were allocated to flood control.

Construction of the Hoover Dam, formerly known as Boulder Dam, began in 1930, and the first generating unit of the power plant went into service in 1937. Upon completion of the project facilities, power sales commenced, in accordance with the provisions of the Project Act, to contractors in the States of Arizona, California, and Nevada.

The Project Act was modified in 1940 by the Adjustment Act. The Adjustment Act, among other things, authorized the Secretary of the Interior to promulgate and to put into effect power rates based upon a repayment period from June 1, 1937, to May 31, 1987; to reduce the interest rate from 4 percent to 3 percent per annum on unpaid Treasury advances; to require annual payments to the States of Arizona and Nevada in lieu of taxes levied; and to defer without interest until June 1, 1987, the repayment of the $25 million allocated to flood control.

Subsequently and pursuant to the Adjustment Act, the Secretary of the Interior published and implemented the 1941 General Regulations for the period ending May 31, 1987.

As the end of the 50-year term of the original contracts approached, controversy developed among the BCP contractors over renewal rights to BCP power, and litigation resulted. Compromises were reached and embodied in the 1984 Act.

The 1984 Act authorized an increase in the capacity of the existing generating and associated electrical equipment at the BCP. The work to accomplish this increase, referred to as the Uprating Program, was to be funded initially by advances from certain BCP contractors to Reclamation. Funds advanced would be returned to these contractors through credits on their monthly power bills. The 1984 Act provided for advances from the Treasury for the improvement of visitor facilities at the BCP. The 1984 Act also required that an additional charge of 4.5 mills/kWh be assessed on energy sales to Arizona and an additional charge of 2.5 mills/kWh be assessed on energy sales to California and Nevada; all revenue resulting from the additional charge is to be transferred to the LCRBDF.

Under the 1984 Act, BCP's power was sold to 15 contractors located in the States of Arizona, California, and Nevada, in accordance with the Conformed Criteria.

Due to the numerous requirements set out in the 1984 Act and the earlier division of the Federal responsibilities relating to Hoover Dam between Reclamation and Western, both agencies published new regulations governing their respective responsibilities at the BCP after June 1, 1987. These regulations are cited herein as Reclamation's 1986 General Regulations and Western's 1986 General Regulations, and they supersede the 1941 General Regulations, which terminated on May 31, 1987.

Power Repayment Studies

PRS and/or PRSSs are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order No. RA 6120.2, section 12.b, states:

> In addition to the recovery of the above costs (operations and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover: (1) Each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus (5) other costs such as payments to basin funds, participating projects or States.

Existing and Provisional Rates

A comparison of the existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

	Existing rates (FY 1992)	Provisional rates (FY 1993)
Power rate schedule	BCP–F3	*BCP–F4
Composite rate (mills/kWh)	10.21	14.56
Energy rate (mills/kWh)	5.11	7.28
Capacity rate ($/kW/month)	$1.05	$1.28

*The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The rates will change annually.

Certification of Ratesetting Methodology and Rates

Western's Administrator has certified that the BCP ratesetting methodology and rates placed into effect on an interim basis herein are the lowest possible consistent with sound business principles, pursuant to the ratesetting methodology agreed to by the BCP contractors, Western, and Reclamation. The rates have been developed in accordance with administrative policies and applicable laws.

Discussion

The new ratesetting methodology of the PRSS compares to the existing ratesetting methodology of the PRS as follows:

PRSS methodology	PRS methodology
Compound interest amortization repayment schedule assures repayment of investments throughout repayment period.	No assurance of principal payments until end of repayment period.
Highest interest rate investments paid first up to amortization schedule amounts through the year 2017.	Highest interest-bearing investments paid first throughout the study.
Personal computer based spreadsheet	"PRIME" (mainframe computer) based program.
Rate based on higher of first future year rate or 5-year average rate. Data shown for 50 years.	Rate based upon "pinch point" methodology over study period (typically 50 years).
Annual over/under revenue collection reflected immediately in following 5-year average.	Not reflected immediately.
Easy to understand and arithmetically verify results by contractors	Considerably more complicated and results difficult to verify by contractors.
Hydrology uses 2-year Master Schedule & 3-year CRSS average. Average hydrology for remainder of study.	Same for first 2 years, then Reclamation estimate for 3 years, then variable CRSS data.
50/50 energy/capacity revenue split	Same.
Creation of a Working Capital Fund to eliminate delays in the availability of funds from accounting period to accounting period & collection of approximately $9.0 million to pay past due uprating credits..	No working capital fund. Uprating credit recovery built into expenses.
Will request FERC approval of a formula based rate which will be used annually to calculate the rates..	Request approval of a single rate for 5 years.

The provisional rate and the FY 1992 Ratebase PRSS filed with FERC have been updated from the rate originally proposed in the Customer Brochure and **Federal Register** notice dated June 10, 1992. The changes to the FY 1992 Ratebase PRSS are as follows:

—Multiproject costs were updated through September 30, 1991.

—Replacement projections in the years past the cost evaluation period were changed to be based on the average from the replacement study.

—Working Capital Fund was changed to demonstrate the running balance at the end of each FY. The working capital would be reduced each year by whatever is left over in the current year CRDF carryover balance.

—The debt service interest expense changed on the visitor facilities from 8.5 percent to 8.40 percent (average weighted).

—Debt service principal payments changed due to the interest rate on the visitor facilities.

—Prior-year carry-over balance column is displayed in different location on spreadsheet.

—Other revenue changed because of expiration of a facility contract and the increased guide service charge from $1 to $2 beginning January 1, 1993.

—Capacity sales were changed in FY 1992 due to uprating program delays.

—Energy sales were revised to more recent hydrology predictions. As a result of these changes, the provisional rates are set by the first year in the 5-year window, which is greater than an average of the 5-year window. The rates in the customer brochure were set by the average of the 5-year window.

The existing and proposed revenue requirements for the BCP are as follows:

	Revenue requirements	
	Existing rate (FY 1992)	Provisional rate (FY 1993)*
Revenue requirements	$42,877,030	$56,408,822

*The provisional rates are in effect from January 1, 1993, through September 30, 1997.

The rate increase is necessary to satisfy the cost-recovery criteria set forth in DOE Order No. RA 6120.2.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year proposed rate approval period.

BOULDER CANYON PROJECT COMPARISON OF 5-YEAR RATE PERIOD (FY 1993–97) REVENUES AND EXPENSES ($1,000)

	FY 1990 PRS 1993–97	FY 1992 PRSS 1993–97	Difference
Revenues:			
Energy Sales	$136,559	$140,674	$4,115
Capacity Sales	123,022	140,674	17,652
Water Sales	2,000	2,250	250
Other Revenue	3,185	6,201	3,016
CRDF Carry-Over Balance	0	1,830	1,830
Total Revenues	$264,766	$291,629	$26,863
Revenue Distribution:			
Operation & Maintenance	$97,500	$107,753	$10,253
Payment to States	3,000	3,000	0
Other Expenses	3,380	9,037	5,657
Annual Uprating Payments	79,688	91,539	11,851
Annual Replacement	23,464	27,766	4,302
Interest	37,135	35,716	1,419
Principal Payments	20,599	11,148	9,451
Working Capital Fund	0	5,670	5,670
Total	$264,766	$291,629	$26,863

Basis for Rate Development—BCP

The BCP provisional rates are designed to maintain a 50/50 split between revenue earned from energy and capital rates. The cost to individual customers will vary, because of differences in their supplies and loads.

The provisional rate consists of a 7.28 mills/kWh energy rate and $1.28/kW/month capacity rate effective January 1, 1993. The ratesetting methodology approval period is through September 30, 1997.

Comments

During the 110-day comment period, Western received 29 written comments. In addition, 11 speakers commented at the September 10, 1992, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Ak-Chin Indian Community (Arizona)
Aquila Irrigation District (Arizona)
Arizona Power Authority (Arizona)
Basic Management, Inc. (Nevada)
Buckeye Water Conservation & Drainage District (Arizona)
Central Arizona Water Conservation District (Arizona)
Chemstar Lime Company (Arizona)
Colorado River Commission of Nevada (Nevada)
Electrical District Number Five, Pinal County (Arizona)
Electrical District Number Seven (Arizona)
Electrical District Number Eight (Arizona)
Electric Resource Strategy & Contracts Consultants (Arizona)
Harquahala Irrigation District (Arizona)
Irrigation & Electrical Districts Association of Arizona (Arizona)
Los Angeles, City of, Department of Water and Power (California)
Maricopa Water District (Arizona)
Metropolitan Water District of Southern California (California)
Meyer, Hendricks, Victor, Osborn & Maledon (Arizona)
McMullen Valley Water Conservation and Drainage District (Arizona)
Nevada Power Company (Nevada)
Overton Power District No. 5 (Nevada)
Pioneer Chlor Alkali Company (Nevada)
Roosevelt Irrigation District (Arizona)
Safford, City of, Arizona (Arizona)
Salt River Project (Arizona)
Southern California Edison (California)
Titanium Metal Corporations (Nevada)
Tonopah Irrigation District (Arizona)
Valley Electric Association (Nevada)

Representatives of the following organizations made oral comments:

Aquila Irrigation District (Arizona)
Arizona Power Authority (Arizona)
Chemstar Lime Company (Arizona)
Colorado River Commission of Nevada (Nevada)
Harquahala Irrigation District (Arizona)
Los Angeles, City of, Department of Water and Power (California)
Basic Management, Inc. (Nevada)
Electrical District Number Seven (Arizona)
Irrigation & Electrical Districts Association of Arizona (Arizona)
McMullen Valley Water Conservation and Drainage District (Arizona)
Overton Power District No. 5 (Nevada)
Pioneer Chlor Alkali Company (Nevada)
Safford, City of, Arizona (Arizona)
Southern California Edison (California)
Tonopah Irrigation District (Arizona)
Valley Electric Association (Nevada)

Most of the comments received at the public meetings and in correspondence dealt with hydrology, capitalized investments, annual expenses, working capital, other revenue, ratesetting, capitalized deficits, and audits. All comments were considered in developing the provisional rate.

The comments and responses, paraphrased for brevity, are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Boulder Canyon Comments

Hydrology—Energy Sales

Comment: Disagrees with Reclamation's hydrology (i.e., energy) projections in that Reclamation distorts the prediction of energy production for 1996 and 1997 by the selective removal of surplus water release sequences and by averaging the remaining sequences. Surplus water release sequences should be capped at the high value for downstream requirements and be used as part of the average for annual energy prediction, thus increasing energy sales by 315,000 MWh.

Comment: Recommends accepting Reclamation's predicted energy total of 20,413,000 MWh for the 5-year window period of 1993–97.

Comment: The CRSS model should be used for projecting the hydrology and energy generation, without adjustments.

Comment: Rates should be based upon contractual allocation numbers of the 1984 Act rather than on projected generation numbers.

Response: Reclamation was requested by the Hoover Rates Committee to prepare its best projections for energy generation at Hoover Dam. The Hoover Rates Committee requested that Reclamation use the 24-Month Annual Operating Plan model for the first 2 year's data with the last 3 years of the 5-year study period to be based on the CRSS. Reclamation has followed the Hoover Rates Committee's request in its preparation of the energy projections for the BCP and has predicted an energy production of 20,413,000 MWh for the 5-year cost evaluation period. Reclamation has reviewed the methodology of removing the surplus water sequences and believes that removal of these sequences, rather than capping them, and averaging of the remaining sequences, most accurately portrays the projected hydrology.

The BCP Electric Service Contracts with each of the contractors are based on an entitlement share of generated capacity and energy, rather than on a contractual commitment. Therefore the energy projections in the PRSS are based upon forecasted generation estimates. Subsection 5.1.2.2 of the BCP contracts between Western and the individual contractors states, "* * * That the measure of the Contractor's rights to Power hereunder shall be the quantity of capacity and energy available from Hoover Powerplant." The total of schedule A and schedule B firm energy is demonstrated in Table 5 of the BCP contract. This Table gives each contractor's percentage of entitlement of the energy generated at Hoover Dam. Once Hoover Dam annual generation exceeds 4,527,001 kWh, the contract provides for schedule C excess energy provisions based on the 1984 Act.

Subsection 6.3.1 of the BCP contract states, "The quantities of Firm Energy and Excess Energy deemed to be delivered and to be paid for shall be the quantities measured or scheduled to the contractor by Western under this Contract." Hence, under current contracts, Western is unable to bill based on contractual entitlement. It can only bill based on actual energy delivered.

Hydrology—Water Sales

Comment: Concern that projected water sales are below the actual sales for the last 3 historical years and requests water sales revenues be increased to reflect the average of actual sales.

Response: Reclamation has reviewed available water sales data and believes that the current PRSS accurately represents the best estimate for future water sales revenue.

Hydrology—S_L

Comment: Estimated energy generation per acre-foot of water released must be revised to recognize the benefits of unloaded synchronized generation by adding 250,000 MWh for years FY 1993–97 and 207,000 MWh for return of backlogged S_L energy.

Response: According to Exhibit C (Accounting For Use of Unloaded Synchronized Generation) of the BCP Electric Service Contracts with the contractors, L is defined as the "megawatthour energy reduction in the energy entitlement to the Contractor in

the following Billing Period or as soon as practicable". S_L is "computed energy, expressed in megawatthours, lost due to reduced plant efficiency caused by operation of generating units in a partially loaded spinning mode for all Contractors that schedule Unloaded Synchronized Generation during the Billing Period." Therefore, S_L is an energy loss that causes a reduction in the contractor's energy entitlement in a future billing period and does not create additional energy. Western and Reclamation have reviewed the hydrology assumptions and do not believe that further adjustments are necessary regarding S_L. Any adjustments due to backlogged S_L will be handled pursuant to agreements reached between Western and the contractors.

Capitalized Investments

Comment: Concern that a portion of the multiproject facilities allocated to BCP and the Mead Substation facility charges charged to P–DP transmission customers, amounts to a double recovery for the same capital facilities.

Response: Western has reviewed the provisions concerning the Mead facilities charges in the P–DP transmission agreements and has determined that there is no double accounting to the BCP contractors for the same capital facilities. In determining Mead facilities charges to P–DP transmission customers, the costs of the Mead facilities, replacements, and O&M expenses are first allocated to the P–DP based upon the number of bay positions used. This allocation is further allocated based upon the transmission capacity contracted for. Since there is no allocation to the contractors in the determination of the Mead facilities charges, there can be no double accounting to those contractors through the multiproject facilities cost.

Comment: Principal payments in the PRSS should be made throughout the year and interest credits given.

Response: The amortization of debt under the new methodology assumes only one principal payment at the end of each year. Reclamation makes its payments to Treasury at the end of each fiscal year due to the fact that the BCP is a revolving fund. This process incurs a full year's interest expense on the unpaid balance of each investment and thus no interest credits should be given.

Comment: The levelization of debt service obligations was a key consideration in the development of the level amortization approach. Western has assumed that the uncollected principal payments during the first 5 years should be collected over a similar 5-year period; however, the contractor believes that this amount should be recovered over the last 25 years of the contract.

Response: Western has concurred with the levelization over 25 years since the debt service obligations to be recovered are investment costs. Therefore, the cost for uncollected principal payments has been changed in the FY 1992 Ratebase PRSS to be recovered by the end of FY 2017.

Visitor Facilities

Comment: Concern about the visitor facilities excessive costs that had not been anticipated by the contractors and that exceed the authorized amounts.

Response: The 1984 Act, section 103(a)(2), states that $77 million (October 1983 price levels) represent the additional amount required for the uprating program and the visitor facilities program. This $77 million shall be adjusted plus or minus such amounts as may be justified by fluctuation of construction costs. Since the uprating program was financed by the contractors, the $77 million was left to be used at Reclamation discretion. Reclamation believes they have not exceeded the indexed authorized ceiling.

Comment: The interest rate used in the PRSS for the visitor facilities should be the weighted average as required by the 1984 Act.

Response: Western agrees that the interest rate used in the PRSS for the visitor facilities should be the weighted average interest rate. Western had been using an 8.50-percent interest rate in the PRSS but has since calculated the weighted average rate to be 8.40 percent.

Comment: Columns 8 and 11 in the PRSS should be footnoted with a statement indicating the renegotiations of the portion of the debt service attributable to the visitor facilities is pending.

Comment: The $45 million in visitor facilities costs should either be reclassified as non-reimbursable and reallocated to the National Highway System, or be postponed, without interest, for repayment after FY 2017. It was suggested that Reclamation take the lead on achieving legislation that would be required to accomplish either solution.

Response: Reclamation has been meeting with the contractors to discuss different methodologies which would ease the contractors' burden regarding visitor facilities costs. No formal negotiations are in process that would justify such a footnote.

Annual Expenses—O&M

Comment: Western and Reclamation should work with its contractors by establishing a formal review process of planned O&M, additions, and replacements. The process should include measurement of program needs, costs and budgets against agreed criteria, review thereof by contractors prior to decisions, and an opportunity for review of decisions where contractors for more than one-half of Hoover capacity disagree.

Response: Western believes this is being accomplished through the E&OC. Western will continue its involvement on the E&OC.

Comment: Commitment to cost containment should be reflected in the O&M and replacement budgets.

Response: Western and Reclamation are fully committed to cost containment. Cost containment plays a major role in the preparation of Western's and Reclamation's O&M and replacement budgets.

Comment: Hoover's O&M and replacement costs shown in the PRSS need to be reevaluated to determine whether they are absolutely essential or can be deferred to a later date.

Response: Western and Reclamation, in cooperation with the E&OC, have reviewed their O&M and Replacement costs and feel that the costs are essential and cannot be deferred to a later date. Both Western and Reclamation are committed to work with the contractors through the E&OC to ensure that all entities are informed and have the opportunity to review the O&M and replacement expenditures.

Comment: Two million, one hundred thousand dollars of Reclamation O&M should be removed from PRSS in 1997 because it had not been reviewed by the E&OC ($1.2 million in extraordinary maintenance and $.9 million in dam and power additions).

Response: Both Western and Reclamation utilize information contained in the latest approved budget document available for inclusion in the PRSS.

The E&OC will be requested to expand its evaluation period by 1 year to match the cost evaluation period contained in the PRSS.

Comment: Western has not justified substantial increases in O&M costs shown in the PRSS.

Response: Western's O&M costs are being driven by (i) general Western allocation costs, (ii) multiproject costs, (iii) CSRS costs and (iv) environmental compliance issue costs. The general Western allocation costs are indirect costs allocated directly to power

projects. These indirect costs are expenditures that benefit the ratepayers at large or that are incurred in establishing or maintaining the system as a whole. Multiproject costs are costs associated with the construction of facilities (principal, interest, and O&M expenses) charged to other projects that also benefit the BCP. CSRS costs reflect the retirement costs of a number of Western employees under the CSRS retirement program in the Phoenix Area Office that are anticipated to retire within the next 20 years. Environmental compliance issue costs are those costs associated with cleanup such as disposal of oil and PCB contaminated equipment, removal of oil and above ground equipment as stations are de-energized, removal of underground oil piping, and excavating and disposal of contaminated soil and debris.

Annual Expense—Replacements

Comments: Hoover-Mead consolidation costs should be removed from replacements and funded through the Uprating Program.

Response: Western and Reclamation believe this must be a decision of the uprating contractors. As of this date there is no consensus position by the uprating contractors and thus there will be no change in the PRSS at this time.

Comment: Replacements should be funded by appropriations and capitalized rather than being expensed.

Response: Reclamation has planned for a portion of the replacement costs to be funded by appropriations in its FY 1995 budget. Until this is approved by the OMB, Reclamation and Western must continue expensing the replacements in the PRSS. Discussion will continue as provided by the Settlement Agreement dated September 15, 1992.

Comment: The three million, four hundred thousand dollar projection for replacement costs in the PRSS should be patterned to reflect the bathtub curve (replacement study) which was submitted by Western on September 4, 1992, in response to a contractor's data request.

Response: Western and Reclamation have agreed to use the replacements study (bathtub curve) average for the out years in the PRSS. The replacement study represents higher replacements costs at the beginning and end of the repayment period with the in-between years having lower replacement costs. The PRSS has been revised to display an average annual expenditure of $1.7 million from 1998 through the end of the study.

Annual Expenses—Uprater Payments

Comment: In the interest of sound accounting practice and a conservative approach, Western should ensure that uprating contractor payments included in the PRSS are based on the latest information provided by the contractors. Some contractors believe Western is using the wrong schedules of uprating payments.

Response: The uprating contractor payment schedules utilized in the PRSS are the same schedules utilized by Western in determining the monthly power bills. Western has also consulted with each of the contractors as to the proper schedule Western should be using. The contractors all agree with the schedules being used in the PRSS.

Comment: Western has improperly deferred the payment of the uprating credits.

Response: Subsection 6.5 of the BCP contracts states, "* * * That a Schedule B Contractor shall not receive any credits or portions thereof on its power bills for any Billing Period unless sufficient funds are legally available for (i) the payment of operation, maintenance, and replacement costs of the Boulder Canyon Project; (ii) repayments to the Treasury, with interest, of advances or any readvances made to the Colorado River Dam Fund that may not be legally deferred; and (iii) in-lieu-of-tax payments to the States of Arizona and Nevada." Western and Reclamation implemented this section of the BCP contract to suspend the payment of uprating credits on the power bills.

Annual Expenses—Other Expenses

Comment: Multiproject costs should be deleted from the PRSS until the E&C has had an opportunity to review.

Response: These multiproject costs are costs for facilities being charged to one project that benefits other projects. Therefore, Western believes this is not a regular O&M cost; although it is an element in the total O&M cost, this does not fall under the review process by the E&OC.

Working Capital

Comment: The PRSS should provide for the return of working capital to the contractors at the end of the contract period.

Response: The FY 1992 Ratebase PRSS provides for returning the contributed working capital to the BCP contractors in FY 2017.

Comment: No amount of working capital requirement has been justified.

Comment: The sum of the working capital and the carry-over balance should equal the $7.5 million rather than $7.5 million for working capital alone.

Response: The contractors, Western, and Reclamation had previously agreed to a $7.5-million working capital fund to be shown in the PRSS. This amount was proposed by the Hoover Rates Committee in its February 13, 1992, proposal to Western and Reclamation. Western and Reclamation are agreeable to make the sum of the working capital and the carry-over balance for 1992 equal to $7.5 million. The FY 1992 Ratebase PRSS has been modified accordingly.

Comment: Western and Reclamation should effect a 30-day reduction in the payment delay of revenue collection and deposit to Reclamation, having the effect of reducing the CRDF carryover expense by one-half.

Response: Western and Reclamation have met to establish procedures to minimize the delay of revenue collection and deposit to Reclamation. Discussions are continuing to speed this process to the maximum extent possible.

Other Revenue

Comment: Revenue collected through the guide service must be sufficient to recover the costs of providing that service by increasing fees from $1 to $2.

Response: Reclamation is implementing a fee of $2 for guide service, effective January 1, 1993. The PRSS has been revised to incorporate this increase in revenue.

Comment: Recognition must be given to the marketing of an additional 30 MW from the P–DP as a consequence of Hoover providing spinning reserves for Western's system. Contractor believes Hoover is providing P–DP with a significant benefit that has not been recognized in the form of revenue reallocation or expense credit. P–DP has an additional 30 MW of firm capacity because Hoover is providing the P–DP spinning reserves. Contractor believes a reduction to other expenses in the amount of approximately $450,000/year should be made to account for the allocation of 30 MW of spinning reserve capacity held at Hoover for the benefit of P–DP.

Response: Western has researched this matter thoroughly and can find no evidence that Hoover is providing spinning reserves to the P–DP. Although the Consolidated Marketing Plan anticipated that an additional 30 MW of P–DP capacity would be available for sale as result of consolidated operations within the Boulder City Area (now the Phoenix Area), spinning reserve requirements have not changed.

Spinning reserve requirements for the Phoenix Area are today identical to what they were prior to initiation of consolidated operations.

What did change with the initiation of consolidated operations is that the BCP, P–DP, and Navajo Project are all able to "consolidate" their capacity and energy resources into a single fungible resource. By being able to schedule power from this fungible resource, the Phoenix Area Office has been able to schedule the region's resources from the most economical resource possible without sacrificing reliability or reducing capacity. Although an additional 30 MW of capacity and associated energy is being marketed by the P–DP under the Consolidated Marketing Plan, the greatest benefits under the plan are being realized by the BCP. Since tracking started in January 1989, the BCP has accumulated through October 1992, 151,579 NW of hourly generation commitment from the P–DP.

Ratesetting

Comment: Preference customers' ability-to-pay should be considered before replacement and new construction obligations are incurred.

Response: While Western and Reclamation are sympathetic to the current financial plight of a number of the contractors with large agricultural loads, they cannot allow the BCP facilities to deteriorate to a point where safe and continued operation to all contractors is jeopardized. Both Western and Reclamation believe that replacements and new construction obligations have been and will continue to be thoroughly discussed in the E&OC forum.

Comment: One of the missing ingredients in decision making related to the ratesetting proposal for Hoover is an analysis of the impact to contractors.

Response: While it is true that Western did not analyze the BCP rate proposal to determine its impact on individual customers, Western does not have sufficient information at its disposal nor is it required to complete such an analysis. This is a function that the individual contractors should perform. While being sympathetic to individual contractor's positions, Western has a financial and legal obligation to the Treasury to pay expenses related to the operation of the BCP.

Comment: Is Western providing power at the lowest possible cost consistent with sound business principles?

Response: Western is of the opinion that it is providing power from the BCP at the lowest possible cost consistent with both sound business principles and with the principles outlined by the Hoover Rates Committee.

Comment: Due to the contractor-requested limitations regarding the year 2017, the PRSS improperly pays off lower-cost debt before higher-cost debt.

Response: While this statement is basically true, the contractors, who have financial obligations to the BCP only through the year 2017, suggested this particular methodology for paying off principal. In this manner they are insured of not paying any debt that would be amortized after 2017 which under the new ratesetting methodology is payable by the post 2017 BCP contractors.

Comment: The proposed rates are so fraught with impropriety that they should be withdrawn. However, if Western declines to withdraw, contractor believes Western should proceed on the basis of the third option outlined in the DOE governing regulations, 10 CFR 903.21 a.3., which states, "develop rates which in the Administrator's judgment should be confirmed, approved, and placed into effect by FERC on a final basis without being placed into effect on an interim basis."

Response: Western believes that the proposed rates are properly set and is recommending that the proposed rates be placed into effect on an interim basis by the Assistant Secretary for Conservation and Renewable Energy effective January 1, 1993, to meet the immediate cashflow requirements of the BCP.

Capitalized Deficits

Comment: The capitalized deficits of annual costs should be amortized over remainder of PRSS rather than 10 years.

Response: Western agrees that it would be appropriate to recover these annual costs over a 10-year period. Capital investment costs have been amortized over the 25 years remaining in the contract period.

Audits

Comment: Western's proposed rates reflect abnormally high unaudited levels of replacements and O&M costs.

Response: Western has incorporated the crosswalk as of September 30, 1991, in the PRSS. This crosswalk reconciles the financial statements to the PRSS through FY 1991.

Comment: Western fails to have biennial audits performed.

Response: Rates are set on projected costs. While historical costs are of value, they are not highly significant unless there is a sizeable discrepancy in the data. To avoid any such discrepancy there have been crosswalks to reconcile PRS data with financial data. Further there was a 50-year BCP audit ending operating year 1987 and a FY 1991 Western-wide audit. Annual Western-wide audits are expected in the future.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR part 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of the environmental assessment or EIS.

Executive Order 12291

DOE has determined that this rate action is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including PRSS's, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Phoenix Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 89009; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The ratesetting methodology and rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I confirm and approve on an interim basis, effective January 1, 1993, the ratesetting methodology and Rate Schedule BCP–F4. The rate schedule, subject to adjustment pursuant to the ratesetting methodology, shall remain in

effect on an interim basis, pending FERC confirmation and approval of it or a substitute rate on a final basis, through September 30, 1997.

Issued in Washington, DC, December 14, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Rate Schedule BCP–F4/1
(Supersedes Schedule BCP–F3)

Boulder Canyon Project

Schedule of Rates for Power Service

Effective (In accordance with approved ratesetting methodology)

January 1, 1993, that being the first day of the January 1993 billing period.

Available

In the marketing area served by the Boulder Canyon Project.

Applicable

To power customers served by the Boulder Canyon Project supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

The base charge capacity rate is $1.28/kW/month for each kW of rated capacity to which each contractor is entitled by contract during the billing period.

The base charge energy rate is 7.28 mills/kWh for each kWh measured or scheduled at the point of delivery during the billing period, except for purchased power.

Lower Basin Development Fund Contribution Charge

The Lower Basin Development Fund Contribution Charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overruns shall be billed at 10 times the above base charge energy and capacity rates. The Lower Basin Development Fund Contribution Charge shall be applied also to each kWh of overrun.

Adjustments: None.

[FR Doc. 92–31137 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4547–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Water Quality Standards Regulation (ICR No. 0988.05.)

Abstract: ICR No. 0988.05 covers the activities that States and Territories must perform in reviewing and revising their water quality standards as required by section 303(c) of the Clean Water Act (CWA). Section 303(c) requires States and Territories to carry out this review and revision every three years. This requirement involves updating existing standards to take into account new information, identifying and evaluating water bodies, and deciding whether use designations and water quality criteria are appropriate for them.

The States and Territories must submit the results of these reviews to the EPA Regional Administrators, who may approve or reject them. The Water Quality Standards Regulation (40 CFR Part 131) sets out the procedures by which States and Territories develop and revise their Water Quality Standards, and the criteria by which EPA reviews and approves these standards.

The States and Territories' standards must include a policy of protecting existing water uses and water quality. When the States and Territories submit the results of their water quality standards reviews to EPA, the Agency compares them with the requirements of the CWA in deciding whether or not to approve the standards. The standards that the States and Territories submit to EPA are used primarily as the basis for controlling pollutant discharges. Without this information, Federal and State authorities would be unable to establish permit limits to protect water quality.

In addition, ICR No. 0988.05 describes information burden associated with CWA section 518(e), which requires EPA to specify how Indian Tribes will be treated as States for the purposes of the Water Quality Standards Program. Section 518(e) also requires EPA to set up a means of resolving Tribe/State disputes over water quality standards on common waterbodies. Tribes and States will have to submit information to EPA to enable the Agency to determine a Tribe's qualifications for treatment as a State and so that the Agency can decide whether formal dispute resolution is necessary.

Burden Statement: The average burden imposed by the Water Quality Standards Regulation is 1953 hours per response. This total includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. However, the burden varies considerably between the two classes of respondent. The burden of a State, Territory or Tribe meeting its section 303(c) requirements will average 2500 hours per response, while the burden on a Tribe applying for treatment as a State will average 40 hours per response.

Respondents: States, Territories, Indian Tribes.

Estimated No. of Respondents: 77.

Estimated Total Annual Burden on Respondents: 193,440 hours.

Frequency of Collection: Once every three years, one-time, on occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: December 17, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–31156 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4547–4]

Final Maximum Pressures for Rule-Authorized Enhanced Recovery Injection Wells in Michigan—First Group Fields

AGENCY: Environmental Protection Agency.

ACTION: Notice of final maximum injection pressure in fields with rule-authorized enhanced recovery injection wells in Michigan—first group fields.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) today is issuing pressure gradients for calculating the maximum allowable liquid injection pressure for rule-authorized class II enhanced recovery injection wells in 14 of 45 Michigan fields currently approved by the State of Michigan for enhanced recovery operations. (These 14 fields include 20 of 68 enhanced recovery units recognized by the State). Therefore, as of the date of publication of this notice, operators of rule-authorized enhanced recovery wells in the 14 fields must limit their liquid injection pressure as directed in this notice. This notice now becomes part of the applicable Underground Injection Control program for the State of Michigan, administered by Region 5 of USEPA, promulgated under the provisions of the Safe Drinking Water Act.

FOR FURTHER INFORMATION CONTACT: Leah Haworth, Underground Injection Control Section, Water Division, (312) 886–6556, 17th floor Metcalfe Building (WD–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION:

I. Background

Federal regulations at 40 CFR 147.1154 stipulate that the Regional Administrator shall establish maximum injection pressures ("field rules") for rule-authorized enhanced recovery injection wells in Michigan fields, after proper notice and opportunity for public comment. Notice was given on July 31, 1992, to persons on a state-wide mailing list and on September 11, 1992, in the **Federal Register** (57 FR 41751). The public notice period ended October 13, 1992. One written comment was received.

II. Final Field Rules

In this final notice, USEPA is announcing that rule-authorized, enhanced recovery, injection wells in the Michigan fields listed in Table 1, must operate below a maximum injection pressure for liquids calculated using the following formula:

$$Pm=(FPG-0.433\ Sg)d$$

Where

Pm=injection pressure at the wellhead (psi)
FPG=fracture pressure gradient from Table 1 (psi/ft)
Sg=specific gravity of the injection fluid (dimensionless)
d=depth to top of injection zone (ft)

III. Alternative Maximum Pressures

If an owner or operator wishes to inject at a pressure higher than that calculated using the above formula, he or she may submit a request that the USEPA establish an alternative maximum pressure for a particular field and formation. This request may result in permission to inject at higher pressures if the operator can demonstrate to the satisfaction of the Agency that the desired injection pressure will not fracture the confining layer adjacent to the lowermost Underground Source of Drinking Water (USDW) and that there will be no migration of fluids into a USDW. The Agency may grant such a request after notice and opportunity for public comment, according to the provisions of 40 CFR part 124.

If a request for an Alternative Maximum Pressure is denied, the owner or operator may apply for a UIC permit under 40 CFR 144.25(c). The final permit decision, including permit conditions which the owner or operator considers to be inappropriate, may be subject to administrative review pursuant to 40 CFR 124.19. To be added to a mailing list to receive notice of Agency decisions in Michigan regarding Alternative Maximum Pressures or Class IIR permits, contact USEPA, Region 5 Underground Injection Control Section at the address given above.

IV. Notice to Owners and Operators

Concurrent with publication of this notice, USEPA is sending certified written notices to owners and operators of wells in affected fields informing them of the applicable formula to be used in determining the maximum allowable liquid injection pressure. After receipt of this notice, owners and operators who exceed the injection pressure established under the formula or the alternative maximum pressure approved by USEPA will be considered in violation of 40 CFR 147.1154(a), and may be subject to enforcement action, including the assessment of civil penalties and the issuance of compliance orders. If an owner or operator does not receive a certified written notice from USEPA within thirty (30) days of the date of this notice, he or she should immediately contact USEPA, Region 5 at the telephone number given above, to avoid the possibility of violating UIC regulations.

Dated: November 27, 1992.

Kenneth A. Fenner,

Acting Director, Water Division, Region 5, U.S. Environmental Protection Agency.

TABLE 1.—FRACTURE PRESSURE GRADIENT VALUES

Field	Formation	County	Township/range/section	FPG (psi/ft)
Aurelius 35	Niagaran Reef	Ingham	T2N, R2W, S26, 35, 36	0.65
Beaver Creek	Richfield	Crawford/Kalkaska	T25N, R5W, S12, 13, 24 and T25N, R4W, S7, 8, 16–21, 28, 29.	1.07
Bentley-Dundee	Dundee	Gladwin	T17N, R2E, S18, 19, 20	1.15
Billings	Dundee	Gladwin		1.12
Billings 2 Unit			T17N, R1E, S2, 3, 10, 11	
Billings-Bentley Unit			T17N, R1E, S12, 13 and T17N, R2E, S18	
Chester	A1 Carbonate & Niagaran	Otsego		
Chester 18 Unit			T30N, R2W, S7, 8, 17, 18, 19, 20	0.99
Chester 21 Unit			T30N, R2W, S21, 22	0.78
Columbus 3	Niagaran	Saint Clair	T5N, R15E, S3, 10 and T6N, R15E, S34	0.79
Cranberry Lake	Richfield	Clare	T20N, R6W, S1, 2, 11, 12	1.10
Hayes	Salina-Niagaran	Otsego		0.67
Hayes 15 Unit			T29N, R4W, S15	
Hayes 21A Unit			T29N, R4W, S21, 28	
Headquarters	Richfield	Roscommon		1.22
Headquarters Unit			T21N, R3W, S19, 29, 30	
Headquarters-Sour Unit			T21N, R3W, S29, 30, 32, 33	
Ingham 13	Salina-Niagaran	Ingham	T2N, R1E, S13	0.76

TABLE 1.—FRACTURE PRESSURE GRADIENT VALUES—Continued

Field	Formation	County	Township/range/section	FPG (psi/ft)
Kalkaska "21"	Saline-Niagaran	Kalkaska	T27N, R8W, S22	0.92
Onondaga 10	Saline-Niagaran	Ingham	T1N, R2W, S2–4, 10, 11, 14	0.61
Pennfield 35	Niagaran Reef	Calhoun	T1S, R7W, S35	0.60
Rose City	Richfield	Ogemaw		1.07
Rose City Unit			T23, 24N, R2E, S3, 19–21, 27–30, 32–35	
Rose City Central Unit			T24N, R1, 2E, S25	
Rose City West Unit			T24N, R1E, S21	

[FR Doc. 92–31152 Filed 12–22–92; 8:45 am]
BILLING CODE 6560–50–M

[FRL–4548–1]

Public Meeting on the Land Disposal Restrictions (LDR's) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), EPA established the Land Disposal Restrictions program (LDR's). EPA's Office of Solid Waste will hold a roundtable discussion on the LDR program on January 13 and 14, 1993. The roundtable is aimed at those implementing the LDR program and the discussions will focus on what is working or not working in the implementation of the LDR program.

The public is welcome to observe the discussions among participants; however, these meetings are not intended as public hearings. The roundtable will be held from 8:30 a.m. to 5 p.m. at the Crystal City Hyatt Regency, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Contact Michelle Prejean of the Waste Treatment Branch at (703) 308–8467.

Dated: December 14, 1992.

Elizabeth Cotsworth,

Deputy Director, Waste Management Division.

[FR Doc. 92–31154 Filed 12–22–92; 8:45 am]
BILLING CODE 6560–50–M

[OPP–180880; FRL–4178–5]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 18 States as listed below. One public health exemption was granted to the California Environmental Protection Agency and 10 crisis exemptions were initiated by various States. These exemptions, issued during the months of August and September 1992, except for the one in July, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption from the Florida Department of Agriculture and Consumer Services. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and public health exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–305–5805).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of avermectin B_1 on melons to control leafminers; July 1, 1992, to June 30, 1993. Arizona had initiated a crisis exemption for this use. (Larry Fried)

2. Arizona Department of Agriculture for the use of bifenthrin on head lettuce, broccoli, and cauliflower to control the sweet potato whitefly; September 18, 1992, to June 15, 1993. (Andrea Beard)

3. California Environmental Protection Agency for the use of cypermethrin on sugar beets to control the granulose cutworm; September 24, 1992, to May 1, 1993. (Andrea Beard)

4. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on celery, head lettuce, and tomatoes to control leafminers; September 28, 1992, to September 27, 1993. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of propiconazole on sweet corn to control rust and leaf blight; September 8, 1992, to September 8, 1993. (Andrea Beard)

6. Idaho Department of Agriculture for the use of paraquat on dry peas and lentils to control weeds prior to harvest; August 14, 1992, to August 15, 1992. Idaho had initiated a crisis exemption for this use. (Susan Stanton)

7. Indiana State Chemist and Seed Commissioner for the use of cryolite on potatoes to control the Colorado potato beetle; August 27, 1992, to October 31, 1992. Indiana had initiated a crisis exemption for this use. (Libby Pemberton)

8. Michigan Department of Agriculture for the use of sethoxydim on canola to control volunteer cereal grains; September 4, 1992, to November 30, 1992. (Susan Stanton)

9. Minnesota Department of Agriculture for the use of glyphosate on hard red spring wheat to control weeds (preharvest); September 18, 1992, to October 1, 1992. Minnesota had initiated a crisis exemption for this use. (Susan Stanton)

10. Ohio Department of Agriculture for the use of cryolite on potatoes to control the Colorado potato beetle; August 27, 1992, to October 31, 1992. (Libby Pemberton)

11. Oregon Department of Agriculture for the use of oxyfluorfen on grasses grown for seed to control various weeds; August 31, 1992, to Janaury 15, 1993. This chemical was the subject of a Special Review; a Rebuttable Presumption Against Registration (RPAR), but it has been returned to Registration Division. (Libby Pemberton)

12. South Dakota Department of Agriculture for the use of glyphosate on wheat, oats, and feed barley to control weeds (preharvest); September 18, 1992, to October 1, 1992. South Dakota had initiated a crisis exemption for this use. (Susan Stanton)

13. Texas Department of Agriculture for the use of glyphosate on grain sorghum (preharvest) to control weeds; September 18, 1992, to October 20,

1992. Texas had initiated a crisis exemption for this use. (Susan Stanton)

14. Washington Department of Agriculture for the use of paraquat on dry pea and lentil fields to control weeds prior to harvest; August 14, 1992, to September 15, 1992. Washington had initiated a crisis exemption for this use. (Susan Stanton)

15. Specific exemptions have been granted for the use of amitraz on honey bee colonies to control tracheal mites. EPA completed a rebuttable presumption against registration (RPAR) for this chemical; final determination notice published in April 1979. The effective dates for the following States listed below are from September 1, 1992 to: (Libby Pemberton)

a. Arkansas State Plant Board, February 16, 1993.

b. Illinois Department of Agriculture, August 31, 1993.

c. Indiana State Chemist and Seed Commissioner, May 1, 1993.

d. Louisiana Department of Agriculture and Forestry, March 31, 1993.

e. Maryland Department of Agriculture, May 21, 1993.

f. Michigan Department of Agriculture, May 30, 1993.

g. North Dakota Department of Agriculture, May 16, 1993.

h. South Dakota Department of Agriculture, June 1, 1993.

i. Virginia Department of Agriculture and Consumer Services, May 1, 1993.

Crisis exemptions were initiated by the:

1. California Environmental Protection Agency, Pesticide Regulation, on September 22, 1992, for the use of avermectin B_1 on fresh market tomatoes to control leafminers. This program has ended. (Libby Pemberton)

2. Louisiana Department of Agriculture and Forestry on September 10, 1992, for the use of paraquat on corn to control weeds. This program has ended. (Susan Stanton)

3. Minnesota Department of Agriculture on August 11, 1992, for the use of glyphosate on spring wheat to control weeds. This program has ended. (Susan Stanton)

4. Mississippi Department of Agriculture and Commerce on August 20, 1992, for the use of paraquat on grain sorghum to control weeds. This program has ended. (Susan Stanton)

5. Mississippi Department of Agriculture and Commerce on August 17, 1992, for the use of paraquat on corn to control weeds. This program has ended. (Susan Stanton)

6. Montana Department of Agriculture on August 5, 1992, for the use of glyphosate on spring wheat to control weeds. This program has ended. (Susan Stanton)

7. Nebraska Department of Agriculture on August 7, 1992, for the use of sodium chlorate on winter wheat to desiccate weeds prior to harvest. This program has ended. (Susan Stanton)

8. North Dakota Department of Agriculture on August 12, 1992, for the use of glyphosate on wheat to control weeds. This program has ended. (Susan Stanton)

9. North Dakota Department of Agriculture on August 7, 1992, for the use of glyphosate on feed barley to control weeds. This program has ended. (Susan Stanton)

10. Texas Department of Agriculture on August 4, 1992, for the use of esfenvalerate on sorghum to control midge and headworm in the entire State. This program has ended. (Libby Pemberton)

EPA has granted a public health exemption to the California Environmental Protection Agency, Department of Pesticide Regulation, for the use of formaldehyde on poultry houses, hatcheries, and immobile equipment to control *salmonella spp.*; September 4, 1992, to September 3, 1993. (Susan Stanton)

EPA has denied a specific exemption request from the Florida Department of Agriculture and Consumer Services for the use of propiconazole on field corn grown for seed to control rust and leaf blight. The Agency denied this request because mancozeb, a previously unregistered alternative, is now registered; chlorothalonil, a registered alternative, was previously impractical due to rotational restrictions, but these restrictions have been removed from the label. Available studies have shown no significant yield differences among field corn treated with mancozeb, chlorothalonil, and propiconazole. Therefore, it appears that the registered alternatives, mancozeb and chlorothalonil, can be used without significant economic loss due to yield losses. (Andrea Beard)

Authority: 7 U.S.C. 136.

Dated: December 16, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–31150 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 11, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452–1422. for further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0020

Title: Application for Ground Station Authorization in the Aviation Services

Form Number: FCC Form 406

Action: Revision of a currently approved collection

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting

Estimated Annual Burden: 1,600 responses; 1 hour average burden per response; 1,600 hours total annual burden

Needs and Uses: FCC Rules require that applicants file the FCC Form 406 to apply for new, modification, renewal with modification or for an assignment of a Ground station authorization. This form has been revised to remove questions no longer needed; to add new questions; to reformat for enhanced key entry screens and to further clarify instructions for completing the form. Data are used to update the existing database and to issue licenses.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–31049 Filed 12–22–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-969-DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA-969-DR), dated December 1, 1992, and related determinations.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended as follows: The incident period for this disaster is November 22, 1992 through December 7, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Volland,

Chief, Individual Assistance Division, State and Local Programs and Support.

[FR Doc. 92-31138 Filed 12-22-92; 8:45 am]

BILLING CODE 6718-02-M

Board of Visitors for the National Fire Academy; Open Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the National Fire Academy.

DATE OF MEETING: February 5-6, 1993.

PLACE: National Emergency Training Center, National Fire Academy, Building N, Conference Room, Emmitsburg, MD 21727.

TIME: February 5, 1993, 9 a.m.-5 p.m. February 6, 1993, 9 a.m.-12 noon.

PROPOSED AGENDA: February 5: Quarterly meeting—old business. February 6—Agenda completion.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447-1117, on or before January 15, 1993.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meetings.

Dated: December 9, 1992.

Olin L. Greene,

U.S. Fire Administrator.

[FR Doc. 92-31139 Filed 12-22-92; 8:45 am]

BILLING CODE 6718-01-M

[Docket No. FEMA-REP-1-MA-2]

Massachusetts Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Region I Office of FEMA gives notice that it has received radiological emergency response plans from the Commonwealth of Massachusetts. These plans support the Commonwealth of Massachusetts and include the plans of local governments near the North Atlantic energy Service Corporation's Seabrook Nuclear Power Station, located in Seabrook, New Hampshire.

DATE PLANS RECEIVED: Initial submittal: September 24, 1991; latest revisions received: December 9, 1992.

ADDRESSES: Comments on the plans may be submitted in writing to Albert A. Gammal, Jr., Chief, Natural and Technological Hazards Division, Federal Emergency Management Agency, Region I Office, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109, on or before January 22, 1993.

Copies of the plans are available for review and copying at the FEMA Region I Office at the Federal Emergency Management Agency, Region I Office, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109. Please call (617) 223-9559 in advance to arrange a time to review the plans. Copies are also available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, 44 CFR 5.26. See Supplementary Information below for further information on requesting copies of the plans.

FOR FURTHER INFORMATION CONTACT: Albert A. Gammal, Jr., Federal Emergency Management Agency, Region I Office, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

SUPPLEMENTARY INFORMATION: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Under 44 CFR 350.7, "Application by State for Review and Approval," The Commonwealth of Massachusetts submitted its Radiological Emergency Response Plan for the Commonwealth of Massachusetts to the Federal Emergency Management Agency, Region I Office for review and approval.

Included in the submission are plans for the Commonwealth of Massachusetts and for local communities that are wholly or partially within the established plume exposure pathway emergency planning zone of Massachusetts for the Seabrook Nuclear Power Station.

Copies of the plans are available for review at the Federal Emergency Management Agency, Region I, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109. They are also available on request in accordance with the fee schedule for FEMA Freedom of Information Act request, 44 CFR 5.26. Reproduction fees are $.15 a page payable at the time the copies are requested.

The policies and procedures for FEMA's review, evaluation and approval process on the adequacy of offsite plans and preparedness are established in 44 CFR 350. FEMA findings and determinations, made under this rule, are provided to the Nuclear Regulatory Commission for its use in making Commission findings on the adequacy of offsite plans and preparedness and in making licensing decisions on authorizing full-power operation of commercial nuclear power plans.

Dated: December 15, 1992.

Richard H. Strome,

Regional Director, FEMA Region I.

[FR Doc. 92-31140 Filed 12-22-92; 8:45 am]

BILLING CODE 6718-20-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010876–006.

Title: Palm Beach/Gulfstream Lines Terminal Agreement.

Parties:

Port of Palm Beach District
Gulfstream Line, Inc.

Synopsis: The amendment continues the leasing agreement between the parties on a month-to-month basis.

By Order of the Federal Maritime Commission.

Dated: December 17, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–31068 Filed 12–22–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R-0786]

Telecommunications Service Priority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; Request for comment.

SUMMARY: In November 1988, the Federal Communications Commission (FCC) established the Telecommunications Service Priority (TSP) system to provide a uniform system for assigning priorities for provisioning and restoring telecommunication services that support national security and emergency preparedness (NS/EP) functions. Under the FCC rule, the Board may sponsor TSP assignments to telecommunication services of private-sector organizations that are critical for supporting the Board's NS/EP responsibilities.

Backbone circuits used for the Federal Reserve's Fedwire system, which interconnect the Federal Reserve Banks, have been assigned TSP status. The Board is requesting comment on proposed criteria for providing TSP sponsorship for backbone circuits of eligible private-sector interbank large-value funds or securities transfer systems and access circuits that connect participants to a sponsored large-value payments system.

The Board believes that assignment of TSP status to these circuits will help ensure the operations and liquidity of banks and the maintenance and restoration of stable and orderly financial markets, and thus is consistent with its NS/EP responsibilities. Applications soliciting TSP sponsorship from the Board should not be submitted until these criteria are approved.

DATES: Comments must be submitted on or before March 5, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0786, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m.and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3975), or Kenneth D. Buckley, Manager (202/452-3993), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf, Dorothea Thompson (202/452-2077), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. The above individuals can also be contacted to obtain copies of the NCS forms and instructions referenced in this document.

SUPPLEMENTARY INFORMATION:

Background

The Communications Act of 1934 authorizes the Federal Communications Commission (FCC) to assign and approve reasonable priorities for the provision and restoration of common carrier-provided telecommunications services.[1] In November 1988, the FCC adopted rules establishing the Telecommunications Service Priority (TSP) system for priority restoration and provision of telecommunications services that support National Security and Emergency Preparedness (NS/EP) functions (47 CFR part 64, appendix A). Telecommunication services necessary for NS/EP are defined as those that are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NS/EP posture of the United States.

Two categories of telecommunication services fall within this definition: Emergency NS/EP and Essential NS/EP. Under the FCC rule, Emergency NS/EP telecommunication services are those new services that are "so critical as to be required to be provisioned at the earliest possible time without regard to the costs of obtaining them." An example of Emergency NS/EP service is Federal Government activity in response to a Presidentially declared disaster or emergency. All Emergency TSP services are designated "E".

The FCC rule establishes two types of Essential priority functions:

(1) Expedited restoration of disrupted telecommunication service; and

(2) Expedited provision of new telecommunication services. Essential NS/EP telecommunication services must qualify under one of four subcategories:

(A) National security leadership (the President of the United States);

(B) National security posture and U.S. population attack warning;

(C) Public health, safety, and maintenance of law and order; and

(D) Public welfare and maintenance of national economic posture.

Essential services are assigned a priority on a scale of 1 to 5 (with 1 as the highest priority) based on the appropriate subcategory. Services in subcategory A qualify for priority levels 1-5; those in subcategory B qualify for priority levels 2-5; those in subcategory C qualify for priority levels 3-5; and services in subcategory D qualify for priority levels 4-5.

The FCC rules establish procedures for the assignment and approval of priority levels and set forth priority categories and criteria for determining priority levels. Although the FCC must approve all priority level assignments, the FCC has delegated the administration of the NS/EP TSP program to the Executive Office of the President (EOP). The EOP's responsibilities under the NS/EP TSP program are administered by the

[1] Under section 706 of the Act, this authority may be superseded, and expanded to non-common carrier telecommunications services, by the emergency war powers of the President of the United States. The Executive Office of the President has developed separate regulations and procedures to cover the exercise of these emergency powers. See 47 CFR Ch. II and Executive Order 12656.

National Communications System (NCS), established by Executive Order 12472.[2]

Private-sector organizations must apply for TSP assignments through a Federal agency that is willing to sponsor such applications. Pursuant to the FCC rule, the Board may sponsor essential telecommunication services of organizations that contribute to the performance of NS/EP functions under subcategory D "Maintenance of National Economic Posture" for a TSP level of 4 or 5.

TSP status is intended to be limited to the minimum number of telecommunication circuits necessary to support an NS/EP function. TSP is intended to be invoked only as a "last resort" and, as such, organizations granted TSP status are required to ensure that circuits covered by TSP are afforded the highest level of disaster recovery and contingency capabilities. Payment system participants requesting TSP sponsorship by the Board will be expected to minimize single points of failure or other vulnerabilities through diverse circuit routing, dual physical pathing of circuits, or redundant switching arrangements.

Proposed TSP Sponsorship Criteria

Telecommunication services are designated as essential where a disruption of "a few minutes to one day" could seriously affect the continued operations that support an NS/EP function. The Federal Reserve has NS/EP responsibilities on matters related to the "operation and liquidity of banks" and "the development of plans for the maintenance and restoration of stable and orderly markets." An outage of up to one day affecting large-value funds or securities transfer services may adversely affect the operation and liquidity of banks and/or the stability of financial markets. Backbone circuits used for the Federal Reserve's Fedwire system, which interconnect the Federal Reserve Banks, have been assigned TSP priority level 4. TSP further enhances the resilience and recoverability of the communications infrastructure supporting the Fedwire system and is consistent with the Federal Reserve's efforts to improve the reliability of its automation and communications environment. The Board believes that assignment of TSP status for other circuits used by large-value funds and securities transfer systems will help ensure the operations and liquidity of banks and the maintenance and restoration of stable and orderly financial markets, and thus is consistent with its NS/EP responsibilities.

The Fedwire funds and securities transfer services are used to facilitate much of the country's economic activity. The average value of Fedwire funds and securities transfers approaches $1.5 trillion per day. Most domestic transactions that rely on the immediate and irrevocable transfer of a large-value payment are processed through the Fedwire system. A substantial level of international economic activity is conducted via the domestic telecommunication services used by the Clearing House Interbank Payments System (CHIPS) and the Society for Worldwide Interbank Financial Telecommunication (SWIFT) system. Interruptions in the ability to make payments via these systems could adversely affect the ability of private enterprises to engage in their business activities, which could in turn affect the ability of their counterparties to conduct business.

In addition, the Fedwire funds transfer system is critical to the ability of participants in the securities, options and futures markets to effect settlement for their trading activity. The Fedwire system is also used by these market participants to fund margin calls. These transactions require the ability to transfer funds in a short time frame (*i.e.*, the less than one day specified by the NS/EP criteria). In addition, the Fedwire system is critical to depository institutions' ability to manage their reserve positions.

Therefore, the Board believes TSP status is warranted to expedite the provision and restoration of those resources within the telecommunication infrastructure that supports these systems. Assignment of TSP status to circuits used in large-value payment systems will help ensure an orderly and timely resumption of large-dollar funds and securities transfer services in the event of an emergency or disaster. Specifically, the Board believes it would be appropriate to sponsor TSP status for backbone circuits of private-sector interbank large-value funds or securities transfer systems, and certain access circuits that connect participants to a sponsored large-value payments system. The Board proposes that these circuits be sponsored for a TSP priority level 4. The Board requests comment on the following criteria for determining whether particular telecommunications circuits should be considered for sponsorship by the Board for TSP status:

1. *The payments system requesting TSP sponsorship must be critical to the operation and liquidity of banks or to the stability of financial markets.*

A payments system seeking TSP sponsorship from the Board must provide a large-value interbank payments service, such as a funds or securities transfer service, that requires same-day recovery. The New York Clearing House has requested that the Board sponsor circuits used in the CHIPS network. The Board would consider sponsoring TSP assignment to certain CHIPS circuits pursuant to this criterion as finally adopted.

The Board also will consider sponsorship of providers of large-value payment-related services that direct the transfer of funds, such as SWIFT. To qualify for TSP sponsorship, an outage of a large-value payment system of up to one day must be determined to adversely affect bank operations and liquidity or national financial markets.

The Board considered extending TSP sponsorship to telecommunication circuits supporting other electronic services, such as the automated clearing house (ACH) service. At this time, however, the Board does not believe that the ACH service meets the NCS definition of an Essential telecommunication service where a disruption of a "few minutes to one day" would have a serious effect on Federal Reserve NS/EP responsibilities. Retail payment systems, such as automated teller machine, point-of-sale, or credit card networks, also would not meet this criterion. The Board will continue to review the appropriateness of extending TSP sponsorship to ACH or other electronic payment systems as these systems evolve over time.

2. *A payments system seeking TSP sponsorship must clearly delineate the boundaries of its backbone telecommunications network.*

The Board or a Federal Reserve Bank must be able to identify the minimum number of telecommunication circuits that are necessary to support the large-value payment system. Since TSP assignment is not applicable to switched

[2] The administrative structure of the NCS consists of the executive agent, (the Secretary of Defense, as designated by the President), the Manager (designated by the executive agent) and the Committee of Principals (representatives from federal departments, agencies, and entities with significant national security or emergency preparedness telecommunications responsibilities). The Federal Reserve System was designated as a "participating independent entity" on the Committee of Principals. The EOP has assigned to the NCS Manager the administrative authority delegated to the EOP by the FCC, as well as the authority to administer the NS/EP TSP program after invocation of the President's war emergency powers. The NCS has issued, with the FCC's approval, a directive (NCS Directive 3-1), a service vendor handbook (NCS Handbook 3-1-2), and a user manual (NCS Manual 3-1-1) to implement its responsibilities. (Memorandum Opinion and Order, 4 FCC Rcd 9475 (1989) and 54 FR 50622, December 8, 1989).

circuits, both the backbone and access circuits must be leased line circuits. If a leased circuit is a sub-component of a larger circuit, the full circuit may be sponsored for TSP status.

3. *Access circuits connecting depository institutions or other participants to a sponsored large-value system may be eligible for sponsorship if they are used to transmit a daily average aggregate value of at least $2 billion of funds and/or securities transfers, or if they meet an alternative criterion acceptable to the Board.*

The Board would sponsor TSP status for circuits that connect depository institutions or other network participants to a sponsored large-value payments system if a daily average of at least $2 billion in funds and/or securities transfers is transmitted over the circuit. The Board recognizes that certain private-sector large-value payment systems may have difficulty providing information necessary to determine whether this criterion is met. For example, the SWIFT system transmits payment instructions in multiple currencies and does not cause the settlement of the underlying transactions. Consequently, SWIFT does not accumulate the value of transfers sent over particular access circuits. The Board will consider proposals by sponsored large-value systems of alternative methods for determining eligible access circuits that would reduce the administrative costs of determining eligibility and remain consistent with the spirit of this criterion.

The Board believes that the administrative costs associated with tracking Fedwire funds and securities transfer volumes in order to identify Fedwire access circuits eligible for TSP sponsorship under this criterion could exceed the cost of the TSP tariffs applied to these circuits. To minimize the costs associated with administering the TSP program, the Board proposes sponsoring TSP status for the approximately 300 point-to-point computer interface leased connections used for the Fedwire funds and/or securities transfer services. These circuits generally are used to transmit a large aggregate value of Fedwire transfers.

Access circuits eligible for TSP sponsorship by the Board generally will consist of one or more circuits originating from the premise of the depository institution (or other network participant) and terminating at the premise of the sponsored organization. In some circumstances, however, another circuit that connects the network access circuit to the participant's back-office processing location also may be eligible for Board sponsorship for TSP assignment if it meets the Board's criteria, including the threshold value transmitted over that circuit (or equivalent criterion).

4. *The network backbone circuits and the access circuits for which a payments system seeks TSP sponsorship must be subject to adequate contingency backup arrangements.*

TSP is intended as a "last resort" for restoration of disrupted telecommunication services. The NCS strongly encourages TSP users to maintain adequate communication diagnostic and monitoring equipment that can differentiate outages due to a circuit disruption from those arising from premise equipment. The sponsored organization must maintain a robust backbone network that can recover quickly from equipment or circuit failures. Disaster recovery capabilities also must be maintained in a high state of readiness. Network management procedures should be able to isolate errors, reroute data, and remotely reconfigure equipment. The Board would expect the backbone network of sponsored organizations to provide a level of redundancy in equipment, diverse circuit routing, and diagnostic capabilities commensurate with expectations for supporting critical NS/EP functions. A depository institution that uses an access circuit(s) with TSP assignment should have a backup circuit or dial backup capabilities. In the Federal Reserve's new Fednet network environment, Fedwire leased-line access circuits will have, at a minimum, dial backup capability and a redundant digital service unit, and thus will satisfy this criterion.

5. *A payments system sponsored by the Board that receives TSP status for essential circuits must provide the Federal Reserve the opportunity to verify continuing TSP eligibility for those circuits.*

TSP authorization code(s) must be revalidated by the NCS for eligibility every three years. The Board or the Reserve Banks must be provided with an opportunity to review and verify the use of TSP circuits by a sponsored organization to ensure continuing eligibility. This review and verification process will include, but may not be limited to, circuit topologies, contingency provisions, and the level of compliance with Board and NCS TSP criteria and procedures.

Open Market Operations

The Board will sponsor TSP status for eligible dedicated voice circuits from the Federal Reserve Bank of New York's Open Market Desk to major securities dealers and from the Foreign Exchange Desk to foreign exchange counterparties and foreign central banks. These operations are necessary to the stability of the financial markets. The Federal Reserve Bank of New York leases these circuits and will complete the necessary applications for sponsorship.

Application for TSP Sponsorship

Private-sector organizations can apply to the Board for TSP sponsorship to obtain priority restoration of existing circuits. The Board can also sponsor TSP priority to provision new telecommunication services on an "as needed" basis as a result of national emergencies or disasters warranting extraordinary action. The Board will consider requests from sponsored private-sector organizations for TSP provision of new services under the sponsorship criteria proposed in this notice. The Board will delegate to the Director of the Division of Reserve Bank Operations and Payment Systems, or his designee, the authority to sponsor TSP assignments or to sponsor expedited provision of new telecommunications services to sponsored payment system organizations, pursuant to the Board's criteria, as finally adopted. Applications related to telecommunication services that the Board believes warrant TSP status will be forwarded to the Manager of NCS, who is charged with making TSP assignments.

Fedwire Access Circuits

The Board proposes to sponsor for TSP status all point-to-point leased Fedwire access circuits. The Reserve Banks that lease these circuits will complete the necessary applications for TSP sponsorship.

A depository institution that has additional circuits connecting a TSP-sponsored leased Fedwire access circuit with its Fedwire processing location may apply for TSP sponsorship of those additional circuits, if they satisfy the Board's criteria. Since these circuits are not leased by a Reserve Bank, the depository institutions will be expected to complete the TSP applications and submit them to their Reserve Bank, which will forward the applications to the Board. The requesting depository institution should provide, along with its TSP application, a letter that describes how the access circuit meets the Board's criteria for TSP sponsorship.

Private-Sector Payment Systems

Upon final adoption of these criteria, an organization operating a large-value payments system may apply to the Board for TSP sponsorship. The organization applying for sponsorship must describe how the backbone and access circuits for which it is requesting TSP assignment qualify under each applicable criterion. Requests for sponsorship of access circuits must be made by the operator of the large-value network, rather than by individual network participants.

As a sponsoring organization, the Board is required by the NCS to maintain accurate records of the assignment and disposition of TSP codes provided to sponsored payment system participants. As such, organizations receiving TSP assignments pursuant to the Board's sponsorship will be required to (1) provide the Board with information pertaining to the telecommunication carrier and identifying code for each circuit receiving a TSP assignment; (2) notify the Board of any engineering changes affecting TSP assigned circuits; and (3) notify the Board of any TSP codes that should be revoked. Copies of the NCS forms and instructions for applying for TSP status and for reporting this information are available on request.

Confidentiality of TSP Information

The Board believes that information provided to apply for TSP status as well as information included in subsequent TSP reports will be, in most cases, proprietary. Applicants will be required to describe the topology of their payments network and disaster recovery capabilities. Furthermore, private-sector entities will be required to identify telecommunication service providers and the unique circuit identifiers supporting sponsored TSP services. The release of this information could cause competitive harm. Consequently, the Board will generally consider TSP information exempt from the Freedom of Information Act under exemption 4 to protect both the interests of commercial entities that submit proprietary information to the government and the interests of the government in receiving continued access to such data (5 U.S.C. 552(b)(4)).

Revalidation

Consistent with NCS criteria, approved applicants will be required to reapply to the Board every three years to revalidate their continued sponsorship and eligibility of each TSP assigned circuit. The revalidation process will include a review of the validity of the original justification qualifying the depository institution or other organization for TSP status under the Board's TSP criteria. In addition, the Board will reserve the right to periodically audit records pertaining to TSP sponsored circuits to ensure compliance with NCS and FCC criteria on TSP. Such an audit may require the sponsored organization to provide evidence of disaster recovery, network diagnostic, or backup capabilities as well as information necessary to determine continued eligibility for TSP status under the Board's criteria.

Costs Associated with TSP Status

Restoration and Provision Services

In the event of a telecommunications disruption, carriers are obligated to restore TSP designated circuits according to the ranking of their assigned codes and preempt any other priority restoration arrangement for non-TSP circuits. The status of a TSP-designated circuit and its preemptive rights over non-TSP circuits are recognized by all telecommunication carriers. Consequently, a consistent level of priority is provided end-to-end on a TSP designated circuit and the priority is acknowledged with the same level of urgency by local exchange carriers and inter-exchange carriers. Carriers are required to ensure that any trouble tickets or problem logs specifically identify TSP circuits to ensure priority service is received.

In the event that a disaster or national emergency requires the provision of new telecommunications services to a TSP participant, such as relocating to or establishing new facilities, telecommunication carriers are required to expedite circuit installation. Both local exchange and inter-exchange carriers prioritize TSP requests for the provision of new service above any requests from non-NS/EP services. Telecommunication service providers are obligated by the NCS to maintain an accurate inventory of circuits that are assigned TSP status and must reconcile this inventory against NCS records annually.

Telecommunication Carrier Tariffs

Tariffs filed with the FCC and state regulatory agencies allow telecommunication carriers to assess surcharges for providing TSP services. The tariffs permit carriers to assess a one-time charge and a monthly charge for each circuit assigned a TSP restoration authorization code. In the event new service is provisioned under TSP, carriers can apply a surcharge to the normal installation charges for each telecommunication service ordered. Finally, telecommunication carriers can assess a penalty to TSP customers for reporting an erroneous outage on a TSP circuit that is traced to the customer's premise equipment.

Telecommunications carriers' charges for TSP are filed with the FCC and with state regulatory agencies, as applicable. Charges are cost based and are not uniform between states or carriers. Tariff No. 9 specifies TSP charges associated with inter-exchange carrier services. Tariff No. 11 lists TSP charges, by state, associated with Local Access and Transport Area (LATA) services. These LATA-related TSP charges are based on tariffs filed by local exchange carriers with state regulatory agencies. A single carrier generally collects TSP charges for all portions of the end-to-end service. TSP restoration assignment involves a one-time "set-up" charge and an ongoing monthly charge. Under Tariff 11, the one-time charge for assigning TSP ranges from $46 to $345 and ongoing monthly charges range from $.90 to $9.00 by LATA. TSP restoration charges for long distance circuits are assessed on three network components: the LATA access provider at each end of the circuit and the inter-exchange carrier. Under Tariff 9, the inter-exchange portion of a circuit incurs a one-time charge of $235 and a monthly charge of $9.00.[3] Under Tariff 9 and 11, the TSP surcharges for the emergency provision of new service range from $50 to $200 for endpoint access circuits, depending on the LATA, and $400 for the inter-exchange portion of a circuit. The penalty for initiating a service call resulting from an erroneous report of an outage on a TSP circuit is $127.00.

Fedwire Access Circuits

The costs associated with TSP status for point-to-point computer interface leased Fedwire access circuits used for priced services will be recovered through the fees charged to depository

[3] For example, under Tariff 11, the cost of TSP restoration priority on an intra-LATA Fedwire access circuit of the Federal Reserve Bank of Philadelphia would include a one-time charge of $45.93 and monthly charges of $1.29. TSP restoration priority on an inter-LATA Fedwire access circuit from a Delaware depository institution to the Federal Reserve Bank of Philadelphia would include the costs referenced above as well as an additional one-time charge of $45.93 and monthly charges of $1.29 for the Delaware LATA access portion of the circuit and, under Tariff 9, an additional $235 one-time charge and monthly charges of $9.00 for the inter-exchange portion of the circuit.

institutions that use those circuits.[4] The incremental costs associated with TSP status should not have a material effect on Federal Reserve fees. The Federal Reserve will not pay for TSP assignment to any additional circuits connecting a network access circuit to an institution's back-office Fedwire processing location. The TSP costs related to these circuits would be borne by the depository institution leasing the circuits.

Private-Sector Payment Systems

Private-sector payment system organizations that are granted TSP status must bear the cost of all tariffs. The Federal Reserve will not assume an obligation for funding surcharges assessed by local and inter-exchange carriers for establishing and administering TSP on backbone or access circuits used by private-sector large-value payment systems. Furthermore, any costs incurred by sponsored payment system participants for improvements to network facilities necessary to comply with NCS standards will not be reimbursed by the Federal Reserve.

Competitive Impact Analysis

The Board does not believe that its sponsorship of telecommunications circuits of private-sector large-value payment systems or certain Fedwire access circuits for TSP status would adversely affect the ability of other service providers to compete effectively with Federal Reserve Banks in providing similar services. The Board's proposed criteria for determining whether it should sponsor the critical backbone and access circuits of a private-sector payments mechanism would be consistent with the criteria for determining whether it should sponsor circuits used to provide Federal Reserve services.

The Board recognizes that granting TSP status to access circuits of certain depository institutions could provide a slight competitive advantage to those institutions vis-a-vis institutions whose access circuits do not qualify for TSP sponsorship, due to the slightly higher level of reliability and availability they may be able to achieve due to the TSP assignment. To eliminate this competitive advantage, TSP would need to be extended to all depository institution access circuits, or provided to none of these circuits. Neither of these alternatives would be consistent with the objective of protecting only critical NS/EP functions. Given that any circuit subject to TSP status must be subject to other contingency backup arrangements, which would be used in most situations of service outage, the Board does not believe that the marginal competitive advantage that TSP assignment may provide some institutions is significant enough to outweigh the benefits to the payments system of this program.

Paperwork Reduction Act

The Board would use two NCS forms to implement its TSP sponsorship responsibilities, as well as a separate unstructured information collection. The NCS reports are entitled "Telecommunications Service Priority (TSP) Request for Service Users" (NCS Form 315) and "TSP Service Order Report" (NCS Form 316). After consideration of the comments received during the comment period, the Board, under authority delegated by the Office of Management and Budget, will review its proposed additional information collection in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and the OMB's regulation on Controlling Paperwork Burdens on the Public (5 CFR part 1320). Comments regarding the information collection requirements may be submitted to the Board at the address listed above, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for the Federal Reserve Board, with a copy sent to the Board. Copies of the NCS forms and related instructions are available from the Board upon request.

A description of the proposed reporting requirements, including the reasons for the requirements, is contained elsewhere in this docket. The reporting forms will be required of all depository institutions and other payments system providers that wish to obtain TSP sponsorship or that have obtained sponsorship and are obligated to make certain status reports to the Board on their TSP circuits. Payments system providers would apply on behalf of eligible depository institutions for access circuits using the NCS forms. Depository institutions that need TSP on secondary circuits would directly file the NCS 315 and 316 forms with the Board. TSP sponsorship requests must be renewed once every three years (NCS Form 315), and status reports must be made as required (NCS Form 316). Based on an average response time of .5 hours for NCS Form 315 and .25 hours for NCS Form 316, the Board estimates that information collections will result in an annual reporting burden for these two forms of approximately 275 hours for an estimated 500 reporters. In addition to the NCS forms, the Board also would require information from payments system participants on a one-time basis to justify sponsorship of their network and access circuits for TSP sponsorship. This would not require a reporting form, but participants would be required to address, in a letter to the Board, the proposed criteria. This activity likely would take 4 hours per response. Small businesses should not be burdened substantially by these reporting requirements. The information collections will be mandatory to obtain or retain the benefit of a TSP assignment, as authorized in Appendix A of 47 CFR part 64, and generally will be treated as confidential in accordance with 5 U.S.C. 552(b)(4).

By order of the Board of Governors of the Federal Reserve System, December 18, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-31145 Filed 12-22-92; 8:45 am]

BILLING CODE 6210-01-F

[4] Depository institutions that use their access circuits solely for non-priced services are not assessed electronic connection fees. Computer interface point-to-point leased Fedwire access circuits used only for non-priced services will not be charged for TSP.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

National Institute for Occupational Safety and Health

Request for Comments and Secondary Data on Performance Specifications and Testing Protocols for Field Instruments

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: In response to the need to monitor worker exposure and to evaluate workplace atmospheres for gases, vapors and aerosols, NIOSH is requesting information, comments and secondary data relative to the development of performance criteria and the development and evaluation of a testing protocol for field instruments. NIOSH will use this information in the formulation of the performance specifications and testing protocol(s). The resultant performance specifications and testing protocol(s) are

also intended for publication in the NIOSH Manual of Analytical Methods.

DATES: Comments concerning this notice should be submitted by March 23, 1993.

ADDRESSES: Please submit four copies of any information, comments, suggestions, or recommendations in writing to Diane Manning, NIOSH Docket Office (C–34), National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Mary Lynn Woebkenberg, Division of Physical Sciences and Engineering (R–7), National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841–4241.

SUPPLEMENTARY INFORMATION: Under the Occupational Safety and Health Act of 1970 (Pub. L. 92–596), NIOSH is directed to conduct research, experiments and demonstrations, conduct health hazard evaluations and industrywide studies, and develop criteria for improving occupational safety and health standards. In carrying out these responsibilities, industrial hygienists, safety and health professionals, and other scientists use portable and transportable direct-reading instrumentation for on-site analysis of hazardous gases, vapors and aerosols. In order to accurately characterize workplace atmospheres, estimate the extent of exposure, and adequately protect worker health, valid data need to be obtained from the monitoring instrumentation and the instrumentation needs to operate predictably and reliably. NIOSH is currently considering the preparation of recommended performance standards and corresponding testing protocol(s) for field instrumentation and is interested in obtaining existing and secondary information related to the same. The information sought includes the following:

1. Existing performance standards and testing protocols that have been developed for field instrumentation. (All steps of such protocols are of interest.)

2. Results of research wherein existing protocols have been used to evaluate field instrumentation.

3. The existence, availability, characteristics, and suggested applications of instrumentation capable of on-site analysis of gases, vapors, and aerosols.

All information received in response to this notice (except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or that are exempt from disclosure under the Freedom of Information Act) will be available for public examination and copying at the above address.

Dated: December 16, 1992.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–31077 Filed 12–22–92; 8:45 am]

BILLING CODE 4160–19–M

[CRADA 93–001]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop diagnostic probes for virulence-associated genes of selected bacterial pathogens.

It is anticipated that all inventions which arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA. CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC May Not Provide Funds to the other participants in the CRADA.

DATES: This opportunity is available until January 22, 1993. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical

Pathogenesis Study Group (Carolyn M. Black, Barry S. Fields, Patricia I. Fields, C. Harold King, Orjan Olsvik, and Frederick D. Quinn) National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC): 1600 Clifton Road, NE., Mailstop D–11, Atlanta, GA 30333. Telephone: (404) 639–2841.

Business

Greg Jones, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC): 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333. Telephone: (404) 639–2434.

SUPPLEMENTARY INFORMATION: The collaborator and CDC will jointly support research aimed at identifying bacterial genes worthy of use in the detection of pathogenic bacteria including, but not limited to, *Mycobacterium tuberculosis, Legionella pneumophila, Vibrio cholera, Neisseria meningitidis, Chlamydia pneumoniae, Salmonella* spp., and *Afipia felis*. This process will entail the use of CDC's large collection of strains and hybridization techniques developed at CDC which can identify genes and/or gene products present in virulent but not avirulent strains of bacteria.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan;
2. Adequacy of the staff to develop the diagnostic test(s);
3. Adequacy and availability of the facilities and equipment;
4. Evidence of scientific credibility; and
5. Evidence of commitment and ability to develop diagnostic tests that will detect specific organisms based on specific genes.

This CRADA is proposed and implemented under the Federal Technology Transfer Act of 1986: Public Law 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop, C–19, Atlanta, GA 30333.

Dated: December 17, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–31078 Filed 12–22–92; 8:45 am]

BILLING CODE 4160–18–M

Advisory Committee for Energy-Related Epidemiologic Research: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

NAME: Advisory Committee for Energy-Related Epidemiologic Research.

TIMES AND DATES: 8:30 a.m.–5 p.m., January 12, 1993. 8:30 a.m.–3:15 p.m., January 13, 1993.

PLACE: CDC, (Chamblee Facility), Building 101, Conference Room 1301, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

PURPOSE: This committee is charged with providing advice and recommendations to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on the establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies. The committee will take into consideration information and proposals provided by the Department of Energy's (DOE) Advisory Committee for Environment Safety and Health.

MATTERS TO BE DISCUSSED: This is the initial meeting of the Advisory Committee for Energy-Related Epidemiologic Research. Presentations will be made by staff of the National Center for Environmental Health (NCEH), CDC; the National Institute for Occupational Safety and Health, CDC; ATSDR; and DOE with emphasis placed on developing priorities for potential research projects for funding in fiscal year 1993.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040, FAX 404/488–7044.

Dated: December 17, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–31076 Filed 12–22–92; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–3–4210–05; AZA–27349]

Classification of Public Lands; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Recreation and Public Purposes (R&PP) Act Classification; Arizona.

BLM is considering the lease of public lands within the following described township for recreation and public purpose:

Gila and Salt River Meridian, Arizona

T. 6N., R. 1W.,
Sec. 24, all;
Sec. 25, N½.
Aggregating 960 acres, more or less, Maricopa County.

The land has been examined and found suitable for classification for lease and patent for recreation and public purposes under provisions of the R&PP Act of June 14, 1926, as amended (44 Stat. 741: 43 U.S.C. 869; 869–4) and the regulations contained in 43 CFR part 2740 and 43 CFR part 2912.

In addition the land is determined to meet the general classification criteria of 43 CFR 2410.1 (a-d) and specific public purposes classification criteria of 43 CFR 2430.4 (a and c).

Classification of this land under the provisions of the above cited R&PP Act segregates the land from appropriation under the public land laws and the mining laws, but not from applications under the mineral leasing laws or the R&PP Act for a period of eighteen months from the date this notice is published in the **Federal Register** (43 CFR 2741.5(h)(2)).

Detailed information concerning this classification is available from the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Phoenix District Manager.

Dated: December 15, 1992.

David J. Miller,

Acting District Manager.

[FR Doc. 92–31085 Filed 12–22–92; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–7122–03–5441]

Availability of Final Environmental Impact Statement (FEIS) for Plan of Operations, Case Number A 25564; Gila Resource Area, Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The Gila Resource Area, United States Department of Interior, Bureau of Land Management has prepared an FEIS for a proposed open pit copper mine near Safford, Arizona. The FEIS complies with regulations developed by the Council on Environmental Quality for implementing the National Environmental Policy Act of 1969 (40 CFR part 1500) and BLM regulations for surface mining on public lands (43 CFR part 3809). The FEIS was filed with the Environmental Protection Agency on December 10, 1992. The applicant, AZCO Mining, Incorporated (AZCO, Inc.), submitted a Plan of Operations to the BLM Gila Resource Area pursuant to the Federal Land Policy and Management Act of 1976 (90 Stat. 2744; 43 U.S.C. 1701) as implemented by 43 CFR part 3809. This FEIS: (1) Analyzes the environmental consequences of implementing the proposed mine as described in the Plan of Operations, other reasonable alternatives, and the No Action Alternative; (2) identifies significant effects and cumulative impacts; and (3) specifies appropriate mitigation actions.

DATES: Comments on the FEIS will be accepted until January 19, 1993.

ADDRESSES: 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Larry Thrasher, Project Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The Plan of Operations calls for mining the Sanchez copper orebody, located on 581 unpatented lode and millsite claims at the southeast end of the Gila Mountains, about 10 miles east-northeast of the city of Safford, Graham County. The orebody will be mined using conventional open pit mining techniques and mining equipment. The planned ore mining rate is 10 million tons per year. Waste rock and alluvium will be mined at an average rate of about 13 million tons per year. The expected life of the mining operation is 17 years. The pit ultimately will measure about 4,000 feet in diameter and about 1,200 feet deep.

Ore from the pit will be transported to a crushing and screening plant prior to being conveyed to a leach pad. The crushed ore in the leach pad will be treated with a sulfuric acid solution. The resulting pregnant leach solution will be piped to a solvent extraction-electrowinning plant, where the copper will be extracted and concentrated.

Reclamation will involve minimizing public safety hazards and restoring the site to a condition consistent with planned long-term use. The Bureau of Land Management will require a

reclamation bond prior to any surface disturbance.

Complete records of all phases of the environmental compliance process are available for public review at the Safford District Office.

Dated: December 14, 1992

William T. Civish,

District Manager.

[FR Doc. 92-31082 Filed 12-22-92; 8:45 am]

BILLING CODE 4310-32-M

[WY-920-41-5700; WYW112348]

Proposed Reinstatement of Terminated Oil and Gas Lease

December 15, 1992.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW112348 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW112348 effective August 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Eileen Peterson,

Acting Supervisory Land Law Examiner.

[FR Doc. 92-31083 Filed 12-22-92; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-4210-06; GP3-068; OR-48432(Wash)]

Partial Termination of Proposed Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Corps of Engineers, has canceled its application in part to withdraw certain lands for the Yakima Firing Center expansion in Kittitas County. This action will terminate a portion of the proposed withdrawal and will open the land to mineral leasing. The land is included in another existing withdrawal and will remain closed to surface entry and mining.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

SUPPLEMENTARY INFORMATION: The notice of the U.S. Department of the Army, Corps of Engineers, application OR-48432(Wash) for withdrawal was published as FR Doc. 92-14309 of the issue of June 18, 1992. The purpose of the proposed withdrawal is to expand the Yakima Firing Center. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has canceled the application insofar as it effects the following described land:

Willamette Meridian

Surface and Mineral Estates

T. 16 N., R. 23 E.,
Sec. 18, that portion of the E½SE¼ lying easterly of the westerly right-of-way of Huntzinger Road;

The area described contains approximately 15 acres in Kittitas County.

Pursuant to the regulation 43 CFR 2310.2-1(c), at 8:30 a.m., on January 22, 1993, the proposed withdrawal will be terminated in part and the land described above will be opened to the operation of the mineral leasing laws. The land will remain closed to surface entry and mining under an existing withdrawal.

The lands remaining in withdrawal application OR-48432(Wash) are described and amended to read as follows:z

Willamette Meridian

Surface and Mineral Estates

T. 17 N., R. 20 E.,
Sec. 22, S½;
Sec. 24, S½SW¼ and that portion of the E½ lying south of the Interstate Highway 90 right-of-way;
Sec. 26.
T. 16 N., R. 21 E.,
Sec. 4, SW¼SW¼;
Sec. 12, SE¼;
Sec. 18, lots 1, 2, 3, and 4, E½, and E½W½.
T. 17 N., R. 21 E.,
Sec. 30, lots 3 and 4;
Sec. 32, NE¼SE¼.
T. 16 N., R. 22 E.,
Sec. 2, lots 1, 2, 3, and 4, S½N½ and S½;
Sec. 4, lots 1, 2, 3, and 4, S½N½ and S½;
Secs. 10 and 14;
Sec. 20, SE¼SW¼;
Sec. 22;
Sec. 26, N½;
Sec. 28, N½.
T. 16 N., R. 23 E.,
Sec. 18, lots 3 and 4, E½SW¼, W½SE¼, and that portion of the E½SE¼ lying westerly of the westerly right-of-way line of Huntzinger Road;
Sec. 20, that portion of the SW¼ lying westerly of the easterly right-of-way line of the railroad;
Sec. 30, lots 1 and 2, NE¼ and E½NW¼.

Mineral Estate

T. 16 N., R. 20 E.,
Sec. 12;
Sec. 18, lot 4 and SE¼;
Sec. 20, S½.
T. 16 N., R. 21 E.,
Sec. 4, lots 1, 2, 3, and 4, and S½NE¼;
Sec. 8.
T. 16 N., R. 22 E.,
Sec. 12.
T. 17 N., R. 21 E.,
Sec. 32, S½SE¼;
Sec. 34, W½.

The areas described aggregate approximately 9,730.62 acres in Kittitas County.

Dated: December 9, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-31079 Filed 12-22-92; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Intent to Prepare an Environmental Impact Statement on the Master Plan for Bayou Sauvage National Wildlife Refuge in Orleans Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the Master Plan for management and development of the 22,770 acre Bayou Sauvage National Wildlife Refuge. Plans and development will be in the form of physical facilities, and programs designed to be responsive to the purposes for which the refuge was established.

The purpose for which the refuge was established are:

(1) To enhance the population of migratory, shore, and wading birds;

(2) To encourage natural diversity of fish and wildlife species;

(3) To protect endangered and threatened species, and to provide for the conservation of fish and wildlife;

(4) To fulfill the international treaty obligations of the United States respecting fish and wildlife;

(5) To protect the archaeological resources;

(6) To provide opportunities for scientific research and environmental

education, with emphasis being given to the ecological and other values of wetlands; and

(7) To provide opportunities for fish- and wildlife-oriented public use and recreation in an urban setting.

The area of impact will be in the New Orleans metropolitan area. The second public meeting regarding proposal and preparation of the EIS will also be held January 13, 1993. This meeting will be to review the scope of the project, the primary project goals, and the major issues expected to arise from project goals. At this meeting public input is requested.

This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation at this Scoping Meeting are solicited.

DATES: Written comments should be received by February 13, 1993. A public meeting will be held Wednesday, January 13, 1993, at 7 p.m. at the Sarah T. Reed High School, 5316 Michoud Blvd., New Orleans, LA 70126.

ADDRESSES: Comments should be addressed to: Cashio Cochran, Torree/Design Consortium Ltd., 5005 Magazine Street, New Orleans, LA 70115.

FOR FURTHER INFORMATION CONTACT: Dan Tabberer, Wildlife Biologist, 1010 Gause Blvd., Bldg. 936, Slidell, LA 70458, (506) 646–7579.

SUPPLEMENTARY INFORMATION: James W. Pulliam, Jr., is the primary author of this document. The document is being prepared under contract by the consulting firm of Cashio, Cochran, Torre/Design Consortium Ltd., N.Y. Associates, Inc., and Coastal Environment, Inc., 5005 Magazine Street, New Orleans, LA 70115.

The FWS, Department of the Interior, proposes to develop and evaluate four alternatives. The alternatives will be in the form of a Master Plan/EIS detailing and discussing the intended Program for Bayou Sauvage National Wildlife Refuge pursuant to governing laws and regulations. The Plan will detail and discuss the existing natural and socioeconomic environment; the management objectives and strategies; rationale for selecting management objectives and strategies; and anticipated results from achievement of management objectives. Management of the natural environment for fish and wildlife conservation, public use, research, and environmental education shall be discussed in detail in a Master Plan. The Plan will detail the concept, location on a map, general size, capacity for handling Program needs, and order of magnitude cost of physical facilities.

Bayou Sauvage National Wildlife Refuge is in custodial status without a Refuge Management Plan. No alternatives have been identified. Significant issues to be covered through the scoping and planning process are habitat preservation, fish and wildlife conservation, public use, environmental education, endangered species protection, research, and development of physical facilities.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et. seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate DEIS will be made available to the public by September 15, 1993.

Dated: December 10, 1992.

James W. Pullman, Jr.,

Regional Director.

[FR Doc. 92–31102 Filed 12–22–92; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–632–635 (Preliminary)]

Certain Cordage Products From Costa Rica, Korea, Mexico, and Portugal; Institution and Scheduling of Preliminary Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–632–635 (Preliminary) under section 733(a) of the Tarifff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Costa Rica, the Republic of Korea (Korea), Mexico, and Portugal of certain cordage products,[1] provided for in subheadings 5607.41, 5607.49, 5607.50, 5607.90, 5608.19, 5608.90, 5609.00, and 6002.43 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by January 29, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a letter filed on December 15, 1992, by counsel on behalf of the Cordage Institute, Hingham, MA. In this letter, counsel on behalf of the Cordage Institute simultaneously withdrew its petition and addenda in antidumping investigations Nos. 731–TA–628–631 (Preliminary) and filed an identical petition and addenda for the instant antidumping investigations.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations.

[1] For purposes of these investigations, the term "certain cordage products" includes twine, rope or cable, and fish netting, constructed from synthetic fibers, regardless of the percentage of such fibers, however blended or composed, and however assembled. Such products do not include wire rope, finished fishing nets, raw materials for the production of cordage, or natural fiber cordage.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 5, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Douglas Corkran (202–205–3177) not later than December 30, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 8, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: December 7, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31176 Filed 12–22–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–628–631 (Preliminary)]

Certain Cordage Products From Costa Rica, Korea, Mexico, and Portugal; Withdrawal of Petition in Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigations.

SUMMARY: On December 15, 1992, the U.S. Department of Commerce and the U.S. International Trade Commission received a letter from petitioner in the subject investigations (the Cordage Institute, Hingham, MA) withdrawing its petition. Commerce has not initiated investigations as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigations concerning certain cordage products from Costa Rica, Korea, Mexico, and Portugal (investigations Nos. 731–TA–628–631 (Preliminary)) are discontinued.

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas E. Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: December 17, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31175 Filed 12–22–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–331]

Commission Determination Not To Review Initial Determinations Terminating the Investigation as to Two Respondents on the Basis of Settlement Agreements and Granting Complainant's Motion To Withdraw Its Complaint as to the Last Remaining Respondent; Termination of Investigation

In the Matter of: Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review three initial determinations (IDs) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted motions terminating respondents OPTi Computer, Inc. (OPTi) and ETEQ Microsystems, Inc. (ETEQ) on the basis of settlement agreements. The ALJ also granted the motion of complainant Chips and Technologies, Inc. (Chips) to withdraw its complaint against Elite Microelectronics, Inc. (Elite), the only remaining respondent. Although withdrawal of Chips' complaint against Elite results in termination of the investigation, the Commission has retained jurisdiction over the administrative protective order while it considers issues of post-termination document retention.

ADDRESSES: Copies of the nonconfidential versions of the IDs and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On September 12, 1991, Chips filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain microcomputer memory controllers covered by various claims of

several U.S. patents owned by Chips. The Commission instituted an investigation of Chips' complaint on October 17, 1991. 56 FR 52058.

On October 23, 1992, Chips and respondent OPTi Computer, Inc. filed a joint motion to terminate the investigation as to OPTi on the basis of a settlement agreement. On November 6, 1992, Chips and respondent ETEQ Microsystem Inc. filed a joint motion to terminate the investigation as to ETEQ on the basis of a settlement agreement. On October 20, 1992, Chips filed a motion to withdraw its complaint as to the final respondent, Elite Microelectronics, Inc. All three motions were supported by the Commission investigative attorney. On November 16, 1992, the ALJ issued IDs granting all three motions, provided that the terminations be with prejudice to Chips filing future section 337 complaints against the same parties on the same facts, and further provided that OPTi's motions for summary determination of invalidity and unenforceability of the patents in issue, which were pending at the time of termination, be retained in the Commission's public files. ALJ Order No. 27 terminated the investigation as to OPTi on the basis of a settlement agreement. ALJ Order No. 28 terminated the investigation as to ETEQ on the basis of a settlement agreement. ALJ Order No. 29 granted the motion of Chips to withdraw its complaint against the only remaining respondent, Elite.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: December 17, 1992.

By Order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-31177 Filed 12-22-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-323]

Commission Decisions To Lift Suspension and To Grant a Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement

In the Matter of: Certain Monoclonal Antibodies used for therapeutically treating humans having gram-negative bacterial infections.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to lift the suspension of the above-captioned investigation and to grant a joint motion to terminate the investigation on the basis of a settlement agreement.

ADDRESSES: Copies of the joint motion, the Commission investigative attorney's response, the Commission's order, and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 4:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: On December 20, 1990, Xoma Corp. of Berkeley, California filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain monoclonal antibodies covered by claims 6 and 7 of U.S. Letters Patent 4,918,163 owned by Xoma. The Commission instituted an investigation of Xoma's complaint on January 30, 1991. 56 FR 3484-85. The Commission's notice of institution named Centocor, Inc. and Centocor Partners II, L.P., both of Malvern, Pennsylvania, and Centocor B.V. of Leiden, The Netherlands (collectively, Centocor) as respondents. On June 11, 1991, the Commission suspended its investigation in order to avoid conflicts with U.S. district court litigation between Xoma and Centocor. 56 FR 28172 (June 19, 1991).

On September 11, 1992, the private parties to the Commission investigation filed a joint motion to terminate the investigation on the basis of a settlement agreement. On September 21, 1992, the parties filed an amendment to their joint motion. On September 23, 1992, the Commission investigative attorney responded in support of the motion to terminate. On October 16, 1992, the appropriate federal agencies were served with notice of receipt of the joint motion to terminate. On October 22, 1992, notice of receipt of the joint motion was published in the **Federal Register**. 57 FR 48239. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.51 of Commission's Rules of Practice and Procedure (19 CFR 210.51).

Issued: December 17, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-31178 Filed 12-22-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a requested from the ALK Associates Inc. for permission to use certain data from the 1991 ICC Waybill Sample.

A copy of the of the request (WB405-12/9/92) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927-6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-31146 Filed 12-22-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32132]

Steuben County Industrial Development Agency and Champagne Railroad, Inc. (Acquisition and Operation Exemption); Line of Consolidated Rail Corp.

Steuben County Industrial Development Agency (SCIDA), a noncarrier, and Champagne Railroad, Inc. (Champagne) have filed an amended notice of exemption for SCIDA to acquire from Consolidated Railroad Corporation and for Champagne to operate a 2.7-mile line of railroad in Steuben County, NY. The line is a portion of the Bath Industrial Track identified as line code 6352 situated in the Village and Town of Bath, NY, extending between ± milepost 285.1 and ± milepost 287.8. The transaction was expected to be consummated after the December 7, 1992 effective date of the exemption.

Any comments must be filed with the Commission and served on: James

Griffin, 25 West Steuben Street, P. O. Box 393, Bath, NY 14810.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab inito*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31148 Filed 12–22–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32151]

The Wheeling & Lake Erie Railway Co. (Acquisition and Operation Exemption); A Line of CSX Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the purchase and operation by the Wheeling & Lake Erie Railway Company (W&LE) of an 8.4-mile line of railroad of CSX Transportation, Inc. (CSXT), between Benwood, WV, and Martins Ferry, OH, where the line of CSXT joins the current rail line of W&LE, subject to standard labor protective conditions.

DATES: This exemption is effective on December 30, 1992. Petitions to stay must be filed December 28, 1992. Petitions to reopen must be filed by January 12, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32151 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,
and
(2) Petitioners' representatives: Kevin M. Sheys, Suite 400, 1020 Nineteenth St., NW., Washington, DC 20036,
and
Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: December 15, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31147 Filed 12–22–92; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions; Applications

AGENCY: National Credit Union Administration.

ACTION: Notice of application.

SUMMARY: The National Credit Union Administration ("NCUA") will accept applications for participation in the Community Development Revolving Loan Program for Credit Unions (the "Program") through March 31, 1993. Application procedures are set forth in part 705 of NCUA's Rules and Regulations ("Community Development Revolving Loan Program for Credit Unions").

ADDRESSES: Applications to participate in the Program should be submitted to: NCUA, Community Development Revolving Loan Program for Credit Unions, 1776 G Street, NW., Washington, DC 20456.

DATES: Applications must be received by March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Ron Lewandowski at the above address or telephone (202) 682–9780.

SUPPLEMENTARY INFORMATION: Part 705 of NCUA's Regulations implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to make reduced rate loans to both federally and state-chartered credit unions serving low-income communities so that the credit unions may provide needed financial services and help to stimulate the economy in the communities they serve.

This Notice is published pursuant to § 705.9 of NCUA's Regulations (12 CFR 705.9) stating that NCUA will provide notice in the **Federal Register** when funds in the program are available for loans, and the time period during which applications for participation in the Program will be accepted. Funds are currently available for loans. Applications for participation in the Program will be accepted through March 31, 1993. Credit unions wishing to participate in the Program should refer to part 705 of NCUA's Regulations for application procedures and Program requirements. Only credit unions currently in existence may apply.

By the National Credit Union Administration Board on December 15, 1992.

Hattie M. Ulan,

Acting Secretary, NCUA Board.

[FR Doc. 92–31142 Filed 12–22–92; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on January 8, 1993 from 10 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2 p.m.–2:30 p.m. for general discussion.

The remaining portions of this meeting from 10 a.m.–2 p.m. and 2:30 p.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 17, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–31101 Filed 12–22–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant Units 1 and 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company (the licensee), for the operation of the D.C. Cook Nuclear Plant, Units 1 and 2, in Berrien County, Michigan.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) that would authorize an increase of the storage capacity of the spent fuel pool from 2050 to 3613 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated July 26, 1991, as supplemented by letters dated June 7, 1991, February 4, April 1, and October 26, 1992. The Commission's staff has prepared an Environmental Assessment of the Proposed Action dated December 14, 1992.

Need for Proposed Action

If the amendment were not approved, the licensee would be unable to continue operations beyond 1995, due to reaching the storage capacity of the current spent fuel pool.

Environmental Impacts of the Proposed Action

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of the interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For D.C. Cook, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary and the estimated dose to the population within an 80 kilometer radius is believed to be too small to have any significance when compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the spent fuel pool expansion is the waste heat rejected. The total increase in heat load rejected to the environment will be small compared to the amount of total heat currently being released. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment.

With regard to potential non-radiological impacts, the proposed change to the TS involves a change in the installation or use of a facility component located within the restricted areas as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environment effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement, dated August 1973, in connection with D.C. Cook, Units 1 and 2.

Agencies and Persons Consulted

The staff reviewed the licensee's request. No other agencies or persons were consulted.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated July 26, 1991, as supplemented by letters dated June 7, 1991, February 4, April 1, and October 26, 1992, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for D.C. Cook, Units 1 and 2, dated August 1973, and (4) the Environmental Assessment dated December 14, 1992.

These documents are available for public inspection at the Commission's Public Document Room, 2121 L Street, NW., Washington, DC 20555 and at the local public document room located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 14th day of December 1992.

For the Nuclear Regulatory Commission.

William M. Dean,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31099 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment

to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company, et al. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

Identification of the Proposed Action

The proposed amendment would revise the Technical Specifications to extend the required surveillance testing for the emergency diesel generators on a one-time basis so that they are required to be tested by the 1993 refueling outage, but no later than September 30, 1993, rather than by December 25, 1992, which is now required.

The proposed amendment is in accordance with Northeast Nuclear Energy Company's application dated October 22, 1992.

Need for the Proposed Action

The proposed change to the Facility Operating License is needed to extend the interval for diesel generator surveillance because the currently required interval would require an unscheduled outage of the plant.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specification Section 4.8.1.1.2.g.1. The proposed revision would extend the required surveillance testing of the emergency diesel generators on a one-time basis so that they are required to be tested by the 1993 refueling outage, but no later than September 30, 1993, rather than by December 25, 1992, which is now required.

Based on its review, the Commission concludes that the proposed change is acceptable. The staff has determined that the proposed change does not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed change does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change involves components in the plant which are located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement (FES) for the Millstone Nuclear Power Station, Unit 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 22, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 16th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31092 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Northeast Nuclear Energy Company, (the licensee) for the Millstone Nuclear Power Station, Unit No. 2, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would modify the Millstone 2 Technical Specifications (TS) in the area of Tables 3.3–3, 3.3–4 3.3–5 and 4.3–2, of Section 4.8.1.1.2 and of the Bases Section 3/4.3, to add the high containment pressure signal as an input to main steam isolation (MSI) and to reduce the feed isolation portion of MSI from 60 seconds to 14 seconds.

The Need for the Proposed Action

The license amendment is needed to correct an error found in the original Main Steam Line Break (MSLB) analysis. On reanalysis of the MSLB accident it was determined that an over pressurization and high temperature of the containment would exist due to three new postulated single failure modes for the steam line break inside the containment. Two postulated failures are the failure of the feedwater regulation and block valve and the feedwater regulation bypass valve to terminate flow to the affected steam generator. The third is the failure of the vital busses to fast transfer to the Reserve Station Services Transformer.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been evaluated in the licensee's proposal for amendment dated October 28, 1992, as supplemented November 20, 1992, and December 4, 1992, which has been evaluated by the staff using NRC-approved methodology. The proposed amendment will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In addition, the proposed amendment described is a refinement, rather than a substantial

change in the operation of the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment would have either essentially the same or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources different from or beyond the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statement relating to plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for license amendment dated October 28, 1992, as supplemented November 20, 1992, and December 4, 1992, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 16th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31093 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit No. 2: Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Northeast Nuclear Energy Company, (the licensee) for the Millstone Nuclear Power Station, Unit No. 2, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would modify the Millstone 2 Technical Specifications (TS) in the area of TABLE 3.3–3, Engineered Safety Feature Actuation System Instrumentation (Page 3/4.3–13), the Table Notation, page 3/4.3–16 and the Action Statements, Action 4, page 3/4.3–17. The license amendment is relative to proposed Sump Recirculation Actuation Signal (SRAS) and Engineered Safety Features Actuation System (ESAS) logic design modifications. The current two out of four SRAS logic would be modified to be a selective logic that only considers four of the original six combinations.

The Need for the Proposed Action

The change is needed to prevent the generation of a premature SRAS, as a result of a design basis single active failure, such as the loss of DC Bus 201A or B, (without considerating non-safety related backup sources). Also, the proposed change to the ESAS would eliminate the two combinations of Refueling Water Storage Tank (RWST) level sensing which would initiate an SRAS should a failure of either vital DC bus occur.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been evaluated in the licensee's proposal for amendment dated October 28, 1992, supplemented by letter dated November 25, 1992, which has been evaluated by the staff using NRC-approved methodology. The proposed amendment will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In addition, the proposed amendment described is a refinement, rather than a substantial change in the operation of the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment would have either essentially the same or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources different from or beyond the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statement relating to plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for license amendment dated October 28, 1992, supplemented by letter dated November 25, 1992, as supplemented December 8, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley

State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockvile, Maryland, this 16th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31094 Filed 12–12–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Northeast Nuclear Energy Company, (the licensee) for the Millstone Nuclear Power Station, Unit No. 3, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to increase the surveillance test interval for the 4 kV bus undervoltage scheme so that associated logic and alarm relays are actuated once per 18 months rather than monthly.

The Need for the Proposed Action

The license amendment is needed to remove an unnecessary testing requirement which could result in plant shutdown.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been evaluated in the licensee's proposal for amendment dated October 30, 1992, which has been evaluated by the staff using NRC-approved methodology. The TS change will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In addition, the TS change described is a refinement, rather than a substantial change in the operation of the facility. Therefor, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment would have either essentially the same or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources different from or beyond the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statement relating to plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed amendment. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for license amendment dated October 30, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 17th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31098 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 6, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6). The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

The agenda for the subject meeting shall be as follows:

Wednesday, January 6, 1993—3 p.m. Until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conduct of Committee business, and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., E.S.T. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 15, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-31089 Filed 12-22-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on January 6, 1993, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 6, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the key policy issues that the NRC staff has identified for the MHTGR, PIUS, PRISM, and CANDU 3 advanced nuclear power plant designs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with the NRC staff, its consultants, industry representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. (E.S.T.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc. that may have occurred.

Dated: December 16, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-31090 Filed 12-22-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published November 25, 1993 (57 FR 55574). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492-4600 (recording) or 301/492-7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Control and Electrical Power Systems, January 6, 1993, Bethesda, MD—CANCELLED.

Advanced Reactor Designs, January 6, 1993, Bethesda, MD. The Subcommittee will discuss the key policy issues that the NRC staff has identified for the MHTGR, PIUS, PRISM, and CANDU 3 advanced nuclear power plant designs.

Planning and Procedures, January 6, 1993, Bethesda, MD (3 p.m.-5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Computers in Nuclear Power Plant Operations, February 9, 1993 (tentative), Bethesda, MD. The Subcommittee will discuss current and proposed methods used to evaluate software for safety-critical applications, including the use of risk-based criteria.

Advanced Pressurized Water Reactors, February 10, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Draft Safety Evaluation Report (NUREG-1462) for certification of the ABB CE System 80+ Design.

Planning and Procedures, February 10, 1993, Bethesda, MD (3 p.m.-5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Joint Materials and Metallurgy/ Structural Engineering, March 10, 1993, Bethesda, MD. The Subcommittees will discuss: (1) The status of the NRC staff's concerns regarding steam generator tube degradation, and (2) the industry proposal on piping design improvements to reflect current technical knowledge for ALWR plants.

ACRS Full Committee Meetings

393rd ACRS Meeting, January 7-9, 1993, Bethesda, MD. Items are tentatively scheduled.

A. *Performance Indicator Report*—Briefing by and discussion with members of the NRC staff regarding proposed revisions to the NRC performance indicator report. Representatives of the nuclear industry will participate, as appropriate.

B. *Key Policy Issues for Advanced Reactor Designs*—Review and report on key policy issues applicable to MHTGR, PIUS, PRISM, and CANDU 3 advanced reactor designs. Representatives of the

nuclear industry will participate, as appropriate.

C. *Replacement of Analog Instrumentation with Digital Instrumentation*—Briefing by and discussion with representatives of the NRC staff regarding the staff's proposed generic letter on the replacement of analog instrumentation with digital instrumentation in operating plants. Representatives of the nuclear industry will participate, as appropriate.

*D. *Annual Report to the U.S. Congress on the NRC Safety Research Program and Budget*—Discuss the annual ACRS report to Congress on the NRC safety research program and budget. Portions of this session will be closed as necessary to discuss information the premature disclosure of which would be likely to significantly frustrate proposed agency action.

E. *Atomic Safety and Licensing Board Panel (ASLBP) Activities*—Briefing by and discussion with a representative of the ASLBP regarding current and anticipated activities of the ASLBP.

F. *Reactor Operating Experience*—Briefing by and discussion with representatives of the NRC staff regarding reactor operating events and occurrences, including an incident at the Barseback Nuclear Plant in Sweden which involved dislodging of thermal insulation material inside containment and resulting in partial clogging of two of five ECCS strainers. Representatives of the nuclear industry will participate, as appropriate.

G. *ACRS Subcommittee Activities*—Hear and discuss reports of designated subcommittees regarding the status of assigned activities, including conduct of ACRS business by the Planning and Procedures Subcommittee. Representatives of the NRC staff will participate, as appropriate.

H. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee.

I. *Implementation of ACRS Reports and Recommendations*—Discuss replies from the NRC staff regarding staff reaction to recent recommendations of the Committee.

J. *Generic Issue 120, Online Testability of Protection Systems*—Complete review and report on the proposed resolution of this generic issue. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

K. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

394th ACRS Meeting, February 11–13, 1993, Bethesda, MD. Agenda to be announced.

395th ACRS Meeting, March 11–13, 1993, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

50th ACNW Meeting, January 27–28, 1993, Bethesda, MD. Items are tentatively scheduled.

A. Review the development of an NRC staff Branch Technical Position on guidance for performance assessment in low-level waste regulation.

B. Review the scope of a regulatory impact survey for fuel cycle and materials licensees.

C. Review the activities of the Center for Nuclear Waste Regulatory Analyses, specifically the use of natural analogues in model development.

D. Explore the creation of a performance indicator or event reporting system that would monitor the current status of the management and disposal of low-level radioactive waste.

E. Review and comment on the NRC staff's analysis of the issues that the National Academy of Sciences will be addressing as a result of the Energy Policy Act of 1992 and the impacts this Act will have on NRC's high-level waste program.

F. Prepare the next four-month plan of ACNW activities for the period February–May 1993.

G. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Joint Meeting of the ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems, February 5, 1993, Bethesda, MD. The Working Group/Subcommittee will review the following proposed final regulatory guides related to the implementation of the revised 10 CFR part 20:

(1) DG–8006, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,"

(2) DG–8009, "Interpretation of Bioassay Measurements," and

(3) DG–8005, "Assessing External Radiation Doses from Airborne Radioactive Materials."

51st ACNW Meeting, February 24–25, 1993, Bethesda, MD. Agenda to be announced.

52nd ACNW Meeting, March 24–25, 1993, Bethesda, MD. Agenda to be announced.

Dated: December 17, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–31091 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 28, 1992, through December 11, 1992. The last biweekly notice was published on December 9, 1992 (57 FR 58243).

Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 22, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 10, 1992

Description of amendment request: The proposed amendment would revise the technical specification (TS) surveillance requirements for the station batteries. The present TS Section 4.9.A.2 requires a rated load discharge test be performed on the station batteries once-per-cycle. The proposed change consists of replacing the rated load discharge test with a Service Discharge Test once-per-cycle and a Performance Discharge Test every five years in place of the service test that would normally occur within that time frame. The proposed change clarifies and expands the discharge testing requirement to be consistent with the manufacturer's recommended testing, current industry practices, and the testing specified in ANSI/IEEE-450 - 1987. This change will increase plant safety by increasing battery availability and minimize test-related degradation of the batteries. The proposed change is consistent with amendments previously approved for Vermont Yankee Nuclear Power Station (Amendment No. 125, dated August 23, 1990) and Duane Arnold Energy Center (Amendment 179, dated March 2, 1992).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Operation of PNPS in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not affect previous analyses involving these systems.

The proposed revisions affect only the surveillance requirements for the station batteries to make them conform with the manufacturer's recommendations and current industry guidance. The proposed change will require testing in a way more representative of use of the batteries by applying the design load (i.e., present load plus margin) for the time period required. This test retains the capability of detecting a degraded cell or battery and reduces the time required for the batteries to recharge, thereby increasing the overall availability of safety-related batteries.

2) Operation of PNPS in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no equipment or design change associated with this proposed amendment. The proposed amendment only changes the surveillance requirements for the batteries to conform to the current industry guidance.

3) Operation of PNPS in accordance with the proposed amendment will not involve any reduction in a margin of safety because the station batteries will still be available to supply power to the associated safety-related loads. The amendment only revises the surveillance requirements such that the Performance Discharge Test (rated amp-hour discharge) will be performed less frequently (every 5 years) increasing the useful life of the batteries while still maintaining a capacity profile. In addition, a Service Discharge Test (load profile) is being added and will be performed each cycle a Performance Discharge Test is not performed. The Service Discharge Test will demonstrate each battery's ability to supply the required loads for the time required.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 17, 1992

Description of amendment request: The proposed amendment would change the low pressure isolation signal from the HPCI steam inlet piping to the reactor vessel as sensed by the Analog Trip System.

Changing to the reactor vessel pressure signal ensures a divisional single failure-proof isolation logic design that is an improvement when compared to the existing HPCI steam inlet pressure isolation logic. The modification will upgrade the circuitry to provide valve position indication in the Control Room in accordance with our Regulatory Guide 1.97 program implementation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The HPCI steam line low pressure signal is an operational interlock that trips the HPCI turbine and closes system valves to shutdown the HPCI system when inadequate steam pressure is available to run the HPCI system with the closure of the HPCI vacuum breakers by eliminating the potential for a situation where HPCI is running and the vacuum breakers are closed. Therefore, using the Reactor Low Pressure signal (100≤P≤50 psig) to initiate a Group 4 HPCI isolation is equivalent to using the HPCI Steam Line Low Pressure signal (100≤P≤50 psig) and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Replacing HPCI Steam Line Low Pressure with Reactor Low Pressure on Tables 3.2.B and 4.2.B does not affect the instrument functional test or calibration frequency of the Analog Trip System. The valve functional and system operability test frequencies remain unchanged.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because HPCI will continue to operate as designed and the HPCI Steam Line Low Pressure and Reactor Low Pressure signals are functionally equivalent Group 4 initiation signals. The change does not affect the HPCI system's ability to shutdown and isolate when required. This change improves the coordination of the shutdown of the HPCI system with the closure of the HPCI vacuum breakers by eliminating the potential for a situation where HPCI is running and the vacuum breakers are closed.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety because the new Group 4 isolation initiation signal is functionally equivalent to the existing initiation signal. This change does not affect the HPCI system's ability to shutdown and isolate when required. This change improves the coordination of the shutdown of the HPCI system with the

closure of the HPCI vacuum breakers by eliminating the potential for a situation where HPCI is running and the vacuum breakers are closed.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 30, 1992

Description of amendment request: The proposed amendment would create a new section in the Technical Specifications (TS) specifying limiting conditions of operations and surveillance requirements for in service code testing. The amendment also incorporates the term "Refueling Interval" in definitions to specify the interval between designated ASME Code Section XI surveillance and revises the definition of surveillance interval period of twenty-four months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change does not alter any equipment configuration or operation at Pilgrim.

Current Technical Specifications require testing at the same frequency specified in the PNPS IST Program for Scram Discharge Volume and Primary Containment Isolation Valves. This change requires testing at the same frequency and has not changed the intended surveillance requirement; therefore, it does not involve a significant increase in the probability or consequences of an accident previously evaluated. Testing will be performed in accordance with the 1986 Edition of the ASME Boiler and Pressure Vessel Code, Section XI except where relief has been granted by the Commission per 10 CFR 50.55(a)(g)(6)(ii).

Frequency of testing will be changed for pump and MOV operability from monthly to quarterly for the following Core and Containment Cooling Systems; Core Spray, Low Pressure Coolant Injection, Reactor Core Isolation Cooling, and High Pressure Coolant Injection. This change reduces excessive testing of safety-related system pumps and valves and conforms the PNPS Technical Specification to the IST Program. Monthly testing of pumps and valves results in increased testing without providing a significant increase in safety. The proposed change requires testing to the latest industry standards which exceed the existing technical specification surveillance requirements by specifying test methods that establish operability and establishes parameters for monitoring degradation to predict future equipment performance and failures. The proposed surveillance frequency does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Test frequencies for Scram Discharge Volume Drain and Vent valves, Standby Liquid Control System (SLC) relief valves and explosive valves, Safety and Relief Valves and Primary Containment Vacuum Breaker and Instrument Line Flow Check Valve specified as once-per-cycle or during a refueling outage are being revised to once during a refueling interval. This change adds the term REFUELING INTERVAL to Section XI, IWP and IWV surveillance requirements of at least once every 24 months.

This change in frequency from once during each refueling outage to once each refueling interval as applied to testing of the Scram Discharge Volume Vent and Drain valves and the Primary Containment Vacuum Breakers provides a limiting time for performing surveillance. Current technical specifications do not provide a limiting time between surveillance; hence, the length of an operating cycle or refueling outage can delay tests beyond the proposed interval of two years. Therefore, the proposed amendment enhances safety by providing a limiting time between surveillance; therefore, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The testing frequency for SLC relief valves is being changed to once each refueling interval as specified in Section 1.0 of PNPS Technical Specifications. This change conforms the technical specifications to the PNPS IST program which requires testing in accordance with ASME/ANSI OM-1. Testing the explosive valves once-per-cycle is being changed to once-each-refueling interval as specified in Section 1.0 of PNPS Technical Specifications. This surveillance test checks explosion of the charge associated with the tested loop and the operation of the SLC system. Pump and valve operability is verified quarterly in accordance with the PNPS IST program. Manual initiation of the SLC system once-per-refueling interval verifies the system by checking for proper operation of switches and circuit continuity. Performing this test at a frequency of once-per-refueling interval tests the explosive valves in accordance with ASME B&PV Code, Section XI. The circuit and switches required for system actuation are reliable and testing once-per-refueling interval meets the intended surveillance requirement of testing during refueling outages. Testing to the latest industry standards provides assurance of operability by testing using prescribed methods at frequencies recognized by the NRC as appropriate. A testing frequency of once-per-refueling interval returns the intent of the technical specification to test during refueling outages, but imposes a restriction by providing a limiting time of two years. This change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The setpoint of the SLC system relief valves is being changed to the manufacturer's stamped setting of 1425 psig ± 43 psig. The current technical specifications allow a range of 1275 to 1800 psig. This reflects past test practices. Current test procedures remove relief valves from the system for bench testing allowing accurate determination of the setpoint. Testing to the manufacturer's stamped setpoint enhances safety by detecting drift and degradation of the relief valve as well as assuring operability. The past test practices ensured the design intent of the system to prevent the loss of sodium pentaborate via lifting of the relief valve at too low a pressure and protecting the system from overpressure. Testing to the latest industry standards and to the manufacturer's stamped setpoint enhances safety by providing a means to assess the condition of the relief valve as well as their operational readiness; hence, this change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

An editorial change is also being made to clarify the explanation of the surveillance test that initiates the SLC system and pumps demineralized water into the reactor vessel. The explanation describes the components that are tested and changes the word "operability" to "capacity" where the pump test is described. This change is editorial in nature, provides a better description of the test, and does not impact the probability or consequences of an accident previously evaluated.

Safety and Relief Valve testing is being revised to test in accordance with the PNPS IST Program. Testing to the ASME/ANSI OM-1 criteria requires valves to be tested to the current industry standards. The test frequency is changed from once-per-operating cycle to once-per-refueling interval. The frequency for once-per-operating cycle testing is 18 months instead of the 24 months imposed by refueling interval testing. Testing to the ASME/ANSI OM-1 criteria requires the relief/safety valves to be tested prior to resuming operation of the station. It provides an alternative to this testing by allowing the replacement of all relief/safety valves within 12 months. These requirements provide assurance of operational readiness and, coupled with prescriptive corrective action, ensures failure is quickly identified. This benefits safety offsetting the increased test interval and does not cause a significant increase in the probability or consequences of an accident previously evaluated.

Reactor Coolant System instrument Line Flow Check Valves testing is currently

required once-per-cycle. This is being revised to test in accordance with the PNPS IST Program at a frequency of once per refueling interval. This change has already been reviewed by the NRC in the Technical Evaluation Report (TER) for the PNPS IST Program Relief Request RV-22 (TAC No. M74785). This change will conform the PNPS Technical Specifications to the PNPS IST Program and is in accordance with an approved relief request. Testing at a frequency coinciding with refueling outages does not significantly lengthen the test interval and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Refueling outage testing of the drywell-pressure suppression chamber vacuum breakers is being revised to allow testing during each refueling interval. A refueling interval test frequency of two years satisfies the intent of the technical specifications to perform the testing during refueling outages while ensuring the intended frequencies are not exceeded by limiting the time that could elapse between tests. Refueling outages currently occur on a frequency coinciding with the proposed change; therefore, this change does not effectively increase the test interval between tests. This change conforms the PNPS Technical Specifications to the PNPS IST Program and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requirement to perform as-found testing of safety relief valves during Cycle 6 and Cycle 7 is obsolete and is being deleted. This change is editorial because the requirements are no longer in force, and it does not increase the probability or consequences of an accident previously evaluated.

Adding a new section to specify Limiting Conditions of Operation and Surveillance Requirements for ASME Code Class 1, 2, and 3 components imposes established requirements and does not increase the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes which revise testing frequencies and/or perform testing in accordance with the IST Program do no alter the design or change the operation of Pilgrim Station and, therefore, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Adding the term Refueling Interval to the definitions and incorporating this term where applicable provides a method of specifying test intervals associated with ASME Section XI IWP and IWV requirements. This conforms the PNPS technical specifications to the PNPS IST Program and does not create the possibility of a new or different kind of accident previously evaluated.

Revising the setpoint for testing the Standby Liquid Control System from a range of 1275 to 1800 psig to the manufacturer's stamped setting of 1425 psig 1B 43 psig results in testing the standards. It also provides more conclusive results for tracking degradation and drift; thus, the proposed change is inherently conservative and will not create the possibility of a new or different kind of accident previously analyzed.

Editorial changes to more clearly describe surveillance requirements and deleting an obsolete requirement do not change technical specification requirements;, therefore, these changes do not create the possibility of a new or different kind of accident previously analyzed.

Adding a new section to the technical specifications to specify limiting conditions of operation and surveillance requirements imposes further limits, hence, the change does not create the possibility of a new or different kind of accident previously

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The current technical specifications were written prior to the development of ASME Section XI resulting in the test requirements and frequencies being based on limited industry experience. The current industry standards reflect practical requirements and provide assurance equipment is capable of performing its safety function when required.

Revising test intervals from once-per-cycle to once each refueling interval extends the time between tests by six months. Testing will be performed in accordance with and at intervals specified in PNPS IST Program that meets the requirement of the ASME B&PV Code Section XI except where relief has been granted by the Commission as allowed by 10 CFR 50.55(a)(g)(6)(i).

This change also changes the testing frequency for Core and Containment Cooling system pumps and motor operated valves from monthly to quarterly conforming the technical specification to the PNPS IST Program and current industry standards. Industry experience has demonstrated this frequency assures the operational readiness of ASME Code Class 1, 2, and 3 pumps and valves. As discussed under (1) above the proposed test frequencies provide adequate assurance of system operability. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Adding the term Refueling Interval to the definitions of technical specifications requires testing at a frequency of once per refueling interval instead of once per refueling outage. Refueling outages currently occur approximately every two years but could extend beyond two years if the unit is in an extended outage. When refueling outages occur at a frequency of approximately 2 years, changing the frequency to refueling interval having a frequency not to exceed two years does not involve a reduction in the margin of safety. However, when the time between refueling outages extends beyond two years changing to a frequency of refueling interval limits the period between surveillance tests irrespective of when refueling outages occur and in this case is conservative. Changing the frequency of refueling outage to refueling interval for the applicable components does not involve a significant reduction in the margin of safety.

Changing the criteria for testing the SBLC system relief valve from a range of 1275 to 1800 psig to the manufacturer's stamped setpoint of 1425 psig + 43 psig is conservative and reflects the current industry standard. Therefore, this proposed change does

not involve a significant reduction in the margin of safety.

Removing an obsolete surveillance requirement, reformatting the text and other editorial changes do not change the technical specification requirements; therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 12, 1992

Description of amendment request: The amendment request would modify the Technical Specifications to eliminate the requirement to test an alternate train when one train is inoperable. In the case of the Emergency Diesel Generators (EDGs), the alternate train testing would be eliminated only when the inoperability is due to planned maintenance and testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The proposed changes to the technical specification sections delineated above seek to remove an unnecessary requirement to demonstrate operability of redundant equipment if one of the trains becomes inoperable, and in the case of the EDGs only when the inoperability is due to planned maintenance and testing. The current technical specifications contain requirements beyond those necessary to adequately demonstrate system operability. As noted

previously, existing periodic testing requirements not impacted by this effort provide adequate assurance that remaining redundant systems are operable and capable of fulfilling their respective design functions. Further, for ESF [engineered safety features] systems, the current opposite train testing requirements create unnecessary operating limitations in a scenario where both trains are declared inoperable (i.e., one due to failure and the other due to surveillance testing). The proposed amendment will serve to ensure that a train of safety equipment is always available to perform upon demand. It will enhance this capability by reducing the probability of equipment failure because of a lower number of demands for performance.

The proposed changes to the Technical Specification for the EDGs offer similar benefits. Excessive testing has been found to result in a degradation of the EDGs. As noted previously a scheduled EDG maintenance or testing neither affects the remaining EDGs reliability and availability nor is it indicative of a potential failure in the remaining EDGs. The benefit of a positive demonstration that a loss of safety function had not occurred by performing a special test is therefore not sufficient to justify the potential adverse consequences.

For the proposed changes, demonstration of operability for the redundant systems or components is an administrative check that will assure their availability. The proposed amendment will therefore not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

As noted above, the proposed amendment will enhance the availability and reliability of the systems/components impacted. It reduces unnecessary challenges to safety systems/components and will not adversely affect their ability to perform as designed. As the proposed amendment will not adversely impact the design bases of the systems/components, the possibility of a new or different kind of accident from any previously evaluated will not be created.

3. There has been no reduction in the margin of safety.

The proposed amendment will preserve the Technical Specification requirements of the system/components impacted while reducing the unnecessary challenges to a safety system/component. The changes proposed for the EDGs are consistent with the Standard Technical Specification requirements. The proposed changes will enhance equipment reliability and availability and eliminates a potential for a loss of safety function. Consequently no significant reduction in the margin of safety for any system/component is involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 12, 1992

Description of amendment request: The amendment request would change the Technical Specifications to revise the schedule for visual inspection of snubbers in accordance with Generic Letter (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In applying the standards of 10 CFR 50.92, we have concluded that the proposed Technical Specification change would not involve a significant hazards consideration based on the answers to the following questions:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

Operation of Indian Point 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. As stated in NRC Generic Letter 90-09, the proposed revised schedule maintains the same confidence level as the existing schedule. The proposed change does not result in any physical change to the plant which could cause an increase in the probability or consequences of any previously evaluated accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

Operation of Indian Point 2 in accordance with the proposed license amendment does not create the probability of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter any plant operations, maintenance requirement, system design or functions other than the snubber visual inspection interval. The NRC staff has determined that the alternate visual inspection interval maintains the same confidence level of snubber operability (GL 90-09). Con Edison [Consolidated Edison Company] agrees with this determination. Therefore, no possibility of creating a new or different type of accident would result from the proposed amendment.

3. Does the proposed license amendment involve a significant reduction in the margin of safety?

Response:

Operation of Indian Point 2 in accordance with the proposed license amendment does not involve a significant reduction in a margin of safety. As stated above, the proposed amendment incorporates the alternate Technical Specification requirement for visual inspection of snubbers. These requirement were evaluated by NRC staff in Generic Letter 90-09. The NRC staff has determined that the alternate visual inspection interval maintains the same confidence level of snubber operability as the current requirements. Con Edison agrees with this determination. Therefore, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: September 30, 1992

Description of amendment request: The amendment revises the Technical Specifications (TS) for the limit of reactor coolant system (RCS) unidentified leakage rate of change applicable in Operational Condition 1; revises the surveillance interval for monitoring RCS unidentified and identified leakage in Operational Condition 1; and changes the related bases for the TS. These changes are designed to conform to the NRC staff position on leak detection contained in Generic Letter (GL) 88-01 and it's supplement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This amendment:

1) Does not involve a significant increase in the probability or consequences of an

accident previously evaluated. This amendment does not alter the design, function, or operation of the RCS or the RCS leakage detection system. The proposed changes for the RCS unidentified leakage rate of change limit and the drywell floor drain sump level monitoring interval proposed for Operational Condition 1 are based on the NRC staff positions in GL 88-01 and GL 88-01, Supplement 1. Limiting the applicability of the GL 88-01 based RCS unidentified leakage rate of change limit to Operational Condition 1 ensures that the reactor is not unnecessarily shut down if the increase in unidentified leakage experienced during routine plant startups temporarily exceeds the 2 gpm over 24 hour limit. The proposed RCS unidentified leakage rate of change limit for Operational Conditions 2 and 3 maintains the current limit and ensures that the RCS is monitored for IGSCC related failures throughout the reactor startup. The proposed TS ensures that, when the unit is in Operational Condition 1, action is taken to identify and correct RCS leaks in austenitic stainless steel piping earlier because the proposed limit is one-sixth of the current limits. In GL 88-01, Supplement 1, the NRC found that a 4 hour monitoring interval (the current interval in Fermi 2 TS) creates an unnecessary hardship for the plant operators. The NRC has determined that the once per shift, not to exceed 12 hours monitoring interval is an acceptable alternative that facilitates the implementation of GL 88-01 leak detection requirements. The proposed 12 hour surveillance interval for Operational Condition 1 meets both the once per shift and the 12 hour maximum surveillance interval requirements of GL 88-01, Supplement 1, because it is in accordance with the shift surveillance interval definition in Fermi 2 TS. The proposed changes also ensure that the 12 hour surveillance interval for Operational Condition 1 cannot be extended by incorporating the requirement that TS 4.0.2 is not applicable. The current 4 hour surveillance interval in Operational Conditions 2 and 3 is retained and is more conservative than the requirements of GL 88-01, supplement 1. The proposed change to the primary containment sump flow rate monitoring interval in Operational Condition 1 does not change the total leakage limit in TS 3/4.4.3.2 and is consistent with the proposed drywell floor drain sump level monitoring interval. The current primary containment sump (flow rate) monitoring interval in Operational Conditions 2 and 3 is not changed. The proposed changes to the TS Bases reference GL 88-01 and GL 88-01, Supplement 1 as the basis documents for the RCS unidentified leakage rate of change limit and unidentified leakage monitoring interval in Operational Condition 1 and, therefore, reflect the proposed LCO and Surveillance Requirements discussed above.

2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not alter the configuration of the facility, plant operations, or the accident analysis assumptions. The proposed amendment does not change the methods by which RCS unidentified leakage is measured. In Operational Condition 1, action to identify and correct RCS leakage in austenitic stainless piping is taken for a smaller rate of change in RCS unidentified leakage. In Operational Conditions 2 and 3, the current Fermi 2 TS unidentified leakage rate of change limit is maintained. As stated above, the NRC has determined that the once per shift, not to exceed 12 hours monitoring interval for unidentified RCS leakage is an acceptable alternative that facilitates the implementation of GL 88-01. As stated above, the proposed 12 hour surveillance interval for Operational Condition 1 is equivalent to the NRC staff position in GL 88-01, Supplement 1. The current 4 hour surveillance interval in Operational Conditions 2 and 3 is retained and remains more conservative than the GL 88-01, supplement 1 requirements. The proposed primary containment sump flow rate monitoring interval for Operational Condition 1 does not change the limit for total leakage in TS 3/4.4.3.2 and is consistent with the proposed drywell floor drain sump level monitoring interval. The current 4 hour surveillance interval for Operational Conditions 2 and 3 is not changed. The proposed changes to the TS Bases reference GL 88-01 and GL 88-01, Supplement 1, as the basis documents and therefore reflect the LCO and Surveillance Requirements proposed in this amendment request.

3) Does not involve a significant reduction in the margin of safety. For Operational Condition 1, the proposed amendment incorporates the more stringent RCS unidentified leakage rate of change limit required by GL 88-01. This limit is one-sixth of the current TS limit and is, therefore, more conservative. For Operational Conditions 2 and 3, the proposed change maintains the current Fermi 2 TS unidentified leakage rate of change limit. The proposed amendment also incorporates a drywell floor drain sump level monitoring surveillance interval for Operational Condition 1 that is equivalent to the interval found acceptable by the NRC in GL 88-01, Supplement 1. The current 4 hour surveillance interval in Operational Conditions 2 and 3 is retained and is more conservative than the requirements of GL 88-01, supplement 1. The proposed change to the primary containment sump flow rate monitoring interval in Operational Condition 1 does not change the limit for total leakage in TS 3/4.4.3.2 and is consistent with the proposed drywell floor drain sump level monitoring interval. The current primary containment sump (flow rate) monitoring interval for Operational Conditions 2 and 3 is not changed. The proposed changes to the TS Bases reference GL 88-01 and GL 88-01, Supplement 1, as the basis documents for the RCS unidentified leakage rate of change limit and unidentified leakage monitoring interval in Operational Condition 1 and, therefore, reflect the proposed LCO and Surveillance Requirements discussed above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: L. B. Marsh

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 2, 1992

Description of amendment request: In the initial licensing Safety Evaluation Report (SER), NUREG-0954, Supplement No. 5, Section 7.5.2, the NRC staff noted that the licensee had been requested by Generic Letter 82-33 to report on how the post-accident monitoring instrumentation meets the guidelines of Regulatory Guide (RG) 1.97, Revision 2. The NRC staff reviewed the response and found that the licensee had justified deviations from the guidance of RG 1.97 except for accumulator tank level and pressure instrument qualification. The licensee's position was that these are not key variables for any design-basis events which result in a harsh environment and that the corresponding Category 2 level of qualification was not required for accumulator tank level and pressure instrumentation. The NRC staff did not agree with that position in SER Supplement 5 and indicated that conditions would be placed in the license to address this issue. Accordingly, Condition 2.C.(12)(a) in Unit 1 License NPF-35, as amended, and Condition 2.C.(8)(a) in Unit 2 License NPF-52, as amended, were included to read as follows: Unit 1, "Prior to startup following theseventh refueling outage, Duke Power Company shall provide qualified accumulator discharge instrumentation," and Unit 2, "Prior to startup following the sixth refueling outage, Duke Power Company shall provide qualified accumulator discharge instrumentation."

In a subsequent letter to the licensee and a safety evaluation (SE) dated April 8, 1992, the NRC staff noted that numerous plants had requested relaxation of the requirements from Category 2 to a Category 3 level of environmental qualification. The SE also noted that the qualification criteria for instrumentation was based on the safety function of the monitored system. The selection criteria for RG 1.97 variables qualification category is based upon whether monitoring of system parameters is needed during and

following an accident, and whether subsequent operator action in the operating procedures are dependent on the information provided by this information.

As a result of its review, the NRC staff found that the accumulator instrumentation does not perform a safety function during, or in, a post-accident environment and operator actions to mitigate the effects of an accident do not depend on the information provided by the accumulator instrumentation. Additionally, successful performance of core cooling systems can be inferred from environmentally qualified instrumentation. The staff concluded that the post-accident monitoring of the accumulator volume and pressure does not perform a safety function and no operator action is based on the information that will require Category 2 qualification of the instrumentation. Accordingly, the staff concluded that in lieu of Category 2 qualification, Category 3 qualification of this instrumentation is acceptable. As stated in its letter of April 8, 1992, the NRC staff found that, since the requirements of the license conditions had been met, these conditions cold be removed from their respective licenses. Accordingly, the licensee's application dated December 2, 1992, proposed to amend the licenses by deleting these conditions.

Basis for proposed no significant hazards consideration determination: With respect to 10 CFR 50.91(a) regarding the issue of no significant hazards consideration, the NRC staff proposes that: (a) The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The accumulator level and pressure instrumentation performs a monitoring function only; it does not automatically initiate system responses. It does not perform a safety function during, or in, a post-accident environment and operator actions to mitigate the consequences of an accident do not depend on the information provided by this information; (b) The proposed change to the license does not cause changes in the construction, design, or operation of the plant. On this basis and for the reasons stated in (a) above, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated; and (c) On the bases that there is to be no change in the qualification level of the instrumentation installed in the plant (RG 1.97, Category 3) and it does not perform a safety function, nor is operator action based on it, the proposed change would not cause a significant reduction in a margin of safety.

On the bases stated above, it appears that the three standards of 10 CFR 50.92(c) are satisfied and the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 28, 1992

Description of amendment request: The proposed amendments revise and subsequently remove Table 4.4-5, "Reactor Vessel Material Surveillance Program-Withdrawal Schedule," from the McGuire Technical Specifications in accordance with NRC Generic Letter 91-01.

Basis for proposed no significant hazards consideration determination: s required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision to TS Table 4.4-5 will update the reactor vessel surveillance capsule withdrawal schedule which identifies the disposition of capsules and future capsule withdrawal dates. Updating the capsule removal schedule and subsequently removing it from TS will not involve a significant increase in the probability or consequences of an accident previously evaluated, nor will it create the possibility of a new or different kind of accident from any previously evaluated, nor will the margin of safety be reduced because this revision complies with ASTM E185-82, "Standard Practice for Conducting Surveillance Test for Light Water Cooled Nuclear Powered Reactor Vessels" which is approved by the NRC as described in 10 CFR 50 Appendix H, "Reactor Vessel Material Surveillance Program Requirements" and Generic Letter 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications".

As discussed above, we have determined the proposed amendment requests do not involve a significant hazards consideration as defined by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 19, 1992, supplemented on November 30, 1992.

Description of amendment request: The proposed amendment deletes portions of the TMI-1 Radiological Environmental Technical Specifications (RETS) and relocates them to controlled programs in accordance with the guidance contained in NRC Generic Letter 89-01, dated January 31, 1989. The November 30, 1992, supplement requested an additional change to implement a recent change to 10 CFR 50.36(a)(2) but did not change the overall scope of the original amendment request. The notice pertaining to the May 19, 1992 letter was published in the **Federal Register** on October 14, 1992 (57 FR 47137).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed supplement would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed changes to TSCR 194 allow reporting of effluent releases pursuant to 10 CFR 50.36(a)(2) on an annual basis rather than semi-annually. This proposal simplifies the radiological effluent Tech. Specs. (RETS), meets the regulatory requirements for radioactive effluent and radiological environmental monitoring, and is considered a line-item improvement of the Tech. Specs. Thus, this change does not increase the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed supplement would not

create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to TSCR 194 allow reporting of effluent releases pursuant to 10 CFR 50.36(a)(2) on an annual basis rather than semi-annually. Future changes to procedural details in the ODCM and the PCP will be handled under the administrative controls for changes to these documents. Therefore, this change has no affect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed supplement would not involve a significant reduction in a margin of safety.

The proposed changes to TSCR 194 allow reporting of effluent releases pursuant to 10 CFR 50.36(a)(2) on an annual basis rather than semi-annually. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The Commission has provided guidelines on the application of the three standards by listing specific examples in 45 FR 14870. The proposed changes are considered to be in the same category as example (vi) of amendments that are considered not likely to involve significant hazards consideration in that the proposed change conforms the Tech. Specs. to changes made to 10 CFR 50.36 (a)(2).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: November 12, 1992

Description of amendment request: The proposed change would revise the Three Mile Island, Unit 1 (TMI-1) Technical Specifications (TS) to reflect changes that have evolved in Section XI of the ASME Code and in the NRC's regulations and Revised Standard Technical Specifications (RSTS). The most significant of these changes is a revision to the operational testing frequency for the emergency feedwater (EFW) system pumps from monthly to quarterly as specified in the current editions of the ASME Code and the RSTS. The two other proposed changes are (1) redefinition of how the 10-year inservice inspection interval is to be divided into 3 subintervals and(2) separation of the inservice inspection requirements from the inservice testing requirements to reflect a similar recent change in 10 CFR 50.55a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The EFW Pumps will continue to be tested quarterly to the same standards applied to safety related pumps as defined by the ASME Section XI Code. Satisfactory completion of testing in accordance with the Code is accepted as verification that safety related pumps will be available to perform their intended function. Therefore the proposed amendment will not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Create a possibility of a new or different kind of accident from any previously evaluated.

(10 CFR 50.92(c)(2))

This change affects only the frequency of testing the EFW pumps. No changes to plant hardware or EFW System operation are involved. Nor will there be any change in the method of testing the EFW System, or additional tests. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in margin of safety.

(10 CFR 50.92(c)(3))

Extension of the testing frequency to quarterly will not affect the operation of any system or equipment. Completion of EFW pump testing quarterly in accordance with the criteria specified in the ASME Section XI Code provides assurance that the EFW pumps are capable of performing their intended function. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station,Nemaha County, Nebraska

Date of amendment request: September 2, 1992.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) for the Cooper Nuclear Station (CNS) to increase the minimum amount of diesel fuel oil capacity required to be available in the on-site diesel fuel oil storage tanks, and update the standard to which the fuel oil quality is tested to a more recent edition of the same standard.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed license amendment will increase the minimum amount of diesel fuel available in the diesel fuel oil storage tanks to 48,000 gallons. This proposed increase in the on-site diesel fuel oil storage requirements in no way causes an increase in the probability of an accident previously evaluated. The proposed amendment will continue to ensure that sufficient fuel is stored on-site for seven days of operation of one Diesel Generator unit under postulated accident conditions. The on-site fuel oil requirement is being increased to provide an expanded reserve margin of available diesel fuel oil, and also to allow for any future loading additions that could be powered by the diesel generator during LOCA/LOOP {loss-of-coolant accident/loss of offsite power} events. Operation of the diesel generators and its auto-start signals are {sic} not altered with this proposed change. The ability of the diesel generators to meet their Safety Design Basis as contained in the Updated Safety Analysis Report (USAR) is not affected by this change. The diesels will remain able to perform their accident mitigative actions as described in the USAR so that the consequences of a previously evaluated accidents {sic} remain bounding. Therefore, the probability or consequences of previously evaluated accidents has not significantly increased.

The administrative change, updating the edition of the standard specified for diesel generator fuel oil quality surveillance testing to a newer edition of the same standard will not result in any reduction in quality for the diesel fuel oil and, hence in the ability of the

Diesel Generators to perform their intended safety function. The addition of the phrase "for those fuel oil properties directly related to engine performance" will not result in any reduction in quality for the diesel fuel oil. The quality testing of diesel fuel oil properties will remain as currently performed, the inclusion of the subject phrase reiterates what Standards D975-89a and D975-68 currently state. Thus, it is concluded that there is no significant increase in the probability or consequences of previously evaluated accident [sic].

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed Technical Specification revision will increase the amount of on-site diesel fuel oil required by the Technical Specifications to further ensure continued diesel generator operation during a seven day post-accident event. There is no new plant mode of operation created by this revision, nor does it involve any design modification to existing plant structures, systems, or components. This proposed revision will not change the operation or function of the diesel generators or any accident analyses that involve the diesel generators as described in the USAR. Therefore, the proposed Technical Specification revision does not create the possibility of a new or different kind of accident.

The use of a newer edition of the same standard for quality testing of the diesel fuel oil, as specified in Standard D975-89a and the inclusion of the phrase "for those fuel oil properties directly related to engine performance", will not reduce the quality of the fuel oil, and as a result, will not affect the operation of the diesel generators. Therefore, updating to a newer edition of the same standard for fuel oil quality, and including the phrase "fuel oil properties directly related to engine performance" will not create the possibility of any new accident or malfunction.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed Technical Specification revision will increase the minimum amount of on-site diesel fuel oil storage required by the CNS Technical Specifications to 48,000 gallons. This proposed change is being made to further ensure there is sufficient margin in on-site fuel available for seven days of diesel generator operation, by expanding the reserve margin of on-site diesel fuel oil available. All safety functions and safety analyses concerning the diesel generators are not altered in any way, only the amount of available fuel on-site is affected by this change. The proposed change does not allow any new change to plant operating parameters, nor does it affect any plant setpoints. Therefore, raising the amount of required on-site diesel fuel oil storage does not result in a significant reduction in the margin of safety.

Updating the edition of the standard specified for diesel generator fuel oil quality surveillance testing to a newer edition of the same standard, and specifying that the quality testing is for those properties that are directly related to engine performance, will not result in any reduction in quality for the diesel fuel oil. Thus, this update does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 9, 1992

Description of amendment request: The proposed amendment would make administrative changes to the Cooper Nuclear Station (CNS) Technical Specifications (TS) to (1) revise TS Table 3.1.1, "Reactor Protection System Instrumentation Requirements," to indicate that the Main Steam Line Isolation Valve Closure scram is only required while in the RUN mode, (2) add bases for the instrumentation settings for the Core Spray and Residual Heat Removal Systems to the Core Standby Cooling System Bases section of the TS, (3) replace references in the TS to "Reactor Building Closed Cooling Water System" with the term "Reactor Equipment Cooling System," (4) replace references in the TS to "Main Control Room Ventilation Isolation System," "Main Control Room Ventilation System," and "Control Room Air Treatment System" with the term "Control Room Emergency Filter System," (5) clarify in the TS that only one control room emergency bypass fan exists in the Emergency Filter System, and (6) correct several typographical errors in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes correct administrative errors and do not change the design or operation of the nuclear facility. The proposed change to Table 3.1.1 to note that the Main Steam Isolation Valve (MSIV) Closure trip is only required while in the RUN mode will make the table consistent with the plant modifications previously approved by Amendment Number 83. The proposed change to the Core Spray and Residual Heat Removal (Low Pressure Coolant Injection mode) system instrumentation bases will refer to the previously approved basis for the instrument settings. The proposed change to LCO [limiting condition for operation] 3.12.A.2.c simply clarifies that only one emergency bypass fan exists, which reflects the current configuration of the plant.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes correct administrative errors and do not modify the design of the nuclear facility or create any new mode of plant operation. The proposed change to Table 3.1.1 to specify that the MSIV Closure trip is only required during the RUN mode will make the table consistent with the plant modifications previously evaluated and approved by Amendment Number 83. The proposed change to the instrument bases section does not make any changes to the plant instruments or their settings as it only refers to the Updated Safety Analysis Report (USAR) section for the basis of the instrumentation settings. The proposed change to LCO 3.12.A.2.c is editorial in nature, and simply reflects the current configuration of the plant.

The proposed changes will not create a significant reduction in the margin of safety. The proposed changes correct administrative errors and do not modify the design or operation of the nuclear facility. The proposed change to Table 3.1.1 reflects the plant modifications approved by Amendment Number 83. The proposed change to the instrumentation bases section will refer to the USAR section which contains the bases for the instrument settings for the Core Spray and Residual Heat Removal (Low Pressure Coolant Injection mode) systems, and does not change any current settings. The proposed change to LCO 3.12.A.2.c is editorial in nature, and simply reflects the current configuration of the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station,Nemaha County, Nebraska

Date of amendment request: October 8, 1992

Description of amendment request: The proposed amendment would change the Cooper Nuclear Station (CNS) Technical Specifications (TS) to revise the onsite organizational structure by creating new site management positions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The change in the onsite management reporting relationships will provide for increased senior management attention and oversight of each of the functional areas in the Cooper Nuclear Station (CNS) onsite organization. In particular, the Plant Manager will be able to devote day-to-day attention to those onsite activities directly related to operations, maintenance, engineering, and radiological controls, which are important to the continued safe operation and maintenance of the plant. The Senior Manager of Site Support will be able to devote day-to-day attention to those onsite activities directly related to supporting operation of the plant, such as station security, outage and modification coordination, training, and administrative support. The Site Manager will have overview and coordination responsibility to ensure safe and efficient unit operation, and maintains responsibility for all onsite activities, necessary for safe operation and support of the Cooper Nuclear Station. Additionally, this change is expected to have a positive impact on safety by enhancing the ability of the Plant Manager, and the Senior Manager of Site Support to effectively carry out their primary responsibilities and by improving the consistency and continuity of managerial oversight for CNS.

Changes in the onsite organizational structure do not affect plant design or operation, nor does it affect the way any systems, structures, or components are operated or maintained. All individuals filling these positions are qualified to perform the assigned tasks and responsibilities. These organizational changes are expected to improve the implementation of effective and comprehensive work practices that will enhance the overall efficiency, and safety of the plant. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed Technical Specification revision enhances the organizational structure for onsite management, which will provide for increased senior management attention to each of the functional areas in the CNS onsite organization. These changes do not affect the design or operation of any system, structure, or component in the plant, and are considered to be administrative changes which will enhance the performance of the onsite organization to respond to plant transients or emergencies. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

This proposed change to the Technical Specifications is in the Administrative Controls Section, specifically the organizational structure for onsite management. All responsibilities as described in the Technical Specifications for onsite management activities will continue to be performed by qualified individuals. These changes are expected to improve the safe operation and support of the plant and, do not affect any plant safety parameters or setpoints, and therefore, do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. LarkinsNiagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: November 24, 1992

Description of amendment request: The proposed amendment would revise the Administrative Controls section of the Nine Mile Point Nuclear Station Unit No. 1 (NMP1) Technical Specifications (TS). The proposed revisions would incorporate changes in the composition, alternates, and quorum requirements of the Station Operation Review Committee. The Safety Review and Audit Board (SRAB) quorum requirements would be revised to require a majority of the actual membership rather than only the Chairman or the Chairman's designated alternate and at least three members. A reference to a no longer existent "Appendix A" to 10 CFR Part 55 would be deleted from TS 6.4.1. A new requirement would be added requiring the retraining and replacement training program to include "familiarization with relevant industry operational experience."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of NMP1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specification 6.5.1 are consistent with STS [Standard Technical Specifications] guidelines regarding number of members associated with a "Unit Review Group", designated at NMP1 as the "Station Operations Review Committee (SORC)". Proposed changes to the SORC quorum requirements incorporate STS guidelines combined with later operating BWR [Boiling Water Reactor] plant provisions regarding establishment of a SORC Vice-Chairman position. The SORC Vice-Chairman position, with duties, responsibilities and qualifications similar to those of the SORC Chairman, is adopted from later operating BWR plant provisions found acceptable to the NRC. In addition, the authority presently granted to the SORC Chairman to appoint alternate SORC members and to convene SORC, is extended to the Vice-Chairman.

These changes provide a flexibility in the implementation of the SORC review process which should enhance the timeliness of response to routine activities as well as to emerging circumstances requiring SORC review. During SORC Chairman absence, the Vice-Chairman position assures the continuity required for effective implementation of the day-to-day SORC functions. Continued technical adequacy of the process is assured by retention of existing procedural controls requiring verification that SORC members or alternates present have appropriate technical background necessary for an adequate safety review of agenda items, as well as the requirements to designate other personnel, as necessary, for attendance at meetings where additional information or expertise is needed.

The SORC function of advising the Plant Manager on all matters related to nuclear safety, as stated in TS 6.5.1.1, remains unchanged. Similarly, the specific SORC responsibilities detailed in TS 6.5.1.6 are not affected by the proposed changes. The number of alternates permitted by TS 6.5.1.3 remains unchanged thereby maintaining the present condition that there always be at least a majority at each SORC meeting who are permanent SORC members.

The proposed change to the SRAB quorum meets the requirements of ANSI [American National Standards Institute] N18.7-1976 Sections 4.3.2.1 and 4.3.2.3. These require

that the committee consist of no less than five (5) persons and that the quorum consist of not less than a majority of the principles or duly appointed alternates. This will ensure membership continuity during scheduled meetings. The proposed changes are consistent with STS guidelines, ANSI N18.7-1976 and the SRAB charter.

The proposed changes do not affect any accident precursors and do not alter or modify existing limitations on the function, use of alternates, and responsibilities of the SORC. Addition of STS and later operating BWR plant provisions applicable to NMP1 assures retention of an adequate level and quality of review of matters related to nuclear safety, and therefore does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of NMP1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes for NMP1 Technical Specification Section 6.0 are based on STS guidelines and on later operating BWR plant provisions found acceptable to the NRC. These proposed changes have been reviewed for acceptability at NMP1 considering similarity of NMP1 nuclear safety review processes versus the STS and later operating BWRs. No new conditions of operation are introduced by the proposed changes. The proposed changes do not modify existing setpoints or design assumptions for system operation.

Since the proposed changes do not alter the functions and responsibilities of SORC and SRAB to review matters related to nuclear safety, and do not modify the present level of plant system operability, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of NMP1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes to Technical Specification Section 6.0 represent a combination of present requirements, STS guidelines and provisions that have been found acceptable for use on other operating BWRs with review processes similar to those at NMP1. The proposed SORC changes are intended to provide the flexibility required for continued timely SORC review of routine activities as well as review of emergent conditions, without compromising the technical adequacy of the process. The proposed SRAB quorum requirements will ensure membership continuity during scheduled SRAB meetings.

Existing procedural administrative controls requiring verification that SORC members or alternates present have appropriate technical background necessary for an adequate safety review of agenda items, as well as the requirements to designate other personnel, as necessary, for attendance at meetings where additional information or expertise is needed, remain in effect.

Since the proposed changes are based on STS guidelines and NRC accepted provisions at other operating plants that are applicable at NMP1, and since procedural administrative controls remain in place to assure presence of adequate technical expertise during the SORC review process, the proposed changes do not involve a significant reduction in a margin of safety.Therefore, based on the above evaluation, Niagara Mohawk has concluded that these changes do not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: November 24, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 1.0, "Definition;" TS Figure 2.1.1 and its corresponding Bases; TS 2.1.2, "Fuel Cladding Integrity," and its corresponding Bases; TS 2.2.2, "Reactor Coolant System," and its corresponding Bases; TS 3.1.7 and 4.1.7, "Fuel Rods;" TS 3.6.2 and 4.6.2, "Protective Instrumentation;" TS Table 3.6.2a, "Instrumentation that Initiates Scram;" TS Table 3.6.2g, "Instrumentation that Initiates Control Rod Withdrawal Block;" and TS 6.9.1f, "Core Operating Limits Report." The proposed changes would incorporate use of the "3D Monicore" computer software. Use of the "3D Monicore" software is being proposed in the proposed amendment for calculating various limits in the affected technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The APRM [average power range monitors] flow biased scram and rod block Limiting Safety System Settings provide a high level of assurance that plant response to abnormal operational transients will not violate fuel safety limits. The proposed changes to these settings do not alter any accident initiators or precursors and do not affect the probability of any accident. The proposed limiting safety system settings provide a level of safety equivalent to or greater than that provided by the currently specified settings and therefore will not increase the consequences of any accident.

Newer GE [General Electric Co.] fuel designs have different combinations of enriched uranium and gadolinia at various axial node points in the bundle. Thus, these fuel bundle types have MAPLHGRs [Maximum Average Planar Linear Heat Generation Rates] that vary axially along the length of the bundle as well as with fuel burnup. By determining and limiting the allowed APLHGR [Average Planar Linear Heat Generation Rate] at each axial node for each bundle, peak cladding temperature during the design basis loss-of-coolant accident will be significantly less than 2200°F, thus assuring that plant response to a design basis loss-of-coolant accident remains within previously assessed limits.

In addition, operating limits are now calculated by Fraction of Rated Thermal Power (FRTP) and Core Maximum Fraction of Limiting Power Density (CMFLPD) in lieu of Maximum Total Peaking Factor. Deletion of the Maximum Total Peaking Factor (MTPF) value for each fuel bundle design from the Core Operating Limits Report is therefore administrative only. Finally, the editorial changes contained herein correct errors and do not alter the intent of the Technical Specifications. Editorial changes do not, by their nature, affect the probability or consequences of accidents. Therefore, operation in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change will not alter the physical characteristics of any plant systems or components and all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

The proposed parameters are based on the same design criteria as current Technical Specifications, thereby assuring that the reactor response to previously analyzed accidents remains within previously assessed limits of temperature and pressure. In addition, operating limits are now calculated by Fraction of Rated Thermal Power (FRTP) and Core Maximum Fraction of Limiting Power Density (CMFLPD) in lieu of

Maximum Total Peaking Factor. Deletion of the Maximum Total Peaking Factor (MTPF) value for each fuel bundle design from the Core Operating Limits Report is administrative only. Finally, the editorial changes contained herein do not alter plant configurations or operating modes. Editorial changes do not, by their nature, create the possibility of a new or different kind of accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Currently, when calculated peaking factors exceed design values, scram setpoints are reduced to maintain a margin of safety equivalent to that provided at 100% power. In the proposed amendment, in lieu of monitoring peaking factors, the scram and rod block settings will be adjusted by a setdown factor "T" (the ratio of the Fraction of Rated Thermal Power to Core Maximum Fraction of Limiting Power Density) whenever that factor is less than one. The Fraction of Limiting Power Density is the LHGR [Linear Heat Generation Rate] existing at a given location divided by the specified LHGR limit for that bundle type. The core Maximum Fraction of Limiting Power Density is the highest value of the FLPD which exists in the core. Thus, when the ratio of actual LHGR to design LHGR for any bundle exceeds the ratio of actual thermal power to rated thermal power, scram and rod block setpoints will be reduced accordingly to maintain an equivalent margin of safety.

The proposed Technical Specifications will result in the same operating power distribution limits and safety margins as the current Technical Specifications. Limiting and monitoring APLHGR at different axial locations provides adequate assurance that, in the event of a design basis loss-of-coolant accident, peak cladding temperature will stay well below 2200°F. Using the limiting APLHGR in a bundle during hand calculations minimizes the probabilities of error.

In addition, operating limits are now calculated by Fraction of Rated Thermal Power (FRTP) and Core Maximum Fraction of Limiting Power Density (CMFLPD) in lieu of Maximum Total Peaking Factor. Deletion of the Maximum Total Peaking Factor (MTPF) value for each fuel bundle design from the Core Operating Limits Report is administrative only. Finally, the editorial changes contained herein do not alter the intent of the Technical Specifications. The limiting conditions for operation and surveillances requirements are not impacted. Editorial changes do not, by their nature, affect the margins of safety.

Therefore, operation of NMP1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: December 4, 1992

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3.6.2 and 3.6.11 and associated Bases. The proposed revisions would increase the surveillance test intervals and add allowable out-of-service times for various instruments. The proposed changes would be in accordance with General Electric Company Licensing Topical Reports (LTRs) which have been reviewed and approved by the NRC staff. Also, the allowable out-of-service times would be clarified in accordance with the most recently approved Boiling Water Reactors Owners Group letters which were used in the development of NUREG-1433, "Improved Standard Technical Specifications." The proposed changes would permit specified instrument channel functional tests to be performed quarterly rather than weekly or monthly.

The proposed amendment would also make editorial corrections on TS page 192 (reinsert a previously omitted word "upscale") and on TS page 199 (insert the symbol "°F," two places). Furthermore, a footnote on TS page 210 which involved a 1986 licensing condition would be deleted since it is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30851P-A assessed the impact of changing SCRAM (RPS) [Reactor Protection System] surveillance test intervals (STIs) and adding allowable out-of-service times (AOTs) on the SCRAM (RPS) failure frequency, the scram frequency and equipment cycling. Specifically, Section 5.7.4, "Significant Hazards Assessment," of NEDC-30851P-A states that:

≥Fewer challenges to the safeguards system, due to less frequent testing of the RPS, conservatively results in a decrease of approximately one percent in core damage frequency. This decrease is based upon the following:

•Based on the plant-specific experience presented in Appendix J, the estimated reduction in scram frequency (0.3 scrams/yr) represents a 1 to 2 percent decrease in core damage frequency based on the BWR plant-specific Probabilistic Risk Assessments (PRAs) listed in Table 5-8.

•The increase in core damage frequency due to less frequent testing is less than one percent. This increase is even lower (less than 0.01 percent) when the changes resulting from the implementation of the Anticipated Transients Without Scram (ATWS) rule are considered. Therefore, this increase is more than offset by the decrease in CDF [Core Damage Frequency] due to fewer scrams.

•The effect of reducing unnecessary cycles on RPS equipment, although not easily quantifiable also results in a decrease in core damage frequency.

•The overall impact on core damage frequency of the changes in allowable out-of-service is negligible."

From this generic analysis, the BWR [Boiling Water Reactors] Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, namely the increase in probability of a scram failure due to SCRAM (RPS) unavailability is insignificant, and the overall probability of an accident is actually decreased as the time the SCRAM (RPS) Instrumentation logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. Furthermore, the proprietary plant-specific analysis contained in this submittal demonstrates that although NMP1 differs from the generic model analyzed in Licensing Topical Report NEDC-30851P-A, the net effect of the plant-specific differences do not alter the generic conclusions. Also, the BWROG [Boiling Water Reactors Owners Group] 92102 letter clarifications used in the development of NUREG 1433, "Improved Standard Technical Specifications," for AOTs which enhanced wording to ensure "loss of function" does not occur, results in no significant increase in the probability or consequences of an accident previously evaluated."The generic analysis contained in Licensing Topical Reports NEDC-30851P-A Suppl [Supplement] 2/ NEDC-31677P-A assessed the impact of changing STIs and AOTs for BWR Isolation Instrumentation common/not common to SCRAM (RPS) and ECCS [Emergency Core Cooling System] instrumentation. Specifically, Section 4.0, "Summary of Results," of NEDC-30851P-A Suppl 2 states that:

≥The results indicate that the effects on probability of failure to initiate isolation are very small and the effects on probability or frequency of failure to isolate are negligible in nearly every case. In addition, the results indicate that increasing the AOT to 24 hours for tests and repairs has a negligible effect on the probability of failure of the isolation function. These combined with changes to the testing intervals and allowed out-of-service times for RPS and ECCS instrumentation provide a net improvement to plant safety and operations."and Section 5.6, "Assessment of Net Effect of Changes," of NEDC-31677P-A states that:

≥A reduction in core damage frequency (CDF) of at least as much as estimated in the ECCS instrumentation analysis can be expected when the isolation actuation instrumentation STIs are changed from one month to three months. The chief contributor to this reduction is the channel functional tests for the MSIVs [Main Steamline Isolation Valves]. Inadvertent closure of the MSIVs will cause an unnecessary plant scram. This reduction in CDF more than compensates for any small incremental increase (10% or 1.0E-07/year) in calculated isolation function failure frequency when the STI is extended to three months."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the consequences of an accident previously evaluated, namely the increase in probability of an isolation failure due to isolation instrumentation unavailability is insignificant, and the overall probability of an accident is actually decreased as the time the SCRAM (RPS) instrumentation logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. Also, the BWROG 0690-579-32A letter clarifications used in the development of NUREG 1433, "Improved Standard Technical Specifications," for AOTs which enhanced wording to ensure "loss of function" does not occur, results in no significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30936P-A (Parts 1 and 2) assessed the impact of changing STIs and AOTs for all BWR ECCS Actuation Instrumentation. Specifically, Section 4.0, "Technical Assessment of Changes," of NEDC-30936P-A (Part 2) states that:

≥The results indicate an insignificant (less than 5E-7 per year) increase in water injection function failure frequency when STIs are increased from 31 days to 92 days, AOTs for repair of the ECCS actuation instrumentation are increased from one hour to 24 hours, and AOTs for surveillance testing are increased from two to six hours. For all four BWR models the increase represents less than 4% increase in failure frequency. However, when other factors which influence the overall plant safety are considered, the net result is judged to be an improvement in plant safety."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, namely the increase in probability of a water injection failure due to ECCS instrumentation unavailability is insignificant and the net result is judged to be an improvement in plant safety. Furthermore, the proprietary plant-specific analysis contained in this submittal demonstrates that although NMP1 differs from the generic model analyzed in Licensing Topical Report NEDC-30936P-A, the net affect of the plant-specific differences do not alter the generic conclusions.

The generic analysis contained in Licensing Topical Report NEDC-30851P-A Suppl 1, assessed the impact of changing Rod Block STIs on Rod Block failure frequency. Specifically, Section 5 (BNL's Tech. Eval. Report - Attach. 2 to the NRC SER) [Brookhaven National Laboratory's Technical Evaluation Report - Attachment 2 to the NRC Safety Evaluation Report] of NEDC-30851P-A Supp 1 states that:

≥The BWR Owners' Group proposed changes to the Technical Specifications concerning the test requirements for BWR control rod block instrumentation. The changes consist of increasing the surveillance test intervals from one to three months. These test interval extensions are consistent with the already approved changes to STIs for the reactor protection system. The technical analysis reviewed and verified as documented herein indicates that there will be no significant changes in the availability of the control rod block function if these changes are implemented. In addition, there will be a negligible impact on the plant core melt frequency due to the decreased testing."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated or consequences of an accident previously evaluated.

Bases contained in GE Topical Report GENE-770-06-1 assessed the impact of changing STIs and AOTs on selected systems failure frequency. Specifically, Section 2.0, "Summary," of GENE-770-06-1 states that:

≥Technical bases are provided for selected proposed changes to the instrumentation STIs and AOTs that were identified in the BWROG Improved BWR Technical Specification activity. These STI and AOT changes are consistent with approved changes to the RPS, ECCS, and isolation actuation instrumentation. These proposed changes do not result in a degradation to overall plant safety."

From these Bases, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated or consequences of an accident previously evaluated.

Also, NMPC [Niagara Mohawk Power Corporation] concluded the editorial items do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes do not alter the meaning or intent of any requirements.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not alter the physical characteristics of any plant systems or components and all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

The addition of allowable out-of-service times (AOTs) and the increase in surveillance test intervals (STIs) does not alter the function of the SCRAM (RPS), ECCS, Isolation, Rod Block, and Selected Instrument Systems nor involve any type of plant modification and no new modes of plant operation are involved with these changes. Also, the editorial changes contained herein do not alter plant configurations or operating modes. Editorial changes do not, by their nature, create the possibility of a new or different kind of accident. Finally, the approved BWR Owners' Group clarifications are enhancements to allowable out-of-service times (AOTs) and do not create the possibility of a new or different kind of accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and approved the generic studies contained in the GE Topical Reports (LTRs) and has concurred with the BWR Owners' Group that the proposed changes do not significantly affects the availability of the SCRAM (RPS), ECCS, Isolation, Rod Block, or Selected Instrument Systems. The proposed addition of allowable out-of-service times (AOTs) for the instruments addressed in the LTRs provides reasonable time for making repairs and performing tests. The lack of sufficient AOTs in the current Technical Specifications (TS) creates a hurried atmosphere during repairs and tests which could cause an increased risk of error. Also, placing an individual channel in a tripped condition because no AOT exists, as in the current TS, increases the potential of an inadvertent scram. The proposed AOTs provide realistic times to complete the required actions without increasing the overall instrument failure frequency. Therefore, there is no significant reduction in the margin of safety.

The incorporation of extended surveillance test intervals (STIs) does not result in significant changes in the probability of instrument failure, as demonstrated by the LTRs. Also, the calibration frequencyhas not changed, therefore assurance exists that the setpoints will not be affected by drift. These changes, when coupled with the reduced probability of test-induced plant transients and equipment failures, result in an overall increase in the margin of safety.Also, the BWR Owners' Group clarification items do not alter the meaning or intent of any

requirements, therefore does not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

North Atlantic Energy Service Corporation, Docket No. 50-443, SeabrookStation, Rockingham County, New Hampshire

Date of amendment request: October 22, 1992

Description of amendment request: The proposed amendment would change the acceptance value for the sum of Residual Heat Removal (RHR) System injection line flow rates in the plant technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification Surveillance Requirement 4.5.2h.3 revises the acceptance value of the sum of the injection line flow rates with a single pump running to conform with the value used in the Seabrook Station Emergency Core Cooling System (ECCS) analysis performed by Westinghouse. This revised acceptance value is more conservative than the current Technical Specification value.

The Residual Heat Removal (RHR) System provides the low head ECCS flow necessary in the event of a Loss of Coolant Accident (LOCA). ECCS flow must be sufficient to remove the stored heat and fission product decay heat from the reactor core to prevent fuel damage that might impair effective cooling of the core.

The Seabrook Station ECCS analysis is based on the calculated flow rate down three of the four RHR injection lines since the fourth line is assumed to spill to containment. The calculated flow rate down three of the four injection lines in this analysis is 2828.4 gpm. The calculated total pump flow rate down all four injection lines is 3868.4 gpm. Since the actual values used in the analysis for the total flow rate down three and four injection lines are 2712 gpm and 3828 gpm, respectively, the proposed value of 3869 gpm, which includes an allowance of 5% for pump degradation, is conservative.

Technical Specification Surveillance Requirement 4.5.2h.3 is performed as part of a flow balance test during shutdown when modifications to the ECCS subsystems have been made that alter the subsystem flow characteristics. This surveillance requirement verifies that after the modification the total ECCS flow to the reactor core is equal to or greater than the flow assumed in the ECCS analysis.

The proposed change to Technical Specification Surveillance Requirement 4.5.2h.3 does not alter the design of the RHR system or any other plant system. The RHR system design parameters and operation are not changed. The proposed change is necessary to correct an error in the Technical Specifications whereby the acceptance value for the flow rate through three injection lines was inadvertently used instead of the correct flow rate value through four injection lines. In addition, the revised acceptance value in the proposed change is more conservative than the existing value. Therefore, this proposed change does not increase the probability of an accident previously evaluated nor will it increase the consequences of any accident.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Technical Specification Surveillance Requirement 4.5.2h.3 does not affect the design, function or operation of the RHR system. As a subsystem of the Seabrook Station ECCS, the RHR system will continue to be capable of injecting low pressure cooling water in the event of a LOCA to remove stored and fission product decay heat and maintain effective core cooling. The acceptance value for the sum of the RHR injection line flow rates with a single pump running is more conservative than the value being replaced and meets the value used in the design basis Seabrook Station ECCS analysis.

There are no new failure modes introduced by this proposed change. Its intent is to correct an error in the existing Technical Specifications whereby the acceptance value for the sum of the flow rates in three injection lines was used instead of the value for the sum of four injection lines. Therefore, the possibility of a new or different kind of accident than those already evaluated is not created by this proposed change.

(3) The proposed change does not result in a significant reduction in the margin of safety.

The Technical Specification Bases state that the purpose of the surveillance requirement for flow balance testing following modifications to ECCS subsystems that might alter the subsystem flow characteristics is to verify that proper ECCS flow will be maintained in the event of a LOCA. Proper ECCS flow is defined by the design basis ECCS analysis. The Seabrook Station ECCS analysis used a calculated flow rate value for the sum of the four injection line flow rates of 3868.4 gpm. The acceptance value for the sum of the four injection line flow rates which is currently in Technical Specification Surveillance Requirement 4.5.2h.3 is less than 3868.4 gpm. The proposed change revises the acceptance value in the surveillance requirement to 3869 gpm. Since the proposed change is revising the acceptance value to a more conservative value which is bounded by the design basis ECCS analysis, the change will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Walter R. Butler

North Atlantic Energy Service Corporation, Docket No. 50-443, SeabrookStation, Rockingham County, New Hampshire

Date of amendment request: November 3, 1992

Description of amendment request: The proposed amendment would change the technical specifications (TSs) to relax the requirement for the Operations Manager to hold a Senior Reactor Operator (SRO) license. Instead, the Operations Manager would be required to either hold, or have held an SRO license at Seabrook Station. The Assistant Operations Manager would still be required to maintain an SRO license at Seabrook Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only an administrative control, which was based on the existing industry guidance in ANSI/ANS 3.1-1978, that recommended the Operations Manager hold a senior reactor operator license. The current guidance in ANSI/ANS 3.1-1987 recommends, as one option, that the Operations Manager have held a license on a similar unit with the Operations Middle

Manager holding a senior reactor operator license. The proposed change in this License Amendment Request is consistent with the current guidance.

The proposed change does not alter the design of any system, structure, or component. It does not change the way any plant systems are operated. It does not reduce the knowledge, qualifications, or skills of any watchstander, and does not affect the way the Operations Department is managed other than to allow the Operations Manager to focus his efforts on maintaining the effective performance of his personnel and to ensuring the plant is operated safely and in accordance with the requirements of the Operating License.

The proposed change does not detract from the Operations Manager's ability to perform his primary responsibilities. By having previously held a senior reactor operator license he will have gained the necessary training, skills, and experience to fully understand the operation of plant equipment and the requirements for proper watchstanding.

The proposed change does not weaken the supervisory chain that presently exists in the Operations Department. All Control Room operators will continue to be supervised by NRC licensed personnel.

The proposed change is intended to improve the ability of the Operations Manager to provide the plant oversight required of his position. It does not have any affect on the probability or consequences of any previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Technical Specification 6.2.2 does not affect the design or function of any plant system, structure, or component. It does not affect in any way the performance of NRC licensed operators, nor does it change the way any plant equipment is operated. Operation of the plant in conformance with Technical Specification and other license requirements will continue to be supervised by personnel who hold an NRC senior reactor operator license. The proposed change does not introduce any new failure modes.

The proposed change is intended to remove an administrative requirement which adds a significant burden to the Operations Manager without significantly contributing to his effectiveness in managing plant operation and ensuring that the plant is operated safely and in accordance with the requirements of the Operating License.

3. The proposed change does not result in a significant reduction in the margin of safety.

The proposed change involves only an administrative control which is not related to the margin of safety as defined in the Technical Specifications. The proposed change does not reduce

the level of knowledge or experience required of an individual who fills the Operations Manager position, nor does it affect the conservative manner in which the plant is operated. All Control Room operators will continue to be supervised by personnel who hold a senior reactor operator license. This includes the Assistant Operations Manager, who will continue to be required to hold a senior reactor operator license.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Walter R. Butler:

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 18, 1992

Description of amendment request: The amendment requests that Technical Specification surveillance requirements be changed to extend the maximum interval between containment Type B and Type C tests from the present 24 months to 34 months for this fuel cycle only.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:The proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

The past Millstone Unit No. 3 LLRT data, in general, demonstrated good leak rate results. Specifically, during the last refueling outage, the total Type B and Type C leakage rate was 37.4 percent of the technical specification limit. In addition, the last Millstone Unit No. 3 ILRT test completed on July 7, 1989, indicated that the "As-Left" leakage ILRT rate is 44.6 percent of the technical specification limit. This demonstrates that the overall leak tightness of containment and its protective boundaries is maintained. No operations are known to have occurred which would suggest a significant degradation of containment integrity.

The change does not increase the probability of any accident, since a design basis accident is not a function of surveillance test intervals.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The containment isolation features limit the consequences of any accident. The addition of 8 to 10 months to the test schedule should have no impact on this. The proposed change does not alter the testing criteria or any acceptance criteria, it only extends the time period between the test performance. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in margin of safety.

As discussed above, the past Type B and Type C and the containment ILRT results demonstrate that the overall leak tightness of the containment and its protective boundaries is maintained. Also, since the change does not affect the consequences of an accident previously analyzed, there is no reduction in the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 9, 1992

Description of amendment request: The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with fuel cycle 9. Fuel cycle 9 started in August 1992. In order to accommodate operation on a 24-month cycle, the licensee requested a Technical Specifications (TS) amendment to incorporate the changes listed below:

(1) The licensee proposed changing the frequency of containment fan cooler unit filtration system testing (specified in TS Section 4.5.A.4) to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the frequency of central control room filtration system testing (specified in TS Section 4.5.A.5) to accommodate operation on a 24-month cycle.

(3) The licensee proposed changing the frequency of containment vent isolation valve mechanical stop verification (specified

in TS Section 4.13.A) to accommodate operation on a 24-month cycle.

These proposed changes follow the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1)Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously analyzed. These changes propose extending the surveillance intervals for ventilation system testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. An evaluation of past equipment performance and other system testing (e.g., quarterly tests) provides assurance that the longer surveillance intervals will not degrade system performance. Regarding the probability of equipment malfunctions:

•These tests can be safely extended with the longer fuel cycle because a review of surveillance test records and a review of operating occurrence reports substantiates the reliability of these systems. Also, since filtration systems are generally operated intermittently, the operating time between tests would not be increased significantly with the longer operating cycle. With the exception of the containment FCU [fan cooler unit] filtration system, the other filtration systems are inspected or tested monthly to ensure that each system is operating according to specifications. The FCU filtration system may be inspected only during cold shutdown with the fans operational.

•The Technical Specifications require that any time fire, chemical releases or work done on the filters could alter their integrity or after 720 hours of charcoal adsorber use since their last test, the CCR [central control room] filtration system parameters must be demonstrated to meet the required specifications. The Technical Specifications also require each of these systems to be operated for 15 minutes each month.

•In addition, the Technical Specifications (4.13.A.2) require that the operability of the mechanical stops on the containment vent isolation valves be verified each refueling outage. This is accomplished by local observation of stroke testing (currently required by ASME Section XI every 2 years) and quarterly verification of valve stroke times.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes extend surveillance test intervals. The proposed changes do not change the manner in which the ventilation systems function. An evaluation of past equipment performance and a study of on-line testing show the longer surveillance test intervals will not degrade ventilation system equipment. Therefore, the proposed changes do not create any new failure modes or a new accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not reduce the margin of safety as defined in the basis for any Technical Specification. The proposed changes extend surveillance test intervals. Evaluation of the past performance of the equipment indicates that the effects of extending the surveillance test intervals would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: November 18, 1992

Description of amendment request: The proposed request would change Technical Specifications 6.9.1.8, "Semiannual Radioactive Effluent Release Report," and 6.14, "Offsite Dose Calculation Manual," following the provisions provided in 10 CFR 50.36a. This proposed change would extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36a(a)(2). There is no change to plant design, operation, or configuration. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36a(a)(2). There is no change to plant design, operation, or configuration. Therefore, this change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36a(a)(2). There is no change to plant design, operation, or configuration. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: April 2, 1991

Brief description of amendment: The proposed amendment would add action requirements to Technical Specification (TS) Table 3.3-2 for the engineered safety features actuation system instrumentation loss of power function to provide direction consistent with TS 3.8.1.1 and 3.8.3.1 in the event two undervoltage relay channels on a bus become inoperable. The action statements in Technical Specification (TS) Table 3.3-2 currently require entry into in TS 3.0.3 when two undervoltage

relay channels are declared inoperable. The proposed change would revise the action statements to allow an outage time consistent with that allowed in TS 3.8.1.1 and 3.8.3.1 for inoperable AC sources and inoperable AC emergency busses, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed changes do not affect operation of the undervoltage protection relay channels or the protection they provide. Although the change would increase the allowed outage time beyond that currently allowed by TS Table 3.3-2, the proposed changes do not increase the out-of-service time beyond that currently established in TS 3.8.3.1 and 3.8.1.1 for the associated busses. Therefore, the NRC staff concludes that the proposed changes will not cause a significant increase in the probability or consequences of a previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve system hardware or circuit changes and do not change the manner in which the undervoltage relay channels operate or provide plant protection. Since no physical, electrical, or functional changes are made to the undervoltage relay channels, no new failure modes are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

As stated above, the proposed changes increase the allowed outage time beyond that currently allowed by TS Table 3.3-2, but do not increase the out-of-service time beyond that currently established in the TS for the associated busses. Therefore, the NRC staff concludes that the proposed changes do not involve a significant reduction in the margin of safety.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036.

NRC Project Director: Suzanne C. Black

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: October 26, 1992

Description of amendment request: The proposed amendments to the Technical Specifications (TS) would increase the limit for the intermediate range high flux reactor trip setpoint, eliminate a redundant stipulation that predicted critical rod position be above the zero power insertion limit, and establish an allowed outage time for the source range nuclear instruments when reactor power is below a specified level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes will not increase either the probability of occurrence of any of the UFSAR [Updated Final Safety Analysis Report] accidents or their potential consequences. The Intermediate Range High Flux trip provides backup trip protection for the Power Range High Flux trip (low setpoint) during reactivity accidents (power excursions) from low power initial conditions. The proposed revision to the Intermediate Range High Flux trip setpoint will not increase the probability of any UFSAR accident because the actuation of a reactor trip is not considered an accident initiator. Further, the proposed revisions should decrease the probability of unnecessary Intermediate Range trips. The proposed revision does not alter the consequences of any UFSAR accident because the Intermediate Range trip functions as a backup trip and is not credited for mitigation within the UFSAR analysis for any accident. Hence, the revision of a backup trip setpoint does not impact the sequence of events considered for an accident, and will not alter the consequences of the accident as analyzed.

The establishment of an allowed outage time for the Source Range channel at power levels below P-6 also does not increase the probability of any UFSAR accident or its consequences, because the required action of this new requirement (i.e., open the reactor trip breakers at a power level below P-6) has been previously evaluated in the safety analysis.

The deletion of TS 3.12.A.4, which governs the predicated critical rod position at subcritical conditions, does not increase either the probability of occurrence or the potential consequences of any of the UFSAR accidents. TS 3.12.A.2 and startup procedures ensure equivalent conditions to TS 3.12.A.4 above permissive P-6 (i.e., ensure that the control rods are above the zero power insertion limit at criticality). Below permissive P-6, reactor protection against reactivity insertion transients is provided by the Source Range channel, which is automatically activated below permissive P-6.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The Intermediate Range trip setpoint revision simply alters the time during an accident at which reactor trip actuation would occur, if assumed to be actuated by the Intermediate Range protective action. Such a change in reactor trip actuation time has previously been evaluated and found not to create new or different kinds of accidents.

The establishment of an allowed outage time for the Source Range channel at power levels below P-6 also does not create the possibility of new or different kinds of accidents, because the required action of this new requirement (i.e., open the reactor trip breakers at a power level below P-6) has been previously evaluated.

The deletion of TS 3.12.A.4, which governs the predicted critical rod position at subcritical conditions, does not create the possibility of a new or different kind of accident from any accident previously evaluated. TS 3.12.A.2 and startup procedures ensure equivalent conditions to TS 3.12.A.4 above permissive P-6. Below permissive P-6, allowable normal operation operating conditions are effectively restricted by other governing Technical Specifications, and accident operating conditions are restricted by the protective action of the Source Range channel. The deletion of TS 3.12.A.4 does not create an allowable operating mode or core operating condition which could create a new or different kind of accident from those previously evaluated.

3. The proposed changes will not involve a significant reduction in a margin of safety. As stated above, the Intermediate Range High Flux trip provides backup protection for the Power Range High Flux trip (low setpoint). Because a backup trip function is not assumed within the UFSAR accident analysis, no explicit margin of safety is dependent upon the actuation of the backup trip protective action. Accordingly, a revision in a backup trip setpoint will not alter any explicit margin of safety. The proposed changes do alter the Technical Specification basis to explicitly state that the functional capability of the Intermediate Range High Flux trip at the specified trip setting is required to enhance the overall reliability of the Reactor Protection System. The proposed Intermediate Range High Flux trip setpoint revision has been evaluated and determined to maintain the functional capability of the trip at the proposed revised setpoint. Thus, any margins inferred by this proposed basis change are maintained by the proposed Intermediate Range trip setpoint revision.

The establishment of an allowed outage time for the Source Range channel at power levels below P-6 also does not involve a

significant reduction in a margin of safety, because the required action of this new requirement (i.e., open the reactor trip breakers at a power level below P-6) has been previously evaluated.

The deletion of TS 3.12.A.4, which governs the predicted critical rod position at subcritical conditions, does not involve a significant reduction in margin of safety. TS 3.12.A.2 and startup procedures ensure equivalent conditions to TS 3.12.A.4 above permissive P-6 (i.e., ensure that the control rods are above the zero power insertion limit at criticality). Below permissive P-6, reactor protection against reactivity insertion transients is provided by the Source Range channel. The deletion of TS 3.12.A.4 does not cause the results of any existing accident analyses to become more limiting. The margin of safety as defined in the bases of applicable Technical Specifications is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 8, 1992, as superseded August 20, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4, "Steam and Power Conversion System," TS 4.8, "Auxiliary Feedwater System," and the respective bases. The changes incorporate a NRC staff recommendation regarding the required minimum condensate storage tank inventory, additional restrictions on the operation of the auxiliary feedwater system, and revisions to the surveillance requirements for the turbine driven auxiliary feedwater pump. In addition, administrative changes have been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The accidents of interest include loss of main feedwater, flooding, loss of offsite power, and a small break loss of coolant accident. The probabilities of occurrence of these accidents are independent of the proposed changes. In addition, the consequences of these accidents are not significantly increased by any of these changes. The condensate storage tank minimum level is being increased and the auxiliary feedwater pump allowed outage time is being decreased, both conservative changes. In addition, the potential for unnecessary plant transients is being reduced. Finally, auxiliary feedwater system redundancy and separation are maintained while operability of the turbine driven auxiliary feedwater pump is demonstrated, consistent with staff guidance.

The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated, because the changes would not alter the plant configuration, the operational parameters, or plant performance.

The proposed changes would not involve a significant reduction in a margin of safety. The proposed changes in minimum condensate storage tank level and auxiliary feedwater pump allowed outage time are both conservative, enhancing the margin of safety. The potential for unnecessary plant transients is also reduced. In addition, limiting conditions for operation consistent with staff guidance are maintained to ensure the margin of safety is not significantly reduced.

The proposed administrative changes also would not involve a significant increase in the probability or consequences of an accident previously evaluated, would not create the possibility of a new or different kind of accident from any accident previously evaluated, and would not involve a significant reduction in a margin of safety. These changes do not alter the intent or the interpretation of the Technical Specifications.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 5, 1992

Description of amendment request: The proposed amendment modifies Technical Specification 4.2.1.1 associated with monitoring and logging of axial flux difference (AFD). The proposed change eliminates the increased surveillance frequencies following the restoration of the AFD monitor alarm and periods of inoperability greater than 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed removal of the requirement for monitoring the AFD once per hour for the first 24 hours after restoring the AFD Monitor Alarm to operable status is essentially administrative in nature. The requirement is a vestige of a method of power distribution control, the CAOC method, that is no longer used at WCGS [Wolf Creek Generating Station].

Because this requirement is not part of the current power distribution control methodology, its deletion will have no impact on the consequences of any accidents previously evaluated. Also, the power distribution Technical Specifications are intended to assure that the assumptions used in transient and accident analyses are satisfied should an accident or transient occur; and the proposed changes do not involve plant modifications or the imposition of new performance requirements on plant systems or components. Therefore, changes to these Technical Specifications would have no impact on the probability of occurrence of a previously evaluated accident.

The proposed removal of the 30-minute monitoring and logging requirement after the first 24 hours of operation with an inoperable AFD Monitor Alarm would not involve an increase in the consequences of an accident previously evaluated because the monitoring and logging activity would still be required to be performed once per hour. Continuing the monitoring and logging functions on an hourly schedule after the first 24 hours would continue to provide the same assurance that power distribution limits were maintained in accordance with the accident analyses. Therefore, the consequences of previously evaluated accidents would not be

increased. Also, as noted in the previous paragraph, changes to the AFD Technical Specifications would have no effect on the probability of occurrence of a previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated.

The Technical Specification requirements for power distribution limits are intended to assure that the assumptions used in the accident and transient analyses are satisfied should an accident or transient occur. These requirements are of a monitoring nature, and corrective actions are specified if the monitored conditions exceed established limits. The proposed amendment does not involve design changes, hardware modifications nor changes to the method by which any safety-related plant system performs its safety function. Therefore, changes to these Technical Specifications would not create the possibility of a new or different accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety.

The proposed removal of the requirement to monitor the indicated AFD once per hour for the first 24 hours after restoring the AFD Monitor Alarm to operable status would not reduce a margin of safety because the analyses that were performed in support of the implementation of RAOC at WCGS showed that the AFD limits under RAOC provide an acceptable margin of safety and, once the AFD

Monitor Alarm is operable, the plant operators will be warned if that margin is degraded. The RAOC method of power distribution control does not require 24 hours of monitoring of indicated AFD in order to provide this warning. An AFD Monitor Alarm that is "operable" in accordance with the Technical Specification definition is capable of performing its specified function and has all of its necessary support systems capable of providing their necessary functions.

The proposed removal of the 30-minute frequency for monitoring and logging indicated AFD after the first 24 hours of operation with an inoperable AFD Monitor Alarm would not result in a significant reduction of a margin of safety because the requirement to monitor and log on an hourly frequency would provide the same margin to safety as available during the first 24 hours. A reduction in the frequency of monitoring indicated AFD would represent a decrease in the time margin available to the operator to prevent AFD from approaching the RAOC limits; however, the decrease is not significant because the margin available during the first 24 hours, using the hourly frequency, would not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Suzanne C. BlackPreviously Published Notices of Consideration of Issuance Of Amendments ToOperating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity of a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 12, 1992, supplemented November 12, and 18, 1992.

Description of amendment request: The proposed amendment would temporarily modify the definition of operability of the charging pump for cycle 4 operation only, to recognize that with outside temperature below 17°F, the operability of the charging pump will rely upon a temporary heat source. The licensee has requested this temporary definition because equipment changes made to correct recently-identified design deficienicies also resulted in removing the plant's ability to automatically regulate ambient temperature around the charging pump. Use of a temporary heat source became necessary to assure charging pump operability at outside temperatures below 17°F.

Date of publication of individual notice in **Federal Register:** November 24, 1992 (57 FR 55288) corrected December 2, 1992 (57 FR 57081).

Expiration date of individual notice: December 24, 1992

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 20, 1992

Description of amendment request: The proposed amendment to Technical Specification (TS) requested changes to Technical Specification 3.0.D and the associated Bases which incorporate recommendations provided in NRC Generic Letter 87-09 regarding mode changes.

Date of publication of individual notice in **Federal Register:** November 27, 1992 (57 FR 56430)

Expiration date of individual notice: December 28, 1992

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 21, 1992, as supplemented August 24, 1992, September 4, 1992, and October 28, 1992.

Brief description of amendments: The amendments revise the refueling platform overload cutoff setpoint and the refueling platform loaded interlock setpoint for the fuel grapple hoist to accomodate the use of a new General Electric Model NF500 main hoist grapple mast to replace the existing NF400 mast.

Date of issuance: November 27, 1992

Effective date: November 27, 1992

Amendment Nos.: 158, 189

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11102)The August 24, 1992, September 4, 1992, and October 28, 1992, submittals provided clarifying information and corrected Technical Specification pages respectively, and did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 25, 1992.

Brief description of amendments: The amendments change the Technical Specifications (TS) to increase the acceptable limits for control rod average scram insertion times from 0.040 to 0.049 seconds for each of the rod positions listed in TS 3.1.3.3. and 3.1.3.4. In addition, the values of mu, sigma and tau $_A$ specified in TS 3.2.2.2 would be revised.

Date of issuance: December 4, 1992

Effective date: December 4, 1992

Amendment Nos.: 159, 190

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45077)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: February 21, 1992, as supplemented August 7, 1992.

Brief description of amendment: The amendment revises the fire protection license condition and deletes fire protection Technical Specifications consistent with the guidance of Generic Letters 86-10 and 88-12.

Date of issuance: December 7, 1992

Effective date: December 7, 1992

Amendment No.: 142

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11103)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1992.No significant hazards consideration comments received: No The August 7, 1992, letter provided an updated TS page that did not change the initial proposed no significant hazards consideration determination.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 2, 1991, as supplemented June 2, 1992

Brief description of amendments: The approved Technical Specification amendments would eliminate the required use of the Rod Sequence Control System (RSCS), and reduce the Low Power Setpoint (LPSP) initiation for the turnoff of the Rod Worth Minimizer (RWM) from twenty (20) percent of rated power to ten (10) percent of rated power.

Date of issuance: December 4, 1992

Effective date: December 4, 1992

Amendment Nos.: 88 and 73

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27038) The June 2, 1992, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 29, 1992, and July 29, 1992, as supplemented by letters dated October 23, 1992, November 3, 1992, November 5, 1992, November 25, 1992, and December 9, 1992.

Brief description of amendment: The amendment revises the definition of a "Refueling Interval," "R," to 24 months consistent with a 24-month fuel cycle and revises all existing references in Section 4.0, "Surveillance Requirements" to "R" or "at least once every Refueling Interval." It also revises specific surveillance intervals. The remainder will be changed based on future amendment requests by the license. The amendment deletes the required NRC approval for steam generator operation beyond 8 equivalent

months of operation or 1 calendar year. Several administrative errors are also corrected.

Date of issuance: December 10, 1992
Effective date: December 10, 1992
Amendment No.: 159
Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30242) and September 30, 1992 (57 FR 45080), respectively. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: February 7, 1990, as supplementedMay 7, 1990, June 8 and October 8, 1992
Brief description of amendments: The amendments revise the Technical Specifications (TSs) to incorporate programmatic controls for radiological effluents and radiological monitoring in the Administrative Controls section of the TSs consistent with the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a and Appendix I to 10 CFR Part 50. In addition, procedural details of the Radiological Effluent Technical Specifications (RETS) are transferred from the TSs to Chapter 16 of the Final Safety Analysis Report (FSAR).
Date of issuance: December 9, 1992
Effective date: To be implemented 30 days from the date of issuance.
Amendment Nos.: 103 and 97
Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32325)The June 8 and October 8, 1992, letters provided clarifying information and corrections which were not outside the scope of the original Federal Register notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 9, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: September 14, 1992
Brief description of amendment: The amendment deleted various lists of components from the Technical Specifications (TS) in accordance with the requirements of Generic Letter 91-08. The lists removed from the TS are incorporated into plant procedures subject to the administrative controls of TS 6.8 and 6.5.3.
Date of issuance: December 3, 1992
Effective date: December 3, 1992
Amendment No: 102
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47130)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County,Mississippi

Date of application for amendment: May 30, 1991

Brief description of amendment: The amendment requested 1) an increase in the allowed outage time for the drywell and containment hydrogen concentration analyzers and monitors, 2) increasing the time limit for reporting certain inoperable accident radiation monitors, and 3) revising the technical specification ACTIONS for accident monitoring instrumentation in Table 3.3.7.5-1 to be consistent with the guidance provided in Generic Letter 83-36.
Date of issuance: December 9, 1992
Effective date: December 9, 1992
Amendment No: 103
Facility Operating License No. NPF-29. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43808)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 12, 1990
Brief description of amendments: These amendments to the St. Lucie Units 1 and 2 Technical Specifications revise the requirement to determine control element assembly (CEA) operability at least once per 31 days to once per 92 days. Additionally, the surveillance interval for the performance of the functional test of the CEA block circuit, which is performed as part of the CEA operability test, is revised to be performed on a quarterly basis, rather than the existing monthly basis.
Date of issuance: December 2, 1992
Date of issuance: December 2, 1992
Effective date: December 2, 1992
Amendment Nos.: 117, 59
Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 8, 1992 (57 FR 710) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 1992.No significant hazards consideration comments received: No.
Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Uniff 1 and 2, Matagorda County, Texas

Date of amendment request: October 12, 1990, as supplemented by letter dated January 24, 1991; and superseded by letters dated October 25, 1991 and June 16, 1992.
Brief description of amendments: The amendments change the Technical Specifications by deleting Table 5.7-1 (Component Cycle or Transient Limits).

Cyclic/transient occurrences identified in the Updated Final Safety Analysis Report, Table 3.9-8, which include those components listed in TS Table 5.7-1, would be tracked through administrative procedures. The change is intended to resolve discrepancies between Table 5.7-1 and the Updated Final Safety Analysis Report.

Date of issuance: November 24, 1992

Effective date: November 24, 1992, to be implemented within 7 days of issuance.

Amendment Nos.: Amendment Nos. 46 and 35

Facility Operating License Nos. NPF-76 and NPF-80: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 26, 1990, December 26, 1991, and October 14, 1992 (55 FR 53072, 56 FR 66920, 57 FR 47140). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 24, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: November 20, 1990, as superseded February 7, 1992

Brief description of amendment: This amendment is in partial response to the licensee's application submitted February 7, 1992. The amendment revises Table 3.3.4 of Technical Specification 3.3.4 to require closure of the drywell and suppression chamber vent and purge isolation valves on a high radiation signal from the stack radiation monitor. This change is consistent with the requirements of Item II.E.4.2 of NUREG-0737.

Date of issuance: December 3, 1992

Effective date: December 3, 1992

Amendment No.: 134

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4868) and renoticed April 1, 1992 (57 FR 11111).The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50-443, SeabrookStation, Rockingham County, New Hampshire

Date of application for amendment: September 30, 1992 as supplemented October 14, 1992

Brief description of amendment: This amendment changes the Seabrook Station Technical Specifications to increase the temperature limit for the cooling tower basin water from the current 67.3°F to 70.0°F and permit the cooling tower fans and sprays to be manually operated following a cooling tower actuation.

Date of issuance: November 27, 1992

Effective date: November 27, 1992

Amendment No.: 18

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 28, 1992 (57 FR 48822) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 1, 1992, as supplemented June 23, 1992

Brief description of amendment: The amendment revises the visual inspection surveillance requirements associated with the snubbers so that the first interval determined using the surveillance criterion approved in License Amendment No. 62 is based on the results of inspections performed during Millstone Unit No. 3's third refueling outage.

Date of issuance: December 2, 1992

Effective date: December 2, 1992

Amendment No.: 71

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 24, 1992 (57 FR 28203) The June 23, 1992, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: September 25, 1992, and supplemented October 14, 1992

Brief description of amendment: This amendment deletes License Condition 2.C.(11), "Fuel Assemblies," from Facility Operating License NPF-1. This is an administrative change since the license condition is no longer necessary at Trojan Nuclear Plant. This submittal was designated by the licensee as LCA-216.

Date of issuance: December 4, 1992

Effective date: December 4, 1992

Amendment No.: 188

Facility Operating License No. NPF-1: The amendment revised the Facility Operating License.

Date of initial notice in Federal Register: October 28, 1992 (57 FR 48824)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 9, 1992 (TS 92-15)

Brief description of amendments: The amendments provide an alternate method for satisfying the response time requirements of the engineered safety features actuation system (ESFAS) for the feedwater instrumentation channels when the feedwater line is isolated.

Date of issuance: December 8, 1992

Effective date: December 8, 1992

Amendment Nos.: 165 - Unit 1; 155 - Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revised the technical specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (57 FR 54865 dated November 20, 1992). That notice

provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 21, 1992, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 8, 1992.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The ClevelandElectric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear PowerStation, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 1, 1992

Brief description of amendment: The amendment revised Technical Specification 3/4.1.1.2 "Reactivity Control Systems-Boron Dilution," and its Bases. The revision allows the addition of water of lower boron concentration that the reactor coolant system (RCS) during refueling with the RCS flow rate less than 2800 gpm, provided that the boron concentration of the water to be added is greater that the boron concentration corresponding to the more restrictive condition specified in TS 3.9.1, "Refueling Operations - Boron Concentration."

Date of issuance: December 8, 1992

Effective date: December 8, 1992

Amendment No. 176

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40222). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: April 10, 1992, as supplemented May 20, 1992

Brief description of amendment: The amendment modifies the bases and ACTION statement for TS 3.4.3.1, "Leakage Detection Systems" and the limiting condition for operation (LCO), bases, ACTION statement and surveillance requirements for TS 3.4.3.2, "Operational Leakage." These changes assure that the sections of the TS related to leak detection are in conformance with the NRC staff positions stated in Generic Letter 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping" and Supplement 1 to this Generic Letter.

Date of issuance: December 9, 1992

Effective date: December 9, 1992

Amendment No.: 111

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28208)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352Notice of Issuance Of Amendment To Facility Operating License And Final Determination Of No Significant Hazards Consideration And Opportunity For Hearing (Exigent Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has

prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By January 22, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: November 12, 1992, with supporting information provided by letters dated November 12, 1992 and November 18, 1992.

Brief description of amendment: The amendment temporarily modifies the definition of operation of the charging pump for cycle 4 operation only, to recognize that with outside temperatures below 17oF, the operability of the charging pump will rely upon a temporary heat source.

Date of issuance: December 9, 1992

Effective date: December 9, 1992

Amendment No.: 72

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration:Yes. (57 FR 55288 dated November 24, 1992). That notice

provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 24, 1992 (correction dated December 2, 1992, 57 FR 57081), but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.The Commission's related evaluation of the amendment, finding of exigent circumstances, and the final no significant hazards consideration determination are contained in a Safety Evaluation dated December 9, 1992.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 15th Day of December

For the Nuclear Regulatory Commission

Steven A. Varga, Director,

Division of Reactor Projects - I/IIOffice of Nuclear Reactor Regulation

[Doc. 92–31029 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–F

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG–1435, Supplement 2, Status of Safety Issues at Licensed Power Plants, TMI Action Plan (TMI) Requirements, Unresolved Safety Issues (USIs), Generic Safety Issues (GSIs) and Other Multiplant Actions (MPAs). The document covers the status of implementation and verification of these issues at licensed operating plants.

This NUREG has been prepared to provide a comprehensive description of the implementation and verification status of TMI, USI, GSI and other MPAs at licensed operating plants and to make this information available to other interested parties, including the public.

Copies of the Report have been placed in the NRC's Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge their order by calling 202/275–2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 3rd day of December, 1992.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31100 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the President's Pay Agent will meet with the Federal Salary Council at the time and place shown below. The purpose of this meeting will be the discussion of salary surveys to be conducted from June 1993 through May 1994. The meeting will be open.

DATES: January 6, 1993, beginning at 2 p.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 5A06A, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For The President's Pay Agent.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–31143 Filed 12–22–92; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31616; File No. SR–AMEX–92–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Number of Consecutive Terms Which an Exchange Governor May Serve

December 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Article II, Section 1(e) of its Constitution to increase, from two to three, the number of consecutive elected terms which a governor may serve under certain circumstances.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article II, Section 1(e) of the Exchange Constitution currently provides that a governor who has served all or part of two consecutive terms shall not be eligible for election again except after an interval of two years for a governor who is a member, or one year for a public governor. Many, but not all, of the other securities self-regulatory organizations

[1] On November 25, 1992, the Amex submitted this proposed rule change, File No., Amex–92–27, as a substitute to a proposed rule change the Amex had submitted to the Commission on August 13, 1992, also File No. SR–Amex–92–27. Accordingly, the Commission withdrew the proposed rule change submitted on August 13, 1992, and replaced it with the proposal filed on November 25, 1992. The August 13, 1992, submission is substantially similar to the November 25, 1992, proposal, except the latter limits the number and type of governors who may simultaneously serve a third consecutive term, and makes members' independent nominations subject to the same requirements placed on the Nominating Committee with regard to nominating a governor for a third consecutive term in office. *See* letter from Linda Tarr, American Stock Exchange, Inc. to Diana Luka-Hopson, Esq., Securities and Exchange Commission, dated November 24, 1992.

have some restriction as to the number of consecutive terms of office a governor (or the equivalent position) may serve. For example, while the New York Stock Exchange limits members of its Board to three two-year terms, the Chicago Board Options Exchange and the Philadelphia Stock Exchange have no term limitation on their Board members. The Boston Stock Exchange permits four two-year terms, the Pacific and Midwest Stock Exchanges limit member governors to two three-year terms, but do not limit public governor terms.

While the current Amex term limitation probably does force a greater number of members to become involved in the governance of the Exchange, thereby attracting new talent and ideas, it also has several disadvantages. It can deprive the Exchange of the services of an effective governor who is making a significant contribution to the Board. Further, as the Exchange's affairs become increasingly complex, it is important to maintain a sense of continuity on the Board. Regulatory and competitive concerns which the Board must address often require years to resolve, and similar issues tend to recur. Governors who have extensive involvement in important matters may be forced by the six-year limitation to leave the Board while these matters are still pending, and while their expertise is still needed.

Therefore, the Exchange has determined to amend Article II, Section 1(e) of its Constitution to provide the Exchange's Nominating Committee with discretion to nominate an incumbent governor for a third term in situations where there is a consensus among Committee members that the individual has made an extraordinary contribution during his terms on the Board and the Committee determines that the interest of the Exchange will best be served by permitting such person to stand for reelection. Similarly, a group of members making the same finding would be able to nominate an incumbent governor to a third term by independent nomination (requiring the endorsement of at least twenty-five regular members).

However, at any one time, no more than four members of the Board can be serving a third term, and of the four, no more than two can be public governors and no more than two can be members, only one of which can be a member who spends a substantial part of his time on the Floor of the Exchange and one of which can be an upstairs member.

This modest change to the existing two-term limitation should provide the Nominating Committee and the membership with added flexibility to assure that the Exchange is served by the best people available.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(3) in particular in that it assures a fair representation of its members in the selection of its directors and administration of its affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.[2]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–27 and should be submitted by January 13, 1993.

[2] The proposed rule change was approved by the Exchange's Board on June 11, 1992 and the Exchange's regular members on July 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31162 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31610; File No. SR–Amex–92–34]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Procedures for Handling and Executing Market-on-Close Orders

December 16, 1992.

I. Introduction

On September 11, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19B–4 thereunder,[2] a proposed rule change to: (1) extend, until December 15, 1992, the pilot program amending Rule 109[3] to provide that the procedures currently used to execute market-on-close ("MOC") orders[4] in certain stocks on expiration Fridays[5] be made applicable to all MOC orders in all Amex-listed stocks on every trading day; and (2) obtain permanent approval for the pilot program prior to its expiration on December 15, 1992. The Exchange also has submitted a report to the Commission evaluating the effects of the MOC procedures during the pilot program.

[1] 25 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] This pilot program was approved by the Commission for a one-year period beginning on June 14, 1991 and expiring on June 14, 1992. See Securities Exchange Act Release No. 29312 (June 14, 1991), 56 FR 28583 (June 21, 1991) (File No. SR-Amex-90-32) ("1991 Approval Order"). The Commission approved a three-month extension to the pilot program, expiring September 15, 1992, on June 15, 1992. See Securities Exchange Act Release No. 30812 (June 15, 1992), 57 FR 27991 (June 23, 1992) (File No. SR-Amex-92-19) ("June 1992 Approval Order").

[4] A MOC order is a market order that is to be executed on the stock's closing transaction.

[5] Expiration Friday is the one trading day each month when stock index futures, stock index options and options on stock index futures expire or settle concurrently.

The proposed rule change was noticed in Securities Exchange Act Release No. 31182 (September 15, 1992), 57 FR 43990 (September 23, 1992). At the same time, the Commission granted accelerated partial approval to that part of the proposal which requested an extension of the pilot program until December 15, 1992.[6] No comments were received on the proposal.

II. Description of the Proposal

In June, 1991, the Commission approved, on a one-year pilot basis, an Exchange proposal to amend Amex Rule 109 to provide that the procedures used to execute MOC orders on every trading day be the same as those procedures currently used to execute MOC orders on expiration Fridays in stocks that are components of a stock index on which an option and/or stock contract is traded (*e.g.*, the Standard and Poor's 500 Composite Stock Price Index).[7]

The procedures, in place since June 1991, require that all buy and sell MOC orders be paired-off against each other, and if there is an imbalance, that the imbalance would be executed against the closing bid if it is on the sell side and against the closing offer if it is on the buy side. The paired-off orders are executed at the same price as the imbalance. If there is no imbalance, the paired-off orders are executed at the price of the last sale on the Exchange prior to the close of trading in that stock. Thus, this procedure assures that all MOC orders in a particular stock will be executed at the same price. In addition, those orders that are paired-off in implementing the procedure are reported as "stopped stock." so that customers with unexecuted limit orders on the specialist's book will know that the MOC transaction was executed outside the regular auction market, and that for this reason their orders may have not participated.[8]

In its original proposal, the Exchange noted that the procedures developed for use on expiration Fridays were implemented because many trading strategies involving stock indices require the unwinding of positions in the component stocks at the closing price on expiration Friday, since this is the price upon which index options and some future contracts base their settlement.[9] The Exchange, however, became aware that a number of trading techniques and strategies used by institutional investors have been developed which call for a single closing price on a daily basis, not just expiration Fridays. The Exchange, therefore, proposed to implement a one year pilot program to amend Amex Rule 109 to extend the expiration Friday procedures for MOC orders to all Amex listed stocks on every trading day.

In its 1991 Approval Order, the Commission asked the Exchange to develop criteria to evaluate the effects of the MOC procedures. In particular, the Commission requested that the Amex focus on any changes in stock market volatility or order flow during the last hour of trading (*i.e.*, between 3:00 and 4:00 p.m.). The Commission also requested that the Amex examine the use of MOC procedures for Amex stocks that are not included in indexes underlying standardized options and determine how MOC orders are being used for these stocks. The Commission believed that the report would help it determine whether the MOC pilot program should be extended beyond its expiration or, in the alternative, granted permanent approval.

The pilot program was temporarily extended from June 15, 1992 until September 15, 1992,[10] and again from September 15, 1992 to December 15 1992,[11] so that the Commission could receive and review reports from the Amex indicating the effects of the pilot on market volatility and order flow.

III. Discussion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change to approve permanently the pilot program procedures is consistent with Section 6 of the Act[12] and the rules and regulations applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the Commission first approved the use of the pilot program in June, 1991. During the course of the pilot, the Commission requested that the Amex report to the Commission the effects of the pilot program. As noted above, in its 1991 Approval Order, the Commission requested that the Amex review changes in stock volatility or order flow during the last hour of trading, examine the use of MOC procedures for Amex stocks not included in indices underlying standardized options and determine how MOC orders are being used for these stocks. Most recently, in the September 1992 Approval order, the Commission requested that the Amex continue to monitor the closing MOC procedures and report to the Commission any increased volatility or order flow during the last hour of trading. The Commission also requested that the Amex supply the following information concerning the operation of the pilot program: 1) whether there have been any complaints regarding the operation of the pilot; 2) whether the Amex has taken any disciplinary or performance action against any member due to the operation of the pilot; 3) the extent to which the pilot has been used on the Amex; and 4) the impact of the pilot on volatility and order flow. The Commission also requested that the report examine the use of MOC procedures in Amex stocks other than on expiration Fridays, in addition to analyzing the use of MOC procedures on expiration Fridays in stocks that are not components of an index.

In response, the Amex submitted three reports to the Commission on June 10, 1992, September 11, 1992, and November 10, 1992, which detail the Amex's experience with the pilot procedures for the execution of MOC orders.[13] The June and September reports provided analyses of MOC transactions on expiration Fridays. The June and September reports indicate that, during the periods studied (June 1991 through March 1992, and July through August, 1992, respectively), the MOC procedures for expiration Fridays did not, in the Amex's view, result in an

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[6] See Securities Exchange Act Release No. 31182 (September 15, 1992), 57 FR 43990 (File No. SR-Amex-92-34) ("September 1992 Approval Order").

[7] See *supra* note 3.

[8] Prior to the implementation of the pilot program, the procedures for handling MOC orders on a daily basis (other than on expiration Fridays) required that, when the closing spread is no wider than the minimum fractional change in which the stock grades, MOC orders to buy be executed against the offer, and MOC orders to sell be executed against the bid. The former procedures, therefore, assured that one type of order would not receive the final closing price. See 1991 Approval Order, *supra* note 3.

[9] See 1991 Approval Order, *supra* note 3.

[10] See *supra* note 3.

[11] See *supra* note 6.

[12] 15 U.S.C. 78f (1988).

[13] See letter from Claire P. McGrath, American Stock Exchange, to Mary Revell, Esq., Branch Chief, Exchange Regulation, Securities and Exchange Commission, dated June 10, 1992 ("June report"). See also letter from Claire P. McGrath, American Stock Exchange, to Diana Luka-Hopson, Esq., Branch Chief, Exchange Regulation, Securities and Exchange Commission, dated September 11, 1992 ("September report"). See also letter from Claudia Crowley, American Stock Exchange, to Diana Luka-Hopson, Esq., Branch Chief, Exchange Regulation, dated November 6, 1992 ("November report").

increase in volatility and only on three occasions was there an increase in order flow during the final hour of trading on the Exchange. An analysis of the trading in those stocks which experienced an increase in order flow did not, Amex believes, reveal an effort to manipulate the closing price.

The Amex's November 1992 report discusses MOC orders entered on non-expiration Fridays from July 1992 through October 1992. According to the Exchange, 3,975 MOC orders were entered on the Amex during that period.[14] The report concentrates on those instances which involved seven MOC orders or more per stock.

The Amex report states that, during the four months studied, there were 28 instances of seven MOC orders or more per stock on non-expiration Fridays, of which three involved stocks that were not components of a stock index in which an option or a future is traded. These instances occurred on nine days during the study period. The report details the last hour of trading in each of these 28 instances in terms of price range, whether there was any increase in volatility or order flow in the security during that hour, and whether there was satisfactory continuity and depth in the subject security during that period. Of the 28 instances where there were 7 or more MOC orders in the security, the Exchange reported 21 instances where securities showed no increase in volatility or order flow during the last hour of trading, 11 of which traded within ⅛ point or less, 5 traded within ¼ point, 4 traded within ⅜ point, and one traded with no variation in price. The Amex reported that the remaining 7 instances involved large buyers or sellers or sell programs entering the market during the last hour of trading. In the 7 instances of large buyers or sellers or sell programs, the Amex reported that the market in each subject security exhibited satisfactory continuity and depth, and the widest trading range during the last hour of trading was ⅝ point. The Amex report contains no indication that the pilot program has had any negative effect on volatility, continuity, or liquidity in the marketplace. Finally, the report states that the Exchange did not receive any complaints about the operation of the pilot, and that the Exchange did not take or initiate any disciplinary action against any member resulting from the operation of the pilot.

[14] The Amex reports that all MOC executions (executions involving seven or more MOC orders per stock) which occurred on expirations Fridays were in component stocks of an index underlying an option or a future.

The Amex proposal is substantially similar to a New York Stock Exchange ("NYSE") proposal which was originally approved by the Commission as a pilot program [15] and subsequently approved by the Commission on a permanent basis.[16] The Commission is aware that the use of composite-asset trading techniques and strategies has increased substantially over the past several years, prompting a growing need to establish greater price certainty at the close. The Amex proposal is yet another attempt to respond to the demand of customer and member firms to engage in index-related trades.

The Commission believes that, because the Amex pilot procedures were used successfully over the past eighteen months, and because of the anticipated benefits of the procedures, it is appropriate to approve the MOC pilot program procedures on a permanent basis. In addition, the Amex has reported that it has found no instances of abuse with regard to the operation of the pilot program, and the Commission is confident that the Amex will continue to surveil the closing procedures to ensure against potential manipulations of the close through the use of MOC transactions. The surveillance procedures should also help to deter as well as detect any possible abuses.

Although the Amex reported limited participation in the pilot program, particularly in stocks that are not components of an index upon which an option and/or future contract is traded, the Commission believes that the Amex procedures may facilitate investor participation at the Amex closing price while accurately reflecting the balance of supply and demand at the close by printing one closing price in which both buy and sell MOC orders participate. As a result, the MOC procedures should provide customers with additional flexibility in order execution without posing the potential for abuse, thereby facilitating transactions in securities consistent with Section 6(b)(5) of the Act.[17] Moreover, the Commission believes that the proposal should provide some certainty to member firms without any discernible negative effect on the quality of the Exchange's market, as evidenced by the data contained in the Amex's report.

[15] *See* Securities Exchange Act Release Nos. 28167 (June 29, 1990), 55 FR 28117 (July 9, 1990) (File No. SR-NYSE-89-10); 29293 (July 1, 1991), 56 FR 30954 (July 8, 1992) (File No. SR-NYSE-91-22) and 29761 (September 30, 1991), 56 FR 50743 (October 8, 1991) (File No. SR-NYSE-91-34).

[16] *See* Securities Exchange Act Release No. 30004 (November 27, 1991), 56 FR 63533 (December 4, 1991) (File No. SR-NYSE-91-35) where the Commission approved amendments to NYSE Rules 13, 116.40 and 123A.43 on a permanent basis and extended the NYSE's pilot program permitting the entry and execution of matched MOC orders. The Amex proposal is similar to the NYSE proposal with regard to making the procedures used for the execution of MOC orders on expiration Fridays applicable to every trading day in every stock.

[17] 15 U.S.C. 78f(b)(5) (1988).

IV. Conclusion

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-31052 Filed 12-22-92; 8:45 am]

BILLING CODE 8010-01-M

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-31618; File No. SR-CBOE-92-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on the CBOE Environmental Index

December 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on September 18, 1992, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE requests approval to list and trade index options on the CBOE Environmental Index (the "Environmental Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] The proposal was amended on September 28, 1992, to clarify that options on the Environmental Index will be A.M. settled options subject to the provisions of Exchange Rule 24.9(e).

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. the self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

General

Pursuant to Exchange Rule 24.2, the CBOE proposes to list and trade cash-settled, European-style stock index options on an industry index, the CBOE Environmental Index.

The Environmental Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the environmental industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed environmental industry funds, as well as a means of hedging the risks of investing in the environmental industry.

Index Description

Design. The CBOE Environmental Index is based on fifteen environmental industry stocks. Eleven of those stocks currently trade on the New York Stock Exchange; one currently trades on the American Stock Exchange; and three currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is price-weighted, and will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $89 million to $17.7 billion as of September 16, 1992. The median capitalization as of that date was $663 million. The largest stock accounted for 13.7% of the total weighting of the Index, while the smallest accounted for 2.1%. Fourteen of the fifteen component stocks (accounting for 96.2% of the Index) presently have options listed on them.

Calculation. The Index will be calculated continuously by the CBOE or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the CBOE BioTech Index and the Dow Jones Industrial Average, the Environmental Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date. The Index is calculated by adding the prices of the components stocks and then dividing the sum by a divisor that is equal to the number of stocks in the Index.

Maintenance. The Index will be maintained by the CBOE. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

The CBOE may change the composition of the Index at any time or from time to time to reflect conditions in the environmental industry. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), every effort will be made to add a stock that is representative of the environmental industry. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility and name recognition of the proposed replacement stock.

Index Options Trading. The Exchange proposes to base trading in options on the Environmental Index on the full value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the Environmental Index.

Exercise and settlement. The Exchange proposes that CBOE Environmental Index options will have a European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in chapter XXIV, including Rule 24.9. The proposed options will expire on the Saturday following the third Friday of the expiration month. Since A.M.-settled index options are settled based on an index value derived from opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

Exchange Rules Applicable to Industry Index Options. Except as modified by this rule filing, the rules in chapter XXIV of the CBOE rules will be applicable to Environmental Index options.

The CBOE also is proposing to amend Exchange Rule 24.1 to make clear that a "market index," a term which includes the Standard and Poor's ("S&P") 500, S&P 100, the FT-SE (U.K.) 100, and the FT-SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in chapter XXIV, including Rule 24.4 which relates to position limits for broad-based index options. The proposed amendment to Exchange Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or group of related industries. An industry index contract such as the Environmental Index options will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[2] A European-style option only can be exercised during a specified period before the option expires.

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[Release No. 34-31617; File No. SR-CBOE-92-30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on the CBOE Computer Software Index

December 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on September 18, 1992, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE requests approval to list and trade index options on the CBOE Computer Software Index (the "Computer Software Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

General

Pursuant to Exchange Rule 24.2, the CBOE proposes to list and trade cash-settled, European-style stock index options on an industry index, the CBOE Computer Software Index.

The Computer Software Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the computer software industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed computer software industry funds, as well as means of hedging the risks of investing in the computer software industry.

Index Description

Design. The CBOE Computer Software Index is based on fifteen computer software industry stocks. One of those stocks currently trades on the New York Stock Exchange; fourteen currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is price-weighted, and will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $122 million to $41 billion as of September 16, 1992. The median capitalization as of that date was $754 million. The largest stock accounted for 18% of the total weighting of the Index, while the smallest accounted for 2.2%. Fourteen of the fifteen component stocks (accounting for 93.9% of the Index) presently have options listed.

Calculation. The Index will be calculated continuously by the CBOE or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the CBOE BioTech Index and the Dow Jones Industrial Average, the Computer Software Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date. The Index is calculated by adding the prices of the component stocks and then dividing the sum by a divisor that is equal to the number of stocks in the Index.

Maintenance. The Index will be maintained by the CBOE. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Change which may result in the divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

The CBOE may change the composition of the Index at any time or from time to time to reflect conditions in the computer software industry. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), every effort will be made to add a stock that is representative of the computer software industry. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility and name recognition of the proposed replacement stock.

Index Options Trading. The Exchange proposes to base trading in options on the Computer Software Index on the full

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[3] 17 CFR 200.30-3(a)(12) (1992).

value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10) of the value the Computer Software Index.

Exercise and settlement. The Exchange proposes that CBOE computer Software Index options will have a European-style exercise [1] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV, including Rule 24.9.[2] The proposed options will expire on the Saturday following the third Friday of the expiration month. Since A.M.-settled index options are settled based on an index value derived from opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

Exchange Rules Applicable to Stock Index Options. Except as modified by this rule filing, the rules in chapter XXIV will be applicable to Computer Software Index options.

The CBOE also is proposing to amend Exchange Rule 24.1 to make clear that a "market index," a term which includes the Standard and Poor's ("S&P") 500, S&P 100, the FT–SE (U.K.) 100, and the FT–SE Eurotrack 200, also is a "broad-based index" within the meaning of the rules in chapter XXIV, including Rule 24.4 which relates to position limits for broad-based index options. The proposed amendment to Exchange Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or group of related industries. An industry index contract such as the Computer Software Index options will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of rule 24.4A. Ten reduced-value options will equal one full-value contract for such purposes.

Basis. The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31161 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31601; File No. SR–NSCC–92–09]

December 16, 1992.

Self-Regulatory Organization; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Index Receipts

On July 13, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], a proposed rule change (File No. SR–NSCC–92–08) to enable NSCC to clear and settle index receipt products such as the Portfolio Depository Receipts ("PDRs") of the American Stock Exchange, Inc. ("AMEX"). Notice of the proposal was published in the **Federal Register** on October 21, 1992.[2] No comments were received. As discussed below, the Commission is approving NSCC's proposal.

I. Description

The proposed rule change will allow NSCC to provide clearance and settlement services to facilitate the creation and redemption of index receipt products such as the AMEX's proposed PDRs.[3] After an NSCC member places an order for the creation of an index receipt, the NSCC member will be required to deliver to the trustee [4] the shares comprising the index receipt and a cash amount as described below in exchange for a specified number of index receipts.[5] Upon redemption of an index receipt, the NSCC member will be entitled to delivery of the underlying shares. NSCC's service will provide members with the ability to utilize existing

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[1] A European-style option only can be exercised during a specified period before the option expires.

[2] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived form opening prices on the last day of trading prior to expiration.

[3] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31318 (October 14, 1992), 57 FR 48055.

[3] For a detailed description of AMEX's proposal to list and trade PDRs, refer to Securities Exchange Act Release Nos. 31039 (August 13, 1992), 57 FR 37851 (notice of filing of proposed rule change) and 31591 (December 11, 1992) (order approving proposed rule change) [File No. SR–AMEX–92–18].

[4] The trustee will also be a member of NSCC.

[5] The placement of orders by NSCC members with the underwriter/distributor for the trust and the creation of index receipt by the trustee both take place independently of NSCC's operations.

Continuous-Net-Settlement ("CNS") and Balance Order Systems (1) to deliver the underlying shares to the trustee and to receive index receipts upon creation and (2) to deliver the index receipts and receive the shares upon redemption. Processing of these transactions will occur within the normal five (5) day settlement timeframe.

Each day by such time as required by NSCC, the trustee will provide NSCC with data listing the underlying shares and the associated numbers of index receipts which will be created or redeemed on the next business day (referenced as "T"). The trustee also will provide data concerning an estimated cash amount. This estimated cash amount will be calculated by the trustee and will include an accrued dividend amount and a balancing amount.[6] The trustee may also be required or permitted to provide other financial data.

On T by such time as established by NSCC, the trustee, on behalf of each member placing an index receipt order, will report to NSCC the number of index receipts created and redeemed. The trustee also will report the final cash amount and a transaction amount which represents the trustee's transaction fee.

On the next business day ("T+1"), NSCC will report the details of creation/redemption instructions to each member on the Index Receipt Detail Report. Using the data supplied on the previous day, NSCC will report the net amount of the underlying securities that will be required to be delivered or received on settlement day. The report also will indicate the net number of index receipts to be received or delivered on settlement day.[7] The report will further indicate the final cash amount and the transaction fee which will be debited and credited on settlement day.

Settlement of the index receipt and depository eligible component shares will be processed in the CNS System. Settlement of non-depository eligible securities will be processed in the Balance Order System. NSCC will guarantee settlement of the shares to the same extent it guarantees the settlement of other CNS and non-CNS eligible securities. NSCC also will guarantee payment of the cash amount but not the transactions fee.

[6] The balancing amount is designed to compensate for any difference between the net asset value of the index receipt and the value of the underlying index. Among other reasons, a difference in value could result from the fact that an index receipt can not contain fractional shares of a security.

[7] The AMEX's PDRs require the exchange of multiple index receipts for component shares which always will be in multiples of whole shares. Thus, no delivery of fractional shares will occur.

II. Discussion

As described, the proposed rule change is consistent with the purposes of the Act and in particular with Section 17A(b)(3)(F) of the Act.[8] That section requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible, and to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The proposal allows a new product, index receipts such as the AMEX's PDRs, to be cleared and settled within the national clearance and settlement system. As proposed, the index receipt trustee will be long the underlying shares and short the index receipts in NSCC's systems. In turn, the NSCC member will be short the underlying shares and long the index receipts. The use of NSCC's systems permits the centralization and automation of the described index receipt process through NSCC, a clearing agency registered under section 17A of the Act. Otherwise, that process would require independent deliveries of shares and index receipts and payments among trustees and other NSCC members outside the national clearance and settlement system. The Commission believes that processing index receipt transactions through NSCC, therefore, should promote the prompt and accurate clearance and settlement of these securities transactions and should help perfect the mechanism of a national clearance and settlement system.

In addition, industry participants will receive the benefits, such as added certainty to the index receipt market, of NSCC's guarantee of their transactions. Because the guarantee associated with index receipts is no different than the guarantee associated with other securities transactions, the guarantee should impose no new or additional risks to NSCC.[9] NSCC's guarantee, accordingly, should help perfect the national clearance and settlement system while providing for the safeguarding of funds and securities at NSCC.

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] Basically, the various components of index receipt transactions are no different than those of other securities transactions. For example, a broker-dealer placing an order for the creation of an index receipt has an obligation to deliver to NSCC the underlying shares (similar to if it had sold the shares) and the trustee has an obligation to deliver to NSCC the index receipt. The index receipt transaction will be included in both the purchasing broker-dealer's and the trustee's clearing fund requirements. For purposes of the clearing fund, the underlying shares will be valued at their closing price on the day of creation, and the index receipt will be valued using the aggregate value of the underlying shares.

III. Conclusion

On the basis of the foregoing, the Commission finds that NSCC's proposed rule change (File No. SR–NSCC–92–08) is consistent with the Act and in particular with Section 17A(b)(3)(F) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–92–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31051 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31615; File No. SR–NYSE–92–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Information Memo on Odd-Lot Trading Practices

December 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On November 20, 1992, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change concerns the Exchange's odd-lot limit order

[1] See letter Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Diana Luka-Hobson, Branch Chief, Commission, dated November 18, 1992. Amendment No. 1 clarified the Exchange's proposal to provide an example of a pattern of activity that could suggest day trading of odd-lot limit orders.

handling procedures. The Exchange is addressing several potential abuses of the procedures through the issuance of an Information Memo to all Members and Member Organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 1991, the Exchange implemented changes to its odd-lot order handling procedures. One change established the use of "Best Pricing Quote" for pricing odd-lot market orders. This assures that an odd-lot market order sent to the Exchange for execution will be priced on the basis of the best prevailing national market system quotation for that security.[2] The second change eliminated all differentials on odd-lot limit orders entered by member organizations through the Exchange's system for odd-lot.[3]

Both these changes were designed to enhance the efficiency of odd-lot order executions for investors and member organizations by providing more economic pricing for these orders. The Exchange recognized, however, that the efficiencies sought to be obtained by these actions would only be achieved if the odd-lot system was utilized in a manner consistent with traditional odd-lot investing, and did not become a vehicle for trading practices inconsistent with such traditional investing.

The Exchange has carefully monitored the use of the odd-lot system since February, 1991 and has identified several practices which it believes are not consistent with traditional odd-lot investing practices and whose use constitutes an abuse of the Exchange's odd-lot system. These practices included unbundling of round-lots into odd-lots, failure to aggregate odd-lot orders into round lots and entry of both buy and sell odd-lot limit orders for purposes of capturing the spread in the stock.

The Exchange announced its position regarding these practices in Information Memo No. 91–29 which was issued to the Exchange's membership on July 25, 1991. Since that time, the Exchange has identified other practices which the Exchange believes are not consistent with traditional odd-lot investment activity. These practices, all involving the use of odd-lot limit orders, include index arbitrage, other types of program trading (the terms "index arbitrage" and "program trading" are defined in Exchange Rule 80A) or any pattern of activity that would suggest day trading, which, for example, could include entering multiple odd-lot limit orders to buy and sell the same security on the same day.

The Exchange intends to advise its members and member organizations, through an Information Memo, that these types of trading practices may not be effectuated by means of the odd-lot limit order service, except as to program trades where the odd-lot limit orders are in the aggregate a relatively small part of the overall program. It should be noted that the use of odd-lot market orders for effecting index arbitrage or program trading strategies is not prohibited.

The limitations on use of the odd-lot limit order system are intended to address specific types of trading activity, and are not intended to limit access to, or use of, the system by individual market participants or any class of market participants for any authorized use of the system.

Member organizations will be expected to establish appropriate systems to monitor odd-lot activity to ensure that the practices noted in the Information Memo are not engaged in. The Information Memo makes clear that the Exchange intends to initiate appropriate regulatory action if it finds that member organizations have permitted such trading practices, either for proprietary accounts or for the accounts of customers.

2. Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5) which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that its odd-lot limit order service and pricing policies offer a benefit to the investing public by providing cost-effective execution of odd-lot orders, and that practices which threaten to undercut the economic viability of this system are inconsistent with the statutory objective of "perfecting the mechanism of a free and open market" for odd-lot investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[2] See Securities Exchange Release No. 27981 (May 2, 1992), 55 FR 19407 (May 9, 1990) (File No. SR–NYSE–90–06).

[3] See Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 4660 (February 5, 1991) (File No. SR–NYSE–91–03).

provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–13 and should be submitted by January 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31158 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31595; File No. SR–OCC–92–30]

Self-Regulatory Organization; The Options Clearing Corporation; Order Approving on an Accelerated Basis a Proposed Rule Change Relating to the Conversion of the Options Clearing Corporation's Current Batch Escrow Receipt Depository System to an On-Line System

December 11, 1992.

On September 22, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–92–30) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to convert OCC's current batch Escrow Receipt Depository ("ERD") system to an on-line system and to allow index option escrow receipts to be processed through the on-line ERD system.[2] Notice of the proposal was published in the **Federal Register** on November 27, 1992.[3] On December 11, 1992, OCC amended the proposal.[4] No comment letters were received. As discussed below, this order approves the proposal on an accelerated basis.

I. Description

Under the proposal, OCC will convert the current batch ERD system to an on-line system and will allow index option escrow receipts to be processed through the on-line ERD system. OCC also is conforming its Rules to its actual practices with respect to the timing of the release of escrow deposits and is making clarifying and conforming changes in OCC Rules 610, 613(a)(7) (formerly Rule 613(g)), and implementing Rule 613(b)(7), all relating to daily money settlement for short positions covered by escrow deposits.

A. Conversion of ERD to an On-Line System

The current ERD system is a three-party (Clearing Member, ERD Bank, and OCC), multi-line entry and inventory escrow receipt system[5] which operates as follows. An ERD Bank that desires to make escrow deposits with OCC for the accounts of its customers or to "roll over"[6] existing escrow deposits to cover new short positions would do so by submitting to OCC a multi-line escrow receipt from covering an entire day's escrow deposit activity. The ERD Bank may specify on the form the amount of premium payable to the customer's Clearing Member for settlement through OCC.[7] Similarly, a Clearing Member that desires to withdraw an escrow deposit (*e.g.*, because the short position that it covered has been closed out) would complete and submit to OCC a multi-entry escrow receipt form covering a full day's withdrawal activity and specifying, as to each withdrawal instruction, any premiums receivable from the ERD Bank that holds the escrow deposit. At the end of that business day, OCC inputs all of the escrow instructions that it has received into ERD processing system via multiple batch procedures.

On the following business day, OCC delivers to each participating ERD Bank and to each Clearing Member a Pending Escrow Report summarizing the escrow deposits, roll overs, and withdrawal instructions affecting the ERD Bank or Clearing Member from the previous business day. The parties receiving the Pending Escrow Report may "pend" or reject any instruction appearing on the Report. Pended instructions appear on the next day's Pending Escrow Report. Rejected instructions are deleted from the system.

On the following morning, an instruction that was neither "pended" nor rejected is automatically entered into OCC's cash settlement system. At that time, the settlement accounts of the Clearing Member and the participating ERD Bank are charged or credited with the net premiums payable or receivable in connection with escrow deposit activity. Therefore, from the time when a deposit instruction is submitted to OCC until the settlement of premium, the current ERD system requires three days for processing.

OCC is converting the current batch ERD system to an on-line system through the use of its INTRACS Asset Custody Depository function.[8] The

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[1] 15 U.S.C. 78(b)(1) (1988).

[2] Escrow receipts are physical receipts that represent escrow deposits made by a Clearing Member's customer with an OCC approved custodian bank. On the instruction of the customer, an escrow receipt is issued by the custodian bank to the customer's broker-dealer in lieu of the physical assets on deposit to satisfy the customer's margin requirement as a writer of a call option. If the broker-dealer is a Clearing Member of OCC, it may forward the Escrow Receipt of OCC to satisfy its OCC margin obligations. If the broker-dealer is not a Clearing Member of OCC, it must submit the receipt to OCC through a correspondent Clearing Member. The escrow receipt assures the Clearing Member, the correspondent brokers and OCC that the securities held in escrow by the bank will not be released to the customer without prior written approval from OCC.

[3] Securities Exchange Act Release No. 31467 (November 27, 1992), 57 FR 56392.

[4] Letter from James C. Yong, Vice President and Deputy General Counsel, OCC to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (December 11, 1992).

[5] For a detailed discussion of the various legal, regulatory and operational issues of the current batch ERD system, refer to Securities Exchange Act Release No. 18644 (June 25, 1982), 47 FR 29046 [File No. SR–OCC–82–6] (ordering approving implementation of the ERD program on a full-scale basis).

[6] "Roll over" is the term used to describe the situation when a writer of a call option contract closes out the short position by purchasing a call option contract of the same strike price and expiration date then immediately writes another call option contract on the same security or index with a later expiration date and uses the escrow deposit that covered the closed position to meet the margin requirement on the new short position.

[7] An additional feature of the ERD system is that it provides a premium pass through system to help assure timely premium payment via the OCC settlement network. Below is an example to illustrate the movement of premium through ERD system. It should be noted that currently the main users of escrow receipts are pension funds.

Pension Fund P wishes to write a call option on XYZ stock. P instructs its Broker B, who is a clearing member of OCC, to write one call option contract on XYZ stock. B shorts one call of XYZ at $4.00. B is in a short position because of the sale and therefore owes margin to OCC to cover the short position. B satisfies this margin obligation by posting a letter of credit. Settlement occurs by OCC paying B $400.00 as the premium for the sale of the option contract. P now has a margin obligation with B for the short position. P instructs its Depository Bank D, which is an approved ERD Bank, to pledge 100 shares of XYZ to OCC on behalf of B. After OCC has received the pledge through the ERD system, the call is covered and a hedged position is established. The effect is that B's margin requirement is significantly reduced. The letter of credit that B pledged earlier is now considered margin excess. B may leave the letter of credit on deposit or withdraw it. OCC will debit $400.00 (an amount equal to the premium for the sale of the call option but not the actual premium, which was credited to B earlier) from the account of B and credit P's account at D.

[8] The INTRACS Asset Custody Depository function is OCC's computer system designed to maintain records of Clearing Members' forms of margin deposits and the valuation and location of those deposits. The Asset Custody Depository function is concerned mainly with non-cash assets. Conference call between James C. Yong, Vice President and Deputy General Counsel, OCC, Jacqueline R. Luthringshausen, Attorney, OCC, Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission, and Peter R. Geraghty,

Continued

conversion of the current ERD system to an on-line system will improve ERD processing in several ways. First, the proposed on-line system will shorten the time frame between customer pledge and settlement of premium. The proposed system will allow ERD Banks and Clearing Members to submit deposit, roll over, and withdrawal instructions directly into OCC's database via computer terminal. The system will generate on-line transaction and inquiry reports that will list all of the instructions that have been entered into the system. Those reports will be updated on a real-time basis throughout the business day. ERD Banks and Clearing Members will be able to review those on-line reports to determine whether a particular instruction has been approved by the ERD Bank or Clearing Member to which it was addressed.

Under the proposal, All escrow instructions (with the exception of withdrawals without premium and deposits without premium, which are effected without the need for approval) must be approved or rejected by the ERD Bank or Clearing Member to which they are addressed on the same day on which they were entered at or before such time as OCC shall prescribe. Instructions that are not approved by such time as OCC shall prescribe on that same business day will be deleted by OCC from the ERD system. Such instructions will have to be reentered the following business day. Unlike the current batch ERD system, the on-line system will not permit instructions to be "pended" across business days.

The result of these changes is that the proposed on-line system will allow real-time approvals and denials of escrow activity with next day premium settlement. The processing time for an escrow deposit receipt will therefore be reduced from three business days to two business days.

In addition, converting ERD to an on-line system will allow OCC, its ERD Banks, and Clearing Members to continue to move toward a paperless environment. Paper escrow receipts and ERD multi-line escrow receipt forms currently submitted to OCC for entries and corrections could eventually be eliminated as ERD Banks and Clearing Members begin submitting on-line escrow instructions. Furthermore, ERD Banks and Clearing Members will be given access to on-line reports that will be continually updated throughout the business day to provide a real-time inventory record. To facilitate audit trail print capability, ERD Banks and Clearing Members will be able to print hard copies of an escrow audit trail report.[9] Accordingly, the number of paper reports which OCC must produce and distribute on a daily basis will be substantially reduced.

OCC has stated that the conversion of the batch ERD system to an on-line system will not compromise OCC's ability to safeguard the securities and funds subject to its control. OCC's current Rules with respect to ERD expiration processing and the release of escrow deposits will remain intact.[10] In addition, each participating ERD Bank and Clearing Member will be given a user ID by OCC's Security Administration. Access to transactions and inquiry reports will be restricted to those authorized users. OCC will have "global" inquiry access to the reports of all ERD Banks and Clearing Members while ERD Banks and Clearing Members will have inquiry access only to their own inventory items. Furthermore, the proposed system has an on-line editing capability which will check for certain input errors such as an invalid Clearing Member number or option series. ERD Banks and Clearing Members can correct other input errors by reporting such errors to OCC. OCC will then cancel the erroneous transactions from the ERD processing system and input the correct data. Finally, approved transactions are not given effect until the system performs a successful margin excess/deficit check to ensure that a Clearing Member is not in, and that the transaction does not place a Clearing Member in, a margin deficit position.

OCC anticipates that the on-line ERD system will eventually eliminate the current batch ERD system. However, during the transition period, both systems will be in operation. Accordingly, OCC's rule change allows for the use of both the current batch systems and the proposed on-line system. The rules governing the batch ERD system have been renumbered to accommodate the addition of the on-line system. In addition, the names of forms referred to in the batch system rules have been changed to lower case letters in order to make such forms more generic. Furthermore, OCC has deleted certain obsolete language respecting escrow deposits for options on Treasury bills, certificates of deposit, and GNMAs which are not currently traded. Obsolete language respecting supplemental escrow deposit agreements, which were intended to govern escrow deposits consisting of Treasury bills, certificates of deposit, and GNMAs, has also been deleted. As discussed below, the language respecting the timing of the release of an escrow deposit in paragraph (a)(7) of Rule 613 (as renumbered) has been revised. Finally, a provision has been added to the batch system rules to prohibit the roll over of an escrow deposit after expiration of the option covered by the deposit. The provision was added in order to make what was previously an implicit practice explicit in OCC's Rules.

Any bank wishing to become an on-line ERD bank will be required to enter into the On-Line Escrow Deposit Agreement with OCC. In general, the provisions of the Agreement are parallel to the provisions in proposed Rule 613(b), which sets forth the procedures governing participation in the on-line ERD system.

B. Processing of Index Option Escrow Deposits Through the On-Line ERD Systems

The proposed rule change also allows index option escrow deposits to be processed through the on-line ERD system. When OCC's batch ERD system was originally developed and implemented by OCC in 1981, index options were not yet in existence. Accordingly, OCC's Rules do not permit the processing of index option escrow deposits through the ERD system. After index options came into existence, demand for the ability to process index option escrow deposits through the ERD system was initially low. As a result, Rule 1801(d)[11] was never modified. In the past year and a half, however, that demand has increased substantially. Accordingly, OCC is now revising Rule 1801(d) to allow for the processing of index option escrow deposits through the proposed on-line ERD system in accordance with the provisions of revised Rule 613(b). Certain provisions of Rule 613(b) accordingly reflect the fact that index option exercises have a shorter settlement period than equity option exercises.

C. Revision of Rules Relating to Releases of Escrow Deposits

OCC's rules currently permit escrow deposits to be established to cover short call stock option positions either through use of a stock option escrow receipt or through OCC's current batch ERD system. In the case of a deposit made via a stock option escrow receipt,

Attorney, Division of Market Regulation, Commission (November 19, 1992).

[9] The escrow audit trail report is an on-line report which summarizes the daily escrow transactions of an ERD Bank or Clearing Member from a printer attached to their own computer terminals.

[10] Procedures for OCC's escrow receipt depository program are set forth in Rule 613.

[11] Rule 1801 sets forth the procedure for index option escrow receipt deposits.

Rule 610(k) currently provides that the deposit may be withdrawn after settlement of an exercise that is assigned to the covered short position (*i.e.*, on the fifth day after exercise). Similarly, in the case of a deposit made via the batch ERD system, Rule 613(g)(3) currently provides that OCC will release the escrow deposit on the morning of the settlement date for an exercise that is assigned to the covered short position.[12]

Prior to the approval of File No. SR–OCC–82–6, Rule 610 provided that on the business day following the assignment of an exercise to a converted stock option short position (*i.e.*, on the second day following the exercise), ICC would collect margin on the account in which the position was carried without regard to the escrow deposit and after it had collected the margin would permit the escrow deposit to be withdrawn. (This margin requirement is often referred to as "pop-up" margin requirement because it is required only from the second day of the five day exercise settlement period to the end of the exercise settlement period.) At the time that File No. SR–OCC–82–6 was filed, OCC believed that revising Rule 610 and implementing Rule 613 so that each Rule permitted OCC to maintain escrow deposits in effect throughout the five day exercise settlement period was appropriate because OCC's exercise settlement system had begun to utilize (and still utilizes) the continuous net settlement systems of correspondent clearing corporations. As a result, Clearing Members no longer need actual access to the underlying securities on the exercise settlement date in order to make settlement, escrow deposits could be maintained in effect throughout the entire exercise settlement period, and the "pop-up" margin requirement could be eliminated.

In the course of developing the on-line ERD System and preparing new rules describing that system, it has come to OCC's attention that notwithstanding the approval of File No. SR–OCC–82–6 in 1982, changes to OCC's system to reflect the revised escrow release rules were never implemented, and OCC's practices since 1982 in releasing stock option escrow deposits and collecting margin have, therefore, not reflected the revised rules. After reviewing the changes in release procedures described in File No. SR–OCC–82–6, OCC has concluded, first, that both its current release procedures and the release procedures described in File No. SR–OCC–82–6 are consistent with maintaining a sound and secure settlement system and, second, that the costs of implementing the changes proposed in File No. SR–OCC–82–6, for now at least, outweigh the benefits to Clearing Members of avoiding the three day "pop-up" margin requirement.[13] OCC proposed in this rule filing to make changes to Rule 610 and Rule 613(a)(7) (formerly Rule 613(g)) and to implement rule 613(b)(7) so that these Rules would be consistent with OCC's current practices in releasing stock option escrow deposits.[14] By letter dated December 11, 1992, OCC withdrew this portion of the proposed rule change.[15]

D. Rule 503: Related Changes

Related changes are being made to Rule 503 to conform to the changes in Rule 613. Specifically, the names of forms are being changed to lower case letters to make such forms more generic. In addition, a cross reference to Rule 613 is being modified to reflect the renumbering of the subsections of Rule 613. Finally, language is being added to Rule 503 in order to clarify certain rights and obligations set forth in that Rule.

II. Discussion

Section 17A(a)(1)(C)[16] of the Act sets forth Congress' findings that new data processing and communication techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. Section 17A(b)(3)(F)[17] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the on-line ERD system proposed in this rule filing is consistent with these provisions of section 17A and that, in general, it will enhance the safe and efficient operation of the national system for the clearance and settlement of securities transactions.

The Commission believes the on-line ERD system will reduce many of the risks and time delays inherent in a system utilizing paper forms. The system will provide Clearing Members and ERD Banks with the ability for real-time approvals and denials of escrow instructions and with on-line transaction and inquiry reports that will be updated on a real-time basis.[18] The system also has an on-line editing capacity which checks for certain input errors and gives Clearing Members the opportunity to correct these errors immediately. The on-line system, therefore, will provide Clearing Members with the capability to constantly monitor their escrow positions and to correct the input of escrow information. As a result, the on-line system decreases the time necessary for processing escrow deposit receipts from three business days to two business days and, thereby, facilitates the prompt and accurate clearance and settlement of securities transactions as required under the Act.

The system also will perform a margin excess/deficit check. If a Clearing Member is in a margin deficit position or if the approved transaction will place the Clearing Member in a margin deficit position, the transaction will not be given effect. The ability to perform real-time margin level checks will further strengthen the settlement system by limiting the exposure of OCC, Clearing Members, and ERD Banks by helping to ensure that each transaction is covered by sufficient margin.

Precautions have also been taken to safeguard the securities and funds under OCC's control by restricting access to transaction and inquiry reports to authorized users only. OCC will have inquiry access to reports of all Clearing Members and ERD Banks whereas Clearing Members and ERD Banks will have access only to their own inventory items through the use of a user ID supplied by OCC's Security Administration. The Commission believes these security features will enable OCC to safeguard the securities and funds which are in its custody or control or for which it is responsible consistent with OCC's obligations under the Act.

Because the revisions regarding the release of escrow deposits and the

[12] File No. SR–OCC–82–6 amended Rule 610(k) to its present form and added Rule 613(g)(3) to OCC Rules. Securities Exchange Act Release No. 18844, *supra* note 4.

[13] This cost-benefit analysis may change if the on-line ERD system causes an increase in Clearing Member usage of escrow deposits. To its current knowledge, however, OCC has not received any Clearing Member complaint relating to the three day "pop-up" margin requirement in the last ten years.

[14] Since index options have a one day exercise settlement period (two days in the case of capped options subject to automatic exercise), the changes in timing of release of deposits described in the text above are not relevant for index option escrow deposits.

[15] Letter from James C. Yong to Jerry W. Carpenter, *supra* note 4.

[16] 15 U.S.C. 78q–1 (a)(1)(C).

[17] 15 U.S.C. 78q–1 (b)(3)(F).

[18] Currently with the batch ERD system, the Pending Escrow Report is available the morning after the day the escrow instruction is submitted. The Depository Activity Report and the Escrow Settlement Report are available two days after the day the escrow instruction is submitted. The on-line system will allow ERD Banks and Clearing Members to receive these reports on a real-time basis. Hard copies of these reports will be available through the use of printers attached to the Clearing Members' and ERD Banks' owner computer terminals.

collection of "pop-up" margin that were proposed when the original ERD system initially was approved [19] were never implemented, OCC has continued to collect "pop-up" margin. As previously discussed, OCC has proposed in this filing revisions to conform its rules to its current practice. The currently proposed changes reflect that OCC desires to continue to collect "pop-up" margin and release escrow deposits on the second day following the exercise of the option contract. By letter dated December 12, 1992, OCC, at the Commission's request, asked that consideration of the portion of the proposed rule change that concerns "pop-up" margin be delayed. Therefore, this order does not grant approval to OCC's proposal to amend its rules to reflect it practice of collecting "pop-up" margin.[20]

OCC has requested and the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. The on-line ERD system will be fully operational by December 4, 1992 and OCC has several ERD Banks and Clearing Members ready to use the on-line system. By granting accelerated approval, OCC will be able to implement the on-line system soon thereafter, and OCC, ERD Banks, and Clearing Members will be able to reap the benefits, as described above, that the on-line system provides. Moreover, the Commission does not believe that it will receive any significant adverse comments on the proposed rule change in view of the fact that OCC is converting its current batch ERD system to an on-line system and is neither creating a new system nor mandating use of the on-line system.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act. The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (File No. SR–OCC–92–30) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31053 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31614; File No. SR–OCC–92–37]

Self-Regulatory Organization; The Options Clearing Corp.; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

December 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 12, 1992, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis through June 30, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the Commission's previous temporary approval of OCC's modifications to its rules setting forth the standards for letters of credit deposited with OCC as a form of margin.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In August 1991, February 1992, April 1992, and July 1992, OCC filed with the Commission rule changes which proposed to modify the standards for letters of credit deposited with OCC as a form of margin. The Commission granted approval of each of those filings on an accelerated and temporary basis.[2] This filing again proposes to make permanent the Commission's temporary approval of OCC's modifications to its Rule 604 which sets forth the standards for letters of credit deposited with OCC as a form of margin. Like the previous filings, this filing proposes several modifications to that rule. First, in order to conform to the Uniform Commercial Code and to avoid any ambiguity as to the latest time for honoring demands upon letters of credit, letters of credit must state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, letters of credit must be irrevocable. Third, the letters of credit must expire on a quarterly basis. Fourth, OCC included language in its rules to make explicit its authority to draw upon letters of credit at any time, whether or not the Clearing Member that deposited the letter of credit has been suspended or is in default, if OCC determines that such draws are advisable to protect OCC, other Clearing Members, or the general public.[3]

In the interim since its original letter of credit filing, OCC has received no adverse comments or complaints from any of its Clearing Members, Banks, or other interested parties with respect to the modifications to Rule 604 or to the implementation of the revised letter of credit standards. Accordingly, OCC now requests that the Commission grant permanent approval of those revisions.

OCC believes the proposed rule change is consistent with the requirements of section 17A of Act, as

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[19] Securities Exchange Act Release No. 18844, *supra* note 5.

[20] OCC will submit a new proposed rule change under Rule 19b–4 relating to the release of escrow receipts and the collection of "pop-up" margin.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release Nos. 29641 (August 30, 1991), 56 FR 46027 (File No. SR–OCC–91–13) (order temporarily approving proposed rule change through February 28, 1992); 30424 (February 28, 1992), 57 FR 8160 (File No. SR–OCC–92–06) (order temporarily approving proposed rule change through May 31, 1992); 30763 (June 1, 1992), 67 FR 24284 (File No. SR–OCC–92–11) (order temporarily approving proposed rule change through August 31, 1992); and 31126 (September 1, 1992) 57 FR 40925 (File No. SR–OCC–92–19) (order temporarily approving proposed rule change through December 31, 1992).

[3] For a detailed discussion of the modifications to OCC's rules governing letters of credit deposited as margin, refer to Securities Exchange Act Release No. 29641, *supra* note 2.

[4] 15 U.S.C. 78q–1.

amended.[4] Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and one were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal is consistent with section 17A of the Act and specifically with section 17A(b)(3)(F) of the Act.[5] That section requires that the rule of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible. The revised standards should make letters of credit deposited as a form of margin more liquid instruments and, consequently, should permit OCC to more safely rely upon such letters of credit. Because the revised standards will induce letter of credit issuers to reexamine Clearing Member's financial conditions every three months rather than annually as under the prior standards, the financial conditions of Clearing Members electing to deposit letters of credit as margin may be assessed more frequently thereby facilitating the discovery of any adverse developments in a more timely manner. In addition, since the letters of credit will be irrevocable, issuers of letters of credit will no longer be able to revoke letters of credit at times when the Clearing Members most need credit facilities (e.g., when a Clearing Member is experiencing financial difficulties or during times of market volatility). By approving the proposed rule change on a temporary basis through June 30, 1993, OCC, the Commission, and other interested parties will be able to assess further, prior to permanent Commission approval, any effects these revised standards have on letter of credit issuance and on margin deposited at OCC.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because the Commission believes it is desirable that the proposed rule change be approved before the expiration of the Commission's previous order granting temporary approval of these modifications to the letter of credit standards. By approving this proposed rule filing before expiration of the prior temporary approval order, the changes that have been implemented pursuant to the temporary approval order may remain in place pending permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–92–37 and should be submitted by January 13, 1993.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, Under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–92–37) be, and hereby is, approved temporarily through June 30, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] 17 CFR 200.30–3(a)(12) (1991).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92–31159 Filed 12–22–92; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1746]

Secretary of State's Advisory Committee on Private International Law; Meeting of Study Group on Intercountry Adoption

The third meeting of the Study Group on Intercountry Adoption of the Secretary of State's Advisory Committee on Private International Law will take place on Friday, January 8, 1993 from 9:30 a.m. to approximately 4:30 p.m. in room 1912 of the Department of State in Washington, DC.

The purpose of the meeting is to review the preliminary draft convention on international co-operation and protection of children in respect of intercountry adoption prepared in the course of three two-week meetings of a 57-nation special commission of the Hague Conference on Private International Law. The meeting is to provide private sector guidance for the preparation of written U.S. comments on the draft convention to be transmitted to the Hague Conference for dissemination to other nations participating in these negotiations in advance of the 17th session of the Hague Conference (intergovernmental diplomatic conference) that will take place on May 10–29, 1993 at The Hague, Netherlands. The preliminary draft convention will form the basic working document for the 17th session at the conclusion of which the convention's final text will be adopted and the convention will be opened for signature and ratification by States.

The Study Group will also discuss various issues likely to be addressed in U.S. Federal implementing legislation needed to ensure the full and uniform implementation of the intercountry adoption convention throughout the United States should it receive the necessary support for Senate advice and consent to U.S. ratification.

Copies of the preliminary draft convention and a paper discussing issues to be addressed in implementing legislation may be requested from the Office of the Assistant Legal Adviser for Private International Law by contacting Miss Gonzales by fax at (202) 653–9854 or by writing to the Office of the Legal Adviser (L/PIL), 2100 K Street, NW., suite 501, Washington, DC 20037–7180.

Members of the general public may attend up to the capacity of the meeting

room and participate subject to the direction of the Chair. The meeting will be held in Conference Room 1912 at the State Department; participants are to use only the main ("diplomatic") entrance to the Department at 22nd and C Streets, NW. As access to the building is controlled, Miss Gonzales in the office indicated above (telephone: (202) 653–9853) must be notified not later than Tuesday, January 5 by phone, fax or letter of the name affiliation, address, phone number, date of birth and social security number of persons wishing to attend. Persons interested in this project but unable to attend the meeting are welcome to request documents and to submit comments or proposals to the address indicated above.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 92–31045 Filed 12–22–92; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 92–33]

Reports, Forms, and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: December 18, 1992.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for initial, approval, or for renewal under the Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on December 18, 1992:

DOT No: 3702.
OMB No: 2106–0009.
Administration: Research and Special Programs Administration.
Title: Part 221—Electronic Filing of Property and Passenger Tariffs.
Need for Information: Tariffs containing international air fares/cargo rates are required by Section 403 of the Federal Aviation Act of 1958, as amended, and are required in the public interest to establish the prices of air transportation to air carrier passengers and shippers of air cargo.
Proposed Use of Information: The information will be used to establish the prices of air transportation to air carrier passengers and shipper of air cargo.
Frequency: As needed.
Burden Estimate: 1,695,373 hours.
Respondents: Air carriers and foreign air carriers.
Form(s): None.
Average Burden Hours Per Response: 5 minutes.

DOT No: 3703.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Airport Grants Program.
Need for Information: The information required by this program is necessary to protect the Federal interest in safety, efficiency, and utility of the airport. Data is collected to meet reporting requirements of 49 CFR Part 18 for financial management and performance monitoring.
Proposed Use of Information: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Programs. Data is used to determine eligibility, ensure proper use of Federal funds and ensure project accomplishments.
Frequency: On occasion and Quarterly.
Burden Estimate: 66,947 hours.
Respondents: Airport sponsors and planning agencies.
Form(s): FAA Forms 5100–30, 5100–100, 5100–108, and 5370–1.
Average Burden Hours Per Response: FAA 5100–30, 36 hours; FAA 5100–100, 36 hours; FAA 5100–108, 30 minutes; FAA 5370–1, 3 hours.

DOT No.: 3704.
OMB No: 2115–0520.
Administration: U.S. Coast Guard.
Title: Plan Approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons Carrying Oil in Bulk.
Need for Information: This information collection is needed by the Coast Guard to ensure that the minimum standards as promulgated by the regulations for the design, construction and equipment of tank vessels of 20,000 to 40,000 deadweight tons are met.
Proposed Use of Information: Coast Guard will use this information collection to review plans, calculations, specifications and manuals submitted by vessel owners and to certify these vessels if they comply with the minimum standards. Operating personnel will also use this information for the safe and proper operation of the vessel and equipment.
Frequency: On occasion.
Burden Estimate: 43 hours.
Respondents: U.S. and foreign tank vessel owners, operators and builders.
Form(s): None.
Average Burden Hours Per Response: 17 minutes for reporting; 26 minutes for recordkeeping.

DOT No: 3705
OMB No: 2115–0581
Administration: U.S. Coast Guard
Title: Plan Review for Facilities with Vapor Control Systems
Need for Information: This information collection is needed to provide safety standards for marine vapor control systems. Submission of plans and technical information will be reviewed by a Coast Guard accepted certifying entity to ensure that the safety standards are being met. This requirement also establishes

procedures for a person or organization to submit their application for a certifying entity to the Coast Guard
Proposed Use of Information: This information collection will be used by the Coast Guard's Captain of the Port personnel as evidence that vapor control system plans and technical information have been certified by an accepted certifying entity. Coast Guard will also use this information to approve or disapprove applications from persons or organizations who wish to become a certifying entity
Frequency: On occasion
Burden Estimate: 3,466 hours
Respondents: Owners/operators of vapor control systems facilities
Form(s): None
Average Burden Hours Per Response: 34 hours for reporting; 6 minutes for recordkeeping
DOT No: 3706
OMB No: 2120–0042
Administration: Federal Aviation Administration
Title: Aircraft Registration
Need for Information: The information collected is needed by the FAA to register aircraft or hold an aircraft in trust
Proposed Use of Information: The information is used by the FAA Aircraft Registry to maintain a registration system for aircraft identification and a centralized public record of aircraft ownership
Frequency: On occasion
Burden Estimate: 70,684 hours
Respondents: Any person or organization wishing to register an aircraft
Form(s): AC 8050–1, AC 8050–2, AC 8050–4, AC 8050–81, AC 8050–117, AC 8050–98, AC 8050–130, AC 8050–131, AC 8050–132
Average Burden Hours Per Response: AC 8050–1, 30 minutes; AC 8050–2, 30 minutes; AC 8050–4, 30 minutes, AC 8050–81, 30 minutes; AC 8050–98, 30 minutes; AC 8050–117, 1 hour and 30 minutes; AC 8050–130, 30 minutes; AC 8050–131, 45 minutes; AC 8050–132, 45 minutes
DOT No: 3707
OMB No: 2120–0024
Administration: Federal Aviation Administration
Title: Dealer's Aircraft Registration Certificate Application
Need for Information: The information is used by the Aircraft Registry to determine eligibility of applicant to receive Dealer's Certificate, to issue certificates, and to correct name and address of applicants
Proposed Use of Information: An application for dealer's certificate is filled out by any individual or company engaged in manufacturing, distributing or selling aircraft who wants to fly those aircraft with a dealer's certificate instead of registering them permanently in his name. The application is reviewed in the FAA Aircraft Registry by a conveyance examiner to insure that it is completely and properly filled out. If it is correct, the Registry issues the number of dealer's certificates requested and mails them to the dealer
Frequency: On occasion
Burden Estimate: 1,920 hours
Respondents: Aircraft Dealers
Form(s): AC 8050–5 and AC 8050–132
Average Burden Hours Per Response: AC 8050–5, 30 minutes; AC 8050–132, 45 minutes
DOT No: 3708
OMB No: New
Administration: Federal Aviation Administration
Title: Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities
Need for Information: The information is needed to respond to regulations promulgated in accordance with the Omnibus Transportation Employee Testing Act of 1991, enacted on October 28, 1991
Proposed Use of Information: The information submitted is intended to be the basis for monitoring industry implementation of and compliance with the FAA Alcohol Misuse Prevention Program. The information will also be used to evaluate the effectiveness of the program
Frequency: Annually
Burden Estimate: 23,862 hours
Respondents: Specified aviation employers
Form(s): FAA Industry Drug and Alcohol Program Annual Report Form
Average Burden Hours Per Response: 2 hours for reporting; 2 hours for recordkeeping
DOT No: 3709
OMB No: 2120–0535
Administration: Federal Aviation Administration
Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities
Need for Information: The information is needed to respond to a DOT NPRM which proposes that employers in all segments of the transportation industry maintain and submit standardized anti-drug program information
Proposed Use of Information: The information submitted is intended to be the basis for monitoring industry implementation of and compliance with the FAA anti-drug rule, and for evaluating the effectiveness of the FAA antidrug program
Frequency: Annually
Burden Estimate: 32,742 hours
Respondents: Specified aviation employers
Form(s): FAA Industry Drug and Alcohol Program Annual Report Form
Average Burden Hours Per Response: 2 hours and 30 minutes for reporting; 3 hours for recordkeeping
DOT No: 3710
OMB No: New
Administration: U.S. Coast Guard
Title: Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Collection of Drug and Alcohol Testing Information
Need for Information: This information collection is needed by the Coast Guard to analyze, evaluate and monitor the effectiveness of its anti-drug testing program. Information gathered from this collection will give the Coast Guard a more comprehensive assessment of the critical program areas, including the deterrent effect of testing, employee drug abuse patterns, effectiveness of employer's rehabilitation policies and programs, and multi-drug abuse patterns
Proposed Use of Information: This information will be used by the Coast Guard to identify significant trends of drug abuse in the marine industry, and it will form the basis for program modification and improvement
Frequency: Annually
Burden Estimate: 7,262 hours
Respondents: Marine employers
Form(s): USCG Drug Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 16 minutes for reporting; 15 minutes for recordkeeping
DOT No: 3711
OMB No: New
Administration: Federal Transit Administration
Title: Prevention of Alcohol Misuse in Transit Operations
Need for Information: The information is needed to properly monitor the effectiveness of the program and to ensure compliance with the rule
Proposed Use of Information: The information will be used to build a database to determine any necessary modifications or the continuing need for the rule
Frequency: Annually
Burden Estimate: 79,401 hours
Respondents: State and local governments, business or other for-

profit, non-profit institutions, and small businesses or organizations
Form(s): FTA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 16 hours for reporting; 25 hours and 28 minutes for recordkeeping
DOT No: 3712
OMB No: New
Administration: Federal Transit Administration
Title: Prevention of Prohibited Drug Use in Transit Operations
Need for Information: The information is necessary to properly monitor the effectiveness of the program and to ensure compliance with the rule
Proposed Use of Information: The information will be used to build a database to help determine continuing need for the rule
Frequency: Annually
Burden Estimate: 66,974 hours
Respondents: State and local governments, businesses, or other for-profit, non-profit institutions, and small businesses or organizations
Form(s): FTA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 16 hours for reporting; 33 hours and 10 minutes for recordkeeping.
DOT No: 3713
OMB No: 2125–0543
Administration: Federal Highway Administration
Title: Controlled Substances
Need for Information: To monitor the effectiveness of FHWA's anti-drug program and to ensure that motor carriers are complying with the requirement to conduct pre-employment, post-accident, reasonable suspicion and random drug testing
Proposed Use of Information: To measure the magnitude of the drug problem affecting highway safety and to analyze FHWA's current approach to detecting and deterring illegal drug use within the motor carrier industry
Frequency. Annually, Recordkeeping (2 years)
Burden Estimate: 1,178,366 hours
Respondents: Motor carriers
Form(s): FHWA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 2 hours for reporting; 4 hours and 40 minutes for recordkeeping
DOT No: 3714
OMB No: New
Administration: Federal Highway Administration
Title: Controlled Substance and Alcohol Use and Testing
Need for Information: To monitor the effectiveness of FHWA's anti-alcohol program and to ensure that motor carriers are complying with the requirement to conduct pre-employment, post-accident, reasonable suspicion and random drug testing
Proposed Use of Information: To measure the magnitude of the alcohol problem affecting highway safety and to analyze FHWA's current approach to detecting and deterring illegal alcohol use within the motor carrier industry
Frequency: Annually, Recordkeeping (2 years)
Burden Estimates: 484,407 hours
Respondents: Motor carriers
Form(s): FHWA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 1 hour for reporting; 1 hour and 56 minutes for recordkeeping
DOT No: 3715
OMB No: 2137–0579
Administration: Research and Special Programs Administration
Title: MIS Standardized Data Collection and Reporting
Need for Information: The information collection will provide a mechanism for evaluating the overall effectiveness of the pipeline operators' drug and alcohol testing program
Proposed Use of Information: The information will be used to monitor implementation and address compliance and enforcement issues
Frequency: Annually
Burden Estimates: 21,772 hours
Respondents: Pipeline operators
Form(s): RSPA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 4 hours and 30 minutes for reporting; 4 hours and 30 minutes for recordkeeping
DOT No: 3716
OMB No: New
Administration: Research and Special Programs Administration
Title: Alcohol Misuse Prevention Program
Need for Information: The information collection will provide a mechanism for evaluating the overall effectiveness of the pipeline operators' alcohol misuse prevention program
Proposed Use of Information: The information will be used to monitor implementation and address compliance and enforcement issues
Frequency: Annually
Burden Estimates: 35,317 hours
Respondents: Pipeline operators
Form(s): RSPA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 4 hours and 30 minutes for reporting; 10 hours for recordkeeping
DOT No: 3717
OMB No: 2130–0526
Administration: Federal Railroad Administration
Title: Control of Alcohol and Drug Use in Railroad Operations
Need for Information: The information is needed to deter the use of alcohol or drug involvement in railroad operations
Proposed Use of Information: FRA and the railroad industry will use this information to determine the extent of alcohol and drug problems and to curtail the widespread use of alcohol and drugs
Frequency: Annually, On occasion, Recordkeeping
Burden Estimates: 184,316 hours
Respondents: Railroads
Form(s): FRA–F–6180.73, FRA–F–6180.74, FRA–F–6180–91
Average Burden Hours Per Response: 39 hours and 38 minutes for reporting; 684 hours and 25 minutes for recordkeeping.

Issued in Washington, DC, on December 18, 1992.

Cynthia C. Rand,

Director of Information, Resource Management.

[FR Doc. 92–31237 Filed 12–21–92; 12:09 pm]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Blair and Centre Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Blair and Centre Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:. Mr. John A. Gerner, District Engineer, Federal Highway Administration, 2228 Walnut Street, P.O. Box 1088, Harrisburg, Pennsylvania 17108–1088, Telephone: (717) 782–3411 or Joseph A. Walter, P.E., Liaison Engineer, Pennsylvania Department of Transportation, 1924–30 Daisy Street, Clearfield, Pennsylvania, 16039, Telephone: (814) 765–0440

SUPPLEMENTARY INFORMATION: The FWHA, in cooperation with the

Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement for a section of US Route 220, in Blair and Centre Counties, Pennsylvania. Also included in the study will be consideration of improvements to US Route 322 from the eastern terminus of the four lane section of Route 322 approximately 1.0 miles west of Port Matilda to the western terminus of the four lane Mount Nittany Expressway on US Route 322.

Located between Bald Eagle and State College, this 20 mile project will improve the safety and relieve traffic congestion on these sections of US Routes 220 and 322. The southern terminus and study area limits will be the northern end of the existing 4-lane limited access section of US Route 220 approximately 1.0 mile southwest of Bald Eagle. The Northern terminus and study area limits will be the western end of the existing 4-lane limited access section of US Route 322 (Mount Nittany Expressway) approximately 2.3 miles northwest of the Borough of State College.

It is anticipated that at least six alternatives will be evaluated during the course of the study. Based on existing and projected traffic volumes, the build alternatives will be evaluated to determine the need for a four lane facility to accommodate the traffic volumes. The alternates under consideration are: Upgrading the existing facility, transportation system management, two alternatives on new location south of existing US Route 220, one alternative north of existing US Route 220 and the "No Build" alternate. Four interchanges will be evaluated, one being at the southern terminus in the vicinity of Bald Eagle, one in the vicinity of Port Matilda near the eastern terminus of the four lane section of US Route 322, one in the vicinity of Martha Furnace near the existing interchange of US Route 220 and 322, and one being at the northern terminus in the vicinity of Waddle.

A Preliminary Alternative Analysis will evaluate all suggested alternatives against the need and environmental and engineering constraints. A Plan of Study for the Environmental Impact Statement will be prepared and circulated to State and Federal agencies for those alternatives recommended as feasible by the Preliminary Alternative Analysis.

The second phase of the study process will consist of analyzing the alternatives selected for detailed study. These alternatives will be the basis for the detailed environmental studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which best meets the needs of the traffic demand, and satisfies the environmental, socioeconomic, and engineering evaluations and public comments.

An active public participation program will be pursued during the project. At the beginning of the study, an advertisement will be placed in local newspapers and the Pennsylvania Bulletin informing the public and public agencies of the study and soliciting names of individuals, organizations and agencies interested in participating in the Study. A Citizens' Advisory Committee will meet regularly to provide liaison between the Commonwealth of Pennsylvania and local citizens, and participate in all aspects of the study. Public meetings will be held throughout the study to gather input to be used in the study and distribute information on the study. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

The U.S. Army Corps of Engineers and the Environmental Protection Agency will be invited to participate as cooperating agencies in development of the documents.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to PennDOT or the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program.)

George L. Hannon,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 92-31066 Filed 12-22-92; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 247
Wednesday, December 23, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Monday, January 11, 1993, at 11 a.m.

PLACE: 1825 Conn. Ave., NW., suite 918, Washington, DC 20009.

STATUS: Meeting closed pursuant to a vote taken December 16, 1992.

MATTERS TO BE CONSIDERED: Amendment of rules relating solely to the internal personnel rules and practices of the Tribunal.

CONTACT PERSON FOR MORE INFORMATION: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Conn. Ave., NW., suite 918, Washington, DC 20009, (202) 606–4400

Dated: December 17, 1992.

Cindy S. Daub,

Chairman.

COPYRIGHT ROYALTY TRIBUNAL

Certification of Closed Meeting

The General Counsel of the Copyright Royalty Tribunal hereby certifies, pursuant to 5 U.S.C. 552b(f)(1), and pursuant to section 301.14(b) of the Tribunal's rules, 37 CFR § 301.14(b), that the Tribunal's deliberations concerning the amendment of the Tribunal's rules regarding internal personnel matters scheduled to occur on January 11, 1993 (and from time to time thereafter up to 30 days as the Tribunal may, pursuant to 37 CFR § 301.14(a), find appropriate) may properly be closed to public observation.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

5 U.S.C. § 552b(c)(2) (internal personnel rules and practices of an agency)
37 CFR § 301.13(b) (internal personnel rules and practices of the Tribunal)

The recorded vote of each Commissioner taken December 16, 1992 on the question of a closed meeting is as follows:

Chairman Cindy Daub—Yes
Commissioner Edward Damich—Yes
Commissioner Bruce Goodman—Yes

It is anticipated that, in addition to the Commissioners of the Tribunal, the General Counsel will attend the Tribunal's deliberations.

Dated: December 17, 1992.

Linda R. Bocchi,

General Counsel.

[FR Doc. 92–31285 Filed 12–21–92; 2:28 pm]

BILLING CODE 1410–09–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on December 9, 1992 (57 FR 58283) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for December 10, 1992. This notice is to amend the agenda for the closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for December 10, 1992, is amended by revising the closed session to read as follows:

***Session Closed**

A. New Business

1. Enforcement Actions

2. Other

a. Request from Banks for Cooperatives to Temporarily Exceed the Legal Lending Limit to One Borrower.

*Session Closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Dated: December 17, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–31207 Filed 12–21–92; 9:25 am]

BILLING CODE 6705–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, January 4, 1993, and at 8:30 a.m. on Tuesday, January 5, 1993, in Washington, DC.

By telephone vote on December 15, 1992, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for January 4, which will involve consideration of possible actions to take in Docket 91–1073 before the United States Court of Appeals for the District of Columbia Circuit. The Board determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)].

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(10) of title 5, United States Code; and section 7.3(j) of title 39, Code of Federal Regulations.

The January 5 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

January 4—1:00 p.m. (Closed)

1. Consideration of Possible Actions in Docket 91–1073 before the United States Court of Appeals for the District of Columbia Circuit.

Tuesday Session

January 5—8:30 a.m. (Open)

1. Minutes of Previous Meetings, November 30–December 1 and December 15, 1992.
2. Remarks of the Postmaster General. (Marvin Runyon.)
3. Officers' Compensation. (Marvin Runyon.)
4. Annual Report on Sunshine Act Compliance. (David F. Harris, Secretary for the Board of Governors.)

5. Annual Report of the Postmaster General. (Deborah K. Bowker, Vice President, Communications.)

16. Annual Comprehensive Statement to Congress. (William T. Johnstone, Vice President, Government Relations.)

7. Election of Chairman and Vice Chairman.

8. Tentative Agenda for the February 1–2, 1993, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 92–31329 Filed 12–21–92; 3:49 pm]

BILLING CODE 7710–12–M

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federal register

Wednesday
December 23, 1992

Part II

Nuclear Regulatory Commission

48 CFR Chapter 20
Acquisition Regulation (NRCAR); Final Rule

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150–AC01

Acquisition Regulation (NRCAR)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Nuclear Regulatory Commission Acquisition Regulation (NRCAR) to establish requirements for the procurement of goods and services within the NRC to satisfy the particular needs of the agency. This rule expands the existing NRCAR to implement and supplement the government-wide Federal Acquisition Regulation (FAR). This rule applies to all contracts, including small purchases, where specified, awarded on or after the effective date, and to modifications awarded on or after the effective date which require a justification for other than full and open competition.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–4347.

SUPPLEMENTARY INFORMATION:

Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result was a system of procurement policies that varied from agency to agency, causing confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation known as the Federal Acquisition Regulation (FAR).

The FAR has been promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The FAR, which was issued by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration, superseded the Defense Acquisition Regulation (DAR), the Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR) on April 1, 1984. The FAR was published in the **Federal Register** on September 19, 1983 (48 FR 42102) with an effective date of April 1, 1984. The FAR is codified as chapter 1 of title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes agencies to issue regulations to implement FAR policies and procedures internally and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulations being published today represent the NRC's necessary implementation and supplementation of the FAR.

Debarment, Suspension and Ineligibility

A single provision of the NRCAR was published as a final rule July 1, 1992 (57 FR 29220). That provision only contained agency debarment, suspension and ineligibility procedures. This rule publishes the NRCAR in its entirety, including the debarment procedures.

Organizational Conflicts of Interest

The proposed rule, which was published for public comments on October 2, 1989 (54 FR 40420), contained organizational conflicts of interest (COI) provisions which prohibited contractors from doing work for others that fell within the broad-scope of the underlying contract.

On August 15, 1991, the Commission approved a revision to its proposed NRCAR modifying the Agency's COI policy. The thrust of this revision limited COI restrictions to the relatively narrow scope and shorter duration of individual task orders rather than to the entire scope and term of the basic contract. While the NRC believed that the revised policy would increase competition for NRC technical assistance and research work, additional restrictions were added to (a) avoid the potential for unfair competitive advantage that could result if NRC contractors were permitted to market their services while working for NRC at a licensee site, and (b) ensure that NRC contractors do not have divided financial interests while working at a licensee site.

Two of NRC's major technical assistance and research contractors commented that the COI provision, approved on August 15, 1991, was overly restrictive and would impede rather than enhance NRC's ability to increase competition in the technical assistance marketplace. Therefore, the NRC held a public meeting on March 26, 1992, in order that all interested parties could provide further comments on the proposed revision of the Commission's COI policy or provide alternatives that would achieve an equivalent level of COI protection (57 FR 4652; February 6, 1992).

The nature of the comments received in connection with the March 26, 1992, meeting varied with respect to how the commenters viewed the restrictiveness reflected in the proposed revision to the COI policy. While a number of commenters found the existing COI language adequate, others stated the policy was overly restrictive and lacking in flexibility.

The Commission has considered the comments concerning the substantial restrictions against performing any work at an NRC licensee site where the contractor performs on-site work for NRC, coupled with the lack of flexibility in applying this restriction, and agrees that exceptions to the blanket restriction may be permitted in appropriate cases. Thus, the Commission has modified the restriction to authorize the NRC contractor to perform work for NRC licensees at the site of work performed for NRC if:

(a) The work is not in the same technical area as the work performed for NRC; and

(b) The contracting officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

In making the determination, the contracting officer will consider factors such as: the relative value of the work for NRC; whether there has been an on-going contractual or financial relationship between the NRC contractor and the NFC licensee that predates the NRC contract; whether the NRC contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract; the relative amount of time spent at the site by the NRC contractor's personnel; whether the work for NRC at the site is specific or is a part of a generic task or contract; and any other factors that may indicate financial ties or competitive advantage.

requirement to disclose all other work proposed to be done by the contractor for others that may give rise to a COI situation. The specific objection related to the requirement that the NRC be informed of the work at least 15 days in advance of undertaking the work. Some companies complained that it is difficult for diversified firms to ensure that the division performing the work for NRC would be aware of the work by other divisions 15 days in advance in all cases. Giving due consideration to these comments, the Commission has modified the provision to require that the contractor use due diligence to identify and obtain information about work for others that would fall within the scope of the NRC contract, and report the information to NRC 15 days in advance of undertaking the work. The Commission has also added a corresponding provision which indicates that the contracting officer may approve reporting not in accordance with this provision in cases where the contractor justifies the deviation on the grounds of urgency or by showing that despite the exercise of due diligence, the contractor's officials responsible for the NRC contract were not aware of the work for others falling within this provision.

The above revision to the Commission's COI policy has published as a proposed rule August 18, 1992 (57 FR 37140). The final draft rule which was not changed from the proposed rule was approved by the Commission November 2, 1992. This final rule incorporates the November 2, 1992, COI language.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83–2 states that an agency must provide an opportunity for public comment before adopting procurement regulation if the regulation is "significant."

This regulation is issued principally to create one body of guidance incorporating previously cleared procedures, to exercise delegations established by the FAR and to adopt other procedures that will not have a cost or administrative impact on contractors. The NRC issued its acquisition regulation proposed rule for public comment on October 2, 1989 (54 FR 40420). The section on organizational conflicts of interest was issued for public comment on August 18, 1992 (57 FR 37140).

Public Comments

A proposed rule was published in the **Federal Register** on October 2, 1989 (54 FR 40420). Three organizations commented and all comments were considered in the development of this final rule. The comments and responses are summarized below, in the order of the NRCAR text with the exception of organizational conflicts of interest which is contained in a separate subsection.

One commenter suggested that NRCAR 2001.402, concerning policies for deviations from the FAR and the NRCAR, is instructional language that should be excluded from the NRCAR and issued through an NRC internal issuance. This policy, as much as any other internal concurrence or approval, affects the flow of the procurement process. Just as the FAR has a parallel Subpart 1.4, and numerous other specified internal concurrences and approvals, this section is an important part of the NRCAR. In addition, the place to specify the policies for deviating from any requirement is in the policy itself. This section remains in the NRCAR.

One commenter suggested that NRCAR 2001.602–3, Ratification of Unauthorized Commitments, is unnecessary. However, this provision specifies which officials within NRC may approve ratifications. It also specifies the information which must be provided to seek approval of a ratification. The contracting community can be profoundly affected by these policies. Therefore, this section remains in the NRCAR.

One commenter asked if NRCAR 2009.1, Responsible Prospective Contractors, provides special treatment to a firm predominantly staffed by former NRC employees, none of whom were employed by the NRC within the last two years. It does not. NRCAR 2009.1 is designed to prevent preferential treatment under the "revolving door" concept. To extend this restriction beyond two years is not practical in terms of recordkeeping and would be unduly restrictive for individuals whose firms have either survived or formed after a reasonable hiatus from government employment.

One commenter suggested that the NRCAR requirement found at § 2009.405–2(a) for a certification of debarment status is inconsistent with FAR clause 52.209.5. FAR clause 52.209–5 was added to the FAR in 1989. Therefore, the NRCAR clause is no longer necessary and has been removed from the final rule.

One commenter suggested that NRCAR 2009.570–3(c) contains instructional language that should be excluded from the NRCAR and promulgated through one of the NRC internal issuances. This section contains examples of conflicts for the information of potential contractors, as well as NRC staff and therefore, belongs in the survey. These examples are formatted to be similar to those in FAR 9.508, Examples, but the examples are specific to the NRC. The guidance provided after each example is used to illustrate, for potential contractors, as well as NRC staff, the possible resolution of each situation. Therefore, this section remains in the NRCAR.

One commenter questioned why § 2014.201–670(b)(1) requires that past experience be described in all bids. This requirement has been edited to make it optional to fit circumstances. In some instances there is little or no procurement history available, the information requested concerning bidder qualifications and past experience enables the contacting officer to query the contacts identified and ascertain the offeror's performance record, integrity and business ethics.

One commenter suggested moving paragraphs (d) and (e) of NRCAR 2052.214–72, Bid Evaluations, to a new section NRCAR 2014.404–2. This information on materially unbalanced bids and separate charges remains in the provision because knowledge of this information can affect acceptance of the bid. These situations have occurred enough to merit including this information in the provision.

One commenter expressed concern that the requirement for all proposed work to be considered as stated in NRCAR 2019.705–2, Determining the Need for a Subcontracting Plan, is inconsistent with FAR 19.705–2. Both texts state that all proposed contract actions must be considered when determining whether a subcontracting plan will be required. NRCAR 2019.705–2 is therefore an unnecessary duplication and has been removed from the final rule.

One commenter suggested that NRCAR 2019.705–4, Reviewing the Subcontracting Plan, duplicates the FAR (19.7). However, the NRCAR text provides additionally that subcontracting plans may be requested from all concerns in the competitive range, and clarifies conditions for acceptance of master subcontracting plans. Because these provisions are not

in the FAR, the NRCAR text is necessary to provide consistent treatment of proposers.

One commenter suggested that NRCAR 2020.102 duplicates the FAR (20.3). However, the NRCAR text identifies the office that needs to be contacted for labor surplus area set-asides.

A commenter stated that the additional patent reporting requirements stated in NRCAR 2027.305–3 go beyond those required by the FAR. FAR 27.305–3(a) states that Agencies shall maintain appropriate procedures to protect the Government's interest and to check that subject inventories are identified and disclosed. The reporting described in the NRCAR simply requires the contractor to certify that no patent or similar activities took place under the contract. This response is necessary to document that the contractor has not generated work to which the Federal government might have technical or economic rights. This requirement remains in the NRCAR.

One commenter suggested that NRCAR 2035.71, Broad Agency Announcements, duplicates FAR 35.016, Broad Agency Announcement. The duplicate text has been removed from the final rule.

One commenter suggested that NRCAR 2042.803(b) be revised to state that audit cost issues will be resolved within 30 days when payment has not already been made to the contractor. The period in other situations would remain at six months. Contractors who have a need to receive payment due to a hardship currently can offer to help expedite the decision making process. Otherwise, six months is a reasonable period of time for receiving and reviewing audit reports, preparing positions and correspondence, and conducting negotiations. Because the process is dependent on a number of inputs, including the contractor's, the language has been clarified to indicate that "within six months" is a goal, not a deadline.

One commenter suggested that a standard for technical performance reports, OMB Circular A–110, Attachment H, Monitoring and Reporting Program Performance, be used, and took exception to monthly reporting requirements in NRCAR clause 2052.212–71, Technical Progress Report. The requirements of OMB Circular A–110 are applicable only to certain financial assistance awards; and are not appropriate for NRC contracts. However, the prescription for the NRCAR clause 2052.212–71 states that the contracting officer may alter the clause. This prescription has been strengthened to clarify that the frequency of reporting is set at whatever frequency is meaningful and productive for each contract, considering the size and complexity of the particular project or program.

One commenter suggested that a standard for financial assistance, OMB Circular A–110, Attachment G.3.a, Financial Status Report, should be used to set the frequency of submission for Financial Status Reports under NRC contracts. The prescription for NRCAR 2052.212–72, Financial Status Report, states that the contracting officer may alter the clause. This prescription has been strengthened to clarify that the frequency of reporting is set at whatever frequency is meaningful and productive for each contract.

Paragraph (a) of NRCAR provision 2052.214–72 is duplicative of FAR clause 52.214–4, False Statements, and has been removed from the final rule.

It was suggested by one commenter that NRCAR clause 2052.215–76 be modified to require that cost related information on proposed subcontracts be included in the cost proposal, rather than the technical and management proposal. This change has been made to the final rule.

The same commenter recommended that paragraph (e)(4) of NRCAR clause 2052.215–76 permit offerors to address the criteria enumerated under paragraphs (e)(4)(i) through (e)(4)(xix) in other than the manner and sequence outlined. This would lead to inconsistences and difficulties in evaluating proposals. The commenter suggested that the proposed change would provide offerors with flexibility to develop and structure their respective technical and management proposals in a format consistent with the stated evaluation criteria contained in an NRC solicitation. However, NRCAR 2015.407–70(b)(2) already states that the provision must be tailored to assure that all sections reflect the evaluation criteria. Therefore, no change has been made to the final rule.

One commenter suggested that the NRCAR clause 2052.215–76 should be expanded to include guidance for completion of the referenced Contractor Spending Plan. NRC's internal instructions provide only a suggested format which must, as the internal guidance states, be modified to meet each situation. The plan format developed for each specific proposed contract will appear in the Request for Proposal. While a Contractor Spending Plan is required for each applicable contract, the degree of flexibility permitted to the contracting officer is such that guidance for completion of each plan is not appropriate in this regulation. No change is made to the provision for this purpose.

Subpart 4.603, Solicitation Provision, which requires in provision § 52.204–4 that contractors provide Data Universal Numbering System (DUNS) information, was added to the FAR by Federal Acquisition Circular 84–50. Therefore, NRCAR clause § 2052.215–73, Data Universal Numbering System (DUNS), is no longer required and has been removed from the final rule.

A comment was made that section 24, Public Law 100–679, exempts universities from having to comply with the Federal Travel Regulations if they follow their own travel policies in accordance with OMB Circular A–21, Cost Principles for Educational Institutions. Therefore, the commenter stated, NRCAR clause 2052.215–79, (formerly § 2052.215–75) Travel Reimbursement, should be modified in accordance with part 31 of the FAR, and several OMB Circulars, including A–21 (cost principles applicable to universities). A second commenter suggested that the clause be amended to be consistent with FAR part 31.205–46. NRCAR clause 2052.215–79 has been modified to make these clarifications. With these changes and the deletion of the word "domestic" from the first sentence of paragraph (c), paragraph (d) is no longer necessary and has been removed from the final rule.

One commenter states that NRCAR clause 2052.215–80, Travel Approvals, is inconsistent with OMB Circular A–21, when it says that "all domestic travel requires the prior approval of the project officer." OMB Circular A–21, Paragraph J.43.f of A–21, which is applicable to both direct and indirect costs, states that "domestic travel cost are allowable when permitted by the sponsoring agreement." Paragraph C.2 of A–21, Factors Affecting Allowability of Costs, states that in order for costs to be allowable, "they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types or amounts of cost items." The NRC has reserved to project officers, whose role includes monitoring work and associated costs, the ability to determine that domestic travel costs are necessary and prudent expenditures under the contract. No change to this provision has been made in the final rule.

One commenter suggested that provision § 2052.216–74, Task Order Procedures, should specify the task order proposal due date which has been set by mutual agreement. Task ordering contracts are negotiated for needs that are not clearly defined and which will

need to be provided for quickly. The NRC contract administrator is responsible for setting a due date which reflects the agency's needs. If circumstances arise which prevent it from meeting the due date, the contractor should alert the contract administrator at the earliest opportunity. Therefore, no change is made to the provision of the final rule.

NRCAR clause 2052.235–70, Publication of Research Results, has been revised to clarify the requirements for the use of NRC Management Directives.

NRCAR clause 2052.245–71, Private Use of Contract Information and Data is deleted, since NRCAR clauses 2052.235–70 and 2052.235–71 provide adequate coverage.

Organizational Conflicts of Interest

Comments on the COI language contained in the proposed rule published on October 2, 1989 (54 FR 40420):

One commenter suggested that NRCAR 2009.570–5 and the additions to the general organizational conflicts of interest clause set forth under contract clauses §§ 2052.209–76 and 2059.209–77 conflicts restrictions should only be applied to work which is the same or similar to NRC work. The commenter stated that this would protect the NRC against situations which may (a) result in providing an offeror or contractor with an unfair competitive advantage, or (b) impair the offeror's or contractor's objectivity in performing work for the NRC. Paragraph (2) of § 2052.209–76, which would have required prior approval of the contracting officer to perform same or similar services; has been deleted and a new paragraph (§ 2052.209.73(c)(3)) has been added to the final rule. The paragraph prohibits the contractor from performing any of the following activities for a period of one year upon completion of work at a licensee or applicant site: (1) Soliciting work at that site; (2) performing work at that site; and (3) performing work in the same technical area for the licensee or applicant organization regardless of location. While the deletion may lead to some situations whereby NRC will not be able to issue some task orders to a contractor because of the contractor's other work for licensees started after the beginning of the NRC contract, the NRC believes that other alternatives exist to get the work accomplished. The new paragraph will minimize situations of unfair competitive advantage. Language has been added to NRCAR 2052.209–73(d)(3) to limit denial of approval under task order contracts to situations where NRC has issued to plans to issue a task order in the same technical area or at the site.

A commenter suggested that paragraph (d), Disclosure After Award, be deleted in its entirety from NRCAR clause 2052.209–74 (currently § 2052.209–73(d)(3)). The commenter states that NRCAR 2052.209–74(c) already requires contractors to make immediate and full disclosure. However, paragraph (d)(1) also requires the contractor to provide a negative response. Paragraph (d)(3) additionally requires that any disclosure must include a description of action taken to avoid or mitigate such conflicts. NRCAR 2052.209–77 (currently § 2052.209.73(d)) requires that additional text be added to paragraph (d)(3), to clarify the applicability to task orders. Therefore, paragraph (d) is not deleted.

One commenter proposed that NRCAR clause 2052.209–77 (currently § 2052.209.73(d)(3)), Contractor Organizational Conflicts of Interest-Language for Task Order Contracts, imposes a burdensome information reporting requirement. Paragraph (d)(3) provides that the contractor will disclose all proposed new work of any type involving NRC licensees or applicants. The commenter suggested a change in the wording to "the same as, or substantially similar to." The commenter states correctly that this disclosure is necessary regardless of whether the proposed activities represent a potential or actual conflict of interest with work being performed for the NRC. Additionally, circumstances other than the nature of a contractor's work, such as its financial ties to a licensee could constitute a conflict of interest. Consequently, the disclosure requirements in paragraph (d)(3) remain unchanged in order that the Contracting Officer be provided with all requisite information in reaching a determination on organizational conflicts of interests. Therefore, no change is made to paragraph (d)(3) of this clause.

One commenter suggested that the contracting officer should be permitted to alter any conflict of interest clause. The clauses currently provide for basic policies to be applied in all or designated cases. Waivers or contracting officer decisions would provide flexibility in policy application. Open-ended altering of the basic policies would cause inequities and unnecessary delays to the procurement process. Therefore, the language is not changed for this purpose.

Comments on the COI language on the August 18, 1992 proposed rule (57 FR 37140):

Only one comment was received. It endorsed the proposed rule changes. The commenter also provided certain comments on implementation of the rule change. The commenter indicated that implementation of the rule should permit an NRC contractor to discuss and reach agreement with the NRC contracting officer concerning the application of the proposed restrictions to certain types of work for others which the contractor may wish to solicit in advance of such solicitation. The rule proposed would permit such discussion provided that the contractor can provide the contracting officer with the information, outlined above, to enable the contracting officer to determine that the situation will not pose a potential for technical bias or unfair competitive advantage. The commenter also indicated that it expected that, in instances in which the contractor expresses an interest in pursuing totally unrelated activities, a determination permitting an exception to the work for others restrictions would be a timely and routine matter. Under the proposed rule, exceptions from the work for others restrictions is a matter of discretion of the contracting officer, provided that contracting officer is able to reach a determination, on the basis of the factors discussed above, that the proposed work for others will not pose a potential for technical bias or unfair competitive advantage. The fact that the proposed work is totally unrelated to work being done for NRC would be an important factor in such a determination, but the other factors outlined above would also need to be considered.

Other Revisions

Since the proposed rule was published (October 2, 1989; 54 FR 40420) other amendments to proposed NRCAR text have been made as a result of internal review, changes in the Federal Acquisition Regulation, and coordination with other agencies. The amended sections are:

Section 2015.604 which incorporates the Procurement Integrity Act.

Section 2015.610 which provides more specific guidance on the conduct of written and oral discussions.

Section 2015.611 which clarifies the Source Evaluation Panel's basic role as one of fact-finding and scoring.

Section 2009.405–2, in which paragraph (a) has been deleted to be consistent with FAR 9.404.

Section 2009.570–8 which exempts supply subcontractors and includes the

$10,000 threshold requiring offerors and contractors to have subcontractor and consultants submit a COI representation.

Section 2012.104–70 which gives the Contracting Officer more discretion in determining the reporting schedule.

Section 2014.201–670(b)(1) which makes the inclusion of this section optional to fit the circumstances.

Section 2052.214–72, in which paragraph (a) has been removed because it duplicated FAR 14.201–6(b)(4) and the clause cite has been changed to "FAR Subpart 1".

Section 2019.705–2 which has been removed because it duplicated FAR.

Section 2035.71 in which paragraphs (a) and (b) (4) and (2) have been removed because they duplicated FAR.

Section 2052.215–73, which has been removed because it duplicated FAR 4.603.

Section 2052.216–70, which segregates professional and clerical staff years.

Section 2052.235–71 which has been removed because it was inconsistent with Executive Order No. 12591.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c) (5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment is required for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0169.

The information collection requirements were submitted to OMB at the proposed rule stage. At that time, OMB denied approval. OMB believed that rather than promulgating an NRC regulation, NRC should forward those provisions appropriate for inclusion in the FAR to the FAR Councils for consideration in accordance with FAR 1.304(c). OMB further requested that publication of provisions relating to Conflict of Interest Policies Applicable to Consultants await implemtation in the FAR. It is the NRC's position that because we are required by law to have separate procurement regulations implementing the FAR and these provisions only apply to the special circumstances of the NRC, the provisions of the NRCAR are not appropriate for inclusion in the FAR for government wide usage. In addition, in accordance with Sec. 8, Public Law 95–601, adding Sec. 170A to Public Law 83–703, 68 Stat. 919, as amended (42 U.S.C. 2210a), NRC's organizational conflicts of interest provision takes precedence over the FAR 9.5, Organizational and Consultant Conflicts of Interest. However, where non-conflicting guidance appears in FAR 9.5, the NRC shall follow that guidance. With these considerations, NRC therefore requested OMB approval of the information collection requirements at the final rule stage and OMB subsequently approved these requirements.

The public reporting burden for this collection of information is estimated to average 10.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0169), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

This final rule establishes the procedures and requirements necessary to implement and supplement the FAR. The final rule presents the regulations necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the particular needs and requirements of the NRC. This final rule constitutes an administrative action governing the procurement activities of the NRC. These provisions would not have an adverse economic impact on any contractor or potential contractor because they merely supplement the requirements applicable to the acquisition of goods and services by the agency. By clearly and explicitly implementing the FAR and presenting those additional provisions necessary to reflect the needs of the NRC, the final rule would allow a contractor or potential contractor to understand more easily the regulations to be used in soliciting, evaluating and awarding contracts for the provision of goods and services. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule establishes the procedures and requirements necessary to implement and supplement the FAR which will govern the acquisition of goods and services by the NRC. To the extent that the final rule effects a small entity, it sets out provisions applicable to small business and to small, disadvantaged business concerns.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because it does not involve any provision which would impose backfits as defined in 10 CFR part 50.109(a)(1).

List of Subjects

48 CFR Parts 2001, 2002, 2003, 2004, and 2005

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2009

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2010, 2012, and 2013

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Parts 2014 and 2015

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2016 and 2017

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2019

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2020, 2022, 2024, and 2025

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2027

Government procurement, Nuclear Regulatory Commission Acquisition

Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2030, 2031, 2032, 2033, 2035, and 2039

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2042

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Part 2045

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2052

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 552 and 553, and FAR subpart 1.3, the NRC is revising chapter 20 to title 48 of the Code of Federal Regulations.

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

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PART 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

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2001.603 Selection, appointment, and termination of appointment.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C. 418(b)).

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

2001.102 Authority.

The NRCAR and the amendments to it are issued by the Director, Office of Administration, under a delegation from the Executive Director for Operations in accordance with the authority of the Atomic Energy Act of 1954, as amended (42. U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, FAR Subpart 1.3, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from nonappropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104–1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the **Federal Register**; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

2001.104–2 Arrangement of the regulations.

(a) *General.* Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering.* The numbering system and part, subpart and section titles used in this chapter 20 conform with those used in the FAR as follows:

(1) Where chapter 20 implements the FAR or supplements a parallel part, subpart, section, or paragraph of the

FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section, or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104–1 is shown as 2001.104–1 and the NRC's implementation of FAR 24.1 is shown as 2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954, as amended, requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR requires no further implementation.

(c) *Citation.* The NRCAR will be cited in accordance with Federal Register Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as 2001.104–2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104–2(c)." Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104–2." In the NRCAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1–104.

2001.104–3 Copies.

Copies of the NRCAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(b) The information collection requirements contained in this part appear in 2009.570–3(b)(1)&(2), 2009.570–3(c), 2009.570–3(c)(4)(ii), 2009.570–5(b), 2009.570–8, 2014.201–670, 2015.607, 2019.705–4(a), 2027.305–3(a), 2042.803(a)(b), 2052.204–70(b)(j)&(k), 2052.204–71, 2052.204–72, 2052.209–71, 2052.209–72, 2052.209–73(d)(2)&(3)&(f), 2052.210–70(b), 2052.210–71, 2052.212–70, 2052.212–71, 2052.212–72, 2052.213–73, 2052.214–71, 2052.214–72(e), 2052.214–74, 2052.214–75, 2052.215–70, 2052.215–71(f), 2052.215–76, 2052.215–77, 2052.216–74, 2052.235–70, 2052.235–71, and 2052.235–72.

Subpart 2001.3 Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be promulgated through internal NRC issuances such as Management Directives, or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitting to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request (including the result of that request);

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and Regional Offices. All of the above delegations are formal written

delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602–3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications must be approved by the Competition Advocate except that ratifications of procurement actions valued at $2,500 or less may be approved by the appropriate Regional Administrator or at a level above the appropriate Headquarters Contracting Officer. For any such action approved by the Regional Administrator, all other terms of Subpart 2001.6 are applicable, and a copy of all documentation must be submitted within two working days to the Competition Advocate.

(c) Request received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The Designating Official, responsible for the office request, shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A statement as to why the contracting office was not used including the name of the employee who made the commitment:

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work to be performed or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A statement of whether the contractor has commenced performance; and

(viii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review and forward the written statement of facts for a determination of approval to the Competition Advocate DCPM, with any comments or information which should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority are issued by memorandum which includes a clear statement of the delegated authority, including responsibilities and limitations in addition to the "Certificate of Appointment"; SF 1402.

PART 2002—DEFINITIONS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841, and 41 U.S.C. 418(b).

Subpart 2002.1—Definitions

2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or *Head of the Agency* means the NRC Executive Director for Operations, for the purposes specified in this regulation and the FAR. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Public Law 98–369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Day means calendar day unless otherwise specified. If the last day of the designated period of time is a Saturday, Sunday, or legal holiday under Federal law, the period includes the next business day.

Head of the Contracting Activity (HCA) means the Director, Division of Contracts and Property Management.

Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Director, Office of Administration, has been appointed the NRC Procurement Executive.

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1—Safeguards.

Sec.
2003.101 Standards of conduct.
2003.101–3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

Authority: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242, as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2003.1—Safeguards

2003.101 Standards of conduct.

2003.101–3 Agency regulations.

NRC standards of conduct for its employees are published in 10 CFR Part 0. The standards of conduct include requirements for financial disclosure (§ 0.735–28).

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector

General. A report must include all facts and circumstances related to the case. Refer to 10 CFR 0.735–42, Gifts, Entertainment and Favors, for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2004.4—Safeguarding Classified Information Within Industry

2004.404 Contract clauses.

The security clauses used in NRC contracts are found at 2052.204. They are:

(a) Security, 2052.204–70. This clause will be used in all contracts during the performance of which the contractor may have access to, or contact with classified information, including National Security information, restricted data, formerly restricted data, and other classified data.

(b) Site Access Badge Requirements, 2052.204–71. This clause will be used in all contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2005—PUBLICIZING CONTRACT ACTIONS

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2005.5—Paid Advertisements

2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, within each regional office for a regional procurement.

PART 2009—CONTRACTOR QUALIFICATIONS

Subpart 2009.1—Responsible Prospective Contractors

Sec.
2009.100 NRC policy.
2009.105—70 Contract provisions.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.
2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.
2009.405 Effect of listing.
2009.405–1 Continuation of current contracts.
2009.405–2 Restrictions on subcontracting.
2009.406 Debarment.
2009.406–3 Procedures.
2009.407 Suspension.
2009.407–3 Procedures.
2009.470 Appeals.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.
2009.570 NRC organizational conflicts of interest.
2009.570–1 Scope of policy.
2009.570–2 Definitions.
2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.
2009.570–4 Representation.
2009.570–5 Contract clauses.
2009.570–6 Evaluation, findings, and contract award.
2009.570–7 Conflicts identified after award.
2009.570–8 Subcontracts.
2009.570–9 Waiver.
2009.570–10 Remedies.

Authority: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242; as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2009.1—Responsible Prospective Contractors

2009.101 NRC policy.

(a) It is NRC policy that contracts will not normally be placed on a noncompetitive basis with an individual who was employed by the NRC within two years of the date of the request for procurement action. This policy also pertains to any firm in which a former NRC employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by former NRC employees and for granting consent of subcontracts. An exception to this policy will be made if it is determined by the agency Procurement Executive to be in the best interest of the Government to do so. This restriction also applies to former NRC employees acting as a principal under a task order type contract or as a principal under a contract awarded non-competitively under the Small Business Administration's 8(a) Program. This policy is also applied when reviewing subcontracts for the purpose of granting consent under NRC prime contracts.

(b) The term *NRC employee* includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

(1) The contract arises directly out of the individual's activity as a special employee;

(2) The individual is in a position to influence the award of the contract; or

(3) The Contracting Officer determines that another conflict of interest exists.

(c) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraph (a) of this section on a noncompetitive basis may be approved by the Procurement Executive after consulting with the Executive Director for Operations or his designee. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(d) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

2009.105–70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) Section 2052.209–70, Qualifications of Contract Employees.

(b) Section 2052.209–71, Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in 2009.4:

Debarring official means the Procurement Executive.

Initiating official means the contracting officer, the Head of the Contracting Activity (HCA), the Procurement Executive, or the Inspector General.

Suspending official means the Procurement Executive.

2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c)(1)-(3).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted through the HCA to the Procurement Executive.

2009.405–1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405–1.

2009.405–2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

2009.406 Debarment.

2009.406–3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the HCA of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the debarring official may notify the contractor in accordance with FAR 9.406–3(d) that the contractor is debarred.

(c) Fact-finding proceedings. For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407–3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407–3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406–3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the suspending official may notify the contractor in accordance with 9.407–3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official from whose decision the appeal is taken.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570–1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise. However, examples are provided in these regulations to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other government agencies, international organizations, or state, local, or foreign governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570–2 Definitions.

As used in 2009.570:

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern

or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in 2009.570–1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, director, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or *prospective contractor* means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, director, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term *potential conflict of interest* is used to signify those situations that—

(1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or

(2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding the small purchase threshold.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.*

(1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information, that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement, being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

(i) Where the offeror or contractor provides advice and recommendation to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in 2009.570–5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request for Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In

response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) *Guidance.* This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with 2009.570–9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570–3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209–73(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) *Example.* AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety an environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) *Guidance.* An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with 2009.570–9.

(7)(i) *Example.* The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) *Guidance.* 2052.290–73(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

(8)(i) *Example.* ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated value of $5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a $100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) *Guidance.* The Contracting Officer, would allow the contractor to proceed with the solicitation because (A) it is not in the same technical area as the NRC work and (B) the potential for technical bias by the contractor because of financial ties to the utility is slight due to the relative value of the two contracts.

(9)(i) *Example.* The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of $100 million. ABC Corp. has responded to an NRC Request for Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is $75K.

(ii) *Guidance.* An NRC contract would not normally be awarded to ABC Corp. since these factors create the potential for financial loyalty to the utility that may bias the technical judgment of the contractor.

(d) *Other considerations.*

(1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570–4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflict of interest representation provision at 2052.209–72 must be included in solicitations and unsolicited proposals, (including those for task orders and modifications for new work) for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570–5 Contract clauses.

(a) *General contract clause.* All contracts and small purchases of the types set forth in 2009.570–4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in 2052.209–73.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570–9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570–6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of 2009.570–3, the contracting officer shall make a findings of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of 2009.570–9.

2009.570–7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the government to terminate the contract, as provided in the clauses required by 2009.570–5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with 2009.570–9, neutralize the effects of the identified conflict.

2009.570–8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representative statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of $10,000 in accordance with 2009.570–4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570–5 in consultant agreements or subcontracts involving performance of work under a prime contract.

2009.570–9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards, with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program.

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to question of conflict of interest.

(3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

2009.570–10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2010—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

2010.004—Brand name products or equal.
2010.011—Solicitation provisions and contract clauses.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C. 418(b).

2010.004 Brand name products or equal.

(a) Acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances this type of approach may be used as described below.

(b) Brand name or equal purchase descriptions must cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisition. If a brand name product is no longer applicable, the reference to that brand name must be deleted from any subsequent purchase description.

(1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirement. Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. A characteristic (e.g., a specific dimension) of a brand name product may not be specified unless it is essential to the Government's need. The contracting officer shall be able to justify the requirement.

(c) The clause found at 2052.210–70 must be inserted in all solicitations citing a brand name or equal, except when samples are requested.

(d) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In these cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

(e) In small purchases within the open market limitations, brand name policies and procedures are applicable to the extent practicable.

2010.011 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 2052.210–71, Drawings, Designs, Specifications, and Data, in all contracts in which drawings, designs, specifications, or other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409, Solicitation Provisions and Contract Clauses, are included in the solicitation/contract, this clause will not be used.

PART 2012—CONTRACT DELIVERY OR PERFORMANCE

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2012.104—Contract clauses

2012.104–70 NRC clauses.

(a) The contracting officer shall insert the clause at 2042.212–70, Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.212–71, Technical Progress Report, in all solicitations and contracts except—

(1) Firm fixed price; and

(2) Indefinite-delivery contracts to be awarded on a time and materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.212–72, Financial Status Report, in all solicitations and contracts (except Fixed Price) when detailed assessment of costs is warranted and a Contractor Spending Plan is required; use the clause at 2052.212–73 Financial Status Report—Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter these clauses prior to issuance of the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2013.5—Purchase Orders

2013.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

NRC Form 103, Purchase Order, is prescribed for use by the NRC in lieu of Optional Forms 347 and 348.

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.
2014.201 Preparation of invitation for bids.
2014.201–670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406–3 Other mistakes disclosed before award.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2014.2—Solicitation of Bids

2014.201 Preparation of invitation for bids.

2014.201–670 Solicitation provisions.

(a) The contracting officer shall insert the provision at 2052.214–70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit circumstances.

(b) The cognizant contracting officer shall insert in all invitations for bids, except as noted, the provisions at:

(1) Section 2052.214–71, Bidder Qualifications and Past Experiences. (optional, to fit circumstances)

(2) Section 2052.214–72, Bid Evaluation (paragraph f. is optional).

(3) Section 2052.214–73, Timely Receipt of Bids.

(4) Section 2052.214–74, Disposition of Bids.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406–3 Other mistakes disclosed before award.

(a) The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

(b) The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.406–4.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

Sec.
2015.407–70 Solicitation provisions and contract clauses.
2015.413 Disclosure and use of information before award.
2015.413–2 Alternate II.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.
2015.506–1 Receipt and initial review.
2015.506–2 Evaluation.
2015.507 Contracting methods.

Subpart 2015.6—Source Selection

2015.602 Applicability.
2015.604 Responsibilities.
2015.605 Evaluation factors.
2015.607 Disclosure of mistakes before award.
2015.608 Proposal evaluation.
2015.610 Written or oral discussions.
2015.611 Best and final offers.
2015.612 Sources Evaluation Panel structure.
2015.670 Contract provisions.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

2015.407–70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert ain Requests for Proposals (RFPs) the provisions at:

(1) Section 2052.215–70, Key Personnel;

(2)(i) Section 2052.215–71, Project Officer Authority (for solicitations for cost reimbursement, cost plus fixed fee, cost plus award fee, cost sharing labor hour or time and materials, including task order contracts);

(ii) Section 2052.215–72, Project Officer Authority—Alternate 1 (for solicitations for issuance of delivery orders for specific products/services).

(iii) Section 2052.215–72, Project Officer Authority—Alternate 2 with paragraph (b)(1) deleted and the remainder of the clause renumbered (for solicitations for firm fixed price contracts;

(iv) This provision § 2052.215–70 and Alternate 1 are intended for experienced, trained project officers, and may be altered to delete duties where appropriate.

(3) Section 2052.215–73, Timely Receipt of Proposals;

(4) Section 2052.215–74, Award Notification and Commitment of Public Funds; and

(5) Section 2052.215–75, Disposition of Proposals.

(b) The contracting officer shall insert in all solicitations for negotiated procurements for cost type contracts that do not provide for task orders or delivery orders, the provision at 2052.215–76, Proposal Presentation and Format except that:

(1) For all solicitations for negotiated task order contracts, paragraphs (e)(4)(xi) and (xii) must be deleted (and the remainder renumbered), and the paragraph found at 2052.215–77 must be substituted for paragraph (d)(2).

(2) For all negotiated procurements for a fixed price, labor hour, or time and materials contract, paragraph (d)(2) shall be deleted from the provision 2052.215–76.

The provision must be tailored to assure that all sections, but in particular paragraph (e), Technical and Management Proposal, reflect a one-to-one relationship to the evaluation criteria.

(c) The contracting officer shall insert the provision at 2052.215–78, Preproposal Conference, in RFPs where there will be a preproposal conference. This provision may be altered to fit the circumstances of the requirement.

(d) The contracting officer shall insert the clauses at 2052.215–79, Travel Reimbursement, 2052–215–79, Travel Reimbursement—Alternate 1 with paragraph (a) deleted and the remainder of the clause renumbered (for contracts when there is no ceiling amount on domestic travel), and 2052–215–80, Travel Approvals, in RFPs where there will be travel.

2015.413 Disclosure and use of information before award.

2015.413–2 Alternate II.

The procedures discussed at FAR 15.413–2 may be used if approved at a level above the contracting officer.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.

(a) The Division of Contracts and Property Management, Policy Branch (PB), is the point of contact for the receipt, acknowledgement, and handling of unsolicited proposals.

(b) Unsolicited proposals in original and two copies, and requests for additional information regarding their preparation must be submitted to: Chief, Policy Branch, Division of Contracts and Property Management, Mail Stop P–1118, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

This will ensure that the proposal is logged into the unsolicited proposal tracking system.

2015.506–1 Receipt and initial review.

(a) PB shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) PB shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgement letter will be sent to the proposer by the PB, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.503 and 15.505.

2015.506–2 Evaluation.

Directors of NRC offices shall conduct comprehensive technical evaluations of proposals submitted to them by the PB, in accordance with the criteria discussed in FAR 15.506–2(a).

2015.507 Contracting methods.

If a noncompetitive contract is recommended, the Director of the recommending NRC office shall submit to the Division of Contracts and Property Management a written evaluation, Request for Procurement Action (RFPA) and Justification for Other Than Full and Open Competition in accordance with FAR 15.507(b)(5).

Subpart 2015.6—Source Selection

2015.602 Applicability.

This subpart does not apply to contracts awarded to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.604 Responsibilities.

(a) All persons participating in the evaluation process may not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation proceeding, and then only to the extent that the information is required in connection with the proceeding. Divulging information during evaluation, selection, and negotiation phases of the acquisition to offerors or to other persons not having a need to know could jeopardize the resultant award and violates the information-disclosure provisions of FAR 3.104, Procurement Integrity. These provisions carry criminal as well as civil and administrative penalties. Only the contracting officer (or authorized representative within the Division of

Contracts and Property Management) may release source selection information to others during the selection process. The contracting officer (or authorized representative) shall instruct all participants in the evaluations to observe the prohibitions of the Procurement Integrity Act. A procurement official certification must be signed for each agency employee personally and substantially involved in preparing or approving the advance procurement plans, statement of work and participating in the source evaluation process [i.e. serving as a member of the Source Evaluation Panel (SEP)].

(b) All persons participating in the evaluation process shall declare any financial or other relationships which may create conflict or interest problems with their evaluation duties. A form for this purpose must be signed prior to receipt of any proposals or participation in discussion of proposals.

(c) Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may conduct discussions with offerors relative to any aspect of the acquisition. The contracting officer may include other personnel in discussions, as necessary.

2015.605 Evaluation factors.

The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated, and are the basis for the development of proposal preparation instructions, in accordance with 2015.407–70(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors is accomplished by the assignment of a numerical weight to each. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and business evaluations, and "go/on go" evaluation factors.

2015.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that the offeror's clarification(s) provided in accordance with FAR 15.607 be in writing.

(b) A correction of a mistake in a proposal may be made only after a written determination to permit it has been made by the contracting officer.

2015.608 Proposal evaluation.

(a) A Source Evaluation Panel (SEP) shall evaluate technical proposals in accordance with the solicitation technical evaluation criteria. The SEP prepares and signs the Competitive Range Report with the SEP's findings and scoring for each technical proposal together with its analysis of cost and other factors and forwards the report for the review and approval of the Designating Official. The contracting officer uses this technical evaluation and analysis of costs and other factors in determining the competitive range.

(b) The Designating Official (Office Director or designee) is responsible for appointing the SEP and is responsible for conducting an independent review and evaluation of the SEP's two primary products after proposal evaluation: the Competitive Range Report and the Final Evaluation Report. Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

2015.610 Written or oral discussions.

The contracting officer shall point out to each offeror within the competitive range any deficiencies including ambiguities or uncertainties in its proposal. The discussions are intended to assist the SEP in understanding the proposals and their strengths and weaknesses based upon the individual efforts of each offeror to ensure that the meaning and emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government.

2015.611 Best and final offers.

The SEP evaluations the technical proposal portion of the best and final offers. Technical proposals will be recorded and rescored by the SEP, as appropriate, and a Final Evaluation Report of the SEP's findings and scoring for each technical proposal will be prepared and forwarded to the Designating Official for review and approval prior to submission to the contracting officer for final approval. The report will include a summary of the technical analysis of costs as a part of the analysis of the technical proposals. The SEP's individual evaluation worksheets and summary score sheet must accompany the Final Evaluation Report and will become part of the official file.

2015.612 Source Evaluation Panel structure.

(a) For all proposed contracts with total estimated values in excess of $25,000 and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through the establishment of a SEP.

(b)(1) The SEP includes:

(i) At least three technical members (one of whom serves as the chairperson) who participate in the scoring of proposals using weighted evaluation criteria and evaluating proposals using other unweighted factors; and

(ii) A contract negotiator who ensures that procurement rules and regulations are followed, ensures that the integrity of the process is maintained, and negotiates the contract on behalf of the NRC.

(2) Except in unusual cases, the SEP should not exceed five members including the Chairperson. The technical members are usually employees of the NRC program office initiating the request or other NRC employees with expertise in areas related to the solicitation Statement of Work. Appointment of a technical member from other than the office initiating the request is encouraged. Employees of other agencies with expertise in a specific area may also serve as SEP technical members not withstanding the fact that they are not employees of the NRC. Evaluators need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases and the solicitation should notify offerors of the NRC's intent to use non-Federal evaluators. The CO will make a determination whether or not a non-federal evaluator will be a voting SEP member. For proposed procurements with a total estimated cost of less than $500,000 over a performance period of three years or less, a single technical member may be appointed to evaluate proposals with the contracting officer's approval. Designation of SEP members is accomplished by memorandum initiated by the director of the program office or the director's designee. This official is referred to as the Designating Official (DO).

(c) The SEP chairperson may obtain the services of advisors (e.g., legal, financial, etc.) to assist the SEP. Advisors who serve on technical evaluation committees are appointed in writing by the DO. Advisors are not SEP members, and therefore do not score proposals. Advisors need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases, and the solicitation should notify offerors of the NRC's intent to use non-Federal advisors.

(d) The contracting officer shall establish the competitive range on all acquisitions. This is accomplished by

approval of the SEP's written recommendation transmitted by the DO.

(e) The source selection official is the contracting officer. Selection is made based on review of the SEP's recommendations as endorsed by the DO, together with all supporting data to ensure that award is in accordance with sound procurement principles and directly related to the evaluation criteria as set forth in the solicitation. Any proposed selection not endorsed by the DO will be concurred in by the Head of the Contracting Activity.

2015.670 Contract provisions.

(a) The contracting officer shall include the provision found at 2052.215–81, Contract Award and Evaluation of Proposals, in all solicitations, where technical is more important than cost:

(1) The contracting officer shall substitute the paragraph found at 2052.215–82 for paragraph (b) in all solicitation for negotiated competitive procurements where cost is more important than technical merit.

(2) The contracting officer shall substitute the paragraph found at 2052.215–83 for paragraph (b) in all solicitations for negotiated competitive procurements where cost and technical merit are of equal significance.

(b) The contracting officer may make appropriate changes to the provision to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and benchmaking criteria for ADP procurements.

PART 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.
2016.307–70 Contract provisions and clauses.

Subpart 2016.5 Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2016.3—Cost Reimbursement Contracts

2016.307–70 Contract provisions and clauses.

(a) The contracting officer shall insert the clause at 2052.216–70, Level of Effort, in solicitation for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award fee, cost-plus-fixed fee, time and materials, or labor hour basis.

(b) The contracting officer shall insert the following provisions and clauses in all cost reimbursement contracts:

(1) Section 2052.216–71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216–72, Indirect Cost Rates—Alternate 1 (where predetermined rates apply).

(3) Section 2052.216–73, Indirect Cost Rates—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

The contracting officer shall insert the following provisions in all solicitations and contracts that contain task order procedures:

(a) Section 2052.216–74, Task Order Procedures;

(b) Section 2052.216–75, Accelerated Task order Procedures.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2017—SPECIAL CONTRACTING METHODS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2017.2—Options

2017.204 Contracts

(a) The contracting officer may approve extensions to five year contracts for up to a total of an additional six months, for the purpose of completing the competitive process for a follow on contract, provided that the competitive requirement was received in DCPM not less than six months before the end of the fifth year.

(b) The Head of the Contracting Activity may approve extensions for up to a total of one year.

PART 2019—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2019.7—Subcontracting with small business and small disadvantaged business concerns

Sec.
2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2019.705–4 Reviewing the subcontracting plan.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2019.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

2019–705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

(a) During the source selection process, subcontracting plans may be requested from all concerns required to submit them and determined to be in the competitive range, for negotiation with the apparent successful offeror.

(b) The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, if:

(1) The master plan contains all of the elements required by FAR 19.704;

(2) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory threshold;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification; and

(4) The contracting officer has copies of the entire plan.

PART 2020—LABOR SURPLUS AREA CONCERNS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2020.1—General

2020.102 General Policy.

Acquisitions that are in excess of $25,000 must be reviewed for potential labor surplus area set-aside consideration in accordance with FAR 20.104 using publications and other information identifying labor surplus areas obtained from: U.S. Department of Labor, Employment and Training Administration, U.S. Employment Service, Office of Labor Market Information, 200 Constitution Ave., NW., room N4456, Washington, DC 20510, Telephone Number: (202) 535–0157.

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1 Basic Labor Policies

Sec.
2022.101–1 General.
2022.103–4 Approvals.

Subpart 2022.9 Nondiscrimination Because of Age

2022.901–70 Contract provisions.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 4186(b)

Subpart 2022.1 Basic Labor Policies

2022.101–1 General.

The Head of Contracting Activity shall designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance.

2022.103–4 Approvals.

The agency approving official for contractor overtime shall be the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

The contracting officer shall insert the provision found at 2052.222–70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR part 9, subpart H, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR part 9, Subpart A, Freedom of Information Act Regulations, are applicable to the availability of NRC records to the public.

PART 2025—FOREIGN ACQUISITION

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2025.1—Buy American Act—Supplies

2025.102 Policy.

Contracting officers may make the determination required by FAR 25.102(a)(4), provided the determination is factually supported in writing. For contracts exceeding $1 million, the Head of the Contracting Activity shall approve the determination.

SUBCHAPTER 3—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contracts

Sec.

2027.305 Administration of patent rights clauses.

2027.305–3 Follow-up by Government.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305 Administration of patent rights clauses.

The contracting officer shall ensure that each contractor report is in writing on whether any patent rights are being claimed, before final payment and closeout of the contract.

2027.305–3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report on any patents, copyrights, or royalties attained using any portion of the contract funds. The contractor shall, if no activity is to be reported, certify that in connection with the performance of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or owed directly to others.

(b) The contracting officer may waive any of the requirements paragraphs (a)(1)–(4) of this section, after documenting the file to indicate the—

(1) Impracticality of obtaining the document(s); and

(2) Steps taken to attempt to obtain them.

(c) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patient, copyright, or royalty activity, and shall document the official file with the resolution to protect the Government's rights prior to making any final payment and closing out the contract.

PART 2030—COST ACCOUNTING STANDARDS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2030.2—CAS Program Requirements

2030.201–5 Waiver.

In accordance with the FAR 30.201–5(c), the Head of the Contracting Activity may waive CAS requirements.

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2031.1—Applicability

2031.109–70 Contract clauses.

The contracting officer shall insert the clause at 2052.231–70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

PART 2032—CONTRACT FINANCING

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2032.4—Advance Payments

2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements except for subscriptions to publications, the approving official shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

PART 2033—PROTESTS, DISPUTES, AND APPEALS

Subpart 2033.1—Protests

Sec.

2033.103 Protests to the agency.

2033 203 Applicability.

2033.211 Contracting officer's decision.

Sec.
2033.214 Contract clause.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2033.1—Protests

2033.103 Protests to the agency.

The agency may not process, or shall cease processing, agency level protests that are protested outside the agency unless and until such time that a proper determination is made authorizing the agency to proceed under the applicable protest procedures.

2033.203 Applicability.

Pursuant to an interagency agreement between the NRC and the Department of Energy Board of Contract Appeals (EBCA), the EBCA will hear appeals from final decisions of NRC contracting officers issued pursuant to the Contract Disputes Act. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contracting officer's decision.

Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(iv) to identify the Energy Board of Contract Appeals and include its address: Webb Building, room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203, when preparing a written decision.

2033.214 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I where continued performance is vital to National Security, the public health and safety, critical and major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impractical.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

2035.70 Contract clauses.

(a) The contracting officer shall insert the following clauses in all RFPs for Research and Development or in Requests for Proposals (RFPs) for other technical services as appropriate:

(b) Section 2052.235–70, Publication of Research Results, except that in the case of universities, the contracting officer shall substitute the paragraph found at 2052.235–71 for paragraph c.

(c) Section 2052.235–72 Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) Criteria for selecting contractors will include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art technology.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

PART 2039—ACQUISITION OF INFORMATION RESOURCES

Sec.
2039.001 Policy.
2039.002 Delegations of procurement authority.

Authority: 42 U.S.C. 2201; 42 U S.C. 5841; and 41 U.S.C. 418(b).

2039.001 Policy.

In accordance with the Federal Information Resources Management Regulation (41 CFR Ch. 201), and appropriate NRC Management Directives, the Office of Information Resources Management will be responsible for development and/or approval of requirements analysis including information needs, justification for specific make and model, analysis of alternatives, and Delegations of Procurement Authority for information resources management procurements in excess of $25,000 (automated data processing, telecommunications, and records), when required. These documents must be submitted to the Division of Contracts and Property Management with the Request for Procurement Action (RFPA) for which these documents are required.

2039.002 Delegations of procurement authority.

The NRC official authorized to sign Agency Procurement Requests and Agency Telecommunications Requests for Delegations of Procurement Authority is the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support or designee.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 418(b).

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer or designee shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR subpart 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted;

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs;

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall:

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision, including any disallowance of questioned costs; inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR subpart 33.2; and provide a copy of the final decision of the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the government by one or more of the following methods:

(A) Request that the contractor provide a credit adjustment (offset) against amounts billed the government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deduct the disallowed costs from the next invoice submitted under the contract;

(C) Deduct the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advise the contractor that a refund is immediately payable to the government (in situations where there are insufficient payments owed by the government to effect recovery from the contract).

PART 2045—GOVERNMENT PROPERTY

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing government property (in general).

(a) Unless otherwise provided for in FAR 45.302–1(d), applicable to Government facilities with a unit cost of less than $10,000, a contractor may be provided Government property or allowed to purchase the property at Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

(b) If the program office is aware before the submission of the RFPA that it will be necessary to provide prospective contractors with Government property, a written justification must accompany the RFPA to the Division of Contracts and Property Management.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.

2052.200– Authority.
2052.204–70 Security.
2052.204–71 Site access badge requirements.
2052.209–70 Qualifications of contract employees.
2052.209–71 Current/former agency employee involvement.
2052.209–72 Contractor organizational conflicts of interest (representation).
2052.209–73 Contractor organizational conflicts of interest.
2052.210–70 Brand name products or equal.
2052.210–71 Drawings, designs, specifications, and other data.
2052.212–70 Preparation of technical reports.
2052.212–71 Technical progress report.
2052.212–72 Financial status report.
2052.212–73 Financial status report—Alternate 1.
2052.214–70 Prebid conference.
2052.214–71 Bidder qualifications and past experiences.
2052.214–72 Bid evaluation.
2052.214–73 Timely receipt of bids.
2052.214–74 Disposition of bids.
2052.215–70 Key personnel.
2052.215–71 Project officer authority.
2052.215–72 Project officer authority—Alternate 1.
2052.215–73 Timely receipt of proposals.
2052.215–74 Award notification and commitment of public funds.
2052.215–75 Disposition of proposals.
2052.215–76 Proposal presentation and format.
2052.215–77 Proposal presentation and format—Alternate 1 (language for negotiated task order contracts).
2052.215–78 Proposal presentation and format—Alternate 2 (language for negotiated fixed prices, labor hour, or time and materials contracts).
2052.215–79 Preproposal conference.
2052.215–80 Travel reimbursement.
2052.215–81 Travel approvals.
2052.215–82 Contract award and evaluation of proposals—technical merit more important than cost.
2052.215–83 Contract award and evaluation of proposals—cost most important than technical merit.
2052.216–84 Contract award and evaluation of proposals—cost and technical merit of equal value.
2052.216–70 Level of effort.
2052.216–71 Indirect cost rates.
2052.216–72 Indirect cost rates—Alternate 1.
2052.216–73 Indirect cost rates—Alternate 2.
2052.216–74 Task order procedures.
2052.216–75 Accelerated task order procedures.
2052.222–70 Nondiscrimination because of age.
2052.231–70 Precontract costs.
2052.235–70 Publication of research results.
2052.235–71 Publication of research results—universities.
2052.235–72 Safety, health, and fire protection.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204–70 Security.

As prescribed at 2004.404(a), insert the following clause in applicable solicitations and contracts:

Security

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See Section J for List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in the contractor's possession in connection with the performance of work

under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and the retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93–579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer.

Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission.

(e) Definition of National Security Information. The term National Security Information, as used in this clause, means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. The term Restricted Data, as used in this clause, means all data concerning:

(1) design, manufacture, or utilization of atomic weapons;

(2) the production of special nuclear material; or

(3) the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. The term Formerly Restricted Data, as used in this clause, means all data removed from the Restricted Data category under section 142–d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. It is understood that disclosure of National Security Information, Restricted Data, and Formerly Restricted Data, relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing the contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment must provide that the subcontractor or supplier assign classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

(End of Clause)

2052.204–71 Site access badge requirements.

As prescribed at 2004.404(b), insert the following clause in applicable solicitations and contracts:

Site Access Badge Requirement

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with.

(End of Clause)

2052.209–70 Qualifications of contract employees.

As prescribed at 2009.105–70, insert the following provision in applicable solicitations:

Qualifications of Contract Employees

The offeror hereby certifies by submission of this offer that all representations made regarding its employees, proposed subcontractor personnel, and consultants are accurate.

(End of Provision)

2052.209–71 Current/former agency employee involvement.

As prescribed at 2009.105–70, insert the following provision in applicable solicitations:

Current/Former Agency Employee Involvement

(a) The following representation is required by the NRC Acquisition Regulation 2009.105–70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts, and as set forth in the above cited provision, the use of such employees may, under certain conditions, adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) The offeror hereby certifies that there ( ) are ( ) are no current/former NRC employees (including special Government employees performing services as experts, advisors, consultants, or members of advisory committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering, or performing any contract, consultant agreement, or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment, the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

2052.209–72 Contractor organizational conflicts of interest (representation).

As prescribed at 2009.570–4(b) and 2009.570–8, insert the following provision in applicable solicitations:

Contractor Organizational Conflicts of Interest Representation

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 48 CFR 2009.570–3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 48 CFR 2009.570–3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts,

(2) Disqualify the offeror, or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 48 CFR 2009–570–9.

(b) The refusal to provide the representation required by 48 CFR 2009.570–4(b), or upon request of the contracting officer, the facts required by 48 CFR 2009.570–3(b), must result in disqualification of the offeror for award.

(End of Provision)

2052.209–73 Contractor organizational conflicts of interest.

As prescribed at 2009.570–5(a) and 2009–570–8, insert the following clause in all applicable solicitations and contracts:

Contractor Organizational Conflicts of Interest

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor:

(1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract; and

(2) Does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described apply to performance or participation by the contractor, as defined in 48 CFR 2009.570–2 in the activities covered by this clause.

(c) Work for others.

(1) Notwithstanding any other provision of this contract, during the term of this contract the contractor agrees to forgo entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer before the execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate), except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work (except work in the same or similar technical area) if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d) Disclosure after award.

(1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570–2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the government.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

(e) Access to and use of information.

(1) If in the performance of this contract, the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public; or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. section 552a (1988)), or the Freedom of Information Act (5 U.S.C. section 552 (1986)), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) Subject to patent and security provisions of this contract, the contractor shall have the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 48 CFR 2009.570–2, the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms *contract*, *contractor*, and *contracting officer*, must be appropriately modified to preserve the Government's rights.

(g) Remedies. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may

terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) Waiver. A request for waiver under this clause must be directed in writing to the contracting officer in accordance with the procedures outlined in 48 CFR 2009.570–9.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited), which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)

2052.210–70 Brand name products or equal.

As prescribed at 2010.004, insert the following clause in applicable solicitations and contracts:

Brand Name Products or Equal

Offers (proposers) offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to quality of the product(s) offered.

2052.210–71 Drawings, designs, specifications, and other data.

As prescribed at 2010.011, the following clause shall be submitted in applicable solicitations and contracts:

Drawings, Designs, Specifications, and Other Data

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use, be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

2052.212–70 Preparation of technical reports.

As prescribed at 2012.104–70(a), insert the clause in applicable solicitations and contracts:

Preparation of Technical Reports

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See Section J for List of Attachments).

(End of Clause)

2052.212–71 Technical progress report.

As prescribed at 2012.104–70(b), insert the following clause in applicable solicitations and contracts:

Technical Progress Report

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Financial Identification Number (FIN), project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period, and milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution. If the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact.

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of clause)

2052.212–72 Financial status report.

As prescribed at 2012.104–70(c), insert the following clause in applicable solicitations and contracts.

Financial Status Report

The contractor shall provide a monthly Financial Status Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Financial Identification Number (FIN), project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

(1) Total estimated contract amount.

(2) Total funds obligated to date.

(3) Total costs incurred this reporting period.

(4) Total costs incurred to date.

(5) Provide a detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(6) Balance of obligations remaining.

(7) Balance of funds required to complete contract/task order.

(8) Contractor Spending Plan (CSP) status:

(i) Projected percentage of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(ii) Indicate if there has been a significant change in the original CSP projection in either dollars or percentage of completion. Identify the change, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original NRC-approved CSP projections, a written statement to that effect is sufficient in lieu of submitting a detailed response to item 8.

(9) A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(b) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of Clause)

2052.212.73 Financial status report—Alternate 1.

Financial Status Report—Alternate 1

As prescribed in § 2012.104–70(c), insert the following provision in applicable solicitations:

The Contractor shall provide a monthly Financial Status Report to the Project Officer and the Contracting Officer. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, project

manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report shall include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

(1) Total Estimated Contract Amount.

(2) Total Funds Obligated to Date.

(3) Total Costs Incurred This Reporting Period.

(4) Total Costs Incurred to Date.

(5) Balance of Obligations Remaining.

(6) Balance of Funds Required To Complete Contract.

(b) Detail of all direct and indirect costs incurred during the reporting period for each task.

[End of Clause]

2052.214–70 Prebid conference.

As prescribed at 2014.201–670(a), insert the following provision in applicable solicitations:

Prebid Conference

(a) A prebid conference is scheduled for:
Date: * * *
Location: * * *
Time: * * *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential bidder is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Attn: * * *, Mail Stop * * *, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. * /Prebid Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

2052.214–71 Bidder qualifications and past experiences.

As prescribed in 2014.201–670(b), insert the following provision in applicable solicitations:

Bidder Qualifications and Past Experiences

(a) The bidder shall list * previous/current contracts for the same or similar products/services. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts for same or similar products/services or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(1) Contract No.: _____
Name and address of Government agency or commercial entity:
_____
_____
_____

Point of Contact and Telephone Number:
_____
_____

(2) Contract No.: _____
Name and address of Government agency or commercial entity:
_____
_____
_____

Point of Contact and Telephone Number:
_____
_____

(3) Contract No.: _____
Name and address of Government agency or commercial entity:
_____
_____
_____

Point of Contact and Telephone Number:
_____
_____

(b) The bidder shall also provide the name, title and full telephone number for its technical representative and contracts/business representative:

(1) Technical Representative

Name _____
Title _____
Telephone No. ( ) _____

(2) Contracts/Business

Representative Name _____
Title _____
Telephone No. ( ) _____

*To be incorporated into the solicitation

(End of Provision)

2052.214–72 Bid evaluation.

As prescribed at 2014.201–670(b), insert the following provision in applicable solicitations:

Bid Evaluation

(a) Award will be made to that responsive, responsible bidder within the meaning of FAR subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this Invitation for Bid, constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount."

(b) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC, are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1, and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within * hours after receiving the request:

(1) Concerning their ability to meet any of the minimum standards set forth in FAR 9.104,

(2) Samples of work, and

(3) Names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity, will cause the bid to be rejected as nonresponsive.

*To be inserted into solicitation.

(End of Provision)

2052.214–73 Timely receipt of bids.

As prescribed at 2014.670(b), insert the following provision in applicable solicitations:

Timely Receipt of Bids

Because the NRC is a secure facility with perimeter access control, bidders shall allow additional time for hand delivery (including express mail and delivery services) of bids to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

2052.214–74 Disposition of bids.

As prescribed at 2014.670(b), insert the following provision in applicable solicitations:

Disposition of Bids

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property

Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

2052.215–70 Key personnel.

As prescribed at 2015.407–70(a), insert the following clause in applicable solicitations and contracts:

Key Personnel

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

* * *

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer or his/her authorized representative shall evaluate the request and promptly notify the contractor of his or her approval or disapproval in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the contract work is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss, or damage.

(End of Clause)

*To be incorporated into any resultant contract

2052.215–71 Project officer authority.

As prescribed in 2015.70(a)(2)(i), insert the following clause in applicable solicitations and contracts:

Project Officer Authority

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: * * *
Address: * * *
Telephone Number: * * *

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term *technical direction* is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, fills in details, or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way cause an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions, or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the "Changes" clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto is subject to 52.233–1—Disputes.

(i) In addition to providing technical direction as defined in paragraph (b) of the section, the project officer shall:

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

*To be incorporated into any resultant contract.

(End of Clause)

2052.215–71 Project officer authority—Alternate 1.

As prescribed at 2015.407–70(2)(ii), insert the following clause in applicable solicitations and contracts:

Project Officer Authority—Alternate 1

(a) The contracting officer's authorized representative, hereinafter referred to as the project officer for this contract is:

Name: * * *
Address: * * *
Telephone Number: * * *

(b) The project officer shall:

(1) Place delivery orders for items required under this contract.

(2) Monitor contractor performance and recommend to the contracting officer changes in requirements.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract

(End of Clause)

2052.215–73 Timely receipt of proposals.

As prescribed in 2015.407–70(a), insert the following provision in applicable solicitations:

Timely Receipt of Proposals

Because NRC is a secure facility with perimeter access control, offerors shall allow additional time for hand delivery (including express mail and delivery services) of proposals to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

2052.215–74 Award notification and commitment of public funds.

As prescribed at 2015.407–70(a), insert the following clause in applicable solicitations and contracts:

Award Notification and Commitment of Public Funds

(a) All offerors will be notified of their selection or nonselection as soon as possible. Formal notification of nonselection for unrestricted awards may not be made until a contract has been awarded. Pursuant to requirements of FAR 15.1001(b)(2), preliminary notification will be provided before the award for small business set-aside procurements on negotiated procurements.

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments, or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include:

(1) Encouraging a potential contractor to incur costs prior to receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

2052.215–75 Disposition of proposals.

As prescribed in 2015.407–70(a)(5), insert the following provision in applicable solicitations:

Disposition of Proposals

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the proposals is requested by the offeror upon submission of proposal, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

2052.215–76 Proposal presentation and format.

As prescribed at 2015.407–70(b), insert the following provision in applicable solicitations:

Proposal Presentation and Format

(a) Proposals must be typed, printed, or reproduced on letter-size paper and each copy must be legible.

(b) Proposals in response to this Request for Proposal must be submitted in the following three (3) separate and distinct parts:

(1) Two (2) original signed copies of this solicitation package. All applicable sections must be completed by the offeror.

(2) One (1) original and * copies of the "Cost Proposal."

(3) One (1) original and * copies of the "Technical and Management Proposal."

(c) Correctness of the proposal. *Caution*—offerors are hereby notified that all information provided in its proposals, including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education, and employment history of its employees, subcontractor personnel, and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(d) Cost proposal.

(1) The offeror shall use Standard Form 1411, Contracting Pricing Proposal Cover Sheet, in submitting the Cost Proposal. A copy of the form and instructions are attached to this solicitation. The information must include pertinent details sufficient to show the elements of cost upon which the total cost is predicted. The Cost Proposal must be submitted separately from the Technical and Management Proposal.

(2) When the offeror's estimated cost for the proposed work exceeds $100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(3) For any subcontract discussed under the Technical and Management Proposal, provide supporting documentation on the selection process, i.e. competitive vs. noncompetitive, and the cost evaluation.

(e) Technical and management proposal.

(1) The Technical and Management Proposal may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the Technical and Management Proposal so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit with the Technical and Management Proposal full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(4) The Technical and Management Proposal must be tailored to assure that all sections reflect a one-to-one relationship to the evaluation criteria. The following are examples of the type of information that should be included in a technical and management proposal.

(i) Discussion of the statement of work to substantiate the offeror's understanding of the requirement.

(ii) Discussion of the proposed method of approach to meet the contract objectives.

(iii) Discussion of potential problem areas and the approach to be taken to resolve these areas.

(iv) Statements of any interpretations, requirements, or assumptions made by the offeror.

(v) Discussion of support personnel and facilities available to assist the professional personnel.

(iv) Identify "Key Personnel," and for the person(s) so identified, specify the percentage of time that will be committed to other projects over the course of the proposed contract period of performance.

(vii) Resumes for all professional personnel, including subcontractors and consultants, to be utilized in the performance of any resulting contract. Include educational background, specific pertinent work experience, and a list of any pertinent publications authored by the individual.

(viii) Description of the source of personnel required for performance of each task, including those not presently employed by the offeror. If any of the personnel are under commitment, describe the terms of the commitment(s). Note specifically the personnel that will be employed at time of contract award.

(ix) If the offeror plans to obtain consultant services, explain the need for the services. List the proposed consultants by name, describe the work they will perform under this contract, and include related past experience. Individuals who are employees of the contractor or of the U.S. Government are prohibited from being paid as a consultant under this contract.

(x) If the offeror plans to subcontract any of the work to be performed, list proposed subcontractors, if known, by name. Provide a detailed description of the work to be performed by the subcontractor, and supporting documentation of technical evaluation leading to the selection.

(xi) Provide a detailed schedule for work to be performed and identification of significant milestones and completion dates for each subpart or task.

(xii) Project scheduling and contingency planning demonstrating a logical progression and integration of the tasks to ensure completion within the performance period and without program slippage.

(xiii) Describe of the management organizational structure delineating areas of responsibility and authority under the proposed effort. Describe the relationship of the project organization to corporate management and to subcontractors, if any. Discuss the functions and authorities of the project manager.

(xiv) Procedures to periodically review in-house organizational functions, program reviews and controls, subsequent coordination with the NRC.

(xv) Management controls expected to be utilized to preclude a contract cost growth.

(xvi) The offeror shall list of any commitments with other organizations, Government and/or commercial, for the same or similar effort.

(xvii) List of* previous contracts for the same or similar services, with the name, title, and full telephone number of a contact for each.

(xviii) List of the name, title, and full telephone number for the proposer's technical representative and contracts/business representative.

(xix) _____

* To be incorporated into the solicitation

(End of Provision)

2052.215–77 Proposal presentation and format—Alternate 1 (language for negotiated task order contracts.)

As prescribed at 2015.407–70(b)(1), insert the following language in provision 2052.215–76.

(d) Cost proposal.

(1) The offeror shall provide a cost proposal based on the Estimated Level of Effort. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

2052.215–78 Proposal presentation and format—Alternate 2 (language for negotiated fixed prices, labor hour, or time and materials contracts).

As prescribed at 2015.407–70(b)(2), paragraph (d)(2) shall be deleted from the provision 2052.215–76.

(End of Provision)

2052.215–79 Preproposal conference.

As prescribed at 2015.407–70(c), insert the following provision in applicable solicitations:

(a) A preproposal conference is scheduled for:

Date: *

Location: *

Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential proposer is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: *, Mail Stop *, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. */Preproposal Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

(End of Provision)

2052.215–80 Travel reimbursement.

As prescribed at 2015.407–70(d), insert the clauses or alternate in applicable solicitations and contracts:

Travel Reimbursement

(a) Total expenditure for domestic travel may not exceed *_____without the prior approval of the contracting officer.

(b) The contractor is encouraged to use Government contract airlines, AMTRAK rail services, and discount hotel/motel properties in order to reduce the cost of travel under this contract. The contracting officer shall, upon request, provide each traveler with a letter of identification which is required in order to participate in this program. The Federal Travel Directory (FTD) identifies carriers, contract fares, schedules, payment conditions, and hotel/motel properties which offer their services and rates to Government contractor personnel traveling on official business under this contract. The FTD, which is issued monthly, may be purchased from the U.S. Government Printing Office, Washington, DC 20402.

(c) The contractor will be reimbursed for reasonable travel costs incurred directly and specifically in the performance of this contract. The cost limitations for travel costs are determined in accordance with the specific travel regulations cited in FAR 31.205–46, as are in effect on the date of the trip. Travel costs for research and related activities performed at State and nonprofit institutions, in accordance with section 12 of Public Law 100–679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

(d) When the Government changes the Federal Travel Regulations, or other applicable regulations, it is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract if the contractor will be unable to make all of the approved trips and remain within the cost and fee limitations of this contract due to the changes.

*To be incorporated into any resultant contract.

(End of Clause)

2052.215–81 Travel approvals.

As prescribed in 2015.407–70(d), insert the following clause in applicable solicitations and contracts:

Travel Approvals

(a) All domestic travel requires the prior approval of the project officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445 and must be in compliance with FAR 52.247–63 Preference for U.S. Flag Air Carriers. Foreign travel approval must be communicated in writing through the contracting officer.

(End of Clause)

*To be incorporated into any resultant contract

(End of Clause)

2052.215.82 Contract award and evaluation of proposals technical merit more important than cost.

As prescribed in 2015.670(a), insert the following provision in applicable solicitations:

Contract Award and Evaluation of Proposals

(a) By use of numerical and narrative scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below. These factors are listed in their relative order of importance. Award is made to the offeror:

(1) Whose proposal is technically acceptable;

(2) Whose technical/cost relationship is most advantageous to the Government; and

(3) Who is considered to be responsbile within the meaning of Federal Acquisition Regulation Part 9.1.

(b) Although cost is a factor in the evaluation of proposals, technical merit in the evaluation criteria set forth below is a more significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

(c) The Government may:

(1) Reject any or all offers if the action is in the public interest;

(2) Accept other than the lowest offer; and

(3) Waive informalities and minor irregularities in offers received.

(d) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoints.

(e) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan (CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

(f) In making the above determination, an analysis is performed by the Government that takes into consideration the results of the technical evaluation and cost analysis.

* To be incorporated into the solicitation.
(End of Provision)

2052.215–83 Contract award and evaluation of propsoals—cost more important than technical merit.

As prescribed in 2015.670(a), substitute the following paragraph for paragraph (b) in the clause at 2052.215.82:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, cost is more a significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

2052.215–84 Contract award and evaluation of proposals—cost and technical merit of equal value.

As prescribed at 2015.670a(2), substitute the following paragraph for paragraph (b) in the clause at 2052.215.82:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

2052.216–70 Level of effort.

As prescribed at 2016.307–70(a), insert the following provision in applicable solicitations:

Level of Effort

The NRC's estimate of the total effort for this project is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

* To be incorporated into any resultant contract.

(End of Provision)

2052.216–71 Indirect cost rates.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

*

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232–20, Limitation of Cost, or FAR 52.232–22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

*To be incorporated into any resultant contract

(End of Clause)

2052.216–72 Indirect cost rates—Alternate 1.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates—Alternate 1

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined rates:

*To be incorporated into any resultant contract.

(End of Clause)

2052.216–73 Indirect cost rates—Alternate 2.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates—Alternate 1

(a) For this contract, the amount reimbursable for indirect costs is as follows:

*

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates, the rates established by the cognizant audits must apply. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

*To be incorporated into any resultant contract.

(End of Clause)

2052.216–74 Task order procedures.

As prescribed at 2016.506–70(a), insert the following clause in applicable solicitations and contracts:

Task Order Procedures

(a) Task order request for proposal. When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORP) which includes the following, as appropriate:

(1) Scope of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance—place of performance;

(4) Applicable special provisions;

(5) Technical skills required; and

(6) Estimated level of effort.

(b) Task order proposal. By the date specified in the TORP, the contractor shall deliver to the contacting officer a written proposal that provides the following technical and cost information, as appropriate:

(1) Technical proposal content;

(i) A discussion of the scope of work requirements to substantiate the contractor's understanding of the requirements of the task order and the contractor's proposed method of approach to meet the objective of the order.

(ii) Resumes for professional personnel proposed to be utilized in the performance of any resulting task order. Include educational background, specific pertinent work experience, and a list of any pertinent publications authored by the individual.

(iii) Identification of administrative support personnel and/or facilities that are needed to assist the professional personnel in completing work on the task order.

(iv) Identification of "Key Personnel" and the number of staff hours that will be committed to completion of work on the task order.

(2) Cost proposal. The contractor's cost proposal for each task order must be prepared using Standard Form 1411, Contracting Pricing Proposal cover sheet. A copy of the form and instructions are attached to this contract. Each task order cost proposal must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds $100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(c) Task order award. The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following:

(1) Statement of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance;

(4) Key personnel;

(5) Applicable special provisions; and

(6) Total task order amount including any fixed fee.

(End of Clause)

2052.216–75 Accelerated task order procedures.

As prescribed at 2016.506–70, insert the following clause in applicable solicitations and contracts:

Accelerated Task Order Procedures

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to contractor appeal as provided in 52.233–1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

(End of Clause)

2052.222–70 Nondiscrimination because of age.

As prescribed at 2022.901–70, insert the following clause in applicable solicitations and contracts:

Nondiscrimination Because of Age

It is the policy of the Executive Branch of the Government that:

(a) Contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirements; and

(b) That contractors and subcontractors, or person acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

2052.231–70 Precontract costs.

As prescribed in § 2031.109–70, insert the following clause in applicable solicitations and contracts:

Precontract Costs

Allowable costs under this contract must include such costs, incurred by the contractor in connection with the work covered by this contract during the period from * and including * to the effective data of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed * which is included in the estimated cost of this contract.

*To be incorporated into any resultant contract

(End of Clause)

2052.235–70 Publication of research results.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Publication of Research Results

(a) The principal investigator(s)/contractor shall comply with the provisions of NRC Handbook 3.8 (formerly MC 3202) and NRC Manual Chapter 3206 regarding publication in refereed scientific and engineering journals or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

(b) The principal investigator(s)/contractor may publish the results of this work in refereed scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

(c) Prior to any such publication, the contractor shall submit the proposed publication to the NRC Contracting Officer and Project Officer for review and approval.

(End of Clause)

2052.235–71 Publication of research results—universities

As prescribed at § 2035–70 substitute the following paragraph (c) for paragraph (c) in 2052.235–70.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to, the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published is:

(1) subject to Commission approval;

(2) has not been ruled upon, or

(3) disapproved by the Commission, the NRC reserves the right to disapprove or delay the publication. "Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of Clause)

2052.235–72 Safety, Health, and Fire Protection.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Safety, Health, and Fire Protection

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting office may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

(End of Clause)

Dated at Rockville, Maryland this 9th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–30419 Filed 12–22–92; 8:45 am]

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Wednesday
December 23, 1992

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 et al.
Electric Motor Assemblies; Electric Cables, Signaling Cables and Cable Splice Kits; Final Rules

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 18

RIN 1219–AA61

Electric Motor Assemblies

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule establishes the specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. It will primarily affect manufacturers of equipment intended for use in underground mining. Applications for approval or extensions of approval submitted three years after the effective date of this rule will be required to be in compliance with subpart J of part 7. Those motors that incorporate features not specifically addressed in subpart J of part 7 will continue to be evaluated under part 18.

EFFECTIVE DATE: This regulation is effective February 22, 1993. The incorporation by reference in § 7.304(g) of the final rule is approved by the Director of the Federal Register as of February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 1988, with the promulgation of part 7, MSHA implemented new procedures and requirements for testing and approving certain products used in underground mines (53 FR 23486). As explained in that rulemaking, products approved under part 7 are required to be tested by the applicant or tested by a third party selected by the applicant. All testing is to be conducted using MSHA specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under part 7, an approval holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. Under the provisions of subpart A of part 7, the approval holder must report to MSHA any knowledge that a product has been distributed with critical characteristics not meeting required specifications. Upon receiving such a report, MSHA will work with the approval holder to implement appropriate corrective action. As critical characteristics are features of a product which, if not built to specification, can create a hazard, immediate notification is necessary. MSHA performs periodic audits of products approved under part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of part 7 or creates a hazard related to its use, MSHA will take immediate action to address the problem, including revocation of the approval if necessary. Although MSHA's experience with existing subparts to part 7 is limited, primarily due to delayed effective dates, this transition has been positively received by manufacturers and applied without complications.

On March 12, 1991 (56 FR 10464), MSHA published a proposed rule that addressed specific requirements for MSHA approval of certain explosion-proof motor assemblies intended for use in approved equipment in underground mines. Written comments were required to be submitted by June 14, 1991. The agency received written comments from all segments of the mining industry, and the final rule addresses these comments.

As a new subpart J to part 7, this final rule specifies the technical requirements and test procedures for the approval of electric motor assemblies. The rule is derived from existing part 18 and MSHA policies. It provides objective criteria for applicant or third party testing and replaces subjective technical requirements with performance-oriented tests. The tests are based on MSHA's engineering experience with the subjective criteria in the existing approval requirements. They are not intended to introduce more stringent testing methods, but rather to more explicitly state the tests used in MSHA's current testing program which have proven to be effective. Under the rule, manufacturers will use these test procedures to measure, evaluate, and certify compliance of their product with the requirements of subpart J of part 7 in order to receive an MSHA approval.

One commenter suggested that all testing should continue to be performed by MSHA. This commenter believed that the testing procedures would not be strictly adhered to and that there would be no health and safety benefit from applicant or third-party testing. As stated previously, the applicant must certify to product testing and performance, as required, and meet all of the applicable quality assurance requirements, including inspection or testing of the product's critical characteristics. False certifications are subject to criminal sanctions under section 110(f) of the Federal Mine Safety and Health Act of 1977 (Mine Act). MSHA will take immediate action to address any problems identified during product audits, including revocation of the approval if necessary.

The part 7 approach, when fully implemented, will allow the Agency to reallocate resources to product audit activities and the evaluation of technological improvements in mining products submitted for approval. MSHA continues to believe that implementation will result in improved quality assurance and more rapid introduction of technological improvements into the mines, thereby improving miner safety.

This commenter further expressed the opinion that the protections offered by the Mine Act under section 110(h) would not be guaranteed if the testing occurred outside the United States. The responsibilities of the applicant under this section are not affected by this change in approval procedure. The issue of product testing conducted outside the United States is addressed by 30 CFR 7.4(d), a general provision of part 7 which restricts such testing to where it is specifically required by international agreement.

Commenters also suggested that MSHA use consensus standards as the basis for approval of explosion-proof motors. The intent of part 7 is to provide objective technical subparts based on current MSHA regulations. The testing procedures incorporated into part 7 subparts are procedures that the Agency has used successfully for a number of years and for which objective criteria have been established. While these criteria may be revised and modified to clarify existing subjective requirements, they are not intended to introduce new technological requirements. Consensus standards have not been incorporated in this subpart because their use is inconsistent with this intent and was not an objective of this rulemaking.

This final rule is consistent with the Mine Act, Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act and is issued under the authority of section 508 of the Mine Act (30 U.S.C. 957).

II. Discussion of Final Rule

The following section-by-section analysis discusses each provision of subpart J and each revision to part 18 and addresses comments received in response to the proposed rule.

A. Section-by-Section Discussion of Part 7

Section 7.301 Purpose and Effective Date

This section, derived in part from existing § 18.1, revises and simplifies the statement of purpose and requires that certain electric motor assemblies be approved under part 7. The final rule establishes the specific requirements for approval of explosion-proof motor assemblies intended for use on-board approved equipment. Those motor assembly designs that contain devices not provided for under subpart J, such as devices for ventilation, pressure relief and drainage, will continue to be evaluated under existing part 18. In addition, designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology will also be addressed under part 18. These designs are not being covered under subpart J because their acceptance by MSHA requires an individual evaluation of design and performance tests. Designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also require evaluation on an individual basis.

MSHA specifies a three-year phase-in period for the implementation of subpart J. This three-year phase-in period will allow industry time to fully develop testing facilities. During the phase-in period, MSHA will accept applications for certification and extension of certification under existing part 18 or applications for approval under subpart J of part 7. After three years, all motor assemblies submitted for approval, except those with designs not covered under subpart J, will be required to be submitted under subpart J and meet its requirements.

One commenter questioned the availability of competent third-party test facilities within the proposed two-year phase-in period. The commenter also suggested the MSHA continue to provide testing for applicants under subpart J until cost-competitive test facilities are available. The Agency has reconsidered the length of time that may be needed for this implementation period and has increased the phase-in period to three years in the final rule. Some facilities are currently available to provide third-party testing, and the Agency estimates that full implementation can be accomplished within three years.

Section 7.302 Definitions

The following definitions apply to the approval of electric motor assemblies. Most are derived from existing § 18.2, although some are new. In order to address the specific requirements for motor assemblies, some of these definitions have been modified. All of these definitions are designed to clarify the requirements of subpart J.

Afterburning. The combustion of any flammable mixture that is drawn into an enclosure after an internal explosion in the enclosure. This definition clarifies the definition in § 18.2 by stating that afterburning is determined through detection of secondary pressure peaks occurring subsequent to the initial explosion. This phenomenon is characterized by the development of secondary pressure peaks following a negative or zero pressure at the termination of the preceding pressure peak.

Cylindrical joint. This definition is the same as that in § 18.2 and is a joint comprised of two contiguous, concentric, cylindrical surfaces.

Explosion-proof enclosure. The rule modifies the existing definition in § 18.2, which defines an explosion-proof enclosure as a metallic enclosure used as a winding compartment, conduit box, or a combination of both that complies with the applicable requirements of § 7.304 and that is constructed to withstand the explosion tests of § 7.306. This definition is modified to be specific to electric motor assemblies, as their subpart applies only to motor assemblies.

Fastening. This definition includes a bolt, screw or stud used to secure adjoining parts to prevent the escape of flame from an explosion-proof enclosure. Although the definition is new, it reflects the items included as fastenings in existing § 18.32.

Flame-arresting path. This definition identifies two or more adjoining or adjacent surfaces between which the escape of flame is prevented as a flame-arresting path. It is the same as that contained in § 18.2.

Internal free volume (of an empty enclosure). The rule identifies the internal free volume of an empty enclosure as that volume remaining after deducting the volume of any part that is essential to maintaining the explosion-proof integrity of the enclosure or necessary for operation of the motor. Essential parts would include the parts that constitute the flame-arresting path as well as those necessary to secure the parts that constitute a flame-arresting path. This definition is important because the volume of the enclosure defines the minimum design requirements of the explosion-proof enclosure. While the definition is new, it retains the interpretation of "volume of empty enclosure" currently used for the classification of construction requirements contained in existing § 18.31.

Motor assembly. This new definition defines a motor assembly as the winding compartment including a conduit box when specified. It also clarifies that the motor assembly would be comprised of one or more explosion-proof enclosures. This definition describes the typical arrangement currently used for motor assemblies in underground mines.

Plane joint. This definition identifies a plane joint to be a joint comprised of two adjoining surfaces in parallel planes. It is the same as that contained in § 18.2.

Step (rabbet) joint. This definition is derived from § 18.2. It retains its existing meaning and specifies a step or rabbet joint to be a joint comprised of two adjoining surfaces with one or more changes in direction between the inner and outer edges. Examples of a step joint would be one composed of a cylindrical portion and a plane portion or one composed of two or more plane portions.

Stuffing box. This new definition identifies and entrance that has a recess filled with packing material for cables extending through a wall of an explosion-proof enclosure.

Threaded joint. This definition maintains the definition in existing § 18.2 that a threaded joint is a joint consisting of a male- and a female-threaded member, both of which are the same type and gauge.

General definitions such as "applicant," "approval," and "post-approval product audit" are not included in this subpart. They are defined in the general provisions of subpart A of part 7.

Section 7.303 Application Requirements

Under the final rule, derived from existing § 18.6(a), an application for approval of a subpart J motor assembly is required to contain sufficient information to document compliance with the technical requirements of subpart J. The application must be accompanied by a composite drawing or drawings showing the design specifications for the motor assembly. For clear identification, each drawing is required to be titled, dated, and

numbered and include the latest revision number. A sample of a composite drawing is available upon request from the Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

A commenter suggested that § 7.303 should include a statement that these application requirements are in addition to the procedures and requirements of existing § 7.3. This commenter was concerned that new applicants would be unfamiliar with the general requirements of part 7 subpart A. This final rule promulgates subpart J within part 7 and as such, all the general provisions of part 7 in subpart A are applicable. Consequently, it is necessary that applicants be familiar with all these general provisions.

Section 7.304 Technical Requirements

This section revises and updates the existing technical requirements for the approval of motor assemblies. The technical requirements for the approval of motor assemblies are derived from the existing requirements of part 18.

Paragraph (a) is derived from existing § 18.47 and specifies the maximum voltage rating as 4160 volts, which is the voltage limitation for machines approved under part 18. Paragraph (b) is derived from existing § 18.23 and limits the maximum temperature of the external sufaces of the motor assembly to 150°C (302°F) when operated at the manufacturer's specified ratings, which would be considered the normal operating conditions referred to in § 18.23. This is to prevent the thermal ignition of coal dust. A commenter suggested that the external motor surface temperature limitation of § 7.304(b) be applied when the motor is blanketed with dust. It was also suggested that because motors can be overloaded or have other abnormal operating conditions, additional tests should be conducted to verify that surface temperatures do not exceed 200°C under these conditions.

The motors approved under this subpart are intended for incorporation into permissible equipment approved under part 18 and used in gassy mines. Existing part 18 requirements limit the external surface temperature of motors to 150°C under normal operating conditions. Other requirements in part 18 address protection against motors running in overload or faulted conditions for prolonged periods. Part 75 prohibits excessive accumlations of coal dust and other combustibles on equipment. Therefore, the Agency believes that the limitation of 150°C, as specified in part 18 and incorporated in this subpart, provides adequate protection.

Paragraph (c) is derived from existing § 18.24 which requires the clearance between live parts and casings to be sufficient to minimize the possibility of arcs striking the casings. The rule establishes specific minimum clearance distances based upon the circuit voltage of the live parts. These minimum clearances are listed in table J–1. The minimums are applicable to the distance between uninsulated electrical conductor surfaces or between uninsulated electrical conductor surfaces and grounded metal surfaces within the enclosure. These minimum clearances are the result of an engineering study performed in conjunction with high voltage studies at MSHA's Approval and Certification Center.

One commenter suggested that reduced clearances for voltage ratings of 0–250 volts and 251–600 volts would be appropriate. The proposed rule addressed a voltage classification of 0–999 volts. Evaluation by the Agency of a further breakdown of voltage classifications as suggested has resulted in lesser clearances, consistent with the comment, for these voltage ranges. The final rule incorporates this modification. These clearances clarify existing requirements and will not result in additional costs to manufacturers nor impose new requirements.

Paragraph (d) of § 7.304, derived from existing § 18.34(a)(4), does not allow the use of parts such as bearings and seals for flame-arresting paths because they can become worn during the motor operation and therefore cause the explosion-proof integrity of the enclosure to be lost. Paragraph (e), derived from existing § 18.34(a)(6), adds o-ring grooves to the types of grooves to be deducted when determining the width of the flame-arresting paths. This change is consistent with existing MSHA policy that addresses the use of o-ring grooves.

Paragraph (f), derived from existing § 18.34(a)(8), allows an outer bearing cap to form part of a flame-arresting path only if it houses the bearing. A commenter suggested that this provision be modified to allow outer bearing caps that are not part of a bearing cartridge to form part of a flame-arresting path. A bearing cap that does not house the bearing is not essential for the motor operation and could inadvertently be removed from the motor assembly. If the bearing cap were part of the flame-arresting path, its removal would cause the motor assembly to lose its explosion-proof integrity. It is the Agency's experience that nonessential parts are sometimes inadvertently omitted; therefore, the final rule has not been modified.

The design requirements of paragraph (g) are derived from existing §§ 18.26, 18.29, 18.31 through 18.34, and current policy. Paragraph (g)(1), derived from existing § 18.31(a)(1), requires the motor assemblies to be constructed of metal, designed to withstand a minimum internal pressure of 150 pounds per square inch gauge (psig), to have castings free from blow holes and to be explosion-proof as determined by the tests of § 7.306. These requirements ensure that a motor assembly will withstand an internal methane explosion.

Paragraph (g)(2) of § 7.304, derived from existing § 18.31(a)(2), establishes the static pressure test requirements of § 7.307 as the minimum performance level for welded joints forming an enclosure. Submitting an enclosure to this performance test would be an alternative to welding in accordance with, or exceeding, American Welding Society (AWS) standard D14.4–77, which is incorporated by reference. This provides an objective requirement to replace the part 18 requirement that each application be evaluated individually as to the adequacy of the welding standards used. Existing § 18.31(a)(2) states that these welds are to be made in accordance with AWS standards, with no specific standard identified. MSHA policy has been to accept welds made in accordance with AWS D14–77. MSHA's experience with explosion-tested designs indicates that these minimum requirements provide a design adequate to maintain the explosion-proof integrity of the enclosure.

Paragraph (g)(3), derived from existing § 18.31(a)(3), limits the magnesium content of external rotating parts constructed of aluminum alloys to 0.6 percent. Existing § 18.31(a)(3) specifies this magnesium limit to be 0.5 percent. The Agency developed a policy approximately 20 years ago allowing a 0.6 percent magnesium content based upon experimental data demonstrating this value to be within the range of permissible safety limits. Paragraph (g)(3) is also derived from existing § 18.26 and requires that all nonmetallic rotating parts be provided with a means to prevent an accumulation of static electricity. This is to prevent a buildup of a static charge that could produce an incendive spark or arc. A commenter suggested that the requirements of this paragraph be applied to nonmetallic fan guards to evaluate their ability to dissipate static electricity. This comment was not adopted because

MSHA has not evaluated and certified any motors with nonmetallic fan guards. Future applications specifying these fan guards could be addressed as new technology under part 18.

Section 7.304(g)(4), derived from existing § 18.31(a)(5), requires threaded covers and mating parts to be designed with Class 1A and 1B coarse, loose-fitting threads. These are thread classifications from the American National Standard, ANSI B1.1–1982, "Unified Inch Screw Threads (UN and UNR Thread Form)". This provision retains the requirement contained in existing § 18.31(a)(5); however, the classification terms (Class 1A and 1B) are updated to reflect current terminology. The rule is still designed to minimize binding of threads. In addition, as in § 18.31(a)(5), the cover is required to be secured against loosening.

Paragraph (g)(5), derived from existing § 18.33, specifies requirements for the planarity, surface finish, and preparation of all flame-arresting path surfaces. These requirements are important because they relate to maintaining the maximum clearance between flame-arresting path surfaces to prevent the escape of flames and/or hot gases resulting from an internal explosion. One commenter suggested that the test method specified in a consensus standard be required for use to measure the surface finish. The maximum finish of the surface is critical, not the method of measurement. The final rule allows the applicant to determine the specific method, as long as the technical requirements are satisfied.

A second commenter recommended the following wording regarding rust inhibitors: "* * * so long as the final surface may be readily wiped free of any foreign materials." Because this was the intent of the requirement, the final rule includes this wording.

Paragraph (g)(6), derived from existing § 18.34(c), specifies clearance requirements between laminations and end rings for laminated stator frames. This also addresses hazards associated with the escape of flames and/or hot gases resulting from an internal explosion.

Paragraph (g)(7) of § 7.304 is derived from existing § 18.32(b) and requires locking devices to be provided for all fastenings securing parts which form flame-arresting path fits. The rule allows alternatives to lockwashers that meet the lockwasher equivalency test in § 7.308. The lockwasher equivalency test of § 7.308 provides an objective means of evaluating devices as currently permitted under existing § 18.32(b). One commenter suggested that lockwashers should not be required. As previously stated, the intent of part 7 subpart J is to objectively state the technical criteria presently required under part 18, not to introduce new or modified requirements. Therefore, the suggested modification is not included in this final rule.

Paragraph (g)(8), which is derived from existing § 18.32(c), requires all fastenings that hold a flame-arresting path part to be of uniform size, if practicable. This is intended to preclude improper assembly that may result in insufficient thread engagement or bottoming of the fastening. One commenter suggested that proposed § 7.304(g)(8) would change the requirement for uniformity of fasteners and would permit the use of nonuniform sized fasteners. However, the wording of this provision is identical to existing § 18.32(c), and it has been applied successfully. Therefore, this comment was not incorporated into the final rule.

Paragraph (g)(9), derived from § 18.32(d), requires that holes be threaded deeply enough so the fastenings would not bottom if the locking device is omitted. Paragraph (g)(10), which is also derived from existing § 18.32(d) and § 18.34(a)(9), requires that holes for fastenings not penetrate to the interior of the enclosure except as specified. This will prevent the existence of a through hole from the interior of the enclosure to the exterior through which flames and/or hot gases could escape in the event that a fastening were inadvertently omitted. Holes made through motor casings for bolts, studs or screws to hold parts that are essential for the motor operation are allowed.

Paragraph (g)(11) of § 7.304, derived from existing § 18.34(b), specifies requirements for the assembly of pole pieces to the frame of direct current motor assemblies, including the use of shims during assembly of the pole pieces. The pole bolts are necessary to maintain the pole pieces in the frame. The rule requires the total thickness of the shims to be specified, if used. This specification is required to determine the adequacy of the bolt engagement in the pole pieces. The rule also requires the shim assembly to meet the same requirements as the pole piece when mounted to the frame.

Paragraph (g)(12) allows for the use of coil-threaded inserts in holes for fastenings, provided they have conventional screw threads, the holes for the inserts are drilled and tapped consistent with the insert manufacturer's specifications, and the insert is long enough to ensure the required minimum thread engagement of the fastening in the insert. Although not addressed in existing part 18 requirements, current policy, based upon field experience, evaluation and testing by MSHA, permits their use. This provision allows correction of damaged threads for fastenings securing flame-arresting path parts that could lead to the expulsion of flames and/or hot gases due to an internal explosion. One commenter recommended that paragraph (g)(12)(ii) include the provision that the inserts be installed according to the manufacturer's specifications. This was specified in paragraph (g)(12)(iii) of the proposal and is addressed in the final rule.

Paragraph (g)(13) of § 7.304, derived from existing § 18.32 (e), clarifies the requirement for a minimum of ⅛ inch of stock at the bottom of each blind hole by identifying the subject holes as those that could penetrate into the interior of the explosion-proof enclosure. This requirement provides protection against failure of the enclosure surface beneath the blind hole in case fastenings are not present in the holes. One commenter suggested that under certain conditions a minimum of 1/16 inch be allowed in the bottom of blind holes. As previously stated, the intent of part 7 subpart J is to objectively state the established technical criteria presently required and successfully applied by MSHA under part 18, not to introduce new or modified requirements. Therefore, the suggested modification is not included in this final rule.

Paragraph (g)(14), derived from existing § 18.32(f), clarifies the requirement that fastenings hold only parts that are essential for maintaining the explosion-proof integrity of the motor or necessary for the operation of the motor. This ensures the proper thread engagement necessary to maintain the explosion-proof integrity of the enclosure. The rule also retains the requirement that the same fastenings not be used for making electrical connections. This addresses the concern that electrical energy could cause the connection to loosen or the hardware to deteriorate.

Paragraph (g)(15), derived from existing § 18.29(c), clarifies the requirements for through holes in explosion-proof enclosures. Although all through holes are required to be plugged, the plug for holes where future access is necessary only have to be spot welded or brazed, allowing for removal. However, plugs in through holes not requiring future access have to be continuously welded all around for permanent assembly. The rule also

requires removable plugs to meet the flame-arresting path requirements of § 7.304(g)(19). Figure J–1 in the appendix illustrates the alternate methods of securing the plug.

One commenter, concerned that spot welding or brazing can result in unnecessary damage, recommended that other means of securing plugs be allowed. Another commenter suggested alternate methods of securing plugs for holes where future access is not required. These methods that are accepted in some consensus standards include tack welding as a secondary securing measure. The methods specified in this paragraph provide the protection necessary to ensure the explosion-proof integrity of enclosures. Alternate methods would require an evaluation of the type of protection provided and therefore would be required to be evaluated under part 18.

Paragraph (g)(16) is new and specifies the acceptable location of o-rings in a flame-arresting path. Although not addressed in existing part 18, current policy specifies these locations when o-rings are installed to permit checking of flame-arresting path fits without interference from o-rings. This requirement is based upon the Agency's field experience and reflects proven methods needed for field inspection. Figures J–2, J–3, J–4 and J–5 in the appendix are included to clarify the required locations for o-rings.

One commenter expressed concern that the placement of o-rings specified in the proposed rule would result in trapped moisture, causing problems with rust, and suggested that alternate locations be allowed. The introduction of an o-ring does not increase the likelihood of rusting occurring on flame-arresting paths. Rust inhibitors may be used to protect against rust in these areas.

The commenter further suggested that the intent of the requirement of ½ inch in paragraph (g)(16)(ii) was for the o-ring to be located "at least one-half of the acceptable flame-arresting path in by the outer edge of the plane portion * * *". The intent of this requirement is, as stated in the final rule, for the o-ring to be located ½ inch within the outer edge of the plane portion.

Paragraph (g)(17) is new and sets requirements for the mating parts of a pressed fit. Although not addressed in existing part 18, these requirements are current policy developed to define pressed fits. A pressed fit must meet minimum interference and length requirements. These requirements are intended to ensure that the fit is sufficient to maintain the explosion-proof integrity of the motor assembly.

Paragraph (g)(18) of § 7.304, derived from existing § 18.31(a)(5), requires threaded joints to meet the applicable flame-arresting path requirements of § 7.304(g)(19). This addresses the hazards associated with the expulsion of flames and/or hot gases along these surfaces. One commenter suggested that threaded joints as specified under this paragraph must comply with the "minimum thread engagement of fastening" specified in Table J–2 of § 7.304(g)(19) and that an alternative construction based on the number of threads per inch be offered. The referenced minimum thread engagement requirement does not apply to the threaded joints addressed in this paragraph, but rather to hardware used to ensure the integrity of explosion-proof enclosures.

Paragraph (g)(19) references Table J–2 and footnotes that specify the design requirements for flame-arresting paths based on the volume of the empty enclosure. These provisions repeat requirements derived from existing § 18.31(a)(6), with a few clarifications and alternatives explained below.

One commenter requested clarification of the minimum requirements listed in the table concerning the tolerances in standard steel plate thicknesses. The minimum thicknesses included in the table apply to walls, covers, and flanges. While these dimensions are minimum values for flanges and covers, except where noted, they are intended to be the minimum nominal thickness of standard plate used for walls. The final rule includes a new Footnote 1 to clarify this requirement. The proposed footnotes have been renumbered accordingly in the final rule.

Under the maximum fastening spacing for joints, portions of which are in different planes, the specification of 8 inches with a minimum of 4 fastenings is added. This provides an objective requirement to replace the part 18 requirement that each application be evaluated individually. MSHA's experience with explosion-tested designs indicates that these minimum requirements provide a design adequate to maintain the explosion-proof integrity of the enclosure. The corresponding existing part 18 requirement has been retained to allow the continued individual evaluation of designs.

Footnote 5 of table J–2, derived from existing § 18.34(d), specifies alternate flame-arresting path dimension requirements for rabbet (step) joints on small motor assemblies having internal free volume not exceeding 350 cubic inches and joints not exceeding 32 inches in outer circumference. The requirements allow minimum total widths of rabbet (step) joints to be shorter than those specified in table J–2, provided the corresponding tighter clearances are maintained. Figure J–6 in the appendix is included to provide an illustration of a rabbet (step) joint.

Footnote 6 to the table in part 7, which is the same wording as Footnote 4 to the table specified in existing § 18.31, specifies the clearance requirements based on the length of flame-arresting path fits. One commenter questioned the need for this footnote. However, it provides additional clarification of the design requirements pertaining to these specific flame-arresting path fits and has been retained in the final rule.

Footnote 7 clarifies requirements pertaining to the use of studs as fasteners. One commenter requested clarification of the intent of this footnote. In response to this commenter, studs are included in the definition of fastening, and it is MSHA's intent that this footnote provide the basis for which studs are acceptable in lieu of mounting bolts.

Footnote 8 specifies clearance and location requirements for steel dowel pins. These pins are generally used in cover flanges to aid in aligning the covers. Although not addressed in existing part 18, these requirements are consistent with current policy. One commenter requested information on the need to reduce the spacing requirement from 6 inches to 5 inches for steel dowel pins. Where a steel dowel pin is located, an extra hole is created. Since a pin does not secure the cover, a reduction of bolt spacing is necessary to decrease the possibility of flame being admitted. This spacing requirement is based on MSHA's explosion-testing experience and has proven to be a safe design.

Footnotes 9 and 10 contain new performance-oriented criteria to evaluate fastenings not meeting the minimum diameter and thread engagement dimensions specified. Again, these footnotes provide an objective requirement to replace the part 18 requirements that each application be evaluated individually. MSHA's experience with explosion-tested designs indicates that these minimum requirements provide a design adequate to maintain the explosion-proof integrity of the enclosure. The corresponding existing part 18 requirement has been retained to allow the continued individual evaluation of designs. Footnote 9 allows the use of fastenings with diameters smaller than those specified in the table, provided

that the enclosure is first tested to meet the requirements of § 7.307 (static pressure test) and then § 7.306 (explosion-test). This new provision provides performance criteria upon which fastenings with smaller diameters will be evaluated. Footnote 10 allows minimum thread engagement less than the diameter of the fastening specified provided the enclosure meets these same test requirements. The criteria ensure adequate strength of the fastenings and threads for the motor design.

Footnote 11 of table J–2, which is new, specifies that the maximum clearance applies only when the fastening is located within the flame-arresting path. It clarifies when the requirement in the table is applicable. One commenter questioned whether the maximum diametrical clearance between fastening body and unthreaded holes through which it passes applied only when the fastening is located in the flame-arresting path. Footnote 11 specifically clarifies this concern.

Footnote 12, which addresses the deburring of holes, was inadvertently excluded from the proposal to this part 7 section. However, it is a footnote in existing § 18.31 and was proposed as a footnote to the revision of this section. For purposes of consistency, it is included in the final rule.

Footnote 13 states that the edge of the fastening hole must include the edge of any machining done to the fastening hole, such as chamfering. This is consistent with existing policy and is added for clarification.

Footnote 15 provides that shafts or operating rods not be less than ¼ inch in diameter. This provision has been changed in the final rule to be consistent with the comparable footnote published in proposed § 18.31(a)(6). This provision is also contained in existing part 18. The Agency's experience is that the ¼-inch minimum diameter provision for shafts and operating rods provides adequate strength for proper performance.

Commenters suggested that explosion-proof joint constructions specified in consensus standards be accepted as alternatives to the requirements of paragraph (g)(19). As previously stated, the intent of part 7 subpart J is to objectively state the established technical criteria presently required and successfully applied by MSHA under part 18, not to introduce new or modified requirements. Therefore, the suggested modification is not included in this final rule.

Paragraph (h) of § 7.304, derived from existing § 18.37, specifies the requirements for lead entrances. Except as explained below, the requirements are the same as those contained in existing § 18.37. Paragraph (h)(1) requires each cable extending through an outside wall of the motor assembly to pass through a stuffing-box lead entrance. This new provision reflects the Agency's belief that this is the only type of lead entrance for which objective criteria can be developed at this time.

Paragraph (h)(2) addresses the requirements for the proper packing of gland assemblies. Paragraph (h)(2)(i) specifies the minimum clearance distance for gland nuts. One commenter suggested that this provision clarify that there is no limitation on the maximum clearance distance as long as three effective engagement threads are maintained. It was MSHA's intent that the rule be applied in this way. Therefore, this clarification has been included in the final rule.

Paragraph (h)(2)(ii) provides for a minimum of three effective engagement threads for the packing gland nut. Although not contained in existing part 18, this minimum engagement is addressed by current policy. It was developed to define the minimum thread engagement for adequate mechanical strength.

Paragraph (h)(4) specifies a minimum of ½-inch contact distance for compressed packing material. One commenter requested that o-rings be allowed to be used to form a gas tight seal and further stated that if an appropriate o-ring were used it would not be necessary to maintain a minimum contact length of ½ inch. Such use of o-rings would constitute new technology and would not be subject to approval under this subpart. This category of design can be evaluated under part 18.

Paragraph (h)(5) replaces the term "asbestos packing material" with "MSHA accepted rope packing material" in order to address acceptable asbestos substitute materials. For clarification, Figures J–7 through J–14 in the appendix are included for use with the lead entrance requirements of paragraph (h).

Paragraph (i) specifies requirements for insulating material, with respect to combustible gases. These requirements are derived from existing § 18.25. Paragraph (i)(1) includes the existing part 18 requirement prohibiting the use of insulating materials that give off volatile gases when subjected to destructive electrical action. Paragraph (i)(2) allows any method of treatment to remove combustible solvents, instead of only heat as provided under existing § 18.25(b). As the desired result is removal of any combustible solvents, the method of removal is not critical.

Section 7.305 Critical Characteristics

This section is new and lists the critical characteristics that are required to be inspected on each motor assembly that has an approval marking. As defined in subpart A of part 7, a critical characteristic is a feature of a product that, if not manufactured as approved, could have an adverse effect on safety. This rule will assure the explosion-proof integrity of the motor assembly prior to use by requiring inspection of the critical characteristics of an approved motor assembly. This list of critical characteristics was developed using the applicable technical requirements in § 7.304 of this final rule. The same commenter who suggested that § 7.304(g)(7) omit the requirement for lockwashers also recommended that the critical characteristic pertaining to lockwashers be omitted. This suggestion was not incorporated into this provision for the reasons stated in the preamble discussion accompanying § 7.304 of this final rule.

Section 7.306 Explosion Tests

Section 7.306, derived from existing § 18.62, sets forth the equipment, test procedures, and acceptable performance criteria for the testing of a motor assembly to withstand an internal explosion of a combustible gas mixture. The provisions of this section provide objective criteria to evaluate the explosion-proof performance of a motor assembly.

Paragraph (a) requires the use of an explosion test chamber, methane gas supply, electric ignition source and a pressure recording system when conducting explosion tests. Factors that would affect the accuracy, reliability and repeatability of the testing procedures are specified.

The explosion test chamber is defined in paragraph (a)(1) as being designed and constructed to contain an explosive gas mixture. The gas mixture, as described in the testing procedures, would surround and fill the motor assembly being tested. The explosive gas contained within the chamber must envelop the motor assembly during testing. The amount of leakage from the chamber must be controlled so that the gas mixture is maintained within the specified tolerances for the duration of the testing. Therefore, a gas-tight chamber is not required. The chamber would be darkened and have flame-arresting path viewing capabilities enabling the testing personnel to discern the discharge of flame along flame-

arresting paths as well as the ignition of the explosive mixture surrounding the motor assembly being tested.

As specified in paragraph (a)(2) the methane gas supply must be composed of at least 98 percent of combustible hydrocarbons with inert products comprising the remainder. A minimum of 90 percent of the gas, by volume, is required to be methane. This composition of gas, which is specified to provide reliable and repeatable test results, is typical for commercial natural gas (methane) supplies.

Paragraph (a)(3) defines the coal dust to be used in the explosion tests. The existing identification of "Pittsburgh bed coal dust" in § 18.62(a) is replaced by a minimum volatile matter and BTU content. This change allows equivalent coal from other coal seams to be used in the tests. The requirement that the coal be ground to a fineness of minus 200 mesh is retained.

Paragraph (a)(4) establishes the minimum energy level for the electric spark ignition source at 100 millijoules. This minimum energy level ensures that there is sufficient energy available to ignite the explosive gas mixture within the motor assembly during each test. This provision retains the requirement in existing § 18.62(a) that an electric spark ignition source be used for the testing.

Paragraph (a)(5) is derived from § 18.62(a) and retains the existing requirement that the explosion pressure developed during testing be recorded. The rule clarifies this requirement by specifying that the pressure recording system must indicate the pressure peaks within the tested motor assembly as described in the test procedures.

Paragraph (b) of § 7.306 describes the general test procedures for conducting the explosion tests. The preparation of the motor for testing is described in paragraph (b)(1). this paragraph requires motor assemblies being tested to be equipped with unshielded bearings and have all parts not contributing to the operation or assuring the explosion-proof integrity of the enclosure removed. Examples of those parts to be removed include oil seals, grease fittings, hose conduit, cable clamps and outer bearing caps that do not house the bearings. Preparation of the motor assembly in this manner is consistent with existing MSHA policy.

The types of parts identified in paragraph (b)(1) could obstruct the observation of flame-arresting paths during testing and possibly inhibit the expulsion of flames and hot gases. Additionally, since these parts do not contribute to the operation or explosion-proof integrity of the motor, they can be omitted with no reduction in operational capabilities. Testing with these parts not present ensures that no reduction in safety results in such instances.

Paragraph (b)(2) addresses the general procedures of filling the chamber and motor assembly with explosive mixtures, the locations for pressure measurements, and the number of tests permitted before the chamber is purged and recharged. The motor assembly must be observed for discharge of flames during each test. In order to provide adequate observation of any discharge of flames, each externally visible flame-arresting path fit must be observed for discharge of flame for at least two tests, one with coal dust added.

The motor assembly must be filled with and surrounded by explosive methane mixtures for each test. Just before ignition, the gas concentration within the test chamber must be between 6.0 percent and the concentration within the motor assembly. This is specified in paragraph (c), which sets out test procedures. To ensure the accuracy of the test, the gas mixtures must be adequately mixed so that homogeneous gas concentrations within the explosive limits are present.

The rule also specifies that a single spark source is to be used for all testing, with test holes of sufficient quantity and location to permit ignition and pressure recording in each enclosure, as required in paragraph (c).

Finally, paragraph (b) also requires the motor assembly to be completely purged and recharged with a fresh explosive gas mixture from the chamber or by injection after each test. The chamber is required to be completely purged and recharged as necessary. The oxygen level will be maintained at no less than 18 percent. In the absence of oxygen monitoring equipment, the rule includes an alternative method for ensuring that this level is maintained. This method will limit the maximum number of tests between purgings to no more than the number obtained by dividing the chamber volume by forty times the motor assembly volume. This requirement for purging and recharging of the chamber is the result of testing and analysis of data obtained by MSHA.

The purging and recharging sequences are required in order to provide appropriate concentration levels of the combustion gases and the combustion by-products within the motor assembly chamber. The concentration levels of these various gases must be maintained within proper limits to ensure reliable and repeatable ignition and combustion of the explosive gas.

Paragraph (c) provides the specific testing procedures to be followed for each series of tests conducted on a motor assembly. The number of tests, methane concentration levels, stationary or rotating rotor, location of ignition source, and use of coal dust are specified. Existing § 18.62(a) requires testing under these various conditions; however, specific values are not stated. The values that are required under this rule have been developed from the Agency's testing experience and existing policy. The rule provides an objective testing procedure to evaluate all designs foreseen to be explosion tested under this subpart.

The methane concentrations of 7.0±.3 and 9.4±.4 percent are specified to accomplish testing at easily ignitable and violently explosive values, respectively. Ignitions while the rotor is rotating at rated speed test the motor assembly at maximum internal turbulence. Ignitions with the rotor stationary test the motor assembly with no turbulence along the flame-arresting path. Turbulence along the flame-arresting path might prevent flames from existing. If the motor assembly incorporates a nonisolated conduit box, two additional tests must be conducted with ignitions within the conduit box. These tests are designed to detect pressure piling in the winding compartment resulting from ignitions in the conduit box. Pressure piling from precompression of the gases in the winding compartment due to ignition of the gases in the conduit box could result in higher pressures being attained.

Four tests are then to be conducted with the gas concentration at 9.4±.4 percent methane and 0.05 ounces per cubic foot of internal free volume of the motor assembly of finely ground coal dust. The requirement of introducing coal dust is derived from § 18.62(a). The existing standard does not specify the quantity of coal dust to be added. The value of 0.05 ounces per cubic foot volume was established through MSHA's testing experience and engineering analysis to provide sufficient coal dust to coat all internal surfaces of the motor assembly.

These four tests, two with the rotor stationary and two with it rotating at rated speed, require ignitions within the motor assembly at varying locations. These locations were chosen, based on MSHA's testing experience, to produce the greatest potential for development of the highest pressures within the motor assembly upon ignition of the explosive mixture. Paragraph (c)(4) outlines additional testing procedures to be followed for motor assemblies that incorporate a conduit box isolated from

the winding compartment. Examples of isolating barriers would be terminals or potting compound, such as chico. Paragraph (4)(i) describes the location of ignition and pressure recording positions for the conduit box. Two ignition points are to be used for a conduit box with internal free volume greater than 150 cubic inches, one ignition point as near to the geometric center as practical and the other as far as possible from the isolating barrier between the conduit box and winding compartment. Pressure recording points are to be on the same and opposite sides of the conduit box as the latter ignition point. One ignition point as near to the geometric center as practical and one pressure recording point on a side of the conduit box are to be used for a conduit box with internal free volume equal to or less than 150 cubic inches.

Paragraph (4)(ii) requires the conduit box to be tested separately by performing the tests with the isolating barrier in place. A total of ten explosion tests must be performed on the conduit box, six tests with 9.4±.4 percent methane by volume followed by two tests with 7.0±.3 percent methane by volume. The remaining two tests must be conducted at 9.4±.4 percent methane with coal dust added. The quantity (per cubic foot) and specifications of the coal dust are the same as that provided for in paragraph (c)(3). If the internal free volume of the conduit box exceeds 150 cubic inches, the tests are to be equally divided between the two ignition points.

Paragraph (4)(iii) describes the testing sequence to be followed in removal of the isolating barrier. If the isolating barrier is comprised of multiple assemblies, such as terminals, one assembly is to be removed for the initial series of six explosion tests. Following this initial series of tests, one test will be conducted following the removal of each additional assembly. This procedure will continue until the motor assembly has been tested with all isolated barrier assemblies removed.

Each test conducted under this paragraph must be performed using an explosive gas mixture containing 9.4±.4 percent methane by volume within the conduit box and winding compartment. For the initial six tests, the rotor will be stationary for one test and rotating for another for each of three ignition points. The three ignition points must be opposite ends of the winding compartment and the conduit box ignition point which provided the highest pressures during the tests conducted in paragraph (c)(4)(ii). Of these three ignition points, the one that produces the highest recorded pressures will be used for testing following removal of each additional isolating assembly (sectionalizing terminal).

Paragraph (d) provides additional testing procedures or inclusion of a warning statement for any motor assemblies where recorded pressures exceeding 110 psig result following removal of any or all isolating barriers. The additional testing requires the motor assembly to withstand a static pressure test at a pressure of twice the maximum recorded explosion test pressure. As an alternative to conducting the static pressure testing, a warning statement is required. The warning statement, incorporated on the approval plate, states that the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly.

During maintenance and repair of electric motor assemblies, isolating barriers might not be included in the assembly procedure. Normally there is no evidence to indicate the prior existence of an isolating barrier. Deletion of this barrier could result in development of a hazardous situation with no prior warning. Paragraphs (c)(4)(iii) and (d) address this situation.

Some winding compartment-conduit box combination designs can result in increased explosion pressures due to pressure piling. The provisions of paragraphs (c)(4)(iii) and (d) allow the use of such designs while providing what MSHA believes to be adequate safeguards. A warning statement on the approval plate notifies the user that the integrity of the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly.

Paragraph (e) describes the acceptable performance criteria for explosion tests. These criteria are derived from existing § 18.62 (b) and (c). This rule requires that there be no flame discharge from the motor assembly or ignition of the explosive mixture surrounding the motor assembly. These conditions would indicate that the flame-arresting paths are inadequate to prevent the escape of flame and the enclosure is not constructed to withstand and contain internal explosions of methane-air mixtures. Rupture of any part of or any panel or divider within the motor assembly, clearances along accessible flame-arresting paths in excess of those specified in subpart J, and permanent deformation greater than 0.040 inches per linear foot are all indications of structural deficiencies of the motor assembly.

The criterion which considers development of afterburning as an unacceptable result of explosion tests is derived from § 18.62(b)(3). The term "afterburning" is applied to combustion, immediately after an internal explosion, of a gaseous mixture that was not in the enclosure at the time of that explosion. Sometimes the external gases are drawn into a motor interior immediately after an explosion as a result of the cooling of the product of the original explosion or otherwise and continue to burn. If prolonged, afterburning may damage the insulation. What is more serious is that the heating may allow flames to pass to the outside of the apparatus along flame-arresting paths that would otherwise be effective in cooling them. This condition reflects deficiencies in the motor assembly and would represent an increased hazard in an explosive atmosphere.

The occurrence of subsequent pressure peaks within an electric motor assembly in conjunction with an internal explosion is not an unusual event. This phenomenon occurs in multiple compartmented enclosures when the explosion is initiated in one compartment and propagates to the others. This occurrence differs from afterburning in that the secondary pressure peaks result from the combustion of the gases already present in the enclosure at the time of ignition. The pressure developed from the initial explosion is not completely dissipated at the time the secondary peaks develop.

Development of pressures exceeding 110 psig during explosion tests is not acceptable, unless the enclosure has met the acceptable performance criteria of the static pressure tests conducted at twice the maximum recorded explosion test pressure or a warning statement in accordance with § 7.306(d) is included on the approval plate. This provision modifies the existing requirements contained in § 18.62(c).

The ignition and pressure recording locations specified in the explosion test procedures are designed to provide the maximum pressure development and sensing for the enclosures. However, variations in enclosure designs may cause the specified locations to differ slightly from the "optimum" locations. To provide for this potential variation, the rule requires additional testing at a pressure indication of 110 psig rather than the 125 psig required in existing § 18.62(d). The rule also requires this testing to be done statically rather than dynamically, as specified in the existing regulations. The Agency believes that static pressure testing at two times the highest recorded explosion test pressure will provide an adequate safety margin to ensure a safe design. The static pressure test at these higher pressures also provides greater safety to the testing personnel since the development and

release of the testing pressure can be controlled.

The Agency received comments recommending alternate test methods, including the use of different gases and different test parameters. The test procedures contained in the final rule and discussed above are based on the current test procedures and part 18 requirements. Subjective areas were clarified and restated in an objective manner in order to formulate tests that can be repeatedly used by third parties. The use of other test procedures and test requirements was not an objective of this rulemaking. Therefore, test methods alternate to MSHA's established procedures were not included in the proposal and are not in the final rule.

Section 7.307 Static Pressure Test

Section 7.307 describes the test procedures and the acceptable performance criteria for conducting static pressure tests. The static pressure test is new and provides an alternative means of satisfying the technical requirements of § 7.304(g)(2) for welded joints, § 7.304(g)(19) (footnote 8) for diameters of fasteners, and § 7.304(g)(19) (footnote 9) for engagement of fasteners. The test will also be used, as specified in § 7.306(d) and (e)(6), for motor assemblies where explosion test pressures exceed 110 psig. The test procedures are based on the static test procedures developed as part of the approval criteria for high-voltage machines containing on-board switching of high-voltage circuits. These criteria resulted from engineering investigation and testing experience. The acceptable performance criteria are the same performance requirements of § 18.62 with regard to physical failure conditions.

The static pressure test provides an alternative means of satisfying the requirements of the above sections because the concern addressed by those sections was that of failure due to physical stress and deformities.

One commenter recommended the use of air as the pressurizing agent for the static pressure test with the inclusion of additional low-pressure tests. MSHA believes that while the suggested test procedures would meet the requirements and would provide acceptable testing, this is not the only means available to satisfy the test requirement. Therefore, the final rule does not require a specific pressurizing agent or test procedure. Additional tests can be conducted if desired by the applicant.

Another commenter suggested alternate test requirements for the static pressure test. As previously stated, the intent of part 7 subpart J is to objectively state the established technical criteria presently required and successfully applied by MSHA under part 18, not to introduce new or modified requirements. Therefore, the suggested modification is not included in this final rule.

Section 7.308 Lockwasher Equivalency Test

Section 7.308 specifies new test procedures and acceptable performance criteria when conducting tests on locking devices other than lockwashers. The lockwasher equivalency test provides an alternative means of satisfying the technical requirement of § 7.304(g)(7) if a locking device other than a lockwasher is used. The test has been developed based upon testing procedures specified in Society of Automotive Engineers (SAE) recommended practice, Torque-Tension Test Procedure for Steel Threaded Fasteners (SAE J174, 1971) and Military Specification, Inserts, Screw-Thread, Helical Coil (MIL–I–8846B, 1973). The same commenter who suggested that §§ 7.304(g)(7) and 7.305 omit the requirement for lockwashers recommended omitting the lockwasher equivalency test of this section. This suggestion was not incorporated into this provision for the reasons stated in the preamble discussion accompanying § 7.304 of this final rule.

Section 7.309 Approval Marking

Section 7.309, derived from § 18.13, requires a legible and permanent approval plate with the assigned MSHA approval number inscribed. The plate is required to be securely attached to the motor assembly in a manner that does not adversely affect the explosion-proof integrity of the motor assembly. The rule allows identification of approved subpart J motor assemblies in a manner that facilitates field identification of the motor assembly as approved by MSHA.

Section 7.310 Post-Approval Product Audit

Section 7.310 is new and requires an approval holder, upon request, to make available to MSHA at no cost an approved subpart J motor assembly for audit. This request will be made no more than once a year by MSHA, except for cause. The audit will be conducted at a mutually agreeable site and time. This will be in addition to MSHA's ongoing quality assurance program for which the agency can obtain products for audit at any time at MSHA's expense.

Section 7.311 Approval Checklist

Section 7.311 is new and requires the manufacturer to include with each motor assembly bearing an MSHA approval marking a list of items that should be checked by the user to ensure the motor assembly is maintained in approved condition. This is consistent with existing checklist requirements contained in §§ 7.51 and 7.71 of part 7.

B. Section-by-Section Discussion of Part 18

Part 18 includes various provisions by which MSHA can allow variations in design in the evaluation and testing of explosion-proof enclosures. Under these provisions MSHA can evaluate certain variations in designs based upon its experience, engineering judgment and testing results. This flexibility exists in part 18 but is not appropriate in a part 7 subpart. As a result, some specific modifications to part 18 requirements have been incorporated into part 7 requirements, but not part 18. Additionally, modifications judged appropriate for inclusion as part 18 requirements and necessary to make part 18 consistent with subpart J of part 7 are discussed below.

Section 18.4 Equipment for Which Approval Will Be Used

This section is revised to specify that components approved under part 7 will also be acceptable for incorporation in the assembly of a complete machine or accessory.

Section 18.24 Electrical Clearances

This section is revised to establish specific minimum clearance distances based upon the voltage of the energized parts. It specifies these minimum distances to define the adequacy of spacing required under the existing section. The minimums are applicable to the distance between uninsulated electrical conductor surfaces or between uninsulated electrical conductor surfaces and grounded metal surfaces within the enclosure. These minimum clearances are the result of an engineering study performed in conjunction with high voltage studies at MSHA's Approval and Certification Center. The clearances specified in the final rule are consistent with those specified in subpart J, which were modified as discussed earlier in response to a comment.

Section 18.31 Enclosures—Joints and Fastenings

Paragraph (a)(3) is revised to change the maximum allowable magnesium content of external rotating parts constructed of aluminum alloys to 0.6

percent from 0.5 percent. As stated in the preceding preamble discussion for § 7.304(g)(3), this is consistent with MSHA policy.

Paragraph (a)(5) is revised to change the Class 1 thread terminology of the existing requirement to the present Class 1A and 1B terminology, consistent with that of § 7.304(g)(4).

Paragraph (a)(6) is revised for consistency with subpart J of part 7. The introductory paragraph is changed to include an explanation of "internal volume of an empty enclosure." This explanation is expanded to include the parts necessary for use (operation), making it consistent with MSHA's existing policy.

The rule identifies the internal free volume of an empty enclosure as that remaining after the volume of any part that is essential to maintaining the explosion-proof integrity of the enclosure or necessary for operation. Essential parts include the parts that constitute the flame-arresting path, as well as those necessary to secure the parts that constitute the flame-arresting path. This explanation is important because the volume of the enclosure defines the minimum design requirements of the explosion-proof enclosure. The interpretation of "volume of empty enclosure" currently used is retained for the construction requirements in § 18.31.

The tabulated construction requirements are modified in several areas. The requirements for minimum thickness of material for flanges and covers are combined into one category. This change represents a format change only, since the technical requirements are unchanged. The maximum bolt spacing requirements for joints all in one plane are modified to include the requirement for "a minimum of 4 bolts" to be used in the category of "more than 124 cu. ins." of volume. This modification clarifies the Agency's belief and experience that a minimum of 4 bolts is necessary, regardless of the enclosure's volume or the configuration of the parts forming the joints.

The cylindrical joint portion of the table also includes several modifications. The maximum clearance along shafts centered by ball or roller bearings is expressed in terms of diametrical rather than radial dimensions for clarity. The parts that constitute these fits are generally expressed in terms of diametrical rather than radial dimensions.

The categories of "shafts through journal bearings" and "other than shafts" are combined into a single classification of "other cylindrical joints." The clearances specified are the diametrical equivalent for the radial clearances listed in § 18.31(a)(6) for shafts through journal bearings. Except as discussed below, the contents of the footnotes of § 18.31(a)(6) are retained.

Footnote 4 is derived from § 18.34(a)(6) and includes the requirement to deduct the width of oil grooves and grooves for oil seals in measuring the widths of flame-arresting paths. This provision is expanded to include any groove, because the minimum flame-arresting path length is still required to be met.

Footnote 8 is added to specify clearance and location requirements for steel dowel pins. These pins are generally used in cover flanges to aid in aligning the covers. These requirements are consistent with current policy.

Footnote 12, which is new, specifies that the maximum clearance applies only when the fastening is located within the flame-arresting path. It clarifies when the specification in the table is applicable.

Footnote 13 is added to state that the edge of the fastening hole must include the edge of any machining done to the fastening hole, such as chamfering. This is consistent with existing policy and is added for clarification.

Paragraph (a)(7) of § 18.31 is new and specifies the acceptable location of o-rings in a flame-arresting path. When o-rings are installed, current policy requires these locations to permit checking of flame-arresting path fits without interference from o-rings. This requirement is based upon the Agency's field experience. Figures J–2, J–3, J–4 and J–5 in the appendix to subpart J of part 7 are referenced to clarify the required locations for o-rings.

Section 18.32 Fastenings—Additional Requirements

Paragraph (i) is added to allow for the use of coil-threaded inserts in holes for fastenings, provided they have conventional screw threads, the holes for the inserts are drilled, tapped, and installed consistent with the insert manufacturer's specifications and the insert is long enough to ensure the required minimum thread engagement of the fastening in the insert. Although not addressed in existing part 18, as a result of evaluation and testing by MSHA, current policy permits their use. This provision allows correction of damaged threads for fastenings securing flame-arresting path parts that could lead to the expulsion of flames or hot gases due to an internal explosion.

Section 18.33 Finish of Surface Joints

This section is revised to read that a rust inhibitor is acceptable provided the final surface may be readily wiped free of any foreign materials. This change is consistent with the one previously discussed under § 7.304(g)(5) and was the intent of the requirement. This clarifies the type of preparation that might be used to inhibit rusting. The addition of foreign particles to a flame-arresting path is not desirable because it could interfere with maintaining the proper clearance to prevent the escape of flame and/or hot gases.

Section 18.34 Motors

This section is revised by adding an introductory paragraph to specify that explosion-proof electric motor assemblies intended for use in approved equipment in underground mines that are addressed by part 7 are to be approved under part 7. Explosion-proof motor assemblies incorporating designs not specifically addressed under part 7 will continue to be submitted for acceptance or certification under part 18. Those motor assembly designs that, for example, contain devices for ventilation, pressure relief and drainage will continue to be evaluated under part 18. In addition, designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology will also be addressed under part 18. These designs are not being covered under subpart J of part 7 because their acceptance by MSHA requires an individual evaluation of design and performance tests. Designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology will also require evaluation on an individual basis. Paragraph (a)(6) is revised by deleting the present wording "The widths of oil grooves and grooves for holding oil seals will be deducted in measuring the widths of flame-arresting paths," as this requirement is incorporated into footnote 3 of § 18.31(a)(6). The wording of the present "note" is retained, as removing the oil seals is standard practice on motors submitted for testing.

Section 18.37 Lead Entrances

Paragraph (b) is revised to provide for a minimum of three effective engagement threads for the packing gland nut. This minimum engagement is addressed by current policy. It was developed to define what the minimum thread engagement is for adequate mechanical strength.

Section 18.62 Tests To Determine Explosion-Proof Characteristics

Paragraph (a) of § 18.62 is revised with respect to the definition of coal

dust used in the explosion tests. The identification of "Pittsburgh bed coal dust" in § 18.62(a) is replaced by a minimum volatile matter and BTU content. This change allows equivalent coal from other coal seams to be used in the tests. The requirement that the coal be ground to a fineness of minus 200 mesh is retained.

Derivation Table

The following derivation tables list: (1) Each section number of the final rule (New Section); and (2) The section number of the standard from which the section is derived (Old Section).

DERIVATION TABLE.—PART 7

New section	Old section
7.301	18.1
7.302	18.2
7.303	18.6(a)
7.304(a)	18.47
7.304(b)	18.23
7.304(c)	18.24
7.304(d)	18.34(a)(4)
7.304(e)	18.34(a)(6)
7.304(f)	18.34(a)(8)
7.304(g)(1)	18.31(a)(1)
7.304(g)(2)	18.31(a)(2)
7.304(g)(3)	18.31(a)(3) and 18.26
7.304(g)(4)	18.31(a)(5)
7.304(g)(5)	18.33
7.304(g)(6)	18.34(c)
7.304(g)(7)	18.32(b)
7.304(g)(8)	18.32(c)
7.304(g)(9)	18.32(d) and 18.34(a)(9)
7.304(g)(10)	18.32(d)
7.304(g)(11)	18.34(b)
7.304(g)(12)	New
7.304(g)(13)	18.32(e)
7.304(g)(14)	18.32(f)
7.304(g)(15)	18.29(c)
7.304(g) (16) and (17)	New
7.304(g)(18)	18.31(a)(5)
7.304(g)(19)	18.31(a)(6) and 18.34(d)
7.304(h)	18.37
7.304(i)	18.25
7.305	New
7.306	18.62
7.307	New
7.308	New
7.309	18.13
7.310	New
7.311	New
18.4	18.4
18.24	18.24
18.31(a)(3)	18.31(a)(3)
18.31(a)(5)	18.31(a)(5)
18.31(a)(6)	18.31(a)(6) and 18.34(a)(6)
18.31(a)(7) and 18.32(i)	New
18.33	18.33
18.34	18.34
18.37(b)	18.37(b)
18.62(a)	18.62(a)

Distribution Table

The following distribution tables list: (1) Each section number of the part 18 standard (Old Section); and (2) Each section number of the final rule (New Section). Unless indicated in the part 18 Distribution Table, the existing sections of part 18 are retained.

DISTRIBUTION TABLE.—PART 7

Old section	New section
18.1	7.301
18.2	7.302
18.6	7.303
18.13	7.309
18.23	7.304(b)
18.24	7.304(c)
18.25	7.304(i)
18.26	7.304(g)(3)
18.29(c)	7.304(g)(15)
18.31(a)(1)	7.304(g)(1)
18.31(a)(2)	7.304(g)(2)
18.31(a)(3)	7.304(g)(3)
18.31(a)(5)	7.304(g) (4) and (18)
18.31(a)(6)	7.304(g)(19)
18.32(b)	7.304(g)(7)
18.32(c)	7.304(g)(8)
18.32(d)	7.304(g) (9) and (10)
18.32(e)	7.304(g)(13)
18.32(f)	7.304(g)(14)
18.33	7.304(g)(5)
18.34(a)(4)	7.304(d)
18.34(a)(6)	7.304(e)
18.34(a)(8)	7.304(f) and 7.304(g)(10)
18.34(b)	7.304(g)(11)
18.34(c)	7.304(g)(6)
18.34(d)	7.304(g)(19)
18.37	7.304(h)
18.47	7.304(a)
18.62	7.306

DISTRIBUTION TABLE.—PART 18

Old section	New section
18.4	18.4
18.24	18.24
18.31(a)(3)	18.31(a)(3)
18.31(a)(5)	18.31(a)(5)
18.33	18.33
18.34	18.31(a)(6) and 18.34
18.37(b)	18.37(b)
18.62(a)	18.62(a)

III. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA prepared a Regulatory Impact Analysis (RIA). MSHA determined that the final rule will not result in major cost increases nor have an incremental effect of $100 million or more on the economy. This RIA also formed the basis for the analysis required by the Regulatory Flexibility Act. The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate compliance alternatives that minimize any adverse impact on small businesses. Subpart J clarifies the standards that industry must meet for approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. MSHA designed its product testing requirements to be as performance oriented as possible to allow manufacturers to choose the most cost effective option. Performance-oriented standards benefit both large and small manufacturers.

The rule will increase private-sector involvement in the approval of mining products. For the first time, instead of testing only by MSHA, the applicant or a third party selected by the applicant will test explosion-proof electric motor assemblies. The Agency anticipates that this new procedure will in some cases reduce associated testing costs and potential delay in product approvals.

MSHA also will be able to shift resources from the more standard approvals covered under part 7 to those approvals covered under part 18 that involve new technology and substantial design changes. MSHA anticipates that the increase in resources devoted to part 18 approvals will reduce the time needed to approve new technology from the current 4 months to 6 months to an expected 2 months to 3 months.

MSHA estimates that the total annual compliance cost to electric motor assembly manufacturers under the existing standards is about $65,700. The total annual compliance cost under the new rule will be about $78,600 for the first few years after the effective date, gradually decreasing to $45,800 after manufacturers and MSHA become more familiar with applications under part 7. The cost increase is associated with the requirements for MSHA observation of testing, annual product audits, and quality assurance procedures. These costs, however, are offset by decreased costs for MSHA fees for processing applications and testing products. Even though there are many small firms, MSHA lacks data on them to identify the potential impact on small entities.

MSHA estimates that the incremental cost of the final rule is an increased annual cost of about $12,900 for the first few years, gradually decreasing to a net annual cost reduction of about $19,900. Incremental annual cost increases total about $18,100 and are offset by cost savings of about $5,200 for the first few years after the effective date of this Subpart J and a savings of about $38,000 annually thereafter.

This final rule will not significantly alter the existing technical requirement for electric motor assemblies. Any necessary testing of products required by MSHA either is not substantially different from the currently undertaken or does not impose significant costs compared to the sales value of the product. The annual incremental compliance cost, for the 40 firms which may be affected by the final rule, averages about $322 per firm for the first few years, gradually decreasing to a cost reduction of about $498 per firm in subsequent years.

IV. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collected information. the information collection requirements contained in the rule are discussed below.

Section 7.303 requires applicants seeking approval of an electric motor assembly to submit an application for approval. MSHA estimates that there will be 42 applications submitted per year, each requiring 1.5 hours to prepare for a total of 63 burden hours.

Existing § 7.4(a) requires records of test results and procedures to be retained for at least 3 years. Standard testing protocols used by the manufacturing community include the keeping of records of product testing; therefore, no additional burden hours are assigned to this requirement.

Existing § 7.7(d) requires applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that under subpart J manufacturers will submit 40 reports per year requiring 15 minutes per report for a total of 10 burden hours. The rule requires applicants to maintain records on the distribution of each product bearing an approval marking as set forth in § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply.

In accordance with Section 3504(h) of the Paperwork Reduction Act of 1980, the collection of information requirements contained in § 7.303 of the final rule have been approved by OMB under control No. 1219015.

V. Metric Measurements

In accordance with section 5164 of the Omnibus Trade and Competitiveness Act of 1988, MSHA requested comments on the availability of metric equipment and supplies and metric nominal safety equivalences of the English inch-pound measurements. One commenter recommended issuance of separate metric approval rules, believing that more than a simple conversion of the present dimensions into metric values is required. MSHA agrees that more than a simple direct conversion of dimensions into metric values is appropriate. However, to effectivaly accomplish this conversion, metric values that establish equivalent safety would have to be developed for all the technical requirements specified in parts 7 and 18. Such an approach would require a broader rulemaking effort than intended under the establishment of part 7, subject J. Therefore, technical requirements specified in metric units are not included in this final rule. However, current applications under part 7 and part 18 can be and are submitted with metric measurements. The Agency will continue efforts to work towards metric equivalents to ensure the approval of safe products.

List of Subjects in 30 CFR Parts 7 and 18

Approval of equipment, Incorporation by reference, Mine safety and health, Underground mining.

Dated: December 14, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly subchapter B, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY [AMENDED]

1. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

2. A new subpart J is added to part 7 to read as follows:

Subpart J—Electric Motor Assemblies

Sec.

7.301 Purpose and effective date.
7.302 Definitions.
7.303 Application requirements.
7.304 Technical requirements.
7.305 Critical characteristics.
7.306 Explosion tests.
7.307 Static pressure test.
7.308 Lockwasher equivalency test.
7.309 Approval marking.
7.310 Post-approval product audit.
7.311 Approval checklist.

Appendix I to Subpart J of Part 7

Subpart J—Electric Motor Assemblies

§ 7.301 Purpose and effective date.

This subpart establishes the specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. Applications for approval or extensions of approval submitted after (insert date three years after effective date of this subpart) shall meet the requirements of this part. Those motors that incorporate features not specifically addressed in this subpart will continue to be evaluated under part 18 of this chapter.

§ 7.302 Definitions.

The following definitions apply in this subpart:

Afterburning. The combustion of any flammable mixture that is drawn into an enclosure after an internal explosion in the enclosure. This condition is determined through detection of secondary pressure peaks occurring subsequent to the initial explosion.

Cylindrical joint. A joint comprised of two contiguous, concentric, cylindrical surfaces.

Explosion-proof enclosure. A metallic enclosure used as a winding compartment, conduit box, or a combination of both that complies with the applicable requirements of § 7.304 of this part and is constructed so that it will withstand the explosion tests of § 7.306 of this part.

Fastening. A bolt, screw, or stud used to secure adjoining parts to prevent the escape of flame from an explosion-proof enclosure.

Flame-arresting path. Two or more adjoining or adjacent surfaces between which the escape of flame is prevented.

Internal free volume (of an empty enclosure). The volume remaining after deducting the volume of any part that is essential in maintaining the explosion-proof integrity of the enclosure or necessary for operation of the motor. Essential parts include the parts that constitute the flame-arresting path and those necessary to secure parts that constitute a flame-arresting path.

Motor assembly. The winding compartment including a conduit box when specified. A motor assembly is comprised of one or more explosion-proof enclosures.

Plane joint. A joint comprised of two adjoining surfaces in parallel planes.

Step (rabbet) joint. A joint comprised of two adjoining surfaces with a change or changes in direction between its inner and outer edges. A step joint may be composed of a cylindrical portion and a plane portion or of two or more plane portions.

Stuffing box. An entrance with a recess filled with packing material for cables extending through a wall of an explosion-proof enclosure.

Threaded joint. A joint consisting of a male- and a female-threaded member, both of which are the same type and gauge.

§ 7.303 Application requirements.

(a) An application for approval of a motor assembly shall include a composite drawing or drawings with the following information:

(1) Model (type), frame size, and rating of the motor assembly.

(2) Overall dimensions of the motor assembly, including conduit box if applicable, and internal free volume.

(3) Material and quantity for each of the component parts that form the explosion-proof enclosure or enclosures.

(4) All dimensions (including tolerances) and specifications required to ascertain compliance with the requirements of § 7.304 of this part.

(b) All drawings shall be titled, dated, numbered, and include the latest revision.

§ 7.304 Technical requirements.

(a) Voltage rating of the motor shall not exceed 4160 volts.

(b) The temperature of the external surfaces of the motor assembly shall not exceed 150 °C (302 °F) when operated at the manufacturers' specified ratings.

(c) Minimum clearances between uninsulated electrical conductor surfaces, or between uninsulated conductor surfaces and grounded metal surfaces, within the enclosure shall meet the requirements of table J–1 of this section.

TABLE J–1.—MINIMUM CLEARANCES BETWEEN UNINSULATED SURFACES

Phase-to-phase voltage (rms)	Clearances (inches)	
	Phase-to-phase	Phase-to-ground or control circuit
0 to 250	0.25	0.25
251 to 600	0.28	0.25
601 to 1000	0.61	0.25
1001 to 2400	1.4	0.6
2401 to 4160	3.0	1.4

(d) Parts whose dimensions can change with the motor operation, such as ball and roller bearings and oil seals, shall not be used as flame-arresting paths.

(e) The widths of any grooves, such as grooves for holding oil seals or o-rings, shall be deducted in measuring the widths of flame-arresting paths.

(f) An outer bearing cap shall not be considered as forming any part of a flame-arresting path unless the cap is used as a bearing cartridge.

(g) Requirements for explosion-proof enclosures of motor assemblies.

(1) Enclosures shall be—

(i) Constructed of metal;

(ii) Designed to withstand a minimum internal pressure of 150 pounds per square inch (gauge);

(iii) Free from blowholes when cast; and

(iv) Explosion proof as determined by the tests set out in § 7.306 of this part.

(2) Welded joints forming an enclosure shall be—

(i) Continuous and gas-tight; and

(ii) Made in accordance with or exceed the American Welding Society Standard AWS D14.4–77, "Classification and Application of Welded Joints for Machinery and Equipment," or meet the test requirements set out in § 7.307 of this part. AWS D14.4–77 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Welding Society, Inc., 2501 NW 7th Street, Miami, FL 33125. Copies may be inspected at the Mine Safety and Health Administration, Department of Labor, Approval and Certification Center, RR 1, Industrial Park Road, Triadelphia, WV 26059, or at the Office of the Federal Register, 800 N. Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(3) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium. Non-metallic rotating parts shall be provided with a means to prevent an accumulation of static electricity.

(4) Threaded covers and mating parts shall be designed with Class 1A and 1B (coarse, loose fitting) threads. The covers shall be secured against loosening.

(5) Flat surfaces between fastening holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in paragraph (g)(19) of this section. All surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of nonhardening preparation to inhibit rusting may be applied to these finished metal surfaces as long as the final surface can be readily wiped free of any foreign materials.

(6) For a laminated stator frame, it shall be impossible to insert a 0.0015 inch thickness gauge to a depth exceeding ⅛ inch between adjacent laminations or between end rings and laminations.

(7) Lockwashers, or equivalent, shall be provided for all fastenings. Devices other than lockwashers shall meet the requirements of § 7.308 of this part. Equivalent devices shall only be used in the configuration in which they were tested.

(8) Fastenings shall be as uniform in size as practicable to preclude improper installation.

(9) Holes for fastenings in an explosion-proof enclosure shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(10) Holes for fastenings shall not penetrate to the interior of an explosion-proof enclosure, except holes made through motor casings for bolts, studs, or screws to hold essential parts, such as pole pieces, brush rigging, and bearing cartridges. The attachments of such parts shall be secured against loosening. The threaded holes in these parts shall be blind unless the fastenings are inserted from the inside, in which case the fastenings shall not be accessible with the rotor in place.

(11) For direct current motor assemblies with narrow interpoles, the distance from the edge of the pole piece to any bolt hole in the frame shall be at least ⅛ inch. If the distance is ⅛ to ¼ inch, the diametrical clearance for the pole bolt shall not exceed 1/64 inch for not less than ½ inch through the frame. Furthermore, the pole piece shall have the same radius as the inner surface of the frame. Pole pieces may be shimmed as necessary. If used, the total resulting thickness of the shims shall be specified. The shim assembly shall meet the same requirements as the pole piece.

(12) Coil-thread inserts, if used in holes for fastenings, shall meet the following:

(i) The inserts shall have internal screw threads.

(ii) The holes for the inserts shall be drilled and tapped consistent with the insert manufacturer's specifications.

(iii) The inserts shall be installed consistent with the insert manufacturer's specifications.

(iv) The insert shall be of sufficient length to ensure the minimum thread engagement of fastening specified in paragraph (g)(19) of this section.

(13) A minimum of ⅛ inch of stock shall be left at the center of the bottom of each blind hole that could penetrate into the interior of an explosion-proof enclosure.

(14) Fastenings shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity of the enclosure, or necessary for the operation of the motor. They shall not be used for making electrical connections.

(15) Through holes not in use shall be closed with a metal plug. Plugs, including eyebolts, in through holes where future access is desired shall meet the flame-arresting paths, lengths, and clearances of paragraph (g)(19) of this section and be secured by spot welding or brazing. The spot weld or braze may be on a plug, clamp, or fastening (for example see figure J–1). Plugs for holes where future access is

not desired shall be secured all around by a continuous gas-tight weld.

(16) O-rings, if used in a flame-arresting path, shall meet the following:

(i) When the flame-arresting path is in one plane, the o-ring shall be located at least one-half the acceptable flame-arresting path length specified in paragraph (g)(19) of this section from within the outside edge of the path (see figure J–2).

(ii) When the flame-arresting path is one of the plane-cylindrical type (step joint), the o-ring shall be located at least ½ inch from within the outer edge of the plane portion (see figure J–3), or at the junction of the plane and cylindrical portion of the joint (see figure J–4), or in the cylindrical portion (see figure J–5).

(17) Mating parts comprising a pressed fit shall result in a minimum interference of 0.001 inch between the parts. The minimum length of the pressed fit shall be equal to the minimum thickness requirement of paragraph (g)(19) of this section for the material in which the fit is made.

(18) The flame-arresting path of threaded joints shall conform to the requirements of paragraph (g)(19) of this section.

(19) Explosion-proof enclosures shall meet the requirements set out in table J–2 of this section, based on the internal free volume of the empty enclosure.

TABLE J–2.—EXPLOSION-PROOF REQUIREMENTS BASED ON VOLUME

	Volume of empty enclosure		
	Less than 45 cu. ins.	45 to 124 cu. ins. inclusive	More than 124 cu. ins.
Minimum thickness of material for walls [1]	1/8"	3/16"	1/4"
Minimum thickness of material for flanges and covers	[2] 1/4"	[3] 3/8"	[3] 1/2"
Minimum width of joint; all in one plane	1/8"	3/4"	1"
Maximum clearance; joint all in one plane	0.002"	0.003"	0.004"
Minimum width of joint, portions of which are in different planes; cylinders or equivalent	[4] 3/8"	[4] 3/8"	[4] 3/4"
Maximum clearances; joint in two or more planes, cylinders or equivalent: [5]			
(a) Portion perpendicular to plane [6]	0.006"	0.006"	0.006"
(b) Plane portion	0.006"	0.006"	0.006"
Maximum fastening [7,8] spacing; joints all in one plane	([16])	([16])	([16])
Maximum fastening spacing; joints, portions of which are in different planes	([17])	([17])	([17])
Minimum diameter of fastening [9] (without regard to type of joint)	1/8"	1/4"	5/16"
Minimum thread engagement of fastening [10]	1/4"	1/4"	5/16"
Maximum diametrical clearance between fastening body and unthreaded holes through which it passes [8,11,12]	1/64"	1/32"	1/16"
Minimum distance from interior of enclosure to the edge of a fastening hole: [8,13]			
Joint—minimum width 1"			[14] 7/16"
Joint—less than 1" wide	1/8"	5/16"	
Cylindrical Joints			
Shaft centered by ball or roller bearings:			
Minimum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.020"	0.025"	0.030"
Other cylindrical joints: [15]			
Minimum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.006"	0.008"	0.010"

[1] This is the minimal nominal dimension when applied to standard steel plate.
[2] 1/16 inch less is allowance for machining rolled plate.
[3] 1/16 inch less is allowance for machining rolled plate.
[4] If only two planes are involved, neither portion of a joint shall be less than 1/4 inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-and-groove joints) the combined lengths of those portions having prescribed clearances are considered.
[5] For winding compartments having internal free volume not exceeding 350 cubic inches and joints not exceeding 32 inches in outer circumference and provided with step joints between the stator frame and the end bracket the following dimensions shall apply:

DIMENSIONS OF RABBET (STEP) JOINTS-INCHES

[See figure J–6 in appendix]

Minimum total width	Minimum width of clamped radial portion	Maximum clearance of radial portion	Maximum diametrical clearance at axial portion
3/8	9/64	0.0015	0.003
1/2	9/64	0.002	0.003
1/2	9/64	0.002	0.004

[6] The allowable diametrical clearance is 0.009 inch when the portion perpendicular to the plane portion is 1/4 inch or greater in length. If the perpendicular portion is more than 1/4 inch but less than 1/2 inch wide, the diametrical clearance shall not exceed 0.006 inch.
[7] Studs, when provided, shall bottom in blind holes, be completely welded in place, or have the bottom of the hole closed with a plug secured by weld or braze. Fastenings shall be provided at all corners.
[8] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the explosion-proof enclosure apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 6 inches.
[9] Fastening diameters smaller than specified may be used if the enclosure meets the test requirements of 30 CFR 7.307 and then 7.308 in that order.
[10] Minimum thread engagement shall be equal to or greater than the diameter of the fastening specified, or the enclosure must meet the test requirements of 30 CFR 7.307 and then 7.308 in that order.
[11] This maximum clearance applies only when the fastening is located within the flame-arresting path.
[12] Threaded holes for fastening bolts shall be machined to remove burrs or projections that affect planarity of a surface forming a flame-arresting path.
[13] Edge of the fastening hole shall include the edge of any machining done to the fastening hole, such as chamfering.
[14] If the diametrical clearance for fastenings does not exceed 1/64 inch, then the minimum distance shall be 1/8 inch.
[15] Shafts or operating rods through journal bearings shall be at least 1/4" in diameter. The length of the flame-arresting path shall not be reduced when a pushbutton is depressed. Operating rods shall have a shoulder or head on the portion inside the enclosure. Essential parts riveted or bolted to the inside portion are acceptable in lieu of a head or shoulder, but cotter pins and similar devices shall not be used.
[16] 6" with a minimum of 4 fastenings.
[17] 9" with a minimum of 4 fastenings.

(h) *Lead entrances.* (1) Each cable, which extends through an outside wall of the motor assembly, shall pass through a stuffing-box lead entrance (see figure J–7). All sharp edges shall be removed from stuffing boxes, packing nuts, and other lead entrance (gland) parts, so that the cable jacket is not damaged.

(2) When the packing is properly compressed, the gland nut shall have—

(i) A clearance distance of ⅛ inch or more, with no maximum, to travel without interference by parts other than packing; and

(ii) A minimum of three effective threads engaged (see figures J–8, J–9, and J–10).

(3) Packing nuts (see figure J–7) and stuffing boxes shall be secured against loosening (see figure J–11).

(4) Compressed packing material shall be in contact with the cable jacket for a length of not less than ½ inch.

(5) Requirements for lead entrances in which MSHA accepted rope packing material is specified, are:

(i) Rope packing material shall be acceptable under § 18.37(e) of this chapter.

(ii) The width of the space for packing material shall not exceed by more than 50 percent the diameter or width of the uncompressed packing material (see figure J–12).

(iii) The maximum diametrical clearance, using the specified tolerances, between the cable and the through holes in the gland parts adjacent to the packing (stuffing box, packing nut, hose tube, or bushings) shall not exceed 75 percent of the nominal diameter or width of the packing material (see figure J–13).

(6) Requirements for lead entrances in which grommet packing made of compressible material is specified, are:

(i) The grommet packing material shall be accepted by MSHA as flame-resistant material under § 18.37(f)(1) of this chapter.

(ii) The diametrical clearance between the cable jacket and the nominal inside diameter of the grommet shall not exceed 1/16 inch, based on the nominal specified diameter of the cable (see figure J–14).

(iii) The diametrical clearance between the nominal outside diameter of the grommet and the inside wall of the stuffing box shall not exceed 1/16 inch (see figure J–14).

(i) Combustible gases from insulating material.

(1) Insulating materials that give off flammable or explosive gases when decomposed electrically shall not be used within explosion-proof enclosures where the materials are subjected to destructive electrical action.

(2) Parts coated or impregnated with insulating materials shall be treated to remove any combustible solvent before assembly in an explosion-proof enclosure.

§ 7.305 Critical characteristics.

The following critical characteristics shall be inspected on each motor assembly to which an approval marking is affixed:

(a) Finish, width, and planarity of surfaces that form any part of a flame-arresting path.

(b) Clearances between mating parts that form flame-arresting paths.

(c) Thickness of walls, flanges, and covers that are essential in maintaining the explosion-proof integrity of the enclosure.

(d) Spacing of fastenings.

(e) Length of thread engagement on fastenings and threaded parts that assure the explosion-proof integrity of the enclosure.

(f) Use of lockwasher or equivalent with all fastenings.

(g) Dimensions which affect compliance with the requirements for packing gland parts in § 7.304 of this part.

§ 7.306 Explosion tests.

(a) The following shall be used for conducting an explosion test:

(1) An explosion test chamber designed and constructed to contain an explosive gas mixture to surround and fill the motor assembly being tested. The chamber must be sufficiently darkened and provide viewing capabilities of the flame-arresting paths to allow observation during testing of any discharge of flame or ignition of the explosive mixture surrounding the motor assembly.

(2) A methane gas supply with at least 98 by volume per centum of combustible hydrocarbons, with the remainder being inert. At least 80 percent by volume of the gas shall be methane.

(3) Coal dust having a minimum of 22 percent dry volatile matter and a minimum heat constant of 11,000 moist BTU (coal containing natural bed moisture but not visible surface water) ground to a fineness of minus 200 mesh U.S. Standard sieve series.

(4) An electric spark ignition source with a minimum of 100 millijoules of energy.

(5) A pressure recording system that will indicate the pressure peaks resulting from the ignition and combustion of explosive gas mixtures within the enclosure being tested.

(b) *General test procedures.* (1) Motor assemblies being tested shall—

(i) Be equipped with unshielded bearings regardless of the type of bearings specified; and

(ii) Have all parts that do not contribute to the operation or assure the explosion-proof integrity of the enclosure, such as oil seals, grease fittings, hose conduit, cable clamps, and outer bearing caps (which do not house the bearings) removed from the motor assembly.

(2) Each motor assembly shall be placed in the explosion test chamber and tested as follows:

(i) The motor assembly shall be filled with and surrounded by an explosive mixture of the natural gas supply and air. The chamber gas concentrations shall be between 6.0 by volume per centum and the motor assembly natural gas concentration just before ignition of each test. Each externally visible flame-arresting path fit shall be observed for discharge of flames for at least two of the tests, including one with coal dust added.

(ii) A single spark source is used for all testing. Pressure shall be measured at each end of the winding compartment simultaneously during all tests. Quantity and location of test holes shall permit ignition on each end of the winding compartment and recording of pressure on the same and opposite ends as the ignition.

(iii) Motor assemblies incorporating a conduit box shall have the pressure in the conduit box recorded simultaneously with the other measured pressures during all tests. Quantity and location of test holes in the conduit box shall permit ignition and recording of pressure as required in paragraphs (c)(1) and (c)(4)(i) of this section.

(iv) The motor assembly shall be completely purged and recharged with a fresh explosive gas mixture from the chamber or by injection after each test. The chamber shall be completely purged and recharged with a fresh explosive gas mixture as necessary. The oxygen level of the chamber gas mixture shall be no less than 18 percent by volume for testing. In the absence of oxygen monitoring equipment, the maximum number of tests conducted before purging shall be less than or equal to the chamber volume divided by forty times the volume occupied by the motor assembly.

(c) *Test procedures.* (1) Eight tests at 9.4±0.4 percent methane by volume within the winding compartment shall be conducted, with the rotor stationary during four tests and rotating at rated speed (rpm) during four tests. The ignition shall be at one end of the winding compartment for two stationary and two rotating tests, and then switched to the opposite end for the remaining four tests. If a nonisolated conduit box is used, then two additional tests, one stationary and one rotating, shall be conducted with ignition in the conduit box at a point furthest away from the opening between the conduit box and the winding compartment.

(2) Four tests at 7.0±0.3 percent methane by volume within the winding compartment shall be conducted with

the rotor stationary, 2 ignitions at each end.

(3) Four tests at 9.4±0.4 percent methane by volume plus coal dust shall be conducted. A quantity of coal dust equal to 0.05 ounces per cubic foot of internal free volume of the winding compartment plus the nonisolated conduit box shall be introduced into each end of the winding compartment and nonisolated conduit box to coat the interior surface before conducting the first of the four tests. The coal dust introduced into the conduit box shall be proportional to its volume. The remaining coal dust shall be equally divided between the winding compartment ends. For two tests, one stationary and one rotating, the ignition shall be either in the conduit box or one end of the connected winding compartment, whichever produced the highest pressure in the previous tests. The two remaining tests, one stationary and one rotating, shall be conducted with the ignition in the winding compartment end furthest away from the conduit box.

(4) For motor assemblies incorporating a conduit box which is isolated from the winding compartment by an isolating barrier the following additional tests shall be conducted—

(i) For conduit boxes with an internal free volume greater than 150 cubic inches, two ignition points shall be used, one as close to the geometric center of the conduit box as practical and the other at the furthest point away from the isolating barrier between the conduit box and the winding compartment. Recording of pressure shall be on the same and opposite sides as the ignition point furthest from the isolating barrier between the conduit box and the winding compartment. Conduit boxes with an internal free volume of 150 cubic inches or less shall have one test hole for ignition located as close to the geometric center of the conduit box as practical and one for recording of pressure located on a side of the conduit box.

(ii) The conduit box shall be tested separately. Six tests at 9.4±0.4 percent methane by volume within the conduit box shall be conducted followed by two tests at 7.0±0.3 percent methane by volume. Then two tests at 9.4±0.4 percent methane by volume with a quantity of coal dust equal to 0.05 ounces per cubic foot of internal free volume of the conduit box and meeting the specifications in paragraph (c)(3) of this section shall be conducted. For conduit boxes with an internal free volume of more than 150 cubic inches, the number of tests shall be evenly divided between each ignition point.

(iii) The motor assembly shall be tested following removal of the isolating barrier or one sectionalizing terminal (as applicable). Six tests at 9.4±0.4 percent methane by volume in the winding compartment and conduit box shall be conducted using three ignition locations. The ignition shall be at one end of the winding compartment for one stationary and one rotating test; the opposite end for one stationary and one rotating test; and at the ignition point that produced the highest pressure on the previous test in paragraph (c)(4)(ii) of this section in the conduit box for one stationary and one rotating test. Motor assemblies that use multiple sectionalizing terminals shall have one test conducted as each additional terminal is removed. Each of these tests shall use the rotor state and ignition location that produced the highest pressure in the previous tests.

(d) A motor assembly incorporating a conduit box that is isolated from the winding compartment that exhibits pressures exceeding 110 psig, while testing during removal of any or all isolating barriers as specified in paragraph (c)(4) of this section, shall have a warning statement on the approval plate. This statement shall warn that the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly. A statement is not required when the motor assembly has withstood a static pressure of twice the maximum pressure recorded in the explosion tests of paragraph (c)(4) of this section. The static pressure test shall be conducted on the motor assembly with all isolating barriers removed, and in accordance with § 7.307 of this part.

(e) *Acceptable performance.* Explosion tests of a motor assembly shall not result in—

(1) Discharge of flames.

(2) Ignition of the explosive mixture surrounding the motor assembly in the chamber.

(3) Development of afterburning.

(4) Rupture of any part of the motor assembly or any panel or divider within the motor assembly.

(5) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

(6) Pressure exceeding 110 psig, except as provided in paragraph (d) of this section unless the motor assembly has withstood a static pressure of twice the maximum pressure recorded in the explosion tests of this section following the static pressure test procedures of § 7.307 of this part.

(7) Permanent deformation greater than 0.040 inches per linear foot.

§ 7.307 Static pressure test.

(a) *Test procedure.* (1) The enclosure shall be internally pressurized to a minimum of 150 psig and the pressure maintained for a minimum of 10 seconds.

(2) Following the pressure hold, the pressure shall be removed and the pressurizing agent removed from the enclosure.

(b) *Acceptable performance.* (1) The enclosure during pressurization shall not exhibit—

(i) Leakage through welds or casting; or

(ii) Rupture of any part that affects the explosion-proof integrity of the enclosure.

(2) The enclosure following removal of the pressurizing agent shall not exhibit—

(i) Visible cracks in welds;

(ii) Permanent deformation exceeding 0.040 inches per linear foot; or

(iii) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

§ 7.308 Lockwasher equivalency test.

(a) *Test procedure.* (1) Each test sample shall be an assembly consisting of a fastening with a locking device. Each standard sample shall be an assembly consisting of a fastening with a lockwasher.

(2) Five standard samples and five test samples shall be tested.

(3) Each standard and test sample shall use a new fastening of the same specifications as being used on the motor assembly.

(4) A new tapped hole shall be used for each standard and test sample. The hole shall be of the same specifications as used on the motor assembly.

(5) Each standard and test sample shall be inserted in the tapped hole and continuously and uniformly tightened at a speed not to exceed 30 rpm until the fastening's proof load is achieved. The torquing device shall not contact the locking device or the threaded portion of the fastening.

(6) Each standard and test sample shall be engaged and disengaged for 15 full cycles.

(b) *Acceptable performance.* The minimum torque value required to start removal of the fastening from the installed position (minimum breakway torque) for any cycle of any test sample shall be greater than or equal to the average breakway torque of each removal cycle of every standard sample.

§ 7.308 Approval marking.

Each approved motor assembly shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and a warning statement as specified in § 7.306(d) of this part. The plate shall be securely attached to the motor assembly in a manner that does not impair any explosion-proof characteristics.

§ 7.310 Post-approval product audit.

Upon request by MSHA but not more than once a year, except for cause, the approval holder shall make a motor assembly available for audit at no cost.

Appendix I to Subpart J of Part 7

§ 7.311 Approval checklist.

Each motor assembly bearing an MSHA approval marking shall be accompanied by a list of items necessary for maintenance of the motor assembly as approved.

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Appendix I to Subpart J—Figures J-1 through J-14

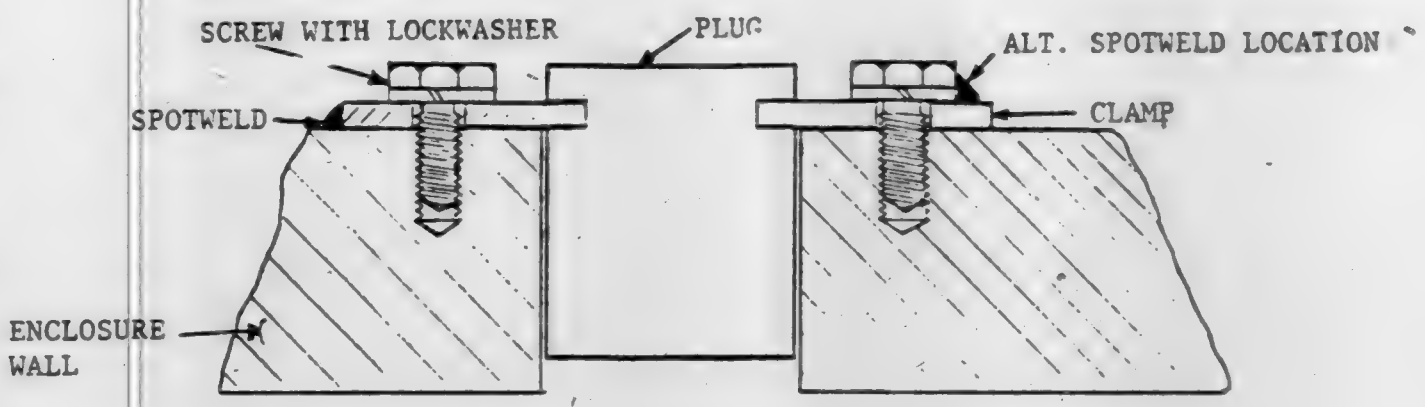

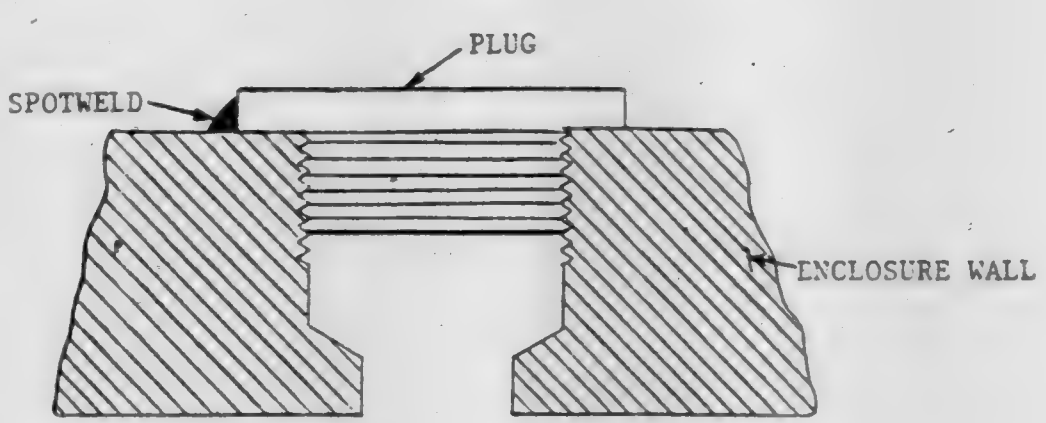

WELD (OR BRAZE) MAY BE ON PLUG, CLAMP, OR FASTENING

FIGURE J-1

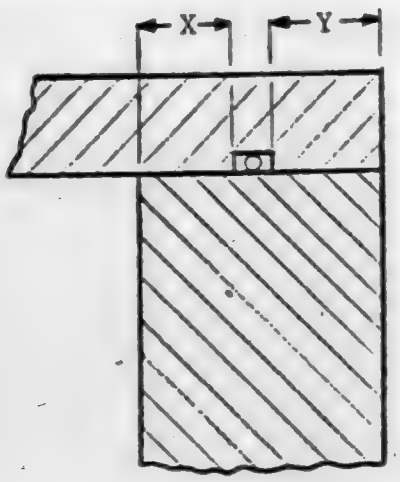

X + Y = MIN. ACCEPTABLE FLAME-ARRESTING PATH LENGTH

$$Y = \frac{X + Y}{2}$$

FIGURE J-2

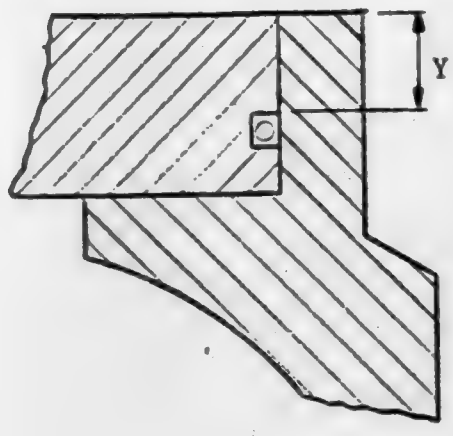

Y = 1/2" MIN.

FIGURE J-3

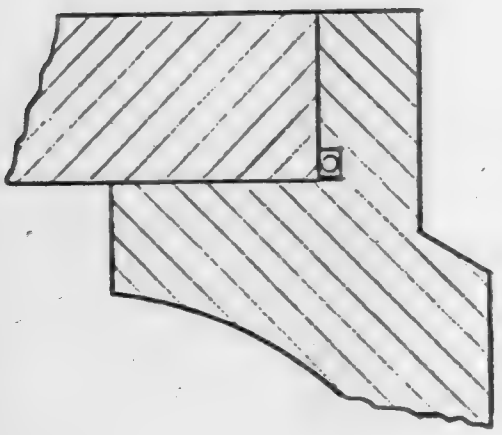

FIGURE J-4

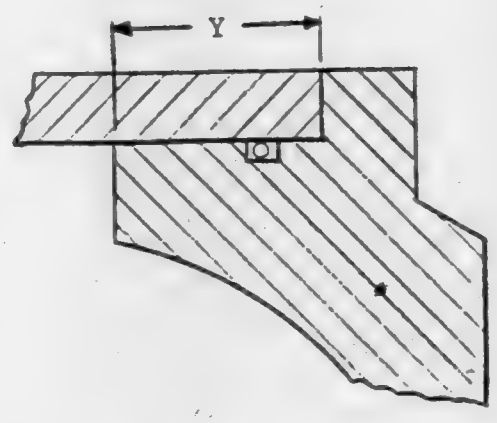

O-RING CAN BE LOCATED ANYWHERE ALONG LENGTH OF (Y).

FIGURE J-5

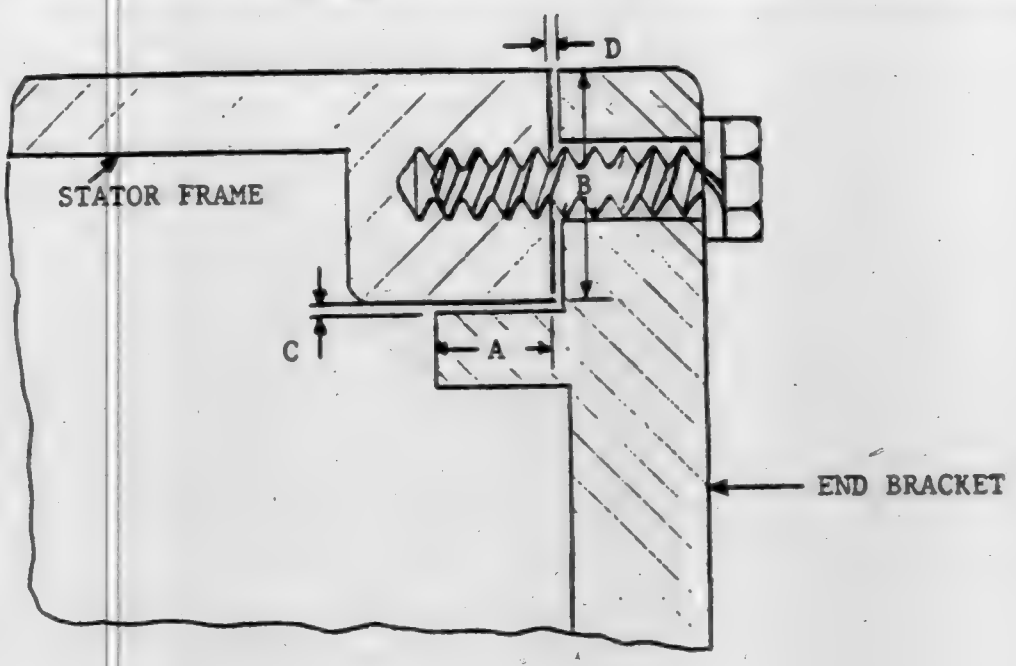

A = Width of Axial Portion

B = Width of Clamped Radial Portion

C = Clearance of Axial Portion

D = Clearance of Radial Portion

Total Width of Flamepath = A + B

FIGURE J-6

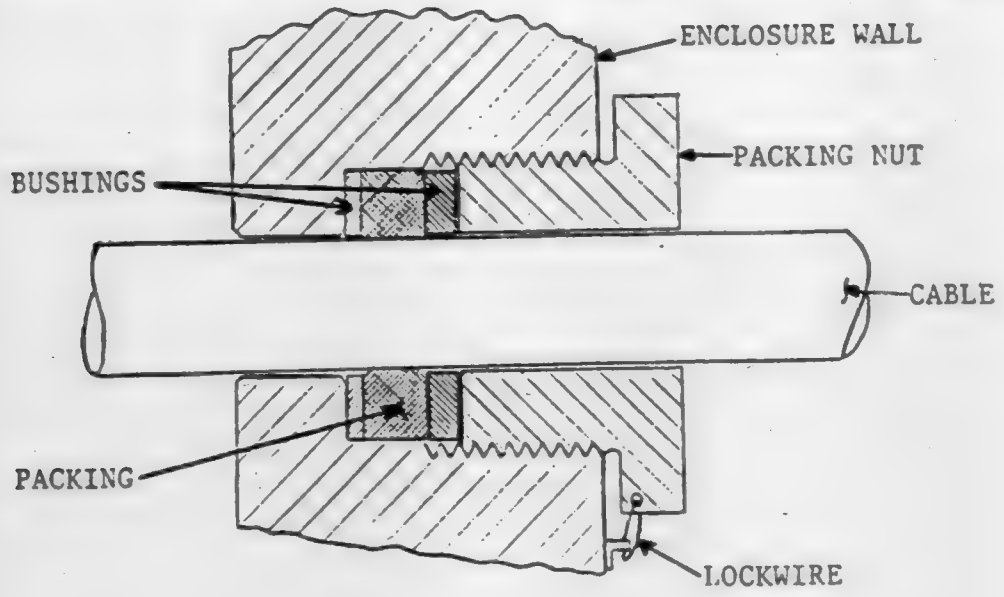

MACHINED-IN STUFFING BOX

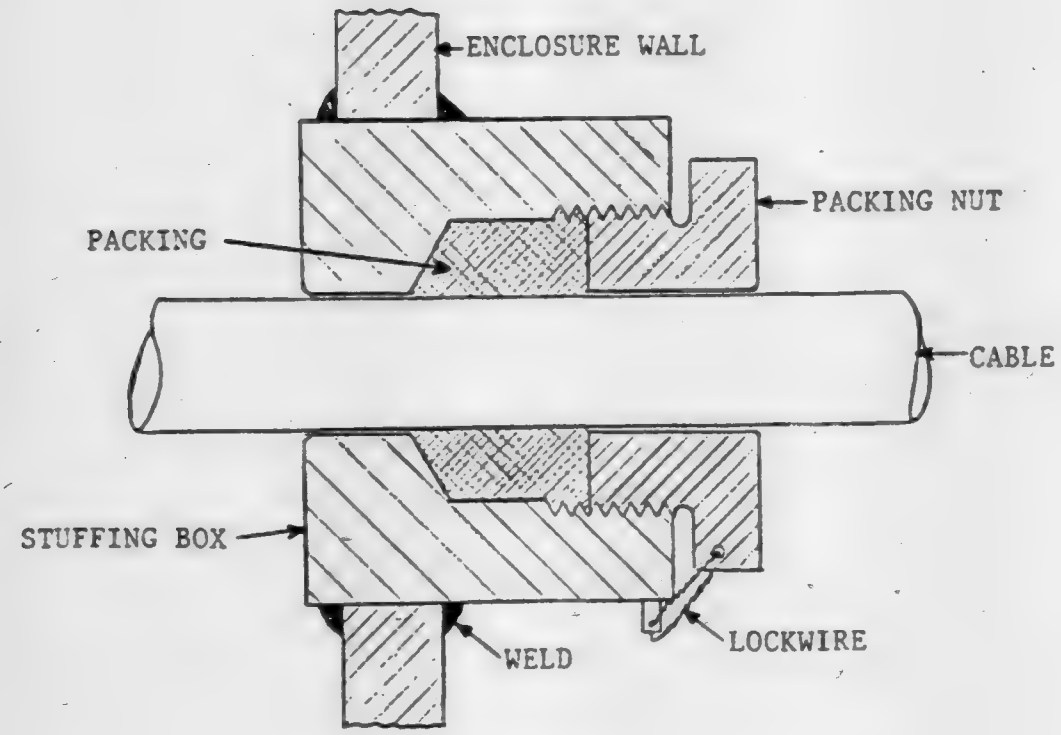

WELD-IN STUFFING BOX

FIGURE J-7

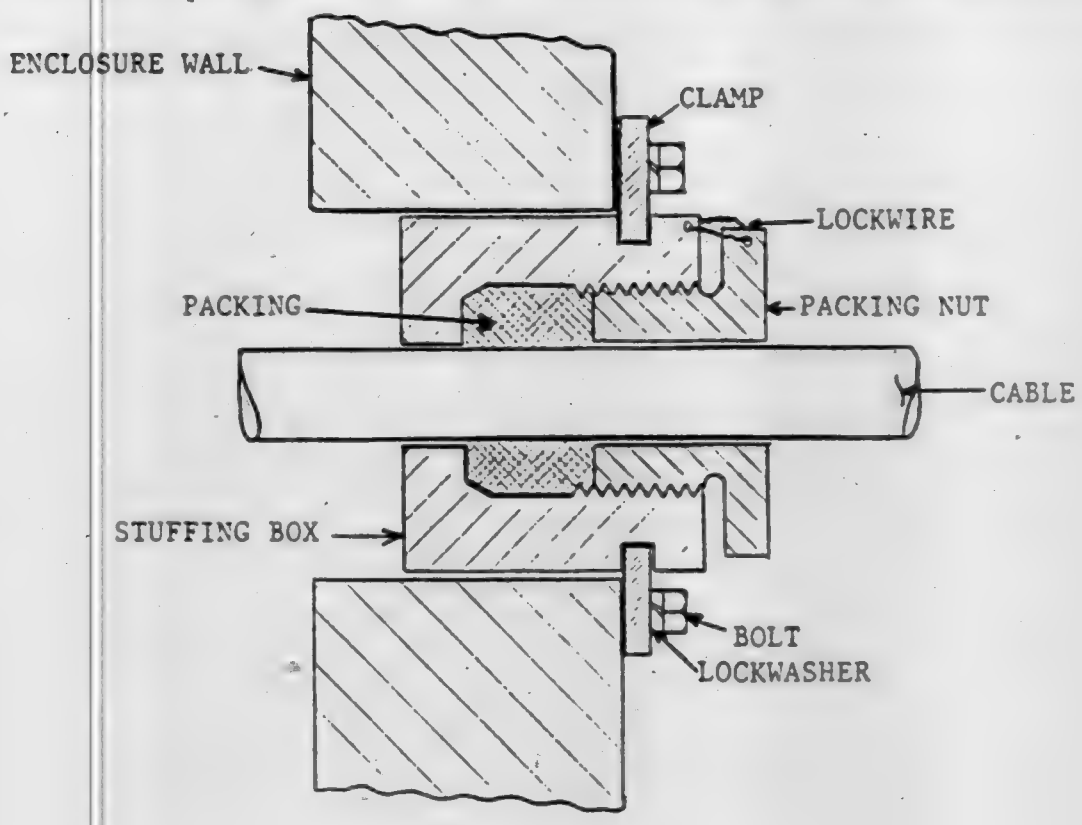

SLIP-FIT STUFFING BOX

FIGURE J-7

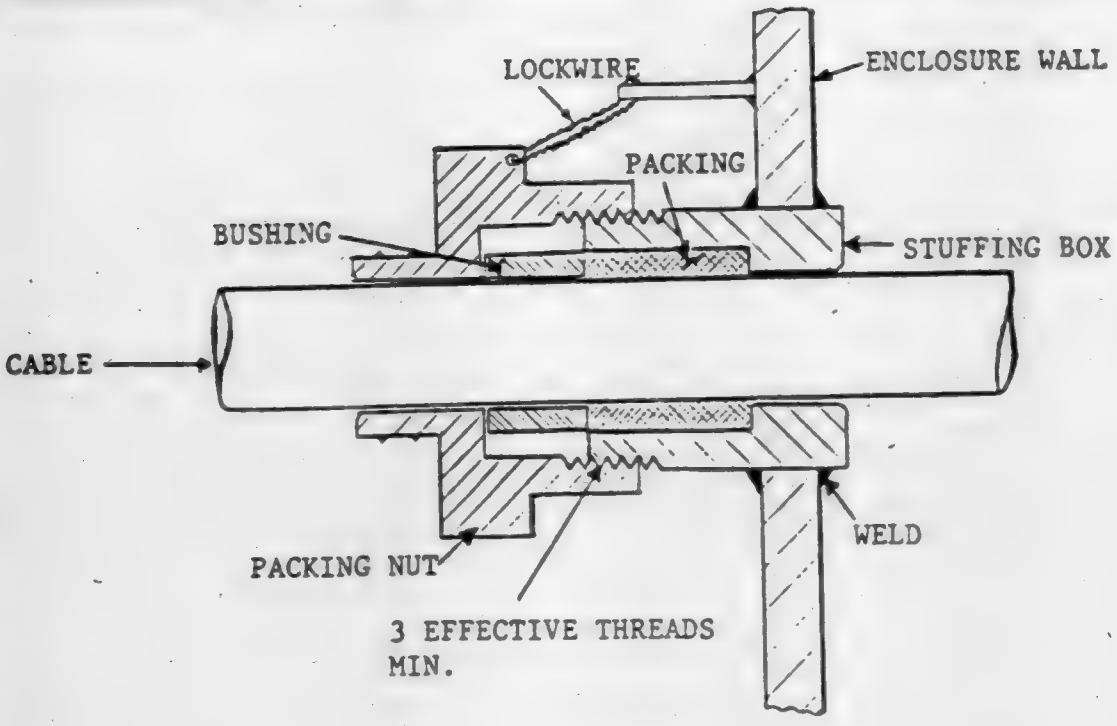

FIGURE J-8

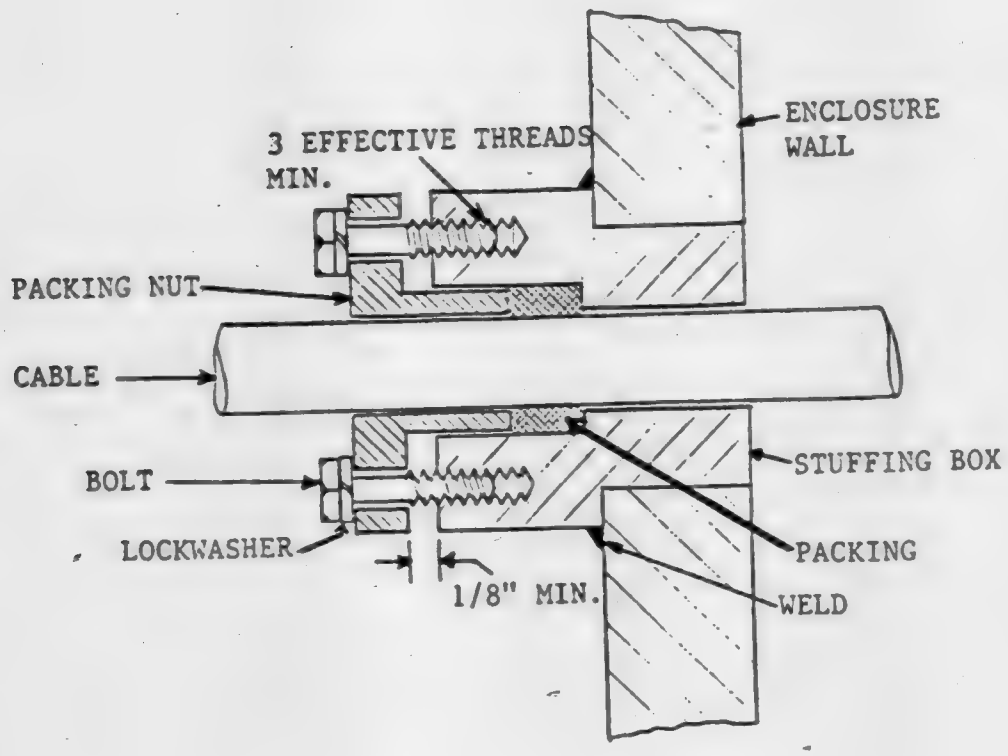

FIGURE J-9

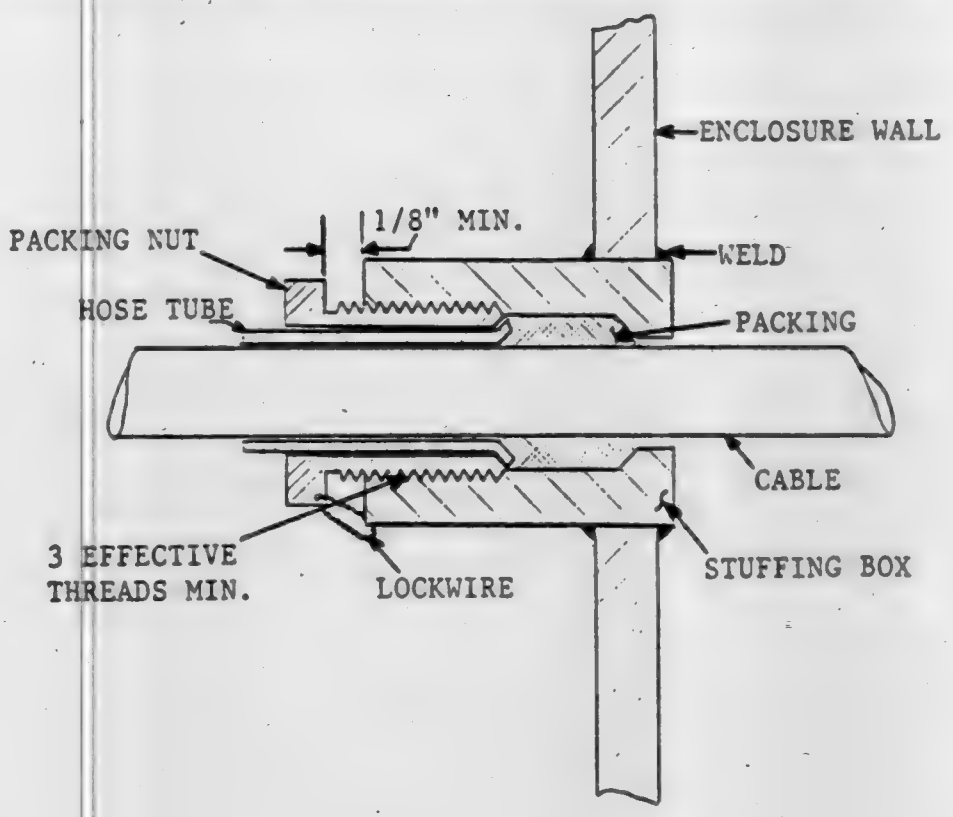
ENCLOSURE WALL
1/8" MIN.
PACKING NUT
WELD
HOSE TUBE
PACKING
CABLE
3 EFFECTIVE
THREADS MIN.
LOCKWIRE
STUFFING BOX

FIGURE J-10

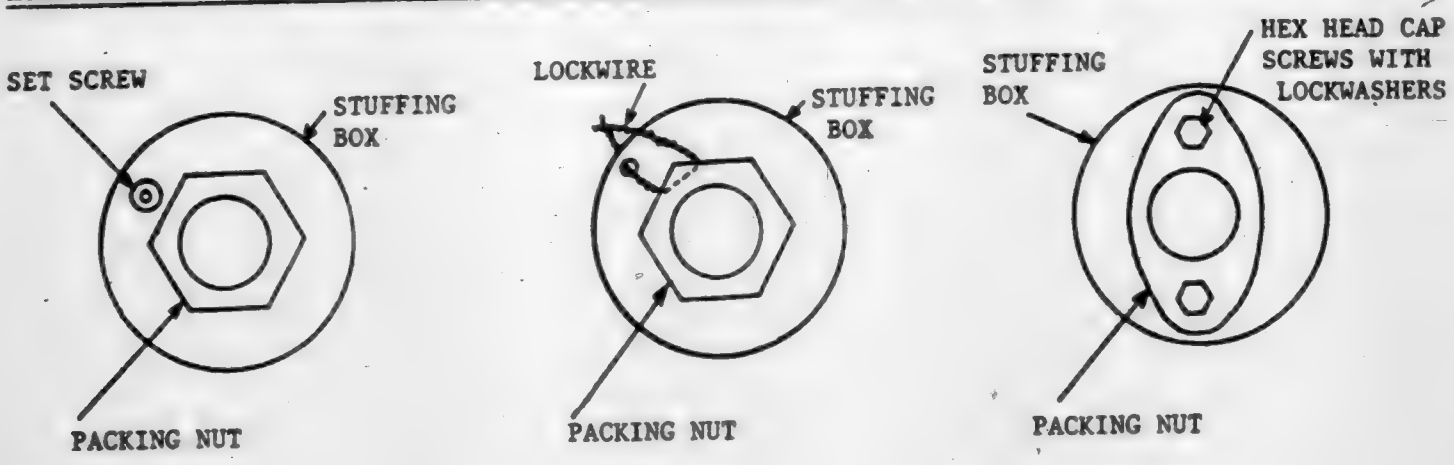

FIGURE J-11

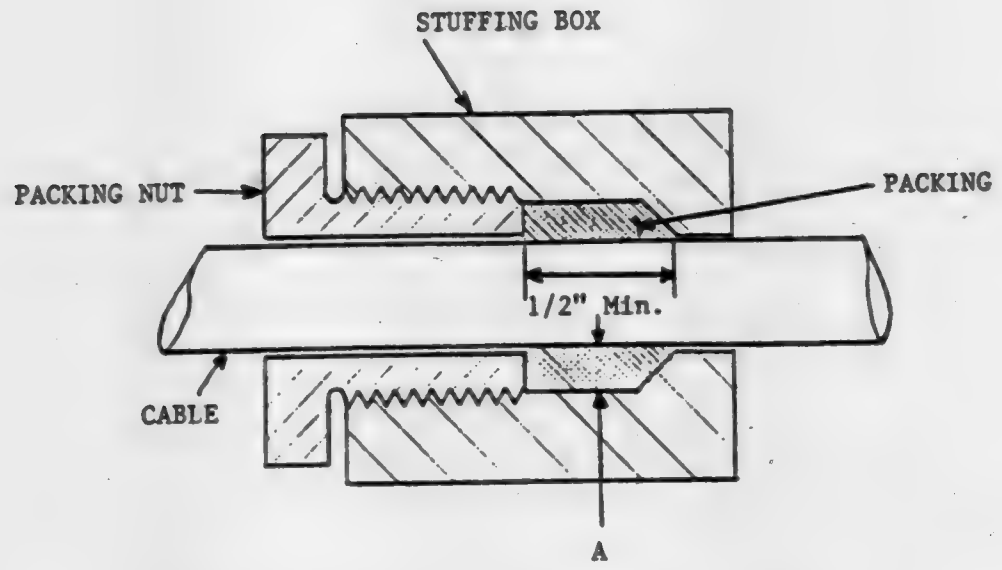

A ≤ 150% of Packing Material Diameter or Width

FIGURE J-12

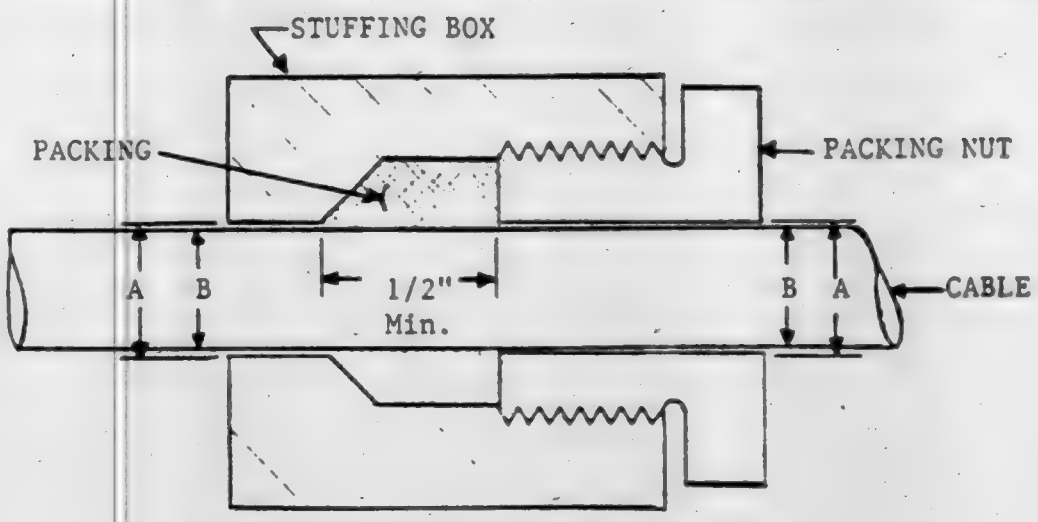

A - B ≤ 75% of Packing Material Diameter or Width

FIGURE J-13

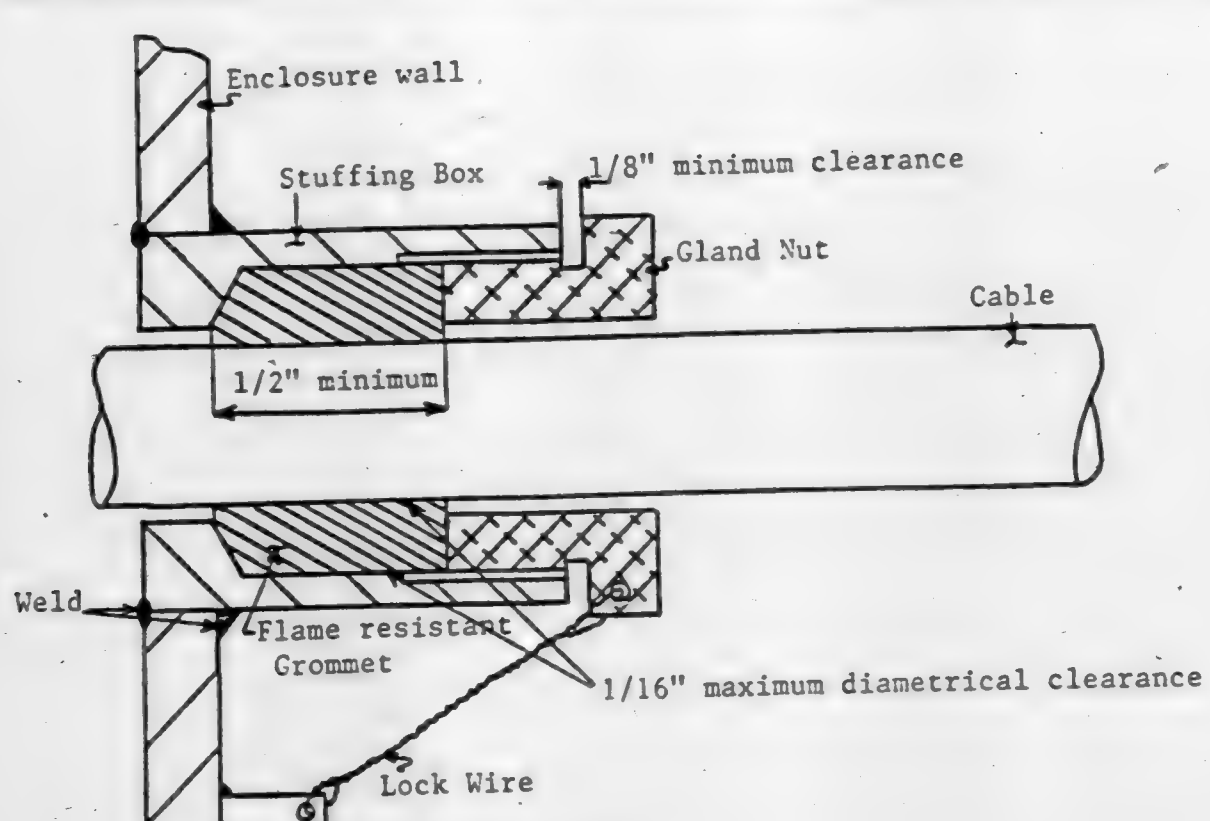

FIGURE J-14

BILLING CODE 4510-43-C

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES [AMENDED]

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

2. Section 18.4 is revised to read as follows:

§ 18.4 Electrical equipment for which approval is issued.

An approval will be issued only for a complete electrical machine or accessory. Only components meeting the requirements of subpart B of this part or those approved under part 7 of this chapter, unless they contain intrinsically safe circuits, shall be included in the assemblies.

3. Section 18.24 is revised to read as follows:

§ 18.24 Electrical clearances.

Minimum clearances between uninsulated electrical conductor surfaces, or between uninsulated conductor surfaces and grounded metal surfaces, within the enclosure shall be as follows:

MINIMUM CLEARANCES BETWEEN UNINSULATED SURFACES

Phase-to-Phase Voltage (rms)	Clearances (inches)	
	Phase-to-Phase	Phase-to-Ground or Control Circuit
0 to 250	0.25	0.25
251 to 600	0.28	0.25
601 to 1000	0.61	0.25
1001 to 2400	1.4	0.6
2401 to 4160	3.0	1.4

4. Section 18.31 is amended by revising paragraphs (a)(3), (a)(5), and (a)(6) and by adding paragraphs (a) (7) and (8) to read as follows:

§ 18.31 Enclosures—joints and fastenings.

(a) * * *

(3) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium.

* * * * *

(5) Threaded covers and mating parts shall be designed with Class 1A and 1B (coarse, loose-fitting) threads. The flame-arresting path of threaded joints shall conform to the requirements of paragraph (a)(6) of this section.

(6) Enclosure requirements shall be based on the internal volumes of the empty enclosure. The internal volume is the volume remaining after deducting the volume of any part that is essential in maintaining the explosion-proof integrity of the enclosure or necessary for the operation. Essential parts include the parts that constitute the flame-arresting path and those necessary to secure parts that constitute a flame-arresting path. Enclosures shall meet the following requirements:

EXPLOSION-PROOF REQUIREMENTS BASED ON VOLUME

	Volume of empty enclosure		
	Less than 45 cu. in.	45 to 124 cu. in. inclusive	More than 124 cu. in.
Minimum thickness of material for walls [1]	1/8"	5/16"	1/4"
Minimum thickness of material for flanges and covers	[2] 1/4"	[3] 3/8"	[3] 1/2"
Minimum width of joint; all in one plane [4]	1/2"	3/4"	1"
Maximum clearance; joint all in one plane	0.002"	0.003"	0.004"
Minimum width of joint, portions of which are in different planes; cylinders or equivalent [4,5]	3/8"	5/8"	3/4"
Maximum clearances; joint in two or more planes, cylinders or equivalent:			
(a) Portion perpendicular to plane [6]	0.006"	0.006"	0.006"
(b) Plane portion	0.006"	0.006"	0.006"
Maximum bolt [7,8] spacing; joints all in one plane	([9])	([9])	([9])
Maximum bolt spacing; joints, portions of which are in different planes	(?)	(?)	(?)
Minimum diameter of bolt (without regard to type of joint)	1/4"	1/4"	3/8"
Minimum thread engagement [10]	1/4"	1/4"	3/8"
Maximum diametrical clearance between bolt body and unthreaded holes through which it passes [8,11,12]	1/64"	1/32"	1/16"
Minimum distance from interior of enclosure to the edge of a bolt hole: [8,13]			
Joint—minimum width 1"	.....	.....	[14] 7/16"
Joint—less than 1" wide	1/8"	5/16"	.....
Cylindrical joints			
Shaft centered by ball or roller bearings:			
Minimum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.020"	0.025"	0.030"
Other cylindrical joints: [15]			
Minimum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.006"	0.008"	0.010"

[1] This is the minimal nominal dimension when applied to standard steel plate.
[2] 1/32 inch less is allowable for machining rolled plate.
[3] 1/16 inch less is allowable for machining rolled plate.
[4] The widths of any grooves, such as grooves for holding oil seals or O-rings, shall be deducted in measuring the widths of flame-arresting paths.
[5] If only two planes are involved, neither portion of a joint shall be less than 1/8 inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-and-groove joints) the combined lengths of those portions having prescribed clearances are considered.
[6] The allowable diametrical clearance is 0.008 inch when the portion perpendicular to the plane portion is 1/4 inch or greater in length. If the perpendicular portion is more than 1/8 inch but less than 1/4 inch wide, the diametrical clearance shall not exceed 0.006 inch.
[7] Where the term "bolt" is used, it refers to a machine bolt or a cap screw, and for either of these studs may be substituted provided the studs, bottom in blind holes, are completely welded in place, or the bottom of the hole is closed with a plug secured by weld or braze. Bolts shall be provided at all corners.
[8] The requirements as to diametrical clearance around the bolt and minimum distance from the bolt hole to the inside of the explosion-proof enclosure apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the bolts on either side of the pin shall not exceed 6 inches.
[9] Adequacy of bolt spacing will be judged on the basis of size and configuration of the enclosure, strength of materials, and explosion test results.
[10] In general, minimum thread engagement shall be equal to or greater than the diameter of the bolt specified.
[11] Threaded holes for fastening bolts shall be machined to remove burrs or projections that affect planarity of a surface forming a flame-arresting path.
[12] This maximum clearance applies only when the bolt is located within the flamepath.
[13] The edge of the bolt hole shall include the edge of any machining done to the bolt hole, such as chamfering.
[14] Less than 7/16" (1/4" minimum) will be acceptable provided the diametrical clearance for fastening bolts does not exceed 1/64".
[15] Shafts or operating rods through journal bearings shall be at least 1/4" in diameter. The length of fit shall not be reduced when a push button is depressed. Operating rods shall have a shoulder or head on the portion inside the enclosure. Essential parts riveted or bossed to the inside portion are acceptable in lieu of a head or shoulder, but cotter pins and similar devices shall not be used.
[16] 6" with a minimum of 4 bolts.

(7) O-rings, if used in a flame-arresting path, shall meet the following:

(i) When the flame-arresting path is in one plane, the o-ring shall be located at least one-half the acceptable flame-arresting path length specified in paragraph (a)(6) of this section within the outside edge of the path (see figure J–2 in the appendix to subpart J of part 7 of this chapter).

(ii) When the flame-arresting path is one of the plane-cylindrical type (step joint), the o-ring shall be located at least ½ inch within the outer edge of the plane portion (see figure J–3 in the appendix to subpart J of part 7 of this chapter), or at the junction of the plane and cylindrical portion of the joint (see figure J–4 in the appendix to subpart J of part 7 of this chapter); or in the cylindrical portion (see figure J–5 in the appendix to subpart J of part 7 of this chapter).

(8) Mating parts comprising a pressed fit shall result in a minimum interference of 0.001 inch between the parts. The minimum length of the pressed fit shall be equal to the minimum thickness requirement of paragraph (a)(6) of this section for the material in which the fit is made.

* * * * *

5. Section 18.32 is amended by adding paragraph (i) to read as follows:

§ 18.32 Fastenings—additional requirements.

* * * * *

(i) Coil-thread inserts, if used in holes for fastenings, shall meet the following:

(1) The inserts shall have internal screw threads.

(2) The holes for the inserts shall be drilled and tapped consistent with the insert manufacturer's specifications.

(3) The inserts shall be installed consistent with the insert manufacturer's specifications.

(4) The insert shall be of sufficient length to ensure the minimum thread engagement of fastening specified in § 18.31(a)(6) of this part.

6. Section 18.33 is revised to read as follows:

§ 18.33 Finish of surface joints.

Flat surfaces between bolt holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in § 18.31(a)(6). All metal surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of nonhardening preparation to inhibit rusting may be applied to these finished metal surfaces as long as the final surface can be readily wiped free of any foreign materials.

7. Section 18.34 is amended by adding an introductory paragraph and revising paragraph (a)(6) to read as follows:

§ 18.34 Motors.

Explosion-proof electric motor assemblies intended for use in approved equipment in underground mines that are specifically addressed in part 7 of this chapter shall be approved under part 7 of this chapter after February 22, 1996. Those motor assemblies not specifically addressed under part 7 of this chapter shall be accepted or certified under this part.

(a) * * *

(6) Oil seals shall be removed from motors prior to submission for explosion tests.

* * * * *

8. Section 18.37 is amended by revising paragraph (b) to read as follows:

§ 18.37 Lead entrances.

* * * * *

(b) Stuffing boxes shall be so designed, and the amount of packing used shall be such, that with the packing properly compressed, the gland nut still has a clearance distance of ⅛ inch or more to travel without meeting interference by parts other than packing. In addition, the gland nut shall have a minimum of three effective threads engaged. (See Figures 8, 9 and 10 in Appendix II.)

* * * * *

9. Section 18.62 is amended by revising the fifth sentence of paragraph (a) to read as follows:

§ 18.62 Tests to determine explosion-proof characteristics.

(a) * * * Coal dust having a minimum of 22 percent dry volatile matter and a minimum heat constant of 11,000 moist BTU (coal containing natural bed moisture but not visible surface water) ground to a fineness of minus 200 mesh U.S. Standard sieve series. * * *

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 18, 57 and 75

RIN 1219–AA57

Electric Cables, Signaling Cables and Cable Splice Kits

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule implements new procedures for testing and approval of electric cables, signaling cables and cable splice kit designs. The final rule revises the existing requirements for acceptance of cables in 30 CFR part 18, establishes the flame-resistant requirements for approval of cable splice kit designs, and contains the approval requirements for signaling cables, all of which are currently being granted acceptance by MSHA. The final rule also makes conforming changes to 30 CFR parts 57 and 75 to require certain cables and splices to be accepted or approved by MSHA as flame resistant.

EFFECTIVE DATE: Subpart K of part 7 and §§ 7.44(k), 18.35(a)(3), 18.94(a)(2), and conforming amendments to parts 18, 57, and 75 will be effective on February 22, 1993. Sections 18.1, 18.2, 18.6(a), 18.6(b), 18.6(i), 18.9, and 18.64 will be effective on December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule will replace, in one year, the current regulations and acceptance programs covering the testing and approval for flame resistance of electric cables, signaling cables, and cable splice kits found in 30 CFR part 18. These revisions are issued pursuant to section 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act) (30 U.S.C. 957). In addition, pursuant to section 101 of the Mine Act (30 U.S.C. 811), the final rule makes conforming changes to 30 CFR parts 57 and 75 to require certain cables and splices to be accepted or approved by MSHA as flame resistant.

MSHA published a proposed rule in the **Federal Register** on October 1, 1990 (55 FR 40124). The proposal did not retain the existing regulations and acceptance programs covering the testing and approval for flame resistance of electric cables, signaling cables, and

cable splice kits found in part 18. Instead, it proposed that electric cables, signaling cables, and splice kits be evaluated for approval by the applicant or a third party selected by the applicant under the provisions of 30 CFR part 7, Underground Mining Equipment; Product Testing by Applicant or Third Party. These products meet the criteria for applicant or third party testing because they possess characteristics that can be objectively tested in a routine and readily reproducible manner with no elements of subjective analysis.

Part 7 initiated a revised role for MSHA in the evaluation and testing of selected products used in underground mines. Products approved under part 7 are required to be tested by the applicant or by a third party selected by the applicant to conduct the testing. All testing is to be conducted using MSHA-specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under part 7, an approval holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. Under the provisions of subpart A, the approval holder will report to MSHA any knowledge that a product has been distributed with critical characteristics not meeting required specifications. Upon receiving such a report, MSHA will work with the approval holder to implement appropriate corrective action. Since critical characteristics are features of a product which, if not built to specification, can create a hazard, immediate notification should be by expeditious means, such as by telephone. MSHA will perform periodic audits of products approved under part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of part 7 or creates a hazard related to its use, MSHA will take immediate action to address the problem, including revocation of the approval, if necessary.

MSHA reviewed all written statements submitted in response to the proposed rule. No public hearing was requested or held on subpart K. Comments were received from all segments of the mining community, including equipment manufacturers, testing laboratories, trade associations, mine operators, and representatives of miners. This final rule was developed after a full evaluation of the entire public record.

II. Discussion and Summary of the Final Rule

MSHA's regulations found in 30 CFR part 18 governing the approval of electric cables were last reviewed in 1968. Since that time, technological advances in insulation and jacket material, as well as manufacturing techniques, have led to the development of improved electric cables suitable for use in underground mines having potentially explosive atmospheres.

As subpart K to part 7, this rule specifies the technical requirements and test procedures for the approval of electric cables, signaling cables, and cable splice kits. The rule is derived from existing part 18 and current MSHA policies interpreting parts 18 and 75. It provides objective criteria for applicant or third party testing, replacing subjective technical requirements with performance-oriented tests. These tests are based on MSHA's engineering experience with the subjective criteria in the existing approval requirements. Except where indicated, they are not intended to introduce more stringent testing methods but rather to explicitly state the tests used in MSHA's current testing program which have proven to be effective. By using these test procedures, manufacturers can measure, evaluate, and certify compliance of their product with the requirements of this subpart in order to receive an MSHA approval.

The Agency's final rule addresses the comments received and is consistent with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

III. Section-by-Section Discussion

The following section-by-section analysis discusses each provision of subpart K and addresses the comments received on the proposed rule.

Section 7.401 Purpose and Effective Date

This section is derived from § 18.1 and defines the purpose and scope of electric cable, splice kit, and signaling cable approvals issued under this subpart.

Electric cables are used for the transmission and distribution of electric energy for powering equipment in both gassy metal/nonmetal mines and coal mines. Splice kits are used in the repair of damaged electric cables. Signaling cables are used in the transmission of optical signals or electric signals in current-limited applications which include low-energy communication circuits and intrinsically safe remote control circuits. Because of the hazard presented by fire in underground coal mines and gassy underground metal/nonmetal mines, MSHA safety standards such as 30 CFR 57.4057, 57.22310, 57.22311 and 75.600 require the use of flame-resistant cables. In addition, MSHA safety standards in 30 CFR 75.604 address flame-resistant splices in electric cables; however, the flame-resistant performance requirements for splices are not specified.

This final rule modifies the existing requirements for acceptance of cables contained in §§ 18.6(b), 18.6(i), and 18.64 of this chapter and establishes the flame-resistant requirements for approval of electric cable splice kit designs. Additionally, it contains approval requirements for signaling cables which are currently being granted acceptance by MSHA. Conforming amendments to 30 CFR parts 7, 18, 57, and 75 resulting from the approval requirements in this subpart K final rule are included as part of this rulemaking. The conforming amendments revising parts 57 and 75 require the use of cables and splices that have been accepted or approved by the Agency as flame resistant. Although amendatory language was not in the actual proposed rule, in the preamble to the proposal the Agency published its intent to modify these safety standards with this final rule and set forth the actual language the Agency intended to use in requiring that such cables and splices be accepted or approved as flame resistant.

Section 7.401 provides that the requirements of subpart K take effect 60 days after publication of the final rule. It further provides that manufacturers may continue to submit requests for acceptance or extension of acceptance for electric cables, signaling cables, and splice kits under existing procedures until one year from the effective date of this subpart K. After this one-year phase-in period, the applicable portions of part 18 referring to cables will be modified and the signaling cable and splice kit acceptance programs will be discontinued. All new cable and splice kit designs submitted for approval or extension of approval after one year will be required to meet the requirements of this subpart.

This subpart K has been developed to include a product-specific phase-in period, consistent with the preamble

discussion to the final rule on part 7, subpart A (53 FR 23488, June 22, 1988). This phase-in period is based on an assessment of the amount of time needed to prepare for testing and reflects commenters' concerns addressed to subpart A that a phase-in period of sufficient duration be provided to ensure that competent third-party testing facilities be available for prompt testing of products at a reasonable cost. This one-year phase-in period will provide sufficient time for cable and splice kit manufacturers and independent testing laboratories to establish testing capabilities for part 7 testing. The phase-in period is not intended to limit the use or manufacture of preivously approved electric cables, signaling cables, and splice kits.

Several commenters expressed concern that a sufficient amount of phase-in time be allocated in order for existing inventories of electric cables, signaling cables, and splice kits to be exhausted. They also requested that electric cables, signaling cables, and splices installed prior to the effective date of the final rule continue to be usable without immediately having to replace them with products approved under this subpart K. Another commenter questioned the need for a one-year phase-in period. This commenter believed that upon implementation of the final rule, existing approvals should be valid for a transition period of only one year and all applications for approval should be made under this subpart. According to this commenter, all existing approvals that had not been issued under the provisions of this subpart should no longer be valid after this one-year period.

In revising the technical requirements for the approval of electric cables, signaling cables, and splice kits under the procedures of part 7, the final rule does not significantly alter the approval criteria for these products. Furthermore, as discussed under § 7.407(b) in the proposal (55 FR 40128, October 1, 1990), the test results of cable and splice acceptance applications for the past several years indicate the products currently being manufactured and marketed meet the final rule's acceptable performance criteria. MSHA does not intend to revoke, except for cause, any cable or splice approvals previously granted. Cable and splice products accepted under prior regulations and in compliance with those regulations may continue to be manufactured and offered for sale in the mining community as long as no changes are made which would deviate from conformance with the approval documentation. Furthermore, MSHA will consider any cable or splice kit, evaluated and issued an acceptance under the provisions of part 18 or approved under this subpart, to meet the requirements for flame resistance stated in MSHA's safety standards as set forth in 30 CFR parts 57 and 75. Therefore, MSHA will not require mine operators to replace existing inventories or to install only those products approved under this subpart.

Part 7 revises MSHA's role in the evaluation and testing of certain products used in underground mines. Where the Agency's role had been one which emphasized testing by MSHA, part 7 requires testing by the applicant or a third party selected by the applicant to make the approval process more efficient for those products capable of being tested outside the Agency using Agency-developed, standardized and repeatable tests and procedures. As such, the various product subparts have been developed to include product-specific phase-in periods appropriate to provide manufacturers and independent testing laboratories sufficient time to prepare for part 7 testing responsibility. The topic of phase-in periods was discussed in the preamble discussion to the final rule on part 7, subpart A. During this one-year phase-in period, both part 18 and subpart K will be in effect. Applicants can, therefore, choose to submit applications for acceptance under part 18 and have cable and splice products tested by MSHA or submit them under subpart K where the obligation to test will be with the applicant. Furthermore, applicants will be required to submit extensions of approval in accordance with the approval regulations under which the original approval was granted. At the expiration of one year, all applications for extension of approval will be treated as new applications and applicants will be required to apply for an original approval under subpart K. MSHA believes that this procedure will minimize confusion and allow for the continued introduction of cable and splice products to the mining industry without unnecessary delay.

Section 7.402 Definitions

The following definitions applying to the approval of electric cables, cable splice kits, and signaling cables are new. They are designed to clarify the requirements of subpart K.

Component. This definition includes any material in a splice kit which becomes part of the splice. Materials such as conductor insulation, outer jacket, and shielding are included in this definition. Assembly instructions, cleaning solvents, abrasive strips and other materials included in the splice kit, necessary for preparing the splice but not part of the final assembly, have been excluded from this definition.

Conductor. This definition specifies a conductor to be a bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

Electric Cable. This definition identifies an electric cable as the assembly of one or more insulated conductors of electric current under a common or integral jacket. Additionally, an electric cable may also contain one or more uninsulated conductors. Under the definition, single conductor cables as well as multiple conductor cables are covered. While the minimum materials comprising an electric cable are specified, materials such as filler and metallic shielding are also included. The cable construction and type determine those additional materials which are included as part of the assembly.

Jacket. This definition specifies a jacket to be a nonmetallic abrasion-resistant outer covering of a cable or splice. The jacket is intended to provide protection against physical damage. Commonly used jacket materials include neoprene and polyvinyl chloride.

Power Conductor. This definition identifies a power conductor to be an insulated conductor of a cable assembly through which the primary electric current or power is transmitted.

Signaling Cable. This definition identifies a signaling cable to be either a fiber optic cable or a cable containing electric conductors, of cross-sectional area less than #14 AWG, used where the circuit cannot deliver electric currents which could increase conductor temperatures beyond the normal operating temperature as established for the current-carrying capacity of the conductors. These cables are normally used to transmit signals for audio or visual annunciation. Equipment using these cables is typically powered by regulated power supplies or batteries. This equipment generally includes, but is not limited to, intrinsically safe systems.

Splice. This definition specifies a splice to be the mechanical joining of one or more severed conductors in a single length of a cable and includes the replacement of insulation and jacket. A splice is intended as a repair to a damaged electric cable.

Splice Kit. This definition identifies a cable splice kit as a group of materials and related instructions for making a flame-resistant splice in an electric

cable. The materials typically contained in a splice kit include replacement jacket, insulation, shielding (if for shielded cable), cable cleaner, abrasive strips, and assembly instructions.

A commenter noted that the proposed language for this definition did not include signaling cable splice kits, while there is a need to repair some types of signaling cables. The commenter believed that subpart K should be modified with language to accommodate splice kits for the repair of those types of signaling cables. The commenter further stated that some signaling cable may also meet the definition of an electric cable and it would be unnecessarily restrictive to preclude an applicant from developing a splice kit for signaling cable that does not qualify as an electric cable.

Present federal regulations require flame-resistant properties only for trailing cables and for the cables installed on equipment that must be maintained in permissible condition. Flame-resistant splices are required on trailing cables and, except for shearer and motor cables on longwall mining systems, cables on permissible equipment are not permitted to be spliced. Furthermore, present MSHA policy does not allow splicing of any cables used in intrinsically safe systems, and splice kits used to repair cables in areas where permissibility is not required to be maintained are not required to be approved for flame resistancy.

As stated previously, signaling cables are normally used to transmit signals for audio or visual annunciation. Equipment using these cables is typically powered by regulated power supplies or batteries. This equipment generally includes, but is not limited to, intrinsically safe systems. Therefore, in most applications where flame-resistant signaling cables are required, a splice kit would not be permitted to be used to repair a damaged cable.

To date, MSHA has not tested or otherwise evaluated splice kits designed solely for the repair of signaling cables. For this reason, MSHA has not included approval requirements for these products in this final rule. The final rule includes provisions under § 7.411 to accommodate the approval of splice kits for which the requirements of this subpart are not applicable. If an applicant submits an application for approval of a splice kit designed to repair a signaling cable that does not qualify as an electric cable as defined in this subpart, MSHA will evaluate the product as new technology under the provisions of § 7.411.

The proposed rule included a definition for filler to identify the materials used to fill the interstices of a cable to provide for a substantially uniform cross section of the completed assembly. This definition has not been included in the final rule since this term is not used.

Section 7.403 Application Requirements

Section 7.403(a) contains the application requirements for approval of electric cables and signaling cables. The requirements stated in this section are derived from existing requirements of 30 CFR 18.6 and the standard application procedures presently in use.

Under this final rule, an application for approval is required to provide product identification information to include cable type, construction, number and size of conductors, and voltage rating for all cables containing electric conductors. This final rule allows for a single application to address two or more sizes, types, and constructions if the products do not differ in composition of materials or basic design. The final rule also requires applications to include technical specifications related to the flame resistance of the product, including the type of material and identifying number for each material comprising the finished assembly, as well as current-carrying capacity (rated ampacity) with the corresponding ambient temperature upon which the current rating is based. Since current-carrying capacity is not a factor in determining the flame resistance of signaling cables, the final rule does not require this information to be provided for these products. Technical information related to jacket, conductor insulation, and filler materials is required for all electric cables and signaling cables approved under this subpart K. Because applicable design factors such as material thickness, conductor configuration, kind and position of shield or braid coverings, and type of construction may affect the flame-resistant performance of electric cables or signaling cables, the final rule requires that complete design specifications or a reference to an existing consensus design standard specification such as the Insulated Cable Engineer's Association (ICEA) Publication No. S–19–81, Fourth Edition, be included with the application. If a product submitted for approval is not based on an existing consensus design standard specification, the application must be accompanied by complete specifications related to the design of the product or include information which details differences in design between the product and an existing consensus design standard specification.

Section 7.403(b) contains the application requirements for approval of electric cable splice kit designs which are similarly based on existing procedures. Under the final rule, applications for approval are required to include product identification information including trade names, style, code numbers, and voltage rating. Applications are also required to include complete splice assembly instructions and technical specifications related to the flame resistance of the splice, including the type of material and identifying number for each component used in the finished product. Design factors such as material thickness, conductor configuration, kind and position of shield or braid coverings, and type of construction could affect the flame-resistant performance of a splice. Therefore, the final rule requires that the complete design specifications or a reference to a published design standard be provided with the application. This information includes identification of the type of splice (shielded, nonshielded) and final assembly dimensions for all components required for splices in each cable that the splice kit is designed to repair.

MSHA will use the application information to evaluate electric cables, signaling cables, and splice kit designs submitted for approval or extension of approval, as well as to identify those bearing an MSHA approval marking as those approved by the Agency.

One commenter believed that a single application is not sufficient to determine the flame resistance of more than one size, type or construction of electric cable or signaling cable because various design factors may affect the flame-resistant performance of the cables. Further, this commenter stated that it would not be a substantial burden for manufacturers to submit a separate application for each product for which they are seeking approval. At the present time, MSHA permits a single application to include two or more sizes, types, and constructions of cables as long as the products do not differ in composition of materials or basic design. Furthermore, MSHA does not currently test each cable product submitted for approval since it has determined that it is unnecessary to test each size, type, and construction to assess the flammability characteristics inherent in the basic design of any particular cable. Instead, only selected sizes, types, and constructions are flame

tested and, based on the results of this testing, similarly designed cable products are granted acceptance without additional tests begin performed. These policies and procedures reflect the experience of over 40 years in testing and evaluating the flame-resistant properties of cable products.

As stated in subpart A of part 7, manufacturers will be required to submit applications detailing the information necessary to evaluate all facets of the design and construction of the product relative to the approval requirements. The application procedures require submission of all the technical specifications that the Agency has determined affect the flame resistance of the cable product designs. Applicants requesting approval or extension of approval must indicate whether, in their opinion, changes in a previously approved product require testing. If tests are not planned, the applicant will be required to explain the technical reasons for not conducting testing. Under this final rule, manufacturers will be required to provide detailed information relative to the design and testing for each size, type, and construction for each product addressed in the application. MSHA will evaluate the need for testing in each case, taking into account the applicant's explanation for not planning to test. MSHA's decision will be based on its evaluation of the effect of any proposed changes on the safe performance of the product. In those cases where the Agency decides that testing is necessary, the applicant will be notified so that testing can be scheduled.

MSHA has granted acceptances for cable products using these procedures over a period of several years and the Agency is not aware of any administrative or technical problems related to permitting more than one size, type, and construction to be evaluated in a single application. The Agency believes that a change in testing policies or this provision, which is based on current application procedures and practice, will result in unnecessary paperwork without improving the integrity of the approval program. Therefore, based on this information, MSHA has not modified this provision in the final rule and will continue to permit a single application for approval to cover two or more sizes, types, and constructions if the products do not differ in composition of material or basic design. It will be the Agency, however, who will be the arbiter of whether any such differences exist.

Fees

In accordance with 30 CFR part 5, fees for MSHA processing of an application under part 7 are subject to an hourly charge. Fee schedules are updated at least once every 3 years and published in the **Federal Register**.

An application fee of $100 must be submitted with each request for approval or extension of approval for electric cables, signaling cables and splice kits under subpart K of part 7. Under the 1992 rate schedule, the Agency will charge $39 per hour for processing new approvals and $38 per hour for processing extensions of approval.

Section 7.404 Technical Requirements

Section 7.404 is derived from and retains the existing technical requirement of § 18.35(a)(3) for flame resistance of electric cables and applies the same criteria to splices in electric cables. The test presently used for signaling cables is also incorporated into the final rule. Flame resistance will be demonstrated by successful completion of the applicable flame test, as specified in this final rule. A complete description of the flame test is contained in the discussion of §§ 7.407 and 7.408.

Section 7.405 Critical Characteristics

This section is new and lists the critical characteristics that are required to be inspected or tested from each production run, batch, or lot of cables or splice kits manufactured having an approval marking. As defined in subpart A of this part, a "critical characteristic" is a feature of a product that, if not manufactured as approved, could have a direct adverse effect on safety. The critical characteristic identified for inspection or testing of cable and splice kits is flame resistance.

One commenter recommended that manufacturers be required to perform flame tests as well as other physical and chemical tests in order to assure compliance. Other commenters were concerned that an unrealistic number of tests would be required to be performed on a sample of each production run, lot, or batch, since some manufacturers can produce different constructions in a 24-hour period, resulting in up to 100 flame tests being run per week. While MSHA agrees that flame testing samples is the most reliable method to make a determination as to whether an electric cable, signaling cable, or splice made from a splice kit meets the technical requirements of this subpart, inspections and tests other than flame testing can be used to determine compliance with this final rule.

Section 7.405(a) provides for the flame testing of a sample of each production run, batch, or lot as one method to ensure continued compliance with the flame-resistant requirements. As an alternate to flame testing, § 7.405(b) provides that materials that contribute to the flame-resistant characteristic, along with a sample of the cable or splice kit assembly for each production run, batch, or lot, be inspected or tested. Such inspections or tests will be conducted to verify material composition, thickness, and, for cables, position within the finished product in relationship to the approved design. Appropriate inspection or test procedures, other than flame testing, that satisfy the requirements of § 7.405(b) are dependent upon the materials used that contribute to the flame-resistant characteristic of the product as well as the manufacturing process used. MSHA, therefore, has not identified these inspection and test procedures specifically. Inspections could include observation of the color or consistency of the materials or sample of the assembly. Tests could include chemical or physical analysis of the materials that comprise the product.

Although current regulations do not specifically require flame testing of samples or inspection or testing of the physical properties of the finished product, they do require manufacturers to maintain the quality of approved products. Further, use of the MSHA marking obligates the manufacturer to produce cable and slice products as accepted to meet flame resistance. Based on product audits, MSHA has no evidence to show that cable and splice products being supplied to the mining community do not meet the technical requirement for flame resistance. Thus, the Agency has concluded that existing manufacturing techniques and quality assurance methods have been effective in assessing the critical flame-resistant characteristic of cable and splice products. Furthermore, MSHA believes that there will be minimal impact upon manufacturers in determining compliance of their final products, as existing methods and procedures have proven to be adequate and are likely to continue to be used for cable and splice products approved under this subpart K to part 7. Finally, MSHA disagrees with the comment proposing that additional physical tests be required to be performed on every product approved under this subpart in order to determine compliance with this section. MSHA maintains that a manufacturer is obligated to perform only tests and inspections necessary to assure that the

technical requirement is met. The manufacturer should not be required to perform superfluous testing.

Section 7.406 Flame Test Apparatus

The flame test apparatus described in § 7.406 is the same as that presently used by MSHA for conducting tests under § 18.64(a) and (b). Because variations in design may change the conditions of the test or disturb the burning process, the design factors essential to obtaining uniform and consistent test results are stated for each principal part of the flame test apparatus. They are based on equipment presently used by MSHA. However, where variations do not affect the reliability of the test results, MSHA has not specified design characteristics and will allow design flexibility. Apart from a comment directed to § 7.406(c), which is discussed below, commenters had no objections to the provisions on the flame test apparatus.

Section 7.406(a) addresses requirements concerning the size of the test chamber and is derived from § 18.64. It requires that the chamber be completely open at the top and front as well as have provisions (supports) for mounting the test specimen and energizing electric cable or splice specimens with electric current. It also requires that the floor of the chamber be fabricated or lined with a noncombustible material, such as metal, that will not readily extinguish burning matter which may fall from the specimen during testing. This reduces the possibility that burning matter will either ignite the floor of the chamber or be extinguished due to the composition of the floor material. Disturbance of the burning process by such events will affect the reliability of the test results.

Section 7.406(b) is derived from § 18.64(b) and requires that the specimen holder (support) be constructed of three metal rods and be designed to support and maintain the specimen at a specific level within the test chamber. The existing requirement stated in § 18.64(b)(4) that the metal rods be wrapped with asbestos tape to reduce the cooling effect has been replaced in the final rule with a new requirement that the rods have a nominal diameter of approximately 3/16 inch. Further, the length of the horizontal portion of the rod which contacts the test specimen is specified to be approximately 12 inches in length. Existing regulations do not specify rod size, and MSHA believes that this new specification will provide uniform control of the cooling effects of the rods upon the test specimen, thereby improving the repeatability of the test.

Section 7.406(c) is derived from existing requirements stated in § 18.64 concerning the type of fuel and gas burner used to ignite the test specimen. It continues to specify a natural gas type Tirrill burner as the gas ignition source and requires the natural gas fuel for the burner to be composed of at least 96 percent combustible hydrocarbons, with a methane content of at least 80 percent. These fuel specifications, derived from the fuel used by MSHA in flame testing, are considered necessary in order to ensure proper operation of the gas burner.

One commenter suggested that MSHA consider methods other than gas composition, since variations in gas composition affect BTU output as well as the flame temperature during the igniting process. These could include measuring flame temperature or specifying a range of heating values as an alternative to that which was proposed. The commenter offered these recommendations to assist the Agency in developing a natural gas specification which would minimize local variances and thus preclude the possibility of affecting the reliability of test results.

Based on these suggestions, MSHA reevaluated the appropriateness of the natural gas specification requirements stated in proposed § 7.406(c). MSHA has had extensive experience in conducting flame tests of cable and splice products and has performed these tests using natural gas with the full range of gas constituents specified in the proposed rule. The description of the allowable gas concentration in the proposed rule has been slightly modified to accurately reflect the variations that have been present during the testing performed by MSHA. The Agency has not observed any significant variations in test results using these natural gas supplies and has concluded that the effects of any variations in heat content or flame temperature, due to varying gas compositions, were inconsequential with respect to the outcome of the flame test. Thus, there is no data to support a change in the natural gas requirements and no experience to show how much variation may be tolerated by specifying the natural gas requirements in another manner. For these reasons, the method used in the final rule to identify the quality of the natural gas supply remains unchanged from the proposal. The specified gas compositions stated in final § 7.406(c) will allow the use of most natural gas supplies while still ensuring the consistency and reliability of the test results.

Section 7.406(d) is derived from § 18.64(b)(1) and requires a source of either alternating current or direct current to energize and regulate electric current flow through the electric cable or spliced test specimen. It also specifies the type of conductors which are subject to heating current. A new requirement concerning the output voltage of the current source has been added because use of an incompatible voltage to energize test specimens during the flame test may provide unpredictable results.

Section 7.406(e) is derived from § 18.64(b)(2) and requires that an instrument be provided to measure current flow through the power conductors of the test specimens within an accuracy of ±1 percent. This monitoring accuracy is necessary to attain a consistent heating rate of the cable.

Section 7.406(f) is derived from § 18.64(b)(3) and requires a device to measure the conductor temperature of the electric cable and spliced test specimen. It allows for design flexibility in the type of device provided and does not require the use of a thermocouple-type instrument as specified in existing regulations. However, MSHA requires that the device measure conductor temperature within an accuracy of ±2 percent. In addition, the device used must be capable of measuring the temperature without removing any cable material from the test specimen in order to make the temperature measurements. Any material disturbed in inserting the device, such as a thermocouple, is required to be returned as closely as possible to its original location and be maintained there for the duration of the testing. If such material were removed or unduly displaced, unpredictable cooling effects could occur which would affect the repeatability of the test. Paragraphs (d) through (f) do not apply to signaling cables because signaling cables are not tested with any preheating requirements.

Section 7.407 Test for Flame Resistance of Electric Cables and Cable Splices

The flame test described in § 7.407(a) is derived from § 18.64 (a), (c), and (d). It is the same as that presently used, with some minor changes detailed below. MSHA's experience with this procedure is that it produces repeatable, objective test results which assess the flame-resistant properties of electric cables and is considered equally effective for testing splices.

Existing requirements concerning the size and preparation of test specimens are maintained in § 7.407(a)(1). Section 7.407(a)(2) adds a new requirement for conditioning all specimens before testing and for maintaining the same

environmental conditions during testing. Temperature and moisture content of the specimen at the start of and during the flame resistance test may affect the repeatability of test results and for this reason have been addressed in this final rule.

Section 7.407(a)(3) is derived from existing requirements concerning the location for measuring conductor temperature of electric cables and spliced cables. It provides flexibility in the method of securing the sensing element of the temperature measuring instrument. The existing requirement for tying the flap of jacket and insulation material with wire has been replaced by the more performance-oriented requirement that any disturbed jacket or insulation material be restored as closely as possible to its original location and be maintained there for the duration of the test. Unpredictable cooling effects could occur if such material were displaced.

Section 7.407(a)(4) retains existing requirements concerning the mounting of the applicable test specimen on the rods positioned within the chamber. It provides flexibility in the placement of the test chamber by deleting the existing requirement for using a ventilated hood or canopy, although the use of a hood or canopy is still acceptable. The existing requirement for the test specimen to be free from external air currents during testing has been retained and, as stated previously, the test chamber must be placed in an area having controlled temperature and humidity, because uncontrolled environmental conditions could affect the burning process.

Section 7.407(a)(5) specifies the adjustment of the flame from the gas ignition source and retains present specifications concerning flame height and size. Also, a new requirement has been added that requires the flame to be blue in color without a persistence of yellow coloration. The persistence of yellow coloration indicates maladjustment or impurities in the fuel. This will provide for a controlled and consistent flame during the igniting process and will provide for more consistent repeatable test results.

Section 7.407(a)(6) retains the existing requirement for connecting electric cable and spliced test specimens to the current source. It requires that connections be secure and compatible with the size of the specimen's power conductors, as improper connections may produce undesirable heating effects affecting temperature measurement and yielding unreliable results.

Section 7.407(a)(7) is derived from existing test procedure requirements for electric cable and spliced test specimens and specifies that all power conductors be energized with electric current. It retains the intent of existing regulations that the value of the effective heating current be five times the rated power conductor ampacity, but specifically states that the rating be based on using an ambient temperature of 104 °F (40 °C), for consistency. One commenter noted that ampacity tables are not included in this subpart K but do appear in existing regulations in part 18. The commenter indicated that it is not clear whether existing conductor ampacity tables, per ICEA standards, will be applied to the test method. To properly conduct the test, the final rule requires that each power conductor be energized with a current that is five times the power conductor rating at 104 °F (40 °C). MSHA has noted differences in power cable ampacity ratings, for identical sizes and cable types, due to the design standard used in their manufacture. For this reason, MSHA has chosen to require that flame tests be performed using current values determined from the ampacity rating stated by the manufacturer of the product in its application for approval. To permit advances in technology and to accommodate the testing of a wide variety of cable constructions, including standard and nonstandard designs, that result in various current ratings, MSHA has not published ampacity tables in this final rule.

Section 7.407(a)(8) is derived from the existing requirement for monitoring the current flow through the power conductors. It requires that the effective heating current be adjusted to within #5 percent, as required, to maintain the proper value. This provides for a controlled and consistent heating process, thus improving the repeatability of the test results.

Section 7.407(a)(9) is derived from the existing procedure for the location and application of the flame. For electric cables, the tip of the inner cone from the flame of a gas burner is to be applied directly beneath the test specimen for 60 seconds at a location 14 inches from one end of the cable and between the supports separated by a 16-inch distance. For spliced cable specimens, the tip of the inner cone from the flame of a gas burner is to be applied for 60 seconds beneath the midpoint of the splice jacket.

Paragraphs 7.407(a) (10) and (11) retain the existing requirements concerning the duration of exposure to external flame and the measurement and recording of burn time of the specimen, respectively. Section 7.407(a)(10) requires the flame from the gas burner and the electric current to be removed simultaneously from the test specimen after the specified time period. It further requires that the flame from the gas burner be removed from beneath the test specimen in a manner which does not disturb air currents created during the burning process within the test chamber. If special care is not taken, unnatural turbulence could be produced which may affect the burning process and the results of the tests. MSHA has not specified a method for removing the flame or electric current in order to provide more performance-related requirements and to allow design flexibility. Section 7.407(a)(11) requires that the duration of burning be recorded and that the measurement of the time the specimen continues to burn after the flame from the gas burner has been removed begin concurrently with flame removal. The duration of burning includes the burn time of material that falls from the test specimen after the flame from the gas burner has been removed. This requirement is based on an interpretation of the existing requirement for measuring burn time and is currently considered as a factor for evaluating the flame-resistant properties of electric cables and splices under existing procedures.

Sections 7.407(a) (12) and (13) retain the existing requirements for measuring the length of burned area of the test specimen for testing three cable specimens, respectively. It requires that the measurement be made longitudinally along the cable axis to provide for a consistent measurement parameter and that the burned length include any charred length.

Section 7.407(b) is derived from § 18.64(e). It modifies and expands the requirements to include splices. This section sets forth the criteria for acceptable performance for this test. It requires that each of the three specimens tested exhibit burn times not exceeding 240 seconds and the length of burned area in each specimen be less than 6 inches. This change from the present requirement that two of three specimens meet the acceptable performance criteria addresses advances in technology. The existing criteria for acceptable performance for testing were developed approximately 40 years ago based upon the use of natural rubber-jacketed cables. Two out of three specimens represented optimal performance and was acceptable for these cables. Jacket materials presently used have better flame-resistant properties, and three out of three represents the optimal performance for these synthetic compounds and

produces reliable test results. The technology currently used in the manufacturing process has advanced to provide more consistent flame-resistant properties for the manufactured product. The test results of cable and splice acceptance applications for the past several years indicate the products currently being manufactured and marketed will meet this final rule without requiring modification to the manufacturing process.

Section 7.408 Test for Flame Resistance of Signaling Cables

The flame test described in § 7.408 is derived from § 18.64 (a), (c), and (d). It is the same as that presently performed under the signaling cable acceptance program. The test apparatus for signaling cables is the same as that for electric cables except that there is no preheating requirement. Preheating is not required to be performed for these cables due to their intended use. Fiber optic cables do not carry electric current and therefore are not subject to electric current heating. Cables having electric conductors of cross-sectional area less than #14 AWG for use as signaling cables are used in low-current applications, as stated earlier. Equipment using these signaling cables is typically powered by batteries or by regulated power supplies which are not capable of delivering currents which exceed the current-carrying capacities of the conductors. As a result, the signaling cables are not subject to excessive currents that could cause the conductors to become overheated. Electrically preheating the cable during testing would simulate a condition to which these cables would not be subjected.

The requirements concerning the size and preparation of test specimens are specified in § 7.408(a)(1). It requires three samples of signaling cable to be prepared, each three feet long.

Section 7.408(a)(2) adds a new requirement for conditioning all specimens before testing and maintaining the same environmental conditions while conducting the testing. Temperature and moisture content of the specimen at the start of and during the flame-resistance test may affect the repeatability of test results.

Section 7.408(a)(3) retains existing testing procedures concerning the mounting of the applicable test specimen on the rods positioned within the chamber. It provides flexibility in the placement of the test chamber by removing the existing requirement for using a ventilated hood or canopy, although use of a hood or canopy is still acceptable. The existing requirement for the test specimen to be free from external air currents during testing has been retained, and the test chamber must be placed in an area having controlled temperature and humidity because uncontrolled environmental conditions could affect the burning process.

Section 7.408(a)(4) specifies the adjustment of the flame from the gas ignition source and retains present specifications concerning flame height and size. Also, a new requirement has been added to require that the flame be blue in color without a persistence of yellow coloration. The persistence of yellow coloration indicates maladjustment or impurities in the fuel. This adjustment will provide for a controlled and consistent flame during the igniting process and will provide for more consistent repeatable test results. Section 7.408(a)(5) retains the existing procedure for locating and applying the flame. The flame is applied for 30 seconds directly beneath the sample centered between either end support and the center support.

The existing requirements concerning the duration of exposure to external flame and the measurement and recording of burn time of the specimen, respectively, are retained in § 7.408(a)(6) and (7). Section 7.408(a)(6) requires the flame from the gas burner to be removed from the test specimen after the specified time period. It further requires that the flame from the gas burner be removed from beneath the test specimen in a manner which does not disturb air currents created during the burning process within the test chamber. If special care is not taken, unnatural turbulence could be produced which may affect the burning process and the results of the tests. MSHA has not specified a method for removing the flame in order to provide a more performance-oriented requirement and to allow design flexibility. Section 7.408(a)(7) requires that the duration of burning be recorded and that the measurement of the time the specimen continues to burn after the flame from the gas burner has been removed begin concurrently with flame removal. The duration of burning includes the burn time of material that falls from the test specimen after the flame from the gas burner has been removed. This requirement is based on an interpretation of the existing requirement for measuring burn time and is currently considered as a factor for evaluating the flame-resistant properties of signaling cables under existing procedures.

The existing requirements for measuring the length of burned area of the test specimen and for testing three cable specimens, respectively, are retained in § 7.408(a) (8) and (9). These provisions require that the measurement be made longitudinally along the cable axis to provide for a consistent measurement parameter and that the burned length include any charred length.

Section 7.408(b) is derived from § 18.64(e) and the existing signaling cable acceptance program. It specifies the criteria for acceptable performance for this test. It requires that each of the three specimens tested exhibit burn times not exceeding 60 seconds, which is the same as is presently required under the signaling cable flame test program. This time is shorter than for electric cables and splices because the signaling cables are not preheated. The allowable length of burned (charred) area specified; i.e., not exceeding 6 inches, remains the same as the present criteria for this product. The requirement that each of the three specimens meet the acceptable performance criteria of this section is consistent with the existing signaling cable acceptance program.

Section 7.409 Approval Markings

Section 7.409 implements the general provisions of subpart A of this part, which requires each product issued approval under part 7 to have an approval marking. This section of the final rule is derived from existing § 18.64(f) which requires approval markings on electric cables so that mine operators know which cables meet the flame-resistance specifications of the Secretary. It expands the marking requirements to include signaling cables and splices and adds additional marking requirements for electric cables and signaling cables.

One commenter disagreed with the marking of signaling cables and stated that these marking requirements would result in added cost to the industry, while not enhancing safety in any manner. At the present time, MSHA has issued signaling cable acceptances to a number of manufacturers according to guidelines established in the Signaling Cable Acceptance Program developed by the Agency to evaluate these products. Under this program, signaling cable manufacturers are required to mark products that have been granted acceptance by MSHA with permanent and legible approval markings at intervals not exceeding three feet. MSHA believes that products are being marked in this manner without placing a significant financial burden upon the industry and that the presence of an approval marking enhances safety by

providing, for mine operators, identification of those products which have met the flame-resistant criteria of the Agency.

Under part 18, MSHA requires trailing cables to be marked at intervals not exceeding 12 feet, with the marking impressed in the jacket or as raised letters and figures on an impressed background. Other types of cable may be marked in the same manner or have a durable marking printed on the surface of the cable at intervals not exceeding 3 feet. As proposed, the 12-foot marking interval currently specified under part 18 would have been deleted in order to facilitate the identification of shorter sections of cable.

One commenter recommended that the current 12-foot marking interval for trailing cables and mine power feeder cables be retained because these cables are used in lengths long enough to insure proper identification with a 12-foot marking interval. The commenter further noted a lack of personal experience with any problems indicating a need to mark these types of cables in 3-foot intervals. Under the proposal, all approved cables would have to be legibly and permanently marked on the jacket at 3-foot intervals. Further, the marking would have to include additional information pertaining to the size and number of conductors, type of cable, and voltage rating for those cables containing electric conductors, as well as the MSHA-assigned approval number. Although the final rule imposes additional cable making requirements, it allows for flexibility by not specifying the marking method. An electric cable construction approved under this subpart may be used in a number of different applications. In one application it may be used between electric components of a machine; in another as a trailing cable or mine power feeder cable. The cable length in each of these applications can often be 12 feet or less and varies according to the function it serves.

The revised marking regulation will facilitate identification of appropriate cables and splices. Mine operators are obligated to maintain permissible equipment in approved condition. Equipment manufacturers are obligated to assemble permissible equipment according to the design approved by MSHA. Additionally, underground equipment is required to use electric cables and conductors of proper size for the loads involved. Improper cable selection when installing or replacing cables on permissible equipment could cause potential fire and explosion hazards. Cable marking information pertaining to the size (gauge) and number of conductors, as well as cable type and voltage rating for cables containing electric conductors, in addition to the MSHA approval number designation, is considered necessary for a proper and complete identification of an electric cable or signaling cable. Furthermore, a complete identification of a damaged electric cable is required in order to select a splice kit that is proper for the repair. Based upon experience, MSHA believes that there are a number of cable manufacturers who are producing "MSHA accepted" cables that comply with the marking requirements as stated in this subpart and that compliance with these provisions will not impose an undue burden on the industry.

The marking requirements for the jacket in a splice kit remain unchanged from existing policy. The approval marking is required to be legible and permanent and appear at least once on the outside of the assembled splice. One commenter recommended that a splice kit stipulate the size of electric cable that it is designed to repair as this information would help prevent using the wrong kit to repair an electric cable. This information is currently available for the proper selection of splice kits to repair electric cables. Further, the Agency is unaware of any problems resulting from unavailability of this information. It may be supplied on the splice kit package, on the splice outer jacket, on charts, or contained in the detailed assembly instructions which are required to be provided with all splice kit products approved under the existing procedures or under the provisions in § 7.402 and § 7.403 of this final rule. Therefore, the final rule has not been modified to specify the inclusion of this information.

Section 7.410 Post-Approval Product Audit

This section is new and implements the post-approval product audit requirements as set forth in the general provisions of subpart A to this part 7. Subpart A sets forth that a product will be audited no more than once a year unless MSHA has cause to audit more frequently. Paragraph (a) specifies that upon request by MSHA, 12 feet of an approved electric cable or approved signaling cable design be provided at no cost for auditing purposes. Paragraph (b) specifies that 3 approved splice kits of an approved splice kit design, as well as 12 feet of MSHA-approved cable which the splice is designed to repair, be provided at MSHA's request at no cost.

MSHA received a number of comments concerning the post-approval audit provisions of this final rule. Two commenters stated their concern with the "except for cause" provision. One indicated that the term "cause" needed to be explained more fully. The other commenter noted that the Agency could perform more audits if the "except for cause" language were deleted from the final rule. Based on MSHA's experience, the Agency anticipates few instances in which more than one approved cable or spliced product will be required "for cause" from any one manufacturer in any one year. There are circumstances, however, under which an additional audit is appropriate to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of approved cables or splices, evidence of changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval holder. Under these circumstances, an approval holder must provide, at no cost to MSHA, additional approved cables or splices so the Agency can ensure that the approval holder is meeting the obligation to manufacture the product as approved. As an on-going program, MSHA obtains approved cable and splice products from other sources as well to perform product audits. These audit activities supplement existing quality assurance efforts to ensure conformity with the technical requirements upon which product approval was based. This work complements the quality assurance provisions of this subpart by providing a mechanism for independent evaluation by MSHA of approved products on a random basis.

Another commenter indicated that MSHA's intent to conduct all periodic audits of approved products itself is too restrictive. This commenter stated that independent third party agencies, which regularly conduct such product audits as part of their labeling, listing, and follow-up services, should be permitted to perform this function as an alternative to MSHA audits. In the part 7 process, MSHA remains as the approval-issuing authority and as such should maintain control of the post-approval auditing.

As noted in earlier rulemaking for subpart A of this part 7, approved products audited by MSHA will be selected by the Agency as representative of those distributed for use in mines. When an approved product is requested by MSHA for audit from the approval holder, the Agency will arrange to examine and evaluate it at a mutually-

agreed-upon time and location and permit the approval holder to observe audit-related tests. This examination can take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any place agreed upon by MSHA and the approval holder. The information necessary to determine compliance, such as that related to product design, may not be readily available to independent third-party test laboratories. This information is considered, by manufacturers, as proprietary and is not available for disclosure by the Agency. Therefore, while MSHA has no objection to other organizations independently testing cable and splice products against the flame-resistant requirement and reporting this information to the Agency, it must conduct all product audits in order to maintain a viable audit program.

Section 7.411 New Technology

Section 7.411 allows for approval of cables and splice kit designs that incorporate technology for which the specific requirements of this subpart are not applicable, if MSHA determines that the product is as safe as those which meet the requirements of this subpart. One commenter expressed an opinion that this section is unnecessary because part 18 provides MSHA with the authority to approve cable and splice products that incorporate new technology. Although this section is derived from existing § 18.20(b), MSHA believes that it is necessary to retain this provision in the final rule because, after one year from the effective date of this subpart K, part 18 will be modified and those sections pertaining to issuing cable acceptances under part 18 will be deleted. All new cable and splice kit applications will be required to be evaluated under the provisions of this subpart. The Agency recognizes that technology not now envisioned may at some time be applied to cable and splice products. Therefore, MSHA has retained the new technology provisions in this final rule in order to maintain a mechanism for evaluating these products and not limit the introduction of technological improvements or hinder new applications of existing technology. To implement this provision, MSHA will prescribe appropriate test procedures and performance requirements when such an approval is sought.

Once MSHA approves an electric cable, signaling cable, or splice kit under this section, the Agency will make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If, over a period of time, MSHA receives a number of applications for the same type of technology or newly adapted technology, MSHA will revise the electric cable, signaling cable, or splice kit approval regulations through the rulemaking process to recognize such developments.

Conforming Amendments

The changes to MSHA's requirements for acceptance of cable and splice kits as flame resistant also necessitate certain conforming modifications to the Agency's safety standards in 30 CFR parts 57 and 75. Currently MSHA's standards require mine operators to use cable which is accepted as flame resistant pursuant to 30 CFR 18.64 in underground coal and metal and nonmetal mines. (See §§ 57.4057, 57.22310, 57.22311, and 75.600–1.) In addition, permanent splices in cable used in underground coal mines must also be flame resistant (see § 75.604(c)).

As discussed in the proposed rule (55 FR 40124), to avoid conflict with amendatory language which had been proposed for the parts 57 and 75 electrical standards, MSHA did not propose amendatory language of these parts in the regulatory text of the proposed rule. However, the preamble to the proposal did state that MSHA intended to amend its safety standard language to state that cables or splices "be accepted or approved by MSHA as flame resistant." Therefore, revisions are being made wherever part 57 or part 75 requires cables or splices to be flame resistant or references the flame-resistance test in § 18.64. The modified wording will allow mine operators to use any cable or splice determined by MSHA to be flame resistant without regard to the specific approval part under which the approval or acceptance was issued. This is possible because cables and splices already tested and accepted by the Agency as flame resistant will remain unaffected by this rule for approval of cables and splice kits under the procedures of part 7.

Derivation Table

The following derivation table lists: (1) Each section number of the final rule (New Section) and (2) the section number of the standard from which the section is derived (Old Section).

DERIVATION TABLE

New Section	Old Section
7.401	18.1.
7.402	New.
7.403	18.6.
7.404	18.35(a)(3).
7.405	New.
7.406	18.64(a) and (b).
7.407(a)	18.64(a), (c) and (d).
7.407(b)	18.64(e).
7.408(a)	18.64(a), (c) and (d).
7.408(b)	18.64(e).
7.409	18.64(f).
7.410	New.
7.411	18.20(b).

Distribution Table

The following distribution table lists: (1) Each section number of the part 18 standard (Old Section) and (2) each section number of final subpart K of part 7 (New Section). New section numbers marked with an asterisk (*) refer to subpart A—the general provisions of part 7 applicable to all technical product subparts.

DISTRIBUTION TABLE

Old Section	New Section
18.1	7.1*, 7.401, 18.1.
18.2	7.2*, 18.2.
18.6	7.3*, 7.403, 18.6.
18.9(a)	7.4(c)*, 18.9(a).
18.10	7.5*, 18.10(a).
18.15	7.3(a)*, 18.15.
18.16	7.9*, 18.16.
18.20(b)	7.411, 18.20(b).
18.35(a)(3)	7.404.
18.64(a)	7.406, 7.407(a), 7.408(a).
18.64(b)	7.406.
18.64(c)	7.407(a) and 7.408(a).
18.64(d)	7.407(a) and 7.408(a).
18.64(e)	7.407(b) and 7.408(b).
18.64(f)	7.409.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify the potential costs and benefits associated with subpart K. This analysis has formed the basis for the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that this rule neither results in major cost increases nor has an incremental effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule, and a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that in developing regulatory proposals agencies evaluate compliance alternatives that minimize any adverse impact on small businesses. Subpart K would clarify the standards which industry must meet for approval of electric cables, signaling cables, and cable splice kits. MSHA designed its product testing requirements to be as performance oriented as possible to

allow manufacturers to choose the most cost-effective option. Performance-oriented standards should benefit both large and small manufacturers.

The rule upgrades existing requirements in 30 CFR § 18.64 that address the acceptance of electric cables as flame-resistant. It establishes flame-resistant requirements for the approval of signaling cables and cable splice kit designs. MSHA currently accepts these products under the requirements in § 18.64, which have been modified for signaling cables and cable splice kits. The rule also includes current terminology, not in part 18, in the definitions section of part 7; eliminates unnecessary provisions, such as certain cable marking requirements; and, where possible, provides alternative methods of compliance.

This final rule does not significantly alter the existing technical requirement for electric cables, signaling cables, and cable splice kits. MSHA requires certain electric cables used in underground coal and gassy metal/nonmetal mines to be approved (accepted). MSHA has interpreted this to include signaling cables and splice kits, although existing requirements do not include approval criteria for these materials. The final rule sets out, with little modification, the approval criteria presently used by MSHA to approve these products. MSHA expects all currently accepted electric cables, signaling cables and splice kit materials to be able to meet the technical requirements. There is no additional cost associated with this requirement, since existing regulations require approval. Any necessary testing of products required by MSHA either is not substantially different from that currently undertaken or does not impose significant costs compared to the sales value of the product. The application procedures, testing procedures, quality assurance program, and annual audit do not impose significant costs.

The rule will increase private-sector involvement in the approval of mining products. For the first time, in lieu of testing only by MSHA, the applicant or a third party selected by the applicant will test electric cables, signaling cables, and splices in electric cables. The Agency anticipates that this new procedure will reduce duplicate testing of products in some cases and eliminate associated costs and potential delays in product approvals. In addition, MSHA expects that this procedure will enhance the safety of miners through the more rapid introduction of technological advances in mining products.

During the phase-in period for subpart K, which will be 1 year from the effective date of this final rule, MSHA will grant extensions of approval pursuant only to the part under which the original approval was granted. After the phase-in period, MSHA will discontinue issuing acceptances under the existing acceptance programs, and all applications for an approval or an extension of approval for electric cables, signaling cables, and cable splice kits will be subject to the provisions of part 7. If a manufacturer does not change a product that has a current acceptance, then it can continue to be manufactured and used.

The proposal will affect 135 foreign and domestic firms that currently have MSHA acceptances for electric cables, signaling cables, or cable splice kits. Of these firms, 68 manufacture electric cables, 6 manufacture signaling cables, 7 manufacture both signaling and electric cables, and 54 manufacture splice kits. About 33 percent of these firms have not had any contact with MSHA in the past 10 years.

MSHA estimates that the annual compliance cost increase due to the provisions of subpart K will be about $17,000, but there will be an offsetting cost reduction of about $6,400 from MSHA testing fees and shipping costs. The total annual incremental cost increase, therefore, will be about $10,600. Product audits, the most costly provision, will cost about $9,800.

V. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980.

Section 7.403 requires applicants seeking approval of electric cables, signaling cables, and cable splice kits to submit an application for approval. MSHA estimates that there will be an average of 38 applications submitted per year, each requiring 1 hour to prepare, and an average of 3 applications submitted per year, each requiring 4 hours to prepare for a total of 50 burden hours.

Section 7.4(a) requires records of test results and procedures to be retained for at least 3 years. Standard testing protocols used by the manufacturing community include the keeping of records of product testing; therefore, MSHA estimates there will be no additional cost for applicants to maintain these records.

Section 7.7(d) requires applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that manufacturers will submit 142 reports per year requiring 15 minutes per report for a total of 36 burden hours.

The rule requires applicants to maintain records on the distribution of each product bearing an approval marking as set forth in § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply.

In accordance with § 3504(h) of the Paperwork Reduction Act of 1980, the collection of information requirements contained in § 7.403 of the final rule have been approved by OMB under control number 1219–0100.

List of Subjects in 30 CFR Parts 7, 18, 57, and 75

Mine safety and health, Underground mining.

Dated: December 14, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Chapter I of title 30 of the Code of Federal Regulations is amended as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY

1. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

2. Section 7.44 is amended by revising the first sentence of paragraph (k) to read as follows:

§ 7.444 Technical requirements.

* * * * *

(k) Cables within a battery box shall be accepted by MSHA as flame resistant under part 18 of this chapter or approved under subpart K of this part.

* * *

* * * * * *

3. A new subpart K is added to part 7 to read as follows:

Subpart K—Electric Cables, Signaling Cables and Cable Splice Kits.

Sec.

7.401 Purpose and effective date.
7.402 Definitions.
7.403 Application requirements.
7.404 Technical requirements.
7.405 Critical characteristics.
7.406 Flame test apparatus.
7.407 Test for flame resistance of electric cables and cable splices.
7.408 Test for flame resistance of signaling cables.
7.409 Approval markings.
7.410 Post-approval product audit.
7.411 New technology.

§ 7.401 Purpose and effective date.

This subpart establishes the flame-resistant requirements for approval of

electric cables, signaling cables and cable splice kit designs. Applications for approval or extension of approval submitted after February 22, 1994 shall meet the requirements of this subpart.

§ 7.402 Definitions.

The following definitions apply in this subpart.

Component. Any material in a cable splice kit which becomes part of a splice.

Conductor. A bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

Electric Cable. An assembly of one or more insulated conductors of electric current under a common or integral jacket. A cable may also contain one or more uninsulated conductors.

Jacket. A nonmetallic abrasion-resistant outer covering of a cable or splice.

Power Conductor. An insulated conductor of a cable assembly through which the primary electric current or power is transmitted.

Signaling Cable. A fiber optic cable, or a cable containing electric conductors of a cross-sectional area less than #14 AWG used where the circuit cannot deliver currents which would increase conductor temperatures beyond that established for the current-carrying capacity of the conductors.

Splice. The mechanical joining of one or more severed conductors in a single length of a cable including the replacement of insulation and jacket.

Splice Kit. A group of materials and related instructions which clearly identify all components and detail procedures used in safely making a flame-resistant splice in an electric cable.

§ 7.403 Application requirements.

(a) *Electric cables and signaling cables.* A single application may address two or more sizes, types, and constructions if the products do not differ in composition of materials or basic design. Applications shall include the following information for each product:

(1) Product information:

(i) Cable type (for example, G or G–GC).

(ii) Construction (for example, round or flat).

(iii) Number and size (gauge) of each conductor.

(iv) Voltage rating for all cables containing electric conductors.

(v) For electric cables, current-carrying capacity of each conductor, with corresponding ambient temperature upon which the current rating (ampacity) is based, of each power conductor.

(2) Design standard. Specify any published consensus standard used and fully describe any deviations from it, or fully describe any nonstandard design used.

(3) Materials. Type and identifying numbers for each material comprising the finished assembly.

(b) *Splice kit.* A single application may address two or more sizes, types, and constructions if the products do not differ in composition of materials or basic design. Applications shall include the following information for each product:

(1) Product information:

(i) Trade name or designation (for example, style or code number).

(ii) Type or kit (for example, shielded or nonshielded).

(iii) Voltage rating.

(2) Design standard. Specify any published design standard used and fully describe any deviations from it, or provide complete final assembly dimensions for all components for each cable that the splice kit is designed to repair.

(3) Materials. Type of materials, supplier, supplier's stock number or designation for each component.

(4) Complete splice assembly instructions which clearly identify all components and detail procedures used in making the splice.

§ 7.404 Technical requirements.

(a) Electric cables and splices shall be flame resistant when tested in accordance with § 7.407.

(b) Signaling cables shall be flame resistant when tested in accordance with § 7.408.

§ 7.405 Critical characteristics.

(a) A sample from each production run, batch, or lot of manufactured electric cable, signaling cable, or splice made from a splice kit shall be flame tested, or

(b) A sample of the materials that contribute to the flame-resistant characteristic of the cable or splice and a sample of the cable or splice kit assembly shall be visually inspected or tested through other means for each production run, batch, or lot to ensure that the finished product meets the flame-resistance test.

§ 7.406 Flame test apparatus.

The principal parts of the apparatus used to test for flame resistance of electric cables, signaling cables and splices shall include:

(a) *Test chamber.* A rectangular enclosure measuring 17 inches deep by 14½ inches high by 39 inches wide and completely open at the top and front. The floor or base of the chamber shall be fabricated or lined with a noncombustible material that will not extinguish burning matter which may fall from the test specimen during testing. The chamber shall have permanent connections mounted to the back wall, sides, or floor of the chamber which extend to the sample end location. These are used to energize the electric cable and splice specimens. They are not used, but may stay in place, when testing signaling cables.

(b) *Specimen holder (support).* A specimen holder (support) consisting of three separate metal rods each measuring approximately 3/16 inch in diameter (nominal) to support the specimen. The horizontal portion of the rod which contacts the test specimen shall be approximately 12 inches in length.

(c) *Gas ignition source.* A standard natural gas type Tirrill burner, with a nominal inside diameter of 3/8 inch, to apply the flame to the test specimen. The fuel for the burner shall be natural gas composed of at least 96 percent combustible hydrocarbons, with at least 80 percent being methane.

(d) *Current source.* (For electric cables and splices only). A source of electric current (either alternating current or direct current) for heating the power conductors of the test specimen. The current source shall have a means to regulate current flow through the test specimen and have an open circuit voltage not exceeding the voltage rating of the test specimen.

(e) *Current measuring device.* (For electric cables and splices only). An instrument to monitor the effective value of heating current flow through the power conductors of the specimen within an accuracy of ±1 percent.

(f) *Temperature measuring device.* (For electric cables and splices only). An instrument to measure conductor temperature within an accuracy of ±2 percent without the necessity of removing material from the test specimen in order to measure the temperature.

§ 7.047 Test for flame resistance of electric cables and cable splices.

(a) *Test procedure.* (1) For electric cables, prepare 3 specimens of cable, each 3 feet in length, by removing 5 inches of jacket material and 2½ inches of conductor insulation from both ends of each test specimen. For splices, prepare a splice specimen in each of 3 sections of MSHA-approved flame-resistant cable. The cable shall be of the type that the splice kit is designed to

repair. The finished splice shall not exceed 18 inches or be less than 6 inches in length for test purposes. The spliced cables shall be 3 feet in length with the midpoint of the splice located 14 inches from one end. Both ends of each of the spliced cables shall be prepared by removing 5 inches of jacket material and 2½ inches of conductor insulation. The type, amperage, voltage rating, and construction of the cable shall be compatible with the splice kit design. Each splice shall be made in accordance with the instructions provided with the splice kit.

(2) Prior to testing, condition each test specimen for a minimum of 24 hours at a temperature of 70±10°F (21.1±5.5°C) and a relative humidity of 55±10 percent. These environmental conditions shall be maintained during testing.

(3) For electric cables, locate the sensing element of the temperature measuring device 26 inches from one end of each test specimen. For splices, locate the sensing element 12 inches from the midpoint of the splice and 10 inches from the end of the cable. The sensing element must be secured so that it remains in direct contact with the metallic portion of the power conductor for the duration of the flame-resistant test. If a thermocouple-type temperature measuring instrument is used, connect the sensing element through the cable jacket and power conductor insulation. Other means for monitoring conductor temperature may be used, provided the temperature measurement is made at the same location. If the jacket and conductor insulation must be disturbed to insert the temperature measuring device, each must be restored as closely as possible to its original location and maintained there for the duration of the testing.

(4) Center the test specimen norizontally in the test chamber on the three rods. The three rods shall be positioned perpendicular to the longitudinal axis of the test specimen and at the same height, which permits the tip of the inner cone from the flame of the gas burner, when adjusted in accordance with the test procedure, to touch the jacket of the test specimen. The specimen shall be maintained at this level for the duration of the flame test. The two outermost rods shall be placed so that 1 inch of cable jacket extends beyond each rod. For electric cables, the third rod shall be placed 14 inches from the end of the test specimen nearer the temperature monitoring location on the specimen. For splices, the third rod shall be placed between the splice and the temperature monitoring location at a distance 8 inches from the midpoint of the splice. The specimen shall be free from external air currents during testing.

(5) Adjust the gas burner to give an overall blue flame 5 inches high with a 3-inch inner cone. There shall be no persistence of yellow coloration.

(6) Connect all power conductors of the test specimen to the current source. The connections shall be secure and compatible with the size of the cable's power conductors in order to reduce contact resistance.

(7) Energize all power conductors of the test specimen with an effective heating current value of 5 times the power conductor ampacity rating (to the nearest whole ampere) at an ambient temperature of 104 °F (40 °C).

(8) Monitor the electric current through the power conductors of the test specimen with the current measuring device. Adjust the amount of heating current, as required, to maintain the proper effective heating current value within ±5 percent until the power conductors reach a temperature of 400 °F (204.4 °C).

(9) For electric cables, apply the tip of the inner cone from the flame of the gas burner directly beneath the test specimen for 60 seconds at a location 14 inches from one end of the cable and between the supports separated by a 16-inch distance. For splices, apply the tip of the inner cone from the flame of a gas burner for 60 seconds beneath the midpoint of the splice jacket.

(10) After subjecting the test specimen to external flame for the specified time, fully remove the flame of the gas from beneath the specimen without disturbing air currents within the test chamber. Simultaneously turn off the heating current.

(11) Record the amount of time the test specimen continues to burn after the flame from the gas burner has been removed. The duration of burning includes the burn time of any material that falls from the test specimen after the flame from the gas has been removed.

(12) Record the length of burned (charred) area of each test specimen measured longitudinally along the cable axis.

(13) Repeat the procedure for the remaining two specimens.

(b) *Acceptable performance.* Each of the three test specimens shall meet the following criteria:

(1) The duration of burning shall not exceed 240 seconds.

(2) The length of the burned (charred) area shall not exceed 6 inches.

§ 7.406 Test for flame resistance of signaling cables.

(a) *Test procedure.* (1) Prepare 3 samples of cable each 2 feet long.

(2) Prior to testing, condition each test specimen for a minimum of 24 hours at a temperature of 70±10 °F (21.1±5.5 °C) and relative humidity of 55±10 percent. These environmental conditions shall be maintained during testing.

(3) Center the test specimen horizontally in the test chamber on the three rods. The three rods shall be positioned perpendicular to the longitudinal axis of the test specimen and at the same height, which permits the tip of the inner cone from the flame of the gas burner, when adjusted in accordance with the test procedure, to touch the test specimen. The specimen shall be maintained at this height for the duration of the flame test. The two outermost rods shall be placed so that 1 inch of cable extends beyond each rod. The third rod shall be placed at the midpoint of the cable. The specimen shall be free from external air currents during testing.

(4) Adjust the gas burner to give an overall blue flame 5 inches high with a 3-inch inner cone. There shall be no persistence of yellow coloration.

(5) Apply the tip of the inner cone from the flame of the gas burner for 30 seconds directly beneath the specimen centered between either and support and the center support.

(6) After subjecting the test specimen to external flame for the specified time, fully remove the flame of the gas from beneath the specimen without disturbing air currents within the test chamber.

(7) Record the amount of time the test specimen continues to burn after the flame from the gas burner has been removed. The duration of burning includes the burn time of any material that falls from the test specimen after the flame from the gas has been removed.

(8) Record the length of burned (charred) area of each test specimen measured longitudinally along the cable axis.

(9) Repeat the procedure for the remaining two specimens.

(b) *Acceptable performance.* Each of the three test specimens shall meet the following criteria:

(1) The duration of burning shall not exceed 60 seconds.

(2) The length of the burned (charred) area shall not exceed 6 inches.

§ 7.409 Approval marking.

Approved electric cables, signaling cables, and splices shall be legibly and permanently marked with the MSHA-

assigned approval marking. For electric cables and signaling cables, the marking shall appear at intervals not exceeding 3 feet and shall include the MSHA-assigned approval number in addition to the number and size (gauge) of conductors and cable type. For cables containing electric conductors, the marking shall also include the voltage rating. For splices, the marking shall be placed on the jacket so that it will appear at least once on the assembled splice.

§ 7.410 Post-approval product audit.

Upon request by MSHA, but no more than once a year except for cause, the approval holder shall supply to MSHA for audit at no cost—

(a) 12 feet of an approved electric cable or approved signaling cable; or

(b) 3 splice kits of one approved splice kit design and 12 feet of MSHA-assigned cable that the splice kit is designed to repair.

§ 7.411 New technology.

MSHA may approve cable products or splice kits that incorporate technology for which the requirements of this subpart are not applicable if the Agency determines that they are as safe as those which meet the requirements of this subpart.

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

4. The authority citation for Part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

§ 18.1 [Amended]

5. Section 18.1 is amended by removing the phrase "cables, hoses, and conveyor belts," and inserting "hoses and conveyor belts,".

§ 18.2 [Amended]

6. Section 18.2 is amended by removing the phrase "cable, hose, or conveyor belt," and inserting "hose or conveyor belt" in the definitions of "Acceptance", "Acceptance marking", and "Applicant".

§ 18.6 [Amended]

7. Section 18.6(a) is amended by removing the phrase "cables, hose, or conveyor belt," and inserting "hose or conveyor belt,".

8. Section 18.6(b) is removed and reserved.

9. Section 18.6(i) is amended by removing the phrase "cable, hose, or conveyor belt," and inserting "hose or conveyor belt,", and removing the words "Cable—a sample having a minimum length of 12 feet;".

§ 18.9 [Amended]

10. Section 18.9(a) is amended by removing the phrase "cable, hose, or conveyor belt," and inserting "hose or conveyor belt,".

11. Section 18.35(a)(3) is revised to read as follows:

§ 18.35 Portable (trailing) cables and cords.

(a) * * *

(3) Be accepted as flame resistant under this part or approved under subpart K of part 7 of this chapter.

* * * * *

§ 18.64 [Removed]

12. Section 18.64 is removed.

13. Section 18.94(a)(2) is revised to read as follows:

§ 18.94 Application for field approval; contents of application.

(a) * * *

(2) The trade name and the flame-resistance acceptance or approval number of any cable, cord, hose, or conveyor belt installed on the machine for which prior acceptance or approval by MSHA has been issued.

* * * * *

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

14. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

15. Section 57.4057 is revised to read as follows:

§ 57.4057 Underground trailing cables.

Underground trailing cables shall be accepted or approved by MSHA as flame resistant.

16. Section 57.22310 is revised to read as follows:

§ 57.22310 Electrical cables (I–C mines).

Electrical cables used to power submersible sump pumps shall be accepted or approved by MSHA as flame resistant, or be installed in continuous metal conduit or metal pipe. The ends of such conduit or pipe shall be sealed to prevent entry of explosive gas or dust.

17. Section 57.22311 is revised to read as follows:

§ 57.22311 Electrical cables (II–A mines).

Only jacketed electrical cables accepted or approved by MSHA as flame resistant shall be used to supply power to distribution boxes and electrical equipment operating in face and bench areas.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

18. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

19. Section 75.600–1 is revised to read as follows:

§ 75.600–1 Approved cables; flame resistance.

Cables shall be accepted or approved by MSHA as flame resistant.

20. In § 75.604, paragraph (d) is added to read as follows:

§ 75.604 Permanent splicing of trailing cables.

* * * * *

(d) Made using splice kits accepted or approved by MSHA as flame resistant.

[FR Doc. 92–30836 Filed 12–22–92; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990
Low-Income Public Housing; Project-Based Accounting; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. R–92–1595; FR 3088–F–03]

RIN: 2577–AB08

Low-Income Public Housing; Project-Based Accounting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: The Department is amending 24 CFR chapter IX by adding a new subpart C in part 990 to require Public Housing Agencies (but not Indian Housing Authorities) to establish and maintain a system of accounting for income and expenses by project or by reference to some other appropriate cost center. This change is directed by section 502(c) of the National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992. That Act requires that the Department promulgate project-based accounting regulations in accordance with section 553 of title 5, U.S.C., taking into account the requirements of public housing agencies of different sizes and characteristics, making the new accounting system effective for PHAs with 500 or more public housing units by January 1, 1993, and for projects with fewer than 500 units by January 1, 1994.

EFFECTIVE DATE: January 21, 1993. For public housing agencies operating 500 or more public housing rental units, the rule will apply to PHA fiscal years beginning on or after January 1, 1993. For Public Housing Agencies operating fewer than 500 public housing rental units, the rule will apply to PHA fiscal years beginning on or after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Comerford, Director, Financial Management Division, Office of Management Operations, Public and Indian Housing, room 4212, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1872. Hearing or speech impaired individuals may call the Office of Public and Indian Housing's TDD number, (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget, under § 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0159.

II. Background

Currently, Public Housing Agencies (PHAs) maintain a consolidated accounting system for projects owned and operated by the PHAs as part of the Low Income Public Housing Program. Under such a system, the operating revenues and expenses for all projects are combined. A system of the kind described is necessary for a PHA in order for it to respond to Federal requirements for accounting and reporting under the PHA's Consolidated Annual Contributions Contract (ACC), under which all projects are combined for determination of eligibility for operating subsidy.

There are a number of advantages to the consolidated system, both from the Federal government's perspective in managing a housing assistance program and the PHA's point of view as a recipient of Federal assistance. From a property management perspective, however, consolidated budgeting and accounting can limit information available for management decision making, and accountability for project-level operations. Cost-effective management of rental properties requires that managers be aware of income and expenditures at specific properties or management entities, so that appropriate decisions can be made concerning allocation of resources. One means to achieve that awareness and to assist managers in allocating resources is through a system of project-based accounting (PBA).

In 1990, Congress enacted legislation imposing the use of a PBA system on PHAs. The Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA) amended section 6(c)(4) of the U.S. Housing Act of 1937 (1937 Act) as follows:

"(4) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—

* * * * *

(E) except in the case of agencies not receiving operating assistance under section 9, the establishment and maintenance of a system of accounting for rental collections and costs (including administrative, utility, maintenance, repair and other operating costs) for each project or operating cost center (as determined by the Secretary) which collections and costs shall be made available to the general public and submitted to the appropriate local public official (as determined by the Secretary); except that the Secretary may permit agencies owning or operating less than 250 units to comply with the requirements of this subparagraph by accounting on an agency-wide basis."

The Department published a proposed rule to implement this provision in the **Federal Register** on April 3, 1992 (57 FR 11448). This final rule responds to the public comments received on that proposed rule, and to the subsequent statutory revision.

III. Final Rule

This final rule implements the provisions in NAHA by adding a new subpart C to part 990, requiring PHAs that receive operating subsidy under section 9 of the 1937 Act use PBA. Part 990 is controlling with respect to operating subsidy and Performance Funding System (PFS) and PBA is equally applicable to PFS housing authorities under subpart A and to non-PFS PHAs under subpart B of part 990.

An exception from the requirements to implement PBA is provided for PHAs that have fewer than 250 units. (The 250-unit threshold applies to PHA-owned rental units and excludes section 8 units and homeownership units.)

The new subpart C is not applicable to Indian Housing Authorities (IHAs) operating under 24 CFR part 905. Section 527 of NAHA specifically exempts IHAs from the PBA requirements in section 502 of that Act.

Only the terms "cost center" and "project" are defined. The definition of "cost center" includes the language from 24 CFR 964.7, where "project" is defined for resident management programs. "Project," as defined, is limited to a development project under a HUD-assigned project number. Language for "cost center" is included to clarify that PHAs are not bound to maintain separate accounting for every HUD-originated and HUD-numbered development project. However, where a cost center consists of units in two or more projects (as identified by their HUD-assigned project numbers), the PHA must identify the individual project numbers and the number of units, and characterize (i.e., high-rise family, mid-rise family, scattered-site, etc.) each numbered project included in the cost center.

Covered PHAs are to implement a PBA system in a manner capable of generating information to meet HUD consolidated reporting requirements.

The PBA system is to account for project-specific operating income and operating costs either by reference to projects or cost centers. At a minimum, rental income and excess utilities income are considered project-specific operating income, and utilities expense and direct maintenance expense (materials and labor) are considered project-specific operating expenses.

Indirect income and costs that are not project-specific and are not identifiable with, or readily assignable to, a specific project or cost center, such as PHA central office overhead expense, are expressly excluded from the PBA requirement.

The goal of creating a more effective tool for PHA management through PBA is best served, the Department believes, by permitting PHAs that decide to use a cost center system to identify the cost centers to be monitored, in accordance with the goals and priorities of the PHA and its parent government. In the event of a disagreement between HUD and the PHA over the appropriateness of the PHA's configuration of accountable cost centers, the burden of proof will be on HUD to demonstrate that the PHA's PBA program is inconsistent with statutory objectives, or is otherwise inadequate or inappropriate.

PHAs must maintain fiscal year-end income and expense reports, reflecting the required PBA information, by project or cost center. These reports are to be made available for review by the public and distributed, as promptly as possible after the close of the PHA's fiscal year, to the Chairman and each member of the housing commission.

PHAs are to document compliance with PBA requirements by filing with HUD a one-time certification of compliance. The PHA must certify, in a form acceptable to HUD, that it is aware of and in compliance with the specifications of this rule. The certification identifies each project or other cost center, the basis on which each project or other cost center was established and determined to be in compliance, and (when a cost center consists of units in two or more projects) the project numbers assigned by HUD to the included projects in the development documents. The certification is updated only when the PHA deletes units, or adds additional units or projects, to its inventory of units in management, or if the PHA elects to reconfigure its system of cost centers.

The regulation becomes effective with a PHA's first fiscal year beginning on or after (a) January 1, 1993, for PHAs with 500 or more units, and (b) January 1, 1994, for PHAs with 250 to 500 units, as prescribed by law. Any PHA that currently is operating fewer than 250 rental units must come into compliance with the requirements of the rule beginning in the first fiscal year after the date the PHA's inventory of rental units reaches 250.

IV. Response to Public Comments

Fifty-four comments were received during the comment period. Comments were received from 43 public housing agencies, one Indian housing authority, four public interest groups, and six public accountants. Many of the comments criticized the requirement of PBA as being unnecessary regulation, duplicative to the Public Housing Management Assessment Program (PHMAP), and not helpful for its intended purpose. Commenters also focused on the burdens imposed in changing to PBA, as well as the perceived increase in labor and costs. A large number of the comments received were directed at provisions in the PBA Guidebook that was published after the OKM Associates 1990 study of PBA systems, conducted at the request of the Department. The requirements in the Guidebook for implementation of PBA system are not, however, part of this rule. The comments reflect a number of misinterpretations about the requirements of the proposed PBA rule. Following is a full discussion of all of the comments.

National Affordable Housing Act of 1990

A number of commenters, while acknowledging that the PBA proposed rule was intended to implement a NAHA provision, characterized the requirement as "an ill-conceived idea" and referred to the concept on which the rule is based as inherently unsound and inappropriate as a means of monitoring the true costs and management of PHAs. One CPA saw only more complexities, with inconclusive benefits, and expressed the opinion that common sense was "being swapped for computer software packages." Some commenters argued that PBA is not necessary to comply with the requirements of NAHA, because PBA neither achieves the intended objective as a management tool nor the intent of the Senate Committee to avoid building "rigidities into public housing resource management." PHAs and interest groups recommended several alternatives and modifications, including: (1) Allowing the use of existing systems that PHAs have in place for making management decisions on resource allocation in lieu of PBA; (2) requiring that PHAs implement PBA only for direct costs and income; and (3) tracking direct maintenance costs incurred on work orders by project only, or imposing no requirement to break down costs by project when expenditures are already tracked by type; and (4) not requiring PHAs to submit separate HUD–52599, HUD–52598, and HUD–52722B forms by project.

The Department disagrees with commenters who contended that this rule fails in its objective. As reported in the study conducted by OKM Associates, PBA delivers maximum benefits for PHAs using multiple cost centers, expanded charts of accounts, links between capital and operating budgets, and operating standards monitored by internal audit and staff control.

After careful study of the statute and legislative history of NAHA, the Department determined that the only means by which the Congressional purpose could be met was to publish a proposed rule requiring PHAs to implement PBA. The statute refers to "a system of accounting * * * for each project or operating cost center" and the Senate Committee Report expressly states the requirement that "project-based accounting be implemented * * *"[.] Consequently, none of the alternatives to implementing PBA presented by the commenters would be sufficient to meet Congressional intent. The recommended modification that PHAs be required to implement PBA only for direct costs and income was considered to be consistent with the statute, and § 990.310 has been revised accordingly in the final rule.

The provisions in this PBA rule do not require PHAs to submit separate HUD–52599, HUD–52598, and HUD–52722B forms by project. No reports are required to be submitted to HUD, and the rule does not prescribe a reporting format for the annual reports to be submitted to the Commissioners. In addition, the rule does not mandate either a methodology for collecting project level cost data or a specific PBA structure. For example, maintenance expenditures accounted for by type need not also be accounted for by project if a breakdown of project level costs can be compiled for PBA report purposes from work orders.

This rule was drafted against the backdrop of the Senate's stated intention that PBA be implemented in a way that avoids building "rigidities into public housing resource management". This is evidenced by the flexible provisions of the rule, such as the broad definition of the term "cost center" and the authority granted to PHAs that elect

to use a cost-center PBA system to establish operating cost centers on any reasonable basis that reflects management structure.

Finally, the Department suggests that comments representing opinions on the efficacy of the statute are appropriately addressed to the Congress.

PBA as a Management Tool

Forty-nine commenters stated that PBA was of no benefit in generating information for making management decisions relating to the allocation of resources. These commenters noted that for private property managers, information on individual projects would be considered essential in making decisions about rent increases or available services. The commenters stated that housing authorities, however, have no control over the rent charged or the subsidy provided, and have little control over services offered and the age of the project. Further, family size and other project-unique characteristics determine the level of service and maintenance. Accordingly, the commenters concluded, the "bottom line profit or loss" on a project is not of the same importance in public housing, because it is not an indicator of good performance, nor is it the basis for project resource allocation because, for example, "repairs must be made". Some commenters went on to say that older projects or projects with negative rents may always show net deficits, and PHAs normally do not have the option of disposing of "troubled" projects.

The Department finds that these comments reflect a misunderstanding of the statute, regulation and Congressional intent. The implementation of PBA is not an attempt to identify or isolate developments which do not make a "profit". Rather, PBA is seen by Congress and HUD as a valuable management tool that is used universally in private real estate management operations and that can have similar usage in, and show improvements for, PHAs.

HUD is aware of the limitations that exist for public housing management that do not exist in the private market. Still, even without having ultimate control over income and operating subsidies, PHAs do have control over the allocation of these resources; the ability to target the resources productively in enhanced when either project-by-project or cost center-level expense information is available through PBA.

In addition, although there are statutory and regulatory limitations on a PHA's ability to dispose of "troubled" developments, the Department points out that these limitations do not impose absolute prohibitions. Further, PHAs with 250 or more units have a source of funds under the Comprehensive Grant Program (CGP) for modernizing projects, which source is not available to operators of private developments.

Effectiveness of the Existing Consolidated System

A number of commenters responded to the background material in the proposed rule that described certain advantages of the consolidated system of reporting. They stated that the PBA rule overlooks these advantages as well as the fact that PHAs already have in place methods for making management decisions relating to the allocation of resources, which methods reflect the years of effort, study, and time spent developing and refining the most effective system for a particular agency. Several PHAs noted that they have effective cost information systems, based on cost category, which provide needed information for compiling HUD data for Comprehensive Improvement Assistance Program and CGP requests. They explained that these systems are designed to track cost trends, alert the PHA to potential problem areas and assist in preparing consolidated budgets. An accounting firm, representing sixty housing authorities, stated that it did "not understand the benefits that would be gained by project based accounting other than increased paper work and the ability to hide expenses." This commenter saw PBA as "another accounting nightmare that will only cost PHAs time and money and offer no benefit."

Congress and HUD recognize that many well-managed PHAs have systems in place that are adequate to provide the requisite management information. It is the Department's belief that many of the PHA commenters who objected to this rulemaking on the basis of the adequacy of their existing systems would be the PHAs that have the least difficulty in making the additional adjustment to comply with the final regulation.

Nonetheless, in recognition of the current systems, the requirements imposed by the rule, as explained above, are very flexible and do not attempt to impose a mandatory framework for PBA, beyond that which is statutorily specified.

Ability of PBA to Affect or Improve Management

A frequent comment was that management problems will not be solved by a change in the accounting system or by requiring additional cost information and more reports because "sound management" is a matter of using information, not generating it. A typical viewpoint of the commenters was that "Federal regulations are attempting to overburden all of us because of a few who are not doing their jobs" and that HUD "can not mandate or write enough regulations to assure that all authorities are soundly managed * * * only qualified, dedicated Directors and staff can assure this."

The Department agrees that it is not regulations alone that will assure sound management. This regulation provides that Directors and staff implement PBA in a manner that best suits their needs and that can be effected at the least cost in the most efficient manner. Although PBA may not provide the solution to PHA management problems, Congress and the Department believe that the use of PBA provides another tool to assist the less well managed PHAs and direct their attention to data which heretofore has not been available to them.

Paperwork Burden and Cost Effectiveness

Numerous objections were raised by commenters in response to the estimated reporting and recordkeeping burden of one and one-quarter hours per PHA. An accounting firm and a PHA characterized the estimate as outrageous and ridiculous. These commenters argued that PBA would cause a tremendous increase in staff hours, require computer hardware and software redesign, increase staff training time, require additional staff to handle accounting and reporting, increase accounting and auditing fees, and necessitate the hiring of consultants. Both PHAs and public interest group commenters expressed concern that a PBA system might result in the abandonment of currently effective, and more valuable, data systems because PHAs would not be able to afford to absorb the increased cost of the PBA system.

The Department has not changed the number of estimated burden hours because the original estimate was based on a number of considerations, including that many PHAs, particularly the larger ones, have existing systems in place that provide for the accumulation and allocation of resources by management areas; that little, if any, modification of existing systems would be required in order to further identify consolidated income and expense categories by project or cost center; and, that the only continuing additional workload incurred by PHAs would be in the preparation of the required fiscal

year end information reports for the Board by project or cost center.

The Department recognizes that the extent to which current accounting systems may have to be augmented to provide subsidiary PBA income and expense information to the consolidated accounts will vary from PHA to PHA. Nevertheless, the Department believes that, on the average, the ongoing time required will be limited to preparing the annual project and cost center reports for distribution to the Board.

Many of the Commenters who raised objections to the estimate of burden hours saw the scope of the impact that PBA will have on an existing PHA accounting system as greater than it will be. Several of the perceived consequences of PBA included the erroneous assumption that PBA imposes a mandatory framework of accounting or reporting that would require extensive revision of existing accounting systems; that separate operating budgets and HUD reporting forms would have to be prepared and submitted by project; that separate general ledgers would have to be maintained by project; that PBA means the assignment of specific staff to individual projects which would either require hiring additional staff or result in idle time for existing staff; and that operating subsidy and operating reserves would have to be calculated and maintained by project.

A careful reading of the final rule clearly indicates that these are not requirements of PBA. As stated above, the regulation does not impose a mandatory framework of accounting or reporting. Nor does the regulation impose any of the other requirements mentioned by the commenters, like the need to calculate and maintain project-level operating subsidies and operating reserves, prepare and submit HUD reporting forms, or assign specific staff to individual projects. Both the proposed and the final PBA rule require PHAs to implement a PBA system either on a project-by-project or cost center level, as determined in the sole discretion of the PHA, and to produce a fiscal year-end income and expense financial statement that must be distributed to the Board and made available to the public. No additional general ledgers are required, nor is any additional HUD reporting required under the terms of this rule.

The commenters also noted that the OKM Associates study undertaken at the request of the Department did not provide cost effectiveness data, and they stated that any cost benefits derived from PBA would be more than offset by the additional administrative cost burdens. The Department points out that this rule is promulgated pursuant to statutory provision, therefore, a cost benefit demonstration is not required.

These commenters seemed to interpret the rule as mandating a specific HUD-approved PBA structure, which might require the abandonment of currently effective monitoring management information systems. On the contrary, the rule incorporates the flexibility permitted in the statute to allow PBA to be implemented in a manner best suited to the management of each PHA. The PBA system can be an adjunct to the existing accounting system or a replacement thereof. Neither scenario is mandated. As such, the perceived costs to be incurred for reprogramming and for redesigning systems already in place and the increased staff time to generate reports do not take into consideration the adaptable nature of the regulatory requirements.

PFS Add-on

Several commenters either assumed PBA to be or inquired whether PBA was a federally mandated change that would qualify as a PFS add-on so that the start up and additional ongoing costs of a PBA system would be covered by HUD.

HUD regulations at 24 CFR 990.108(c) describe the eligibility of add-ons for costs attributable to a change in Federal law or regulation. The Department believes that the cost of implementing PBA as required by this regulation will not cause a significant increase in PHA expenditures of a continuing nature. All PHAs affected by this regulation will be covered by the CGP and any requisite hardware and software costs can be incorporated in CGP planning. The Department also believes that given the flexibility of this rule and the varying degrees of PBA currently in existence in the PHAs, it may in fact be difficult to isolate and monitor additional costs directly attributable to the PBA provisions in the Federal law.

Unit Threshold Applicability

The proposed rule would have permitted PHAs that do not receive operating subsidy or that operate fewer than 250 units to maintain accounts on an agency-wide basis. Many of the commenters objected to the 250 unit threshold for requiring implementation of the new project-based accounting, with a number asking that the threshold be raised. The most frequently requested threshold was 500 units, although one PHA requested a 600 unit threshold and another, 3,000 units. Some commenters based their objection to the threshold on the fact that small PHAs already have all of the paperwork they can handle, and others objected on the grounds that HUD adds requirements without providing help for the additional workload or recognition of the hardships imposed. One commenter said that this regulatory requirement may be the "straw that breaks the camel's back with small authorities." A few of the PHAs requesting a threshold unit increase commented that annual audits, inspections, and current HUD requirements provide sufficient information to manage their projects and that PBA adds nothing.

In this final rule the Department has not modified the 250 unit threshold for applying the PBA, because the statute only authorizes HUD to permit agency-wide accounting for PHAs with fewer than that number of units (section 502(c)(1) of NAHA). Specifically, it provides that, "* * * the Secretary may permit agencies owning or operating less than 250 units to comply with the requirements of this subparagraph by accounting on an agency-wide basis." From this language, we infer that all PHAs receiving operating subsidy are subject to the accounting requirements of section 6(c)(4)(E) of the 1937 Act, but that the Secretary has the option of permitting smaller PHAs to maintain accounts on a PHA-wide basis. The Secretary has no such option with respect to PHAs operating 250 units or more; they must account by project or cost center.

The rule applies the 250-unit threshold to rental units. This was done specifically to exclude homeownership units from PBA, and the exclusion of section 8 units is premised on statutory language of "* * * agencies owning or operating less than 250 units."

Any change to the unit threshold, such as those suggested by the commenters, is not within the Department's authority. Those commenters seeking to raise this threshold should direct their requests to Congress. In the Housing and Community Development Act of 1992, Congress did distinguish between PHAs with fewer than 500 units, but rather than exempt them from PBA, it delayed its effective date with respect to them.

Effective Date

Almost a dozen commenters stated that the January 1, 1993 effective date was unreasonable because it did not provide sufficient time for PHAs to change their accounting and computer systems, or to test the PBA process.

PHAs are bound by the January 1, 1993 effective date because that date is prescribed in the law with respect to the PHAs with 500 or more units, and the Department does not have the authority

to provide otherwise. It should be noted that, as the rule is written, this effective date is met by PHAs filing a certificate with HUD at the start of the first fiscal year that begins on or after January 1, 1993 certifying that they are in compliance with the specifications of the rule and identifying the configuration of project or cost centers to be used in implementing PBA. In order to be "in compliance with the specifications" of the rule, the PHA must "develop and maintain" a PBA system, but this requirement does not preclude a PHA from developing a PBA system in an orderly, methodical way that allows for phase-in and testing of the process.

With respect to PHAs operating between 250 and 500 units, the effective date is prescribed by the Housing and Community Development Act of 1992 to be January 1, 1994, so these PHAs have more time to prepare for implementation.

Relationship of PBA and PHMAP

Numerous commenters said that PBA duplicated the intent of PHMAP in the identification of poorly managed PHAs. Many of these commenters recommended that PHAs who score well on PHMAP not be required to implement PBA since they will have demonstrated management capability, thereby satisfying the intent of NAHA. Alternatively, some respondents recommended that PBA be required only for PHAs designated as "troubled."

The Department does not agree that either the statute or the implementing regulations of PBA and PHMAP are duplicative. PHMAP is an evaluation mechanism that will help PHAs to identify and develop strategies to improve operational shortcomings and help HUD to better focus its limited resources on those PHAs which are in need of more assistance and guidance. PBA, on the other hand, is deemed to be a management tool, not an evaluation of management. It is to be used by PHAs to help eliminate the deficiencies which may have been identified through PHMAP. The Department's view is that PHMAP and PBA will work in conjunction with each other and are complementary, not duplicative. As such, PHMAP and PBA can benefit all PHAs, not just those that are "troubled".

PBA and the OKM Study

Several respondents assumed that the PBA rule is being promulgated as a result of the OKM Associates study. Particular concern was raised that OKM had a distinct advantage, which appears to be a conflict of interest, because OKM conducted the study and is also in the business of contracting with PHAs to provide technical services for conversion to PBA.

The OKM study was an independent study contracted by the Department and completed prior to passage of the NAHA legislation. The provision in the Federal law requiring PHA use of PBA were formulated separately from the OKM study. The PBA rule being promulgated by the Department implements the Federal statutory requirements, not the specifics of the OKM study or the PBA Guidebook published after the conclusion of that study. Reference to and use of the Guidebook is in the sole discretion of the PHA, and the information and requirements contained therein in no way form any part of this final rule.

Income and Expense Distribution

Commenters objected strongly to the provisions in § 990.310 that required indirect income and indirect expenses not project-specific to be allocated among projects or cost centers. They also objected to the PBA Guidebook method of allocation on the basis of bedroom size and to the allocation of operating reserves and operating subsidy among projects. Even commenters who did not object to the concept of PBA stated that allocation of indirect income and expenses would distort the actual operating results for a project and produce unreliable and misleading information.

The commenters pointed out that managers at the project level have no control over indirect costs and, further, that indirect income and costs lose their identity when allocated and are meaningful only when examined as a whole rather than in fragments. These commenters recommended that only project-specific income and expense be tracked at project or cost center level.

The Department agrees with the commenters that allocating the indirect income and indirect expense to project or cost centers is not necessary in order to comply with the requirements of NAHA. Therefore, § 990.310 has been revised in the final rule to provide that only project-specific operating income and operating expenses must be accounted for at a project or cost center level. Indirect income and costs not project-specific are now expressly excluded from the requirements of accounting at a project or cost center level. In addition, § 990.310 has been further revised to state what, at a minimum, is to be considered project-specific operating income and expense.

As a point of explanation, the rule does not mandate a specific allocation method, nor does it require either the allocation of operating reserves or operating subsidy at project level or that a separate set of accounts be maintained for each project or cost center. It is acceptable for project-specific income and expense information to be maintained by subdividing operating income and operating expense subsidiary accounts, in order to segregate the information applicable to projects or cost centers; and it is acceptable to collect project-specific maintenance information from a work order system.

Because the PBA Guidebook is not a part of this final rule, the Guidebook method of allocation on the basis of bedroom size is inapplicable to the PBA requirements in this final rule. However, where appropriate, PHAs are encouraged to use the method of allocation for indirect costs set forth in the Guidebook.

Records and Reports

Commenters questioned the validity of providing financial statements for individual projects to Commissioners and to the general public. They argued that the statements would be subject to misinterpretation and misuse, users might assume that a "less profitable" project was less well-managed or that a "profitable" project should get more services. In addition, the commenters felt that spreading data over more reports and focusing on project-related data will not aid Commissioners in making informed decisions, but "will dilute Commissioner involvement in more important agency-wide problems."

The records and reports language of this rule in § 990.315, closely tracks the language in the statute. The rule imposes no requirements beyond the statutory provisions with respect to reports being made available to the public. Making reports available under the terms of the rule simply means providing access to the reports in a reasonable manner when such a request is made by a member of the public.

The provision on the Commissioner's review of year-end statements and audits follows from the language of the conference report accompanying NAHA, as reported from the conference committee, which states:

> The conferees want to encourage local Commissioners to review the results [of these accounting requirements]. The Conferees are aware that in some instances of troubled agencies, there was a breakdown in communication between the agency itself and the Board of Commissioners which is required to oversee the operations of the agency and that in at least one instance commissioners too were unable to obtain copies of HUD's annual audit of the agency.

The Committee recognizes that an integral part of agency oversight is the analysis of the operations of the agency by HUD through its annual audit. Therefore, the Committee directs the Secretary to ensure that a copy of an agencies' [sic] annual audit be made available to the Chairman of the Board of Commissioners of each agency.

Although this discussion of audits is reported in the context of section 502 of NAHA relating to performance indicators, annual performance evaluations, and project-based accounting, the Department has been advised that the references to audit requirements relate to annual audits required under the Single Audit Act. HUD regulations at 24 CFR 44.10(f) require that auditors submit their reports to the governmental entity being audited. Current handbook instructions explicitly require that such audits be circulated to the Chairman and to members of the PHA Board of Commissioners (see HUD Handbook 7476.1 REV 1, paragraph 14), and the Department has recently taken steps to assure compliance with that requirement. In keeping therewith, the language in this final rule explains that year-end statements developed out of PBA procedures should be made available to the Commissioners at the close of the fiscal period. If the reports are properly documented, Board members should then be more aware of how the limited resources of the PHA are managed to address the varying needs of the individual projects and cost centers. This information should, in turn, assist in the decision making process for the agency as a whole.

Other Matters

Environmental Review

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable and is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. on weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. It will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule will result in more precise monitoring of projects in the larger PHAs, but of the approximately 3200 PHAs nationwide, about 2400, or 75% of all PHAs, operate fewer than the threshold 250 units. Therefore, most PHAs will be unaffected by this rule.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have Federalism implications and, thus, are not subject to review under the Order. The rule will require closer monitoring, by PHAs, of their housing programs, and explicitly provides for reporting to "* * * the appropriate local public official", but contains no requirement for explicit action by such local official, and will not interfere with state or local governmental functions.

Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Regulatory Agenda

This rule was listed as item 1515 under the Office of Public and Indian Housing in HUD's semiannual agenda of regulations published on November 3, 1992 (57 FR 51392, 51439), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number for this rule is 14.850.

List of Subjects in 24 CFR Part 990

Grant programs; housing and community development; Low and moderate income housing; Public housing.

Accordingly, 24 CFR part 990 is amended as follows:

PART 990—LOW-INCOME PUBLIC HOUSING

1. The authority citation for part 990 is revised to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 4 3535(d).

2. A new subpart C is added, to read as follows:

Subpart C—Project-Based Accounting

Sec.

990.301 Applicability.
990.305 Definitions.
990.310 Project-Based Accounting.
990.315 Records and Reports.
990.320 Certifications.
990.325 Compliance Dates.

Subpart C—Project-Based Accounting

§ 990.301 Applicability.

(a) The provisions of this subpart C are applicable to all PHAs that receive operating subsidies pursuant to section 9 of the U.S. Housing Act of 1937 (the Act), both PFS-eligible PHAs and PHAs outside the 48 adjacent states for which operating subsidy eligibility is not calculated in accordance with the PFS.

(b) PHAs that own and operate 250 or more dwelling rental units under title I of the Act, exclusive of section 8 units, are required to develop and maintain project-based accounting systems consistent with § 990.310. Where a portion of a PHA's rental inventory is separately managed (by a resident management corporation, for example), the 250-unit threshold shall apply to the total number of PHA-owned dwelling rental units, including those separately managed.

(c) PHAs that do not receive operating subsidies or that have fewer than 250 rental units may, but are not required to, develop and use project-based accounting systems consistent with the specifications of this subpart.

§ 990.305 Definitions.

Cost Center. A set of units, activities, programs, or staff that are grouped by a PHA for purposes of management, financial monitoring, and analysis. Cost centers can be delineated by administrative departments or divisions within a PHA, by office locations, by individual projects or clusters or communities of projects that consist of one or more contiguous buildings, an

area of contiguous row houses, or scattered-site buildings.

Project. A building or set of buildings identifiable as a development project under a HUD-assigned project number.

§ 990.310 Project-Based Accounting.

(a) PHAs identified in § 990.301(b) shall develop and maintain a system of accounting for operating income and operating costs for each project or operating cost center in a manner capable of generating information to meet HUD consolidated reporting requirements.

(b) Operating income and cost information to be accounted for at a project or cost center level shall include at least rental income and the administrative costs, utilities costs, maintenance costs, repair costs, and such other income and costs identified by the PHA as project-specific for management purposes. The minimum income and expense distribution requirements for project-based accounting information include:

(1) Project-specific operating income credited to a specific project or cost center which shall include, at a minimum, rental income and excess utilities income; and

(2) Project-specific operating expense to be charged to a specific project or cost center level which shall include, at a minimum, utilities expense and direct maintenance (material and labor) expense, in addition to any other operating expenses in the 4000 series of accounts which are identified by the PHA as project-specific for management purposes (for example, tenant services or protective services personnel assigned to a specific project).

(c) Indirect operating income and indirect operating expenses that are not project-specific are not required to be accounted for at, or allocated to, a project or cost center level. Indirect income and expense that is not required to be allocated to the project or cost center level includes non-project-specific income and expense, including PHA central office overhead expense, which is not identifiable with, or readily assignable to, a specific project or cost center.

(d) PHAs may establish operating cost centers on any reasonable basis that reflects the PHA management structure and that meets the financial information needs at the lowest level of line authority within that management structure. A PHA's determination of appropriate cost centers and method of income and cost distribution shall be controlling unless HUD determines there is good cause for requiring some other frame of reference for aggregating financial information.

§ 990.315 Records and Reports.

(a) Each PHA shall maintain fiscal year-end income and expense statements, which reflect the PBA information required by § 990.310, for each project or other cost center and shall make these available for review upon request by interested members of the public.

(b) Each PHA shall distribute such year-end financial statements to the Chairman and to each member of the Housing Authority Board of Commissioners, and to such other State and local public officials as the Secretary may specify. Project-based income and expense statements shall be made available to Board chairmen as soon as is practicable after the close of the fiscal period.

§ 990.320 Certifications.

(a) The PHA shall certify, by the effective date specified in § 990.325, in a form acceptable to HUD, that the PHA is aware of and is taking steps to implement project-based accounting and will produce the fiscal year-end reports required under § 990.315. The certification shall identify each project or other cost center, the basis upon which each project or other cost center has been established and determined to be in compliance with the definitions of § 990.305, above, and where a cost center consists of units in two or more projects (as identified by HUD-assigned development project number) the PHA shall identify the individual development project numbers, the number of units, and a characterization (i.e., high-rise family, mid-rise family, scattered-site, etc.) of each numbered project included in the cost center.

(b) A certification made in accordance with this section shall be updated if the PHA deletes units, adds additional units or projects (as identified by HUD-assigned development project numbers) to its inventory, or otherwise elects to reconfigure its system of cost centers.

(Approved by the Office of Management and Budget under control number 2577–0159.)

§ 990.325 Compliance Dates.

(a) The provisions of this subpart shall apply for PHA fiscal years beginning on or after January 1, 1993, for PHAs operating 500 or more public housing rentals units.

(b) The provisions of this subpart shall apply for PHA fiscal years beginning on or after January 1, 1994, for PHAs operating fewer than 500 public housing rental units. In the case of PHAs whose housing programs expand to the point at which their inventory of rental units exceeds the threshold stated in § 990.301(b), the provisions of § 990.310 shall apply at the beginning of the PHA's first fiscal year after the date on which its inventory of rental units reaches that threshold.

Dated: December 11, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–30978 Filed 12–22–92; 8:45 am]

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federal register

Wednesday
December 23, 1992

Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: January 22, 1993.

ADDRESSES: Comments on the master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314.

Periodically the Agency will update the national master list to incorporate additions and corrections/changes to the list, and deletions from the list. This notice is the first update.

Each update contains or will contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies refer to stock number 069–001–00049–1.

The update to the national master list follows.

Dated: December 16, 1992.

Wallace E. Stickney,

Director.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE

[Additions]

Alabama:				
Econo Lodge	241 Daleville Avenue	Dalesville	AL 36322	2055986304
Arkansas:				
Melbourne Motel Inc.	Hwy. 9 North	Melbourne	AR 72556	5013684355
Best Western Inn	210 N Blake Street	Pine Bluff	AR 71601	5015347222
Hampton Inn West Memphis	2003 Service Road	West Memphis	AR 72301	5017321102
Fayetteville Hilton	70 N. East Avenue	Fayetteville	AR 72701	5014425555
Arizona:				
Hilton Pavilion	1011 West Holmes Avenue	Mesa	AZ 85210	6028335555
Phoenix Airport Hilton	2345 South 47th Street	Phoenix	AZ 85034	6028941600
Tempe Motel	947 E Apache Blvd.	Tempe	AZ 85281	6028940909
Americinn Motel	850 E Wickenburg Way	Wickenburg	AZ 85358	6026845461
California:				
Anaheim Plaza Hotel	1700 S Harbor Blvd	Anaheim	CA 92802	7147725900
Beverly Hilton Hotel	9876 Wilshire Blvd	Beverly Hills	CA 90210	3102851392
Los Angeles Airport Marriott Hotel	5855 W Century Blvd	Los Angeles	CA 90045	3106415700
Courtyard by Marriott—Buena Park	7621 Beach Blvd	Buena Park	CA 90620	7146706600
District of Columbia:				
Dupont Plaza Hotel	1500 New Hampshire Avenue, NW	Washington	DC 20036	2024836000
Georgia:				
Days Inn I–75	1200 West 4th Street	Adel	GA 31620	9128964574
Econo Lodge I–75	1102 West 4th Street	Adel	GA 31620	9128964523
Hojo Inn I–75	1103 West 4th Street	Adel	GA 31620	9128962244
Days Hotel Lenox	3377 Peachtree Road	Atlanta	GA 30326	4042641111
Embassy Suites Hotel Perimeter	1030 Crown Point Parkway	Atlanta	GA 30338	4043945454
Residence Inn By Marriott	2960 Piedmont Road	Atlanta	GA 30305	4042390677
Sheraton Inn Atlanta Airport	3601 North Desert Drive	Atlanta	GA 30344	4047625141
The Suite Hotel Underground Atlanta	54 Peachtree Street	Atlanta	GA 30303	4042235555
Howard Johnson	I–95 And Hwy 341	Brunswick	GA 31520	9122644720
The American Inn Of Buford	4267 Hwy 20	Buford	GA 30518	4049320111
The Days Inn Of Canton	291 Ballground Road	Canton	GA 30114	4044790301
The Days Inn Of Cleveland	PO Box 339 Hwy 129	Cleveland	GA 30528	7068654079
Comfort Suites—Atlanta Airport	4820 Massachusetts Blvd	College Park	GA 30337	4049960000
Ramada Inn Of Cordele	2016 16th Avenue, East	Cordele	GA 31015	9122735000
Hojo Inn	1010 Mountain Drive	Dahlonega	GA 30533	7068644343
The Days Inn Of Dahlonega	1065 Chestatee Street	Dahlonega	GA 30533	7068642338
The Days Inn Of Helen	South Main Street	Helen	GA 30545	7068784079
Homewood Suites—Atlanta Peachtree	450 Technology Parkway	Narcross	GA 30092	4044484663
Peachtree Executive Conference Center	2443 Hwy 54 West	Peachtree City	GA 30269	4044872000
Days Inn Abercorn	11750 Abercorn Street	Savannah	GA 31419	9129277720
Days Inn Airport	2500 Dean Forest Road	Savannah	GA 31408	9129665000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE—Continued

[Additions]

Howard Johnson	I–95 And Hwy 204	Savannah	GA 31419	9129253680
Days Inn St. Simons Island	1701 Frederick Road	St. Simons Island	GA 31522	9126340660
Hojo Inn By Howard Johnson's	3880 Flatshoals Road	Union City	GA 30291	4049690110
Hojo Inn I–75	I–75 Exit 6 North Valdosta Rd	Valdosta	GA 31602	9122444460
Indiana:				
Days Inn South	450 Bibler Road	Indianapolis	IN 46227	3177880811
Kentucky:				
Days Inn	12700 Hwy 180	Ashland	KY 41101	6069283600
Days Inn Motel South	5575 Athens Boonesboro	Lexington	KY 40505	6062633100
Holiday Inn Downtown	120 W Broadway	Louisville	KY 40202	5025822241
Otter Creek Park Lodge	Rt 1	Vine Grove	KY 40175	5029423641
Louisiana:				
Sportsman Lodge	700 N Macarthur Drive	Alexandria	LA 71301	3184456541
Arcadia Motel	Hwy 80 East	Arcadia	LA 71001	3182636444
Nob Hill Inn	PO Box 275 Exit 69 & I–20	Arcadia	LA 71101	3182632013
Airport Hilton	901 Airline Hwy	Kenner	LA 70062	5044695000
Garden Vue Square Hotel	2438 Veterans Blvd	Kenner	LA 70062	5044692800
Hilton Hotel	Towers 2 Poydras Street	New Orleans	LA 70111	5045610500
Westin Canal Place Hotel, The	100 Rue Iberville	New Orleans	LA 70130	5045567006
Best Western	I–20 At Hwy 167 South	Ruston	LA 71270	3182510000
Holiday Capri	204 N Cedar Street	Tallulah	LA 71282	3185741154
Massachusetts:				
Holiday Inn Dedham	55 Ariadne Road	Dedham	MA 02026	6153291000
Michigan:				
Hyatt Regency Dearborn	Fairlane Town Center	Dearborn	MI 48126	3135931234
Dearborn Travelodge	23730 Michigan Avenue	Detroit	MI 48124	3135657250
Warren Hospitality Holding Corp—Days Hotel	30000 Van Dyke	Warren	MI 48093	3135737600
Missouri:				
Mountain Oak Lodge	PO Box 1106	Branson	MO 65616	4173382141
Best Western Deerfield Inn	3343 E Battlefield	Springfield	MO 65804	.....
Mississippi:				
La Font Inn	2703 Danny Avenue	Pascagoula	MS 39568	6017627111
Holiday Inn	923 North Gloster	Tupelo	MS 38801	6018428811
New Hampshire:				
Mount Washington Hotel	.....	Bretton Woods	NH	.....
Tourist Village Motel	130 Main Street	Gorham	NH 03581	6034663312
Cranmore Mountain Lodge	PO Box 1194	North Conway	NH 03860	6033562044
Kozy 7 Motel	175 Londonderry Turnpike	Hooksett	NH 03106	6036698744
New York:				
North Star Motel	PO Box 605, Rt 12	Alexandria Bay	NY 13607	3154829332
Blue Dolphin Motel	Main Road	East Marion	NY 11939	5164770907
Embassy Suites—Syracuse	6646 Old Collamer Road	East Syracuse	NY 13057	3154463200
Holiday Inn	College Drive And Court Street	East Syracuse	NY 13057	3154372761
Ramada Inn	540 Saw Mill River Road	Elmsford	NY 10523	9145923300
Edge Of The Lake Motel	56 Saranac Avenue	Lake Placid	NY 12946	5185239430
Residence Inn By Marriott	1 Residence Inn Drive	Latham	NY 12110	5167830600
Danfords Inn, Marina & Executive Conf. Center.	25 East Broadway	Port Jefferson	NY 11777	5169285200
Inn Your Budget	104 Breen Avenue	Watertown	NY 13601	3157866666
Oregon:				
Best Western Ramada Inn	2630 SW 17th Place	Redmond	OR 97756	5035486080
Pennsylvania:				
Radisson Hotel Philadelphia Airport	500 Stevens Drive	Lester	PA 19113	2155215900
Mountain Laurel Resort East	PO Box 126, I–80 And Pa Turnpike	White Haven	PA 18661	7174436411
Tennessee:				
Winners Circle Motel	3430 Fort Campbell Blvd	Clarksville	TN 37042	6154314908
Virginia:				
Days Inn—Rosslyn	2201 Arlington Blvd	Arlington	VA 22201	.....
Bernard's Landing	Rt 3 Box 462, Resort And Conference Center	Moneta	VA 24121	7037218870
Super 8 Motel	8620 Midlothian Turnpike	Richmond	VA 23235	.....
Super 8 Motel	2045 Rosser Avenue	Waynesboro	VA 22980	.....
Quality Inn At Kingsmill	480 McLaws Circle	Williamsburg	VA 23185	.....
Scottish Inn	951 Annapolis Way	Woodbridge	VA	.....
Washington:				
Stage Coach Inn	107 W 1st Street	Cle Elum	WA 98922	5096744735
Harborside Inn	3300 Benedict Street	Port Townsend	WA 98368	2063857909
Spokane—Shilo Inn	E 923 Third Avenue	Spokane	WA 992022215	5036416565
Corrections/Changes:				
Louisiana:				
Ramada Inn—Houma	1400 W Tunnel Blvd	Houma	LA 70360	5048794871
Maine:				
Coastline Inn	80 John Roberts Road	South Portland	ME 04106	2077723838
Hampton Inn	171 Philbrook Avenue	South Portland	ME 04106	2077734400
Portland Marriott	200 Sables Oaks Drive	South Portland	ME 04106	2078718000
Sheraton Tara Hotel	363 Main Mall Road	South Portland	ME 04106	2077756161
North Carolina:				
Holiday Inn Raleigh Durham Airport	PO Box 136161—40 Exit 282 At Page Road	Research Triangle	NC 277093616	9199416000
New Hampshire:				
Glynn House Inn	PO Box 719, 43 Highland Street	Ashland	NH 03217	6039683775
East Branch Resort Ltd	Rt 16–A	Bartlett	NH 03838	6033599060
Old Field House	PO Box 1	Bartlett	NH 03838	6033565478
Swiss Chalet Motel	Rt 16–A	Bartlett	NH 03838	6033582232

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE—Continued

[Additions]

The Forest A Country Inn	Rt 16–A	Bartlett	NH 03838	6033669772
Villager Motel	Rt 302	Bartlett	NH 03838	6033742742
Bedford Motor Inn	410 South River Road	Bedford	NH 03102	6036276800
Bedford Village Inn	2 Old Bedford Road	Bedford	NH 03102	6034722001
Hillbrook Motel	360 Rt 101	Bedford	NH 03102	6034723788
Sheraton Wayfarer Inn	121 South River Road	Bedford	NH 03102	6036223766
Daniel Webster Motor Lodge	188 King Street	Boscawen	NH 03301	6037962136
Kettle & Crane Inn	215 King Street	Boscawen	NH 03301	6037962261
Hampton Inn	515 South Street	Bow	NH 03304	6032245322
Bretton Arms Inn	Rt 302	Bretton Woods	NH 03575	6032781000
Bretton Woods Motor Inn	Rt 302	Bretton Woods	NH 03575	6032781000
Maple Hedge Bed & Breakfast	S Main Street	Charlestown	NH 03603	6036265237
del—E—Motel	24 Sullivan Street	Claremont	NH 03743	6035429857
Colebrook Country Club & Motel	PO Box 2, Rr 1	Colebrook	NH 03576	6032375566
Brick Tower Motor Inn	414 S Main Street	Concord	NH 03301	6032249565
Comfort Inn	71 Hall Street	Concord	NH 03301	6032264100
Conway Valley Inn	Rt 16	Conway	NH 03818	6034473858
Labnon's Motor Lodge	Wilder Street	Conway	NH 03818	6034476216
Merrill Farm Resort	Rt 16	Conway	NH 03818	6034473866
White Deer Motel	Rt 16	Conway	NH 03818	6034475366
Robert Frost Motor Inn	185 Rockingham Road	Derry	NH 03038	6034325567
Dover Days Inn Bldg. 1	481 Central Avenue	Dover	NH 03820	6037420400
Dover Days Inn Bldg. 2	481 Central Avenue	Dover	NH 03820	6037420400
Friendship Inn	181 Silver Street	Dover	NH 03820	6037424100
Silver Street Inn	103 Silver Street	Dover	NH 03820	6037433000
The Inn At Crystal Lake	Bx 12 Rt 153	Eaton Center	NH 03832	6034472120
Exeter Inn	90 Front Street	Exeter	NH 03833	6037725901
Ella River Motel	Rt 11	Farmington	NH 03835	.....
Red Coach Inn	Wallace Hill Road	Franconia	NH 03580	6036237422
Dairy King Motel	394 North Main Street	Franklin	NH 03235	6039343311
Franklin Motel	North Main Street	Franklin	NH 03235	6039344744
B Mae's Resort Inn	17 Harris Shore Road	Gilford	NH 03246	6032937526
Gunstock Country Inn	580 Cherry Valley Road	Gilford	NH 03246	6032934307
Misty Harbor Resort Hotel	Rt 11B, 115 Weirs Road	Gilford	NH 03246	6032934500
One Gilford Place	144 Lake Street	Gilford	NH 03246	6035270566
Covered Bridge House	Rt 302	Glen	NH 03838	6033839109
Linderhof Motor Inn	Rt 16	Glen	NH 03838	6033834334
Nordic Village Resort	Rt 16	Glen	NH 03838	6033839101
Storybrook Motel	Rt 16 & 302	Glen	NH 03838	6033836800
Town & Country Motel	Rt 2 Shelburne	Gorham	NH 03581	6034663315
Budget Host Stone Gable Inn	859 Lafayette Road	Hampton	NH 03842	6039266883
Hampton Motor Inn	815 Lafayette Road	Hampton	NH 03842	6039266771
Hampton Village Resort	660 Lafayette Road	Hampton	NH 03842	6039266775
Oceanside Hotel	365 Ocean Blvd	Hampton	NH 03842	6039263542
Sea Spiral Suites	449 Ocean Blvd	Hampton	NH 03842	6039262222
Sea Squire Motor Lodge	1088 Ocean Blvd	Hampton	NH 03842	6039262571
Hampton House Hotel	PO Box 578, 333 Ocean Blvd	Hampton Beach	NH 03842	6039261033
Kentville Hotel	315 Ocean Blvd	Hampton Beach	NH 03842	6039263950
John Hancock Inn	Main Street	Hancock	NH 03449	6035253318
Hanover Inn	PO Box 151	Hanover	NH 03755	6036434300
Maple Tree Bed & Breakfast	Cass Mill Road	Hill	NH 03243	6037446566
Dolly Dimple Motel	1396 Hooksett Road	Hooksett	NH 03106	6036220720
Firebird Motel	10 Bell Avenue	Hooksett	NH 03106	6036226263
Park Place Motel	1375 Hooksett Road	Hooksett	NH 03106	6036884430
Sunset Motel	1334 Hooksett Road	Hooksett	NH 03106	.....
Days Inn	90 Derry Street	Hudson	NH 03051	6038801700
Hudson Motor Inn	220 Derry Street	Hudson	NH 03051	6038892169
Intervale Motel	PO Box 9	Intervale	NH 03845	6033569775
Dana Place Inn	PO Box L, Rt 16 Pinkam Notch	Jackson	NH 03846	6033836822
Eagle Mt Resort	Carter Notch Road	Jackson	NH 03846	6033839111
Nordic Village Resort	Rt 16	Jackson	NH 03846	6033839156
Lantern Motor Inn	PO Box 97, Rt 2	Jefferson	NH 03583	6035867151
Days Inn	175 Key Road	Keene	NH 03431	6033527616
Ramada Inn Of Keene	401 Winchester Street	Keene	NH 03431	6033573038
Rocky Brook Motel	Rt 101, Box 159	Keene	NH 03431	6033524236
Super 8 Motel	3 Ashbrook Road	Keene	NH 03431	6033529780
Winding Brook Lodge	PO Box 372, 631 Park Avenue	Keene	NH 03431	6033523111
Christine's Island Motel	630 Weirs Blvd	Laconia	NH 03246	6033864378
Margate Resort Inn	76 Lake Street	Laconia	NH 03246	6035245210
Days Inn	Rt. 120	Lebanon	NH 03766	6034485070
Sheraton Inn	Airport Hill	Lebanon	NH 03766	6032985906
Indian Head Resort	Rt 3	Lincoln	NH 03251	6037458000
Mountain Club On Loon	PO Box 41, Rr 1	Lincoln	NH 03251	6037458111
Maple Leaf Motel	297 West Main Street	Littleton	NH 03561	6034445105
The Inn At The Highlander	1 Highlander Way	Londonderry	NH 03053	6036256426
Dowds Country Inn	On The Common	Lyme	NH 03768	6037954712
Holiday Inn—Center Of NH	700 Elm Street	Manchester	NH 03103	6036251000
The Inn At Mill Falls	Rt 3	Meredith	NH 03253	6032797006
Best Western Merrimack Inn	Exit 11 Everett Turnpike	Merrimack	NH 03054	6034246161
Fairfield Inn	4 Amherst Road	Merrimack	NH 03054	6034247500
Merrimack Inn	4 Executive Park	Merrimack	NH 03054	6034246181
Residence Inn	246 D. W. Highway	Merrimack	NH 03054	6034246100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE—Continued

[Additions]

Caton House Motel	Rail Road Square	Nashua	NH 03062	6038869273
Clarion	2 Somerset Parkway	Nashua	NH 03062	6038835031
Comfort Inn	10 St. Laurent Street	Nashua	NH 03062	6038837700
Holiday Inn		Nashua	NH	
Howard Johnson Motor Lodge	170 Main Dunstable Road	Nashua	NH 03062	6038890173
Lillians Motel	188 Concord Street	Nashua	NH 03062	6038823451
Marriott Hotel	2200 Southwood Road	Nashua	NH 03062	6038809100
Motel 6	2 Progress Avenue	Nashua	NH 03062	6038894151
Red Roof Inn	77 Spitbrook Road	Nashua	NH 03062	6038881893
Tavern Hotel		Nashua	NH 03062	
The Main House	355 Main Street	Nashua	NH 03062	6038839748
Old Mill House Bed And Breakfast	Rt 9 Box 224, Munsonville	Nelson	NH 03457	6038473224
New London Inn	PO Box 8	New London	NH 03257	6035262791
The Inn At Newington	20 Nimble Hill Road	Newington	NH 03801	6034310777
1785 Inn—Charles Mallar	PO Box 1785	North Conway	NH 03860	6033569025
Best Western— Fox Ridge	20 North Main Street	North Conway	NH 03860	6033563151
Briarcliff Motel Bernie Seeko	Rt 16	North Conway	NH 03860	6033565584
Clarendon Motel	PO Box 895	North Conway	NH 03860	6033563551
Colonial Motel Walter Karmozyn	PO Box 463	North Conway	NH 03860	6033565178
Cranmore Inn	PO Box 1349	North Conway	NH 03860	6033565502
Eastern Slope Inn	PO Box 359	North Conway	NH 03860	6033566321
Forest Glen Inn	PO Box 438	North Conway	NH 03860	6033566311
Green Granite Motel	Main Street	North Conway	NH 03860	6033566901
Hales White Mountain Hotel	West Side Road	North Conway	NH 03860	6033567100
Junges Motel	PO Box 164, Rfd #1	North Conway	NH 03860	6033562886
Maple Leaf Motel	PO Box 917	North Conway	NH 03860	6033565386
Mt. Washington Valley Mtr. Lodge	PO Box 1647	North Conway	NH 03860	6033565486
North Conway Mountain Inn	Rt 16	North Conway	NH 03860	6033562803
Olde Eastman Village	Box 882	North Conway	NH 03860	6033566707
Presidential Motel	RFD 2 Box 65	North Conway	NH 03860	6033569744
Red Jacket	20 North Main Street	North Conway	NH 03860	6033565411
School House Motel	Box 368	North Conway	NH 03860	6033566829
Scottish Lion	PO Box 1527	North Conway	NH 03860	6033566381
Sheraton White Mountain Inn	PO Box 3189	North Conway	NH 03860	6033569300
Sylvan Pines Motel	South Main Street	North Conway	NH 03860	6033562678
Victorian Harvest Inn	Box 1763	North Conway	NH 03860	6033563648
White Trellis	Box 441	North Conway	NH 03860	6033562492
Yankee Clipper Motel	PO Box 479	North Conway	NH 03860	6033565736
Pine Haven Motel	183 Lafayette Road	North Hampton	NH 03862	6039648187
Slumber Manor Motel	53 Lafayette Road	North Hampton	NH 03862	6039645707
Three Rivers House	RR 1 Box 72	North Woodstock	NH 03262	6037452711
Lake Shore Farm Inc.	Jenness Pond Road	Northwood	NH 03261	6039425521
Northwood Motel	Rt 4	Northwood	NH 03261	6039425476
Crab Apple Inn	Rt 25	Plymouth	NH 03264	6035364476
Days Inn—White Mountain	PO Box 355, Rt 3	Plymouth	NH 03264	6035363520
Deep River Motor Inn	Highland Street	Plymouth	NH 03264	6035362156
Knoll Motel	TE 3	Plymouth	NH 03264	6035361245
Pilgrim Motel	Rt 3	Plymouth	NH 03264	6035361319
Suisse Chalet	Rt 3	Plymouth	NH 03264	6035362330
Achorage Motor Inn	417 Woodbury Avenue	Portsmouth	NH 03801	6034318111
Comfort Inn At Yokens	1390 Lafayette Road	Portsmouth	NH 03801	6034333336
Econo Lodge	383 Woodbury Avenue	Portsmouth	NH 03801	6034312500
Howard Johnson's	520 Interstate Hwy	Portsmouth	NH 03801	6034367600
Meadowbrook Inn	549 Rt 1 Bypass	Portsmouth	NH 03801	6034362000
Sheraton Hotel	250 Market Street	Portsmouth	NH 03801	6034312300
Sise Inn	40 Court Street	Portsmouth	NH 03801	6034331200
The Port Motor Inn	505 Interstate Highway South	Portsmouth	NH 03801	6034364378
Wren's Nest Motel	3548 Lafayette Road	Portsmouth	NH 03801	6034362481
Achorage Inn	PO Box 7325, Rt 125	Rochester	NH 03867	6033323350
Cress Motel	119 Milton Road	Rochester	NH 03867	6033245462
Friendship Inn	10 Farmington Road	Rochester	NH 03867	6033321902
Hi—Vu Motor Inn	157 Rochester Hill Road	Rochester	NH 03867	6033321230
Riviera Motel	Rt 125	Rochester	NH 03867	6033323491
Crown Colony	1381 Ocean Blvd	Rye	NH 03870	6034368923
Pebble Beach Motel	741 Ocean Blvd	Rye	NH 03870	
Rye Harbor Motel	2000 Ocean Blvd	Rye	NH 03870	6039649054
Star Island Conference Center	Star Island	Rye	NH 03870	6039647252
Best Western Parkview	Rt 28, 109 S Broadway	Salem	NH 03079	6036965632
Suisse Chalet Hotel	8 Keewaydin Drive	Salem	NH 03079	6036934722
Hampshire Motor Inn	22 Spur Road	Seabrook	NH 03874	6034745700
King Cottages	131 Lafayette	Seabrook	NH 03874	6034742262
Mt. Chocorua View House	Rt 16	Tamworth	NH 03897	6033236350
Riverhead Inn	Rt 16	Tamworth	NH 03897	6033237440
Stafford's In The Field	Philbrook Neighborhood Road	Tamworth	NH 03897	6033237766
White Lake Inn	Rt 16	Tamworth	NH 03897	60 33238688
Black Bear Lodge	Village Road	Waterville Valley	NH 03215	6032364501
Golden Eagle Lodge	PO Box 495, Snowsborough Road	Waterville Valley	NH 03215	6032364551
Snowy Owl Inn	Village Road	Waterville Valley	NH 03215	6032368383
Valley Inn & Tavern	Tecumseh Road	Waterville Valley	NH 03215	6032368336
Wentworth Inn & Gallery	Ellsworth Hill Road	Wentworth	NH 03282	6037649923
Chesterfield Inn	Rt 9	West Chesterfield	NH 03466	6032563211
Economy Inn	7 Airport Road	West Lebanon	NH 03784	6032988888

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE—Continued

[Additions]

Sunset Motel	Rt 10	West Lebanon	NH 03784	6032988721
Mirror Lake Motel	PO Box 17, Rr 2	Whitefield	NH 03598	6038372544
Wolfeboro Inn	Box 1270, 44 North Main Street	Wolfeboro	NH 03894	6035693016
The Ledges	Rt 3, Po Box B	Woodstock	NH 03262	6037459433
Virginia:				
Pinehurst Motel	Us 60–220 E	Covington	VA 24426	
Innkeeper	2901 Chandlers Mt. Road	Lynchburg	VA 24501	
Deletions:				
Nevada:				
Airport Inn	5100 Paradise Road	Las Vegas	NV 89119	7027982777
Michigan:				
Ann Arbor South Knights Inn	3764 S State Street	Ann Arbor	MI 48108	
Quality Inn & Convention Center	1000 Orleans Blvd	ColdWater	MI 49036	
Super 8 Motel	600 Orleans Blvd	Coldwater	MI 49036	
The Ritz—Carlton Hotel	300 Town Center Drive	Dearborn	MI 48126	
The Rock At Woodmoor	PO Box 52, Hr 52	Drummend Island	MI 49726	
Days Inn	1500 S Beacon Blvd	Grand Haven	MI 49417	
Holiday Inn Crowne Plaza	5700 28th Street SE	Grand Rapids	MI 49546	
Budgetel Inn #741	2035 Service Drive	Jackson	MI 49201	
University Inn	1211 S Westnedge Avenue	Kalamazoo	MI 49008	
Days Inn—Lansing South	6501 S Pennsylvania	Lansing	MI 48911	
Redwood Motor Inn, Inc	County Road 612	Lewiston	MI 49756	
Best Western Park Plaza Hotel	2967 Henry Street	Muskegon	MI 49441	
Hendrika Island Lake Resort	5999 N Oak	Rose City	MI 48654	
Best Western Colonial Inns	4281 I–75 Business Spur	Sault Ste. Marie	MI 49783	
Suburban "53" Motel	12269 Dix—Toledo Road	Southgate	MI 48195	
Ambassador Motel, Inc	11811 Telegraph	Taylor	MI 48180	
Holiday Inn—Taylor	20777 Eureka Road	Taylor	MI 48180	
McGowan Rest And Motel	PO Box 315, 315 M–123	Trout Lake	MI 49793	

[FR Doc. 92–31111 Filed 12–22–92; 8:45 am]

BILLING CODE 6718–01–M

federal register

Wednesday
December 23, 1992

Part VI

Environmental Protection Agency

1992 Master Testing List; Notice of Availability

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42052L FRL 4178–1]

RIN: 2070–AC30

1992 Master Testing List; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces the availability of the 1992 Master Testing List (MTL), an important component of the Existing Chemicals Program in the Office of Pollution Prevention and Toxics in EPA's Office of Prevention, Pesticides and Toxic Substances. EPA's Existing Chemicals Program is responsible for assessing and managing human health and environmental risks that may be posed by existing chemicals. EPA has been using the MTL since 1990 to set the Agency's chemical testing agenda under the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: To request copies of the 1992 MTL contact: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

ADDRESSES: Written comments regarding the MTL should be sent in triplicate, to: TSCA Public Docket (TS–793), Attn: TSCA Section 4 Master Testing List, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with the 1992 MTL itself, is available as an electronic file on the *Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512–1387 or call (202) 512–1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII. The 1992 MTL is available in Wordperfect and ASCII.

1992 Master Testing List

Under section 4 of the Toxic Substances Control Act (TSCA), EPA has the authority to require chemical manufacturers and processors to test chemicals. Specifically, EPA has the authority to require testing after finding that (1) a chemical substance may present an unreasonable risk of injury to human health or the environment, or the chemical is produced in substantial quantities which could result in significant or substantial human or environmental exposure, and (2) available data to evaluate the chemical substance are inadequate, and (3) testing is needed to develop the necessary data. EPA's Chemical Testing Program also continues to work with industry to develop needed test data by way of consent orders and voluntary testing agreements. This notice announces the availability of the 1992 MTL.

The major purposes of EPA's MTL are to:

1. Identify the chemical testing needs of the Federal Government (including EPA) and international programs of interest to the United States.
2. Focus limited EPA resources on the highest priority chemical testing needs.
3. Identify and publicize EPA's testing priorities for industrial chemicals.
4. Obtain broad public comment on EPA's Chemical Testing Program and its priorities.
5. Encourage initiatives by industry to provide EPA with the priority data needs identified on the MTL.

Since 1990, EPA has (1) added 222 specific chemicals and 9 categories to the MTL, (2) deleted 45 chemicals from the MTL, (3) proposed testing for 113 chemicals via proposed rulemaking under TSCA section 4; (4) required testing for 6 chemicals and 1 category via final TSCA section 4 test rules, negotiated consent orders or voluntary testing agreements, and (5) made risk assessment and/or management decisions on 41 chemicals based on final TSCA section 4 test results received. In addition, 159 chemical substances that are listed on the MTL are now being tested under the Screening Information Data Set (SIDS) program, an international voluntary testing program developed under the auspices of the Organization for Economic Cooperation and Development (OECD). Members of the U.S. chemical industry have agreed to test 39 of these chemical substances while other OECD member countries are testing the remainder. This cooperative voluntary effort addresses the testing needs for international high production volume chemicals. The MTL now contains over 320 specific chemicals and 9 categories and presents the EPA Chemical Testing Program's 1992–1994 priorities.

EPA invites written comments from persons interested in development of the MTL. In particular, EPA is interested in comments on the approach it takes to identify priority testing needs. EPA is also interested in comments on the categories of chemicals described in the MTL. Comments in this regard may affect how the categories are ranked and may influence how EPA proceeds to obtain needed toxicity and/or exposure data on chemicals within those categories. EPA is also interested in identifying other categories of chemicals that may deserve further evaluation.

Dated: December 16, 1992.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–31149 Filed 12–22–92; 8:45 am]

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Federal Register

Wednesday
December 23, 1992

Part VII

Department of the Interior

Bureau of Land Management

43 CFR Part 8360
Visitor Services: Rules of Conduct; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[WO-702-4830-15-24 1A; Circular No. 2645]

RIN 1004-AB91

Visitor Services: Rules of Conduct

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing a mandatory safety belt regulation that applies to occupants of the front seats of motor vehicles operated on Federal lands managed by the BLM (public lands) that are within States that do not have in effect a mandatory safety belt law, or that have enacted such a law but the law does not apply to public lands or may not be enforced by BLM. Under existing BLM regulations, the use of safety belts is required only on public lands in States that have a mandatory safety belt law in effect. Requiring use of safety belts will reduce risk of injury or death in vehicle accidents on public lands, and contribute to the reduction of societal costs caused by such incidents.

EFFECTIVE DATE: January 22, 1993.

ADDRESSES: Suggestions or inquiries should be sent to: Director (702), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Norman Duquette, Acting Chief, Safety Staff, Bureau of Land Management, (202) 653-8851.

SUPPLEMENTARY INFORMATION: The BLM is establishing a mandatory safety belt regulation applying to occupants of motor vehicles operated on public lands under its administration. The BLM currently administers over 270 million acres of public lands and its general regulations pertaining to vehicles and traffic safety are codified at 43 CFR subpart 8365. These regulations apply to all lands administered by the BLM. Under this rule, BLM will require the operator and all front seat passengers of a motor vehicle in motion to be restrained by a properly fastened safety belt. The burden of compliance is on the operator of the vehicle. Children, as defined by applicable State law, would be required to be restrained in accordance with State law. A person convicted of violating this or any other BLM regulation promulgated under the authority of the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) (FLPMA) will be subject to a maximum penalty as defined by law.

The proposed rule was published in the **Federal Register** on May 30, 1991 (56 FR 24363), and the public comment period expired on July 29, 1991. During the comment period, the BLM received 11 comments. Of these responses, 7 were from organizations or associations dealing with highway safety or insurance issues, 2 were from business entities and 2 were from individuals.

The arguments raised during the public comment period by those opposed to the rule were that the rule was an example of overregulation, that it was an erosion of civil liberties, and that it was unenforceable.

The issue most often addressed in the comments was whether the regulation should be enforced through "secondary enforcement" procedures (i.e., vehicles would not be stopped solely to check on violations of this regulation but would be checked if stopped for other purposes). The BLM intends to implement this regulation primarily through signs, text in brochures, and incidental public contact, not through "checkpoints or 'primary' enforcement measures that are not initiated as the result of another violation." One comment stated: "Existing resource constraints in terms of personnel available to enforce this regulation [should not] determine enforcement authority." On the other hand, another comment questioned whether the rule would require additional personnel and funding. Secondary enforcement (citing violators only if they are stopped for some other reason) will not require additional manpower or funding, which is an important consideration in times of budgetary constraint. The secondary enforcement provided for in the rule does, nevertheless, provide the BLM with a valuable tool for promoting safety on public lands. Although we recognize the benefits of primary enforcement as considerable, it is simply not practical for BLM to employ it at this time.

Other points of clarification were requested. The BLM intends that the regulation, as written, shall apply to all members of the public on the public lands. Interior Department personnel and volunteers are covered by other laws and regulations. The BLM also intends that the regulation, as written, shall apply to all motor vehicles ordinarily used for transportation or recreation that are originally equipped with safety belts. This includes trucks, cars, buses, and other on-road vehicles, and off-road vehicles that are originally equipped with safety belts. It is the objective of the BLM, through this regulation, to reduce the number of vehicular injuries and fatalities.

Other comments questioned whether the regulation would apply on public lands whether or not the surrounding State had a safety belt law in effect. There seems to be a misconception that the rule would not apply to BLM lands in States that do not have such a law. The Summary, as printed in the **Federal Register** on May 30, 1991, noted that: "Under current BLM regulations * * * use of safety belts by visitors is required only on public lands in States that have a mandatory safety belt law in effect." The intention of this rule is to promulgate a safety belt use requirement for all BLM administered lands, regardless of whether or not the surrounding State has one. One writer who appeared to understand this goal stated: "We are also pleased BLM proposes to enforce the applicable mandatory use law for BLM land in those States that have such laws and to require safety belt use even when BLM lands are exempted by State law." Thus, rather than overstepping the province of the States, the rule will enable BLM officers to implement a safety belt use requirement on its lands in States that previously exempted BLM lands from its authority. As for a related question about enforcement, FLPMA authorizes the BLM to cooperate with State, local, and other jurisdictions in the enforcement of applicable laws on public lands. This authority is not affected by this rule.

Several comments urged that the safety belt requirement in the rule apply to off-road vehicles (ORVs), while others questioned whether certain types of vehicles, such as pick-up trucks, are intended to be covered. The **Federal Register** on May 30, 1991, stated: "The rule would apply only to those vehicles ordinarily used for transportation on public roads as opposed to farm, construction or off-road vehicles that occasionally appear on public roads." Although it is true that many injuries and fatalities are due to accidents involving off-road vehicles, not all vehicles are required by the Department of Transportation to be equipped with safety belts, and some of such vehicles would be less safe with seatbelts. Department of Transportation regulations require certain types of motor vehicles to be equipped with safety belts and/or other restraint systems while other types of vehicles (motorcycles, for example) are not required to be so equipped. It would not be reasonable for one Federal agency to require individuals to add equipment to vehicles that are not, in accordance with regulations of another Federal agency,

manufactured with such equipment. All trucks originally equipped with safety belts, including pick-ups, would be covered by this rule, while dune-buggies and tractors would not if they were not so equipped originally. With this in mind, the question arises how to define an ORV for inclusion in this regulation. One comment suggested that the rule apply to "off-road vehicles with four wheels and automotive-type construction." This approach would be too broad. Many ORVs have less than four wheels, while snowmobiles and some types of construction vehicles have no conventional wheels at all. Many older automotive-type vehicles, such as antique cars, old jeeps and pick-ups that are still in use, were not originally equipped with safety belts. Accordingly, the definition for "vehicle" in the final rule has been amended to include all vehicles originally equipped with safety belts, which may include some ORVs.

Several comments were received asking for a clarification of the term "visitor." BLM intended that the term "visitor," as used in the preamble to the proposed rule, cover everyone on public lands with the exception of BLM volunteers and employees, who are already covered under other mandatory safety belt regulations. However, the term "visitor" is not used in the regulatory text, so there is no need to define the term in the regulation.

Other comments opposed the rule, arguing that the BLM is overstepping its authority, that safety belt regulation should be left to the States, that the BLM would not be able to enforce the regulation, and that it would be too expensive to enforce. As stated earlier, FLPMA gives the BLM authority to promulgate regulations dealing with conduct on the public lands that they administer. General regulations of the BLM pertaining to vehicles and traffic safety are codified in title 43 of the Code of Federal Regulations 43 CFR part 8365. The policy of secondary enforcement avoids the problem of lack of enforcement personnel, because vehicles will have already been stopped for other purposes under part 8365. For the same reason, additional costs will be negligible.

One comment asked 2 specific questions: Whether the standard penalty provisions of FLPMA would be invoked against violators of this provision, and whether the rule would apply to vehicles originally equipped with safety belts that no longer are so equipped. A person convicted of this regulation will be subject to the same penalty as applies to a violation of any other part of FLPMA. If a safety belt required by Department of Transportation regulations is removed, it would be a violation of this rule.

The principal authors of this final rule are Walter Johnson, Chief, Division of Law Enforcement, and Norman Duquette, Acting Chief, Safety Staff, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

The BLM has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to: (a) Increase public use to the extent of compromising the nature and character of the area or cause physical damage to it; (b) introduce incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it; (c) conflict with adjacent ownerships or land uses or cause a nuisance to adjacent owners or occupants.

Based on this determination, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulation in the Departmental Manual at 510 DM 6 (49 FR 21436). It is therefore determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The basis for these determinations is that beyond the costs of signing and other forms of public outreach, the final rule will impose no costs on any public or private entity. It merely requires existing safety equipment to be used.

For the same reason, the Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Additionally, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Dated: November 25, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

List of Subjects in 43 CFR Part 8360

Penalties, Public lands, Reporting and recordkeeping requirements, Traffic safety, Vehicles, Wilderness.

In consideration of the foregoing, and under the authorities stated below, part 8360, group 8000, subchapter H, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

PART 8360—VISITOR SERVICES [AMENDED]

1. The authority citation for part 8360 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460l–6a, 16 U.S.C. 1241 *et seq.*

2. Section 8360.0–5 is amended by adding paragraph (e) to read as follows:

§ 8360.0–5 Definitions.

* * * * *

(e) *Vehicle* means any motorized transportation conveyance designed and licensed for use on roadways, such as an automobile, bus, or truck, and any motorized conveyance originally equipped with safety belts.

Subpart 8365—Rules of Conduct [Amended]

3. Section 8365.1–3 is amended by redesignating the existing section as paragraph (a), and adding paragraph (b) to read as follows:

§ 8365.1–3 Vehicles.

(a) * * *

(b)(1) The operator of a motor vehicle is prohibited from operating a motor vehicle in motion, unless the operator and each front seat passenger is restrained by a properly fastened safety belt that conforms to applicable United States Department of Transportation standards, except that children, as defined by State law, shall be restrained as provided by State law.

(2) Paragraph (b) applies on public lands, or portions thereof, that are located within a State in which there is no State law in effect that requires the mandatory use of a safety belt by the vehicle operator and any front seat passenger. It also applies on public lands, or portions thereof, located within a State in which the mandatory safety belt law of the State does not apply to the public lands or in which any provision of State law renders the mandatory safety belt law of the State unenforceable by the authorized officer as to acts or omissions occurring on the public lands.

(3) This section does not apply to an operator or a passenger of a motor vehicle occupying a seat that was not originally equipped by the manufacturer with a safety belt, nor does it apply to an operator or passenger with a medical condition that prevents restraint by a safety belt or other occupant restraining device.

(4) An authorized officer may not stop a motor vehicle for the sole purpose of determining whether a violation of paragraph (b)(1) of this section is being committed.

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federal register

Wednesday
December 23, 1992

Part VIII

The President

Proclamation 6516—Year of American Craft: A Celebration of the Creative Work of the Hand, 1993

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Presidential Documents

Title 3—

The President

Proclamation 6516 of December 21, 1992

Year of American Craft: A Celebration of the Creative Work of the Hand, 1993

By the President of the United States of America

A Proclamation

While the United States leads the world in the development and use of sophisticated technology and materials, Americans continue to share a special appreciation of works made by hand. Our ancestors were skilled artisans and craftsmen, as well as accomplished hunters, farmers, and fishermen, and today we still marvel at their skill in carpentry, weaving, stonecutting, smithery, and so forth. Over the years, Americans have maintained a magnificent tradition of craftsmanship and folk art, in keeping with the spirit of our forebears, and it is fitting that we celebrate this rich portion of our national heritage.

Using their hands as the tools of their imaginations, American artisans have designed and developed a tangible record of our national experience. By plying trades that have been passed on through the centuries, from generation to generation, quilters, carvers, and other craftspeople of our day are helping to preserve America's history. These tradespeople and artists have produced objects of practical application, as well as lasting beauty, and many of our art galleries and museums display outstanding samples of their work.

We are rightly proud of American craft and folk art because, in many ways, these works of the hand embody traditional American values: pride in quality and service, diligence in pursuit of a goal, attention to detail, and respect for learning and achievement. By celebrating traditional American craft and by saluting the men and women who have mastered fine trades, we reaffirm the importance of those timeless values.

Crafts are inspired by the best in American tradition, yet they also reflect the informed creativity and vision of the present. Having learned from the past, today's artisans and craftspeople are adding their own unique touches to American culture. As we celebrate traditional craft and folk art in the United States, we also recognize each of the masters and apprentices who, through their works of the hand, continue to preserve and shape this living legacy of beauty.

The Congress, by Senate Joint Resolution 218, has designated 1993 as a "Year of American Craft: A Celebration of the Creative Work of the Hand" and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim 1993 as a Year of American Craft: A Celebration of the Creative Work of the Hand. I invite all Americans to observe this year with appropriate programs and activities in celebrating the traditional arts in the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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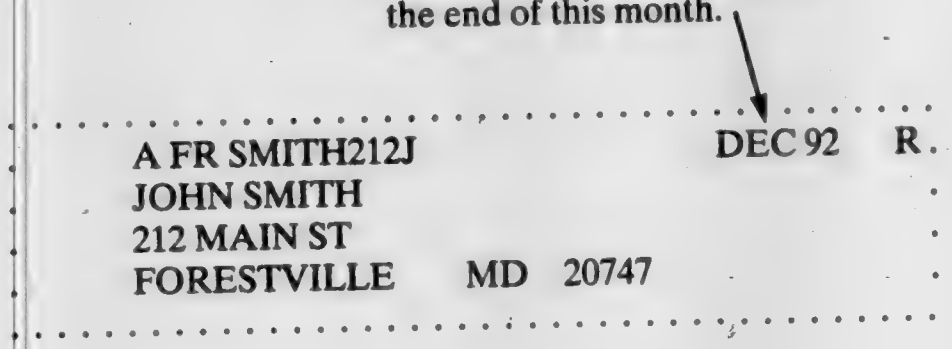

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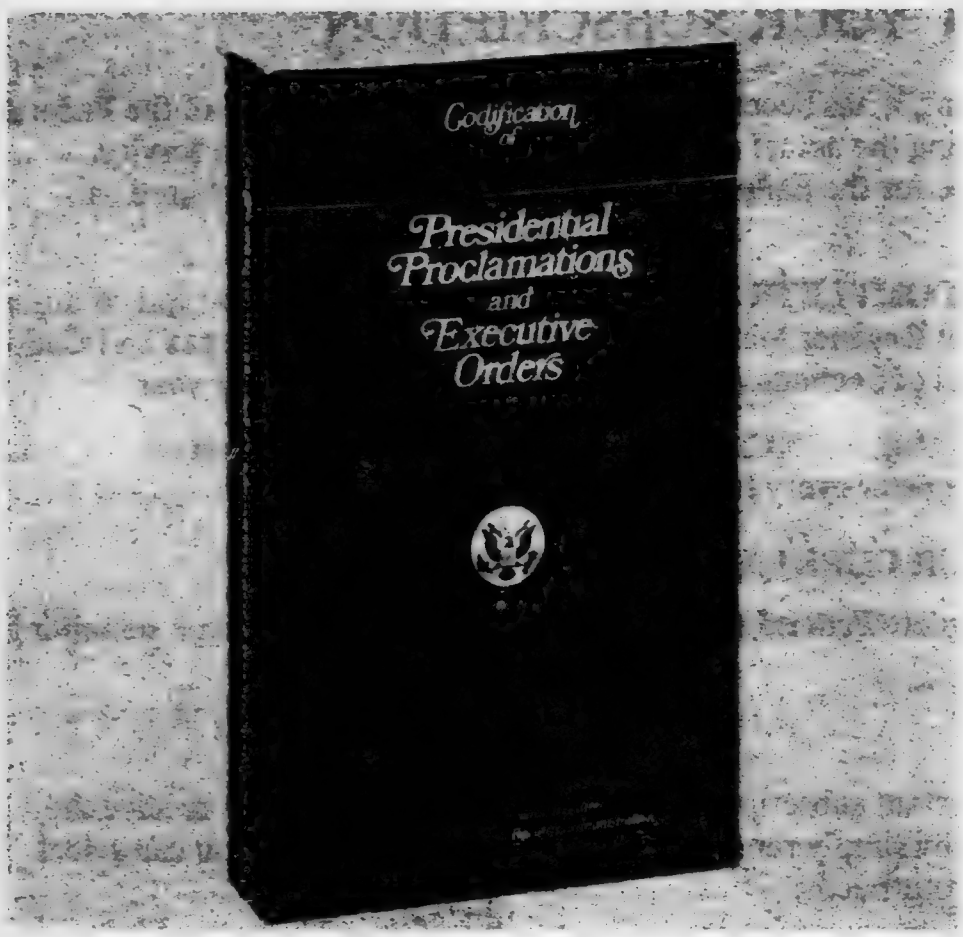

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Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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Thursday, December 24, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

RIN 3206–AE06

Retention of Senior Executive Service Provisions; Correction

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: In a final rule under 5 CFR part 317 published on November 20, 1992, at 57 FR 54677, the date listed after the "Dates" caption was not specifically identified as the effective date of the rule. This document clarifies that the date listed, December 21, 1992, is the effective date of the rule. The rule relates to the retroactive election of Senior Executive Service (SES) benefits under Public Law 101–335 and Public Law 102–378 by certain career SES members appointed to positions at level V of the Executive Schedule or higher.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Neal Harwood at (202) 606–1610.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the "Dates" caption in OPM's final rule under 5 CFR part 317 published on November 20, 1992, (57 FR 54677, first column) is corrected to read: **EFFECTIVE DATE:** December 21, 1992.

[FR Doc. 92–31104 Filed 12–23–92; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506 and 563

[No. 92–502]

RIN 1550–AA52

Reporting Requirements for Adjustable-Rate Mortgage Index Data

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its reporting regulation to require any savings association, within the jurisdiction of a Federal Home Loan Bank (FHLBank), to provide the FHLBank with data to calculate and publish an adjustable-rate mortgage index, upon the FHLBank's request. The regulation adopted today will ensure that the adjustable-rate mortgage index data continue to be reported notwithstanding the elimination of the monthly Thrift Financial Report (monthly TFR) effective January 1, 1993.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine Shepard, Senior Attorney, (202) 906–7275, Regulations and Legislation Division, Chief Counsel's Office; Patrick G. Berbakos, Deputy Assistant Director, Supervisory Systems, (202) 906–6720, Thomas A. Loeffler, Assistant Director for Supervisory Operations, (202) 906–5762, Supervisory Operations; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Proposal

On April 4, 1992, the OTS announced its decision to eliminate the monthly TFR as of January 1, 1993.[1] The OTS expects that there will be a significant reduction in the paperwork burden on the thrift industry and that savings associations will realize corresponding financial benefits from the elimination of the monthly TFR.

The monthly TFR has been used for a number of purposes in addition to monitoring the condition of savings associations. One of the important uses of the monthly TFR has been to provide the FHLBanks with data for calculating and publishing adjustable-rate mortgage indices. Eliminating the monthly TFR could, therefore, affect the continued publication of adjustable-rate mortgage indices by the FHLBanks. Of particular concern to commenters on the January, 1992, notice was the potential loss of the Eleventh District Cost of Funds Index published monthly by the FHLBank of San Francisco, which is used as the base index for over $250 billion of adjustable-rate mortgages nationwide.

Section 402(e)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, section 402(e)(3), 103 stat. 183,355 (1989)) directs the OTS to take necessary steps to ensure that pre-FIRREA indices prepared by, *inter alia*, the FHLBanks and used to calculate the interest rate on adjustable-rate mortgage instruments continue to be available.

To preserve and maintain these important adjustable-rate mortgage indices, the OTS proposed to amend its reporting regulation. 57 FR 33,662 (July 30, 1992). Under the proposal, certain adjustable-rate mortgage index data currently extracted from the monthly TFR would continue to be reported to the FHLBanks notwithstanding the elimination of the monthly TFR. A new paragraph would be added to the reporting regulation that would require any savings association, within the jurisdiction of a FHLBank, that reports data from which a FHLBank calculates and publishes an adjustable-rate mortgage index, to continue to provide the FHLBank with such data upon the FHLBank's request. Such data would be limited to the data necessary for a FHLBank to calculate and publish the adjustable-rate mortgage index it published on or before August 9, 1989, the date of enactment of FIRREA.

II. Summary of Comments and Description of Final Regulation

The OTS received ten comment letters on this proposal. Four commenters were savings associations; three commenters

[1] *See* 57 FR 2,314 (Jan. 21, 1992) (notice and request for comment with respect to elimination of the monthly TFR). One of the principal reasons OTS gave for the elimination of the monthly report was that "[t]he quarterly TFR data collection, in conjunction with examinations and other supervisory reports required on a case-by-case basis, provides the OTS with sufficient financial data to assess the condition of . . . savings associations." *Id.*

were FHLBanks; and the Federal Housing Finance Board, a national bank, and a thrift trade association each submitted one comment.

All commenters supported the OTS's effort to ensure that FHLBanks continue to have access to data for calculating and publishing adjustable-rate mortgage indices. Five of the commenters specifically mentioned their reliance on, and the importance of preserving, the Eleventh District Cost of Funds Index. These commenters stated that the loss of this important index would require lenders to convert their adjustable-rate mortgage loans to another index with undesirable results, including borrower confusion and significant conversion costs.

Two commenters thought that the proposed rule might apply only to those savings associations that have actually filed monthly TFRs and that savings associations chartered after January 1, 1993 would thus not be required to report adjustable-rate mortgage index data to the FHLBanks. The OTS does not intend to exclude newly chartered thrifts from the rule and has modified the language of the final rule to clarify that the reporting requirement applies to all savings associations within the jurisdiction of the requesting FHLBank, regardless of chartering date.

Four commenters expressed concern that in calculating its index a FHLBank may find it necessary from time to time to modify its reporting requirements. They argued that the proposed rule did not give the FHLBanks this necessary flexibility. The OTS has added language to the final rule recognizing that the FHLBank may modify, from time to time, the data items that are collected. The OTS stresses, however, that the revised language of the final rule, as modified, does not require savings associations to provide data for any new index created by a FHLBank. The requirement is limited to the data items, as amended or modified, used to publish the adjustable-rate mortgage index that the FHLBank published on or before August 9, 1989.

One commenter suggested that the OTS collect the adjustable-rate mortgage index data and share it with the FHLBanks. Implementation of this suggestion is not practical, however, since after the monthly TFR is eliminated as of January 1, 1993, the OTS will no longer be in possession of the data elements the FHLBanks need for publication of their adjustable-rate mortgage indices. Furthermore, collection of these data merely to transfer them to the FHLBanks would unnecessarily delay the data collection process.

One commenter thought that the purpose of the reporting regulation was to inform savings associations that the OTS would no longer collect data from which it publishes the Monthly Median Cost of Funds Index. The commenter misunderstands the regulation. The purpose of the regulation is to ensure that FHLBanks have continued access to the data that they use to publish adjustable-rate mortgage indices notwithstanding the elimination of the monthly TFR. The OTS is not eliminating publication of its Monthly Median Cost of Funds Index and will still collect data from savings associations for its continued publication.

Accordingly, the OTS is amending its reporting regulation, 12 CFR 563.180, to require, upon the request of any FHLBank, any savings association within the jurisdiction of the FHLBank to provide data from which the FHLBank calculates and published an adjustable-rate mortgage index. This reporting requirement would only cover the data necessary for a FHLBank to calculate and publish the adjustable-rate mortgage index it published on or before August 9, 1989, the date of enactment of FIRREA. A FHLBank may, as it deems necessary, alter or amend the data items it requires savings associations to report for the calculation and publication of an adjustable-rate mortgage index, so long as the resulting adjustable-rate mortgage index is the same index that the FHLBank published on or before August 9, 1989.

III. Executive Order 12291

The OTS has determined that this regulation does not constitute a "major rule" and, therefore, the preparation of a regulatory impact analysis is not required.

IV. Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this regulation will not have a significant impact on a substantial number of small savings associations.

V. Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1550–0079.

The collection of information in this final rule is in 12 CFR 563.180(e). The information will be used by the FHLBanks in the publication of adjustable-rate mortgage indices and will allow the home loan mortgage market to function efficiently.

Comments concerning the collection of information under this final rule should be directed to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and to the Office of Management and Budget, Paperwork Reduction Project 1550–0079.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby amends parts 506 and 563, chapter V, title 12, Code of Federal Regulations as set forth below:

Subchapter A—Organization and Procedures

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding one new entry in numerical order to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control no.
. . . . .	.
563.180(e)	1550–0079
. . . . .	.

Subchapter D—Regulations Applicable to all Savings Associations

PART 563—OPERATIONS

3. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106 Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2355 (1991).

4. Section 563.180 is amended by adding a new paragraph (e) to read as follows:

§ 563.180 Criminal referrals and other reports or statements.

* * * * *

(e) *Adjustable-rate mortgage indices*—(1) *Reporting obligation.* Upon the request of a Federal Home Loan Bank, all savings associations within the jurisdiction of that Federal Home Loan Bank shall report the data items set forth in paragraph (e)(2) of this section for the Federal Home Loan Bank to use in calculating and publishing an adjustable-rate mortgage index.

(2) *Data to be reported.* For purposes of paragraph (e)(1) of this section, the term "data items" means the data items previously collected from the monthly Thrift Financial Report and such data items as may be altered, amended, or substituted by the requesting Federal Home Loan Bank.

(3) *Applicable indices.* For the purpose of this reporting requirement, the term "adjustable-rate mortgage index" means any of the adjustable-rate mortgage indices calculated and published by a Federal Home Loan Bank or the Federal Home Loan Bank Board on or before August 9, 1989.

Dated: December 1, 1992.
By the Office of Thrift Supervision.
Timothy Ryan,
Director.

[FR Doc. 92-31196 Filed 12-23-92; 8:45 am]
BILLING CODE 6720-01-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1503

Privacy Act Procedures

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Final rule.

SUMMARY: This final rule prescribes procedures to implement the Privacy Act of 1974. The Thrift Depositor Protection Oversight Board, which is an agency for the purposes of the Privacy Act, is required to promulgate regulations establishing such procedures. The objective of this rule is to facilitate the exercise of the rights conferred on individuals by the Privacy Act and to ensure that the disclosure of information contained in systems of records maintained by the Board is in compliance with the Privacy Act.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION, CONTACT: Lawrence Hayes, telephone (202) 786-9681.

SUPPLEMENTARY INFORMATION:

Background

The Thrift Depositor Protection Oversight Board ("Board") is a corporate instrumentality of the United States, established as the "Oversight Board" by section 21A(a)(1) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(a)(1), as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The Oversight Board was redesignated as the Thrift Depositor Protection Oversight Board by the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Public Law No. 102-233, sec. 302(a), 105 Stat. 1761, 1767. The Board's principal duty is to oversee the Resolution Trust Corporation ("RTC"), also established under FIRREA, whose principal duty is to manage and resolve cases involving failing and failed thrift institutions.

Pursuant to 12 U.S.C. 1441a(a)(2), the Board is an agency of the United States for the purposes of the Privacy Act of 1974, 5 U.S.C. 552a. The promulgation of regulations establishing procedures for access to and amendment of records pertaining to an individual maintained in a system of records is required by 5 U.S.C. 552a(f).

The Board reviews overall strategies, policies, and goals established by the RTC for its activities, approves its periodic financing requests prior to implementation, and reviews the RTC's regulations, procedures, and overall performance. With respect to case-specific matters involving individual case resolutions, asset dispositions, and its day-to-day operations, the RTC makes determinations and takes such actions as it deems appropriate without any prior review, approval, or disapproval by the Board. As a consequence of the Board's focus on issues of policy and overall review, the files of the Board concerning its basic functions are generally not organized in groups of records from which information about an individual may be retrieved by the use of the individual's name or personal identifier, the "systems of records" that are the concern of the Privacy Act. Board information that is retrievable by use of the name or symbol of an individual person is generally restricted to files concerning Board employees and former employees, applicants for employment, members of advisory boards established by the Board pursuant to 12 U.S.C. 1441a(d) (who are special government employees) and candidates for advisory board membership, individuals who are or have been in litigation with the Board, persons who have corresponded with the Board, members of Congress, and contractors with the Board.

Final Rule

On June 12, 1992, the Board proposed a rule to implement the Privacy Act. The 60-day comment period for the proposed rule ended on August 11, 1992. No comments were received.

The Board's final rule, which is substantially unchanged from the proposed rule, implements Privacy Act requirements with respect to the promulgation and contents of regulations concerning systems of records in which information is retrievable by the name or personal identifier of an individual. Section 1503.3 establishes procedures whereby an individual can be notified in response to his or her request whether any system of records of the Board contains a record pertaining to such individual. Section 1503.4 sets forth reasonable requirements for identifying an individual who requests his or her records. Sections 1503.4, 1503.5, and 1503.6 establish procedures for the disclosure to an individual of records pertaining to such individual that are maintained by the Board. Sections 1503.7, 1503.8, and 1503.9 establish procedures for reviewing a request from an individual concerning the amendment of a record pertaining to such individual maintained by the Board and for an appeal within the agency of an initial adverse determination with respect to such request. Section 1503.11 establishes fees that may be charged an individual for duplicating copies of his or her records, excluding the cost of any search for and review of such records. The regulations as a whole provide the means necessary for an individual to exercise fully his or her rights under the Privacy Act.

This rule is issued pursuant to the requirement of 5 U.S.C. 552a(f) and to implement the provisions and intent of the Privacy Act. The Board finds good cause to make this final rule effective upon publication in that requests and appeals under the Privacy Act may thereby be processed without delay in accordance with agency rules, as required by 5 U.S.C. 552a(f).

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number 3203-0001.

The collections of information in the final rule are in §§ 1503.3, 1503.4, and 1503.7. This information is required by

the Board under §§ 1503.3 and 1503.4 to identify individuals or persons acting on their behalf seeking to know whether a system of records contains information relating to such individuals and to identify individuals or representatives of individuals seeking access to records pertaining to such individuals. Information is required under § 1503.7 for the appropriate amendment or correction of records pertaining to individuals. This information will be used to process such inquiries and requests, amend or correct records, and protect records pertaining to individuals in accordance with the Privacy Act. The likely respondents are individuals or their representatives; Board employees, former employees, applicants for employment, and special government employees providing services for the Board.

The total annual reporting and recordkeeping burden that will result from these sections is estimated not to exceed ten hours. The estimated average burden hours per response is not more than one half hour under §§1503.3 and 1503.4 and one hour under § 1503.7. The annual number of likely respondents is estimated not to exceed fifteen, and the proposed frequency of responses is on occasion.

Executive Order 12291

This rule is not a major rule under Executive Order No. 12291. The economic impact of the rule is minimal.

Regulatory Flexibility Act

The Thrift Depositor Protection Oversight Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Board's systems of records are few, small in size, and generally limited in scope to records concerning Board employees, former employees, applicants for employment, special government employees, correspondents and contractors with the Board, and individuals in litigation with the Board.

Proposed amendment

Elsewhere in this issue of the **Federal Register** the Board is publishing a proposed amendment to this final rule that would exempt from subsections (c)(3), (d), (e)(1), and (e)(4)(G), (H), and (f) of 5 U.S.C. 552a a system of records that is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal employment, to the extent that the disclosure of such information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. This specific exemption may be issued pursuant to 5 U.S.C. 552a(k)(5) if promulgated pursuant to the requirements of 5 U.S.C. 553.

List of Subjects in 12 CFR Part 1503

Privacy.

For the reasons set forth in the preamble, chapter XV of title 12 of the Code of Federal Regulations is amended by adding new part 1503 to subchapter A to read as follows:

PART 1503—PRIVACY ACT PROCEDURES

Sec.

1503.1 Purpose and scope.
1503.2 Definitions.
1503.3 Procedures for determining if an individual's records are contained in a system of records.
1503.4 Requests for disclosure of records.
1503.5 Disclosure of requested records.
1503.6 Special procedure: Medical records.
1503.7 Requests for amendment of records.
1503.8 Board review of requests for amendment of records.
1503.9 Appeal of initial adverse determinations on access or amendment.
1503.10 Disclosure of a record to a person other than the individual to whom it pertains.
1503.11 Fees.
1503.12 Exception.

Authority: 5 U.S.C. 552a; 12 U.S.C. 1441a(a)(2); 12 U.S.C. 1441a(a)(13).

§ 1503.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the provisions of the Privacy Act with regard to access to and review of personal information in systems of records maintained by the Board.

§ 1503.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Board* means the Thrift Depositor Protection Oversight Board.

(b) *Business day* means any day other than a Saturday, Sunday, or legal Federal public holiday.

(c) *Guardian* means the parent of a minor individual or the legal guardian of an individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* means maintain, collect, use, disseminate, or control.

(f) *Privacy Act* means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(g) *Privacy Officer* means an officer or employee of the Board designated by the President of the Board to implement the Privacy Act in accordance with this part.

(h) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(i) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected or created.

(j) *System of records* means a group of any records under the control of the Board from which information is retrievable by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

(k) *Vice President* means a Vice President of the Board designated by the President of the Board to review actions and determinations of the Privacy Officer and to take action on behalf of the Board with respect to appeals under this part.

§ 1503.3 Procedures for determining if an individual's records are contained in a system of records.

(a) An individual or his or her guardian desiring to know if a specific system of records maintained by the Board contains a record pertaining to such individual shall address an inquiry in writing to the Privacy Officer, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Notwithstanding the preceding sentence, an individual employed by the Board is not required while so employed to make such inquiry in writing. The written inquiry shall:

(1) Identify the system of records maintained by the Board or reasonably describe the type of record in sufficient detail to permit the Privacy Officer to identify an existing system of records; and

(2) Identify the individual making the inquiry or on whose behalf the inquiry is made. The Privacy Officer may require such information concerning the identity or authority of an individual or guardian as the Privacy Officer deems appropriate, as provided under § 1503.4(b).

(b) The Privacy Officer shall ordinarily inform an inquirer whether a system of records described in the written inquiry contains a record pertaining to an individual within ten

business days following receipt of the inquiry. If the Privacy Officer is unable to respond to a written inquiry within ten business days following its receipt, the Privacy Officer shall inform the inquirer of the reasons for delay and the anticipated date of response.

(c) An affirmative response shall describe or reference the procedures to be followed in order to gain access to a record.

§ 1503.4 Requests for disclosure of records.

(a) Requests by or on behalf of an individual for access to records pertaining to such individual in a system of records shall be submitted in writing to the Privacy Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, in accordance with the requirements of paragraph (b) of this section. The written request may be mailed, or presented in-person on a business day between 9 a.m. and 5 p.m. to the Privacy Officer at the offices of the Board specified in the preceding sentence. The written request and the envelope (if the request is mailed) shall be clearly marked "Privacy Act Request." Notwithstanding the first sentence of this paragraph (a), an individual employed by the Board is not required while so employed to request access to his or her records in writing.

(b) Each written request shall be dated and signed and shall include:

(1) The name, address, and telephone number of the person signing the request;

(2) The name, address, and telephone number of the individual to whom a requested record pertains, if such individual is not the person signing the request, with evidence of authority to act on behalf of the record subject;

(3) Verification of identity, by providing a document, such as a photocopy of a driver's license, bearing the signature of the person signing the request.

(4) Certified or authenticated copies of documents establishing parentage or guardianship if the request is made by the guardian of the individual to whom the requested record pertains;

(5) A statement that the individual whose records are requested is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(6) The name and location of the system of records in which the requested records are contained.

(c) An individual who appears in person at the offices of the Board to submit a written request for access to his or her records shall present two forms of identification, such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) Unless a requested record is publicly available pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Officer may require certification by a notary public attesting to the identity of a requesting individual or other evidence establishing the identity of the requesting individual as a condition of making available or releasing a copy of a record pertaining to such individual. If a request is made by a guardian or another person acting on behalf of the individual, the Privacy Officer may require appropriate evidence of authority to act on behalf of the individual whose records are requested.

(e) Requests by or on behalf of an individual for an accounting made pursuant to 5 U.S.C. 552a(c) of previous disclosures of records pertaining to such individual in a system of records shall also be made and processed in accordance with paragraphs (a) through (d) of this section.

§ 1503.5 Disclosure of requested records.

(a) The Privacy Officer shall ordinarily respond to a request for access to records or an accounting of previous disclosures within ten business days following receipt of a request. If the Privacy Officer is unable to respond within ten business days following receipt of a request, the Privacy Officer shall inform the requester within ten business days following receipt of a request of the reasons for delay and the anticipated date of response.

(b) The Privacy Officer, in responding to a request for access to records, shall inform the requester:

(1) Whether or not a requested record is maintained by the Board in a system of records;

(2) Whether or not access will be granted;

(3) If access is granted, of a reasonable time, place, and procedure for providing access to and copies of the requested records;

(4) Of any fees that may be required pursuant to § 1503.11;

(5) Of any additional information that may be required as a condition of granting access; and

(6) If access to a record is denied, the reason or reasons for denial and the procedures for obtaining a review of such denial.

(c) The requester of records may be accompanied in the inspection and discussion of such records by a person chosen by the requester, provided that the requester submits a written and signed statement authorizing the presence of such person during such inspection and discussion.

§ 1503.6 Special procedure: Medical records.

Medical records requested pursuant to § 1503.4 will be disclosed to the requester unless the disclosure of such records directly to the requester, in the judgment of the Privacy Officer, could have an adverse effect upon the requester. In such case, such information will be forwarded to a licensed physician named by the requester.

§ 1503.7 Requests for amendment of records.

(a) An individual or his or her guardian may request amendment of records pertaining to such individual in accordance with the requirements of this section. Such request shall be in writing and shall be submitted to the Privacy Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW, Washington, DC 20232, by mail, or in person on a business day between 9 a.m. and 5 p.m. The written request and the envelope (if the request is mailed) shall be clearly marked "Privacy Act Record Amendment."

(b) Each request shall be dated and signed and shall:

(1) Identify the system of records containing the record for which amendment or connection is requested;

(2) Specify the record requested to be amended or corrected;

(3) Specify requested additions and deletions;

(4) State the reasons for each requested amendment or correction, with appropriate supporting information or documentation; and

(5) Identify the requester, referring specifically to any previous written request for access submitted pursuant to § 1503.4 or providing the documentation concerning the individual and his or her guardian required by § 1503.4(b).

(c) An individual who appears in person at the offices of the Board to submit a written request for amendment or correction of his or her records shall present two forms of identification such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) The Privacy Officer may require additional evidence of the identity or authority of the requester.

(e) This section does not authorize or permit collateral attack upon the results or findings of a previous judicial or administrative proceeding.

§ 1503.8 Board review of requests for amendment of records.

(a) The Privacy Officer shall acknowledge in writing the receipt of a request made pursuant to § 1503.7 within two business days of such receipt. Such acknowledgment may include a request for additional information necessary for a decision concerning the requested amendment of a record.

(b) The Privacy Officer shall promptly review each request made pursuant to § 1503.7 in light of relevant criteria of the Privacy Act, including, but not limited to, 5 U.S.C. 552a(e) (1) and (5).

(c) Upon completion of such review, the Privacy Officer shall direct amendment of the record as requested, giving notice of such action to the requester, or immediately notify the requester that the request for amendment of a record is denied. If an accounting of disclosures of such record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in such accounting shall be informed of any amendment.

(d) If a request made pursuant to § 1503.7 is denied in whole or in part, the Privacy Officer shall inform the requester of the reasons for such denial, the procedures for obtaining a review of such denial, and the name and business address of the Vice President.

§ 1503.9 Appeal of initial adverse determinations on access or amendment.

(a) A requester may appeal the denial of a request made pursuant to § 1503.4 or § 1503.7 in accordance with the provisions of this section.

(b) An appeal shall be submitted in writing to the Secretary, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, within 60 days following issuance of notice of a denial. The written appeal and the envelope in which it is mailed shall be clearly marked "Privacy Act Appeal." The written appeal shall be dated and signed and shall:

(1) State clearly in summary form the request that was denied, attaching a copy of the Privacy Officer's notice of denial or giving the date of such notice; and

(2) Set forth the reasons why the requester believes that access to a record should be granted or a record should be amended.

(c) The Vice President shall complete review of an appeal and, with the advice of the General Counsel to the Board, make a final determination within 30 business days following the date on which review is requested unless, for good cause shown, the President of the Board extends such period. A requester shall be promptly notified of an extension of the review period and the reasons therefor. The Vice President shall promptly give notice to the requester of the determination to grant access to a record, to amend a record as requested, or to affirm an initial adverse determination.

(d) If on appeal a request for access to a record made pursuant to § 1503.4 is granted, the Vice President's notice shall provide the information described in § 1503.5(b) (3) and (4). If the initial denial of such request is affirmed, the Vice President's notice shall include a statement of the reasons for such determination and advise the requester of the provisions of the Privacy Act concerning judicial review of such determination, as set forth in 5 U.S.C. 552a(g).

(e)(1) If on appeal a request for amendment of a record made pursuant to § 1503.7 is granted, the Vice President shall direct amendment of the record as requested, and the Vice President's notice shall so inform the requester. If an accounting of disclosures of the record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in the accounting shall be informed of the amendment.

(2) If the initial adverse determination of a request pursuant to § 1503.7 is affirmed, the Vice President's notice shall:

(i) Confirm, amplify, or modify the statement of reasons given by the Privacy Officer for denial of the request;

(ii) Advise the requester of the right to file with the Board a concise statement of the requester's reasons for disagreeing with the determination not to amend a record in accordance with the request, as provided by 5 U.S.C. 552a(d)(3); and

(iii) Advise the requester of the provisions of the Privacy Act concerning judicial review of the determination, as set forth in 5 U.S.C. 552a(g).

(f) If a requester seeking amendment of a record ("disputed record") files a concise statement of disagreement pursuant to 5 U.S.C. 552a(d)(3) and paragraph (e)(2)(ii) of this section, a copy of such statement shall be provided by the Board to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement. If an accounting of previous disclosures of such disputed record has been made pursuant to 5 U.S.C. 552a(c), a notation of the disagreement shall be provided by the Board to any person or agency listed in such accounting. If deemed appropriate by the President of the Board, a concise statement of the Board's reasons for not amending the disputed record shall also be provided to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement.

§ 1503.10 Disclosure of a record to a person other than the individual to whom it pertains.

(a) Except as provided in paragraph (b) of this section, the Board shall not disclose by any means of communication any record contained in a system of records to any person or agency except with the prior written consent of the individual to whom the record pertains or of his or her guardian.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to disclosure:

(1) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act, 5 U.S.C. 552;

(3) For a routine use;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(5) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, the record to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its

jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 1503.11 Fees.

(a) Records disclosed to requesters pursuant to the Privacy Act and this part shall be duplicated at a cost of $0.10 per page, except as follows:

(1) If the Privacy Officer determines that access to a record may be provided only by furnishing a copy of the record, no fee will be charged for the first copy of the record or any portion thereof;

(2) If duplication fees do not exceed $2 for one request, the fees will be waived; and

(3) If the Privacy Officer determines it to be in the public interest, the Privacy Officer may waive any duplication fees.

(b) Requesters will not be charged for search or review of a record.

(c) If it is anticipated that duplication fees will exceed $25, the requester shall be notified promptly, and processing of the request shall be suspended until an agreement to pay the requested fees has been provided by the requester.

§ 1503.12 Exception.

Nothing in this part shall allow access to any information compiled in reasonable anticipation of a civil action or proceeding.

Peter H. Monroe,

President.

[FR Doc. 92-31204 Filed 12-23-92; 8:45 am]

BILLING CODE 2222-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Dollar Threshold for Approval/Denial of Certificate of Competency

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby revising the dollar threshold for Approval/Denial of a Certificate of Competency (COC) by SBA's Regional Offices. This action is necessary to reflect internal changes which have occurred in the COC Program. This revision will enhance and streamline SBA's ability to process COC applications.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Program Manager, Certificate of Competency Program, Office of Industrial Assistance, 202/205-6475.

SUPPLEMENTARY INFORMATION: This regulation establishes a uniform $5,000,000 threshold for approval/denial of a COC for SBA's Regional Administrators, Deputy Regional Administrator's and Assistant Regional Administrators for Procurement Assistance. This is a departure from the graduated levels which are currently in effect. In addition, the regulation is being revised to eliminate the $250,000 threshold for approval/denial of COC's by SBA's Regional COC Specialists. COC Specialists have no authority for the approval/denial of COC's. The Agency is making this change to streamline and enhance its internal processing of COC applications at the regional level.

Due to the fact that this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for proposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq), or to do a Federalism Assessment Pursuant to Executive Order 12612. SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35). Finally, for purposes of E.O. 12778, SBA certifies that this rule, is drafted, to the extent practicable, in accordance with standards set forth in section 2 of that order.

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administration.

For the reasons set forth above, part VI of § 101.3-2, part 101 of title 13, Code of Federal Regulations (CFR), is revised as follows:

PART 101—ADMINISTRATION

1. The Authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Public Law 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Public Law 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Public Law 93-386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3-2, Part VI is revised to read as follows:

§ 101.3-2 Delegations of authority to conduct program activities in field offices.

* * * * *

Part VI—Procurement Assistance Program (PA) Certificate of Competency Approval Authority

1. To approve applications for a Certificate of Competency (COC) received from small business concerns and issue COC's to those firms located within the region's geographic jurisdiction, subject to the following monetary limitations:

a. Regional Administrator—$5,000,000
b. Deputy Regional Administrator—$5,000,000
c. Assistant Regional Administrator/PA—$5,000,000

2. To deny an application for a Certificate of Competency received from small business concerns located within the region's geographic jurisdiction, subject to the following monetary limitations:

a. Regional Administrator—Unlimited
b. Deputy Regional Administrator—Unlimited
c. Assistant Regional Administrator/PA—Unlimited

* * * * *

Dated: December 7, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-31290 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-227-AD; Amendment 39-8447; AD 92-27-12]

Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires repetitive visual inspections of wire bundles that extend between the P6 and P7 panels to detect damage due to chafing, and repair of damaged wires. This amendment is prompted by a report of an electrical wiring short circuit, smoke in the cockpit, and loss

of flight instruments, which resulted in a rejected take-off. The actions specified in this AD are intended to prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

DATES: Effective January 8, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–227–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Recently, an electrical wiring short circuit was detected in the cockpit of a Boeing Model 747–300 series airplane. The cockpit filled with smoke, and sounds of electrical arcing and circuit breakers popping were heard during the take-off roll, resulting in a rejected take-off. The reported cause of the smoke, sounds of electrical arcing and circuit breakers popping has been traced to abrasion between wire bundles in the cockpit overhead just aft of the P6 power panel and at approximately stringer two, right-hand side. Numerous cockpit instruments were lost during this incident. The lost systems included the pilot's airspeed indicator, clock, altimeter, vertical speed indicator, VOR/DME displays, and master warning switch. All of the first officer's instruments were lost, except for the flight director computer select switch.

The cockpit of Model 747–100 and –200 series airplanes is similar in design to that of the Model 747–300 series. Investigation by the manufacturer has revealed that all Model 747 series airplanes, except the Model 747–400 series, may be subject to this fault. A partial inspection of the worldwide fleet has revealed 11 cases of wire bundle damage that occurred in the same location as on the airplane that experienced the incident. The affected wire bundles contain wires that carry power and data for all of the captain's and first-officer's instruments (except standby airspeed, compass, and altitude) that are necessary for continued safe flight and landing of the airplane. These instruments could be lost if a fault of the type experienced in the described incident occurs again. This condition, if not corrected, could result in smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane. This AD requires repetitive visual inspections of wire bundles that extend between the P6 and P7 panels to detect damage due to chafing, and repair of damaged wires.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self- addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–227–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-27-12. Boeing: Amendment 39-8447. Docket 92-NM-227-AD.

Applicability: Model 747 series airplanes, excluding Model 747-400 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane, accomplish the following:

(a) Within 15 days after the effective date of this AD, perform a visual inspection to detect damage due to chafing of the wire bundles that extend between the P6 and P7 panels at station 400, water line 385, right butt line 15, at Stringer 2 on the right-hand side, 6 inches aft of the P6 panel. Pay particular attention to wire bundles W418, W718, W998, and other bundles that cross over these bundles. If any damaged wires are found, prior to further flight, repair them in accordance with Boeing Standard Wiring Practices Document, D6-54446.

(b) Repeat the inspection and repair procedure required by paragraph (a) of this AD at intervals not to exceed 120 days.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on January 8, 1993.

Issued in Renton, Washington, on December 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-31209 Filed 12-23-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASO-21]

Alteration of Airways and Jet Routes; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the descriptions of VOR Federal airways and jet routes located in Miami, FL. The airways and jet routes listed in this document are followup changes to the airways and jet routes in airspace actions taken to restore the necessary traffic flow in the Miami terminal area. The Biscayne Bay very high frequency omnidirectional range (VOR) was rendered inoperative by Hurricane Andrew, and it cannot be relocated at that site. Because this VOR was a critical component to traffic flow in the Miami area, realignment of airways and jet routes in the area based on another navigational aid is urgently needed to maintain a safe and efficient operation. The planned commissioning of a nondirectional beacon (NDB), Andrew, has been delayed indefinitely; consequently, this action is essential to support other actions already taken to improve traffic flow in the Miami area. Most importantly, it is essential to prevent the degradation of safety in the terminal airspace complex that would occur in the absence of this emergency action. This amendment also reflects the action taken in Airspace Docket No. 92-ASO-6, which changes the name of the Knoxville, TN, VOR to the Volunteer, TN, VOR in V-267 and becomes effective at the same time as this docket.

DATES: Effective date—0901 UTC, February 4, 1993. Comments must be received on or before February 5, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 92-ASO-21, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Request for Comment on the Rule

This amendment is in the form of a final rule, which involves changes in the descriptions of several airways and jet routes in the State of Florida due to the destruction of the Biscayne Bay, FL, VOR. The Biscayne Bay VOR was destroyed by Hurricane Andrew and will be replaced by a substitute navigational facility named Andrew NDB. Because the commissioning of Andrew NDB has been delayed indefinitely, the FAA has realigned the airways and jet routes using the Miami, FL, VOR instead of the currently charted routes based on the Andrew NDB. Although this amendment was not preceded by notice and public procedure because of the emergency nature of this action, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will proceed with further rulemaking to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) is to alter the descriptions of several airways and jet routes in the Miami, FL, area to compensate for the unforeseen delay of the commissioning of the Andrew NDB. This delay has created an emergency situation affecting the safe and efficient movement of air traffic as a consequence of the lack of an adequate airspace structure. The FAA must immediately realign the airways and jet routes to the Miami VOR and associated holding fixes. These changes are essential to prevent the degradation of the safe and efficient movement of traffic and increased controller workload. This action also reflects the name change of the Knoxville, TN, VOR to the Volunteer, TN, VOR.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the descriptions of the airways and jet routes to the Miami VOR to prevent the degradation of air traffic

control's ability to separate all aircraft in that area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the pubic interest. The coordinates for this airspace docket are based on North American Datum 83. Domestic VOR Federal airways and jet routes are published in Sections 71.123 and 71.607, respectively, of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airways and jet routes listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71 123 Domestic VOR Federal Airways

* * * * *

V–3 [Revised]

From Key West, FL; INT Key West 083° and Miami, FL, 205° radials; INT Miami 205° and Lee County, FL, 132° radials. From Ft. Lauderdale, FL; Palm Beach, FL; Vero Beach, FL; Melbourne, FL; Ormond Beach, FL; Brunswick, GA; Savannah, GA; Vance, SC; Florence, SC; Sandhills, NC; Raleigh-Durham, NC; INT Raleigh-Durham 016° and Flat Rock, VA, 214° radials; Flat Rock; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena; Solberg, NJ; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; Hartford, CT; INT Hartford 084° and Boston, MA, 224° radials; Boston; INT Boston 014° and Pease, NH, 185° radials; Pease; INT Pease 004° and Augusta, ME, 233° radials; Augusta; Bangor, ME; INT Bangor 039° and Houlton, ME, 203° radials; Houlton; Presque Isle, ME; to PQ, Canada. The airspace within R–2916, R–2934, R–2935 and within Canada is excluded.

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V–7 [Revised]

From INT Miami, FL, 222° and Lee County, FL, 120° radials; Lee County; INT Lee County 353° and Lakeland, FL, 170° radials; Lakeland; Cross City, FL; Tallahassee, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; Marquette, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

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V–35 [Revised]

From Key West, FL, via INT Key West 083° and Miami, FL, 188° radials. From INT Miami 222° and Collier County, FL, 110° radials; INT Collier County 110° and Lee County, FL, 139° radials; Lee County; INT Lee County 326° and St. Petersburg, FL, 152° radials; St. Petersburg; INT St. Petersburg 350° and Cross City, FL, 168° radials; Cross City, FL; Greenville, FL; Pecan, GA; Macon, GA; INT Macon 005° and Athens, GA, 195° radials; Athens; Electric City, SC; Sugarloaf Mountain, NC; Holston Mountain, TN; Glade Spring, VA; Charleston, WV; INT Charleston 051° and Elkins, WV, 264° radials; Clarksburg, WV; Morgantown, WV; Indian Head, PA; Johnstown, PA; Tyrone, PA; Philipsburg, PA; Stonyfork, PA; Elmira, NY; Syracuse, NY. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit. The airspace within R–2916 is excluded.

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V–51 [Revised]

From Miami, FL; INT Miami 337° and Pahokee, FL, 175° radials; Pahokee; INT Pahokee 009° and Vero Beach, FL, 193° radials; Vero Beach, INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Dublin, GA; Athens, GA; INT Athens, GA, 340° and Harris, GA, 148° radials; Harris; Hinch Mountain, TN; Livingston, TN; Louisville, KY; Nabb, IN; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL.

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V–267 [Revised]

From INT Pahokee, FL, 155° and Miami, FL; 020° radials; Pahokee; Orlando, FL; Craig FL; Dublin, GA; Athens, GA; INT Athens 340° and Harris, GA, 148° radials; Harris; Volunteer, TN.

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V–437 [Revised]

From INT Pahokee, FL, 155° and Miami, FL; 020° radials; Pahokee; Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach; Savannah, GA; Charleston, SC; Florence, SC. The airspace within R–2935 is excluded.

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V–509 [Revised]

From St. Petersburg, FL; to INT St. Petersburg 111° and Lakeland, FL, 142° radials.

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V–511 [Revised]

From Lakeland, FL; INT Lakeland 142° and Pahokee, FL, 204° radials.

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V–529 [Revised]

From INT Miami, FL, 222° and La Belle, FL, 158° radials; to La Belle.

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Section 71.607 Jet Routes

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J–53 [Revised]

From INT Palm Beach, FL, 247° and Orlando, FL, 160° radials; Orlando; Craig, FL; INT Craig 347° and Colliers, SC, 174° radials; Colliers; Spartanburg, SC; Pulaski, VA; INT of Pulaski 015° and Ellwood City, PA, 177° radials; to Ellwood City.

* * * * *

J–58 [Revised]

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Amarillo, TX; Wichita Falls, TX; Dallas-Fort Worth, TX; Alexandria, LA; INT of the Alexandria 126° and the New Orleans, LA, 295° radials; New Orleans; INT of Grand Isle, LA, 104° and Crestview, FL, 201° radials; INT of Grand Isle 104° and Sarasota, FL, 286° radials; Sarasota; Lee County, FL; to the INT Lee County 118° and Palm Beach, FL, 184° radials.

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J–75 [Revised]

From INT Palm Beach, FL, 184° and Lee County, FL, 118° radials; Lee County; INT Lee County 340° and Taylor, FL, 176° radials; Taylor; INT Taylor 019° and Columbia, SC, 203° radials; Columbia; Greensboro, NC; Gordonsville, VA; INT Gordonsville 040° and Modena, PA, 231° radials; Modena; Solberg.

NJ; Carmel, NY; INT Carmel 045° and Boston, MA, 252° radials; to Boston.

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Issued in Washington, DC, on December 16, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-31240 Filed 12-23-92; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 785, 786 and 799

[Docket No. 910813 2323]

Administrative Exceptions and Favorable Consideration Treatment for Country Group W; Telecommunications Equipment for Country Groups Q and Y; Revisions, Clarifications, and Corrections to the Commerce Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule adds a number of Advisory Notes to the CCL that identify those items that are eligible for administrative exceptions treatment or favorable consideration treatment for exports to Country Group W (*i.e.*, Czechoslovakia and Poland). The Supplementary Information section of this rule identifies a number of items controlled by the telecommunications entries in Category 5 that are eligible for administrative exceptions treatment to Country Groups QWY, effective July 1, 1992. This rule also adds new Export Control Classification Numbers (ECCNs) and revises other ECCN's to clarify the licensing requirements that apply to exports of software and technology. A number of ECCNs are revised and new ECCNs are added to clarify existing foreign policy controls on exports of software and technology to Iran and Syria.

Other ECCNs and related Advisory Notes are revised to clarify when certain items are eligible for export under General License GFW, and a number of ECCNs have been revised to correct typographical errors that appeared in the interim rule that was published in the **Federal Register** on August 29, 1991 (56 FR 42824).

Finally, this rule revises the instructions for completing the Shipper's Export Declaration by requiring exporters to designate the Export Control Classification Number in the appropriate space on the SED when shipping under General Licenses GFW and GCT, as well as GLV.

The result of these extensive revisions to the CCL will be to slightly increase the number of export license applications, and increase the number of items that will likely be approved for export to Country Groups QWY and the PRC.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT:

For questions of a technical nature, the following persons in the Office of Technology and Policy Analysis are available:

Category 1:—Jeff Tripp—(202) 482–1309
Category 2:—Surendra Dhir—(202) 482–5695
Category 3:—Jerald Beiter—(202) 482–1641
Category 4:—Randolph Williams—(202) 482–0708
Category 5:—Dale Jensen—(202) 482–0730
Category 6:—Joseph Chuchla—(202) 482–1641
Categories 7 and 9:—Bruce Webb—(202) 482–3806
Category 8:—Steve Clagett—(202) 482–3550

SUPPLEMENTARY INFORMATION:

Background

This rule adds to the Commerce Control List (CCL) a number of Advisory Notes that provide administrative exceptions treatment or favorable consideration treatment for exports to Country Group W (Czechoslovakia and Poland). These Advisory Notes significantly increase the number of items eligible for administrative exceptions treatment and favorable consideration treatment to Country Group W. Every category on the CCL is affected by this change, except Category 5 (Telecommunications and "information security"), which already contains Advisory Notes for Country Group W, and Category 10 (Miscellaneous). Section 785.2(c) is revised to remove all references to the "Group W Favorable Consideration" paragraphs, since the Advisory Notes that are found in each Category of the CCL now describe which items are eligible for favorable consideration treatment for exports to Country Group W.

The number of items eligible for administrative exceptions treatment to the People's Republic of China is also expanded. Category 4 (Computers) is revised to add an Advisory Note that provides administrative exceptions treatment for exports to the People's Republic of China of certain digital computers and related equipment. Two Advisory Notes are added in the telecommunications section of Category 5 (Telecommunications and "Information Security") to provide administrative exceptions treatment for exports to the People's Republic of China of certain repair facilities for stored program controlled communication switching equipment and certain semiconductor lasers for civil fiber optic communications systems. This rule also amends Category 5 to add an Advisory Note that provides administrative exceptions treatment for exports of certain telecommunications items to the Baltic states (Estonia, Latvia, and Luthuania)

This rule also adds new administrative exceptions procedures for the export of certain Category 5 telecommunications items to Country Groups QWY, established by the Coordinating Committee for Multilateral Export Controls (COCOM) at the June 1992 High-Level meeting. Effective July 1, 1992, the Office of Export Licensing began reviewing license applications to export certain telecommunications items according to these new procedures. Administrative exceptions treatment applies for the following telecommunications items up to the limits and under the conditions described below. Exporters are advised to consult the referenced Advisory Notes for a complete description of all conditions for consideration under this treatment.

A. International links to the West (Advisory Note 19)

For fiber-optic telecommunications transmission systems connecting specific proscribed-country destinations to the West, operating at a "digital transfer rate" at the highest multiplex level that does not exceed 623 Mbit/s, and using optical fibers optimized to operate at a wavelength not exceeding 1,590 nm, and for coaxial cable transmission systems designed to operate at a "digital transfer rate" at the highest multiplex level of 623 Mbit/s or less;

B. Inter-city and Intra-city Domestic links (Advisory Note 20)

1. For optical telecommunication transmission systems, operating at a "digital transfer rate" at the highest multiplex level that does not exceed 156 Mbit/s and using optical fibers

optimized to operate at a wavelength not exceeding 1,590 nm;

2. For microwave transmission systems, operating at a "digital transfer rate" at the highest multiplex level that does not exceed 156 Mbit/s, and employing quadrature amplitude modulation (QAM) techniques not exceeding 16 QAM;

3. For coaxial cable transmission systems, operating at a "digital transfer rate" at the highest multiplex level that does not exceed 156 Mbit's.

C. Procedures Governing International "Common Channel Signalling" (Advisory Note 21)

1. The locations are the same as those for international links;

2. Associated mode of "common channel signalling" only will be allowed;

3. Only East-West international traffic will be permitted (i.e., calls originating in a COCOM-proscribed country will not be rerouted to any COCOM proscribed destination);

4. The "integrated services digital network" (ISDN) user part may be used on the international signalling link, but no general ISDN services shall be provided by the Eastern gateway switch.

D. Data Transmission Protocols

The functions of routing or switching of "fast select" and "datagrams", and "dynamic adaptive routing" for packet switches (Advisory Note 22).

Additional licensing conditions to prevent unauthorized use or diversion also apply.

This rule also amends the Advisory Notes section of Category 6 by renumbering some notes, revising others, and adding Advisory Notes 12 through 22. In Category 7, two new Advisory Notes are added, and in Category 8, the existing Advisory Note was renumbered and two new Advisory Notes were added.

This rule also amends a number of ECCNs to make them conform to corresponding items on the International Industrial List, the International Atomic Energy List, and the International Munitions List. ECCNs 1A02A, 1C10A, and 1E02A are amended to add notes indicating that these entries do not control certain carbon fibrous or filamentary materials, epoxy resins, and related technology for the repair of certain aircraft structures or laminates. ECCN 2A19.c is revised to control certain valves that are 40 mm or more in diameter, and the Advisory Note that formerly applied to valves controlled by 2A19.c is removed, thereby eliminating CFW eligibility for these valves. In Category 4, ECCN 4A03A is revised to correctly redesignate 4A03.f through 4A03.i, and Advisory Notes 4 and 5 (previously Advisory Notes 2 and 3) are revised to reflect the redesignated paragraphs in 4A03A. In Category 5 (telecommunications), ECCN 5A02A is revised by adding a new note. In Category 9, ECCNs 9D01A, 9D02A, 9E01A, and 9E02A are revised to remove controls on software and technology for items controlled by ECCN 9A18A. Software and technology for items described in ECCN 9A18A are now controlled under ECCNs 9D18A and 9E18A, respectively.

This rule revises a number of entries and adds new entries to the CCL to clarify the foreign policy-based validated licensing requirements that apply to exports of certain items to Iran and/or Syria. The changes made by this rule complete implementation of the controls on exports to Iran and Syria established in the August 29, 1991 (56 FR 42824), interim rule that revised and renamed the Commodity Control List (now the Commerce Control List). This rule adds the following software and technology entries for Iran and/or Syria: 1D93F, 1D94F, 1E94F, 2D92F, 2D93F, 2D94F, 2E93F, 2E94F, 3D94F, 3E94F, 4D94F, 4E94F, 5D91F, 5E91F, 6D90F, 6D92F, 6D93F, 6D94F, 6E90F, 6E92F, 6E93F, 6E94F, 9D90F, 9D91F, 9D93F, 9E90F, 9E91F, and 9E93F. This rule also revises a number of Iran/Syria software and technology entries, including the following ECCNs: 5D92F, 5D93F, 5D94F, 5D95F, 5E92F, 5E93F, 5E94F, 5E95F, 7D94F, 7E94F, 8A94F, and 9D94F, and 9E94F. ECCNs 3D91F and 3E91F are removed because the items previously controlled by these entries are now included in new ECCNs 3D94F and 3E94F.

The changes made by this rule also clarify which commodities are subject to foreign policy-based export controls on Iran and/or Syria. Certain telecommunications test equipment previously controlled under ECCN 5A92F is moved to new ECCN 5B94F. ECCN 6A91F is removed because its controls overlap with those of ECCN 6A94F, and ECCN 6A94F is revised to remove certain airborne radar equipment also controlled by ECCN 6A90F. ECCN 8A94F is revised to clarify which commodities are controlled by the entry. ECCN 9A90F is added to control diesel engines for trucks, tractors, and automotive applications and pressurized aircraft breathing equipment previously controlled by ECCN 9A94F, while ECCN 9A94F is revised to control certain aircraft parts and components only. Marine engines and boats previously controlled by 9A94F are now controlled by ECCN 8A94F only.

This rule also adds a new ECCN 3A22B to control radiographic equipment (linear accelerators) previously controlled under ECCN 9B27B. In addition, new ECCNs 3D22B and 3E22B are added to control software and technology for this equipment. These items are subject to the foreign policy controls on missiles described in § 778.7(a). This change is made to ensure consistency of controls on accelerators. Certain pulsed electron accelerators that are currently controlled under ECCN 2A54B for nuclear nonproliferation reasons will be moved to Category 3 during an upcoming revision of CCL entries that are subject to nuclear nonproliferation controls. ECCN 3A51B, which controls mass spectrometers, is revised to more accurately reflect those items that are of concern for nuclear nonproliferation reasons.

This rule also revises many of the software and technology entries on the CCL to clarify which items and destinations are eligible for General License GTDR/GTDU. ECCNs 3D80C and 3E80C, which control software and technology for equipment controlled by 3A80C or 3A81C (*i.e.*, voice print identification and analysis equipment, polygraphs, fingerprint analyzers, automated fingerprint and identification systems, psychological stress analysis equipment, and electronic monitoring restraint devices), are revised to permit shipments under General License GTDU to Australia, Japan, New Zealand, and members of NATO only. ECCN 4D03A is revised to indicate that software controlled by 4D03.e (*i.e.*, software having characteristics or performing functions exceeding the limits specified in the information security entries in Category 5) is not eligible for shipment under General License GTDR.

In Category 5, EECNs 5D11A and 5D13A are revised to clarify that General License GTDR is available for shipments of software that meets the requirements of information security Advisory Note 5. This Advisory Note 5 is also revised to indicate that GTDR shipments are allowed to all eligible destinations, and are not limited to Austria, Finland, Ireland, Switzerland, and members of COCOM. In addition, Advisory Notes 3 and 4 to the information security entries in Category 5 are revised to indicate that General License GFW is available for shipments of equipment that meets the requirements of these notes.

ECCN 4A80C is created to maintain foreign policy-based validated licensing requirements on computerized

fingerprint equipment and on computers for computerized fingerprint equipment that are not controlled by ECCN 4A03A. Software and technology for the items described in 4A80C are controlled by new ECCNs 4D80C and 4E80C, respectively.

A number of CCL entries are also revised to correct typographical errors or omissions contained in the August 29, 1991, interim rule. Most notable among these are the corrections to ECCN 2B51B, which is revised to add a list of controlled items that was inadvertently omitted in the August 29, 1991, rule.

Finally, this rule amends the instructions for completing the Shipper's Export Declaration by requiring exporters to designate the Export Control Classification Number in the appropriate space on the SED when shipping under General Licenses GFW and GCT, as well as GLV.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves several collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) that have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, 0694–0013, 0694–0021, 0694–0023, and 0607–0018. This rule also contains several new reporting and recordkeeping requirements that are being submitted for approval by the Office of Management and Budget under the Paperwork Reduction Act. Public burden for the new requirements varies depending on the requirement and is estimated to average between 1 minute and 2 hours. This includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—(Attn: Paperwork Reduction Project (0694–0005 and 0694–XXXX).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 785

Communist countries, Exports.

15 CFR Parts 771, 786, and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771, 785, 786, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 785 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (5 FR 53979, November 13, 1992).

2. The authority citation for 15 CFR parts 771, 786, and 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 28, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (56 FR 53979, November 13, 1992).

PART 771—[AMENDED]

3. Section 771.23 is amended by adding a new paragraph (d) to read as follows:

§ 771.23 General license GFW; low-level exports to certain countries.

* * * * *

(d) *Special provision.* In addition to the general license designation GFW, the Export Control Classification Number, which in this case identifies a commodity that is eligible to be shipped under General License GFW, shall be shown in parentheses immediately below the Schedule B Number on the SED.

4. Section 771.25 is amended by adding a sentence to the end of paragraph (f)(1) to read as follows:

§ 771.25 General license GCT.

* * * * *

(f) * * *

(1) * * * In addition to the general license designation GCT, the Export Control Classification Number, which in this case identifies a commodity that is eligible to be shipped under General License GCT, shall be shown in parentheses immediately below the Schedule B Number on the SED.

PART 785—[AMENDED]

5. Section 785.2(c) is revised to read as follows:

§ 785.2 Country Groups Q, W, and Y [1]; Geographic area of the former U.S.S.R., Eastern Europe, Mongolian People's Republic, Cambodia, and Laos.

* * * * *

(c) *Country Group W: Favorable consideration policy.* The countries of

[1] See Supplement No. 1 to part 770 for listing of Country Groups.

Czechoslovakia and Poland (Country Group W) have been determined to present a lesser strategic threat, and have adopted safeguard measures to protect against the diversion of COCOM-controlled commodities and technical data. In recognition of these facts, and consistent with COCOM agreement, most exports of COCOM-controlled items to Czechoslovakia and Poland are processed at national discretion, without referral to COCOM, as described in the Advisory Notes indicating likelihood of approval. Certain other items are described in Advisory Notes that indicate favorable consideration for export to satisfactory end-users in Country Group W. Items not eligible for national discretion or favorable consideration will be reviewed in accordance with the general exceptions policy described in paragraph (a) of this section.

6. Section 785.4 is amended by revising the first sentence in paragraph (d)(5) to read as follows:

§ 785.4 Country groups T & V.

* * * * *

(d) * * *

(5) The reexport provisions of part 774 and the parts and components provisions of § 776.12 do not apply to the foreign policy controls on Iran, in paragraph (d)(1) of this section, for ECCNs, 2A94, 3A93, 5A92, 5A95, 6A90, 6A94, 7A94, 8A92, 8A94, 9A90, 9A92, and 9A94. * * *

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PART 786—[AMENDED]

7. Section 786.3 is amended by revising the phrase "General License GLV" in paragraph (j)(2) to read "General Licenses GLV, GFW, or GCT".

PART 799—[Amended]

Supplement No. 1 to § 799.1—[Amended]

Make the following amendments to Supplement No. 1 to § 799.1:

1. In Category 1 , ECCN 1A02A is revised to read as follows:

1A02A "Composite" structures or laminates.

Requirements

Validated License Required: QSTVWYZ
Unit: Kilograms
Reason for Control: NS, MT (see Note)
GLV: $1,500
GCT: Yes, except MT (see Note)
GFW: No

Note: MT controls apply to composite structures that are specially designed for military, stealth, or space applications.

List of Items Controlled

a. Having an organic "matrix" and made from materials embargoed by 1C10.c, d or e; *or*

b. Having a metal or carbon "matrix" and made from:

b.1. Carbon "fibrous and filamentary materials" with:

b.1.a. A "specific modulus" exceeding 10.15×10^6 m; *and*

b.1.b. A "specific tensile strength" exceeding 17.7×10^4 m; *or*

b.2. Materials controlled by 1C10.c;

Technical Notes:

1. Specific modulus: Young's modulus in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2)° C) and a relative humidity of (50±5)%.

2. Specific tensile strength: ultimate tensile strength in pascals, equivalent to N/M^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2)° C) and a relative humidity of (50±5)%.

Note: 1A02A does not control composite structures or laminates made from epoxy resin impregnated carbon "fibrous or filamentary materials" for the repair of aircraft structures or laminates, provided that the size does not exceed one square meter.

2. In Category 1, ECCN 1A49E is revised to read as follows:

1A49E Tantalum sheet of 20 centimeter diameter or greater (or other shapes from which a 20 centimeter diameter circle can be cut) with a thickness of 2.5 millimeters or greater.

Requirements

Validated License Required: SZ, Taiwan, Supp. 4 to Part 778
Unit: Kilograms
Reason for Control: NP
GLV: $1,000
GCT: No
GFW: No

3. In Category 1, ECCN 1B01A is amended by revising the Requirements section to read as follows:

1B01A Equipment for the production of fibers, prepregs, preforms or composites controlled by 1A02 or 1C10, as follows, and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, NP (see Note)
GLV: $5,000
GCT: Yes, except MT (see Note)
GFW: No

Note: MT controls apply, except to 1B01.d.4. NP controls apply to filament winding machines described in 1B01.a that are capable of winding cylindrical rotors having a diameter between 3 inches and 16 inches and a length of 24 inches or greater.

* * * * *

4. In Category 1, ECCN 1B51E is amended by revising the heading of the entry to read as follows:

1B51E Instruments capable of measuring pressures up to 3×10^5 newtons per square meter (44 PSIA) to an accuracy of better than 1%, with corrosion-resistant pressure sensing elements constructed of nickel, nickel alloys, phosphor bronze, stainless steel, aluminum, or aluminum alloys, and such pressure sensing elements if supplied separately.

* * * * *

5. In Category 1, ECCN, 1C10A is amended by revising the List of Items Controlled to read as follows:

1C10A "Fibrous and filamentary materials" that may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminates.

* * * * *

List of Items Controlled

a. Organic "fibrous and filamentary materials", *except* polyethylene, with:

a.1. A "specific modulus" exceeding 12.7×10^6 m; *and*

a.2. A "specific tensile strength" exceeding 23.5×10^4 m;

b. Carbon "fibrous and filamentary materials" with:

b.1. A "specific modulus" exceeding 12.7×10^6 m; *and*

b.2. A "specific tensile strength" exceeding 23.5×10^4 m;

Technical Note: Properties for materials described in 1C10.b should be determined using SACMA recommended methods SRM 12 to 17, or national equivalent tow tests, such as Japanese Industrial Standard JIS–R–7601, Paragraph 6.6.2., and based on lot average.

Note: 1C10.b does not control fabric made from "fibrous or filamentary materials" for the repair of aircraft structures or laminates, in which the size of individual sheets does not exceed 50 cm x 90 cm.

c. Inorganic "fibrous or filamentary materials" with:

c.1. A "specific modulus" exceeding 2.54×10^6 m; *and*

c.2. A melting, decomposition or sublimation point exceeding 1,922 K (1,649° C) in an inert environment; *except*

c.2.a. Discontinuous, multiphase, polycrystalline alumina fibers in chopped fiber or random mat form, containing 3 weight percent or more silica, with a "specific modulus" of less than 10×10^6 m;

c.2.b. Molybdenum and molybdenum alloy fibers;

c.2.c. Boron fibers;

c.2.d. Discontinuous ceramic fibers with a melting, decomposition or

sublimation point lower than 2,043 K (1,770°C) in an inert environment;

d. "Fibrous or filamentary materials":

d.1. composed of any of the following:

d.1.a. Polyetherimides controlled by 1C08.a; *or*

d.1.b. Materials controlled by 1C08.b, .c, .d, .e, or .f; *or*

d.2. Composed of materials controlled by 1C10.d.1 .a or .b and "commingled" with other fibers controlled by 1C10.a, .b, or .c;

e. Resin- or pitch-impregnated fibers (prepregs), metal or carbon-coated fibers (preforms) or "carbon fiber preforms", as follows:

e.1. Made from "fibrous or filamentary materials" controlled by 1C10.a, .b, or .c; *or*

e.2. Made from organic or carbon "fibrous or filamentary materials":

e.2.a. With a "specific tensile strength" exceeding 17.7×10^4 m;

e.2.b. With a "specific modulus" exceeding 10.15×10^6 m;

e.2.c. Not controlled by 1C10.a or .b; *and*

e.2.d. When impregnated with materials controlled by 1C08 or 1C09.b, or with phenolic or epoxy resins, having a glass transition temperature (T_g) exceeding 383 K (110°C);

Note: 1C10.e does not control epoxy resin matrix impregnated carbon "fibrous or filamentary materials" (prepregs) for the repair of aircraft structures or laminates, in which the size of individual sheets of prepreg does not exceed 50 cm x 90 cm.

7. In Category 1, new ECCNs 1D93F and 1D94F are added immediately following ECCN 1D60C to read as follows:

1D93F "Software" specially designed for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C50E.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1D94F "Software" specially designed for the "development" or "production" of fluorocarbon electronic cooling fluids controlled by 1C94F.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8. In Category 1, ECCN 1E02A is amended by revising the List of Items Controlled to read as follows:

1E02A Other technology.

* * * * *

List of Items Controlled

a. Technology for the "development" or "production" of polybenzothiazoles or polybenzoxazoles;

b. Technology for the "development" or "production" of fluoroelastomer compounds containing at least one vinylether monomer;

c. Technology for the design or "production" of the following base materials or non-"composite" ceramic materials:

c.1. Base materials having all the following characteristics:

c.1.a. Any of the following compositions:

c.1.a.1. Single or complex oxides of zirconium and complex oxides of silicon or aluminum;

c.1.a.2. Single nitrides of boron (cubic crystalline forms);

c.1.a.3. Single or complex carbides of silicon or boron; *or*

c.1.a.4. Single or complex nitrides of silicon;

c.1.b. Total metallic impurities, excluding intentional additions, of less than:

c.1.b.1. 1,000 ppm for single oxides or carbides; *or*

c.1.b.2. 5,000 ppm for complex compounds or single nitrides; *and*

c.1.c.1. Average particle size equal to or less than 5 micrometer and no more than 10 percent of the particles larger than 10 micrometer; *or*

N.B.: For zirconia, these limits are 1 micrometer and 5 micrometer respectively;

c.1.c.2.a. Platelets with a length to thickness ratio exceeding 5;

c.1.c.2.b. Whiskers with a length to diameter ratio exceeding 10 for diameters less than 2 micrometer; *and*

c.1.c.2.c. Continuous or chopped fibers less than 10 micrometer in diameter.

c.2. Non-"composite" ceramic materials, *except* abrasives, composed of the materials described in 1E02.c.1;

d. Technology for the "production" of aromatic polyamide fibers;

e. Technology for the installation, maintenance or repair of materials controlled by 1C01.;

f. Technology for the repair of "composite" structures, laminates or materials controlled by 1A02, 1C07.c, or 1C07.d.

Note: 1E02.f does not control technology for the repair of "civil aircraft" structures using carbon "fibrous or filamentary materials" and epoxy resins, contained in aircraft manufacturers' manuals.

9. In Category 1, ECCN 1E70E is revised, a new ECCN 1E94F is added immediately following ECCN 1E70E, and ECCN 1E96G is revised, as follows:

1E70E Technology for the production of commodities described in ECCNs 1B70, 1B71, 1C64, or 1C65 (equipment that can be used in the production of chemical warfare agents or their precursors, or of biological agents).

Requirements

Validated License Required: SZ, Supplement No. 5 to Part 778
Reason for Control: CB
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1E94F Technology for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C50E or fluorocarbon electronic cooling fluids controlled by 1C94F.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1E96G Other technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 1.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

10. In Category 1, the heading "Notes for Category 1" and a new Advisory Note are added immediately following ECCN 1E96G, as follows:

Notes for Category 1

Advisory Note: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 1 for national security reasons, *except:*

a. "Composite" structures or laminates controlled by 1A02.a, when specially designed for stealth or space applications, or by 1A02.b;

b. Filament winding machines controlled by 1B01.a;

c. Tape-laying machines controlled by 1B01.b;

d. "Fibrous or filamentary materials" controlled by 1C10.a, 1C10.c, 1C10.d, or 1C10.e;

e. "Software" specially designed and technology "required" for the equipment or

materials described in this Advisory Note that are controlled for national security reasons by Category 1D or 1E.

11. In Category 2, ECCN 2A19A is amended by revising the Requirements section and the List of Items Controlled and by removing Advisory Notes 1, 2, and 3, as follows:

2A19A Commodities on the International Atomic Energy List.

Requirements

Validated License Required: QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NS and NP
GLV: $500: 2A19.a; $0: 2A19.b and c
GCT: No
GEN: No

List of Items Controlled

a. Power generating and/or propulsion equipment specially designed for use with military nuclear reactors;

Note 1: 2A19.a does not control conventional power generating equipment that, although designed for use in a particular nuclear station, could in principle be used in conjunction with conventional systems.

Note 2: 2A19.a does not affect the controls maintained by the Office of Defense Trade Controls, Department of State, as indicated in ITAR Category VI, Part e.

b. Neutron generator systems, including tubes, designed for operation without an external vacuum system, and utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction, and specially designed parts therefor;

Technical Note: Specially designed parts controlled under 2A19.b include deuterated and/or tritiated sources and targets.

c. Valves, specially designed or prepared for gaseous diffusion separation process, that are wholly made of or lined with aluminum, aluminum alloys, nickel, or alloy containing 60 percent or more nickel, 40 mm or more in diameter, with bellows seals, and specially designed parts and accessories therefor.

12. In Category 2, ECCN 2A54B is amended by revising the List of Items Controlled to read as follows:

2A54B Electron accelerators.

* * * * *

List of Items Controlled

Pulsed electron accelerators with a peak energy of 500 keV (thousand electron volts) or greater, as follows, except accelerators that are component parts of devices designed for purposes other than electron beam or x-ray radiation (e.g., electron microscopy), that:

a. Have an accelerator peak electron energy of 500 keV or greater, but less than 25 MeV (million electron volts), and with a figure of merit (K) of 0.25 or greater:

a.1. Where K is defined as: $K = 1.7 \times 10^3 V^{2.65} Q$;

a.2. Where V is the peak electron energy in megavolts; and

a.3. Where Q is:

a.3.a. The total accelerated charge in coulombs, if the accelerator beam pulse duration is less than or equal to 1 microsecond;

a.3.b. The maximum accelerated charge in 1 microsecond, if the accelerator beam pulse duration is greater than 1 microsecond;

Note: Q equals the integral of "i" with respect to "t", over the lesser of 1 microsecond or the time duration of the beam pulse ($Q = \int i dt$), where "i" is beam current in amperes and "t" is time in seconds.

b. Have an accelerator peak electron energy of 25 MeV or greater and a peak power greater than 50 MW.

Note: Peak power=(peak potential in volts)x(peak beam current in amperes).

Technical Note: The formula for "K" can be expressed as a table that shows the accelerated charge "Q", which is related to a specific energy "V" for K=0.25. Any device for which "Q" exceeds the value in the table is subject to control under this ECCN 2A54B.

V (MeV)	Q (coulomb)
0.50	920.0×10^{-6}
0.75	320.0×10^{-6}
1.0	150.0×10^{-6}
3.0	8.0×10^{-6}
5.0	2.0×10^{-6}
8.0	0.6×10^{-6}
10.0	0.3×10^{-6}
15.0	0.1×10^{-6}
20.0	0.05×10^{-6}
25.0	0.03×10^{-6}

13. In Category 2, ECCN 2B01A is amended by revising the List of Items Controlled to read as follows:

2B01A "Numerical control" units, "motion control boards" specially designed for "numerical control" applications on machine tools, machine tools, and specially designed components therefor.

* * * * *

List of Items Controlled

Technical Notes: 1. Secondary parallel contouring axes, e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis, are not counted in the total number of contouring axes.

Note: Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device, e.g., a screw or a rack-and-pinion.

2. Axis nomenclature shall be in accordance with International Standard ISO 841, "Numerical Control Machines—Axis and Motion Nomenclature".

a. "Numerical control" units for machine tools, as follows, and specially designed components therefor:

a.1. Having more than four interpolating axes that can be coordinated simultaneously for "contouring control"; *or*

a.2. Having two, three or four interpolating axes that can be coordinated simultaneously for "contouring control" and:

a.2.a. Capable of "real-time processing" of data to modify, during the machining operation, tool path, feed rate and spindle data by either:

a.2.a.1. Automatic calculation and modification of part program data for machining in two or more axes by means of measuring cycles and access to source data; *or*

a.2.a.2. "Adaptive control" with more than one physical variable measured and processing by means of a computing model (strategy) to change one or more machining instructions to optimize the process;

a.2.b. Capable of receiving directly (on-line) and processing computer-aided-design (CAD) data for internal preparation of machine instructions; *or*

a.2.c. Capable, without modification, according to the manufacturer's technical specifications, of accepting additional boards which would permit an increase above the control levels specified in 2B01, in the number of interpolating axes that can be coordinated simultaneously for "contouring control", even if they do not contain these additional boards;

Note: 2B01.a does not control "numerical control" units if:

a. Modified for and incorporated in uncontrolled machines; *or*

b. Specially designed for uncontrolled machines.

b. "Motion control boards" specially designed for machine tools and having any of the following characteristics:

b.1. Interpolation in more than four axes;

b.2. Capable of "real time processing" as described in 201.a.2.a; or

b.3. Capable of receiving and processing CAD data as described in 2B01.a.2.b;

c. Machine tools, as follows, for removing or cutting metals, ceramics or composites, that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous "contouring control" in two or more axes:

c.1. Machine tools for turning, grinding, milling or any combination thereof that:

c.1.a. Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*

c.1.b. Have any of the following characteristics:

c.1.b.1. Two or more contouring rotary axes;

Technical Note: The c-axis on jig grinders used to maintain grinding wheels normal to the work surface is not considered a contouring rotary axis.

c.1.b.2. One or more contouring "tilting spindles";

Note: 2B01.c.1.b.2. applies to machine tools for grinding or milling only.

c.1.b.3. "Camming" (axial displacement) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

Note: 2B01.c.1.b.3. applies to machine tools for turning only.

c.1.b.4. "Run out" (out-of-true running) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

c.1.b.5. The "positioning accuracies", with all compensations available, are less (better) than:

c.1.b.5.a. 0.001° on any rotary axis; *or*

c.1.b.5.b.1. 0.004 mm along any linear axis (overall positioning) for grinding machines;

c.1.b.5.b.2. 0.006 mm along any linear axis (overall positioning) for turning or milling machines; *or*

Note: 2B01c.1.b.5 does not control milling or turning machine tools with a positioning accuracy along one axis, with all compensations available, equal to or greater (worse) than 0.005 mm.

Technical Note: The positioning accuracy of "numerically controlled" machine tools is to be determined and presented in accordance with ISO/DIS 230/2, paragraph 2.13, in conjunction with the requirements below:

a. Test conditions (paragraph 3):

1. For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the premeasurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

2. The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

3. Accuracy of measuring equipment for the measurements shall be at least four times more accurate than the expected machine tool accuracy;

4. Power supply for slide drives shall be as follows;

a. Line voltage variation shall not exceed ± 10% of nominal rated voltage;

b. Frequency variation shall not exceed ± 2 Hz of normal frequency;

c. Linecuts or interrupted service are not permitted.

b. Test program (paragraph 4):

1. Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

Note: In the case of machine tools that generate optical quality surfaces, the feedrate shall be equal to or less than 50 mm per minute.

2. Measurements shall be made in an incremental manner from one limit of the axis travel to the other without retiring to the starting position for each move to the target position;

3. Axes not being measured shall be retained at mid travel during test of an axis.

c. Presentation of test results (paragraph 2): The results of the measurement must include:

1. Positioning accuracy (A); *and*

2. The mean reversal error (B).

c.1.b.6. A "positioning accuracy" less (better) than 0.007 mm; *and*

c.1.b.6.b. A slide motion from rest for all slides within 20% of a motion command input for inputs or less than 0.5 micrometer;

Technical Note: Minimum increment of motion test (slide motion from rest): The test is conducted only if the machine tool is equipped with a control unit the minimum increment of which is less (better) than 0.5 micrometer. Prepare the machine for testing in accordance with ISO 230.2 paragraphs 3.1, 3.2, 3.3. Conduct the test on each axis (slide) of the machine tool as follows:

1. Move the axis over at least 50% of the maximum travel in plus and minus directions twice at maximum feed rate, rapid traverse rate or jog control;

2. Wait at least 10 seconds;

3. With manual data input, input the minimum programmable increment of the control unit;

4. Measure the axis movement;

5. Clear the control unit with the servo null, reset or whatever clears any signal (voltage) in the servo loop;

6. Repeat steps 2 to 5 five times, twice in the same direction of the axis travel and three times in the opposite direction of travel for a total of six test points;

7. If the axis movement is between 80% and 120% of the minimum programmable input for four of the six test points, the machine is controlled. For rotary axes, the measurement is taken 200 mm from the center of rotation.

Note 1: 2B01.c.1 does not control cylindrical external, internal, and external-internal grinding machines having all of the following characteristics:

a. Not centerless (shoe-type) grinding machines;

b. Limited to cylindrical grinding;

c. A maximum workpiece outside diameter or length of 150 mm;

d. Only two axes which can be coordinated simultaneously for "contouring control"; *and*

e. No contouring c axis.

Note 2: 2B01.c.1 does not control machines designed specifically as jig grinders having both of the following characteristics:

a. Axes limited to x, y, c and a, where the c-axis is used to maintain the grinding wheel normal to the work surface and the a-axis is configured to grind barrel cams; *and*

b. A spindle "run out" not less (not better) than 0.0006 mm.

Note 3: 2B01.c.1 does not control tool or cutter grinding machines having all of the following characteristics:

a. Shipped as a complete system with "software" specially designed for the production of tools or cutters;

b. No more than two rotary axes that can be coordinated simultaneously for "contouring control";

c. "Run out" (out-of-true running) in one revolution of the spindle not less (not better) than 0.0006 mm total indicator reading (TIR) *and*

d. The "positioning accuracies", with all compensations available, are not less (not better) than:

1. 0.004 mm along any linear axis for overall positioning; *or*

2. 0.001° on any rotary axis.

c.2. Electrical discharge machines (EDM) of the wire feed type that have five or more axes that can be coordinated simultaneously for "contouring control";

c.3. Electrical discharge machines (EDM) of the non-wire type that have two or more rotary axes that can be coordinated simultaneously for "contouring control";

c.4. Machine tools for removing metals, ceramics or composites;

c.4.a. By means of:

c.4.a.1. Water or other liquid jets, including those employing abrasive additives;

c.4.a.2. Electron beam; *or*

c.4.a.3. "Laser" beam; *and*

c.4.a. Having two or more rotary axes that:

c.4.b.1. Can be coordinated simultaneously for "contouring control"; *and*

c.4.b.2. Have a "positioning accuracy" of less (better) than 0.0003°.

14. In Category 2, ECCN 2B05A is amended by revising the Requirements section and ECCN 2B06A is revised to read as follows:

2B05A Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications, as follows, for non-electronic substrates, by processes shown in the Table and associated Notes following 2E03.d and specially designed automated handling, positioning, manipulation and control components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GLV: $1,000
GCT: Yes
GFW: No

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2B06A Dimensional inspection or measuring systems or equipment.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS and NP (see Note)

GLV: $5,000
GCT: Yes
GFW: 2B06.b.1 only

Note: NP controls apply, for all countries except countries listed in supp. 2 to part 773 of this subchapter, to items described in 2B06.b and c.

List of Items Controlled

a. Computer controlled, "numerically controlled" or "stored program controlled" dimensional inspection machines, having both of the following characteristics:

a.1. Two or more axes; *and*

a.2. A one dimensional length "measurement uncertainty" equal to or less (better) than (1.25 + L/1,000) micrometer tested with a probe with an "accuracy" of less (better) than 0.2 micrometer (L is the measured length in mm);

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear measuring instruments having any of the following characteristics:

b.1.a. Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 micrometer within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems with both of the following characteristics:

b.1.b.1. "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ±1 K; *or*

b.1.c. Measuring systems having both of the following characteristics:

b.1.c.1. Containing a "laser"; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ±1 K around a standard temperature and at a standard pressure:

b.1.c.2.a. A "resolution" over their full scale of 0.1 micrometer or less (better); *and*

b.1.c.2.b. A "measurement uncertainty" equal to or less (better) than (0.2 + L/2,000) micrometer (L is the measured length in mm);

b.2. Angular measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025°;

Note: 2B06.b.2 does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

c. Systems for simultaneous linear-angular inspection of hemishells, having both of the following characteristics:

c.1. "Measurement uncertainty" along any linear axis equal to or less (better) than 3.5 micrometer per 5 mm; *and*

c.2. "Angular position deviation" equal to or less (better) than 0.02°;

d. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better);

Technical Notes: 1. Machine tools that can be used as measuring machines are controlled if they meet or exceed the criteria specified for the machine tool function or the measuring machine function.

2. A machine described in 2B06 is controlled if it exceeds the control threshold anywhere within its operating range.

3. The probe used in determining the "measurement uncertainty" of a dimensional inspection system shall be as described in VDI/VDE 2617 Parts 2, 3, and 4.

4. All measurement values in 2B06 represent permissible positive and negative deviations from the target value, i.e., not total band.

15. In Category 2, ECCN 2B24B is amended by revising the heading of the entry to read as follows:

2B24B "Isostatic presses" capable of achieving a maximum working pressure of 10,000 psi (69 MPa) or greater and having a chamber cavity with an inside diameter in excess of 152 mm (6 inches) and specially designed dies and molds, components, accessories, and controls therefor.

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16. In Category 2, ECCN 2B51B is revised to read as follows:

2B51B Centrifuge rotor assembly and straightening equipment and bellows-forming mandrels and dies.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: No
GCT: No
GFW: No

List of Items Controlled

a. Rotor assembly equipment for the assembly of gas centrifuge rotor tube sections, baffles, and end caps. Such equipment includes specially designed precision mandrels, clamps, and shrink fit machines.

b. Rotor straightening equipment for alignment of gas centrifuge rotor tube sections to a common axis. Normally, such equipment will consist of precision measuring probes linked to a computer that subsequently controls the action of pneumatic rams, for example, that are used for aligning the rotor tube sections.

c. Bellows-forming mandrels and dies for producing single-convolution bellows that:

c.1. Are made of high-strength aluminum alloys, maraging steel, or high-strength filamentary materials; and

c.2. Have all of the following dimensions:

c.2.a. 75 mm to 400 mm (3 in. to 16 in.) inside diameter;

c.2.b. 12.7 mm (0.5 in.) or more in length; and

c.2.c. Single convolution depth more than 2mm (0.08 in.).

17. In Category 2, ECCN 2B91F is amended by revising the List of Items Controlled section to read as follows:

2B91F "Numerical control" units for machine tools and numerically controlled machine tools, n.e.s.

* * * * *

List of Items Controlled

a. "Numerical control" units for machine tools:

a.1. Having four interpolating axes that can be coordinated simultaneously for "contouring control"; or

a.2. Having two or more axes that can be coordinated simultaneously for "contouring control" *and* a minimum programmable increment better (less) than 0.001 mm (0.00004 in.);

b. Numerically controlled machine tools that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous "contouring control" in two or more axes and that have both of the following characteristics:

b.1. Two or more axes that can be coordinated simultaneously for contouring control; *and*

b.2. "Positioning accuracies", with all compensations available:

b.2.a. Better than 0.020 mm, but no better than 0.004 mm along any linear axis (overall positioning) for grinding machines;

b.2.b. Better than 0.020 mm, but no better than 0.006 mm along any linear axis (overall positioning) for milling machines; or

b.2.c. Better than 0.020 mm, but no better than 0.010 mm along any linear axis (overall positioning) for turning machines.

18. In Category 2, ECCN 2D02A is amended by revising the Requirements section to read as follows:

2D02A Specific "software".

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes
GTDU: No

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19. In Category 2, ECCNs 2D46C and 2D50C are revised to read as follows:

2D46C "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2B46.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: Yes
GTDU: No

2D50C "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A50 or 2A51.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: Yes
GTDU: No

20. In Category 2, ECCN 2D53C is revised, new ECCNs 2D92F, 2D93F, and 2D94F are added immediately following ECCN 2D53C, and ECCN 2D96G is revised to read as follows:

2D53C "Software" specially designed or modified for the "use" of equipment controlled by 2B50.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control. NP
GTDR: Yes
GTDU: No

2D92F "Software" specially designed for the "development" or "production" of portable electric generators controlled by 2A94F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D93F "Software" specially designed for the "development" or "production" of manual dimensional inspection machines controlled by 2B92F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D94F "Software" specially designed for the "development", "production", or "use" of "numerical control" units and numerically controlled machine tools controlled by 2B91F, gear making and/or finishing machinery controlled by 2B93F, or robots controlled by 2B94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D96G "Software", n.e.s., for the "Development", "production", or "use" of commodities controlled under Category 2.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

21. In category 2, ECCN 2E50C is revised to read as follows:

2E50C Technology specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A50 or 2A51.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NP
GTDR: Yes
GTDU: No

22. In Category 2, new ECCNs 2E93F and 2E94F are added immediately following ECCN 2E52B and ECCN 2E96G is revised to read as follows:

2E93F Technology for the "development", "production", or "use" of portable electric generators controlled by 2A94F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2E94F Technology for the "development", "production", or "use" of "numerical control" units and numerically controlled machine tools controlled by 2B91F, manual dimensional inspection machines controlled by 2B92F, gear making and/or finishing machinery controlled by 2B93F, or robots controlled by 2B94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2E96G Technology, n.e.s., for the "development", "production", or "use" of commodities controlled under Category 2.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

23. In Category 2, the heading "Notes for Category 2" and a new Advisory Notes 1 through 5 are added immediately following ECCN 2E96G, as follows:

Notes for Category 2:

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 2 for national security reasons, *except:*

a. "Numerical control" units, "numerically controlled" machine tools with a positioning accuracy of 2 micrometers or better, and components, specially designed parts or assemblies therefor, controlled by 2B01, 2B08, or 2B09;

b. Non-"numerically controlled" machine tools for generating optical quality surfaces controlled by 2B02;

c. Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications controlled by 2B05;

d. Coating technology for non-electronic devices controlled by 2E03.d;

e. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 1.a, .b, or .c that are controlled by 2D or 2E.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, to satisfactory end-users in the People's Republic of China of machine tools for milling controlled by 2B01.c.1 to civil end-users other than nuclear and aerospace, provided that they are not controlled by 2B01.c.1.b.1, c.1.b.4, c.1.b.5, or c.1.b.6.

Advisory Note 3: Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of turning machines controlled by 2B01.c.1, provided that:

a. They are not intended for use in nuclear related activities; *and*

b. They have all of the following characteristics:

1. Only two axes that can be coordinated simultaneously for "contouring control";

2. The positioning accuracy, with all compensations available, is not less (not better) than 0.002 mm per 300 mm of travel;

3. Geometric alignment of the axes, parallel or perpendicular to each other, is not less (not better) than 0.001 mm per 300 mm of travel;

4. Slide travel in both axes is not longer than 400 mm;

5. "Run out" (out-of-true running) in one revolution of the spindle is more (worse) than 0.0004 mm TIR; *and*

6. "Camming" (axial displacement) in one revolution of the spindle is more (worse) than 0.0004 mm TIR.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 2B06.b.1 to civil end-users not engaged in aerospace or nuclear activities.

Advisory Note 5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of non-"numerically controlled" machine tools for generating optical quality surfaces controlled by 2B02, and "software" specially designed and technology "required" therefor controlled by 2D or 2E.

24. In Category 3, 3A01A is amended by revising the Requirements section to read as follows:

3A01A Electronic devices and components.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS, MT, NP (see Notes)
GLV: $1,500: 3A01.c; $3,000: 3A01.b.1 to b.3, 3A01.d to 3A01.f; $5,000: 3A01.a, 3A01.b.4 to b.7
GCT: Yes, except 3A01.a.1 and 3A01.e.5 (see Notes)
GFW: Yes, except 3A01.a.1, 3A01.b.1 and b.3 to b.7, 3A01.c to f

Notes: 1. MT controls apply to 3A01.a.1.

2. NP controls apply, for all countries except countries listed in Supp. 2 to Part 773, to items described in 3A01.e.5.

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25. In Category 3, a new ECCN 3A22B is added immediately following ECCN 3A02A to read as follows:

3A22B Radiographic equipment (linear accelerators) capable of delivering electromagnetic radiation produced by "bremsstrahlung" from accelerated electrons of 2 MeV or greater or by using radioactive sources of 1 MeV or greater, except those specially designed for medical purposes.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

26. In Category 3, ECCN 3A51B is revised to read as follows:

3A51B Mass spectrometers

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: No
GCT: No
GFW: No

List of Items Controlled

Mass spectrometers capable of measuring ions of 230 atomic mass units or greater and having a resolution of better than 2 parts in 230, and ion sources therefor, as follows:

a. Inductively coupled plasma mass spectrometers (ICPMS);

b. Glow discharge mass spectrometers (GDMS);

c. Thermal ionization mass spectrometers (TIMS);

d. Electron bombardment mass spectrometers that have a source chamber constructed from, lined with, or plated with materials resistant to UF_6

e. Molecular beam mass spectrometers that have:

e.1. A source chamber constructed from, lined with, or plated with stainless steel or molybdenum and have a cold trap capable of cooling to 193 K (−80° C) or less; or

e.2. A source chamber constructed from, lined with, or plated with materials resistant to UF_6; or

f. Mass spectrometers equipped with a microfluorination ion source designed for use with actinides or actinide fluorides.

Note: Specially designed or prepared magnetic or quadrupole mass spectrometers capable of taking "on-line" samples of feed, product, or tails from UF_6 gas streams and having all of the following characteristics require export authorization from the Nuclear Regulatory Commission (see 10 CFR part 110):

a. Unit resolution for mass greater than 320;

b. Ion sources that are constructed of or lined with nichrome or that are monel or nickle plated;

c. Electron bombardment ionization sources;

d. Having a collector system suitable for isotopic analysis.

27. In Category 3, ECCN 3B01A is amended by revising the Requirements section to read as follows:

3B01A Equipment for the manufacture or testing of semiconductor devices or materials, as follows, and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS
GLV: $500
GCT: Yes
GFW: No

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28. In Category 3, ECCNs 3D01A and 3DO2A are revised and the Requirements section of ECCN 3D03A is revised to read as follows:

3D01A "Software" specially designed for the "development" or "production" of equipment controlled by 3A01.b to 3A01.f, 3A02, and 3B01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes
GTDU: No

3D02A "Software" specially designed for the "use" of "stored program controlled" equipment controlled by 3B01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes
GTDU: No

3D03A Computer-aided-design (CAD) "software" for semiconductor devices or integrated circuits.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes
GTDU: No

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29. In Category 3, a new ECCN 3D22B is added immediately following ECCN 3D21B to read as follows:

3D22B "Software" for the "development", "production", or "use" of radiographic equipment (linear accelerators) controlled by 3A22.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GTDR: No
GTDU: No

30. In Category 3, ECCN 3D80C is revised, ECCN 3D91F is removed, a new ECCN 3D94F is added immediately following ECCN 3D80C, and ECCN 3D96G is revised to read as follows:

3D80C "Software" specially designed for the "development", "production", or "use" of items controlled by 3A80C or 3A81C.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO

Unit: $ value
Reason for Control: FP (Crime control)
GTDR: No
GTDU: Yes, for Australia, Japan, New Zealand, and NATO only

3D94F "Software" specially designed for the "development", "production", or "use" of microcircuits controlled by 3A92F, electronic test equipment controlled by 3A93F, or manufacturing and test equipment controlled by 3B91F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

3D96G "Software", n.e.s., for the "development", "production", or "use" of commodities controlled under Category 3.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

31. In Category 3, in sub-category 3E:
a. ECCN 3E01A is revised;
b. The Requirements section of ECCN 3E02A is revised;
c. A new ECCN 3E22B is added immediately following ECCN 3E02A;
d. ECCNs 3E51B and 3E80C are revised;
e. ECCN 3E91F is removed and a new ECCN 3E94F is added immediately following ECCN 3E80C; and
f. ECCN 3E96G is revised to read as follows:

3E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03, or 3C04.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS and MT (see Note)
GTDR: Yes
GTDU: No

Note 1: MT controls apply to technology specially designed for the "development" or "production" of items described in 3A01.a.1.

Note 2: 3E01 does not control technology for the "development" or "production" of:
a. Microwave transistors operating at frequencies below 31 GHz;
b. Integrated circuits controlled by 3A01.a.3 to a.11, having both of the following characteristics:
1. Using technology of the micrometer or more, *and*
2. Not incorporating multi-layer structures.

N.B.: This Note does not preclude the export of multilayer technology for devices incorporating a maximum of two metal layers and two polysilicon layers.

3E02A Other technology for the "development" or "production" of commodities described in this entry.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS
GTDR: Yes
GTDU: No

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3E22B Technology for the "development", "production", or "use" of radiographic equipment (linear accelerators) controlled by 3A22B.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: MT
GTDR: No
GTDU: No

3E51B Technology specially designed for the "development", "production", or "use" of items controlled by 3A51.

Requirements

Validated License Required: QSTVWYZ and Canada
Reason for Control: NP
GTDR: No
GTDU: No

3E80C Technology for the "development", "production", or "use" of items controlled by 3A80C or 3A81C.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO
Reason for Control: FP (Crime control)
GTDR: No
GTDU: Yes, for Australia, Japan, New Zealand, and NATO only

3E94F Technology for the "development", "production", or "use" of microcircuits controlled by 3A92F, electronic test equipment controlled by 3A93F, or manufacturing and test equipment controlled by 3B91F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

3E96G Technology, n.e.s., for the "development", "production", or "use" of commodities controlled under Category 3.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

32. In Category 3, the Advisory Note under the heading "Notes for Category 3" immediately following ECCN 3E96G is removed and new Advisory Notes 1 through 3 are added to read as follows:

Notes for Category 3:

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 3 for national security reasons, *except* equipment controlled by 3B01.a.2, 3B01.a.3, 3B01.g.1, or 3B01.g.2, and "software" specially designed and technology "required" therefor controlled by 3D or 3E.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of:
a. Analog instrumentation magnetic tape recorders controlled by 3A02.a.1, provided that all of the following conditions are met:
1. Bandwidths do not exceed:
a. 4 MHz per track and have up to 28 tracks; *or*
b. 2 MHz per track and have up to 42 tracks;
2. Tape speed does not exceed 6.1 m/s;
3. They are not designed for underwater use;
4. They are not ruggedized for military use; *and*
5. Recording density does not exceed 653.2 magnetic flux sine waves per mm;
b. Video magnetic tape recorders specially designed for civil television recording;
c. Instrument "frequency synthesizers" or synthesized signal generators controlled by 3A02.b or 3A02.d.2, and specially designed components or accessories therefor, having:
1. A synthesized output frequency of 2.6 GHz or less; *and*
2. A "frequency switching time" of 0.3 ms or more;
d. Epitaxial reactors controlled by 3B01.a.1, *except* those also controlled by 3B01.a.2 or 3B01.a.3;
e. Positive resists not optimized for photolithography at a wavelength of less than 365 nm, provided that they are not controlled by 3C02.b to 3C02.d.

Advisory Note 3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of equipment controlled by 3B01.g.2 and "software" specially designed and technology "required" therefore controlled by 3D or 3E.

33. In Category 4, ECCNs 4A01A and 4A02A are amended by revising the Requirements section in each entry to read as follows:

4A01A Electronic computers and related equipment, as follows, and "assemblies" and specially designed components therefore.

Requirements

Validated License Required: QSTVWYZ

Unit: Computers and peripherals in number; parts and accessories in $ value
Reason For Control: NS, MT, NP (see Notes)
GLV: $5,000 for 4A01.a *only*; $0 for 4A01.b
GCT: Yes, except MT and except electronic computers with a CTP equal to or greater than 195 Mtops (no CTP ceiling for Japan).
GFW: No

Notes: 1. MT controls apply to 4A01.a.
2. NP controls apply to the following:
a. Supercomputers (as defined in 770.3 of this subchapter) to countries listed in Supplements 2 and 8 to Part 773 of this subchapter;
b. Computers with a CTP exceeding 41 Mtops to countries listed in Supplement 3 to Part 773 of this subchapter;
c. Computers with a CTP exceeding 12.5 Mtops to all other destinations.

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4A02A "Hybrid computers", as follows, and "assemblies" and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Computers and peripherals in number; parts and accessories in $ value
Reason For Control: NS, MT, NP (see Notes)
GLV: $5,000
GCT: Yes, *except* MT
GFW: No

Notes: 1. MT controls apply to hybrid computers combined with specially designed "software", for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems described in § 778.7 of this subchapter.
2. NP controls apply to the following:
a. Supercomputers (as defined in § 770.3 of this subchapter) to countries listed in supplements 2 and 8 to part 773 of this subchapter;
b. Computers with a CTP exceeding 41 Mtops to countries listed in supplement 3 part 773 of this subchapter;
c. Computers with a CTP exceeding 12.5 Mtops to all other destinations.

* * * * *

34. In Category 4, ECCN 4A03A is revised to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Computers and peripherals in number; parts and accessories in $ value
Reason For Control: NS, MT, NP, FP (see Notes)
GLV: $5,000
GCT: Yes, *except* MT or digital computers with a CTP equal to or exceeding 195 Mtops (no CTP ceiling for Japan)
GFW: Yes (Advisory Notes 3 and 4 only)

Notes: 1. MT controls apply to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06.
2. NP controls apply to the following:
a. Supercomputers (as defined in 770.3) to countries listed in Supplements 2 and 8 to Part 773;
b. Computers with a CTP exceeding 41 Mtops to countries listed in Supplement 3 to Part 773;
c. Computers with a CTP exceeding 12.5 Mtops to all other destinations.

List of Items Controlled

Note 1: 4A03 includes vector processors, array processors, logic processors, and equipment for "image enhancement" or "signal processing".

Note 2: The control status of the "digital computers" or related equipment described in 4A03 is governed by the control status of other equipment or systems provided:
a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;
b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*
N.B.: 1. The control status of "signal processing" or "image enhancement" equipment described in 4A03.g and specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.
2. For the control status of "digital computers" or related equipment for telecommunications equipment, see the telecommunications entries in Category 5.
c. The technology for the "digital computers" and related equipment is governed by 4E.

Note 3: "Digital computers" or related equipment are not controlled by 4A03 provided:
a. They are essential for medical applications;
b. The equipment is substantially restricted to medical applications by nature of its design and performance;
c. The equipment does not have "user-accessible programmability" other than that allowing for insertion of the original or modified "programs" supplied by the original manufacturer;
d. The "composite theoretical performance" of any "digital computer" which is not designed or modified but essential for the medical application does not exceed 20 million composite theoretical operations per second (Mtops); *and*
e. The technology for the "digital computers" or related equipment is governed by 4E.

"Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor:
a. Designed for combined recognition, understanding and interpretation of image or continuous (connected) speech;
b. Designed or modified for "fault tolerance";

Note: For the purposes of 4A03.b, "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance", if they use:
1. Error detection or correction algorithms in "main storage";
2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;
3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; *or*
4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

c. "Digital computers" having a "composite theoretical performance" exceeding 12.5 million composite theoretical operations per second (Mtops);
d. "Assemblies" specially designed or modified to enhance performance by aggregation of "computing elements", as follows:

Note 1: 4A03.d applies only to "assemblies" and programmable interconnections not exceeding the limits in 4A03.c, when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03.e to 4A03.h.

Note 2: 4A03.d does not control any "assembly" specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A03.c.

d.1. Designed to be capable of aggregation in configurations of 16 or more "computing elements"; *or*
d.2. Having a sum of maximum data rates on all data channels available for connection to associated processors exceeding 40 million Bytes/s;
e. Disk drives and solid state storage equipment:
e.1. Magnetic, erasable optical or magneto-optical disk drives with a "maximum bit transfer rate" exceeding 25 million bit/s;
e.2. Solid state storage equipment, other than "main storage" (also known as solid state disks or RAM disks), with

a "maximum bit transfer rate" exceeding 36 million bit/s;

f. Input/output control units designed for use with equipment controlled by 4A03.e;

g. Equipment for "signal processing" or "image enhancement" having a "composite theoretical performance" exceeding 8.5 million composite theoretical operations per second (Mtops);

h. Graphics accelerators or graphics coprocessors exceeding a "3–D Vector Rate" of 400,000 or, if supported by 2–D vectors only, a "2–D vector rate" of 600,000;

Note: The provisions of 4A03.h do not apply to work stations designed for and limited to:

1. Graphic arts (e.g., printing, publishing); *and*

2. The display of two-dimensional vectors.

i. Color displays or monitors having more than 120 resolvable elements per cm in the direction of the maximum pixel density;

Note 1: 4A03.i does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

j. Equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits in 3A01.a.5;

k. Equipment containing "terminal interface equipment" exceeding the limits in 5A02.c;

Note: For the purposes of 4A03.k, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

35. In Category 4, a new ECCN 4A80C is added immediately following ECCN 4A21B, as follows:

4A80C Computers for fingerprint equipment, n.e.s.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO
Unit: Number
Reason for Control: FP (see Note)
GLV: No
GCT: No
GFW: No

Note: FP controls apply to the items described in this entry because they can be used for crime control and detection purposes. Applications will generally receive favorable consideration on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights.

36. In Category 4, ECCNs 4D01A and 4D02A are revised and ECCN 4D03A is amended by revising the Requirements to section to read as follows:

4D01A "Software" specially designed or modified for the "development", "production", or "use" of equipment or materials controlled by 4A01, 4A02, 4A03, 4A04, 4B01, 4B02, 4B03, or 4C01 or "software" controlled by 4D01, 4D02, or 4D03.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes
GTDU: No

Note: MT controls apply to "software" specially designed or modified for the "development," "production" or "use" of equipment controlled for MT by 4A01, 4A02, and 4A03.

4D02A "Software" specially designed or modified to support "technology" controlled by 4E01 or 4E02.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes
GTDU: No

Note: MT controls apply to "software" specially designed or modified to support technology for the "development," "production" or "use" of equipment controlled for MT by 4A01, 4A02 and 4A03.

4D03A Specific "software" as follows.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, FP
GTDR: Yes, except 4D03.e
GTDU: No

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37. In Category 4, new ECCNs 4D21B, 4D80C, and 4D94F are added immediately following ECCN 4D03A and ECCN 4D96G is revised to read as follows:

4D21B "Software" specially designed or modified for the "development", "production", or "use" of items controlled by 4A21, or for supporting technology controlled by 4E21 for the "development", "production", or "use" of items controlled by 4A21.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GTDR: No
GTDU: No

4D80C "Software" specially designed for the "development", "production", or "use" of items controlled by 4A80C.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO
Unit: $ value
Reason for Control: FP (Crime control)
GTDR: No
GTDU: Yes, for Australia, Japan, New Zealand, and NATO *only*

4D94F "Software" specially designed for the "development", "production", or "use" of "digital computers" controlled by 4A94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of computer equipment or materials controlled by 4A, 4B, or 4C, and other "software", n.e.s.

Note: Certain "software" must also be evaluated against the performance characteristics of the telecommunications or "information security" entries in Category 5. See Notes 1 and 2 following the heading of Category 4.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

38. In Category 4, ECCNs 4E01A and 4E02A are revised, new ECCNs 4E21B, 4E80C, and 4E94F are added immediately following ECCN 4E02A, and ECCN 4E96G is revised to read as follows:

4E01A Technology, according to the General Technology Note, for the "development", "production", or "use" of equipment or materials controlled by 4A01, 4A02, 4A03, 4A04, 4B01, 4B02, 4B03, or 4C01 or "software" controlled by 4D01, 4D02, or 4D03.

Requirements

Validated License Required: QSTVWY2
Reason for Control: NS, MT, FP (see Notes)
GTDR: Yes, except MT and FP (see Notes)
GTDU: No

Notes: 1. MT controls apply to certain items controlled by 4A01, 4A02, 4A03, 4D01,

or 4D02. See *Reason for Control* paragraphs in these entries to determine which items are subject to MT controls.

2. FP controls apply, for all destinations *except* Australia, Japan, New Zealand, and members of NATO, to technology for the "development", "production", or "use" of computers controlled by 4A03 for computerized fingerprint equipment.

4E02A Other technology.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, FP
GTDR: Yes
GTDU: No

List of Items Controlled

a. "Technology" for the "development" or "production" of equipment released under 4A03.h;

b. "Technology" for the "development" or "production" of equipment designed for "multi-data-stream processing";

c. Technology "required" for the "development" or "production" of magnetic hard disk drives with a "maximum bit transfer rate" exceeding 11 million bit/s.

4E21B Technology for the "development", "production", or "use" of items controlled by 4A21.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: MT
GTDR: No
GTDU: No

4E80C Technology for the "development", "production", or "use" of items controlled by 4A80C.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO
Reason for Control: FP (Crime control)
GTDR: No
GTDU: Yes, for Australia, Japan, New Zealand, and NATO *only*

4E94F Technology for the "development", "production", or "use" of "digital computers" controlled by 4A94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4E96G Technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 4.

Note: Technology for certain equipment of "software" must also be evaluated against the performance characteristics of the telecommunications or "information security" entries in Category 5. See Notes 1 and 2 following the heading of Category 4.

Requirements

Validated License Required: SZ, South African military and police
Reasons for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

39. Category 4 is amended:

a. By adding a new heading "Notes for Category 4" immediately following ECCN 4E96G;

b. By revising Advisory Notes 1, 2, and 3;

c. By adding new Advisory Notes 4, 5, and 6; and

d. By adding a new heading immediately following Advisory Note 6 and immediately preceding the Technical Note, "Composite Theoretical Performance (CTP)", as follows:

Notes for Category 4:

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 4 for national security reasons, *except:*

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03, having a "composite theoretical performance" (CTP) exceeding 41 million theoretical operations per second (Mtops), and specially designed components therefore;

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 1.a, .b, or .c that are controlled by 4D or 4E.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for export to satisfactory end-users in the People's Republic of China of "digital computers", specially designed components and related equipment therefor, controlled by 4A03.c, .e, .f, .h, .i, .j, or .k, or "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They are exported as complete systems or enhancements to previously exported systems up to the limits in this Advisory Note 2.d;

c. They have been primarily designed and used for non-strategic applications;

d. The "CTP" of the "digital computers" does not exceed 20 Mtops; *and*

e. Equipment containing "terminal interface equipment" does not exceed:

1. The limits of Advisory Note 4 to Category 5, Section I (Telecommunications);

2. The limits of 5A02.c.2; *or*

3. A "digital transfer rate" of 100 Mbit/s on the common media for "network access controllers" and related equipment controlled by 5A02.c.3;

f. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups Q and Y and the People's Republic of China of "digital computers" controlled by 4A03.c, or specially designed components therefor, and "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. The "CTP" of the "digital computers" does not exceed 20 Mtops;

d. They do not contain any related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 3.c;

f. They are not exported as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

Note: This does not preclude the enhancement of such computers when they are used by civil end-users in civil applications.

g. Any controlled "software" is the minimum required for the "use" of the approved "digital computers";

h. Exports of items covered by this Advisory Note 3 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; *and*

2. The equipment will not be used for the design, development, or production of items controlled for national security reasons.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups Q and Y and the People's Republic of China of equipment controlled by 4A03.a or .f provided:

a. The "maximum bit transfer rate" does not exceed 36 million bit/s;

b. They are exported as part of a computer system or as an enhancement to a previously exported system;

c. Exports of items covered by this Advisory Note 4 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; *and*

2. The equipment will not be used for the design, development or production of items controlled for national security reasons.

Advisory Note 5: (Not eligible for General License GFW) Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups Q and Y and the People's Republic of China of "digital computers" or related equipment therefor controlled by 4A03.c, .e, .f, or .g, or "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. "CTP" of the "digital computers"—23 Mtops;

2. "Maximum bit transfer rate" of disk drives or input/output control units controlled by 4A03.e or 4A03.f—36 Mbit/s; *or*

3. "CTP" of the "signal processing" or "image enhancement" equipment—12.5 Mtops;

d. They do not contain any other related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 5.c;

f. They are not shipped as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

g. Any controlled "software" is the minimum required for the "use" of the approved computers" and related equipment;

h. Exports of items covered by this Advisory Note 5 shall be subject to the following restrictions:

1. A signed statement must be submitted by a responsible representative of the end-user(s) or the importing agency certifying that responsible Western representatives of the supplier will:

a. Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours *and* at any other time the equipment is operating; *and*

b. Be furnished information demonstrating continued authorized application of the equipment; *and*

c. These Western representatives will be notified of any significant change of application or of other facts, on which the license was based;

2. The following information must be clearly stated on an export application for equipment controlled by this Advisory Note:

a. A full description of the equipment *and* its intended application and workload; *and*

b. A complete identification of all end-users and their activities.

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of the following:

a. "Hybrid computers" controlled by 4A02, when not combined with specially designed "software" for modelling simulation or design integration for complete rocket systems and unmanned air vehicle systems;

b. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

c. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 6.a or .b that are controlled by 4D or 4E.

Information on How to Calculate Composite Theoretical Performance (CTP):

Technical Note: "Composite theoretical performance" (CTP).

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40. In Category 5, Subcategory I "Telecommunications" ECCN 5A02A is revised to read as follows:

5A02A "Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes for items identified in Telecommunications Advisory Notes 11, 14, 19, 20 and 21 *only*

List of Items Controlled

Note: "Telecommunication transmission equipment"

a. Categorized as follows, or combinations thereof:

1. Radio equipment (e.g., transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical multiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);
10. "Stored program controlled" digital crossconnection equipment;
11. "Gateways" and bridges;
12. "Media access units"; *and*

b. Designed for use in single or multi-channel communication via:

1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation.

"Telecommuncation transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

a. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s.

Note: 5A02.a does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b. Being "stored program controlled" digital cross connect equipment with a "digital transfer rate" exceeding 8.5 Mbit/s per port;

c. Being equipment containing:

c.1. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 9,600 bit/s;

Note: 5A02.c.1 does not control dedicated stand-alone facsimile equipment with a "data signalling rate" not exceeding 14,400 bits per second and that is not controlled by the "Information Security" section of Category 5. In addition, the embedded modem in such equipment must be of the single chip type and it must not be feasible to remove the modem from the dedicated stand-alone equipment.

c.2. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel; *or*

c.3. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A02.c.

d. Employing a "laser" and having any of the following characteristics:

d.1. Having a transmission wavelength exceeding 1,000 nm;

d.2. Employing analog techniques and having a bandwidth exceeding 45 MHz;

d.3. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

d.4. Employing wavelength division multiplexing techniques; *or*

d.5. Performing "optical amplification".

e. Being radio equipment operating at input or output frequencies exceeding:

e.1. 31 GHz for satellite-earth station applications; *or*

e.2. 26.5 GHz for other applications;

Note: 5A02.e.2 does not control equipment for civil use when conforming with an ITU allocated band between 26.5 and 31 GHz.

f. Being radio equipment:

f.1. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

f.2. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

f.3. Employing other digital modulation techniques and having a "spectral efficiency" greater than 3 bit/s/Hz;

Note: 5A02.f.2 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

g. Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

g.1. a. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

g.1.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals

simultaneously at an output power of 1 kW or more in the 1.5 to 30 Mhz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than –80 dB; *or*

g.2. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal;

h. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

h.1. User programmable spreading codes; *or*

h.2. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz.

i. Being digitally controlled radio receivers having more than 1,000 channels, which:

i.1. Search or scan automatically a part of the electromagnetic spectrum;

i.2. Identify the received signals or the type of transmitter; *and*

i.3. Have a "frequency switching time" of less than 1 ms;

j. Providing functions of digital "signal processing" as follows:

j.1. Voice coding at rates of less than 2,400 bit/s;

j.2. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A03.f;

k. Being underwater communications systems having any of the following characteristics;

k.1. An acoustic carrier frequency outside the range of 20 to 60 kHz;

k.2. Using an electromagnetic carrier frequency below 30 kHz; *or*

k.3. Using electronic beam steering techniques.

41. In Category 5, Subcategory I "Telecommunications", ECCN 5A03A is amended by revising the Requirements section to read as follows:

5A03A "Stored program controlled" switching equipment and related signalling systems having any of the following characteristics, functions or features; and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value.
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes, for items identified in Telecommunications Advisory Notes 21 and 22 *only*

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42. In Category 5, Subcategory I "Telecommunications", ECCN 5A05A is amended by revising the Requirements section to read as follows:

5A05A Optical fiber communications cables, optical fibers and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Meters
Reason for Control: NS
GLV: $3,000
GCT: Yes
GFW: Yes, for items identified in Telecommunications Advisory Notes 12, 19, and 20 *only*

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43. In Category 5, Subcategory I "Telecommunications", ECCN 5B01A is revised to read as follows:

5B01A Equipment specially designed for the "development", "production", or "use" of equipment, materials, or functions controlled by the entries in the telecommunications section of Category 5 for national security reasons.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes, for items identified in Telecommunications Advisory Notes 13, 19, 20, 21, and 22 *only*

List of Items Controlled

Equipment specially designed for:

a. "Development" of equipment, materials, functions or features controlled by the telecommunications entries in this Category, including measuring or test equipment;

b. "Production" of equipment, materials, functions, or features controlled by the telecommunications entries in this Category, including measuring, test, or repair equipment;

c. "Use" of equipment, materials, or functions, exceeding any of the least stringent control criteria applicable in telecommunications entries in this Category, including measuring, test, or repair equipment;

Note: 5B01 does not control optical fibers and "optical fiber preform" characterization equipment not using semiconductor "lasers".

44. In Category 5, Subcategory I "Telecommunications", ECCNs 5D01A and 5D02A are revised and ECCN 5D03A is amended by revising the Requirements section to read as follows:

5D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by telecommunications entries 5A01, 5A02, 5A03, 5A04, 5A05, 5A06, 5B01, 5B02, or 5C01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, MT, FP (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" designed or modified for the "development", "production" or "use" of items controlled by 5A01.

5D02A "Software" specially designed or modified to support "technology" controlled by telecommunications entries 5E01 or 5E02.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" designed or modified to support technology for the "development", "production" or "use" of items controlled by 5A01.

5D03A Specific "software" as follows:

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" listed below as applicable to the "development", "production" or "use" of equipment controlled by 5A01.

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45. In Category 5, Subcategory I "Telecommunications" is amended:

a. By revising Advisory Notes 1 through 11 under the heading "Notes for Telecommunications" at the end of Subcategory I;

b. By removing the heading "Favorable Consideration Notes (Telecommunications)" that follows Advisory Note 11;

c. By revising Advisory Notes 12 through 15; and

d. By adding new Advisory Notes 16, 17, 18, 19, 20, 21, and 22 to read as follows:

Notes for Telecommunications:

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for

exports to satisfactory end-users in Country Group W of equipment or systems controlled by 5A02, 5A03, 5A04, 5A05, or 5A06, and test equipment, "software" and "use" technology therefor, provided that:

a. The equipment or systems:

1. Are designed for and will be used for specific civil applications; *and*

2. Will be operated in the importing country by a civil end-user who has furnished to the supplier a Statement of Ultimate Consignee and Purchaser (Form BXA–629P) certifying that the equipment or systems will be used only for the specific end-use.

b. The information to accompany each application will include:

1. An Import Certificate issued by the government of the importing country;

2. A full description of the equipment or systems to be provided;

3. Specific end-use information including the installation site and intended application.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Estonia, Latvia and Lithuania of equipment or systems controlled by 5A02, 5A03, 5A04, 5A05, or 5A06, and test equipment, "software" and "use" technology therefor, provided that:

a. The equipment or systems:

1. Are designed for and will be used for specific civil applications; *and*

2. Will be operated in the importing country by a civil end-user who has furnished to the supplier a Statement by Ultimate Consignee and Purchaser (Form BXA–629P) certifying that the equipment or systems will be used only for the specific end-use;

b. The information to accompany each application will include:

1. End-use assurances provided by the importer and backed by the importing country;

2. Acceptance of on-site inspection of the equipment or system by the licensee or the designated representative of the licensee from a non-proscribed country;

3. A full description of the equipment or systems to be provided; *and*

4. The end-use information clearly stated including the installation site and intended application.

N.B.: Licenses for export of items covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following communications, measuring or test equipment:

a. "Telecommunications transmission equipment" controlled by 5A02.a, 5A02.b, or 5A02.d provided that:

1. It is intended for general commercial traffic in a civil communication system;

2. It is designed for operation at a "digital transfer rate" at the highest multiplex level of 140 Mbit/s or less and at a "total digital transfer rate" of 168 Mbit/s or less;

3. For equipment controlled by 5A02.d, the transmission wavelength must not exceed 1,370 nm and optical fiber must be used as the communication medium;

4. It is to be installed under the supervision of the seller in a permanent circuit; *and*

5. It is to be operated by the civilian authorities of the importing country;

b. Measuring or test equipment controlled by 5B01.c and 5B02 .a and .b, that is necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the conditions of this Advisory Note, provided that:

1. It is designed for use with communication transmission equipment operating at a "digital transfer rate" of 140 Mbit/s or less, and at a "total digital transfer rate" of 168 Mbit/s or less; *and*

2. It will be supplied in the minimum quantity required for the transmission equipment eligible for administrative exception treatment.

N.B.1: Where possible, built-in test equipment (BITE) will be provided for installation or maintenance of transmission equipment eligible for administrative exception treatment under this Advisory Note rather than individual test equipment.

N.B.2: The license application must include the locations of the connection points, types of equipment being connected and transmission rates.

N.B.3: Licenses for export of equipment covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following "telecommunications transmission equipment":

a. Modems controlled by 5A02.c.1 with a "data signalling rate" not exceeding 19,200 bit/s; *or*

b. "Network access controllers" controlled by 5A02.c.3, when exported under the conditions of Advisory Note 2 to Category 4, with a "digital transfer rate" not exceeding 100 Mbits/s.

Advisory Note 5: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following, provided that the associated multiplex equipment is designed for operation at a "digital transfer rate" at the highest multiplex level of 140 million bit/s or less:

a. Digital microwave radio relay equipment controlled by 5A02.a or 5A02.f, for fixed civil installations, operating at fixed frequencies not exceeding 23.6 GHz, with a "total digital transfer rate" not exceeding 168 Mbit/s;

b. Ground communication radio equipment for use with temporarily fixed services operated by civil authorities and designed to be used at fixed frequencies not exceeding 23.6 GHz;

c. Radio transmission media simulators/channel estimators controlled by 5B02.c, designed for testing equipment described in this Advisory Note 9.a or .b.

Advisory Note 6: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of equipment controlled by 5A03.a or "software" for "common channel signalling" controlled by 5D01 or 5D03.c, provided that:

a. The "common channel signalling" is restricted to quasi-associated or associated mode of operation according to CCITT Red Book, Volume X, fascicle X.1;

b. No functions, other than those described in the following recommendations in the Red Book of CCITT: Q.701 to Q.709, Q.721 to Q.725, Q.791 and Q.795, are included;

N.B.: Only functions described in paragraph 2 of Q.795 are to be included. These Q.795 functions may not provide centralized network control having all of the following characteristics:

a. Is based on a network management protocol; *and*

b. Does both of the following:

1. Receives data from the nodes; *and*

2. Processes these data in order to:

a. Control traffic; *and*

b. Directionalize paths;

c. No form of "Integrated Services Digital Network" (ISDN) is provided;

d. Equipment or "software" is restricted to that necessary for the operation within a city or, for "Private Automatic Branch Exchanges", within a radius of 100 km;

e. No means are provided that will allow "common channel signalling" via analog transmission links;

f. All the applicable conditions enumerated in this Advisory Note 10.a to .e are accomplished by:

1. Omission or physical removal of equipment or coding;

2. Over-writing with non-functioning statements; *or*

3. Reasonably non-reversible modifications.

Advisory Note 7: Licenses are likely to be approved, as administrative exceptions, for export to satisfactory end-users in the People's Republic of China of equipment controlled by 5B01.b, as follows:

a. Optical fiber or "optical fiber preform" characterization equipment using semiconductor "lasers" with a wavelength not exceeding 1,370 nm;

b. Equipment for the manufacture of silica-based "optical fiber preforms", optical fibers or cables.

Advisory Note 8: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of repair facilities or "software" controlled by 5B01.c or 5D01 for the repair of "stored program controlled" communication switching equipment or systems, provided that:

a. The repair facilities:

1. Are specially designed equipment for repair;

2. Are to be used to repair controlled equipment authorized for export as an administrative exception under Advisory Note 6 (Notes for Telecommunications) or equipment that is not controlled for national security reasons;

3. Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

4. Do not provide local production facilities; *and*

5. Do not provide for testing of individual electronic components;

b. The repair does not upgrade the equipment or "software";

c. All the records of repair activity are kept by a representative of the Western supplier; *and*

d. The information to accompany each license application shall include:

1. A complete list of equipment to be provided; *and*

2. A clear identification of the users and their activities.

N.B.: Nothing in this Advisory Note 13 shall be construed as overriding controls in other ECCNs contained in the Commerce Control List.

Advisory Note 9: Licenses are likely to be approved, as administrative exceptions, for export to satisfactory end-users in the People's Republic of China of "optical fiber preforms" controlled by 5C01, specially designed for the manufacture of silica-based optical fibers, provided they are specially designed to produce non-militarized silica-based optical fibers that are optimized to operate at a wavelength not exceeding 1,370 nm.

Advisory Note 10: Licenses are likely to be approved, as administrative exceptions, for exports to the People's Republic of China of minimum quantities of semiconductor "lasers" designed and intended for use with a civil fiber optic communication system that would be either not controlled for national security reasons or eligible for administrative exceptions treatment under Advisory Note 3 (Notes for Telecommunications), having an output wavelength not exceeding 1,370 nm and a CW power output not exceeding 100 mW.

Advisory Note 11: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of telecommunications equipment for optical fibers controlled by 5A02.d.1, provided that the transmission wavelength does not exceed 1,370 nm.

Advisory Note 12: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of cables or fibers controlled by 5A05, provided that:

a. Quantities are normal for the envisaged end-use; *and*

b. They are for a specified civil end-use.

Advisory Note 13: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical fiber test equipment controlled by 5B01.c using a transmission wavelength not exceeding 1,370 nm.

Advisory Note 14: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of digital radio equipment or systems controlled by 5A02.a or .f, provided that:

a. The equipment or system is intended for general commercial international traffic in an international civil telecommunication system, one end of which is in a COCOM member country;

b. It is to be installed in a permanent circuit under the supervision of the COCOM member country licensee;

c. No means are to be provided for the transmission of traffic between points in a single proscribed country other than a country in Country Group W;

d. The "digital transfer rate" at the highest multiplex level does not exceed 156 Mbit/s;

e. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above 64 QAM; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6 bit/s/Hz;

f. The equipment is not controlled by 5A02.e or .h or by the "information security" entries in Category 5;

g. Spare parts shall remain under the control of the COCOM member country licensee;

h. The COCOM member country licensee or his designated representative who shall be from a non-proscribed country shall have the right of access to all the equipment;

i. There will be no transfer of technology controlled for national security reasons;

j. Supervision of systems installation and maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel from non-proscribed countries; *and*

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This does not require that only nationals from the exporting country should install the system.

k. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

N.B.: Licenses for exports of items covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 15: Licenses will receive favorable consideration for exports to Country Group W of technology controlled by the telecommunications entries in Category 5, and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by the telecommunications entries in Category 5 or by entries in other Categories on the Commerce Control List, for the modification or "production" of telecommunications equipment or systems eligible for administrative exceptions treatment under Advisory Note 5 in the Notes for Telecommunications (Category 5), provided that:

N.B.: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains governed by Category 4.

a. The characteristics of the telecommunications equipment or systems are limited to those eligible for administrative exceptions treatment under Advisory Note 8 in the Notes for Telecommunications (Category 5);

b. Modifications of the telecommunications equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of Advisory Note 5 in the Notes for Telecommunications (Category 5);

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.2.: Advisory Note 15.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories on the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. All "software" shall be exported in machine executable form only;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or "production" equipment is not reexported or exported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and "production" equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the "production" of the telecommunications equipment or systems;

5. The "production" technology, "production" equipment and produced equipment or systems will be for civil end-use only and not for reexport to Country Groups QSYZ or the People's Republic of China;

h. System integration testing will be performed by the supplier or licensor, if it requires test tools that would provide the licensee with the capability to recover source code or upgrade the system beyond the performance thresholds or features of Advisory Note 5 in the Notes for Telecommunications (Category 5);

i. End-use reporting of the installed telecommunication equipment or systems will be provided in accordance with the provisions of Advisory Note 5 in the Notes for Telecommunications (Category 5);

N.B.: 1. No export under the favorable consideration provisions of this Advisory Note shall establish a precedent for the approval of exports under entries in other Categories on the Commerce Control List.

2. For each license application for export pursuant to this Advisory Note, the exporter must submit the following assurances to be obtained from the importer:

a. An Import Certificate issued by the importer's national authorities;

b. An assurance that the importer will make available information as requested by the Department of Commerce; *and*

c. An assurance that the importer will allow on-site inspection if requested by the Department of Commerce.

Advisory Note 16: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of radio relay communications equipment, specially designed components and accessories, specially designed test equipment, "software" and technology for the "use" or equipment or materials therefor, controlled by the telecommunications entries in this Category, provided that:

a. It is for fixed installation and civil application;

b. It is designed for operation at a total "digital transfer rate" not exceeding 156 Mbit/s;

c. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above 64 QAM; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6.3 bit/s/Hz;

d. It operates at fixed frequencies not exceeding 9 GHz;

e. A license application for export under the provisions of this Advisory Note provides the following information:

1. A complete list of the equipment or system to be provided;

2. Specific end-use information including intended application; *and*

3. The location of the equipment.

Advisory Note 17: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical fiber cables and optical fiber transmission equipment or systems controlled by 5A02 or 5A05, provided that:

a. The equipment or system is intended for general commercial international traffic in an international civil submarine optical fiber telecommunication system linking the importing country with a COCOM member country;

b. It is to be installed in a permanent circuit under the supervision of the COCOM member country licensee;

c. No means are to be provided for the transmission of traffic between points in one or more proscribed countries other than those in Country Group W;

d. The total length of optical fiber cable to be installed within the proscribed country, excluding cable in territorial waters, does not exceed 10 km or the shortest distance that is practical for installation;

e. The "digital transfer rate" at the highest multiplex level does not exceed 565 Mbit/s;

f. The "laser" transmission wavelength does not exceed 1,550 nm;

g. The equipment is not controlled by 5A02.d.2 to d.5 above or by the "information security" entries in Category 5;

h. Spare parts shall remain under control of the COCOM member country licensee;

i. The COCOM member country licensee or his designated representative, who shall be from a non-proscribed country, shall have the right of access to all the equipment;

j. There will be no transfer of controlled technology;

k. Supervision of systems installation and maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel and non-proscribed countries; *and*

N.B.1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2: This does not require that only nationals from the exporting country should install the system.

l. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose;

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. the licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 18: Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of technology controlled by the telecommunications entries in Category 5 and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by the telecommunications entries in Category 5 or by entries in other Categories of the Commerce Control List, for modification or production of "stored program controlled" circuit switching equipment or systems provided that:

NB.: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains governed by Category 4.

a. The characteristics of the "stored program controlled" circuit switching equipment or systems are limited to those that release them from control or make them eligible under Advisory Notes that provide administrative exceptions treatment;

b. Modification of the "stored program controlled" circuit switching equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of the relevant Advisory Notes that provide administrative exceptions treatment;

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.: Advisory Note 18.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories on the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. The manufacturing of the load tape by the licensee is limited to the addition to the generic "software" of the specific customer data and site parameters;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or "production" equipment is not reexported or exported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and "production" equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the "production" of the "stored program controlled" circuit switching equipment or systems;

5. The "production" technology, "production" equipment and produced equipment or systems will be for civil end-use only;

h. System integration testing will be performed by the supplier or licensor if it requires test tools that provide the licensee with the capability to recover "source code" or upgrade the system beyond the performance thresholds or features of the relevant Advisory Notes that provide administrative exceptions treatment.

N.B.: No export under the favorable consideration provisions of this Note shall establish a precedent for the approval of exports under other Categories on the Commerce Control List.

Advisory Note 19: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of fiber optic telecommunication transmission system or equipment controlled by 5A02.a and 5A02.d.1, fiber optic cables controlled by 5A05, or coaxial cable telecommunications transmission systems controlled by 5A02.a, and the test equipment, specially designed components, accessories, "software" and technology, necessary for the "use" thereof, provided that:

a. They are intended for international telecommunications links dedicated to international civil traffic between the following locations:

1.a. *From the following countries:* Belgium, Czechoslovakia, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey, United Kingdom, Austria, Finland, Ireland, Sweden, or Switzerland;

b. *To the following cities:* Tirana (Albania), Yerevan (Armenia), Baku (Azerbaijan), Sophia, Varna (Bulgaria), Minsk (Byelorus), Tbilissi (Georgia), Alma-Ata (Kazakhstan), Bishkek (Kyrgyzstan), Chisinau (Moldova), Bucharest, Constanza (Romania), Moscow, Novorossiisk, Rostov-on-Don, St. Petersburg, Volgograd (Russia), Dushanbe (Tajikistan), Ashgabat (Turkmenistan), Kiev, Odessa, Sebastopol (Ukraine), Tashkent (Uzbekistan) *or:*

2.a. *From the following countries:* Australia, Canada, Hong Kong, Japan, New Zealand, South Korea, or the United States:

b. *To the following cities:* Shanghai, Guangzhou (People's Republic of China), Khaberovsk, Nkhodka, Vladivostok, Yuzhno-Sadhalinsk (Russia), Hanoi, Ho Chi Minh City (Vietnam);

N.B.: No traffic shall be carried between points in proscribed countries, except in Czechoslovakia, Estonia, Latvia, Lithuania, and Poland.

b.1. No portion of the system is installed in the region:

a. East of 38° longitude East;

b. West of 130° longitude East; *and*

c. North of 45° latitude North;

2. *Except*, portions of the system may be installed in the region:

a. South of 60° latitude North;

b. West of 58° longitude East; *and*

c. Southwest of the great circle arc connecting 50° North/50° East and 45° North/58° East;

c. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 623 Mbit/s or less;

d. The "laser" transmission wavelength does not exceed 1,590 nm;

e. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e. ANSI or CCITT);

f. Supervision of systems installation and maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment which would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B.1.: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2.: This is not meant to require that only nationals from the exporting country should install the system.

g. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be affected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The COCOM member country licensee or his designated representative who must be from a non-proscribed country must have the right of access to all the equipment;

i. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Note is being used for the stated end purpose and is still located at the installation sites. After each inspection, the licensee must report his findings to his authorities within one month.

j. The licensee application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to its licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route;

N.B.1.: License applications for the export of fiber optic telecommunications transmission systems or equipment are subject to 30 day COCOM notification before the license is issued under the provisions of this Note.

N.B.2.: License applications for the export of coaxial cable telecommunications transmission systems or equipment are subject to a 45 day COCOM notification before the license is issued under the provisions of this Note.

N.B.3.: Destinations other than those listed in subparagraph (a) of this Note may be approved after a 45 day COCOM review. Applications for other destinations must be accompanied by a detailed justification for the additional link. Approved destinations for international telecommunications links will be included in sub-paragraph (a) of this Note.

Advisory Note 20: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY of fiber optic telecommunication transmission systems or equipment controlled by 5A02.a and 5A02.d.1, digital radio equipment or systems controlled by 5A02.a and 5A02.f.1, coaxial cable telecommunications transmission equipment or systems controlled by 5A02.a, or optical fiber cables controlled by 5A05 and the test equipment, specially designed components, accessories, "software" and technology, necessary for the "use thereof," provided that:

a. They are intended for:

1. Intra-city or inter-city links within Albania, Armenia, Azerbaijan, Bulgaria, Byelorus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, or Vietnam;

N.B.: Intra-city links provide service within a local service area which must not extend beyond a circle with a diameter of 50 km and with the city in the middle.

2. Inter-city links between cities in Albania, Armenia, Azerbaijan, Bulgaria, Byelorus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan;

b. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 156 Mbit/s or less;

c. The "laser" transmission wavelength does not exceed 1590 nm;

d. The radio transmission system does not employ Quadrature Amplitude Modulation (QAM) techniques above 16 QAM;

e. The equipment or systems are designed and intended to be used for fixed civil applications directly connected to the civilian network;

f. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e., ANSI or CCITT);

g. Supervision of systems installation and of maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment which would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B.1.: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2.: This is not meant to require that only nationals from the exporting country should install the system.

h. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

i. The COCOM member country licensee or his designated representative, who must be from a non-proscribed country, must have the right of access to all the equipment;

j. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Note is being used for the stated end purpose and is still located at the installation sites;

3. After each inspection, the licensee must report his findings to his authorities within one month; and

k. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to its licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

N.B.1: License applications for the export of fiber optic or radio telecommunications transmission systems or equipment for intra-city systems are subject to a 45 day COCOM notification before the license is issued under the provisions of this Note.

N.B.2.: License applications for the export of coaxial cable telecommunications transmission systems or equipment for intra-city systems are subject to a 45 day COCOM notification before the license is issued under the provisions of this Note.

N.B.3.: License applications for the export of telecommunications transmission systems or equipment for inter-city links are subject to a 45 day COCOM notification before the license is issued under the provisions of this Note. Consideration will be given to:

a. The use of specific carrier media in specific locations;

b. The concentration of strategic facilities, including military sites, along the proposed route(s);

c. Evidence which would indicate that the end-use(s) are directly related to significant strategic activities, including intelligence or diversion; *and*

d. The political/strategic situation in the importing country at a given time.

Advisory Note 21: Licenses are likely to be approved, as administrative exceptions, for the export of systems to County Groups QWY and the People's Republic of China for equipment controlled by 5A03.a or 5A03.b, or "software" for "common channel signalling" controlled by 5D01 or 5D03.c, and the test equipment, specially designed components, accessories and technology, necessary for the "use" thereof, provided that:

a. They are intended for fiber optic, radio, or coaxial cable international telecommunication links fulfilling the provisions of Note 19.a and .b.;

b. The "common channel signalling" (CCS) is restricted to associated mode of operation. Signalling channels and all related traffic channels must be carried on the same transmission system. Only international traffic between the locations listed in Note 19.a is permitted (i.e. calls originating in a proscribed country will not be rerouted to any proscribed destination);

c. No general service of "Integrated Service Digital Network" (ISDN) is provided by the proscribed country gateway switch, *except*:

1. ISDN user part (ISUP) may be used on the international signalling link;

2. ISDN service may be provided for specified subscribers on the proscribed countries gateway switch;

d. Supervision of systems installation and of maintenance of controlled equipment and "software" must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled equipment and "software" which would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B.1.: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2.: This is not meant to require that only nationals from the exporting country should install the system.

e. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

f. All CCS equipment, including spares, is operational in such a form that any removal from or manipulation on the end in a proscribed country is immediately recognized by the operator (e.g. through remote maintenance and monitoring procedures);

g. The licensee or operator takes immediate action to ensure that non-operational equipment is repaired or replaced within a week of the failure;

h. The COCOM member country licensee or his designated representative, who must be from a non-proscribed country, must have the right of access to all the equipment;

i. Proscribed country nationals are not given tools or training allowing them to modify the approved configuration or divert equipment or "software" to non-approved uses.

j. Upon request of the government of the exporting country, the licensee or operator must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Note is being used for the stated end purpose and is still located at the installation sites.

3. After each inspection, the licensee must report his findings to his authorities within one month;

k. The operator informs the exporting government immediately of any sign of misuse or diversion of CCS hardware or "software" on the other end of the international link, or of any failure of the operator at the other end to allow the operator to comply with the terms of the export license; and

l. Contractual agreements between the licensee and the operators on both end of the link require that the operator at the other end of the international link complies fully with all the conditions stipulated in the export license and that, in the event of failure by the latter to comply, the operator will inform his authorities and the exporting government.

N.B.1.: Operators must be from the countries list in subparagraphs a.1.a. or a.2.a of Advisory Note 19.

N.B.2.: License applications for the export of systems, equipment, or "software" for "common channel signalling" intended for new fiber optic international telecommunication links are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

N.B.3.: License applications for ISDN services for specified subscribers, or systems, equipment or "software" for "common channel signalling" intended for new non-fiber optic international telecommunications links or existing links are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 22: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China for the export of systems or equipment controlled by 5A03.d, 5A03.e, or 5A03.f, "software" controlled by 5D03.c that provides features described in 5A03.d, 5A03.e, or 5A03.f, specially designed components and accessories therefor, and test equipment, "software" and technology necessary for the "use" thereof, provided:

a. The equipment or "software" will be used for a specified civil end-use by a civil end-user only;

b. The equipment or "software" does not perform circuit switching or circuit switching functions;

c. Supervision of systems installation and of maintenance of controlled equipment or "software" must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled equipment or "software" that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries.

N.B.1.: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2.: This is not meant to require that only nationals from the exporting country should install the system.

N.B.3.: This does not apply if the equipment or "software" is designed for installation by the user without further substantial support by the supplier.

d. The COCOM member country licensee or his designated representative, who must be from a non-proscribed country, must have the right of access to all the equipment and may carry out inspections;

e. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Note is being used for the stated end purpose and is still located at the installation sites.

3. After each inspection, the licensee must report his findings to his authorities within one month.

N.B.: Licenses for exports of items covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note. The notification will include the equipment or "software" locations and the network topology.

46. In Category 5, Subcategory II, "Information Security", ECCN 5A11A is amended by revising the Requirements section to read as follows:

5A11A Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", as follows, and other specifically designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS

GLV: $0

GCT: No

GFW: Yes, for "Information Security" Advisory Note 4 *only*

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47. In Category 5, Subcategory II "Information Security", ECCN 5D11A is revised, ECCN 5D12A is amended by revising the heading of the entry, and ECCN 5D13A is amended by revising the Requirements section to read as follows:

5D11A "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by "information security" entries 5A11, 5B11, 5B12, or 5B13 or "software" controlled by "information security" entries 5D11, 5D12, or 5D13.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes, for "Information Security," Advisory Note 5 *only*
GTDU: No

5D12A "Software" specially designed or modified to support technology controlled by "information security" entry 5E11.

* * * * *

5D13A Specific "software" as follows:

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes, for software described in Advisory Note 5 *only*. Also, see note following this section.
GTDU: No

Note: Exporter must have determined that the software is not controlled by the Office of Defense Trade Control, Department of State, before using this general license.

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48. In Category 5, Subcategory II "Information Security", ECCN 5E11A is revised to read as follows:

5E11A Technology according to the General Technology Note for the "development", "production", or "use" of equipment controlled by "Information Security" entries 5A11, 5B11, 5B12, or 5B13 or "software" controlled by "information security" entries 5D11, 5D12, or 5D13.

Requirements

Validated License Required: QSTVWYZ
Reason For Control: NS
GTDR: No
GTDU: No.

49. In Category 5, Subcategory II "Information Security", the Notes for "Information Security" that follow ECCN 5E11A are revised to read as follows:

Notes for "Information Security":

Note 1: "Information security" entries in this Category do not control:

a. "Personalized smart cards" using "cryptography" restricted for use only in equipment or systems released from control under 5A11.c.1 to c.6, by this Note or as described in "Information Security" Advisory Notes 3 and 4 below;

b. Equipment containing "fixed" data compression or coding techniques;

c. Receiving equipment for radio broadcast, pay television or similar restricted audience television of the consumer type, without digital encryption and where digital decryption is limited to the video, audio or management functions;

d. Portable (personal) or mobile radiotelephones for civil use, e.g., for use with commercial civil cellular radiocommunications systems, containing encryption, when accompanying their users;

e. Decryption functions specially designed to allow the execution of copy-protected "software", provided that the decryption functions are not user-accessible.

Note 2: "Information security" entries in this Category do not control:

a. "Software" "required" for the "use" of equipment released by "Information Security" Note 1;

b. "Software" providing any of the functions of equipment released by "Information Security" Note 1.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to Country Group W of cellular radio equipment or systems specially designed for cryptographic operation, provided any message traffic encryption capability that is within the scope of the control of the "information security" entries in Category 5 and that is contained in such equipment or systems is irreversibly disabled.

N.B.: Provided message traffic encryption is not possible within such a system, the export of mobile or portable cellular radio subscriber equipment containing cryptographic capabilities is permitted under this Advisory Note.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the PRC of the following cryptographic equipment, provided that the equipment is intended for civil use:

a. Access control equipment, such as automatic teller machines, self-service statement printers or point of sale terminals, that protects password or personal identification numbers (PIN) or similar data to prevent unauthorized access to facilities, but does not allow for encryption of files or text, except as directly related to the password of PIN protection;

b. Data authentication equipment that calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication;

c. Cryptographic equipment specially designed, developed or modified for use in machines for banking or money transactions, such as automatic teller machines, self-service statement printers, point of sale terminals or equipment for the encryption of interbanking transactions, and intended for use only in such applications.

Advisory Note 5: (Eligible for GTDR). Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the PRC of the following cryptographic "software":

a. "Software" required for the "use" of equipment eligible for administrative exceptions treatment under Advisory Notes 3 and 4 in the Notes for "Information Security" (Category 5);

b. "Software" providing any of the functions of equipment eligible for administrative exceptions treatment under Advisory Notes 3 and 4 in the Notes for "Information Security" (Category 5).

50. In Category 5, Subcategory III "Other Equipment, Materials, 'Software' and Technology", ECCN 5A92F is revised to read as follows:

5A92F Mobile communications equipment, n.e.s., and "assemblies" and components therefor.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

51. In Category 5, Subcategory III, ECCNs 5A95F and 5A96G are amended by revising the heading of each entry to read as follows:

5A95F "Information security" equipment, n.e.s. (e.g., cryptographic, cryptoanalytic, and cryptologic equipment, n.e.s.), and components therefor.

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5A96G Telecommunications equipment, "assemblies", and components, n.e.s.

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52. In Category 5, Subcategory III, a new ECCN 5B94F is added immediately following the heading "B. Test, Inspection and Production Equipment" and ECCN 5B96G is amended by revising the heading of the entry to read as follows:

5B94F Telecommunications test equipment, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: No
GCT: No
GFW: No

Note: General License G–TEST is available for shipment to Syria valued at $1,000 or less.

5B96G Telecommunications and "information security" production equipment, n.e.s.

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53. In Category 5, Subcategory III, a new ECCN 5D91F is added immediately following ECCN 5D20B; as follows:

5D91F "Software" specially designed or modified for the "development", "production", or "use" of telecommunications test equipment controlled by 5B94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

54. In Category 5, Subcategory III, ECCNs 5D92F, 5D93F, and 5D94F are revised to read as follows:

5D92F "Software" specially designed or modified for the "development", "production" or "use" of mobile communications equipment controlled by 5A92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D93F "Software" specially designed or modified for the "development", "production" or "use" of radio relay communication equipment controlled by 5A93.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D94F "Software" specially designed or modified for the "development", "production" or "use" of "data (message) switching" equipment controlled by 5A94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

55. In Category 5, Subcategory III, ECCN 5D95G is removed and a new ECCN 5D95F is added immediately following ECCN 5D94F, as follows:

5D95F "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of "information security" or cryptologic equipment (e.g., equipment controlled by 5A95).

Requirements

Validated License Required: SZ, Iran, South African military and police.
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

56. In Category 5, Subcategory III, ECCN 5D96G is revised to read as follows:

5D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of telecommunications equipment.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

57. In Category 5, Subcategory III, a new ECCN 5E91F is added immediately following ECCN 5E20B, as follows:

5E91F Technology for the "development", "production", or "use" of telecommunications test equipment controlled by 5B94, or "software" controlled by 5D91.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

58. In Category 5, Subcategory III, ECCNs, 5E92F, 5E93F, 5E94F, 5E95F, and 5E96G are revised to read as follows:

5E92F Technology for the "development", "production", or "use" of mobile communications equipment controlled by 5A92, or "software" controlled by 5D92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E93F Technology for the "development", "production", or "use" of radio relay communication equipment controlled by 5A93, or "software" controlled by 5D93.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E94F Technology for the "development", "production", or "use" of "data (message) switching" equipment controlled by 5A94, or "software" controlled by 5D94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E95F Technology, n.e.s., for the "development", "production", or "use" of "information security" or cryptologic equipment (e.g., equipment controlled by 5A95), or "software" controlled by 5D95.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E96G Technology, n.e.s., for the "development", "production", or "use" of telecommunications equipment.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

59. In Category 6, ECCN 6A01A is amended by revising the Requirements section and ECCNs 6A02A are revised to read as follows:

6A01A Acoustics.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GLV: $3,000
GCT: Yes
GFW: Yes, for 6A01.a.1.b.4 only (see Advisory Note 3 to Category 6)

* * * * *

6A02A Optical Sensors.

Requirements

Validated License Required: QSTVWYZ

Unit: Number; $ value for parts and accessories
Reason for Control: NS, FP, MT, and NP (see Notes)
GLV: $3,000, except $0 for 6A01.a.1, a.2, a.3, and c
GCT: Yes, except MT and FP (see Notes)
GFW: Yes (Advisory Notes 6 and 7 to Category 6 only)

Notes: 1. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

2. MT controls apply to optical detectors described in 6A02.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including "laser") and ionized-particle radiation resistant.

3. NP controls apply to all countries, except countries listed in supp. no. 2 to part 773 of this subchapter, for image intensifier tubes and specially designed components described in 6A02.a.2.

List of Items Controlled

a. Optical detectors, as follows:

Note: 6A02.a does not control germanium or silicon photodevices.

a.1 "Space-qualified" single-element or focal plane array (linear or two dimensional) elements having any of the following:

a.1.a.1. A peak response at a wavelength shorter than 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response "time constant" of 95 ns or less; *or*

a.1.c. A peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all the following:

a.2.a.1. A peak response in wavelength range exceeding 400 nm, but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of less than 25 micrometers; *and*

a.2.a.3.a. An S–20, S–25 or multialkali photocathode; *or*

a.2.a.3.b. A GaAs or GaInAs photocathode;

a.2.b. Specially designed components as follows:

a.2.b.1. Fiber optic image inverters;

a.2.b.2. Microchannel plates having both of the following characteristics:

a.2.b.2.a. 15,000 or more hollow tubes per plate; *and*

a.2.b.2.b. Hole pitch (center-to-center spacing) of less than 25 micrometers; *or*

a.2.b.3. GaAs or GaInAs photocathodes.

a.3. Non-"space-qualified" linear or two dimensional focal plane arrays, having any of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 90 nm, but not exceeding 1,050 nm; *and*

a.3.a.2. A response "time constant" of less than 0.5 ns;

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm, but not exceeding 1,200 nm; *and*

a.3.b.2. response "time constant" of 95 ns or less; *or*

a.3.c. Individual elements with a peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm;

Notes: 1. 6A02.a.3 includes photoconductive arrays and photovoltaic arrays.

2. 6A02.a.3 does not control silicon focal plane arrays, multi-element (not to exceed 16 elements) encapsulated photoconductive cells or pyroelectric detectors using any of the following:

a. Lead sulphide;
b. Triglycine sulphate and variants;
c. Lead-lanthanum-zirconium titanate and variants;
d. Lithium tantalate;
e. Polyvinylidene fluoride and variants;
f. Strontium barium niobate and variants; *or*
g. Lead selenide.

a.4. Non-"space-qualified" single-element or non-focal plane multi-element semiconductor photodiodes or phototransistors having both of the following:

a.4.a. A peak response at a wavelength exceeding 1,200 nm; *and*

a.4.b. A response "time constant" of 0.5 ns or less; b. "Multispectral Imaging Sensors" designed for remote sensing applications, having either of the following characteristics:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 microradians; *or*

b.2. Specified for operation in the wavelength range exceeding 400 nm, but not exceeding 30,000 nm; *and*

b.2.a. Providing output imaging data in digital format; *and*

b.2.b.1. "Space-qualified"; *or*

b.2.b.2. Designed for airborne operation and using other than silicon detectors;

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating either of the following:

c.1. Image intensifier tubes controlled by 6A02.a.2 *or*

c.2. Focal plane arrays controlled by 6A02.a.3;

Note: 6A02.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use;

Technical Note: Direct view refers to imaging equipment operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically, or by any other means.

d. Special support components for optical sensors, as follows;

d.1. "Space-qualified" cryocoolers;

d.2. Non-"Space-qualified" cryocoolers, as follows:

d.2.a. Closed cycle with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers with bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers:

d.3.a. Specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive; *or*

d.3.b. Modified structurally to have a "beat length" of less than 50 mm (high birefringence);

Related ECCNs: * * *

6A03A Cameras.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS and NP (NP controls apply to 6A03.a.2 through a.5 and b.1 only)
GLV: $1,500
GCT: Yes, except 6A03.a.2, a.3, a.4, a.5, and b.1
GFW: No

List of Items Controlled

a. Instrumentation cameras, as follows:

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames per second;

Note: 6A03.a.1 does not control cinema recording cameras for normal civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames per second for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras with writing speeds exceeding 10 mm/microsecond;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames per second;

a.5. Electronic cameras having both of the following:

a.5.a An electronic shutter speed (gating capability) of less than 1 microsecond per full frame; *and*

a.5.b. A readout time allowing a framing rate of more than 125 full frames per second;

b. Imaging cameras, as follows:

Note: 6A03.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4×10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4×10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.c. More than 12×10^6 "active pixels" for solid state array color cameras incorporating one solid state array;

b.2. Scanning cameras and scanning camera systems:

b.2.a. Incorporating linear detector arrays with more than 8,192 elements per array; *and*

b.2.b. Having mechanical scanning in one direction;

b.3. Incorporating image intensifiers controlled by 6A02.a.2.a;

b.4. Incorporating focal plane arrays controlled by 6A02.a.3;

(For cameras specially designed or modified for underwater use, see 8A02.d and 8A02.e)

RELATED ECCNs: * * *

60. In Category 6, ECCNs 6A07A and 6A08A are amended by revising the Requirements section for each entry to read as follows:

6A07A Gravity meters (gravimeters) and gravity gradiometers, as follows.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT (see Note)
GLV: $3,000
GCT: Yes, except MT (see Note)
GFW: No

Note: MT controls apply to gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, as follows:

a. Designed or modified for airborne or marine use; *and*

b. Having a static or operational accuracy of 0.7 milligal or better, with a time to steady-state registration of two minutes or less.

* * * * *

6A08A Radar systems, equipment and assemblies having any of the following characteristics, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT and FP (see Notes)
GLV: $5,000
GCT: Yes, except MT (see Notes)
GFW: Yes, for Advisory Note 21 to Category 6 *only*

Notes: 1. MT controls apply to items that are designed for airborne aplications and that are usable in the systems described in § 778.7(a).

2. FP controls apply to Iran, Libya and Syria for items described in 6A08.g.

* * * * *

61. In Category 6, ECCN 6A28B is revised to read as follows:

6A28B Radar and laser radar systems (including altimeters), and specially designed components therefor, for airborne applications.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT and FP (see Notes)
GLV: $5,000
GCT: No
GFW: No

Notes: 1. FP controls apply to Iran, Libya, and Syria for all items controlled by this entry.

2. This entry does not control airborne civil weather radar conforming to international standards for civil weather radars provided that they do not incorporate any of the following:

a. Phased array antennas;

b. "Frequency agility";

c. "Spread spectrum"; or

d. Signal processing specially designed for tracking of vehicles.

3. Laser radar systems embody specialized transmission, scanning, receiving and signal processing techniques for utilization of lasers for echo ranging, direction finding and discrimination of targets by location, radial speed and body reflection characteristics.

62. In Category 6, ECCN 6A43B is amended by revising the heading of the entry to read as follows:

6A43B Cameras and components not controlled by ECCN 6A03.

* * * * *

63. In Category 6, ECCN 6A91F is removed.

64. In Category 6, ECCN 6A94F is revised to read as follows:

6A94F Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and specially designed components, n.e.s.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GLV: No
GCT: No
GFW: No

65. In Category 6, ECCNs 6D01A and 6D02A are revised and ECCN 6D03A is amended by revising the Requirements section to read as follows:

6D01A "Software" specially designed for the "development" or "production" of equipment controlled by 6A04, 6A05, 6A08, or 6B08.

Requirements

Validated License Required: QSTVWYZ
Unit: value
Reason for Control: NS and MT (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" for the "development" or "production" of equipment controlled by ECCN 6A08 that is designed for airborne applications and that is usable in the systems described in § 778.7(a).

RELATED ECCNS: 8 * * *

6D02A "Software" specially designed for the "use" of equipment controlled by 6A02.b, 6A08, or 6B08.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS and MT (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" for the "use" of equipment controlled by ECCN 6A08 that is designed for airborne applications and that is usable in the systems described in § 778.7(a).

RELATED ECCNs: * * *

6D03A Other "software", as follows.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS

GTDR: Yes
GTDU: No
* * * * *

66. In Category 6, new ECCNs 6D90F, 6D92F, 6D93F, and 6D94F are added immediately following ECCN 6D29B and ECCN 6D96G is revised to read as follows:

6D90F "Software" specially designed for the "development", "production", or "use" of airborne radar equipment controlled by 6A90F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6D92F "Software" specially designed for the "development", "production", or "use" of gravity meters (gravimeters) controlled by 6A92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6D93F "Software" specially designed for the "development", "production", or "use" of "magnetometers" controlled by 6A94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6D94F "Software" specially designed for the "development", "production", or "use" of marine or terrestrial acoustic equipment controlled by 6A94.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6D96G "Software", n.e.s., specially designed for the "development", "production", or "use" of equipment described in Category 6.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

67. In Category 6, ECCNs 6E01A and 6E02A are revised and ECCN 6E03A is amended by revising the Requirements section to read as follows:

6E01A Technology according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, 6C05, 6D01, 6D02, or 6D03.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT, and FP (see Notes)
GTDR: Yes, except MT and FP (see Notes)
GTDU: No

Notes: 1. MT controls apply to technology for the "development" of equipment controlled by 6A02.a.1, a.3, and a.4, 6A07. b and c, and 6A08. MT controls on technology for 6A08 equipment apply only when the equipment is designated for airborne applications and is unable in the systems described in § 778.7(a).

2. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for technology for the "development" of police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

RELATED ECCN: * * *

6E02A Technology according to the General Technology Note for the "production" of equipment or materials controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, or 6C05.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT, and FP (see Notes)
GTDR: Yes, except MT and FP (see Notes)
GTDU: No

Notes: 1. MT controls apply to technology for the "production" of equipment controlled by 6A02. a.1, a.3, and a.4, 6A07. b and c, and 6A08. MT controls on technology for 6A08 equipment apply only when the equipment is designed for airborne applications and is usable in the systems described in § 778.7(a) of this subchapter.

2. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for technology for the "production" of police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

RELATED ECCNs: * * *

6E03A Other technology.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS
GTDR: Yes
GTDU: No
* * * * *

68. In Category 6, new ECCNs 6E90F, 6E92F, 6E93F, and 6E94F are added immediately following ECCN 6E23B and 6E96G is revised to read as follows:

6E90F Technology for the "development", "production", or "use" of airborne radar equipment controlled by 6A90F

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6E92F Technology for the "development", "production", or "use" of gravity meters (gravimeters) controlled by 6A92F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No.
GTDU: Yes, except destinations listed under *Validated License Required*

6E93F Technology for the "development", "production", or "use" of "magnetometers" controlled by 6A93F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6E94F Technology for the "development", "production", or "use" of marine or terrestrial acoustic equipment controlled by 6A94F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6E96G Technology, n.e.s., for the "development", "production", or "use" of equipment, materials or "software" controlled under Category 6.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

69. In Category 6, under the heading "Notes for Category 6" that follows ECCN 6E96G, Advisory Notes 1 through 11 are revised and new Advisory Notes 12 through 22 are added to read as follows:

Notes for Category 6

Acoustics

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of equipment:

a. Controlled by 6A01.b or 6A01.c, and "software" specially designed and technology "required" therefor controlled by 6D or 6E;

b. Eligible for administrative exceptions treatment under Advisory Note 2 for Category 6.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of acoustic systems or equipment for determining the position of surface vessels or underwater vehicles, provided that:

a. They are not capable of processing responses from more than 8 beacons in the calculation of a point;

b. They do not have devices for correcting automatically speed-of-sound propagation errors for calculation of a point;

c. They do not use coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle; and

d. Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressures at depths exceeding 1,000 m.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 6A01.a.1.b.4 for use in civil research or civil exploration work.

Optical Sensors

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of non-ruggedized equipment operating in the visible spectrum, controlled by 6A02.c, and containing image intensifier tubes controlled by 6A02.a.2.a.3.a, provided that they are to be used for civil certified end-uses by civil end-users.

Advisory Note 5: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of image intensifier tubes incorporating microchannel-plates, not specially designed for cameras controlled by 6A03.

N.B.: Advisory Note 5 does not apply to tubes incorporating a gallium arsenide (or similar semiconductor) photocathode.

Advisory Note 6: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "multispectral imaging sensors" controlled by 6A02.b.2.a or 6A02.b.2.b.2, provided that the Instantaneous-Field-of-View (IFOV) of the "multispectral imaging sensor" is equal to or more than 2.5 milliradians.

Advisory Note 7: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of reasonable quantities of non-ruggedized image intensifier tubes controlled by 6A02.a.2.a.3.a for bona fide medical use.

Advisory Note 8: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of items controlled by 6A02, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 9: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of reasonable quantities of image intensifier tubes controlled by 6A02.a.2.a.3.a that are non-ruggedized and intended for equipment listed in the Note to 6A02.c.

Cameras

Advisory Note 10: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of cameras controlled by 6A03.a.1 or 6A03.a.5, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 11: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of framing cameras controlled by 6A03.a.2 designed for civil purposes (i.e., non-nuclear use) with a framing speed of not more than 2 million frames per second.

Optics

Advisory Note 12: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of the following items for installation and use at ground-based bona fide academic or civilian astronomical research sites or in international air- or space-based bona fide academic or civilian astronomical research projects. For the end-use stated in this Advisory Note, the following limits apply:

a. One optical mirror controlled by 6A04.a.1;

b. Three optical mirrors controlled by 6A04.a.2;

c. Three optical mirrors controlled by 6A04.a.4;

d. Three optical mirrors controlled by 6A04.b;

e. Ten optical filters controlled by 6A04.d.1.a;

f. One piece of optical control equipment controlled by 6A04.e.2 for each operational mirror;

g. Four pieces of optical control equipment controlled by 6A04.e.4;

h. Three "substrate blanks" controlled by 6C04.a;

i. A reasonable quantity of the bulk fluoride glass controlled by 6C04.e.2;

j. A reasonable quantity of the materials controlled by 6C04.f.

N.B.: The quantity limitations listed in Advisory Note 12 refer to specific projects.

Advisory Note 13: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of items controlled by 6A04, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Lasers

Advisory Note 14: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following and specially designed components therefor:

1. An output wavelength less than 800 nm;

2. A "pulse duration" not exceeding 100 ns; *and*

3. A peak output power not exceeding 15 MW;

b. CO_2 or CO/OC_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having either:

1. A pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; *or*

2. A CW maximum rated single or multimode output power not exceeding 10 kW;

c. CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10 kW.

Advisory Note 15: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following, and specially designed components therefor:

1. An output wavelength less than 800 nm;

2. A "pulse duration" not exceeding 100 ns; *and*

3. A peak output power not exceeding 15 MW;

b. CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having either:

1. A pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; *or*

2. A CW maximum rated single or multimode output not exceeding 10 kW;

c. CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10kW;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 15.a, .b, or .c that are controlled by 6D or 6E.

Advisory Note 16: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "lasers", for civil applications, as follows:

a. Neodymium-doped (other than glass), pulse-excited, "Q-switched lasers" controlled by 6A05.c.2.c.2.b having:

1. A pulse duration equal to or more than 1 ns; *and*

2. A multiple-transverse mode output with a "peak power" not exceeding 400 MW;

b. Neodymium-doped (other than glass) "lasers" controlled by 6A05.c.2.c.3.b or 6A05.c.2.c.4.b:

1 Having:

a. An output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; *and*

b. An average or CW output power not exceeding 2 kW; *and*

2. Being;

a. Pulse-excited, non-"Q-switched" multiple-tranverse mode; *or*

b. Continuously excited, multiple-tranverse mode;

c. Carbon dioxide "lasers" controlled by 6A05.a.4:

1. Being in CW multiple-tranverse mode; *and*

2. Having a CW output power not exceeding 15 kW.

Advisory Note 17: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical equipment controlled by 6A05.g that is destined for use with "lasers" that are not controlled or controlled "lasers" that have been approved for export.

Mangnetometers

Advisory Note 18: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A06, and "software" specially designed and technology "required" therefor that are controlled by 6D or 6E.

Gravimeters

Advisory Note 19: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A07 or 6B07, and "software" specially designed and technology "required" therefore that are controlled by 6D or 6E.

Radar

Advisory Note 20: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W, for purposes such as air traffic control, of radar equipment controlled by 6A08 or 6B08, and "software" specially designed and technology "required" therefor that are controlled 6D or 6E.

Advisory Note 21: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of ground radar equipment specially designed for enroute air traffic control (ATC), and "software" specially designed for the "use" thereof, provided that:

a. It is controlled by 6A08.i;

b. It has a maximum "instrumented range" of 500 km or less;

c. It is configured so that the radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;

d. It contains no provisions for remote control of the radar scan rate from the enroute ATC center; *and*

e. It is to be permanently installed under the supervision of the exporter or the exporter's Western representative, so that the "instrument range" and volumetric coverage of the radar encompasses an ICAO air route.

N.B.: The "use" "software" must be limited to "object code" and the minimum amount of "source code" necessary for installation, operation or maintenance.

Advisory Note 22: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of ATC "software" application "programs" controlled by 6D03.d.1, provided that:

a. The number of "system tracks" does not exceed 700;

b. The number of primary radar inputs does not exceed 32; *and*

c. The "software" is further limited to "object code" and the minimum amount of "source code" necessary for installation, operation or maintenance.

70. In Category 7, ECCN 7A02A is amended by revising the List of Items Controlled to read as follows:

7A02A Gyros having any of the following characteristics, and specially designed components therefor.

* * * * *

List of Items Controlled

a. A "drift rate" "stability", when measured in a 1 g environment over a period of three months and with respect to a fixed calibration value, of:

a.1. Less (better than 0.1° per hour when specified to function at linear acceleration levels below 10 g; *or*

a.2. Less (better) than 0.5° per hour when specified to function at linear acceleration levels from 10 to 100 g inclusive;

b. Specified to function at linear acceleration levels above 100 g;

Related ECCNs: * * *

71. In Category 7, ECCN 7A26B is revised to read as follows:

7A26B Avionics equipment and components usable in "missile" systems.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

List of Items Controlled

a. Avionics equipment and components including, but not limited to:

a.1. Terrain contour mapping equipment;

a.2. Scene mapping and correlation (both digital and analog) equipment;

a.3. Doppler navigation radar equipment;

a.4. Passive interferometer equipment; *and*

a.5. Imaging sensor equipment (both active and passive).

b. Reserved.

72. In Category 7, ECCN 7A94F is amended by revising the heading of the entry to read as follows:

7A94F Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems, and other avionic equipment, including parts and components, n.e.s.

* * * * *

73. In Category 7, ECCN 7D94F is revised to read as follows:

7D94F "Software", n.e.s., for the "development", "production", or "use" of navigation, airborne communication, and other avionics equipment.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

73. In Category 7, ECCN 7E94F is revised to read as follows:

7E94F Technology, n.e.s., for the "development", "production", or "use" of navigation, airborne communication, and other avionics equipment.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

75. In Category 7, the heading "Notes for Category 7" and new Advisory Notes 1 and 2 are added immediately following ECCN 7E94F, as follows:

Notes for Category 7

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled for national security reasons by Category 7, *except:*

a. Inertial navigation systems controlled by 7A03, and "software" specially designed and

technology "required" therefor that are controlled by 7D or 7E;

b. Technology controlled by 7E for accelerometers and gyros controlled by 7A01 and 7A02;

c. Technology controlled by 7E04.a.4.

Advisory Note 2: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of:

a. Technology controlled by 7E for the accelerometers and gyros controlled by 7A01 and 7A02;

b. Technology controlled by 7E04.a.4.

76. In Category 8, ECCNs 8A01A and 8A02A are amended by revising the Requirements section of each entry to read as follows:

8A01A Submersible vehicles or surface vessels.

Requirements

Validated License Required: QSTVWYZ
Unit: Vessels or vehicles in number; parts and accessories in $ value
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: No

* * * * *

8A02A Systems or equipment.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes, for 8A02.i.2 *only* (see Advisory Note 2)

* * * * *

77. In Category 8, ECCN 8A94F is amended by revising the heading of the entry to read as follows:

8A94F Boats, n.e.s., including inflatable boats; marine engines (both inboard and outboard) and submarine engines, n.e.s.; and specially designed parts therefor, n.e.s.

* * * * *

78. In Category 8, ECCNs 8D01A, 8D02A, 8D92F, 8D93F, and 8D96G are revised to read as follows:

8D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by 8A01A, 8A02A, 8A18A, 8B01A, or 8C01A.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, FP
GTDR: Yes
GTDU: No

8D02A Specific "software" specially designed or modified for the "development", "production", repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, FP
GTDR: Yes
GTDU: No

8D92F "Software" specially designed or modified for the "development", "production" or "use" of commodities controlled by 8A92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason For Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8D93F "Software" specially designed or modified for the "development", "production" or "use" of commodities controlled by 8A93 or 8A94.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason For Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of marine equipment or materials.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason For Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

79. In Category 8, ECCNs 8E01A, 8E02A, 8E92F, 8E93F, and 8E96G are revised to read as follows:

8E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 8A01A, 8A02A, 8A18A, 8B01A, or 8C01A.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, FP
GTDR: Yes
GTDU: No

8E02A Other technology.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, FP
GTDR: Yes
GTDU: No

List of Items Controlled

a. Technology for the "development", "production", repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction;

b. Technology for the overhaul or refurbishing of equipment controlled by 8A01 or 8A02.b, j, o, or p.

8E92F Technology for the "development", "production" or "use" of commodities controlled by 8A92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8E93F Technology for the "development", "production" or "use" of commodities controlled by 8A93 or 8A94.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8E96G Technology, n.e.s., for "development", "production" or "use" of items controlled by Category 8.

Requirements

Validated License Required: SZ, South African military and police
Reason For Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

80. In Category 8, the Advisory Note for Category 8 that follows ECCN 8E96G is removed and the heading "Notes for Category 8" and new Advisory Notes 1 through 3 are added immediately following ECCN 8E96G as follows:

Notes for Category 8

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled for national security reasons by Category 8, *except:*

a. Submersible vehicles controlled by 8A01.a, 8A01.b, 8A01.c, or 8A01.d;

b. Submersible systems or equipment controlled by 8A02.a, 8A02.b, 8A02.c, 8A02.i, or 8A02.j;

c. "Software" specially designed and technology "required" for the submersible vehicles, systems or equipment described in this Advisory Note 1.a or .b that are controlled by 8D or 8E;

d. Other technology for submersible vehicles, systems or equipment controlled by 8E02.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of manipulators, for civil end-uses (e.g., underwater oil, gas or mining operations), that are controlled by 8A02.1.2 and have 5 degrees of freedom of movement.

Advisory Note 3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of air independent power systems controlled by 8A02.j, and "software" specially designed and technology "required" therefor that are controlled by 8D and 8E.

81. In Category 9, a new ECCN 9A90F is added immediately following ECCN 9A80B, as follows:

9A90F Diesel engines, n.e.s., for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 kPa and 25°); pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

82. In Category 9, ECCN 9A94F is revised to read as follows:

9A94F Aircraft parts and components, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

83. In Category 9, ECCN 9B27B is revised to read as follows:

9B27B Test benches or stands that have the capacity to handle solid or liquid propellant rockets or rocket motors of more than 90 KN (20,000 lbs.) of thrust, or that are capable of simultaneously measuring the three axial thrust components.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

84. In Category 9, ECCNs 9D01A and 9D02A are amended by revising the Requirements section and 9D03A is revised to read as follows:

9D01A "Software" "required" for the "development" of equipment controlled by 9A01, 9A02, 9A03, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09, or technology controlled by 9E03.

* * * * *

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Note: MT controls apply to "software" "required" for the "development" of equipment for test, inspection and production of small lightweight turbine engines described in 9A21, equipment controlled by 9B02, 9B03, and 9B04, vibration test equipment controlled by 9B06, and radiographic equipment controlled by 9B07.

9D02A "Software" "required" for the "production" of equipment controlled by 9A01, 9A02, 9A03, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09.

* * * * *

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Note: MT control apply to "software" "required" for the "production" of equipment for test, inspection and production of small lighweight turbine engines described in 9A21, equipment controlled by 9B02, 9B03, and 9B04, vibration test equipment controlled by 9B06, and radiographic equipment controlled by 9B07.

9D03A "Software" "required" for the "use" of full authority digital electronic engine control (FADEC) for propulsion systems controlled by 9A01, 9A02, 9A03, or equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Note: MT controls apply to "software" "required" for the "use" of FADEC for gas turbine aero engines controlled under ECCN 9B21 (see related ECCN 9A01).

List of Items Controlled

a. "Software" in digital electronic controls for propulsion systems, aerospace test facilities or air breathing aero-engine test facilities;

b. Fault-tolerant "software" used in FADEC systems for propulsion system and associated test facilities.

85. In, Category 9, a new ECCN 9D18A is added immediately following ECCN 9D04A, as follows:

9D18A "Software" for the "development", "production", or "use" of equipment controlled by 9A18A.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, NATO
Unit: $ Value
Reason for Control: NS
GTDR: Yes, for Australia, Japan, New Zealand, and NATO *only*
GTDU: No

86. In Category 9, new ECCNs 9D90F, 9D91F, and 9D93F are added immediately following ECCN 9D24B and ECCNs 9D94F and 9D96G are revised to read as follows:

9D90F "Software", n.e.s., for the "development" or "production" of diesel engines and pressurized aircraft breathing equipment controlled by 9A90F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D91F "Software", n.e.s., for the "development" or "production" of "aircraft" and aero gas turbine engines controlled by 9A91F or aircraft parts and components controlled by 9A94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D93F "Software" for the "production" or "development" of off-highway wheel tractors controlled by 9A92F or on-highway tractors controlled by 9A93F.

Requirements

Validated License Requirement: SZ, Iran, Syria, South African military and police
Unit: $ value

Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D94F "Software" for the "development", "production", or "use" of vibration test equipment controlled by 9B94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of propulsion systems or transportation equipment.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

87. In Category 9, ECCN 9E01A is amended by revising the Requirements section and ECCN 9E02A is amended by revising the heading and requirements section to read as follows:

9E01A Technology according to the General Technology Note for the "development" of equipment controlled by 9A01.c, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, 9B09, or "software" controlled by 9D01, 9D02, 9D03, or 9D04.

* * * * *

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Related ECCNs: * * *

Note: MT controls apply to technology according to the General Technology Note for the "development" of equipment controlled by 9B02, 9B03, and 9B04, vibration test equipment controlled by 9B06, radiographic equipment controlled by 9B07, and software controlled by 9D01, 9D02, 9D03, and 9D04 for MT reasons.

9E02A Technology according to the General Technology Note for the "production" of equipment controlled by 9A01.c, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09.

* * * * *

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Note 1: "Development" or "production" technology controlled by 9E for gas turbine engines remains controlled when used as "use" technology for repair, rebuild and overhaul. Excluded from control are: technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units, including replacement of whole engines or engine modules.

Note 2: MT controls apply to technology according to the General Technology Note for the "development" of equipment controlled by 9B02, 9B03, and 9B04, vibration test equipment controlled by 9B06, radiographic equipment controlled by 9B07, and software controlled by 9D01, 9D02, 9D03, and 9D04 for MT reasons.

88. In Category 9, new ECCN 9E18A is added immediately following ECCN 9E03A to read as follows:

9E18A Technology for the "development", "production", or "use" of equipment controlled by 9A18A.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, NATO
Reason for Control: NS
GTDR: Yes, for Australia, Japan, New Zealand, and NATO *only*
GTDU: No

89. In Category 9, new ECCNs 9E90F, 9E91F, and 9E93F are added immediately following ECCN 9E21B and ECCNs 9E94F and 9E96G are revised to read as follows:

9E90F Technology, n.e.s., for the "development", "production", or "use" of diesel engines and pressurized aircraft breathing equipment controlled by 9A90F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9E91F Technology, n.e.s., for the "development", "production", or "use" of "aircraft" and aero gas turbine engines controlled by 9A91F or aircraft parts and components controlled by 9A94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes except destinations listed under *Validated License Required*

9E93F Technology for the "production", "development", or "use" of off-highway wheel tractors controlled by 9A92F or on-highway tractors controlled by 9A93F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes except destinations listed under *Validated License Required*

9E94F Technology for the "development", "production", or "use" of vibration test equipment controlled by 9B94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes except destinations listed under *Validated License Required*

9E96G Technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 9.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes except destinations listed under *Validated License Required*

90. In Category 9, under the heading "Advisory Notes for Category 9" that follows ECCN 9E96G, the Advisory Note is removed and new Advisory Notes 1 through 3 are added to read as follows:

Advisory Notes for Category 9

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled for national security reasons by Category 9, *except:*

a. Test facilities or equipment controlled by 9B01, 9B02, 9B03, 9B05, or 9B06;

b. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 1.a that are controlled by 9D or 9E;

c. Other technology controlled by 9E03.a, and "software" specially designed therefor that is controlled by 9D.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and People's Republic of China of marine gas turbine engines controlled by 9A02, for installation in civil marine vessels for civil end-use, provided that their specific fuel consumption exceeds 0.23 kg/kW-hr. and their continuous ISO rating is less than 20,000 kW.

Advisory Note 3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of technology controlled by 9E03.a, and

"software" specially designed therefor that is controlled by 9D.

91. In Category 10, ECCNs OE18A, OE84C, and OE96G are revised to read as follows:

OE18A Technology for the "development," "production," or "use" of items controlled by OA18.b through OA18.e.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, FP (see Note)
GTDR: Yes
GTDU: No

Note: FP controls apply to all exports of technology controlled under this entry to South Africa (see supp. 2 to part 779 of this subchapter).

OE84C Technology for the "development" or "production" of shotguns controlled by OA84 and shotgun shells.

Requirements

Validated License Required: QSTVWYZ, except for Australia, Japan, New Zeland, and members of NATO
Reason for Control: FP (see Note)
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

Note: FP controls based on the UN arms embargo apply to all exports to South Africa of technology controlled under this entry (see supp. 2 to part 779 of this subchapter).

OE96G Technology for the "development," "production," or "use" of items controlled by Category O, n.e.s.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDU: No
GTDU: Yes, except destinations listed under *Validated License Required*

Dated: December 17, 1992.

Daniel E. Cook,

Acting Director, Office of Technology and Policy Analysis, Bureau of Export Administration.

[FR Doc. 92–30966 Filed 12–23–92; 8:45 am]
BILLING CODE 3510–DT–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Procedures Regarding Public Availability of No-Action, Interpretative and Exemption Letters and Other Written Communications

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting 140.97 (17 CFR 140.97) to implement new procedures for the publication of no-action, interpretative and exemption letters issued by the Commission or its staff together with the incoming letters or other written communications to which they respond.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Donald H. Heitman, Counsel to the Office of Communication and Education Services, (202) 254–8390.

SUPPLEMENTARY INFORMATION:

I. The Rule

The Commission and its staff regularly provide responses to written requests from persons seeking interpretative advice concerning, or no-action or exemptive relief from, provisions of the Commodity Exchange Act ("Act") or the Commission's rules, regulations or orders issued thereunder. Interpretative letters provide advice and guidance by interpreting a specific provision of the Act, or a Commission rule, regulation or order in the context of an specific factual situation. No-action letters express the staff's decision not to recommend an enforcement action to the Commission if a particular transaction, business practice or other course of conduct is engaged in. Exemption letters grant an exemption from a specific provision or provisions of the Act or from specified Commission rules, regulations or orders.

The Commission is of the view that there is a public interest in, and the public generally benefits from, timely publication of its views and those of its staff as expressed in interpretative, no-action and exemption letters. In this regard, the Commission understands that interpretative letters represent a valuable source of the Commission's and staff's views on the application of this body of law,[1] and no-action and exemption letters may assist members of the public in formulating their own requests for relief. As a result, the Commission has determined to formalize its procedures for the public dissemination of this correspondence with the adoption of new Rule 140.97.

Subsection (a) of the rule generally establishes that no-action, interpretative and exemption letters issued by the Commission or its staff, together with the incoming letters or other written communications to which they respond, will be made publicly available as soon as practicable after the Commission or staff letter has been issued. The provisions of subsection (a), however, will not apply to applications for orders granting exemptions that are submitted pursuant to section 4(c) of the Act or to any written Commission responses thereto.[2] Subsection (b) of the rule provides that, in particular cases where it appears that a delay in publication would be appropriate, the Commission or staff letter together with the incoming letter will be given confidential treatment for a reasonable period (not exceeding 120 days from the date the Commission or staff letter issued) upon application therefore. The burden will be on the person requesting the issuance of an interpretative, no-action or exemptive letter to establish the need for confidential treatment and it will not be granted unless the need is clearly demonstrated. Moreover, requests for confidential treatment should be limited to the minimum period necessary under the circumstances. Only in exceptional situations will the full 120-day period be allowed. Finally, subsection (c) of the rule makes clear that information of the type which Section 8 of the Act, 7 U.S.C. 12, generally prohibits the Commission from publishing will not be made public except in accordance with the provisions of Section 8.

The rule will operate prospectively and will apply to all no-action, interpretative and exemption letters issued by the Commission or its staff on or after January 25, 1993 and to the letters or other written communications to which the Commission or staff letters respond. Persons who have letters or other written communications requesting the issuance of no-action, interpretative or exemptive letters pending on this date may avail themselves of the confidential treatment procedures set forth in subsection (b) of the rule or may otherwise promptly withdraw their requests.

The Commission intends to publish once each month in the CFTC Weekly

[1] Of course, unless adopted by the Commission itself, any opinion or position taken by the staff in such correspondence reflects only the views of the Office or Division that issued it, and does not necessarily bind the Commission or any other Office or Division of the Commission.

[2] Section 4(c), which was recently added to the Act by section 502 of the Futures Trading Practices Act of 1992, Public Law No. 102–564, provides, among other things, that the Commission by order may exempt any agreement, contract or transaction from any of the provisions of the Act upon the application of any person for such exemptive relief. That section also provides that the Commission may temporarily limit the public availability of applications for the issuance of such exemptive orders under certain circumstances. The Commission intends in the near future to issue procedural regulations in this regard.

The provisions of subsection (a) also will not apply to routine correspondence issued by the Commission or its staff, or to any incoming letters or other written communications to which such correspondence responds.

Advisory a list and description of all no-action letters, interpretative letters and exemption letters issued by the Commission or its staff during the month. Copies of these letters and of the written correspondence to which they respond will be available after publication of the list from the Commission's Office of Communication and Education Services.

II. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates regulations. Section 553(b), however, sets forth an exemption to this notice-and-comment requirement for rules of agency organization, procedure or practice. The Commission finds that notice and public comment on the rule promulgated herein are unnecessary because the rule pertains exclusively to agency procedure or practice.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96-354, 94 stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of Rule 140.97 which relates solely to agency procedure or practice.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1989, ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that new Rule 140.97 does not impose any information collection requirements as defined by the PRA.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Conflict of interest, Organization and functions (Government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular in Section 8a of the Act, 7 U.S.C. 12a, the Commission hereby amends part 140 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 is revised to read as follows:

Authority: 7 U.S.C. 7a(j) and 12a.

2. Section 140.98 is added to read as follows:

§ 140.98 Publication of No-Action, Interpretative and Exemption Letters and Other Written Communications.

(a) Except as provided in paragraphs (b) and (c) of this section, and except for applications for orders granting exemptions submitted pursuant to section 4(c) of the Commodity Exchange Act and any written responses thereto, each written response by the Commission or its staff to a letter or other written communication requesting:

(1) Interpretative legal advice with respect to the Commodity Exchange Act or any rule, regulation or order issued or adopted by the Commission thereunder;

(2) A statement that, on the basis of the facts stated in such letter or other communication, the staff would not recommend that the Commission take any enforcement action; or

(3) An exemption, on the basis of the facts stated in such letter or other communication, from the provisions of the Commodity Exchange Act or any rules, or regulations or orders issued or adopted by the Commission thereunder; shall be made available, together with the letter or other written communication making the request, for inspection and copying by any person as soon as practicable after the response has been sent or given to the person requesting it.

(b) Any person submitting a letter or other written communication making such a request may also submit therewith a request that the letter or other written communication, as well as any Commission or staff response thereto, be accorded confidential treatment for a specified period of time, not exceeding 120 days from the date of the response thereto, together with a statement setting forth the considerations upon which the request for such treatment is based. If the staff determines that the request is reasonable and appropriate it will be granted and the letter or other written communication as well as the response thereto will not be made available for public inspection or copying until the expiration of the specified period. If it appears to the staff that the request for confidential treatment should be denied, the staff shall so advise the person making the request and such person may withdraw the letter or other written communication within 30 days thereafter. In such case, no response will be sent or given and the letter or other written communication shall remain in the Commission's files but will not be made public pursuant to this section. If such letter or other written communication is not so withdrawn, it shall be deemed to be available for public inspection and copying together with any written response thereto.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no portion of a letter or other written communication received by the Commission or its staff of the type described in paragraph (a) of this section, or any written response thereto, shall be made available for inspection and copying or otherwise published which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, except in accordance with the provisions of Section 8 of the Commodity Exchange Act.

Issued in Washington, DC on December 17, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-31122 Filed 12-23-92; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 143

Collection of Claims Owed the United States Arising from Activities Under the Commission's Jurisdiction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rules relating to collection of claims owed the United States arising from activities under the Commission's jurisdiction to increase the maximum amount of such claims that the Commission itself may settle by compromise from $20,000 to $100,000. This amendment will conform the Commission's rules to amendments enacted to the Federal Claims Collection Act.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Esq., Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, which is codified at 31 U.S.C. 3701–3719, directs all federal agencies to pursue unsatisfied, overdue claims or debts and to afford notice and other protections to the debtor prior to agency use of certain collection procedures. The Department of Justice and General Accounting Office have interpreted these statutes in the Federal Claims Collection Standards, the government-wide debt collection rules originally authorized by the Federal Claims Collection Act. See 4 CFR parts 101–105. These rules provide agencies with general guidance on sound debt collection principles and are incorporated by reference in the Commission's rules relating to collection of claims owed the United States arising from activities under the Commission's jurisdiction. Such procedures include the use of administrative offset and compromise and are intended to ensure fair and expeditious collection of unpaid claims.

The Commission published its rules relating to collection of claims owed the United States arising from activities under the Commission's jurisdiction on February 8, 1985 (50 FR 5383). These rules included rule 143.5, 17 CFR 143.5, which authorized the Commission itself to settle claims not exceeding $20,000 by compromise at less than the principal amount of the claim provided one of four contingencies enumerated in the rule exists.[1] The $20,000 ceiling was consistent with the Federal Claims Collection Act in 1985. However, since the adoption of Rule 143.5, the Federal Claims Collection Act was amended by the Administrative Dispute Resolution Act, enacted on November 15, 1990. Section 8(b) of the latter statute amended 31 U.S.C. 3711(a)(2) by striking out "$20,000 (excluding interest)" as the ceiling for compromise by an executive or legislative agency and inserting in lieu thereof "$100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe." In light of this change in the law, the Commission has determined to amend the dollar amount set forth in Rule 143.5 to read $100,000 instead of the current $20,000.

The Commission notes that Rule 143.5 governs compromise of claims which the Commission itself may approve. Claims in excess of $100,000 could be subject to compromise under the Federal Claims Collection Standards and the authority to accept compromise of any such claims rests solely with the Department of Justice. See generally 4 CFR part 103.[2]

The amendment of Rule 143.5 reflects a statutory change regarding agency procedure within the meaning of 5 U.S.C. 553(b)(3)(A) and, therefore, does not require notice and opportunity for public comment. Further, the Commission for good cause finds that any such notice and opportunity for public comment is also unnecessary under 5 U.S.C. 553(b)(3)(B) because the rule amendment is authorized by a statutory amendment that was not proposed by the Commission.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman certifies that this rule amendment will not have a significant economic impact on a substantial number of small entities. Since the amendment allocates discretion previously held by the Department of Justice to the Commission and does not create any new authority, any economic impact on small entities will be minimal.

This rule does not call for collection of information from the general public and is therefore not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subject in 17 CFR Part 143

Claims.

In consideration of the foregoing, and pursuant to the authority contained in Sections 6(c), 6(e), 6b and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 9, 9a, 13a and 12a(5), and 31 U.S.C. 3711(a)(2), the Commission hereby amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for part 143 is revised to read as follows:

Authority: 7 U.S.C. 9, 9a, 12a(5) and 13a; 31 U.S.C. 3701–3719.

2. Section 143.5 is amended by revising the introductory text to read as follows:

§ 143.5 Collection by compromise.

The Commission may settle claims not exceeding $100,000 (excluding interest) by compromise at less than the principal amount of the claim if—

* * * * *

Issued in Washington, DC on December 17, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31123 Filed 12–23–92; 8:45 am]

BILLING CODE 6351–01–M

[1] These contingencies include:

(a) The debtor shows an inability to pay the full amount within a reasonable period of time;

(b) The Government would be unable to enforce collection in full through litigation or administrative means within a reasonable period of time;

(c) The cost of collecting the claim in full is not justified by the amount of the claim; or

(d) The Commission's enforcement policy would be served by settlement of the claim for less than the full amount.

[2] Justice Department approval is not required if the Commission wishes to reject a compromise offer. 4 CFR 103.1(b).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 89C–0506]

Listing of Color Additives Exempt From Certification; Diluents for Color Additive Mixtures: Calcium Disodium EDTA (Calcium Disodium Ethylenediaminetetraacetate) and Disodium EDTA (Disodium Ethylenediaminetetraacetate); Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 21, 1992, for the final rule that amended the color additive regulations to provide for the safe use of calcium disodium EDTA (calcium disodium ethylenediaminetetraacetate) and disodium EDTA (disodium ethylenediaminetetraacetate) as diluents in color additive mixtures for use in food and ingested drugs.

DATES: Effective date confirmed: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Emily Florio, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 1992 (57 FR 32173), FDA issued a final rule amending 21 CFR 73.1(a)(3) of the color additive regulations to provide for the safe use of calcium disodium EDTA and disodium EDTA as diluents in color additive mixtures for food and ingested drug use.

FDA gave interested persons until August 20, 1992, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of July 21, 1992, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) notice is given that no objections or requests for a hearing were filed in response to the July 21, 1992, final rule. Accordingly, the amendments promulgated thereby became effective August 21, 1992.

Dated: December 16, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-31330 Filed 12-23-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[T.D. 8458]

RIN 1545-AJ35

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to real estate mortgage investment conduits, or REMICs. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. The regulations contained in this document provide guidance to REMICs and their investors.

EFFECTIVE DATES: These regulations are effective November 12, 1991, except as otherwise specified in § 1.860A-1(b).

FOR FURTHER INFORMATION CONTACT: Carol A. Schwartz (telephone 202-622-3920) (not a toll-free number) of the Office of Assistant Chief Counsel, Financial Institutions and Products, 1111 Constitution Avenue, NW., Washington, DC 20224 Attention CC:FI&P (FI-88-86).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1276. The estimated annual burden per respondent or recordkeeper varies from .25 hours to 1.5 hours with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Report Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document adopts income tax regulations (26 CFR parts 1, 301, and 602) under sections 860A through 860G of the Internal Revenue Code of 1986 (Code) and adopts conforming amendments to other sections of the income tax regulations. Proposed regulations were published in the **Federal Register** on September 30, 1991 (56 FR 49526) and April 20, 1992 (57 FR 14369). Following publication of the proposed regulations on September 30, 1991, written comments were received and a public hearing was held on December 5, 1991. Following publication of the proposed regulations on April 20, 1992, no comments or requests to appear were received.

After consideration of all of the comments relating to the proposed regulations, they are adopted by this Treasury decision as final regulations. The comments and revisions relating to the proposed regulations are discussed below.

Explanation of Provisions

I. Qualification as a REMIC

In general, a REMIC is a pool of assets, in which investors hold interests, for which a REMIC election is filed, and which satisfies certain requirements concerning the composition of its assets and the nature of its investors' interests. A REMIC must also make arrangements to prevent entities not subject to tax from holding certain of its interests. A REMIC may, for state law purposes, be a corporation, partnership, trust, or segregated pool of assets that is not a separate legal entity.

A. Asset Test

To qualify for REMIC treatment, an organization must, among other things, satisfy certain tests concerning the assets it holds. Specifically, except during an initial startup period and during a limited liquidation period, substantially all of the organization's assets must consist of qualified mortgages and permitted investments (qualified reserve assets, cash flow investments, and foreclosure property). The initial startup period extends from the startup day to the end of the third calendar month beginning after the startup day. Generally, the startup day is the day on which the REMIC issues all of its regular and residual interests.

1. *Qualified Mortgages.* The term "qualified mortgage" includes any obligation (including any participation or certificate of beneficial ownership in an obligation) that is principally secured by an interest in real property and that is either transferred to the REMIC on the startup day in exchange for regular or residual interests or purchased by the REMIC within a three-month startup period pursuant to a fixed price contract in effect on the startup day.

The final regulations define the terms "interests in real property" and "real property" for purposes of the REMIC rules by referencing the definitions of those terms set out in the real estate investment trust (REIT) regulations. See § 1.856-3. These final regulations also modify the definition of interests in real property set out in § 1.856-3(c) to include certain timeshare interests and shares held by a tenant stockholder in a cooperative housing corporation.

The proposed regulations explained that an obligation is principally secured by an interest in real property if the fair market value of the real property that secures the obligation at least equals 80 percent of the adjusted issue price of the obligation (a 125% loan-to-value ratio) at one of two times. The 80-percent test must be satisfied either at the time the obligation was originated, or at the time the obligation is contributed to the entity seeking REMIC status.

The proposed regulations provided that the principally secured requirement is satisfied so long as the REMIC

sponsor reasonably believes that the obligation satisfies the 80-percent test. The proposed regulations also provided that a sponsor could base a reasonable belief upon representations or warranties given by the originator of the obligation.

The final regulations retain the 80-percent test and the reasonable belief safe harbor. The final regulations, however, also amend the proposed "principally secured" standard in three ways.

First, in addition to the current 80-percent test, the final regulations provide an alternative test for determining whether an obligation is principally secured by an interest in real property. Under the alternative test, an obligation is considered to be principally secured by an interest in real property if substantially all of the loan proceeds were used to acquire or to improve or protect an interest in real property and the interest in real property is the only property securing the loan. Thus, for example, a home improvement loan made in accordance with Title I of the National Housing Act would be considered to satisfy the principally secured standard even though one cannot readily demonstrate that the loan satisfies the 80-percent test because a property appraisal was not required at the time the loan was originated.

Second, the regulations make it clear that a modification of a loan before it is contributed to the REMIC is treated as the origination of a new loan on the date of the modification only if the modification is a significant one. Thus, for example, if an obligation satisfied the principally secured standard at the time it was originated, but the terms of the obligation were subsequently modified in a workout occasioned by the mortgagor's likely default, that modification would not affect the principally secured status of the obligation.

Finally, the final regulations expand the "reasonable belief" safe harbor to provide that a sponsor can base a reasonable belief on evidence indicating that (i) the originator of the obligation typically made loans in accordance with a set of established parameters, and (ii) any loan originated in accordance with those established parameters would satisfy the principally secured standard. Of course, the sponsor cannot avail itself of the safe harbor if the sponsor had actual knowledge or had reason to know that a particular obligation did not satisfy that standard at the time it was originated.

The proposed regulations provided that mortgage pass-thru certificates, such as those guaranteed by GNMA, FNMA, and FHLMC, are treated as obligations secured by an interest in real property. The final regulations provide that in addition to those securities, pass-thru certificates guaranteed by the Canada Mortgage and Housing Corporation (CMHC) are obligations secured by interests in real property. The final regulations also make it clear that other investment trust interests can qualify as obligations secured by interests in real property even if the investment trust holds, in addition to real estate mortgages, related assets that would be permitted investments if the investment trust were a REMIC.

The final regulations define the term "obligation" for purposes of the REMIC provisions to include any instrument that provides for total noncontingent principal payments that at least equal the instrument's issue price even if that instrument also provides for contingent payments. Thus, for example, an instrument that was issued for $100x and that provides for (i) noncontingent principal payments of $100x, (ii) interest payments at a fixed rate, and (iii) contingent payment based on a percentage of the mortgagor's gross receipts, is an obligation.

The final regulations also amend the proposed regulations concerning the treatment of income on residual interests held by REITs. The final regulations make it clear that a REIT cannot avoid the limitations imposed by section 856(f) (concerning interest based on mortgagor net profits) and 856(j) (concerning shared appreciation provisions) by forming a wholly owned REMIC to hold an obligation that provides for interest payments based on net profits or an obligation that contains a shared appreciation provision.

2. *Mortgage Modifications.* The proposed regulations provided, as a general rule, that if an obligation is modified following its contribution to or acquisition by a REMIC, the modification is treated as the REMIC's acquisition of the modified obligation in exchange for the unmodified obligation. An obligation is modified for purposes of this rule if its new terms differ materially either in kind or in extent, within the meaning of § 1.1001–1(a), from its former terms. The proposed regulations provided, however, that certain changes in the terms of an obligation are not treated as modifications even if those changes would be sufficient to trigger the "differ materially" standard of section 1001. The excepted changes include changes occasioned by (i) default or reasonably foreseeable default on a mortgage, (ii) assumption of a mortgage, (iii) waiver of a due-on-sale clause, or (iv) adjustment of the interest rate on a convertible mortgage.

The final regulations make certain clarifying changes to the language of the proposed regulations and provide that an exchange of obligations will be deemed to occur only if an obligation is significantly modified. The final regulations explain that, generally, a significant modification is any change in the terms of an obligation that would be treated as an exchange of obligations under section 1001 and the related regulations. The final regulations also add the waiver of a due on encumbrance clause to the list of exceptions to the general rule that were set out in the proposed regulations.

3. *Defective Obligations.* The proposed regulations defined the term "defective obligation" as a qualified mortgage that is in default or with respect to which default is reasonably foreseeable, that was fraudulently procured by the mortgagor, or that does not conform to customary representations or warranties. A mortgage is also a defective obligation if, despite the reasonable belief of the sponsor at the time the obligation was contributed to the REMIC, it does not in fact meet the principally secured standard. If it is discovered that an obligation is defective, and the defect is one that, had it been discovered before the startup day, would have prevented the obligation from being a qualified mortgage, then, unless the REMIC either causes the defect to be cured or disposes of the obligation within 90 days of the discovery, the obligation ceases to be a qualified mortgage at the end of the 90-day period.

The final regulations make it clear that a defective obligation held beyond the 90-day period following discovery of the defect can still be exchanged for a qualified replacement mortgage if the exchange occurs within two years of the startup day. Further, the final regulations make it clear that it is the REMIC's discovery of the defect that determines when the 90-day period starts to run.

4. *Defeasance.* Commercial mortgages often contain defeasance provisions whereby the mortgagee may release its lien on the real property securing the mortgage in return for the mortgagor's pledge of substitute collateral. The proposed regulations provided that the defeasance of a qualified mortgage does not affect its status as a qualified mortgage only if certain conditions are satisfied. Specifically, the substitute collateral must be government securities, the defeasance must be undertaken pursuant to the terms of the

mortgage, the defeasance must not occur within two years of the startup day, and the lien must be released to facilitate the mortgagor's disposition of the encumbered property.

The final regulations retain the first three limitations. The final regulations provide, however, that the lien on real property can be released for reasons other than a mortgagor's disposition of the encumbered real property if the defeasance transaction is undertaken as part of a customary commercial transaction, and not as part of an arrangement to collateralize a REMIC offering with obligations that are not real estate mortgages.

5. *Credit Enhancement.* Some form of credit enhancement is employed in most REMIC offerings to improve the marketability of the REMIC interests. The function of credit enhancement arrangements is, in general, to provide payments to replace defaulted or delinquent payments on qualified mortgages and thereby ensure timely payments to REMIC interest holders. Credit enhancement contracts can take many forms, such as mortgage pool insurance contracts, certificate insurance contracts, third party guarantee arrangements, and bank letters of credit.

The proposed regulations provided that for purposes of the asset test in section 860D(a)(4), all forms of credit enhancement are treated as incidents of the pooled mortgages and not as separate assets of the REMIC. Thus, payments received under credit enhancement arrangements are treated as payments on the qualified mortgages. Similarly, the credit enhancer's right to be reimbursed or the right to be subrogated to the REMIC's claim on a defaulted mortgage is not viewed as an interest in the REMIC.

The final regulations retain the rules set out in the proposed regulations concerning the treatment of credit enhancement contracts. The final regulations, however, clarify the definition of "credit enhancement contract" in five ways.

First, the final regulations make it clear that the term "credit enhancement contract" includes arrangements that provide support for residual interests in a REMIC.

Second, the term "credit enhancement contract" includes an agreement between the REMIC and a third party whereby the third party agrees to make up cash flow shortfalls occasioned by lower than expected returns on cash flow investments.

Third, the final regulations make it clear that certain arrangements to make advances to the REMIC are credit enhancement contracts even if those arrangements are between the REMIC and a third party other than the mortgage servicer.

Fourth, the final regulations provide that certain agreements between a REMIC and a third party whereby the third party agrees to advance amounts to the REMIC to provide for the orderly administration of the REMIC, although technically not providing credit support, nonetheless are considered credit enhancement contracts.

Finally, the final regulations make it clear that a guarantee or insurance arrangement does not fail to qualify as a credit enhancement contract solely because the guarantor or insurer has the right to defer the guarantee or insurance payment that is to substitute for the amounts due on a defaulted mortgage, together with interest, according to the original payment schedule of the mortgage, or according to some other deferred payment schedule. Any deferred payments are payments pursuant to a credit enhancement contract (and therefore treated as payments on a mortgage) even if the mortgage is foreclosed upon and the guarantor is entitled to receive immediately the proceeds of foreclosure.

6. *Cash Flow Investments.* A cash flow investment is any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC. Because a cash flow investment is intended to be a temporary investment, the proposed regulations provided that the period between receipt of amounts from qualified mortgages and distribution of those amounts to interest holders may not exceed thirteen months.

The final regulations adopt the definition set out in the proposed regulations, and explain that in determining the length of time that a REMIC has held an investment that is part of a commingled account or fund, the REMIC may employ any reasonable method of accounting.

7. *Qualified Reserve Funds.* The proposed regulations provided that a qualified reserve fund is any reasonably required reserve to provide for (i) full payment of expenses of the REMIC, or (ii) amounts due on regular or residual interests in the event of defaults or delinquencies on qualified mortgages, lower than expected returns on cash flow investments, or interest shortfalls on qualified mortgages caused by prepayments of those mortgages between scheduled payment dates. The final regulations retain the language of the proposed regulations and further explain that a qualified reserve can be maintained to provide for any contingency that could be provided for under a credit enhancement contract.

8. *Outside Reserve Funds.* The proposed regulations provided that the assets of certain outside reserve funds that are maintained to pay expenses of the REMIC or to provide credit support for REMIC interest holders are not assets of the REMIC. For a fund to be respected as an outside reserve fund, the REMIC's organizational documents must clearly and expressly (i) provide that the reserve fund is an outside reserve fund and not an asset of the REMIC, (ii) identify the owner(s) of the reserve fund, and (iii) provide that, for all federal tax purposes, amounts transferred by the REMIC to the fund are treated as amounts distributed by the REMIC to the designated owner(s) or transferee(s) of such owner(s). These requirements are intended to ensure that a person other than the REMIC is the true owner of the reserve fund. So long as these requirements are satisfied, a reserve fund will be respected as an outside reserve fund even if it is maintained by the same trustee that holds the REMIC's qualified mortgages and permitted investments.

The final regulations provide that any reserve fund that satisfies the three requirements set out above is an outside reserve fund and not an asset of the REMIC even if the fund protects the REMIC interest holders against risks other than credit risk.

B. Investors' Interests

For an organization to qualify as a REMIC, all interests in the organization must be designated as either residual interests or regular interests. The REMIC must issue one, and only one, class of residual interests. A REMIC may issue one or more classes of regular interests.

1. *Regular Interests.* A regular interest is one that is designated as a regular interest and that is issued on the startup day with fixed terms. The regular interest must (except for certain interest-only regular interests) unconditionally entitle the holder to receive a specified principal amount (or other similar amount). Any interest payments (or other similar payments) at or before maturity must be based either on a fixed rate of interest or (to the extent provided in regulations) a variable rate of interest, or consist of a specified portion of interest payments on qualified mortgages, which portion does not vary during the period the regular interest is outstanding.

Under the proposed regulations a rate is a permissible variable rate if it is based on an objective interest index or

based on a weighted average of the interest rates on some or all of the mortgages held by the REMIC. In addition, an otherwise permissible variable rate is not disqualified because it is subject to periodic or permanent caps or floors. Finally, an interest is considered to bear interest at a variable rate if it provides for interest at one permissible rate during one or more accrual or payment periods and a different permissible rate or rates for other accrual or payment periods.

The final regulations clarify the variable rate definition in the proposed regulations in two ways. First, the final regulations make it clear that a rate is considered to be based on a weighted average rate even if, in determining that rate, the interest rate on some or all of the qualified mortgages is first subject to a cap or a floor, or is first reduced by a number of basis points or a fixed percentage. Second, the final regulations provide that a rate does not fail to qualify as a variable rate because it is subject to a funds-available cap.

A "funds-available cap" is a limit on the amount of interest to be paid on a regular interest in any payment period that is based on the current funds that a REMIC has available for distribution. The term "funds-available cap" does not, however, include any cap or limit used as a device to avoid the purposes of the otherwise applicable standard for a permissible variable rate.

The proposed regulations defined "specified portion" to mean a right to receive interest payments that can be expressed as (1) a fixed percentage of the interest payable on qualified mortgages, or (2) a fixed number of basis points of the interest payable on qualified mortgages. The final regulations expand the definition of "specified portion" to include a portion that can be expressed as the interest payable on some or all of the qualified mortgages in excess of a fixed number of basis points or in excess of a variable rate.

The proposed regulations provided that, except for certain specified contingencies, a regular interest's principal amount and latest possible maturity date must not be contingent. The final regulations adopt the proposed rule and the list of specified contingencies that was set out in the proposed regulations with minor clarifying changes. In addition, the final regulations also make it clear that an interest will not be denied status as a regular interest solely because the payments on that interest are subject to remote and incidental contingencies.

Prepayment penalty provisions are typically found in commercial mortgage loans. The proposed regulations allowed a REMIC to pass through to regular interest holders customary prepayment penalties received when a qualified mortgage prepays. The final regulations make it clear that a REMIC may allocate a prepayment penalty among its classes of interest in any manner.

2. *Other Rights That Are Not Interests.* Not every right to receive a payment from a REMIC is an interest in the REMIC. The proposed regulations contained a non-exclusive list of certain rights that are not interests in the REMIC. The final regulations adopt the list set out in the proposed regulations with minor clarifying changes.

The proposed regulations provided that certain de minimis interests issued by an entity that elects REMIC status to facilitate creation of the entity are not interests in the REMIC. The final regulations make it clear that this rule applies only if the interests are not designated as either regular or residual interests.

The final regulations also make it clear that certain obligations that contain contingent payment provisions can be stripped of the contingent payment rights and the holder of those rights will not be considered to hold an interest in the REMIC. Thus, for example, if a loan not only has a fixed principal amount and provides for interest at a fixed rate, but also contains a shared appreciation provision, the holder of the loan can contribute the fixed payment rights to a REMIC and retain the shared appreciation rights and those retained rights will not be considered to be an interest in the REMIC. Of course, the owner could have contributed the entire loan to the REMIC and taken back a residual interest that consisted of the right to the contingent payments.

II. Formation and Liquidation of the REMIC

A regular interest in a REMIC can be used to collateralize a second REMIC because regular interests can be qualified mortgages. The proposed regulations provided that two or more REMICs can be formed pursuant to a single set of organizational documents even if, for state law purposes or for Federal securities law purposes, only one entity exists.

The final regulations adopt the position set out in the proposed regulations concerning tiered REMICs. In addition, the final regulations make it clear that a REMIC and one or more investment trusts can be created pursuant to a single set of organizational documents even if, for state law purposes or for Federal securities law purposes, only one entity exists. Thus, a sponsor can create a REMIC and an investment trust under one set of documents, and the investment trust can hold both an interest in the REMIC and a notional principal contract for the benefit of the trust certificate holders.

A qualified liquidation is a transaction in which a REMIC adopts a plan of liquidation and then disposes of its assets and distributes the proceeds of disposition in the 90-day period following the adoption of the plan. The date on which the plan is adopted is important because it marks the beginning of a 90-day period during which certain of the restrictions that limit the nature of a REMIC's assets and operations are inapplicable. The proposed regulations indicated that a REMIC is considered to adopt a plan of liquidation on the date that it is signed by a person authorized to sign the REMIC's tax return. The final regulations provide that a plan of liquidation need not be in any special form, and that a REMIC may specify the first day in the 90-day liquidation period in a statement attached to its final return and the REMIC will be considered to have adopted a plan of liquidation on the date specified.

III. The Excess Inclusion Rules

A. Generally

A portion of the income allocable to a residual interest, referred to as an excess inclusion, is, with an exception for thrift institutions, subject to Federal income taxation in all events. Residual interest holders other than thrift institutions may not offset excess inclusions with otherwise allowable deductions. An excess inclusion is treated as unrelated business taxable income (UBTI) if the residual interest holder is an exempt organization that is subject to the tax imposed under section 511 on UBTI.

B. Special Rule for Thrift Institutions

Thrift institutions to which section 593 applies are excepted from the general rule that excess inclusions are, in all events, subject to taxation. Thus, a thrift with NOLs can apply those losses to offset excess inclusions. The Service is given express authority to provide regulations that render this special thrift exception inapplicable where necessary or appropriate to prevent tax avoidance.

The proposed regulations provided that the exception for thrift institutions applies only if the residual interest has significant value. A residual interest has significant value only if the aggregate of the issue prices of the residual interests

in the REMIC is at least two percent of the aggregate of the issue prices of all interests in the REMIC, and only if the anticipated weighted average life of the residual interest is at least 20 percent of the anticipated life of the REMIC.

The final regulations retain the two-percent of issue price test of the proposed regulations, but modify the anticipated-life test. Under the final regulations, the anticipated-life test is satisfied if the anticipated weighted average life of the residual interest equals at least 20 percent of the anticipated weighted average life of the REMIC.

The regulations explain that the anticipated weighted average life of a REMIC is a weighted average of the anticipated weighted average lives of all classes of interests in the REMIC. The final regulations also clarify the procedures for computing the weighted average life of an interest in a REMIC.

The above described significant value test applies only for purposes of the special rule for thrifts. In adopting this test, the Service has not exercised the regulatory authority provided in section 860E(c)(1) to treat all income allocated to the residual interest as an excess inclusion if the residual interest lacks significant value.

C. Tax on Transfer to Disqualified Organization

If a residual interest holder transfers its residual interest to a disqualified organization, a tax is imposed on the transferor (unless the transfer is through an agent, in which case the tax is imposed on the agent). The amount of tax is equal to the sum of the present values of the anticipated excess inclusions attributable to the interest multiplied by the highest corporate rate. The proposed regulations explain how to compute the present value of the anticipated excess inclusions and require that the REMIC provide to the transferor information needed to compute the amount of tax due.

The final regulations clarify the proposed regulations by providing that a REMIC does not have any obligation to ascertain whether a residual interest has been transferred to a disqualified organization. The REMIC's only obligation is to provide information upon request.

If a disqualified organization is a record holder of an interest in a pass-thru entity that holds a residual interest, then the pass-thru entity is taxed on the amount of income allocable to the disqualified organization. A pass-thru entity is any partnership, trust, estate, regulated investment company (RIC), REIT, common trust fund, or subchapter T cooperative.

The proposed regulations provided that any tax imposed on a pass-thru entity, such as a RIC or a REIT, would be deductible against its ordinary income in determining the amount of its required distributions. The final regulations explain further that a RIC's or a REIT's dividends are not preferential dividends solely because the RIC or REIT allocates any tax expense incurred under section 860E(e)(6) only to the shares held by disqualified organizations.

D. Noneconomic Residual Interests

To qualify as a residual interest in a REMIC, the interest must be designated as such, and it must be issued on the startup day. The residual interest holder need not be entitled to any distributions. The residual interest holder must, however, include in income the amounts allocated to it under section 860C, and to the extent those amounts represent excess inclusions, they are subject to the rules of section 860E.

If a REMIC will have taxable income over the course of its life, the residual interest represents a future tax liability to the residual interest holder because the residual interest holder must include in gross income the REMIC's taxable income, and the excess inclusion portion of that taxable income cannot be offset with deductions. If, in addition, the residual interest holder is not entitled to any distributions, the interest also represents a net economic liability.

The proposed regulations set forth a rule that is intended to discourage transfers of noneconomic residual interests for the purpose of avoiding the tax on excess inclusions. Under this rule, the transfer of a noneconomic residual interest is disregarded unless no significant purpose of the transfer was to impede the assessment or collection of tax.

The proposed regulations provide that a residual interest is a noneconomic residual interest unless (1) the present value of the expected distributions on the residual interest at least equals the present value of the expected tax on the excess inclusions, and (2) the transferor reasonably expects that the transferee will receive distributions with respect to the residual interest at or after the time the taxes accrue on the anticipated excess inclusions in an amount sufficient to satisfy the accrued taxes.

The final regulations provide that a significant purpose to impede the assessment or collection of tax exists if the transferor, at the time of the transfer, has "improper knowledge" (*i.e.*, either knew or should have known that the transferee would be unwilling or unable to pay taxes due on its share of the taxable income of the REMIC). The final regulations explain that a transferor of a noneconomic residual interest can establish a presumptive lack of improper knowledge by satisfying two conditions. First, the transferor conducts a reasonable investigation of the transferee and, as a result of that investigation, finds that the transferee has historically paid its debts as they come due and finds no significant evidence to indicate that the transferee will not continue to pay its debts as they come due in the future. Second, the transferor obtains from the transferee a representation that the transferee understands that the residual interest may generate tax liabilities in excess of cash flows and that the transferee intends to pay those tax liabilities as they come due.

Section 860G(b)(1) sets out special rules for the tax treatment of foreign persons that hold residual interests. These rules provide that, unlike other residual interest holders, nonresident alien individuals and foreign corporations are to take into account the income attributable to their residual interests only when they receive distributions or when they dispose of their interests.

The proposed regulations set forth an anti-abuse rule that is similar to the general anti-abuse rule described above in that it is intended to discourage the transfer of residual interests to foreign persons for the purpose of avoiding tax on excess inclusions. The rule here provides that the transfer of a residual interest to a foreign transferee is disregarded if the residual interest has tax avoidance potential. A residual interest has tax avoidance potential unless at the time of the transfer, the transferor reasonably expects that the REMIC will distribute to the transferee residual interest holder amounts that will equal at least 30 percent of each excess inclusion, and that such amounts will be distributed at or after the time which the excess inclusion accrues and not later than the close of the calendar year following the calendar year of accrual.

The final regulations retain the "tax avoidance potential" rules.

IV. Other Issues

The Service recognizes that these final regulations do not address all of the issues that arise in connection with the formation and operation of a REMIC. The Service may, however, provide

future guidance on the seven items listed below.

(1) Regulations under section 1272(a)(6) concerning the application and scope of the OID rules to regular interests, qualified mortgages, and other obligations.

(2) Rules concerning the proper tax treatment of a payment made by a transferor of a noneconomic residual interest to induce the transferee to acquire the interest.

(3) Regulations concerning the allocation of excess inclusions among interest holders in RICs and REITS.

(4) Clarification of the "improper knowledge" standard in § 1.856–6(b)(3) for purposes of determining whether property acquired by a REMIC or a REIT in foreclosure will qualify as foreclosure property.

(5) Regulations that (i) finalize the temporary and proposed REMIC reporting regulations that allow issuers 41 days instead of 30 days after the close of a quarter to report financial information with respect to the regular interests they have issued, or (ii) propose a new system that may allow issuers less than 41 days to report information, but that would also allow issuers to use estimated data in fulfilling their reporting obligations.

(6) Modification of § 1.860F–4(d) to expand the class of persons that may be designated as tax matters person.

(7) Regulations concerning withholding on distributions to foreign holders of residual interests to satisfy accrued tax liability due to excess inclusions.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these proposed regulations are Carol A. Schwartz and Tom Lyden, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in the development of the proposed regulations.

List of Subjects

26 CFR 1.591–1 through 1.1.596–1

Banks, Banking, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.856–0 through 1.860–5

Income taxes, Investments, Trusts and trustees.

26 CFR 1.860D–1 through 1.860F–4

Income taxes, Investments, Mortgages, Reporting and recordkeeping requirements.

26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 1.860D–1 also issued under 26 U.S.C. 860G(e). Section 1.860E–1 also issued under 26 U.S.C. 860E and 860G(e). Section 1.860E–2 also issued under 26 U.S.C. 860E(e). Section 1.860F–2 also issued under 26 U.S.C. 860G(e). Section 1.860G–1 also issued under 26 U.S.C. 860G(a)(1)(B) and (e). Section 1.860G–3 also issued under 26 U.S.C. 860G(b) and 26 U.S.C. 860G(e). * * *

Par. 2. Section 1.593–11 is amended by adding a sentence at the end of paragraph (b)(1) and by adding paragraph (e) to read as follows:

§ 1.593–11 Qualifying real property loan and nonqualifying loan defined.

* * * * *

(b) * * *

(1) * * * See paragraph (e) of this section for the treatment of a REMIC interest as a qualifying real property loan.

* * * * *

(e) *Treatment of REMIC interests as qualifying real property loans*—(1) *In general.* For purposes of section 593 and §§ 1.593–4 through 1.593–10, if, for any calendar quarter, at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3)) are qualifying real property loans (as defined in paragraph (b) of this section), then, for that calendar quarter, all the regular and residual interests in that REMIC are treated as qualifying real property loans. If less than 95 percent of a REMIC's assets are qualifying real property loans, then a percentage of each regular or residual interest is treated as a qualifying real property loan. The percentage equals the percentage of the REMIC's assets that are qualifying real property loans. See § 1.860F–4(e)(1)(ii)(B) and § 1.6049–7(f)(3) for information required to be provided to regular and residual interest holders if the 95-percent test is not met.

(2) *Treatment of REMIC assets for section 593 purposes*—(i) *Manufactured housing treated as qualifying real property.* For purposes of paragraph (e)(1) of this section, the term "qualifying real property" includes manufactured housing treated as a single family residence under section 25(e)(10).

(ii) *Status of cash flow investments.* For purposes of paragraph (e)(1) of this section, cash flow investments (as defined in section 860G(a)(6) and § 1.860G–2(g)(1)) are treated as qualifying real property loans.

Par. 3. Section 1.856–3 is amended as follows:

1. The text of paragraph (b) is redesignated as paragraph (b)(1).

2. A heading is added for new paragraph (b)(1).

3. Paragraph (b)(2) is added.

4. Paragraph (c) is revised.

5. The additions and revisions read as follows:

§ 1.856–3 Definitions.

* * * * *

(b) *Real estate assets*—(1) *In general.*

* * *

(2) *Treatment of REMIC interests as real estate assets*—(i) *In general.* If, for any calendar quarter, at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3)) are real estate assets (as defined in paragraph (b)(1) of this section), then, for that calendar quarter, all the regular and residual interests in that REMIC are treated as real estate assets and, except as provided in

paragraph (b)(2)(iii) of this section, any amount includible in gross income with respect to those interests is treated as interest on obligations secured by mortgages on real property. If less than 95 percent of a REMIC's assets are real estate assets, then the real estate investment trust is treated as holding directly its proportionate share of the assets and as receiving directly its proportionate share of the income of the REMIC. See §§ 1.860F–4(e)(1)(ii)(B) and 1.6049–7(f)(3) for information required to be provided to regular and residual interest holders if the 95-percent test is not met.

(ii) *Treatment of REMIC assets for section 856 purposes*—(A) *Manufactured housing treated as real estate asset.* For purposes of paragraphs (b) (1) and (2) of this section, the term "real estate asset" includes manufactured housing treated as a single family residence under section 25(e)(10).

(B) *Status of cash flow investments.* For purposes of this paragraph (b)(2), cash flow investments (as defined in section 860G(a)(6) and § 1.860G–2(g)(1)) are real estate assets.

(iii) *Certain contingent interest payment obligations held by a REIT.* If a REIT holds a residual interest in a REMIC for a principal purpose of avoiding the limitation set out in section 856(f) (concerning interest based on mortgagor net profits) or section 856(j) (concerning shared appreciation provisions), then, even if the REMIC satisfies the 95-percent test of paragraph (b)(i) of this section, the REIT is treated as receiving directly the REMIC's items of income for purposes of section 856.

(c) *Interests in real property.* The term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon. The term also includes timeshare interests that represent an undivided fractional fee interest, or undivided leasehold interest, in real property, and that entitle the holders of the interests to the use and enjoyment of the property for a specified period of time each year. The term also includes stock held by a person as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216). Such term does not, however, include mineral, oil, or gas royalty interests, such as a retained economic interest in coal or iron ore with respect to which the special provisions of section 631(c) apply.

Par. 4. Sections 1.860A–0, 1.860A–1, 1.860C–1 and 1.860C–2 are added to read as follows:

§ 1.860A–0 Outline of REMIC provisions.

This section lists the paragraphs contained in §§ 1.860A–1 through 1.860G–3.

Section 1.860A–1 Effective dates and transition rules.

(a) In general.
(b) Exceptions.
(1) Reporting regulations.
(2) Tax avoidance rules.
(i) Transfers of certain residual interests.
(ii) Transfers to foreign holders.
(iii) Residual interests that lack significant value.
(3) Excise taxes.

Section 1.860C–1 Taxation of holders of residual interests.

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(b) Adjustments to basis of residual interests.
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(3) Deduction allowable under section 166.
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(5) Expenses and interest relating to tax-exempt income.

Section 1.860D–1 Definition of a REMIC.

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(b) Specific requirements.
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(2) Certain rights not treated as interests.
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(5) Reasonable arrangements.
(i) Arrangements to prevent disqualified organizations from holding residual interests.
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Section 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

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(B) Regular interests that have a specified principal amount.
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(D) Anticipated payments.
(b) Treatment of a residual interest held by REITs, RICs, common trust funds, and subchapter T cooperatives. [Reserved]
(c) Transfers of noneconomic residual interests.
(1) In general.
(2) Noneconomic residual interest.
(3) Computations.
(4) Safe harbor for establishing lack of improper knowledge.
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Section 1.860E–2 Tax on transfers of residual interest to certain organizations.

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(4) Present value computation.
(5) Obligation of REMIC to furnish information.
(6) Agent.
(7) Relief from liability.
(i) Transferee furnishes information under penalties of perjury.
(ii) Amount required to be paid.
(b) Tax on pass-thru entities.
(1) Tax on excess inclusions.
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Section 1.860F–1 Qualified liquidations.

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(i) In general.
(ii) Reasonably required reserve.
(A) In general.
(B) Presumption that a reserve is reasonably required.
(C) Presumption may be rebutted.
(h) Outside reserve funds.
(i) Contractual rights coupled with regular interests in tiered arrangements.
(1) In general.
(2) Example.
(j) Clean-up call.
(1) In general.
(2) Interest rate changes.
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(k) Startup day.

Section 1.860G–3 Treatment of foreign persons.

(a) Transfer of a residual interest with tax avoidance potential.
(1) In general.
(2) Tax avoidance potential.
(i) Defined.
(ii) Safe harbor.
(3) Effectively connected income.
(4) Transfer by a foreign holder.
(b) [Reserved]

§ 1.860A–1 Effective dates and transition rules.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section, the regulations under sections 860A through 860G are effective only for a qualified entity (as defined in § 1.860D–1(c)(3)) whose startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)) is on or after November 12, 1991.

(b) *Exceptions*—(1) *Reporting regulations*—(i) Sections 1.860D–1(c) (1) and (3), and § 1.860D–1(d) (1) through (3) are effective after December 31, 1986.

(ii) Sections 1.860F–4 (a) through (e) are effective after December 31, 1986 and are applicable after that date except as follows:

(A) Section 1.860F–4(c)(1) is effective for REMICs with a startup day on or after November 10, 1988.

(B) Sections 1.860F–4(e)(1)(ii) (A) and (B) are effective for calendar quarters and calendar years beginning after December 31, 1988.

(C) Section 1.860F–4(e)(1)(ii)(C) is effective for calendar quarters and calendar years beginning after December

31, 1986 and ending before January 1, 1988.

(D) Section 1.860F–4(e)(1)(ii)(D) is effective for calendar quarters and calendar years beginning after December 31, 1987 and ending before January 1, 1990.

(2) *Tax avoidance rules*—(i) *Transfers of certain residual interests.* Section 1.860E–1(c) (concerning transfers of noneconomic residual interests) and § 1.860G–3(a)(4) (concerning transfers by a foreign holder to a United States person) are effective for transfers of residual interests on or after September 27, 1991.

(ii) *Transfers to foreign holders.* Generally, § 1.860G–3(a) (concerning transfers of residual interests to foreign holders) is effective for transfers of residual interests after April 20, 1992. However § 1.860G–3(a) does not apply to a transfer of a residual interest in a REMIC by the REMIC's sponsor (or by another transferor contemporaneously with formation of the REMIC) on or before June 30, 1992 if—

(A) The terms of the regular interests and the prices at which regular interests were offered had been fixed on or before April 20, 1992;

(B) On or before June 30, 1992, a substantial portion of the regular interests in the REMIC were transferred, with the terms and at the prices that were fixed on or before April 20, 1992, to investors who were unrelated to the REMIC's sponsor at the time of the transfer; and

(C) At the time of the transfer of the residual interest, the expected future distributions on the residual interest were equal to at least 30 percent of the anticipated excess inclusions (as defined in § 1.860E–2(a)(3)), and the transferor reasonably expected that the transferee would receive sufficient distributions from the REMIC at or after the time at which the excess inclusions accrue in an amount sufficient to satisfy the taxes on the excess inclusions.

(iii) *Residual interests that lack significant value.* The significant value requirement in § 1.860E–1(a) (1) and (3) (concerning excess inclusions accruing to organizations to which section 593 applies) generally is effective for residual interests acquired on or after September 27, 1991. The significant value requirement in § 1.860E–(a) (1) and (3) does not apply, however, to residual interests acquired by an organization to which section 593 applies as a sponsor at formation of a REMIC in a transaction described in § 1.860F–2(a)(1) if more than 50 percent of the interests in the REMIC (determined by reference to issue price) were sold to unrelated investors before November 12, 1991. The exception from the significant value requirement provided by the preceding sentence applies only so long as the sponsor owns the residual interests.

(3) *Excise taxes.* Section 1.860E–2(a)(1) is effective for transfers of residual interests to disqualified organizations after March 31, 1988. Section 1.860E–2(b)(1) is effective for excess inclusions accruing to pass-thru entities after March 31, 1988.

§ 1.860C–1 Taxation of holders of residual interests.

(a) *Pass-thru of income or loss.* Any holder of a residual interest in a REMIC must take into account the holder's daily portion of the taxable income or net loss of the REMIC for each day during the taxable year on which the holder owned the residual interest.

(b) *Adjustments to basis of residual interests*—(1) *Increase in basis.* A holder's basis in a residual interest is increased by—

(i) The daily portions of taxable income taken into account by that holder under section 860C(a) with respect to that interest; and

(ii) The amount of any contribution described in section 860G(d)(2) made by that holder.

(2) *Decrease in basis.* A holder's basis in a residual interest is reduced (but not below zero) by—

(i) First, the amount of any cash or the fair market value of any property distributed to that holder with respect to that interest; and

(ii) Second, the daily portions of net loss of the REMIC taken into account under section 860C(a) by that holder with respect to that interest.

(3) *Adjustments made before disposition.* If any person disposes of a residual interest, the adjustments to basis prescribed in paragraph (b) (1) and (2) of this section are deemed to occur immediately before the disposition.

(c) *Counting conventions.* For purposes of determining the daily portion of REMIC taxable income or net loss under section 860C(a)(2), any reasonable convention may be used. An example of a reasonable convention is "30 days per month/90 days per quarter/360 days per year."

§ 1.860C–2 Determination of REMIC taxable income or net loss.

(a) *Treatment of gain or loss.* For purposes of determining the taxable income or net loss of a REMIC under section 860C(b), any gain or loss from the disposition of any asset, including a qualified mortgage (as defined in section 860G(a)(3)) or a permitted investment (as defined in section 860G(a)(5) and § 1.860G–2(g)), is treated as gain or loss from the sale or exchange of property that is not a capital asset.

(b) *Deductions allowable to a REMIC*—(1) *In general.* Except as otherwise provided in section 860C(b) and in paragraph (b) (2) through (5) of this section, the deductions allowable to a REMIC for purposes of determining its taxable income or net loss are those deductions that would be allowable to an individual, determined by taking into account the same limitations that apply to an individual.

(2) *Deduction allowable under section 163.* A REMIC is allowed a deduction, determined without regard to section 163(d), for any interest expense accrued during the taxable year.

(3) *Deduction allowable under section 166.* For purposes of determining a REMIC's bad debt deduction under section 166, debt owed to the REMIC is not treated as nonbusiness debt under section 166(d).

(4) *Deduction allowable under section 212.* A REMIC is not treated as carrying on a trade or business for purposes of section 162. Ordinary and necessary operating expenses paid or incurred by the REMIC during the taxable year are deductible under section 212, without regard to section 67. Any expenses that are incurred in connection with the formation of the REMIC and that relate to the organization of the REMIC and the issuance of regular and residual interests are not treated as expenses of the REMIC for which a deduction is allowable under section 212. See § 1.860F–2(b)(3)(ii) for treatment of those expenses.

(5) *Expenses and interest relating to tax-exempt income.* Pursuant to section 265(a), a REMIC is not allowed a deduction for expenses and interest allocable to tax-exempt income. The portion of a REMIC's interest expense that is allocable to tax-exempt interest is determined in the manner prescribed in section 265(b)(2), without regard to section 265(b)(3).

Par. 5. Section 1.860D–1 is amended by adding the text of paragraphs (a) and (b), and by revising paragraph (c)(2) to read as follows:

§ 1.860D–1 Definition of a REMIC.

(a) *In general.* A real estate mortgage investment conduit (or REMIC) is a qualified entity, as defined in paragraph (c)(3) of this section, that satisfies the requirements of section 860D(a). See paragraph (d)(1) of this section for the manner of electing REMIC status.

(b) *Specific requirements*—(1) *Interests in a REMIC*—(i) *In general.* A REMIC must have one class, and only one class, of residual interests. Except as

provided in paragraph (b)(1)(ii) of this section, every interest in a REMIC must be either a regular interest (as defined in section 860G(a)(1) and § 1.860G–1(a)) or a residual interest (as defined in section 860G(a)(2) and § 1.860G–1(c)).

(ii) *De minimis interests.* If, to facilitate the creation of an entity that elects REMIC status, an interest in the entity is created and, as of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)), the fair market value of that interest is less than the lesser of $1,000 or 1/1,000 of one percent of the aggregate fair market value of all the regular and residual interests in the REMIC, then, unless that interest is specifically designated as an interest in the REMIC, the interest is not treated as an interest in the REMIC for purposes of section 860D(a) (2) and (3) and paragraph (B)(1)(i) of this section.

(2) *Certain rights not treated as interests.* Certain rights are not treated as interests in a REMIC. Although not an exclusive list, the following rights are not interests in a REMIC.

(i) *Payments for services.* The right to receive from the REMIC payments that represent reasonable compensation for services provided to the REMIC in the ordinary course of its operation is not an interest in the REMIC. Payments made by the REMIC in exchange for services may be expressed as a specified percentage of interest payments due on qualified mortgages or as a specified percentage of earnings from permitted investments. For example, a mortgage servicer's right to receive reasonable compensation for servicing the mortgages owned by the REMIC is not an interest in the REMIC.

(ii) *Stripped interests.* Stripped bonds or stripped coupons not held by the REMIC are not interests in the REMIC even if, in a transaction preceding or contemporaneous with the formation of the REMIC, they and the REMIC's qualified mortgages were created from the same mortgage obligation. For example, the right of a mortgage servicer to receive a servicing fee in excess of reasonable compensation from payments it receives on mortgages held by a REMIC is not an interest in the REMIC. Further, if an obligation with a fixed principal amount provides for interest at a fixed or variable rate and for certain contingent payment rights (*e.g.*, a shared appreciation provision or a percentage of mortgagor profits provision), and the owner of the obligation contributes the fixed payment rights to a REMIC and retains the contingent payment rights, the retained contingent payment rights are not an interest in the REMIC.

(iii) *Reimbursement rights under credit enhancement contracts.* A credit enhancer's right to be reimbursed for amounts advanced to a REMIC pursuant to the terms of a credit enhancement contract (as defined in § 1.860G–2 (c)(2)) is not an interest in the REMIC even if the credit enhancer is entitled to receive interest on the amounts advanced.

(iv) *Rights to acquire mortgages.* The right to acquire or the obligation to purchase mortgages and other assets from a REMIC pursuant to a clean-up call (as defined in § 1.860G–2(j)) or a qualified liquidation (as defined in section 860F(a)(4)), or on conversion of a convertible mortgage (as defined in § 1.860G–2(d)(5)), is not an interest in the REMIC.

(3) *Asset test—*(i) *In general.* For purposes of the asset test of section 860D(a)(4), substantially all of a qualified entity's assets are qualified mortgages and permitted investments if the qualified entity owns no more than a de minimis amount of other assets.

(ii) *Safe harbor.* The amount of assets other than qualified mortgages and permitted investments is de minimis if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the REMIC's assets. Nonetheless, a qualified entity that does not meet this safe harbor may demonstrate that it owns no more than a de minimis amount of other assets.

(4) *Arrangements test.* Generally, a qualified entity must adopt reasonable arrangements designed to ensure that—

(i) Disqualified organizations (as defined in section 860E(e)(5)) do not hold residual interests in the qualified entity; and

(ii) If a residual interest is acquired by a disqualified organization, the qualified entity will provide to the Internal Revenue Service, and to the persons specified in section 860E(e)(3), information needed to compute the tax imposed under section 860E(e) on transfers of residual interests to disqualified organizations.

(5) *Reasonable arrangements—*(i) *Arrangements to prevent disqualified organizations from holding residual interests.* A qualified entity is considered to have adopted reasonable arrangements to ensure that a disqualified organization (as defined in section 860E(e)(5)) will not hold a residual interest if—

(A) The residual interest is in registered form (as defined in § 5f.103–1(c) of this chapter); and

(B) The qualified entity's organizational documents clearly and expressly prohibit a disqualified organization from acquiring beneficial ownership of a residual interest, and notice of the prohibition is provided through a legend on the document that evidences ownership of the residual interest or through a conspicuous statement in a prospectus or private offering document used to offer the residual interest for sale.

(ii) *Arrangements to ensure that information will be provided.* A qualified entity is considered to have made reasonable arrangements to ensure that the Internal Revenue Service and persons specified in section 860E(e)(3) as liable for the tax imposed under section 860E(e) receive the information needed to compute the tax if the qualified entity's organizational documents require that it provide to the Internal Revenue Service and those persons a computation showing the present value of the total anticipated excess inclusions with respect to the residual interest for periods after the transfer. See § 1.860E–2(a)(5) for the obligation to furnish information on request.

(6) *Calendar year requirement.* A REMIC's taxable year is the calendar year. The first taxable year of a REMIC begins on the startup day and ends on December 31 of the same year. If the startup day is other than January 1, the REMIC has a short first taxable year.

(c) * * *

(2) *Identification of assets.* Formation of the REMIC does not occur until—

(i) The sponsor identifies the assets of the REMIC, such as through execution of an indenture with respect to the assets; and

(ii) The REMIC issues the regular and residual interests in the REMIC.

* * * * *

Par. 6. Sections 1.860E–1, 1.860E–2, 1.860F–1, and 1.860F–2 are added to read as follows:

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

(a) *Excess inclusion cannot be offset by otherwise allowable deductions—*(1) *In general.* Except as provided in paragraph (a)(3) of this section, the taxable income of any holder of a residual interest for any taxable year is in no event less than the sum of the excess inclusions attributable to that holder's residual interests for that taxable year. In computing the amount of a net operating loss (as defined in section 172(c)) or the amount of any net operating loss carryover (as defined in section 172(b)(2)), the amount of any excess inclusion is not included in gross income or taxable income. Thus, for example, if a residual interest holder has $100 of gross income, $25 of which

is an excess inclusion, and $90 of business deductions, the holder has taxable income of $25, the amount of the excess inclusion, and a net operating loss of $15 ($75 of other income—$90 of business deductions).

(2) *Affiliated groups.* If a holder of a REMIC residual interest is a member of an affiliated group filing a consolidated income tax return, the taxable income of the affiliated group cannot be less than the sum of the excess inclusions attributable to all residual interests held by members of the affiliated group.

(3) *Special rule for certain financial institutions*—(i) *In general.* If an organization to which section 593 applies holds a residual interest that has significant value (as defined in paragraph (a)(3)(iii) of this section), section 860E(a)(1) and paragraph (a)(1) of this section do not apply to that organization with respect to that interest. Consequently, an organization to which section 593 applies may use its allowable deductions to offset an excess inclusion attributable to a residual interest that has significant value, but, except as provided in section 860E(a)(4)(A), may not use its allowable deductions to offset an excess inclusion attributable to a residual interest held by any other member of an affiliated group, if any, of which the organization is a member. Further, a net operating loss of any other member of an affiliated group of which the organization is a member may not be used to offset an excess inclusion attributable to a residual interest held by that organization.

(ii) *Ordering rule*—(A) *In general.* In computing taxable income for any year, an organization to which section 593 applies is treated as having applied its allowable deductions for the year first to offset that portion of its gross income that is not an excess inclusion and then to offset that portion of its income that is an excess inclusion.

(B) *Example.* The following example illustrates the provisions of paragraph (a)(3)(ii) of this section:

Example. Corp. *X*, a corporation to which section 593 applies, is a member of an affiliated group that files a consolidated return. For a particular taxable year, Corp. *X* has gross income of $1,000, and of this amount, $150 is an excess inclusion attributable to a residual interest that has significant value. Corp. *X* has $975 of allowable deductions for the taxable year. Corp. *X* must apply its allowable deductions first to offset the $850 of gross income that is not an excess inclusion, and then to offset the portion of its gross income that is an excess inclusion. Thus, Corp. *X* has $25 of taxable income ($1,000–$975), and that $25 is an excess inclusion that may not be offset by losses sustained by other members of the affiliated group.

(iii) *Significant value.* A residual interest has significant value if—

(A) The aggregate of the issue prices of the residual interests in the REMIC is at least 2 percent of the aggregate of the issue prices of all residual and regular interests in the REMIC; and

(B) The anticipated weighted average life of the residual interests is at least 20 percent of the anticipated weighted average life of the REMIC.

(iv) *Determining anticipated weighted average life*—(A) *Anticipated weighted average life of the REMIC.* The anticipated weighted average life of a REMIC is the weighted average of the anticipated weighted average lives of all classes of interests in the REMIC. This weighted average is determined under the formula in paragraph (a)(3)(iv)(B) of this section, applied by treating all payments taken into account in computing the anticipated weighted average lives of regular and residual interests in the REMIC as principal payments on a single regular interest.

(B) *Regular interests that have a specified principal amount.* Generally, the anticipated weighted average life of a regular interest is determined by—

(*1*) Multiplying the amount of each anticipated principal payment to be made on the interest by the number of years (including fractions thereof) from the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)) to the related principal payment date;

(*2*) Adding the results; and

(*3*) Dividing the sum by the total principal paid on the regular interest.

(C) *Regular interests that have no specified principal amount or that have only a nominal principal amount, and all residual interests.* If a regular interest has no specified principal amount, or if the interest payments to be made on a regular interest are disproportionately high relative to its specified principal amount (as determined by reference to § 1.860G–1(b)(5)(i)), then, for purposes of computing the anticipated weighted average life of the interest, all anticipated payments on that interest, regardless of their designation as principal or interest, must be taken into account in applying the formula set out in paragraph (a)(3)(iv)(B) of this section. Moreover, for purposes of computing the weighted average life of a residual interest, all anticipated payments on that interest, regardless of their designation as principal or interest, must be taken into account in applying the formula set out in paragraph (a)(3)(iv)(B) of this section.

(D) *Anticipated payments.* The anticipated principal payments to be made on a regular interest subject to paragraph (a)(3)(iv)(B) of this section, and the anticipated payments to be made on a regular interest subject to paragraph (a)(3)(iv)(C) of this section or on a residual interest, must be determined based on—

(*1*) The prepayment and reinvestment assumptions adopted under section 1272(a)(6), or that would have been adopted had the REMIC's regular interests been issued with original issue discount; and

(*2*) Any required or permitted clean up calls or any required qualified liquidation provided for in the REMIC's organizational documents.

(b) *Treatment of residual interests held by REITs, RICs, common trust funds, and subchapter T cooperatives.* [Reserved]

(c) *Transfers of noneconomic residual interests*—(1) *In general.* A transfer of a noneconomic residual interest is disregarded for all Federal tax purposes if a significant purpose of the transfer was to enable the transferor to impede the assessment or collection of tax. A significant purpose to impede the assessment or collection of tax exists if the transferor, at the time of the transfer, either knew or should have known (had "improper knowledge") that the transferee would be unwilling or unable to pay taxes due on its share of the taxable income of the REMIC.

(2) *Noneconomic residual interest.* A residual interest is a noneconomic residual interest unless, at the time of the transfer—

(i) The present value of the expected future distributions on the residual interest at least equals the product of the present value of the anticipated excess inclusions and the highest rate of tax specified in section 11(b)(1) for the year in which the transfer occurs; and

(ii) The transferor reasonably expects that, for each anticipated excess inclusion, the transferee will receive distributions from the REMIC at or after the time at which the taxes accrue on the anticipated excess inclusion in an amount sufficient to satisfy the accrued taxes.

(3) *Computations.* The present value of the expected future distributions and the present value of the anticipated excess inclusions must be computed under the procedure specified in § 1.860E–2(a)(4) for determining the present value of anticipated excess inclusions in connection with the transfer of a residual interest to a disqualified organization.

(4) *Safe harbor for establishing lack of improper knowledge.* A transferor is presumed not to have improper knowledge if—

(i) The transferor conducted, at the time of the transfer, a reasonable

investigation of the financial condition of the transferee and, as a result of the investigation, the transferor found that the transferee had historically paid its debts as they came due and found no significant evidence to indicate that the transferee will not continue to pay its debts as they come due in the future; and

(ii) The transferee represents to the transferor that it understands that, as the holder of the noneconomic residual interest, the transferee may incur tax liabilities in excess of any cash flows generated by the interest and that the transferee intends to pay taxes associated with holding the residual interest as they become due.

(d) *Transfers to foreign persons.* Paragraph (c) of this section does not apply to transfers of residual interests to which § 1.860G–3(a)(1), concerning transfers to certain foreign persons, applies.

§ 1.860E–2 Tax on transfers of residual interests to certain organizations.

(a) *Transfers to disqualified organizations*—(1) *Payment of tax.* Any excise tax due under section 860E(e)(1) must be paid by the later of March 24, 1993, or April 15th of the year following the calendar year in which the residual interest is transferred to a disqualified organization. The Commissioner may prescribe rules for the manner and method of collecting the tax.

(2) *Transitory ownership.* For purposes of section 860E (e) and this section, a transfer of a residual interest to a disqualified organization in connection with the formation of a REMIC is disregarded if the disqualified organization has a binding contract to sell the interest and the sale occurs within 7 days of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)).

(3) *Anticipated excess inclusions.* The anticipated excess inclusions are the excess inclusions that are expected to accrue in each calendar quarter (or portion thereof) following the transfer of the residual interest. The anticipated excess inclusions must be determined as of the date the residual interest is transferred and must be based on—

(i) Events that have occurred up to the time of the transfer;

(ii) The prepayment and reinvestment assumptions adopted under section 1272(a)(6), or that would have been adopted had the REMIC's regular interests been issued with original issue discount; and

(iii) Any required or permitted clean up calls, or required qualified liquidation provided for in the REMIC's organizational documents.

(4) *Present value computation.* The present value of the anticipated excess inclusions is determined by discounting the anticipated excess inclusions from the end of each remaining calendar quarter in which those excess inclusions are expected to accrue to the date the disqualified organization acquires the residual interest. The discount rate to be used for this present value computation is the applicable Federal rate (as specified in section 1274(d)(1)) that would apply to a debt instrument that was issued on the date the disqualified organization acquired the residual interest and whose term ended on the close of the last quarter in which excess inclusions were expected to accrue with respect to the residual interest.

(5) *Obligation of REMIC to furnish information.* A REMIC is not obligated to determine if its residual interests have been transferred to a disqualified organization. However, upon request of a person designated in section 860E(e)(3), the REMIC must furnish information sufficient to compute the present value of the anticipated excess inclusions. The information must be furnished to the requesting party and to the Internal Revenue Service within 60 days of the request. A reasonable fee charged to the requestor is not income derived from a prohibited transaction within the meaning of section 860F(a).

(6) *Agent.* For purposes of section 860E(e)(3), the term "agent" includes a broker (as defined in section 6045(c) and § 1.6045–1(a)(1)), nominee, or other middleman.

(7) *Relief from liability*—(i) *Transferee furnishes information under penalties of perjury.* For purposes of section 860E(e)(4), a transferee is treated as having furnished an affidavit if the transferee furnishes—

(A) A social security number, and states under penalties of perjury that the social security number is that of the transferee; or

(B) A statement under penalties of perjury that it is not a disqualified organization.

(ii) *Amount required to be paid.* The amount required to be paid under section 860E(e)(7)(B) is equal to the product of the highest rate specified in section 11(b)(1) for the taxable year in which the transfer described in section 860E(e)(1) occurs and the amount of excess inclusions that accrued and were allocable to the residual interest during the period that the disqualified organization held the interest.

(b) *Tax on pass-thru entities*—(1) *Tax on excess inclusions.* Any tax due under section 860E(e)(6) must be paid by the later of March 24, 1993, or by the fifteenth day of the fourth month following the close of the taxable year of the pass-thru entity in which the disqualified person is a record holder. The Commissioner may prescribe rules for the manner and method of collecting the tax.

(2) *Record holder furnishes information under penalties of perjury.* For purposes of section 860E(e)(6)(D), a record holder is treated as having furnished an affidavit if the record holder furnishes—

(i) A social security number and states, under penalties of perjury, that the social security number is that of the record holder; or

(ii) A statement under penalties of perjury that it is not a disqualified organization.

(3) *Deductibility of tax.* Any tax imposed on a pass-thru entity pursuant to section 860E(e)(6)(A) is deductible against the gross amount of ordinary income of the pass-thru entity. For example, in the case of a REIT, the tax is deductible in determining real estate investment trust taxable income under section 857(b)(2).

(4) *Allocation of tax.* Dividends paid by a RIC or by a REIT are not preferential dividends within the meaning of section 562(c) solely because the tax expense incurred by the RIC or REIT under section 860E(e)(6) is allocated solely to the shares held by disqualified organizations.

§ 1.860F–1 Qualified liquidations.

A plan of liquidation need not be in any special form. If a REMIC specifies the first day in the 90-day liquidation period in a statement attached to its final return, then the REMIC will be considered to have adopted a plan of liquidation on the specified date.

§ 1.860F–2 Transfers to a REMIC.

(a) *Formation of a REMIC*—(1) *In general.* For Federal income tax purposes, a REMIC formation is characterized as the contribution of assets by a sponsor (as defined in paragraph (b)(1) of this section) to a REMIC in exchange for REMIC regular and residual interests. If, instead of exchanging its interest in mortgages and related assets for regular and residual interests, the sponsor arranges to have the REMIC issue some or all of the regular and residual interests for cash, after which the sponsor sells its interests in mortgages and related assets to the REMIC, the transaction is, nevertheless, viewed for Federal income tax purposes as the sponsor's exchange of mortgages and related assets for regular and residual interests, followed by a sale of some or all of those interests. The purpose of this rule is to

ensure that the tax consequences associated with the formation of a REMIC are not affected by the actual sequence of steps taken by the sponsor.

(2) *Tiered arrangements*—(i) *Two or more REMICs formed pursuant to a single set of organizational documents.* Two or more REMICs can be created pursuant to a single set of organizational documents even if for state law purposes or for Federal securities law purposes those documents create only one organization. The organizational documents must, however, clearly and expressly identify the assets of, and the interests in, each REMIC, and each REMIC must satisfy all of the requirements of section 860D and the related regulations.

(ii) *A REMIC and one or more investment trusts formed pursuant to a single set of documents.* A REMIC (or two or more REMICs) and one or more investment trusts can be created pursuant to a single set of organizational documents and the separate existence of the REMIC(s) and the investment trust(s) will be respected for Federal income tax purposes even if for state law purposes or for Federal securities law purposes those documents create only one organization. The organizational documents for the REMIC(s) and the investment trust(s) must, however, require both the REMIC(s) and the investment trust(s) to account for items of income and ownership of assets for Federal tax purposes in a manner that respects the separate existence of the multiple entities. See § 1.860G–2(i) concerning issuance of regular interests coupled with other contractual rights for an illustration of the provisions of this paragraph.

(b) *Treatment of sponsor*—(1) *Sponsor defined.* A sponsor is a person who directly or indirectly exchanges qualified mortgages and related assets for regular and residual interests in a REMIC. A person indirectly exchanges interests in qualified mortgages and related assets for regular and residual interests in a REMIC if the person transfers, other than in a nonrecognition transaction, the mortgages and related assets to another person who acquires a transitory ownership interest in those assets before exchanging them for interests in the REMIC, after which the transitory owner then transfers some or all of the interests in the REMIC to the first person.

(2) *Nonrecognition of gain or loss.* The sponsor does not recognize gain or loss on the direct or indirect transfer of any property to a REMIC in exchange for regular or residual interests in the REMIC. However, the sponsor, upon a subsequent sale of the REMIC regular or residual interests, may recognize gain or loss with respect to those interests.

(3) *Basis of contributed assets allocated among interests*—(i) *In general.* The aggregate of the adjusted bases of the regular and residual interests received by the sponsor in the exchange described in paragraph (a) of this section is equal to the aggregate of the adjusted bases of the property transferred by the sponsor in the exchange, increased by the amount of organizational expenses (as described in paragraph (b)(3)(ii) of this section). That total is allocated among all the interests received in proportion to their fair market values on the pricing date (as defined in paragraph (b)(3)(iii) of this section) if any, or, if none, the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)).

(ii) *Organizational expenses*—(A) *Organizational expense defined.* An organizational expense is an expense that is incurred by the sponsor or by the REMIC and that is directly related to the creation of the REMIC. Further, the organizational expense must be incurred during a period beginning a reasonable time before the startup day and ending before the date prescribed by law for filing the first REMIC tax return (determined without regard to any extensions of time to file). The following are examples of organizational expenses: legal fees for services related to the formation of the REMIC, such as preparation of a pooling and servicing agreement and trust indenture; accounting fees related to the formation of the REMIC; and other administrative costs related to the formation of the REMIC.

(B) *Syndication expenses.* Syndication expenses are not organizational expenses. Syndication expenses are those expenses incurred by the sponsor or other person to market the interests in a REMIC, and, thus, are applied to reduce the amount realized on the sale of the interests. Examples of syndication expenses are brokerage fees, registration fees, fees of an underwriter or placement agent, and printing costs of the prospectus or placement memorandum and other selling or promotional material.

(iii) *Pricing date.* The term "pricing date" means the date on which the terms of the regular and residual interests are fixed and the prices at which a substantial portion of the regular interests will be sold are fixed.

(4) *Treatment of unrecognized gain or loss*—(i) *Unrecognized gain on regular interests.* For purposes of section 860F(b)(1)(C)(i), the sponsor must include in gross income the excess of the issue price of a regular interest over the sponsor's basis in the interest as if the excess were market discount (as defined in section 1278(a)(2)) on a bond and the sponsor had made an election under section 1278(b) to include this market discount currently in gross income. The sponsor is not, however, by reason of this paragraph (b)(4)(i), deemed to have made an election under section 1278(b) with respect to any other bonds.

(ii) *Unrecognized loss on regular interests.* For purposes of section 860F(b)(1)(D)(i), the sponsor treats the excess of the sponsor's basis in a regular interest over the issue price of the interest as if that excess were amortizable bond premium (as defined in section 171(b)) on a taxable bond and the sponsor had made an election under section 171(c). The sponsor is not, however, by reason of this paragraph (b)(4)(ii), deemed to have made an election under section 171(c) with respect to any other bonds.

(iii) *Unrecognized gain on residual interests.* For purposes of section 860F(b)(1)(C)(ii), the sponsor must include in gross income the excess of the issue price of a residual interest over the sponsor's basis in the interest ratably over the anticipated weighted average life of the REMIC (as defined in § 1.860E–1(a)(3)(iv)).

(iv) *Unrecognized loss on residual interests.* For purposes of section 860F(b)(1)(D)(ii), the sponsor deducts the excess of the sponsor's basis in a residual interest over the issue price of the interest ratably over the anticipated weighted average life of the REMIC.

(5) *Additions to or reductions of the sponsor's basis.* The sponsor's basis in a regular or residual interest is increased by any amount included in the sponsor's gross income under paragraph (b)(4) of this section. The sponsor's basis in a regular or residual interest is decreased by any amount allowed as a deduction and by any amount applied to reduce interest payments to the sponsor under paragraph (b)(4)(ii) of this section.

(6) *Transferred basis property.* For purposes of paragraph (b)(4) of this section, a transferee of a regular or residual interest is treated in the same manner as the sponsor to the extent that the basis of the transferee in the interest is determined in whole or in part by reference to the basis of the interest in the hands of the sponsor.

(c) *REMIC's basis in contributed assets.* For purposes of section 860F(b)(2), the aggregate of the REMIC's bases in the assets contributed by the sponsor to the REMIC in a transaction described in paragraph (a) of this section is equal to the aggregate of the

issue prices (determined under section 860G(a)(10) and § 1.86G–1(d)) of all regular and residual interests in REMIC.

Par. 7. Section 1.860F–4 is amended by adding paragraph (f) and sections 1.860G–1 through 1.860G–3 are added to read as follows:

§ 1.860F–4 REMIC reporting requirements and other administrative rules.

* * * * *

(f) *Information returns for person engaged in a trade or business.* See § 1.6041–(b)(2) for the treatment of a REMIC under sections 6041 and 6041A.

§ 1.860G–1 Definition of regular and residual interests.

(a) *Regular interest*—(1) *Designation as a regular interest.* For purposes of section 860G(a)(1), a REMIC designates an interest as a regular interest by providing to the Internal Revenue Service the information specified in § 1.860D–1(d)(2)(ii) in the time and manner specified in § 1.860D–1(d)(2).

(2) *Specified portion of the interest payments on qualified mortgages*—(i) *In general.* For purposes of section 860G(a)(1)(B)(ii), a specified portion of the interest payments on qualified mortgages means a portion of the interest payable on qualified mortgages, but only if the portion can be expressed as—

(A) A fixed percentage of the interest that is payable at either a fixed rate or at a variable rate described in paragraph (a)(3) of this section on some or all of the qualified mortgages;

(B) A fixed number of basis points of the interest payable on some or all of the qualified mortgages; or

(C) The interest payable at either a fixed rate or at a variable rate described in paragraph (a)(3) of this section on some or all of the qualified mortgages in excess of a fixed number of basis points or in excess of a variable rate described in paragraph (a)(3) of this section.

(ii) *Specified portion cannot vary.* The portion must be established as of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)) and, except as provided in paragraph (a)(2)(iii) of this section, it cannot vary over the period that begins on the startup day and ends on the day that the interest holder is no longer entitled to receive payments.

(iii) *Defaulted or delinquent mortgages.* A portion is not treated as varying over time if an interest holder's entitlement to a portion of the interest on some or all of the qualified mortgages is dependent on the absence of defaults or delinquencies on those mortgages.

(iv) *No minimum specified principal amount is required.* If an interest in a REMIC consists of a specified portion of the interest payments on the REMIC's qualified mortgages, no minimum specified principal amount need be assigned to that interest. The specified principal amount can be zero.

(v) *Examples.* The following examples, each of which describes a pass-thru trust that is intended to qualify as a REMIC, illustrate the provisions of this paragraph (a)(2).

Example 1. (i) A sponsor transferred a pool of fixed rate mortgages to a trustee in exchange for two classes of certificates. The Class A certificate holders are entitled to all principal payments on the mortgages and to interest on outstanding principal at a variable rate based on the current value of One-Month LIBOR, subject to a lifetime cap equal to the weighted average rate payable on the mortgages. The Class B certificate holders are entitled to all interest payable on the mortgages in excess of the interest paid on the Class A certificates. The Class B certificates are subordinate to the Class A certificates so that cash flow shortfalls due to defaults or delinquencies on the mortgages will be borne first by the Class B certificate holders.

(ii) The Class B certificate holders are entitled to all interest payable on the pooled mortgages in excess of a variable rate described in paragraph (a)(3)(vi) of this section. Moreover, the portion of the interest payable to the Class B certificate holders is not treated as varying over time solely because payments on the Class B certificates may be reduced as a result of defaults or delinquencies on the pooled mortgages. Thus, the Class B certificates provide for interest payments that consist of a specified portion of the interest payable on the pooled mortgages under paragraph (a)(2)(i)(C) of this section.

Example 2. (i) A sponsor transferred a pool of variable rate mortgages to a trustee in exchange for two classes of certificates. The mortgages call for interest payments at a variable rate based on the current value of the One-Year Constant Maturity Treasury Index (hereinafter "CMTI") plus 200 basis points, subject to a lifetime cap of 12 percent. Class C certificate holders are entitled to all principal payments on the mortgages and interest on the outstanding principal at a variable rate based on the One-Year CMTI plus 100 basis points, subject to a lifetime cap of 12 percent. The interest rate on the Class C certificates is reset at the same time the rate is reset on the pooled mortgages.

(ii) The Class D certificate holders are entitled to all interest payments on the mortgages in excess of the interest paid on the Class C certificates. So long as the One-Year CMTI is at 10 percent or lower, the Class D certificate holders are entitled to 100 basis points of interest on the pooled mortgages. If, however, the index exceeds 10 percent on a reset date, the Class D certificate holders' entitlement shrinks, and it disappears if the index is at 11 percent or higher.

(iii) The Class D certificate holders are entitled to all interest payable on the pooled mortgages in excess of a qualified variable rate described in paragraph (a)(3) of this section. Thus, the Class D certificates provide for interest payments that consist of a specified portion of the interest payable on the qualified mortgages under paragraph (a)(2)(i)(C) of this section.

Example 3. (i) A sponsor transferred a pool of fixed rate mortgages to a trustee in exchange for two classes of certificates. The fixed interest rate payable on the mortgages varies from mortgage to mortgage, but all rates are between 8 and 10 percent. The Class E certificate holders are entitled to receive all principal payments on the mortgages and interest on outstanding principal at 7 percent. The Class F certificate holders are entitled to receive all interest on the mortgages in excess of the interest paid on the Class E certificates.

(ii) The Class F certificates provide for interest payments that consist of a specified portion of the interest payable on the mortgages under paragraph (a)(2)(i) of this section. Although the portion of the interest payable to the Class F certificate holders varies from mortgage to mortgage, the interest payable can be expressed as a fixed percentage of the interest payable on each particular mortgage.

(3) *Variable rate.* A regular interest may bear interest at a variable rate. For purposes of section 860G(a)(1)(B)(i), a variable rate of interest is a rate described in this paragraph (a)(3).

(i) *Rate based on index.* A rate that is a qualifying variable rate for purposes of sections 1271 through 1275 and the related regulations is a variable rate. For example, a rate based on the average cost of funds of one or more financial institutions is a variable rate. Further, a rate equal to the highest, lowest, or average of two or more objective interest indices is a variable rate for purposes of this section.

(ii) *Weighted average rate*—(A) *In general.* A rate based on a weighted average of the interest rates on some or all of the qualified mortgages held by a REMIC is a variable rate. The qualified mortgages taken into account must, however, bear interest at a fixed rate or at a rate described in this paragraph (a)(3). Generally, a weighted average interest rate is a rate that, if applied to the aggregate outstanding principal balance of a pool of mortgage loans for an accrual period, produces an amount of interest that equals the sum of the interest payable on the pooled loans for that accrual period. Thus, for an accrual period in which a pool of mortgage loans comprises $300,000 of loans bearing a 7 percent interest rate and $700,000 of loans bearing a 9.5 percent interest rate, the weighted average rate for the pool of loans is 8.75 percent.

(B) *Reduction in underlying rate.* For purposes of paragraph (a)(3)(ii)(A) of this section, an interest rate is considered to be based on a weighted

average rate even if, in determining that rate, the interest rate on some or all of the qualified mortgages is first subject to a cap or a floor, or is first reduced by a number of basis points or a fixed percentage. A rate determined by taking a weighted average of the interest rates on the qualified mortgage loans net of any servicing spread, credit enhancement fees, or other expenses of the REMIC is a rate based on a weighted average rate for the qualified mortgages. Further, the amount of any rate reduction described above may vary from mortgage to mortgage.

(iii) *Additions, subtractions, and multiplications.* A rate is a variable rate if it is—

(A) Expressed as the product of a rate described in paragraph (a)(3)(i) or (ii) of this section and a fixed multiplier;

(B) Expressed as a constant number of basis points more or less than a rate described in paragraph (a)(3)(i) or (ii) of this section; or

(C) Expressed as the product, plus or minus a constant number of basis points, of a rate described in paragraph (a)(3)(i) or (ii) of this section and a fixed multiplier (which may be either a positive or a negative number).

(iv) *Caps and floors.* A rate is a variable rate if it is a rate that would be described in paragraph (a)(3)(i) through (iii) of this section except that it is—

(A) Limited by a cap or ceiling that establishes either a maximum rate or a maximum number of basis points by which the rate may increase from one accrual or payment period to another or over the term of the interest; or

(B) Limited by a floor that establishes either a minimum rate or a maximum number of basis points by which the rate may decrease from one accrual or payment period to another or over the term of the interest.

(v) *Funds-available caps*—(A) *In general.* A rate is a variable rate if it is a rate that would be described in paragraph (a)(3)(i) through (iv) of this section except that it is subject to a "funds-available" cap. A funds-available cap is a limit on the amount of interest to be paid on an instrument in any accrual or payment period that is based on total amount available for distribution, including both principal and interest received by an issuing entity on some or all of its qualified mortgages as well as amounts held in a reserve fund. The term "funds-available cap" does not, however, include any cap or limit on interest payments used as a device to avoid the standards of paragraph (a)(3)(i) through (iv) of this section.

(B) *Facts and circumstances test.* In determining whether a cap or limit on interest payments is a funds-available cap within the meaning of this section and not a device used to avoid the standards of paragraph (a)(3)(i) through (iv) of this section, one must consider all of the facts and circumstances. Facts and circumstances that must be taken into consideration are—

(*1*) Whether the rate of the interest payable to the regular interest holders is below the rate payable on the REMIC's qualified mortgages on the start-up day; and

(*2*) Whether, historically, the rate of interest payable to the regular interest holders has been consistently below that payable on the qualified mortgages.

(C) *Examples.* The following examples, both of which describe a pass-thru trust that is intended to qualify as a REMIC, illustrate the provisions of this paragraph (a)(3)(v).

Example 1. (i) A sponsor transferred a pool of mortgages to a trustee in exchange for two classes of certificates. The pool of mortgages has an aggregate principal balance of $100*x*. Each mortgage in the pool provides for interest payments based on the eleventh district cost of funds index (hereinafter COFI) plus a margin. The initial weighted average rate for the pool is COFI plus 200 basis points. The trust issued a Class X certificate that has a principal amount of $100*x* and that provides for interest payments at a rate equal to One-Year LIBOR plus 100 basis points, subject to a cap described below. The Class R certificate, which the sponsor designated as the residual interest, entitles its holder to all funds left in the trust after the Class X certificates have been retired. The Class R certificate holder is not entitled to current distributions.

(ii) At the time the certificates were issued, COFI equalled 4.874 percent and One-Year LIBOR equalled 3.375 percent. Thus, the initial weighted average pool rate was 6.874 percent and the Class X certificate rate was 4.375 percent. Based on historical data, the sponsor does not expect the rate paid on the Class X certificate to exceed the weighted average rate on the pool.

(iii) Initially, under the terms of the trust instrument, the excess of COFI plus 200 over One-Year LIBOR plus 100 (excess interest) will be applied to pay expenses of the trust, to fund any required reserves, and then to reduce the principal balance on the Class X certificate. Consequently, although the aggregate principal balance of the mortgages initially matched the principal balance of the Class X certificate, the principal balance on the Class X certificate will pay down faster than the principal balance on the mortgages as long as the weighted average rate on the mortgages is greater than One-Year LIBOR plus 100. If, however, the rate on the Class X certificate (One-Year LIBOR plus 100) ever exceeds the weighted average rate on the mortgages, then the Class X certificate holders will receive One-Year LIBOR plus 100 subject to a cap based on the current funds that are available for distribution.

(iv) The funds available cap here is not a device used to avoid the standards of paragraph (a)(3) (i) through (iv) of this section. First, on the date the Class X certificates were issued, a significant spread existed between the weighted average rate payable on the mortgages and the rate payable on the Class X certificate. Second, historical data suggest that the weighted average rate payable on the mortgages will continue to exceed the rate payable on the Class X certificate. Finally, because the excess interest will be applied to reduce the outstanding principal balance of the Class X certificate more rapidly than the outstanding principal balance on the mortgages is reduced, One-Year LIBOR plus 100 basis points would have to exceed the weighted average rate on the mortgages by an increasingly larger amount before the funds available cap would be triggered. Accordingly, the rate paid on the Class X certificates is a variable rate.

Example 2. (i) The facts are the same as those in *Example 1*, except that the pooled mortgages are commercial mortgages that provide for interest payments based on the gross profits of the mortgagors, and the rate on the Class X certificates is 400 percent on One-Year LIBOR (a variable rate under paragraph (a)(3)(iii) of this section), subject to a cap equal to current funds available to the trustee for distribution.

(ii) Initially, 400 percent of One-Year LIBOR exceeds the weighted average rate payable on the mortgages. Furthermore, historical data suggest that there is a significant possibility that, in the future, 400 percent of One-Year LIBOR will exceed the weighted average rate on the mortgages.

(iii) The facts and circumstances here indicate that the use of 400 percent of One-Year LIBOR with the above-described cap is a device to pass through to the Class X certificate holder contingent interest based on mortgagor profits. Consequently, the rate paid on the Class X certificate here is not a variable rate.

(vi) *Combination of rates.* A rate is a variable rate if it is based on—

(A) One fixed rate during one or more accrual or payment periods and a different fixed rate or rates, or a rate or rates described in paragraph (a)(3) (i) through (v) of this section, during other accrual or payment periods; or

(B) A rate described in paragraph (a)(3) (i) through (v) of this section during one or more accrual or payment periods and a fixed rate or rates, or a different rate or rates described in paragraph (a)(3) (i) through (v) of this section in other periods.

(4) *Fixed terms on the startup day.* For purposes of section 860G(a)(1), a regular interest in a REMIC has fixed terms on the startup day if, on the startup day, the REMIC's organizational documents irrevocably specify—

(i) The principal amount (or other similar amount) of the regular interest;

(ii) The interest rate or rates used to compute any interest payments (or other similar amounts) on the regular interest; and

(iii) The latest possible maturity date of the interest.

(5) *Contingencies prohibited.* Except for the contingencies specified in paragraph (b)(3) of this section, the principal amount (or other similar amount) and the latest possible maturity date of the interest must not be contingent.

(b) *Special rules for regular interests*—(1) *Call premium.* An interest in a REMIC does not qualify as a regular interest if the terms of the interest entitle the holder of that interest to the payment of any premium that is determined with reference to the length of time that the regular interest is outstanding and is not described in paragraph (b)(2) of this section.

(2) *Customary prepayment penalties received with respect to qualified mortgages.* An interest in a REMIC does not fail to qualify as a regular interest solely because the REMIC's organizational documents provide that the REMIC must allocate among and pay to its regular interest holders any customary prepayment penalties that the REMIC receives with respect to its qualified mortgages. Moreover, a REMIC may allocate prepayment penalties among its classes of interests in any manner specified in the REMIC'S organizational documents. For example, a REMIC could allocate all or substantially all of a prepayment penalty that it receives to holders of an interest-only class of interests because that class would be most significantly affected by prepayments.

(3) *Certain contingencies disregarded.* An interest in a REMIC does not fail to qualify as a regular interest solely because it is issued subject to some or all of the contingencies described in paragraph (b)(3) (i) through (vi) of this section.

(i) *Prepayments, income, and expenses.* An interest does not fail to qualify as a regular interest solely because—

(A) The timing of (but not the right to or amount of) principal payments (or other similar amounts) is affected by the extent of prepayments on some or all of the qualified mortgages held by the REMIC or the amount of income from permitted investments (as defined in § 1.860G–2(g)); or

(B) The timing of interest and principal payments is affected by the payment of expenses incurred by the REMIC.

(ii) *Credit losses.* An interest does not fail to qualify as a regular interest solely because the amount or the timing of payments of principal or interest (or other similar amounts) with respect to a regular interest is affected by defaults on qualified mortgages and permitted investments, unanticipated expenses incurred by the REMIC, or lower than expected returns on permitted investments.

(iii) *Subordinated interests.* An interest does not fail to qualify as a regular interest solely because that interest bears all, or a disproportionate share, of the losses stemming from cash flow shortfalls due to defaults or delinquencies on qualified mortgages or permitted investments, unanticipated expenses incurred by the REMIC, lower than expected returns on permitted investments, or prepayment interest shortfalls before other regular interests or the residual interest bear losses occasioned by those shortfalls.

(iv) *Deferral of interest.* An interest does not fail to qualify as a regular interest solely because that interest, by its terms, provides for deferral of interest payments.

(v) *Prepayment interest shortfalls.* An interest does not fail to qualify as a regular interest solely because the amount of interest payments is affected by prepayments of the underlying mortgages.

(vi) *Remote and incidental contingencies.* An interest does not fail to qualify as a regular interest solely because the amount or timing of payments of principal or interest (or other similar amounts) with respect to the interest is subject to a contingency if there is only a remote likelihood that the contingency will occur. For example, an interest could qualify as a regular interest even though full payment of principal and interest on that interest is contingent upon the absence of significant cash flow shortfalls due to the operation of the Soldiers and Sailors Civil Relief Act, 50 U.S.C. app. 526 (1988).

(4) *Form of regular interest.* A regular interest in a REMIC may be issued in the form of debt, stock, an interest in a partnership or trust, or any other form permitted by state law. If a regular interest in a REMIC is not in the form of debt, it must, except as provided in paragraph (a)(2)(iv) of this section, entitle the holder to a specified amount that would, were the interest issued in debt form, be identified as the principal amount of the debt.

(5) *Interest disproportionate to princpal*—(i) *In general.* An interest in a REMIC does not qualify as a regular interest if the amount of interest (or other similar amount) payable to the holder is disproportionately high relative to the principal amount or other specified amount described in paragraph (b)(4) of this section (specified principal amount). Interest payments (or other similar amounts) are considered disproportionately high if the issue price (as determined under paragraph (d) of this section) of the interest in the REMIC exceeds 125 percent of its specified principal amount.

(ii) *Exception.* A regular interest in a REMIC that entitles the holder to interest payments consisting of a specified portion of interest payments on qualified mortgages qualifies as a regular interest even if the amount of interest is disproportionately high relative to the specified principal amount.

(6) *Regular interest treated as a debt instrument for all Federal income tax purposes.* In determining the tax under chapter 1 of the Internal Revenue Code, a REMIC regular interest (as defined in section 860G(a)(1)) is treated as a debt instrument that is an obligation of the REMIC. Thus, sections 1271 through 1288, relating to bonds and other debt instruments, apply to a regular interest. For special rules relating to the accrual of original issue discount on regular interests, see section 1272(a)(6).

(c) *Residual interest.* A residual interest is an interest in a REMIC that is issued on the startup day and that is designated as a residual interest by providing the information specified in § 1.860D–1(d)(2)(ii) at the time and in the manner provided in § 1.860D–1(d)(2). A residual interest need not entitle the holder to any distributions from the REMIC.

(d) *Issue price of regular and residual interests*—(1) *In general.* The issue price of any REMIC regular or residual interest is determined under section 1273(b) as if the interest were a debt instrument and, if issued for property, as if the requirements of section 1273(b)(3) were met. Thus, if a class of interests is publicly offered, then the issue price of an interest in that class is the initial offering price to the public at which a substantial amount of the class is sold. If the interest is in a class that is not publicly offered, the issue price is the price paid by the first buyer of that interest regardless of the price paid for the remainder of the class. If the interest is in a class that is retained by the sponsor, the issue price is its fair market value on the pricing date (as defined in § 1.860F–2(b)(3)(iii)), if any, or, if none, the startup day, regardless of whether the property exchanged therefor is publicly traded.

(2) *The public.* The term "the public" for purposes of this section does not include brokers or other middlemen, nor does it include the sponsor who acquires all of the regular and residual interests from the REMIC on the startup

day in a transaction described in § 1.860F–2(a).

§ 1.860G–2 Other rules.

(a) *Obligations principally secured by an interest in real property*—(1) *Tests for determining whether an obligation is principally secured.* For purposes of section 860G(a)(3)(A), an obligation is principally secured by an interest in real property only if it satisfies either the test set out in paragraph (a)(1)(i) or the test set out in paragraph (a)(1)(ii) of this section.

(i) *The 80-percent test.* An obligation is principally secured by an interest in real property if the fair market value of the interest in real property securing the obligation—

(A) Was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated (see paragraph (b)(1) of this section concerning the origination date for obligations that have been significantly modified); or

(B) Is at least equal to 80 percent of the adjusted issue price of the obligation at the time the sponsor contributes the obligation to the REMIC.

(ii) *Alternative test.* For purposes of section 860G(a)(3)(A), an obligation is principally secured by an interest in real property if substantially all of the proceeds of the obligation were used to acquire or to improve or protect an interest in real property that, at the origination date, is the only security for the obligation. For purposes of this test, loan guarantees made by the United States or any state (or any political subdivision, agency, or instrumentality of the United States or of any state), or other third party credit enhancement are not viewed as additional security for a loan. An obligation is not considered to be secured by property other than real property solely because the obligor is personally liable on the obligation.

(2) *Treatment of liens.* For purposes of paragraph (a)(1)(i) of this section, the fair market value of the real property interest must be first reduced by the amount of any lien on the real property interest that is senior to the obligation being tested, and must be further reduced by a proportionate amount of any lien that is in parity with the obligation being tested.

(3) *Safe harbor*—(i) *Reasonable belief that an obligation is principally secured.* If, at the time the sponsor contributes an obligation to a REMIC, the sponsor reasonably believes that the obligation is principally secured by an interest in real property within the meaning of paragraph (a)(1) of this section, then the obligation is deemed to be so secured for purposes of section 860G(a)(3). A sponsor cannot avail itself of this safe harbor with respect to an obligation if the sponsor actually knows or has reason to know that the obligation fails both of the tests set out in paragraph (a)(1) of this section.

(ii) *Basis for reasonable belief.* For purposes of paragraph (a)(3)(i) of this section, a sponsor may base a reasonable belief concerning any obligation on—

(A) Representations and warranties made by the originator of the obligation; or

(B) Evidence indicating that the originator of the obligation typically made mortgage loans in accordance with an established set of parameters, and that any mortgage loan originated in accordance with those parameters would satisfy at least one of the tests set out in paragraph (a)(1) of this section.

(iii) *Later discovery that an obligation is not principally secured.* If, despite the sponsor's reasonable belief concerning an obligation at the time it contributed the obligation to the REMIC, the REMIC later discovers that the obligation is not principally secured by an interest in real property, the obligation is a defective obligation and loses its status as a qualified mortgage 90 days after the date of discovery. See paragraph (f) of this section, relating to defective obligations.

(4) *Interests in real property; real property.* The definition of "interests in real property" set out in § 1.856–3(c), and the definition of "real property" set out in § 1.856–3(d), apply to define those terms for purposes of section 860G(a)(3) and paragraph (a) of this section.

(5) *Obligations secured by an interest in real property.* Obligations secured by interests in real property include the following: mortgages, deeds of trust, and installment land contracts; mortgage pass-thru certificates guaranteed by GNMA, FNMA, FHLMC, or CMHC (Canada Mortgage and Housing Corporation); other investment trust interests that represent undivided beneficial ownership in a pool of obligations principally secured by interests in real property and related assets that would be considered to be permitted investments if the investment trust were a REMIC, and provided the investment trust is classified as a trust under § 301.7701–4(c) of this chapter; and obligations secured by manufactured housing treated as single family residences under section 25(e)(10) without regard to the treatment of the obligations or the properties under state law).

(6) *Obligations secured by other obligations; residual interests.* Obligations (other than regular interests in a REMIC) that are secured by other obligations are not principally secured by interests in real property even if the underlying obligations are secured by interests in real property. Thus, for example, a collateralized mortgage obligation issued by an issuer that is not a REMIC is not an obligation principally secured by an interest in real property. A residual interest (as defined in section 860G(a)(2) is not an obligation principally secured by an interest in real property.

(7) *Certain instruments that call for contingent payments are obligations.* For purposes of section 860G(a)(3) and (4), the term "obligation" includes any instrument that provides for total noncontingent principal payments that at least equal the instrument's issue price even if that instrument also provides for contingent payments. Thus, for example, an instrument that was issued for $100*x* and that provides for noncontingent principal payments of $100*x*, interest payments at a fixed rate, and contingent payments based on a percentage of the mortgagor's gross receipts, is an obligation.

(8) *Defeasance.* If a REMIC releases its lien on real property that secures a qualified mortgage, that mortgage ceases to be a qualified mortgage on the date the lien is released unless—

(i) The mortgagor pledges substitute collateral that consists solely of government securities (as defined in section 2(a)(16) of the Investment Company Act of 1940 as amended (15 U.S.C. 80a–1));

(ii) The mortgage documents allow such a substitution;

(iii) The lien is released to facilitate the disposition of the property or any other customary commercial transaction, and not as part of an arrangement to collateralize a REMIC offering with obligations that are not real estate mortgages; and

(iv) The release is not within 2 years of the startup day.

(9) *Stripped bonds and coupons.* The term "qualified mortgage" includes stripped bonds and stripped coupons (as defined in section 1286(e) (2) and (3)) if the bonds (as defined in section 1286(e)(1) from which such stripped bonds or stripped coupons arose would have been qualified mortgages.

(b) *Assumptions and modifications*—(1) *Significant modifications are treated as exchanges of obligations.* If an obligation is significantly modified in a manner or under circumstances other than those described in paragraph (b)(3) of this section, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. Consequently—

(i) If such a significant modification occurs after the obligation has been contributed to the REMIC and the modified obligation is not a qualified replacement mortgage, the modified obligation will not be a qualified mortgage and the deemed disposition of the unmodified obligation will be a prohibited transaction under section 860F(a)(2); and

(ii) If such a significant modification occurs before the obligation is contributed to the REMIC, the modified obligation will be viewed as having been originated on the date the modification occurs for purposes of the tests set out in paragraph (a)(1) of this section.

(2) *Significant modification defined.* For purposes of paragraph (b)(1) of this section, a "significant modification" is any change in the terms of an obligation that would be treated as an exchange of obligations under section 1001 and the related regulations.

(3) *Exceptions.* For purposes of paragraph (b)(1) of this section, the following changes in the terms of an obligation are not significant modifications regardless of whether they would be significant modifications under paragraph (b)(2) of this section—

(i) Changes in the terms of the obligation occasioned by default or a reasonably foreseeable default;

(ii) Assumption of the obligation;

(iii) Waiver of a due-on-sale clause or a due on encumbrance clause; and

(iv) Conversion of an interest rate by a mortgagor pursuant to the terms of a convertible mortgage.

(4) *Modifications that are not significant modifications.* If an obligation is modified and the modification is not a significant modification for purposes of paragraph (b)(1) of this section, then the modified obligation is not treated as one that was newly originated on the date of modification.

(5) *Assumption defined.* For purposes of paragraph (b)(3) of this section, a mortgage has been assumed if—

(i) The buyer of the mortgaged property acquires the property subject to the mortgage, without assuming any personal liability;

(ii) The buyer becomes liable for the debt but the seller also remains liable; or

(iii) The buyer becomes liable for the debt and the seller is released by the lender.

(6) *Pass-thru certificates.* If a REMIC holds as a qualified mortgage a pass-thru certificate or other investment trust interest of the type described in paragraph (a)(5) of this section, the modification of a mortgage loan that backs the pass-thru certificate or other interest is not a modification of the pass-thru certificate or other interest unless the investment trust structure was created to avoid the prohibited transaction rules of section 860F(a).

(c) *Treatment of certain credit enhancement contracts*—(1) *In general.* A credit enhancement contract (as defined in paragraph (c) (2) and (3) of this section) is not treated as a separate asset of the REMIC for purposes of the asset test set out in section 860D(a)(4) and § 1.860D–1(b)(3), but instead is treated as part of the mortgage or pool of mortgages to which it relates. Furthermore, any collateral supporting a credit enhancement contract is not treated as an asset of the REMIC solely because it supports the guarantee represented by that contract. See paragraph (g)(1)(ii) of this section for the treatment of payments made pursuant to credit enhancement contracts as payments received under a qualified mortgage.

(2) *Credit enhancement contracts.* For purposes of this section, a credit enhancement contract is any arrangement whereby a person agrees to guarantee full or partial payment of the principal or interest payable on a qualified mortgage or on a pool of such mortgages, or full or partial payment on one or more classes of regular interests or on the class of residual interests, in the event of defaults or delinquencies on qualified mortgages, unanticipated losses or expenses incurred by the REMIC, or lower than expected returns on cash flow investments. Types of credit enhancement contracts may include, but are not limited to, pool insurance contracts, certificate guarantee insurance contracts, letters of credit, guarantees, or agreements whereby the REMIC sponsor, a mortgage servicer, or other third party agrees to make advances described in paragraph (c)(3) of this section.

(3) *Arrangements to make certain advances.* The arrangements described in this paragraph (c)(3) are credit enhancement contracts regardless of whether, under the terms of the arrangement, the payor is obligated, or merely permitted, to advance funds to the REMIC.

(i) *Advances of delinquent principal and interest.* An arrangement by a REMIC sponsor, mortgage servicer, or other third party to advance to the REMIC out of its own funds an amount to make up for delinquent payments on qualified mortgages is a credit enhancement contract.

(ii) *Advances of taxes, insurance payments, and expenses.* An arrangement by a REMIC sponsor, mortgage servicer, or other third party to pay taxes and hazard insurance premiums on, or other expenses incurred to protect the REMIC's security interest in, property securing a qualified mortgage in the event that the mortgagor fails to pay such taxes, insurance premiums, or other expenses is a credit enhancement contract.

(iii) *Advances to ease REMIC administration.* An agreement by a REMIC sponsor, mortgage servicer, or other third party to advance temporarily to a REMIC amounts payable on qualified mortgages before such amounts are actually due to level out the stream of cash flows to the REMIC or to provide for orderly administration of the REMIC is a credit enhancement contract. For example, if two mortgages in a pool have payment due dates on the twentieth of the month, and all the other mortgages have payment due dates on the first of each month, an agreement by the mortgage servicer to advance to the REMIC on the fifteenth of each month the payments not yet received on the two mortgages together with the amounts received on the other mortgages is a credit enhancement contract.

(4) *Deferred payment under a guarantee arrangement.* A guarantee arrangement does not fail to qualify as a credit enhancement contract solely because the guarantor, in the event of a default on a qualified mortgage, has the option of immediately paying to the REMIC the full amount of mortgage principal due on acceleration of the defaulted mortgage, or paying principal and interest to the REMIC according to the original payment schedule for the defaulted mortgage, or according to some other deferred payment schedule. Any deferred payments are payments pursuant to a credit enhancement contract even if the mortgage is foreclosed upon and the guarantor, pursuant to subrogation rights set out in the guarantee arrangement, is entitled to receive immediately the proceeds of foreclosure.

(d) *Treatment of certain purchase agreements with respect to convertible mortgages*—(1) *In general.* For purposes of sections 860D(a)(4) and 860G(a)(3), a purchase agreement (as described in paragraph (d)(3) of this section) with respect to a convertible mortgage (as described in paragraph (d)(5) of this section) is treated as incidental to the convertible mortgage to which it relates. Consequently, the purchase agreement is part of the mortgage or pool of mortgages and is not a separate asset of the REMIC.

(2) *Treatment of amounts received under purchase agreements.* For

purposes of sections 860A through 860G and for purposes of determining the accrual of original issue discount and market discount under sections 1272(a)(6) and 1276, respectively, a payment under a purchase agreement described in paragraph (d)(3) of this section is treated as a prepayment in full of the mortgage to which it relates. Thus, for example, a payment under a purchase agreement with respect to a qualified mortgage is considered a payment received under a qualified mortgage within the meaning of section 860G(a)(6) and the transfer of the mortgage is not a disposition of the mortgage within the meaning of section 860F(a)(2)(A).

(3) *Purchase agreement.* A purchase agreement is a contract between the holder of a convertible mortgage and a third party under which the holder agrees to sell and the third party agrees to buy the mortgage for an amount equal to its current principal balance plus accrued but unpaid interest if and when the mortgagor elects to convert the terms of the mortgage.

(4) *Default by the person obligated to purchase a convertible mortgage.* If the person required to purchase a convertible mortgage defaults on its obligation to purchase the mortgage upon conversion, the REMIC may sell the mortgage in a market transaction and the proceeds of the sale will be treated as amounts paid pursuant to a purchase agreement.

(5) *Convertible mortgage.* A convertible mortgage is a mortgage that gives the obligor the right at one or more times during the term of the mortgage to elect to convert from one interest rate to another. The new rate of interest must be determined pursuant to the terms of the instrument and must be intended to approximate a market rate of interest for newly originated mortgages at the time of the conversion.

(e) *Prepayment interest shortfalls.* An agreement by a mortgage servicer or other third party to make payments to the REMIC to make up prepayment interest shortfalls is not treated as a separate asset of the REMIC and payments made pursuant to such an agreement are treated as payments on the qualified mortgages. With respect to any mortgage that prepays, the prepayment interest shortfall for the accrual period in which the mortgage prepays is an amount equal to the excess of the interest that would have accrued on the mortgage during that accrual period had it not prepaid, over the interest that accrued from the beginning of that accrual period up to the dete of the prepayment.

(f) *Defective obligations*—(1) *Defective obligation defined.* For purposes of sections 860G(a)(4)(B)(ii) and 860F(a)(2), a defective obligation is a mortgage subject to any of the following defects.

(i) The mortgage is in default, or a default with respect to the mortgage is reasonably foreseeable.

(ii) The mortgage was fraudulently procured by the mortgagor.

(iii) The mortgage was not in fact principally secured by an interest in real property within the meaning of paragraph (a)(1) of this section.

(iv) The mortgage does not conform to a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part. A representation that payments on a qualified mortgage will be received at a rate no less than a specified minimum or no greater than a specified maximum is not customary for this purpose.

(2) *Effect of discovery of defect.* If a REMIC discovers that an obligation is a defective obligation, and if the defect is one that, had it been discovered before the startup day, would have prevented the obligation from being a qualified mortgage, then, unless the REMIC either causes the defect to be cured or disposes of the defective obligation within 90 days of discovering the defect, the obligation ceases to be a qualified mortgage at the end of that 90 day period. Even if the defect is not cured, the defective obligation is, nevertheless, a qualified mortgage from the startup day through the end of the 90 day period. Moreover, even if the REMIC holds the defective obligation beyond the 90 day period, the REMIC may, nevertheless, exchange the defective obligation for a qualified replacement mortgage so long as the requirements of section 860G(a)(4)(B) are satisfied. If the defect is one that does not affect the status of an obligation as a qualified mortgage, then the obligation is always a qualified mortgage regardless of whether the defect is or can be cured. For example, if a sponsor represented that all mortgages transferred to a REMIC had a 10 percent interest rate, but it was later discovered that one mortgage had a 9 percent interest rate, the 9 percent mortgage is defective, but the defect does not affect the status of that obligation as a qualified mortgage.

(g) *Permitted investments*—(1) *Cash flow investment*—(i) *In general.* For purposes of section 860G(a)(6) and this section, a cash flow investment is an investment of payments received on qualified mortgages for a temporary period between receipt of those payments and the regularly scheduled date for distribution of those payments to REMIC interest holders. Cash flow investments must be passive investments earning a return in the nature of interest.

(ii) *Payments received on qualified mortgages.* For purposes of paragraph (g)(1) of this section, the term "payments received on qualified mortgages" includes—

(A) Payments of interest and principal on qualified mortgages, including prepayments of principal and payments under credit enhancement contracts described in paragraph (c)(2) of this action;

(B) Proceeds from the disposition of qualified mortgages;

(C) Cash flows from foreclosure property and proceeds from the disposition of such property;

(D) A payment by a sponsor or prior owner in lieu of the sponsor's or prior owner's repurchase of a defective obligation, as defined in paragraph (f) of this section, that was transferred to the REMIC in breach of a customary warranty; and

(E) Prepayment penalties required to be paid under the terms of a qualified mortgage when the mortgagor prepays the obligation.

(iii) *Temporary period.* For purposes of section 860G(a)(6) and this paragraph (g)(1), a temporary period generally is that period from the time a REMIC receives payments on qualified mortgages and permitted investments to the time the REMIC distributes the payments to interest holders. A temporary period may not exceed 13 months. Thus, an investment held by a REMIC for more than 13 months is not a cash flow investment. In determining the length of time that a REMIC has held an investment that is part of a commingled fund or account, the REMIC may employ any reasonable method of accounting. For example, if a REMIC holds mortgage cash flows in a commingled account pending distribution, the first-in, first-out method of accounting is a reasonable method for determining whether all or part of the account satisfies the 13 month limitation.

(2) *Qualified reserve funds.* The term qualified reserve fund means any reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular or residual interests in the event of defaults on qualified mortgages, prepayment interest shortfalls (as defined in paragraph (e) of this section), lower than expected returns on cash flow investments, or any other contingency that could be provided for

under a credit enhancement contract (as defined in paragraph (c) (2) and (3) of this section).

(3) *Qualified reserve asset*—(i) *In general.* The term "qualified reserve asset" means any intangible property (other than a REMIC residual interest) that is held both for investment and as part of a qualified reserve fund. An asset need not generate any income to be a qualified reserve asset.

(ii) *Reasonably required reserve*—(A) *In general.* In determining whether the amount of a reserve is reasonable, it is appropriate to consider the credit quality of the qualified mortgages, the extent and nature of any guarantees relating to either the qualified mortgages or the regular and residual interests, the expected amount of expenses of the REMIC, and the expected availability of proceeds from qualified mortgages to pay the expenses. To the extent that a reserve exceeds a reasonably required amount, the amount of the reserve must be promptly and appropriately reduced. If at any time, however, the amount of the reserve fund is less than is reasonably required, the amount of the reserve fund may be increased by the addition of payments received on qualified mortgages or by contributions from holders of residual interests.

(B) *Presumption that a reserve is reasonably required.* The amount of a reserve fund is presumed to be reasonable (and an excessive reserve is presumed to have been promptly and appropriately reduced) if it does not exceed—

(*1*) The amount required by a nationally recognized independent rating agency as a condition of providing the rating for REMIC interests desired by the sponsor; or

(*2*) The amount required by a third party insurer or guarantor, who does not own directly or indirectly (within the meaning of section 267(c)) an interest in the REMIC (as defined in § 1.860D–1(b)(1)), as a condition of providing credit enhancement.

(C) *Presumption may be rebutted.* The presumption in paragraph (g)(3)(ii)(B) of this section may be rebutted if the amounts required by the rating agency or by the third party insurer are not commercially reasonable considering the factors described in paragraph (g)(3)(ii)(A) of this section.

(h) *Outside reserve funds.* A reserve fund that is maintained to pay expenses of the REMIC, or to make payments to REMIC interest holders is an outside reserve fund and not an asset of the REMIC only if the REMIC's organizational documents clearly and expressly—

(1) Provide that the reserve fund is an outside reserve fund and not an asset of the REMIC;

(2) Identify the owner(s) of the reserve fund, either by name, or by description of the class (*e.g.*, subordinated regular interest holders) whose membership comprises the owners of the fund; and

(3) Provide that, for all Federal tax purposes, amounts transferred by the REMIC to the fund are treated as amounts distributed by the REMIC to the designated owner(s) or transferees of the designated owner(s).

(i) *Contractual rights coupled with regular interests in tiered arrangements*—(1) *In general.* If a REMIC issues a regular interest to a trustee of an investment trust for the benefit of the trust certificate holders and the trustee also holds for the benefit of those certificate holders certain other contractual rights, those other rights are not treated as assets of the REMIC even if the investment trust and the REMIC were created contemporaneously pursuant to a single set of organizational documents. The organizational documents must, however, require that the trustee account for the contractual rights as property that the trustee holds separate and apart from the regular interest.

(2) *Example.* The following example, which describes a tiered arrangement involving a pass-thru trust that is intended to qualify as a REMIC and a pass-thru trust that is intended to be classified as a trust under § 301.7701–4(c) of this chapter, illustrates the provisions of paragraph (i)(1) of this section.

Example. (i) A sponsor transferred a pool of mortgages to a trustee in exchange for two classes of certificates. The pool of mortgages has an aggregate principal balance of $100*x*. Each mortgage in the pool provides for interest payments based on the eleventh district cost of funds index (hereinafter COFI) plus a margin. The trust (hereinafter REMIC trust) issued a Class N bond, which the sponsor designates as a regular interest, that has a principal amount of $100*x* and that provides for interest payments at a rate equal to One-Year LIBOR plus 100 basis points, subject to a cap equal to the weighted average pool rate. The Class R interest, which the sponsor designated as the residual interest, entitles its holder to all funds left in the trust after the Class N bond has been retired. The Class R interest holder is not entitled to current distributions.

(ii) On the same day, and under the same set of documents, the sponsor also created an investment trust. The sponsor contributed to the investment trust the Class N bond together with an interest rate cap contract. Under the interest rate cap contract, the issuer of the cap contract agrees to pay to the trustee for the benefit of the investment trust certificate holders the excess of One-Year LIBOR plus 100 basis points over the weighted average pool rate (COFI plus a margin) times the outstanding principal balance of the Class N bond in the event One-Year LIBOR plus 100 basis points ever exceeds the weighted average pool rate. The trustee (the same institution that serves as REMIC trust trustee), in exchange for the contributed assets, gave the sponsor certificates representing undivided beneficial ownership interests in the Class N bond and the interest rate cap contract. The organizational documents require the trustee to account for the regular interest and the cap contract as discrete property rights.

(iii) The separate existence of the REMIC trust and the investment trust are respected for all Federal income tax purposes. Thus, the interest rate cap contract is an asset beneficially owned by the several certificate holders and is not an asset of the REMIC trust. Consequently, each certificate holder must allocate its purchase price for the certificate between its undivided interest in the Class N bond and its undivided interest in the interest rate cap contract in accordance with the relative fair market values of those two property rights.

(j) *Clean-up call*—(1) *In general.* For purposes of section 860F(a)(5)(B), a clean-up call is the redemption of a class of regular interests when, by reason of prior payments with respect to those interests, the administrative costs associated with servicing that class outweigh the benefits of maintaining the class. Factors to consider in making this determination include—

(i) The number of holders of that class of regular interests;

(ii) The frequency of payments to holders of that class;

(iii) The effect the redemption will have on the yield of that class of regular interests;

(iv) The outstanding principal balance of that class; and

(v) The percentage of the original principal balance of that class still outstanding.

(2) *Interest rate changes.* The redemption of a class of regular interests undertaken to profit from a change in interest rates is not a clean-up call.

(3) *Safe harbor.* Although the outstanding principal balance is only one factor to consider, the redemption of a class of regular interests with an outstanding principal balance of no more than 10 percent of its original principal balance is always a clean-up call.

(k) *Startup day.* The term "startup day" means the day on which the REMIC issues all of its regular and residual interests. A sponsor may, however, contribute property to a REMIC in exchange for regular and residual interests over any period of 10 consecutive days and the REMIC may designate any one of those 10 days as its

startup day. The day so designated is then the startup day, and all interests are treated as issued on that day.

§ 1.860G–3 Treatment of foreign persons.

(a) *Transfer of a residual interest with tax avoidance potential*—(1) *In general.* A transfer of a residual interest that has tax avoidance potential is disregarded for all Federal tax purposes if the transferee is a foreign person. Thus, if a residual interest with tax avoidance potential is transferred to a foreign holder at formation of the REMIC, the sponsor is liable for the tax on any excess inclusion that accrues with respect to that residual interest.

(2) *Tax avoidance potential*—(i) *Defined.* A residual interest has tax avoidance potential for purposes of this section unless, at the time of the transfer, the transferor reasonably expects that, for each excess inclusion, the REMIC will distribute to the transferee residual interest holder an amount that will equal at least 30 percent of the excess inclusion, and that each such amount will be distributed at or after the time at which the excess inclusion accrues and not later than the close of the calendar year following the calendar year of accrual.

(ii) *Safe harbor.* For purposes of paragraph (a)(2)(i) of this section, a transferor has a reasonable expectation if the 30-percent test would be satisfied were the REMIC's qualified mortgages to prepay at each rate within a range of rates from 50 percent to 200 percent of the rate assumed under section 1272(a)(6) with respect to the qualified mortgages (or the rate that would have been assumed had the mortgages been issued with original issue discount).

(3) *Effectively connected income.* Paragraph (a)(1) of this section will not apply if the transferee's income from the residual interest is subject to tax under section 871(b) or section 882.

(4) *Transfer by a foreign holder.* If a foreign person transfers a residual interest to a United States person or a foreign holder in whose hands the income from a residual interest would be effectively connected income, and if the transfer has the effect of allowing the transferor to avoid tax on accrued excess inclusions, then the transfer is disregarded and the transferor continues to be treated as the owner of the residual interest for purposes of section 871(a), 881, 1441, or 1442.

(b) [Reserved]

Par. 8. Section 1.6041–1 is amended by redesignating the text of paragraph (b) as paragraph (b)(1) and adding a heading for new paragraph (b)(1), and adding a new paragraph (b)(2) to read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more.

* * * * *

(b) *Persons engaged in trade or business*—(1) *In general.* * * *

(2) *Special rule for REMICs.* For purposes of chapter 1 subtitle F, chapter 61A, part IIIB, the terms "all persons engaged in a trade or business" and "any service-recipient engaged in a trade or business" includes a real estate mortgage investment conduit or REMIC (as defined in section 860D).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 10. Section 301.7701–13A is amended by adding a new paragraph (e)(12) to read as follows:

§ 301.7701–13A Post–1969 domestic building and loan association.

* * * * *

(e) * * *

(12) *Regular or residual interest in a REMIC*—(i) *In general.* If for any calendar quarter at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3) of this chapter) are assets defined in paragraph (e)(1) through (e)(11) of this section, then for that calendar quarter all the regular and residual interests in that REMIC are treated as assets defined in this paragraph (e). If less than 95 percent of a REMIC's assets are assets defined in paragraph (e)(1) through (e)(11) of this section, the percentage of each REMIC regular or residual interest treated as an asset defined in this paragraph (e) is equal to the percentage of the REMIC's assets that are assets defined in paragraph (e)(1) through (e)(11) of this section. See §§ 1.860F–4(e)(1)(ii)(B) and 1.6049–7(f)(3) of this chapter for information required to be provided to regular and residual interest holders if the 95 percent test is not met.

(ii) *Loans secured by manufactured housing.* For purposes of paragraph (e)(12)(i) of this section, a loan secured by manufactured housing treated as a single family residence under section 25(e)(10) is an asset defined in paragraph (e)(1) through (e)(11) of this section.

* * * * *

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 12. Section 602.101(c) is amended by adding the following entries to the table:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.860E–2 (a) (5)	1545–1276
1.860E–2 (a) (7)	1545–1276
1.860E–2 (b) (2)	1545–1276
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: November 23, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–30944 Filed 12–23–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[T.D. 8455]

RIN 1545–AL74

Election to Expense Certain Depreciable Business Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to final regulations on the election to expense certain depreciable business assets. The final regulations in this document reflect changes to the applicable tax law that were made by the Revenue Reconciliation Act of 1990, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Reform Act of 1986. The regulations provide the public with the guidance needed when making an election to expense certain depreciable business assets.

EFFECTIVE DATE: The provisions of these regulations are effective January 25, 1993. See "**SUPPLEMENTARY INFORMATION**" for further details.

FOR FURTHER INFORMATION CONTACT: Winston H. Douglas, 202–622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1201. The estimated annual burden per respondent/recordkeeper varies from .50 hour to 1 hour, depending on individual circumstances, with an estimated average of .75 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 179 of the Internal Revenue Code (Code). These amendments reflect the amendments made by section 11813 of the Revenue Reconciliation Act of 1990, section 1002(b) of the Technical and Miscellaneous Revenue Act of 1988, and section 202 of the Tax Reform Act of 1986. On March 28, 1991, the Internal Revenue Service published in the **Federal Register** (56 FR 12868) a Notice of Proposed Rulemaking proposing amendments to the Income Tax Regulations under section 179. The preamble to that notice contains an explanation of the proposed amendments. A public hearing was held on August 8, 1991. After considering all comments regarding the proposed amendments, the amendments as proposed are adopted as revised by this Treasury decision.

Explanation of Provisions

In General

Section 179, as amended by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1990, retains the election, as enacted by the Economic Recovery Tax Act of 1981, for taxpayers (other than trusts, estates, and certain noncorporate lessors) to treat the cost or a portion of the cost of certain depreciable business assets (section 179 property) as a currently deductible expense. Taxpayers who do not elect under section 179 to expense the cost of section 179 property must capitalize this cost. A section 179 expense election is made for the taxable year in which the section 179 property is placed in service. See § 1.179–4 (a) and (e) of the regulations, respectively, for definitions of the terms "section 179 property" and "placed in service." Final regulations under section 179, as amended by the Economic Recovery Tax Act of 1981, were published in the **Federal Register** on January 6, 1987.

General Description of Changes Made to Section 179 by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1990

The Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988 and the Revenue Reconciliation Act of 1990, made certain changes to section 179, as amended by the Economic Recovery Tax Act of 1981. Under these changes, the $10,000 limit on the amount that a taxpayer may elect to expense for a taxable year is reduced (but not to less than zero) by one dollar for every dollar of investment in excess of $200,000 in section 179 property placed in service during the taxable year ("amended dollar limitation"). See sections 179(b)(1) and (2) of the Code. In addition, the amount that may be deducted for any taxable year is limited to the taxable income derived from the active conduct of any trade or business during the taxable year ("taxable income limitation"). See section 179(b)(3)(A). Section 179 expense deductions disallowed solely as a result of the taxable income limitation are carried forward to the succeeding taxable year ("carryover of disallowed deduction"). See section 179(b)(3)(B). Further, the definition of section 179 property was amended to require that the property be purchased for use in "the active conduct of" a trade or business. Finally, recapture of the section 179 deductions is required if the section 179 property is converted to a nonbusiness use at any time before the end of its recovery period (instead of during a limited recapture period). See section 179(d)(10). Section 179, as so amended, generally applies to property placed in service after December 31, 1986.

Changes to the Proposed Regulations

This document adopts the rules in the proposed regulations, with certain amendments. The amendments are discussed below.

Taxable Income of Partnerships and S Corporations.

For purposes of the taxable income limitation of section 179(b)(3) of the Code, proposed § 1.179–2(c)(4) provides that the aggregate amount of taxable income derived from the active conduct by a partnership or an S corporation of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the partnership or S corporation during the taxable year. Commentators noted that proposed § 1.179–2(c)(4) does not specifically address how to compute the net income (or loss) of partnerships and S corporations for purposes of the taxable income limitations and suggested how the Service could amend the proposed regulations to specifically address the computation of the taxable income of partnerships and S corporations. One commentator suggested using the definition of "partnership net income" and "S corporation net income" provided in section 7519(d) of the Code and § 1.7519–1T(b)(5) of the temporary Income Tax Regulations.

The final regulations adopt the commentator's suggestion by incorporating a modified version of the section 7519 definition of "partnership net income" and "S corporation net income" into the regulations under section 179. Under section 7519, the calculation of a required payment for a partnership or an S corporation electing to have a taxable year other than the required taxable year is based on the entity's net income. Partnership net income is generally defined for this purpose as the aggregate amount of the partnership's items described in section 702(a), other than credits, tax-exempt income, and guaranteed payments under section 707(c). The final section 179 regulations adopt this definition of "partnership net income."

The section 7519 definition of "S corporation net income" is the aggregate amount of the S corporation's items described in section 1366(a), other than credits and tax-exempt income. The final section 179 regulations adopt this definition with one modification. To avoid inconsistent results between the treatment of the S corporation compensation paid to S corporation shareholder-employees and the treatment of the partnership guaranteed payments to partners under section

707(c), the final regulations provide that the net income of an S corporation is determined without deducting compensation paid to an S corporation's shareholder-employees.

Taxable Income—Deductions and Losses

For purposes of the taxable income limitation of section 179(b)(3) of the Code, proposed § 1.179–2(c)(4) provides that the aggregate amount of taxable income derived from the active conduct by an individual of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the individual during the taxable year. For calculating taxable income under section 179, a commentator requested clarification on whether an individual taxpayer should include the amount of suspended deductions (e.g., a deduction suspended under section 704(d)). The final regulations clarify that, in computing taxable income for section 179 purposes, deductions suspended under any section of the Code are not taken into account until the year in which the deductions are allowed.

Active Conduct of a Trade or Business

Proposed § 1.179–2(c)(5) provides that the purpose of the active conduct requirement is to prevent a passive investor in a trade or business from deducting section 179 expenses against taxable income derived from that trade or business. Commentators stated that the section should state more specifically in the regulations that the terms "active" and "passive" do not have the same meaning as in section 469 of the Code and the regulations thereunder. The definition of the active conduct standard under section 179 is a different standard than the material participation standard under section 469; however, it was not deemed necessary to modify the regulations to so state specifically.

Unreimbursed Employee Business Expenses

A commentator requested that the final regulations should state how unreimbursed employee business expenses are handled when computing the taxable income limitation. Proposed § 1.179–2(c)(5)(iv) provides that wages, salaries, tips, and other compensation derived by taxpayers in the active conduct of the trade or business of their employment are included in the aggregate amount of taxable income. The final regulations clarify that unreimbursed employee business expenses, incurred by the taxpayer as an employee, are not included in the calculation of taxable income.

Carryover of Disallowed Deduction—Transfer at Death

A commentator requested that the final regulations specifically address the question of whether the death of a partner or an S corporation shareholder is considered a disposition that would allow the use of a partner's or an S corporation shareholder's outstanding carryover of disallowed deduction by a transferee (e.g., the estate of the taxpayer).

Under proposed § 1.179–3(f)(1), a taxpayer who transfers section 179 property for which a carryover of disallowed deduction is outstanding must increase the basis of the property by the amount of any carryover for that property immediately before the transfer. A similar rule under proposed § 1.179–3(h)(2) applies to transfers of a partner's interest in a partnership, if a carryover of disallowed deduction of section 179 expenses allocated from the partnership is outstanding. The rules with respect to S corporation shareholders are similar to those applicable to partners. Under the proposed regulations, the carryover of disallowed deduction is not available as a deduction to the transferee of section 179 property.

In response to this comment, the final regulations clarify that the principles, set forth in proposed § 1.179–3(f)(1) and § 1.179–3(h)(2), apply to transfers at death.

Thus, upon the death of a taxpayer, the transferee (e.g., the estate of the taxpayer) is not permitted to succeed to the taxpayer's carryover of disallowed deduction.

Carryover of Disallowed Deduction—Section 381 Transaction

Proposed § 1.179–3(f)(1) provides that, if property is transferred in a nonrecognition transaction, the transferee of section 179 property is not permitted to succeed to the transferor's carryover of disallowed deduction with respect to the property. A commentator asked how this rule relates to transactions described in section 381 of the Code. Section 381 provides rules allowing for the preservation of certain tax attributes by the acquiring corporation if the assets of the transferor or distributing corporation are acquired by the acquiring corporation in a nonrecognition transaction described in section 381(a). The final regulations retain the rule that, in a nonrecognition transaction, such as one described in section 381(a), the transferee (i.e., the acquiring corporation) is not permitted to succeed to the transferor's carryover of disallowed deduction with respect to the property.

Dates

Although these regulations are effective January 25, 1993, a taxpayer may apply the provisions of §§ 1.179–1 through 1.179–5 to property placed in service after December 31, 1986, in taxable years ending on or before January 25, 1993. Otherwise, for property placed in service after December 31, 1986, in taxable years ending on or before January 25, 1993, the final regulations under section 179 as in effect for the year the property was placed in service apply, except to the extent modified by the changes made to section 179 by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1990. For that property, a taxpayer may apply any reasonable method that clearly reflects income in applying the changes to section 179, provided the taxpayer consistently applies the method to the property.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Winston H. Douglas of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.161–1 Through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, title 26, chapter I, parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph. 1. The authority citation for part 1 is amended by revising the citation for § 1.179–1 and adding a citation for § 1.179–6 to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.179–1 also issued under 26 U.S.C. 179(d)(6) and (10). * * * Section 1.179–6 also issued under 26 U.S.C. 179(c). * * *

Par. 2. Section 1.179–0 is added to read as follows:

§ 1.179–0 Table of contents for section 179 expensing rules.

This section lists captioned paragraphs contained in §§ 1.179–1 through 1.179–6.

§ 1.179–1 Election to Expense Certain Depreciable Assets

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(1) In general.
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(1) In general.
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(3) Additional rules that may apply.
(e) Change in use; recapture.
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(3) Basis; application with section 1245.
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(g) Disallowance of the section 38 credit.
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(i) Leasing of section 179 property.
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§ 1.179–2 Limitations on Amount Subject to Section 179 Election

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(7) Component members of a controlled group.
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(ii) Statement to be filed.
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(c) Taxable income limitation.
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(i) In general.
(ii) Taxable income of an S corporation.
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(4) Taxable income of a corporation other than an S corporation.
(5) Ordering rule for certain circular problems.
(i) In general.
(ii) Example.
(6) Active conduct by the taxpayer of a trade or business.
(i) Trade or business.
(ii) Active conduct.
(iii) Example.
(iv) Employees.
(7) Joint returns.
(i) In general.
(ii) Joint returns filed after separate returns.
(8) Married individuals filing separately.
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§ 1.179–3 Carryover of Disallowed Deduction

(a) In general.
(b) Deduction of carryover of disallowed deduction.
(1) In general.
(2) Cross references.
(c) Unused section 179 expense allowance.
(d) Example.
(e) Recordkeeping requirement and ordering rule.
(f) Dispositions and other transfers of section 179 property.
(1) In general.
(2) Recapture under section 179(d)(10).
(g) Special rules for partnerships and S corporations.
(1) In general.
(2) Basis adjustment.
(3) Dispositions and other transfers of section 179 property by a partnership or an S corporation.
(4) Example.
(h) Special rules for partners and S corporation shareholders.
(1) In general.
(2) Dispositions and other transfers of a partner's interest in a partnership or a shareholder's interest in an S corporation.
(3) Examples.

§ 1.179–4 Definitions

(a) Section 179 property.
(b) Section 38 property.
(c) Purchase.
(d) Cost.
(e) Placed in service.
(f) Controlled group of corporations and component member of controlled group.

§ 1.179–5 Time and Manner of Making Election

(a) Election.
(b) Revocation.

§ 1.179–6 Effective Date

Par. 3. Section 1.179–1 is amended as follows:

1. Paragraphs (a), (b), (c), and (d) are revised.
2. The first and the last two sentences of paragraph (e)(1) are revised.
3. Paragraph (e)(4) is revised.
4. Paragraph (e)(5) is added.
5. Paragraph (f)(1) is revised.
6. The second sentence of (f)(2) is revised and a third sentence is added.
7. The last sentence of (f)(3) is revised
8. Paragraph (h) is revised.
9. Paragraph (i)(2) is revised.
10. Paragraph (j) is redesignated as paragraph (k) and the second sentence is removed, and a new paragraph (j) is added.
11. The added and revised provisions read as follows:

§ 1.179–1 Election to expense certain depreciable assets.

(a) *In general.* Section 179(a) allows a taxpayer to elect to expense the cost (as defined in § 1.179–4(d)), or a portion of the cost, of section 179 property (as defined in § 1.179–4(a)) for the taxable year in which the property is placed in service (as defined in § 1.179–4(e)). The election is not available for trusts, estates, and certain noncorporate lessors. See paragraph (i)(2) of this section for rules concerning noncorporate lessors. However, section 179(b) provides certain limitations on the amount that a taxpayer may elect to expense in any one taxable year. See §§ 1.179–2 and 1.179–3 for rules relating to the dollar and taxable income limitations and the carryover of disallowed deduction rules. For rules describing the time and manner of making an election under section 179, see § 1.179–5. For the effective date, see § 1.179–6.

(b) *Cost subject to expense.* The expense deduction under section 179 is allowed for the entire cost or a portion of the cost of one or more items of section 179 property. This expense deduction is subject to the limitations of section 179(b) and § 1.179–2. The taxpayer may select the properties that are subject to the election as well as the portion of each property's cost to expense.

(c) *Proration not required—(1) In general.* The expense deduction under

section 179 is determined without any proration based on—

(i) The period of time the section 179 property has been in service during the taxable year; or

(ii) The length of the taxable year in which the property is placed in service.

(2) *Example.* The following example illustrates the provisions of paragraph (c)(1) of this section.

Example. On December 1, 1991, X, a calendar-year corporation, purchases and places in service section 179 property costing $20,000. For the taxable year ending December 31, 1991, X may elect to claim a section 179 expense deduction on the property (subject to the limitations imposed under section 179(b)) without proration of its cost for the number of days in 1991 during which the property was in service.

(d) *Partial business use*—(1) *In general.* If a taxpayer uses section 179 property for trade or business as well as other purposes, the portion of the cost of the property attributable to the trade or business use is eligible for expensing under section 179 provided that more than 50 percent of the property's use in the taxable year is for trade or business purposes. The limitations of section179(b) and § 1.179–2 are applied to the portion of the cost attributable to the trade or business use.

(2) *Example.* The following example illustrates the provisions of paragraph (d)(1) of this section.

Example. A purchases section 179 property costing $10,000 in 1991 for which 80 percent of its use will be in A's trade or business. The cost of the property adjusted to reflect the business use of the property is $8,000 (80 percent × $10,000). Thus, A may elect to expense up to $8,000 of the cost of the property (subject to the limitations imposed under section 179(b) and § 1.179–2).

(3) *Additional rules that may apply.* If a section 179 election is made for "listed property" within the meaning of section 280F(d)(4) and there is personal use of the property, section 280F(d)(1), which provides rules that coordinate section 179 with the section 280F limitation on the amount of depreciation, may apply. If section 179 property is no longer predominantly used in the taxpayer's trade or business, paragraphs (e) (1) through (4) of this section, relating to recapture of the section 179 deduction, may apply.

(e) * * * (1) *In general.* If a taxpayer's section 179 property is not used predominantly in a trade or business of the taxpayer at any time before the end of the property's recovery period, the taxpayer must recapture in the taxable year in which the section 179 property is not used predominantly in a trade or business any benefit derived from expensing such property * * * However, see section 280F(d)(1) relating to the coordination of section 179 with the limitation on the amount of depreciation for luxury automobiles and where certain property is used for personal purposes. If the recapture rules of both section 280F(b)(2) and this paragraph (e)(1) apply to an item of section 179 property, the amount of recapture for such property shall be determined only under the rules of section 280F(b)(2).

* * * * *

(4) *Carryover of disallowed deduction.* See § 1.179–3 for rules on applying the recapture provisions of this paragraph (e) when a taxpayer has a carryover of disallowed deduction.

(5) *Example.* The following example illustrates the provisions of paragraphs (e)(1) through (e)(4) of this section.

Example. A, a calendar-year taxpayer, purchases and places in service on January 1, 1991, section 179 property costing $15,000. The property is 5-year property for section 168 purposes and is the only item of depreciable property placed in service by A during 1991. A properly elects to expense $10,000 of the cost and elects under section 168(b)(5) to depreciate the remaining cost under the straight-line method. On January 1, 1992, A converts the property from use in A's business to use for the production of income, and A uses the property in the latter capacity for the entire year. A elects to itemize deductions for 1992. Because the property was not predominantly used in A's trade or business in 1992, A must recapture any benefit derived from expensing the property under section 179. Had A not elected to expense the $10,000 in 1991, A would have been entitled to deduct, under section 168, 10 percent of the $10,000 in 1991, and 20 percent of the $10,000 in 1992. Therefore, A must include $7,000 in ordinary income for the 1992 taxable year, the excess of $10,000 (the section 179 expense amount) over $3,000 (30 percent of $10,000).

(f) * * * (1) *In general.* A taxpayer who elects to expense under section 179 must reduce the depreciable basis of the section 179 property by the amount of the section 179 expense deduction.

(2) * * * This reduction must be made in the basis of partnership or S corporation property even if the limitations of section 179(b) and § 1.179–2 prevent a partner in a partnership or a shareholder in an S corporation from deducting all or a portion of the amount of the section 179 expense allocated by the partnership or S corporation. See § 1.179–3 for rules on applying the basis provisions of this paragraph (f) when a person has a carryover of disallowed deduction.

(3) * * * Accordingly, the partnership or S corporation may claim a depreciation deduction under section 168 or a section 38 credit (if available) with respect to any depreciable basis resulting from the trust or estate's inability to claim its allocable portion of the section 179 expense.

* * * * *

(h) *Partnerships and S corporations*—(1) *In general.* In the case of property purchased and placed in service by a partnership or an S corporation, the determination of whether the property is section 179 property is made at the partnership or S corporation level. The election to expense the cost of section 179 property is made by the partnership or the S corporation. See sections 703(b), 1363(c), 6221, 6231(a)(3), 6241, and 6245.

(2) *Example.* The following example illustrates the provisions of paragraph (h)(1) of this section.

Example. A owns certain residential rental property as an investment. A and others form ABC partnership whose function is to rent and manage such property. A and ABC partnership file their income tax returns on a calendar-year basis. In 1991, ABC partnership purchases and places in service office furniture costing $20,000 to be used in the active conduct of ABC's business. Although the office furniture is used with respect to an investment activity of A, the furniture is being used in the active conduct of ABC's trade or business. Therefore, because the determination of whether property is section 179 property is made at the partnership level, the office furniture is section 179 property and ABC may elect to expense a portion of its cost under section 179.

(i) * * *

(2) *Noncorporate lessor.* In determining the class of taxpayers (other than an estate or trust) for which section 179 is applicable, section 179(d)(5) provides that if a taxpayer is a noncorporate lessor (*i.e.*, a person who is not a corporation and is a lessor), the taxpayer shall not be entitled to claim a section 179 expense for section 179 property purchased and leased by the taxpayer unless the taxpayer has satisfied all of the requirements of section 179(d)(5) (A) or (B).

(j) *Application of sections 263 and 263A.* Under section 263(a)(1)(G), expenditures for which a deduction is allowed under section 179 and this section are excluded from capitalization under section 263(a). Under this paragraph (j), amounts allowed as a deduction under section 179 and this section are excluded from the application of the uniform capitalization rules of section 263A.

* * * * *

Par. 4. Section 1.179–2 is revised to read as follows:

§ 1.179–2 Limitations on amount subject to section 179 election.

(a) *In general.* Sections 179(b) (1) and (2) limit the aggregate cost of section 179 property that a taxpayer may elect to expense under section 179 for any one taxable year (dollar limitation). See paragraph (b) of this section. Section 179(b)(3)(A) limits the aggregate cost of section 179 property that a taxpayer may deduct in any taxable year (taxable income limitation). See paragraph (c) of this section. Any cost that is elected to be expensed but that is not currently deductible because of the taxable income limitation may be carried forward to the next taxable year (carryover of disallowed deduction). See § 1.179–3 for rules relating to carryovers of disallowed deductions. See also sections 280F(a), (b), and (d)(1) relating to the coordination of section 179 with the limitations on the amount of depreciation for luxury automobiles and other listed property. The dollar and taxable income limitations apply to each taxpayer and not to each trade or business in which the taxpayer has an interest.

(b) *Dollar limitation.*—(1) *In general.* The aggregate cost of section 179 property that a taxpayer may elect to expense under section 179 for any taxable year is $10,000 reduced (but not below zero) by the amount of any excess section 179 property (described in paragraph (b)(2) of this section) placed in service during the taxable year.

(2) *Excess section 179 property.* The amount of any excess section 179 property for a taxable year equals the excess (if any) of—

(i) The cost of section 179 property placed in service by the taxpayer in the taxable year; over

(ii) $200,000.

(3) *Application to partnerships*— (i) *In general.* The dollar limitation of this paragraph (b) applies to the partnership as well as to each partner. In applying the dollar limitation to a taxpayer that is a partner in one or more partnerships, the partner's share of section 179 expenses allocated to the partner from each partnership is aggregated with any nonpartnership section 179 expenses of the taxpayer for the taxable year. However, in determining the excess section 179 property placed in service by a partner in a taxable year, the cost of section 179 property placed in service by the partnership is not attributed to any partner.

(ii) *Example.* The following example illustrates the provisions of paragraph (b)(3)(i) of this section.

Example. During 1991, CD, a calendar-year partnership, purchases and places in service section 179 property costing $150,000 and elects under section 179(c) and § 1.179–5 to expense $10,000 of the cost of that property. CD properly allocates to C, a calendar-year taxpayer and a partner in CD, $5,000 of section 179 expenses (C's distributive share of CD's section 179 expenses for 1991). In applying the dollar limitation to C for 1991, C must include the $5,000 of section 179 expenses allocated from CD. However, in determining the amount of any excess section 179 property C placed in service during 1991, C does not include any of the cost of section 179 property placed in service by CD, including the $5,000 of cost represented by the $5,000 of section 179 expenses allocated to C by the partnership.

(iii) *Partner's share of section 179 expenses.* Section 704 and the regulations thereunder govern the determination of a partner's share of a partnership's section 179 expenses for any taxable year. However, no allocation among partners of the section 179 expenses may be modified after the due date of the partnership return (without regard to extensions of time) for the taxable year for which the election under section 179 is made.

(iv) *Taxable year.* If the taxable years of a partner and the partnership do not coincide, then for purposes of section 179, the amount of the partnership's section 179 expenses attributable to a partner for a taxable year is determined under section 706 and the regulations thereunder (generally the partner's distributive share of partnership section 179 expenses for the partnership year that ends with or within the partner's taxable year).

(v) *Example.* The following example illustrates the provisions of paragraph (b)(3)(iv) of this section.

Example. AB partnership has a taxable year ending January 31. A, a partner of AB, has a taxable year ending December 31. AB purchases and places in service section 179 property on March 10, 1991, and elects to expense a portion of the cost of that property under section 179. Under section 706 and § 1.706–1(a)(1), A will be unable to claim A's distributive share of any of AB's section 179 expenses attributable to the property placed in service on March 10, 1991, until A's taxable year ending December 31, 1992.

(4) *S Corporations.* Rules similar to those contained in paragraph (b)(3) of this section apply in the case of S corporations (as defined in section 1361(a)) and their shareholders. Each shareholder's share of the section 179 expenses of an S corporation is determined under section 1366.

(5) *Joint returns*— (i) *In General.* A husband and wife who file a joint income tax return under section 6013(a) are treated as one taxpayer in determining the amount of the dollar limitation under paragraph (b)(1) of this section, regardless of which spouse purchased the property or placed it in service.

(ii) *Joint returns filed after separate returns.* In the case of a husband and wife who elect under section 6013(b) to file a joint income tax return for a taxable year after the time prescribed by law for filing the return for such taxable year has expired, the dollar limitation under paragraph (b)(1) of this section is the lesser of—

(A) The dollar limitation (as determined under paragraph (b)(5)(i) of this section); or

(B) The aggregate cost of section 179 property elected to be expensed by the husband and wife on their separate returns.

(iii) *Example.* The following example illustrates the provisions of paragraph (b)(5)(ii) of this section.

Example. During 1991, Mr. and Mrs. B, both calendar-year taxpayers, purchase and place in service section 179 property costing $100,000. On their separate returns for 1991, Mr. B elects to expense $3,000 of section 179 property as an expense and Mrs. B elects to expense $4,000. After the due date of the return they elect under section 6013(b) to file a joint income tax return for 1991. The dollar limitation for their joint income tax return is $7,000, the lesser of the dollar limitation ($10,000) or the aggregate cost elected to be expensed under section 179 on their separate returns ($3,000 elected by Mr. B plus $4,000 elected by Mrs. B, or $7,000).

(6) *Married individuals filing separately*—(i) *In general.* In the case of an individual who is married but files a separate income tax return for a taxable year, the dollar limitation of this paragraph (b) for such taxable year is the amount that would be determined under paragraph (b)(5)(i) of this section if the individual filed a joint income tax return under section 6013(a) multiplied by either the percentage elected by the individual under this paragraph (b)(6) or 50 percent. The election in the preceding sentence is made in accordance with the requirements of section 179(c) and § 1.179–5. However, the amount determined under paragraph (b)(5)(i) of this section must be multiplied by 50 percent if either the individual or the individual's spouse does not elect a percentage under this paragraph (b)(6) or the sum of the percentages elected by the individual and the individual's spouse does not equal 100 percent. For purposes of this paragraph (b)(6), marital status is determined under section 7703 and the regulations thereunder.

(ii) *Example.* The following example illustrates the provisions of paragraph (b)(6)(i) of this section.

Example. Mr. and Mrs. D, both calendar-year taxpayers, file separate income tax returns for 1991. During 1991, Mr. D places $195,000 of section 179 property in service and Mrs. D places $9,000 of section 179 property in service. Neither of them elects a percentage under paragraph (b)(6)(i) of this section. The 1991 dollar limitation for both Mr. D and Mrs. D is determined by multiplying by 50 percent the dollar limitation that would apply had they filed a joint income tax return. Had Mr. and Mrs. D filed a joint return for 1991, the dollar limitation would have been $6,000, $10,000 reduced by the excess section 179 property they placed in service during 1991 ($195,000 placed in service by Mr. D plus $9,000 placed in service by Mrs. D less $200,000, or $4,000). Thus, the 1991 dollar limitation for Mr. and Mrs. D is $3,000 each ($6,000 multiplied by 50 percent).

(7) *Component members of a controlled group*—(i) *In general.* Component members of a controlled group (as defined in § 1.179–4(f)) on December 31 are treated as one taxpayer in applying the dollar limitation of sections 179(b) (1) and (2) and this paragraph (b). The expense deduction may be taken by any one component member or allocated (for the taxable year of each member that includes that December 31) among the several members in any manner. Any allocation of the expense deduction must be pursuant to an allocation by the common parent corporation if a consolidated return is filed for all component members of the group, or in accordance with an agreement entered into by the members of the group if separate returns are filed. If a consolidated return is filed by some component members of the group and separate returns are filed by other component members, the common parent of the group filing the consolidated return must enter into an agreement with those members that do not join in filing the consolidated return allocating the amount between the group filing the consolidated return and the other component members of the controlled group that do not join in filing the consolidated return. The amount of the expense allocated to any component member, however, may not exceed the cost of section 179 property actually purchased and placed in service by the member in the taxable year. If the component members have different taxable years, the term "taxable year" in sections 179(b) (1) and (2) means the taxable year of the member whose taxable year begins on the earliest date.

(ii) *Statement to be filed.* If a consolidated return is filed, the common parent corporation must file a separate statement attached to the income tax return on which the election is made to claim an expense deduction under section 179. See § 1.179–5. If separate returns are filed by some or all component members of the group, each component member not included in a consolidated return must file a separate statement attached to the income tax return on which an election is made to claim a deduction under section 179. The statement must include the name, address, employer identification number, and the taxable year of each component member of the controlled group, a copy of the allocation agreement signed by persons duly authorized to act on behalf of the component members, and a description of the manner in which the deduction under section 179 has been divided among the component members.

(iii) *Revocation.* If a consolidated return is filed for all component members of the group, an allocation among such members of the expense deduction under section 179 may not be revoked after the due date of the return (including extensions of time) of the common parent corporation for the taxable year for which an election to take an expense deduction is made. If some or all of the component members of the controlled group file separate returns for taxable years including a particular December 31 for which an election to take the expense deduction is made, the allocation as to all members of the group may not be revoked after the due date of the return (including extensions of time) of the component member of the controlled group whose taxable year that includes such December 31 ends on the latest date.

(c) *Taxable income limitation*—(1) *In general.* The aggregate cost of section 179 property elected to be expensed under section 179 that may be deducted for any taxable year may not exceed the aggregate amount of taxable income of the taxpayer for such taxable year that is derived from the active conduct by the taxpayer of any trade or business during the taxable year. For purposes of section 179(b)(3) and this paragraph (c), the aggregate amount of taxable income derived from the active conduct by an individual, a partnership, or an S corporation of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the individual, partnership, or S corporation during the taxable year. Items of income that are derived from the active conduct of a trade or business include section 1231 gains (or losses) from the trade or business and interest from working capital of the trade or business. Taxable income derived from the active conduct of a trade or business is computed without regard to the deduction allowable under section 179, any section 164(f) deduction, any net operating loss carryback or carryforward, and deductions suspended under any section of the Code. See paragraph (c)(6) of this section for rules on determining whether a taxpayer is engaged in the active conduct of a trade or business for this purpose.

(2) *Application to partnerships and partners*—(i) *In general.* The taxable income limitation of this paragraph (c) applies to the partnership as well as to each partner. Thus, the partnership may not allocate to its partners as a section 179 expense deduction for any taxable year more than the partnership's taxable income limitation for that taxable year, and a partner may not deduct as a section 179 expense deduction for any taxable year more than the partner's taxable income limitation for that taxable year.

(ii) *Taxable year.* If the taxable year of a partner and the partnership do not coincide, then for purposes of section 179, the amount of the partnership's taxable income attributable to a partner for a taxable year is determined under section 706 and the regulations thereunder (generally the partner's distributive share of partnership taxable income for the partnership year that ends with or within the partner's taxable year).

(iii) *Example.* The following example illustrates the provisions of paragraph (c)(2)(ii) of this section.

Example. AB partnership has a taxable year ending January 31. A, a partner of AB, has a taxable year ending December 31. For AB's taxable year ending January 31, 1992, AB has taxable income from the active conduct of its trade or business of $100,000, $90,000 of which was earned during 1991. Under section 706 and § 1.706–1(a)(1), A includes A's entire share of partnership taxable income in computing A's taxable income limitation for A's taxable year ending December 31, 1992.

(iv) *Taxable income of a partnership.* The taxable income (or loss) derived from the active conduct by a partnership of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the partnership during the taxable year. The net income (or loss) from a trade or business actively conducted by the partnership is determined by taking into account the aggregate amount of the partnership's items described in section 702(a) (other than credits, tax-exempt income, and guaranteed payments under section 707(c)) derived from that trade or

business. For purposes of determining the aggregate amount of partnership items, deductions and losses are treated as negative income. Any limitation on the amount of a partnership item described in section 702(a) which may be taken into account for purposes of computing the taxable income of a partner shall be disregarded in computing the taxable income of the partnership.

(v) *Partner's share of partnership taxable income.* A taxpayer who is a partner in a partnership and is engaged in the active conduct of at least one of the partnership's trades or businesses includes as taxable income derived from the active conduct of a trade or business the amount of the taxpayer's allocable share of taxable income derived from the active conduct by the partnership of any trade or business (as determined under paragraph (c)(2)(iv) of this section).

(3) *S corporations and S corporation shareholders*—(i) *In general.* Rules similar to those contained in paragraphs (c)(2) (i) and (ii) of this section apply in the case of S corporations (as defined in section 1361(a)) and their shareholders. Each shareholder's share of the taxable income of an S corporation is determined under section 1366.

(ii) *Taxable income of an S corporation.* The taxable income (or loss) derived from the active conduct by an S corporation of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the S corporation during the taxable year. The net income (or loss) from a trade or business actively conducted by an S corporation is determined by taking into account the aggregate amount of the S corporation's items described in section 1366(a) (other than credits, tax-exempt income, and deductions for compensation paid to an S corporation's shareholder-employees) derived from that trade or business. For purposes of determining the aggregate amount of S corporation items, deductions and losses are treated as negative income. Any limitation on the amount of an S corporation item described in section 1366(a) which may be taken into account for purposes of computing the taxable income of a shareholder shall be disregarded in computing the taxable income of the S corporation.

(iii) *Shareholder's share of S corporation taxable income.* Rules similar to those contained in paragraph (c)(2)(v) and (c)(6)(ii) of this section apply to a taxpayer who is a shareholder in an S corporation and is engaged in the active conduct of the S corporation's trades or businesses.

(4) *Taxable income of a corporation other than an S corporation.* The aggregate amount of taxable income derived from the active conduct by a corporation other than an S corporation of any trade or business is the amount of the corporation's taxable income before deducting its net operating loss deduction and special deductions (as reported on the corporation's income tax return), adjusted to reflect those items of income or deduction included in that amount that were not derived by the corporation from a trade or business actively conducted by the corporation during the taxable year.

(5) *Ordering rule for certain circular problems*—(i) *In general.* A taxpayer who elects to expense the cost of section 179 property (the deduction of which is subject to the taxable income limitation) also may have to apply another Internal Revenue Code section that has a limitation based on the taxpayer's taxable income. Except as provided in paragraph (c)(1) of this section, this section provides rules for applying the taxable income limitation under section 179 in such a case. First, taxable income is computed for the other section of the Internal Revenue Code. In computing the taxable income of the taxpayer for the other section of the Internal Revenue Code, the taxpayer's section 179 deduction is computed by assuming that the taxpayer's taxable income is determined without regard to the deduction under the other Internal Revenue Code section. Next, after reducing taxable income by the amount of the section 179 deduction so computed, a hypothetical amount of deduction is determined for the other section of the Internal Revenue Code. The taxable income limitation of the taxpayer under section 179(b)(3) and this paragraph (c) then is computed by including that hypothetical amount in determining taxable income.

(ii) *Example.* The following example illustrates the ordering rule described in paragraph (c)(5)(i) of this section.

Example. X, a calendar-year corporation, elects to expense $10,000 of the cost of section 179 property purchased and placed in service during 1991. Assume X's dollar limitation is $10,000. X also gives a charitable contribution of $5,000 during the taxable year. X's taxable income for purposes of both sections 179 and 170(b)(2), but without regard to any deduction allowable under either section 179 or section 170, is $11,000. In determining X's taxable income limitation under section 179(b)(3) and this paragraph (c), X must first compute its section 170 deduction. However, section 170(b)(2) limits X's charitable contribution to 10 percent of its taxable income determined by taking into account its section 179 deduction. Paragraph (c)(5)(i) of this section provides that in determining X's section 179 deduction for 1991, X first computes a hypothetical section 170 deduction by assuming that its section 179 deduction is not affected by the section 170 deduction. Thus, in computing X's hypothetical section 170 deduction, X's taxable income limitation under section 179 is $11,000 and its section 179 deduction is $10,000. X's hypothetical section 170 deduction is $100 (10 percent of $1,000 ($11,000 less $10,000 section 179 deduction)). X's taxable income limitation for section 179 purposes is then computed by deducting the hypothetical charitable contribution of $100 for 1991. Thus, X's section 179 taxable income limitation is $10,900 ($11,000 less hypothetical $100 section 170 deduction), and its section 179 deduction for 1991 is $10,000. X's section 179 deduction so calculated applies for all purposes of the Code, including the computation of its actual section 170 deduction.

(6) *Active conduct by the taxpayer of a trade or business*—(i) *Trade or business.* For purposes of this section and § 1.179–4(a), the term "trade or business" has the same meaning as in section 162 and the regulations thereunder. Thus, property held merely for the production of income or used in an activity not engaged in for profit (as described in section 183) does not qualify as section 179 property and taxable income derived from property held for the production of income or from an activity not engaged in for profit is not taken into account in determining the taxable income limitation.

(ii) *Active conduct.* For purposes of this section, the determination of whether a trade or business is actively conducted by the taxpayer is to be made from all the facts and circumstances and is to be applied in light of the purpose of the active conduct requirement of section 179(b)(3)(A). In the context of section 179, the purpose of the active conduct requirement is to prevent a passive investor in a trade or business from deducting section 179 expenses against taxable income derived from that trade or business. Consistent with this purpose, a taxpayer generally is considered to actively conduct a trade or business if the taxpayer meaningfully participates in the management or operations of the trade or business. Generally, a partner is considered to actively conduct a trade or business of the partnership if the partner meaningfully participates in the management or operations of the trade or business. A mere passive investor in a trade or business does not actively conduct the trade or business.

(iii) *Example.* The following example illustrates the provisions of paragraph (c)(6)(ii) of this section.

Example. A owns a salon as a sole proprietorship and employs B to operate it. A periodically meets with B to review developments relating to the business. A also approves the salon's annual budget that is prepared by B. B performs all the necessary operating functions, including hiring beauticians, acquiring the necessary beauty supplies, and writing the checks to pay all bills and the beauticians' salaries. In 1991, B purchased, as provided for in the salon's annual budget, equipment costing $9,500 for use in the active conduct of the salon. There were no other purchases of section 179 property during 1991. A's net income from the salon, before any section 179 deduction, totaled $8,000. A also is a partner in PRS, a calendar-year partnership, which owns a grocery store. C, a partner in PRS, runs the grocery store for the partnership, making all the management and operating decisions. PRS did not purchase any section 179 property during 1991. A's allocable share of partnership net income was $6,000. Based on the facts and circumstances, A meaningfully participates in the management of the salon. However, A does not meaningfully participate in the management or operations of the trade or business of PRS. Under section 179(b)(3)(A) and this paragraph (c), A's aggregate taxable income derived from the active conduct by A of any trade or business is $8,000, the net income from the salon.

(iv) *Employees.* For purposes of this section, employees are considered to be engaged in the active conduct of the trade or business of their employment. Thus, wages, salaries, tips, and other compensation (not reduced by unreimbursed employee business expenses) derived by a taxpayer as an employee are included in the aggregate amount of taxable income of the taxpayer under paragraph (c)(1) of this section.

(7) *Joint returns*—(i) *In general.* The taxable income limitation of this paragraph (c) is applied to a husband and wife who file a joint income tax return under section 6013(a) by aggregating the taxable income of each spouse (as determined under paragraph (c)(1) of this section).

(ii) *Joint returns filed after separate returns.* In the case of a husband and wife who elect under section 6013(b) to file a joint income tax return for a taxable year after the time prescribed by law for filing the return for such taxable year, the taxable income limitation of this paragraph (c) for the taxable year for which the joint return is filed is determined under paragraph (c)(7)(i) of this section.

(8) *Married individuals filing separately.* In the case of an individual who is married but files a separate tax return for a taxable year, the taxable income limitation for that individual is determined under paragraph (c)(1) of this section by treating the husband and wife as separate taxpayers.

(d) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section.

Example 1. (i) During 1991, PRS, a calendar-year partnership, purchases and places in service $50,000 of section 179 property. The taxable income of PRS derived from the active conduct of all its trades or businesses (as determined under paragraph (c)(1) of this section) is $8,000.

(ii) Under the dollar limitation of paragraph (b) of this section, PRS may elect to expense $10,000 of the cost of section 179 property purchased in 1991. Assume PRS elects under section 179(c) and § 1.179–5 to expense $10,000 of the cost of section 179 property purchased in 1991.

(iii) Under the taxable income limitation of paragraph (c) of this section, PRS may allocate to its partners as a deduction only $8,000 of the cost of section 179 property in 1991. Under section 179(b)(3)(B) and § 1.179–3(a), PRS may carry forward the remaining $2,000 it elected to expense, which would have been deductible under section 179(a) for 1991 absent the taxable income limitation.

Example 2. (i) The facts are the same as in *Example 1*, except that on December 31, 1991, PRS allocates to A, a calendar-year taxpayer and a partner in PRS, $7,000 of section 179 expenses and $2,000 of taxable income. A was engaged in the active conduct of a trade or business of PRS during 1991.

(ii) In addition to being a partner in PRS, A conducts a business as a sole proprietor. During 1991, A purchases and places in service $201,000 of section 179 property in connection with the sole proprietorship. A's 1991 taxable income derived from the active conduct of this business is $6,000.

(iii) Under the dollar limitation, A may elect to expense only $9,000 of the cost of section 179 property purchased in 1991, the $10,000 limit reduced by $1,000 (the amount by which the cost of section 179 property placed in service during 1991 ($201,000) exceeds $200,000). Under paragraph (b)(3)(i) of this section, the $7,000 of section 179 expenses allocated from PRS is subject to the $9,000 limit. Assume that A elects to expense $2,000 of the cost of section 179 property purchased by A's sole proprietorship in 1991. Thus, A has elected to expense under section 179 an amount equal to the dollar limitation for 1991 ($2,000 elected to be expensed by A's sole proprietorship plus $7,000, the amount of PRS's section 179 expenses allocated to A in 1991).

(iv) Under the taxable income limitation, A may only deduct $8,000 of the cost of section 179 property elected to be expensed in 1991, the aggregate taxable income derived from the active conduct of A's trades or businesses in 1991 ($2,000 from PRS and $6,000 from A's sole proprietorship). The entire $2,000 of taxable income allocated from PRS is included by A as taxable income derived from the active conduct by A of a trade or business because it was derived from the active conduct of a trade or business by PRS and A was engaged in the active conduct of a trade or business of PRS during 1991. Under section 179(b)(3)(B) and § 1.179–3(a), A may carry forward the remaining $1,000 A elected to expense, which would have been deductible under section 179(a) for 1991 absent the taxable income limitation.

Par. 5. Sections 1.179–3, 1.179–4, and 1.179–5 are redesignated as §§ 1.179–4, 1.179–5, and 1.179–6, respectively, and new § 1.179–3 is added to read as follows:

§ 1.179–3 Carryover of disallowed deduction.

(a) *In general.* Under section 179(b)(3)(B), a taxpayer may carry forward for an unlimited number of years the amount of any cost of section 179 property elected to be expensed in a taxable year but disallowed as a deduction in that taxable year because of the taxable income limitation of section 179(b)(3)(A) and § 1.179–2(c) ("carryover of disallowed deduction"). This carryover of disallowed deduction may be deducted under section 179(a) and § 1.179–1(a) in a future taxable year as provided in paragraph (b) of this section.

(b) *Deduction of carryover of disallowed deduction*—(1) *In general.* The amount allowable as a deduction under section 179(a) and § 1.179–1(a) for any taxable year is increased by the lesser of—

(i) The aggregate amount disallowed under section 179(b)(3)(A) and § 1.179–2(c) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this section); or

(ii) The amount of any unused section 179 expense allowance for the taxable year (as described in paragraph (c) of this section).

(2) *Cross references.* See paragraph (f) of this section for rules that apply when a taxpayer disposes of or otherwise transfers section 179 property for which a carryover of disallowed deduction is outstanding. See paragraph (g) of this section for special rules that apply to partnerships and S corporations and paragraph (h) of this section for special rules that apply to partners and S corporation shareholders.

(c) *Unused section 179 expense allowance.* The amount of any unused section 179 expense allowance for a taxable year equals the excess (if any) of—

(1) The maximum cost of section 179 property that the taxpayer may deduct under section 179 and § 1.179–1 for the taxable year after applying the limitations of section 179(b) and § 1.179–2; over

(2) The amount of section 179 property that the taxpayer actually elected to expense under section 179 and § 1.179–1(a) for the taxable year.

(d) *Example.* The following example illustrates the provisions of paragraphs (b) and (c) of this section.

Example. A, a calendar-year taxpayer, has a $3,000 carryover of disallowed deduction for an item of section 179 property purchased and placed in service in 1991. In 1992, A purchases and places in service an item of section 179 property costing $25,000. A's 1992 taxable income from the active conduct of all A's trades or businesses is $100,000. A elects, under section 179(c) and § 1.179–5, to expense $8,000 of the cost of the item of section 179 property purchased in 1992. Under paragraph (b) of this section, A may deduct $2,000 of A's carryover of disallowed deduction from 1991 (the lesser of A's total outstanding carryover of disallowed deductions ($3,000), or the amount of any unused section 179 expense allowance for 1992 ($10,000 limit less $8,000 elected to be expensed, or $2,000)). For 1993, A has a $1,000 carryover of disallowed deduction for the item of section 179 property purchased and placed in service in 1991.

(e) *Recordkeeping requirement and ordering rule.* The properties and the apportionment of cost that will be subject to a carryover of disallowed deduction are selected by the taxpayer in the year the properties are placed in service. This selection must be evidenced on the taxpayer's books and records and be applied consistently in subsequent years. If no selection is made, the total carryover of disallowed deduction is apportioned equally over the items of section 179 property elected to be expensed for the taxable year. For this purpose, the taxpayer treats any section 179 expense amount allocated from a partnership (or an S corporation) for a taxable year as one item of section 179 property. If the taxpayer is allowed to deduct a portion of the total carryover of disallowed deduction under paragraph (b) of this section, the taxpayer must deduct the cost of section 179 property carried forward from the earliest taxable year.

(f) *Dispositions and other transfers of section 179 property.*—(1) *In general.* Upon a sale or other disposition of section 179 property, or a transfer of section 179 property in a transaction in which gain or loss is not recognized in whole or in part (including transfers at death), immediately before the transfer the adjusted basis of the section 179 property is increased by the amount of any outstanding carryover of disallowed deduction with respect to the property. This carryover of disallowed deduction is not available as a deduction to the transferor or the transferee of the section 179 property.

(2) *Recapture under section 179(d)(10).* Under § 1.179–1(e), if a taxpayer's section 179 property is subject to recapture under section 179(d)(10), the taxpayer must recapture the benefit derived from expensing the property. Upon recapture, any outstanding carryover of disallowed deduction with respect to the property is no longer available for expensing. In determining the amount subject to recapture under section 179(d)(10) and § 1.179–1(e), any outstanding carryover of disallowed deduction with respect to that property is not treated as an amount expensed under section 179.

(g) *Special rules for partnerships and S corporations*—(1) *In general.* Under section 179(d)(8) and § 1.179–2(c), the taxable income limitation applies at the partnership level as well as at the partner level. Therefore, a partnership may have a carryover of disallowed deduction with respect to the cost of its section 179 property. Similar rules apply to S corporations. This paragraph (g) provides special rules that apply when a partnership or an S corporation has a carryover of disallowed deduction.

(2) *Basis adjustment.* Under § 1.179–1(f)(2), the basis of a partnership's section 179 property must be reduced to reflect the amount of section 179 expense elected by the partnership. This reduction must be made for the taxable year for which the election is made even if the section 179 expense amount, or a portion thereof, must be carried forward by the partnership. Similar rules apply to S corporations.

(3) *Dispositions and other transfers of section 179 property by a partnership or an S corporation.* The provisions of paragraph (f) of this section apply in determining the treatment of any outstanding carryover of disallowed deduction with respect to section 179 property disposed of, or transferred in a nonrecognition transaction, by a partnership or an S corporation.

(4) *Example.* The following example illustrates the provisions of this paragraph (g).

Example. ABC, a calendar-year partnership, owns and operates a restaurant business. During 1992, ABC purchases and places in service two items of section 179 property—a cash register costing $4,000 and office furniture costing $6,000. ABC elects to expense under section 179(c) the full cost of the cash register and the office furniture. For 1992, ABC has $6,000 of taxable income derived from the active conduct of its restaurant business. Therefore, ABC may deduct only $6,000 of section 179 expenses and must carry forward the remaining $4,000 of section 179 expenses at the partnership level. ABC must reduce the adjusted basis of the section 179 property by the full amount elected to be expensed. However, ABC may not allocate to its partners any portion of the carryover of disallowed deduction until ABC is able to deduct it under paragraph (b) of this section.

(h) *Special rules for partners and S corporation shareholders*—(1) *In general.* Under section 179(d)(8) and § 1.179–2(c), a partner may have a carryover of disallowed deduction with respect to the cost of section 179 property elected to be expensed by the partnership and allocated to the partner. A partner who is allocated section 179 expenses from a partnership must reduce the basis of his or her partnership interest by the full amount allocated regardless of whether the partner may deduct for the taxable year the allocated section 179 expenses or is required to carry forward all or a portion of the expenses. Similar rules apply to S corporation shareholders.

(2) *Dispositions and other transfers of a partner's interest in a partnership or a shareholder's interest in an S corporation.* A partner who disposes of a partnership interest, or transfers a partnership interest in a transaction in which gain or loss is not recognized in whole or in part (including transfers of a partnership interest at death), may have an outstanding carryover of disallowed deduction of section 179 expenses allocated from the partnership. In such a case, immediately before the transfer the partner's basis in the partnership interest is increased by the amount of the partner's outstanding carryover of disallowed deduction with respect to the partnership interest. This carryover of disallowed deduction is not available as a deduction to the transferor or transferee partner of the section 179 property. Similar rules apply to S corporation shareholders.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (h).

Example 1. (i) G is a general partner in GD, a calendar-year partnership, and is engaged in the active conduct of GD's business. During 1991, GD purchases and places section 179 property in service and elects to expense a portion of the cost of the property under section 179. GD allocates $2,500 of section 179 expenses and $15,000 of taxable income (determined without regard to the section 179 deduction) to G. The income was derived from the active conduct by GD of a trade or business.

(ii) In addition to being a partner in GD, G conducts a business as a sole proprietor. During 1991, G purchases and places in service office equipment costing $25,000 and a computer costing $10,000 in connection with the sole proprietorship. G elects under section 179(c) and § 1.179–5 to expense $7,500 of the cost of the office equipment. G has a taxable loss (determined without regard to the section 179 deduction) derived from the active conduct of this business of $12,500.

(iii) G has no other taxable income (or loss) derived from the active conduct of a trade or business during 1991. G's taxable income limitation for 1991 is $2,500 ($15,000 taxable income allocated from GD less $12,500 taxable loss from the sole proprietorship).

Therefore, G may deduct during 1991 only $2,500 of the $10,000 of section 179 expenses. G notes on the appropriate books and records that G expenses the $2,500 of section 179 expenses allocated from GD and carries forward the $7,500 of section 179 expenses with respect to the office equipment purchased by G's sole proprietorship.

(iv) On January 1, 1992, G sells the office equipment G's sole proprietorship purchased and placed in service in 1991. Under paragraph (f) of this section, immediately before the sale G increases the adjusted basis of the office equipment by $7,500, the amount of the outstanding carryover of disallowed deduction with respect to the office equipment.

Example 2. (i) Assume the same facts as in *Example 1*, except that G notes on the appropriate books and records that G expenses $2,500 of section 179 expenses relating to G's sole proprietorship and carries forward the remaining $5,000 of section 179 expenses relating to G's sole proprietorship and $2,500 of section 179 expenses allocated from GD.

(ii) On January 1, 1992, G sells G's partnership interest to A. Under paragraph (h)(2) of this section, immediately before the sale G increases the adjusted basis of G's partnership interest by $2,500, the amount of the outstanding carryover of disallowed deduction with respect to the partnership interest.

Par. 6. Newly designated section 1.179–4 is amended as follows:

1. The introductory text and paragraph (a) are revised.

2. Paragraph (b) is removed and paragraphs (c) through (g) are redesignated as paragraphs (b) through (f), respectively.

3. The revised provision reads as follows:

§ 1.179–4 Definitions.

The following definitions apply for purposes of section 179 and §§ 1.179–1 through 1.179–6:

(a) *Section 179 property.* The term "section 179 property" means any tangible property described in section 179(d)(1) that is acquired by purchase for use in the active conduct of the taxpayer's trade or business (as described in § 1.179–2(c)(6)). For purposes of this paragraph (a), the term "trade or business" has the same meaning as in section 162 and the regulations thereunder.

* * * * *

Par. 7. Newly designated § 1.179–5 is amended by adding a sentence immediately after the first sentence of paragraph (a) concluding text to read as follows:

§ 1.179–5 Time and manner of making election.

(a) * * *

* * * * *

* * * However, for this purpose a partner (or an S corporation shareholder) treats partnership (or S corporation) section 179 property for which section 179 expenses are allocated from a partnership (or an S corporation) as one item of section 179 property. * * *

* * * * *

Par. 8. Newly designated § 1.179–6 is revised to read as follows:

§ 1.179–6 Effective date.

The provisions of §§ 1.179–1 through 1.179–5 are effective for property placed in service in taxable years ending after January 25, 1993. However, a taxpayer may apply the provisions of §§ 1.179–1 through 1.179–5 to property placed in service after December 31, 1986, in taxable years ending on or before January 25, 1993. Otherwise, for property placed in service after December 31, 1986, in taxable years ending on or before January 25, 1993, the final regulations under section 179 as in effect for the year the property was placed in service apply, except to the extent modified by the changes made to section 179 by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1990. For that property, a taxpayer may apply any reasonable method that clearly reflects income in applying the changes to section 179, provided the taxpayer consistently applies the method to the property.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by removing the entries for "§ 1.179–2" and "§ 1.179–4" in the table and by adding the following entries to the table:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.179–2	1545–1201
1.179–3	1545–1201
1.179–5	1545–0172
* * * * *	

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: November 20, 1992.

Alan J. Wilensky,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 92–30942 Filed 12–23–92; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2601

Bylaws of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of two amendments to the bylaws of the Pension Benefit Guaranty Corporation that changed the delegations of authority with regard to the approval of regulations.

EFFECTIVE DATES: The amendment to § 2601.3(b)(1) was effective on April 17, 1986. The amendment to § 2601.3(c) was effective on August 21, 1987. The amendment to the authority citation for part 2601 is effective December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500), 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1001 *et seq.*). In carrying out its functions, the PBGC is administered by the Chairman of its Board of Directors in accordance with policy established by the Board (29 U.S.C. 1302). Among other things, the agency has the power to adopt, repeal, and amend bylaws of the PBGC, which are to be published in the **Federal Register.** In view of their continuing interest to members of the public, the PBGC has included the bylaws in the Code of Federal Regulations as part 2601 (29 CFR part 2601).

In Resolutions 86–7 and 87–6, the PBGC's Board of Directors amended the delegations of authority in the bylaws with regard to the approval of regulations. It also authorized the Executive Director to cause the bylaws, as amended, to be published.

Under paragraphs (b)(1) and (c), respectively, of § 2601.3 of the amended bylaws, the Executive Director is responsible for: (1) The approval of amendments to the regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal establishing new interest rates and factors (amendments to 29 CFR parts 2619 and 2676, respectively), and (2) the approval of all final non-substantive regulations and all proposed regulations prior to their publication in the **Federal Register**, but a proposed substantive regulation may be issued only after circulating it for review to the Board of Directors, or Board member designees, for a 21-day period and responding to any comments made during that period. Paragraph (b)(1) continues to reserve to the Board of Directors the power to approve all final substantive regulations prior to publication except for the amendments to parts 2619 and 2676 referred to in the preceding sentence. It previously was limited to amendments to part 2619. Paragraph (c) previously required that proposed substantive regulations be approved by the Board of Directors prior to publication, authorized Directors to delegate their authority for such approval to an official at a level not below that of Assistant Secretary, and required that the delegation be in writing and be effective until withdrawn or a date specified therein.

While the PBGC inadvertently did not publish these amendments when they were adopted, the agency is now conforming the bylaws, as set forth in part 2601, to reflect the changes made by the Board of Directors. Since this action involves agency management and organization, it is not subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553).

List of Subjects in 29 CFR Part 2601

Organization and functions (Government agencies), Authority delegations (Government agencies).

For the reasons set forth above, the PBGC is amending 29 CFR part 2601 as follows:

PART 2601—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

1. The authority citation for part 2601 is revised to read as follows:

Authority: 29 U.S.C. 1302(f).

2. Paragraph (b)(1) of § 2601.3 is amended by adding "in Single-Employer Plans and Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal" after "Valuation of Plan Benefits".

3. Paragraph (c) of § 2601.3 is revised to read as follows:

§ 2601.3 Board of Directors.

* * * * *

(c) Final non-substantive regulations and all proposed regulations shall be approved by the Executive Director prior to publication in the **Federal Register**; provided that all proposed substantive regulations shall first be circulated for review to the Board of Directors or their designees, and may thereafter be issued by the Executive Director after responding to any comments made within 21 days after circulation of the proposed regulation, or, if no comments are received, after expiration of the 21-day period.

Issued, as authorized by the Board of Directors, in Washington, DC this 21st day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-31322 Filed 12-23-92; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 287

[DISA Instruction 210-225-1]

Defense Information Systems Agency (DISA) Freedom of Information Act Program

AGENCY: Defense Information Systems Agency.

ACTION: Final rule.

SUMMARY: This revision makes administrative changes to conform with Department of Defense's final rule, 32 CFR part 286, regarding the implementation of the Freedom of Information Act.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Sergeant Martha King, (703) 692-2006.

SUPPLEMENTARY INFORMATION: It is hereby certified that this final rule does not exert a significant economic impact on a substantial number of small entities. This determination is made based upon the fact that the rule merely recodifies the procedural aspects of the DISA's Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the Defense Information Systems Agency; imposes no new requirements, rights, or benefits on small entities; and will have neither a beneficial nor an adverse effect on small entities. A notice of proposed rulemaking was published in the **Federal Register** on October 28, 1992, (57 FR 48768).

Interested parties were given until November 28, 1992 to respond. No comments were received.

List of Subjects in 32 CFR Part 287

Freedom of information.

Accordingly, 32 CFR part 287 is revised to read as follows:

PART 287—DEFENSE INFORMATION SYSTEMS AGENCY (DISA) FREEDOM OF INFORMATION ACT PROGRAM

Sec.

287.1 Purpose.
287.2 Applicability.
287.3 Authority.
287.4 Responsibilities.
287.5 Fees.
287.6 Reports.
287.7 Questions.
287.8 "For Official Use Only" records.

Authority: 5 U.S.C. 552.

§ 287.1 Purpose.

This part delineates responsibility for making available to the public the maximum amount of information concerning the operations and activities of the Defense Information Systems Agency (DISA) and the Office of the Manager, National Communications System (OMNCS).

§ 287.2 Applicability.

This part applies to Headquarters, DISA/OMNCS, and DISA field activities in the Metropolitan Washington area.

§ 287.3 Authority.

Published in accordance with the authority contained in 32 CFR part 286.

§ 287.4 Responsibilities.

(a) The DISA Freedom of Information Act (FOIA) Officer at DISA Headquarters, 701 S. Courthouse Road, Arlington, VA, is vested with the authority, within DISA/OMNCS, to release records for all requests coming to Headquarters, DISA, and to the field activities in the Metropolitan Washington Area, and will:

(1) Make the material described in paragraph 2-101 of DoD Directive 5400.7-R,[1] DoD Freedom of Information Act Program available for public inspection and reproduction. A current index of this material will be

[1] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Rd, Springfield, VA 22161.

maintained in accordance with paragraph 2–101 of DoD 5400.7–R.

(2) Establish education and training programs for all DISA/OMNCS military members and employees who contribute to DISA/OMNCS implementation of the Freedom of Information Act.

(3) Respond to all requests for records from private persons in accordance with 32 CFR part 286 whether the requests are received directly by Headquarters, DISA/OMNCS, or by DISA field activities. Coordinate such release with the General Counsel in any case in which release is, or may be controversial.

(4) Be the DISA/OMNCS principal point of contact for coordination with the Office of the Assistant Secretary of Defense (Public Affairs), reference FOIA issues.

(5) Ensure the cooperation of DISA/OMNCS with the OASD (PA) in fulfilling the responsibilities of monitoring the implementation of the Freedom of Information Act program.

(6) Refer cases of significance to the OASD (PA) for review and evaluation, after coordination with the General Counsel and with the approval of the Chief of Staff, when the issues raised are unusual, precedent setting, or otherwise require special attention or guidance.

(7) Advise the OASD (PA), prior to the denial of a request or prior to an appeal when two or more DoD components are affected by the request for a particular record, and when circumstances suggest a potential public controversy.

(8) Be responsible for the annual reporting requirement contained in 32 CFR part 286.

(9) Furnish copies of the material to be published in the Federal Register to DISA Code ADR.

(b) The mission/support staff Directors and the Chief of Staff, DISA will furnish the FOIA Officer, when requested, with DISA/OMNCS documentary material which qualifies as a record in accordance with 32 CFR part 286, for the purpose of responding to FOIA requests. All such requests for information will be referred to the FOIA Officer.

(c) The Chief of Staff, DISA will, on behalf of the Director, DISA, respond to the corrective or disciplinary action recommended by the Merit Systems Protection Board for arbitrary or capricious withholding of records requested, pursuant to the Freedom of Information Act, by military members or employees of DISA/OMNCS. This action will be coordinated with the General Counsel, DISA.

(d) The DISA General Counsel, or in his absence, the Deputy General Counsel within DISA/OMNCS is vested with the sole authority to deny, in whole or in part, a request. The General Counsel, DISA will:

(1) Make the decision, whenever a request for a record is to be denied in whole or in part, in accordance with the criteria provided in 32 CFR part 286.

(2) Inform the person denied a record of the basis for the denial of the request and of his or her right to appeal the decision to the Director, DISA via written correspondence.

(3) Ensure that if such an appeal is taken, that the basis for the determination by the Director, DISA not to release the record will be in writing, will state the reasons for the denial, and will inform the requester of his or her right to a judicial review in the appropriate U.S. district court.

(e) DISA (Code ADR) will arrange for the publication of this part in the **Federal Register**, after coordinating with the DISA/OMNCS Freedom of Information Act Officer and General Counsel.

§ 287.5 Fees.

Fees charged to the requester are contained in 32 CFR part 286.

§ 287.6 Reports.

Each major staff element and field activity on the distribution list of this part will furnish an annual report by January 5 to the Freedom of Information Officer, Headquarters, DISA, in accordance with 32 CFR part 286.

§ 287.7 Questions.

Questions on both the substance and procedures of the Freedom of Information Act and the DISA/OMNCS implementation thereof should be addressed to the Freedom of Information Act Officer by the most expeditious means possible, including telephone calls. Freedom of Information Act requests should be addressed as follows: Defense Information Systems Agency, Attention: Code ADA, 701 S. Courthouse Road, Arlington, VA 22204–2199. Calls should be made to (703) 692–2006.

§ 287.8 "For Official Use Only" records.

The designation "For Official Use Only" will be applied to documents and other material only as authorized by 32 CFR part 286.

Dated: December 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–31180 Filed 12–23–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Loan Guaranty: Negotiated Interest Rates

AGENCY: Department of Veterans Affairs.

ACTION: Notice of availability of negotiated interest rates.

SUMMARY: This notice advises participants in the Department of Veterans Affairs (VA) loan guaranty program that the interest rate to be charged on a VA guaranteed home loan and the number of points to be charged, if any, may now be negotiated between the borrower, the lender and the seller of the property.

EFFECTIVE DATE: The parties to a VA guaranteed home loan transaction may negotiate interest rates and points on and after October 28, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Judith A. Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (202) 233–3042.

SUPPLEMENTARY INFORMATION: VA guaranteed home loans have historically been made at or below a maximum interest rate established by the Secretary pursuant to 38 U.S.C. 3703(c) and 3712(f). On October 28, 1992, the President signed Public Law 102–547, which authorizes the Secretary of Veterans Affairs to elect to require that such loans bear interest at a rate that is agreed upon by the veteran and the lender. The law also authorizes veterans to pay reasonable discount points in connection with these loans. VA has determined that negotiated interest rates should be made available to veterans seeking VA guaranteed home loans. This election to permit veteran-borrowers and lenders to agree upon interest rates and points to be charged is effective for VA guaranteed home loans closed on or after October 28, 1992.

The law also provides that the Secretary may from time to time change this election and return to a system with an administered maximum interest rate. Notice of any such future change in this election will be published in the **Federal Register.**

Approved: December 14, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

[FR Doc. 92–31272 Filed 12–23–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6954

[NM-920-4210-06; NMNMAA 1803]

Revocation of Public Land Order No. 203; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a public land order which withdrew 155.34 acres of public land for use by the Bureau of Indian Affairs in connection with the construction of a war housing project. Pursuant to Phase II of the Land Exchange Agreement dated May 1, 1991, involving the Navajo Nation, the Bureau of Land Management, and the Bureau of Indian Affairs, the land has been patented in trust to the Navajo Tribe of Indians, with all minerals reserved to the United States. This action will open the land to mining and mineral leasing.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505-438-7594.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 203, which withdrew the following described land, is hereby revoked in its entirety:

New Mexico Principal Meridian

T. 15 N., R. 17 W.,
Sec. 14, lots 2, 3, 4, and 6.

The area described contains 155.34 acres in McKinley County.

2. At 8 a.m. on January 25, 1993, the land will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 15, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-31197 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No. 911215-2326]

RIN 0648-AD50

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a revision of Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI). Revised Amendment 18 to the FMP established allocations of pollock in the BSAI between inshore and offshore components during the years 1993 through 1995. Also, these regulations revise the catcher vessel operational area (CVOA) established in the BSAI to allow only catcher vessels and motherships to operate during the non-roe (or "B") season (June 1-December 31). In addition, this rule clarifies regulations that implement portions of Amendment 18 and Amendment 23 to the FMP for Groundfish of the Gulf of Alaska (GOA). These actions are intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMP that governs these fisheries.

EFFECTIVE DATE: January 19, 1993.

ADDRESSES: Copies of revised Amendment 18 and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the BSAI and GOA FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fishery for walleye pollock (*Theragra chalcogramma*) and the affected human environment are described in the FMPs and in the environmental impact statements prepared by the Council for each FMP and the RIR/FRFA prepared for this action.

The problems and issues that Amendments 18 and 23 are intended to resolve are discussed in the proposed rule published for the amendments (56 FR 66009, December 20, 1991; corrected at 57 FR 2814, January 23, 1992), the final rule implementing Amendment 23 and the approved portions of Amendment 18 (57 FR 23321, June 3, 1992), and the proposed rule published for revised Amendment 18 (57 FR 46133, October 7, 1992).

Briefly, pollock fishing operations of several offshore catcher/processor vessels in the GOA early in 1989 contributed to an early closure of the GOA pollock fishery. This prevented some inshore processing plants and the vessels that deliver to them from realizing their anticipated economic benefit from pollock later in the fishing year. The Council discussed the issues of coastal community development and shoreside preference, and reviewed analyses of various management alternatives throughout the remainder of 1989, 1990, and in early 1991. The Council defined the issue as a resource allocation problem where one industry sector faces the risk of preemption by another.

After receiving advice from its advisory bodies and hearing public testimony at its meeting of June 24-29, 1991, the Council adopted its preferred alternative. This alternative included an allocation of all of the total allowable catch (TAC) of pollock in the GOA to the inshore component of the industry, and, in the BSAI area, a graduated,

increasing allocation to the inshore component of 35 to 45 percent from 1992 through 1995 and an inverse, decreasing allocation to the offshore component over the same period.

Secretarial review of the amendments began on December 1, 1991. Public comment on the proposed rule ended February 3, 1992. On March 4, 1992, the Secretary of Commerce (Secretary) approved the proposed pollock and Pacific cod allocations for the GOA and the proposed pollock allocation for the BSAI for 1992. These allocations were implemented on June 1, 1992 (57 FR 23321, June 3, 1992). The proposed pollock allocations for the BSAI in 1993 through 1995 were disapproved.

When an FMP amendment is disapproved, the Council may submit a revised amendment to the Secretary for consideration under an expedited review schedule set forth in section 304(b) of the Magnuson Act. At its April 21–26, 1992, meeting, the Council decided to submit a revised Amendment 18. In a supplement to its previous analysis of inshore-offshore management alternatives, the Council considered (1) no action, (2) allocations in 1993 through 1995 of 30 and 70 percent to inshore and offshore components, respectively, and (3) inshore and offshore allocations in 1993 of 35 and 65 percent, in 1994 of 40 and 60 percent, and in 1995 of 45 and 55 percent. The Council made the draft analysis of these alternatives available for public review on July 10, 1992.

At a special meeting to consider this issue on August 4–5, 1992, the Council again considered the comments of its advisory bodies and the public, and adopted its recommendation to the Secretary as revised Amendment 18. The Council recommended allocations of pollock in the BSAI area between inshore and offshore components, respectively, of 35 and 65 percent in 1993, and of 37.5 and 62.5 percent in 1994 and 1995. In addition, the Council recommended that the CVOA be established for 1993 through 1995 only in the "B" season pollock fishery. Further, the Council recommended allowing vessels in the offshore component that process only (i.e., motherships) to operate in the CVOA so that the catcher vessels that deliver to these vessels also can operate in the CVOA.

The Council submitted revised Amendment 18 to the Secretary for review, approval, and implementation under section 304(a) of the Magnuson Act. The Secretary's receipt date was September 24, 1992. A notice of availability of revised Amendment 18 and request for public comment was published on October 2, 1992 (57 FR 45602). A notice of proposed regulations that would implement revised Amendment 18, if approved, was published on October 7, 1992 (57 FR 46133). Public comments on the revised amendment were invited through October 29, 1992, and comments on the proposed rules were invited through November 4, 1992. All comments received through November 4, 1992, were considered.

Twenty comments were received from 16 separate entities. After careful consideration of the public comments, the record developed by the Council, and the RIR/FRFA analysis of the potential effects of the proposed amendment, NOAA decided to approve allocations of pollock TAC to the inshore and offshore components equal to 35 and 65 percent, respectively, beginning in 1993 and continuing through 1995. The allocations will apply in each BSAI subarea and for each season. NOAA also approved the CVOA for the "B" season during the years 1993 through 1995, as recommended by the Council, including the allowance that motherships could operate within, and receive pollock from catcher vessels operating in, the CVOA. NOAA disapproved the Council's recommended additional allocation of 2.5 percent to the inshore component for 1994 and 1995, because, based on the record before the Under Secretary for Oceans and Atmosphere (Under Secretary), it was determined that the sole purpose of the increased allocation to the inshore component during those years is economic, and, therefore, violates national standards 4, 5, and 7 of the Magnuson Act, as well as Executive Order 12291.

The approved 35/65 percent allocations in revised Amendment 18 are the same as those approved by the Under Secretary for the "B" season of 1992 when Amendment 18, as originally submitted by the Council, was partially disapproved, and which were intended to resolve the preemption problem for the balance of 1992. Disapproval of the allocations in the original Amendment 18 for the years 1993 through 1995 was based in part on a cost-benefit analysis that NMFS had prepared to assist the Under Secretary in his decision. The NMFS analysis, which was based on the best available data at the time, indicated that a substantial net economic loss to the Nation would result if the allocations proposed by the Council in Amendment 18 for 1993, 1994, and 1995 were approved. The Under Secretary determined that the Council had not supplied sufficient evidence of social or other benefits to offset that loss.

In a March 4, 1992, letter to the Council conveying the partial disapproval of the original Amendment 18, the Under Secretary stated that the net economic effects in 1993 through 1995 were "not fully understood" at the time the Council took its action on the original Amendment 18, and further evaluation of the economic effects of each reasonable alternative would be necessary before the additional years could be approved. In his letter, the Under Secretary asked the Council to examine and refine the assumptions and methodology of the economic model used by NMFS in its analysis, to identify any countervailing benefits, and to consider modifications to the allocation percentages that would minimize economic loss to the Nation from the Council action.

In its analysis for revised Amendment 18, the Council's response to the Under Secretary's suggestions displayed economic consequences that are more favorable than the original version of Amendment 18. The analysis indicates that the annual net economic loss to the Nation of the 35/65 percent allocation is no more than $1.7 million, and is offset by the Council's legitimate objective of avoiding preemption of one sector by the other.

An increased allocation from 35 to 37.5 percent for the inshore component must be justified. One possible justification would be an increase in net national benefits. The analysis shows that the increase in allocations to the inshore component for 1994 and 1995 would further reduce the national economic benefits available from the pollock resource. Unlike the economic loss resulting from a 35/65 percent allocation, which the Under Secretary believes is adequate to avoid preemption and provide stability in the pollock fishery, the additional economic loss resulting from 37.5/62.5 percent allocations for 1994 and 1995 has not been justified by any other legitimate objective of the FMP.

The Under Secretary has concluded that an inshore allocation greater than 35 percent would increase the risk of net negative national benefits that is not warranted or justified by the record. On the other hand, although the 35 percent allocation to the inshore component exceeds the current status quo, approval of the 35/65 percent allocations will have beneficial results. The main justification for approval of these allocations is that they will obtain the objective identified in Amendment 18, which is to avoid potential preemption of the inshore component by the

offshore component. In addition, the allocations will guarantee both components the opportunity to fish while providing the needed stability, so long-term business plans and decisions can be made. Finally, the inshore/offshore allocation issue has been debated for several years. The allocations will not solve the problem of overcapitalization and all parties involved have spent too much time and effort on an issue that does not appear to result in economic gain to the Nation and cannot be justified beyond the allocations as approved for 1993 through 1995. To further pursue the allocations distracts the Council from focusing on other important issues that could lead to the development of a market-based allocation system. Based on the above reasoning, the Under Secretary approved only the 35/65 percent allocation for 1993 through 1995. In addition, NOAA has approved regulations implementing the CVOA as recommended by the Council, and certain other regulatory changes proposed by NMFS to clarify the implementing regulations for Amendments 18 and 23. A summary of, and response to, public comments received is included in this notice.

Description of Management Measures Implemented by this Rule

Revised Amendment 18

The definitions of "inshore" and "offshore" components of the industry remain unchanged from those implementing Amendment 23 in the GOA and the approved part of Amendment 18, except as described below in "Additional Regulatory Changes." In addition, this action makes no change to the western Alaska Community Development Quota (CDQ) program. Final regulations to implement CDQ allocations of pollock in the BSAI area during the years 1992 through 1993 were published in the **Federal Register** on November 23, 1992 (57 FR 54936).

The principal provisions of revised Amendment 18, as approved by the Under Secretary, include (1) the proportional allocation of the pollock TAC between inshore and offshore components, and (2) the CVOA.

1. Inshore-Offshore Allocation of Pollock in the BSAI Area

Under revised Amendment 18, as approved, the BSAI pollock TAC is allocated between the inshore and offshore components for each subarea and for each season defined at § 675.20(a)(2) during a three-year period, 1993 through 1995. The allocations to the inshore and offshore components are 35 and 65 percent, respectively, for each of these years.

The amount of TAC allocated to each component will be calculated after the reserve (§ 675.20(a)(3)) is subtracted. The reserve is specified annually as 15 percent of the TAC of all species categories. One half of this amount (7.5 percent) would be designated as the CDQ reserve and made available to western Alaska communities that have an approved community development plan (CDP). If the CDQ reserve is not used by western Alaska communities, it will be reapportioned to the non-CDQ fishery in accordance with the specified proportional allocations among the inshore and offshore components.

If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to catch and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by one component will be reallocated to the other fishery by notice in the **Federal Register**.

2. Catcher Vessel Operational Area (CVOA)

Revised Amendment 18 establishes a CVOA between 163° and 168° W. longitude, south of 56° N. latitude, and north of the Aleutian Islands. Offshore catcher-processors must not conduct directed fishing operations for pollock in the CVOA during the pollock "B" season (June 1 through December 31). Access to this area is unrestricted during the pollock roe or "A" season (January 1–April 15). This CVOA is similar to that established by the approved portion of original Amendment 18 with the following two important differences.

First, under revised Amendment 18, the CVOA will exist only during the pollock "B" season instead of during the "A" and "B" seasons as originally proposed by the Council in Amendment 18. This represents a compromise between an exclusive, year-round CVOA, and no CVOA. The compromise is based on compelling arguments made by representatives of the offshore fleet that closing the CVOA during the "A" season would deprive them of prime fishing on roe-bearing fish, particularly because the Bogoslof area (adjacent to and west of the CVOA) fishery had been closed. Further, the ice edge would cause congestion and gear conflicts between factory trawlers and vessels using longlines and pots. They also reasoned that restricting factory trawlers north of 56° N. latitude would result in lower recovery rates and higher discard of small pollock. The Council retained the CVOA during the "B" season, because catcher vessels that deliver their pollock catch to shore-based processing plants in the Aleutian Islands have a limited range compared with catcher/processor vessels that can harvest pollock resources north and west of the CVOA. In addition, public testimony indicated the possibility of overcrowding and grounds preemption within the CVOA by the catcher/processor fleet.

Second, motherships operating in the offshore component may operate in the CVOA under revised Amendment 18. This was not allowed during the "B" season in 1992, because the original Amendment 18 established this area exclusively for catcher vessels. The regulations for 1992 did not prohibit catcher vessels from harvesting pollock in the CVOA and delivering their catch to motherships outside the area. However, this restriction was found to be impractical, because catcher vessels working with motherships cannot tow cod ends large distances. The Council also was concerned with safety. During the winter, the combination of ice edge, icing conditions, and severe storms makes it very hazardous for the catcher-boat fleet to operate outside the CVOA.

Additional Regulatory Changes

Experience in implementing inshore-offshore allocations under Amendments 18/23 during 1992 prompted NMFS to make several changes to existing regulations. The following changes were described and their purpose explained in the revised Amendment 18 proposed rule notice (57 FR 46133, October 7, 1992). The intent of these changes is to improve the clarity and effectiveness of the regulations.

1. The "inshore component" definition currently at §§ 672.2 and 675.2 would be changed by re-ordering the sequence of types of processing operations that qualify as "inshore." The category of processor vessels operating at a single location within State of Alaska waters would be identified third instead of second. This change juxtaposes this category of processor vessel with the succeeding sentence, which explains how a single location would be determined.

2. The prohibitions listed in §§ 672.7 and 675.7 would be changed by substituting a paragraph prohibiting the use of any vessel in more than one of the three categories included in the definition of "inshore component" during any fishing year. This change deletes regulatory text that is redundant with the definition of "inshore component," and clarifies that the category in which a vessel begins

operating in an "inshore" directed fishery for Pacific cod harvested in the GOA or pollock harvested in either the GOA or BSAI area is the category in which the vessel must continue to operate for the remainder of the fishing year whenever it processes these species.

3. Finally, regulatory text at §§ 672.20 and 675.20 is changed to clarify that allocations of pollock (and Pacific cod in the GOA) are made to vessels that catch these species for processing by either the inshore or offshore component. Hence, the vessels that catch these species, not processor vessels that do not catch fish, are subject to the directed fishing allowances and prohibitions that the Regional Director is authorized to establish for either component.

Changes in the Final Rule From the Proposed Rule

This final rule includes changes from the proposed rule. These changes are described as follows:

1. The prohibitions in §§ 672.7(h)(2) and 675.7(i)(2) are amended by deleting the word "processor." Under the existing regulations, if a vessel does not have a federal fishing permit, it is not included in the definition of a "processor vessel," and would not be subject to the prohibitions of this section. The revised paragraph clarifies that all vessels are subject to these prohibitions.

2. Section 675.20(a)(2)(iii) is amended to implement only the allocations approved by the Under Secretary. Language intended to implement the disapproved portions of revised Amendment 18 has been deleted.

Responses to Comments

The allocations of pollock in the BSAI area that are implemented by Secretarial approval of revised Amendment 18 remain controversial. Twenty letters of comment were received from 16 different entities during the comment period. Of these, nine opposed and seven expressed support for the action. Most comments are lengthy and raise many points of concern. Key issues and concerns are summarized and responded to as follows:

Comment 1: Revised Amendment 18 violates national standard 1 of providing for the greatest overall benefit to the Nation because (1) the supplemental analysis projects a cumulative loss of $85.8 million and (2) the alternative benefits only Alaskan onshore processors and reduces competition by restricting the number of processors to whom a fisherman can deliver.

Response: National standard 1 requires fishery conservation and management measures be implemented that prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery. Executive Order 12291 requires that the economic benefits be in favor of society as a whole. The allocations, as proposed in revised Amendment 18, do not reduce the likelihood of pollock TAC being reached. Weekly production report data indicate that the inshore and offshore components have sufficient capacity and opportunity to harvest and process the available OY.

The Under Secretary has determined that national benefits would result from the approval of a 35/65 percent allocation for 1993 through 1995 by way of maintaining a balance in the social and economic opportunities inherent in the fisheries. One of the nine Comprehensive Fishery Management Goals for the development of the North Pacific Council's fishery management plans is to ensure that the people of the United States benefit from optimum utilization of the Nation's publicly owned fishery resources. The benefits to the Nation will accrue in gains in Alaskan communities, as evidenced by the promotion of economic stability, growth, and self-sufficiency.

The Under Secretary determined that the 2.5 percent allocation increase proposed for the inshore component in 1994 through 1995 would violate E.O. 12291 because the increased risk of negative national benefits is not justified by the likelihood of any additional social or other benefit for the western Alaskan communities. Therefore, the proposed increased allocation to the inshore sector is disapproved. The approved allocations of revised Amendment 18 that benefit the coastal communities of Alaska and aid them in achieving a stable, self-sufficient, and growing economy balance any potential losses to the Nation.

For a discussion of the issue of competition, see response to comment 34.

Comment 2: Revised Amendment 18 violates national standard 2, which states that conservation and management measures shall be based upon the best scientific information available.

Response: As was explained in the final rule for Amendments 18/23 (57 FR 23321, June 3, 1992), the administrative record does not close until the Secretary makes a decision. During the public comment period, NOAA used the Council's data to review the Council's findings. The decision of the Under Secretary is based on the supplemental analysis, using 1992 data, as well as public comment received.

Based on the record and data developed by the Council and NMFS, the Under Secretary has determined that the record contained sufficient information, and that the information available was the best and most current available for a decision regarding revised Amendment 18.

Comment 3: National standard 4 is violated in that revised Amendment 18 discriminates against fishermen who deliver to shoreside processors in other states. In addition, the regulations would not allow freezer vessels to package frozen headed and gutted or round fish for later shoreside processing, which discriminates among processors of different states. Further, the CDQ discriminates among residents from different states.

Response: Several concerns similar to comment 3 were addressed in the final rule for Amendments 18/23 (57 FR 23321, June 3, 1992). The basis for the approval of the allocation does not conflict with the reasons given in the final rule for Amendments 18/23.

Regulations implementing revised Amendment 18 do not restrict owners or operators of catcher vessels from delivering to either inshore or offshore processing sectors until a component reaches its allocation. NOAA has determined that the revised allocations, as approved, will not discriminate among residents of different states.

As stated in the final rule for Amendments 18/23, the CDQ program does not discriminate between Alaskans and non-Alaskans on the basis of State of residence. The impact of the CDQ program in setting aside a pollock reserve for use by western Alaskan communities for CDPs falls equally upon similarly situated Alaskans and non-Alaskans. Regulations that are determined to discriminate among residents of different states, based on their residence, would not be approved.

See also response to comment 34.

Comment 4: The allocations do not violate national standard 4 as they represent a fair compromise, balancing needs and interests of industry, state, and coastal communities.

Response: Comment noted. The Under Secretary has determined that the revised allocations in the BSAI, as approved, are consistent with the fair and equitable criterion of national standard 4. See response to comment 3.

Comment 5: The proposed regulations violate national standard 5 in that the resource would not be efficiently utilized and because the only justification for the proposed action is economic gain by one sector. In

addition, to ignore modern technology for fear of preempting an older technology violates the efficiency requirements. The amendment merely acts as a subsidy to less efficient producers.

Response: A similar comment was raised during the review of Amendments 18/23. National standard 5 requires fishery conservation and management measures to promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose. In theory, an efficient fishery would harvest all the allowable catch with a minimum use of economic inputs (e.g., labor, capital, fuel, etc.). As was the case with Amendments 18/23, revised Amendment 18 is not substantially less efficient than an open access fishery. The benefits of advanced technology are dissipated when the TAC is reached before the end of the fishing year. The factory trawler fleet is capable of harvesting a large amount of fish in a short period of time. This can lead to early season closures, to the detriment of the inshore fleets and processors. The major objective of Amendment 18 is to avoid preemption of one sector by another. The Under Secretary determined that the 35/65 percent allocation obtains this objective and will protect the smaller, more localized fleets, and allow for continued development of coastal communities in the BSAI.

NOAA has determined that approval of the 35/65 percent allocation does not have economic allocation as its sole purpose because its aim is to protect and enhance benefits, such as preserving stability and avoiding preemption, for Alaska coastal communities. However, the increase in the allocation recommended by the Council for the inshore component to 37.5 percent for 1994 and 1995 is determined to be solely economic in nature as there is no evidence of an increase in social benefits to counter the substantial net economic loss that would be associated with the difference between 35 percent and 37.5 percent inshore allocations.

The allocations, as approved, could improve the overall recovery of fish products from the round weight harvested based on reported higher product recovery rates for the inshore sector. Also, non-resident or foreign workers employed by local processing plants during peak fishing seasons when local labor supply is insufficient contribute to the economic well being of local communities through their demand for goods and services. Finally, the guidelines of the national standards, at 50 CFR 602, provide that sector allocations are justified by the achievement of overall biological, economic, or social benefits. The Under Secretary determined that a 35/65 percent allocation is justified based on these criteria, although an additional 2.5 percent increase for the inshore component for 1994 and 1995 is not. Therefore, the Under Secretary approved only the 35/65 percent allocation for 1993 through 1995.

Comment 6: There is no evidence that revised Amendment 18 violates national standard 5.

Response: Comment noted. See response to comment 5. The benefits of economic stability and gains to the Alaskan coastal communities balance potential economic losses to the Nation with approval of the 35/65 percent allocation. However, the benefits of the 2.5 increase proposed for the inshore component, which was disapproved, do not balance potential economic losses to the Nation.

Comment 7: Revised Amendment 18 violates national standard 6.

Response: A similar comment was made during the review of Amendments 18/23. National standard 6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Impacts on both components and the resources were analyzed in the draft SEIS for Amendments 18/23.

Comment 8: Revised Amendment 18 is inconsistent with national standard 7, because it increases costs and promotes duplication of capital.

Response: National standard 7 requires that fishery conservation and management measures minimize costs and avoid unnecessary duplication, where practicable. Amendment 18, as proposed originally, was likely to result in net losses in economic efficiency that would not be offset by social or other non-economic benefits. As demonstrated in the supplemental cost-benefit analysis, the revised allocations would mitigate these losses in net national economic benefits. Moreover, the developmental benefits for Alaska coastal communities that would accrue with a 35/65 percent allocation program for 1993–1995 would outweigh the negative. The Magnuson Act allows for an allocation of fishing privileges that may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups (e.g., social and development benefits). Therefore, the Under Secretary approved the 35/65 percent allocation for 1993 through 1995.

Other alternatives were considered but rejected, because they were either too restrictive to the offshore component or would not have prevented preemption of the inshore component by the offshore component.

Comment 9: The partial denial of Amendment 18, which referenced national standard 7, was based on a flawed analysis, because it confused net national benefits with corporate profits.

Response: The cost-benefit analysis done by the NMFS analysis team prior to the March 4 decision adhered to standard methodology and used the best available data and information at the time of the analysis. The supplemental analysis submitted with Revised Amendment 18 used the same general methodology with updated information and some refinements in techniques. In both analyses, the results displayed estimated changes in producer surplus, which is an accepted measure of net national benefits. Producer surplus is not a proxy for corporate profits largely because of differences in the way costs are identified and treated in the accounting.

Comment 10: Amendment 18, as revised, addresses the Department of Commerce's concerns in the previous partial disapproval as it substantially reduces the original proposed allocations, removes the restriction on offshore vessel access in the CVOA during the roe or "A" season (January 1–April 15), and permits mothership vessels to operate in the CVOA during the non-roe or "B" season (June 1–December 31). Based, in part, on these significant changes, revised Amendment 18 should be approved.

Response: The above issues have been addressed during the review process for revised Amendment 18. NOAA recognizes that the allocations proposed in revised Amendment 18 are reduced from the original submission. The 35/65 percent allocations to be implemented for 1993 through 1995 were approved, because they are likely to meet the Council's objective without causing substantial losses to the offshore component or the Nation. In addition, approval of the allocations will allow the Council to focus its attention on more rational solutions to fishery problems in Alaska. The decision to allow offshore vessels to operate in the CVOA during the "A" season was due to the extreme importance this area and time have for the offshore sector. To deprive them of use of the CVOA during the "A" season would present too great an economic burden. Allowing motherships to operate in the CVOA would prevent undue hardships on the smaller catcher vessels in this area.

Comment 11: A number of comments opposing Amendments 18/23 were submitted in response to the proposed rule implementing the amendments (57 FR 66009, December 20, 1991). These comments were submitted by crew members on offshore vessels, seafood industry employees and representatives, and other interested parties. The main points stressed in opposition to Amendments 18/23 included: (1) Many at-sea workers had steady, well-paying jobs, not readily available otherwise; (2) many of these workers came from areas of high unemployment; (3) the at-sea fleet offered upward mobility for women and minorities; and (4) the high-pay and other aspects of at-sea employment made it possible to pursue goals in life that would otherwise be unattainable. These same comments apply to revised Amendment 18 and should be addressed. Many of the deficiencies identified with the initial amendment have not been addressed in the supplemental analysis.

Response: The comments that were submitted during the review period for Amendments 18/23 were addressed at that time. A resubmission of these comments does not provide any new information that was not considered under Amendments 18/23, and the responses to those comments in the final rule published June 3, 1992 (57 FR 23321), apply to revised Amendment 18. However, the same issues presented in those comments have been addressed throughout this final rule.

Comment 12: Revised Amendment 18 does not address the underlying problem of overcapitalization in an open-access fishery and may even encourage additional capital investment within the inshore sector. Therefore, the Nation is no closer to solving problems in the North Pacific groundfish fishery. The Council and NMFS should direct their attention to other, more important issues that need to be faced (i.e., stock assessments, bycatch, and management of new technologies) rather than this course of protectionist regulations that threaten to destroy rather than enhance the Magnuson Act system. Instead, conservation and management objectives should be met by establishing performance requirements.

Response: The issue of overcapitalization in an open-access fishery was addressed during the review of Amendments 18/23. NOAA agrees that the olympic system that prevailed is inefficient and wasteful in the sense that it fosters more investment than is necessary to catch the amount of fish available for harvest in any fishing year. One purpose of the approved revised Amendment 18 allocations is to serve as a preliminary step toward solving the problem of overcapitalization. The approved allocations will provide a stable three-year period while the Council can evaluate more permanent, rationalized management measures, and implement them.

In his November 23, 1992, letter to the Council, the Under Secretary strongly urged the Council to direct its attention to a long-term, market-based allocation system.

Comment 13: The stated purpose of the allocation is to prevent preemption; however, the final allocation will actually lower the share of the TAC currently being utilized by the offshore fleet in the BSAI. The result transfers resources that have been historically taken from one sector (offshore) to another (inshore). Thus the preferred alternative within revised Amendment 18 does not solve the stated problem of preemption, but rather creates it.

Response: NOAA recognizes that a 35 percent allocation to the inshore component exceeds the inshore performance in recent years. However, the inshore sector has taken increasing shares of the pollock harvest in the BSAI, and in 1991 its share grew to 28 percent. The approval of the 35/65 percent allocations is expected to obtain the objective identified in Amendment 18, which is to avoid potential preemption of the inshore component by the offshore component. The allocations also provide needed stability in the fishery for long-term planning and guarantee both components the opportunity to fish.

Comment 14: The intent of the Magnuson Act was not to allow one sector (offshore) to smother development of social and economic stability in another (coastal communities). Preemption is a continuing problem. Originally, the foreign distant water fleet preempted U.S. fishermen, and now the U.S. distant water fleet is preempting coastal communities.

Response: NOAA recognizes that protection of both sectors is needed. Because the mobility of the offshore component gives it a competitive advantage, an allocation to the inshore sector for a fixed term is justified. However, the groundfish resources off Alaska are a national resource. All U.S. fishing vessels, regardless of their home port of technological components, currently enjoy the same Alaska groundfish harvesting privileges under the BSAI FMP. The preemption problem stems from the excess harvesting and processing capacity to prosecute the fishery, and not the geographic origin of that capacity. The Council has been urged to develop a market-based allocation system for the long term to achieve stability in the fishery and eliminate the problems of preemption and overcapitalization.

Comment 15: The Magnuson Act encouraged American fishermen to invest in harvesting and processing facilities and many factory trawlers have achieved the capacity to harvest 100 percent of the pollock TAC. The allocations would take a large portion of pollock (worth between $34,994,845 and $54,537,433) away from factory trawlers and give it to another sector, thereby putting many American fishermen out of business.

Response: The Magnuson Act established U.S. authority for the conservation and management of fishery resources within the EEZ and provided for priority access to those resources by U.S. fishing and processing firms.

The Magnuson Act also authorizes the allocation of fishery resources among various sectors of the fishing industry. The Under Secretary determined that a 35/65 percent allocation of the BSAI pollock TAC between inshore and offshore components is consistent with the Magnuson Act and other applicable laws. While this allocation may produce benefits for the inshore component at the expense of the offshore component, both sectors should realize some decrease of investment risk, in the short term, resulting from better knowledge of the amount of BSAI pollock that will be reserved specifically for either component for a 3 year period.

Intra-component competition for the pollock resource will continue to be a source of uncertainty and risk, but inter-component competition, with its attendant risks, will cease with the implementation of this rule. This should allow improved investment decision-making for both components in the short term (i.e., 3 years).

Comment 16: Catcher boats played an important role in the Americanization of the Alaska groundfish fisheries and, yet, the superior catching capability of the factory trawlers has preempted them. Approval of revised Amendment 18 would provide a sufficient short-term measure. In addition, the smaller catcher boats cannot compete with the factory trawlers, particularly in stormy weather. Approval of the CVOA will enable catcher vessels to fish closer to sheltered waters and still deliver to motherships. Amendment 18 should be approved as it addresses the preemption of catcher vessels by factory trawlers.

Response: The development of a U.S. groundfish fishery in the BSAI area began in 1980 with U.S. catcher vessels delivering pollock and other species to

foreign processing vessels in joint venture processing (JVP) agreements. Significant harvests by U.S. catcher/processors began in 1985. Shorebased pollock processing began to develop in the mid-1980s. Under the Magnuson Act, however, the foreign and JVP fisheries were sequentially replaced in favor of the wholly domestic fishery. The last year in which any groundfish were allocated to JVP fisheries in the BSAI area was 1990. Many of the former JVP catcher vessels were converted to deliver fish to the shorebased processors, and some developed a JVP-style market with U.S. motherships. In both cases, the catcher vessels are generally smaller and more limited in their range than catcher/processors in the offshore component. Revised Amendment 18 recognizes this history by providing for catcher vessels that deliver BSAI pollock to the inshore component, which has a 35 percent allocation of the pollock TAC, and by providing for those that deliver to U.S. motherships the opportunity to fish within the CVOA during the pollock "B" season.

Comment 17: Preemption of the catcher boats by factory trawlers should be addressed from a harvesting perspective rather than one of processing.

Response: The Council considered the alternative of allocating pollock (and Pacific cod in the GOA) between vessels that catch and process at sea and vessels that catch for delivery to processors regardless of whether they are on shore or at-sea. This is alternative 6 in the final supplemental environmental impact statement prepared by the Council for Amendments 18/23. The Council did not recommend this alternative, because it did not adequately address the Council's objective of assuring catcher vessels that deliver to shorebased processors a specific proportion of the pollock TAC and alleviating the preemption issue. Approval of the 35/65 percent allocation is justified and accomplishes the stated objective.

Comment 18: The proposed allocation shifts resources away from the offshore fleet, which is primarily from the Pacific Northwest (Washington and Oregon), to the shoreside plants in local Alaskan communities. As a result, Alaska will gain a relatively small number of jobs and increased income at the expense of the Pacific Northwest having much greater losses. Such a reallocation of jobs and income from one region to another has not been justified. The bottom line is that the Pacific Northwest will suffer significant economic hardships as well as direct income and job losses at a time when the entire nation is concerned with rising unemployment and economic growth.

Response: The analytical results support this general conclusion that net economic benefits will be negative, but economic considerations are only one element of the decision-making process. The objective of revised Amendment 18 is to avoid possible preemption of the inshore sector by the offshore sector. The allocations, as approved, will prevent preemption and allow stability in the fishery so that long-term plans can be developed. In addition, the Council will be able to direct its attention to other fishery issues and resolutions. Therefore, the Under Secretary determined that the 35/65 percent allocation would result in benefits that offset National losses.

Comment 19: The inshore sector had no catch history prior to inshore/offshore allocations. The largest shoreside catchers came on line just this year and many have a significant percentage of ownership directly related to Con-agra (Trident), Unisea (Nippon-Suisan), and Westward (Taiyo). These are not the "family farm" companies the Council claims to be protecting.

Response: The inshore sector represents a complex of fishing, processing, and support operations that includes small independently owned catcher vessels and other small support enterprises, in addition to the large shore-based processors that are at the hub of the system. During the review of Amendments 18/23, representatives of several inshore plants testified that they had not been operating at full capacity previously, because they did not have enough fish to supply the plants. Lack of raw product for processing would curtail production and have a negative impact on the various enterprises that feed into and support the processing operations. The aim of Amendment 18 is to help assure some stability in raw fish supplies for the inshore sector and thus stabilize the system and promote economic growth and security for the affected coastal communities in Alaska.

Comment 20: Revised Amendment 18 does not demonstrate any net social benefits. It threatens jobs as well as the economic and social well-being of communities and individuals in the State of Washington, which could lead to revenue losses and economic dislocations in Washington State. In addition, the allocations discriminate against Washington State coastal communities by favoring Alaska shoreside processing plants. It takes from one sector to give to another.

Response: The overall fishery continues to be an open-access system, whether or not revised Amendment 18 is approved. Individual fishermen or processors are not guaranteed access to a given amount. The analysis concludes that losses in jobs and revenues will occur in the Pacific Northwest but will be partially offset by gains to employment and revenue in Alaska. See response to comment 8.

Comment 21: There is no realistic benefit or justification that outweighs the significant harm to the offshore fleet or those dependent on the health of that fleet. The proposed allocations would result in significant economic losses without any demonstrable countervailing benefits. The Council has failed to provide any new reason why the Under Secretary's initial rejection of this part of the proposal should not stand.

Response: The revised analysis provides the same general economic results, but in order to attain social goals, these considerations could cause the Council to give more or less weight to benefits or costs imposed on different segments of the industry. The Under Secretary approved the 35/65 percent allocation for 1993 through 1995 to obtain the objective of avoiding preemption of the inshore component by the offshore component while providing both components the opportunity to fish. In addition, approval of the allocations will allow the Council to direct its attention to other important management considerations to benefit the North Pacific fishing industry. However, the 2.5 percent increase to the inshore component proposed for 1994 through 1995 did not result in sufficient benefits that would offset National loss. Therefore, the Under Secretary disapproved any increase in the allocations to the inshore component for 1994 and 1995. Nonetheless, increasing national net benefits is only one of the many goals of applicable law and policy.

Comment 22: Communities that are located close to the fishing grounds face fewer alternative opportunities for economic advancement and thus have a greater reliance on access to these fisheries than do distant water fleets. Approval of the allocations of Amendment 18, especially with the CVOA, will be important for the economic health and development in the small coastal communities of Alaska. Amendment 18 would allow for stabilization and growth of locally generated municipal revenues that are derived mainly from taxes on landed raw fish, collected from shore-based vessels and plants, or local property taxes. Pollock is becoming a more

significant source of this revenue. Without this guaranteed access, instability will occur.

Response: NOAA agrees that the coastal communities have a smaller job base and could be viewed as having a higher reliance on fisheries, although not necessarily on pollock stocks. These communities have not had a historical dependence on pollock, *per se*, but on the crab, halibut, and salmon fisheries. As shoreside plants process more raw fish in general, local tax revenues will increase but growth may incur offsetting costs for society. Nonetheless, NOAA recognizes a need to provide some assurance of stability to the shore-based fishery enterprises that are substantial contributors to economic welfare of local communities, through a reliable supply of raw fish for processing. Approval of the 35/65 percent allocations and the CVOA offer adequate protection without overly deviating from the current conditions.

Comment 23: Amendment 18 will provide increased employment and long-term stability for Alaskan coastal communities.

Response: The amendment is expected to increase the number of harvesting and processing jobs available in the inshore component, although there will be a concurrent decrease in jobs and income in the offshore sector that is tied principally to the Pacific Northwest. This action is only intended to be a short-term solution that aims at promoting economic stability in Alaskan coastal communities. Improvement of the fisheries that help support these communities, and that contribute substantially to the national welfare, depends on putting in place a management system that eliminates the economic waste inherent in common property fisheries.

Comment 24: Although Amendment 18 is a short-term interim solution, if it is not enacted soon, management might lose the option of dealing with long-term rationalization. Without approval of Amendment 18, the more efficient offshore fleet would capture an ever increasing share of the TAC and reduce the viability of the inshore fleet dramatically. The sector may be so weakened that a decision to disapprove this amendment would be irreversible. Failure to approve this measure would lead to a *de facto* allocation of all or most of the resource to the offshore fleet and cause a loss of diversity within the fishery.

Response: Prior to the first allocation in 18/23, the inshore sector had grown over a fairly short period to a point where it was taking a significant share of the pollock resource, and new plants came on line. The growth in the inshore sector's participation in the pollock catch is an indicator of its ability to compete with the offshore sector. However, the substantial (and much underutilized) catching capacity of the offshore fleet cannot be ignored and is viewed as an overwhelming competitive threat to the inshore sector with regard to access to the pollock resource. Locking the allocations in at 35/65 for the three-year period assures that the threat is eliminated while a more productive and beneficial management system is designed and put into place.

Comment 25: The allocations would provide a predictable supply of fish, allowing onshore plants to operate nearly year-round and provide a sustained demand for support services. This would provide more opportunity for permanent residents to work, for other workers to become permanent residents, and allow for long-term planning abilities and financing, as harvesters could choose the best times for fishing. In addition, groundfish plants will be available for traditional species markets such as black cod (sablefish), Pacific halibut, salmon, and crab.

Response: NOAA concurs. The potential of operating nearly year-round is enhanced, which would lead to stabilized production and employment. Stability is one of the objectives of the amendment.

Comment 26: The allocations would allow harvesters to determine the best time to fish based on the condition of fish, the weather, and when recovery and value would be highest.

Response: NOAA concurs. By being guaranteed a percentage of fish, the "race for fish" between inshore and offshore interests is curtailed and harvesters can choose when they want to fish as long as TAC remains in either component. Harvesters delivering to the inshore component would be limited only by their portion of the TAC, and not by the harvesting capability of the offshore sector. Nevertheless, there remains a probability the "race" will occur within a sector, which is a problem that a market-based management system is intended to address.

Comment 27: The shoreside sector has much higher product recovery rates (PRRs), particularly for surimi. The supplementary analysis for revised Amendment 18 stated the surimi recovery rate for the offshore sector to be 17.7 percent. A NMFS study of factory trawlers showed the PRR of surimi during the "A" or roe season (January 1–April 15) to be only 14.35 percent and NMFS recently recommended a rule that established the offshore surimi rate to be 14 percent. Section 2 of the supplementary analysis fails to use existing data that the roe recovery rate is equal for inshore and offshore. The analysis overlooks a lot of data on PRRs and the result is PRRs are overstated for the offshore fleet and understated for the inshore processors.

Response: The team responsible for the supplementary analysis used 1991 data for surimi and roe recovery rates, which was the most recent information available at the time of the analysis. Later data based on partial year results for 1992 indicate lower surimi PRRs for the offshore sector compared with 1991 and higher roe recovery rates for the inshore sector. This new information was used by NMFS analysts in a subsequent run of the cost-benefit analysis and the results made available to the Under Secretary. With regard to PRRs, it is worth noting that the rate is influenced by market and resource conditions as well as the relative efficiency of the operator, and therefore can be expected to vary considerably. In the cost-benefit analysis done by the supplemental analysis analytical team and by NMFS analysts independently, the uncertainties in PRRs are addressed through the application of a risk analysis that allows for the use of a range of values for a particular variable as opposed to a point estimate.

Comment 28: Revised Amendment 18 promotes conservation in that the possibility of localized pulse overfishing by factory trawlers would be reduced.

Response: Effective management of TACs, as in the past, will prevent resource depletion. However, there is no evidence to indicate that increased allocations to the inshore sector will prevent localized depletions, early closures, or shore-based overcapitalization. Potential problems of localized depletion can be addressed by the Council through further management actions, as in the past.

Comment 29: The shoreside sector has demonstrated its concern for the fishery by attempting to delay the non-roe or "B" season (June 1–December 31) to reduce catch of juvenile pollock, Pacific herring, and salmon bycatch. In addition, the shoreside sector set up a voluntary herring savings area to reduce herring bycatch in 1991 and 1992.

Response: NOAA acknowledges and appreciates the concern fishermen have for the resources that sustain them. Self-regulation is certainly a benefit for the resource.

Comment 30: Benefits to the Nation with approval of Amendment 18 would include an increase in food production

and value, as well as a reduction in wasteful discard of fish.

Response: Some current data indicate that the product recovery rate of the inshore sector is somewhat higher than for the offshore sector. Inshore processors presently convert a higher percentage of fish from round weight to finished product. The best information currently available to estimate discard amounts in the groundfish fisheries provides no reason to believe that discard amounts will increase or decrease under the approved allocations. The amount of prohibited species taken in the groundfish trawl fisheries is largely governed by prohibited species catch (PSC) limits, attainment of which will prohibit further fishing for specified species by both inshore and offshore operations. In addition, the factory fleet has indicated that it expects to increase recovery rates while decreasing waste as it learns more about the improved technology used by the inshore sector. Shoreside processing plants have demonstrated an increase in use of all raw materials, while some factory trawlers may experience a greater loss of potential product due to the conditions under which they must work. Equipment used for preparing fish products must be precisely set; rough conditions experienced at sea on the factory trawlers could interfere with maximum efficiency of processing equipment. The inshore processing plants do not have to deal with the movement of equipment and can be more precise in their cuts of fish. Nonetheless, the offshore component is developing and employing better technology to more fully utilize the entire fish.

These same issues were dealt with in the final rule published for Amendments 18/23.

Comment 31: The offshore sector has a higher preprocessing discard rate, which can be verified by the 1992 data. This constitutes a waste of our resources and discards should be counted as a cost to the nation. This amendment will reduce waste and promote conservation.

Response: The cost-benefit analysis considers the variations in discard rates. Differences occur between seasons, sectors, and individual vessels. The 1992 data mentioned in the comment are from a small subset of factory trawler(s) and may not be representative of the entire fleet. Similarly, because only a portion of the harvest taken by the inshore fleet is reported by official observers, estimates of inshore discards are particularly subject to statistical bias and error.

With regard to an evaluation of efficiency and waste in the production process, other scarce resources in addition to raw fish need to be taken into account, e.g. fuel, labor, and capital. Thus, waste needs to be placed in the context of total resources employed to generate a given quantity of output.

Comment 32: The offshore sector has other fishing options available to it as it is more mobile. The inshore sector is solely dependent on resources close at hand.

Response: NOAA recognizes the competitive advantage of the mobile offshore component. Approval of the CVOA during the "B" season will provide needed protection to the inshore component in an area close to shore.

Comment 33: The inshore sector should not be penalized for failing to capitalize as rapidly as the offshore fleet, because part of the offshore fleet's growth can be attributed to federal loan guarantees and capital subsidies by both the U.S. government and foreign interests.

Response: The allocations approved under revised Amendment 18 are not intended to penalize either the inshore or the offshore component. Instead, the intent is to provide protection to the inshore component to allow the utilization of the fishery resource while acknowledging the fishery interest of the offshore component. Approval of the 35/65 percent allocation for 1993 through 1995 demonstrates this point.

Comment 34: By requiring fishermen to declare where they may sell their product for an entire calendar year, fishermen are prohibited from selling to a more competitive purchaser, thereby restricting trade. In addition, in attempting to protect a specific industry sector in a specific location from competition with another sector, freedom of trade between states is restricted.

Response: Amendment 18 does not restrict to whom a harvester may sell fish. Harvesters are free to deliver fish to either inshore or offshore processors, as defined in the regulations, up to the specified percentages. In addition, the allocations do not restrict freedom of trade between states as they do not restrict where delivery or sale of fish may occur.

Comment 35: Approval of revised Amendment 18 will transfer significant control to foreign interests that dominate the Alaska shoreside processing industry. In effect, the allocations illegally give away Washington State jobs and U.S. resources to Japanese companies. The allocation will increase the market power of the Japanese within these markets.

Response: Revised Amendment 18 will result in a transfer of benefits from the offshore sector to the inshore sector. The cost-benefit analysis indicates that under a 35/65 percent inshore/offshore allocation program, the impact on net national benefits is minimized. That is, losses from the one sector are nearly balanced by gains in the other, in terms of national economic welfare. The transfer will have a definite positive impact for the Alaska coastal communities that will benefit from an increase in commercial fishing and processing revenues. NOAA recognizes that a fairly substantial share of the inshore processing capacity is identified with Japanese interests. By the same token, there is a considerable foreign financial interest in the offshore operations. Moreover, the catcher vessels that serve the onshore processing plants are identified as nearly 100 percent U.S. enterprises. In any case, the foreign ownership element in both sectors does not violate U.S. law. In fact, under the U.S. "fish and chips" policy that played an important role in the development of Alaska fisheries for domestic production, foreign companies that transferred (pollock) processing technology and invested in U.S. fish processing companies were awarded preferential allocations of the total allowable foreign catch off Alaska in the period in which foreign directed fishing was allowed. Some Japanese companies were especially cooperative under this policy and as a result these companies have maintained an ownership presence in the onshore Alaska processing sector.

Comment 36: Allocation should be based on harvesting rather than processing rights. Otherwise, "foreign leakage" is a problem. Rents, or benefits, from the fishery are much more likely to be captured by allocating to harvesters as opposed to processors.

Response: Revised Amendment 18 allocates pollock between vessels catching pollock for processing by the inshore component and vessels catching pollock for processing by the onshore component. "Foreign leakage" refers to the accrual of benefits to persons and firms outside of the United States. The RIR/FRFA indicates the difficulties of measuring foreign leakage due to imperfect knowledge of the level of investment foreign firms have in the BSAI pollock fishery. Foreign firms are known to have investments in vessels in the offshore component as well as in shorebased plants and vessels in the inshore component. NOAA has no verified information on which to

determine whether benefits to the United States would be significantly larger under alternative allocations.

Comment 37: Revised Amendment 18 does not correct the failings of Amendment 18 identified in the March 4, 1992, letter of disapproval from the Under Secretary. By refusing to measure the preferred alternative against others, the Council has admitted there is no new justification for approval of revised Amendment 18.

Response: The Under Secretary, in his March 4, 1992, letter to the Council, disapproved portions of Amendment 18 based on a lack of information that would justify the higher percentages being allocated to the inshore component. In particular, there was no documentation of positive social impacts that could balance the losses in net national benefits demonstrated in the cost-benefit analysis. The Under Secretary suggested the Council consider alternative justifications, such as countervailing benefits, modifying the allocation percentages to minimize economic loss, and/or melding a subsequent allocation proposal with a moratorium on entry into the fishery, prior to a resubmission of Amendment 18. He stated that a supplemental analysis would be necessary before further consideration could take place. During the April 1992 meeting, the Council chose to consider a modification of the allocation percentages. And, although a separate action, the Council has prepared a plan amendment to place a moratorium on the entry of new vessels into the fishery, beginning in 1993.

On September 3, 1992, the Council, in cooperation with NMFS staff, completed a supplementary analysis of the allocation alternatives. The analysis concluded that the preferred alternative would result in net national economic losses but would generate compensating economic benefits and development for the Alaska coastal communities in the BSAI. On this basis, a 35/65 percent allocation from 1993 through 1995 appeared warranted. By the same token, there was not sufficient justification for an allocation that would give the inshore component a share greater than 35 percent.

The Under Secretary urged the Council to work towards some other method of allocating fish that would rely more on free market decisions and less on government intervention. The allocations, as approved, will provide protection from preemption of the inshore sector by the offshore sector while the Council works towards a more market-based allocation system. The Council has since submitted proposed amendments for individual fishing quotas (IFQ) for sablefish and Pacific halibut.

Comment 38: As stated in the March 4, 1992, letter from the Under Secretary to the Council, safeguarding capital investments is a desirable objective under the Magnuson Act. The Council has totally disregarded this obligation under the Magunson Act.

Response: NOAA disagrees. The Council must consider not only the interests of the offshore component, but also the interests of the inshore component. The Council has an obligation to both components when recommending appropriate management measures for the Alaska groundfish fishery. In view of the possibility of preemption, an allocation of the pollock TAC in the BSAI guarantees both the offshore and inshore sectors access to the fishery.

Comment 39: Maintaining the status quo would accomplish the goals identified in the March 4, 1992, letter from the Under Secretary. During the non-roe or "B" season, the shoreside sector operated for 77 days, while the offshore operated only 58. Prior to allocations, both sectors operated an equal number of days. If the allocations are approved and increased in 1994 and 1995, the offshore sector will be further decreased, especially taking into account losses to be incurred during the roe or "A" season.

Response: A comparison of the number of fishing days for the offshore versus inshore components is not an appropriate parallel. The offshore component is capable of harvesting a larger amount of fish in a shorter period of time than the inshore component. Maintaining the status quo could lead to the problem of preemption Amendment 18 was intended to prevent.

Although the supplemental analysis for this amendment projects future losses for the offshore fleet and gains for the inshore sector, the 35/65 percent allocation coupled with approval of the CVOA is justified based on the resulting stability and prevention of potential preemption on behalf of the inshore sector, and the likelihood of benefits that would accrue to Alaska coastal communities.

Comment 40: The Council has done little to "work as expeditiously as possible toward some other method of allocating fish than either the olympic system or direct government intervention" (i.e., IFQs) as urged in the March 4, 1992, letter from the Under Secretary.

Response: NOAA urged the Council to work toward a more efficient method of allocating fishing privileges than direct government intervention when Amendment 23 and part of Amendment 18 were approved. NOAA is aware that the Council currently is working on a moratorium on the entry of new vessels into the fisheries, to be followed by a permanent solution to excess fishing capacity. Any incentive to over-invest in the inshore catching and processing sector will be tempered by the planned expiration of the approved allocations, and the possibility of limited access measures in the near future. In addition, a proposed rule for IFQ for sablefish and Pacific halibut, submitted October 27, 1992, was published in the **Federal Register** December 3, 1992 (57 FR 57130).

Comment 41: Amendment 18 does not live up to the fundamental principle of the Magnuson Act to use "wise management of the fisheries as the best economic safeguard for those who derive their living from these resources."

Response: The allocations approved in revised Amendment 18 are intended to be a temporary, interim management measure to prevent the potential problem of preemption in the Alaska groundfish fishery. The allocations will provide a certain amount of protection to the inshore component, which depends on the fishery for its livelihood. NOAA has urged the Council to continue working toward more efficient management measures, such as limited entry and individual transferable quotas. In the meantime, NMFS, together with the Council, will provide necessary management measures to protect the resources as well as the temporary allocations to protect the resource-users, inshore and offshore.

Comment 42: A statement that a broad consensus of the industry supported the Council's action is untrue.

Response: NOAA concurs. The allocation recommendations of the Council under Amendments 18/23 and revised Amendment 18 appear to be highly controversial and divisive within the fishing industry.

Comment 43: Revised Amendment 18 is politically biased and conflicts of interest exist in the Council. Such issues will continue to invite costly litigation.

Response: A similar comment was raised during the review of Amendment 18/23. The Magnuson Act requires each voting member of a Regional Fishery Management Council and the executive director of each Council to disclose any financial interest in any harvesting, processing, or marketing activity that is being or will be undertaken within any fishery over which the Council concerned has authority. Financial

interests that must be disclosed include those held by the individual, his or her spouse, minor child, or partner; and any organization (other than the Council) in which the individual is serving as an officer, director, trustee, partner or employee. If the individual complies with the requirement to file a financial disclosure statement, he or she is exempt from criminal liability under section 208 of Title 18 of the United States Code.

In developing the Magnuson Act, Congress recognized the need to have members of the fishing community on the Council to share their fisheries knowledge and experience. Congress understood that by requiring nominees with this type of background, some members may be voting on issues that would directly affect their fishing operations, positively or negatively. Regardless of the effect, Council members are not required to recuse themselves from voting or debating on a decision unless the matter is primarily of individual concern.

Comment 44: The Council has not adequately addressed the merits for choosing the preferred alternative versus other possibilities, in particular, alternative 6, which would have allowed the catcher vessels to decide to whom they would sell. In addition, it is the catcher vessel sector that has been preempted, not the inshore sector. The Council has not explained how the preferred alternative will address this problem of preemption in the fishery.

Response: The preemption of catcher vessels may be a problem, but it was not the problem addressed by the Council. The Council may address this problem in the future if it chooses. Alternative 6 was not recommended to the Secretary in Amendments 18/23 or in revised Amendment 18, because allocations of pollock under that alternative did not provide sufficient assurance that the desired amounts of pollock would be available to vessels that deliver to shoreside processing plants, thereby preventing preemption. Approval of the 35/65 percent allocation is justified and accomplishes the stated objective. See response to comment 17.

Comment 45: The Department of Commerce does not have the legal authority to allocate processing rights, only harvesting rights, and should have chosen Alternative 6 as its preferred option.

Response: Revised Amendment 18 allocates pollock between vessels catching pollock for processing by the inshore component and vessels catching pollock for processing by the offshore component. In *American Factory Trawler Association* v. *Knauss*, No. C92–870R (W.D. Wash.), the court found that the allocations under Amendments 18/23 were consistent with the Magnuson Act.

Comment 46: The indirect and induced effects of direct income is greater for Alaskan coastal communities of the inshore sector than for the offshore sector.

Response: The results referred to in this comment were derived by using numbers from different impact studies and are not comparable with the results in the Councils' Input-Output study. In general, indirect and induced effects will be larger (have higher multipliers) for larger communities, because more of the initial income change will be captured and re-spent within the presence of support industries and other services. For smaller communities, more income will "leak" to other areas, and the indirect and induced impacts will contribute to those other areas.

Comment 47: Neither sector has to pay for the right to harvest raw fish, which are a public resource. Taxes are one way the public receives benefit from the fish. Because the offshore fleet pays minimal taxes as opposed to the inshore fleet, a transfer of resources to the inshore fleet gives the public more compensation from the use of the resource.

Response: Taxes are one vehicle used to convey or capture compensation to the true owners of the resource. However, the current tax structure only benefits a subset of owners, those in Alaska. See also response to comment 22. If this allocation necessitates growth in governmental services, then the increase in tax revenue may not be sufficient to offset the extra costs.

Comment 48: It is inappropriate to cite and use the total amount of fish tax, rather than the tax for pollock deliveries, while considering the benefits of inshore production for the State of Alaska.

Response: NOAA concurs that when calculating the benefits of processing more pollock on shore, only pollock deliveries should be considered.

Comment 49: The analysis of the benefits of the proposed increase in fish to the inshore sector does not incorporate the private costs required for increased processing capacity or the accompanying additional social infrastructure.

Response: The quantitative results in the supplemental analysis are a projection over the relatively short time period for Amendment 18 (through 1995). The inshore sector will not need to increase processing capacity beyond recent additions. In addition, the social impact data do not anticipate significant changes in structure over the same time period. The supplemental analysis reflects recently increased capacity and capital investment. Given the current inshore season length, further capacity would not likely be needed to harvest the approved allocations of 35 percent for the inshore component. Whether the amendment encourages (or discourages) further investment is unknown. We note, however, that capacity growth is a common feature of an open-access fishery.

Comment 50: The supplemental cost-benefit analysis is overly simplified and relies on faulty information. Inadequate data were used to project market prices (based on only 1 year) and to construct supply functions. The analysis does not incorporate recent changes in the size and number of operations in both sectors. A bioeconomic model should have been constructed instead.

Response: The supplemental cost-benefit analysis relied on the latest information available at the time and followed standard cost-benefit methodology. Time constraints ruled out an attempt to construct a more rigorous and elaborate model upon which to base the analysis, which in any case likely would have had data requirements that were not possible to meet under any circumstances. A prior effort by Council staff to model the pollock fishery was abandoned as a result, at least in part, of data constraints. The methodology used in the supplemental analysis was scrutinized by the Council's Scientific and Statistical Committee, expert representatives from the offshore and inshore sectors and economists from the academic community. There was general agreement the basic methodology was appropriate and sound, although there were disagreements about data inputs, particularly with regard to product recovery rates and discards. The analysts recognized that the model assumes no structural changes that could alter the outcome over time, but given the relatively short time frame for the analysis—three years—this shortcoming was judged as marginal. Variations and uncertainties in the data sets were addressed through the application of Monte Carlo simulations (risk analysis), which is a standard statistical technique. It is also of note that biologists were unable to predict any biological feedback or impact from this rule. TACs are set separately. If the harvest remains within the established TAC, the health of the fish stock is not likely to be affected by who harvests and processes it.

Comment 51: The supplementary analysis demonstrates a potential loss to the nation of $34–60 million. This is based on an erroneous analysis that, if corrected, would show a positive net benefit of $88 million.

Response: The estimate of net benefits of $88 million is based on a set of parameters and an analysis that was presented to the Council by certain processors, but was not reviewed by the Council/NMFS analytical team that prepared the supplemental cost-benefit analysis for the revised amendment. NMFS staff subsequently reviewed the processors' analysis and discovered computational and methodological flaws that raised serious questions about the results and conclusions. In any event, reruns of the NMFS cost-benefit analysis that incorporated the latest data failed to produce results that in any way resembled those produced in the processors' analysis. The NMFS model reruns consistently showed that the outcome of the allocation alternatives was a loss in net national economic benefits. See response to comment 50.

Comment 52: The revised Amendment 18 cost-benefit analysis shows a net gain in producer surplus as a result of approving this measure.

Response: The positive cost-benefit finding, as reported in section 8 of the September 3, 1992, supplementary analysis, was based on unverified data assumptions that did not agree with information that appears in other parts of the supplementary analysis. Also, the estimates in section 8 represent total benefits to all U.S. and non-U.S. owners of capital in the pollock industry and do not take into account the leakage of benefits to foreign interests. Studies have shown that foreign ownership of processing capacity in Alaska was in the 75–80 percent range, while foreign ownership for the offshore sector was in the 20–25 percent range. Additionally, the section 8 table does not include any of the lost surplus attributable to the labor sector.

Comment 53: The cost-benefit analysis should incorporate more than just the maximization of private profit. Other considerations, such as physical waste, marine pollution, and loss of food production, must be incorporated.

Response: The cost-benefit study addresses more than profit. Study results report the estimated changes in producer benefits that are identified as "producer surplus," which is the residual after variable costs (considered social costs) are deducted from revenues. This surplus cannot be strictly identified as corporate profits because of different ways some cost items are treated.

Comment 54: The supplementary analysis for revised Amendment 18 admitted the computation of fish meal production was understated, yet did not correct the error in the computation of producer surplus.

Response: In the numeric analysis, fish meal is treated as an ancillary product and the recovery rate of 1.0 is used. Treating roe and meal as additional rather than primary products means that quantities of those products in the model will depend solely on the amount of raw fish processed by each sector. This may not match actual observed product levels. In any event, the impact of fish meal production on the estimated changes in producer surplus is marginal.

Comment 55: The supplementary analysis states the cost for factory trawlers to harvest and process pollock into surimi is $0.10 per pound. This assumption does not take into account the cost of fuel, depreciation, equipment repair, and other services.

Response: The analysis relied upon the best available information at the time, which included records of offshore trawler operations from which cost estimates were made. Uncertainties with regard to the cost were addressed in the risk analysis.

Comment 56: The supplementary analysis treats wages differently for inshore and offshore workers. Wages to the offshore sector are viewed as profits, while wages earned by the inshore sector are not counted as a gain to the workers.

Response: Compensation for at-sea workers is not treated as profit. A portion of the lost share-based income for at-sea workers is treated as lost producer surplus, while a portion of the gains to inshore share-based workers (fishing crew) is treated as gained producer surplus. It is therefore not accurate to state that labor costs between sectors is treated differently. All labor payments, no matter the source, are treated as costs for purposes of calculating the surplus attributable to vessel and plant owners. Surplus also accrues to share-based labor, as represented by payment in excess of opportunity costs. Crewmen in both sectors are paid on a share basis. Labor in processing plants inshore, however, is paid on a wage rate basis, which does not fluctuate with changes in plant revenue and is assumed to approximate the opportunity cost.

Comment 57: The supplementary analysis does not include taxes paid to the government as a benefit to society.

Response: NOAA concurs that taxes paid by foreign entities should be included as a national benefit in cost-benefit analysis and that this was omitted in the cost-benefit analysis. The information on the amount of taxes paid was not available to the analysts. The effect of including these taxes would have been a reduction in the magnitude of the net losses. Even if we had information including the taxes, the likely result would still have been significant national losses.

Comment 58: NMFS uses the wrong percentage of foreign ownership in both sectors to account for foreign leakage of benefits outside of the nation. It also ignores the benefit of taxes paid by foreigners to the U.S. government in its analysis.

Response: The analysts used the best published information available on foreign ownership. It is difficult to ascertain actual ownership within the corporate structure, and how much control that ownership or capital investment has within the market to reallocate profits. No recent work on foreign ownership had been done or could be completed within the available timeframe. Nonetheless, approval of the 35/65 percent allocation was based on benefits to the western Alaskan coastal communities.

Comment 59: The cost-benefit calculations ignored subsidy of shoreside plants during their initial operations in the early 1980s.

Response: The cost-benefit study focuses on 1992–1995, so any prior investments are considered sunk costs. Federal funds were available to both sectors through a variety of government programs such as the Saltonstall-Kennedy Grant Program and the Fisheries Obligation Guarantee Program.

Comment 60: Because the results of the economic analysis showed a net loss as resources were shifted away from the offshore sector, the Council should have evaluated an alternative that increased the allocation to the offshore fleet.

Response: The Council did not consider an increased allocation because it had other objectives beside increasing the flow of national net benefits (i.e., protection from preemption for the inshore component and the accompanying stability of the fishery).

Comment 61: The models and analyses used for the cost-benefit study may be sufficient for gauging short run industry producer surplus from a given pollock TAC, but are not sufficient for constructing actual supply and demand equations.

Response: NOAA assumes this is a short-term measure and the TAC is relatively fixed. Since it is not necessary to estimate functions, this type of study is appropriate. Also, the data were not

sufficient to construct the market curves.

Comment 62: The cost data for inshore processors are not based on any formal survey and do not allow one to attribute cost by product form. This and other deficiencies make it difficult to generate any statistical measures of their accuracy and make the results of the cost-benefit study questionable.

Response: NOAA concurs. New data are constantly needed and NOAA recognizes the dynamic changes occurring in this fishery. The risk analysis performed as a part of the cost-benefit analysis is a modest attempt to capture some of the uncertainties. See response to comment 2.

Comment 63: Variable costs should have been attributed among products based on price as opposed to volume.

Response: Non-labor costs for the offshore sector were based on an analysis of vessel records that provided a breakdown of production volume, by product, and overall cost figures. Individual product costs were estimated through a regression analysis of costs as a function of volume, which, given the available data, was judged to be the most reliable means to estimate the costs. The underlying assumption is that the cost per unit of time spent is equivalent across product types. NMFS received no information indicating, for instance, that the labor costs per unit of time were different across species. Volume of fish handled would seem to be a more accurate representation of time spent than the value associated with the output products. If the value argument were used, the cost of producing surimi and roe during the "A" season would be substantially higher than producing surimi alone, and this does not seem reasonable.

Comment 64: Section 8 of the supplementary analysis is unfair and biased. It includes a cost-benefit analysis done by the Council after-the-fact to justify approval of the allocation. The analysis ignores extensive testimony of some parts of the industry and the Council's Scientific and Statistical Committee and relies solely on shoreside interests to produce model parameters. The predicted result of this "testimony" scenario does not resemble the actual fishery performance for the year modeled (1991). The NMFS team of economists refused to be identified as preparers of this section.

Response: This section should be viewed as a Council document reflecting the differing parameters the Council decided were important. NMFS staff did not contribute to the section 8 analysis.

Comment 65: Section 8 fails to account for the effect the cumulative costs would have on the offshore component of revised Amendment 18. It ignores the costs already imposed on the offshore fleet under Amendment 23 in the GOA.

Response: The revised analysis looks at the marginal costs, benefits, and impacts arising from the proposed new allocations. It is not appropriate to incorporate the results from any other previous management action.

Comment 66: The analysis did not take into account that the mobile offshore fleet has many more options for alternative activities than the smaller shorebased ones.

Response: Time was insufficient to assess the true opportunity cost to the at-sea sector (i.e., opportunities for shifting effort to other fisheries, mainly in Russian waters). The price currently being paid for the opportunity to fish elsewhere by some members of the at-sea fleet does not, by itself, supply enough information to assess accurately the profitability of those operations or the value of fishing in the EEZ as there are differences in risk, management regimes, etc.

Comment 67: Creation of the CVOA during the "B" season gives the inshore fleet the choice of unlimited access outside of that area but exclusive access within.

Response: The CVOA was established to address the dependence of the inshore component on pollock resources in nearby waters and to provide needed protection for the inshore component within this area. During the August 4–5, 1992, meeting, the Council considered comments from its advisory bodies and the public and recommended that offshore vessels that process only (i.e., motherships) be allowed to operate in the CVOA during both the "A" and the "B" season. This would allow catcher vessels that deliver to these offshore motherships to operate in the CVOA. Outside the CVOA, the inshore component's access is not unlimited because the catcher vessels delivering to it may not exceed their percentage of the allocation.

Comment 68: Approval of the CVOA cannot be justified now that the Bogoslof area is closed, the offshore component is being preempted from its most productive and valuable fishing area by the same interests that would profit from the CVOA, and the inshore component will have a guaranteed quota.

Response: See response to comment 67. NOAA also recognizes the importance of the Bogoslof subarea as a fishing ground; however, continued protection of the Aleutian basin pollock stock is necessary.

Comment 69: Approval of the CVOA would result in safety risks to the offshore sector, higher discards and lower recovery rates due to smaller fish, higher operational costs, gear conflicts, and ground preemption problems with crab and longline fishermen. In addition, the offshore pollock fleet would be preempted from entering the salmon processing industry. Analysis of the CVOA does not incorporate any increase in the operating costs due to harvesting and processing of smaller size fish by those vessels displaced outside of the zone or the cost of increased gear conflict with fixed gear fisheries.

Response: See response to comments 67 and 68. NOAA agrees that fishing patterns would be affected by implementation of the CVOA in the BSAI area. This action establishes the CVOA only for the "B" or non-roe season. Access to the CVOA will be unrestricted during the "A" or roe season. In addition, revised Amendment 18 was changed from the original Amendment 18 to allow access to the CVOA for motherships that only process fish. Restrictions in the CVOA apply only to pollock and will not affect entry in the salmon processing industry.

Historical catch data indicate that large amounts of pollock are likely to be available north and west of the CVOA during the "B" season of which the offshore component could take advantage. The Council retained the CVOA during the "B" season because catcher vessels that deliver their pollock catch to shore-based processing plants in the Aleutian Islands have a limited range compared with catcher/processor vessels that can harvest pollock resources north and west of the CVOA. In addition, public testimony indicated the possibility of overcrowding and grounds preemption within the CVOA by the catcher/processor fleet. Approval of the CVOA during the "B" season will provide needed protection to the inshore sector. Access to the CVOA is unrestricted during the "A" season, which will allow offshore vessels to operate. In addition, allowing motherships to operate in the CVOA will prevent undue hardship on the smaller catcher vessels in the CVOA and allow delivery there to the offshore component.

Comment 70: In the past, NMFS and the Council rejected similar CVOA proposals that would have applied to foreign fishermen and joint venture fishing operations. The reasons for disapproving such areas in the past apply to the CVOA as now proposed.

Response: The Council proposed a fishery development zone (FDZ) in Amendment 6 to the BSAI groundfish FMP. The FDZ was intended to exclude foreign fishing vessels and be reserved for the use of U.S. fishing vessels only. This amendment proposal was disapproved by the Secretary on December 8, 1983. Even though the concept was supported, the Secretary determined during the preliminary evaluation that the amendment was not consistent with the national standards and was not sufficient in scope and substance to warrant review. The Council was informed of the reasons for disapproval and provided with information on rectifying the deficiencies. The proposal was not resubmitted. In Amendment 9, the Council proposed closure of areas west of 170° W. longitude, within 20 nautical miles of the Aleutian Islands, to foreign trawling. The Council proposed this measure to reduce the foreign bycatch of fully utilized species such as rockfish. The Secretary disapproved this part of the amendment because the proposed area closure was not the most effective way to resolve the bycatch problem. Hence, the reasons for Secretarial disapproval of the previous exclusive area proposals are not relevant to the CVOA proposed as part of revised Amendment 18. In this instance, the CVOA is necessary to assure that catcher vessels that deliver "B" season pollock primarily to the inshore component will have a reasonable opportunity to harvest the pollock allocation without preemption by the offshore component that is capable of harvesting its "B" season allocation in other areas.

Comment 71: The CDQ is needed to help local communities offset the high capital costs of entering the BSAI groundfish fisheries.

Response: NOAA concurs. The CDQ program was established to help develop commercial fisheries in eligible western Alaska communities on the Bering Sea coast that otherwise may not have been able to enter the fishery. The Under Secretary approved the CDQ in concept through December 31, 1995, as a part of the final rule for Amendments 18/23. This decision has not been changed. Proposed regulations to implement the CDQ for the years 1994 and 1995 are the subject of a separate rulemaking; a final rule for the years 1992 and 1993 has been issued.

Comment 72: The CDQ part of the proposed action is not consistent with the problem statement (preemption) and no cost-benefit analysis was done for this portion of the allocation.

Response: See response to comment 71. Analysis of the CDQ program was considered during the review period for Amendments 18/23 and was approved, in concept. The CDQ is being implemented under separate rulemaking.

Comment 73: The allocations would be prejudicial to some CDQ participants because those at-sea processors that are neither catcher vessels nor motherships would be precluded from entering the CVOA. On the other hand, catcher vessels and motherships would be allowed to operate in the CVOA, reducing costs of transportation. The overall effect would be to drive up the expenses of the at-sea segment. The CVOA is unnecessary if the comprehensive rationalization of the fishery occurs and the CVOA discourages some potential participants in the CDQ program.

Response: The final rule issuing regulations to implement the CDQ states that "a vessel included in the offshore component may harvest its CDQ allocation in the CVOA when directed fishing is closed for the offshore component" (57 FR 54936, November 23, 1992). The CVOA is necessary to provide protection for the inshore component and should not affect participation in the CDQ program.

Comment 74: If the CVOA is approved, the non-roe or "B" season should be redefined so that it lasts only 5 weeks (or whatever period would affect the at-sea component). In addition, if individual fishing quotas (IFQ) come about, the CVOA would be unnecessary.

Response: Directed fishing for the second seasonal allowance of pollock, commonly known as the non-roe or "B" season, may occur at any time during the period June 1 through December 31 under § 675.20(a)(2)(ii). Although the "B" season is specified for this period, directed fishing by, or for delivery to, either the inshore or offshore component is expected to occur during a much reduced time period within this season. After closure of the offshore component's directed pollock fishery, the existence of the CVOA becomes moot, unless it is reopened later in the fishing year due to a reapportionment of reserve to the pollock TAC.

The applicability of the CVOA will have to be evaluated by the Council and the Secretary under an IFQ program for the pollock fishery.

Comment 75: The amended language in the prohibition sections of 50 CFR 672.7 and 675.7 to ensure that mobile processors declaring themselves to be part of the inshore component remain at a fixed point throughout the year may be incomplete. The portion of the sections which state, "when that vessel engages in a directed fishery for Pacific cod in the GOA or pollock for the first time in a fishing year" may lead to an interpretation that a vessel may have two fixed locations, one for Pacific cod and one for pollock. It might be useful to provide further clarification of this sentence.

Response: Harvesting and processing can be independent operations that may occur in different areas. With regard to harvesting, the single location criterion under the "inshore component" definition applies to "* * * pollock, harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the GOA * * *" (§§ 672.2 and 675.2). Without reference to a specific management area, this definition applies to any pollock harvested anywhere. For Pacific cod, it applies only to Pacific cod harvested in the GOA. For example, Pacific cod harvested in a directed fishery for this species in the GOA would be affected by the inshore-offshore allocation rules even if the fish were actually processed in the BSAI area. With regard to processing, the definition explains that a "single geographic location" means the location at which a processor vessel first engages in a directed fishery for Pacific cod in the GOA or pollock (harvested anywhere) during a fishing year. For example, if a processor vessel reported a single location adjacent to the BSAI to process pollock harvested in a directed fishery for pollock in that area and then moved to a different location adjacent to the GOA to process either pollock or Pacific cod harvested in directed fisheries for those species in that area, then the GOA location would be considered the second location. This would be a violation of the "inshore component" definition. This interpretation was explained in the preamble of the proposed and final rules for Amendments 18/23 published in the **Federal Register** (56 FR 66009; December 20, 1991, and 57 FR 23321; June 3, 1992, respectively).

Comment 76: The Department of Commerce's Inspector General and the antitrust division of the Department of Justice objected to flaws in the analysis of the rule..

Response: Comments on Amendments 18/23 presented this same argument and the agency responded to these comments in the final rule for Amendments 18/23 (see page 23330 of 57 FR 23321, June 3, 1992).

Comment 77: Revised Amendment 18 is in violation of the Appointments Clause of the U.S. Constitution. The

majority of the voting members of the Council are selected by the Governor of Alaska and biased Amendment 18 to promote social interests rather than legitimate conservation and management goals.

Response: Although Councils recommend FMPs or FMP amendments, it is the Secretary that decides whether to approve or disapprove a Council's proposal and only the Secretary has the authority to implement an approved FMP or FMP amendment. The delegation of power from the Congress to the Secretary is within the authority of the Appointments Clause. Therefore, the Secretary's approval of this allocation does not violate the Appointments Clause of the U.S. Constitution.

Classification

NOAA determined that revised Amendment 18 to the BSAI groundfish FMP, as approved, is necessary for the conservation and management of the groundfish fishery in this area. This final rule implementing revised Amendment 18 is published under section 305(a)(2) of the Magnuson Act, which requires the Secretary to publish regulations that are necessary to carry out a plan or plan amendment. The Under Secretary has determined that revised Amendment 18 as approved is consistent with the Magnuson Act and other applicable law.

NMFS finalized a supplemental environmental impact statement (FSEIS) for Amendments 18 and 23, which was reviewed under the requirements of the National Environmental Policy Act. A notice of availability of the FSEIS was published on March 20, 1992 (57 FR 9722). A copy of the FSEIS may be requested from the Council (see **ADDRESSES**). Since the impacts of revised Amendment 18 are within the scope of the FSEIS, this rule is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216–6.

NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/FRFA prepared by the Council. A copy of the RIR/FRFA may be requested from the Council (see **ADDRESSES**).

The FRFA prepared by the Council describes the effects that revised Amendment 18 is expected to have on small entities. Based on this analysis, NOAA concluded that this rule implementing revised Amendment 18 will have a significant impact on a substantial number of small entities. A summary of this determination is contained in the proposed rule notice (57 FR 46133, October 7, 1992).

The existing collection-of-information requirement for check-in/check-out notices has been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA) (control number 0648–0213). This final rule does not contain a collection-of-information requirement for purposes of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible Alaska State agency under section 307 of the Coastal Zone Management Act. Consistency is automatically inferred because the appropriate State agency did not reply within the statutory time period.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

A formal consultation on the original Amendment 18 under section 7 of the Endangered Species Act (ESA) was previously conducted by NMFS. The resulting biological opinion, dated March 4, 1992, concluded that the amendment was not likely to jeopardize the continued existence of any endangered or threatened species within the jurisdiction of NMFS. Since revised Amendment 18 is not expected to result in any effects to listed species that were not considered in the March 4 biological opinion, further consultation under section 7 is not required. NMFS will continue to evaluate the suitability of the existing management measures in the southeastern Bering Sea shelf to ensure adequate protection for Steller sea lions.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 18, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the existing definitions of "inshore component" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

* * * * *

3. In § 672.7, paragraph (h) (1) and (2) are revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) * * *

(1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 672.2 of this part, during any fishing year.

(2) Operate any vessel to process pollock harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

4. Section 672.20 is amended by removing paragraph (a)(2)(v)(C), and revising paragraphs (a)(2)(v) (A) and (B) to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) * * *

(v) * * *

(A) The DAP apportionment of pollock in all regulatory areas and for each quarterly reporting period described in paragraph (a)(2)(iv) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If the Regional Director determines that the inshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by the inshore component during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the offshore component.

(B) The DAP apportionment of Pacific cod in all regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching Pacific cod for processing by the inshore component and for vessels catching Pacific cod for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of Pacific cod allocated to vessels catching Pacific cod for processing by that component, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of Pacific cod to vessels catching Pacific cod for processing by the other component.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, the definitions of "inshore component" and "offshore component" are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

* * * * *

Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

* * * * *

7. In § 675.7, (i) is revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1995.* (1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 675.2 of this part, during any fishing year.

(2) Operate any vessel to process pollock harvested in a Federal reporting area of Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

8. In § 675.20, paragraph (a)(2)(iii) introductory text is revised to read as follows:

§ 675.20 General limitations

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1995.* The DAP apportionment of pollock in each subarea, and for each seasonal allowance defined in paragraph (a)(2)(ii) of this section, will be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by that component, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the other component.

* * * * *

9. In § 675.22, paragraph (g) is revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1995).* Processor vessels in the "offshore component," defined at § 675.2 of this part, may not catch pollock in excess of the directed fishing standard for pollock during the second seasonal allowance of pollock, defined in paragraph (a)(2)(ii) of this section, in the Bering Sea subarea south of 56°00′ N. latitude, and between 163°00′ and 168°00′ W. longitude. Processor vessels in the "offshore component" that do not catch groundfish but process pollock that is caught in a directed fishery for pollock by catcher vessels, may operate within this area to process the second seasonal allowance of pollock. Offshore processor vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within this area.

[FR Doc. 92–31210 Filed 12–18–92; 5:09 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

Standard Design Certification Rulemaking Procedures; Notice of Availability; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability: Correction.

SUMMARY: This document corrects a notice of availability appearing in the **Federal Register** on December 11, 1992 (57 FR 58730), that announces the availability of a paper, SECY 92–381 (November 10, 1992), providing final recommendations on design certification rulemaking procedures. The heading of the notice should be corrected to read 10 CFR Part 52, rather than 10 CFR Part 54.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504–1639.

Dated at Rockville, MD this 18th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–31248 Filed 12–23–92; 8:45 am]
BILLING CODE 7590–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1503

Privacy Act Procedures

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Privacy Act procedures of the Thrift Depositor Protection Oversight Board to permit it to use a specific exemption for certain investigatory material, as authorized by the Privacy Act. The action is necessary to protect the identity of sources of investigatory information compiled solely for determining suitability for Federal employment. The objective of the amendment is to protect the identity of sources who have furnished information to the Government under an express promise of confidentiality.

DATES: Comments must be received on or before January 25, 1993.

ADDRESSES: Comments may be mailed to the Office of General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

FOR FURTHER INFORMATION CONTACT: Lawrance Hayes, telephone (202) 786–9681.

SUPPLEMENTARY INFORMATION:

Privacy Act Rule

Elsewhere in this issue of the **Federal Register** the Thrift Depositor Oversight Board ("Board") is publishing a final rule establishing procedures to implement the Privacy Act of 1974, 5 U.S.C. 552a. The final rule does not include specific exemptions that, as authorized by 5 U.S.C. 552a(k)(5), may be promulgated in accordance with requirements of 5 U.S.C. 553.

Proposed Amendment

The Board receives and compiles investigatory information for the purpose of determining the suitability, eligibility, or qualifications for Federal employment of persons who may serve as special government employees on advisory boards established under section 21A(d) of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1441a(d), to advise the Board and the Resolution Trust Corporation on the disposition of real property assets of institutions under the jurisdiction of the Corporation. The Board does not directly obtain confidential investigatory information from third parties through the use of written report forms, questionnaires, or similar methods, but it receives such information from or through other agencies of the United States Government; and it is necessary to protect the identity of sources who would provide information to the Government only under express promises that their identities would be held in confidence.

Accordingly, the Board has determined to propose an amendment to its Privacy Act regulations that would add a new § 1503.13 to 12 CFR part 1503. As authorized by 5 U.S.C. 552a(k)(5), the new section would exempt a system of records within the Board from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f) of section 552a that is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal employment, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. As required by 5 U.S.C. 552a(k), the Board is publishing general notice of this proposed rulemaking in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3).

Executive Order 12991

The proposed amendment is not a major rule for the purposes of Executive Order 12291.

Regulatory Flexibility Act

The proposed amendment would concern information concerning Federal employment, and the Board certifies that the rule will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The proposed amendment would not require any collection of information.

List of Subjects in 12 CFR Part 1503

Privacy.

For the reasons set forth in the preamble, 12 CFR part 1503 is proposed to be amended as follows:

PART 1503—PRIVACY ACT PROCEDURES

1. The authority citation for Part 1503 continues to read as follows:

Authority: 5 U.S.C. 552a; 12 U.S.C. 1441a(a) (2) and (13).

2. Section 1503.13 is added to read as follows:

§ 1503.13 Exemption of system of records for Privacy Act provisions.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G) and (H), and (f) and from the sections of this part that implement such subsections of 5 U.S.C. 552a: Advisory Board Member Files (OB–011).

(b) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5),

(c) The exemptions from particular subsections are justified for the following reasons:

(1) From subsections (c)(3), (d), (e)(4) (G) and (H), and (f), because access to records that are subject to exemption pursuant to 5 U.S.C. 552a(k)(5) would cause the identity of a confidential source to be disclosed and impair the ability of the Board and of agencies providing such information to the Board to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment.

(2) From subsection (e)(1), which requires that the agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a statutory or executively ordered purpose, because such requirement would unduly restrict the Board in its information gathering. The relevance and necessity of particular information with respect to the evaluation of candidates for Federal civilian employment cannot be determined prior to evaluation.

Peter H. Monroe,

President.

[FR Doc. 92–31205 Filed 12–23–92; 8:45 am]

BILLING CODE 2222–01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ANM–25]

Proposed Alteration of Control Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the names of two VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) aids, and one VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) aid, within the airspace designations for certain control zones located in Oregon and Idaho. A navigational aid (NAVAID) with the same name as the airport should be located on the airport. This action proposes to reflect the name changes, where necessary, of the NAVAID's that are not located on the airport with which they are associated.

DATES: Comments must be received on or before February 10, 1993.

ADDRESSES: Send comments on the proposal to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 92–ANM–25, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM–535, Federal Aviation Administration, Docket No. 92–ANM–25, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify with the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ANM–25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NRPM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NRPM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the change of the names of four VORTAC's within the airspace designations for certain control zones located in Oregon and Idaho. FAA Handbook 7400.2C states that a NAVAID with the same name as the associated airport should be located on the airport; therefore, the names of the NAVAID's associated with that airport that are not located on the airport surface, or are not the primary NAVAID's located off the airport surface for that airport, are proposed to be changed accordingly. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in section 71.171 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zones listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

§71.171 Designation of Control Zones.

* * * * *

ANM OR CZ Medford, OR [Revised]

Medford-Jackson County Airport, OR
(lat. 42°22′20″N, long. 122°52′22″W)
Rogue Valley VORTAC (lat. 42°28′47″N. long. 122°54′47″W) Pumie Lom (lat. 42°27′03″N, long. 122°54′49″W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of the Medford-Jackson County Airport; and that airspace extending upward from the surface within 1.8 miles west and 2.7 miles east of the Medford ILS localizer north course extending from the 4.1-mile radius to 2.7 miles north of the Pumie LOM, and within 2.7 miles each side of the Rogue Valley VORTAC 352° radial extending from the Rogue Valley VORTAC to 6.4 miles north of the VORTAC, and within 4 miles each side of the VORTAC 164° radial extending from the 4.1-mile radius to 19.3 miles south of the Medford-Jackson County Airport.

* * * * *

ANM OR CZ Redmond, OR [Revised]

Redmond, Roberts Field, OR
(lat. 44°15′14″N, long 121°09′00″W)
Deschutes VORTAC (lat. 44°15′10″N, long. 121°18′13″W)

Within a 5.1-mile radius of Roberts Field, and within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius to .9 mile west of the VORTAC.

* * * * *

ANM ID CZ Lewiston, ID [Revised]

Lewiston-Nez Perce County Airport, ID
(lat. 46°22′28″N, long. 117°00′55″W)
Nez Perce VOR/DME (lat. 46°22′53″N, long. 116°52′10″W)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 4.1-mile radius of the Lewiston-Nez Perce County Airport; and that airspace extending upward from the surface within 2.7 miles each side of the Lewiston-Nez Perce ILS localizer course extending from the 4.1-mile radius to 14 miles east of the airport, and within 3.5 miles each side of the Nez Perce VOR/DME 266° radial extending from the 4.1-mile radius to 13.1 miles west of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter by continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on December 14, 1992.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 92–31241 Filed 12–23–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AWP–20]

Proposed Establishment of a Transition Area at Westover Field Amador Co; Jackson, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700 foot and above transition area at Westover Field Amador Co, Jackson, CA. This transition area would provide controlled airspace for aircraft executing a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) to the Westover Field Amador Co.

DATES: Comments must be received on or before February 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 92–AWP–20, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 6W14, 15000 Aviation Boulevard, Lawndale, CA.

An informal docket may be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWP–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot above the surface transition area at Westover Field

Amador Co, Jackson, CA. This transition area would provide controlled airspace from 700 feet above ground level and above for aircraft executing a newly established approach, the VOR/DME Runway 1, into Westover Field Amador Co, Jackson, CA. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in section 71.181 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1956–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

§71.181 Designation of Transition Areas.

* * * * *

AWP CA TA Jackson, CA [New]

Westover Field Amador Co, Jackson, CA
(lat. 38°22'44"N, long, 120°48'04"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Westover Field Amador Co, Jackson, CA.

* * * * *

Issued in Los Angeles, California, on December 15, 1992.

Charles B. Aalfs,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 92–31242 Filed 12–23–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–164–84]

RIN 1545–AG98

Allocations Reflecting Built-In Gain or Loss on Property Contributed to a Partnership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to allocations with respect to property contributed by a partner to a partnership under section 704 of the Internal Revenue Code. Changes to the applicable law were made by the Tax Reform Act of 1984 and the Revenue Reconciliation Act of 1989. The proposed regulations affect partnerships and their partners and are necessary to provide guidance needed to comply with the applicable tax law.

DATES: Written comments, requests to appear, and outlines to be presented at a public hearing scheduled for April 16, 1993, at 10 a.m. must be received by March 26, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–164–84], room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit, (202) 622–8452 (not a toll-free number); concerning the regulations, David Edquist at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document proposes to add new § 1.704–3 to the Income Tax Regulations (26 CFR part 1) under section 704(c)(1) of the Internal Revenue Code (Code) and to revise §§ 1.704–1(b)(1)(2)(vi), 1.704–1(b)(2)(iv), and 1.704–1(c) of the existing regulations.

Background

Contributions to and distributions from partnerships are generally tax free under sections 721 and 731 of the Code, respectively. Prior to its amendment by the Tax Reform Act of 1984 (1984 Act), section 704(c) provided that, in determining a partner's distributive share of partnership items, depreciation, depletion, or gain or loss with respect to property contributed by a partner was generally allocated among the partners in the same manner as if the property had been purchased by the partnership. However, the statute permitted a partnership, if the partnership agreement so provided, to make allocations with respect to contributed property so as to take into account the variation between the basis of the property to the partnership and its fair market value at the time of contribution.

The 1984 Act amended section 704(c) of the Code to require, rather than permit, that income, gain, loss, and deduction with respect to property contributed to the partnership by a partner be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. The statute grants broad regulatory authority to determine how these allocations should be made. This resulted from Congressional concern that the existing regulations under the formerly elective method did not provide sufficient flexibility and were overly burdensome for taxpayers in situations where there was little potential for abuse. See H.R. Rep. No. 861, 98th Cong., 2d Sess. 857 (1984); S. Prt. No. 169, Vol. I, 98th Cong., 2d Sess. 214–15 (1984).

The proposed regulations attempt to provide guidance that is consistent with the intent of Congress in enacting the amendments to section 704(c) and that is relatively simple for taxpayers to comply with and for the Internal Revenue Service to administer. The Treasury Department and the Internal Revenue Service encourage public

participation in the rulemaking process to achieve these goals.

Explanation of Provisions

In General

After review of the statute and legislative history, the Service and the Treasury Department have determined that when a partner contributes property to a partnership and the partner's basis in the property is not equal to the property's fair market value, the partner and the partnership should be able to use any reasonable method, consistently applied, of making allocations so that the contributing partner receives the tax burdens and benefits of any precontribution gain (built-in gain) and precontribution loss (built-in loss). The proposed regulations adopt this approach.

The proposed regulations specifically describe three reasonable methods of making allocations under section 704(c). These are (1) the traditional method, (2) the traditional method with curative allocations, and (3) the deferred sale method. Other reasonable allocation methods meeting the requirements of section 704(c) are also acceptable.

The proposed regulations allow a partnership to use different reasonable allocation methods with respect to different items of section 704(c) property. However, a partnership may not use more than one method with respect to the same item of section 704(c) property. The allocation method used for an item of section 704(c) property must be consistently applied to that item by both the partnership and the partners from year to year. In addition, the overall method or combination of methods must be reasonable under the facts and circumstances.

The proposed regulations provide a general anti-abuse rule that applies to all methods of making section 704(c) allocations, including the methods described in the regulations. Under the rule, an allocation method is not reasonable if the contribution of property and the allocation of tax items are made with a view to reducing substantially the partners' aggregate overall tax liability.

The proposed regulations also provide special rules and exceptions that apply regardless of the allocation method chosen by the partnership. These include a de minimis rule for small disparities, an aggregation rule for certain depreciable property, and a consistency rule for tiered partnerships.

The Traditional Method

The "traditional method" is the method of allocation described in § 1.704–1(c)(2) of the existing regulations, which reflect the formerly elective section 704(c). The proposed regulations restate the existing regulations in simpler terms. The traditional method requires the partnership, upon the disposition of contributed property, to allocate to the contributing partner the gain or loss attributable to the period prior to the contribution of the property. The partnership must also allocate any cost recovery deductions with respect to the contributed property to reduce the build-in gain or build-in loss. Generally, partnerships do this by determining the cost recovery deductions to which the partners are economically entitled based on the property's fair market value at the time of contribution, and then allocating first to non-contributing partners the cost recovery deduction for tax purposes up to the amount of their share of the economic (*i.e.*, book) deductions. The remaining tax deductions, if any, may be allocated to the contributing partner or shared among the partners.

The traditional method retains the "ceiling rule." The ceiling rule provides that the total amortization, depletion, depreciation, or gain or loss allocated to the partners cannot exceed the amount of the partnership's amortization, depletion, depreciation, or gain or loss. Thus, under the traditional method there may be insufficient partnership tax deductions to allow noncontributing partners to be allocated tax deductions equal to their share of book deductions. This consequence of the ceiling rule may prevent elimination of the entire effect of the disparity between the fair market value and adjusted basis in the partnership for the contributing partner and may create a disparity for the noncontributing partners. The proposed regulations retain the traditional method despite this potential for distortions; however, the general anti-abuse rule may apply to limit the use of the traditional method.

The proposed regulations maintain Example (2) in existing § 1.704–1(c)(2) in its present form, although the Joint Committee on Taxation's General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 suggests that this example should be amended. See General Explanation at 213, n.4. The intent of the suggestion is that the regulations permit tax allocations to correct the distortions caused by the ceiling rule upon a disposition of contributed property. Because that allocation would be permissible as a curative allocation under the proposed regulations, modification of the example is not necessary.

The proposed regulations also provide that under the traditional method, if a partnership disposes of section 704(c) property in a transaction in which gain or loss is not recognized, any substituted basis property is treated as section 704(c) property with the same amount of built-in gain or built-in loss as the section 704(c) property disposed of by the partnership.

The Traditional Method with Curative Allocations

The proposed regulations provide that partnerships may modify the traditional method by using reasonable curative allocations to overcome the distortions caused by the ceiling rule. In general, curative allocations are allocations of other partnership tax items of income, gain, loss, or deduction that "cure" disparities caused by the ceiling rule. Thus, the purpose of curative allocations is to equalize the overall allocations of economic and tax items to noncontributing partners. Because curative allocations involve only tax items, they will differ from economic allocations of the same items.

Under the proposed regulations, a curative allocation is reasonable only if it conforms to certain limitations, including the general anti-abuse rule. A curative allocation is reasonable only up to the amount necessary to offset the effect of the ceiling rule and only if it is made using a tax item that would have the same effect on the partners as the tax item affected by the ceiling rule.

If a partnership does not have tax items sufficient to make a reasonable curative allocation, the partnership may make the curative allocation in the next taxable year that it has sufficient other items of the correct type, provided that the curative allocation, when made, is reasonable. The proposed regulations do not attempt to define specific methods of making curative allocations that are reasonable. The Internal Revenue Service and the Treasury Department welcome comments regarding whether practitioners believe that the regulations should provide more specific guidance.

The Deferred Sale Method

In General

The proposed regulations allow use of the deferred sale method. Under this method, a contribution of property to the partnership is treated as a sale of the property to the partnership at fair market value, except that the recognition of any gain or loss realized by the partner on the sale is deferred (deferred gain or loss). The partnership

is treated as having a tax basis in the property, at the time of contribution, equal to its fair market value. The partnership's tax basis consists of the adjusted basis in the hands of the contributing partner and an amount of additional basis treated as newly acquired property. Upon contribution, the contributing partner's basis in the partnership interest is increased by an amount equal to the partner's adjusted tax basis in the property. The contributing partner's basis in the partnership interest increases or decreases by the amount of deferred gain or loss recognized by the partner each year.

Type and Stacking Order

The character, source, and other attributes of any deferred gain or loss recognized are determined as if the deferred sale property had been sold to the partnership at the time of the contribution. If the contributing partner would have had both ordinary income and capital gain had the deferred sale property been sold to the partnership at the time of the contribution, the contributing partner must treat recognized deferred gain as ordinary income until an amount of deferred gain equal to the deferred ordinary income has been recognized.

Recognition of Deferred Gain or Loss

As a general rule, the deferred gain or loss is triggered when the partnership receives an advantage or detriment, for tax purposes, from the adjusted partnership basis generated or foregone by using the deferred sale method, or when the contributing partner's interest in the partnership is reduced. In particular, all or part of the contributing partner's deferred gain or loss is triggered by the following events:

(i) The partnership takes deductions for amortization, depletion, depreciation, or other cost recovery that differ from the deductions it would have been allowed had it taken a transferred basis in the contributed property under section 723;

(ii) The partnership disposes of the contributed asset (including by distribution to any partner other than the contributing partner);

(iii) The partnership makes a distribution to the contributing partner, and the amount of cash and the fair market value of property distributed exceeds the adjusted basis of the partner's interest in the partnership immediately before the distribution; and

(iv) The partner disposes of any portion of the partnership interest (other than by death).

Special Rules

The proposed regulations provide special rules for dispositions of deferred sale property in certain nonrecognition transactions. If a partnership disposes of deferred sale property in a nonrecognition transaction under sections 1031, 1033, 1071, or 1081, deferred gain or loss is generally not recognized, but the replacement property acquired by the partnership is treated as deferred sale property. If the contributing partner disposes of all or a portion of the interest in the partnership in a nonrecognition transaction (for example, a transaction under section 351 or 721), the partner does not recognize any remaining deferred gain or loss, unless and to the extent that gain or loss is recognized in that transaction. The transferee partner recognizes any remaining deferred gain or loss at the same time and in the same manner as the contributing partner would have recognized the remaining deferred gain or loss.

Section 704(b) Revaluations

The principles of the proposed regulations also apply to allocations that reflect differences between book value and adjusted tax basis created when a partnership chooses to revalue partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*) (reverse section 704(c) allocations). Partnerships are generally not required to use the same allocation method for reverse section 704(c) allocations as for section 704(c) property or to use the same allocation method each time the partnership revalues its property, so long as each method is reasonable under the facts and circumstances.

Special Rules and Exceptions

Small Disparities

The proposed regulations provide that a partnership may disregard the application of section 704(c) to a partner's contributions of property in a single year if (1) for each item of contributed property, the fair market value does not differ from the adjusted basis by more than 15 percent of the adjusted basis, and (2) the total disparity for all properties contributed by that partner in that year does not exceed $10,000. In determining the total disparity for all properties, built-in gains and losses are both treated as positive numbers and property to which the deferred sale method is applied is not included. Alternatively, in the case of a small disparity, a partnership may choose to allocate gain or loss under section 704(c) only upon the disposition of the property.

Aggregation of Property

In general, the proposed regulations provide that property may not be aggregated for purposes of making allocations under section 704(c). However, property (other than real property) that is included in the same general asset account and contributed by a partner in a single taxable year of the partnership may be treated as one item of property. In addition, the Service and the Treasury Department may provide in guidance published in the Internal Revenue Bulletin that other classes of items may be aggregated for purposes of section 704(c).

Tiered Partnerships

The proposed regulations provide that when a partnership contributes section 704(c) property (other than deferred sale property) to a lower-tier partnership, the upper-tier partnership must allocate its distributive share of lower-tier partnership items in a manner that takes into account the contributing partner's remaining built-in gain or loss.

Proposed Effective Date

These regulations are proposed to apply to property contributed to a partnership on or after the date the regulations are published in final form in the **Federal Register**.

Request for Comments

The Service invites public comment on the rules proposed in these regulations. In particular, the Service requests comments on: (1) Possible allocation methods for partnerships that invest in marketable securities or commodities, (2) what, if any, additional specific guidance should be provided on what constitutes a reasonable or unreasonable curative allocation, (3) other types of property for which aggregation should be permitted, (4) how dispositions of deferred sale property in a nonrecognition transaction should be treated, and (5) how the deferred sale method might apply to oil and gas properties.

Private Letter Ruling Requests

The Service will entertain private letter ruling requests on whether particular allocation methods under section 704(c) are or are not considered reasonable. In particular, the Service invites private letter ruling requests regarding allocation methods (for both contributed property and revalued property) from partnerships with multiple properties and multiple partners where the compliance burden is likely to outweigh any abuse potential.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on April 16, 1993, at 10 a.m. Written requests to speak and outlines of oral comments must be received by March 26, 1993. See notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David Edquist of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.701–1 through 1.709–2

Income Taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.704–3 also issued under 26 U.S.C. 704(c). * * *

Par. 2. Section 1.704–1 is amended by revising paragraphs (b)(1)(vi), (b)(2)(iv)(*d*)(*3*), and (c) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(vi) *Section 704(c) determinations.* Section 704(c) and § 1.704–3 generally require that if property is contributed by a partner to a partnership, the partners' distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to the property are determined so as to take account of the variation between the adjusted tax basis and fair market value of the property. Although section 704(b) does not directly determine the partners' distributive shares of tax items governed by section 704(c), the partners' distributive shares of tax items may be determined under section 704(c) and § 1.704–3 (depending on the allocation method chosen by the partnership under § 1.704–3) with reference to the partners' distributive shares of the corresponding book items, as determined under section 704(b) and this paragraph. (See paragraphs (b)(2)(iv)(*d*) and (b)(4)(i) of this section.) See § 1.704–3 for methods of making allocations under section 704(c). See also Example (13)(i) of paragraph (b)(5) of this section.

* * * * *

(2) * * *

(iv) * * *

(*d*) * * *

(*3*) *Section 704(c) considerations.* Section 704(c) and § 1.704–3 govern the determination of the partners' distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to property contributed to a partnership (see paragraph (b)(1)(vi) of this section). In cases where section 704(c) and § 1.704–3 apply to partnership property, the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless the partnership agreement requires that the partners' capital accounts be adjusted in accordance with paragraph (b)(2)(iv)(*g*) of this section for allocations to them of depreciation, depletion, amortization, or other cost recovery, and gain and loss, as computed for book purposes, with respect to such property. See Example (13)(i) of paragraph (b)(5) of this section. Capital accounts are not adjusted to reflect allocations of taxable income under section 704(c) and § 1.704–3 (*i.e.*, allocations of precontribution gain, curative allocations, or deferred gain or loss).

* * * * *

(c) *Contributed property; cross-reference.* See § 1.704–3 for methods of making allocations that take into account precontribution appreciation or diminution in value of property contributed by a partner to a partnership.

* * * * *

Par. 3. Section 1.704–3 is added to read as follows:

§ 1.704–3 Contributed property.

(a) *In general*—(1) *General principles.* Under section 704(c), a partnership must allocate income, gain, loss, and deduction with respect to partnership property contributed by a partner so as to take into account any variation between the adjusted basis of the property and its fair market value at the time of contribution. Notwithstanding any other provision of this regulation a partnership must make allocations under this section using a reasonable method that is consistent with the purposes of section 704(c). Except as provided by paragraph (e)(2) of this section, section 704(c) and this section apply on a property-by-property basis (*e.g.*, in determining whether or not there is a disparity between basis and value, the built-in gains and built-in losses on items of property contributed by a single partner cannot be aggregated). A partnership may use different methods with respect to different items of contributed property, provided that the partnership and the partners consistently apply a single reasonable method for each item of contributed property and that the overall method or combination of methods are reasonable based on the facts and circumstances. For example, it may be unreasonable to use one method for appreciated property and another method for depreciated property. Paragraphs (b), (c), and (d) of this section describe some reasonable allocation methods. Paragraph (e) of this section contains special rules and exceptions.

(2) *Definitions*—(i) *Section 704(c) property.* Property contributed to a partnership is section 704(c) property if at the time of contribution its book value differs from the contributing partner's adjusted tax basis. For purposes of this section, book value is determined as contemplated by § 1.704–1(b); therefore, book value is equal to fair market value at the time of contribution, and is subsequently adjusted for cost recovery and other economic events. For a partnership that maintains capital accounts in accordance with § 1.704–1(b)(2)(iv), the book value of property is its value used in determining the contributing partner's capital account under § 1.704–1(b)(2)(iv)(*d*), and as adjusted thereafter

(*e.g.*, for book cost recovery under § 1.704–1(b)(2)(iv)(*g*)(*3*)). A partnership that does not maintain capital accounts under § 1.704–1(b)(2)(iv) must comply with this § 1.704–3 using a book capital account based on the same principles (*i.e.*, a book account that reflects the fair market value of property at the time of contribution and is subsequently adjusted for cost recovery and other recognition events).

(ii) *Built-in gain and built-in loss.* The contributing partner's built-in gain on section 704(c) property is the excess of the property's book value over the partner's tax basis upon contribution. The contributing partner's built-in gain is thereafter reduced by any decrease in the difference between the property's book value and adjusted tax basis. The contributing partner's built-in loss on section 704(c) property is the excess of the partner's tax basis over the property's book value upon contribution. The contributing partner's built-in loss is thereafter reduced by any decrease in the difference between the property's adjusted tax basis and book value.

(3) *Other provisions of the Internal Revenue Code.* Except as provided in paragraph (a)(4) of this section, section 704(c) and this section apply only if there is a contribution of property to the partnership under section 721, taking into account other provisions of the Internal Revenue Code. For example, to the extent that a transfer of property to a partnership is a sale under section 707, the transfer is not a contribution of property to which section 704(c) applies.

(4) *Revaluations under section 704(b).* The principles of this section apply to allocations that reflect differences between book value and adjusted tax basis created when a partnership chooses to revalue partnership property pursuant to § 1.704-1(b)(2)(iv)(f) (reverse section 704(c) allocations). Partnerships are generally not required to use the same allocation method for reverse section 704(c) allocations as for section 704(c) property, even if at the time of revaluation the property is already subject to section 704(c) and paragraph (a)(1) of this section. In addition, partnerships are generally not required to use the same allocation method for reverse section 704(c) allocations each time the partnership revalues its property. A partnership that makes allocations with respect to revalued property must do so by using a reasonable method that is consistent with the purposes of section 704 (b) and (c).

(5) *Anti-abuse rule.* An allocation method is not reasonable if the contribution of property and the allocation of tax items are made with a view to reducing substantially the partners' aggregate overall tax liability without substantially affecting the amounts to which each partner is economically entitled on the partnership's books. If a partnership's allocation method is unreasonable, the Service may make adjustments as needed to result in a reasonable method. See Example 2 of paragraph (b)(3) of this section and Example 2 of paragraph (c)(4) of this section.

(b) *Traditional method*—(1) *In general.* This paragraph (b) describes the traditional method of making section 704(c) allocations. In general, the traditional method requires that when the partnership has gain, loss, income, or deduction attributable to built-in gain or built-in loss on contributed property, it must make appropriate allocations to the contributing partner. Specifically, when the partnership disposes of section 704(c) property in a transaction in which gain or loss is recognized, any built-in gain or built-in loss on the property is allocated to the contributing partner. If the partnership disposes of part of section 704(c) property in a transaction in which gain or loss is recognized, a proportionate part of any built-in gain or built-in loss is allocated to the contributing partner. For section 704(c) property subject to amortization, depletion, depreciation, or other cost recovery, the allocation of deductions for these items takes into account any built-in gain or built-in loss on the property. For example, tax allocations of cost recovery deductions with respect to 704(c) property to the noncontributing partners are generally required to equal book allocations to those partners. However, the total amortization, depletion, depreciation, other cost recovery, or gain or loss allocated to the partners with respect to a property cannot exceed the amount of the partnership's amortization, depletion, depreciation, other cost recovery, or gain or loss with respect to that property (the ceiling rule).

(2) *Disposition of property in nonrecognition transaction.* If a partnership disposes of section 704(c) property in a transaction in which gain or loss is not recognized, any substituted basis property (within the meaning of section 7701(a)(42)) is treated as section 704(c) property with the same amount of built-in gain or built-in loss as the section 704(c) property disposed of by the partnership. To the extent that gain or loss is recognized in part in a transaction, paragraph (b)(1) of this section applies.

(3) *Examples.* The following examples illustrate the principles of the traditional method

Example 1. Reasonable use of the traditional method—(i) *Calculation of built-in gain on contribution.* A and B form partnership AB and agree that each will receive a 50 percent share of all partnership items and that AB will make allocations under section 704(c) using the traditional method under paragraph (b) of this section. A contributes depreciable property with a tax basis of $4,000 and a book value of $10,000, and B contributes $10,000 cash. Under paragraph (a)(2) of this section, A has built-in gain of $6,000, the excess of the partnership's book value for the property ($10,000) over A's tax basis in the property at the time of contribution ($4,000).

(ii) *Allocation of tax depreciation.* The property is depreciated using the straight-line method over a 10-year useful life. By contributing $10,000 cash, B has, in effect, acquired an undivided one-half interest in the property, with a fair market value of $5,000. Because the property depreciates at an annual rate of 10 percent, B would have been entitled to a depreciation deduction of $500 per year for both book and tax purposes. However, the partnership is allowed a depreciation deduction of only $400 per year (10 percent of $4,000) for tax purposes. Under the ceiling rule of paragraph (b)(1) of this section, the partnership can only allocate $400 of tax depreciation, and it must be allocated entirely to B. In AB's first year, the proceeds generated by the equipment exactly equal AB's operating expenses. At the end of that year, AB has an adjusted book value for the property of $9,000 ($10,000 less the $1,000 book depreciation deduction), and an adjusted tax basis in the property of $3,600 ($4,000 less the $400 tax depreciation deduction). A's built-in gain with respect to the property decreases to $5,400 ($9,000 book value less $3,600 tax basis). Also, at the end of AB's first year, A has a $4,000 basis in A's partnership interest, and B has a $9,600 basis in B's partnership interest.

(iii) *Sale of the property.* If AB sells the property at the beginning of AB's second year for $9,000, AB realizes tax gain of $5,400 ($9,000, the amount realized, less the adjusted basis of $3,600). Under paragraph (b)(1) of this section, the entire $5,400 gain must be allocated to A because A has that much built-in gain. If AB sells the property at the beginning of AB's second year for $10,000, AB realizes tax gain of $6,400 ($10,000, the amount realized, less the adjusted basis of $3,600). Under paragraph (b)(1) of this section, only $5,400 of gain must be allocated to A to account for A's built-in gain. The remaining $1,000 of gain is allocated equally between A and B in accordance with the partnership agreement. If AB sells the property for less than the $9,000 book value, and AB realizes tax gain of less than $5,400, the entire gain must be allocated to A.

(iv) *Termination of partnership.* If AB sells the property at the beginning of AB's second year for $9,000, and A, B, and AB engage in no other transactions that year, A will report a gain of $5,400, and B will report no income

or loss. A's adjusted basis for A's interest in AB will then be $9,400 ($4,000, A's original basis, increased by the gain of $5,400). B's adjusted basis for B's interest in AB will be $9,600 ($10,000, B's original basis, less the $400 depreciation deduction in the first partnership year). If the partnership then terminates and distributes its assets ($19,000 in cash) to A and B pro rata to liquidate their interests, A will have a capital gain of $100 ($9,500, the amount received, less $9,400, the adjusted basis of A's interest). B will have a capital loss of $100 (the excess of B's adjusted basis, $9,600, over the amount received, $9,500).

Example 2. Unreasonable use of the traditional method—(i) *Facts.* C and D form partnership CD and agree that each will receive a 50 percent share of all partnership items and that CD will make allocations under section 704(c) using the traditional method under paragraph (b) of this section. C contributes equipment with a tax basis of $1,000 and a book value of $10,000, with a view to taking advantage of the fact that the equipment has only one year remaining on its cost recovery schedule although its remaining economic life is significantly longer. The equipment is section 704(c) property, and at the time of contribution C has a built-in gain of $9,000. D contributes $10,000 of cash, which CD uses to buy securities. D has substantial net operating loss carryforwards that D otherwise anticipates will expire unused. Under § 1.704–1(b)(2)(iv)(g)(3), the partnership must allocate the $10,000 of book depreciation to the partners in the first year of the partnership. Thus, there is $10,000 of book depreciation and $1,000 of tax depreciation in the partnership's first year. CD sells the equipment during the second year for $10,000 and recognizes a $10,000 gain ($10,000 received less the adjusted basis of $0).

(ii) *Unreasonable use of method*—(A) At the end of the first year both the book value and adjusted basis of the equipment are $0 so there is no more remaining built-in gain. Therefore, the $10,000 gain on the sale of the equipment in the second year is allocated $5,000 each to C and D. The interaction of the partnership's one-year writeoff of the entire book basis in the equipment and the use of the traditional method results in a shift of $4,000 (D's $5,000 share of the sale proceeds less the $1,000 tax depreciation deduction previously allocated to D) of the precontribution gain in the equipment from C to D.

(B) The traditional method is not reasonable under paragraph (a)(5) of this section because the contribution of property is made and the traditional method is used with a view to shifting a significant amount of taxable income to a partner who is indifferent to receiving that income.

(c) *Traditional method with curative allocations*—(1) *In general.* To correct distortions created by the ceiling rule, a partnership using the traditional method under paragraph (b) of this section may make reasonable curative allocations of other partnership tax items of income, gain, loss, or deduction so that equal allocations of book and tax items may be made to noncontributing partners. A curative allocation is an allocation for tax purposes that differs from the allocation of the item as reflected on the books of the partnership. A partnership may choose to limit its curative allocations to a particular tax item or items (*e.g.*, only depreciation from a specific property or properties). If a partnership does not have other tax items of income, gain, loss, or deduction sufficient in the amount and of the correct type to equalize allocations of book and tax items, the partnership may choose to make the curative allocation in the next succeeding taxable year in which it has sufficient other items of the correct type.

(2) *Consistency.* A partnership must be consistent in its application of curative allocations with respect to each item of property from year to year.

(3) *Reasonable curative allocations*—(i) *Amount.* A curative allocation is reasonable only to the extent it does not exceed the amount necessary to offset the effect of the ceiling rule either for the taxable year or for a prior taxable year in which there were insufficient other partnership items to make the curative allocation.

(ii) *Type.* A curative allocation is reasonable only if made using tax items that would have the same effect on the partners as the tax items affected by the ceiling rule. For example, if depreciation deductions that would be allocated to a noncontributing partner are limited by the ceiling rule, a curative allocation of capital gain items to the contributing partner is not reasonable. Similarly, if depreciation deductions that would be allocated to a noncontributing partner with respect to property used in the conduct of a U.S. trade or business are limited by the ceiling rule, a curative allocation of income derived from operations conducted within foreign country to the contributing partner is not reasonable.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. Reasonable and unreasonable curative allocations—(i) *Facts.* E and F form partnership EF and agree that each will receive a 50 percent share of all partnership items and that EF will make allocations under section 704(c) using the traditional method with curative allocations under paragraph (c) of this section. E contributes equipment with a tax basis of $4,000 and a book value of $10,000. The equipment is section 704(c) property, and at the time of contribution E has a built-in gain of $6,000. F contributes $10,000 of cash, which EF uses to buy inventory for resale. In EF's first year, the proceeds generated by the equipment exactly equal EF's operating expenses. The equipment is depreciable using the straight-line method over a 10-year life. Thus, there is $1,000 of book depreciation and $400 of tax depreciation each year. In addition, at the end of the first year EF sells all the inventory for $10,700, recognizing $700 of gain. Under the traditional method of paragraph (b) of this section, E and F would each be allocated $350 of inventory profit for book and tax purposes and $500 of depreciation for book purposes. However, because there is only $400 of depreciation for tax purposes it all must be allocated to F. Thus, at the end of the first year, E and F's book and tax capital accounts would be as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	350	350	350	Sales income.
9,850	4,350	9,850	9,950	

(ii) *Reasonable curative allocation.* Because the ceiling rule causes a disparity of $100 between F's book and tax capital accounts, under paragraph (c) of this section, E and F may properly allocate to E an additional $100 of sales income for tax purposes. This allocation results in capital accounts at the end of EF's first year as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	350	350	250	Sales income.
9,850	4,450	9,850	9,850	

(iii) *Unreasonable curative allocation.* (A) The facts are the same as in paragraph (i) of this *Example 1*, except that E and F choose to allocate all of the sales income to E for tax purposes, although they share it equally for book purposes. This allocation results in capital accounts at the end of EF's first year as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	700	350	0	Sales income.
9,850	4,700	9,850	9,600	

(B) This curative allocation is not reasonable under paragraph (c)(3)(i) of this section because the allocation is in excess of the amount necessary to correct the disparity caused by the ceiling rule. If the partnership makes this allocation, its method of making allocations under section 704(c) will not be considered reasonable for purposes of this section.

Example 2. Unreasonable use of curative allocations—(i) *Facts.* G and H form partnership GH and agree that each will receive a 50 percent share of all partnership items and that GH will make allocations under Section 704(c) using the traditional method with curative allocations under paragraph (c) of this section. G contributes equipment with a tax basis of $1,000 and a book value of $10,000, with a view to taking advantage of the fact that the equipment has only one year remaining on its cost recovery schedule although its remaining economic life is significantly longer. The equipment is section 704(c) property, and at the time of contribution G has a built-in gain of $9,000. H contributes $10,000 of cash, which GH uses to buy inventory for resale. In GH's first year, the proceeds generated by the equipment exactly equal GH's operating expenses. Under § 1.704–1(b)(2)(iv)(g)(3), the partnership must allocate the $10,000 of book depreciation to the partners in the first year of the partnership. Thus, there is $10,000 of book depreciation and $1,000 of tax depreciation in the partnership's first year. In addition, at the end of the first year GH sells all the inventory for $11,500 recognizing $1,500 of gain. Finally, G has substantial net operating loss carryforwards that G otherwise anticipates will expire unused. Under the traditional method of paragraph (b) of this section GH's book and tax capital accounts at the end of the first year would be as follows:

G		H		
Book	Tax	Book	Tax	
$10,000	$1,000	$10,000	$10,000	Initial contribution.
<5,000>	<0>	<5,000>	<1,000>	Depreciation.
750	750	750	750	Sales income.
5,750	1,750	5,750	9,750	

(ii) *Unreasonable use of method.* (A) If GH were to use curative allocations in this situation, their tax and book capital accounts at the end of the first year would be as follows:

G		H		
Book	Tax	Book	Tax	
$10,000	$1,000	$10,000	$10,000	Initial contribution.
<5,000>	<0>	<5,000>	<1,000>	Depreciation.
750	1,500	750	0	Sales income.
5,750	2,500	5,750	9,000	

(B) This curative allocation is not reasonable under paragraph (a)(5) of this section because the contribution of property and the curative allocation method is used with a view to shifting a significant amount of partnership taxable income to a partner who is indifferent to receiving that income.

(d) *Deferred sale method*—(1) *In general.* Under the *deferred sale method*, a contribution of section 704(c) property is treated as a sale of the property to the partnership at fair market value, except that any gain or loss that would have been recognized by the partner on the sale (deferred gain or loss) is deferred. The partnership is treated as having a total basis in the section 704(c) property (deferred sale property) equal to its fair market value. The amount of partnership basis in the property equal to (or up to, in the case of property with a deferred loss) the contributing partner's basis is depreciated over the property's remaining useful life under section 168(i)(7). The amount by which the basis is increased because of the use of the deferred sale method is treated as newly purchased recovery property placed in service when the contribution occurs for purposes of section 167. The contributing partner recognizes all or part of the deferred gain or loss as required under paragraph (d)(2) of this section. Under section 722, at the time of contribution the contributing partner's tax basis in the partnership interest is increased by the amount of the partner's tax basis in the deferred sale property at that time. That partner thereafter increases or decreases its basis in the partnership interest by the amount of deferred gain or loss recognized by the partner each year.

(2) *Recognition of deferred gain or loss*—(i) *In general.* As a general rule, the deferred gain or loss is triggered when the partnership receives an advantage or detriment, for tax purposes, from the adjusted partnership basis generated or foregone by using the deferred sale method, or when the contributing partner's interest in the partnership is reduced. In particular, the contributing partner recognizes deferred gain or loss upon the occurrence of a partner level event specified in paragraph (d)(2)(ii) of this section or a partnership level event specified in paragraph (d)(2)(iii) of this section. However, deferred gain or loss is not recognized as a result of a partnership or partner level event if another section of the Code continues to limit or disallow realization or recognition.

(ii) *Partner level events*—(A) *Disposition of partnership interest.* If the contributing partner disposes of all or a portion of the partner's interest in the partnership in a taxable transaction, the contributing partner recognizes a corresponding portion of any remaining deferred gain or loss with respect to any deferred sale property. If the contributing partner disposes of all or a portion of the partner's interest in the partnership in a nonrecognition transaction (as defined in section 7701(a)(45)), the partner does not recognize any remaining deferred gain or loss. To the extent that gain or loss is recognized in part in a nonrecognition transaction, a ratable portion of deferred gain or loss is recognized under this paragraph. The transferee partner must recognize any remaining deferred gain or loss on the deferred sale property at the same time and in the same manner as the contributing partner would have recognized the deferred gain or loss.

(B) *Distribution of property.* If the partnership distributes to the contributing partner cash or property other than the contributed property, the contributing partner recognizes any remaining deferred gain with respect to any contributed property to the extent the cash and fair market value of the other property exceed the contributing partner's adjusted basis in the partnership immediately before the distribution. If the contributing partner has contributed more than one deferred gain property, then a proportionate amount of the remaining deferred gain from each property is recognized.

(iii) *Partnership level events*—(A) *Depreciation, etc.* If the partnership claims deductions for amortization, depletion, depreciation, or other cost recovery that reduce the basis of the deferred sale property, the contributing partner recognizes any remaining deferred gain or loss in the amount by which the deductions differ from the amount that could have been deducted had the deferred sale method not been used.

Disposition of property. Except as provided in paragraphs (d)(4) and (d)(5) of this section, if the partnership disposes of deferred sale property (other than by distribution to the contributing partner), the contributing partner recognizes any remaining deferred gain or loss with respect to the property.

(3) *Type and stacking order*—(i) *Type.* The character, source, and other attributes of any deferred gain or loss recognized under this paragraph (d) are determined as if the deferred sale property had been sold to the partnership at the time of the contribution. For example, if a partner that is a dealer in securities contributes securities to the partnership, and the deferred sale method is used with respect to the contributed securities, gain on the sale of the securities is ordinary income regardless of whether the partnership is a dealer in securities.

(ii) *Stacking order.* If the contributing partner would have had both ordinary income and capital gain if the deferred sale property had been sold to the partnership at the time of the contribution, the contributing partner must treat deferred gain recognized under paragraph (d) of this section as ordinary income until an amount of deferred gain equal to the deferred

ordinary income has been recognized. For example, if a partner contributes deferred sale property to a partnership, and the property is section 1245 property, the contributing partner first recognizes ordinary income up to the amount that would have been treated as ordinary income under section 1245 if the contributing partner had instead sold the property to the partnership at the time of contribution, and then the contributing partner recognizes any capital gain.

(4) *Nonrecognition transactions.* If a partnership disposes of deferred sale property in a transaction in which gain or loss is not recognized under sections 1031, 1033, 1071, or 1081, any substituted basis property (within the meaning of section 7701(a)(42)) is treated as deferred sale property with the same amount and character of deferred gain or loss as the deferred sale property disposed of by the partnership. For example, if a partnership's deferred sale property is compulsorily or involuntarily converted and gain is not recognized because section 1033 of the Code applies, the substituted basis property is treated as deferred sale property. To the extent that gain or loss is recognized in part in a transaction, paragraphs (d)(2)(iii) and (d)(3) of this section apply.

(5) *Contribution to controlled partnership*—(i) *General rule.* Notwithstanding paragraphs (d)(2)(iii)(B) and (d)(4) of this section, if there is a disposition of deferred sale property to a controlled partnership, the deferred gain or loss recognized by the contributing partner is limited to the gain or loss (if any) recognized by the partnership on that disposition, and, for purposes of paragraph (d) of this section, the partnership is treated as continuing to hold the deferred sale property so long as the deferred sale property is held by a controlled partnership.

(ii) *Controlled partnership.* For purposes of paragraph (d)(5)(i) of this section, a controlled partnership is any partnership having a relationship described in section 707(b)(1)(B) to the contributing partnership.

(6) *Other rules*—(i) *Distribution of property to contributing partner.* If deferred sale property is distributed to the contributing partner, no deferred gain or loss is recognized and the contributing partner's basis in the property equals the partnership's basis in the property reduced by any unrecognized deferred gain or increased by any unrecognized deferred loss of the contributing partner.

(ii) *734 adjustments.* No adjustments to the basis of partnership property are made under section 734 on account of recognition of deferred gain or loss by the contributing partner.

(iii) *Nonapplication of section 724.* Section 724 does not apply to deferred sale property.

(7) *Example.* The following example illustrates the principles of the deferred sale method.

Example. (i) *Calculation of deferred gain.* J and K form partnership JK and agree that each will receive a 50 percent share of all partnership items and that JK will make allocations under section 704(c) using the deferred sale method under paragraph (d) of this section. J contributes depreciable property with a basis of $4,000 and a fair market value of $10,000, and K contributes $10,000 in cash. The property is depreciated using the straight-line method with a 10-year useful life, and has five years of its life remaining. Under paragraph (d)(1) of this section, J has a deferred gain of $6,000 in the property and JK has a $10,000 basis in the property. Under paragraph (d)(2) of this section, J must recognize gain whenever JK has a tax benefit from the additional $6,000 of basis JK has in the property by reason of using the deferred sale method.

(ii) *Deferred sale and depreciation.* In year 1, the partnership has a depreciation deduction of $1,400 with respect to the property ($800 on the $4,000 basis carried over from J and $600 on the additional basis). This deduction is shared equally by J and K. Under paragraph (d)(2)(iii)(A) of this section, J recognizes a deferred gain of $600 ($1,400 depreciation deduction to the partnership less the $800 depreciation deduction that would have been allowable had the partnership had a $4,000 basis in the property). J's basis in J's partnership interest at the end of the first year is $3,900 ($4,000 basis upon contribution plus $600 deferred gain recognized less $700 depreciation deduction). J's remaining deferred gain is reduced to $5,400 ($6,000 total deferred gain less $600 recognized deferred gain).

(iii) *Partial disposition of partnership interest.* At the beginning of year 2, J sells ½ of J's interest in JK to L for $4,200. J first recognizes a proportionate share of J's deferred gain and then calculates gain or loss based on the difference between the consideration received and J's adjusted basis in the portion of J's partnership interest transferred. J's deferred gain at the time of the sale is $5,400. J must take into income ½ of that balance, or $2,700. J received consideration of $4,200, and ½ of J's basis in J's partnership interest is $4,650 (half of $3,900 adjusted basis plus $2,700 deferred gain recognized). Thus, J has a loss of $450 on the sale that offsets the $2,700 of gain. Therefore, J recognizes gain on the sale of $2,250.

(e) *Exceptions and special rules*—(1) *Small disparities*—(i) *General rule.* If a partner contributes one or more items of property to a partnership within a single taxable year of the partnership, and the disparity between the book value of the property and the contributing partner's adjusted tax basis in the property is a small disparity, the partnership may—

(A) Disregard the application of section 704(c) to the property; or

(B) Allocate gain or loss with respect to the property under section 704(c) and this section only upon the disposition of the property.

(ii) *Definition of small disparity.* A disparity between book value and adjusted tax basis is a small disparity if for each item of property contributed by one partner in one partnership taxable year the book value does not differ from the adjusted tax basis by more than 15 percent of the adjusted tax basis and the total disparity for all properties contributed by that partner in that year does not exceed $10,000. In determining the total disparity for all properties, built-in gains and losses are both treated as positive numbers and property to which the deferred sale method is applied is not included.

(2) *Aggregation.* The following types of property may be aggregated for purposes of making allocations under section 704(c) and this section if contributed by one partner in one taxable year of the partnership.

(i) *Depreciable property.* All property, other than real property, that is included in the same general asset account may be treated as one item of property.

(ii) *Other aggregated property.* Any other class of items listed in guidance published in the Internal Revenue Bulletin as items that may be aggregated for purposes of section 704(c) may be treated as one item of property.

(3) *Tiered partnerships.* If a partnership contributes section 704(c) property (other than deferred sale property) to a lower-tier partnership, the upper-tier partnership must allocate its distributive share of lower-tier partnership items with respect to that section 704(c) property in a manner that takes into account the contributing partner's remaining built-in gain or loss.

(f) *Effective date.* This section applies to property contributed to a partnership on or after the date the regulations are published in final form in the **Federal Register**.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–31064 Filed 12–23–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[PS–164–84]

RIN 1545–AG98

Allocations Reflecting Built-in Gain or Loss on Property Contributed to Partnership; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations relating to allocations with respect to property contributed by a partner to a partnership under section 704 of the Internal Revenue Code.

DATES: The public hearing will be held on Friday, April 16, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, March 26, 1993.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–164–84) room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–8452 or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 704(c) of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, March 26, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–31063 Filed 12–23–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 26

[PS–32–90]

RIN 1545–AO89

Generation-Skipping Transfer Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed Generation-Skipping Transfer Tax Regulations relating to the liability for the generation-skipping transfer tax when a direct skip occurs at death with respect to property held in a trust arrangement. These proposed regulations will affect trustees of trust arrangements, such as life insurance companies, and executors of decedents' estates.

This document also contains proposed Generation-Skipping Transfer Tax Regulations relating to the treatment of the exercise of certain powers of appointment over trust property as constructive additions to generation-skipping trusts. The proposed regulations take account of the law in effect in States that have adopted the Uniform Statutory Rule Against Perpetuities.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for February 18, 1993, must be received by February 1, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS–32–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, John B. Franklin, 202–622–3090 (not a toll-free number); concerning the hearing, Michael Slaughter, 202–622–8543 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On March 15, 1988, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking (53 FR 8469) [LR–128–86, 1988–1 C.B. 925] by cross reference to Temporary Regulations published on the same date in the **Federal Register** (53 FR 8441) (T.D. 8187, 1988–1 C.B. 332) under section 2601 and 2662 of the Internal Revenue Code (Code). Section 26.2601–1 of the Temporary Regulations relates, in part, to the effect of the release, exercise, or lapse of a power of appointment over a trust that is otherwise grandfathered from the generation-skipping transfer tax provisions. Section 26.2662–1 of the Temporary Regulations relates, in part, to return filing requirements and the imposition of liability for the generation-skipping transfer tax in the case of a direct skip occurring at death with respect to property held in trust arrangements.

Trust Arrangements

The Tax Reform Act of 1986 (Pub. L. 99–514), 1986–3 (Vol. 1) C.B. 1 retroactively repealed the generation-skipping transfer tax provisions that were added to the Code by the Tax Reform Act of 1976 (Pub. L. 94–455), 1976–3 (Vol. 1) C.B. 1 and added new generation-skipping transfer tax provisions that are contained in sections 2601 through 2663 (chapter 13) of the Code. Certain sections of the Code have since been amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), 1988–3 C.B. 1 and the Revenue Reconciliation Act of 1989 (Pub. L. 101–239), 1990–1 C.B. 210, 214. In general, the new generation-skipping transfer tax provisions apply to any generation-skipping transfer made after October 22, 1986. Certain inter vivos transfers made after September 25, 1985, and on or before October 22, 1986, are treated as if made after October 22, 1986.

A direct skip, which is one form of generation-skipping transfer that is subject to the generation-skipping transfer tax, is a transfer of property subject to the gift or estate tax to a skip person. A direct skip occurs at death if property that is includible in a decedent's gross estate, and thus subject to estate tax, passes to a skip person. In this context, the property may pass directly from the decedent or from a trust or trust arrangement to a skip person (*i.e.*, a direct skip from a trust). A direct skip also occurs at death when property passes from a decedent to a

trust which is a skip person (*i.e.*, a direct skip to a trust).

A trust is a skip person if all "interests" (defined generally as a current right to receive trust income or corpus) in the trust are held by skip persons or if no person holds an "interest" in the trust and at no time after the transfer to the trust may a distribution be made from the trust to someone who is not a skip person. For generation-skipping transfer tax purposes, the term "trust" includes a trust arrangement, which includes life estates and remainders, estates for years, and insurance and annuity contracts. The trustee of a trust arrangement is the person in actual or constructive possession of the property subject to the arrangement.

As provided in section 2611(a) of the Code, the three types of generation-skipping transfers are (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip. The proposed regulation under consideration relates only to certain direct skips. Among other things, the Temporary Regulations prescribe rules relating to who must file the return and pay the generation-skipping transfer tax in the case of a direct skip occurring at death with respect to property held in trust arrangements.

Section 26.2662–1(c)(1)(iv) of the Temporary Regulations presently provides a general rule that in the case of a direct skip from a trust or trust arrangement, or with respect to property that continues to be held in trust, the trustee must file the return and pay the generation-skipping transfer tax. An exception to this general rule is contained in § 26.2662–1(c)(2)(iii). Under the special rule in § 26.2662–1(c)(2)(iii), the executor, rather than the trustee, must file the return and pay the generation-skipping transfer tax if the total value of property involved in direct skips with respect to the subject trust arrangement is less than $100,000. Under this special rule, the executor is entitled to recover the generation-skipping transfer tax from the trustee (if the property continues to be held in the trust arrangement) or from the recipient of the property (in the case of a transfer from a trust arrangement).

The Technical and Miscellaneous Revenue Act of 1988 added section 2663(3) to the Code to provide that the Secretary shall prescribe regulations providing for such adjustments as may be necessary to the application of chapter 13 of the Code in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b). By way of an example, an underlying committee report indicated that where the generation-skipping arrangement is in the form of an insurance or annuity contract, the regulation could provide that the beneficiary must pay the tax. It was determined, however, that it would be more appropriate if the primary burden for paying the tax remained on the trustee of the trust arrangement (or, in certain cases, upon the decedent's executor) because they are more likely to possess the information needed to compute the tax and file the return.

Explanation of Provisions Relating to Trust Arrangements

This notice of proposed rulemaking proposes an amendment to § 26.2662–1(c)(2)(iii) of the Temporary Regulations that would increase the $100,000 amount specified therein to $250,000. Thus, under the proposed regulation, in the case of direct skips occurring at death with respect to property held in trust arrangements such as life insurance policy proceeds, the executor, rather than the insurance company/trustee, must file the return and pay the generation-skipping transfer tax if the total value of property involved in direct skips with respect to the trustee of the subject trust arrangement is less than $250,000.

Generally, the executor of the decedent's estate is in the best position to ascertain the generation-skipping transfer tax consequences of transfers to and from trust arrangements such as life insurance policy proceeds. For example, an executor will generally have knowledge of critical factors such as the relationship between the decedent and the beneficiaries of the policy, whether the policy proceeds are includible in the gross estate, whether a given beneficiary is in a higher generation level by reason of having a predeceased parent, and whether any portion of the decedent's $1,000,000 GST exemption has been allocated to the policy proceeds.

If the burden of filing the return and paying the generation-skipping transfer tax is placed upon the insurance company (namely, if the conditions of the special rule are not satisfied), the executor is required to compute the tax on Schedule R–1 of Form 706 and forward the schedule to the insurance company. The company then remits the Schedule R–1 and the tax to the Service. The company is primarily liable for the tax and for any deficiency should the Schedule R–1 prove to be incorrect. Consequently, the company may have to withhold amounts from the policy proceeds until such time as the amount of the generation-skipping transfer tax becomes finalized, for example, by way of an estate tax closing letter. Thus, the proposed regulation would accelerate the payment of insurance benefits if the aggregate amount of the policies on the decedent's life issued by that company is less than $250,000.

As noted above, the exception shifting the burden of payment to the executor applies only with respect to a direct skip occurring at death and only if the aggregate policy proceeds are less than $250,000. Direct skips are limited to transfers subject to the estate or gift tax. If a generation-skipping transfer is subject, at the same time, to either the estate or gift tax, the transfer is a direct skip rather than a taxable termination or a taxable distribution because the characterization of a transfer for generation-skipping transfer tax purposes is determined with respect to the most recent application of the estate or gift tax. Thus, an insurance company/trustee will be able to pay policy proceeds without regard to the generation-skipping transfer tax if it determines that (1) the proceeds are includible in the decedent/insured's gross estate and (2) the amounts payable under all of the policies it issued on the decedent's life which are includible in the decedent's gross estate are, in the aggregate, less than $250,000. An insurance company will generally be able to determine whether the proceeds are includible in the decedent's gross estate because it will have access to information regarding whether the proceeds are being paid to the decedent's estate or whether the decedent owned the policy or incidents of ownership in the policy. As noted above, if the policy proceeds are includible in the decedent's gross estate, any generation-skipping transfer of the proceeds that occurs upon the decedent's death will be a direct skip rather than a taxable termination or a taxable distribution (the other two kinds of generation-skipping transfers).

USRAP Provisions

The Temporary Regulations that were published on March 15, 1988, relate, in part, to the conditions under which the exercise of a power of appointment will constitute a constructive addition to a trust that is otherwise grandfathered from the provisions of chapter 13 (26 CFR part 26.2601–1, T.D. 8187, 53 FR 8441).

Under the Temporary Regulations, an exercise of a nongeneral power of appointment under a trust grandfathered under the effective date provisions of the generation-skipping transfer tax will generally be treated as a constructive addition to the trust if the exercise of the power may postpone or suspend the vesting, absolute ownership

or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years. This limitation on the "grandfathering" of such trusts generally parallels restrictions on trust duration under the common law rule against perpetuities.

Several states have replaced the common law rule against perpetuities with the Uniform Statutory Rule Against Perpetuities (USRAP). USRAP generally provides that a nonvested interest in property is invalid unless (1) when it is created, it is certain to vest or terminate no later than 21 years after the death of an individual alive at the time the interest is created, or (2) the interest in fact vests or terminates within 90 years after its creation. The 90-year "wait and see" period employed in USRAP is intended to be a reasonable approximation of the period that would on average be produced under the common law measuring standard, i.e., lives in being at the time of creation plus 21 years.

This proposed regulation, which would amend the Temporary Regulations published on March 15, 1988, modifies the constructive addition rule discussed above to exempt exercises of nongeneral powers which, while not satisfying the requirements of the current Temporary Regulation, would be valid under a 90-year test. Although the amendment to the Temporary Regulation incorporates a 90-year period, it does not adopt the "wait and see" aspect of USRAP. A "wait and see" rule is inappropriate for purposes of chapter 13 because it will usually be necessary to determine the generation-skipping transfer tax consequences of distributions and terminations that occur during the interim. Under the amendment to the Temporary Regulation, it must be clear at the time the nongeneral power is exercised that the exercise will not postpone or suspend the vesting, absolute ownership or power of alienation of the subject interest in property beyond either (but not both) the common law period or the 90-year period (measured from the date of the creation of the trust). The subject proposed regulation does not permit the exercise of a nongeneral power of appointment in a manner that attempts to obtain a perpetuities period that is the longer of a specified term (such as 90 years) or lives in being plus 21 years.

Special Analyses

It has been determined that these rules are not rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing is scheduled for February 18, 1993. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is John B. Franklin, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 26 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 26 is revised to read as follows:

Authority: 26 U.S.C. 7805 and 26 U.S.C. 2663. Section 26.2662–1 is also issued under section 26 U.S.C. 2662.

Par. 2. Section 26.2601–1(b)(1)(v)(B)(*2*) is revised (and (b)(1)(v)(D) Examples 7 and 8 are added to read as follows:

§ 26.2601–1 Effective dates.

* * * * *

(b) * * *
(1) * * *
(v) * * *
(B) * * *

(*2*) In the case of an exercise, the power of appointment is not directly or indirectly exercised in manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (perpetuities period). For purposes of this paragraph (b)(1)(v)(B)(*2*), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones vesting beyond the perpetuities period.

* * * * *

(D) * * *

Example 7. Extension for the longer of two periods. Prior to the effective date of chapter 13, GP established an irrevocable trust under which the trust income was to be paid to GP's child, C, for life. C was given a testamentary power to appoint the remainder in further trust for the benefit of C's issue. In default of C's exercise of the power, the remainder was to pass to charity. C dies on February 3, 1995 survived by two children and a sibling, S (who was born prior to the creation of the trust). C exercises the power in a manner that validly extends the trust in favor of C's issue until the later of May 15, 2064 (80 years from the date the trust was created), or the death of S. C's exercise of the power is a constructive addition to the trust because the exercise may extend the trust for a period longer than the permissible periods of either a life in being at the creation of the trust plus 21 years or a term not more than 90 years measured from the creation of the trust. On the other hand, if C's exercise of the power could extend the trust based only on a life in being at the creation of the trust plus 21 years or only for a term of 80 years from the creation of the trust (but not the later of the two periods) then the exercise of the power would not have a constructive addition to the trust.

Example 8. Extension for the longer of two periods. The facts are the same as in *Example 7* except local law provides that the effect of C's exercise is to extend the term of the trust until May 15, 2064, whether or not S survives that date. C's exercise is not a constructive addition to the trust because C exercised the power in a manner that cannot postpone or suspend vesting, absolute ownership, or power of alienation for a term of years that will exceed 90 years. The result would be the same if the effect of C's exercise is either to extend the term of the trust until the death of S or to extend the term of the trust until the *first* to occur of May 15, 2064 or the death of S.

Par. 3. Section 26.2662–1 is amended as follows:

1. The paragraph heading for (c)(2)(iii) is revised to read as set forth below.

2. Paragraph (c)(2)(iii)(B) is amended by removing the figure "$100,000" and adding "$250,000" in its place.

3. Paragraph (c)(2)(iv) is redesignated as paragraph (c)(2)(v).

4. New paragraph (c)(2)(iv) is added to read as set forth below.

5. Newly designated paragraph (c)(2)(v) is amended by:

a. Revising the introductory text to read as set forth below.

b. Redesignating *Examples (1)* through *(4)* as *Examples 1* through *4*, respectively.

c. In the list below, for each location indicated in the left column, remove the language indicated in the middle column, and add the language indicated in the right column:

Paragraph	Remove	Add
Example 1, sentence 1	Aug. 1, 1988	Aug. 1, 1993
Example 1, sentence 2	$95,000	$200,000
Example 1, sentence 6	$95,000	$200,000
Example 1, sentence 6	$100,000	$250,000
Example 2, sentence 2	$75,000	$150,000
Example 2, sentence 6	$150,000	$300,000
Example 2, sentence 6	$100,000	$250,000
Example 3, sentence 1	Aug. 1, 1988	Aug. 1, 1993
Example 3, sentence 3	$110,000	$300,000
Example 3, sentence 6	$110,000	$300,000
Example 3, sentence 6	$100,000	$250,000
Example 4, sentence 1	$95,000	$200,000
Example 4, sentence 3	$95,000	$200,000
Example 4, sentence 3	$100,000	$250,000

d. Adding *Example 5* to read as set forth below.

§ 26.2662–1 Generation-skipping transfer tax return requirements.

* * * * *

(c)* * *

(2)* * *

(iii) *Executor's liability in the case of transfers with respect to decedents dying on or after* June 22, 1993, *if the transfer is less than $250,000.** * *

* * * * *

(iv) *Executor's liability in the case of transfers with respect to decedents dying prior to June 22, 1993, if the transfer is less than $100,000.* In the case of a direct skip occurring at death with respect to a decedent dying prior to June 22, 1993, the rule in paragraph (c)(2)(iii) of this section that imposes liability upon the executor applies only if the property involved in the direct skip with respect to the trustee of the trust arrangement, in the aggregate, is less than $100,000.

(v) *Examples.* The following examples illustrate the application of this paragraph (c)(2) with respect to decedents dying on or after *June 22, 1993.*

* * * * *

Example 5. On August 1, 1993, A, the insured under a life insurance policy, dies. The insurance proceeds on A's life that are payable under policies issued by Company X are in the aggregate amount of $200,000 and are includible in A's gross estate. Because the proceeds are includible in A's gross estate, the generation-skipping transfer that occurs upon A's death, if any, will be a direct skip rather than a taxable distribution or a taxable termination. Accordingly, because the aggregate amount of insurance proceeds with respect to Company X is less than $250,000, Company X may pay the proceeds without regard to whether the beneficiary is a skip person in relation to the decedent-transferor.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–30945 Filed 12–23–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 26 and 301

[PS–73–88]

RIN 1545–AL75

Generation-Skipping Transfer Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1989. The proposed regulations will provide the guidance needed to comply with chapter 13.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for February 18, 1993, must be received by February 1, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS–73–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, John B. Franklin (202) 622–3090 (not a toll free call); concerning the hearing, Michael Slaughter (202) 622–8543 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirements in these regulations are in §§ 26 CFR 26.2632–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, and 26.2652–2. This information is required by the Internal Revenue Service in order to determine the tax rate applicable to generation-skipping transfers. The likely respondents are individuals and fiduciaries.

The time estimates for the reporting and recordkeeping requirements contained in this regulation are included in the estimate of burden applicable to Forms 706, 706NA, 706GS(T), 706GS(D), 706GS(D–1), and 709.

Background

This document contains proposed additions to the Generation-Skipping Transfer Tax Regulations (26 CFR part 26) under sections 2601 through 2663 of the Internal Revenue Code (Code). The

Tax Reform Act of 1986 retroactively repealed the generation-skipping transfer tax that had been enacted in 1976, replacing it with chapter 13 of the Code, a simplified tax determined at a flat rate. Sections of chapter 13 have been amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), and the Revenue Reconciliation Act of 1989 (Pub. L. 101–239).

Explanation of Provisions

Chapter 13 of the Code imposes a tax on every generation-skipping transfer (GST). A GST is a direct skip (generally, a transfer subject to estate or gift tax to a person more than one generation younger than the transferor), a taxable distribution (generally, a distribution from a trust to a person more than one generation younger than the creator of the trust), or a taxable termination (generally, the termination of a beneficiary's eligibility to receive current distributions from a trust if, after the termination, only certain younger generation beneficiaries have rights in the trust). A transfer that would be excluded from taxable gifts under section 2503(e) (relating to payment of certain medical or educational expenses) is not a GST. In addition, a transfer with respect to property that has previously been subject to GST tax is generally not a GST if the prior transferee was in the same generation as or in a lower generation than the current transferee.

Determining whether an event is a GST generally involves determining (1) the identity of the "transferor," (2) whether a donee or trust beneficiary is a "skip person," and (3) whether a trust beneficiary has an "interest in property held in trust."

Transferor

Under chapter 13 of the Code, the transferor is generally the person who most recently transferred the property in a transfer subject to estate or gift tax (*i.e.*, the donor in the case of a lifetime transfer and the decedent in the case of a transfer occurring at death). The proposed regulations clarify that a transfer is "subject to gift tax" if it is a completed gift within the meaning of § 25.2511–2 regardless of whether a gift tax is actually imposed on the transfer. Thus, a transfer excluded from taxable gifts under section 2503(b) is a transfer subject to gift tax for this purpose. Similarly, a transfer is "subject to estate tax" if the property would be includible in the decedent's gross estate as determined under section 2031. For example, a nonresident not a citizen of the United States is treated as the transferor of property transferred by that individual at death even though no Federal estate tax is imposed on the transfer by virtue of the situs of the property.

Notwithstanding the foregoing, if a special election is made to treat qualified terminable interest property (QTIP) for purposes of chapter 13 of the Code as though the QTIP election under section 2056(b)(7) or 2523(f) had not been made, the donee spouse does not become the transferor of the property when the donee spouse (or the estate of the donee spouse) is subject to transfer tax with respect to the QTIP property.

Skip Person

Generally, a skip person is an individual assigned to a generation more than one generation below the generation of the transferor. A trust is a skip person if all trust beneficiaries who can presently receive distributions from the trust are skip persons. A trust is also a skip person if no one has a present right to receive distributions from the trust and future distributions may be made only to skip persons.

Interest in Property Held in Trust

Generally, person has an interest in property held in trust (interest in trust) if the person has a present right to, or may otherwise currently receive distributions of, income or principal from the trust. An individual has an interest in trust if trust income or principal may be used to satisfy a legal obligation of the individual; however, an individual does not have an interest in trust solely because trust property may be used, within the discretion of a fiduciary or pursuant to a State law substantially similar to the Uniform Gifts to Minors Act, to satisfy a support obligation of the individual.

Direct skip

A direct skip is a transfer of property to a skip person that is subject to Federal estate or gift tax. A direct skip may be a direct transfer from the transferor to an individual or it may be made by a transfer to or from a trust.

In determining whether a transfer is a direct skip, each lineal descendant of a deceased lineal descendant of the transferor (or the transferor's spouse) is assigned to the generation that is one generation higher than the one to which he or she would otherwise be assigned. If a transfer to a trust would be a direct skip but for the application of this rule, the modified generation assignments continue to apply to determine the future applicability of the GST tax to the trust.

Taxable Termination

A taxable termination is any termination of an interest in a trust (including a termination that requires the distribution of trust property) unless, immediately after the termination, a person other than a skip person has an interest in the trust or no future distribution from the trust may be made to a skip person. In general, an interest in trust for generation-skipping transfer tax purposes means a present right or expectancy. The proposed regulations provide that only one taxable termination occurs on the happening of a single event though the interests of more than one person may terminate as a result of that event. A taxable termination may, under certain circumstances, involve only a portion of the property in a trust.

Taxable Distribution

A taxable distribution is any distribution of income or principal from a trust to a skip person in a transaction that is not a direct skip or a taxable termination.

GST Exemption

Each individual is allowed a GST exemption amount of $1 million. Through use of the GST exemption, each transferor may exempt up to $1 million in property transferred by that individual (generally valued as of the time the allocation of GST exemption is effective) and any future appreciation on the property from the GST tax. GST exemption may be allocated by the transferor or the transferor's executor at any time on or before the date prescribed for filing the transferor's Federal estate tax return (including extensions actually granted).

Available GST exemption is automatically allocated to lifetime direct skips unless the transferor elects out of the automatic allocation. The proposed regulations provide that the election out of the automatic allocation must be made on a timely-filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) and, once made, is irrevocable. Allocations of GST exemption to lifetime transfers other than direct skips are also made on Form 709. If the allocation is made on a timely-filed Form 709 or if the transfer is subject to the automatic allocation rule, it is effective from the date of the transfer to which it relates. If the allocation is made on a late-filed Form 709, it is effective on the date the Form 709 is filed (or, in the case of a late Form 709 filed by the donor's executor, on the date of the donor's death).

Allocations of GST exemption to transfers occurring by reason of death

are generally made on a United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706). If the executor does not allocate all of the decedent's available GST exemption by the date prescribed for filing the Form 706, including extensions, the remaining GST exemption is automatically allocated pro rata to direct skips occurring at death; any remaining GST exemption is allocated pro rata to trusts of which the decedent was the transferor and from which GSTs may occur in the future. Except with respect to certain lifetime transfers, any post-death allocation of GST exemption, whether made by the executor or occurring automatically, is effective as of the date of the transferor's death.

Under the proposed regulations, no GST exemption is automatically allocated to a trust that will have (in its entirety) a new transferor before any GST can occur with respect to the trust property, *e.g.*, a QTIP trust created under the decedent's will for which the special election under section 2652(a)(3) has not been made.

The proposed regulations provide that an allocation of GST exemption may be made by means of a formula. Allocations to trusts are made to the entire trust principal and may not be made to specific trust assets or to a fractional share of a trust. Once made, an allocation of GST exemption (including an automatic allocation) is irrevocable. Under the proposed regulations, an allocation of GST exemption (other than an allocation to a charitable lead annuity trust) greater than the amount necessary to fully exempt the transferred property is void to the extent of the excess allocation.

Estate Tax Inclusion Period

A transferor who makes a gift of property that would be included in the gross estate of the transferor or the transferor's spouse (other than by reason of section 2035(d)) may allocate GST exemption to the property. As described below, this allocation is generally not effective during the period in which the property would be included in the gross estate of the transferor or the transferor's spouse were the transferor or the transferor's spouse to die (the estate tax inclusion period or "ETIP"). An allocation of GST exemption on Form 709 filed by the date the return would be due if the termination of the ETIP were a taxable gift is effective as of the date of the termination. An allocation of GST exemption made after that date is effective as of the earlier of the date it is filed or the date of death of the transferor (or the transferor's spouse, if applicable). An allocation of GST exemption by the executor of the estate of the transferor (or the executor of the estate of the transferor's spouse, if applicable) on the termination of an ETIP occurring by reason of death is made on Form 706.

Under the proposed regulations, in determining whether property is subject to an ETIP, an individual is treated as holding any interest in or power over property held by the individual's spouse. However, this rule does not prevent allocation of the transferor's GST exemption to property with respect to which the special election under section 2652(a)(3) has been made.

Computing the GST Tax: The Applicable Fraction and the Inclusion Ratio

The rate of tax imposed on a GST is the product of the inclusion ratio with respect to the GST and the highest Federal estate tax rate in effect at the time of the GST. The inclusion ratio with respect to a transfer is 1 minus the applicable fraction. The numerator of the applicable fraction is generally the amount of GST exemption allocated to the trust (or allocated to the property transferred in a direct skip). The denominator of the applicable fraction is generally the value of the trust (or the property transferred in the direct skip) on the date the GST exemption allocation becomes effective, reduced by any death taxes actually recovered from the trust and any charitable deduction allowed with respect to the transfer.

The proposed regulations provide several exceptions to the general rule that property is valued as of the date the allocation becomes effective. First, if GST exemption is allocated to a lifetime transfer on a Form 709 that is not a timely-filed Form 709, generally the transferor may elect to value the property at its fair market value as of the first day of the month in which the late allocation is made. This rule recognizes the practical difficulties of filing an allocation on the same date the property is valued. Second, if GST exemption is allocated to a pecuniary bequest that is paid with property valued at other than date of distribution values, the value of the property used to pay the bequest is determined on the date the bequest is paid. However, if the amount is paid within 15 months of the decedent's death, or if the fiduciary is required to fund the payment with property fairly representative of the net appreciation or depreciation occurring with respect to the assets from which the amount may be paid between the date of death and the date the payment is made, the value is determined as of the date of death.

The inclusion ratio for a direct skip that is a nontaxable gift is zero. A transfer is a nontaxable gift to the extent it is excluded from taxable gifts under section 2503(b) or (e) of the Code. A transfer to a trust made after March 31, 1988, is not a nontaxable gift unless the trust is for the sole benefit of an individual during that individual's lifetime and the trust will be includible in the individual's gross estate if the trust does not terminate before the individual's death.

The proposed regulations provide that the inclusion ratio with respect to a direct skip becomes final upon the expiration of the statute of limitations for assessment of the GST tax. While this period will often parallel the assessment period for the applicable estate or gift tax, the periods may differ for reasons such as the existence of an ETIP, the late filing of a return, or the execution of a consent that extends the assessment period.

In the case of other types of generation-skipping transfers, the inclusion ratio does not become final until the later of (1) the expiration of the period for assessment of the first GST tax computed using that inclusion ratio, or (2) the expiration of the period for assessment of Federal estate tax with respect to the transferor's estate. The "later of" rule with respect to GSTs (other than direct skips) is necessary because there often will be no justifiable issue with respect to a claimed inclusion ratio until a deficiency in tax can be asserted. Comments are invited on this issue.

The proposed regulations set forth the method for recomputing the inclusion ratio for a trust to which an additional transfer is made or for a trust that is consolidated with another trust.

Special rules are provided for determining the inclusion ratio with respect to a charitable lead annuity trust. In general, the numerator of the applicable fraction with respect to the trust is the adjusted GST exemption (*i.e.*, the amount of GST exemption allocated to the trust plus interest on that amount computed for a period of the charitable lead interest at a rate equal to the rate used to determine the amount of the charitable deduction). The denominator of the applicable fraction is the value of the trust property immediately after the termination of the charitable lead interest. The proposed regulations provide that if a late allocation of GST exemption is made to a charitable lead annuity trust, interest is accrued only after the effective date of the allocation in determining the amount of the adjusted GST exemption.

Single Trust Treated as Separate Trusts

Generally, a single trust may not be treated as separate trusts for purposes of chapter 13 of the Code. The statute provides two exceptions to this rule: (1) The portions of a single trust attributable to different transferors are treated as separate trusts, and (2) separate and independent shares of different beneficiaries in a single trust are treated as separate trusts. Under the proposed regulations, separate and independent shares must exist at the time of the transfer and, under the terms of the instrument, at all times thereafter for separate trust treatment to apply. A trust may be severed at any time to reflect the separate trusts deemed to exist under the preceding rules.

The proposed regulations provide additional rules for determining when a pecuniary amount payable on the death of a transferor from a trust that is includible in the transferor's gross estate is treated as a separate share and therefore as a separate trust. These rules treat the pecuniary amount as a separate share (and thus remove the amount from the denominator of the applicable fraction determined for the trust) only if the pecuniary amount is promptly funded, or if any delayed payment earns interest and may not be funded in a manner that would disproportionately allocate post-death changes in the value of the property from which the pecuniary amount may be funded.

The proposed regulations also clarify that a single trust may, under certain circumstances, be divided into two or more trusts. Except as specifically provided in the proposed regulations, severed trusts are treated as a single trust for purposes of chapter 13 of the Code.

Reverse QTIP Election

The transferor or the transferor's executor may elect for purposes of chapter 13 of the Code to treat qualified terminable interest property (QTIP) as though the QTIP election had not been made. If this election is made, the donee spouse does not become the transferor of the property on the subsequent inclusion of the trust property in that spouse's taxable gifts or gross estate.

Additionally, because the right of recovery under section 2207A arises as a result of the QTIP election, an election to treat the property as if no QTIP election had been made for purposes of chapter 13 has the effect of disregarding the corresponding right of recovery for purposes of chapter 13. Thus, the waiver of (or failure to exercise) such right is not treated as an addition to the trust (whether or not Federal gift tax is imposed on the event).

The election to treat a trust as if no QTIP election had been made applies to the entire trust with respect to which the QTIP election is made. A transition rule under the proposed regulations permits a trust as to which the election was made prior to December 24, 1992, to be treated as separate trusts under certain circumstances.

Additional "Transferor" and "Transfer" Issues

The proposed regulations clarify that a transfer to a trust subject to a beneficiary's right of withdrawal is treated as a transfer to the trust rather than a transfer to the beneficiary. On the lapse of a withdrawal right, the holder of a right becomes the transferor of the trust to the extent the holder is treated as making a transfer subject to gift tax.

Multiple Skips

If immediately after a GST the property with respect to which the GST occurred continues to be held in trust, the transferor is thereafter deemed to occupy the generation immediately above the generation occupied by the person who occupies the highest generation of all persons holding an interest in the trust immediately after the transfer.

Treatment of Transfers by Nonresidents Not Citizens of the United States

The proposed regulations describe the application of chapter 13 of the Code to transfers made by nonresidents who are not citizens of the United States. Under the proposed regulations, any transfer on which a Federal estate or gift tax is imposed is subject to chapter 13 in the same manner as a transfer made by a resident or a citizen of the United States. In addition, certain transfers, distributions, and terminations are subject to chapter 13 depending on the citizenship or residence of certain individuals at the time of the original transfer and at the time of the subsequent distribution or termination.

In order to mitigate the unexpected application of chapter 13 to transfers by a nonresident who is not a citizen of the United States, the proposed regulations generally provide for the automatic allocation of the $1 million GST exemption to transfers that may have GST consequences regardless of whether the transfer is a direct skip. Comments are invited on the application of the automatic allocation rules, and on the rule for electing out of the automatic allocation.

Several bilateral tax treaties negotiated by the United States prior to 1986 cover the generation-skipping transfer tax. The Service believes that those treaties continue to apply to the generation-skipping transfer tax imposed by chapter 13, as amended by the Tax Reform Act of 1986 and subsequent legislation. These regulations are not intended to override any provision of those treaties that may limit United States jurisdiction to impose the GST tax on the transfer of certain property.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations; and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Proposed Effective Dates

These regulations are proposed to be effective with respect to any generation-skipping transfer made after December 24, 1992, except for the following. The rule that any election described in § 26.2632–1(b)(1) is irrevocable is proposed to be effective on July 22, 1993. Section 26.2652–2(c) contains a transition rule that is proposed to be effective for elections made prior to December 24, 1992. Section 26.2663–2(c) applies only to generation-skipping transfers occurring with respect to transfers made on or after December 24, 1992. Although the regulations under § 26.2663–2(c) are proposed to be effective only with respect to transfers made on or after December 24, 1992, section 2663(2) applies to transfers by nonresidents not citizens of the United States made after October 22, 1986. Comments are invited, including comments on the adequacy of this effective date with respect to existing documents that became irrevocable before December 24, 1992.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public

hearing is scheduled for February 18, 1993. See the notice of public hearing published elsewhere in this issue to the Federal Register.

Drafting Information

The principal author of these regulations is John B. Franklin, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedures, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 26 and 301 are proposed to be amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The title of part 26 is revised as set forth above.

Par. 2. The authority for part 26 is revised to read as follows:

Authority: 26 U.S.C. 7805 and 26 U.S.C. 2663. Section 26.2632–1 also issued under 26 U.S.C. 2632 and 2663. Section 26.2642–4 also issued under 26 U.S.C. 2632 and 2663. Section 26.2662–1 also issued under 26 U.S.C. 2662. Section 26.2663–2 also issued under 26 U.S.C. 2632 and 2663.

Par. 3. Section 26.2600–1 is revised to read as follows:

§ 26.2600–1 Table of contents.

This section lists the captions that appear in the regulations under sections 2601 through 2663 of the Internal Revenue Code.

§ 26.2601–1 Effective dates.

(a) Transfers subject to the generation-skipping transfer tax.
(1) In general.
(2) Certain transfers deemed made after October 22, 1986.
(b) Exceptions.
(1) Irrevocable trusts.
(2) Transition rule for wills or revocable trusts executed before October 22, 1986.
(3) Transition rule in case of mental incompetency.
(4) Exceptions to additions rule.
(c) Transfers before October 22, 1986.
(1) In general.
(2) Refunds of overpayments.
(d) $2,000,000 grandchild exclusion.
(1) In general.
(2) Treatment of transfers in trust. [Reserved]
(3) Election for certain contingent transfers.
(e) Additional effective dates.
(1) In general.
(2) Certain transfers by nonresidents not citizens of the United States.

§ 26.2611–1 Generation-skipping transfer defined.

§ 26.2612–1 Definitions.

(a) Direct skip.
(1) In general.
(2) Special rule for certain lineal descendants.
(b) Taxable termination.
(1) In general.
(2) Partial termination.
(c) Taxable distribution.
(d) Skip person.
(e) Interest in trust.
(1) In general.
(2) Exceptions.
(f) Examples.

§ 26.2613–1 Skip person.

§ 26.2632–1 Allocation of GST exemption.

(a) General rule.
(b) Lifetime allocations.
(1) Automatic allocation to direct skips.
(2) Allocation to other transfers.
(c) Special rules during an estate tax inclusion period.
(1) In general.
(2) Estate tax inclusion period defined.
(3) Termination of an ETIP.
(4) Treatment of direct skips.
(5) Examples.
(d) Allocations after the transferor's death.
(1) Allocation by executor.
(2) Automatic allocation after death.

§ 26.2641–1 Applicable rate of tax.

§ 26.2642–1 Inclusion ratio.

(a) In general.
(b) Numerator of applicable fraction.
(1) In general.
(2) GSTs occurring during an ETIP.
(c) Denominator of applicable fraction.
(1) In general.
(2) Zero denominator.
(3) Nontaxable gifts.
(d) Examples.

§ 26.2642–2 Valuation.

(a) Lifetime transfers.
(1) In general.
(2) Special rule for late allocations during life.
(b) Transfers at death.
(1) In general.
(2) Special rule for pecuniary payments.
(3) Special rule for residual transfers after payment of a pecuniary payment.
(4) Appropriate interest.
(c) Examples.

§ 26.2642–3 Special rule for charitable lead annuity trusts.

(a) In general.
(b) Adjusted GST exemption defined.
(c) Example.

§ 26.2642–4 Redetermination of applicable fraction.

(a) In general.
(1) Multiple transfers to a single trust.
(2) Consolidation of separate trusts.
(3) Property included in transferor's gross estate.
(4) Imposition of recapture tax under section 2032A.
(b) Examples.

§ 26.2642–5 Finality of inclusion ratio.

(a) Direct skips.
(b) Other GSTs.

§ 26.2652–1 Transferor defined; other definitions.

(a) Transferor defined.
(1) In general.
(2) Transfers subject to Federal estate or gift tax.
(3) Special rule for certain QTIP trusts.
(4) Exercise of certain nongeneral powers of appointment.
(5) Examples.
(b) Trust defined.
(1) In general.
(2) Examples.
(c) Trustee defined.
(d) Executor defined.
(e) Interest in trust.

§ 26.2652–2 Special election for qualified terminable interest property.

(a) In general.
(b) Time and manner of making election.
(c) Transitional rule.
(d) Examples.

§ 26.2653–1 Taxation of multiple skips.

(a) General rule.
(b) Examples.

§ 26.2654–1 Certain trusts treated as separate trusts.

(a) In general.
(b) Single trust treated as separate trusts.
(1) Multiple transferors to single trust.
(2) Substantially separate and independent shares.
(c) Division of single trust into separate trusts.
(1) In general.
(2) Trust property included in the gross estate.

§ 26.2662–1 Generation-skipping transfer tax return requirements.

(a) In general.
(b) Form of return.
(1) Taxable distributions.
(2) Taxable terminations.
(3) Direct skip.
(c) Person liable for tax and required to make return.
(1) In general.
(2) Special rule for direct skips occurring at death with respect to property held in trust arrangements.
(3) Limitation on personal liability of trustee.

(4) Exceptions.
(d) Time and manner of filing return.
(1) In general.
(2) Exceptions.
(e) Place for filing returns.
(f) Lien on property.

§ 26.2663–1 Recapture tax under section 2032A.

§ 26.2663–2 Application of chapter 13 to transfers by nonresidents not citizens of the United States.

(a) In general.
(b) Transferred property situated in the United States.
(1) Transfers at death.
(2) Transfers during life.
(3) Taxable distributions and taxable terminations.
(4) Determination of situs.
(c) Transferred property not subject to chapter 13 by reason of United States situs.
(1) In general.
(2) Beneficial interest in property.
(d) Anti-abuse rule.
(e) Examples.
(f) Automatic allocation of GST exemption.

Par. 4. Section 26.2601–1 is amended by adding paragraph (e) to read as follows:

§ 26.2601–1 Effective dates.

* * * * *

(e) *Additional effective dates*—(1) *In general.* Except as otherwise provided, the regulations under §§ 26.2611–1, 26.2612–1, 26.2613–1, 26.2632–1, 26.2641–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, 26.2642–5, 26.2652–1, 26.2652–2, 26.2653–1, 26.2654–1, 26.2663–1, and 26.2663–2(c) are effective with respect to generation-skipping transfers made on or after December 24, 1992.

(2) *Certain transfers by nonresidents not citizens of the United States.* The provisions of chapter 13 do not apply to any transfer by a nonresident not a citizen of the United States described in paragraph (c) of § 26.2663–2 made before December 24, 1992.

Par. 5. Sections 26.2611–1, 26.2612–1, 26.2613–1, 26.2632–1, 26.2641–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, 26.2642–5, 26.2652–1, 26.2652–2, 26.2653–1, 26.2654–1, 26.2663–1, and 26.2663–2 are added to read as follows:

§ 26.2611–1 Generation-skipping transfer defined.

A generation-skipping transfer ("GST") is an event that is either a direct skip, a taxable distribution, or a taxable termination. See § 26.2612–1 for the definition of these terms.

§ 26.2612–1 Definitions.

(a) *Direct skip*—(1) *In general.* A direct skip is a transfer that is subject to Federal gift or estate tax to a skip person. If property is transferred to a trust, the transfer is a direct skip only if the trust is a skip person. Only one direct skip occurs when a single transfer of property skips two or more generations. See § 26.2612–1(d) for the definition of "skip person." See § 26.2652–1(b) for the definition of "trust." See § 26.2632–1(c)(4) for the time that a direct skip occurs, if the transferred property is subject to an estate tax inclusion period. See § 26.2652–1(a)(2) for determining whether a transfer is subject to Federal estate or gift tax.

(2) *Special rule for certain lineal descendants.* Solely for the purpose of determining whether a transfer to or for the benefit of a lineal descendant of the transferor (or the transferor's spouse or former spouse) is a direct skip, the generation assignment of the descendant is determined by disregarding the generation of a predeceased individual who was both an ancestor of the descendant and a lineal descendant of the transferor (or the transferor's spouse or former spouse). If a transfer to a trust would be a direct skip but for this paragraph, any generation assignment determined under this paragraph continues to apply in determining whether any subsequent distribution from (or termination of an interest in) the portion of the trust attributable to that transfer is a GST. For purposes of this paragraph (a)(2), a living descendant is not treated as a predeceased individual solely by reason of applicable local law; *e.g.*, where state law treats an individual executing a disclaimer as having predeceased the transferor of the disclaimed property. See § 26.2652–1(a)(1) for the definition of "transferor." See § 26.2612–1(e) for the definition of "interest in trust."

(b) *Taxable termination*—(1) *In general.* Except as otherwise provided in this paragraph (b), a taxable termination is a termination (occurring for any reason) of an interest in trust unless—

(i) A transfer subject to Federal estate or gift tax occurs with respect to the property held in the trust at the time of the termination (*i.e.*, a new transferor is determined with respect to the property);

(ii) Immediately after the termination, a person who is not a skip person has an interest in the trust; or

(iii) At no time after the termination may a distribution (including a distribution at the termination of the trust) be made from the trust to a skip person.

(2) *Partial termination.* If a distribution of a portion of trust property is made to a skip person by reason of a termination occurring on the death of a lineal descendant of the transferor, the termination is a taxable termination, but only with respect to the distributed property.

(c) *Taxable distribution.* A taxable distribution is a distribution of income or principal from a trust to a skip person unless the distribution is a taxable termination or a direct skip. If any portion of GST tax (including penalties and interest thereon) imposed on a distributee is paid from the distributing trust, the payment is an additional taxable distribution to the distributee. For purposes of chapter 13, the additional distribution is treated as having been made on the last day of the calendar year in which the original taxable distribution is made.

(d) *Skip person.* A skip person is—

(1) An individual assigned to a generation more than one generation below that of the transferor (determined under the rules of section 2651); or

(2) A trust if—(i) All interests in the trust are held by skip persons; or

(ii) No person holds an interest in the trust and no distributions (including distributions at the termination of the trust) may be made after the transfer to a person other than a skip person.

(e) *Interest in trust*—(1) *In general.* An interest in trust is an interest in property held in trust as defined in section 2652(c) and these regulations. An interest in trust exists if a person—

(i) Has a present right to receive trust principal or income;

(ii) Is a permissible current recipient of trust principal or income and is not described in section 2055(a); or

(iii) Is described in section 2055(a) and the trust is a charitable remainder annuity trust or unitrust (as defined in section 664(d)) or a pooled income fund (as defined in section 642(c)(5)).

(2) *Exceptions*—(i) *Support obligations.* In general, an individual has a present right to receive trust income or principal if trust income or principal may be used to satisfy the individual's obligations. However, an individual does not have an interest in a trust merely because a support obligation of that individual may be satisfied by a distribution that is either within the discretion of a fiduciary or pursuant to provisions of State law substantially equivalent to the Uniform Gifts (Transfers) to Minors Act.

(ii) *Nominal interests.* If a significant purpose for the creation of an interest in trust is to postpone or avoid the GST tax, the interest is disregarded for purposes of chapter 13. The creation of an interest in a trust may have more than one significant purpose.

(f) *Examples.* The following examples illustrate the provisions of this section. Unless stated otherwise, § 26.2612–1(a)(2), which assigns descendants to a higher generation when there is a predeceased ancestor, does not apply.

Example 1.—Direct skip. T gratuitously conveys Blackacre to T's grandchild. Because the transfer is a transfer to a skip person of property subject to Federal gift tax, it is a direct skip.

Example 2.—Direct skip of more than one generation. T gratuitously conveys Blackacre to T's great-grandchild. The transfer is a direct skip. Only one GST tax is imposed on the direct skip although two generations are skipped by the transfer.

Example 3.—Taxable termination. T establishes an irrevocable trust under which the income is to be paid to T's child, C, for life. On the death of C, the trust principal is to be paid to T's grandchild, GC. Since C has an interest in the trust, the trust is not a skip person and the transfer to the trust is not a direct skip. If C dies survived by GC, a taxable termination occurs at C's death because C's interest in the trust terminates and thereafter the trust property is held by a skip person who occupies a lower generation than C.

Example 4.—Direct skip of property held in trust. T establishes a testamentary trust under which the income is to be paid to T's surviving spouse, S, for life and the remainder is to be paid to a grandchild of T and S. T's executor elects to treat the trust as qualified terminable interest property under section 2056(b)(7). The transfer to the trust is not a direct skip because S, a person who is not a skip person, holds a present right to receive income from the trust. Upon S's death, the trust property is included in S's gross estate under section 2044 and passes directly to a skip person. The GST occurring at that time is a direct skip because it is a transfer subject to chapter 11. The fact that the interest created by T is terminated at S's death is immaterial because S becomes the transferor at the time of the transfer subject to chapter 11.

Example 5.—Predeceased ancestor exception. T establishes an irrevocable trust providing that trust income is to be paid to T's grandchild, GC, for 5 years. At the end of the 5-year period, the trust is to terminate and the principal is to be distributed to GC. T's child C, a parent of GC, is deceased at the time T establishes the trust. Therefore, GC is treated as a child of T rather than as a grandchild. As a result, GC is not a skip person and the initial transfer to the trust is not a direct skip. Similarly, distributions to GC during the term of the trust and at the termination of the trust will not be GSTs.

Example 6.—Predeceased ancestor exception not applicable. The facts are the same as in *Example 5*, except the trust income is to be paid to T's spouse, S, during the first two years of the trust. Since S has an interest in the trust, the trust is not a skip person and the transfer by T is not a direct skip. Since the transfer is not a direct skip, the predeceased ancestor rule does not apply and GC is not treated as the child of T. A taxable termination occurs at the expiration of S's interest.

Example 7.—Taxable termination. T establishes an irrevocable trust for the benefit of T's child, C, T's grandchild, GC, and T's great-grandchild, GGC. Under the terms of the trust, income and principal may be distributed to any or all of the living beneficiaries at the discretion of the trustee. Upon the death of the second beneficiary to die, the trust principal is to be paid to the survivor. C dies first. A taxable termination occurs at that time because, immediately after C's interest terminates, all interests in the trust are held by skip persons (GC and GGC).

Example 8.—Taxable termination resulting from distribution. The facts are the same as in *Example 7*, except twenty years after C's death the trustee exercises its discretionary power and distributes the entire principal to GGC. The distribution results in a taxable termination because GC's interest in the trust terminates as a result of the distribution of the entire trust property to GGC, a skip person.

Example 9.—Simultaneous termination of interests of more than one beneficiary. T establishes an irrevocable trust for the benefit of T's child, C, T's grandchild, GC, and T's great-grandchild, GGC. Under the terms of the trust, income and principal may be distributed to any or all of the living beneficiaries at the discretion of the trustee. Upon the death of C, the trust property is to be distributed to GGC if then living. If C is survived by both GC and GGC, both C's and GC's interests in the trust will terminate on C's death. However, because both interests will terminate at the same time and as a result of one event, only one taxable termination occurs.

Example 10.—Partial taxable termination. T creates an irrevocable trust providing that trust income is to be paid to T's children, S and D, in such proportions as the trustee determines for their joint lives. On the death of the first child to die, one-half of the trust principal is to be paid to T's then living grandchildren. The balance of the trust principal is to be paid to T's grandchildren on the death of the survivor of S and D. If S predeceases D, the distribution occurring on the termination of S's interest in the trust is a taxable termination and not a taxable distribution. It is a taxable termination because the distribution is a distribution of a portion of the trust that occurs as a result of the death of S, a lineal descendant of T. It is immaterial that a portion of the trust continues and that D, a person other than a skip person, thereafter holds an interest in the trust.

Example 11.—Taxable distribution. T establishes an irrevocable trust under which the trust income is payable to T's child, C, for life. When T's grandchild, GC, attains 35 years of age, GC is to receive one-half of the principal. The remaining one-half of the principal is to be distributed to GC on C's death. Assume that C survives until GC attains age 35. When the trustee distributes one-half of the principal to GC on GC's 35th birthday, the distribution is a taxable distribution because it is a distribution to a skip person and is neither a taxable termination nor a direct skip.

Example 12.—Exercise of withdrawal right as taxable distribution. The facts are the same as in *Example 11*, except GC holds a continuing right to withdraw trust principal and after one year GC withdraws $10,000. The withdrawal by GC is not a taxable termination because the withdrawal does not terminate C's interest in the trust. The withdrawal by GC is a taxable distribution to GC.

Example 13.—Interest in trust. T establishes an irrevocable trust under which the income is to be paid to T's child, C, for life. On the death of C, the trust principal is to be paid to T's grandchild, GC. Because C has a present right to receive income from the trust, C has an interest in the trust. Because GC cannot currently receive distributions from the trust, GC does not have an interest in the trust.

Example 14.—Support obligation. T establishes an irrevocable trust for the benefit of T's grandchild, GC. The trustee has discretion to distribute property for GC's support without regard to the duty or ability of GC's parent, C, to support GC. Because GC is a permissible current recipient of trust property, GC has an interest in the trust. C does not have an interest in the trust because the potential use of the trust property to satisfy C's support obligation is within the discretion of a fiduciary.

§ 26.2613–1 Skip person.

For the definition of "skip person" see § 26.2612–1(d).

§ 26.2632–1 Allocation of GST exemption.

(a) *General rule.* Except as otherwise provided in this section, an individual or the individual's executor may allocate the individual's $1 million GST exemption at any time from the date of the transfer through the date for filing the individual's Federal estate tax return (including any extensions actually granted). If no estate tax return is required to be filed, the GST exemption may be allocated at any time through the date a Federal estate tax return would be due if a return were required to be filed (including any extensions actually granted). If property is held in trust, the allocation of GST exemption is made to the entire trust rather than to specific trust assets. If a transfer is a direct skip to a trust, the allocation of GST exemption to the transferred property is also treated as an allocation of GST exemption to the trust for purposes of future GSTs with respect to the trust by the same transferor.

(b) *Lifetime allocations*—(1) *Automatic allocation to direct skips*—(i) *In general.* If a direct skip occurs during the transferor's lifetime, the transferor's GST exemption not previously allocated (unused GST exemption) is automatically allocated to the transferred property (but not in excess of the fair market value of the property on the date of the transfer). The transferor may prevent automatic allocation of GST exemption by

describing on a timely-filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) the transfer and the extent to which the automatic allocation is not to apply. In addition, a timely-filed Form 709 accompanied by payment of the GST tax (as shown on the return with respect to the direct skip) is sufficient to prevent an automatic allocation of GST exemption with respect to the transferred property. See paragraph (c)(4) of this section for special rules in the case of direct skips treated as occurring at the termination of an estate tax inclusion period.

(ii) *Time for filing Form 709.* A Form 709 is timely filed if it is filed on or before the date that would be the date for reporting the transfer if it were a taxable gift (*i.e.*, the date prescribed by section 6075(b), including any extensions actually granted (the due date)). Except as provided in paragraph (b)(1)(iii) of this section, the automatic allocation of GST exemption (or the election to prevent the allocation, if made) is irrevocable after the due date. An automatic allocation of GST exemption is effective as of the date of the transfer to which it relates.

(iii) *Transitional rule.* An election to prevent an automatic allocation of GST exemption filed on or before January 25, 1993, becomes irrevocable on July 22, 1993.

(2) *Allocation to other transfers*—(i) *In general.* An allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is being made, the amount of GST exemption allocated to it, and the value of the trust principal at the time of the allocation. The allocation should also state the inclusion ratio of the trust after the allocation. An allocation of GST exemption may be made by a formula; *e.g.*, the allocation may be expressed in terms of the amount necessary to produce an inclusion ratio of zero. An allocation of GST exemption is irrevocable. Except as provided in § 26.2642–3 (relating to charitable lead annuity trusts), an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust. See § 26.2642–1 for the definition of inclusion ratio.

(ii) *Effective date of allocation.* Except as otherwise provided, an allocation of GST exemption is effective as of the date of any transfer as to which the Form 709 on which it is made is a timely filed return (a timely allocation). If more than one timely allocation is made, the earlier allocation is modified only if the later allocation clearly identifies the transfer and the nature and extent of the modification. Except as provided in paragraph (d)(1) of this section, an allocation to a trust made on a Form 709 filed after the due date for reporting a transfer to the trust (a late allocation) is effective on the date the Form 709 is filed. See paragraph (c)(1) of this section regarding allocation of GST exemption to property subject to an estate tax inclusion period. If it is unclear whether an allocation of GST exemption on a Form 709 is a late or a timely allocation to a trust, the allocation is effective in the following order—

(A) To any transfer to the trust disclosed on the return as to which the return is a timely return;

(B) As a late allocation; and

(C) To any transfer to the trust not disclosed on the return as to which the return would be a timely return.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (b).

Example 1.—Modification of allocation of GST exemption. T transfers $100,000 to an irrevocable generation-skipping trust on December 1, 1993. The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 1994. On February 10, 1994, T files a Form 709 allocating $50,000 of GST exemption to the trust. On April 10 of the same year, T files an amended Form 709 allocating $100,000 of GST exemption to the trust in a manner that clearly indicates the intention to modify and supersede the prior allocation with respect to the 1993 transfer. The allocation made on the April 10 return supersedes the prior allocation because it is made on a timely-filed Form 709 that clearly identifies the trust and the nature and extent of the modification of GST exemption allocation. The allocation of $100,000 of GST exemption to the trust is effective as of December 1, 1993. The result would be the same if the amended Form 709 decreased the amount of the GST exemption allocated to the trust.

Example 2.—Modification of allocation of GST exemption. The facts are the same as in *Example 1*, except on July 10, 1994, T files a Form 709 attempting to reduce the earlier allocation. The return is not a timely-filed return. The $100,000 GST exemption allocated to the trust, as amended on April 10, 1994, remains in effect because an allocation, once made, is irrevocable and may not be modified after the last date on which a timely-filed Form 709 can be filed.

Example 3.—Effective date of late allocation of GST exemption. T transfers $100,000 to an irrevocable generation-skipping trust on December 1, 1993. The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 1994. On December 1, 1994, T files a Form 709 and allocates $50,000 to the trust. The allocation is effective as of December 1, 1994.

Example 4.—Effective date of late allocation of GST exemption. T transfers $100,000 to a generation-skipping trust on December 1, 1993, in a transfer that is not a direct skip. T does not make an allocation of GST exemption on a timely-filed Form 709. On July 1, 1994, the trustee makes a taxable distribution from the trust to T's grandchild in the amount of $20,000. On the same date, T allocates GST exemption to the trust in the amount of $20,000. The allocation of GST exemption on the date of the transfer is treated as occurring immediately prior to the taxable distribution. Thus, at the time of the GST the trust has an inclusion ratio of less than one.

(c) *Special rules during an estate tax inclusion period*—(1) *In general.* An allocation of GST exemption (including an automatic allocation) to property subject to an estate tax inclusion period (ETIP) is effective no earlier than the termination of the ETIP. An allocation is effective at the termination of the ETIP if made by the due date for filing a Form 709 that would apply to a taxable gift occurring at the time the ETIP terminates (timely ETIP return). The rules of this paragraph (c)(1) do not apply to qualified terminable interest property with respect to which the special election under § 26.2652–1(a)(3) has been made.

(2) *Estate tax inclusion period defined.* An ETIP is the period during which, should death occur, the value of transferred property would be includible (other than by reason of section 2035) in the gross estate of—

(i) The transferor;

(ii) The transferor had the transferor retained an interest held by the transferor's spouse (but only to the extent the spouse acquired the interest from the transferor in an inter vivos transfer that was not included in the transferor's taxable gifts or for which a deduction was allowed under section 2523 of the Code); or

(iii) The spouse of the transferor.

(3) *Termination of an ETIP.* Generally, an ETIP terminates on the first to occur of—

(i) The death of the transferor;

(ii) The time at which no portion of the property would be includible in the transferor's gross estate (other than by reason of section 2035) or, in the case of an individual who is a transferor solely by reason of an election under section 2513, the time at which no portion would be includible in the gross estate of the individual's spouse (other than by reason of section 2035);

(iii) The time of a GST, but only with respect to the property involved in the GST; or

(iv) In the case of an ETIP arising by reason of an interest held by the

transferor's spouse, at the first to occur of—

(A) The death of the spouse; or

(B) The time at which no portion of the property would be includible in the spouse's gross estate (other than by reason of section 2035).

(4) *Treatment of direct skips.* If property transferred to a skip person is subject to an ETIP, the direct skip is treated as occurring on the termination of the ETIP.

(5) *Examples.* The following examples illustrate the rules of this section. In each example assume that T transfers $100,000 to an irrevocable trust.

Example 1.—Allocation of GST exemption during ETIP. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. If T dies within the 9-year period, the value of the trust principal is includible in T's gross estate under section 2036(a) of the Internal Revenue Code. Thus, the trust is subject to an ETIP. T files a timely Form 709 reporting the transfer and allocating $100,000 of GST exemption to the trust. The allocation of GST exemption to the trust is not effective until the termination of the ETIP.

Example 2.—Effect of prior allocation on termination of ETIP. The facts are the same as in *Example 1*, except the trustee has the power to invade trust principal on behalf of T's grandchild, GC, during the term of T's income interest. In year 4, when the value of the trust is $200,000, the trustee distributes $15,000 to GC. The distribution is a taxable distribution. The ETIP with respect to the property distributed to GC terminates at the time of the taxable distribution. See paragraph (c)(3)(iii) of this section. Solely for purposes of determining the trust's inclusion ratio with respect to the taxable distribution, the $100,000 allocation of GST exemption (as well as any additional allocation made on a timely ETIP return) is effective immediately prior to the taxable distribution. See § 26.2642–1(b)(2).

Example 3.—Split-gift transfers subject to ETIP. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. T files a timely Form 709 reporting the transfer. T's spouse, S, consents to have the gift treated as made one-half by S. Because S is treated as transferring one-half of the property to T's grandchild, S becomes the transferor of one-half of the trust for purposes of chapter 13. Because the value of the trust would be includible in T's gross estimate if T died immediately after the transfer, S's transfer is subject to an ETIP.

Example 4.—Transfer of retained interest as ETIP termination. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. Four years after the initial transfer, T transfers the income interest to T's sibling. The ETIP with respect to the trust terminates on T's transfer of the income interest because, after the transfer, the trust property would not be includible in T's gross estate (other than by reason of section 2035) if T died at that time.

Example 5.—Interest transferred to spouse. The facts are the same as in *Example 4*, except T transfers the income interest to T's spouse, S, rather than to T's sibling. Assume that the transfer to S qualifies for the annual gift tax exclusion under section 2503(b). The ETIP does not terminate by reason of the transfer because the trust property subject to the transferred income interest held by T's spouse would be includible in T's gross estate if T had retained the interest and had died during the term of the trust.

(d) *Allocations after the transferor's death*—(1) *Allocation by executor.* Except as otherwise provided in this paragraph (d), an allocation of the decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) filed on or before the date prescribed for filing the return by section 6075(a) (including any extensions actually granted (the due date)). An allocation of GST exemption with respect to property included in the gross estate of the decedent is effective as of the date of death. A timely allocation of GST exemption by the executor with respect to a lifetime transfer of property that is not included in the transferor's gross estate is made on a Form 709. A late allocation of GST exemption by an executor with respect to a lifetime transfer of property is made on Form 706 and is effective as of the date of the transferor's death. An allocation of GST exemption to a trust (whether or not funded at the time the Form 706 is filed) is effective if the notice of allocation clearly identifies the trust and the amount of the decedent's GST exemption allocated to the trust. An executor may allocate the decedent's GST exemption by use of a formula.

(2) *Automatic allocation after death*—(i) *In general.* A decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decendent's executor on or before that date. The automatic allocation occurs whether or not a return is actually required to be filed. Unused GST exemption is allocated pro rate (on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value) of the nonexempt portion of the transferred property) first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (on the basis of the chapter 11 value of the nonexempt portion of the trust property) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation of GST exemption is irrevocable, and an allocation made by the executor after the automatic allocation is made is ineffective. No automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust. In addition, no automatic allocation of GST exemption is made to a trust if, during the nine month period ending immediately after the death of the transferor—

(A) No GST has occurred with respect to the trust; and

(B) At the end of such period no future GST can occur with respect to the trust.

§ 26.2641–1 Applicable rate of tax.

The rate of tax applicable to any GST (applicable rate) is determined by multiplying the maximum Federal estate tax rate in effect at the time of the GST by the inclusion ratio (as defined in § 26.2642–1). For this purpose, the maximum Federal estate tax rate is the maximum rate set forth under section 2001(c) of the Internal Revenue Code (without regard to section 2001(c)(3)).

§ 26.2642–1 Inclusion ratio.

(a) *In general.* Except as otherwise provided in this section, the inclusion ratio is determined by subtracting the applicable fraction (rounded to the nearest one-thousandth (.001)) from 1. In rounding the applicable fraction to the nearest one-thousandth, any amount that is midway between one one-thousandth and another one-thousandth is rounded up to the higher of those two amounts.

(b) *Numerator of applicable fraction*—(1) *In general.* Except as otherwise provided in this paragraph (b), and in §§ 26.2642–3 (providing a special rule for charitable lead annuity trusts) and 26.2642–4 (providing rules for the redetermination of the applicable fraction), the numerator of the applicable fraction is the amount of GST exemption allocated to the trust (or to the transferred property in the case of a direct skip not in trust).

(2) *GSTs occurring during an ETIP*—(i) *In general.* For purposes of determining the inclusion ratio with respect to a taxable termination or a taxable distribution that occurs during an ETIP, the numerator of the applicable fraction is the sum of—

(A) The GST exemption previously allocated to the trust reduced (but not below zero) by the nontax amount of

any prior GSTs with respect to the trust; and

(B) Any GST exemption allocated to the trust on a timely ETIP return filed after the termination of the ETIP.

(ii) *Nontax amount of a prior GST.* The nontax amount of a prior GST with respect to the trust is the amount of the GST multiplied by the applicable fraction attributable to the trust at the time of the prior GST. For the definition of ETIP, for the definition of a timely ETIP return, and for rules regarding the allocation of GST exemption to property during an ETIP, see § 26.2632.1(c).

(c) *Denominator of applicable fraction*—(1) *In general.* Except as otherwise provided in this paragraph (c) and in §§ 26.2642–3 and 26.2642–4, the denominator of the applicable fraction is the value of the property transferred to the trust (or transferred in a direct skip not in trust) (as determined under § 26.2642–2) reduced by the sum of—

(i) Any Federal estate tax and any State death tax incurred by reason of the transfer that is chargeable to the trust and is actually recovered from the trust;

(ii) The amount of any charitable deduction allowed under section 2055, 2106, or 2522 with respect to the transfer; and

(iii) In the case of a direct skip, the value of the portion of the transfer that is a nontaxable gift. See paragraph (c)(3) of this section for the definition of nontaxable gift.

(2) *Zero denominator.* If the denominator of the applicable fraction is zero, the inclusion ration is zero.

(3) *Nontable gifts.* Generally, for purposes of chapter 13, a transfer is a nontaxable gift to the extent the transfer is excluded from taxable gifts by reason of section 2503(b) (after application of section 2513) or section 2503(e). However, a transfer to a trust for the benefit of an individual is not a nontaxable gift for purposes of this section unless—

(i) Trust principal or income may, during the individual's lifetime, be distributed only to or for the benefit of the individual; and

(ii) The assets of the trust will be includable in the gross estate of the individual if the individual dies before the trust terminates.

(d) *Examples.* The following example illustrate the provisions of this section. See *Examples 2* and *3* of § 26.2652–2(d) for examples of the computation of the inclusion ratio where the special (reverse QTIP) election may be applicable.

Example 1.—Computation of the inclusion ratio. T transfers $100,000 to a newly-created irrevocable trust providing that income is to be accumulated for 10 years. At the end of 10 years, the accumulated income is to be distributed to T's child, C, and the trust principal is to be paid to T's grandchild. T allocates $40,000 of T's GST exemption to the trust on a timely-filed gift tax return. The applicable fraction with respect to the trust is 2/5 ($40,000 (the amount of GST exemption allocated to the trust) over $100,000 (the value of the property transferred to the trust)). The inclusion ratio is 3/5 (1–2/5). If the maximum Federal estate tax rate is 50 percent at the time of a GST, the rate of tax applicable to the transfer will be 30 percent (50 percent (the maximum estate tax rate) x 3/5 (the inclusion ration)).

Example 2.—Gift entirely nontaxable. On December 1, 1993, T transfers $10,000 to an irrevocable trust for the benefit of T's grandchild, GC, in a manner that qualifies the entire transfer for the annual exclusion under section 2503(b) of the Code. Under the terms of the trust, the income is to be paid to GC for 10 years or until GC's prior death. Upon the expiration of GC's income interest, the trust principal is payable to GC or GC's estate. The transfer to the trust is a direct skip. T made no prior gifts to or for the benefit of GC during 1993. The entire $10,000 transfer is a nontaxable transfer. For purposes of computing the tax on the direct skip, the denominator of the applicable fraction is zero, and thus the inclusion ratio is zero.

Example 3.—Gift nontaxable in part. T transfers $12,000 to an irrevocable trust for the benefit of T's grandchild, GC. Under the terms of the trust, the income is to be paid to GC for 10 years or until GC'S prior death. Upon the expiration of GC's income interest, the trust principal is payable to GC or GC's estate. Ten thousand dollars of the transfer qualifies for the annual exclusion under section 2503(b) of the Code. The amount of the nontaxable transfer is $10,000. Solely for purposes of computing the tax on the direct skip, T's transfer is divided into two portions. One portion is equal to the amount of the nontaxable transfer ($10,000) and has a zero inclusion ratio; the other portion is $2,000 ($12,000–$10,000). With respect to the $2,000 portion, the denominator of the applicable fraction is $2,000. Assuming that T has sufficient GST exemption available, the numerator of the applicable fraction is $2,000 (unless T elects to have the automatic allocation provisions not apply). Thus, assuming the automatic allocation is made, the applicable fraction is one ($2,000/$2,000=1) and the inclusion ration is zero (1–1=0).

Example 4.—Gift nontaxable in part. Assume the same facts as in *Example 3*, except T files a timely Form 709 electing that the automatic allocation of GST exemption not apply to the $12,000 transferred in the direct skip. T's transfer is again divided into two portions, a $10,000 portion with a zero inclusion ratio and a $2,000 portion with an applicable fraction of zero (0/$2,000=0) and an inclusion ration of one (1–0=1).

§ 26.2642–2 Valuation.

(a) *Lifetime transfers*—(1) *In general.* For purposes of determining the denominator of the applicable fraction, the value of property transferred during life is its fair market value on the effective date of the allocation of GST exemption.

(2) *Special rule for late allocations during life.* If a transferor makes a late allocation of GST exemption to a trust, the value of the property transferred to the trust is the fair market value of the trust assets determined on the effective date of the allocation of GST exemption. Except as otherwise provided in this paragraph (a)(2), if a transferor makes a late allocation of GST exemption to a trust, the transferor may, solely for purposes of determining the fair market value of the trust assets, elect to treat the allocation as having been made on the first day of the month during which the late allocation is made (valuation date). An election under this paragraph (a)(2) is not effective with respect to life insurance. An allocation subject to the election contained in this paragraph (a)(2) is not effective until it is actually filed with the Internal Revenue Service. The election is made by stating on the Form 709 on which the allocation is made—

(i) That the election is being made;

(ii) The applicable valuation date; and

(iii) The fair market value of the trust assets on the valuation date.

(b) *Transfers at death*—(1) *In general.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, in determining the denominator of the applicable fraction, the value of property included in the decedent's gross estate is its value for purposes of chapter 11. For purposes of the preceding sentence, the chapter 11 value of qualified real property as to which the election under section 2032A is made is the fair market value of the property unless—

(i) The property is transferred by direct skip; and

(ii) The recapture agreement filed with respect to the election under section 2032A specifically provides for recapture of the GST tax.

(2) *Special rule for pecuniary payments.*—(i) *In general.* If a pecuniary payment is satisfied with cash, the denominator of the applicable fraction is the pecuniary amount. If property other than cash is used to satisfy a pecuniary payment, the denominator of the applicable fraction is the pecuniary amount only if payment must be made with property on the basis of the value of the property on—

(A) The date of distribution; or

(B) A date other than the date of distribution, but only if the pecuniary payment must be satisfied on a basis that fairly reflects net appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from

which the distribution could have been made.

(ii) *Other pecuniary amounts payable in kind.* The denominator of the applicable fraction with respect to any property used to satisfy any other pecuniary payment payable in kind is the date of distribution value of the property.

(3) *Special rule for residual transfers after payment of a pecuniary payment*—(i) *In general.* Except as otherwise provided in this paragraph (b)(3), the denominator of the applicable fraction with respect to a residual transfer of property after the satisfaction of a pecuniary payment is the estate tax value of the assets available to satisfy the pecuniary payment reduced, if the pecuniary payment carries appropriate interest (as defined in paragraph (b)(4) of this section), by the pecuniary amount. The denominator of the applicable fraction with respect to a residual transfer of property after the satisfaction of a pecuniary payment that does not carry appropriate interest is the estate tax value of the assets available to satisfy the pecuniary payment reduced by the present value of the pecuniary payment. For purposes of this paragraph (b)(3)(i), the present value of the pecuniary payment is determined by using—

(A) The interest rate applicable under section 7520 at the death of the transferor; and

(B) The period between the date of the transferor's death and the date the pecuniary amount is paid.

(ii) *Special rule for residual transfers after pecuniary payments payable in kind.* The denominator of the applicable fraction with respect to any residual transfer after satisfaction of a pecuniary payment payable in kind is the date of distribution value of the property distributed in satisfaction of the residual transfer, unless the pecuniary payment must be satisfied with property on the basis of the value of the property on—

(A) The date of distribution; or

(B) A date other than the date of distribution, but only if the pecuniary payment must be satisfied on a basis that fairly reflects net appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which the distribution could have been made.

(4) *Appropriate interest*—(i) *In general.* For purposes of this section and § 26.2654–1 (relating to certain trusts treated as separate trusts), appropriate interest means that interest must be payable from the date of death of the transferor (or from the date specified under applicable State law requiring the payment of interest) to the date of payment at a rate—

(A) At least equal to—(*1*) The statutory rate of interest, if any, applicable to pecuniary bequests under the law of the State whose law governs the administration of the trust; or

(*2*) If no such rate is indicated under applicable State law, 80 percent of the rate that is applicable under section 7520 at the death of the transferor; and

(B) Not in excess of the greater of—

(*1*) The statutory rate of interest, if any, applicable to pecuniary bequests under the law of the State whose law governs the administration of the trust; or

(*2*) 120 percent of the rate that is applicable under section 7520 at the death of the transferor.

(ii) *Pecuniary payments deemed to carry appropriate interest.* For purposes of this paragraph (b)(4), if a pecuniary payment does not carry appropriate interest, the pecuniary payment is considered to carry appropriate interest to the extent—

(A) The payment is made or property is irrevocably set aside to satisfy the pecuniary payment within 15 months of the transferor's death; or

(B) The governing instrument requires the executor or trustee to allocate to the pecuniary payment a pro rata share of the income earned by the estate or trust between the valuation date and the date of payment.

(c) *Examples.* The following examples illustrate the provisions of this section.

Example 1.—T transfers $100,000 to a newly-created irrevocable trust on December 15, 1993. The trust provides that income is to be paid to T's child for 10 years. At the end of the 10-year period the trust principal is to be paid to T's grandchild. T does not allocate any GST exemption to the trust on the gift tax return reporting the transfer. On September 15, 1994, T files a Form 709 allocating $50,000 of GST exemption to the trust. Because the allocation was made on a late filed return, the value of the property transferred to the trust is determined on the date the allocation is filed (unless an election is made pursuant to § 26.2642–2(a)(2) to value the trust property as of the first day of the month in which the allocation document is filed with the Internal Revenue Service). On September 15, 1994, the value of trust property is $150,000. Effective as of September 15, 1994, the applicable fraction with respect to the trust is .333 ($50,000 (the amount of GST exemption allocated to the trust) over $150,000 (the value of the trust principal on the effective date of the GST exemption allocation)), and the inclusion ratio is .667 (1.0—.333).

Example 2.—The facts are the same as in *Example 1*, except the value of the trust property is $80,000 on September 15, 1994. The applicable fraction is .625 ($50,000 over $80,000) and the inclusion ratio is .375 (1.0—.625).

Example 3.—T transfers $100,000 to a newly-created irrevocable trust on December 15, 1993. The trust provides that income is to be paid to T's child for 10 years. At the end of the 10-year period the trust principal is to be paid to T's grandchild. T does not allocate any GST exemption to the trust on the gift tax return reporting the transfer. On September 15, 1994, T files a Form 709 allocating $50,000 of GST exemption to the trust. T elects to value the trust principal on the first day of the month in which the allocation is made pursuant to the election provided in § 26.2642–2(a)(2). Because the late allocation is made in September, the value of the trust is determined as of September 1, 1994, except for any policies of life insurance held by the trust. The valuation date with respect to any policy of life insurance is September 15, 1994, the effective date of the allocation.

§ 26.2642–3 Special rule for charitable lead annuity trusts.

(a) *In general.* In determining the applicable fraction with respect to a charitable lead annuity trust—

(1) The numerator is the adjusted generation-skipping transfer tax exemption (adjusted GST exemption); and

(2) The denominator is the value of all property in the trust immediately after the termination of the charitable lead annuity.

(b) *Adjusted GST exemption defined.* The adjusted GST exemption is the amount of GST exemption allocated to the trust increased by an amount equal to the interest that would accrue if an amount equal to the allocated GST exemption were invested at the rate used to determine the amount of the estate or gift tax charitable deduction, compounded annually, for the actual period of the charitable lead annuity. If a late allocation is made to a charitable lead annuity trust, the adjusted GST exemption is the amount of GST exemption allocated to the trust increased by the interest that would accrue if invested at such rate for the period beginning on the date of the late allocation and extending for the balance of the actual period of the charitable lead annuity. The amount of GST exemption allocated to a charitable lead annuity trust is not reduced even though it is ultimately determined that the allocation of a lesser amount of GST exemption would have resulted in an inclusion ratio of zero. For purposes of chapter 13, a charitable lead annuity trust is any trust providng an interest in the form of a guaranteed annuity for which the transferor is allowed a charitable deduction for Federal estate or gift tax purposes.

(c) *Example.* The following example illustrates the provisions of this section.

Example.—T creates a charitable lead annuity trust for a 10-year term with the remainder payable to T's grandchild. T timely allocates an amount of GST exemption to the trust which T expects will ultimately result in a zero inclusion ratio. However, at the end of the charitable lead interest, because the property has not appreciated to the extent T anticipated, the numerator of the applicable fraction is greater than the denominator. The inclusion ratio for the trust is zero. No portion of the GST exemption allocated to the trust is restored to T or to T's estate.

§ 26.2642–4 Redetermination of applicable fraction.

(a) *In general.* The applicable fraction for a trust is redetermined whenever additional exemption is allocated to the trust or when certain changes occur with respect to the principal of the trust. Except as otherwise provided in this paragraph (a), the numerator of the redetermined applicable fraction is the sum of the amount of GST exemption currently being allocated to the trust (if any) plus the value of the nontax portion of the trust, and the denominator of the redetermined applicable fraction is the value of the trust principal immediately after the event occurs. The nontax portion of a trust is determined by multiplying the value of the trust principal, determined immediately prior to the event, by the then applicable fraction.

(1) *Multiple transfers to a single trust.* If property is added to an existing trust, the denominator of the redetermined applicable fraction is the value of the trust immediately after the addition reduced as provided in § 26.2642–1(c).

(2) *Consolidation of separate trusts.* If separate trusts created by one transferor are consolidated, a single applicable fraction for the consolidated trust is determined. The numerator of the redetermined applicable fraction is the sum of the nontax portions of each trust immediately prior to the consolidation.

(3) *Property included in transferor's gross estate.* If the value of property held in a trust created by the transferor is included in the transferor's gross estate, the applicable fraction is redetermined if additional GST exemption is allocated to the property. The numerator of the redetermined applicable fraction is an amount equal to the nontax portion of the property immediately before the death of the transferor increased by the amount of GST exemption allocated by the executor of the transferor's estate to the trust.

(4) *Imposition of recapture tax under section 2032A.* If an additional estate tax is imposed under section 2032A and if the section 2032A election was effective for purposes of the GST tax, the applicable fraction with respect to the property is redetermined as of the date of death of the transferor. In making the redetermination, any available GST exemption not allocated at the death of the transferor (or at a prior recapture event) is automatically allocated to the property. The denominator of the applicable fraction is the fair market value of the property at the date of the transferor's death reduced as provided in § 26.2642–1(c) and further reduced by the amount of the additional GST tax actually recovered from the trust.

(b) *Examples.* The following examples illustrate the principles of this section.

Example 1. Allocation of additional exemption. T transfers $200,000 to an irrevocable trust under which the income is payable to T's child, C, for life. Upon the termination of the trust, the remainder is payable to T's grandchild, GC. At a time when no ETIP exists with respect to the trust property, T makes a timely allocation of $100,000 of GST exemption, resulting in an inclusion ratio of ½. The entire trust property (valued at $500,000) is includible in T's gross estate when T dies. T's executor allocates an additional $100,000 of T's unused GST exemption to the trust. The inclusion ratio of the trust is recomputed at that time. The numerator of the applicable fraction is $350,000 ($250,000 (the nontax portion as of the date of death) plus $100,000 (the GST exemption currently being allocated). The denominator is $500,000 (the date of death fair market value of the trust). The inclusion ratio is 3/10 (1– 7/10).

Example 2. Multiple transfers to a trust, allocation both timely and late. On December 10, 1993, T transfers $10,000 to an irrevocable trust which does not qualify under section 2642(c)(2). T makes identical transfers to the trust on December 10, 1994, 1995, 1996, and on January 15, 1997. Immediately after the transfer on January 15, 1997, the value of the trust principal is $40,000. On January 14, 1998, when the value of the trust principal is $50,000, T allocates $30,000 of GST exemption to the trust. T discloses the 1997 transfer on the Form 709 filed on January 14, 1998. Thus, T's allocation is a timely allocation with respect to the transfer in 1997, $10,000 of the allocation is effective as of the date of that transfer, and, on and after January 15, 1997, the inclusion ratio of the trust is .75 (1–($10,000/$40,000). The balance of the allocation is a late allocation with respect to prior transfers to the trust and is effective as of January 14, 1998. In redetermining the inclusion ratio as of that date, the numerator of the redetermined applicable fraction is $32,500 ($12,500 (.25×$50,000), the nontax portion of the trust on January 14, 1998) plus $20,000 (the amount of GST exemption allocated late to the trust). The denominator of the new applicable fraction is $50,000 (the value of the trust principal at the time of the late allocation).

Example 3. Excess allocation. (i) T creates an irrevocable trust for the benefit of T's child and grandchild in 1993 transferring $50,000 to the trust on the date of creation. T allocates no GST exemption to the trust on the Form 709 reporting the transfer. On July 1, 1995 (when the value of the trust property is $60,000), T transfers an additional $40,000 to the trust.

(ii) On April 15, 1996, when the value of the trust is $150,000, T files a Form 709 reporting the 1995 transfer and allocating $150,000 of GST exemption to the trust. The allocation is a timely allocation of $40,000 with respect to the 1995 transfer and is effective as of that date. Thus, the applicable fraction for the trust as of July 1, 1995 is ⅔ {($40,000/$100,000 ($40,000+$60,000)).

(iii) The allocation is also a late allocation of $90,000, the amount necessary to attain a zero inclusion ratio on April 15, 1996, computed as follows: $60,000, the nontax portion immediately prior to the allocation (⅔×$150,000) plus ($90,000/$150,000) equals one and, thus, an inclusion ratio of zero. The balance of the allocation $20,000 ($150,000 less the timely allocation of $40,000 less the late allocation of $90,000) is void.

Example 4. Undisclosed transfer. (i) The facts are the same as in *Example 3*, except that on February 1, 1996 (when the value of the trust is $150,000), T transfers an additional $50,000 to the trust and the value of the entire trust corpus on April 15, 1996 is $220,000. The Form 709 filed on April 15, 1996 does not disclose the 1996 transfer. Under the rule in § 26.2632–1(b)(2)(ii), the allocation is effective first as a timely allocation to the 1995 transfer; second, as a late allocation to the trust as of April 15, 1996; and, finally as a timely allocation to the February 1, 1996 transfer. As of April 15, 1996, $55,000, a pro-rata portion of the trust assets, is considered to be the property transferred to the trust on February 1, 1996 (($50,000/$200,000)×$220,000). The balance of the trust, $165,000, represents prior transfers to the trust.

(ii) As in *Example 3*, the allocation is a timely allocation as to the 1995 transfer (and the applicable fraction as of July 1, 1995 is 2/5) and a late allocation as of 1996. The amount of the late allocation is $99,000, computed as follows: (2/5×$165,000 plus $99,000=one).

(iii) The balance of the allocation, $11,000 ($150,000 less the timely allocation of $40,000 less the late allocation of $99,000) is a timely allocation as of February 1, 1996. The applicable fraction with respect to the trust, as of February 1, 1996, is .355, computed as follows: $60,000 (the nontax portion of the trust immediately prior to the February 1, 1996 transfer (2/5×$150,000)) plus $11,000 (the amount of the timely allocation to the 1996 transfer) over $200,000 (the value of the trust on February 1, 1996, after the transfer on that date)=$71,000 /$200,000=.355.

(iv) The applicable fraction with respect to the trust, as of April 15, 1996, is .805 computed as follows: $78,100 (the nontax portion immediately prior to the allocation (.355×$220,000)) plus $99,000 (the amount of the late allocation) over $220,000=$177,100 / $220,000=.805.

Example 5. Redemption of inclusion ratio on ETIP termination. (i) T transfers $100,000

to an irrevocable trust. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. The trustee has the power to invade trust principal on behalf of T's grandchild, GC, during the term of T's income interest. The trust is subject to an ETIP while T holds the retained income interest. T files a timely Form 709 reporting the transfer and allocates $100,000 of GST exemption to the trust. In year 4, when the value of the trust is $200,000, the trustee distributes $15,000 to GC. The distribution is a taxable distribution. Because of the existence of the ETIP, the inclusion ratio with respect to the taxable distribution is determined immediately prior to the occurrence of the GST. Thus, the inclusion ratio applicable to the year 4 GST is ½ ($100,000/$200,000).

(ii) In year 5, when the value of the trust is again $200,000, the trustee distributes another $15,000 to GC. Because the trust is still subject to the ETIP in year 5, the inclusion ratio with respect to the year 5 GST is again computed immediately prior to the GST. In computing the new inclusion ratio, the numerator of the applicable fraction is reduced by the nontax portion of prior GSTs occurring during the ETIP. Thus, the numerator of the applicable fraction with respect to the GST in year 5 is $92,500 ($100,000−(.50×$15,000)) and the inclusion ratio applicable with respect to the GST in year 5 is .537 (1−.463 ($92,500/$200,0000=.463). Any additional GST exemption allocated on a timely ETIP return with respect to the GST in year 5 is also effective immediately prior to the transfer.

§ 26.2642–5 Finality of inclusion ratio.

(a) *Direct skips.* The inclusion ratio applicable to a direct skip becomes final when no additional GST tax (including additional GST tax payable by reason of section 2032A) may be assessed with respect to the direct skip.

(b) *Other GSTs.* With respect to taxable distributions and taxable terminations, the inclusion ratio for a trust becomes final on the later of—

(1) The expiration of the period for assessment with respect to the first GST tax computed using that inclusion ratio; or

(2) The expiration of the period for assessment of Federal estate tax with respect to the estate of the transferor. For purposes of this paragraph (b)(2), if an estate tax return is not required to be filed, the period for assessment is determined as if a return were required to be filed and as if the return were timely-filed within the period prescribed by section 6075(a).

§ 26.2652–1 Transferor defined; other definitions.

(a) *Transferor defined—*(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, the individual with respect to whom property was most recently subject to Federal estate or gift tax is the transferor of that property for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be a transferor even though there is no transfer of property under local law at the time the Federal estate or gift tax applies.

(2) *Transfers subject to Federal estate or gift tax.* For purposes of this section, a transfer is subject to Federal gift tax if the transfer is a completed gift within the meaning of § 25.2511–2 regardless of whether gift tax is actually imposed. A transfer is subject to Federal estate tax if the value of the property is includible in the decendent's gross estate as determined under section 2031.

(3) *Special rule for certain QTIP trusts.* Solely for purposes of chapter 13, if a transferor of qualified terminable interest property (QTIP) elects under § 26.2652–2(a) to treat the property as if the QTIP election had not been made (reverse QTIP election), the identity of the transferor of the property is determined without regard to the application of sections 2044, 2207A, and 2519.

(4) *Exercise of certain nongeneral powers of appointment.* The exercise of a power of appointment that is not a general power of appointment (as defined in section 2041(b)) is treated as a transfer subject to Federal estate or gift tax by the creator of the power if the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (perpetuities period). For purposes of this paragraph (a)(4), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) is not an exercise that may extend beyond the perpetuities period.

(5) *Examples.* The following examples illustrate the principles of this paragraph (a).

Example 1. Identity of transferor. T transfers $100,000 to a trust for the sole benefit of T's grandchild. The transfer is a completed gift under § 25.2511–2. Thus, for purposes of chapter 13, T is the transferor of the $100,000. It is immaterial that a portion of the transfer is excluded from the total amount of T's taxable gifts by reason of section 2503(b).

Example 2. Gift splitting and identity of transferor. The facts are the same as in *Example 1*, except T's spouse, S, consents under section 2513 to split the gift with T. For purposes of chapter 13, S and T are each treated as a transferor of $50,000 to the trust.

Example 3. Change of transferor on subsequent transfer tax event. T transfers $100,000 to a trust providing that all the net trust income is to be paid to T's spouse, S, for S's lifetime. T elects under section 2523(f) to treat the transfer as a transfer of qualified terminable interest property. On S's death, the trust property is included in S's gross estate under section 2044 of the Internal Revenue Code. Thus, S becomes the transferor at the time of S's death.

Example 4. Effect of transfer of an interest in trust on identity of the transferor. T transfers $100,000 to a trust providing that all of the net income is to be paid to T's child, C, for C's lifetime. At C's death the trust property is to be paid to T's grandchild. C transfers the income interest to X, an unrelated party, in a transfer that is a completed transfer for Federal gift tax purposes. Because C's transfer is a transfer of a term interest in the trust that does not affect the rights of other parties with respect to the trust property, T remains the transferor with respect to the trust.

Example 5. Effect of lapse of withdrawal right on identity of transferor. T transfers $10,000 to a new trust providing that the trust income is to be paid to T's child, C, for C's life and, on the death of C, the trust principal is to be paid to T's grandchild, GC. The trustee has discretion to distribute principal for GC's benefit during C's lifetime. C has a right to withdraw $10,000 from the trust for a 60-day period following the transfer. Thereafter the power lapses. C does not exercise the withdrawal right. The transfer by T is a completed transfer within the meaning of § 25.2511–2 and, thus, T is treated as having transferred the entire $10,000 to the trust. On the lapse of the withdrawal right, C becomes a transferor to the extent C is treated as having made a completed transfer for purposes of chapter 12. Therefore, except to the extent that the amount with respect to which the power of withdrawal lapses exceeds the greater of $5,000 or 5% of the value of the trust property, T remains the transferor of the trust property for purposes of chapter 13.

Example 6. Effect of reverse QTIP election on identity of the transferor. T establishes a testamentary trust having a principal of $500,000. Under the terms of the trust, all trust income is payable to T's surviving spouse, S, during S's lifetime. T's executor makes an election to treat the trust property as qualified terminable interest property and also makes the reverse QTIP election. For purposes of chapter 13, T is the transferor with respect to the trust. On S's death, the then full fair market value of the trust is includible in S's gross estate under section 2044. However, because of the reverse QTIP election, S does not become the transferor with respect to the trust; T continues to be the transferor.

Example 7. Effect of reverse QTIP election on constructive additions. The facts are the

same as in *Example 6*, except the inclusion of the QTIP trust in S's gross estate increased the Federal estate tax liability of S's estate by $200,000. The estate does not exercise the right of recovery from the trust granted under section 2207A. Under local law, the beneficiaries of S's residuary estate (which bears all estate taxes under the will) could compel the executor to exercise the right of recovery but do not do so. Solely for purposes of chapter 13, the beneficiaries of the residuary estate are not treated as having made an addition to the trust by reason of their failure to exercise their right of recovery. Because of the reverse QTIP election, for GST purposes the trust property is not treated as includible in S's gross estate and, under those circumstances, no right of recovery exists.

Example 8. Exercise of a nongeneral power of appointment. On May 15, 1990, GP establishes an irrevocable trust under which the trust income is to be paid on GP's child, C, for life. C is given a testamentary power to appoint the remainder in further trust for the benefit of C's issue. In default of C's exercise of the power, the remainder is to pass to charity. C dies on February 3, 1996, survived by two children and a sibling, S (who was born prior to May 15, 1990). C exercises the power in a manner that validly extends the trust in favor of C's issue until the later of May 15, 2070 (80 years from the date the trust was created), or the death of S. C's exercise of the power is considered a transfer by GP that is subject to the estate or gift tax because it may extend the term of the trust beyond the perpetuities period.

Example 9. Exercise of a nongeneral power of appointment. The facts are the same as in *Example 8*, except local law provides that the effect of C's exercise is to extend the term of the trust until May 15, 2070, whether or not S survives that date. GP is not treated as having made a transfer to the trust as a result of the exercise of the power because the exercise of the power does not extend the term of the trust beyond a period of 90 years measured from the creation of the trust. The result would be the same if the effect of C's exercise is either to extend the term of the trust until the death of S or to extend the term of the trust until the *first* to occur of May 15, 2070, or the death of S.

(b) *Trust defined*—(1) *In general.* A trust includes any arrangement (other than an estate) that has substantially the same effect as a trust. Thus, for example, arrangements involving life estate and remainders, estates for years, and insurance and annuity contracts are trusts. Generally, a transfer as to which the identity of the transferee is contingent upon the occurrence of an event is a transfer in trust; however, a testamentary transfer as to which the identity of the transferee is contingent upon an event that must occur within 6 months of the transferor's death is not considered a transfer in trust solely by reason of the existence of the contingency.

(2) *Examples.* The following examples illustrate the provisions of this paragraph (b).

Example 1. T transfers cash to an account in the name of T's child, C, as custodian for C's child, GC (who is a minor), under a state statute substantially similar to the Uniform Gifts to Minors Act. For purposes of chapter 13, the transfer to the custodial account is treated as a transfer to a trust.

Example 2. To bequeaths $200,000 to T's child, C, provided that if C does not survive T by more than 6 months, the bequest is payable to T's grandchild, GC. C dies 4 months after T. The bequest is not a transfer in trust because the contingency that determines the recipient of the bequest must occur within 6 months of T's death. The bequest to GC is a direct skip.

Example 3. The facts are the same as in *Example 2*, except C must survive T by 18 months to take the bequest. The bequest is a transfer in trust for purposes of chapter 13, and the death of C is a taxable termination.

(c) *Trustee defined.* The trustee of a trust is the person designated as trustee under local law or, if no such person is so designated, the person in actual or constructive possession of property held in trust.

(d) *Executor defined.* For purposes of chapter 13, the executor is the executor or administrator of the decedent's estate. However, if no executor or administrator is appointed, qualified or acting within the United States, the executor is the fiduciary who is primarily responsible for payment of the decedents' debts and expenses. If there is no such executor, administrator or fiduciary, the executor is the person in actual or constructive possession of the largest portion of the value of the decedent's gross estate.

(e) *Interest in trust.* See § 26.2612–1(e) for the definition of "interest in trust."

§ 26.2652–2 Special election for qualified terminable interest property.

(a) *In general.* If an election is made to treat property as qualified terminable interest property (QTIP) under section 2523(f) or section 2056(b)(7), the person making the election may, for purposes of chapter 13, elect to treat the property as if the QTIP election had not been made (reverse QTIP election). An election under this section is irrevocable. An election under this section is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. See, however, § 26.2654–1(c)(2).

(b) *Time and manner of making election.* An election under this section is made on the return on which the QTIP election is made. If a protective QTIP election is made, no election under this section is effective unless a protective reverse QTIP election is also made.

(c) *Transitional rule.* If a reverse QTIP election is made with respect to a trust prior to December 24, 1992, and GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust. The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this paragraph (c) is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under section 2652(a)(3). The statement must indicate that an election is being made to treat the trust as two separate trusts and must identify the values of the two separate trusts. The statement is to be filed in the same place in which the original return was filed and must be filed before April 15, 1993. A trust subject to the election described in this paragraph is treated as a trust that was created by two transferors. See § 26.2654–1 for special rules involving trusts with multiple transferors.

(d) *Examples.* The following examples illustrate the provisions of this section.

Example 1. Special (reverse QTIP) election under section 2652(a)(3). T transfers $1,000,000 to a trust providing that all trust income is to be paid to T's spouse, S, for S's lifetime. On S's death, the trust principal is payable to GC, a grandchild of S and T. T elects to treat all of the transfer as a transfer of QTIP and also makes the reverse QTIP election for all of such property. Because of the reverse QTIP election, T continues to be treated as the transferor of the property after S's death for purposes of chapter 13. A taxable termination rather than a direct skip occurs on S's death.

Example 2. Election under transition rule. In 1991, T dies leaving $4 million in trust for the benefit of T's surviving spouse, S. On January 16, 1992, T's executor files T's Form 706 on which the executor elects to treat the entire trust as qualified terminable interest property. The executor also makes a reverse QTIP election. The reverse QTIP election is effective with respect to the entire trust even though T's executor could allocate only $1 million of GST exemption to the trust. T's executor may elect to treat the trust as two separate trusts, one having a value of 25% of the value of the single trust and an inclusion ratio of zero, but only if the election is made prior to April 15, 1993. If the executor makes the transitional election, the other separate trust, having a value of 75% of the value of the single trust and an inclusion ratio of one, is not treated as subject to the reverse QTIP election.

Example 3. Denominator of the applicable fraction of QTIP trust. T bequeaths

$1,500,000 to a trust in which T's surviving spouse, S, is given an income interest for life. Upon the death of S, the property is to remain in trust for the benefit of C, the child of T and S. Upon C's death, the trust is to terminate and the trust property paid to the descendants of C. The bequest by T qualifies for the estate tax marital deduction under section 2056(b)(7) as QTIP. The executor does not make the reverse QTIP election under section 2652(a)(3)(A). As a result, S becomes the transferor of the trust at S's death when the value of the property in the QTIP trust is included in S's gross estate under section 2044. For purposes of computing the applicable fraction with respect to the QTIP trust upon S's death, the denominator of the fraction is reduced by any Federal estate tax and State death tax attributable to the trust property that is actually recovered from the trust. The result is the same whether Federal estate tax is imposed under section 2001, 2101 or 2056A(b) of the Code.

§ 26.2653–1 Taxation of multiple skips.

(a) *General rule.* If property is held in trust immediately after a GST, solely for purposes of determining whether future events involve a skip person, the transferor is thereafter deemed to occupy the generation immediately above the highest generation of any person holding an interest in the trust immediately after the transfer. If no person holds an interest in the trust immediately after the GST, the transferor is treated as occupying the generation above the highest generation of any person in existence at the time of the GST who may subsequently hold an interest in the trust. See § 26.2612–1(e) for rules determining when a person has an interest in property held in trust.

(b) *Examples:* The following examples illustrate the provisions of this section.

Example 1. T transfers property to an irrevocable trust for the benefit of T's grandchild, GC, and great-grandchild, GGC. During GC's life, the trust income may be distributed to GC and GGC in the trustee's absolute discretion. At GC's death, the trust property passes to GGC. Both GC and GGC have an interest in the trust for purposes of chapter 13. The transfer by T to the trust is a direct skip and the property is held in trust immediately after the transfer. After the direct skip, the transferor is treated as being one generation above GC, the highest generation individual having an interest in the trust. Therefore, GC is no longer a skip person and distributions to GC are not taxable distributions. However, because GGC occupies a generation that is two generations below the deemed generation of T, GGC is a skip person and distributions of trust income to GGC are taxable distributions

Example 2. T transfers property to an irrevocable trust providing that the income is to be paid to T's child, C, for life. At C's death, the trust income is to be accumulated for 10 years and added to principal. At the end of the 10-year accumulation period, the trust income is to be paid to T's grandchild, GC, for life. Upon GC's death, the trust property is to be paid to T's great-grandchild, GGC, or to GGC's estate. A GST occurs at the time of C's death. Immediately after C's death and during the 10-year accumulation period, no person has an interest in the trust within the meaning of section 2652(c) and § 26.2612–1(e) because no one can receive current distributions of income or principal. Immediately after C's death, T is treated as occupying the generation above the generation of GC (the trust beneficiary in existence at the time of the GST who then occupies the highest generation level of any person who may subsequently hold an interest in the trust). Thus, subsequent income distributions to GC are not taxable distributions.

§ 26.2654–1 Certain trusts treated as separate trusts.

(a) *In general.* Paragraph (b) of this section and § 26.2663–2(a) provide rules for treating a single trust as separate trusts solely for purposes of chapter 13. Treatment of separate portions of a single trust as separate trusts under chapter 13 does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Additions to, and distributions from, such trusts are allocated pro-rata among the separate trusts unless otherwise expressly provided in the governing instrument. An individual's GST exemption allocated to a single trust is allocated on a pro rata basis among the separate trusts of which the individual is the transferor unless the individual, at the time of the allocation, clearly allocates the GST exemption in a different manner.

(b) *Single trust treated as separate trusts*—(1) *Multiple transferors to single trust*—(i) *In general.* If there is more than one transferor to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for purposes of chapter 13. If an individual makes a contribution to a trust of which the individual is not the sole transferor, the portion of the single trust attributable to each separate trust is determined by multiplying the fair market value of the single trust immediately after the contribution by a fraction. The numerator of the fraction is the value of the separate trust immediately after the contribution. The denominator of the fraction is the fair market value of all the property in the single trust immediately after the transfer.

(ii) *Examples.* The following examples illustrate the principles of this paragraph (b)(1).

Example 1. A transfers $100,000 to an irrevocable generation-skipping trust; B simultaneously transfers $50,000 to the same trust. From the time of the transfers, the single trust is treated as two trusts for purposes of chapter 13. Because A contributes ⅔ of the value of the original principal, ⅔ of the single trust principal is treated as a separate trust created by A. Similarly, because B contributes ⅓ of the value of the original principal, ⅓ of the single trust is treated as a separate trust created by B.

Example 2. A transfers $100,000 to an irrevocable generation-skipping trust; B simultaneously transfers $50,000 to the same trust. When the value of the single trust has increased to $180,000, A contributes an additional $60,000 to the trust. At the time of the additional contribution, the portion of the single trust attributable to each grantor's separate trust must be redetermined. The portion of the single trust attributable to A's separate trust immediately after the contribution is ¾ ((⅔ × $180,000) + $60,000) over $240,000). The portion attributable to B's separate trust after A's addition is ¼.

Example 3. The facts are the same as in *Example 2*, except after A's second contribution, $50,000 is distributed to a beneficiary of the trust. Absent a provision in the trust instrument that charges the distribution against the contribution of either A or B, ¾ of the distribution is treated as made from the separate trust of which A is the transferor and ¼ from the separate trust of which B is the transferor.

(2) *Substantially separate and independent shares*—(i) *In general.* If a single trust consists solely of separate and independent shares for different beneficiaries, the share attributable to each beneficiary (or group of beneficiaries) is treated as a separate trust for purposes of chapter 13. Except as provided in this paragraph (b)(2), the phrase "substantially separate and independent shares" has the same meaning as provided in § 1.663(c)–3. A portion of a trust is not a separate share unless such share exists from and at all times after the creation of the trust. For purposes of this paragraph (b)(2), a trust is treated as created at the date of death of the grantor if the trust is includible in its entirety in the grantor's gross estate for Federal estate tax purposes.

(ii) *Exception for certain pecuniary amounts.* For purposes of this section, if a person holds the current right to receive a mandatory payment of a pecuniary amount at the death of the transferor from a trust that is includible in the transferor's gross estate, the pecuniary amount is a separate and independent share if—

(A) The trustee—

(*1*) Is required to pay appropriate interest (as defined in § 26.2642–2(b)(4)) to the person; or

(*2*) Within 15 months of the date of death, either pays or permanently sets aside property in satisfaction of the pecuniary amount; and

(B) If the pecuniary amount is payable in kind on the basis of value other than the date of distribution value of the assets, the trustee is required to allocate assets to the pecuniary payment in a manner that fairly reflects net appreciation or depreciation in the value of the assets in the fund available to pay the pecuniary amount measured from the date of death to the date of payment.

(iii) *Examples.* The following examples illustrate the application of the principles of this paragraph (b)(2).

Examples 1. Separate shares as separate trusts. T transfers $100,000 to a trust under which income is to be paid in equal shares for 10 years to T's child, C, and T's grandchild, GC (or their respective estates). The trust does not permit distributions of principal during the term of the trust. At the end of the 10-year term, the trust principal is to be distributed to C and GC in equal shares. The shares of C and GC in the trust are separate and independent and, therefore, are treated as separate trusts. The result would not be the same if the trust permitted distributions of principal unless the distributions could only be made from a one-half separate share of the initial trust principal and the distributee's future rights with respect to the trust are correspondingly reduced.

Example 2. Separate share rule inapplicable. The facts are the same as in *Example 1*, except the trustee holds the discretionary power to distribute the income in any proportion between C and GC during the last year of the trust. The shares of C and GC in the trust are not separate and independent shares throughout the entire term of the trust and, therefore, are not treated as separate trusts for purposes of chapter 13.

Example 3. Pecuniary payment as separate share. T creates a lifetime revocable trust providing that on T's death $500,000 is payable to T's spouse, S, with the balance of the principal to be held for the benefit of T's grandchildren. The value of the trust is includible in T's gross estate upon T's death. Under the terms of the trust, the payment to S is required to be made in cash, and under local law S is entitled to receive interest on the payment at an annual rate of 6 percent, commencing immediately upon T's death. For purposes of chapter 13, the trust is treated as created at T's death, and the $500,000 payable to S from the trust is treated as a separate share. The result would be the same if the payment to S could be satisfied using noncash assets at their value on the date of distribution.

Example 4. Pecuniary payment not treated as separate share. The facts are the same as in *Example 3*, except the bequest to S is to be paid in noncash assets valued at their values as finally determined for Federal estate tax purposes. Neither the trust instrument nor local law requires that the assets distributed in satisfaction of the bequest fairly reflect net appreciation or depreciation in all the assets from which the bequest may be funded. S's $500,000 bequest is not treated as a separate share and the trust is treated as a single trust for purposes of chapter 13 unless the trustee, within fifteen months of the date of T's death, either pays the bequest or permanently sets aside sufficient assets to pay the bequest.

(c) *Division of single trust into separate trusts*—(1) *In general.* A single trust treated as separate trusts under paragraph (b)(1) or (b)(2) of this section may be divided at any time into separate trusts to reflect that treatment. Except as provided in this paragraph (c), the severance of a single trust into separate trusts is not recognized for purposes of chapter 13.

(2) *Trust property included in the gross estate*—(i) *In general.* The severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if—

(A) The new trusts are severed pursuant to authority granted either under the governing instrument or under local law;

(B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C) Either—

(*1*) The new trusts are funded with a fractional share of each and every substantial interest or right held by the single trust; or

(*2*) If the severance is required (by the terms of the governing instrument) to be made on the basis of a pecuniary amount, the pecuniary payment is satisfied in a manner that would meet the requirements of paragraph (b)(2)(ii) of this section if it were paid to an individual.

(ii) *Special rule.* If a court order severing the trust has not been issued at the time the Federal estate tax return is filed, the executor must indicate on a statement attached to the return that a proceeding has been commenced to sever the trust and describe the manner in which the trust is proposed to be severed. A copy of the petition or other instrument used to commence the proceeding must also be attached to the return. If the governing instrument of a trust authorizes the severance of the trust, a severance pursuant to that authorization is treated as meeting the requirement of paragraph (c)(2)(i)(B) of this section if the executor indicates on the Federal estate tax return that separate trusts will be created (or funded) and clearly sets forth the manner in which the trust is to be severed and the separate trusts funded.

§ 26.2663–1 Recapture tax under section 2032A.

See § 26.2642–4 for rules relating to the recomputation of the applicable fraction if additional estate tax is imposed under section 2032A.

§ 26.2663–2 Application of chapter 13 to transfers by nonresidents not citizens of the United States.

(a) *In general.* Paragraphs (b) and (c) of this section provide rules for applying chapter 13 of the Internal Revenue Code to transfers by a transferor who is a nonresident not a citizen of the United States (NRA). If a single trust created by an NRA is only partially subject to chapter 13 by reason of this section, the trust is treated in the same manner as a trust with multiple transferors. See § 26.2654–1. For purposes of this section, an individual is a resident or citizen of the United States if that individual is a resident or citizen of the United States under the rules of chapter 11 or chapter 12 of the Internal Revenue Code, as the case may be.

(b) *Transferred property situated in the United States*—(1) *Transfers at death.* Chapter 13 of the Internal Revenue Code applies to GSTs attributable to transfers by an NRA decedent to the extent that the transferred property is situated in the United States for purposes of chapter 11 (as determined under paragraph (b)(4) of this section).

(2) *Transfers during life.* Chapter 13 of the Internal Revenue Code applies to GSTs attributable to inter vivos transfers by an NRA to the extent that the transferred property is—

(i) Situated in the United States for purposes of chapter 12 (as determined under paragraph (b)(4) of this section); and

(ii) Is subject to tax under section 2501(a).

(3) *Taxable distributions and taxable terminations.* Distributions and terminations with respect to property held in a trust are subject to chapter 13 under this paragraph (b) to the extent the initial transfer by the NRA transferor (whether during life or at death) is a transfer described in paragraph (b)(1) or (b)(2) of this section.

(4) *Determination of situs.* For purposes of paragraphs (b)(1) and (b)(2) of this section, transferred property is situated in the United States to the extent that the property is treated as situated in the United States at the time of the initial transfer to the skip person or to a trust that is not a skip person, as the case may be.

(c) *Transferred property not subject to chapter 13 by reason of United States*

situs—(1) *In general.* Chapter 13 of the Internal Revenue Code applies to GSTs attributable to transfers by an NRA to the extent a beneficial interest in property passes to a skip person who is a resident or citizen of the United States at the time of the direct skip, taxable termination, or taxable distribution (as the case may be) if, at the time of the initial transfer to the skip person or to a trust that is not a skip person, a lineal descendent of the transferor who is a lineal ancestor of the skip person was a resident or citizen of the United States.

(2) *Beneficial interest in property.* Solely for purposes of this section, a beneficial interest in property passes to an individual to the extent the individual may at any time, directly or indirectly, hold the right to receive, or be a permissible recipient of, the property or the income therefrom.

(d) *Anti-abuse rule.* The rules of this section are applicable without regard to any transaction or other activity if the effect of such transaction or activity is to transfer United States situs property from the transferor to the transferee.

(e) *Examples.* The following examples illustrate the provisions of this section. In each example T, an NRA, is the transferor, C is T's child, GC is C's child, a grandchild of T, and GGC is GC's child, a great grandchild of T.

(1) *Transfers of property situated in the United States.*

Example 1. Direct transfer not in trust. During T's lifetime, T transfers real property located in the United States to GC. At the time of the transfer, C and GC are NRAs.The transfer is a direct skip for purposes of chapter 13 because T's transfer is a direct skip for purposes of chapter 13 because T's transfer consists of property that is treated as property situated in the United States for purposes of chapter 12 at the time of the direct skip and is a transfer subject to tax under section 2501(a)(1). The result would be the same if T first transfers the real property to T's wholly owned foreign or domestic corporation and shortly thereafter transfers the stock in the corporation to GC because the effect of the transaction is to transfer United States situs property from T to GC.

Example 2. Transfer in trust. During T's lifetime, T transfers United States situs real property to a trust for the benefit of all of T's descendants, none of whom are residents or citizens of the United States at the time of the transfer. The trust terminates on the death of the last to die of T's children at which time the trust corpus is to be distributed to T's then living descendants equally. Assuming that the last survivor of T's children is survived by living descendants of T, a taxable termination occurs upon the death of that child because the chapter 13 consequences are determined with respect to a transfer of property situated in the United States for purposes of chapter 12 and the transfer to the trust would be subject to tax under section 2501(a)(1). The result would be the same if T transfers cash to the trust and the trustee shortly thereafter purchases United States situs property from T because the effect of the transaction is to transfer United States situs property from T to the trust.

(2) *Transfers of property not subject to chapter 13 by reason of United States situs.* In *Examples 3* through *5*, unless otherwise specified, the transferred property is not United States situs property at the time of the direct skip or the initial transfer to a trust that is not a skip person and, therefore, no GST may occur with respect to the property by reason of paragraph (b) of this section.

Example 3. Transfer to a skip person. T transfers property to GC. At the time of the transfer, C is a resident of the United States and GC is an NRA. The transfer is not subject to chapter 13 because GC is not a resident or citizen of the United States at the time of the generation-skipping transfer. It is immaterial that C, the "skipped generation," resides in the United States at the time of the transfer. However, if both C and GC were residents or citizens of the United States at the time of the generation-skipping transfer, the transfer would be a direct skip subject to GST tax under paragraph (c) of this section.

Example 4. Transfer in trust for C and GC. T transfers property to a trust for the benefit of C and GC. Upon C's death the trust is to terminate and the trust principal is to be distributed to GC. At the time of the transfer, C is an NRA. The termination of C's interest (and the distribution of corpus to GC) is not a generation-skipping transfer by reason of paragraph (c) of this section because C was not a citizen or resident of the United States at the time of the initial transfer to the trust. The result would not change if, immediately prior to C's death, C and GC are residents of the United States.

Example 5. Transfer in trust. T transfers property to a trust for the benefit of GC during GC's life. At GC's death the trust is to be distributed to GC's descendants. At the time of T's transfer, C is an NRA and GC is a resident of the United States who has no descendants. The transfer to the trust is not subject to chapter 13 by reason of paragraph (c) of this section because C is not a resident or citizen of the United States at the time of the initial transfer to the trust. Under paragraph (c) of this section, a transfer is a generation-skipping transfer with respect to an NRA transferor only if the skip person recipient (GC) is a United States citizen or resident at the time of the generation-skipping transfer and a lineal ancestor of the skip person recipient who is a lineal descendant of the transferor is a citizen or resident of the United States at the time of the initial transfer to the trust. If GC has a descendant who is a United States citizen or resident at the time of the generation-skipping transfer, the termination of GC's interest would be a taxable termination because GC, an ancestor of GGC, is a United States resident at the time of the initial transfer to the trust.

(f) *Automatic allocation of GST exemption.* Notwithstanding any other provision of this chapter to the contrary, an NRA transferor's GST exemption is automatically allocated to the NRA's direct skips and to trusts as to which distributions and terminations may be subject to tax under paragraph (b) or (c) of this section. The GST exemption is generally allocated wthin a calendar year in the order prescribed in section 2632(c). Thus, an NRA's unused GST exemption is first allocated to any direct skips made during the calendar year and then to any trusts with respect to which the NRA made transfers during the same calendar year and from which a taxable distribution or a taxable termination might occur under this section. Allocations within the above categories are made in the order in which the transfers occur. Allocations among simultaneous transfers within the same category are made pursuant to the principles of section 2632(c)(2). See, however, § 26.2632–1(c)(1) for rules with respect to the effective date of an allocation in the case of an ETIP. An NRA may elect to have an automatic allocation of GST exemption not apply by describing on a timely-filed Form 709 for the year of the transfer (including extensions actually granted) the details of the transfer and the extent to which the allocation is not to apply. The executor of an NRA's estate may elect to have an automatic allocation of GST exemption not apply by describing on a timely-filed Form 709 for the year of the transfer (or on a timely filed Form 706NA for transfers made at the death of the NRA) the transfer and the extent to which the automatic allocation is not apply. Allocations of GST exemption made in a manner contrary to the automatic allocation must comply with all applicable rules of chapter 13 and these regulations. See § 26.2632–1.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 7. Section 301.9100–7T is amended as follows:

1. Paragraph (a)(1) is amended by removing both entries for "1431(a)".

2. Paragraph (a)(4)(i) is amended by removing the entry for "1431(a)".

3. Paragraph (a)(4)(iii) is revised to read as follows:

§ 301.9100–7T Time and manner of making certain elections under the Tax Reform Act of 1986.

(a) * * *

(4) * * *

(iii) *Freely revocable election.* The election described in this section under Act section 311(d)(2) is freely revocable.

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Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–30946 Filed 12–23–92; 8:45 am]

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26 CFR Part 301

[INTL–978–86]

RIN 1545–AJ93

Information Reporting by Passport and Permanent Residence Applicants

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing section 6039E of the Internal Revenue Code of 1986. Section 6039E was added by the Tax Reform Act of 1986 to require that applicants for passports and permanent residence report certain information related to administration of U.S. tax law. These regulations would inform applicants for passports or for permanent residence of their obligations under the new reporting provision and the penalties for non-compliance and advise certain agencies of the federal government of their responsibilities under this provision.

DATES: Written comments and requests for a public hearing must be received by February 22, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL–978–86), P.O. Box 7604, Ben Franklin Station, room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Ricardo A. Cadenas of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, (202–874–1490, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224

The collection of information is required by § 301.6039E–1(c) of the proposed regulations. This information is required by the Internal Revenue Service to implement section 6039E. This information will be used to give the Internal Revenue Service notice of U.S. non-filers living abroad, and of persons with foreign source income that is subject to U.S. taxation but that is not subject to normal withholding. The respondents are individuals.

These estimates are an approximation of the average time expected to be necessary for collection of information. They are based on information available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden for passport applicants: 500,000 hours. The estimated annual burden per respondent varies from four to ten minutes, depending on individual circumstances, with an estimated average of six minutes. Estimated number of respondents: 5,000,000. Estimated annual frequency of responses: one.

Estimated total annual reporting burden for permanent residence applicants: 250,000. The estimated annual burden per respondent varies from twenty to forty minutes, depending on individual circumstances, with an estimated average of thirty minutes. Estimated number of respondents: 500,000. Estimated annual frequency of responses: one.

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301), under section 6039E of the Internal Revenue Code of 1986 (26 U.S.C. 6039E), as added by section 1234 of the Tax Reform Act of 1986 (Pub. L. 99–514), as amended by section 1012(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, Nov. 10, 1988). The proposed amendments to the regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805) and under the authority contained in section 6039E. The regulations are proposed to be applicable to all passport applications submitted after January 31, 1987 and immigration applications submitted after December 31, 1989, that solicit the information described in section 6039E.

Statutory Framework

Section 6039E of the Internal Revenue Code of 1986 requires that passport and permanent residence applicants include certain information with their applications. The information required of passport applicants in the statute is different from that required of permanent residence applicants. The Secretary of the Treasury has authority to require additional information from either of the above mentioned groups. The statute requires a TIN (Taxpayer Identification Number) (if any) from both passport applicants and applicants for permanent residence, but also requires special information from each of these two groups. For passport applicants, the foreign country of residence (if any) must be stated, and for permanent residence applicants, a statement as to whether the applicant is required to file a tax return for any of that individual's three most recent taxable years must be given. Section 6039E requires and authorizes the obtaining of three categories of information which are grouped into "lists" in the proposed regulations—a list for permanent residence applicants, a list for passport applicants, and a list of "possible" information items which may be required of either group (or both) at a later date under the authority of section 6039E (b)(4). The statute imposes a $500 penalty on any applicant who fails to provide the required information without reasonable cause for such failure. The Department of State and the Immigration and Naturalization Service are required to share the information collected in the course of processing passport and permanent residence applications with the Treasury Department, and are also required to identify persons refusing to comply. Finally, Congress gave the Secretary the authority to exempt any class of individuals from these reporting requirements if reporting by that class is unnecessary to carry out the purposes of section 6039E.

Section 1012 (o) of the Technical and Miscellaneous Revenue Act of 1988 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 (IRCA); (section 245A of the Immigration and Nationality Act, 8 U.S.C. 1255a). This change, which added the last sentence of section 6039E (d), has been implemented in the

proposed regulations by both exempting any information gathered in connection with IRCA from the information sharing requirements and also by excepting such information from the reporting requirements by definition.

Purpose and Scope

Section 6039E is intended to improve tax compliance by resident aliens and U.S. citizens or nationals living abroad.

With respect to U.S. citizens or nationals living overseas but not filing returns, the Congress foresaw that collection of tax after identification might be difficult but nonetheless sought both to give the Internal Revenue Service a further source of information regarding these nonfilers and to notify these overseas persons of their continuing duty to file U.S. tax returns. With respect to persons applying for permanent residence, Congress was concerned that new residents might derive income from foreign sources not subject to normal information reporting or withholding. Therefore, Congress concluded that the Internal Revenue Service needed an additional tax compliance measure for these persons. The new reporting provisions give the Internal Revenue Service information about these persons that would otherwise be unavailable.

Explanation of Provision

The proposed regulations in this document:

(1) Prescribe the information to be gathered by processing agencies (generally, the Department of State and the Immigration and Naturalization Service (INS) of the Department of Justice),

(2) Exempt certain applicants and applications from section 6039E and this section,

(3) Provide alternate procedures for agencies reporting section 6039E information to the Internal Revenue Service,

(4) Require that information transmitted by other agencies include information concerning any persons who fail to comply with the information reporting requirements, and

(5) Restate the penalties imposed on nonexempt applicants who fail to comply.

In addition, the proposed regulations provide rules and examples concerning the possible unavailability of information to passport and immigration applicants.

The Department of State (through its domestic passport agencies and through its embassies and consulates abroad) processes all passport applications. Applications for lawful permanent residence, or "immigrant visa" applications, are processed by both INS (domestically) and the Department of State (overseas). Forms used in these processes have been (or are in the process of being modified to request information required by section 6039E and these proposed regulations. In some instances, the forms request additional information pursuant to the authority granted in section 6039E(b)(4).

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed Regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments on the proposed rules. Notice of the time and place of that hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Ricardo A. Cadenas of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 301 is as follows:

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6039E–1 also issued under 26 U.S.C. 6039E * * *

Par. 2. Section 301.6039E–1 is added to read as follows:

§ 301.6039E–1 Information reporting by passport and permanent residence applicants.

(a) *Applicability.* Section 6039E and this section apply to passport applicants, immigration applicants, immigration services and passport agencies of the United States (as these terms are defined in paragraph (b) of this section). Paragraphs (c) and (d) of this section apply only to passport and immigration applicants. Paragraph (e) of this section applies only to government agencies. This section shall apply to passport applications submitted after January 31, 1987 and immigration applications submitted after December 31, 1989, that solicit the information described in section 6039E.

(b) *Definitions.* For purposes of this section, the following definitions apply

(1) *Taxpayer identification number* or *TIN* means the individual's social security number (SSN) issued by the Social Security Administration. If an individual does not have an SSN, then any TIN assigned to such individual under section 6109 must be reported. An individual who has neither an SSN nor a TIN must enter zeros in the appropriate space on the application.

(2) *Country of residence* means the country in which the applicant resides at the time of the application.

(3) *Passport applicant* means any person who applies for a U.S. passport, other than a person who applies for a U.S. passport for use in diplomatic, military, or other official U.S. government business.

(4) *Passport applicaton* includes any form used to apply for a U.S. Passport described in paragraph (b)(3) of this section.

(5) *Immigration applicant* means any person applying to be accorded the privilege of lawful permanent residence in the United States as an immigrant in

accordance with chapter 12 of title 8 of the United States Code. However, the term does not include any person applying for adjustment of status under 8 U.S.C. 1255a, commonly known as the Immigration Reform and Control Act of 1986, Public Law 99–603 (100 Stat. 3394).

(6) *Immigration application* means any form used in the processing of an immigration applicant by an immigration service (as defined in paragraph (b) (7) of this section).

(7) *Immigration service* means those offices of the Immigration and Naturalization Service of the Department of Justice that process immigration applications.

(8) *Passport agency* includes those offices of the Department of State (including United States Embassies and Consular posts abroad) that process passport applications.

(9) *Reporting agency* means an immigration service or passport agency.

(c) *Requirement of Reporting*— (1) Passport applicants must include with the application the following information—

(i) Name;

(ii) Address of the applicant's home within the country of residence as defined in paragraph (b)(2) of this section, but if the applicant does not maintain a home within the country of residence, the applicant's mailing address at the time of the application;

(iii) Taxpayer Identification Number (TIN), if such a number has been issued to the applicant;

(iv) Date of birth; and

(v) Country of residence.

(2) Immigration applicants must include with the application the following information—

(i) Name;

(ii) Address of the applicant's home within the United States, but if the applicant does nor have a home within the United States, the applicant's home address within the foreign country (or U.S. possession);

(iii) Taxpayer Identification Number (TIN), if such a number has been issued to the applicant,

(iv) Date of birth; and

(v) For each of the applicant's three most recent taxable years;

(A) A statement whether the applicant had income from sources within the United States during any such year (specifying which year or years); and

(B) A statement indicating whether the applicant has been present in the United States more than 182 days during any such year (specifying which year or years). For purposes of this section, the applicant's physical presence within the United States during any part of a day shall be considered as presence for that day.

(3) Passport and immigration applicants must also provide in connection with their applications, the following information, if required on the application form—

(1) The last year the applicant filed a United States tax return;

(ii) A statement whether the applicant is self-employed;

(iii) A statement indicating the applicant's occupation; and

(iv) A statement regarding whether the applicant was required to file a Federal income tax return for any of the applicant's three most recent taxable years, indicating whether such returns were filed or explaining why any such returns have not been filed.

(4) Passport applicants must provide the information required by this section at the time of submitting a passport application to a passport agency.

(5) Immigration applicants residing outside of the United States who commence the immigration application process by making a visa request with the Department of State (including U.S. embassies and consulates abroad) must provide the information required by this section to an immigration service no later than the time of immigration processing upon the applicant's entry to the United States. All other immigration applicants must provide the information required by this section at the time of submitting an immigration application to an immigration service.

(d) *Penalties*—(1) A passport or immigration applicant who fails to provide the information required by section 6039E and this section must pay a penalty of $500 for each such failure, unless it is due to reasonable cause and not willful neglect. This penalty will be applied only once per application.

(2) *Notice to applicant.* Before assessing a penalty under this section, the Service will ordinarily provide to the applicant a written notice advising the applicant of the potential imposition of the $500 penalty, requesting the information being sought, and offering the applicant an opportunity to explain why such information was not provided at the time the application was submitted. An applicant has 30 days (60 days if the notice is addressed to an applicant outside the United States) to respond to the notice. The Service will consider the applicant's response in determining whether it will assess the penalty.

(3) *Abatement of the penalty.* After a penalty is assessed, an applicant may obtain an abatement of the penalty by affirmatively showing reasonable cause for the failure to provide the information required by this section, in the form of a written statement declaring that it is made under penalties of perjury. If it is shown that the applicant exercised ordinary care and prudence, made a reasonable effort to respond with the correct information and was, nevertheless, unable to provide all of the information required by section 6093E and this section, then the failure is due to reasonable cause. If after considering all of the surrounding circumstances, the Service determines that the failure to provide the information was due to reasonable cause and not to willful neglect, the penalty will be abated.

(4) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. A (a citizen or national of the United States) needs a passport quickly because of a medical emergency and does not have the required information at the time A completes A's passport application. The Department of State (or other passport agency) processes A's passport application. The Internal Revenue Service contacts A about the penalty, and A responds within 30 days of the date of the Internal Revenue Service's notice (60 days if it is addressed to A outside the United States). Under the emergency circumstances A's failure to provide the information would generally be treated as due to reasonable cause and not willful neglect. No penalty would be assessed.

Example 2. B does not have a social security number when B applies for permanent residence. B should so indicate on the application. The law requires that B furnish a TIN (which for individuals is generally the SSN) only if B has one. No penalty would be assessed.

Example 3. C makes a minor mistake in supplying information on a passport or immigration application. Based on the nature of the error and the information C provides after contact by the Service, the Internal Revenue Service concludes that the mistake is not due to willful neglect. No penalty will be assessed if C provides accurate information when notified by the Service.

Example 4. D decides not to give D's TIN and another information item when applying for permanent residence. D has no reasonable cause for failing to provide the required information. Although two information items are missing, D's failure involves only one "statement," within the meaning of section 6039E(c); thus, only one $500 penalty is assessed.

(e) *Prescribed forms and transmittal of information by agencies*—(1) A reporting agency is required by section 6039E and this section to obtain from passport and immigration applicants the information described in section 6039E (b) and paragraph (c) of this section. A reporting agency may either forward the passport or immigration applications directly to the Service, or record and

transmit to the Service the information required by this section.

(2) If a passport or immigration applicant refuses to disclose any item of information required by this section, the reporting agency shall provide to the Service the applicant's name and address, and any other information, described in paragraph (c) of this section of which it has knowledge.

(3) If the passport or immigration applicant provides incomplete information with the application, the Service may contact the applicant to obtain complete information.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-31062 Filed 12-23-92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, and 268

[FRL-4548-8]

Notice of Public Meeting on the RCRA Hazardous Waste Identification System

AGENCY: Environmental Protection Agency.

ACTION: Meeting.

SUMMARY: EPA's Office of Solid Waste will conduct a discussion on issues related to hazardous waste identification. Through this meeting EPA will solicit input from the public on appropriate procedures and standards to identify hazardous waste and contaminated media. EPA will also solicit additional information on how to best address wastes from remediations.

On May 20, 1992, EPA proposed the Hazardous Waste Identification Rule (HWIR) (57 FR 21450). The proposed rule contained a number of different options for managing low-toxicity wastes under RCRA. On October 30, 1992, the HWIR was withdrawn (57 FR 49278) after review of pubic comments revealed a variety of concerns expressed by environmental groups, industry, and states over the options presented. This discussion is intended to allow all interested parties an opportunity for open dialogue on the next steps to be taken in this area. This discussion is open to the public.

DATES: On January 5, the meeting will begin at 8:30 a.m.

ADDRESSES: The meeting will be held at the Quality Hotel, 415 New Jersey Avenue, NW., Washington, DC, (202) 638-1616.

FOR FURTHER INFORMATION CONTACT: For information on substantive matters, please contact William A. Collins, Jr., of the Waste Identification Branch, at (202) 260-4791. For information on administrative matters, please contact Michael Young of Endispute, Inc., EPA's Convener at (212) 223-8300

Dated: December 21, 1992.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 92-31299 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 281

[FRL-4548-7]

Nevada; Approval of State Underground Storage Tank (UST) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination to approve the State of Nevada's UST Program, public hearing and public comment period.

SUMMARY: The State of Nevada has applied for approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Nevada's application and has made the tentative decision that Nevada's UST program satisfies all of the requirements necessary to qualify for approval. Thus, EPA intends to grant approval to the State to operate its program in lieu of the Federal program. Nevada's application for approval is available for public review and comment, and, if sufficient public interest is expressed, a public hearing will be held to solicit comments on the application.

DATES: A public hearing is scheduled for January 28, 1993, from 7 p.m. to 10 p.m. at the Nevada State Library, Board Room, 100 Stewart Street, Carson City, Nevada, 89710. Requests to present oral comments at the hearing must be received by January 14, 1993. EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing, postmarked by January 14, 1993. EPA will determine after January 14, 1993 whether there is significant interest to hold a public hearing. Those requesting to present oral comments will be notified of the cancellation. Nevada will participate in any public hearing held by EPA on this subject. All written comments on Nevada's state program approval application must be postmarked no later than January 29, 1993. If no significant comment are provided and insufficient public interest exists to hold a public hearing, this tentative decision of the Regional Administrator will become final 60 days after the public comment period ends, without the need to publish further notice in the **Federal Register**.

ADDRESSES: Copies of Nevada's state program approval application are available during 8:30 a.m. and 4:30 p.m. at the following addresses for inspection and copying:

Nevada Division of Environmental Protection, UST/LUST Branch, 333 West Nye Lane, Carson City, Nevada 89710, (702) 687-5872.

U.S. Environmental Protection Agency, UST Docket, Mail Code OS-305, 401 M Street, S.W., room 2427, Washington, DC 20460, (202) 260-9720.

U.S. Environmental Protection Agency, Region IX Library (13th Floor), 75 Hawthorne Street, San Francisco, California 94105-3901, Contact: Reference desk, (415) 744-1510.

Written comments should be sent to Martin Rodriguez, Nevada Program Manager, Office of Underground Storage Tanks, U.S. EPA Region IX, 75 Hawthorne Street (H-2-1), San Francisco, California 94105-3901, (415) 744-2076.

FOR FURTHER INFORMATION CONTACT: Martin Rodriguez, Office of Underground Storage Tanks, U.S. EPA Region IX, 75 Hawthorne Street (H-2-1), San Francisco, California 94105-3901, (415) 744-2076.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c(a), authorizes EPA to approve State UST programs to operate in the State in lieu of the Federal UST program. Program approval is granted by EPA if it finds that the State program is "no less stringent" than the Federal program in all eight elements listed below and provides for adequate enforcement of compliance with UST standards:

(a) New UST Systems Design, Construction, Installation, and Notification;

(b) Upgrading existing UST Systems;

(c) General Operating Requirements;

(d) Release Detection;

(e) Release Reporting, Investigation, and Confirmation;

(f) Release Response and Corrective Action;

(g) Out of Service UST Systems and Closure; and

(h) Financial Responsibility for UST Systems Containing Petroleum.

B. State of Nevada

The Nevada Division of Environmental Protection of the Department of Conservation and Natural Resources, through the Underground Storage Tank Program, is the implementing agency for UST activities in the State. State standards and criteria have been adopted in the statutes and regulations of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), as amended, for the design, installation, operation, maintenance, and monitoring of UST systems to prevent and correct UST-related soil and ground water contamination.

On October 1, 1992, the State submitted an official application for state program approval. Prior to its submission, Nevada provided an opportunity for public notice and comment in the development of its UST program, as required under 40 CFR 281.50(b). EPA sent a letter on November 3, 1992, stating that the application was administratively complete but requesting minor revisions to the Memorandum of Agreement and Attorney General's Certification Letter. These revised items were provided to EPA on November 5, 1992. EPA informally requested additional minor revisions of the Attorney General's Certification Letter, and the updated letter was provided to EPA on December 8, 1992.

EPA has reviewed Nevada's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for approval. Consequently, EPA intends to grant approval to Nevada to operate its program in lieu of the Federal program.

The State program regulates the same UST population as the Federal program, because Nevada adopted the Federal regulations (40 CFR 280.10 to 280.111, inclusive) by reference (NAC 459.993). The State of Nevada estimates that there are approximately 7,600 UST systems at 3,300 facilities in the State. At the time of submittal of this notice, the State had 6,368 registered UST systems at 2,745 facilities across the State.

There are approximately 20,000 home heating oil tanks and 100 to 200 above ground tanks that qualify for participation in the State Petroleum Fund, but are not subject to the UST notification or technical requirements. The Petroleum Fund has a participating universe larger than the UST regulated universe. The Fund allows coverage of home heating oil tanks and above ground storage less than 30,000 gallons.

C. Public Comments

In accordance with section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR 281.50(e), if sufficient public interest is received by January 14, 1993, the Agency will hold a public hearing on its tentative decision on January 28, 1993 from 7:00 p.m. to 10:00 p.m. at the Nevada State Library, Board Room, 100 Stewart Street, Carson City, Nevada, 89710. The public may also submit written comments on EPA's tentative determination and they must be postmarked by January 29, 1993. Copies of Nevada's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on its tentative determination received at the hearing, if any, or during the public comment period. Issues raised by those comments may be the basis for a decision to grant or deny approval to Nevada. EPA expects to make a final decision on whether or not to approve Nevada's program within 60 calendar days after the end of the public comment period. EPA will give notice of its final decision in the **Federal Register**, if the final decision differs from this tentative decision. The notice will include a summary of the reasons for the final determination and a response to all significant comments. However, if no such comments are provided and insufficient public interest exists, this tentative decision of the Regional Administrator will become final 60 days after the end of the public comment period, without the need to publish further notice in the **Federal Register**.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval of Nevada's UST program effectively suspends the applicability of certain Federal UST regulations, thereby eliminating duplicative requirements for owners and operators of UST systems in the State. Consequently, it does not impose any new burdens on small entities. This decision, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Dated: December 17, 1992.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 92-31301 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 525, 533, 537

[Docket No. 91-50; Notice 2]

RIN 2127 AE42

Light Truck Average Fuel Economy Standards Model Years 1995-97

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the establishment of average fuel economy standards for light trucks manufactured in model years (MY) 1995 through 1997. The issuance of the standards is required by Title V of the Motor Vehicle Information and Cost Savings Act. The agency is proposing to set the combined standard for all light trucks within a range of 20.5–21.0 mpg for MY 1995, and 20.5–21.5 mpg for MY's 1996–97. This notice also proposes to eliminate the separate categories of "captive import" and "other" for purposes of light truck CAFE calculations beginning in MY 1995, and to convert certain measurements into metric units beginning at the same time.

DATES: Comments must be received on or before February 1, 1993. The comment period has been shortened due to a statutory deadline.

ADDRESSES: Comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. The Docket is open 9:30 a.m. to 4 p.m., Monday through Friday. Submission containing information for which confidential information is requested should be

submitted (in three copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket section.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added a new title, title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act (the Act). Title V provides for the establishment of average fuel economy standards for cars and light trucks.

Section 502(b) of the Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. The Act provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: Technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy.

(Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976)). Pursuant to this authority, the agency has set standards of 20.2 mpg for MY 1992, 20.4 mpg for MY 1993, and 20.5 mpg for MY 1994.

II. Proposals

A. General

The agency's proposals are based on information derived from a variety of sources. One major source is the submissions received in response to a questionnaire published in the **Federal Register** (56 FR 50694) on October 8, 1991. As the agency had already established light truck fuel economy standards through 1994, it was the beginning of the process of establishing standards for model years 1995–97. The comments received in response to the questionnaire are available in Docket No. 91–50.

As a part of setting forth the proposals, this notice discusses a variety of issues which are being considered by the agency, all of which are relevant to the statutory criteria noted above. In discussing these issues, the agency asks a number of questions and makes a number of requests for data to help it obtain information to facilitate its analysis. For easy reference, the questions or requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, please provide any relevant factual information to support conclusions or opinions, including but not limited to statistical and cost data, and the source of such information.

B. Ranges of Proposals

This notice proposes to establish an average fuel economy standard for light trucks for each of MY's 1995–97. The agency is proposing to select the standard from within a range of 20.5–21.0 mpg for MY 1995, and 20.5–21.5 mpg for MY's 1996 and 1997.

In view of the uncertainties, the setting of standards outside the proposed ranges is possible. Factual uncertainties which could result in lower standards include the possibility of mix shifts toward larger light trucks and engines, the possibility that planned technological actions may not achieve anticipated fuel economy benefits or may prove to be infeasible, and the potential impact of test procedure changes mandated by the Clean Air Act Amendments of 1990. Factual uncertainties which could result in higher standards include the possibility that manufacturers may be able to improve their CAFE by further technological actions, i.e., ones beyond those they are already planning.

III. Manufacturer Capabilities for MY 1995–97

In evaluating manufacturers' fuel economy capabilities for MY 1995–97, the agency has analyzed manufacturers' current projections and underlying product plans and is considering what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Preliminary Regulatory Impact Analysis (PRIA), which has been placed in the docket for this notice. Some of the information included in the PRIA, including the details of manufacturers' future product plans, has been determined by the agency to be confidential business information whose release could cause competitive harm. The public version of the PRIA omits the confidential information.

A. Manufacturer Projections

1. General Motors

In December 1991, GM projected that it could achieve CAFE levels of 20.2 mpg in MY 1995, and 20.7 mpg in MY's 1996–97. This compares to a projection of 20.1 mpg for MY 1992 taken from GM's pre-model year report of December 1991.

2. Ford

Ford projected in January 1992 that it could achieve CAFE levels of 20.8 mpg for MY 1995, 21.6 mpg for MY 1996, and 21.5 mpg for MY 1997. This compares to a December 1991 pre-model year report projection of 20.3 mpg for MY 1992.

3. Chrysler

Chrysler projected in December 1991 that it could achieve CAFE levels of 20.5 mpg for MY 1995, and 21.0 mpg for MY's 1996–97. This compares to a pre-model year report projection of 21.3 mpg for MY 1992.

4. Other Manufacturers

Most light truck manufacturers, other than the domestic manufacturers, easily exceed the proposed combined CAFE standards. The exceptions are Range Rover, with a MY 1992 CAFE value of 16.3 mpg, and PAS, with a MY 1992 CAFE level of 19.2 mpg.

Nissan, the only manufacturer other than those listed above to respond to the questionnaire, projected MY 1995 fuel efficiency ratings above the proposed CAFE standard for that year. Nissan's pre-model year report projection for MY 1992 was 24.9 mpg.

B. Possible Additional Actions to Improve MYs 1995–97 CAFE

There are additional actions (further technological changes and product restrictions) which, given sufficient time and resources, manufacturers may be able to take to improve their CAFE above the levels currently projected for 1995–97.

1. Further Technological Changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies that manufacturers are able to apply within the available time.

The agency's PRIA discusses the fuel efficiency enhancing technologies which are expected to be available during the MY 1995–97 time period.

One potential constraint on the increased use of these technologies, at least for MY's 1995–96, is the limited leadtime. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically at least three years. Also, as the agency discussed in establishing its final rule for MYs 1993–94, once a new design is established and tested as feasible for production, the leadtime necessary to design tools and test components is typically 30 to 36 months. Some potential major changes may take even longer. Leadtimes for new vehicles are usually at least three years. Further, light trucks have a long model life, i.e., 8–10 years or more. If a manufacturer must make a major model change ahead of its normal schedule, this change may have a significant, unprogrammed financial impact.

Given the leadtime constraints, the agency does not believe that manufacturers can achieve significant improvements in their projected CAFE levels for these model years by additional technological actions. Some actions—increased use of diesel engines, for example—could lead to significant fuel economy improvements. However, diesel engines are faced with the increasingly strict emissions requirements of both the Clean Air Act Amendments of 1990 (CAAA) and the California standards. Further, consumer acceptance of diesel engines is limited if the price of gasoline remains below that of diesel fuel, as it has for the past several years. Other technologies already largely in use, such as electronic engine control, cannot achieve much further penetration into the light truck market.

With regard to manufacturers' abilities to afford new models and technological programs to improve light truck fuel efficiency, the agency anticipates that fuel economy standards within the proposed ranges will not result in any significant changes in capital spending levels already planned by companies. In its October 8, 1991 questionnaire, NHTSA asked manufacturers for projections of total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in the companies' responses. The manufacturers did not provide any evidence that projected capital spending for new technologies would put a strain on their financial conditions, or that the projected light truck product changes are economically impracticable.

In analyzing the economic practicability of making additional capital expenditures to improve MYs 1995–97 CAFE by additional technological means, the agency requests information or comments on the following questions:

1. What is the technological feasibility and economic practicability of the various fuel efficiency enhancing technologies, including but not limited to: Multi-valve and variable valve timing engines; electronic engine controls; port fuel injection; lean burn-fast burn combustion; engine friction reduction; two-stroke engines; turbocharging; improved transmissions, including continuously variable transmissions and electronic controls; redesigning vehicles for weight reduction and aerodynamic enhancement; substitution of lighter-weight materials; lowering rolling resistance; low-friction lubricants; and reducing parasitic losses, for improving manufacturers' CAFE for MY 1995–97? In answering this question, please address both the amount of fuel economy improvement associated with each technology, and the potential penetrations of those technologies during this time period i.e., the extent to which they could be incorporated across manufacturers' fleets. For each year and technology, what penetrations are feasible for each manufacturer's fleet? Why isn't a higher penetration feasible? What are the leadtimes involved in making such technological changes? Please provide cost estimates for these technologies and specific information concerning the bases for such cost estimates.

2. Would the technological requirements needed to achieve the proposed MY 1995–97 light truck CAFE standards place an undue financial burden on the manufacturers?

2. Product Restrictions

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting production of particular larger light truck models and larger displacement engines. Such product restrictions, if made necessary by selection of a CAFE standard that is above manufacturers' capabilities, could result in adverse effects on vehicle sales, if the effect was to force consumers to purchase vehicles over 8500 pounds GVWR, or industry-wide employment, if consumers elected to retain older vehicles longer than usual. Purchase of vehicles over 8500 pounds GVWR would have the additional effect of defeating the energy-saving and pollution control aims of the CAFE program, because such vehicles would not be subject to light truck CAFE standards. The analysis of manufacturer capabilities in the PRIA indicates that technical and marketing considerations appear to limit the maximum feasible CAFE level to 20.5–21.0 mpg in MY 1995 and 20.5–21.5 mpg in MYs 1996–97.

The agency estimates that only GM in MYs 1995–97 and Chrysler in MY 1995 may have a problem meeting the proposed standards. To develop an independent indicator of the potential impacts of a standard above the maximum feasible level on GM's production, the agency estimated the loss of production associated with sufficient production restrictions to raise its CAFE by 0.5 mpg. To estimate this effect, the agency eliminated production of GM's least fuel efficient models until the desired improvement in CAFE was achieved. This approach tends to yield the maximum possible negative impacts, because it does not include the possibility of consumers accepting a smaller truck or engine, or switching to vehicles over 8500 pounds GVWR. Also, it ignores the possibility of additional technological improvements to these truck fleets, or compliance through the use of credits earned in other model years.

For MY 1995, the NHTSA analysis indicates that to increase its CAFE by 0.5 mpg by restricting sales, GM could suffer a sales loss of up to 174,000 units of its projected light truck production for that year. For MY 1996, GM could suffer a sales loss of up to 151,000 units, and for MY 1997 a potential loss of 142,000 units. Because of uncertainty regarding the actual sales losses and the nature of personnel adjustments that would have to be made by manufacturers, no precise estimate of net employment effects can be made, especially in light of the fact that specific employment data for light trucks are not readily available. However, an estimate can be made assuming that labor requirements for light trucks are similar to those for motor vehicles on average. An additional complication is attempting to ascertain how many supplier jobs would be affected in industries such as metalworking equipment, electrical components, plastics, and iron and steel. Studies performed at the Department of Transportation's Transportation Systems Center yield an estimate of 1.4 to 2.0 supplier jobs for each auto industry job, or an average of 1.7 supplier jobs.

If there is one job in the motor vehicle and equipment industry for every 16 vehicles produced, then the potential 1995 sales loss discussed previously for

GM of 174,000 vehicles due to raising its CAFE standards 0.5 mpg, could result in the loss of approximately 10,900 jobs. A supplier industry job multiplier of 1.7 would imply a total job loss of 29,400 jobs. For the 151,000 sales that could be lost in 1996, 25,500 jobs could be lost. For 1997, the 142,000 potential sales reduction could mean the loss of 24,000 jobs.

In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use. Also, such product restrictions could unduly limit consumer choice.

Given these considerations, NHTSA tentatively concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve MYs 1995–97 CAFE levels.

To aid in analyzing the possible economic impacts of fuel economy standards outside the range of those proposed, the agency requests information or comments on the following questions:

3. What would be the likely specific effects on employment and sales of different MYs 1995–97 light truck fuel economy standards, within and outside the proposed ranges? Please provide data to support arguments on this point.

4. What would be the likely specific effects on consumer choice of different standards, within and outside the proposed ranges of light truck fuel economy standards?

C. Manufacturer-Specific CAFE Capabilities

Of the manufacturers producing light trucks for sale in the U.S. in MY 1992, only three are projecting CAFEs lower than the three major domestic manufacturers: Chrysler imports, PAS, and Range Rover. PAS is a low-volume converter of GM trucks that are marketed through GM dealers, and Range Rover is a small importer of luxury 4WD utility vehicles. Because none of the three fleets has a significant share of the U.S. market, the discussion in this section will be confined to the capabilities of the major domestic light truck manufacturers, Chrysler, Ford, and GM.

Chrysler's projected CAFE level is 20.5 mpg for MY 1995, and increases to 21.0 mpg for MY's 1996 and 1997.

In its submissions to the agency in response to the questionnaire, Ford described a number of risks and opportunities that could affect its CAFE in future years. Ford accumulates these corrections over the years of its projections. Ford's baseline CAFE projection for MY 1995 is 20.8 mpg, but due to technology risks, which could cost 0.025 mpg in its estimation, and other factors outweighing potential technology improvements, Ford revised its projection downward to 20.7 mpg. Ford's MY 1996 projection of 21.6 mpg was lowered to 21.4 mpg, mainly because of a technology risk estimated to be 0.20 mpg. Ford applied the same technology risk factor to its 21.5 mpg baseline projection for MY 1997, and it was a major factor in its revised projection of 21.4 mpg.

The agency questions the concept that a risk of not achieving the full benefit of a technology improvement in the first year of application will stay with the technology forever. It seems more reasonable that the risk may be reduced or eliminated after more development time. Therefore the agency suggests deleting the MY 1995 technology risk in MY 1996, and the MY 1996 risk in MY 1997, thus increasing the projected, adjusted CAFE by 0.02 mpg in MY 1996, and 0.20 mpg in MY 1997. NHTSA's revised projections for Ford are 20.7 mpg for MY 1995, 21.4 mpg for MY 1996, and 21.6 mpg for MY 1997.

GM also included a discussion of penalties and uncertainties that could affect its CAFE estimates in its submissions, but, unlike Ford, it did not anticipate any potential opportunities to increase CAFE. First GM "corrected" its fleet estimates by 0.1 mpg each year to account for the added weight for mandated safety and emissions hardware and some voluntary safety features, and the phase-out of CFC–12 refrigerant. Next GM estimated that various uncertainties could reduce its CAFE by 0.3 mpg in MY 1995 and 0.7 mpg in both MYs 1996 and 1997. Thus GM's baseline projection for MY 1995 of 20.2 mpg was revised to 19.8 mpg. Its 20.7 mpg baseline projections for MYs 1996 and 1997 were reduced to 19.9 mpg.

The agency disagrees with certain of GM's "risks" and revised GM's CAFE to new levels of 20.0 mpg in MY 1995, and 19.9 mpg in MY's 1996 and 1997.

It can be seen that Ford is projecting the highest CAFE levels of MY's 1995–97 among the three domestic manufacturers, and is also projecting an improvement over current performance. GM is clearly the least capable manufacturer with a large share of the market. GM is declining from levels achieved in recent years, while Chrysler lies in between the two, and is maintaining roughly equivalent average fuel economy. Some import light truck manufacturers also show declining CAFE levels, but still have higher levels than the domestic manufacturers.

GM projects a much larger portion of its fleet to have 4WD than it has had in recent years, or than its competitors are projecting. The agency is not aware of any reason to expect that the 4WD market share will continually increase. In addition, the agency believes that there are alternatives to 4WD. Limited slip differentials have been available for many years, but another similar feature is now becoming available: traction control. Traction control is now offered on some passenger cars in conjunction with antilock brakes. It could easily be offered on light trucks since most models will have antilock brakes soon. For those light truck users who do not expect to drive in heavy snow or mud, but merely want security and control on wet and icy pavements, traction control is potentially a satisfactory alternative. This is especially true when cost is considered. While the retail price of 4WD over 2WD is generally higher by approximately $1500, and occasionally by $2000, the price of optional traction control on a Lincoln Town Car is only $222. If the GM light truck fleet for MY's 1995–97 consisted of the same share of 4WD models as its MY 1992 fleet, its CAFE would be 0.1 mpg higher for each of these years.

The GM fleet leads the other manufacturers in every engine performance calculation carried out by the agency. GM's performance levels are detrimental to its fuel economy performance. If GM's light truck fleet for MY 1995 had been closer to the values achieved by other manufacturers for the various performance measures, its CAFE values might be improved by between 0.3 and 0.4 mpg. However, GM's fleet average 0-to-60 mph acceleration time might be increased by about 15 percent. This could impose costs (probably mainly in the form of utility reductions) on GM light truck buyers, because power and performance are attributes valued by consumers. GM's light truck fleet may be filling a market demand for higher-powered vehicles. For example it may be that, on average, GM trucks are purchased to haul or tow larger or heavier loads than those of other manufacturers.

In summary, the agency concludes that the feasible CAFE capability of the three domestic manufacturers for MYs 1995–97, as expressed in their responses to the questionnaire and after adjusting GM's to reflect a more comparable performance level (0.4 mpg), and a 4WD market share consistent with both its and its competitors' historical levels, is as follows:

Manufacturer	MY 1995	MY 1996	MY 1997
Chrysler	20.5	20.9	20.9
Ford	20.7	21.4	21.6
GM	20.5	20.4	20.4

Notwithstanding the projected product plans that the manufacturers have provided the agency and that the agency has adjusted above, there is potential for further improvement in each manufacturer's CAFE. For example, the market may dictate changes in the light truck mix in response to changes in fuel prices and availability. Although the agency does not expect any drastic changes in the near future, it is likely that if any significant changes do occur, they will be in the direction of improved CAFE. This is because the projections provided by the manufacturers appear to be pessimistic. The agency also has not suggested weight reductions beyond the manufacturers' product plans, because material substitution involves increased cost for lighter and/or stronger materials which is not returned in fuel savings at current fuel prices, and alternate, smaller vehicle configurations are subject to consumer acceptability problems. But, again, market forces could make lighter or stronger materials cost effective or lighter vehicles more popular in future years (although leadtime constraints limit manufacturers' abilities to introduce models not currently planned for the MY 1995–97 time frame). Aerodynamic improvements were not emphasized except on certain new models which did not show continuing progress over existing versions. As a result, the agency did not incorporate fuel economy corrections into the adjusted CAFE projections to account for aerodynamics. Some of the known technological improvements that are not projected for full implementation could also increase fuel economies. There are also a variety of emerging technologies for drivetrains that are basically refinements with minor fuel economy impact, but their combination with other improvements can produce net gains in CAFE. The implementation of the technologies mentioned above could yield a CAFE improvement of 0.1 to 0.2 mpg in MY 1995 and 0.3 to 0.5 mpg in MY's 1996 and 1997, where more leadtime is available.

Considering the potential for improvement in CAFE beyond that demonstrated in the foregoing analysis and adjustment of the manufacturers' projections along with the need to set the standard within the capability of the least capable manufacturer with a significant share of the market, the agency believes that a CAFE standard for MY 1995 in the range of 20.5 to 21.0 mpg is feasible. For MY's 1996–97, standards in the range of 20.5 to 21.5 mpg are deemed feasible. GM is the least capable manufacturer with a significant share of the market in MY's 1995–97, and is joined as least capable by Chrysler in MY 1995.

In analyzing manufacturer capabilities for MY 1995–97, the agency requests information or comments on the following question:

5. What are the manufacturers' current CAFE capabilities for MYs 1995–97? How substantial are the uncertainties affecting manufacturers' capabilities during this time period, how can these uncertainties be minimized, and how should these uncertainties be considered in setting fuel economy standards at the maximum feasible level?

IV. Other Federal Standards

In determining the maximum feasible economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability.

A. Safety Standards

As discussed by the PRIA, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MYs 1995–97. These include revisions to FMVSS Nos. 208: Occupant Crash Protection; 214: Side impact protection; 216: Roof crush resistance; 108: Lamps, Reflective Devices and Associated Equipment; and 201: Occupant Protection in Interior Impacts. In addition, the agency is considering whether to propose a safety standard to improve rollover protection.

The overall fuel economy effect of each of the safety programs discussed below indicate that the added weight due to the NHTSA safety regulations taking effect after MY 1992 will reduce typical light truck fuel economy capabilities by 0.08–0.18 mpg in MY 1995, 0.11–0.21 mpg in MY 1996, and 0.13–0.24 mpg in MY 1997. The effect of voluntarily-installed safety equipment could add as much as 0.1 mpg to this impact.

1. FMVSS 208

On March 26, 1991, NHTSA published (56 FR 12472) a final rule requiring automatic restraints on trucks with a Gross Vehicle Weight Rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less. These requirements phase in at the following rate for each manufacturer: 20 percent of light trucks manufactured from September 1, 1994 to August 31, 1995; 50 percent of light trucks manufactured from September 1, 1995 to August 31, 1996; 90 percent of light trucks manufactured from September 1, 1996 to August 31, 1997; and all light trucks manufactured on or after September 1, 1997. Thus, the requirement would affect 20 percent of MY 1995 light trucks, 50 percent of MY 1996 light trucks, and 90 percent of MY 1997 light trucks. Although light truck manufacturers may comply with the automatic restraint requirements by using automatic belts, "passive interiors," or air bags, NHTSA expects that essentially all light truck manufacturers will comply by using air bags.

To encourage the use of more innovative automatic restraint systems (primarily air bags) in light trucks, during the first four years of the phase-in (i.e., through MY 1998) manufacturers may count each light truck equipped with such a restraint system for the driver's position, and a manual safety belt for the right-front passenger's position, as a vehicle complying with the automatic restraint requirements. Beginning with MY 1999, however, all light trucks are required to provide automatic restraints for both the driver and right-front passenger positions.

Title II of the Intermodal Surface Transportation Efficiency Act of 1991 requires NHTSA to amend its automatic restraint requirements to mandate that 80 percent of MY 1998, and all MY 1999 light trucks be equipped with driver and passenger-side air bags. Because NHTSA expects that essentially all manufacturers will rely on air bags for compliance with the light truck automatic restraints requirements, this provision should have a negligible substantive impact, and will not affect MYs 1995–97 fuel economy capabilities.

In the Final Regulatory Impact Analysis (FRIA) for the light truck automatic restraint rulemaking, NHTSA estimated weight increases per vehicle ranging from 15.3 pounds for a driver's-side air bag to 35.7 pounds for both driver and right-front passenger air bags (including "secondary weight," i.e., weight added for supporting structure, etc.). Fuel economy would be reduced by about 0.05 to 0.11 mpg.

The automatic restraint weight estimates provided by the manufacturers were generally consistent with those previously developed by the agency. NHTSA calculates that the manufacturers' estimates translate into fuel economy penalties of 0.04–0 08

mpg for MY 1995, 0.07–0.11 mpg for MY 1996, and 0.09–0.14 mpg for MY 1997. These weight effects are reflected in the manufacturers' fuel economy projections, so there is not need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard. Nevertheless, this analysis demonstrates that the automatic restraint requirement of FMVSS 208 reduces MYs 1995–97 fuel economy capabilities by approximately 0.1 mpg.

2. FMVSS 214

On June 14, 1991, NHTSA published (56 FR 27427) a final rule extending the "quasi-static" test requirements of FMVSS 214 to trucks, multipurpose vehicles, and buses with a GVWR of 10,000 pounds or less. The rule is effective September 1, 1993. The "quasi-static" FMVSS 214 specified performance requirements for each side door to mitigate occupant injuries in side impacts. It measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder against it. Manufacturers generally comply with the standard by reinforcing the side doors with metal beams or rods.

In the FRIA accompanying the rule, NHTSA estimated that the requirements of FMVSS 214 would result in an average weight increase of 24.8 to 26.7 pounds (including secondary weight). This weight increase could result in a fuel economy degradation of 0.08 mpg.

The quasi-static side impact protection weight estimates provided by the manufacturers translate, according to NHTSA calculations, into fuel economy penalties of approximately 0.04–0.07 mpg for MYs 1995–97. These weight effects are included in the manufacturers' fuel economy projections, so there is no need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard. However, this analysis shows that the quasi-static side impact protection requirement of FMVSS 214 reduces MYs 1995–97 fuel economy capabilities by less than 0.1 mpg.

The agency is considering additional regulatory requirements to protect light truck occupants in side impacts. For example, NHTSA is considering applying to light trucks the same dynamic test that it has adopted for passenger car side impact protection. This approach is discussed in an ANPRM published August 19, 1988 (53 FR 31716). The test, which would be in addition to the quasi-static door-crush test described above, would require a light truck to provide occupant protection in a full-scale crash test. In the crash test, a light truck would be struck in the side by a moving barrier simulating another vehicle. Test dummies would be positioned in the light truck on the impacted side to measure the potential for injuries to the thorax and pelvis of occupants. NHTSA is also considering whether requirements should be developed to specifically address side impacts with fixed objects such as poles and trees.

The Intermodal Surface Transportation Efficiency Act of 1991 required NHTSA to publish an ANPRM or NPRM by May 31, 1992 to extend the passenger car side impact protection standard (the dynamic test discussed above) to multipurpose passenger vehicles and trucks with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less. On June 5, 1992, NHTSA published (57 FR 24009) an ANPRM on this issue. Any potential impacts on MYs 1995–97 fuel economy capabilities resulting from this rulemaking will be considered before CAFE standards are established for those model years.

3. FMVSS 216

On April 17, 1991, NHTSA published a final rule (56 FR 15510) amending FMVSS 216, Roof Crush Resistance, to extend its requirements to light trucks with GVWRs of 6000 pounds or less. Previously, the standard applied only to passenger cars. The effective date of the rule is September 1, 1993.

FMVSS 216 is intended to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover crashes. This standard established strength requirements for the forward portion of the roof to increase the resistance of the roof to intrusion and crush.

The agency believes that this requirement will have a negligible impact on light truck manufacturers' MYs 1995–97 fuel economy capabilities. Many light trucks already meet the standard. In addition, a 1982 evaluation of changes made to passenger cars to comply with the standard indicated that the average weight increase was only 2.95 pounds. NHTSA calculated that the manufacturers' weight impact estimates translate into fuel economy penalties of about 0.003–0.03 mpg for MYs 1995–97. These weight effects are included in the manufacturers' fuel economy projections.

4. FMVSS 108

On April 19, 1991, NHTSA published (56 FR 16015) a final rule requiring new light trucks to be equipped with center high-mounted stoplamps (CHMSLs). The effective date is September 1, 1993. With an estimated weight effect of about one pound, this rule will have a negligible CAFE effect.

5. FMVSS 201

As part of an ANPRM published on August 19, 1988 (53 FR 31716), NHTSA indicated it is looking into approaches to reduce injuries and fatalities due to head and face impacts with interior surfaces. In particular, the agency is examining means of reducing occupant harm due to head/face impacts with pillars and roof/windshield headers. NHTSA believes that various techniques, including adding padding and reducing the stiffness of impacted surfaces, may reduce the severity of, or even prevent, many head injuries.

One possible performance requirement would be to place limits on head acceleration in specified component tests using a headform impactor. The weight penalty for this potential rulemaking would probably be no more than 2–3 pounds per vehicle.

The Intermodal Surface Transportation Efficiency Act of 1991 requires that NHTSA publish an ANPRM or NPRM by January 3, 1993 to provide "improved head impact protection from interior components of passenger cars (i.e., roof rails, pillars, and front headers)." At this point, the Department has not decided what action to take on this requirement, but may include light trucks in any rulemaking on this subject. Potential impacts on MYs 1995–97 fuel economy capabilities will be considered before CAFE standards are established for those model years.

6. Rollover Prevention

The Intermodal Surface Transportation Efficiency Act of 1991 requires NHTSA to publish an ANPRM or NPRM by May 31, 1992 to provide "protection against unreasonable risk of rollovers of passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less." On January 3, 1992, NHTSA published (57 FR 242) an ANPRM announcing that the agency is considering whether to propose a safety standard to reduce the casualties associated with rollovers of passenger cars, pickup trucks, vans, and utility vehicles. NHTSA is considering possible regulatory actions in the areas of (1) improved vehicle stability (to reduce rollovers), (2) improved crashworthiness (to provide increased occupant protection in the event of a rollover), and (3) consumer information on a vehicle's rollover propensity. These

actions may be pursued singly or in combination.

Weight and fuel economy penalty estimates have not yet been developed for this rulemaking because the agency is considering a wide range of regulatory options. If the agency pursued an "improved vehicle stability" approach, regulatory possibilities include precluding the production of vehicles that do not meet a specific performance measurement (such as a minimum "tilt table" ratio) or requiring these vehicles to have safety devices or features to improve the vehicle's directional stability characteristics (such as anti-lock brakes).

If the agency pursued an "improved crashworthiness" approach, it could require means to increase belt usage, different types of restraints (e.g., four-point harnesses), improved roof strength, or interior padding. Under a "consumer information" approach, manufacturers could be required to measure certain metrics (such as the tilt table ratio) for their vehicles and report them to prospective purchasers. The number of rollovers might be reduced if consumers better understood the risk of rollover associated with different vehicle types and models.

Any potential impacts on MYs 1995–97 fuel economy capabilities will be considered before CAFE standards are established for those model years.

In analyzing the effects of the Intermodal Surface Transportation Efficiency Act of 1991 on CAFE standards, the agency seeks comment and information on the following question:

6. What effects could the potential or actual NHTSA safety requirements regarding FMVSS 201, 208, 214, 216, and rollover protection, have on manufacturers' CAFE levels in MYs 1995–97? Please provide data to support arguments on this point.

7. Voluntarily Installed Safety Equipment

The effect of voluntarily-installed safety equipment (i.e., anti-lock brakes, traction control, and built-in child restraints) on fuel economy is estimated to range from 0.01–0.10 mpg for each model year, with the effect varying from company to company. The specific impact for each company is included in the manufacturers' estimates of fuel economy capability.

B. Revised Emissions Standards

The Clean Air Amendments of 1990 (CAAA) impose more stringent exhaust emissions standards on light trucks. Standards are also becoming tighter in California. Under the CAAA, new standards begin phasing-in starting with MY 1994 for trucks with GVWRs up to 6,000 pounds. The phase-in is 40 percent for MY 1994, 80 percent for MY 1995, and 100 percent for MY 1996 and afterwards. For light trucks over 6,000 pounds GVWR, more stringent standards begin to take effect in MY 1996. Fifty percent of these vehicles must comply with the new standards in MY 1996; all light trucks over 6,000 pounds GVWR must meet the new standards for MY 1997 and later.

Current standards for exhaust emissions will tighten substantially under the CAAA. Over the "full useful life" of a vehicle, emissions standards will be 0.8 grams/mile for total hydrocarbons, and will range (depending on vehicle and test weight) from 0.31 to 0.56 grams/mile for non-methane hydrocarbons, from 4.2 to 7.3 grams/mile for carbon monoxide, from 0.6 to 1.53 grams/mile for oxides of nitrogen, and from 0.10 to 0.12 grams/mile for particulate matter.

The CAAA also require EPA to establish standards for carbon monoxide emissions at 20 degrees Fahrenheit. These standards take effect beginning with MY 1994. Furthermore, for all gasoline-fueled motor vehicles, the CAAA require EPA to promulgate regulations covering evaporative emissions (1) during operation ("running losses") and (2) over two or more days of non-use.

In their questionnaire responses, none of the auto companies provided substantial detail on the possible impacts of these standards of MY 1995–97 light truck fuel economy capabilities. GM states, "The total impact of the Clean Air Act Tier I and the California emissions standards on truck fuel economy is unknown at this time. * * * Although not quantified, preliminary indications are that there will be some lost opportunities to improve fuel economy when redesigning our powertrains to comply with these standards."

Ford stated that, "[M]ost troublesome is the effect of compliance with the amended Clean Air Act. We project that compliance has reduced the average truck fuel economy by 0.3 mpg after inclusion of technology which has an offsetting effect * * * and it negates other technology benefits."

The net impact on CAFE capabilities due to changes in emissions requirements is likely to be minimal. Some of the new requirements will lead to fuel savings, while others may lead to fuel economy losses. Benefits will be obtained from enhanced evaporative controls and the "low temperature" carbon monoxide standards because manufacturers will sharpen their fuel-control systems, using techniques such as sequential port fuel injection. Fuel economy losses may result from tighter hydrocarbon and nitrous oxides emissions standards.

NHTSA has not made any adjustments to the manufacturers' CAFE projections to account for any impacts of changing emissions standards during MYs 1995–97 because the net effects of the CAAA are uncertain.

C. Test Weight for Light Trucks over 6,000 Pounds GVWR

The CAAA require that, beginning with MY 1996, many light trucks over 6,000 pounds GVWR be tested, for emissions purposes, at the average of curb weight and GVWR. This requirement applies to one-half the "over 6,000 pound" fleet in MY 1996 and all of this fleet in MY 1997. Previously, test weights were determined based on "loaded vehicle weight," (LVW) which is defined as curb weight plus 300 pounds. Loaded vehicle weight has been the sole basis used to calculate "equivalent test weight," which is the weight used for dynamometer testing. EPA has defined the average of vehicle curb weight and GVWR to be "adjusted loaded vehicle weight" (ALVW) (see 56 FR 25739), which will be used as the basis for determining equivalent test weight for emission testing of the "over 6,000 pound" test fleet described above. ALVW is higher than the LVW, and if light trucks are tested at ALVW there will be a lose in the estimated fuel economy.

The CAAA do not require fuel economy testing to be performed at ALVW. However, because exhaust emissions testing must be done at ALVW for light trucks over 6,000 pounds GVWR, use of a different test weight system for fuel economy could require manufacturers and EPA (when conducting confirmatory tests) to test each of these trucks twice: Once at its "equivalent test weight" for fuel economy purposes and once at ALVW for exhaust emissions purposes. The extra tests performed under this option would cost manufacturers between $1,000–$1,500 per test. Similarly, EPA would incur additional testing costs when conducting confirmatory testing on these vehicles. Based on a submission from the Motor Vehicle Manufacturers Association (Docket No. 91–50–NO1–010) estimating the number of models for which dual testing would have to be performed, the total cost of this option would range roughly between $40,000 and $60,000. This "dual testing" approach would have the

effect of removing the emissions tests at ALVW from consideration in setting CAFE standards.

Another approach would be to have EPA mandate that trucks over 6,000 pounds GVWR be fuel economy tested at ALVW and for NHTSA to consider any deleterious fuel economy effect in establishing CAFE standards for the affected model years. A third approach would be to have a manufacturer-specific test procedure adjustment to account for the proportion of its fleet affected by this requirement when fuel economy is derived from tests at ALVW. This approach would require EPA to promulgate implementing regulations.

Domestic auto manufacturers have pointed out that testing at the higher weights would have a negative fuel economy impact. Using MY 1992 data, GM claimed a potential impact in MY 1997 of at least 0.5 mpg. Ford estimated a possible loss in MY 1997 of 0.2–0.3 mpg. Chrysler did not give a specific number but agreed that fuel economy would be lowered. Import manufacturers are unlikely to have any significant penalty from this test procedure change because they produce few, if any, light trucks with a GVWR exceeding 6,000 pounds.

EPA stated that NHTSA should set CAFE standards with the heavier test weight in mind and stated that dual testing would entail increased expenses. In addition, Congressional intent may have been that fuel economy and emission testing be performed under the same conditions. EPA also noted that EPCA requires that integrated fuel economy and emissions testing, although this requirement is limited "to the extent practicable." EPA estimated that the test weight change would reduce GM's and Ford's CAFE levels by 0.63 and 0.34 mpg, respectively (Docket No. 91–50–NO1–011).

Since that time, MVMA has indicated to EPA that requiring the heavier test weight would also increase testing expenses, by forcing separate fuel economy tests for light trucks above and below 6,000 pounds GVWR. In addition, MVMA has raised concerns that changing the basis for determining fuel economy on only a portion of the light truck fleet (i.e., those above 6,000 pounds GVWR) would cause consumer confusion and affect the competitiveness of manufacturers with a higher proportion of the sales of the heavier light trucks.

In analyzing dual testing and the CAFE standard adjustment alternatives, the agency requests information or comments on the following question:

7. Has the agency identified all options (i.e., dual testing, single testing with an adjustment in the CAFE standard, or an adjustment formula in the single test results) regarding the new EPA test weights? What are the consequences of each option (e.g., added expenses for dual testing, proper CAFE adjustment for single testing at higher weight), and which is preferable for MYs 1995–97 light truck fuel economy standard purposes?

D. Phase-out of Chlorofluorocarbons

Under terms of the international Montreal Protocol, the United States and other industrialized nations have agreed to halt production of chlorofluorocarbons (CFCs) by the year 2000. In February 1992, the President announced that the United States would phase-out production by the end of 1995.

Both Ford and General Motors identified weight penalties for eliminating the use of CFCs in their vehicles' air conditioning systems of seven pounds or less for each MY 1995–97. NHTSA estimated that these weight additions could result in an average fuel economy penalty of 0.02 mpg. These weight effects are included in the manufacturers' fuel economy projections.

In analyzing the effects of other Federal standards on fuel economy, the agency requests information or comments on the following question:

8. Has NHTSA identified all of the other Federal standards that might have an impact on light truck fuel economy during MYs 1995–97? What are the potential impacts of other Federal standards on individual manufacturers' CAFE levels for these model years?

V. NAS Study

In 1991, the agency provided a grant to the National Academy of Sciences (NAS) to estimate the practically achievable levels of fuel economy for various classes of passenger cars and light trucks over the next decade. The report of this study, Automotive Fuel Economy—How Far Should We Go?, published in April 1992, includes an estimate of the light truck fleet fuel economy potential for MY 1996. This value was derived from data shown in the EPA report, Light-Duty Automotive Technology and Fuel Economy Trends Through 1991, by Heavenrich, Murrell, and Hellman, 1991. The NAS analysis uses the average fuel economies projected for MY 1991 of four of the major segments of the light truck fleet—small pickup, small van, small utility, and large pickup—with the MY 1990 market share of each of these segments proportioned upward to give a total of 100 percent, and with 0.7 mpg added to each fuel economy average to simulate technological progress between MY's 1991 and 1996. The 0.7 mpg improvement was based on the assumption that fuel economy would continue to improve as in the past and at the same rate.

The MY 1996 average fuel economy projection that results from this methodology, 22 mpg, has little relevance as a reference value for this rulemaking. First of all, this figure is intended to represent the entire light truck fleet, not the capability of one or two manufacturers with a significant share of the market. Individual large manufacturers may have considerably less capability because of the presence in their fleets of larger, less fuel efficient trucks. Second, the model mix that the NAS study used for the MY 1996 projection was derived from EPA preliminary data for MY 1990 and does not bear a close relationship to the actual mix that was produced in MY 1991, and will have an even more distant connection with the projected mix for MY 1996. The study did not include large vans and utility vehicles that are, quite obviously, a significant segment of the light truck market. Third, the assumption of 0.7 mpg fuel economy improvement for each segment and the total fleet between MY's 1991 and 1996 is questionable. Fuel economy improvement measured in five-year intervals has been steadily decreasing over the past decade, and recent five-year trends have even been negative.

VI. Domestic/Import Fleet Distinction

Section 503 of the Act is very explicit regarding the procedures to be followed in calculating the average fuel economy for determining compliance with the passenger automobile standards. Section 503(a)(1) requires that the average fuel economy value be the harmonic average. Section 503(b)(1) provides that the EPA Administrator shall separate the total number of passenger automobiles manufactured by a manufacturer into two categories: domestically manufactured and not domestically manufactured. An automobile is considered domestically manufactured if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada.

Section 503 does not specify procedures for calculating the average fuel economy for automobiles which are not passenger automobiles (later referred to as light trucks). Section 503(a)(1) simply provides that light truck average fuel economy be calculated in accordance with procedures established by the EPA.

Section 502(b) of the Act calls for the Secretary of Transportation to prescribe, by rule, average fuel economy standards. This section further permits the Secretary to provide separate standards for different classes of light trucks, as determined by the Secretary, but it does not require a subdivision of a manufacturer's fleet into domestic and import categories as the passenger automobile section specifies. In 1977, the agency noted in its NPRM for light truck CAFE standards for MY's 1980–81 (42 FR 63186) that the Act did not explicitly state the basis on which classification schemes for light trucks should be drawn, and noted that the report of the Conference Committee on the Act stated that the agency had wide latitude for selecting bases for classification purposes, provided such classification promoted the general purpose of the Act. The agency explicitly noted that it was not required to separate domestic and captive import fleets for light truck CAFE, and could have continued full inclusion of captive import light trucks in the domestic fleet for CAFE purposes.

The agency issued its first light truck fuel economy standard for MY 1979 and permitted manufacturers to combine "captive imports" with their domestic light truck fleets in computing their CAFE values. This agency action resulted from two facts: (1) Light truck fleets are not required by the statute to be separated into domestic and import fleets; and (2) due to leadtime constraints at that time, the inclusion of the imports with the domestic light trucks in MY 1979 would not have provided any significant motivation for importing light trucks. However, for MY's 1980 and 1981, the agency elected to use its authority under section 502(b) to separate each manufacturer's light truck fleet into domestic and "captive import" classes to prevent domestic manufacturers from exporting jobs by augmenting their fleets with imported light trucks that could increase their CAFE values.

The agency justified the continued separation of captive imports and domestic fleets in its rule establishing the 1982 light truck CAFE standard, concluding that such division of light trucks would encourage domestic manufacturers to produce small trucks in the U.S. and was the position "most consistent" with the intent of the Act to develop similar average CAFE standards for light trucks and passenger automobiles. (45 FR 20872) NHTSA notes that the intent to which it was referring in 1980 was expressed in a committee report, and not in the statute itself. As such, that statement of intent did not legally bind the agency. Further, while the division of each manufacturer's fleet may then have been consistent with that statement of intent, changed circumstances since that time have rendered that judgment obsolete. Over the years that the separation of a manufacturer's light truck fleet into "captive import" and "other" sectors has been required, the composition of the domestic light truck fleets has changed. In 1980, 229,034 captive import units accounted for 14.7 percent of the overall light truck market. By 1992, captive imports had declined to less than a 0.5 percent share of the total light truck market. Conversely, during the same period, domestic light truck production increased by 162 percent, from 1,333,055 units in 1980 to 3,498,637 units in 1992. Thus, between 1980 and 1992, while the total light truck market increased by 231 percent, captive imports fell by over 90 percent, and now represent approximately 5 percent of their 1980 sales units.

One of the Act's major goals was to preserve domestic employment—a fact noted by NHTSA in establishing the separation of fleets for the 1980–81 model years. (43 FR 11998) Initial market conditions justified the decision to separate light truck fleets, but subsequent market changes show that continued separation of fleets is no longer relevant in today's market, in which over 99.5 percent of light trucks sold by domestic manufacturers in the United States are domestically produced. While domestic employment was an obvious concern when captive imports made up nearly 15 percent of the market at the beginning of the 1980's, it is not of paramount importance in 1992. Captive imports have fallen to a negligible portion of the market, and, in addition, the captive import segment occasionally has a lower CAFE level than domestically produced units.

The 25 percent tariff imposed on imported pickups and 2-door utility vehicles has provided a significant cost advantage for such vehicles manufactured in the U.S. or Canada. GM and Ford both have introduced compact pickups and utilities, and no longer import any light trucks to augment their domestic production. Chrysler has not produced a domestic compact pickup or utility, but it does compete in the slightly larger "mid-size" category of pickups and utilities with the domestic Dodge Dakota pickup and Jeep Cherokee utility. Chrysler's captive import fleet has gradually diminished in importance to the corporation. For MY 1992, Chrysler's captive import fleet consists solely of compact pickups produced in Japan by Mitsubishi and full-size utilities produced in Mexico. Indeed, the combination of Chrysler's domestic and imported trucks produces a CAFE that is within 0.1 mpg of the domestic CAFE in each of the last five years (1988–92). Although Chrysler's captive import fleet CAFE fell below the standard in one of the past five years, there were always adequate carryforward credits to offset the penalty and, consequently, no advantage to Chrysler would have resulted if it had been permitted to combine the captive imports with the domestic trucks.

Finally, it is unlikely that domestic manufacturers, having expended funds for the capital expenses (such as plant construction and retooling) required to increase light truck production in the U.S., would suddenly abandon their investments and begin purchasing large numbers of captive imports for sale in the U.S. simply because the agency eliminates the distinction between domestic and captive import fleets. There would be no economic incentive to reverse the trend toward almost total domestic production of light trucks for sale in the U.S. by domestic manufacturers.

In short, it appears that in recent years the maintenance of a distinction between captive import and other light trucks has not been necessary to discourage the importation of "captive imports" to the detriment of U.S. jobs. Neither Ford nor GM currently market any imported trucks, and Chrysler's imported truck fleet is nearing the level of insignificance.

Thus, besides there being no statutory requirement to separate a light truck manufacturer's fleet into imported and domestic components, there is no longer any evident detrimental employment issue associated with combining the captive import and other light truck fleets for CAFE compliance. Therefore, the agency proposes that for light truck standards beginning in MY 1995, manufacturers combine all of their light truck production in calculating their CAFE compliance. The columns in 49 CFR 533 labeled "captive imports" and "other" would be eliminated and the standards would simply be listed under the heading, "combined standard." For accommodating the 3-year carryforward and carryback of credits for light trucks after the elimination of the two-fleet requirement, a procedure should be outlined in the preamble of the final rule, or in a revision of 49 CFR 535. For MY's 1992–94, a manufacturer's domestic and captive import light truck credits could be applied to offset penalties incurred up to three model

years later. Similarly, a manufacturer would have to break down its MYs 1995–97 CAFE credits into "captive import" and "other" components based on each fraction of the fleet's share of total production if it wishes to carryback credits to offset earlier penalties in the respective light truck fleets. This procedure is consistent with the handling of credits for the transition from 2WD and 4WD standards for MY's 1980–81 to combined standards for MY 1982 and later (45 FR 83233, December 18, 1980).

In analyzing the effect of the elimination of the "captive import" category, the agency seeks comment and information on the following question:

9. What effect would elimination of the category of "captive import" have on the fleet CAFE in MY's 1995–97? What procedures for carryback and carryforward credits should be put into effect? Would this change have any detrimental effect on U.S. employment? If so, please provide data to quantify the effect.

VII. Metrification

Inasmuch as it is the policy of the U.S. to designate the metric system as the preferred system of measurement under the Omnibus Trade and Competitiveness Act, this rulemaking will also serve as a vehicle to convert measurements in the regulations related to the CAFE to metric equivalents. This encompasses regulations included in 49 CFR 523–538, and encompasses the following conversions.

§ 523.5(b)(2)(iv) Running clearance of not less than 20 centimeters (presently 8 inches).

§ 523.5(b)(2)(v) Front and rear axle clearances of not less than 18 centimeters each (presently 7 inches).

§ 525.7(e)(4) Basic engine, displacement, and SAE rated net power, kilowatts (presently net horsepower).

§ 533.4(b)(2) * * * *4-wheel drive, general utility vehicle* means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 280 centimeters (presently 110 inches), and that has a body shape similar to 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser.

§ 537.7(c)(4)(iii) Engine displacement, liters (presently cubic inches or liters).

§ 537.7(c)(4)(v) SAE net rated power, kilowatts (presently net horsepower).

VIII. The Need of the Nation to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share reached 36.8 percent in 1975, the year EPCA was passed, and peaked at 46.4 percent in 1977, at a cost of $62 billion (stated in 1982 dollars). Although the share declined to below 30 percent in the mid-1980's, lately the United States has again become increasingly dependent on imported oil. Over 40 percent of the country's petroleum needs have been imported in every year since 1988, peaking at 44.3 percent in 1990 before slipping to 41.9 percent in 1991. Sharply lower oil prices in the past decade, however, cut the value of oil imports in 1990 to $46.2 billion (1982 dollars).

Similarly, the percentage of oil imported from OPEC sources, which peaked at 70 percent in 1977, and declined to a low of 36 percent in 1985, has been steadily rising since then, and was 53.6 percent in 1991.

The average cost of crude oil imports jumped from $4.08 per barrel in 1973 to $12.52 in 1974 as a result of the oil embargo against selected countries, including the United States, by Arab members of OPEC. Additional increases in the cost of oil occurred in 1979–80, due to unrest in Iran (which eliminated a substantial portion of that country's oil output), and in 1980–81, when the outbreak of the Iran-Iraq war reduced supply from the area. In 1981, the United States adopted a policy of reliance on market forces and decontrolled the price of oil. Since 1981, prices have fallen as conservation efforts continue. In 1990–91, petroleum prices were affected by the conflict in the Persian Gulf. In the beginning of 1992, the continued worldwide economic recession and high levels of crude oil production by OPEC member countries together held down oil prices. The Department of Energy forecasts United States refiner acquisition cost of imported crude oil in 1992 averaging $18.76 per barrel, slightly below the 1991 average of $18.81 per barrel.

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed, and the percentage of its oil supplied by OPEC is similar to that of 1975. Oil continues to account for over 40 percent of all energy used in the United States, and 96 percent of the energy consumed in the transportation sector. Despite legislation such as the Clean Air Act Amendments of 1990 and California's strict "clean fuel" and emissions standards, gasoline will likely remain the predominant fuel in the transportation sector. Domestic oil production has declined steadily since reaching a peak of 10.6 million barrels per day in 1985 to 9.1 million barrels per day in 1991. Domestic production is expected to continue declining in 1992 and 1993. By the end of 1993, output is expected to be 220,000 barrels per day lower than current production levels. While the United States is currently the world's second largest oil producer, it contains only about three percent of the world's known oil reserves. Persian Gulf countries contain 63 percent of known world reserves, and former communist countries contain 9 percent.

Long-term projections of petroleum prices, supply, and demand are now influenced by a wide range of uncertainties associated with sweeping economic and political changes in the former U.S.S.R. and in Eastern Europe, environmental issues, and the role of Middle East countries in determining the world's future oil supplies and prices, and future energy demands in populous developing countries. The Department of Energy projects that oil prices will be between $18 and $32 (1990 dollars) per barrel in the year 2000, and will rise to between $23 and $40 per barrel by 2010. DOE projects a continuing decline in domestic oil production to between 4.16 and 6.14 million barrels per day in 2010, with imports rising to between 53 percent and 69 percent of total use. Four-fifths of the projected increase in total petroleum consumption in the United States during the next 20 years will be in the transportation sector. By 2010, the United States could be consuming between 43 and 107 percent more petroleum for transportation alone than is expected to be produced domestically. DOE's projections assume that significant improvements in vehicle fuel efficiency, at an average annual rate of 1.3 percent, will take place as motor gasoline prices rise.

The level of petroleum imports is only one aspects of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the national security and energy independence aspects of the current energy situation:

> Although dependence on insecure oil supplies is * * * projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to

changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.

The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to a world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.

Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

Based on the above NHTSA concludes that there is a continuing need for the nation to conserve energy.

The increase in market share of light trucks points to the need for enhanced fuel economy for this class of vehicle. Light trucks are less fuel efficient and are driven more miles over their lifetime than passenger automobiles. In 1991, over half of the energy in the transportation sector was used by light-duty vehicles (automobiles and light trucks). Light trucks have steadily increased their share of petroleum use in the transportation sector. In 1973, light trucks accounted for approximately 12 percent of transportation petroleum use, a figure which increased to roughly 20 percent by 1989.

Light trucks meeting the standards proposed by this notice would be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

10. NHTSA requests comments on these factors, as well as any other factors that may affect the benefits or costs of the proposed CAFE standards for light trucks, such as the proposal's effect on safety, vehicle performance, fleet composition, fuel consumption, competitiveness, or other issues.

IX. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) Be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

B. Industry-wide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industry-wide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–55 (1975)) states:

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. * * *

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industry-wide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876, March 31, 1980. However, as the agency noted in deciding not to set the MYs 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599, December 11, 1980.

C. Petroleum Consumption

The significance of a small change in fuel economy has declined since the early 1970's as overall light truck fleet fuel efficiency has increased about 75 percent, from roughly 12 mpg to the over 20 mpg level expected for the 1994 fleet. Based solely on the GM fleet, which is the one most significantly affected by the proposed MYs 1995–97 CAFE standards, raising CAFE levels from 20.0 mpg to 20.5 mpg would lead to a cut in that fleet's gasoline consumption of 2.4 percent. A further increase to 21.0 mpg would save 4.8 percent over a 20.0 mpg level.

However, it is possible that manufacturers may be able to achieve particular higher CAFE levels only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less fuel-efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to restrict sales of its large light trucks, consumers may be able to transfer their purchases of those same types of vehicles to another manufacturer which may have less difficulty meeting the CAFE standard. Thus, the agency believes that the actual impacts, if any, on energy consumption of alternative higher fuel economy standards, would be less than the theoretical calculations comparing different levels of industry-wide CAFE.

D. The Proposed MY 1995–97 Standards

The manufacturers provided various recommendations for MY 1995–97

standards. Chrysler supports the extension of the present MY 1994 light truck combined CAFE standard of 20.5 mpg to the 1995–97 model years, stating that it "has already invested considerable time and resources into improving the fuel economy of light trucks, and * * * [does not] anticipate any major light truck CAFE improvements for 1995–97 through new technological applications." Ford's docket submission stated that "[b]ased on the product and technical improvements and the market considerations, Ford recommends that the 1995 standard be set at a level which is carryover from 1994, particularly in recognition of the substantial changes needed to meet the 1990 Clean Air Act. For 1996 and 1997 model years, improvements in CAFE over 1994–95 levels are possible." However, Ford adds that "the extent of those improvements must be balanced against the risks and uncertainties to establish potential standards which meet the statutory criteria for manufacturers with a substantial share of the U.S. market." General Motors stated that "because of the various uncontrollable uncertainties manufacturers face 4–6 years from now, standards higher than those established for MY 1994 may prove to be too stringent for MY's 1995–97."

This proposed rule would not have any retroactive effect. Under section 509(a) of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act; 15 U.S.C. 2009(a)), whenever a Federal motor vehicle fuel economy standard is in effect, a state may not adopt or maintain separate fuel economy standards applicable to vehicles covered by the Federal standard. Under section 509(b) of the Cost Savings Act (15 U.S.C. 2009(b)) a state may not require fuel economy labels on vehicles covered by section 506 of the Cost Savings Act (15 U.S.C. 2006) which are not identical to the Federal standard. Section 509 does not apply to vehicles procured for the State's use. Section 504 of the Cost Savings Act (15 U.S.C. 2004) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal average fuel economy standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

X. Impact Analyses

A. Economic Impacts

The agency has considered the economic implications of the proposed standards and determined that the proposal is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Preliminary Regulatory Impact Analysis (PRIA), copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. Environmental Impacts

The agency has analyzed the environmental impacts of the proposed MYs 1995–97 light truck average fuel economy standards in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Copies of the Environmental Assessment are available from the Docket Section. The agency has concluded that no significant environmental impact would result from this rulemaking action.

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer subject to the proposed rule would be classified as a "small business" under the Regulatory Flexibility Act. In the case of other small businesses, small organizations, and small governmental units which purchase light trucks, adoption of the proposed rule would not affect the availability of fuel efficient light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

D. Impact of Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Department of Energy Review

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this proposal to the Department of Energy (DOE) for review. No comments were received.

Comments

NHTSA is providing a comment period, ending on February 1, 1993, for interested parties to present data, views, and arguments on the proposed standards. The agency invites comments on the issues raised in this notice and the accompanying PRIA, as well as any other issues commenters believe are relevant to this proceeding. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 523

Classification, Motor vehicles.

49 CFR Parts 525, 533, and 537

Energy conservation, Motor vehicles.

PART 523—[AMENDED]

In consideration of the foregoing, 49 CFR part 523 would be amended as follows:

1. The authority citation for § 523.5 would be revised to read as follow:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

1. Section 523.5(b) (2) (iv) and (v) are revised to read as follows:

§ 523.5 Light truck.

* * * * *

(b) * * *

(2) * * *

(iv) Running clearance of not less than 20 centimeters.

(v) Front and rear axle clearances of not less than 18 centimeters each.

PART 525—[AMENDED]

In consideration of the foregoing, 49 CFR part 525 would be amended as follows:

1. The authority citation for part 525.7 would be revised to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

1. Section 525.7(e) (4) would be revised to read as follows:

§ 525.7 Basis for petition.

* * * * *

(e) * * *

(4) Basic engine, displacement, and SAE rated net power, kilowatts.

* * * * *

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 would be amended as follows:

1. The authority citation for part 533 would be revised to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. § 533.5(a) would be amended by adding a new Table IV immediately following Table III to read as follows:

§ 533.5 Requirements.

* * * * *

TABLE IV

Model year	standard
1995	[A range is being considered].
1996	[A range is being considered].
1997	[A range is being considered].

3. Section 533.4(b)(2) would be amended by revising the definition of *4-wheel drive, general utility vehicle* to read as follows:

§ 533.4 Definitions.

* * * * *

(b) *Other terms.* * * *

(2) * * * *4-wheel drive, general utility vehicle* means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 280 centimeters, and that has a body shape similar to 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser.

* * * * *

PART 537—[AMENDED]

In consideration of the foregoing, 49 CFR part 537 would be amended as follows:

1. The authority citation for part 537 would be revised to read as follows:

Authority: 15 U.S.C. 2005; delegation of authority at 49 CFR 1.50.

2. Sections 537.7(c)(4) (iii), and (iv) would be revised to read as follows:

§ 537.7 Pre-model year and mid-model year reports.

* * * * *

(c) Model type and configuration fuel economy and technical information.

* * *

(4) Loaded vehicle weight. * * *

(iii) Engine displacement, liters;

(iv) SAE net rated power, kilowatts;

* * * * *

Issued: December 18, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–31129 Filed 12–21–92; 11:05 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 921230–2330]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed initial specifications for the 1993 summer flounder fishery; request for comments.

SUMMARY: NMFS proposes to implement catch quotas and other restrictions for the 1993 summer flounder fishery. Regulations governing this fishery require the Secretary of Commerce (Secretary) to publish specifications for the upcoming fishing year. This action is intended to fulfill this requirement and prevent overfishing of the summer flounder resource.

DATES: Public comments must be received on or before January 5, 1993.

ADDRESSES: The environmental impact statement and analyses for Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, 508–281–9324 or Richard Seamans, 508–281–9244.

SUPPLEMENTARY INFORMATION: Section 625.20 of the regulations implementing Amendment 2 to the FMP published at 57 FR 57358 (December 4, 1992) describe the process for determining the annual catch quotas and other restrictions for the upcoming summer flounder fishing year. The Summer Flounder Monitoring Committee (Committee), made up of representatives from the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council and NMFS, are required to review, on an annual basis, scientific and other relevant information and recommend catch quotas and other restrictions necessary to result in a fishing mortality rate of 0.53 for the years 1993–1995, and 0.23 in 1996 and thereafter. This schedule of fishing mortality rates is mandated by Amendment 2 to the FMP and is necessary to prevent overfishing of the summer flounder resource.

The information to be reviewed annually by the Committee includes:

(1) Commercial and recreational catch data;

(2) Current estimates of fishing mortality;

(3) Stock status;

(4) Recent estimates of recruitment;

(5) Virtual population analysis;

(6) Levels of regulatory noncompliance by fishermen or individual states;

(7) Impact of fish size and net mesh regulations;

(8) Impact of gear other than otter trawls on the mortality of summer flounder; and

(9) Other relevant information.

Restrictions listed in § 625.20 that require consideration and may require adjustment to ensure achievement of the appropriate fishing mortality rate are the:

(1) Commercial quota;

(2) Commercial minimum fish size;

(3) Minimum mesh size;

(4) Recreational possession limit within the range of 0 to 15 fish per person per day;

(5) Recreational minimum fish size;

(6) Recreational season, and

(7) Restrictions to gear types other than otter trawls. Although adjustments to all of these measures were considered, the only recommendations forthcoming from the Committee were to propose that the 1993 commercial quota be set equal to 12.35 million pounds (5.6 million kg) and the recreational target quota be set at 4.36 million fish which is an estimated 8.38 million pounds (3.8 million kg). The other measures such as minimum fish size and net mesh size for the commercial fishery and minimum fish size, possession limit, and season for the recreational fishery remain as established by Amendment 2 to the FMP.

The commercial quota represents the level of allowable coastwide commercial landings necessary to achieve a 0.53 fishing mortality rate in the commercial sector of the fishery. It is calculated based on a simulation of the effects of the existing minimum fish and mesh sizes on landings, utilizing the most currently available estimates of stock size and an assumption that recruitment will be at average levels.

The recreational sector of the fishery is also constrained to the schedule of fishing mortality rates, and for 1993, the rate is also 0.53. The FMP utilizes a different approach to achieve this rate in the recreational sector, consisting of a combination of bag, season and size limits rather than state quotas and closures. The "target" level of recreational landings for the 1993 fishing year that will result in a fishing mortality rate of 0.53 is estimated to be 8.38 million pounds (3.8 million kg) or 4.36 million fish. Based on an analysis of the factors listed in § 625.20(a), the Committee has determined that the measures currently in place for the recreational fishery are sufficient to remain within the recreational target quota.

The Committee is required to include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The recently completed Environmental Impact Statement for Amendment 2 to the FMP (EIS) analyzes the impacts and consequences of the imposition of the fishing mortality rate schedule and the alternatives. Because the commercial quota specified in this proposed rule is merely a specification of the 0.53 fishing mortality rate, the environmental impacts of the annual quota fall within the range and scope of alternatives addressed in the EIS. There are no changes to any measures contained in the FMP as a result of this rule.

The Regional Director, Northeast Region, is required to publish a proposed rule in the **Federal Register** on or before September 15th, of each year, to implement measures he determines are necessary to assure that specified fishing mortality rates are not exceeded. For this first year of implementation, the proposed specifications could not be published until the final rule implementing Amendment 2 to FMP had been filed. This proposed rule sets forth the Regional Director's determination that a commercial quota equal to 12.35 million pounds (5.6 million kg) is the only specification necessary at this time. Public comments on this proposed rule are requested (see "**DATES**").

The following table presents the proposed 1993 commercial quota of 12.35 million pounds (5.6 million kg.) apportioned among each state according to the percent shares specified by Amendment 2 to the FMP:

State	Share (percent)	1993 quota (lbs)	1991 landings
ME	0.0482	5,956	0
NH	0.0005	65	0
MA	6.9111	853,521	1,124,000
RI	15.8914	1,962,588	1,672,000
CT	0.9532	117,720	399,000
NY	7.7486	956,952	719,000
NJ	16.9473	2,092,992	2,341,000
DE	0.0180	2,223	4,000
MD	2.0662	255,176	232,000
VA	21.6001	2,667,612	3,715,000
NC	27.8155	3,435,214	3,516,000

Classification

The Regional Director has initially determined that this action is necessary for the conservation and management of the summer flounder fishery and is consistent with Amendment 2 to the FMP.

These proposed specifications do not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

A final environmental impact statement (FEIS) was prepared for Amendment 2 and subjected to public comment. The FEIS concluded that the preferred alternative which included the method for determination of annual commercial and recreational quotas based on a specified fishing mortality rate was environmentally preferable compared to the status quo. The measures contained in these proposed specifications are within the scope of analysis of the FEIS for Amendment 2; therefore, no supplemental EIS or environmental assessment is necessary for this action.

These proposed specifications do not alter the impacts analyzed within the regulatory impact review (RIR) for Amendment 2. On the basis of the RIR, these proposed specifications are determined not to be a major rule under E.O. 12291.

Previously, a determination was made that Amendment 2 may have a significant effect on a substantial number of small entities and a RIR/final regulatory flexibility analysis was prepared. That analysis was in large part based on the commercial and recreational quotas for 1993 needing to attain a fishing mortality rate of 0.53, the same fishing mortality rate that these proposed initial specifications would obtain. The long-term benefit to the summer flounder stock and the fishery is expected to greatly outweigh short-term costs to small entities managed under quota restrictions.

These proposed specifications do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The most recent biological opinion on the impacts of the summer flounder fishery on threatened and endangered species concluded that the fishery may jeopardize the Kemp's ridley sea turtle, and certain reasonable and prudent alternatives were suggested. Management measures for Amendment 2 were determined to be consistent with those suggestions; therefore, these proposed specifications are also consistent with those suggestions.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: December 21, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-31318 Filed 12-21-92; 3:17 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meetings

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, January 8, 1993. The meeting will be held in the Williamsburg Room (104–A), at the Department of Agriculture, 14th and Jefferson Drive, SW., Washington, DC, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Council Business
III. Executive Director's Report
IV. Section 106 Cases
V. New Business
VI. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202–786–0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: December 17, 1992.

Robert D. Bush,
Executive Director.

[FR Doc. 92–31201 Filed 12–23–92; 8:45 am]
BILLING CODE 4310–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 18, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250. (202) 690–2118.

Revision

- Food and Nutrition Service
- School Lunch and Breakfast Cost Study
- One-time Only
- State or local governments; Non-profit institutions; 389 responses; 4,182 hours
- John R. Endahl (703) 305–2117

New Collection

- Forest Service
- Forest Industry Survey of California and Oregon
- One time only
- Businesses or other for-profit; Small businesses or organizations; 500 responses; 300 hours
- George R. Sampson (907) 474–3303
- Rural Electrification Administration
- Seismic Safety of New Building Construction
- On Occasion
- Small businesses or organizations; 279 responses; 419 hours
- Fred Albrecht (202) 720–0736
- Agricultural Stabilization and Conservation Service
- 7 CFR part 1435, Sugar and Fructose Marketing Allotment Regulations for Fiscal Years 1992 through 1996—Addendum
- CCC–831, 832, 835
- Recordkeeping; Monthly
- Individuals or households; Farms; Small businesses or organizations; 1,009 responses; 31,508 hours
- Bob Barry (202) 720–3391

Reinstatement

- Agricultural Stabilization and Conservation Service
- 7 CFR 735–743, Warehouse Regulations under U.S. Warehouse Act
- WA–50, 51, 51–2, 54, 55, 56, 57, 59, 60, 61, 70, 80, 81, 82, 83, 84, 85, 86, 87, 88, 99, 125, 137, 139, 140, 220, 221, 222, 302, 303, 308, 372, 561, 562, and 570
- Recordkeeping; On Occasion, Annually, and Daily
- Business or other for-profit; 35,290 responses; 192,710 hours
- R. Ford Lanterman (202) 720–6004

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92–31195 Filed 12–23–92; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Oil and Gas Leasing; Custer National Forest; Little Missouri National Grassland: Billings, Golden Valley and Slope Counties, ND; Cedar River National Grassland: Sioux and Grant Counties, ND

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice; amendment of notice of intent to prepare an environmental impact statement.

SUMMARY: A revised notice of intent was published in the **Federal Register** [57 FR 26818] on Tuesday, June 16, 1992, indicating that an environmental impact statement (EIS) would be prepared on the proposal to lease Federal oil and gas minerals in North Dakota on the Custer National Forest, including the Little Missouri and the Cedar River National Grasslands. That Notice of Intent is amended to include the addition of the Bureau of Land Management as a joint-lead agency on this project, and to change the schedule for completion of the draft EIS.

Originally the draft environmental impact statement was scheduled to be released to the public on May 30, 1993 with the final statement to be filed by December, 1993. Under the current schedule, the draft environmental impact statement should be available for review in August 1993, and the final statement should be released in December 1993.

DATES: This action is effective upon the publication of this notice.

ADDRESSES: Curtis W. Bates, Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, MT 59103; and Thomas P. Lonnie, State Director, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, MT 59107.

FOR FURTHER INFORMATION CONTACT: Greg Visconty, EIS Team Leader, Custer National Forest, phone (406) 657–8361.

Dated: December 14, 1992.

Curtis W. Bates,

Forest Supervisor.

[FR Doc. 92–31252 Filed 12–23–92; 8:45 am]

BILLING CODE 3410–11–M

Grade/Dukes Timber Sale, Payette National Forest, Washington County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: A notice of intent to prepare a draft supplement to a final environmental statement (EIS) for the proposed Grade/Dukes timber sale, in the Cuddy Mountain roadless area, was published in the **Federal Register** February 20, 1992 (Vol. 75, No. 34, p. 6087–6088). That notice is hereby revised to show a change in the anticipated schedule for the EIS.

The schedule has been delayed to complete additional field inventories for sensitive plant and animal species. Forest Service personnel are analyzing these data as part of the biological evaluation for each species.

The draft supplemental EIS is now scheduled for release to the public by February 1993, and the final supplemental EIS by April 1993. (The previous schedule was June 1992 for the draft, and August 1992 for the final).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to John Baglien, Weiser District Ranger, phone 208–549–2420.

Dated: December 16, 1992.

Kurt J. Nelson,

Acting Forest Supervisor.

[FR Doc. 92–31254 Filed 12–23–92; 8:45 am]

BILLING CODE 3410–01–M

Bear Mountain Ski Resort Expansion—San Bernardino National Forest, San Bernardino County, CA; Intent To Prepare a Supplemental Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare a Supplemental Environmental Impact Statement (SEIS) for the proposed further expansion of the Bear Mountain Ski Resort as anticipated in the Record of Decision of the San Bernardino National Forest Supervisor for the Bear Mountain Ski Resort Expansion Environmental Impact Statement dated July 3, 1990. That decision selected alternative 2, but stated that Alternative 4 was the preferred alternative but could not be selected because the impacts on the California spotted owls and northern flying squirrels could not be determined until the studies of these species were completed. Those studies have now been completed.

Issues Identified: Environmental issues for which supplemental analysis will be conducted will be limited to the individual and cumulative impacts of the proposed development on the habitats of California spotted owls and northern flying squirrels. The other previously considered issues will not be reconsidered during this analysis, except as they are associated with impacts on spotted owls and/or flying squirrels habitats. The impacts on spotted owls and flying squirrels will be evaluated for each of the remaining proposed, but unapproved, ski lifts and runs.

The Draft SEIS is expected to be available for public review by March 1993. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of its availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F. 2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is important those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplemental environmental impact statement. Comments may also address the adequacy of the draft supplemental environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3. The final supplemental environmental impact statement is

expected to be available about May 1993.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft SEIS. Comments must be received within 30 days of the publication date of this notice.

PUBLIC MEETING: The Forest Service has previously conducted a public meeting to provide information on the project and no additional public meetings are planned.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the Bear Mountain Ski Resort Expansion proposal to Gene Zimmerman Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the SEIS to Hal Seyden, Planning Program Leader, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430 or call (909) 383–5591.

Dated: December 14, 1992.

Gene Zimmerman,

Forest Supervisor.

[FR Doc. 92–31253 Filed 12–23–92; 8:45 am]

BILLING CODE 3410–11–M

Long-Term Soil Productivity Study; Tahoe National Forest; Nevada and Sierra Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) for a proposal to install long-term soil productivity study plots on the Nevada City and Downieville Ranger Districts of the Tahoe National Forest. These plots are an integral part of a national long term soil productivity study being undertaken throughout the National Forest System in the United States and Canada. The study is a joint undertaking by Forest Service Research and the National Forest System. The EIS described herein applies only to the study plots on the Tahoe National Forest.

The Forest Service gives notice of the full environmental analysis and decision making process that will occur on the Proposed Action so that interested and affected people, along with local, State and other Federal agencies are aware of how they may participate and contribute to the final decision. The Tahoe National Forest invites written input concerning issues specific to the Proposed Action.

The Proposed Action is to establish a series of 9 one acre plots on Cohasset soils on two sites on the Tahoe National Forest. One site is in the Brandy City area on the Downieville Ranger District and one in the Lowell Hill area on the Nevada City Ranger District. The study will encompass 82 acres; 52 acres in the Lowell Hill area and 30 acres in the Brandy City area. Nine treatments (three levels of organic matter removal crossed with three levels of soil compaction) will be applied following clearcutting at each site. This includes clearcutting of all trees within the one acre plots and in buffers which are at least 20 meters wide around each plot. Each treatment plot will be regenerated promptly with native conifer species; growth, vegetation, and soil characteristics will be monitored for up to 70 years. One half of each plot will be kept weed-free by ground application of herbicides. Alternatives to the proposed action will be developed by January 1993.

Internal scoping and public comments to date have identified the following major issues: Affect of project on California Spotted Owl, Goshawk and deer habitat, effects of clearcutting, protection of 4 potential Rust Resistant Sugar Pine trees, rutting of local roads which access the study sites during wet weather, herbicide use, and water quality in the Cherokee watershed.

DATES: Input concerning issues with the Proposed Action must be received by January 18, 1993.

ADDRESSES: Direct written input and questions about the Proposed Action and Environmental Impact Statement to the Forest Supervisor, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959–6003. Telephone (916) 265–4531.

FOR FURTHER INFORMATION CONTACT: Martha Twarkins, Project Leader, Nevada City Ranger District, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959–6003. Telephone (916) 265–4531.

SUPPLEMENTARY INFORMATION: The EIS will tier to the Tahoe National Forest Land and Resource Management Plan and Forest Plan EIS. The purpose of the Proposed Action is three-fold.

1. Address public concern about policies and programs related to forest management by providing for the measuring of the effects of site disturbance on long-term productivity.

2. Validating soil quality standards and developing effective monitoring techniques for evaluating the long-term impacts of management practices on soil productivity. This information will be helpful in fulfilling the Forest Plan requirement for "validation monitoring". Validation monitoring is to determine if the specifications in soil quality standards and guidelines are appropriate to maintain soil productivity.

3. Understanding how soil and site disturbances affect the fundamental processes controlling productivity.

Public Scoping Process: A letter describing the Proposed Action was mailed to a list of interested parties on October 29, 1992. An article describing the project and soliciting information/concerns from the public was published in "The Union" newspaper in Grass Valley, CA on November 6, 1992. The Tahoe National forest plans to issue a scoping letter to all interested publics in December, 1992 and have a public meeting with the research scientists who will carry out the Proposed Action in January or February 1993.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. "Vermont Yankee Nuclear Power Corp. v. NRDC", 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. "City of Angoon v. Hodel", 803 F.2d 1016, 1022 (9th Cir. 1986) and "Wisconsin Heritages, Inc. v. Harris", 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the draft EIS so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and

discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

A draft EIS is expected to be available for agency and public review by February 1993. A final EIS is expected to be completed by May 1993 and documented by a Record of Decision.

The responsible official for the EIS and decision is John H. Skinner, Forest Supervisor, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959–6003.

Dated: December 16, 1992.

Judie L. Tartaglia,

Deputy Forest Supervisor.

[FR Doc. 92–31250 Filed 12–23–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–92]

Foreign-Trade Zone 86—Tacoma, WA; Application for Subzone West Coast Forest Products, Inc., Arlington, WA (Wood Building Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Tacoma, grantee of FTZ 86, requesting special-purpose subzone status for export activity at the facilities of West Coast Forest Products, Inc. (WCPP) (a subsidiary of Sekisui House, Ltd., Japan) in Arlington, Washington, within the Everett Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 3, 1992.

The WCFP (28 acres) is located at 19406 68th Drive, NE., Arlington, Snohomish County, Washington, some 70 miles north of Tacoma. The facility (90 employees) is used primarily to manufacture wood residential and commercial construction products, including door and window jambs, ceiling and wall frames, molding, and flooring. Up to 25 percent of the lumber used in the manufacturing process is Canadian softwood lumber (HTSUS 4407.10.00). Normally the product is duty-free, but currently a countervailing duty of 6.51 percent is in effect. Exports account for over 60 percent of total production, and all products manufactured from Canadian softwood lumber are exported to Japan (95 percent of which go to parent company Sekisui House, Ltd., Japan's largest construction firm).

Zone procedures would exempt WCFP from payments of the countervailing duties presently applicable to the Canadian softwood lumber which is used in its export production. Imports would be subject to such duties. The savings will help improve the plant's international competitiveness of increase exports.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 22, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period March 8, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, suite 290, 3131 Elliott Avenue, Seattle, Washington 98121

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 18, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31326 Filed 12–23–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–00014." A summary of the application follows.

Summary of the Application:

Applicant: American Pork Export Trading Company ("APEX"), P.O. Box 10383, Des Moines, Iowa 50306, Contact: Laurence J. Lasoff, Telephone: (202) 342–8400.

Application No.: 92–00014.

Date Deemed Submitted: December 16, 1992.

Members (in addition to applicant): Doskocil/Wilson Foods Co., Oklahoma City, OK; FDL Marketing, Inc., Dubuque, IA (Subsidiary of Geo. A. Hormel & Co.); Farmland Foods, Inc., Kansas City, MO; Hormel International Corporation, Austin, MN (Subsidiary of Geo. A. Hormel & Co.); IBP, Inc., Dakota City, NE; Seaboard Corporation, Shawnee Mission, KS; and W & G Marketing Company, Inc., Ames, IA.

APEX seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

Products for the pork industry are those forth in the U.S. Department of Agriculture, Agricultural Marketing Service's Institutional Meat Purchase Specifications and include all types of fresh, cured, cured and smoked and fully-cooked pork products. Fresh pork products include carcasses and/or split carcasses, hams, shoulders, bellies, loins, spareribs, hocks, trimmings, pig's feet, neck bones, ribs, diced pork, ground pork, fillets, butt steaks, loin chops, pork patties, and various miscellaneous fresh pork products. Cured, cured and smoked, and fully-cooked pork products include pork lions, can bacon, jowls, spareribs, hocks, clear fatback, feet, ham patties, ham steaks, pork loin chops, pork patties, pork shoulders, bellies, bacon, ham, diced pork, shoulders, and sausage.

2. Export Trade Facilitation Services

Consulting, international market research, marketing and trade promotion, trade show participation, insurance, legal assistance, testing and certification of Products, transportation, trade documentation and freight forwarding, communication and processing of export orders, warehousing/cold storage, packaging, foreign exchange, financing, and taking title to goods.

3. Services

Ancillary services associated with the production and sale of pork products for export, including research and development, testing and certification of products, and training programs.

4. Intellectual Property Rights

Patents, trademarks, service marks, copyrights, trade secrets, and know-how.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. APEX and/or one or more of its Members may:

a. Engage in joint bidding and/or other joint selling arrangements for Products and/or Services in Export Markets, and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-Member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of APEX and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Intellectual Property Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with APEX or any other Member;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical product, service, and/or technology requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by APEX and/or its Members, to export Products to Export Market; operate warranty, service, and training centers in Export Markets; and to provide Export Trade Facilitation Services to Members.

2. APEX and/or its Members may enter into agreements wherein APEX and/or one or more Members agree to act in certain countries or Export Markets as the Members' exclusive or nonexclusive Export Intermediary for Products and/or Services in that country or Export Market. In such agreements, (i) APEX or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country of Export Market, and (ii) Members may agree that they will export for sale in the relevant country or export Market only through APEX or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or Export Market, either directly or through any other Export Intermediary. APEX and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its Services on non-discriminatory terms to those Members that are parties to the exclusive arrangements and which request such Services.

3. APEX and/or its Members may exchange and discuss the following types of information:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, ability to supply Products in quantities sufficient to meet a sales opportunity, and delivery dates of Products available from Members for export, provided however, that exchanges of information and discussions as to Product quantity, source, ability to supply Products in quantities sufficient to meet a sales opportunity, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members who are participating or have a genuine interest in participating in such transaction;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by APEX and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales,

documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets;

h. Information about APEX's or its Members' export operations, including without limitation sales and distribution networks established by APEX or its Members in Export Markets, and prior export sales by Members (including export price information);

i. Information related to the standardization, testing, and certification of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations that are in the process of formulating standards for those Products or Services; and

j. Information related to the means for complying with existing technical standards.

4. APEX may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by APEX itself, or by agreement with members or other parties.

5. APEX and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. APEX and/or its Members may make available to non-Members the Export Trade Facilitation Services relating to testing and certification of Products. APEX and/or its Members may refuse to provide other Export Trade Facilitation Services, and may deny participation in the other activities described in paragraphs one through five above, to non-Members.

7. APEX and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private preshipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. An "Export Intermediary" means a person who acts as a distributor, representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means those member companies of APEX listed in Attachment A to the Certificate, which is incorporated herein by reference, and those member companies of APEX subsequently incorporated in the Certificate pursuant to the amendment procedures set forth below.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, Technology Right, and or Export Trade Facilitation Service, whether a Member or non-Member.

Terms and Conditions of Certificate

(a) In engaging in Export Trade Activities and Methods of Operation, neither APEX nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information that is about its or any other Member's or supplier's costs, production, inventories, domestic prices, domestic sales, capacity, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchaser.

(b) Any agreements, discussions, or exchanges of information under the Certificate relating to quantities of products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other then export financing, servicing and repair arrangements) shall, except as provided in paragraph 3(i) and (j) of the Export Activities and Methods of Operation, be in connection only with actual or potential bona fide export transactions and shall be on a transaction-by-transaction basis only, and shall include only those Members participating or having a genuine interest in participating in such transaction.

(c) Participation by a Member in any Export Trade Activity or Method of Operation under the Certificate shall be entirely voluntary to that Member, subject to the honoring of contractual commitments for sales of Products or Services in Specific export transactions. A Member may withdraw from coverage under the Certificate at any time by giving written notice to APEX, a copy of which APEX shall promptly transmit to the Secretary of Commerce and the Attorney General.

(d) APEX and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities or Methods of Operation of a person protected by this Certificate of Review continues to comply with the standards of section 303(a) of the Act.

Dated: December 18, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-31324 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and federal government antitrust actions and from private, treble, damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration,

Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–00012." A summary of the application follows.

Summary of the Application

Applicant: Refined Sugar Trading Institute, P.O. Box 339; Savannah, GA 31402–0339.

Application No.: 92–00015.

Date Deemed Submitted: December 16, 1992.

Members (in addition to applicant): Domino Sugar Corporation, New York, NY; and Savannah Foods and Industries, Inc., Savannah, GA.

Refined Sugar Trading Institute seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operation.

Export Trade

Products

Refined sugar in various package forms, including but not limited to fifty kilo jute bags; and to pound, five pound, and twenty-five pound kraft paper bags.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands), Canada, and Mexico.

Export Trade Activities and Methods of Operation

Traders may exchange and discuss the following types of information:

a. Information about sales and marketing efforts in the Export Markets; activities and opportunities for sales of Products in the Export Markets; selling strategies for the Export Markets; pricing in the Export Markets; projected demand in the Export Markets; customary terms of sale in the Export Markets; prices and availability of Products for sales in the Export Markets; and specifications for Products by customers in the Export Markets;

b. Information about the quality, quantity, and prices of Products for export; the ability to supply Products in quantities sufficient to meet an export sales opportunity; source and delivery dates of Products available from Members for export; provided, however, that exchanges of information and discussions as to export prices, quantity, ability to supply Products in quantities sufficient to meet an export sales opportunity, and source and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export and involve only those Members who are participating or who have a genuine interest in participating in the transaction;

c. Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by the Members;

d. Information about joint bidding and selling for the Export Markets and allocation of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in the Export Markets; and

g. Information about the Members' export operations, including without limitation, sales and distribution networks established by the Members in the Export Markets, and prior export sales by Members (including export price information).

The Traders may jointly establish a selling price, or a "minimum margin," to be added to each Member's manufacturing and sales costs to arrive at a selling price for refined sugar for export. Once determined, the selling price, or the minimum margin, shall remain in effect until it is rescind or superseded by all of the Traders.

Members may utilize the selling price, or the minimum margin, in all of their sales of refined sugar for export to any Export Market; provided, however, that no Member shall be obligated to utilize the selling price or the minimum margin.

If a Member makes a sale at a price which is below the established selling price or does not utilize the minimum margin, the Trader of such Member shall inform the other Traders of such fact and explain the circumstances which caused the Member to so act.

Definitions

For purposes of this certificate application, the following terms are defined:

"Traders" are employees of a Member, and are appointed by the Member to be the sole persons to communicate with Traders of other Members. A trader shall not be any person whose job directly involves the sale or marketing of Products in the United States.

Dated: December 21, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–31325 Filed 12–23–92; 8:45 am]

BILLING CODE 3510–DR–M

University of Alaska-Fairbanks, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision;* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92–093. *Applicant:* University of Alaska-Fairbanks, Fairbanks, AK 99775–1440. *Instrument:* Coal Oxidation Calorimeter, Model V2.0. *Manufacturer:* BHP Research New Castle Laboratory, Australia. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instrument provides an adiabatic system with a temperature range of 10 to 50 °C controlled to ±0.1 °C and a sample capacity to 1.0 kg. *Advice Received From:* U.S. Bureau of Mines, October 14, 1992.

Docket Number: 92–095. *Applicant:* Princeton University, Princeton, NJ 08544. *Instrument:* Electron Microprobe, Model SX 50. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instrument provides an intense electron beam to excite characteristic x-rays of a sample phase down to 1.0 μm area. *Advice Received From:* National Institute of Standards and Technology, October 8, 1992.

The U.S. Bureau of Mines and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no

domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 92-30794 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DS-M

Marine Biological Laboratory; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be reviewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-087. *Applicant:* Marine Biological Laboratory, The Ecosystem Center, Woods Hole, MA 02543. *Instrument:* Accessory Equipment for Mass Spectrometer. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 57 FR 40434, September 3, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated September 11, 1992 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-30798 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DS-M

The Pennsylvania State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision;* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92-089. *Applicant:* The Pennsylvania State University, Park, PA 16802. *Instrument:* Two Mass Spectrometer Systems, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instruments provide: (1) an internal precision of 0.005 per mil for 3 bar μ1 samples of CO_2, (2) six adjustable Faraday collectors and (3) a computer-controlled carbonate and gas chromatograph/combustion multiport inlet system.

Docket Number: 92-092. *Applicant;* New Mexico Institute of Mining and Technology, Socarro, NM 87801. *Instrument:* Noble Gas Mass Spectrometer, Model MAP 215-50. *Manufacturer:* Mass Analyzer Products, United Kingdom. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instrument provides (1) a static mode background of 2.2×-10^{-16} moles at m/e=36, (2) a rate of rise of background of 4.5×10^{-17} moles/min., (3) quantitative measurement of ^3He and ^4He by dual collectors and (4) resolution of ^3He from HD and H_3 with an electrostatic analyzer.

These capabilities are pertinent to the applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-30796 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DS-M

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 92-067. *Applicant:* University of Vermont, Department of Pharmacology, UVM Medical Research Center, 55A South Park Drive, Colchester, VT 05446-2500. *Instrument:* 3-D Micromanipulator. *Manufacturer:* Narishige, Japan. *Date of Denial without Prejudice to Resubmission:* August 13, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-30797 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescission of a Request to Consult and Cancellation of an Import Restraint Limit on Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

December 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the rescission of a request to consult and cancelling a limit.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to rescind the request made on February 28, 1992 to consult on imports of cotton printcloth in Category 315. Should it become necessary to discuss this category with the Government of the Democratic Socialist Republic of Sri Lanka at a later date, further notice will be published in the **Federal Register**.

In the letter published below, the Chairman of CITA directs the

Commissioner of Customs to cancel the limit established for Category 315 for the period beginning on July 1, 1992 and extending through June 30, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 9689, published on March 20, 1992; and 57 FR 29290, published on July 1, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on December 29, 1992, you are directed to cancel only that portion of the directive dated June 25, 1992, which establishes a limit for cotton textile products in Category 315, produced or manufactured in Sri Lanka and exported during the period beginning on July 1, 1992 and extending through June 30, 1993.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31323 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Healthcare Provider Questionnaire; NAVCRUIT Form 6000/1.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 3 Hours.

Responses Per Respondent: 1.

Number of Respondents: 600.

Annual Burden Hours: 1,800.

Annual Responses: 600

Needs and Uses: The information collected is used by a selection board and a professional review board to determine an applicant's qualifications for a commission in the United States Navy or United States Naval Reserve as a medical doctor, dentist, or healthcare professional requiring credentialing.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: December 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31181 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Joint Advisory Committee (JAC) on Nuclear Weapons Surety will meet in closed session on January 14-15, 1993, at San Diego, CA.

The mission of the Joint Advisory Committee is to advise the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. As this meeting, the Joint Advisory Committee will receive classified briefings on the nuclear weapons stockpile and the Trident nuclear weapon systems.

In accordance with section 19(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended, (5 U.S.C. App. II, (1988)), it has been determined that this Joint Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 18, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31275 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Services, DOD

AGENCY: Defense, Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the Committee at the DACOWITS 1992 Fall Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1993 Spring Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: February 8, 1993, 8:30 a.m.-4 p.m.

ADDRESSES: SECDEF Conference Room 3E869, the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Branda M. Weidner, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), the Pentagon, room 3D769, Washington, DC 20301-4000; telephone (703) 697-2122.

Dated: December 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31276 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0059]

Clearance Request for North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0059).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina Sales Tax Certification.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 106; responses per respondent, 4; total annual responses, 424; preparation hours per response, 17; and total response burden hours, 72.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: December 17, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–31256 Filed 12–23–92; 8:45 am]

BILLING CODE 6820–34–M

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Proposed Reuse and Disposal of Naval Air Station Chase Field, Beeville, TX

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed disposal and reuse of Naval Air Station (NAS) Chase Field, Beeville, Texas.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on January 14, 1993, beginning at 7 p.m., in the Bee County Coliseum, Farm Road 351, Beeville, Texas.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by February 1, 1993, to become part of the official record.

NAS Chase Field is being closed in compliance with the Defense Base Closure and Realignment Act of 1990. The proposed action involves the disposal of NAS Chase Field, off-base family housing area, and Naval Auxiliary Landing Field (NALF) Goliad in compliance with Federal Property Management Regulations. Potential reuses of NAS Chase Field evaluated in the DEIS include correctional facility/ mixed use and community aviation/ mixed use; reuses of NALF Goliad evaluated include correctional facility/ agricultural use and intensive agricultural use.

Additional information concerning this notice may be obtained by contacting Mr. Laurens Pitts (Code 20), Southern Division, Naval Facilities Engineering Command, P.O. Box 10068, 2155 Eagle Drive, Charleston, South Carolina 29411, telephone (803) 743–0893.

Dated: December 21, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92–31283 Filed 12–23–92; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet January 12, 1993, from 9:00 a.m. to 5:00 p.m., in Alexandria, Virginia.

The purpose of this meeting is to attempt to forecast emerging demographic and sociological trends and their effect on Naval Forces. The agenda of the meeting will consist of discussions of key issues related to domestic changes in response to demographic, sociological, cultural and political phenomena.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia, 22302-0268, Phone (703) 756-1205.

Dated: December 15, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92–31200 Filed 12–23–92; 8:45 am]

BILLING CODE 3810–AE–F

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet January 25, 1993, from 1:00 p.m. to 3:00 p.m., in the Pentagon, Room 4E630.

The purpose of this meeting is to do the final outbrief for the Task Force Environment.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia, 22302-0268, Phone (703) 756-1205.

Dated: December 15, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-31199 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-AE-F

Intent to Grant Exclusive Patent License; Electronic Health Technologies, Inc.

AGENCY: Department of the Navy

ACTION: Intent to Grant Exclusive Patent License.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Electronic Health Technologies, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-owned inventions described in U.S. Patent No. 4,685,462, entitled "Method and Apparatus for Treatment of Hypothermia by Electromagnetic Energy" and U.S. Patent No. 5,160,828 entitled "Electronmagnetic Warming of Submerged Extremeties" in the fields of (i) perioperative heating, and (ii) diabetic neuropathy, diabetic microangiopathy, slow-healing and non-healing wound due to either diabetes mellitus or peripheral vascular disease.

Anyone wishing to object to the grant of this license has 60 days form the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code OOCCIP), Ballston Tower One, Arlington, Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

Dated: December 15, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-31198 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.097A]

Law School Clinical Experience Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide grants to accredited law schools to establish, continue, or expand programs of clinical experience for students in the practice of law. This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, especially Goal 5, by enhancing the job skills and knowledge of law school students. Goal 5 calls for adult Americans to possess the knowledge and skills to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Individual law schools that have been accredited by a nationally recognized agency approved by the Secretary, and combinations and consortia of accredited law schools.

Deadline for Transmittal of Applications: March 1, 1993.

Deadline for Intergovernmental Review: April 30, 1993.

Applications Available: January 15, 1993.

Available Funds: $7,015,291.

Estimated Range of Awards: $40,000-$250,000.

Estimated Average Size of Awards: $160,000.

Estimated Number of Awards: 44.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 639, as revised on November 3, 1992 (57 FR 49650).

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 639.11, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications that meet both of these absolute priorities:

(a) Provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

(b) Provide service to persons who have difficulty in gaining access to legal representation.

Supplementary Information: The authorizing statute for the program permits the Secretary to pay up to 90 percent of the cost of projects at law schools (20 U.S.C. 1134u(a)). The program regulations permit the Secretary to establish annually a lower maximum Federal share (34 CFR 639.40(a)(2)). The Secretary sets the maximum Federal share at 65 percent for grants to establish programs, 35 percent for grants to continue programs, and 50 percent for grants to expand programs of clinical experience for FY 1993.

For Applications or Information Contact: Barbara J. Harvey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-7863. Individuals who are hearing-impaired may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1134u-1134w.

Dated: December 18, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-31221 Filed 12-23-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Finding of No Significant Impact, Consolidated Incineration Facility at the Savannah River Site, Aiken, SC

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The U.S. Department of Energy (DOE) has prepared an environmental assessment (EA)(DOE/EA-0400) for the proposed construction and operation of the Consolidated Incineration Facility (CIF) at the Savannah River Site (SRS), Aiken, South Carolina. The CIF would be for the treatment of hazardous, low-level radioactive, and mixed (both hazardous and radioactive) wastes from SRS. Incineration would reduce the volume and toxicity of these wastes. Construction and operation of the CIF would be subject to the conditions of permits issued by the South Carolina Department of Health and Environmental Control and the U.S. Environmental Protection Agency (EPA).

Based on the analysis presented in the EA, DOE issued a proposed finding of no significant impact (FONSI) on June 24, 1992. During the week of June 28, 1992, copies of the EA and proposed FONSI were distributed to the Governors of Georgia and South Carolina, local officials, interested organizations, news media, and DOE Public Reading rooms. Copies of the proposed FONSI were also sent to more than 1000 individuals and organizations on the SRS mailing list. The proposed FONSI was published in the Federal Register on July 1, 1992, beginning a 30-day public review period (57 FR 29299). In response to several requests, the public review period was extended to August 31, 1992; notification of this

extension was published in the **Federal Register** on July 31, 1992 (57 FR 33946).

In total, 14 Federal and State agencies, 11 organizations, and 35 individuals submitted comments during the review period. Those comments and DOE's responses are presented in appendix B to the EA, "Response to Public Comments." A summary of the public comments and DOE responses are included in the Attachment to this finding. DOE has added a reference in the EA to recent solid waste forecast information, and has deleted a reference to "applicable dioxin emission standards" because none exist. DOE has also added a calculus of the risk to the exposed population from potential accidents using a risk factor of $5x10^{4}$ latent cancer fatalities per person-rem. None of these updates constitutes a material change to the EA's analysis.

After considering all the comments received as a result of the public review process, DOE has concluded that no information has been made available that alters DOE's proposed FONSI. Therefore, DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). Accordingly, DOE is issuing this FONSI.

ADDRESSES: Persons requesting additional information regarding the CIF project or wishing a copy of the EA should contact: Stephen Wright, Director, Environmental and Laboratory Programs Division, Savannah River Field Office, U.S. Department of Energy, P.O. Box A, Aiken, South Carolina 29802, Telephone: (803) 725–3957.

FOR FURTHER INFORMATION CONTACT: Persons requesting further information regarding DOE's general NEPA procedures should contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Proposed Action

The SRS CIF is part of the strategy for the treatment, storage, and disposal of SRS waste as described in the Final Environmental Impact Statement (EIS), Waste Management Activities for Groundwater Protection, Savannah River Plant, Aiken, South Carolina (DOE/EIS–0120), December, 1987. The proposed action involves the construction and operation of the CIF for (1) the treatment of hazardous and mixed waste at SRS to enable SRS to comply with Resource Conservation and Recovery Act (RCRA) requirements for the treatment of hazardous and mixed wastes before land disposal; (2) volume reduction of low-level radioactive waste before disposal; and (3) the elimination of current SRS shipments of burnable hazardous waste for offsite treatment and disposal. The CIF is scheduled to start operating in 1995.

The types of waste proposed to be incinerated in the CIF include hazardous waste and low-level radioactive and mixed waste (waste that is or is presumed to be both hazardous and radioactive). These wastes are primarily generated during normal SRS operations and consist of solids, sludges, and organic and aqueous liquids; examples are oils, paints, solids, solvents, rags, clothing, and floor cleaning equipment. The CIF would not receive or treat waste containing dioxins or polychlorinated biphenyls.

The CIF would have a rotary kiln combustion chamber and a secondary combustion chamber (SCC) to ensure 99.99 percent destruction of all hazardous constituents. The CIF offgas treatment system would ensure that the SCC offgas meets all applicable regulatory requirements before discharge to the environment. At designed operating capacities, approximately 30 pounds per hour of residual ash would result from CIF operation and would be solidified for disposal at SRS in a proposed RCRA-permitted facility.

The CIF would be located near the center of the SRS in the 200–H Chemical Separations Area. The facility would consist of a new concrete and steel open building of approximately 31,000 square feet with processing facilities, control rooms, waste receiving areas, and waste handling areas. The CIF process building would have an exhaust stack to handle offgas from the incinerator and exhaust air from the building ventilation system. The offgas would be cooled in a quench vessel and would enter a free jet scrubber to remove particulates and acid gases before entering a cyclone separator to remove entrained moisture. The offgas would also pass through a mist eliminator and a series of high-efficiency particulate air (HEPA) filters to remove fine particulates (including radioactive particulates) before the emissions would be monitored and released through the stack. The building ventilation system would provide exhaust hoods around each of the kiln seals for the collection and HEPA filtration of any emissions.

Alternatives Considered

Under the No Action alternative, the CIF would not be constructed or operated. Untreated waste would continue to accumulate at SRS. This alternative would result in the continued offsite shipment of waste, and would impair SRS's ability to comply with RCRA land ban requirements.

An offsite treatment and disposal alternative would involve shipping burnable hazardous waste to offsite incinerators (DOE or commercial) and shipping mixed wastes to offsite DOE mixed waste incinerators (commercial capacity not available). However, sufficient capacity would not be available at DOE incinerators for the volume of SRS mixed waste. Even if capacity were available, the alternative would involve the costs and environmental impacts associated with any necessary modifications to other facilities and offsite transportation of hazardous and mixed wastes. It would also make SRS operations more dependent upon the availability of other facilities.

Another alternative would be to construct two incinerators at SRS—one incinerator to burn miscellaneous solid and liquid hazardous wastes, with a subsequent upgrade to handle radioactive waste, and the second to burn only organic liquid waste from the Defense Waste Processing Facility. This alternative would allow the use of different technologies and potentially lower direct treatment costs. However, this alternative would substantially duplicate facilities and increase costs. The duplication of equipment would also result in higher actual and potential emissions, e.g., from duplicate tank vents. Moreover, whether a single incinerator or two separate incinerators were used, either alternative would have to meet the same destruction and removal efficiency requirements and other offgas quality standards.

Other treatment methods for hazardous wastes (i.e., solidification, biological treatment, and chemical treatment) were considered as alternatives. A separate treatment method could be used for each waste stream, possibly increasing the efficiency of the treatment of each waste. If separate waste treatment processes were chosen, facility costs would be higher because of the need to construct, operate, and maintain multiple facilities. Such multiple facilities would increase land usage and fugitive emissions due to the possible duplication of equipment. No other treatment method compares favorably

with incineration, which EPA has identified (40 part 268) as the Best Demonstrated Available Technology for treatment of many SRS hazardous wastes.

Environmental Considerations

The CIF would occupy 3 acres of previously developed land adjacent to H-Area, a location that has been subjected to construction impacts since the early 1950s. The peak construction workforce of 175 workers would have negligible effects on area land use, housing, and social services. No significant impacts on ecological resources are expected due to the minimal habitat quality of the proposed CIF site. No floodplains, wetlands, or archaeological or historical sites exist on the proposed site. Air quality impacts from construction activities are expected to be negligible. Once operational, the facility would employ 39 people. It is anticipated that many of these positions would be filled by personnel already employed at SRS.

Liquid wastes from CIF processing operations would be collected in permitted storage tanks before being treated for disposal in a SRS RCRA-permitted vault disposal unit. Other liquid wastes from CIF operations, such as sanitary wastewater, would be analyzed and treated, as appropriate, before being discharged in compliance with the current National Pollutant Discharge Elimination System permit.

Air emissions from the CIF would be controlled to levels significantly below the applicable EPA Prevention of Significant Deterioration emission requirements. Therefore, the CIF would not be expected to significantly change regional ambient air quality. The CIF would be designed and operated to achieve a 99.99 percent minimum destruction and removal efficiency of principal organic hazardous constituents, as required by South Carolina air pollution control and hazardous waste management regulations for the wastes proposed to be incinerated at the CIF. Trial burn and periodic emission monitoring programs required by State and Federal regulations would be undertaken to confirm that CIF air emissions are within state and Federal standards.

The National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations (40 CFR part 61) limit radionuclide emissions from DOE facilities to amounts that would cause no more than a 10 mrem per year effective dose-equivalent to any member of the public. A NESHAP permit for CIF construction has been obtained from EPA. Total annual radionuclide releases to the atmosphere from the proposed CIF routine operations are estimated to be 1200 curies. The maximum effective dose to an individual at the SRS boundary from such releases is projected to be 0.003 mrem per year. The maximum combined dose from the existing operation of SRS and the CIF would remain at approximately 0.5 mrem to the maximally exposed individual at the plant boundary. This is well below the NESHAP limit. The EA also indicates that dioxin emissions from the CIF would be small; emissions from a similar incinerator in New York were less than the New York State standard.

Routine CIF processing activities would result in only minor radiological and chemical exposures to onsite operating personnel. Engineering and administrative controls would ensure that the annual effective dose equivalent to any SRS worker would not exceed the DOE limit of 5 rem (DOE Order 5480.11) and that any chemical exposure would be within safe limits.

Potential accidents associated with CIF operations are addressed in the EA and a safety assessment document for the facility. Facility accidents addressed in the EA include natural phenomena (wind or tornado), earthquakes, fire, nuclear criticality, explosion in the incinerator chamber(s), benzene release, and human-caused external events. Onsite transportation accidents were also evaluated. Using a relation between radiation dose and consequent health effects of 4×10^{-4} latent cancer fatalities per person-rem, none of these accidents would be expected to produce any radiation-induced fatal cancers in the exposed population, either onsite or offsite.[1]

For carcinogens such as benzene, EPA requires that risk be reduced to below 10^{-4} (i.e., 1 excess cancer death in ten thousand people) in exposed receptors. In the case of benzene release under maximum reasonably foreseeable accident conditions involving a spill of the benzene inventory into the secondary containment system, the estimated carcinogenic risk is 6×10^{-7} for the maximally exposed offsite individual, 4×10^{-6} for an individual at the spill site, and 2×10^{-6} for an onsite individual 5 miles from the spill, when computed using the EPA rise assessment methodology. Smaller but potentially more frequent releases could occur from minor spills or process upsets. However, the analysis determined that no chronic exposure hazards would exist for onsite or offsite populations, and that the probability of an accident that could produce a harmful exposure would be very low.

Determination

Based on the information and the analyses in the EA for the CIF as well as the review of the information received from the commenters, the proposed action does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of NEPA. Therefore, DOE has determined that preparation of an EIS is not required.

Issued at Washington, D.C., this 18th day of December 1992.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

Attachment—Summary of Comments Received on the Proposed FONSI

All of the comments received by DOE during the comment period from July 1 to August 31, 1992, and the corresponding responses are included in "Response to Public Comments," appendix B to the EA. The following summary briefly describes the nine major categories of comments and DOE's responses. Readers interested in specific comments or DOE's detailed responses should refer to appendix B.

A. Appropriate Level of NEPA Review

Many comments urged DOE to prepare an EIS for the CIF. One reason provided was that DOE's regulations for implementing NEPA (57 FR 15122, April 24, 1992) specify an EIS as the appropriate level of review for an incinerator such as the CIF, unless there are extraordinary circumstances that affect the significance of the proposal's impacts. The preparation of an EIS for the incinerator at DOE's Gaseous Diffusion Plant at Oak Ridge, Tennessee, was cited as precedent for requiring an EIS.

Under the DOE NEPA guidelines (52 FR 47662, December 15, 1987) that were in effect at the time DOE decided to prepare an EA for the CIF, there were no specific requirements regarding the type of NEPA documentation that should be prepared for the siting, construction, and operation of incinerators. Accordingly, DOE Headquarters held extensive discussions with SRS staff concerning the proposed CIF and its potential impacts. DOE also reviewed the characteristics and NEPA document level determination of other DOE incinerators. Based on this review, DOE concluded that it was not clear that

[1] Even if a factor of 5×10^{-4} were used (Nuclear Regulatory Commission, 56 FR 23360, May 21, 1991), none of these accidents would be expected to produce any radiation-induced fatal cancers in the exposed population, either onsite or offsite.

significant environmental impacts would result from the proposed action. Therefore, in accordance with applicable provisions of the Council on Environmental Quality's (CEQ) regulations implementing NEPA, DOE determined that it was appropriate to prepare an EA for the proposed CIF as the basis for determining whether to prepare an EIS or to issue a FONSI.

On May 26, 1992, a new DOE NEPA rule took effect which provides that an EIS will normally be prepared for proposals involving the siting, construction, and operation of incinerators such as the CIF. The rule provides that DOE need not prepare an EIS for incinerator proposals in cases where "there are extraordinary circumstances related to the specific proposal that may affect the significance of the environmental effects of the proposal" (57 FR at 15151, to be codified at 10 CFR 1021.400(c)).

The EA demonstrates that this specific incinerator proposal (i.e., the CIF) presents the type of extraordinary circumstances referred to in the rule. The conclusion that the CIF would not significantly affect the environment results from a combination of favorable factors: A site located on previously developed land and remote from any population centers; a facility design that incorporates many features to avoid or mitigate harmful emissions during normal and abnormal operations; and effective treatment of incinerator residuals, Consistent with the procedure CEQ provides when an agency believes a FONSi is warranted for a proposed action for which it would normally required an EIS (40 CFR 1501.4(e)(2)(i)), DOE made the Proposed FONSI available for public review for 30 days (extended to 60 days) before making its final determination regarding preparation of an EIS.

In any case, the preamble to DOE's new NEPA rule indicates that DOE intended to apply the rule to NEPA documents that had been initiated before the rule's effective date "to the fullest extent practicable" (57 FR at 15123). The new DOE NEPA rule took effect only one month before DOE issued the EA on the proposed CIF. It would not have been practicable to prepare an EIS on the proposed CIF where the EA was substantially complete at the time the new DOE NEPA rule took effect, and where the EA indicates that the proposed CIF would not significantly affect the environment.

In 1982, DOE issued an EIS for an incinerator that was subsequently built at DOE's Oak Ridge, Tennessee, Gaseous Diffusion Plant. The DOE incinerator at Oak Ridge differs from the proposed CIF in several respects, including: Type quantity, and source of waste feeds; design; stack emissions; aqueous effluents; and surrounding environment, including distance to land with public access. These differences preclude a conclusion that an EIS should be prepared for the proposed CIF only because an EIS was prepared for the Oak Ridge incinerator. DOE's decision to prepare an EA to serve as the basis for a decision of whether to prepare an EIS for the proposed CIF is in accordance with DOE regulations and policy and CEQ regulations.

B. Future SRS Waste Management Needs

Some commenters pointed to the significant change in the world political environment and questioned the continued mission of DOE to produce nuclear materials, the need for a waste treatment facility like the CIF at SRS, and the accuracy of DOE's prediction of the quantity of SRS generated wastes to be incinerated.

The mission of SRS is to serve the national interest of the United States by safely producing nuclear materials while protecting employee and public health and the environment. DOE recognizes that in recent years there has been a significant change in the world's political environment. In 1990, the Secretary of Energy chartered a Complex Reconfiguration Committee to reexamine the future activities of DOE. While the Secretary can encourage the evolution of the Department towards a new set of missions, in part developed by independent committees, task forces, and other citizen recommendations, any change to DOE's missions must come from the President and Congress. Although DOE has initiated an effort to determine in the long term how SRS capabilities can best be employed to serve the national interest, that effort has not yet reached the point of formulating any specific proposals for consideration by Congress and the President.

It is expected that environmental restoration and waste management activities will continue over time to increase at SRS. These activities will likely include decontamination and decommissioning (D&D) of SRS facilities. The CIF would provide SRS with the ability to treat many combustible hazardous and mixed wastes generated onsite, including those that might be generated from facility D&D. If nuclear facilities at SRS become part of a D&D program, waste volumes would increase. Many of the "job control" wastes generated by D&D activities (contaminated protective clothing and equipment, rags, etc.) would be identical to wastes currently generated from SRS operations and maintenance activities. Even though the waste volumes have changed since the initial sizing of the CIF, a re-evaluation of the waste volumes indicates that the sizing of the CIF is justified utilizing only SRS waste. Reference to this re-evaluation has been added to section 2.1 of the EA.

Should any mission change at SRS involve hazardous constituents different from those listed in the CIF Resource Conservation and Recovery Act (RCRA) permits, SRS would be required to request a permit modification from either the South Carolina Department of Health and Environmental Control (SCDHEC) or the U.S. Environmental Protection Agency (EPA), which in turn would require a public comment period. In that event, DOE would also determine if any further NEPA documentation would be required.

C. Waste Stream/Offsite Wastes (See Also Section D, Waste Management)

Some commenters either predicted the CIF would be used to treat offsite wastes or inquired if offsite wastes would be incinerated. Commenters stated that, by failing to consider the potential impacts from transport and treatment of offsite wastes, the EA illegally segments the action.

Construction and operation of the CIF is being regulated by SCDHEC and by EPA under RCRA. SCDHEC and EPA have issued to DOE permits setting conditions for constructing and operating the CIF. Condition IIIE4.D.1 of the SCDHEC permit states that no offsite wastes shall be accepted or managed at the CIF. SRS is prohibited from incinerating offsite wastes without first applying for and receiving a RCRA permit modification. This would require an additional public comment period. Further, management of offsite wastes at the CIF would have to be addressed through appropriate NEPA documentation.

SRS has fully characterized the existing waste inventory that would be incinerated under existing permit conditions. Condition III.E5.C.1.c of the SCDHEC permit requires that nine months prior to the trial burn, DOE would submit for review and comment an updated report of hazardous waste feed volumes and composition, based upon SRS waste only. That report would include:

1. The annual volume of SRS generated hazardous waste to be incinerated.

2. The necessary incinerator waste feed rates for the existing and annually-generated hazardous wastes.

3. An explanation of how the necessary waste feed rates for the incinerator were determined.

4. Any changes in waste character from the description of waste to be incinerated given in Volume X of the RCRA permit application.

A final waste feed assessment report addressing SCDHEC comments would be completed and submitted for SCDHEC approval prior to the trial burn. DOE does not expect that the final Waste Feed Assessment Report will depart materially from the waste fees considered in the EA.

D. Waste Management

Several commenters criticized the choice of incineration as a waste treatment process, some arguing that the byproduct wastes could not be disposed of adequately. Some suggested that waste generation be minimized instead of incinerating the waste.

EPA regulations impose stringent conditions on the treatment, storage, and disposal of hazardous and mixed wastes. DOE and EPA have signed a Federal Facilities Compliance Agreement (FFCA) which commits SRS to the construction and operation of several proposed facilities, including the CIF, for treating certain mixed wastes.

Currently, mixed wastes are stored at SRS and hazardous wastes are being shipped offsite for RCRA-specified treatment. As discussed in Section E (Technologies) below, incineration is the RCRA-specified treatment for many of SRS's waste streams, as well as the best demonstrated available technology (BDAT) for many others. Incineration would render these wastes less hazardous to public health and the environment and would reduce the volume of wastes requiring permitted disposal.

Secondary waste streams from the CIF must be managed in accordance with RCRA regulations. Ash from the kiln would be cement-stabilized and disposed of in onsite vaults. The CIF liquid waste, fly-ash, and blowdown would be stabilized to meet the regulatory requirements for disposal. In the commercial and nuclear industry sectors, a majority of solidification systems successfully utilize hydraulic cement to encapsulate ash materials and other waste contaminants. RCRA Land Disposal Restrictions (LDR) regulations (40 CFR part 268) require that such a solidified waste form meet applicable treatment standards before it can be disposed of. A CIF solidified waste form would not be disposed of unless it can meet EPA and DOE requirements for disposal.

The onsite disposal vaults that would receive solidified CIF wastes would be permitted by EPA and SCDHEC. A RCRA Part B permit application for these vaults was submitted to SCDHEC in 1988. NEPA review of these vaults is included in the 1987 SRS Waste Management Activities for Groundwater Protection EIS (DOE/EIS–0120). The Record of Decision was published in March 1988.

SRS has implemented a waste minimization program, which reduces the waste at the generation site. The EA states on page 1–2 that "a variety of techniques are being explored and utilized to minimize waste, and a number of techniques have been implemented, resulting in reduced generation rate for various SRS waste streams. Among these techniques are process and raw material changes, waste segregation (separate waste into toxic and non-toxic fractions), recycling and reuse of waste, and employee awareness training, one or more minimization techniques such as those listed above are selected and implemented, and progress toward established goals is reported an monitored. Significant waste reductions have already been realized at SRS."

E. Technologies

Some commenters questioned the choice of incineration instead of other treatment methods as the proposed means of treating SRS wastes. Other commenters questioned whether DOE was following EPA's LDR regulations and BDAT requirements for the wastes to be treated.

The CIF is the preferred alternative to other waste treatment alternatives addressed in the EA because:

—Incineration is the RCRA-specified treatment for the hazardous portion of certain mixed wastes generated at SRS.

—Treatment onsite would avoid having to transport SRS waste to another site for treatment and/or disposal.

The EPA LDR regulations establish treatment standards for wastes that must be met before final disposal (e.g., a landfill). There are two types of treatment standards:

—A technology standards requires that a waste must be treated by a specific industrial treatment process that has been shown to render the waste safe for disposal.

—A concentration standard sets the maximum allowable concentration of a hazardous constituent in a waste at the time of disposal. While any process may be legally used to achieve a concentration standard, the best results are usually achieved by application of BDAT. EPA sets a concentration standard after determining which commercially-available industrial process achieves the lowest concentration of a hazardous constituents in a waste. Usually the process that provides the lowest concentration is designated the BDAT. In many cases the concentration standard may only be achievable by use of the BDAT.

The CIF would meet the EPA LDR treatment standards for all 230 waste codes that it would be permitted to treat. The incineration portion of the CIF process is the specified treatment process (technology standard) or the BDAT (where concentration standards are used) for 80% of these waste codes. The stabilization and neutralization portions of the CIF process would meet the EPA LDR treatment standards for the remaining 20% by being the specified treatment (technology standard) or by achieving the required concentrations (concentration standards).

Additionally, incineration is the technology that achieves the greatest volume reduction benefit for the large amount of low-level radioactive waste (LLW) generated at SRS. Incineration achieves a significantly higher volume reduction than other technologies such as supercompaction. Another advantage of the CIF process over other volume reduction methods for LLW is that the resultant ash from the CIF would be solidified, which would immobilize the radioactive contaminants to prevent leaching. Supercompaction or other volume reducing methods other than incineration do not immobilize the radioactive contaminants.

Although incineration is the RCRA-specified treatment technology for certain SRS mixed wastes, the EA considered alternatives to the CIF system that were proven technologies and commercially available. Technologies, such as chemical or biological treatment, were also considered in section 2.4 of the EA.

F. Health

Many commenters questioned DOE's procedures for estimating the health effects for workers and the general public that might result from operation of the CIF.

DOE used EPA risk assessment guidance, exposure models, and air dispersion models to assess whether operation of the CIF would pose significant risks to human health and the environment. DOE agrees with the

recent findings of EPA's Science Advisory Board that recommends risk-based decisionmaking. Based on the very conservative assumptions (that tend to overestimate risks) built into the EPA models and risk equations, additional risk assessments were not considered.

EPA's proposed rules for controlling toxic emissions from hazardous waste incinerators are explained in detail in the April 27, 1990, **Federal Register** (55 FR 17862). DOE used this conservative risk-based approach to establish risk-based air concentrations and to set CIF emissions limits. These risk-based emission limits are incorporated into the SCDHEC RCRA permit. (Also see section H, below.)

The risk-based emission limits incorporate many protective assumptions to ensure that the most sensitive subpopulations (such as the very young and the very old) would be protected during periods of maximum exposure. The aggregate carcinogenic risk to the maximally exposed individual (MEI) is established at 1 in 100,000 (1×10^{-5}). For toxic compounds that do not exhibit carcinogenic effects, CIF air emissions are allowed to contribute only 25 percent of the dose that would exceed a health-based threshold. The results of these analyses indicate that potential emissions from CIF would be below risk-based emission limits.

DOE has also used several EPA approved air dispersion models to assess potential impacts on human health and the environment from emissions of heavy metals and radionuclides. DOE used the TSCREEN (Toxic Screening) model for heavy metals and organics, and the Industrial Source Complex Short-Term (ISCST) model for heavy metals and hydrogen chloride (HC1). For radionuclides, DOE used the CAP–88 model, which considers doses from all major pathways including inhalation and food chain effects.

G. Destruction & Removal Efficiency

Some commenters questioned the ability of the CIF to achieve and maintain a 99.99% destruction and removal efficiency (DRE).

After testing the capabilities of existing hazardous waste incinerators, the EPA has established strict emission and performance standards for hazardous waste incinerators (40 CFR part 264, subpart O). EPA has determined that these standards can be reliably and consistently achieved and are protective of human health and the environment.

The EPA standards require that no more than 0.01 percent of the principal organic hazardous constituents (POHC)—the organic chemicals used to test an incinerator—can be emitted unburned from the facility stack. This equates to a minimum DRE of 99.99 percent. Trial burns of hazardous waste incinerators have repeatedly demonstrated that the 99.99 percent DRE performance standard can be readily met. In fact, DREs of 99.999 percent or better are frequently achieved, such as the Kodak incinerator in Rochester, New York.

A trial burn tests a hazardous waste incinerator's ability to achieve performance standards—including DRE—under conditions that would make achieving such standards difficult. It should be noted that there are well recognized operating methods which can increase DRE. For example, DRE generally increases as combustion temperature is raised; DRE is also improved the longer waste remains at the combustion temperature. If the trial burn is successful in demonstrating a DRE of 99.99 percent or greater, the permitting authority will generally establish the range of operating conditions used in the test as the boundary conditions for routine operation.

Similarly, test chemicals selected for use in a trial burn are those that are as difficult or more difficult to destroy than those the incinerator would be permitted to process. EPA has ranked RCRA regulated hazardous constituents according to their resistance to incineration. This ranking is used to select test chemicals more resistant than the wastes to be incinerated. In summary, trial burn conditions are designed to be more severe than routine operating conditions. This ensures that routine operations can comply with the DRE standard.

The EPA approved CIF trial burn plan can be found in Section D–5 of the CIF RCRA permit application. The trial burn plan details the composition of the test feeds, the operating conditions to be tested, and the final permitted operating conditions that may be modified based on results of the trial burn. The trial burn plan also discusses operating data collection methods, instrument calibration procedures, sample collection and analysis protocols, chain-of-custody procedures, reporting requirements, and quality assurance procedures that would be utilized to ensure that the trial burn is properly conducted and accurately reflects the CIF's ability to reliably achieve the EPA performance standards.

To minimize emission increases that could result from process upsets, (e.g., a low temperature excursion in the rotary kiln or a reduction of scrubbing liquid flow to the free jet scrubber), equipment failures, or operator error, various measures will be employed to reduce the probability of occurrence and impact of such incidents. For example, engineering features, such as a waste feed cutoff system, will be built into the CIF. This system will automatically and instantaneously shut off waste feeds when the computer control system detects the existence of a problem condition (e.g., combustion temperature deviates outside of EPA and SCDHEC approved limits). Also, installed spare equipment and backup systems will be used in critical areas of the process (e.g., high efficiency particulate air (HEPA) filters) to immediately replace malfunctioning equipment to promote continued, efficient operation.

Carbon monoxide (CO) and oxygen concentrations in the stack gas would also be continuously monitored in the CIF. EPA has determined as a basis for proposed incinerator regulations (55 FR 17862, April 27, 1990) that a stack CO concentration of less than 100 parts per million by volume (ppmv) indicates that a high combustion efficiency in the incinerator is being achieved. This in turn indicates that POHC destruction is being maintained above 99.99% and the formation of products of incomplete combustion (PIC) are being limited to insignificant levels. The CIF would be equipped with an automatic waste feed cutoff interlock that would terminate waste combustion if the CO monitor indication exceeds 100 ppmv, which would prevent a significant emission of unburned organic waste constituents and PICs.

Administrative programs—including daily testing of key parts of the waste feed cutoff system—would also minimize the likelihood of an upset or malfunction. Comprehensive training of CIF operating personnel, performed and documented in accordance with DOE and regulatory requirements, is also expected to minimize the chance of operator error.

H. Stack Emissions

Many commenters were concerned about DOE's estimates of the relative destruction of the various waste components and the composition and dispersion of stack emissions.

As stated in Section G, DOE expects the trial burn to verify that the CIF would achieve a DRE of at least 99.99 percent of POHCs. Sampling would be conducted during the trial burn to quantify and qualify POHCs. Details

concerning selection of POHCs and their destruction during the trial burn are found in the CIF RCRA Part B Permit Application.

The approved SCDHEC air pollution control permit for the CIF specifies the maximum allowable feed quantity and maximum allowable emission of each hazardous metal and organic compound that the CIF may incinerate. The metals emission calculations are provided in appendix 2 of the same document.

The dispersion of these emissions in the atmosphere was modeled utilizing the EPA TSCREEN model and the ISCST model. The resulting ambient air concentration for each hazardous constituent was then compared to the regulatory standard established in SCDHEC Air Regulation 61–62.5 Standard No. 8, Toxic Air Pollutants.

In all cases, the concentrations were found to be less than the SCDHEC standards. Estimated emissions of hazardous metals and hydrochloric acid from the CIF were also determined to be well below EPA limits for control of heavy metal and hydrochloric acid emissions (risk-based limits found in 55 FR 17862, April 27, 1990). The CIF Clean Air Act and RCRA permit applications document the calculations that predict pollutant generation and apply emission control factors to arrive at predicted emissions removal.

When wastes containing both combustible materials (e.g., organic compounds, paper) and noncombustible materials (e.g., metals and radionuclides) are incinerated, the combustible fraction would be destroyed and its associated toxicity reduced or eliminated. The CIF has been designed to ensure that the amounts of non-combustible hazardous material entering the facility are strictly controlled. Also, pollution control devices (scrubbers, filters, etc.) have been designed to prevent constituents from being emitted from the stack in harmful quantities. Prior to combustion in the CIF, all waste material would undergo a thorough analysis to ensure that non-combustible metals and radionuclides do not exceed pre-established limits.

Most metals and radionuclides processed through the CIF would remain in the residual ash or be captured by the offgas scrubber and HEPA filters. The ash material, scrubber residues, and HEPA filter elements containing the captured metals and radionuclides would be treated and disposed of in accordance with RCRA requirements.

Metals and radionuclides not captured in the ash, offgas scrubbers, or HEPA filters would be emitted from the stack. However, as described above, DOE used SCDHEC air regulations, air dispersion models, and EPA risk-based limits so that the CIF's emissions would meet all public health and environmental requirements for air emissions. It should be noted that CIF emissions are estimated to be below permit requirements for all contaminants.

I. Emission Monitoring

Several commenters were concerned about the monitoring of the emissions from the CIF, raising questions about the compounds that would be monitored, techniques that would be used, and the frequency of monitoring.

SRS operates a network of approximately 30 radiological air quality monitoring stations, some of which are located off site. Additionally, the States of South Carolina and Georgia operate nonradiological monitoring stations in the vicinity of SRS. Although air dispersion modeling has indicated that no measurable air quality impacts would result from the CIF, these stations would be available to detect certain ambient air quality changes that could result from operation of the CIF, other facilities at SRS, and private industry in the vicinity of SRS. A comprehensive discussion of the SRS environmental monitoring program may be found in the 1991 Savannah River Site Environmental Report (document number WSRC–TR–92–186).

CIF monitoring programs required by State and Federal regulations (Section 4.5.1 of the EA) refer to the initial trial burn testing and periodic follow-up testing required by the facility's operating permits and provisions of RCRA and the Clean Air Act. These testing program would initially demonstrate and periodically confirm continued compliance with the RCRA performance standard of 99.99% minimum DRE and emission limits for metals and other pollutants. The proposed CIF would have continuous stack monitoring systems for measuring radionuclide emissions and concentrations of CO and oxygen. CO and oxygen would be used as an indicator of combustion efficiency. High combustion efficiency minimizes emissions of unburned organic compounds and PICs.

The emission of other pollutants such as metals, nitrogen oxides, and uncombusted organic compounds would be measured periodically to ensure compliance with regulatory performance standards and CIF permit limitations. The scope and frequency of the periodic sampling and analysis of CIF stack emissions are being developed and would be conditions of the CIF operating permits issued by EPA and SCDHEC. The methods to be used for the continuous and periodic stack sampling and analysis are those approved by EPA and required by Clean Air Act regulations (40 CFR parts 60–61) and RCRA regulations (40 CFR part 264). The methods are further described in the following CIF permit documents: Application for a SCDHEC Air Pollution Control permit (Revision 1; July 1991). Application for a NESHAP Permit (September 1988), and Application for a Hazardous Waste Part B Permit (Revision 4; July 1991).

DOE would continue to review the advancement of continuous emission monitoring systems for organic and metal constituents. In the interim, the emission of these pollutants would be measured periodically to ensure compliance with regulatory performance standards and CIF permit limitations. The scope and frequency of the periodic sampling and analysis of CIF stack emissions are being developed and would be conditions of the CIF operating permits to be issued by EPA and SCDHEC.

[FR Doc. 92–31308 Filed 12–23–92; 8:45 am]
BILLING CODE 6450–01–M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board

Date and Time: Friday, January 8, 1993, 8:30 a.m.–4 p.m.

Place: Ritz-Carlton Tysons Corner, Salon I, 1700 Tysons Boulevard, McLean, VA 22102, (703) 506–4300

Contact: Dr. Jake W. Stewart, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092

Purpose: The Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

Friday, January 8, 1993, 8:30 a.m.–4 p.m.

8:30 a.m. Call to Order and Opening Remarks
9:00 a.m. Education Task Force Update
9:15 a.m. Radioactive Waste Management Task Force Report and Discussion
12:15 p.m. Public Comment on Radioactive Waste Task Force Report (5 minute rule)

2:15 p.m. Space Nuclear Propulsion Task Force Update
2:30 p.m. The DOE National Laboratories Report: Follow-up
2:45 p.m. Task Force on Economic Analysis and Modeling Related to Energy—Update
3:30 p.m. Public Comment—(5 minute rule)
4 p.m. Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.S.T.) Thursday, December 28, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (E.S.T.) Thursday, December 28, 1992, to assure that it is considered by Board members during the meeting.

Minutes: A transcript and minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

Issued: Washington, DC, on: December 18, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92–31312 Filed 12–23–92; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Decision To Sign Two Billing Credits Contracts

AGENCY: Bonnevillle Power Administration (BPA), DOE.

ACTION: Notice of decision. BPA file No.: BCR–11. BPA announces its decision to sign two billing credit contracts for two generations projects.

SUMMARY: BPA, pursuant to its Billings Credits Policy, as amended August 30, 1984, (49 FR 34395), and its Billing Credit Solicitation July 1990, has negotiated with two public bodies for two proposed generation projects.

The Wynoochee Hydroelectric project will be a 10.6 megawatt (MW) hydroelectric generating facility constructed at the existing Wynoochee Dam located on the Wynoochee River in western Washington. The Army Corps of Engineers own the Wynoochee Dam, and the City of Aberdeen, Washington, operates it. Tacoma will own the new hydroelectric facilities constructed at the site. (Notice of Intent, 57 FR 48793) The Wynoochee Hydroelectric facility is colicensed to the City of Aberdeen, Washington, and the City of Tacoma, Washington, under the Federal Energy Regulatory Commission License number 6842.

The Eugene Water and Electric Board's Steam Plant project consists of installing a 2.6 MW back pressure turbine generator to an existing facility. The existing facility includes two condensing turbines fueled by 40,000 units of hog fuel annually to produce steam. The new turbine would require an additional 4,000 units of hog fuel annually, backed with No. 6 fuel oil. (Notice of Intent, 57 FR 22212; May 27, 1992)

The Administrative Record, available for public review, contains background on BPA's Billing Credits Policy, the need for billing credit resources, a summary of the Billing Credit Solicitation, a summary of the evaluation process for proposals, and environmental considerations. The Administrative Record includes two Appendices: Appendix A—Billing Credit Solicitation, Appendix B—Issue Resolution Log. The Administrative Record also includes three Addendums.

Addedum One of the Draft Administrative Record—Customer System Efficiency Improvements (CSEI) Contract Development, and Amendment A to Addendum One provide specific information about CSEI projects and how billing credits are determined. These were previously released for public review (57 FR 1161; January 10, 1992) and (57 FR 9250; March 27, 1992).

Addendum Two of the Administrative Record—Contract Development Conservation Proposals, provides specific information about the conservation projects and how billing credits are determined for these projects. This Addendum was previously released for public review (57 FR 9250; March 17, 1992).

The release of Addendum Three—Generation Proposals Contract Development was announced on May 27, 1992, in 57 FR 22212.

BPA has signed other generation billing credit contracts, in addition to the contracts described in this Notice. These prior contract signings were addressed in previous released **Federal Register** notices. (57 FR 33501; July 29, 1992) and (57 FR 48792; October 28, 1992)

Responsible Official: Paul Norman, Billing Credits Project Manager, is the official responsible for BPA's Billing Credit contracts, the Administrative Record, and Addenda.

DATES: Payment or credits will not be made or granted until 90 days after the date of a **Federal Register** Notice announcing that a contract has been signed.

FOR FURTHER INFORMATION CONTACT: For a copy of a specific generation billing credit contract(s), or the Administrative Record, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503–230–3478 in Portland, or toll-free 800–622–4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, Room 253, Portland, Oregon 97208, 503–230–4551.
Mr. Robert Laffel, Eugene District Manager, Federal Building, Room 206, 211 East Seventh Street, Eugene, Oregon 97410, 503–465–6952.
Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–2518.
Ms. Carol S. Fleischman, Spokane District Manager, Room 112 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–3279.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.
Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington 98807, 509–662–4377.
Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Avenue North, Suite 400, Seattle, Washington 98109, 206–553–4130.
Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.
Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, Room 450, Boise, Idaho 83702, 208–334–9137.
Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is a self-financing power marketing agency with the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 et seq., to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power

to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839c(b)(1) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839a(1) and (d). The Northwest Power Act requires BPA to grant credits to BPA's customers on their power bills for electric power resources that reduce the Administrator's obligation to acquire resources to meet BPA's electric power requirements. 16 U.S.C. 830d(h). Billing credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for billing credits include conservation and generation. Specific requirements for resources and the amount BPA can pay for these resources are outlined in the Northwest Power Act and BPA's Billing Credits Policy.

BPA's Billing Credits Policy interprets the billing credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting billing credits.

BPA's 1990 Resource Program focused on choosing near-term resource actions for Fiscal Years 1992 and 1993. Subsequent to receiving comments from customers on the draft 1990 Resource Program that suggested BPA use billing credits, BPA developed a solicitation requesting proposals for billing credits resources. Billing credits provide a way to shift some of the risk for resource development to utilities and others, which was an objective of the chosen strategy in the 1990 Resource Program. In July 1990, BPA released the solicitation. It proposed to test the billing credit approach for acquiring energy resources by granting 50 average MW of billing credits to eligible resources. BPA's objective in the test was to ensure that the billing credit mechanism is workable for BPA customers.

II. Billing Credit Proposals

The proposals submitted in response to the Billing Credit Solicitation were divided into two groups, conservation and generation resources. Because CSEI projects reduce electric power consumption or losses by increasing efficiency of electric use, production, transmission, or distribution, they were considered a subset of conservation measures, but covered in separate contracts. Conservation and CSEI projects are not discussed, in detail, in this Notice.

III. Description of the Generation Proposals

Seventeen generation proposals representing 11 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Proposed generation projects included hydroelectric, biomass, and cogeneration projects to produce electricity. Five of the 17 proposals were withdrawn during the evaluation process and three proposals were rejected for not meeting the threshold criteria. BPA has released previous **Federal Register** Notices announcing the signing of generation projects.

BPA intends to sign a contract with these public bodies for the following generation projects:

1. City of Tacoma, Washington—Wynoochee Hydroelectric Project—a hydroelectric project.
2. Eugene Water and Electric Board—Steam Plant Project—a back pressure turbine project.

These projects meet the qualifications for billing credits, and BPA has completed its obligations under NEPA. The customers will comply with all applicable environmental requirements in the construction of the projects and during the projects' operation phase.

IV. Methodology for Determining Generation Billing Credits

The payment for billing credits (BC) for each customer will be calculated and paid monthly as follows:

Both the City of Tacoma, Washington, and EWEB are Computed Requirements Customers. Under both Power Sales Contracts with BPA, the monthly BC will be the lesser of the Adjusted Alternative Cost or Net Cost multiplied by the monthly amounts of Assured Firm Energy of each BC Resource, less the amount of Priority Firm Rate dollars each customer avoids paying as a result of the BC Resource. There will be no true-up; each customer is required to maintain the Assured Energy Capability for each BC Resource, as it must do for all firm resources under the Power Sales Contract.

V. Materials Available

Copies of the Billing Credits Policy, the Administrative Record, its Appendices, Addendum One, Amendment A to Addendum One, Addendum Two, and Addendum Three are available from BPA's Public Involvement office. Refer to the "For Further Information Contract" section of this notice.

Issued in Portland, Oregon, on December 4, 1992.

Steve Hickok,

Executive Assistant Administrator.

[FR Doc. 92–31307 Filed 12–23–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF93–33–000, et al]

Monsanto Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Monsanto Company

[Docket No. QF93–33–000]

December 16, 1992.

On December 10, 1992, Monsanto Company (Applicant), of P.O. Box 12830, Pensacola, Florida 32575, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Cantonment, Florida, and will consist of a combustion turbine generator and heat recovery boilers. Steam recovered from the facility will be used in an existing chemical complex for process uses. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 100 MW. The facility is scheduled to begin in January, 1993.

Comment date: January 25, 1993 in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER93–53–000]

December 16, 1992.

Take notice that on December 11, 1992, Arizona Public Service Company tendered for filing an amendment to its filing in Docket No. ER93–53–000.

A copy of this filing has been served on the Arizona Corporation Commission and the City of Williams.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER93–265–000]

December 16, 1992.

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated December 7, 1992, tendered for filing a Second Supplemental Agreement to the interconnection agreement between Indiana Municipal Power Agency (IMPA) and LG&E.

The Second Supplemental Agreement modifies the Interconnection Agreement such that it references the Participation Agreement or the Unit Power Purchase Agreement, whichever is in effect. The interconnection agreement between IMPA and LG&E currently references only the Unit Power Purchase Agreement. This filing affects Schedule G, Backup Power, Schedule H, Transmission Service and Schedule J, Replacement Energy.

A copy of the filing was served upon the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. The United Illuminating Company

[Docket No. ER91–680–000]

December 16, 1992.

Take notice that on December 4, 1992, The United Illuminating Company (UI) filed an extension of a short-term, coordination transaction involving the exchange of capacity entitlements with Connecticut Municipal Electric Energy Cooperative (CMEEC). Under the original agreement, dated September 20, 1991, service was to end December 31, 1992. Service will be extended until terminated by either party. No other terms of the original agreement have been changed.

Copies of the filing were mailed to CMEEC.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Union Electric Company

[Docket No. ER93–267–000]

December 16, 1992.

Taken notice that on December 8, 1992, tendered for filing Third Revised Exhibit A to its Wholesale Electric Service Agreements with the Cities of California, Centralia, Clarksville, Farmington, Fredericktown, Hannibal, Kahoka, Kirkwood, Linneus, Marceline, Owensville, Perry, Rolla, and St. James, Missouri; Citizens Electric Corporation; Sho-Me Power, and West Point Municipal Utility System, providing for a decrease in the rates charged pursuant to said Agreements.

Said decrease in rates follows a decrease in the Company's Missouri retail rates and is being applied to the Company's wholesale customer's settlement rates pursuant to Section 2 of said Wholesale Electric Service Agreements.

Copies of the filing were served upon the public utility's jurisdictional customers, the Missouri Public Service Commission and the Iowa Utilities Board.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER93–167–000]

December 16, 1992.

Take notice that on November 30, 1992, Puget Sound Power & Light Company (Puget) tendered for filing additional information to its filing of November 17, 1992 in this docket.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Electric Company

[Docket No. ER93–261–000]

December 16, 1992.

Take notice that on December 7, 1992, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) an initial rate schedule for transmission services to Penntech Papers, Inc. (Penntech). Under a Transmission Services Agreement between Penelec and Penntech, Penelec would provide Penntech with firm transmission services for a period of 20 years for the delivery of energy from Penntech's proposed qualifying cogeneration facility to be located in Johnstonburg, Pennsylvania to Niagara Mohawk Power Corporation. Penelec has requested a waiver of § 35.3(a) of the Commission's Regulations (18 CFR 35.3(a)) to the extent required to permit the proposed rates to go into effect not later than February 1, 1993.

Copies of the filing have been served on the Pennsylvania Public Utility Commission and Penntech.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company; Massachusetts Electric Company; The Narragansett Electric Company

[Docket No. ER93–255–000]

December 16, 1992.

Take notice that New England Power Company, Massachusetts Electric Company and The Narragansett Electric Company jointly tendered for filing various interconnection Agreements on December 4, 1992.

The purpose of the agreements is to permit various utilities, municipal light departments and non-utility generators to interconnect with the companies' transmission and distribution.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Alabama Power Company

[Docket No. ER93–253–000]

December 16, 1992.

Take notice that on December 3, 1992, Alabama Power Company (Alabama) tendered for filing revisions to a Service Agreement between Alabama and Black Warrior Electric Membership Corporation.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER93–242–000]

December 16, 1992.

Take notice that on December 9, 1992, Florida Power & Light Company (FP&L) tendered for filing an amendment to its November 27, 1992 filing in the above-referenced docket.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Company

[Docket No. ER93–105–000]

December 16, 1992.

Take notice that on December 3, 1992, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR an Amendment 1 to its filing of the Transmission Service Agreement (WWP Contract No. WP–PS92–4846) between the Washington Water Power Company and PacifiCorp. WWP states that this Amendment 1 provides additional information on the Newport 115/60 kV Substation use of facilities charges. This information was requested by Commission staff.

A copy of the filing was served upon PacifiCorp.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER92–826–000]

Errata

(December 16, 1992)

Notice of filing

(December 10, 1992)

Take notice that the Notice of Filing issued on December 10, 1992, under Docket No. ER93–235–000 should have been issued under Docket No. ER92–826–000.

13. The Detroit Edison Company

[Docket No. ER93–91–000]

December 16, 1992.

Take notice that The Detroit Edison Company (Detroit Edison) on December 11, 1992, tendered for filing revised statements supporting its rate application in the above-referenced proceedings. The revised statements reflect cost of service normalization of income taxes required by the Commission's Order No. 144 and a modification in overall rate of return.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Green Mountain Power Corporation

[Docket No. ER93–272–000]

December 16, 1992.

Take notice that on December 9, 1992, Green Mountain Power Corporation (GMP) tendered for filing a letter dated December 9, 1992 notifying the Federal Energy Regulatory Commission that it would continue to provide service pursuant to an Option Power Sales Agreement and Amended Distribution Service Agreement (the Agreement) between GMP and the Vermont Department of Public Service which was filed previously in Docket No. ER90–151–000. GMP stated that the Agreement expired in accordance with its terms on October 31, 1992, and requested waiver of the Commission's regulations in order to permit the notification of GMP's intention to continue to provide service thereafter in accordance with the rates, terms and conditions of the Agreement to be effective as of that date.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Pennsylvania Power & Light Company

[Docket No. ER92–642–000]

December 16, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on December 9, 1992, tendered for filing an Amended executed Power Supply Agreement dated as of December 1, 1992 (Amended 1992 PSA), between PP&L and UGI Utilities, Inc. (UGI). PP&L states that the Amended 1992 PSA sets forth the terms and conditions under which PP&L will sell power to UGI. When approved, the Amended 1992 PSA will supersede and replace the November 22, 1977, Power Supply Agreement between PP&L and UGI, as supplemented to date, and designated by the Commission as PP&L Rate Schedule No. 68.

PP&L requests an effective date for the Amended 1992 PSA of March 1, 1993. PP&L states that a copy of its filing was served on UGI and the Pennsylvania Public Utility Commission.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Maine Public Service Company

[Docket No. ER92–725–000]

December 16, 1992.

Take notice that on December 9, 1992, Maine Public Service Company (Maine Public) tendered an amended filing of a proposed initial rate schedule, originally filed July 14, 1992, pertaining to the short term, non-firm sale of capacity and energy. The rate will be negotiated between Maine Public and the purchaser at the time of the transaction, but not to exceed Maine Public's cost of service for the units available for sale. A Service Agreement will be executed prior to the time of a purchase by a particular utility and submitted to the Commission. An amended filing is being made to include modifications suggested by the Commission Staff.

Additionally, Maine Public has included with the amended filing an executed Service Agreement with Bangor Hydro-Electric Company.

Maine Public has requested that the rate schedule become effective no later than November 18, 1992, corresponding with the commencement of the initial transaction under said rate schedule, and requests waiver of the Commission's regulations regarding filing.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Pennsylvania Power & Light Company

[Docket No. ER93–268–000]

December 16, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on December 8, 1992, tendered for filing an Offer of Settlement (Offer), dated December 8, 1992, between PP&L and Atlantic City Electric Company (Atlantic City).

PP&L states that a copy of its filing was served on Atlantic City, the Pennsylvania Public Utility Commission and the State of New Jersey Board of Regulatory Commissioners.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER93–250–000]

December 16, 1992.

Take notice that Entergy Services, Inc. (Entergy Services) as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively the "Entergy Operating Companies") on December 2, 1992 tendered for filing the Second Transmission Service Agreement (Second TSA) between Entergy Service and Entergy Power, Inc. (Entergy Power). The Second TSA sets out the terms and conditions of firm and non-firm transmission service under the Entergy Operating Companies' Transmission Service Tariff, which has been filed in Docket No. ER91–569–002, for the sale of base load capacity and reserve unit capacity to Northeast Texas Electric Cooperative, Inc.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Tampa Electric Company

[Docket No. ER93–264–000]

December 16, 1992.

Take notice that on December 7, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement that amends an existing Letter of Commitment providing for the sale by Tampa Electric to the Kissimmee Utility Authority (Kissimmee) of capacity and energy from Tampa Electric's Big Bend Station. The tendered Letter Agreement extends the term of the commitment and reduces the level of committee reserved capacity.

Tampa Electric proposes an effective date of January 1, 1993, for the Letter Agreement, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Iowa Electric Light and Power Company

[Docket No. ER93–262–000]

December 16, 1992.

Take notice that Iowa Electric Light and Power Company (Iowa Electric), on December 7, 1992, tendered for filing an Interconnection Agreement dated November 25, 1992, between Central Illinois Public Service Company (CIPS) and Iowa Electric.

The Interconnection Agreement provides for coordinated interconnection operation including the

interchange of Power and Energy under Emergency Service, Economy Energy, Short Term Power Non-Displacement, and Limited Term Power Schedules. The proposed effective date for the Agreement is the closing date of the sale agreements between the parties and Union Electric.

Copies of this filing have been sent to Central Illinois Public Service Company, the Iowa State Utilities Board, and the Illinois Commerce Commission.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. The United Illuminating Company

[Docket No. ER93–258–000]

December 16, 1992.

Take notice that on December 4, 1992, the United Illuminating Company (UI) tendered for filing a rate schedule for a coordination transaction involving the sale of capacity entitlements to Connecticut Municipal Electric Energy Cooperative (CMEEC). The rate schedule corresponds to a letter agreement, dated December 1, 1992, between UI and CMEEC. The commencement date for service under the agreement is January 1, 1993. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's Bridgeport Harbor Station Unit #2.

UI also filed an extension of a short-term, coordination transaction involving the exchange of capacity entitlements with Connecticut Municipal Electric Energy Cooperative (CMEEC). Under the original agreement, dated December 3, 1991, service was to end December 31, 1992. Service will be extended until the above mentioned new agreement becomes effective. No other terms of the original agreement have been changed.

Copies of the filing were mailed to CMEEC.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power & Light Company

[Docket No. ER93–271–000]

December 17, 1992.

Take notice that on December 9, 1992, Florida Power & Light Company (FPL) filed its Agreement to Provide Coordination Transmission Service and Additional Transmission Service between Florida Power & Light Company and the Utility Board of the City of Key West, Florida.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Company

[Docket No. ER93–270–000]

December 17, 1992.

Take notice that on December 9, 1992, Arizona Public Service Company (APS or Company) tendered for filing revised Exhibit I and a proposed extension to the Lease Power Agreement between APS and Electrical District No. 3 (District) (APS–FPC Rate Schedule No. 12).

No change to the current rate or revenue levels presently on file with the Commission is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on the District and the Arizona Corporation Commission.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER93–052–000]

December 17, 1992.

Take notice that on December 9, 1992, PacifiCorp tendered for filing an Amendment to its filing under FERC Docket No. ER93–052–000.

The Amended filing is in response to Commission's Staff's questions under FERC Docket No. ER93–052–000.

Copies of this filing were supplied to Nevada Power Company, Southern California Edison Company, The Department of Water Resources of the State of California, the Public Utility Commission of Oregon, the Public Service Commission of Nevada and the Public Utilities Commission of the State of California.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Public Service Electric and Gas Company

[Docket No. ER93–781–000]

December 17, 1992.

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on December 11, 1992, tendered for filing a supplement to the agreement filed in this docket on August 14, 1992 between PSE&G and Orange & Rockland (O&R).

In response to discussions with Commission Staff, PSE&G hereby submits the First Supplemental Agreement by and between Public Service Electric and Gas Company and Orange and Rockland Utilities, Inc. which establishes ceiling and floor caps on annual revenues from the sale of capacity and associated energy, eliminates the contribution of Cost of Work in Progress (CWIP) in the development of the "Up-to" Capacity Charge, and revises the calculation used in determining losses.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Appalachian Power Company

[Docket Nos. EL89–53–005, ER90–132–005 and ER90–133–005]

December 17, 1992.

Take notice that on December 4, 1992, Appalachian Power Company tendered for filing its compliance report in the above-referenced dockets.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Montaup Electric Company

[Docket No. ER92–91–001]

December 17, 1992.

Take notice that on November 30, 1992, Montaup Electric Company tendered for filing its compliance filing in this docket pursuant to the Commission's order issued on September 30, 1992 in this docket.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. Midwest Power Company

[Docket No. ER92–694–000]

December 17, 1992.

Take notice that on November 4, 1992, Midwest Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Portland General Electric Company

[Docket No. ER93–273–000]

December 17, 1992.

Take notice that Portland General Electric Company (PGE), on December 11, 1992, tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology. This filing includes the revised Appendix 1 to the Residential Purchase and Sale Agreement.

The Bonneville Power Administration determined the ASC rate for PGE to be 33.26 mills/kWh, effective April 15, 1992. PGE does not dispute the determination.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Company

[Docket No. ER93-130-000]

December 17, 1992.

Take notice that New England Power Company (NEP), on December 11, 1992, amended its filing in this docket. The amendment substitutes an initial service agreement with the Village of Johnson, Vermont, Electric Department for an amendment to a service agreement.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. Commonwealth Edison Company

[Docket No. ER92-354-001]

December 17, 1992.

Take notice that on December 9, 1992, Commonwealth Edison Company (Commonwealth) tendered for filing its compliance refund report pursuant to the Commission's order issued November 10, 1992.

Copies of the tendered filing have been served by Commonwealth upon the New England Power Company, the Commission Staff and the Massachusetts Department of Public Utilities.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31220 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-32-000]

Colorado Interstate Gas Co.; GRI Charge Filing

December 18, 1992.

Take notice that on December 15, 1992, Colorado Interstate Gas Company ("CIG") submitted for filing an original and six copies of tariff sheets pursuant to Commission Order issued August 28, 1992, in Docket No. RP92-133-000 (Phase I), reflecting an 8/Mcf cent Gas Research Institute ("GRI") D1 demand charge, and a continuation of the existing 1.51 cent/Mcf GRI commodity charge effective as of January 1, 1993.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before December 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31260 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-111-000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

December 18, 1992.

Take notice that on December 15, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93-111-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate 14 existing delivery taps that were originally installed under section 311(a) of the Natural Gas Policy Act of 1978, under the certificate issued to El Paso in Docket No. CP82-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that El Paso constructed a number of delivery taps exclusively for use in the transportation of natural gas under subpart B of part 284 of the Commission's Regulations. El Paso states that the regulatory restriction placed on the facilities prohibits El Paso's shippers from utilizing the delivery taps under any transportation arrangement other than a Subpart B transportation arrangement. El Paso states that it now requests authorization to operate, under the Natural Gas Act, the delivery tap facilities listed below.

Delivery point	Location
Borger Carbon Black Delivery Point No. 1.	Hutchinson County, Texas
Amoco Wasson Plant Delivery Point.	Yoakum County, Texas
Intersearch Pet Foods/Border Steel Delivery Point.	El Paso County, Texas
Cochran County Delivery Point.	Cochran County, Texas
Hartley County Delivery Point.	Moore County, Texas
Sun Compressor Fuel Tap Delivery Point.	Coke County, Texas
Cabot Walton Delivery Point.	Winkler County, Texas
Phillips Dune Booster Fuel Tap Delivery Point.	Crane County, Texas
Phillips Credo Booster Station Fuel Supply Delivery Point.	Glasscock County, Texas
Lamb County Delivery Point.	Lamb County, Texas
Kai Farms Tap Delivery Point.	Pima County, Arizona
Bruce Foods Meter Station Delivery Point.	El Paso County, Texas
El Paso Refining (Endevco) Delivery Point.	El Paso County, Texas
Phillips Lusk Plant Delivery Point.	Lea County, New Mexico

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31262 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-47-000]

Questar Pipeline Co.; Tariff Filing

December 16, 1992.

Take notice that Questar Pipeline Company, on December 11, 1992, tendered for filing and acceptance to be effective January 10, 1993, First Revised Sheet No. 63 to Original Volume No. 1-A of its FERC Gas Tariff.

Questar states that this filing revises § 13.1 of the General Terms and Conditions to Original Volume No. 1-A of its FERC Gas Tariff by removing tariff language that requires a shipper to provide documentation demonstrating a need for capacity at the requested receipt and delivery points.

Questar states further that this filing was served upon its transportation customers and the Wyoming and Utah public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31217 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-68-000]

Questar Pipeline Co.; Request Under Blanket Authorization

December 16, 1992.

Take notice that on November 18, 1992, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93-68-000, an application pursuant to 18 CFR 157.205 and 157.216(b) requesting authority to abandon, by removal, one 3/4-inch sales tap/delivery point and appurtenant facilities on Questar's transmission pipeline system previously used to deliver natural gas to Mountain Fuel Supply Company (Mountain Fuel), under Rate Schedules CD-1 and X-33 of Questar's FERC Gas Tariff, for ultimate delivery by Mountain Fuel to the Husky truck stop located near Rock Springs, Wyoming. Such request was made under the blanket certificate authorization issued in Questar's Docket No. CP82-491-000 pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the prior-notice request, which is on file with the Commission and open to public inspection.

Questar proposes to abandon the 3/4-inch sales tap/delivery point in response to a request of Mountain Fuel, Questar's local distribution company affiliate and the only customer receiving service through the subject tap. Questar explains that the total investment associated with the facilities proposed to be abandoned is $886. It is stated that because Mountain Fuel is currently providing natural-gas service to the Husky truck stop via an adjacent sales tap-delivery point, service to Mountain Fuel, and ultimately Husky, will not be abandoned by the operation of this prior-notice request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31218 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-47-001]

Questar Pipeline Co.; Tariff Filing

December 18, 1992.

Take notice that Questar Pipeline Company, on December 16, 1992, tendered for filing and acceptance to be effective January 10, 1993, First Revised Sheet No. 63A to Original Volume No. 1-A of its FERC Gas Tariff.

Questar states that this filing revises § 13.1 of the General Terms and Conditions to Original Volume No. 1-A of its FERC Gas Tariff by removing tariff language that requires a shipper to provide documentation demonstrating a need for capacity at the requested receipt and delivery points.

Questar states further that this filing was served upon its transportation customers and the Wyoming and Utah public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31259 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-100-000]

Texas Eastern Transmission Corp.; Application

December 16, 1992.

Take notice that on December 8, 1992, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP93-100-000, an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to upgrade and rebuild six existing gas turbine/compressor units at the Lilly, Grantville and Bechtelsville, Pennsylvania compressor stations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that it would upgrade and rebuild six early-model Westinghouse Electric W-52 regenerative cycle gas turbine compressor engines. Texas Eastern further states that it would retire, scrap, and replace essentially all existing components of the old turbines. Texas Eastern states that it would upgrade one unit at the Lilly, Pennsylvania station in 1994, and upgrade the second unit at Lilly in 1995. In 1996, Texas Eastern states, it would upgrade two units at the Grantville station. The last two units located at the Bechtelsville station, would be upgraded in 1997.

Texas Eastern also states that it requests authorization to capitalize the costs associated with this upgrade program. Texas Eastern asserts that

those existing turbine units provide capacity used by Texas Eastern to render service to its system-wide customers and accordingly, Texas Eastern proposes to include the costs to rebuild these turbines in rate base and to recover such costs from its system-wide customers. It is asserted that the total cost of the proposal is $22,300,000.

In addition, Texas Eastern claims that the proposed turbine upgrade program has been determined to be the most effective means of reducing non-routine maintenance expenses, reducing exposure to flow disruptions due to turbine/compressor outage, and reducing fuel cost through improved efficiency. It is stated that the existing gas turbine units were installed in 1956 and 1957 and that various parts have exceeded the manufacturer's recommended service life and are requiring more frequent down time for inspections and maintenance. In addition, maximum horsepower outputs have decreased by approximately 10% to 20%, and thermal efficiencies have dropped 22% or lower.

Texas Eastern expects that the proposed turbine upgrade program would reduce maintenance costs and increase reliability. Further, reliability of the units as a result of age and deterioration of major components is also a primary concern, because the potential for major turbine failure increases. Finally, Texas Eastern states, inventories of older, more difficult to locate parts could be reduced because there would be fewer older units in operation. Replacement parts for the rebuilt units would be more readily available, which would also reduce inventory requirements.

It is also claimed that the proposed upgrading of these units would also increase thermal efficiencies from the present 22% level to 25.5% and that the increased efficiency alone would reduce fuel consumption by 13% and would generate fuel savings of approximately 2,420,000 Mcf over the ten year period from 1995 to 2005. Also, additional savings would be obtained by increasing the use factor of the upgraded units and proportionately decreasing usage of less efficient units.

Texas Eastern estimates that the cost to replace the turbines, as compared to the proposed upgrade program, would be in the order of magnitude of $60,000,000.

Texas Eastern states that, subject to Commission approval, Texas Eastern proposes to capitalize the costs associated with the turbine upgrade program. Texas Eastern asserts that this four-year $22,300,000 project represents a substantial improvement in the reliability and efficiency of Texas Eastern's system. The modification would upgrade major items of depreciable property using the latest standards in gas turbine technology. Essentially all major components of the turbine units, including the turbine casings and rotors will be newly constructed. For these reasons and due to the similarly large dollar amount involved in such a major renovation, Texas Eastern states that capitalization is the appropriate accounting treatment for the project.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 6, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31219 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-104-000]

U-T Offshore System; Application

December 16, 1992.

Take notice that on December 9, 1992, U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93-104-000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of firm and associated interruptible overrun transportation services provided to Trunkline Gas Company (Trunkline) under U-TOS' Rate Schedules T-8 and I, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Service for Trunkline was certificated in Docket No. CP76-118 by order issued June 12, 1978, 3 FERC ¶ 61,232 (1978). Trunkline's currently effective contract demand under the T-8 Rate Schedule is 121,856 Mcf per day, and its overrun quantity under Rate Schedule I is 178,800 Mcf per day.

U-TOS states that it was notified by Trunkline by letter dated June 2, 1992 of Trunkline's intent to terminate the service agreement underlying the T-8 Rate Schedule at the end of the primary term thereof, *i.e.*, on June 14, 1993. Accordingly, U-TOS requests an order permitting and approving abandonment of Rate Schedule T-8 and related Rate Schedule I (interruptible overrun) service effective on June 14, 1993.

U-TOS states that it does not propose to abandon any facilities in the instant application. U-TOS states that no service to any of its other customers will be affected by the abandonment authorization requested herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required therein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for U–TOS to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31214 Filed 12–23–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–105–000]

U–T Offshore System; Application

December 16, 1992.

Take notice that on December 9, 1992, U–T Offshore System, P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–105–000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of firm and associated interruptible overrun transportation services provided to Natural Gas Pipeline Company of America (Natural) under U–TOS' Rate Schedules T–1 and I, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Service for Natural was certificated in Docket No. CP76–118 by order issued January 13, 1977. Texas Gas Transmission Corporation, *et al.* 57 FPC 199 (1977). Natural's currently effective contract demand under the T–1 Rate Schedule is 113,700 Mcf per day, and its overrun quantity under Rate Schedule I is 167,944 Mcf per day.

U–TOS states that it was notified by Natural by letter dated April 3, 1992 of Natural's intent to terminate the service agreement underlying the T–1 Rate Schedule at the end of the primary term thereof, *i.e.*, on May 22, 1993. Accordingly, U–TOS requests an order permitting and approving abandonment of Rate Schedule T–1 and related Rate Schedule I (interruptible overrun) service effective on May 22, 1993.

U–TOS states that it does not propose to abandon any facilities in the instant application. U–TOS states that no service to any of its other customers will be affected by the abandonment authorization requested herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required therein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for U–TOS to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31215 Filed 12–23–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–107–000]

U–T Offshore System; Application

December 16, 1992.

Take notice that on December 11, 1992, U–T Offshore System, P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–107–000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of firm and associated interruptible overrun transportation services provided to Columbia Gas Transmission Corporation (Columbia) under U–TOS' Rate Schedules T–4 and I, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Service for Columbia was certificated in Docket No. CP76–118 by order issued June 12, 1978. 3 FERC ¶ 61,232 (1978). Columbia's currently effective contract demand under the T–4 Rate Schedule is 30,987 Mcf per day, and its overrun quantity under Rate Schedule I is 89,505 Mcf per day.

U–TOS states that it was notified by Columbia by letter dated June 24, 1992 of Columbia's intent to terminate the service agreement underlying the T–4 Rate Schedule at the end of the primary term thereof, *i.e.*, on June 29, 1993. Accordingly, U–TOS requests an order permitting and approving abandonment of Rate Schedule T–4 and related Rate Schedule I (interruptible overrun) service effective on June 29, 1993.

U–TOS states that it does not propose to abandon any facilities in the instant application. U–TOS states that no service to any of its other customers will be affected by the abandonment authorization requested herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required therein, if the Commission on its own review of

the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for U–TOS to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31216 Filed 12–23–92; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 92–155–NG]

Canadian Hydrocarbons Marketing (U.S.) Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Canadian Hydrocarbons Marketing (U.S.) Inc. (Canadian Hydrocarbons) authorization to import up to 72 Bcf of Canadian natural gas over a two-year term beginning on April 1, 1993, the day after Canadian Hydrocarbons' current authorization expires, through March 31, 1995.

A copy of this order is available for inspection and copying in the office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, Except Federal holidays.

Issued in Washington, DC, December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–31317 Filed 12–23–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–34–NG]

Fulton Cogeneration Associates; Order Amending Conditional Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that the conditional authorization previously granted to Fulton Cogeneration Associates (Fulton) in DOE/FE Opinion and Order No. 492, issued March 28, 1991, to import up to 55 Bcf of Canadian natural gas through October 31, 2005, has been finalized. Fulton may now import its remaining contract volumes at Grand Island, New York, for transportation by the proposed Empire State Pipeline to its 47.4-megawatt cogeneration facility in Fulton, New York.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–31313 Filed 12–23–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–109–NG]

Kamine/Besicorp Beaver Falls, L.P.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that on December 3, 1992, it issued an order granting authorization to Kamine/Besicorp Beaver Falls, L.P. to import from Canada near Waddington, New York, up to 16,100 Mcf of natural gas per day through November 1, 2008. The gas will be used to fuel a 79.9-megawatt cogeneration facility being built in Croghan, New York.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–31315 Filed 12–23–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–90–NG]

Kamine/Besicorp Syracuse L.P.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Kamine/Besicorp Syracuse L.P. authorization to import at Chippawa, Ontario/Grand Island, New York, up to 16,300 Mcf per day, and up to a total of 89.2 Bcf of Canadian natural gas over a period of 15 years, beginning on the date of commercial operation of a cogeneration facility to be constructed in the Town of Geddes, New York.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 15, 1992.

Charles F. Vacek

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–31316 Filed 12–23–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–139–NG]

The Montana Power Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Montana Power Company (MPC) blanket authorization to import up to 10 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after February 6, 1993, the date on which MPC's current blanket import authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31314 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed the Week of December 4 Through December 11, 1992

During the week of December 4 through December 11, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 18, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 4 through December 11, 1992]

Date	Name and location of applicant	Case No.	Type of submission
12/7/92	Texaco/Bancfirst, Ponca City, OK	RR321-123	Request for Modification/Recession in the Texaco refund procedures. If granted: The October 1, 1992 Decision and Order (Case No. RF321-4152) issued to Bancfirst regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/7/82	Larry's Clark Station	RF342-313
12/7/82	Gonzales Canal Station	RF346-14
4/15/92	Jayson's Bottled Gas	RF340-111
6/30/92	Dresser Industries, Inc	RF225-11
12/4/92 thru 12/11/92	Texaco Oil Refund Applications Received.	RF321-19488 thru RF321-19502
12/4/92 thru 12/11/92	Gulf Oil Refund Applications Received.	RF300-20747 thru RF300-20763
12/4/92 thru 12/11/92	Atlantic Richfield Applications Received.	RF304-13426 thru RF304-13438
12/4/92 thru 12/11/92	Crude Oil Refund Applications Received.	RF272-93980 thru RF272-93995
12/8/92	Holly Sugar Corporation	RF347-1
12/11/92	Ball Corp	RF347-2

[FR Doc. 92-31309 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders the Week of November 16 Through November 20, 1992

During the week of November 16 through November 20, 1992, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within 10 days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: December 18, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Chapman Oil, Brewer, Maine, Lee-0037 Reporting Requirements

Chapman Oil, (Chapman) filed an Application for Exception from the provision of filing Form EIA-782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Chapman to be exempted from filing Form EIA-782B. On November 18, 1992, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

[FR Doc. 92-31311 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders the Week of November 30 through December 4, 1992

During the week of November 30 through December 4, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Enron Corp./Northern Illinois Gas Co., 12/2/93 RF340-103

The DOE issued a Decision and Order concerning an Application for Refund

that the Northern Illinois Gas Company (NI-Gas) has submitted in the Enron Corporation special refund proceeding. The DOE found that NI–Gas was a public utility subject to the jurisdiction of the Illinois Commerce Commission. Accordingly, the DOE granted NI-Gas a refund of 3.8 million dollars based on its total purchases from Enron, and required NI-Gas to pass through the refund to its customers on a dollar for dollar basis.

Gerald A. Barrett, Inc., 12/2/92 FR272–25932, RD272–25932

The DOE issued a Decision and Order granting an Application for Refund filed by Gerald A. Barrett, Inc., a producer and transporter of bituminous concrete materials, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $23,370.

The Gillette Company, 12/4/92, RF272–25506, RD272–25506

The DOE issued a Decision and Order granting an Application for Refund filed by The Gillette Company, a manufacturer of shaving products, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States cited increases in Gillette's sales and profits and the maintenance of a substantial share of the blade and razor market during the refund period. In addition, the States submitted an affidavit of an economist stating that, because of the relative elasticities of supply and demand, nearly every industry passes through a portion of its cost increases. The DOE determined that the evidence offered by the States was insufficient to rebut the end-user presumption of injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $22,204.

Texaco Inc./Dental's Automotive Center, 12/3/92, RF321–5260

The DOE issued a Decision and Order denying an Application for Refund filed by Denial's Automotive Center (Dental's) in the Texaco Inc., special refund proceeding. The DOE found that because Dental's did not purchase product from Texaco, but sold Texaco product on consignment for an independent distributor of Texaco products, Dental's was not injured by any Texaco overcharges and consequently was not entitled to a refund in the Texaco proceeding.

Texaco Inc./Mike M. Marcello, Inc., 12/2/92, RF321–3843

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding on behalf of Mike M. Marcello, Inc. (Marcello) (Case No. RF321–3843), a distributor of Texaco products. In a Proposed Decision and Order (PDO) issued on May 15, 1992, the DOE tentatively determined that the Marcello application should be denied. That proposed determination was based on a finding that, after filing 17 unauthorized Texaco refund applications that were later dismissed, Marcello had again filed two unauthorized Texaco refund applications using the names of individuals who had no knowledge of the submissions. These actions were contrary to the stated requirements of the Texaco proceeding and the explicit instructions given to Mr. Frank Marcello, the owner of the refinery, by this Office after the first 17 applications were dismissed. On June 11, 1992, Mr. Marcello's attorney filed a two-page Statement of Objections, on his behalf, contesting the denial of the Marcello submission. However, this submission failed to provide evidence to disprove the findings of the PDO or any reasonable explanation regarding Marcello's filing of the unauthorized applications. It remained clear that neither Marcello, Inc. nor the individuals named in those applications were entitled to the refunds which would have resulted had those applications been granted. Accordingly, the DOE found that it lacked confidence in the veracity of any statements by Mr. Marcello and it would be inappropriate to grant him a refund. The application filed on behalf of Marcello, Inc. was therefore denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Alliance City Schools et al.	RF272–87408	12/03/92
Atlantic Richfield Company/Acme Markets, Inc. et al.	RF304–13210	11/30/92
Atlantic Richfield Company/Ashdale Arco et al.	RF304–6032	11/30/92
Atlantic Richfield Company/G&G Oil Company of Indiana, Inc.	RR304–48	12/04/92
Atlantic Richfield Company/J. C. Hayes, Inc. et al.	RF304–3107	12/04/92
Atlantic Richfield Company/Vassar's Arco et al.	RF304–11905	12/03/92
Beaver River Central School et al.	RF272–87301	12/03/92
Bellwood School District 88 et al.	RF272–79004	11/30/92
Benson County, North Dakota.	RC272–165	12/03/92
Chesterfield County	RC272–164	12/03/92
Cimarron-Ensign Schools et al.	RF272–87600	12/04/92
City of Davis et al ...	RF272–83007	11/30/92
Collier County School District et al.	RF272–87241	12/03/92
Enron Corp./Economy Gas Company.	RF340–64	12/02/92
Enron Corp./Pester Refining Company.	RF340–105	12/03/92
Enron Corp./Sooner Petroleum Company.	RF340–118	12/02/92
Fall Creek School District et al.	RF272–87204	12/03/92
Gulf Oil Corporation/Eastern Express, Inc.	RF300–16113	12/03/92
Gulf Oil Corporation/No-Glow Gas Company et al.	RF300–16523	11/30/92
Kindred Public School District No. 2 et al.	RF272–83327	12/02/92
M.S.D. Wabash County Schools et al.	RF272–80808	11/30/92
McDowell County et al.	RF272–87803	12/03/92
Murphy Oil Corp./Handy Shops, Inc. et al.	RF309–1199	11/30/92
Okeechobee County et al.	RF272–87707	12/02/92
Reese Construction Company.	RF272–26458	12/02/92
Shell Oil Company/Holmes Oil Corporation.	RF315–10213	12/04/92
Texaco Inc./Arthur P. Gumz Farms et al.	RF321–15175	12/03/92
Texaco Inc./Halprin's Texaco.	RF321–14837	12/04/92
Fletcher Oil Company.	RF321–14855	.....

Indian Oil Company	RF321–16490	.....
A.G. Lipfert Oil	RF321–16529	.....
Texaco Inc./Hancock Texaco #1 et al.	RF321–16450	12/03/92
Texaco Inc./Ron's Texaco et al.	RF321–9920	12/03/92
Texaco Inc./United Service Center.	RF321–19478	12/02/92

Dimissals

The following submissions were dismissed:

Name	Case No.
Bill Ellis	RF304–13378
Brookhaven Public Schools System.	RF272–86844
Deese's Gulf	RR300–168
Halliburton Gas Company	RF321–17072
Hayes Gulf	RR300–150
Homewood School District	RF272–79171
Munday Pontiac	RF272–93661
Orange County Transit District ...	RF272–56525
Richard F. Wilcoxon	RR300–139
Rios Gulf	RR300–148
Sell's Texaco #3	RF321–16703
Siew's Texaco	RF321–17355
St. John's University	RF272–93330
TNT Red Star Express, Inc.	RF272–92778
Unified School Dist. # 379	RF272–86780
Variety Pic-Up, Inc.	RF309–1220
West Texaco	RF321–15251
West Texaco Service Station	RF321–17344

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 18, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–31310 Filed 12–23–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4547–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 07, 1992 Through December 11, 1992 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–FHW–D40127–PA

Rating EC1, Danville-Riverside Bridge Replacement Project, Construction and Road Construction, across the North Branch of the Susquehanna River, Funding and Section 404 Permit, Appalachian Mountain, Montour and Northumberland Counties, PA.

Summary: EPA expressed concern for potential impacts to the historic resources of the area. EPA suggests that the Federal Highway Administration resolve all outstanding concerns with the Advisory Council on Historic Preservation and the Pennsylvania Historic and Museum Commission.

ERP No. D–FHW–E40747–NC

Rating EC2, US 13/NC–24 Transportation Project, Improvements, from All American Freeway to I–95 at the existing US–13 Interchange, Funding, COE Section 10 and 404 Permits, City of Fayetteville, Cumberland County, NC.

Summary: EPA's concerns were primarily related to destruction of wetlands. Additional information was requested to further quantify projected wetland losses in terms of functional values. EPA requested that other alternatives that could reduce wetland destruction be investigated.

ERP No. D–NPS–K61123–HI

Rating LO, Kaloko-Honokohau National Historical Park, Management and Development, General Management Plan, Implementation, Hawaii County, HI.

Summary: EPA had no objections with the DEIS but requested additional information in the FEIS on wastewater disposal impacts, nonpoint source water pollution, and pollution prevention efforts at the historical park.

ERP No. D–USA–E11030–AL

Rating EC2, Redstone Arsenal Base Realignment, Transfer of Activities from US Army Armament, Munitions and Chemical Command, Rock Island, IL; Lexington-Bluegrass Army Depot, KY; Presido Army Base, San Francisco, CA and Harry Diamond Laboratories, Adelphi, MD to the Redstone Arsenal Base, Madison County, AL.

Summary: EPA expressed environmental concerns regarding the potential traffic problems within and around the Redstone Arsenal resulting from the functional and organizational changes. Additional information should be provided regarding the short and long-term measures to address traffic problems.

ERP No. DR–AFS–K61105–CA

Rating LO, Lake Tahoe Basin Management Unit (LTBMU) Forest Plan, New Information concerning the Lake of the Sky Visitor Information or Interpretive Center and Community Parking Development Project to Comply with the LTBMU Forest Plan, Tahoe City, Lake Tahoe, Placer County, CA.

Summary: EPA expressed a lack of objections to the proposed action.

Final EISs

ERP No. F–DOE–K80030–CA

Lawrence Livermore National (LLNL) and Sandia National (SNL) Laboratories, Continued Operation/Construction, Funding, Livermore Valley, City of San Francisco, Alameda and San Joaquin Counties, CA.

Summary: EPA recommended that the EIS Record of Decision contain commitments to ensure the facilities' compliance with all applicable environmental protection statutes.

Dated: December 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–31319 Filed 12–23–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4547–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Availability of Environmental Impact Statements Filed December 14, 1992 Through December 18, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920495, Final EIS, COE, CA, Los Angeles and Long Beach Harbors Navigation Improvements and Landfill Development Project, Construction and Approval of Master Plan Amendment, San Pedro Bay, Los Angeles County, CA, Due: January 25, 1993, Contact: Frank Piccola (213) 894–0244.

EIS No. 920496, Draft EIS, AFS, AK, North Revilla Project, Long-Term Timber Sale Contract, Implementation, Tongass National Forest, Ketchikan Administrative Area, Ketchikan Ranger District, Revillagigedo Island, AK, Due: February 09, 1993, Contact: Dave Arrasmith (907) 225–3101.

EIS No. 920497, Final Supplement, FHW, MN–TH–33 Improvements, I–35 to US TH–53, Additional Information Urban Section near the City of Cloquet, Approval of COE Permit, St. Louis

River, Carlton and St. Louis Counties, MN, Due: January 25, 1993, Contact: Kevin N. Kliethermes (612) 290–1242.

EIS No. 920498, Draft Supplement, NOA, Atlantic Sea Scallop, Placepecten Magellanicus, (Gmelin), Fishery Management Plan, (FMP), Additional Information, Amendment No. 4, Due: February 08, 1993, Contact: William W. Fox, Jr. (301) 713–2239.

EIS No. 920499, Draft EIS, AFS, UT, Chevron Table Top Project Exploratory Oil and Gas Wells Drilling, Leasing and Permit, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Due: February 09, 1993, Contact: Bernard Asay (307) 789–3194.

EIS No. 920500, Final EIS, FHW, MO, Ozark Mountain Highroad Corridor Construction from existing US 65/MO–F north of Branson, then south across Lake Taneycomo to another intersection with US 65 south of Branson, Funding, COE Section 10 and 404 Permits and Coast Guard Bridge Permit, Taney and Stone Counties, MO, Due: January 25, 1993, Contact: Tim Mullen (314) 636–7104.

EIS No. 920501, Final EIS, UMT, CA, Tasman Corridor Mass Transit System Improvements, between Milpitas and Northern San Jose and Mountain View/Sunnyvale, Funding, Santa Clara County, CA, Due: January 25, 1993, Contract: Robert Hom (415) 744–3116.

EIS No. 920502, Final EIS, AFS, CA, Littlerock Dam and Reservoir Restoration Project, Implementation and Special Use Permit, Section 404 Permit, Los Angeles National Forest, Valyermo Ranger, Los Angeles County, CA, Due: January 25, 1993, Contact: Michael J. Rogers (818) 574–1613.

EIS No. 920503, Draft EIS, BLM, NV, Cortez Gold Mines Expansion Project, Construction and Operation, Mining Plan of Operations, Right-of-Way Permits, Special-Use Permit, NPDES and Section 404 Permits, Crescent Valley, south of Battle Mountain District, Lander and Eureka Counties, NV, Due: March 01, 1993, Contact: Dave Davis (702) 415–4000.

Amended Notices

EIS No. 920376, Draft EIS, AFS, WY, Grand Targhee Ski Area Expansion Master Development Plan, Implementation, Targhee National Forest, Teton County, WY, Due: February 01, 1993, Contact; Lynn Ballard (206) 624–3151.

Published FR 11–06–92–Review period extended.

EIS No. 920429, Draft EIS, DOE, MS, AL, LA, Strategic Petroleum Reserve Expansion Plan, Implementation and Site Selection, Brazoria and Jefferson Counties, TX: Iberia and St. Mary Parishes, LA or Perry County, MS with Associated Pipeline and Terminals located in several counties and parishes of TX, LA, MS and AL, Due: January 13, 1993, Contact: Hal Delaplane (202) 586–4730.

Published FR—05–08–92 Review period extended.

EIS No. 920434, Draft EIS, AFS, OR, 1991 Warner Creek Fire Recovery Project, Northern Spotted Owl Habitat and Other Resources Reforestation, Northern Spotted Owl Habitat Conservation Area 0–10, Willamette National Forest, Oakridge Ranger District, Lane County, OR, Due: January 11, 1993, Contact: Terri Jones (503) 782–2291.

Published FR—11–13–92—Review period extended.

EIS No. 920482, Draft Supplement, NOA, PR, VI, Shallow-Water Reeffish Fishery Management Plan, Updated Information, Amendment 2, Puerto Rico and U.S. Virgin Island, Due: January 25 1993, Contact: William W. Fox, Jr. (301) 713–2239.

Published FR 12–11–92—Due Date Correction.

Dated: December 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–31320 Filed 12–23–92; 8:45 am]

BILLING CODE 6560–60–M

[OPP–00326; FRL–4072–5]

Zinc Salts; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredients zinc sulfate monohydrate (hereafter referred to as zinc sulfate), zinc chloride, and zinc oxide and the start of a 60–day public comment period. The RED for zinc salts is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemicals, and presents the Agency's determination regarding which pesticidal uses of zinc sulfate, zinc chloride, and zinc oxide are eligible for reregistration.

DATES: Written comments on the RED must be submitted by February 22, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00326" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Mark Wilhite, at (703) 308–8586.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredients: zinc sulfate, zinc chloride, and zinc oxide. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemicals zinc sulfate, zinc chloride, and zinc oxide is substantially complete. EPA has determined that all currently registered products containing zinc sulfate, zinc chloride, and zinc oxide as an active ingredient are eligible for reregistration.

All registrants of products containing zinc sulfate, zinc chloride, and zinc oxide have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been

submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: December 11, 1992.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92–31305 Filed 12–23–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00329; FRL–4072–8]

Soap Salts; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredients ammonium salts of fatty acids and potassium salts of fatty acids, and the start of a 60–day public comment period. The RED for soap salts is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of soap salts are eligible for reregistration.

DATES: Written comments on the RED must be submitted by February 22, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00329" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Veronica Dutch, at (703) 308–8585.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredients: ammonium salts of fatty acids and potassium salts of fatty acids. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical soap salts is substantially complete. EPA has determined that all currently registered products containing soap salts as an active ingredient are eligible for reregistration.

All registrants of products containing soap salts have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: September 30, 1992.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92–31303 Filed 12–23–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00332; FRL–4073–2]

Sodium Hydroxide; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient sodium hydroxide, and the start of a 60–day public comment period. The RED for sodium hydroxide is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of sodium hydroxide are eligible for reregistration.

DATES: Written comments on the RED must be submitted by February 22, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00332" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for

inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Richard Gebken, at (703) 308–8591.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredient: sodium hydroxide. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical sodium hydroxide is substantially complete. EPA has determined that all currently registered products containing sodium hydroxide as an active ingredient are eligible for reregistration.

All registrants of products containing sodium hydroxide have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: September 30, 1992.

Daniel M. Barolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92–31302 Filed 12–23–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100116; FRL–4159–4]

Labat-Anderson; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Labat-Anderson has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Labat-Anderson consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2), and will enable Labat-Anderson to fulfill the obligations of the contract.

DATES: Labat-Anderson will be given access to this information no sooner than December 29, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7460.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–W9–0052, Work Order Number 208, Labat-Anderson will provide support to the Certification and Training Branch of the Field Operations Division in its efforts of maintaining and effectively using regulatory and non-regulatory pesticide applicator training and certification files under FIFRA sections 4 and 23.

OPP has determined that access to this information is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Labat-Anderson prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Labat-Anderson is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Delivery Order Project Officer for this contract in OPP.

All information supplied to Labat-Anderson by EPA for use in connection with this contract will be returned to EPA when Labat-Anderson has completed its work.

Dated: December 16, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 92–31304 Filed 12–23–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL TRADE COMMISSION

[File No. 861 0126]

National Association of Social Workers; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Washington, DC-based, professional association from restraining competition among social workers by restricting advertising or solicitation, and from restricting social workers from paying a fee to any patient referral service.

DATES: Comments must be received on or before February 22, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Schroeder, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Avenue, Seattle, WA 98174. (206) 553–4656.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of National Association of Social Workers, a corporation.
File No. 861 0126

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the National Association of Social Workers, a corporation, and it now appearing that the National Association of Social Workers, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between the National Association of Social Workers, by its duly authorized officers and its attorney, and by counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 750 First Street, NE., suite 700, Washington, DC 20002.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For the purposes of this order, "NASW" means the National Association of Social Workers, its directors, trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees, successors, or assigns.

II

It is Ordered That NASW, directly, indirectly, or through any corporate or other device, in or in connection with NASW's activities as a professional association, in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall cease and desist from:

A. Prohibiting, restricting, regulating, declaring unethical, interfering with, restraining or advising against the advertising, publishing, stating or disseminating by any person of the prices, terms, availability, characteristics or conditions of sale of social workers' services, offered for sale or made available by any social worker or by any organization or institution with which a social worker is affiliated, through any means, including but not limited to the adoption or maintenance of any principle, rule, guideline or policy that restricts any social worker from:

1. Engaging in any solicitation of actual or prospective clients or other consumers or from offering services to clients or other consumers receiving similar services from another professional; or

2. Presenting testimonials from clients or other consumers.

Provided That nothing contained in this order shall prohibit NASW from formulating, adopting, disseminating and enforcing reasonable ethical principles or guidelines governing the conduct of its members with respect to:

(1) Representations, including representations of objective claims for which the claimant does not have a reasonable basis, that NASW reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act; or

(2) Uninvited, in-person solicitation of business from persons who, because of their particular circumstances, are vulnerable to undue influence; or

(3) Solicitation of testimonial endorsements (including solicitation of consent to use the person's prior statement as a testimonial endorsement)

from current psychotherapy patients, or from other persons who, because of their particular circumstances, are vulnerable to undue influence.

B. Prohibiting, restricting, regulating, declaring unethical, interfering with or restraining the giving or paying of any remuneration by any of its members or affiliates or any organization or institution with which any of its members or affiliates is associated to any patient referral service or other similar institution for the referral of clients or other consumers for professional service.

Provided That nothing contained in this section shall prohibit NASW from formulating, adopting, disseminating and enforcing reasonable ethical principles or guidelines requiring that its members disclosure to clients or other consumers that they will pay or give, or have paid or given, remuneration for the referral of such clients or other consumers for professional services.

III

It is further Ordered That, for a period of five (5) years after the date this order becomes final, NASW shall:

Maintain for three (3) years following the taking of any action against a person alleged to have violated any ethical principle, rule, policy, guideline or standard relating to advertising, solicitation or referral fees, in one separate file, segregated by the names of any person against whom such action was taken, and make available to Commission staff for inspection and copying, upon reasonable notice, all documents and correspondence that embody, discuss, mention, refer or relate to the action taken and all bases for or allegations relating to it.

IV

It is further Ordered That NASW shall:

A. Within sixty (60) days after the date this order becomes final, remove from NASW's Code of Ethics and Standards for the Practice of Clinical Social Work, and any officially promulgated or authorized guidelines or interpretations of NASW's official policies, any statement of policy that may be inconsistent with Part II of this order, or amend any such statement to eliminate all such inconsistencies, including but not limited to Sections II.I.1 and III.K.1 of NASW's Code of Ethics, and Standards 8 and 9 of the Standards for the Practice of Clinical Social Work;

B. Within sixty (60) days after the date this order becomes final, publish in NASW News, or in any successor publication that serves as the official journal of NASW:

1. A copy of this order;

2. Notice of the removal or amendment of any Code of Ethics provisions, Standards, guidelines, interpretations, provisions or statement; and

3. A copy of such Code of Ethics provision, Standard, guideline, interpretation, provision or statement as worded after any such amendment;

C. Within sixty (60) days after the date this order becomes final, distribute a copy of appendix A, along with a copy of this order, to each of NASW's members, including those in all classes of membership, and to each affiliate;

D. Require as a condition of affiliation with NASW that any affiliate, constitutent, or component organization agree by specific action taken by the affiliate, constituent, or component organization's governing body to adhere to the provisions of Part II of this order; and

E. Cease and desist for a period of one (1) year from maintaining or continuing respondent's affiliation with any affiliate, constitutent, or component organization, whether a division of NASW or a state or regional association affiliated with NASW, within one hundred and twenty (120) days after respondent learns or obtains information that would lead a reasonable person to conclude that said organization has, following the effective date of this order, maintained or enforced any prohibition against:

1. Soliciting clients;

2. Offering services to persons receiving similar services from another professional; or

3. Making payments to patient referral services;

where maintenance or enforcement of such prohibition by respondent would be prohibited by Part II of this order; unless, prior to the expiration of the 120-day period, said organization informs respondent by a verified written statement of an officer that the organization has eliminated and will not reimpose such prohibition, and respondent has no grounds to believe otherwise.

V

It is further Ordered That NASW:

A. Shall, within sixty (60) days after the date this order becomes final and at such other times as the Commission may require by written notice to NASW, file with the Commission a written report setting forth in detail the manner and form in which NASW has complied and is complying with the order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part II of this order, including but not limited to all documents generated by NASW or that come into the possession, custody, or control of NASW, regardless of the source, that discuss, refer, or relate to any advice or interpretation rendered with respect to advertising, solicitation, or giving or receiving any remuneration for referring clients for professional services, involving any of its members or affiliates.

VI

It is further Ordered That NASW shall notify the Commission at least thirty (30) days prior to any proposed change in NASW, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change that may affect compliance obligations arising out of this order.

Appendix A

NASW and FTC Enter Into Consent Agreement

As you may be aware, the NASW entered into a consent order agreement with the Federal Trade Commission on September 24, 1988. Under that agreement, the Commission has entered a cease and desist order that became final on (insert date). A copy of that order is printed in this issue of the NASW News.

The agreement between the Commission and NASW does not constitute an admission by NASW that it has violated any law, and is for settlement purposes only.

The reason for this announcement is to acquaint all members with the order, especially including those who have become members in the last three years, and to call attention to changes that have been made in response to the agreement in NASW's Code of Ethics and in the Standards for the Practice of Clinical Social Work. The changes in the Code and Standards are also printed in this issue.

Under the terms of the order, NASW may not ban any of its members from engaging in truthful, non-deceptive advertising and marketing. Specifically, NASW may not prohibit its members from:

1. Engaging in any solicitation of actual or prospective clients or other consumers or from offering services to clients or other consumers receiving similar services from another professional;

2. Presenting testimonials from clients or other consumers.

The order also prohibits preventing the payment of any remuneration to any patient referral service or other similar institution for the referral of clients or other consumers for professional service.

However, the order does not prohibit NASW from formulating and enforcing reasonable principles or ethical guidelines to prevent deceptive advertising and solicitation practices. NASW is also not barred from issuing guidelines with respect to solicitation of business or testimonials from persons who, because of their particular circumstances, are vulnerable to undue influence by a social worker.

The order also does not prohibit NASW from issuing reasonable principles or guidelines requiring that factual disclosures be made to clients or other consumers regarding fees paid by any social worker to any patient referral service or similar institution for referring the client or other consumer for professional services.

Finally, the order requires NASW to amend the Code of Ethics, the Standards for the Practice of Clinical Social Work, and any guidelines or interpretations officially promulgated or authorized by NASW to delete any provisions that are in conflict with the order and to cease affiliation for one year with any affiliate, constituent, or component organization that engages in any conduct that is prohibited by the order and that does not notify NASW that it has ceased and will not repeat such conduct. In response to this requirement, NASW amended the Standards for Practice in April 1989, and the Code of Ethics in August 1990.

In entering into an agreement with NASW, the Federal Trade Commission has not endorsed any principle, guideline, policy, or practice of the Association. For more specific information, you should refer to the Federal Trade Commission's order itself.

National Association of Social Workers

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval an agreement to a proposed consent order from the National Association of Social Workers ("NASW"). The agreement would settle charges by the Commission that NASW has violated section 5 of the Federal Trade Commission Act by restraining competition among social workers in the United States. The Commission charged NASW with injuring consumers by unreasonably restricting social workers' use of solicitation, referral fees, and certain types of truthful advertising.

NASW has agreed to the proposed consent order for settlement purposes only and does not admit that it violated the law as alleged in the complaint.

The Commission has placed the proposed consent order on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After the close of the comment period, the Commission will again review the agreement, will review the comments received, and will decide whether it should make the agreement's proposed order final or withdraw the agreement.

The Complaint

The Commission has prepared a complaint to issue along with the proposed order. The complaint alleges that NASW is an association of about 114,000 social workers, a substantial number of whom are clinical social workers who provide therapeutic and counseling services. NASW members compete among themselves and with other social workers. NASW has adopted a Code of Ethics and a set of Standards for the Practice of Clinical Social Work, both of which restrain competition in the delivery of social work services.

According to the complaint, NASW has prohibited social workers from soliciting the clients of other social workers, which deters social workers from initiating contact with potential clients, even where the clients are not vulnerable to abusive solicitation practices.

The complaint further alleges that NASW has prohibited social workers from paying a fee for receiving a referral, which deters social workers from participating in such institutions as patient referral services.

Finally, the complaint alleges that NASW has deterred social workers from using testimonials and other forms of truthful advertising, which prevents social workers from disseminating truthful information concerning their services.

According to the complaint, these rules have restrained competition in the delivery of social work services, deprived consumers of the benefits of truthful information about the availability of social work services, and deprived consumers of the benefits of competition among social workers in the provision of their services through competing referral services.

The Proposed Consent Order

The proposed consent order prohibits NASW from restricting advertising or solicitation. NASW is allowed, however, to adopt reasonable ethical principles with respect to: (1) Representations that NASW reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act; (2) uninvited, in-person solicitation of business from persons who, because of their particular circumstances, are vulnerable to undue influence; or (3) solicitation of testimonial endorsements (including solicitation of consent to use the person's prior statement as a testimonial endorsement) from current psychotherapy patients, or from other persons who, because of their particular circumstances, are vulnerable to undue influence.

The order also prohibits NASW from restricting social workers from paying a fee to any patient referral service or other similar institution for the referral of consumers for professional service. However, NASW may require its members to tell clients a referral fee was paid.

Finally, the order requires NASW to distribute a copy of the order to all members, publish the order and revised ethics rules in NASW NEWS, terminate its affiliation with any affiliate organization that engages in practices prohibited by the order, and file compliance reports.

The purpose of this analysis is to aid public comment on the proposed order. It is not an official interpretation of the agreement and proposed order and it does not modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Starek In the Matter of National Association of Social Workers

I respectfully dissent from the decision of the Commission today to accept provisionally and place on the public record for comment the proposed consent order with the National Association of Social Workers ("NASW"). The lack of evidence indicating that the restrictions of NASW at issue are likely to restrict competition leads me to conclude that they are not "inherently suspect" as defined in Mass. Board.[1] Consequently, without a rule-of-reason inquiry, as required by Mass. Board, I cannot conclude that NASW's restrictions violate Section 5 of the Federal Trade Commission Act.

Association restrictions on professionals can reduce competition, and thereby harm consumers. The challenged practices here are restrictions on certain types of advertising, solicitations, and payment of referral fees by those who choose to become members of NASW. Because social workers employed by social service agencies would not have reason to take part in these activities, the restrictions in effect apply only to "clinical" social workers in private practice who are members of NASW. These social workers primarily provide psychological counseling and therapy services, as opposed to what might be considered more traditional social worker services.

The restrictions at issue here were in place in the association's ethics code and its "Standards of Practice" for a period of several years in the 1980s. We have no indication that they ever were enforced. We are not aware of any suspension, expulsion, reprimand, notice of violation in the association newsletter, or any threat of these or any other actions taken by the association in response to violations of these restrictions. We do not know if the restrictions ever have affected a social worker's business practices in any way. We do not know if any members of NASW were even aware of the existence of the allegedly anticompetitive restrictions.

Determining the extent to which a horizontal restraint is likely to have anticompetitive or procompetitive effects often requires considerable inquiry and analysis. However, in this case I need not reach that issue because the record does not indicate that the restrictions were likely to have *any* effect on the market. In order to determine whether a horizontal restraint is inherently suspect, Mass. Board instructs us first to ask "is the practice the kind that appears likely, absent an efficiency justification, to 'restrict competition and decrease output'?"[2] The interpretation, enforcement, and market response to challenged restraints can, in many cases,

[1] Massachusetts Board of Registration in Optometry, 110 F.T.C. 549 (1988).

[2] *Id.*, at 604.

clarify the likely effects of such restraints on competition.

Were the potential effects of the restrictions less ambiguous, I would not necessarily require much evidence of how these restrictions affected the market. Some efficiency benefits conceivably could result from NASW's restrictions. For example, NASW's restriction on the use of testimonials in members' advertising may protect certain patients vulnerable to undue influence from being coerced into providing testimonials for their therapist's advertising.[3] After all, patients of clinical social workers in many instances have serious emotional and mental disorders. Many of these patients may benefit from protection that is broader than that which is appropriate in other markets. Private professional associations such as NASW may be particularly well suited to provide such protection. The record does not indicate the extent to which such benefits are likely to result from the restrictions, as it also does not indicate the extent to which anticompetitive effects might result.

I am concerned that acceptance of the proposed consent order with NASW here will suggest that the Commission interprets the Mass. Board rule to the imply that ambiguous horizontal restraints can be concluded to be inherently suspect without any inquiry into how, or even if, the restrictions have affected the market.

When restrictions as written are competitively ambiguous, as I believe they are here, the enforcement of such restrictions can shed much light on their likely effects.[4] Evidence of how restrictions are interpreted and enforced may be sufficient to support a conclusion that the restrictions are inherently suspect. One commentator recently proposed as the first "Analytical Guideline" for antitrust enforcement in this area, "Professional rules are restraints only if and as enforced."[5] I would not go as far as he does when he argues that "unenforced restraints can be ignored."[6]

Other market evidence in some cases may indicate a likelihood of anticompetitive effects absent explicit market enforcement. For example, evidence may indicate that the fear of enforcement prevents professionals from certain restricted activities. Or professionals may choose not to violate restrictions because they fear retribution from their colleagues, such as being cut off from referrals or being ostracized after being noted as violators in a professional publication.

On the other hand, even when all agree that restrictions as written appear facially suspicious, they may be innocuous because they are not generally known by association members, are known but widely ignored, are easily circumvented, or are responded to by the membership in a way that illustrates that they are highly unlikely to have anticompetitive effects.

In the present case, I believe that we do not have sufficient evidence on the interpretation, application and market response to the challenged restraints, nor do we have any evidence that the written restrictions at issue were enforced or affected the market in any way.

Furthermore, the restraints applied only to NASW members who provide psychological therapy and counseling in private practice. In order to compete effectively at providing these services, it may not be necessary to be a member of NASW. We have no indication that NASW has substantial leverage to impose anticompetitive restrictions on those social workers who choose to join the association. Moreover, even if the association did have such leverage, it appears that inter-professional competition with other types of therapists may be sufficient to prevent anticompetitive results.

Obtaining evidence on these issues does not appear to impose an onerous burden of proof or to require an inordinate commitment of resources. Prudent enforcement requires that these issues be examined. The Commission's previous determinations that conduct is inherently suspect have been confined largely to cases in which market evidence much more strongly suggested the likelihood of anticompetitive effects than does the evidence in the present matter.

In Mass. Board itself, the record indicated that the Board had taken actions against numerous violators of the restrictions and these Board actions resulted in violators discontinuing advertising practices that were held to violate the Board's regulations.[7] Moreover, substantial evidence suggested that the restrictions were highly likely to lead to increased prices for optometry services.[8]

In Detroit Auto Dealers Association, evidence indicated that there was protracted enforcement of the restrictions which appeared to coerce widespread adherence.[9] Furthermore, the association acknowledged that its activity had anticompetitive results.[10]

In *Superior Court Trial Lawyers' Association*, the Supreme Court emphasized that the practice at issue was a *per se* antitrust violation. But the Court also emphasized that the record included "overwhelming testimony" indicating that the group's actions brought the District's criminal justice system to the "brink of collapse" and thus resulted in higher prices.[11]

Finally, the recent consent order placed on the public record by the Commission with the American Psychological Association ("APA") was supported by evidence of enforcement of the restraints. Thus, we did not have to speculate about how the restrictions there affected the market. APA's own enforcement record illustrated both its broad interpretation of the restrictions and actual effects of the restrictions on competitive behavior. Without such evidence here at a minimum, I cannot conclude that the challenged restrictions are inherently suspect.

Consequently, in order to condemn these restrictions under Section 5, a traditional rule-of-reason analysis must be performed, including an evaluation of market power. Although the evidence in this regard is not complete, based on what has been presented to date, I consider it highly unlikely that these restrictions would be condemned at the completion of that analysis.

Although my conclusion that the challenged restraints are not inherently suspect does not require that I reach the issue of market power, there has been a suggestion that a "market power screen" should be used to determine whether restrictions are inherently suspect. Mass. Board does not require the use of a market power screen, but it is worth noting that the Massachusetts Board of Registration had the power to license, and thus it appeared likely to have substantial market power. And, in *NCAA*, the court found that the association there did have substantial market power[12] (and that its restraint had demonstrable anticompetitive effects[13]).

I am not today advocating inclusion of a market power screen as a formal element of the Commission's truncated rule-of-reason analysis. But it seems to be self-evident that to ignore the issue of market power is to argue that the truncated rule of reason is applicable to the restrictions of all associations, regardless of the extent of an association's membership or its ability to affect members' behavior. This is particularly troubling when the challenged restrictions are unenforced and their potential effects are ambiguous. Here, the indications of a lack of market power on the part of NASW could well undermine the potential for the restraints to have anticompetitive effects. It may well be that some limited analysis of market power could be warranted in some cases in order to provide the Commission with some confidence that our enforcement

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[3] The proposed order recognizes this and other possible sources of efficiency by including some safe harbors for NASW action. Because Commission inquiry into the restrictions' possible benefits was quite limited, I cannot confidently conclude that the safe harbors adequately protect potential benefits of the restrictions.

[4] Judge Easterbrook has written that "there can be no restraint of trade without a restraint." See *Schachar* v. *Am. Academy of Ophthalmology, Inc.*, 870 F.2d 397 (7th Cir. 1989). He explains that "enforcement mechanisms are the 'restraints' of trade. Without them there is only uncoordinated individual action, the essence of competition."

[5] J. Lopatka, Antitrust and Professional Rules: A Framework for Analysis, 28 San Diego L. Rev. 301, 310, 382 (1991).

[6] *Id.*, at 382.

[7] Mass. Board, 110 F.T.C. at 562–71 (Initial Decision Findings 73 and 117–59).

[8] *Id.*, at 561–63 (Initial Decision Findings 60–78).

[9] Detroit Auto Dealers Association, Inc., 111 F.T.C. 417, 425, 451–66 (1989) (Initial Decision Findings 51–52, 245–84), aff'd in part, remanded in part, 955 F.2d 457 (6th Cir. 1992), petition for cert. filed, 61 U.S.L.W. 3156 (Aug. 21, 1992) (No. 92–333).

[10] 111 F.T.C. at 426–27 (Initial Decision Findings 57–61).

[11] *Federal Trade Commission* v. *Superior Court Trial Lawyers' Association*, 110 U.S. 768, 772, 782 (1990).

[12] *NCAA* v. *Board of Regents of the Univ. of Okla.*, 468 U.S. 85, 111 (1984).

[13] *Id.*, at 104–07.

program is consistent with our competition mission.[14]

I am concerned about extending the reach of Mass. Board to restrictions as competitively ambiguous as those of NASW here. I am further troubled that acceptance of the proposed consent here might portend a weakening of the Mass. Board standard by future Commissions. The Mass. Board approach was an attempt by the Commission to enunciate a standard for evaluating horizontal restraints as gleaned from the Supreme Court's decisions in *NCAA* and *BMI*[15]—the truncated rule-of-reason cases. A relatively weak truncated rule-of-reason standard might appear to conserve enforcement resources. But if too much reason is truncated from the rule of reason, resources will be drawn to cases with questionable merit. The net effect is likely to be a draining of enforcement resources away from the types of cases in which Commission action can best benefit consumers. Acceptance of the proposed consent order with NASW appears likely to encourage this unfortunate and unintended effect.

Absent evidence that NASW's restrictions are likely to restrict competition, I do not have reason to believe that the National Association of Social Workers has violated the Federal Trade Commission Act. Therefore, I must dissent from the Commission's action today.

[FR Doc. 92-31264 Filed 12-23-92; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Runaway and Homeless Youth Program Proposed Priorities for Fiscal Year 1993

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Fiscal Year 1993 Runaway and Homeless Youth Program Priorities for the Administration for Children and Families.

SUMMARY: The Runaway and Homeless Youth Act requires the Secretary to publish annually, for public comment, a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the Act. The final priorities selected will take into consideration the comments and recommendations received from the public in response to this notice.

The public, particularly those knowledgeable about and experienced in providing services to runaway and homeless youth, are urged to respond. The actual solicitations for grant applications will be published at a later date in the **Federal Register**. Solicitations for contracts will be published in the "Commerce Business Daily." No proposals, concept papers or other forms of application should be submitted at this time.

DATES: To be considered, comments must be received no later than February 8, 1993.

ADDRESSES: Please address comments to: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families. Attention: Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, (202) 205-8347.

SUPPLEMENTARY INFORMATION:

I. Background: Organization and Mission of the Administration for Children and Families (ACF)

On April 15, 1991, Louis W. Sullivan, M.D., Secretary of the Department of Health and Human Services (HHS) established the Administration for Children and Families (ACF) as a new HHS operating division, combining two antecedent agencies: the Family Support Administration and the Office of Human Development Services. The Administration on Children, Youth and Families (ACYF) is a major program unit within ACF.

The purpose of the consolidation was to bring together into a single agency many children and family programs that had been created over the years in order to better target and coordinate services. The consolidation has increased the Department's ability to deliver services and has provided communities, States, and the Congress a single agency to address in these matters.

Among the programs administered by ACF are Head Start, Job Opportunities and Basic Skills (JOBS), Aid to Families with Dependent Children (AFDC), Child Support Enforcement, Adoption Assistance, Foster Care, Social Services Block Grant, Child Care and Development Block Grant, Child Abuse Prevention Grants, and Runaway and Homeless Youth Programs.

While ACF program and staff offices are varied in the programs they administer and the populations they serve, all are guided by three common principles. First, all programs strive to create and stimulate self-sufficiency in their service populations. Second, all programs promote parental responsibility for the economic, social, emotional, physical, and cognitive development of children. Third, all programs encourage integration of services among specialized providers to eliminate fragmentation, reduce duplication, and improve the impact of ACF services on children and families.

II. Background: Organization, Mission and Goals of the Family and Youth Services Bureau

The Family and Youth Services Bureau (FYSB) is a component of the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

The Family and Youth Services Bureau is charged with implementing four Federal programs dealing with youth and children:

(1) The Runaway and Homeless Youth (Basic Center) Program,

(2) The Transitional Living Program for Homeless Youth,

(3) The Drug Abuse Prevention Program for Runaway and Homeless Youth, and

(4) The Youth Gang Drug Prevention Program.

The mission of the Family and Youth Services Bureau is to provide national leadership on youth issues and to assist individuals and organizations in providing effective, comprehensive services for at-risk youth and their families, ensuring the safety and maximizing the stability and long-term self-sufficiency of youth.

To accomplish this mission, the Bureau has established the following operational goals as a guide in the implementation of the four programs it administers:

(1) Promote the development of a continuum of care for at-risk youth and their families and increase the range and comprehensiveness of services provided by FYSB grantees;

(2) Provide timely financial support to and quality oversight of youth programs in order to strengthen such programs and ensure that quality services are available to at-risk youth and their families;

(3) Enhance training, technical assistance and related support to the youth-serving community to help increase the knowledge and skills of youth service workers and organizations;

(4) Improve the quantity, quality, and reliability of information on youth programs supported by FYSB;

(5) Promote the creation of a comprehensive youth service system by facilitating interaction and coordination among the FYSB-supported components of the youth service community; and

(6) Initiate and formalize coordination efforts with other ACF units, Federal

[14] Clearly, evidence of market power is not necessary in all cases. For example, analysis of market power would not be necessary in a case involving an ethics code restriction that establishes minimum prices for association members.

[15] *Broadcast Music, Inc.* v. *CBS*, 441 U.S. 1 (1979).

agencies, State and local governments, and the private sector in order to focus increased attention on at-risk youth issues and to access other resources to expand and enhance essential services for at-risk youth.

Two of the FYSB programs listed above—the Runaway and Homeless Youth Program (RHYP) and the Transitional Living Program for Homeless Youth (TLP)—are authorized under the Runaway and Homeless Youth Act (title III of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, hereinafter cited as "the Act") and are the subject of the priorities proposed in this notice.

The Act specifically authorizes the Secretary to make grants to entities that establish and operate local runaway and homeless youth centers (Basic Centers) to address the immediate needs of at-risk youth. Currently, 358 such projects are being supported. The Act also authorizes activities that support the local centers, and that gather knowledge about the conditions of runaway and homeless youth and their families.

The Act further authorizes the Secretary to make grants to entities that establish and operate transitional living projects for homeless youth to enable the youth to become self-sufficient and to avoid long-term dependency on social services. Currently, 86 such projects are being supported.

the Act also authorizes financial support for:

—A national communications system (a toll-free 24-hour runaway hotline) which serves as a neutral channel of communication between at-risk youth and their families and as a source of referral to needed services;
—Grants to statewide and regional non-profit organizations for the provision of training and technical assistance to agencies and organizations eligible to establish and operate runaway and homeless youth centers; and
—Grants to conduct research, demonstration, evaluation, and service projects.

Annual Program Priorities

Section 364(a) of the Act instructs the Secretary to develop for each fiscal year, and to publish annually in the **Federal Register** for public comment, a proposed plan specifying the priorities the Department will follow in making grants under the Act. The Secretary is further instructed to take into consideration the comments received in developing and publishing the subsequent plan specifying the final fiscal year priorities. This publication constitutes the Department's proposed priorities as required by the Act.

No acknowledgement will be made of the comments received in response to this notice, but all comments received by the deadline will be considered in preparing the runaway and homeless youth final priorities. We also encourage suggestions for topics not covered in this announcement, but which are timely and relate to the specific needs of runaway and homeless youth. Final priorities will be published in the **Federal Register** as required by the Act.

A program announcement soliciting applications for the Basic Center grants will appear in the **Federal Register** as in previous years. Copies of the announcement will be sent to all persons who comment on these proposed priorities. Because all FY 1993 funds which are likely to be available for the National Communication System (NCS) and for training and technical assistance activities are committed for continuation awards to projects already funded in FY 1992 or earlier, no new solicitations are planned for publication in these two areas in FY 1993. A competition for new Transitional Living grants will be held during FY 1993 to be awarded in the first quarter of FY 1994. Solicitations for contracts will be published in the "Commerce Business Daily" during FY 1993.

III. Priorities for On-Going Direct Service Programs

A. Priorities for Basic Centers

Approximately 360 grants, of which about two-thirds will be non-competitive continuations and about one-third competitive new starts, will be funded in FY 1993 to support organizations which provide services to fulfill the four major goals of the Runaway and Homeless Youth Program, as follows:

(1) Alleviate the problems of runaway and homeless youth;

(2) Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services;

(3) Strengthen family relationships and encourage stable living conditions for youth; and

(4) Help youth decide upon a future course of action.

The goals of the RHYP are achieved through the Basic Centers, which provide services in support of the immediate needs (temporary shelter, food, clothing, counseling, and related services) of runaway or homeless youth and their families in a manner which is outside the law enforcement, child welfare, mental health and juvenile justice systems. Further, the Basic Center provide services, directly and through referrals, to promote the long-terms stability and safety of such youth.

An announcement of the availability of funds for the Basic Centers, along with the instructions and forms needed to prepare and submit applications, will be published in a **Federal Register** announcement.

Funds for Basic Center grants are allotted annually among the States and other qualifying jurisdictions on the basis of their relative populations of individuals who are less than 18 years of age. Amendments to the Act made by Pub. L. 102–586 increase the minimum amount to be allotted to any State from $75,000 to $100,000 and to the Territories from $30,000 to $45,000, but only if all States first receive the amount allotted to them in FY 1992. Because the FY 1993 appropriation for this program is less than the FY 1992 appropriation, an increase in the minimum allotment to any State would result in a reduction to other States. For this reason, the increase in the minimum allotment will not be implemented this year.

For the past several years, Basic Center grants have been awarded for three-year project periods. Approximately one-third of the Basic Center grants expire each year, requiring these agencies to compete for new awards. The remaining two-thirds of the Basic Center grants receive non-competitive continuation awards. Within any given State, in consequence, individual grantees may fall within any one of three different funding cycles: New starts, second-year continuations, and third-year continuations. In FY 1993, the cyclical funding pattern will be continued, assuming satisfactory performance on the part of existing grantees and the availability of funds. Thus, approximately two-thirds of the current grantees will be awarded noncompetitive continuation funds, and the remaining grantees (those whose grant periods expire in FY 1993) will have the opportunity to submit new competitive applications. Readers should also note that all other eligible youth-serving agencies not holding current awards may also apply for these new competitive funds.

During the past two years, increased levels of funding have been available for Basic Center grants. To allow agencies in mid-cycle of their grant periods to compete for these increased appropriations, continuation grantees receiving an annual award of less than $75,000 in FY 1991 or less than $85,000 in FY 1992 were invited to apply for competitive expansion grants. The purpose of the expansion grants was to allow award totals to increase to an amount considered minimally sufficient

to carry out the requirements of the Runaway and Homeless Youth Program. Because there is a decrease in available funds in FY 1993, the Department does not currently plan to make expansion awards in FY 1993.

Section 366(a)(2) of the Act requires that 90 percent of the funds appropriated under part A be used to establish and strengthen runaway and homeless youth Basic Centers. Total funding under part A of the Act for FY 1993 is approximately $35.1 million.

B. Priorities for a National Communications System

Part C, Section 331 of the Runaway and Homeless Youth Act, as amended, mandates support for a national communications system to assist runaway and homeless youth in communicating with their families and with service providers. In FY 1991, a three-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate the system. It is anticipated that $912,500 in third-year continuation funds will be awarded to the grantee in FY 1993.

C. Priorities for Transitional Living Grants

Part B, Section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

The first 45 Transitional Living Program (TLP) grants were awarded in September 1990 for three-year project periods. An additional 32 grants were awarded in FY 1991 and 9 grants in FY 1992, also for three-year project periods. It is anticipated that all funds available under this program in FY 1993 will be awarded in the form of non-competitive continuation awards to the current grantees.

In order to award new TLP grants as early as possible in FY 1994, however, an open competition will be held in FY 1993 for new awards to be supported with FY 1994 funds. Projects periods of new awards will begin no sooner than October 1, 1993. This will also allow current grantees with project periods ending in September 1993 to compete for new grants and to continue their existing projects with minimal disruption of services, if they are successful in the competition.

IV. Continuation Support Services and Evaluations

Section 342 of the Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance to organizations in establishing and operating runaway and homeless youth centers.

Section 343 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway and homeless youth. These activities are important in order to identify emerging issues and to develop and test models which address such issues.

A. Training and Technical Assistance

Both the Runaway and Homeless Youth Act, Section 314, and the Drug Abuse Prevention Program for Runaway and Homeless Youth, Section 3511 of the Anti-Drug Abuse Act of 1988, also administered by FYSB, authorize support to nonprofit organizations for the purpose of providing training and technical assistance (T&TA) to runaway and homeless youth service providers. This T&TA is a valuable mechanism to strengthen programs and to enhance the knowledge and skills of youth service workers.

Beginning in FY 1991, the Family and Youth Services Bureau awarded ten Cooperative Agreements, one in each of the ten Federal Regions, to provide T&TA to agencies funded under all three Federal programs for runaway and homeless youth. Each Cooperative Agreement is unique, being based on the characteristics and different T&TA needs in the respective Regions.

Each of these Cooperative Agreements has a three-year project period, and it is anticipated that all funds available for services in this area in FY 1993 will be awarded through noncompeting continuations to the current grantees.

B. National Clearinghouse on Runaway and Homeless Youth

In June 1992, a five-year contract was awarded by the Department to establish and operate the National Clearinghouse on Runaway and Homeless Youth. The purpose of the Clearinghouse is to serve as a central information point for professionals and agencies involved in the development and implementation of services to runaway and homeless youth. To this end, the Clearinghouse will:

(1) Collect, evaluate and maintain reports, materials and other products regarding service provision to runaway and homeless youth;

(2) Develop and disseminate reports and bibliographies useful to the field;

(3) Identify areas in which new or additional reports, materials and products are needed; and

(4) Implement other activities designed to provide the field with the information needed to improve services to runaway and homeless youth.

The Clearinghouse is fully operational and is able to respond to requests for information. Non-competitive continuation funding will be awarded to sustain the Clearinghouse in FY 1993.

C. National Evaluation of the Rundway and Homeless Youth Basic Center Program

In FY 1991, a contract to evaluate the Basic Center program was awarded, and it will continue through FY 1993. The study has two major objectives:

(1) To evaluate the impact and effect of the Runaway and Homeless Youth Basic Center Program on the youth served; and

(2) To determine the policy, program, and service delivery issues that facilitate or impede the program goals.

It is anticipated that evaluators will be in the field in FY 1993 interviewing a sample of both youth and youth-service workers. It is further anticipated that no additional funding will be required to complete this evaluation.

D. Evaluation of the Transitional Living Program for Homeless Youth

In FY 1991, an evaluation of the Transitional Living Program (TLP) was initiated, which will require additional financial support in FY 1993. The evaluation will collect data at three points in time: pre-program baseline, program exit, and six months after program completion, for the purpose of determining the effectiveness of the program in preparing homeless youth for self-sufficiency. It is anticipated that evaluators will be conducting interviews of a sample of youth and program administrators in the field during FY 1993.

E. National Evaluation of Home-Based Services Demonstration Grants for Runaway Youth

In FY 1989 and FY 1991, demonstration grants were awarded to develop and implement models of home-based services as alternatives to shelter care for at-risk youth. In FY 1992, a two-year contract was awarded to evaluate these grants. The contractor will provide descriptive information about the models and outcome information about their impact on the

youth served. In FY 1993, it is anticipated that the contractor will begin interviews in the field.

F. Management Information System (MIS) Implementation

In FY 1992, a five-year contract was awarded to implement the Runaway and Homeless Youth Management Information System (RHY MIS) across three FYSB programs: the Runaway and Homeless Youth Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program. In FY 1993, using an existing computer-based, information gathering protocol, the contractor will provide training and technical assistance to these grantees in the use of the MIS. The FYSB will use the data generated by the system to produce reports and information regarding the programs, including information for the required reports to Congress on each of the three programs.

The RHY MIS is designed to be useful as a management tool for individual programs, and to serve as the mechanism to submit required information and data to FYSB.

G. Monitoring Support for FYSB Programs

In FY 1992, FYSB began developing a comprehensive monitoring instrument and set of site visit protocols, including a peer-review component for the Runaway and Homeless Youth Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program. The instrument and related protocols will be implemented in FY 1993. Also in FY 1993, a new contract to provide logistical support for the peer review monitoring process is planned. Use of the new instrument and peer review process will improve Federal oversight of the programs. Moreover, it will identify program strengths and weaknesses. The findings will be used to direct technical assistance and policy development.

V. New Demonstration Initiatives: Promoting a Continuum of Care for Runaway and Homeless Youth

Background

Over the past decade, directors of agencies serving runaway and homeless youth have observed and documented significant changes in the populations they assist. The youth are increasingly "multi-problem" youth. Whereas 15 years ago, youth typically fled their homes for reasons related to child and parent conflict, the familial alienation of runaway and homeless youth today is very often overlaid with problems of alcohol and drug abuse, school failure, sexual promiscuity, as well as impaired physical and mental health. There also has been an apparent corresponding increase in the intensity of the problems experienced by these young people.

As a result of these growing problems among runaway and homeless youth and a corresponding increase in funding streams, an increasingly complex, multi-faceted service system has emerged. The Family and Youth Services Bureau will therefore promote the development of a continuum of care to more effectively serve at-risk youth and their families. This continuum can be considered from three perspectives:

(1) The individual components of care to be provided directly by FYSB-supported youth-serving agencies (e.g., street outreach, intake and assessment, or aftercare);

(2) The types and range of services to be provided through coordination with a variety of community agencies; and

(3) The care to be accorded special, particularly hard-to-reach, populations.

The following new demonstration grant priority areas are being proposed. However, given the limited funds available, FYSB does not anticipate soliciting applications in all of these areas. Selection of one or more of these areas for competitive grants will be based on the public comments received in response to this notice and the availability of funds. In addition, FYSB will continue to pursue a number of interagency collaborative efforts at the Federal level. Readers are encouraged to comment particularly on the following possible initiatives:

A. Continuum of Care: Strengthening Individual Program Components—Aftercare

Aftercare, as a component of runaway and homeless youth services, has been identified as needing additional attention. As part of its effort to provide the information and assistance required to strengthen this service component, the Family and Youth Services Bureau is considering making funds available to support grants to explore aftercare.

Once a youth has received services from a runaway and homeless youth center, it is often necessary to provide aftercare services, whether directly or through referrals, in order to maintain and increase the progress made by the client and his or her family. This program component is problematic. It is difficult to keep track of youth once they leave a center and even more difficult to determine if services are received when referrals are made to other service providers.

The purpose of these grants would be to demonstrate effective aftercare systems through the successful coordination of community-based service delivery. These grants would result in a written description of the aftercare model implemented, the identification of issues related to model implementation and information on youth and program outcomes.

B. Continuum of Care: Community Planning Grants for Promoting Comprehensive Services

One of the goals of service provision to runaway and homeless youth is to gear the services provided to the needs of individual youth and their families. The types of services needed vary by individual and encompass, at a minimum, such areas as reunification and other social services, mental health, drug treatment, medical and dental services, and education. In addition, the extent of the services needed by the individual also vary in intensity. For example, the youth and family may exhibit only a need for reassurance and immediate reunification, the youth may need emergency shelter prior to reunification, or residential care for extended periods of time may be required.

It is not necessary for any one agency to be able to provide all of the services needed by individual youth or families. It is important, however, that multi-disciplinary services and service components of varying scope and intensity for this client population be available and accessible within a community. The creation and ongoing functioning of such interagency collaboration takes considerable time and effort.

To help agencies and communities explore the continuum of services needed by runaway and homeless youth in their area, the Family and Youth Services Bureau is considering making funds available for grants to:

(1) Determine the needs of runaway and homeless youth in the community;

(2) Determine the availability and accessibility of care within the community, including services geared to special needs populations;

(3) Identify, on a community-wide basis, the gaps and weaknesses in available services and service components, including the duration and intensity of services; and

(4) Plan, through coordination and collaboration, a continuum of care for runaway and homeless youth, including the action steps required for community implementation of that plan.

It is expected that eligible grantees would be agencies currently providing

services to runaway and homeless youth.

C. Continuum of Care: Special Populations

Services for Youth in Rural Areas

Because of geographic distances, low population density and, in some cases, cultural differences, it is difficult to provide effective services to runaway and homeless youth in rural areas. There is a need for innovative models for the provision of a continuum of care in areas where the incidence of runaway and homeless youth is not sufficient to warrant allocating scarce resources to the funding of a separate, autonomous basic center program.

The purpose of these grants would be to demonstrate innovative and effective models for the provision of runaway and homeless youth services in rural areas, including Indian reservations. These models would involve innovative methods that make services accessible to youth without setting up inordinately expensive service agencies in low populated areas. Some possible options include satellite centers, telecommunication systems, and mobile vans. These grants would result in a written description of the service model implemented, the identification of issues related to model implementation, and information on youth and program outcomes. The proposed models would be required to incorporate formal collaboration with other major youth-serving agencies in the areas to be served.

(Catalogue of Federal Domestic Assistance, Program Number 93.623, Runaway and Homeless Youth Program, and Program Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: November 20, 1992.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 92–31298 Filed 12–23–92; 8:45 am]

BILLING CODE 4130–01–M

Administration on Aging

Office of Administration and Management; Statement of Organization, Functions, and Delegations of Authority

This Notice amends part B of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Administration on Aging (AoA), as follows: Chapter B, Administration on Aging (AoA), Chapter BE, Office of Administration and Management (OAM), Chapter BC, Office of State and Community Programs (OSCP), and Chapter BD, Regional Office on Aging, as last amended at 56 FR 46620 on September 13, 1991. Specifically this organizational change will make the following changes to the Office of Administration and Management functional statement: Establish the Division of Budget and Finance (BE1); establish the Division of Management Systems (BE2); and, establish the Division of Grants Management (BE3). This organizational change will make the following change to the Office of State and Community Programs: Retitle and revise the Division of Community Based Systems Implementation (BC2) to the Division of Eldercare Services Implementation (BC2). In addition, this organizational change will correct a typographical error in the title for the Regional Offices on Aging; and, add Chapter BY, Federal Council on Aging Staff.

The changes are as follows:

1. Chapter B.10. Organization. Delete in its entirety and replace with the following:

B.10. Organization. The Administration on Aging is headed by the Commissioner on Aging and consists of:

Office of the Commissioner
Office of Policy Coordination and Analysis
Office of External Affairs
Office of Administration and Management
  Division of Budget and Finance
  Division of Management Systems
  Division of Grants Management
Office of Field Operations
Office of Program Development
  Division of Research, Demonstration and Training
  Division of Dissemination and Utilization
Office of State and Community Programs
  Division of Program Management and Analysis
  Division of Eldercare Services Implementation
Office for American Indians, Alaskan Native and Native Hawaiian Programs
Regional Offices on Aging
Federal Council on Aging staff

2. Chapter B.20. Functions D. Office of Administration and Management. Delete in its entirety and replace with the following:

D. Office of Administration and Management (BE)

Advises the Commissioner in the areas of internal administration and management of AoA. In response to Federal laws, regulations and Departmental policies and instructions, provides leadership, policies and procedures for effective and efficient management throughout AoA, including such areas as: Budget, finance, grants administration, personnel management, procurement, material and facilities management, management systems analysis, information resources management, telecommunications and similar administrative management facilitation services. Responsible for all management and administrative reviews, analyses and controls within AoA required by law or regulations, such as the Federal Managers Financial Integrity Act. The Director, OAM, will perform the duties of the Chief Financial Officer Act of 1990 as they relate to AoA. Conducts management analysis and systems development activities for AoA and serves as the principal AoA staff examining the AoA organization. Provides technical assistance and guidance to Central and Regional Office units in the development, implementation and maintenance of administrative management systems.

D.1. Division of Budget and Finance (BE1)

Provides and coordinates management support services involving budget formulation and execution, and financial management. In coordination with AoA program offices, consolidates, formulates, and presents budget estimates and forecasts of financial resources of AoA; executes apportionment documents; plans, directs, and coordinates financial and budgetary programs of AoA. Provides guidance to AoA program offices in preparing budgets, justifications, and other budgetary materials. Prepares budget document(s) on behalf of the Commissioner for presentation to Departmental management, the Office of Management and Budget (OMB), and the Congress. Assists in planning for and presenting the budget before OMB and the Congress. Solicits, obtains and consolidates information and data from other AoA offices for testimony at hearings before these bodies in coordination with the Office of External Affairs. Analyzes the budget as approved by Congress, obtains input from program offices and recommends for the Commissioner's approval a financial plan for its execution. Makes allowances to AoA offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observances of established ceilings on both program, including all formula and discretionary grants accounts, and S&E funds; maintains commitment records against allowances, and certifies funds availability for all AoA accounts. Prepares requests for apportionment of appropriated funds. Maintains control

of allotted funds against current obligations, including separate plans for each of the Regional Offices. Prepares spending plans and status-of-funds reports for the Commissioner.

Acts as AoA's focal point with the Office of the Secretary, other Federal agencies, and AoA organizational units on policy and regulatory issues involving travel management. Provides support services and policy interpretation to AoA components for travel management.

Provides analysis and coordinates accounting reports for AoA. Manages funds salary and expense accounts. Tracks financial status of all AoA program and salary and expense funds.

In meeting the Commissioner's priorities and instructions, with appropriate input from AoA program units, develops financial operating procedures and manuals, including directing the implementation within AoA (headquarters and regions) of Departmental and Federal fiscal policies and procedures. Participates in program development and implementation plans where there are budgetary implications; serves as the AoA liaison with the Department of Health and Human Services (HHS) and OMB on all budgetary matters.

D.2. Division of Management Systems (BE2)

Plans, organizes and conducts surveys, reviews and management studies of functions and administrative processes in the AoA program, staff and regional components, with cooperation and input from affected program units and/or staff offices. Initiates and develops AoA administrative management and human resources management policies, procedures and instructions.

Plans, organizes and conducts in-depth studies of organization structures, functional statements, job structure, staffing patterns, management and administrative information systems, relevant legislative and regulatory authorities and/or workloads to analyze staff, equipment, and systems resources and needs and/or to determine and measure work elements. Recommends to the Commissioner organization changes; alternate staffing patterns; job structure and/or functional statement modifications; staff, workload or equipment distribution/redistribution.

Develops, designs and implements management, work measurement, reporting and other information systems to provide for better informed management decisions and more equitable distribution of resources, consistent with the Office of Management and Budget (OMB) Circulars No. A–64 and No. A–76.

Assesses potential of proposed systems enhancement(s) or new systems design(s) to improve agency and staff performance in accomplishing agency goals and objectives, and presents comprehensive strategy to the Commissioner for consideration. Applies work measurements against agency functions and resources to propose changes and improvements in distribution of resources.

Plans, organizes and conducts surveys and management reviews of administrative processes and functions in AoA headquarters and regional components under the Federal Manager's Financial Integrity Act (FMFIA), OMB Circular A–123 (Internal Control Reviews (ICR)). Develops protocols for each ICR segment. Designs, develops and prepares guidelines for ICR self-assessment models. Evaluates the effectiveness of self-assessment models and reviews. Identifies weaknesses resulting from ICRs and recommends corrective actions. Monitors AoA's progress in taking actions on accepted recommendations. Acts as the AoA liaison with the Assistant Secretary for Management and Budget on matters related to the Departmental FMFIA program. Prepares the AoA annual FMFIA report to the Secretary.

Manages the AoA management improvement programs. Identifies areas in need of improvement by review and analysis of work methods and procedures, administrative information and management systems, organization and position management, and interviews. Makes recommendations for improvement to the Commissioner. Monitors AoA's progress in meeting goals on accepted recommendations. Develops that section of the annual budget relating to the AoA management improvement program. Develops supporting materials for the OAM Director's briefing of OMB officials on the AoA management improvement program.

Manages and monitors AoA's full-time equivalent (FTE) employment ceilings and formulates the agency's FTE portion of the budget. Develops strategies and recommendations to the Commissioner on manpower usage and the assignment of FTE ceilings. Projects AoA's end of year consumption of FTE based on adjustments to the Department's official FTE tracking system. Serves as the principal source of information to the Commissioner on FTE ceiling control matters as they relate to the distribution of personnel resources among AoA program and staff offices.

Examines all proposed organization or position structure changes. Studies proposed organization structure, functions, and staffing patterns to identify problems and recommend solutions to the Commissioner. Coordinates organization changes, assuring that appropriate clearances are obtained prior to the Commissioner's approval. Develops and administers the AoA Position Management Plan. Acts as liaison with the Assistant Secretary for Management and Budget in coordinating preparation of organizational proposals requiring approval by the Secretary. Maintains official organizational files for AoA.

Develops formal program, administrative and personnel AoA delegations of authority for the Secretary, the Commissioner and the Director, OAM. Reviews and analyzes legislation and regulations to determine to whom program, administrative or personnel authorities may be delegated in AoA. Acts as liaison with the Assistant Secretary for Management and Budget in preparing delegations from the Secretary to the Commissioner. Maintains official files of AoA delegations of authority.

Manages official AoA information systems, such as the personnel data base and the administrative issuance system. Performs assessments of paperwork processing, reporting, and other systems needs in AoA, with program and staff office input.

Provides technical assistance and guidance to AoA managers and staff regarding personnel management matters related to staffing and leave. Reviews proposed requests for personnel action and, where appropriate, recommends approval/disapproval of such requests to the Commissioner. Develops, administers and provides overall guidance on AoA time and leave policies.

Develops and monitors the annual AoA employee training strategy, assuring that the common training needs of AoA employees are identified. Serves as the AoA Training Officer to assure that AoA training needs are effectively met. Develops a training strategy and formulates the training budget for AoA. Serves as the project officer for AoA training contracts awarded.

Develops, manages, and assesses the effectiveness of AoA performance management systems, including inter/intra-departmental demonstration projects on performance management systems. Provides training and technical assistance on current and demonstration

systems and provides overall guidance, monitoring and evaluation of AoA systems. Develops, manages and assesses the effectiveness of AoA performance, incentive, and honor awards systems. Provides overall guidance, monitoring and evaluation of AoA awards systems, develops an awards strategy and formulates the various awards budgets for AoA.

Serves as the communications center for the Agency, ensuring that issues requiring the attention of the Commissioner, Deputy Commissioner or AoA Executive Staff are developed on a timely and coordinated basis. Analyzes all policy, planning and legislative documents and determines their impact on personnel and resources management; issues instructions to all AoA managers concerning their impact on administrative management. Monitors the response of other AoA units in developing necessary documents for the Commissioner's review and provides assistance to staff on the content and style of special assignments. Operates the agency-wide correspondence and assignment tracking and control system and provides technical assistance on standards for control of correspondence and memoranda. Manages the clearance system and receives documents for consistency with the Commissioner's and the Secretary's assignments, previous decisions on related matters and editorial standards. Refers unprecedented policy questions to the Office of Policy Coordination and Analysis. Provides liaison with the Executive Secretariats in the Office of the Secretary and in other Departmental units on AoA program and policy matters, as well as special administrative matters.

Maintains liaison with the National Archives and the Washington National Records Center for the loan and transfer of AoA retired records. Serves as the AoA records manager providing guidance and assistance to both Headquarters and Regional staff regarding filing practices, retention and disposition of records.

Is responsible for reviewing requests for information under the Freedom of Information Act and arranging for appropriate responses to the requests.

Acts as AoA's focal point with the Office of the Secretary, other Federal agencies, and AoA organizational units on policy and regulatory issues involving real and personal property, space management, occupational safety and health, materiel management, travel management, telecommunications, postal management, and forms and records management.

Provides oversight and direction to meet the administrative needs of AoA components. Provides administrative and support services to AoA components including coordination of services and purchase of equipment and supplies, postal services, small purchases, forms/records management and travel.

Serves as liaison with HHS, the General Service Administration (GSA) and outside vendors to provide facilities services including acquisition of facilities and equipment, personal property management, inventory control, and labor services. Administers AoA's personal property management program including: The establishment and maintenance of a personal property accountability system, the storing and distribution of supplies and the movement of furniture and equipment associated with the relocation of offices. Manages, coordinates, monitors, and controls the loan of Government-owned equipment and property to AoA employees according to existing regulations. Develops standard operating procedures and instructions to maintain uniform property management accountability systems for the control, utilization, and disposal of nonexpendable personal property for AoA. Administers the AoA personal property management program and provides technical guidance to AoA staff. Maintains liaison with the Department, the Office of the Secretary, and GSA in developing personal property standards, policies, and plans to assure an efficient supply management program.

Receives and sorts internal mail for AoA headquarters components. Provides internal special messenger service. Prepares and justifies budget estimates for AoA postal services.

Establishes guidelines for the utilization of GSA assigned space and facilities occupied by AoA. Prepares and monitors guidelines for the space reduction program effort in AoA on behalf of the Commissioner. Develops and implements AoA's space management plans and activities, including identification of and negotiations for space, allocations of space, coordination of physical moves, and planning and design of office layouts. Responsible for the acquisition, disposition, allocation, and budgeting of space for AoA.

Monitors and reconciles centralized office space rental billings and prepares budget estimates for incorporation in the AoA budget.

Develops policies and procedures related to the AoA Safety and Occupational Health Programs. Oversees AoA Safety and Health Program.

Provides telecommunications management for AoA Headquarters facilities, including installation, alterations, and maintenance. Develops telecommunications plans and places orders for telecommunications services; provides liaison with HHS, GSA and private communications firms on telecommunications matters; and provides assistance to AoA components to identify telecommunications needs and to use communications equipment and systems. Monitors telecommunications billings. Plans and administers telecommunications budgets for AoA Headquarters and Regional offices.

Manages AoA's information resources management (IRM) program and develops policies, plans, budget, standards and procedures related to it. Plans, manages, maintains and operates AoA's automated office system, including the LAN, personal computers, software, and support systems and services. Provides guidance and technical assistance on all components of the system and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the system. Provides or contracts for training of users in all AoA systems, hardware and software. Carries out activities required under the Paperwork Reduction Act of 1980, as amended, including OMB reports clearance. Represents AoA on OS IRM Policy and Planning Board.

Assesses the need for, and defines the specifications for procurement of all Headquarters and Regional Office IRM hardware and software. Reviews and recommends to the Director, OAM, the approval/disapproval for Headquarters and Regional Office requests for ADP equipment and services. Assesses, recommends and defines the need for contractual ADP sharing services through inter-government, inter-department and interagency agreements. Surveys specifications and other literature, initiates requests for services, and defines AoA's need for similar services with private ADP vendors.

Recommends strategies, provides for, and maintains systems integration in the AoA central data base system. Designs and institutes procedures for the protection, security and integrity of the AoA data base.

D.3. Division of Grants Management (BE3)

Serves as the nucleus for management, leadership and administration of discretionary grants

and formula grants for AoA. Provides national policy oversight and development for grant matters. Assures that all grant awards conform with applicable statutes, regulations, and policies. Maintains liaison and coordination with appropriate AoA and HHS organizations to assure consistency between AoA discretionary and formula grant award activities, and the Department's various payment systems for grants.

For discretionary grants, assures that the administrative and financial management aspects of grants administration are carried out and monitors grantee performance in these areas. Provides support for and processes all discretionary grant award documents and negotiates grant budgets, and makes all awards for AoA Headquarters and Regional Offices. Reviews discretionary grants after input from AoA program offices, and coordinates AoA financial management matters as necessary with appropriate HHS and AoA units.

Issues and maintains control over formula grant awards to States under Title III of the Older Americans Act. In addition, makes adjustments to previously issued formula grant awards.

In coordination with AoA program and Regional Offices, reviews and assesses AoA formula grant award procedures; directs and/or coordinates management initiatives to improve formula grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among AoA programs; establishes priorities and develops procedures for financial monitoring; and, reviews activities at the regional level for all AoA discretionary and formula grant programs.

Following consultation with program and regional offices and with the approval of the Commissioner, develops AoA regulations, instructions, and procedures for the administration of all discretionary and formula grants, including those approved in AoA Regional Offices. Provides training and technical assistance to AoA staff regarding grants and provides overall guidance, monitoring, and assistance to Regional Offices in all areas of administrative and financial management of grants.

Reviews all proposed AoA regulations and policy issuances pertaining to grant matters which are derived from Departmental, OMB or government-wide issuances to assure consistency within AoA.

Functions as AoA liaison with the General Accounting Office (GAO), the HHS Office of the Inspector General and the Department's Office of Acquisition and Grants Management on grant matters. Assists at discretionary and formula grant hearings held by the Departmental Appeals Board in response to claims by grantees. Manages the Departmental negative alert system for AoA units. Based on Department formula grants management policies and procedures, controls administrative accounting and reprogramming of formula grants funds under the Older Americans Act.

3. Chapter B.20. Functions G.2. Division of Community Based Systems Implementation. Delete in its entirety and replace with the following:

G.2. Division of Eldercare Services Implementation (BC2)

Implements the provisions of Title II of the Older Americans Act for overseeing the creation of a more responsive service system at the community level to meet the social and human service needs of the elderly. Develops and implements special initiatives at the national level for building strong interagency, intergovernmental and private sector partnerships to address age related issues and concerns and promotes these initiatives throughout the network of agencies involved with older Americans.

At all levels, from national to the local service delivery level, develops methods and relationships to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age related needs and issues.

Directs and assesses the development under Title III of the OAA of State administered, community based systems of opportunities, social services and long-term care for the elderly. Initiates and encourages expansion of the capacities of community based social service and health care systems to deliver comprehensive services to the elderly. Strengthens and extends the development of the continuum of care principle in local community based social services systems for the elderly. Provides technical and subject matter expertise for the development of these systems, targeted at building the capabilities of State and Area Agencies, and local service delivery programs to improve their service to older people.

Directs, guides and monitors the improvement and expansion of community based information and referral systems, and other developments in accessibility, for social services to the elderly.

Through extensive formal and informal contacts with a variety of agencies and organizations, identifies and disseminates through the State and Area Agency network, concepts, systems and devices to improve care for the elderly.

Promotes and coordinates information and education campaigns at the local level to improve the quality of life of the elderly, e.g., health promotion activities. Fosters public education efforts at all levels on the needs of the frail elderly through the Eldercare Campaign and other initiatives of AoA. Assists local agencies in other specialized social service areas by means of technically expert staff in the Division.

Assists State and Area Agencies and local service delivery agencies to analyze future program trends and needs of the aging population, and to develop strategies and specific implementation plans to enable all levels of the Aging Network to anticipate and adapt to community program needs at given intervals in the future.

Acts as a national representative and advocate of the State and Area Agency network with other Departmental agencies, private industry and the general public.

4. Chapter B.20. Function I. Regional Office on Aging (BD1–X5). Correct title to read as follows: Function I. Regional Offices on Aging (BD–1—BD–X).

5. Chapter B.20. Functions. Add the following functions as Function J.:

J. Federal Council on Aging Staff (BY)

The Federal Council on Aging Staff provides general staff support for a Presidential-level advisory body, the Federal Council on Aging. Provides all meeting and hearing arrangements. Prepares an annual report for the President and distributes it to the Congress and such other reports as are authorized by the Federal Advisory Committee Act. Conducts or supervises the production of studies, research, or analysis of various matters affecting the elderly as background for Council deliberations and recommendations.

Dated: December 15, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–31191 Filed 12–23–92; 8:45 am

BILLING CODE 4130–01–M

Food and Drug Administration

[Docket No. 85D–0249]

Guideline for Postmarketing Reporting of Adverse Drug Experiences; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guideline entitled "Guideline for Postmarketing Reporting of Adverse Drug Experiences," which provide guidance to drug manufacturers for complying with the postmarketing adverse drug experience reporting requirements for approved new drugs and antibiotic drugs. In addition, the guideline provides guidance to drug manufacturers for complying with the adverse drug experience reporting requirements for marketed prescription drugs without approved new drug applications.

ADDRESSES: Submit written requests for single copies of the "Guideline for Postmarketing Reporting of Adverse Drug Experiences" to the Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document "Guideline for Postmarketing Reporting of Adverse Drug Experiences" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joyce M. Johnson, Division of Epidemiology and Surveillance (HFD–730), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4227.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 1985 (50 FR 26411), FDA issued a notice announcing the availability of nine draft guidelines, including the "Guideline for Postmarketing Reporting of Adverse Drug Reactions," dated August 23, 1985. The draft guideline provided information on completing the adverse experience reporting form (FDA 1639), on the sources of adverse drug reaction information, and on the procedures for submitting a report. The draft guideline was made available for public comment to provide the agency with views to be considered in its development of the final guideline. A copy of the comments is on file with the Dockets Management Branch (address above), under Docket No. 85D–0249.

The current adverse drug experience reporting requirements were adopted in the final rule revising the new drug and antibiotic regulations (the NDA Rewrite) that was published in the **Federal Register** of February 22, 1985 (50 FR 7452). The reporting requirements were designed to ensure the timely submission to FDA of information on new and potentially serious safety problems (21 CFR 314.80).

In a final rule published in the **Federal Register** of July 3, 1986 (51 FR 24476), the agency adopted adverse drug reaction reporting requirements for manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of approved applications (21 CFR 310.305). The reporting requirements for drugs not subject to approved applications are like those established for new drugs.

The agency is now announcing the availability of a guideline entitled "Guideline for Postmarketing Reporting of Adverse Drug Experiences," a single guideline for reporting adverse drug experiences that applies both to new approved drugs and antibiotics and drugs not subject to approved applications. In developing this guideline, FDA has carefully considered the comments received on the draft guideline issued in the **Federal Register** of June 26, 1985, and its experience in implementing the two sets of reporting requirements.

The notice of availability of the draft guideline stated that FDA would announce the availability of the final guideline under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to the agency. The agency is now in the process of considering whether to revise § 10.90(b). Although that decisionmaking process is not yet complete, the agency has decided to publish this guideline. However, this notice and the final guideline are not being issued under the authority of § 10.90(b), and this final guideline, although called a guideline, does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. However, the guideline represents the agency's current position on procedures for reporting adverse drug experiences. An applicant may follow the guideline or may choose to use alternate procedures even though they are not provided for in the guideline. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA.

Interested persons may submit written comments on the final guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Two copies of comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document.

The final guideline and received comments may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 30, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–31229 Filed 12–23–92; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1993:

Name: National Advisory Committee on Rural Health.

Date and Time: February 8–10, 1993; 8:30 a.m.

Place: The Hyatt Regency Hotel, Ocean Front at Palmetto Dunes, P.O. Box 6167, Hilton Head Island, South Carolina 29938, (803) 785–1234.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During this meeting, the Committee intends to address graduate medical education and health care reform. The Committee will also be touring rural clinics and medical facilities in Beaufort County, South Carolina on Monday afternoon, February 8. It will concentrate on

programs that address the needs of underserved populations. Finally, the Committee will continue shaping its agenda for and developing recommendations to be included in the Sixth Report to the Secretary, Department of Health and Human Services. The entire meeting is open to the public, however, no transportation to the sites will be provided for public attendees.

Anyone requiring information regarding the subject Council should contact Dena S. Puskin, Sc.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Dated: December 21, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–31227 Filed 12–23–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

President's Cancer Panel Special Commission on Breast Cancer; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, January 11 and 12, 1993, at the Hyatt Atlanta Airport, 1900 Sullivan Road, College Park, GA 30337, (404) 997–2770.

This meeting will be open to the public on January 11 from 8:30 a.m. to recess and on January 12 from 8:30 a.m. to adjournment. Attendance will be limited to space available. Agenda items will include presentations by invited speakers on the topic of "Treatment, Rehabilitation and Quality of Life."

Iris J. Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31, room 4A34, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–1148, will provide a roster of the Commission members and substantive program information upon request.

Dated: December 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–31225 Filed 12–23–92; 8:45 am]

BILLING CODE 4140–01–M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on February 1–2, 1993. On Monday, February 1, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 5 p.m. This portion of the meeting will be devoted to a discussion of current issues in the management of Fulminant Hepatic Failure (FHF). On Tuesday, February 2, the meeting will begin at 8:30 a.m. and adjourn at approximately 4 p.m. A statement regarding current therapy of FHF and future needs in clinical and basic research as well as current and future Board business will be discussed at this time. The meeting, which will be open to the public, will be held at the Dulles Marriott, 333 West Service Road, Chantilly, Virginia 22021. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: December 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

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BILLING CODE 4140–01–M

Public Health Service

Core Support of a Board on Learning Readiness

Introduction

The Public Health Service (PHS) announces the award of fiscal year (FY) 1992 funds for a cooperative agreement to provide core support for establishment of a board on learning readiness to address the physical social, and developmental requirements of children and adolescents that influence their ability to succeed in school. Such a board will provide a permanent structure, focus, and attention to complex issues relating to school readiness and will contribute to a better understanding of important national issues by improving information on which public policy decisions are based.

The Public Health Service has a primary responsibility for identifying the health barriers to learning readiness and those actions that might be undertaken by families, schools, communities, healthcare providers and the research community to overcome them. In carrying out this responsibility the Department wishes to have available to it a standing board composed of leading researchers in relevant domains that could be called together to provide either informal advise or more deliberative seminars or studies on discrete issues.

Authority

This program is authorized under section 301 of the Public Health Act, 42 CFR part 52.

Eligible Applicants

Assistance was provided only to the National Academy of Sciences, Washington, DC. No other applications were solicited.

The National Academy of Sciences is the only organization that has a unique and special relationship with the Federal Government which has the ability to assemble committees and boards of the Nation's most eminent scholars, to furnish independent advice and guidance of the highest quality with an unparalleled level of objectivity. This combination of advice and objectivity is a succinct asset to the Department in carrying out its' mission in this area.

Availability of Funds

$100,000, including direct and indirect costs, was awarded to the National Academy of Sciences for this cooperative agreement. Award was made on September 30, 1992 for a 12-month project period.

Purpose

The purpose of this cooperative agreement is to provide core support for a new board on learning readiness, to assist the Department in defining the concept of, identifying indicators of and measuring "school readiness" as they relate to the health component of Goal #1 (by the year 2000 all children will enter school healthy and ready to learn), of the President's national education strategy, America 2000, for which DHHS has the lead. The board will build upon

the efforts of PHS and other Federal and Non-Federal entities as it examines the science related to "readiness to learn" in both children entering school for the first time and children/youth already in school each and every day. In addition, the board will consider the public policy implications and the best approaches for reaching those with greatest need.

Program Requirements

During the period of this cooperative agreement, the federal substantial involvement will be as follows:

1. Meet with NAS to discuss plans for the activity of the Board during the coming year;
2. Be in contact with NAS staff prior to Board meetings to discuss the agenda for board meetings; and
3. Attend presentations, when appropriate, to pursue specific ideas and suggestions generated by the Board.

Evaluation Criteria

The application was reviewed and evaluated according to the following criteria:

A. Degree to which the applicant demonstrates their understanding of the problem and the purpose of the award.

B. Degree to which the objectives are consistent with the stated purpose of the application and the ability to meet the objectives within the specified period.

C. Adequacy of plans to monitor progress toward meeting the programs activities and objectives.

D. Degree to which the applicant demonstrates the capability to provide the staff and resources necessary to perform and manage the project.

E. Degree to which the budget is reasonable, adequately justified and consistent with the intended use of the grant funds.

Catalog of Federal Domestic Assistance Number

A Catalog of Federal Domestic Assistance Number is not required because the project is to be funded for one year only.

Where to Obtain Additional Information

Additional information regarding this program can be obtained by contacting Cindy Oswald, Contract Specialist, General Acquisitions Branch, Division of Acquisitions Management, ASC/OM, 5600 Fishers Lane, room 5–101, Rockville, MD 20857.

Programmatic technical assistance may be obtained from Melanie Timberlake, Office of Health Planning and Evaluation, HHH Building, Room 740G, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: September 16, 1992.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 92–31193 Filed 12–23–92; 8:45 am]

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National Toxicology Program; Draft Response of the Program to Recommendations in the Final Report of the Advisory Review by the NTP Board of Scientific Counselors; Request for Comments

Background

Dr. Kenneth Olden, Director of the NTP, has as a major goal to assure that the Program serves the public health by strengthening its role as the Nation's premier toxicology research and testing program. To accomplish this goal, Dr. Olden asked the NTP Board of Scientific Counselors, the primary scientific oversight body for the NTP, to review three specific issues of the operation and function of the NTP having to do with how:

- To improve the quality of chemicals nominated for testing by assuring that they have the greatest public health significance;
- To assure that emphasis is placed on studies of the mechanism of toxicity and carcinogenicity; and
- To develop and validate alternate essays that may reduce the need for long-term testing in animals.

Accordingly, the NTP Board, assisted by *ad hoc* expert consultants, met in public session in Research Triangle Park, NC, on April 14–15, 1992, to conduct this review. The final report of the advisory review was published in the **Federal Register** (Vol. 57, No. 138, pp. 31721–31730, July 17, 1992).

Comments were received on the report and other aspects of Program activities at a public meeting held on September 11, 1992, in Washington, DC. Written comments also were accepted at NTP headquarters. At a meeting of the NTP Board on October 27, 1992, Program staff responded to the report and its recommendations. A copy of the response with a summary of public comments is appended here.

Action

The NTP seeks written comments and views on the response to the Advisory Review report and its recommendation. To be most useful, comments should be received within 30 days of the date of this announcement, be as specific and brief as possible, and addressed to the Executive Secretary, NTP Board of Scientific Counselors, Dr. Larry G. Hart, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709. Comments may be sent by FAX to 919 541–2260.

Subsequently, the final report and Program response, along with comments received, and after approval by the NTP Executive Committee, will be considered by Dr. Olden in making recommendations for improvements in the NTP to the Assistant Secretary for Health, Department of Health and Human Services.

Dated: December 18, 1992.

Kenneth Olden,

Director, National Toxicology Program.

Summary of the NTP Response to Recommendations of the NTP Board of Scientific Counselors

The NTP Board of Scientific Counselors met on April 14–15, 1992, to review certain key aspects of the operation and function of the NTP, specifically, the nomination of chemicals, the emphasis on mechanistic work within the NTP and the role of the NTP in the development and validation of alternative assays in toxicology. The overall positive response by the Board regarding the Program is appreciated. The recommendations are relevant to the broad dimensions of the Program as an interagency effort of the Federal government, primarily including scientists and resources of the NIEHS, NIOSH and NCTR.

The NTP agrees strongly with the suggestions of the Board that the process for nominating chemicals and agents for testing by the NTP needs to be expanded and revised to include more emphasis on endpoints of toxicity other than carcinogenesis and to get input from a broader audience of nomination sources. The current procedures for nomination and selection of chemicals, as outlined in the NTP Annual Plan, could more clearly indicate that these options are available. The Program will review the selection and prioritization process in light of recommendations made by the Board. Consideration will be given to the development of criteria for selection and prioritization that are endpoint specific.

The recommendation that mechanisms of toxicity and carcinogenesis should be more widely included in NTP studies is consistent with changes in emphasis that have been implemented over the past few years. As suggested, scientists from basic research backgrounds from NIEHS, NIOSH and FDA (NCTR) laboratories will be included in the discussions to determine the research plans and protocols on individual chemicals. This will introduce more mechanistic observations in the study designs and

will foster cooperative research projects with more intramural scientists. The Program is committed to developing a broader package of data to assist in the interpretation of test results and in the assessment of human risk.

The NTP agrees with the Board recommendation that the NTP should continue to foster the development and validation of new test systems. This is a contribution that can be made uniquely by the NTP. Approaches using *in vitro* systems and alternative species have considerable potential to contribute to our understanding of mechanisms. Their potential value as replacements for currently used *in vivo* systems remains to be determined, as recognized by the Board.

The NTP also agrees with the Board that one of the strengths of the NTP is that scientists are involved in testing, methods development, and mechanistic research. This will definitely continue on a program basis, and on an individual scientist basis where appropriate. More extensive involvement of other intramural scientists and laboratories from NIEHS, NIOSH and NCTR in NTP studies will help to broaden the array of scientific expertise brought to bear on NTP projects.

In summary, the NPT management and professional staff agrees with the major recommendations of the NTP Board of Scientific Counselors from the recent review. Further amplification of our responses is included in the more detailed discussion that follows.

NTP Response to Board of Scientific Counselors' Report

The NTP Board of Scientific Counselors met on April 14–15, 1992, to review certain key aspects of the operation and function of the NTP, specifically, the nomination of chemicals, the emphasis on mechanistic studies within the NTP, and the role of the NTP in the development and validation of alternative assays in toxicology. The thoroughness of the report of the Board, received in June 1992, reflects the hard work and attentiveness of the Board members and ad hoc consultants. The Board's comments were insightful and will definitely help to provide further focus and improvements to the Program. While the Board reviewed the three major issues through workgroups of experts in the areas of carcinogenesis, reproductive and heritable effects, and chemical disposition and other toxicities, this response addresses the collective recommendations of the three groups on the three issues. Comments in this response focus primarily on points of agreement that are of particular importance and points of disagreement or misunderstanding.

Issue 1—To Improve the Quality of Chemicals or Other Environmental Agents or Factors Nominated for Testing by Assuring That They Have the Greatest Public Health Significance

Although there were some differences in the recommendations provided by the three workgroups, the recommendations were more complementary than conflicting and will be used to help guide the Program evaluation and revision of the procedures for nomination, selection and prioritization of agents to be tested. All three workgroups recommended that a wider diversity of individuals and organizations be reached as a source of chemical nominations. The NTP agrees that it is important for a broader spectrum of sources to have input to the nomination process. The greatest diversity in working group recommendations occurred in those addressing the selection and prioritization of agents for testing, reflecting, in part, the varying criteria that need to be considered in testing agents for different endpoints. The Carcinogenesis Workgroup considered the extent of human exposure to be the most important criterion, followed by suspicion of toxicity or carcinogenicity and the existence of data gaps in knowledge. They recommended that chemicals should not be nominated solely as a representative of a chemical class. Classes of chemicals that have been studied in the past were nominated because of exposure of large numbers of people to some members of the class in addition to a suspicion of carcinogenicity. Hypotheses about chemical structural contributions to carcinogenic potential have and should continue to be evaluated. In some cases it has been possible to characterize the toxicity of a large chemical class by studying a few carefully selected members of the class.

Increasing numbers of chemicals have been nominated for study of endpoints other than cancer and the NTP encourages such nominations. Only about half of the chemicals studied by the Program are evaluated in two-year carcinogenicity studies. In contrast to the Carcinogenesis Workgroup, the other two workgroups put less emphasis on human exposure as the primary consideration for selection for study. The criteria for prioritizing chemicals for non-cancer endpoints included structure activity relationships and mechanistic considerations, including chemical class. We do not disagree with these recommendations or with the distinction between the selection criteria for carcinogenesis vs. other toxicity studies. In fact, the Program has always considered human exposure to be a high priority criterion for selecting chemicals for carcinogenesis testing. In answer to the question of how to identify chemicals that become important through the development of new industries, the Carcinogenesis Workgroup recommended that the program might employ chemists or chemical engineers to identify chemicals from these new industries. The Program has been relatively successful in anticipating new industries, such as the semiconductor industry with its novel chemicals, and will continue to use the contacts already established to identify newly developing industries. We feel that additional personnel would have a higher priority for other aspects of Program work.

The NTP agrees with the recommendation of the Reproductive and Heritable Effects Workgroup that the Program should test individual chemicals and concepts of importance to toxicology. The greatest impacts of this Program's work to date are the total body of knowledge accumulated through the testing and research program, and the standardization of methods for the conduct and interpretation of studies, and to a lesser extent, the results of studies on individual chemicals. Although questions driven by chemical-data needs will continue to be important, there are many ideas and concepts of great importance to the regulatory agencies that this Program can address, often simultaneously with testing of selected chemicals. The Reproductive and Heritable Effects Workgroup also recommended a historical evaluation of the chemicals nominated to the Program, and the outcomes and implications of performing or not performing testing. Numerous reviews have been written that analyze and summarize the results of NTP studies. These reviews address issues related to the animal models, statistical considerations, predictiveness of certain types of observations for other toxicologic responses, chemical triggers for specific types of toxic potential, and other evaluations of the respective databases. A more specific response would require further clarification of the intent of the recommendation by the Board.

The workgroup evaluating other toxicity endpoints and chemical disposition recommended the formation of an independent committee to judge

chemical prioritization and selection. The Program will review all chemical nominations as well as consider recommendations for concept and issue-related studies. This review will be done by representatives from the three major operating agencies of the NTP—NIEHS, NIOSH, and NCTR and possibly other government agencies in the future. Thus, reviewers will represent a broad range of scientific interests to provide more assurance that chemicals and ideas that are selected for Program work in the future will have public health importance as a major criterion for selection. The initial review of nominations of chemicals and issues for work by the NTP will consider epidemiologic, mechanistic, and toxicological questions and other Program needs such as the development and validation of screening tests. The procedural details of the selection and prioritization process including involvement of the Chemical Evaluation Committee, **Federal Register** notices of study plans and approval procedures are under review by NTP staff.

The NTP proposes that after a chemical or scientific issue is selected for work by the NTP and receives the appropriate committee approvals, a team leader will be selected for that specific chemical or issue based on expertise relevant to the topic. A team of experts will be selected from the cooperating agencies of the NTP as well as experts from other organizations inside and outside the government, as appropriate, to develop a plan of work on that specific chemical or scientific issue. This group of experts will review the literature and prepare a list of prioritized studies that represent the recommendations to the NTP. The NTP management will review the recommendations of these teams to determine which are relevant for commitment of NTP resources. The approved work will be initiated through existing NTP contracts, in-house laboratories, or through new contracts or grants, new interagency agreements, or other mechanisms as needed. The team that was organized to recommend the research program on the individual chemical or issue will monitor progress on the program and will meet periodically to review the status of ongoing work and to consider new priorities. Once the work is accomplished, the team will be disbanded. This approach of using teams for high priority commitments of the Program will assure broad representation from throughout the NTP and other agencies of the Federal government. In fact, these teams will represent the driving force for much of the work by the NTP in the future.

The workgroup on Other Toxicities and Disposition also recommended that steps be taken to improve public awareness of the NTP. The NTP agrees that additional steps could be taken, perhaps along the line of the recommendations of the Reproductive and Heritable Effects Workgroup that more effort be made to communicate through the scientific and professional societies that are related to the areas of work of the NTP. For example, we can provide information to the relevant major scientific societies that can be published in their newsletters to make their members aware of the purpose of the NTP and our interest in their nominations of chemicals and research suggestions. We will also communicate with the Association of State and Territorial Health Officials for the same purpose. These efforts to improve communications will be assisted by the Office of Communications of the NIEHS.

In summary, the Program intends to utilize the suggestions provided and make a greater effort to solicit nominations from other agencies, trade associations, unions, public organizations, and professional societies. As was recommended in the Summary Section of the Board report, the Program will also evaluate and revise, as needed, the nomination format to emphasize the options in nominations for testing. Also, the Program intends to review the selection and prioritization process in light of the recommendations made by the Board. Consideration will be given to the development of criteria for use in selection and prioritization which are specific to the various endpoints of toxicity.

Issue 2—To Assure That Emphasis is Placed on Studies of the Mechanisms of Toxicity and Carcinogenicity

We agree with the Board about the need for additional data that improve interpretation and extrapolation of test results. In fact, many recent studies have incorporated additional observations to improve the interpretability of the test results, such as lung loading of insoluble particles in inhalation studies, oncogene activation patterns, cell proliferation data, identification of metabolic pathways that result in the formation of toxic or reactive metabolites, species variations in the metabolism and elimination of test chemicals, and dose and route dependent factors that account for variations in toxicity. This information documents more completely the dosimetry aspects of exposure, identification of critical lesions that might be important in the development of toxicity or cancer, and helps to define the mode of action of chemicals where specific toxic effects have been observed. It is anticipated that this process will be expanded in the coming years through the involvement of a broader range of intramural scientists from within NIEHS and other NTP agencies (NIOSH, NCTR). In addition, efforts to stimulate the existing extramural grant mechanism to develop investigator-initiated research proposals based on the results of NTP studies will be pursued. Intramural and extramural scientists will also be notified, as feasible, of the potential availability of experimental animals from NTP studies for research projects in their laboratories.

With the NIEHS reorganization, a greater involvement of other intramural scientists will assure that all NIEHS expertise will be available to address important NTP scientific issues. Moreover, scientific expertise from the other two NTP agencies will also be available to address specific research needs of the Program. This closer cooperation between NIEHS intramural, NIOSH, and NCTR scientists will permit a much broader cadre of scientific expertise from which the Program can identify and select scientists who can contribute to protocol design, mechanistic research, and data interpretation and provide the scientific community and appropriate regulatory bodies with sound scientific data to better assess human risk.

Thus, the NTP testing program will be enhanced at all stages. A greater diversity of scientific input will be sought for selection of chemicals and for the design of studies on selected chemicals and issues. Study protocols will be expanded, as possible, to accommodate collaborative research studies and facilitate the design of mechanistic studies that might follow the descriptive toxicity studies. This added emphasis on mechanistic work, however, must not deemphasize the importance of the chemical testing program of the NTP.

The recommendation of the Carcinogenesis Workgroup that there should be a requirement that the results of the bioassay be discussed with regard to their biological significance concerning human health requires further discussion and clarification. Hypotheses about mechanisms of cancer and relevancy of animal responses for human hazard are not widely accepted for any type of tumor. The current state of knowledge about mechanistic considerations appropriate for a given

study should be identified in technical reports, but the historical strength of the NTP database is the fact that the reports include all of the data necessary for anyone to evaluate the results of the study. As a rule the NTP conclusions about the data are independent of mechanistic considerations, some of which have narrow windows of acceptance. It is uncommon that any single special study will make a tumor response in animals "relevant" or "irrelevant" for humans.

Although the Program is committed to developing a broad package of data to help interpret test results, there will likely continue to be uncertainty in extrapolating animal data to humans. The "under the conditions of this study" approach of the Program is conservative, objective, and has had acceptance in the public peer review process. To enhance risk characterization and facilitate extrapolation to humans; though, opportunities will be sought that include human studies and model development.

The statement that ⅔ of the carcinogens would not be identified at less than the maximum tolerated dose (MTD) is based on a paper (Haseman, J.K.: Issues in Carcinogenicity Testing: Dose Selection. *Fundamental and Applied Toxicology 5*, 66–78, 1985) that evaluated only 13 rodent carcinogen studies, too few to justify such general conclusions. An expansion of that analysis (Hoel, D.G., Haseman, J.K., Hogan, M.D., Huff, J., and McConnell, E.E.: The Impact of Toxicity on Carcinogenicity Studies: Implications for Risk Assessment. *Carcinogenesis 9* (11), 2045–2052, 1988) concluded that only 18 of 52 (35%) multidose chemicals classified as carcinogens would not be statistically positive if the MTD were excluded. Fifteen of the 18 chemicals not showing statistically significant tumor effects at doses below the MTD nevertheless had numerically elevated tumor rates at these dose levels relative to controls.

The criteria for selecting the high dose level for carcinogenesis studies have been the subject of review and discussion for years. The default criteria cited by the Board for extrapolation from the MTD actually have little impact on the design of most carcinogenesis studies because of the lack of mechanistic understanding. Use of the MTD for hazard identification grew out of efforts to produce cancer in laboratory animals with known human carcinogens. Carcinogenic risk may or may not be impacted by proportionality of dose with exposure even in the presence of nonlinear kinetics in blood. NTP studies currently use three dose levels to define the dose-response relationship. The concept of the MTD does not include assumptions about the dose response for DNA repair. Regarding age-dependency and our experience in exposing animals for about ⅔ of their lifespan, no clearcut advantage has been shown by adding perinatal exposure. Estimations of human exposure often have little or nothing to do with selection of the highest dose level for carcinogenesis studies. Negative studies with all dose levels below the MTD are not given much credence for hazard identification. We believe, given our current understanding of mechanisms for carcinogenesis, that currently there are no well-founded generic changes that can be incorporated in test protocols that would impact any default criteria for extrapolation from high dose to low dose in animals, or in scaling to human exposure doses. The Program does believe, however, that it would be prudent to explore modification or alternatives to the MTD concept, such as DNA repair kinetics, to assist in protocol design and in reducing the number of default assumptions incorporated in conducting risk assessments.

Two of the workgroups specifically recommended that a balance be maintained in the areas of testing, mechanistic work, and the development of new methods. This balance can be maintained where it has existed in the past and can be developed in those areas where it hasn't existed on a program basis but is difficult to achieve on an individual scientist basis. By closer integration with other intramural laboratories of NIEHS, NCTR, NIOSH and other organizations, the Program will maintain a balance between mechanistic, testing, and methods development work with individual efforts spanning the range from complete mechanistic commitments to complete Program responsibilities. The balance between mechanistic research and other responsibilities, on an individual basis, will be tailored as closely as possible to the skills of the individuals.

Closer coordination of efforts of toxicologists, whose primary responsibilities are to NTP-related work, and other intramural scientists who are involved in basic research, will be accomplished through at least two approaches. First, efforts to include basic research scientists in all of the functional operations of the NTP will be expanded. Thus, the planning for the program activities will be done by a broader range of scientists. This will help ensure that more mechanistic work will be included in the study protocols and that more mechanistic work will be done in the intramural laboratories to enhance the database on individual chemicals or on issues that relate to the interpretation of test data. The other approach by which collaboration will be developed with other intramural scientists is through an internal granting process. In this process, NIEHS resources, though limited initially, will be made available to NIEHS scientists who develop collaborative research projects that are at the interface between toxicological observations and mechanistic research. These resources would be applied for through central mechanisms and would be made available on basis of merits of the proposal. This work could include new hires (most likely temporary employees such as post doctoral scientists) to conduct the studies under the guidance of the intramural scientists who devised the projects. This will not only provide resources to support research projects but also provides an incentive for scientists to collaborate to generate data at the interface between mechanistic and toxicologic areas of work.

As noted in the discussions by the workgroups, what constitutes mechanistic work is not a matter of widespread agreement. In most cases, what is considered mechanistic work is really additional descriptive information relating to some normal or abnormal biological process or outcome (toxicity). Such information doesn't identify ultimate mechanisms of action, but may be helpful in the overall understanding of the development of the agent-induced toxicity. To fully identify and characterize the molecular mechanisms of toxicity will require the full resources of the entire biomedical community. For its part, the NTP will expand the scope of its mechanistic efforts to include more intramural scientists and to incorporate mechanistic information in the design of more definitive studies. Much of the mechanistic work, however, must be done sequentially based on the results of the toxicity testing and the developing base of mechanistic information. Thus, a balance will continue to be sought between research and testing activities by the NTP to provide the best composite of information for making public health and regulatory decisions.

Issue 3—To Develop and Validate Assays that May Reduce the Need for Long-Term Testing in Animals

The Program shares the qualified optimism expressed by the three

workgroups regarding the status and prospects for the future use of alternative test systems. We agree that there are currently no short-term tests or tests in alternative species that are adequate to replace the definitive protocols currently used for characterizing toxicity and carcinogenicity. We mut be cautious with statements that changes in protocols will lead to the use of reduced numbers of animals. Within the field of toxicology, such optimistic statements were made decades ago and it is not obvious that there have been significant reductions in the use of animals as a result of the development of prescreens and alternative test systems. Instead, test strategies, including prescreens, have permitted us to use animals more wisely by improving the prioritization process. Also, the proposed expert team approach for the development of work plans and protocols should enhance the opportunity for investigators to maximize the amount of data obtained from a study and, thus, possibly decrease the number of animals required. We must be careful not to build false hopes that alternative procedures are so close at hand that we will be able to phase out long-term tests using whole animals. The Program has made considerable progress in using animals only for high priority testing and research and has provided a considerable amount of guidance to broad fields of toxicology in the development and evaluation of screens in such areas as genetic toxicity and developmental toxicity. In addition to the history of the Program and its involvement in submammalian screens, the program is currently involved in the evaluation of fish, frogs, and Drosophila as alternative test systems for carcinogenicity and developmental toxicity.

The Program will continue to evaluate the use of reduced protocols for evaluation of carcinogenic potential. Recent meetings sponsored jointly by the EPA and NIEHS have confirmed that there are some situations where reduced protocols, perhaps including only one sex of each of two species, would be appropriate but that a certain percentage (perhaps as high as 10%) of chemicals that would have been detected by the standard two species-protocol would not be identified as animal carcinogens. Thus, the possibility of using reduced protocols for carcinogenicity testing will be considered but on an individual chemical basis.

The Program is currently involved in the evaluation of several transgenic animal models particularly for the identification of carcinogenic potential. Transgenic and other models show considerable promise for improving our understanding of mechanisms of toxicity and carcinogenicity. However, their ultimate value for early screens for toxicity remains to be determined.

The Reproductive and Heritable Effects Workgroup recommended the development of statistical models using existing data to increase power by combining endpoints of toxicity. They also noted that this might reduce the number of animals needed for such testing. One of the strengths of the database generated by the NTP in multiple areas of toxicity, including cancer, immunotoxicology, reproductive and developmental toxicity, and genetic toxicity, is that all of the data are available for evaluation by others who wish to try other approaches to data analysis. For example, the EPA is currently evaluating the developmental toxicity database generated by the NTP for other approaches to model the data. At the present time, we consider it most appropriate to let the evaluation by EPA and others go to completion and then review the status. It isn't clear that combining biochemically or physiologically unrelated endpoints is a logical way to improve the interpretation of developmental and reproductive toxicity data. Rational combinations of endpoint observations await better mechanistic understanding.

The Program agrees with the Board that the NTP should continue to foster the development and validation of new test systems and should be involved in interagency coordination efforts to develop and use such systems. In fact, 1992 Congressional appropriations supported the development of alternative test systems by the NTP but the level of support doesn't afford a larger role in the field for the NTP. Currently there are at least two interagency committees that deal with this issue to a limited extent—the Interagency Research Animal Committee (IRAC) and the Interagency Regulatory Alternatives Group (IRAG). Because neither of these groups has the focus and scale of the NTP interest in alternative test systems, the Program is considering the advisability of forming another interagency group of the nature recommended by the Board.

Toxicology Strategy

The workgroup on Other Toxicities and Disposition made an additional recommendation that was outside of the three major issues already discussed. This group recommended that the NTP become the nation's principal coordinating center for toxicological issues, to develop a national toxicology strategy. In response, the Program already, to a significant extent, plays this role in the field of toxicology through the various conferences, symposia and workshops that have been sponsored by the NTP and public reviews of reports and programs. NTP studies provide hypotheses used by extramural scientists in grant applications funded by the NIEHS Extramural Program in the areas of clinical and experimental biomedical sciences that impact on toxicology. The NTP leads major interagency efforts to communicate and harmonize toxicological issues. The Program serves as a center for coordination of toxicological data needs and issues, particularly for those agencies that comprise the NTP Executive Committee. Consideration will be given to broadening the communications to include all agencies that are producers or users of toxicological data.

While the Program is committed to communication on a chemical-by-chemical and issue-by-issue basis, it has effectively served as a center of coordination of toxicological issues without adopting a more aggressive stance of policy advocacy. The Program feels that the contribution of data to support regulatory and public health decisions has been more important than spending a larger proportion of our resources to develop and defend strategies for appropriate approaches to toxicological issues. Thus, the Program is committed to continue to play an important role in providing leadership for the toxicology community with the approaches used successfully in the past.

NTP Annual Report on Carcinogens

Several reviewers recommended that the process of listing chemicals in the Annual Report on Carcinogens take into account mechanistic data to avoid listing chemicals where the animal data appear to be not relevant for predicting risk for humans. The approach used to select chemicals for the Annual Report was recently reviewed by an interagency committee, the Committee to Coordinate Health and Related Programs, which concluded that the procedures were appropriate and consistent with the congressional mandate for the Report. The NTP agrees that mechanistic data are important to consider and will cite relevant literature of a mechanistic nature that could impact the extrapolation from animals to humans for chemicals that are listed in the Annual Report.

In summary, the insightful recommendations of the NTP Board of Scientific Counselors are a basis for

constructive refinements to the operation of the NTP. Coupled with organizational changes in progress within the NIEHS that will increase the breadth of scientific expertise applied to the work of the NTP, the comments of the Board are timely to assure the high scientific quality and leadership role of the National Toxicology Program.

Summary Report of Public Comments on the Advisory Review Report of the NTP Board Received by October 23, 1992

The NTP Board of Scientific Counselors assisted by ad hoc expert consultants met on April 14–15, 1992, to review certain aspects of the operation and function of the National Toxicology Program (NTP) and make recommendations to NTP Director and Executive Committee. As agreed, the final report of the Advisory Review of the NTP was published in the **Federal Register**, Vol. 57, No. 138, 31721–31730 (July 17, 1992) and public comments were requested on the report as well as suggestions of other activities to improve the NTP. Additionally, a public meeting attended by about 100 persons was held in Washington, DC, on September 11, 1992, at which time oral comments were received.

There were 19 speakers at the meeting on September 11. Eleven were from industry or represented industrial trade associations, while there were two speakers representing labor, two from public interest groups, two Federal scientists representing themselves, a representative for an animal protection group, and one private citizen. Without exception, the industrial speakers expressed general support for the recommendations in the report, especially the call for more mechanistic research often incorporated into bioassay design to aid in risk assessment, while being in less agreement on whether there should be less testing, the same as currently, or more. These speakers thought the use of the MTD should be reevaluated. Other speakers encouraged more studies of mechanisms but not at the expense of doing bioassays, calling for increased funding to support more testing. Two noted that there was no current alternative to the bioassay for predicting human cancer risk. There was general support for an NTP role in development and validation of alternative test systems to replace the use of whole animals. With regard to improving chemical nomination and selection, there was some expressed support for selection of natural substances and opposition expressed to selecting and testing pharmaceuticals and chemicals that should be tested by industry. One speaker cautioned that production volume did not necessarily equate with human exposure. Another called for broader nongovernment input in the nomination process and several called for more emphasis on non-cancer endpoints. With regard to the issue of how to improve the procedures for alerting regulatory agencies and the public about test results on chemicals, there was a divergence of opinion between not communicating information until potential human risk is identified vs. more prompt release of bioassay results. One subject not addressed specifically in the report but which drew comments from several speakers was the NTP Annual Report on Carcinogens. Several speakers stated that the criteria for inclusion of substances needed to be reevaluated to include the use of mechanistic information. Two speakers said the Annual Report was an important public health tool and there should be no delays in its release.

There were 38 written statements received through October 23, with about a third received prior to the public meeting. Eight were from persons who also spoke at the public meeting. Of the statements, 20 were from industry/trade group representatives, five from Federal scientists, five from academia, three from public interest groups, two from private citizens, one from a journal editor, one from a consultant, and one from labor. In general, many of the comments received mirrored those received in the public meeting.

Among the comments, three correspondents stated there was a factual error in the statement in the Report about the percentage of NTP carcinogens that would not be positive in rodent studies if the MTD had not been used. There was a divergence of opinion concerning the use of reduced protocols. One writer decried the lack of discussion on risk assessment in the report. Two called for more testing of natural dietary substances while one thought this should be coupled with more research on effects of dietary insufficiencies and caloric restriction on tumorigenesis in rodents. One writer called for more short-term bioassays in immature animals as they are more sensitive to tumor induction than adult animals. With regard to development of alternative systems, one writer thought more emphasis should be given to aquatic organisms, while another suggested that multiple endpoint assays could be valuable *in vitro* alternatives to whole animal studies. One writer said the NTP should reexamine the mechanisms involved in carcinogenesis of compounds which only induce liver tumors in B6C3F1 mice. Classes of substances that were suggested for study included mixtures, food constituents, and radiolytic byproducts of the irradiation of food. Two writers supported a call for more interaction and even collaboration between NTP scientists and industrial scientists. Two writers proposed that, because of limited NTP resources, testing be shifted to industry where possible with one stating that there was sufficient authority under the Toxic Substances Control Act (TSCA) to compel industry to increase the conduct of bioassays. Finally, 13 correspondents referred to the Annual Report on Carcinogens with the comments primarily echoing those received at the public meeting.

All of the oral and written comments received from the public were promptly provided to NTP staff in the three agencies for their review and consideration in the process of formulating the Program's responses to the recommendations of the Advisory Review Report.

[FR Doc. 92–31226 Filed 12–23–92; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–3350–N–11]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is

publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD:

(1) Its intention to make the property available for use to assist the homeless,

(2) Its intention to declare the property excess to the agency's needs, or

(3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the total free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE-MM, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314–1000; (202) 272–1750; (These are not toll-free numbers).

Dated: December 18, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/24/92

Suitable/Available Properties

Buildings (by State)

California

199 Military Family Housing
Savannah Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240001
Status: Excess
Base closure, Number of Units: 398
Comment: 1405 sq. ft., 2-family duplexes, 1-story woodframe stucco, 144 units scheduled to be vacated 1/31/93; 254 units scheduled to be vacated 10/1/93.

Utility Bldg.
Savannah Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240002
Status: Excess
Base closure, Number of Units: 1
Comment: 237 sq. ft., 1-story woodframe stucco, most recent use—gas meter bldg., scheduled to be vacated 10/93.

100 Military Family Housing
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240003
Status: Excess
Base closure, Number of Units: 684
Comment: 2550 sq. ft. to 3024 sq. ft., 16 duplexes, 72 four-plexes, and 12 six-plexes totaling 684 units, 3 to 4 bedrooms, 1 to 2 story, scheduled to be vacated 10/94.

49 Detached Carports
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240004
Status: Excess
Base closure, Number of Units: 49
Comment: size varies, 1-story concrete block wall, scheduled to be vacated 10/94.

Convenience Store
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240005
Status: Excess
Base closure, Number of Units: 1
Comment: 4830 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

Youth Center
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240006
Status: Excess
Base closure, Number of Units: 1
Comment: 6576 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

Utility Bldg.
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240007
Status: Excess
Base closure, Number of Units: 1
Comment: 416 sq. ft., 1-story woodframe stucco, most recent use—gas meter building, scheduled to be vacated 10/94.

Child Care Center & Storage
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240008
Status: Excess
Base closure, Number of Units: 2
Comment: 6641 sq. ft. child care center and 400 sq. ft. storage bldg. 1-story woodframe stucco, scheduled to be vacated 10/94.

Maintenance Bldg.
Cabrillo Project
Long Beach Naval Station

Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240009
Status: Excess
Base closure, Number of Units: 1
Comment: 900 sq. ft., 1-story steel panel bldg., scheduled to be vacated 10/94.

Laundromat
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240010
Status: Excess
Base closure, Number of Units: 1
Comment: 1320 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

North Dakota

Barracks/Admin Bldg.
Lamoure Co: Lamoure ND 58458–
Landholding Agency: GSA
Property Number: 549240007
Status: Excess
Comment: 11800 sq. ft., 1-story masonry frame, most recent use—offices, in wetlands area.
GSA Number: 7–U–ND–0494

Land (by State)

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultr IL 62565–9804
Landholding Agency: COE
Property Number: 319240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Suitable/Unavailable Properties

Land (by State)

Kentucky

Carr Fork Lake
5 miles SE of Hindman, Ky., Hwy. 60
Hindman Co: Knott KY
Landholding Agency: COE
Property Number: 319240003
Status: Unutilized
Comment: 2.81 acres, most recent use—drainage area for bank stabilization for adjacent cemetery.

Suitable/To Be Excessed

Land (by State)

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 319240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

[FR Doc. 92–31144 Filed 12–23–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–03–4410–01]

Correction of Meeting Agenda

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of agenda for meeting of the Rock Springs District Advisory Council.

SUMMARY: This notice corrects the agenda and sets forth the schedule and total agenda for the next meeting of the Rock Springs District Advisory Council.

DATES: January 8, 1993, 9 a.m. until 4:30 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82901–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting, as amended, will be limited to:

1. Introduction and opening remarks
2. Review minutes of the last meeting
3. Election of officers
4. The Green River Resource Management Plan
5. Animal Damage Control M–44 demonstration
6. Public comment period

The meeting is open to the public. Interested persons may make oral statements to the Council between 3:30 and 4:30 p.m. on January 8, 1993, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by January 6, 1993.

Marlowe E. Kinch,

District Manager.

[FR Doc. 92–31202 Filed 12–23–92; 8:45 am]
BILLING CODE 4310–22–M

Bureau of Land Management

[NM–060–4320–01 ADVB; 602]

Roswell District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATES: Thursday, January 28, 1993, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

LOCATION: BLM Roswell District Office, 1717 West Second St., Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 W. 2nd St., Roswell, NM 88201, telephone (505) 622–9042.

SUPPLEMENTARY INFORMATION: The agenda will consist of review and discussion of FY 93 Range Improvement Projects and Incentive Based Grazing Fee Proposal. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the District Manager by August 24, 1992. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours, within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: December 16, 1992.

Leslie M. Cone,

District Manager.

[FR Doc. 92–31251 Filed 12–23–92; 8:45 am]
BILLING CODE 4310–FB–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 15, 1992.

The plat representing the dependent resurvey of a portion of the north boundary, subdivisional lines, subdivision of sections 1 and 2, and adjusted 1873 and 1977–1984 meanders of the left bank of the Clearwater River, and the subdivision of sections 1 and 2, Township 33 North, Range 3 East, Boise Meridian, Idaho, Group No. 820, was accepted December 10, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs, North Idaho Agency, Nez Perce Tribe.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: December 15, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92-31258 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Eugene R. Gordon, Naples, FL, PRT-773261.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by D.B. Pohl, P.O. Box 249, Teafontein, Grahamstown, 6140, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Tom L. Pettiette, Houston, TX, PRT-774017.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by E.V. Pringle, P.O. Box 59, Huntley Glen, Bedford, 5780, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: John J. Jackson, III, Metairie, LA, PRT-774792.

On December 14, 1992, a notice was published in the **Federal Register** requesting comments on a number of conservation actions proposed for the rhinoceros, currently undergoing a catastrophic population decline. One management program involves dehorning as a means of reducing poaching. Now the Fish and Wildlife Service has received an application. The applicant requests a permit to import one horn from Zimbabwe taken from a sedated black rhinoceros (*Diceros bicornis*) for personal display. The applicant proposes to dart a rhinoceros with anaesthesia for removal of the horn by a qualified individual. The rhinoceros would be released after dehorning. The applicant requests that the proposed horn, removed from a live rhinoceros, be considered a sport-hunted trophy and states the import would serve to enhance survival of the species in the wild.

Applicant: U.S. Fish & Wildlife Service, Pacific Island Office, Honolulu, HI, PRT-774779.

Applicant requests a permit to take (harass, capture, band, attach radio transmitters) and remove from the wild both eggs and hatchlings of Hawaiian crow (*Corvus hawaiiensis*) for a captive-breeding and reintroduction program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: December 18, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-31212 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued food and beverage facilities and services for the public at Independence National Historical Park, Pennsylvania, for a period of ten (10) years from the date of execution of the contract.

EFFECTIVE DATE: February 22, 1993.

ADDRESS: Interested parties should contact the Regional Director, Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pennsylvania, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1990, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 16, 1992.

Charles P. Clapper, Jr.,

Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 92-32135 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-70-M

Farmington Wild and Scenic River Study; Massachusetts and Connecticut Farmington River Study Committee; Public Forum Meeting

The National Park Service is hereby announcing that a public forum meeting of the Farmington River Study Committee will be held Thursday, January 14, 1993.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments.

The purpose of this meeting is to offer presentations on aspects of the study and to provide an opportunity for public comment. This is not a regular business meeting of the Study Committee and no decisions will be made. The meeting will convene at 7:30 p.m. at the Barkhamsted Elementary School Gymnasium, Barkhamsted, Connecticut

(the school is located on Route 318 in Pleasant Valley, approximately 200 yards west of the intersection with Route 181 and the Farmington River).

Agenda

I. Introduction;
II. Brief Presentations on:
1. Study Status
2. Instream Flow Study
3. Draft recommendations for River Management Plan
III. Opportunity for questions/clarifications from the public;
IV. Public comment and open discussion.

Further information concerning this meeting may be obtained from the Chief, Office of Communications, National Park Service, North Atlantic Region, 15 State Street, Boston, Massachusetts, 02109 (617) 223–5199.

Dated: December 16, 1992.

Marie Rust,

Regional Director.

[FR Doc. 92–31234 Filed 12–23–92; 8:45 am]

BILLING CODE 4310–70–M

Preservation of Jazz Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Preservation of Jazz Advisory Commission will be held at 9 a.m., on Friday, January 29, 1993, at the World Trade Center, 18th Floor, Crescent City Conference Room, 2 Canal Street, New Orleans, Louisiana.

NOTE: If necessary, the Commission meeting will be extended to Saturday, January 30, at 9 a.m., at the U.S. Customs House, 423 Canal Street, room 223.

The Preservation of Jazz Advisory Commission was established by Public Law 101–499 to advise the Secretary of the Interior in the preparation of the suitability and feasibility of preserving and interpreting the origins of jazz in New Orleans.

The Commission will:

—Review the Draft New Orleans Jazz Special Resource Study (The Draft Study has been made available to Commission members prior to the meeting. Comments from the Commission members will be addressed in the final report that will be available to the public after it is transmitted to Congress)

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the Commission meeting with the Superintendent, Jean Lafitte National Historical Park and Preserve. The public will also have an opportunity to submit written and oral comments for the record during the meeting.

Persons wishing further information concerning the meeting, or who wish to submit written statements may contact Mr. Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882.

Mintues of the Commission meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: December 16, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92–31321 Filed 12–23–92; 8:45 am]

BILLING CODE 4310–70–M

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of Meetings for the Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of the forthcoming scheduled meetings of the Vancouver Historical Study Commission. The next two monthly management meetings will be held on Tuesday, January 12, 1993, and Tuesday, February 9, 1993. The two meetings will be held in the Vancouver City Council Chambers, 210 East 13th Street, Vancouver, Washington. The meeting for January 12, 1993, is scheduled from 1 to 5 p.m.

Dated: December 10, 1992.

Charles H. Odegaard,

Regional Director.

[FR Doc. 92–31236 Filed 12–23–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act (19 U.S.C. 2253 note), enacted in December 1989, concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries. The U.S. International Trade Commission's role as outlined in this Act was to determine annually for 2 years the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feed stock raquirement. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Departments of Commerce and Treasury to make these determinations.

Section 225 of the Customs and Trade Act of 1990 (Pub. L. 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. In the amendment, a determination of the U.S. domestic market for fuel ethyl alcohol will be made for each year after 1989.

For the 12-month period ending September 30, 1992, the Commission has preliminarily determined the level of U.S. consumption of fuel ethyl alcohol to be 1.11 billion gallons. Seven percent of this amount is 77.8 million gallons. Because the law specifies that the base quantity to be used by Customs in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission, the base quantity for 1993 should be 77.8 million gallons. It should be noted that certain of the data required to make the determination are being estimated by the Commission pending finalization of Treasury statistics through September 1992 for alcohol fuel producers. In addition, fuel oxygenates data from the Department of Energy are being used to supply fuel ethyl alcohol production data for periods not yet compiled by Treasury. In the event that the finalized data materially change the base quantity estimate to be used in 1992, the

Commission will notify the Customs Service and issue an amended **Federal Register** notice.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Michels (202–205–3325) or Mr. James A. Emanuel (202–205–3367) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–205–3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: December 18, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31213 Filed 12–23–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. *Parent Corporation and address of principal office:* Southwest By-Products of Arkansas, Inc., whose principal office is 3401 North Grant Street, Springfield, Missouri 65803.

2. *Wholly owned subsidiaries which will participate in the operations and State(s) of incorporation:* National Commodity Exchange, Inc., a Missouri Corporation, located at 3401 North Grant Street, Springfield, Missouri 65803.

B.1. *Parent corporation and address of principal office:* Tyler Corporation, 3200 San Jacinto Tower, 2121 San Jacinto Street, Dallas, Texas 75201.

2. *Wholly owned subsidiaries which will participate in the operations and State(s) of incorporation:* Tyler Pipe Industries, Inc. (Delaware Corporation) and Swan Transportation Company (Delaware Corporation).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31266 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub No. 5 (93–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factors and decisions.

SUMMARY: The Commission has approved a first quarter 1993 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF (Unadjusted) is 1.012. The first quarter RCAF (Adjusted) is 0.863, an increase of 0.1 percent from the rebased fourth quarter 1992 RCAF (Adjusted) of 0.862. Maximum first quarter 1993 RCAF rate levels may not exceed 100.1 percent of maximum fourth quarter 1992 RCAF rate levels.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 927–5720; Robert C. Hasek, (202) 927–6239, TDD for hearing impaired (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, or call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 16, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31267 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32167]

Kansas City Southern Industries, Inc., MidSouth Corp., MidSouth Rail Corp., MidLouisiana Rail Corp., SouthRail Corp. and TennRail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision No. 3.

SUMMARY: The Commission is accepting for consideration the control application filed November 25, 1992, by Kansas City Southern Industries, Inc., The Kansas City Southern Railway Company, K&M Newco, Inc. to acquire control of MidSouth Corporation, MidSouth Rail Corporation, MidLouisiana Rail Corporation, SouthRail Corporation, and TennRail Corporation (collectively referred to as applicants).

DATES: The Commission is formally adopting the procedural schedule tentatively adopted in Decision No. 2. Written comments on the application must be filed no later than January 25, 1993, and for comments from the Department of Justice and the Department of Transportation, no later than February 8, 1993. For further information, see the attached procedural schedule.

ADDRESSES: Send an original and 10 copies of all documents to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32167, Washington, DC 20423. In addition, one copy of all documents in this proceeding must be sent to each of the following:

Federal Railroad Administration, Docket Clerk, Office of Chief Counsel, room 5101, 400 Seventh Street, SW., Washington, DC 20590

Attorney General of the United States, Antitrust Division, Washington, DC 20530

Laurence R. Latourette, Preston, Gates, Ellis & Rouvelas Meeds, Suite 500, 1735 New York Avenue, NW., Washington, DC 20006–4759

Richard P. Bruening, Kansas City Southern Industries, Inc., 114 West 11th Street, Kansas City, MO 64105

Robert H. Forry, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, GA 30308–2216

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721.].

SUPPLEMENTARY INFORMATION: The Commission is accepting for consideration the control application filed in these proceedings. On November 25, 1992, Kansas City Southern Industries, Inc. (KCSI), The Kansas City Southern Railway Company (KCS), K&M Newco, Inc. (KMN), MidSouth Corporation (MSC), MidSouth Rail Corporation (MSR), MidLouisiana Rail Corporation (MLR), SouthRail Corporation (SR), and TennRail Corporation (TR) (all of these entities are referred to collectively as applicants) filed an application under 49 U.S.C. 11343 *et seq.* for the common control by KCSI of KCS and MSC's rail subsidiaries (MSR, MLR, SR, and TR).

The Commission will also adopt the schedule proposed in its prior decision in this proceeding served November 6, 1992 (Decision No. 2), a copy of which is attached as appendix A, but it

reserves the right to amend it if circumstances warrant. All of the filing deadlines ordered here are in accordance with the governing regulations as modified by the expedited schedule. Applicants and all other parties to this proceeding are advised that, particularly because of the expedited schedule, they must strictly comply with all requirements. If questions arise concerning an interpretation of a requirement, they may contact the Commission's Office of Proceedings, Office of Legal Counsel, (202) 927–5610, for assistance. See 49 CFR 1180.4(c)(6)(iii).

If the application in Finance Docket No. 32167 is approved, applicants intend that KCSI, though its newly created noncarrier subsidiary KMN, will acquire the common stock of MSC. Once KMN has acquired all of MSC's common stock, KMN and MSC will be merged, with MSC the surviving corporation. After the merger, MSC will be a wholly owned subsidiary of KCSI, and KCSI will have direct control over KCS and indirect control of the MS rail subsidiaries through its ownership of MSC.

The application was filed under 49 U.S.C. 11343, *et seq.* and 49 CFR Part 1180. The Commission is accepting it for consideration because it substantially complies with the applicable regulations, waivers, and requirements. There is one aspect of the application, however, that needs to be supplemented with additional information.

The financial data submitted by applicant are complete except for the requirement of 49 CFR 1180.9(e), which requires balance sheets (Exhibit 20) and income statements (Exhibits 21) for the MSC's class II and III rail carrier subsidiaries covering a period ending within 6 months before the application is filed. The waiver of *pro forma* financial statements granted in Decision No. 2 did not include the balance sheet and income statement required under 1180.9(e). Applicants should be able to comply with this request by submitting MSC's SEC Form 10–Q for both the first and second quarters of 1992. An original and ten copies of the above information must be filed within 5 days of the service date of this decision.

Copies of this and prior decisions, as well as the application and exhibits are available for inspection in the Public Docket Room, Room 1221, at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested persons, including government parties, may participate in this proceeding by submitting written comments regarding the applications. Comments from parties other than the Department of Transportation and the Department of Justice must be filed no later than January 25, 1993. The Department of Transportation and the Department of Justice must file comments no later than February 8, 1993. An original and 10 copies of all comments must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be concurrently served by first class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list. A service list will be issued shortly after comments have been received. Any person who files timely written comments shall be considered a party of record if so indicated in the comments. Accordingly, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments shall include:

(1) The docket number and title of the proceeding;

(2) The name, address, and telephone number of the commenting party and its representative on whom service shall be made;

(3) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(4) A statement on whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(5) Any request for an oral hearing with reasons supporting this request and an indication of the disputed facts that can only be resolved at a hearing;

(6) A list of all information sought to be discovered from applicant carriers;

(7) An initial list of specific conditions sought;

(8) An analysis of the issues the Commission must consider under the relevant underlying statutory criteria and the policies of the antitrust laws.

The parties have already begun discovery. This proceeding is being assigned to the Office of Hearings to resolve any discovery disputes. All parties are advised to respond to discovery requests promptly. The Commission will not tolerate dilatory tactics in response to discovery requests designed to elicit relevant evidence. A refusal to voluntarily provide information will be treated as an objection to the request for discovery. Responses must be served on all parties of record, and 10 copies of those responses must be concurrently filed with the Commission.

The evidentiary phase of this proceeding will conclude by April 9, 1993. The initial decision will be waived, and the determination of the application's merits will be made in the first instance by the entire Commission under 49 U.S.C. 11345.

Under 49 U.S.C. 11344(d), the Commission shall approve an application unless it finds that (1) as a result of the transaction there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

Decided: December 17, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmon and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

Schedule for the Control Transaction in Finance Docket No. 32167

November 25, 1992—Primary application filed.
December 24, 1992—Commission notice of acceptance of primary application published.
January 25, 1993—Comments on primary application (except DOJ, DOT) due.
February 8, 1993—Written comments of DOJ and DOT due.
March 1, 1993—Opposition evidence and briefs due.
March 15, 1993—Government parties' evidence and briefs due.
April 9, 1993—Rebuttal evidence and reply briefs [1] in support of primary application due. Close of evidentiary record.
July 8, 1993—Final decision.

[FR Doc. 92–31269 Filed 12–23–92; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 32206]

Norfolk Southern Railway Co.; Acquisition and Operation Exemption; Line of Eastern Alabama Railway, Inc.

Norfolk Southern Railway Company (NSR) seeks a notice of exemption to

[1] We are here clarifying the proposed schedule to specify that applicants are the parties entitled to file rebuttal evidence and reply briefs.

purchase approximately 2.4-miles of rail line currently owned by Eastern Alabama Railway, Inc. (EARY). The line extends from a point formerly known as GP Junction at NSR milepost 737.3 to a point 500 feet north of the north switch to Donoho Clay (approximately 11,427 feet north of GP Junction) at Anniston, AL, and is part of a 15.06-mile EARY line extending between Anniston (milepost LAM 507.73) and Wellington (milepost LAM 522.79) in Calhoun County, AL. NSR now serves shippers on the 2.4-mile line under a trackage rights agreement with EARY. See Finance Docket No. 32050, Norfolk Southern Railway Company—Trackage Rights Exemption—Eastern Alabama Railway, Inc. (not printed), served May 20, 1992. The transaction is expected to be consummated before December 31, 1992.

As part of their trackage rights agreement, NSR was granted the option to purchase the line in the event EARY sought regulatory authority to abandon or discontinue its own operations over the line. NSR recently sought to exercise its option and purchase the 2.4-mile segment when EARY was granted an exemption to discontinue its service on the 2.4-mile segment and abandon the remainder of the line between Anniston and Wellington, in AB–374 (Sub-No. 1X), Eastern Alabama Railway, Inc.—Abandonment and Discontinuance Exemption—In Calhoun, AL (not printed), served October 9, 1992. NSR filed an offer of financial assistance (OFA) in that proceeding, but NSR's OFA was rejected on the basis that section 10905 purchase procedures do not apply when there are continuing operations over the line. See Docket No. AB–374 (Sub–No. 1X), Eastern Alabama Railway, Inc.—Abandonment and Discontinuance Exemption in Calhoun County, AL (not printed), served October 23, 1992. In this instance, the continuing operations were those of NSR under its trackage rights.

NSR has now filed a petition requesting either an exemption under 49 U.S.C. 10505 from the provisions of 49 U.S.C. 11343 or application of the class exemption pursuant to 49 CFR 1180.2(d)(1).[1] EARY and NSR could have sought abandonment and discontinuance, respectively, for the entire line and followed that by a sale of the 2.4-mile segment to NSR. Instead, EARY received a discontinuance for the 2.4-mile segment rather than an abandonment and NSR was allowed to continue its operations under the trackage rights. In these limited circumstances, where the owning carrier sought discontinuance (rather than abandonment) authority in order to allow the acquiring carrier to continue its operations on the line, it is in the public interest to construe the acquiring carrier's subsequent acquisition as falling within the parameters of 1180.2(d)(1).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: R. Allan Wimbish, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions in New York Dock Ry.—Control—Brooklyn Eastern Distr., 360 I.C.C. 60 (1979).

Decided: December 17, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31270 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

[1] Section 1180.2(d)(1) is the exemption for acquisition of a line of railroad that would not constitute a major market extension when the Commission has found that the public convenience and necessity permit abandonment.

Release of Waybill Data

The Commission has received a request from the Reebie Associates for permission to use certain data from the 1991 ICC Waybill Sample.

A copy of the request (WB654–12/8/92) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31268 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 451X]

CSX Transportation, Inc.—Abandonment Exemption in Ben Hill and Irwin Counties, GA

CSX Transportation, Inc. has filed a notice of exemption under 49 CFR part 1152, Subpart F—Exempt Abandonments to abandon its approximately 2.71-mile line[1] of railroad from milepost SLA–660.6, V.S. 1289+74 at Fitzgerald, in Ben Hill County, GA, to milepost SLA–663.31 V.S. 1436+26 at Wiggins, in Irwin County, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at the 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 23, 1993, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[2] formal

[1] This line was part of a line that applicant sought to abandon in Docket No. AB–55 (Sub-No. 352), CSX Transportation Inc.—Abandonment—in Ben Hill and Irwin Counties, GA. By decision served December 7, 1990, as corrected by decision served February 25, 1991, the Commission found that the present and future public convenience and necessity permitted the abandonment by applicant of the line that was the subject of that proceeding except for the segment that is the subject of this proceeding.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). An entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to

Continued

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 4, 1993.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 13, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water St. J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 29, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions, will be imposed, where appropriate, in a subsequent decision.

Decided: December 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31271 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,697]

Coombs Machinery, Inc., Whitehall, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Coombs Machinery, Incorporated, Whitehall, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,697; Coombs Machinery, Inc., Whitehall, Pennsylvania (December 14, 1992)

Signed at Washington, DC, this 15th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–31277 Filed 12–23–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,453]

Welltech, Inc., Dickinson, ND; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Welltech, Incorporated. Dickinson, North Dakota. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,453; Welltech, Incorporated Dickinson, North Dakota (December 11, 1992)

Signed at Washington, DC this 15th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–31278 Filed 12–23–92; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Canadian Standards Association Rexdale (Toronto) facility application for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Canadian Standards Association (CSA), Rexdale (Toronto), which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this application is:

Canadian Standards Association, Toronto Facility, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario M9W1R3, Canada.

Background

The Canadian Standards Association is an independent organization providing integrated services in the fields of standards development and conformity assessment. The Certification and Testing Division provides conformity assessment programs including laboratory testing, certification, inspection and quality management services.

CSA originated in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the present name. In 1940, CSA began to test and certify products.

CSA's initial application, dated April 20, 1989 (Ex. 2A), was amended by letter dated January 16, 1990 (Ex. 2C) to expand the original request for NRTL recognition to test and certify products from only two standards to more than 360 acceptable test standards. By letter dated December 20, 1991 (ex. 2M), CSA further amended its application for recognition as follows:

1. The scope of this application relating to certification services is to be limited to in-house testing, and

2. The initial phase of the recognition is to be limited to the Rexdale (Toronto) facility.

An on-site evaluation of the Rexdale facility was conducted from November 4 through November 8, 1991, and the results discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey. In the interim, the application was revised by letter dated

April 27, 1992 (ex. 2Q) to include two additional test standards and further data was provided as requested. The final on-site review report (ex. 3A), consisting of the on-site evaluation of CSA's Rexdale testing facilities and administrative and technical practices and the corrective action taken by CSA [ex. 3A (2)], and the OSHA staff recommendation, were subsequently forwarded to the Acting Assistant Secretary for a preliminary finding on the application. A notice of CSA's application together with a positive preliminary finding was published in the **Federal Register** on June 3, 1992 (57 FR 23429–23434). Interested parties were invited to submit comments.

There were 68 responses to the **Federal Register** notice of the CSA application and preliminary finding (Docket No. NRTL–2–92).

Of the 68 responses, 54 agreed with OSHA's preliminary determination. Several respondents (exs. 4–20, –52) recommended that accreditation be denied to CSA until U.S. laboratories, such as UL, are recognized in Canada. This issue is discussed under the heading "Eligibility" below. Another comment questioned how any CSA product certified under the OSHA/NRTL program could be distinguished from any other of CSA's programs. The Canadian Standards Association will utilize the acronym "NRTL" as an integral part of its mark. If no label is used, the "NRTL" acronym will also be used in CSA's product directory to identify the product as having been certified under the OSHA/NRTL program. For the present, the use of the "NRTL" acronym will also be limited only to products tested or re-tested at the Rexdale facility.

Seven other commentators recommended that CSA be recognized, but with a variety of conditions, ranging from permitting witness testing of products at the manufacturer's site to allowing the manufacturer to engage in CSA's "Category Certification" and "Assured Certification" programs, none of which is presently allowable. (See exs. 4–2, –25, –27, –40, –55, –65, and –67).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Eligibility

The American Council of Independent Laboratories, Inc. (ACIL) has questioned whether CSA, as a foreign laboratory, is eligible for recognition as an NRTL under this program. OSHA concludes that the Canadian Standards Association (Toronto) is eligible for recognition as an NRTL to test and certify equipment and materials to the standards listed below. As required by appendix A [1], OSHA has "take[n] into consideration the policy of the foreign government" toward U.S. entities in making this eligibility determination.

Initially, OSHA notes that this eligibility requirement in appendix A is not a substantive requirement going to the capability of an applicant to effectively implement a program to assure the safety and integrity of workplace materials or equipment. Rather it is a procedural matter which is left to the Secretary's discretion, subject only to the requirement that the policy of the foreign government be taken into consideration. It does not establish any substantive criteria for this consideration, nor does it assign any weight to be given to this consideration in the final determination of whether a foreign laboratory can be recognized by OSHA. Certainly, this provision does not require the Secretary to find that any particular form of "reciprocity" exists between this country and the country where the foreign applicant is domiciled, nor indeed to make any specific findings on this matter. The eligibility requirement, which was included in the regulation at the request of the U.S. Trade Representative during the rulemaking proceeding, merely requires that the Secretary consider the foreign trade implications of recognizing a foreign-based testing and certification organization. The provision was intended to provide a tool to help advance U.S. interests in the international trade arena where appropriate.

Section I.A.1. of appendix A requires OSHA to take into consideration the policy of a foreign government toward U.S. entities. OSHA did in fact take these matters into consideration and concludes that CSA is eligible for recognition as an NRTL. OSHA interpreted the appendix A provisions in light of the U.S.-Canada Free Trade Agreement (CFTA) and with the advice of the U.S. Trade Representative. The CFTA requires that each party shall accord the other party "national treatment," i.e., that each party will treat the other's testing and certification laboratories as it treats its own.

The legislation implementing the CFTA provides that where there is a conflict between the CFTA and an existing statute or regulation, the existing statute or regulation will prevail. However, the Statement of Administrative Action accompanying the implementing legislation explains that this section is to be construed to allow for the interpretation of such statutes and regulations in a way that is consistent with the CFTA. While Appendix A requires OSHA to consider the treatment of U.S. companies by a foreign government, it does not require a finding of reciprocity as a precondition to NRTL accreditation. Since the United States has agreed in the CFTA to accord national treatment to Canadian service organizations, OSHA has determined that it will accord a Canadian applicant for recognition as a nationally recognized testing laboratory the same treatment it would an American applicant.

Even apart from U.S. obligations under the "national treatment" requirements of the CFTA, OSHA notes that the Standards Council of Canada (SCC) has accepted applications for recognition from American testing and certification organizations and has recently accredited an American organization, Underwriters Laboratories Inc. Thus, Canada is allowing U.S. laboratories to seek and obtain recognition as testing and certification organizations and therefore the eligibility criteria in appendix A would be satisfied even without regard to the CFTA provisions.

The American Council of Independent Laboratories, Inc. (ACIL) objected to OSHA's preliminary finding (57 FR 23429, 6/3/92) that CSA could meet the requirements for recognition as an NRTL, stating *inter alia*, that the preliminary finding was flawed since OSHA did not address the requirement in Section I.A.1. of Appendix A to the regulation (exs. 4–1 and 4–24). Specifically, the ACIL objected to what it termed the Agency's failure to address the "foreign reciprocity requirement," the failure to provide any legal interpretation or factual finding with respect to this requirement, and the failure to give any indication of the Agency's reasoning with respect to this

[1] Appendix A states in pertinent part: 1. *Eligibility.* a. Any testing agency or organization considering itself to meet the definition of nationally recognized testing laboratory as specified in § 1910.7 may apply for OSHA recognition as an NRTL.

b. However, in determining eligibility for a foreign-based testing agency or organization, OSHA shall take into consideration the policy of the foreign government regarding both the acceptance in that country of testing data, equipment acceptances, and listings, and labeling, which are provided through nationally recognized testing laboratories recognized by the Assistant Secretary, and the accessibility to government recognition or a similar system in that country by U.S. based safety-related testing agencies, whether recognized by the Assistant Secretary or not, if such recognition or a similar system is required by that country.

issue, and requested an opportunity to comment. The ACIL also submitted comments substantively addressing these issues.

While not conceding that the preliminary notice was procedurally flawed, on October 28, 1992, OSHA amended its preliminary finding on the CSA application and offered further explanation of "the Appendix A issue" (57 FR 46808). OSHA found that by its own terms, section I.A.1.b. of Appendix A requires OSHA to consider the treatment of U.S. companies by a foreign government but does not require that a finding of reciprocity is a precondition to NRTL accreditation.

Contrary to the ACIL's argument, OSHA's preliminary finding was adequate, even though it did not include findings and did not invite public comment on "the reciprocity issue". Initially, even as to substantive issues, the preamble to § 1910.7 (see 53 FR at 12115, 4/12/88) makes it clear that the Secretary is under no compulsion in the preliminary finding to explain every factor that went into her decision.[2] Moreover, section I.A.1.b. of Appendix A is *not* a substantive prerequisite for recognition as an NRTL. The substantive requirements for recognition as an NRTL are contained in the definitional provisions of 29 CFR 1910.7, which address an applicant's ability to effectively carry out a testing and certification program that will assure the safety and integrity of certain workplace materials and equipment.[3] The procedural requirements in the Appendix make it clear that an application is to address these substantive criteria for recognition and that public comment is to be invited on the applicant's fulfillment of these substantive criteria.

OSHA's notice and preliminary finding properly addressed and asked for public comment on the substantive requirements for recognition as an NRTL. OSHA properly refrained from soliciting public comment on the policy of the Canadian government towards U.S. certification organizations. The requirement that the Secretary consider the policy of a foreign government clearly involves sensitive issues of foreign trade policy and may include consideration of areas far broader than those covered by the NRTL regulation. Moreover, a complete public inquiry into such an issue may not be advantageous to the successful implementation of a pragmatic foreign trade policy. While the Appendix requires the Secretary to take the policy of a foreign government into account, there are no criteria for how the Secretary will decide the issue, what factors will be used, and what weight should be given to competing considerations. As such these issues are neither suitable nor appropriate issues for public comment.

The ACIL offered a number of other objections to the recognition of CSA. We show below that these objections are without merit. Moreover, they are of questionable relevance to the recognition because they do not address the capability of CSA to effectively implement a certification or approval program for certain materials or equipment used in American workplaces. The Agency believes that the ACIL's factual concerns have been or are being addressed[4] or fail to support their objections to OSHA's actions herein.

For example, the ACIL concern that OSHA recognition would allow CSA unrestricted access to the American market while U.S. based laboratories were excluded from the Canadian market has been dispelled by recent events including the recognition of an American testing and certification laboratory by the Standards Council of Canada and on-going negotiations between the Standards Council of Canada and OSHA on a memorandum of understanding to help streamline accreditation under both systems. Another objection, that the SCC does not impose any costs on Canadian organizations that apply for SCC accreditation but does charge American laboratories, is addressed in Article 605 of the CFTA which permits either party to waive accreditation fees for domestic entities during a ten year transition period. And no substantial support is offered for the contention that manufacturers will give their business to an organization that can simultaneously certify products for both the U.S. and the Canadian market which will lead to a temporary monopoly for CSA and that it will be difficult for U.S. labs "to ever recover their lost customers because the total market will have shrunk."

Accordingly, OSHA concludes that CSA meets the eligibility provisions of appendix A.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

Based upon the on-site review report and the products and standards in question, CSA's Rexdale facility has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks.

The Rexdale (Toronto) facility includes the corporate headquarters, a standards division, finance and administration division, and certification and testing division. The laboratory is owned by CSA and consists of a two story building covering 250,000 square feet, situated on ten acres. Approximately 100,000 square feet of floor space are allocated to product testing. The laboratory, established in 1919, has been at this location since 1954.

Natural gas, electric, oil, and water utilities are available in the laboratory for product testing. Environmental conditions in the laboratory are controlled. The temperature and humidity variations throughout the laboratory are recorded as required by specific test requirements. There are rooms and chambers used to control and monitor environmental conditions for specific product testing. The calibration room also has relative humidity control.

The laboratory has a shipping and receiving department for receipt, retention, and disposal of samples for testing. Incoming samples are identified with numbered tags and then delivered to the testing areas with a duplicate numbered tag attached. A secondary numbered tag is prepared in triplicate for sample disposition purposes after testing is complete. A copy of each tag

[2] The preamble states "Paragraph B.4 provides for a preliminary finding by the Assistant Secretary. . . . Each preliminary finding is a straightforward yes or no decision. Documentation is not required of the Assistant Secretary. . . ."

[3] With this in mind, the regulation addresses such issues as the capability of the staff, proper testing equipment, procedures, facilities, appropriate calibration and quality control programs, the use of appropriate test standards, control of the mark, inspection of the production run to assure conformance with test standards, economic independence of the laboratory and the necessity of having procedures to produce objective findings and handle complaints and disputes under a fair and reasonable system.

[4] In spite of its best efforts in dealing with this issue, the Agency notes that the ACIL's concerns appear to be expanding from the time of their first comment (6/2/92) through their most recent comment (11/13/92) wherein they suggest for the first time that the Agency must (1) make an assessment of all the barriers imposed by the foreign lab's government, (2) describe how OSHA considered all the disparities in treatment and (3) explain why those disparities do not warrant withholding recognition until the foreign government grants equal rights to U.S. laboratories.

is retained by the shipping and receiving department. One copy of the secondary tag is routed to the customs department and a second copy is sent to the jobholder. The jobholder completes this copy when all product evaluation is finished and returns it to the shipping and receiving department for sample disposition. The sample information is maintained on a computer data base. All storage locations are secure and pose no adverse environmental conditions on the samples.

Visitors must enter the front lobby area and are issued name tag labels by a receptionist. All visitors are escorted. A card access system is utilized for staff to enter or leave the facility. Separate test and conference areas are available for clients requiring confidentiality. There are 24 hour, 7 day per week security guards. Staff entering the facility outside normal working hours are required to sign an in/out log book. Indoor and outdoor monitoring cameras are utilized. Staff must wear name/photo identification badges.

The Certification and Testing (C&T) Division, Toronto facility, of the Canadian Standards Association employs approximately 370 staff as follows:

12—Management
84—Professional Engineers
139—Technologists (Testing & Certification)
24—Technologists (Inspection)
71—Support Staff
40—Other Support Staff (Corporate C&T)

Of this staff, some 45 are considered to be key personnel, as follows by position:

4—General Managers/Directors
8—Managers
13—Senior Engineers
14—Team Coordinators
6—Engineering & Quality Assurance

CSA submitted personal resumes and position descriptions for the key C&T Division personnel, which include general accountability, reporting relationships, specific accountabilities, dimensions, and nature and scope. All personnel appear to be suitably educated and trained to carry out their assigned duties.

Test equipment is available to perform testing in accordance with the standards. Test equipment not available is purchased as required.

An inventory list identifies over 7000 pieces of equipment by inventory number, instrument name, model and serial number, location in laboratory, range, accuracy, and manufacturer. The calibration lab maintains a separate equipment inventory list. Operational status and calibration information is maintained on instrument history files in the calibration laboratory.

Manufacturer's instructions on use and maintenance of test equipment are on file in the calibration laboratory. Instruction manuals are available at the appropriate work stations. Test equipment subjected to overloading or mishandling, or giving suspect results, is returned to the calibration laboratory. Defective equipment is retained in the instrumentation repair department. After repairs are completed, the instruments are recalibrated before release. Tests that have been performed with defective equipment are reevaluated.

The manager of service quality has responsibility for the operation of the metrology laboratory which includes three full-time calibration technologists who report, in turn, to a team coordinator.

All electrical measuring instrumentation is calibrated once per year at a minimum. Where equipment manufacturer recommended calibration intervals are exceeded, the instrument history records are used to determine any necessary reduced calibration intervals. New and repaired test equipment is calibrated prior to use. Power supplies, although not accurately calibrated, have their output set using calibrated equipment. Dated calibration labels are affixed to the instruments to indicate the calibration status.

Calibration and repair records are maintained on the metrology laboratory computer database. The data is maintained for the life of the equipment. The metrology laboratory computer database generates monthly recall lists on instruments due for calibration the following month. The team coordinators and quality assurance representatives ensure that the instruments are returned for calibration.

Calibration standards are traceable to the National Research Council of Canada (NRCC) or to the National Institute of Standards and Technology (NIST).

Published standards, test procedures, the quality assurance manual, divisional quality documents, and divisional operating procedures all contain construction or testing parameters to be met by the product being evaluated. These documents specify, as required, chronological order of evaluation. Experienced and trained personnel are responsible for conducting various stages of the investigation. The testing personnel are generally technical college graduates.

At the time of the on-site evaluation, not all requests for testing were documented. A directive has been issued requiring the documentation in the job files of all requests for tests or evaluations that are received from customers.

The engineering and quality assurance group develops, reviews and maintains the divisional quality documents (procedures). Procedures are reviewed once per year. Senior staff, audits and investigations staff, and engineering and quality assurance representatives are responsible for determining if procedures are followed. Work orders are prepared for the testing staff which specify the standards and clause numbers to be followed.

A letter is sent to the clients describing the construction or test deficiencies encountered during the course of the evaluation. No approval is granted until all deficiencies have been resolved.

The shipping/receiving department applies identification labels directly on the test samples to enable identification after they have been removed from shipping cartons. Technicians apply further identification tags, labels or direct markings to differentiate between similar samples or sets of samples.

Technical policy decisions regarding standards interpretations and deviations are developed by a consensus of technical experts. The laboratory distributes technical letters describing standards policy decisions. The engineering and quality assurance group is responsible for the development and issuance of technical policy decisions.

The test procedures contain the following: Instructions on equipment; preparation of test samples; standard testing techniques; references to specific standards including titles and dates; testing equipment and accuracies; precautionary statements for operator safety; test data to be obtained, measurement resolution and data recording time; ambient conditions and adverse environmental conditions; and acceptance criteria during tests.

Test procedures are reviewed and approved by the engineering and quality assurance group. The procedures are reviewed once per year.

Test data sheets and attached work orders contain the following: standard and clause numbers; product model number; measuring and test instruments; test date and file number, signature of tester and reviewer; ambient conditions; test observations and deviations; test data in the form of compliance, non-compliance, or the need for further review. An Engineering Policy has been issued that requires the documentation of the rationale for the

waiving of any tests specified in the applicable standard.

The Certification and Testing Division maintains a quality assurance (QA) system for CSA's world-wide network. The QA Program of the Testing Laboratory is registered by Quality Management Institute (QMI) to ISO 9003 and Z299.3. The Corporate Engineering and Quality Assurance (EQA) Group has the responsibility and authority for overseeing all activities related to the Quality Program. The object of the QA system is to ensure technical excellence, consistency of interpretation and application of standards, consistency of implementation of certification programs and procedures, the integrity of the CSA Mark, and continuous improvement. In addition, the QA System is designed to meet National and International Accreditation Criteria. The QA System is documented as follows:

—*Quality Assurance Policy Manual* (QAPM). It contains the quality policies for the Certification and Testing Division and establishes the responsibilities for implementation of these policies.

—*Quality Assurance Manual* (QAM). These manuals describe in detail the system and procedures outlined in the QAPM. They are issued by each Operation Unit after approval by EQA.

—*Divisional Quality Documents* (DQDs). They are issued and controlled by Engineering and Quality Assurance (EQA) and consist of additional operating procedures and guidelines to be used by operations staff.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

The Canadian Standards Association maintains effective procedures for producing creditable findings or reports that are objective and without bias as demonstrated by its application as well as the on-site review report.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for controlling all technical and quality records is described in the Quality Assurance Manuals for each CSA Office.

The certification reports contain the following: Name and location of submitter and factory; title, number, and date of standard used for evaluation; file number, report date, edition number and revision date; description of product including drawings, specifications, and photographs; conditions of product use; construction and testing narratives which describe how the product(s) comply with the standard; tests and results of tests; deviations and technical rationale for acceptance.

Some reports were found to be out of chronological order and resolutions to problems were sometimes located in separate files. Extra copies of documentation were found in some files which made the files cumbersome and fastening problems existed on some of the larger files. A modification to the CSA file system has been implemented which will address the problems.

The jobholder, or certification engineer, is responsible for the preparation and review of the final report. The test report is written by the technician. The senior technician also is responsible for reviewing and signing the test report before it is reviewed by the certification engineer. Certification reports are revised with replacement pages. A new report is prepared if extensive changes are required. Copies of the certification report are given to the customer, jurisdictional authorities, where required, and are placed in follow-up inspection files and main certification files.

CSA has in force an appeals procedure, designed primarily for their clients, which consistes of a comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter. All complaints and disputes are resolved, whenever possible, by those directly involved with the work contested or at the level of authority appropriate for the nature of the complaint/dispute. If the issue cannot be resolved, there are specific steps, including appeals, which may be followed.

There is also a system in effect enabling any interested party to file complaints concerning certification related matters, manufacturing related matters, or test standard discrepancies. Upon receipt of a complaint from a concerned party, the appropriate CSA section takes the matter under advisement to determine what corrective action should be taken. All complaints are investigated to determine if and what corrective action may be necessary.

CSA routinely investigates incidents involving CSA marked products. This is done with the help of regulatory and law enforcement authorities, consumers and manufacturers. The investigations are performed by the Special Support Services Group. Their mandate is to protect the integrity of the Registered CSA Mark. The Special Support Services Group investigates fires, examines products, does research, conducts fact finding studies, analyzes failures and trends and, when required, presents evidence in court.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. CSA has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

The applicant provides for the implementation of control procedures for identifying the listed and labeled equipment or materials, inspection of the production run of such items at factories for product evaluation purposes to assure conformance with applicable test standards, and the conducting of field inspections to monitor and to assure the proper use of its identifying mark or labels on products. A submitter must enter into a written contract (service agreement) with CSA to permit the use of the CSA Mark on the product. This agreement clearly specifies the submitter's responsibilities and the terms and conditions for maintaining certification, such as the right of access by CSA inspection staff to listed factories, and notifying CSA when changes are made to certified products. These terms and conditions are designed to protect the integrity of the CSA Mark, which is also registered as a certification mark with the U.S. Patent Office.

CSA established a comprehensive field services program to ensure that manufactured products bearing any CSA Mark continue to meet the applicable requirements. The program consists of three elements:

Follow-up Inspections;

Re-examination Testing; and
Field Monitoring.

Follow-up inspections are conducted at the point of manufacturing and labeling to ensure, among other things, that:

—The CSA Mark is applied only to certified products;
—That the terms of the Agreement are met when the CSA Mark is used;
—Defects noted during previous inspections have been corrected;
—The manufacturer is aware of any new services and requirements;

The inspections are unannounced and are based on performing a minimum of four inspections per factory per year. The frequency varies with production volumes, the types of products and the manufacturer's track record.

When products fail to meet the requirements, Field Service Representatives take action to have the manufacturer correct the defect immediately, quarantine the stock until the product can be reworked or re-evaluated by certification staff, and remove the CSA Mark from the product.

In cases where it is difficult to determine if a product or component complies with the requirements strictly by visual examination, such products are re-examined and tested on a yearly basis.

CSA has an independent, special investigation unit, the Audits and Investigations Group, to monitor products in the field, investigate field complaints, and provide feedback to the standards writing and certification process.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

The applicant has demonstrated that it is an independent, not-for-profit membership association, without share capital, incorporated under the laws of Canada in 1919, engaged in developing national standards and providing a certification service for manufacturers wishing to have their products certified as complying with national standards or standards of foreign countries. The applicant further demonstrated that the organization has no affiliation with manufacturers or suppliers of the products submitted for testing and certification. Several documents were submitted as a part of the CSA application to address the issue of independence.

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an ANSI safety designated product standard. As to the non-ANSI UL test standards for which CSA has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). (See 54 FR 25643, 6/16/89). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

The laboratory subscribes to the ANSI/UL standards updating service. Standards and revisions are distributed to appropriate laboratory personnel. Revised or superseded standards are archived.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, and public comments, OSHA finds that the Canadian Standards Association, Rexdale facility, has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Canadian Standards Association, Rexdale facility, is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

CSA has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI Z21.1—Household Cooking Gas Appliances
ANSI Z21.5—Gas Clothes Dryers
ANSI Z21.10—Gas Water Heaters
ANSI Z21.11—Gas-Fired Room Heaters
ANSI Z21.12—Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.47—Gas-Fired Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 20—General-Use Snap Switches
ANSI/UL—Electric Amusement Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Electrical Cabinets and Boxes
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas

ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices
ANSI/UL 114—Electric Office Appliances and Business Equipment
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating Pads
ANSI/UL 133—Wires and Cables With Varnished Cloth Insulation
UL 141—Garment Finishing Appliances
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 231—Electrical Power Outlets
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL—Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
ANSI/UL 399—Drinking-Water Coolers
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 764A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Motor Operated Commercial Food Preparing Machines
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment

ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Groups C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
UL 896—Oil-Burning Stoves
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commerical Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Value for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
UL 1059—Terminal Blocks
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
UL 1092—Process Control Equipment
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio- and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio- and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types

ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines.
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1676—Discharge Path Resistors
UL 1681—Wiring Device Configurations
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
ANSI/UL 1773—Termination Boxes
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

The Canadian Standards Association must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any Canadian Standards Association program which is available only to qualified manufacturers and is based upon the evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to CSA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

All products certified within this program shall be tested and certified only at the Rexdale facility. Products which may have been previously evaluated at any of CSA's other facilities must be re-evaluated at the Rexdale facility in order to be considered to have been approved under the NRTL program.

In order to distinguish between products tested and certified by CSA under the OSHA/NRTL program at the Rexdale facility from all other CSA facilities or from non-NRTL programs, the following procedures shall be followed for all products tested and certified at the Rexdale facility under the OSHA/NRTL program:

Where the CSA registered certification mark is utilized on a label on the product, the label will also bear the acronym "NRTL";

The product shall also be clearly identified in the Directory of CSA Certified Products by using the "NRTL" acronym.

CSA shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

CSA will continue to meet the requirements for recognition in all areas where it has been recognized; and

CSA will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its cognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on December 24, 1992, and will be valid for a period of five years from that date, until December 24, 1997, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 18th day of December, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92-31279 Filed 12-23-92; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-077]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: January 26, 1993, 9 a.m. to 4 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Borgo, Code K, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Emerging Vision for Committee
—Emerging Issues for Small Disadvantaged Business Communities and NASA; Priorities for 1993
—Selection of Working Groups and Functional Directors
—Working Groups' Breakout Sessions
—Working Groups' Submittal of Proposed 1993 Projects

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: December 18, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-31245 Filed 12-23-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

John F. Kennedy Assassination Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of creation of collection.

SUMMARY: In accordance with the President John F. Kennedy Assassination Records Collection Act (Pub. L. 102-526, 106 Stat. 3443), NARA announces the establishment of the Kennedy Assassination Records Collection on December 28, 1992. Federal agencies may begin transferring assassination records which are open and available for public access to the Collection on that date. All relevant Federal records, regardless of the current agency of custody, will be incorporated eventually into the Collection.

FOR FURTHER INFORMATION CONTACT: Mary Ronan, Access Staff, National Archives and Records Administration, 202-501-5380.

Dated: December 21, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-31284 Filed 12-23-92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by January 25, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202-682-5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 Presenting and Commissioning: Artists' Projects Regional Initiative Application Guidelines.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit arts organizations that apply for funding under the Presenting and Commissioning Program Artists Projects Regional Initiative category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the application review process.

Estimated Number of Respondents: 20.

Average Burden Hours per Response: 25.

Total Estimated Burden: 500.

Bobbi Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92-31208 Filed 12-23-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #2 Section) to the National Council on the Arts will be held on January 12-13, 1993 from 9 a.m.-6:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 12 from 9 a.m.-9:15 a.m. for opening remarks.

The remaining portions of this meeting on January 12 from 9:15 a.m.-6:30 p.m. and January 13 from 9 a.m.-6:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: December 21, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-31282 Filed 12-23-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Atmospheric Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: February 8, 1993, 9 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G St. NW., Washington, DC.

Contact Person: Dr. Timothy Eastman, Program Director, Division of Atmospheric Sciences, rm. 644, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-0040.

Agenda: To review and evaluate Geospace Environment Modeling proposals as part of the selection process for awards.

Date and Time: February 17-18, 1993; 9 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G St. NW., Washington, DC.

Contact Person: Drs. Richard A. Behnke, Robert M. Robinson, and Sunanda Basu, Division of Atmospheric Science, rm. 644, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7618.

Agenda: To review and evaluate Coupling, Energetics, and Dynamics of Atmospheric Regions proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31230 Filed 12-23-92; 8:45 am]

BILLING CODE 7555-01-M

Ocean Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: January 26-28, 1993; 8:30 a.m.-5 p.m.

Place: Embassy Room, Board Room, St. James Room, room 116 and room 117, St. James Hotel, 950 24th St., NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7924.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Sciences Research Section (OSRS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31233 Filed 12-23-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: January 27, 1993; 7:30 p.m. to 9 p.m., January 28, 1993; 8:30 a.m. to 5 p.m., January 29, 1993; 8:30 a.m. to 5 p.m., January 30, 1993; 8:30 a.m. to 3 p.m.

Place: The Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Jim Lightbourne, Program Director, 1800 G Street, NW., rm 1210, Washington, DC 20550. Telephone: (202) 357-7051.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Teacher Preparation Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31231 Filed 12-23-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 3, 1993, 7:30 p.m. to 9 p.m.; February 4, 1993, 8:30 a.m. to 5 p.m.; February 5, 1993, 8:30 a.m. to 5 p.m.; February 6, 1993, 8:30 a.m. to 3 p.m.; February 10, 1993, 7:30 p.m. to 9 p.m.; February 11, 1993, 8:30 a.m. to 5 p.m.; February 12, 1993, 8:30 a.m. to 5 p.m.; February 13, 1993, 8:30 a.m. to 3 p.m.;

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA. 22202.

Type of Meeting: Closed.

Contact Person: Dr. Duncan McBride, Program Director, 1800 G Street, NW., rm 1210, Washington, DC 20550. Telephone: (202) 357-7051.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Instrumentation & Laboratory Improvement/ Leadership Laboratory Improvement Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31232 Filed 12-23-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Meeting

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on January 14-15, 1993, in the Plaza I Room at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear

Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to review the NRC's recent aging research activities and plans; research related to proposed changes in seismic requirements for nuclear power plants; performance assessment and other selected elements of the NRC's high-level waste disposal research program; NRC research activities and plans with respect to SBWR, a passive advanced boiling-water reactor and AP600, a passive advanced pressurized-water reactor; and the NRC's research program on human-system interfaces in digital instrumentation and controls (DI&C) for nuclear power plants; and to discuss NSRRC operations.

The planned schedule is as follows:

Thursday, January 14, 1993

8:30 a.m.–9 a.m. Introduction: NSRRC Chairman; RES Director.

9 a.m.–12:15 p.m. NSRRC operations.

1:30 p.m.–2:30 p.m. Research program on nuclear power plant aging. The discussion will include consideration of the report of the Subcommittee on Aging on its meeting of September 16, 1992.

2:30 p.m.–3:30 p.m. High-level waste research issues, including performance assessment research. The discussion will include consideration of the report of the Waste Subcommittee on its meeting of December 1, 1992.

3:45 p.m.–5:15 p.m. SBWR research program; selected elements of AP600 research. The discussion will include consideration of the report of the Advanced Reactor Subcommittee on its meeting of December 2–3, 1992.

Friday, January 15, 1993

8 a.m.–10 a.m. Research program on human-system interfaces in digital instrumentation and controls (DI&C) for nuclear power plants; plans for revisiting DI&C. The discussion will include consideration of the report of the Advanced Instrumentation and Control and Human Factors Subcommittee on its meeting of December 9–10, 1992.

10:15 a.m.–12 noon Proposed changes in seismic requirements for nuclear power plants.

1:15 p.m.–2:30 p.m. Committee discussions.

NRC staff will be present and provide further input as required.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing of written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492–3904), between 8:15 a.m. and 5 p.m.

Dated: December 18, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–31183 Filed 12–23–92; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; McDowell Property, Bernalillo County, NM

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the McDowell Property, located in Albuquerque, Bernalillo County, New Mexico, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until March 24, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Fred Ambrogi, Resolution Trust Corporation, c/o NorthCorp Realty Advisors, Inc., 707 Broadway, NE., Suite 101, Albuquerque, NM 87102. (505) 246–9330, Fax (505) 246–9352.

SUPPLEMENTARY INFORMATION: The McDowell Property is located on the west side of Albuquerque, New Mexico, at the northeast quadrant of the intersection of Unser Boulevard and Ouray Boulevard. The property has archaeological value and is adjacent to Petroglyph National Monument which is managed by the National Park Service. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property consists of approximately 65 acres of undeveloped land in two contiguous parcels. The property is situated on the western edge of Albuquerque's developing urban area. The Ricanada area of the basalt escarpment, which comprises the southern portion of Petroglyph National Monument, lies a short distance to the west and northwest. The terrain slopes gradually from the base of the volcanic escarpment on the west to the Rio Grande River about two miles to the east of the property. Several isolated occurrences of cultural significance have been found on the site including lithic and groundstone artifacts, rock features, and two quarry areas.

Property size: Approximately 65 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before March 24, 1993, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by March 24, 1993 to Mr. Fred Ambrogi at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: McDowell Property
Federal Register Publication Date: December 24, 1992.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: December 18, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–31287 Filed 12–23–92; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31613; File No. SR-PSE-92-34]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Extension of the Options Trading Crowd Performance Evaluation Pilot Program

December 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 7, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE seeks an extension until October 1, 1993, of its Options Trading Crowd Performance Evaluation pilot program.[1] Currently, under the pilot program, the Options Allocation Committee ("Committee")[2] conducts periodic evaluations of options trading crowds to determine whether they have fulfilled performance standards relating to quality of markets, competition among market makers, observance of ethical standards, and administrative factors. In making its evaluations, the Committee may consider any relevant information, including the results of a trading crowd evaluation questionnaire, trading data, reports filed with the Exchange (*i.e.*, Order Book Official Unusual Activity Reports), and the regulatory history of the members in the crowd. As part of the program, the Committee distributes trading crowd evaluation questionnaires to virtually every floor broker and floor brokerage firm on the options trading floor. Floor brokers approved by the Committee complete the questionnaires. Trading crowds rated in the bottom 10% of the aggregate results of overall evaluation scores are presumed to have failed to meet minimum performance standards. The Committee may call an informal meeting or conduct a formal hearing with a trading crowd for failure to meet minimum performance standards. At the formal hearing, rights of confrontation and rights to counsel apply. Based on the information adduced at the formal hearing, the Committee has the authority to take action against a trading crowd or individual market makers in the crowd, such as a restriction on the allocation of new options classes or a reallocation of existing options classes.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE implemented its Options Trading Crowd Performance Evaluation pilot program in April 1988. The PSE represents that, in its view, the pilot program's evaluations have enhanced the quality of the markets provided by PSE market makers. However, the Exchange believes that additional time is needed to fully evaluate the merits of the program due to several factors, and, accordingly, requests a one year extension of the pilot program through October 1, 1993.[3]

The PSE notes that as a result of the multiple trading environment, the trading crowd evaluations play a vital role in the PSE's determinations to allocate and reallocate options issues. As such, the trading crowd performance evaluations serve to ensure that the investing public is being afforded competitive markets. Accordingly, the PSE believes the extension of the current pilot is necessary while the process is evaluated and adjustments are made. In addition, the PSE notes that the pilot program contributes to the maintenance of good options markets at the PSE, thereby helping the Exchange to maintain its competitiveness.

The PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it seeks to improve the Exchange's markets, to promote just and equitable principles of trade and to afford protection to the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[4] Specifically, the Commission finds that the extension of the pilot is consistent with the Act because it is likely to encourage improved market maker performance consistent with the protection of investors and the public interest. In this regard, the Commission notes that the PSE has stated that the trading crowd evaluations play a vital role in the allocation and reallocation of options issues. Accordingly, the Commission believes that the evaluation process is important in providing specialists with an initiative to strive for optimal

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[1] On April 22, 1988, the Commission approved the PSE's Options Trading Crowd Performance Evaluation program on a two-year pilot basis. See Securities Exchange Act Release No. 25611 (April 22, 1988), 53 FR 15325 (order approving SR-PSE-87-28). Subsequently, the Commission approved an extension of the pilot program through October 1, 1992. See Securities Exchange Act Release No. 29930 (November 12, 1991), 56 FR 58598 (order approving File No. SR-PSE-91-30).

[2] Previously, the evaluations were conducted by the PSE's Options Listing Committee. The Committee assumed the evaluation function in June 1992. See Securities Exchange Act Release No. 30843 (June 19, 1992), 57 FR 28869 (order approving File No. SR-PSE-92-07).

[3] In January 1990, the pilot program was expanded to include the evaluation of Lead Market Makers ("LMMs"). See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462.

[4] 15 U.S.C. 78f(b)(5) (1987).

performance as they compete for additional options allocations.

Consistent with its original approval and subsequent extension of the pilot program,[5] the Commission also believes that the program should further the PSE's ability to ensure liquid and continuous markets for options traded on its floor. In particular, responses to the trading crowd evaluation questionnaire should help the PSE monitor the performance of LMMs and market makers and determine whether market makers are making continuous, two-sided markets in all option series for each option class located at a trading station. The questionnaire should also help the PSE determine whether deep and liquid markets are provided as a result of competition among market makers. The Commission believes that the proposal should protect investors and the public interest by setting minimum standards of market maker performance and that the implementation of more stringent, formalized market maker standards will enhance the integrity of the PSE's options markets and contribute to investor confidence.

Before the Commission approves the pilot program on a permanent basis, however, the PSE must provide the Commission with a report assessing the effectiveness of the pilot program, any problems associated with its implementation, and any proposed modifications to the program and the reasons for these modifications. The Commission expects that this report will describe:

(1) Whether the pilot program has improved the performance of the PSE's market makers and LMMs, as determined by the trading crowd evaluation questionnaires and other relevant data;

(2) The number of market makers and trading crowds that fall below acceptable performance levels;

(3) The number of informal meetings and formal hearings commenced pursuant to the program;

(4) The results of any remedial actions taken pursuant to the program;

(5) A list of options reallocated due to substandard performance and the market makers involved; and

(6) The accuracy and usefulness of the questionnaire as a means of evaluating trading crowd performance.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the continuation of the pilot program. In addition, because there were no comments submitted previously on the evaluation proposal and because of the importance of maintaining the quality and efficiency of the PSE's options markets, the Commission believes it is consistent with the Act to approve the extension of the pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 19, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PSE–92–34) to extend the PSE's Options Trading Crowd Performance Evaluation pilot program until October 1, 1993, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31288 Filed 12–23–92; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* note 1, *supra.*

[6] 15 U.S.C. 78s(b)(2) (1982).

Order of Suspension of Trading

December 18, 1992.

In the Matter of Trading in the Securities of: Sanyo Industries, Inc. File Number 500–1.

It appears to the Securities and Exchange Commission (Commission) that there is a lack of current and accurate information concerning the securities of Sanyo Industries, Inc. concerning, among other things, (1) questions regarding the identity of persons having undisclosed control of the company, and (2) questions concerning the identities of persons having beneficial ownership of the company's securities, and the resulting impact on the market for Sanyo Industries, Inc.'s securities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above listed company is suspended for the period from 9:30 A.M. E.D.T., December 21, 1992 through 11:59 P.M. E.D.T, on January 5, 1993.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31289 Filed 12–23–92; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2613]

Declaration of Disaster Loan Area; South Carolina

Saluda County and the contiguous counties of Aiken, Edgefield, Greenwood, Newberry, and Lexington in the State of South Carolina constitute a disaster area as a result of damages caused by severe storms, high winds and tornadoes which occurred on November 22, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 4, 1993 and for economic injury until the close of business on September 7, 1993 at the following address: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625

	Percent
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 261312 and for economic injury the number is 777600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 4, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-31291 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

Microloan Demonstration Program

AGENCY: Small Business Administration.

ACTION: Notice of request for proposals availability and filing deadline.

SUMMARY: Public Law 102-140, the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1992 added section 7(m) to the Small Business Act, 15 U.S.C. 636(m), which authorizes the Small Business Administration (SBA) to conduct a Microloan Demonstration Program (Program). Public Law 102-366, the Small Business Credit and Business Opportunity Enhancement Act of 1992, amended this authority. SBA issued interim final regulations implementing each law on January 31, 1992, 57 FR 3848, and October 23, 1992, 57 FR 48309, respectively. This notice announces the availability of a Request for Proposals for entities seeking to participate in the program, as well as a February 15, 1993 filing deadline for such proposals.

DATES: Request for Proposals Packages will be available beginning December 29, 1992.

ADDRESSES: Request for Proposals Packages may be obtained by written request submitted to: U.S. Small Business Administration, Office of Financing, 409 Third Street, SW., 8th Floor, Washington, DC 20416, Attn: Microloan Proposals, Mail Code 6120 or by telephone at (202) 205-6570.

SUPPLEMENTARY INFORMATION: Section 7(m) of the Small Business Act authorizes SBA to conduct a Microloan Demonstration Program. The program has as its purpose to provide assistance to women, low-income, the minority entrepreneurs, and business owners, and other such individuals possessing the capability to operate successful business concerns and to assist small business concerns in those areas suffering from a lack of credit due to economic downturn. Under the Program, SBA is authorized to make direct loans to qualified intermediary lenders who will use the proceeds to make short-term, fixed interest rate microloans, of not more than $25,000, to startup, newly established, and growing small business concerns. In conjunction with the loans made to intermediary lenders, SBA may make grants to such intermediaries to be used to provide intensive marketing, management and technical assistance to microloan borrowers under this Program.

SBA will accept responses from those entities seeking to be accepted into the Program as an intermediary. To be eligible, an organization, *inter alia*, must be a private, non-profit entity; a private, non-profit, community development corporation (CDC); a consortium of private, non-profit organizations or CDCs; or, in certain circumstances, a quasi-governmental economic development entity. Further, an entity meeting one of the above descriptions must have at least one year of experience making microloans to small business concerns and itself providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its microloan borrowers.

In addition, SBA is authorized to make limited grants to eligible and qualified non-profit entities, which are not intermediaries, to provide marketing, management, and technical assistance to assist low income individuals seeking to start or enlarge their small business concern. Such a grant may be made only if the non-profit entity agrees to work with low income individuals to secure loans in amounts not to exceed $15,000, in the aggregate, from private sector lenders, regardless of whether the non-profit organization provides a loan guarantee.

Those organizations believing themselves eligible and wishing to participate in the Program may obtain a Microloan Demonstration Program Request for Proposals Package by contacting SBA at the above set forth address. Completed proposals must be received by SBA no later than 4 p.m. Eastern Standard Time, February 15, 1993.

Charles R. Hertzberg,

Associate Administrator for Financial Assistance.

[FR Doc. 92-31292 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Public Law 97-35) and the SBA share of immediate participation loans is 6⅞ percent for the fiscal quarter beginning January 1, 1993.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the January-March quarter of FY 93, this rate will be 7⅞ percent.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 92-31295 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

National Advisory Council Public Meeting

The U.S. Small Business Administration, National Advisory Council Executive Committee, will hold a public meeting from 8:30 a.m. to 4 p.m. on Friday, January 15, 1993 at the U.S. Small Business Administration, 409 Third Street, SW., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Dorothy Overal, Office of Advisory Councils, U.S. Small Business Administration, 409 Third Street, SW., suite 5525, Washington, DC 20416, (202) 205-7650.

Dated December 18, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-31293 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, will hold a public meeting from 9 a.m. to 2 p.m. on Tuesday, January 12, 1993 at the Federal Building, 400 North 8th Street, room 7230, Richmond, Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Dratin Hill, Jr., District Director, U.S. Small Business Administration, Federal Building, P.O. Box 10126,

Richmond, Virginia 23240, (804) 771–2400, Ext. 140.

Dated: December 21, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–31294 Filed 12–23–92; 8:45 am]

BILLING CODE 8025–01–M

Notice Delegating Loan Approval Authority to Specific Agency Field Personnel

AGENCY: Small Business Administration.

SUMMARY: This notice sets the delegated authority of certain specific Small Business Administration (SBA) field personnel to approve SBA guaranteed loans. This authority is based upon the education, training, or experience of such personnel and is meant to expedite Agency action in processing loan applications.

EFFECTIVE DATE: This notice is effective December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, D.C. 20416, Tel. (202) 205–6490.

SUPPLEMENTARY INFORMATION: On December 19, 1991, SBA published in the **Federal Register** a final rule amending § 101.3–2 of part 101, Title 13, Code of Federal Regulations, which set forth a clarified standard delegation of authority to conduct program activities in SBA field offices (56 FR 65823). Previously, § 101.3–2 had set forth the standard delegation of authority to SBA field personnel as well as all deviations from the standard based upon education, experience, and/or training.

The December 19, 1991 publication eliminated all deviations in favor of a standard delegation of authority. In addition, the rule provided authority by which SBA might, as it deemed appropriate, increase, decrease, or set the level of authority for any individual SBA field official in a regional, district, or branch office, based upon education, training, or experience by publication of a notice in the **Federal Register**.

The Agency believes that, when appropriate, delegating increased levels of authority to field personnel yields increased benefits for program participants and SBA. SBA is authorized to guaranty up to 90% of a loan depending upon total loan amount. Further, SBA has certain authority to make direct loans. As such, it is essential that the Agency have qualified loan officers to process expeditiously and accurately the applications submitted. Agency officials in the field who are delegated greater levels or authority in light of their additional education, training, or experience allow for loan applications of greater amounts being processed where both the lender and the borrower are located. In this fashion, the loan applicant and the lender are both served with quicker and more accurate processing, while the Agency is served by quality lending and, in the case of guaranteed loans, better relations with its participating lenders.

This notice sets the delegated authority of a specific SBA official to approve direct loan applications based upon such official's education, training, and experience. The SBA Assistant Branch Manager for Finance and Investment in Gulfport, MS. has successfully completed all three commercial credit analysis training courses offered by the Agency. Such training qualifies this official to better analyze and process loan applications.

SBA assistant branch managers do not have, as a standard, delegated authority to approve SBA direct loans. This notice sets the delegated direct loan approval authority for the Assistant Branch Manager for Finance and Investment in Gulfport, MS. at $250,000. This delegation of authority is specific to the individual presently incumbent and continues only so long as this individual remains in such position.

Dated: December 15, 1992.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 92–31328 Filed 12–23–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03–5066]

Alliance Enterprise Corp.; Application for Transfer of Ownership

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1992)) for a transfer of ownership of Alliance Enterprise Corporation, Three Christine Center, Suite 1300, 201 North Walnut Street, Wilmington, DE 19801 under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

The present shareholder plans to sell 100 percent of its shares of ownership in the Licensee to MESBIC Ventures Holding Company, North Central Plaza 1, Suite 710, 12655 North Central Expressway, Dallas, Texas 75243. MESBIC Ventures Holding Company will be the 100% owner of MESBIC Ventures, Inc., a licensed SSBIC, located at same address. The operations of Alliance will be moved to Dallas and managed by MESBIC Ventures, Inc.

Present and proposed change in ownership is as follows:

Name	Present percent of ownership	Proposed percent of ownership
Sun Company, Inc.	100	0
MESBIC Ventures Holding Co.	0	100

The proposed shareholders of more than 10% of the common shares of MESBIC Ventures Holding Company are as follows: NationsBank of Texas, NA (29% of total common shares to be outstanding), and Sun Company, Inc. (18%).

Matters involved in SBA's consideration of the application include the business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this notice, submit written comments on the proposed transfer of ownership to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in Dallas, Texas and Wilmington, Delaware.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies.)

Dated: December 17, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–31327 Filed 12–23–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–5235]

Power Ventures, Inc.; Application for Transfer of Ownership

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1992)) for a transfer of ownership of Power

Ventures, Inc., 829 Highway 270 North, Malvern, Arkansas 72104 under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

The present shareholder plans to sell 100 percent of its shares of ownership in the Licensee to MESBIC Ventures Holding Company, North Central Plaza 1, suite 710, 12655 North Central Expressway, Dallas, Texas 75243. MESBIC Ventures Holding Company will be the 100% owner of MESBIC Ventures, Inc., a licensed SSBIC, located at the same address. The operations of Power Ventures will be moved to Dallas and managed by MESBIC Ventures, Inc.

The present and proposed change in ownership is as follows:

Name	Present % of ownership	Proposed percent of ownership
Stihl Southwest, Inc	100	0
MESBIC Ventures Holding Co	0	100

The proposed shareholders of more than 10% of the common shares of MESBIC Ventures Holding Company are as follows: NationsBank of Texas, NA (29% of total common shares of be outstanding), and Sun Company, Inc. (18%).

Matters involved in SBA's consideration of the application include the business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this notice, submit written comments on the proposed transfer of ownership to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in Dallas, Texas and Little Rock, Arkansas.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies).

Dated: December 17, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–31296 Filed 12–23–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1745]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea, Working Group on Containers and Cargoes Bulk Cargoes Panel; Meeting

The Bulk Cargoes Panel of the Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 27, 1993, at 10 a.m. in room 4315 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to establish U.S. positions on matters to be addressed at the 32d Session of the International Maritime Organization's (IMO's) Subcommittee on Containers and Cargoes (BC 32) to be held February 8–12, 1993.

Items of particular interest that will be discussed include:

1. Amendments to IMO's *Code of Safe Practice for Solid Bulk Cargoes* for various solid bulk cargoes.
2. Development of new criteria for liquefaction and shifting of bulk cargoes.
3. Revision of IMO's *Recommendations on the Safe Use of Pesticides in Ships.*
4. Requirements for dangerous solid bulk cargoes under the International Convention for the Safety of Life at Sea (SOLAS).
5. A proposal by another government that IMO's *Code of Safe Practice for Solid Bulk Cargoes* be made mandatory through an amendment of the International Convention for the Safety of Life at Sea.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing CDR K.J. Eldridge or Mr. F.K. Thompson, U.S. Coast Guard (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: December 15, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–31203 Filed 12–23–92; 8:45 am]

BILLING CODE 4310–07–M

Office of the Secretary

[Public Notice 1743]

Delegation of Authority No. 199; to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby delegate to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs the functions vested in the Secretary of State by sections 804(b), 805(a)(4), 806, 807(a), 807(b) and 813 of the North Pacific Andromous Stocks Act of 1992, Title VIII of Public Law 102–567 ("the Act"), and by any amendments to the Act as may be made from time to time.

Notwithstanding any provision of this Delegation of Authority, the Secretary of State or the Deputy Secretary of State may at any time exercise any function delegated by this Delegation of Authority.

Dated: December 11, 1992.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 92–31255 Filed 12–23–92; 8:45 am]

BILLING CODE 4710–10–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 11 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1993 meetings are scheduled as follows:

1. January 14, 9 a.m. to 12:30 p.m., Little Rock, Arkansas, Region 2 Advisory Board.
2. January 21, 9 a.m. to 12:30 p.m., Miami, Florida, Region 1 Advisory Board.
3. January 26, 9 a.m. to 12:30 p.m., Colorado Springs, Colorado, Region 5 Advisory Board.
4. January 28, 9 a.m. to 12:30 p.m., San Diego, California, Region 6 Advisory Board.
5. February 9, 9 a.m. to 12:30 p.m., San Antonio, Texas, Region 4 Advisory Board.
6. February 25, 9 a.m. to 12:30 p.m., Detroit, Michigan, Region 3 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Little Rock, Arkansas—Camelot Hotel, 424 W. Markham.
2. Miami, Florida—Sheration Biscayne Bay, 495 Brickell Avenue.

3. Colorado Springs, Colorado—Antlers Doubletree Hotel, 4 South Cascade Avenue.
4. San Diego, California—San Diego Concourse Convention Center, 202 C Street.
5. San Antonio, Texas—Hilton Palacio Del Rio, 200 South Alamo.
6. Detroit, Michigan—Westin Hotel, Renaissance Center.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose

The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda

Topics to be addressed at the six meetings will include the impact of RTC activities on: local real estate markets; hard-to-sell assets; RTC's affordable housing disposition program; and RTC's sales strategies, goals and contractor's program. A detailed agenda will be available at the meeting.

Statements

Interested persons may submit to an advisory board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meeting will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: December 21, 1992.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 92–31263 Filed 12–23–92; 8:45 am]

BILLING CODE 2222–01–M

Privacy Act Systems of Records

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of the existence and character of systems of records and of routine uses.

SUMMARY: The purpose of this document is to publish notice of the existence and character of systems of records under the control of the Thrift Depositor Protection Oversight Board and of each routine use of the records contained in such systems. The notices are required by the Privacy Act of 1974, as amended. Publication of this document will provide notice of the Board's systems of records, as defined by the Privacy Act, and also provide an opportunity for interested persons to submit written data, views, or arguments concerning intended uses of information in such systems.

DATES: Comments must be received on or before January 25, 1993.

ADDRESSES: Comments may be mailed to Office of General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street, NW, Washington, DC 20232.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, telephone (202) 786–9681.

SUPPLEMENTARY INFORMATION: The Thrift Depositor Protection Oversight Board ("Oversight Board") is a corporate instrumentality of the United States. Its principal duty is to oversee the Resolution Trust Corporation, which manages and resolves cases involving failing and failed thrift institutions the accounts of which were formerly insured by the Federal Savings and Loan Insurance Corporation.

Pursuant to 12 U.S.C. 1441a(a)(2), the Oversight Board is an agency of the United States for the purposes of the Privacy Act of 1974, 5 U.S.C. 552a. Elsewhere in this issue of the **Federal Register** the Oversight Board is publishing a final rule establishing procedures to implement the Privacy Act of 1974, 5 U.S.C. 552a.

A report describing the Oversight Board's systems of records has been submitted to the Office of Management and Budget ("OMB") and the Congress pursuant to the Privacy Act and OMB Circular No. A–130. A waiver of the 60-day review period has been requested. Unless comments cause or require revisions, the systems will be established and the routine uses effective January 25, 1993.

The specific data elements of the Oversight Board's systems of records are set forth below, introduced by a table of contents.

Table of Contents

OB–001 Oversight Board Payroll, Attendance, and Leave System
OB–002 Grievances Filed Under Administrative Grievance Procedures
OB–003 General Correspondence Files
OB–004 Congressional Correspondence and Report Files
OB–005 Freedom of Information Record System
OB–006 Litigation Information System
OB–007 Contractor Information System
OB–008 Public Affairs Information System
OB–009 Advisory Board Member Files

OB–001

SYSTEM NAME:

Oversight Board Payroll, Attendance, and Leave System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Oversight Board, including special government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and time and attendance records and other records relating to pay and leave. The system includes identifying information such as an employee's name, date of birth, home address, mailing address, social security number and home telephone as well as information concerning an employee's position, grade or pay level, earnings, annual and sick leave accrual rate and balance, and deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a, 31 U.S.C. 3512.

PURPOSES:

Records in this system are used to insure that each employee receives the proper pay, proper deductions and authorized allotments are made from employees' pay, and employees are credited and charged with the proper amounts of sick and annual leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To disclose information to the General Services Administration in providing payroll support functions for the Oversight Board, including, but not limited to, issuance of payroll checks, savings bonds, and earning and leave statements, and preparation of W–2 forms.

2. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal,

or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto.

3. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

4. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. To disclose information to the Department of Justice, in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

6. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

7. To disclose information to the Merit Systems Protection Board in connection with appeals and other functions promulgated in 5 U.S.C. 1204.

8. To disclose information to the Office of Special Counsel in connection with the investigation of alleged or possible prohibited personnel practices and other functions promulgated in 5 U.S.C. 1212.

9. To disclose information to the Internal Revenue Service and to agencies of jurisdictions that are authorized to tax an employee's compensation when necessary to verify or determine tax information or computations.

10. To disclose information to a Federal, State, county, municipal, or local agency when necessary to adjudicate a claim under a program of such an agency for a benefit, such as unemployment or disability compensation or affordable housing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by the name of the employee on whom they are maintained.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computerized information is reached through passwords or codes. Hard copy files are kept in locked metal cabinets.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with the General Records Schedule of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by employees, timekeepers, supervisors, and the General Services Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–002

SYSTEM NAME:

Grievances filed under Administrative Grievance Procedures.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons filing grievances with the Oversight Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information or documents relating to the grievance and personal relief sought, documented materials used in consideration of the grievance, and correspondence related to the deposition of the grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a, 5 CFR part 771.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or

implementing a statute, rule, regulation, or order issued pursuant thereto.

2. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

3. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. To disclose information to the Merit Systems Protection Board in connection with appeals and other functions promulgated in 5 U.S.C. 1204.

7. To disclose information of the Office of Special Counsel in connection with investigation of alleged or possible prohibited personnel practices and other functions promulgated in 5 U.S.C. 1212.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by the name of the complainant.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computerized information is reached through passwords or codes. Hard copy files are kept in locked metal cabinets.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the General Records Schedule of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7. Review of such a request will be limited in scope to determination of the accuracy of documentation and will not include a review of the merits of an agency action, determination, or finding.

RECORD SOURCE CATEGORIES:

Employees, persons testifying or providing information under administrative procedures, fact-finders in administrative proceedings, and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–003

SYSTEM NAME:

General Correspondence Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and staff of Congress, Federal, State, and local officials, officers and employees of Federal, State, and local agencies, representatives of news media, and members of the general public who have contacted the Oversight Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence received and sent by or on behalf of the Oversight Board; and profile descriptions that contain identifying information concerning the correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

2. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member of employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records

is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

3. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual, who may be the writer, recipient, or subject of correspondence.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through codes. Hard copy files are kept in lockable cabinets.

RETENTION AND DISPOSAL:

Records are maintained for five years and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Correspondence Manager, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Individuals who have corresponded with the Oversight Board; members and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–004

SYSTEM NAME:

Congressional Correspondence and Report Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Congressional Affairs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress; officers and employees of the Oversight Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and control information recording requests, inquiries, and statements of Members of Congress, referrals of constituents' inquiries, and responses to such requests, inquiries, and referrals. Reports, briefing papers, and summaries of briefings of and meetings with Members of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records and information in these records may be used:

1. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

2. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

3. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual Member of Congress or of a member or employee of the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords or codes. Hard copy files are kept in lockable cabinets.

RETENTION AND DISPOSAL:

Upon a person's ceasing to be a Member of Congress, records concerning

such person are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President for Congressional Affairs, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Members of Congress who have corresponded with the Oversight Board; members and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–005

SYSTEM NAME:

Freedom of Information Record System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including representatives of organizations, requesting access to inspect or copy records of the Oversight Board under the Freedom of Information Act; and individuals submitting business information to the Oversight Board who request confidential treatment of such information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for access to or copies of information of the Oversight Board and replies on behalf of the Oversight Board; control information identifying the requesters; requests for confidential treatment of business information submitted to the Oversight Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

2. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

3. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. By the National Archives and Records Administrative and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

5. To disclose information to the Department of Justice for the purpose of obtaining its advice in the event that the Oversight Board deems it desirable or necessary in determining whether particular records are required to be disclosed under the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual who requests access to or copies of information of the Oversight Board or confidential treatment for business information submitted to the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords and codes. Hard copy files are kept in lockable cabinets with limited access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the General Records Schedule of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Correspondence Manager, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A

request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Individuals who have requested information of the Oversight Board under the Freedom of Information Act or have requested confidential treatment for business information submitted to the Oversight Board; members and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–006

SYSTEM NAME:

Litigation Information System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the General Counsel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties to administrative or judicial claims filed against the Oversight Board or a member, officer, or employee of the Oversight Board or who seek disclosure of information of the Oversight Board by order of a court.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records generated in connection with the litigation, administrative claim, or court order.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto.

2. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

3. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. To disclose information to the Department of Justice, in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders in lockable cabinets.

RETRIEVABILITY:

Indexed by the name of a party to the litigation or administrative claim against the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Files are kept in lockable cabinets with limited access.

RETENTION AND DISPOSAL:

Records of a case are retained for five years after its conclusion and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Individuals filing administrative or judicial claims against the Oversight Board or its members, officers, or employees; Department of Justice personnel; and Oversight Board personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–007

SYSTEM NAME:

Contractor Information System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals contracting with or seeking to contract with the Oversight Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contracts of the Oversight Board and records generated under the Oversight Board's contracting procedures, including documentation of

qualifications of individuals seeking to contract with the Oversight Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto.

2. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

3. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. To disclose information to the Department of Justice, in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity if the Department of Justice has agreed to represent the member or employee; or (c) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual contracting with or seeking to contract with the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords or codes. Hard copy files are kept in lockable cabinets.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the General Records Schedule of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Individuals contracting with or seeking to contract with the Oversight Board; officers and employees of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–008

SYSTEM NAME:

Public Affairs Information System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Public Affairs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members, officers, and employees of the Oversight Board; Members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographies, speeches, and Congressional testimony of current and former members, officers, and employees of the Oversight Board; news media articles and press releases concerning current and former members, officers, and employees of the Oversight Board; correspondence with Members of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

2. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee in his or her

individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

3. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual Member of Congress or of a current or former member, officer, or employee of the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords or codes. Hard copy files are kept in lockable cabinets.

RETENTION AND DISPOSAL:

These records are maintained for three years and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President for Public Affairs, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with CFR 1503.7.

RECORD SOURCE CATEGORIES:

Members of Congress who have corresponded with the Oversight Board; members and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–009

SYSTEM NAME:

Advisory Board Member Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Advisory Board Affairs; Office of the General Counsel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the National and Regional Advisory Boards and candidates for membership of the Advisory Boards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical and financial information concerning Advisory Board members and candidates for membership; financial disclosure statements of candidates, and background checks of candidates conducted by the Secret Service. Travel authorizations and vouchers. Correspondence of Advisory Board Members and candidates for Advisory Board membership.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto.

2. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

3. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. To disclose information to the Department of Justice, in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board, or (b) any member or employee of the Oversight Board in his or her official capacity, including any special government employee, and any Advisory Board member; or (c) any member or employee of the Oversight Board, including any special government employee, or any Advisory Board member in his or her individual capacity if the Department of Justice has

agreed to represent such member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RRETRIEVABILITY:

Indexed by the name of an Advisory Board member or candidate for Advisory Board membership.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords or codes. Hard copy files are kept in locked cabinets.

RETENTION AND DISPOSAL:

Records concerning candidates and former members are maintained for three years and then transfer to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Advisory Board Affairs, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232; General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Advisory Board Members and candidates for Advisory Board membership; and officers and employees of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The specific exemption of 5 U.S.C. 552a(k)(5) for investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Advisory Board membership, but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

Dated: December 18, 1992.

Peter H. Monroe,

President.

[FR Doc. 92–31206 Filed 12–23–92; 8:45 am]

BILLING CODE 2222–01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Greater Pittsburgh International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Administration (FAA) announces its determination that the noise exposure maps submitted by the Allegheny County Department of Aviation for the Greater Pittsburgh International Airport and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for PIT under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 8, 1993.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 10, 1992. The public comment period ends January 24, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA–610, Fitzgerald Federal Building, JFK Int'l Airport, Jamaica, NY 11430, (718) 553–0902. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the PIT Airport are in compliance with applicable requirements of part 150, effective December 10, 1992. Further, the FAA is reviewing a proposed noise compatibility program for the airport which will be approved or disapproved on or before June 8, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150 promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Allegheny County Department of Aviation, submitted an update of the PIT Airport part 150 Study on November 17, 1992. This document contains updated Noise Exposure Maps representing existing (1991) noise impact conditions and future (1996) conditions. The existing noise exposure maps were prepared using activity data for the period September 1990 to August 1991. The future noise exposure map represents activity levels projected for calendar year 1996 and reflect changes in airfield use resulting from the relocation of passenger facilities to the airport's new Midfield Terminal in October 1992. It was requested that the

FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Allegheny County. The specific maps under consideration are the Existing (1991) Noise Exposure Map in the paper pocket following Page 4–24 of Volume I and the Future (1996) Noise Exposure Map in the paper pocket following Page 5–25 of Volume I.

The FAA has determined that these maps for PIT are in compliance with applicable requirements. This determination is effective on December 10, 1992. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plan, or a commitment to approve a noise compatible program or to fund the implementation of the program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative location of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under the Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rest exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of FAR part 150, that the statutory required consultation has been accomplished.

The FAA formally received the noise compatibility program for PIT, on November 17, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 8, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. The public comment period ends January 24, 1993. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination at the following locations:

FAA, Eastern Regional Office, Fitzgerald Federal Building, JFK Int'l Airport, Airports Division, Room 337, Jamaica, NY

FAA, Harrisburg Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA

Commonwealth of Pennsylvania, Bureau of Aviation, Department of Transportation, 208 Airport Dr., Harrisburg Int'l Airport, Middletown, PA

County of Allegheny, Department of Aviation, Pittsburgh International Airport, Landside Terminal, Suite 4000, Pittsburgh, PA

Questions may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Jamaica, NY on December 10, 1992.

Louis P. DeRose,

Manager, Airports Division.

[FR Doc. 92–31244 Filed 12–23–92; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 26987]

Draft Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over the State of New Jersey; Public Hearings and Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearings and meeting.

SUMMARY: The FAA intends to conduct hearings in New Jersey and a meeting on Staten Island to gather comments on the Draft Environmental Impact Statement (DEIS) released on November 12, 1992.

COMMENT PERIOD: Due to the high degree of public interest in the DEIS and technical complexity of the issues raised, the comment period has been extended to March 5, 1993.

Written comments must be received at the following address by March 5, 1993: Federal Aviation Administration, Office of the Chief Counsel: Docket Number 26987, 800 Independence Avenue SW., Washington, DC 20591.

During the comment period, the FAA will conduct seven public hearings in New Jersey to solicit both written and oral comments on the DEIS. A public meeting will also be held on Staten Island, New York. All persons wishing to make oral presentations at the public hearings and the public meeting are strongly urged to provide a written copy of their statements at the hearing/meeting or at the FAA address provided in the above paragraph.

The following is a listing of the dates, times and locations or the hearings in New Jersey and the meeting on Staten Island:

Date	Time/Location
January 5, 1993.	7–11 p.m.
January 6, 1993.	5 p.m., and 7–11 p.m., Cranford—Coachman Hotel (Days Inn), Exit 136 Garden State Parkway, 10 Jackson Drive, Cranford, New Jersey.
January 7, 1993.	1–5 p.m. and 7–11 p.m., Tinton Falls—Holiday Inn, Exit 105 Garden State Parkway, 700 Hope Road, Tinton Falls, NJ.
January 11, 1993.	1–5 p.m. and 7–11 p.m., Runnemede—Holiday Inn, 109 9th Avenue, Runnemede, NJ.
January 12, 1993.	1–5 p.m. and 7–11 p.m., Bernardsville—Old Mill Inn, Route 202 & North Maple Avenue, Bernardsville, NJ.
January 13, 1993.	1–5 p.m. and 7–11 p.m., Rochelle Park—Ramada, 375 W. Passaic Street, Rochelle Park, NJ.
January 14, 1993.	1–5 p.m. and 7–11 p.m., Parsippany—Holiday Inn, Route 46 East, Parsippany, NJ.
January 25, 1993.	3–5 p.m. and 7–11 p.m., Staten Island—P. S. 44, 80 Maple Parkway, Staten Island, NY.
January 26, 1993.	1–5 p.m. and 7–11 p.m., New Brunswick—Hyatt Regency, 2 Albany Street, New Brunswick, NJ.

The FAA will consider and respond to all comments directly related to the scope of the DEIS. The geographic scope delineated by Congress for the EIS was the environmental effects of the Expanded East Coast Plan over the State of New Jersey and adjacent coastal waters. Please note, however, that the

most useful comments are those which provides facts and analyses to support the reviewer's recommendations or conclusions on specific topics contained in the document. Should any comments be received after the close of the comment period, FAA cannot assure that they will be considered or addressed in the final EIS.

The FAA will issue a final EIS that will include corrections, clarifications and responses to comments on the DEIS.

Issued in Washington, DC, on December 17, 1992.

Norbert A. Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 92–31179 Filed 12–21–92; 8:45 am]

BILLING CODE 4910–13–M

Deadline for Submission of Preapplication/Application for Airport Grant Funds Under the Airport Improvement Program (AIP) for Fiscal Year 1993

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces January 31, 1993, as the deadline for the submission of preapplications and applications for airport grant funds under the Airport Improvement Program (AIP) for fiscal year 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: Section 509(e) of the Airport and Airway Improvement Act of 1982 (AAIA) provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for passenger and cargo entitlement funds. Notification of the sponsor's intent to apply during fiscal year 1993 for any of its entitlement funds, including those unused from priors years, shall be in the form of a project preapplication or application (SF 424) submitted to the FAA field office no later than January 31, 1993.

The FAA also recommends that all other airports or planning agencies expecting to apply for airport grant funds do so early in the fiscal year. Such prospective applicants should contact the appropriate FAA field office for information on that office's deadline. These offices will assist in the preparation of preapplications/applications and provide procedural information as needed.

Prompt submission of complete requests by the deadline date will allow earlier funding decisions by the FAA regarding the availability of discretionary funds for program changes. It will permit completion of procedural requirements necessary for placing projects under grant and beginning construction in a timely manner within the fiscal year 1993 construction season. To achieve this, Airport sponsors should work with their respective FAA field offices to meet the deadlines established by those offices for completion of documentation for final applications, including construction bid prices, in order to have all entitlement funds under grant as early as possible in the fiscal year. Failure to meet those deadlines could result in the deferral of award of a sponsors' entitlement funds until next fiscal year.

Issued in Washington, DC, December 18, 1992.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 92–31239 Filed 12–23–92; 8:45 am]

BILLING CODE 4910–13–M

Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 13, 1993, at 9 a.m.

ADDRESSES: The meeting will be held in the Regional Airline Association Board Room, Third Floor, 1101 Connecticut Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Air Carrier Operations Subcommittee to be held on January 13, 1993, in the Regional Airline Association Board Room, Third Flood, 1101 Connecticut Ave., NW., Washington, DC. The agenda for this meeting will include progress reports from the Fuel Requirements Working Group, Autopilot Engagement Working Group, Flight Crewmember Flight/Duty/Rest Requirements Working Group, and Controlled Rest on the Flight Deck Working Group. Each working group Chair will report on the progress of the working group. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 18, 1992.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–31243 Filed 12–23–92; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

The Edmund S. Muskie Fellowship Program

AGENCY: United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from accredited US institutions offering degrees at the master's level in business administration, economics, law, or public administration to host graduate students from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan for degree, certificate or professional development programs under the auspices of the 1993 Edmund S. Muskie Fellowship Program. Formerly known as the Benjamin Franklin Fellowship Program, this initiative seeks to provide qualified students with one or two year programs of graduate-level education and relevant internships.

DATES: Deadline for Proposals: All copies must be received at the appropriate office (listed below) by 5 p.m. Washington, DC time on Wednesday, February 17, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 17, 1993, but received at a later date. It

is the responsibility of each applicant to ensure that proposals are received by the above deadline.

ADDRESSES: The original and four copies of the proposal should be submitted by the deadline and addressed as follows:

For Degree Programs in Business Administration: The Edmund S. Muskie Fellowship Program, c/o ACTR/ACCELS, 1776 Massachusetts Avenue, NW., Suite 300, Washington, DC 20036.

For Degree Programs in Economics: The Edmund S. Muskie Program, c/o IREX, 1616 H Street, NW., Washington, DC 20006.

For Degree Programs in Law: The Edmund S. Muskie Fellowship Program, c/o The Soros Foundation, 888 Seventh Avenue, Suite 1901, New York, NY 10106.

For Degree Programs in Public Administration: (Applications may be sent to either organization, but need not be submitted to both.)

The Edmund S. Muskie Fellowship Program, c/o ACTR/ACCELS, 1776 Massachusetts Avenue, NW., Suite 300, Washington, DC 20036; or

c/o The Soros Foundation, 888 Seventh Avenue, Suite 1901, New York, NY 10106.

For Professional Development Programs in Business Administration, Economics, Law, or Public Administration: The Edmund S. Muskie Fellowship Program, c/o Martha Loerke, The Institute of International Education, 809 United Nations Plaza, New York, NY 10017–3580.

FOR FURTHER INFORMATION CONTACT: Interested U.S. institutions should write ACTR/ACCELS, IIE, IREX, or the Soros Foundation to request application packets, which include guidelines and award criteria.

SUPPLEMENTARY INFORMATION: The Edmund S. Muskie Program is supported by grants from USIA to the following organizations: The American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study (ACTR/ACCELS), the Institute of International Education (IIE), the International Research & Exchanges Board (IREX), and the Soros Foundation. Under these grants ACTR/ACCELS, IIE, IREX, and the Soros Foundation are responsible for the selection, academic placement, and monitoring of the Fellows. All interested applicants should apply directly to the appropriate organization at the address listed above.

Academic Programs

Muskie Fellows will enter U.S. graduate programs in the 1993 fall semester.

Degree Programs

In general, Fellows studying business administration and economics will take part in two-year academic programs leading to the degree of Masters of Business Administration (MBA) or Master of Arts (MA), respectively. Internships will be held during the summer between the first and second years of study. Fellows in Law will take part in a nine-month academic program leading to the Master of Law degree (LLM), followed by a three-month internship. Public administration Fellows will take part in one or two-year academic programs leading to the Masters of Public Administration (MPA) or the Master of Arts (MA) degree. Three-month internships will take place during the summer of 1994, after one year of academic study.

Professional Development

The Professional Development awards are specifically designed for mid-career professionals with at least two years substantive work experience prior to application. The non-degree programs in business administration, economics, and public administration generally include two semesters of academic study at the graduate level, followed by up to three months of practical training. The degree program for mid-career professionals in law will also include two semesters of coursework leading to the Master of Laws (LLM) with up to three months of practical training after the period of academic study. Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the Untied States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Program Overview

The Edmund S. Muskie Program was established in 1992 to encourage democratic and economic development in Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzebekistan. Fellows will be identified through an open competition and rigorous selection process administered by ACTR/ACCELS, IIE, IREX, and the Soros Foundation, in conjunction with professional associations and U.S. faculty from the four academic fields, who review applications and interview semi-finalists in-country. Semi-finalists in all disciplines will take the Test of English as a Foreign Language (TOEFL). Candidates for degree programs in business administration will take the Graduate Management Admission Test (GMAT), and candidates for degree programs in economics will take the general and subject Graduate Record Examination (GRE).

To be eligible for a Muskie Fellowship, applicants must be citizens of one of the fifteen nations targeted by the Program, have successfully completed an undergraduate program, be proficient in spoken and written English at the time of application, demonstrate professional aptitude and leadership potential in the field of specialization, and be under the age of forty. Applicants for professional development programs must have a minimum of two years professional work experience in addition to an undergraduate degree. Individuals currently enrolled in academic programs in the U.S., persons working or earning a living in the United States, spouses of U.S. citizens, or individuals who have applied for an immigrant visa or political asylum to any country are not eligible for the Muskie Program. Muskie Fellows, under the terms of the grant and under the laws governing the student visa required for participation in the Program, must return to their home country for a period of at least two years immediately upon completion of the academic program and internship. No financial or administrative support or provision is made for dependents under the Muskie Program.

Muskie Fellows will receive scholarships for international transportation, domestic transportation within the United States, stipend, health insurance, room/board, and tuition. U.S. institutions hosting Muskie Fellows are asked to provide cost-sharing for tuition

and/or room and board expenses, so that greater numbers of students may take part in the program. Currently 155 students are enrolled at U.S. institutions under the auspices of the 1992 Muskie Program. Approximately 150 Fellows will be selected for participation in the 1993 Muskie Program.

Program Requirements and Review Criteria

U.S. institutions may apply to receive Fellows individually or in groups of 5–10 people representing one or any combination of the four disciplines. Host U.S institutions for 1993 Muskie Fellows will be selected by ACTR/ACCELS, IIE, IREX, the Soros Foundation, and USIA, based on the following criteria:

—Strength of the academic program;
—Experience working with and providing a full range of support services for international students;
—Ability to arrange professional affiliations and internships;
—Capacity to assign a faculty advisor and a Muskie Program coordinator to provide academic support and enrichment;
—Commitment to contribute substantial cost-sharing, such as tuition scholarships, fellowships, or reduced room and board expenses.
—Evaluation plan for monitoring the academic progress and integration of Fellows into the campus and community; and
—Adherence of proposed activities to the criteria outlined above and the goals of the Edmund S. Muskie Fellowship Program.

USIA retains the right to determine final selection decisions with regard to the competition for institutions to host Muskie Fellows.

Some Fellows will be placed at universities or colleges in clusters of 5–10, and institutions are encouraged to receive and provide commensurate cost-sharing for such groups. The academic interests and needs of candidates selected as Fellows will also be considered in the selection of U.S. receiving institutions. Institutions currently hosting Fellows under the 1992 Program are eligible to apply to receive students in 1993 but should submit a proposal under these guidelines. The Agency reserves the right to determine final placement decisions.

Proposals must be submitted to ACTR/ACCELS, IIE, IREX, or the Soros Foundation, according to discipline and type of program (degree or professional development), as indicated above. All programs in law must lead to the Master of Laws (LLM) degree.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA, ACTR/ACCELS, IIE, IREX, or Soros Foundation representative. Explanatory information provided by USIA, ACTR/ACCELS, IIE, IREX, or the Soros Foundation that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

Applicants will be notified in writing of the results of the review process on or about April 15, 1993. Final placement of students at institutions is subject to the specific academic interests and needs of individuals selected as Muskie Fellows.

Options for Renewal

Subject to the availability of funding and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: December 18, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92–31228 Filed 12–23–92; 8:45 am]
BILLING CODE 8230–01–M

Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

TITLE: Central and Eastern European Training Program *(CEETP–3).*

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for non-profit organizations to develop training programs in the areas of (1) independent media development, (2) local government/public administration and (3) business administration for countries of Central and Eastern Europe as specified below. These projects should link the U.S. organization's international exchange interests with counterpart institutions and groups in the partner countries.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to Central and Eastern European Training Program *(CEETP–3).* This announcement number is *E/P–93–8.* Please refer to this title and number in all correspondence or telephone calls to USIA.

Dates: *Deadline for Proposals:* All copies must be received at the U.S. Information Agency by 5 p.m., Washington DC time on February 26, 1993. Faxed documents will not be accepted, nor will documents postmarked February 26, 1993, but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. CEETP–3 grant project activity should begin after June 15, 1993.

Addresses: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: CEETP–3 E/P–93–8, Office of Grants Management (E/XE), 301 Fourth Street SW., room # 336, Washington, DC 20547.

For information contact; Interested organizations/institutions should contact: European Division, Office of Citizen Exchanges (E/P), room 216, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, telephone 202/619–5348, fax 202/619–4350, to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Objectives of Central & East European Training Program (CEETP–3)

Overview: Proposals must be for projects which encourage the growth of democratic institutions and political and economic pluralism, and must show tolerance and sensitivity toward cultural and ethnic differences. They should lay the groundwork for new and continuing links between American and Central/East European professional organizations. Grant proposals which are overly ambitious or general will not be competitive. Doing a few tasks well is preferred. Other objectives which apply to all three theme areas:

—The advancement of mutual understanding through targeted professional development programs for Central/Eastern European leaders;
—The development of culturally sensitive and relevant study tours in

the United States for small groups of key senior leaders to observe theories and concepts at work in the United States;

—The transfer at minimal cost of relevant knowledge through short courses and intensive workshops (preferably of at least two weeks duration) conducted in Central/Eastern Europe;

—Well-planned internships in the U.S. and extended learning programs overseas (from four to ten weeks, with considerable in-country cost-sharing);

—The transfer of American academic and professional expertise through consultations in Central/Eastern Europe for periods of not less than one month;

—The development of specialized materials for secondary and post-secondary teachers, plus special training workshops for such teachers;

Programmatic Considerations

Pursuant to the Bureau's authorizing legislation, grant programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

The Office of Citizen Exchanges strongly encourages the coordination of these activities between respected universities, professional associations, and significant cultural, educational and political institutions in the U.S. and abroad. In addition, coordination in the design of program with U.S. Information Agency officers overseas and with foreign government officials will likely make the proposal more competitive. The themes addressed in these exchange programs must be of long-term importance rather than focussed on current events or short-term issues.

In every case, a compelling rationale for the development and execution of an exchange program must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project and its enduring impact.

USIA will give priority to proposals from U.S. organizations which have partner organizations in Central/Eastern Europe, which will assist logistically and will contribute to the realization of program goals and objectives and will themselves be enhanced by the program. Applicants are encouraged to demonstrate partner relationships by providing copies of correspondence or other materials as appendices to proposals.

The CEE partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing, transportation, interpreting, translating and other local currency costs and to assist with the organization of projects. USIA is interested in multi-phase programs. A model program could include a planning visit by the American organizer; an in-country workshop or seminar led by American experts; a travel/study program in the United States for selected foreign participants; U.S.-based internships where appropriate; and, finally, follow-up consultations overseas by American organizers. Internships usually work best when arranged for the most promising participants in earlier, in-country workshops.

The development of new curricula and instructional materials in Central/Eastern European languages is encouraged; however, USIA does not pay for publication of materials for distribution in the United States.

Planning Trips

USIA grants will pay for planning trips to partner CEE countries by staff or consultants for consultations and planning meetings with partner institutions, but these should be trips which build on previous communications and agreements for cooperation.

Seminars and In-Country Workshops

Seminars and workshops should be at least two weeks in duration. CEE language skills on the part of American experts are desirable but not essential. American presenters should be experienced trainers and professionals in the relevant field (local government administration, business, or media) and be sufficiently knowledgeable of local conditions and needs to tailor presentations.

Orientation Activities

All CEETP–3 grant projects should include a pre-departure orientation to introduce travelers, in both directions, to administrative and substantive details of the grant program. On arrival in the USA, all projects should begin with two to three days of local orientation to such matters as geographic and historical setting, medical insurance, health, cultural values and practices, the roles of police and mass media and other sectors of society which visitors may encounter, and the like. In addition, there should be an orientation for hosts, whether families or individuals or institutions; if overseas visitors will stay longer than a couple of weeks, it is advisable to established some sort of support network to monitor the project and resolve problems which develop.

The purpose in all these orientations is not only to inform participants about agenda and logistics but also to raise issues of economic, social, political, and cultural sensitivities, knowledge, and practice.

Finally, there should be a re-entry orientation and project evaluation just before visitors return home to ease their re-entry, to promote understanding, to identify strengths and weaknesses in the program, and to make adjustments in the remainder of the program where possible.

Study Tours in the United States

Study tours are generally three-four weeks in length and can be a mix of site visits, mini-workshops, and consultations. The purpose of these visits is to provide the participants a first-hand look at local government administration, business, and the media as organized in the United States, as well as an introduction to the cultural and geographic richness of the United States.

U.S.-Based Internships

For the purposes of this competition, internships are practical work experiences in state or local government, businesses, or media organizations. Active, productive internships are preferred over passive job shadowing. They are not university-based residency programs or research opportunities. Participants must be fluent in English. The length of stay for an internship should be at least one month, including orientation activities, but probably not longer than ten weeks. USIA gives priority to proposals which demonstrate private sector cost-sharing, either in the form of in-kind contributions or through corporate or foundation support. Funding from private sources is encouraged to cover food, lodging, and pocket money for the participant. In no case could the intern receive a wage or be "hired" by the sponsoring institution.

Well-designed internships require considerable planning and monitoring. Critical to the success of internship programs is the matching of expectations of host institution and participant. USIA will give priority to proposals that include a detailed plan for how internships will be developed and organized, including the recruitment of institutions for placements and their preparation, the detailed course of work for participants, extra curricular activities, on-going monitoring, contingency planning for any required changes, and final evaluation.

Internships should begin with a basic orientation program as described above but also with due emphasis on American work habits and detailed information on the particular area of interest (public administration, business, or media). For internships of an extended duration, organizations may wish to design a mid-point workshop which brings participants together for a few days to evaluate the experience and make mid-course corrections if necessary.

Materials Development

USIA encourages the development, where needed, of written, audio and video materials in CEE languages to enhance the training programs. For example, if not already available, glossaries of specialized terms in the three fields (public administration, business, and media) might be developed.

In developing materials, consideration should be given to their wider use, beyond the immediate training program. USIA is interested in organizations' ideas on how to "reuse" specialized materials by providing them to universities, libraries, or other institutions for use by a larger audience.

Local Government

Preference will be given to projects in Albania, Bulgaria, Romania, The Czech and Slovak Federal Republic, Hungary and Poland. USIA is interested in proposals for training programs which will foster effective administration of local and regional governments. Programs might examine and seek to improve relationships among local executive, legislative, and judicial elements, or they might address the knowledge and skills necessary to administer one or more of these branches of local government.

Program topics might include one or more of the following: judicial administration, budget development, financial management, tax policies and mechanisms, election practices, management of municipal services, privatization of government property, consumer protection, business regulation (as opposed to control), licensing, environmental protection. Programs might further the development of information and library systems relevant to local government improve committee and staff structures, research capability, legislation drafting capability, structural and procedural needs of local governments. Training should be conducted mostly in local centers, preferably situated outside the capital cities.

Business Administration

Preference will be given to projects with Albania, Bulgaria, Romania, Estonia, Latvia, Lithuania, the Czech and Slovak Federal Republic, Hungary, and Poland. In Poland, Hungary, and the Czech and Slovak Federal Republic, projects which take place outside Warsaw, Budapest, and Prague will be given priority.

While this topic is broad, proposals should focus primarily on management training, small business development (including incubators and Small Business Centers), agri-business, banking, credit practices, financial management, marketing management, industrial relations, and/or privatization.

Program design should clearly differentiate CEE target audiences, such as professors and instructors of economics, senior business leaders, government officials, or promising practitioners, and demonstrate how the proposed agenda addresses the selected audience(s).

USIA has a strong interest in programs on the development of business structures and the creation of jobs in non-urban areas.

Mass Media Development

Preference will be given to projects with Albania, Bulgaria, Croatia, Romania, Estonia, Latvia, Lithuania, the Czech and Slovak Federal Republic, Hungary, Poland, Macedonia, and Slovenia. The focus of the proposals should be directed toward the development of a free and independent media, since this is a sector of the society which has benefitted least from the new wave of democratization.

Programs in this general topic fall under two training sub-categories: working reporters and media business management. Preference will be given to mass media training programs which contain a U.S. internship component. For training programs in CEE, preference will be given to those of at least two weeks duration; they could focus on either basic journalism or business management techniques. Mass media proposals may also focus on curriculum reform and development of schools of journalism.

Training, especially for journalists outside of the CEE capital cities, should emphasize skills such as effective writing, investigative reporting, objectivity, evaluation of sources, clear labelling of editorials and opinion pieces, conformance to copyright laws, and ethics.

Media management training (both print and broadcast) should focus on management of media as a profitable business. Topics to be addressed might include management techniques, desk top publishing, advertising, marketing, distribution, public relations, staff development, accountability, and the pitfalls of journalistic advocacy, among others.

Scope

USIA is interested in proposals for programs with one or more of the CEE countries, but they should focus on one of the three major topics: independent media development, local governance, or business administration. A program that is broader in scope is less likely to receive USIA support. Grantee organizations are not limited to one-country projects. However, if developing a multi-country or regional project, serious thought should be given to political, organizational, and budgetary implications.

USIA will consider geographic distribution in selecting grantee institutions to ensure a wide distribution of this program.

USIA encourages proposals which feature "train the trainers" models; the creation of indigenous training centers; enhancement for university departments; schemes to create professional networks or professional associations to disseminate information, and other enduring aspects.

Guidelines and Restrictions

In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution.

Selection of Participants

All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of internships in USA should include letters tentatively committing host institutions to support the internships.

USIA does not support proposals limited to conferences or seminars of only a few days length which are organized as plenary sessions, major speakers, and panels with a passive audience. It will support conferences only insofar as they are a minor part of a larger project in duration and scope which is receiving USIA funding from this competition. Furthermore, grants are not given to support projects whose focus is limited to technical issues, or for research projects, for publications intended for dissemination in the

United States, for individual student exchanges, for film festivals or exhibits. Nor does this Office provide scholarships or other support for long-term (i.e., a semester or more) academic studies.

Competitions sponsored by other offices of USIA's Educational and Cultural Bureau are also announced in the **Federal Register**, and may have different guidelines or restrictions.

Funding

The amount requested from USIA should not exceed $200,000. However, exchange organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location or activity in order to facilitate USIA decisions on funding.

While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for USIA funding support is keen.

The following project costs are eligible for consideration for funding: 1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities.

Note: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in Central/Eastern Europe, the Federal per diem rates must be used.

3. Interpreters. Interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each DOS interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants and escorts are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $15–20 for a lunch and $20–30 for a dinner; this includes room rental if applicable. The number of invited guests may not exceed participants by more than a factor of two to one.

9. Administrative Costs. USIA-funded administrative costs are limited to 22% of total funds requested. Administrative costs are defined as salaries for grantee organization employees, benefits, other direct and indirect costs incurred in the United States. Overseas administrative costs, such as employee compensation in an office abroad, are not counted in this 22% limit. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines U.S. faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

10. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel. Please Note: All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of European Affairs. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant all preparation and submission costs are at the applicants expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit relevance, originality, rigor and substance to the USIA mission. They should demonstrate the match of U.S. resources to a clearly defined need.

2. *Institutional Ability/Capacity/Record:* Applicant institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by the Office of Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. *Program Planning:* A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

6. *Cross-Cultural Expertise and Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as relevant knowledge of target area/country.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and attainable. Proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* Overhead and administrative costs should be kept as

low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity success. In this respect the applicant should include a draft survey questionnaire or other technique and a methodology to use to link outcomes to original project objectives. Applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1993.

Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 18, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92–31185 Filed 12–23–92; 8:45 am]

BILLING CODE 8230–01–M

Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) announces a request for proposals from not-for-profit organizations to conduct an initiative grant exchange program designed to encourage increased private sector commitment to and involvement in international exchanges between U.S. and African journalists. All international participants will be nominated by USIA personnel overseas. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

ANNOUNCEMENT NUMBER: The announcement number is E/P–93–7. Please refer to this number in all correspondence and telephone calls to the Agency.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, February 26, 1993. Faxed documents will not be accepted, nor will documents postmarked February 26, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin after June 26, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: Citizen Exchange: Initiative Grant Competition FY–93–7, Office of Grants Management (E/XE), room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), room 224, USIA, Washington, DC 20547, telephone: (202) 619–5326, to request detailed application packets which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation guidance. Please specify the name of USIA Program Officer Stephen Taylor on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, "programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life."

Professional Development of African Print and Broadcast Media Journalists and Managers

The Office of Citizen Exchanges (E/P) of the United States Information Agency (USIA) proposes the development of a two-way exchange program for print and broadcast journalists and media managers in anglophone, francophone and lusophone Africa. The first phase of the program would provide a series of at least 20 intensive workshops in Africa aimed at strengthening skills in the areas of political affairs reporting, economic affairs reporting and management of media organizations. During the second phase, the grantee institution would organize internships of 4–6 weeks at appropriate U.S. publications and broadcast services for 25 African participants. The project would be designed to prepare African trainers to replicate the training activities for other audiences in Africa.

A U.S. not-for-profit institution or institutions will design and execute the program and select the American presenters. The institution should demonstrate extensive experience and success in coordinating international exchange programs for senior-level foreign participants. The potential grantee institution should have substantive working relationships with U.S. public and private sector organizations responsible for promoting journalistic professionalism and successful business management. The African participants will be nominated by overseas personnel of the United States Information Service (USIS) and selected by the United States Information Agency (USIA). The program will begin in the summer of 1993.

It is desirable that the first phase of the program be completed, and the second phase be underway, within twelve months after the initial grant award from USIA. While coordination of all activities by a single grantee organization would be attractive, the number and variety of workshops and follow-on internships may require subcontracting or the award of two smaller grants in order to achieve successful completion of program activities in a timely manner. Thus, USIA will consider proposals to conduct all elements of the program, as well as proposals to develop either the anglophone or francophone portions of the program, in combination with activities for lusophone participants.

Funding

Competition for USIA funding is keen. The selection of a grantee

institution will depend on program substance, cross-cultural sensitivity, the applicant's familiarity with professional journalistic standards and the U.S. and foreign media, and ability to successfully carry out the program. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process.

Funds requested from USIA cannot exceed $550,000 for support of this program. However, organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000.

Administrative costs. USIA-funded administrative costs are limited to twenty-two (22%) per cent of the total funds requested from USIA. Administrative costs are defined as salaries, benefits, other direct and indirect costs. Important note for universities: The U.S. Information Agency's Bureau of Educational, and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of African Affairs and the Office of Contracts. Proposals may also be reviewed by the Agency's Office of the General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

The award of any grant is subject to the availability of funds.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Institution Reputation/Ability Evaluations:* Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal and no longer than two pages each.

4. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substance and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. *Cost Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institution direct funding contributions.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 20, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 18, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-31186 Filed 12-23-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held January 26 and 27, 1992, by the Department of Veterans Affairs, in the Conference Room 7 of the Ramada Renaissance Hotel—TechWorld, 999 Ninth Street, NW., Washington, DC. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Acting Secretary of Veterans Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The committee will meet on January 26 from 8:30 a.m. until 4:30 p.m. and will reconvene on January 27 at 8:30 a.m. and adjourn at 12 noon. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes,

Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202–535–7165) prior to January 22, 1992.

Changes in geriatric programs and update on allied health care training will be the primary topics for discussion.

Dated: December 15, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–31273 Filed 12–23–92; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held in room 442, of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC, on January 29, 1993, at 10 a.m. The committee members will review Department of Veterans Affairs construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Krishna K. Banga, Acting Director, Structural Engineering Service, Office of Construction Management, Department of Veterans Affairs Central Office (phone 202–233–2864) prior to January 27, 1993.

Dated: December 15, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–31274 Filed 12–23–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 14, 1993.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Slatersville Congregational Church, On the Common, Slatersville, RI, for the following reasons:

1. Presentation of North Smithfield significance and projects.
2. Corridor video.
3. Report of Executive Committee on budget and administration.
4. Report of Boundary Committee.
5. Status of demonstration projects.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 730, Uxbridge, MA 01569. Telephone: (508) 278–9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address noted on this letterhead.

James R. Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 92–31465 Filed 12–22–92; 2:14 pm]

BILLING CODE 4310–70–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 59378, December 15, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 12:00 noon, Monday, December 21, 1992.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed computer maintenance contract for the Federal Reserve System. (This item was originally announced for a closed meeting on December 14, 1992.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–31383 Filed 12–22–92; 2:13 pm]

BILLING CODE 6210–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: January 21, 1993, 1:00 p.m.-5:30 p.m. January 22, 1993, 9:30 a.m.-3:30 p.m.

PLACE: The Warwich Hotel, 1776 Grant Street, Denver, Colorado 802103.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Chairman's report
Executive Director's report
NCLIS AMERICA 2000: Library Partnership Ad Hoc Committee report
Status of NCLIS publications:
- NREN open forum report
- Pathways to Excellence: A Report on Improving Library and Information Services for Native American Peoples
- NCLIS Annual Report, FY 1991–92

Ward E. Shaw, Chairman of CARL Systems, Inc., Colorado Alliance of Research Libraries and CARL Systems, Inc. (tentative)
Nancy Bolt, Colorado State Librarian (tentative)
Committee reports:
- Budget and Finance Committee
- International
- Legislative and Library Statistics
- Public Affairs
- Recognition

Public Comment
Unfinished Business

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, NCLIS, suite 310, 1111–18th Street, NW., Washington, DC 20036, (202) 254–3100.

Dated: December 17, 1992.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 92–31472 Filed 12–22–92; 2:58 pm]

BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1965

Elimination of Loan Cost Payments Through the "MISPAY" Accounting System at the National Finance Center

Correction

In rule document 92–19250 beginning on page 36589 in the issue of Friday, August 14, 1992, make the following correction:

§ 1965.104 [Corrected]

On page 36593, in the first column, in the amendment to § 1965.104, the text set out for paragraph (c)(1)(ii) should be removed.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[AD–FRL–4532–8]

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

Correction

In proposed rule document 92–27549 beginning on page 55632 in the issue of Wednesday, November 25, 1992, make the following corrections:

1. On page 55632, in the first column, under the heading **ADDRESSES**, in the third paragraph, in the last line, "No. A–90–30" should read "No. A–90–39".

2. On page 55637, in the third column, in the third full paragraph, in the fourth and fifth lines, "low NO technology" should read "low NO_x burner technology".

3. On page 55639, in the second column, in the second full paragraph, in the seventh line, "producers" should read "produces".

4. On the same page, in the 2nd column, in the 3rd full paragraph, in the 16th line, "mumber" should read "number".

5. On page 55640, in the second column, in the third full paragraph, in the second line, "will-fired" should read "wall-fired".

6. On the same page, in the same column, in the same paragraph, in the 13th and 18th lines, "No_x" should read "NO_x".

7. On the same page, in the third column, in the 5th, 8th, and 16th lines, "No_x" should read "NO_x".

8. On the same page, in the same column, in the first full paragraph, in the first line, "No_x" should read "NO_x"

9. On page 55648, in the first column, in the last paragraph, in the sixth line, "reduction" should read "reductions"

10. On page 55659, in the first column, in the 2nd full paragraph, in the 19th line, "phase" should read "phrase".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 91N–0278]

RIN 0905–AD66

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval

Correction

In rule document 92–30129 beginning on page 58942 in the issue of Friday, December 11, 1992, make the following corrections:

On page 58843, in the third column, in the first full paragraph, in the seventh and eighth lines, "ddi)" and "ddc)" should read "ddI)" and "ddC)".

BILLING CODE 1505–01–D

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Federal Register

Thursday
December 24, 1992

Part II

Environmental Protection Agency

40 CFR Parts 261, et al.
Wood Preserving; Identification and Listing of Hazardous Waste; et al., Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, and 302

[FRL–4155–5]

RIN 2050–AD35

Wood Preserving; Identification and Listing of Hazardous Waste; Standards and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by modifying the technical standards for drip pads used to collect preservative drippage from treated wood and modifying the listings of three categories of hazardous waste from the wood preserving industry. These listings include wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use or have used pentachlorophenol (F032), that currently use creosote (F034), or that currently use inorganic preservatives containing arsenic or chromium (F035). This action modifies portions of the regulations that were previously finalized by EPA on December 6, 1990 (50 FR 50450). Portions of that final rule were administratively stayed on June 13, 1991 (56 FR 27332), and again on February 6, 1992 (published in the **Federal Register** on February 18, 1992 [57 FR 5859]). Today's amendments constitute final action on the June 1991 Administrative Stay and result in termination of that stay. The February 6, 1992 stay is also terminated as a result of today's action. This notice also modifies the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list of hazardous substances to reflect the modifications to the F032, F034, and F035 hazardous waste listings.

DATES: This final rule will become effective on December 24, 1992 except for the amendments to the following provisions which are effective on June 24, 1993: §§ 264.570(c)(1), 264.573(a)(4)(i), and (b)(3), 265.440(c)(1), 265.443(a)(4)(i) and (b)(3) and the revision of hazardous waste number F032 in § 261.31. See section VII of Supplementary Information for further details.

ADDRESSES: The official record of this rule-making is identified by Docket Number F92–WP2F–FFFFF and is located at the following address: EPA RCRA Docket Clerk, Room 2427 (OS–332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page. Copies of materials relevant to the CERCLA portions of this rulemaking also are located in room 2427 at the above address.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 (toll-free) or (703) 920–9810, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323, locally. For technical information on the modifications to the hazardous waste listings and drip pad standards, contact Mr. David J. Carver at (202) 260–6775, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5650.

SUPPLEMENTARY INFORMATION: The contents of the preamble are listed in the following outline:

I. Legal Authority
II. Background
  A. General
  B. Administrative Stays
III. Summary of the Regulation
  A. Overview of the Proposed Rule
  B. Overview of the Final Rule
IV. Summary of Public Comments and Responses
  A. Provisional Elimination of the F032 Waste Code
  B. February 6, 1992 Deadline
  C. Mixture Rule and Contained-In Policy
  D. Narrowing of Wastewater Listings
  E. Storage Yard Drippage
  F. Revisions to Drip Pad Cleaning Requirements
  G. Policy to Allow Installation of Either a Surface Coating, Sealer, or Cover or a Liner and Leak Detection System
  H. Drip Pad Coating, Sealer and Cover Permeability
  I. Other Issues
V. State Authority
  A. Applicability of Final Rule in Authorized States
  B. Effect on State Authorizations
VI. CERCLA Designation and Reportable Quantities
VII. Compliance Deadlines
VIII. Regulatory Requirements
  A. Executive Order 12291
  B. Regulatory Flexibility Act
IX. Paperwork Reduction Act

I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a), 3001(b) and (e)(1), and 3004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a) and 6921(b) and (e)(1) (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a).

II. Background

A. General

Section 3001(e)(1) of RCRA requires EPA to determine whether to list as hazardous wastes containing chlorinated dioxins and chlorinated dibenzofurans. As part of this mandate, the Agency initiated a listing investigation of dioxin-containing wastes from pentachlorophenol wood preserving processes and pentachlorophenate surface protection processes. Two other similar wood preserving processes that use creosote and aqueous inorganic formulations containing chromium or arsenic were also included in this investigation.

On December 30, 1988, EPA proposed four listings pertaining to wastes from wood preserving and surface protection processes, as well as a set of standards for the management of these wastes (53 FR 53282). The Agency finalized three generic hazardous waste listings for wastes from wood preserving processes and promulgated standards for the management of these wastes on drip pads (40 CFR parts 264 and 265, subpart W) on December 6, 1990 (55 FR 50450).

The purpose of this final rule is to amend the F032, F034, and F035 listings and portions of the subpart W requirements for drip pads. As explained briefly above, the EPA proposed these amendments in a notice published in the **Federal Register** on December 5, 1991 (56 FR 163848). As with the original final rule, the scope of today's amendments does not include wastes that are included in the K001 listing (bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol).

B. Administrative Stays

1. June 6, 1992 Administrative Stay

On December 31, 1990, the American Wood Preservers Institute (AWPI) formally requested a stay of the effective date for compliance with the final rule, and also filed a petition for judicial review of the rule. EPA issued an Administrative Stay on June 13, 1991 (see 56 FR 27332). Elements of the December 6, 1990 final rule subject to that stay are the following:

- The F032, F034, and F035 listings in the process area only (until February 6, 1992 for existing drip pads and until May 6, 1992 for new drip pads);
- The requirement for impermeably sealed or coated surfaces for new drip pads, until further administrative action is taken;
- The applicability of the F032 waste code to wastes generated by previous users of pentachlorophenol, provided that they are regulated as F034 or F035, until further administrative action is taken; and
- The applicability of the F032, F034, and F035 listings to wastewaters that do not contact listed process wastes, until further administrative action is taken.

This stay further required that a facility adhere to several conditions in order to be eligible for the stay. The Agency did this in an effort to limit the extension provided by the stay to those facilities making bona fide efforts to comply with the original final rule. The conditions of the stay are as follows.

(1) By August 6, 1991, a facility must have notified the proper authorities of its intent to either install or upgrade a drip pad, or cease operations by August 7, 1991;

(2) By November 6, 1991, a facility must have provided evidence of *bona fide* efforts to comply with its earlier stated intent;

(3) By February 6, 1992, a facility must have completed any upgrades to existing pads, including installation of an impermeable coating, sealer, or cover; and

(4) By May 6, 1992, a facility must have completed installation of new pads.

The staying of the F032, F034, and F035 listings in the process area does not require further administrative action to effect termination of the stay. The remaining elements of the June 1991 stay require specific administrative action to effect their termination. These elements of the December 1990 final rule were proposed for modification in the December 5, 1991 NPRM and are being finalized today. Accordingly, today's final rule constitutes the final administrative action that terminates the stay of these provisions.

2. February 6, 1992 Administrative Stay

Because the Agency had not promulgated today's final rule prior to the February 6, 1992 deadline set forth in the June 13, 1991 Administrative Stay, the Agency issued a subsequent Administrative Stay on February 6, 1992 (57 FR 5859). This action stayed the impermeability requirements for existing drip pad coatings, sealers, and covers until October 30, 1992. Because today's final rule amends the impermeability requirement, replacing it with a specific hydraulic conductivity standard, the February 6, 1992 stay is no longer applicable. The Agency is establishing today a new compliance date for the hydraulic conductivity standard (see section VII). Facilities with existing drip pads must meet the new hydraulic conductivity standard before the compliance date established in today's rule, and not the October 30, 1992 deadline set in the administrative stay.

III. Summary of the Regulation

A. Overview of the Proposed Rule

In the December 5, 1992 **Federal Register**, EPA proposed to revise several elements of the wood preserving hazardous waste regulations and requested comment on those issues. The Agency proposed the following actions: (1) Eliminate the F032 classification for certain wastes generated by past users of chlorophenolic formulations that any wastewaters, drippage, process residuals, or spent preservatives are regulated as F034 wastes, F035 wastes, or wastes exhibiting the Toxicity Characteristic (TC); (2) narrow the scope of the wastewater listings contained in the F032, F034, and F035 listings to include only those wastewaters that come in contact with process contaminants; (3) require contingency plans and cleanup of storage yard drippage in response to incidental drippage in storage yards; (4) remove the requirement that new drip pad coatings, sealers or covers be impermeable; (5) add a requirement that new drip pads have leak collection devices; (6) revise the requirement that all existing drip pad coatings, sealers, or covers be impermeable to reflect data on the permeabilities of available coatings, sealers, or covers; (7) require that drip pad surface materials be chemically resistant to the preservation being used and that these surface materials be maintained free of cracks, gaps, corrosion, or other deterioration that would increase their hydraulic conductivity above the 1×10^{-7}cms level and lead to a potential for releases to the environment; (8) revise the requirement that drip pads be cleaned weekly to a requirement that drip pads be cleaned in a manner and frequency such that the entire surface of drip pads can be inspected weekly; (9) revise the schedule for upgrading existing drip pads to allow 15 years for the incorporation of liners and leak detection systems; and (10) revise the CERCLA designation of hazardous substances to reflect the modifications in the listings.

The Agency also requested comment as to whether the standards for new drip pads should allow the choice of either a highly impermeable surface (e.g., sealers, coatings, or covers for concrete drip pads) or a liner with a leak detection and collection system.

B. Overview of the Final Rule

Today's rule finalizes modifications proposed on December 5, 1991 (56 FR 63848) to the wood preserving waste listings and drip pad regulations originally promulgated on December 6, 1990 (55 FR 50450). The modifications being finalized today are summarized below.

1. Provisional Elimination of the F032 Waste Code

The listing description for F032 promulgated in the December 6, 1990 final rule includes wastes generated at wood preserving plants that currently use or previously used chlorophenolic formulations. That final rule also contained a provision whereby a facility owner/operator could "delete" the F032 waste code from the wastes if the facility's process no longer uses chlorophenolic formulations and the facility meets other criteria outlined in § 261.35 (see 55 FR 50483). In the December 5, 1991 NPRM, EPA proposed to eliminate the applicability of the F032 listing to wastes generated by past users of chlorophenolic formulations that have ceased using such formulations, provided that any wastes generated exhibit the Toxicity Characteristic or meet the listing description of F034 or F035 (56 FR 63849).

In today's rule, the Agency is finalizing a portion of this provision. Today's action eliminates the applicability of the F032 waste code to wastes generated by wood preserving operations that previously used, but no longer use, chlorophenolic preservatives, provided that any wastewaters, process residuals, drippage, or spent preservatives generated by those operations are

regulated as F034 or F035 wastes. EPA has made this elimination of the F032 waste code conditional in order to ensure continued protection of human health and the environment. Given this approach, the wastes generated by past users of chlorophenolic formulations will continue to be subject to appropriate management standards under Subtitle C. There is no additional environmental benefit to be gained from regulating wastes from past users of chlorophenolic formulations as F032 wastes, provided the wastes are regulated as F034 or F035 wastes. It is important to note, however, that although F034 and F035 do not include dioxin as a basis for listing, wastes generated by past users of chlorophenolic formulations that are reclassified as F034 or F035 may contain dioxin due to cross-contamination with wastes formerly classified as F032. As discussed in the December 1991 NPRM, this will be relevant in establishing treatment standards under the Land Disposal restrictions program of 40 CFR 268.

As discussed above, the December 1991 NPRM proposed to extend eligibility for the provisional elimination of the F032 waste code to wastes that exhibit that TC as well as wastes meeting the F034 or F035 listings. The Agency has decided not to finalize the TC portion of the proposed conditional elimination for wastes from past users of chlorophenolic preservatives. Therefore, TC wastes generated by past users of chlorophenolic formulations which do not meet the F034 or F035 listing descriptions are still considered F032 wastes, unless the generator satisfies the cleaning and replacement requirements of 40 CFR 261.35.

2. Narrowing of the Wastewater Listings

EPA is promulgating amendments to the listings of F032, F034 and F035, as proposed, to exclude wastewaters that have not come into contact with process contaminants. For purposes of today's rule (and as stated in the June 13, 1991 Administrative Stay), EPA intends "process contaminants" to include hazardous constituents from formulations of preservative and any F032, F034 of F035 wastes. Therefore, wastewaters that never conduct these process contaminants do not fall within the scope of the listings, as amended today. Rainwater, however, that is collected on drip pads and conveyed to a collection system would be considered a hazardous waste if it becomes mixed with hazardous wastes from wood preserving operations. This contaminated rainwater would then meet the definition of a wastewater generated from the facility and would have to be treated as a listed hazardous waste.

3. Drippage in Storage Yards and Contingency Plans

On December 5, 1991, the Agency proposed to require owners/operators of wood preserving plants to develop and implement a contingency plan for immediate response to incidental drippage in storage yards. Today, EPA is finalizing this requirement as proposed and is providing guidance through this preamble discussion of what EPA intends by "immediate response." With respect to the word "immediate," the Agency intends, absent extenuating circumstances, that owners/operators respond to storage yard drippage that occurs when a facility is in operation within one consecutive working day. A facility is considered in operation on any day in which it is treating wood. For facilities which are not in operation during a storage yard drippage event, the Agency expects the facility to clean up drippage within 72 hours of occurrence. EPA recognizes that the term "immediate" must take into account the nature of the incident as well as facility-specific factors. The above clarification of "immediate" recognizes that facilities have "down" times, and that a facility may not have adequate staff available during down times, weekends, or holidays.

It is important to note that the timing of response to drippage is based on when the drippage actually occurs, rather than when the drippage is detected in the storage year. The approach promulgated today places the responsibility for checking storage yards for drippage on the facility owner/operator. Regular checks of storage yards, particularly following the initial storage of newly treated wood, allow owners/operators to response to drippage as required by today's rule.

With respect to the word "response," EPA intends to include cleanup and removal of preservative drippage from the storage yard which is consistent with Federal Regulations. Because response must be "immediate," as discussed above, drippage would not remain in the storage yard long enough to cause significant contamination of the soil or other environmental media. Therefore, extensive remediation will not be necessary for periodic cleanup of drippage in accordance with the contingency plan. For purposes of today's rule, removal of visible drippage from storage yards will satisfy the requirements for immediate response. Today's rule does not require sampling and analysis for confirmation of contamination in storage yards. If historical contamination exists at a wood preserving plant, any remediation would proceed under an enforcement order and would be independent of any response to incidental storage yard drippage required by this rule.

Today's rule requires facility owners/operators to maintain a written plan that describes how the facility will respond to incidental drippage in the storage yard. As described in the NPRM, and as finalized in today's rule, this plan, at a minimum, must describe how the owner/operator will do the following:

(i) Clean up of the drippage
(ii) Document the clean-up of the drippage
(iii) Retain the documents regarding the clean up for three years; and
(iv) Manage the contaminated media in a manner which is consistent with Federal regulation.

The NPRM stated that the contingency plan meet the requirements of subpart D of 40 CFR part 264/265. By this, the Agency did not intend, and is not requiring in today's rule, that the contingency plan for responding to incidental storage yard drippage meet the detailed content requirements for subpart D. The Agency believes that those requirements exceed what is necessary for a written plan for responding to incidental storage yard drippage. Today's rule still requires that a written plan be developed and maintained at the facility, and that the plan be available for inspection by the Agency or its representatives.

With respect to the requirement that the cleanup of incidental drippage in the storage yard be documented, the Agency will consider an annual certification, signed and on company letterhead, that the owner/operator has cleaned up in accordance with today's final rule requirements, to be adequate documentation. Individual facilities, however, may elect to keep more detailed records, including records for each cleanup incident, to defend, for example, against potential claims of liability.

4. New Drip Pad Coating, Sealer or Cover Impermeability Requirement

As proposed in the December 5, 1991 NPRM, EPA is revising the 40 CFR subpart W regulations for drip pads by removing the requirement that new drip pads have an impermeable surface coating, sealer or cover. Furthermore, the Agency has decided to remove the requirement for new drip pads to have liners and leak detection with leak collection if coatings and sealers are chosen. As discussed in the proposal, the Agency requested comment on the

relative merits of allowing industry a choice for new drip pads of having a surface protection system on the drip pad surface or a liner and leak detection system below pad with no surface protection. The Agency has decided to allow regulated community to choose between these two options.

In the NPRM, the Agency noted that the design criteria for coatings could be more complex than the design criteria for a liner and leak detection system. Specifically, EPA was concerned that coatings would not be an effective barrier unless operators applied coatings and sealers to the drip pad which are chemically resistant to the preservatives in use and which are maintained against corrosion and wear. Therefore, EPA is today promulgating requirements to ensure that new drip pads with coatings, including extensions to existing drip pads, are designed and maintained to be an effective barrier to migration of contaminates from the drip pad.

Today's requirements for existing drip pad surface protection will be applicable to new drip pads. A new drip pad without a liner and leak detection system will be in compliance with subpart W requirements if the owner/operator applies a surface protection system to the pad which meets the permeability requirements for existing drip pads and is chemically resistant to the preservative being used. Likewise, a new drip pad following these technical requirements must be inspected and certified annually by an independent qualified registered professional engineer.

It is the Agency's belief that a drip pad with a liner and leak detection system may require less maintenance than a drip pad with a surface coating only, potentially saving a facility a substantial amount of money over the lifetime of a new pad. However, commenters to the proposed rule pointed out specific situations where coatings may be more cost effective. New drip pads may be located in specific environmental locations (i.e. with a high seasonal water table) or a facility situation (i.e. an extension to the existing drip pad that does not have a liner) in which it is less expensive to use coatings than a liner and leak detection system. Further, if the cost of highly impermeable coatings declines in the future, allowing the two compliance options in today's rule could reduce overall compliance costs. Since the Agency finds that either requirement for new drip pads promulgated today provides for adequate protection of human health and the environment, the Agency has decided to allow the regulated community the flexibility to choose either compliance option. However, the Agency believes that either requirement for new drip pads promulgated today provide for adequate protection of human health and the environment.

5. Leak Collection Systems for New Drip Pads

The EPA is finalizing the proposal that new drip pads which are equipped with a liner and leak detection system also be equipped with a leak collection system below the pad and above the liner so that any leakage through the pad can be collected and removed. With a leak collection system in place, water and preservative formulations that leak through the pad can be removed before they even reach the liner. This collection system will also aid the facility in determining whether or not (and the extent to which) pad failure has occurred. The leak collection system required by today's rule is to be a collection device separate from than the sump system used to collect drip pad washdown water. The purpose of this separate collection device is to differentiate between washdown water and leachate collection which could occur due to drip pad permeation. Owners and operators must document, in the facility's operating record, the date, time, and quantity of leakage collection when it is removed from the collection device. This information will be useful to the Agency in enforcing the requirement that new drip pads be maintained in a structural sound manner. This leak collection requirement will apply to all new drip pads which are fitted with a liner and leak collection system constructed after the publication date of today's rule, except for those pads constructed after such time, for which the owner/operator has entered into binding financial or other agreements for construction prior to the publication date of today's rule. As stated in the NPRM, the requirement to install a leak collection system on new drip pads does not affect the responsibility of an owner/operator to remove some or all of a drip pad to clean up any release of hazardous waste to the environment in the event such a release occurs. This requirement, however, should minimize the frequency of these potentially costly cleanup activities.

6. Existing and New Drip Pad Coating, Sealer, and Cover Permeability Requirements

EPA is aware that the requirement for an absolutely impermeable surface cannot be practicably met. The Agency's intent in the December 6, 1990 rule was to require a surface coating, sealer, or cover for concrete drip pads (or similar porous or easily-fractured materials of construction) that would provide incremental protection against permeation of preservative through the drip pad and thus serve to ensure less permeability than would be achieved by the drip pad alone. This requirement would be applicable to concrete or other porous or easily fractured materials of construction but may not be applicable to other materials of construction such as steel.

Today's rule finalizes the proposed standard that existing drip pad coatings, sealers, or covers have a hydraulic conductivity of less than or equal to 1×10^{-7} cm/second. This requirement, which was proposed for existing drip pads, also applies to new drip pads for which the owner/operator has chosen surface protection over liners and leak detection, and collection, as described elsewhere in the preamble. The Agency recognizes that the most common material for drip pad construction has been concrete. Thus, the conductivity value of 1×10^{-7} cm/s has been derived from the theoretical conductivity of unfractured, well constructed concrete. Available data reflect that coatings, sealers and covers that meet this standard are currently on the market.

A common unit of measurement within the protective coating and sealer industry to express a coating, sealer, or liner's hydraulic conductivity is a mass flux number given in units of grains per ft^2. The hydraulic conductivity value of 1×10^{-7} cm/s can be expressed as a flux with an equivalent value of 1×10^{-7} grams/cm^2/s or in English units of 5.168 grains/ft^2/hr, assuming that values for water are used in the calculation. Additionally, to convert from grains per hour per ft^2 to units of cm/s, one has to multiply by 1.934964×10^{-8} (ft^2)(hr)(cm)/(s)(grains). This flux number was obtained by assuming that a worst case scenario would exist if pure water was used to permeate through a pad, instead of preservative. The Agency has no data on the infiltration rates of preservatives but it is logical that water would permeate a drip pad somewhat more rapidly than a preservative formulation. The Agency believes that the adoption of a 1×10^{-7} cm/s hydraulic conductivity based on a worst case scenario is reasonable. Indeed, because wastes mixed with rainwater or other water may be present and may permeate the pad, the Agency stands by its calculation. Therefore, the density term in the calculation was chosen for water at room temperature and atmospheric pressure. The details of

this calculation along with any assumptions can be found in the docket for this rule.

In the NPRM, EPA identified ASTM Method E–96 Procedure E as an accepted method for measuring the infiltration rate of water vapor into a drip pad surface. EPA continues to support this method as acceptable, although its use is not required and other appropriate methods may be used.

7. Selection of a Chemically Compatible Surface Material for Existing and New Drip Pads

Today's rule also promulgates a requirement that existing and (if applicable) new drip pads be constructed with coatings, sealers, or covers that are chemically compatible with the preservatives being used. Furthermore, these surface materials must be maintained free of cracks, gaps, corrosion, or other deterioration that would increase the hydraulic conductivity of drip pad coatings, sealers, and covers above the 1×10^{-7} cm/s level and lead to a potential for releases to the environment. There is no testing requirement associated with this provision; an owner/operator is not required to demonstrate through testing that a surface material is compatible with the preservatives being used.

8. Drip Pad Cleaning Requirements

The Agency is revising the drip pad cleaning requirements as proposed. Cleaning of drip pads is required in a manner and frequency to be determined on a facility-specific basis by the owner/operator to allow weekly inspections of the entire surface of the drip pad. The current requirements to document the date and time of each cleaning to which revisions were not proposed remain unchanged.

9. Timeframe for Existing Drip Pads To Comply With New Drip Pad Standards

The Agency is not finalizing the proposal to allow 15 years from the effective date of today's rule for owners/operators of existing drip pads to meet the new drip pad standards. The requirements at 40 CFR part 265, subpart W are amended today to reflect these changes. In addition to removing the 15 year upgrade requirement, the Agency is removing the requirement that owners/operators of existing drip pads document the age of their drip pad. Because this requirement was directly related to the 15 year upgrade requirement, there is no logical reason to maintain it in the absence of that upgrade provision. As discussed elsewhere in this preamble, the Agency has elected to allow facilities to comply with the standards for new drip pads by choosing between liner and leak detection and surface protection. Because the substantive requirements for existing pads (particularly the requirement of an annual, certified written assessment of the drip pads compliance with regulatory standards) are the same as those being promulgated today for new drip pads for which surface protection has been elected over liners, the proposed 15 year upgrade deadline has become unnecessary and irrelevant.

For example, at the end of the proposed 15 year period, an owner/operator could choose to continue meeting the surface protection requirement, or could retrofit an existing pad or build a new pad to include a liner and leak detection system. Since the surface protection option is consistent with the standards that owners/operators are already required to meet for existing drip pads, the owner/operator is able to meet the standards for new drip pads without adapting to different standards. Thus, at the end of the 15 year period, an owner/operator in compliance with the requirements for existing drip pads would be in compliance with the standards for new drip pads as well. As stated elsewhere in this preamble, Agency believes that a well constructed drip pad that complies with the surface protection requirement may provide sufficient protection for a period greater than 15 years. The annual certification requirement for drip pads with surface protection is intended to ensure that drip pads meet these requirements.

Of course, today's rule allows the owner/operator to install a drip pad with a liner or retrofit an existing pad with a liner to meet the standards for new drip pads. Under today's rule, there is no requirement that the owner/operator do so within 15 years. The decision to choose the liner option, as well as the decision of when to install or retrofit a drip pad to meet these requirements are left to the individual facility. It is important to note, however, that the Agency is maintaining the requirement that owners/operators develop a written plan for upgrading, repairing, and modifying the drip pad if the owner/operator chooses to meet the standards for new drip pads by installing a liner and leak detection system. Any such plan must still be submitted to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications will be complete.

10. CERCLA Hazardous Substance Designation

All hazardous wastes listed pursuant to RCRA 3001 are hazardous substances as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The designations for F032, F034, and F035 in Table 302.4 (40 CFR 302.4) are revised today to reflect the modifications to their listing descriptions under RCRA (40 CFR 261.31). Reportable quantities (RQ's) for these revised CERCLA designations are set at one pound, consistent with the RQ's established in the December 6, 1990 final rule, for the initial CERCLA listings for F032, F034, and F035.

IV. Summary of Public Comments and Responses

The Agency received several comments on the NPRM, covering a range of issues. These major issues presented in these comments and the Agency's responses are addressed separately below for clarity and ease of understanding. A complete summary of comments received and the Agency's responses thereto are contained in the separate document entitled "Response to Public Comment" which is located in the docket associated with today's rulemaking. The major issues from public comments, however, are summarized and responded to in this section.

A. Provisional Elimination of F032 Waste Code

Several comments were received on the conditions for elimination of the F032 waste code from wastes generated at plants that previously used, but no longer use, chlorophenolic formulations. As proposed in December 1991, these conditions required that any wastes generated by past users of chlorophenolic formulations either exhibit the TC or be regulated as F034 or F035 wastes to qualify for elimination of the code. Industry commenters generally supported the provisional elimination of the waste code. Two commenters, however, requested that EPA remove the reference to TC wastes. The commenters stated that listed wastes are subject to a different regulatory regime than are characteristic wastes. Thus, while the Agency could be sure that F034 and F035 wastes generated by past users of chlorophenolic preservatives would be subject to the identical scheme of regulation as F032 wastes, the same cannot be said of TC wastes generated by past users.

The Agency agrees with the commenters' rationale and has decided not to include TC wastes within the conditional elimination for wastes from past users of chlorophenolic formulations. TC wastes were originally added to the conditional elimination proposal to regulate wastes in States that are authorized for the base RCRA program but have not adopted the F034 or F035 listings. The Agency notes that its regulations require all States authorized for the base program to pick up the F034 and F035 listings by the end of December 1992 (See 40 CFR 271.21). As the commenter stated, the regulatory standards that apply to F032, F034 and F035 wastes are identical; therefore, the Agency can be assured that wastes generated by past users of chlorophenolic formulations that are reclassified as F034 or F035 will be managed consistently. In addition, it is programmatically more difficult to establish and implement land ban treatment standards for cross-contaminated wood preserving wastes under the TC than under the F034/F035 listings. The F034/F035 listings involve a clearly defined industry and a significantly smaller universe of wastes than that which is potentially captured by the TC.

One commenter urged the Agency to expand the provision for deletion of the F032 code to include wastes generated by past users of chlorophenolics that are not regulated as hazardous wastes. Such an approach would undermine the central premise of the F032 waste code deletion concept. As discussed above, EPA wants to ensure that wastes from which the F032 code is deleted continue to be managed properly under the Subtitle C regime. In this way, the deletion provision has not established a regulatory loophole of any kind but continues to provide protection of human health and the environment.

Finally, one commenter stated that the F032 waste code appeared to overlap with the existing F027 listing, in that spent formulations would be regulated as F027. The Agency clarifies here that the F027 listing applies only to discarded unused formulations containing tri-, tetra-, or pentachlorophenol. Therefore, spent formulations are not covered by the F027 listing. On the other hand, the listing descriptions for F032, F034 and F035 explicitly include spent formulations from wood preserving processes. The same commenter suggested that EPA clarify that the F032, F034 and F035 listings do not include wastes from the wood surface protection industry. EPA believes that the listing descriptions for F032, F034 and F035 are clear as to which wastes they encompass. On December 30, 1988, the Agency proposed to list wastes from wood surface protection processes as F033 (53 FR 53330). This listing was not finalized along with the rest of the wood preserving rule on December 6, 1990; a possible F033 listing will be pursued in the future as a separate Agency action. Today's rule, as with the December 6, 1990 rule, does not apply to wastes from the wood surface protection industry.

B. February 6, 1992 Deadline

One commenter (a wood preserving industry trade group) requested a six month extension of the February 6, 1992 deadline for existing pads to comply with the numerical standard for coating, sealer and cover permeability. The Agency has already recognized that February 6 presented an impractical deadline for compliance with standards for existing drip pads that the Agency proposed to modify but had yet to amend by that date. In order to remedy this situation, EPA issued an Administrative Stay on February 6, 1992 (57 FR 5859; February 18, 1992), staying the impermeability requirement for drip pad surfaces until October 30, 1992. However, as explained elsewhere in this notice, today's final rule modifies the permeability standard for existing drip pads, and establishes a new compliance date for meeting the new standard (see section VII). The effective date established in the February 1992 stay is no longer applicable; rather, facilities must now meet the later compliance deadline associated with the permeability standard promulgated today.

C. Mixture Rule and Contained-In Policy

Several commenters were concerned with the management of media contaminated with wood preserving wastes, particularly in light of the court remand of the mixture and derived-from rules (*Shell Oil Co.* v. *EPA*, 950 F. 2d 741, D.C. Cir. 1991). At the outset, neither the mixture rule nor the derived-from rule (which the Agency reinstated on March 3, 1992, 57 FR 7628), applies to environmental media. These rules concern the regulatory status of solid wastes. Two commenters urged EPA to develop risk-based *de minimis* levels for listed hazardous wastes that are "contained in" environmental media.

One commenter argued that EPA should not include environmental media within the listings themselves. EPA emphasizes that the listings for F032, F034, and F035 as promulgated on December 6, 1990, and as modified today, do not specifically include environmental media in the listing criteria. Environmental media can be classified as listed hazardous wastes, however, through application of the "contained-in" policy, whereby soils, rainwater, and other media that come into contact with listed hazardous wastes are themselves hazardous wastes (*i.e.*, they "contain" hazardous wastes). For example, soil that comes into contact with spent creosote formulations at a wood preserving plant and is subsequently excavated or otherwise actively managed, will carry the F034 listing.

Another commenter suggested that environmental media should be considered hazardous wastes only if they exhibit a characteristic of hazardous waste. Consideration of such an approach is far broader than the specific issues in this rulemaking and is outside the scope of the December 1991 NPRM.

Several commenters requested that EPA clarify that stormwater run-off is not a hazardous waste under 40 CFR 261.3(c)(2)(i). This regulatory citation refers to the "derived-from" rule, which states generally that any solid waste generated from the treatment, storage, or disposal of a hazardous waste, is itself a hazardous waste. This provision specifically exempts precipitation run-off from the derived-from rule (i.e., precipitation run-off is not considered to be "derived from" the treatment, storage or disposal of a hazardous waste and, therefore, is not itself a hazardous waste).

The nature of the Subpart W standards for drip pads, however, distinguishes them from the regulations governing other more conventional hazardous waste management units. The definition of drip pad in 40 CFR 260.10 states that a drip pad is "designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants" (55 FR 50482). In the July 1, 1991 technical correction notice, EPA amended the applicability sections of Subpart W in parts 264 and 265 to reflect that drip pads were intended to convey precipitation and surface water run-on as well as treated wood drippage (56 FR 30193). Additional language in the preamble to the December 1991 NPRM indicates the Agency's position on precipitation at wood preserving plants. In the discussion of wastewater listings, EPA states that rainwater (precipitation run-off) collected in a fashion that keeps it segregated from preservative formulations or listed wastes would not be considered a hazardous waste (56 FR 63850). On the other hand (and as

discussed above), rainwater that falls on a drip pad and contacts preservative formulations or listed wastes and is then collected is itself a hazardous waste by virtue of the contained-in policy (*i.e.*, the rainwater, which is an environmental medium, "contains" the hazardous waste). Because drip pads are hazardous waste management units designed and maintained to convey treated wood drippage, precipitation and surface water run-on to an associated collection system, the exemption for precipitation run-off in 40 CFR 261.3(c)(2)(i) does not apply to drip pads.

D. Narrowing of Wastewater Listings

The majority of commenters supported the Agency's proposal to narrow the wastewater listings to exclude wood preserving wastewaters that do not come into contact with process contaminants. One commenter believed that EPA should not regulate wastewaters that simply come into contact with process contaminants. The Agency disagrees and is not expanding this revision beyond what was proposed. Wastewaters that come into contact with process contaminants at wood preserving plants have the potential to solubilize and mobilize hazardous constituents and, therefore, warrant regulation as a hazardous waste under RCRA.

E. Storage Yard Drippage

The majority of commenters on the issue of incidental drippage in storage yards requested that EPA clarify what is meant by "immediate response" to such drippage. EPA appreciates the commenters' concerns and is providing guidance on the Agency's use of the term "immediate response" in today's rule. This guidance can be found in section III.B.3. of this preamble.

One commenter objected to the Agency requiring response to drippage in storage yards on the grounds that EPA has not shown any environmental benefit to be gained from such a requirement. The commenter went on to say that contamination in storage yards is limited to the first few feet of soil. EPA believes that this last statement about storage yard contamination justifies the requirement for responding to drippage in treated wood storage yards. There are several cases of historical contamination resulting from incidental drippage from treated wood stored outside on the ground. Since facility owners/operators are required to implement a contingency plan for responding to visible drippage from treated wood, the likelihood of incidental drippage causing long term contamination is greatly minimized, if not eliminated. As a result, EPA believes that the requirement to respond to preservative drippage in storage yards is consistent with the RCRA mandate to protect human health and the environment.

F. Revisions to Drip Pad Cleaning Requirements

All commenters supported the proposed changes to the drip pad cleaning requirements. One commenter stated that the recordkeeping requirement associated with the pad cleaning provisions is unnecessary and should be dropped. The Agency disagrees; the records maintained by facilities showing how often drip pads are cleaned and what cleaning procedure is used can provide valuable information for Agency and State officials conducting inspections of the site. For example, these records could show inspectors that aqueous preservatives do not obscure the drip pad and that weekly inspections can be conducted without frequent water washings of the pad. EPA notes that the recordkeeping requirement was promulgated as part of the original final rule on December 6, 1990. The December 1991 NPRM dealt only with the frequency of pad cleaning.

G. Policy to Allow Installation of Either a Surface Coating, Sealer, or Cover or a Liner and Leak Detection System

Two commenters favored the concept of allowing facility owners/operators the choice of installing either a surface coating, sealer, or cover or a liner and leak detection system on a new drip pad. One State agency commented that surface coatings alone do not provide adequate protection in cases of pad failure. The Agency disagrees. As discussed in the NPRM, the Agency believes that surface coatings, sealers, and covers provide a primary barrier against continuous chemical attack and limit permeation of preservatives through the pad. Liners, on the other hand, provide backup protection against unpredictable chemical exposure that could occur due to concrete micro-cracking without the use of coatings or sealers. EPA believes both options adequately protect human health and the environment. As discussed earlier, EPA is providing a choice to facilities to use either surface protection which meets the permeability and chemical resistance requirements of this rule or a liner and leak detection system to protect against releases into subsurface soils, ground water, and surface waters.

However, as discussed in the NPRM, the EPA believes that additional benefits could accrue with both the use of a liner and leak detection, and leak collection system and the use of sealers and coatings. Section VIII of this rule provides additional discussion of the costs of each option. Although not required, the EPA recommends the use of coatings and sealers and a liner and leak detection and leak collection system. EPA notes that the use of a surface coating, sealer, or cover can eliminate or minimize the amount of leakage to the liner and leak collection system.

One commenter suggested a change in the regulatory language to clarify which drip pads are required to meet the hydraulic conductivity standard of today's rule. EPA notes that the regulatory language promulgated today clearly specifies which drip pads are required to be equipped with a sealer, coating, or cover that meets the hydraulic conductivity standard. The Agency has not made the change suggested by the commenter. In addition to requiring a coating/sealer system on existing drip pads, today's rule allows an owner/operator to satisfy the standards for new drip pads by choosing to use either a coating/sealer system *or* a liner and leak detection and leak collection system.

One manufacturer of protective coatings commented that owners/operators should not be given the option of using either a sealer or a coating since most would not choose coatings due to cost. The Agency appreciates the commenter's interest in this matter but believes that sealers are also acceptable as a primary barrier against chemical attack of drip pads. In particular, the commenter objected to the use of penetrating sealers, stating that the breakdown of the sealer will allow absorption of CCA into the pad. The Agency disagrees with the commenter. Performance data provided by manufacturers indicate that penetrating sealers are capable of providing adequate protection from permeation of preservatives through drip pads, particularly given the pad cleaning requirements included in today's rule. In order for a facility owner/operator to inspect drip pads in accordance with Subpart W standards, water washings of the pad must occur at a frequency sufficient to allow visual inspection of the entire pad surface on a weekly basis.

H. Drip Pad Coating, Sealer, and Cover Permeability

The comments received on the numerical standard for drip pad coating, sealer, and cover permeability were generally favorable. One commenter, however, strongly disagreed with the

Agency's reliance on the calculation indicating 4 gallons per day of leakage from 2000 square feet of wetted concrete, indicating that very few wood preserving plants have four gallons per day of drippage in any event. The commenter went on to say that if concrete leaked that badly, most of the regulated community would believe that the primary liner had failed. As discussed in section III.B.6 of this preamble, the Agency stands by this calculation and its assumptions, which represent a worst case scenario. In addition to the discussion of the permeability standard in the NPRM (56 FR 63851), supporting documentation for the numerical standard can be found in the docket for this rulemaking. The reader is referred to these sources for background information. Today, the Agency is finalizing the performance standard as proposed, requiring that drip pad coatings, sealers or covers have a hydraulic conductivity of less than or equal to 1×10^{-7} cm/s.

One commenter suggested that EPA adopt ASTM Method E–96 Procedure BW for determining hydraulic conductivity. As discussed above, EPA has recommended ASTM Method E–96 Procedure E as an accepted method for measuring the rate of infiltration of water vapor into a drip pad surface. The Agency continues to recommend this method but does not preclude the use of other acceptable methods, such as the one referred to by the commenter. More information concerning water vapor transmission testing can be found in the docket of the December 5, 1991 NPRM (56 FR 63848).

I. Other Issues

EPA requested comment on several other issues that are not specifically addressed above. These are: (1) The addition of a requirement that new drip pads have leak collection systems, (2) a requirement that drip pad surface protection materials be chemically compatible with the preservatives being used, and (3) the revision of the schedule for upgrading existing drip pads to allow 15 years from publication of today's rule for owners/operators to meet the standard for new drip pads. EPA is finalizing the first two issues, but EPA is not finalizing the proposal to allow 15 years for owners/operators of existing drip pads to meet the new drip pad standards. As discussed elsewhere in this preamble, the Agency has elected to allow facilities to comply with the standards for new drip pads by choosing between liner and leak detection and surface protection.

With respect to the issue of the 15 year upgrade period, one commenter interpreted the NPRM to require owners/operators to demonstrate that no releases have occurred before the Regional Administrator will grant an extension of the 15 year deadline. EPA clarifies here that the regulations in subpart W do not require an owner/operator to make such a showing. Paragraph (b)(2) of §§ 264.571 and 265.441 states that the RA will grant a petition for extension of the 15 year period based on a finding that the drip pad meets all the requirements of §§ 264.573 and 265.443, other than those for liners and leak detection and collection systems, and that the pad will continue to be protective of human health and the environment.

One commenter asserted that plants using more than one type of preservative should be able to label their wastes with one waste code most appropriate for the nature of the waste, rather than ascribing two or three waste codes to the same waste. The Agency disagrees. It is not uncommon for wastes generated at one facility to carry multiple RCRA waste codes. Some overlap does occur among different hazardous waste listing descriptions. However, it is important to note that the listing of each hazardous waste under RCRA is based on a unique set of hazardous constituents contained in the waste (see part 261, appendix VII). For example, F032 is listed, in part, due to the presence of dioxins in the waste, whereas F034 is listed because it contains naphthalene and other hydrocarbons, but no dioxin. It is important that hazardous waste generators classify their wastes correctly when shipping them for subsequent management so that the owner/operator of the treatment, storage, and disposal facility (TSDF) has full knowledge of the composition of the waste. In this way, the TSDF can make an informed decision concerning proper treatment or disposal of the waste and ensure that protection of human health and the environment is not compromised.

V. State Authority

A. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the Federal HSWA requirements apply in authorized States in the interim.

Pursuant to section 3001(e) of RCRA, a provision added by HSWA, EPA added F032 to the list of hazardous wastes from nonspecific sources (40 CFR 261.31) in the December 6, 1990 rule. Thus, the changes finalized in today's rule in connection with F032, including modifications to the drip pad standards, will take effect in all States (authorized and unauthorized) on the effective date.

The elements of today's final rule as they apply to F034 and F035 wastes are not immediately effective in authorized States since the requirements are not imposed pursuant to HSWA. These regulations will apply in authorized States when F034 and F035 become hazardous wastes in that State, and when the State is authorized for the drip pad standards. However, should F034 or F035 wastes exhibit the Toxicity Characteristic, which was promulgated under HSWA authority and is effective in authorized States, such wastes managed on drip pads must meet the modified Subpart W standards. Today's amendments include a technical correction to footnote 2 of Table 1 in 40 CFR 271.1(j). To clarify this point, Table 1 identifies the Federal program requirements that are promulgated pursuant to HSWA, and that take effect in all States, regardless of their authorization status.

B. Effect on State Authorizations

1. HSWA Provisions

Because portions of the final rule are promulgated pursuant to HSWA, a State submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 1993 (see 40 CFR 271.24(c)).

2. Non-HSWA Provisions

As described above, other portions of today's notice will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA. In authorized States, these requirements will not be applicable until the States revise their programs to adopt equivalent requirements under State law.

3. Modification Deadlines

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that States with final authorization must modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this regulation will be determined by the date of promulgation of the final rule in accordance with section 271.21(e)(2). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs already may have regulations similar to those in today's final rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements that States must meet when submitting final authorization applications.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. (See 40 CFR 271.1(i).) For example, the modification to the F032 listing is less stringent than the Federal program because it exempts wastes generated by past users of chlorophenolic formulations from the F032 listing under certain conditions. As a result, authorized States are not required to modify their programs to pick up this provision. On the other hand, the requirement that owners/operators develop and implement a contingency plan for response to incidental drippage in storage yards increases the stringency of the Federal program. Consequently, this provision must be adopted by authorized States.

VI. CERCLA Designation and Reportable Quantities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA Section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the releases at 1-800-424-8802 or (202) 426-2675. In addition, Section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a CERCLA hazardous substance or an extremely hazardous substance of the appropriate State Emergency Response Commission (SERC) and to the Local Emergency Planning Committee (LEPC) when the amount released equals or exceeds the RQ for the substance or one pound where no RQ has been set. It is important to note that the RQ is measured by the volume of the hazardous substance released into the environment, not the volume of any resulting contaminated media.

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (48 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, then the Clean Water Act mixture rule may be applied. According to this rule, developed in connection with the Clean Water Act section 311 regulations and also used in notification under CERCLA and SARA (50 FR 13463; April 4, 1985), the release of mixtures and solutions containing hazardous wastes would need to be reported to the NRC, and to the appropriate LEPC and SERC, when the RQ of any of its component hazardous substances is equalled or exceeded. This mixture rule provides that "[d]ischarges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ (44 FR 50767; August 29, 1979). RQs of different hazardous substances are not additive under the Clean Water Act mixture rule, such that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

Under section 102(b) of CERCLA, all hazardous waste streams newly designated under RCRA will have a statutorily imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemakings with respect to the amended waste stream listings, the Agency today is amending the descriptions of waste streams F032, F034, and F035 at 40 CFR 302.4, the codified list of CERCLA hazardous substances. In the December 1991 NPRM, EPA proposed an RQ of one pound for F032, F034 and F035. Because the basis for listing these three wastes has not changed from the original final rule in December 1990, the final RQs remain at one pound, as originally promulgated.

VII. Compliance Deadlines

Section 3010(b) of RCRA (42 U.S.C. 6930(b)) specifies that a regulation within subtitle C will take effect on the date six months after the date of promulgation. At the time a regulation is promulgated, the Administrator may provide for a shorter period prior to an effective date, or an immediate effective date for "a regulation with which the Administrator finds the regulated community does not need six months to come into compliance."

All elements of this final rule, with the exception of the four listed below, become effective on December 24, 1992, since each of these modifications has the effect of minimizing or relieving existing regulatory requirements. (See also section 553(d)(1) of the Administrative Procedures Act, 5 U.S.C. 553.)

Other Effective Dates

(1). With respect to meeting the drip pad permeability requirements of this final rule (264.573(a)(4)(i), 265.443(a)(4)(i)), the Agency is establishing a new effective date of June 24, 1993, by which time owners and operators of drip pads must comply with the standard. The Agency is establishing this new date to provide facilities adequate time to comply with this new permeability requirement. The Agency recognizes that the upcoming cold weather and rainy seasons in parts of the country may hinder the proper curing of coatings or sealers and that this compliance period should address any such concerns.

(2). With respect to the requirement that new drip pads for which owners/operators have chosen liners and leak detection also have a leak collection system (264.573(b)(3), 265.443(b)(3)), the Agency is establishing an effective date of June 24, 1993.

(3). With respect to the provisional elimination of the F032 waste code (Today's revision to the listing of hazardous waste No. F032 in § 261.31 with respect to the potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes), the Agency is establishing an effective date of June 24, 1993.

(4). With respect to the requirements for contingency plans for incidental drippage in storage yards (264.570(c)(1), 265.440(c)(1)), the Agency is establishing an effective date of June 24, 1993.

VIII. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, a Federal agency must determine whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. Today's final rule is not major because it will not result in an effect on the economy of $100 million or more, will not result in significantly increased costs or prices (indeed, it will likely result in decreased costs), will not have a significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order for these modifications. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Although the Agency is not required to prepare a Regulatory Impact Analysis for this rule, for the benefit of the regulated community, the economic impacts of modifications presented in this rule are discussed below. Where the Agency has insufficient data to quantify the impact, economic effects are qualitatively discussed.

The exclusion from the listing descriptions for wastewaters that have not come into contact with process contaminants will result in a decrease in costs to the extent that segregation of wastewater results in a decreased hazardous waste generation rate. For example, collection of rainwater in a vessel rather than on a drip pad could result in decreased hazardous waste generation. Because generated hazardous waste is taxed in some locations, there may be additional cost savings in the form of a decrease in tax liability. Increases in cost may be incurred in the form of expenditures for collection equipment that may be required to segregate such wastewaters. The Agency has insufficient information to quantify such cost savings or additional costs attributable to the wastewater exclusion.

The removal of the applicability of the F032 listing to past users of chlorophenolic formulations who currently generate F034 or F035 wastes will have a negligible impact on costs. The regulatory requirements associated with a waste that is listed as F032 are not substantially different from those associated with wastes listed as F034 or F035 wastes.

The requirement to clean up incidental and infrequent drippage in storage yards will have cost effects that are highly site, weather, and situation dependent. There will also be costs associated with documenting the cleanup of storage yard drippage and the collection of leachate from new drip pads with liners. Costs associated with this requirement are also dependent on the efforts undertaken by individual plants to eliminate or minimize such drippage to incidental amounts. These efforts would include the use of vacuum cycles and holding treated wood on drip pads for an appropriate amount of time.

The removal of the requirement that new drip pads have an impermeable coating, sealer, or cover will decrease costs by the amount attributable to the application of coatings, sealers or covers. The installation cost of low cost sealers and coatings ranges between $2 to $5 per square foot of drip pad, the savings to a plant with a 10,000 square foot drip pad would range from $20,000 to $50,000.

The change in the drip pad cleaning requirements from a weekly basis to as needed to conduct weekly drip pad inspections will also reduce costs. Cost reductions will mostly benefit users of inorganic preservatives that are dissolved in water. Such aqueous solutions will tend not to obscure drip pad surfaces and will result in a greatly decreased frequency of cleaning. Facilities using oil-based preservatives, particularly creosote, will not benefit to the same degree because such formulations tend to obscure the drip pad surface. The cost savings may result primarily from reduced taxes on hazardous waste generation. The Agency has insufficient data to quantify these cost effects.

The change in drip pad coating, sealer, and cover permeability requirements (from "impermeable" to $\leq 1\times10^{-7}$ centimeters per second) should have no cost effects. The regulations promulgated today give an actual value for hydraulic conductivity and, therefore, provide the owner/operator with useful information in making purchasing decisions regarding drip pad coatings, sealers, or covers.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, no RFA is required.

The Agency examined the potential effects on small entities for the December 6, 1990 final rule. In that rule,

EPA concluded that the rule did not have a significant effect on a substantial number of small entities. Therefore, EPA did not prepare a formal Regulatory Flexibility Analysis (RFA) in support of the rule. Details on small business impacts are available in the Regulatory Impact Analysis for the rule. Today's final rule reduces the potential effects identified for the December 6, 1990 rule, particularly by removing the applicability of the F032 listing to past users of chlorophenolic formulations who generate F034 or F035 wastes. As a result, a formal RFA was not prepared in support of today's rule.

IX. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0115.

Public reporting burden for this collection of information is estimated to average about 338 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Jonathan Gledhill."

List of Subjects

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 271

Administrative practice and procedures, Air pollution control, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: October 30, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6934, and 6938.

2. In § 261.31 the table is amended by revising the F032, F034, and F035 listings.

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
	• • • • • • •	
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
	• • • • • • •	

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

4. Section 264.570 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 264.570 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system.

Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement at § 264.573(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992

except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

* * * * *

(c) The requirements of this subpart are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan must describe how the owner or operator will do the following:

(i) Clean up the drippage;

(ii) Document the cleanup of the drippage;

(iii) Retain documents regarding cleanup for three years; and

(iv) Manage the contaminated media in a manner consistent with Federal regulations.

5. Section 264.571 is amended by revising the last sentence of paragraph (a), and revising paragraph (b) to read as follows:

§ 264.571 Assessment of existing drip pad integrity.

(a) * * * The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573 of this subpart, except the standards for liners and leak detection systems, specified in § 264.573(b) of this subpart.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) of this subpart, and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.573 of this subpart. The plan must be reviewed and certified by an independent qualified registered professional engineer.

* * * * *

6. Section 264.572 is revised to read as follows:

§ 264.572 Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) all of the requirements of §§ 264.573 (except 264.573(a)(4)), 264.574 and 264.575 of this subpart, or

(b) all of the requirements of §§ 264.573 (except § 264.573(b)), 264.574 and 264.575 of this subpart.

7. Section 264.573 is amended by revising paragraphs (a)(4) and (b) introductory text and paragraph (i) and adding paragraph (b)(3) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4)(i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with § 264.572(a) instead of § 264.572(b).

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this Section.

* * * * *

(b) If an owner/operator elects to comply with § 264.572(b) instead of § 264.572(a), the drip pad must have:

* * * * *

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

* * * * *

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner/operator must determine if the residues are hazardous as per 40 CFR 262.11 and, if so, must manage them under parts 261–268, 270, and section 3010 of RCRA.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

8. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) 6924, 6925, and 6935.

9. Section 265.440 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 265.440 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement at § 265.443(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

* * * * *

(c) The requirements of this subpart are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such

infrequent and incidental drippage. At a minimum, the contingency plan must describe how the facility will do the following:

(i) Clean up the drippage;

(ii) Document the cleanup of the drippage;

(iii) Retain documents regarding cleanup for three years; and

(iv) Manage the contaminated media in a manner consistent with Federal regulations.

10. Section 265.441 is amended by revising the last sentence of paragraph (a), and revising paragraph (b) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

(a) * * * The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 265.443 of this subpart, except the standards for liners and leak detection systems, specified in § 265.443(b) of this subpart.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b) of this subpart, and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 265.443 of this subpart. The plan must be reviewed and certified by an independent qualified registered professional engineer.

* * * * *

11. Section 265.442 is revised to read as follows:

§ 265.442 Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) All of the applicable requirements of §§ 265.443 (except § 265.443(a)(4)), 265.444 and 265.445 of this subpart, or

(b) All of the applicable requirements of §§ 265.443 (except § 265.443(b)), 265.444 and 265.445 of this subpart.

12. Section 265.443 is amended by revising paragraphs (a)(4) and (b) introductory text, and paragraph (i) and adding paragraph (b)(3) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4)(i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with § 265.442(a) instead of § 265.442(b).

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for subsection (b).

* * * * *

(b) If an owner/operator elects to comply with § 265.442(b) instead of § 265.442(a), the drip pad must have:

* * * * *

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

* * * * *

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

13. The authority citation for part 271 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

14. In Table 1 of 271.1(j), footnote 2 is revised to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

* * * * *

[2] These regulations, including test methods for benzo(k)fluoranthene and technical standards for drip pads, implement HSWA only to the extent that they apply to the listing of Hazardous Waste No. F032, and wastes that are hazardous because they exhibit the Toxicity Characteristic. These regulations, including test methods for benzo(k)fluoranthene and technical standards for drip pads, do not implement HSWA to the extent that they apply to the listings of Hazardous Waste Nos. F034 and F035.

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

15. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

16. In 302.4 the table is amended by revising the listings for waste streams F032, F034, and F035. The appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
• • •	•	•		•		•	
F032 ..... Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with §261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	.....	.....	1°	4	F032	X	1(0.454)
• • •	•	•		•		•	
F034 ..... Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	.....	.....	1°	4	F034	X	1(0.454)
F035 ..... Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	.....	.....	1°	4	F035	X	1(0.454)
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† Indicates the statutory source as defined by 1, 2, 3, 4, or 5 below.

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1° Indicates that the 1-pound RQ is a CERCLA statutory RQ.

4 Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

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[FR Doc. 92–27703 Filed 12–23–92; 8:45am]

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Thursday
December 24, 1992

Part III

Department of Education

34 CFR Part 280

Magnet Schools Assistance Program; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 280

RIN: 1810–AA63

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Magnet Schools Assistance Program (MSAP). These amendments are needed to improve administration of the program and to enable the Secretary to select applications for funding that best demonstrate promise of achieving the purposes of the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sylvia Wright, Chief, Magnet Schools and Desegregation Branch, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC 20202–6246. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These amendments are based on the Department's experience in implementing the program over several years. These final regulations also complement the President's AMERICA 2000 strategy by requiring that, in order to receive MSAP assistance, local educational agencies (LEAs) demonstrate how well their proposed magnet schools will provide high-quality educational programs in desegregated learning environments that are designed to improve significantly the academic and vocational skills of America's students.

On August 12, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (57 FR 36324).

As a result of public comments since publication of the NPRM, the Secretary has made the following revisions:

- Section 280.20 has been revised to clarify that, in determining the eligibility of an applicant's voluntary desegregation plan, an LEA will be asked to submit additional information only after the Secretary has reviewed the enrollment data and other materials the LEA has submitted with its application and determined that additional information is necessary to assist the Secretary in determining the eligibility of the LEA's plan.
- Section 280.32(d) has been revised to explain further the factors used to evaluate an applicant's need for assistance.

Note: These final regulations do not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes to sections of the regulations that were not discussed in the NPRM—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, Magnet schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program)

Dated: December 18, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 280 of title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for Part 280 continues to read as follows:

Authority: 20 U.S.C. 3021–3032, unless otherwise noted.

2. Section 280.2 is amended by redesignating the undesignated introductory text as paragraph (a), redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively, and adding a new paragraph (b) to read as follows:

§ 280.2 Who is eligible to apply for a grant?

* * * * *

(b) The Secretary approves a voluntary plan under paragraph (a)(2) of this section only if he determines that for each magnet school for which funding is sought—

(1) The magnet school will reduce, eliminate, or prevent minority group isolation within the period of the grant award, either in the magnet school or in a feeder school, as appropriate; and

(2) The establishment of the magnet school will not result in an increase of minority enrollment, at the magnet school or at any feeder school, above the districtwide percentage of minority group students in the LEA's schools at the grade levels served by that magnet school.

(Authority: 20 U.S.C. 3022)

3. Section 280.4 is amended by designating "Minority group isolation" in paragraph (b) as a separate definition by italicizing the words "Minority group isolation" and adding a definition for "Feeder school" in alphabetical order to read as follows:

§ 280.4 What definitions apply to this program?

* * * * *

Feeder school means a school from which students are drawn to attend a magnet school.

* * * * *

4. Section 280.20 is amended by adding new paragraphs (f) (4) and (5), redesignating the current paragraph (g) as paragraph (i), and adding new paragraphs (g) and (h) to read as follows:

§ 280.20 How does one apply for a grant?

* * * * *

(f) * * *

(4) For an LEA that seeks assistance for existing magnet schools—

(i) Enrollment numbers and percentages, for minority and non-minority group students, for each magnet school for which funding is sought and each feeder school—

(A) For the school year prior to the creation of each magnet school;

(B) For the school year in which the application is submitted; and

(C) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures); and

(ii) Districtwide enrollment numbers and percentages for minority group students in the LEA's schools, for grade levels involved in the applicant's magnet schools (e.g., K–6, 7–9, 10–12)—

(A) For the school year prior to the creation of each magnet school;

(B) For the school year in which the application is submitted; and

(C) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures).

(5) For an LEA that seeks assistance for new magnet schools—

(i) Enrollment numbers and percentages, for minority and non-minority group students, for each magnet school for which funding is sought and for each feeder school—

(A) For the school year in which the application is submitted; and

(B) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures); and

(ii) Districtwide numbers and percentages of minority group students in the LEA's schools, for the grade levels involved in the applicant's magnet schools (e.g., K–6, 7–9, 10–12)—

(A) For the school year in which the application is submitted; and

(B) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures).

(g) An applicant that does not have an approved desegregation plan, and demonstrates that it cannot provide some portion of the information requested under paragraphs (f)(4) and (5) of this section, may provide other information (in lieu of that portion of the information not provided in response to paragraphs (f)(4) and (5) of this section) to demonstrate that the creation or operation of its proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's schools and would not result in an increase of minority student isolation at one of the applicant's schools above the districtwide percentage for minority students at the same grade levels as those served in the magnet school.

(h) After reviewing the information provided in response to paragraph (f)(4) or (5) of this section, or as provided under paragraph (g) of this section, the Secretary may request other information, if necessary (e.g., demographic data concerning the attendance areas in which the magnet schools are or will be located), to determine whether to approve an LEA's plan.

* * * * *

(Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 3027)

5. Section 280.31 is revised to read as follows:

§ 280.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation.* (25 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the applicant demonstrates—

(i) The effectiveness of its management plan to ensure proper and efficient administration of the project;

(ii) The effectiveness of its plan to attain specific outcomes that—

(A) Will accomplish the purposes of the program;

(B) Are attainable within the project period;

(C) Are measurable and quantifiable; and

(D) For multi-year projects, can be used to determine the project's progress in meeting its intended outcomes;

(iii) The effectiveness of its plan for utilizing its resources and personnel to achieve the objectives of the project, including how well it utilizes key personnel to complete tasks and achieve the objectives of the project;

(iv) How it will ensure equal access and treatment for eligible project participants who have been traditionally underrepresented in courses or activities offered as part of the magnet school, e.g., women and girls in mathematics, science or technology courses, and disabled students; and

(v) The effectiveness of its plan to recruit students from different social, economic, ethnic, and racial backgrounds into the magnet schools.

(b) *Quality of personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the personnel the applicant plans to use on the project.

(2) The Secretary determines the extent to which—

(i) The project director (if one is used) is qualified to manage the project;

(ii) Other key personnel are qualified to manage the project;

(iii) Teachers who will provide instruction in participating magnet schools are qualified to implement the special curriculum of the magnet schools; and

(iv) The applicant, as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, religion, color, national origin, sex, age, or disability.

(3) To determine personnel qualifications the Secretary considers experience and training in fields related to the objectives of the project, including the key personnel's knowledge of and experience in curriculum development and desegregation strategies.

(c) *Quality of project design.* (35 points) (1) The Secretary reviews each application to determine the quality of the project design.

(2) The Secretary determines the extent to which each magnet school for which funding is sought will—

(i) Foster interaction among students of different social, economic, ethnic, and racial backgrounds in classroom activities, extracurricular activities, or other activities in the magnet schools (or, if appropriate, in the schools in which the magnet school programs operate);

(ii) Address the educational needs of the students who will be enrolled in the magnet schools;

(iii) Carry out a high quality educational program that will substantially strengthen students' knowledge of mathematics, science, history, English, foreign languages, art, music, or vocational skills;

(iv) Encourage greater parental decisionmaking and involvement; and

(v) Improve the racial balance of students in the applicant's schools by reducing, eliminating, or preventing minority group isolation in its schools.

(d) *Budget and resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources and the cost-effectiveness of the budget for the project, including—

(1) The adequacy of the facilities that the applicant plans to use;

(2) The adequacy of the equipment and supplies that the applicant plans to use; and

(3) The adequacy and reasonableness of the budget for the project in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary determines the extent to which the evaluation plan for the project—

(1) Includes methods that are appropriate for the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including its goals for desegregating its students and increasing student achievement; and

(3) Includes methods that are objective and that will produce data that are quantifiable.

(f) *Commitment and capacity.* (10 points) (1) The Secretary reviews each application to determine whether the applicant is likely to continue the magnet school activities after assistance under this part is no longer available.

(2) The Secretary determines the extent to which the applicant—

(i) Is committed to the magnet schools project; and

(ii) Has identified other resources to continue support for the magnet school activities when assistance under this program is no longer available.

(Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 3021–3032)

6. Section 280.32 is revised to read as follows:

§ 280.32 How is special consideration given to applicants?

(a) *How special consideration is given.* In addition to the points awarded under § 280.31, the Secretary gives special consideration to the factors listed in paragraphs (b) through (f) of this section. The maximum number of points awarded for each factor is stated in parentheses.

(b) *Recentness of the implementation of the approved desegregation plan.* (5 points)

(1) The Secretary reviews each application to determine the recentness of the implementation date of the approved desegregation plan or modification of the plan.

(2) The Secretary determines the recentness of the plan by assigning each application to one of the following categories:

(i) Applications based on plans or modifications of plans with implementation dates not more than five years before the July 1 that follows the deadline date for applications. (5 points)

(ii) Applications based on plans or modifications of plans with implementation dates more than 5 years but not more than 10 years before the July 1 that follows the deadline date for applications. (3 points)

(iii) Applications based on plans or modifications of plans with implementation dates more than 10 years but not more than 15 years before the July 1 that follows the deadline date for applications. (1 point)

(iv) Applications based on plans or modifications of plans with implementation dates more than 15 years before the July 1 that follows the deadline date for applications. (0 points)

(c) *Involvement of minority group children.* (5 points)

(1) The Secretary gives special consideration to the proportion of minority group children involved in the approved desegregation plan.

(2) The Secretary determines the percentage that represents a comparison of the number of minority group children involved in the applicant's approved desegregation plan to the number of minority group children enrolled in the applicant's schools.

(3) The Secretary awards one point for each 20 percentage points the applicant receives under paragraph (c)(2) of this section.

(d) *Need for assistance.* (15 points) (1) The Secretary evaluates the applicant's need for assistance under this part, by considering—

(i) The costs of fully implementing the magnet schools project as proposed;

(ii) The resources available to the applicant to carry out the project if funds under the program were not provided;

(iii) The extent to which the costs of the project exceed the applicant's resources; and

(iv) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet school project—e.g., the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.

(2) The applicant receives up to 15 points, depending on the extent of its need for assistance.

(e) *Degree of achievement.* (15 points) (1) The Secretary determines the extent to which the project for which assistance is sought affords promise of achieving the purposes of this program as listed in § 280.1.

(2) In determining the degree to which the magnet school affords promise of achieving the purposes stated in § 280.1, the Secretary will evaluate the likelihood that the applicant's plan to achieve desegregation through the use of a magnet school program will be successful in reducing, eliminating, or preventing minority group isolation in light of its overall strategy. Factors the Secretary will consider include, but are not limited to—

(i) The needs assessment conducted by the applicant;

(ii) The site selection for each magnet school;

(iii) The special curriculum selected for each magnet school; and

(iv) If appropriate, the applicant's past performance in achieving desegregation through use of a magnet school.

(f) *Collaborative efforts.* (5 points) The Secretary determines the extent to which the project for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate State educational agency, or any other organization.

(Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 3028)

Appendix—Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations.)

§ 280.2 Who is eligible to apply for a grant?

Comment: One commenter suggested that urban districts be granted more than two years to show that a newly created magnet program has reduced, eliminated, or prevented minority group isolation. The commenter indicated that the two-year time frame is unrealistic in light of the barriers these districts must overcome to reduce racial isolation and suggested that a three- or four-year time frame for reporting progress or a longer grant period would be more realistic.

Discussion: The Secretary has interpreted the Magnet Schools Assistance Act (MSAA) to require a two-year limit on grant awards under this program. See 20 U.S.C. 3031. In addition, the Secretary believes it is reasonable to expect that within the two-year grant period an LEA can demonstrate a positive change in minority group isolation in its schools, as a result of the implementation of a magnet school. The Secretary appreciates the difficulty that all school

districts face in implementing voluntary desegregation plans and, accordingly, has not established numerical benchmarks to measure how well an LEA has performed under a MSAP grant. However, the Secretary seeks to award MSAP grants to those LEAs that best demonstrate promise of achieving the purposes of this program.

Changes: None.

Comment: One commenter suggested that the Secretary introduce some flexibility into the requirement that magnet schools not result in increases in minority enrollments in the magnet or feeder schools above the relevant districtwide average. The commenter suggested that a margin of five percent be permitted, because in many urban school districts the non-minority enrollment is very small and therefore districts struggle to enroll and maintain a critical mass of non-minority students in their schools. Thus, the movement of a single non-minority student may have a significant impact on the percentage of minority group students in a particular school.

Discussion: Use of an LEA's districtwide average as the standard for evaluating the effect of a magnet school on other schools in an LEA provides a school district with sufficient flexibility to tailor a desegregation plan to its needs so that the district can maximize its opportunities to promote desegregation. It also provides the Secretary with a standard that can be applied uniformly to all school districts when determining the eligibility of their voluntary desegregation plans, and that can be used as a reasonable gauge to measure if an applicant is attempting to reduce, eliminate, or prevent minority group isolation.

Changes: None.

§ 280.20 How does one apply for a grant?

Comment: One commenter explained that neither the old regulations nor these revised regulations address the difficulty that districts with open enrollment plans have, when seeking approval of a voluntary desegregation plan, in demonstrating the effect of the magnet school on surrounding schools, because the traditional concept of a "magnet feeder school" does not apply to these districts. The commenter suggested that districts with open enrollment plans be permitted to demonstrate the effectiveness of a magnet school by providing data on student assignment patterns for neighboring schools, that would have been applicable had the districts not had open enrollment.

Discussion: The Secretary believes that the regulations address this concern. Under § 280.20(g) of the regulations, an LEA that demonstrates that it cannot provide reliable data on magnet feeder schools may provide other information to the Secretary in support of its desegregation plan. This section provides an applicant flexibility in demonstrating the potential effectiveness of its magnet school if, because of the design of its desegregation plan, an applicant does not have data on feeder schools as required under § 280.20(f). Therefore, districts with open enrollment plans may provide other information to demonstrate that creation or operation of their magnet schools complies with the eligibility requirements of this program.

Changes: None.

Comment: One commenter suggested that § 280.20(f)(4)(iii) be clarified to indicate—(1) when the applicant would be required to submit "other information that the Secretary determines is necessary;" (2) whether the information would be required of all or only some applicants; and (3) whether the example provided is used for illustrative purposes only. If additional information will be required of all applicants, the commenter suggested that the regulations indicate how applicants will be notified of the additional requirements.

Discussion: The Secretary recognizes that there may be limited circumstances when an LEA may not be able to provide the information requested under § 280.20(f)(4) or (5) in the manner required by the regulations, or may not provide enough information with its application to allow the Secretary to fairly evaluate its desegregation plan. The Secretary does not expect that every applicant will be asked to provide additional information in support of its desegregation plan. However, the Secretary wants to ensure that each applicant is given a full and fair opportunity to demonstrate its eligibility for this program. Therefore, if, after review of enrollment data provided with an application, or other information provided by an LEA to demonstrate its eligibility, the Secretary does not have sufficient information to approve a desegregation plan, the Secretary will request that an LEA provide additional information. Reference to providing the Secretary with demographic data to support a desegregation plan is included in this discussion for illustrative purposes only.

Changes: The Secretary has deleted §§ 280.20(f)(4)(iii) and (5)(iii) and added a new section (h) to explain that, after reviewing the enrollment information provided with an LEA's application, or other information provided by the LEA under paragraph (g), the Secretary may request additional information necessary to evaluate the LEA's desegregation plan.

Comment: One commenter suggested that the regulations indicate where in the application the applicant should provide desegregation plan data (e.g., enrollment numbers and percentages).

Discussion: Instructions for submitting enrollment numbers and percentages, and any other information to support an application, will be provided in the application package.

Changes: None.

Comment: One commenter recommended that the regulations require applicants to submit in their application the data needed to ascertain their compliance with civil rights laws. The commenter expressed concern that some districts seeking MSAP funds maintain racially identifiable classes as a result of ability grouping and assign faculty and staff in a manner to identify its schools for a particular race of students.

Discussion: Under § 280.20, an LEA must provide assurances of its compliance with civil rights laws in its application and upon request, must provide the Assistant Secretary for Civil Rights with any information the Assistant Secretary finds is necessary to determine whether the assurances will be met. This provision of the regulations was not changed by the NPRM.

Changes: None.

§ 280.31 What selection criteria does the Secretary use?

Comment: One commenter objected to the proposed reduction of points for the quality of project personnel under § 280.31(b), because it believes the success of each project depends on experienced key personnel who are knowledgeable about desegregation and magnet schools.

Discussion: The Secretary agrees that a project must have qualified staff if it is to be successful and therefore has assigned significant points for this criterion. However, the Secretary has found that almost all applicants propose to use personnel who are qualified to conduct the project activities. In assigning the relative weights for the selection criteria, the Secretary determined that the criteria for project design and implementation, i.e., "quality of project design" and "plan of operation," provide a more meaningful indication of the likelihood of an applicant's success in meeting the purposes of the MSAP.

Changes: None.

Comment: One commenter felt that the regulations should address perceived deficiencies in the program. Specifically, the commenter recommended that the regulations be amended to limit funding to only magnet schools that serve the school's entire student population and that operate throughout the regular school day, to allow expenditures only for the operation of the magnet school, and to disallow expenditures for a year of planning.

Discussion: The MSAA defines a magnet school as "a school or educational center that offers a special curriculum capable of attracting students of different racial backgrounds." The MSAA does not limit eligibility for MSAP funding to a magnet school that only involves an entire student population and that only operates throughout the regular school day. However, under § 280.31(c), the Secretary evaluates how well an LEA's magnet school will assist an LEA to desegregate its schools. In this way, the Secretary selects for awards those applicants that best demonstrate promise of achieving the purpose of the program. In addition, although the MSAA permits funds to be used for planning and promotional activities, planning activities are limited to no more than 10 percent of a grant award in any given year.

Changes: None.

Comment: One commenter felt that assigning points under § 280.31(c)(2)(iii) for a project's conformance with the President's AMERICA 2000 strategy goes beyond the purpose of the law and therefore the existing regulations should not be changed.

Discussion: Points are not assigned for a project's conformance with the President's AMERICA 2000 strategy. The selection factor evaluating the type of educational program that an LEA will provide is based on the requirement in the MSAA that the magnet school provide courses of instruction to substantially strengthen a student's knowledge of academic subjects and marketable vocational skills. The subjects that are identified under this factor are specifically included in the MSAA in describing the "Uses of funds."

Changes: None.

Comment: One commenter felt that the points assigned to "commitment and capacity" under § 280.31(f) should be increased, to make continuation of projects after Federal funding ends a stronger requirement. The commenter indicated that if the magnet programs are reducing minority group isolation and are improving academic achievement they should be continued. The commenter noted that under the current point assignment, programs are sometimes decreased or eliminated after the Federal funding ends.

Discussion: The Secretary believes that the criterion "Commitment and capacity" has been assigned significant points relative to the other selection factors, to ensure that applicants for MSAP funds will continue magnet schools programs. Data from previously funded magnet schools grants confirms that most MSAP-funded programs are continued after Federal funding ends. In addition, an applicant must demonstrate under other selection factors, e.g., "Collaborative efforts," that it has sought other resources through which funds needed to continue a project could be acquired.

Changes: None.

§ 280.32 How is special consideration given to applicants?

Comment: Two commenters felt the 10 points awarded for "recentness of implementation of the approved desegregation plan" should be retained. One commenter explained that reducing the points for this factor reduces the advantage for newly desegregating districts that attempt to win public acceptance of plans through the use of new magnet schools. Another commenter felt that districts that continually revise desegregation plans to adapt to changing circumstances and student needs should be rewarded.

Discussion: The regulations continue to provide an advantage to school districts that are implementing new or recently revised plans, but reduce the relative weight of this special consideration factor. The Secretary has found that this criterion has not resulted in a meaningful distinction among applicants since most applicants have received maximum points for it. For example, in the fiscal year 1991 grant competition, 85 percent of the applicants received the maximum score. The district's desire to meet the educational needs of its students and its desire to retain the support of the community should be sufficient incentive for implementing new plans or for modifying existing plans.

Changes: None.

Comment: One commenter said that reducing the points awarded for "involvement of minority group students" from 10 to 5 reduces the competitive advantage for districts that are truly striving to meet the purposes of the MSAP by undertaking massive, districtwide desegregation.

Discussion: The points for the proportion of minority group children involved in the applicant's desegregation plan was reduced because most applicants have received the maximum points for this criterion and therefore it has not helped to determine the relative merit of applications. Also, the Secretary found that applicants who had made progress in desegregating some schools in their districts were being penalized for their success. The reduction in points for this criterion is intended to ensure that the weight given is reasonably consistent with its value in determining the likely success of the applicant's plan to achieve the purpose of the MSAP.

Changes: None.

Comment: One commenter stated that the language of the regulations under "need for assistance" is inadequate to prevent wealthy districts from receiving funds while poor districts are left unfunded. Another commenter suggested that the factors used to evaluate an applicant's need for assistance be expanded to give applicants further guidance on what information should be provided to address this criterion (e.g., how will the Secretary assess an applicant's ability to finance the project). The commenter also noted that this criterion now refers only to the difficulty of carrying out the project for which assistance is sought and not the difficulty of carrying out the applicant's desegregation plan and the project for which assistance is sought.

Discussion: "Need for assistance" is an important criterion for funding under the MSAP and, accordingly, is a relatively heavily weighted factor. The Secretary agrees that additional guidance on the factors that the Secretary will consider in evaluating this criterion will assist an applicant in demonstrating its need for assistance and will provide the Secretary with information to better distinguish among applicants seeking funding. Information provided in an application in response to this criterion may include (1) a budget for fully implementing the magnet schools project or a narrative discussion of costs for fully implementing the project that includes a breakdown of all of the resources that will be needed to fund the project; (2) a description of any special costs that, because of the design of the project, would be incurred in order to implement the project fully; and (3) a description of why the applicant does not have sufficient funds without assistance under this program to fully implement the project.

Changes: The Secretary has revised this section to explain further the factors used to evaluate an applicant's need for assistance. The Secretary will evaluate

an applicant's need for assistance based on how much it will cost the applicant to fully implement the magnet schools project proposed in the application and the resources available to the applicant to implement the project if funds under the MSAP were not provided. The Secretary will also consider how the design of the project impacts on the applicant's ability to successfully implement the desegregation plan as proposed.

Comment: One commenter suggested that if the Secretary wants to reduce the collective weight of the special consideration factors, the points assigned to "collaborative efforts" could be reduced because the commenter felt that this factor does not deserve equal weight with "quality of personnel" and "commitment and capacity," and does not merit more weight than "budget and resources."

Discussion: The NPRM did not propose a change in the points assigned for this criterion. Currently, five points are awarded under § 280.32(f) for this criterion.

Changes: None.

[FR Doc. 92-31222 Filed 12-23-92; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: Provides grants to eligible local educational agencies to support magnet schools that are part of approved desegregation plans.

Eligible Applicants: Local educational agencies.

Deadline for Transmittal of Applications: February 19, 1993.

Deadline for Intergovernmental Review: April 20, 1993.

Applications Available: January 4, 1993.

Available Funds: $107,532,800.

Estimated Range of Awards: $200,000–$4,000,000.

Estimated Average Size of Awards: $1,792,000.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86; and (b) the regulations in 34 CFR part 280 as amended. (Please note that amendments to 34 CFR parts 75 and 77 of EDGAR were published in the **Federal Register** on Wednesday, July 8, 1992, (57 FR 30328). Final regulations amending 34 CFR part 280 are published in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: Applicants must submit with their applications one of the following types of desegregation plans (1) a plan required by a court order; (2) a plan required by a State agency or official of competent jurisdiction; (3) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of 1964 (Title VI plan); or (4) a voluntary plan adopted by the applicant.

An applicant that submits a plan required by a court, State agency or official of competent jurisdiction, must obtain approval for any modification to the plan from the court, agency, or official that originally approved the plan. A previously approved desegregation plan that does not include the magnet school or program for which an applicant is now seeking assistance under this program must be modified to include the magnet school component, and the modification to the plan must be approved by a court, agency or official, as appropriate. An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof to ED to approval of all modifications to their plans by March 26, 1993. If an applicant submits a modification to a previously approved Title VI plan, the proposed modification will be reviewed by OCR for approval as part of this magnet schools application process.

An applicant submitting a desegregation plan as described in 1, 2, or 3 above, must provide an assurance that the plan is being implemented as approved. An applicant submitting a voluntary plan or a modification to a Title VI plan for approval by the Secretary must provide a copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement it if Magnet Schools Assistance Program funds are made available.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC 20202–6246. Telephone (202) 401–0358. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3021–3032.

Dated: December 18, 1992.

John T. MacDonald,

Assistant Secretary,

Elementary and Secondary Education.

[FR Doc. 92–31223 Filed 12–23–92; 8:45 am]

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Thursday
December 24, 1992

Part IV

Department of Health and Human Services

Administration for Children and Families

Administration for Native Services; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–932]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, (ACF), Department of Health and Human Services, (DHHS).

ACTION: Announcement of availability of competitive financial assistance for Alaskan Native social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1993 funds for social and economic development projects. Financial assistance provided by ANA is designed to promote the goal of self-sufficiency for Alaskan Natives through support of locally determined social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are February 5, 1993 and May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson (202) 690–7727 or Hank Aguirre, (202) 690–7714, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., 344F, Washington, DC 20201–0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1993 financial assistance to promote the goal of social and economic self-sufficiency for Alaskan Natives through social and economic development (SEDS) strategies. Funds will be awarded under section 803 of the Native American Program Act of 1974, as amended, (42 U.S.C. 2991b) for local governance and social and economic development projects.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement. A Native American community is self-sufficient when it can generate and control the resources which are necessary to meet the needs of its members and to meet its own social and economic goals.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaskan Native villages, and in the leadership of Native American groups. Progress toward the goal of self-sufficiency requires active development with regard to the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and economic well-being of individuals, families and communities. Progress towards self-sufficiency is based on the community's ability to develop a social and economic development strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals.

The Administration for Native Americans bases its program and policy on three interrelated goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

To achieve these goals, ANA supports tribal and village governments, and other Native American organizations, to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities. The ANA SEDS approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community makes such self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

(2) Economic, governance, and social development are interrelated, and development in one area should be balanced with development in the others in order to move toward self-sufficiency. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to develop self-sufficient communities.

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health and economic well-being are maintained within the community and that support governance and economic goals.

Without a careful balance between all of these, a community's development efforts could be jeopardized. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services. Conversely, inadequate social support services and training could seriously impede productivity and local economic development. Additionally, the governmental infrastructures must be put in place to support or institute social and economic development and growth.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is to develop those social and economic development strategies (SEDS) that support their local goals, resources, and cultural values. The Administration for Native Americans assists local communities to undertake one-to-three year development projects that are a part of long-range comprehensive plans to move toward social and economic self-sufficiency. The Administration for Native Americans expects its applicants to have undertaken a long-range planning process to address the community's development. Such long-range planning must consider the maximum use of all available resources, directing those resources to development opportunities, and addressing how to overcome the local issues that hinder social and economic growth in the community. The Administration for Native Americans encourages applicants to design project

strategies to achieve their specific but interrelated governance, and social and economic objectives and to use available human, natural, financial, and physical resources to which the applicant has access. Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund, such as construction, will be financed through other sources.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but supported by funds other than ANA's. The Administration for Native Americans does not fund programs which operate indefinitely or would have a need for ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. However, ANA will consider funding core administrative capacity building projects at the village government level if the villages do not have governing systems in place. "Core administration" is defined as those functions which provide the ongoing management and administrative support to an organization. The management and administrative functions needed to carry out an ANA approved project are not considered "core administration." However, ANA does fund the salaries of approved staff for the time to implement a funded ANA project. The Administration for Native Americans does not provide funds for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Goal 1: Governance Development. Effective governance is a necessary foundation and condition for the social and economic development of Indian tribes, Alaskan Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the governmental, judicial and/or administrative infrastructures of tribal and village governments; (2) increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of and exercising legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States.

Under its governance development goal, ANA strongly encourages tribal and village councils, and other governing bodies, to strengthen and streamline their established administrative and management procedures that influence their institutional management systems. The purpose of this capacity is to develop and implement effective social and economic development strategies and their comprehensive community long term goals and to improve their day-to-day governmental management. By improving governance and management capabilities, Indian Tribes, Alaskan Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Applications in this area are generally under the following categories:

- Status clarification
- Tribal recognition
- Amendments to tribal constitutions; court procedures and functions; bylaws or codes; council or executive branch duties and functions;
- Improvements in administration and management of tribes/villages.

Goal 2: Economic Development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and economic well-being of individuals and families, and preserve the values, language, and culture of the community.

Social and Economic Development Strategies (SEDS)

Building on developing the foundation for strong local governance, ANA supports tribal and village governments' and other Native American organizations' corollary plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies and their objectives should describe in detail how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, SEDS strategies that combine balanced social and economic and governance goals should also address how to obtain independent sources of revenue for the community or how the venture supports the long-term goals.

Alaska Initiative

Based on the three ANA goals, in fiscal year 1984, ANA implemented a special Alaska social and economic development initiative. The purpose of this special effort was to provide financial assistance at the village level or for village-specific projects aimed at improving a village's social and economic development. This program announcement continues to implement this initiative. ANA sees both the nonprofit and for-profit corporations in Alaska as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantages of the opportunities afforded to Alaskan Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance:

- Initiate a demonstration program at a regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base.
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management, resources assessment and development, and studies of the potential impact of land use upon the environment and the subsistence ecology.

- Assist village consortia in the development of tribal constitutions, ordinances, codes and court systems.
- Develop agreements between the State and villages that transfer programs, jurisdictions, and/or control to Native entities.
- Strengthen village government control of land management, including land protection.
- Develop tribal courts, adoption codes, and/or related comprehensive children's codes.
- Assist in status clarification.
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health and well being of a community and its people.
- Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia in order to maximize tribal government resources, i.e., to develop model codes, tribal court systems, governance structures and organic documents.
- Assist villages in developing and coordinating plans for the development of water and sewer systems for use within the village boundaries.
- Assist villages in establishing structures through which youth would participate in the governance of the community and be trained to assume leadership roles in village governments.

Economic Development:

- Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaskan Natives, (3) are capable of high productivity at a small scale of operation, and (4) complement traditional and necessary seasonal activities.
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.
- Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars in villages.
- Assist in new or expanded native-owned businesses.
- Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills, earthquakes, etc.

Social Development:

- Assist villages in developing programs to deliver needed social services.
- Assist in developing training and education programs for those jobs in education, government and health usually found in local communities; and work with the various agencies to encourage job replacement of non-Natives by Natives.
- Coordinate land use planning with village corporations and city government.
- Develop local models related to comprehensive planning and delivery of social services.
- Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.
- Develop or coordinate activities with State-funded projects in decreasing the incidence of child abuse and neglect, fetal alcohol syndrome, or Native suicides.
- Assist in obtaining licenses to provide housing or related services from State or local governments.
- Develop businesses to provide relief for caretakers needing respite from demanding care work, child care, chore service, etc.

C. Eligible Applicants

- Current ANA grantees in Alaska funded under Section 803 of the Native American Programs Act whose project period terminates in fiscal year 1993 (October 1, 1992–September 30, 1993) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document);
- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects; and
- Nonprofit Alaskan Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

If the applicant is a nonprofit organization, proof of nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in its application. Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

Note: In fiscal year 1993, Alaskan Native entities are eligible to submit an application under either program announcement 93612–931 or 93612–932, but are limited to a single application for each closing date.

An Alaskan Native applicant may apply for the:

(1) February 5, 1993 closing date for Program Announcement 93612–931 OR for Program Announcement 93612–932; and

(2) May 14, 1993 closing date for Program Announcement 93612–931 OR for Program Announcement 93612–932.

D. Available Funds

Approximately $1.5 million of financial assistance is anticipated to be available under this program announcement for Alaskan Native projects. This program announcement is being issued in anticipation of the appropriation of funds for FY 1993, and is contingent upon final appropriations.

ANA plans to award approximately 15–18 grants under this announcement. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period is up to $150,000, commensurate with approved multi-village objectives. Each eligible applicant can receive only one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop mutli-year projects. However, applicants should understand that a multi-year project is a project on a single theme that requires more than 12 months to complete. The project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period. Funding after the first 12 month budget period of an approved multi-year project is non-competitive.

Applications for continuation grants funded under these awards beyond the

one-year budget period, but within the two or three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds (based on an award of $100,000, per budget period for three years), must include a match of at least $25,000 (20% total project cost per budget year). An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, room 344F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: Earldine Glover, Phone: (202) 690–7727.

Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: ANA 93612–032.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with Native American Tribes, communities and organizations evaluates each application against the published criteria in this announcement. The review will result in a numerical score attributed to each application. The results of this review assist the Commissioner to make final funding decisions.
- The Commissioner's funding decision also takes into account the analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- That the application narrative, forms and materials submitted are adequate to allow the review panel to undertake an indepth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the five evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purpose of this announcement), include a social and economic development strategy, and address the specific developmental steps toward self-sufficiency that the specific tribe or Native American community is undertaking.

The five programmatic and management criteria are closely related to each other. They are considered as a whole also in judging the overall quality of an application. Points are awarded only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated

social and economic development strategy.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

(2) *Organizational Capabilities and Qualifications.* (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes related specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly described each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) *Project Objectives, Approach and Activities.* (45 points)

The application proposes specific project objective work plans with activities related to the SEDS strategy and the overall long-term goals. The objective work plan(s) in the application include(s) project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- are measurable and/or quantifiable in terms of results or outcomes;
- are based on the fully described and locally determined balanced SEDS strategy narrative for governance or social and economic development;
- clearly related to the community's long-range goals which the project addresses;
- can be accomplished with the available or expected resources during the proposed project period;
- indicate when the objective, and major activities under each objective, will be accomplished;
- specify who will conduct the activities under each to achieve the objective; and
- support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points)

The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the community meet its goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points)

There is a detailed budget provided for each budget period requested. The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable profit within a future specified time frame.

J. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) *Program Guidance*

- The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development leading to its self-sufficiency. The Administration for Native Americans does not fund on the basis of need alone.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these and/or progress to date, as well as the size of the population to be served. The appropriateness and potential of the proposed project in strengthening and promoting the goal of the self-sufficiency of a community will be determined by reviewers.
- An application should describe a clear relationship between the proposed project, the SEDS strategy, and the community's long-range goals or plan.
- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact on the community that the project will have.
- Supporting documentation or other testimonies from concerned interests other than the applicant should be included to provide support for the feasibility and the commitment of other resources to implement or conduct the proposed project.

In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or to start a business if the applicant includes a business plan that clearly describes its feasibility and the plan for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these as a guide to its development of an economic development project or business that is part of the application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.
- A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, the delivery of human services such as health, day care, counseling, education, and training.

(2) *Technical Guidance*

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• The Administration for Native Americans will accept only one application from any one applicant for each closing date. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from an Indian Tribe, Alaskan Native village or other applicant must be from the governing body of the applicant.

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The Approach Page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• Village governments or other applicants without established accounting systems must arrange for qualified, acceptable accounting services prior to release of grant funds.

Note: Subpart H, 45 CFR part 74 and subpart C, 45 CFR part 92, address those elements of a generally acceptable accounting system for Federal grantees. The financial management standards in subparts H and C, for example, include:

(1) Accurate, current and complete disclosure;

(2) Records which show source and application of funds;

(3) Effective control and accountability of funds and property;

(4) Comparison of actual and budgeted amounts;

(5) Procedures to minimize time lapsing between transfer and disbursement of funds;

(6) Procedures to determine allowability and allocation of funds;

(7) Accounting records with source documentation;

(8) Periodic audits; and

(9) A follow-up system.

(3) *Projects or activities that generally will not meet the purposes of this announcement.*

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS strategy long-range development plan. The Administration for Native Americans is not interested in funding "wish lists" of business possibilities. The administration for Native Americans expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies on the potential success to the business prior to the submission of the application.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions.

• Project goals which are not responsive to one or more of the three interrelated ANA goals (Government Development, Economic Development, Social Development).

• Proposals from consortia of tribes and villages that are not specific with regard to support from, and roles of, member tribes and villages. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.

• Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see ACF Grants Administration Manual Ch. 3, § E.)

• Projects originated and designed by consultants who are not members of the applicant organization, tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment (i.e., oil rigs, agricultural equipment, etc.) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are February 5, 1993 and May 14, 1993.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines. Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

(1) Received on or before the deadline date at the address specified in Section H, Application Submission, or

(2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: November 23, 1992

S. Timothy Wapato,

Commissioner, Administration for Native Americans.

[FR Doc. 92–31297 Filed 12–23–92; 8:45 am]

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Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 14, et al.
Requirements for Approval of Flame-Resistant Conveyor Belts; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18 and 75

RIN 1219–AA65

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement new procedures and requirements for testing and approval of flame-resistant conveyor belts to be used in underground mines. The proposed revisions would replace the existing flame test for acceptance of flame-resistant conveyor belts specified in agency regulations. The proposal would also include current terminology. Currently regulations require that conveyor belts be flame resistant in accordance with specifications of the Secretary. Conforming amendments to safety standards are being proposed as part of this rulemaking.

DATES: Written comments must be submitted on or before February 22, 1993.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia Silvey, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposal contains information collection requirements in §§ 14.4, 14.7 and 14.8. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA (see address at the end of this discussion). The respondents would be mine equipment manufacturers. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collected information. In each instance, the resultant information collected would be used by MSHA to assess compliance with the proposed requirements. The information collection requirements contained in the proposal are discussed below.

Proposed § 14.4 would require applicants seeking approval of flame-resistant conveyor belts to submit an application for approval. MSHA estimates there would be 250 applications submitted the first year, 150 applications during the second year, and 60 applications in the third and following years. The time needed to prepare and submit each application is projected to be 5 hours for each approval application for a conveyor belt that is not similar to one previously approved (original application) for the applicant and 2 hours for each extension of approval or approval application of a conveyor belt similar to one that has been previously approved. The proposal would not require submittal of duplicative documentation on extension of approval and approval applications for conveyor belts similar to a previously approved belt. Hence these applications would take less time to prepare than original applications. MSHA estimates that initially the first year, there would be 200 original applications submitted, each requiring 5 hours to prepare, and 50 applications similar to ones previously submitted, each requiring 2 hours to prepare. The estimated burden hours are 1100. During the second year, MSHA estimates there would be 75 original applications submitted, each requiring 5 hours to prepare, and 75 similar applications, each requiring 2 hours to prepare. The estimated burden hours are 525. In the third and following years, MSHA estimates there would be 60 applications, each requiring 2 hours to prepare. The estimated burden hours are 120.

The proposal would require applicants to maintain records on the distribution of all conveyor belt bearing an approval marking as set forth in § 14.7(d). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply; therefore, no burden hours are assigned to this requirement.

Proposed § 14.8(d) requires applicants to report to MSHA any knowledge of any conveyor belt distributed with flame resistance characteristics not in accordance with the approval specifications. MSHA estimates that, in a worse case, manufacturers would submit 12 reports per year requiring 15 minutes per report. Estimated burden hours are 3.

Send comments regarding these burden estimates or any other aspects of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, and to the Office of Information and Regulatory Affairs of OMB, Attention: Steve Semenuk Desk Officer for the Mine Safety and Health Administration, room 3001, New Executive Office Building, Washington, DC 20503.

II. Background

Conveyor belt systems are used extensively in underground mines to transport mined material. MSHA estimates there are about 3,000 feet (900 meters) of conveyor belt in an average small underground coal mine (covering 1,500 feet (450 m) for conveyance and return) and 28,000 feet (8,500 m) of conveyor belt in an average large underground mine. Because of the fire hazards in underground coal mines, existing MSHA safety standards require that conveyor belts be flame resistant in accordance with specifications of the Secretary by passing the flame test for conveyor belt specified in § 18.65. That test is conducted in a 21-inch (53.3 cm) cubical test gallery with belt samples 6-inches (15.2 cm) long by ½-inch (1.27 cm) wide by belt thickness.

MSHA requires mine operators to report any mine fires that either are not extinguished within 30 minutes of discovery or involve a serious injury. MSHA's Belt Entry Ventilation Review: Report of Findings and Recommendations (1989) contains a historical review of reportable underground coal mine fires involving conveyor belts. In addition, two other MSHA reports contain information on underground coal mine fires involving conveyor belts. These reports are Coal Mine Fires Involving Track and Belt Entries, 1970–1988, dated November 19, 1990 and Mine Fire Prevention and Response Strategies, dated October 31, 1991. An analysis of information from these reports follows.

From 1970 through 1990, 307 underground coal mine fires were reported and investigated by MSHA. Conveyor belts were identified to be involved in 42 of these fires. The 42 fires represent 14 percent of the total number of fires over this 21-year period. Moreover, belt fires as a percentage of total fires have shown increases over the last twelve years with half of the belt fires occurring in the last eight years.

From an analysis of the available data, approximately 75 percent of the belt fires occurred in the mainlines, with about 25 percent of the belt fires occurring in the panel or section beltlines. Two of the 42 belt fires, or

about 5 percent resulted in the mine being sealed. These data also indicate that about 30 percent of the belt fires resulted in flame traveling for hundreds of feet. Such fires create a severe hazard to the health and safety of miners.

When belt fires reach the propagation stage, they produce more fire gases and spread faster than the fires of surrounding coal surfaces. The belt fires that have occurred since 1970 have burned as much as 2,000 feet (600 m) of belt before the fire was extinguished.

The 21 underground coal mine fires from 1983 through 1990 that involved conveyor belts and the large-scale flammability studies of conveyor belts conducted by the Bureau of Mines, U.S. Department of the Interior (BOM) in cooperation with MSHA have shown that the flame test specified in § 18.65 is not optimal for evaluating the flammability of conveyor belts. For example, some conveyor belts that passed the current flame test readily propagated flame and were completely consumed by fire in large-scale gallery tests that were more representative of the mine environment. As a result, BOM and MSHA worked together to develop a revised test that would more effectively assess the flame resistance of conveyor belts than the flame test in § 18.65.

The Agency is aware that in recent years the United Kingdom has developed a conveyor belt evaluation program that provides the U.K. with a product having flame resistance superior to that provided by existing part 18 requirements in the United States. Germany and the U.K. are currently involved with the other European nations to negotiate a common standard.

The revised test is intended to address the resistance of conveyor belts to both ignition and flame propagation. It is designed to significantly reduce or eliminate the hazard of flame propagation along the belt.The revised test would identify conveyor belts which are difficult to ignite and are self-extinguishing under the test conditions. Therefore, conveyor belts passing the revised test would not only be resistant to ignition, but also highly resistant to flame propagation.

This proposal would replace the current regulations covering the testing and acceptance for flame resistance of conveyor belts found in 30 CFR part 18 with new regulations incorporating the revised flame test.

III. Discussion and Summary of Proposed Rule

The test procedures and criteria in subpart B are the result of the BOM and MSHA's cooperative efforts to develop a more appropriate laboratory-scale flammability test for conveyor belts. The primary concerns were to develop procedures that are objective, repeatable and which appropriately assess the flammability of conveyor belts in the context of the mining environment in which they are used.

Development of Laboratory—Scale Test and Procedures

A large-scale flammability test for conveyor belt was jointly developed by the BOM and MSHA. Experimental tests were conducted in the BOM surface fire gallery located at the Lake Lynn Laboratory. The fire gallery consisted of a 90-foot (27.4 m) long by 12.5-foot (3.8 m) wide arched tunnel (81 square feet (7.5 m^2) cross-sectional area) coupled, by means of a transition section, to a 6-foot (1.8 m) diameter axivane fan. The gallery contained a typical conveyor belt structure. A 30-foot (9.1 m) length of belt, typically 42-inches (107 cm) wide, was placed on the top rollers of the structure. The ignition source was a 2-gallon (7.6 liter) liquid fuel fire (700 kilowatts (2520 millijoules)) in a 3-foot (0.9 m) by 2-foot (0.6 m) tray located below the upstream end of the belt sample. The gallery airflow was set at 300 feet per minute (ft/min) (91.4 m/min) (24,300 CFM (688 m^3/min)). Previous studies on the effect of ventilation on conveyor belt fires with rubber and polyvinyl chloride (PVC) belts had shown that flame propagation at these test conditions was most likely to occur with this airflow. (see "Effect of Ventilation on Conveyor Belt Fires" by C.P. Lazzara and F.J. Perzak, presented at the Symposium on Safety in Coal Mining, Pretoria, South Africa (October 1987) and "Impact of Entry Air Velocity on the Fire Hazards of Conveyor Belts" by H.C. Verakis and R.W. Dalzell, presented at the 4th International Mine Ventilation Congress, Brisbane, Australia (July, 1988) and "Reducing the Fire Hazard of Mine Conveyor Belts" by H.C. Verakis, presented at the 5th U.S. Mine Ventilation Symposium, West Virginia University in Morgantown, WV (June 4, 1991) which detail these studies.)

A belt passed the large-scale flammability test if a portion of the 30-foot (9.1 m) long sample, across its width, remained undamaged by fire (excluding blistering). Sixteen different formulations of conveyor belts, 8 rubber and 8 PVC, that passed the current MSHA flammability test (30 CFR 18.65) were subjected to the large-scale gallery test. Six of these formulations passed the test and ten failed. For the belts that failed, flame propagation rates varied from about 1 foot (0.3 m) per minute to 30 feet (9.1 m) per minute. Results from the large-scale test were repeatable and the test provided an appropriate method for evaluating the flame resistance of conveyor belts in a manner that was more representative of the mining environment than the current test.

The large-scale test requires an expensive fire gallery facility and large amounts of belt. This makes it expensive to conduct testing. It would not be feasible for belt manufacturers to construct the large-scale fire gallery and perform the test. It would not be feasible for MSHA or the BOM to use the large-scale facility for approval testing. Therefore, the BOM began development of a laboratory-scale flammability test for conveyor belts that provide results comparable with the large-scale test. To develop the laboratory-scale test the ventilated tunnel dimensions were selected on the basis of experience with fire testing and the development of flammability tests. Other values such as sample size, the air velocity and ignition time were varied to obtain comparable results to the large-scale test. The laboratory-scale test developed consists of a horizontal 5.5-foot (1.68 m) long by 1.5-foot (0.46 m) square ventilated tunnel. The size of the belt test sample is 60 inches (152.4 cm) long by 9 inches (22.9 cm) wide. The tunnel airflow is 200 feet per minute (61 m/min) (450 CFM (12.7 m^3/min)) and the ignition source is a gas burner applied to the upstream end of the sample for 5 minutes. A belt formulation passes the test if, in each of three separate trials, there remains a portion of the sample, across its entire width, undamaged by fire.

Samples of the same 16 formulations of belts that were examined in the large-scale gallery test were subjected to the laboratory-scale test and the results compared. Of these, 8 were rubber belt formulations, and 8 were PVC formulations. Of the 16 formulations examined, one formulation passed the laboratory-scale test but failed the large-scale gallery test and one formulation passed the large-scale gallery test and failed the laboratory-scale test.

The development of flammability tests is not an exact science. Because of the difficulty in designing a laboratory-scale test that is in complete agreement with a large-scale test, the comparison of tesf results obtained between these two procedures is considered to be very good. MSHA solicits comments on the appropriateness of the laboratory-scale test.

The laboratory-scale flammability test described above and in subpart B of this proposed rule was found to produce

repeatable, objective test results. MSHA and the BOM believe this test appropriately assesses the flame resistance of conveyor belts in a relatively inexpensive manner that is more representative of the mining environment than the present test. The laboratory-scale test procedure also provides results comparable with the large-scale test with control of certain critical factors. (See "Conveyor Belt Flammability Tests: Comparison of Large-Scale Gallery and Laboratory-Scale Tunnel Results" by C.P. Lazzara and F. J. Perzak, presented at the 23rd International Conference of Safety In Mines Research Institutes, Washington, D.C. (September 11–15, 1989) which details this agreement).

Due to the fire dynamics during testing, certain design characteristics essential in obtaining uniform and consistent test results are specified in subpart B. These include tunnel dimensions, sample size and distance of sample rack to tunnel roof. These factors are critical for obtaining agreement and repeatable test results. For example, the requirements for construction of the laboratory-scale tunnel described in subpart B minimize thermal losses through the walls. The specified burner provides a controlled and consistent flame during the ignition period and was found to be a reliable and uniform ignition source. Variations in the principal parts of the apparatus and procedures will affect the burning process, yielding unreliable results. However, where variations do not affect the reliability of the test results, design characteristics have not been specified.

IV. Section-by-Section Discussion

Subpart A—General Provisions

Section 14.1 Purpose and effective date.

This section is derived from existing § 18.1 and would establish the requirements for conveyor belts to be approved under part 14. Conveyor belts are used for the transportation of coal and other mining products in underground mines. Because of the hazard presented by fires in underground coal mines, existing 30 CFR 75.1108 requires the use of flame-resistant conveyor belts as determined by specifications of the Secretary. Under this proposal, MSHA would modify the existing requirements specified for acceptance of conveyor belts contained in §§ 18.6(c), 18.6(i), and 18.65 after a review of the public record and consideration of all comments.

The proposal would take effect 60 days from the publication of the final rule. At the same time, the applicable portions of part 18 referring to conveyor belts would be modified. After this date, all applications for approval of conveyor belts would be required to meet the requirements of this part, and applications for acceptance of conveyor belts would no longer be processed under part 18.

MSHA is implementing a voluntary acceptance program concurrent with the publication of this proposal. Under this program manufacturers may submit applications to MSHA's Approval Certification Center requesting the testing of their conveyor belts in accordance with the test procedures outlined in proposed § 14.22. Acceptance numbers will be issued to conveyor belts meeting the acceptable performance criteria, identifying those conveyor belts that have demonstrated this improved flame resistance. The inception of this program would not affect the existing acceptance program conducted under part 18. MSHA intends to continue to offer the new voluntary acceptance program for evaluation of belts with improved flame resistance until the effective date of the final rule for this part.

MSHA anticipates that, as a result of manufacturers' participation in the voluntary acceptance program, a substantial number of conveyor belts in compliance with the improved flame-resistance requirements would be commercially available on the effective date of the final rule. Based upon this projection, as well as the performance of belt samples during the development of the proposed test, MSHA believes the manufacturers will be able to submit applications for approval of conveyor belts in accordance with the final rule shortly after its publication. MSHA has, therefore, proposed the effective date of the final rule to be 60 days after its publication.

Section 14.2 Definitions.

The following definitions which apply to the approval of conveyor belts are designed to clarify the requirements of this part. Many are derived from existing § 18.2, although some are new.

Applicant. This term, which is derived from existing § 18.2, would identify an applicant as an individual or organization that manufactures or controls the production of the conveyor belt and that applies to MSHA for approval of that conveyor belt.

Approval. This term would replace the "Acceptance" terminology defined in existing § 18.2. An approval would be defined as a document issued by MSHA which states that a conveyor belt has met the requirements of this part. It also would authorize an approval marking identifying the conveyor belt as approved.

This would be consistent with other recent MSHA approval regulations which define "approved" as the general term which indicates that products have met MSHA's technical requirements and have been designed and manufactured to ensure that the products will not present a fire, explosion, or other specified safety hazard related to use.

Conveyor belt. This term is new. It would define a conveyor belt to be a flexible strip of material that is typically constructed of interwoven fabric or plies and polymeric compounds and used to transport coal or other extracted minerals.

Extension of approval. This term, which is new as applied to conveyor belts, would define an extension of approval as a document issued by MSHA which states that a change to a conveyor belt previously approved by MSHA under this part meets the requirements of this part. It would also authorize the continued use of the approval marking after the appropriate extension number has been added. The definition of this term would, like that of "approval", provide for consistent terminology.

Load bearing cover. This term is new and would describe the top cover of a conveyor belt. The load bearing cover is designed to be the surface upon which the extracted minerals are conveyed

Post-approval product audit. This term is new. It would be defined as MSHA's examination, testing, or both, of an approved conveyor belt selected by MSHA to determine whether it meets the technical requirements and has been manufactured as approved.

Section 14.3 Observers at tests and evaluations.

This section is derived from existing § 18.9(a) and would specify those individuals who could be present during testing and evaluation conducted under this part. These individuals would be limited to personnel of MSHA, BOM, representatives of the applicant and such other persons as agreed upon by MSHA and the applicant. This section is intended to protect proprietary information which could be available to observers at tests and evaluations conducted under this part.

Section 14.4 Application procedures and requirements.

This section, which is derived from existing § 18.6, would set forth the procedures and requirements for requesting approval of a flame-resistant conveyor belt. It does not contain

specific provisions concerning the fees to be charged for approval of a flame-resistant conveyor belt. Instead, § 14.4(b) would require that fees, calculated pursuant to Part 5, Fees for Testing, Evaluation, and Approval of Mining Products, (52 FR 17506) be submitted with each application for approval or extension of approval.

Fees for MSHA processing of an application under part 14 would be subject to an hourly rate charge for evaluation and testing. On hourly rate actions, applicants would be billed for the fee when processing of the action is completed.

MSHA would charge $39 per hour for evaluation and $41 an hour for testing with an application fee of $100 for processing requests for approval or extension of approval of flame-resistant conveyor belt under part 14. These fees are based on the fee adjustments published in the **Federal Register** on December 20, 1991, (56 FR 66299) effective January 1, 1992.

This rule would organize the application procedures into two types of approval actions: Approval and extension of approval. In requesting an approval for a flame-resistant conveyor belt, MSHA would require the submission of all information necessary to properly evaluate a conveyor belt as it relates to the approval requirements. If, after receipt of an approval, the applicant requests approval of a similar conveyor belt or an extension of approval for the original conveyor belt, the applicant would not be required to submit documentation duplicative of previously submitted information. Only information related to changes in the previously approved conveyor belt would be required, avoiding unnecessary paperwork.

This proposal would include a requirement that changes in the specifications of a previously approved flame-resistant conveyor belt must be approved by MSHA. This would avoid unauthorized changes being made that could affect the flame resistance of the conveyor belt.

Section 14.4(c) would require an applicant to submit information to characterize the identification and construction of a conveyor belt. The applicant would have the option to either provide the complete formulation of a conveyor belt or to specify each fire retardant ingredient by percentage along with a listing of each flammable and inert ingredient. While the submission of this information is not specifically addressed, existing § 18.6(c) and current application procedures for acceptance of conveyor belts require formulation information to be provided.

The proposal provides that an application for approval of a conveyor belt that is similar to a previously approved conveyor belt would include an explanation of any changes from the existing approval, along with the approval number of the belt which most closely resembles the new one. Documentation which is listed in the prior approval need not be resubmitted.

Section 14.4(d) would require an application for extension of approval to include a description of the proposed change to an approved belt and the MSHA approval number for the belt for which the extension is requested. The applicant would not be required to submit documentation duplicative of previously submitted information. Only information related to changes in the previously approved product would be required, avoiding unnecessary paperwork. Section 14.4(e) would provide that a determination by MSHA would be made if additional information, samples and testing are needed to evaluate the application. Additional samples may be requested by MSHA as a result of erroneous test results as discussed below in the flame-resistance test procedures. There may be instances where MSHA would not need to conduct testing to determine the flammability of a conveyor belt based on its previous experience in testing and evaluating similar belts. An applicant may also provide a statement of MSHA for consideration which explains the reasons why flame testing of a conveyor belt is not necessary in a given case.

Section 14.5 Test samples.

Section 14.5, derived from § 18.6(g) and (h), would require that three unrolled, flat samples of conveyor belt, 60 inches (152.4 cm) long by 9 inches (22.9 cm) wide, be submitted for flame testing when requested by MSHA. The test for flame resistance would require that three samples be tested to determine acceptable performance. The purpose of providing the samples in an unrolled, flat state is to prevent difficulty in mounting samples for testing. If samples would be received in a rolled (coiled) state, additional time would be needed for MSHA to flatten the samples for subsequent mounting.

Curling of samples can cause erroneous test results and has, at times, presented a problem during testing. MSHA and BOM have determined that most of this curling effect resulted from the conveyor belts having a "pre-set" from being rolled prior to testing. The requirements of § 14.5 along with the preconditioning of samples in § 14.22(a)(1) have been designed to address and minimize this problem.

Section 14.6 Issuance of approval.

This section is derived from existing § 18.10 and would specify the actions to be taken by MSHA upon review of applications for approval of conveyor belts.

Paragraph (a) would require MSHA to issue, following completion of the evaluation and testing of a conveyor belt provided for under this part, a written notice of approval or the reason for denying approval of the product.

Paragraph (b) would retain the provision of existing § 18.10(c) that an applicant is not to advertise or otherwise represent a conveyor belt as approved until MSHA has issued an approval for that product.

Section 14.7 Approval marking and distribution record.

This section is derived from existing § 18.65(f), with modifications, and would provide for the marking of approved conveyor belts and the retention of initial sale records.

Paragraph (a) would clarify the Agency's policy that approved products be marketed only under the name specified in the approval. This provision, common to all products bearing an MSHA approval, would ensure that the product is easily identifiable as one to which the approval applies.

The provisions of paragraph (b) would require a legible and permanent approval marking to be at least ½-inch (1.27 cm) high, at intervals not exceeding 60 feet (18.3 m), and repeated at least once every foot (30.5 cm) across the width of the belt. They are modified in part from the existing § 18.65(f). This modification in marking is being proposed to allow for greater ease of identification of a conveyor belt in use. As the belt passes along the conveyor framework, the edges can wear. The resulting fraying of conveyor belts which occurs during normal use can cause the approval markings on these belts to be illegible. The relocation of the markings from the edge of the belt to across its width would permit identification of the conveyor belt for a longer time period.

The proposal would specify that the approval marking be repeated at least once every foot (30.5 cm) across the width of the belt. This would ensure that a portion of the making would be present should a belt be worn along the edges or cut into narrower widths. The proposed change to a 60-foot (18.3 m) distance between the approval markings would correspond to the present requirement that the approval marking be placed at 30-foot (9.1 m) intervals

alternately along the edges of the belt. For example, when placing markings according to the present requirement at the 30 foot (9.1 m) intervals alternately along the edges of a belt, the distance between the marking along one edge of a belt is 60 feet (18.3 m).

The proposed change from the existing requirement of metal stencils used during the vulcanizing process to produce depressed letters, to the requirement that the approval marking be "legibly and permanently marked" would provide flexibility in marking and allow for technological advances in the manufacturing process for conveyor belts. This proposed modification acknowledges current manufacturing procedures and materials that allow conveyor belts to be manufactured without including the vulcanizing process.

Paragraph (c) would retain the existing provision that allows MSHA to accept permanent marking other than that described in paragraph (b) where the conveyor belt construction does not permit such marking.

Paragraph (d) would require applicants to maintain records of the initial sale of each belt having an approval marking. These sale records would be expected to be maintained for the projected service life of the belts, as determined by the applicant. This approach recognizes that the life of a belt varies depending on factors such as its physical characteristics, use as a main line or section belt, the type of material being transported and belt maintenance. Since belts in service may need to be traced for corrective action, it is necessary to have records of the belts as long as they are in use. Maintaining records on the sale of belts would be necessary so that deficient products which may present a hazard to miners can be traced and withdrawn from use until appropriate corrective action could be taken by the approval-holder. The proposal does not specify the type of record to be maintained. MSHA believes most manufacturers would use existing record systems to fulfill this requirement. The information that would be needed on initial sales would be the customer name and address and belt identification on a batch or lot basis.

Section 14.8 Quality assurance.

The provisions of proposed § 14.8 are new for conveyor belts. However, they are very similar to provisions contained in other recent MSHA regulations concerning approval of products for use in underground mines. The MSHA approval label is relied upon in the mining community as an indication that the product is safe for use in mines. Section 14.8 would set forth the elements of a quality assurance program which MSHA believes are essential to ensure the required level of flame resistance can be expected from any conveyor belts distributed.

Under § 14.8(a) of this proposed rule, the approval-holder would be required to flame test a sample of each batch or lot of conveyor belt or inspect, test, or both, a sample of each batch or lot of the materials that contribute to the flame-resistance characteristic to ensure that the finished product will meet the flame test.

Section 14.8(b) would require that instruments used for the inspection and testing in § 14.8(a) be properly calibrated and sufficiently accurate. The minimum frequency of calibration that would be required is that recommended by the instrument manufacturer and the calibration would need to be traceable to standards set by the National Institute of Standards and Technology (formerly National Bureau of Standards), U.S. Department of Commerce, or other nationally recognized standards. The instruments used would be required to be accurate to at least one significant figure beyond the desired accuracy. The use of instruments to such degree of accuracy would be consistent with testing protocol.

Section 14.8(c) would require that production documentation be controlled so that the conveyor belt is manufactured as approved. While many constructions and formulations would meet the technical requirements of this proposal, the conveyor belt that is manufactured and distributed under an approval must conform to the specifications to which the approval was issued. This aspect of the proposal would require approval-holders to ensure that the conveyor belt produced does not differ from the conveyor belt approved by MSHA. The proposal does not specify which documents must be controlled, but would instead obligate each approval-holder to implement document control procedures to ensure that the product conforms to the approval.

In MSHA's present conveyor belt acceptance program, the manufacturer is obligated to maintain the quality of the accepted conveyor belts. Manufacturers already have quality control programs which monitor the production of accepted conveyor belts and therefore, no additional cost is anticipated from these provisions.

Adherence to the proposed requirements for quality assurance would provide substantial protection against the distribution of defective conveyor belts. However, MSHA recognizes that this could occur. In such an event, § 14.8(d) would require the approval-holder to report immediately to the Agency any knowledge that conveyor belts have been distributed which do not meet the requirements upon which the approval is based. This knowledge could come from the results of audits conducted by the approval-holder, reports from users, or other sources. Upon receiving such a report, MSHA would work with the approval-holder to implement appropriate corrective action.

Since conveyor belts not meeting the technical requirement of this part could create a hazard, immediate notification should be by expeditious means, such as by telephone. The notification should include a description of the nature and extent of the problem, the locations where the conveyor belt has been distributed, and the approval-holder's plans for corrective action. Corrective action may include recalling the conveyor belt or restricting its use pending conformance with the approval specifications. MSHA would review all the information provided, including the approval-holder's program of corrective action. MSHA would work with the approval-holder, if necessary, to develop an appropriate program. If appropriate corrective action cannot be agreed upon by the approval-holder and MSHA, the Agency may seek revocation of the approval, or other action as necessary.

Section 14.9 Disclosure of information.

This section is derived from existing § 18.9 and addresses the disclosure of information on conveyor belts tested and evaluated under part 14. MSHA intends to continue the current practice of treating information on product specifications and performance as proprietary information and will protect its disclosure to the fullest extent consistent with The Freedom of Information Act (FOIA, 5 U.S.C. 522). Under § 14.9(b) of the proposed rule, MSHA would notify the applicant of requests for product information received by the Agency and provide the manufacturer the opportunity to present its position on disclosure. Information identified by the manufacturer as proprietary would not be disclosed, unless, as provided by FOIA, MSHA determines that disclosure would further the public interest and would not impede the discharge of any of the functions of the Agency.

Section 14.10 Post-approval product audit.

This section, also new, would provide for approved conveyor belts to be subject to periodic audit by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. A consistent approach on the issue of product audits with that outlined in parts 7 (Product testing by applicant or third party) and 15 (Requirements for approval of explosives and sheathed explosive units) would be maintained by this section. This aspect of the proposed rule, by providing a mechanism for independent evaluation by MSHA of approved products on a random basis, would complement the quality assurance provisions that would require approval-holders to manufacture their conveyor belts as approved. Moreover, it would be consistent with recommendations from interval reviews of MSHA's approval program. Approved conveyor belts audited by MSHA would be selected by the Agency as representative of those distributed for use in mines. Upon request, a final report of such audits would be provided to the approval-holder.

In determining which approved conveyor belts would be subject to audit at any particular time, MSHA would consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations may include product complexity, the manufacturer's previous conveyor belt audit results, product population in the mining community and the time since the last audit or since the conveyor belt was first approved. Use of these factors would be consistent with the approach taken in all of MSHA's other approval programs where approved products are audited.

Under this proposed rule, approved conveyor belts could be obtained for audit from the approval-holder or from sources other than the manufacturer, such as mine suppliers or distributors. The provisions of paragraph (b) would, however, require the approval-holder to provide, at MSHA's request, three samples of an approved conveyor belt of the size needed for flame testing at no cost to MSHA for an audit. Such requests, except for cause, would be made no more than once a year. The Agency would examine, evaluate and conduct any testing necessary when requesting an approved conveyor belt for audit from the approval-holder. Approval-holders would be notified by MSHA of the time for any audit-related testing of approved conveyor belts to allow then an opportunity to witness such tests. MSHA could obtain conveyor belts for audit from the approval-holder or other sources, such as mine suppliers or distributors at any time at MSHA expense.

Based on MSHA's experience, the Agency anticipates few instances in which more than this quantity of approved conveyor belts would be required "for cause" from any one manufacturer in any one year. There are circumstances, however, under which an additional audit would be appropriate to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approved belt, evidence of unapproved changes to belts, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval-holder. Under these circumstances, the approval-holder would be required to provide, at no cost to MSHA, additional approved conveyor belts so the Agency can ensure that the approval-holder is meeting the obligation to manufacture the product as approved.

Should discrepancies be found during MSHA audits of approved conveyor belts, MSHA would require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval-holder recalling the lot, batch, or roll of conveyor belt; or issuing user notices. Revocation of the approval by MSHA may result when discrepancies in approved products are not successfully corrected.

Section 14.11 Revocation.

Section 14.11 is derived from existing § 18.16, as well as § 7.9 and § 15.11. It would be identical to the revocation provisions in other recent approval regulations as MSHA believes that all approval-holders must be accorded the same rights and subject to the same process regardless of the approval regulations under which the approval was granted.

The proposed rule would provide that MSHA may revoke an approval granted under part 14 whenever a conveyor belt fails to meet the technical requirements specified in this part or creates a hazard when used in a mine. The Agency recognizes that an MSHA approval is important to the marketability of a product used in the mining industry. For this reason, it has been MSHA's practice to treat approval-holders as "licensees" under the Administrative Procedure Act (APA, 5 U.S.C. 558). Consistent with this practice, the proposed rule would provide that approval-holders be accorded certain protection prior to revocation of an approval. This protection would include being provided with (1) a written notice of the Agency's intent to revoke a product approval, with an explanation of the reasons for the proposed revocation, (2) an opportunity to demonstrate or achieve compliance with the technical requirements for approval, and (3) an opportunity for a hearing upon request.

Paragraph (d) would permit MSHA to suspend an approval without prior notice to the approval-holder, if a conveyor belt poses an imminent hazard to the safety or health of miners. Under such circumstances, an approval could be suspended immediately to protect the safety and health of any affected miner. If during the manufacturing of a certain lot of belting, specifications have been so altered that the belt's flame resistance has been rendered ineffective or flammability is increased, an imminent hazard may arise. Upon suspension of an approval, the conveyor belt involved is no longer approved and MSHA will require mine operators to withdraw the conveyor belt from use during the course of any suspension. MSHA would also immediately advise the affected approval-holder of any suspension so effective corrective action could be started as soon as possible. The provisions of this paragraph, as proposed, are in accord with the APA.

Subpart B—Technical Requirements

Section 14.20 Flame resistance

This section is based upon joint work of BOM and MSHA to develop a revised test for flame resistance that would be more representative of the mining environment than the present test specified in § 18.65. It would require that conveyor belts be flame resistant when tested in accordance with the flame test specified in § 14.22.

Section 14.21 Belt flame test apparatus

This section describes the principal parts of the apparatus used for the flame test of conveyor belts. Copies of drawings which depict some aspects of the test apparatus would be available from MSHA upon request.

Paragraph (a) would require a horizontal test chamber (tunnel) 5.5 feet (1.68 m) long by 1.5 feet (0.46 m) square (inside dimension) which is constructed from 1-inch (2.5 cm) thick Marinite I, or

equivalent insulating material. Marinite I was selected because it is a noncombustible, insulating material that minimizes thermal losses through the walls and is able to withstand repeated test fires without cracking or warping. The chamber dimensions were established based upon comparison of test results with the large-scale belt flammability studies. Paragraph (b) describes a 16-gauge (0.16 cm) stainless steel duct section, tapering over at least a 24-inch (61 cm) length and lined with ½ inch (1.27 cm) thick ceramic blanket insulation or equivalent insulating material, that would connect the test chamber to a 1-foot (30.5 cm) diameter exhaust duct, or equivalent. Stainless steel would minimize corrosion and the tapered duct section would provide a smooth airflow to enter the exhaust duct. The tapered duct is lined with blanket insulation to minimize high duct temperatures and thermal expansion.

Paragraph (c) would require a U-shaped gas-fueled impinged jet burner igniting source. The U-tube would measure 12 inches (30.5 cm) long and 4 inches (10.2 cm) wide with two parallel rows of 6 jets each. The burner jets are canted so that they point toward each other in pairs and the flames from these pairs impinge upon each other. The burned fuel would be methane or natural gas of suitable purity. This burner was chosen because it is commercially available and provides a reliable, reproducible ignition source that can burn methane or natural gas. Use of the specified burner and gaseous fuel, in conjunction with the other parameters, resulted in agreement between the laboratory-scale (tunnel) test results with the large-scale belt flammability studies.

Paragraph (d) would require a removable steel rack, consisting of 2 rails and supports constructed from slotted angle iron, to hold a belt sample. The rack dimensions of 7 inches (17.8 cm) wide, 60 inches (152.4 cm) long and 5 inches (12.7 cm) between the rails would be specified in the proposal. MSHA and BOM consider these dimensions to be critical to the repeatability of the flammability tests. Typically, commercially available, 1-inch (2.5 cm) by 1¾ inch (4.4 cm) by ⅛ inch (0.3 cm) thick angle iron with predrilled ¼ inch (0.6 cm) diameter holes spaced 1-inch (2.5 cm) apart would be used. The top surface of the rack would be 8 ± ⅛ inches (22.9 ± 0.3 cm) from the inside roof of the test chamber. The rack materials and dimensions were selected so that the rack would adequately support the belt sample, withstand repeated tests with only minor warping due to heat and minimize the thermal mass due to the sample support method. The distance from the top surface of the rack to the inside roof of the test chamber was established based on comparison of the test results with the large-scale belt flammability studies.

Section 14.22 Test for flame resistance of conveyor belts

Paragraph (a) would specify the test procedures to be followed to determine the flame resistance of conveyor belts. It would specify that the test be conducted in the sequence described, as well as require the use of a flame test apparatus meeting the specifications of § 14.21. Paragraph (a)(1) would require 3 belt samples, 60±¼ inches (152.4±0.6 cm) long by 9±⅛ inches (22.9±0.3 cm) wide. The belt samples would be preconditioned by being laid flat at 70±10 °F (21±5 °C) for at least 24 hours prior to the test. The number of samples and the sample dimensions are based on comparison of the test results to the large-scale belt flammability studies. Preconditioning of the samples by laying them flat at 70±10 °F (21±5 °C) for a least 24 hours ensures that the samples are at laboratory temperatures, facilitates sample mounting and minimizes curling during the test. A conveyor belt that has been rolled prior to testing is more likely to rebound to the rolled position during testing. This action is considered "curling" and may lead to erroneous test results. Samples which have been rolled prior to testing can develop sufficient curling forces to overcome the holding capabilities of the cotter pins installed to retain the sample on the rack. Should curling occur, MSHA would be required to test additional samples to ensure reliable test results have been obtained. MSHA and BOM have determined, through their joint testing experience, that the use of flat, unrolled samples greatly reduces the occurrence of this phenomenon.

Paragraph (a)(2) would require that the belt sample be placed on the rails of the rack with the load bearing cover (top cover) up, as appropriate. In some cases, a belt may be constructed without having a designated top cover and would be mounted without regard to cover orientation. For example, many PVC belts are constructed with a solid woven carcass such that a top or bottom cover is not designated. Therefore, either side of the belt could be mounted as the load bearing cover. The sample would extend 1±⅛ inch (2.5±0.3 cm) beyond the front of the rails and about inch (2.5 cm) from the outer lengthwise edge of each rail. This would center the longitudinal axis of the sample along the centerline of the rack with about the first inch of the sample in the ignition area and not in contact with the rack. The 1-inch (2.5 cm) overlap facilitates ignition of the belt sample by minimizing the thermal heat sink created by the sample rack. A greater overlap would result in the sample curling or pulling back from the burner during the ignition period.

Paragraph (a)(3) would require that the belt sample be fastened to the rails of the rack by drilling (or punching) holes along the long edges of the sample and using square steel washers and cotter pins as fasteners. Each washer is typically ¾ inch (1.9 cm) square and 1/16 inch (0.2 cm) thick with a 3/16 inch (0.5 cm) diameter hole. A washer is placed over each sample hole and a cotter pin is inserted through the hole in the belt and rail. The cotter pin is spread apart to secure the sample to the rail. The locations of the fasteners were chosen so that the majority (6 of 10) would be in the ignition area to minimize the belt sample pulling away from the burner, or lifting and curling during the ignition period. Additional fasteners could be used in the ignition region for belts that lift excessively. The fasteners would facilitate the secure mounting of the belt sample. They are not of such size to influence the test results due to heat absorption, even if additional fasteners are used.

Paragraph (a)(4) would require that the rack and mounted sample be centered in the test chamber with the front end of the sample 6±½ inches (15.25±1.27 cm) from the entrance of the chamber. This location was selected to reduce the disturbance of the airflow entering the test chamber and was also based on comparison of the test results to the large-scale belt flammability studies.

Paragraph (a)(5) would require the airflow passing over the belt sample to be 200±20 ft/min (61±6 m/min) as measured by a nominal 4-inch (10.2 cm) diameter vane anemometer, or equivalent device, placed on the centerline of the belt about 1 foot (30.5 cm) from the chamber entrance. The airflow and measuring location were selected based on comparison of the test results with the large-scale belt flammability studies.

Paragraph (a)(6) would require that before the start of a test, the inner surface temperature of the chamber roof measured at points approximately 6, 30, and 60 inches (15.2, 76.2, and 152.4 cm) from the front entrance not exceed 95 °F (35 °C) at any of these points with the specified airflow passing through the chamber. The temperature of the air

entering the chamber during a test would also be required to be not less than 50 °F (10 °C). These temperature limits were selected to assure the reproducibility of the test results and to maintain the comparison obtained with the large-scale belt flammability studies.

Paragraph (a)(7) would specify the burner to be positioned in front of the belt sample's leading edge such that, when ignited, the flames from the two rows of jets impinge in front of the belt's edge and distribute uniformly on the top and bottom surfaces of the sample. This alignment of the burner would provide for uniform heating of the sample, which is necessary to maintain the consistency of the test results.

The exact burner orientation to provide for uniform distribution of flame on the top and bottom surfaces of the test sample may vary depending upon the belt sample's thickness. Based upon comparison tests and experience gained in developing the proposed flame test procedure, the burner must be canted downward, at about a 15° angle, and located about ¾-inch (1.9 cm) in front of the sample's leading edge. Tilting of the burner compensates for the buoyancy of the burner flames. The burner alignment to be used may be determined by experimental means prior to igniting the samples under test.

Paragraph (a)(8) would require that the gas flow to the burner be adjusted to 1.2 ± 0.1 standard cubic feet per minute (SCFM) (34 ± 2.8 liters per minute) and be maintained at this value throughout the ignition period. One standard cubic foot is defined as the amount of gas which occupies one cubic foot at 72 °F and one atmosphere pressure (1 cubic liter at 22 °C and 101 kPa). The specified gas flow provides a stable flame and was selected based on comparison of the test results with the large-scale belt flammability studies.

Paragraph (a)(9) would require that the burner flame be applied to the front edge of the belt sample for an ignition period of 5.0 to 5.1 minutes. At the conclusion of the ignition period, the burner would be lowered and its flame extinguished. This ignition period was based on comparison of the test results with the large-scale belt flammability studies.

After completion of the test, paragraph (a)(10) would require the undamaged portion across the entire width of the sample be determined. Blistering, without charring, would not be considered damage since blistering could result from the effects of heat rather than the presence of flame. Determining the undamaged portion across the entire width of the sample is necessary for specifying acceptable performance.

Paragraph (b) would require, for acceptable belt performance that each of the tested samples exhibit an undamaged portion across its entire width. This criteria was established based on comparison of the test results with the large-scale belt flammability studies.

Paragraph (c) would specify that MSHA reserves the right to modify the test requirements for flame resistance of conveyor belts constructed with thicknesses of more than ¾-inch (1.9 cm). Extensive flame testing of belts of this thickness (more than ¾-inch (1.9 cm)) has not been conducted because insufficient quantities of these belts have been available for testing. Therefore, the test results cannot be sufficiently predicted. As information becomes available, MSHA may need to modify the testing apparatus and procedures to provide comparison of test results between the large-scale belt flammability test and the tests specified in this subpart for belts with thicknesses of more than ¾-inch (1.9 cm).

Section 14.23 New technology.

This section is derived from existing § 18.20(b). The wording would be consistent with that used for the new technology provisions in parts 7 and 15 and would allow MSHA to approve a conveyor belt which incorporates technology for which the requirements of this part are not applicable, provided the Agency determines that the conveyor belt is as safe as those which meet the requirements of this part.

Part 75—Conforming Amendments

The proposal to MSHA's current requirements for acceptance of conveyor belts as flame resistant would also necessitate certain conforming amendments to the agency's safety standards for underground coal mines in 30 CFR part 75. Currently, MSHA's standard at § 75.1108 requires that all conveyor belts purchased for use underground be flame resistant according to specifications established by the Secretary. Further, § 75.1108–1 specifies that conveyor belts which are approved as flame resistant under part 18 meet the requirements of § 75.1108. The proposal would modify these existing standards to require the acquisition of conveyor belts evaluated by MSHA as flame resistant under the revised flame test.

The revised test, as discussed earlier, would identify conveyor belts that are both difficult to ignite and also self-extinguishing under the test conditions. Therefore, conveyor belts passing the revised test would not only be resistant to ignition, but also highly resistant to flame propagation.

Several benefits are expected to accrue from the use of belts meeting the revised flame resistance test. These belts would reduce the number of fires in belt entries because propagation of fire would be severely limited. In turn, the probability that combustibles in the belt entry would ignite would be reduced.

MSHA believes that the fires that do occur in belt entries would be more quickly extinguished because the belt would not readily contribute to fire propagation The severity of the fire and it potential for exposing miners to hazards would thus be reduced. Therefore, belts meeting the revised flame resistance test would reduce the number and the size of fires in the belt entry and, in so doing, the potential for disaster.

As set out in the proposal, the revisions to part 75 would take effect in two stages. The proposed timetable is intended to introduce conveyor belt that has demonstrated increased flame-resistant qualities soon after the product is anticipated to be commercially available. Further, it would replace part 18 belt with belts meeting the revised test as belts are purchased for use in mines on and after a proposed date. This parallels the existing § 75.1108 statutory requirement which states that belt purchased for use in mines on and after a specified date be flame resistant.

The first change to part 75 would become effective at the same time that the revised approval requirements for conveyor belts in part 14 would take effect, i.e., 60 days after publication of the final rule. The proposal would amend § 75.1108–1 to state that, in addition to belts accepted as flame resistant under part 18, conveyor belts approved or accepted by MSHA as flame resistant using the revised flame test under either part 14 or the voluntary acceptance program would meet the requirements of § 75.1108. This modification explicitly would acknowledge the acceptability of a belt which passes the revised flame test as complying with the specifications of the Secretary. The conveyor belts which would be evaluated and accepted under the voluntary acceptance program have demonstrated a much higher degree of flame resistance compared to belts tested under § 18.65. For this reason, MSHA would consider belts accepted under the voluntary program to be comparable to belts approved under proposed part 14 and thus permitted to be used underground.

The second phase, being proposed now, would take effect one year later. At

that time, § 75.1108–1 would be amended by adding a new paragraph to require that all conveyor belts purchased for use in underground coal mines on and after one year from the effective date of part 14 be approved by MSHA as flame resistant under part 14 or accepted by MSHA as flame resistant under the voluntary acceptance program. Mine operators would be able to use part 18 approved belt inventories in their possession which were purchased prior to one year from the effective date of the final rule. After that inventory of part 18 belts is exhausted and existing part 18 belts wear out, the operator would be required to purchase belts meeting the revised flame test.

MSHA believes that a one year period would provide sufficient time for conveyor belt manufacturers to produce and make available to mine operators commercial quantities of conveyor belt meeting the revised flame test. This belief is based upon several factors. Belt manufacturers have been aware of, and monitoring the development of, a revised flame test for conveyor belts since BOM and MSHA initiated their belt fire studies in 1985. As the Government's work on the revised test progressed, belt producers were engaged in research and development to formulate belts that would pass a revised test addressing propagation of fire.

On January 19, 1989, MSHA held a public meeting to discuss the development of a revised laboratory-scale flame resistance test (54 FR 1802). At that time, the Agency, in conjunction with BOM, announced its willingness to test belts using the laboratory scale belt flame test apparatus at no charge. Many manufacturers have submitted samples of their conveyor belts to BOM and MSHA for this testing. As of December 1, 1991, fifteen manufacturers have had one or more different belt constructions demonstrate the ability to pass the revised test for flame resistance. These include both rubber and PVC formulations.

In addition, as indicated earlier, MSHA is implementing a voluntary acceptance program to evaluate the flame resistance of conveyor belt using the revised flame test set out in the proposal. MSHA would require belts meeting the performance criteria after testing to be marked with an acceptance number. The acceptance number would identify those belts as meeting the revised flame resistance test. The agency is aware that some manufacturers have already received orders from mine operators for belts which would pass the revised test. Further, when compatible belts identified by MSHA as having passed the revised flame resistance test become commercially available, mine operators with granted modifications under § 75.326 to use belt air to ventilate will be required to purchase belts meeting the revised test.

The Agency anticipates that manufacturers' participation in the voluntary program will result in sufficient quantities and types of improved flame-resistant conveyor belt being available for purchase by mine operators after one year. However, MSHA solicits information specifically from manufacturers on whether this time period is adequate to supply mine operators with the kind and quantity of belt needed for use in underground coal mines.

Derivation Table

The following derivation table lists: (1) Each section number of the proposed rule (New Section) and (2) the section number of the existing standard from which the proposed section is derived (Old Section).

New section	Old section
14.1	18.1.
14.2	18.2.
14.3	18.9(a).
14.4	18.6.
14.5	18.6(g) and 18.6(h).
14.6	18.10.
14.7	18.65(f).
14.8	New.
14.9	18.9.
14.10	New.
14.11	18.16.
14.20	New.
14.21	New.
14.22	New.
14.23	18.20(b)

Distribution Table

The following distribution table lists: (1) Each section number of the existing standard (Old Section) and (2) each section number of the proposed part 14 (New Section).

Old section	New section
18.1	14.1.
18.2	14.2.
18.6	14.4 and 14.5.
18.9	14.3 and 14.9.
18.10	14.6.
18.16	14.11.
18.20(b)	14.23.
18.65(f)	14.7.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify the potential costs and benefits associated with subpart B. This analysis has formed the basis for the Preliminary Regulatory Impact Analysis (PRIA). In this analysis, MSHA has determined that this rule neither results in major cost increases nor has an effect of $100 million or more on the economy. A copy of the PRIA is available upon request.

MSHA estimates that the annual cost of the proposed rule to mine operators would be between $6.7 million and $8.2 million. As belt manufacturers incur increased research and development cost, their cost would be about $1.2 million the first year, $467,000 the second year, and about $36,500 each year thereafter.

There have been 307 reportable fires in underground coal mines since 1970. Of these, 42 fires involved the conveyor belt and as much as 2,000 feet (600 m) of belt has burned before a fire could be extinguished. One miner suffered a fatal heart attack fighting a conveyor belt fire. Another miner suffered a non-fatal heart attack and several miners have had to be hospitalized and treated for smoke inhalation. The conveyor belt meeting the revised test is expected to be difficult to ignite and extremely resistant to flame propagation. Thus, the number and size of fires in the belt entry will be reduced, as will the potential for disaster.

The Agency has not proposed exemption of small mines from any provision of the proposal. Of the approximately 1,800 underground coal mines affected by the proposed rule, MSHA estimates that 969 are small businesses employing fewer than 20 miners. The annual cost of compliance per miner is estimated to be between $50 and $70 in a small underground coal mine. This cost represents less than 0.095 percent of the average small mines value of shipments.

The Agency solicits comments and data on how the proposed rule would affect all belt manufacturers and all underground coal mines, including small manufacturers and small mine operators. In particular, MSHA requests information on: (1) The quantity of belt currently in use that would pass the proposed test; (2) the size of the market for used underground conveyor belt; (3) the cost of belt that will pass the revised flame test ("new" belt) versus belt that passes the current flame test ("old" belt); (4) whether costs of the "new" belt will decline as production increases and by how much; and (5) whether "new" belts are compatible with "old" belts, with existing hardware, and whether PVC and rubber belts can be spliced together.

V. Metric Measurements

Under section 5164 of the Omnibus Trade and Competitiveness Act of 1988, MSHA intends to begin providing both

metric and English specifications in its rules to assist industry in converting to metric measurements where appropriate. In most cases, the conversion from English units to metric units was made by rounding to one decimal place. However, where tolerances are indicated, rounding of the metric measurement was made to two decimal places to keep the numbers within tolerances. MSHA requests comments on the metric conversion and equivalences of the English inch-pound measurements in this proposed rule.

List of Subjects in 30 CFR Part 14

Approval of equipment, Mine safety and health, Underground mining.

Dated: December 18, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

It is proposed that chapter I of title 30, of the Code of Federal Regulations be amended as follows:

1. Add a new part 14 to subchapter B chapter I, title 30 of Code of Federal Regulations to read as follows:

PART 14—REQUIREMENTS FOR APPROVAL OF FLAME-RESISTANT CONVEYOR BELT

Subpart A—General

Sec.

14.1 Purpose and effective date.
14.2 Definitions.
14.3 Observers at tests and evaluations.
14.4 Application procedures and requirements.
14.5 Test samples.
14.6 Issuance of approval.
14.7 Approval marking and distribution records.
14.8 Quality assurance.
14.9 Disclosure of information.
14.10 Post-approval product audit.
14.11 Revocation.

Subpart B—Technical Requirements

14.20 Flame resistance.
14.21 Belt flame test apparatus.
14.22 Test for flame resistance of conveyor belts.
14.23 New technology.

Authority: 30 U.S.C. 957.

Subpart A—General

§ 14.1 Purpose and effective date.

This part establishes the flame resistance requirements for MSHA approval of conveyor belts for use in underground mines. Applications for approval or extension of approval submitted after [60 DAYS FROM PUBLICATION OF THE FINAL RULE] shall meet the requirements of this part.

§ 14.2 Definitions.

The following definitions apply in this part.

Applicant. An individual or organization that manufactures or controls the production of a conveyor belt and that applies to MSHA for approval of that conveyor belt.

Approval. A document issued by MSHA which states that a conveyor belt has met the requirements of this part and which authorizes an approval marking identifying the conveyor belt as approved.

Conveyor belt. A flexible strip of material typically constructed of interwoven or fabric plies and polymeric compounds which is used to transport coal or other extracted minerals.

Extension of approval. A document issued by MSHA which states that the change to a product previously approved by MSHA under this part meets the requirements of this part and which authorizes the continued use of the approval marking after the appropriate extension number has been added.

Load bearing cover. The cover of a conveyor belt upon which extracted minerals are conveyed.

Post-approval product audit. Examination, testing, or both, by MSHA of an approved conveyor belt selected by MSHA to determine whether it meets the technical requirements and has been manufactured as approved.

§ 14.3 Observers at tests and evaluations.

Only personnel of MSHA and the Bureau of Mines, U.S. Department of the Interior, representatives of the applicant and such other persons as agreed upon by MSHA and the applicant shall be present during tests and evaluations conducted under this part.

§ 14.4 Application procedures and requirements.

(a) *Application.* Requests for an approval or an extension of an approval under this part shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, P.O. Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

(b) *Fees.* Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

(c) *Approval.* Each application for approval of a conveyor belt shall include the following, except that any document which is the same as the one listed by MSHA in a prior approval need not be submitted. Such documents shall be noted in the application.

(1) A technical description of the conveyor belt which includes—

(i) Trade name or identification number;

(ii) Cover compound type and designation number;

(iii) Belt thickness and thickness of top and bottom covers;

(iv) Presence and type of skim coat;

(v) Presence and type of friction coat;

(vi) Carcass construction (number of plies, solid woven);

(vii) Carcass fabric by textile type and weight (ounce per square yard);

(viii) Presence and type of breaker or floated ply; and

(ix) The number, type and size of cords for metal cord belts.

(2) Formulation information on the compounds in the conveyor belt by either—

(i) Specifying each ingredient by its chemical name along with its percentage (weight) and tolerance of percentage range, or;

(ii) Specifying each flame retardant ingredient by its chemical or generic name with its percentage and tolerance or percentage range or its minimum percent. List each flammable ingredient by chemical, generic, or trade name along with the total percentage of all flammable ingredients. List each inert ingredient by chemical, generic, or trade name along with the total percentage of all inert ingredients.

(3) The name, address and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(4) Identification of any similar conveyor belt for which the applicant already holds an approval by including—

(i) The MSHA assigned approval number of the conveyor belt which most closely resembles the new one, and

(ii) An explanation of any changes from the existing approval.

(d) *Extension of approval.* Any change in an approved conveyor belt from the documentation on file at MSHA that affects the technical requirements of this part shall be submitted for approval prior to implementing the change. Each application for an extension of approval shall include—

(1) The MSHA-assigned approval number for the conveyor belt for which the extension is sought;

(2) A description of the proposed change to the conveyor belt; and

(3) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(e) MSHA will determine if testing, additional information, samples, or material are required to evaluate an application. If the applicant believes that flame testing is not required, a

statement explaining the reasons for not testing shall be included in the application.

§ 14.5 Test samples.

Upon request by MSHA, the applicant shall submit 3 unrolled, flat conveyor belt samples for flame testing. Each sample shall be 60±¼-inches long (152.4±0.6 cm) long by 9±⅛-inches (22.9±0.3 cm) wide.

§ 14.6 Issuance of approval.

(a) MSHA will issue an approval or a notice of the reasons for denying approval after completing the evaluation and testing provided for by this part.

(b) An applicant shall not advertise or otherwise represent a conveyor belt as approved until MSHA has issued an approval.

§ 14.7 Approval marking and distribution records.

(a) An approved conveyor belt shall be marketed only under the name specified in the approval.

(b) Approved conveyor belt shall be legibly and permanently marked for the usable life of the belt with the assigned MSHA approval number. The approval marking shall be at least ½-inch (1.27 cm) high, placed at intervals not exceeding 60 feet (18.3 m) and repeated at least once every foot (30.5 cm) across the width of the belt.

(c) Where construction of the conveyor belt does not permit marking in accordance with the foregoing, other permanent marking may be accepted by MSHA.

(d) Applicants shall maintain records of the initial sale of each belt having an approval marking. The record retention period shall be at least the expected service life of the belt.

§ 14.8 Quality assurance.

Applicants granted an approval or an extension of approval under this part shall—

(a) Flame test a sample of each batch or lot of conveyor belts or inspect, test, or both, a sample of each batch or lot of the materials that contribute to the flame-resistance characteristic to ensure that the finished product will meet the flame-resistance test.

(b) Calibrate instruments used for the inspection and testing in paragraph (a) of this section at least as frequently as, and according to, the instrument manufacturer's specifications, using calibration standards traceable to those set by the National Institute of Standards and Technology, U.S. Department of Commerce or other nationally recognized standards and use instruments accurate to at least one significant figure beyond the desired accuracy.

(c) Control production documentation so that the product is manufactured as approved.

(d) Immediately report to the MSHA Approval and Certification Center, any knowledge of a conveyor belt that has been distributed that does not meet the specifications of the approval.

§ 14.9 Disclosure of information.

(a) All information concerning product specifications and performance submitted to MSHA by the applicant shall be considered proprietary information.

(b) MSHA will notify the applicant of requests for disclosure of information concerning its conveyor belts and shall give the applicant an opportunity to provide MSHA with a statement of its position prior to any disclosure.

§ 14.10 Post-approval product audit.

(a) Approved conveyor belts shall be subject to periodic audits by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. Any approved conveyor belt which is to be audited shall be selected by MSHA and be representative of those distributed for use in mines. Upon request the approval-holder may obtain any final report resulting from such audit.

(b) No more than once a year, except for cause, the approval-holder at MSHA's request, shall make 3 samples of an approved conveyor belt available at no cost to MSHA for an audit. The approval-holder may observe any tests conducted during this audit.

(c) An approved conveyor belt shall be subject to audit for cause at any time MSHA believes that it is not in compliance with the technical requirement upon which the approval was based.

§ 14.11 Revocation.

(a) MSHA may revoke for cause an approval issued under this part if the conveyor belt—

(1) Fails to meet the technical requirements; or

(2) Creates a hazard when used in a mine.

(b) Prior to revoking an approval, the approval-holder shall be informed in writing of MSHA's intention to revoke. The notice shall—

(1) Explain the specific reasons for the proposed revocation; and

(2) Provide the approval-holder an opportunity to demonstrate or achieve compliance with the product approval requirements.

(c) Upon request, the approval-holder shall be afforded an opportunity for a hearing.

(d) If a conveyor belt poses an imminent hazard to the safety or health of miners, the approval may be immediately suspended without a written notice of the Agency's intention to revoke. The suspension may continue until the revocation proceedings are completed.

Subpart B—Technical Requirements

§ 14.20 Flame resistance.

Conveyor belts shall be flame resistant when tested in accordance with the test for flame resistance specified in § 14.22 of this part.

§ 14.21 Belt flame test apparatus.

The principal parts of the apparatus used to test for flame resistance of conveyor belts are as follows—

(a) A horizontal test chamber 5.5 feet (1.68 m) long by 1.5 feet (0.46 m) square (inside dimensions) constructed from 1-inch (2.5 cm) thick Marinite I, or equivalent insulating material.

(b) A tapered 16-gauge (0.16 cm) stainless steel duct section tapering over a length of at least 24 inches (61 cm) from a 20-inch (51 cm) square cross-sectional area at the test chamber to a 1 foot (30.5 cm) diameter exhaust duct, or equivalent. The interior surface of the tapered duct section is lined with ½-inch (1.27 cm) thick ceramic blanket insulation, or equivalent insulating material. The tapered duct must be tightly connected to the test chamber.

(c) A U-shaped gas-fueled impinged jet burner ignition source, measuring 12 inches (30.5 cm) long and 4 inches (10.2 cm) wide, with two parallel rows of 6 jets. Each jet is spaced alternately along the U-shaped burner tube. The 2 rows of jets are canted so that they point toward each other and their flames impinge upon each other in pairs. The burner fuel is at least 98 percent methane (technical grade, or natural gas containing at least 96 percent combustible gases which includes not less than 93 percent methane.)

(d) A removable steel rack, consisting of 2 parallel rails and supports that form a 7-inch (17.8 cm) wide by 60-inch (152.4 cm) long assembly to hold a belt sample. The 2 rails, with a 5-inch (12.7 cm) space between them, comprise the top of the rack. The rails are constructed of slotted angle iron with holes along the top surface. The top surface of the rack shall be 8 ± ⅛ inches (20.3 ± 0.3 cm) from the inside roof of the test chamber.

§ 14.22 Test for flame resistance of conveyor belts.

(a) *Test procedures.* The test is conducted in the following sequence using a flame test apparatus meeting the specifications of § 14.21 of this part—

(1) Lay three samples of the belt, 60±¼-inches (152.4±0.6 cm) long by 9±⅛-inches (22.9±0.3 cm) wide, flat at 70±10 °F (21±5 °C) for at least 24 hours prior to the test.

(2) For each test, place a belt sample with the load bearing cover up, as appropriate, on the rails of the rack so that the sample extends 1±⅛-inch (2.5±0.3 cm) beyond the front of the rails and about 1 inch (2.5 cm) from the outer lengthwise edge of each rail.

(3) Fasten the sample to the rails of the rack with steel washers and cotter pins of such length that at least ¾-inch (1.9 cm) extends below the rails. Equivalent fasteners may be used. Make a series of 5 holes, about 9/32-inch (0.7 cm) in diameter along both edges of the belt sample starting at the first rail hole within 2 inches (5.1 cm) from the front edge of the sample. Make the next hole about 5 inches (12.7 cm) from the first, the third about 5 inches (12.7 cm) from the second, the fourth about midway along length of sample, and the fifth near the end of the sample. After placing a washer over each sample hole, insert a cotter pin through the hole and spread it apart to secure the sample to the rail.

(4) Center the rack and sample in the test chamber with the front end of the sample 6±½ inches (15.25±1.27 cm) from the entrance.

(5) Measure the airflow with a nominal 4-inch (10.2 cm) diameter vane anemometer, or an equivalent device, placed on the centerline of the belt about 1 foot (30.5 cm) from the chamber entrance. Adjust the airflow passing through the chamber to 200±20 ft/min (61±6 m/min).

(6) Before starting, the inner surface temperature of the chamber roof measured at points approximately 6, 30, and 60 inches (15.2, 76.2, and 152.4 cm) from the front entrance of the chamber, shall not exceed 95 °F (35 °C) at any of these points with the specified airflow passing through the chamber. The temperature of the air entering the chamber during a test shall not be less than 50 °F (10 °C).

(7) Center the burner in front of the sample's leading edge with the plane, defined by the tips of the burner jets, approximately ¾-inch (1.9 cm) from the front edge of the belt.

(8) With the burner lowered away from the sample, set the gas flow at 1.2±0.1 standard cubic feet per minute (SCFM) (34±2.8 liters per minute) and ignite the gas. Maintain the gas flow throughout the ignition period.

(9) After applying the burner flame to the front edge of the sample for a 5.0 to 5.1 minute ignition period, lower the burner away from the sample and extinguish the burner flame.

(10) After completion of the test, determine the undamaged portion across the entire width of the sample. Blistering without charring does not constitute damage.

(b) *Acceptable performance.* For 3 tested samples, each sample shall exhibit an undamaged portion across its entire width.

(c) MSHA reserves the right to modify the procedures of the flammability test for belts constructed of thickness more than ¾-inch (1.9 cm) to provide agreement with results of the large-scale belt flammability tests on these belts.

§ 14.23 New technology.

MSHA may approve a conveyor belt that incorporates technology for which the requirements of this part are not applicable if the Agency determines that the conveyor belt is as safe as those which meet the requirements of this part.

PART 18—[AMENDED]

2. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

§ 18.1 [Amended]

3. Section 18.1 is amended by revising the phrase "cables, hoses and conveyor belts" to read "cables or hoses".

§ 18.2 [Amended]

4. Section 18.2 is amended by revising the phrase "cable, hose or conveyor belt" in the definitions of "Acceptance", "Acceptance Marking", and "Applicant" to read "cable or hose" and removing the definition for "Fire-resistant".

§ 18.6 [Amended]

5. Section 18.6(a) is amended by revising the phrase "cables, hose or conveyor belt" to read "cables or hose".

6. Section 18.6(c) is removed and reserved.

7. Section 18.6(i) is amended by revising the phrase "cable, hose or conveyor belt" to read "cable or hose" and removing the words "conveyor belt—a sample of each type 8 inches long cut across the entire width of the belt."

§ 18.9 [Amended]

8. Section 18.9(a) is amended by revising the phrase "cable, hose or conveyor belt" to read "cable or hose".

§ 18.65 [Amended]

9. Section 18.65 is amended in the heading by removing the phrase "conveyor belting and" and removing and reserving paragraph (a)(1) and removing and reserving paragraph (f)(1).

10. Section 18.94(a)(2) is revised to read as follows:

§ 18.94 Application for field approval; contents of application.

(a) * * *

(2) The trade name and the flame resistance acceptance or approval number of any cable, cord, hose, or conveyor belt installed on the machine for which prior acceptance or approval by MSHA has been issued.

* * * * *

PART 75—[AMENDED]

11. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

12. Revise § 75.1108–1 to read as follows:

§ 75.1108–1 Approved conveyor belts.

(a) Effective [60 DAYS FROM PUBLICATION OF THE FINAL RULE] conveyor belts meet the requirements of § 75.1108 if they are—

(1) Approved by MSHA as flame resistant under part 14;

(2) Accepted by MSHA as flame resistant under the voluntary acceptance program; or

(3) Accepted by MSHA as flame resistant under part 18.

(b) On and after [ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE] all conveyor belts purchased for use in underground coal mines shall be approved by MSHA as flame resistant under part 14 or accepted by MSHA as flame resistant under the voluntary acceptance program.

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Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Operation and Maintenance of Machinery and Equipment in Underground Coal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA80

Safety Standards for Operation and Maintenance of Machinery and Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's (MSHA) safety standard, which addresses the operation and maintenance of equipment in underground coal mines. The revision would clarify that adding or removing conveyor belting is a maintenance activity covered by the standard.

DATE: All comments and information must be submitted by February 22, 1993.

ADDRESS: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no paperwork requirements.

II. Background

MSHA is proposing to revise its existing safety standard that applies to mechanical work on equipment in underground coal mines. The revision would clarify that adding or removing conveyor belting would be considered maintenance for purposes of 30 CFR 75.1725(c). This revision is proposed under section 101 of the Federal Mine Safety and Health Act of 1977, (30 U.S.C. 811).

On June 25, 1992, the Federal Mine Safety and Health Review Commission (FMSHRC) issued a decision in the case of Southern Ohio Coal Co., 14 FMSHRC 978. In that decision, the Commission reversed an administrative law judge's decision, and concluded in part that extending the conveyor belt, which the mine operator was doing, did not constitute "maintenance" within the meaning of 30 CFR 75.1725(c).

The Commission held that the judge misinterpreted the definition of "maintenance." The Commission determined that the judge's literal interpretation of the terms "maintenance" and "extension" was incorrect when applied to the actual work of extending the belt. Instead, the Commission interpreted the term "maintenance" to mean the act of keeping something in a state of repair or in good order. The Commission concluded that a belt extension was an improvement rather than maintenance, as it shortened the distance between the belt's feeder and the working face.

The accident that gave rise to the case occurred on May 5, 1989, and was followed by the issuance of a citation during MSHA's accident investigation. On the day of the accident a work crew was extending a belt approximately 100 feet toward the face of the mine when the deenergized belt was restarted in order to remove slack from the belt. When the belt was restarted, one miner who was still working on the belt, was caught in a belt chain and thrown from the belt, sustaining an injury to his leg.

The Commission decision also raised other safety issues related to maintenance and repair of mechanical equipment. The Agency also is considering whether other safety procedures are necessary to protect miners while performing work on mechanical equipment.

III. Discussion of Proposed Rule

MSHA's existing standard in 30 CFR 75.1725(c) allows repairs or maintenance on machinery only when the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. Since promulgation of this standard in 1973, the Agency has consistently interpreted the requirement to include the types of activities that this revision would address.

The proposed rule would revise paragraph (c) of § 75.1725 to clarify that activities involved in adding or removing conveyor belting are considered maintenance. MSHA believes this revision would eliminate confusion with respect to enforcement of this standard. This approach is consistent with current enforcement of this provision.

Moving or extending conveyor belts becomes necessary as mining progresses and penetrates deeper into the coal seam. The hazards that miners are exposed to while extending the conveyor belt are essentially the same as those involved in more routine belt maintenance such as replacement of rollers and installing and splicing new sections of belt. Similar hazards exist when conveyor belts are shortened by removing belt as mining sections retreat. Therefore, MSHA believes that it is important to clarify that power must be removed from conveyor belts when these activities take place.

IV. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis (RIA) be done for any rule that would have an annual effect of $100 million or more on the economy or result in a major increase in costs or prices for consumers or individual industries. The Agency has determined that the revision would not be a major action.

The Regulatory Flexibility Act requires that agencies evaluate the potential economic impact of any regulatory actions on small entities. MSHA has determined that this proposal would not have a significant economic impact on a substantial number of small entities.

It is standard operating procedure for mine operators to deenergize electrical equipment before performing maintenance on such equipment, including extending or shortening the conveyor belt. The Agency contends that the proposed revision would clarify the regulatory language to reflect more accurately the existing requirements which have been enforced since the standard was promulgated originally in 1973.

List of Subjects in 30 CFR Part 75

Mandatory safety standards, Mine safety and health, Underground coal mines.

Dated: December 18, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, subchapter O, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.1725 is proposed to be amended by revising paragraph (c) to read as follows:

§ 75.1725 Machinery and equipment; operation and maintenance.

* * * * *

(c) Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make

adjustments. All activities involved in adding or removing conveyor belting are considered maintenance for purposes of this paragraph.

* * * * *

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Part VII

Environmental Protection Agency

40 CFR Part 261
Suspension of Toxicity Characteristics Rule for Non-UST Petroleum Product-Contaminated Media and Debris; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–4548–6]

Suspension of the Toxicity Characteristics Rule for Non-UST Petroleum Product-Contaminated Media and Debris

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to suspend the Toxicity Characteristics (TC) rule (Hazardous Waste Codes D018 through D043 only) for three years for environmental media and debris contaminated by petroleum products released from sources other than RCRA subtitle I-regulated underground storage tanks (hereafter, these releases and sources of release will be referred to as "non-UST"). During the three year suspension, the Agency would collect additional data, perform additional analyses, and explore other administrative and legal mechanisms to better tailor RCRA regulatory requirements to the unique issues associated with remediation of petroleum releases. The suspension would be applicable only in states that certify that they have in place effective authorities and programs to compel cleanup of non-UST petroleum product spills and control the disposition of wastes generated from such cleanup actions. The suspension would apply only to wastes generated from state supervised or approved cleanup sites, and sites being remediated under Federal authorities.

DATES: Written comments on this proposed rule should be submitted on or before February 8, 1993.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS–305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference number F–92–STPP–FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260–9327. Copies of docket materials may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: General questions about the regulatory requirements under RCRA should be directed to the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC 20460, (800) 424–9346 (toll-free) or (202) 260–3000 (local). For the hearing impaired, the number is (800) 553–7672 (toll-free), or (202) 260–9652 (local).

Specific questions about the issues discussed in this proposed rule should be directed to David M. Fagan, Office of Solid Waste (OS–341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–4740.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are issued under the authority of sections 2002 and 3001 *et seq.* of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6912 and 6921 *et seq.*

II. Background

A. Toxicity Characteristics Rule

1. General

Under current regulations, EPA uses two procedures to define wastes as hazardous: *Listing and hazardous characteristics*. The listing procedure involves identifying industries or processes that produce wastes that pose hazards to human health and the environment. The second procedure involves identifying properties or "characteristics" that, if exhibited by any waste, indicate a potential hazard if the waste is not properly managed. Toxicity is one of four characteristics that must be considered when identifying a waste as hazardous. The others are ignitability, reactivity, and corrosivity.

The Toxicity Characteristics (TC) Rule was promulgated on March 29, 1990, 55 FR 11798 (March 29, 1990), was amended on June 29, 1990, and became effective on September 25, 1990. The TC rule has three main features. First, it replaced the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP). Second, it added 25 organic chemicals to the list of toxic constituents of concern and established regulatory levels for these organic chemicals. These levels were based on health-based concentration thresholds and a dilution/attenuation factor (DAF) that was developed using a subsurface fate and transport model. (A concentration threshold indicates how much of a chemical adversely affects human health, while the dilution/attenuation factor indicates the extent to which the concentration of a chemical is expected to be reduced during transport to and through ground water. The levels set in the TC rule were determined by multiplying the health-based number by a dilution/attenuation factor of 100.

The overall effect of the TC rule was to subject additional wastes to regulatory control under subtitle C of RCRA. A waste may be a "TC waste" if any of the chemicals listed in the rule, such as benzene, are present in waste sample extract (i.e. leachate) resulting from application of the TCLP to that waste. If chemicals are present at or above the specified regulatory levels, the waste is a "TC waste," and is subject to all RCRA hazardous waste requirements. Among these wastes are petroleum contaminated media and debris that fail the TC.

2. Deferral of the Application of the TC Rule to Petroleum Contaminated Media and Debris From Subtitle I—Regulated Underground Storage Tanks

Also on March 29, 1990, the Agency made a decision to defer a final determination regarding the application of the TC to media and debris contaminated with petroleum from underground storage tanks (USTs) subject to the part 280 (*i.e.* RCRA Subtitle I corrective action) requirements. 55 FR 11836. The UST regulations governing cleanups at these sites were deemed adequate to protect human health and the environment in the interim.

At that time the Agency had insufficient information concerning the full impact of the TC rule on UST cleanups, particularly regarding the amount of contaminated media that would become hazardous waste and the type of management feasible and appropriate for such waste (*e.g.* on-site treatment, off-site disposal). However, available information suggested that the impact might be very severe in terms of the administrative feasibility for both the subtitle C and subtitle I programs. In addition, a preliminary assessment indicated that the number of UST cleanup sites and the amount of media and debris at each site that would exhibit the toxicity characteristic could be extremely high, with EPA expecting hundreds of thousands of UST releases to be uncovered in the next few years. EPA believed that subjecting each of these sites to subtitle C requirements could overwhelm the hazardous waste

permitting program and the capacity of existing hazardous waste treatment, storage, and disposal facilities. Moreover, EPA believed that the imposition of these requirements could delay cleanups significantly, require an enormous commitment of federal resources, and undermine the State and local focus of the UST program.

The application of the TC rule to UST cleanups was deferred to allow cleanups under the UST program to proceed while the Agency evaluated the extent and nature of the impacts of Subtitle C on the UST program. Specifically, the Agency is currently studying the characteristics of UST sites (*i.e.* number of UST sites by media type, volumes of media and debris typically removed, fraction of these media and debris that exhibit the TC, if any, etc.), current practices and requirements for management of these media and debris, and how contaminated media and debris from these sites are managed under the Subtitle I state programs. The Agency is also evaluating the impact that Subtitle C management of petroleum-contaminated media and debris from USTs would have on the Agency's and States' hazardous waste management programs. In addition, the inclusion of these media and debris in the Subtitle C management system is being evaluated in comparison to the available capacity for commercial hazardous waste treatment, storage, and disposal. EPA is also studying whether the Agency can make regulatory changes to the subtitle C program which will better tailor the current hazardous waste rules to these particular current hazardous waste rules to these particular types of wastes and the context in which they are managed. (See 57 FR 21450, May 20, 1992.) The Agency plans to complete these studies later in 1992 and make its final determination early in 1993.

B. State Petitions for Rulemaking

Since the Agency announced its decision to defer the TC for UST petroleum contaminated media and debris, a number of States and other affected parties have requested that EPA consider expanding the deferral to include other petroleum contaminated media and debris. In particular, rulemaking petitions were received from the States of New York, Nevada, South Dakota, North Dakota, Maryland, and Maine, requesting that the current UST deferral be expanded to media contaminated from surface and subsurface discharges of petroleum products (from non-UST sources) that are currently being adequately addressed by existing State programs. In addition, the Agency has received letters from several other States which support the requests, concerns, and ideas expressed in the above-mentioned petitions.

The States believe that the numbers and volumes of petroleum releases from non-UST sources almost certainly exceed those from USTS. They argue that there is no technical basis for distinguishing between contaminated media and debris generated from UST cleanups (which is not subject to RCRA subtitle C), and that generated from other cleanups (which potentially is subject). In addition, this distinction presents substantial difficulties for the regulated community, which must determine whether a specific spill derives from an UST or from other sources, and it severely complicates enforcement.

These States further state that they have active and effective response programs for cleanup of spills and other releases of petroleum into the environment. For example, New York has an extensive petroleum cleanup program that, in its judgment, places a stringent set of requirements on petroleum-contaminated media. In New York, any soil left on site must be treated to the point where the extract from a TCLP test meets the New York State groundwater standard for benzene of 5 ppb.

According to the petitioning States, the toxicity characteristics rule has seriously impacted the operations and effectiveness of their programs. For example, in North Dakota the advent of the TC rule placed several existing environmental control rules and programs in conflict with each other. Reclassifying certain petroleum releases as hazardous waste that were previously handled outside of the hazardous waste program by the state above-ground storage tanks program, potentially places an extreme burden on that State's Hazardous Waste Program. In general, States argue that application of the toxicity characteristic to petroleum contaminated media and debris will place extraordinary demands on the RCRA permit program, which in turn could severely affect States' efforts to permit other RCRA facilities that are of higher environmental priority.

Finally, some states have pointed out that the toxicity characteristic has created a disincentive for private party cleanup initiatives by imposing RCRA permit requirements on many of those actions. In addition, some have suggested that the TC rule has created an incentive to simply dilute contaminated media (or delay testing in order to allow certain TC constituents to volatilize) so that the contaminated media no longer exhibit the toxicity characteristic.

C. Public Meetings

In September and December, 1991, EPA met with various affected parties (including representatives from the States, Congressional staff, environmental groups, and the waste-treatment and generating industries) to discuss issues related to the cleanup of petroleum contamination and the potential impacts of the TC rule on this cleanup. During these meetings, the Agency listened to various opinions and views concerning the impact of the TC rule and the potential impacts of a possible Agency decision to expand the UST deferral to all petroleum contaminated media and debris.

EPA was struck by the unanimity of opinion among the thirteen states present concerning the detrimental impacts of the TC rule on their ability to achieve timely and effective cleanup of spilled petroleum product. EPA was also struck by the concern being expressed by State environmental regulators about the adverse environmental impacts resulting from the application of the TC rule to petroleum releases from above-ground sources. The State representatives indicated that subtitle C regulation of petroleum contaminated media and debris would significantly increase the cost of cleanup of these releases, substantially delay cleanup, and in some cases (by delaying cleanup) negatively impact human health and the environment.

A number of States have funds that provide for some reimbursement of cleanup costs for above ground (as well as underground) petroleum spills. Many cleanup contractors provide cleanup services to responsible parties (RPs) "on credit," knowing that they will be paid by the RPs shortly after the work is completed. According to these States, if petroleum cleanup wastes are regulated under RCRA subtitle C, the resulting dramatic increase in costs of waste management would significantly impair the ability of the State to reimburse future cleanups. If there is no guarantee that payment will be forthcoming, several States believe that remediation contractors will be much less willing to respond promptly to spills. Further, it is unlikely that States will substantially increase these funds for the foreseeable future. The net result, according to these States, will be that fewer sites will be remediated. With fewer sites being addressed, spilled material will migrate further and potentially expose more

people, fish, and wildlife to contamination.

Unremediated spills of petroleum product onto soil can result in petroleum product reaching groundwater through infiltration, and, surface water through run-off. Benzene, a common constituent of many types of petroleum products, is carcinogenic and moderately toxic to aquatic organisms.

In the view of many States, the delays associated with RCRA subtitle C management would allow for the volatilization and migration of certain TC constituents such as benzene to the extent that the media may no longer fail the TC. These States point to RCRA testing and permitting as significant sources of delay. In addition, States cautioned EPA to recognize that, because of the high costs associated with subtitle C management and the high volatility of certain TC constituents of petroleum, there is a significant disincentive to promptly report and remediate petroleum spills.

Groups representing the generating industries (*e.g.*, petroleum and petrochemical industries) at the meetings generally agreed with the views being expressed by the States, although several stated that the problem was not unique to petroleum-contaminated media, but rather should be extended to other types of TC hazardous contaminated media.

Environmental interest group representatives were sensitive to the importance of the issues being raised by the States, but saw the States' position as similar to other claims that regulations deter effective actions. The environmental representatives agreed on the merits of streamlining the administrative procedures and processes (e.g., RCRA subtitle C permitting) for petroleum spill response actions, but felt that regulatory control was necessary to ensure environmental safety. They were also concerned about the extent to which State regulatory programs for non-UST spill cleanups are in fact adequately protective of human health and the environment, and the extent to which States place sufficient emphasis on spill prevention. The environmental group representatives also argued that certain features of a RCRA permit which they believe are important—particularly, public involvement and facility-wide corrective action—would be lost if EPA adopted the approach suggested in the States' petitions.

Certain representatives of the hazardous waste treatment industry expressed strong concerns with the Agency pursuing a suspension of the TC rule as the mechanism for solving the implementation problems posed by Subtitle C regulation of petroleum contaminated media and debris. According to these representatives, EPA should consider streamlining the RCRA permitting process for the cleanup and disposal of petroleum contaminated media and debris. They specifically suggested that EPA consider issuing permits-by-rule for petroleum contaminated media and debris, as well as for other cleanup wastes. They also expressed concern that the States' approach would effectively exempt petroleum-contaminated media from RCRA technical standards, in particular the land disposal restrictions. Other representatives of the treatment industry, however, supported the States' approach and favored expanding it to other cleanup wastes.

III. Basis for the Proposed Suspension

A. Purpose of the Suspension

The purpose of today's notice is to propose a suspension of the 1990 Toxicity Characteristics (TC) rule as it applies to non-UST petroleum product-contaminated media and debris for a period of three years.[1] As discussed in more detail below, the Agency believes that the States have raised sufficient concerns about the environmental impacts of applying the TC rule to petroleum contaminated media and debris to warrant study of this issue in the same manner in which the Agency is currently conducting analysis for petroleum contaminated media and debris from USTs. EPA believes, in addition, that the TC should be suspended in the interim while the Agency fully studies this issue and prepares any regulatory adjustments necessary and appropriate for the regulation of this material under the RCRA subtitle C program. Thus, the purpose of this suspension is to give the Agency three years in which to collect additional information on the nature, scope, and environmental impacts of regulating non-UST petroleum product-contaminated media and debris under RCRA Subtitle C and determine whether and how such regulation should be established.

This suspension does not constitute a final decision by the Agency on how to integrate the TC with existing State petroleum cleanup programs. Rather, EPA bases the suspension on the significant issues raised by the States and a recognition that increased human and environmental exposures to petroleum product would likely occur without a period for EPA to undertake additional data gathering and analyses. EPA will make a final decision and implement any regulatory adjustments at the end of the three year suspension.

During the three year suspension, EPA believes that existing State laws and programs will adequately protect human health and the environment. To ensure such protection, EPA is proposing that the suspension would apply only where media or debris is cleaned up under State oversight through enforcement orders or other explicit written State approval. States would have to certify to the EPA Regional Administrator that they have legal authorities and programs in place to administer and enforce those authorities, that can compel cleanup of non-UST petroleum product-contaminated media and debris, and control the treatment, storage and disposal of such waste when cleaned up.

B. Available Information on Scope of the Problem and Impacts of Subtitle C

1. Nature and Frequency of Petroleum Product Contamination

Petroleum product releases occur daily throughout the United States in the course of the transport and storage of the billions of gallons of petroleum product used in this country each year. The majority of spills are under 1,000 gallons and occur from transmission pipelines, gathering lines, pump stations, storage tanks, and transport vehicles. According to a recent American Petroleum Institute survey of 42 States, over 36,000 above ground petroleum product spills occurred in the United States in 1990 alone. The API survey also indicated that over 23,000,000 gallons of product were released in 24 States in 1990. Information from the States of New York and Texas indicate that the majority of petroleum product spills occur to land. Based on these data and data submitted by the State of New York, EPA estimates that over 3.5 million tons of petroleum contaminated environmental media (mostly soil) and debris were created in 1990 alone as a result of these spills.

Regulating the disposal of these contaminated media and debris under Subtitle C of RCRA potentially means: (1) Characterization for TC (which may often involve testing) at as many as 36,000 locations per year, (2) manifesting from many thousands of points of generation (when contaminated media and debris are

[1] Since the scope of today's proposal includes groundwater contaminated with petroleum product, this proposal, if finalized, would supersede the exclusion for injected groundwater from hydrocarbon recovery operations, which was due to expire on January 25, 1993. See 40 CFR 261.4(b)(11), and 56 Fed. Reg. 13406 (April 2, 1991).

disposed of off-site) per year, and (3) treating, storing, and/or disposing of a substantial portion of the 3.5 million tons per year of petroleum contaminated soil in RCRA permitted hazardous waste facilities. If on-site RCRA treatment, storage, or disposal were to be the chosen alternative at even one-half of these 36,000 sites each year, the number of new RCRA hazardous waste permits needed to address petroleum product cleanup would vastly surpass the 4,500 facilities which make up the current RCRA TSDF universe.

In addition to spills which occur as a result of the day-to-day use of petroleum product, EPA expects that there will be many potentially large, complex petroleum product contaminated sites which require remediation as well. One example is the Oil City site in Syracuse, New York, where there has been a great deal of interest on the part of the local government and private parties in converting this 800 acre former petroleum tank terminal property to residential and commercial use. The regulation of petroleum product contamination under RCRA subtitle C at this and other similar sites creates a significant disincentive to private parties to conduct any cleanup activities. Such cleanups can generate hundreds of thousands of cubic yards of contaminated media and cost tens to hundreds of millions of dollars to cleanup. Since few private uses of this land would create economic benefits of this magnitude, the Oil City site and similar sites may not be cleaned up for the foreseeable future.

The nature of petroleum as an environmental contaminant was another factor in the Agency's decision to propose the TC Suspension for petroleum contaminated media. EPA believes that there are significant differences between the investigation and remediation requirements for media known to be contaminated with petroleum (from UST or non-UST sources) and other types of contamination often found at RCRA facilities and other contaminated sites. For sites contaminated with petroleum products, the source(s) of the contamination (e.g., transportation spills, pipeline leaks, aboveground tank spills) can often easily be identified, the substance (petroleum) is known, and therefore the properties and exposure pathways of the contamination, and potential remedial approaches, can also be identified without extensive investigations. In contrast, at other contaminated sites, identifying the sources of contamination, their properties and potential risks, and remedial options will often require extensive and protracted investigations and analysis.

Thus, the Agency believes that for many sites contaminated with petroleum, investigation and remediation can be relatively straightforward. As such, EPA believes that a simplified or streamlined permitting approach, or some other type of simplified administrative mechanism, could be appropriate for dealing with petroleum contaminated sites (see discussion of alternative approaches in Section III. D. of this preamble).

2. Impacts of Subtitle C Regulation on Pace of Cleanup

Information provided by the States suggests that subtitle C regulation of petroleum contaminated media and debris may have profound impacts on the ability of States with existing spill response programs to promptly initiate cleanup. Information from State case studies suggests that at many sites, the initiation of cleanup could be delayed between three and 18 months. The sources of the delay include: sampling and testing requirements associated with the TCLP, the need to register as a hazardous waste generator and obtain a generator identification number, and the increased complexity of evaluating and implementing remedial measures that comply with subtitle C. One example of the increased complexity of implementing remedial measures is the need to specifically evaluate on-site versus off-site options for the management of hazardous waste. This would include identifying RCRA permitted TSDFs that would accept the waste and balancing transportation and off-site disposal costs, risks, and benefits with the costs, risks and benefits of on-site management.

On-site treatment will frequently be the preferred option for sites involving large amounts of contamination. In cases where such treatment would require RCRA permitting, the permitting process would require an additional one to three years. These delays would likely allow volatilization of certain TC constituents such as benzene, and result in further vertical migration of contaminants into the soil and groundwater. This would increase the volume of contaminated soil and the probability that ground water would be impacted by a spill.

It is difficult to quantify at this time the precise differences nationally in the pace of petroleum cleanups with and without subtitle C regulation. The pace of cleanup in a State is highly dependent on the specific provisions of the State program, the available State resources for responding to spills, and the amount of flexibility provided for in authorized State RCRA programs. However, many States which petitioned EPA believe that they do a good job in responding quickly and adequately to petroleum spills. Moreover, based on available information, EPA believes that Subtitle C regulation could significantly increase the time required to initiate and complete remediation. In States with adequate spill response programs and controls on the disposal of cleanup wastes, EPA believes this delay would result in increased risk to human health and the environment.

3. Impacts of Subtitle C Regulation on the Costs of Cleanup

It is clear that Subtitle C regulation of petroleum contaminated soil and debris can substantially increase the cost of remediation. A primary source of the increase is the relative expense of Subtitle C soil treatment technologies compared to those likely to be used in States with spill response programs. Depending upon the treatment technology selected, per site cleanup costs for soil treatment would likely increase by as much as 300 to 900 percent over existing costs.[2]

For example, unit costs for thermal treatment that is being used in one state UST program averages $55.00 per cubic yard of petroleum contaminated soil, compared to treatment costs of $1,060 per cubic yard of soil for subtitle C incineration, and disposal costs of $510.00 for subtitle C landfills.[3] Thus, for every 100 cubic yards of TC hazardous soil, the increase in treatment costs would be between $45,500 and $100,500 per site.

It is unclear whether the increased costs of subtitle C treatment of petroleum product-contaminated soil can be justified on the basis of a reduction in human health risk. In a study on the impacts of removing the TCLP deferral for petroleum-contaminated media at UST sites, it was concluded that one component of risk, residual risk, will likely not decrease with subtitle C management, since Subtitle I cleanup standards are generally more stringent than those implied by the TCLP regulatory standard for benzene.[4] Also ambiguous is the effect of subtitle C management on

[2] Office of Policy Analysis, U.S. EPA, "DRAFT Report: The Impacts of Removing the TCLP Deferral for Petroleum-Contaminated Media at Underground Storage Tank Sites," (April 1992) Appendix B: Minnesota Case Study, p. 27.

[3] Office of Policy Analysis, U.S. EPA, "DRAFT Report: The Impacts of Removing the TCLP Deferral for Petroleum-Contaminated Media at Underground Storage Tank Sites," (April 1992), p. 3–2.

[4] *Ibid*, p. 1–3.

risks associated with soil treatment and disposal. Because the predicted mix of soil treatment technologies includes a variety of methods that would likely vary over time, assessing the ultimate effect on human health risks is extremely complex, and thus a more detailed study of the risk characteristics of the various soil treatment and disposal technologies is needed.[5]

Also, EPA believes that these increased costs of waste management will reduce the number of spills responded to and remediated by States in State-funded petroleum spill cleanup programs. For example, the petroleum spill response program in New York is financed by a dedicated but limited funding source. When there is no responsible party capable of responding to a spill of petroleum product, the New York program takes action using funds specifically dedicated to this purpose. States have argued that regulating these cleanups under subtitle C would increase costs by a factor of 3.[6] Unless New York decides to dedicate significant additional funds to the program, New York will have to substantially decrease the number of spills addressed by State-funded response programs. This same result is expected in other states that have similar programs. Thus, nationally, EPA expects overall petroleum product spill response efforts to decrease as a result of the TC regulation.

EPA also believes that the increased costs of waste management under subtitle C creates substantial disincentives to prompt reporting and cleanup of petroleum spills by responsible parties. Although this disincentive holds true as well to some degree for all subtitle C wastes, EPA believes that petroleum contaminated media are different because of the common and widespread use of petroleum products in this country. Billions of gallons of petroleum product is stored, transported, and used throughout this country every year. In New York state alone, over 10,000 petroleum product spills were reported to the New York Department of Environmental Conservation during the 1989–1990 state fiscal year.

If regulated parties believed that they could escape liability for these releases, little private remediation would likely occur. If severe regulatory disincentives dissuaded responsible parties from reporting even a fraction of these spills, federal and State programs would not know about these spills and therefore could not evaluate them. Therefore, significant volumes of petroleum product would be released to the environment. EPA believes that it is important, given the widespread use of petroleum products, not to create significant disincentives to cleanup actions that provide benefit in terms of reducing risk to human health and the environment.

C. Definition of Hazardous Waste

Today's action is also consistent with the Agency's intention to apply Subtitle C standards to waste which is truly hazardous in the context in which it is actually managed. EPA believes that for those petroleum product-contaminated wastes managed under State oversight as part of effective State cleanup programs, there is a very low likelihood of mismanagement of the waste. Thus the wastes may not be "hazardous" as defined under RCRA Section 1004.

Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended, establishes a federal program for the comprehensive regulation of hazardous waste. Section 1004(5) of RCRA defines hazardous waste, among other things, as solid waste that may "* * * pose a substantial present or potential hazard to human health and the environment when improperly treated, stored, transported, disposed, or otherwise managed." Under RCRA Section 3001, EPA is charged with defining which solid wastes are hazardous and "should be subject to" Subtitle C requirements either by identifying the characteristics of hazardous waste or listing particular hazardous wastes.

The hazardous waste characteristics promulgated by EPA designate broad classes of wastes which are hazardous by virtue of an inherent property. In the 1980 rule which established EPA's general framework for identifying hazardous waste, EPA set forth two basic criteria for identifying hazardous waste by inherent properties. First, waste exhibiting the property must meet the statutory definition of "hazardous waste"; *e.g.* the waste exhibiting the property must pose a substantial hazard to the environment when improperly managed. Second, the property must be measurable by available standardized testing protocols or reasonably detectible by generators using their knowledge of the waste. 40 CFR 260.10.

EPA has historically identified such waste by assuming that the waste would be mismanaged and evaluating the waste's hazard under such circumstances. See 45 FR 33113 (May 19, 1980). EPA has used a "reasonable worst-case" mismanagement scenario (codisposal in a municipal landfill) to identify these wastes. See 55 FR 11800 (March 29, 1990). However, EPA believes that, based on a decade of experience with hazardous waste management, this mismanagement assumption may no longer be accurate or necessary in defining wastes which should be subject to RCRA hazardous waste requirements.

The Agency believes that it is appropriate to begin tailoring the scope of its hazardous waste characteristic program to reflect how wastes are actually managed, rather than how they might be managed under a worst-case analysis. Today's rule reflects this more tailored approach.

This approach is authorized by the definition of "hazardous waste" in RCRA section 1004(5). Section 1004(5)(B) defines as "hazardous" wastes which may present a hazard "when mismanaged," thus authorizing EPA to determine whether, and under what conditions, a waste may present a hazard and regulating the waste only under such conditions, *i.e.*, when mismanaged. (Note that this is in contrast to section 1004(5)(A) under which EPA regulates as hazardous wastes which are inherently hazardous no matter how managed.)

In addition, EPA believes that section 3001 provides EPA with the flexibility to consider the necessity for, and appropriateness of, hazardous waste regulation for wastes which meet the section 1004(5) criteria. Section 3001 specifies that EPA must make a determination of whether such wastes "should" be subject to the provisions of subtitle C in determining whether to list or otherwise identify wastes as hazardous under that Section. Thus, section 3001 authorizes EPA to determine whether Subtitle C regulation is appropriate in determining whether to designate a waste as "hazardous." EPA thus may determine that subtitle C regulation is not appropriate because such wastes are not "hazardous" when properly managed and, based on information available to the Agency, unlikely to be mismanaged. Regulation of such waste under subtitle C would not be "necessary to protect human health or the environment" (see RCRA sections 1003(a)(4), 3002(a), 3003(a), 3004(a)).

Moreover, EPA interprets its existing regulatory criteria for identifying hazardous waste as providing the flexibility to consider actual management of the waste in order to determine whether to designate such waste as "hazardous." EPA's criteria for identifying hazardous waste

[5] *Ibid*, p. 4–6.

[6] New York State's petition to Administrator Reilly, U.S. EPA, August 17, 1990, p.2. (Baseline cost estimate was not provided.)

characteristics codifies the statutory definition of hazardous waste and thus provides EPA with the same flexibility accorded by the statute to consider actual management practices in determining whether a waste is hazardous. Where mismanagement of the waste is likely to be implausible or has been adequately addressed by other programs, EPA need not identify the waste as hazardous under the regulatory criteria.

As a result, EPA believes that the Agency should tailor its hazardous waste identification program, (see 57 FR 21450, May 20, 1992), to ensure that the stringent Subtitle C program for hazardous waste regulation applies only to waste which is truly hazardous in the context of the way in which the waste is actually, or reasonably likely to be, managed. EPA believes, based on a decade of experience with hazardous waste management, that waste containing hazardous constituents at levels below concern from a human health and environment perspective should not be subject to full Subtitle C management. EPA has proposed concentration-based levels for comment in 57 FR 21450 (May 20, 1992).

EPA has already promulgated several modifications of the 1990 toxicity characteristics rule in several respects based, at least in part, on the manner in which the particular waste is actually managed. 56 FR 13406 (April 2, 1991); 55 FR 11836 (March 29, 1990). Today's proposal is consistent with, and furthers, this approach to identifying hazardous waste characteristics. Because EPA believes that it can be confident that remedial waste managed subject to State oversight and the conditions set forth in this proposal would not be "mismanaged," the waste may not be "hazardous" under RCRA section 1004(5) and "should" not be regulated as hazardous under RCRA section 3001(u).

D. Alternative Approaches

EPA recognizes that not all groups consider the approach it is taking in today's proposal is the most appropriate. The Hazardous Waste Treatment Council, for example, suggests that EPA address the TC issues that have been raised by the States though some means of simplifying the permitting of petroleum cleanups, rather than by suspending the applicability of the TC. The Treatment Council specifically suggested the use of permits by rule as a mechanism which could alleviate the administrative impacts of addressing petroleum contaminated media under RCRA subtitle C, while maintaining the controls and standards (including the land disposal restrictions) provided under subtitle C.

In the context of other previous rulemakings, the Agency has explored the concept of alternative, and more streamlined, types of RCRA permits that could be used to expedite cleanup-type situations. One example is the proposed rulemaking for mobile treatment units (see 52 FR 20914, June 3, 1987). The primary legal impediments to this type of permit are the need to provide for site specific public participation (as required under RCRA section 7004), and the requirement to address facility-wide corrective action (under section 3004(u)). Given that these permits would have to address these statutory requirements, and that doing so would require a considerable time and resource commitment on the part of the issuing government agency(s), as well as the permittee, it may be that creating some such type of permit for petroleum cleanup situations would actually have little "streamlining" effect.

Some have also suggested the use of emergency permits as another alternative to RCRA subtitle C permitting. Emergency permits could be used in some situations involving petroleum releases, albeit not to extended cleanup operations, nor currently to sites where cleanup is not being conducted in response to an actual "emergency" situation. However, one option, upon which we are seeking comment, concerns modifying the emergency permit provisions to accommodate petroleum spill remediation.

Even if the administrative problems associated with issuing permits for petroleum release cleanup activities could be resolved, we recognize that several of the problems cited by the States in this regard may remain. For example, several States point to the need for persons conducting cleanups to register as a hazardous waste generator and obtain a generator identification number as a source of delay in being able to legally allow transport of contaminated media and debris from the spill site to subtitle C disposal. The volumes of such materials requiring RCRA Subtitle C management could also potentially create serious capacity problems for the hazardous waste treatment, storage and disposal system. EPA is specifically soliciting comment and data on the volume of contaminated media and debris associated with petroleum product spill cleanup and the impact of this on the capacity of the existing hazardous waste system.

As discussed above, EPA believes that the existing legal framework in RCRA creates impediments to adapting subtitle C permit requirements to address the problems posed by thousands of petroleum product contaminated sites. However, other modifications to RCRA requirements may be much less problematic. The Agency will continue to examine these types of options, and others, as alternatives to or as additions to today's proposed TC suspension. The Agency invites comment as to how such options may fulfill the general objective of removing unnecessary procedural and substantive subtitle C requirements for petroleum release response, while ensuring that petroleum contaminated media are managed in a manner protective of human health and the environment. Specifically, comment is solicited on the following options:

- Expanding the permit exemption in § 270.1(c)(2)(i) for less than 90-day treatment and storage of on-site generated hazardous wastes. This exemption could be extended for some longer time period specifically for on-site petroleum response actions (e.g., 180 days).
- Providing permits by rule or class permits specifically for remediation of petroleum contaminated media (see preceding discussion).
- Changing the existing emergency permit requirements (§ 270.61) to provide for such permits for short term cleanup actions for petroleum releases that may not actually pose "imminent and substantial threats" to human health and the environment.
- Creating a new type of unit subject to the less than 90-day storage and treatment permit exemptions, that would otherwise be regulated as waste piles, and thus not eligible for this exemption (such units, employing flexible membrane liners and vapor recovery are currently in use, and can remediate relatively large volumes of contaminated soils).
- Developing differential regulatory controls based on the size of the petroleum release (e.g., 10,000 gallons of released product). Under this system, larger spills requiring large scale, long term remediation might be subject to full Subtitle C controls, while smaller releases could be eligible for more streamlined procedural requirements and/or less stringent substantive standards.

In regard to these alternatives, comment is requested particularly in regard to their legal feasibility in light of existing RCRA statutory requirements.

E. Relationship of This Proposal to Contaminated Media Cluster

It should be noted that the Agency has underway a broader consideration of

contaminated media issues related to the issues addressed in this proposal. To improve the overall quality of its regulatory decisionmaking and to develop more integrated approaches to environmental problems, the Agency has begun to look at groups or clusters of regulations. One of these regulatory clusters, the "contaminated media cluster," is charged with developing a more integrated approach among Agency policies and regulations dealing with waste remediation.

The contaminated media cluster project is gathering information to develop a comprehensive view of the quantities and types of waste needing remediation, the types of risks they represent, the current regulatory and statutory framework, elements of an effective cleanup process, and the costs and benefits of cleanups. The culmination of that work will be a regulatory strategy that will include a set of objectives and operating principles for the Agency's remediation programs. Although the cluster effort is not yet complete, this proposed TC suspension rule for petroleum contaminated media and debris has been closely coordinated with the regulatory cluster on contaminated media.

F. Relationship of This Proposal to the Ground Water Protection Principles

This proposed rule is consistent with the Ground Water Protection Principles. One of the Principles states that "With respect to Federal, State, and local responsibilities, the primary responsibility for developing and implementing comprehensive ground-water protection programs continues to and should be vested with the States." Thus, today's proposed TC Suspension and the Ground Water Protection Strategy both reflect the general objective of giving States the lead role in implementing these types of environmental programs.

IV. Explanation of Today's Proposal

A. Scope

1. Wastes Subject to the Proposed Suspension

The proposed suspension of the TC rule (for D018–D043) will be limited to environmental media (groundwater, surface water, soils, and sediments) and debris (see definition in 57 FR 1015, January 9, 1992) that are contaminated by releases of petroleum product from sources other than Subtitle I regulated underground storage tanks (*e.g.* aboveground storage tanks, pipelines, transportation vehicles). Note that the proposal would suspend the TC rule for the 25 organic constituents only (hazardous waste codes D018–D043), and not for the original EP toxic constituents (metals, insecticides, and herbicides; hazardous waste codes D001–D017). EPA believes that suspending the TC rule for the 25 organic constituents will have the effect of suspending RCRA Subtitle C regulation of the treatment, storage, and disposal of petroleum product contaminated media and debris. This is EPA's clear intent. If EPA finds through comments on this proposal or new data that additional EP toxic constituents occur in media resulting from petroleum product contamination, EPA intends to expand the list of constituents subject to the petroleum product suspension in the final rule to include such additional EP constituents. EPA solicits comments on its intention to expand the list of constituents if comments or new data show that this is needed in order to fully suspend the TC regulation for this material.

For the purpose of today's proposal, petroleum product is defined as: (1) Crude petroleum oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and (2) petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, and lubricants. This definition is a modified version of that in the Subtitle I regulations, as it does not include petroleum solvents and used oils.

Today's proposed exclusion would not affect the regulatory status of media or debris contaminated with petroleum-derived listed hazardous wastes (e.g., F037, F038). Although some have suggested that EPA extend the proposed suspension to media and debris contaminated with petroleum-derived wastes (e.g., sludges, landfill leachates, and tank bottoms), in addition to petroleum products, EPA is not at this time proposing to suspend the TC rule for these wastes. These wastes generally contain contaminants of concern at higher concentrations than do petroleum products, can contain hazardous constituents other than those found in petroleum products, and are generally not covered by existing stated petroleum product spill response programs.

EPA is also not extending the application of the TC suspension to used oil, or used-oil processing residuals.[7] Used oil can be contaminated with hazardous constituents other than those found in petroleum product, and these constituents may be present in significant concentrations. Further, state rulemaking petitions submitted to EPA do not specifically request a suspension of the TC rule for media and debris contaminated by used oil. Therefore, this proposed rule does not affect the UST deferral for petroleum contaminated media.

The Agency is soliciting comment on an alternative approach in which the TC suspension for environmental media and debris contaminated by petroleum product would be limited to a subset of the 25 organic constituents. The alternative approach would provide a TC suspension only for those contaminants identified in 40 CFR 261.24 (hazardous waste codes D018–D043) which are known to be indigenous to petroleum product. The Agency is considering the following three contaminants in this regard—benzene, cresols, and methyl ethyl ketone. These contaminants have been identified as indigenous to petroleum product, based on data derived from the delisting program. (See 40 CFR 260.22.) The Agency requests comment on this particular list, as well as on other TC contaminants identified by hazardous waste codes D018–D043 which may also be indigenous to petroleum product. The Agency is considering this approach because it is concerned about the improper application of this suspension to media and debris contaminated by other D018–D043 constituents. In this scenario, the actual source of contamination could be non-petroleum product constituents, or a mixture of such constituents with those common to petroleum product, but the responsible party may argue that the source was petroleum product. On the other hand, petroleum products are complex mixes of chemicals, and adequately characterizing them by a limited subset of codes D018–D043 constituents could prove difficult, as well as require expensive testing, with no commensurate benefit. The Agency requests comment on this alternative approach.

The Agency also considered an alternative that would broaden the scope of the suspension beyond

[7] As defined in 40 CFR 266.40(b), used oil is any oil refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities. A new definition in 40 CFR 279.1, when it becomes effective, is as follows: "Used oil means any oil defined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities."

petroleum product, to include media and debris contaminated by any TC constituent. At this time, the Agency is not proposing to expand the suspension beyond petroleum contaminated media and debris. The Agency believes that there are compelling human health and environmental reasons for proposing the suspension of the TC rule for petroleum contaminated media and debris, and that it should act as quickly as possible to remedy the current situation. Including other TC contaminated media and debris in this proposal would require substantial further analysis, which could delay EPA in addressing the petroleum issue. Moreover, while many States may have adequate petroleum spill response programs, these states may not have programs to adequately manage other TC contaminated media and debris, which could result in these materials being unregulated.

Nevertheless, the Agency notes that similar concerns have been raised by many in the regulated community and States about the disincentives to cleanup associated with RCRA subtitle C regulation of media and debris contaminated by any TC constituent, and that EPA is concerned about these impacts. The Agency requests comment on expanding the scope of the suspension beyond petroleum product to include media and debris contaminated by other TC constituents.

The Agency also considered the particular issue raised by coal tar contaminated media and debris generated from the remediation of historic manufactured gas plant (MGP) sites. For many decades, manufactured coal gas was the primary source of gas for many American cities. There are in excess of 1500 old MGP sites in the United States, all thought to be similar in the nature and extent of coal tar-related contamination. According to electric utility industry sources, a substantial number of these sites will undergo assessment and possibly cleanup in the near future, and many companies planning such remediation activities were hoping to use their own high efficiency utility boilers to burn coal tar remediation-related wastes. The utility industry has expressed to the Agency its concern that the advent of the TC rule has created a disincentive to conduct these cleanups because these wastes may no longer be able to be burned as fuel in their boilers.

EPA is currently exploring various options to encourage responsible parties to undertake the assessment and any necessary remediation of historic MGP sites within the framework of the existing RCRA program. One option under consideration is to include coal tar wastes within the scope of this proposal to suspend the TC rule for petroleum product. However, EPA is not including coal tar wastes in this proposed suspension at this time. First, the primary intent of this suspension is to respond to the requests made by States in their rulemaking petitions to EPA; that is, to suspend the TC rule for media and debris contaminated by petroleum products. Second, although EPA believes that there may be important environmental reasons for including coal tar wastes within the scope of this suspension, EPA lacks information on whether coal tar remediation and waste disposal in utility boilers is effectively regulated outside the RCRA Program by state and local governments.

Should information submitted in response to this proposed rule support a determination that the cleanup and burning of coal tar contaminated media and wastes in high efficiency boilers is effectively regulated by States, EPA may extend the suspension in the final rule to include coal tar contaminated media. The suspension would, however, only apply in States that certify that they have in place adequate authorities and programs to compel MGP site cleanup and control the burning of wastes generated from such cleanup actions.

The Agency requests comment on an option that would include coal tar wastes within the scope of this suspension. The Agency also requests comment on the following: The extent to which coal tar cleanup operations are currently being adequately regulated by state and/or local authorities; the cost of remediation of coal tar contaminated media under Subtitle C and under alternative approaches; the risk posed to human health and the environment by not regulating coal tar wastes under Subtitle C but under alternative approaches; and, the most effective approaches to remediating old coal gasification sites.

2. Size of Release

EPA is proposing that the suspension of the TC rule apply to any non-UST petroleum product release, regardless of the volume of spilled material or amount of contaminated media or debris. Some have suggested, however, that the Agency narrow the suspension to contaminated media and debris resulting from spills of less than 10,000 gallons (this volume is the National Contingency Plan definition of a major discharge of oil to inland waters and an established point of reference for defining a large spill). These parties have suggested this narrowing because there may be unique issues posed by larger releases, and in some States, petroleum spill response programs may not be well suited to address these unique issues. EPA requests comment on the extent to which State spill response programs address the unique issues posed by larger releases.

Recent experiences in EPA's Regional VIII office with large petroleum spills (i.e., spills greater than 10,000 gallons) indicate that larger spills tend to have multi-media environmental impacts and require long term oversight. It is not unusual for a particularly large spill to contaminate surface water, sediment, air, soil, and ground water and require years to remediate. It has been suggested that States may not always have the necessary expertise or resources to oversee remediation of these types of spills.

On the other hand, the State that first approached the Agency on the issue of a TC deferral—New York—did so because of the difficulties that the TC was presenting at a large cleanup site, involving many thousands cubic yards of contaminated soil. In this case, the State hoped to conduct on-site treatment under its State cleanup program; securing a Federal permit (the State is not yet authorized for the TC) would significantly delay the project. In fact, the problem presented by Subtitle C regulation may be greater at these large sites, because smaller sites often can be handled expeditiously within the existing permitting system as emergency responses, wastewater treatment units, or 90-day treatment units, or will not involve on-site treatment. Furthermore, it may be difficult to determine in all cases the volume of material released after the fact, particularly where the release is not a surface spill but rather has occurred as leakage over an extended period of time.

EPA is soliciting comment on whether a limit should be placed on the volume of spills covered under the deferral. In particular, comments should address the extent to which States with petroleum response programs do or do not have the regulatory authority, technical expertise, and/or capability to properly oversee the long term cleanup of large, multi-media spills or other releases of petroleum product. However, as discussed in Section C below, the Agency is not proposing an extensive review of State programs. Any review of this type would be overly prescriptive and deny States the flexibility to tailor response programs to specific spills or site conditions. To the extent that comments and data submitted in response to this proposal support a determination that State petroleum spill

response programs are generally not adequate to respond to large petroleum spills, EPA could limit the suspension in the final rule to contaminated media and debris generated as a result of spills of less than 10,000 gallons of petroleum product. Alternatively, if data suggest that certain States have the ability to adequately respond to larger spills, EPA could, in the final rule, suspend the TC rule for all volumes of spills in states with this capability and limit the suspension to smaller volumes in States that lack the capability.

B. Timing

EPA is proposing that this suspension of applicability of the TC to non-UST petroleum contaminated media and debris be no longer than three years from the effective date of the final rule. Although EPA believes that available data on the negative impacts of Subtitle C regulation of petroleum contaminated media are sufficient to support a 3 year suspension, EPA recognizes that additional data and analyses may suggest the need for a refinement of the basic approach taken in this proposal to better ensure that human health and the environment are being adequately protected. During the three-year period, EPA will conduct studies similar to those now underway pursuant to the UST deferral, including:

- A comprehensive study of the characteristics of sites and wastes affected by application of the TC to contaminated media and debris resulting from non-UST spills of petroleum product, including an analysis of potential cross-media impacts.
- A national survey of state petroleum spill response programs.
- A comprehensive evaluation of the potential economic and environmental impacts of subtitle C regulation of these materials on the Agency's and States' hazardous waste management programs, and an evaluation of the available capacity of commercial hazardous waste treatment, storage and disposal facilities.
- A comprehensive evaluation of whether some alternative regulatory structure would be more appropriate (such as streamlining or otherwise revising subtitle C requirements for these wastes) then the currently available alternatives of a complete suspension of the TC rule or full subtitle C regulations.

EPA considered proposing to suspend the TC rule for a shorter time frame, such as two years or one year. However, given the scope and complexity of the issues involved and the studies to be performed during the suspension, EPA believes that it may need a full three years in order to fully address the issues and develop a generally acceptable permanent solution. EPA is, however, soliciting comment on whether the three year time frame is reasonable and necessary. Comment is solicited regarding alternative time frames for the proposed suspension.

C. Limiting Suspension to States With Effective Programs

EPA is proposing that this suspension be limited to states that certify to the EPA Regional Administrator that they have effective programs in place to response to and remedial non-UST petroleum releases and control remediation-related contaminated media and debris.[8] This is similar to the standard for delegation to State petroleum cleanup programs under section 9003(h)(7) of RCRA (L.U.S.T. Trust Fund and cleanup authorities). EPA believes that limiting the suspension in this manner will provide adequate protection of human health and the environment from the potential impacts associated with the remediation of petroleum product, while at the same time allowing remediations to proceed expeditiously.

EPA considered not limiting the suspension to states with effective petroleum response programs in place. In other words, the TC could be suspended completely as it would apply to petroleum product contaminated media and debris, on a national basis. Such a suspension would be based on the assumption that such contaminated materials inherently do not merit Subtitle C regulation, and that specific state controls *are not* needed to ensure protection of human health and the environment. EPA decided not to propose this option, since the Agency believes that petroleum product contaminated media and debris can pose potential threats if mismanaged. A "blanket" suspension of the TC in this context would likely leave non-UST petroleum spills largely unregulated in some States, with the resulting potential for mismanagement of what may be large volumes of contaminated media and debris. Further, limiting the suspension to states with effective petroleum spill response programs may provide an incentive for states without such programs to establish them.

EPA also considered an alternative for this proposed rule that would have granted the suspension only to states that could demonstrate that their petroleum response programs complied with a comprehensive, Federally defined set of criteria. Under this approach, EPA could develop a very detailed set of requirements explicitly defining the types of legal authorities that states must have, requirements for how releases must be investigated, standards for management of cleanup wastes, cleanup levels to be achieved, and program administration requirements (e.g., staffing levels, qualifications of personnel, etc.). EPA believes that this type of approach would be overly prescriptive, and would not allow states flexibility to tailor response programs to specific responses, or to reflect different conditions across states. For example, cleanup of petroleum releases in a State like Alaska, where much of the State can be reached only by air, might of necessity be approached differently than in a more populated state. Furthermore, this approach would take undue time to put into effect. Not only would cleanups be significantly delayed, but EPA's experience with State authorization under Subtitle C suggests that few if any States would be able to complete the authorization process before the termination of the three-year suspension.

Today's proposal, in specifying requirements for adequate state programs for purposes of obtaining the TC suspension, outlines a set of criteria that the Agency believes will allow flexibility for States, while ensuring effective and protective responses to petroleum product releases in States in which the suspension would apply.

As proposed today, the primary standard for determining adequacy of State programs would be whether a State has both legal authorities (including enforcement authorities), and an administrative program structure sufficient to require cleanup of non-UST petroleum product releases, and to control the management of petroleum contaminated media and debris that are generated from cleanup activities. Specific remedial requirements that may be applied to a particular release situation will continue to be determined by the State, according to applicable State regulations and guidelines. Although States will have to be able to impose appropriate controls on management and disposal of petroleum contaminated media and debris, such controls would be determined by the State.

Similarly, although today's proposal requires that States must, to obtain the TC suspension, have programs in place to effectively administer and enforce the

[8] The proposed suspension would also apply to petroleum product contaminated media and debris that are generated and managed pursuant to Federal remedial authorities, as explained in the following section (E) of this preamble.

requisite cleanup authorities, it does not place any particular requirements as to how such programs must be structured, the type of State agency responsible for implementation of cleanup actions, or any other specific administrative requirements.

One of the key issues associated with today's proposal is the scope of the suspension in a State which receives the suspension; that is, would the suspension apply to all non-UST petroleum contaminated media and debris in that State, or only that which is generated to sites that are being cleaned up under the State program. EPA is proposing today that the suspension would be limited to petroleum contaminated media and debris that are managed pursuant to State-supervised cleanup actions. EPA believes that applying the suspension to all petroleum-contaminated media or debris would contradict one of the basic premises of today's proposal; that is, that the State programs will provide adequate protection in lieu of subtitle C controls. If contaminated media or debris are being managed outside the controls or oversight of the State, such protections cannot be assured.

EPA is not specifying exactly how, or to what degree, States must exercise oversight or enforcement of cleanup actions, so that the proposed suspension would apply to those cleanup wastes. At a minimum, however, it is proposed that such cleanups be conducted under State enforcement orders, or some other written approval from the State agency. EPA recognizes that in emergency situations involving catastrophic releases over the weekend or holidays, written approval may not be able to be provided in advance of emergency response actions. In these cases, verbal direction and approval may be given, to be followed up with written approval on the next working day following the incident.

In addition to specifying criteria for effective State programs, EPA also considered adding a requirement for States to have in place petroleum spill prevention programs which would require inspections and maintenance of non-UST potential sources of release, as well as the development of detailed and specific spill contingency plans. EPA is not proposing this as a criterion because it is unsure of the extent to which generally accepted industry practices and/or existing State laws and regulations require these measures. Moreover, EPA recognizes that there already exist strong incentives for private parties to prevent spills. EPA is soliciting comment, however, on whether the final rule should include such provisions, and on the extent to which such requirements are already in place in individual States. EPA would review this in the same manner as other criteria (See Section D below.)

D. Procedure for Granting the TC Suspension

Under today's proposal, the applicability of the TC would be suspended for media and debris contaminated with petroleum product, based on a certification by the Director of the State hazardous waste program and the State Attorney General that the state petroleum release response program meets the criteria in 261.4(b)(11)(iv).[9] The certification would be made to the EPA Regional Administrator. EPA would review the certification for completeness; if complete, EPA would publish a notice in the **Federal Register** to formally put the suspension into effect in that State.

Under this proposed approach, it is expected that some States will have response programs in place that address only certain types of releases or certain contaminated media. The certifications must therefore explicitly identify the jurisdiction and coverage of the program; the **Federal Register** notice will accordingly specify any limitations to the scope of the suspension in a particular State. The limitations specified in the **Federal Register** notice will be based on the State's own assessment of the limitations in the jurisdiction and coverage of its program.

Today's proposal in effect provides a self-certification process for the States in determining eligibility for the TC suspension. Thus, EPA's review of the certifications submitted by states would be limited to determining whether the certification includes the requisite information and documentation, as specified in the proposed 261.4(b)(11)(v) and (vi). It would not be the role of the Agency during its review to analyze the State's certification or to make a judgment as to the effectiveness of the state's petroleum response program. EPA is proposing that its review be completed within 90 days of receipt. EPA is soliciting comment on the desirability of such a deadline.

In developing today's rule, EPA considered alternative processes for granting the TC suspension that would have created more rigorous review and approval procedures which EPA would follow in granting the suspension to the States. Under this type of process, EPA would have the responsibility of making qualitative assessments as to how effective or "adequate" each State program is. In practice, this type of process would be similar to the current state authorization process for the RCRA subtitle C program.

EPA does not believe that an "authorization-type" process is necessary for the purpose of determining whether States should be eligible for the TC suspension as proposed today. Such a process would likely result in considerable delays in putting the suspension into effect, and would also be resource-intensive for EPA and the States. Further, many states have been on the forefront of this issue for years, establishing programs and funding mechanisms to ensure environmentally protective responses to petroleum spills in their states. Given this, and the relatively limited scope of the proposed suspension in terms of time (*i.e.*, three years) and its regulatory effect, the Agency believes that a more straightforward, self-certification process is most appropriate for this proposed rule.

Proposed § 261.4(b)(11)(v) would require States to submit certain information describing the States' legal authorities and program(s) for petroleum release response. EPA will use this information in conducting the analyses during the suspension period for making a final determination of how the TC should be applied to petroleum contaminated media and debris.

E. Applicability of Suspension to Remedial Actions Under Federal Authorities

In addition to suspending (under certain conditions) the applicability of the TC to petroleum contaminated media and debris for State cleanup actions, today's proposal would provide the same suspension for cleanups that are conducted under Federal statutory authorities. These authorities include the RCRA corrective action authorities of sections 3004(u), 3004(v), 3008(h) and 7003, and the Oil Pollution Act (OPA).

EPA believes that the scope of and degree of control over remedial activities that is provided under RCRA and OPA is certainly equal to, and may in most cases surpass that of State petroleum response programs. Therefore, the Agency is confident that management of petroleum contaminated media at such federally supervised cleanup sites would be fully protective of human health and the environment during the three year suspension period. In addition, several other reasons for granting the proposed suspension for State cleanups apply equally to Federal-

[9] This procedure applies to States that are not authorized for the TC. See discussion in Section VI of this preamble.

lead remediation—potential impacts on subtitle C treatment and disposal capacity, the substantial cost impacts of subtitle C management of these materials with little associated benefits, and the need to obtain RCRA permits for potentially large numbers of units in which petroleum contaminated media and debris will be managed.

EPA solicits comment on extending today's proposed TC suspension to Federally supervised cleanup actions, particularly in regard to whether cleanups supervised by Federal agencies under authorities other than RCRA and OPA should also be eligible for this suspension.

V. Relationship to Other Programs

A. Deferral of the Application of the TC Rule to Petroleum Contaminated Media and Debris From Subtitle I—Regulated USTs

This action would not affect the UST deferral from the TC rule, since it applies only to non-UST petroleum product contaminated media and debris. As explained previously, the Agency is currently evaluating the extent and nature of the potential impact of the TC rule on UST cleanups, as well as the impact that Subtitle C management of petroleum contaminated media and debris from USTs would have on the Agency's and States' hazardous waste management programs. The Agency plans to make its final determination on the UST deferral in early 1993.

The Agency believes it is appropriate to examine the application of the TC rule to petroleum contaminated media and debris from USTs and non-UST sources separately. Programs that regulate USTs and non-UST sources or petroleum contaminated media and debris can be distinct, with their own regulatory and administrative structures. Hence, the impacts of the TC rule on UST and non-UST cleanups can differ. For this reason, the ultimate determinations as to how to regulate UST and non-UST petroleum contaminated media and debris could be different.

B. Enforcement

Effect of Today's Proposal on Section 7003 Authority

The proposed suspension does not affect the Agency's ability to use RCRA section 7003 to compel clean-up of a petroleum release in cases when the Agency has determined that an imminent and substantial endangerment may be present. Product which has been spilled or otherwise placed into or on any land or water and not promptly recovered is a waste material (see 40 CFR 260.10 and 40 CFR 261.2(b)(1)). This includes spilled petroleum product. (See *Zands* v. *Nelson*, 779 F. Supp. 1254 (S.D.Cal.1991)). RCRA Section 7003 applies to solid waste *or* hazardous waste. Therefore, spilled petroleum is potentially subject to this statutory authority, regardless of whether or not it may meet the definition of a characteristic hazardous waste, e.g., TC for benzene.

If the proposed suspension goes into effect, materials other than petroleum that are listed in subpart D of 40 CFR part 261 or that exhibit a characteristic of hazardous waste as defined in subpart C of 40 CFR part 261, will continue to be considered hazardous wastes when spilled or dumped. Handlers misrepresenting such material as non-hazardous waste are in violation of RCRA subtitle C and subject to enforcement.

Effect of Today's Proposal on RCRA Sections 3004(u) and 3008(h) Authorities

Today's proposal has no effect on the scope of 3004(u) and 3008(h) authorities, since those authorities are not limited to hazardous waste, but apply also to hazardous constituents. Since petroleum product contains hazardous constituents, sections 3004(u) and 3008(h) authorities can still be used by the Agency to compel cleanup of petroleum releases at facilities regulated under RCRA subtitle C.

C. Corrective Action

Effect of Today's Proposal on Corrective Actions Underway

As explained in the previous section of this preamble, the proposed suspension of the TC is not expected to have significant impacts on the Agency's ability to require cleanup of facilities under the corrective action authorities of RCRA, Section 7003, 3004(u) or 3008(h). Such authorities are not limited to cleanup of hazardous wastes. This is the case of facilities and sites that are potentially subject to corrective action under these authorities, as well as facilities where the corrective action process is already underway. In addition, the suspension would not be expected to affect States' abilities to require cleanup under State response authorities.

In the case of cleanup operations already underway that involve management of TC hazardous contaminated media, today's proposed suspension could have an effect on the specific requirements that would be applicable to the treatment, storage, disposal or transportation of such hazardous media. For example, a remedial action may be underway which involves excavation of petroleum contaminated soils, and storage of those hazardous soils in a pile at the facility. The pile would be subject to the applicable RCRA subpart L standards for piles, including requirements for liners, ground water monitoring, closure, and other standards. If the proposed TC suspension were to become effective during this cleanup action, the subpart L pile standards would no longer apply, since the contaminated soils would no longer be hazardous. However, the waste management requirements specified in existing orders or permits would remain in effect, despite the suspension, unless the requirements were modified by the regulatory authority.

Effect of Today's Proposal on RCRA Permitting Requirements

There may be a situation in which the Agency has required a RCRA permit for the remedial action at a site solely due to petroleum product contamination of environmental media and debris. Under today's proposal, the permit in this case would no longer be required, since the petroleum product contaminated media and debris would not be considered hazardous waste. The Agency is not aware of any such facility, therefore the impact of today's proposal on permitting is assumed to be minimal.

VI. State Authorization Considerations

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State

until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in the authorized State in the interim.

B. Effect of Today's Proposal on State Authorization

Today's proposal provides, for a limited period of time, a less stringent standard for petroleum product contaminated media than is imposed in the Toxicity Characteristics regulation. In order to promote environmentally beneficial petroleum product cleanup operations, today's proposed rule provides that wastes generated from such cleanup operations would not be hazardous wastes under Federal regulations until 3 years after the promulgation of today's rule in those states that certify to EPA that they have in place effective petroleum product spill response programs. For states that have adopted the TC regulation, today's proposal is less stringent; therefore, states are not required to adopt it. For states that have not adopted the TC regulation, EPA implements the TC regulation and would implement this suspension of the TC regulation, if finalized, for wastes from petroleum product spills.

However, the relationship of state certification for the proposed suspension to the state's authorization status needs clarification. For states that are not authorized for the base RCRA program, as well as for those states that are RCRA-authorized but not TC-authorized, state certification raises no special state authorization issues. These states could simply certify that they have both legal authorities and an administrative program structure sufficient to require cleanup of non-UST petroleum product releases, and to control the management of petroleum contaminated media and debris that are generated from cleanup activities. In this manner, these states would qualify for the Federal suspension of the TC regulation, without raising any state authorization issues.

States that are both RCRA- and TC-authorized, however, would have to make a decision about whether to adopt a similar suspension, and, if they choose to adopt such a procedure, they would also have to make a decision at the state level on the need to change their state regulations. Some states may choose not to change their regulations, but rather to use a state waiver authority to lift the TC requirements in these cleanup situations. Use of such waiver authority would have to be in a manner no less stringent than the Federal TC suspension.

In cases where a state chooses to certify and chooses to change its regulations, the new state regulations must be no less stringent than the Federal suspension. If State TC regulations are changed in a manner that is less stringent than this proposed suspension (*e.g.*, the State suspension is longer than three years or addresses more than just petroleum product), EPA will not authorize the change and will enforce the more stringent Federally-authorized State TC rule provisions pursuant to Section 3009 of RCRA.

EPA also considered an alternative approach for States that are both RCRA- and TC-authorized. Under this approach, EPA would require authorization of the new State regulations before the suspension could become effective, in order to guarantee that the new State regulations would be no less stringent than the Federal program. The Agency rejected this option because of the need to move cleanups more promptly. Furthermore, the Agency does not believe this would be a workable approach since the three-year suspension would likely run out by the time a State made the necessary changes to its regulations suspending the TC rule, and then applied for and received authorization for these changes.

Finally, for States that have adopted the TC rule but are not yet authorized for it, if these States wish to pursue the suspension, EPA will accept their certification for the purposes of the Federal TC suspension. The State may also need to take other actions (*e.g.*, use of waivers) to satisfy State law requirements.

VII. Risk Assessment/Screening Analysis

EPA performed a screening risk analysis in order to investigate the discussion set forth in the state petitions, which argue that the state programs would be at least as protective as subtitle C management of petroleum contaminated soils. States argue that state program clean-ups would address sites more quickly than clean-ups under the Subtitle C program and therefore more promptly and more effectively reduce risk to human health and the environment.

Any delays under the subtitle C program would increase the incremental risk of subtitle C clean-up versus TC-suspension state management practices if 1) state programs control risks from the spill more quickly than efforts under the subtitle C program and do not experience similar delays and 2) state management practices are as (or almost as) protective as subtitle C management practices.

EPA conducted a screening risk analysis to identify potential increased risks to human health due to delays in clean-up. The screening analysis is based on modeling the fate and transport of benzene from petroleum from the soil surface, through the unsaturated zone and into the groundwater. Because this analysis is a screening analysis, the models use simplified and conservative assumptions, and represent worst case scenarios.

For this screening analysis, EPA modeled the fate of gasoline spilled onto three types of soil: Gravel, sand and clay. Depending on the soil type, the estimated time for a leachate exhibiting the TC for benzene to reach a depth of 3 meters ranges from 1–25 months, and twice that time to reach a depth of 6 meters. In addition, the screening analysis revealed that groundwater may be potentially contaminated above the MCL standard for benzene (5 ppb) in certain locations. Field studies have demonstrated that under some conditions, such as fractured environments, petroleum has been reported to travel more quickly and to reach groundwater in a matter of hours.

Another effect of the penetration of petroleum products through the soil is an increase in the volume of contaminated soil over time and therefore, in most instances, an increase in the amount of TC hazardous waste which would need to be cleaned-up. This results in both an increase in clean-up costs and a potential increase in exposure. EPA will study this effect of delays in clean-ups and is requesting comments on the areal extent of contamination resulting from various size spills of various types of petroleum products.

In summary, the results of this screening analysis indicate that gasoline spill clean-up delays of a few months could result in (1) increased areal extent of contamination, which increases the volume of soil requiring excavation or remediation and thereby increasing potential for exposure and (2) contamination of groundwater, thereby adding to cleanup costs and potentially

posing health risks if groundwater is used for drinking water. The Agency will continue to assess potential risks of petroleum spills. Towards this end, the Agency is requesting comments and information regarding spill size, resulting contamination over time and exposures over time for recent petroleum spills which may be useful in preparation for the final rule.

In order to analyze any change in risk between the TC Suspension and subtitle C management, the Agency will consider the environmental fate of the remediated waste. While the Agency has some information on the residual risks of waste management and disposal under subtitle C, the Agency has less information on State management and disposal requirements for these petroleum wastes. The Agency has limited data on the quantities of material that would be managed in this manner, and on the actual impacts on exposure pathways, and so solicits comment on this issue.

The risk screening analysis used simplified and conservative assumptions, and the results are therefore very preliminary. However, it is clear that in many instances immediate remediation of petroleum spills will reduce risk to human health and the environment in comparison with lengthy delays in clean-up. More information on this analysis is included in the Technical Background Document for Screening Risk Analysis of the TC Suspension for Petroleum-Contaminated Media, RCRA docket number F–92–STPP–FFFFF.

In addition, because of the volatile nature of many petroleum constituents, such as benzene, delayed clean-ups of petroleum contaminated soil may also pose a potential risk to human health through the air pathway. EPA requests comments on the potential exposure rates and risks from the air pathway, both due to delayed clean-ups and due to uncontrolled remediation activities. EPA is particularly interested in laboratory studies, field observations, modeling results or other information about the length of time over which, and the rate at which, benzene (or other constituents) in petroleum products volatilize after a spill or release into the environment, and the effects of competing processes such as percolation through the soil (speed and depth) and biodegradation on the rate of volatilization.

VIII. Cost Savings Analysis

EPA has identified several possible sources of cost savings under a TC suspension for petroleum contaminated media. Cost savings result from the difference between waste management costs under state petroleum response programs and costs under Subtitle C programs.

Below is a discussion of sample cost estimates provided by states and other sources. An EPA memo, "Cost Discussion References for Management and Disposal of Petroleum Product Contaminated Media and Debris," is available in the docket.

Based on limited information available from the states, on-site management technologies of petroleum contaminated media could be similar under state programs and under subtitle C programs. Thus the cost difference between the two on-site remediation regulatory scenarios—state programs and subtitle C programs—may be primarily associated with the difference in administrative costs. EPA solicits comments on subtitle C administrative costs as compared to state program administrative costs, including information on whether new subtitle C permits are likely to be obtained at petroleum spill sites. No information is available on owner/operator administrative costs under state programs, but under Subtitle C programs total TSD permit cost estimates provided by states (Minnesota and Vermont) range between $21,000 and $80,000. Because of this high cost of a subtitle C TSD permit, which would be required for many on-site remediations of hazardous waste, petroleum contaminated soil management and disposal is more likely to be conducted off-site under the subtitle C regulatory scenario.

However, subtitle C off-site remediation unit costs would still be greater than state program remediation unit costs, both (1) due to fees charged by treatment, storage and disposal facilities and (2) due to transportation costs to the disposal site.

In addition, some states have asserted that clean-ups under Subtitle C would take longer than state programs, allowing contamination to spread and resulting in a much larger volume of soil and/or groundwater to be remediated.

In summary, unit costs for subtitle C waste management of petroleum contaminated soil tend to be higher than for state program management of soil. The reason for this cost difference depends on whether the soil is managed on- or off-site.

Subtitle C management	State program management (TC suspension)	Source of cost savings for TC suspension
On-site	On-site	Avoided Subtitle C administrative costs.
Off-site	On-site	Avoided transportation costs; difference between Subtitle C disposal fees and on-site remediation costs.
Off-site	Off-site	Lower transportation costs; lower disposal fees.

Estimates of actual unit cost savings vary, depending on location (i.e. distance from a subtitle C disposal facility) and on remediation method chosen. State estimates of transportation costs to a Subtitle C facility range from $30/ton (Texas) to $300/ton (Minnesota).

[Note: One cubic yard of contaminated soil is assumed to weigh one ton.]

Subtitle C landfill cost estimates provided by states range from $140/ton (Minnesota) to $2,000/ton (New York) and incineration costs estimates provided by states range from $420/ton to $1,700/ton (Minnesota).

Conversely, potential waste management costs using methods that state programs might choose under a TC suspension are substantially lower. State estimates of transportation costs to subtitle D landfills range from $5/ton (Texas) to $20/ton (Vermont). Subtitle D landfill cost estimates provided by states range from $30 (Minnesota, including transport) to $300/ton (New York, not including transport). On-site remediation techniques, such as thermal treatment or bioremediation, are generally less expensive than off-site techniques [states provided ranges from $30/ton (Minnesota, thermal treatment) to $120/ton (Minnesota, bioremediation)] but are reported to be as high as $1,000/ton (Texas, for bioremediation). These cost ranges are based on studies of five different states (Minnesota, Florida, New York, Vermont and Texas); other states' costs may vary widely.

Information on the total amount soil or other media affected by a TC suspension is not readily available. The American Petroleum Institute (API) estimates in January 1992 that 23.5 million gallons of petroleum is spilled in 24 states annually. Of this 23.5 million gallons of petroleum spilled in 24 states, only a portion will contaminate soil or other media in states affected by the TC suspension (i.e. states with adequate programs to address petroleum contamination).

[Note: The Texas Railroad Commission estimates that 1 barrel of oil (42 gallons) contaminates 2.1 cubic yards of soil].

Of the contaminated soil in affected states, only a portion will actually fail the TC. Although these portions are unknown, the amount of TC petroleum-contaminated soil affected annually by the suspension appears to be on the order of hundreds of thousands of cubic yards. Depending on the actual unit cost savings, the total national cost savings due to the TC suspension for petroleum-contaminated media may be in the tens or hundreds of millions of dollars per year for the duration of the three year suspension.

IX. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order No. 12291

Executive Order No. 12291 requires that regulatory agencies determine whether a new regulation constitutes a major rulemaking and, if so, it requires that the agency conduct a Regulatory Impact Analysis (RIA). An RIA consists of the quantification of the potential benefits, costs, and economic impacts of a major rule. A major rule is defined in Executive Order No. 12291 as a regulation likely to result in:

- An annual effect to the economy of $100 million or more; or
- A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The Agency has estimated that today's proposed rule will result in significant cost savings to the economy (see VIII. Cost Savings Analysis, above). Also, the Agency does not believe the rule will significantly effect consumers, individuals, industries, Federal, State and local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, innovation, or international trade. Therefore, the Agency has determined that today's proposed rule is not a major rule.

Because today's proposed rule is not a major rule, the Agency has performed a Cost Savings Analysis (see section VIII above), rather than an RIA, focusing its analyses on the cost savings of the rule only. The Agency has not assessed the economic impacts and benefits attributable to today's proposed rule.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–12, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions).

This proposal will generally provide regulatory relief to business facing petroleum-related cleanups and businesses conducting the cleanups. For this reason, the Administrator has certified that this rule will not have a significant negative impact on small entities—in fact, it is likely to have a significant positive impact. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1623.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (PM–223Y), Washington, DC 20460 or by calling (202) 260–2740.

Public reporting burden for this collection of information is estimated to average 26 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 261

Harzardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 15, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6095, 6912(a), 6921, and 6922.

2. Section 261.4 is amended by revising paragraph (b)(11) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(11) Environmental media and debris contaminated solely by releases of petroleum product that fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only), and that are not subject to the corrective action regulations under part 280 of this chapter (*i.e.* RCRA Subtitle I-regulated underground storage tanks). This exclusion is applicable only as provided under paragraphs (b)(11)(i) through (vii) of this section, as follows:

(i) This exclusion shall be effective until [three years after date of publication of final rule in Federal Register].

(ii) For the purposes of this exclusion only, petroleum product is defined as:

(A) Crude petroleum oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and

(B) Petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, and lubricants.

(iii) Except as provided in § 261.4(b)(11)(vii), the exclusion shall apply only to petroleum product-contaminated media or debris that are being managed pursuant to a remedial action for which State oversight is being provided under a site-specific enforcement order, or other written approval from the State.

(iv) The exclusion shall apply only in a State that certifies in writing to the EPA Regional Administrator that the State:

(A) Has response authorities to:

(*1*) Require cleanup of media and debris contaminated by petroleum

product that is released from sources other than those subject to 40 CFR part 280, subpart F, to levels of protection defined as adequate by the State; and

(2) Control the transportation, treatment, storage, and disposal of petroleum product-contaminated media and debris generated from those response actions; and

(B) Has programs in place to effectively administer and enforce such authorities.

(v) The certification submitted by the State must be signed by the State waste management program director and the State Attorney General, and must contain:

(A) A description of the existing State laws and regulations which constitute the response authorities specified in paragraph (b)(11)(iv)(A) of this section; and

(B) A description of the State programs as specified in paragraph (b)(11)(iv)(B) of this section. Such description must include:

(1) A description of types and numbers of releases which are responded to by the State programs and authorities and the types and numbers of response actions conducted under the State program; and

(2) A description of the standards that are used by the State to establish cleanup goals for media and debris contaminated by petroleum product releases not subject to RCRA Subtitle I. If specific cleanup standards have not been adopted by the State, a description of the process used by the State to determine cleanup goals for such contaminated media and debris shall be provided.

(vi) The Regional Administrator shall review the certification to determine if it is complete within 90 days of receipt. When a certification is determined to be complete, EPA shall publish a notice in the **Federal Register** to suspend the TC in that State at sites meeting the conditions of paragraph (b)(11)(iii) of this section. The suspension shall be effective immediately upon publication of the **Federal Register** notice.

(vii) The exclusion shall also apply to petroleum product-contaminated media and debris that are managed pursuant to remedial actions under RCRA 7003, 3004(u), 3004(v), and 3008(h), and under the Oil Pollution Act.

* * * * *

[FR Doc. 92–31300 Filed 12–23–92; 8:45 am]
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–143–AD; Amendment 39–8433; AD 92–26–06]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 125–800A series airplanes, that requires the installation of an indicator label on certain circuit breakers that must be disabled by the flight crew during smoke drill procedures. This amendment is prompted by a report that certain additional circuit breakers must be clearly identified in order to ensure that the flight crew disables them in an emergency. The actions specified by this AD are intended to prevent reduced effectivity of smoke elimination and passenger evacuation procedures by allowing the crew to disable all appropriate circuit breakers in an emergency situation.

DATES: Effective February 1, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125–800A series airplanes was published in the **Federal Register** on October 2, 1992 (57 FR 45584). That action proposed to require the installation of an indicator label on certain circuit breakers that must be disabled by the flight crew during smoke drill procedures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,535, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

Section 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–26–06. British Aerosapce: Amendment 39–8433. Docket 92–NM–143–AD.

Applicability: All Model BAe 125–800A series airplanes on which Modification No. 253284A has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the crew from failing to disable all appropriate circuit breakers in an emergency, accomplish the following:

(a) Within 3 months after the effective date of this AD, install Modification No. 253284A by painting the perimeters of the "A SCRN" and "B SCRN" heat control circuit breakers with matte white (non-cellulose) paint, in accordance with British Aerospace Service Bulletin SB.24–288–3284A, dated February 7, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA,

Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with British Aerospace Service Bulletin SB.24-288-3284A, dated February 7, 1992.

(Note: The issue date of that service bulletin is indicated only on "page 1 of 7"; no other page of the document is dated.)

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 1, 1993.

Issued in Renton, Washington, on December 2, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service

[FR Doc. 92-31382 Filed 12-24-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-72-AD; Amendment 39-8432; AD 92-26-05]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, that requires a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, and repair, replacement, or refit, if necessary. This amendment also requires, under certain circumstances, a further visual inspection of the support channels/structure for deformation or cracks, and repair or replacement of damaged parts. This amendment is prompted by a report of an airplane running off the runway as a result of failure of the nose wheel steering quadrant support structure. The actions specified by this AD are intended to prevent failure of the nose wheel steering structure, which could adversely affect the controllability of the airplane.

DATES: Effective February 1, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 1, 1993.

ADDRESSES: The service information referericed in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes was published in the **Federal Register** on July 23, 1992 (57 FR 32747). That action proposed to require a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, and repair, replacement, or refit, if necessary. That action also proposed to require, under certain circumstances, a further visual inspection of the support channels/structure for deformation or cracks, and repair or replacement of damaged parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule, but recommends that it be issued as a telegraphic AD or immediately adopted rule to assure timely action to prevent failure of the nose wheel steering structure, which could adversely affect the controllability of the airplane. The FAA does not concur with the commenter's suggestion. Although the FAA recognizes the unsafe condition presented by this situation, as was described in the preamble to the notice, the FAA could not justify that an immediate safety of flight problem existed, especially in light of the fact that the entire U.S. fleet of British Aerospace Model ATP series airplanes had already been inspected in accordance with the proposed requirements. None of the operators found a steering linkage binding problem and no additional action in accordance with the related service bulletin was required. In developing this AD action, the FAA considered these items, and determined that it was not impracticable to provide notice and the opportunity for public comment on the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that all 10 affected airplanes have been inspected in accordance with the requirements of this AD. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operator.

However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it will take approximately .5 work hour per airplane to accomplish the proposed actions, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the AD is estimated to be $28 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–26–05. British Aerospace: Amendment 39–8432. Docket 92–NM–72–AD.

Applicability: Model ATP series airplanes, serial numbers 2001 through 2044, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, in accordance with British Aerospace Service Bulletin ATP–32–37, dated February 14, 1992.

(1) If the quadrant pivot/upper toggle link attachment bolt can be turned freely, in accordance with paragraph 2.A.(1) through 2.A.(8) of the Service Bulletin, no further action is necessary.

(2) If the quadrant pivot/upper toggle link attachment bolt is still tight, prior to further flight, if possible, remove and replace the bolt, in accordance with paragraphs 2.A.(9) and 2.A.(8) of the Service Bulletin. After this procedure, if the bolt turns freely, no further action is necessary.

(3) If the quadrant pivot/upper toggle link attachment bolt is found to be seized and cannot be removed, prior to further flight, check to see if the upper toggle link is free to rotate about the bolt, in accordance with paragraphs 2.A.(10) through 2.A.(12) of the Service Bulletin.

(i) If the upper toggle link is free to rotate about the bolt, prior to the accumulation of 50 landings after the functional inspection required by this AD, accomplish paragraph (a)(4) of this AD.

(ii) If the upper toggle link is not free to rotate about the bolt, prior to further flight, accomplish paragraph (a)(4) of this AD.

(4) If the upper toggle link has been checked in accordance with paragraph (a)(3)(i) or (a)(3)(ii) of this AD, repair the quadrant pivot/upper toggle link and bolt assembly, visually inspect the support channels/structure for deformation or cracks, and repair or replace any deformed or cracked structure, in accordance with paragraph 2.B. of the Service Bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections, repair, and replacement shall be done in accordance with British Aerospace Service Bulletin ATP–32–37, dated February 14, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 1, 1993.

Issued in Renton, Washington, on December 2, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92–31381 Filed 12–24–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302 and 303

RIN 0970–AA91

Child Support Enforcement Program: Review and Adjustment of Child Support Orders

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Final rule.

SUMMARY: These regulations implement the requirements of section 103(c) of the Family Support Act of 1988 (Pub. L. 100–485) which are effective October 13, 1993. Section 103(c) requires periodic review of child support orders and adjustment, as appropriate, in accordance with State guidelines for support award amounts. These regulations implement the requirement that States have a process under which child support orders in IV–D cases are periodically reviewed not later than 36 months after the establishment of the order or the most recent review, and adjusted, as appropriate, in accordance with State guidelines. These regulations also implement the requirement that States notify each parent subject to a child support order in the State, being enforced under Title IV–D, of the right to request a review of the order. Final rules implementing certain other requirements of section 103(c) which were effective October 13, 1990 were published separately (57 FR 30658, dated July 10, 1992).

EFFECTIVE DATE: These regulations are effective on and after October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Marianne Clifford Upton, OCSE Division of Policy and Planning, (202) 401–5373.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation contains no information collection requirements that are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Statutory Authority

These regulations are published under the authority of section 466(a)(10) of the Social Security Act (the Act), as amended by Public Law 100–485 and the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient

administration of the functions for which he is responsible under the Act.

Background

Review and Adjustment of Child Support Orders

Historically, State laws governing modification of child support orders have required that the party seeking a change in the award amount must prove that a material change in circumstances has occurred since entry of the order. Several States require that the change in circumstances be substantial and continuing. Still others impose a condition that the change be one that could not have been contemplated at the time the order was initially established. Meeting this burden of proof has often made obtaining a change in the amount of child support a difficult undertaking for many parties. The existence of such a standard has frequently meant the need for an adversary proceeding and protracted litigation to demonstrate the occurrence of a sufficient change in circumstances or to resist an allegation that the requisite change in circumstances has occurred.

Section 103 of the Family Support Act of 1988 (Pub. L. 100–485) requires that States must use guidelines as a rebuttable presumption in all proceedings for the award of child support and that review and adjustment of child support orders be done "in accordance with guidelines." These provisions evidence Congressional intent to make obtaining an adjustment in the amount of child support easier by requiring a process in which the standard for modification must be related to State child support guidelines. The enactment of these requirements reflects a recognition that the traditional burden of proof for making a change in the amount of support ordered may have contributed to many awards remaining unchanged throughout the life of the order and thus, inadequate or inappropriate with the passage of time. It also signals a need for States to at least expand, if not replace, the traditional "change in circumstances" test as the legal prerequisite for changing the amount of child support to be paid, by making State guidelines the presumptively correct amount of support to be paid.

Beginning with the enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378), each State had to establish guidelines for child support award amounts in the State, as a condition of State IV–D plan approval. These guidelines were not binding, but had to be made available to all judges and other officials with authority to determine award amounts.

Under section 103(a) of Public Law 100–485, Congress required that States must use guidelines and that the amount of the child support award computed according to the guidelines is rebuttably presumed to be the correct amount to be awarded. A written finding or specific finding on the record of the support proceeding that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by State criteria, is sufficient to rebut the presumption in that case. To ensure that the use of the guidelines will result in appropriate support award amounts, section 103(b) of Public Law 100–485 requires that States review guidelines at least once every four years.

Final regulations governing these aspects of section 103 were published in the **Federal Register** on May 15, 1991 (56 FR 22335). In response to comments, OCSE stressed that the use of guidelines is not limited to setting the initial award, and that guidelines must be used to modify existing orders.

The challenge of keeping child support orders up-to-date has emerged as an issue of concern for legislators, policymakers, IV–D personnel, the judiciary, child advocates, and parents. Analysis done by the HHS Office of the Inspector General (OIG) suggests that States and AFDC recipients would benefit substantially if State IV–D agencies reviewed child support orders of $50 per month or less in cases in which the State and/or Federal wage data indicates that the absent parent's income is more than $10,000 per year (see OIA–05–87–00035). This study also suggests that non-AFDC families would benefit substantially if State IV–D agencies determined the income of absent parents from State and/or Federal wage data in non–AFDC cases with low child support orders and informed custodial parents how a modification might affect the amount of support awarded.

Child support orders established prior to the adoption of State guidelines may be grossly inadequate. Even the use of guidelines in establishing the initial award amount does not ensure that orders, over time, continue to meet the support standards set by the guidelines. To address this problem, section 103(c) of Public Law 100–485 phases-in a requirement for the periodic adjustment of support orders, in accordance with the support guidelines in the State.

Under section 103(c), the Act is amended by inserting a new section 466(a)(10). Section 466(a)(10)(A), effective October 13, 1990, requires State procedures for review and adjustment of orders, consistent with a plan indicating how and when child support orders are to be reviewed and adjusted. Review may take place at the request of either parent subject to the order or at the request of a State IV–D agency. Any adjustment to the award must be in accordance with the State's guidelines, which must be used as a rebuttable presumption in establishing or adjusting support obligations in the State.

Section 466(a)(10)(B), effective October 13, 1993 (or earlier at State option), requires the State to have implemented a process whereby orders being enforced under title IV–D will be reviewed no later than 36 months after establishment of the order or the most recent review of the order and adjusted in accordance with the State's guidelines for support award amounts. Review is required in IV–D cases in which support rights are assigned to the State, unless the State has determined that review would not be in the best interests of the child and neither parent has requested a review. This encompasses child support orders in cases in which benefits under the AFDC, Title IV–E foster care, or Medicaid programs are currently being provided. It does not include orders in former AFDC, Title IV–E foster care, or Medicaid cases, even if the State retains an assignment of support rights to the extent of any unpaid support that accrued under the assignment which remains due to the State after assistance terminates. In IV–D cases in which there is no current assignment of support rights to the State, including former recipients of AFDC, Title IV–E foster care, or Medicaid benefits receiving continued IV–D services, review is required at least once every 36 months only if a parent requests it. In all IV–D cases, if such a review indicates that adjustment of the support amount is appropriate, the State must proceed to adjust the award accordingly.

Section 466(a)(10)(C) requires States to have procedures for notifying each parent subject to an order in effect in the State, being enforced under title IV–D, of their rights concerning reviews and proposed adjustments. Each parent must be notified of the right to request the State to review the order; of any review, at least 30 days before it commences; and of a proposed adjustment or determination that there should be no change in the award amount. In the latter case, the parent must be given at least 30 days after notification to initiate proceedings to challenge the proposed adjustment or determination.

Proposed regulations governing all section 103(c) requirements were published in the **Federal Register** on August 15, 1990 (55 FR 33414). Final rules implementing only those review and adjustment requirements which are effective October 13, 1990 were published on July 10, 1992 (57 FR 30658). Section 303.8(a) of the final rule published earlier contains definitions designed to clarify key aspects of the review and adjustment process. Under § 303.8(a)(1)(i), "adjustment" means an upward or downward change in the amount of child support based upon an application of the State guidelines for setting and adjusting child support. Under § 303.8(a)(1)(ii), "adjustment" also means the provision for the health care needs of the child through health insurance or other means.

Section 303.8(a)(2) defines "parent" to include any custodial parent or noncustodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order). "Review" is defined in § 303.8(a)(3) as an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine the appropriate support award amount, and the need for a provision in the order addressing the child(ren)'s health care needs through health insurance or other means under State guidelines.

Section 303.8(b) of the final rule published earlier requires the State to have a written and publicly available plan indicating how and when child support orders in effect in the State will be periodically reviewed and adjusted. It also specifies the requirements that the State must meet between October 13, 1990 and October 12, 1993, with respect to orders being enforced in IV–D cases.

In accordance with section 103(e) of Public Law 100–485, OCSE conducted two-year demonstration projects in Colorado, Delaware, Florida, and Illinois to test and evaluate model procedures for reviewing child support award amounts. Project findings corroborated that many child support orders are inadequate, outdated, and not reflective of parental ability to pay. At the conclusion of the projects, adjusted orders had been obtained in over 3,200 cases across the four projects. These cases represented 10 percent of those initially selected for review. [Another 17 percent were pending at the conclusion of the demonstration projects.] The vast majority (87%) of the modifications were upward adjustments in the child support award. The average percentage increase in the monthly support obligation ranged from 47 percent in Delaware to 135 percent in Illinois. Across the four projects, the average percentage increase was 92 percent.

We urge interested parties to examine the findings of these demonstration projects, as well as the results of a similar project initiated earlier in Oregon, to determine innovative methods for conducting review and adjustment processes on an ongoing basis. States may find the practical experiences and various approaches of other jurisdictions beneficial in implementing the review and adjustment requirements. To this end, OCSE will continue to broadly disseminate reports of the experiences of the demonstration States and best practices of other jurisdictions as they integrate review and adjustment into their routine support enforcement program operations.

In response to numerous comments urging us to delay publication of final regulations until completion of the demonstration projects mentioned previously, we decided to publish this separate rule governing the requirements for review and adjustment which are effective October 13, 1993. This action has enabled us to benefit from the experience and wisdom gained from the review and adjustment demonstration projects.

Description of Regulatory Provisions

Required State Laws—Section 302.70

With the issuance of the final rule with respect to the review and adjustment requirements which are effective October 13, 1990, regulations at 45 CFR 302.70(a)(10) require that States enact necessary laws and have procedures in effect for the review and adjustment of support orders, in accordance with the requirements of 45 CFR 303.8. We amend § 302.70(a)(10) to specify the requirements for review and adjustment by the respective effective dates. Current § 302.70(a)(10) is redesignated as paragraph (a)(10)(i) to require that States enact laws and implement procedures for review and adjustment of child support orders in accordance with § 303.8 (a) and (b) effective on October 13, 1990 until October 12, 1993. Paragraph (a)(10)(ii) requires States to enact laws and implement procedures for review and adjustment of child support orders in accordance with § 303.8 (a) and (c) through (f), effective on October 13, 1993, or earlier at State option.

Provision of Services in Interstate Cases—Section 303.7

This final rule amends § 303.7 (b) and (c) to add review and adjustment activities to the required functions to be performed by initiating and responding States in interstate IV–D cases. Paragraph (b) is amended by adding new subparagraph (6) which requires an initiating State to send a request for review of a child support order to another State within 20 calendar days of determining that review of a child support order should be requested in such other State and receipt of information necessary for conducting the review, in accordance with § 303.8(f)(1). We add a new subparagraph (v) to § 303.7(c)(7) to include review and adjustment of child support orders upon request, in accordance with § 303.8(f)(2), to the services a IV–D agency in a responding State must provide if necessary in interstate IV–D cases. We amend paragraph (c)(8) to replace the term "modification" with the term "adjustment" to make the terminology of the regulation consistent with the language of P.L. 100–485. Section 303.8(f) of this regulation sets forth specific requirements for review and adjustment in interstate cases. We address and clarify these interstate review and adjustment responsibilities in greater detail under the section of this preamble which explains § 303.8(f) of the regulation.

Review and Adjustment of Orders—Section 303.8

Section 303.8(c)—Periodic Review and Adjustment After October 13, 1993

Section 303.8(c) contains the requirements that are effective October 13, 1993, or earlier at State option, regarding review of child support orders being enforced under the IV–D program. Beginning at that time, under paragraph (c)(1), the State must have in effect and use a process for review and adjustment of child support orders in effect in the State, including a process for challenging any proposed adjustment or other determination. The review and adjustment process may be conducted within a State's judicial arena, within an administrative process structure available within an executive agency, within a combination of the judicial and administrative systems, or within any other designated forum at the discretion of the State. The law does not mandate that the IV–D agency substitute for or assume the functions of a court or administrative forum which has the legal authority in the State to adjust child support orders. Alternatively,

nothing in the law precludes a State, if it so chooses, from extending such authority to the IV–D agency.

Notice of the Right to Request Review. Paragraph (c)(2) requires that the State must notify each parent subject to a child support order in the State being enforced under Title IV–D of the right to request a review of the order. It further requires that the parents be notified of the appropriate place and manner in which the request for review should be made. States may meet this requirement by sending a one-time notice to each parent subject to an order in the State.

This requirement applies in all cases in which there is a valid order in effect, which can be adjusted under State law, including orders entered as a result of interstate activity, such as those obtained or registered in the State through the Uniform Reciprocal Enforcement of Support Act (URESA) or the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). We recognize that a URESA order is a separate order which stands on its own merit. Such order may be additional to a divorce decree or other order for support, and may be in a different amount than such other orders. On the other hand, in some cases, a URESA order may be the only order in effect. This requirement recognizes that in some instances, there may be orders in effect and being enforced in more than one State. As a result, it is possible that the parents involved in such cases may receive multiple notices from different States regarding the right to request a review of the order. The responsibilities of initiating and responding States for requesting and conducting reviews and adjusting child support award amounts in interstate cases are discussed in greater detail later in this preamble.

The duty to send a notice of the right to request a review does not, however, extend to those cases in which a State, acting in a responding capacity, has registered or entered an order for enforcement purposes only and, under State law, cannot modify the underlying child support award amount. In these cases, the State is providing only enforcement services such as income withholding or State income tax refund offset, and the State's jurisdiction over the parties is limited to the specific purpose of enforcement.

Periodic Publicizing of Right to Request Review. Paragraph (c)(3) requires States to periodically publicize the right to request a review as part of its support enforcement services as required under § 302.30 and to include notice of this right as part of the information on IV–D services required under § 303.2(a)(2). Thus, States must regularly and frequently publicize information about the availability of review and adjustment services, as well as all other support enforcement services, through public service announcements. States could, for instance, incorporate appropriate information about review and adjustment of child support orders in any pertinent notices to child support recipients and obligors or use other media such as brochures, pamphlets, radio, television, posters, and billboards. Additionally, States could sponsor advertising campaigns or utilize public service announcements to inform parents of the right to request review of child support orders.

Frequency and Conditions of Reviews. Paragraph (c)(4) specifies the frequency and conditions under which child support orders in effect in the State and being enforced under Title IV–D must be reviewed. With certain exceptions, States must review, at 36-month intervals after establishment of the order or the most recent review, child support orders in IV–D cases in which rights to child support are assigned to the State. In IV–D cases in which there is no assignment of support rights to the State, reviews are required only upon the request of either parent.

Although the statute requires periodic reviews only in cases in which rights to child support are assigned to the State under section 402(a)(26) of the Act (i.e., AFDC cases), we are using our authority under section 1102 of the Act to publish regulations that are necessary for the efficient administration of the IV–D program to require such reviews in all IV–D cases in which support rights are assigned to the State. This includes, in addition to cases assigned as a condition of receipt of AFDC under 45 CFR 232.11, title IV–E foster care cases in which the support rights are assigned under section 471(a)(17) of the Act and non-AFDC Medicaid cases in which the rights to medical support or to payments for medical care from any third party are assigned under 42 CFR 433.146. In any non-AFDC Medicaid case in which the support order does not provide for the health care needs of the children or the custodial parent does not have satisfactory health insurance other than Medicaid, a review is required to determine the need to provide in the order for the health care needs of the children, through health insurance or other means.

Regulations implementing the requirement for extension of IV–D services to non-AFDC Medicaid recipients and continuation of IV–D services to former AFDC recipients were published in the **Federal Register** on February 26, 1991 (56 FR 7988). IV–D services include those unrelated to securing medical support under §§ 303.30 and 303.31, unless the non-AFDC Medicaid recipient notifies the IV–D agency that child support enforcement services unrelated to securing medical support are not wanted. Individuals who have assigned medical support rights must cooperate with the IV–D agency in establishing paternity and in securing medical support, unless the Medicaid agency determines that good cause for not cooperating exists. Other than the fact that medical support rights are assigned and a duty to cooperate with the IV–D agency in establishing paternity and securing medical support exists, a non-AFDC Medicaid case is similar to a non-AFDC case. Therefore, if a support order requiring the provision of health insurance or otherwise addressing the health care needs of the children already exists in a non-AFDC Medicaid case, a review of the child support order is not required every 36 months unless a parent requests a review.

For the purpose of review and adjustment requirements, former AFDC cases which continue to receive IV–D services are considered to be non-AFDC cases, such that review is not required in such cases unless requested by either parent. Similarly, cases in which the State, by virtue of a previous assignment of rights to child support, is entitled to arrearages, but in which continued services are no longer being provided to the former recipient, are not subject to the mandatory review requirement.

These requirements are discussed more extensively in the Response to Comments section of this preamble.

Exceptions to Mandatory Review. Paragraph (c)(4) also sets forth three exceptions to the mandatory review requirement. First, under paragraph (c)(4)(i), review is not required in cases in which support rights are assigned to the State, as defined at § 301.1, if the State determines, in accordance with § 303.8(c)(5), that a review would not be in the best interests of the child and neither parent has requested a review.

Paragraph (c)(4)(ii) specifies the second exception, by providing that review is not required in IV–D cases, in which there is no assignment of support rights to the State, if neither parent requests a review.

Lastly, paragraph (c)(4)(iii) exempts from mandatory review any IV–D case in which medical support rights are assigned under 42 CFR 433.146, but in which child support rights are not assigned under 45 CFR 232.11 or section 471(a)(17) of the Act, the order requires

the provision of health insurance, and neither parent has requested a review. Recipients of Medicaid are required under section 1912(a)(1) of the Act to assign to the State their rights to support for medical care from any third party and to cooperate with the State in establishing paternity and securing medical support. Effective July 1, 1988, section 9142 of Public Law 100–203 amended section 454(4) of the Act to require that State IV–D agencies provide IV–D services to families who have assigned their rights under section 1912 of the Act as a condition of receipt of Medicaid. The IV–D agency must provide all appropriate IV–D services to Medicaid recipients referred to the IV–D agency, whether or not they are also eligible for AFDC, without an application or application fee.

Circumstances Under Which Review Would Not Be in the Best Interests of the Child. Paragraph (c)(5) provides that, in cases in which support rights are assigned to the State as defined in § 301.1, a State must determine that a review of the child support order would not be in the best interests of a child if there has been a finding of good cause as set forth at 45 CFR 302.31(c) and 45 CFR 232.40 through 232.49 or 42 CFR 433.147(c) and the State or local IV–A, XIX, or IV–E agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative.

Section 466(a)(10)(B)(i) provides that the State's determination regarding whether a review would not be in the best interests of the child must be in accordance with regulations of the Secretary. In the proposed rule, we requested input from commenters as to how to best define "not in the best interests of the child." These regulations reflect our decision, in consideration of many insightful comments, to limit the "not in the best interests of the child" exception to mandatory reviews to cases in which good cause for not cooperating has been determined to exist. Since the statute specifies that the regulations of the Secretary dictate the State's determinations in this regard, States may not establish or use other criteria for determining that a review would not be in the best interests of the child.

Under section 466(a)(10)(B)(i), a review is not required in any case in which an assignment of support rights is in effect, if the State has determined that such a review would "not be in the best interests of the child and neither parent has requested review." This creates a two-prong test, both conditions of which must be satisfied to meet the exception to the requirement that a review be conducted. Even if it is determined that good cause exists, a request by a parent would require a review. This could result in requests from absent parents in cases in which good cause for not cooperating exists and in which the IV–D agency is therefore not pursuing support. However, we believe this to be a remote possibility because § 303.11(b)(10) permits States to close cases in which there has been a finding of good cause as set forth at §§ 302.31(c) and 45 CFR 232.40 through 232.49 and the State or local IV–A or IV–E agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative.

Pre-Review Notice. Paragraph (c)(6) contains the requirements for notifying each parent subject to a child support order in effect in the State in advance of any review. Under paragraph (c)(6)(i), States must notify each parent of any review at least 30 calendar days before commencement of the review.

The requirement that States provide advance notice prior to conducting a review is applicable in all IV–D cases, regardless of whether the State is proceeding with a mandatory review or whether the review was requested by a parent. Notices must be issued to both parties, including the requesting party. The purpose of the notice is to advise the parties that a review will be conducted. We strongly encourage that the language in the notice be "reader-friendly": i.e., clear and easy to understand. The notice can serve as a vehicle for requesting information from the parties, explaining the steps in the process, and advising of the date, time, and location of hearings, if any. The notice can be tailored to fit the particular State circumstances. If State due process or other rules established for the review process allow, the notice requirement may be satisfied by sending a copy of the petition, motion, or administrative notice to each party, provided that any hearing on such pleading not occur until 30 calendar days following the mailing or service of the notice. This requirement is further explained in the Response to Comments section of this preamble.

Information Requirements. Under paragraph (c)(6)(ii), States must notify each parent of any information necessary to conduct the review and the date by which such information must be provided. States are encouraged to incorporate both aspects of this requirement in the notice issued 30 calendar days in advance of a review. This requirement to provide information was included as authority for States to advise parties of the types of information needed to conduct the review, such as wage statements, income tax returns, health insurance coverage verification, financial affidavits, completed guideline worksheets, or other documents. Any information necessary for computing the child support obligation using State guidelines should be listed and the parties urged to submit any additional facts or documents they wish to have considered during the review process. If a State's statute or procedures which specify guideline computation requirements permit the imputing of income to a party (as a way of dealing with either a lack of necessary financial information to calculate the support amount or situations of voluntary underemployment or unemployment), States are encouraged to advise parties in the notice that failure to provide the specified information may result in imputing income to that party for purposes of determining the amount or entry of an adjusted order.

States are also encouraged to consider requiring that parties, in all cases or perhaps only certain categories of cases, furnish on a routine basis, financial information directly pertinent to the application of State guidelines to either the court or administrative agency which entered the child support order or which will be conducting any review. States may wish to consider adopting legislation which requires any party to a child support order to file, with the court or administrative agency which entered the order, on a regular basis, a financial statement relevant to the guidelines. For example, at least one State requires, by statute, any absent parent to complete, at the request of the IV–D agency, a statement under oath, providing specified information. Under this law, such information includes, but is not limited to, the absent parent's monthly income, his or her total income for the previous year, the number and name of his or her dependents and the amount of support he or she provides to each, the nature and extent of his or her assets, and such other information as requested. Under this State's law, at the agency's request, such statements must be completed annually. Failure to comply is considered to be a class A misdemeanor.

As part of its guideline, another State specifies that "a party to a child support proceeding shall exchange relevant information on finances or dependents every 3 years, and shall be encouraged to update a support order voluntarily using the updated information and the guideline." Adoption of similar laws or practices may help eliminate the necessity of having to first file a modification petition in order to

conduct any discovery activities. As several commenters noted, until an action is pending before a court or administrative forum, proceedings to obtain information and other evidence cannot be initiated.)

Post-Review Notice and Challenge. Paragraph (c)(7) specifies the requirements for providing notices following any review. Under paragraph (c)(7), following any review, the State must notify each parent subject to a child support order in effect in the State of: (i) A proposed adjustment or a determination that there should be no change in the order and (ii) each parent's right to initiate proceedings to challenge the proposed adjustment or determination, not less than 30 calendar days after the notice.

The post-review notice serves to inform the parties of the findings and decision of the reviewer, whether such review is conducted by a court, through a quasi-judicial process, or by an administrative body or agency. Depending upon how a State establishes its review process, the post-review notice can take the form of a standardized letter issued by the IV–D agency indicating the review findings, a judicial order, a recommendation of a mediator or referee, an administrative finding, or other document reflecting the results of the review.

Each State has discretion and flexibility in determining how the proposed adjustment or determination not to adjust the order may be challenged by a party. The only statutory requirement is that the State provide the parties at least 30 calendar days to initiate proceedings to challenge the determination. In the four demonstration projects, if an adjustment of the child support award amount was indicated as a result of the review, all four States initiated the adjustment process in conjunction with the notification of the review results. As a result, there was considerable overlap between completion of the review process which included a response to the challenges received and the initiation of the process to adjust the order.

All four projects informed the parents in the notification of review of the opportunity to challenge or contest the result indicated by the review. All four projects had specific time periods within which a challenge must be received and established procedures for responding to challenges made. Although each of the States' procedures varied, the most commonly used approach to a challenge was to review any new or additional information provided by the parent and recompute the amount of child support using guidelines. The parties were notified of the redetermination and asked to stipulate to entry of an order reflecting the findings of the review. As a rule, none of the demonstration States conducted more than two reviews before referring a case for legal action. We believe that arrangements similar to those used in the demonstration States which allow for a reexamination or additional review upon challenge and allow an opportunity to present evidence to the judicial or administrative authority which ultimately decides whether to adjust or not adjust the order satisfy the intent of the Congress that an opportunity to challenge the findings be provided.

In any State which establishes its review and adjustment process entirely within a judicial arena, with court staff conducting the reviews, the post-review notice requirement may be fulfilled by permitting the parties to challenge the court's decision through appeal. We believe that the availability of an appeal satisfies the statutory right to challenge the adjustment or determination and meets the intent of Congress that parties have an opportunity to challenge a decision. In a judicial setting, hearings provide an opportunity for parties to present evidence and make objections prior to entry of the ruling. Generally, the ruling of the court is considered final, except for purposes of appeal, on the date the order is signed by the judge, unless a subsequent judgment must be filed. Upon entry of the order, the appeal period begins to run. In most States, the time to appeal ends 30 calendar days after entry of the order. The appeal right affords a party the opportunity to have a higher court examine the decision to determine whether error or an abuse of discretion occurred.

Adjustments to Child Support Orders. Paragraph (c)(8) requires that following any review, the State must adjust the order, or determine that there should be no adjustment, as appropriate, in accordance with the State's guidelines for setting support awards and paragraph (d), which addresses the basis for petitioning for an adjustment. This would also include determinations which indicate the need to provide for the health care needs of the children, through health insurance or other means, in the order. Further discussion of the adjustment phase of the process follows in our discussion of paragraph (d) concerning the basis for petitioning for adjustment and later in the Response to Comments section of this preamble.

Basis for Seeking Adjustment—Section 303.8(d)

Section 303.8(d) specifies the requirements States must meet with respect to seeking adjustments to child support orders in IV–D cases. Paragraph (d)(1) requires that inconsistency between the existent child support order amount and the amount of child support which results from application of the State guidelines must be an adequate basis, under State law, for petitioning for an adjustment of an order in a IV–D case, regardless of whether or not the order was established using guidelines.

Two exceptions to this requirement are set forth in subparagraphs (d)(1)(i) and (ii). The first exception is allowed if the inconsistency does not meet a reasonable quantitative standard established by the State, as permitted under subparagraph (d)(2). Paragraph (d)(2) provides that States may establish a quantitative standard based upon either a fixed dollar amount or percentage, or both. This quantitative standard, or threshold, is to be used as a basis for determining whether the inconsistency is sufficient to justify proceeding with a petition or motion for adjustment of an award, not as a criterion for deciding whether to review. Threshold standards are not mandatory if States adjust all orders regardless of the degree of inconsistency with the guidelines. However, thresholds may serve to prevent inundating the adjustment process with cases in which the variance in amount between the current order and the amount an application of guidelines would require is minimal. The reasonable quantitative standard and change in circumstances topics are further discussed and explained in the Response to Comments section of this preamble.

The quantitative standard contemplated by § 303.8(d)(2) should be used as a post-review decision-making tool. It should not be considered a restriction on the requirement that the court or administrative process must use guidelines in setting and modifying support or a limitation on the authority of the court or other authority to find, in a particular case, that an award based on guidelines is unfair or inappropriate. In making any adjustment to the amount of support, the judicial or administrative process must apply the State guidelines and, pursuant to § 302.56(f), the child support award calculated to be due under the guidelines is rebuttably presumed to be the correct amount of support to be paid.

Under subparagraph (d)(1)(ii), a second exception to the requirement that an inconsistency between the

current amount of support and the amount of support resulting from application of the guidelines is permitted. This exception is allowed if the basis for the inconsistency is the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change in the circumstances which resulted in rebuttal of the guideline amount at the time the current order was established. This exception recognizes the existence of cases in which the amount of child support was initially established using guidelines, but the court or administrative authority determined that the amount presumed to be correct was unfair or inappropriate, and set an amount which varies from the guideline amount. Consequently, reapplication of guidelines in such cases may always reflect inconsistency simply because the amount of the current support award was established as a rebuttal of the guideline amount. In these cases, the petitioner would have to show a change in the circumstances which resulted in the original rebuttal of the guideline amount.

Need for Provision for Health Care Needs. Paragraph (d)(3) requires that if the review indicates the need to provide for the health care needs of the children in the order, through health insurance coverage or other means, such need must constitute adequate justification under State law to petition for adjustment of the order to provide for the health care needs of the children, regardless of whether an adjustment in the amount of child support ordered is necessary. It further stipulates that in no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child's health care needs in the order.

This provision effectively requires that the review process must include a determination of whether the health care needs of the children are being met, other than through Medicaid, either through health insurance coverage available to the custodial parent, health insurance coverage available to the absent parent, or other means. Even if adjustment of the child support award amount is not sought, the need to provide for the health care needs of the children must be a sufficient reason to seek adjustment of the order. As defined in § 303.8(a), "review" includes a determination of the need to provide for the child's health care needs in the order through health insurance coverage or other means. "Adjustment" means "provision for the child's health care needs, through health insurance coverage or other means."

Providing for the health care needs of children is an integral part of the general obligation that parents have to support their children. Ensuring that children have available medical care is essential to their general welfare. Private insurance provided by parents to cover their children who are eligible for Medicaid assistance also reduces the public costs of supporting a child and results in significant cost savings or cost avoidance to the government under the Medicaid program.

As part of the final regulations published on May 15, 1991 (56 FR 22335) governing presumptive guidelines, State guidelines are required, under § 302.56(c)(3) to take into consideration the child(ren)'s health care needs. As we stated in response to comments on that rule, States have flexibility to determine how their guidelines will provide for the health care needs of the children as long as the requirements of § 302.56(c)(3) are met. Since guidelines must in some way address the children's health care needs, any review of the child support order using guidelines would, by necessity, include a determination of the children's health care needs. Similarly, since any adjustment to the child support order resulting from a review must be in accordance with guidelines, the health care needs of the children must be taken into consideration as part of the application of the guidelines. Furthermore, regulations governing securing and enforcing medical support at § 303.31(b)(2) require IV-D agencies to petition the court or administrative authority to include health insurance that is available to the absent parent at reasonable cost in new and modified court or administrative orders, unless the custodial parent and children have satisfactory health insurance other than Medicaid.

Timeframes for Review and Adjustment—Section 303.8(e)

Section 303.8(e) specifies the timeframes for review and adjustment activities. Paragraph (e)(1) requires that in any case in which support rights are assigned to the State under § 301.1, the State must determine, within 15 calendar days of October 13, 1993, or the date the child support order is 36 months old, whichever date occurs later, whether a review should be conducted, as required under § 303.8(c)(4). Subsequent determinations about whether to conduct a review must be made in accordance with paragraph (c)(4), at 36-month intervals based upon the date the child support order was adjusted or the date an order was entered determining that the child support order should not be adjusted, or, in any case in which a petition or motion for adjustment was not filed following a review, the date upon which the post-review challenge period ended. Paragraph (e)(2) requires that within 15 calendar days of receipt of a request for a review, the State must determine whether a review should be conducted, as required under § 303.8(c)(4).

Paragraph (e)(3) specifies that within 180 calendar days of determining that a review should be conducted, or locating the non-requesting parent, if necessary, whichever occurs later, the State must perform four required activities. The State has 180 calendar days to: (1) Send the notice or serve process required under paragraph (c)(6) that a review will be conducted; (2) conduct the review of the order; (3) send the notice required under paragraph (c)(7); and (4) adjust the order, or determine that the order should not be adjusted, in accordance with paragraph (c)(8).

To ensure that States are subject to timeframes for conducting review and adjustment activities, the proposed rule proposed to add a reference to modification in the timeframes for establishing an order under § 303.4(d), which was added by final regulations, establishing standards for program operations, including timeframes for processing cases, published August 4, 1989 (54 FR 32284). As proposed, the addition of modification to § 303.4(d) would have required States to modify an order for support or complete service of process necessary to commence proceedings to modify a support order within 90 calendar days of locating an absent parent.

However, as a result of comments received regarding this proposal, as well as the findings of the demonstration projects regarding the average span of time involved from case selection through disposition, we have carefully reconsidered the proposed timeframe requirement. We believe that the timeframe should be measured from the date an order is determined to be eligible for review based on its age or the date of a request, allow for a reasonable period to determine whether a review is required, take into consideration the statutory pre- and post-review notice requirements, and accommodate the variations among State legal structures with respect to how child support orders can be legally adjusted.

The findings of the demonstration projects substantiate that a 180-calendar-day timeframe is both necessary and reasonable. The time for completing the review and adjustment

process experienced in the demonstration States was measured from case selection as the starting point. Location of the non-requesting parent was not a criteria for selection, but a post-selection, pre-review activity. Thus, time devoted to location was a component of the processing times used to compute the average length of time the review and adjustment process encompasses. The 180-calendar-day timeframe imposed by these regulations does not commence to run until the non-requesting parent is located or determination to review is made, whichever is later. Further discussion of these requirements and the rationale for establishing the 15-calendar-day and 180-calendar-day timeframes is presented in the Response to Comments section of this preamble.

Interstate Requirements—Section 303.8(f)

Section 303.8(f) designates the requirements for conducting review and adjustment activities across State lines. The inherent complications in enforcing and establishing child support orders when parties live in different States or move from the State in which the original order was entered are no less difficult when review and adjustment of orders is added to the configuration. We are equally mindful of the complexities in reviewing cases with multiple orders in different amounts as a result of intervening URESAs or modified registered orders, in determining the effect of an adjustment made by one State on other orders in existence in other States, and in improving communications about cases among States.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is currently redrafting URESA/RURESA and will address review and adjustment of orders in interstate cases in the revised act. The Commission on Interstate Child Support, established by section 126 of Public Law 100–485, is gathering public input on possible reform and improvement to the interstate system, as well as working closely with the NCCUSL on the redraft of URESA. The work of both the NCCUSL and the Interstate Commission is scheduled for completion in 1992. These bodies are scrutinizing the complex legal, jurisdictional, and operational issues involved in review and adjustment of child support orders in interstate cases. OCSE is involved in, and will follow, developments as a result of these groups' efforts, in anticipation that answers and guidance on the many interstate concerns will emerge.

However, in order to provide States essential guidance as they begin to review and adjust child support orders under the new requirements, we believe that Federal rulemaking is necessary at this time to clarify the roles and responsibilities of initiating and responding States in performing review and adjustment activities in interstate cases.

Initiating State Responsibilities

Paragraph (f)(1) specifies the responsibilities of an initiating State with respect to review and adjustment requirements. Paragraph (f)(1)(i) requires that the State in which there is an assignment of rights to child support, as defined under § 301.1, must, in any case in which support rights are assigned to the State under § 301.1, determine within 15 calendar days of October 13, 1993, or the date the child support order is 36 months old, whichever date occurs later, whether a review should be conducted, as required under § 303.8(c)(4) and in which State a review and adjustment will be sought. As stated previously, this requirement encompasses orders in cases currently receiving benefits through the AFDC, title IV–E foster care, or Medicaid programs, and does not apply to cases involving former recipients of public assistance or cases in which the State retains an assignment of support rights to the extent of any unpaid support that accrued under the assignment which remains due to the State after assistance terminates.

Subsequent determinations about whether to conduct a review must be made in accordance with paragraph (c)(4), at 36-month intervals based upon the date the child support order was adjusted or the date an order was entered determining that the child support order should not be adjusted, or, in any case in which a petition or motion for adjustment was not filed following a review, the date upon which the post-review challenge period ended.

We use our regulatory authority under section 1102 of the Act to require that States must also request review every 36 months in any case in which support rights are assigned to the State but where an order for child support was entered in another State. In meeting this requirement, States are governed by the requirements of §§ 303.7(b)(7) and 303.8(f)(1), applicable to initiating States. This places responsibility upon the State to review or request that another State review the child support order in all cases in which support rights are assigned to the State, as defined by § 301.1. Again, this would not encompass IV–D cases involving former recipients of AFDC, title IV–E foster care benefits, or Medicaid, or cases in which the State retains an assignment of support rights, after public assistance has ceased to be provided, to the extent of any unpaid support remaining due to the State under such assignment.

Paragraph (f)(1)(ii) requires that the State in which a request for review is made, must, within 15 calendar days of a request for a review, determine whether a review should be conducted, as required under § 303.8(c)(4) and in which State a review and adjustment will be sought.

The State in which a request for review is made or in which there is an assignment of support rights is required to determine whether a review should be conducted and if so, in which State the review should take place or be requested. The factors which States must evaluate in making a decision as to whether a review must be conducted are governed by § 303.8(c)(4) which specifies the conditions under which a review is not required. For example, a review is not required in a case in which there is an assignment of support rights to the State and the State determines that a review would not be in the best interests of the child and neither parent has requested a review. The factors which States might evaluate in making a decision as to the suitable forum for conducting the review and making any appropriate adjustment to the child support order include the location of existing order(s), the present residence of each party, and jurisdiction over the parties.

Paragraph (f)(1)(iii) provides that if the State determines under paragraph (f)(1)(i) or paragraph (f)(1)(ii) that it should review a child support order in effect in the State, it must provide notice, conduct a review, and adjust the order, or determine that the order should not be adjusted, in accordance with paragraphs (c)(6) through (8), and complete these activities within the 180-calendar-day timeframe in paragraph (e)(2). If the initiating State has an order which can be reviewed locally, even if one or both of the parties is no longer a resident, the case does not become an interstate case for review and adjustment purposes, and the provisions of §§ 303.8(c) through (e) given the review process. We believe this is the most efficient and preferred approach, as it prevents the establishment of multiple orders in various jurisdictions.

However, the initiating State may determine that it is more appropriate to request that a review be conducted in another State because there is an order in such other State that can be adjusted.

In these instances, the provisions of paragraph (f)(1)(iv) would apply.

Paragraph (f)(1)(iv) requires that if the State determines under paragraph (f)(1)(i) or paragraph (f)(1)(ii) to request a review of an order in another State, it must send a request for review to that State within 20 calendar days of receipt of sufficient information to conduct the review and provide that State with sufficient information to act on the request. Under this provision, the initiating State must transmit a case to the State it determines is an appropriate place for a review, indicating on the standardized interstate transmittal form that a review is requested and attaching documents necessary to permit review in the responding State.

The current requirements of §§ 303.7(b)(3) and (4) governing providing sufficient, accurate information for the responding State to act on the request, and providing any additional information requested by the responding State also apply to requests for review.

Paragraph (f)(1)(v) specifies the requirements for transmitting requests for review to other States. If the request for review is the first contact between the initiating and responding States in the case, the request for review must be sent to the interstate central registry in the responding State. However, if the initiating State has previously referred the case to a responding State for action, the initiating State may request a review of the order (if it can be modified under the responding State's law) by sending the request for review directly to the local office or agency working the case, rather than routing the request as a new action through the interstate central registry of the responding State.

Paragraph (f)(vi) requires the initiating State to send, to the parent in the initiating State, a copy of any notice issued by a responding State in connection with the review and adjustment of an order, within 5 working days of receipt of such notice by the initiating State.

Responding State Responsibilities. Paragraph (f)(2) details the responsibilities of a responding State in response to receipt of a request for a review from another State. Paragraph (f)(2)(i) requires that, within 15 calendar days of receipt of a referral from another State requesting review of an order in effect in the responding State, the appropriate processing agency in the responding State must determine whether a review should be conducted, in accordance with § 303.8(c)(4) and the responding State's procedures for review and adjustment of child support orders. We have included a 15-calendar-day timeframe for the responding State in order to address requests for review of orders that are less than 36 months old. The determination of whether or not to conduct a review in such situations is governed by the responding State's procedures for review and adjustment of child support orders. This affords the responding State an opportunity to examine the case to determine whether the child support order should be reviewed using as a basis the requirement that reviews must be conducted at 36-month intervals after the establishment of the order or the most recent review. It also makes clear that the decision of whether a review should be conducted is made by the appropriate processing agency, rather than by the central registry. Therefore, the 15 calendar days begin to run upon receipt of the request from the central registry. However, in no event, should a responding State make a good cause determination not to review an order based on the best interests of the child, if the initiating State has requested a review. The determination that good cause not to review an order exists in any case in which there is an assignment of support rights to the State shall be made only by the State to which such assignment of rights to support has been made.

Paragraph (f)(2)(ii) requires that within 180 calendar days of determining that a review should be conducted or locating the non-requesting parent, whichever occurs later, the responding State must send the notice to each parent that a review will be conducted, conduct a review, send the notice of the proposed adjustment or determination that there should be no adjustment, and adjust the order or determine that the order should not be adjusted, in accordance with paragraphs (c)(6) through (8).

Although we devote a separate section of this final regulation to interstate processing of required and requested reviews, the determination of whether a case should be reviewed, the processing steps, and timeframes are identical to those applicable in an intrastate case. Once the case is received in the responsible local office, the procedures involved in conducting the review should be no different than those used in intrastate cases. A State may not establish a separate process for handling requests for review from other States. If the information received is inadequate, the provisions of § 303.7(c)(4)(ii) require the responding State to notify the IV–D agency in the initiating State of the necessary corrections or additions to the interstate form or documentation. As provided under § 303.7(c)(4)(iii), if the documentation received with a case is inadequate and cannot be remedied by the responding IV–D agency without the assistance of the initiating State, the IV–D agency must process the interstate IV–D case to the extent possible pending necessary action by the initiating State.

Under paragraph (f)(2)(iii), States may meet the notice requirement of § 303.7(c)(8) by sending notice of the review required under § 303.8(c)(6) to the parent in the initiating State through the IV–D agency in the initiating State. Thus, a responding State would not have to prepare and issue two different notices contemplated by the mutual existence of the requirement under § 303.8(c)(6)(i) that advance notice of any review be sent to each parent and the requirement under § 303.7(c)(8) that the responding State IV–D agency provide timely notice to the IV–D agency in the initiating State in advance of any formal hearings which may result in the establishment or modification of an order. This requirement effectively permits the advance notice of review to the parent in the initiating State to also serve as the notice to the initiating State itself, by requiring that the notice be transmitted to the parent through the initiating State IV–D agency. As explained previously, § 303.8(f)(1)(vi) requires the initiating State to forward any notices, to the parent in the initiating State, within 5 working days of receipt of the notice from the responding State.

Paragraph (f)(3) specifies that the applicable laws and procedures for review and adjustment of child support orders, including the State guidelines for setting child support awards, established to § 302.56, are those of the State in which the review and adjustment, or determination that there be no adjustment, take place.

Response to Comments

In response to the Notice of Proposed Rulemaking published August 15, 1990, in the **Federal Register** (55 FR 33414), we received comments from over 70 commenters, representing national organizations, State and local IV–D agencies, advocacy groups, and private citizens. The comments concerning the 1993 requirements and our responses are as follows:

Periodic Review and Adjustment After October 13, 1993—Section 303.8(c)

1. Comment: Numerous commenters questioned what duties are placed by the Act on the State IV–D agency. Can only a IV–D agency conduct review or can other State entities such as the court system?

Response: While nothing in the Act requires the IV–D agency to be the entity responsible for the review and adjustment of orders, nothing prevents the IV–D agency from doing so or from playing an integral role. We retain flexibility in the regulations to allow States to allocate the various review and adjustment functions according to historical practice or to the exercise of State discretion. We recognize the possible distinction between the State and the IV–D agency.

Nothwithstanding this flexibility to develop a workable process in the State, the IV–D agency retains overall responsibility for ensuring that the requirements are met. Placement of certain review and adjustment functions within other organizational entities or branches of government in no way diminishes the responsibility of the IV–D agency to ensure that, overall, the State is in compliance with all Federal requirements.

Because the Act refrains from specifying which State entity is required to conduct the review and adjustment process, "review" is broadly defined in § 303.8(a) to encompass many possible alternatives. Because these regulations do not necessarily place responsibility on the State IV–D agency to conduct reviews and make adjustments, a State has the discretion and the flexibility to design a review process that will be effective within or as a complement to its respective child support enforcement program. For example, under one possible model, States which use administrative processes for the establishment of child support awards, which allow for fair hearings and rights of appeal, may find it feasible to use such procedures for the review and adjustment process.

2. Comment: One commenter warned that unless constitutionally-sound State legislation provides for administration modification of judicial orders, it will be necessary in an administrative process State for a judicial or quasi-judicial decision-maker to conduct reviews in cases in which the existent order was established through a judicial process.

Response: We encourage States to consider the various options available for implementing an effective mechanism for conducting reviews of child support orders. In some States, the preferred forum may be the State judicial system. In States which designate that review and adjustment be done entirely by the same entity which entered the initial order, the review and adjustment activities of the State IV–D agency may be limited to filing the action, issuing the notices of the right to request review, and facilitating the exchange of information.

As indicated previously, we urge States to examine the work of the States which conducted demonstration projects. These projects illustrate that various approaches for reviewing and adjusting orders are feasible. In all of the demonstration projects, the review was a fairly simple and straightfo ward task once the necessary financial information was obtained. Reviews were conducted by computing a new support amount based on the application of the child support guidelines and the required financial information. In Colorado, modification technicians conducted the reviews. In Delaware, mediators or masters conducted reviews if mediation was used; if stipulations were used, child support specialists conducted the reviews. Child support case analysts were responsible for the reviews in Florida, while in Illinois, reviews were conducted by modification unit staff members. If adjustments to orders were appropriate, the demonstration project States varied somewhat in how the adjustments were sought. For example, Colorado used an expedited judicial process: If the IV–D agency could not obtain a stipulation, cases were heard before court referees or commissioners; if either party disagreed with the referee's decision, cases were referred to a judge. Delaware used an expedited quasi-judicial process with family court mediators conducting mediation sessions to obtain stipulations. If stipulations could not be obtained, cases were referred for a hearing before a court master. Any party disagreeing with the master's ruling could request a de novo hearing before a judge. In Florida, IV–D staff attempted to obtain stipulations prior to legal referral; hearings were conducted by either a hearing officer or a judge. Illinois employed dual judicial and administrative processes for establishing orders. However, the use of the administrative process was limited to cases not previously or currently under the court's jurisdiction.

Oregon used an administrative process for establishing child support orders where no court order for child support existed. If a court order was subsequently established, as in a divorce action, the administrative order was superseded. Alternatively, if a court order already existed when a case acquired IV–D status, no administrative order was established. Because Oregon enforced both administratively and judicially established orders, modifying these orders had to proceed through the appropriate process. The Final Report on the Oregon Child Support Updating Project (February 1991) explains that the project was able to test the relative efficacy of using an administrative and a judicial process to modify support orders. According to the report, modification of orders through the judicial process did not take significantly longer than those modified through the administrative process. The report emphasized, however, that this result may have occurred because the project was able to arrange expedited docketing and priority calendaring for court hearings. The report further noted that the advantages of an administrative process were more evident with respect to the costs of modifying orders. The report cited data that the comparative cost per case to modify child support orders was considerably lower for administrative modification ($496 per case) than for judicial modification ($770 per case).

Role of the IV–D Agency

1. Comment: Many commenters offered opinions concerning the conflicts of interest discussion in the preamble to the proposed rule. In that document we presented our position that the IV–D agency does not provide legal services *per se*. Several commenters explained the difficulties and dilemmas often encountered because of various, and often contradictory, rulings and interpretations of the role of the IV–D program and staff in their jurisdiction in relation to the individuals receiving IV–D services.

Response: The issue of "legal representation" of parties in child support proceedings is a matter to be determined by State law, regulations, or bar association requirements. There are no Federal statutory or regulatory requirements addressing this matter. The IV–D agency, on the other hand, must perform certain functions in accordance with Federal statutory and regulatory requirements. As required under § 303.20(f), States must have staff to achieve the standards for an effective program which must include attorneys or prosecutors to represent the agency in court or administrative proceedings with respect to the establishment and enforcement of orders of paternity and support. Generally, conflicts of interest should not arise, but if they do exist, the State must resolve the conflict and still perform the requisite functions.

Clearly, Congress has mandated that each party to a child support order in effect in the State and being enforced through the IV–D program has a right to request a review of that order. In addition, if appropriate, the State must adjust the order, in accordance with

State guidelines for setting child support award amounts. However, this does not mean that the IV–D agency or its attorneys must "represent" the parties in the process of conducting a review and/or adjusting the order. The State's role is not to advocate either an increase or a reduction in the amount of the order, but rather, to facilitate whatever adjustment is appropriate in accordance with the guidelines.

We are aware that some States have developed processes through which the review is conducted by the IV–D agency. Following the review, any adjustments are made through the judicial or administrative process in place in the State for setting child support orders, without any necessity of "representation" of either party by the IV–D agency in an advocacy capacity. Several States are exploring *pro se* procedures for enabling the parties to have better and easier access to the judicial or administrative process to obtain an adjustment.

It is our understanding that a number of States, through legislation and bar association opinions, have taken the position that neither the custodial parent nor the non-custodial parent is the "client" of the IV–D program or the attorneys who work for the IV–D program. Additionally, we are aware that several States are making statutory, regulatory, and procedural changes to clarify or redefine the IV–D agency's relationship with the parties in IV–D cases. Some of the efforts States are taking to address these concerns include: removing references to the parent or child as "clients" in all statutes, regulations, policies, forms, and legal pleadings; captioning all legal pleadings relating to the delivery of IV–D services for establishment and enforcement of child support in the name of the State and clearly specifying that the IV–D attorney is not the attorney for either of the parents; and notifying both parents, in writing, that the IV–D agency or its attorneys do not represent either parent and that either parent may obtain private counsel.

2. Comment: Several commenters stressed the need to recognize that in some States the IV–D agency cannot initiate proceedings to reduce child support obligations due to an inherent conflict of interests that would apparently exist in those States because of their administrative structure. They cited ethical problems which would arise for a IV–D attorney in seeking results on behalf of the one party in a case which are directly contrary to the interests of another party in the same case for whom the attorney has previously provided services.

Response: Because the statute does not differentiate between the parties with respect to the right to request a review, each parent is entitled to make a request. Consequently, it is conceivable that a review may be requested by an absent parent for the purpose of obtaining a reduction in the amount of child support previously ordered. As indicated by several commenters, in the IV–D context, the issue of client representation has not been universally resolved. As previously indicated, a growing number of State bar associations, attorneys general, or legislatures have issued opinions or statutory interpretations providing guidance to practitioners.

For those cases which were not terminated from the review process, the number of downward adjustments in the demonstration projects was very low. In only 170 cases, representing five percent of the total modifications obtained, did a lower support award amount result. Of these 170 cases, 150 (88 percent) occurred in Colorado and Delaware. Only six downward modifications occurred in Florida, and in Illinois, only 14 of the approximately 1400 orders modified resulted in a reduction in the amount of child support. While Delaware had the largest number of downward adjustments (82 orders representing 10.7 percent), Delaware also had 19 cases in which a downward adjustment was indicated, but the obligor agreed to no change. Delaware also had 139 cases in which the modification disposition was "no change." The earlier project in Oregon reflected that overall, 81 percent of the adjusted orders were for increases in the monthly support obligation and 19 percent produced decreases in the monthly obligation. Moreover, in Oregon, downward adjustments tended to be situations in which the original order had been entered by default, with income imputed to the obligor. In these instances, the subsequent availability of information as to the obligor's income produced a lower support order. These reported data illustrate that an expected high income of downward adjustments did not materialize. The results reflect that the impact of downward adjustments was minimal.

Making the review and adjustment process more accessible does not imply that it must be the responsibility of the IV–D agency to directly operate the process or to initiate all petitions for adjustment. It is, of course, permissible and for simplicity, may be desirable, for the IV–D agency to perform these functions in States which do not perceive that there are conflict of interests problems. Within a review process, a IV–D agency may be able to seek voluntary agreements consenting to an adjustment, without taking an advocacy role. Such agreements could be ratified and given legal effect through the judicial, quasi-judicial, administrative, or other designated process in which reviews are conducted. If a stipulation for an adjustment to the order cannot be reached, the case could be submitted to the designated judicial or administrative process for a hearing on the merits of whether an adjustment is appropriate.

It is also permissible under the statute and this regulation for States to allocate the required functions within the review and adjustment process among various entities (courts, administrative hearing officers, IV–D agency staff, etc.). Thus, the potential for perceived conflicts of interest arising in some States if the IVS–D agency is required to seek downward adjustments on behalf of parties in cases in which it previously represented the interests of the other party in the same case may be reduced or avoided by careful and clear designation of these functions to another entity. However, should a State establish a process outside of the IV–D agency, it is imperative that the IV–D agency remain ultimately responsible for ensuring that all Federal requirements under the Act and regulations are satisfied.

3. Comment: Several commenters contended that even if there is no attorney-client relationship with either party, and the IV–D agency is considered the client of the IV–D attorney, the interests of the agency in reducing AFDC dependency, promoting economic self-sufficiency of families, and seeing that children are adequately supported may be compromised if the IV–D agency or its agents advocate for or represent individuals seeking downward adjustments.

Response: Providing an avenue or opportunity for parties to a child support order to access the court for the purpose of updating or changing a child support obligation does not mean that the State places itself in an advocacy role with respect to the interests of either party, and does not create an attorney-client relationship between the IV–D agency and either party. As aptly stated by one commenter, if States are unbiased in the application of child support guidelines, then they should proceed with a review in all eligible cases regardless of the nature of the request or the anticipated outcome. In some cases, a downward adjustment may even be advantageous to the child if it results in an amount of support

which can be paid fully, regularly, and timely by the obligor.

4. Comment: One commenter noted that an implied attorney/client relationship can arise if the custodial parent reasonably believes that one exists based upon the conduct of the attorney and communications between the IV–D attorney and the agency.

Response: Although many States have and will continue to make efforts to resolve any problems in this area, we are mindful of and acknowledge the concern raised by commenters concerning the posture a State IV–D agency or its attorneys and other staff may have taken previously in the case or perceptions and beliefs the parties may have regarding the IV–D agency/attorney's role Furthermore, we recognize that even in States which have made it clear that no attorney-client relationship is created by virtue of the application for or delivery of IV–D services, rules governing the legal profession may dictate ethical responsibilities and certain duties of disclosure on the part of attorneys dealing with "unrepresented persons." However, these are matters which State law and individuals bound by such professional rules of conduct must address at the State level, and not issues governed by Federal law and regulations on the IV–D program.

We encourage States to enact legislation or obtain an Attorney General opinion that specifically identifies who the IV–D agency and its attorneys represent. It may also be helpful for States to include an explicit statement on the IV–D application or referral form that provision of IV–D services does not constitute or create an attorney-client relationship between either party and the State IV–D agency or its employees or agents. Such a statement could also specify that IV–D attorneys are bound by and will follow State and Federal rules and policy. The interests of the applicant or recipient of IV–D services, although important, do not prescribe the IV–D attorney's activities as they might in a private attorney-client relationship.

5. Comment: One commenter questioned whether an application for IV–D services is required in situations in which the party making the request for a review is not the named recipient of IV–D services.

Response: If the case is currently receiving services through the IV–D program, a separate or additional application for IV–D services under § 302.33 is not necessary even if the individual requesting a review is not the original applicant. The statute requires that notice of the right to request a review be provided to both parties, not just the individual who applied for services through the IV–D program. The statute specifies that non-custodial parents in IV–D cases are entitled to notice of the right to request a review of the child support order and the right to request a review by virtue of being a party to a IV–D case. Although there is no requirement to do so, a State may, at its option, take applications for services and required fees from non-custodial parents in existent IV–D cases. However, if a IV–D agency is asked to conduct a review in a non-IV–D case, the requesting party must apply for services and pay the fee before IV–D services may be provided. Certainly, a review and adjustment process may be generally available in the State, independent of the IV–D program, to any party seeking an adjustment.

Pro SE Processes

1. Comment: Several commenters responded to the preamble discussion in the proposed rule regarding establishing *pro se* processes. One commenter suggested that *pro se* be used for cases seeking review sooner than they would otherwise be eligible on the 36-month cycle.

Response: We encourage States to establish simple procedures that do not unduly burden a party seeking a review and adjustment of a child support order. States may find it useful to develop *pro se* procedures and/or establish means to provide legal services in cases in which an adjustment is sought. *Pro se* was suggested as a mechanism for improving access to the legal process (judicial or administrative) to parties seeking a change in a child support order without the necessity of retaining legal counsel. For example, if a review is requested sooner than the interval for conducting mandatory reviews, a State may suggest *pro se* or other alternative routes to the individual seeking the review. The suggested use of *pro se* procedures is not intended as a way for States to avoid their statutory responsibilities for responding to requests for review from either party to a child support order, but a way to reduce the expense and time for the parties and the State wherever appropriate.

Several States have successfully implemented such a *pro se* process. In Michigan, forms and instructions are available through the Friend of the Court to enable parties to file their own actions. New Hampshire has developed a "do it yourself" modification kit which is available to any party upon request, and which offers another option if review through the State review plan is not possible or not elected. In September 1991, OCSE published, through its contract with the American Bar Association Center on Children and the Law, a monograph, "Developing Effective Procedures for *Pro Se* Modification of Child Support Awards" which examines selected State practices and policy issues in developing a successful *pro se* modification program. In order to enable parties to accomplish their legal objectives through self-representation, *pro se* processes may contemplate that the State, courts, IV–D agency, or other sources make copies of guideline worksheets and charts, rebuttal criteria, and other explanations publicly available in order for the parties to effectively proceed *pro se*.

Notice of the Right to Request Review—Sections 303.8(c) (2) and (3)

1. Comment: Several questions were raised by commenters concerning the effective dates of the notice requirements.

Response: The effective date for the notification of the right to request review is October 13, 1993, or such earlier date as the State may select. In response to many questions received concerning this notice requirement, OCSE issued a letter to State IV–D Directors on November 28, 1990 clarifying this requirement. As specified in the final rules published earlier which govern the review and adjustment requirements which are effective October 13, 1990, the pre-review and post-review notices are required in any case in which a review is conducted under the State's plan specifying how and when child support orders in IV–D cases are to be reviewed.

2. Comment: A number of commenters inquired as to alternatives for meeting the requirement for notifying each parent subject to an order in effect in the State being enforced through the IV–D program of the right to request a review.

Response: Paragraph (c)(2) specifies that this requirement may be met by sending a one-time notice to each parent in a IV–D case in which there is a child support order in the State. Such notices could also be incorporated in any informational materials presented to the parties at the time the order is originally entered. Some court clerks routinely distribute instructions to parties, which could be expanded to include information about the right to request review. Adding a specific review clause in every child support order at the time of establishment or adjustment is another alternative for satisfying this notice requirement with respect to new cases. This requirement affords States flexibility in creating mechanisms for

notifying each parent of the right to request review, provided that the methods selected are reasonably calculated to provide the necessary notification of both the right to request review and how and where to exercise this right.

3. Comment: One commenter inquired whether a newspaper advertisement about the availability of reviews would satisfy this mandate.

Response: Although there is no requirement for proof of actual receipt, section 466(a)(10)(C)(ii) of the Act contemplates that the notice be issued in a matter reasonably calculated to reach the intended recipients, as it directs that notice be given to "each parent." Therefore, placing an advertisement in a newspaper of general circulation will not, in itself, suffice to meet this requirement, as it is conceivable that not all parents who should receive the required notice will receive it. Certainly, States may consider advertisement as a means of complying with paragraph (c)(3), which requires the State to periodically publicize the right to request a review as part of its support enforcement services as required under § 302.30 and to include notice of this right as part of the information on IV–D services required under § 303.2(a)(2).

4. Comment: Several commenters questioned the propriety of including other information in the one-time notice.

Response: We use our regulatory authority under section 1102 of the Act to require that the notice under paragraph (c)(2) inform the parents where and how to make their requests for review. Section 1102 authorizes the Secretary of HHS to publish regulations (not inconsistent with the Act) which are necessary to efficiently administer his functions under the Act. Although the Act only requires that "notice of the right to request a review" be provided, we believe it is essential for the notice document to designate how and to whom the request must be made. Giving more detailed instructions about making requests for reviews may actually serve to reduce the number of inquiries for further information as well as misdirected or incomplete requests.

5. Comment: Some commenters asked that we specify in regulations how a parent exercises the right to request a review. They inquired whether parents must make a one-time decision about whether to have a triennial review or if they may decide every 36 months whether they want a review. These commenters further inquired whether a State may limit the time a party has to elect a review, and if so, what is considered an adequate opportunity to exercise the option.

Response: We believe that requiring parents to elect only once whether or not a review is desired, which binds all future actions, is too restrictive. Therefore, parents cannot be required to make a one-time decision. States may not limit the time a parent has to request a review, for example, to no later than three months after the order is 36 months old. However, States may limit the frequency with which they conduct reviews, to, for example, once every 24 months. If they choose, States may include in the notice information about these and other matters, such as explanations of specific procedures or a telephone number or address to contact for further details about the review process.

Frequency and Conditions of Reviews—Section 303.8(c)(4)

1. Comment: Numerous commenters questioned whether States must act in advance of October 13, 1993 to address cases in which the child support order will be over 36 months old on October 13, 1993. Several objected to the proposal for targeting cases for review and OCSE's interpretation of the statutory requirement. Some asked whether a State must initiate review of all AFDC cases with orders that have not been reviewed or adjusted in the last 36 months or whether a State may phase-in a review process beginning on October 13, 1993.

Response: Section 466(a)(10)(B) of the Act, added by section 103(c) of Public Law 100–485 states that "(b)eginning 5 years after enactment [October 13, 1993] . . . States must implement a process for the periodic review and adjustment of orders. . . ." In the preamble to the proposed rule, we stated that this section effectively requires that orders in AFDC cases that were entered or last modified before October 13, 1990 must be reviewed before October 13, 1993, upon request of either parent or a State child support enforcement agency. Furthermore, in the proposed § 303.8(b)(1), we specified that the State plan for periodic review and modification must "target for review" orders in IV–D cases in which there is an assignment of support rights to the State. After reviewing the comments received and deliberating on the language of the statute, we have deleted the requirement that between 1990 and 1993, States, must conduct reviews and adjust all pre-October 13, 1990 orders upon request prior to October 13, 1993. It is our position that because the requirement for reviews at 36-month intervals is effective starting October 13, 1993, a State has no explicit duty prior to that date to conduct reviews other than as specified in its plan for how and when orders are to be periodically reviewed and adjusted as required under § 303.8(b). However, as a practical matter, if the State's plan and procedures do not address orders older than 36 months, and if these older cases are not actually processed through to completion with respect to review and adjustment, the number of such cases awaiting appropriate handling on October 13, 1993 may be overwhelming.

Although there is no mandate to do so, States may find it advantageous to the best interests of the children involved and the taxpayer to examine these older cases in a measured way beginning now, in anticipation of the requirement for mandatory triennial reviews. Since reviews are required only in cases in which the support rights are assigned to the State and in which the order is 36 months old or more, the impact of mandatory reviews may not be as severe as expected. Unpublished tabulations from the Bureau of the Census Current Population Studies, Child Support and Alimony Supplement 1988, reflect that of the 2.4 million women with children from an absent parent who are recipients of AFDC, 41 percent had support awards. According to the data, on these 990,000 awards, approximately 51 percent are over 3 years old. Thus, a nationwide total of 550,000 orders would be subject to review. The impact of reviewing these eligible orders would be further reduced by findings of good cause and inability to locate obligors. In this context, and given the potential benefits to children and taxpayers, we do not believe the statutory requirement is overly burdensome. To reap these benefits and to further minimize the volume of cases requiring reviews beginning on October 13, 1993, a number of States are already reviewing, in manageable installments, AFDC cases with orders over 36 months old.

2. Comment: One commenter questioned whether an AFDC IV–D case would be considered flawed for audit purposes if the court order is more than 36 months old and a review was not conducted.

Response: Audit regulations governing substantial compliance with the requirements for review and adjustment of child support orders have not yet been published. This issue will be addressed in those regulations.

Compelling evidence about inadequate and out-of-date support awards prompted enactment of the review and adjustment provisions in the first instance. Therefore, it is essential

that States examine cases in which there is an assignment of support rights to the State and begin reviewing (and updating as necessary) any cases with orders over three years old as soon as possible.

As previously indicated, some States have implemented plans under which the entire AFDC caseload is being reviewed in equal monthly increments in advance of the October 13, 1993 effective date, so that the number of cases with orders which have not been reviewed for over 36 months will be far fewer, and more manageable. For example, subsequent review of a case reviewed in June 1991 would not be required until June 1994. However, within 15 calendar days of October 13, 1993, in any IV–D case in which child support rights are assigned to the State and the current child support order was established on or before October 13, 1990 and not subsequently reviewed, the State must determine whether to initiate a review in order to comport with the statutory requirement that orders be reviewed "not later than 36 months after the establishment of the order or the most recent review." Advance planning in recognition of the potential impact of reviewing certain cases at 36-month intervals is crucial.

3. Comment: One commenter suggested allowing a one-year grace period to review all existent orders required to be reviewed that are older than 36 months on October 13, 1993.

Response: Unlike the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378), wherein the statute permitted States needing legislation to come into compliance some additional time to enact such legislation, the Family Support Act of 1988 (Pub. L. 100–485) makes no such provision of additional time after October 13, 1993, to phase-in a review process. Moreover, because the 1993 requirements are effective a full five years after enactment of the Family Support Act, States have considerable advance notice in order to adopt any necessary laws, to anticipate the number of cases potentially needing review when the 36-month requirement becomes effective, and to otherwise address the operational implementation in a meaningful way. Further delay would only result in children being deprived of the appropriate amount of support to which they are entitled.

Under the timeframe requirements for conducting review and adjustment activities set forth in § 303.8(e), and explained in detail later in this Response to Comments section, States have 15 calendar days after October 13, 1993 to determine whether to initiate a review of any order in which a review is required in cases with orders older than 36 months on October 13, 1993. The timeframe requirements provide that States must complete the review and adjustment activities within 180 days of determining that a review is required or locating the non-requesting parent, whichever occurs later.

4. Comment: Another commenter requested that we address for audit purposes situations in which the child support order is older than 36 months at the time of application for IV–D services.

Response: A State may not specify a time period during which a new IV–D case must receive services before the case becomes eligible to be considered for review. A State must initiate a review of any case in which a review is required (cases in which there is an assignment of rights) or requested (by either parent in a non-AFDC case), in accordance with § 303.8(c)(4), regardless of the length of time services through the IV–D program have been provided. With the limited exception under § 303.72(a)(3)(iii) allowing States to limit past-due support amounts submitted for Federal income tax refund offsets to amounts which have accrued since the IV–D agency began to enforce the support order, States may not deny or restrict any services, including review, based on the length of time a case has been receiving IV–D services. Accordingly, the duration a case has been receiving IV–D services may not be a criterion for evaluating requests for review. Certainly, the order in which requests for review are received may be a factor in determining the relative order in which the request is processed within the framework of the required timeframes.

5. Comment: One commenter inquired whether the review must be initiated, or actually completed, not later than 36 months after establishment of the order or the most recent review.

Response: The timeframes established under § 303.8(e) allow States a 15-calendar-day period within which to determine whether a review is required based upon the age of the order, the timing of the last review, or a request from either parent. Because the time allotted for conducting various review activities and actually completing the review through entry of an adjustment or determination that there be no adjustment may span up to 180 calendar days, or longer, if location is required, we consider the date of the "most recent review" to be either the date on which the order adjusting or determining not to adjust the order was signed by the judge or administrative hearing officer or, where no petition for adjustment was filed by either parent or the IV–D agency following the most recent review, the date that the 30-day period for challenging the review findings expired.

We recognize the possibility that in some cases, no action will be taken by either parent or the State following the review to petition for adjustment of the order. Therefore, since an order adjusting the amount of support or determining not to adjust the order may not exist in such instances, the date for the next required review must be based upon when the last review was concluded, that is, the date upon which the period for challenging the results of the review elapses. In any case in which a petition for adjustment is filed with the judicial or administrative process which results in entry of an order adjusting or determining not to adjust the previous order, the date the judicial or administrative hearing official signs the order is the date from which the 36-month period for determining the age of the order runs. Furthermore, we believe that using the date the order is signed is the customary practice and the simplest for case tracking and monitoring purposes, even if such order specifies an earlier effective date for the change in the obligation, within the limitations permitted under § 303.106(b), governing retroactive modification of orders. Thus, States can incorporate, within an automated case tracking and monitoring system, a trigger or flagging of each case on a 36-month cycle measured from either the date the most recent order was signed, or where appropriate, the date upon which the post-review challenge period ended. However, absent a request for a review in a non-AFDC case, the State need not conduct a review.

6. Comment: Several commenters objected to our proposed requirement that States must establish procedures specifying circumstances under which orders will be reviewed more frequently than every 36 months. Commenters indicated that to direct that States establish an inclusive list of all circumstances in which child support orders would be reviewed more frequently than every 36 months would create an impossible task. One commenter requested that States not be required to impose guidelines for reviewing orders more frequently than every 36 months, because either party has an absolute right to petition the court at any time, if they believe the support order is no longer equitable. The commenter argued that such a guideline requirement could unnecesarily restrict this right to petition the court.

Response: We agree with these commenters and have not included a

requirement in the final rule that States must have procedures specifying the circumstances under which reviews would be conducted more frequently than the minimum interval of "no later than 36 months after the establishment of the order or the most recent review" as mandated by statute.

States will undoubtedly encounter requests for reviews more frequently than every 36 months or other interval established by the State for conducting mandatory reviews. Although States are not required to conduct reviews more frequently than every 36 months, there are certainly circumstances which would warrant a review sooner than 36 months after the most recent order was established. Changes in the financial circumstances which may justify an adjustment in the amount of child support are unpredictable events. A party may offer a reason that would be considered a suitable basis for adjustment (such as proof of a salary increase or decrease) and ask for another review. For example, if a minimum support amount is ordered because the obligor is unemployed or employed part-time at the time the order is entered and the custodial parent or IV–D agency learns one year later that the obligor has secured significantly higher paying employment, a review may be warranted. Alternatively, if the obligor becomes permanently disabled, a review may be warranted although three years have not elapsed since the last review. These situations may occur at intervals sooner than 36 months following the previous decision to adjust or not adjust the order.

The statute does not place a limit on the number or frequency of requests for review a party may make, but requires reviews not later than 36 months after establishment of the order or the most recent review. Thus, States have the flexibility to establish their own criteria for performing more frequent reviews.

Although States are not required to conduct reviews more frequently than every 36 months, we urge States to consider the best interests of children in establishing any criteria for conducting reviews more frequently than at 36-month intervals. Should a State choose to review orders more frequently than required by Federal requirements, States are encouraged to adopt an objective standard applicable to all requests rather than making subjective decisions about whether a case qualifies for a review. If a State does not allow, or restricts the availability of review if a request is made sooner than the interval established by the State for conducting reviews, it may wish to identify alternative avenues for review and consider referring requestors whose requests are made sooner than the established frequency to these other alternatives. One premise of the review and adjustment legislation was that *child support orders become inadequate over time and that a mechanism for* routinely checking the adequacy of the award amount which can be easily accessed by the parties is necessary. We urge States to respond to what we believe to be the spirit and intent of the Congress in enacting this provision of the Family Support Act: to promote easier access to opportunities to seek adjustments in child support award amounts based on changes in the circumstances of the individuals affected by the obligations.

Exceptions to Mandatory Review—Section 303.8(c)(4)(i)–(iii)

1. Comment: One commenter contended that because reviews are required in AFDC cases, but are not required unless a parent requests in non-AFDC cases, the statute fails to promote equal treatment.

Response: We disagree. In conducting reviews and determining whether adjustments are warranted, States may not differentiate between non-AFDC cases and cases in which there is an assignment of support rights to the State. The only distinction made in the statute is whether reviews are mandatory (cases in which there is an assignment of support rights to the State) or performed only upon request (non-AFDC cases in which there is no such assignment to the State). Procedures used for reviewing cases and standards for making adjustments should be identical regardless of the public assistance status of a case.

It is our position that the State has an affirmative duty to seek reviews in cases in which there is an assignment of support rights to the State. However, Congress did not mandate reviews in non-AFDC IV–D cases if neither parent requests a review. Requiring States to conduct reviews only upon request in non-AFDC IV–D cases may eliminate the unnecessary expense of time, paperwork, and personnel if the parties themselves do not want a review. It does place an affirmative duty on a parent to make the request in such cases. It also signals a need to make known the existence of this service and to clearly explain the processes and potential outcomes of a review so that the parties can make an informed decision.

Data from the five demonstration projects reflect an overwhelmingly low rate of authorization to conduct reviews among non-AFDC IV–D cases. In Oregon, authorizations were received in only 16 percent of the 1,626 non-AFDC IV–D cases determined to be eligible for review. Consistent findings are reflected among the other four demonstration projects. In Illinois, for example, fully *60 percent of non-AFDC cases with orders eligible for review were* terminated from the review process due to lack of authorization. Reasons cited by non-AFDC obligees for refusing the available review indicate concerns about "rocking the boat" and jeopardizing compliance with current support payments or good relations with the obligor. In instances where payments are not being made, non-AFDC obligees claim that a review would be a waste of time. Other responses reflect a desire to avoid going to court, seeing the other parent, or risking custody or visitation issues being raised.

Circumstances Under Which Review Would Not Be in the Best Interests of the Child—Section 303.8(c)(5)

1. Comment: Several commenters recommended that the responsibility for defining "best interests" be left to the States. Many other commenters suggested that we define the circumstances in which a "review would not be in the best interests of a child" to be instances in which a determination of good cause not to cooperate in establishing paternity or securing support has been rendered in an AFDC case.

Response: In the preamble to the proposed rule, we indicated that we had not otherwise defined "best interests of the child" in the proposed rule, and solicited comments regarding this provision. We specified that one approach to establishing a complete definition of the best interests of the child would be to tie the definition to that contained in AFDC regulations at 45 CFR 232.41 for refusal to cooperate. We further stated that another approach would allow States to establish criteria which would define the best interests of the child for purposes of reviewing an order, since a review and adjustment of a previously established order may not necessitate the cooperation of the custodial parent. Of the suggestions offered in response to our solicitation, we elected to follow those of the commenters who urged that the "best interests of the child" be linked to good cause determinations in cases in which the support rights are assigned to the State.

Circumstances under which cooperation in establishing paternity or securing support is against the best interests of the child for which good cause may be determined are specified

in § 232.42. Regulations of the Health Care Financing Administration (HCFA) [42 CFR 433.147(c)(1)] governing waiver of cooperation in obtaining medical care support and payments require that the good cause determination be in accordance with factors specified in 45 CFR part 232 for other good cause determinations.

The "good cause" exception to required reviews does not require a separate determination of good cause circumstances. Under § 303.31(b), upon receiving notice from IV–A, IV–E, or Medicaid agency that there has been a claim of good cause for failure to cooperate, the IV–D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the appropriate agency. Additionally, under § 303.31(c), the IV–D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV–A, IV–E, or Medicaid agency that there has been a finding of good cause unless there has been a determination by the IV–A, IV–E, or Medicaid agency, as appropriate, that support enforcement may proceed without the participation of the caretaker relative. Therefore, unless there has been a determination under § 232.41 that good cause exists, and that child support enforcement may not proceed without risk of harm to the child or caretaker relative, a case in which there is an assignment of support rights must be reviewed.

In proposed § 303.8(c)(4), we specified that in a IV–D case in which there is an assignment of support rights to the State, an increase in support or the availability of health insurance must be considered to be in the best interests of the child unless either parent demonstrates it would not be in the child's best interests after a hearing. We have not included such a provision in the final rule, for several reasons. First, such a rule would essentially require a review to be done in order to determine whether a review should be done, since without a review, it may be difficult to determine whether an increase is likely or that health insurance is available. Secondly, the statute links the best interests test to whether a review should be conducted, not to whether an adjustment should be entered. Thirdly, such a rule implies that a hearing be conducted to determine whether a result would be in the child's best interest, which may be burdensome on States. Fourthly, such a requirement may reflect a misinterpretation of the statutory language in section 466(a)(10)(B)(i) of the Act which specifies a "not in the best interests of the child" test for when a review is not required rather than an "in the best interests of the child" test governing when a review is required.

2. Comment: Several commenters urged that "not in the best interests" be governed by the outcome of the review such that requests to increase the child support award amount should be honored and requests to decrease the child support award amount should be refused.

Response: We cannot support this approach. Section 466(a)(10)(B)(i) clearly specifies that an exception is permitted for cases in which a "review" would not be in the best interests of the child. It does not, however, provide any exception in the event the "adjustment or determination that there be no adjustment" would not be in the best interests of the child. Thus, the statute plainly connects the "child's best interest" test to the review, not the adjustment. The test applies to the process, not the results. States cannot fail to proceed with a required review or refuse a request to pursue a potential downward adjustment on the basis that the possible outcome would not be in a child's best interests. Decisions of whether or not to conduct reviews cannot be predicated on speculation that the results may be unfavorable to one or the other party or the child.

Furthermore, because review is defined in § 303.8(a) as an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine the appropriate child support award amount and the availability of health insurance, it implies the absence of any preconceived ideas or biases about the outcome. It also requires consistent and uniform application of presumptive guidelines in all cases. Thus, once the review begins, it should proceed to completion. If a party is dissatisfied with the result and wishes to challenge the determination, an opportunity to do so must be available. To allow parties the option to stop a review in progress to prevent undesired results would render meaningless the statutory language which provides that the parties be given notice following any review of the proposed adjustment or determination that there be "no adjustment." The decision-maker may determine that the order should not be adjusted, but cannot render such a determination absent a review.

Pre-Review Notice Requirement—Section 303.8(c)(6)

1. Comment: Several commenters requested removal of the 30-calendar-day notice requirement, so that reviews could begin immediately upon receipt of the necessary information.

Response: We recognize that in certain cases, waiting for the 30 calendar days to expire may create unnecessary delay. The 30-calendar-day requirement placed upon the notice is statutory. Until the 30 calendar days elapse, the formal review cannot begin, even if all the necessary information is available in advance. States may request that the parties consent, on a case-by-case basis, to waive the 30-calendar-day requirement and begin the review once the necessary information is available. However, without an amendment to the statute, the requirement cannot be changed or deleted. We have taken the notice requirements into consideration in determining timeframes for completion of review and adjustment activities.

Obtaining Information to Conduct Reviews—Section 303.8(c)(6)(ii)

1. Comment: A number of commenters suggested the need for administrative agencies to obtain subpoena power in order to more efficiently obtain necessary information from parties and other sources.

Response: We urge States to consider practices used by the States which conducted the demonstration projects as well as other jurisdictions to improve the information gathering and verification process. For example, in Illinois, the principal method for obtaining the information necessary to conduct a review was through a computer-generated administrative subpoena automatically issued to obligors' employers and sent by certified mail at the same time the initial notice packets were sent to both parents. Illinois officials reported positive responses from employers. In fact, the information contained in the employer responses to the administrative subpoenas was sufficient for conducting reviews, as well as a valuable source of current address information.

Colorado, another demonstration State, issued administrative subpoenas to any obligor who failed to return an affidavit for child support issued with the initial notice. The administrative subpoenas, served via certified mail or a process server, directed the obligor to bring specified financial information to an adjustment hearing at the IV–D office. If the obligor failed to appear as directed after service of an

administrative subpoena, a motion to compel could be filed, requiring the obligor to appear for a court hearing. Because information on the financial situation of both parents is necessary for application of Colorado guidelines, administrative subpoenas could also be served upon non-AFDC obligees who failed to return affidavits after two notices.

Another alternative would be for the court or administrative agency to include a provision in each new or adjusted order which requires each party to produce an annual income statement or for such a requirement to be adopted as a matter of State law. If a party then fails to comply, they have violated a term of the order, or if the requirement is statutory, a State law, which may be punishable by contempt or fine, as governed by State law, court rule, or the language of the order itself.

2. *Comment*: Some commenters requested that we specify what information should be shared or exchanged between the parties as part of the review process. Several raised issues concerning confidentiality and safeguarding requirements. One commenter suggested that making the provision of information a term of every support order in all States would benefit States responding to requests for review in interstate cases.

Response: States should investigate options such as clauses in the orders or statutory authorization requiring that certain information be exchanged between the parties or filed with the court or agency to reduce the need for elaborate and protracted discovery. The required information should be limited to the necessary data required to compute the support award using State guidelines. Limiting the scope of information required and informing the parties in advance of the responsibility to provide it and that it will be shared will make the requirement less burdensome and minimize possible breach of confidentiality claims.

3. *Comment*: Several commenters noted problems with ensuring the accuracy and completeness of information provided by the parties or obtained from automated databases. Some contended that it is unreasonable to expect or assume that the necessary information can be easily obtained, and that discovery techniques to compel disclosure are often cumbersome.

Response: We encourage States to consider alternative solutions to these operational concerns, from simplifying existing discovery techniques to possibly developing and requiring the use of standardized financial affidavits. Additionally, States may wish to consider contacting employers or other income sources to obtain, verify, and update wage information. Many States routinely ask employers or other income sources to confirm income in the course of imposing income withholding. Certainly, such practices could be extended to the review process as a means of ensuring the reliability of the information.

With the exception of Federal income tax data and income information obtained from the Internal Revenue Service, Federal regulations do not specify verification requirements or procedures for using information obtained on behalf of IV–D cases. The same policies and procedures developed by the State for verifying IV–D information generally should be applied to verifying information obtained for use in the review process. The key point is that verified data, not unsubstantiated allegations, should form the basis of the decision-making process.

Scope of a Review

1. *Comment:* Several commenters inquired whether automated reviews would satisfy the requirement for conducting reviews.

Response: As defined in § 303.8(a)(3), a review is an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine the appropriate support award amount and the availability of health insurance. By definition, review contemplates more than a computer match of a case against wage reporting systems, public assistance records, unemployment insurance rolls, and other automated databases. Because review is intricately connected to guidelines for setting child support awards and is designed to result in a determination of the appropriate amount of child support to be paid, a key component of the process is the computation of the child support amount using presumptive State guidelines. Typically, in most States, this will require gathering information sufficient to complete a worksheet or performs calculations, much of which may be known only to the parties involved. Some States have automated the State guidelines. Unless the databases accessed by the State permit retrieval of the necessary information sufficient to conduct a review as defined in § 303.8(a)(3), such access cannot be considered a complete review. In States which permit income to be imputed to a party in certain situations for the purpose of applying support guidelines, information from databases may be the only objective evidence available and considered sufficient for conducting a review in those instances. If a review is required, a full review must be conducted to reach a decision that the order be adjusted upward, downward, or not at all. Only a review could produce a "determination that there should be no change." Thus, the review itself is a "screen" to determine whether an adjustment in the amount of child support should be sought. In situations in which a review is not required, such as a case in which the support order is less than a year old, relying on information from automated databases to determine whether a complete review is warranted is permissible, unless supplemental information is brought to the attention of the agency conducting the review.

The experience of the Oregon Child Support Updating Project in using partial automated reviews indicated that sole reliance on computer matching to conduct reviews cannot ensure the accuracy of the information used to compute the appropriate child support amount under State guidelines. Oregon determined that case disposition using the Partial Automated Review (PAR) process often took longer and required greater work than the full manual procedure. Under the PAR process, the child support agent accessed automated data sources, computed a new child support award amount using that data, and notified the parents of the result. Because the results were often based on incomplete data, parents usually submitted additional information, which required that the support amount be recalculated. The initial computations obtained under PAR created false parental expectations in many situations, with the consequence that staff time had to be diverted to responding to complaints and explaining why the final result was lower or higher than expected.

Two reasons were cited in the final report on the Oregon project to explain the difficulty with PAR. First, for every case in which adequate Oregon Employment Wage Commission (EWC) earnings information was available for the obligor, the child support agent prepared a child support calculation worksheet and a proposed consent agreement and attached these documents to the initial notice letters to both parents. Because both parents rarely agreed to the new support amount specified in the notice, preparing the documents was usually wasted effort. Secondly, the simulated child support calculation was based only on financial information obtained from EWC or

imputed. If either parent provided additional earnings or allowable deductions information in response to the notice, the child support agent had to calculate a new child support amount.

2. Comment: One commenter argued that to complete a full review on all cases would require significant additional resources and cause unnecessary work.

Response: If an order is eligible for review based on its age, a State may not substitute a pre-screening or a partial review for a complete review by speculating as to the ultimate outcome. If, however, an objective evaluation of the circumstances in a particular case indicates no apparent change in the parents' situation (*e.g.* the obligation was originally established under guidelines, neither the obligee nor the obligor's income have changed), the State could readily assess that no adjustment is appropriate and notify the parties accordingly, allowing the parties the right to challenge such determination. States are also permitted to establish a reasonable quantitative standard, or threshold, to guide decisions whether to petition for an adjustment following a review. This topic is discussed more extensively elsewhere in this preamble.

To reduce the need suggested by the commenter for additional resource requirements and the possibility of unnecessary work, we encourage States to adopt procedures and other means that facilitate entering adjusted orders on the basis of stipulations or consent agreements between the parties, as long as the appropriate amount of child support to be paid is determined in accordance with State guidelines. For example, all of the demonstration projects originally proposed to test a consent-oriented approach to obtaining adjusted orders, with streamlined or simplified administrative, quasi-judicial, or expedited judicial processes. Prior to processing a case through the regular judicial or administrative channels, project staff would attempt to obtain stipulations to a modified order based on guidelines.

In their demonstration projects, Colorado, Delaware, and Florida were able to obtain adjusted orders based upon out-of-court stipulations. Data from the Colorado project reflect that 62 percent of adjusted orders were accomplished by consent of the parties. Similarly, in Florida, 77 percent of the adjusted orders were obtained through stipulation of the parties. The vast majority (99.6 percent) of Delaware's modifications were obtained through the mediation process. In Illinois, all but one of the 1,382 adjusted orders were obtained through the judicial process. In Oregon, overall, 42 percent of the adjusted orders were obtained by consent of the parents, 28 percent were obtained by default, and 30 percent were obtained in an administrative or judicial hearing.

States have considerable latitude and flexibility in determining the site and degree of formality for reviews, as long as required reviews are conducted through a proceeding before a court, quasi-judicial process, administrative body or agency, notices are issued, timeframes are met, and guidelines are used, in compliance with Federal law and regulations. The experiences of the demonstration project States illustrate that not every case in which an adjustment is warranted requires a full judicial or administrative hearing to obtain a disposition.

Permissive Review

1. Comment: Several commenters questioned whether reviews may be pursued in non–AFDC cases without a request from a parent. They asked whether, in a non-AFDC IV–D case, a potential adjustment could be forced upon unwilling parties if the State chooses to review and the review results in a determination that the child support amount should be changed. If a State decides to review absent a request, is there a right to refuse the review before it is conducted or must the parties await the review results and then challenge the determination?

Response: The Act requires that States review, upon the request of either parent, any order that does not have an assignment of support rights as defined in § 301.1. The law does not preclude a State from going beyond the statutory requirement, therefore, States may conduct a review of all non-AFDC IV–D cases with orders. The notice of the rights to request a review required at § 303.8(c)(2) would provide parents with information on the circumstances under which the State would conduct a review. If the State determines that a review is warranted, even if not requested, either or both parents have a right to initiate proceedings to challenge the proposed adjustment or any other determination made on the basis of the review. Therefore, while such a review may be conducted without a request from either party, to conduct a review absent a request may be an inefficient use of State resources.

With respect to the question concerning the right to refuse a review conducted on the State's own initiative, once the State has decided to conduct a review absent a request from either parent, the review and adjustment process may proceed to completion despite the parents' objections. The parties may not refuse the review. The opportunity to challenge the proposed adjustment is available to the parents following notification of the results of the review or within the judicial or administrative proceedings for adjusting the order. Certainly, a State may not close a case or deny further services to a non-AFDC custodial parent who did not request, and refuses to cooperate in, a review conducted at the State's initiative. Based on the experiences in the demonstration projects, we believe that States' efforts will be focused upon conducting the required and requested reviews, and if the State chooses, reviews on their own initiative with which the parties are cooperative, rather than devoting time and expense to elective activities in which both parties are unwilling participants in the process.

The reason for not requesting a review may be a lack of knowledge that review is available. This underscores the importance of notifying the parties of the right to request a review. In its preliminary report on the Wisconsin Order Revision Pilots, the Institute for Research on Poverty, University of Wisconsin-Madison, cites various reasons why custodial parents might not pursue an action to upgrade an order which could potentially increase the income available for the children in their custody. These reasons include: (1) A perception that the existing award is "final"; (2) lack of knowledge as to how to pursue a change; (3) an assumption that the process would be too expensive; (4) fear of "rocking the boat" (causing custody or visitation issues to surface); (5) fear that action would produce a lower award; and (6) lack of awareness of the effect of inflation on the real value of the support award over time. The Oregon Child Support Updating Project conducted a telephone survey or interviews of non-AFDC parents who failed to return a review authorization form, in order to better understand why parents did not authorize a review of their child support orders. Numerous reasons were mentioned by parents for not authorizing a review. Many responses suggested that obligees believed it was pointless to adjust a support amount that the obligor was not presently paying. Other obligees seemed concerned that the obligor may stop paying support if the ordered amount was increased. Still others appeared to have some problems with the forms or were concerned about what direction (upward or downward) the adjustment

would take. Similar findings are indicated in the results among the other four demonstration projects. Across the four projects, non-AFDC cases were terminated from the review process at a much higher rate (72 percent) than AFDC cases (60 percent), principally because of a lack of authorization or cooperation needed from non-AFDC IV–D cases to conduct a review. Reasons typically cited for refusing a review mirror those raised in the earlier Wisconsin and Oregon updating projects. Review terminations in AFDC cases generally resulted from AFDC case closings, inability to locate the obligor, or lack of employer or income information upon which the review could be conducted.

Basis for Seeking Adjustment—Section 303.8(d)

1. *Comment:* Several commenters requested regulatory language to enhance their efforts in securing legislative amendments to change their statutory change in circumstances requirements. As indicated by the commenters, in most States, the party seeking the modification of a child support order, must allege and prove that a material, significant change in circumstances has occurred since establishment of the current order before a change is warranted. As noted by commenters, this burden in many States has traditionally been quite stringent, often requiring that parties prove that the claimed change in circumstances could not have been contemplated at the time of entry of the original order.

Response: As required under section 467(b)(2) of the Act, added by section 103(a) of Public Law 100–485, effective October 13, 1989, there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of guidelines for child support award amounts within the State is the correct amount of child support to be awarded. In § 303.8(d)(1), we specify that inconsistency between the existent child support award amount and the amount of child support which results from an application of the State guidelines must be an adequate basis, under State law, for petitioning for an adjustment of an order in a IV–D case. Two exceptions to this requirement are permitted. The first exception is allowed if the State establishes a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support which results from application of the guidelines is adequate grounds for petitioning for adjustment of the order. The second exception is permitted if the inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change in the circumstances which resulted in the rebuttal of the guideline amount.

In recent years, several States have adopted legislation expanding the definition of material or substantial change in circumstances to specify that adoption of guidelines alone constitutes a requisite change in circumstances or otherwise addressing the application of guidelines in modification proceedings. Illinois permits a one-time modification of those orders established before the guidelines were implemented to adjust the child support award to guideline levels, without the necessity of proving a change in circumstances. Appellate courts in at least two States have ruled that the adoption of support guidelines changed the rules for determining child support. One opinion holds that the material change in circumstances test no longer applies, that the question now is whether there is a "significant variance" between the guidelines and the amount of child support agreed to by the parties or ordered by the judge, and that, had the State legislature intended that the guideline statute could only be invoked upon a change in circumstances, it would have clearly said so.

2. *Comment:* One commenter suggested that States, in establishing the threshold, consider percentage amounts rather than fixed dollar amounts, noting that a $10 change makes a greater impact on a $50 monthly award than a $100 monthly award. Another commenter stressed that setting the threshold too low would literally bury the system with cases requesting upward or downward adjustments where there are minor fluctuations in either party's income; setting the threshold too high would foreclose cases otherwise appropriate for adjustment.

Response: We do not prescribe a particular fixed dollar or percentage in the regulation, as we believe this will allow States the necessary flexibility and discretion to establish an appropriate and reasonable quantitative standard. If a State establishes a threshold test, we urge the State not to aim too high or too low. In establishing a threshold, States may wish to consider adopting one which combines a "percentage or fixed dollar amount, whichever is lesser" so as to make the test more equitable across both income levels and family size. For example, meeting a 20 percent increase/decrease test is considerably more difficult in the case of a $500 order for three children than a $150 order for one child. In the former situation, the order would have to increase/decrease under guidelines by at least $100 in order to meet the threshold. In the latter, a $30 difference would suffice to warrant seeking an adjustment.

We encourage States to consider the experiences of the demonstration project States as well as other jurisdictions which have adopted thresholds applicable to review and adjustment processes. For example, Colorado and Florida will seek adjustment if there is a difference of at least 10 percent (plus or minus) from the current order amount. Illinois requires a change of plus or minus 10 percent and at least $5 in the order amount. Delaware requires a change of at least $25 in the monthly order amount. At the time of the Oregon project's inception, the criterion for modification in the State was that the moving party allege and prove a "substantial change in circumstances since entry of the order." Processing modifications became less burdensome and more predictable when Oregon adopted a guidelines-based modification standard and implemented an administrative criterion for the project of plus or minus 10 percent of the current support amount, and at least $25 per month as the minimum requisite change. We encourage States not only to examine the approaches adopted elsewhere, but to involve and work closely with the judiciary, the private bar, parents' groups, and other concerned parties in establishing the percentage or fixed dollar amount, or both, as a threshold.

We recognize that the traditional "substantial change in circumstances" test is applicable in many States. However, we believe that, by requiring States to use guidelines as a rebuttable presumption of the correct amount of support to be paid and requiring periodic review and adjustment, if appropriate, in accordance with such support guidelines, the Congress intended that States use guidelines as the basis for determining the need to change the amount of the child support award, rather than any other standard. The adoption of a threshold amount constituting a change sufficient to proceed with a request for an adjustment, following a review, will allow the review to be the means through which potential eligibility or

suitability of an order for adjustment is determined.

Establishment of a threshold will enable a reviewer to ascertain, based on a calculation of the amount of support presumed to be correct under guidelines, whether an adjustment is warranted. For example, if the VI–D agency conducts a review and determines that the proposed change in the amount of support does not meet the threshold established by the State for determining whether to petition for an adjustment, the IV–D agency does not have to proceed to file a petition. Certainly, under such circumstances, the decision by the IV–D agency not to proceed with a petition or motion to adjust the order does not preclude either parent from filing such a petition through the judicial or administrative process, either through counsel or *pro se*. We encourage States to include, as part of the notice sent to each parent concerning the right to request a review and other publicity about the review and adjustment process, information about any thresholds used in the review process and the avenues available for obtaining adjustments to the support order.

3. Comment: Several commenters suggested that the threshold be merely a starting point for deciding whether an adjustment is warranted. One commenter asked that we consider permitting States to use the numeric standard in concert with non-quantifiable standards to ensure that determinations about the appropriateness of adjustment are accurate.

Response: We believe that using the reasonable quantitative standard, or threshold, as merely the starting point or using non-quantifiable standards along with guidelines would provide more latitude to apply additional critieria to decide whether adjustment is warranted than was intended by the Act. Because the Act ties adjustment directly to guidelines, any latitude or variance should come from the guidelines computation itself and the opportunity afforded parties to rebut the presumption that the guideline amount is the correct amount of child support to be awarded in a case. We do not believe that requiring stricter criteria for adjustment beyond inconsistency with guidelines is necessary, because the opportunity to present other non-quantifiable evidence is a component of the right to rebut the presumption by demonstrating that application of the guidelines in a particular case would be unfair or inappropriate.

As indicated earlier, the reasonable quantitative standard, or threshold, established by the State should be used as a basis for deciding whether to petition for an adjustment. Presumptive guidelines, not the threshold established by the State, must be the basis upon which the judicial or administrative entity with authority to adjust child support order determines whether or not to adjust the order. Therefore, even if an established threshold is not met in a particular case, such that the IV-D agency or other reviewer decides not to proceed with a petition to adjust the order, the court or administrative authority may still act upon a petition from either parent, apply the guidelines, and establish an adjusted order.

4. Comment: One commenter observed that because guidelines are to be used as a rebuttable presumption, any order established under guidelines which differs from the guideline amount is immediately inconsistent. The commenter indicated that it may be inappropriate to petition for an adjustment merely because of an inconsistency due solely to a rebuttal of the presumption. The commenter suggested that all financial factors originally considered by the court should be reviewed when determining whether an adjustment is warranted.

Response: We agree with the commenter's analysis and have incorporated an exception to the inconsistency with guidelines requirement in § 303.8(d)(1) to address such situations. The exception encompasses cases in which the inconsistency between the current child support award amount and the amount of support required under guidelines is due to the fact that the amount of the current support award resulted from a rebuttal of the guideline amount and there has not been a change in the circumstances which resulted in the rebuttal of the guideline amount. The existence of situations such as that illustrated by the commenter underscores the importance of compliance with the requirement regarding written findings or specific findings on the record of a judicial or administrative proceeding for the award of child support regarding rebuttal of the guidelines. As required by § 302.56(g), findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. Having such information available should prove beneficial in determining whether an adjustment is appropriate due to an inconsistency or whether the exception is applicable in a particular case.

Need for Provision for Health Care Needs

1. Comment: One commenter indicated a belief that determining the availability of health insurance will not result in enough benefits to the child to justify a substantial investment in staff time.

Response: Since December 2, 1985, under § 303.31(b)(1), IV-D agencies have been required to petition the court or administrative authority to include health insurance that is available to the absent parent at reasonable cost in new or modified court or administrative orders for support, unless the custodial parent and the children have satisfactory health insurance other than Medicaid. The IV-D agency is also required to petition the court or administrative authority to include medical support whether or not health insurance at reasonable cost is actually available to the absent parent at the time the order is entered or modification of current coverage to include the children is immediately possible. Additionally, since September 16, 1988, under § 303.31(b)(4), IV-D agencies are required to petition the court or administrative body to modify support orders to include a requirement for medical support in the form of health insurance, in cases identified under State criteria as having high potential for obtaining medical support. Thus, medical support responsibilities are not new requirements for States.

We believe that requiring States to determine the need to provide for the health care needs of the children as part of the review process reinforces the existent medical support enforcement requirements. Furthermore, the review process serves as a convenient way to deal with both the financial support and the health care needs of the children in the same transaction and to eliminate duplication of effort. Section 302.56(c)(3) requires that State guidelines for setting child support award amounts must provide for the children's health care needs, through health insurance coverage or other means.

In all five demonstration project States, modification for medical support could be sought independently of any change in the amount of the child support award and associated legal standards. In the earlier demonstration project in Oregon, some provision was made for obligors to carry medical insurance for their supported children in all but four percent of the adjusted orders. Oregon determined that a major benefit of reviewing previous support orders was the high proportion of

adjusted orders that included a provision for the obligor to carry medical insurance. Among the orders adjusted through the Oregon project, 63 percent of orders in AFDC cases, 75 percent of orders in former AFDC cases, and 54 percent of orders in non-AFDC cases did not previously provide for the health care needs of the children, but did so as a result of the adjustment process. Data from the other demonstrations projects indicate similar outcomes. For example, modifications for medical support were obtained in conjunction with adjustments in the order amount in 69 percent of the cases in Colorado and nearly half of the cases in Illinois.

Given the high cost of health care and the relatively nominal cost of health insurance, OCSE considers medical support to be generally advantageous to children. In cases in which there is an assignment of support rights, as defined under § 301.1, medical support need not be sought if the custodial parent has satisfactory health insurance coverage other than Medicaid available on behalf of the children. However, as provided under § 303.31(b)(2)(i), the medical support requirement is not dependent on the absent parent actually having coverage available at reasonable cost at the time the order is entered or adjusted. With respect to non-AFDC cases not receiving Medicaid, the decision to petition for inclusion of medical support is guided by a determination of high potential cases under State criteria required under § 303.31(b)(3) and the consent of the individual applying for IV–D services, as specified under § 303.31(c).

Timeframes for Review and Adjustment—Section 303.8(e)

1. *Comment:* Numerous commenters objected to placing timeframes for review and adjustment with those governing establishment of support obligations. In general, most commenters urged us to put timeframes in a separate section, apart from the timeframes in § 303.4. Many commenters expressed concern that the proposed wording and inclusion with the establishment requirements made the timeframe confusing, and subject to the potential misinterpretation that every time a parent was located or paternity was established, a review had to be conducted. Most commenters urged us to wait until the reports from the review and adjustment demonstration projects were completed before establishing timeframes (and before making regulations effective).

Response: In response to these comments, the final regulation specifies two explicit timeframes which must be met by States in conducting review and adjustment activities. Section 303.8(e)(1) requires that in any case in which support rights are assigned to the State under § 301.1, the State must determine, within 15 calendar days of October 13, 1993, or the date the child support order is 36 months old, whichever date occurs later, whether a review should be conducted. Subsequent determinations about whether to conduct a review must be made in accordance with paragraph (c)(4), at 36-month intervals based upon the date the child support order was adjusted or the date an order was entered determining that the child support order should not be adjusted, or, in any case in which a petition or motion for adjustment was not filed following a review, the date upon which the post-review challenge period ended.

Section 303.8(e)(2) imposes a 15-calendar-day timeframe on the State for making a determination whether a review should be conducted where a request for a review is made, based upon the date of receipt of a request. Section 303.8(e)(3) specifies a 180-calendar-day period for conducting specified review and adjustment activities, measured from the date of determining that a review should be conducted or locating the non-requesting parent, if necessary, whichever is later. Our decision to expand the timeframe from the 90 days specified on the proposed rule is based upon the suggestions of commenters and indications from the experiences in the demonstration projects, as well as recognition of the need to incorporate the statutory 30-day pre-notice and 30-day post-notice requirements.

The findings and experiences of the demonstration projects substantiate that a 180-calendar timeframe is both necessary and reasonable. The time for completing the review and adjustment process experienced in the demonstration States was measured from case selection as the starting point. Location of the non-requesting parent was not a criteria for selection, but a post-selection, pre-review activity. Thus, time devoted to location was a component of the processing times used to compute the average length of time the review and adjustment process encompasses. The 180-calendar-day timeframe imposed by these regulations does not commence to run until the non-requesting parent is located or determination to review is made, whichever is later. We believe including location as a necessary prerequisite allows States additional time of up to 75 calendar days after determining location is necessary to access location sources and ensure that locate information is sufficient to take the next appropriate action in the case, as required by § 303.3(b)(3).

In the Oregon Child Support Updating Project, modified orders required an average of 200 calendar days to be established, measured from the date a case was selected for review to the date a modified order was entered. This average was achieved using expedited court dockets in the nine participating counties, involving designating a half day of court time each month strictly for handling modification cases. The Oregon demonstration project found no significant difference in time required to obtain adjusted orders by administrative process (190 calendar days) as compared to judicial processes (212 calendar days). As noted in the "Findings from the Third Year Research" (September 1991) under Oregon's project, the greater time required to obtain judicial modifications prompted Oregon to adopt legislation giving the Oregon Support Enforcement Division authority to modify all orders under its jurisdiction—both those established by administrative process and those established by judicial process—through an administrative process. Under this law, administratively-modified orders that had been originally established by a judge, will still be ratified and approved by a judge. Because such a process is anticipated to eliminate delays associated with docketing court hearings, the change to a totally administrative process is expected to reduce the calendar time required to obtain an adjusted order. Third-year supplemental data from the Oregon project reflect that the method used for obtaining the adjusted order also influenced the amount of time required to complete the process. The average time was significantly less for adjusted orders obtained by consent (146 calendar days) than those obtained by default (217 calendar days) or after a judicial or administrative hearing (248 calendar days).

Data from the demonstration projects conducted in Colorado, Delaware, Florida, and Illinois reflect that the overall average length of time from case selection to adjustment across all four projects for 3,207 cases in which adjustment activities were completed was 195 calendar days. In Delaware, the average time required was 174 calendar days and in Illinois, an average of 171 calendar days was necessary. The average time to obtain an adjusted order in the Florida project was 162 calendar days. Colorado experienced the longest

average time (252 calendar days) from selection to adjustment. This average was clearly affected by the method by which the adjustment was obtained. Of the orders adjusted, 576 were obtained by stipulation of the parties, representing 62 percent of the total cases modified. The average time required for processing these cases was 216 calendar days. Cases in which obtaining an adjustment involved a court hearing, including modified orders by default, took longer, and affected the overall average amount of time required. Data from the demonstration projects also indicate that interstate cases do take longer, but only about one month longer. In Colorado, for example, findings indicate that, on average, adjusting an interstate case took only nine days longer than an in-State case. These findings are consistent with those from the Oregon project. In Oregon, the average calendar time to obtain an adjusted order was only slightly longer (16–19 calendar days) for cases in which one parent lived in the State than for cases in which both parents lived in the State.

During the 180-calendar-day timeframe, all necessary preliminary activities must occur, including preparation of any pleadings and documents necessary before issuance of the advance notice of the review. Following the issuance of the notice, and as explicitly required by statute, at least 30 calendar days must elapse before the review is actually conducted. This period should be the time for gathering information, both from the parties and by accessing any other databases or information sources available to the State (labor/wage screens or employer inquiries, for example).

The balance of the period following the 30-calendar-day pre-review period allows time for conducting the review, determining whether an adjustment is warranted, preparing any written findings, sending the post-review notice of the results to the parties, petitioning for adjustment, where indicated, and adjusting the order or determining that no adjustment should be made, no later than the 180th calendar day following the determination that a review should be conducted or locating the non-requesting parent, whichever occurs later. Depending upon the State's processes for conducting reviews and making adjustments to child support orders, each of the various activities within the 180-calendar-day timeframe may be the responsibility of a different entity, including the IV–D agency, the judicial or administrative process, and the parties.

2. Comment: Several commenters contended that a timeframe is not intended by Congress because review and adjustment are not mentioned in section 121 of Public Law 100–485, which requires the Secretary to establish time limits within which States must accept and respond to requests for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity and initiate proceedings to establish and collect support awards.

Response: We disagree with the commenter's contention that Congress intended that no timeframes apply to the process for review and adjustment of orders. As set forth in section 452(a) of the Act, OCSE is required to establish such standards for State programs as determined to be necessary to assure that such programs will be effective. Additionally, as specified in section 452(h) of the Act, these standards shall include standards establishing time limits governing the period or periods within which a State must accept and respond to requests for assistance in establishing and enforcing orders. While the statute mentions the kinds of requests included, the specific activities enumerated are by no means inclusive of the various activities involved in establishing and enforcing support orders for which standards or time limits are appropriate. We use our regulatory authority, under section 1102 of the Act, to impose a timeframe requirement for completion of review and adjustment activities. The timeframe of 180 calendar days means that review and adjustment falls outside of the basic expedited processes requirement under § 303.101(b)(2), which requires that actions to establish or enforce child support must be completed from time of successful service of process to the time of disposition within the following timeframes: 90 percent in 3 months, 98 percent in 6 months, and 100 percent in 12 months.

Review and Adjustment in Interstate Cases—Section 303.8(f)

1. Comment: One commenter asked that regulations address whether a rendering court has jurisdiction to honor a request to adjust an order for support if neither party presently resides in that State.

Response: We believe that absent any controlling Federal law, State law governs such circumstances. Therefore, it would be inappropriate to delineate in regulations matters within the authority of each State. Generally, a court which enters a child support order retains continuing subject matter jurisdiction to review and adjust such order and continuing personal jurisdiction over the parties regardless of their present residence provided that the court had personal jurisdiction over the parties at the time the order was entered.

If the rendering court had personal jurisdiction over the parties at the time the order was entered, such jurisdiction is not lost with respect to actions flowing out of the original order such as enforcement or adjustment, regardless of where the parties are presently situated. However, a rendering court, although it may have ongoing jurisdiction, may decline to exercise such jurisdiction if it considers itself to be an inconvenient forum because none of the parties to the original action currently reside in or have any present connection with that State. For example, following a divorce decree in one State, both parties may have relocated to other States. Instead of conducting the review "long-distance" or forcing both parties to litigate the adjustment in the original court, one party could register the child support order in the court of another State which has personal jurisdiction over the other party.

2. Comment: One commenter inquired whether States will be required to share their review and adjustment criteria with all other States so that in interstate cases the initiating jurisdiction can provide necessary documentation for the responding State to act on the request and so that individuals affected will know in advance what criteria will be used to make a determination.

Response: In Decemeber 1990, OCSE distributed a "State At A Glance" directory on computer diskette to each State, which contains State profile information about each State as well as specific documentation requirements for each of the various establishment and enforcement functions, including modification. This publication may be a valuable resource for States in preparing requests for review for referral to other States. OCSE is exploring the possibility of periodically updating this reference tool to reflect changes in State law and practices.

3. Comment: Several commenters urged that regulations include a separate section on interstate review and adjustment.

Response: Accordingly, we added § 303.8(f) to address specific requirements for providing review and adjustment services in interstate cases.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this proposed rule does not

constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule implements specific requirements of Public Law 100–485. We expect the additional costs to the States will be less than $100 million. Any costs will be administrative and can be minimized through careful State planning. We believe increased collections as a result of adjustments to child support award amounts and the imposition of immediate wage withholding in these cases will exceed increased administrative costs.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

List of Subjects in 45 CFR Parts 302 and 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.023, Child Support Enforcement Program)

Dated: May 16, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Dated: July 22, 1992.

Louis W. Sullivan,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on December 18, 1992.

For the reasons set out in the preamble, 45 CFR chapter III is amended as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Section 302.70 is amended by revising paragraph (a)(10) to read as follows:

§ 302.70 Required State laws.

(a) * * *

(10) Procedures for the review and adjustment of child support orders:

(i) Effective on October 13, 1990 until October 12, 1993, in accordance with the requirements of §§ 303.8 (a) and (b) of this chapter; and

(ii) Effective October 13, 1993, or an earlier date the State may select, in accordance with the requirements of § 303.8 (a) and (c) through (f) of this chapter.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

3. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. Section 303.7 is amended by adding paragraph (b)(6), by adding paragraph (c)(7)(v), and by amending paragraph (c)(8) by replacing the word "modification" with the word "adjustment," to read as follows:

§ 303.7 Provision of services in interstate IV–D cases.

* * * * *

(b) * * *

(6) Send a request for review of a child support order to another State within 20 calendar days of determining that a request for review of the order should be sent to the other State and of receipt of information from the requestor necessary to conduct the review in accordance with §§ 303.8(f)(1) of this part.

(c) * * *

(7) * * *

(v) Reviewing and adjusting child support orders upon request in accordance with § 303.8(f)(2) of this part.

* * * * *

5. Section 303.8 is amended by adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 303.8 Review and adjustment of child support orders.

* * * * *

(c) *Review of child support orders.* Effective October 13, 1993 or an earlier date the State may select, the State must, when providing services under this chapter:

(1) Have in effect and use a process for review and adjustment of child support orders in effect in the State, including a process for challenging a proposed adjustment or determination.

(2) Notify each parent subject to a child support order in the State of the right to request a review of the order, and the appropriate place and manner in which the request should be made.

(3) Periodically publicize the right to request a review as part of its support enforcement services as required under § 302.30 of this chapter and include notice of this right as part of information on IV–D services under § 303.2(a)(2) of this part.

(4) Review child support orders at 36-month intervals after establishment of the order or the most recent review, unless:

(i) In a case in which there is an assignment as defined in § 301.1 of this chapter, the State determines, in accordance with § 303.8(c)(5) of this section, that a review would not be in the best interests of the child and neither parent has requested a review; or

(ii) In a case in which there is no such assignment of support rights to the State, neither parent has requested a review; or

(iii) In a case in which medical support rights are assigned under 42 CFR 433.146, but child support rights are not assigned to the State under § 232.11 of this title or § 471(a)(17) of the Act, the order requires the provision of health insurance coverage, and neither parent has requested a review; or

(5) Determine that a review of the child support order would not be in the best interests of a child if there has been a finding of good cause as set forth at §§ 302.31(c) and 232.40 through 232.49 of this title or under 42 CFR 433.17(c), and the State of local IV–A, XIX, or IV–E agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative.

(6) Notify or serve process upon each parent subject to a child support order in effect in the State of:

(i) Any review of such order at least 30 calendar days before commencement of the review, and

(ii) Any information necessary to conduct the review that each parent must provide and the date by which such information must be provided.

(7) Following any review, notify each parent subject to the child support order of:

(i) A proposed adjustment or a determination that there should be no adjustment in the order; and

(ii) Each parent's right to initiate proceedings to challenge the proposed adjustment or other determination, not

less than 30 calendar days after the notice.

(8) Adjust the order, or determine that there should be no adjustment, as appropriate, in accordance with the State's guidelines for setting child support awards and paragraph (d) of this section.

(d) *Basis for seeking adjustment.* (1) Inconsistency between the existent child support award amount and the amount of child support which results from application of the State guidelines must be an adequate basis, under State law, for petitioning for an adjustment of an order in a IV–D case, unless:

(i) the inconsistency does not meet a reasonable quantitative standard established by the State, in accordance with paragraph (d)(2) of this section or

(ii) the inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change in the circumstances which resulted in the rebuttal of the guideline amount.

(2) The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support which results from application of the guidelines is adequate grounds for petitioning for adjustment of the order.

(3) The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to petition for adjustment of an order to provide for the children's health care needs, regardless of whether an adjustment in the amount of child support is necessary. In no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child's health care needs in the order.

(e) *Timeframes for review and adjustment.* (1) In any case in which support rights are assigned to the State under § 301.1 of this part, the State must determine, within 15 calendar days of October 13, 1993 or the date the child support order is 36 months old, whichever date occurs later, whether a review should be conducted, as required under paragraph (c)(4) of this section. Subsequent determinations about whether to conduct a review must be made in accordance with paragraph (c)(4) of this section, at 36-month intervals based upon the date the child support order was adjusted or the date an order was entered determining that the child support order should not be adjusted, or, in any case in which a petition or motion for adjustment was not filed following a review, the date upon which the post-review challenge period ended.

(2) Within 15 calendar days of receipt of a request for a review, the State must determine whether a review should be conducted, as required under paragraph (c)(4) of this section.

(3) Within 180 calendar days of determining that a review should be conducted or locating the non-requesting parent, whichever occurs later, a State must:

(i) Send the notice or serve process required under paragraph (c)(6) of this section that a review will be conducted;

(ii) Conduct a review of the order;

(iii) Send the notice of the proposed adjustment or determination that there should be no adjustment as required under paragraph (c)(7) of this section; and

(iv) Adjust the order or determine that the order should not be adjusted in accordance with paragraph (c)(8) of this section.

(f) *Interstate review and adjustment.* Effective October 13, 1993, or such earlier date the State may select:

(1) *Initiating State responsibilities.* The State in which a request for review is made, or in which there is an assignment of rights to support, as defined under § 301.1 of this part, must:

(i) In any case in which support rights are assigned to the State under § 301.1, determine, within 15 calendar days of October 13, 1993, or the date the child support order is 36 months old, whichever date occurs later, whether a review should be conducted, as required under paragraph (c)(4) of this section, and in which State a review and adjustment will be sought. Subsequent determinations about whether to conduct a review must be made in accordance with paragraph (c)(4) of this section, at 36-month intervals based upon the date the child support order was adjusted or the date an order was entered determining that the child support order should not be adjusted, or, in any case in which a petition or motion for adjustment was not filed following a review, the date upon which the post-review challenge period ended.

(ii) Within 15 calendar days of receipt of a request for a review, determine whether a review should be conducted, as required under paragraph (c)(4) of this section, and in which State a review and adjustment will be sought.

(iii) If the State determines under paragraph (f)(1)(i) or paragraph (f)(1)(ii) of this section that it should review a child support order in effect in the State, the State shall, within the 180-calendar-day timeframe for review and adjustment of child support orders set forth in paragraph (e)(2) of this section, send the notice that a review will be conducted to each parent, conduct a review, provide notice to the parties of the right to challenge the proposed adjustment or other determination, and adjust the order or determine that the order should not be adjusted, in accordance with paragraphs (c) (6) through (8) of this section.

(iv) If the State determines under paragraph (f)(1)(i) or paragraph (f)(1)(ii) of this section to request a review of a child support order in another State, send a request for review to that State within 20 calendar days of receipt of sufficient information to conduct the review and provide that State with sufficient information on the requestor to act on the request, in accordance with the requirements of § 303.7(b)(6) of this part.

(v) If the request for review is the first contact between the initiating and responding States in the case, send the request for review to the interstate central registry in the responding State. However, if the initiating State has previously referred the case to a responding State for action and determines under paragraph (f)(1)(i) or paragraph (f)(1)(ii) of this section that the child support order should be reviewed in that responding State, the request for review may be sent directly to the appropriate agency in the responding State for processing.

(vi) Send, to the parent in the initiating State, a copy of any notice issued by a responding State in connection with the review and adjustment of an order, within 5 working days of receipt of such notice in the initiating State.

(2) *Responding State responsibilities.* (i) Within 15 calendar days of receipt of a request for a review of a child support order in the responding State, the appropriate processing agency in the responding State must determine whether a review should be conducted, in accordance with paragraph (c)(4) of this section and the responding State's procedures for review and adjustment of child support orders.

(ii) Within 180 calendar days of determining that a review should be conducted or locating the non-requesting parent, whichever occurs later, the responding State must send the notice that a review will be conducted to each parent, conduct a review, adjust the order or determine that the order should not be adjusted, and provide the notice of the adjustment or determination and the right to challenge the adjustment or determination in accordance with

paragraphs (c) (6) through (8) of this section.

(iii) The State may meet the notice requirements of § 303.7(c)(8) of this part by sending the notices of the review required under paragraphs (c)(6) and (c)(7) of this section to the parent in the initiating State through the IV–D agency in the initiating State.

(3) *Applicable laws and procedures.* The applicable laws and procedures for review and adjustment of child support orders, including the State guidelines for setting child support awards, established in accordance with § 302.56 of this chapter, are those of the State in which the review and adjustment, or determination that there be no adjustment, take place.

[FR Doc. 92–31106 Filed 12–24–92; 8:45 am]
BILLING CODE 4160–11–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 502, 504, 508, 510, 515, 530, and 533

[APD 2800.12A CHGE 44]

General Services Administration Acquisition Regulation; Miscellaneous, Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise section 501.603–70 to modify the training requirements under the Contracting Officer Warrant Program; to revise section 501.670–4 to modify the requirements for legal review of contract modifications; to revise section 502.101 to modify the definition of "Agency Competition Advocate" and "Contracting Activity Competition Advocate;" to revise section 504.201 to clarify circumstances when contract award data is to be submitted to the paying office; to revise section 504.803 to provide for maintaining evidence of submission of award data in the contract file; to revise section 508.304–5 to eliminate the requirement for use of the GSA–1533 Utility Contract; to delete section 508.371; to revise section 510.011 to add instructions to modify FAR 52.210–1 to update the address and phone number and to delete reference to certain Business Service Centers; to revise section 515.406–1 to eliminate the exception for utility contracts from use of the uniform contract format; to revise section 515.414–70 to provide for use of the GSA–3503 in utility contracts; to add section 530.470 and to revise 533.104 to clarify from whom the notice of a protest after award must be received and the number of days refers to calendar days.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Teresa Elmendorf, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable because the changes made in this final rule do not have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors and, therefore, are not subject to publication for comment under section 22 of the Office of Federal Procurement Policy Act, 41 U.S.C. 418b.

C. Paperwork Reduction Act

This rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 501, 502, 504, 508, 510, 515, 530, and 533

Government procurement.

Accordingly, 48 CFR parts 501, 502, 504, 508, 510, 515, 530 and 533 are amended to read as follows:

1. The authority citation for 48 CFR parts 501, 502, 504, 508, 510, 515, 530, and 533 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.603–70 is amended by revising paragraph (h)(1)(iv)(K) to read as follows:

501.603–70 Contracting officer warrant program (COWP).

* * * * *

(h) * * *

(1) * * *

(iv) * * *

(K) Public Utility Contracts—24–40 hours (Applicable to personnel handling public utility procurements)

* * * * *

3. Section 501.670–4 is amended by revising paragraph (a)(3) to read as follows:

501.670–4 Legal review.

(a) * * *

(3) Award of any contract which requires pre-award or post-award clearance by the Office of Acquisition Policy or by a service or regional clearance office under GSA Order, Contract Clearance (APD 2800.1C), and any modifications thereof valued at $25,000 or greater.

* * * * *

PART 502—DEFINITION OF WORDS AND TERMS

4. Section 502.101 is amended by revising the definition of "Agency competition advocate" and "contracting activity competition advocate" to read as follows:

502.101 Definitions.

Agency competition advocate means the Deputy Associate Administrator for Acquisition Policy.

* * * * *

Contracting activity competition advocate means the (1) Deputy Associate Administrator for Acquisition Policy, (2) FSS Competition Advocate, Office of Commodity Management, (3) IRMS Competition Advocate, Office of Information Resources Management Policy, (4) Special Assistant to the Director, Program Support Office, FPRS, (5) Deputy Regional Administrator for Regions 2, 3, 4, 5, 6, 7, 9, and the National Capital Region and (6) the Senior Advisor to the Regional Administrator for Regions 8 and 10. The Deputy Associate Administrator for Acquisition Policy serves as the contracting activity competition advocate for Central Office contracting activities outside of FSS, IRMS, and FPRS.

* * * * *

PART 504—ADMINISTRATIVE MATTERS

5. Section 504.201 is revised to read as follows:

504.201 Procedures.

(a) Contracting Officers are required to send documentation to the paying office on all contracts where a delivery order will be generated by GSA. The documentation shall consist of a "Duplicate Original" of the entire contract or modification, except as provided in paragraph (c), below.

(b) The Contracting Officer shall certify that the "Duplicate Original" is a true copy of the contract or

modification by means of a handwritten signature, in ink, on the award or modification form (i.e., SF 26, 33, 1442, etc.). The certification requirement does not apply to:

(1) Leases of real property;

(2) Schedule contracts; or

(3) Standard or GSA multipage purchase/delivery order carbon forms.

(c) For Federal Supply Service contracts entered into the FSS–19 system and subject to the requirement in paragraph (a), above, distribution to the paying office shall be accomplished through the use of a system-generated contract listing.

6. Section 504.803 is amended by revising paragraph (a)(23) to read as follows:

504.803 Contents of contract files.

(a) * * *

(23) Contractual action. Successful bid or proposal and all pertinent correspondence applicable to the contractual action including evidence of submission of contract award data to paying office, if applicable (see 504.201). Subcontracting plans that are incorporated in and made a material part of a contract, as required by FAR 19.705–5(a)(5), and the successful competing contractor's certificate of procurement integrity required by FAR 3.104–9(b), should be filed under this tab.

* * * * *

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

7. Section 508.304–5 is revised to read as follows:

508.304–5 Agency acquisition.

Contracting officers shall notify the Public Utilities Services Division (PPU) in accordance with FAR 8.304–5(g), when a utility service supplier refuses to execute a contract.

508.371 [REMOVED]

8. Section 508.371 is removed.

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

9. Section 510.011 is amended by adding paragraph (j) to read as follows:

510.011 Solicitation provisions and contract clauses.

* * * * *

(j) When the provision at 52.210–1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, is used in solicitations, the contracting officer is authorized to deviate from the FAR provision by substituting 490 L'Enfant Plaza, SW, Suite 8100, for the street address and 202–755–0325 or 0326 for the telephone numbers of the GSA Specification Unit shown in the provision. Business Service Centers in Chicago, IL; Los Angeles, CA; and Auburn, WA, also must be deleted from the provision because these offices no longer maintain and distribute Federal specifications and standards.

PART 515—CONTRACTING BY NEGOTIATION

10. Section 515.406–1 is amended by revising paragraph (a) to read as follows:

515.406–1 Uniform contract format.

(a) Leases of real property are exempted from the requirement for use of the uniform contract format.

* * * * *

11. Section 515.414–70 is amended by revising paragraph (b) to read as follows:

515.414–70 GSA Forms.

* * * * *

(b) The GSA Form 3503, Representations and Certifications, may be used in solicitations and contracts, except leases of real property.

* * * * *

PART 530—COST ACCOUNTING STANDARDS

12. Section 530.201–5 is revised to read as follows:

530.201–5 Waiver.

Requests to waive CAS requirements under FAR 30.201–5 shall be submitted to the CAS Board through the Associate Administrator for Acquisition Policy.

13. Subpart 530.4 is added consisting of section 530.470 to read as follows:

Subpart 530.4 Cost Accounting Standards

530.470 Waiver of Cost Accounting Standard 9904.412–40(c).

The Associate Administrator for Acquisition Policy (V) on a non-delegable basis may waive the cost assignment provisions of 48 CFR 9904.412–40(c). Requests for waivers shall be forwarded to the Associate Administrator with supporting documentation and rationale. A copy of each approved waiver will be furnished by the Associate Administrator to the CAS Board's Executive Secretary.

PART 533—PROTESTS, DISPUTES, AND APPEALS

14. Section 533.104 is amended by revising paragraph (c) to read as follows:

533.104 Protests to GAO.

* * * * *

(c) *Protests after award.* The procedures in paragraph (a) of this section apply to the handling of protests filed with GAO after award. If the protest is received from GAO (not from protester or any other party) within 10 calendar days after an award, contract performance must be suspended under FAR 33.104(c) unless the HCA determines in writing that contract performance is in the best interests of the United States or that urgent and compelling circumstances that significantly affect the interests of the United States do not permit waiting for the GAO's decision. The written determination and findings (D&F), in the format shown at 501.704–70(e)(2), should be prepared by the contracting officer for signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate AGC. After the D&F is approved, it must be returned to the AGC who notifies GAO of the agency's findings and intended action before contract performance is authorized.

* * * * *

Dated: December 7, 1992.

Richard H. Hopo, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92–31084 Filed 12–23–92; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Ex Parte No. 334 (Sub-Nos. 8 and 8A)]

Joint Petitions for Rulemaking on Railroad Car Hire Compensation and for Exemption of Arbitration Rule and Motion to Dismiss

AGENCY: Interstate Commerce Commission.

ACTION: Revisions to final rules.

SUMMARY: The Commission has revised two of its final rules scheduled to become effective January 1, 1993, governing the 10-year phased deprescription of the car hire rates. As revised, the final rules now treat cars rebuilt on or after January 1, 1991, essentially the same as they treat new cars.

EFFECTIVE DATE: The decision revising the rules is effective on December 28, 1992. The new rules, including these revisions, are effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Commission adopted final rules governing car hire rates in a decision served and published in the **Federal Register** on November 10, 1992, at 57 FR 53450. That decision became effective December 10, 1992. It provided that the rules will become effective January 1, 1993. Based on petitions for reconsideration that were filed, the Commission has revised §§ 1033.1(a)(3) and 1033.1(b)(1) of the new rules. The revisions were made so that new cars and cars rebuilt since January 1, 1991, would be treated similarly. The final rules, including the revisions to these sections, will still become effective January 1, 1993.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Regulatory Flexibility Analysis

The Commission certified in its decision served November 10, 1992, that its action will not have a significant impact on a substantial number of small entities. The Petitions for Reconsideration did not challenge that certification, and the revisions of the rules adopted on reconsideration affect only two sections. As treating recently rebuilt cars and recently purchased cars similarly will not have a material effect on small purchased cars similarly will not have a material effect on small entities, the Commission certifies that its action will not have a significant impact on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1033

Railroads.

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

Decided: December 21, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips. Vice Chairman McDonald and Commissioner Simmons would have granted the stay.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1033 of the Code of Federal Regulations is amended as follows:

PART 1033—CAR SERVICE

1. The authority citation for Part 1033 continues to read as follows:

Authority: 49 U.S.C. 10321, 10326, 11121, and 11122; 5 U.S.C. 553.

2. In section 1033.1 Paragraphs (a)(3) and (b)(1) are revised to read as follows:

§ 1033.1 Car hire rates.

(a) * * *

(3) *Fixed rate car.* Any car placed in service or rebuilt prior to January 1, 1991 or for which there was a written and binding contract to purchase, rebuild, or build prior to July 1, 1990, regardless of whether such car bore railroad reporting marks prior to January 1, 1991. Cars purchased or rebuilt on or after January 1, 1991, or under contract after July 1, 1990, will be deemed to be market rate cars. Provided, however, that for a period of one year from January 1, 1993, all cars shall be deemed to be fixed rate cars.

* * * * * *

(b) * * *

(1) Except as provided in paragraph (b)(3) of this section, for a 10-year period beginning January 1, 1993, the prescribed rates shall continue to apply to fixed rate cars without regard to the aging of such cars subsequent to December 31, 1990.

* * * * * *

[FR Doc. 92–31417 Filed 12–24–92; 8:45 am]

BILLING CODE 7035–01–M

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49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 12)]

Transfer or Operation of Lines of Railroads in Reorganization

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: On December 3, 1992 at 57 FR 57112 the Commission amended the procedures to be followed in allowing transfers or operations of lines of bankrupt rail carriers under bankruptcy reorganization. A revision is necessary to show the correct wording of one of the sentences adopted in this proceeding.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Levin, (202) 927–6287 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1180

Railroads.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations amended on December 3, 1992 at 57 FR 57112 is amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

§ 1180.20 [Corrected]

2. In § 1180.20, paragraph (c), the second sentence is corrected by removing the word "different" and adding in its place the word "greater".

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31418 Filed 12–24–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Approval of a fishery management plan amendment.

SUMMARY: NMFS announces the approval of Amendment 26 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The amendment continues the authorization of time/area closures around Kodiak Island to protect king and Tanner crab habitat areas. The action is intended to promote the recovery of these crab stocks and further the goals and objectives of the FMP that governs fishing for Gulf of Alaska groundfish.

ADDRESSES: Copies of the environmental assessment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

SUPPLEMENTARY INFORMATION: During its June 23–28, 1992, meeting, the North

Pacific Fishery Management Council (Council) recommended Amendment 26 for review by the Secretary of Commerce (Secretary) under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). A notice of availability of Amendment 26 was published in the **Federal Register** on September 25, 1992 (57 FR 44355). It invited review of, and comment on, the amendment until November 20, 1992. A full description of these time/area closures and their justification was published on October 15, 1992 (57 FR 47321).

Response to Comments

Two letters of comment were received during the comment period. Comments are summarized and responded to below.

Comment 1: Regulations implementing Amendment 26 and its predecessor, Amendment 18, exemplify a wise approach to the conservation of the crab resource without unnecessarily impacting commercial fishing operations.

Response: NMFS notes this comment.

Comment 2: NMFS invited comment on the enforcement concerns about aerial monitoring of the time/area closures to non-pelagic trawl gear when pelagic trawl gear could still be deployed in the closed areas. These concerns are unfounded in the Gulf of Alaska (GOA). Pollock is the only pelagic trawl fishery in the GOA. All other groundfish trawl fisheries are prosecuted with non-pelagic trawl gear. Additionally, all non-pelagic groundfish fisheries are restricted by a single halibut bycatch limit that is apportioned into seasonal allowances. When a seasonal allowance is reached, the GOA is closed to directed fishing for groundfish by vessels using trawl gear, except that fishing for pollock with pelagic trawl gear may continue when directed fishing for pollock is open. The only time pelagic and non-pelagic trawl gear operations simultaneously occur in the GOA is when directed fisheries for pollock and other groundfish are both open. The trawl fleet normally fishes for pollock at the beginning of each quarterly reporting period when quarterly apportionments of the annual pollock quota become available. Quarterly apportionments are harvested within a short time period and the trawl fleet typically shifts to other groundfish species during the remainder of the quarter. Therefore, monitoring of the non-pelagic trawl gear closures around Kodiak Island may only be complicated during the seasonal openings of the pollock fishery. NMFS enforcement need not resort to aerial monitoring in this case, but could simply confirm a vessel's participation in the pelagic trawl pollock fishery by checking observer reports, landings documents, or vessel logbooks.

Response: NMFS concurs that enforcement of the Kodiak Island closures to trawl gear other than pelagic trawl gear is possible. However, aerial surveillance of areas closed to specified gear types is the most effective and least costly and intrusive means to monitor such closures. NMFS may pursue an FMP amendment in the future that would prohibit the deployment of all trawl gear in the Kodiak Island time/area closures implemented under Amendment 26.

Comment 3: Fisheries enforcement would be enhanced if the time/area closures implemented under Amendment 26 applied to all trawl operations. Allowing only pelagic trawls in the closed areas renders aerial enforcement ineffective. As a result, enforcement of these closures will continue to require air/sea coordination to board and verify whether pelagic or non-pelagic trawl gear activity is occurring. The U.S. Coast Guard does not object to the regulations implementing Amendment 26 because they continue current practices and minimize impacts on pelagic trawl fisheries in the Kodiak Island area.

Response: NMFS notes this comment. Also, see response to Comment 2.

Amendment 26 authorizes time/area closures around Kodiak Island to protect sensitive king and Tanner habitat areas from on-bottom trawl operations by continuing the effectiveness of such closures that were authorized under Amendment 18 to the FMP (54 FR 50386, December 6, 1989) and for which authorization would have expired on December 31, 1992. Section 672.24 (d)(1) and (d)(3), in 50 CFR part 672 currently implement Amendment 26.

The Secretary has determined that Amendment 26 is consistent with the Magnuson Act and other applicable laws as authorized under section 304 of the Magnuson Act.

Dated: December 17, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-31127 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 249
Monday, December 28, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

8 CFR Part 3

[AG Order No. 1641–92]

Executive Office for Immigration Review; Deportation Proceedings: Alien Convicted of Aggravated Felony

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends 8 CFR Part 3 by requiring an Immigration Judge to conduct a hearing on the merits within 30 days after the filing of the order to show cause in the case of an alien who is charged in the order as an alien who has been convicted of an aggravated felony. The Immigration Judge may not grant more than one continuance absent extraordinary or compelling circumstances. If an appeal is taken from an order of deportation, the Board of Immigration Appeals shall decide the appeal within 60 days of the filing thereof.

DATES: Written comments must be received no later than January 27, 1993.

ADDRESSES: Please submit written comments, in triplate, to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5304, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for Immigration Review, Suite 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 756–6470; Robert K. Bingham, Acting Associate General Counsel, Office of the General Counsel, Room 7048, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20436, (202) 514–2895.

SUPPLEMENTARY INFORMATION: The proposed rule amends section 3.14 of Part 3 by adding a new paragraph (c) requiring the Executive Office of Immigration Review to expedite the administrative hearing and appeals of aliens charged, under section 241(a)(2)(A)(iii) of the Immigration and Naturalization Act (Act), as amended, as an alien convicted of an aggravated felony. In addition, the proposed rule amends section 3.3 to provide that an appeal from an order of deportation pursuant to section 241(a)(2)(A)(iii) shall be decided by the Board of Immigration Appeals within 60 days of the filing of the Notice of Appeal; and to limit the time that parties in such an appeal to file their briefs. This rule would implement the congressional mandate to protect society from serious criminal offenders pursuant to sections 242 (h)–(i) and 242A of the Act by facilitating their removal as expeditiously as possible upon a finding of deportability under section 241(a)(2)(A)(iii).

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. This proposed rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this proposed rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

For the reasons set out in the preamble, 8 CFR part 3 is proposed to be amended as set forth below.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301; Sec. 2, Reorganization Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.3 is amended by adding a sentence at the end of paragraph (c) and by adding a new paragraph (d) to read as follows:

§ 3.3 Notice of appeal.

* * * * *

(c) *Briefs.* * * * In an appeal governed by paragraph (d) of this section, the brief of the appealing party must be filed within 10 days after service of the transcript of the hearing, and the opposing party shall be allowed ten days to respond.

(d) *Aggravated felony.* An appeal from an order of deportation pursuant to section 241(a)(2)(A)(iii) of the Act shall be considered and decided by the Board within 60 days of the filing of the Notice of Appeal. In extraordinary and compelling circumstances the Board may extend this 60 days period for an additional time not to exceed 60 days.

3. Section 3.14 is amended by adding a new paragraph (c) to read as follows:

§ 3.14 Jurisdiction and commencement of proceedings.

* * * * *

(c) When an Immigration Judge has jurisdiction over an alien charged with being deportable pursuant to section 241(a)(2)(A)(iii) of the Act, the hearing must be scheduled and completed within 30 days after the commencement of proceedings. In extraordinary and compelling circumstances the Immigration Judge may continue the hearing, or extend the scheduled date for a hearing, provided that the hearing is completed no more than 60 days after the commencement of proceedings.

Dated: December 14, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–31340 Filed 12–24–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–211–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model ATP series airplanes. This proposal would require an inspection to detect cracking of the aft end of the wing rib boom angles on the left and right engine, and repair or replacement of the wing rib boom angle assemblies, if necessary. This proposal

is prompted by the detection of cracks during routine maintenance of the wing rib boom angles at the main landing gear (MLG) actuator attachment point. The actions specified by the proposed AD are intended to prevent structural failure of the actuator attachment point, which could lead to collapse of the MLG.

DATES: Comments must be received by February 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–211–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model ATP series airplanes. The CAA advises that one operator of a Model ATP series airplane detected a fatigue crack in a wing rib boom angle at the main landing gear (MLG) actuator attachment point. Fatigue cracking will reduce the strength of the attachment of the MLG actuator support structure to the airframe. This condition, if not detected and corrected, could result in structural failure of the actuator attachment point, which could lead to collapse of the MLG.

British Aerospace has issued Service Bulletin ATP–57–13, dated September 18, 1992, which describes procedures for a visual inspection to detect cracking of the aft end of the wing rib boom angles on the wing rib outboard of the left and right engine, and replacement of the wing rib boom angle assemblies, if necessary. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a visual inspection to detect cracking of the aft end of the wing rib boom angles on the wing rib outboard of the left and right engine, and repair or replacement of the wing rib boom angle assemblies, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The requirements of this rule are considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,100, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–211–AD.

Applicability: All Model ATP series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main landing gear actuator attachment point, which could lead to collapse of the main landing gear, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, conduct a visual inspection to detect cracking of the aft end of the wing rib boom angles on the wing rib outboard of the left and right engine, in accordance with British Aerospace Service Bulletin ATP–57–13, dated September 18, 1992.

(b) If no crack is detected, no further action is required.

(c) If any crack is detected and that crack does not extend beyond bolt hole X, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, repair or replace the wing rib boom angle assembly in accordance with a method approved by the Manager, Standardization Branch; ANM–113, FAA, Transport Airplane Directorate.

(2) Within 150 hours time-in-service after accomplishing the initial inspection, reinspect the wing rib boom angles for crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, dated September 18, 1992.

(i) If no additional crack propagation is detected, prior to the accumulation of 300 hours time-in-service after the initial inspection in accordance with paragraph (a) of this AD, repair or replace the wing rib boom angle assembly in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(ii) If additional crack propagation is detected or if cracking has exceeded the limits specified in paragraphs (d) or (e) of this AD, prior to further flight, repair or replace the wing rib boom angle assembly in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) If any crack is detected and that crack extends beyond bolt hole X, but not beyond bolt hole Y or down towards bolt hole A, accomplish either paragraph (d)(1) or (d)(2) of this AD.

(1) Prior to further flight, repair or replace the wing rib boom angle assembly in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) At intervals not to exceed 25 hours time-in-service, reinspect the wing rib boom angles for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, dated September 18, 1992.

(i) If no additional crack propagation is detected during any of the repeat inspections, prior to the accumulation of 150 hours time-in-service after the initial inspection in accordance with paragraph (a) of this AD, repair or replace the wing rib boom angle assembly in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(ii) If additional crack propagation is detected during any of the repeat inspections or if any crack propagation has exceeded the limits specified in paragraphs (d) or (e) of this AD, prior to further flight, repair or replace the wing rib boom angle assembly in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(e) If any crack is detected and that crack extends beyond bolt hole Y or into bolt hole A, prior to further flight, repair or replace the wing rib boom angle assembly in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31344 Filed 12–23–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice 1747]

Amendent to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule is the result of an advanced notice of proposed rulemaking published in **Federal Register**, 56 FR 43894, dated September 5, 1991. This proposed rule is intended to amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. The Department previously amended the U.S. Munitions List by adding category XV for space-related articles and moving certain spacecraft-related items from the coverage of categories VIII and XI into the new category XV.

This proposed rule is intended to reduce the burden on exporters by clarifying that all remote sensing type satellites are covered under the U.S. Munitions List (USML). In addition, the language on components, parts, accessories and associated equipment has been modified in order to begin the process of moving some components of satellites off the USML to the Commerce Control List (CCL). Only those components which are specifically designed or modified for the satellites or other equipment controlled in category XV will themselves be controlled in category XV. All other components of satellites not specifically designed for one or more of the satellites controlled in category XV will be controlled under the CCL. At the same time, the new language in paragraph (e) cites five parameters, all five of which must be met, in order for radiation hardened microelectronic circuits to be controlled under category XV of the USML.

DATES: Comments must be submitted on or before January 27, 1993.

ADDRESSES: Written comments should be sent to: Kenneth M. Peoples, Office of Defense Trade Controls, SA–6, room 200, U.S. Department of State, Washington, DC 20522–0602, fax (703) 875–6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, tel. (703) 875–6619, or Thomas Oldenburg, Office of Advanced Technology, Department of State, tel. (202) 647–2432.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include removal from the USML of all items contained on the COCOM dual-use list (also known as the "CORE" list) unless significant U.S. national security interests would be jeopardized. In

implementing this directive, the Department headed an interagency working group which reviewed the coverage of spacecraft and related components and determined that in the time allotted for this exercise, specific items could not be determined for removal. Therefore, in further implementation of the Presidential directive, the Department of State began chairing a space technical working group comprised of the Departments of State, Commerce, Defense, other national security agencies, NASA and other interested agencies. The group meets to recommend the movement of commercial satellites and related articles identified by the COCOM IL off the USML except for such commodities and technical data that it recommends be kept on the USML for reasons related to the U.S. national security. Previously, the group proposed the creation of Category XV, including the language for Global Positioning Service (GPS) receivers and commercial communications satellites and their components and technical data and defense services, all of which have been formally moved into Category XV. This proposed rule stipulates that all remote sensing type satellites and their related ground stations will continue to be controlled under new Category XV (b) of the USML, except for passive, receive-only ground stations for such satellites. This proposed rule constitutes the STWG's final recommendation. At the conclusion of the requisite thirty day public comment period, the group will review the comments and recommend a final rule, which in turn will conclude the rationalization exercise.

Note that this proposed rule changes the language of all of the headings for the various paragraphs in Category XV as outlined in previous **Federal Register** Notices. Paragraph (a) continues to cover all military satellites, but paragraph (b) now covers only "remote sensing" type satellites, paragraph (c) now covers only communications satellites, paragraph (d) now covers GPS receivers, paragraph (e) now covers components, parts, accessories, associated and attached equipment for the commodities in category XV, and paragraph (f) now covers technical data and defense services for the commodities in category XV.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a notice of proposed rulemaking in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close 30 days after publication of this notice of proposed rulemaking. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and will serve to reduce the burden on exporters by clarifying USML coverage of space-related articles. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1404–0013.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

List of Subjects in 22 CFR Part 121

Arms and Munitions, Exports.

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, category XV is amended by revising paragraphs (a) through (e) and by adding paragraph (f) to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XV—Spacecraft Systems and Associated Equipment

*(a) Spacecraft and associated hardware, including ground support equipment, specifically designed or modified for military use.

(b) Remote sensing satellite systems as follows:

*(1) All Remote sensing satellites;

(2) Ground control stations for remote sensing satellites as follows:

(i) Ground control stations for telemetry, tracking and control of such satellites; or

(ii) Passive ground stations for remote sensing satellites having any of the following characteristics:

(a) Employing any of the cryptographic items controlled under Category XIII of this subchapter; or

(b) Employing any uplink command capability.

Note: for export licensing controls over any passive ground receive only stations for remote sensing satellites not having any of the above parameters nor any systems or major components controlled elsewhere under this subchapter, see the Commerce Control List.

(c) Communications satellites (excluding ground stations and their associated equipment and technical data not enumerated elsewhere in this § 121.1; for controls on such ground stations, see the Commerce Control List) with any of the following characteristics:

1. Anti-jam capability. Antennas and/or antenna systems with ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference.

2. Antennas:

(i). With aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; or

(ii). With sidelobes less than or equal to −35dB; or

(iii). Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).

3. Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links").

4. Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be changed several times a day on a channel by channel basis among previously assigned fixed frequencies.

5. Employing any of the cryptographic items controlled under Category XIII (b) of this section.

6. Employing radiation-hardened devices controlled elsewhere in this § 121.1 that are not embedded in the satellite in such a way as to deny physical access. (Here "embedded" means that the device either cannot feasibly be removed from the satellite or be used for other purposes.)

7. Having propulsion systems which permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1g.

8. Having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees azimuth and elevation.

9. Having orbit transfer engines ("kick-motors") which remain permanently with the spacecraft and are capable of being restarted after achievement of mission orbit and providing acceleration greater than 1g. (Orbit transfer engines which are not designed, built, and shipped as an integral part of the satellite are controlled under Category IV of this section.)

(d) Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:

1. Designed for encryption or decryption (e.g., Y-Code) of GPS precise positioning service (PPS) signals;

2. Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

3. Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

4. Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km.

Note: GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified or configured for military use and therefore covered under this subparagraph.

Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this subparagraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: "ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which by U.S. policy, may be switched off without notice."

(e) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) as follows:

(1) Specifically designed, modified or configured for the articles in paragraphs (a) through (d) of this category.

(2) Radiation hardened microelectronic circuits that are specifically designed or rated to meet or exceed all five of the following characteristics:

Note: For export controls on all other radiation hardened microelectronic circuits not captured below, see the Commerce Control List.

(i) A total dose of 5×10^5 Rads (Si);

(ii) A dose rate upset of 5×10^8 Rads (Si)/Sec.;

(iii) A neutron dose of 1×10^{14} N/cm^2;

(iv) A single event upset of 1×10^{-7} or less error/bit/day; and

(v) Single event latch-up free and having a dose rate latch-up of 5×10^8 Rads(Si)/sec or greater.

(f) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 for exceptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME. In addition, detailed design, development, production or manufacturing data for all spacecraft systems and specifically designed or modified components thereof, regardless of which U.S. Government agency has jurisdiction for export of the hardware. (See § 125.4 for exceptions.) This restriction does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item intended to operate in space has been designed, manufactured and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations), as well as data necessary to evaluate in-orbit anomalies and to operate and maintain associated ground equipment.

* * * * *

Dated: November 30, 1992.

R. Rand Beers,

Deputy Assistant Secretary of State, Bureau of Politico-Military Affairs.

[FR Doc. 92-31366 Filed 12-24-92; 8:45 am]

BILLING CODE 4710-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket No. 91-213; FCC 92-442]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The FCC inadvertently did not publish in the **Federal Register** a certification statement required by the Regulatory Flexibility Act. The FCC has determined that the Regulatory Flexibility Act does not apply to the proposed rules in CC Docket No. 91-213, Transport Rate Structure and Pricing, FCC 92-442, which appeared in the **Federal Register** on November 17, 1992 (57 FR 54205), because, if promulgated, these rules would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Federal Regulatory Act. For this reason, the FCC did not prepare an initial Regulatory Flexibility Act analysis.

FOR FURTHER INFORMATION CONTACT: Melissa Newman, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This notice corrects the FCC's Further Notice of Proposed Rulemaking, CC Docket No. 91-213, FCC 92-442, adopted September 17, 1992, and released October 16, 1992, which appeared in the **Federal Register** on November 17, 1992 (57 FR 54205), FR Doc. 92-27747, by adding a certification statement that the Regulatory Flexibility Act does not apply to this rulemaking.

The following correction is made in CC Docket No. 91-213, Transport Rate Structure and Pricing, FCC 92-442, which was published in the **Federal Register** on November 17, 1992 (57 FR 54205):

1. After the first full paragraph in the third column on page 54207, the following should be inserted:

Regulatory Flexibility Act

We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. Carriers providing interstate transport services directly subject to the proposed rule amendment do not quality as small businesses since they are dominant in their field of operation. The Commission will, however, take appropriate steps to ensure that the special circumstances of the smaller LECs are carefully considered in resolving those issues. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1980).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-31349 Filed 12-24-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-268, DA 92-1714]

Broadcast Service; Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action, in response to a request to extend comment period filed by The Association of America's Public Television Stations, the Corporation for Public Broadcasting and the Public Broadcasting Service, extends the deadline for submitting comments and reply comments in the Third Further Notice of Proposed Rule Making portion of the Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making in the above-cited docket (57 FR 53679, November 12, 1992, FR Doc. 92-27348). The Third Further Notice of Proposed Rule Making segment of that decision solicited comment on issues fundamental to the implementation of advanced television service in this

country. The deadline for comments was originally due December 21, 1992, and is extended to January 7, 1993. The deadline for accepting reply comments was scheduled for January 29, 1993, and is not extended to February 8, 1993.

DATES: Comments are now due on January 7, 1993, and reply comments are due on February 8, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of: Advanced Television System and Their Impact upon the Existing Television Broadcast Service.

Adopted: December 17, 1992; Released: December 18, 1992.

Comment Date: January 7, 1993.

Reply Comment Date: February 8, 1993.

By the Chief, Mass Media Bureau.

1. This action extends the deadline for filing comments and reply comments in response to the Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making in the above-cited docket (7 FCC Rcd 6924, 1992) pertaining to the implementation of advanced television service in this country. The deadline for initial comments was originally set for December 21, 1992, and the deadline for accepting reply comments for January 29, 1993.

2. The Association of America's Public Television Stations, the Corporation for Public Broadcasting and the Public Broadcasting Service request extension of the comment deadline to January 7, 1993 in order that they can give fuller and more careful consideration to the important issues raised, and to reach a consensus on their recommendations to the Commission. They argue that the press of business has made it difficult to address these issues, particularly in light of the December 16, 1992 deadline for filing reply comments to a Second Further Notice of Proposed Rule Making in this same proceeding (7 FCC Rcd 3340, 1992).

3. In light of the foregoing, the Bureau finds that good cause exists for an extension. Pursuant to 47 CFR 0.283, the deadline for filing comments in this proceeding is extended to January 7, 1993. The deadline for filing reply comments is extended commensurately until February 8, 1993.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 92–31363 Filed 12–24–92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 249
Monday, December 28, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Agua/Caballos Timber Sale, Carson National Forest, Rio Arriba County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental consequences of the Agua/Caballos Project, a timber sale proposal. After examining the project in light of the ten points of significance, 40 CFR 1509.25, it is my decision as responsible official to prepare an EIS for this project.

The Draft EIS will be issued by fall/winter of 1993, with the Final EIS planned for the spring, 1994.

DATE: Comments concerning the project should be received in writing by the Forest Service. Interested public will be notified of the comment due date.

ADDRESSES: Send written comments to Graciela A. Terrazas, El Rito District Ranger, P.O. Box 56, El Rito, NM 87530 or Gene Onken, Interdisciplinary Team Leader, Canjilon Ranger District, P.O. Box 488, Canjilon, NM 87515. The telephone number is (505) 581–4554 in El Rito and (505) 684–2486 in Canjilon, respectively.

FOR FURTHER INFORMATION CONTACT: Graciela A. Terrazas, El Rito District Ranger or Gene Onken, Interdisciplinary Team Leader; addresses and phone numbers above.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Carson National Forest, El Rito Ranger District, proposes to harvest timber within a portion of the approximately 24,000 acre Agua/Caballos Project area. Implementation is projected for September, 1994. The USDA Forest Service will be the lead agency.

Location

Agua/Caballos Project Area is on the Carson National Forest, El Rito Ranger District, in Rio Arriba County, New Mexico. It is located on the south end of the Vallecitos Federal Sustained Yield Unit (VFSYU), in Township 25 North, Range 7 East, Sections 1, 2, 3, 4, 9, 10, and 11; and Township 26 North, Range 6 East, Sections, 1, 12, 25, and 36, and 36 Township 26 North, Range 7 East Sections 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, and Township 26 North, Range 8 East, Sections 5, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32; and Township 27 North, Range 6 East, Sections 25 and 36 and Township 27 North, Range 7 East, Sections 30 and 31.

Purpose

The purpose of the proposed action is to meet the intent of the Vallecitos Federal Sustained Yield Unit (VFSYU) by providing stability to the local, affected northern New Mexico communities of Cañon Plaza, Vallecitos, La Madera, Las Tablas, Petaca, Tres Piedras, Ojo Caliente, El Rito, and Canjilon. This proposal also tiers to the Carson National Forest Land and Resource Management Plan (USDA, 1986) which directs that timber sales be offered at a rate of 5.5 million board feet (MMBF) per year to Duke City Lumber, the single, approved, responsible operator for the VFSYU, plus 1.0 MMBF to smaller, local operators. The Agua/Caballos Project could contribute to two-year's mill operation, more or less, depending on the decision and timber sale scheduling.

Decisions

The decisions to be made are as follows:

Should a timber sale(s) be used to help achieve the desired future condition?

If so, which areas in the Agua/Caballos analysis area should be harvested and what vegetation conditions should be created in the harvest areas?

What products should be offered (sawtimber, firewood, vigas, poles) and who much?

How should the slash be treated?

What, if any, roads should be reconstructed? Should new roads be built?

What, if any, roads should be obliterated or closed?

Which areas should be thinned?

Which areas should be allocated to old growth?

Improvements/Opportunities

Scoping

The project is in the initial stages of scoping. The Interdisciplinary Team will involve the public and media with letters to organizations, media and individuals on a large mailing list, meetings, and an open house and field trip to obtain issues, concerns, and comments on the proposed action and the alternatives as they are developed.

The Key Issues for the project have not been determined.

Alternatives: Alternatives will be developed to respond to key public issues.

Supplemental Information for Public Participation

There will be a 45-day comment period on the draft EIS. A public participation plan will be prepared for the project within the next few months. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the proposed action and

the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 18, 1992.

Leonard L. Lucero,

Forest Supervisor.

[FR Doc. 92–31351 Filed 12–24–92; 8:45 am]

BILLING CODE 3410–11–M

Upper Sunday Timber Sales and Associated Activities; Kootenai National Forest, Lincoln and Flathead Counties, Montana; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber, reforest the site, and construct haul roads in the southern portion of the Sunday Creek drainage. The Sunday Creek drainage is located approximately 34 air miles northeast of Libby, Montana.

The Forest Service proposes to harvest approximately 19 million board feet of timber through application of a variety of harvest methods on approximately 1,556 acres of forest land. The proposal also includes approximately 7.2 miles of new road construction and 1.5 miles of road reconstruction to access the specific harvest units.

The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides program goals, objectives, and standards and guidelines for conducting management activities in this area. All activities associated with the proposal will be designed to maintain high quality wildlife, fisheries, and watershed objectives.

DATES: Comments concerning the scope and implementation of this proposal must be received in writing on or before January 27, 1993.

ADDRESSES: The Responsible Official is Jane P. Kollmeyer, District Ranger, Fortine Ranger District, P.O. Box 116, Fortine, Montana, 59918. Written comments and suggestions concerning the scope of the analysis may be sent to her at that address.

FOR FURTHER INFORMATION CONTACT: Rob Carlin, Project Coordinator, Fortine Ranger District. Phone: (406) 882–4451.

SUPPLEMENTARY INFORMATION: The decision area contains approximately 12,374 acres within the Kootenai National Forest in Lincoln and Flathead Counties, Montana. All of the proposed projects are located in the Sunday Creek drainage with sub-drainages of Tom, Advent, Blessed and Skillet Creek included. The legal location of the decision area is as follows: Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, and 30 of Township 32 North, Range 25 West; Sections 1, 2, 11, 12, 13, 14, 23, 24, and 25 of Township 32 North, Range 26 West; and Sections 26, 27, 28, 29, 32, 33, 34, and 35 of Township 33 North, Range 25 West; Principle Montana Meridian.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals.

Prescribed harvest treatments in this proposal are as follows:

Prescription	Acres (approx.)	No. of units	Maximum opening size (acres)
Intermediate Harvest	51	1	0
Sanitation/Salvage Harvest	273	11	<1
Special Shelterwood Harvest with Reserve Trees	309	10	38
Shelterwood Harvest with Reserve Trees	105	4	32
Seed Tree Harvest with Reserve Trees	645	21	40
Clearcut Harvest with Reserve Trees	173	6	40

The prescriptions included in this proposal are defined as follows:

Intermediate Harvest—Some individual trees are selected and designated for harvest. The remaining trees provide a fully stocked stand of the highest quality, most vigorous individuals, with little disturbance to the existing forest habitat conditions.

Sanitation/Salvage Harvest—Trees selected for harvest include the salvage of dead and down merchantable trees; as well as, all lodgepole pine susceptible to a mountain pine beetle infestation. The remaining stand is fully stocked with species other than lodgepole pine.

Special Shelterwood Harvest with Reserve Trees—Harvest would be designed to maintain two important components of old growth forests; large diameter trees and existing down woody material on site. All windfirm large diameter trees (up to 25 per acre) greater than 17 inches diameter at breast height would be reserved on each acre and remain through the next rotation. All other merchantable trees would be harvested. Most existing large down woody material would be left on site.

Shelterwood Harvest with Reserve Trees—Twenty to thirty trees would be selected and designated to remain on each acre to provide seed, shade, and site protection. All other merchantable trees would be harvested. Once seedlings reestablish in the stand, six to ten trees per acre would be selected to remain through the next rotation and form the upper story of a multi-storied stand. All other seed and shelterwood trees would be harvested.

Seed Tree Harvest with Reserve Trees.—Six to ten seed producing trees would be selected and designated to remain on each acre. All other merchantable trees would be harvested. All or some of the six to ten seed trees may be retained as reserve trees, while those not selected to be retained would be removed once new seedlings become established. Reserve trees would remain through the next rotation and form the upper story of a multi-storied stand.

Clearcut Harvest with Reserve Trees—All windfirm trees (one to four per acre) would be selected and designated to remain on site as reserve trees. Reserve trees would remain through the next rotation and form the upper story of a multi-storied stand. All other merchantable trees would be harvested.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The proposed projects encompass three predominant MA's; 12, 13, and 15. Only two include timber harvest; 12 and 15. Briefly described, MA 12 is managed to maintain or enhance non-winter big-game habitat (summer/fall) and produce a programmed yield of timber. MA 15 focuses on timber production using various silvicultural practices. This MA also provides for other resource values such as soil, air, water, wildlife, recreation, and forage for domestic livestock. MA 13 is managed for the special habitat necessary for old growth dependent wildlife. No harvest is proposed for this management area.

Issues: Tentatively, several issues of concern have been identified through the scoping process. These issues are briefly described below:

- Old Growth—What effect will the proposed action have on old growth, including effects on size, and location?
- Timber Supply—How will the proposed action help satisfy local and national needs?
- Management Intensity—How many acres should be harvested, and how much timber should be cut from each acre?
- Road Construction—What type of road construction is needed, and what are the effects of road construction on different aspects of the resource?
- Riparian Area Management—What effects will the proposed action have on riparian areas?
- Forest Health—A large portion of the trees in the Upper Sunday drainage are at high risk due to susceptibility to bark beetle populations. What effect will the proposed action have to reduce susceptibility to bark beetles?

Public Involvement and Scoping: Public participation to this point has been extensive. On July 16, 1992 a proposal for timber harvest in the Upper Sunday Decision Area was taken to the public at an open house. Alternatives to that proposal were then identified and again submitted to the public in the form of an information sheet. A public field trip to the decision area was conducted on September 19, 1992. Comments were requested in writing during all of these public involvement efforts. Consultation with appropriate State and Federal agencies has been initiated. Taking into account the comments received and information gathered during analysis it was decided to prepare an EIS for the Upper Sunday Timber Sales. Comments received prior to this notice will be included in the documentation for the EIS.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS.

The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring additional alternatives which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

Estimated Dates for Filing: The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April, 1993. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The final EIS is scheduled to be completed by July, 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service is identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specified as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Jane P. Kollmeyer, District Ranger, Fortine Ranger District, Kootenai National Forest, P.O. Box 116, Fortine, Montana, 59918, is the Responsible Official. As the Responsible Official she will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: December 17, 1992.

Jane P. Kollmeyer,

District Ranger, Fortine Ranger District.

[FR Doc. 92-31352 Filed 12-24-92; 8:45 am]

BILLING CODE 3410-11-M

Motorized Vehicle Use, Salem and Potosi Ranger Districts, Mark Twain National Forest; Crawford, Dent, Iron, Reynolds, Shannon and Washington Counties, MO

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an environmental impact statement. (This notice replaces the Notice of Intent published April 14, 1992, FR Vol 57, No. 72 p. 12910.)

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze a range of alternatives regarding the use of recreational motorized off highway vehicles (OHV) on National Forest

System lands within the adjacent Salem and Potosi Ranger Districts, Mark Twain National Forest, in response to various public demands including no motorized off highway vehicle use.

DATES: The anticipated distribution dates of the draft environmental impact statement and the final environmental impact statement are changed to June, 1993, and September, 1993, respectively.

ADDRESSES: Send any written comments to Darsan Wang, Forest Supervisor's Office, 401 Fairgrounds Road, Rolla, MO 65401.

FOR FURTHER INFORMATION CONTACT: Darsan Wang, Recreation Specialist (314) 364–4621.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to respond to expressed public demands for motorized use by all-terrain vehicles, motorcycles, dune buggies, and 4x4 drive off highway vehicles over parts of the adjoining Salem Ranger District and Potosi Ranger District. The option of no motorized off highway vehicles will be considered. Consideration of motorized trails for ATVs and motorcycles has been underway on both Districts for some time. There has been previous scoping initiatives by both Districts. The information gathered is relevant to the decision to be made and will be used along with any new information received. In April, 1990, both Districts issued separate decisions based on the NEPA process to establish an ORV trail. Both decisions were appealed and subsequently withdrawn by the Deciding Officers. Off highway motor vehicles have been extensively used on both Districts in the past and presently. Under the Forest Plan, the Forest Service transportation system and designated OHV trails are available for OHV use unless closed to this type use on specific roads. Cross-country use is prohibited. Unauthorized use has been a problem with the proliferation of OHVs.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1993. At that time copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 60 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could have raised at the draft stage but that are not raised until after completion of the final Environmental Impact Statement may be waived or dismissed by the court. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in these proposed actions participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. Comments may address the adequacy of the draft environmental impact statement or the merits of the alternatives discussed; reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

The final EIS is scheduled to be completed by September, 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Forest Service is the lead agency. B. Eric Morse is the responsible official. As the responsible official, he will decide which, if any, of the alternatives will be implemented. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: December 14, 1992.

B. Eric Morse,

Forest Supervisor.

[FR Doc. 92–31353 Filed 12–24–92; 8:45 am]

BILLING CODE 3410–11–M

Waggit Environmental Impact Statement; Six Rivers National Forest, Trinity County, CA

AGENCY: USDA, Forest Service.

ACTION: Cancellation of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) which proposed timber management and road construction within the Mad, Rock and Backbone Compartments located on the Mad River Ranger District of Six Rivers National Forest, Trinity County, California was published in the December 10, 1991 **Federal Register** (56 FR 64492). The Forest Service hereby gives notice that the NOI to prepare this EIS is rescinded.

FOR FURTHER INFORMATION CONTACT: Marcia Andre, District Ranger, Mad River Ranger District, Star Route Box 300, Bridgeville, CA 95526. Telephone: (707) 574–6233.

Dated: December 17, 1992.

Martha J. Ketelle,

Deputy Forest Supervisor.

[FR Doc. 92–31354 Filed 12–24–92; 8:45 am]

BILLING CODE 3410–11–M

Wallow Environmental Impact Statement; Ladder and North Trinity Compartments, Trinity and Humboldt County, CA

AGENCY: USDA, Forest Service.

ACTION: Cancellation of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) which would analyze timber management and road construction within the Ladder and North Trinity Compartments located on the Lower Trinity Ranger District of Six Rivers National Forest, Humboldt County, California was published in the April 19, 1991 **Federal Register** (56 Fr 16066). The project area is now located within a Category 1 Habitat Conservation Area and within Critical Habitat for the northern spotted owl. The Forest Service gives notice that the NOI to prepare this EIS is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Cabodi, District Ranger, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, CA 95573. Telephone: (916) 628–2118.

Dated: December 14, 1992.

Martha J. Ketelle,

Deputy Forest Supervisor.

[FR Doc. 92–31355 Filed 12–24–92; 8:45 am]

BILLING CODE 3410–11–M

Cumulative Watershed Effects Analysis for Timber Management in Grouse Creek Basin, Humboldt County, CA

AGENCY: USDA, Forest Service.

ACTION: Cancellation of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Notice of Intent to prepare an Environmental Impact Statement which proposed to address cumulative watershed effects and associated timber management in the Grouse Creek basin, located on the Lower Trinity Ranger District of Six Rivers National Forest, Humboldt County, California published in the October 22, 1990 **Federal Register** (55 FR 42590), is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Cabodi, District Ranger, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, CA 95573. Telephone: (916) 628–2118.

Dated: December 9, 1992.

Martha J. Ketelle,

Deputy Forest Supervisor.

[FR Doc. 92–31356 Filed 12–24–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Taking and Importing of Marine Mammals Incidental and Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of removal of Pelly certification.

SUMMARY: The Marine Mammal Protection Act (MMPA) requires that 6 months after the importation of yellowfin tuna has been banned from a nation, certification of the importation prohibition be made to the President. Certification under this provision is considered a certification for the purposes of section 8(a) of the Fishermen's Protective Act (the Pelly Amendment). The Pelly Amendment requires periodic review of the activities of the national subject to the importation prohibition to determine if the reasons for which the certification was made no longer prevail. NMFS has lifted the intermediary nation yellowfin tuna embargoes that were in place against Canada, Malaysia, the Netherlands Antilles, Singapore, and the United Kingdom and, therefore, the Secretary of Commerce has removed the Pelly certifications that resulted from those embargoes.

EFFECTIVE DATE: The termination of these Pelly Certifications was effective December 14, 1992.

ADDRESSES: Michael Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2055).

SUPPLEMENTARY INFORMATION: On January 31, 1992, the United States imposed a court-ordered prohibition on the importation of all yellowfin tuna and yellowfin tuna products from Canada, Malaysia, the Netherlands Antilles, Singapore, and the United Kingdom.

On July 31, 1992, the Secretary of Commerce certified to the President that the intermediary nation embargoes on all yellowfin tuna and yellowfin tuna products from these countries had been in effect for 6 months. As required by the MMPA, this certification is considered a certification for purposes of section 8(a) of the Fishermen's Protective Act of 1967 (the Pelly Amendment, 22 U.S.C. 1978). The Pelly Amendment authorizes, at the discretion of the President, a restriction on imports of fish and fish products from certified nations to the extent such restrictions are sanctioned by the General Agreement on Tariffs and Trade. No sanctions were recommended or imposed as a result of the certification of these intermediary nations.

On October 26, 1992, the President signed the International Dolphin Conservation Act of 1992. Among other things, this Act amended the MMPA to provide a legislative definition of "intermediary nation". As a result, NMFS was able to lift the intermediary nation embargoes on yellowfin tuna and yellowfin tuna products from several countries (57 FR 59979).

NMFS, therefore, announces that the Pelly Certifications imposed on Canada, Malaysia, the Netherlands Antilles, Singapore, and the United Kingdom as a result of intermediary nation yellowfin tuna embargoes, were removed on December 14, 1992, as a result of the lifting of those intermediary nation embargoes.

Dated: December 21, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92–31379 Filed 12–24–92; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification No. 2 to Permit No. 585.

SUMMARY: On June 16, 1987, notice was published in the **Federal Register** (52 FR 22835) that Permit No. 585 had been issued to the Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149.

Notice is hereby given that on December 16, 1992, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the Regulations Governing Endangered Fish and Wildlife (50 CFR parts 217–222), NMFS modified Permit No. 585 to extend the effective date through March 31, 1993.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713/2289); and

Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3366).

Dated: December 16, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–31378 Filed 12–24–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Government-Industry Technical Data Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations

required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The committee's January and February meetings are scheduled for January 12–13, 1993, and February 9–10, 1993, from 9:30 a.m. to 4 p.m. at the Herman Lay Room, the U.S. Chamber of Commerce, 1615 "H" Street, NW., Washington, DC 20062–2000. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: December 21, 1992.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 92–31342 Filed 12–24–92; 8:45 am]

BILLING CODE 3810–01–M

Government-Industry, Technical Data Committee; Meeting Cancellation

AGENCY: Office of the Under Secretary of Defense (Acquisition).

ACTION: Notice of cancellation.

SUMMARY: Pursuant to section 897 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The committee meetings scheduled for January 6–7, 1993, are hereby cancelled. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

SUPPLEMENTARY INFORMATION: The Department of Defense published the notice on November 13, 1992 (57 FR 53890).

Dated: December 21, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–31341 Filed 12–24–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA 84.060A]

Formula Grant Program Under the Indian Education Act of 1988, Subpart 1; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose: Provides grants for supplementary projects that meet the special educational and culturally related academic needs of Indian children. This program should be seen as an opportunity for local educational agencies to support those elements of the National Education Goals and the AMERICA 2000 Education Strategy that are relevant to their unique missions.

Eligible Applicants: Local educational agencies (LEAs) and certain schools operated by Indian Tribes and organizations (Tribal schools) that received funds under this program in fiscal year 1988, and, if sufficient funds are available, LEAs and Tribal schools that were not grantees in fiscal year 1988 and to schools operated by the Bureau of Indian Affairs (BIA).

Deadline for Transmittal of Applications: March 12, 1993. Applicants not meeting the deadline will not be considered for funding in the initial allocation of awards. Applications not meeting the deadline may be considered for funding if the Secretary determines, under section 5316(b) of the Indian Education Act, that funds are available and that reallocation of those funds to those applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, made under section 5316(b) of the Act may not be the same to which the applicant would have been entitled if the application had been submitted on time.

Deadline for Intergovernmental Review: May 10, 1993.

Applications Available: January 8, 1993.

Available Funds: The appropriation for this program for fiscal year 1993 is $56,330,000, which should be sufficient to fund all eligible applicants. Therefore, the Department encourages all eligible applicants to apply, including those entities that were not grantees under the program in fiscal year 1988.

Estimated Range of Awards: $700 to $1,400,000.

Estimated Average Size of Awards: $47,000.

Estimated Number of Awards: 1,200.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 251.

For Applications or Information Contact: Sandra Spaulding, U.S. Department of Education, 400 Maryland Avenue, SW., room 2177, Washington, DC 20202–6335. Telephone: (202) 401–1907 (FTS 441–1907). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 25 U.S.C. 2601–2606, 2651.

Dated: December 18, 1992.

John T. MacDonald,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 92–31369 Filed 12–24–92; 8:45 am]

BILLING CODE 4000–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 17, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW, suite 640, Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0384.

Title: Section 64.904, Annual Auditor's Certification.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: Annually.

Estimated Annual Burden: 19 responses; 500 hours average burden per response; 9,500 hours total annual burden.

Needs and Uses: Over the years, several methods have been adopted by the Commission, such as structural separation, which required carriers to establish separate corporate entities for their common carrier and data processing services. Structural separation provided maximum separation of cost; however, it proved to be inefficient and not in the public interest. Recently, the Commission developed a system of accounting separation. To deter cost shifting both in the form of misallocation of joint and common costs and in the form of improper intracorporate transfer pricing, the Commission adopted cost allocation standards in 1987 and also imposed a requirement for the one-time filing of cost allocation manuals by the Tier 1 local

exchange carriers and dominant interexchange carriers. These carriers are required to file annually the report of an auditor attesting that: (1) The cost system in place reflects the carrier's cost manual requirements; and (2) the cost allocations performed in accordance with that system are the product of accurate methods. In CC Docket No. 90–623, Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, the Commission codified the auditor's attestation requirement. The Commission strengthened the standard to be used by independent auditors in preparing their reports on carrier's cost allocation manual implementation and results by requiring that the independent auditors provide the same level of assurance in audits as they provide in a financial statement audit engagement. The Commission also clarified that the independent auditors must evaluate the results of the carrier's cost allocation manuals in light of the requirements of the manuals as well as the Commission's joint cost rules and rules and regulations including 47 CFR 32.23, 32.27, 64.901 and 65.903 in force as of the date of the auditor's report. Independent auditors must follow all of the ten standards of generally accepted auditing standards (GAAS) in preparing the required reports. The attestation requirement is imposed to ensure that the carriers are properly implementing their cost allocation manual. The independent audits serve as an important aid to the Commission's monitoring program. Without this information, the Commission would not be able to efficiently carry out its responsibilities.

OMB Number: 3060–0439.

Title: Regulations Concerning Indecent Communications by Telephone (sector 64.201).

Action: Extension of a currently approved collection.

Respondents: Individuals or households, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 10,200 responses; .16 hours average burden per response; 1,632 hours total annual burden.

Needs and Uses: Section 64.201 contains several information collection requirements including: (1) A requirement that certain common carriers block access to indecent messages unless the subscriber seeks access from the common carrier (telephone company) in writing; (2) a requirement that adult message service providers notify their carriers of the nature of their programming; and (3) a requirement that a provider of adult message services request that their carrier identify it as such in bills to its subscribers. Section 223 of the Communications Act of 1934, as amended, imposes fines and penalties on those who knowingly use the telephone to make obscene or indecent communications for commercial purposes. The fines and penalties are applicable to those who use the telephone, or permit their telephone to be used, for obscene communications to any person and to those who use the telephone for indecent communications to persons under 18 years of age or to adults without their consent. The information requirements are imposed on carriers, adult message service providers and those who solicit their services to ensure that minors are denied access to material deemed indecent.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–31350 Filed 12–24–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Portland and James River II, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200307–004.

Title: Port of Portland and James River II, Inc., DBA Western Transportation Terminal Leasing Agreement.

Parties:

The Port of Portland ("Port")
James River II, Inc., DBA Western Transportation

Synopsis: The modification removes the Port's ability to repossess House 103; leases a portion of the premises to the Port of Cascade Locks and sets new rental rates.

Agreement No.: 224–200565–001.

Title: Port Everglades Marine Terminal Operating Co., Inc. ("PEMTOC") Agreement.

Parties:

Eller & Company, Inc.
Sel Maduro (Florida), Inc.
Strachan Shipping Company
Harrington & Company, Inc.

Synopsis: The subject Agreement authorizes the parties, as shareholders in PEMTOC, to operate a common user container terminal at Port Everglades or other locations in Broward County, Florida.

Agreement No.: 202–010676–057.

Title: South Europe/U.S.A. Freight Conference.

Parties:

Achille Lauro
Compania Trasatlantic Espanola, S.A.
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
Italia di Navigazione, S.p.A.
Jugolinija
Lykes Lines
A.P. Moller Maersk Line
Nedlloyd Lines
Sea-Land Service, Inc.
P & O Containers Limited
Zim Israel Navigation Company, Ltd

Synopsis: The proposed amendment modifies the provisions in Article 6.4 governing the committee structures under the Agreement. It also sets forth guidelines for members to follow in negotiating service contracts.

Agreement No.: 203–011393.

Title: United States/Canary Islands and West Africa Carrier Discussion Agreement.

Parties:

Lykes Bros. Steamship Co., Inc.
Safbank Line, Ltd.

Synopsis: The proposed Agreement authorizes the parties to meet, discuss and agree upon rates, charges and practices in the trade between United States ports and points (excluding ports in Alaska and Hawaii), and all ports and points in the range from the northern border of Mauritania to the southern border of Angola and the Canary Islands and to all inland points in Mali, Burkina, Niger, Chad, Central African Republic and Zambia. Adherence to any agreement reached by the parties is strictly voluntary.

Dated: December 21, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–31332 Filed 12–24–92; 8:45 am]

BILLING CODE 6730–01–M

Availability of List of Non-Vessel-Operating Common Carriers in Compliance with the Bonding Requirements of 46 CFR Part 583

Notice is given that a revised list of non-vessel-operating common carriers in compliance with the bonding requirements of 46 CFR part 583 is available. This list is effective five days after publication of this notice in the **Federal Register**. For copies of this list please contact: Office of Tariffs, Bureau of Tariffs, Certification and Licensing.

800 North Capitol Street, NW., Washington, DC 20573. (202) 523–5818.

Joseph C. Polking

Secretary.

[FR Doc. 92–31331 Filed 12–24–92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 92-29708) published at page 58021 of the issue for Tuesday, December 8, 1992.

Under the Federal Reserve Bank of Cleveland, the entry for Banc One Corporation is revised to read as follows:

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One West Virginia Corporation, Charlestown, West Virginia; to acquire 100 percent of the voting shares of Key Centurion Bancshares, Inc., Charleston, West Virginia, and thereby indirectly acquire Charleston National Bank, Charleston, West Virginia; Citizens National Bank of St. Albans, St. Albans, West Virginia; Beckley National Bank, Beckley, West Virginia; The National Bank of Logan, Logan, West Virginia; The National Bank of Commerce of Williamson, Williamson, West Virginia; Boone National Bank, Madison, West Virginia; Nicholas County Bank, Summersville, West Virginia; The Central National Bank of Buckhannon, Buckhannon, West Virginia; The Lincoln National Bank of Hamlin, Hamlin, West Virginia; Security National Bank & Trust Company, Wheeling, West Virginia; The First National Bank of New Martinsville, New Martinsville, West Virginia; Peoples Bank of Charles Town, Charles Town, West Virginia; and The First Huntington National Bank, Huntington, West Virginia; Union Bancorp of West Virginia, Clarksburg, West Virginia, and thereby indirectly acquire Union National Bank of West Virginia, Clarksburg, West Virginia, and First National Bank of Philippi, Philippi, West Virginia; Wayne Bancorp, Inc., Wayne, West Virginia, and thereby indirectly acquire Wayne County Bank, Inc., Wayne, West Virginia; and First National Company, Pikeville, Kentucky, and thereby indirectly acquire The First National Bank of Pikeville, Pikeville, Kentucky. In connection with this proposal, Banc One West Virginia Corporation has applied to become a bank holding company.

In connection with this application, Applicants also propose to acquire Reliable Mortgage Company, Charleston, West Virginia, and thereby engage in mortgage banking activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Comments on this application must be received by January 6, 1993.

Board of Governors of the Federal Reserve System, December 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31384 Filed 12-24-92; 8:45 am]

BILLING CODE 6210-01-F

Citizens, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Citizens, Inc., Evans City, Pennsylvania; to engage *de novo* in the activity of making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Withee Bank Shares, Inc., Withee, Wisconsin; to engage *de novo* in developing and owning a low-income housing project under the Farmers Home Administration 515 program, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31385 Filed 12-24-92; 8:45 am]

BILLING CODE 6210-01-F

Farmers & Merchants Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 21, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Farmers & Merchants Bancshares, Inc., Burlington, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants Bank & Trust, Burlington, Iowa.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Midwest National Bancshares, Inc., Midwest City, Oklahoma; to merge with Harrah National Bancshares, Inc., Harrah, Oklahoma, and thereby indirectly acquire The National Bank of Harrah, Harrah, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Heritage Bancshares, Inc., Dover, Delaware; to become a bank holding company by acquiring 87.33 percent of the voting shares of Wharton Bank and Trust Company, Wharton, Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Security Bank Holding Company Employee Stock Ownership Plan, Coos Bay, Oregon; to become a bank holding company by acquiring 29.3 percent of the voting shares of Security Bank Holding Company, Coos Bay, Oregon, and thereby indirectly acquire Security Bank, Coos Bay, Oregon.

Board of Governors of the Federal Reserve System, December 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31386 Filed 12-24-92; 8:45 am]

BILLING CODE 6210-01-F

Garwin Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Garwin Bancorporation, Garwin, Iowa; to acquire Garwin Insurance Agency, Garwin, Iowa, and thereby engage in the activity of operating a general insurance agency in a town with a population not exceeding 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31387 Filed 12-24-92; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

Norwest Corporation, Minneapolis, Minnesota, has applied to acquire Community Title Guaranty Company, Lombard, Illinois, and thereby engage in its title insurance agency activities pursuant to § 4(c)(8)(G) ("exemption G") of the BHC Act and § 225.25(b)(8)(vii) of the Board's Regulation Y (12 CFR 225.25(b)(8)(vii). The Board has previously approved this activity for exemption G companies. *See*, First Wisconsin Corporation, 75 Federal Reserve Bulletin 31 (1989); *American Land Title Association v. Board of Governors of the Federal Reserve System*, 892 F.2d 1059 (DC Cir. 1989). In connection with its title insurance agency activities, Applicant will perform title abstracting through searches and examinations of titles to real estate.

Applicant also proposes to conduct real estate closing or settlements. In particular, these activities will include: reviewing the title commitment to determine the status of the title, verifying payoffs on existing loans secured by the real estate, reviewing the purchase agreement to identify any requirements contained in the agreement and ensuring their satisfaction, verifying the amount of and then calculating the pro rating of special assessments and taxes at closing, establishing a time and place for the closing, updating the title insurance commitment to the date of closing, preparing the checks, the deed, and affidavits required for the closing and authorization letters, conducting the closing and ensuring all parties properly execute the appropriate documents, collecting funds from the parties, preparing the HUD settlement statement, deed of trust, mortgage notice, Truth-in-Lending statement, and the purchaser's affidavits, and recording all these documents as required under law.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly and indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (DC Cir.

1975) ("National Courier"). In addition, the Board may consider any other basis that may demonstrate that the activity has reasonable or close relationship to banking or managing or controlling banks. "Board Statement Regarding Regulation Y," 49 Federal Register 808 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Applicant maintains that banks provide these real estate closing services as a normal element of their real estate lending activity. Also, many of the above activities are conducted in basic loan transactions performed by banks especially in the secured real estate lending area. Accordingly, Applicant believes the proposed activities should be regarded as closely related to banking.

Applicant also maintains that the substantial overlap between the tasks of preparing a title insurance binder and performing a real estate settlement allow for increased efficiencies if conducted by the same company. Also, the customer will receive increased convenience through one-stop-shopping for these services. Accordingly, the proposed activities should be regarded as a proper incident to banking.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notices of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standard of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington DC 20551, not later than January 21, 1993.

Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedures (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Minneapolis.

Board of Governors of the Federal Reserve System, December 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31388 Filed 12-24-92; 8:45 am]

BILLING CODE 6210-01-F

Willard Belton Simmons, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 19, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Willard Belton Simmons, Jr., Daphne, Alabama; to acquire an additional 7.2 percent, for a total of 25.9 percent, of the voting shares of FirstBanc Holding Company, Inc., Robertsdale, Alabama, and thereby indirectly acquire First Bank of Baldwin County, Robertsdale, Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Charles Tuck, Jr. and Frances L. Tuck, Springfield, Missouri; to acquire an additional 1.67 percent, for a total of 10.39 percent, of the voting shares of Citizens National Bancorp, Inc., Springfield, Missouri, and thereby indirectly acquire Citizens National Bank of Springfield, Springfield, Missouri.

Board of Governors of the Federal Reserve System, December 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31389 Filed 12-24-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 315]

Demonstration Program for State Health Departments to Conduct Health Consultations and Public Health Assessment Activities; Amendment

A notice announcing the availability of Fiscal Year 1993 funds for cooperative agreements for conducting health consultations and public health assessment activities was published in the **Federal Register** on November 25, 1992, [57 FR 55540]. This notice extends the deadline date for application submission to February 1, 1993. Also, the notice is amended as follows:

On page 55540, second column, under the heading "Availability of Funds," after the second sentence, insert the following: "However, consideration will also be given to funding a single application up to the maximum available amount of approximately $150,000 for a meritorious proposal that, if well executed, would not only meet but exceed program requirements and produce desired impact." The next sentence is revised to read: "It is expected that the awards will begin on or about April 15, 1993, for a 12-month budget period within a 12-month project period."

On page 55542, third column, under the heading "Application Submission and Deadline," the first sentence is revised to read: "The original and two copies of application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before February 1, 1993."

All other information and requirements of the November 25, 1992, **Federal Register** notice remain the same.

Dated: December 21, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–31377 Filed 12–24–92; 8:45 am]

BILLING CODE 4160-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-066-4331-13]

Notice of Closure on Public Land; Riverside County, California

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of closure to vehicular traffic on public land for the protection of cultural resources.

SUMMARY: Notice is hereby given that Public Land in the area of the mouth and alluvial fan of Toro Canyon is closed to all vehicular traffic.

San Bernardino Meridian, California

T.7S., R.7E.,
Section 10.

The purpose of this notice is to establish a supplemental rule to help protect archaeological resources.

Exceptions to the closure would include law enforcement patrol and emergency services and administratively approved access for actions such as monitoring, research studies, mining activities, and access to private lands. Other actions would be considered on a case by case basis.

A map of the area described above may be viewed in the Palm Springs-South Coast Resource Area office. This closure is necessary to protect archaeological resources.

EFFECTIVE DATE: This closure is effective upon publication in the **Federal Register** and shall remain in effect until rescinded by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Mike Mitchell, Archaeologist, Palm Springs-South Coast Resource Area, 63-500 Garnet Ave., North Palm Springs, CA 92258-2000, (619) 251-0812.

SUPPLEMENTARY INFORMATION: Authority for this Closure and Restriction Order may be found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $10,000 and/or imprisonment not to exceed 12 months. Resource monitoring over the last year has shown that archaeological resources are being directly impacted by vehicular traffic.

Dated: December 16, 1992.

Russell L. Kaldenberg,

Area Manager.

[FR Doc. 92-31357 Filed 12-24-92; 8:45 am]

BILLING CODE 4310-40-M

[ID-943-03-4210-04; IDI-27201]

Notice of Exchange and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchange and Opening Order.

SUMMARY: The United States has issued an exchange conveyance document to the State of Idaho under section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchange, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

T. 16 N., R. 4 W.,
Sec. 8, NE¼NW¼;
Sec. 17, NW¼NW¼;
Sec. 18, E½NE¼.
T. 17 N., R. 4 W.,
Sec. 6, lots 6 and 7 and E½SW¼;
Sec. 7, lots 1 and 2, E½NW¼ and NE¼ SW¼;
Sec. 18, lots 1, 3, and 4, SE¼NW¼, and E½SW¼;
Sec. 19, lots 1 and 5, E½NW¼, NE¼ SW¼, E½SW¼NW¼, E½NW¼SW¼, and N½SE¼SW¼.
T. 17 N., R. 5 W.,
Sec. 1, E½SW¼SW¼, E½SW¼, and SE¼;
Sec. 11, NE¼NE¼SE¼, S½NE¼SE¼, SW¼SW¼SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 12, SW¼NE¼, S½NW¼, N½SW¼, and W½SE¼;
Sec. 13, SW¼NE¼, S½NW¼, and N½ S½;
Sec. 14, E½NE¼, NW¼NE¼, and NE¼ SE¼;
Sec. 23, NW¼SE¼SW¼, E½SW¼SE¼ SW¼, and E½SE¼SW¼;
Sec. 24, E½NE¼;
Sec. 25, NW¼NE¼, SE¼NE¼, and E½ SE¼;
Sec. 27, SW¼NE¼ and NE¼SW¼;
Sec. 28, E½NE¼SE¼SE¼ and S½SE¼ SE¼;
Sec. 32, SW¼SW¼;
Sec. 34, S½;
Sec. 35, SE¼SE¼.

Comprising 6,221.70 acres of public lands.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 13 N., R. 4 W.,
Sec. 16.
T. 16 N., R. 5 W.,
Sec. 2, lot 3;
Sec. 4, NE¼SW¼;
Sec. 5, N½SW¼ and SE¼SW¼;
Sec. 6, lots 1, 5, and 6;
Sec. 8, SE¼NE¼ and E½NW¼;
Sec. 9, NW¼NW¼, SE¼NW¼, SE¼ SW¼, and W½SE¼;
Sec. 10, SW¼;
Sec. 11, NE¼;
Sec. 15, NW¼NE¼, NW¼NW¼, N½ SW¼, and SW¼SW¼;
Sec. 19, lots 3 and 4 and E½SW¼;
Sec. 21, NW¼NE¼ and N½NW¼;
Sec. 23, SE¼NW¼ and E½SW¼;
Sec. 24, E½NW¼.
T. 16 N., R. 6 W.,
Sec. 1, NW¼SE¼;
Sec. 10, E½SE¼;
Sec. 14, S½NE¼;
Sec. 23, SE¼SW¼ and SE¼;
Sec. 24, SW¼ and S½SE¼;
Sec. 25, W½;
Sec. 26, N½ and N½S½;
Sec. 27, NW¼NW¼ and S½;
Sec. 28, SE¼NE¼ and NE¼SE¼.
T. 18 N., R. 4 W.,
Sec. 4, lot 1 and SE¼ NE¼.
T. 19 N., R. 4 W.,
Sec. 27, NW¼SW¼;
Sec. 33, SE¼SE¼.
T. 13 N., R. 5 W.,
Sec. 2, SW¼NW¼ and W½SW¼;
Sec. 3, SE¼NW¼ and W½SE¼;
Sec. 10, NE¼NE¼;
Sec. 11, SW¼NE¼, NW¼, N½SW¼, and W½SE¼;
Sec. 16;
Sec. 36, NE¼NE¼, W½NE¼, W½, and SE¼SE¼.
T. 14 N., R. 5 W.,
Sec. 36.
T. 15 N., R. 6 W.,
Sec. 1, lots 1 and 2, S½NE¼, and SE¼;
Sec. 16.
T. 16 N., R. 6 W.,
Sec. 35, N½N½;
Sec. 36.
T. 13 N., R. 7 W.,
Sec. 16.
T. 14 N., R. 7 W.,
Sec. 36, N½, SW¼, and S½SE¼.
T. 15 N., R. 7 W.,
Sec. 36, lots 1 to 4, inclusive.

Comprising 6,239.20 acres of State lands.

The purpose of the exchange was to acquire State lands which have important wildlife and riparian values as well as important habitat for Columbia sharp-tailed grouse. The public interest was sell served through completion of this exchange. The values of the Federal and State lands were appraised at $330,000 and $330,700, respectively.

3. At 9 a.m. on January 27, 1993, the reconveyed State lands described in

paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 27, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on January 27, 1993, the reconveyed State lands described in paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 2 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 17, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92–31358 Filed 12–24–92; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 16, 1992.

The plat, in two sheets, representing the dependent resurvey of portions of the east boundary, subdivisional lines, subdivision of section 26, and the 1963–1968 adjustments of the 1879 meander lines of Henrys Fork, and the survey of portions of the 1991 meanders of Henrys Fork and islands in section 26, T. 7 N., R. 39 E., Boise Meridian, Idaho, Group No. 816, was accepted December 14, 1992.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: December 16, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92–31359 Filed 12–24–92; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice if hereby given that, on November 6, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and Citicorp International Communications, Inc. ("CICI") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and CICI, Long Island City, NY. Bellcore and CICI entered into an agreement effective as of October 1, 1992, to engage in cooperative research of network based directory services to better understand the technologies for the provision of directory services as exchange and exchange access services, including research prototype fabrication for the experimental demonstration of such technologies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–31336 Filed 12–24–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on November 6, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and Digital Equipment Corporation ("DEC") simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and DEC, Maynard, MA. Bellcore and DEC entered into an agreement effective as of October 5, 1992, to engage in cooperative research of multimedia databases, computer based video services, information retrieval systems, and high-speed computer communications to better understand the feasibility and application of these technologies for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technologies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–31337 Filed 12–24–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on October 1, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become members of CableLabs: New Heritage Associates, Des Moines, IA; Buckeye Cablevision, Inc., Toledo, OH; and CUC Broadcasting Limited, Scarborough, Ontario, CANADA.

No other changes have been made in either the membership or planned activity of CableLabs. The membership remains open.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on May 18, 1992. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on July 24, 1992 (57 FR 33012).

This submission will also serve as notification with respect to the following joint research ventures to which CableLabs is a member although there is no change in membership of any of the joint research ventures:

Cable Television Laboratories, Inc./PCN America, Inc.
Date of original notification: March 25, 1991
Federal Register notice: June 14, 1991(56 FR 27539)
Most recent Federal Register notice: July 9, 1992 (57 FR 30510)

Cable Television Laboratories, Inc./Tele-Communications, Inc./Viacom International, Inc./Public Broadcasting Service
Date of original notification: November 27, 1991
Federal Register notice: February 3, 1992 (57 FR 4061)
Most recent Federal Register notice: July 9, 1992 (57 FR 30511)

Cable Television Laboratories, Inc./General Instrument Corp./NEXUS Engineering
Date of original notification: June 27, 1991
Federal Register notice: July 25, 1991 (56 FR 34075)
Most recent Federal Register notice: July 24, 1992 (57 FR 33012)

Cable Television Laboratories, Inc./General Instrument Corp.
Date of original notification: September 20, 1990
Federal Register notice: November 1, 1990 (55 FR 46111)
Most recent Federal Register notice: July 9, 1992 (57 FR 30510)

Cable Television Laboratories, Inc./Advanced Television Test Center, Inc.
Date of original notification: October 2, 1989
Federal Register notice: November 8, 1989 (54 FR 46997)
Most recent Federal Register notice: July 9, 1992 (57 FR 30509)

Cable Television Laboratories, Inc./General Instrument Corp./Scientific-Atlanta, Inc.
Date of original notification: June 21, 1991
Federal Register notice: August 1, 1991 (56 FR 36847)
Most recent Federal Register notice: July 9, 1992 (57 FR 30510)

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-31338 Filed 12-24-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984: "IHPTET Fiber Development Consortium"

Notice is hereby given that, on November 17, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of the "IHPTET Fiber Development Consortium." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the parties to the Consortium are Allied Signal Aerospace Company, Phoenix, AZ; AVCO Corporation, Stratford, CT; General Electric Company, Cincinnati, OH; General Motors Corporation, Detroit, MI; Teledyne Industries, Inc., Toledo, OH; United Technologies Corporation, West Palm Beach, FL; and Williams International, Walled Lake, MI, and its general area of planned activity is to identify opportunities for joining aspects of their independent research and development efforts pertaining to advanced fibers for use in composites for parts and components of advanced aircraft propulsion engines. The objectives are to avoid inefficient duplication of effort and expense, accelerate the development of advanced fibers for ceramic, metal matrix, and intermetallic matrix composites for gas turbine engines to meet the U.S. Government's Integrated High Performance Turbine Engine Technology goals (with a primary emphasis on fiber technology for ceramic matrix composites) and promote a United States advanced fiber manufacturing capability. To meet these objectives, the parties will collect, exchange, and analyze research information in these areas; conduct or direct joint research in the most promising of these high risk/high cost areas; and perform further acts allowed by the National Cooperative Research Act that would advance the Parties' objectives in this area. Membership in the Consortium remains open, and the parties intend to file additional written notification disclosing all changes in membership to the Consortium.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-31335 Filed 12-24-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Petrotechnical Open Software Corporation

Notice is hereby given that, on October 19, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following additional parties have become new, non-voting members of POSC: Australian Geological Survey Organisation, Canberra, Australia; Merak Projects Ltd., Calgary, Alberta, Canada; the Norwegian Petroleum Directorate, Stravanger, Norway; Base Line Computer Corporation, Southlake, TX; UNISQL, Incorporated, Austin, TX; Geomath International, Rueil-Malmaison, France; and Britannia Data Management, London, England.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on February 7, 1991, 56 FR 5021. The last notification was filed with the Department on July 20, 1992. A notice was published in the Federal Register pursuant to section 6(b) of the Act on August 20, 1992, 57 FR 37840.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-31339 Filed 12-24-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 18, 1992, a proposed Consent Decree in *United States* v. *PBM Enterprises, et al.*, Civil Action No. 88CV-74073-DT, was lodged in the United States District Court for the Eastern District of Michigan. The Complaint filed by the United States alleged claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for costs incurred by the United States in responding to the release or threat of release of hazardous substances at the PBM Enterprises Site located at 10100 Harrison Road in Romulus, Michigan ("the Site"). The Consent Decree requires defendants PBM Enterprises,

Edward F. Martin, William B. Matakas, and Phillipa C. Matakas to pay $190,000 to reimburse the United States Environmental Protection Agency for unrecovered past response costs at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *PBM Enterprises, et al.*, D.J. Ref. No. 90–11–3–347.

The proposed Consent Decree may be examined at any of the following offices: (1) the United States Attorney for the Eastern District of Michigan, 231 West Lafayette, Detroit, Michigan, 48226 (contact Assistant United States Attorney Geneva Halliday; (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Richard Nagle); and the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, (202) 347–2072. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, telephone (202) 347–7829. For a copy of the Consent Decree please enclose a check in the amount of $4.25 (25 cents per page reproduction charge) payable to Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 92–31333 Filed 12–24–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on December 10, 1992, a proposed consent decree in *United States* vs. *NICOR National Louisiana, Inc.*, Civil Action No. 92–0960, was lodged with the United States District Court for the Eastern District of Louisiana. The complaint filed by the United States sought injunctive relief and civil penalties for violations by defendant NICOR National Louisiana, Inc. (NL) of sections 301 and 402 of the Clean Water Act and the terms and conditions of its National Pollutant Discharge Elimination System (NPDES) permit issued by the U.S. Environmental Protection Agency (EPA) in 1989. The proposed consent decree imposes a $225,000 penalty for these violations.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* vs. *NICOR National Louisiana, Inc.*, DOJ # 90–5–1–3379.

The proposed consent decree may be examined at the offices of the United States Attorney for the Eastern District of Louisiana, 400 Poydras Street, Suite 1900, New Orleans, Louisiana and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Quinton Farley, Assistant Regional Counsel). A copy of the consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004. Copies of the decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. Such requests should be accompanied by a check in the amount of $2.00 (25 cents per page reproduction charge) payable to "Consent Decree Library". When requesting copies, please refer to *United States* vs. *NICOR National Louisiana, Inc.*, DOJ # 90–5–1–1–3379.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–31334 Filed 12–24–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data more made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest

in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume I

Wage Decision No. NY91–3, Modification Nos. 5 Through 9

Pursuant to the Regulations, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of Publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:
KY91–25 (Feb. 22, 1991) ..... p. All
KY91–26 (Feb. 22, 1991) ..... p. All
KY91–27 (Feb. 22, 1991) ..... p. All
KY91–28 (Feb. 22, 1991) ..... p. All
New Jersey:
NJ91–2 (Feb. 22, 1991) ..... p. 701 pp. 705
NJ91–3 (Feb. 22, 1991) ..... p. 721 pp. 725, 727–728
South Carolina: SC91–23 (Feb. 22, 1991). p. All

Volume II

Illinois: IL91–19 (Feb. 22, 1991) p. All
Indiana: IN91–18 (Feb. 22, 1991) p. All

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issues on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of December 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–31184 Filed 12–24–92; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before February 11, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about

the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1–AFU–93–1). Routine background files to the Journal of Military Assistance, 1963–72.
2. Department of the Air Force (N1–AFU–93–2). Routine records of the Education Services Program.
3. Department of the Army (N1–AU–91–6). Files relating to changes in the organization of installation support activities.
4. Department of Commerce, National Institute of Standards and Technology (N1 167–92–3). Records of the U.S. Metric Board.
5. Department of Commerce, Patent and Trademark Office (N1–241–92–1). Case folders of registered attorneys and agents.
6. Department of Commerce, Patent and Trademark Office (N1–241–92–2). Records of the Office of Enrollment and Discipline.
7. Department of Health and Human Services, Health Care Financing Agency (N1–440–93–2). Case files of the MEDICARE Geographic Classification Review Board.
8. Department of Labor, Employees Compensation Appeals Board (N1–386–92–1). Legislative reference files.
9. Department of State, Bureau of Politico-Military Affairs (N1–59–92–31). Routine, facilitative, and duplicative records of the Office of Defense Relations and Security Assistance.
10. General Services Administration (N1–269–93–1). Records relating to Real and Personal Property Management.
11. National Archives and Records Administration (N2–121–93–1). Glass plate photographic negatives, the images of which have been copied, accessioned from the General Services Administration, Public Buildings Service

Dated: December 15, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92–31360 Filed 12–24–92; 8:45 am]

BILLING CODE 7515–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Notice of Recommendations for Amendments to the Columbia River Basin Fish and Wildlife Program (Measures for Resident Fish and Wildlife)

December 18, 1992.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

SUMMARY: Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) interested parties have submitted to the Pacific Northwest Electric Power and Conservation Planning Council (Council) recommendations for amendments to resident fish and wildlife provisions of the Columbia River Basin Fish and Wildlife Program (program). Copies of the recommendations are now available, and comments are solicited.

Background: The Council is in the last phase of a four-part process to amend the Columbia River Basin Fish and Wildlife Program (program). In phases one through three, the Council adopted amendments regarding salmon and steelhead. The Council is now initiating the fourth phase, in which resident fish and wildlife amendments to the program will be considered.

Opportunity for Comment: The Council will receive written comment on the recommendations through 5 p.m. Pacific time, February 11, 1993. Comments should be clearly marked "Phase Four Comments," and submitted to the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204. After the close of comment on the recommendations, the Council will propose program amendments, and opportunities for comment on these proposed amendments, including hearings in the four states, will be afforded. The Council expects to make final decisions on the proposed amendments in October 1993.

FOR FURTHER INFORMATION CONTACT: A summary of the recommendations is available. For the summary, or for copies of the recommendations, contact the Council at 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355.

Edward W. Sheets,

Executive Director.

[FR Doc. 92–31361 Filed 12–24–92; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 18, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0082.

Form Number: PD F 5237.

Type of Review: Extension.

Title: Subscription for Purchase of U.S. Treasury Securities—State and Local Governments Series One-Day Certificates of Indebtedness.

Description: This form will be used to collect account establishment information from State and Local Government entities wishing to purchase demand deposit U.S. Treasury securities—State and Local Government Series. Information on the form will be encoded to create book-entry accounts on the records of the Bureau of the Public Debt.

Respondents: State or local governments.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Response: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1535–0083.

Form Number: PD F 5238.

Type of Review: Extension.

Title: Request for Redemption of U.S. Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness.

Description: This form will be used to collect account redemption information from State and Local Government securities wishing to redeem demand deposit U.S. Treasury securities—State and Local Government Series. Information on the forms will be encoded to process redemptions of book-entry accounts on the records of the Bureau of the Public Debt.

Respondents: State of local governments.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Response: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Vicki S. Ott, (304) 420–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-31364 Filed 12-24-92; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 18, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1135.

Form Number: IRS Form 8817.

Type of Review: Extension.

Title: Allocation of Patronage and Nonpatronage Income and Deductions.

Description: Form 8817 is used by taxable Farmer Cooperatives to indicate their income and deductions by patronage and nonpatronage source. IRS uses this information to improve the classification of returns for examination, and to enhance taxpayer compliance.

Respondents: Farms, Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,650.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—17 hours, 2 minutes

Learning about the law or the form—30 minutes

Preparing, copying, assembling, and sending the form to the IRS—48 minutes

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 22,726 hours.

Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-31362 Filed 12-24-92; 8.45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 249
December 28, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning the Department of Energy's Operational Readiness Review and other matters related to the resumption of plutonium operations in Building 707 at the Rocky Flats Plant.

TIME AND DATE: 5:30 p.m. January 12, 1993—Department of Energy presentations; 8:00 p.m.—Opportunity for interested persons to present oral comments concerning the matters to be considered.

PLACE: The Boulder Broker Inn, The Ballroom, 555–30th Street, Boulder, Colorado 80303.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The open public meeting and hearing will address the Department of Energy's Operational Readiness Review and other matters related to the resumption of plutonium operations in Building 707 at the Rocky Flats Plant. The Department of Energy will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202) 208–6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on January 8, 1993, will be scheduled for time slots, beginning at approximately 8:00 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Ballroom at The Boulder Broker Inn at the start of the 5:30 p.m. meeting.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board members may question presenters to the extent deemed appropriate. The Board will hold the record open until January 22, 1993, for the receipt of materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and a the DOE's public reading room at DOE's Front Range Community College, 3645 West 112 Avenue, Westminster, CO 80030.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: December 22, 1992.

Kenneth M. Pusateri,

General Manager

[FR Doc. 92–31495 Filed 12–22–92; 4:54 pm]

BILLING CODE 6820–KD–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, December 22, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate and supervisory activities.

Matters relating to an assistance agreement with an insured bank.

Recommendations concerning administrative enforcement proceedings.

Reports of the Office of Inspector General.

Matters relating to the cross-guaranty provisions of the Federal Deposit Insurance Act and issuance of notices of assessment of liability pursuant to those provisions.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,846 VMS National Properties' Bankruptcy Reorganization Plan

In calling the meeting, the Board determined, on motion of Director C.C. Hope Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: December 22, 1992.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–31496 Filed 12–22–92; 4:55 pm]

BILLING CODE 6714–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 6, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31589 Filed 12–23–92; 2:42 pm]

BILLING CODE 6351–01–M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of December 28, 1992, January 4, 11, and 18, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 28

Tuesday, December 29

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 4—Tenative

Tuesday, January 5

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 11—Tentative

Monday, January 11

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 18—Tentative

Thursday, January 21

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: On December 21 and December 22 "Continuation of 12/18 Briefing on Investigative Matters" (Closed—Ex. 5 & 7) were held. By a vote of 5–0 on December 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing by Executive Branch" (Closed—Ex. 1) be held on December 22 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: December 22, 1992.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 92–31588 Filed 12–23–92; 2:41 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 57, No. 249
Monday, December 28, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 374

[FRL-3908-9]

Citizen Suits Under Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act

Correction

In rule document 92-27702 beginning on page 55038 in the issue of Monday, November 23, 1992, make the following correction:

§ 374.3 [Corrected]

On page 55041, in the second column, in § 374.3(c), in the second line "statement" should read "state".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 85N-0214]

RIN 0905-AB63

Abbreviated New Drug Application Regulations

Correction

In rule document 92-9320 beginning on page 17950 in the issue of Tuesday, April 28, 1992, make the following correction:

§ 314.54 [Corrected]

1. On page 17982, in the third column, in § 314.54(a)(2), in the 5th line, "§ 314.50(d)," should read "§ 314.50(d)(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219-AA44

Criteria and Procedures for Proposed Assessment of Civil Penalties

Correction

In rule document 92-30840 beginning on page 60690 in the issue of Monday, December 21, 1992, make the following correction:

§ 100.4 [Corrected]

On page 60697, in § 100.4(b), in the third column, in the eighth line, "January 1, 1992" should read "January 1, 1991".

BILLING CODE 1505-01-D

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA07

Executive Agency Ethics Training Programs; Amendments

Correction

In rule document 92-29939 beginning on page 58399 in the issue of Thursday, December 10, 1992, make the following corrections:

1. On page 58399, in the second column, in the third line from the bottom, "supplement" should read "supplemental".

2. On page 58400, in the first column, **SUBPART G—EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS** was misspelled.

§ 2638.703 [Corrected]

3. On the same page, in § 2638.703(a)(1):

a. In the first column, in the last line, after "as amended" insert "by".

b. In the second column, in the second line, "Comp , p 306;" should read "Comp., p. 306;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. P-90-1W; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Petition for Waiver; Panhandle Eastern Corporation

Correction

In notice document 92-30216 beginning on page 59198 in the issue of Monday, December 14, 1992, make the following correction: On page 59200, in the first column, in paragraph (5), in the fifth line, "to pipe to the" should read "to pipe to be".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8436]

RIN 1545-AP91

Deposits of Employment Taxes

Correction

In rule document 92-23233 beginning on page 44099 in the issue of Thursday, September 24, 1992, make the following corrections:

1. On page 44100, in the second column, under the heading "B. Annual Determination and Lookback Period", in the second paragraph, in the third line from the bottom "apply or the" should read "apply for the".

2. On the same page, in the third column, under the heading "D. Semi-Weekly Rule", in paragraph 2., in the fifth line from the bottom "in single" should read "in a single".

3. On page 44101, in the first column, under the heading "G. Safe Harbor", in the fourth paragraph, in the third line from the bottom "remit that taxes" should read "remit the taxes".

4. On the same page, in the second column, under the heading "I. Special Rules for Backup Withholding Amounts", in the penultimate line "other other employment" should read "other employment".

BILLING CODE 1505-01-D

federal register

Monday
December 28, 1992

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 456 and 483

Medicare and Medicaid; Resident Assessment in Long Term Care Facilities; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 456 and 483

[HSQ–180–P]

RIN 0938–AE61

Medicare and Medicaid; Resident Assessment in Long Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Sections 1819(b)(3) and 1919(b)(3) of the Social Security Act (the Act) require long term care facilities participating in the Medicare and Medicaid programs to conduct periodic assessments of each resident's functional capacity. Sections 1819(f)(6) and 1919(f)(6) of the Act require the Secretary to specify a minimum data set of core elements and common definitions for use by the facilities, to establish guidelines for use of the data set, and to designate one or more assessment instruments which a State may require facilities to use. This proposed rule would set forth these required items. It would also implement sections 1819(e)(5) and 1919(e)(5), which require the States to specify a resident assessment instrument (RAI) to be used by long term care facilities in complying with sections 1819(b)(3) and 1919(b)(3).

To conform the regulations to section 4214(d)(1)(A) of the Omnibus Budget Reconciliation Act of 1987, we would also revise sections of part 456 that deal with Inspections of Care. We would substitute "intermediate care facility for the mentally retarded" for intermediate care facility and eliminate skilled nursing facility. Also, "mental hospitals" and "psychiatric facilities" would be substituted for institutions for mental diseases.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 26, 1993.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–180–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments.

In commenting, please refer to file code HSQ–180–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: Sue Nonemaker, (410) 966–6825.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Social Security Act (the Act), long term care facilities must meet certain requirements in order to participate in the Medicare and Medicaid programs. Sections 1819(a) through (d) of the Act set forth the requirements for Medicare skilled nursing facilities (SNFs), and sections 1919 (a) through (d) set forth the requirements for Medicaid nursing facilities (NFs). The State responsibilities relating to Medicare SNFs are set forth in section 1819(e), the Federal responsibilities in section 1819(f), and joint State-Federal responsibilities in sections 1819 (g) through (i). The State responsibilities relating to Medicaid NFs are set forth in section 1919(e), the Federal responsibilities in section 1919(f), and joint State-Federal responsibilities in sections 1919 (g) through (i).

The requirements that SNFs and NFs must meet in order to qualify to participate in the Medicare and Medicaid programs are set forth at 42 CFR part 483, subpart B ("Requirements for Long Term Care Facilities"). These requirements are enforced through a survey process which provides for annual recertification surveys and additional surveys as needed. The surveys are conducted by State agencies under contract with the Health Care Financing Administration (HCFA) and are monitored through its ten regional offices.

Certain new requirements regarding resident assessment were published in the **Federal Register** on February 2, 1989 (54 FR 5316). These new requirements conform with sections 4201(a)(3) and 4211(a)(3) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Public Law 100–203 added sections 1819(a)(3), (e)(5), and (f)(6), and sections 1919(a)(3), (e)(5), and (f)(6) of the Act. Public Law 100–203, as subsequently amended, requires that—

- Long term care facilities participating in the Medicare and Medicaid programs conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;
- The assessment describe the resident's capability to perform daily life functions and significant impairments in functional capacity;
- Effective October 1, 1990, the assessment be based on a uniform minimum data set (MDS) of core elements and common definitions specified by the Secretary;
- The Secretary specify the MDS and guidelines for using it no later than January 1, 1989;
- Long term care facilities use a resident assessment instrument specified by the State;
- The instrument specified by the State be either specified by the Secretary or approved by the Secretary as consistent with the MDS of core elements, common definitions, and utilization guidelines specified by the Secretary; and
- No later than April 1, 1990, the Secretary designate one or more resident assessment instruments.

These provisions of the Act were the basis of the new requirements published as part of a final rule on February 2, 1989. The rule added 42 CFR 483.20 ("Level A requirement: Resident assessment"), which sets forth resident assessment requirements for long term care facilities. But, while the rule set forth the requirements for resident assessment, it did not set forth the MDS consisting of core elements and common definitions, guidelines for using the MDS, and one or more resident assessment instruments.

Public Law 100–203 also amended a part of the Act which deals with Inspection of Care (IoC) reviews. IoC reviews are independent professional reviews to determine quality of care and appropriateness of the levels of care furnished to Medicaid recipients in Medicaid participating facilities. The reviews are the responsibility of the State and may either be conducted by teams of State employees or by outside teams under contract to the State.

Section 4212(d)(1)(A) of Public Law 100–203 removed references to skilled nursing facilities (SNFs) and substituted references to intermediate care facilities

for the mentally retarded (ICFs/MR) in place of intermediate care facilities (ICFs) in section 1903(g)(1) of the Act, which relates to IoC reviews. However, the law specifies that this change shall not apply to a State until the Secretary has determined that the State has specified its resident assessment instrument and has begun conducting surveys under the new survey and certification process. Therefore, States must continue to conduct IoC reviews in NFs (on October 1, 1990, ICFs other than ICFs/MR became NFs) until the resident assessment process and the new survey and certification process is fully implemented.

II. Provisions of the Proposed Regulation

To conform the regulations to section 4212(d)(1)(A) of Public Law 100–203, we would revise the sections of Part 456 that make specific reference to IoC reviews of SNFs and ICFs. We would substitute "ICFs/MR" for SNFs and ICFs. In addition, we would substitute the terms "mental hospitals" and "psychiatric facilities" for Institutions for Mental Diseases (IMDs). Since Public Law 100–203 excludes SNFs and ICFs from the provisions of section 1903(g)(1) of the Act, this means that the only types of IMDs remaining are mental hospitals and psychiatric facilities. Accordingly, we would substitute the terms "mental hospitals" and "psychiatric facilities" for IMDs. The sections involved are—

§ 456.1(b)(5)	"Inspections of care and services in institutions".
§ 456.600	"Purpose [of Subpart I ("Inspections of Care in Skilled Nursing and Intermediate Care Facilities and Institutions for Mental Diseases")]".
§ 456.601	"Definitions [of terms used in Subpart I]".
§ 456.602(c), (d), and (f).	"Inspection team".
§ 456.603	"Financial interests and employment of team members".
§ 456.608	"Personal contact with and observation of recipients and review of records".
§ 456.609	"Determinations by team".
§ 456.610	"Basis for determinations".
§ 456.612	"Copies of reports".
§ 456.651	"Definitions [of terms used in Subpart J ("Penalty for Failure to Make a Satisfactory Showing of an Effective Institutional Utilization Control Program")]".
§ 456.654	"Requirements for content of showings and procedures for submittal".

The resident assessment instrument (RAI) is designed to produce "a comprehensive, accurate, standardized, reproducible assessment of each [long term care facility] resident's functional capacity" required by sections 4201(a)(3) and 4211(a)(3) of Public Law 100–203. To meet this requirement, we have designed an RAI comprised of the MDS and the Resident Assessment Protocols (RAPs). States may choose to specify it or to specify an alternate RAI approved by HCFA.

We would revise the current § 483.20(b)(1) to state that facilities must make a comprehensive assessment of each resident's needs, using the RAI specified by the State, and that the assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff members on all shifts.

In October 1988, HCFA contracted with the Research Triangle Institute (RTI) to develop the RAI (HCFA Contract No. 500–88–0055). During the period October 1988 to March 1990, RTI and its principal subcontractors, the Hebrew Rehabilitation Center for Aged, Brown University, and The University of Michigan, assisted HCFA in developing an RAI, to include the MDS (which appears at the proposed § 483.315(b)(1)). A complete copy of the RAI developed by RTI, along with instructions and guidelines, appears in the appendix to this preamble, and a description of the development of the elements of the RAI and guidelines follows below:

A. The Development of the MDS

The principal task in developing the RAI was specifying the MDS. The MDS is a minimum set of screening and assessment elements, including common definitions and coding categories, needed to perform a comprehensive assessment of a long-term care facility resident. Its development involved two major activities: (1) Organizing and analyzing the recommendations of clinical experts and persons knowledgeable about the assessment needs of nursing facility residents as to what core elements to include in the data set, including creating a conceptual framework to organize these elements; and (2) conducting extensive reliability testing of this data set, including producing training materials for nurse assessors. We have included in the proposed MDS only those individual core data elements that—

- Are necessary to consider in developing a plan of care;
- Show acceptable levels of inter-rater reliability (that is, if two assessors were independently to gather this information, they would reach a similar conclusion about a resident's status and care needs);
- Are cost-efficient to gather (that is, the time and resources needed by nursing staff to collect and record this information would be commensurate with the information's utility in planning a resident's care);
- Assess a resident's actual performance and functioning levels, rather than their potential performance and function;
- Describe evident conditions or behaviors (that is, "resident expresses sadness", rather than describe conditions and behaviors that are not readily manifested, such as, "resident feels sad");
- Provide a time frame for assessing the behavior or condition (for example, "within the last 7 days" or "bedfast at least 22 hours per day"); and
- When applicable, specify the frequency and intensity of services required (for example, in the assessment of a need for specialized rehabilitation therapies such as physical, occupational, or speech therapy)

The framework for performing a comprehensive assessment is found at the current § 483.20(b)(2), which states:

The comprehensive assessment must include at least the following information:

(i) Medically defined conditions and prior medical history;
(ii) Medical status measurement;
(iii) Physical and mental functional status;
(iv) Sensory and physical impairments;
(v) Nutritional status and requirements;
(vi) Special treatments or procedures;
(vii) Mental and psychosocial status;
(viii) Discharge potential;
(ix) Dental condition;
(x) Activities potential;
(xi) Rehabilitation potential;
(xii) Cognitive status; and
(xiii) Drug therapy.

In devising the MDS, HCFA and its contractors first reviewed over 60 assessment instruments developed for the purposes of preadmission screening, State case-mix payment determination, nursing facility management, and geriatric research. We asked States using standardized assessment instruments to forward their forms to us for analysis. Twelve instruments that met a criterion for comprehensiveness consistent with the areas detailed in the current § 483.20(b) were reviewed further to identify common items, definitions, and coding categories.

Most previously used instruments measured activities of daily living (ADLs), mobility, and selected nursing care needs and services. However, few instruments measured behavioral disorders, mood disturbances, activities potential and cognitive functioning. Not one assessment tool addressed

residents' preferences for, and involvement in, activities. Based on this review of existing instruments, HCFA concluded that none could serve "as is" or with simple modifications as the MDS or RAI. However, this analysis of common assessment items and definitions did provide a starting point for developing the first draft of the MDS.

The second stage of MDS development focused on the formation of a Clinical Consultant Panel and a National Advisory Committee of professionals from a spectrum of disciplines, including: nursing; social work; medicine; physical, occupational, and speech therapy; pharmacy; and nutrition. We also included resident advocates, individual nursing facility providers, nursing facility industry representatives, regulators, and statistical experts in these deliberations.

Based on the suggestions of these expert consultants, HCFA's contractors prepared and circulated for comment 38 drafts of the MDS to various provider groups, consumer organizations, professional associations, and State government representatives, over a 6-month period. We received comment from approximately 90 organizations and 200 individuals. This developmental process resulted in an MDS suitable for field testing.

The goal of field testing was to produce an MDS with elements having both high inter-rater reliability and clinical utility. The first field test of the MDS occurred in 10 nursing facilities in North Carolina and Massachusetts in May–June 1989. HCFA contractors analyzed the use of the MDS for 383 nursing facility residents in these 10 facilities.

This field trial of the MDS provided objective evidence for retaining, modifying, or dropping proposed MDS items. We concluded from our analysis of this field test that 39 percent of the items were reliable and should be retained in their tested form; 40 percent required some modification and additional testing; and 21 percent of items were dropped. After sharing these findings with the Clinical Consultant Panel and the National Advisory Committee, HCFA's contractors produced a revised MDS.

We subjected this revised MDS to additional field testing with 123 residents in 15 nursing facilities in North Carolina, Massachusetts, Ohio, Minnesota, and Connecticut from December 1989–February 1990. The result of this research and testing is the MDS at the proposed § 483.315(b)(1). It consists of the following information:

- Identification and background information;
- Cognitive patterns;
- Communication/hearing patterns;
- Vision patterns;
- Physical functioning and structural problems;
- Continence in last 14 days;
- Psychosocial well-being;
- Mood and behavior patterns;
- Activity pursuit patterns;
- Disease diagnoses;
- Health conditions;
- Oral/nutritional status;
- Oral/dental status;
- Skin condition;
- Medication use; and
- Special treatment and procedures.

In addition to conducting additional reliability testing of MDS elements, this second field test used MDS items to construct valid "resident assessment protocols." Despite extensive review and consultation with a clear attempt to reduce the number of data elements in the MDS, we encourage comment on whether there may be still more items that are valuable for care planning purposes.

B. Resident Assessment Protocols

In the Appendix, we set forth proposed resident assessment protocols (RAPs). We are using the term "resident assessment protocols" to refer to structured frameworks for organizing MDS elements and gathering additional clinically relevant information about an individual that contributes to care planning.

Although a required part of the proposed RAI at § 483.315(b)(2), the RAPS would not be listed in the regulations text because we believe that, to be truly responsive to the needs of the health care community, the RAPS should be flexible and easy to change and update without the necessity of revising the CFR each time. In addition, States have the option of using the RAPS developed by HCFA in specifying an RAI, or developing their own frameworks for additional assessment, as long as they meet the HCFA criteria for approval at the proposed § 483.315(c)(2). Although the RAPS in the Appendix are not part of the regulations text, we encourage public comment on their usefulness.

The proposed RAPS would require facility staff to make a structured review of MDS elements and additional clinical items to identify resident problems, complicating conditions, and risk factors around which a multi-dimensional view of the resident's unique physical, mental, and psychosocial status can be constructed. At the proposed § 483.315(b), we would require that, in order to receive Secretarial approval, a State's alternate RAI must include triggers and frameworks for additional assessment.

A critical part of the RAI is the "trigger." Triggers are specific MDS elements that prompt additional assessment using the RAPS. HCFA's proposed RAI includes 18 RAPS. These RAPS would cover the following care areas that collectively address the comprehensive assessment and quality of care requirements currently at § 483.20(b)(2)(i) through (xiii) and at paragraphs (a) through (l) of § 483.25 ("Level A requirement: Quality of care."):

- Delirium;
- Cognitive loss/dementia;
- Visual function;
- Communication;
- Activities of daily living and functional rehabilitation potential;
- Urinary incontinence and indwelling catheter;
- Psychosocial well-being;
- Mood state;
- Behavior problems;
- Activities;
- Falls;
- Nutritional status;
- Feeding tubes;
- Dehydration/fluid maintenance;
- Dental care;
- Pressure ulcers;
- Psychotropic drug use; and
- Physical restraints.

An example of how RAPs are triggered would be that a psychosocial well-being problem would be suggested if any of the following is checked on the MDS form:

- G2a ("Covert/open conflict with and/or repeated criticism of staff").
- G2b ("Unhappy with roommate").
- G2c ("Unhappy with residents other than roommate").
- G2d ("Openly expresses conflict/anger with family or friends").
- G3b ("Expresses sadness/anger/empty feeling over lost roles/status").

Besides assessing the reliability of all MDS items, HCFA's contractors tested the validity of the RAPs during field tests that were completed in June 1990.

The results of these field tests indicate that HCFA's proposed RAI, composed of the MDS and RAPs, is a feasible system for use by long term care facilities to collect resident information for the development of appropriate plans of care for nursing facility residents. Detailed reports of the field test findings can be obtained from the HCFA contact person listed in this preamble.

RAPs are not intended to prescribe clinical courses of action or to usurp appropriate professional judgment. We include RAPs as part of the RAI to provide frameworks for additional assessment if the MDS indicates that it

may be warranted. RAPs complement the MDS to ensure a comprehensive, accurate, reproducible assessment of individualized resident needs for use in care planning.

Each of the 18 RAPs proposed in the Appendix organizes a systematic approach for evaluating targeted clinical information to assist facility staff in thinking about care planning and treatment decisions. For a given resident, we propose that facility staff use only those RAPs triggered by specific MDS elements or additional clinical items. The RAP Trigger Legend in the Appendix summarizes the relationship between MDS items that serve as triggers and RAPs.

Because RAPs build on MDS items, we suggest strongly that the facility delegate completion of a particular RAP to the most knowledgeable facility staff who can address that care area, whether it be nursing personnel, therapists, social workers, activity specialists, or physicians. Whenever possible, it is desirable that the person who gathered information for the MDS triggered item(s), complete the RAP associated with those triggers.

The RAP Summary in the HCFA RAI which appears in the Appendix is one means by which the long term care facility can document the care planning decision resulting from applying relevant RAPs. At the proposed § 483.315(c)(2), we would state that an alternate resident assessment instrument must include structured frameworks for organizing MDS elements and additional clinically relevant information about an individual that contributes to care planning. The State is not required to use the term "RAP" in an alternate instrument, and a State's protocols may include all, some, or none of the same RAPs contained in HCFA's RAI. States must, however, specify a standardized format for documentation of information obtained from additional assessment and care-planning decisions.

We expect that the use of the MDS and RAPs would ultimately reduce the amount of time required to complete the assessment, including the paperwork associated with assessment and care planning practices and related requirements. The RAI process would minimize duplication of effort by various disciplines involved in evaluating a resident by providing a standard core of information as well as a centralized location for assessment data. The standardized documentation process would also minimize the time necessary to retrieve information from the clinical record as well as allow various disciplines to access relevant information now compiled in a central source. We believe that the efficiency of the RAI will be even more obvious after the MDS is computerized.

C. Long Term Care Facility Requirements

1. Frequency of Assessments

As required by sections 4008(h)(2)(C) and 4801(e)(3) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), the current § 483.20(b)(4) requires long term care facilities to assess a resident—

- No later than 14 days after admission;
- No later than October 1, 1991 for current Medicaid residents;
- No later than January 1, 1991 for current Medicare residents;
- Promptly after a significant change in the resident's physical or mental condition; and
- In no case, less often than once every 12 months.

These requirements pertain to completion of the comprehensive assessment, which consists of the MDS, triggers and RAPs in HCFA's RAI.

We would delete the current § 483.20(b)(3), which is reserved, and redesignate the current § 483.20(b)(4) as § 483.20(b)(2). (We would delete the current § 483.20(b)(2), because the 13 elements it lists would be included in the 16 MDS items and the other RAI data required at § 483.315(b).) We would then revise the newly redesignated § 483.20(b)(2) to state that, while each facility must conduct an admission assessment when a resident is first admitted, it need not conduct one if the resident is readmitted unless the resident has experienced a significant change in status. A readmission is a return to the facility following a temporary absence for hospitalization or for therapeutic leave. If a significant change in status has occurred, we propose that long-term care facilities apply the procedures for conducting an assessment after a significant change in status.

To initiate care planning, the long term care facility must collect as much information as possible for the MDS elements and any additional data elements found in an approved State RAI within 14 days after admission.

We realize that rigid enforcement of the current requirement at § 483.20(b)(4)(i) that assessments be conducted no later than 14 days after admission from individuals admitted on or after October 1, 1990 may mean that the clinical status of a newly admitted resident may affect the validity and reliability of some MDS elements, and thus their clinical utility for care planning purposes. Therefore, at the proposed § 483.20(b)(2)(i) (A) through (C), we would set forth circumstances under which a long term care facility may amend the MDS information collected during the 14 days post-admission period up until the 21st day after admission. These are situations when—

- All information necessary for performing the assessment is not available during the 14-day post-admission period but can be obtained afterward;
- Further observation and interaction with the resident reveals the need to alter the initial assessments in any of the following MDS domains: cognitive patterns, communication patterns, potential for self-care improvement/rehabilitation, psychosocial well-being, mood and behavior patterns, nutritional status, and activity pursuit patterns; and
- The resident's condition is unstable upon admission because he or she is experiencing an acute illness or flare-up of a chronic problem and the acute illness or chronic problem is controlled by the 21st day.

The proposed definition of "significant change" in § 483.20(b)(2)(iv) is particularly important because of the impact it can have on the use of long term care facility resources, particularly nursing staff. Defining "significant change" too broadly can lead staff to perform excessive assessments. The additional information about the resident gained from these assessments may not materially enhance care planning or treatment. Conversely, defining "significant change" too narrowly can contribute to staff not paying sufficient and timely attention to resident changes in physical and cognitive functioning. Not reassessing residents under such circumstances can contribute directly to increasing the rate of functional and cognitive decline among residents.

At § 483.20(b)(2)(iv), we would state that a significant change is one or more of the following:

- Apparent permanent deterioration or improvement in two or more activities of daily living, communication, and/or cognitive abilities, or any combination of deterioration in two or more areas that appears to be permanent;
- Non-reversible loss of ability to freely ambulate or to use hands to grasp small objects to feed or groom oneself;
- Deterioration in behavior, mood, or relationships that requires staff intervention;

• Deterioration in a resident's health status when this places the resident's life in danger;

• A factor associated with a serious clinical complication that has not responded to treatment;

• A new diagnosis of a condition that is likely to affect the resident's physical, mental, or psychosocial well-being over a prolonged period of time;

• A marked and sudden improvement in the resident's status.

Examples of changes in a resident's condition that are probably transitory and therefore not significant include:

• Anticipated, easily reversible side effects of psychotropic medication while attempting to establish a clinically effective dose level;

• Short-term acute illness or episodic event such as a mild fever secondary to a cold from which facility staff expect full recovery of the resident's pre-morbid functional abilities and health status;

• Well established, predictive cyclical patterns of clinical signs and symptoms associated with previously diagnosed conditions such as depressive symptoms in a resident previously diagnosed with bipolar disease when an appropriate course of treatment is in progress; or

• The resident continues to make steady progress under the current course of care. Reassessment is required only when the condition has stabilized.

At § 483.20(b)(2)(iv), we propose that within 14 calendar days after the facility determines or should have determined that the resident's change in status is likely to be permanent, staff must complete a full comprehensive assessment within 14 days of this determination.

To minimize the burden on facility staff in collecting MDS information, we propose in the MDS instructions in the Appendix that if the long term care facility has already completed and posted Sections I and III ("Identification Information" and "Customary Routine" respectively) of the MDS found at § 483.315(b)(1) to the resident's record, then the long term care facility need not collect this information upon a return stay or readmission.

The current § 483.20(b)(5) requires that facilities must examine each resident quarterly and that the resident's assessments be revised as necessary to assure accuracy. At the proposed § 483.20(b)(3), we would be more specific, stating that the following core MDS elements be a part of that quarterly review, with the resident's status for each of these items noted in the resident's record:

• Section B: Cognitive patterns.
—Item 2 (Memory); and
—Item 4 (Cognitive skills for daily decisionmaking).

• Section C: Communication/hearing patterns.
—Item 4 (Making self understood); and
—Item 5 (Ability to understand others).

• Section E: Physical functioning and structural problems.
—Item 1b–f (activity of daily living self-performance); and
—Item 3a (Bathing).

• Section F: Continence in last 14 days.
—Item 1 (Continence self-control categories).

• Section H: Mood and behavior patterns.
—Item 2 (Mood persistence); and
—Item 3 (Problem behavior).

• N Section J: Disease diagnoses. Note only those diseases diagnosed in the last 90 days that have a relationship to current activity of daily living status, behavior status, medical treatments, or risk of death.

• N Section L: Oral/nutritional status. Item 2c (Weight loss).

• N Section O: Medication use. Item 4 (Days received the following medication).

• N Section P: Special treatment and procedures.
—Item 3b (Trunk restraint); and
—Item 3d (Chair prevents rising).

We would state at § 483.20(b)(3) that the assessment and plan of care must be revised if indicated by the quarterly review.

2. Use of Assessments

At the proposed § 483.20(b)(4), we would require facilities to maintain all resident assessments completed within the most recent 2-year period in the resident's active record and use the results of the assessments to develop, review, and revise the resident's comprehensive plan of care. This would include assessments, quarterly reviews and RAP summaries. This differs from the current requirement for use of assessments at § 483.20(b)(6) only in that it would set a specific 2-year time frame. We believe that having up to 2 years of assessment information in the active record would aid nursing facility staff in closely monitoring resident changes in functional and cognitive status.

3. Development of a National Resident Assessment System of Records

We propose as a requirement of participation at § 483.20(b)(6) that long term care facilities encode the MDS in a machine-readable form, and be capable of routinely reporting this information to a system of records maintained by HCFA and/or States beginning October 1, 1994. We will collect MDS data only, and believe that the development of an information system containing MDS data on all nursing home residents across the nation has many uses. These uses are:

• Facility Management. The requirement to computerize the MDS and report this information to a national data base would foster the growth of more sophisticated management information systems in long term care facilities. The information potential that lies in resident assessment data can be expected to lead to ways in which long term care facilities can use these data to improve the cost-effectiveness of services delivery.

• Identification of Effective Care Patterns. Computerized resident assessment data would be a valuable resource to monitor trends in the nursing home industry. As with data developed for the hospital industry, such as the Uniform Hospital Discharge Data Survey, the national resident assessment database would provide important insights into the structure of the industry and use of resources. When linked with information about long term care facilities collected routinely by States during the annual certification survey and entered into HCFA's OSCAR (Online Survey Certification and Reporting) system, computerized assessment data would be used rigorously to evaluate policy and program options in long-term care delivery and financing. A national data base provides the foundation for national, regional, interstate, and intrastate analyses. The influence of the following organizational and financing factors on resident outcomes can be examined using resident assessment data:

Payment differentials (case-mix payment);
Staffing patterns (especially nurse staffing);
Organizational structures (for example, swing beds, specialized care units, hospital-based versus freestanding nursing facilities, hospital geriatric evaluation units, and preadmission screening programs); and
Physician participation.

Care-related factors as they influence care outcomes (for example, site of admission), duration of prior hospital stay (adjusted for DRG), and resident's social support network, also can be taken into consideration in assessing policy and program options.

• Quality Monitoring. The quality of service provided in long term care facilities can be more effectively monitored through the survey and certification process with profiles of

both individual residents and facilities. Profiles of individual residents provide capability for targeted reviews, increasing the probability of detecting facility-wide problems. The availability of a comprehensive national database of resident characteristics and services permits development of expected norms from a variety of outcome measures. Individual resident outcomes can be compared with these norms. In the aggregate, facilities can be compared for their prevalence of negative outcomes (for example, pressure sores, restraints, falls, catheters), a comparison that is not meaningful when done at the level of the individual resident.

A computerized database also permits development of longitudinal norms. By linking residents' sequential assessments, norms would be developed for diminution of function and resolution of acute problems. With Medicaid payment policies focusing increasingly on case-mix adjustments, longitudinal resident assessment data could be used to calculate norms for transition probabilities (that is, residents changing from one case-mix group to another). Understanding these transitions would allow for the identification of residents who improve or deteriorate more rapidly than like residents; this would allow a unique approach to identify the effects of both good and poor care.

Achieving the full potential of the resident assessment initiative requires that long term care facilities be capable of storing, retrieving, and routinely reporting the information found in the MDS to the States and HCFA in a machine-readable form. In particular, we request comment on the following issues:

- What specific uses would State agencies have for these data? Should States accumulate and maintain their own data sets? This is particularly important when States use MDS information for the survey and certification process, and as the basis for nursing facility case-mix classification payment systems.
- What advantages or disadvantages do States see in collecting and/or reporting to HCFA MDS data for 100 percent of the facilities versus a sample of the facilities?
- Would reports on HCFA national data bases provide useful information to States for making comparisons for management, performance, measurements, and research purposes?
- How should MDS data flow from the facilities to HCFA? To the States? With assessments occurring on a resident-centered schedule (that is, on admission and on anniversaries thereafter, and "on significant change in a resident's status"), on what schedule should facilities be responsible for submitting MDS data?
- What auditing procedures should be developed to ensure accuracy of the information entered into the national data base? For example, facilities would be required to submit data in a State specified format (in States specifying an RAI other than the HCFA designated RAI). How should States certify the format and validity of data from individual facilities? What data verification procedures should be required by facilities before submitting data (for example, double entry)?
- What privacy and confidentiality concerns surround use of the data base? For example, who should have routine access?
- How timely would the data that is to be maintained be?
- If facilities computerize their records, what requirement would remain for a hard copy of the MDS in the residents' records? Once the MDS is completed and entered into the data system, what edits of it should be permitted without requiring the facility to produce a new electronic record or hard copy for the resident? What should be the facility's responsibility to maintain invalidated records (both electronic and hard copies)?
- How and to what extent should we standardize electronic formats? How can we assure that these formats are reviewed on an ongoing basis and revised to be consistent with technological changes?

4. Accuracy of Assessments

- The current § 483.20(c)(3) states that, effective October 1, 1990, an individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties. We would add a sentence to § 483.20(c)(3) to clarify that clinical disagreement does not constitute a material and false statement.

5. Guidelines for Using the Resident Assessment Instrument

Field tests have demonstrated that it is essential that long term care facilities observe and communicate directly with the resident to accurately complete a comprehensive assessment. In the utilization guidelines proposed in the Appendix, we discuss how long term care facilities should use a variety of information sources to complete the assessment including—

- A discussion of resident performance levels with nurse aides and assistants on all shifts;
- A discussion of the resident's status with an attending physician;
- A discussion of the resident's status with family members;
- A discussion of the resident's status with appropriate licensed health professionals who have observed, evaluated, or treated the resident; and
- The resident's records, including the admission record, medical plan of care, resident plan of care, documentation of services provided to the resident, reports of any diagnostic testing, consultation, or other services, medication administration record, copies of any transfer data provided to another health care facility, and summaries of previous discharges.

D. State Requirements for Resident Assessment

Sections 1819(e)(5) and 1919(e)(5) of the Act require each State to specify an RAI for use in the long term care facilities that are located in that State and that participate in the Medicare and Medicaid programs. We would state this in the introductory text at § 483.315 ("Specification of resident assessment instrument") and also would specify that the State has the option of using the RAI designated by HCFA, which is comprised of the proposed MDS at § 483.315(b)(1), the proposed 18 RAPS that appear in the Appendix of this document as well as in II.B. of this preamble, and the requirements for use of the RAI at the proposed § 483.20. We also would propose that, if it chooses, the State may specify an alternate instrument. An alternate instrument must be approved by the Secretary, using the criteria at § 483.315(c).

At § 483.315(a), we would set forth the following State responsibilities in specifying an RAI:

- Within 30 days of notification from HCFA of the HCFA-designated RAI or changes to it, the State would be required to specify the HCFA-designated RAI or notify HCFA of its intent to specify an alternate instrument.
- After specifying an instrument, the State would be required to assure facility implementation by providing the necessary technical direction and training to facilities.
- States would have a 4-month period in which to work with HCFA to secure approval of an alternate instrument. If after 4 months the State has failed to meet the criteria for approval of an alternate instrument, it would be required to specify the HCFA-designated instrument.

• Within 30 days of receiving HCFA approval of an alternate RAI, the State would be required to specify the RAI for use by all Medicare and Medicaid long term care facilities. HCFA approval of an alternate RAI would continue for a period of 2 years, after which it must be renewed.

• A State would be required to request and receive approval from HCFA before modifying its RAI. Amendments requiring HCFA reapproval include adding or reordering core MDS assessment items, adding new RAPs or combining care areas under a single RAP, or adding triggers that would require additional assessment. If a State specifies the HCFA-designated RAI, it must adopt revisions as HCFA issues them.

At § 483.315(b), we would set forth the elements of the HCFA-designated RAI. It would consist of the—

• MDS (§ 483.315(b)(1));

• RAPs (§ 483.315(b)(2)); and

• Requirements for the use of the RAI that appear at § 483.20 (§ 483.315(b)(3)).

At § 483.315(c), we would state that to receive approval, an alternate instrument must contain:

• The MDS at § 483.315(b)(1). All data elements and corresponding coding categories specified in the MDS must be contained in the State's instrument. The State may not alter the MDS definitions or the coding categories used with each MDS element or elements within a section. If proposing to reorder major sections of the MDS or the placement of items within sections, the State must provide a conversion table between its instrument and the MDS, and the data supplied to HCFA from the MDS must be ordered in the same manner as designated in paragraph (b)(1) of this section.

The State may include in its RAI data elements additional to those in the MDS to meet unique operational needs provided there is no conflict with elements included in the MDS.

• Resident Assessment Protocols (RAPS). An alternate RAI must include structured frameworks for organizing MDS elements and additional clinically relevant information about an individual that contributes to care planning. The State is not required to use the term "RAP" in an alternate instrument, and a State's protocols may include all, some, or none of the same RAPs contained in HCFA's RAI.

If the State creates alternative RAPs through combining care areas, it must provide a cross-walk chart from its RAPs to the care areas listed below.

The RAI must include assessment triggers, based on MDS elements or other information requirements, that screen which residents are subject to additional assessment. If States select alternative triggers or information requirements, they must provide supporting documentation for their decisions. This documentation may take the form of citations from the professional medical journals or reports, results of field testing, or the consensus of experts that the State uses to assist in designing these RAPs.

States must also specify a standardized format similar to the RAP summary form that long term care facilities will use to document information derived from RAPs about the nature of problems, complications and risk factors, the need for referral to appropriate health professionals, and the reasons for deciding to proceed or not to proceed with care planning specific to the triggered problems. There must be provision for identification of the location of the assessment results and for certification of completion and accuracy.

An alternate RAI must provide frameworks for comprehensive assessment in the following care areas:

• Cognitive loss/dementia;

• Visual function;

• Communication;

• Activities of daily living functional potential;

• Rehabilitation potential (combined with the activities of daily living in the HCFA-designated RAPs);

• Urinary incontinence and indwelling catheter;

• Psychosocial well-being (There are three distinct HCFA-designated RAPs that bear on psychosocial functioning: mood, behavior, and delirium);

• Activities;

• Falls;

• Nutritional status;

• Feeding tubes;

• Dehydration/fluid maintenance;

• Dental care;

• Pressure ulcers;

• Psychotropic drug use; and

• Physical restraints.

Our approval of a State's RAI covers the core items included on the instrument, the working and sequence of those items, and all definitions and instructions for the RAI. Our approval of the RAI does not include attributes related to formatting, for example, print type, color coding, or changes such as printing triggers on the assessment form.

States may allow facilities some flexibility in form design (for example, print type, color, shading, or integrating triggers) or to use a computer-generated printout of the RAI without our approval. However, the State must assure that any RAI form in the resident's record accurately and completely represents the State's RAI as approved by us in accordance with § 483.20(b). That is, the facility must provide an RAI that includes all and only the items on the State RAI with the exact wording and in the same sequence. This applies to either pre-printed forms or computer generated printouts.

E. Changes to the MDS and the RAPs

Sections 4201(c) and 4211(c) of Pub. L. 100–203 require that the Secretary evaluate implementation of the resident assessment process. These evaluations will inform Congress about the strengths and weaknesses of the MDS and resident assessment information as these data relate to resident care planning for long term care facilities.

Because we recognize that clinical advances in the care of residents in long term care facilities should be taken into account in periodic review and revision of the MDS, we encourage public comment on developing a mechanism for advising HCFA on the need and methods to update the RAPs as well as the core elements and common definitions that make up the MDS.

F. Coordination of the Resident Assessment Process with PASARR and Other Assessment Systems

Sections 1819(b)(3)(E) and 1919(b)(3)(E) of the Act require that the resident assessment be coordinated with any State-required preadmission screening program to the maximum extent practicable to avoid duplicative testing and effort. For example, facilities may permit the State mental health and mental retardation authority to use the annual resident assessment, conducted by the NF, as the basis for their annual PASARR (Preadmission Screening and Annual Resident Review). We are soliciting comments on this and other methods for accomplishing the required coordination. We also invite comment as to how we may ensure that facilities fulfill this requirement and how we can coordinate the annual resident assessment with other assessment protocols, such as home health assessments and hospital discharge assessments.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all long term care facilities (Medicare Skilled Nursing Facilities and Medicaid Nursing Facilities) and Intermediate Care Facilities to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer then 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

This proposed rule reflects the requirements of section 4012(d)(1)(A) of Public Law 100–203 regarding IoC and sections 4201(a)(3) and 4211(a)(3) of Public Law 100–203 regarding resident assessments in long term care facilities. Because long term care facilities may perceive these regulations as having greater economic impact than we anticipate, we are preparing the following voluntary analysis which conforms to the requirements of E.O. 12291 and the RFA.

We expect that the net effect of the proposed revisions regarding IoC would be to reduce State agency costs since State agencies would no longer be required to compile and submit quarterly showings for SNFs and ICFs that are not ICF/MRs once the State has specified its RAI. IoC reviews in SNFs and ICFs would then be combined with survey and certification reviews. Although these reviews would be conducted on a sample basis rather than a complete review of all Medicaid residents, the reviews would be more comprehensive. Thus, we estimate that the time required would be nearly the same. Therefore, we believe these provisions regarding IoC will not have a significant economic impact.

The statute requires the Secretary to specify an MDS of common elements and definitions and utilization guidelines for use by long term care facilities in conducting resident assessments of Medicare and Medicaid beneficiaries and to designate one or more RAIs for use by the States.

The MDS and the RAI were developed to comply with the resident assessment provisions of Public Law 100–203. The resident assessment process is used to evaluate needs for care and provides a foundation for the development of the plan of care.

The use of the MDS as the core of the comprehensive assessment requirement will improve the quality of long term care facility services by assuring that the assessment is consistently based on all information that is necessary to evaluate a resident's needs. Accurate and comprehensive resident assessments can improve the accuracy of the care planning process and ultimately, the care provided.

Through a contract with Research Triangle Institute (RTI), the MDS was field tested in over 30 long term care facilities in five States to assure that it is practical and effective. According to a RTI's "Report on the Small Scale Trial of the Minimum Data Set for Resident Assessment and Care Screening (MDS)" dated January 15, 1990, nurses participating in the field test averaged approximately 90 minutes to complete the MDS once they became familiar with it. Most facilities currently perform an assessment of the residents' needs for care-planning purposes and will be required to perform a comprehensive assessment at 42 CFR 483.20, effective October 1, 1990. RTI estimates that, based on limited field tests, the MDS may add 30 minutes to what long term care facilities currently spend for initial assessments of newly admitted residents.

Additionally, it is estimated that requirements to perform assessments on a quarterly basis and on a significant change in the resident's status may add up to a net increase of 10 minutes per assessment. On an average, this may add as much as 60 minutes per year per resident for those residents who are in facilities for a full year. Annual reassessments are estimated to result in no net increase since they should be offset by what facilities are currently doing.

Most of the nurse assessors participating in RTI field tests felt that the MDS definitions were "somewhat similar" to the definitions used in their facilities' current assessment process. They also believed that the "MDS definitions were more comprehensive" as well as "more resident focused". Most nurses felt that the time spent completing the MDS was worthwhile.

The RAPs referred to in Section II.B. of the preamble and identified in the Appendix were piloted in trials involving 400 long term care facility residents. In a May 21, 1990 memorandum, RTI stated that "The RAPs help focus problem identification and structure the review of assessment information—prior to care planning." RIT reported an average of 5 minutes per resident was required to identify which RAPs were triggered by the MDS, with an average of seven RAPs triggered per resident. If the MDS/RAI were computerized, even less time would be required to identify residents whose conditions would trigger RAPs.

It is not possible to estimate the average amount of time required to complete the RAPs because of the diversity in the clinical conditions of residents and differences in the amount of time required to complete various RAPs. Resources required to utilize the RAPs will vary widely depending on the complexity of the resident's status and clinical problems.

Additionally, there is no requirement for facilities to use the RAPs contained in the RAI designated by the Secretary. Rather, facilities are required to use the frameworks for additional assessment contained in the RAI specified by the State. States may choose to use all, some or none of the RAPs proposed in the appendix as long as the State's RAI includes frameworks for additional assessment and meets the criteria used by HCFA to grand approval of an alternate instrument. Because of this lack of uniformity, it is not possible to determine the actual amount of time needed to complete the alternative RAPs developed by the States or estimate the average number of State-developed alternative RAPs that would be triggered by a resident's condition.

We would require long term care facilities to computerize the MDS by October 1, 1994, to support MDS reporting requirements. Computerized resident assessment data would provide a valuable resource for both the clinical staff and administrators of long-term care facilities. Data could be used by

facilities to monitor an individual resident's progress as well as to identify facility-level trends or problems. Information could also be compiled to generate administrative reports to identify management concerns or to assist in meeting other regulatory requirements.

The requirement to report MDS information to a national data base will foster the growth of more sophisticated management information systems in long term care facilities. The information potential that lies in a resident assessment data base can be expected to lead to improvements in clinical and operational management for long term care facilities.

We anticipate that some additional cost will result from computerizing the MDS. (Depending on the policies of HCFA and State Medicaid agencies, these costs could be reimbursed as either operating costs or capital costs or both.)

Many issues surrounding computerization of the MDS, such as facility requirements regarding the frequency and process for transmission of data, have not yet been determined. However, it is possible to estimate the order of magnitude of facility costs by looking at the types of equipment and tasks that would be necessary. They include:

- Hardware: We estimate hardware costs to be under $2000 per facility (based on an IBM-compatible 8086-based microcomputer with 640K memory, 20Mb hard disk, monochrome monitor and dot-matrix printer). Larger facilities (100 or more beds) may desire a faster or more sophisticated machine at approximately $500 more. Facilities may also need a modem for telecommunication of data, at approximately $250.
- Software: Small facilities (under 100 beds) desiring to meet only the requirement for data submission could use a simplistic software package; in theory, even a word processing package (available for less than $100) could be used to meet the requirement. However, it is anticipated that virtually all facilities will choose more capable programs, some of which could be used to meet other clinical or operational needs (that is, care planning, order entry, quality assurance, billing) or other regulatory requirements for reporting of resident information. We estimate that such packages will be available on the market for approximately $200–300 in large volume; in smaller volumes the costs would rise to approximately $500.
- Supplies and maintenance of equipment: We estimate the cost of supplies necessary for collection and transmission of data (that is, diskettes or computer paper) to be less than $200 per year. Some costs would also be associated with the maintenance of computer equipment, such as the replacement of disk drives or memory chips. If hardware is amortized over a relatively short period of time (that is, three years), then the additional costs of maintenance should be low; we estimate no more than $200–300 per year.
- Training: Training of personnel would be required, with approximately four hours of training estimated based on preliminary experiences with the system in Wisconsin. We estimate a one time cost of approximately $60 of paid staff time for training of clinical staff members inputting MDS data; the cost would be less to train clerical staff members. The cost of travel to a training center would need to be added, though we anticipate that training would be provided in multiple sites around a State once the system is implemented. Using the experience of New York in implementing a resident assessment system for case-mix reimbursement, a maximum of two data entry persons would be sufficient for facilities of up to 100 beds. We estimate initial costs for training to be approximately $120 plus travel for a 100 bed facility. Turnover of trained staff would require additional expenditures over time.
- Data entry: Facilities would have flexibility in the method used to input data. Data could be entered directly by a clinical staff member (that is, the nurse responsible for coordinating or completing the assessment), from a hard copy of a completed MDS by a clerical staff member, or by a keypunch operator the facility may contract with to key in the data. With entry of an MDS requiring approximately 347 keystrokes, we estimate that keypunch operators would require approximately 15 minutes to enter each MDS; less skilled personnel (that is, other than keypunch operators) may require approximately one-half hour. Circumstances under which facilities will collect and may be required to transmit MDS data include the admission assessment and annual updates as well as on "significant change" in the resident's status. Additionally, time would be required for data validation and preparation of data for transmission. Based on our previous estimate of 2.3 MDSs per bed (annual plus "significant change") per year, we estimate total operational costs for facility staff to input data for a 100-bed facility to be approximately $3450 per year (based on 230 hours). We estimate the cost of contracting with a commercial service to input data to be approximately $1125 per year, based on an hourly rate of $15. However, this underrepresents actual facility costs, as a substantial amount of facility staff time would be required to prepare the MDS forms for data entry and validate the key punched data.

We have based these estimates on outside ranges (that is, the maximum number of keystrokes needed to input the initial and subsequent assessments as well as to perform data validation). Consequently, we believe the costs to facilities to input data may be lower in actual practice.

Our estimates reflect the costs associated with computerization of the MDS only. No data entry would be required for quarterly reviews of the MDS or completion of the RAPs.

The foregoing preliminary estimates may actually overstate anticipated costs because they do not take into account cost-savings achieved improving long term care facilities' management information systems and data bases. Assessment data may be used by facilities for diverse purposes such as facility monitoring or to project staffing requirements. In addition, in many long term care facilities computers and computer programs already exist that can accommodate the necessary changes with little added cost. Further, long term care facilities will be compensated for a portion of the costs of maintaining and transmitting the MDS through payment mechanisms in accordance with sections 1861(v)(1) and 1902(a)(13) of the Act.

In conclusion, while we believe that long term care facilities would bear some incremental costs associated with this proposal, we believe that the costs would be insignificant when compared to the anticipated increased quality of care for long term care facility residents as well as the potential uses of the mechanized data by the facilities. We expect numerous benefits to result from the RAI. Resident outcomes will improve and potential program savings will be realized. Anecdotal reports from a number of facilities indicate that staff are identifying resident care problems with the RAI of which they had been unaware previously. Examples of these problems include delirium, mood state disorders, dehydration, rehabilitation potential related to incontinence, and risk of falling. Preliminary results from our evaluation indicate the RAI is able to improve the facility's ability to evaluate problems that would have been identified previously only with an indepth specialty evaluation. For example, research nurse assessors using the RAI were able to identify residents with potentially curable causes of

incontinence. These causes of incontinence had been missed earlier by the facility unless the resident underwent an evaluation by a urologist or other specialist dealing with incontinence.

Use of the RAI would also reduce the likelihood of inappropriate decline in a resident's status. Our utilization guidelines require that the resident be examined, using a subset of MDS items, at least quarterly and that a resident who experiences a significant change in status receive a comprehensive assessment within 14 days. Early assessment would allow facilities to identify problems and implement appropriate interventions before the condition of the resident declines precipitously. Early assessment may result in a savings to Medicare Part A in terms of decreased hospitalizations. Additionally, early assessment of the causes of a functional decline would enable facilities to intervene early in the decline cycle, thereby minimizing poor outcomes and the need for extensive diagnostic testing conducted outside the facility.

Comprehensive assessment using the RAI would assist facilities in their efforts to help residents achieve the highest practicable levels of physical, mental and psychosocial well-being. Studies and anecdotal reports indicate that increasing the independence of residents results in decreased demands on staff and material resources. Various RAPs promote the concept of the highest practicable level of well-being by challenging staff to identify resident strengths and implement interventions to assist residents to reach their full potential (for example, increasing a resident's ability to ambulate is inherent in the ADL Rehabilitation, Physical Restraints, and Falls RAPs.) By improving resident outcomes and preventing problems from developing, we believe that the RAI has tremendous potential to decrease costs associated with reversible causes of incontinence, fractures related to falls, and the treatment of pressure ulcers.

In that this discussion of costs is not conclusive, we encourage comments and any applicable data describing Federal, State, and facility costs, as well as benefits to residents and potential program savings. Further, as stated in part II.C. of this preamble, the Secretary of HHS is required to report to Congress by January 1, 1992, for Medicare, and January 1, 1993, for Medicaid, the overall effects of the resident assessment process, including estimated costs of resident assessment on the operation of long term care facilities throughout the country.

IV. Information Collection Requirements

Sections 4204(b) and 4214(d) of Public Law 100–203 provide a waiver of paperwork reduction review, specifying that Chapter 35 of title 44 U.S.C. "shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part."

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 456

Administrative practice and procedure, Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, 42 CFR parts 456 and 483 would be amended as follows:

A. Part 456 is amended to read as follows:

PART 456—UTILIZATION CONTROL [AMENDED]

2. The authority citation for part 456 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

3. In § 456.1(b), the introductory text is republished and paragraph (b)(5) and Table 1 are revised to read as follows:

§ 456.1 Basis and purpose of part.

* * * * *

(b) The requirements in this part are based on the following sections of the Act. Table 1 shows the relationship between these sections of the Act and the requirements in this part.

* * * * *

(5) *Inspection of care and services in institutions.* Sections 1902(a)(26) (B) and (C) and 1902(a)(31) (B) and (C) require that the plan provide for periodic inspections and reports, by a team of professional persons, of the care being provided to each recipient in mental hospitals, psychiatric facilities, and intermediate care facilities for the mentally retarded (ICFs/MR) participating in Medicaid.

* * * * *

Table 1

[This table relates the regulations in this part to the sections of the Act on which they are based.]

Subpart A—General	1902(a)(30) 1902(a)(33)(A)
Subpart B—Utilization Control: All Medicaid Services	1902(a)(30)
Subpart C—Utilization Control:	
Hospitals—	
Certification of need for care	1903(g)(1)(A)
Plan of care	1903(g)(1)(B)
Utilization review plan (including admission review)	1902(a)(30) 1903(g)(1)(C) 1903(i)(4)
Subpart D—Utilization Control: Mental Hospitals—	
Certification of need for care	1903(g)(1)(A)
Medical evaluation and admission review	1902(a)(26)(A) 1903(g)(1)(C)
Plan of care	1902(a)(26)(A) 1903(g)(1)(B)

Table 1—Continued

[This table relates the regulations in this part to the sections of the Act on which they are based.]

Admission and plan of care requirements for individuals under 21	1902(a)(26)(A) 1903(g)(1) (B), (C)
Utilization review plan	1902(a)(30) 1903(g)(1)(C) 1903(i)(4)
Subpart E—Utilization Control: Skilled Nursing Facilities—	1903(g)(1)(A
Certification of need for care	1902(a)(26)(A)
Medical evaluation and admission review	1903(g)(1)(C)
Plan of care	1902(a)(26)(A) 1903(g)(1)(B)
Utilization review plan	1902(a)(30) 1903(g)(1)(C) 1903(i)(4)
Discharge plan	1902(a)(30)
Subpart F—Utilization Control: Intermediate Care Facilities—	1903(g)(1)(A)
Certification of need for care	1902(a)(31)(A)
Medical evaluation and admission review	1903(g)(1)(C)
Plan of care	1902(a)(31)(A) 1903(g)(1)(B)
Utilization review plan	1902(a)(30) 1903(g)(1)(C) 1903(i)(4)
Subpart G—Inpatient Psychiatric Services for Individuals Under Age 21: Admission and Plan of Care Requirements	1905 (a)(16) and (h)
Subpart H—Utilization Review Plans: FFP, Waivers, and Variances for Hospitals, Mental Hospitals and Skilled Nursing Facilities.	1902(a)(30) 903(i)(4)
Subpart I—Inspections of Care in Intermediate Care Facilities for the Mentally Retarded, Psychiatric Facilities, and Mental Hospitals.	1902(a)(26) (B), (C), (31)(B), (C) 1903(g)(1)

4. The heading of subpart I is revised to read as follows:

Subpart I—Inspections of Care in Intermediate Care Facilities for the Mentally Retarded, Psychiatric Facilities, and Mental Hospitals

5. Section 456.600 is revised to read as follows:

§ 456.600 Purpose.

This subpart prescribes requirements for periodic inspections of care and services in intermediate care facilities for the mentally retarded (ICFs/MR), psychiatric facilities, and mental hospitals.

6. Section 456.601 is revised to read as follows:

§ 456.601 Definitions.

For purposes of this subpart—

Facility means a mental hospital, psychiatric facility, or an intermediate care facility for the mentally retarded.

Intermediate care facility for the mentally retarded means institutions for the mentally retarded or persons with related conditions but excludes Christian Science sanatoria operated, or listed and certified, by the First Church of Christ Scientist, Boston, Mass.

Mental hospital means that it primarily cares for patients with psychiatric diagnoses.

Psychiatric facility includes a facility or program that provides inpatient psychiatric services for individuals under 21, as specified in § 441.151 of this chapter, but does not include psychiatric wards in acute care hospitals.

7. In § 456.602, paragraph (c) is revised, paragraphs (d) and (f) are removed, and paragraphs (e), (g), and (h) are redesignated as paragraphs (d), (e), and (f), respectively, to read as follows:

§ 456.602 Inspection team.

* * * * *

(c) For a mental hospital or psychiatric facility, each team must have a psychiatrist or physician knowledgeable about mental institutions and other appropriate mental health and social service personnel.

* * * * *

8. Section 456.603 is revised to read as follows:

§ 456.603 Financial interests and employment of team members.

A member of a team that reviews care in a mental hospital, psychiatric facility, or an institution for the mentally retarded or persons with related conditions—

(a) May not have a financial interest in any institution of that same type but may have a financial interest in other facilities or institutions; and

(b) May not review care in an institution where he is employed but may review care in any other facility or institution.

9. Section 456.608 is revised to read as follows:

§ 456.608 Personal contact with and observation of recipients and review of records.

(a) For recipients under age 21 in psychiatric facilities and recipients in ICFs/MR, the team's inspection must include—

(1) Personal contact with and observation of each recipient; and

(2) Review of each recipient's medical record.

(b) For recipients age 65 or older in mental hospitals, the team's inspection must include—

(1) Review of each recipient's medical record; and

(2) If the record does not contain complete reports of periodic assessments required by § 441.102 of this chapter or, if such reports are inadequate, personal contact with and observation of each recipient.

10. Section 456.609 is revised to read as follows:

§ 456.609 Determinations by team.

The team must determine in its inspection whether—

(a) The services available in the facility are adequate to—

(1) Meet the health needs of each recipient,

(2) Promote his maximum physical, mental, and psychosocial functioning.

(b) It is necessary and desirable for the recipient to remain in the facility;

(c) It is feasible to meet the recipient's health needs through alternative institutional or noninstitutional services; and

(d) Each recipient under age 21 in a psychiatric facility and each recipient in an institution for the mentally retarded or persons with related conditions is receiving active treatment as defined in § 441.154 of this chapter.

11. In § 456.610, paragraphs (b) and (e) are revised, paragraph (f) is removed, and paragraphs (g) and (h) are redesignated as paragraphs (f) and (g), respectively, to read as follows:

§ 456.610 Basis for determinations.

* * * * *

(b) The attending physician reviews prescribed medications—

(1) At least every 30 days in psychiatric facilities and mental hospitals; and

(2) At least quarterly in ICFs/MR;

* * * * *

(e) The recipient receives adequate services, based on observations such as the following:

(1) Cleanliness.

(2) Absence of bedsores.

(3) Absence of signs of malnutrition or dehydration.

(4) Apparent maintenance of maximum physical, mental, and psychosocial function.

* * * * *

12. Section 456 .612 is revised to read as follows:

§ 456.612 Copies of reports.

The agency must send a copy of each inspection report to—

(a) The facility inspected;

(b) The facility's utilization review committee;

(c) The agency responsible for licensing, certification, or approval of the facility for purposes of Medicare and Medicaid; and

(d) Other State agencies that use the information in the reports to perform their official function, including, if inspection reports concern mental hospitals and psychiatric facilities, the appropriate State mental health authorities.

13. Section 456.651 is revised as follows:

§ 456.651 Definitions.

For purposes of this subpart—

Facility, with respect to inpatient psychiatric services for individuals under 21, includes a psychiatric program as specified in § 441.151 of this chapter.

Level of care means one of the following types of inpatient services: hospital, mental hospital, intermediate care facility for the mentally retarded, or psychiatric services for individuals under 21.

Long-stay services means services provided to a recipient after a total of 60 days of inpatient stay (90 in the case of mental hospital services) during a 12-month period beginning July 1, not counting days of stay paid for wholly or in part by Medicare.

14. In § 456.654, the introductory text in paragraph (a) is republished, and paragraphs (a)(7) and (a)(8) are revised to read as follows:

§ 456.654 Requirements for content of showings and procedures for submittal.

(a) An agency's showing for a quarter must—

* * * * *

(7) For each on-site review in a mental hospital, or intermediate care facility that primarily cares for mental patients, or inpatient psychiatric facility, list the name and qualifications of one team member who is a physician; and

(8) For each on-site review in an intermediate care facility for the mentally retarded that does not primarily care for mental patients, list the name and qualifications of one team member who is either a physician or registered nurse.

* * * * *

B. Part 483 is amended to read as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102, 1819(a)–(f), 1861 (j) and (l), 1863, 1871, 1902(a)(28), 1905 (a), (c) and (d), and 1919(a)–(f) of the Social Security Act (42 U.S.C. 1302, 1395i–3(a)–(f), 1395x (j) and (l), 1395hh, 1395z, 1396a(a)(28), and 1396d (c) and (d), and 1396r(a)–(f)), unless otherwise noted.

2. In § 483.20, the section heading and paragraphs (b) and (c) are revised to read as follows:

§ 483.20 Level A requirement: Resident assessment.

* * * * *

(b) *Comprehensive assessments.*

(1) *Resident assessment instrument.* The facility must make a comprehensive assessment of a resident's needs, using the resident assessment instrument (RAI) specified by the State. The assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff members on all shifts.

(2) *When required.*

Comprehensive assessments must be conducted:

(i) Within 14 days after admission, excluding readmissions in which there is not a significant change in the resident's physical or mental condition (A "readmission" is defined as a return to the facility following a temporary absence for hospitalization or for therapeutic leave.). Assessment information may be amended up to 21 days after admission if—

(A) All information necessary for performing the assessment is not available to staff during the initial 14-day period;

(B) Further resident observation and interaction indicates a need to alter the initial assessment of cognitive patterns, communication patterns, potential for self-care improvement/rehabilitation, psychosocial well-being, mood and behavior patterns, nutritional status, and activity pursuit patterns;

(C) The resident's condition is unstable upon admission.

(ii) No later than October 1, 1991 for residents of a nursing facility admitted prior to October 1, 1991.

(iii) No later than January 1, 1991 for residents of a skilled nursing facility admitted prior to January 1, 1991.

(iv) Within 14 calendar days after the facility determines, or should have determined, that there has been a significant change in the resident's physical or mental condition. A significant change is one or more of the following:

(A) Apparent permanent deterioration or improvement in two or more activities of daily living, communication, and/or cognitive abilities; or any combination of deterioration in two or more areas that appears to be permanent.

(B) Non-reversible loss of ability to freely ambulate or to use hands to grasp small objects to feed or groom oneself.

(C) Deterioration in behavior, mood, or relationships that requires staff intervention.

(D) Deterioration in a resident's health status when this places the resident's life in danger.

(E) A factor associated with a serious clinical complication that has not responded to treatment.

(F) A new diagnosis of a condition that is likely to affect the resident's physical, mental, or psychosocial well-being over a prolonged period of time.

(G) A marked and sudden improvement in the resident's status.

(v) No less often than once every 12 months in any case.

(3) *Quarterly Review.* The minimum data set (MDS) is at § 483.315(b)(1) of this chapter. Facilities must examine residents and review the following core MDS elements quarterly and revise the assessment and plan of care if indicated:

(i) Section B: Cognitive patterns.

(A) Item 2 (Memory); and

(B) Item 4 (Cognitive skills for daily decisionmaking).

(ii) Section C: Communication/hearing patterns.

(A) Item 4 (Making self understood); and

(B) Item 5 (Ability to understand others).

(iii) Section E: Physical functioning and structural problems.

(A) Items 1b–f (activity of daily living self-performance); and

(B) Item 3a (Bathing).

(iv) Section F: Continence in last 14 days. Item 1 (Continence self-control categories).

(v) Section H: Mood and behavior patterns.

(A) Item 2 (Mood persistence); and

(B) Item 3 (Problem behavior).

(vi) Section J: Disease diagnoses. Note only those diseases diagnosed in the last 90 days that have a relationship to current activity of daily living status, behavior status, medical treatments, or risk of death.

(vii) Section L: Oral/nutritional status. Item 2c (Weight loss).

(viii) Section O: Medication use. Item 4 (Days received the following medication).

(ix) Section P: Special treatment and procedures.

(A) Item 3b (Trunk restraint); and

(B) Item 3d (Chair prevents rising).

(4) *Use.* The facility must maintain all resident assessments completed within the previous 2 years in the resident's active record and use the results of the assessments to develop, review, and revise the resident's comprehensive plan of care.

(5) *Coordination.* The facility must coordinate assessments with any State-required preadmission screening program to the maximum extent practicable to avoid duplicative testing and effort.

(6) *ADP requirement:* Effective October 1, 1994, the facility must:

(i) Encode the information contained in the MDS in a machine-readable (that is, computerized) format. The facility must be capable of computerized retrieval of the information contained in the MDS for the initial comprehensive assessment, annual updates, and information entered because of residents experiencing a "significant change" in status.

(ii) Be capable of routinely transmitting the information required in § 483.315(b)(1) of this chapter in a format and in accordance with particular data screens specified by HCFA or the State to a system of records maintained by HCFA.

(c) *Level B requirement: Accuracy of assessments.*

(1) *Coordination.*

(i) Each assessment must be conducted or coordinated, with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) *Certification.* Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(3) *Penalty for falsification.* An individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties. Section 1819(b)(3)(B)(ii)(II) of the Act allows for civil penalties of up to $5,000 in some cases. Clinical disagreement does not constitute a material and false statement.

* * * * *

3. New subpart F, consisting of § 483.315, is added to read as follows:

Subpart F—Requirements That Must Be Met by States and State Agencies: Resident Assessment

§ 483.315 Specification of resident assessment instrument.

Sections 1819(e)(5) and 1919(e)(5) of the Act require the State to specify the resident assessment instrument (RAI) to be used by long term care facilities in the State for their use in complying with § 483.20, which requires long term care facilities to conduct initial and periodic assessment of each resident's functional capacity. The RAI may be either the one designated by the Secretary at paragraph (b) of this section or an alternate instrument specified by the State and approved by the Secretary, using the criteria at paragraph (c) of this section.

(a) The State responsibilities in specifying an RAI are as follows:

(1) Within 30 days of notification from HCFA of the HCFA-designated RAI or changes to it, the State must specify the HCFA-designated RAI or notify HCFA of its intent to specify an alternate instrument.

(2) After specifying an instrument, the State must assure facility implementation by providing the necessary technical direction and training to facilities.

(3) States have a 4-month period in which to work with HCFA to secure approval of an alternate instrument. If after 4 months the State has failed to meet the criteria for approval of an alternate instrument at paragraph (c) of this section, it must specify the HCFA-designated instrument.

(4) Within 30 days of receiving HCFA approval of an alternate RAI, the State must specify the RAI for use by all Medicare and Medicaid long term care facilities. Generally, HCFA approval of an alternate RAI continues for a period of 2 years, after which it must be renewed. However, if in the interim HCFA modifies the HCFA designated RAI, paragraph (a)(1) of this section applies.

(5) A State must request and receive approval from HCFA before modifying its RAI. Amendments requiring HCFA reapproval include adding or reordering core MDS assessment items, adding new RAPs or combining care areas under a single RAP, or adding triggers that would require additional assessment. If a State specifies the HCFA-designated RAI, it must adopt revisions as HCFA issues them.

(b) The HCFA-designated RAI consists of the following:

(1) The following uniform minimum data set (MDS):

BILLING CODE 4120-03-M

MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)
BACKGROUND INFORMATION AT INTAKE/ADMISSION

I. IDENTIFICATION INFORMATION

1.	RESIDENT NAME	(First) (Middle Initial) (Last)
2.	DATE OF CURRENT ADMISSION	Month — Day — Year
3.	MEDICARE NO. (SOC. SEC. or Comparable No. if no Medicare No.)	
4.	FACILITY PROVIDER NO.	Federal No.
5.	GENDER	1. Male 2. Female
6.	RACE/ ETHNICITY	1. American Indian/Alaska Native 2. Asian/Pacific Islander 3. Black, not of Hispanic origin 4. Hispanic 5. White, not of Hispanic origin
7.	BIRTHDATE	Month — Day — Year
8.	LIFETIME OCCUPATION	
9.	PRIMARY LANGUAGE	Resident's primary language is a language other than English 0. No 1. Yes _____ (Specify)
10.	RESIDENTIAL HISTORY PAST 5 YEARS	*(Check all settings resident lived in during 5 years prior to admission)* Prior stay at this nursing home — a. Other nursing home/residential facility — b. MH/psychiatric setting — c. MR/DD setting — d. *NONE OF ABOVE* — e.
11.	MENTAL HEALTH HISTORY	Does resident's RECORD indicate any history of mental retardation, mental illness, or any other mental health problem? 0. No 1. Yes
12.	CONDITIONS RELATED TO MR/DD STATUS	*(Check all conditions that are related to MR/DD status, that were manifested before age 22, and are likely to continue indefinitely)* Not applicable—no MR/DD (Skip to Item 13) — a. MR/DD with Organic Condition Cerebral palsy — b. Down's syndrome — c. Autism — d. Epilepsy — e. Other organic condition related to MR/DD — f. MR/DD with no organic condition — g. Unknown — h.
13.	MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
14.	ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
15.	LIVED ALONE	0. No 1. Yes 2. In other facility
16.	ADMISSION INFORMATION AMENDED	*(Check all that apply)* Accurate information unavailable earlier — a. Observation revealed additional information — b. Resident unstable at admission — c.

II. BACKGROUND INFORMATION AT RETURN/READMISSION

1.	DATE OF CURRENT READMISSION	Month — Day — Year
2	MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
3	ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
4.	LIVED ALONE	0. No 1. Yes 2. In other facility

III. CUSTOMARY ROUTINE (ONLY AT FIRST ADMISSION)

1. CUSTOMARY ROUTINE (Year prior to first admission to a nursing home)

(Check all that apply. If all information UNKNOWN, check last box only

CYCLE OF DAILY EVENTS
- Stays up late at night (e.g., after 9 pm) — a.
- Naps regularly during day (at least 1 hour) — b.
- Goes out 1+ days a week — c.
- Stays busy with hobbies, reading, or fixed daily routine — d.
- Spends most time alone or watching TV — e.
- Moves independently indoors (with appliances, if used) — f.
- *NONE OF ABOVE* — g.

EATING PATTERNS
- Distinct food preferences — h.
- Eats between meals all or most days — i.
- Use of alcoholic beverage(s) at least weekly — j.
- *NONE OF ABOVE* — k.

ADL PATTERNS
- In bed/clothes much of day — l.
- Wakens to toilet all or most nights — m.
- Has irregular bowel movement pattern — n.
- Prefers showers for bathing — o.
- *NONE OF ABOVE* — p.

INVOLVEMENT PATTERNS
- Daily contact with relatives/close friends — q.
- Usually attends church, temple, synagogue (etc.) — r.
- Finds strength in faith — s.
- Daily animal companion/presence — t.
- Involved in group activities — u.
- *NONE OF ABOVE* — v.

UNKNOWN—Resident/family unable to provide information — w.

END

Signature of RN Assessment Coordinator: _____ Date: _____

Signatures of Others Who Completed Part of the Assessment:

_____ _____ _____ _____

_____ _____ _____ _____

MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)

(Status in last 7 days, unless other time frame indicated)

SECTION A. IDENTIFICATION AND BACKGROUND INFORMATION

1.	ASSESSMENT DATE	Month — Day — Year
2.	RESIDENT NAME	(First) (Middle Initial) (Last)
3.	SOCIAL SECURITY NO.	
4.	MEDICAID NO. (If applicable)	
5.	MEDICAL RECORD NO.	
6.	REASON FOR ASSESSMENT	1. Initial admission assess. 2. Hosp/Medicare reassess. 3. Readmission assessment 4. Annual assessment 5. Significant change in status 6. Other (e.g., URI)
7.	CURRENT PAYMENT SOURCE(S) FOR N.H. STAY	*(Billing Office to indicate; check all that apply)* Medicaid (a.) VA; Medicare (b.) Self pay/Private insurance; CHAMPUS (c.) Other
8.	RESPONSIBILITY/ LEGAL GUARDIAN	*(Check all that apply)* Legal guardian (a.) Family member responsible; Other legal oversight (b.) Resident responsible; Durable power attny./ health care proxy (c.) *NONE OF ABOVE*
9.	ADVANCED DIRECTIVES	*(For those items with supporting documentation in the medical record, check all that apply)* Living will (a.) Feeding restrictions; Do not resuscitate (b.) Medication restrictions; Do not hospitalize (c.) Other treatment restrictions; Organ donation (d.) *NONE OF ABOVE*; Autopsy request (e.)
10.	DISCHARGE PLANNED WITHIN 3 MOS.	*(Does not include discharge due to death)* 0. No 1. Yes 2. Unknown/uncertain
11.	PARTICIPATE IN ASSESSMENT	a. Resident 0. No 1. Yes; b. Family 0. No 1. Yes 2. No family
12.	SIGNATURES AND SECTIONS COMPLETED	Signature of RN Assessment Coordinator _____ Date: _____ Signatures of Others Who Completed Part of the Assessment and Sections Completed

SECTION B. COGNITIVE PATTERNS

1	COMATOSE	*(Persistent vegetative state/no discernible consciousness)* 0. No 1. Yes *(Skip to SECTION E)*
2.	MEMORY	*(Recall of what was learned or known)* a. Short-term memory OK—seems/appears to recall after 5 minutes 0. Memory OK 1. Memory problem; b. Long-term memory OK—seems/appears to recall long past 0. Memory OK 1. Memory problem
3.	MEMORY/ RECALL ABILITY	*(Check all that resident normally able to recall during last 7 days)* Current season (a.) That he/she is in a nursing home; Location of own room (b.) *NONE OF ABOVE* are recalled; Staff names/faces (c.)
4.	COGNITIVE SKILLS FOR DAILY DECISION-MAKING	*(Made decisions regarding tasks of daily life)* 0. Independent—decisions consistent/reasonable 1. Modified Independence—some difficulty in new situations only 2. Moderately Impaired—decisions poor; cues/supervision required 3. Severely Impaired—never/rarely made decisions
5.	INDICATORS OF DELIRIUM—PERIODIC DISORDERED THINKING/ AWARENESS	*(Check if condition over last 7 days appears different from usual functioning)* Less alert, easily distracted (a.); Changing awareness of environment (b.); Episodes of incoherent speech (c.); Periods of motor restlessness or lethargy (d.); Cognitive ability varies over course of day (e.); *NONE OF ABOVE* (f.)
6.	CHANGE IN COGNITIVE STATUS	Change in resident's cognitive status, skills, or abilities in last 90 days 0. No change 1. Improved 2. Deteriorated

SECTION C. COMMUNICATION/HEARING PATTERNS

1.	HEARING	*(With hearing appliance, if used)* 0. Hears adequately—normal talk, TV, phone 1. Minimal difficulty when not in quiet setting 2. Hears in special situations only—speaker has to adjust tonal quality and speak distinctly 3. Highly impaired/absence of useful hearing
2.	COMMUNICATION DEVICES/ TECHNIQUES	*(Check all that apply during last 7 days)* Hearing aid, present and used (a.); Hearing aid, present and not used (b.); Other receptive comm. techniques used (e.g., lip read) (c.); *NONE OF ABOVE* (d.)
3.	MODES OF EXPRESSION	*(Check all used by resident to make needs known)* Speech (a.) Signs/gestures/sounds; Writing messages to express or clarify needs (b.) Communication board (c.); Other (d.); *NONE OF ABOVE* (e.)
4.	MAKING SELF UNDERSTOOD	*(Express information content—however able)* 0. Understood 1. Usually Understood—difficulty finding words or finishing thoughts 2. Sometimes Understood—ability is limited to making concrete requests 3. Rarely/Never Understood
5.	ABILITY TO UNDERSTAND OTHERS	*(Understanding verbal information content—however able)* 0. Understands 1. Usually Understands—may miss some part/intent of message 2. Sometimes Understands—responds adequately to simple, direct communication 3. Rarely/Never Understands
6.	CHANGE IN COMMUNICATION/ HEARING	Resident's ability to express, understand or hear information has changed over last 90 days 0. No change 1. Improved 2. Deteriorated

SECTION D. VISION PATTERNS

1.	VISION	*(Ability to see in adequate light and with glasses if used)* 0. Adequate—sees fine detail, including regular print in newspapers/books 1. Impaired—sees large print, but not regular print in newspapers/books 2. Highly Impaired—limited vision; not able to see newspaper headlines; appears to follow objects with eyes 3. Severely Impaired—no vision or appears to see only light, colors, or shapes
2.	VISUAL LIMITATIONS/ DIFFICULTIES	Side vision problems—decreased peripheral vision (e.g., leaves food on one side of tray, difficulty traveling, bumps into people and objects, misjudges placement of chair when seating self) (a.); Experiences any of following: sees halos or rings around lights, sees flashes of light, sees "curtains" over eyes (b.); *NONE OF ABOVE* (c.)
3.	VISUAL APPLIANCES	Glasses; contact lenses; lens implant; magnifying glass 0. No 1. Yes

■ = Code the appropriate response ☐ = Check all the responses that apply

December 19, 1990

SECTION E. PHYSICAL FUNCTIONING AND STRUCTURAL PROBLEMS

1. ADL SELF-PERFORMANCE — *(Code for resident's PERFORMANCE OVER ALL SHIFTS during last 7 days—Not including setup)*

0. *INDEPENDENT* — No help or oversight — OR — Help/oversight provided only 1 or 2 times during last 7 days
1. *SUPERVISION* — Oversight, encouragement or cueing provided 3+ times during last 7 days — OR — Supervision plus physical assistance provided only 1 or 2 times during last 7 days
2. *LIMITED ASSISTANCE* — Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times — OR — More help provided only 1 or 2 times during last 7 days
3. *EXTENSIVE ASSISTANCE* — While resident performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times:
   — Weight-bearing support
   — Full staff performance during part (but not all) of last 7 days
4. *TOTAL DEPENDENCE* — Full staff performance of activity during entire 7 days

2. ADL SUPPORT PROVIDED — *(Code for MOST SUPPORT PROVIDED OVER ALL SHIFTS during last 7 days; code regardless of resident's self-performance classification)*

0. No setup or physical help from staff
1. Setup help only
2. One-person physical assist
3. Two+ persons physical assist

			(1) SELF-PERF.	(2) SUPPORT
a.	BED MOBILITY	How resident moves to and from lying position, turns side to side, and positions body while in bed		
b.	TRANSFER	How resident moves between surfaces—to/from: bed, chair, wheelchair, standing position (EXCLUDE to/from bath/toilet)		
c.	LOCOMOTION	How resident moves between locations in his/her room and adjacent corridor on same floor (IF in wheelchair, self-sufficiency once in chair)		
d.	DRESSING	How resident puts on, fastens, and takes off all items of street clothing, including donning/removing prostheses		
e.	EATING	How resident eats and drinks (regardless of staff)		
f.	TOILET USE	How resident uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, cleanses, changes pad, manages ostomy or catheter, adjusts clothes		
g.	PERSONAL HYGIENE	How resident maintains personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum (EXCLUDE baths and showers)		
3.	BATHING	How resident takes full-body bath/shower, sponge bath, and transfers in/out of tub/shower (EXCLUDE washing of back and hair. *Code for most dependent in self-performance and support.* Bathing Self-Performance codes appear below)	a.	b.

0. Independent—No help provided
1. Supervision—Oversight help only
2. Physical help limited to transfer only
3. Physical help in part of bathing activity
4. Total dependence

4. BODY CONTROL PROBLEMS — *(Check all that apply during last 7 days)*

- Balance—partial or total loss of ability to balance self while standing — a.
- Bedfast all or most of the time — b.
- Contracture to arms, legs, shoulders, or hands — c.
- Hemiplegia/hemiparesis — d.
- Quadriplegia — e.
- Arm—partial or total loss of voluntary movement — f.
- Hand—lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid) — g.
- Leg—partial or total loss of voluntary movement — h.
- Leg—unsteady gait — i.
- Trunk—partial or total loss of ability to position, balance, or turn body — j.
- Amputation — k.
- *NONE OF ABOVE* — l.

5. MOBILITY APPLIANCES/DEVICES — *(Check all that apply during last 7 days)*

- Cane/walker — a.
- Brace/prosthesis — b.
- Wheeled self — c.
- Other person wheeled — d.
- Lifted (manually/mechanically) — e.
- *NONE OF ABOVE* — f.

6.	TASK SEGMENTATION	Resident requires that some or all of ADL activities be broken into a series of subtasks so that resident can perform them 0. No 1. Yes	
7.	ADL FUNCTIONAL REHABILITATION POTENTIAL	Resident believes he/she capable of increased independence in at least some ADLs	a.
		Direct care staff believe resident capable of increased independence in at least some ADLs	b.
		Resident able to perform tasks/activity but is very slow	c.
		Major difference in ADL Self-Performance or ADL Support in mornings and evenings (at least a one category change in Self-Performance or Support in any ADL)	d.
		NONE OF ABOVE	e.
8.	CHANGE IN ADL FUNCTION	Change in ADL self-performance in last 90 days 0. No change 1. Improved 2. Deteriorated	

SECTION F. CONTINENCE IN LAST 14 DAYS

1. CONTINENCE SELF-CONTROL *(Code for resident's performance over all shifts)*

0. *CONTINENT* — Complete control
1. *USUALLY CONTINENT* — BLADDER, incontinent episodes once a week or less; BOWEL, less than weekly
2. *OCCASIONALLY INCONTINENT* — BLADDER, 2+ times a week but not daily; BOWEL, once a week
3. *FREQUENTLY INCONTINENT* — BLADDER, tended to be incontinent daily, but some control present (e.g., on day shift); BOWEL, 2-3 times a week
4. *INCONTINENT* — Had inadequate control; BLADDER, multiple daily episodes; BOWEL, all (or almost all) of the time

a.	BOWEL CONTINENCE	Control of bowel movement, with appliance or bowel continence programs, if employed	
b.	BLADDER CONTINENCE	Control of urinary bladder function (if dribbles, volume insufficient to soak through underpants), with appliances (e.g., foley) or continence programs, if employed	
2.	INCONTINENCE RELATED TESTING	*(Skip if resident's bladder continence code equals 0 or 1 AND no catheter is used)* Resident has been tested for a urinary tract infection	a.
		Resident has been checked for presence of a fecal impaction, or there is adequate bowel elimination	b.
		NONE OF ABOVE	c.
3.	APPLIANCES AND PROGRAMS	Any scheduled toileting plan	a.
		External (condom) catheter	b.
		Indwelling catheter	c.
		Intermittent catheter	d.
		Did not use toilet room/commode/urinal	e.
		Pads/briefs used	f.
		Enemas/irrigation	g.
		Ostomy	h.
		NONE OF ABOVE	i.
4.	CHANGE IN URINARY CONTINENCE	Change in urinary continence/appliances or programs in last 90 days 0. No change 1. Improved 2. Deteriorated	

IF RESIDENT IS COMATOSE, SKIP TO SECTION J

SECTION G. PSYCHOSOCIAL WELL-BEING

1.	SENSE OF INITIATIVE/INVOLVEMENT	At ease interacting with others	a.
		At ease doing planned or structured activities	b.
		At ease doing self-initiated activities	c.
		Establishes own goals	d.
		Pursues involvement in life of facility (e.g., makes/keeps friends; involved in group activities; responds positively to new activities; assists at religious services)	e.
		Accepts invitations into most group activities	f.
		NONE OF ABOVE	g.
2.	UNSETTLED RELATIONSHIPS	Covert/open conflict with or repeated criticism of staff	a.
		Unhappy with roommate	b.
		Unhappy with residents other than roommate	c.
		Openly expresses conflict/anger with family or friends	d.
		Absence of personal contact with family/friends	e.
		Recent loss of close family member/friend	f.
		NONE OF ABOVE	g.
3.	PAST ROLES	Strong identification with past roles and life status	a.
		Expresses sadness/anger/empty feeling over lost roles/status	b.
		NONE OF ABOVE	c.

SECTION H. MOOD AND BEHAVIOR PATTERNS

1.	SAD OR ANXIOUS MOOD	*(Check all that apply during last 30 days)* VERBAL EXPRESSIONS of DISTRESS by resident (sadness, sense that nothing matters, hopelessness, worthlessness, unrealistic fears, vocal expressions of anxiety or grief)	a.
		DEMONSTRATED (OBSERVABLE) SIGNS of mental DISTRESS — Tearfulness, emotional grooming, sighing, breathlessness	b.
		— Motor agitation such as pacing, handwringing or picking	c.
		— Failure to eat or take medications, withdrawal from self-care or leisure activities	d.
		— Pervasive concern with health	e.
		— Recurrent thoughts of death—e.g., believes he/she about to die, have a heart attack	f.
		— Suicidal thoughts/actions	g.
		NONE OF ABOVE	h.
2.	MOOD PERSISTENCE	Sad or anxious mood intrudes on daily life over last 7 days — not easily altered, doesn't "cheer up" 0. No 1. Yes	
3.	PROBLEM BEHAVIOR	*(Code for behavior in last 7 days)* 0. Behavior not exhibited in last 7 days 1. Behavior of this type occurred less than daily 2. Behavior of this type occurred daily or more frequently	
		WANDERING (moved with no rational purpose, seemingly oblivious to needs or safety)	a.
		VERBALLY ABUSIVE (others were threatened, screamed at, cursed at)	b.
		PHYSICALLY ABUSIVE (others were hit, shoved, scratched, sexually abused)	c.
		SOCIALLY INAPPROPRIATE/DISRUPTIVE BEHAVIOR (made disruptive sounds, noisy, screams, self-abusive acts, sexual behavior or disrobing in public, smeared/threw food/feces, hoarding, rummaged through others' belongings)	d.
4.	RESIDENT RESISTS CARE	*(Check all types of resistance that occurred in the last 7 days)* Resisted taking medications/injection	a.
		Resisted ADL assistance	b.
		NONE OF ABOVE	c.
5.	BEHAVIOR MANAGEMENT PROGRAM	Behavior problem has been addressed by clinically developed behavior management program. (Note: Do not include programs that involve only physical restraints or psychotropic medications in this category) 0. No behavior problem 1. Yes, addressed 2. No, not addressed	
6.	CHANGE IN MOOD	Change in mood in last 90 days 0. No change 1. Improved 2. Deteriorated	
7.	CHANGE IN PROBLEM BEHAVIOR	Change in problem behavioral signs in last 90 days 0. No change 1. Improved 2. Deteriorated	

4.	GENERAL ACTIVITY PREFERENCES (adapted to resident's current abilities)	*(Check all PREFERENCES whether or not activity is currently available to resident)*			
		Cards/other games	a.	Spiritual/religious activities	f.
		Crafts/arts	b.	Trips/shopping	g.
		Exercise/sports	c.	Walking/wheeling outdoors	h.
		Music	d.	Watch TV	i.
		Read/write	e.	*NONE OF ABOVE*	j.
5.	PREFERS MORE OR DIFFERENT ACTIVITIES	Resident expresses/indicates preference for other activities/choices 0. No 1. Yes			

SECTION J. DISEASE DIAGNOSES

Check only those diseases present that have a relationship to current ADL status, cognitive status, behavior status, medical treatments, or risk of death. (Do not list old/inactive diagnoses.)

1.	DISEASES	*(If none apply, CHECK the NONE OF ABOVE box)*			
		HEART/CIRCULATION		PSYCHIATRIC/MOOD	
		Arteriosclerotic heart disease (ASHD)	a.	Anxiety disorder	p.
		Cardiac dysrhythmias	b.	Depression	q.
		Congestive heart failure	c.	Manic depressive (bipolar disease)	r.
		Hypertension	d.	SENSORY	
		Hypotension	e.	Cataracts	s.
		Peripheral vascular disease	f.	Glaucoma	t.
		Other cardiovascular disease	g.	OTHER	
		NEUROLOGICAL		Allergies	u.
		Alzheimer's	h.	Anemia	v.
		Dementia other than Alzheimer's	i.	Arthritis	w.
		Aphasia	j.	Cancer	x.
		Cerebrovascular accident (stroke)	k.	Diabetes mellitus	y.
		Multiple sclerosis	l.	Explicit terminal prognosis	z.
		Parkinson's disease	m.	Hypothyroidism	aa.
		PULMONARY		Osteoporosis	bb.
		Emphysema/Asthma/COPD	n.	Seizure disorder	cc.
		Pneumonia	o.	Septicemia	dd.
				Urinary tract infection—in last 30 days	ee.
				NONE OF ABOVE	ff.
2.	OTHER CURRENT DIAGNOSES AND ICD-9-CM CODES	a. _____ b. _____ c. _____ d. _____ e. _____ f. _____			

SECTION I. ACTIVITY PURSUIT PATTERNS

1.	TIME AWAKE	*(Check appropriate time periods over last 7 days)* Resident awake all or most of time (i.e., naps no more than one hour per time period) in the:			
		Morning	a.	Evening	c.
		Afternoon	b.	*NONE OF ABOVE*	d.
2.	AVERAGE TIME INVOLVED IN ACTIVITIES	0. Most—more than 2/3 of time 2. Little—less than 1/3 of time 1. Some—1/3 to 2/3 of time 3. None			
3.	PREFERRED ACTIVITY SETTINGS	*(Check all settings in which activities are preferred)*			
		Own room	a.	Outside facility	d.
		Day/activity room	b.	*NONE OF ABOVE*	e.
		Inside NH/unit	c.		

SECTION K. HEALTH CONDITIONS

1.	PROBLEM CONDITIONS	*(Check all problems that are present in last 7 days unless other time frame indicated)*			
		Constipation	a.	Pain—resident complains or shows evidence of pain daily or almost daily	j.
		Diarrhea	b.	Recurrent lung aspirations in last 90 days	k.
		Dizziness/vertigo	c.	Shortness of breath	l.
		Edema	d.	Syncope (fainting)	m.
		Facial impaction	e.	Vomiting	n.
		Fever	f.	*NONE OF ABOVE*	o.
		Hallucinations/delusions	g.		
		Internal bleeding	h.		
		Joint pain	i.		
2.	ACCIDENTS	Fell in past 30 days	a.	Hip fracture in last 180 days	c.
		Fell in past 31-180 days	b.	*NONE OF ABOVE*	d.

J.	STABILITY OF CONDITIONS	Conditions/diseases make resident's cognitive, ADL, or behavior status unstable—fluctuating, precarious, or deteriorating	a.
		Resident experiencing an acute episode or a flare-up of a recurrent/chronic problem	b.
		NONE OF ABOVE	c.

SECTION L. ORAL/NUTRITIONAL STATUS

1.	ORAL PROBLEMS	Chewing problem	a.
		Swallowing problem	b.
		Mouth pain	c.
		NONE OF ABOVE	d.
2.	HEIGHT AND WEIGHT	*Record height (a.) in inches and weight (b.) in pounds. Weight based on most recent status in last 30 days; measure weight consistently in accord with standard facility practice—e.g., in a.m. after voiding, before meal, with shoes off, and in nightclothes.* HT (in.) a. WT (lb.) b.	
		c. Weight loss (i.e., 5%+ in last 30 days; or 10%+ in last 180 days) 0. No 1. Yes	c.
3.	NUTRITIONAL PROBLEMS	Complains about the taste of many foods a.	
		Insufficient fluid; dehydrated b.	
		Did NOT consume all/almost all liquids provided during last 3 days c.	
		Regular complaint of hunger	d.
		Leaves 25%+ food uneaten at most meals	e.
		NONE OF ABOVE	f.
4.	NUTRITIONAL APPROACHES	Parenteral/IV a.	
		Feeding tube b.	
		Mechanically altered diet c.	
		Syringe (oral feeding) d.	
		Therapeutic diet e.	
		Dietary supplement between meals	f.
		Plate guard, stabilized built-up utensil, etc.	g.
		NONE OF ABOVE	h.

SECTION M. ORAL/DENTAL STATUS

1.	ORAL STATUS AND DISEASE PREVENTION	Debris (soft, easily movable substances) present in mouth prior to going to bed at night	a.
		Has dentures or removable bridge	b.
		Some/all natural teeth lost—does not have or does not use dentures (or partial plates)	c.
		Broken, loose, or carious teeth	d.
		Inflamed gums (gingivis); swollen or bleeding gums; oral abscesses, ulcers or rashes	e.
		Daily cleaning of teeth/dentures	f.
		NONE OF ABOVE	g.

SECTION N. SKIN CONDITION

1.	STASIS ULCER	(open lesion caused by poor venous circulation to lower extremities) 0. No 1. Yes	
2.	PRESSURE ULCERS	*(Code for highest stage of pressure ulcer)* 0. No pressure ulcers 1. Stage 1 A persistent area of skin redness (without a break in the skin) that does not disappear when pressure is relieved 2. Stage 2 A partial thickness loss of skin layers that presents clinically as an abrasion, blister, or shallow crater 3. Stage 3 A full thickness of skin is lost, exposing the subcutaneous tissues—presents as a deep crater with or without undermining adjacent tissue 4. Stage 4 A full thickness of skin and subcutaneous tissue is lost, exposing muscle and/or bone	
3.	HISTORY OF RESOLVED/ CURED PRESSURE ULCERS	Resident has had a pressure ulcer that was resolved/cured in last 90 days 0. No 1. Yes	

4.	SKIN PROBLEMS/ CARE	Open lesions other than stasis or pressure ulcers (e.g., cuts)	a.
		Skin desensitized to pain, pressure, discomfort	b.
		Protective/preventive skin care	c.
		Turning/repositioning program	d.
		Pressure relieving beds, bed/chair pads (e.g., egg crate pads)	e.
		Wound care/treatment (e.g., pressure ulcer care, surgical wound)	f.
		Other skin care/treatment	g.
		NONE OF ABOVE	h.

SECTION O. MEDICATION USE

1.	NUMBER OF MEDICATIONS	*(Record the number of different medications used in the last 7 days; enter "0" if none used)*	
2.	NEW MEDICATIONS	Resident has received new medications during the last 90 days 0. No 1. Yes	
3.	INJECTIONS	*(Record the number of days injections of any type received during the last 7 days)*	
4.	DAYS RECEIVED THE FOLLOWING MEDICATION	*(Record the number of days during last 7 days, enter "0" if not used; enter "1" if long-acting meds. used less than weekly)* Antipsychotics	a.
		Antianxiety/hypnotics	b.
		Antidepressants	c.
5.	PREVIOUS MEDICATION RESULTS	*(SKIP this question if resident currently receiving antipsychotics, antidepressants, or antianxiety/hypnotics—otherwise code correct response for last 90 days)* Resident has previously received psychoactive medications for a mood or behavior problem, and these medications were effective (without undue adverse consequences) 0. No, drugs not used 1. Drugs were effective 2. Drugs were not effective 3. Drug effectiveness unknown	

SECTION P. SPECIAL TREATMENTS AND PROCEDURES

1.	SPECIAL TREATMENTS AND PROCEDURES	SPECIAL CARE—*Check treatments received during the last 14 days*	
		Chemotherapy a.	IV meds i.
		Radiation b.	Transfusions j.
		Dialysis c.	O_2 k.
		Suctioning d.	Other _____ l.
		Trach. care e.	*NONE OF ABOVE* l.
		THERAPIES—*Record the number of days each of the following therapies was administered (for at least 10 minutes during a day) in the last 7 days:*	
		Speech—language pathology and audiology services	a.
		Occupational therapy	b.
		Physical therapy	c.
		Psychological therapy (any licensed professional)	d.
		Respiratory therapy	e.
2.	ABNORMAL LAB VALUES	Has the resident had any abnormal lab values during the last 90-days? 0. No 1. Yes 2. No tests performed	
3.	DEVICES AND RESTRAINTS	*Use the following codes for last 7 days:* 0. Not used 1. Used less than daily 2. Used daily	
		Bed rails	a.
		Trunk restraint	b.
		Limb restraint	c.
		Chair prevents rising	d.

BILLING CODE 4120-03-C

(2) The Resident Assessment Protocols (RAPs) and triggers that are established by HCFA. HCFA issues the RAPs, and any changes, in the State Operations Manual (HCFA Pub. 7). The RAPs are available from HCFA upon request.

(3) The requirements for use of the RAI that appear at § 483.20.

(c) To receive Secretarial approval, a State's alternate instrument must contain—

(1) The MDS at paragraph (b)(1) of this section. All data elements and corresponding coding categories specified in the MDS must be contained in the State's instrument. The State may not alter the MDS definitions or the coding categories used with each MDS element or elements within a section. If proposing to reorder major sections of the MDS, the State must provide a conversion table between its instrument and the MDS, and the data supplies to HCFA from the MDS must be ordered in the same manner as designated in paragraph (b)(1) of this section. The State may include in its RAI data elements additional to those in the MDS to meet unique operational needs provided there is no conflict with elements included in the MDS.

(2) Resident Assessment Protocols (RAPs). An alternate RAI must include structured frameworks for organizing MDS elements and additional clinically relevant information about an individual that contributes to care planning. The State is not required to use the term "RAP" in an alternate instrument, and a State's protocols may include all, some, or none of the same RAPs contained in HCFA's RAI.

(i) Crosswalk. If the State creates alternative RAPs through combining care areas, it must provide a cross-walk chart from its RAPs to the care areas listed below in paragraph (b)(2)(iv) of this section.

(ii) Triggers. Each RAP must include assessment triggers, based on MDS elements or other information requirements, that screen which residents are subject to additional assessment. If States select alternative triggers or information requirements, they must provide supporting documentation for their decisions. This documentation may take the form of citations from professional medical journals and reports, results of field testing, or the consensus of experts that the State uses to assist in designing these RAPs.

(iii) Format. States must also specify a standardized format that long term care facilities will use to document information derived from RAPs about the nature of problems, complications and risk factors, the need for referral to appropriate health professionals, and the reasons for deciding to proceed or not to proceed with care planning specific to the triggered problems. There must be provision for identification of the location of the assessment results and for certification of completion and accuracy.

(iv) Frameworks for care areas. An alternate RAI must provide frameworks for comprehensive assessment in the following care areas:

(A) Cognitive loss/dementia.
(B) Visual function.
(C) Communication.
(D) Activities of daily living functional potential.
(E) Rehabilitation potential (In the RAPs designated by HCFA, the rehabilitation RAP is combined with the activities of daily living RAP.)
(F) Urinary incontinence and indwelling catheter.
(G) Psychosocial well-being. (In the RAPs designated by HCFA, there are three distinct RAPs that bear on psychosocial functioning: mood, behavior, and delirium.)
(H) Activities.
(I) Falls.
(J) Nutritional status.
(K) Feeding tubes.
(L) Dehydration/fluid maintenance.
(M) Dental care.
(N) Pressure ulcers.
(O) Psychotropic drug use.
(P) Physical restraints.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance, and No. 13.714, Medical Assistance Program)

Dated: March 14, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: August 14, 1991.

Louis W. Sullivan.

Secretary.

Editorial Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Resident Utilization System

Definitions
A. Utilization Guidelines
B. Minimum Data Set and Common Definitions
C. Resident Assessment Protocols
D. Criteria for Evaluation of Alternative Instruments

Resident Assessment System

Definitions

- *Minimum Data Set (MDS)*—minimum set of screening and assessment elements, including common definitions and coding categories, needed to assess comprehensively an individual nursing home resident. The items in the MDS standardize communication within facilities, between other facilities, and between facilities and outside agencies about resident problems and conditions.
- *Common Definitions*—standardized explanations of each element specified in the MDS.
- *Coding Categories*—the levels of measurement for each element included in the MDS.
- *Triggers*—levels of measurement (coding categories) of MDS elements that serve to identify residents who may require further evaluation using resident assessment protocols designated by the State.
- *Resident Assessment Protocols (RAPs)*—structured frameworks for organizing MDS elements, and additional clinically relevant information about an individual that contribute to care planning. (The State is not required to use the term "resident assessment protocol" in defining structured frameworks.)
- *Resident Assessment Instrument*—a standardized system comprised of the Minimum Data Set and Resident Assessment Protocol, including triggers, that result in a comprehensive, accurate, standardized, reproducible assessment of each long term care facility resident's functional capabilities.
- *Utilization Guidelines*—Instructions concerning when and how to use the resident assessment instrument.

Resident Assessment Instrument Specified by HCFA

HCFA is responsible for specifying the minimum data set and its common definitions, utilization guidelines, and for designating one or more resident assessment instruments. A State may specify HCFA's resident assessment instrument for use by long term care facilities in the State for conducting assessments.

HCFA's proposed resident assessment instrument follows. The resident assessment instrument is comprised of:

- The utilization guidelines (attachment A);
- The MDS of core elements and common definitions (attachment B); and
- And the resident assessment protocols, triggers and instructions for use (attachment C).

State Specified Resident Assessment Instrument

States may specify a resident assessment instrument designated by HCFA or specify its own instrument

provided it includes the utilization guidelines (attachment A), the minimum data set of core elements and common definitions (attachment B), and is approved by HCFA. The proposed criteria that HCFA will use to evaluate alternate assessment instruments is in attachment D.

Attachment A—Utilization Guidelines

Utilization Guidelines for Resident Assessment Instruments

A. General Guidelines

Use the resident assessment instrument for conducting comprehensive assessments of your residents. The resident assessment instrument provides information on the resident's condition, helps develop a plan of care and is a means by which a long term care facility can track changes in resident status.

Assess all residents in long term care facilities that participate in Medicare or Medicaid regardless of payor source.

Adhere to the MDS definitions specified within the sections of the MDS and detailed in the definition supplement. In addition to direct observation and communication with the resident, use a variety of information sources to complete the assessment. These information sources may include, but are not limited to:

- Discussion of resident performance levels with nurse aides and assistants on all shifts;
- Discussion of the resident's status with an attending physician;
- Discussion of the resident's status with family members;
- Discussion of the resident's status with appropriate licensed health professionals who have observed, evaluated, and/or treated the resident; and/or
- The resident's record, including the admission record, medical plan of care, resident plan of care, documentation of services provided to the resident, reports of any diagnostic testing, consultation, or other services, medications administration record, copies of any transfer data provided to another health care facility, and summaries of previous discharges.

A registered nurse is responsible for conducting or coordinating each resident assessment. This person may:

- Use instructional material prepared by HCFA to train other facility staff to gather MDS information and to inform them of the circumstances requiring completion of the MDS;
- Delegate responsibility for completing sections of the MDS to staff who have clinical knowledge about the resident, such as staff nurses, social workers, activities specialists, physical, occupational, or speech therapists, attending physicians, dietitians, and pharmacists;
- Establish facility policies and procedures to assure that key clinical personnel on all shifts are knowledgeable about the information found in the resident's most current MDS and report changes in resident's status that may affect the accuracy of this information; or
- Establish facility policies and procedures that instruct staff how to integrate MDS information with existing facility resident assessment and care planning practices.

Have the registered nurse coordinating the assessment sign and certify the completion of the assessment. Each individual who completes a portion of the assessment must certify the accuracy of that portion of the assessment. An individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement is subject to civil money penalties. Clinical disagreement does not constitute a material and false statement.

Place *all* completed resident assessments in the resident's record. All resident assessments completed within the last two years must be easily retrievable from the record if requested by representatives of State or Federal survey and certification agencies.

B. Frequency of Assessment

Federal requirements mandate that long term care facilities assess residents using the resident assessment instrument specified by the State:

- Within 14 days of admission to the facility;
- Promptly after a significant change in the resident's physical or mental condition; and
- In no case, less often than once every 12 months.

The facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

Specific utilization guidelines for conducting these assessments and quarterly reviews are as follows:

At Admission

Conduct an assessment within 14 days, if this is the resident's first stay or return stay (not a readmission) in the facility. A readmission is a return to the facility following a temporary absence for hospitalization or for therapeutic leave. Do not conduct an assessment if the resident is readmitted unless the resident has experienced a significant change in status. If a significant change in status has occurred, apply the procedures for conducting an assessment after a significant change in status (see below).

Do not complete Section I. *Identification Information* of the MDS if this information has previously been collected and posted to the resident's record.

To initiate care planning, collect as much information as possible for MDS elements and any additional data elements found in an approved State resident assessment instrument within 14 days post-admission.

If any of the following three circumstances occurs, you may amend MDS information collected during the 14 day post-admission period up until the 21st day after admission:

- Staff have no way to complete an item by the fourteenth day because information to complete the assessment is not available. For example, staff wish to interview a family member of a severely cognitively impaired resident because the family member is the most knowledgeable person about the resident's prior customary routines, accident history, recent changes in cognitive and functional status, and activity preferences. However, the resident is admitted on a Monday and the family member cannot visit the facility until sixteen days after admission.
- Further observation and interaction with the resident reveals the need to alter the initial assessments in any of the following MDS domains: cognitive patterns; communication patterns; potential for self-care improvement/rehabilitation; psychosocial well-being; mood and behavior patterns; and activity pursuit patterns. If any of the core items in these domains is altered by the 21st day, the assessor shall show these changes on the admission assessment, and shall initial and date such amendments.
- Upon admission, the resident's condition is unstable because he/she is experiencing an acute illness or flare-up of a chronic problem and the acute illness or chronic problem is controlled by the 21st day. If any of the MDS core items is altered by the 21st day, the assessor should show the change on the admission assessment, and should initial and date the amendments. If the acute episode or chronic problem has not stabilized by the 21st day after admission, and the resident's physical, mental, or psychosocial status has declined, the facility must complete a new MDS (see "Significant Change in Status").

At a Significant Change in a Resident's Status

A "significant change" means any of the following:

- Deterioration in two or more activities of daily living, communication, and/or cognitive abilities that appears permanent. For example, simultaneous functional *and* cognitive decline is often experienced by residents with chronic, degenerative illness such as Alzheimer's Disease or pronounced functional changes following a stroke.
- Loss of ability to freely ambulate or to use hands to grasp small objects to feed or groom oneself, such as, spoon, toothbrush, or comb. Such losses must be permanent and not attributable to identifiable, reversible causes such as drug toxicity from introducing a new medication, or an episode of acute illness such as influenza.
- Deterioration in behavior, mood, and/or relationships where staff conclude that these changes in the resident's psychosocial status are not likely to improve without staff intervention.
- Deterioration in a resident's health status, where this change: places the resident's life in danger, e.g., stroke, heart condition, or diagnosis of metastatic cancer; is associated with a serious clinical complication, e.g., initial development of a stage III or stage IV pressure ulcer, the initial onset of nonrelieved delirium, or recurrent loss of consciousness; or is associated with an initial new diagnosis of a condition that is likely to affect the resident's physical, mental, or psychosocial well-being over a prolonged period of time, e.g., Alzheimer's Disease or diabetes.
- A serious clinical complication.
- A new diagnosis of a condition that is likely to affect the resident's physical, mental, or psychosocial well-being over a prolonged period of time.
- Onset of a significant weight loss (5% in last 30 days or 10% in last 180 days).
- A marked and sudden improvement in the resident's status, for example, a comatose resident regaining consciousness.

Document in progress notes the initial identification of a significant change in status.

Once you determine that the resident's change in status is likely to be permanent, complete a full comprehensive assessment within 14 days of this determination.

Do *not* assess the resident if declines in a resident's physical, mental, or psychosocial well-being are attributable to:

- Discrete and easily reversible cause(s) documented in the resident's record and for which facility staff can initiate corrective action. For example, an anticipated side effect of introducing a psychotropic medication while attempting to establish a clinically effective dose level.
- Short-term acute illness such as a mild fever secondary to a cold from which facility staff expect full recovery of the resident's pre-morbid functional abilities and health status.
- Well established, predictive cyclical patterns of clinical signs and symptoms associated with previously diagnosed conditions. For example, depressive symptoms in a resident previously diagnosed with bipolar disease.

At Least Annually

Each resident must have a full, comprehensive assessment no later than 12 months following the last full assessment.

Quarterly Reviews

To track resident status between assessments, and to ensure monitoring critical indicators of the gradual onset of significant declines in resident status, examine the resident and review the following MDS core elements for all residents quarterly. Document the results of the assessment and revise the plan of care if indicated:

- Section B: Cognitive Patterns

—Item 2 (Memory); and
—Item 4 (Cognitive Skills for Daily Decisionmaking).

- Section C: Communication/Hearing Patterns

—Item 4 (Ability to Make Self Understood); and
—Item 5 (Ability to Understand Others).

- Section E: Physical Functioning and Structural Problems

—Items 1b-f (ADL Self-Performance); and
—Item 3a (Bathing).

- Section F: Continence in Last 14 Days

—Item 1 (Continence Self-Control Categories).

- Section H: Mood and Behavior Patterns

—Item 2 (Mood Persistence); and
—Item 3 (Problem Behavior).

- Section J: Disease Diagnoses

—Note only those diseases diagnosed in the last 90 days that have a relationship to current ADL status, behavior status, medical treatments, or risk of death.

- Section L: Oral/Nutritional Status

—Item 2b (Weight loss (i.e., 5% on last 30 days; or 10% in last 180 days)).

- Section O: Medication Use

—Item 4 (Days Received The Following Medication).

- Section P: Special Treatment and Procedures

—Item 3b (Devices and Restraints—Trunk restraint); and
—Item 3d (Devices and Restraints—Chair prevents rising).

Attachment B—Minimum Data Set and Common Definitions

Minimum Data Set

In addition to the form for background information, there are 16 sections that make up the MDS, lettered from A to P. Each section contains one or more items labelled sequentially with corresponding definitions. For instance, the third item in section B is labelled "B3", the second item in section P is "P2".

The MDS has been formatted to assist the assessor determine the appropriate type of response for each item. The appropriate response for unshaded answer boxes is a check mark [√]. Items with a lightly shaded box require a numeric response, either a number, such as height or weight, or a preassigned code. Darkly shaded boxes do not require an answer and should be left blank. Complete all items unless the instructions tell you to "skip" over the next item (or several items) and go on to another. In cases where information is unavailable despite exhaustive probing, enter "NA" for "not available" or the approved "no information available" code, a circled dash.

The Minimum Data Set of common elements follows. Supplemental coding instructions and common definitions follow the MDS.

BILLING CODE 4120-03-M

MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)
BACKGROUND INFORMATION AT INTAKE/ADMISSION

I. IDENTIFICATION INFORMATION

1.	RESIDENT NAME	(First) (Middle Initial) (Last)
2.	DATE OF CURRENT ADMISSION	Month Day Year
3.	MEDICARE NO. (SOC. SEC. or Comparable No. if no Medicare No.)	
4.	FACILITY PROVIDER NO.	Federal No.
5.	GENDER	1. Male 2. Female
6.	RACE/ ETHNICITY	1. American Indian/Alaska Native 2. Asian/Pacific Islander 3. Black, not of Hispanic origin 4. Hispanic 5. White, not of Hispanic origin
7.	BIRTHDATE	Month Day Year
8.	LIFETIME OCCUPATION	
9.	PRIMARY LANGUAGE	Resident's primary language is a language other than English 0. No 1. Yes _____ (Specify)
10.	RESIDENTIAL HISTORY PAST 5 YEARS	(Check all settings resident lived in during 5 years prior to admission) Prior stay at this nursing home a. Other nursing home/residential facility b. MH/psychiatric setting c. MR/DD setting d. NONE OF ABOVE e.
11.	MENTAL HEALTH HISTORY	Does resident's RECORD indicate any history of mental retardation, mental illness, or any other mental health problem? 0. No 1. Yes
12.	CONDITIONS RELATED TO MR/DD STATUS	(Check all conditions that are related to MR/DD status, that were manifested before age 22, and are likely to continue indefinitely) Not applicable—no MR/DD (Skip to Item 13) a. MR/DD with Organic Condition Cerebral palsy b. Down's syndrome c. Autism d. Epilepsy e. Other organic condition related to MR/DD f. MR/DD with no organic condition g. Unknown h.
13.	MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
14.	ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
15.	LIVED ALONE	0. No 1. Yes 2. In other facility
16.	ADMISSION INFORMATION AMENDED	(Check all that apply) Accurate information unavailable earlier a. Observation revealed additional information b. Resident unstable at admission c.

II. BACKGROUND INFORMATION AT RETURN/READMISSION

1.	DATE OF CURRENT READMISSION	Month Day Year
2.	MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
3.	ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
4.	LIVED ALONE	0. No 1. Yes 2. In other facility

III. CUSTOMARY ROUTINE (ONLY AT FIRST ADMISSION)

1. CUSTOMARY ROUTINE (Near prior to first admission to a nursing home)

(Check all that apply. If all information UNKNOWN, check last box only.)

CYCLE OF DAILY EVENTS	
Stays up late at night (e.g., after 9 pm)	a.
Naps regularly during day (at least 1 hour)	b.
Goes out 1+ days a week	c.
Stays busy with hobbies, reading, or fixed daily routine	d.
Spends most time alone or watching TV	e.
Moves independently indoors (with appliances, if used)	f.
NONE OF ABOVE	g.
EATING PATTERNS	
Distinct food preferences	h.
Eats between meals all or most days	i.
Use of alcoholic beverage(s) at least weekly	j.
NONE OF ABOVE	k.
ADL PATTERNS	
In bed/clothes much of day	l.
Wakens to toilet all or most nights	m.
Has irregular bowel movement pattern	n.
Prefers showers for bathing	o.
NONE OF ABOVE	p.
INVOLVEMENT PATTERNS	
Daily contact with relatives/close friends	q.
Usually attends church, temple, synagogue (etc.)	r.
Finds strength in faith	s.
Daily animal companion/presence	t.
Involved in group activities	u.
NONE OF ABOVE	v.
UNKNOWN—Resident/family unable to provide information	w.

END

Signature of RN Assessment Coordinator: _____ Date: _____

Signatures of Others Who Completed Part of the Assessment:

_____ _____ _____ ____

_____ _____ _____

MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)

(Status in last 7 days, unless other time frame indicated)

SECTION A. IDENTIFICATION AND BACKGROUND INFORMATION

1.	ASSESSMENT DATE	Month — Day — Year
2.	RESIDENT NAME	(First) (Middle Initial) (Last)
3.	SOCIAL SECURITY NO.	
4.	MEDICAID NO. (If applicable)	
5.	MEDICAL RECORD NO.	
6.	REASON FOR ASSESSMENT	1. Initial admission assess. 2. Hosp/Medicare reassess. 3. Readmission assessment 4. Annual assessment 5. Significant change in status 6. Other (e.g., UR)
7.	CURRENT PAYMENT SOURCE(S) FOR N.H. STAY	*(Billing Office to indicate; check all that apply)* Medicaid (a.) Medicare (b.) CHAMPUS (c.) VA (d.) Self pay/Private insurance (e.) Other (f.)
8.	RESPONSIBILITY/ LEGAL GUARDIAN	*(Check all that apply)* Legal guardian (a.) Other legal oversight (b.) Durable power attny./ health care proxy (c.) Family member responsible (d.) Resident responsible (e.) *NONE OF ABOVE* (f.)
9.	ADVANCED DIRECTIVES	*(For those items with supporting documentation in the medical record, check all that apply)* Living will (a.) Do not resuscitate (b.) Do not hospitalize (c.) Organ donation (d.) Autopsy request (e.) Feeding restrictions (f.) Medication restrictions (g.) Other treatment restrictions (h.) *NONE OF ABOVE* (i.)
10.	DISCHARGE PLANNED WITHIN 3 MOS.	*(Does not include discharge due to death)* 0. No 1. Yes 2. Unknown/uncertain
11.	PARTICIPATE IN ASSESSMENT	a. Resident 0. No 1. Yes (a.) b. Family 0. No 1. Yes 2. No family (b.)
12.	SIGNATURES AND SECTIONS COMPLETED	Signature of RN Assessment Coordinator ____ Date: ____ Signatures of Others Who Completed Part of the Assessment and Sections Completed

SECTION B. COGNITIVE PATTERNS

1.	COMATOSE	*(Persistent vegetative state/no discernible consciousness)* 0. No 1. Yes *(Skip to SECTION E)*
2.	MEMORY	*(Recall of what was learned or known)* a. Short-term memory OK—seems/appears to recall after 5 minutes 0. Memory OK 1. Memory problem (a.) b. Long-term memory OK—seems/appears to recall long past 0. Memory OK 1. Memory problem (b.)
3.	MEMORY/ RECALL ABILITY	*(Check all that resident normally able to recall during last 7 days)* Current season (a.) Location of own room (b.) Staff names/faces (c.) That he/she is in a nursing home (d.) *NONE OF ABOVE* are recalled (e.)
4.	COGNITIVE SKILLS FOR DAILY DECISION-MAKING	*(Made decisions regarding tasks of daily life)* 0. Independent—decisions consistent/reasonable 1. Modified Independence—some difficulty in new situations only 2. Moderately Impaired—decisions poor; cues/supervision required 3. Severely Impaired—never/rarely made decisions
5.	INDICATORS OF DELIRIUM —PERIODIC DISORDERED THINKING/ AWARENESS	*(Check if condition over last 7 days appears different from usual functioning)* Less alert, easily distracted (a.) Changing awareness of environment (b.) Episodes of incoherent speech (c.) Periods of motor restlessness or lethargy (d.) Cognitive ability varies over course of day (e.) *NONE OF ABOVE* (f.)
6.	CHANGE IN COGNITIVE STATUS	Change in resident's cognitive status, skills, or abilities in last 90 days 0. No change 1. Improved 2. Deteriorated

SECTION C. COMMUNICATION/HEARING PATTERNS

1.	HEARING	*(With hearing appliance, if used)* 0. Hears adequately—normal talk, TV, phone 1. Minimal difficulty when not in quiet setting 2. Hears in special situations only—speaker has to adjust tonal quality and speak distinctly 3. Highly impaired/absence of useful hearing
2.	COMMUNICATION DEVICES/ TECHNIQUES	*(Check all that apply during last 7 days)* Hearing aid, present and used (a.) Hearing aid, present and not used (b.) Other receptive comm. techniques used (e.g., lip read) (c.) *NONE OF ABOVE* (d.)
3.	MODES OF EXPRESSION	*(Check all used by resident to make needs known)* Speech (a.) Writing messages to express or clarify needs (b.) Signs/gestures/sounds (c.) Communication board (d.) Other (e.) *NONE OF ABOVE* (f.)
4.	MAKING SELF UNDERSTOOD	*(Express information content—however able)* 0. Understood 1. Usually Understood—difficulty finding words or finishing thoughts 2. Sometimes Understood—ability is limited to making concrete requests 3. Rarely/Never Understood
5.	ABILITY TO UNDERSTAND OTHERS	*(Understanding verbal information content—however able)* 0. Understands 1. Usually Understands—may miss some part/intent of message 2. Sometimes Understands—responds adequately to simple, direct communication 3. Rarely/Never Understands
6.	CHANGE IN COMMUNICATION/ HEARING	Resident's ability to express, understand or hear information has changed over last 90 days 0. No change 1. Improved 2. Deteriorated

SECTION D. VISION PATTERNS

1.	VISION	*(Ability to see in adequate light and with glasses if used)* 0. Adequate—sees fine detail, including regular print in newspapers/books 1. Impaired—sees large print, but not regular print in newspapers/books 2. Highly Impaired—limited vision; not able to see newspaper headlines; appears to follow objects with eyes 3. Severely Impaired—no vision or appears to see only light, colors, or shapes
2.	VISUAL LIMITATIONS/ DIFFICULTIES	Side vision problems—decreased peripheral vision (e.g., leaves food on one side of tray, difficulty traveling, bumps into people and objects, misjudges placement of chair when seating self) (a.) Experiences any of following: sees halos or rings around lights; sees flashes of light; sees "curtains" over eyes (b.) *NONE OF ABOVE* (c.)
3.	VISUAL APPLIANCES	Glasses; contact lenses; lens implant; magnifying glass 0. No 1. Yes

■ = Code the appropriate response ☐ = Check all the responses that apply

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SECTION E. PHYSICAL FUNCTIONING AND STRUCTURAL PROBLEMS

1. ADL SELF-PERFORMANCE — *(Code for resident's PERFORMANCE OVER ALL SHIFTS during last 7 days—Not including setup)*

0. *INDEPENDENT* — No help or oversight — OR — Help/oversight provided only 1 or 2 times during last 7 days
1. *SUPERVISION* — Oversight, encouragement or cueing provided 3+ times during last 7 days — OR — Supervision plus physical assistance provided only 1 or 2 times during last 7 days
2. *LIMITED ASSISTANCE* — Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times — OR — More help provided only 1 or 2 times during last 7 days
3. *EXTENSIVE ASSISTANCE* — While resident performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times:
   — Weight-bearing support
   — Full staff performance during part (but not all) of last 7 days
4. *TOTAL DEPENDENCE* — Full staff performance of activity during entire 7 days

2. ADL SUPPORT PROVIDED — *(Code for MOST SUPPORT PROVIDED OVER ALL SHIFTS during last 7 days; code regardless of resident's self-performance classification)*

0. No setup or physical help from staff
1. Setup help only
2. One-person physical assist
3. Two+ persons physical assist

			(1) SELF-PERF.	(2) SUPPORT
a.	BED MOBILITY	How resident moves to and from lying position, turns side to side, and positions body while in bed		
b.	TRANSFER	How resident moves between surfaces—to/from: bed, chair, wheelchair, standing position (EXCLUDE to/from bath/toilet)		
c.	LOCOMOTION	How resident moves between locations in his/her room and adjacent corridor on same floor (IF in wheelchair, self-sufficiency once in chair)		
d.	DRESSING	How resident puts on, fastens, and takes off all items of street clothing, including donning/removing prostheses		
e.	EATING	How resident eats and drinks (regardless of skill)		
f.	TOILET USE	How resident uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, cleanses, changes pad, manages ostomy or catheter, adjusts clothes		
g.	PERSONAL HYGIENE	How resident maintains personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum (EXCLUDE baths and showers)		
3.	BATHING	How resident takes full-body bath/shower, sponge bath, and transfers in/out of tub/shower (EXCLUDE washing of back and hair. *Code for most dependent in self-performance and support.* Bathing Self-Performance codes appear below)	a.	b.

0. Independent—No help provided
1. Supervision—Oversight help only
2. Physical help limited to transfer only
3. Physical help in part of bathing activity
4. Total dependence

4. BODY CONTROL PROBLEMS — *(Check all that apply during last 7 days)*

- Balance—partial or total loss of ability to balance self while standing — a.
- Bedfast all or most of the time — b.
- Contracture to arms, legs, shoulders, or hands — c.
- Hemiplegia/hemiparesis — d.
- Quadriplegia — e.
- Arm—partial or total loss of voluntary movement — f.
- Hd—lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid) — g.
- hg—partial or total loss of voluntary movement — h.
- ug—unsteady gait — i.
- unb—partial or total loss of ability to position, balance, or turn body — j.
- Amputation — k.
- NONE OF ABOVE — l.

5. MOBILITY APPLIANCES/DEVICES — *(Check all that apply during last 7 days)*

- Cane/walker — a.
- Brace/prosthesis — b.
- Wheeled self — c.
- Other person wheeled — d.
- Lifted (manually/mechanically) — e.
- NONE OF ABOVE — f.

6.	TASK SEGMENTATION	Resident requires that some or all of ADL activities be broken into a series of subtasks so that resident can perform them 0. No 1. Yes	
7.	ADL FUNCTIONAL REHABILITATION POTENTIAL	Resident believes he/she capable of increased independence in at least some ADLs	a.
		Direct care staff believe resident capable of increased independence in at least some ADLs	b.
		Resident able to perform tasks/activity but is very slow	c.
		Major difference in ADL Self-Performance or ADL Support in mornings and evenings (at least a one category change in Self-Performance or Support in any ADL)	d.
		NONE OF ABOVE	e.
8.	CHANGE IN ADL FUNCTION	Change in ADL self-performance in last 90 days 0. No change 1. Improved 2. Deteriorated	

SECTION F. CONTINENCE IN LAST 14 DAYS

1. CONTINENCE SELF-CONTROL *(Code for resident's performance over all shifts)*

0. *CONTINENT* — Complete control
1. *USUALLY CONTINENT* — BLADDER, incontinent episodes once a week or less. BOWEL, less than weekly
2. *OCCASIONALLY INCONTINENT* — BLADDER, 2+ times a week but not daily. BOWEL, once a week
3. *FREQUENTLY INCONTINENT* — BLADDER, tended to be incontinent daily, but some control present (e.g., on day shift). BOWEL, 2-3 times a week
4. *INCONTINENT* — Had inadequate control. BLADDER, multiple daily episodes. BOWEL, all (or almost all) of the time

a.	BOWEL CONTINENCE	Control of bowel movement, with appliance or bowel continence programs, if employed	
b.	BLADDER CONTINENCE	Control of urinary bladder function (if dribbles, volume insufficient to soak through underpants), with appliances (e.g., foley) or continence programs, if employed	
2.	INCONTINENCE RELATED TESTING	*(Skip if resident's bladder continence code equals 0 or 1 AND no catheter is used)* Resident has been tested for a urinary tract infection	a.
		Resident has been checked for presence of a fecal impaction, or there is adequate bowel elimination	b.
		NONE OF ABOVE	c.
3.	APPLIANCES AND PROGRAMS	Any scheduled toileting plan — a.	
		External (condom) catheter — b.	
		Indwelling catheter — c.	
		Intermittent catheter — d.	
		Did not use toilet room/commode/urinal — e.	
		Pads/briefs used	f.
		Enemas/irrigation	g.
		Ostomy	h.
		NONE OF ABOVE	i.
4.	CHANGE IN URINARY CONTINENCE	Change in urinary continence/appliances or programs in last 90 days 0. No change 1. Improved 2. Deteriorated	

IF RESIDENT IS COMATOSE, SKIP TO SECTION J

SECTION G. PSYCHOSOCIAL WELL-BEING

1.	SENSE OF INITIATIVE/INVOLVEMENT	At ease interacting with others	a.
		At ease doing planned or structured activities	b.
		At ease doing self-initiated activities	c.
		Establishes own goals	d.
		Pursues involvement in life of facility (e.g., makes/keeps friends involved in group activities; responds positively to new activities; assists at religious services)	e.
		Accepts invitations into most group activities	f.
		NONE OF ABOVE	g.
2.	UNSETTLED RELATIONSHIPS	Overt/open conflict with or repeated criticism of staff	a.
		Unhappy with roommate	b.
		Unhappy with residents other than roommate	c.
		Openly expresses conflict/anger with family or friends	d.
		Absence of personal contact with family/friends	e.
		Recent loss of close family member/friend	f.
		NONE OF ABOVE	g.
3.	PAST ROLES	Strong identification with past roles and life status	a.
		Expresses sadness/anger/empty feeling over lost roles/status	b.
		NONE OF ABOVE	c.

SECTION H. MOOD AND BEHAVIOR PATTERNS

1.	SAD OR ANXIOUS MOOD	*(Check all that apply during last 30 days)* VERBAL EXPRESSIONS of DISTRESS by resident (sadness, sense that nothing matters, hopelessness, worthlessness, unrealistic fears, vocal expressions of anxiety or grief)	a.
		DEMONSTRATED (OBSERVABLE) SIGNS of mental DISTRESS — Tearfulness, emotional groaning, sighing, breathlessness	b.
		— Motor agitation such as pacing, handwringing or picking	c.
		— Failure to eat or take medications, withdrawal from self-care or leisure activities	d.
		— Pervasive concern with health	e.
		— Recurrent thoughts of death—e.g., believes he/she about to die, have a heart attack	f.
		— Suicidal thoughts/actions	g.
		NONE OF ABOVE	h.
2.	MOOD PERSISTENCE	Sad or anxious mood intrudes on daily life over last 7 days — not easily altered, doesn't "cheer up" 0. No 1. Yes	
3.	PROBLEM BEHAVIOR	*(Code for behavior in last 7 days)* 0. Behavior not exhibited in last 7 days 1. Behavior of this type occurred less than daily 2. Behavior of this type occurred daily or more frequently	
		WANDERING (moved with no rational purpose, seemingly oblivious to needs or safety)	a.
		VERBALLY ABUSIVE (others were threatened, screamed at, cursed at)	b.
		PHYSICALLY ABUSIVE (others were hit, shoved, scratched, sexually abused)	c.
		SOCIALLY INAPPROPRIATE/DISRUPTIVE BEHAVIOR (made disrupting sounds, noisy, screams, self-abusive acts, sexual behavior or disrobing in public, smeared/threw food/feces, hoarding, rummaged through others' belongings)	d.
4.	RESIDENT RESISTS CARE	*(Check all types of resistance that occurred in the last 7 days)* Resisted taking medications/injection	a.
		Resisted ADL assistance	b.
		NONE OF ABOVE	c.
5.	BEHAVIOR MANAGEMENT PROGRAM	Behavior problem has been addressed by clinically developed behavior management program. (Note: Do not include programs that involve only physical restraints or psychotropic medications in this category) 0. No behavior problem 1. Yes, addressed 2. No, not addressed	
6.	CHANGE IN MOOD	Change in mood in last 90 days 0. No change 1. Improved 2. Deteriorated	
7.	CHANGE IN PROBLEM BEHAVIOR	Change in problem behavioral signs in last 90 days 0. No change 1. Improved 2. Deteriorated	

4.	GENERAL ACTIVITY PREFERENCES (adapted to resident's current abilities)	*(Check all PREFERENCES whether or not activity is currently available to resident)*	
		Cards/other games a.	Spiritual/religious activities f.
		Crafts/arts b.	Trips/shopping g.
		Exercises/sports c.	Walking/wheeling outdoors h.
		Music d.	Watch TV i.
		Read/write e.	*NONE OF ABOVE* j.
5.	PREFERS MORE OR DIFFERENT ACTIVITIES	Resident expresses/indicates preference for other activities/choices 0. No 1. Yes	

SECTION J. DISEASE DIAGNOSES

Check only those diseases present that have a relationship to current ADL status, cognitive status, behavior status, medical treatments, or risk of death. (Do not list old/inactive diagnoses.)

1.	DISEASES	*(If none apply, CHECK the NONE OF ABOVE box)*			
		HEART/CIRCULATION		PSYCHIATRIC/MOOD	
		Arteriosclerotic heart disease (ASHD)	a.	Anxiety disorder	p.
		Cardiac dysrhythmias	b.	Depression	q.
		Congestive heart failure	c.	Manic depressive (bipolar disease)	r.
		Hypertension	d.	SENSORY	
		Hypotension	e.	Cataracts	s.
		Peripheral vascular disease	f.	Glaucoma	t.
		Other cardiovascular disease	g.	OTHER	
		NEUROLOGICAL		Allergies	u.
		Alzheimer's	h.	Anemia	v.
		Dementia other than Alzheimer's	i.	Arthritis	w.
		Aphasia	j.	Cancer	x.
		Cerebrovascular accident (stroke)	k.	Diabetes mellitus	y.
		Multiple sclerosis	l.	Explicit terminal prognosis	z.
		Parkinson's disease	m.	Hypothyroidism	aa.
		PULMONARY		Osteoporosis	bb.
		Emphysema/Asthma/COPD	n.	Seizure disorder	cc.
		Pneumonia	o.	Septicemia	dd.
				Urinary tract infection—in last 30 days	ee.
				NONE OF ABOVE	ff.
2.	OTHER CURRENT DIAGNOSES AND ICD-9-CM CODES	a. _____ b. _____ c. _____ d. _____ e. _____ f. _____			

SECTION I. ACTIVITY PURSUIT PATTERNS

1.	TIME AWAKE	*(Check appropriate time periods over last 7 days)* Resident awake all or most of time (i.e., naps no more than one hour per time period) in the:			
		Morning	a.	Evening	c.
		Afternoon	b.	*NONE OF ABOVE*	d.
2.	AVERAGE TIME INVOLVED IN ACTIVITIES	0. Most—more than 2/3 of time 2. Little—less than 1/3 of time 1. Some—1/3 to 2/3 of time 3. None			
3.	PREFERRED ACTIVITY SETTINGS	*(Check all settings in which activities are preferred)*			
		Own room	a.	Outside facility	d.
		Day/activity room	b.	*NONE OF ABOVE*	e.
		Inside NH/off unit	c.		

SECTION K. HEALTH CONDITIONS

1.	PROBLEM CONDITIONS	*(Check all problems that are present in last 7 days unless other time frame indicated)*			
		Constipation	a.	Pain—resident complains or shows evidence of pain daily or almost daily	j.
		Diarrhea	b.	Recurrent lung aspirations in last 90 days	k.
		Dizziness/vertigo	c.	Shortness of breath	l.
		Edema	d.	Syncope (fainting)	m.
		Fecal impaction	e.	Vomiting	n.
		Fever	f.	*NONE OF ABOVE*	o.
		Hallucinations/delusions	g.		
		Internal bleeding	h.		
		Joint pain	i.		
2.	ACCIDENTS	Fall in past 30 days	a.	Hip fracture in last 180 days	c.
		Fall in past 31-180 days	b.	*NONE OF ABOVE*	d.

J.	STABILITY OF CONDITIONS	Conditions/diseases make resident's cognitive, ADL, or behavior status unstable—fluctuating, precarious, or deteriorating	a.
		Resident experiencing an acute episode or a flare-up of a recurrent/chronic problem	b.
		NONE OF ABOVE	c.

SECTION L. ORAL/NUTRITIONAL STATUS

1.	ORAL PROBLEMS	Chewing problem	a.
		Swallowing problem	b.
		Mouth pain	c.
		NONE OF ABOVE	d.
2.	HEIGHT AND WEIGHT	*Record height (in.) in inches and weight (lb.) in pounds. Weight based on most recent status in last 30 days; measure weight consistently in accord with standard facility practice—e.g., in a.m. after voiding, before meal, with shoes off, and in nightclothes.* HT (in.) ___ WT (lb.) ___	a. b.
		c. Weight loss (i.e., 5%+ in last 30 days, or 10%+ in last 180 days) 0. No 1. Yes	c.
3.	NUTRITIONAL PROBLEMS	Complains about the taste of many foods	a.
		Insufficient fluid; dehydrated	b.
		Did NOT consume all/almost all liquids provided during last 3 days	c.
		Regular complaint of hunger	d.
		Leaves 25%+ food uneaten at most meals	e.
		NONE OF ABOVE	f.
4.	NUTRITIONAL APPROACHES	Parenteral/IV	a.
		Feeding tube	b.
		Mechanically altered diet	c.
		Syringe (oral feeding)	d.
		Therapeutic diet	e.
		Dietary supplement between meals	f.
		Plate guard, stabilized built-up utensil, etc.	g.
		NONE OF ABOVE	h.

SECTION M. ORAL/DENTAL STATUS

1.	ORAL STATUS AND DISEASE PREVENTION	Debris (soft, easily movable substances) present in mouth prior to going to bed at night	a.
		Has dentures or removable bridge	b.
		Some/all natural teeth lost—does not have or does not use dentures (or partial plates)	c.
		Broken, loose, or carious teeth	d.
		Inflamed gums (gingivia); swollen or bleeding gums; oral abscesses, ulcers or rashes	e.
		Daily cleaning of teeth/dentures	f.
		NONE OF ABOVE	g.

SECTION N. SKIN CONDITION

1.	STASIS ULCER	(open lesion caused by poor venous circulation to lower extremities) 0. No 1. Yes	
2.	PRESSURE ULCERS	*(Code for highest stage of pressure ulcer)* 0. No pressure ulcers 1. Stage 1 A persistent area of skin redness (without a break in the skin) that does not disappear when pressure is relieved 2. Stage 2 A partial thickness loss of skin layers that presents clinically as an abrasion, blister, or shallow crater 3. Stage 3 A full thickness of skin is lost, exposing the subcutaneous tissues—presents as a deep crater with or without undermining adjacent tissue 4. Stage 4 A full thickness of skin and subcutaneous tissue is lost, exposing muscle and/or bone	
3.	HISTORY OF RESOLVED/ CURED PRESSURE ULCERS	Resident has had a pressure ulcer that was resolved/cured in last 90 days 0. No 1. Yes	

4.	SKIN PROBLEMS/ CARE	Open lesions other than stasis or pressure ulcers (e.g., cuts)	a.
		Skin deneralized to pain, pressure, discomfort	b.
		Protective/preventive skin care	c.
		Turning/repositioning program	d.
		Pressure relieving beds, bed/chair pads (e.g., egg crate pads)	e.
		Wound care/treatment (e.g., pressure ulcer care, surgical wound)	f.
		Other skin care/treatment	g.
		NONE OF ABOVE	h.

SECTION O. MEDICATION USE

1.	NUMBER OF MEDICATIONS	*(Record the number of different medications used in the last 7 days; enter "0" if none used)*	
2.	NEW MEDICATIONS	Resident has received new medications during the last 90 days 0. No 1. Yes	
3.	INJECTIONS	*(Record the number of days injections of any type received during the last 7 days)*	
4.	DAYS RECEIVED THE FOLLOWING MEDICATION	*(Record the number of days during last 7 days, enter "0" if not used; enter "1" if long-acting meds. used less than weekly)* Antipsychotics	a.
		Antianxiety/hypnotics	b.
		Antidepressants	c.
5.	PREVIOUS MEDICATION RESULTS	*(SKIP this question if resident currently receiving antipsychotics, antidepressants, or antianxiety/hypnotics—otherwise code correct response for last 90 days)* Resident has previously received psychoactive medications for a mood or behavior problem, and these medications were effective (without undue adverse consequences) 0. No, drugs not used 1. Drugs were effective 2. Drugs were not effective 3. Drug effectiveness unknown	

SECTION P. SPECIAL TREATMENTS AND PROCEDURES

1.	SPECIAL TREATMENTS AND PROCEDURES	SPECIAL CARE—*Check treatments received during the last 14 days*			
		Chemotherapy	a.	IV meds	i.
		Radiation	b.	Transfusions	j.
		Dialysis	c.	O_2	k.
		Suctioning	d.	Other _____	l.
		Trach. care	e.	*NONE OF ABOVE*	l.
		THERAPIES—*Record the number of days each of the following therapies was administered (for at least 10 minutes during a day) in the last 7 days:*			
		Speech—language pathology and audiology services			a.
		Occupational therapy			b.
		Physical therapy			c.
		Psychological therapy (any licensed professional)			d.
		Respiratory therapy			e.
2.	ABNORMAL LAB VALUES	Has the resident had any abnormal lab values during the last 90-days? 0. No 1. Yes 2. No tests performed			
3.	DEVICES AND RESTRAINTS	*Use the following codes for last 7 days:* 0. Not used 1. Used less than daily 2. Used daily			
		Bed rails			a.
		Trunk restraint			b.
		Limb restraint			c.
		Chair prevents rising			d.

BILLING CODE 4120-03-C

Supplemental Coding Instructions and Common Definitions

Below are instructions to supplement the instructions and definitions found on the MDS itself. Some MDS items are not defined in this section as they are self-explanatory. The numbering and lettering correspond to the elements of the MDS.

Sections—Form 1

Minimum Data Set Nursing Facility Resident Assessment and Care Screening (MDS) Background Information at Intake/Admission

This assessment is to be completed upon initial admission or return stay (not a readmission following temporary hospitalization or for therapeutic leave). It is designed to give insight into the resident's life prior to admission (for initial admissions) and to document any significant change in the resident's status since his/her last admission (for readmissions).

I. Identification Information

1. *Resident Name:* Please print. Use the following format: First Name, Middle Initial, Last Name.

2. *Date of Current Admission:* The most recent date the resident was admitted to this facility. If the resident left the facility for any reason (e.g., transfer to another nursing home, discharge home) and was *officially* discharged by the nursing facility, record the *most recent* admission date.

Example: Resident was first admitted to the facility on 10/10/87. He was treated at a local hospital for several days on three occasions since admission, but was never officially discharged from the nursing facility. Therefore, 10/10/87 is considered the resident's current date of admission.

3. *Medicare No. (Soc. Sec. or Comparable No. if no Medicare No.):* Enter the resident's Medicare Number. If the resident does not have a Medicare number, enter the resident's social security number.

4. *Facility Provider Number:* The identification number assigned to the nursing home by the Medicare/Medicaid program(s). Some homes may have only a Federal identification number and space is provided for this.

5. *Gender:* Code 1 for male, 2 for female.

6. *Race/Ethnicity:* Choose only one answer.

7. *Birthdate:* Use all boxes to record date. For months and days with only one digit, place a zero in the first box (e.g., for Janaury 2, 1918 should be recorded:

Month		Day		Year			
0	0	0	2	1	9	1	2

8. *Lifetime Occupation:* Record job title or describe the profession in which the resident was mainly engaged before retiring or entering the facility. A woman whose primary work was within her own home should be recorded as a "homemaker."

9. *Primary Language:* The language the resident primarily speaks and/or understands.

10. *Residential History Past 5 Years:* Check all settings the resident lived in during the five years prior to this admission. Exclude short-term stays for treatment or rehabilitation where the resident was expected to return home. The setting must designate the resident's primary residence (i.e., the place the resident would have called "home" during this time).

MH/psychiatric setting—mental health facility, psychiatric hospital, psychiatric ward of a general hospital, psychiatric group home.

MR/DD setting—mental retardation or developmental disabilities facility, including MR/DD institutions, intermediate care facilities for the mentally retarded (ICF/MRs), and group homes.

None of Above—If the resident has not lived in any of these settings in the past 5 years, check the box NONE OF ABOVE.

11. *Mental Health History:* Includes a primary or secondary diagnosis of psychiatric illness or developmental disability; EXCLUDE organic brain syndrome, Alzheimer's Disease and related dementia.

12. *Conditions Related to MR/DD Status:* Record all conditions that are:

- Related to MR/DD status;
- Were manifested before age 22; and
- Are likely to continue indefinitely.

If the resident does not have mental retardation/developmental disabilities (MR/DD), check the first box, "Not Applicable—No MR/DD" and move to item 13. If the resident does exhibit MR/DD, but his/her status is not manifested in any of the conditions listed, check "MR/DD with no organic condition". If information about MR/DD condition is not available, check "Unknown."

13. *Marital Status:* Code the resident's current marital status.

14. *Admitted from:* Indicate where the resident was staying immediately prior to the current date of admission to the facility. Code only one answer.

15. *Lived Alone:* To determine the resident's living situation and availability of formal and/or informal social supports prior to the current date of admission to the facility.

If the resident was living in another facility (i.e., nursing facility, group home, sheltered care, board and care home), code "2" in the answer box. If the resident was NOT living in another facility, record either code "0" or "1".

Examples:

A woman living on her own whose daughters take turns sleeping at her home so she'll never be alone at night should be coded "0" (No).

A person living in his own apartment on the second floor of a two-family home with constant input from his family living on the first floor would be coded "0" (No).

16. *Admission Information Amended:* Denotes that MDS admission information has been changed/updated for the following reason(s): accurate information unavailable earlier, observation revealed additional information or resident unstable at admission. These changes/updates can be made up to the 21st day of residency only.

II. Background Information at Return/Readmission

Complete this section whenever a resident returns to the facility following an external discharge.

III. Customary Routine (Only at First Admission)

1. *Customary Routine:* This element gives insight into the resident's usual life style and daily routine *in the year prior to his/her first admission to a nursing facility.* Code the resident's routine rather than his/her goals (e.g., if resident would have liked to have had daily contact with relatives but didn't, do not check "Daily contact with relatives/close friends").

If the form is being completed for an admission from another facility or institutional setting, answer for the resident's routine prior to the resident's first nursing facility or other institutional admission.

Note that under each major category (Cycle of Daily Events, Eating Patterns, ADL Patterns, and Involvement Patterns) a "NONE OF ABOVE" category is available. This response pertains ONLY to the choices in the category above it. For example, if the person does not engage in any of the items listed under CYCLE OF DAILY EVENTS, indicate this by checking the "NONE OF ABOVE" box.

If *no* information is available about any customary routine, check the final box entitled "UNKNOWN". If, however, an individual item is unknown, write "NA" for "not available" or use the approved "no information available"

code, a circled dash, in the corresponding box.

Goes out 1+ days a week—Resident goes out of home for whatever reason (e.g., socialization, fresh air, clinic visit).

Distinct food preferences—(e.g., vegetarian; kosher; hates brussels sprouts).

Use of alcoholic beverage(s) at least weekly—Drank more than one alcoholic beverage per week.

Wakens to toilet all or most nights—Resident awakens to use the toilet at least once during the night all or most of the time.

Has irregular bowel movement pattern—"Irregular" means an unpredictable or variable pattern of bowel elimination regardless of whether or not the resident would prefer the pattern to be different.

Daily contact with relatives/close friends—Includes visits and telephone calls; does not include *only* exchange of letters.

Usually attends church, temple, synagogue (etc.)—Refers to religious involvement regardless of type (e.g., regular churchgoer; watches T.V. evangelist, involvement in church/temple committees/groups).

Daily animal companion/presence—Companion/presence refers to involvement with animals (e.g., house pet; seeing-eye dog; daily feeding birds in yard/park).

Unknown—If the resident/family cannot provide any information and the record does not contain the information, check the final box entitled "UNKNOWN".

Signature of RN Assessment Coordinator: The RN Assessment Coordinator should sign her/his name and date of completion of this form.

Signature of Others Who Completed Part of the Assessment: Signature of others who participated in the completion of this form and date of entry.

Sections—Form 2

Minimum Data Set for Nursing Facility Resident Assessment and Care Screening (MDS) (Status in Last 7 Days, Unless Otherwise Indicated)

Section A. Identification and Background Information

1. *Assessment Date:* Sets the designated endpoint of the common observation period for specific MDS items. Used as a reference point from which all periods of observation are timed by counting back the appropriate length of time (7 days, 14 days, etc.). Various staff members may document the resident's response for MDS items at different times but should use the established time period as their period of observation.

The month and day of the assessment should be two digits each (use "0" (zero), as a filler) and the year should be four digits.

2. *Resident Name:* Enter the resident's name in the following order: First Name, Middle Initial, Last Name.

3. *Social Security No.:* Fill in the resident's social security number.

4. *Medicaid No. (if applicable):* Enter the resident's Medicaid Number.

5. *Medical Record No.:* The unique identifier for the resident assigned by the facility.

6. *Reason for Assessment:* Code the one most appropriate response. See MDS utilization guidelines.

7. *Current Payment Source(s) for N.H. Care:* Payment source(s) for nursing facility care actually billed during the most recent month, according to the billing office—not the medical record. Code multiple payment sources if applicable. Exclude sources of payment for services other than for the nursing facility stay (e.g., exclude physician visit; prescriptions, durable medical equipment).

8. *Responsibility/Legal Guardian:* Person(s) responsible for participating in decisions about the resident's health care and treatment. Check all that apply.

Legal guardian—A legal guardian must be court-appointed.

Durable Power Attorney/Health Care Proxy—Designates a person who is legally responsible for the resident's legal affairs or a person is responsible for making health care decisions for the resident if the resident becomes unable to make decisions for him/herself. Durable power of attorney/health care proxy can be revoked if the resident later becomes able to make his/her own decisions.

9. *Advanced Directives:* The resident's (or proxy) preferences regarding treatment options. There must be supporting documentation in the resident's medical record to code these elements. Check all that apply.

Living Will—A document that specifies a resident's preferences about measures used to prolong life when there is a terminal prognosis.

Do not resuscitate—Indicates that, in case of respiratory or cardiac failure, the resident/family/legal guardian have directed that no cardiopulmonary resuscitation (CPR) or other life-saving methods are to be used.

Do not hospitalize—Indicates that the resident is not to be hospitalized, even if he/she has a medical condition that would usually require hospitalization.

Organ donation—Indicates that the resident wishes his/her organs to be available for transplantation upon his/her death.

Autopsy request—Indicates that the resident/family/legal guardian has requested an autopsy be performed upon the death of the resident. (Note: Family/legal guardian must still be contacted for permission prior to performance of procedure.)

Feeding restrictions—Indicates that the resident/family/legal guardian does not wish for the resident to be fed by artificial means (e.g., tube, intravenous nutrition) if he/she is not able to be nourished by oral means.

Medication restrictions—Indicates that the resident/family/legal guardian does not wish for the resident to receive life-sustaining medications (e.g., antibiotics, chemotherapy).

Other treatment restrictions—Indicates that the resident/family/legal guardian does not wish for the resident to receive certain medical treatments. Examples include, but are not restricted to, blood transfusions, tracheostomy, respiratory intubation, etc.

10. *Discharge Planned Within 3 Months:* The facility expects the resident will be discharged within three months. Planned discharge can be to another care setting or to a residential setting. A prognosis of death *is not* to be recorded as a planned discharge.

12. *Signatures:* The RN Assessment Coordinator should sign and date the MDS to certify its completion. Other staff members that complete part of the assessment should sign their name, professional credentials and date as well as indicate the sections they completed.

Section B. Cognitive Patterns

The resident's ability to remember, think coherently and organize daily self-care activities.

1. *Comatose:* The resident must have a recorded neurological diagnosis of "coma" or "persistent vegetative state". If the resident is comatose, skip the remainder of Section B as well as Sections C (Communication/Hearing Patterns), D (Vision Patterns), G (Psychosocial Well-Being), H (Mood and Behavior Patterns), and I (Activity Pursuit Patterns).

2. *Memory:* The resident's capacity to remember both recent and long-past events.

3. *Memory/Recall Ability:* The resident's capabilities related to memory and orientation ability.

Current season—Resident is able to correctly name the current season.

Location of own room—Resident is able to locate and recognize own room. Resident does not need to know the number of his/her room but can find his/her way to room.

Staff names/faces—Resident is able to distinguish staff from family members, strangers, visitors and other residents (resident does not have to know staff member's name; only recognize the fact that he/she is a staff member).

4. *Cognitive Skills for Daily Decision-Making:* The resident's ability to make everyday decisions about the tasks or activities of daily living. Examples of daily decisions may be choosing items of clothing; determining mealtimes; using environmental cues to organize and plan (e.g., clocks, calendars, posted listings of upcoming events); using awareness of one's own strengths and limitations in regulating the day's events (e.g., asks for help when necessary).

Independent—Resident organizes daily routine and makes decisions in a consistent and reasonable fashion.

Modified Independence—Resident organizes daily routine and makes safe decisions in familiar situations, but experiences some difficulty in decision-making when faced with new tasks or situations.

Moderately Impaired—Resident's decisions are poor; resident requires reminders, cues and supervision in planning, organizing, and correcting daily routines.

Severely Impaired—Resident's decision-making is severely impaired; resident never (or rarely) made decisions.

5. *Indicators of Delirium—Periodic Disordered Thinking/Awareness:* Many illnesses in nursing home residents are manifested as acute confusional states. Delirium may be characterized by changes in mental status or behavior that deviates from the resident's usual state. For example, some residents who are usually alert and noisy may become very quiet; those who are considered quiet and cooperative may suddenly become belligerent; or those who are usually able to find their way about the unit may get "lost." Check all that apply.

6. *Change in Cognitive Status:* Change in the resident's cognitive status, skills or abilities over the last 90 days. Changes include, but are not limited to, changes in level of consciousness, cognitive skills for daily decision making, short- or long-term memory, thinking/awareness or recall.

Section C. Communication/Hearing Patterns

The resident's ability to hear, understand and communicate with others.

1. *Hearing:* The resident's ability to hear (with environmental adjustments, if necessary) for the past seven-day period. Evaluate hearing ability with appliance, if used.

Heard adequately—Hears all normal conversational speech; including when using the telephone, watching television or while engaged in other group activities.

Minimal difficulty—Hears speech at conversational levels but has difficulty hearing when not in quiet listening conditions or when not in one-on-one situations.

Special situation only—Hearing deficient, but resident compensates when speaker adjusts tonal quality and speaks distinctly, or resident can hear only when speaker's face is clearly visible.

Highly impaired—Hears only some sounds; frequently fails to respond even when speaker adjusts tonal quality, speaks distinctly, or faces resident; absence of useful hearing (e.g., no comprehension of conversational speech even when speaker makes maximum adjustments).

2. *Communication Devices/ Techniques:*

Hearing aid, present and used—Hearing aid is available to resident and *regularly* used.

Hearing aid, present and not used—Hearing aid is available to resident but is *not regularly* used (e.g., owns hearing aid which is broken or used episodically).

Other receptive communication technique—Something the resident uses to enhance interaction with others (e.g., reading lips).

3. *Modes of Expression:* The types of communication the resident uses to make needs and wishes known. Check all that apply.

4. *Making Self Understood:* The resident's ability to express/ communicate requests, needs, opinions, urgent problems, and converse socially (whether in speech, writing, sign language, or a combination of these).

Understood—Resident expresses ideas clearly.

Usually Understood—Resident has difficulty finding right words or finishing thoughts, resulting in response delays; resident requires some prompting to make self understood.

Sometimes Understood—Resident has limited ability but is able to express concrete requests regarding basic needs (e.g., regarding food, drink, sleep, toilet).

Rare/Never Understood—At best, understanding is limited to staff interpretation of highly individual, resident-specific body language (e.g., indicated presence of pain or need to toilet).

5. *Ability to Understand Others:* The resident's ability to comprehend verbal information. The intent is to describe comprehension rather than hearing.

Understands—Resident clearly comprehends the speaker's message(s); resident demonstrates through words or actions/behaviors that he/she comprehends.

Usually Understands—Resident may miss some part or intent of the message but comprehends most of it; resident may have periodic difficulties in integrating information but generally demonstrates comprehension by responding (words or actions).

Sometimes Understands—Resident demonstrates frequent difficulties in integrating information; responds only to simple and direct questions and directions; comprehension is enhanced when the speaker rephrases or simplifies the message(s) and/or uses gestures.

Rare/Never Understands—Resident demonstrates very limited ability to understand communication; difficult to determine if the resident comprehends messages based on his/her verbal and nonverbal responses; or resident can hear sounds but does not understand messages.

6. *Change in Communication/ Hearing:* Any change in the resident's ability to express, understand, or hear information over the last 90 days.

Section D. Vision Patterns

Resident's visual abilities/limitations in adequate lighting and with the assistance of visual appliance, if used.

1. *Vision:* The resident's ability, over the past 7 days, to see close objects in adequate lighting using whatever visual appliance he/she usually uses for close vision (e.g., glasses, magnifying glass). "Adequate" light is defined as that which is sufficient or comfortable for a person with normal vision.

2. *Visual Limitations/Difficulties:* Visual limitations/difficulties related to diseases that commonly occur in the aged (e.g., cataracts, glaucoma, macular degeneration, diabetic retinopathy, neurologic diseases).

a. *Side Vision Problems:* Decreased awareness of the objects in peripheral vision (e.g., leaves food on side of tray, has difficulty traveling, bumps into people and objects, misjudges placement of chair when seating self.)

b. *Resident experiences:* Resident complains about seeing halos or rings around lights, seeing flashes of light or seeing "curtains" over eyes. These conditions may be symptomatic of treatable eye problems.

3. *Visual Appliances:* Includes any type of eyeglasses, contact lenses (removable or implanted) or magnifying glass.

Section E. Physical Functioning and Structural Problems

1. *ADL Self-Performance:* Resident's self-care performance in each activity of daily living (e.g., what the resident actually did for him/herself and/or what type of assistance staff actually provided for each activity) during the last 7 days. In coding self-performance select the appropriate performance description (0. Independent—4. Total Dependence) for each ADL category. *Do not consider set-up help* when coding self-performance. Set-up help will be coded in Item 2, "ADL Support," if it was provided. *Example:* A resident who performs personal hygiene independently once hygienic items are set-up for him should receive a self-performance code of "0", independent in personal hygiene. *Note:* Consider the resident's performance during all shifts as function may vary from time to time.

2. *ADL Support Provided:* The maximum amount of support provided to the resident for each ADL category during the last 7 days. (Code regardless of resident's self-performance classification). *Note:* Consider the amount of support provided during all shifts as function and type of staff support may vary.

Set-up help—Providing resident with the materials/devices necessary to perform an activity independently (e.g., for personal hygiene—setting up wash basin and grooming articles; for locomotion—handing resident a walker; for eating—cutting meat and opening containers at meals).

Examples

If a resident can perform personal hygiene with set-up of appropriate materials but receives one person's physical assistance for perineal care, code "2" (one-person physical assist).

If a hoyer lift is used in transferring, code for the maximum amount of persons needed to be present. Code "3," two+ persons physical assist, if the lift requires two.

If a resident receives one-person physical assistance to transfer out of bed in the a.m. and two-person physical assistance to transfer back into bed later in the day, code "3," two+ persons physical assist, in the ADL support column for transfer.

3. *Bathing:* How resident takes full-body bath, sponge bath/shower, and transfers in/out of tub/shower (Exclude washing of back and hair). Code for *most dependent* using the bathing self-performance codes provided (0. Independent—no help provided to 4. Total dependence).

4. *Body Control Problems:* Physical impairments that may affect the resident's self-performance in activities of daily living.

Bedfast—In bed or recliner in room 22 hours or more per day. Includes bedfast with bathroom privileges.

Contracture to arms, legs, shoulders, or hands—Restriction of full range of motion of any joint due to deformity, disuse, pain, etc. Includes loss of range of motion in fingers, wrists, elbows, shoulders, hips, knees and ankles.

Partial or total loss of voluntary leg or arm movement—Includes motion lost because of contractures (whether muscle shortening only or bony deformity); decreased range of motion; spasticity; uncontrollable leg or arm movement. Includes being in a cast.

Hemiplegia/hemiparesis—Paralysis of only one half of the body.

Amputation—Loss of part or all of any limb.

5. *Mobility Appliances/Devices:* Appliances, devices or personal assistance protocols used or followed when resident performs routine daily activities. Do not include aids or protocols used only under special circumstances.

Cane/walker—Includes residents who walk by pushing a wheelchair for support.

Wheeled self—Includes hand-propelled and motorized wheelchair as long as resident takes some responsibility for his/her own mobility.

6. *Task Segmentation:* Residents who are more independent in personal care tasks (such as eating, bathing, grooming, dressing) when the associated activities are broken into small steps. These residents usually have some problem with memory, thinking or paying attention to the task, due to such problems as dementia, head injury, CVA, or depression. Some residents will receive this care because of body control problems only.

Examples

Resident is able to wash his/her face when handed a facecloth and asked to "wash your face" (vs. setting a wash basin in front of him/her with various grooming supplies with the expectation he/she will bathe).

Resident is more independent in eating when just one food item and one utensil are presented to him/her at a time (vs. placing a tray with the entire meal and several utensils before him/her.)

7. *ADL Functional Rehabilitation Potential:* Describe beliefs and characteristics related to the resident's function during the last 7 days that may indicate that the resident has the capacity for greater independence.

8. *Change in ADL Function:* Changes in the resident's ADL status, skills or abilities in the last 90 days. Changes include but are not limited to changes in self-performance, amount of support, body control problems and ADL potential.

Section F. Continence in Last 14 Days

The resident's pattern of bladder and bowel continence/control in the previous 14 Day Period.

1. (a and b) *Bladder and Bowel Continence:* Control of urinary bladder function and/or bowel movement. Describes the resident's pattern of bladder/bowel control, with toileting schedules, bladder/bowel training programs or appliances, if used. This category does not refer to the resident's ability to toilet him/herself. For bladder incontinence, the difference between a code of "3" frequently incontinent and "4" incontinent is determined by the presence (3) or absence (4) of any bladder control.

Examples

A resident who is taken to the toilet after every meal, before bed, and once during the night and is never wet or soiled, is considered to be continent.

A resident who uses appliances without leakage (e.g., catheter or ostomy) is considered to be continent.

2. *If Incontinent of Bladder:* Complete This Item Only if The Resident's Bladder Continence Equals 2, 3 or 4. Skip to Section F3 if bladder continence code equals 0 or 1 AND no catheter is employed. Identifies whether or not incontinent residents have been tested for urinary tract infection or checked for fecal impaction during the prior 14 days.

3. *Appliances and Programs:*

Any scheduled toileting plan—Staff take the resident to the toilet or remind him/her to go to the toilet at scheduled times of the day.

Indwelling catheter—Catheter that is held in position in the bladder.

Intermittent catheter—Catheter that is used to obtain urine from the bladder but does not remain in place.

Did not use toilet room/commode/urinal—Resident never used any of these items during the last 7 days.

Pads/briefs used—This category includes any type of absorbent devices whether worn by the resident or placed on the bed or chair for protection. This category does *not* include the routine use of pads on beds when a resident is never or rarely incontinent.

Enemas/irrigation—Any type of enema or bowel irrigation. Includes ostomy irrigations.

Ostomy—Any type of ostomy of the gastrointestinal or genitourinary tract.

4. *Change in Urinary Continence:* Change in resident's urinary continence status in the last 90 days. Includes changes in self-control categories, appliances or programs.

Section G. Psychosocial Well-Being

A non-comatose resident's overall level of emotional adjustment to the nursing facility environment, including his/her general attitude, evidence of adaptation to surroundings and change in relationship patterns. Section G is comprised of three parts, each having multiple responses. The responses selected in each area—Sense of Initiative/Involvement, Unsettled Relationships, and Past Roles—should be confirmed by the resident's behavior (either verbal or non-verbal) in the past 7 days.

1. *Sense of Initiative/Involvement:* The degree to which the resident is involved in the nursing home community and takes initiative in activities. The primary source of information for these items is the resident. Staff who have regular contact with the resident may also be consulted.

To determine if the resident is *at ease interacting with others,* think about how the resident behaves during the time you spend with him/her. How does the resident behave with other residents, staff, visitors?

To determine if the resident is *at ease doing planned or structured activities,* think about how he/she responds to such activities. Does he/she feel comfortable with the structure or restricted by it?

Is the resident *at ease doing self-initiated activities:* (e.g., leisure activities such as reading, watching TV, talking with friends; work activities such as folding personal laundry, organizing belongings). Does he/she spend most of his/her time alone? Or is the resident always looking for someone to find something for him/her to do?

To determine if someone *establishes own goals,* think about whether or not the resident makes statements like "I hope I am able to walk again" or "I would like to get up early and visit the beauty parlor." Resident goals can be as traditional as wanting to learn how to walk again following a hip replacement or wanting to live to say goodbye to a loved one. In addition, some things may not be stated verbally. If a resident has her/his own way of living at the facility (e.g., organizing own activities or setting own pace), this person could be seen as establishing his/her own goals.

Does the resident pursue involvement in life of facility? Does the resident partake of facility events, socialize with peers, discuss activities?

Is the resident willing to try group activities? Does the resident accept *invitations into most group activities* even if he/she decides the activity is not for him/her and leaves. Or does the resident regularly refuse to attend group programs?

2. *Unsettled Relationships:* The quality and nature of the resident's interpersonal contacts (i.e., how the resident interacts with staff and with other residents). Do you see signs of conflict or generally harmonious interpersonal relationships? These items refer to conflict or disagreement outside the range of *normal* criticisms or requests—i.e., beyond a reasonable level.

Examples of *conflict with staff* include: resident chronically complains about some staff members to other staff; verbal criticisms of staff in therapeutic group situations that cause disruption within group; or a pattern of constant disagreement over routines of daily living.

Examples of *unhappiness with roommate* include frequent requests for roommate changes, grumbling about the roommate spending too long in the bathroom or complaining about the roommate rummaging in their things.

Examples of *unhappiness with residents other than roommate* include chronic complaints about the behaviors of others, poor quality of interaction with other residents, lack of peers for socialization.

An *absence of contact with family/close friends,* as indicated by the resident not having visitors or telephone calls from significant others in the last 7 days.

Resident *openly expresses conflict/anger with family or friends,* as indicated by expressing feelings of abandonment, ungratefulness, lack of understanding, hostility regarding relationships with family/friends.

Recent loss of close family member/friend—includes family member/friend moving to a more distant location, even temporarily (e.g., for the winter months); death or incapacitation; recent severing of a significant relationship.

Resident openly expresses conflict/anger with family or close friends. Listen for expressions of feelings of abandonment, ungratefulness, lack of understanding, hostility regarding relationships with family/friends.

3. *Past Roles:* The resident's recognition and/or acceptance of his/her feelings regarding his/her new role/status, as a function of entering the nursing home.

Strong identification with past roles and life status—as indicated by the resident enjoying telling stories about his/her past; taking pride in past accomplishments or family life; overt connections with previous lifestyle (e.g., commemorating family events, celebrating lifelong traditions).

Expresses sadness/anger/empty feelings over lost roles/status—as indicated by expressing feelings with statements such as "I'm not the man I used to be"; "I wish I had been a better mother to my children"; "I'm not capable of doing the things I always liked to do." May also cry when reminiscing about past accomplishments.

Section H. Mood and Behavior Patterns

1. *Sad or Anxious Mood:* The presence of behaviors that may be interpreted as physical or verbal expressions of sadness or anxiety. A type of painful mood characterized by explicit verbal or gestural expressions of feeling "depressed," or one of its synonyms such as feeling sad, miserable, blue, hopeless, empty or tearful. It can be a disorder of mood which is usually, but not always, accompanied by a "painful mood" and calling for relief on the grounds that it is severely, or unnecessarily, distressing and/or threatening to physical health and life, and/or interfering with functional performance and adaptation. These symptoms may be preceded by anger or withdrawal. Code all verbal and demonstrated signs that apply.

2. *Mood Persistence:* Sad or anxious mood intrudes on daily life over last 7 days—not easily altered by attempts to "cheer resident up."

3. *Problem Behavior:* The presence of problem behaviors which cause disruption to facility residents or staff, including those which are potentially disruptive even though staff and residents have appeared to adjust to their occurrence. Problem behaviors include:

- Wandering—moves with no rational purpose, seemingly oblivious to needs or safety.
- Verbally abusive—others are threatened, screamed at, or cursed at.
- Physically abusive—others are hit, shoved, scratched, or sexually abused.
- Socially inappropriate/disruptive behavior—resident makes disruptive sounds, is noisy, screams, self-abusive acts, sexual behavior or disrobing in public, smears/throws food/feces, hoarding, rummaging through others' belongings.

4. *Resident Resists Care:* Problem behaviors related to delivery of nursing care/treatment to the resident that should prompt further causal evaluation (e.g., fear of pain, fear of falling, poor

comprehension, anger, poor relationships). Signs of resistance may be verbal and/or physical.

5. *Behavior Management Program:* Management of problem behaviors through clinical intervention in which staff have made attempts to understand the resident's "agenda" behavior (i.e., the meaning underlying the problem behavior) and have developed evidence of structure and continuity of care in the program. This category does not include behavioral management by physical restraints or psychotropic drugs if these are the only interventions.

Examples:

A. Mrs. S has been observed on numerous occasions to hit, shove, and curse the woman seated next to her at each meal. After observing the pattern of Mrs. S' behavior for several days, staff noticed that her tablemate was in the habit of moving in close to Mrs. S to take her food from her tray. As a result of their observations, the primary nurse made a change in seating arrangements. All staff have been made aware that Mrs. S must be seated for each meal at a small table of two.

B. Provisions for safely monitored wandering (may include the use of "secure bands" or any electronic device that activates an alarm when the resident wanders away from a designated area).

6. *Change in Mood:* Change in any aspect of sad or anxious mood that has been expressed verbally or demonstrated physically in the last 90 days. Changes include increased/decreased number of signs/symptoms or change in the frequency or intensity of behaviors associated with sad or anxious mood.

7. *Change in Problem Behavior:* Change in any problem behavior including but not limited to wandering, verbally abusive, physically abusive, and socially inappropriate behavior in the last 90 days. Includes increased/decreased number of signs/symptoms or change in the frequency or intensity of the behavior(s).

Section I. Activity Pursuit Patterns

The amount and types of interests and activities that the resident currently pursues, as well as those activities the resident would like to pursue.

1. *Time Awake:* The periods of a typical day (over the last 7 days) when the resident is awake all or most of the time (i.e., naps no more than one hour in the period).

2. *Average Time Involvement in Activities:* The proportion of available free time that the resident spends involved in activities, which is an indicator of the resident's overall activity level. Includes time spent in solitary activities (such as reading, letter writing), as well as group activities. Exclude time the resident spent in receiving treatments or completing ADLs in scoring this item.

Most—More than ⅔ of the resident's available time is spent in activities.

Some—⅓ to ⅔ of the resident's available time is spent in activities.

Little—Less than ⅓ of the resident's available time is spent in activities.

None—None of the resident's available time is spent in activities.

3. *Preferred Activity Settings:* The activities, circumstances or settings that the resident prefers, including though not limited to, those in which the resident appears to be at ease.

4. *General Activity Preferences:* Activities in which the resident prefers to participate, regardless of whether that activity is currently available to the resident or the resident currently engages in the activity. Check for each activity preferred. If none are preferred, check "NONE OF ABOVE".

Exercise/sports—Includes any type of physical activity (e.g., dancing, sports).

Spiritual/Religious Activities—Includes participation in religious services as well as watching them on television.

5. *Prefers More or Different Activities:* The resident has expressed an interest in pursuing other activities that are NOT offered at the facility. Residents who resist attendance/involvement in activities offered at the facility should also be included in this category. Also include instances where the activity is provided, but the resident would like to have other choices in carrying out the activity.

Section J. Disease Diagnoses

Diseases that are associated with the resident's current ADL status, cognition, behavior, medical treatments and/or risk of death. These conditions drive the current care plan. Identify current conditions affecting the resident, not those that have been resolved or no longer affect the resident's functioning.

1. *Diseases:*

Cardiac dysrhythmias—Disorder of heart rate or rhythm.

Cerebrovascular Accident (CVA/Stroke)—Includes intracranial bleeds, cerebral thromboses, infarcts, emboli; also includes TIAs (transient ischemic attacks).

Peripheral vascular disease—Venous or arterial.

Dementia—Other than Alzheimer's—Includes Organic Brain Syndrome (OBS) or Chronic Brain Syndrome (CBS), senility, Senile Dementia, Multi-infarct Dementia, dementia related to neurologic diseases other than Alzheimer's.

Aphasia—Communication disorder, often found in stroke patients in which the person has difficulty using speech, writing, or signs; or trouble understanding spoken or written language.

Emphysema/Asthma/COPD—Includes COPD (Chronic Obstructive Pulmonary Disease) or COLD (Chronic Obstructive Lung Disease); chronic restrictive lung diseases such as Asbestosis; chronic bronchitis.

Manic depressive (bipolar disease)—Bipolar is the current terminology for manic depressive disease.

Anemia—Includes anemia of any etiology.

Arthritis—Includes degenerative join disease (DJD), osteoarthritis (OA), rheumatoid arthritis (RA).

Diabetes Mellitus—Includes insulin dependent diabetes mellitus (IDDM) and diet controlled diabetes mellitus (NIDDM or AODM).

Explicit terminal prognosis—The resident is expected to die from primary diagnosis within 6 months. This should be supported by physician documentation.

Allergies—Includes all drug and food allergies; contact dermatitis and allergies that cause itchy eyes, runny nose or sneezing. Includes all allergies, not just those that are currently reactive.

Septicemia—Morbid condition associated with bacterial growth in the blood.

Urinary tract infection—Includes chronic and acute symptomatic infection in last 30 days.

2. *Other Current Diagnoses and ICD–9 Diagnoses:* Identify conditions OTHER THAN those listed in Item J1 that affect the resident's functioning or plan of care. These conditions drive the current care plan. Identify current conditions, not those that have been resolved or no longer affect the resident's functioning.

ICD–9 codes must be entered for every diagnosis listed under Item J2. If this information is not available in the medical record, check the list of common ICD–9–CM codes in Appendix A. If the code is not available from either of these sources, consult *ICD–9–CM*: The International Classification of Diseases.

Section K. Health Conditions

Identify specific problems or symptoms that affect or could affect the resident's health or functional status, or are risk factors for functional decline. Check all signs or symptoms occurring or present within the past 7 days, unless

indicated (e.g., lung aspirations—last 90 days).

1. *Problem Conditions*:

Dizziness/vertigo—The resident feels the sensation that he/she is turning or his surroundings are whirling around him.

Edema—Excessive accumulation of fluid in tissues, either localized or generalized.

Internal bleeding—Bleeding may be frank, such as bright red blood, or occult, such as guiac positive/hemoccult positive stools. Indicator may be black, tarry stools.

Syncope—Transient loss of consciousness, characterized by unresponsiveness and loss of postural tone with spontaneous recovery (i.e., fainting).

2. *Accidents*:

Fell—Note timeframes in both items.

Hip Fracture—Note timeframe.

3. *Stability of Conditions*: Denotes whether the resident is experiencing an unstable or acute condition.

Section L. Oral/Nutritional Status

1. *Oral Problems*:

Chewing Problem—Inability to chew food easily and without pain or difficulties, regardless of cause (e.g., residents with ill-fitting dentures or with neurologic impairments related to chewing).

Swallowing Problem—Symptoms may include frequent choking and coughing when eating or drinking, holding food in mouth for prolonged periods of time or excessive drooling.

2. *Height and Weight*:

a. *Height*: Round height to the nearest whole inch.

b. *Weight*: If the resident's weight is taken more than once a month, record the most recent weight. Round weight to the nearest whole pound.

c. *Weight Loss*: Weight loss of 5%+ in last 30 days; or 10% in last 180 days.

3. *Nutritional Problems*:

Insufficient fluids; dehydrated—Condition that occurs when output of water exceeds water intake.

Examples:

- Resident usually takes in less than six 8 oz. glasses of fluid daily (fluid to include beverages, soup, gelatin, ice cream, etc.).
- Resident has clinical signs of dehydration.
- Resident's fluid loss exceeds the amount of fluids he/she takes in (i.e., loss from vomiting, diarrhea, sweating exceeds fluid replacement).

Did not consume all/almost all liquids provided during last 3 days—Liquids include water, juices, gelatin, soup, ice cream/sherbet, coffee, etc.

4. *Nutritional Approaches*:

Parenteral/IV—Intravenous fluids or hyperalimentation given continuously or intermittently. This category does NOT include IV medication (See item P1).

Feeding tube—Any type of tube which delivers food/nutritional substances directly into the gastrointestinal (GI) system.

Syringe feeding—Use of syringe to deliver oral nourishment.

Mechanically altered diet—A diet ordered to be prepared so that its consistency is altered to facilitate oral intake (e.g., soft, pureed, ground).

Therapeutic diet—A diet ordered to treat problem conditions (e.g., calorie specific, low salt, lactose free).

Supplement between meals: Any type of dietary supplement (e.g., high protein/calorie shake, 3 p.m. snack for insulin dependent diabetic).

Plate guard, stabilized built-up utensils—Any type of specialized or altered equipment to facilitate resident participation in the eating process.

Section M. Oral/Dental Status

1. *Oral Status and Disease Prevention*: Check all that apply.

Carious—Pertains to tooth decay and disintegration (cavities).

Section N. Skin Condition

The condition of the resident's skin as well as skin treatments received by the resident in the last 7 days.

1. *Stasis Ulcer*: An open lesion, usually in the lower extremities, caused by decreased blood flow from chronic venous insufficiency. May also be referred to as a venous ulcer or ulcer related to Peripheral Vascular Disease (PVD).

2. *Pressure Ulcers*: Ischemic ulceration or necrosis of tissues overlying a bony prominence that has been subjected to pressure or friction. Other terms used to describe this condition include bed sores and decubitus ulcers. Record the stage of development corresponding to the most severe pressure ulcer on the resident's body.

3. *History of Resolved/Cured Pressure Ulcers*: Pressure ulcers that were resolved/cured during the last 90 days. Identification of this condition is important because it is a risk factor for development of subsequent pressure ulcers.

4. *Skin Problems/Care:* Includes skin conditions that may present risk factors for more serious problems as well as the type of skin care the resident has received during the prior 7 days.

Protective/preventive skin care—Includes any care given for preventive or protective purposes (e.g., diabetic foot care, moisturizing lotions, elbow protectors, booties).

Wound care/treatment—Care or treatments to any type of wound (e.g., pressure ulcer, surgical wound, skin tear). May include, but is not limited to, debridement, dressings, irrigations, etc

Section N. Medication Use

Determine the resident's pattern of medication use over the past 7 days.

1. *Number of medications:* The number of different medications (over-the-counter and prescription) the resident has used in the past 7 days. Count only those medications actually administered and received by the resident over the last 7 days.

Count the number of different medications (not the doses or different dosages). For example, Digoxin 0.25 mg po given on Tuesday and Thursday and Digoxin 0.125 mg po given on Monday, Wednesday and Friday is one medication. Also, if both the generic and brand name of a single drug are administered, consider them as one medication.

2. *New Medications:* Code "1" if the resident has received new medications in last 90 days; code "0" if the resident has not received any new medications in the last 90 days.

3. *Injections:* The number of days, during the past 7 days, that the resident received any type of injection.

4. *Days Received the Following Medication:* The number of days that the resident has taken each type of medication, in the past 7 days.

Write the appropriate number of days, out of the prior 7 days, in the answer box. If the resident has not used any medications from a drug category record "0" (zero). If the resident uses long-lasting drugs that are taken less often than weekly (e.g., Prolixin (decanoate) given every couple of weeks or monthly), record "1".

Example of Medication Sheet Recording:

Haldol 0.5 mg po BID prn—given once a day on Monday, Wednesday, and Thursday.

Ativan 1 mg po QAM—given every day.

Restoril 15 mg po QHS prn—given Tuesday and Wednesday.

Coding of Example:

Antipsychotics—3 days

Antianxiety/hypnotics—7 days

Antidepressants—0 days

5. *Previous Medication Results:* Skip This Question If The Resident Is Currently Receiving Antipsychotics, Antidepressants, or Antianxiety/Hypnotics. Psychoactive drugs are considered to have been effective if they

reduced the intensity or frequency of a behavior problem or reduced the presence or intensity of a mood problem as long as the resident is free of significant side effects (e.g., excess sedation).

Section P. Special Treatments and Procedures

1. *Special Treatments and Procedures:*

a. *Special Care:* All treatments received by the resident in the last 14 days.

Chemotherapy—Given by any route. Includes any type of chemotherapy (antineoplastic drug) given by any route the resident is currently taking whether it is received at the nursing facility or other facility.

Radiation—Includes radiation therapy or radiation implant. May occur at nursing facility or other facility.

Dialysis—Includes dialysis which occurs at nursing facility or other facility.

Suctioning—Includes nasopharyngeal or tracheal aspiration.

IV meds—Includes any medication given by intravenous push or drip.

Transfusions—Includes transfusions of blood or ANY blood products (e.g., platelets).

O_2—Includes continuous or intermittent oxygen via mask, cannula, etc.

b. *Therapies*: The number of days particular therapy services were received by the resident for at least 10 minutes each day during the last 7 days.

Psychological therapy—Therapy given by psychiatrist, psychologist, psychiatric nurse or psychiatric social worker.

2. *Abnormal Lab Values:* Any abnormal lab values during the prior 3 month period. This item refers to lab values that are abnormal when compared to standard values, not abnormal for the specific resident.

3. *Devices and Restraints:* The frequency with which the resident was restrained by any of the four devices listed, over the past 7 days.

For each restraint type, record:

"0" if not used in past 7 days
"1" if used, but used less than daily, in past 7 days
"2" if used on a daily basis in past 7 days

Attachment C—Resident Assessment Protocols and Instructions

Instructions for Using HCFA's Resident Assessment Protocols

Each of the 18 resident assessment protocols (RAPs) organizes comprehensively clinical information to assist long term care facility staff in thinking about care planning and treatment decisions. A RAP has two parts: (1) a RAP KEY that summarizes all MDS elements applicable to thinking about assessment and care planning in that particular clinical area; and (2) instructions, including clinical background information and suggested approaches to additional assessment. Upon completing a RAP, staff will have:

- Identified the unique problems the resident has that may affect adversely his/her highest practicable physical, mental, and psychosocial functioning.
- Identified factors that place the resident's highest practicable physical, mental, and psychosocial functioning at risk.
- Considered whether the identified problems and risk factors could be prevented or reversed, and evaluated the extent to which the resident is able to attain a higher level of well-being and functional independence.
- Evaluated ongoing care practices for that resident by, for example, considering alternative therapies and the need for medical consultation, or consultation(s) by other health professionals such as occupational or physical therapists.

To use RAPs, long term care facility staff shall follow these steps:

- As specified in the utilization guidelines, complete MDS elements, using common definitions.
- Review MDS information. Use the Resident Assessment Protocol Trigger Legend Worksheet that shows which MDS elements serve as triggers for each RAP.
- If MDS item(s) and code(s) trigger a RAP(s), circle those RAP(s) that have been triggered.
- Complete triggered RAPs following instructions for each RAP. Delegate completion of a particular RAP to the facility staff who can address that care area most knowledgeably, whether it be nursing personnel, therapists, social workers, activity specialists, or physicians. Whenever possible, get the person(s) who completed the MDS trigger(s) for that RAP to apply the full RAP.
- After completing a RAP, use the Resident Assessment Protocol Summary to document decisions about care planning and to specify where in the resident's record summary information gained from the assessment has been noted, for example, progress note or care plan.

This summary information must include, as appropriate to the individual resident, documentation of problems, complications, and risk factors, the need for referral to appropriate health professionals, and the reasons for deciding to proceed or not to proceed to care planning for the specific problems identified.

- The registered nurse coordinating the assessment must sign and date the Resident Assessment Protocol Summary verifying that the triggered RAPs have been applied.

BILLING CODE 4120-03-M

Resident's Name:	Medical Record No.:

Signature of RN Assessment Coordinator: _____

RESIDENT ASSESSMENT PROTOCOL SUMMARY

1. For each RAP area triggered, show whether you are proceeding with a care plan intervention.
2. Document problems, complications, and risk factors; the need for referral to appropriate health professionals; and the reasons for deciding to proceed or not to proceed to care planning. Documentation may appear anywhere the facility routinely keeps such information, such as problem sheets or nurses' progress notes.
3. Show location of this information.

RAP Problem Area	Care Planning Decision		Location of Information
	Proceed	Not Proceed	
DELIRIUM	☐	☐	
COGNITIVE LOSS/DEMENTIA	☐	☐	
VISUAL FUNCTION	☐	☐	
COMMUNICATION	☐	☐	
ADL FUNCTIONAL/ REHABILITATION POTENTIAL	☐	☐	
URINARY INCONTINENCE AND INDWELLING CATHETER	☐	☐	
PSYCHOSOCIAL WELL-BEING	☐	☐	
MOOD STATE	☐	☐	
BEHAVIOR PROBLEM	☐	☐	
ACTIVITIES	☐	☐	
FALLS	☐	☐	
NUTRITIONAL STATUS	☐	☐	
FEEDING TUBES	☐	☐	
DEHYDRATION/FLUID MAINTENANCE	☐	☐	
DENTAL CARE	☐	☐	
PRESSURE ULCERS	☐	☐	
PSYCHOTROPIC DRUG USE	☐	☐	
PHYSICAL RESTRAINTS	☐	☐	

August 15, 1990

RESIDENT ASSESSMENT PROTOCOL TRIGGER LEGEND

LEGEND:

● Automatic Trigger—Go directly to RAP Instructions

▲ Potential Trigger—Go to RAP Instructions for more detailed trigger definitions

Instructions: Match MDS item codes with trigger codes below. Proceed to RAP instructions as indicated by symbol. Circle all RAPs that are "triggered," based on your review.

MDS Item	Code	Delirium	Cognitive Loss/Dementia	Visual Function	Communication	ADL Functional/Rehabilitation Potential	Urinary Incontinence and Indwelling Catheter	Psychosocial Well-Being	Mood State	Behavior Problem	Activities	Falls	Nutritional Status	Feeding Tubes	Dehydration/Fluid Maintenance	Dental Care	Pressure Ulcers	Psychotropic Drug Use	Physical Restraints
B2 a or b	1		▲																
B3 a,b,c,d	lower than 3 ✓		▲																
B4	0,1,2				▲														
	1,2,3		▲																
B5 a,b,c,d,e	any ✓	●																	
B6	2	●													▲				
C4	2,3				▲														
C5	1,2,3		▲																
	2,3				▲	▲													
C6	2	●																	
D1	1,2,3			●															
D2 a	✓			●															
E1 a,b,c,d,e,f	3,4					▲													
E3 a	3,4					▲													
E4 a,b,d,e,h,j	any ✓											▲							
E7 a,b	any ✓					▲													
E8	2														▲				
F1 b	2,3,4						▲												
F3 b,c,d,f	any ✓						▲												
G2 a,b,c,d	any ✓							●											
G3 b	✓							●											
H1 a,b,c,d,e,f,g	any ✓								●										
H1 d	✓														▲				
H2	1								●										
H3 a,b,c or d	1,2									●									
H6	2	▲																	
H7	2	●																	
I2	0,2,3										▲								
I5	1										●								
J1 ee	✓														▲				
J2	290, 291, 292												●						
	293, 293.0, 293.1												●						
	293.2, 293.8, 293.9												●						
	276.5														▲				
	291.0, 292.81	●																	
	293.0, 293.1	●																	
K1 b,c,f,h,n	any ✓														▲				
K2 a,b	any ✓											●							
L1 c	✓															●			
L2 c	1												●		▲				
L3 a,d,e	any ✓												●						
L3 b	✓														●				
L3 c,e	✓														▲				
L4 a,b	any ✓														▲				
L4 a,c,d,e	any ✓												●						
L4 b	✓													●					
M1 a,c,d,e	any ✓															●			
M1 f	not ✓															●			
N2	1,2,3,4												●				●		
N4 c,d,e,f,g	none ✓																▲		
O4 a,b,c	1-7									▲		▲						▲	
P3 b,c, or d	1,2									▲									●

RESIDENT ASSESSMENT PROTOCOL: DELIRIUM

I. PROBLEM

Delirium (acute confusional state) is a common indicator or nonspecific symptom of a variety of acute, treatable illnesses. It is a serious problem, with high rates of morbidity and mortality, unless it is recognized and treated appropriately. Delirium is never a part of normal aging. Some of the classic signs of delirium may be difficult to recognize and may be mistaken for the natural progression of dementia, particularly in the late stages of dementia when delirium has high mortality. Thus careful observation of the resident and review of potential causes are essential.

Delirium is characterized by fluctuating states of consciousness, disorientation, decreased environmental awareness, and behavioral changes. The onset of delirium may vary, depending on the severity of the cause(s) and the resident's health status; however, it usually develops rapidly, over a few days or even hours. Even with successful treatment of cause(s) and associated symptoms, it may take several weeks before cognitive abilities return to pre-delirium status.

Successful management depends on accurate identification of the clinical picture, correct diagnosis of specific cause(s), and prompt nursing and medical intervention. Delirium is often caused and aggravated by multiple factors. Thus, if you identify and address one cause, but delirium continues, you should continue to review the other major causes of delirium and treat any that are found.

II. TRIGGERS

Delirium problem suggested if:

1. ANY Indicator of Disordered Thinking **[B5a, B5b, B5c, B5d, B5e = any checked]**
2. Cognitive/Communication/Behavior Decline **[B6 = 2 or C6 = 2 or H7 = 2]**
3. Mood Decline **[H6=2]** AND ANY of following:
   - Motor Agitation **[H1c = checked]**
   - Withdrawal **[H1d = checked]**
   - Hallucinations/Delusions **[K1g = checked]**
4. Alcohol Withdrawal, Drug-induced, Acute or Subacute Delirium **[J2 = 291.0, 292.81, 293.0, or 293.1]**

III. GUIDELINES

Detecting signs and symptoms of delirium requires careful observation. Knowledge of a person's baseline cognitive abilities facilitates evaluation.

- Staff should become familiar with residents' cognitive function by regularly observing the resident in a variety of situations so that even subtle but important changes can be recognized.

When observed in this manner, the presence of any trigger signs/symptoms may be seen as a potential marker for acute, treatable illness.

An approach to detection and treatment of the problem can be selected by reviewing the items that follow in the order presented. Also refer to the RAP KEY for guidance on the MDS items that are relevant.

DIAGNOSES AND CONDITIONS

By correctly identifying the underlying cause(s) of delirium, you may prevent a cycle of worsening symptoms (e.g., an infection-fever-dehydration-confusion syndrome) or a drug regimen for a suspected cause that worsens the condition. The most common causes of delirium are associated with circulatory, respiratory, infectious, and metabolic disorders. However, finding one cause or disorder does not rule out the possibility of additional contributing causes and/or multiple interrelated factors.

MEDICATIONS

Many medications given alone or in combination can cause delirium.

- If necessary, check doctor's order against med sheet and drug labels to avoid the common problem of medication error.
- Review the resident's drug profile with a physician.
- Review all medications (regularly prescribed, PRN, and "over-the-counter" drugs).

Number of medications. The greater the number, the greater the possibility of adverse drug reaction/toxicity.

- Review meds to determine need and benefit (ask if resident is receiving more than one drug class of drug to treat a condition).
- Check to determine whether nonpharmacological interventions have been considered (e.g., a a behavior management program rather than antipsychotics to address the needs of a resident who is physically or verbally abusive).

New medications.

- Review to determine whether there is a temporal relationship between onset or worsening of delirium and start of new medication.

Drugs that cause delirium.

1. PSYCHOTROPIC
   Antipsychotics
   Antianxiety/hypnotics
   Antidepressants
2. CARDIAC
   Digitalis glycosides (Digoxin),
   Antiarrhythmics, such as quinidine, procainamide (Pronestyl), disoprymide (Norpace)
   Calcium channel blockers, such as verapamil (Isoptin), nifedipine (Procardia), and diltiazem (Cardizem)
   Antihypertensives, such as methyldopa (Aldomet), propanolol (Inderal)
3. GASTROINTESTINAL
   H2 antagonists such as cimetidine (Tagamet) and ranitidine (Zantac)
4. ANALGESICS such as Darvon, narcotics (e.g., morphine, dilaudid)
5. ANTI-INFLAMMATORY
   Corticosteroids such as prednisone
   Nonsteroidal anti-inflammatory agents such as ibuprofin (Motrin)
6. OVER-THE-COUNTER DRUGS, especially those with anticholinergic properties
   Cold remedies (antihistamines, pseudoephedrine)
   Sedatives (antihistamines, e.g., Benadryl)
   Stay-awakes (caffeine)
   Antinauseants
   Alcohol

PSYCHOSOCIAL

After serious illness and drug toxicity are ruled out as causes of delirium, consider the possibility that the resident is experiencing psychosocial distress that may produce signs of delirium.

Isolation.

- Has the resident been away from people, objects and situations?
- Is resident confused about time, place and meaning?
- Has the resident been in bed or in an isolated area while recuperating from an illness or receiving a treatment?

Recent loss of family/friend. Loss of someone close can precipitate a grief reaction that presents as acute confusion, especially if the person provided safety and structure for a demented resident.

- Review the MDS to determine whether the resident has experienced a recent loss of a close family member/friend.

Depression/sad or anxious mood. Mood states can lead to confusional states that resolve with appropriate treatment.

- Review the MDS to determine whether the resident exhibits any signs or symptoms of sad or anxious mood or has a diagnosis of a psychiatric illness.

Restraints. Restraints often aggravate the conditions staff are trying to treat (e.g., confusion, agitation, wandering).

- Did the resident become more agitated and confused with their use?

Recent relocation.

- Has the resident recently been admitted to a new environment (new room, unit, facility)?
- Was there an orientation program that provided a calm, gentle approach with reminders and structure to help the new resident settle into the environment?

SENSORY LOSSES

Sensory impairments often produce signs of confusion and disorientation, as well as behavior changes. This is especially true of residents with early signs of dementia. They can also aggravate a confusional state by impairing the resident's ability to accurately perceive or cope with environmental stimuli (e.g., loud noises; onset of evening). This can lead to the resident experiencing hallucinations/delusions and misinterpreting noises and images.

Hearing.

- Is hearing deficit related to easily remedied situations — impacted ear wax or hearing aid dysfunction?
- Has sensory deprivation led to confusion?
- Has physician input been sought?

Vision.

- Has vision loss created sensory deprivation resulting in confusion?
- Have major changes occurred in visual function without the resident's being referred to a physician?

DELIRIUM RAP KEY

TRIGGERS

Delirium problem suggested if:

1. **ANY** indicator of Disordered Thinking **[B5a, B5b, B5c, B5d, B5e = any checked]**

2. Cognitive/Communication/Behavior Decline **[B6 = 2 or C6 = 2 or H7 = 2]**

3. Mood Decline **[H6 = 2]** AND ANY of following:

   - Motor Agitation **[H1c = checked]**
   - Withdrawal **[H1d = checked]**
   - Hallucinations/Delusions **[K1g = checked]**

4. Alcohol Withdrawal, Drug-induced, Acute or Subacute Delirium **[J2=291.0, 292.81, 293.0, or 293.1]**

GUIDELINES

Factors that may be associated with signs and symptoms of delirium:

1. **Diagnoses and Conditions.** Cardiac dysrhythmias **[J1b]**, CHF **[J1c]**, CVA **[J1k]**, Emphysema/Asthma/COPD **[J1n]**, Pneumonia **[J1o]**, Anemia **[J1v]**, Cancer **[J1x]**, Diabetes **[J1y]**, Hypothyroidism **[J1aa]**, Septicemia **[J1dd]**, Urinary tract infection **[J1ee]**, Fecal impaction **[K1e]**, Fever **[K1f]**, or Dehydration **[L3b]**. Myocardial infarction, any viral or bacterial infection (e.g., meningitis, infectious diarrhea), Surgical abdomen, Head trauma, Hypothermia, Hypoglycemia, Hyperthyroidism, or Transient Ischemic Attack (TIA) **[J2 and medical record]**.

2. **Medications.** No. of meds **[O1]**, New meds **[O2]**, Antipsychotics **[O4a]**, or Antianxiety/hypnotics **[O4b]**, Cardiac meds, GI meds, Analgesics, Antinflammatory, Anticholinergics **[from med charts]**.

3. **Psychosocial.** Isolation **[G2e; from record]**, Recent loss **[G2f]**, Sad or anxious mood **[H1]**, Restraints **[P3b, P3c, P3d]**, or Recent relocation **[Intake I2]**.

4. **Sensory impairment.** Hearing **[C1]** or Vision **[D1]**.

Clarifying information to be considered in establishing a diagnosis: Alzheimer's **[J1h]**, Time of onset within hours to days **[from record or observation]**; Sleep disturbance **[from record or observation]**

Environment conducive to reducing symptoms: Quiet, well-lit, calm, familiar objects **[from observation]**; Task segmentation **[E6]**

RESIDENT ASSESSMENT PROTOCOL: COGNITIVE LOSS/DEMENTIA

I. PROBLEM

Approximately 60% of residents in nursing facilities exhibit signs and symptoms of decline in intellectual functioning. Recovery will be possible for less than 10% of these residents — those with a reversible condition such as an acute confusional state (delirium). For most residents, however, the syndrome of cognitive loss or dementia is chronic and progressive, and appropriate care focuses on enhancing quality of life, sustaining functional capacities, minimizing decline, and preserving dignity.

Confusion and/or behavioral disturbances present the primary complicating care factors. Identifying and treating acute confusion and behavior problems can facilitate assessment of how chronic cognitive deficits affect the life of the resident.

For residents with chronic cognitive deficits, a therapeutic environment is supportive rather than curative and is an environment in which licensed and nonlicensed care staff are encouraged (and trained) to comprehend a resident's experience of cognitive loss. With this insight, staff can develop care plans focused on three main goals: (1) to provide positive experiences for the resident (e.g., enjoyable activities) that do not involve overly demanding tasks and stress; (2) to define appropriate support roles for each staff member involved in a resident's care; and (3) to lay the foundation for reasonable staff and family expectations concerning a resident's capacities and needs.

II. TRIGGERS

A cognitive loss/dementia problem is suggested if two or more of the following deficits are present:

- **Short-term Memory Problem [B2a = 1]**
- **Long-term Memory Problem [B2b = 1]**
- **Two or More Memory Recall Problems [B3a, B3b, B3c, B3d = fewer than three checked]**
- Some Decision-making Problem [B4 = 1, 2 or 3]
- Problem Understanding Others [C5 = 1, 2 or 3]
- Diagnosis of Alzheimer's Disease [J1h = checked]; Dementia other than Alzheimer's [J1i = checked]; Mental Retardation [INTAKE I12 b-f = any checked]; Parkinson's Disease [J1m = checked]; or Aphasia [J1j = checked]

III. GUIDELINES

Review the following MDS items to investigate possible links between these factors and the resident's cognitive loss and quality of life. The three triggers identify residents with differing levels of cognitive loss. Even for those who are most highly impaired, the RAP seeks to help identify areas in which staff intervention might be useful. Refer to the RAP KEY for specific MDS items and other specific issues to consider.

NEUROLOGICAL

Fluctuating Cognitive Signs and Symptoms/Neurological Status. Co-existing delirium and progressive cognitive loss can result in erroneous impressions concerning the nature of the resident's chronic limitations. Only when acute confusion and behavioral disturbances are treated, or when the treatment effort is judged to be as effective as possible, can a true measure of chronic cognitive deficits be obtained.

Recent Changes in the Signs/Symptoms of the Dementia Process. Identifying these changes can heighten staff awareness of the nature of the resident's cognitive and functional limitations. This knowledge can assist staff in developing reasonable expectations of the resident's capabilities and in designing programs to enhance the resident's quality of life. This knowledge can also challenge staff to identify potentially reversible causes for recent losses in cognitive status.

Mental Retardation, Alzheimer's Disease, and Other Adult-Onset Dementias. The most prevalent neurological diagnoses for cognitively impaired residents are Alzheimer's disease and multi-infarct dementia. But increasing numbers of mentally retarded residents are in nursing facilities, and many adults suffering from Down's syndrome appear to develop dementia as they age. The diagnostic distinctions among these groups can be useful in reminding staff of the types of long-term intellectual reserves that are available to these residents.

MOOD/BEHAVIOR

Specific treatments for behavioral distress, as well as treatments for delirium, can lessen and even cure the behavioral problem. At the same time, however, some behavior problems will not be reversible, and staff should be prepared (and encouraged) to learn to live with their manifestations. In some situations where problem/distressed behavior continues, staff may feel that the behavior poses no threat to the resident's safety, health, or activity pattern and is not disruptive to other residents. For the resident with declining cognitive functions and a behavioral problem, you may wish to consider the following issues:

- Have cognitive skills declined subsequent to initiation of a behavior control program (e.g., psychotropic drugs or physical restraints)?
- Is decline due to the treatment program (e.g., drug toxicity or negative reaction to physical restraints)?
- Have cognitive skills improved subsequent to initiation of a behavior control program?
- Has staff assistance enhanced resident self-performance patterns?

CONCURRENT MEDICAL PROBLEMS

Major Concurrent Medical Problems. Identifying and treating health problems can positively affect cognitive functioning and the resident's quality of life. Effective therapy for congestive heart failure, chronic obstructive pulmonary disease, and constipation can lead, for example, to functional and cognitive improvement. Comfort (pain avoidance) is a paramount goal in controlling both acute and chronic conditions for cognitively impaired residents. Verbal reports from residents should be one (but not the only) source of information. Some residents will be unable to communicate sufficiently to pinpoint their pain.

FUNCTIONAL LIMITATIONS

Extent and Rate of Change of Resident Functional Abilities. Functional changes are often the first concrete indicators of cognitive decline and suggest the need to identify reversible causes. You may find it helpful to determine the following:

- To what extent is resident dependent for locomotion, dressing and eating?
- Could the resident be more independent?
- Is resident going downhill (e.g., experiencing declines in bladder continence, locomotion, dressing, vision, time involved in activities)?

SENSORY IMPAIRMENTS

Perceptual Difficulties. Many cognitively impaired residents have difficulty identifying small objects, positioning a plate to eat, or positioning the body to sit in a chair. Such difficulties can cause a resident to become cautious and ultimately cease to carry out everyday activities. If problems are vision-based, corrective programs may be effective. Unfortunately, many residents have difficulty indicating that the source of their problem is visual. Thus, the cognitively impaired can often benefit if tested for possible visual deficits.

Ability to Communicate. Many individuals suffering from cognitive deficits seem incapable of meaningful communication. However, many of the seemingly incomprehensible behaviors (e.g., screaming, aggressive behavior) in which these individuals engage may constitute their only form of communication. By observing the behavior and the pattern of its occurrence, one can frequently come to some understanding of the needs of individuals with dementia. For example, residents who are restrained for their own safety may become noisy due to bladder or bowel urgency.

- Is resident willing/able to engage in meaningful communication?
- Does staff use non-verbal communication techniques (e.g., touch, gesture) to encourage resident to respond?

MEDICATIONS

Psychoactive medications can be a factor in cognitive decline. If necessary, review Psychotropic Drug Use RAP.

INVOLVEMENT FACTORS

Opportunities for Independent Activity. Staff can encourage residents to participate in the many available activities, and staff can guard against assuming an overly protective attitude toward residents. Decline in one functional area does not indicate the need for staff to assume full responsibility in that area nor should it be interpreted as an indication of inevitable decline in other areas. Review information in the MDS when considering the following issues:

- Are there factors that suggest that the resident can be more involved in his/her care (e.g., instances of greater self-performance; desire to do more independently; retained ability to learn; retained control over trunk, limbs, and/or hands)?
- Can resident participate more extensively in decisions about daily life?
- Does resident retain any cognitive ability that permits some decision making?
- Is resident passive?
- Does resident resist care?
- Are activities broken into manageable subtasks?

Extent of Involvement in Activities of Daily Life. Programs focused on physical aspects of the resident's life can lessen the disruptive symptoms of cognitive decline for some residents. Consider the following:

- Are residents with some cognitive skills and without major behavioral problems involved in the life of the facility and the world around them?
- Can modifying task demands, or the environmental circumstances under which tasks are carried out, be beneficial?
- Are small group programs encouraged?
- Are special environmental stimuli present (e.g., directional markers, special lighting)?
- Do staff regularly assist residents in ways that permit them to maintain or attain their highest predictable level of functioning (e.g., verbal reminders, physical cues and supervision regularly provided to aid in carrying out ADLs; ADL tasks presented in segments to give residents enough time to respond to cues; pleasant, supportive interaction)?
- Has the resident experienced a recent loss of someone close (e.g., death of spouse, change in key direct care staff, recent move to the nursing facility, decreased visiting by family and friends)?

FAILURE TO THRIVE

Cognitively impaired residents can reach the point where their accumulated health/neurological problems place them at risk of clinical complications (e.g., pressure ulcers) and death. As this level of disability approaches, staff can review the following:

- Do emotional, social, and/or environmental factors play a key role?
- If a resident is not eating, is this due to a reversible mood problem, a basic personality problem, a negative reaction to the physical and interactive environment in which eating activity occurs, or a neurological deficit such as deficiency in swallowing or loss of hand coordination?
- Could an identified problem be remedied through improved staff education — trying an antidepressant medication, referral to OT for training or an innovative counseling program?
- If causes cannot be identified, what reversible clinical complications can be expected as death approaches (e.g., fecal impaction, UTI, diarrhea, fever, pain, pressure ulcers)?
- What interventions are or could be in place to decrease complications?

COGNITIVE LOSS/DEMENTIA RAP KEY

TRIGGERS

A cognitive loss/dementia problem deficit and retained abilities suggested if two or more of the following deficits are present:

- Short-term Memory Problem **[B2a = 1]**
- Long-term Memory Problem **[B2b = 1]**
- Two or More Memory Recall Problems **[B3a, B3b, B3c, B3d = less than 3 checked]**
- Some Decision-making Problem **[B4 = 1, 2, or 3]**
- Problem Understanding Others **[C5 = 1, 2 or 3]**
- Diagnosis of Alzheimer's **[J1h = checked]**; Dementia other than Alzheimer's **[J1i= checked]**; Mental Retardation **[INTAKE I12b-f = any checked]**; Parkinson's **[J1m = checked]**; or Aphasia **[Jlj = checked]**

GUIDELINES

Factors to review for relationship to cognitive loss:

1. **Neurological.** Delirium **[B5]**, Cognitive decline **[B6]**, Alzheimer's and other dementias **[J1h, J1i]**, MR/DD status **[INTAKE I12]**.

Confounding Problems that may require resolution or suggest reversible causes:

2. **Mood/behavior.** Sad mood or Mood decline **[H1, H6]**, Behavior problem or behavior decline **[H3, H7]**, Anxiety disorder **[J1p]**, Depression **[J1q]**, Manic depressive disorder **[J1r]**, Other psychiatric disorders **[J2]**.

3. **Concurrent medical problems.** CHF **[J1c]**, Other cardiovascular disease **[J1g]**, CVA **[J1k]**, Emphysema/Asthma/COPD **[J1n]**, Cancer **[J1x]**, Diabetes **[J1y]**, Hypothyroidism **[J1aa]**.

4. **Functional limitations.** ADL task segmentation **[E6]**, Decline in ADL or continence **[E8; F4]**.

5. **Sensory impairment.** Hearing/visual problems **[C1; D1]**, Rarely/never understands **[C5]**, Impaired tactile sense **[N4b]**.

6. **Medications.** Antipsychotics, Antianxiety/hypnotics, Antidepressants **[O4]**.

7. **Involvement factors.** New admission **[INTAKE I2]**, Trunk or chair restraint **[P3]**, Withdrawal from activities **[H1d]**, Encouragement of small group programs **[from record]**.

8. **Failure to thrive.** Terminal prognosis **[J1z]**, Clinical complications **[K1; L3; N2]**.

RESIDENT ASSESSMENT PROTOCOL: VISUAL FUNCTION

I. PROBLEM

The aging process leads to a gradual decline in visual acuity: a decreased ability to focus on close objects or to see small print, a reduced capacity to adjust to changes in light and dark, and diminished ability to discriminate color. The aged eye requires about 3-4 times more light in order to see well than the young eye.

The leading causes of visual impairment in the elderly are macular degeneration, cataracts, glaucoma, and diabetic retinopathy. In addition, visual perceptual deficits (impaired perceptions of the relationship of objects in the environment) are common in the nursing home population. Such deficits are a common consequence of cerebrovascular events and are often seen in the late stages of Alzheimer's disease and other dementias. The incidence of all these problems increases with age.

In 1974, 49% of all nursing home residents were described as being unable to see well enough to read a newspaper with or without glasses. In 1985, over 100,000 nursing home residents were estimated to have severe visual impairment or no vision at all. Thus vision loss is one of the most prevalent losses of residents in nursing facilities. A significant number of residents in any facility may be expected to have difficulty performing tasks dependent on vision as well as problems adjusting to vision loss.

The consequences of vision loss are wide-ranging and can seriously affect physical safety, self-image, and participation in social, personal, self-care, and rehabilitation activities. This RAP is primarily concerned with identifying two types of residents: 1) Those who have treatable conditions that place them at risk of permanent blindness (e.g., Glaucoma; Diabetes, retinal hemorrhage); and 2) those who have impaired vision whose quality of life could be improved through use of appropriate visual appliances. Further, the assumption is made that residents with new acute conditions will have been referred to followup as the conditions were identified (e.g., sudden loss of vision; recent red eye; shingles; etc). To the extent that this did not occur, the RAP KEY followup questions will cause staff to ask whether such a referral should be considered.

II. TRIGGERS

The Visual Function RAP triggers three types of residents:

1. Residents with treatable conditions that place them at risk of permanent blindness (e.g., Glaucoma; Diabetes, retinal hemorrhage). For glaucoma, the issue to be considered will revolve around proper use of eye medications; for diabetes, the issue centers on the possible referral for laser treatment to arrest retinal hemorrhage.

   Some Vision Impairment but not functionally blind **[D1=1 or 2]** AND presence of Glaucoma OR Diabetes **[J1t, J1y = any checked]**.

2. Residents with visual problems who are able to understand others AND make themselves understood. In most instances, these residents are able to participate in a thorough eye exam, including testing of visual acuity. The key question for these residents centers on whether current daily functioning is seriously limited by visual acuity problems.

   Vision impairment OR Side Vision problems **[D1 = 1, 2 or 3 or D2a = checked]** AND Can Both Make Self Understood AND Understand Others **[C4 = 0, 1 or 2 and C5 = 0, 1 or 2]**

3. Residents with visual problems who are not able to understand others OR make themselves understood. In most instances these residents are unable to cooperate in a thorough eye exam, including testing of visual acuity. They are triggered to ensure screening for disease that might put them at risk of blindness, as well as to determine whether the resident or family have concerns about how the visual deficit is restricting the resident.

Vision impairment OR Side Vision problems [D1=1, 2 or 3 or D2a = checked] AND Cannot Make Self Understood OR Understand Others [C4=3 or C5=3]

III. GUIDELINES

Visual impairment may be related to many causes, and one purpose of this section is to screen for the presence of major risk factors and to review the resident's recent treatment history. This section also includes items that ask whether the visually impaired resident desires or has a need for increased functional use of eyes.

Eye medications: Of greatest importance is the review of medications related to glaucoma (phospholine iodide, pilorarpine, propine, epineprin, Timoptic or other Beta-Blockers, diamox, or Neptazane).

- Is the resident receiving his/her eye medication as ordered?
- Does the resident experience any side effects?

Diabetes Cataracts, Glaucoma, or Macular Degeneration: Diabetes may affect the eye by causing blood vessels in the retina to hemorrhage (retinopathy). All these conditions are associated with decreased visual acuity and visual field deficits. If resident is able to cooperate it is very possible to test for glaucoma and retinal problems.

Exam by ophthalmologist or optometrist since problem noted:

- Has the resident been seen a consultant?
- Have the recommendations been followed (e.g. medications, refraction [new glasses], surgery)?
- Is the recommendation compatible with the resident's wishes (e.g., medical rehab. vs. surgery)?

If neurological diagnosis or dementia exam by physician since problem noted. Check the medical record to see if a physician has examined the resident for visual/perceptual difficulties. Some residents with diseases such as myethenia gravis, stroke, and dementia will have such difficulties associated with central nervous system in the absence of diseases of the eye.

Sad or anxious mood: Some residents, especially those in a new environment, will complain of visual difficulties. Visual disorganization may improve with treatment of the sad or anxious mood.

Appropriate use of visual appliances: Residents may have more severe visual impairment when they do not use their eyeglasses. Residents who wear reading glasses for walking, for example, may misperceive their environment and bump into objects or fall.

- Are glasses labelled or color coded in a fashion that enables the resident/staff to determine when they should be used?
- Are the lenses of glasses clean and free of scratches?
- Were glasses recently lost? Were they being recently used, and now they are missing?

Functional need for eye exam/new glasses: Many residents with limited vision will be able to use the environment with little or no difficulty, and neither the resident nor staff will perceive the need for new visual appliances. In other circumstances, needs will be identified, and for residents who are capable of participating in a visual exam, new appliances, surgery to remove cataracts, etc. can be considered.

- Does resident have peripheral vision or other visual problem that impedes his/her ability to eat food, walk on the unit, or interact with others?
- Is resident's ability to recognize staff limited by a visual problem?
- If resident is having difficulty negotiating his environment or participating in self-care activities because of visual impairment has he/she been referred to low vision services?
- Does resident report difficulty seeing TV/reading material of interest?
- Does resident express interest in improved vision?
- Has resident refused to have eyes examined? How long ago did this occur? Has it occurred more than once?

Environmental modifications: Residents whose vision cannot be improved by refraction, or medical and/or surgical intervention may benefit from environmental modifications.

- Does the resident's environment enable maximum visual function (e.g. low-glare floors and table surfaces, night lights)?
- Has the environment been adapted to resident's individual needs (e.g. large print signs marking room, color coded tape on dresser drawers, large numbers on telephone, reading lamp with 300 watt bulb)? Could the resident be more independent with different visual cues (e.g., labeling items, task segmentation) or other sensory cues (e.g., cane for recognizing there are objects in path)?

Acute Problems that may have been missed: Eye pain, blurry vision, double vision, sudden loss of vision: These symptoms are usually associated with acute eye problems.

- Has resident been evaluated by a physician or ophthalmologist?

Residents with communication impairments may be very difficult to assess. Residents who are unable to understand others may have problems following the directions necessary to test visual acuity.

VISUAL FUNCTION RAP KEY

TRIGGERS

Potential for acute, reversible visual function problems suggested if:

1. Some Vision Impairment but not functionally blind [D1 = 1 or 2] AND Glaucoma OR Diabetes [J1t, J1y = any checked]

Potential for improved visual function suggested if:

2. Vision Impairment OR Side Vision problems [D1 = 1, 2 or 3 or D2a = checked] AND Can Make Self Understood AND Can Understand Others [C4 = 0, 1 or 2 and C5 = 0, 1 or 2]

3. Vision Impairment OR Side Vision problems [D1 = 1, 2 or 3 or D2a = checked] AND Cannot Make Self Understood OR Understand Others [C4 = 3 or C5 = 3]

GUIDELINES

Issues and problems to be reviewed that may suggest need for intervention:

1. Eye medications [from record]
2. Diabetes [J1y], Cataracts, Glaucoma or Macular Degeneration [J1s, J1t; J2]
3. Exam by ophthalmologist since problem noted [from record]
4. Neurological diagnosis or dementia [J1b, J1i, J1j, J1k, J1m; J2]
5. Sad or Anxious Mood [H1]
6. Appropriate use of visual appliances [D3; from record, observation]
7. Functional need for eye exam/new glasses [from observation]
8. Environmental modifications [from record, observation]
9. Other acute problems: Eye pain, blurry vision, double vision, sudden loss of vision [from record, observation]

RESIDENT ASSESSMENT PROTOCOL: COMMUNICATION

I. PROBLEM

Good communication enables residents to express emotion, listen to others, and share information. It also eases adjustment to a strange environment and lessens social isolation and depression.

EXPRESSIVE communication problems include changes/difficulties in: speech and voice production, finding appropriate words, transmitting coherent statements, describing objects and events, using nonverbal symbols (e.g., gestures), and writing. RECEPTIVE communication problems include changes/difficulties in: hearing, speech discrimination in quiet and noisy situations, vocabulary comprehension, vision, reading, and interpreting facial expressions.

When communication is limited, assessment focuses on reviewing several factors: underlying causes of the deficit, the success of attempted remedial actions, the resident's ability to compensate with nonverbal strategies (e.g., ability to visually observe nonverbal signs and signals), and the willingness and ability of staff to engage with residents to ensure effective communication. As language use recedes with dementia, both the staff and the resident must expand their nonverbal communication skills — one of the most basic and automatic of human abilities. Touch, facial expression, eye contact, tone of voice, and posture all are powerful means of communicating with the demented resident, and recognizing and using all practical means is the key to effective communication.

II. TRIGGERS

The resident has the potential for improved communication and the RAP should be completed when the following problems are present.

Potential for improved communication is suggested if:

1. Poor Expression or Understanding [C4 = 2 or 3 or C5 = 2 or 3] AND
   Some Decision-Making Ability [B4 = 0, 1 or 2]

2. Poor Expression or Understanding [C4 = 2 or 3 or C5 = 2 or 3] AND
   No Decision-Making Ability [B4 = 3] AND
   No CVA or Neurological Problems [J1h, J1i, J1j, J1k, J1m = none checked]

Potential for improved hearing is suggested if:

3. Some Decision-Making Ability [B4 = 0, 1 or 2] AND ANY Hearing Problem [C1 = 1, 2 or 3]

III. GUIDELINES

The communication trigger suggests residents for whom a corrective communication treatment program may be beneficial. Specify those residents with potentially correctable problems. An effective review requires a special effort by staff to overcome any preconceived notions or fixed perceptions they may have about the resident's probable responsiveness to treatment. These perceptions may be based on the failure of prior treatment programs, as well as on assumptions that may not have been recently tested about the resident's unwillingness to begin a corrective program.

The triggers identify three types of residents:

1. Those with serious communication deficits who have retained some ability to make decisions. Such residents should have some ability to participate in a restorative communication treatment program.

2. Those with serious communication deficits in addition to no apparent ability to make decisions but no underlying CVA or neurological problems. These residents may have behavioral, mood, or environmental limitations that complicate their communication problem.

3. Those with hearing deficits and some ability to make decisions. These residents should have the intellectual ability to be considered for participation in a restorative hearing program

Review items listed on the RAP KEY as follows:

Confounding Problems.

As these confounding problems lessen or further decline is prevented, the resident's communication abilities should be reviewed.

Components of Communication.

Details of resident strengths and weaknesses in understanding, hearing and expression are the direct or indirect focus of any treatment program.

Possible Links with Causes of Communication Deficits.

- For chronic conditions that are unlikely to improve, consider communication treatments or interventions that might compensate for losses (e.g., for moderately impaired residents with Alzheimer's, the use of short, direct phrases and tactile approaches to communication can be effective).
- Are there acute or transitory conditions which if successfully resolved may result in improved ability to communicate?
- Are medications in use that could cause or complicate communication deficits, where titration or substitution may result in improved ability to communicate?
- Are opportunities to communicate limited in ways that could be remedied — e.g., availability of partners?

Treatment/Evaluation History.

- Has resident received an evaluation by an audiologist or speech-language pathologist? How recently?
- Has the resident's condition deteriorated since the most recent evaluation?
- If such an evaluation resulted in a plan of care, has it been followed as specified?

COMMUNICATION RAP KEY

TRIGGERS

Potential for improved communication suggested if:

1. Poor Expression or Understanding [C4 = 2 or 3 or C5 = 2 or 3] AND Some Decision-Making Ability [B4 = 0, 1 or 2]

2. Poor Expression or Understanding [C4 = 2 or 3 or C5 = 2 or 3] AND No Ability to Make Decisions [B4 = 3] AND No CVA/Neurological Problems [J1h, J1i, J1j, J1k, J1m = none checked]

Potential for improved hearing suggested if:

3. Some Decision-Making Ability [B4 = 0, 1 or 2] AND ANY Hearing Problem [C1 = 1, 2 or 3]

GUIDELINES

Confounding problems that may require resolution:

1. Decline in cognitive status [B6]
2. Decline in ADL status [E8]
3. Increased mood problems [H6]

Components of communication to be considered:

1. Hearing/Vision [C1; D1]
2. Comm. devices/Modes of expression [C2, C3]
3. Decline in communication/hearing [C6]
4. Medical status of ear — discharges, cerumen accumulation, hearing changes [from record or exam]

Factors to be reviewed for possible relationship to communication problems:

1. **Chronic Conditions.** Alzheimer's/Other dementia [J1h, J1i], Aphasia [J1j], CVA [J1k], Parkinson's [J1m], Emphysema/Asthma/COPD [J1n], Cancer [J1x], Psychiatric disorders [J2]
2. **Transitory Conditions.** Delirium [B5], Depression [J1q], Infections [J1o, J1dd, J1ee; K1f], Acute episode [K3b]
3. **Medications.** Psychotropics [O4], Narcotics, Parkinson's meds, Gentamycin, Tobramycin, Aspirin toxicity [from record]
4. **Opportunities to Communicate.** Quality/quantity of communication is (or is not) commensurate with apparent ability to communicate [staff judgement]

Clarifying issues to be considered:

1. Memory [B2; B3]
2. Recent audiology/language pathology evaluation [P1k; from record]

RESIDENT ASSESSMENT PROTOCOL: ACTIVITIES OF DAILY LIVING—FUNCTIONAL REHABILITATION POTENTIAL

I. PROBLEM

Personal mastery of ADL and mobility are as crucial to human existence in the nursing home as they are in the community. The nursing home is unique only in that most residents require help with self-care functions. ADL dependence can lead to intense personal distress — invalidism, isolation, diminished self-worth, and a loss of control over one's destiny. As inactivity increases, complications such as pressure ulcers, falls, contractures, and muscle-wasting can be expected.

The ADL RAP assists staff in setting positive and realistic goals, weighing the advantages of independence against risks to safety and self-identity. In promoting independence staff must be willing to accept a reasonable degree of risk and active resident participation in setting treatment objectives.

Rehabilitative goals of several types can be considered:

- To restore function to maximum self-sufficiency in the area indicated;
- To replace hands-on assistance with a program of task segmentation and verbal cueing;
- To restore abilities to a level that allows the resident to function with fewer supports;
- To shorten the time required for providing assistance;
- To expand the amount of space in which self-sufficiency can be practiced;
- To avoid or delay additional loss of independence; and
- To support the resident who is certain to decline in order to lessen the likelihood of complications (e.g., pressure ulcers and contractures).

II. TRIGGERS

The three MDS triggers suggest the types of residents for whom special care interventions may be most important. Such residents may have either the need and potential to improve or the need for services to prevent decline.

The two rehabilitation triggers will select all residents:

(1) Who have some ability to make decisions and who have more substantial ADL problems; or
(2) Who are more self-sufficient but who are thought to have potential for increased ADL self-sufficiency.

The maintenance trigger selects residents who lack cognitive skills. These individuals depend totally on others to ensure that their ADL status does not decline precipitously and that they do not develop complications. If a resident falls into one of these groups, the RAP should be completed.

Rehabilitative/Restorative plans suggested if resident has:

1. Some Ability to Make Decisions **[B4 = 0, 1 or 2]** AND Extensive Assistance/Total Dependence in 1 or more ADL areas **[E1a, E1b, E1c, E1d, E1e or E1f = 3 or 4 OR E3a = 3 or 4]**

2. Some Ability to Make Decisions **[B4 = 0, 1 or 2]** AND Needs no more than Limited Assistance in All ADL areas **[E1a, E1b, E1c, E1d, E1e and E1f = 0, 1 or 2 AND E3a = 0, 1 or 2]** AND Potential for More Self-Sufficiency Noted **[E7a, E7b = any checked]**

Maintenance/Complication Avoidance plans suggested if resident has:

3. No Ability to Make Decisions **[B4 = 3]** AND No Memory **[B2a = 1 AND B2b =1]** AND Some or Rare/No Understanding **[C5 = 2 or 3]**

III. GUIDELINES

Base an approach to a resident's ADL difficulty on clinical knowledge of:

- The causes of dependence;
- The expected course of the problem(s); and
- Which services work or do not work.

The MDS goal is to assist the clinician in identifying residents for whom rehabilitative/restorative goals can be reasonably established. Many ADL-restricted residents can regain partial ability for self-care. Certain types of disease-generated losses will respond to therapy. In addition, the removal of inappropriate restraints and the close monitoring of potentially toxic medications can often result in increased functioning.

Use the items in the ADL RAP KEY to consider the resident's risk of decline and chance of rehabilitation. Responses to these items permit a focused approach to specific ADL deficits (i.e., selecting and describing the specific ADL areas where decline has been observed or improvement is possible). The first thing that needs to be considered is the possible presence of confounding problems that may require resolution before rehabilitation goals can be reasonably attempted.

The second task is to clarify the resident's potential for improved functioning. The clinician might find the following sequence of questions useful in initiating an evaluation:

- Does the resident have the ability to learn? To what extent can the resident call on past memory to assist in current problem-solving situations?
- What is the resident's general functional status? How disabled is the resident, and does status vary?
- Is mobility severely impaired?
- Is trunk, leg, arm and/or hand use severely impaired?
- Are there distinct behavioral problems?
- Are there distinct mood problems?
- Is the resident motivated to work at a rehabilitative program?

Where rehabilitation goals are envisioned, use of the ADL Supplement will help care planners to focus on those areas that might be improved, allowing them to choose from among a number of basic tasks in designated areas. Part 1 of the Supplement can assist in the evaluation of all those triggered into the RAP. Part 2 of the Supplement can be helpful when a treatment program is under consideration.

ADL SUPPLEMENT
(Attaining maximum possible independence)

PART 1: ADL Problem Evaluation INSTRUCTIONS: For those triggered— In areas physical help provided, indicate reason(s) for this help.	DRESSING	BATHING	TOILETING	LOCOMOTION	TRANSFER	EATING
Mental Errors: Sequencing problems, incomplete performance, anxiety limitations, etc. **Physical Limitations:** Weakness, limited range of motion, poor coordination, visual impairment, pain, etc. **Facility Conditions:** Policies, rules, physical layout, etc.						

PART 2: Possible ADL goals INSTRUCTIONS: For those considered for rehabilitation or decline prevention treatment— Indicate specific type of ADL activity that might require: 1. Maintenance to prevent decline. 2. Treatment to achieve highest practical self sufficiency (selecting ADL abilities that are just above those the resident can now perform or participate in).				If wheelchair, check: ☐		
	Locates/ selects/ obtains clothes	Goes to tub/shower	Goes to toilet (include commode/ urinal at night)	Walks in room/ nearby ☐	Positions self in preparation	Opens/pours/ unwraps/cuts etc.
	Grasps/puts on upper/ lower body	Turns on water/adjusts temp.	Removes/ opens clothes in preparation	Walks on unit ☐	Approaches chair/bed	Grasps utensils and cups
	Manages snaps, zippers, etc.	Lathers body (except back)	Transfers/ positions self	Walks throughout building ☐ (uses elevator)	Prepares chair/bed (locks pads, moves covers)	Scoops/spears food (uses fingers when necessary)
	Puts on in correct order	Rinses body	Eliminates into toilet	Walks outdoors ☐	Transfers (stands/sits/ lifts/turns)	Chews, drinks, swallows
	Grasps, removes each item	Dries with towel	Tears/uses paper to clean self	Walks on uneven surfaces ☐	Repositions/ arranges self	Repeats until food consumed
	Replaces clothes properly	Other	Flushes	Other ☐	Other	Uses napkins, cleans self
	Other		Adjusts clothes, washes hands			Other
			Other			

ADL FUNCTIONAL/REHABILITATION POTENTIAL RAP KEY

TRIGGERS

REHABILITATION/RESTORATIVE plans suggested if:

1. Some Ability to Make Decisions **[B4=0, 1 or 2]** AND Extensive Assistance/Total Dependence in 1 or more ADL areas **[E1a, E1b, E1c, E1d, E1e or E1f = 3 or 4 OR E3a = 3 or 4]**

2. Some Ability to Make Decisions **[B4=0, 1 or 2]** AND Needs no more than limited assistance in ALL ADL areas **[E1a, E1b, E1c, E1d, E1e, and E1f = 0, 1 or 2 AND E3a = 0, 1 or 2]** AND Potential for More Self-Sufficiency noted **[E7a, E7b = any checked]**

MAINTENANCE/COMPLICATION AVOIDANCE plans suggested if:

3. No Ability to Make Decisions **[B4 = 3]** AND No Memory **[B2a = 1 AND B2b = 1]** AND Some or Rare/No Understanding **[C5 = 2 or 3]**

GUIDELINES

Confounding problems that may require resolution:

1. Delirium **[B5]**
2. Persistent mood problem **[H2]**
3. Daily behavior problem **[H3]**
4. Decline in mood/behavior **[H6, H7]**
5. Unstable/acute health problem **[K3]**
6. Use of Psychoactive medications **[O4]**

Clarifying issues to be considered:

1. Prior improvement in cognition, ADLs, mood, or behavior **[B6; E8; H6; H7]**
2. Communication and vision **[C; D]**
3. Explicit terminal prognosis **[J1z]**
4. Trunk/limb control and ability to stand **[E4]**
5. Complete ADL Supplement Part 1 for all triggered residents; for a resident with rehabilitation potential, complete ADL Supplement Part 2

RESIDENT ASSESSMENT PROTOCOL: URINARY INCONTINENCE AND INDWELLING CATHETER

I PROBLEM

Urinary incontinence is the inability to control urination in a socially appropriate manner. Nationally, 50% of nursing home residents are incontinent. Incontinence causes many problems, including skin rashes, falls, isolation, and pressure ulcers, and the potentially troubling use of indwelling catheters. In addition, continence is often an important goal to many residents, and incontinence may affect residents' psychological well-being and social interactions. Urinary incontinence is curable in many elderly residents but realistically not all will benefit from an evaluation. Catheter use increases the risk of life-threatening infections, bladder stones and cancer. Use of catheters also contributes to patient discomfort and the needless use of toxic medications often required to treat the associated bladder spasms. For many (but not all) residents, urinary incontinence is curable, and safer and more comfortable approaches are often practical for residents with indwelling catheters.

This RAP, the purpose of which is to improve incontinence, goes far beyond bladder training. Even if a patient is not believed to be a candidate for bladder training, the assessment should still be done since many other treatable conditions may be found, the treatment of which will not only improve incontinence, but the overall quality of life for the patient.

The goal of this assessment is to detect reversible causes of incontinence, such as infections and medications, and situationally induced incontinence; to identify individuals whose incontinence is caused by harmful conditions such as bladder tumors or spinal cord diseases; and to consider the appropriateness of catheter use. Staff judgment is clearly required to realize these aims. Detailed instructions are provided to facilitate this clinical process.

Continence depends on many factors. Urinary tract factors include a bladder that can store and expel urine and a urethra that can close and open appropriately. Other factors include the resident's ability (with or without staff assistance) to reach the toilet on time (locomotion), his/her ability to adjust clothing so as to toilet (dexterity), cognitive function and social awareness (e.g., recognizing the need to void in time and in an appropriate place), and the resident's motivation. Fluid balance and the integrity of the spinal cord and peripheral nerves will also have an effect on continence. Change in any one of these factors can result in incontinence, although alterations in several factors are common before incontinence develops.

II. TRIGGERS

A urinary continence or indwelling catheter problem is suggested if:

1. Occasional, Frequent, or Frank Urinary Incontinence **[F1b = 2, 3 or 4]**

2. Use of Catheter or Pads **[F3b, F3c, F3d, F3f = any checked]**

Exclusions for Triggers: Comatose **[B1]** or Explicit terminal prognosis **[J1z]**. Other exclusions may apply especially after the reversible problems have been addressed. These are noted at the beginning of each section.

III. GUIDELINES

For residents with incontinence (including those with condom catheters), all MDS items described in Section A should be addressed, unless exclusionary criteria have been met. If incontinence persists, complete Section B and, if necessary, Section C For residents with indwelling catheters, first complete Sections A and B and then complete Section D.

A. ITEMS NECESSARY TO EVALUATE INCONTINENCE OR NEED FOR CATHETER

Review the reversible problems listed on the RAP KEY. Virtually all are easily diagnosed, and their treatment will improve not only incontinence but functional status as well. Also, most of these factors can be identified by a nurse, but some will take a physician's order to carry out.

UTI.

Urinary tract infections are common causes of incontinence, especially new incontinence. Therefore, they should be looked for in all residents. If a clean catch urine is not feasible and the resident both has no memory recall and requires at least extensive assistance in self-transfer [**E1b = 3 or 4**] you may choose to forego catheterization to obtain a specimen, since identification and treatment of UTIs in this population has not been shown to make a difference.

- Send a clean catch or sterile urine specimen for microscopic analysis. If >5 WBC are found, send a fresh and sterilely obtained specimen for urine culture. If UTI is found, consider treatment.
- For residents with an indwelling catheter, a new catheter should be sterilely inserted to obtain the specimen.

Fecal Impaction.

Impaction is very common and can cause incontinence by preventing the bladder from emptying well. Thus, check for impaction in all residents who are incontinent.

- To find bowel impaction, insert a gloved finger into resident's rectum.
- The finding of no stool or small amount of soft stool indicates that impaction is unlikely to be the cause of incontinence. A record demonstrating that the resident has recently passed stool is not sufficient to rule out bowel impaction.

Delirium.

If present, this is the most important problem. Often when delirium is treated, incontinence will resolve. In the meantime, regular toileting will help.

Lack of toilet access.

Daily use of restraints can result in a resident's inability to get to the toilet; quick staff response is necessary. The toilet may also be too far away for a resident who does not get adequate warning (e.g., there may not be a toilet room near the activities room). Environmental modifications such as a bedside commode, urinal, or a room closer to the toilet can be useful. To remain continent, residents may also require more staff support, such as more timely responses to requests for assistance.

Immobility.

Immobility correlates highly with incontinence in many nursing home residents. Improving the resident's ability in transferring, locomotion and toileting will often reduce incontinence, as will providing timely staff assistance when needed.

Depression

Severe depression can result in loss of the motivation to stay dry. Prompted toileting is often helpful as a means of positive reinforcement.

Congestive Heart Failure (CHF) or Pedal Edema

CHF and pedal edema are especially troublesome when the resident is lying down: diuresis overwhelms the bladder. Treatment of these conditions is not difficult and will improve both incontinence and functional status.

Recent Stroke

Once the resident is stable, delirium has cleared, and locomotion has improved, continue workup if incontinence persists. Most stroke patients are continent at this point.

Diabetes Mellitus

Diabetes with persistently high blood sugar causes fluid loss that can cause or worsen incontinence. Treatment will improve incontinence and functional status.

Medications

Many medications can affect the bladder or urethra and result in incontinence. Physicians would usually discontinue suspect medication if possible, weighing the risks and benefits of doing so. For instance, where a calcium channel blocker is used for mild hypertension, another medication might be easily substituted; a medication for arrhythmia, however, might not have an appropriate substitute.

- Review all medications — regularly prescribed, occasional or "PRN", and any nonprescribed ("over-the-counter") medications

Medications that can affect continence include the following classes and types of drugs:

1. Diuretics, especially those that act quickly, such as furosemide (Lasix), bumetanide (Bumex), and metolozone (Zaroxylyn), and, less frequently, thiazide agents such as hydrochlorothiazide.

2. Sedative hypnotics, i.e., sleeping pills and antianxiety drugs such as diazepam (Valium), lorazepam, Xanax, Halcion, and Dalmane.

3. Any drug with anticholinergic properties:

   - Antipsychotics (e.g., Haldol, Mellaril)
   - Antidepressants (e.g., Elavil, Triavil)
   - Narcotics (e.g., Morphine, Dilaudid, Darvon)
   - Medication for Parkinson's disease (except Sinemet and Deprenyl)
   - Disopyramide
   - Antispasmodics (e.g., Donnatal, Bentyl)
   - Antihistamines (e.g., medications for colds)

4. Calcium channel blockers (e.g., verapamil, nimodipine, nicardipine, nifedipine, and diltiazem).

5. Drugs that affect the sympathetic nervous system:

   - Alpha blockers (e.g., prazosin and phenoxybenzamine)
   - Alpha stimulants (e.g., ephedrine, pseudoephedrine, phenylpropanolamine, and nosedrops)

B. OTHER POTENTIAL CAUSES OR FACTORS CONTRIBUTING TO INCONTINENCE OR USE OF CATHETERS

Much of the information asked for above will appear in a completed MDS. However, other items of information should be obtained and reviewed if incontinence persists. Identification and treatment of these factors will frequently not only improve incontinence, but may prevent further deterioration such as paralysis. However, in the resident who both has no memory recall [**B3e = checked**], requires at least extensive assistance in self-transfer [**E1b = 3 or 4**], and is free of related pain, there is, as of yet, no evidence that identification and treament of such factors would benefit the resident.

Pain

Pain in the bladder, or related to urination, is a distinctly rare and abnormal symptom in the incontinent patient, and often indicates another pathological process, which may be treatable. Physician evaluation is recommended.

Excessive or Inadequate Urine Output.

If daily urine output is less than 1 liter, incontinence may worsen because of very strong, concentrated urine. A daily output over 1.5 liters can overwhelm the bladder. If present, the identification of the underlying cause of the high urine output (e.g., diabetes, high calcium, or excessive fluid intake) is required before restricting fluids.

- The amount of fluid excreted daily should be measured for 1 to 2 days. This can be done using a voiding record or, if patient is severely incontinent, by inserting a temporary catheter.

Atrophic Vaginitis.

Caused by reduced amount of the female hormone estrogen, this condition causes or contributes to incontinence in many women.

- Examine vagina for evidence of estrogen deficiency.

Optimally, a pelvic exam checks for signs of atrophic vaginitis.

If a resident is impaired, or appropriate equipment is not readily available, an exam may be done in the resident's bed by spreading the labia and looking inside for redness, dryness, pinpoint hemorrhages, or easy bleeding.

- Pain or irritation during the insertion of a catheter is another useful sign of the condition (catheterization normally may be uncomfortable, but should not be painful).
- Atrophic vaginitis can be treated with a low dose of oral conjugated estrogens. Contraindications to estrogen therapy include a history of breast or endometrial cancer.

Abnormal Lab Values.

Several conditions detectable only by laboratory tests can cause incontinence. These include high blood calcium or glucose and Vitamin B12 deficiency. It is also important to check the blood urea nitrogen (BUN) or creatinine because some causes of incontinence also can damage the kidneys. All of these tests should have been done within the last 60 days, except the B12, which should have been checked within the past 3 years.

Serious Conditions That Cause or Accompany Incontinence (To Be Considered By Primary Doctor)

A doctor or a nurse practitioner can identify potentially life-threatening conditions that cause or accompany urinary incontinence. These include bladder cancer or bladder stones, prostate cancer, spinal cord or brain lesions (such as slipped discs and metastatic tumors), poor bladder compliance, and tabes dorsalis.

- Bladder cancer or stones are suggested by the presence of any amount of blood in the urine (even in microscopic amounts) without evidence of UTI. To investigate for bladder cancer, the first morning urine is sent for 2 or 3 days for cytology examinations. Residents more likely to have bladder cancer are men, smokers, and those with suprapubic pain or discomfort, a history of work exposure to certain dyes, or recent onset of urge incontinence. The physician will decide who is worked up or referred to a urologist.
- Suspected prostate cancer can be detected by a rectal exam.
- Spinal cord diseases are detected by a neurological exam.
- Decreased bladder compliance can result in damage to the kidneys and should be suspected in residents with a history of conditions that result in decreased bladder compliance (pelvic radiation therapy, abdominal/pelvic resection, radical hysterectomy or prostatectomy, or spinal cord disease).
- Another cause of incontinence is tabes dorsalis (an advanced stage of syphilis), which is treatable with antibiotics.

C. FINAL EVALUATION IF INCONTINENCE PERSISTS

After the above causes of easily treatable incontinence have been eliminated and the most serious underlying conditions have been investigated, conclude the evaluation with an assessment of the four causes of incontinence that are due to abnormalities within the bladder itself. The following section first describes these abnormalities and then describes the tests to detect their presence. A variety of treatment options is available for each type of incontinence, including treatment and care plans appropriate for every resident. In each case, the care plan can be tailored to the needs and characteristics of the resident with dementia, immobility, etc. Notably, bladder training and medications have been shown to significantly improve incontinence in even severely demented residents. The options are discussed in full detail in the educational material.

Exclusions: Although demented residents have been shown to benefit from targeted therapy, certain patients have a low probability of responding. Therefore, if a resident has no memory recall **[B3e = checked]**, is extensively dependent in self-transfer **[E1b or c = 3 or 4]**, and the facility's ability to toilet the resident on a regular schedule is limited, then the patient may not benefit from this part of the evaluation, and should be managed with pads, frequent turning and changing, or external catheters. Indications for an indwelling catheter are: the resident is in a coma or has terminal illness, a stage 3 or 4 pressure ulcer in an area affected by the incontinence, untreatable urethral blockage, the need for exact measurement of urine output, a history of being unable to void after having a catheter removed in the past, or a resident with quad/paraplegia who failed a past attempt to remove a catheter.

The bladder abnormalities can be simply understood: either (1) the bladder contracts when it should not ("uninhibited bladder"), abruptly soaking the patient ("urge incontinence"); or (2) the bladder fails to contract when it should ("atonic" or underactive bladder), so that urine builds up and spills over as "overflow incontinence." Alternatively the urethra, through which the bladder empties, is either (3) blocked by an obstruction (e.g., a large prostate) or (4) unable to close tightly enough ("stress incontinence").

By doing a "stress test" and measuring the amount of urine that remains in the bladder after voiding (Post Void Residual — PVR) these conditions can be separated: the uninhibited bladder generally has little residual urine (<100 ml) and a negative stress test, while the atonic bladder has a much larger residual (e.g., >400 ml). Women with stress incontinence (it is rare in men) generally have <100 ml residual urine and a positive stress test. Men with a blocked urethra (rare in women) generally have >100 ml residual urine and a negative stress test.

Post-Void Residual (PVR).

The PVR (post-void residual) is the amount of urine left in the bladder after a void. Research has shown that many elderly people have large amounts left in the bladder after a void, even though they demonstrate no signs of this. That is, they do not feel full or uncomfortable, they have a good urine output, and do not seem to have a large bladder by palpation or percussion. Also, in men, a high PVR can signal a variety of problems, and in both men and women, knowledge of the PVR can help guide the selection of medication. Therefore, a PVR should be determined in all patients who reach this point of the evaluation. In some cases, a physician's order may be necessary to perform a PVR. If the physician chooses not to allow this, it should be documented in the chart.

- When the resident feels relatively full, he/she should void as normally as possible into a commode, bedpan, urinal, or a toilet equipped with a collection device (hat). Measure volume voided. Within 15 minutes of voiding, under sterile conditions, insert a nonpermanent catheter to measure the residual volume (PVR). Adding the volume voided to PVR gives the Total Bladder Volume (TBV).

Attention to several points will ensure that the test is done correctly. First, if the resident cannot void intentionally, do the test after an episode of incontinence. Second, after allowing the urine to drain, apply gentle pressure with your hand to the abdomen to increase the drainage. When the urine has stopped draining, withdraw the catheter slowly, continuing to press on the lower abdomen. If possible, have the resident sit up during the catheter withdrawal. Under sterile conditions, the risk of causing an infection is under 3%. Residents with known valvular heart disease (who receive antibiotic prophylaxis for dental work) probably should receive a dose of antibiotics before the PVR is checked.

Kidney Ultrasound Test for Men With a PVR Greater Than 100 ml.

- Ultrasound of the kidneys is indicated in male residents with a PVR greater than 100 ml to rule out hydronephrosis (inability of the kidneys to drain properly), which could be due to bladder obstruction and result in preventable kidney damage.

This test has no risks (compared to the risk of the dye injection in an IVP). Evidence of urine backing into the kidneys strongly suggests the need for urologic referral; if this is not done, the resident needs chronic indwelling catheterization.

Bladder Stress Test for Female Patients.

- Bladder Stress Test. When the resident has a relatively full bladder, but not a strong urge to void, have her stand or assume as upright a position as possible, relax, and cough vigorously or strain. The test is positive if there is immediate leakage similar in volume and circumstance to usual incontinence. The stress test is negative if there is a delay of more than 5 seconds, no leakage, or leakage of only a few drops, or if it is dissimilar to the usual volume and circumstance of leakage.
- Measure void plus PVR as described above (i.e., calculate Total Bladder Volume).
- Repeat Stress Test. If the bladder stress test is negative AND the Total Bladder Volume is less than 200 ml, another test is needed for verification. Insert a sterile catheter into the bladder (preferably do this while the catheter for PVR measurement is still in the bladder) and fill it with at least 200 ml of sterile water, if possible. Remove the catheter, have the patient stand up (if possible), and repeat the stress test as above.

D. FINAL EVALUATION FOR RESIDENTS WITH INDWELLING CATHETERS

After the resident with an indwelling catheter has been treated for infection and all the other treatable conditions listed above, a voiding trial can be attempted — unless the resident has terminal illness, stage 3 or 4 pressure ulcers, or untreatable urethral blockage. This trial may reveal that the catheter is not necessary after all.

Exclusions: The resident is in a coma or has terminal illness, a stage 3 or 4 pressure ulcer in an area affected by the incontinence, untreatable urethral blockage, the need for exact measurement of urine output, a history of being unable to void after having a catheter removed in the past, or a resident with quad/paraplegia who failed a past attempt to remove a catheter.

- If appropriate, institute a voiding trial.

(1) Before removing the catheter, record urine output every 6 hours for one or two days. Use this record to plan when to remove the catheter so that the expected urine will not be over 800 mls during the time of the voiding trial.

(2) Remove catheter and observe. For example, if the resident usually puts out 500 ml on the day shift, remove the catheter at the beginning of that shift and observe; if resident has not voided by the end of the shift, wait until the volume gets higher, but do not exceed a volume of 800 ml.

(3) If resident is able to void, check the PVR, as detailed in **Section C**.

- If volume is greater than 400 ml, reinsert indwelling catheter permanently or until resident can be referred to a urologist.
- If PVR is between 100 and 400 ml, observe resident carefully as urinary retention may redevelop over a few days to a few weeks. If not, check for presence of incontinence: if present, complete **Section C** (above).
- If PVR is less than 100 ml, check for presence of incontinence; if present, complete **Section C** (above).

(4) If resident has not voided by the time the expected volume is 800 ml, and there is no sensation of fullness, no urge to void, and no void, reinsert an indwelling catheter and record the volume. Residents who fail the voiding trial need either urologic referral, if appropriate, or permanent catheterization.

(5) If the resident has no memory recall, is unable to transfer independently, and has incontinence that is resistant to all therapy for more than 2 weeks after removing the catheter, a catheter may be reinserted if deemed appropriate by the staff.

URINARY INCONTINENCE AND INDWELLING CATHETER RAP KEY

TRIGGERS

Incontinence care plan suggested if:

1. Incontinent 2+ Times a Week
   [F1b = 2, 3 or 4]

2. Use of Catheter or Pads
   [F3b, F3c, F3d, F3f = any checked]

EXCLUSIONS: Comatose **[B1 = 1]** or Explicit terminal prognosis **[J1z = checked]**

GUIDELINES

Possible reversible problems to be reviewed in evaluating incontinence or need for catheter:

1. Conditions: UTI **[F2a; J1ee]**, Fecal Impactions **[F2b; K1e]**, Delirium **[B5]**, Depression **[J1q]**, Edema **[K1d]**
2. Environment: Locomotion **[E1c]**, Lack of access to toilet, Barriers **[observation]**, Restraints **[P3]**
3. Diagnoses: CHF **[J1c]**, CVA **[J1k]**, Parkinson's **[J1m]**, Diabetes **[J1y]**
4. Medications: Diuretics, Parkinson's meds, Disopyramide, Antispasmodics, Antihistamines, Drugs that stimulate or block sympathetic nervous system, Calcium channel blockers (verapomil, nifedipine, diltiozem), Narcotics **[from record]**
5. Psychoactive Medications: Antipsychotics, Antianxiety/hypnotics, Antidepressants **[O4]**

Other Potential factors contributing to incontinence or use of catheter:

1. Conditions: Pain; Excessive or inadequate urine output, Atrophic vaginitis, Cancer of bladder, prostate, brain, or spine, tabes dorsalis **[from record or exam]**
2. Abnormal Lab Values: High blood calcium, high blood glucose, low B_{12}, High BUN or Creatinine **[from record]**

Final evaluation if incontinence persists:

1. Specific Tests: Not indicated when Comatose **[B1]** or both No memory recall **[B3e]** AND Dependent in Transfer, Locomotion **[E1b, E1c]**, for others, do: Post Void Residual, bladder stress test for females, reflux test (kidney ultrasound) for males with PVR >100 ml

Final evaluation for residents with indwelling catheters:
If indwelling catheter **[F3c]**, do Voiding Trial unless terminal illness **[J1z]**, stage 3/4 pressure ulcer **[N2]** and/or untreatable urethral blockage **[J2]**

RESIDENT ASSESSMENT PROTOCOL: PSYCHOSOCIAL WELL-BEING

I. PROBLEM

Well-being refers to feelings about self and social relationships. Positive attributes include initiative and involvement in life; negative attributes include distressing relationships and concern about loss of status. On average, 30% of residents in a typical nursing facility will experience problems in this area, two-thirds of whom will also have serious behavior and/or mood problems. When such problems coexist, initial treatment is often focused on mood and behavior manifestations. In such situations, treatment for psychosocial distress is dependent on how the resident responds to the primary mood/behavior treatment regimen.

II. TRIGGERS

A psychosocial well-being problem is suggested if:

1. One or More Problems With Relationships [G2a, G2b, G2c, G2d = any checked]

2. Grief Over Lost Status/Roles [G3b = checked]

III. GUIDELINES

Sequentially review the items found on the RAP KEY.

Confounding Problems

Treatment for mood/behavior problems are often immediately beneficial to well-being.

- Do mood/behavior problems affect well-being?
- Did the mood/behavior problems appear before the reduced sense of well-being?
- Have ongoing treatment programs been effective?

Situational Factors That May Impede Ability to Interact With Others

Environmental and situational problems are often amenable to staff intervention without the burden of staff having to "change the resident."

- Have key social relationships been altered/terminated?
- Have changes in the resident's environment altered access to others or to routine activities — for example, room assignment, use of physical restraints, assignment to new dining area?

Resident Characteristics That May Impede Ability to Interact With Others

These items focus on areas where the resident may lack the ability to enter freely into satisfying social relationships. They represent substantial impediments to easy interaction with others and highlight areas where staff intervention may be crucial.

- Do cognitive/communication deficits or a lack of interest in activities impede interactions with others?
- Does resident indicate unease in social relationships?

Lifestyle Issues

Residents can withdraw or become distressed because they feel life lacks meaning.

- Was life more satisfactory prior to entering the nursing facility?
- Is resident preoccupied with the past, unwilling to respond to the needs of the present?
- Has the facility focused on a daily schedule that resembles the resident's prior lifestyle?

Additional Information to Clarify the Nature of the Problem

Supplemental assessment items can be used to specify the nature of the well-being problem for residents for whom a well-being care plan is anticipated. These items represent topics around which to phrase questions and to establish a trusting exchange with the resident. Each item includes the positive and negative end of a continuum, representing the possible range that staff can use in thinking about these issues. Staff can use or not use the items in this list. For those items selected, the following issues should be considered:

- How do staff/resident perceive the severity of the problem?
- Has the resident ever demonstrated (while in the facility) strengths in the area under review?
- Are corrective strategies now being used? Have they been used in the past? To what effect?
- Is this an area that might be improved?

PSYCHOSOCIAL WELL-BEING RAP KEY

TRIGGERS

Well-being problem suggested if:

1. One or More Problems With Relationships **[G2a, G2b, G2c, G2d = any checked]**

2. Grief Over Lost Status/Roles **[G3b = checked]**

GUIDELINES

Confounding problems:
1. Increasing/persistent sad mood **[H2, H6]**
2. Increasing/daily disturbing behavior **[H3, H7]**

Situational factors that may impede ability to interact with others:
1. Loss of family member, friend, or staff close to resident **[G2f; from record]**
2. Initial use of physical restraints **[P3]**
3. Change in room assignment or new admission **[Intake I2; from record]**

Resident characteristics that may impede ability to interact with others:
1. Delirium/cognitive decline **[B5, B6]**
2. Communication deficit/decline **[C4, C5, C6]**
3. Locomotion deficit/use of wheelchair **[E1c, E5c, E5d]**
4. Ill at ease interacting with others **[G1]**
5. Diseases that impede communication — Alzheimer's **[J1h]**, Other dementia **[J1i]**, Depression **[J1q]**, terminal prognosis **[J1z]**, Mental retardation **[Intake I12]**
6. Uninvolved in activities **[I2, I4]**

Lifestyle issues:
1. Strong identification with past roles/status **[G3a]**
2. Incongruence of current and prior style of life **[Intake III]**
3. Length of time problem existed **[from record]**

Supplemental problem clarification issues [from resident/family if necessary]:
1. Ability to relate to others
   - — Skill/unease in dealing with others
   - — Reaches out/distances self
   - — Friendly/unapproachable
   - — Flexible/ridiculed by others

2. Relationships resident could draw on
   - — Supported/isolated
   - — Many friends/friendless

3. Dealing with grief
   - — Moving through grief/bitter and inconsolable
   - — Religious faith/feels punished

RESIDENT ASSESSMENT PROTOCOL: MOOD STATE

I. PROBLEM

About 15% of nursing home residents will have a major depression; about 30% will exhibit noticeable symptomatic signs of a mood state problem. Such signs are often expressed as sad mood, feelings of emptiness, anxiety or unease. They are also manifested in a wide range of bodily complaints and dysfunctions, such as loss of weight, tearfulness, agitation, aches and pains.

II. TRIGGERS

A Mood State problem is suggested if any of the following are found:

1. Verbal Expressions of Sad or Anxious Mood [H1a = checked].
2. Demonstrated (observable) Signs of Mental Distress [H1b, H1c, H1d, H1e, H1f, H1g = any checked].
3. Persistent Sad or Anxious Mood [H2 = 1].

III. GUIDELINES

Specific conditions stated below suggest the need for an altered/new care strategy. They are not exhaustive; other situations may arise in which staff decide that an altered care plan is necessary. The most obvious are instances of drug-induced side effects (addressed in Psychotropic Drug Use RAP). Residents whose mood problems do not call for care plan alterations are those with stable behavior and no unusual confounding problems.

Many of the questions and issues that follow relate to the MDS items listed on the Mood State RAP KEY. An altered care strategy is suggested when specified conditions are met.

Have Mood State Problems Recently Intensified?

- Were mood problems present 6 months ago?
- Does resident have a cyclic history of decline and improvement in mood state?
- Has loss of appetite with accompanying weight loss occurred?
- Has interest in activities declined, even though resident remains physically capable?

Mood Unimproved and Potentially Reversible Causes Present.

Resolution of delirium (fluctuating consciousness) behavioral, relationship and/or communication problems often affect a resident's mood state. Only when these conditions have been addressed can the nature of a mood problem be fully understood.

- Review record to determine whether there has been a sudden onset or worsening of cognitive symptoms or communication skills following initiation of treatment (e.g., medications)
- Review to determine whether the resident is using any medications known to cause mood shifts, such as: psychotropics; antihypertensives, such as clonidine (Catapres), quanethedine (Ismelin), methlydopa (Aldomet), propeneral (Inderal), and reserpine; cimetidine (Tagamet); cytoxic agents; digitalis; immunosuppressives; sedatives; steroids; or stimulants.

Also, consider the possible presence of other complicating factors, such as:

- Delirium
- Review recent changes in the life of the resident (e.g., death of a child, transfer to new environment, separation from loved ones, loss of functional abilities or change in body image, loss of autonomy)
- Review nature and intensity of relationship and/or behavior problems

ADL decline can be both a cause and a consequence of distressed mood. Reviewing the sequence of ADL and mood decline may be informative. In any case, where mood seems to impair ADL functioning, useful strategies include modifying the physical environment, separating the resident's performance of ADL activities into a series of subtasks, and using verbal reminders and cues.

When Staff/Family Try to "Cheer Up" Resident, Is Mood Unchanged? Does the Resident Lack Initiative?

The passive resident with distressed mood may be overlooked. Such a resident may be erroneously assumed to have no mood state problem.

- Does the resident show little/no initiative?
- Does he/she remain uninvolved in activities (alone or with others)?
- Is the sad mood persistent?

Are There Indications of New or Intensified Problems With Conditions That May Affect Mood Problems?

These conditions include: Alzheimer's Disease, cancer, cardiac disease, metabolic and endocrine disorders (e.g., hypercalcemia, Cushing's disease, Addison's disease, hypoglycemia, hypokalemia, porphyria), Parkinson's disease, stroke, or other neurological disease, and thyroid disease.

Does Sad Mood Appear to Respond to Treatment (e.g., Drug Regimen)?

- Has the mood problem remained relatively unchanged for the last 90 days, or has it improved with the current treatment program?
- Have there been cycles of decline and improvement?
- Is resident receiving medications and/or psychosocial therapy?

MOOD STATE RAP KEY

TRIGGERS

A mood problem suggested if:

1. Verbal Expression of Sad/Anxious Mood **[H1a = checked]**
2. Any Demonstrated Sign of Mental Distress **[H1b, H1c, H1d, H1e, H1f, H1g = any checked]**
3. Mood Persistence **[H2 = 1]**

GUIDELINES

Indicators of the need to consider a new/altered care strategy:

1. Mood decline **[H6]**
2. Mood unimproved **[H6]** AND reversible conditions present
   - — Delirium/cognitive decline; Hallucinations/ delusions **[B5, B6; K1g]**
   - — Communication decline **[C6]**
   - — ADL decline **[E8]**
   - — Grief due to loss of loved one **[G2]**
   - — Recent move into/within facility **[INTAKE I2]**
   - — Use of meds known to cause mood shifts (e.g., antihypertensives, cimetidine, clonidine, cytoxic agents, digitalis, guanethidine, immunosuppressive, methyldopa, nitrates, propranolol, reserpine, steroids, stimulants) **[from record]**
3. Mood unimproved **[H6]** AND indication of cognitive ability/memory, decision-making ability, and ability to understand **[B2, B4; C5]** AND ANY of following:
   - — Little or no initiative shown **[G1]**
   - — Little or no involvement in activities **[I2]**
   - — No medications **[O1]**
   - — No psychological therapy **[P1n]**
4. Relationship and/or behavioral problems present **[G2; H3]**

Confounding issues to be considered:

1. Communication skills **[C4; C5]**
2. Diseases: Neurological disease **[J1h, J1i, J1j, J1m]**, CVA **[J1k]**, Anxiety **[J1p]**, Depression **[J1q]**, Manic depressive **[J1r]**, Thyroid disease **[J1aa]**, Hypercalcemia, Cushing's, Addison's, Hypoglycemia, Hypokalemia, Porphyria, Psychosis **[J2]**

RESIDENT ASSESSMENT PROTOCOL: BEHAVIOR PROBLEM

I. PROBLEM

Between 60% and 70% of residents in a typical nursing facility exhibit emotional, social, and/or behavior disorders; about 40% have purely behavioral problems (i.e., wandering, verbal abuse physically aggressive and/or socially inappropriate behaviors). Residents with behavior problems also frequently have other related problems. Over 80% of those who have behavior problems will have some type of cognitive deficit; about 75% will have mood and/or relationship problems.

Problem behaviors are often seen as a source of danger and distress to the residents themselves and sometimes to other residents and staff. Nursing facilities often find such residents difficult to cope with, and physicians often seem unaware of the wide range of available treatment and management options. As a result, overuse of physical restraints or psychotropic drugs is not uncommon. About one-half of residents who exhibit "problem" behaviors will be physically restrained, and about one-half will receive psychoactive medications — antipsychotics (neuroleptics), antianxiety agents, and, to a lesser extent, antidepressants. These interventions, however, have potentially serious negative side-effects, and many nurses in nursing facilities report being uncomfortable using only physical restraints and/or psychotropics to manage residents with behavior problems. As a result, there is an increasing trend toward using other interventions and treatments in addressing problem behaviors.

II. TRIGGERS

The MDS trigger items identify two types of residents for whom further review is suggested: residents who exhibit the problem behaviors of wandering, being verbally abusive, being physically aggressive and/or exhibiting socially inappropriate behaviors AND residents who are not currently exhibiting problem behaviors but who are receiving treatment or intervention that might mask or prevent the manifestation of the behavior (e.g. no wandering because restrained).

Review of behavior status is suggested if resident has:

1. One or More Behavior Problems [H3a, H3b, H3c or H3d = 1 or 2]

The possibility of elimination or reduced treatment/intervention is suggested if:

2. Behavior Improved [H7 = 1] AND Use of Antipsychotics OR Antidepressants [O4a or O4c = 1 - 7]

3. Behavior Improved [H7 = 1] AND Use of Trunk OR Limb Restraints [P3b or P3c = 1 or 2]

III. GUIDELINES

The items in this RAP (and in the RAP KEY) begin with those items that help to draw the distinction between serious behavior problems and others that can be more easily accommodated. This is followed by a section on potential causes or factors involved in the manifestation of problem behaviors the resolution of which might reduce or eliminate the behavior(s).

EVALUATING THE SERIOUSNESS OF BEHAVIOR PROBLEMS

The first trigger identifies residents who currently exhibit some type of problem behavior for which additional or new treatment programs may be considered. Not all behaviors need an extensive intervention. Some behaviors neither endanger nor distress the resident or others. For example, many

hallucinations and delusions (when not a sign of a psychosis or an acute condition such as delirium) are benign. Residents with such behavioral manifestations may be accommodated (e.g., tolerated, behavior rechanneled or redirected) within the environment of the nursing facility. Thus, determining whether a particular behavioral manifestation is a problem is an important step and involves determining the nature and severity of the behavior(s) in question and the effects of the behavior(s).

Observing Specific Behavioral Manifestations in the Most Recent 7-Day Period.

- Review to determine the intensity, duration, and frequency of behavior problems over the last 7-day and 14-day periods. Did these change or vary over time?
- Is there a pattern to the behavior manifestations based on observations over a 7-14 day time period? (Consider such factors as time of day, nature of the environment, what the resident and others were doing at the time the problem behavior was manifested.)

Identifying Stability/Change in the Nature of Behavioral Problems.

Identifying patterns of behaviors over time may help clarify the underlying causes of problem behaviors. For example, such a review may reveal a pattern in which a resident's catastrophic reactions typically occur only in the presence of a particular combination of stressors (e.g., a person who can tolerate large groups for singing but not for meals). Similarly, observing a resident over time may reveal that a resident's seemingly random behaviors are associated with particular events (e.g., yelling/screaming associated with objecting to someone changing the channel during a favored television program; wandering associated with the need to toilet). Addressing the causes of such patterns may reduce or eliminate the behavior.

- How did behavior develop over time? Were problem signs evident earlier in the resident's stay or even earlier in the resident's life?
- Has resident experienced recent changes (e.g., movement to a new unit, assignment of new nonlicensed direct care staff to the unit, change in medication, withdrawal from a treatment program, decline in cognitive status)?

Determining the Ways in Which Behavior Problem Impinges on Other Functioning.

Understanding that a behavior can — but does not always — interfere with a resident's self-performance and treatment regimens is useful in considering the need for interventions. This view can also help to ensure that aggressive treatments or interventions (e.g., physical restraints or antipsychotics) are not introduced simply to keep the resident "looking normal."

- Does the behavior endanger the resident? Others? If so, in what ways does it endanger the resident or others?
- Are behavior problems related to daily variations in functional performance? If so, how?
- Does behavior problem lead to resistance to care?
- Does it lead to difficulties dealing with people and coping in the facility?

REVIEW OF POTENTIAL CAUSES OF BEHAVIOR PROBLEMS

Many behaviors, however, are problematic for the resident or others. Many are directly associated with acute health conditions, neurological diseases, or psychiatric conditions. Still others originate in the resident's reaction to external factors, such as psychotropic medications, the use of physical restraints, and stressors in the environment (e.g., loud noises, changes in familiar routines). Identifying the various factors involved in the manifestation of problem behaviors is critical. Such a process may reveal conditions that can be resolved, thus eliminating or reducing the problem behaviors. Further, distinguishing

among potential causes or interrelationships is essential to developing an appropriate care plan (e.g., distinguishing between behaviors originating with neurological condition as contrasted to a psychotic syndrome). Consideration of the items in the Behavior Problem RAP KEY (as well as in related RAPs as indicated) should facilitate this process.

Cognitive Status Interactions

Decision-making ability is a key indicator of effective cognitive skills. Resolving acute confusional state or delirium, a potentially reversible problem, can be critical to behavior management. (See Delirium RAP if a diagnosis or signs and symptoms of delirium are present.)

For many residents with chronic progressive dementia, certain behaviors may continue in spite of remedial treatments or interventions. In some instances, the behaviors will be distressing; however, in many instances behaviors can be accommodated. For example, many residents who wander can be accommodated without restraints in a hazard-free environment. Similarly, the needs and patterns of demanding residents or those with catastrophic reactions can often be anticipated or the most disrupting reactions to the distress alleviated. The Cognitive Loss/Dementia RAP refers to several issues that can be considered for such residents. Thus, that RAP should be completed prior to this RAP on Behaviors for residents who have cognitive problems.

Presence of Disturbed Mood and/or Relationship Interactions

Mood and relationship problems often produce disturbed behaviors. If the underlying problems are resolved, the behavior may lessen or stop.

- Does the resident have an unresolved mood state or relationship problem that may lead to behavior problems (e.g., anxiety disorder and agitation; depression or isolation and verbally abusive behavior)? Refer to the Psychosocial Well-Being RAP and to the Mood State RAP.

- Is there an association among mood state, relationship, and behavior problems?
- Can a cause and effect relationship be determined?
- Does the resident experience a sense of frustration because of rejection by family? If so, does this frustration result in the resident verbally abusing staff or other residents?

Relationship Difficulties That May Affect Behavior

- Does the presence or absence of other persons precipitate an event?
- Was a combative act prompted by paranoid delusions about another's motives or actions?
- Did recent loss of a loved one, change in staff, an intrafacility move, or placement with a roommate with whom the resident cannot communicate lead to disruptive behavior?

Environmental Conditions

A review of the resident's behaviors over time may, as noted earlier, reveal a pattern of behaviors that helps identify the causes of the behaviors. Because environmental conditions often have a profound effect on residents' behaviors, these factors should be given special consideration.

- Are staff sufficiently responsive? Do they recognize stressors for the resident and early warning signs of problem behavior?
- Do staff follow the resident's familiar routines?
- Do noise, crowding or dimly lit areas affect resident's behavior?
- Are other residents physically aggressive?

Illness/Conditions

Sometimes, the onset of acute illnesses and/or the worsening of a chronic illness produces disturbed behaviors. Often identification and treatment of the illness will resolve the problem behavior. In addition, a resident with certain chronic conditions, particularly difficulties in making his/her needs understood or in understanding others may also exhibit problem behaviors that can be eliminated or reduced if more effective methods of communication are adopted by staff and families. Sensory impairments (vision, hearing) may also produce disruptive behaviors that would lessen or disappear if the underlying condition were addressed.

- Can physical health factors close in time to the disturbed behavior be identified (e.g., pain or discomfort from physical conditions such as arthritis, constipation, or headache)?
- Can the observed behavior be associated with an acute illness (e.g., urinary tract infection, other infections, fever, hallucinations/delusions, sleep deprivation, physical trauma, nutritional deficiencies, weight loss, dehydration/insufficient fluids, electrolyte disorder, or acute hypotension)?
- Can the observed behavior be associated with the worsening of a chronic illness (e.g., congestive heart failure, diabetes, psychoses, Alzheimer's disease or other dementia, CVA, or hypoglycemia for a diabetic)?
- What was the role of impaired hearing, vision, or ability to communicate?

Current Treatment Procedures: Positive and Negative Consequences

A number of treatment or management interventions may affect a resident's behavior. Some may have had a positive effect, while others may exacerbate existing problem behaviors — or produce new problems. Both are important to consider in reaching a decision about whether to proceed with a care plan intervention. For example, review the resident's interest in, use of, or participation in psychological treatment program(s). This review will be especially important for residents who have recently experienced improved behavioral status. For some residents and some management programs, continuation of treatments may be central to maintaining their new-found control. In other cases, either the interventions can be normally reduced (at least on a trial basis), or the side effects of the intervention may be so severe that alterations in the treatment regimen should be considered. For example, a drug or restraint program may result in increased confusion and agitation, reduced ADL self-performance, a decline in mood, or a general decrease in the quality of life for the resident. On the other hand, breaking tasks of daily life down into smaller steps that the resident can comprehend and perform may reduce stress and prevent problem behavior.

- Has the resident been reviewed by a psychiatrist, etc.? When?
- Are there indicators that treatments have helped resident gain increased control over life? What were they?
- Can improvement be attributed to an identifiable treatment?
- If behavioral problems have lessened, can medication or behavior management programs be withdrawn?
- Is the onset or change of behaviors associated with the start of (or change in prescription of) a medication(s)?
- Is the behavior associated with the use of a physical restraint (e.g., increased agitation and anger)?
- Has the resident received care in a specially designed therapeutic unit?
- Are there special staff training/support programs that focus on managing behavior problems? What disciplines are involved? How frequent/consistent is the training?
- Has task segmentation been used to maximize resident involvement?

BEHAVIOR PROBLEM RAP KEY

TRIGGERS

Review of behavior status suggested if:

1. One or More Behavior Problems [H3a, H3b, H3c or H3d = 1 or 2]

Review of treatment intervention suggested if:

2. Behavior Improved AND Use of Antipsychotics or Antidepressants [H7 = 1 AND O4a or O4c = 1-7]

3. Behavior Improved and Use of Trunk or Limb Restraints [H7 =1 AND P3b or P3c = 1 or 2]

GUIDELINES

Review and describe problem behavior:

1. **Evaluating the seriousness and stability/change of behavior problems.** Review of intensity, duration, frequency and, if any, pattern of behaviors, their development over time, and their effect on the resident and others [from record].

Review potential causes that could be addressed or resolved:

1. **Cognitive status problems.** Delirium/periodic disordered thinking [B5, J2], Alzheimer's [J1h] or other dementia [J1i], effects of stroke [J1k; from record].
2. **Mood and/or relationship problems.** Unsettled relationships [G2], sad or anxious mood [H1], psychiatric diagnosis [J1p, J1q, J1r].
3. **Environmental conditions.** Staff responses, presence of stressful conditions or physically aggressive resident, departure from resident's normal routines [from record; interviews with staff, resident].
4. **Illness/conditions.** Onset of acute illness, worsening of chronic illness, and other related problems, such as CHF [J1c], pneumonia [J1o], diabetes [J1y], septicemia [J1dd], UTI [J1ee] or other infection [from record], constipation [K1a], fever [K1f], hallucinations/delusions [K1g], pain [K1j], fall with physical trauma to head [K2; from record].
5. **Communication deficits.** Difficulty making self understood [C4] and/or understanding others [C5].
6. **Sensory impairments.** Hearing/visual problems [C1; D1].
7. **Treatment/management procedures.** Antipsychotics, antianxiety/hypnotics, antidepressants [O4], trunk, limb or chair restraints [P3], behavior management program [H5; from record].

RESIDENT ASSESSMENT PROTOCOL: ACTIVITIES

I. PROBLEM

The Activities RAP targets residents for whom a revised activity care plan may be required to identify those residents whose inactivity may be a major complication in their lives. Resident capabilities may not be fully recognized: the resident may have recently moved into the facility or staff may have focused too heavily on the instrumental needs of the resident and may have lost sight of complications in the institutional environment.

Resident involvement in passive as well as active activities can be as important in the nursing home as it was in the community. The capabilities of the average resident have obviously been altered as abilities and expectations change, disease intervenes, situational opportunities become less frequent, and extended social relationships less common. But something that should never be overlooked is the great variability within the resident population: many will have ADL deficits, but few will be totally dependent; impaired cognition will be widespread, but so will the ability to apply old skills and learn new ones; and sense may be impaired, but some type of two-way communication is almost always possible.

For the nursing home, activity planning is a universal need. For this RAP, the focus is on cases where the system may have failed the resident, or where the resident has distressing conditions that warrant review of the activity care plan. The types of cases that will be triggered are: (1) residents who have indicated a desire for additional activity choices; (2) cognitively intact, distressed residents who may benefit from an enriched activity program; (3) cognitively deficient, distressed residents whose activity levels should be evaluated; and (4) highly involved residents whose health may be in jeopardy because of their failure to "slow down."

In evaluating triggered cases, the following general questions may be helpful:

- Is inactivity disproportionate to the resident's physical/cognitive abilities or limitations?
- Have decreased demands of nursing home life removed the need to make decisions, to set schedules, to meet challenges? Have these changes contributed to resident apathy?
- What is the nature of the naturally occurring physical and mental challenges the resident experience in everyday life?
- In what activities is the resident involved? Is he/she normally an active participant in the life of the unit? Is the resident reserved, but actively aware of what is going on around him/her? Or is he/she unaware of surroundings and activities that take place?
- Are there proven ways to extend the resident's inquisitive/active engagement in activities?
- Might simple staff actions expedite resident involvement in activities? For example: Can equipment be modified to permit greater resident access of the unit? Can the resident's location or position be changed to permit greater access to people, views, or programs? Can time and/or distance limitations for activities be made less demanding without destroying the challenge? Can staff modes of interacting with the resident be more accommodating, possibly less threatening, to resident deficits?

II. TRIGGERS

The following sets of MDS based conditions indicate those residents who will require further review, as well as the types of the action that may be required:

1. Revised activity plan suggested if:

   Resident Prefers More or Different Activity Choices [I5 = 1]

2. Revised activity care plan suggested to help resident overcome resident distress when ALL THREE of the following conditions met:

   a. Little/No involvement in activities [I2 = 2 or 3]
   b. One/More of following indicators of Distress:

      - Unsettled relationships in any area [G2a ,G2b, G2c, G2d = Any checked]
      - Sadness over lost roles/status [G3b = checked]
      - Verbal expressions of sad mood [H1a = checked]
      - Withdrawn — as indicated by complete absence of General Activity Preferences [I4j = checked]

   c. Two or more of following indicators of Communication/Cognitive Ability:

      - Short-term memory OK [B2a = 0]
      - At least some decision-making ability [B4 = 0, 1, or 2]
      - Understood/usually understood by others [C4 = 0 or 1]
      - Understood/usually understand others [C5 = 0 or 1]

3. Review of activity care plan to determine if its modification might help to overcome resident distress when either of the following conditions met:

   - -a- and -b- conditions above AND resident is bedfast [E4b = checked]
   - -a- and -b- conditions above AND resident has No or Only One of the four indicators of Communication/Cognitive ability (c. above).

4. Review of activity care plan suggested if: Most involvement in activities [I2 = 0] AND Two or more checked in measurement of time awake [I1a, I1b, I1c = more than 1 checked]

III. GUIDELINES

The followup review looks for factors that may impede resident involvement in activities. Although many factors can play a role, age as a valid impediment to participation can normally be ruled out. If age continues to be linked as a major cause of lack of participation, a staff education program may prove effective remedying what may be overprotective staff behavior.

Is Resident Suitably Challenged, Overstimulated? To some extent, competence depends on environmental demands. When the challenge is not sufficiently demanding, a resident can become bored, perhaps withdrawn, may resort to fault-finding and perhaps even behave mischievously to relieve the boredom. Eventually, such a resident may become less competent because of the lack of challenge. In contrast, when the resident lacks the competence to meet challenges presented by the surroundings, he or she may react with anger and aggressiveness.

- Do available activities correspond to resident lifetime values, attitudes, and expectations?
- Does resident consider "leisure activities" a waste of time — he/she never really learned to play, or to do things just for enjoyment?
- Have the resident's wishes and prior activity patterns been considered by activity and nursing professionals?
- Have staff considered how activities requiring lower energy levels may be of interest to the resident — e.g., reading a book, talking with family and friends, watching the world go by, knitting?
- Does the resident have cognitive/functional deficits that either reduce options or preclude involvement in all/most activities that would otherwise have been of interest to him/her?

Health-related factors that may affect participation in activities. Diminished cardiac output, an acute illness, reduced energy reserves, and impaired respiratory function are some of the many reasons that

activity level may decline. Most of these conditions need not necessarily incapacitate the resident. All too often, disease-induced reduction of activity may lead to progressive decline through disuse, and further decrease in activity levels. However, this pattern can be broken: many activities can be continued if they are adapted to require less exertion or if the resident is helped in adapting to a lost limb, decreased communication skills, new appliances, and so forth.

- Is resident suffering from an acute health problem?
- Is resident hindered because of embarrassment/unease due to the presence of health-related equipment (tubes, oxygen tank, colostomy bag, wheelchair)?
- Has the resident recovered from an illness? Is the capacity for participation in activities greater?
- Has an illness left the resident with some disability (e.g., slurred speech,necessity for use of cane/walker/wheelchair, limited use of hands)?
- Does resident's treatment regimen allow little time or energy for participation in preferred activities?

Recent decline in resident status — cognition, communication, function, mood, or behavior. When pathologic changes occur in any aspect of the resident's competence, the pleasurable challenge of activities may narrow. Of special interest are problematic changes that may be related to the use of psychoactive medications. When residents or staff overreact to such losses, compensatory strategies may be helpful — e.g., impaired residents may benefit from periods of both activity and rest; task segmentation can be considered; or available resident energies can be reserved for pleasurable activities (e.g., using usual stamina reserves to walk to the card room rather than to the bathroom) or activities that have individual significance (e.g., sitting unattended at a daily prayer service rather than at group activity program).

- Has staff or the resident been overprotective? Or have they misread the seriousness of resident cognitive/functional decline? In what ways?
- Has the resident retained skills, or the capacity to learn new skills, sufficient to permit greater activity involvement?
- Does staff know what the resident was like prior to the most recent decline? Has the physical/other staff offered a prognosis for the resident's future recovery, or change of continued decline?
- Is there any substantial reason to believe that the resident cannot tolerate or would be harmed by increased activity levels? What reasons support a counter opinion?
- Does resident retain any desire to learn or master a specific new activity? Is this realistic?
- Has there been a lack of participation in the majority of activities which he/she stated as preference areas, even though these types of activities are provided?

Environmental factors. Environmental factors include recent changes in resident location, facility rules, season of the year, and physical space limitations that hinder effective resident involvement.

- Does the interplay of personal, social, and physical aspects of the facility's environment hamper involvement in activities? How might this be addressed?
- Are current activity levels affected by the season of the year or the nature of the weather during the MDS assessment period?
- Can the resident choose to participate in or to create an activity? How is this influenced by facility rules?
- Does resident prefer to be with others, but the physical layout of the unit gets in the way? Do other features in the physical plant frustrate the resident's desire to be involved in the life of the facility? What corrective actions are possible? Have any been taken?

Changes in availability of family/friends/staff support. Many residents wil experience not only a change in residence but also a loss of relationships. When this occurs, staff may wish to consider ways for a resident to develop a supportive relationship with another resident, staff member or volunteer that may increase the desire to socialize with others and/or to attend and/or paticipate in activities with this new friend.

- Has a staff person who has been instrumental in involving a resident in activities left the facility/ been reassigned?
- Is a new member in a group activity viewed by a resident as taking over?
- Has another resident who was a leader on the unit died or left the unit?
- Is resident shy, unable to make new friends?
- Does resident's expression of dissatisfaction with fellow residents indicate he/she does not want to be a part of an activities group?

Possible Confounding Problems to be Considered for Those Now Actively Involved in Activities. Of special interest are cardiac and other diseases that might suggest a need to slow down.

ACTIVITIES RAP KEY

TRIGGERS

1. Revised activity plan suggested if: Resident Prefers More or Different Activity Choices [I5 = 1]

2. Revised activity plan suggested to help resident overcome distress if ALL of the following:
   a. Little or no involvement in activities [I2 = 2 or 3]
   b. Distress: Any indicators of unsettled relationships [G2a, G2b, G2c, G2d = any checked] OR Sadness over lost roles/status [G3b = checked] OR Verbal expressions of sad mood [H1a = checked] OR Absence of general activity preferences [I4j = checked]
   c. Two or more indicators of intact Communication and/or Cognitive Ability:
      — Short-term memory OK [B2a = 0]
      — Some decision-making ability [B4 = 0, 1 or 2]
      — Understood/usually understood by others [C4 = 0 or 1]
      — Understands/usually understands others [C5 = 0 or 1]

3. Revised activity plan suggested to determine whether modifications might help resident overcome distress if all of the following:
   a. Little or no involvement in activities [I2 = 2 or 3]
   b. Distress: Two or more indicators of unsettled relationships [G2a, G2b, G2c, G2d = two or more checked] OR Sadness over lost roles/status [G3b = checked] OR Verbal expressions of sad mood [H1a = checked] OR Absence of general activity preferences [I4j = checked]
   c. Resident is bedfast [E4b = checked] OR None or Only One indicator of intact Communication and/or Cognitive Ability:
      — Short-term memory OK [B2a = 0]
      — Some decision-making ability [B4 = 0, 1 or 2]
      — Understood/usually understood by others [C4 = 0 or 1]
      — Understands/usually understands others [C5 = 0 or 1]

4. Review of activity plan suggested if: Resident has Most time involvement in activities [I2 = 0] AND is awake all or most of time [I1a, I1b, I1c = more than 1 checked]

GUIDELINES

Problems to be considered as activity plan is developed:

1. Cognitive status [B]
2. Unstable/acute health conditions [K3]
3. Number of treatments received [P1]
4. Time in Facility [INTAKE I2]
5. Use of psychoactive medications [04]

Confounding problems to be considered:

Cardiac dysrhythmias [J1b], Hypertension [J1d], CVA [J1k]

RESIDENT ASSESSMENT PROTOCOL: FALLS

I. PROBLEM

Falls are a common source of serious injury and death among the elderly. Each year, 40% of nursing home residents fall. Up to 5% of falls result in fractures; an additional 15% result in soft tissue injuries. Moreover, most elders are afraid of falling, and this fear can limit their activities.

In about one-third of falls, a single potential cause can be identified; in two-thirds, more than one risk factor will be involved. Risk factors that are internal to the resident include the resident's physical health and functional status. External risk factors include medication side effects, the use of appliances and restraints, and environmental conditions. Identification and assessment of those who have fallen and those who are at high risk of falling are the goals of this RAP.

II. TRIGGERS

Residents who have fallen at least once are at high risk for future falls, unless underlying causes of the falls can be identified and resolved. Thus, review is suggested if there is potential for additional falls.

1. Fell in Past 30 Days [K2a = checked]

2. Fell in Past 31-180 Days [K2b = checked]

Identifying and addressing risk factors is also an important preventive step for individuals who are at very high risk of falls but have not yet fallen. The resident who has not yet had a fall is at highest risk when all three conditions listed in the third trigger are met. Elderly persons with all three risks have a nearly certain probability of falling within six months, unless risks can be reduced. Thus, review is suggested for a resident with high risk for initial falls:

3. No Indication of Fall [K2a, K2b = not checked] AND TWO OR MORE of following:
   - Use of Any Psychoactive Drugs [O4a, O4b or O4c = 1-7]
   - Impaired Sense of Balance [E4a, E4j = any checked]
   - Bedfast or Hemi/Quadriplegia or Poor Leg Control [E4b, E4d, E4e, E4h = any checked]

III. GUIDELINES

To reach a decision on a care plan, begin by reviewing whether one or more of the major risk factors listed on the RAP KEY are present. Clarifying information on the nature of the risk or type of issue to be considered for the RAP KEY items follows.

Is There a Previous History of Falls, or was the Fall an Isolated Event?

Refer to the MDS, reports of the family, and incident reports.

Internal Risk Factors

Review to determine whether the items listed on the RAP KEY under the following headings are present. Each of these represents an underlying health problem or condition that can cause falls and may be addressed to prevent future falls.

- Cardiovascular.
- Neuromuscular/functional.
- Orthopedic.
- Perceptual.
- Psychiatric or cognitive.

External Risk Factors.

These risk factors can often be modified to reduce the resident's risk of falls.

- Medications. Certain drugs can produce falls by causing related problems (hypotension, muscle rigidity, impaired balance, other extrapyramidal side effects [e.g., tremors], and decreased alertness). These drugs include: antipsychotics, antianxiety/hypnotics, antidepressants, cardiovascular medications, and diuretics.

- Were these medications administered prior to or after the fall?
- If prior to the fall, how close to it were they first administered?

- Appliances and Devices.

- If the resident who falls (or is at risk of falling) uses an appliance, observe his/her use of the appliance for possible problems.
- Review the MDS and the resident's record to determine whether restraints were used prior to the fall and might have contributed to the fall (e.g., causing a decline function or an increase in agitation).

- Environmental/Situational Hazards. Many easily modifiable hazards (e.g., poor lighting, patterned carpeting, poorly arranged furniture) in the environment may cause falls both in relatively healthy and in frail elderly residents.

For Those Who Have Fallen Previously, Review the Circumstances Under Which the Fall Occurred.

Attempt to gather information on most recent fall. Needed information includes:

- Time of day, time since last meal.
- Was resident doing usual or unusual activity?
- Was he/she standing still or walking? Reaching up or down? Not reaching?
- Was resident in a crowd of people? Responding to bladder/bowel urgency?
- Was there glare or liquid on floors? Foreign objects in walkway? New furniture placement or other changes in environment?
- Is there a pattern of falls in any of the above circumstances?
- If you know what the resident was doing during the fall, have her/him perform that activity and observe (protect resident to ensure that a fall does not occur during this test).

Take necessary vital signs:

- At time of fall, obtain supine and upright blood pressure and heart rate, IF the resident does not have a serious injury such as a fracture of the hip or lower extremity.
- When reproducing circumstances of a fall (e.g., if the resident fell 10 minutes after eating a large meal, take vital signs 10 minutes after the residents eats).
- Measure blood pressure and heart rate when the resident is supine AND 1 and 3 minutes after standing; note temperature and respiratory rate.

For Residents At Risk of Future Falls, Review Environmental/Situational Factors to Determine Whether Modifications Are Needed

- Observe resident's usual pattern of interaction with his/her environment — the way he/she gets out of bed, walks, turns, gets in and out of chairs, uses the bathroom. Observations may reveal environmental solutions to prevent falls.
- Observe him/her getting out of bed, walking 20 feet, turning in a 360° circle, standing up from a chair without pushing off with his/her arms (fold arms in front), and using the bathroom.

FALLS RAP KEY

TRIGGERS

Potential for ADDITIONAL FALLS suggested if:

1. Fell in Past 30 Days **[K2a = checked]**
2. Fell in Past 31-180 Days **[K2b = checked]**

High Risk for INITIAL FALL suggested if:

3. No Indications of Falls **[K2a, K2b = not checked] AND TWO OR MORE** of the following:
   - — Use of any Psychotropic Drugs **[O4a, O4b or O4c = 1-7]**
   - — Impaired Sense of Balance **[E4a, E4j = any checked]**
   - — Bedfast or Hemi/Quadriplegia or Poor Leg Control **[E4b, E4d, E4e, E4h = any checked]**

GUIDELINES

Review risk factors for falls to identify problems that may be addressed/resolved:

1. **Multiple Falls. [K2a, K2b]**

2. **Internal Risk Factors.**
   a. Cardiovascular: Cardiac dysrhythmia **[J1b]**, Hypotension **[J1e]**, Syncope **[K1m]**
   b. Neuromuscular/functional: CVA **[J1k]**, Parkinson's **[J1m]**, Chronic/acute condition makes unstable **[K3]**, Hemiplegia **[E4d]**, Loss of leg or arm movement **[E4f, E4h]**, Unsteady gait **[E4i]**, Incontinence **[F1]**, Decline in functional status **[E8]**,Seizure disorder **[J1cc]**
   c. Orthopedic: Arthritis **[J1w]**, Joint pain **[K1i]**, Osteoporosis **[J1bb]**, Fracture of the hip **[K2c]**
   d. Perceptual: Impaired hearing **[C1]**, Dizziness/vertigo **[K1c]**
   e. Psychiatric or cognitive: Decline in cognitive skills **[B6]**, Alzheimer's **[J1h]**, Other Dementia **[J1i]**, Delirium **[B5]**, Manic depressive **[J1r]**

3. **External Factors.**
   a. Medications: Psychotropic meds**[O4a, O4b, O4c]** cardiovascular meds and diuretics **[from record]**
   b. Appliances/devices (time started): pacemaker/walker/cane **[E5a; from record]**; physical restraints **[P3b, P3c, P3d]**
   c. Environmental/situational hazards and, if relevant, circumstances of recent fall(s): glare; poor illumination; slippery floors; uneven surfaces; patterned carpets; objects in walkway; new arrangement of objects; recent move into/within facility; proximity to aggressive resident; time of day; time since meal; type of activity; standing still/walking; in a crowded area; reaching/not reaching; responding to bladder/bowel urgency

RESIDENT ASSESSMENT PROTOCOL: NUTRITIONAL STATUS

I. PROBLEM

Malnutrition is not a response to normal aging; it can arise from many causes. Its presence may signal the worsening of a life-threatening illness, and it should always be seen as a dramatic indicator of the resident's risk of sudden decline. Severe malnutrition is, however, relatively rare, and this RAP focuses on signs and symptoms that suggest that the resident may be at risk of becoming malnourished. For many who are triggered, there will be no obvious, outward signs of malnutrition. Prevention is the goal, and early detection is the key.

Early problem recognition can help to ensure appropriate and timely nutritional intervention. For many residents, simple adjustments in feeding patterns may be sufficient. For others, compensation or correction for food intake problems may be required.

Within a nutrition program, food intake is best accomplished via oral feedings. Tube (enteral) feeding is normally limited to residents who have a demonstrated inability to orally consume sufficient food to prevent major malnutrition or weight loss. Parenteral feeding is normally limited to life-saving situations where both oral and enteral feeding is contraindicated or inadequate to meet nutrient needs. Oral feeding is clearly preferred. Depending on the nature of the problem, residents can be encouraged to use finger foods; to take small bites; to use the tongue to move food in the mouth from side to side; to chew and swallow each bite; to avoid food that causes mouth pain, etc. Therapeutic programs can also be designed to review for the need for adaptive utensils to compensate for problems in sucking, closing lips, or grasping utensils; to help the confused resident maintain a fixed feeding routine, etc.

II. TRIGGERS

Nutritional problem suggested if any of following observed:

1. Nutrition Deficiency ICD codes [J2 = 260, 261, 262, 263, 263.0, 263.1, 263.2, 263.8 or 263.9]

2. Weight Loss — Significant unintentional weight loss in the past month (5% or more) or six months (10% or more) is a major risk indicator. [L2c = 1]

3. Taste Alterations [L3a = checked]. Some diseases can disrupt the sense of tastes, and this can affect food intake. For example, some residents undergoing cancer therapy may find protein-like foods to be repugnant; other foods may taste bitter, overly sweet, or have no taste at all.

4. Hunger [L3d = checked]. In the absence of weight loss and in the presence of well-balanced and adequate meals, hunger is inconsistent with a good quality of life. In the presence of weight loss or in the absence of a well designed nutrition program at the facility, hunger can be an early indicator of a deficient food service program for this resident.

5. Parenteral/IV feeding [L4a = checked]. Tube or parenteral feedings may be essential for the resident who is unable to swallow oral nutriment without choking or aspirating (as in cases of Parkinson's disease and amyotrophic lateral sclerosis [ALS]), or if staff have not been able to maintain or improve the resident's nutritional status through oral intake alone.

6. Mechanically altered diet, syringe (oral) feeding, or therapeutic diet [L4c, L4d, L4e = any checked]. An overly managed diet may cause malnutrition because of the resident's refusal to eat a narrow group of selected foods or because of disinterest in the available food. The resident on such a diet must also be monitored to ensure that there is no unintended weight loss.

7. Leaves 25% of food uneaten at most meals [L3e = checked]. Assuming that portions are not excessive, this is an important indicator of the need to identify the cause of the problem. Several factors may account for this pattern: poor appetite secondary to mental or confusional problems or other disease (e.g., Alzheimer's disease, confusion, depression, cancer, food intolerances, gastroparesis secondary to diabetes mellitus, constipation); food quality may be questionable; resident may not be permitted to state food preferences; mealtimes may be poorly spaced; or quality of the food service andwr dining experience may be unacceptable.

8. Presence of pressure ulcers [N2 = 1, 2, 3 or 4]. Malnutrition and weight loss can cause pressure ulcers; pressure ulcers, in turn, can cause malnutrition. Stage II, III, and IV pressure ulcers and major stasis ulcers increase the resident's requirement for calories, protein, and fluid, and, to a lesser extent, vitamin C, zinc, and most other nutrients.

III. GUIDELINES

RESIDENT FACTORS THAT MAY IMPEDE ABILITY TO CONSUME FOOD

Chewing problems

Residents with oral abscesses, ill-fitting dentures, teeth that are broken, loose, carious or missing, or those on mechanically altered diets frequently cannot eat enough food to meet their calorie and other nutrient needs. Significant weight loss can, in turn, result in poorly fitting dentures and infections that can lead to more weight loss.

Swallowing problems

Swallowing problems arise in several contexts: the long-term result of chemotherapy, radiation therapy, or surgery for malignancy (including head and neck cancer); fear of swallowing because of COPD/emphysema/asthma; stroke; hemiplegia or quadriplegia; Alzheimer's disease or other dementia; and ALS.

Reduced ability to feed self

Reduced ability to feed self can be due to arthritis, contractures, partial or total loss of voluntary arm movement, hemiplegia or quadriplegia, vision problems, inability to perform activities of daily living without significant assistance, and coma.

Possible Medical Causes

Numerous conditions and diseases can result in increased nutrient requirements (calories, protein, vitamins, minerals, water, and fiber) for residents. Among these are cancer and cancer therapies, Parkinson's disease with tremors, septicemia, pneumonia, gastrointestinal influenza, fever, vomiting, diarrhea and other forms of malabsorption including excessive nutrient loss from ostomy, burns, pressure ulcers, COPD/emphysema/asthma, Alzheimer's disease with concomitant pacing or wandering, and hyperthyroidism.

Malignancy and nutritional consequences of chemotherapy, radiation therapy/surgery. For the resident undergoing therapy aimed at remission or cure, aggressive nutritional support is necessary to achieve the goal; for the resident with incurable malignancy who is undergoing palliative therapy or is not responding to curative therapy, aggressive nutritional support is often medically inappropriate.

Have the wishes of the resident and family concerning aggressive nutritional support been ascertained?

Anemia (nutritional deficiency, not malnutrition). A hematocrit of less than 41% is predictive of increased morbidity and mortality for residents.

Are shortness of breath, weakness, paleness of mucous membranes and nailbeds, and/or clubbing of nails present?

Chronic COPD increases calorie needs and can be complicated by an elevated fear of choking when eating or drinking.

Shortness of breath (frequently seen with congestive heart failure, hypertension, edema, and COPD/emphysema/asthma). This is another condition that can cause a fear of eating and drinking, with a consequent reduction in food intake.

Constipation/intestinal obstruction/pain can inhibit appetite.

Drug-induced anorexia often causes decreased or altered ability to taste and smell foods.

Delirium.

PROBLEMS TO BE REVIEWED FOR CAUSAL LINK

Mental problems.

Dementia, depression, paranoid fears that food is poisoned, and mental retardation can all lead to anorexia, resulting in significant amounts of uneaten food and subsequent weight loss.

Behavior patterns and problems.

Residents who are fearful, who pace or wander, withdraw from activities, cannot communicate, or refuse to communicate, often refuse to eat or will eat only a limited variety and amount of foods. Left untreated, behavior problems that result in refusal to eat can cause significant weight loss and subsequent malnutrition.

- Does resident use food to gain staff attention?
- Is resident unable to understand the importance of eating?

Inability to Communicate.

For most residents, enjoying food and mealtimes crucially affects quality of life. Inability to make food and mealtime preferences known can result in a resident eating poorly, losing weight, and being unhappy. Malnutrition due to poor communication usually indicates substandard care. Early correction of communication problems, where possible, can prevent malnutrition.

- Does the area in which meals are served lend itself to socialization among residents? Is it a place where social communication can easily take place?
- Has there been a failure to provide adequate staff and/or adequate time in feeding or assisting residents to eat?
- Has there been a failure to recognize the need and supply adaptive feeding equipment for residents who can be helped to self-feed with such assistance?
- Is the resident capable of telling staff that he/she has a problem with the food being served — e.g., finds it to be unappetizing or unattractively presented?

NUTRITIONAL STATUS RAP KEY

TRIGGERS

Malnutrition problem suggested if:

1. Nutritional Deficiency [J2 = 260, 261, 262, 263, 263.1, 263.2, 263.8 or 263.9]
2. Weight loss [L2c = 1]
3. Taste alterations [L3a = checked]
4. Hunger [L3d = checked]
5. Parenteral/IV feeding [L4a = checked]
6. Mechanically altered diet, syringe (oral feeding), or therapeutic diet [L4c, L4d, L4e = any checked]
7. Leaves 25% or more food uneaten at most meals [L3e = checked]
8. Pressure sores [N2 = 1, 2, 3 or 4]

GUIDELINES

Factors that impede ability to consume food:

1. Chewing problems [L1a]
2. Swallowing problems [L1b]
3. Reduced ability to feed self [E2e]
4. Possible medical causes: Cancer [J1x], cancer therapies [P1a, P1b], septicemia [J1dd], pneumonia [J1o], fever [K1f], diarrhea [K1b], ostomy losses [F3h], anemia [J1v], shortness of breath [K1l], and nutrient/medication interactions (e.g., antipsychotics, cardiac drugs, diuretics, laxatives, antacids) [from record]

Problems to be reviewed for possible relationship to nutritional status problem:

1. Mental problems: fear that food is poisoned [from record; H1a, H1e], Alzheimer's [J1h], other dementia [J1i], anxiety disorders [J1p], depression [J1q]
2. Behavior problems: Slowness in self feeding [E7c], pacing [H1c], wandering [H3a], failure to eat and withdrawal from activities [H1d], throwing food [H3d]
3. Inability to communicate: Comatose [B1], unable to make food and mealtime preferences known [C3f], and difficulty making self understood [C4], difficulty understanding others [C5], aphasia [J1j]
4. Amputation [E4k].

RESIDENT ASSESSMENT PROTOCOL: FEEDING TUBES

I. PROBLEM

The efficacy of tube feedings is difficult to assess. When the complications and problems are known to be high and the benefits difficult to determine, the efficacy of tube feedings as a long-term treatment for individuals requires careful evaluation.

Where residents have difficulty eating and staff have limited time to assist them, insertion of feeding tubes for the convenience of nursing staff is an unacceptable rationale for use. The only rationale for such feedings is demonstrated medical need to prevent malnutrition or dehydration. Even here, all possible alternatives should be explored prior to using such an approach for long-term feeding, and restoration to normal feeding should remain the goal throughout the treatment program.

Use of nasogastric and nasointestinal tubes can result in many complications including, but not limited to: agitation, self-extubation (removal of the tube by the patient), infections, aspiration, unintended misplacement of the tube in the trachea or lungs, inadvertent dislodgement, and pain.

This RAP focuses on reviewing the status of the resident using tubes. The Nutritional Status and Dehydration/Fluid Maintenance RAPs focus on resident needs that may warrant the use of tubes. To help clarify the latter issue, the following guidelines indicate the type of review process required to ensure that tubes are used in only the exceptional and acceptable situation. As a general rule, residents unable to swallow or eat food and unlikely to eat within a few days due to physical problems in chewing or swallowing (e.g., stroke or Parkinson's disease) or mental problems (e.g., Alzheimer's depression) should be assessed regarding the need for a nasogastric or nasointestinal tube or an alternative feeding method. In addition, if normal caloric intake is substantially impaired with endotracheal tubes or a tracheostomy, a nasogastric or nasointestinal tube may be necessary. Finally, tubes may be used to prevent meal-induced hypoxemia (insufficient oxygen to blood), which occurs with patients with COPD or other pulmonary problems that interfere with eating (e.g., use of oxygen, bronchodilators, tracheostomy, endotracheal tube with ventilator support).

1. Assess causes of poor nutritional status that may be identified and corrected as a first step in determining whether or not a nasogastric or nasointestinal tube is necessary (see Nutritional Status RAP).

   (a) Eating, swallowing and chewing disorders can negatively affect nutritional status (low weight in relation to height, weight loss, serum albumin level, and dietary problems) and the initial task is to determine the potential causes and period of time such problems are expected to persist. Recent lab work should also be reviewed to determine if there are electrolyte imbalances, fluid volume imbalances, BUN, creatinine, low serum albumin, and low serum protein levels before treatment decisions are made. Laboratory measurement of sodium and potassium tell whether or not an electrolyte imbalance exists. Residents taking diuretics may have potassium losses requiring potassium supplements. If these types of imbalances cannot be corrected with oral nutrition and fluids or intravenous feedings, then a nasogastric or nasointestinal tube may be considered.

   (b) Determine whether fluid intake and hydration problems are short-term or long-term.

   (c) Review for gastrointestinal distention, gastrointestinal hemorrhage, increased gastric acidity, potential for stress ulcers, and abdominal pain.

   (d) Identify pulmonary problems (e.g., COPD and use of endotracheal tubes, tracheostomy, and other devices) that interfere with eating or dehydration.

(e) Review for mental status problems that interfere with eating such as depression, agitation, delirium, dementia, and mood disorders.

(f) Review for other problems such as cardiovascular disease or stroke.

2. Determine the need for such a tube. Examine alternatives.

Alternatives to nasogastric and nasointestinal tubes should always be considered. Intravenous feedings should be used for short-term therapy as a treamtent of choice or at least a first option. Jejunostomy may have some advantages for long-term therapy, although may increase the risk for infection. A gastrostomy is better tolerated by agitated patients and those requiring prolonged therapy (more than 2 weeks). Gastrostomy with bolus feedings is preferable to nasogastric or nasointestinal tubes for long-term therapy for comfort reasons and to prevent the dislodgement and complications associated with nasal tubes. It is also less disfiguring as it can be completely hidden under clothing when not in use.

3 Assure informed consent and right to refuse treatment. Informed consent is essential before inserting a nasogastric or nasointestinal tube. Potential advantages disadvantages, and potential complications need to be discussed. Resident preferences are normally given the greatest weight in decisions regarding tube feeding. State laws and judicial decisions must also be taken into account. If the resident is not competent to make the decision, a durable power of attorney or living will may determine who has the legal power to act on the resident's behalf. Where the resident is not competent or no power of attorney is in effect, the physician may have the responsibility for making a decision regarding the use of tube feeding. In any case, when illness is terminal and/or irreversible, technical means of providing fluids and nutrition can represent extraordinary rather than ordinary means of prolonging life.

4. Monitor for complications and correct/change procedures and feedings when necessary. Periodic changing of the nasogastric and intestinal tubes is necessary, although the appropriate interval for changing tubes is not clear. Assessment and determination of continued need should be completed before the tube is reinserted. Specific written orders by the physician are required.

Individuals at risk of pulmonary aspiration (such as those with altered pharyngeal reflexes or unconsciousness) should be given a nasointestinal tube rather than a nasogastric tube, or other medical alternative. Those at risk for displacement of a nasogastric tube, such as those with coughing, vomiting, or endotracheally intubated, should also be given a nasointestinal tube rather than a nasogastric tube or other medical alternative.

II. TRIGGER

1. Tubes currently in use. [L4b = checked]

III. GUIDELINES

COMPLICATIONS OF TUBE FEEDING

To reiterate, serious potential negative consequences include agitation, depression, mood disorders, self-extubation (removal of the tube by the patient), infections, aspirations, misplacement of tube in trachea or lungs, pain, and tube dysfunction. Abnormal lab values can be expected and should be reviewed.

Infection in the trachea or lungs. Gastric organisms grow as a result of alkalizing (raising) the gastric pH. Gastric colonization results in transmission of gastric organisms to the trachea and the development of nosocomial pneumonia. In one study, colonization in 89% of patients within 4 days in ventilated patients with enteral nutrition was found with nosocomial respiratory infection in 62% of the patients studied. Symptoms of respiratory infections to be monitored include coughing, shortness of breath, fever, chest pain, respiratory arrest, delirium, confusion, and seizures.

Aspiration of gastric organisms into the trachea and the lungs. The incidence is difficult to determine, but most studies suggest it is relatively high.

Inadvertent respiratory placement of the tube is the most common side effect of tube placement. In one study, 15% of small-bore nasogastric tubes and 27-50% of nasointestinal tubes were found to be out of their intended position upon radiographic examination without any other evidence of displacement. Respiratory placement can occur in any patient, but is most likely in those who are neurologically depressed, heavily sedated, unable to gag, or endotracheally intubated. Detecting such placement is difficult; the following comments address this issue:

- Radiologic detection is the most definitive means to detect tube displacement. Under this procedure, pneumothorax and inadvertent placement in the respiratory tract can be avoided by first placing the feeding tube in the esophagus with the tip above the xiphoid process and then securing the tube and confirming placement with a chest x-ray. Then the tube may be advanced into the stomach and another x-ray taken to confirm the position. The stylet can then be removed and tube feeding begun. Unfortunately, nursing homes are highly unlikely to have appropriate radiological technology and it is normally unreasonable to expect them to make arrangements to have patients transported to available radiology.

- pH testing of gastric aspirates to determine whether a tube is in the gastric, intestine, or the respiratory area is a promising method for testing feeding tube placement. However, parameters for various secretions from the three areas have not yet been clinically defined.

- Aspiration of visually recognizable gastrointestinal secretions, although a frequently used method of determining placement of tubes, is of questionable value as the visual characteristics of secretions can be similar to those from the respiratory tract.

- Ausculatory method: although "shooshing" or gurgling sounds can indicate placement in the stomach, the same sounds can occur when feeding tubes are inadvertently placed in the pharynx, esophagus and respiratory tract. Although small-bore tubes make the ausculatory method more difficult to use, large-bore nasogastric tubes may also be placed inadvertently in the respiratory tract producing false gurgling.

Inadvertent dislodgement of the tubes. Nonweighted tubes appear to be more likely to be displaced than weighted tubes (with an attached bolus of mercury or tungsten at the tip).

Other complications include: pain, epistaxis, pneumothorax, hydrothorax, nasal alar necrosis, nasapharyngitis, esophagitis, eustachitis, esophageal strictures, airway obstruction, pharyngeal and esophageal perforations. Symptoms of respiratory infections are to be reviewed.

Complications of gastric tract infections and gastric problems. Symptoms include abdominal pain, abdominal distention, stress ulcers, and gastric hemorrhage. There is also a need to monitor for complications including diarrhea, nausea, abdominal distention, and asphyxia. Such complications signal the need for a change in the type of formula or diagnostic work for other pathology.

Complications for the cardiovascular system. Symptoms of cardiac distress or arrest to be monitored include chest pain, loss of heart beat, loss of consciousness, and loss of breathing.

Periodic tests to assure positive nitrogen balance during enteral feeding. Where positive balance is not achieved, a formula with high nitrogen density is needed. The absorptive capacity is impaired in many elderly patients so that serum fat and protein should be monitored. Effective nutrients should result in positive nitrogen balance, maintenance or increases in body weight, triceps skinfold and midarm muscle circumference maintenance, total iron binding capacity maintenance, and serum urea nitrogen level maintenance. Caloric intake and resident weight should be monitored on a regular basis.

FEEDING TUBES RAP KEY

TRIGGERS

Feeding Tube present [L4b = checked]

GUIDELINES

Factors that may impede removal of tube:

1. Comatose [B1]
2. Failure to eat [H1d] AND Resists assistance in eating [H4b; from record]
3. Diagnoses: CVA [J1k], gastric ulcers, gastric bleeding [J2]
4. Chewing problem [L1a]
5. Swallowing problem [L1b]
6. Mouth pain [L1c]
7. Length of time feeding tube has been in use [from record]

Potential complications of tube feeding:

1. Diagnostic conditions: delirium [B5], agitation [H1], anxiety [J1p], depression [J1q], lung aspirations [K1k]
2. Self-extubation (removal of tube by resident) [from record]
3. Limb restraints in use to prevent self-extubation [P3c]
4. Infections in lung/trachea: fever [K1f], shortness of breath [K1l], pneumonia [J1o], placement or dislodgement of tube into lung [from exam, record]
5. Side-effects of enteral feeding solutions: constipation [K1a], diarrhea [K1b], fecal impaction [K1e], abdominal distention or pain [exam], dehydration [L3b]
6. Respiratory problems: pneumothorax, hydrothorax, airway obstruction, acute respiratory distress, respiratory distress [J2; from observation, record]
7. Cardiac distress/arrest: chest pain, loss of heart beat, loss of consciousness, loss of breathing [from observation, record]
8. Abnormal lab values [P2]

RESIDENT ASSESSMENT PROTOCOL: DEHYDRATION/FLUID MAINTENANCE

I. PROBLEM

On average, one can live only four days without water. Water is necessary for the distribution of nutrients to cells, elimination of wastes, regulation of body temperature, and countless other complex processes.

Dehydration is a condition in which water or fluid loss (output) far exceeds fluid intake. The body becomes less able to maintain adequate blood pressure, deliver sufficient oxygen and nutrients to the cells, and rid itself of wastes. Many distressing symptoms can originate from this conditions, including:

- Dizziness on sitting/standing (blood pressure insufficient to supply oxygen and glucose to brain);
- Confusion or change in mental status (decreased oxygen and glucose to brain);
- Decreased urine output (kidneys conserve water);
- Decreased skin turgor, dry mucous membranes (symptoms of dryness);
- Constipation (water insufficient to rid body of wastes); and
- Fever (water insufficient to maintain normal temperature).

Other possible consequences of dehydration include: decreased functional ability, predisposition to falls (because of orthostatic hypotension), fecal impaction, predisposition to infection, fluid and electrolyte disturbances, and ultimately death.

Nursing home residents are particularly vulnerable to dehydration. It is often difficult or impossible to access fluids independently; the perception of thirst can be muted; the aged kidney can have a decreased ability to concentrate urine; and acute and chronic illnesses can alter fluid and electrolyte balance.

Unfortunately, many symptoms of this condition do not appear until significant fluid has been lost. Early signs and symptoms tend to be unreliable and nonspecific; staff will often disagree about the clinical indicators of dehydration for specific cases; and the identification of the most crucial symptoms of the condition are most difficult to identify among the aged. Early identification of dehydration is thus problematic, and the goal of this RAP is to identify any and all possible high risk cases, permitting the introduction of programs to prevent the condition from occurring.

When dehydration is in fact observed, treatment objectives focus on restoring normal fluid volume, preferably orally. If the resident cannot drink between 2500-3000 cc's every 24 hours, water and electrolyte deficits can be made up via other routes. Fluids can be administered intravenously, subcutaneously, or by tube until resident is adequately hydrated and can take and retain sufficient fluids orally.

II. TRIGGERS

Dehydration suggested if either of following conditions apply:

1. Insufficient fluid/dehydration — actual fluid deficit [L3b = checked]

2. Two or more of the following are present:

   - Deteriorated cognitive status [B6 = 2]
   - Deteriorated ADL status [E8 = 2]
   - Failure to eat or take medications [H1d = checked]
   - UTI [J1ee = checked]
   - Dehydration diagnosis [J2 = 276.5]
   - Diarrhea, fever, or internal bleeding [K1b, K1f, K1h = any checked]
   - Dizziness/vertigo [K1c = checked]
   - Vomiting [K1n = checked]
   - Recent weight loss [L2c = 1]
   - Did not consume all liquids provided [L3c = checked]
   - Leaves 25%+ food uneaten [L3e = checked]
   - Parenteral/IV or feeding tube [L4a, L4b = any checked]
   - Taking diuretic [from record]

III. GUIDELINES

RESIDENT FACTORS THAT MAY IMPEDE ABILITY TO MAINTAIN FLUID BALANCE

Moderate/severely impaired decision-making Ability.

- Has there been a recent unexplainable change in mental status?
- Does resident seem unusually agitated or disoriented?
- Is resident delirious?
- Is resident comatose?

Comprehension/Communication problems.

- Does dementia, aphasia or other condition seriously limit resident's understanding of others, or how well others can understand the resident?

Body control problems.

- Does resident require extensive assistance to transfer?
- Does resident freely move on the unit?
- Has there been recent ADL decline?

Hand dexterity problem.

- Can resident grasp cup?

Swallowing problems.

- Does resident have mouth sore(s)/ulcer(s)?
- Does resident refuse food, meals, meds?
- Can resident drink from a cup or suck through a straw?

Use of Parenteral/IV.

- Are feeding tubes in use?

RESIDENT DEHYDRATION RISK FACTORS

Dehydration risk factors can be categorized in terms of whether they decrease fluid intake or increase fluid loss. The higher the number of factors, the greater the risk of dehydration. Ongoing fluid loss through the lungs and skin occurs at a normal rate of approximately 500 cc/day and increases with rapid respiratory rate and sweating. Therefore, decreased fluid intake for any reason can lead to dehydration.

Purposeful Restriction of Fluid Intake.

- Has there been a decrease in thirst perception?
- Is resident unaware of the need to intake sufficient fluids?
- Has resident or staff restricted intake to avoid urinary incontinence?
- Are fluid restricted because of diagnostic procedure or other health reason?
- Does sad mood, grief, or depression cause resident to refuse foods/liquids?

Presence of infection, fever, vomiting/diarrhea/nausea, excessive sweating (e.g., a heat wave).

Frequent use of laxatives, enemas, diuretics.

Excessive urine output (polyuria).

Excessive urine output (polyuria) may be due to:

- Drugs (e.g., lithium, phenytoin), alcohol abuse
- Diseases (e.g., diabetes mellitus, diabetes insipidus)
- Other conditions (e.g., hypoaldosteronism, hyperparathyroidism)

Other test results.

Relevant test result to be considered:

- Does systolic/diastolic blood pressure drop 20 points on sitting/standing?
- On inspection, do oral mucous membranes appear dry?
- Does urine appear more concentrated and/or decreased in volume?

DEHYDRATION/FLUID MAINTENANCE RAP KEY

TRIGGER

Dehydration Suggested if:

1. Insufficient Fluid/dehydration [L3b = checked]

2. Two or More of following are Present:

   - Deteriorated cognitive status [B6 = 2]
   - Deteriorated ADL status [E8 = 2]
   - Failure to eat or take medications [H1d = checked]
   - UTI [J1ee = checked]
   - Dehydration diagnosis [J2 = 276.5]
   - Diarrhea, fever, or internal bleeding [K1b, K1f, K1h = any checked]
   - Dizziness/vertigo [K1c = checked]
   - Vomiting [K1n = checked]
   - Recent weight loss [L2c = 1]
   - Did not consume all liquids provided [L3c = checked]
   - Leaves 25%+ food uneaten [L3e = checked]
   - Parenteral/IV or feeding tube [L4a, L4b = any checked]
   - Taking diuretic [from record]

GUIDELINES

Resident Factors That May Impede Ability to Maintain Fluid Balance:

1. Moderate/severely impaired decision-making ability [B4]
2. Comprehension/communication problem [C4, C5]
3. Body control problems [E4, E8]
4. Hand dexterity problem [E4g]
5. Swallowing problem [L1b]
6. Use of Parenteral/IV [L4a]

Resident Dehydration Risk Factors:

1. Purposeful restriction of fluids [from record]
2. Presence of infection [J1o, J1dd, J1ee], diarrhea [K1b], fever [K1f], vomiting [K1n], nausea [from record], excessive urine loss [from record, exam]
3. Frequent laxative/enema/diuretic use [from record]
4. Excessive urine output [from record]
5. Other tests: Standing/sitting blood pressure, status of oral mucous membranes, urine output volume [from record; exam]

RESIDENT ASSESSMENT PROTOCOL: DENTAL CARE

I. PROBLEM

Having teeth/dentures that function properly is an important requisite for nutritional adequacy. Having teeth/dentures that are clean and attractive can promote a resident's positive self-image as well as personal appearance thereby enhancing social interactions among residents, residents and staff, and residents and visitors. Good oral health can decrease a resident's risk of oral discomfort and in some instances, systemic illness from oral infections/cancer. Residents at greatest risk due to impaired abilities are primarily those with multiple medical conditions and medications, functional limitations in self-care, and communication deficits. Also at risk are more self-sufficient residents who lack motivation or have no consistent history of performing oral health functions. Residents with a history of alcohol and/or tobacco use have a greater risk of developing chronic oral lesions.

II. TRIGGERS

The Dental Care RAP triggers two types of residents:

- residents with oral hygiene problems; and
- residents with oral/dental health problems who may benefit from dental evaluation

A dental care problem is suggested if the following signs are present:

1. Mouth debris [**M1a = checked**] **OR** Less than daily cleaning of teeth/dentures [**M1f = not checked**]

Potential for oral/dental health problems is suggested if any of the following signs/symptoms are present:

1. Mouth pain [**L1c = checked**] **OR** Broken, loose, carious teeth [**M1d = checked**] **OR** Inflamed gums, oral abscesses, swollen or bleeding gums, ulcers, rashes [**M1e = checked**]

2. Some/all natural teeth lost —does not have or does not use dentures (or partial plates) [**M1c = checked**]

III. GUIDELINES

CONFOUNDING PROBLEMS

Debris on teeth, gums, and oral tissues may consist of food and bacteria-laden plaque that can begin to decay teeth or cause foul denture odors if not removed at least once daily. The purpose of this section is to examine confounding problems (from the MDS) which may be prohibiting a resident from adequately removing oral debris.

Impaired cognitive skills:

- Does the resident need reminders to clean his/her teeth/dentures?
- Does he remember the steps necessary to complete oral hygiene?
- Would he benefit from task segmentation or supervision?

Impaired ability to understand:

- Can the resident follow verbal directions or demonstrations for mouth care?
- If the resident has language difficulties, does he/she know what to do when handed a toothbrush/toothpaste and placed at the bathroom sink?

Impaired vision.

- Is resident's vision adequate for performing mouth care or checking its adequacy?

Impaired personal hygiene.

- Did the resident receive supervision or assistance with oral/dental care during the last 7 days?
- Has he/she been assessed to see if he/she could do it independently?
- Does the resident have partial/total loss of voluntary arm movement or impaired hand dexterity that interferes with self-care?
- What would the resident need to be more independent?

Motivation/Knowledge of resident who is independent in oral/dental care but still has debris or performs care less than daily.

- Is he/she brushing adequately?
- Does he/she know that it is most important to brush near the gumline?
- Does he/she need to be shown how or be given reinforcement for maintaining good hygiene?

Adaptive equipment for oral hygiene.

- Has the resident tried or would he/she benefit from using a built-up, long-handled, or electric toothbrush, or suction brush for cleaning teeth?
- If resident has dentures, does he/she have denture cleaning devices (e.g., denture brush, soaking bath)?

Resists ADL assistance:

- Does the resident resist mouth care? If so, why (e.g., would rather do own care, painful mouth, apathy related to depression, not motivated—never cared for teeth/mouth, approach of staff, fear)?

Dry mouth from dehydration or medications.

- Dry mouth can contribute to the formation of debris. Is the resident's lips, tongue, or mouth dry, sticky, or coated with film?
- Is the resident taking enough fluids? Is lip balm being applied to resident who has painful, cracking or bleeding lips?
- Is he/she taking any medications that can cause dry mouth (e.g., decongestants, antihistamines, diuretics, antihypertensives, antidepressants, antipsychotics, antineoplastics)?
- If these medications are necessary, has the resident tried saliva substitutes to stimulate moisture?

TREATMENT HISTORY AND OTHER RELEVANT FACTORS

Mouth pain or sensitivity can be related to either minor and easily treatable (e.g., gum irritation from ill-fitting dentures, localized periodontal problem) or more serious problems (e.g., oral abscess, cancer, advanced tooth decay or periodontal disease). The presence of pain may prevent the resident from eating adequately. Residents with cognitive impairment and/or those who have difficulty making their needs known are difficult to assess. They may not complain specifically of mouth pain but may instead have decreased food intake or changes in behavior.

The presence of lesions, ulcers, inflammation, bleeding, swelling, or rashes may be representative of a minor problem (e.g. irritation from wearing dentures for 24 hours/day), which resolves when the cause is alleviated (e.g., combination of mouth care and leaving dentures out). However, these signs may also

indicate more serious problems, even dental emergencies (e.g., infection). If the problem does not resolve with specific local treatment after a couple of days, OR if these signs are accompanied by pain, fever, lymphadenopathy (swollen glands) and/or other signs of local infection (e.g., redness), chewing or swallowing problems, or changes in mental status or behavior, a dental consult should be considered.

- Review mouth for Candidiasis (white areas that appear to be able to be removed — anywhere in mouth, mostly on tongue) for lethargic residents who have one or more of following diagnoses: stroke, Alzheimer's, Parkinson's, anxiety disorder, depression, diabetes, osteoporosis, or septicemia.

Broken, loose, or carious teeth may progress to more severe problems (e.g., dislodging a decayed tooth and swallowing or aspirating it). Although, not emergencies, a dental consult should be considered.

If a resident has lost some or all of his/her natural teeth and does not have dentures (or partial plates) staff should consider if the resident has the cognitive ability and motivation to wear dentures.

- Has a dentist evaluated resident for dentures?
- Why doesn't resident use his/her dentures (or partial plates)?
- Are teeth in good repair?
- Do they fit well?
- Are they comfortable to wear when eating or talking?
- Does the resident like the way he/she looks when wearing them?
- Has a dentist evaluated resident for dentures?
- Has a dental hygienist interviewed and made recommendations regarding oral hygiene care?

Exam by dentist since problem noted. When evaluating a resident with mouth pain or the presence of any of the other trigger signs, check the record to see if a dentist has examined the resident since the problem was first noted.

- Was the current problem addressed?
- What were the recommendations?

Use of anticoagulants.

- Is the resident on coumadin or heparin that would put him/her at risk for bleeding if dental work is necessary?
- Is it noted on the medical record?

Valvular heart disease or prosthesis (e.g., heart valve, false hip, etc.).

- Are either of these conditions present?
- If so are they clearly noted in the medical record so that necessary precautions be taken prior to

DENTAL CARE RAP KEY

TRIGGERS

Dental Care problem suggested if:

1. Mouth Debris [M1a = checked] OR Less Than Daily Cleaning of Teeth/Dentures [M1f = not checked]

Potential for oral/dental health problems suggested if:

2. Mouth Pain [L1c = checked]; Broken, Loose or Carious Teeth [M1d = checked] OR Inflamed Gums, Oral Abscesses, Swollen/Bleeding Gums, Ulcers, Rashes [M1e = checked]

3. Some/All natural teeth lost and does not have or does not use dentures [M1c = checked]

GUIDELINES

Confounding problems to be considered:

1. Impaired cognitive skills [B1, B4]
2. Impaired ability to understand [C1, C5]
3. Impaired vision [D1]
4. Impaired personal hygiene [E2g]
5. Motivation/knowledge [from observation]
6. Adaptive equipment for oral hygiene [from record]
7. Resists ADL assistance [H4b]
8. Dry mouth from hydration [L3b, L3c] or from medications [from medication sheet]

Treatment history/relevant factors:

1. Mouth pain or sensitivity [L1c]
2. Presence of lesions, ulcers, inflammation, bleeding, swelling or rashes [M1e]
3. Broken, loose or carious teeth [M1d]
4. Natural teeth lost/no dentures [M1c]
5. Exam by dentist/dental hygenist since problem noted [from record]
6. Use of anticoagulants [from record]
7. Valvular heart disease or valvular appliance [J1, J2]

RESIDENT ASSESSMENT PROTOCOL: PRESSURE ULCERS

I. PROBLEM

Between 3% and 5% (or more) of residents in nursing facilities have pressure ulcers (pressure sores, decubitus ulcers, bedsores). Sixty percent or more of residents will typically be at risk of pressure ulcer development. Pressure ulcers can have serious consequences for the elderly and are costly and time consuming to treat. However, they are one of the most common, preventable and treatable conditions among elderly who have restricted mobility. Successful outcomes can be expected with preventive and treatment programs.

Assessment goals are: (1) to ensure that a treatment plan is in place for residents with pressure ulcers; and (2) to identify residents at risk for developing a pressure ulcer who are not currently receiving some type of preventive care program.

II. TRIGGERS

1. Pressure Ulcer Present. **[N2 = 1, 2, 3 or 4]**

2. Risk Factors for Pressure Ulcer. One or more of the following problems AND NOT receiving any skin care program **[N4c, N4d, N4e, N4f, N4g = not checked]**: (NOTE: these are listed in the order in which they appear in the MDS and RAP KEY — not by type or severity of risk.)

   Impaired Transfer or Bed Mobility. **[E1a or E1b = 3 or 4]** Increased risk occurs when a resident's impaired ability prevents repositioning at regular intervals.

   Bedfast, Hemiplegia, Quadriplegia. **[E4b, E4d, E4e = any checked]** These conditions predispose a resident to immobility, and the extended time (2 hours or less) spent in one position will generate sufficient pressure to cause skin breakdown. Pressure relief at regular intervals (2 hours is maximum) through repositioning can alleviate the problem. Maximum time varies because of other differences in individual skin integrity and presence of other risk factors. A pressure-reducing device (e.g., foam mattress, water mattress, or specialized bed) is helpful, but it can not replace regular repositioning.

   Urinary or bowel incontinence. **[F1a or F1b = 3 or 4]** The presence of urine or feces on the skin for a prolonged time can lead to skin maceration (softening) and subsequent breakdown. Bowel incontinence requires evaluation for the presence of neurologic disorder, bowel disorder, drug side effects, or acute illness.

   Peripheral vascular disease. **[J1f = checked]** Poor circulation places resident at risk of pressure ulcer formation, especially in heels and ankles. Any decrease in blood flow permits ischemia (lack of tissue oxygenation) in areas where pressure is applied. This can happenquite rapidly (i.e., within 2 hours). If peripheral vascular disease is present, physician referral should be considered.

   Diabetes mellitus. **[J1y = checked]** Diabetes, particularly insulin-dependent diabetes, increases risk, probably from the effects of diabetes on vasculature or blood flow. Although not proven, control of blood sugar may minimize this risk factor.

   Hip fracture. **[K2c = checked]** Recent fracture of hip (or lower limb) increases risk in that a fracture can lead to decreased mobility and increased time spent in one position.

   Weight loss. **[L2c = 1]** Weight loss should raise concerns about malnutrition. Malnutrition can lead to decreased skin integrity and muscle weakness, which can impair repositioning ability. Malnutrition also impedes healing.

Pressure ulcer history. [N3 = 1] Persons with a history of pressure ulcers are at risk for a recurrence. Current risk factors should be assessed.

Impaired tactile sensory perception. [N4b = checked] Skin that is not sensitive to pain, pressure or discomfort may impede ability to change position because of blunted response to pain, which can be a warning that skin pressure is excessive and breakdown imminent.

Medications. [O4a = 7] Daily use of antipsychotics, can retard mobility, exacerbate incontinence, or lead to mental confusion — conditions that increase the risk of pressure ulcer formation.

Restraints. [P3b, P3c or P3d = 2] Daily use of restraints leads to immobility, increases the time spent in one position, and decreases an individual's ability to change positions. As pressure to a particular area increases (e.g., buttocks or hips), pressure ulcer risk increases.

III. GUIDELINES

Review the MDS items listed on the RAP KEY for relevance in understanding the type of care that may be required.

Complicating Conditions and Treatments.

Consider carefully whether the resident exhibits conditions or is receiving treatments that may either place the resident at higher risk of developing pressure ulcers or complicate their treatment. Such conditions include:

Alzheimer's Disease and other dementias. An impairment in cognitive ability, particularly in severe end-stage dementia, can lead to immobility.

Edema. The presence of extravascular fluid can impair blood flow. If prolonged or excess pressure is applied to an area with edema, skin breakdown can occur.

Antidepressants and antianxiety/hypnotics. These medications can produce or contribute to lessened mobility, worsen incontinence, and lead to or increase confusion.

Things to Consider if the Resident Develops a New Pressure Ulcer or an Ulcer Being Treated is not Resolved.

A variety of factors may explain this occurrence; however, they may suggest the need to evaluate current interventions and modifications of the care plan.

- Review the resident's medical condition and other risk factors to determine whether the care plan (for prevention or cure) addresses all potential causes or complications.
- Review the care plan to determine whether it is actually being followed (e.g., is the resident being turned often enough to prevent ulcer formation).

Things to Consider if the Resident is At Risk for Pressure Ulcers But is Not Receiving Preventive Skin Care

Even if pressure ulcers are not present, determine why this course of prevention is not being provided to a resident with risk factors.

- Is the resident new to the unit?
- Do few or many risk factors for the development of pressure ulcers apply to this resident?
- Are staff concentrating on other problems (e.g., resolution of behavior problems) so that the risks pressure of ulcers are masked?

PRESSURE ULCERS RAP KEY

TRIGGERS

1. Pressure Ulcer Present [N2 = 1, 2, 3 or 4]

2. At Risk for Pressure Ulcer when Both of Following (a&b) True:

   a. One or More of the Following are Present:

      — Bed mobility/Transfer Problem [E1a or E1b = 3 or 4]
      — Bedfast, Hemiplegia, Quadriplegia [E4b, E4d, E4e = any checked]
      — Incontinence [F1a or F1b = 3 or 4]
      — Peripheral Vascular Disease [J1f = checked]
      — Diabetes Mellitus [J1y = checked]
      — Hip Fracture [K2c = checked]
      — Weight Loss [L2c = 1]
      — Previous Pressure Ulcer [N3 = 1]
      — Impaired Tactile Sense [N4b = checked]
      — Daily Antipsychotics [O4a = 7]
      — Daily Trunk, Limb or Chair restraints [P3b, P3c or P3d = 2]

   b. Absence of ALL of the Following Treatments:

      — Protective/Preventive skin care [N4c = not checked]
      — Turning/repositioning [N4d = not checked]
      — Pressure relieving beds/chair pads [N4e = not checked]
      — Wound care/treatment [N4f = not checked]
      — Other skin care/treatment [N4g = not checked]

GUIDELINES

Other factors that address or may complicate treatment of pressure ulcers or risk of ulcers:

1. **Diagnoses:** Alzheimer's disease [J1h], Other dementia [J1i], Edema [K1d]

2. **Interventions/Programs:**
   Protective/preventive skin care [N4c]
   Turning/repositioning [N4d]
   Pressure relieving beds/chair pads [N4e]
   Wound care/treatment [N4f]
   Use of restraints [P3]

3. **Medications:**
   Antipsychotics [O4a]
   Antianxiety/hypnotics [O4b]
   Antidepressants [O4c]

RESIDENT ASSESSMENT PROTOCOL: PSYCHOTROPIC DRUG USE

I. PROBLEM

Psychotropic drugs are among the most frequently prescribed agents for elderly nursing home residents. Studies in nursing facilities suggest that 35% to 65% of residents receive psychotropic medications.

When used appropriately and judiciously, these medications can enhance the quality of life of residents who need them. However, all psychotropic drugs have the potential for producing undesirable side effects or aggravating problematic signs and symptoms of existing conditions. An important example is postural hypotension, a condition associated with serious and life-threatening side effects. Severity of delirium side effects is dependent on: the class and dosage of drug, interactions with other drugs, and the age and health status of the resident.

Maximizing the resident's functional potential and well-being while minimizing the hazards associated with drug side effects are important goals of therapy. In reviewing a psychotropic drug regimen there are several rules of thumb:

- Evaluate the need for the drug (e.g., consider amount and type of distress, response to nonpharmacologic interventions, pros and cons of drug side effects in relation to distress without the drug). Distinguish between treating specific diagnosed psychiatric disorders and treating symptoms. Specific psychiatric disorders (e.g., schizophrenia, major depression) have specific drug treatments with published guidelines for dosage and duration of treatment. However, a recorded diagnosis of a psychiatric disorder does not necessarily require drug treatment if symptoms are inactive.
- Start low, go slow. If needed, psychotropic drugs should be started at lowest dosage possible. To minimize side effects, doses should be increased slowly until either there is a therapeutic effect, side effects emerge, or the maximum recommended dose is reached.
- Each drug has its own set of actions and side effects, some more serious than others; these should be evaluated in terms of each user's medical-status profile, including interaction with other medications.
- Consider symptoms or decline in functional status as a potential side effect of medication.

II. TRIGGERS

The RAP should be completed when the resident takes any psychotropic drug and one or more of the following 5 combinations of MDS conditions are present:

Potential for Drug-Related Hypotension if:

1. Antipsychotic AND/OR Antidepressant Use [O4a or O4c = 1-7] AND ANY of the following:

   - Hypotension [J1e = checked]
   - Dizziness/Vertigo [K1c = checked]
   - Syncope [K1m = checked]
   - Accidents [K2a, K2b, K2c = any checked]

Potential for Drug-Related Movement Disorder if:

2. Antipsychotic Use [O4a = 1-7] AND ANY of the following:

   - Parkinson's Disease [J1m = checked]
   - Poor Balance [E4a = checked]
   - Unsteady Gait [E4i = checked]
   - Difficulty Positioning/Turning [E4j = checked]
   - Tardive Dyskenisia [J2 = 333.82]
   - Partial/Total Loss of Voluntary Arm/Leg Movement [E4f, E4h = any checked]
   - Motor Agitation [H1c = checked]
   - Chewing/Swallowing Problem [L1a, L1b = any checked]

Potential for Drug-Related Gait Disturbance (other than antipsychotic induced) if:

3. Antianxiety/hypnotic Use [O4b = 1-7] AND ANY of the following:

   - Poor Balance [E4a = checked]
   - Unsteady Gait [E4i = checked]
   - Difficulty Positioning/Turning [E4j = checked]
   - Dizziness/Vertigo [K1c = checked]
   - Accidents [K2a, K2b, K2c = any checked]

Potential for Drug-Related Cognitive/Behaviorial Impairment if:

4. Any Psychotropic use [O4a, O4b or O4c = 1-7] AND ANY of the following:

   - Delirium/Disordered Thinking [B5a, B5b, B5c, B5d, B5e = any checked]
   - Withdrawal [H1d = checked]
   - Depression [J1q = checked]
   - Hallucinations/Delusions [K1g = checked]
   - Major Difference in ADL Self-Performance [E7d = checked]
   - Deterioration in Cognition, Communication, ADL, Continence, Mood and/or Behavior [B6=2 or C6=2 or E8=2 or F4=2 or H6=2 or H7=2]

Potential for Drug-Related Discomfort if:

5. Any Psychotropic [O4a, O4b or O4c = 1-7] use AND ANY of the following:

   - Constipation [K1a = checked]
   - Fecal Impaction [K1e = checked]
   - Urinary Retention [J2 = 788.2]

III. GUIDELINES

If any of the triggered conditions are present, complete the following:

Step One:

Conduct the following reviews:

1. Drug review [from record]

- Length of time between when the drug was first taken and onset of problem
- Dose of drug and how frequently taken
- Number of classes of psychotropics taken
- Reason drug prescribed

2. Review resident's conditions that impair drug metabolism/excretion

- Acute condition(s)
- Dehydration
- Impaired liver/renal function

3. Review behavior/mood/psychiatric status

- Current problem status
- Recent change in mood behavior
- Behavior management program
- Psychiatric conditions

Step Two:

Compare the drugs the resident is currently taking with common side effects listed below. Refer to Tables A, B, and C for clarification.

POTENTIAL PSYCHOTROPIC DRUG-RELATED SIDE EFFECTS

Hypotension

Postural (orthostatic) hypotension (decrease in blood pressure upon standing) is one of the major risk factors for falls related to psychotropic drugs. It is commonly seen with the low-potency antipsychotic drugs (chlorpromazine, thioridizene) and with tricyclic antidepressants. Both classes of drugs have anticholinergic properties. Within each class, drugs with the most potent anticholinergic properties also seem to produce the greatest hypotensive effects. Symptoms of dizziness/vertigo upon sitting or standing from a lying position, syncope (fainting), and falls/fractures should be seriously considered as potential indicators of psychotropic drug-induced hypotension. In addition, these symptoms may be due to a disturbance of heart rhythm, which could be aggravated by a tricyclic antidepressant. The occurrence of any of the aforementioned symptoms requires assessment of postural vital signs and heart rhythm.

Measurement of postural vital signs. Measure blood pressure and pulse when the resident is lying down. Remeasure blood pressure and pulse after the resident has been on his/her feet for one to five minutes (if unable to stand, ensure after the resident has been sitting). Occasionally,further drops in blood pressure occur after the person has been up for some time. While a drop of more than 20 mm Hg systolic is always abnormal, it is particularly significant if accompanied by dizziness, loss of balance, or standing blood pressure of less than 100 mm Hg. A large drop may be clinically significant even if the lower pressure is not abnormally low, particularly in residents who have some degree of cerebrovascular disease.

Movement Disorder.

High fever AND/OR muscular rigidity. Antipsychotic drugs can interfere with temperature regulation, which can lead to the potentially fatal problem of hyperthermia. Also, when high fever is accompanied by severe muscular rigidity, "neuroleptic malignant" syndrome must be suspected. Fever above 103 degrees in a resident on an antipsychotic drug is a medical emergency because of the disturbed temperature regulation. Even lesser degrees of fever, if accompanied by severe muscular rigidity, are medical emergencies. Temperature must therefore be monitored especially closely in residents on psychotropic drugs with anticholinergic properties. In addition, nonantipsychotic drugs with anticholinergic properties, such as antidepressants, may aggravate fever by impairing sweating.

Parkinson's disease. This condition is known to be aggravated by all antipsychotic drugs. At times it is difficult to know whether parkinsonian symptoms (e.g., tremors, especially of hands; pill-rolling of hands; muscle rigidity of limbs, necks, trunk) are due to Parkinson's disease or to present or recent antipsychotic drug therapy. There should be a strong bias in favor of reducing or eliminating antipsychotic drugs in residents with Parkinson's disease unless there are compelling behavioral or psychotic indications. Antiparkinson drugs should be considered when antipsychotic drugs are clinically necessary in residents with Parkinson's disease.

Five movement disorders are commonly encountered in residents on antipsychotic drugs. All of these disturbances can adversely affect a resident's quality of life as well as increase his/her risk of accidents. The triggered MDS items in Group 2 are signs/symptoms of these disorders. To clarify whether the resident is suffering from one of these disorders, all residents on antipsychotic drugs should be periodically screened for the following conditions:

Parkinsonism. As with Parkinson's disease, this condition may involve ANY combination of tremors, postural unsteadiness, and rigidity of muscles in the limbs, neck, or trunk. Although the most common is a pill-rolling or alternating tremor of the hands, other kinds of tremors are occasionally seen. Occasionally, a resident with Parkinsonism will have no tremor, only rigidity and shuffling gait. Symptoms respond to antiparkinson drugs, but not always completely. Dosage reduction or substitution of nonantipsychotic drug, when feasible, is the preferred management.

Akinesia. This condition is characterized by marked decrease in spontaneous movement, often accompanied by nonparticipation in activity and self-care. It is managed by reducing the antipsychotic drug or adding an antiparkinson drug.

Dystonia. This disorder is marked by holding of the neck or trunk in a rigid, unnatural posture. Usually the head is either hyperextended or turned to the side. The condition is uncomfortable and prompt treatment with an antiparkinson drug can be helpful.

Akathisia — the inability to sit still. The resident with this disorder is driven to constant movement, including pacing, rocking, or fidgeting, which can at times persist for weeks, even after the antipsychotic drug is stopped. The condition responds occasionally to antiparkinson drugs, but less consistently than parkinsonism or dystonia. Sometimes benzodiazepines or beta-blockers are helpful in treating the symptom, although dosage reduction is the most desirable treatment when possible.

Tardive dyskinesia — persistent, sometimes permanent movements induced by long-term antipsychotic drug therapy. Most typical are thrusting movements of the tongue, movements of the lips, or chewing or puckering movements. These involuntary movements can clearly interfere with chewing and swallowing. When they do, the dyskinesia can be suppressed by raising the dose of the antipsychotic drug, but this will make the problem more permanent. When possible, it is usually preferable to reduce or eliminate the antipsychotic drug, because the symptoms of dyskinesia will often decrease over time after drug discontinuation.

Other variations of tardive dyskinesia include abnormal limb movements, such as peculiar and recurrent postures of the hands and arms, or rocking or writhing trunk movements. There is no consistently effective treatment. Withdrawal of the antipsychotic drug leads to eventual reversal of the symptoms over many months in about 50% of cases.

Gait Disturbance (Other Than That Induced by Antipsychotics).
Long-acting benzodiazepine antianxiety drugs have been implicated in increasing the risk of falls and consequent injury by producing disturbances of balance, gait, and positioning ability. They also produce marked sedation, often manifested by short-term memory loss, decline in cognitive abilities, slurred speech, drowsiness in the morning/daytime sedation, and little/no activity involvement. If an antianxiety drug is needed to treat an anxiety disorder, a short-acting benzodiazepine or buspirone would be preferable to a long-acting benzodiazepine. Buspirone is nonsedating and takes several weeks to work. Dosage should be increased slowly.

Cognitive/Behavior Impairment.

Periodic disordered thinking/awareness. These MDS items, which tap the syndrome of acute confusion or delirium, can all be caused or aggravated by psychotropic drugs of any of the major classes. If the resident does not have acute confusion related to a medical illness or severe depression, consider the psychotropic drug as a cause. The most helpful information in establishing a relationship is the linkage between starting the drug and the occurrence of the change in cognitive status.

Depression. Both anti-anxiety and antipsychotic drugs may cause symptoms of depression as a side effect, or may aggravate depression in a resident with a depressive disorder who receives these drugs rather than specific antidepressive therapy.

Hallucinations/delusions. While these are often symptoms of mental illness, all of the major classes of psychotropic drugs can actually produce or aggravate hallucinations. The antidepressant drugs, the more anticholinergic antipsychotic drugs, and the shorter-acting benzodiazepines such as triazolam and lorazepam are most implicated in causing visual hallucinations. Visual hallucinations in the aged are virtually always indicative of brain related disturbance (e.g., delirium) rather than a psychiatric disorder.

Major differences in AM/PM self-performance. All classes of psychotropic drugs can have an effect on a resident's ability to perform activities of daily living. Establishing a link between the time a drug is taken and the change in self-performance is helpful in evaluating the problem.

Decline in cognition/communication. Decline in these areas signals the possibility that the decline is drug-induced and the need to review the relationship of the decline with initiation or change in drug therapy. All major classes of psychotropics can cause impairment of memory and other cognitive skills in vulnerable residents. While memory loss in nursing facility residents is caused primarily by dementing disorders and other neurologic disease, psychotropic drugs, particularly those with anticholinergic side effects, and long-acting benzodiazepines, definitely contribute to memory impairment. In contrast, treatment of depression or psychosis can actually improve usable memory, which is very much disrupted by severe psychiatric illness. If memory worsens after initiating or increasing the dose of a psychotropic drug, consider reducing or discontinuing the drug, or substituting a less anticholinergic drug. For a resident with anxiety, a short-acting benzodiazepine or buspirone is preferable to a long-acting benzodiazepine.

Decline in mood. (See reference to Depression above.)

Decline in behavior. Problem behaviors may be aggravated and worsened by psychotropic drugs as they can contribute to confusion, perceptual difficulties, and agitation.

Decline in ADL status. Drug side effects must always be considered if a resident becomes more dependent in ADLs. In addition, psychotropic drugs can precipitate or worsen bladder incontinence either through a change in cognition or through a direct action on bladder function.

Discomfort.

Constipation/fecal impaction. Any psychotropic drug with anticholinergic effects can cause or aggravate constipation; the effects are pronounced with tricyclic antidepressants and with low-potency antipsychotic drugs such as chlorpromazine or thioridizine. Milder cases of constipation can be treated with stool softeners, bulk-forming agents, and increased fluid; more severe constipation is best managed by substituting a less anticholinergic agent, or decreasing or discontinuing the psychotropic drug if possible. Antianxiety drugs can contribute to constipation if they sedate the resident to the point that fluid intake or exeresis is impaired. The problem can be handled by switching to a less sedating drug, decreasing dosage, or discontinuing the drug if possible.

Urinary retention. This condition may be manifested by the inability to urinate, or new onset or worsening of urinary incontinence (caused by overflow of urine from a full bladder that cannot empty properly). Any psychotropic drug with anticholinergic properties can produce or aggravate urinary retention. The problem is best managed by substituting a less anticholinergic agent, or decreasing or discontinuing the psychotropic drug if possible.

Dry mouth. This symptom is a common side effect of any psychotropic drug with anticholinergic properties. Dry mouth can aggravate chewing and swallowing problems. Substituting a less anticholinergic drug may be helpful. Other remedies include artificial saliva or sugar-free mints or candies (sugar contributes to cavity formation).

WHEN TO DISCONTINUE DRUG TREATMENT.

1. Drug treatment that is ineffective after a reasonable trial should be discontinued or changed. The definition of a reasonable trial depends on the drug class and therapeutic indication.

2. When a medication is effective, but produces troublesome side effects, either the dose should be reduced or the medication should be replaced by a therapeutically equivalent agent less likely to cause the problematic side effect. If this is not feasible, or if doing it leads to a recurrence of symptoms, specific medical therapy for the troublesome side effects should be considered. For example, if the best drug for treating a resident's depression causes constipation, stool softeners, laxatives, or bulk-forming agents can be prescribed.

3. When a medication is effective and does not cause troublesome side effects, it should be continued for a defined period, and then efforts should be made to taper and eventually discontinue the drug.

4. Psychotropic medication should be prescribed on a permanent basis only if symptoms have recurred on at least two previous attempts to taper the medication after a defined period of therapy.

COMMONLY PRESCRIBED PSYCHOTROPIC DRUGS AND THEIR SIDE EFFECTS

TABLE A. ANTIPSYCHOTIC (NEUROLEPTIC) DRUGS

Generic Name	Brand Name	Incidence of Side Effects			
		Sedation	Hypotension	Anti-cholinergic Symptoms[1]	Extra-pyramidal Symptoms[2]
Chloropromazine	Thorazine	Marked	Marked	Marked	Mild
Thioridizine	Mellaril	Marked	Marked	Marked	Mild
Acetophenazine	Tindal	Mild	Mild	Moderate	Mild
Perphenazine	Trilafon	Mild	Mild	Moderate	Moderate
Loxapine	Loxitane	Mild	Mild	Moderate	Moderate
Molindone	Moban	Mild	Mild	Moderate	Moderate
Trifluoperazine	Stelazine	Mild	Mild	Mild	Marked
Thiothixene	Navane	Mild	Mild	Mild	Marked
Fluphenazine	Prolixin	Mild	Mild	Mild	Marked
Haloperidol	Haldol	Minimal	Minimal	Mild	Marked

TABLE B. ANTIDEPRESSANT DRUGS

Generic Name	Brand Name	Incidence of Side Effects		
		Sedation	Hypotension	Anti-cholinergic Symptoms[1]
Cyclic antidepressants				
Imipramine	Tofranil	Mild	Moderate	Mod-strong
Desipramine	Norpramin	Mild	Mild-mod	Mild
Doxepin	Adapin Sinequan	Mod-strong	Moderate	Strong
Amitriptyline	Elavil Triavil	Strong	Moderate	Very Strong
Nortriptyline	Aventyl Pamelor	Mild	Mild	Moderate
Maprotiline	Ludiomil	Mod-strong	Moderate	Moderate
Amoxapine*	Asendin	Mild	Moderate	Moderate
Fluoxetine	Prozac	Variable	Nil	Nil
Triazolopyridine Antidepressant				
Trazodone	Desyrel	Mod-strong	Moderate	Mild
MAO inhibitors*				
Phenelzine	Nardil	Mild	Moderate	Mild
Tranylcypromine	Parnate	Mild	Moderate	Mild
Other				
Bupropion	Wellbutrin	None	Nil	Nil
		May cause agitation High incidence of seizures		

* Also a neuroleptic drug with all the neuroleptic side effects.
* Special diet required; many drug interactions.
[1] Anticholinergic symptoms include: dry mouth, constipation, urinary retention, blurred vision, confusion, disorientation, short-term memory loss, hallucinations, insomnia, agitation and restlessness, picking behaviors, fever.
[2] Extrapyramidal symptoms include: movement disorders, such as Parkinsonism, dyskinesias, and akathisia (described in text). Antidepressants (except Amoxapine) and antianxiety/hypnotics do not produce extrapyramidal side effects.

COMMONLY PRESCRIBED PSYCHOTROPIC DRUGS AND THEIR SIDE EFFECTS (cont.)

TABLE C. ANTIANXIETY AND HYPNOTIC DRUGS

Generic Name	Brand Name	Duration of Action
Benzodiazepines		
Triazolam	Halcion	Very short
Oxazepam	Serax	Short
Temazepam	Restoril	Short
Lorazepam	Activan	Short
Alprazolam	Xanax	Medium
Chlorodiazepoxide	Librium	Long
Diazepam	Valium	Long
Chlorazepate	Tranxene	Long
Flurazepam	Dalmane	Very long
Barbiturates		
Antihistamines		
Dephenhydramine	Benadryl	Moderate
Hydroxyzine	Vistaril	Moderate
Chloral hydrate	Noctec	Long
Other		
Buspirone	Buspar	Not meaningful

PSYCHOTROPIC DRUG USE RAP KEY

TRIGGERS

Potential for Drug-Related Hypotension if:

1. Antipsychotic AND/OR Antidepressant Use **[O4a or O4c = 1-7]** AND ANY of the following:
   - — Hypotension **[J1e = checked]**
   - — Dizziness/Vertigo **[K1c = checked]**
   - — Syncope **[K1m = checked]**
   - — Accidents **[K2a, K2b, K2c = any checked]**

Potential for Drug-Related Movement Disorder if:

2. Antipsychotic Use **[O4a = 1-7]** AND ANY of the following:
   - — Partial/Total Loss of Voluntary Arm/Leg Movement **[E4f, E4h = any checked]**
   - — Unsteady Gait **[E4i = checked]**
   - — Partial/Total Loss of Ability to Position, Balance, Turn Body/Balance While Standing **[E4a, E4j = any checked]**
   - — Motor Agitation **[H1c = checked]**
   - — Parkinson's **[J1m = checked]**
   - — Tardive Dyskinesia **[J2 = 333.82]**
   - — Chewing/Swallowing Problem **[L1a, L1b = any checked]**

Potential for Drug-Related Gait Disturbance (other than antipsychotic-induced) if:

3. Antianxiety/hypnotic Use **[O4b = 1-7]** AND ANY of the following:
   - — Poor Balance **[E4a = checked]**
   - — Unsteady Gait **[E4i = checked]**
   - — Difficulty Positioning/Turning **[E4j = checked]**
   - — Dizziness/Vertigo **[K1c = checked]**
   - — Accidents **[K2a, K2b, K2c = any checked]**

GUIDELINES

If resident is triggered, review the following:

1. Drug review **[from record]** Length of time between when the drug was first taken and onset of problem; Doses of drug and how frequently taken; Number of classes of psychotropics taken; Reason drug prescribed
2. Review resident's conditions that affect drug metabolism/excretion
   Acute condition **[K3b]**; dehydration **[L3b]**; impaired liver/renal function **[J2; P1c; from record]**
3. Review Behavior/Mood Status:
   Current problem status **[H1, H2, H3]**
   Recent changes **[H6, H7]**
   Behavior management program **[H5]**
   Psychiatric Diagnoses **[J1p, J1q, J1r; J2]**

Then Consider:

- **Clarifying Information For Hypotension:**
  1. Postural changes in vital signs **[from exam]**
  2. Drugs with marked anticholinergic properties **[from record]**

- **Clarifying Information For Movement Disorder:**
  1. High Fever **[K1f]** AND/OR Muscular rigidity **[from record, observation]**
  2. Tremors, especially of hands; pill-rolling of hands; muscle rigidity of limbs, neck, trunk (Parkinsonism) **[from record, observation]**
  3. Marked decrease in spontaneous movement (Akinesia) **[from record, observation]**
  4. Rigid, unnatural, uncomfortable posture of neck or trunk (Dystonia) **[from record, observation]**
  5. Restlessness, inability to sit still (Akathisia) **[from record, observation]**
  6. Persistent movements of the mouth (e.g., thrusting of tongue, movements, of lips, chewing/puckering) AND/OR peculiar and recurrent postures of limbs, trunk (Tardive dyskinesia) **[from record, observation]**

Potential for Drug-Related Cognitive/Behavioral Impairment if:

4. ANY Psychotropic Use [O4a, O4b or O4c = 1-7] AND ANY of the following:
   - — Delirium/Disordered Thinking [B5a, B5b, B5c, B5d, B5e = any checked]
   - — Withdrawal [H1d = checked]
   - — Depression [J1q = checked]
   - — Hallucinations/Delusions [K1g = checked]
   - — Major Difference in ADL Self-Performance [E7d = checked]
   - — Deterioration in Cognition, Communication, ADL, Continence, Mood and/or Behavior [B6 = 2 or C6 = 2 or E8 = 2 or F4 = 2 or H6 = 2 or H7 = 2]

Potential for Drug-Related Discomfort if:

5. ANY Psychotropic Use [O4a, O4b or O4c = 1-7] AND ANY of the following:
   - — Constipation [K1a = checked]
   - — Fecal Impaction [K1e = checked]
   - — Urinary Retention [J2 = 788.2]

- **Clarifying Information For Gait Disturbances:**
  1. Long-acting benzodiazepines [from med record]
  2. Recent dosage increase [from med record]
  3. Short-term memory loss; Decline in cognition; Slurred speech [B2, B6; observation]
  4. Decreased AM wakefulness; Little/no activity involvement [I1, I2]

- **Clarifying Information For Cognitive/Behavioral Impairment:**

  If neither of the following are present, psychotropic drug side effects can be considered as a major cause of problem:
  1. Acute confusion (delirium) related to medical illness [B5]
  2. Depression [H1, H2]

- **Clarifying Issues For Drug-Related Discomfort:**
  1. Dehydration [L3b]; Reduced dietary bulk; Lack of exercise [from record]

  Other potential drug-related discomforts that may require resolution:
  2. Dry mouth, if on antipsychotic or antidepressant [observation]

RESIDENT ASSESSMENT PROTOCOL: PHYSICAL RESTRAINTS

I. PROBLEM

Studies of nursing homes show that between 30 and 40% of residents are physically restrained. This is quite serious since negative effects of restraint use include declines in residents' physical functioning (e.g., ability to ambulate) and muscle condition, contractures, increased incidence of infections, and development of pressure sores, delirium, agitation, and incontinence. Moreover, restraints have been found in some cases to increase the incidence of falls and other accidents (e.g., strangulation). Finally, residents who are restrained face the loss of autonomy, dignity and self-respect. In effect, the use of physical restraints undercuts the major goals of long-term care — to maximize independence, functional capacity, and quality of life. Thus, the goal of minimizing or eliminating restraint use has become central to both clinical practice and federal law.

The primary reason given for applying restraints is to protect residents from falls and accidents. Facilities are also concerned about potential lawsuits and malpractice claims that might result if residents should fall. Other reasons cited for restraint use include to provide postural support or positioning for residents, to facilitate treatment (e.g., preventing residents from pulling out IV lines or NG tubes), and to manage behaviors such as wandering or physical aggressiveness.

The experience of many health care providers suggests that facility goals can often be met without the use of physical restraints and their negative side effects. In part, this involves identifying and treating health, functional, or psychosocial problems that may be causing the condition for which restraints were ordered (e.g., falls, wandering, agitation). Minimizing use of restraints also involves care management alternatives, such as: modifying the environment to make it safer; maintaining an individual's customary routine; using less intrusive methods of administering medications and nourishment; and recognizing and responding to residents' needs for psychosocial support, responsive health care, meaningful activities, and regular exercise.

II. TRIGGERS

Definition: Physical restraints are any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot easily remove and that restricts freedom of movement or normal access to his/her body.

ANY use of trunk restraint, limb restraint, or chair that prevents rising **[P3b, P3c or P3d = 1 or 2]**

III. GUIDELINES

In evaluating and reconsidering the use of restraints for a resident, consider needs, problems, conditions, or risk factors (e.g., for falls) which, if addressed, could eliminate the need for using restraints. Refer to the RAP KEY for specific MDS items to consider as you review the following issues.

WHY ARE RESTRAINTS USED?

The first step in determining whether use of a restraint can be reduced or eliminated is to identify the reasons a restraint was applied.

- Review the resident's record and consult primary caregivers to determine reason for use.

Ask the following questions:

- Why is the resident restrained?
- What type(s) of restraint is used?
- During what time of day is each type(s) used?
- Where is the resident restrained (e.g., own room in bed, chair in hallway)?
- How long is the resident restrained each day?
- Under what circumstances (e.g., when left alone, after family leave, when not involved in structured activity, when eating)?
- Who suggested that the resident be restrained (e.g., staff, family, resident)?

CONDITIONS ASSOCIATED WITH RESTRAINT USE

It may be possible to identify and resolve health/functional/psychosocial needs, risks, or problems that caused restraints to be used. By addressing the underlying condition(s) and cause(s), the facility may eliminate the apparent need for the restraint(s). In addition, a review of underlying needs, risks, or problems may help to identify other potential kinds of treatments. After determining why and how a restraint is used, review the appropriate areas described below.

Problem Behavior.

To determine presence of a behavior problem, review the MDS. If the behavior for which the resident is restrained was not exhibited in the last 7 days, was it because the restraint prohibited the behavior from occurring (e.g., resident was restrained and could not wander)? If a behavior problem was present during the last 7 days or the resident was restrained to prevent a problem behavior, consider the resident to have a behavior problem and review Behavior Problem RAP as indicated.

Many problem behaviors are manifestations of unmet health, functional, and/or psychosocial needs that can often be reduced, eliminated, or managed by addressing the conditions that produced them. (See RAP on Behavior Problem). Conditions associated with problem behaviors and restraint use include:

- Delirium (acute confusional state)
- Impaired cognition
- Impaired communication (e.g., difficulty making needs/wishes understood or understanding others)
- Unmet psychosocial needs (e.g., social isolation, disruption of familiar routines, anger with family members)
- Sad or anxious mood
- Resistance to treatment, medication, nourishment
- Psychotropic drug side effects (e.g., motor agitation, confusion, gait disturbance)
- If a behavior management program is in place, does it adequately address the causes of the resident's particular problem behaviors?

Risk of Falls.

Although restraints have not been shown to safeguard residents from injury, one of the most common reasons given by facilities for restraining residents is to prevent falls. In some instances, restraints have been reported to contribute to falls and injuries. Because of the complications associated with restraint use, many physicians and geriatric clinicians recommend exploring alternatives for preventing falls, such as treating health problems and making environmental modifications.

- Review risk factors for falls on RAP KEY. Refer to Falls RAP if these risks are present or if the restraint is being used to prevent falls.

Treatment Regimens.

Another reason facilities give for using restraints is to prevent a resident from removing tubes.

If the resident is being restrained to manage resistance to any type of tube or mechanical device (e.g., indwelling/external catheter, feeding tube, intravenous line, oxygen mask/cannula, wound dressing), review the following to facilitate decision-making:

- Is the tube/mechanical device used to treat a life-threatening condition?
- Does the resident actually need a particular intervention that may be potentially burdensome to him/her? Are there less intrusive treatment options?
- Why is the resident reacting to the tube/mechanical device with resistance? (e.g., Does the device produce discomfort or irritation? Is the resident really resisting or is the device just something to fidget with? Is the treatment compatible with the resident's wishes? Does the resident understand the reason for the method of treatment? Has the resident/family been informed about the risks and benefits of treatment options?)

HCFA Guideline: "If there are medical symptoms which are life threatening (such as dehydration, electrolyte imbalance, urinary blockage) then a restraint may be used temporarily to provide necessary lifesaving treatment. Physical restraints may be used for brief periods to allow medical treatment to proceed, if there is documented evidence of resident or legal approval of the treatment."

- If an indwelling or external catheter is present, review the Urinary Incontinence RAP for alternatives.
- If a feeding tube is present, review the Feeding Tubes RAP

ADL Self-Performance.

In rare instances, a restraint can enhance a resident's ability to be more self-sufficient, IF the restraint use is supportive and time-limited.

Review the MDS to determine if the restraint contributes to the resident's self-performance of an activity (e.g., wheelchair belt supports trunk while resident wheels self, geri-chair used only at meals enables wandering resident to attend to feeding self).

Other Factors.

Resident's Response to Restraints

In evaluating restraint use, it is important to review the resident's reaction to restraints (e.g., positive and negative, such as passivity, anger, increased agitation, withdrawal, pleas for release, calls for help, constant attempts to untie/release self). This will help determine whether presumed benefits are outweighed by negative side effects.

Review MDS items on other potential negative effects of restraint use, such as declines in functional self-performance, body control, skin condition, mood and cognition, since restraints have been in use.

Alternatives to Restraints

Many interventions may be as effective or even more effective than restraints in managing a resident's needs, safety risks, and problems. To be effective the intervention must address the underlying problem. Examples of alternatives include: use of familiar, comfortable chairs; activities that are meaningful to resident; behavior management programs; judicious use of psychotropic drugs to treat active psychiatric disorders (e.g., psychoses, panic disorders); cheduled toileting plans; and regular exercise for agitated residents.

- Review resident's record and confer with staff to determine whether alternatives to restraints have been tried.
- If alternatives to restraints have been tried, what were they?
- How long were the alternatives tried?
- What was the resident's response to the alternatives at the time?
- If the alternative(s) attempted were ineffective, what else was attempted?
- How recently were alternatives other than restraints attempted?

Philosophy and Attitudes.

In reconsidering the use of restraints for a resident, consider the philosophy, values, attitudes, and wishes of the resident regarding restraint use, as well as those of his family/significant others, and caregivers. Consider the impact of restraints on facility environment and morale.

- Is there consensus or differences among affected parties in choosing between resident independence and freedom in favor of presumed safety?

PHYSICAL RESTRAINTS RAP KEY

TRIGGERS

Potential for decline if:

1. ANY use of Trunk Restraint, Limb Restraint, or Chair that Prevents Rising **[P3b, P3c or P3d = 1 or 2]**

GUIDELINES

Review factors and complications associated with restraint use:

Problem Behavior: Motor agitation **[H1c]**, Any problem behavior **[H3]**, Part of behavior management program **[H5]**

Risk of Falls: Falls **[K2a, K2b]**;
Antidepressant **[O4c]**;
Impaired balance **[E4a, E4j]**;
Bedfast or Hemi/Quadriplegia or Poor leg control **[E4b, E4d, E4e, E4h]**

Conditions and Treatments:
Unstable/acute condition **[K3a, K3b]**;
Hip fracture **[K2c]**; Catheter **[F3b, F3c]**;
Parenteral/IV and/or feeding tube **[L4a, L4b]**;
Wound care/treatment **[N4f]**; IV meds **[P1f]**;
Respiratory/Oxygen **[P1h]**

ADL Self-Performance [E1]

Confounding problems to be considered:

1. Delirium **[B5]**
2. Cognitive loss/dementia **[B2, B3, B4]**
3. Impaired communication **[C4, C5]**
4. Unmet psychosocial needs **[G1, G2, G3]**
5. Sad/anxious mood **[H1, H2]**
6. Resistance to treatment/meds/nourishment **[H4a; observation]**
7. Psychotropic drug side effects **[O4]**

Other factors to be considered:
Resident's response to restraint(s); use of alternatives to restraints; resident/family/staff philosophy, values, wishes, attitudes about restraints **[record, observation, discussion]**

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Attachment D—Approval Criteria for Alternate Instruments

Approval Criteria for Alternate Instruments

To Receive Approval, an Alternate Instrument Must Contain:

- *The Utilization Guidelines.*
- *The MDS.* All data elements and corresponding coding categories specified in the MDS must be contained in the State's instrument. The State may not alter the MDS definitions or the coding categories used with each MDS element. For example, Section E. Activities of Daily Living (ADLs) has five coding categories. The State may not change the order of elements within a section. Therefore, the State cannot specify coding categories with four levels of measurement. The State may propose, however, changing the order of the major sections of the MDS, for example, move Section E. to follow Section R. In those situations, the State must provide a conversion table between its instrument and the MDS, and data supplied to HCFA from the MDS must be ordered in the same manner as designated in this issuance.

The State may include in its resident assessment instrument data elements additional to those in the MDS if the State believes this information will serve unique operational needs such as supporting pre-admission screening, quality assurance, quality incentive, or case-mix payment classification systems. This material will only be reviewed by HCFA to assure there is no conflict with elements included in the MDS, that is, HCFA will not evaluate the merits of including those elements.

- *Resident Assessment Protocols.* An alternate resident assessment instrument may include all, some, or none of the RAPs designated by HCFA.

A State developed alternate resident assessment instrument must provide frameworks for comprehensive assessment in the following care areas:

—Cognitive loss/dementia;
—Visual function;
—Communication;
—Activities of daily living functional potential;
—Rehabilitation potential (HCFA's instrument combines the Rehabilitation RAP with the ADLs RAP);
—Urinary incontinence and indwelling catheter;
—Psychosocial well-being (In the instrument designated by HCFA, in addition to a distinct psychosocial well-being protocol, we include three distinct RAPs that bear on psychosocial functioning, that is, "mood", "behavior", and "delirium".);
—Activities;
—Falls;
—Nutritional status;
—Feeding tubes;
—Dehydration/fluid maintenance;
—Dental care;
—Pressure ulcers;
—Psychotropic drug use; and
—Physical restraints.

These care areas may be combined in different ways to create a RAP comparable to that designated by HCFA. For example, the State may have a RAP that combines nutrition and tube feeding or activities of daily living and rehabilitation potential. However, if the State creates alternative RAPs through combining care areas, it must provide a cross-walk chart from its RAPs to the above care areas.

Each RAP the State develops must include assessment triggers, based on MDS elements or other information requirements, that screen which residents are subject to additional assessment.

If a State selects alternative triggers and/or information requirements for its RAI, it should provide supporting documentation for its decisions. Such documentation may take the form of citations from the literature, results of field testing, or the consensus of experts that the State uses to assist in designing these RAPs.

The State must also specify a standardized format that long term care facilities will use to document information derived from RAPs about the nature of problems, complications and risk factors, the need for referral to appropriate health professionals, and the reasons for deciding to proceed or not to proceed with care planning specific to the triggered problems. There must be provision for identification of the location of the assessment results and for certification of completion and accuracy. See the RAP formats proposed by HCFA.

Also, be advised that we plan to require MDS data to be transmitted in computer readable form at a later date through rulemaking and instructions, however, we will not gather data nationally from any assessment material beyond the MDS.

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Federal Register

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December 28, 1992

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 574
Housing Opportunities for Persons with AIDS; Interim Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 574

[Docket No. R-92-1606; FR-3178-I-02]

RIN 2501-AB41

Housing Opportunities for Persons With AIDS

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule is being issued pursuant to a schedule prescribed by the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992), which amended the program established under the AIDS Housing Opportunity Act (42 U.S.C. 12901). The program provides States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome (AIDS) or related diseases and their families. The program authorizes entitlement grants and competitively awarded grants for housing assistance and services.

DATES: Effective date: December 28, 1992. Comment due date: February 26, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, (202) 708-4300; TDD: (202) 708-2565); Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-7000. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements for the HOPWA program were approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB) through January 31, 1993, and assigned OMB control number 2506-0133. Information on the estimated public reporting burden is provided in this document in paragraph I of Section III., Findings and Certifications. Comments regarding burden estimates or any other aspects of the information collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: HUD Desk Officer, and to the HUD Rules Docket Clerk, at the address stated in the address section above.

II. Introduction

A. Background

The initial Interim Rule for the Housing Opportunities for Persons with AIDS (HOPWA) Program was published in the **Federal Register** on July 20, 1992 (57 FR 32106), establishing regulations for the implementation of a new program during Fiscal Year 1992. The Department also published at that time (57 FR 32124) the Announcement of Allocations for HOPWA that provided for a distribution of $42,935,000 in formula funds to 11 eligible States and 27 eligible metropolitan statistical areas for Fiscal Year 1992 appropriations; a correction to the announcement was published on August 6, 1992 (57 FR 34782). The Department also published a Notice of Funding Availability in the **Federal Register** on August 25, 1992 (57 FR 38552) to announce the competitive program under § 574.200 of the Interim Rule. This notice provided for $4,771,000 in funds to be awarded by competition with applications due to the Department on October 26, 1992.

At the time of publication of the initial Interim Rule, HUD indicated that its procedures for rulemaking, which generally require the publication of a proposed rule with public comment prior to the implementation of a program, were not being followed in order to more expeditiously address the pressing needs for housing and services for persons with AIDS and related diseases. The Department did, however, solicit public comment on the Interim Rule to be considered in the drafting of a final rule. The Department announced a comment due date of September 18, 1992 and received twelve public comments during this period. The comments were submitted by nonprofit organizations, national and local coalitions of AIDS organizations, professional organizations, State, and local governments, representing 47 groups located in 13 States. A number of these comments were highly supportive of those provisions of the Interim Rule that allow flexibility in the selection of activities, the inclusion of supportive services, the amendment and waiver procedures, the potential for HUD-approval for other activities, and the requirement for beneficiary confidentiality. Other comments recommended revisions to the Interim Rule which will be addressed below in this preamble.

Additional revisions are being made to the HOPWA program pursuant to the statutory changes provided by Section 606 of the Housing and Community Development Act of 1992, Public Law 102-550, approved October 28, 1992 (hereafter "the Act"). That statute requires HUD to issue interim regulations within 45 days from the enactment of that Act with the regulations taking effect upon publication. The Act further specifies that final regulations are to be issued within 90 days from the publication of interim regulations, including the opportunity for public comment during a period of not less than 60 days. Statute revisions are addressed below along with any public comments which coincide with the respective statutory provision. Additional technical changes have been identified through the Department's experience in initiating this program and are also addressed below.

B. Statutory Revisions and Related Public Comments

1. Eligible Persons Include Families

Section 606(c)(3) of the Act expanded the term "eligible person" to include "and the family of such a person." While the Department believes that grantees were empowered to assist the families of eligible persons under the existing program, the statutory clarification of the term is reflected throughout the second Interim Rule in the use of "eligible person," which is defined to include the family of the person with AIDS, as a replacement for the terms persons or individuals with AIDS. These revisions also accommodate comments which supported a clarification that a family is eligible under the program.

2. Nonprofits as Eligible Applicants and Project Sponsors

Section 606(d)(1) of the Act revised the term "applicant" to provide that nonprofit organizations are eligible to apply for and receive funding directly from HUD. This authorization is limited to the non-formula allocation of funds for special projects of national significance in section 606(d)(4)(B). These changes are found at §§ 574.3 and 574.200(a)(1) of the rule.

Nonprofit organizations may also continue to serve as project sponsors for grantees under this program. Since the grantees, as governmental jurisdictions are subject to the requirement of having a Comprehensive Housing Affordability Strategy (CHAS), the nonprofit organization serving as project sponsor would have to obtain a certification of consistency of any housing activity with the CHAS of the grantee or, in the case of an EMSA, the CHAS of the jurisdiction where the housing activity is to be located.

The Act further revised the definition of nonprofit, found at § 574.3 of the rule, by replacing the direct reference to section 501(c) of the Internal Revenue Code of 1986 with a description that requires nonprofits to: (i) Be organized under State or local laws; (ii) have no benefit inuring to members, (iii) have acceptable financial accountability, and (iv) have significant AIDS related housing or services among its purposes. The Department interprets this revised definition as including both public and private nonprofit organizations. The rule's use of the fourth component also reflects comments which recommended that all community-based organizations that are selected as project sponsors have prior experience in serving persons with HIV/AIDS.

3. Definition of Project Sponsors

Section 606(c)(3) of the Act creates a definition for project sponsor including any nonprofit organization or governmental housing agency. In the initial Interim Rule, HUD did not specify that only a "housing" agency could operate a project for a grantee. Given the differences in administrative structures of State and local governments, HUD interprets this new definition at § 574.3 to include government agencies that engage in housing activities as an established function of that office, such as providing direct housing assistance and related community development activities, emergency/transitional shelter, residential care, and housing subsidies.

4. Applicants for Formula Allocations to Eligible Metropolitan Statistical Areas

The Act revises the formula allocation section of the program by designating the government that will serve as the applicant for an eligible metropolitan statistical area (EMSA). Section 606(d)(2) stipulates that the city that is the most populous unit of general local government in an EMSA will be allocated the funds for that EMSA. The term "city" is defined by the Act, as provided in § 574.3, as a municipality, and, in some circumstances, a town or township, but it does not include county governments. Under this Interim Rule, county governments are not authorized to receive formula funds, regardless of their status as the most populous unit of general local government in an EMSA. The selection process found at § 574.110 of the initial Interim Rule is eliminated in conformance with the statutory provision.

The statute further requires in section 606(d)(7) that the city applicant for an EMSA provide assurances to HUD that grant funds will be used to address the needs of eligible persons residing within its metropolitan statistical area and that coordination will occur with other localities in that EMSA in providing this assistance. Additions at §§ 574.120, 574.160(c)(5), and 574.420(c) of this rule implement this requirement.

5. Formula Change on Data

The program's formula allocation, at § 574.130, is revised by changing the date of the data used for the number of cases of AIDS. The statute under section 606(d)(3), uses March 31 of the fiscal year immediately preceding the fiscal year of the appropriations as the standard date for this element of the formula. In the first formula allocation, HUD had used data as of September 30 to coincide with the standard dates for the Department's fiscal year.

6. Administrative Costs Authorized

Section 606(f)(2) of the Act authorizes administrative costs for grantees and project sponsors. Under § 574.300(b)(9) of this Interim Rule, a grantee can use up to 3 percent of the grant amount for its own administrative costs for administering the grant and allocating funds to project sponsors. A project sponsor can use up to 7 percent of the amounts it receives for its own administrative costs in carrying out eligible activities, including costs of staff necessary to carry out those activities. This limitation on staff costs may somewhat constrain the amount of funds available under HOPWA for project sponsors that directly provide those supportive services which are staff-intensive, such as assessment, counseling and assistance in gaining access to other benefits and services. However, this 7 percent limitation does not apply to contracted services. This authorization for administrative costs responds to comments which requested that the program authorize administrative costs. Also pursuant to this statutory change, a related reference to staff training and recruitment has been deleted under operating costs at § 574.300(b)(8) as these items are administrative costs.

7. Other Revised Eligible Activities

In addition to administrative costs, other changes were made by the statute to the list of eligible activities at § 574.300(b) (7) and (11). The health services component of supportive services is limited by section 606(g)(1) of the Act to eligible persons who are individuals with AIDS or related diseases. Family members who are otherwise eligible for HOPWA assistance, as discussed above, do not qualify for health services funded by a grant under this program.

The final category of activity, "any other activity proposed by the applicant and approved by HUD," was made applicable to competitive grants only by section 606(e) of the Act. Formula grantees are no longer authorized to use this provision.

8. Prohibition of Fees

The original statute prohibited fees for any service provided by HOPWA funds, directed HUD to use Section 8 provisions to the extent practicable, and required resident rent payments at community residences (42 U.S.C. 12910). The Department implemented these provisions at §§ 574.430 and 574.320. Section 606(f)(1) of the Act prohibits fees for any housing provided to eligible persons. Since the statute did not remove the references to Section 8 and resident rent, the Department interprets this additional provision found at § 574.430 as prohibiting any fees over and above resident rent.

9. Removal of Location Limitation on Short-Term Facilities

Section 606(g)(2)(A) deletes a previous limitation on the location of short-term supported housing for eligible persons. That provision of the Interim Rule at § 574.330(b)(2), which authorized a facility in or contiguous to another emergency or short-term housing facility if that other facility is used exclusively by persons with AIDS or related diseases, was removed from this Interim Rule.

10. Waiver Presumption for Good Faith Efforts

Section 606(g)(2)(B) establishes a presumption for a waiver by HUD of time limits for residency in short-term supported housing facilities in cases where the project sponsor has made a good faith effort to acquire permanent housing for the resident. Section 574.330(a)(2) implements this statutory provision. Clarification was also added at § 574.330(a)(1) that the time

limitations for short-term supported housing are not applicable to rental assistance provided under § 574.300(b)(5).

C. Other Revisions in Response to Public Comments

1. Involvement of Organizations Serving Persons with AIDS

A number of comments were received which recommended that applicants consult with and involve organizations experienced with serving persons with AIDS in their application planning process. The Department agrees and has revised §§ 574.160(c)(5) and 574.240(c)(6) to require that applications submitted for formula and competitive grants contain information on this matter.

2. SRO Units in Community Residences

A number of comments were received recommending changes to enhance single room occupancy (SRO) dwellings, including use of technical assistance to help plan and develop such dwellings. Comments also noted that buildings with SRO units may meet the definition of community residences at § 574.340(a). The initial Interim Rule at § 574.300(b)(9) provides for technical assistance in establishing and operating a community residence. In order for a SRO building to receive technical assistance under a HOPWA grant, it must meet the qualifications for a community residence at § 574.340 in accordance with section 861 of the AIDS Housing Opportunity Act.

3. Timely Expenditure of Funds

Comments on § 574.540 expressed concern that the term timely manner was undefined and non-objective. A clarification is made that funds may be deobligated if not expended within 3 years.

4. Audit Procedures

One comment recommended that the audit procedures for nonprofit organizations be updated. This has been done in § 574.650.

D. Other Points Raised in Public Comments

1. Comments were received that the announcement of formula allocations should specify the process for curing technical deficiencies. The processes for curing technical deficiencies under the formula program provide for greater flexibility than that established for the competitive program in the notice of funding availability (NOFA) for that program. The Department is reluctant to impose the competitive standard given its experience under the first formula allocation under which formula applicants and HUD Field Offices cooperated successfully in correcting deficiencies.

Comments were also received that formula application deadlines could be difficult to meet in the initiation of the applicant's HOPWA program. The first Interim Rule provided flexibility in addressing this concern. The Department may extend the deadline for the submission of a formula application in exceptional circumstances pursuant to the waiver provision at § 574.4.

2. One comment recommended allowing applicants for EMSAs to proportionately share grant amounts with other jurisdictions in that EMSA based on AIDS prevalence, planning council recommendations or other means and to delegate grant management responsibilities to those jurisdictions. Grantees are required by § 574.420 to coordinate with other governments within an EMSA in addressing the needs of eligible persons. The statute provides for only one grantee for each EMSA and the rule therefore does not permit a grantee to diminish or delegate its responsibilities for grant administration under subpart F.

3. Comments were received recommending removal of the provision at § 574.300(c)(1)(i)(C) regarding voluntary nondenominational prayer before meetings of primarily religious organizations. The Department is not adopting this recommendation because it believes that the provision is permissible under the Constitution.

4. Comments recommended that the rental assistance standards at § 574.320 authorize the use of documented open market rental rates or otherwise exempt high cost areas from fair market rent (FMR) provisions. The Department believes that the procedures to establish and update FMRs under the Section 8 program are adequate to address these concerns. The related use of this procedure will provide for greater consistency in HUD programs and avoid redundant administrative activities.

5. The provision for due process in terminating assistance is found at § 574.310(e). One comment contended that this provision does not adequately address participant's rights within the program's administrative procedures which may lead to the loss of housing as compared to the use of judicial procedures for evictions under other HUD programs. The Interim Rule is consistent with other homeless assistance programs operated by the Department where housing assistance is integrated with supportive services.

E. Additional Technical Changes

1. HIV Included

The definition of acquired immunodeficiency syndrome and related diseases at § 574.3 includes infection with the human immunodeficiency virus (HIV). It is the Department's observation that while HIV infection was included under the term "etiologic agent" found in both the original definition and the authorizing statute, it was not clearly understood by interested parties. Therefore, the definition of acquired immunodeficiency syndrome and related diseases now explicitly includes HIV infection.

2. CHAS Consistency

Under § 574.160(a), a clarification is provided that only the State CHAS is applicable for the State application under the formula program.

3. Criteria for Competitive Grants

In implementing the first competitive program, HUD included in the notice of funding availability (NOFA) a rating criterion for the appropriateness of housing and supportive services, under authority existing at § 574.250(b)(2)(vi). This specific criterion has been included in this Interim Rule.

4. Applicability of Housing Quality Standards

Under § 574.310(b) in the first Interim Rule, the housing quality standards (HQS) provision was mistakenly applied to the current residence of an eligible person seeking short-term rent, mortgage, and utility payments under § 574.300(b)(6). Requiring conformance with HQS in this regard could have unintended consequences for residents in incurring unnecessary costs for repairs that in some cases may exceed the value of the requested HOPWA assistance. It could also lead to waiver requests and monitoring activities that delay or restrict assistance intended to address short-term emergency circumstances and temporary needs. Therefore, § 574.310(b) has been revised to delete the reference to § 574.300(b)(6).

5. Community Residence Service Agreement

Section 574.340(b)(1) requires that a written agreement to provide services be entered into by the two parties involved in that community residence. A clarification is made in identifying the parties as the grantee and the community resident's service provider and allowance is made if the grantee is providing the services itself.

6. Submission of Technical Information

A procedural change is provided at § 574.250(a)(3) regarding the grant selection process. To reduce the amount of documentation required to be submitted by all applicants, only those applicants with the highest rated applications within each competitive category will be required to submit detailed technical information. That process of identifying these top applicants is labeled a conditional approval of their applications. However, submission of such additional technical information will be a prerequisite to a grant offer from HUD.

7. Conflict of Interest Exceptions

Section 574.625 contains conflict of interest provisions for this program. This interim rule adds paragraphs (b) and (c) to the section to provide exceptions to be approved to the conflict of interest prohibition under appropriate circumstances. These paragraphs mirror provisions already included in regulations for the HOME program and the Community Development Block Grants program. The Department has found that waiver of the original provision is very time-consuming and difficult and believes that these added paragraphs provide for exceptions to be granted only where it is clearly in the interest of the HOPWA program.

8. Americans With Disabilities Act

References to this new statute were added to the provisions of § 574.600 dealing with nondiscrimination on the basis of handicap and on disability requirements.

F. Environmental Provisions

No public comments were made on Part 50, Protection and Enhancement of Environmental Quality. Since the 1992 Act did not make any changes that would affect the environmental issues, no changes to part 50 have been included here. The final rule incorporating changes to that part based on the previous interim rule will be included in the final rule on changes to part 574.

However, a few technical changes were made to § 574.510 to correct that section on environmental procedures, and environmental information was added to § 574.250(a)(4)(iv) to the list of specific technical information needed in the competitive program after an applicant has received conditional approval.

III. Findings and Certifications

A. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) requires the Department to submit draft interim regulations to Congress not later than the expiration of the 30-day period beginning on the date of the enactment of that Act, or November 27, 1992. Section 606(k)(1) further provides that following the 15-day period beginning upon the submission of the draft interim regulations to the Congress, HUD must publish interim regulations which will take effect upon publication.

Section 606(k)(2) of the Act provides that the comment period on the interim rule is to be 60 days long; that final regulations must be published following that notice and opportunity for public comment within 90 days of publication of the interim regulations; and that the final regulations will take effect upon publication. The Department invites public comment on this interim rule. The comments received within the 60-day comment period will be considered during the development of the final rule, which will supersede this interim rule.

B. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

C. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are limited to States and metropolitan statistical areas with a relatively large cumulative number of cases of persons with AIDS.

E. Semiannual Agenda of Rules

This rule was listed as sequence number 1377 under the Office of the Secretary in the Department's Semiannual Agenda of Regulations, published on November 3, 1992 (57 FR 51392, 51408) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

F. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule authorizes entitlement grants to a limited number of States and metropolitan areas and authorizes competitively awarded grants under a limited statutory allocation for housing assistance and services for the Housing Opportunities for Persons with AIDS program, but the grants are administered locally.

G. Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that this rule, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance and general well-being. The program provides housing assistance and services for individuals with acquired immunodeficiency syndrome or related diseases and their families and defines the term eligible person to include the family of a person with AIDS or related diseases. Such assistance will help enable those families with a participating member

who has AIDS to live in decent, safe, and sanitary housing and receive the supportive services necessary to assist a person with AIDS to live independently. Since the impact on the family is beneficial, no further review is considered necessary.

H. "Takings" Assessment

The General Counsel, as the Designated Official under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, has determined that this rule does not have "takings implications" as defined in HUD's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." The Department does not regard the effects of this rule on private property rights as "effectively denying economically viable use of any distinct legally protected property interest of a property owner, or resulting in a permanent or temporary physical occupation, invasion, or deprivation." The rule would authorize acquisition of property by grantees or their project sponsors under the normal State and local governmental procedures for the limited purpose of providing housing assistance for eligible persons.

I. Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection	Provision of interim rule	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Applications to HUD:						
—State entitlements	§574.160	11	1	11	8.0	88
—City for EMSA	§574.160	27	1	27	12.0	324
—Competitive awards	§574.240	100	1	100	20.0	2,000
Annual report to HUD	§574.520	48	1	48	12.0	576
Waiver requests to HUD	§574.4 §574.310(c) §574.330(b)	5	1	5	4.0	20
Amendments submitted	§574.180 §574.260	5	1	5	4.0	20
Uniform relocation act appeals process	§574.630	5	1	5	2.0	10
Environmental review recordkeeping	§574.510	48	1	48	4.0	192
Total Burden						3,230

J. Catalog

The Catalog of Federal Domestic Assistance program number for the Housing Opportunities for Persons with AIDS program is 14.241.

List of Subjects in 24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, title 24 of the Code of Federal Regulations is amended by revising part 574 to read as follows:

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart A—General

Sec.
574.1 Purpose.
574.2 Overview.
574.3 Definitions.
574.4 Waivers.

Subpart B—Formula Entitlements

574.100 Eligible applicants.
574.120 Responsibility of applicant to serve EMSA.
574.130 Formula allocations.
574.140 Eligible persons.
574.150 Eligible activities.
574.160 Application requirements.
574.170 Application review and approval.
574.180 Amendments.
574.190 Reallocation of grant amounts.

Subpart C—Competitive Grants

574.200 Amounts available for competitive grants.
574.210 Eligible applicants.
574.220 Eligible persons.
574.230 Eligible activities.
574.240 Application requirements.
574.250 Grant selection process.
574.260 Amendments.

Subpart D—Uses of Grant Funds

574.300 Eligible activities.
574.310 General standards for eligible housing activities.
574.320 Additional standards for rental assistance.
574.330 Additional standards for short-term supported housing.
574.340 Additional standards for community residences.

Subpart E—Special Responsibilities of Grantees and Project Sponsors

574.400 Prohibition of substitution of funds.
574.410 Capacity.
574.420 Cooperation.
574.430 Fee prohibitions.
574.440 Confidentiality.
574.450 Financial records.

Subpart F—Grant Administration

574.500 Responsibility for grant administration.
574.510 Environmental procedures and standards.
574.520 Performance reports.
574.530 Recordkeeping.
574.540 Obligation and deobligation of funds.

Subpart G—Other Federal Requirements

574.600 Nondiscrimination and equal opportunity.
574.605 Applicability of OMB circulars.
574.610 Drug-free workplace.
574.615 Anti-lobbying certification.
574.620 Debarred or suspended contractors.
574.625 Conflict of interest.
574.630 Displacement, relocation and real property acquisition.
574.635 Lead-based paint.
574.640 Flood insurance protection.
574.645 Coastal barriers.
574.650 Audit.

Authority: 42 U.S.C. 12901–12912.

Subpart A—General

§ 574.1 Purpose.

The Housing Opportunities for Persons with AIDS (HOPWA) program is authorized by AIDS Housing Opportunity Act (AOHA) and amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). The program is designed to provide States and localities with resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome or related diseases and their families. The program authorizes entitlement grants and competitively awarded grants for housing assistance and services.

§ 574.2 Overview.

(a) *Available funds.* The Department awards funds appropriated for any fiscal year for the program through a formula allocation and a competitive grant process. The amount of funds available will be specified in an Announcement of Allocations for entitlement grants and a Notice of Funds Availability (NOFA) for competitive grants, both published in the Federal Register. Certain States and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive (upon submission of an application and approval by HUD) formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part for eligible activities that address the housing needs of persons with AIDS or related diseases and their families. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance. Only those States and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects.

(b) *Formula entitlements.* Under the Act, 90 percent of appropriated amounts are to be distributed by formula entitlement. See § 574.130(b).

(c) *Competitive grants.* The 10 percent remainder of appropriated funds are awarded through a competitive process. See subpart C of this part.

§ 574.3 Definitions.

Acquired immunodeficiency syndrome (AIDS) or related diseases means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

Applicant means a State or city applying for a formula allocation as described under § 574.100 or a State, unit of general local government, or a nonprofit organization applying for a competitive grant as described under § 574.210.

City means any unit of general local government which is classified as a municipality by the U.S. Bureau of the Census or any other unit of general local government which is a town or township and which, in the determination of the Secretary:

(1) Possesses powers and performs functions comparable to those associated with municipalities;

(2) Is closely settled; and

(3) Contains within its boundaries no incorporated places as defined by the U.S. Bureau of the Census which have not entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

Eligible Metropolitan Statistical Area (EMSA) means a metropolitan statistical area that has a population of more than 500,000 and has more than 1,500 cumulative cases of AIDS.

Eligible person means a person with acquired immunodeficiency syndrome or a related disease and the family of such person.

Eligible State means a State that has:

(1) More than 1,500 cumulative cases of AIDS in those areas of the State outside of eligible metropolitan statistical areas that are eligible to be funded through a qualifying city; and

(2) An approved Comprehensive Housing Affordability Strategy (CHAS) as provided by § 574.160. A State may carry out activities anywhere in the State, including within an eligible metropolitan statistical area.

Grantee means a State, unit of general local government, or nonprofit organization receiving a grant directly from HUD under this part.

Low-income individual means any individual or family whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area if HUD finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

Metropolitan statistical area means a metropolitan statistical area as established by the Office of Management and Budget.

Moderate rehabilitation means rehabilitation that involves costs that are less than or equal to 75 percent of the value of the building after rehabilitation.

Nonprofit organization means any nonprofit organization (including a State or locally chartered, nonprofit organization) that:

(1) Is organized under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated an entity that will maintain such an accounting system; and

(4) Has among its purposes significant activities related to providing services or housing to persons with acquired immunodeficiency syndrome or related diseases.

Population means total resident population based on data compiled by the U.S. Census and referable to the same point in time.

Project sponsor means any nonprofit organization or governmental housing agency that receives funds under a contract with the grantee to carry out eligible activities under this part.

Qualifying city means a city that is the most populous unit of general local government in an Eligible Metropolitan Statistical Area (EMSA) and that has an approved Comprehensive Housing Affordability Strategy (CHAS) as provided by § 574.160.

Rehabilitation means the improvement or repair of an existing structure, or an addition to an existing structure that does not increase the floor area by more than 100 percent.

Secretary means the Secretary of the Department of Housing and Urban Development.

State means a State of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part.

Substantial rehabilitation means rehabilitation that involves costs in excess of 75 percent of the value of the building after rehabilitation.

Unit of general local government means any city, town, township, parish, county, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin

Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of the National Affordable Housing Act.

§ 574.4 Waivers.

Upon a determination and finding of good cause, the Secretary may waive any requirement of this part in any particular case subject only to statutory limitations. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

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Subpart B—Formula Entitlements

§ 574.100 Eligible applicants.

(a) Eligible States and qualifying cities, as defined in § 574.3, qualify for formula allocations under HOPWA.

(b) List. A list of qualifying cities and eligible States will be contained in the Announcement of Allocations published annually in the Federal Register.

§ 574.120 Responsibility of applicant to serve EMSA.

The EMSA's applicant shall serve eligible persons who live anywhere within the EMSA, except that housing assistance shall be provided only in localities within the EMSA that have a HUD-approved CHAS and have provided a certification of consistency in accordance with § 574.160(a). In allocating grant amounts among eligible activities, the EMSA's applicant shall address needs of eligible persons who reside within the metropolitan statistical area, including those not within the jurisdiction of the applicant.

§ 574.130 Formula allocations.

(a) *Data sources.* HUD will allocate funds based on the number of cases of acquired immunodeficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control, and on population data provided by the U.S. Census. The number of cases of acquired immunodeficiency syndrome used for this purpose shall be the number reported as of March 31 of the fiscal year immediately preceding the fiscal year for which the amounts are appropriated and allocated.

(b) *Distribution of appropriated funds for entitlement awards.* (1) Seventy-five percent of the funds allocated under the formula is distributed to qualifying cities and eligible States, as described in § 574.100, based on each metropolitan statistical area's or State's proportionate share of the cumulative number of AIDS cases in all eligible metropolitan statistical areas and eligible States.

(2) The remaining twenty-five percent is allocated among qualifying cities, but not States, where the per capita incidence of AIDS for the year, April 1 through March 31, preceding the fiscal year of the appropriation is higher than the average for all metropolitan statistical areas with more than 500,000 population. Each qualifying city's allocation reflects its EMSA's proportionate share of the high incidence factor among EMSA's with higher than average per capita incidence of AIDS. The high incidence factor is computed by multiplying the population of the metropolitan statistical area by the difference between its twelve-month-per-capita-incidence rate and the average rate for all metropolitan statistical areas with more than 500,000 population. The EMSA's proportionate share is determined by dividing its high incidence factor by the sum of the high incidence factors for all EMSA's with higher than average per capita incidence of AIDS.

(c) *Minimum grant.* No grant awarded under paragraph (b) of this section shall be less than $200,000. Therefore, if the calculations under paragraph (b) of this section would result in any eligible metropolitan statistical area or eligible State receiving less than $200,000, the amount allocated to that entity is increased to $200,000 and allocations to entities in excess of $200,000 are proportionately reduced by the amount of the increase.

§ 574.140 Eligible persons.

Persons eligible to receive assistance or services under this part are persons with acquired immunodeficiency syndrome or related diseases who are low-income individuals and their families. A person with AIDS or related diseases or a family member regardless of income is eligible to receive housing information services, as described in § 574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS or related diseases, as provided in § 574.300(b)(9).

§ 574.150 Eligible activities.

Grantees under this subpart are authorized to provide, or contract with project sponsors to provide, housing assistance or service activities as described in Subpart D—Uses of Grant Funds. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36

§ 574.160 Application requirements.

(a) *CHAS.* Assistance may not be made available under this subpart unless the applicant has submitted a certification that proposed housing assistance is consistent with a Comprehensive Housing Affordability Strategy (CHAS) submitted to and approved by HUD in accordance with 24 CFR part 91. The applicant's certification of consistency must be submitted by the public official responsible for submitting the CHAS. Where the applicant is a city that is the most populous unit of general local government in an EMSA, it must also obtain and keep on file certifications of consistency from such public officials for each other locality in the EMSA in which housing assistance is provided. Where the applicant is a State, the certification applies to consistency with the State's CHAS.

(b) *Application requirements.* To receive a grant, a State or city applicant for an EMSA applying for a formula grant award on the basis of an allocation under § 574.130 must submit an application that meets the requirements of paragraph (c) of this section, and the application must be submitted within the time period established by HUD in the Announcement of Allocations for Housing Opportunities for Persons with AIDS, published annually in the Federal Register. This Announcement:

(1) Gives the location for obtaining application packages, which provides specific application requirements and guidance;

(2) Specifies the time and the place for submitting completed applications; and

(3) Identifies States and the cities that are the most populous unit of general local government in metropolitan statistical areas eligible to receive funding available under the announcement.

(c) *Application contents.* A formula entitlement grant application, at a minimum, must contain:

(1) A description of the proposed activities, including general locations, and costs;

(2) A description of the number and characteristics of the eligible persons who would be served by the proposed activities;

(3) A description of the public and private resources that are expected to be made available in connection with the proposed activities;

(4) A description of the method of selecting project sponsors;

(5) A description of efforts that have been or will be taken to coordinate proposed activities with State and local government agencies responsible for providing services to persons with AIDS or related diseases, including, where applicable, coordination with agencies administering assistance provided pursuant to the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C. 300). In addition, for city applicants, coordination with other units of general local government located within the metropolitan statistical area to address needs within that area. This description should also describe how community-based nonprofit organizations experienced in caring for persons with AIDS and organizations which represent persons with AIDS have been consulted and involved in the application planning process;

(6) A certification that any building or structure assisted under this part will be maintained as a facility to provide assistance for eligible persons:

(i) For a period of not less than 10 years in the case of assistance involving new construction, substantial rehabilitation or acquisition of a facility; and

(ii) For a period of not less than 3 years in cases involving non-substantial rehabilitation or repair of a building or structure;

(7) Description of how the proposed activities will meet urgent needs that are not being met by available public and private sources. In addition, for city applicants, a description of how the proposed activities will address the needs within the metropolitan statistical area in which the city is located, including areas not within the jurisdiction of the city;

(8) A certification that proposed housing activities are consistent with a CHAS approved by HUD, as described in paragraph (a) of this section;

(9) An assurance that the applicant will:

(i) Supply HUD with information necessary for HUD to perform any applicable environmental review for each property in accordance with the environmental laws and authorities cited in 24 CFR part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair or construct property to provide housing, or commit HUD, State, local, or other funds to such program activities with respect to any eligible property until HUD approval is received. See § 574.510 of this part for the environmental procedures and standards for applicants for assistance; and

(10) Such other information or certifications as HUD determines to be necessary.

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§ 574.170 Application review and approval.

The application review and approval process for assistance under this section consists of the following stages:

(a) *Review.* Applications will be reviewed to determine:

(1) Whether the application is adequate in time of submission, form, and completeness;

(2) Whether the applicant, the population to be served and project sponsor, if any, are eligible; and

(3) Whether the proposed activities are eligible for assistance under the program.

(b) *Approval.* The Department will award a grant in the amount determined under § 574.130 of this part to eligible applicants with approved applications.

§ 574.180 Amendments.

(a) A grantee must notify HUD in writing of any substantial change in the approved program of activities. A substantial change is any addition or deletion of an eligible activity, or any change that will significantly alter the scope, location, service area, or objectives of an activity or the number of eligible persons served, that has been approved in an application.

(b) Each amendment request must contain a description of the revised proposed use of funds and, for grantees receiving formula awards, a certification that the proposed use of funds is consistent with the applicable Comprehensive Housing Affordability Strategy. Funds may not be expended for the revised proposed use of funds until:

(1) HUD accepts the revised proposed use; and

(2) For amendments to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, an environmental review of the revised proposed use of funds has been completed in accordance with § 574.510.

§ 574.190 Reallocation of grant amounts.

Funds allocated to eligible States or to the cities that are the most populous unit of general local government in EMSAs, that do not submit an application by the deadline specified by HUD, will be added to the funds available for formula allocations in the current fiscal year. Any formula funds that become available as a result of deobligations or the imposition of sanctions as provided for in § 574.540 will be added to the funds available for formula allocations in the next fiscal year.

Subpart C—Competitive Grants

§ 574.200 Amounts available for competitive grants.

(a) The Department will set aside 10 percent of the amounts appropriated under this program to fund on a competitive basis:

(1) Special projects of national significance; and

(2) Other projects submitted by States and localities that do not qualify for formula grants.

(b) Any competitively awarded funds that become available as a result of deobligations or the imposition of sanctions, as provided in § 574.540, will be added to the funds available for competitive grants in the next fiscal year.

§ 574.210 Eligible applicants.

(a) All States, units of general local government, and nonprofit organizations, may apply for grants for projects of national significance.

(b) Only those States and units of general local government that do not qualify for formula grants, as described in § 574.100; may apply for grants for other projects as described in § 574.200(a)(2).

(c) Except for grants for projects of national significance, nonprofit organizations are not eligible to apply directly to HUD for a grant but may receive funding as a project sponsor under contract with a grantee.

§ 574.220 Eligible persons.

Persons eligible to receive assistance or services under this part are persons with acquired immunodeficiency syndrome or related diseases who are low-income individuals and their families. A person with AIDS or related diseases or a family member regardless of income is eligible to receive housing information services, as described in § 574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS or related diseases, as provided in § 574.300(b)(9).

§ 574.230 Eligible activities.

Grantees under this subpart are authorized to provide, or contract with project sponsors to provide, housing assistance or service activities as

described in Subpart D—Uses of Grant Funds. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36.

§ 574.240 Application requirements.

(a) *Notice of fund availability for competitive grants.* Applications must comply with the provisions of the Department's Notice of Fund Availability (NOFA) to be published in the **Federal Register** in accordance with 24 CFR part 12. The notice:

(1) Gives the location for obtaining application packages, which will provide specific application requirements and guidance;

(2) Specifies the time and the place for submitting completed applications;

(3) States the amount and status of funding available under the notice, including the amounts allocated to each of the two categories of assistance;

(4) Specifies the timing and conditions for curing technical deficiencies in reviewed application;

(5) Provides other appropriate program information and guidance, including purpose, authority, and eligibility; and

(6) Describes the factors relative to each ranking criterion contained in § 574.250 of this part, and indicates the weight or relative importance of the criteria as they will be applied to the funding round announced in the Notice.

(b) *Application requirements.* To receive grant amounts, a State, unit of general local government, or nonprofit organization that elects to apply for a competitive grant award must submit an application that meets the requirements of paragraph (c) of this section and must be submitted within the time period established by HUD in the Notice of Funds Availability.

(c) *Application contents.* A competitive grant application, at a minimum, must contain:

(1) Applicant and project sponsor data, including a description of the applicant and sponsor's past experience in administering programs providing assistance to persons with AIDS, including minority persons, and for nonprofit organizations, description of how it is consistent with the definition of nonprofit organization as provided in § 574.3;

(2) A description of the proposed activities, including site information and costs;

(3) A description of the number and characteristics of the persons who would be served by the proposed activities;

(4) A description of the public and private resources that are expected to be made available in connection with the proposed activities;

(5) A description of the method of selecting project sponsors;

(6) A description of efforts that have been or will be taken to coordinate proposed activities with State and local government agencies responsible for providing services to persons with AIDS or related diseases, including, where applicable, coordination with agencies administering assistance provided pursuant to the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C. 300). The description should also describe how community-based nonprofit organizations experienced in caring for persons with AIDS and organizations which represent persons with AIDS have been consulted and involved in the application planning process;

(7) A certification that any building or structure assisted with amounts under this part will be maintained as a facility to provide assistance for eligible persons:

(i) For not less than 10 years in the case of assistance involving new construction, substantial rehabilitation or acquisition of the building; and

(ii) For not less than 3 years in cases involving non-substantial rehabilitation or repair of a building or structure;

(8) Description of how the proposed activities will meet urgent needs that are not being met by available public and private sources;

(9) For grants for projects of national significance, a description of the innovative nature of the project and its potential for replication in similar localities or nationally;

(10) An assurance that the applicant will:

(i) Supply HUD with information necessary for HUD to perform any applicable environmental review for each property in accordance with the environmental laws and authorities cited in 24 CFR part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair or construct property to provide housing, or commit HUD, State, local, or other funds to such program activities with respect to any eligible property until HUD approval is received. See § 574.510 of this part for the environmental procedures and standards for applicants for assistance;

(11) For States and units of general local government, a certification that proposed housing activities are consistent with a CHAS approved by HUD (see § 574.160(a)); and

(12) Such other information or certifications as the Secretary determines to be necessary.

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§ 574.250 Grant selection process.

(a) *Selection process*—(1) *Review.* Applications will be reviewed to determine:

(i) Whether the application is adequate in time of submission, form, and completeness;

(ii) Whether the applicant, the population to be served and project sponsor(s), if any, are eligible;

(iii) Whether the proposed activities are eligible for assistance under the program; and

(iv) Whether the applicant is currently in compliance with the Federal requirements contained in Subpart G—Other Federal Requirements, §§ 574.600–574.650.

(2) *Rating.* Applications received by the deadline will be rated based on the selection criteria provided in paragraph (b) of this section;

(3) *Conditional selection for funding.* The highest rated applications within each of the two categories of assistance will be selected for potential funding in accordance with their ranked order to the extent funds are available. Each conditionally selected applicant will be invited to provide additional project information, as described in paragraph (a)(4) of this section, as a prerequisite to a grant offer from HUD.

(4) *Obtaining additional information.* When an applicant is selected for potential funding, the applicant will be invited by HUD to submit additional project information, which may include:

(i) Documentation to show that the project is feasible;

(ii) Documentation showing site control, as described in § 574.240(c)(2);

(iii) Information necessary for HUD to perform an environmental review under § 574.510; and

(iv) Such other documentation that is necessary for clarification or confirmation of the information in the application, as specified by HUD in writing to the applicant.

(5) *Receipt of additional information.* The required additional information must be received in acceptable form by the deadline established by HUD in a notice of funding availability published in the **Federal Register**. HUD reserves the right to remove any project from further consideration for grant assistance if the required additional information is not received in acceptable form by the established deadline.

(6) *Grant award.* Following receipt of the additional information in acceptable form and following completion of an

acceptable environmental review, HUD will approve the application and send a grant agreement for execution to the applicant.

(b) *Rating criteria for applications for funds for competitive grants—(1) General.* Applications for funds for competitive grants will be assigned a rating score and placed in ranked order, based upon the criteria listed in paragraphs (b)(2) and (b)(3) of this section. The criteria, including the point value for each, will be described in more detail in the Notice of Funds Availability which will be published in the Federal Register.

(2) *Criteria.* HUD will award points for the following criteria:

(i) Applicant capacity;

(ii) Need for the project in the area to be served, including the relative numbers of AIDS cases and per capita AIDS incidence, and the housing needs of eligible persons in the community;

(iii) Appropriateness of housing and supportive services, including how activities carried out with HOPWA funds and other resources will provide a continuum of housing and services to meet the changing needs of eligible persons;

(iv) Extent of leveraged public and private resources for the project;

(v) Extent of local planning and coordination of housing programs for eligible persons and the likelihood of the continuation of State and local efforts; and

(vi) Other criteria as determined by the Secretary and announced in the NOFA.

(3) *Additional criteria for projects of national significance.* For projects of national significance, HUD also will award points for the following criteria:

(i) Innovative nature of the proposal, including the effectiveness of the proposed model(s) for providing supportive housing for eligible persons; and

(ii) Potential for replication of the proposed activity in other similar localities or nationally.

(c) *Ties between applicants.* In the event of a tie between applicants, HUD will use need for the project to determine which application should be selected for potential funding.

(d) *Procedureal error.* If HUD makes a procedural error in a funding competition that, when corrected, would warrant funding of an otherwise eligible application, HUD will select that application for potential funding when sufficient funds become available.

§ 574.260 Amendments.

(a) After an application has been selected for funding, any change that will significantly alter the scope, location, service area, or objectives of an activity or the number of eligible persons served must be justified to HUD and approved by HUD. Whenever any other amendment to the application is made, the grantee must provide a copy to HUD.

(b) Each amendment request must contain a description of the revised proposed use of funds. Funds may not be expended for the revised proposed use of funds until:

(1) HUD accepts the revised proposed use; and

(2) For amendments to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, an environmental review of the revised proposed use of funds has been completed in accordance with § 574.510.

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Subpart D—Uses of Grant Funds

§ 574.300 Elegible activities.

(a) *General.* Subject to applicable requirements described in §§ 574.310, 574.320, 574.330, and 574.340, HOPWA funds may be used to assist all forms of housing designed to prevent hopelessness including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, as required by § 574.310(a), must be provided as part of any HOPWA assisted housing, but HOPWA funds may also be used to provide services independently of any housing activity.

(b) *Activities.* The following activities may be carried out with HOPWA funds:

(1) Housing information services including, but not limited to, counseling, information, and referral services to assist an eligible person to locate, acquire, finance and maintain housing. This may also include fair housing counseling for eligible persons who may encounter discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or handicap;

(2) Resource identification to establish, coordinate and develop housing assistance resources for eligible persons (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives);

(3) Acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services;

(4) New construction (for single room occupancy (SRO) dwellings and community residences only).

(5) Project- or tenant-based rental assistance, including assistance for shared housing arrangements;

(6) Short-term rent, mortgage, and utility payments to prevent the homelessness of the tenant or mortgagor of a dwelling;

(7) Supportive services including, but not limited to, health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, nutritional services, intensive care when required, and assistance in gaining access to local, State, and Federal government benefits and services, except that health services may only be provided to individuals with acquired immunodeficiency syndrome or related diseases and not to family members of these individuals;

(8) Operating costs for housing including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, and other incidental costs;

(9) Technical assistance in establishing and operating a community residence, including planning and other pre-development or pre-construction expenses and including, but not limited to, costs relating to community outreach and educational activities regarding AIDS or related diseases for persons residing in proximity to the community residence;

(10) Administrative expenses:

(i) Each grantee may use not more than 3 percent of the grant amount for its own administrative costs relating to administering grant amounts and allocating such amounts to project sponsors; and

(ii) Each project sponsor receiving amounts from grants made under this program may use not more than 7 percent of the amounts received for its own administrative costs relating to carrying out eligible activities under this section, including costs of staff necessary to carry out eligible activities.

(11) For competitive grants only, any other activity proposed by the applicant and approved by HUD.

(c) *Limitations of assistance to primarily religious organizations—(1) Provision of assistance.* (i) Assistance may be provided under this part by a grantee to a project sponsor that is a primarily religious organization if the primarily religious organization agrees to provide all eligible activities under this program in a manner that is free from religious influences and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion.

(B) It will not discriminate against any person applying for any of the eligible activities under this part on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion.

(C) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary nondenominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of eligible activities under this part.

(ii) Assistance will not be provided to a project sponsor that is a primarily religious organization to construct or acquire a structure. Assistance may be provided to a project sponsor that is a primarily religious organization to rehabilitate or convert a structure owned by the organization, only as described in paragraph (c)(2) of this section.

(2) *Rehabilitation or conversion of structures owned by primarily religious organizations.* Grant amounts may be used to rehabilitate or convert a structure that is owned by a primarily religious organization, only if:

(i) The structure (or portion thereof) that is to be rehabilitated or converted with HUD assistance has been leased to an existing or newly established wholly secular organization (which may be established by the religious organization under the provisions of paragraph (c)(3) of this section).

(ii) The HUD assistance is provided to the secular organization (and not the religious organization) to make the improvements.

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion.

(iv) The lease payments paid to the primarily religious organization do not exceed the fair market rent for the structure before the rehabilitation or conversion was done.

(v) The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the religious organization.

(vi) The primarily religious organization agrees that if the secular organization does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the original grantee from which the amounts used to rehabilitate or convert the building were derived. While the original grantee is expected to use this amount for eligible HOPWA activities, there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.*

(i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a project sponsor. The secular organization may be eligible to receive all forms of assistance available under this part.

(ii) The secular organization must agree to provide eligible activities under this part in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iii) The secular organization may enter into a contract with the religious organization to operate the housing assistance, supportive services and other eligible activities for the project. In such a case, the religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iv) The rehabilitation or conversion of structures are subject to the requirements of paragraph (c)(2) of this section.

§ 574.310 General standards for eligible housing activities.

All grantees using grant funds to provide housing must adhere to the following standards:

(a) *Supportive services.* The grantee shall ensure that qualified service providers in the area make available appropriate supportive services to the individuals assisted with housing under this subpart. Supportive services are described in § 574.300(b)(7). For any individual with acquired immunodeficiency syndrome or a related disease who requires more intensive care than can be provided in housing assisted under this subpart, the grantee shall provide for locating a care provider who can appropriately care for the individual and for referring the individual to the care provider.

(b) *Housing quality standards.* All housing assisted under § 574.300(b) (3), (4), (5), and (8) must meet the applicable housing quality standards outlined below.

(1) *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.

(2) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, recipients must meet the following requirements:

(i) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from hazards.

(ii) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(iii) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. An acceptable place to sleep must be provided for each resident.

(iv) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(v) *Water supply.* The water supply must be free from contamination at levels that threaten the health of individuals.

(vi) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(vii) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliance while assuring safety from fire.

(viii) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(ix) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Minimum use period for structures.* (1) Any building or structure assisted with amounts under this part

must be maintained as a facility to provide housing or assistance for individuals with acquired immunodeficiency syndrome or related diseases:

(i) For a period of not less than 10 years, in the case of assistance provided under an activity eligible under § 574.300(b) (3) and (4) involving new construction, substantial rehabilitation or acquisition of a building or structure; or

(ii) For a period of not less than 3 years in the cases involving non-substantial rehabilitation or repair of a building or structure.

(2) Waiver of minimum use period. HUD may waive the minimum use period of a building or structure as stipulated in paragraph (c)(1) of this section if the grantee can demonstrate, to the satisfaction of HUD, that:

(i) The assisted structure is no longer needed to provide supported housing or assistance, or the continued operation of the structure for such purposes is no longer feasible; and

(ii) The structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, if the Secretary finds that such variations are necessary because of construction costs or unusually high or low family incomes.

(d) *Resident rent payment.* Each person receiving rental assistance under this program or residing in any rental housing assisted under this program must pay as rent, including utilities, an amount determined in accordance with section 3(a) of the United States Housing Act of 1937 and 24 CFR 813.106. Under these authorities, each resident must pay as rent the higher of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 813.102);

(2) 10 percent of the family's monthly gross income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(e) *Termination of assistance.* Assistance to participants who reside in housing programs under this grant may be terminated if the participant violates program requirements or conditions of occupancy. Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases. In terminating assistance to any program participant, grantees must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process at a minimum, must consist of:

(1) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(2) Permitting the participant to have a review of the decision, in which the participant is given the opportunity to present written objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Providing prompt written notification of the final decision to the participant.

(Paragraph (c) approved by the Office of Management and Budget under OMB control number 2506–0133)

§ 574.320 Additional standards for rental assistance.

(a) If grant funds are used to provide rental assistance, the following additional standards apply:

(1) *Maximum subsidy.* The amount of grant funds used to pay monthly assistance for an eligible person may not exceed the difference between:

(i) The lower of the rent standard or reasonable rent for the unit; and

(ii) The resident's rent payment calculated under § 574.310(d).

(2) *Rent standard.* The rent standard shall be established by the grantee and shall be no more than the published section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the grantee may increase that amount by up to 10 percent for up to 20 percent of the units assisted.

(3) *Rent reasonableness.* The rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units.

(b) With respect to shared housing arrangements, the provisions of subpart C of 24 CFR part 882 shall be followed.

§ 574.330 Additional standards for short-term supported housing.

Short-term supported housing includes facilities to provide temporary shelter to eligible individuals as well as rent, mortgage, or utilities payments to enable eligible individuals to remain in their own dwellings. If grant funds are used to provide such short-term supported housing assistance, the following additional standards apply:

(a) *Time limits.* (1) A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six month period. Rent, mortgage, or utilities payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided to such an individual for these costs accruing over a period of more than 21 weeks in any 52 week period. These limitations do not apply to rental assistance provided under § 574.300(b)(5).

(2) *Waiver of time limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (a)(1) and will favorably consider a waiver based on the good faith effort of a project sponsor to provide permanent housing under subsection (c).

(b) *Residency limitations*—(1) *Residency.* A short-term supported facility may not provide shelter or housing at any single time for more than 50 families or individuals;

(2) *Waiver of residency limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (b)(1) of this section.

(c) *Placement.* A short-term supported housing facility assisted under this part must, to the maximum extent practicable, provide each individual living in such housing the opportunity for placement in permanent housing or in a living environment appropriate to his or her health and social needs.

(d) *Assistance to continue independent living.* In addition to the supportive services provided when an individual is relocated to a short-term supported housing facility, supportive services may be provided to individuals when they remain in their residence because the residence is appropriate to the needs of the individual. In the latter case, a rent, mortgage or utilities payments program assisted under this part shall provide, when reasonable, supportive services specifically designed to maintain the individual in such residence.

(e) *Case management services.* A program assisted under this section shall provide each assisted individual with an opportunity, if eligible, to receive case management services from the appropriate social service agencies.

(Paragraph (b) approved by the Office of Management and Budget under OMB control number 2506–0133)

§ 574.340 Additional standards for community residences.

(a) A community residence is a multiunit residence designed for eligible

persons to provide a lower cost residential alternative to institutional care; to prevent or delay the need for such care; to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently; and to enable such persons to participate as fully as possible in community life.

(b) If grant funds are used to provide a community residence, except for planning and other expenses preliminary to construction or other physical improvement for the development of a community residence, the grantee must, prior to the expenditure of such funds, obtain and keep on file certifications that:

(1) The grantee has entered into a written agreement with service providers to provide, or the grantee will itself provide, services as required by § 574.310(a) to eligible persons assisted by the community residence;

(2) The grantee has acquired sufficient funding for these services, or has on file an analysis of the service level needed for each community residence and a statement of which agencies will provide the needed services and how the services will be funded, and the service providers are qualified to assist eligible persons; and

(3) Any construction or physical improvements carried out with amounts received from the grant will comply with any applicable State and local housing codes and licensing requirements in the jurisdiction in which the community residence is located.

Subpart E—Special Responsibilities of Grantees and Project Sponsors

§ 574.400 Prohibition of substitution of funds.

Amounts received from grants under this part may not be used to replace other amounts made available or designated by State or local governments through appropriations for use for the purposes of this part.

§ 574.410 Capacity.

The grantee shall ensure that any project sponsor with which the grantee contracts to carry out an activity under this part has the capacity and capability to effectively administer the activity.

§ 574.420 Cooperation.

(a) The grantee shall agree, and shall ensure that each project sponsor agrees, to cooperate and coordinate in providing assistance under this part with the agencies of the relevant State and local governments responsible for services in the area served by the grantee for eligible persons and other public and private organizations and agencies providing services for such eligible persons.

(b) A grantee that is a State shall obtain the approval of the unit of general local government in which a project is to be located before entering into a contract with a project sponsor to carry out an activity authorized under this part.

(c) A grantee that is a city receiving a formula allocation for an EMSA shall coordinate with other units of general local government located within the metropolitan statistical area to address needs within that area.

§ 574.430 Fee prohibitions.

The grantee shall agree, and shall ensure that each project sponsor agrees, that no fee, except rent, will be charged of any eligible person for any housing or services provided with amounts from a grant under this part.

§ 574.440 Confidentiality.

The grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.

§ 574.450 Financial records.

The grantee shall agree, and shall ensure that each project sponsor agrees, to maintain and make available to HUD for inspection financial records sufficient, in HUD's determination, to ensure proper accounting and disbursing of amounts received from a grant under this part.

Subpart F—Grant Administration

§ 574.500 Responsibility for grant administration.

(a) *General.* Grantees are responsible for ensuring that grants are administered in accordance with the requirements of this part and other applicable laws. Grantees are responsible for ensuring that their respective project sponsors carry out activities in compliance with all applicable requirements.

(b) *Grant agreement.* The grant agreement will provide that the grantee agrees, and will ensure that each project sponsor agrees, to:

(1) Operate the program in accordance with the provisions of these regulations and other applicable HUD regulations;

(2) Conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;

(3) Assure the adequate provision of supportive services to the participants in the program; and

(4) Comply with such other terms and conditions, including recordkeeping and reports (which must include racial and ethnic data on participants) for program monitoring and evaluation purposes, as HUD may establish for purposes of carrying out the program in an effective and efficient manner.

(c) *Enforcement.* HUD will enforce the obligations in the grant agreement in accordance with the provisions of 24 CFR 85.43. A grantee will be provided an opportunity for informal consultation before HUD will exercise any remedies authorized in paragraph (a) of that section.

§ 574.510 Environmental procedures and standards.

(a) Before any amounts under this program are used to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, HUD shall perform a review in accord with 24 CFR part 50, which implements the National Environmental Policy Act and the related Federal environmental laws and authorities listed under 24 CFR 50.4. In performing its environmental review, HUD may use previously issued environmental reviews prepared by other local, State, or federal agencies for the proposed property. The grantee will cooperate in providing these documents. HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for the required environmental findings.

(b) HUD shall determine whether an environmental assessment under NEPA is required. HUD also shall determine whether the proposed property triggers thresholds for the applicable federal environmental laws and authorities listed under 24 CFR 50.4. These may apply when the property:

(1) Is located within designated coastal barriers;

(2) Is listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, an historic district, or is a property whose area of potential effects includes a historic district or property;

(3) Is located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature;

(4) Is contaminated by toxic chemicals or radioactive materials;

(5) Is located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield;

(6) Is located within certain flood hazard areas or a designated wetland;

(7) Is located within an area requiring flood insurance protection;

(8) Is located within a high noise area;

(9) Is located within a coastal management zone;

(10) Is located on a sole source aquifer; or

(11) Would affect an endangered species.

(c) A grantee or project sponsor shall refer the property to HUD for threshold review and shall submit all available, relevant information to HUD to permit HUD to make the review.

(d) If HUD determines that one or more of the thresholds are exceeded, HUD shall conduct an environmental review of the issue and, if appropriate, establish mitigating measures that the grantee and/or project sponsor shall carry out for the property unless it decides to select an alternate property.

(e) HUD will issue a notice specifying applicable threshold and documentation requirements.

(Approved by the Office of Management and Budget under OMB control number 2506.0133)

§ 574.520 Performance reports.

A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

(Approved by the Office of Management and Budget under OMB control number 2506–0133)

§ 574.530 Recordkeeping.

Each grantee must ensure that records are maintained for a three-year period to document compliance with the provisions of this part. Grantees must maintain current and accurate data on the race and ethnicity of program participants.

§ 574.540 Obligation and deobligation of funds.

Selection of an application for funding and notification of the applicant constitutes the obligation of funds by HUD to cover the amount of the approved assistance. HUD may deobligate all or a portion of the amounts approved for eligible activities if such amounts are not expended in a timely manner, or the proposed activity for which funding was approved is not provided in accordance with the approved application and the requirements of this regulation. HUD may deobligate any amount of grant funds that have not been expended within a three-year period from the date of the signing of the grant agreement. The grant agreement may set forth other circumstances under which funds may be deobligated or sanctions imposed.

Subpart G—Other Federal Requirements

§ 574.600 Nondiscrimination and equal opportunity.

Grantees and project sponsors must, within the eligible population, comply with the following requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status and handicap:

(a) *Fair housing requirements.* The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100; Executive Order 11063 and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) *Discrimination on the basis of age or handicap.* The prohibitions against discrimination based on age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101–12213) and implementing regulations at 28 CFR part 35 (States and local government grantees) and part 36 (public accommodations requirements for certain types of short-term housing assistance).

(c) *Employment opportunities.* The requirements of section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701(u)) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects).

(d) *Minority and women's business enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 apply to grants under this part. Consistent with HUD's responsibilities under these Orders, the grantee and project sponsor must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(e) *Affirmative outreach.* A grantee or project sponsor must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or handicap, know of the availability of the HOPWA program, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of the procedures.

(f) *Disability requirements.* The grantee and project sponsor must not discriminate against persons with AIDS or related diseases based on an additional handicap of such persons in violation of the Fair Housing Act or section 504 of the Rehabilitation Act of 1973. In addition, the grantee and project sponsor must comply with the reasonable modification requirement of the Fair Housing Act, the reasonable accommodation requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, and the accessibility requirements of the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, and implementing regulations. See 42 U.S.C. 3604(f) and 24 CFR 100.203–100.205; 29 U.S.C. 794 and 24 CFR part 8; and 28 CFR parts 35 and 36.

§ 574.605 Applicability of OMB circulars.

The policies, guidelines, and requirements of 24 CFR part 85 (codified pursuant to OMB Circular No. A–102) and OMB Circular No. A–87 apply with respect to the acceptance and use of funds under the program by States and units of general local government, including public agencies, and Circulars Nos. A–110 and A–122 apply with respect to the acceptance and use of funds under the program by private non-profit entities. (Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.

§ 574.610 Drug-free workplace.

Grantees are subject to the requirements of sections 5151–5180 of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

§ 574.615 Anti-lobbying certification.

Recipients of Federal contracts, grants, and loans are prohibited from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. The rule is found at 24 CFR part 87. It requires applicants, grantees, and project sponsors of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires

disclosures from applicants, grantees, and project sponsors if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. Substantial monetary penalties may be imposed for failure to file the required certification or disclosure.

§ 574.620 Deberred or suspended contractors.

The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, placement in ineligibility status are applicable to grantees and project sponsors under this part.

§ 574.625 Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A–102 and 24 CFR 85.36(b)(3), no person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or project sponsor and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(b) *Exceptions: Threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (a) of this section when it determines that the exception will serve to further the purposes of the HOPWA program and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(c) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (b) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(2) Whether the person affected is a member of a group or class of eligible persons and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (a) of this section;

(5) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

§ 574.630 Displacement, relocation and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, grantees and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the grantee's or project sponsor's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A low-income person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(e) *Responsibility of grantee.* (1) Each grantee shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with these provisions.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the grantee, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the grantee submits to HUD an application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the grantee, project sponsor, or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the "initiation of negotiations" and the move occurs before the tenant has been provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(1) The tenant's monthly rent before the initiation of negotiations and estimated average utility costs, or

(2) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex and either:

(1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(2) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation or applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purposes of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section), if the project is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The grantee or project sponsor may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the grantee and the project sponsor.

§ 574.635 Lead-based paint.

The grantee and project sponsor must comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35, as applicable. In addition, the grantee and project sponsor must also meet the following requirements relating to inspection and abatement of defective lead-based paint surfaces:

(a) Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity under this part; and

(b) Appropriate action must be taken to protect facility occupants from the hazards associated with lead-based paint abatement procedures.

(Approved by the Office of Management and Budget under OMB control number 2506–0133)

§ 574.640 Flood insurance protection.

No property to be assisted under this part may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a)(1) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59 through 79); or

(2) Less than a year has passed since FEMA notification regarding such hazards; and

(b) The grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

§ 574.645 Coastal barriers.

In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

§ 574.650 Audit.

The financial management system used by a State or unit of general local government that is a grantee must provide for audits in accordance with 24 CFR part 44. A nonprofit organization that is a grantee or a project sponsor is subject to the audit requirements set forth in 24 CFR part 45.

Dated: December 2, 1992.

Jack Kemp,

Secretary.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3440; FR-3294-N-01]

Announcement of Allocations for Housing Opportunities for Persons With AIDS

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice contains a listing of formula allocations for Fiscal Year 1993 under the Housing Opportunities for Persons With AIDS (HOPWA) program and information on how eligible applicants may apply for the formula grants to which they are entitled. An Interim Rule for the Fiscal Year 1993 program containing the requirements and other programmatic information for HOPWA is published elsewhere in this issue of the **Federal Register**.

DATES: Application packages will be available beginning December 28, 1992, from the HUD field offices listed at the end of this announcement. Applications may be submitted any time before the deadline date and will be processed as soon as they are received. Applicants are encouraged to submit their applications as soon as possible.

The original copy of the application must be received at the HUD Field Office serving the jurisdiction of the applicant no later than 4 p.m. local time on March 15, 1993. An additional copy of the application must also be sent to the following address: Department of Housing and Urban Development, Office of Special Needs Assistance Programs, room 7262, 451 Seventh Street, SW., Washington, DC 20410, Attention: James N. Forsberg, Director. However, a determination that an application was received on time will be made solely on receipt of the original application at the Field Office. Additional information regarding the submission of applications is included in the package.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office serving the jurisdiction of the applicant. See the listing at the end of the announcement.

Program Authority

The $90,000,000 in assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992), and was appropriated by the Department's appropriation act for fiscal year 1993 (Pub. L. 102-389, approved October 6, 1992). An additional $10,000,000 in appropriated funds, to be awarded by competitive grants, will be announced in a Notice of Funding Availability (NOFA) to be published later.

Eligibility

Under the Act, entitlement grants are to be awarded to eligible States and to qualifying cities in eligible metropolitan statistical areas (EMSAs), as they are defined in § 574.3 of the Interim Rule published elsewhere in this issue of the **Federal Register**, in accordance with an allocation formula described in § 574.130 of that rule. Eligible States must have more than 1,500 cumulative cases of persons with AIDS in that portion of the State outside of any eligible metropolitan statistical area, and they must have an approved Comprehensive Housing Affordability Strategy (CHAS). In the case of a city applicant, the city must be the most populous unit of general local government in the eligible metropolitan statistical area and must have an approved CHAS. In addition, the EMSA must have more than 1,500 cumulative cases of persons with AIDS and a population of more than 500,000.

For the fiscal year 1993 awards, the number of cumulative cases of AIDS used to determine if the 1,500 threshold has been met is as of March 31, 1992 and is from data collected by the U.S. Department of Health and Human Services, Centers for Disease Control. The Department has used 1990 U.S. Census data to determine the populations of metropolitan statistical areas and the city that is the most populous unit of general local government in each eligible metropolitan statistical area.

Recipient Disclosures: HUD Reform Act

States and units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each State and unit of general local government may use HUD Form 2880 to collect the applicant disclosure and update reports, or it may develop its own form. (See CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

Efforts to influence HUD's decisions with respect to financial assistance under these allocations are subject to disclosure requirements imposed by section 13 of the Department of Housing and Urban Development Act. That Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance or management of the award, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Listing of Eligible Metropolitan Statistical Areas and States With Projected Awards

Chart 1, below, provides the Department's determination of the States entitled to formula grants from the 1993 appropriation and their formula allocations. Chart 2, below, provides the Department's determination of the eligible metropolitan statistical areas that are entitled to formula grants from the 1993 appropriation, the city that is the most populous unit of general local government in an eligible metropolitan statistical area, and the formula allocation.

CHART 1.—STATES THAT QUALIFY FOR THE HOPWA PROGRAM AND FISCAL YEAR 1993 AWARDS

State	1993 award
Arizona	$571,000
California	1,801,000
Connecticut	882,000
Florida	2,205,000
Missouri	925,000
New Jersey	1,166,000
New York	1,312,000
North Carolina	822,000
Ohio	1,086,000
Pennsylvania	693,000
Puerto Rico	904,000
South Carolina	519,000
Tennessee	542,000

CHART 1.—STATES THAT QUALIFY FOR THE HOPWA PROGRAM AND FISCAL YEAR 1993 AWARDS—Continued

State	1993 award
Texas	1,827,000
Virginia	630,000

CHART 2. ELIGIBLE METROPOLITAN STATISTICAL AREAS THAT QUALIFY FOR THE HOPWA PROGRAM, FISCAL YEAR 1993 AWARDS, AND THE CITY WITHIN EACH EMSA THAT IS THE ELIGIBLE APPLICANT

Name of EMSA and applicant city	1993 award
** Anaheim-Santa Ana, CA	$1,017,000
Santa Ana	
** Atlanta, GA	2,341,000
Atlanta	
** Baltimore, MD	1,091,000
Baltimore	
** Bergen-Passaic, NJ	631,000
Paterson	
** Boston, MA	1,188,000
Boston	
** Chicago, IL	2,292,000
Chicago	
** Dallas, TX	1,767,000
Dallas	
** Denver, CO	709,000
Denver	
** Detroit, MI	729,000
Detroit	
** Fort Lauderdale-Hollywood, FL	2,308,000
Fort Lauderdale	
** Houston, TX	3,016,000
Houston	
** Jersey City, NJ	1,277,000
Jersey City	
** Los Angeles-Long Beach, CA	7,219,000
Los Angeles	
** Miami-Hialeah, FL	4,697,000
Miami	
** Nassau-Suffolk, NY	709,000
Islip Town	
** New Orleans, LA	1,082,000
New Orleans	
** New York, NY	20,796,000
New York	
** Newark, NJ	2,838,000
Newark	
** Oakland, CA	1,072,000
Oakland	
** Philadelphia, PA–NJ	1,607,000
Philadelphia	
** Riverside-San Bernardino, CA	522,000
Riverside	
** San Diego, CA	1,245,000
San Diego	
** San Francisco, CA	6,647,000
San Francisco	
** San Juan, PR	2,220,000
San Juan Municipio	
** Seattle, WA	825,000
Seattle	
** Tampa-St. Petersburg-Clearwater, FL	950,000
Tampa	
** Washington, DC-MD-VA	2,292,000
Washington	
** West Palm Beach-Boca Raton-Delray, FL	1,028,000
West Palm Beach	
Total grants allocated for 1993 in charts 1 and 2	$90,000,000

HUD Field Offices

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339) or (202) 708–9300.

Arizona

Diane Domzalski, 400 N. 5th St., Suite 1600, Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461.

California (Southern)

Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038.

(Northern)

Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

Colorado

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811; TDD (303) 844–6158.

Connecticut

Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508; TDD (203) 240–4522.

District of Columbia

James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275–0994; TDD (202) 275–0967.

Florida

James N. Nichol, 325 W. Adams St., Jacksonville, FL 32202–4303; (904) 232–3587; TDD (904) 232–1291.

Georgia

Charles N. Straub, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TDD (404) 730–2654.

Illinois

Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60606–5760; (312) 353–1696; TDD (312) 353–7143.

Louisiana

Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212; TDD (504) 589–7237.

Maryland

Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202–1865; (301) 962–2417; TDD (301) 962–0106.

Massachusetts

Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

Michigan

Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343; TDD * via 1–800–877–8339.

Missouri

Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184; TDD (913) 236–3972.

New Jersey

Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102–5504; (201) 877–1776; TDD * via 1–800–877–8339.

New York

Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885; TDD (212) 264–0927.

North Carolina

Charles T. Ferebee, 415 N. Edgeworth St., Greensboro, NC 27401–2107; (919) 333–5711; TDD (919) 333–5518.

Ohio

Jack E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TDD (614) 469–6694.

Pennsylvania

John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

Puerto Rico

Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

South Carolina

Louis E. Bradley, Fed. Bldg., 1835 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD * via 1–800–877–8339.

Tennessee

Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 549–9422; TDD 549–9372.

Texas

R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

Virginia

Joseph Aversano, Fed. Bldg., 400 N. 8th St., P.O. Box 10170, Richmond, VA 23240–9998; (804) 771–2624; TDD (804) 771–2820.

Washington

John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2054; (206) 553–0374; TDD (206) 553–4351.

Dated: December 2, 1992.

Denise R. Alexander,

Deputy Assistant Secretary for Operations.

[FR Doc. 92–30976 Filed 12–24–92; 8:45 am]

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federal register

Monday
December 28, 1992

Part IV

The President

Proclamation 6517—To Amend the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Proclamation 6517 of December 23, 1992

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, Public Law 93–618, as amended (19 U.S.C. 2461 and 2462) ("Trade Act"), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Ethiopia as a beneficiary developing country for purposes of the Generalized System of Preferences ("GSP").

2. Pursuant to section 504(a)(1) of the Trade Act (19 U.S.C. 2464(a)(1)), the President may withdraw, suspend, or limit the application of the duty-free treatment accorded under the GSP with respect to any article or any country after considering the factors set forth in sections 501 and 502(c) of the Trade Act (19 U.S.C. 2461 and 2462(c)). Accordingly, after taking into account the factors set forth in sections 501 and 502(c) of the Trade Act, I have determined that it is appropriate to withdraw the duty-free treatment accorded under the GSP to imports of sulfanilic acid provided for in subheading 2921.42.24 of the Harmonized Tariff Schedule of the United States ("HTS").

3. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 501, 502(c), 504(a)(1), and 604 of the Trade Act, do proclaim that:

(1) General note 3(c)(ii)(A) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting "Ethiopia" in alphabetical order in the enumeration of independent countries.

(2) In order to withdraw the duty-free treatment accorded under the GSP to sulfanilic acid, the HTS is modified as provided in the Annex to this proclamation.

(3) For HTS subheadings 2921.42.26 and 2921.42.28, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1993, in the Rates of Duty 1-Special subcolumn of the HTS, the HTS is modified by deleting the symbol "(CA)" and the duty rate preceding it, and inserting in the parentheses following the "Free" rate the symbol "CA," in alphabetical order.

(4) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(5) The modifications to the HTS made by paragraphs (1) and (2) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1978, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

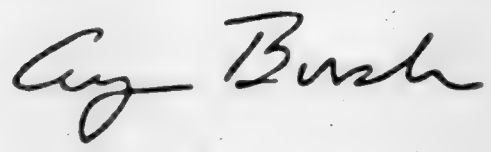

Billing code 3195-01-M

ANNEX

The Harmonized Tariff Schedule ("HTS") is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Subheading 2921.42.24 is superseded by:

	[Amine-function compounds:]			
	[Aromatic monoamines ...:]			
	[Aniline derivatives ...:]			
*2921.42.26	Metanilic acid.....	2.4¢/kg + 18.8%	Free (A*,E,IL,J) 0.4¢/kg + 3.7% (CA)	15.4¢/kg + 60%
2921.42.28	Sulfanilic acid.....	2.4¢/kg + 18.8%	Free (E,IL,J) 0.4¢/kg + 3.7% (CA)	15.4¢/kg + 60%*

Conforming change: General note 3(c)(ii)(D) to the HTS is modified by deleting "2921.42.24 India" and inserting, in numerical sequence, "2921.42.26 India" in lieu thereof.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–017–00001–9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869–017–00002–7)	17.00\1\	Jan. 1, 1992
4	(869–017–00003–5)	16.00	Jan. 1, 1992
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900–999	(869–017–00016–7)	29.00	Jan. 1, 1992
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*2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
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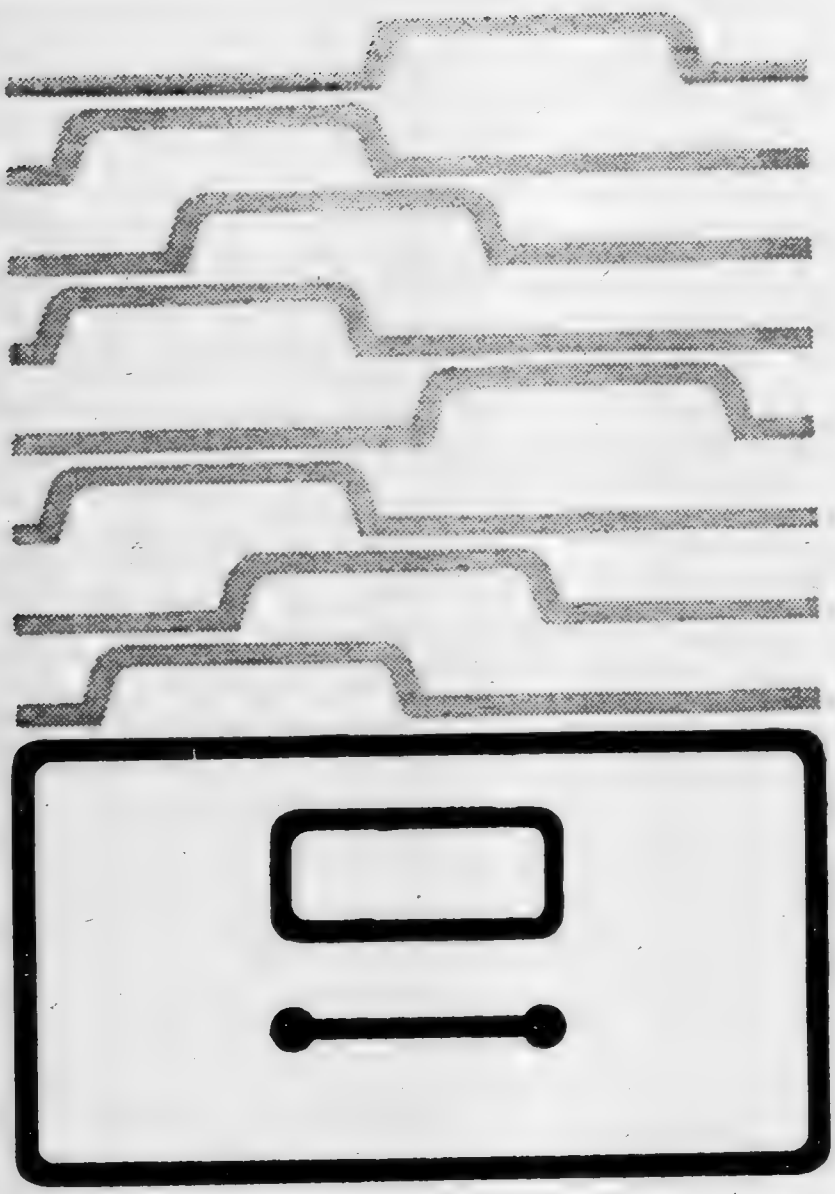

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statements of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations and amendments.

SUMMARY: The Administrative Conference of the United States adopted three recommendations at its Forty-Seventh Plenary Session addressing: The Federal administrative judiciary; administration of the Office of Juvenile Justice and Delinquency Prevention's formula grant program; and de minimis settlements under Superfund.

The Administrative Conference of the United States is a Federal agency established to study the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out administrative programs, and to make recommendations for improvements.

At this time, the Conference is removing the texts of certain recommendations and statements from the Code of Federal Regulations because they are deemed to be no longer of continuing general interest.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Renee Barnow, Information Officer (202–254–7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 591–596. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)).

At its Forty-Seventh Plenary Session, held December 10–11, 1992, the Assembly of the Administrative Conference of the United States adopted three recommendations. These recommendations were issued December 22, 1992.

Recommendation 92–7, The Federal Administrative Judiciary, is the result of a comprehensive study of federal administrative adjudications. It calls upon Congress, when creating new programs, to preserve the uniformity of process and of qualifications of presiding officers contemplated by the Administrative Procedure Act, and it contains guidelines for assigning adjudications to administrative law judges (ALJs). The Recommendation also urges reform of the ALJ selection process administered by the Office of Personnel Management so that agencies can hire from a larger pool of qualified applicants. More specifically, the Conference recommends elimination of the veterans' preference in the ALJ hiring process in order to make it more possible for agencies to hire qualified women candidates as ALJs. Recommendation 92–7 also recommends that a system of review of ALJ performance be developed, and that it be administered by agency Chief ALJs. The system would include a mechanism for investigating ALJ allegations of improper agency infringement of, or interference with, their decisional independence, and it would include procedures for investigating complaints of ALJ misconduct, such as allegations of bias or prejudice.

Recommendation 92–8, Administration of the Office of Juvenile Justice and Delinquency Prevention's Formula Grant Program, contains Conference recommendations for improving administration of the formula grant program, including changes related to OJJDP's communication and consultation with states, coordination and collaboration at various levels of government, consistency and clarity of policy elaboration, staffing, and training.

Recommendation 92–9, De Minimis Settlements Under Superfund, urges the Environmental Protection Agency to expand its efforts to negotiate settlements with "potentially responsible parties" that have contributed relatively small amounts of hazardous waste at sites covered by the Superfund program. A more active agency role is recommended and suggestions are made for additional guidance from EPA headquarters to regional offices. The recommendation also calls for establishing a central, publicly accessible repository of de minimis settlement documents.

The full texts of the recommendations are set out below. The recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session is available for public inspection at the Conference's offices at suite 500, 2120 L Street NW., Washington, DC. Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register**. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR part 305). Copies of all past Conference recommendations and statements, and the research reports on which they are based, may be obtained from the Office of the Chairman of the Administrative Conference.

The authority citation for parts 305 and 310 is being revised to conform to renumbering of the Administrative Conference Act in Pub. L. 102–354.

List of Subjects in 1 CFR Parts 305 and 310

Administrative practice and procedure, Administrative adjudication, Administrative law judges, Juvenile justice, and Superfund.

Parts 305 and 310 of title 1 of the Code of Federal Regulations are amended as follows:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 is revised to read as follows:

Authority: 5 U.S.C. 591–596.

2. New §§ 305.92–7 through 305.92–9 are added to read as follows:

§ 305.92–7 The Federal Administrative Judiciary (Recommendation No. 92–7).

At the request of the Office of Personnel Management, the Administrative Conference undertook a study of a series of issues relating to the roles of Federal administrative law judges (ALJs) and non-ALJ adjudicators, or administrative judges (AJs),[1] as they have evolved over the last several decades. The study addressed a number of different issues, including those relating to selection and evaluation of ALJs and AJs, the relationship of ALJs and AJs to their employing agencies, including the appropriate level of "independence" of such decisionmakers, and under what circumstances each type of decisionmaker should be used. Many of these issues are controversial, and the Conference has heard strong arguments from those with differing views.

The Administrative Conference takes as its starting point in considering the role of the Federal administrative judiciary the role created for "hearing examiners," now redesignated as "administrative law judges," in the Administrative Procedure Act in 1946.[2] That Act contemplated the existence of impartial factfinders, with substantive expertise in the subjects relevant to the adjudications over which they preside, who would be insulated from the investigatory and prosecutorial efforts of employing agencies through protections concerning hiring, salary, and tenure, as well as separation-of-functions requirements. The decisions of such impartial factfinders were made subject to broad review by agency heads to ensure that the accountable appointee at the top of each agency has control over the policymaking for which the agency has responsibility.

The need for impartial factfinders in administrative adjudications is evident. To ensure the acceptability of the process, some degree of adjudicator independence is necessary in those adjudications involving some kind of hearing.[3] The legitimacy of an adjudicatory process also depends on the consistency of its results and its efficiency.

ALJs possess a degree of independence that dates back to the enactment of the APA and is governed by the APA and related statutes. The APA provides that certain separations of functions must be observed to protect the ALJ from improper pressures from agency investigators and prosecutors. ALJs are selected through a special process overseen by OPM. Their pay is set by statute and OPM regulations. Any attempt by an agency to discipline or remove an ALJ requires a formal hearing at the Merit Systems Protection Board. ALJs are also exempt from the performance appraisal requirements applicable to almost all other Federal employees under the Civil Service Reform Act.

While the number of ALJs in the Federal government has leveled off in the last decade, and has actually decreased outside of the Social Security Administration, some agencies have been making increased use of AJs. The amount of functional independence accorded to AJs varies with the particular agency and type of adjudication; however, AJs generally lack the statutory protections guaranteed to ALJs. AJs are not statutorily exempt from performance appraisals, and several major groups of AJs regulatory undergo such appraisals by the agencies for which they work. In general, however, AJs presiding in agency adjudications in which a hearing is provided are accorded de facto protection from pressure from agency investigators and prosecutors, and, according to the Conference's survey, do not perceive themselves as significantly more subject to agency pressure than do ALJs.

The Conference's general view is that the movement away from the uniformity of qualifications, procedures, and protections of independence that derives from using ALJs in appropriate adjudications is unfortunate. The Conference believes that, to some extent, this movement away from ALJs toward AJs has been fueled by perceptions among agency management of difficulties in selecting and managing ALJs. These recommendations attempt to address these perceived problems. It should be noted that these recommendations are interdependent. For example, recommendations concerning the conversion of AJ positions to ALJ positions, and creation of new ALJ positions in new programs, are premised on the implementation of improvements in the selection and evaluation processes.

Use of ALJs and AJs

There is no apparent rationale undergirding current congressional or agency decisions on the use of ALJs or non-ALJs in particular types of cases. Congress seems to make such choices on an ad hoc basis. Moreover, it is quite clear that similar types of determinations made in different agencies are being made by different types of decisionmakers. For example, disability benefits adjudications at the Social Security Administration are handled by ALJs; at the Department of Veterans Affairs, AJs adjudicate similar types of cases. Moreover, in some contexts, non-ALJ adjudicators preside over cases in which extremely important issues of personal liberty are potentially at stake, such as deportation proceedings and security clearance cases.

The uniform structure established by the APA for on-the-record hearings and for qualifications of presiding officers serves to provide a consistency that helps furnish legitimacy and acceptance of agency adjudication. A rationalized system of determining when ALJs should be used would encourage uniformity not only in procedure, and in the qualifications of the initial decider, but in adjudication of similar interests. The Conference, therefore, recommends that Congress consider the conversion of AJ positions to ALJ positions in certain contexts. While the Conference does not identify specific types of cases for which such conversion should be made, it proposes a series of factors for Congress to consider in making such determinations; these same factors should also apply when Congress creates new programs involving evidentiary hearings.

One critical factor is the nature of the interest being adjudicated. The separation of functions mandated by the APA, as well as the selection criteria designed to ensure the highest quality adjudicators, are of particular value in situations where the most important interests are at stake. Generally speaking, a hearing that is likely to involve a substantial impact on personal liberties or freedom, for example, is one where use of an ALJ likely would be

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[1] The term "administrative judge," as used here, includes non-ALJ hearing officers, whatever their title, who preside at adjudicatory hearings.

[2] In 1969, the Conference addressed some of these issues in the context of hearing examiners. See Conference Recommendation 69–9. 1 CFR 305.69–9 (part A) (1986). Many of the recommendations set forth here pertaining to selection and training of ALJs are broadly consistent with the earlier recommendation, but to the extent that they differ, this recommendation is intended to supersede part A of Recommendation 69–9.

[3] The study underlying this recommendation limited its consideration to adjudicators who preside over some kind of hearing. More informal adjudication processes are outside the scope of the study.

appropriate. Similarly, cases that could result in an order carrying with it a criminal-like finding of culpability, imposition of sanctions with a substantial economic effect (such as large monetary penalties or some license revocations),[4] or a determination of discrimination under civil rights laws (unless there is an opportunity for a de novo hearing in court) represent categories of proceedings that may call for ALJ use. This characterization should be done for types of cases rather than for particular cases.

Another factor to consider is whether the procedures established by statute or by rule for cases heard and decided are, or would be, substantially equivalent to APA formal hearings. In such cases, the additional uniformity that would derive from making the cases formally subject to 5 U.S.C. 554, 556, and 557 would argue in favor of ALJs.

ALJs are required to be lawyers. Some AJs who decide cases are not lawyers, but have other needed specialized expertise. For example, certain adjudicators at the Nuclear Regulatory Commission are physicists or engineers who participate on multi-member boards. In determining whether it is appropriate to use ALJs in particular types of cases, Congress should consider whether the benefits of using ALJs are outweighed by the benefits of having other expertise brought to bear. It should also consider whether lawyers serving with nonlawyers on decision panels should be ALJs.

A final consideration, particularly in the context of considering conversion of existing AJ positions to ALJ positions, is the extent to which the current adjudicators closely approximate ALJs in their decisional independence, the criteria for their selection, or their compensation and experience levels. If existing AJs are functioning well and do not approach parity with ALJs on these criteria, there may be no need to make the conversion. On the other hand, if they closely match ALJs on these factors, uniformity interests may weigh in favor of conversion.

Although none of these factors is necessarily intended to be determinative, the more that these factors weigh in favor of ALJ status for the decisionmaker, the more appropriate it is for Congress to mandate such status. It should be noted, however, that these recommendations are not intended to be seen as encouraging increased formalization of administrative adjudicatory processes.

[4] Grant or contract disputes would not fall within this category, unless a monetary penalty was involved.

In situations where Congress does convert AJ positions to ALJ positions, those AJs who can satisfy OPM eligibility qualifications should be eligible for immediate appointment as ALJs. Thus, only those existing AJs meeting the standards for ALJ appointment would become ALJs, but they would not be required to go through the competitive selection process.

Historically, OPM has had responsibility to review and rule on agency requests for additional ALJ positions. In the past, when there were government-wide limits on "supergrade" positions, which included ALJs, this oversight role served a purpose. Those limits no longer exist, and it is no longer necessary for OPM to participate in this process. Agencies should be free, within their normal resource allocation constraints, to determine for themselves whether they need more or fewer ALJs.

ALJ Selection

The selection process for ALJs has been administered by OPM (and its predecessor agency) since 1946. OPM develops the criteria for selection, accepts applications for the register of eligibles, and rates the applicants on the basis of their experience as described in a lengthy statement prepared by the applicant, a personal reference inquiry, a written demonstration of decision-writing ability, and a panel interview. The scores from this process determine an applicant's rank on the register of eligibles. Because OPM has historically considered ALJs as being in the competitive service, OPM follows the statutory requirements for filling vacancies. Thus, OPM rates and ranks eligibles on a scale from 70 to 100, and when an agency seeks to fill a vacancy, OPM certifies the top three names on the register to that agency. In practice, only applicants with scores from 85 to 100 have been certified.

The Veterans' Preference Act, which has historically applied to most civil service hiring, is applicable to selection of administrative law judges. As applied, veterans deemed qualified for the preference are awarded an extra 5 points, and disabled veterans are awarded an extra 10 points in their scores. These extra points have had an extremely large impact, given the small range in unadjusted scores. In addition, under current law, agencies may not pass over a veteran to hire a nonveteran with the same or lower score on the certificate. As a consequence, application of the veterans' preference has almost always been determinative in the ALJ selection system.

There has been concern about the ALJ selection process, arising from the determinative impact of veterans' preference and the very limited selection options available to agencies. In fact, most agencies in recent years have found ways to circumvent this process somewhat, primarily by hiring laterally from other agency ALJ offices, or (in those few agencies that hire substantial numbers of ALJs) by waiting until there are numerous slots to fill at one time, thus entitling them to a larger certificate of eligibles from OPM.

Despite this circumvention, the application of veterans' preference to the ALJ selection process has had a materially negative effect on the potential quality of the federal administrative judiciary primarily because it has effectively prevented agencies from being able to hire representative numbers of qualified women candidates as ALJs. There is also some evidence that application of the veterans' preference may have adversely affected the hiring of racial minorities. Thus, agencies are prevented from being able to select the best qualified ALJs for specific positions from a pool of representative applicants. The Conference recognizes that the general policy of veterans' preference in Federal hiring reflects a valid social concern, particularly as it helps those who leave military service enter the Federal civilian workforce. But, in view of the conflict between this policy and the valid need of Federal agencies to have an opportunity to select the best qualified ALJs from among representative applicants, the Conference recommends that Congress abolish veterans' preference in the particular and limited context of ALJ selection.[5] In that connection, it should be noted that in 1978, Congress created a similar narrow exemption for members of the Senior Executive Service. Moreover, there is no veterans' preference in the selection for any other Federal judicial position.

The Conference's recommendation on the selection of ALJs would leave with OPM the responsibility for preparing the register of eligibles (i.e., for determining the basic qualifications for the position and rating the applicants). OPM is urged to ensure that all applicants placed on the register are in fact qualified to fulfill the responsibilities of being an ALJ.

In conjunction with this, however, the recommendation would also expand the choices that agencies would have in

[5] The Conference has recommended a similar modification to the veterans' preference in this context before. See Conference Recommendation 69-9, 1 CFR 305.69-9 ¶ A(4) (1969).

selecting from among those qualified applicants. Under this recommendation, after OPM rated the applicants, it would compile a register of all applicants deemed qualified following the final rating process. An agency could request a certificate with the names of all applicants whose numerical ratings placed them in the highest-ranked 50 percent of the register. Agencies could also request a certificate containing a smaller number of names or applicants in a higher percentile. The agency would have the authority to hire anyone on the certificate.[6]

In addition, if, following review of the highest-ranked 50 percent, an agency needed to review additional names to find a suitable candidate, it could request an additional certificate from OPM. Such an exception should be invoked rarely, and only upon a showing of exceptional circumstances.

The Conference recognizes that any limitation on the number of qualified candidates on the certificate, including the "top three" limitation now in place, might be criticized as arbitrary. By recommending the highest-ranked 50 percent of the applicants OPM has determined to be qualified, the Conference is attempting to balance two factors. The Conference recognizes the agencies' strong interest in having a substantially larger pool of qualified candidates from which to select ALJs who meet their varying criteria and needs. It also recognizes the importance of ensuring that such a pool is highly qualified, as measured by a uniform objective rating system. The Conference believes that its recommendation provides a reasonable balance of these factors. It provides a pool large enough that agencies should be able to find candidates for ALJ positions who satisfy their varying and specific needs. At the same time, OPM estimates that the top 50 percent of the register corresponds to those applicants with scores of 85 or better out of 100.

Agencies would also have access to a computerized database that would contain the complete application files of individual applicants on their certificate, including numerical ratings, geographical or agency preferences, particular kinds of experience, and veterans status. This database would allow agencies the option to narrow the list of qualified applicants and focus on those whom they would like to consider further. For example, an agency could search for all candidates willing to relocate to New York City, who spoke Spanish, and had ratings in the top 20 percent.

To ensure that the register contains a broad range of qualified applicants, the Conference also recommends that OPM and hiring agencies expand recruitment of women and minority applicants for ALJ positions. In addition, because questions have been raised about OPM's current method of assessing litigation experience for the purposes of scoring applicants for ALJ positions, the Conference recommends that OPM review its rating criteria to determine whether they are appropriate.

For much of the last decade, the register has been closed, thus precluding newly interested applicants from being considered for ALJ positions. Although OPM deferred reopening the register pending the outcome of the Conference's consideration and recommendations, it has announced that the register will be reopened in the spring of 1993. While the Conference's recommendations would significantly affect the ALJ selection process, the impact would come mostly at the end of the process, after OPM has evaluated and rated the new applicants. This procedure is likely to be a time-consuming one, given the expected large influx of applicants. Therefore, the Conference supports reopening the application process, so that OPM can begin rating the candidates now, even though the recommended changes in the later stages have not yet been implemented. This way, when and if those changes are in place, the updated register will be readily available. It should be noted, however, that the Conference is also recommending that OPM review some of its rating criteria, which would need to be done before it begins rating new applicants.

OPM has indicated that it has a planned program to expand recruitment of women and minority applicants for the register. The Conference both encourages OPM to give such a program a high priority, and recommends that OPM and the hiring agencies take steps in particular to recruit among minority bar associations and other institutions with large numbers of minorities or women.

The Conference's view is that implementing these recommendations will provide agencies the opportunity to select ALJs from a broad range of highly qualified candidates and to hire the best applicants from a representative register.

ALJ Evaluation and Discipline

At present, ALJs, virtually alone among Federal employees, are statutorily exempt from any performance appraisal. Although agencies may seek removal or discipline of ALJs "for good cause" by initiating a formal proceeding at the MSPB, the Board has applied standards that have strictly limited the contexts in which such actions may successfully be taken against an ALJ. For example, agency actions premised on low productivity have never been successful before the Board.

The Conference recognizes the importance of independence for ALJs. Their role under the APA as independent factfinders requires that they be protected from pressure in making their decisions. There can be a tension, however, between this independence and the agency's role as final policymaker, including the need for consistency of result and political accountability. Moreover, agencies have a legitimate interest in being able to manage their employees, including ALJs, in order to ensure that the adjudicatory system is an efficient and fair one.

The Conference, therefore, recommends that a system of review of ALJ performance be developed. Chief ALJs would be given the responsibility to coordinate development of case processing guidelines, with the participation of other agency ALJs, agency managers and others. These guidelines, which would address issues such as ALJ productivity and step-by-step time goals,[7] would be one of the bases upon which Chief ALJs would conduct regular (e.g., annual) performance reviews. Judicial comportment and demeanor would be another basis for review. Another factor on the list of bases for performance review, which list is not intended to be exclusive, would be the existence of a clear disregard of, or pattern of nonadherence to, properly articulated and disseminated rules, procedures, precedents and other agency policy. Such performance review systems need not involve quantitative measures or specific performance levels, but they should provide meaningful and useful feedback on performance.[8]

[6] In order to implement this recommendation, Congress would need at a minimum to modify the veterans' preference to eliminate the provision restricting the passing over of veterans, so that agencies would have the ability to hire any qualified applicant on the certificate.

[7] See Conference Recommendation 86–7, "Case Management as a Tool for Improving Agency Adjudication," 1 CFR 305.86–7 (1992), at ¶2.

[8] Many states now use performance reviews for their state court judges and ALJs. The performance of Federal magistrate-judges is evaluated as a condition of reappointment. Even some Federal courts are beginning to experiment with evaluation of judges' performance.

Conversely, ALJs should also have a mechanism for dealing with legitimate concerns about improper agency infringement of, or interference with, their decisional independence. Under the Conference's recommendation, each agency employing ALJs should set up a system for receiving and investigating allegations of such activity by agency management officials and, where warranted, referring them to the appropriate authorities for action.[9] OPM would have oversight responsibility, and could, upon request by an ALJ or at its own discretion, review an agency's response to such allegations, and recommend appropriate further action.

Under the Conference recommendation, the Chief ALJs' responsibilities would also include developing ALJ training and counseling programs designed to enhance professional capabilities and to remedy individual performance deficiencies, and, in appropriate cases, issuing reprimands or recommending disciplinary action.[10]

Recently, attention has been focused on allegations of prejudice against certain classes of litigants by some ALJs.[11] While there is no known evidence that such a problem is widespread, the Conference's view is that it is important to have a mechanism for handling complaints or allegations relating to ALJ misconduct, including allegations of bias or prejudice. The Conference, therefore, recommends that Chief ALJs, either individually or through an ALJ peer review group, receive and investigate such complaints or allegations, and recommend appropriate corrective or disciplinary actions. To the extent practicable, such investigation and the processing of any corrective or disciplinary recommendation should be expedited to protect affected interests and create public confidence in the process. Where appropriate, consensual resolutions are encouraged. The Conference also recommends that agencies publicize the existence of their complaint procedures, in published rules and procedures or in some other appropriate fashion, and inform complainants in a timely manner of the disposition of their complaints.

The Conference is also recommending that OPM assign the various responsibilities relating to ALJs to a specific unit within that agency. Such a unit would, among other things, have responsibility for overseeing personnel, hiring and performance matters involving Chief ALJs, thus providing them additional insulation from agency pressures. Because of the increased importance of the position of Chief ALJ under this proposal, Congress also should consider making the position subject to a term appointment, as it has done for Chief Judges of United States District Courts.

The Conference also recommends that proceedings before the Merit Systems Protection Board involving charges against ALJs be heard by a three-judge panel. Judging administrative law judges is a sensitive process, and the benefit of collegial decisionmaking in this context seems worth the added cost. The panel should be selected from a pool of ALJs. Currently, MSPB has only on ALJ. So long as this is the case, the pool should consist of ALJs from other agencies, but the panel in a particular case should not involve ALJs from the same agency as the respondent ALJ.

Policy Articulation

As discussed, the APA model of agency decisionmaking is based on the use of independent ALJs to find facts and to apply agency policy to those facts. This system requires that ALJs be granted independence as factfinders, but it also must ensure that agency policymakers are able to establish policies in an efficient manner for application by ALJs in individual cases. The methods available to agencies include promulgation of rules of general applicability, the use of a system of precedential decision,[12] or other appropriate practices, such as proper use of policy statements.[13] Such policy statements must be properly disseminated.

Where the agency has made its policies known in an appropriate fashion, ALJs and AJs are bound to apply them in individual cases. Policymaking is the realm of the agency, and the ALJ's (or AJ's) role is to apply such policies to the facts that the judge finds in an individual case.

The Concept of an ALJ Corps

There has been over the last decade considerable discussion of the concept of an ALJ corps. Although there have been differences among the specific proposals, the concept in general includes separating ALJs from individual agencies, and placing them in a new, separate agency. Recent legislative proposals provided, among other things, that new ALJs would be selected by a chief judge of the corps, and that ALJs would be divided into several general subject matter divisions (such as health and benefits; safety and environment; and communications, public utility and transportation regulation).[14]

The Conference discussed these recent legislative proposals to establish a centralized ALJ corps as a means of handling some of the issues addressed in this recommendation. Some of these recommendations are independent of such proposals; others are inconsistent with them. The Conference concluded that there is no basis at this time for structural changes more extensive than those proposed here.

Recommendation

I. Congressionally Mandated Use of ALJs and AJs[15]

A. When Congress considers new or existing programs that involve agency on-the-record adjudications, it should seek to preserve the uniformity of process and of qualifications of presiding officers contemplated by the APA, by providing for the use of administrative law judges (ALJs) in all appropriate circumstances.[16] In order to further this goal, Congress should consider converting certain existing administrative judge (AJ) positions[17] to ALJ positions. In determining the appropriateness of converting existing AJ positions to ALJ status and of requiring the use of ALJs in particular types of new adjudications, Congress should consider the following factors, if present, as indicia to weigh in favor of requiring ALJ status:

1. The cases to be heard and decided are likely to involve:

a. Substantial impact on personal liberties or freedom;

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[9] Such authorities might include OPM for certain lesser sanctions, and the Office of Special Counsel or MSPB in more serious cases.

[10] See 43 Op. Att'y Gen. 1 (1977) (discussing certain limitations on agency's authority to reprimand ALJs).

[11] See, e.g., U.S. GAO, Social Security: Racial Difference in Disability Decisions Warrants Further Investigation, GAO/HRD–92–56 (April 1992). Cf. Ninth Circuit Gender Bias Task Force, Preliminary Report (Discussion Draft) (July 1992) at 93–103 (discussing gender bias issues relating to disability determinations).

[12] See Conference Recommendation 89–8, "Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions," 1 CFR 305.89–8 (1992) ¶1 at n. 2.

[13] See Conference Recommendation 92–2, "Agency Policy Statements," 57 FR 30101, 30103 (1992), to be codified at 1 CFR 305.92–2.

[14] See S. 826 and H.R. 3910, 102d Cong.

[15] The recommendations in this Part I are interdependent with those of Parts II and III urging improvements in the selection and evaluation processes for ALJs.

[16] This recommendation is not intended to be seen as encouraging increased formalization of administrative adjudicatory processes.

[17] The term "administrative judge," as used here, includes non-ALJ hearing officers, whatever their title, who preside at adjudicatory hearings.

b. Orders that carry with them a finding of criminal-like culpability;

c. Imposition of sanctions with substantial economic effect; or

d. Determination of discrimination under civil rights or other analogous laws.

2. The procedures established by statute or regulation for the cases heard and decided are, or would be, the functional equivalent of APA formal hearings.

3. The deciders in such cases are, or ought to be, lawyers—taking into consideration the possibility that some programs might require other types of specialized expertise on the part of adjudicators or on panels of adjudicators.

4. Those incumbent AJs in such cases who are required to be lawyers already meet standards for independence, selection, experience, and compensation that approximate those accorded to ALJs.

B. When Congress determines that it should require ALJs to preside over hearings in specific classes of existing federal agency adjudications at which ALJs do not now preside, it should specify that those AJs presiding over such proceedings at that time who can satisfy the Office of Personnel Management's eligibility qualifications for ALJs be eligible for immediate appointments as ALJs.

C. Congress should provide that OPM should no longer be responsible for reviewing and ruling on agency requests for additional ALJ positions. Decisions relating to an agency's need for more or fewer ALJ positions should be made by the individual agencies through the normal resource allocation process.

II. ALJ Selection

A. Congress should authorize where required, and OPM should establish, a process for the selection of qualified ALJs by federal agencies that contains the following elements:

1. OPM should continue to administer the process for determining whether applicants are qualified to be on the register of eligibles for ALJ positions and for rating such applicants. OPM should ensure that all applicants appearing on the register are in fact qualified to fulfill the duties of an ALJ under applicable law, including that they have the capability and willingness to provide impartial, independent factfinding and decisionmaking. To the extent that this may require revising the examination process, OPM should make the appropriate changes.

2. Those applicants determined by OPM to be qualified should be listed on the register with their numerical scores noted. Agencies seeking to fill ALJ positions should be allowed to request a certificate containing the names of those applicants whose numerical ratings place them in the highest-ranking 50 percent of the register of eligible applicants. Agencies should have the discretion to request a certificate with a smaller number of percentage of the register. Agencies should also be given access to a computerized database containing the complete application files of those applicants on the certificate.

3. A hiring agency should be permitted to select any applicant from the certificate who, in the agency's opinion, possesses the qualifications for the particular position to be filled. An agency may request that OPM provide an additional number of names upon a showing of exceptional circumstances.

B. OPM and the hiring agencies should give a high priority to expanding recruitment of women and minority applicants for ALJ positions. OPM also should review its ALJ application criteria to determine whether its current method of assessing litigation experience is appropriate.

C. OPM immediately should implement Parts II (A)(1) and (B), which may involve revisions to the examination or scoring process. Pending implementation of the other recommendations in this Part, OPM should open the register application process as soon as possible, and keep it open continuously.

D. In order to implement the proposals in paragraphs II (A) and (B) above, Congress should abolish the veterans' preference in ALJ selection.

III. ALJ Evaluation and Discipline

Congress should authorize, where necessary, and OPM and the agencies that employ ALJs should establish, the following processes for assisting ALJs and the agencies that employ them to carry out their responsibilities to the public and to individual parties:

A. Organization

1. OPM should assign a specific unit the responsibility for (a) overseeing those matters concerning the selection of ALJs, (b) overseeing all personnel, hiring and performance matters that involve Chief ALJs, (c) acting on allegations of improper interference with decisional independence of ALJs, (d) conducting regular performance reviews of Chief ALJs, and (e) periodically publishing reports on the effectiveness with which OPM's responsibilities are performed and seeking recommendations as to how the program may be improved.

2. Each agency that employs more than one ALJ should designate a Chief ALJ, who is given the responsibility within the agency to do the tasks assigned to the Chief ALJ under this Part III.[18]

3. OPM should provide guidance and assistance to aid Chief ALJs fulfilling the responsibilities given to them under this Part III.

4. OPM and the agencies should ensure that Chief ALJs are insulated from improper agency influence when carrying out the responsibilities described in this Part III.[19]

B. Evaluation and Training

Chief ALJs should be given the authority to:

1. Develop and oversee a training and counseling program for ALJs designed to enhance professional capabilities and to remedy individual performance deficiencies.

2. Coordinate the development of case processing guidelines, with the participation of other agency ALJs, agency managers and, where available, competent advisory groups.

3. Conduct regular ALJ performance reviews based on relevant factors, including case processing guidelines, judicial comportment and demeanor, and the existence, if any, of a clear disregard of or pattern of nonadherence to properly articulated and disseminated rules, procedures, precedents, and other agency policy.

4. Individually, or through involvement of an ALJ peer review group established for this purpose, provide appropriate professional guidance, including oral or written reprimands, and, where good cause appears to exist, recommend that disciplinary action against ALJs be brought by the employing agency at the Merit Systems Protection Board (MSPB), based on such performance reviews.

C. Complaints About ALJs

Each agency that employs ALJs should set up a system for receiving and evaluating complaints or allegations of misconduct by an ALJ, including bias or prejudice.

1. The Chief ALJ in each agency, individually or through involvement of

[18] In agencies with large numbers of ALJs, the Chief ALJ might appropriately delegate some or all such responsibility to deputy or regional chief ALJs.

[19] Congress also should consider making the position of Chief ALJ subject to a term appointment. This suggestion does not result from a finding by the Conference that any number of current Chief ALJs are not functioning effectively. The Conference notes, however, that Chief Judges of United States District Courts are subject to term appointments and believes it is appropriate to consider whether a similar limitation should apply to Chief ALJs.

an ALJ peer review group established for this purpose, should be given responsibility for receiving and investigating such complaints.

2. If a Chief ALJ determines that ALJ misconduct occurred, the Chief ALJ should recommend that the agency take appropriate corrective action, or, in appropriate cases, recommend that disciplinary action against the ALJ be brought by the agency at the MSPB.

3. If a Chief ALJ determines that further investigation by another authority is warranted, he or she should refer the case to that authority.

4. Each agency should make known to interested persons in an appropriate fashion the existence of such complaint procedure.

5. Where allegations of misconduct implicate a Chief ALJ, they should be referred to OPM for such investigation and recommended action.

6. Complainants should be given notice of the disposition of their complaints.

D. Complaints by ALJs

Each agency that employs ALJs should set up a system for receiving and investigating allegations of unlawful agency infringement on ALJ decisional independence or other improper interference in the fulfillment of ALJ responsibilities. Such a system should be subject to OPM oversight. Where investigation reveals the probable occurrence of such an impropriety, the matter should be referred to the appropriate authority for review and recommended action designed to remedy the situation and prevent recurrence, including the issuance of oral or written reprimands and other appropriate sanctions.

E. MSPB Panels

MSPB should assign cases involving charges against ALJs to a three-judge panel of ALJs drawn from a pool. No judge on the panel should be from the same agency as the respondent ALJ.

IV. Policy Articulation

To ensure that ALJs and affected persons are aware of their responsibilities, agencies should articulate their policies through rules of general applicability, a system of precedential decisions, or other appropriate practices.[20] Congress, the President, and the courts should encourage such policy articulation.

V. The Concept of an ALJ Corps

Congress should not at this time make structural changes more extensive than those proposed here, such as those in recent legislative proposals to establish a centralized corps of ALJs.

§ 305.92–8 Administration of the Office of Juvenile Justice and Delinquency Prevention's Formula Grant Program (Recommendation No. 92–8).

In 1974 Congress enacted the Juvenile Justice and Delinquency Prevention ("JJDP") Act, which created the Office of Juvenile Justice and Delinquency Prevention ("OJJDP" or "the Office") within the U.S. Department of Justice. Among OJJDP's responsibilities, then and now, is that of administering a program of formula grants to states and local governments. While the overall purposes of the formula grant program were broadly framed,[1] the statute also required states to achieve several very specific substantive outcomes. Compliance with those mandates,[2] as well as with a variety of other administrative and procedural requirements, continues to determine eligibility for formula grant funds from OJJDP.

Monitoring for levels of state compliance, determining grant eligibility status, reviewing submitted plans and reports, and responding to technical assistance requests all fall to OJJDP's State Relations and Assistance Division (SRAD). Its administration of the formula grant program is guided by a substantial body of regulations, rules, policies and interpretations that OJJDP has developed over the years. Mechanisms such as waivers, exceptions, and de minimis criteria—characteristic features of many regulatory and grant programs—have been adopted by either Congress or the agency over the years.

The Conference, in response to a request from OJJDP, studied OJJDP's administration of the formula grant program, including its efforts to monitor and assist state compliance with the statutory mandates and requirements. As part of this study, the Conference examined issues of communication and consultation with states, coordination and collaboration at various levels of government, consistency and clarity of policy elaboration, staffing, and training.

Recommendation

I. Policymaking

(a) The Department of Justice should ensure that overall policy, priorities, and objectives for all Federal juvenile delinquency programs and activities are coordinated so that related activities and programs advance efforts by OJJDP and the states to achieve and maintain compliance with the substantive mandates of the JJDP Act.

(b) OJJDP should (1) create, and ensure adherence to, internal operating guidelines and (2) assign formula grant staff responsibilities, so that important issues of policy or interpretation are identified and dealt with promptly. Once such an issue has been finally resolved, the Office's policy or interpretation should be made available promptly by appropriate means—whether the **Federal Register** or otherwise—to all state juvenile justice specialists,[3] the National Coalition of State Juvenile Justice Advisory Groups,[4] and other groups and entities, that may have a substantial interest in the policy or interpretation.

(c) In all instances where issues of policy or interpretation may substantially affect interested persons or organizations or the interests of one or more states, the Office should engage in pre-decisional consultation with the affected persons or entities. OJJDP, in selecting a mode of consultation, should take into account the scope and impact of the policy or interpretation and other matters relevant to effective communication of views and efficient decisionmaking.

(d) The Office should ensure that the reasons underlying its policies and

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[20] See generally Conference Recommendation 71–2, "Articulation of Agency Policies," 1 CFR 305.71–2 (1992); Conference Recommendation 87–7, "A New Role for the Social Security Appeals Council," 1 CFR 305.87–7 (1992); Conference Recommendation 89–8, "Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions," 1 CFR 305.89–8 (1992); Conference Recommendation 92–2, "Agency Policy Statements," 57 FR 30101, 30103 (1992), to be codified at 1 CFR 305.92–2.

[1] Funds may be used for a broad variety of programs and services related to juvenile justice and the treatment and prevention of juvenile delinquency. State participation in the formula grant program is strictly voluntary, with state funding levels determined on the basis of relative population under age 18.

[2] The three substantive mandates are as follows:

1. Juveniles who are accused or convicted of status offenses (conduct not considered criminal if committed by an adult, such as running away or truancy) and nonoffenders (such as abused, dependent, or neglected children) must not be placed in secure detention or secure correctional facilities.

2. Juveniles who are accused or adjudicated of delinquency or status offenses must not have regular contact with incarcerated adults where both juveniles and adults are confined in the same institution.

3. No juvenile may be detained or confined in any adult jail or lockup.

[3] State juvenile justice specialists serve as the states' primary staff liaison with OJJDP.

[4] The Coalition consists of the members of the state advisory groups that are appointed by the governors of all states participating in the formula grant program. The JJDP Act provides for the Coalition to play an advisory role to Congress and the Administrator of OJJDP on program operations and related matters.

interpretations, including changes and clarifications, are clearly explained in documents announcing them.

(e) The Office should develop adequate internal procedures to ensure that consistent advice regarding the requirements applicable to the formula grant program is afforded to affected states by the OJJDP state representatives.

2. OJJDP Staffing

(a) The Office should have a general attorney assigned primarily to advising OJJDP state representatives,[5] the SRAD Director, and OJJDP's Administrator concerning general legal issues arising in OJJDP's grant administration.

(b) The Office should take steps to ensure that the evaluation of monitoring data and other information relevant to determining compliance and waiver of grant termination is even-handed and takes into full account Office policies and interpretations. In so doing, the Office should consider reestablishing the position of "monitoring coordinator."

(c) The Office should refrain from so frequently shifting the state assignments of the OJJDP state representatives that the value of familiarity with state programs is lost.

3. Background and Training of OJJDP and State Formula Grant Personnel

(a) The Office should accord due weight to prior general training or experience in the area of juvenile justice and grants management in hiring applicants for the position of state representative.

(b) The Office should train both new and experienced state representatives to ensure that they:

(i) Are fully informed with regard to their roles and responsibilities;

(ii) Have adequate knowledge regarding the Office's procedures and practices for the conduct of their work;

(iii) Have a firm working knowledge of the relevant state and Federal statutes, regulations, and guidelines applicable to the formula grant program; and

(iv) Are kept apprised of recent developments in relevant Office policy and in the area of juvenile justice generally that may affect their work as state representatives.

(c) The Office should ensure that adequate training is provided to states' juvenile justice specialists for their role in the implementation of the formula grant program. This should include regularly scheduled training programs for new and experienced state juvenile justice specialists. The programs should (i) be timed so that necessary training is provided soon after new specialists take their positions, and (ii) make sure that training materials are updated expeditiously to reflect new developments in Office policy and interpretation, juvenile justice generally, and state compliance efforts.

4. Information Dissemination to States

(a) As part of its research and program development functions, the Office should collect information that may be helpful to the states in complying with the statutory mandates; the Office should disseminate this information to state juvenile justice specialists in a timely fashion and accessible format.

(b) The Office should create procedures to ensure that states will be (i) fully consulted in a timely manner regarding applications for special emphasis grants awarded to projects in their respective jurisdictions and (ii) regularly informed about the progress, results, and lessons of those projects.

(c) The Office should advise all states in a timely fashion concerning promising approaches to achieving and maintaining compliance with the substantive mandates of the JJDP Act.

(d) The Office should ensure that state-submitted monitoring data and other information by which it determines compliance and waiver are widely available both to the states and the public generally.

(e) A study should be undertaken to determine whether restructuring of, or improving communications between, the four divisions that have responsibilities for establishing juvenile delinquency and prevention programs, evaluating effective strategies, fostering promising approaches, and disseminating information would help the Office achieve its goals.

5. Enforcement and Administration

To enhance administration of the program, Congress should repeal the existing provision of the JJDP Act that authorizes waiver of the requirement that states submit annual monitoring reports to OJJDP. It should also retain the current requirement that the Office periodically audit state monitoring systems to ensure their reliability.

§ 305.92–9 De Minimis Settlements Under Superfund (Recommendation No. 92–9).

In the last decade, following the passage in 1980 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),[1] commonly referred to as Superfund, the nation has begun focusing its attention on the cleanup of hazardous waste sites. The task is a daunting one. There currently are approximately 1200 sites on the National Priorities List (NPL), the list of most hazardous sites, and it is likely that many more will be added to this list in the coming decades. The average cleanup cost at each of these sites is about $25 million. The aggregate cost of remedying the hazardous waste problem has been placed at several hundred billion dollars.

Joint and several liability for these cleanup costs has been imposed on a very broad set of parties—practically any party that had any connection with hazardous substances placed at a site in need of a cleanup, as well as owners and operators of contaminated facilities. Potentially responsible parties, known as PRPs, at typical Superfund sites include not only large industrial firms, but an array of small entities. Under the governing contribution rule, responsibility does not depend on the size of the firm, but rather depends generally on the firm's hazardous waste contribution at the site. Some PRPs therefore bear a large share of the liability at a site because they generated a large proportion of the hazardous substances. Other PRPs, which generated a relatively small proportion, may be responsible for only a few thousand dollars in cleanup costs. The process for apportioning the cleanup costs at a site gives rise to substantial transaction costs, principally legal fees and technical consulting costs. Parties that are responsible for only a small share of the cleanup costs might have to disburse several times this amount in transaction costs.

Congress expressed concern about this situation in 1986 when it reauthorized the program and substantially amended the statute. The Superfund Amendments and Reauthorization Act of 1986 (SARA),[2] included provisions designed to make it easier for such "de minimis parties" to enter into early settlements with EPA, thereby limiting their transaction costs.

SARA set forth a far-reaching scheme for imposing liability for the cleanup of hazardous waste sites. The liability provisions are triggered by the release or threat of release of hazardous substances into the environment. For each site, the

[5] OJJDP state representatives serve in a liaison role between OJJDP and the states, communicating and interpreting federal policy, reviewing state plans and performance, and providing technical assistance to state agencies.

[1] Pub. L. No. 96–510, 94 Stat. 2767 (1980) (codified as amended at 42 U.S.C. §§ 9601–9675).

[2] Pub. L. No. 99–499, 100 Stat. 1613 (1986). This law generally reflects the pro-negotiation approach urged by the Conference in Recommendation 84–4, "Negotiated Cleanup of Hazardous Waste Sites under CERCLA" (1984).

statute establishes four categories of liable parties: The generators of the hazardous substances present at the site, the transporters of these substances to the site, the current owner of the site, and prior owners during whose period of ownership there was disposal of hazardous substances at the site.[3] These parties are liable for the costs of cleanup of the site, as well as for damage to natural resources under the control of the Federal or state governments, or Indian tribes.[4]

The language of the statute has the effect of imposing a strict liability rather than a negligence standard. Moreover, current law holds parties jointly and severally liable if the harm at the site is indivisible. Under the statute, PRPs held jointly and severally liable can seek contribution from other PRPs. The existence of joint and several liability is significant in the Superfund context because, given the significant periods of time—often several decades—between the disposal of hazardous substances and the cleanup, it is particularly likely that some liable parties will not be found, or will be insolvent. The remaining PRPs will then have to bear a disproportionate share of the costs.

The statute provides a limited set of defenses. Generally, a party can escape liability only if it can show by a preponderance of the evidence that the release or threat of release was caused solely by an act of God, an act of war, an act or omission of a third party, or a combination of these causes. Only the third-party defense has been of practical significance. In addition to showing causation by a third party, a PRP seeking to escape liability must show that (i) it took due care with respect to the hazardous substances, (ii) it took precautions against foreseeable acts or omissions of the third party, and (iii) such acts or omissions did not occur in connection with a contractual relationship with the PRP. So, for example, a generator cannot escape liability simply by showing that the problem was caused by the transporter with which it contracted for the disposal of the wastes.

To understand the context for de minimis settlements, it is important to review both the process of cleanup of hazardous waste sites and the allocation of responsibility for this cleanup among EPA and the PRPs. One of the most compelling reasons for offering early settlements to parties who bear only a small share of the liability is the very long time (averaging 12 years) that elapses between the discovery of a site and its ultimate cleanup. Settling with de minimis parties relatively early in this process can save them substantial legal and consulting costs.

The allocation of responsibility between EPA and the major PRPs at a particular site is also of critical importance. Many of the issues raised by a de minimis settlement concern its effect on subsequent settlements pursuant to which the major parties agree to undertake the cleanup of the site.

The early stages in the Superfund process involve the screening of sites to determine which pose the most serious health problems, and should therefore become the focus of EPA's attention. The later stages involve the cleanup of these sites. Obviously, the call for de minimis settlements during the early stages of the process is more compelling because the process is a slow one.

Congress translated these concerns into statutory provisions encouraging settlements in general[5] and de minimis settlements in particular.[6] With regard to de minimis settlements, the statute provides that "whenever practicable and in the public interest," the Administrator "shall as promptly as possible reach a final settlement with a potentially responsible party * * * if such settlement involves only a minor portion of the response costs at the facility." In addition, to qualify for de minimis status, generators and transporters must show that the amount and the effect of their hazardous waste contribution are both minimal in comparison to other hazardous substances at the facility.

Landowners constitute a unique class of PRPs. They may invoke an "innocent landowner" third-party defense to escape liability if they can establish that they (i) "did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility," (ii) "did not contribute to the release or threat of release of a hazardous substance at the facility through any act or omission," and (iii) purchased the property without "actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substances." If they elect, instead of pursuing this defense, to limit their liability by a settlement, they may do so. Since such settlements are entered into under the statutory provisions applicable to do minimis settlements, these landowners are customarily referred to as "de minimis landowner" PRPs.

This recommendation identifies several procedural steps that can be taken by the Environmental Protection Agency to improve the functioning of the de minimis settlement program.

As a general principle, EPA should establish procedures and incentives to negotiate de minimis settlements as a standard practice at all multi-party Superfund sites involving de minimis parties. The Conference's study indicates that the vast majority of de minimis settlements have been entered relatively late in the process, and that the majority of the regional offices have shown little interest in undertaking earlier settlements. They frequently have favored resolving the liability of de minimis parties as part of global settlements pursuant to which the major parties undertake cleanups by requiring de minimis parties to negotiate directly with the major parties to determine their contribution to the cleanup cost. Paragraph 1 expresses the Conference's belief that transaction costs can be reduced significantly by settling with de minimis parties rather than seeking de minimis settlements as part of a global settlement.

The predominant approach to de minimis settlements taken by EPA regional offices has been to wait for groups of de minimis parties to form and take the first step in proposing settlements. However, the formation of such groups requires the expenditure of transaction costs by private parties and can take considerable time, and such group might not represent the smaller de minimis parties that have the greatest interest in settlement. Paragraph 2 recommends that EPA's regional offices take a more active role in seeking such settlements. The Conference also recognizes, however, that reasonable limitations on the negotiation process may be appropriate to avoid unduly protracted negotiations.

The study found significant differences in the approaches of the regional offices, and even across sites in the same region, due to the lack of concrete guidance on several important issues. Perhaps the most significant example is the variation in the volumetric determinant used to determine de minimis status. This lack of uniformity increases the incentives for parties to protest the terms of individual settlements, and increases the probability that such settlements

[3] 42 U.S.C. 9607(a). Under a limited set of circumstances a prior owner can be liable even if there was no disposal during its period of ownership. Liability will attach if the prior owner had actual knowledge of the release or threatened release when it owned the property, and transferred it without disclosing such knowledge. 42 U.S.C. 9607(35)(C).

[4] 42 U.S.C. 9607(a), (f)(1).

[5] 42 U.S.C. § 9622.

[6] 42 U.S.C. § 9622(g).

could be successfully challenged in court. Paragraph 3(a) addresses this concern.

Paragraph 3(b) recognizes that, while current policy guidelines on de minimis landowner settlements contemplate some payment, they do not specify either how to compute this payment or its relationship to estimated costs of cleanup. Such guidelines are necessary because the current "innocent landowner" guidance does not provide any assistance to the regional offices in determining an appropriate settlement figure for such landowners.

Currently, settlement documents are dispersed throughout the regions, making it difficult to determine both the extent to which de minimis settlements are used and the content of the settlements reached. Assurance that similarly situated parties are treated similarly requires knowledge of what actual practice has been, and any efforts to standardize the practice would benefit from knowledge of the variants already employed. Paragraph 3(c) urges creation of a central repository of such documents to address this need.

The explanation given most frequently by the regional offices as to the impracticality of early de minimis settlements is the lack of sufficiently reliable information on cleanup costs. EPA's recent guidance document has attempted to deal with this question on a regional level. Paragraph 4(a) suggests that this task is better accomplished on the national level. In general, there is no reason for a regional office to confine itself to its own sites in determining the costs of similar cleanups, as the inventory of comparable sites that have progressed sufficiently in the cleanup process may be small or nonexistent. Furthermore, there is no central repository for de minimis settlement documents, which might contain relevant data, and no EPA database contains their full terms. While this information can generally be obtained from the individual regional offices, this process is cumbersome and time-consuming.

An element over which there is substantial conflict among EPA and the de minimis and major parties is the premium to be charged in exchange for a waiver of any cost overrun and the risk that future events may trigger the possibility of further action by EPA against a party that has already settled ("reopeners"). The study found wide variation, ranging from approximately 50% to 250%, not readily explained merely by the different stages at which the settlements were entered. Moreover, there does not appear to be a standardized method for calculating premiums. Paragraph 4(b), like paragraph 3(a), intended to reduce the potential for conflict by standardizing the approach.

In general, earlier settlements will be based on less accurate estimates of ultimate cleanup costs than settlement reached at later stages of the process. Paragraph 4(c) suggests that settlements, at the time they are reached, should represent a fair allocation of expected burdens.

The study found some evidence of confusion as to whether EPA can set up an account to finance a cleanup in cases in which it will not perform the cleanup itself and negotiations with the major parties are not sufficiently advanced. In these cases, the funds are generally placed in the Superfund and are not made available to finance a later cleanup by the major parties. These parties, understandably, object to this outcome, and the resulting friction is one of the reasons why several of the regional offices favor global settlements. Paragraph 5 suggests that EPA headquarters seek mechanisms to provide that an appropriate portion of the proceeds from de minimis settlements benefit the parties that take responsibility for the cleanup. Appropriate benefits might include amounts paid for future cleanup costs and premium payments.

Recommendation

1. EPA should make further efforts to establish procedures and incentives to negotiate de minimis settlements as a standard practice at all multi-party Superfund sites involving de minimis parties. EPA should not rely on global settlements as the preferred mechanism for resolving the liability of de minimis parties.

2. EPA's regional offices should actively seek de minimis settlements by informing potentially responsible parties (PRPs) of their potential eligibility and circulating a draft settlement agreement as soon as the required statutory findings can be made.[7] These steps should be taken as soon as is practicable, but in any event no later than the time EPA completes the "waste-in list," which identifies the type and quantity of waste contributed to a site by each PRP. In undertaking settlement negotiations with de minimis parties, EPA regional office should be permitted to impose reasonable limitations on the negotiation process.

3. EPA headquarters should:

(a) Make further efforts to standardize the general terms of de minimis settlements and should establish a procedure to determine site-specific terms,

(b) Provide guidelines for the determination of appropriate payments and terms in de minimis landowner settlements, and

(c) Create and maintain a central repository of de minimis settlement documents, readily accessible to the public.

4. To facilitate de minimis settlements, EPA headquarters should:

(a) Establish a database and methodology to assist and guide the regional offices in estimating site cleanup costs,

(b) Establish principles for determining premiums (additional fees charged to settling parties in exchange for immunity against reopening of their cases) applicable at different stages in the process, and

(c) Make clear that regional offices should seek settlements that, at the time of settlement, represent a fair allocation of expected burdens.

5. To enhance the acceptability of de minimis settlements, EPA headquarters should, to the extent permitted by law, establish mechanisms to ensure that the parties that take responsibility for the cleanup receive appropriate benefits from the proceeds of de minimis settlements.

3. The editorial note preceding Conference recommendations is revised to read as follows:

Note: For an explanation of the publication policy regarding these recommendations, see § 304.2(a) of this chapter. Copies of the texts of Recommendations not published in part 305 may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone: (202) 254–7020.

4. Part 305 is amended by removing the texts (but not the titles or **Federal Register** citations) of the following sections and, in some cases, inserting explanatory notes:

§ 305.79–4 Appropriate Restrictions on Participation by a Former Agency Official in Matters Involving the Agency (Recommendation No. 79–7).

Note: This recommendation has become moot as a result of the Ethics Reform Act of 1989, Pub. L. 101–194, 103 Stat. 1716.

§ 305.83–1 The Certification Requirement in the Contract Disputes Act (Recommendation No. 83–1).

Note: Congress corrected the problem identified by this recommendation in the Court of Federal Claims Technical and Procedural Improvement Act of 1992, Pub. L. 102–572, Title IX.

[7] See 42 U.S.C. 9622(g).

§ 305.84–4 Negotiated Cleanup of Hazardous Waste Sites Under CERCLA (Recommendation No. 84–4).

Note: This recommendation was substantially implemented by EPA memorandum and by the Superfund Amendments and Reauthorization Act of 1986.

§ 305.84–6 Disclosure of Confidential Information Under Protective Order in International Trade Commission Proceedings (Recommendation No. 84–6).

§ 305.87–1 Priority Setting and Management of Rulemaking by the Occupational Safety and Health Administration (Recommendation No. 87–1).

Note: This recommendation contains advice to OSHA on internal management improvements to its rulemaking; Recommendation 87–10, which is preserved in the Code of Federal Regulations, addresses broader reforms of OSHA rulemaking.

§ 305.87–12 Adjudication Practices and Procedures of the Federal Bank Regulatory Agencies (Recommendation No. 87–12).

Note: This recommendation was implemented by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, 101 Stat. 183, and by subsequent agency actions.

§ 305.88–4 Deferred Taxation for Conflict-of-Interest Divestitures (Recommendation No. 88–4).

Note: This recommendation was implemented by the Ethics Reform Act of 1989, Pub. L. 101–194, 103 Stat. 1716.

§ 305.88–8 Resolution of Claims Against Savings Receiverships (Recommendation No. 88–8).

Note: The issues addressed by this recommendation were resolved by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, 101 Stat. 183.

§ 305.89–6 Public Financial Disclosure by Executive Branch Officials (Recommendation No. 89–6).

Note: This recommendation has become moot as a result of the Ethics Reform Act of 1989, Pub. L. 101–194, 103 Stat. 1716.

PART 310—MISCELLANEOUS STATEMENTS

1. The authority citation for part 310 is revised to read as follows:

Authority: 5 U.S.C. 591–596.

2. Part 310 of title 1 CFR is amended by removing the text (but not the title or Federal Register citation) of the following section:

§ 310.14 Statement on Mass Declsionmaking Programs: The Alien Legalization Experience.

Dated: December 21, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–31365 Filed 12–28–92; 8:45 am]

BILLING CODE 6110–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF26

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is deleting Horry County, South Carolina, from the survey area for the Southeastern North Carolina appropriated fund wage area. This action is being taken because Myrtle Beach Air Force Base (AFB), which is located in Horry County, is scheduled to close on March 31, 1993. When Myrtle Beach AFB closes, there will no longer be any Federal Wage System (FWS) appropriated fund employees in the county and no further reason to survey the county. Deleting Horry County will make future surveys in the area easier to administer and less costly.

DATES: This final rule becomes effective on January 12, 1993. In view of its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before January 28, 1993.

ADDRESS: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barbara Fudge, (202) 606–2848.

SUPPLEMENTARY INFORMATION: Horry County, South Carolina, was added to the survey area for the Southeastern North Carolina wage area in 1984 under a one-time application of stated criteria to certain counties identified by the Federal Prevailing Rate Advisory Committee. The county was added because there were in the county in 1984 at least 100 FWS employees subject to the regular schedule and at least 10 establishments within the scope of regular survey specifications. Myrtle Beach AFB, which is located in Horry County and is the only employer of FWS appropriated fund employees in the county, is scheduled for closure on March 31, 1993. The closure of Myrtle Beach AFB eliminates the rationale for having Horry County in the wage area survey. In addition, the Department of Defense (DOD) Wage Fixing Authority reports that a review of the last full-scale survey indicates that elimination of data from firms located in Horry County would have no significant impact on the survey sample yield. The deletion of Horry County has the consensus support of the DOD Wage Committee and the Federal Prevailing Rate Advisory Committee.

Under sections 553(b)(3)(B) and 553(d)(3) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The closure of Myrtle Beach AFB removes the rationale for retaining Horry County as part of the survey area, and its deletion would have no significant effect on the survey findings. The regulation is being made effective immediately because the next full-scale survey for the Southeastern North Carolina wage area is scheduled to begin on January 12, 1993.

If substantive comments are received, OPM will respond to those comments in a future document.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for 5 CFR part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Public Law 92–502.

2. Appendix C to subpart B is amended by revising the wage area listing for the Southeastern North Carolina wage area to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Southeastern North Carolina

Survey Area

North Carolina:

Brunswick	Lenoir
Carteret	New Hanover
Columbus	Onslow
Craven	Pamlico
Jones	Pender

Area of Application. Survey area plus:

North Carolina:

Beaufort	Hyde
Bertie	Martin
Dare	Pitt
Duplin	Tyrrell
Greene	Washington
Hertford	

South Carolina:

Horry

* * * * *

[FR Doc. 92–31420 Filed 12–28–92; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 532

RIN 3206–AF27

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to abolish the Horry, South Carolina, Nonappropriated Fund (NAF) Wage Area. The Horry wage area is composed of Horry County, South Carolina (survey area), and New Hanover County, North Carolina (area of application). This regulation redefines Horry County, South Carolina, to the Charleston, South Carolina, wage area as an area of application and New Hanover County, North Carolina, to the Onslow, North Carolina, wage area as an area of application. Because of downsizing associated with a scheduled base closure, the Horry County, South Carolina, survey area will no longer have the required minimum of 26 NAF wage employees, and no local activity within the Horry wage area has the capability to conduct a wage survey.

DATES: This interim rule becomes effective on January 1, 1993. Comments must be received on or before January 28, 1993.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts (202) 606–2848.

SUPPLEMENTARY INFORMATION: Horry County, South Carolina, is presently defined as a separate wage area for NAF pay-setting purposes. The Department of Defense notified OPM that the host activity for the Horry wage area, Myrtle Beach Air Force Base (AFB), is scheduled to close on March 31, 1993. Downsizing is underway, and most NAF activities are scheduled to close by the end of December 1992. Myrtle Beach AFB will not have the capability to conduct the full-scale wage survey for the Horry, South Carolina, wage area that is required to begin in January 1993, in accordance with appendix B to subpart B of part 532, title 5, Code of Federal Regulations.

In addition, Horry County, South Carolina, will no longer meet the regulatory criteria for an established nonappropriated fund wage area under 5 CFR 532.219. Myrtle Beach AFB and Fort Fisher are the only installations with NAF employment in the Horry wage area. As of March 31, 1993, Myrtle Beach AFB will be closed. Fort Fisher, located in New Hanover County, North Carolina, does not employ the minimum of 26 employees required to establish an NAF wage area. Thus, Horry and New Hanover Counties must both be redefined as areas of application to existing wage areas for pay-setting purposes.

The following criteria are taken into consideration when two or more counties are to be combined to constitute a single wage area:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

Geographically, Myrtle Beach AFB in Horry County is closest in proximity (approximately 145 km (90 miles)) to Charleston Naval Air Station in Charleston County, the survey area for the Charleston, South Carolina, wage area. The next closest wage area activity is approximately 217 km (135 miles) distant in Onslow County, North Carolina. Transportation facilities also favor definition to Charleston. Commuting patterns indicate 38,113 workers live and work in Horry County and that 92 Horry residents commute to work in the Richland, South Carolina, wage area. Residents do not commute to any other FWS wage area. Horry is most similar to Onslow County in overall population. However, no one wage area is clearly most similar to Horry in private employment in major industry categories and the kinds and sizes of private industrial establishments.

Geographically, Fort Fisher in New Hanover County is closest in proximity (approximately 97 km (60 miles)) to Camp LeJeune in Onslow County, North Carolina, the survey area for the Onslow, North Carolina, wage area. The next closest wage area activity is approximately 145 km (90 miles) distant in Wayne County, North Carolina. Transportation facilities and commuting patterns also favor Onslow. Although the majority of workers live and work in New Hanover County (36,414), 196 New Hanover residents commute to work in the Onslow, North Carolina, wage area. Residents do not commute from New Hanover to any other FWS wage area. New Hanover is most similar to Onslow County in overall population. However, no one wage area is clearly most similar to New Hanover in private employment in major industry categories and the kinds and sizes of private industrial establishments.

Based on a review of the criteria for establishing and combining wage areas, we find that the Horry, South Carolina, wage area should be abolished on January 1, 1993. In addition, on March 31, 1993, Horry County, South Carolina, should be redefined as an area of application to the Charleston, South Carolina, wage area and New Hanover County, North Carolina, should be redefined as an area of application to the Onslow, North Carolina, wage area. Thus, employees paid from the Horry, South Carolina, wage schedule will remain on their current schedule until the Myrtle Beach AFB officially closes on March 31, 1993. The Federal Prevailing Rate Advisory Committee (FPRAC) reviewed this request and recommended approval by consensus.

In addition, these regulations include a technical amendment to correct an oversight in appendix B to subpart B of part 532 by deleting the listing for the former Imperial, California, wage area in conformance with the previous abolishment of that wage area in appendix D to subpart B.

Pursuant to sections 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed

rulemaking to accommodate changes necessitated by DOD downsizing and expedite this wage area redefinition. By December 1992, Horry County, South Carolina, will not meet the current criteria for establishing nonappropriated fund wage areas. Myrtle Beach AFB will not have the capability to conduct the Horry County full-scale survey that is required to begin in January 1993, and no local activity within the Horry wage area has the capability to conduct a wage survey.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management
Douglas A. Brook,
Acting Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Public Law 92–502.

2. In Appendix B to subpart B, the listing for the Horry, South Carolina, and Imperial, California, wage areas are removed.

3. Appendix D to subpart B is amended by removing the listing for the Horry, South Carolina, wage area and by revising the wage area listings for Onslow, North Carolina, and Charleston, South Carolina, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

North Carolina
Onslow
Survey Area

North Carolina:
Onslow

Area of Application. Survey area plus:
North Carolina:
New Hanover [1]

* * * * *

South Carolina
Charleston
Survey Area

South Carolina:
Charleston

Area of Application. Survey area plus:
South Carolina:
Berkeley
Horry [1]

* * * * *

[1] Effective date March 31, 1993.

[FR Doc. 92–31421 Filed 12–28–92; 8:45 am]
BILLING CODE 6325–01–M

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5 CFR Part 835

RIN 3206–AE72

Debt Collection

AGENCY: Office of Personnel Management.
ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to establish a new part 835 dealing entirely with debt collection. Collection procedures for both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) will be combined in this part. This regulation establishes a subpart F covering procedures whereby delinquent debts owed to OPM will be referred to the Internal Revenue Service (IRS) for collection by offset against Federal income tax refunds under 31 U.S.C. 3720A. These regulations are necessary for OPM to participate in the Tax Refund Offset Program for the 1992 tax year. Separate regulations will be prepared to cover subparts A through E of part 835.

EFFECTIVE DATE: December 29, 1992.
FOR FURTHER INFORMATION CONTACT: Patricia Rochester, (202) 606–0299.
SUPPLEMENTARY INFORMATION: On October 5, 1992, we published (at 57 FR 45753) proposed regulations describing the procedures OPM would use to refer past-due legally enforceable debts to the IRS for offset against the Federal income tax refunds of persons owing debts to OPM. Interested parties were given 30 days to comment on the proposed regulations. Aside from several questions concerning the applicability of the proposed regulations to other Federal agencies and employees, we did not receive any comments. We did not make any substantive changes to the proposed regulations.

Under section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately because the Internal Revenue Service requires final regulations to be in effect before it will allow participation in the Tax Refund Offset Program. OPM must have final regulations before the end of the year in order to meet its commitment to participate in the Program for the 1992 tax year.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities because it will only affect private persons who owe debts to the Civil Service Retirement and Disability Fund.

List of Subjects in 5 CFR Part 835

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Survivors.

U.S. Office of Personnel Management.
Douglas A. Brook,
Acting Director.

Accordingly, OPM is adding a new 5 CFR part 835 to read as follows:

PART 835—DEBT COLLECTION

Subparts A–E—[Reserved]

Subpart F—Collection of Debts by Federal Tax Refund Offset

Sec.
835.601 Purpose.
835.602 Past-due legally enforceable debt.
835.603 Notification of intent to collect.
835.604 Reasonable attempt to notify.
835.605 OPM action as a result of consideration of evidence submitted in response to the notice of intent.
835.606 Change in notification to Internal Revenue Service.
835.607 Administrative charges.

Authority 5 U.S.C. 8347(a) and 8461(g). Subpart F also issued under 31 U.S.C. 3720A.

Subparts A–E—[Reserved]

Subpart F—Collection of Debts by Federal Tax Refund Offset

§ 835.601 Purpose.

This subpart establishes procedures for OPM to refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to OPM. It specifies the agency procedures and the rights of the debtor applicable to claims referred under the Federal Tax Refund Offset Program for the collection of debts owed to OPM.

§ 835.602 Past-due legally enforceable debt.

A past-due legally enforceable debt for referral to the IRS is a debt that—

(a) Resulted from—

(1) Erroneous payments made under the Civil Service Retirement or the Federal Employees' Retirement Systems; or

(2) Unpaid health or life insurance premiums due under the Federal Employees' Health Benefits or Federal Employees' Group Life Insurance Programs; or

(3) Any other statute administered by OPM;

(b) Is an obligation of a debtor who is a natural person;

(c) Except in the case of a judgment debt, has been delinquent at least 3 months but not more than 10 years at the time the offset is made;

(d) Is at least $25.00;

(e) With respect to which the individual's rights described in 5 CFR 831.1301 through 831.1309 have been exhausted;

(f) With respect to which either:

(1) OPM's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under Title 11 of the United States Code; or

(2) OPM can clearly establish at the time of the referral that the automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(g) Cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Is not eligible for administrative offset under 31 U.S.C. 3716(a) because of 31 U.S.C. 3716(c)(2), or cannot currently be collected as an administrative offset by OPM under 31 U.S.C. 3716(a) against amounts payable to the debtor by OPM; and

(i) Has been disclosed by OPM to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.

§ 835.603 Notification of intent to collect.

(3) *Notification before submission to the IRS.* A request for reduction of an IRS income tax refund will be made only after OPM makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by IRS tax refund offset.

(b) *Contents of notice.* OPM's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(1) The amount of the debt;

(2) That unless the debt is repaid within 60 days from the date of OPM's Notice of Intent, OPM intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as a Federal income tax refund by an amount equal to the amount of the debt and all accumulated interest and other charges;

(3) A mailing address for forwarding any written correspondence and a contract name and a telephone number for any questions; and

(4) That the debtor may present evidence to OPM that all or part of the debt is not past due or legally enforceable by—

(i) Sending a written request for a review of the evidence to the address provided in the notice;

(ii) Stating in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable;

(iii) Including in the request any documents that the debtor wishes to be considered or stating that the additional information will be submitted within the remainder of the 60-day period.

§ 835.604 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, OPM must have used a mailing address for the debtor obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) within a period of 1 year preceding the attempt to notify the debtor, unless OPM received clear and concise notification from the debtor that notices from the agency are to be sent to an address different from the address obtained from IRS. Clear and concise notice means that the debtor has provided the agency with written notification, including the debtor's name and identifying number (as defined in 26 CFR 301.6109–1), and the debtor's intent to have the agency notices sent to the new address

§ 835.605 OPM action as a result of consideration of evidence submitted as a result of the notice of intent.

(a) *Consideration of evidence.* If, as a result of the Notice of Intent, OPM receives notice that the debtor will submit additional evidence or receives additional evidence from the debtor within the prescribed time period, any notice to the IRS will be stayed until OPM can—

(1) Consider the evidence presented by the debtor; and

(2) Determine whether or not all or a portion of the debt is still past due and legally enforceable; and

(3) Notify the debtor of its determination.

(b) *Notification to the debtor.* Following review of the evidence, OPM will issue a written decision notifying the debtor whether OPM has sustained, amended, or canceled its determination that the debt is past-due and legally enforceable. The notice will advise the debtor of any further action to be taken and explain the supporting rationale for the decision.

(c) *OPM action on the debt.* (1) OPM will notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund, if it sustains its decision that the debt is past-due and legally enforceable. OPM will also notify the debtor whether the amount of the debt remains the same or is modified.

(2) OPM will not refer the debt to the IRS for offset against the debtor's Federal income tax refund, if it reverses its decision that the debt is past-due and legally enforceable.

§ 835.606 Change in notification to Internal Revenue Service.

(a) Except as noted in paragraph (b) of this section, after OPM sends IRS notification of an individual's liability for a debt, OPM will promptly notify IRS of any change in the notification, if OPM—

(1) Determines that an error has been made with respect to the information contained in the notification;

(2) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the IRS for offset; or

(3) Receives notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(b) OPM will not notify the IRS to increase the amount of a debt owed by

a debtor named in OPM's original notification to the IRS.

(c) If the amount of a debt is reduced after referral by OPM and offset by the IRS, OPM will refund to the debtor any excess amount and will promptly notify the IRS of any refund made by OPM.

§ 835.607 Administrative charges.

All administrative charges incurred in connection with the referral of the debts to the IRS will be assessed on the debt and thus increase the amount of the offset.

[FR Doc. 92-31599 Filed 12-28-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV-92-044FR]

Irish Potatoes Grown in Colorado; Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends, for an indefinite period, a provision of the marketing order requiring the Colorado Potato Committee (Committee) to be composed of two members and alternate members from each of three area committees. The production area is divided into three regulatory areas and provision is made for the area committees to act as administrative agencies for each of the areas. Area 1 has not been regulated for years, and is not expected to begin commercial interstate potato marketing in the foreseeable future. Because of this, the Committee has had to operate with only four members and alternate members. To allow the Committee to operate at its maximum membership level of six members and alternate members, this final rule also reapportions Committee membership by adding one member and alternate member each to the active Area 2 and 3 committees and not providing representation for the inactive Area 1 committee. In addition, the references to Area 1 are also suspended in the marketing order and regulations, as appropriate. This action will improve the efficiency of the Committee and allow it to remain functional if some members are absent.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 SW Third Avenue, Portland, OR 97204, telephone 503-326-2725, or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-690-0464.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948 [7 CFR part 948], both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a non-major rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will policies, unless they present an irreconcilable conflict with this final rule.

The Act provides that administrative proceedings must be exhausted before parties my file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill a equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 handlers of Colorado potatoes subject to regulation under the marketing order, and approximately 400 producers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined by the Small Business Administration [15 CFR 121.601] as those having annual receipts of less than $500,000. The majority of potato handlers and producers regulated under the marketing agreement and order may be classified as small entities.

The production area under Marketing Order No. 948 is divided into three separate regulatory areas. Area 1, also called the Western Slope, consists of the northwestern portion of the State of Colorado. Area 2, known as the San Luis Valley, is located in the southwestern part of the State. Area 3, referred to as the Northern Colorado or the Greeley area, covers most of the eastern part of the State. Section 948.50 establishes area committees as administrative agencies for each of the three areas.

The Committee is established, pursuant to § 948.51, consisting of six members, with alternates. Section 948.51 further specifies that two members and alternates for the Committee shall be selected by the Secretary from each area committee. The Committee coordinates activities and affairs of mutual interest among the area committees.

For years, the primary cash crops of Area 1 have been relatively high-value tree fruit crops. As fruit production has increased, potato production has decreased. The small volume of potatoes still produced there is being consumed locally. As a result of such changes in potato production, rising costs of equipment, and crop inputs, the potato industry in Area 1 has diminished significantly.

Consequently, handling regulations have not been implemented and an area committee has not been selected for years. Because of this, the Committee has had no representatives from Area 1 and has had to operate with only four members (two members and alternates each from the Area 2 and 3 committees). The Committee believes that it could function more effectively and obtain a broader cross-section of industry views with six members and alternates, as

provided under § 948.51. Industry representatives believe it unlikely that Area 1 will again increase potato production to significant levels. Thus, it is unlikely that Area 1 will be able to provide the membership necessary to allow the Committee to operate with six members.

In light of this situation, the Committee met November 8, 1991, and unanimously passed a motion requesting the Area 2 and 3 committees to recommend reapportionment of the Committee. It requested that the two member and alternate member positions currently allocated to the Area 1 committee be allocated to the Area 2 and 3 committees so that each committee will have three members and alternates, rather than two members and alternates. On November 21, 1991, the Area 2 committee recommended this reapportionment action, and on December 5, 1991, the Area 3 committee recommended the same action.

In order to so reapportion Committee membership, the second sentence of § 948.51 will be suspended. That sentence specifies that, "Two members and alternates shall be selected from each area committee." With that sentence suspended, § 948.51 specifies that, "The Colorado Potato Committee is hereby established consisting of six members, with alternates. Committeemen shall be selected by the Secretary from nominations of area committee members or alternates." This language permits the Committee to be composed of an equal number of members from each active area committee currently regulating shipments. This makes use of all six authorized member positions. The Committee believes that an additional member and alternate member from each active area provide increased input, interest, and guidance in operating the marketing order. In the unlikely event that Area 1 again becomes a commercially important producer of potatoes, the Committee could again be reapportioned to reflect such changes in production. Such action would be considered by the Secretary at the request of the industry.

In addition, paragraph (a) of §§ 948.4 and 948.50 of the order were to be suspended by the proposed rule. Paragraph (a) of the definition of the term "area" describes Area 1. Paragraph (a) of § 948.50 establishes the composition of Area 1 (Western Slope) with the selection of four producers and handlers. However, this action does not suspend paragraph (a) of § 948.4 as proposed. The definition of Area 1 remains unsuspended for clarity. Paragraph (c) of § 948.4 defines Area 3 in terms of counties not included in Area No. 1 or Area No. 2. A new § 948.151 is added to the regulations concerning Committee membership. In addition to the new section added to the regulations as proposed, this action would also suspend references to Area No. 1 in §§ 948.103 and 948.104 of the regulations concerning the fiscal period and terms of office, respectively.

A proposed rule was published in the **Federal Register** on August 25, 1992 (57 FR 38446). This document contained a proposal to reapportion the Colorado Potato Committee and suspend related provisions. This rule provided that interested persons could file comments through September 9, 1992. No comments were filed.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities, and that the reapportionment of the Committee benefits Colorado potato producers and handlers.

After consideration of all relevant matter presented, including the information and recommendations submitted by the two area committees, and other available information, it is hereby found that with regard to the suspension of the provisions of the order and the regulations as set forth herein, these provisions no longer tend to effectuate the declared policy of the Act, and that the amendment to the regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The reapportioned Committee should be in place as soon as possible to be of maximum benefit to the active growing areas; (2) this action is fully supported by those areas; (3) prompt implementation of this action will allow nominations for the additional positions to be held and a Committee with six, rather than four, members to be selected; and (4) no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is hereby amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 948.50 [Amended]

2. In § 948.50, paragraph (a) is suspended for an indefinite period.

§ 948.51 [Amended]

3. In § 948.51, the second sentence is suspended for an indefinite period. With that sentence suspended, § 948.51 reads as follows:

§ 948.51 Colorado Potato Committee.

The Colorado Potato Committee is hereby established consisting of six members, with alternates. Committeemen shall be selected by the Secretary from nominations of area committee members or alternates.

§ 948.103 [Amended]

4. In § 948.103(a), the words, "Area No. 1 and" are suspended for an indefinite period.

§ 948.104 [Amended]

5. In § 948.104(a)(1), the words, "Area No. 1 and" are suspended for an indefinite period.

6. A new § 948.151 is added to Subpart—Rules and Regulations (7 CFR 948.100–948.150) to read as follows:

§ 948.151 Colorado Potato Committee membership.

The Colorado Potato Committee shall be comprised of six members and alternates selected by the Secretary. Three members and three alternates shall be selected from nominations of Area 2 committee members or alternates, and three members and three alternates shall be selected from nominations of Area 3 committee members or alternates.

Dated: December 21, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–31431 Filed 12–28–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 959

[Docket No. FV–92–096IFR]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Onion Committee (Committee) under M.O. No. 959. This interim final rule increases the level of authorized expenses and establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1992, through July 31, 1993. Comments received by January 28, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone (512) 682–2833, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President's Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

The Department has developed and reviewed this regulatory action in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable in ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in this action. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this rule.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1992–93 fiscal period, which began August 1, 1992, through July 31, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 47 producers of South Texas onions under this marketing order, and approximately 34 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $100,000 for personnel, office, and travel expenses were recommended in a mail vote completed July 3, 1992. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $100,000 were published in

the **Federal Register** as an interim final rule September 25, 1992 (57 FR 44312). That interim final rule added § 959.233, authorizing expenses for the Committee, and provided that interested persons could file comments through October 26, 1992. No comments were filed.

The Committee subsequently met on October 20, 1992, and unanimously recommended slight changes in some of the administrative expense categories and recommended funding for numerous research and promotion projects for a total 1992–93 budget of $339,188. The new budget is $2,417.67 less than the budget for the previous year. Increases include: $13,919 in market development, $2,000 in the fumigation trials research, $2,000 for a new computer and computer program, and $2,400 for monitoring of thrips research. These budget increases will be offset by decreases of $1,000 for furniture and fixtures, $3,600 in the leaf wetness research program, and the elimination of the Texas 1015 DNA research for which $12,000 was budgeted last season.

The Committee also unanimously recommended an assessment rate of $0.07 per 50-pound container or equivalent of onions, the same as last season. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield $350,000 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve as of September 30, 1992, $302,998, were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to that taken for the 1991–92 fiscal period; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 959.233 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 959.233 Expenses and assessment rate.

Expenses of $339,188 by the South Texas Onion Committee are authorized and an assessment rate of $0.07 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–31347 Filed 12–28–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 967

[FV–92–082FR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The U.S. Department of Agriculture is adopting without modification, as a final rule, the provisions of an interim final rule which established the quantity of Florida celery which handlers may ship to fresh markets during the 1992–93 marketing season at 6,612,910 crates or 100 percent of producers' base quantities. The 1992–93 marketing season covers the period August 1, 1992, through July 31, 1993. This final rule is intended to lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was unanimously recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

EFFECTIVE DATE: January 28, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action establishes the quantity of Florida celery (at 6,612,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1992–93 marketing season which covers the period August 1, 1992 through July 31, 1993. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any

handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated seven handlers of celery grown in Florida subject to regulation under the celery marketing order, and approximately seven producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 10, 1992, and unanimously recommended a marketable quantity of 6,612,910 crates of fresh celery for the 1992–93 marketing season beginning August 1, 1992. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to § 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1992–93 supply and demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (396,775 crates) of the 1991–92 total base quantities was made available to new producers and for increases for existing producers. As of May 1, 1992, the deadline for requesting changes in base quantities, no applications for new base quantities or adjustments in base quantities from current producers were received by the Florida Celery Committee.

This final rule will continue to limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1992–93 marketing season to 6,612,910 crates. This marketable quantity is slightly reduced from the 1991–92 marketable quantity, but is more than the average number of crates marketed fresh during the 1987–88 through 1991–92 seasons. It is expected that such quantity will be more than actual shipments for the 1992–93 season. Thus, the 6,612,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the final rule should lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product.

The interim final rule was published in the **Federal Register** with an effective date of September 16, 1992 (57 FR 42689, September 16, 1992). That rule provided a 30-day comment period which ended October 16, 1992. No comments were received.

On the basis of the foregoing, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is revised as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Sections. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Accordingly, the interim final rule adding § 967.327, published in the **Federal Register** (57 FR 42689, September 16, 1992), is adopted as a final rule without change.

Note: This section will not be published in the annual Code of Federal Regulations.

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–31345 Filed 12–28–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 987

[Docket No. FV92–987–1IFR]

Temporary Relaxation of Size Requirements for California Deglet Noor Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily relaxes the size requirements prescribed for Deglet Noor dates for use domestically and in Canada as whole and pitted dates. This action increases the current tolerance, from 10 percent to 15 percent, through October 31, 1993, for individual Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum). The relaxation is necessary because Deglet Noor dates from the 1992–93 crop are significantly smaller in size and weight than normal. The decrease in size and weight is due to extremely high temperatures experienced in the production area during late August and early September. The relaxation was unanimously recommended by the California Date Administrative Committee (committee) to make a larger quantity of the 1992–93 crop available for use as whole or pitted dates domestically and in Canada.

DATES: This interim final rule is effective December 29, 1992 and continues until October 31, 1993. Comments received by January 28, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket

number and date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kellee Hopper, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 2202 Monterey Street, suite 102 B, Fresno, CA 93721; telephone (209) 487–5901 or Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2020.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 987 (7 CFR part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

The Department has developed and reviewed this regulatory action in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable in ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the action. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this action.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 25 handlers of California dates subject to regulation under the order each season and approximately 135 date producers in the regulated area. The majority of the date handlers and producers may be classified as small entities.

This interim final rule modifies paragraphs (b)(2) and (c)(2) of § 987.112a to relax the current size requirements for Deglet Noor dates to be used as whole or pitted dates domestically or in Canada. The modification is issued pursuant to § 987.39 of the order.

Section 987.112a prescribes grade, size, and container requirements for each outlet category of dates. Paragraph (b)(2) of that section prescribes such requirements for "DAC" dates, including an individual size requirement for Deglet Noor dates of 6.5 grams with a tolerance of 10 percent per lot for dates weighing less than 6.5 grams. DAC dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and applicable identification requirements for handling in the United States and Canada. Paragraph (c)(2) of § 987.112a provides the same requirements for "dates for further processing" (FP dates). FP dates are marketable whole dates acquired by one handler from another handler that are certified as meeting the same grade and size requirements for DAC dates, with the exception of moisture requirements and applicable identification requirements.

Due to exceedingly high temperatures during late August and early September which stressed the date palms, individual fruit of the current crop is significantly smaller in size and weight than normal. Early deliveries of Deglet Noor dates are failing to meet the marketing order requirements of 10 percent tolerance for individual dates in a lot weighing less than 6.5 grams. The size and weight of the dates are not expected to improve as the harvest progresses.

Therefore, at its October 22, 1992, meeting, the committee unanimously recommended that the size requirements for DAC and FP dates be relaxed through October 31, 1993, by increasing the tolerance from 10 to 15 percent for dates weighing less than 6.5 grams. This action is intended to permit a greater quantity of Deglet Noor dates which are of good quality but weigh less than 6.5 grams to meet the requirements for DAC and FP dates. The additional five percent tolerance for undersize dates will allow handlers to use approximately three smaller dates per pound. Thus, more of the crop can be utilized as whole or pitted dates domestically and in Canada. The committee estimates marketable 1992–93 Deglet Noor production at approximately 35.3 million pounds. Making more Deglet Noor dates of satisfactory quality available for use as whole and pitted dates domestically and in Canada will provide for maximum utilization of the 1992–93 crop, thereby

benefiting producers, handlers and consumers.

Based on the available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and unanimous recommendation submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Compliance with this action will require no special preparation by handlers; (2) it is important that the relaxed size requirements apply to as much of the 1992–93 crop as possible; (3) this action relieves restrictions on handlers and; (4) the rule provides a 30-day comment period, and any comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 987.112a is amended by revising the second sentence of paragraph (b)(2) and revising the second sentence of paragraph (c)(2) to read as follows:

Note: This section will appear in the annual *Code of Federal Regulations*.

§ 987.112a Grade, size and container requirements for each outlet category.

* * * * *

(b) * * *

(2) * * * Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning December 29, 1992, and ending October 31, 1993, the 10 percent tolerance shall be increased to 15 percent. * * *

* * * * *

(c) * * *

(2) * * * Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning December 29, 1992, and ending October 31, 1993, the 10 percent tolerance shall be increased to 15 percent. * * *

* * * * *

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–31346 Filed 12–28–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1006, 1012, and 1013

[DA–92–38]

Milk in the Upper Florida, Tampa Bay, and Southeastern Florida Marketing Areas; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends a portion of the producer milk definition of the Upper Florida, Tampa Bay, and Southeastern Florida, milk orders. The action suspends the requirement that 10 days' production of a producer be received each month at a pool plant in order to qualify milk produced on other days for diversion to nonpool plants. The suspension was requested by the Florida Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, Dairymen, Inc., and Southern Milk Sales that want to reduce some inefficient milk movements in order to pool milk normally associated with these markets.

EFFECTIVE DATE: December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Prior Document in this proceeding:

Notice of Proposed Suspension: Issued November 16, 1992; published November 23, 1992 (57 FR 54947).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on November 23, 1992, (57 FR 54947) concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice, and other available information,

it is hereby found and determined that beginning December 1, 1992, for an indefinite period, the following provisions of the orders do not tend to effectuate the declared policy of the Act:

In § 1006.13, paragraph (b)(2).
In § 1012.13, paragraph (b)(2).
In § 1013.13, paragraph (b)(2).

Statement of Consideration

This action suspends portions of the producer milk definition of the Upper Florida, Tampa Bay, and Southeastern Florida milk orders. This action suspends the requirement that 10 days' production of a producer be received each month at a pool plan in order to qualify milk produced on other days for diversion to nonpool plants.

The suspension was requested by Florida Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, Dairymen Inc., and Southern Milk Sales. The proponents have formed and work through a common marketing agency in order to achieve maximum efficiencies in balancing the needs of the fluid milk plants and in disposing of reserve or excess milk supplies. When milk of producers located in other states who supply the Florida market is not needed, it is often diverted to plants located in other states that are regulated by other Federal milk orders.

Milk that is diverted to other order manufacturing plants, but fails to qualify for diversion under the 10-day requirement, becomes producer milk under the other order and lowers blend prices to producers under the other order. The suspension will enable cooperatives to realize efficiencies in diverting the most distant milk from fluid milk plants. The suspension will not threaten the integrity of marketwide pooling because all three orders limit the overall percentage of a handler's milk supply that can be diverted each month. The suspension is needed to be effective for the holiday season because of the need to move excess milk supplies off these markets.

No comments were received in response to the proposed suspension. Accordingly, it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing areas in that this action should enable cooperatives to realize efficiencies in diverting the most distant milk from fluid milk plants;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective December 1, 1992.

List of Subjects in 7 CFR Parts 1006, 1012, and 1013

Milk marketing orders.

The authority citation for 7 CFR parts 1006, 1012, and 1013 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is therefore ordered, That the following provisions of the orders (7 CFR parts 1006, 1012, and 1013) are hereby suspended for an indefinite period.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

§ 1006.13 [Suspended in Part]

1. In § 1006.13, paragraph (b)(2) is suspended.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

§ 1012.13 [Suspended in Part]

1. In § 1012.13, paragraph (b)(2) is suspended.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

§ 1013.13 [Suspended in Part]

1. In § 1013.13, paragraph (b)(2) is suspended.

Dated: December 21, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–31432 Filed 12–28–92; 8:45 am]
BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150–AE11

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide for the exclusion of counsel from a subpoenaed interview when that counsel represents multiple interests in the investigation and there is concrete evidence that the counsel's presence at the interview would obstruct and impede the investigation. These amendments are designed to ensure the integrity and efficacy of the investigative and inspection process. These amendments provide a standard and procedures for making and effectuating the decision to exclude counsel.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–1606.

SUPPLEMENTARY INFORMATION:

Contents

I. Background
II. Response to Public Comments on the Proposed Rule

I. Background

On December 19, 1991 (56 FR 65949), the Nuclear Regulatory Commission (NRC) published proposed amendments to its regulations found at 10 CFR part 19. The proposed amendments provided for the exclusion of counsel from subpoenaed interviews in connection with an NRC investigation when that counsel represents multiple interests in the investigation and there is concrete evidence that such representation would obstruct and impede the investigation. The proposed amendments also provided procedures to be followed by the NRC and individual witnesses in connection with the NRC's exercise of its authority to exclude counsel.

The Commission had published a final rule on the same subject on January 4, 1990 (55 FR 243). That rule provided, *inter alia*, for the exclusion of counsel for a subpoenaed witness when that counsel represented multiple interests and there existed a reasonable basis to believe that such representation would prejudice, impede, or impair the integrity of the inquiry. Upon legal challenge, the United States Court of Appeals for the District of Columbia Circuit struck down the portion of the final rule on attorney exclusion. *Professional Reactor Operator Society* v. *Nuclear Regulatory Commission*, 939 F.2d 1047, 1052 (D.C. Cir. 1991) (hereafter "*PROS*").

Specifically, the Court of Appeals ruled that the NRC must apply the same standard for attorney exclusion that the Court had previously required of the

Securities & Exchange Commission by virtue of the Court's interpretation of the right-to-counsel guarantee of the Administrative Procedure Act (APA), 5 U.S.C. 555(b). The Court stated that to exclude counsel "the agency must come forward with 'concrete evidence' that the counsel's presence would impede its investigation." *PROS*, 939 F.2d at 1049 (*citing SEC* v. *Csapo*, 533 F.2d 7, 11 (D.C. Cir. 1976)). Thus, the Court vacated the attorney exclusion portion of the rule, since its "rational basis" standard was less rigorous than the "concrete evidence" requirement. On December 19, 1991 (56 FR 65948), the Commission responded to the appeals court decision by publishing notice in the **Federal Register** of the Commission's revocation of its rule on attorney exclusion, *i.e.*, the definition of "exclusion" appearing in 10 CFR 19.3 and the standard and procedures for attorney exclusion appearing in 10 CFR 19.18(b)–(e). On December 19, 1991 (56 FR 65949), the Commission also published the proposed amendments in the **Federal Register** that would conform the NRC's attorney exclusion requirements to the Court's ruling.

II. Responses to Public Comments on the Proposed Rule

The Commission received nine comments on the proposed December 19, 1991 rule. The commenters included one individual, the Nuclear Utility Management and Resources Council (NUMARC), three utilities endorsing NUMARC's comments, the Professional Reactor Operators Society (PROS), a law firm commenting on behalf of PROS as well as seven utilities and a major engineering firm, a law firm commenting on behalf of six utilities, and a law firm that represents utilities and individuals holding NRC licenses. All commenters opposed adoption of the proposed rule. The comments are available for inspection and copying in the agency's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

The Commission has considered the comments received, but is not persuaded that the proposed amendments should be withdrawn or modified in substantial ways as some commenters requested. However, the Commission has clarified its description of the standard for exclusion by stating the threshold requirement as "concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection * * *" A similar change was made in the definition of "[e]xclusion." The Commission has deleted the phrase "directly or indirectly" from the standard for exclusion of counsel. The Commission has also revised the rule to provide that the interview shall not be rescheduled to a date that precedes the expiration of the time provided under 10 CFR 19.18(d) for appeal of exclusion of counsel, unless the witness consents to an earlier date. In addition, the final rule requires that the written notice of the grounds for counsel's exclusion also describe the right to appeal the exclusion to the Commission and thereby obtain an automatic stay of the effectiveness of the subpoena pending the Commission's decision.

Because these changes are logical outgrowths of the proposed amendments and no other modifications are made, the Commission concludes that the final rule should become effective without further notice and comment. The Commission's responses to the concerns of the commenters are set forth below.

A. Need for the Rule

One commenter argued that the expected rarity of application of the rule demonstrated the absence of a need for the rule. The Commission does expect that the rule will be invoked only in rare and compelling cases. However, the Commission continues to believe that the rule should further expeditious and satisfactory resolution of some investigations and that this is important to the Commission's fulfillment of its statutory mission. By providing to witnesses, counsel, and agency staff both a general standard for determining whether disqualification is appropriate and procedures for implementing and challenging these determinations, the final rule should reduce delay, uncertainty and confusion associated with consideration of the exclusion of counsel.

Although several commenters emphasized the circumstances in which courts have found insufficient grounds for exclusion of counsel by the Securities and Exchange Commission (SEC), the same courts have explicitly recognized the propriety and utility of this type of rule. In *Csapo*, the United States Court of Appeals for the District of Columbia Circuit stated (533 F.2d at 11) with regard to the SEC's sequestration rule that—

> We do not question its utility in preserving the integrity of an investigation and recognize its practical necessity in certain circumstances.

533 F.2d at 11. In *SEC* v. *Higashi*, the Ninth Circuit said that "[t]he reason for and purpose of the [SEC's] sequestration rule are clear and there can be no question as to its necessity and general propriety" (359 F.2d 550, 552 (9th Cir. 1966)). For reasons akin to those motivating the SEC rule, the NRC proposed and now finalizes its attorney exclusion rule.

The NRC's investigation of unsafe practices and potential violations of the Atomic Energy Act and NRC regulations is an important means of ensuring public health and safety in operation of nuclear power plants and other uses of nuclear material (*see* 10 CFR part 19; 10 CFR 1.36). NRC investigators often interview licensees, their officials and employees, and other individuals having possible knowledge of matters under investigation. In many cases, investigating officials conduct extensive and difficult inquiries to determine whether violations were willful and/or whether licensee's management engaged in wrongdoing. Yet, effective identification and correction of unsafe practices or regulatory violations through an investigative or inspection process can depend upon the willingness of individuals having knowledge of the practices or violations to disclose that information to interviewing officials.

Therefore, as specified in 10 CFR 19.2, the rule would apply to all interviews under subpoena within the jurisdiction of the Nuclear Regulatory Commission other than those which focus on NRC employees or its contractors. While the purposes of the rule relate primarily to interviews conducted under subpoena by the NRC's Office of Investigations, the NRC's predominant user of investigative subpoenas, the final rule would also apply to NRC inspections and investigations conducted under subpoena by other NRC officials. The rule does not apply, however, to subpoenas issued pursuant to 10 CFR 2.720, which applies to subpoenas requested in hearings.

Several commenters argued that there is no need for the rule because of the availability of other means for ensuring proper conduct by counsel (*e.g.*, investigation and prosecution under Federal criminal statutes or investigation and disciplinary action or disqualification under standards of professional conduct for lawyers). In some cases, the causes of impairment of the investigation may justify consideration of criminal or other proceedings. However, the Commission's objectives, standard for action, burden of proof, and remedy, *i.e.*, exclusion of counsel from particular interviews, may differ widely from those associated with criminal statutes or rules of conduct. Therefore, the

possibility of collateral or future actions addressing misconduct in some cases pursuant to other authority is an insufficient basis to ignore the potential need for a direct determination of whether the counsel representing multiple interests should be excluded from an interview.

As noted in the supplementary information included in the notice of the proposed rule (56 FR 65949, 65950; December 19, 1991), questions regarding impairment of investigation as a result of multiple representation have arisen in some cases in the past. Several of the commenters argued that the cited cases did not involve any grounds for disqualification of counsel and that any concern about multiple representation in those cases was improper. The Commission believes that the final rule will facilitate resolution of this type of question when it arises in the future. As the Commission has stated (56 FR 65949, 65950; December 19, 1991), the justification for this rule is not premised on whether any *prior* case actually involved "concrete evidence" that the investigation would be impeded.

NUMARC and another commenter indicated that adoption of the proposed rule would be inconsistent with the Commission's efforts to eliminate unnecessary regulatory burdens (*see, e.g.*, 57 FR 4166; February 4, 1992 and 57 FR 39353; August 31, 1992). The Commission disagrees with the suggestion that the rule fails to strike a fair and reasonable balance between the right to counsel and the need for information in investigations. In this case, the Commission is expressly adopting the judicial resolution of that issue. That resolution does not involve a highly prescriptive standard. Rather, it involves a demanding general standard that is expected to have very limited application in a fraction of NRC interviews under subpoena.

NUMARC stated that the rule was unnecessary because NRC rules currently in effect (10 CFR part 2) provide a mechanism for imposing sanctions for attorney misconduct in various contexts. The existing provisions directly relating to standards of practice (10 CFR 2.713) concern appearance and practice in adjudicatory proceedings. By this final rule, however, the Commission intends to provide specific direction for expeditious resolution of decisions to exclude counsel because of obstruction or impediment of investigative interviews resulting from multiple representation. Therefore, the final rule serves purposes that are not met by the general 10 CFR part 2—Rules of practice for domestic licensing proceedings and issuance of orders.

B. Attorney Misconduct

Most commenters indicated that the proposed standard for exclusion of counsel was deficient because it did not require a showing of misconduct or wrongdoing by the attorney representing multiple parties. These commenters generally concede that unethical or illegal conduct by counsel, such as encouraging or condoning perjury or engaging in a pattern of overt disruption of the interview, would supply grounds for exclusion. Concrete evidence that such conduct is obstructing and impeding an investigation could lead to exclusion under the rule. However, the Commission does not find as a matter of logic or law that there is no possibility of a finding of concrete evidence of impairment on grounds other than misconduct or wrongdoing by counsel.

For instance, the Commission does not find it necessary to rule out application of the rule to a case presenting concrete evidence of nondisclosure of information by a witness as a result of the presence of counsel representing multiple interests even though the counsel has not engaged in misconduct. Moreover, whether or not an investigation will be impeded could be irrelevant in a pure misconduct case.

The Commission also does not interpret the legal precedent as permitting disqualification only for misconduct, wrongdoing, or active obstruction by counsel. Indeed, in stating the standard to which the Commission must adhere, the court in *Pros* did not mandate "concrete evidence" of wrongdoing but rather "'concrete evidence' that counsel's presence would impede [the agency's] investigation." *Pros*, 939 F.2d 1049 (*citing SEC* v. *Csapo*, 533 F.2d at 11).

The commenters insisting on the necessity of misconduct or wrongdoing as the essential substantive element for disqualification point to *Csapo*, in which the Court of Appeals agreed with the lower court's finding that the SEC had failed to produce any "concrete evidence" of misconduct (533 F.2d at 8). While that opinion clearly affirmed an evidentiary threshold of "concrete evidence" in relation to the alleged misconduct, the Court of Appeals also found that the record failed to disclose "*any reason* for barring counsel selected" by the witness (*id.*) (emphasis added). And, the Court's specific direction was that "before the SEC may exclude an attorney from its proceedings, it must come forth * * * with 'concrete evidence' that [counsel's] presence would obstruct and impede its investigation." *Id.* at 11. Therefore, the Commission does not interpret *Csapo* as limiting the grounds for exclusion of counsel to "misconduct."

c. Application of the Rule

Most commenters expressed or endorsed the view that the supplementary information in the notice of the proposed rule (56 FR 65949–65950; December 19, 1991) shows that the intended application of the rule is inconsistent with judicial direction. They suggest that the Commission's identification of concerns motivating the rule and of some of the potentially relevant evidence displaces the "concrete evidence" standard.

While "concrete evidence" was not defined expressly in the cases referenced above, the discussion and application of that standard indicates the courts require more than speculation or even reasonable concern about potential impairment. Rather, exclusion of counsel requires real or tangible evidence demonstrating that the investigation would be impeded as a result of the multiple representation. Thus, the Commission recognizes that neither multiple representation nor speculation about a potential for obstruction of an investigation by, for example, the mere sharing of information provided by an interviewee to a subsequent interviewee, is a sufficient basis to exclude counsel.

The Commission cannot predict in any significant detail what set of circumstances will arise in particular investigations that will lead to application of the exclusion rule. In the proposed rule, however, the Commission did endeavor to identify some of the factual circumstances which would tend to support invocation of the rule. For instance, it seems clear that the Commission's interests in the integrity and effectiveness of its investigation may outweigh a witnesses' choice of counsel for multiple interests where there is reliable, factual evidence that a witness is withholding, or will withhold, information critical to the investigation because the information will be shared with the witnesses' employer or supervisor by virtue of multiple representation.

Thus, the Commission continues to believe that evidence that the employee had a concern that his employment would be jeopardized by transmittal of information from the interview to the licensee would be relevant. The Commission believes that evidence that the multiple representation would lead to disclosure of the substance of an interview to a future interviewee or

subject in the investigation would also be relevant although not sufficient unless there was also concrete evidence that the disclosure would obstruct and impede the investigation. However, the Commission expects that it will be a rare case in which there is actual proof that the multiple representation will seriously obstruct and impede the investigation, *e.g.*, critical information is being or will be withheld.

Some commenters misunderstood the Commission's statement that concerns arise about inhibition of the candor of witnesses where the interviewee is represented by counsel who is paid by the licensee and also represents the licensee or licensee's officials under investigation, particularly where the matter at issue is whether the licensee's employees have been, or are being, harassed or intimidated for raising safety issues (56 FR 65949; December 19, 1991). These commenters viewed these statements as examples of cases in which the Commission would deem exclusion to be appropriate. The Commission recognizes that these circumstances do not necessarily lead to non-disclosure of critical information or other serious impairment of the investigation. Exclusion of counsel under the rule is warranted only when there is also concrete evidence, not just mere concern or speculation, that the investigation will be obstructed and impeded as a result of the presence of the counsel representing multiple interests.

Several commenters expressed concern that the Commission would find obstruction and impediment to the investigation where minor inconvenience results from such traditional activities of counsel as endeavoring to learn more about the investigation or to advise clients to testify truthfully but cautiously. The Commission recognizes that these types of activities do not establish real obstruction and impediment to the investigation. Indeed, these traditional activities of counsel are common to legal representation of any witness.

Some commenters fault the proposed rule's statement that disqualification may be based on concrete evidence that multiple representation will "directly or indirectly" impede the investigation. Several commenters state that the Commission's use of these modifiers unjustifiably lessens and obscures the "concrete evidence" standard.

The Commission recognizes that the Court in *Pros* and *Csapo* did not use the modifiers "directly or indirectly" in referring to the requirement of concrete evidence of impediment to the investigation. However, the Commission notes that the same modifiers were present in the final rule published on January 4, 1990 (55 FR 243), and that the court of appeals did not comment on their presence in that rule.

The key requirement is "concrete evidence" of obstruction and impediment. Whether the causation is described as direct or indirect, the question in a particular case will be whether there is concrete evidence that the presence of counsel representing multiple interests would obstruct and impede the investigation. It is the effects of multiple representation, not multiple representation standing alone, that may in some cases impede the investigation. For instance, if there were concrete evidence that a present or future witness will not answer questions or provide evidence because his attorney's representation of multiple interests will necessarily result in the sharing of the witness' testimony or evidence with a represented target, invocation of the rule could be warranted whether the cause of the impairment is described as direct or indirect. Clearly, a mere chain of inferences and speculation would not constitute "concrete evidence." Nonetheless, the "concrete evidence" requirement does not preclude a showing of obstruction and impediment through indirect effects, but rather implicitly embraces the possibility of such a showing. Therefore, the Commission has decided to delete the phrase "directly or indirectly" from the rule as unnecessary.

For increased clarity, the Commission has also revised the standard for exclusion by stating the threshold requirement in § 19.18(b) as "concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection. * * *" In the proposed § 19.18(b), the requirement was described as "concrete evidence that the investigation or inspection will be obstructed and impeded, directly or indirectly, by an attorney's representation of multiple interests." A similar change was made in the definition of "[e]xclusion" in § 19.3. The revised language tracks more precisely the judicial articulation of the threshold requirement. Thus the revisions further affirm and clarify the Commission's intent to follow the judicial guidance.

D. Adequacy of the Procedures

NUMARC and another commenter stated that "consultation" by the investigating official with the Office of the General Counsel before a decision to exclude counsel is ineffectual without the requirement of consent by the Office of General Counsel. Another commenter recommended that the investigator be required to obtain a written opinion from the Office of the General Counsel that the standard of "concrete evidence" has been met. The Commission disagrees because it has already added numerous safeguards which it considers to be sufficient, including the "consultation" requirement, to guide agency officials and prevent arbitrary action in the exclusion process. The rule requires that the interviewing official provide a written statement of reasons for the exclusion to the witness whose attorney has been excluded and to the excluded attorney. The interviewing official must consult with the Office of the General Counsel prior to invoking the exclusion rule. The witness whose counsel has been excluded may appeal the decision to the Commission and automatically obtain a stay of the effectiveness of that decision pending decision by the Commission.

Of course, the Commission may also quash or modify the subpoena if it finds that the exclusion of counsel decision is not based upon concrete evidence or if the subpoena is otherwise unreasonable, or requires evidence not relevant to any matter in issue. Moreover, the Commission (like the SEC) must still prevail in court in a subpoena enforcement proceeding if the person under subpoena declines to comply. A court in which the basis for the exclusion is litigated may also conduct an evidentiary hearing if the factual issues require it. *SEC* v. *Csapo*, 533 F.2d at 12.

NUMARC recommended that § 19.18(d) be revised to provide the witness and the witness' counsel an opportunity to appear before the Commission in the course of the Commission's evaluation of the appeal of an interviewing official's decision. The purpose would be to ensure that the adversely affected parties had a right to be heard. The Commission believes that the procedure in the final rule, providing a statement of reasons for exclusion and permitting the filing of a motion to quash, provides a reasonable mechanism for presentation of the views of affected parties. However, nothing in the rule prevents the witness moving to quash the subpoena from requesting an opportunity for an oral presentation in connection with the motion and stating the reasons supporting the need for oral presentation.

The comments of PROS included the suggestion that the rule, if issued, be amended to require that the witness be advised of the right to counsel at the time of an exclusion of counsel and prior to any subsequent interview.

NUMARC recommended that internal procedures to implement the rule should be amended to direct NRC investigators to advise witnesses of the right to counsel, including a right to consent to multiple representation, and of the provisions of § 19.18, including the right to appeal any exclusion of counsel.

As a practical matter, a witness who is already represented by counsel can be expected to consult with counsel about such issues as the right to counsel, consent to multiple representation and witnesses' rights under this final rule. Thus, while an investigator may reasonably inquire about issues of consent to multiple representation in connection with an investigative interview, it does not seem necessary to require that an investigator provide general direction or advice on rights and limitations regarding an attorney's representation of multiple interests to a witness already represented by counsel. Moreover, the Commission was asked to require that investigators advise witnesses of the right to consent to multiple representation, although even under standards of professional conduct for lawyers such consent is subject to various conditions and exceptions. *See, e.g., Wheat* v. *United States*, 486 U.S. 153 (1988) (district court may refuse waiver of conflicts of interest in cases where a potential for conflict exists); *FTC* v. *Exxon*, 636 F.2d 1336, 1342 (D.C. Cir. 1980) (district court's order to retain separate counsel because of potential conflict violated neither due process nor the APA). However, in order to ensure that the witness is aware of the Commission's procedures for appeal of the exclusion decision, the Commission has revised the text of the proposed § 19.18(c) to require that the written notice of the reasons for exclusion include a description of the rights provided in § 19.18(d), regarding the right to appeal the exclusion decision.

NUMARC recommended that proposed 10 CFR 19.18(e) be clarified to assure that a witness' interview is delayed automatically to at least the date of the receipt of the written statement of basis for exclusion. An automatic delay is clearly unnecessary, however, if the witness chooses to proceed without counsel or with new counsel at an earlier time. Moreover, the proposed provision already permits the witness to request a reasonable period of time to obtain new counsel, and the witness may even obtain an automatic stay of the subpoena during an appeal of the exclusion decision to the Commission.

Nonetheless, the Commission would not expect that an interviewing official would proceed with the interview of the witness until more than five days after the receipt by the witness and the counsel of the written statement of reasons for exclusion, unless the witness requests that the interview proceed without counsel or with new counsel at an earlier date. Therefore, the Commission has revised the text of the proposed 10 CFR 19.18(e) to provide that the interview shall not be rescheduled to a date that precedes the expiration of the time provided under 10 CFR 19.18(d) for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

Aside from this minimum delay, however, what constitutes a reasonable period of time for the continuation of an interview after exclusion of counsel must be determined on a case-by-case basis, with the interviewing official taking into account the relevant circumstances, including the availability of substitute counsel, the complexity of the case and the grounds for exclusion, the date of actual notice to the witness and excluded counsel of the grounds for exclusion, and the Commission's need to complete the investigation promptly in order to protect public health and safety.

PROS recommended that the witness whose counsel has been excluded be presented "concrete evidence" that the new counsel has a previous record of accomplishment in, and knowledge of, the nuclear industry that is on the same level as the excluded counsel. The Commission disagrees that it should have the burden of initiating an investigation and making a finding on this question. The witness, not the Commission, would choose new counsel. Many counsel and law firms appear in connection with Commission proceedings and investigations. Moreover, the Commission has already provided that a witness may either proceed without counsel or request a delay for a reasonable period of time to permit retention of new counsel.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0044.

Regulatory Analysis

The APA affords individuals compelled to submit to agency inquiry under subpoena the right to be accompanied by counsel or other representative of choice (5 U.S.C. 555(b)). This right to counsel guarantee is not absolute and may be circumscribed within permissible limits when justice requires. An exception has been recognized for cases in which there is concrete evidence that the presence of counsel representing multiple interests during an investigative interview would impede and obstruct the agency's investigation.

Questions concerning the scope of the right to counsel have arisen in the context of NRC investigative interviews of licensee employees when the employee is represented by counsel who also represents the licensee or other witnesses or parties in the investigation. This arrangement is not improper as a general matter. This final rule provides, however, that counsel representing multiple interests may be excluded from a subpoenaed interview if there is concrete evidence that counsel's presence would obstruct and impede the investigation. This final rule also delineates responsibilities of NRC officials and rights of interviewees in connection with the exercise of the authority to exclude counsel. Thus, the rule is intended to further expeditious and satisfactory resolution of NRC's inquiry into matters concerning public health and safety. Guidance in this area should reduce delay and uncertainty in the completion of an investigation when questions of multiple representation arise. The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this final rule would not have a significant impact on a substantial number of small entities. The final rule concerns an attorney's appearance at a subpoenaed interview of a licensee's employee or other individual during an NRC investigation or inspection in circumstances where there is concrete evidence that the attorney's representation of multiple interests would obstruct and impede the investigation or inspection. It provides procedures for exercise of the authority to exclude that attorney from the interview in these limited

circumstances and for challenge of a decision to exclude the attorney.

Backfit Analysis

The NRC has determined that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 19.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10. 92 Stat. 2951 (42 U.S.C. 5851).

2. In § 19.3, the definition of "Exclusion" is added in alphabetical order to read as follows:

§ 19.3 Definitions.

* * * * *

Exclusion means the removal of counsel representing multiple interests from an interview whenever the NRC official conducting the interview has concrete evidence that the presence of the counsel would obstruct and impede the particular investigation or inspection.

* * * * *

3. In § 19.18, paragraphs (b)–(e) are added to read as follows:

§ 19.18 Sequestration of witnesses and exclusion of counsel in interviews conducted under subpoena.

* * * * *

(b) Any witness compelled by subpoena to appear at an interview during an agency inquiry may be accompanied, represented, and advised by counsel of his or her choice. However, when the agency official conducting the inquiry determines, after consultation with the Office of the General Counsel, that the agency has concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection, the agency official may prohibit that counsel from being present during the interview.

(c) The interviewing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section and the witness's counsel a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion. This statement must also advise the witness of the witness' right to appeal the exclusion decision and obtain an automatic stay of the effectiveness of the subpoena by filing a motion to quash the subpoena with the Commission within five days of receipt of this written statement.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Commission. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Commission's decision on the motion.

(e) If a witness' counsel is excluded under paragraph (b) of this section, the interview may, at the witness' request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The interview may also be rescheduled to a subsequent date established by the NRC, although the interview shall not be rescheduled by the NRC to a date that precedes the expiration of the time provided under § 19.18(d) for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

Dated at Rockville, Maryland, this 18th day of December, 1992.

For the Nuclear Regulatory Commission

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–31247 Filed 12–28–92; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Parts 34, 35, 50, 73, and 110

RIN 3150–AD58

Material Approved for Incorporation by Reference; Maintenance and Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to make a needed clarification to previously published requirements governing the availability of material approved for incorporation by reference The amendment clarifies that copies of material which have been incorporated by reference are maintained and available for review at the NRC Library

EFFECTIVE DATE: December 29, 1992

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–7758

SUPPLEMENTARY INFORMATION.

Background

The Nuclear Regulatory Commission is revising those portions of 10 CFR chapter I that reference the availability of materials that have been approved by the Director of the Office of Federal Register for incorporation by reference Current references within 10 CFR chapter I indicate that copies of material which have been incorporated by reference are available for inspection at the Commission's Public Document Room. This amendment revises the text of 10 CFR chapter I to indicate the current location where this material is available for inspection. The material which has been approved for incorporation by reference is maintained and available for inspection in the NRC Library, which is located at 7920 Norfolk Avenue, Bethesda, Maryland 20814.

Because this is an amendment dealing with agency practice and procedures the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with the location where referenced documents are available for inspection.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0007, –0010, –0002, and –0036.

List of Subjects

10 CFR Part 34

Criminal penalty, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalty, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 34, 35, 50, 73, and 110

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for part 34 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 34.20 [Amended]

2. In § 34.20, paragraph (a), remove the words "Nuclear Regulatory Commission Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555", and add in their place the words "NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814".

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 35.632 [Amended]

4. In § 35.632, paragraph (d), remove the words "or may be obtained from the U.S. Nuclear Regulatory Commission, Public Document Room, 2120 L Street, NW., Washington, DC 20555", and add in their place the words "at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814".

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for part 50 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 50.34 [Amended]

6. In § 50.34, paragraph (f)(3)(v)(A)(*2*), remove the words "Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW., Washington, DC", and add in their place the words "NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814".

7. In § 50.55a, paragraph (b) introductory text is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) The ASME Boiler and Pressure Vessel Code, which is referenced in the following paragraphs, was approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th St., New York, NY 10017. It is also available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

Appendix H to Part 50 [Amended]

8. In the second paragraph of the introduction to appendix H to part 50, remove the words "at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC", and add in their place the words "at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814".

9. In appendix J to part 50, section III, remove footnote number one, redesignate footnote number two as number one, and revise paragraph A 3 (a) to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

* * * * *

III. * * *

A. * * *

3. *Test Methods.* (a) All Type A tests shall be conducted in accordance with the provisions of the American National Standards N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors," March 16, 1972. In addition to the Total time and Point-to-Point methods described in that standard, the Mass Point Method, when used with a test duration of at least 24 hours, is an acceptable method to use to calculate leakage rates. A typical description of the Mass Point method can be found in the American National Standard ANSI/ANS 56.8–1987, "Containment System Leakage Testing Requirements," January 20, 1987. Incorporation of ANSI N45.4–1972 by reference was approved by the Director of the Federal Register. Copies of this standard, as well as ANSI/ANS–56.8–1987, "Containment System Leakage Testing Requirements" (dated January 20, 1987) may be obtained from the American Nuclear Society, 555 North Kensington Avenue, La Grange Park, IL 60525. A copy of each of these standards is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

10. In appendix K to part 50, section I is amended by revising paragraphs A4, A5, C1b, D5, and D7c to read as follows:

Appendix K to Part 50—ECCS Evaluation Models

I. * * *

A. * * *

4. *Fission Product Decay.* The heat generation rates from radioactive decay of fission products shall be assumed to be equal

to 1.2 times the values for infinite operating time in the ANS Standard (Proposed American Nuclear Society Standards—"Decay Energy Release Rates Following Shutdown of Uranium-Fueled Thermal Reactors." Approved by Subcommittee ANS–5, ANS Standards Committee, October 1971). This standard has been approved for incorporation by reference by the Director of the Federal Register. A copy of the standard is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. The fraction of the locally generated gamma energy that is deposited in the fuel (including the cladding) may be different from 1.0; the value used shall be justified by a suitable calculation.

5. *Metal—Water Reaction Rate.* The rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation (Baker, L., Just, L.C., "Studies of Metal Water Reactions at High Temperatures, III. Experimental and Theoretical Studies of the Zirconium-Water Reaction," ANL–6548, page 7, May 1962). This publication has been approved for incorporation by reference by the Director of the Federal Register. A copy of the publication is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. The reaction shall be assumed not to be steam limited. For rods whose cladding is calculated to rupture during the LOCA, the inside of the cladding shall be assumed to react after the rupture. The calculation of the reaction rate on the inside of the cladding shall also follow the Baker-Just equation, starting at the time when the cladding is calculated to rupture, and extending around the cladding inner circumference and axially no less that 1.5 inches each way from the location of the rupture, with the reaction assumed not to be steam limited.

* * * * *

C. * * *

1. * * *

b. *Discharge Model.* For all times after the discharging fluid has been calculated to be two-phase in composition, the discharge rate shall be calculated by use of the Moody model (F.J. Moody, "Maximum Flow Rate of a Single Component, Two-Phase Mixture," Journal of Heat Transfer, Trans American Society of Mechanical Engineers, 87, No. 1, February, 1965). This publication has been approved for incorporation by reference by the Director of the Federal Register. A copy of this publication is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. The calculation shall be conducted with at least three values of a discharge coefficient applied to the postulated break area, these values spanning the range from 0.6 to 1.0. If the results indicate that the maximum clad temperature for the hypothetical accident is to be found at an even lower value of the discharge coefficient, the range of discharge coefficients shall be extended until the maximum clad temperatures calculated by this variation has been achieved.

* * * * *

D. * * *

5. *Refill and Reflood Heat Transfer for Pressurized Water Reactors.* a. For reflood rates of one inch per second or higher, reflood heat transfer coefficients shall be based on applicable experimental data for unblocked cores including FLECHT results ("PWR FLECHT (Full Length Emergency Cooling Heat Transfer) Final Report," Westinghouse Report WCAP–7665, April 1971). The use of a correlation derived from FLECHT data shall be demonstrated to be conservative for the transient to which it is applied; presently available FLECHT heat transfer correlations ("PWR Full Length Emergency Cooling Heat Transfer (FLECHT) Group I Test Report," Westinghouse Report WCAP–7544, September 1970; "PWR FLECHT Final Report Supplement," Westinghouse Report WCAP–7931, October 1972) are not acceptable. Westinghouse Report WCAP–7665 has been approved for incorporation by reference by the Director of the Federal Register. A copy of this report is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. New correlations or modifications to the FLECHT heat transfer correlations are acceptable only after they are demonstrated to be conservative, by comparison with FLECHT data, for a range of parameters consistent with the transient to which they are applied.

b. During refill and during reflood when reflood rates are less than one inch per second, heat transfer calculations shall be based on the assumption that cooling is only by steam, and shall take into account any flow blockage calculated to occur as a result of cladding swelling or rupture as such blockage might affect both local steam flow and heat transfer.

* * * * *

7. * * *

c. Wetting of the channel box shall be assumed to occur 60 seconds after the time determined using the correlation based on the Yamanouchi analysis ("Loss-of-Coolant Accident and Emergency Core Cooling Models for General Electric Boiling Water Reactors," General Electric Company Report NEDO–10329, April 1971). This report was approved for incorporation by reference by the Director of the Federal Register. A copy of the report is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

11. The authority citation for part 73 continues to read in part as follows:

Authority: Sec. 161, 58 Stat. 948, as amended (42 U.S.C. 2201; sec 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

12. In § 73.26, paragraph (l)(1) is revised to read as follows:

§ 73.26 Transportation physical protection systems, subsystems, components and procedures.

* * * * *

(l) *Shipment by sea.* (1) Shipments shall be made only on container-ships. The strategic special nuclear material container(s) shall be loaded into exclusive use cargo containers conforming to American National Standards Institute (ANSI) Standard MH5.1—"Basic Requirements for Cargo Containers" (1971) or International Standards Organization (ISO) 1496, "General Cargo Containers" (1978). Locks and seals shall be inspected by the escorts whenever access is possible. The ANSI Standard MH5.1 (1971) and the (ISO) 1496 (1978), have been approved for incorporation by reference by the Director of the Federal Register. A copy of each of these standards is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

13. In § 73.50, paragraph (d)(1) is revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

* * * * *

(d) Detection aids. (1) All alarms required pursuant to this part shall annunciate in a continuously manned central alarm station located within the protected area and in at least one other continuously manned station, not necessarily within the protected area, such that a single act cannot remove the capability of calling for assistance or otherwise responding to an alarm. All alarms shall be self-checking and tamper indicating. The annunciation of an alarm at the onsite central alarm station shall indicate the type of alarm (e.g., intrusion alarm, emergency exit alarm, etc.) and location. All intrusion alarms, emergency exit alarms, alarm systems, and line supervisory systems shall at minimum meet the performance and reliability levels indicated by GSA Interim Federal Specification W-A–00450 B (GSA-FSS). The GSA Interim Federal Specification has been approved for incorporation by reference by the Director of the Federal Register. A copy of the material is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethedsa, Maryland 20814.

* * * * *

14. In Appendix B to part 73, section I is amended by revising paragraph B.1.b.(2)(a) and section IV is amended by revising Footnote 2 to the table in paragraph C to read as follows:

Appendix B to Part 73—General Criteria for Security Personnel

* * * * *

I. * * *

B. * * *

1. * * *

b. * * *

(2) Hearing: (a) Individuals shall have no hearing loss in the better ear greater than 30 decibels average at 500 Hz, 1,000 Hz, and 2,000 Hz with no level greater that 40 decibels at any one frequency (by ISO 389 "Standard Reference Zero for the Calibration of Puritone Audiometer" (1975) or ANSI S3.6–1969 (R. 1973) "Specifications for Audiometers"). ISO 389 and ANSI S3.6–1969 have been approved for incorporation by reference by the Director of the Federal Register. A copy of each standard is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

IV. * * *

C. * * *

2. As set forth by the National Rifle Association (NRA) in its official rules and regulations, "NRA Target Manufacturers Index," December 1976. The Index has been approved for incorporation by reference by the Director of the Federal Register. A copy of the index is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

15. The authority citation for part 110 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

16. In § 110.43, paragraph (a)(1) is revised to read as follows:

§ 110.43 Physical security standards.

(a) * * *

(1) Review of the physical security program established by the recipient country and of the implementation of the national requirements, as considered through country visits and other information exchanges, to ensure that the physical security measures provide, as a minimum protection comparable to that set forth in the International Atomic Energy publication INFCIRC/225 Rev. 1, entitled "The Physical Protection of Nuclear Material" (INFCIRC/225), which is incorporated by reference in this part.

This publication has been approved for incorporation by reference by the Director of the Federal Register. Notice of any changes to the publication will be published in the **Federal Register**. Copies of INFCIRC/225 may be obtained from the Assistant Director for International Security, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and are available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. A copy is on file in the library of the Office of the Federal Register.

* * * * *

Dated at Rockville, Maryland, this 14th day of December 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–31249 Filed 12–28–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–229–AD; Amendment 39–8451; AD 92–27–16]

Airworthiness Directives; Sabreliner Model NA265 Series Airplanes Equipped With or Converted to Electrical Driven Hydraulic Pump (Single or Double)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Sabreliner Model NA265 series airplanes. This action requires installation of redundant hydraulic pump/motor ground circuitry. This amendment is prompted by an in-flight fire that occurred inside the aft section of the fuselage shortly after takeoff. The actions specified in this AD are intended to prevent electrical arcing, which could lead to a fire inside the aft section of the fuselage.

DATES: Effective January 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 1993.

Comments for inclusion in the Rules Docket must be received on or before March 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Sabreliner Corporation, 18118 Chesterfield Airport Road, Chesterfield, Missouri 63005–1121. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: Recently, a Sabreliner Model NA265–70 series airplane experienced an in-flight fire in the aft section of the fuselage shortly after takeoff. The airplane landed safely at the airport, the flight crew evacuated uninjured, and the fire was extinguished. Subsequent investigation revealed that the fire was caused by inadequate grounding of the hydraulic pump/motors. Such inadequate grounding caused high current flow through the metal braid covering the hydraulic pump pressure and return lines and into the airplane structure, which resulted in softening and rupturing of the high pressure lines and subsequent electrical arcing. Inadequate grounding of the hydraulic pump/motors could result in electrical arcing, which could lead to a fire inside the aft section of the fuselage.

The FAA has reviewed and approved Sabreliner Service Bulletin 92–5, dated December 11, 1992, that describes procedures for installation of redundant hydraulic pump/motor ground circuitry which would preclude the possibility for a fire in the aft section of the fuselage due to loss of ground in the hydraulic pump/motor. This service bulletin also describes procedures for repetitive inspections of the hydraulic pump/motors.

Since an unsafe condition has been identified that is likely to exist or develop on other Sabreliner Model NA265 series airplanes of the same type design, this AD is being issued to prevent electrical arcing caused by inadequate grounding of the hydraulic pump/motors, which could lead to fire inside the aft section of the fuselage. This AD requires installation of redundant hydraulic pump/motor ground circuitry. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–229–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Fedefalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–27–16. Sabreliner: Amendment 39–8451. Docket 92–NM–229–AD.

Applicability: Model NA265, NA265–20, –30, –40, –50, –60, –65, –70, and –80 series airplanes equipped with or converted to electrical driven hydraulic pump (single or double); as listed in Sabreliner Service Bulletin 92–5, dated December 11, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing, which could lead to fire inside the aft section of the fuselage, accomplish the following:

(a) Within 30 days or 10 flight hours after the effective date of this AD, whichever occurs first, install redundant hydraulic pump/motor ground circuitry in accordance with Sabreliner Service Bulletin 92–5, dated December 11, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

NOTE: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Sabreliner Service Bulletin 92–5, dated December 11, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sabreliner Corporation, 18118 Chesterfield Airport Road, Chesterfield, Missouri 63005–1121. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid Continent Airport, Wichita Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 13, 1993.

Issued in Renton, Washington, on December 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31532 Filed 12–28–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–CE–56–AD; Amendment 39–8455; AD 93–01–02]

Airworthiness Directives; British Aerospace, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to British Aerospace (BAe), Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes. This action requires inspecting the tailplane de-icing system for water contamination, draining any water that has accumulated in the system, modifying the tailplane de-icing system, and replacing and relocating the tail unit pressure switch. The Federal Aviation Administration (FAA) has evaluated reports of accidents and incidents where it is believed that ice-induced tailplane stall is a causal factor.

The actions specified by this AD are intended to prevent tailplane de-icing system failure, including false indication of system operation, and subsequent loss of pitch control, which could result in loss of control of the airplane.

DATES: Effective January 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1993.

Comments for inclusion in the Rules Docket must be received on or before March 5, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 92–CE–56–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that is applicable to this AD may be obtained from British Aerospace, Regional Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44–292) 79888; Facsimile (44–292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435–9100; Facsimile (703) 435–2628. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: Accidents and incidents involving certain BAe, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes where a probable causal factor is believed to be ice-induced tailplane stall has prompted the FAA and the National Transportation Safety Board (NTSB) to investigate the tailplane de-icing system of these airplanes. Results of this investigation showed that (1) water can enter the tailplane de-icing system through small leaks in the tailplane de-icing boots, in particular when the system is selected "Off" and is thus operating in the suction mode; (2) this water collects in a flexible pipe that supplies air to inflate the tailplane de-icing boots on the leading edge of the tailplane; and (3) if sufficient water has collected, ice can form in cold conditions which in turn could restrict or prevent air flow to the tailplane de-icing boots, causing the boots to fail. If failure of the tailplane de-icing boots is not detected and corrected, then flap extension to the landing setting could result in loss of pitch control at an altitude from which recovery is not possible.

BAe, Regional Aircraft Limited, has issued Jetstream Alert Service Bulletin (ASB) 30–A–JA 920444, dated October 30, 1992, which specifies procedures for (1) inspecting the tailplane de-icing system for water contamination; (2) draining any water that has accumulated in the system; (3) modifying the tailplane de-icing system; and (4) replacing and relocating the tail unit pressure switch.

The affected airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently issued CAA AD 009–10–92 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

After examining the circumstances and reviewing all available information related to the accidents and incidents described above, the FAA has determined that AD action should be proposed for products of this type design that are operated in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other BAe, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes of the same type design, this AD is being issued to provide actions that are intended to prevent tailplane de-icing system failure, including false indication of system operation, and subsequent loss of pitch control. The AD requires inspecting the tailplane de-icing system for water contamination, draining any water that has accumulated in the system, modifying the tailplane de-icing system, and replacing and relocating the tail unit pressure switch. The actions are accomplished in accordance with BAe, Regional Aircraft Limited, Jetstream ASB 30–A–JA 920444, dated October 30, 1992.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–56–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is

impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–02 British Aerospace, Regional Aircraft Limited: Amendment 39–8455; Docket No. 92–CE–56–AD.

Applicability: HP 137 Mk1, Jetstream Models 200, 3101, and 3201 Airplanes (serial numbers 1 through 969 and 971), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent tailplane de-icing system failure, including false indication of system operation, and subsequent loss of pitch control, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 150 hours TIS until the modification required by paragraph (b) of this AD is accomplished, inspect the tailplane de-icing system for contamination in accordance with part 1 of the Accomplishment Instructions section of British Aerospace (BAe), Regional Aircraft Limited, Jetstream Alert Service Bulletin (ASB) 30–A–JA 920444, dated October 30, 1992. Prior to further flight, drain any accumulated water.

(b) Within the next 400 hours TIS after the effective date of this AD, modify the tailplane de-icing system and replace and relocate the tail unit pressure switch in accordance with part 2 or part 3, as applicable, of the Accomplishment Instructions section of BAe, Regional Aircraft Limited, Jetstream ASB 30–A–JA 920444, dated October 30, 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(e) The inspections, modification, replacement, and relocation required by this AD shall be done in accordance with British Aerospace, Regional Aircraft Limited, Jetstream Alert Service Bulletin 30–A–JA 920444, dated October 30, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Regional Aircraft Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment (39–8455) becomes effective on January 22, 1993.

Issued in Kansas City, Missouri, on December 21, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31533 Filed 12–28–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–233–AD; Amendment 39–8446; AD 92–27–11]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This action requires a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and modification of discrepant parts. This amendment is prompted by a report that the engine fire extinguisher switches would not actuate, due to interference between fire shutoff handles and the cover assembly in the flight compartment. The actions specified in this AD are intended to prevent inhibited operation of the engine emergency fire extinguisher system.

DATES: Effective January 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 1993.

Comments for inclusion in the Rules Docket must be received on or before March 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications-Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Recently, during a routine maintenance check of the engine emergency fire extinguisher system on a Model MD–11 series airplane, the numbers one and three fire shutoff handles did not rotate far enough to actuate the fire extinguisher switches. This condition has been attributed to either incorrect trimming of the cutouts in the fire shutoff handle cover assembly or incorrect installation of the rub strips between the cover assembly and lightplate assembly, hindering rotation of the fire shutoff handles. This condition, if not corrected, could result in inhibited operation of the engine emergency fire extinguisher system.

The engine emergency fire extinguisher system of Model MD–11F series airplanes is similar to that of Model MD–11 series airplanes. Therefore, the Model MD–11F may be subject to the same potential unsafe condition.

The FAA has reviewed and approved McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992, that describes procedures for a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and if any fire bottle switch does not actuate and/or any handle clearance is not within the specified limits, trim of the cover assembly handle cutout and rub strips, and a functional reinspection for proper switch actuation. This modification will ensure sufficient rotation of the fire shutoff handles.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 and MD–11F series airplanes of the same type design, this AD is being issued to prevent inhibited operation of the engine emergency fire extinguisher system. This AD requires a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and if any fire bottle switch does not actuate and/or any handle clearance is not within the specified limits, trim of the cover assembly handle cutout and rub strips, and a functional reinspection for proper switch actuation. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–233–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–27–11. McDonnell Douglas: Amendment 39–8446. Docket 92–NM–223–D.

Applicability: McDonnell Douglas Model MD–11 and MD–11F series airplanes; as listed in McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inhibited operation of the engine emergency fire extinguisher system, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a functional inspection for proper actuation of the fire bottle switch, and a visual inspection of the fire shutoff handle cover assembly to verify whether a minimum clearance of 0.30 inch (0.76 mm) exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment, in accordance with the Accomplishment Instructions of McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992.

(1) If any fire bottle switch actuates (audible click), and if any handle clearance

is found to be 0.30 inch (0.76 mm) or greater, no further action is necessary; or,

(2) If any fire bottle switch does not actuate (click is not audible), and/or any handle clearance is not found to be 0.30 inch (0.76 mm) or greater, prior to further flight, trim the cover assembly handle cutout and rub strips to achieve a clearance of 0.30 inch (0.76 mm) or greater, and repeat the functional inspection requirements for proper switch actuation in accordance with paragraph (a) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The functional inspection and trim shall be done in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A76-3, dated November 17, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 13, 1993.

Issued in Renton, Washington, on December 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-31534 Filed 12-28-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-44-AD; Amendment 39-8456; AD 93-01-03]

Airworthiness Directives; Ayres Corporation S2D and S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Ayres Corporation (Ayres) S2D and S2R series airplanes. This action requires repetitively inspecting the wing front spar for corrosion, and repairing any corroded areas. Investigation of an accident involving one of the affected airplanes revealed extensive corrosion on the upper and lower portions of the front spar. The actions specified by this AD are intended to prevent wing structural damage that, if not detected, could progress to the point of failure.

DATES: Effective February 5, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 5, 1993.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883-1440. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (316) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Ayres S2D and S2R series airplanes was published in the Federal Register on September 9, 1992 (57 FR 41115). The action proposed repetitive inspections of the wing front spar for corrosion, and repair of any corroded areas. The proposed actions would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Ayres Service Bulletin No. SB-AG-29, dated June 15, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The compliance time for this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by the required AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service. In addition, the utilization rate of the affected airplanes varies throughout the fleet. For example, one operator may utilize the airplane 50 hours TIS in one week, while another operator may not operate the airplane 50 hours TIS in one month. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is utilized.

The FAA estimates that 1,700 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $180 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,054,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety .

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93–01–03 Ayres Corporation: Amendment 39–8456; Docket No. 92–CE–44–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
S2D	all serial numbers.
S2R	5000 through 5099, 1380R, and 1416R through 2583R.
S2R–R1340	R1340–001 through R1340–030 (with or without DC suffix).
S2R–R3S	R3S–001 through R3S–011 (with or without DC suffix).
S2R–R1820	R1820–001 through R1820–035 (with or without DC suffix).
S2R–T11	T11–001 through T11–005 (with or without DC suffix).
S2R–T15	T15–001 through T15–029 (with or without DC suffix) and T15–031 (with or without DC suffix); and T27–001 through T27–029 (with or without DC suffix) and T27–031 (with or without DC suffix).
S2R–T34	6000 through 6049, T34–001 through T34–178 (with or without DC suffix) and T34–180 (with or without DC suffix); and T41–001 through T41–178 (with or without DC suffix) and T41–180 (with or without DC suffix).
S2R–T45	T45–001 through T45–003 (with or without DC suffix).
S2R–T65 and S2RHG–T65.	T65–001 through T65–010 (with or without DC suffix).
S2R–G6	G6–101 through G6–107 (with or without DC suffix).

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 12 calendar months.

To prevent wing structural damage that, if not detected, could progress to the point of failure, accomplish the following:

(a) Inspect the wing front spar for corrosion in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: I. Inspection of Front Spar" section of Ayres Service Bulletin (SB) No. SB–AG–29, dated June 15, 1992.

(b) If corrosion is found, prior to further flight, treat and repair the corrosion damage in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: II. Repairs" section of Ayres SB No. SB–AG–29, dated June 15, 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) The inspections required by this AD shall be done in accordance with Ayres Service Bulletin No. SB–AG–29, dated June 15, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8456) becomes effective on February 5, 1993.

Issued in Kansas City, Missouri, on December 21, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31411 Filed 12–28–92; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Shuttle

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim final rule.

SUMMARY: NASA is amending its regulations by adding new provisions on "Special Policy on Use of Small, Self-Contained Payloads (SSCP's) by Domestic Educational Institutions." In conjunction with NASA regulations on, "Use of Small, Self-Contained Payloads," the goal is to stimulate and encourage the use of space by a wide range of users, particularly those associated with education.

DATES: This rule is effective December 29, 1992. Any comments must be received on or before January 28, 1993.

ADDRESSES: Comments may be mailed to the Education Division, Code FET, NASA Headquarters, Washington, DC 20546, or delivered to room 2K31, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Malcom V. Phelps, (202) 358–1540.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 51 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Government employees, Security measures, Space Shuttle.

PART 1214—SPACE SHUTTLE

For reasons set out in the Preamble, 14 CFR part 1214 is amended as follows:

1. The authority citation for 14 CFR part 1214 is revised to read as follows:

Authority: Sec. 203, Public Law 85–568, 72 Stat. 429, as amended (42 U.S.C. 2473).

2. Subpart 1214.10 is revised to read as follows:

Subpart 1214.10—Special Policy on Small, Self-Contained Payloads (SSCP's) by Domestic Educational Institutions

Sec.

1214.1000 Scope.
1214.1001 Goal.
1214.1002 Pricing.
1214.1003 Qualifications.
1214.1004 Results and data dissemination.

Subpart 1214.10—Special Policy on Small, Self-Contained Payloads (SSCP's) by Domestic Educational Institutions

§ 1214.1000 Scope.

This subpart defines NASA's special policy for the use of Small, Self-Contained Payloads (SSCP's) by domestic educational institutions.

§ 1214.1001 Goal.

The goal of NASA's policy on "Use of Small, Self-Contained Payloads," as stated in subpart 1214.9, is to stimulate

and encourage the use of space by a wide range of users, particularly those associated with education.

§ 1214.1002 Pricing.

As an adjunct to that policy, and in furtherance of NASA's commitment to education, NASA is offering lower prices for standard launch services for SSCP's sponsored by domestic educational institutions that agree to certain provisions and can meet certain criteria. The prices for standard launch services for such payloads will be:

Payload weight/volume	Price
200 lbs/5.0 cf	$10,000
100 lbs/2.5 cf	5,000
60 lbs/2.5 cf	3,000

§ 1214.1003 Qualifications.

For a payload to qualify for flight as a domestic educational institution payload":

(a) The applying institution must be a U.S. public or nonprofit (section 501(c)(3) of the Internal Revenue Code) educational institution, which may include universities, colleges, community colleges, elementary or secondary schools, or university-affiliated education research foundations.

(b) The payload must be certified by an authorized official of the institution to be part of an educational or research project that is principally for the benefit of students, rather than nonstudents, such as faculty or research staff. The certification shall include a brief explanation of the educational aspects of the payload project and how it principally benefits students.

(c) Payload experiments should involve students in all phases of the project, including concept development, initial planning, design, conduct, and analysis of the results of the experiments. Involvement of faculty or other professionals in a supervisory, advisory, or consultative relationship with the students is necessary.

(d) Projects may include; (1) Applied research;

(2) Basic research; and/or

(3) Other activities which have further educational uses beyond the immediate research effort.

§ 1214.1004 Results and data dissemination.

(a) A goal of this special category of payloads is to encourage student participation in various space science and technology experiments. Accordingly, subject to the exceptions listed below, NASA, unless otherwise agreed, will require all scientific or research results or data that are produced or obtained during the flight of a payload of this category to be made publicly available without restriction of disclosure and use no later than 2 years after the Shuttle mission on which the payload is flown. The exceptions are:

(1) Those results comprising an invention for which patent protection has been or will in a reasonable time be applied for.

(2) Data disclosing an invention prior to applying for patent protection thereon.

(b) Payloads of domestic educational institutions will be subject to all other provisions of subpart 1214.9, and each such institution will be required to sign a Launch Services Agreement with NASA.

(c) Domestic educational institutions proposing to fly SSCP experiments under this special policy should contact NASA Headquarters, Office of Space Flight, Code MB, Washington, DC 20546. Such applications must receive the approval of the NASA Education Division, Office of Human Resources and Education.

Dated: November 30, 1992.

Daniel S. Goldin,

Administrator.

[FR Doc. 92-31246 Filed 12-28-92; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960—None Assigned

Federal Old-Age, Survivors and Disability Insurance Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which part A of the cardiovascular system listings found in appendix 1 of part 404, subpart P, will no longer be effective from January 5, 1993, to July 6, 1993. We have made no revisions in the medical criteria in the cardiovascular system listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments we received on a Notice of Proposed Rulemaking (NPRM) to update the medical criteria contained in part A and part B of the cardiovascular system listings. When we have completed our review, any revised criteria will be published as final regulations.

EFFECTIVE DATE: This final rule will be effective December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of 13 major body systems, impairments that are considered severe enough to preclude a person from engaging in any gainful activity (part A), or in the case of a child under the age of 18, impairments that are considered severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (part B). The Listing of Impairments is used for evaluating disability and blindness at the third step of the sequential evaluation process for adults and children under the Social Security disability program and the supplemental security income program.

When the revised Listing of Impairments was published in 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated.

Accordingly, we established termination dates ranging from 4 to 8 years for each of the listings for specific body systems. A date of December 6, 1989, was established for the cardiovascular system listings in part A to no longer be effective. A date of December 6, 1993, was established for part B of the cardiovascular system listings to no longer be effective.

The potential program impact of the changes to update the cardiovascular system listings required careful analysis and consideration within the Agency. As our study and analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for part A of the cardiovascular system listings by December 6, 1989. We published in the **Federal Register** of December 5, 1989 (54 FR 50233), a final regulation extending the current cardiovascular system listings for a period of 18 months through June 5, 1991. The cardiovascular system listings were again extended an additional 12

months through June 5, 1992, by final regulation published in the **Federal Register** on June 6, 1991 (56 FR 26030), and were extended to January 5, 1993, by final regulation published in the **Federal Register** on June 5, 1992 (57 FR 23945).

On July 9, 1991 we published an NPRM proposing revisions to the medical criteria contained in parts A and B of the cardiovascular system listings (56 FR 31266), with provisions for a 60-day comment period. The complex issues raised by the numerous comments we received have required extensive analysis and careful consideration. Because of the need to consider these complex issues thoroughly so that any revised criteria reflect medical advances in disability evaluation and treatment of cardiovascular impairments, we find that we will not have sufficient time to publish a final regulation in the **Federal Register** by January 5, 1993. We have, therefore, decided to extend the date on which the current cardiovascular system listings in part A will no longer be effective for an additional 6 months and 1 day—from January 5, 1993, to July 6, 1993.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the date on which part A of the cardiovascular system listings will no longer be effective and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, we have determined that use of public comment procedures is unnecessary under the Administrative Procedure Act.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Social Security Act.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security-Disability Insurance; No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements.

Dated: December 3, 1992.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: December 15, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Public Law 96–265, 94 Stat. 473, secs. 2(d)(2), (5), (6) and (15) of Public Law 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Appendix 1 to subpart P is amended by revising the fourth paragraph of the introductory text to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

The cardiovascular system (4.00) will no longer be effective on July 6, 1993.

* * * * *

[FR Doc. 92–31471 Filed 12–28–92; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from Norwich Eaton Pharmaceuticals, Inc., to Procter & Gamble Pharmaceuticals, Inc.

EFFECTIVE DATE: December 29, 1992.

FOR FUTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815, has informed FDA of a change of sponsor name from Norwich Eaton Pharmaceuticals, Inc., to Procter & Gamble Pharmaceuticals, Inc. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Norwich Eaton Pharmaceuticals, Inc." and in the table in paragraph (c)(2) in the entry for "000149" by revising the

sponsor name to read "Procter & Gamble Pharmaceuticals, Inc."

Dated: December 18, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-31530 Filed 12-28-92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8462]

RIN 1545-AH09

Definition of Affiliated Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1504(a) setting forth circumstances under which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group. For purposes of these regulations, unless the context otherwise provides, warrants, options, convertible obligations, and similar interests are all referred to as options. This section generally applies to all provisions under the Internal Revenue Code and Income Tax Regulations to which affiliation within the meaning of section 1504 (with or without the exceptions in section 1504(b)) is relevant, and to all provisions that refer to section 1504(a)(2). These regulations ensure that the affiliation rules under section 1504(a) are not circumvented through the use of options.

DATES: These regulations are effective December 28, 1992 and apply to options with a measurement date on or after February 28, 1992. These regulations do not apply to options issued prior to February 28, 1992, which have a measurement date on or after February 28, 1992, if the measurement date for the option occurs solely because of an adjustment in the terms of the option pursuant to the terms of the option as it existed on February 28, 1992. Section 1.1504-4(b)(2)(iv) applies to stock outstanding on or after February 28, 1992.

FOR FURTHER INFORMATION CONTACT: Ken Cohen, (202) 622-7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

On March 2, 1992, the Internal Revenue Service published in the **Federal Register** a Notice of proposed rulemaking (57 FR 7340 [CO-152-84, 1992-12 I.R.B. 37]) proposing to add new regulations §§ 1.1504-0 and 1.1504-4 to 26 CFR part 1. The Notice of proposed rulemaking provided rules regarding circumstances under which options are treated as exercised for purposes of determining whether the 80 percent voting power and value tests for affiliation under section 1504(a) are satisfied. A public hearing was scheduled for April 14, 1992. Comments responding to the Notice of proposed rulemaking were received, but no one requested to present comments at the scheduled public hearing. Accordingly, the hearing was cancelled. After considering the written comments received, the Service adopts the proposed regulations as revised by this Treasury decision.

Overview

The final regulations provide guidance regarding circumstances under which options are treated as exercised for purposes of determining whether the 80 percent voting power and value tests for affiliation under section 1504(a) are satisfied. In general, options are disregarded in determining whether a corporation is a member of an affiliated group. An option, however, is treated as exercised for purposes of determining affiliation when (1) a reasonable certainty exists, on a specified measurement date (generally the issuance, adjustment, or transfer date), that the option will be exercised and (2) the issuance or transfer of the option in lieu of the issuance, redemption, or transfer of the underlying stock would result (but for these regulations) in the elimination of a substantial amount of federal income tax liability. In each case, the determination of whether an option is reasonably certain to be exercised or whether a substantial amount of federal income tax liability would be eliminated is based on all the facts and circumstances. Options that do not have an abuse potential, such as publicly traded options, employee stock options, and options granted in connection with a bona fide loan agreement are generally excepted from these regulations. Safe harbors are provided for other options, which based on their terms, do not evidence an abuse potential.

Amendment and Adoption of §§ 1.1504-0 and 1.1504-4

After full consideration of the comments concerning the proposed regulations, §§ 1.1504-0 and 1.1504-4 are amended and adopted as final regulations. Generally, the final regulations maintain the same approach as the proposed regulations. However, in response to comments, the following modifications have been made.

Scope of Regulations

Comments asked whether the proposed regulations were intended to apply to provisions of the Code and regulations that refer to section 1504(a)(2) or just to provisions that use the term "affiliation." The final regulations clarify that they apply to all provisions which refer to affiliation and to those provisions to which affiliation within the meaning of section 1504(a) is relevant, including those provisions which refer to section 1504(a)(2) without referring to affiliation. For this purpose, a provision is considered to refer to affiliation or section 1504(a)(2) regardless of whether the exceptions provided in section 1504(b) apply. However, a provision is not considered to refer to affiliation or section 1504(a)(2) if the 80 percent voting power and 80 percent value requirements of section 1504(a)(2) are modified. In addition, the regulations do not apply to those provisions specified by the Internal Revenue Service in regulations, a revenue ruling, or revenue procedure.

Several of the exceptions to the scope of the proposed regulations have been modified in the final regulations. Sections 163(j) and 904(i) have been added to the excepted sections and the exception relating to section 864 has been limited to subsection (e) of section 864. The proposed regulations provided that the regulations do not apply to section 382(l)(5). Because section 382(l)(5) modifies the 80 percent voting power and value requirement of section 1504(a)(2), no exception is needed to prevent the regulations from applying to section 382(l)(5). Accordingly, the exception for section 382(l)(5) is unnecessary and has been removed from the final regulations.

Option Not Treated as Exercised for Voting Power Purposes

Under the proposed regulations, an option that was treated as exercised was always treated as exercised for purposes of determining the value of the stock of the issuing corporation owned, but was treated as exercised for voting power purposes only in limited circumstances.

Comments requested that the regulations be clarified as to those circumstances. The regulations have been revised to provide that, for purposes of these regulations, an option is never treated as exercised for voting power purposes. Instead, the determination of the voting power owned is made under other applicable principles of law.

Cash Settlement Options, Phantom Stock, Stock Appreciation Rights, or Similar Interests

Comments requested that the regulations clarify the treatment of cash settlement options, phantom stock, stock appreciation rights, or similar interests. The final regulations provide that such options are treated as reasonably certain to be exercised if it is reasonably certain that the option will have value at some time during the period in which the option may be exercised. If such an option is treated as exercised, the option is treated as having been converted into stock of the issuing corporation. If the amount to be received upon the exercise of such an option is determined by reference to a multiple of the increase in the value of a share of the issuing corporation's stock on the exercise date over the value of a share of the stock on the date the option is issued, the option is treated as converted into a corresponding number of shares of such stock. For example, assume P owns all 100 shares of the stock of S. S issues to X, an unrelated corporation, a stock appreciation right that allows X to receive 40 times the increase in the value of a share of S stock at the time the stock appreciation right is exercised over the current value of a share of S stock. If the stock appreciation right is treated as exercised under these regulations, X is treated, for value purposes only, as the owner of 40 shares of S stock. Appropriate adjustments must be made in any situation in which the amount to be received upon exercise of the option is determined in another manner.

Measurement Dates

Comments requested that the number of measurement dates be limited. After consideration of the comments, several changes have been made.

Under the proposed regulations, a measurement date included the date on which an option was issued, transferred, or on which the terms of an existing option or the underlying stock were modified. The proposed regulations provided an exception for certain issuances, transfers, and modifications "unless used as a device to avoid the application of section 1504 and these regulations." Comments suggested that this exception was too vague. After consideration of these comments, the device test has been deleted.

Comments asserted that the exception from a measurement date for sales between parties none of which are related to a member of the issuing corporation's group was too narrow. The Service and Treasury have determined that the purposes of this provision can be satisfied by broadening the exception to cover sales between parties none of which is a member of the issuing corporation's affiliated group. However, the exception does not apply if the person is related to, or acting in concert with, the issuing corporation or a member of its affiliated group, and the issuance or transfer of the option is pursuant to a plan a principal purpose of which is to avoid the application of section 1504 and these regulations.

Comments also asserted that the definition of related persons in the proposed regulations was too broad. The proposed regulations defined related persons by reference to section 267(b), which incorporates sections 267(c) and 1563(e)(1). The incorporation of section 1563(e)(1) had the unintended result of treating a corporation having an option to acquire over 10 percent of the stock of an issuing corporation as related to the issuing corporation, regardless of whether it actually owned stock of the issuing corporation. Under the proposed regulations, the transfer of such an option by a corporation would have caused a measurement date. Accordingly, the regulations have been amended to provide that section 1563(e)(1) does not apply in determining whether persons are related. Furthermore, the Service and Treasury have determined that the incorporation of the constructive ownership rules under section 267(c) is also unnecessary to carry out the purposes of the regulations. Accordingly, the regulations have been amended to provide that section 267(c) does not apply in determining whether persons are related.

Instruments Treated as Options

Several comments concerned instruments treated as options under the proposed regulations. Comments asked whether an agreement under which one shareholder could require the issuing corporation to redeem the stock of another shareholder constituted an option under the proposed regulations. The regulations have been modified to clarify that redemption agreements constitute options because they provide for the ability to transfer or require the transfer of stock.

In addition, comments suggested that the provision in the proposed regulations treating any instrument or right (except for stock itself) pursuant to which the holder may share in corporate growth as an option was too broad. For example, comments suggested that this rule treated instruments such as royalty interests and purchase price "earn-outs" as options. Because these instruments generally are associated with non-abusive transactions, the proposed regulations were not intended to cover these types of instruments. Accordingly, the regulations have been modified to limit the application of the regulations to instruments with greater abuse potential and thus the language defining an option as any "instrument or right (except for stock itself) pursuant to which the holder may share in the growth of the issuing corporation" has been eliminated.

Comments requested that the treatment of tracking stock be clarified in the regulations. However, the final regulations do not address the treatment of tracking stock. The Service and Treasury continue to study the questions raised by tracking stock and may issue guidance in the future.

Instruments Not Treated as Options

The proposed regulations stated that, "provided they are not used as a device to avoid the application of section 1504 or these regulations," specified instruments are not treated as options. Several comments asserted that the device test causes uncertainty. Comments recommended eliminating the general device test and addressing concerns about abuse by narrowing the enumerated exceptions. After consideration of these comments, the general device test has been eliminated. Concerns about abuse are addressed by more specific requirements for instruments not treated as options. For example, under the final regulations, the exception for publicly traded options applies unless an option is issued, transferred, or listed with a principal purpose of avoiding the application of section 1504 and these regulations. The final regulations include examples of when a publicly traded option may have such a principal purpose.

In addition, the final regulations provide that options created pursuant to a title 11 or similar case and certain convertible preferred stock are not treated as options. Most convertible preferred stock should satisfy this exception and should not be treated as an option. If, however, the convertible preferred stock does not satisfy this exception, it may be treated as stock

and/or an option, depending on the circumstances.

Comments asked whether an option that is publicly traded on one measurement date but not on a subsequent measurement date is treated as an option on the subsequent measurement date. The regulations have been clarified to provide that the publicly traded exception no longer applies if the option is no longer publicly traded.

Reasonable Anticipation of Elimination of Tax Liability

Comments asked whether the requirement that there be a reasonable anticipation that the issuance or transfer of an option, in lieu of the underlying stock, result in the elimination of tax liability requires only some possibility of elimination, or similar to the reasonable certainty of exercise test, a strong probability. The intention of the regulations is that the sale of an option is treated as if it would result in the elimination of tax liability only if the parties expect, or should reasonably have expected, that there would be an elimination of tax liability. The mere possibility of such savings is not sufficient to satisfy this requirement.

Comments also suggested that an aggregation rule should be provided when testing whether the issuance or transfer of an option in lieu of the underlying stock would, if not for the regulations, result in the elimination of federal income tax liability. In response to these comments, the regulations have been changed to provide that in the case of options issued pursuant to a plan, a measurement date for any of the options constitutes a measurement date for all options issued pursuant to the plan that are outstanding on the measurement date. In addition, the regulations have been modified to provide that all options with the same measurement date are aggregated in determining whether the sale of the option, in lieu of the underlying stock, would result in the elimination of a substantial amount of federal income tax liability.

Other comments asked whether the triggering of an excess loss account or the restoration of deferred intercompany accounts because of the disaffiliation of the issuing corporation from its affiliated group are taken into account in determining whether there would be an elimination of tax liability under the regulations. The regulations intend that any benefit related to the affiliation of the issuing corporation and its affiliated group constitutes an elimination of federal income tax liability within the meaning of the regulations. When a corporation is disaffiliated from its group, the entire excess loss account or deferred intercompany account, and not just the amount associated with any stock that is sold, is restored to income. Therefore, these amounts must be taken into consideration in determining whether there would be an elimination of federal income tax liability. This should be contrasted with the deferral of gain with respect to stock subject to the option that would be recognized if such stock, rather than the option, were sold on a measurement date. This latter deferral of gain is not related to the affiliation of the issuing corporation and its affiliated group but only to the stock that would otherwise have been sold. Therefore, the regulations provide that such deferral does not constitute an elimination of federal income tax liability.

Another comment asked whether the description of items that constitute an elimination of tax liability under the proposed regulations was all inclusive, or whether other items could also satisfy this provision. The list was not intended to address all items that could constitute the elimination of tax liability. For example, a deferral of a loss under § 1.1502–13 from the current year to a later year to allow an otherwise expiring net operating loss to be used in the current year constitutes an elimination of tax liability for purposes of this provision.

Elimination of a Substantial Amount of Federal Income Tax Liability

Comments requested that the regulations add a safe harbor for the determination of a substantial amount of federal income tax liability. Careful consideration was given to this issue. Based on all of the different factors involved, however, including size of groups, gross income of groups, net income of groups, amount of savings, and timing of savings, the Service and Treasury determined that the final regulations would not provide a safe harbor. Accordingly, the determination of whether an elimination of tax liability is substantial is made on a facts and circumstances basis.

Reasonable Certainty of Exercise

Other comments asked about the treatment of an option whose exercise price varies over time. Generally, all the facts and circumstances are considered in determining whether an option is reasonably certain to be exercised. The fact that an option cannot, or may not, be exercised for a period of time after its issuance is not determinative as to whether the option is treated as exercised as of a measurement date. Therefore, if the possible exercise prices of an option are set forth in the option agreement, the lowest exercise price (or in the case of an option to sell stock, the highest exercise price) is used in determining whether an option is reasonably certain to be exercised. If the exercise price varies according to an index or some other standard outside the option agreement, all the facts and circumstances must be taken into consideration. In addition, the regulations have been amended to clarify that the date on which the exercise price of the option changes constitutes a measurement date, because the change is an adjustment pursuant to the terms of the option.

One of the factors considered in determining whether an option is reasonably certain to be exercised is the existence of stockholder rights (i.e., managerial or economic rights in the issuing corporation that ordinarily are possessed by owners of stock). Several comments asked whether an option holder (or a person whose stock ownership would increase on the exercise of an option) who is also a stockholder is considered to possess such stockholder rights if these rights are possessed solely because of actual stock ownership. In response to these comments, the regulations have been modified to provide that managerial or economic rights possessed because of actual stock ownership in the issuing corporation are not taken into account.

In addition, another comment noted that the proposed regulations treat the existence of stockholder rights as a factor to be taken into account in determining whether an option is reasonably certain to be exercised, even though the existence of such rights actually may reduce the likelihood of exercise. For example, if an option holder already possesses dividend and/or voting rights pursuant to an option agreement, the exercise of the option may be less likely than if the option did not provide such rights, because the option holder benefits less from the exercise of the option. However, because an option that provides stockholder rights tends to appear more similar to actual stock of the issuing corporation, the existence of such rights is considered a factor making an option more likely to be exercised, rather than less likely.

Treatment of Options Previously Treated as Exercised

Several comments concerned the treatment of options that were treated as exercised on one measurement date and that subsequently either lapsed or were forfeited. The lapse or forfeiture of an option does not constitute a

measurement date. However, because the option is no longer in existence as of the date of lapse or forfeiture, the option is not taken into account in determining affiliation on or after such date. Accordingly, if the option had the effect of breaking affiliation as of a prior measurement date, the lapse or forfeiture of the option may reaffiliate the issuing corporation with its affiliated group as of the date of lapse or forfeiture.

Several comments requested that an option that lapses or is forfeited be treated as if it never existed, so that the issuing corporation would be treated as not having disaffiliated. The final regulations do not adopt such a rule. These regulations only apply to options that are reasonably certain to be exercised and the sale, issuance, or transfer of which, if not for these regulations, would provide a substantial elimination of tax liability, i.e., abusive situations. In effect, the regulations treat the sale, issuance, or transfer of such an option as if the underlying stock were sold. Accordingly, the issuing corporation should properly be disaffiliated as of the date of the sale, issuance, or transfer of the option. Further, all of the consequences of the disaffiliation and reaffiliation, including section 1504(a)(3), apply.

Comments also asked whether options that were previously treated as exercised are to be retested on subsequent measurement dates or are permanently treated as exercised. Under the regulations, an option, whether previously treated as exercised or as not exercised, is retested on a subsequent measurement date for the option. Thus, an option that was previously treated as exercised will no longer be treated as exercised on a subsequent measurement date if the option no longer satisfies both the reasonable certainty of exercise test and the substantial elimination of tax liability test. If the retesting of the option causes the reaffiliation of the issuing corporation to its affiliated group, all of the consequences of disaffiliation and reaffiliation apply.

Substance Over Form

The preamble to the proposed regulations stated that no inference was intended that options with no measurement date on or after February 28, 1992, are to be disregarded for purposes of determining affiliation and that the Service may apply substance over form principles in determining whether options are treated as stock or as exercised in appropriate circumstances. Comments asked whether the same substance over form principles would be applied for options with measurement dates on or after February 28, 1992. It is intended that substance over form principles apply to options with measurement dates on or after February 28, 1992. Accordingly, the fact that an instrument is treated as an option under these regulations does not prevent the instrument from being treated as stock under general principles of law.

Effective Date

Several comments asked for clarification of the effective date of the provision concerning valuation of stock. This provision does not require the existence of an option and thus, the effective date of this provision is unclear. Accordingly, the regulations have been modified to provide that the valuation provision applies to stock outstanding on or after February 28, 1992, the date the proposed regulations were filed with the Federal Register.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis and a final Regulatory Flexibility Analysis (under the Regulatory Flexibility Act (5 U.S.C. chapter 6)) are not required. Pursuant to section 7805(f) of the Internal Revenue Code, the Notice of Proposed Rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ken Cohen of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1501–1 Through 1.1504–5

Consolidated returns, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.1504–4 also issued under 26 U.S.C. 1504(a)(5). * * *

Par. 2. Section 1.1504–0 is added to read as follows:

§ 1.1504–0 Outline of provisions.

In order to facilitate the use of §§ 1.1504–1 through 1.1504–4, this section lists the captions contained in §§ 1.1504–1 through 1.1504–4.

§ 1.1504–1 Definitions.

§ 1.1504–2 [Reserved].

§ 1.1504–3 [Reserved].

§ 1.1504–4 Treatment of warrants, options, convertible obligations, and other similar interests.

(a) Introduction.
(1) General rule.
(2) Exceptions.
(b) Options not treated as stock or as exercised.
(1) General rule.
(2) Options treated as exercised.
(i) In general.
(ii) Aggregation of options.
(iii) Effect of treating option as exercised.
(A) In general.
(B) Cash settlement options, phantom stock, stock appreciation rights, or similar interests.
(iv) Valuation.
(3) Example.
(c) Definitions.
(1) Issuing corporation.
(2) Related or sequential option.
(3) Related persons.
(4) Measurement date.
(i) General rule.
(ii) Issuances, transfers, or adjustments not treated as measurement dates.
(iii) Transactions increasing likelihood of exercise.
(iv) Measurement date for options issued pursuant to a plan.
(v) Measurement date for related or sequential options.
(vi) Example.
(5) In-the-money.
(d) Options.
(1) Instruments treated as options.
(2) Instruments generally not treated as options.
(i) Options on section 1504(a)(4) stock.
(ii) Certain publicly traded options.
(A) General rule.
(B) Exception.
(iii) Stock purchase agreements.
(iv) Escrow, pledge, or other security agreements.
(v) Compensatory options.
(A) General rule.
(B) Exceptions.
(vi) Options granted in connection with a loan.
(vii) Options created pursuant to a title 11 or similar case.
(viii) Convertible preferred stock.
(ix) Other enumerated instruments.
(e) Elimination of federal income tax liability.
(f) Substantial amount of federal income tax liability.

(g) Reasonable certainty of exercise.
(1) Generally.
(i) Purchase price.
(ii) In-the-money option.
(iii) Not in-the-money option.
(iv) Exercise price.
(v) Time of exercise.
(vi) Related or sequential options.
(vii) Stockholder rights.
(viii) Restrictive covenants.
(ix) Intention to alter value.
(x) Contingencies.
(2) Cash settlement options, phantom stock, stock appreciation rights, or similar interests.
(3) Safe harbors.
(i) Options to acquire stock.
(ii) Options to sell stock.
(iii) Options exercisable at fair market value.
(iv) Exceptions.
(v) Failure to satisfy safe harbor.
(h) Examples.
(i) Effective date.

Par. 3. Sections 1.1504–2 and 1.1504–3 are added and reserved and § 1.1504–4 is added to read as follows.

§ 1.1504–2 [Reserved]

§ 1.1504–3 [Reserved]

§ 1.1504–4 Treatment of warrants, options, convertible obligations, and other similar interests.

(a) *Introduction*—(1) *General rule.* This section provides regulations under section 1504(a)(5) (A) and (B) regarding the circumstances in which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group. The fact that an instrument may be treated as an option under these regulations does not prevent such instrument from being treated as stock under general principles of law. Except as provided in paragraph (a)(2) of this section, this section applies to all provisions under the Internal Revenue Code and the regulations to which affiliation within the meaning of section 1504(a) (with or without the exceptions in section 1504(b)) is relevant, including those provisions that refer to section 1504(a)(2) (with or without the exceptions in section 1504(b)) without referring to affiliation, provided that the 80 percent voting power and 80 percent value requirements of section 1504(a)(2) are not modified therein.

(2) *Exceptions.* This section does not apply to sections 163(j), 864(e), or 904(i) or to the regulations thereunder. This section also does not apply to any other provision specified by the Internal Revenue Service in regulations, a revenue ruling, or revenue procedure. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(b) *Options not treated as stock or as exercised*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, an option is not considered either as stock or as exercised. Thus, options are disregarded in determining whether a corporation is a member of an affiliated group unless they are described in paragraph (b)(2) of this section.

(2) *Options treated as exercised*—(i) *In general.* Solely for purposes of determining whether a corporation is a member of an affiliated group, an option is treated as exercised if, on a measurement date with respect to such option—

(A) It could reasonably be anticipated that, if not for this section, the issuance or transfer of the option in lieu of the issuance, redemption, or transfer of the underlying stock would result in the elimination of a substantial amount of federal income tax liability (as described in paragraphs (e) and (f) of this section); and

(B) It is reasonably certain that the option will be exercised (as described in paragraph (g) of this section).

(ii) *Aggregation of options.* All options with the same measurement date are aggregated in determining whether the issuance or transfer of an option in lieu of the issuance, redemption, or transfer of the underlying stock would result in the elimination of a substantial amount of federal income tax liability.

(iii) *Effect of treating option as exercised*—(A) *In general.* An option that is treated as exercised is treated as exercised for purposes of determining the percentage of the value of stock owned by the holder and other parties, but is not treated as exercised for purposes of determining the percentage of the voting power of stock owned by the holder and other parties.

(B) *Cash settlement options, phantom stock, stock appreciation rights, or similar interests.* If a cash settlement option, phantom stock, stock appreciation right, or similar interest is treated as exercised, the option is treated as having been converted into stock of the issuing corporation. If the amount to be received upon the exercise of such an option is determined by reference to a multiple of the increase in the value of a share of the issuing corporation's stock on the exercise date over the value of a share of the stock on the date the option is issued, the option is treated as converted into a corresponding number of shares of such stock. Appropriate adjustments must be made in any situation in which the amount to be received upon exercise of the option is determined in another manner.

(iv) *Valuation.* For purposes of section 1504(a)(2)(B) and this section, all shares of stock within a single class are considered to have the same value. Thus, control premiums and minority and blockage discounts within a single class are not taken into account.

(3) *Example.* The provisions of paragraph (b)(2) of this section may be illustrated by the following example:

Example. (i) Corporation P owns all 100 shares of the common stock of Corporation S, the only class of S stock outstanding. Each share of S stock has a fair market value of $10 and has one vote. On June 30, 1992, P issues to Corporation X and option to acquire 80 shares of the S stock from P.

(ii) If, under the provisions of this section, the option is treated as exercised, then, solely for purposes of determining affiliation, P is treated as owning only 20 percent of the value of the outstanding S stock and X is treated as owing the remaining 80 percent of the value of the S stock. P is still treated as owning all of the voting power of S. Accordingly, because P is treated as owning less than 80 percent of the value of the outstanding S stock, P and S are no longer affiliated. However, because X is not treated as owning any of the voting power of S, X and S are also not affiliated.

(c) *Definitions.* For purposes of this section—

(1) *Issuing corporation.* "Issuing corporation" means the corporation whose stock is subject to an option.

(2) *Related or sequential option.* "Related or sequential option" means an option that is one of a series of options issued to the same or related persons. For purposes of this section, any options issued to the same person or related persons within a two-year period are presumed to be part of a series of options. This presumption may be rebutted if the facts and circumstances clearly establish that the options are not part of a series of options. Any options issued to the same person or related persons more than two years apart are presumed not to be part of a series of options. This presumption may be rebutted if the facts and circumstances clearly establish that the options are part of a series of options.

(3) *Related persons.* Persons are related if they are related within the meaning of section 267(b) (without the application of sections 267(c) and 1563(e)(1)) or 707(b)(1), substituting "10 percent" for "50 percent" wherever it appears.

(4) *Measurement date*—(i) *General rule.* "Measurement date" means a date on which an option is issued or transferred or on which the terms of an existing option or the underlying stock are adjusted (including an adjustment

pursuant to the terms of the option or the underlying stock).

(ii) *Issuances, transfers, or adjustments not treated as measurement dates.* A measurement date does not include a date on which—

(A) An option is issued or transferred by gift, at death, or between spouses or former spouses under section 1041;

(B) An option is issued or transferred—

(*1*) Between members of an affiliated group (determined with the exceptions in section 1504(b) and without the application of this section); or

(*2*) Between persons none of which is a member of the affiliated group (determined without the exceptions in section 1504(b) and without the application of this section), if any, of which the issuing corporation is a member, unless—

(*i*) Any such person is related to (or acting in concert with) the issuing corporation or any member of its affiliated group; and

(*ii*) The issuance or transfer is pursuant to a plan a principal purpose of which is to avoid the application of section 1504 and this section;

(C) An adjustment occurs in the terms or pursuant to the terms of an option or the underlying stock that does not materially increase the likelihood that the option will be exercised; or

(D) A change occurs in the exercise price of an option or in the number of shares that may be issued or transferred pursuant to the option as determined by a bona fide, reasonable, adjustment formula that has the effect of preventing dilution of the interests of the holders of the options.

(iii) *Transactions increasing likelihood of exercise.* If a change or alteration referred to in this paragraph (c)(4)(iii) is made for a principal purpose of increasing the likelihood that an option will be exercised, a measurement date also includes any date on which—

(A) The capital structure of the issuing corporation is changed; or

(B) The fair market value of the stock of the issuing corporation is altered through a transfer of assets to or from the issuing corporation (other than regular, ordinary dividends) or by any other means.

(iv) *Measurement date for options issued pursuant to a plan.* In the case of options issued pursuant to a plan, a measurement date for any of the options constitutes a measurement date for all options issued pursuant to the plan that are outstanding on the measurement date.

(v) *Measurement date for related or sequential options.* In the case of related or sequential options, a measurement date for any of the options constitutes a measurement date for all related or sequential options that are outstanding on the measurement date.

(vi) *Example.* The provisions of paragraph (c)(4)(v) of this section may be illustrated by the following example.

Example. (i) Corporation P owns all 80 shares of the common stock of Corporation S, the only class of S stock outstanding. On January 1, 1992, S issues a warrant, exercisable within 3 years, to U, an unrelated corporation, to acquire 10 newly issued shares of S common stock. On July 1, 1992, S issues a second warrant to U to acquire 10 additional newly issued shares of S common stock. On January 1, 1993, S issues a third warrant to T, a wholly owned subsidiary of U, to acquire 10 newly issued shares of S common stock. Assume that the facts and circumstances do not clearly establish that the options are not part of a series of options.

(ii) January 1, 1992, July 1, 1992, and January 1, 1993, constitute measurement dates for the first warrant, the second warrant, and the third warrant, respectively, because the warrants were issued on those dates.

(iii) Because the first and second warrants were issued within two years of each other, and both warrants were issued to U, the warrants constitute related or sequential options. Accordingly, July 1, 1992, constitutes a measurement date for the first warrant as well as for the second warrant.

(iv) Because the first, second, and third warrants were all issued within two years of each other, and were all issued to the same or related persons, the warrants constitute related or sequential options. Accordingly, January 1, 1993, constitutes a measurement date for the first and second warrants, as well as for the third warrant.

(5) *In-the-money.* "In-the-money" means the exercise price of the option is less than (or in the case of an option to sell stock, greater than) the fair market value of the underlying stock.

(d) *Options*—(1) *Instruments treated as options.* For purposes of this section, except to the extent otherwise provided in this paragraph (d), the following are treated as options:

(i) A call option, warrant, convertible obligation, put option, redemption agreement (including a right to cause the redemption of stock), or any other instrument that provides for the right to issue, redeem, or transfer stock (including an option on an option); and

(ii) A cash settlement option, phantom stock, stock appreciation right, or any other similar interest (except for stock).

(2) *Instruments generally not treated as options.* For purposes of this section, the following will not be treated as options:

(i) *Options on section 1504(a)(4) stock.* Options on stock described in section 1504(a)(4);

(ii) *Certain publicly traded options*—(A) *General rule.* Options which on the measurement date are traded on (or subject to the rules of) a qualified board or exchange as defined in section 1256(g)(7), or on any other exchange, board of trade, or market specified by the Internal Revenue Service in regulations, a revenue ruling, or revenue procedure. See § 601.601(d)(2)(ii)(*b*) of this chapter;

(B) *Exception.* Paragraph (d)(2)(ii)(A) of this section does not apply to options issued, transferred, or listed with a principal purpose of avoiding the application of section 1504 and this section. For example, a principal purpose of avoiding the application of section 1504 and this section may exist if warrants, convertible or exchangeable debt instruments, or other similar instruments have an exercise price (or, in the case of convertible or exchangeable instruments, a conversion or exchange premium) that is materially less than, or a term that is materially longer than, those that are customary for publicly traded instruments of their type. A principal purpose may also exist if a large percentage of an issuance of an instrument is placed with one investor (or group of investors) and a very small percentage of the issuance is traded on a qualified board or exchange;

(iii) *Stock purchase agreements.* Stock purchase agreements or similar arrangements whose terms are commercially reasonable and in which the parties' obligations to complete the transaction are subject only to reasonable closing conditions;

(iv) *Escrow, pledge, or other security agreements.* Agreements for holding stock in escrow or under a pledge or other security agreement that are part of a typical commercial transaction and that are subject to customary commercial conditions;

(v) *Compensatory options*—(A) *General rule.* Stock appreciation rights, warrants, stock options, phantom stock, or other similar instruments provided to employees, directors, or independent contractors in connection with the performance of services for the corporation or a related corporation (and that is not excessive by reference to the services performed) and which—

(*1*) Are nontransferable within the meaning of § 1.83–3(d); and

(*2*) Do not have a readily ascertainable fair market value as defined in § 1.83–7(b) on the measurement date;

(B) *Exceptions.* (*1*) Paragraph (d)(2)(v)(A) of this section does not apply to options issued or transferred with a principal purpose of avoiding the application of section 1504 and this section; and

(2) Paragraph (d)(2)(v)(A) of this section ceases to apply to options that become transferable;

(vi) *Options granted in connection with a loan.* Options granted in connection with a loan if the lender is actively and regularly engaged in the business of lending and the options are issued in connection with a loan to the issuing corporation that is commercially reasonable. This paragraph (d)(2)(vi) continues to apply if the option is transferred with the loan (or if a portion of the option is transferred with a corresponding portion of the loan). However, if the option is transferred without a corresponding portion of the loan, this paragraph (d)(2)(vi) ceases to apply;

(vii) *Options created pursuant to a title 11 or similar case.* Options created by the solicitation or receipt of acceptances to a plan of reorganization in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), the option created by the confirmation of the plan, and any option created under the plan prior to the time the plan becomes effective;

(viii) *Convertible preferred stock.* Convertible preferred stock, provided the terms of the conversion feature do not permit or require the tender of any consideration other than the stock being converted; and

(ix) *Other enumerated instruments.* Any other instruments specified by the Internal Revenue Service in regulations, a revenue ruling, or revenue procedure. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(e) *Elimination of federal income tax liability.* For purposes of this section, the elimination of federal income tax liability includes the elimination or deferral of federal income tax liability. In determining whether there is an elimination of federal income tax liability, the tax consequences to all involved parties are considered. Examples of elimination of federal income tax liability include the use of a loss or deduction that would not otherwise be utilized, the acceleration of a loss or deduction to a year earlier than the year in which the loss or deduction would otherwise be utilized, the deferral of gain or income to a year later than the year in which the gain or income would otherwise be reported, and the acceleration of gain or income to a year earlier than the year in which the gain or income would otherwise be reported, if such gain or income is offset by a net operating loss or net capital loss that would otherwise expire unused. The elimination of federal income tax liability does not include the deferral of gain with respect to the stock subject to the option that would be recognized if such stock were sold on a measurement date.

(f) *Substantial amount of federal income tax liability.* The determination of what constitutes a substantial amount of federal income tax liability is based on all the facts and circumstances, including the absolute amount of the elimination, the amount of the elimination relative to overall tax liability, and the timing of items of income and deductions, taking into account present value concepts.

(g) *Reasonable certainty of exercise*—(1) *Generally.* The determination of whether, as of a measurement date, an option is reasonably certain to be exercised is based on all the facts and circumstances, including:

(i) *Purchase price.* The purchase price of the option in absolute terms and in relation to the fair market value of the stock or the exercise price of the option;

(ii) *In-the-money option.* Whether and to what extent the option is in-the-money on the measurement date;

(iii) *Not in-the-money option.* If the option is not in-the-money on the measurement date, the amount or percentage by which the exercise price of the option is greater than (or in the case of an option to sell stock, is less than) the fair market value of the underlying stock;

(iv) *Exercise price.* Whether the exercise price of the option is fixed or fluctuates depending on the earnings, value, or other indication of economic performance of the issuing corporation;

(v) *Time of exercise.* The time at which, or the period of time during which, the option can be exercised;

(vi) *Related or sequential options.* Whether the option is one in a series of related or sequential options;

(vii) *Stockholder rights.* The existence of an arrangement (either within the option agreement or in a related agreement) that, directly or indirectly, affords managerial or economic rights in the issuing corporation that ordinarily would be afforded to owners of the issuing corporation's stock (e.g., voting rights, dividend rights, or rights to proceeds on liquidation) to the person who would acquire the stock upon exercise of the option or a person related to such person. For this purpose, managerial or economic rights in the issuing corporation possessed because of actual stock ownership in the issuing corporation are not taken into account;

(viii) *Restrictive covenants.* The existence of restrictive covenants or similar arrangements (either within the option agreement or in a related agreement) that, directly or indirectly, prevent or limit the ability of the issuing corporation to undertake certain activities while the option is outstanding (e.g., covenants limiting the payment of dividends or borrowing of funds);

(ix) *Intention to alter value.* Whether it was intended that through a change in the capital structure of the issuing corporation or a transfer of assets to or from the issuing corporation (other than regular, ordinary dividends) or by any other means, the fair market value of the stock of the issuing corporation would be altered for a principal purpose of increasing the likelihood that the option would be exercised; and

(x) *Contingencies.* Any contingency (other than the mere passage of time) to which the exercise of the option is subject (e.g., a public offering of the issuing corporation's stock or reaching a certain level of earnings).

(2) *Cash settlement options, phantom stock, stock appreciation rights, or similar interests.* A cash settlement option, phantom stock, stock appreciation right, or similar interest is treated as reasonably certain to be exercised if it is reasonably certain that the option will have value at some time during the period in which the option may be exercised.

(3) *Safe harbors*—(i) *Options to acquire stock.* Except as provided in paragraph (g)(3)(iv) of this section, an option to acquire stock is not considered reasonably certain, as of a measurement date, to be exercised if—

(A) The option may be exercised no more than 24 months after the measurement date and the exercise price is equal to or greater than 90 percent of the fair market value of the underlying stock on the measurement date; or

(B) The terms of the option provide that the exercise price of the option is equal to or greater than the fair market value of the underlying stock on the exercise date.

(ii) *Options to sell stock.* Except as provided in paragraph (g)(3)(iv) of this section, an option to sell stock is not considered reasonably certain, as of a measurement date, to be exercised if—

(A) The option may be exercised no more than 24 months after the measurement date and the exercise price is equal to or less than 110 percent of the fair market value of the underlying stock on the measurement date; or

(B) The terms of the option provide that the exercise price of the option is equal to or less than the fair market value of the underlying stock on the exercise date.

(iii) *Options exercisable at fair market value.* For purposes of paragraphs (g)(3)(i)(B) and (g)(3)(ii)(B) of this

section, an option whose exercise price is determined by a formula is considered to have an exercise price equal to the fair market value of the underlying stock on the exercise date if the formula is agreed upon by the parties when the option is issued in a bona fide attempt to arrive at fair market value on the exercise date and is to be applied based upon the facts in existence on the exercise date.

(iv) *Exceptions.* The safe harbors of this paragraph (g)(3) do not apply if—

(A) An arrangement exists that provides the holder or a related party with stockholder rights described in paragraph (g)(1)(vii) of this section (except for rights arising upon a default under the option or a related agreement);

(B) It is intended that through a change in the capital structure of the issuing corporation or a transfer of assets to or from the issuing corporation (other than regular, ordinary dividends) or by any other means, the fair market value of the stock of the issuing corporation will be altered for a principal purpose of increasing the likelihood that the option will be exercised; or

(C) The option is one in a series of related or sequential options, unless all such options satisfy paragraph (g)(3) (i) or (ii) of this section.

(v) *Failure to satisfy safe harbor.* Failure of an option to satisfy one of the safe harbors of this paragraph (g)(3) does not affect the determination of whether an option is treated as reasonably certain to be exercised.

(h) *Examples.* The provisions of this section may be illustrated by the following examples. These examples assume that the measurement dates set forth in the examples are the only measurement dates that have taken place or will take place.

Example 1. (i) P is the common parent of a consolidated group, consisting of P, S, and T. P owns all 100 shares of S's only class of stock, which is voting common stock. P also owns all the stock of T. On June 30, 1992, when the fair market value of the S stock is $40 per share, P sells to U, an unrelated corporation, an option to acquire 40 shares of the S stock that P owns at an exercise price of $30 per share, exercisable at any time within 3 years after the granting of the option. P and T have had substantial losses for 5 consecutive years while S has had substantial income during the same period. Because P, S, and T have been filing consolidated returns, P and T have been able to use all of their losses to offset S's income. It is anticipated that P, S, and T will continue their earnings histories for several more years. On July 31, 1992, S declares and pays a dividend of $1 per share to P.

(ii) If P, S, and T continue to file consolidated returns after June 30, 1992, it could reasonably be anticipated that P, S, and T would eliminate a substantial amount of federal income tax liability by using P's and T's future losses to offset S's income in consolidated returns. Furthermore, based on the difference between the exercise price of the option and the fair market value of the S stock, it is reasonably certain, on June 30, 1992, a measurement date, that the option will be exercised. Therefore, the option held by U is treated as exercised. As a result, for purposes of determining whether P and S are affiliated, P is treated as owning only 60 percent of the value of outstanding shares of S stock and U is treated as owning the remaining 40 percent. P is still treated as owning 100 percent of the voting power. Because members of the P group are no longer treated as owning stock possessing 80 percent of the total value of the S stock as of June 30, 1992, S is no longer a member of the P group. Additionally, P is not entitled to a 100 percent dividends received deduction under section 243(a)(3) because P and S are also treated as not affiliated for purposes of section 243. P is only entitled to an 80 percent dividends received deduction under section 243(c).

Example 2. (i) The facts are the same as in *Example 1* except that rather than P issuing an option to acquire 40 shares of S stock to U on June 30, 1992, P, pursuant to a plan, issues an option to U1 on July 1, 1992, to acquire 20 shares of S stock, and issues an option to U2 on July 2, 1992, to acquire 20 shares of S stock.

(ii) Because the options issued to U1 and U2 were issued pursuant to a plan, July 2, 1992, constitutes a measurement data for both options. Therefore, both options are aggregated in determining whether the issuance of the options, rather than the sale of the S stock, would result in the elimination of a substantial amount of federal income tax liability. Accordingly, as in *Example 1*, because the continued affiliation of P, S, and T could reasonably be anticipated to result in the elimination of a substantial amount of federal income tax liability and the options are reasonably certain to be exercised, the options are treated as exercised for purposes of determining whether P and S are affiliated, and P and S are no longer affiliated as of July 2, 1992.

Example 3. (i) The facts are the same as in *Example 1* except that the option gives U the right to acquire all 100 shares of the S stock, and U is the common parent of a consolidated group. The U group has had substantial losses for 5 consecutive years and it is anticipated that the U group will continue its earnings history for several more years.

(ii) If P sold the S stock, in lieu of the option, to U, S would become a member of the U group. Because the U group files consolidated returns, if P sold the S stock to U, U would be able to use its future losses to offset future income of S. When viewing the transaction from the effect on all parties, the sale of the option, in lieu of the underlying S stock, does not result in the elimination of federal income tax liability because S's income would be offset by the losses of members of either the P or U group. Accordingly, the option is disregarded and S remains a member of the P group.

Example 4. (i) P is the common parent of a consolidated group, consisting of P and S. P owns 90 of the 100 outstanding shares of S's only class of stock, which is voting common stock, and U, an unrelated corporation, owns the remaining 10 shares. On August 31, 1992, when the fair market value of the S stock is $100 per share, P sells a call option to U that entitles U to purchase 20 shares of S stock from P, at any time before August 31, 1993, at an exercise price of $115 per share. The call option does not provide U with any voting rights, dividend rights, or any other managerial or economic rights ordinarily afforded to owners of the S stock. There is no intention on August 31, 1992, to alter the value of S to increase the likelihood of the exercise of the call option.

(ii) Because the exercise price of the call option is equal to or greater than 90 percent of the fair market value of the S stock on August 31, 1992, a measurement date, the option may be exercised no more than 24 months after the measurement date, and none of the items described in paragraph (g)(3)(iv) of this section that preclude application of the safe harbor are present, the safe harbor of paragraph (g)(3)(i) of this section applies and the call option is treated as if it is not reasonably certain to be exercised. Therefore, regardless of whether the continued affiliation of P and S would result in the elimination of a substantial amount of federal income tax liability, the call option is disregarded in determining whether S remains a member of the P group.

Example 5. (i) The facts are the same as in *Example 4* except that the call option gives U the right to vote similar to that of a shareholder.

(ii) Under paragraph (g)(3)(iv) of this section, the safe harbor of paragraph (g)(3)(i) of this section does not apply because the call option entitles U to voting rights equivalent to that of a shareholder. Accordingly, all of the facts and circumstances surrounding the sale of the call option must be taken into consideration in determining whether it is reasonably certain that the call option will be exercised.

Example 6. (i) In 1992, two unrelated corporations, X and Y, decide to engage jointly in a new business venture. To accomplish this purpose, X organizes a new corporation, S, on September 30, 1992. X acquires 100 shares of the voting common stock of S, which are the only shares of S stock outstanding. Y acquires a debenture of S which is convertible, on September 30, 1995, into 100 shares of S common stock. If the conversion right is not exercised, X will have the right, on September 30, 1995, to put 50 shares of its S stock to Y in exchange for 50 percent of the debenture held by Y. The likelihood of the success of the venture is uncertain. It is anticipated that S will generate substantial losses in its early years of operation. X expects to have substantial taxable income during the three years following the organization of S.

(ii) Under the terms of this arrangement, it is reasonably certain on September 30, 1992, a measurement date, that on September 30, 1995, either through Y's exercise of its

conversion right or X's right to put S stock to Y, that Y will own 50 percent of the S stock. Additionally, it could reasonably be anticipated, on September 30, 1992, a measurement date, that the affiliation of X and S would result in the elimination of a substantial amount of federal income tax liability. Accordingly, for purposes of determining whether X and S are affiliated, X is treated as owning only 50 percent of the value of the S stock as of September 30, 1992, a measurement date, and S is not a member of the X affiliated group.

Example 7. (i) The facts are the same as in *Example 6* except that rather than acquiring 100 percent of the S stock and the right to put S stock to Y, X acquires only 80 percent of the S stock, while S, rather than acquiring a convertible debenture, acquires 20 percent of the S stock, and an option to acquire an additional 30 percent of the S stock. The terms of the option are such that the option will only be exercised if the new business venture succeeds.

(ii) In contrast to *Example 6*, because of the true business risks involved in the start-up of S and whether the business venture will ultimately succeed, along with the fact that X does not have an option to put S stock to Y, it is not reasonably certain on September 30, 1992, a measurement date, that the option will be exercised and that X will only own 50 percent of the S stock on September 30, 1995. Accordingly, the option is disregarded in determining whether S is a member of the X group.

(i) *Effective date.* This section applies, generally, to options with a measurement date on or after February 28, 1992. This section does not apply to options issued prior to February 28, 1992, which have a measurement date on or after February 28, 1992, if the measurement date for the option occurs solely because of an adjustment in the terms of the option pursuant to the terms of the option as it existed on February 28, 1992. Paragraph (b)(2)(iv) of this section applies to stock outstanding on or after February 28, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue,

Approved: November 13, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

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26 CFR Part 1

[T. D. 8460]

RIN 1545-AP28

Income From Discharge of Indebtedness—Acquisition of Indebtedness by Person Related to the Debtor

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations under section 108(e)(4) of the Internal Revenue Code of 1986. These regulations provide rules concerning the acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor. These regulations provide that the acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor results in the realization by the debtor of income from discharge of indebtedness (to the extent required by section 61(a)(12) and section 108). This rule also applies to transactions in which a holder of outstanding indebtedness becomes related to the debtor, if the holder acquired the indebtedness in anticipation of becoming related to the debtor.

DATES: The regulations are effective on December 28, 1992 and apply to direct or indirect acquisitions of indebtedness occurring on or after March 21, 1991.

FOR FURTHER INFORMATION CONTACT: Victor L. Penico at (202) 622-7750 or Sharon L. Hall at (202) 622-4930 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1991, the Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** (56 FR 12135) regarding the tax treatment of the acquisition of indebtedness by a person related to the debtor under section 108(e)(4). The preamble to that notice contains an explanation of the proposed rules. A public hearing was held on June 3, 1991. After consideration of the public comments regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Statutory Provisions

Under section 61(a)(12) of the Internal Revenue Code (Code), gross income includes income from discharge of indebtedness. Section 108(e)(4)(A) provides that for purposes of determining income from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor is treated as the acquisition of such indebtedness by the debtor. Thus, to the extent required by section 61(a)(12) and section 108, the debtor realizes discharge of indebtedness income upon the acquisition of its debt at a discount by a related party from an unrelated party.

Section 108(e)(4) was enacted by section 2(a) of the Bankruptcy Tax Act of 1980 (Pub. L. No. 96-589, 94 Stat. 3389, 3392) to prevent taxpayers from avoiding discharge of indebtedness through acquisitions of outstanding indebtedness by related parties. The legislative history notes that, under prior law, "a related party (such as the parent corporation of a debtor) can acquire the taxpayer's debt at a discount and effectively eliminate it as a real liability to outside interests, but the debtor thereby avoids the tax treatment which would apply if the debtor had directly retired the debt by repurchasing it." H. Rep. No. 96-833, 96th Cong., 2d Sess. 9 (1980); S. Rep. No. 96-1035, 96th Cong., 2d Sess. 10 (1980) (the Senate Report).

Public Comments

A significant number of comments were received from the public on the scope and content of the proposed regulations. The following discussion summarizes the principal comments made, as well as the changes made in the final regulations in response to those comments.

Direct and Indirect Acquisitions

Under the proposed regulations, section 108(e)(4) applies if indebtedness is acquired in a direct acquisition or an indirect acquisition. A direct acquisition occurs where a person related to the debtor acquires the indebtedness from a person unrelated to the debtor. An indirect acquisition is a transaction in which a holder of outstanding indebtedness becomes related to the debtor, if the holder acquired the indebtedness in anticipation of becoming related to the debtor.

The final regulations provide that the Service may exclude certain transactions from the definition of a direct acquisition through the issuance of subsequent published guidance. In response to comments received, the Service intends to study the extent, if any, to which a direct acquisition should not occur if the indebtedness and an ownership interest in the debtor are acquired together from the same person, and that person was related to the debtor immediately prior to the transaction.

Some commentators argued that the Secretary does not have the regulatory authority to apply section 108(e)(4) to indirect acquisitions, particularly where the holder acquires the debtor (because the holder then retains the power to

require payment of the debt). However, the Service and Treasury continue to believe that section 108(e)(4) applies to indirect acquisitions of the type covered by these regulations.

Under the proposed regulations, a holder is treated as having acquired indebtedness in anticipation of becoming related to the debtor, (1) if the holder acquired the indebtedness less than 6 months before the date the holder becomes related to the debtor or, (2), if, on the date the holder becomes related to the debtor, indebtedness of the debtor represents more than 25 percent of the fair market value of the total gross assets of the holder or of the holder group (the 25 percent test). Under the proposed regulations, a holder is presumed to have acquired indebtedness in anticipation of becoming related to the debtor if the holder acquired the indebtedness 6 months or more before the date the holder becomes related to the debtor but less than 24 months before that date (the 6 to 24 month test). This presumption is rebutted if the holder establishes that the acquisition was not made in anticipation of becoming related to the debtor.

A number of comments were received with respect to these rules. Several commentators criticized the proposed regulations for not permitting the debtor to establish that the acquisition was not made in anticipation of becoming related to the debtor under the 25 percent test. Others suggested that certain transactions should be excepted from the test. In response to these comments, the final regulations eliminate the presumptions relating to the 25 percent test and 6 to 24 month test. In those cases, the determination as to whether the acquisition was in anticipation of becoming related to the debtor will be based on the facts and circumstances of the particular case. However, if either the 25 percent test or the 6 to 24 month test is met and the debtor does not treat the transaction as an indirect acquisition, the final regulations require the debtor to disclose the circumstances of the acquisition on its income tax return (or on a qualified amended return within the meaning of § 1.6664–2(c)(3)) for the taxable year in which the debtor becomes related to the holder. This disclosure is in addition to any applicable disclosure required under section 6662, 6664 or 6694. If the debtor fails to make this disclosure in a timely manner, the holder will be presumed to have acquired the indebtedness in anticipation of becoming related to the debtor.

The final regulations also make technical changes in the mechanics of the 25 percent test and with respect to the tacking of holding periods for measuring the time elapsed from the date of the acquisition of the indebtedness until the date the holder becomes related to the debtor.

Measure of Discharge of Indebtedness Income

The proposed regulations provide that in a direct or indirect acquisition, discharge of indebtedness income is measured by reference to the fair market value of the indebtedness. Several commentators urged that the amount of discharge of indebtedness should be measured by reference to the related holder's cost of acquiring the indebtedness.

In most cases (for example, where an affiliate of the debtor buys the indebtedness for cash), the holder's cost should equal, or at least approximate, the fair market value of the indebtedness. However, disparities could potentially arise in three significant cases. One is where the related party acquires the indebtedness in exchange for its own indebtedness (a debt swap) and the issue price of the related party's indebtedness is not determined by reference to the fair market value of either instrument. Another is in an indirect acquisition, where the value of the indebtedness can change between the time the holder acquires the indebtedness and the time the holder becomes related to the debtor. The third is where the indebtedness is acquired in a nonrecognition transaction, in which case the holder's basis generally reflects the transferor's earlier cost rather than the current economic cost to the debtor group of acquiring the indebtedness.

The proponents of a cost standard argued that the treatment of an indebtedness acquired by a related person under section 108(e)(4) should mirror the treatment of an acquisition of indebtedness by the debtor itself. In the latter case, under § 1.61–12 and section 108(e)(11), the amount of income from discharge of indebtedness is generally determined by reference to the debtor's cost of acquiring the indebtedness.

As noted above, in most cases subject to section 108(e)(4), the cost and fair market value standards should produce similar results. The Service and Treasury believe that, where the two standards would differ, the correct economic measure of the cost of acquiring the debt (and, thus, of discharge of indebtedness income) is by reference to fair market value. However, the Service and Treasury have concluded that, in most circumstances, the related holder's cost of acquiring the indebtedness is a reasonable measure for determining the amount of discharge of indebtedness income. For example because discharge of indebtedness income in debt swaps by the debtor is measured by reference to the debtor's cost rather than always measured by reference to fair market value, the Service and Treasury are persuaded that the cost standard should generally apply in debt swaps by debtor affiliates. Moreover, the use of cost is significantly less burdensome because it eliminates the need to value the indebtedness

Consequently, the final regulations adopt a cost standard in computing discharge of indebtedness income for most transactions subject to section 108(e)(4). Except in certain special cases, this rule applies as long as the related holder (or a holder that becomes related to the debtor) acquires the debt "by purchase" on or less than six months before the acquisition date. For this purpose, a purchase occurs if the indebtedness in the hands of the holder is not substituted basis property within the meaning of section 7701(a)(42) (*e.g.* if the holder has a cost basis under section 1012 or a fair market value basis under section 301(d)).

Where the holder's basis is not established by purchase within the six month period, the final regulations retain the fair market value measuring standard. In that case, the holder's cost of acquiring the indebtedness provides a less reliable measure of the debtor's discharge of indebtedness, *i.e.*, that cost would be less likely to bear a reasonable relationship to the fair market value of the debt and, thus, to the economic cost to the debtor group of reacquiring its debt. It is expected that this rule will apply infrequently because of the limited scope of the indirect acquisition rules.

The final regulations reserve on the treatment of an acquisition of indebtedness in a nonrecognition transaction, such as a merger of the creditor into a subsidiary of the debtor in a reorganization under section 368(a)(1)(A). As stated in the preamble to the proposed regulations, the Treasury Department intends to issue regulations clarifying the measurement and treatment of income from discharge of indebtedness in certain nonrecognition transactions in which the debtor acquires its own indebtedness, or the creditor assumes a debtor's obligation to the creditor. It is anticipated that those regulations will also provide guidance on the amount of discharge of indebtedness income in a nonrecognition transition that constitutes a direct or indirect

acquisition of debt under section 108(e)(4).

The final regulations also provide that discharge of indebtedness income is measured by the fair market value of the indebtedness if a principal purpose of the acquisition is the avoidance of federal income tax. Such an avoidance purpose may be inferred, for example, in a transaction that shifts the discharge of indebtedness income of a domestic corporation to a foreign affiliate.

Deemed Issuance

In general, the proposed regulations treat indebtedness acquired in a direct or indirect acquisition as new indebtedness of the debtor for all purposes of the Code with an issue price equal to its fair market value. This deemed issuance creates original issue discount (OID) that is generally deductible by the debtor and includible in income by the related holder. To correlate with the revised measure of discharge of indebtedness income in a section 108(e)(4) transaction, the final regulations provide that the issue price of the new indebtedness is equal to the amount used to compute the debtor's discharge of indebtedness. As discussed above, this amount is generally the related holder's cost of acquiring the indebtedness but, in certain cases, may be the fair market value of the indebtedness.

As noted above, under the proposed regulations, the deemed issuance applies for all purposes of the Code. In the preamble to the proposed regulations, the Service invited comments on whether the deemed issuance should not apply for purposes of specific provisions of the Code. Several commentators argued that the deemed issuance should not apply for purposes of the applicable high yield discount obligation (AHYDO) rules of section 163(e)(5) and the earnings stripping rules of section 163(j).

The final regulations provide that the Commissioner may provide by Revenue Procedure or other published guidance that the indebtedness is not treated as newly issued indebtedness for purposes of designated provisions of the income tax laws. The Service and Treasury are currently of the view that providing an exception from section 163(j) (or its effective date provisions) would permit taxpayers to convert non-earnings stripping debt into earnings stripping debt, and do not contemplate providing relief for that case. The Service is studying the possibility of publishing guidance with respect to other contexts (including AHYDO) and invites comments as to where the deemed issuance results in inappropriate consequences.

Treatment of the Holder in an Indirect Acquisition

The proposed regulations treat the holder of indebtedness in an indirect acquisition as if it sold the indebtedness to an unrelated party on the day before the acquisition date for an amount of money equal to the fair market value of the indebtedness on the acquisition date (deemed sale rule).

Comments were received to the effect that the holder should not be treated as selling the indebtedness, and that the holder's basis in the indebtedness should be treated as acquisition premium that offsets the OID to be earned by the holder as a result of the deemed issuance.

By adopting cost as the measuring standard for discharge of indebtedness income for most transactions under section 108(e)(4), the final regulations have substantially diminished the underlying basis for the deemed sale rule. Even where the final regulations measure discharge of indebtedness income by reference to the fair market value of the indebtedness, the Service and Treasury have concluded, in response to the comments received, that it is appropriate not to cause the holder to recognize gain or loss, and instead to treat the holder's basis as acquisition premium that offsets the OID otherwise includible as a result of the deemed issuance.

Accordingly, the final regulations have eliminated the deemed sale rule. In addition, the final regulations provide that the related holder does not recognize any gain or loss on the deemed issuance and its adjusted basis in the indebtedness is equal to its adjusted basis immediately before the deemed issuance. The deemed issuance is treated as a purchase of the indebtedness by the related holder for purposes of sections 1272(a)(7) and 1276, enabling the holder to use any basis in excess of the new issue price as an offset against the OID of the reissued indebtedness.

Subsequent Dispositions

Under the proposed regulations, the deemed issuance rule continues to apply after the related holder disposes of the indebtedness to an unrelated holder or ceases to be related to the debtor. Under this rule, the debtor continues to deduct and the unrelated holder must include in income the OID attributable to the deemed issuance. The preamble to the proposed regulations requested comments whether a different rule should apply, *e.g.*, a rule that suspends the debtor's deduction of OID (and does not require holder inclusion) attributable to the deemed issuance until maturity.

Although one commentator partially endorsed the alternative proposal, the final regulations retain the rule of the proposed regulations. The Service and Treasury believe that a subsequent disposition of the indebtedness by a related party would not be a common business transaction. Thus, the complexity involved in the alternative proposal was not considered justified.

Under the final regulations, a special anti-abuse rule applies to certain subsequent dispositions of indebtedness by the related holder if the related holder acquired the indebtedness in exchange for its own indebtedness and the issue price of the related holder's indebtedness is not determined by reference to fair market value.

As noted above, the final regulations generally measure discharge of indebtedness income under section 108(e)(4) by reference to the holder's cost. This rule was adopted, in part, to provide parity with the treatment that would apply if the debtor acquired its own indebtedness in exchange for new indebtedness. However, in the situation outlined above, absent this special rule, the debtor group might be able to obtain better treatment than would be available if the debtor acquired its own debt in exchange for its indebtedness and then resold its acquired obligation (which, for income tax purposes, would be treated as the issuance of a new obligation). In that case, the timing of the debtor's deductions with respect to the newly issued indebtedness (stated interest or OID) would match that of the holders' income inclusion. By contrast, in the transaction outlined above, the debtor group would have the benefit of a current deduction (the related holder's loss on the disposition of the indebtedness) while the unrelated holder would generally defer its corresponding market discount income until the debt is satisfied.

Accordingly, under the anti-abuse rule, the related holder's loss is deferred until the date the debtor retires the indebtedness. Comparable treatment is also provided for less direct forms of disposition (*e.g.*, where the holder contributes the indebtedness to a subsidiary and either the subsidiary sells the debt or the former holder sells the subsidiary) that would otherwise result in a tax benefit similar to the loss.

Miscellaneous Comments

Additional comments were received from the public. The Service and Treasury were requested, among other

things, to provide a *de minimis* dollar exception to the application of section 108(e)(4), to clarify the applicability of the stock-for-debt exception to cancellation of indebtedness income, and to clarify the treatment of the acquisition by an affiliate of portions of stripped bonds. The Service and Treasury concluded that a *de minimis* exception would not be appropriate and would add undue complexity (including aggregation rules and similar provisions).

The regulations (both proposed and final) require the realization of income "to the extent required by section 61(a)(12) and section 108." They do not address the extent to which the stock-for-debt exception might apply when a person related to the debtor issues its stock in exchange for the indebtedness. The Service is currently working on guidance regarding triangular stock-for-debt exchanges within a consolidated return context.

The question regarding coupon stripping transactions should be addressed with respect to acquisitions by the debtor as well as by its affiliates. Accordingly, it is believed that such guidance should await future guidance under section 1286 generally.

Additional comments were received prior to the publication of the proposed regulations as to the scope of the relationship rules. However, the Service and Treasury believe it would be inappropriate to address the scope of section 267(b) or 707(b) solely in the context of section 108(e)(4) and, thus, those issues are not addressed in the final regulations.

Effective Dates

The proposed regulations state that the regulations are proposed to apply to direct or indirect acquisitions on or after March 21, 1991. In addition, the proposed regulations state that section 108(e)(4) is effective for any transaction after December 31, 1980, subject to the rules of section 7 of the Bankruptcy Tax Act of 1980 (Pub. L. No. 96–589, 94 Stat. 3389, 3411). Several commentators argued that the statute should not be considered effective before the effective date of regulations because the statutory language of section 108(e)(4) states that the section applies to the extent provided in regulations.

It remains the position of the Service and Treasury that section 108(e)(4) is effective from the date of its enactment. The statutory language of section 108(e)(4) is reasonably clear in its primary application. However, the final regulations clarify that taxpayers may use any reasonable method of determining the amount of discharge of indebtedness income and the treatment of correlative adjustments for acquisitions of indebtedness before March 21, 1991, if such method is applied consistently by both the debtor and related holder. In addition, pursuant to a notice being published separately in the Internal Revenue Bulletin, the Service will permit taxpayers to apply the proposed regulations to acquisitions occurring on or after March 21, 1991 and before December 28, 1992.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to any part of these regulations other than § 1.108–2(g). Furthermore, the rules of § 1.108–2(g) generally apply only to extraordinary transactions, primarily by larger issuers of indebtedness and their affiliates. Thus, they will generally not have a significant impact on a substantial number of small entities, nor will they significantly alter the reporting or recordkeeping duties of small entities. Therefore, although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f)(1) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal authors of these regulations are Victor L. Penico of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service, and Sharon L. Hall of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.101–1 Through 1.133–1T

Income taxes, Reporting and recordkeeping requirements.

Adoption of Final Regulations

Accordingly 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.108–2 also issued under 26 U.S.C. 108. * * *

Par. 2. Section 1.108–2 is added to read as follows:

§ 1.108–2 Acquisition of indebtedness by a person related to the debtor.

(a) *General rules.* The acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor results in the realization by the debtor of income from discharge of indebtedness (to the extent required by section 61(a)(12) and section 108) in an amount determined under paragraph (f) of this section. Income realized pursuant to the preceding sentence is excludible from gross income to the extent provided in section 108(a). The rules of this paragraph apply if indebtedness is acquired directly by a person related to the debtor in a direct acquisition (as defined in paragraph (b) of this section) or if a holder of indebtedness becomes related to the debtor in an indirect acquisition (as defined in paragraph (c) of this section).

(b) *Direct acquisition.* An acquisition of outstanding indebtedness is a direct acquisition under this section if a person related to the debtor (or a person who becomes related to the debtor on the date the indebtedness is acquired) acquires the indebtedness from a person who is not related to the debtor. Notwithstanding the foregoing, the Commissioner may provide by Revenue Procedure or other published guidance that certain acquisitions of indebtedness described in the preceding sentence are not direct acquisitions for purposes of this section.

(c) *Indirect acquisition*—(1) *In general.* An indirect acquisition is a transaction in which a holder of outstanding indebtedness becomes related to the debtor, if the holder acquired the indebtedness in anticipation of becoming related to the debtor.

(2) *Proof of anticipation of relationship.* In determining whether indebtedness was acquired by a holder in anticipation of becoming related to the debtor, all relevant facts and circumstances will be considered. Such facts and circumstances include, but are not limited to, the intent of the parties at the time of the acquisition, the nature of any contacts between the parties (or

their respective affiliates) before the acquisition, the period of time for which the holder held the indebtedness, and the significance of the indebtedness in proportion to the total assets of the holder group (as defined in paragraph (c)(5) of this section). For example, if a holder acquired the indebtedness in the ordinary course of its portfolio investment activities and the holder's acquisition of the indebtedness preceded any discussions concerning the acquisition of the holder by the debtor (or by a person related to the debtor) or the acquisition of the debtor by the holder (or by a person related to the holder), as the case may be, these facts, taken together, would ordinarily establish that the holder did not acquire the indebtedness in anticipation of becoming related to the debtor. The absence of discussions between the debtor and the holder (or their respective affiliates), however, does not by itself establish that the holder did not acquire the indebtedness in anticipation of becoming related to the debtor (if, for example, the facts and circumstances show that the holder was considering a potential acquisition of or by the debtor, or the relationship is created within a relatively short period of time of the acquisition, or the indebtedness constitutes a disproportionate portion of the holder group's assets).

(3) *Indebtedness acquired within 6 months of becoming related.* Notwithstanding any other provision of this paragraph (c), a holder of indebtedness is treated as having acquired the indebtedness in anticipation of becoming related to the debtor if the holder acquired the indebtedness less than 6 months before the date the holder becomes related to the debtor.

(4) *Disclosure of potential indirect acquisition*—(i) *In general.* If a holder of outstanding indebtedness becomes related to the debtor under the circumstances described in paragraph (c)(4)(ii) or (iii) of this section, the debtor is required to attach the statement described in paragraph (c)(4)(iv) of this section to its tax return (or to a qualified amended return within the meaning of § 1.6664–2(c)(3)) for the taxable year in which the debtor becomes related to the holder, unless the debtor reports its income on the basis that the holder acquired the indebtedness in anticipation of becoming related to the debtor. Disclosure under this paragraph (c)(4) is in addition to, and is not in substitution for, any disclosure required to be made under section 6662, 6664 or 6694.

(ii) *Indebtedness represents more than 25 percent of holder group's assets*—(A) *In general.* Disclosure under this paragraph (c)(4) is required if, on the date the holder becomes related to the debtor, indebtedness of the debtor represents more than 25 percent of the fair market value of the total gross assets of the holder group (as defined in paragraph (c)(5) of this section).

(B) *Determination of total gross assets.* In determining the total gross assets of the holder group, total gross assets do not include any cash, cash item, marketable stock or security, short-term indebtedness, option, futures contract, notional principal contract, or similar item (other than indebtedness of the debtor), nor do total gross assets include any asset in which the holder has substantially reduced its risk of loss. In addition, total gross assets do not include any ownership interest in or indebtedness of a member of the holder group.

(iii) *Indebtedness acquired within 6 to 24 months of becoming related.* Disclosure under this paragraph (c)(4) is required if the holder acquired the indebtedness 6 months or more before the date the holder becomes related to the debtor, but less than 24 months before that date.

(iv) *Contents of statement.* A statement under this paragraph (c)(4) must include the following—

(A) A caption identifying the statement as disclosure under § 1.108–2(c);

(B) An identification of the indebtedness with respect to which disclosure is made;

(C) The amount of such indebtedness and the amount of income from discharge of indebtedness is section 108(e)(4) were to apply;

(D) Whether paragraph (c)(4)(ii) or (iii) of this section applies to the transaction; and

(E) A statement describing the facts and circumstances supporting the debtor's position that the holder did not acquire the indebtedness in anticipation of becoming related to the debtor.

(v) *Failure to disclose.* In addition to any other penalties that may apply, if a debtor fails to provide a statement required by this paragraph (c)(4), the holder is presumed to have acquired the indebtedness in anticipation of becoming related to the debtor unless the facts and circumstances clearly established that the holder did not acquire the indebtedness in anticipation of becoming related to the debtor.

(5) *Holder group.* For purposes of this paragraph (c), the holder group consists of the holder of the indebtedness and all persons who are both—

(i) Related to the holder before the holder becomes related to the debtor; and

(ii) Related to the debtor after the holder becomes related to the debtor.

(6) *Holding period*—(i) *Suspensions.* The running of the holding periods set forth in paragraphs (c)(3) and (c)(4)(iii) of this section is suspended during any period in which the holder or any person related to the holder is protected (directly or indirectly) against risk of loss by an option, a short sale, or any other device or transaction.

(ii) *Tacking.* For purposes of paragraphs (c)(3) and (c)(4)(iii) of this section, the period for which a holder held the debtor's indebtedness includes—

(A) The period for which the indebtedness was held by a corporation to whose attributes the holder succeeded pursuant to section 381; and

(B) The period (ending on the date on which the holder becomes related to the debtor) for which the indebtedness was held continuously by members of the holder group (as defined in paragraph (c)(5) of this section).

(d) *Definitions*—(1) *Acquisition date.* For purposes of this section, the acquisition date is the date on which a direct acquisition of indebtedness or an indirect acquisition of indebtedness occurs.

(2) *Relationship.* For purposes of this section, persons are considered related if they are related within the meaning of sections 267(b) or 707(b)(1). However—

(i) Sections 267(b) and 707(b)(1) are applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren; and

(ii) Two entities that are treated as a single employer under subsection (b) or (c) of section 414 are treated as having a relationship to each other that is described in section 267(b).

(e) *Exceptions*—(1) *Indebtedness retired within one year.* This section does not apply to a direct or indirect acquisition of indebtedness with a stated maturity date on or before the date that is one year after the acquisition date, if the indebtedness is, in fact, retired on or before its stated maturity date.

(2) *Acquisitions by securities dealers.* (i) This section does not apply to a direct acquisition or an indirect acquisition of indebtedness by a dealer that acquires and disposes of such indebtedness in the ordinary course of its business of dealing in securities if—

(A) The dealer accounts for the indebtedness as a security held primarily for sale to customers in the ordinary course of business;

(B) The dealer disposes of the indebtedness (or it matures while held by the dealer) within a period consistent with the holding of the indebtedness for sale to customers in the ordinary course of business, taking into account the terms of the indebtedness and the conditions and practices prevailing in the markets for similar indebtedness during the period in which it is held; and

(C) The dealer does not sell or otherwise transfer the indebtedness to a person related to the debtor (other than in a sale to a dealer that in turn meets the requirements of this paragraph (e)(2)).

(ii) A dealer will continue to satisfy the conditions of this paragraph (e)(2) with respect to indebtedness that is exchanged for successor indebtedness in a transaction in which unrelated holders also exchange indebtedness of the same issue, provided that the conditions of this paragraph (e)(2) are met with respect to the successor indebtedness.

(iii) For purposes of this paragraph (e)(2), if the period consistent with the holding of indebtedness for sale to customers in the ordinary course of business is 30 days or less, the dealer is considered to dispose of indebtedness within that period if the aggregate principal amount of indebtedness of that issue sold by the dealer to customers in the ordinary course of business (or that mature and are paid while held by the dealer) in the calendar month following the month in which the indebtedness is acquired equals or exceeds the aggregate principal amount of indebtedness of that issue held in the dealer's inventory at the close of the month in which the indebtedness is acquired. If the period consistent with the holding of indebtedness for sale to customers in the ordinary course of business is greater than 30 days, the dealer is considered to dispose of the indebtedness within that period if the aggregate principal amount of indebtedness of that issue sold by the dealer to customers in the ordinary course of business (or that mature and are paid while held by the dealer) within that period equals or exceeds the aggregate principal amount of indebtedness of that issue held in inventory at the close of the day on which the indebtedness was acquired.

(f) *Amount of discharge of indebtedness income realized*—(1) *Holder acquired the indebtedness by purchase on or less than six months before the acquisition date.* Except as otherwise provided in this paragraph (f), the amount of discharge of indebtedness income realized under paragraph (a) of this section is measured by reference to the adjusted basis of the related holder (or of the holder that becomes related to the debtor) in the indebtedness on the acquisition date if the holder acquired the indebtedness by purchase on or less than six months before the acquisition date. For purposes of this paragraph (f), indebtedness is acquired "by purchase" if the indebtedness in the hands of the holder is not substituted basis property within the meaning of section 7701(a)(42). However, indebtedness is also considered acquired by purchase within six months before the acquisition date if the holder acquired the indebtedness as transferred basis property (within the meaning of section 7701(a)(43)) from a person who acquired the indebtedness by purchase on or less than six months before the acquisition date.

(2) *Holder did not acquire the indebtedness by purchase on or less than six months before the acquisition date.* Except as otherwise provided in this paragraph (f), the amount of discharge of indebtedness income realized under paragraph (a) of this section is measured by reference to the fair market value of the indebtedness on the acquisition date if the holder (or the transferor to the holder in a transferred basis transaction) did not acquire the indebtedness by purchase on or less than six months before the acquisition date.

(3) *Acquisitions of indebtedness in nonrecognition transactions.* [Reserved]

(4) *Avoidance transactions.* The amount of discharge of indebtedness income realized by the debtor under paragraph (a) of this section is measured by reference to the fair market value of the indebtedness on the acquisition date if the indebtedness is acquired in a direct or an indirect acquisition in which a principal purpose for the acquisition is the avoidance of federal income tax.

(g) *Correlative adjustments*—(1) *Deemed issuance.* For income tax purposes, if a debtor realizes income from discharge of its indebtedness in a direct or an indirect acquisition under this section (whether or not the income is excludible under section 108(a)), the debtor's indebtedness is treated as new indebtedness issued by the debtor to the related holder on the acquisition date (the deemed issuance). The new indebtedness is deemed issued with an issue price equal to the amount used under paragraph (f) of this section to compute the amount realized by the debtor under paragraph (a) of this section (*i.e.*, either the holder's adjusted basis or the fair market value of the indebtedness, as the case may be). Under section 1273(a)(1), the excess of the stated redemption price at maturity (as defined in section 1273(a)(2)) of the indebtedness over its issue price is original issue discount (OID) which, to the extent provided in sections 163 and 1272, is deductible by the debtor and includible in the gross income of the related holder. Notwithstanding the foregoing, the Commissioner may provide by Revenue Procedure or other published guidance that the indebtedness is not treated as newly issued indebtedness for purposes of designated provisions of the income tax laws.

(2) *Treatment of related holder.* The related holder does not recognize any gain or loss on the deemed issuance described in paragraph (g)(1) of this section. The related holder's adjusted basis in the indebtedness remains the same as it was immediately before the deemed issuance. The deemed issuance is treated as a purchase of the indebtedness by the related holder for purposes of section 1272(a)(7) (pertaining to reduction of original issue discount where a subsequent holder pays acquisition premium) and section 1276 (pertaining to acquisitions of debt at a market discount).

(3) *Loss deferral on disposition of indebtedness acquired in certain exchanges.* (i) Any loss otherwise allowable to a related holder on the disposition at any time of indebtedness acquired in a direct or indirect acquisition (whether or not any discharge of indebtedness income was realized under paragraph (a) of this section) is deferred until the date the debtor retires the indebtedness if—

(A) The related holder acquired the debtor's indebtedness in exchange for its own indebtedness; and

(B) The issue price of the related holder's indebtedness was not determined by reference to its fair market value (*e.g.*, the issue price was determined under section 1273(b)(4) or 1274(a) or any other provision of applicable law).

(ii) Any comparable tax benefit that would otherwise be available to the holder, debtor, or any person related to either, in any other transaction that directly or indirectly results in the disposition of the indebtedness is also deferred until the date the debtor retires the indebtedness.

(4) *Examples.* The following examples illustrate the application of this paragraph (g). In each example, all taxpayers are calendar-year taxpayers, no taxpayer is insolvent or under the

jurisdiction of a court in a title 11 case and no indebtedness is qualified farm indebtedness described in section 108(g).

Example 1. (i) P, a domestic corporation, owns 70 percent of the single class of stock of S, a domestic corporation. S has outstanding indebtedness that has an issue price of $10,000,000 and provides for monthly interest payments of $80,000 payable at the end of each month and a payment at maturity of $10,000,000. The indebtedness has a stated maturity date of December 31, 1994. On January 1, 1992, P purchases S's indebtedness from I, an individual not related to S within the meaning of paragraph (d)(2) of this section, for cash in the amount of $9,000,000. S repays the indebtedness in full at maturity.

(ii) Under section 61(a)(12), section 108(e)(4), and paragraphs (a) and (f) of this section, S realizes $1,000,000 of income from discharge of indebtedness on January 1, 1992.

(iii) Under paragraph (g)(1) of this section, the indebtedness is treated as issued to P on January 1, 1992, with an issue price of $9,000,000. Under section 1273(a), the $1,000,000 excess of the stated redemption price at maturity of the indebtedness ($10,000,000) over its issue price ($9,000,000) is original issue discount, which is includible in gross income by P and deductible by S over the remaining term of the indebtedness under sections 163(e) and 1272(a).

(iv) Accordingly, S deducts and P includes in income original issue discount, in addition to stated interest, as follows: in 1992, $289,144.88; in 1993, $331,286.06; and in 1994, $379,569.06.

Example 2. The facts are the same as in *Example 1*, except that on January 1, 1992, P sells S's indebtedness to J, who is not related to S within the meaning of paragraph (d)(2) of this section, for $9,400,000 in cash. J holds S's indebtedness to maturity. On January 1, 1993, P's adjusted basis in S's indebtedness is $9,289,144.88. Accordingly, P realizes gain in the amount of $110,855.12 upon the disposition. S and J continue to deduct and include the original issue discount on the indebtedness in accordance with *Example 1*. The amount of original issue discount includible by J is reduced by the $110,855.12 acquisition premium as provided in section 1272(a)(7).

Example 3. The facts are the same as in *Example 1*, except that on February 1, 1992 (one month after P purchased S's indebtedness), S retires the indebtedness for an amount of cash equal to the fair market value of the indebtedness. Assume that the fair market value of the indebtedness is $9,022,621.41, which in this case equals the issue price of indebtedness determined under paragraph (g)(1) of this section ($9,000,000) plus the accrued original issue discount through February 1 ($22,621.41). Section 1.61–12(c)(3) provides that if indebtedness is repurchased for a price that is exceeded by the issue price of the indebtedness plus the amount of discount already deducted, the excess is income from discharge of indebtedness. Therefore, S does not realize income from discharge of indebtedness. The result would be the same if P had contributed the indebtedness to the capital of S. Under section 108(e)(6), S would be treated as having satisfied the indebtedness with an amount of money equal to P's adjusted basis and, under section 1272(d)(2), P's adjusted basis is equal to $9,022,621.41.

Example 4. (i) P, a domestic corporation, owns 70 percent of the single class of stock of S, a domestic corporation. On January 1, 1986, P issued indebtedness that has an issue price of $5,000,000 and provides for no stated interest payments and a payment at maturity of $10,000,000. The indebtedness has a stated maturity date of December 31, 1995. On January 1, 1992, S purchases P's indebtedness from K, a partnership not related to P within the meaning of paragraph (d)(2) of this section, for cash in the amount of $6,000,000. The sum of the debt's issue price and previously deducted original issue discount is $7,578,582.83. P repays the indebtedness in full at maturity.

(ii) Under section 61(a)(12), section 108(e)(4), and paragraphs (a) and (f) of this section, P realizes $1,578,582.83 in income from discharge of indebtedness ($7,578,582.83 minus $6,000,000) on January 1, 1992.

(iii) Under paragraph (g)(1) of this section, the indebtedness is treated as issued to S on January 1, 1992, with an issue price of $6,000,000. Under section 1273(a), the $4,000,000 excess of the stated redemption price at maturity of the indebtedness ($10,000,000) over its issue price ($6,000,000) is orignial issue discount, which is includible in gross income by S and deductible by P over the remaining term of the indebtedness under sections 163(e) and 1272(a).

(iv) Accordingly, P deducts and S includes in income original issue discount as follows: in 1992, $817,316.20; in 1993, $928,650.49; in 1994, $1,055,150.67; and in 1995, $1,198,882.64.

(h) *Effective date.* This section applies to any transaction described in paragraph (a) and in either paragraph (b) or (c) of this section with an acquisition date on or after March 21, 1991. Although this section does not apply to direct or indirect acquisitions occurring before March 21, 1991, section 108(e)(4) is effective for any transaction after December 31, 1980, subject to the rules of section 7 of the Bankruptcy Tax Act of 1980 (Pub. L. 96–589, 94 Stat. 3389, 3411). Taxpayers may use any reasonable method of determining the amount of discharge of indebtedness income realized and the treatment of correlative adjustments under section 108(e)(4) for acquisitions of indebtedness before March 21, 1991, if such method is applied consistently by both the debtor and related holder.

Michael P. Dolan,

Acting Commissioner of Internal Revenue

Approved: November 16, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 92–31065 Filed 12–28–92; 8:45 am]

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26 CFR Part 1

[T.D. 8463]

RIN 1545–AQ03

Treatment of Certain Stripped Bonds and Stripped Coupons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations that apply to taxpayers holding stripped bonds and stripped coupons under section 1286 of the Internal Revenue Code. The regulations are needed to provide guidance on the treatment of original issue discount (OID) that arises under section 1286(a) of the Internal Revenue Code. This guidance is intended to simplify and clarify the tax treatment of certain stripped bonds and stripped coupons.

EFFECTIVE DATE: These regulations are effective August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mark S. Smith, telephone (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations (T.D. 8358) on the tax treatment of certain stripped bonds and stripped coupons were published in the **Federal Register** on August 13, 1991 (56 FR 38339). The text of these temporary regulations also served as the comment document for a notice of proposed rulemaking (the proposed regulations) (56 FR 38398). No public hearing on these regulations was requested or held, and no written comments were received. Accordingly, the temporary regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 1286(a) of the Internal Revenue Code (Code) provides that a stripped bond or stripped coupon is treated by the purchaser as a bond originally issued on the purchase date and having OID equal to the excess of (1) the stated redemption price at

maturity (or, in the case of a coupon, the amount payable on the due date of the coupon), over (2) the bond's or coupon's ratable share of the purchase price. Section 1273(a)(3) of the Code provides that if a debt instrument has only a *de minimis* amount of OID, then the OID shall be treated as zero. Section 1.1286–1(a) of the final regulations provides that the *de minimis* rule applies to stripped bonds and stripped coupons.

Section 1.1286–1(b) of the final regulations, which adopts the provisions of § 1.1286–1T(b) without change, authorizes the Internal Revenue Service to publish guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of the Statement of Procedural Rules) treating certain stripped bonds as market discount bonds under section 1278, provided that certain criteria are met. This authority was exercised in Rev. Proc. 91–49, 1991–2 C.B. 777, which provides simplified tax treatment for certain mortgages that are stripped bonds.

The extent to which this Treasury decision revises § 1.1286–1T(a) is discussed below.

Weighted Average Maturity Rule

Section 1.1286–1(a) of the final regulations treats as *de minimis* any OID determined under Code section 1286(a) with respect to the purchase of a stripped bond or stripped coupon, if the OID "is less than the amount computed under subparagraphs (A) and (B) of section 1273(a)(3) and the regulations thereunder." Code section 1273(a)(3) provides that this amount is ¼ of 1 percent of the stated redemption price at maturity, multiplied by the number of complete years to maturity. However, in the case of an installment obligation, the multiplier is the debt instrument's weighted average maturity. A special safe harbor rule also is available for certain installment obligations.

Section 1.1286–1T(a) provided that for purposes of the computation under section 1273(a)(3), the number of complete years to maturity is the number of full years from the date the stripped bond or stripped coupon is purchased to final maturity. This provision was intended not to override the reference in § 1.1286–1T(a) to "section 1273(a)(3) and the regulations thereunder," but, simply, to provide that the number of complete years to maturity is measured from the date the stripped bond or stripped coupon is purchased. This provision has been clarified to remove any arguable ambiguity as to the required use of a weighted average maturity in testing for *de minimis* OID.

Treatment of OID on Tax-Exempt Obligations

The final regulations also contain a provision that prevents the *de minimis* rule from causing any tax-exempt portion of OID to become taxable. Under section 1288, the holder of a tax-exempt obligation generally increases its basis in the obligation in a manner designed to prevent tax on accrued OID. Section 1.1286–1(a) of the final regulations prevents the *de minimis* rule from negating the section 1288 basis adjustment for any tax-exempt portion of OID on stripped bonds and stripped coupons. Without this provision, the tax-exempt portion of *de minimis* OID would become taxable. Since the provision applies only to any tax-exempt portion of OID, it does not prevent any taxable portion of OID from being treated as zero if the total OID (including any tax-exempt portion thereof) on a tax-exempt obligation is *de minimis*.

Aggregation of Stripped Bonds and Stripped Coupons

The final regulations are premised on the assumption that an aggregation approach such as that applicable under Code section 1275 is appropriate in determining whether OID on a stripped bond or stripped coupon is *de minimis*. The final regulations are premised also on the assumption that stripped coupons may be treated as stated interest with respect to the bonds from which they are stripped and, therefore, may be excluded from stated redemption price at maturity in appropriate circumstances. Without these assumptions, each stripped bond and stripped coupon would be treated as a separate (zero coupon) bond, and the OID with respect to each separate bond or coupon virtually never would be *de minimis*.

Section 1.1286–1T(a) contained a provision concerning the stated redemption price at maturity of a stripped bond or stripped coupon. That provision was omitted from the final regulations to avoid any arguable inconsistency with the assumptions described above. Future regulations under section 1286 will provide specific guidance relating to these assumptions. In anticipation of these regulations, comments are requested on the appropriate rules for aggregating stripped bonds and stripped coupons under section 1286.

Special Analyses

It has been determined that these final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Mark S. Smith, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1231–1 through 1.1297–3T

Income taxes.

Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by removing the citation for "Section 1.1286–1T" and adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.1286–1 also issued under 26 U.S.C. 1275(D) and 1286(f).

Par. 2. Section 1.1286–1T is removed.

Par. 3. Section 1.1286–1 is added to read as follows:

§ 1.1286–1 Tax treatment of certain stripped bonds and stripped coupons.

(a) *De minimis OID.* If the original issue discount determined under section 1286(a) with respect to the purchase of a stripped bond or stripped coupon is less than the amount computed under subparagraphs (A) and (B) of section 1273(a)(3) and the regulations thereunder, then the amount of original issue discount with respect to that purchase (other than any tax-exempt portion thereof, determined under section 1286(d)(2)) shall be considered to be zero. For purposes of this computation, the number of complete years to maturity is measured from the date the stripped bond or stripped coupon is purchased.

(b) *Treatment of certain stripped bonds as market discount bonds*—(1) *In general.* By publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of the Statement of Procedural Rules), the Internal Revenue Service may (subject to the limitation of paragraph (b)(2) of this section) provide that certain mortgage loans that are stripped bonds are to be treated as market discount bonds under section 1278. Thus, any purchaser of such a bond is to account for any discount on the bond as market discount rather than original issue discount.

(2) *Limitation.* This treatment may be provided for a stripped bond only if, immediately after the most recent disposition referred to in section 1286(b)—

(i) The amount of original issue discount with respect to the stripped bond is determined under paragraph (a) of this section (concerning *de minimis* OID); or

(ii) The annual stated rate of interest payable on the stripped bond is no more than 100 basis points lower than the annual stated rate of interest payable on the original bond from which it and any other stripped bond or bonds and any stripped coupon or coupons were stripped.

(c) *Effective date.* This section is effective on and after August 8, 1991.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: December 9, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 92–31059 Filed 12–28–92; 8:45 am]

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26 CFR Parts 1 and 602

[T.D. 8456]

RIN 1545–AQ14

Capitalization of Certain Policy Acquisition Expenses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the requirement that insurance companies capitalize specified policy acquisition expenses for tax purposes. Changes to the applicable law were made by the Revenue Reconciliation Act of 1990. The regulations are necessary to provide guidance to insurance companies that must comply with the capitalization requirement.

EFFECTIVE DATE: September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Gary Geisler, 202–622–3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information requirement contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1287. The estimated annual burden per respondent varies from 15 minutes to 20 hours, depending on individual circumstances, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary to collect information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of these burdens estimates and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final income tax regulations under section 848 of the Internal Revenue Code (Code), relating to the capitalization of certain policy acquisition expenses of insurance companies. Section 848 was added to the Code by section 11301(a) of the Revenue Reconciliation Act of 1990, Pub. L. No. 101–508. Proposed regulations under section 848 were published in the **Federal Register** on November 15, 1991 (56 FR 58003). Written comments were received from the public and a public hearing was held on January 31, 1992. After consideration of all written and oral comments regarding the proposed regulations, those regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 848 provides that insurance companies must capitalize "specified policy acquisition expenses," in lieu of identifying the categories of expenses that must be capitalized, section 848 requires that a company capitalize an amount of otherwise deductible expenses equal to specified percentages of net premiums with respect to certain types of insurance contracts. These capitalized amounts are called "specified policy acquisition expenses." The maximum amount of specified policy acquisition expenses required to be capitalized in any taxable year is generally limited to the insurance company's "general deductions" for that year.

Categories of Specified Insurance Contracts

Under sections 848 (c) and (e), the amounts treated as specified policy acquisition expenses depend on whether a particular contract is classified as an annuity contract, a group life insurance contract, or "other specified insurance contract."

The proposed regulations contain definitions of the types of contracts to which the provisions of section 848 apply. They also define a "combination contract" (that is, a contract providing more than one type of insurance or annuity coverage) and provide rules for applying the capitalization requirement to premiums under a combination contract.

Combination Contracts

In response to comments, the final regulations modify the treatment of premiums under a combination contract. The final regulations define a combination contract as a contract that provides two or more types of coverage, one of which if provided separately would be a life insurance contract, an annuity, or a noncancellable or guaranteed renewable accident and health insurance contract. The regulations generally provide that if the premiums relating to each type of insurance coverage provided by a combination contract are separately stated on the insurance company's annual statement, the separately stated premiums are treated in the same manner as premiums under separate contracts. If premiums allocable to any type of coverage provided under a combination contract are not separately stated, the premium for the entire contract is subject to the highest capitalization percentage applicable to any of the coverages provided by the contract.

Special rules apply in the case of de minimis premiums. De minimis premiums are not required to be separately stated. If the separate statement rule is otherwise satisfied but for de minimis premiums, the de minimis premiums are required to be treated consistently with the characterization of these premiums on the insurance company's annual

statement. Furthermore, in determining the highest capitalization percentage applicable to any of the coverages provided by the contract, the coverage to which a de minimis premium is allocable is disregarded. For purposes of these provisions, premiums allocable to a type of coverage considered de minimis if the premiums are 2 percent or less of the entire premium for the contract.

Definition of Group Life Insurance

Under section 848(c), a lower capitalization percentage is applied to premiums received on a group life insurance contract than to premiums received with respect to an individual life insurance contract. Section 848(e)(2) defines a group life insurance contract as one which satisfies three requirements. The first requirement is an affiliation requirement; that is, the contract must cover "a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor."

The proposed regulations specify five categories of eligible groups as satisfying the affiliation requirement: an employee group, a debtor group, a labor union group, a credit union group, and an association group satisfying certain conditions. The proposed regulations also allow multiple groups consisting of combinations of groups from the same category.

The categories of eligible groups in the proposed regulations include the specific group categories referred to in the Group Life Insurance Definition and Group Life Insurance Standard Provisions Model Act approved by the National Association of Insurance Commissioners. Unlike the Model Act, the proposed regulations make no provision for a discretionary group that satisfies the requirements of the applicable state law to be treated as an eligible group. The preamble to the proposed regulations requested public comment concerning the desirability of expanding the group life insurance definition to include discretionary groups.

In response to comments, the final regulations list a number of discretionary groups that will also be treated as satisfying the affiliation requirement of section 848(e)(2)(A). The final regulations also authorize the Commissioner to specify other discretionary groups as satisfying the group affiliation requirement in subsequent guidance published in the Internal Revenue Bulletin.

Comments stated that a contract covering members from different categories of eligible groups should be treated as a group contract. In general, these comments were not adopted because the Model Act does not specifically authorize these contracts. The final regulations, however, allow employees to be included as members of a group sponsored by an association, a labor union, or a credit union. The regulations also allow members of a credit union to be covered under a single contract whether in their capacity as members or as borrowers of the credit union.

Comments were received asking that the prohibition of determining a group (or class within a group) on the basis of individual health characteristics be clarified such that a pre-retirement age requirement or active work requirement would be allowed. Comments also requested clarification of the application of the identical premium requirement in the context of the separate employer units covered by a single contract issued to a multi-employer trust. The final regulations adopt these comments.

The second requirement for qualification as a group life insurance contract is that the premiums for a group life insurance contract must be determined on a group basis. The proposed regulations set forth a two-part test to determine whether premiums for a contract are determined on a group basis: an identical premium requirement and an eligibility requirement.

Under the identical premium requirement, the only permissible differences in premiums charged with respect to any member of the group are those reflecting the member's actual age (in years), the member's gender, or the member's smoking habits. Under the eligibility requirement, all members of the group generally must be eligible for the coverage provided under the contract without regard to evidence of insurability.

The proposed regulations provide two exceptions with respect to the eligibility requirement. First, in the case of group term life insurance coverage, the proposed regulations allow the insurance company to deny or limit coverage based on a member's responses to a medical questionnaire (but not on any other basis, such as a medical examination). Secondly, a denial or limitation of coverage to any member is allowed on the basis of medical information obtained with respect to that member prior to January 1, 1993.

Public comments generally endorsed the use of an identical premium requirement as a means for determining whether premiums for the contract are determined on a group basis. The comments suggested a number of changes to the identical premium requirement to clarify the application of this test. The final regulations adopt most of these comments. For example, the regulations provide that the identical premium requirement is satisfied if the premium rates charged by the insurance company for the corresponding units of coverage (for example, per $1,000 of face amount of insurance) provided to each member of the group are the same, except for differences attributable to the age, gender, or smoking habits of the member.

A large number of comments objected to the proposed regulations' requirement that all members of the group generally must be eligible for coverage without regard to evidence of insurability. It was stressed that under state law, an insurance company may deny or limit coverage to any member of the group in the absence of satisfactory evidence of individual insurability, and that the accepted group underwriting practice is to require evidence of individual insurability beyond a medical questionnaire in cases when there is a high likelihood of anti-selection against the insurer. The comments stated that other rules in the proposed regulations, such as the group affiliation requirement and the identical premium requirement, clearly differentiate the coverage under a group life insurance contract from that of individual life insurance.

In response to these comments, the final regulations do not contain the eligibility requirement. Future regulations may address company underwriting practices for group life insurance contracts if, for example, changes in business practice or a shift in premiums from the individual to the group category indicate the need for further guidance. If additional guidance addressing the eligibility requirement is contemplated, the guidance would be first published in a notice of proposed rulemaking and, if adopted, would be applied prospectively.

A third requirement for qualification as a group life insurance contract is that the proceeds of the contract are payable to (or for the benefit of) persons other than the employer of the insured, an organization to which the insured belongs, or other similar person. In response to comments, the final regulations clarify the usage of the term "organization" in this context to include only the organization that is either the sponsor of the contract or the group policyholder. It is intended that other life insurance in which the proceeds are used similarly to credit life insurance (for example, pre-need burial insurance) will not be treated as violating the

restriction on the payment of proceeds to the sponsoring organization or group policyholder.

The final regulations also adopt new rules to address the situation in which the requirements of the regulations are not satisfied with respect to a small number of individuals covered by a group contract. Under the proposed regulations, if the group life insurance requirements are not met with respect to all members of the group, the premiums for the entire contract are treated as received under an individual life insurance contract. Comments indicated that an ineligible individual or individuals may temporarily obtain coverage under a group contract (through inadvertence of the group policyholder or otherwise), and that one individual or a small number of individuals should not disqualify the entire premium for the contract. In response to these comments, the final regulations provide that if the premiums allocable to an ineligible member (or members) are no more than 5 percent of the total premiums charged by the insurance company for the group as a whole, then only the premiums allocable to ineligible member (or members) will be treated as individual life insurance premiums.

General Deductions

The final regulations clarify that the determination of general deductions under section 848(c)(2) is made without regard to any amount capitalized under section 848(a) in any taxable year. This clarification eliminates any circularity with respect to the determination of general deductions under section 848(c)(2) and the capitalization of specified policy acquisition expenses for the taxable year.

Definition of Net Premiums

Section 848(d)(1) provides that, with respect to each category of specified insurance contracts, net premiums equal the excess, if any, of the gross amount of premiums and other consideration for the contracts, over the sum of return premiums and premiums incurred for the reinsurance of the contracts. Pursuant to section 848(d)(3), the gross amount of premiums and other consideration does not include certain policyholder dividends and similar amounts that, under section 808(e), are treated as paid to the policyholder and returned to the insurance company as a premium.

Policy Exchanges

The proposed regulations provide that if an insurance or annuity contract is exchanged (within the meaning of section 1001) for a specified insurance contract, the insurance company must include the fair market value of the contract issued in the exchange in its gross amount of premiums and other consideration for the issuance of a new specified insurance contract. The preamble to the proposed regulations requested comments whether this treatment of exchanges of insurance contracts (initiated by either a policyholder or the company) would require an insurance company to capitalize excessive amounts.

Many comments questioned whether under the proposed regulations many routine policy changes, such as the addition or deletion of a rider, might result in the capitalization of existing contract values. The comments generally urged that only external exchanges (that is, exchanges involving a different insurance company) should give rise to net premiums under section 848.

In response to comments, the treatment of exchanges of insurance or annuity contracts is modified in the final regulations. Except as otherwise provided by the regulations, an exchange (including a change in the terms of a specified insurance contract) will not give rise to net premiums under section 848. The regulations identify specific types of exchanges that will cause net premiums to be subject to section 848. These situations are (1) external exchanges (that is, exchanges involving a different insurance company), and (2) internal exchanges which result in the issuance of fundamentally different contracts.

Under the final regulations, an internal exchange is considered to result in the issuance of a fundamentally different contract if the contract issued in the exchange (1) belongs to a different category of specified insurance contract (or is issued in exchange for a nonspecified insurance contract), (2) changes the identity of the individual insured, or (3) changes the mortality, morbidity, interest, or expense guarantees with respect to nonforfeiture benefits provided in the exchanged contract.

The final regulations identify certain modifications that will not be treated as changing the mortality, morbidity, interest, or expense guarantees and authorize the Commissioner to identify other modifications in subsequent guidance published in the Internal Revenue Bulletin. The regulations also provide an exception for contracts that are restructured pursuant to a rehabilitation, conservatorship, insolvency, or similar state proceeding. A finding of insolvency is not necessary to qualify for this exception.

The final regulations also clarify the amount that is taken into account as the value of the new contract issued in an exchange that generates net premiums under section 848. The value of the new contract is generally determined by the most recent sale by the insurance company of a comparable contract, or if this value is not readily ascertainable, by reference to the interpolated terminal reserve of the original contract. The final regulations permit a lesser value to be used for an exchange of contracts made pursuant to a policy enhancement or update transaction. The regulations also provide that in the case of any exchange involving a group term life insurance contract without cash value, the value of the new contract is deemed to be zero.

Dividend Accumulations

The proposed regulations provide that an amount deposited with an insurance company is not treated as a premium until it is applied to, or irrevocably committed to, the payment of premiums on a specified insurance contract. Amounts left on deposit with an insurance company in a dividend accumulation account are not treated as irrevocably committed to the payment of premiums.

Numerous comments asked that dividend accumulations used to pay premiums on a specified insurance contract be treated like "other similar amounts" under section 848(d)(3). This comment was not adopted because amounts credited to a dividend accumulation account are treated as taxable deposits held on behalf of the policyholder and are not committed to the payment of premiums on a specified insurance contract.

Reinsurance

The capitalization requirements of section 848 apply to premiums and other consideration for reinsurance agreements. Under section 848(d)(1), the ceding company reduces its gross amount of premiums and other consideration by the amount that it incurs as premiums for reinsurance. Correspondingly, the reinsurer includes the reinsurance premiums in its gross amount of premiums and other consideration.

Section 848(d)(4)(B) authorizes the Treasury Department to prescribe regulations to ensure that "premiums and other consideration with respect to reinsurance" are treated consistently by the parties of a reinsurance agreement in applying the provisions of section 848.

Pursuant to this regulatory authority, the proposed regulations set forth rules identifying the amounts that are to be taken into account in determining the parties' premiums and other consideration for reinsurance under section 848(d)(1). Under the proposed regulations, all items of consideration transferred between a ceding company and a reinsurer pursuant to a reinsurance agreement are netted. The net negative consideration determined by one party to a reinsurance agreement reduces its net premiums under section 848(d)(1)(B). The net positive consideration determined by the other party increases its net premiums under section 848(d)(1)(A). The determination of net consideration for the reinsurance agreement ensures consistency between the parties. This consistency extends to the amount and timing, as well as the character, of items. The net consideration rules of the proposed regulations apply to all amounts incurred under a reinsurance agreement for taxable years beginning after December 31, 1991.

The proposed regulations also address a second problem that may arise in reinsurance transactions. The capitalization requirements of section 848 could be avoided if, for example, a primary insurer reinsures its business with a reinsurer whose general deductions are disproportionately small. To prevent this avoidance, the proposed regulations limit a party's use of the net negative consideration on a reinsurance agreement to reduce its net premiums if the other party did not capitalize the net positive consideration due to that party's general deductions limitation. Under the proposed regulations, this potential reduction applies to all amounts arising under any reinsurance agreement executed on or after November 15, 1991, and to all amounts arising under any reinsurance agreement for taxable years beginning after December 31, 1991, without regard to when the reinsurance agreement was entered into.

Net Consideration Rules

Several comments addressed the determination of net consideration for reinsurance agreements. One set of comments urged that claims and benefit reimbursements be excluded from the determination of net consideration for reinsurance. Other comments urged the retention of all items of consideration (including claims and benefit reimbursements) in determining net consideration for reinsurance. Finally, a third set of comments urged the adoption of separate rules for determining premiums and other consideration for reinsurance depending on the type of reinsurance agreement involved.

The final regulations generally retain the rules relating to the determination of net consideration for reinsurance agreements that were entered into after November 14, 1991, for taxable years beginning after December 31, 1991. In response to comments, the regulations postpone the effective date of the net consideration rules for other reinsurance agreements. The regulations provide that for reinsurance agreements entered into prior to November 15, 1991, the net consideration rules apply only to amounts arising for taxable years beginning after December 31, 1994. For taxable years beginning before January 1, 1995, the parties must account for premiums and other consideration for the agreement using the interim rules of the proposed regulations.

The final regulations also contain a special rule that applies to a funds-withheld reinsurance agreement that was entered into after November 14, 1991, but before the first day of the first taxable year beginning after December 31, 1991, and was terminated before January 1, 1995. Under this rule, the parties' net consideration for the year of termination must include the amount of the original reserve for any reinsured specified insurance contract that, in applying the provisions of subchapter L, is treated as premiums and other consideration for reinsurance in the taxable year for which the agreement becomes effective.

Reduction in the Amount of Net Negative Consideration To Ensure Consistency of Capitalization for Reinsurance Agreements

The comments generally supported the rule in the proposed regulations that provided for a reduction in the amount of net negative consideration that a party to reinsurance agreement could take into account to reduce its net premiums if the other party did not capitalize the net positive consideration because of the other party's general deductions limitation. Some comments requested that the regulations specify the manner of demonstrating consistency of capitalization between the parties of a reinsurance agreement (such as an affidavit from the party with net positive consideration). Although the regulations do not adopt this comment, the Internal Revenue Service is considering whether to provide an administrative means of demonstrating consistency of capitalization in subsequent guidance published in the Internal Revenue Bulletin.

Reinsurance Agreements With Parties Not Subject to United States Taxation

Section 848(d)(4)(A) provides that premiums and other consideration incurred for reinsurance may be taken into account as a reduction of net premiums only to the extent that the premiums are includible in the gross income of an insurance company which is taxable under subchapter L, or whose shareholders are subject to United States taxation on the reinsurance premiums by reason of subpart F of part III of subchapter N. The proposed regulations provide that a party to a reinsurance agreement may not reduce its net premiums by the net negative consideration on a reinsurance agreement if the other party is neither an insurance company subject to tax under subchapter L nor a controlled foreign corporation. The proposed regulations do not address the treatment of net positive consideration on reinsurance agreements with parties not subject to United States taxation.

Several comments urged that the regulations exclude from net premiums any net positive consideration from reinsurance agreements with parties that are not subject to United States taxation. The comments expressed concern that unless these net positive consideration amounts are eliminated, the rules in the proposed regulations could result in a double counting of a party's net premiums.

In response to the comments, the final regulations provide an election to separately determine the amounts required to be capitalized for reinsurance agreements with parties not subject to United States taxation with respect to the premiums and other consideration under the agreements. If the election is made, a capitalization amount (either positive or negative) is determined for each category of specified insurance contracts based on the net premiums for each category. The capitalization amounts for all the categories of contracts are then aggregated to arrive at a "net foreign reinsurance capitalization amount" (either positive or negative) for the taxable year on all reinsurance agreements with parties that are not subject to United States taxation.

If the net foreign capitalization amount for any taxable year is negative, the negative amount is applied to reduce (but not below zero) the unamortized balances of amounts previously capitalized (beginning with the most recent taxable year) to the extent attributable to prior years' net positive foreign capitalization amounts The reduction of the previously

capitalized amounts is allowed as a deduction for the taxable year. The net negative foreign capitalization amount. The remaining portion of a net negative foreign capitalization amount, if any, remaining after this reduction is carried over and used to offset a future year's net positive foreign capitalization amount. The remaining portion of a net negative foreign capitalization amount may not reduce the amounts otherwise required to be capitalized for the taxable year with respect to directly written business or reinsurance agreements with parties that are subject to United States taxation.

A net positive foreign capitalization amount (after reduction by any carryover amount from preceding years) is added to the specified policy acquisition expenses required to be capitalized for the taxable year (determined without regard to amounts taken into account under the election). Thus, a net positive foreign capitalization amount is capitalized independently of the general deductions limitation.

The rules in the final regulations with respect to the determination of net foreign capitalization amounts generally apply to taxable years beginning after November 14, 1991. Under the regulations, however, an insurance company may make an election to apply the rules with respect to the determination of net foreign capitalization amounts for earlier taxable years by filing an amended federal income tax return.

Carryover of Excess Negative Capitalization Amount

Section 848(f)(1) authorizes an insurance company to reduce the amount of the current year's capitalization of specified policy acquisition expenses and the unamortized balances of specified policy acquisition expenses from preceding years if there is a "negative capitalization amount" for a category of specified insurance contracts. The negative capitalization amount is determined by multiplying the negative net premiums for a category of specified insurance contracts by the applicable percentage set forth in section 848(c)(1) from that category of specified contracts. As a practical matter, a negative capitalization amount for a category of specified insurance contracts will generally only arise as a result of reinsurance agreements.

In response to comments, the final regulations add rules that permit an insurance company to carry over to future years the portion of any negative capitalization amount remaining after the reductions specified in section 848(f)(1). This provision of the regulations is effective for taxable years ending on or after September 30, 1990.

Reinsurance Agreements Involving Insolvent Insurance Companies

The proposed regulations authorize the Commissioner to grant a waiver excluding from the capitalization requirement any reinsurance consideration relating to agreements approved by a state court supervising the rehabilitation or liquidation of an insolvent company. The proposed regulations do not specify the conditions that would allow an insurance company undergoing a rehabilitation, conservatorship, liquidation, or similar state proceeding to be treated as "insolvent."

In response to comments, the final regulations adopt specific rules for the treatment of reinsurance agreements involving insolvent insurance companies. The rules operate in conjunction with the provisions allowing the carryover of an excess negative capitalization amount under section 848(f). Under the final regulations, an insolvent insurance company with an excess negative capitalization amount as a result of a reinsurance agreement and the party with net positive consideration under that agreement may make a joint election. The joint election requires the insolvent company to forego the carryover of the portion of the excess negative capitalization amount attributable to the agreement and allows the party with net positive consideration to reduce its specified policy acquisition expenses for the taxable year by an amount equal to the portion of the insolvent company's excess negative capitalization amount that is not carried over. The final regulations also specify certain conditions occurring as part of a state supervised proceeding that will cause the insurance company that is the subject of this proceeding to be presumed to be insolvent.

The provisions of the final regulations relating to reinsurance agreements involving insolvent companies are effective for taxable years ending on or after September 30, 1990. The joint election of an insolvent insurance company and a reinsurer may be made on an amended return.

Application of the Capitalization Requirements in the Context of Corporate Adjustment

The preamble to the proposed regulations requested comments concerning the applicability of section 848 to reinsurance agreements undertaken in the context of corporate adjustments, such as different non-recognition transactions under subchapter C. Several comments were received on this issue. The comments requested that the regulations also provide guidance regarding the application of section 848 to stock acquisitions that are treated as asset acquisitions under section 338.

Due to the complexity of this area of the tax law, these regulations do not adopt rules relating to the application of section 848 to reinsurance agreements affected as part of non-recognition transactions and other corporate adjustments. The application of section 848 in the context of different subchapter C transactions will be the subject of forthcoming proposed regulations. The Treasury Department and the Internal Revenue Service continue to invite comments on the application of section 848 to these transactions.

Coordination With Subchapter N

The final regulations do not address the treatment of amounts required to be capitalized under section 848 for purposes of subchapter N (including rules concerning source of income, allocation and apportionment of expenses, and computation of the foreign tax credit). The Treasury Department and the Internal Revenue Service request comments on any issues relating to the coordination of section 848 and subchapter N that should be addressed in these forthcoming proposed regulations.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Gary Geisler of the Office of the Assistance Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However,

personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR 1.801–1 Through 1.860–5

Income taxes, Insurance companies, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 1.848–2 also issued under 26 U.S.C. 845(b) and 26 U.S.C. 848(d)(4)(B). Section 1.848–3 also issued under 26 U.S.C. 848(d)(4)(B).

Par. 2. Sections 1.848–0, 1.848–1, 1.848–2, and 1.848–3 are added to read as follows:

§ 1.848–0 Outline of regulations under section 848.

This section lists the paragraphs in §§ 1.848–1 through 1.848–3.

§ 1.848–1 Definitions and special provisions.

(a) Scope and effective date.
(b) Specified insurance contract.
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(2) Exceptions.
(i) In general.
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(c) Life insurance contract.
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(e) Noncancellable accident and health insurance contract.
(f) Guaranteed renewable accident and health insurance contract.
(g) Combination contract.
(1) Definition.
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(vii) Multiple group.
(viii) Certain discretionary groups.
(ix) Employees treated as members.
(x) Class or classes of a group determined without regard to individual health characteristics.
(A) In general.
(B) Limitation of coverage based on certain work and age requirements permissible.
(3) Premiums determined on a group basis.
(i) In general.
(ii) Exception for substandard premium rates for certain high risk insureds.
(iii) Flexible premium contracts.
(iv) Determination of actual age.
(4) Underwriting practices used by company. [Reserved]
(5) Disqualification of group.
(i) In general.
(ii) Exception for de minimis failures.
(6) Supplemental life insurance coverage.
(7) Special rules relating to the payment of proceeds.
(i) Contracts issued to a welfare benefit fund.
(ii) Credit life insurance contracts.
(iii) "Organization or association" limited to the sponsor of the contract or the group policyholder.
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§ 1.848–2 Determination of net premiums.

(a) Net premiums.
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(ii) Amounts irrevocably committed to the payment of premiums.
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(4) Deferred and uncollected premiums.
(c) Policy exchanges.
(1) General rule.
(2) External exchanges.
(3) Internal exchanges resulting in fundamentally different contracts.
(i) In general.
(ii) Certain modifications treated as not changing the mortality, morbidity, interest, or expense guarantees.
(iii) Exception for contracts restructured by a court supervised rehabilitation or similar proceeding.
(4) Value of the contract.
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(ii) Special rule for group term life insurance contracts.
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(A) In general.
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(d) Amounts excluded from the gross amount of premiums and other consideration.
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(5) Special rule for certain reinsurance agreements with parties not subject to U.S. taxation.
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§ 1.848–3 Interim rules for certain reinsurance agreements.

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(4) Termination payments.
(5) Modified coinsurance agreements.
(d) Examples.

§ 1.848–1 Definitions and special provisions.

(a) *Scope and effective date.* The definitions and special provisions in this section apply solely for purposes of determining specified policy acquisition expenses under section 848 of the Internal Revenue Code, this section, and §§ 1.848–2 and 1.848–3. Unless otherwise specified, the rules of this section are effective for the taxable years of an insurance company beginning after November 14, 1991.

(b) *Specified insurance contract*—(1) *In general.* A "specified insurance contract" is any life insurance contract, annuity contract, noncancellable or guaranteed renewable accident and health insurance contract, or combination contract. A reinsurance agreement that reinsures the risks under a specified insurance contract is treated in the same manner as the reinsured contract.

(2) *Exceptions*—(i) *In general.* A "specified insurance contract" does not include any pension plan contract (as defined in section 818(a)), flight insurance or similar contract, or qualified foreign contract (as defined in section 807(e)(4)).

(ii) *Reinsurance of qualified foreign contracts.* The exception for qualified foreign contracts does not apply to reinsurance agreements that reinsure qualified foreign contracts.

(c) *Life insurance contract.* A "life insurance contract" is any contract—

(1) Issued after December 31, 1984, that qualifies as a life insurance contract under section 7702(a) (including an endowment contract as defined in 7702(h)); or

(2) Issued prior to January 1, 1985, if the premiums on the contract are reported as life insurance premiums on the insurance company's annual statement (or could be reported as life insurance premiums if the company were required to file the annual statement for life and accident and health companies).

(d) *Annuity contract.* An "annuity contract" is any contract (other than a life insurance contract as defined in paragraph (c) of this section) if amounts received under the contract are subject to the rules in section 72(b) or section 72(e) (determined without regard to section 72(u)). The term "annuity contract" also includes a contract that is a qualified funding asset under section 130(d).

(e) *Noncancellable accident and health insurance contract.* The term "noncancellable accident and health insurance contract" has the same meaning for purposes of section 848 as the term has for purposes of section 816(b).

(f) *Guaranteed renewable accident and health insurance contract.* The term "guaranteed renewable accident and health insurance contract" has the same meaning for purposes of section 848 as the term has for purposes of section 816(e).

(g) *Combination contract*—(1) *Definition.* A "combination contract" is a contract (other than a contract described in section 848(e)(3)) that provides two or more types of insurance coverage, at least one of which if offered separately would be a life insurance contract, an annuity contract, or a noncancellable or guaranteed renewable accident and health insurance contract.

(2) *Treatment of premiums on a combination contract*—(i) *In general.* If the premium allocable to each type of insurance coverage is separately stated on the insurance company's annual statement (or could be separately stated if the insurance company were required to file the annual statement for life and accident and health companies), the premium allocable to each type of insurance coverage in a combination contract is subject to the capitalization rate, if any, that would apply if that coverage was provided in a separate contract. If the premium allocable to each type of insurance coverage in a combination contract is not separately stated, the entire premium is subject to the highest capitalization percentage applicable to any of the coverages provided.

(ii) *De minimis premiums.* For purposes of this paragraph (g)(2)—

(A) A de minimis premium is not required to be separately stated;

(B) In determining the highest capitalization percentage applicable to a combination contract, the coverage to which a de minimis premium is allocable is disregarded;

(C) If the separate statement requirement of this paragraph (g)(2) is satisfied, a de minimis premium is treated in accordance with its characterization on the insurance company's annual statement; and

(D) Whether a premium for an insurance coverage is de minimis is determined by comparing that premium with the aggregate of the premiums for the combination contract. A premium that is not more than 2 percent of the premium for the entire contract is considered de minimis. Whether a premium that is more than 2 percent is de minimis is determined based on all the facts and circumstances.

(3) *Example.* The principles of this paragraph (g) are illustrated by the following example.

Example. A life insurance company (L1) issues a contract to an employer (X) which provides cancellable accident and health insurance coverage and group term life insurance coverage to X's employees. L1 charges a premium of $1,000 for the contract. $950 of which is attributable to the cancellable accident and health insurance coverage and $50 of which is attributable to the group term life insurance coverage. On its annual statement, L1 reports the premiums attributable to the accident and health insurance coverage separately from the premiums attributable to the group term life insurance coverage. The contract issued by

L1 is a combination contract as defined in paragraph (g)(1) of this section. Pursuant to paragraph (g)(2)(i) of this section, only the premiums attributable to the group term life insurance coverage ($50) are subject to the provisions of section 848. The premiums attributable to the cancellable accident and health insurance coverage ($950) are not subject to the provisions of section 848.

(h) *Group life insurance contract*—(1) *In general.* A life insurance contract (as defined in paragraph (c) of this section) is group life insurance contract if—

(i) The contract is a group life insurance contract under the applicable law;

(ii) The coverage is provided under a master contract issued to the group policyholder, which may be a trust, trustee, or agent;

(iii) The premiums on the contract are reported either as group life insurance premiums or credit life insurance premiums on the insurance company's annual statement (or could be reported as group life insurance premiums or credit life insurance premiums if the company were required to file the annual statement for life and accident and health companies);

(iv) The group affiliation requirement of paragraph (h)(2) of this section is satisfied;

(v) The premiums on the contract are determined on a group basis within the meaning of paragraph (h)(3) of this section; and

(vi) The proceeds of the contract are not payable to or for the benefit of the insured's employer, an organization or association to which the insured belongs, or other similar person. (See paragraph (h)(7) of this section for special rules that apply in determining if this requirement is satisfied.)

(2) *Group affiliation requirement*—(i) *In general.* The group affiliation requirement of section 848(e)(2)(A) and this paragraph (h)(2) is satisfied only if all of the individuals eligible for coverage under the contract constitute a group described in paragraphs (h)(2) (ii) through (viii) of this section.

(ii) *Employee group.* An employee group consists of all of the employees (including statutory employees within the meaning of section 3121(d)(3) and individuals who are treated as employed by a single employer under section 414 (b), (c), or (m)), or any class or classes thereof within the meaning of paragraph (h)(2)(x) of this section, of an employer. For this purpose, the term "employee" includes—

(A) A retired or former employee;

(B) The sole proprietor, if the employer is a sole proprietorship;

(C) A partner of the partnership, if the employer is a partnership;

(D) A director of the corporation, if the employer is a corporation; and

(E) An elected or appointed official of the public body, if the employer is a public body.

(iii) *Debtor group.* A debtor group consists of all of the debtors, or any class or classes thereof within the meaning of paragraph (h)(2)(x) of this section, of a creditor. For this purpose, the term "debtor" includes a borrower of money or purchaser or lessee of goods, services, or property for which payment is arranged through a credit transaction.

(iv) *Labor union group.* A labor union group consists of all of the members, or any class or classes thereof within the meaning of paragraph (h)(2)(x) of this section, of a labor union or similar employee organization.

(v) *Association group.* An association group consists of all of the members, or any class or classes thereof within the meaning of paragraph (h)(2)(x) of this section, of an association that, at the time the master contract is issued—

(A) Is organized and maintained for purposes other than obtaining insurance;

(B) Has been in active existence for at least two years (including, in the case of a merged or successor association, the years of active existence of any predecessor association); and

(C) Has at least 100 members.

(vi) *Credit union group.* A credit union group consists of all of the members of borrowers, or any class or classes thereof within the meaning of paragraph (h)(2)(x) of this section, of a credit union.

(vii) *Multiple group.* A multiple group consists of two or more groups from any single category described in paragraphs (h)(2) (ii) through (vi) of this section. A multiple group may not include two or more groups from different categories described in paragraph (h)(2) (ii) through (vi) of this section.

(viii) *Certain discretionary groups.* Provided that the contract otherwise satisfies the requirements of paragraph (h)(1) of this section, a contract issued to one of the following discretionary groups is treated as satisfying the group affiliation requirement of this paragraph (h)(2)—

(A) A contract issued to a group consisting of students of one or more universities or other educational institutions;

(B) A contract issued to a group consisting of members or former members of the U.S. Armed Forces;

(C) A contract issued to a group of individuas for the payment of future funeral expenses; and

(D) A contract issued to any other discretionary group as specified by the Commissioner in subsequent guidance published in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(ix) *Employees treated as members.* In determining whether the group affiliation requirement of paragraph (h)(2) of this section is satisfied, the employees of a labor union, credit union, or association may be treated as members of a labor union group, a credit union group, or an association group, respectively.

(x) *Class or classes of a group determined without regard to individual health characteristics*—(A) *In general.* A class or classes of a group described in paragraphs (h)(2) (ii) through (viii) of this section may be determined using any reasonable characteristics (for example, amount of insurance, location, or occupation) other than individual health characteristics. The employees of a single employer covered under a policy issued to a multi-employer trust are considered a class of a group described in paragraph (h)(2)(ii) of this section.

(B) *Limitation of coverage based on certain work and age requirements permissible.* A limitation of coverage under a group contract to persons who are actively at work or of a pre-retirement age (for example, age 65 or younger) is not treated as based on individual health characteristics.

(3) *Premiums determined on a group basis*—(1) *In general.* Premiums for a contract are determined on a group basis for purposes of section 848(e)(2)(B) and this paragraph (h) only if the premium charged by the insurance company for each member of the group (or any class thereof) is determined on the basis of the same rates for the corresponding amount of coverage (for example, per $1,000 of insurance) or on the basis of rates which differ only because of the gender, smoking habits, or age of the member.

(ii) *Exception for substandard premium rates for certain high risk insureds.* Any difference in premium rates is disregarded for purposes of this paragraph (h)(3) if the difference is charged for an individual who was accepted for coverage at a substandard rate prior to January 1, 1993.

(iii) *Flexible premium contracts.* In the case of a group universal life insurance contract, the identical premium requirement is satisfied if the premium rates used by the insurance company in determining the periodic mortality charges applied to the policy account value of any member insured by the contract differ from those of other

members (within the same class) only because of the gender, smoking habits, or age of the member.

(iv) *Determination of actual age.* For purposes of this paragraph (h)(3), determinations of actual age may be made using any reasonable method, provided that this method is applied consistently for all members of the group.

(4) *Underwriting practices used by company.* [Reserved]

(5) *Disqualification of group*—(i) *In general.* Except as otherwise provided in this paragraph (h)(5), if the requirements of paragraphs (h)(1), (2), and (3) of this section are not satisfied with respect to one or more members of the group, or of a class within a group (within the meaning of paragraph (h)(2)(x) of this section), the premiums for the entire group (or class) are treated as individual life insurance premiums.

(ii) *Exception for de minimis failures.* If the requirements of paragraphs (h) (1), (2), or (3) of this section are not satisfied with respect to one or more members of the group (or class), but the sum of the premiums charged by the insurance company for those individuals is no more than 5 percent of the aggregate premiums for the group (or class), only the premiums charged for those individuals are treated as premiums for an individual life insurance contract.

(6) *Supplemental life insurance coverage.* For purposes of determining whether the requirement in paragraph (h)(3)(i) of this section is satisfied, any supplemental life insurance coverage (including optional coverage for members of the group, their spouses, or their dependent children) is (or is treated as) a separate contract. In determining whether the group affiliation requirement of paragraph (h)(2) of this section is satisfied for the supplemental coverage, a member's spouse and dependent children are treated as members of the group if they are eligible for coverage.

(7) *Special rules relating to the payment of proceeds.* The following rules apply for purposes of section 848(e)(2) and paragraph (h)(1)(vi) of this section.

(i) *Contracts issued to a welfare benefit fund.* If a contract issued to a welfare benefit fund (as defined in section 419) provides for payment of proceeds to the welfare benefit fund, the proceeds of the contract are not considered payable to or for the benefit of the insured's employer, an organization or association to which the insured belongs, or other similar person, provided the proceeds are paid as benefits to the employee or the employee's beneficiary.

(ii) *Credit life insurance contracts.* If a credit life insurance contract provides for payment of proceeds to the insured's creditor, the proceeds of the contract are not treated as payable to or for the benefit of the insured's employer, an organization or association to which the insured belongs, or other similar person, provided the proceeds are applied against an outstanding indebtedness of the insured.

(iii) *"Organization or association" limited to the sponsor of the contract or the group policyholder.* The term "organization or association" means the organization or association that is either the sponsor of the contract or the group policyholder.

(i) *General deductions.* The term "general deductions" is defined in section 848(c)(2). An insurance company determines its general deductions for the taxable year without regard to amounts capitalized or amortized under section 848(a). The amount of a company's general deductions is also determined without regard to the rules of § 1.848–2(f), which apply only for purposes of determining net consideration for reinsurance agreements.

§ 1.848–2 Determination of net premiums.

(a) *Net premiums*—(1) *In general.* An insurance company must use the accrual method of accounting (as prescribed by section 811(a)(1)) to determine the net premiums with respect to each category of specified insurance contracts. With respect to any category of contracts, net premiums means—

(i) The gross amount of premiums and other consideration (see paragraph (b) of this section); reduced by

(ii) The sum of—

(A) The return premiums (see paragraph (e) of this section); and

(B) The net negative consideration for a reinsurance agreement (other than an agreement described in paragraph (h)(2) of this section). See paragraphs (f) and (g) of this section for rules relating to the determination of net negative consideration.

(2) *Separate determination of net premiums for certain reinsurance agreements.* Net premiums with respect to reinsurance agreements for which an election under paragraph (h)(3) of this section has been made (certain reinsurance agreements with parties not subject to United States taxation) are treated separately and are subject to the rules of paragraph (h) of this section.

(b) *Gross amount of premiums and other consideration*—(1) *General rule.* The term "gross amount of premiums and other consideration" means the sum of—

(i) All premiums and other consideration (other than amounts on reinsurance agreements); and

(ii) The net positive consideration for any reinsurance agreement (other than an agreement for which an election under paragraph (h)(3) of this section has been made).

(2) *Items included.* The gross amount of premiums and other consideration includes—

(i) Advance premiums;

(ii) Amounts in a premium deposit fund or similar account, to the extent provided in paragraph (b)(3) of this section;

(iii) Fees;

(iv) Assessments;

(v) Amounts that the insurance company charges itself representing premiums with respect to benefits for its employees (including full-time life insurance salesmen treated as employees under section 7701(a)(20)); and

(vi) The value of a new contract issued in an exchange described in paragraph (c)(2) or (c)(3) of this section.

(3) *Treatment of premium deposits*—(i) *In general.* An amount in a premium deposit fund or similar account is taken into account in determining the gross amount of premiums and other consideration at the earlier of the time that the amount is applied to, or irrevocably committed to, the payment of a premium on a specified insurance contract. If an amount is irrevocably committed to the payment of a premium on a specified insurance contract, then neither that amount nor any earnings allocable to that amount are included in the gross amount of premiums and other consideration when applied to the payment of a premium on the same contract.

(ii) *Amounts irrevocably committed to the payment of premiums.* Except as provided in paragraph (b)(3)(iii) of this section, an amount in a premium deposit fund or similar account is irrevocably committed to the payment of premiums on a contract only if neither the amount nor any earnings allocable to that amount may be—

(A) Returned to the policyholder or any other person (other than on surrender of the contract); or

(B) Used by the policyholder to fund another contract.

(iii) *Retired lives reserves.* Premiums received by an insurance company under a retired lives reserve arrangement are treated as irrevocably committed to the payment of premiums on a specified insurance contract.

(4) *Deferred and uncollected premiums.* The gross amount of premiums and other consideration does not include deferred and uncollected premiums.

(c) *Policy exchanges*—(1) *General rule.* Except as otherwise provided in this paragraph (c), an exchange of insurance contracts (including a change in the terms of a specified insurance contract) does not result in any amount being included in the gross amount of premiums and other consideration.

(2) *External exchanges.* If a contract is exchanged for a specified insurance contract issued by another insurance company, the company that issues the new contract must include the value of the new contract in the gross amount of premiums and other consideration.

(3) *Internal exchanges resulting in fundamentally different contracts*—(i) *In general.* If a contract is exchanged for a specified insurance contract issued by the same insurance company that issued the original contract, the company must include the value of the new contract in the gross amount of premiums and other consideration if the new contract—

(A) Relates to a different category of specified insurance contract than the original contract;

(B) Does not cover the same insured as the original contract; or

(C) Changes the interest, mortality, morbidity, or expense guarantees with respect to the nonforfeiture benefits provided in the original contract.

(ii) *Certain modifications treated as not changing the mortality, morbidity, interest, or expense guarantees.* For purposes of paragraph (c)(3)(i)(C) of this section, the following items are not treated as changing the interest, mortality, morbidity, or expense guarantees with respect to the nonforfeiture benefits provided in the contract—

(A) A change in a temporary guarantee with respect to the amounts to be credited as interest to the policyholder's account, or charged as mortality, morbidity, or expense charges, if the new guarantee applies for a period of ten years or less;

(B) The determination of benefits on annuitization using rates which are more favorable to the policyholder than the permanently guaranteed rates; and

(C) Other items as specified by the Commissioner in subsequent guidance published in the Internal Revenue Bulletin.

(iii) *Exception for contracts restructured by a court supervised rehabilitation or similar proceeding.* No amount is included in the gross amount of premiums and other consideration with respect to any change made to the interest, mortality, morbidity, or expense guarantees with respect to the nonforfeiture benefits of contracts of an insurance company that is the subject of a rehabilitation, conservatorship, insolvency, or similar state proceeding. This treatment applies only if the change—

(A) Occurs as part of the rehabilitation, conservatorship, insolvency, or similar state proceeding; and

(B) Is approved by the state court, the state insurance department, or other state official with authority to act in the rehabilitation, conservatorship, insolvency, or similar state proceeding.

(4) *Value of the contract*—(i) *In general.* For purposes of paragraph (c)(2) or (c)(3) of this section, the value of the new contract is established through the most recent sale by the company of a comparable contract. If the value of the new contract is not readily ascertainable, the value may be approximated by using the interpolated terminal reserve of the original contract as of the date of the exchange.

(ii) *Special rule for group term life insurance contracts.* In the case of any exchange involving a group term life insurance contract without cash value, the value of the new contract is deemed to be zero.

(iii) *Special rule for certain policy enhancement and update programs*—(A) *In general.* If the interest, mortality, morbidity, or expense guarantees with respect to the nonforfeiture benefits of a specified insurance contract are changed pursuant to a policy enhancement or update program, the value of the contract included in the gross amount of premiums and other consideration equals 30 percent of the value determined under paragraph (c)(4) of this section.

(B) *Policy enhancement or update program defined.* For purposes of paragraph (c)(4)(iii)(A) of this section, a policy enhancement or update program means any offer or commitment by the insurance company to all of the policyholders holding a particular policy form to change the interest, mortality, morbidity, or expense guarantees used to determine the contract's nonforfeiture benefits.

(5) *Example.* The principles of this paragraph (c) are illustrated by the following example.

Example. (i) An individual (A) owns a life insurance policy issued by a life insurance company (L1). On January 1, 1993, A purchases additional term insurance for $250, which is added as a rider to A's life insurance policy. The purchase of the additional term insurance does not change the interest mortality, morbidity, or expense guarantees with respect to the nonforfeiture benefits provided by A's life insurance policy.

(ii) A's purchase of the term insurance rider is not considered to result in a fundamentally different contract under paragraph (c)(3) of this section because the addition of the rider did not change the interest, mortality, morbidity, or expense guarantees with respect to the nonforfeiture values of A's original life insurance policy. Therefore, L1 includes only the $250 received from A in the gross amount of premiums and other consideration.

(d) *Amounts excluded from the gross amount of premiums and other consideration*—(1) *In general.* The following items are not included in the gross amount of premiums and other consideration—

(i) Items treated by section 808(e) as policyholder dividends that are paid to the policyholder and immediately returned to the insurance company as a premium on the same contract that generated the dividends, including—

(A) A policyholder dividend applied to pay a premium under the contract that generated the dividend;

(B) Excess interest accumulated within the contract;

(C) A policyholder dividend applied for additional coverage (for example, a paid-up addition, extension of the period for which insurance protection is provided, or reduction of the period for which premiums are paid) on the contract that generated the dividend;

(D) A policyholder dividend applied to reduce premiums otherwise payable on the contract that generated the dividend;

(E) An experience-rated refund applied to pay a premium on the group contract that generated the refund; and

(F) An experience-rated refund applied to a premium stabilization reserve held with respect to the group contract that generated the refund;

(ii) Premiums waived as a result of the disability of an insured or the disability or death of a premium payor;

(iii) Premiums considered to be paid on a contract as the result of a partial surrender or withdrawal from the contract, or as a result of the surrender or withdrawal of a paid-up addition previously issued with respect to the same contract; and

(iv) Amounts treated as premiums upon the selection by a policyholder or by a beneficiary of a settlement option provided in a life insurance contract.

(2) *Amounts received or accrued from a guaranty association.* Amounts received or accrued from a guaranty association relating to an insurance company that is subject to an insolvency, delinquency, conservatorship, rehabilitation, or

similar proceeding are not included in the gross amount of premiums and other consideration.

(3) *Exclusion not to apply to dividend accumulations.* For purposes of section 848(d)(3) and paragraph (d)(1) of this section, amounts applied from a dividend accumulation account to pay premiums on a specified insurance contract are not amounts treated as paid to, and immediately returned by, the policyholder.

(e) *Return premiums.* For purposes of section 848(d)(1)(B) and this section, return premiums do not include policyholder dividends (as defined in section 808), claims or benefits payments, or amounts returned to another insurance company under a reinsurance agreement. For the treatment of amounts returned to another insurance company under a reinsurance agreement, see paragraph (f) of this section.

(f) *Net consideration for a reinsurance agreement*—(1) *In general.* For purposes of section 848, the ceding company and the reinsurer must treat amounts arising from the reinsurance of a specified insurance contract consistently in determining their net premiums. See paragraph (g) of this section for restrictions on the amount of the net negative consideration for any reinsurance agreement that may be taken into account. See paragraph (h) of this section for special rules applicable to reinsurance agreements with parties not subject to United States taxation.

(2) *Net consideration determined by a ceding company*—(i) *In general.* The net consideration determined by a ceding company for a reinsurance agreement equals—

(A) The gross amount incurred by the reinsurer with respect to the reinsurance agreement, including any ceding commissions, annual allowances, reimbursements of claims and benefits, modified coinsurance reserve adjustments under paragraph (f)(5) of this section, experience-rated adjustments, and termination payments; less

(B) The gross amount of premiums and other consideration incurred by the ceding company with respect to the reinsurance agreement.

(ii) *Net negative and net positive consideration.* If the net consideration is less than zero, the ceding company has net negative consideration for the reinsurance agreement. If the net consideration is greater than zero, the ceding company has net positive consideration for the reinsurance agreement.

(3) *Net consideration determined by the reinsurer*—(i) *In general.* The net consideration determined by a reinsurer for a reinsurance agreement equals—

(A) The amount described in paragraph (f)(2)(i)(B) of this section; less

(B) The amount described in paragraph (f)(2)(i)(A) of this section.

(ii) *Net negative and net positive consideration.* If the net consideration is less than zero, the reinsurer has net negative consideration for the reinsurance agreement. If the net consideration is greater than zero, the reinsurer has net positive consideration for the reinsurance agreement.

(4) *Timing consistency required.* For purposes of determining the net consideration of a party for a reinsurance agreement, an income or expense item is taken into account for the first taxable year for which the item is required to be taken into account by either party. Thus, the ceding company and the reinsurer must take the item into account for the same taxable year (or for the same period if the parties have different taxable years).

(5) *Modified coinsurance and funds-withheld reinsurance agreements*—(i) *In general.* In the case of a modified coinsurance or funds-withheld reinsurance agreement, the net consideration for the agreement includes the amount of any payments or reserve adjustments, as well as any related loan transactions between the ceding company and the reinsurer. The amount of any investment income transferred between the parties as the result of a reserve adjustment or loan transaction is treated as an item of consideration under the reinsurance agreement.

(ii) *Special rule for certain funds-withheld reinsurance agreements.* In the case of a funds-withheld reinsurance agreement that is entered into after November 14, 1991, but before the first day of the first taxable year beginning after December 31, 1991, and is terminated before January 1, 1995, the parties' net consideration in the year of termination must include the amount of the original reserve for any reinsured specified insurance contract that, in applying the provisions of subchapter L, was treated as premiums and other consideration incurred for reinsurance for the taxable year in which the agreement became effective.

(6) *Treatment of retrocessions.* For purposes of this paragraph (f), a retrocession agreement is treated as a separate reinsurance agreement. The party that is relieved of liability under a retrocession agreement is treated as the ceding company.

(7) *Mixed reinsurance agreement.* If a reinsurance agreement includes more than one category of specified insurance contracts (or specified insurance contracts and contracts that are not specified insurance contracts), the portion of the agreement relating to each category of reinsured specified insurance contracts is treated as a separate agreement. The portion of the agreement relating to reinsured contracts that are not specified insurance contracts is similarly treated as a separate agreement.

(8) *Treatment of policyholder loans.* For purposes of determining the net consideration under a reinsurance agreement, the transfer of a policyholder loan receivable is treated as an item of consideration under the agreement. The interest credited with respect to a policyholder loan receivable is treated as investment income earned directly by the party holding the receivable. The amounts taken into account as claims and benefit reimbursements under the agreement must be determined without reduction for the policyholder loan.

(9) *Examples.* The principles of this paragraph (f) are illustrated by the following examples.

Example 1. On July 1, 1992, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated life insurance company (L2) under an agreement whereby L2 becomes solely liable to the policyholders under the contracts reinsured. L1 and L2 are calendar year taxpayers. Under the assumption reinsurance agreement, L1 agrees to pay L2 $100,000 for assuming the life insurance contracts, and L2 agrees to pay L1 a $17,000 ceding commission. Under paragraph (f)(2) of this section, L1 has net negative consideration of ($83,000) ($17,000 ceding commission incurred by L2—$100,000 incurred by L1 for reinsurance). Under paragraph (f)(3) of this section, L2 has net positive consideration of $83,000. Under paragraph (b)(1)(ii) of this section, L2 includes the net positive consideration in its gross amount of premiums and other consideration.

Example 2. (i) On July 1, 1992, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated life insurance company (L2) under an agreement whereby L1 remains liable to the policyholders under the reinsured contracts. L1 and L2 are calendar year taxpayers. Under the indemnity reinsurance agreement, L1 agrees to pay L2 $100,000 for reinsuring the life insurance contracts, and L2 agrees to pay L1 a $17,000 ceding commission. L1 agrees to pay L2 an amount equal to the future premiums on the reinsured contracts. L2 agrees to indemnify L1 for claims and benefits and administrative expenses incurred by L1 while the reinsurance agreement is in effect.

(ii) For the period beginning July 1, 1992, and ending December 31, 1992, the following income and expense items are determined with respect to the reinsured contracts:

Item	Income	Expense
Premiums	$25,000	
Death benefits		$10,000
Surrender benefits		8,000
Premium taxes and other expenses		2,000
Total		20,000

(iii) Under paragraph (f)(2) of this section, L1's net negative consideration equals ($88,000), which is determined by subtracting the $125,000 ($100,000 + $25,000) incurred by L1 from the $37,000 incurred by L2 under the reinsurance agreement ($17,000 + $10,000 + $8,000 + $2,000). L2's net positive consideration is $88,000. Under paragraph (b)(1)(ii) of this section, L2 includes the $88,000 net positive consideration in its gross amount of premiums and other consideration.

Example 3. (i) Assume that the reinsurance agreement referred to in *Example 2* is terminated on December 31, 1993. During the period from January 1, 1993 through December 31, 1993, the following income and expense items are determined with respect to the reinsured contracts:

Item	Income	Expense
Premiums	$45,000	
Death benefits		$18,000
Surrender benefits		6,000
Premium taxes and other expenses		8,000
Total		32,000

(ii) On the termination of the reinsurance agreement, L1 receives a payment of $70,000 from L2 as consideration for releasing L2 from liability with respect to the reinsured contracts.

(iii) L1's net positive consideration equals $57,000, which is the excess of the $102,000 incurred by L2 for the year ($18,000 + $6,000 + $8,000 + $70,000) over the $45,000 incurred by L1. L2's net negative consideration is ($57,000). L1 includes the net positive consideration in its gross amount of premiums and other consideration.

Example 4. (i) On January 1, 1993, an insurance company (L1) enters into a modified coinsurance agreement with another insurance company (L2), covering a block of individual life insurance contracts. Both L1 and L2 are calendar year taxpayers. Under the agreement, L2 is credited with an initial reinsurance premium equal to L1's reserves on the reinsured contracts at the inception of the agreement, any new premiums received with respect to the reinsured contracts, any decrease in L1's reserves on the reinsured contracts, and an amount of investment income determined by reference to L1's reserves on the reinsured contracts. L2 is charged for all claims and expenses incurred with respect to the reinsured contracts plus an amount reflecting any increase in L1's reserves. The agreement further provides that cash settlements between the parties are made at the inception and termination of the agreement, as well as at the end of each calendar year while the agreement is in effect. The cash settlement is determined by netting the sum of the amounts credited to L2 against the sum of the amounts charged to L2 with respect to the reinsured policies. L1's reserves on the reinsured policies at the inception of the reinsurance agreement are $375,000.

(ii) Under the cash settlement formula, L2 is credited with an initial reinsurance premium equal to L1's reserves on the reinsured policies ($375,000), but is charged an amount reflecting L1's policy reserve requirements ($375,000).

(iii) For the period ending December 31, 1993, L2 is also credited and charged the following amounts with respect to the reinsured contracts.

Item	Income	Expense
Premiums	$100,000	
Investment income	39,000	
Death benefits		$65,000
Increase in reserves		75,000

(iv) Under paragraph (f)(5) of this section, L2's net negative consideration for the 1993 taxable year equals ($1,000) which is determined by subtracting the sum of the amounts charged to L2 ($375,000 + $65,000 + $75,000 = $515,000) from the sum of the amounts credited to L2 ($375,000 + $100,000 + $39,000 = $514,000). L1's net positive consideration for calendar year 1993 equals $1,000. Under paragraph (b)(1)(ii) of this section, L1 includes the $1,000 net positive consideration in its gross amount of premiums and other consideration.

Example 5. (i) On January 1, 1993, an insurance company (L1) enters into a coinsurance agreement with another insurance company (L2) covering a block of individual life insurance contracts. Both L1 and L2 are calendar year taxpayers. Under the agreement, L2 is credited with an initial reinsurance premium equal to L1's reserves on the effective date of the agreement, any new premiums received on the reinsured contracts, but must indemnify L1 of all claims and expenses incurred with respect to the contracts. As part of the agreement, L2 makes a loan to L1 equal to the amount of the reserves on the reinsured contracts. L1's reserves on the reinsured contracts on the effective date of the agreement are $375,000. Thus, on the inception date of the reinsurance agreement, L1 transfers to L2 its note for $375,000 as consideration for reinsurance.

(ii) The reinsurance agreement between L1 and L2 is a funds-withheld reinsurance agreement. Under paragraph (f)(5) of this section, the amount of any loan transaction is taken into account in determining the parties' net consideration. At the inception of the reinsurance agreement, L2 is credited with a reinsurance premium equal to L1's reserves on the reinsured contracts ($375,000). L2's $375,000 loan to L1 is treated as an amount returned to L1 under the agreement.

(iii) For the period ending December 31, 1993, L2 is credited and charged the following amounts with respect to the reinsured contracts and the loan transaction with L1.

Item	Income	Expense
Premiums	$100,000	
Accrued interest	39,000	
Death benefits		$65,000
Increase in loan to L1		75,000

(iv) Under paragraph (f)(5) of this section, L2's net negative consideration for the 1993 taxable year equals ($1,000), which is determined by subtracting the sum of amounts incurred by L2 with respect to death benefits and the loan transaction ($375,000 + $65,000 + $75,000 = $515,000) from the sum of the amounts credited to L2 as reinsurance premiums and interest on the loan transaction ($375,000 + $100,000 + 39,000 = $514,000). L1's net positive consideration for calendar year 1993 equals $1,000. Under paragraph (b)(1)(ii) of this section, L1 includes the $1,000 net positive consideration in its gross amount of premiums and other consideration.

Example 6. (i) On December 31, 1993, an insurance company (L1) enters into a reinsurance agreement with another insurance company (L2) covering a block of individual life insurance contracts. Both L1 and L2 are calendar year taxpayers. Under the agreement, L2 is credited with L1's reserves on the reinsured contracts on the effective date of the agreement, plus any new premiums received on the reinsured contracts, but must indemnify L1 for all claims and expenses incurred with respect to the contracts. Under the agreement, L1 transfers cash of $325,000 to L2 plus rights to its policyholder loan receivables on the reinsured contracts ($50,000). L2 reports the reinsurance agreement by including the transferred policyholder loan receivables as an asset on its books.

(ii) For the period beginning January 1, 1994 and ending December 31, 1994, the following income and expense items are incurred with respect to the reinsured contracts.

Item	Income	Expense
Premiums	$100,000	
Death benefits		$25,000
Surrender benefits		5,000
Premium taxes and other expenses		8,000
Total		38,000

(iii) These amounts are net of the outstanding policyholder loans held by L2 of $20,000 with respect to death benefits and $15,000 with respect to surrender benefits.

(iv) Under paragraph (f)(8) of this section, the transferred policyholder loan receivables are treated as an item of consideration under the reinsurance agreement. In determining the parties' net consideration for the agreement, the transferred policyholder loan receivables ($50,000) are treated as an item of consideration incurred by L1 under paragraph (f)(2)(i)(B) of this section. Therefore, for the 1993 taxable year, L1 has net negative consideration of ($375,000). L2 has net positive consideration of $375,000. Under paragraph (b)(1)(ii) of this section, L2 includes the $375,000 net positive consideration in its gross amount of premiums and other consideration.

(v) For the 1994 taxable year, L2 has net positive consideration for the reinsurance

agreement of $62,000 before adjustment for the transferred policyholder loans. Under paragraph (f)(8) of this section, the amounts taken into account as claim and benefit payments must be adjusted by the amount of any transferred policyholder loan receivables which are netted against the reinsurer's claim and benefit reimbursements. Therefore, L2 takes into account $45,000 ($25,000+$20,000=$45,000) as reimbursements for death benefits, and $20,000 ($5,000+$15,000=$20,000) as reimbursements for surrender benefits. After adjustment for these items, L2 has net positive consideration of $27,000, which is determined by subtracting the sum of the amounts charged to L2 ($45,000+$20,000+$8,000=$73,000) from the sum of the amounts credited to L2 ($100,000). L1 has net negative consideration of ($27,000) under the agreement. Under paragraph (b)(1)(ii) of this section, L2 includes the $27,000 net positive consideration in its gross amount of premiums and other consideration. The amount of any interest earned on the policyholder loan receivables after their transfer to L2 is treated as investment income earned directly by L2, and is not taken into account as an item of consideration under the agreement.

(g) *Reduction in the amount of net negative consideration to ensure consistency of capitalization for reinsurance agreements*—(1) *In general.* Paragraph (g)(3) of this section provides for a reduction in the amount of net negative consideration that a party to a reinsurance agreement (other than a reinsurance agreement described in paragraph (h)(2) of this section) may take into account in determining net premiums under paragraph (a)(2)(ii) of this section if the party with net positive consideration has a capitalization shortfall (as defined in paragraph (g)(4) of this section). Unless the party with net negative consideration demonstrates that the party with net positive consideration does not have a capitalization shortfall or demonstrates the amount of the other party's capitalization shortfall which is allocable to the reinsurance agreement, the net negative consideration that may be taken into account under paragraph (a)(2)(ii) of this section is zero. However, the reduction of paragraph (g)(3) of this section does not apply to a reinsurance agreement if the parties make a joint election under paragraph (g)(8) of this section. Under the election, the party with net positive consideration capitalizes specified policy acquisition expenses with respect to the agreement without regard to the general deductions limitation of section 848(c)(1).

(2) *Application to reinsurance agreements subject to the interim rules.* In applying this paragraph (g) to a reinsurance agreement that is subject to the interim rules of § 1.848–3, the term "premiums and other consideration incurred for reinsurance under section 848(d)(1)(B)" is substituted for "net negative consideration," and the term "gross amount of premiums and other consideration under section 848(d)(1)(A)" is substituted for "net positive consideration." If an insurance company has "premiums and other consideration incurred for reinsurance under section 848(d)(1)(B)" and a "gross amount of premiums and other consideration under section 848(d)(1)(A)" for the same agreement, the net of these amounts is taken into account for purposes of this paragraph (g).

(3) *Amount of reduction.* The reduction required by this paragraph (g)(3) equals the amount obtained by dividing—

(i) The portion of the capitalization shortfall (as defined in paragraph (g)(4) of this section) allocated to the reinsurance agreement under paragraph (g)(7) of this section; by

(ii) The applicable percentage set forth in section 848(c)(1) for the category of specified insurance contracts reinsured by the agreement.

(4) *Capitalization shortfall.* A "capitalization shortfall" equals the excess of—

(i) The sum of the required capitalization amounts (as defined in paragraph (g)(5) of this section) for all reinsurance agreements (other than reinsurance agreements for which an election has been made under paragraph (h)(3) of this section); over

(ii) The general deductions allocated to those reinsurance agreements, as determined under paragraph (g)(6) of this section.

(5) *Required capitalization amount*—(i) *In general.* The "required capitalization amount" for a reinsurance agreement (other than a reinsurance agreement for which an election has been made under paragraph (h)(3) of this section) equals the amount (either positive or negative) obtained by multiplying—

(A) The net positive or negative consideration for an agreement not described in paragraph (h)(2) of this section, and the net positive consideration for an agreement described in paragraph (h)(2) of this section, but for which an election under paragraph (h)(3) of this section has not been made; by

(B) The applicable percentage set forth in section 848(c)(1) for that category of specified insurance contracts.

(ii) *Special rule with respect to net negative consideration.* Solely for purposes of computing a party's required capitalization amount under this paragraph (g)(5)—

(A) If either party to the reinsurance agreement is the direct issuer of the reinsured contracts, the party computing its required capitalization amount takes into account the full amount of any net negative consideration without regard to any potential reduction under paragraph (g)(3) of this section; and

(B) If neither party to the reinsurance agreement is the direct issuer of the reinsured contracts, any net negative consideration is deemed to equal zero in computing a party's required capitalization amount except to the extent that the party with the net negative consideration establishes that the other party to that reinsurance agreement capitalizes the appropriate amount.

(6) *General deductions allocable to reinsurance agreements.* An insurance company's general deductions allocable to its reinsurance agreements equals the excess, if any, of—

(i) The company's general deductions (excluding additional amounts treated as general deductions under paragraph (g)(8) of this section); over

(ii) The amount determined under section 848(c)(1) on specified insurance contracts that the insurance company has issued directly (determined without regard to any reinsurance agreements).

(7) *Allocation of capitalization shortfall among reinsurance agreements.* The capitalization shortfall is allocated to each reinsurance agreement for which the required capitalization amount (as determined in paragraph (g)(5) of this section) is a positive amount. The portion of the capitalization shortfall allocable to each agreement equals the amount which bears the same ratio to the capitalization shortfall as the required capitalization amount for the reinsurance agreement bears to the sum of the positive required capitalization amounts.

(8) *Election to determine specified policy acquisition expenses for an agreement without regard to general deductions limitation*—(i) *In general.* The reduction specified by paragraph (g)(3) of this section does not apply if the parties to a reinsurance agreement make an election under this paragraph (g)(8). The election requires the party with net positive consideration to capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation of section 848(c)(1). That party must reduce its deductions under section 805 or section 832(c) by the amount, if any, of the

party's capitalization shortfall allocable to the reinsurance agreement. The additional capitalized amounts are treated as specified policy acquisition expenses attributable to premiums and other consideration on the reinsurance agreement, and are deductible in accordance with section 848(a)(2).

(ii) *Manner of making election.* To make an election under paragraph (g)(8) of this section, the ceding company and the reinsurer must include an election statement in the reinsurance agreement, either as part of the original terms of the agreement or by an addendum to the agreement. The parties must each attach a schedule to their federal income tax returns which identifies the reinsurance agreement for which the joint election under this paragraph (g)(8) has been made. The schedule must be attached to each of the parties' federal income tax returns filed for the later of—

(A) The first taxable year ending after the election becomes effective; or

(B) The first taxable year ending on or after December 29, 1992.

(iii) *Election statement.* The election statement in the reinsurance agreement must—

(A) Provide that the party with net positive consideration for the reinsurance agreement for each taxable year will capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation of section 848(a)(1);

(B) Set forth the agreement of the parties to exchange information pertaining to the amount of net consideration under the reinsurance agreement each year to ensure consistency;

(C) Specify the first taxable year for which the election is effective; and

(D) Be signed by both parties.

(iv) *Effect of election.* An election under this paragraph (g)(8) is effective for the first taxable year specified in the election statement and for all subsequent taxable years for which the reinsurance agreement remains in effect. The election may not be revoked without the consent of the Commissioner.

(9) *Example.* The principles of this paragraph (g) are illustrated by the following examples.

Example 1. (i) On December 31, 1992, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated life insurance company (L2) under an agreement in which L2 becomes solely liable to the policyholders on the reinsured contracts. L1 transfers $105,000 to L2 as consideration for the reinsurance of the contracts.

(ii) L1 and L2 do not make an election under paragraph (g)(8) of this section to capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation. L2 has no other insurance business, and its general deductions for the taxable year are $3,500.

(iii) Under paragraph (f)(2) of this section, L1's net negative consideration is ($105,000). Under paragraph (f)(3) of this section, L2's net positive consideration is $105,000. Pursuant to paragraph (b)(1)(ii) of this section, L2 includes the net positive consideration in its gross amount of premiums and other consideration.

(iv) The required capitalization amount under paragraph (g)(5) of this section for the reinsurance agreement is $8,085 ($105,000 × .077). L2's general deductions, all of which are allocable to the reinsurance agreement with L1, are $3,500. The $4,585 difference between the required capitalization amount ($8,085) and the general deductions allocable to the reinsurance agreement ($3,500) represents L2's capitalization shortfall under paragraph (g)(4) of this section.

(v) Since L2 has a capitalization shortfall allocable to the agreement, the rules of paragraph (g)(1) of this section apply for purposes of determining the amount by which L1 may reduce its net premiums. Under paragraph (g)(3) of this section, L1 must reduce the amount of net negative consideration that it takes into account under paragraph (a)(2)(ii) of this section by $59,545 ($4,585/.077). Thus, of the $105,000 net negative consideration under the reinsurance agreement, L1 may take into account only $45,455 as a reduction of its net premiums.

Example 2. The facts are the same as *Example 1*, except that L1 and L2 make the election under paragraph (g)(8) of this section to capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation. Pursuant to this election, L2 must capitalize as specified policy acquisition expenses an amount equal to $8,085 ($105,000 × .077). L1 may reduce its net premiums by the $105,000 of net negative consideration.

Example 3. (i) A life insurance company (L1) is both a direct issuer and a reinsurer of life insurance and annuity contracts. For 1993, L1's net premiums under section 848 (d)(1) for directly issued individual life insurance and annuity contracts are as follows:

Category	Net premiums
Life insurance contracts	$17,000,000
Annuity contracts	8,000,000

(ii) L1's general deductions for 1993 are $1,500,000.

(iii) For 1993, L1 is a reinsurer under four separate indemnity reinsurance agreements with unrelated insurance companies (L2, L3, L4, and L5). The agreements with L2, L3, and L4 cover life insurance contracts issued by those companies. The agreement with L5 covers annuity contracts issued by L5. The parties to the reinsurance agreements have not made the election under paragraph (g)(8) of this section to capitalize specified policy acquisition expenses with respect to these agreements without regard to the general deductions limitation.

(iv) L1's net consideration for 1993 with respect to its reinsurance agreements is as follows:

Agreement	Net consideration
L2	$1,200,000
L3	(350,000)
L4	300,000
L5	600,000

(v) To determine whether a reduction under paragraph (g)(3) of this section applies with respect to these reinsurance agreements, L1 must determine the required capitalization amounts for its reinsurance agreements and the amount of its general deductions allocable to these agreements.

(vi) Pursuant to paragraph (g)(5) of this section, the required capitalization amount for each reinsurance agreement is determined as follows:

L2.....$1,200,000×.077=$92,400
L3.....($350,000)×.077=($26,950)
L4.....$300,000×.077=$23,100
L5.....$600,000×.0175=$10,500

(vii) Thus, the sum of L1's required capitalization amounts on its reinsurance agreements equals $99,050.

(viii) Pursuant to paragraph (g)(6) of this section, L1 determines its general deductions allocable to its reinsurance agreements. The amount determined under section 848(c)(1) on its directly issued contracts is:

Category:		
Annuity contracts	$8,000,000×.0175 =	$140,000
Life insurance contracts	$17,000,000×.077 =	1,309,000
		$1,449,000

(ix) L1's general deductions allocable to its reinsurance agreements are $51,000 ($1,500,000–$1,449,000).

(x) Pursuant to paragraph (g)(4) of this section, L1's capitalization shortfall equals $48,050, reflecting the excess of L1's required capitalization amounts for its reinsurance agreements ($99,050) over the general deductions allocable to its reinsurance agreements ($51,000).

(xi) Pursuant to paragraph (g)(7) of this section, the capitalization shortfall of $48,050 must be allocated between each of L1's reinsurance agreements with net positive consideration in proportion to their respective required capitalization amounts. The allocation of the shortfall between L1's reinsurance agreements is determined as follows:

L2=$35,237 ($48,050×92,400/126,000)
L4=$8,809 ($48,050×23,100/126,000)
L5=$4,004 ($48,050×10,500/126,000)

(xii) Accordingly, the reduction under paragraph (g)(3) of this section that applies to the amount of net negative consideration that may be taken into account by L2, L4, and L5

under paragraph (a)(1)(ii)(B) of this section is determined as follows:

L2=$457,623 ($35,237/.077)
L4=$114,403 ($8,809/.077)
L5=$228,800 ($4,004/.0175)

Example 4. The facts are the same as *Example 3*, except that L1 and L4 make a joint election under paragraph (g)(8) of this section to capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation. Pursuant to this election, L1 must reduce its deductions under section 805 by an amount equal to the capitalization shortfall allocable to the reinsurance agreement with L4 ($8,809). L1 treats the additional capitalized amounts as specified policy acquisition expenses allocable to premiums and other consideration under the agreement. L4 may reduce its net premiums by the $300,000 net negative consideration. The election by L1 and L4 does not change the amount of the capitalization shortfall allocable under paragraph (g)(7) of this section to the reinsurance agreements with L2 and L5. Thus, the reduction required by paragraph (g)(3) of this section with respect to the amount of the net negative consideration that L2 and L5 may recognize under paragraph (a)(2)(ii) of this section is $457,623 and $228,800, respectively.

(h) *Treatment of reinsurance agreements with parties not subject to U.S. taxation*—(1) *In general.* Unless an election under paragraph (h)(3) of this section is made, an insurance company may not reduce its net premiums by the net negative consideration for the taxable year (or, with respect to a reinsurance agreement that is subject to the interim rules of § 1.848–3, by the premiums and other consideration incurred for reinsurance) under a reinsurance agreement to which this paragraph (h) applies.

(2) *Agreements to which this paragraph (h) applies*—(i) *In general.* This paragraph (h) applies to a reinsurance agreement if, with respect to the premiums and other consideration under the agreement, one party to that agreement is subject to United States taxation and the other party is not.

(ii) *Parties subject to U.S. taxation*—(A) *In general.* A party is subject to United States taxation for this purpose if the party is subject to United States taxation either directly under the provisions of subchapter L of chapter 1 of the Internal Revenue Code (subchapter L), or indirectly under the provisions of subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code (subpart F).

(B) *Effect of a closing agreement.* If a reinsurer agrees in a closing agreement with the Internal Revenue Service to be subject to tax under rules equivalent to the provisions of subchapter L on its premiums and other consideration from reinsurance agreements with parties subject to United States taxation, the reinsurer is treated as an insurance company subject to tax under subchapter L.

(3) *Election to separately determine the amounts required to be capitalized for reinsurance agreements with parties not subject to U.S. taxation*—(i) *In general.* This paragraph (h)(3) authorizes an insurance company to make an election to separately determine the amounts required to be capitalized for the taxable year with respect to reinsurance agreements with parties that are not subject to United States taxation. If this election is made, an insurance company separately determines a net foreign capitalization amount for the taxable year for all reinsurance agreements to which this paragraph (h) applies.

(ii) *Manner of making the election.* An insurance company makes the election authorized by this paragraph (h)(3) by attaching an election statement to the federal income tax return (including an amended return) for the taxable year for which the election becomes effective. The election applies to that taxable year and all subsequent taxable years unless permission to revoke the election is obtained from the Commissioner.

(4) *Amount taken into account for purposes of determining specified policy acquisition expenses.* If for a taxable year an insurance company has a net positive foreign capitalization amount (as defined in paragraph (h)(5)(i) of this section), any portion of that amount remaining after the reduction described in paragraph (h)(7) of this section is treated as additional specified policy acquisition expenses for the taxable year (determined without regard to amounts taken into account under this paragraph (h)). A net positive capitalization amount is treated as an amount otherwise required to be capitalized for the taxable year for purposes of the reduction under section 848(f)(1)(A).

(5) *Net foreign capitalization amount*—(i) *In general.* An insurance company's net foreign capitalization amount equals the sum of the foreign capitalization amounts (netting positive and negative amounts) determined under paragraph (h)(5)(ii) of this section for each category of specified insurance contracts reinsured by agreements described in paragraph (h)(2) of this section. If the amount is less than zero, the company has a net negative foreign capitalization amount. If the amount is greater than zero, the company has a net positive foreign capitalization amount.

(ii) *Foreign capitalization amounts by category.* The foreign capitalization amount for a category of specified insurance contracts is determined by—

(A) Combining the net positive consideration and the net negative consideration for the taxable year (or, with respect to a reinsurance agreement that is subject to the interim rules of § 1.848–3, by combining the gross amount of premiums and other consideration and the premiums and other consideration incurred for reinsurance) for all agreements described in paragraph (h)(2) of this section which reinsure specified insurance contracts in that category; and

(B) Multiplying the result (either positive or negative) by the percentage for that category specified in section 848(c)(1).

(6) *Treatment of net negative foreign capitalization amount*—(i) *Applied as a reduction to previously capitalized amounts.* If for a taxable year an insurance company has a net negative foreign capitalization amount, the negative amount reduces (but not below zero) the unamortized balances of the amounts previously capitalized (beginning with the amount capitalized for the most recent taxable year) to the extent attributable to prior years' net positive foreign capitalization amounts. The amount by which previously capitalized amounts is reduced is allowed as a deduction for the taxable year.

(ii) *Carryover of remaining net negative foreign capitalization amount.* The net negative foreign capitalization amount, if any, remaining after the reduction described in paragraph (h)(6)(i) of this section is carried over to reduce a future net positive capitalization amount. The remaining net negative foreign capitalization amount may only offset a net positive foreign capitalization amount in a future year, and may not be used to reduce the amounts otherwise required to be capitalized under section 848(a) for the taxable year, or to reduce the unamortized balances of specified policy acquisition expenses from preceding taxable years, with respect to directly written business or reinsurance agreements other than agreements for which the election under paragraph (h)(3) of this section has been made.

(7) *Reduction of net positive foreign capitalization amount by carryover amounts allowed.* If for a taxable year an insurance company has a net positive foreign capitalization amount, that amount is reduced (but not below zero) by any carryover of net negative foreign capitalization amounts from preceding taxable years. Any remaining net positive foreign capitalization amount is

taken into account as provided in paragraph (h)(4) of this section.

(8) *Examples.* The principles of this paragraph (h) are illustrated by the following examples.

Example 1. (i) On January 1, 1993, a life insurance company (L1) enters into a reinsurance agreement with a foreign corporation (X) covering a block of annuity contracts issued to residents of the United States. X is not subject to taxation either directly under subchapter L or indirectly under subpart F on the premiums for the reinsurance agreement with L1. L1 makes the election under paragraph (h)(3) of this section to separately determine the amounts required to be capitalized for the taxable year with respect to parties not subject to United States taxation.

(ii) For the taxable year ended December 31, 1993, L1 has net negative consideration of ($25,000) under its reinsurance agreement with X. L1 has no other reinsurance agreements with parties not subject to United States taxation.

(iii) Under paragraph (h)(5) of this section, L1's net negative foreign capitalization amount for the 1993 taxable year equals ($437.50), which is determined by multiplying L1's net negative consideration on the agreement with X ($25,000) by the percentage in section 848(c)(1) for the reinsured specified insurance contracts (1.75%). Under paragraph (h)(6)(ii) of this section, L1 carries over the net negative foreign capitalization amount of $437.50) to future taxable years. The net negative foreign capitalization amount may not be used to reduce the amounts which L1 is required to capitalize on directly written business or reinsurance agreements other than those agreements described in paragraph (h)(2) of this section.

Example 2. (i) The facts are the same as *Example 1* except that L1 terminates its reinsurance agreement with X and receives $35,000 on December 31, 1994. For the 1994 taxable year, L1 has net positive consideration of $35,000 under its agreement with X. L1 has no other reinsurance agreements with parties not subject to United States taxation.

(ii) Under paragraph (h)(5) of this section, L1's net positive net foreign capitalization amount for the 1984 taxable year equals $612.50, which is determined by multiplying the net positive consideration on the agreement with X ($35,000) by the percentage in section 848(c)(1) for the reinsured specified insurance contracts (1.75%). Under paragraph (h)(4) of this section, L1 reduces the net positive foreign capitalization amount for the taxable year by the net negative foreign capitalization amount carried over from preceding taxable years ($437.50). After this reduction, L1 includes $175 ($612.50–$437.50) as specified policy acquisition expenses for the 1994 taxable year.

(i) *Carryover of excess negative capitalization amount*—(1) *In general.* This paragraph (i) authorizes a carryover of an excess negative capitalization amount (as defined in paragraph (i)(2) of this section) to reduce amounts otherwise required to be capitalized under section 848. Paragraph (i)(4) provides special rules for the treatment of excess negative capitalization amounts of insolvent insurance companies.

(2) *Excess negative capitalization amount.* The excess negative capitalization amount with respect to a category of specified insurance contracts for a taxable year is equal to the excess of—

(A) The negative capitalization amount with respect to that category; over

(B) The amount that can be utilized under section 848(f)(1).

(3) *Treatment of excess negative capitalization amount.* The excess negative capitalization amount for a taxable year reduces the amounts that are otherwise required to be capitalized by an insurance company under section 848(c)(1) for future years.

(4) *Special rule for the treatment of an excess negative capitalization amount of an insolvent company*—(i) *When applicable.* This paragraph (i)(4) applies only for the taxable year in which an insolvent insurance company has an excess negative capitalization amount and has net negative consideration under a reinsurance agreement. See paragraph (i)(4)(v) of this section for the definition of "insolvent."

(ii) *Election to forego carryover of excess negative capitalization amount.* At the joint election of the insolvent insurance company and the other party to the reinsurance agreement—

(A) The insolvent insurance company reduces the excess negative capitalization amount which would otherwise be carried over under paragraph (i)(1) of this section by the amount determined under paragraph (i)(4)(iii) of this section; and

(B) The other party reduces the amount of its specified policy acquisition expenses for the taxable year by the amount determined under paragraph (i)(4)(iii) of this section.

(iii) *Amount of reduction to the excess negative capitalization amount and specified policy acquisition expenses.* To determine the reduction to the carryover of an insolvent insurance company's excess negative capitalization amount and the specified policy acquisition expenses of the other party with respect to a reinsurance agreement—

(A) Multiply the net negative consideration for each reinsurance agreement of the insolvent insurer for which there is net negative consideration for the taxable year by the appropriate percentage specified in section 848(c)(1) for the category of specified insurance contracts reinsured by the agreement;

(B) Sum the results for each agreement;

(C) Calculate the ratio between the results in paragraphs (i)(4)(ii) (A) and (B) of this section for each agreement; and

(D) Multiply that result by the increase in the excess negative capitalization amount of the insolvent insurer for the taxable year.

(iv) *Manner of making election.* To make an election under paragraph (i)(4) of this section, each party to the reinsurance agreement must attach an election statement to its federal income tax return (including an amended return) for the taxable year for which the election is effective. The election statement must identify the reinsurance agreement for which the joint election under this paragraph (i)(4) has been made, state the amount of the reduction to the insolvent insurance company's excess negative capitalization amount that is attributable to the agreement, and be signed by both parties. An election under this paragraph (i)(4) is effective for the taxable year specified in the election statement, and may not be revoked without the consent of the Commissioner.

(v) *Presumptions relating to the insolvency of an insurance company undergoing a court supervised rehabilitation or similar state proceeding.* For purposes of this paragraph (i)(4), an insurance company which is undergoing a rehabilitation, conservatorship, or similar state proceeding shall be presumed to be insolvent if the state proceeding results in—

(A) An order of the state court finding that the fair market value of the insurance company's assets is less than its liabilities;

(B) The use of funds, guarantees, or reinsurance from a guaranty association;

(C) A reduction of the policyholders' available account balances; or

(D) A substantial limitation on access to funds (for example, a partial or total moratorium on policyholder withdrawals or surrenders that applies for a period of 5 years).

(vi) *Example.* The principles of this paragraph (i)(4) are illustrated by the following example.

Example. (i) An insurance company (L1) is the subject of a rehabilitation proceeding under the supervision of a state court. The state court has made a finding that the fair market value of L1's assets is less than its liabilities. On December 31, 1993, L1 transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an assumption reinsurance

agreement whereby L2 becomes solely liable to the policyholders under the contracts reinsured. Under the agreement, L1 agrees to pay L2 $2,000,000 for assuming the life insurance contracts. This negative net consideration causes L1 to incur an excess negative capitalization amount of $138,600 for the 1993 taxable year. L1 has no other reinsurance agreements for the taxable year.

(ii) As part of the reinsurance agreement, L1 and L2 agree to make an election under paragraph (i)(4) of this section. Under the election, L1 agrees to forgo the carryover of the $138,600 excess negative capitalization amount for future taxable years. L2 must include the $2,000,000 net positive consideration for the reinsurance agreement in its gross amount of premiums and other consideration. L2 reduces its specified policy acquisition expenses for the 1993 taxable year by $138,600.

(j) *Ceding commissions with respect to reinsurance of contracts other than specified insurance contracts.* A ceding commission incurred with respect to the reinsurance of an insurance contract that is not a specified insurance contract is not subject to the provisions of section 848(g).

(k) *Effective dates*—(1) *In general.* Unless otherwise specified in this paragraph, the rules of this section are effective for the taxable years of an insurance company beginning after November 14, 1991.

(2) *Reduction in the amount of net negative consideration to ensure consistency of capitalization for reinsurance agreements.* Section 1.848–2(g) (which provides for an adjustment to ensure consistency) is effective for—

(i) All amounts arising under any reinsurance agreement entered into after November 14, 1991; and

(ii) All amounts arising under any reinsurance agreement for taxable years beginning after December 31, 1991, without regard to the date on the reinsurance agreement was entered into.

(3) *Net consideration rules.* Section 1.848–2(f) (which provides rules for determining the net consideration for a reinsurance agreement) applies to—

(i) Amounts arising in taxable years beginning after December 31, 1991, under a reinsurance agreement entered into after November 14, 1991; and

(ii) Amounts arising in taxable years beginning after December 31, 1994, under a reinsurance agreement entered into before November 15, 1991.

(4) *Determination of the date on which a reinsurance agreement is entered into.* A reinsurance agreement is considered entered into at the earlier of—

(i) The date of the reinsurance agreement; or

(ii) The date of a binding written agreement to enter into a reinsurance transaction if the written agreement evidences the parties' agreement on substantially all material items relating to the reinsurance transaction.

(5) *Special rule for certain reinsurance agreements with parties not subject to U.S. taxation.* The election and special rules in paragraph (h) of this section relating to the determination of amounts required to be capitalized on reinsurance agreements with parties not subject to United States taxation apply to taxable years ending on or after September 30, 1990.

(6) *Carryover of excess negative capitalization amount.* The provisions of paragraph (i) of this section, including the special rule for the treatment of excess negative capitalization amounts of insolvent insurance companies, are affected with respect to amounts arising in taxable years ending on or after September 30, 1990.

§ 1.848–3. Interim rules for certain reinsurance agreements.

(a) *Scope and effective dates.* The rules of this section apply in determining net premiums for a reinsurance agreement with respect to—

(1) Amounts arising in taxable years beginning before January 1, 1992, under a reinsurance agreement entered into after November 14, 1991; and

(2) Amounts arising in taxable years beginning before January 1, 1995, under a reinsurance agreement entered into before November 15, 1991.

(b) *Interim rules.* In determining a company's gross amount of premiums and other consideration under section 848(d)(1)(A) and premiums and other consideration incurred for reinsurance under section 848(d)(1)(B), the general rules of subchapter L of the Internal Revenue Code apply with the adjustments and special rules set forth in paragraph (c) of this section. Except as provided in paragraph (c)(5) of this section (which applies to modified coinsurance transactions), the gross amount of premiums and other consideration is determined without any reduction for ceding commissions, annual allowances, reimbursements of claims and benefits, or other amounts incurred by a reinsurer with respect to reinsured contracts.

(c) *Adjustment and special rules.* This paragraph sets forth certain adjustments and special rules that apply for reinsurance agreements in determining the gross amount of premiums and other consideration under section 848(d)(1)(A) and premiums and other considerations incurred for reinsurance under section 848(d)(1)(B).

(1) *Assumption reinsurance.* The ceding company must treat the gross amount of consideration incurred with respect to an assumption reinsurance agreement as premiums and other consideration incurred for reinsurance under section 848(d)(1)(B). The reinsurance must include the same amount in the gross amount of premiums and other consideration under section 848(d)(1)(A). For rules relating to the determination and treatment of ceding commissions, see paragraph (c)(3) of this section.

(2) *Reimbursable dividends.* The reinsurer must treat the amount of policyholder dividends reimbursable to the ceding company (other than under a modified coinsurance agreement covered by paragraph (c)(5) of this section) as a return premium under section 848(d)(1)(B). The ceding company must include the same amount in the gross amount of premiums and other consideration under section 848(d)(1)(A). The amount of any experience-related refund due the ceding company is treated as a policyholder dividend reimbursable to the ceding company.

(3) *Ceding commissions*—(i) *In general.* The reinsurer must treat ceding commissions as a general deduction. The ceding company must treat ceding commissions as non-premium related income under section 803(a)(3). The ceding company may not reduce its general deductions by the amount of the ceding commission.

(ii) *Amount of ceding commission.* For purposes of this section, the amount of a ceding commission equals the excess, if any, of—

(A) The increase in the reinsurer's tax reserves resulting from the reinsurance agreement (computed in accordance with section 807(d)); over

(B) The gross consideration incurred by the ceding company for the reinsurance agreement, less any amount incurred by the reinsurer as part of the reinsurance agreement.

(4) *Termination payments.* The reinsurer must treat the gross amount of premiums and other consideration payable as a termination payment to the ceding company (including the tax reserves on the reinsured contracts) as premiums and other consideration incurred for reinsurance under section 848(d)(1)(B). The ceding company must include the same amount in the gross amount of premiums and other consideration under section 848(d)(1)(A). This paragraph does not apply to modified coinsurance agreements.

(5) *Modified coinsurance agreements.* In the case of a modified coinsurance

agreement, the parties must determine their net premiums on a net consideration basis as described in § 1.848–2(f)(5).

(D) *Examples.* The principles of this section are illustrated by the following examples.

Example 1. On July 1, 1991, an insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policy holder under the contracts reinsured. The tax reserves on the reinsured contracts are $100,000. Under the assumption reinsurance agreement, L1 pays L2 $83,000 for assuming the life insurance contracts. Under paragraph (c)(3) of this section, since the increase in L2's tax reserves ($100,000) exceeds the net consideration transferred by L1 ($83,000), the reinsurance agreement provides for a ceding commission. The ceding commission equals $17,000 ($100,000-$83,000). Under paragraph (c)(3) of this section, L1 reduces its gross amount of premiums and other consideration for the 1991 taxable year under section 848(d)(1)(B) by the $100,000 premium incurred for reinsurance, and L2 includes the $100,000 premium for reinsurance in its gross amount of premiums and other consideration under section 848(d)(1)(A). L1 treats the $17,000 ceding commission as non-premium related income and section 803(a)(3).

Example 2. On July 1, 1991, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policyholder under the contracts reinsured. The tax reserves on the reinsured contracts are $100,000. Under the assumption reinsurance agreement, L1 pays L2 $100,000 for assuming the contracts, and L2 pays L1 a $17,000 ceding commission. Under paragraph (c)(1) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by $100,000. L2 includes $100,000 in its gross amount of premiums and other consideration under section 848(d)(1)(A). Under paragraph (c)(3) of this section, since the increase in L2's tax reserves ($100,000) exceeds the net consideration transferred by L1, the reinsurance agreement provides for a ceding commission. The ceding commission equals $17,000 ($100,000 increase in L2's tax reserves less $83,000 net consideration transferred by L1). L1 treats the $17,000 ceding commission as non-premium related income under section 803(a)(3).

Example 3. On July 1, 1991, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policyholder under the contracts reinsured. Under the assumption reinsurance agreement, L1 transfers assets of $105,000 to L2. The tax reserves on the reinsured contracts are $100,000. Under paragraph (c)(1) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by $105,000, and L2 increases its gross amount of premiums and other consideration under section 848(d)(1)(A) by $105,000. Since the net consideration transferred by L1 exceeds the increase in L2's tax reserves, there is no ceding commission under paragraph (c)(3) of this section.

Example 4. (i) On June 30, 1991, a life insurance company (L1) reinsures 40% of certain individual life insurance contracts to be issued after that date with an unrelated insurance company (L2) under an agreement whereby L1 remains directly liable to the policyholders with respect to the contracts reinsured. The agreement provides that L2 is credited with 40% of any premiums received with respect to the reinsured contracts, but must indemnify L1 for 40% of any claims, expenses, and policyholder dividends. During the period from July 1 through December 31, 1991, L1 has the following income and expense items with respect to the reinsured policies:

Item	Income	Expense
Premiums	$8,000	
Benefits paid		$1,000
Commissions		6,000
Policyholder dividends		500
Total		7,500

(ii) Under paragraphs (b) and (c)(2) of this section, L1 includes $8,200 in its gross amount of premiums and other consideration under section 848(d)(1)(A) ($8,000 gross premiums on the reinsured contracts plus $200 of policyholder dividends reimbursed by L2 ($500 × 40%). L1 reduces its gross amount of premiums and other consideration by $3,200 (40% × $8,000) as premiums and other consideration incurred for reinsurance under section 848(d)(1)(B). The benefits and commissions incurred by L1 with respect to the reinsured contracts do not reduce L1's gross amount of premiums and other consideration under section 848(d)(1)(B). L2 includes $3,200 in its gross amount of premiums and other consideration (40% × $8,000) and is treated as having paid return premiums of $200 (the amount of reimbursable dividends paid to L1). L2 is also treated as having incurred the following expenses with respect to the reinsured contracts: $400 as benefits paid (40% × $1,000) and $2,400 as commissions expense (40% × $6,000). Under paragraph (b) of this section, these expenses do not reduce L2's gross amount of premiums and other consideration under section 848(d)(1)(A).

Example 5. On December 31, 1991, an insurance company (L1) terminates a reinsurance agreement with an unrelated insurance company (L2). The termination applies to a reinsurance agreement under which L1 had ceded 40% of its liability on a block of individual life insurance contracts to L2. Upon termination of the reinsurance agreement, L2 makes a final payment of $116,000 to L1 for assuming full liability under the contracts. The tax reserves attributable to L2's portion of the reinsured contracts are $120,000. Under paragraph (c)(4) of this section, L2 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by $120,000. L1 includes $120,000 in its gross amount of premiums and other consideration under section 848(d)(1)(A).

Example 6. (i) On June 30, 1991, an insurance company (L1) reinsures 40% of its existing life insurance contracts with an unrelated life insurance company (L2) under a modified coinsurance agreement. For the period July 1, 1991 through December 31, 1991, L1 reports the following income and expense items with respect to L2's 40% share of the reinsured contracts:

Item	Income	Expense
Premiums	$10,000	
Benefits paid		$4,000
Policyholder dividends		500
Reserve adjustment		1,500
Total		6,000

(ii) Pursuant to paragraph (c)(5) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by the $4,000 net consideration for the modified coinsurance agreement ($10,000–$6,000). L2 includes the $4,000 net consideration in its gross amount of premiums and other consideration under section 848(d)(1)(A).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 38. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 39. Section 602.101 (c) is amended by adding the following entries in the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
1.848–2(g)(8)	1545–1287
1.848–2(h)(3)	1545–1287
1.848–2(i)(4)	1545–1287

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: November 16, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–30943 Filed 12–28–92; 8:45am]

BILLING CODE 4830–01–m

DEPARTMENT OF THE INTERIOR

Bureau of Mines

30 CFR Part 609

RIN 1032-AA02

Payments Required for Owners of Private Lands Upon Which the Bureau of Mines Performs Exploration or Development Work To Investigate Known Coal Deposits

AGENCY: Bureau of Mines, Interior.

ACTION: Final rule; rescission.

SUMMARY: This document rescinds the Federal Government's regulations that stipulate that a "reasonable percentage" of the value of coals produced by a private owner be paid to the Federal Government as compensation for the exploration and development efforts of the Bureau of Mines. This regulation is no longer applicable to Bureau programs.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: John D. Ford, U.S. Department of the Interior, U.S. Bureau of Mines, Branch of Management Analysis, 810 7th Street NW., Washington, DC 20241, Tel: 202–501–9253.

SUPPLEMENTARY INFORMATION: The current 30 CFR part 609, Payments Required from Owners of Private Lands Upon Which the Bureau of Mines Performs Exploration or Development Work to Investigate Known Coal Deposits is a result of a directive established in fiscal year 1947 by the Interior Department Appropriation Act. At that time, the Bureau investigated known coal deposits on Federal, State; and private lands. When on private lands, the Federal Government required a "reasonable percentage" of the value of coals produced by the private owner as compensation for the exploration and development efforts. This regulation, as described above, no longer has application to Bureau programs. Under the authority of the President's memorandum of January 28, 1992, regarding reducing the burden of Government regulations, this regulation is rescinded.

The Department of the Interior has determined this document is not a major rule under Executive Order 12291 and certifies this document does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Mines certifies that this final rule does not have a significant economic effect on a substantial number of small entities.

This final rule to rescind 30 CFR part 609 is determined not to have federalism effects under Executive Order 12612 as it has no direct causal effect on the relative roles of Federal and State Governments.

This final rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment under The National Environmental Policy Act of 1969.

Author: Michael L. Kaas, Chief, Division of Resource Evaluation, U.S. Bureau of Mines.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A proposed rule was published in the **Federal Register**, Vol. 57, No. 183, Monday, September 21, 1992, on pages 43411–43412. Accordingly, interested persons were asked to submit written comments, suggestions, or objections regarding its content. No comments were received during the 30-day comment period.

The Department has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 30 CFR Part 609

Coal, Mines.

Accordingly, in exercise of authority delegated (5 U.S.C. 302) by the Secretary of the Interior to the Assistant Secretary, 30 CFR chapter VI is amended by removing part 609.

Dated: November 5, 1992.

John M. Sayre,

Assistant Secretary—Water and Science.

[FR Doc. 92–31370 Filed 12–28–92; 8:45 am]

BILLING CODE 4310–53–M

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30 CFR Part 651

RIN 1032–AA03

Administration of Grants

AGENCY: Bureau of Mines, Interior.

ACTION: Final rule, rescission.

SUMMARY: 30 CFR part 651 requires innovation in the submission of research and development proposals to further Bureau programs as authorized by statute. These requirements are also contained in 48 CFR chapter 15, part 1515, subpart 1515.5. Since there is no need these requirements be contained in both locations, this part is rescinded.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: John D. Ford, U.S. Department of the Interior, U.S. Bureau of Mines, Branch of Management Analysis, 810 7th Street NW., Washington, DC 20241, Tel: 202–501–9253.

SUPPLEMENTARY INFORMATION: Under the authority of the President's memorandum of January 28, 1992, regarding reducing the burden of Government regulation, this regulation is rescinded.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq* .).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Mines certifies that this final rule does not have a significant economic effect on a substantial number of small entities.

This final rule to rescind 30 CFR part 651 is determined not to have federalism effects under Executive Order 12612 as it has no direct causal effect on the relative roles of Federal and State Governments.

This final rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment under The National Environmental Policy Act of 1969.

Author: Doyne W. Teets, Chief, Division of Procurement, U.S. Bureau of Mines.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A proposed rule was published in the **Federal Register**, Vol. 57, No. 183, Monday, September 21, 1992, on page 43412. Accordingly, interested persons were asked to submit written comments, suggestions, or objections regarding its content. No comments were received during the 30-day comment period.

The Department has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 30 CFR Part 651

Grant programs-environmental protection, Grant programs-health, Mine safety and health, Reporting and recordkeeping requirements, Waste treatment and disposal.

Accordingly, in exercise of authority delegated (5 U.S.C. 302) by the Secretary of the Interior to the Assistant Secretary, 30 CFR chapter VI is amended by removing part 651.

Dated: November 5, 1992.

John M. Sayre,

Assistant Secretary—Water and Science.

[FR Doc. 92-31371 Filed 12-28-92; 8:45 am]

BILLING CODE 4310-53-M

LIBRARY OF CONGRESS

37 CFR Part 201

[Docket No. RM 92-7]

Cable and Satellite Carrier Royalty Interest Regulations (Amendments)

AGENCY: Copyright Office; Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office amends §§ 201.11(h)(2) and 201.17(i)(2)(i) of its regulations to adopt the Department of the Treasury's published interest rates for late and underpaid royalties made pursuant to section 111 and section 119 of the Copyright Act. The Office also makes technical amendments to §§ 201.11(h)(3) and 201.17(i)(2)(ii).

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

On April 10, 1989, the Copyright Office announced that it would be assessing interest against late and underpaid royalties made pursuant to the cable compulsory license. See 54 FR 14217 (1989). The Office made a similar announcement on July 3, 1989 for late payments and underpayments made pursuant to the satellite carrier compulsory license. See 54 FR 27873 (1989). The regulations provide, *inter alia*, the means for determining the beginning and end of the accrual period, the minimum charge assessable, and the method for determining the applicable interest rate.

With regards to determination of an interest rate, the Office provided:

> The Copyright Office does not wish to penalize cable systems for late and amended filings, but rather wishes to compensate copyright owners for the present value loss of royalties which should have been deposited on a timely basis. Therefore, to achieve this equitable result, the Office chose a rate which would most closely approximate the interest earned on royalty payments made within the accounting period filing dates.
>
> As part of its standard practice, the Copyright Office makes a deposit of royalty funds recently received with the U.S. Treasury on the first business day after the close of an accounting filing period. The interest rate paid on that deposit is readily obtainable from the U.S. Treasury within a day or so of the deposit. The Office feels that making the Treasury rate applicable to all underpayments which resulted from cable carriage during that accounting period, most closely equals the amount of interest the underpaid royalties would have earned had they been paid in accordance with the accounting period filing deadlines. The one drawback of adopting such an interest rate is that it is not a fixed predetermined rate.

54 FR at 14220. See also 54 FR at 27874-75. The Office subsequently adopted a regulation which set the interest rate for an accounting period as the rate paid by the Treasury on the first investment of royalties made after the close of the filing period for that accounting period. See § 201.17(i)(2)(i). See also, § 201.11(h)(2).

The Copyright Office also adopted a regulation for the cable and satellite carrier license setting the minimum amount of interest that would be assessed. The regulation provides:

> Interest is not required to be paid on any royalty underpayment from a particular accounting period if the sum of that underpayment is less than or equal to five dollars ($5.00).

§ 201.17(i)(2)(ii). See also § 201.11(h)(3).

2. Policy Decision of the Copyright Office

The Copyright Office has found the procedure for setting the interest rate for late payments and underpayments from particular accounting periods to present several problems. First, the Office has noticed a significant disparity between the interest rate appearing on Treasury securities purchased after the close of an accounting filing period and the actual yield those securities produce. This has resulted in the setting of an interest rate pursuant to §§ 201.11(h)(2) and 201.17(i)(2)(i) which is often higher than the interest yield the royalties would have produced had they been deposited with the Office on time. Second, the Office has faced the administrative problem, particularly with section 119 royalties, of not having sufficient funds to make an investment immediately following the close of the accounting filing period. This has caused problems with the setting of the interest rate. Furthermore, the Copyright Office is often forced to purchase short-term Treasury bills, as opposed to Treasury notes, which contain a discount rate rather than an interest rate, further complicating the setting of an appropriate interest rate.

As the Copyright Office noted in the preamble to the interest regulation for the cable compulsory license, the Office "does not wish to penalize cable systems for late and amended filings, but rather wishes to compensate copyright owners for the present value loss of royalties which should have been deposited on a timely basis." 54 FR at 14220. In order to further this goal, the Office chose a system for establishing a rate of interest to be assessed against late payments and underpayments that it felt would most closely match the amount of interest copyright owners would have earned had all royalties been submitted on time for each individual accounting period. The Office therefore concluded that the "interest rate applicable under the interest regulation adopted herein shall be the interest rate paid by the Treasury on the cable royalty funds deposited by the Copyright Office on the first business day after the close of the filing deadline for the accounting period with respect to which the underpayment occurs." *Id.* at 14220. See also 54 FR at 27875.

The current system for establishing the applicable interest rate has proved administratively difficult for several reasons. First, as noted above, the interest rate obtained from the Treasury on securities purchased the first business day after the close of the filing period has often differed greatly from the effective yield of those securities. For example, when the Office purchases a Treasury note on the day following the close of the filing period, the note may state on its face that it will pay a 9.125% interest rate over the two year term of the note. However, as is often the case, the Copyright Office is forced to purchase notes which have been issued well prior to the purchase date by the Office, and have actually been held by others. The notes are typically held for up to six months or less, at which time the funds are available to the Copyright Royalty Tribunal for distribution. The notes are therefore held for a far shorter period of time than the term of the note. In the above example, a two year note paying 9.125% over that period which is only held for a six month period will yield an amount that is far less than 9.125%. A cable system which makes a late payment therefore must, under the

current regulations, pay a 9.125% interest assessment when, if it had submitted its royalties on time, copyright owners would have received a lesser yield. This result frustrates the Office's stated goal of not penalizing cable systems and satellite carriers for late payments, but rather providing copyright owners the funds they would have received had the royalties been paid on time.

Second, the Copyright Office has encountered the administrative difficulty, particular with satellite carrier royalties, in making deposits of royalties with the Treasury the day after the close of the filing period. It is often the case that the majority of royalties arrive well in advance of the final day of the filing period, necessitating earlier deposits. The Copyright Office does not wish to hold funds from deposit for any period of time, since copyright owners will lose the interest on those funds, nor will it deposit relatively insignificant amounts on a daily basis. The problem therefore arises of having a sufficiently large, recently received royalty pool to be deposited on the day after the close of the filing period so that the appropriate interest rate may be established.

Third, the Copyright Office is faced with the problem of not always being able to purchase Treasury securities which carry an interest rate. It is often the case that the Office is forced to purchase Treasury bills, rather than notes, which are sold at a discount rate, rather than an interest rate. This situation arises when the royalty funds are to be turned over to the Copyright Royalty Tribunal at a time period of less than six months from the date of investment. Since the bills do not carry an interest rate, the question becomes how to calculate the appropriate interest rate for regulation purposes.

Finally, due to such circumstances as the necessity of purchasing Treasury bills as opposed to notes, it is often difficult for the Copyright Office to quickly provide cable and satellite operators with the applicable interest rate for the most recent accounting period. This delay, while perhaps only for a period of several days, has serious implications for Form 3 systems submitting large royalty payments a day or two late.

To correct the above-stated problems, the Copyright Office has decided to amend its regulations to adopt the Department of the Treasury's method for determining the percentage rate charge for late payments. Section 8025.40 of the Treasury Financial Manual states:

> The minimum annual rate of interest to be charged will be calculated by Treasury as an average of current value of funds to Treasury and will be published in the **Federal Register** each year by October 31, to become effective January 1.
>
> Described as the Current Value of Funds Rate, this Treasury Department rate is subject to quarterly revisions if the annual average changes by 2 percent, and such revisions are published in the **Federal Register**. The applicable interest rate for an accounting period shall be the Current Value of Funds Rate in effect on the first business day after the close of an accounting filing period.

The Copyright Office finds the Current Value of Funds Rate to be the superior means of calculating the appropriate cable and satellite interest rate for several reasons. First, the rate more accurately reflects what the market is currently paying on investment funds than the current system, thereby producing a rate which approximates yield on investment. This eliminates disparities currently experienced between interest rate assessed and yield on funds received by copyright owners. Second, the Current Value of Funds Rate solves the problem of lack of deposits on the day after the close of a filing period, and the problem faced by the purchase of Treasury bills carrying only a discount rate. Finally, the rate is easily determinable well in advance of the close of an accounting filing period and is available to all through the **Federal Register**. The Office therefore amends its regulations to adopt the Treasury's method of calculating interest to be effective beginning with the current 1992/2 accounting period and for all accounting periods thereafter.

The Copyright Office also amends §§ 201.11(h)(3) and 201.17(10)(2)(ii) by adding "or late payment" after the word "underpayment" and by removing the second "underpayment" and replacing it with the words "interest charge." Both sections should read:

> Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

Since this regulation makes technical adjustments to the method used in calculating interest on late and underpaid royalties and since the amendments make it easier to establish the applicable interest rate, the regulation is issued in final form and takes effect for late payments and underpayments related to royalties due for the 1992/2 accounting period and for all accounting periods thereafter. The Copyright Office has already set the interest rates for accounting periods earlier than 1992/2 under the superseded regulation, and those established rates are unaffected by this amendment of the regulation. That is, the interest rates already set under the superseded regulation will apply to any late payments or underpayments related to royalties due for any accounting period before 1992/2.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Cable television; Cable compulsory license.

Final Regulation

In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR, chapter II, as set forth below.

PART 201—[AMENDED]

1. The authority section for part 201 continues to read as follows:

> **Authority:** Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 201.16 is also issued under 17 U.S.C. 116; § 201.24 is also issued under Public Law 101–650, 104 Stat. 5089, 5134; § 201.6 is also issued under 17 U.S.C. 708; § 201.17 is also issued under 17

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

U.S.C. 111; § 201.19 is also issued under 17 U.S.C. 115.

PART 201.11—[AMENDED]

2. Sections 201.11(h) (2) and (3) are revised to read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licensee for secondary transmissions for private home viewing.

* * * * *

(h)(1) * * *

(2)(i) The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Cable operators wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

(ii) The interest rate applicable to a specific accounting period earlier than the 1992/2 period shall be the rate fixed by the Licensing Division of the Copyright Office pursuant to 37 CFR 201.11(h) in effect on June 30, 1992.

* * * * *

(3) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

§ 201.17 [Amended]

3. Sections 201.17(i)(2) (i) and (ii) are revised and (i)(2)(iii) is added to read as follows:

§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(i)(1) * * *

(2) * * *

(i) The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Cable operators wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

(ii) The interest rate applicable to a specific accounting period earlier than the 1992/2 period shall be the rate fixed by the Licensing Division of the Copyright Office pursuant to 37 CFR 201.17(i) in effect on June 30, 1992.

(iii) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

* * * * *

Dated: December 3, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-31286 Filed 12-28-92; 8:45 am]

BILLING CODE 1410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 16-1-5140; FRL 4545-5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving three revisions to the Illinois State Implementation Plan (SIP) addressing the control of emissions of total suspended particulates (TSP) from fuel combustion sources. These revisions pertain to the incorporation of new TSP rules to replace those remanded by the courts, as well as procedures for granting adjusted opacity standards. USEPA's action is based upon a request incorporating all three revisions, which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

DATES: This action will be effective March 1, 1993 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Randolph O. Cano at (312) 886-6036, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J) U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604 (312) 886-6036.

SUPPLEMENTARY INFORMATION: USEPA revised the National Ambient Air Quality Standard (NAAQS) for particulate matter on July 1, 1987, (52 FR 24634), and replaced the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA continues to process TSP SIP revisions which were in process at the time the new (PM_{10}) standard was promulgated. In a policy document published on July 1, 1987, (52 FR at 24679, column 2), USEPA stated that it would regard its approval of existing TSP rules as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM_{10}. Section 110(1) of the 1990 Clean Air Act Amendments (CAAA), 42 U.S.C. 7410, prohibits USEPA from approving SIP revisions that result in the relaxation of control requirements in effect in nonattainment areas before November 15, 1990, if such revisions "would interfere with any applicable requirement concerning attainment or reasonable further progress (as defined in section 171), or any other applicable requirement of this Act." If the SIP revision is judged to include more stringent provisions than are in the existing plan, USEPA's general policy is to approve it. Regulations in the TSP SIP cannot be relaxed, however, without a demonstration that the revision will not interfere with attainment and maintenance of the PM_{10} NAAQS. It is USEPA's judgement that the revisions in this action would increase the stringency of the plan and are, therefore, not likely to interfere with the attainment and maintenance of the PM_{10} standard as well. Thus, USEPA is approving this SIP revision.

On May 31, 1972 (37 FR 10862), USEPA approved the incorporation of Illinois Pollution Control Board (IPCB) rule 203(g)(1) and rule 202(b) into the Illinois SIP. These rules were vacated and remanded by the Illinois Appellate Court on September 22, 1978 and, therefore, are no longer federally enforceable as part of the Illinois SIP. Rule 203(g)(1) addressed particulate emission from fuel combustion emission sources. Rule 202(b) addresses visual emission standards for existing sources.

Because these regulations were vacated, USEPA issued a notice of deficiency regarding the Illinois SIP (on July 12, 1979, (44 FR 40723)). Today's rulemaking concerns regulations adopted to replace the TSP fuel combustion regulations remanded by the Court.

On March 13, 1986, the Illinois Environmental Protection Agency (IEPA) submitted certain proposed regulations to USEPA then being considered by the IPCB to replace the regulations vacated and remanded by the Illinois Appellate Court. In submitting these proposed regulations, the State requested USEPA to initiate proposed rulemaking on these regulations using parallel processing. USEPA did not take action on the March 13, 1986, submittals. On July 2, 1986, the IPCB adopted final regulations to replace rule 203(g)(1), those being rules 212.201 through 212.204, and 212.209. The final adopted regulations were submitted to USEPA on July 30, 1986, with a request to incorporate them into the SIP. On June 30, 1988, the IPCB finally adopted regulations to replace rule 202(b), those being rules 212.113, and 212.121 through 212.126. These regulations were submitted to USEPA on July 22, 1988, with a request to incorporate them into the SIP. Also submitted July 22, 1988, were procedural rules, those being rules 106.501 through 106.507, adopted by the IPCB, intended to establish procedures for considering source requests for an adjusted opacity standard pursuant to § 212.126.

It should be noted that subsequent to the invalidation of rule 203(g)(1) and 202(b) by the Illinois Appellate Court, the State of Illinois recodified all of its environmental regulations into title 35 of the Illinois Administrative Code (IAC). The regulations being considered to replace rule 203(g)(1) and rule 202(b) are, respectively, §§ 212.201 through 212.204 and 212.209 and 212.113, 212.121 through 212.126 of 35 IAC Subtitle B; Air Pollution, Chapter I: Pollution Control Board USEPA's description and evaluation of these regulations will utilize the revised numbering scheme.

Description and Evaluation of Rules

Boilers Rules

Section 212.201 Existing Sources Using Solid Fuel Exclusively Located in the Chicago Area

This section provides an emission limit of 0.10 lbs/million British Thermal Units (Btu). This is the same limit that was approved in 1972. USEPA considers this rule to represent Reasonably Available Control Technology (RACT) for TSP sources in Illinois.

Section 212.202 Existing Sources Using Solid Fuel Exclusively Located Outside the Chicago Area

This section provides the following emission limits:

Actual heat input of sources in million Btu/hr (H)	Emission limit in pounds per million Btu
Less than or equal to 10	1.0
Greater than 10 but less than 20	5.18H–0.175
Greater than or equal to 250	0.1

These are the same limits that were approved in 1972. USEPA believes that these rules represent RACT. They would apply both in attainment and nonattainment areas.

Section 212.203 Existing Controlled Sources Using Solid Fuel Exclusively

This section allows for degradation of control at sources subject to section 212.201 and 212.202. Emissions from these sources would in no case exceed 0.20 lbs per million Btu. The rule approved in 1972 would allow a source to degrade up to 0.05 lbs per million Btu from original design or acceptance performance test conditions. Section 212.203 would additionally allow a source to degrade up to 0.05 lbs per million Btu from the most recent stack test submitted prior to April 1, 1985. This rule would apply in attainment and nonattainment areas alike. USEPA considers these Illinois rules, even with this relaxation, to represent RACT. Granting a relaxed emission limit would redefine RACT for a particular facility.

This rule, in effect, sets up a generic procedure for the State agency to provide an alternate emission limit for sources subject to § 212.201 or 212.202. As a general practice USEPA is reluctant to approve SIP provisions which grant the state "director discretion" to allow sources to modify their emission limits without first obtaining Federal approval through the SIP rulemaking process. USEPA's concern is that if source emission limits can be relaxed without Federal SIP approval it is possible that the SIP could be modified so that the attainment and maintenance of the National Ambient Air Quality Standards the SIP was intended to protect is jeopardized. USEPA would not be given an opportunity to rulemake on all such modifications. Several factors lessen USEPA's concerns. First, in all instances the degregations cannot exceed .05 lbs/MMBtu. The relaxed emission limits cannot exceed .20/lbs per MMBtu. USEPA believes that even these relaxed emission limits are reflective of RACT for in the process of granting a relaxed emission limit the State redefines RACT as it pertains to the subject facility. Further, all such relaxations should be incorporated in an operating permit. On December 17, 1992, (57 FR 59928) USEPA approved the Illinois Operating Permit program for the purpose of issuing federally enforceable operating permits. Prior to issuing an operating permit, the State must give USEPA the opportunity to review the permit to ensure that the respective permit is federally enforceable. USEPA will therefore be able to use its review of State operating permits to further ensure that the NAAQS are protected.

Section 212.204 New Sources Using Solid Fuel Exclusively

This section would provide an emission limit of 0.10 lbs per million Btu in any one hour period for new solid fuel sources. This is the same limit that was approved as representing RACT in 1972 and is still approvable as RACT. Under the Clean Air Act's regulatory scheme new sources would also be subject to any applicable emission limits required by Part D, or section 112. These include lowest achievable emission rate (LAER), new source performance standards (NSPS) and, national emission standards for hazardous air pollutants (NESHAPS).

Section 212.209 Village of Winnetka Generating Station

This section would provide as a variance a temporary emission limit of 0.25 lbs per million Btu for the Village of Winnetka Generating Stations if the Village files a petition to establish site-specific particulate standards within 60 days of the effective date of this rule. This variance would be effective until January 1, 1988, or until a final determination is made by the Illinois Pollution Control Board on the site-specific rulemaking, whichever occurs sooner. (The provisions of § 212.209 are moot since the variance period ended on January 1, 1988.)

USEPA believes that §§ 212.201, 212.202, 212.203 and 212.204 are

approvable because they represent RACT. As § 212.209 is moot by its own terms, no determination is made as to its approvability.

Opacity Rules

Section 212.113 Incorporations by Reference

This section was revised to incorporate all of part 60 of title 40 of the Code of Federal Regulations (1987) (which was the most current version available at the time the State modified this Section). In addition, language was added to clarify that no future additions were being incorporated by reference at this time. This additional qualification is consistent with the legal requirements for incorporation by reference at both the State and Federal level. It is simply impossible to incorporate by reference something that is not yet in existence.

Section 212.121 Opacity Standards

This section provides that, for the purpose of subpart B: Visible Emissions of part 212: Visible and Particulate Matter Emissions, all visible emission opacity standards shall be considered equivalent to corresponding Ringleman Chart readings as described under the definition of opacity in § 211.122. An additional change to this Section is that the term "visible" replaces the term "visual". USEPA approves the incorporation of this section into the SIP because the change to the rule in non substantive.

Section 212.122 Limitation for Certain New Sources

This Section, which provides emission limits for new sources with actual heat input greater than 250 MMBtu/hr, was approved for incorporation into the Illinois SIP on May 31, 1972 (37 FR 10862) as PCB rule 202(a)(1). Today USEPA is incorporating the recordified rule number, 35 IAC 212.122 into the SIP.

Section 212.123 Limitation for All Other Sources

This Section has been revised to clarify that no person shall cause or allow emission of smoke, or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission source other than those sources subject to § 212.122. This Section also contains an exception for smoke or other particulate matter from any such emission source, which allows opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period. The more opaque emissions shall occur from only one such emission source, located within 305 meters or 1,000 feet radius from the center point from any other such emission source, owned or operated by the same person. It is further provided that the periods of more opaque emissions are limited to three times in a 24 hour period. USEPA is granting approval of the incorporation of this section into the SIP.

Section 212.124 Exceptions

This section provides for exceptions during startup, malfunction, and breakdown, as provided in an operating permit issued in accordance with 35 IAC 201. Part 201 contains the permit and general provisions. Section 212.124 also provides that sources which have obtained an adjusted opacity standard pursuant to § 212.126 are subject to that standard rather than the limitations of § 212.122 or 212.123. Finally § 212.124 clearly defines the criteria for a source's use of compliance with the particulate regulations as a defense to a violation of the applicable opacity standards. USEPA approves the incorporation of this section into the SIP.

Section 212.125 Determination of Violations

This Section provides three methods for determining violations: visual observation, use of an approved calibrated smoke evaluation device or, use of an approved smoke monitor, which were approved by IPCB for incorporation into the Illinois SIP on May 31, 1972 (37 FR 10862) as PCB rule 202(c). Today USEPA is incorporating the recodified rule number 35 IAC 212.125 into the SIP.

Section 212.126 Adjusted Opacity Standards Procedures

This Section provides detailed procedures a source can follow to obtain an adjusted opacity standard, including a detailed testing methodology. Four limits on alternate opacity limitations are also set forth; they must be contained in an operating permit; must substitute for the otherwise applicable limit; must not allow an opacity greater than 60 percent; and, must allow opacity for one, six minute averaging period in any sixty minute period, to exceed the adjusted opacity standard. USEPA approves the incorporation of this Section in the SIP.

The Illinois opacity rules as discussed above incorporate guidance provided by USEPA in its September 23, 1986, comments to IEPA. The regulations are clear and enforceable. The procedures in § 212.126 Adjusted Opacity Standards Procedures allows the IPCB to modify the pertinent SIP emission requirements without USEPA rulemaking. It should be noted here that opacity is used as an indirect measure of compliance with particulate emission limits by a point source. Even without an opacity limit, compliance with the particulate limit is required. Further, such compliance can be more accurately measured through the use of a stack test. USEPA normally objects to this practice because the State could modify the SIP in such a way as to interfere with attainment and maintenance of the NAAQS. However, because USEPA has approved the Illinois operating permit program for the purpose of issuing federally enforceable operating permits, and operating permits will be the vehicle for issuing Adjusted Opacity Standards, such concerns are minimized. USEPA intends to use its overview of the Illinois operating permit program to review operating permits prior to their issuance; and, through its authority under section 105 of the Act grant process, to ensure attainment and maintenance of the NAAQS. For the above cited reasons, USEPA approves the incorporation of these opacity rules into the SIP.

Air Adjusted Standards Procedures

As part of its June 30, 1988, submittal the State submitted Adjusted Standard Procedures which are part of IPCB's procedural results. These procedures are contained in 35 IAC Subtitle A: General Provisions; Chapter I: Pollution Control Board; part 106: Hearings Pursuant to Specific Rules; subpart E: Air Adjusted Standard Procedures; § 106.501 through 106.507.

Section 106.501 Scope and Applicability

This Section clarifies that subpart E only applies whenever an adjusted standard is requested pursuant to 35 IAC 212.126 Adjusted Opacity Standard Procedures.

Section 106.502 Joint Single Petitions

This Section provides that any person may initiate an adjusted standard proceeding by filing a petition jointly with the IEPA, or on its own.

Section 106.503 Request to Agency to Join as Co-Petitioner

This Section allows IEPA to act in any adjusted standard proceeding as a petitioner. Any person may request IEPA assistance in initiating a petition for an adjusted standard. IEPA may require the requestor to submit relevant information. IEPA must promptly notify the requestor of its decision whether or not to become a co-petitioner. The basis for not becoming a co-petitioner must be given to the requestor. IEPA's decision

is discretionary and not appealable to the IPCB.

Section 106.504 Contents of Petition

This Section specifies what information must be included in a petition.

Section 106.505 Response and Reply

This Section requires IEPA to file a response within 45 days of a petition being filed in which IEPA is not a co-petitioner. This response must include IEPA's recommendations concerning IPCB's proposed action on the petition. The petitioner is allowed 15 days to file a reply to the IEPA response.

Section 106.506 Notice and Conduct of Hearing

This Section requires the IPCB to hold at least one public hearing prior to granting an adjusted standard. The public notification process must conform to the pertinent Federal requirements.

Section 106.507 Opinions and Orders

This Section requires the IPCB to issue an Opinion and Order stating the relevant facts and rationale for the final IPCB determination. The IPCB may issue other orders as it deems appropriate. This Section also requires the Clerk of the IPCB to maintain a record of all Opinions and Orders for public inspection. This Section also provides that decisions of the IPCB are appealable pursuant to section 41 of the Illinois Environmental Protection Act, which provides for judicial review of IPCB decisions in the Appellate Court for the District in which the cause of action arose.

USEPA believes that these Air Adjusted Standards Procedures are well defined and provide for adequate review of petitions for an adjusted standard in that both the public and IEPA are afforded an opportunity to comment on all petitions. These comments must also be addressed in the IPCB Opinion and Order. For these reasons, USEPA approves the incorporation of these procedural rules into the SIP.

USEPA has reviewed IEPA's submittals of July 30, 1986, and July 22, 1988, for conformance with the provisions of the 1990 CAAA enacted on November 15, 1990. USEPA has determined that these actions conform with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Because USEPA considers today's actions noncontroversial and routine, we are approving them today without prior proposal. The action will become effective on March 1, 1993. However, if we receive notice by January 28, 1993 that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids USEPA to base it actions concerning SIPs on such grounds. *Union Electric Co. v. U.S., E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall be not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: December 2, 1992.

David Kee,

Acting Regional Administrator.

For the reasons set out in the preamble title 40, Chapter I of the Code of Federal Regulations is amended as follows.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Subpart O—Illinois

Authority: 42 U.S.C. 7401, 7671(q)

2. Section 52.720 is amended by adding paragraph (c)(94) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(94) On July 30, 1986, the State submitted particulate boiler rules intended to replace rule 203(g)(1) which was vacated by the Courts. No action is taken on § 212.209 because the variance which it authorized has expired. On July 22, 1988, the State submitted opacity rules intended to replace rule 202(b) which had been vacated by the Courts. Also on July 22, 1988, the State submitted Illinois Pollution Control Board procedural rules for considering Air Adjusted Standard Procedures.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Illinois Administrative Code, Subtitle B: Air Pollution; Chapter 1: Pollution Control Board; part 212 Visible and Particulate Matter Emissions; subpart E: Particulate Matter Emission from Fuel Combustion Emission Sources; §§ 212.201, 212.202, 212.203 and 212.204. Amended or added at 10 Ill Reg. 12637, effective July 9, 1986.

(B) Title 35: Environmental Protection, Illinois Administrative Code,

Subtitle B: Air Pollution; Chapter 1: Pollution Control Board; part 212 Visible and Particulate Matter Emissions; subpart B: Visible Emissions. Amended or added at 12 Ill. Reg 12492, effective July 13, 1988.

(C) Title 35: Environmental Protection, Illinois Administrative Code; Subtitle A: General Provisions; Chapter 1: Pollution Control Board; part 106: Hearings Pursuant to Specific Rules; subpart E: Air Adjusted Standards Procedures. Added at 12 Ill. Reg 12484, effective July 13, 1988.

[FR Doc. 92-31265 Filed 12-28-92; 8:45 am]
BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 57, No. 250
Tuesday, December 29, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[DA-92-39]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: The proposed action would suspend from the Southwest Plains order for the months of December 1992 through August 1993 the shipping standards for supply plants that were pooled during the preceding September, and for an indefinite period the limits on the percentage of a supply plant's shipping standard that may be met by considering milk to be qualifying shipments from the supply plant. The action is requested by Kraft General Foods, Inc. Kraft operates a supply plant at Bentonville, Arkansas.

DATES: Comments are due no later than January 4, 1993.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

The proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action would not be intended to have retroactive effect. This action would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

In this regard, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in this notice of proposed suspension.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered: A. For an indefinite period: In § 1106.7(b)(2), the following sentence: "Diversions in excess of three-fifths of the shipping requirements shall not be included as qualifying shipments."; and B. For the period of December 1, 1992, through August 31, 1993, the following:

1. In § 1106.6, the words "during the month."

2. In § 1106.7(b)(1), the words "each of", the word "months", the words "through January", and the words "of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions as previously specified."

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include

December 1992 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action for December 1992 through August 1993 would suspend the shipping standards for supply plants that were previously associated with the market. The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It also provides that in order to be pooled under the order during the months of September through January, 50 percent of a supply plant's receipts must be shipped to distributing plants each month. A supply plant that was pooled during each month of the immediately preceding months of September through January shall continue to be pooled during the following months of February through August if 20 percent of its receipts are shipped to distributing plants. Part of the requested suspension action would remove during the months of December 1992 through August 1993 the shipping standard for supply plants that were pooled under the order during the immediately preceding month of September.

The order also provides that the operator of a supply plant may meet up to 60 percent of its shipping requirement with milk that was diverted from the supply plant. The second part of the proposed suspension would remove the requirement that some milk must actually move from the supply plant to a distributing plant each month. The proposed suspension also would allow a supply plant to meet its pooling standard with diverted milk; i.e., milk that moves directly from the procedures farm(s) to the plant after the suspension of shipping standards ends. This proposed action would be for an indefinite period.

Under the proposed suspension, a supply plant that had met the shipping requirement for September 1992 could be a pool plant during December 1992 through August 1993 without making any actual deliveries of milk to distributing plants. Moreover, the shipping requirements for supply plants could be met entirely with diverted milk as long as the indefinite suspension remained in effect.

These suspension actions were requested by Kraft, USA, which operates a supply plant at Bentonville, Arkansas. Kraft maintains that it is capable of meeting the supply plant shipping standards entirely with diverted milk. Since the order now allows only three-fifths of the shipments to be made by diversions, Kraft must receive, unload and reload two-fifths of the required shipments. Kraft maintains that this uneconomic unloading/reloading is done solely to meet the pooling requirements and serves no other function.

Kraft further maintains that other provisions of the order, such as the "touch-base" provision, will protect the integrity of the order. Meanwhile, the suspension action would allow supply plants to meet their performance standards with the most efficient method of shipping milk. Kraft indicates a belief that the rationale that the Department of Agriculture relied on in reducing cooperative performance standards for pooling balancing plants is appropriate to justify this proposed action.

Before deciding whether to grant the proposed suspension, the Department of Agriculture is inviting comments from other interested parties. Comments also are sought regarding whether the portion of the request that would be suspended indefinitely should instead be suspended for a limited period, such as two years.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: December 21, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–31348 Filed 12–28–92; 8:45 am]

BILLING CODE 3410–02–M

[4910–13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–37–AD]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 81–22–04, which currently requires repetitively inspecting the elevator return spring on certain Fairchild Aircraft SA226 and SA227 series airplanes, and replacing any damaged part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require relocating the elevator return spring as terminating action for the repetitive inspections that are currently required by AD 81–22–04. The actions specified in the proposed AD are intended to prevent a jammed elevator control caused by elevator return spring failure.

DATES: Comments must be received on or before March 5, 1993.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–37–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is discussed in the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; Telephone (512) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Bob D. May, Aerospace Engineer, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193–0150; Telephone (817) 624–5156.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No 91–CE–37–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–37–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion: The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers: (1) The safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of an adjacent structure being damaged as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires the incorporation of a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA recently conducted a review of existing ADs that apply to Fairchild Aircraft SA226 and SA227 series airplanes. Assisting the FAA in this review were (1) Fairchild Aircraft; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 81–22–04, Amendment 39–4238, as one that should be superseded with a new AD that would eliminate short-interval and critical repetitive inspections. AD 81–22–04 currently requires repetitively inspecting the elevator return spring on certain Fairchild Aircraft SA226 and SA227 series airplanes, and replacing any damaged part.

Fairchild Aircraft has issued Service Bulletin (SB) No. 226–27–032, Issued: September 14, 1981, revised: January 19, 1983; and SB No. 227–27–002, Issued: September 14, 1981, revised: October 25, 1985. These service bulletins specify procedures for relocating the elevator return spring on certain Fairchild Aircraft SA226 and SA227 series airplanes.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that (1) The procedures specified in the referenced service information incorporate an improved design change that could replace the repetitive inspections currently required by AD 81–22–04; and (2) AD action should be taken to eliminate these repetitive short-interval inspections and prevent failure of the elevator return spring.

Since the condition described is likely to exist or develop in other SA226 and SA227 series airplanes of the same type design, the proposed AD would supersede AD 81–22–04 with a new AD that would (1) initially retain the inspections of the elevator return spring with replacement and relocation of any damaged elevator return spring; and (2) eventually require the relocation of the elevator return spring as terminating action for the repetitive inspections required by AD 81–22–04. The proposed relocation would be accomplished in accordance with Fairchild SB No. 226–27–032, Issued: September 14, 1981, revised: January 19, 1983; or Fairchild SB No. 227–27–002, Issued: September 14, 1981, revised: October 25, 1985, as applicable.

The FAA estimates that 322 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $354,200.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 322 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 30 percent are operated in scheduled passenger service by 19 different operators. A significant number of the remaining 70 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 2,200 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 11 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 11 to 22 calendar years before the proposed modification would be mandatory.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 81–22–04, Amendment 39–4238, and adding the following new AD:

Fairchild Aircraft: Docket No. 91–CE–37–AD. Supersedes AD 81–22–04, Amendment 39–4238.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial No.
SA226–AT	All serial numbers.
SA226–TC	All serial numbers.
SA227–AC	406, 415, 416, and 420 through 473.
SA227–AT	423 through 469.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent a jammed elevator control caused by elevator return spring failure, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS), unless already accomplished within the last 275 hours TIS, and thereafter at intervals not to exceed 300 hours TIS until the modification specified in paragraph (c) of this AD is accomplished, visually inspect the elevator return spring, the attachment bolts, the spacers, and the clevis for damage such as deterioration, wear, or breakage.

(b) If any damaged part is found, prior to further flight, replace with a new part and relocate the elevator return spring in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Service Bulletin (SB) No. 226–27–032, Issued: September 14, 1981, revised: January 19, 1983; or Fairchild SB No. 227–27–002, Issued: September 14, 1981, revised: October 25, 1985, as applicable.

(c) Within the next 2,200 hours TIS, unless already accomplished as required by paragraph (b) of this AD, relocate the elevator return spring in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Service Bulletin (SB) No. 226–27–032, Issued: September 14, 1981, revised: January 19, 1983; or Fairchild SB No. 227–27–002, Issued: September 14, 1981, revised: October 25, 1985, as applicable.

(d) The accomplishment of the modification required by paragraph (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 81–22–04, Amendment 39–4238.

Issued in Kansas City, Missouri, on December 18, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31380 Filed 12–28–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–209–AD]

Airworthiness Directives; Boeing Model 747–400, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, 757, and 767 series airplanes. This proposal would require a one-time inspection of the discharge cartridges and electrical connectors on the fire extinguisher bottles, and replacement of damaged cartridges and connectors. This proposal is prompted by reports of bent pins found in the discharge cartridges and damaged electrical connectors on some fire extinguisher bottles. The actions specified by the proposed AD are intended to ensure the proper discharge of the fire extinguisher bottle in the event of a fire.

DATES: Comments must be received by February 23, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Mudrovich, Aerospace Engineer, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2670; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–209–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion: Two operators of Boeing series airplanes have reported finding bent pins in the discharge cartridges on fire extinguisher bottles installed at various locations on the airplane. During regular maintenance, whenever the electrical connector is disconnected from the discharge cartridge, a shunt

plug is installed on the discharge cartridge. The removal and installation of this shunt plug can inadvertently bend the pins in the discharge cartridge. (The use of shunt plugs has been discontinued; the use of protective covers during these maintenance procedures is now recommended.) If an electrical connector is connected to a discharge cartridge that has a bent pin, the connector can be damaged. A damaged discharge cartridge pin or a damaged electrical connector, if not detected and corrected, can cause an unsatisfactory electrical connection, which could prevent the proper discharge of the fire extinguisher bottle in the event of a fire.

The subject discharge cartridges are installed on fire extinguisher bottles located in the auxiliary power unit (APU), lower cargo compartment, and engine fire extinguishing systems on certain Boeing Model 747–400, 757, and 767 series airplanes.

The FAA has reviewed and approved the following Boeing Alert Service Bulletins:

Alert service bulletin No.	Issue date	Affected airplane model
747–26A2210	Oct. 29, 1992	747–400
757–26A0032	Oct. 22, 1992	757
767–26A0089	Oct. 22, 1992	767

These service bulletins describe procedures for inspecting the fire extinguishing discharge cartridges (squibs) and electrical connectors on the fire extinguisher bottles to detect damage, and replacement of damaged cartridges or connectors. Also included in these service bulletins are procedures for conducting an operational test of the bottle discharge cartridge circuit whenever a damaged cartridge or connector is replaced.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of the discharge cartridges and electrical connectors on the fire extinguisher bottles; replacement of damaged cartridges and connectors; and an operational test of the bottle discharge cartridge circuit after replacement of any damaged item. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 1,059 airplanes of the affected design in the worldwide fleet; of this number, 149 are Model 747–400 series airplanes, 489 are Model 757 series airplanes, and 421 are Model 767 series airplanes. The FAA estimates that 495 airplanes of U.S. registry would be affected by this proposed AD; of this number, 22 are Model 747–400 series airplanes, 311 are Model 757 series airplanes, and 163 are Model 767 series airplanes.

The FAA estimates that it would take approximately 5 work hours per airplane (.25 work hour per cartridge) to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $136,125, or $275 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 92–NM–209–AD.

Applicability: Model 747–400 series airplanes, passenger and combi configurations, line position 696 through 906, inclusive; Model 757 series airplanes, line numbers 1 through 488, inclusive; and Model 767 series airplanes, line numbers 1 through 421, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the improper discharge of fire extinguishant due to a damaged discharge cartridge or electrical connector on the fire extinguisher bottle, accomplish the following:

(a) Within 120 days after the effective date of this AD, conduct a detailed visual inspection to detect damage to the discharge cartridges and the electrical connectors on each fire extinguisher bottle installed in auxiliary power unit (APU), cargo compartment, and engine fire extinguishing systems, in accordance with Boeing Alert Service Bulletin 747–26A2210, dated October 29, 1992 (for Model 747–400 series airplanes); Boeing Alert Service Bulletin 757–26A0032, dated October 22, 1992 (for Model 757 series airplanes); or Boeing Alert Service Bulletin 767–26A0089, dated October 22, 1992 (for Model 767 series airplanes); as applicable. Since an operational test of the fire extinguishing system can be successfully completed even if there is a damaged pin or connector, this inspection must be performed by visually examining the discharge cartridge and the electrical connector.

(b) If any damage is detected during the inspection required by paragraph (a) of this AD, prior to further flight, replace the damaged item with a serviceable part and perform an operational test of the bottle discharge cartridge circuit in accordance with the applicable service bulletin. Any discrepancies detected as a result of the operational test must be corrected prior to further flight.

(c) As of the effective date of this AD, no person shall install a fire extinguisher bottle on any airplane unless the discharge cartridge and electrical connector has been inspected in accordance with this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-31461 Filed 12-28-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-258-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes. That action would have required inspection of the flexible conduit, wiring, and support brackets between the fuselage and the forward and aft cargo door, and replacement or repair, if necessary. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has reconsidered its position on this safety issue and has concluded that the proposed inspection is unnecessary to provide an acceptable level of safety, and that the procedures currently required by a separate existing AD will preclude the uncommanded opening of the forward and aft cargo door. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Huber, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2791; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on March 2, 1992 (57 FR 7335). The proposed rule would have required inspection of the flexible conduit, wiring, and support brackets between the fuselage and the forward and aft cargo door, and replacement or repair, if necessary. The proposed actions were intended to prevent the inadvertent actuation of the respective cargo door power drive units that open and close the doors, and possible injury to maintenance or cargo handling personnel.

That action originally was prompted by an incident of an uncommanded electrical opening of an aft cargo door that occurred during maintenance procedures conducted on a Model 747-200 series airplane. The apparent cause of the inadvertent cargo door opening was traced to shorted wires contained in the flexible metallic conduit. Wires related to the cargo door control and power are contained in this conduit.

Investigation of this incident indicated that the shorted wires had occurred as a result of wire insulation breaches caused by chafing on the metallic extrusions of the flexible conduit. Apparently, the inherent design of the metallic conduit and the improper installation of the conduit led to the development of circumferential cracks on the inside of the conduit. These cracks produced jagged edges that chafed the wires in the conduit.

In its further review of the circumstances surrounding this door opening incident, however, the FAA has confirmed that an inadvertent opening of the cargo door cannot be caused solely by wire chafing. In addition to chafing, at least four independent failures must also occur in order to drive the door latches to the open position. These four failures are:

1. Failure of the lock sectors;
2. Wire chafing that causes two specific wires to short together;
3. Failure of the associated circuit breakers; and
4. A failure that provides power to the Ground Handling Bus.

To illustrate the consequences of these failures, the FAA offers the following explanation:

As the door closes, two hooks pull the door in and compress the door seal. This allows the eight sill latches to rotate by means of a latching power drive unit. The door is then locked by operation of the master latch-lock mechanism. Overcenter travel of the master latch-lock handle causes the reinforced lock sectors to lock the latches in the closed position. All latches must be latched for the lock sectors to engage.

When the master latch-lock handle is stowed, 28V DC control power is removed by means of a limit switch located on a lock sector. A door warning switch located on the pressure vent door indicates when all the lock sectors are engaged. AD 90-09-06 [Amendment 39-6581, (55 FR 15217, April 23, 1990)] mandated the installation of this door warning switch, as well as a reinforcement of the lock sectors to ensure that the latches remain locked against backdriving of the latches by the latch power drive unit. Failure of lock sectors that are reinforced in accordance with AD 90-09-06 has been shown to be unlikely and, even in the event of such a failure, an indication by means of the door warning switch will warn the flight crew of the problem.

In addition to the failure of the lock sectors, two specific wires must short together as a result of the chafing problem, and power must be available on the Ground Handling Bus, in order for an uncommanded operation of the latch power drive unit to occur. Furthermore, the wires must short together without grounding out the metallic conduit, which would cause the circuit breaker to open and remove power for the cargo door control circuitry.

Power is available on the Ground Handling Busses as long as (1) the weight-on-wheels switch is in the ground position, and (2) either the APU is running or external power is applied. A failure of the Ground Handling Bus relay must occur before power is available to the cargo door control circuitry during flight. The APU is not certified for in-flight operation on any Model 747 series airplane.

If the unlikely condition were to occur where power was available on the Ground Handling Bus and, concurrently, the shorting condition occurred, the latches would be backdriven against the reinforced lock sectors, thus preventing latching. If this were to happen, the "door latched" switch would be relaxed, which would immediately indicate to the crew that a door problem exists that requires maintenance action. Standard operational and/or maintenance practices would then be put into action to correct the problem.

In addition to its own investigation and reconsideration of the addressed safety issue, the FAA also has considered information provided by the public in comments submitted to the proposed rule.

One commenter, Boeing Commercial Airplane Group, provides data concerning failure consequences that are very similar to the discussion above. Boeing also states that its tests of the aft cargo door wire bundle have revealed that the correct installation and rigging of the wire bundle and conduit will preclude any damage to the wire bundle. These tests demonstrated that, after 50,000 opening and closing cycles of the door, no damage occurred to the wire bundle.

Additionally, Boeing contends that in-service experience does not support the unsafe condition addressed in the proposal as "possible injury to maintenance or cargo handling

personnel." The incident involving the uncommanded electrical operation of a cargo door due to a short in the wire bundle conduit occurred on the ground. Further, the slow rate of cargo door travel from the lower sill to the fully open position provides an additional safety margin in the event of an uncommanded cargo door operation occurring on the ground.

After further review of its previous position on this subject and of the data presented by the commenter, the FAA has concluded that the modifications, tests, and inspections currently required by AD 90–09–06 provide an acceptable level of safety to preclude inadvertent actuation of the cargo door power drive unit and possible injury to maintenance or cargo handling personnel. Accordingly, the proposed rule is considered unnecessary and is hereby withdrawn.

Although other comments were received in response to the notice, those comments are not addressed in this document. However, this information may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 91–NM–258–AD, published in the **Federal Register** on March 2, 1992 (57 FR 7335), is withdrawn.

Issued in Renton, Washington, on December 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31462 Filed 12–28–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–198–AD]

Airworthiness Directives; de Havilland, Inc. Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and -300 series airplanes. This proposal would require inspection of the upper drag strut trunnion fittings of the nose landing gear to detect cracks, inspection of the fitting attachment bolts to verify tightness, and replacement of the fittings or fasteners, if necessary. This proposal is prompted by reports of cracked trunnion fittings. The actions specified by the proposed AD are intended to prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear.

DATES: Comments must be received by February 23, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–198–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100 and -300 series airplanes. Transport Canada Aviation advises that cracks have been found in the two trunnion fittings that retain and support the nose landing gear upper drag strut. Historically, these fittings have a low fatigue life. Initial investigations have revealed that fatigue and subsequent cracking is attributed to ground handling of the airplane, in particular towing, which imposes higher loads on the airplane than initially predicted. In addition, this condition may be aggravated by loose fasteners. This condition, if not corrected, could cause failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear.

De Havilland has issued DHC–8 Alert Service Bulletin S.B. A8–53–40, Revision 'A', dated June 12, 1992, which describes procedures for inspecting the

upper drag strut trunnion fittings of the nose landing gear to detect cracks, and inspecting the fitting attachment bolts to verify tightness. The service bulletin also describes procedures for replacing the fittings or fasteners. If either fitting is cracked, both fittings are to be replaced with confirmed crack-free fittings. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–92–18, dated August 18, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections of the upper drag strut trunnion fittings of the nose landing gear to detect cracks, inspections of fitting attachment bolts to verify tightness, and replacement of the fittings or fasteners, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 125 de Havilland Model DHC–8–100 and –300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,875, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92–NM–193–AD.

Applicability: Model DHC–8–102, –103, –301, –311, and –314 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear, accomplish the following:

(a) Within 500 landings after the effective date of this AD, unless accomplished within the last 500 landings, conduct a visual inspection of both upper drag strut trunnion fittings of the nose landing gear to detect cracks; and inspect the fitting attachment bolts to verify tightness; in accordance with de Havilland DHC–8 Alert Service Bulletin S.B. A8–53–40, Revision 'A', dated June 12, 1992.

(1) If no crack is detected in the upper drag strut trunnion fittings of the nose landing gear, and no looseness is detected in the fitting attachment bolts, repeat the inspections at intervals not to exceed 1,000 landings.

(2) If a crack is detected on either fitting, prior to further flight, replace both fittings with confirmed crack-free fittings in accordance with the service bulletin. After such replacement, the inspections required by this paragraph much continue at intervals not to exceed 1,000 landings.

(3) If the fitting attachment bolts are found to be loose during the initial inspection, prior to further flight, replace the fasteners securing the fittings (nuts, washers, and bolts) in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings.

(4) If any fastener, replaced in accordance with this AD, is found to be loose during any repetitive inspection, prior to further flight, tighten the bolt to the value specified in the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31463 Filed 12–28–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–193–AD]

Airworthiness Directives; Fokker Model F–27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F–27 series airplanes. This proposal would require a one-time visual inspection to determine whether bolts and screws of proper length have been installed in the outboard wing attachment fittings of the fuselage main frame and replacement of discrepant parts. This proposal is prompted by reports that loose or sheared bolts and screws were found in

the outboard wing attachment fittings. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wings.

DATES: Comments must be received by February 23, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–193–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion: In June 1988, the FAA sponsored a conference on aging airplanes. It had become obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Based on information exchanged during this conference, it was generally agreed that increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

An Airworthiness Assurance Task Force (AATF), with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives from around the world, was established in August 1988. The objective of the AATF was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the commuter fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

As part of its actions to address Item (1), above, the Working Group assigned to review the Fokker Model F–27 series airplanes made a recommendation that the procedures specified in Fokker Service Bulletin F27/53–115, dated May 21, 1991, be mandated. That service bulletin describes procedures for a one-time visual inspection to determine whether wing attachment fitting bolts and screws have been properly installed in the fuselage main frame at stations 7961 and 9439.5, and replacement of discrepant parts. It was issued in response to reports indicating that, on one Model F–27 series airplane, loose or sheared bolts and screws were found in the outboard wing attachment fittings. This condition, if not corrected, could result in reduced structural integrity of the wings.

The Rijksluchtvaartdienst (RLD) classified the service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 91–067, dated July 15, 1991, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to determine whether bolts and screws of proper length have been installed in the outboard wing attachment fittings of the fuselage main frame at stations 7961 and 9439.5, and replacement of discrepant parts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Airplanes with serial numbers 10260 and subsequent were modified, prior to delivery, to preclude the addressed unsafe condition and, therefore, are not subject to the requirements of this proposed AD. The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,935, or $385 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant

rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92–NM–193–AD.

Applicability: Model F–27 series airplanes, serial numbers 10102 through 10259, inclusive; on which the inspection described in Service Bulletin F27/53–60 (B–156) Part II has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Prior to the accumulation of 2,700 hours time-in-service after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs earlier, perform a one-time visual inspection to determine whether bolts and screws of proper length have been installed in the outboard wing attachment fittings of the fuselage main frame at stations 7961 and 9439.5, in accordance with Fokker Service Bulletin F27/53–115, dated May 21, 1991.

(1) If any measured bolt or screw is found that protrudes more than 4.5 mm (0.177 inch) through the nut, prior to further flight, replace it with a shorter one, in accordance with the service bulletin.

(2) If no measured bolt or screw is found that protrudes more than 4.5 mm (0.177 inch) through the nut, no further action is necessary.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31464 Filed 12–28–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANM–24]

Proposed Alteration of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the names of three VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) aids and one VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) aid, within the airspace designations of certain transition areas located in Oregon and Idaho. A navigational aid (NAVAID) with the same name as the airport should be located on the airport. This action proposes to reflect the name changes, where necessary, of the NAVAID's that are not located on the airport with which they are associated.

DATES: Comments must be received on or before February 10, 1993.

ADDRESSES: Send comments on the proposal to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 92–ANM–24, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM–535, Federal Aviation Administration, Docket No. 92–ANM–24, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ANM–24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the change of the names of four VORTAC's within the airspace designations for certain transition areas located in Oregon and Idaho. FAA

Handbook 7400.2C states that a NAVAID with the same name as the associated airport should be located on the airport; therefore, the names of the NAVAID's associated with that airport that are not located on the airport surface or are not the primary NAVAID's located off the airport surface for that airport are proposed to be changed accordingly. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in § 71.181 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition areas listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Incorporated by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71 [AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of transition areas

* * * * *

ANM OR TA Bend, OR [Revised]
Bend Municipal Airport, OR
(lat. 44°05'37"N, long. 121°11'59"W)
Deschutes VORTAC (lat. 44°15'10"N, long. 121°18'13"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Bend Municipal Airport, and within 1.8 miles each side of the Deschutes VORTAC 334° and 154° radials extending from the 4.3-mile radius to .6 mile northwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 4.3 miles southwest and 7 miles northeast of the Deschutes VORTAC 334° radial extending from the VORTAC to 10.5 miles northwest of the VORTAC.

* * * * *

ANM OR TA Medford, OR [Revised]
Medford-Jackson County Airport, OR
(lat. 42°22'20"N, long. 122°52'22"W)
Rouge Valley VORTAC (lat. 42°28'47"N, long. 122°54'47"W)
Pumie LOM (lat. 42°27'03"N, long. 122°54'49"W)
Klamath Falls VORTAC (lat. 42°09'11"N, long. 121°43'39"W)
Fort Jones VORTAC (lat. 41°26'59"N, long. 122°48'23"W)

That airspace extending upward from 700 feet above the surface within 6.1 miles northeast and 4.3 miles southwest of the Medford ILS localizer northwest course extending from 2.7 miles northwest of the Pumie LOM to 20.9 miles northwest of the LOM, and within 3 miles each side of the Rogue Valley VORTAC 352° radial extending from the Rogue Valley VORTAC to 7.4 miles north of the VORTAC, and within 3.1 miles each side of the Medford ILS localizer southeast course extending from the LOM to 20.9 miles southeast of the LOM; that airspace extending upward from 1,200 feet above the surface bounded on the east by V–452, on the southeast by the 34.8-mile radius of the Klamath Falls VORTAC, on the south by V–122, on the west by V–23, and that airspace southeast of Medford bounded on the north by the south edge of V–122, on the east by the 34.8-mile radius of the Klamath Falls VORTAC, on the southeast by a line 4.3 miles southeast and parallel to the Fort Jones VORTAC 941° radial, on the west by the east edge of V–23, and that airspace west of the Rogue Valley VORTAC bounded on the north by the south edge of V–287, on the west by the east edge of V–27, on the south by the north edge of V–122.

* * * * *

ANM OR TA Redmond, OR [Revised]
Redmond, Roberts Field, OR
(lat. 44°15'14"N, long. 121°09'00"W)
Deschutes VORTAC (lat. 44°15'10"N, long. 121°18'13"W)

That airspace extending upward from 700 feet above the surface within 1.8 miles north and 11.8 miles south of the Deschutes VORTAC 059° radial to 28.8 miles east of the VORTAC, and within 1.8 miles each side of the 230° bearing from the Roberts Field Airport extending 6.7 miles southwest of the airport, and within the 1.8 miles each side of the Deschutes VORTAC 162° radial extending from the VORTAC to 4.3 miles south of the VORTAC, and within 1.8 miles each side of the Deschutes VORTAC 281° radial extending from the VORTAC to 4.3 miles west of the VORTAC and within 3.5 miles each side of the Deschutes VORTAC 014° radial extending from 13.1 miles north of the VORTAC to 30.5 miles north; that airspace extending upward from 1,200 feet above the surface within a 32.2-mile radius of the VORTAC between the 006° and 048° radials, within a 27-mile radius of the VORTAC between the 048° radial and a line 5.3 miles west of and parallel to the 189° radial; that airspace extending upward from 1,700 feet above the surface within a line beginning at Deschutes VORTAC extending north on V–25 to V–112, east on V–112 to V–4, southeast on V–4 to V–357, southwest on V–357 to V–122, west on V–122 to V–452, northwest on V–452 to V–269, east on V–269 to the Deschutes VORTAC; excluding that airspace within Federal Airways; the Lakeview, OR, Additional Control Area; the Baker Municipal Airport, OR; the Klamath Falls International Airport, OR; Pendleton Municipal Airport, OR; the Dallas Municipal Airport, OR, and the Burns Municipal Airport, OR, transition area.

* * * * *

ANM OR TA Sunriver, OR [Revised]
Sunriver Airport, OR
(lat. 43°52'35"N, long. 121°27'10"W)
Deschutes VORTAC (lat. 44°15'10"N, long. 121°18'13"W)

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of the Sunriver Airport and within 3.5 miles each side of the Deschutes VORTAC 197° radial extending from the 6.1-mile radius to 8.7 miles north of the airport.

* * * * *

ANM OR TA The Dalles, OR [Revised]
The Dalles Municipal Airport, OR
(lat. 45°37'07"N, long. 121°10'02"W)
Klickitat VORTAC (lat. 45°42'49"N, long. 121°06'03"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Dalles Municipal Airport, and that airspace within 4.4 miles each side of Klickitat VORTAC 184° radial extending from Klickitat VORTAC to 15.2 miles south of the VORTAC, and that airspace between Klickitat VORTAC 206° radial clockwise to the 222° radial extending from the 4.3-mile radius of the airport to the 10.1-mile radius of the airport, and that airspace 4.3 miles either side of the 15.1 mile radius of the VORTAC between the 121° radial clockwise to the 206° radial; that airspace extending upward from 1,200 feet above the surface within 7 miles north and 5.3 miles south of Klickitat VORTAC 281° radial and 101° radial extending from 6.1 miles west to 12.2 miles east of the VORTAC, and within 4.3 miles north of the VORTAC 101° radial extending from 12.2 miles east to 20.1 miles east of the VORTAC, and that airspace within a 20.1-mile radius of the VORTAC extending clockwise from the 101° radial to the 272°

radial, excluding the airspace within the Portland, OR, Transition Area.

* * * * *

ANM ID TA Lewiston, ID [Revised]
Lewiston-Nez Perce County Airport, ID
(lat. 46°22'28"N, long. 117°00'55"W)
Nez Perce VOR/DME (lat. 46°22'53"N, long. 116°52'10"W)
Walla Walla VOR/DME (lat. 46°05'13"N, long. 118°17'33"W)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 46°29'25"N., long. 117°34'09"W.; east to lat. 46°30'45"N., long. 117°00'49"W.; north to lat. 46°34'25"N., long. 117°04'44"W.; then via the arc of a 14.4 nautical mile radius centered on the Nez Perce VOR/DME to lat. 46°27'00"N., long. 116°32'09"W.; east to lat. 46°25'30"N., long. 116°26'03"W.; south to lat. 46°13'20"N., long. 116°30'04"W.; west to lat. 46°14'33"N., long. 116°35'15"W.; then via the arc of a 14.4 nautical mile radius centered on the Nez Perce VOR/DME; to lat. 46°09'00"N., long. 116°46'54"W.; north to lat. 46°17'00"N., long. 116°49'14"W.; west to lat. 46°18'05"N., long. 117°00'15"W.; west to lat. 46°17'42"N., long. 117°22'04"W.; south to lat. 46°10'30"N., long. 117°26'24"W.; west to lat. 46°12'00"N., long. 117°35'44"W.; north to point of beginning; that airspace extending upward from 1,200 feet above the surface, within an area bounded by a line beginning at lat. 46°00'00"N., long. 116°00'04"W., to lat. 46°00'00"N., long. 116°23'04"W., to lat. 45°39'00"N., long. 116°10'03"W., to lat. 45°30'00"N., long. 116°14'03"W., to lat. 45°23'00"N., long. 116°21'03"W., to lat. 45°25'00"N., long. 116°34'04"W., to lat. 45°30'00"N., long. 116°46'04"W., to lat. 46°00'00"N., long. 116°56'04"W.; thence west along lat. 46°00'00"N. to the Walla Walla VOR/DME 16.6 nautical mile radius, thence north along the 16.6 nautical mile radius until intercepting V-536, thence east along V-536 to long. 116°00'00"W.; thence south along long. 116°00'00"W., to lat. 46°00'00"N., to beginning.

* * * * *

Issued in Seattle, Washington on December 8, 1992.

Temple H. Johnson Jr.,

Manager, Air Traffic Division.

[FR Doc. 92-31425 Filed 12-28-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM93-5-000]

Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act; Notice of Proposed Rulemaking

December 17, 1992.

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise the billing procedures for assessing annual charges for administering Part I of the Federal Power Act, 16 U.S.C. 792–833b. Under the revised procedures, the assessment of annual charges would be based on an estimate of the costs that will be incurred by the Commission during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment would be recalculated based on the costs that were actually incurred during that fiscal year; the actual costs would be compared to the estimated costs; and the difference between the actual and estimated costs would be carried over as an adjustment to the assessment for the subsequent fiscal year. The allocation of costs among the licensees would continue to be based on the data supplied by the licensees with respect to the preceding fiscal year.

The Commission is also proposing to adopt a comparable procedure of current-year billing of the annual charges for the use of tribal land on Indian reservations.

DATES: Comments are due on or before January 28, 1993.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM93-5-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission; 825 N. Capitol Street, NE., Washington, DC 20426 (202) 208-1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 9 data bits, and 1 stop bit. The full text of this document will be available to CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 3106, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to revise the billing procedures for assessing annual charges for administering part I of the Federal Power Act (FPA).[1] Under the revised procedures, the assessment of annual charges would be based on an estimate of the costs that will be incurred by the Commission during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment would be recalculated based on the costs that were actually incurred during that fiscal year; the actual costs would be compared to the estimated costs; and the difference between the actual and estimated costs would be carried over as an adjustment to the assessment for the subsequent fiscal year. The allocation of costs among the licensees would continue to be based on the data supplied by the licensees with respect to the preceding fiscal year.

The Commission is also proposing to adopt a comparable procedure of current-year billing of the annual charges for the use of tribal land on Indian reservations.

The Commission is inviting comments on these proposed amendments to its regulations.

II. Background and Discussion

The Commission is required by section 10(e) of the FPA[2] to collect, among other things, annual charges for the cost of administering part I of the FPA. Part II of the Commission's regulations[3] provides the manner in which licensees are charged for such costs.[4] The reimbursable costs are determined on a fiscal year basis.

The Commission's current regulations do not specify how the reimbursable costs are to be determined, and neither

[1] 16 U.S.C. 792–823b.

[2] 16 U.S.C. 803(e).

[3] 18 CFR part II.

[4] Prior to the adoption of the current regulations in 1958 and 1963, administrative charges were in the nature of set fees that were billed for a calendar year. The present system of basing the annual charges on actual costs was adopted in Order No. 205, 19 F.P.C. 907 (1958) (with respect to municipal licensees only) and in Order No. 272, 30 F.P.C. 1333 (1963) (all other licensees); *see also* Order No. 272A, 31 F.P.C. 1555 (1964).

does the FPA. The Commission's past practice has been to determine the annual charges billed to the licensees in the current fiscal year based on the costs actually incurred by the Commission during the preceding fiscal year. The total costs are then allocated among the licensees based on the amount of each licensee's authorized horsepower, or horsepower and generation, during the preceding fiscal year. The allocation is based on the ratio of each licensee's horsepower (or horsepower and generation) to the total of all of the licensees' horsepower (or horsepower and generation).[5]

There is, however, a substantial lag between the time the costs are incurred and the time they are recovered. In addition, there is a variation from year to year in the costs incurred by the Commission in administering part I of the FPA. The purpose of the proposed rule, therefore, is to revise the Commission's billing practices in such a manner as to enable it to fully recover its costs during the fiscal year in which those costs are incurred.

The proposed rule would achieve this objective by adding to § 11.1 of the current regulations a new paragraph (g). This provision would retain the use of prior-year actual data from licensees to determine the allocation of the costs among the licensees, but would adopt a practice of basing the assessments on an estimate of the costs that will be incurred by the Commission in the current fiscal year (rather than basing the assessments on the costs actually incurred in the preceding fiscal year). The estimate would be based on the Commission's budget for the current fiscal year.

Proposed new paragraph (g) also provides for an adjustment in the subsequent fiscal year. After the end of the fiscal year, the estimated costs would be compared to the actual costs; the assessments would be recalculated based on the costs actually incurred; and the difference between estimated and actual costs would be carried over as an adjustment to the assessment for the subsequent fiscal year.

There is ample precedent for adopting these billing procedures. These are, in fact, the billing procedures that the Commission currently utilizes to recover the costs it incurs in administering the Natural Gas Act (NGA), the Natural Gas Policy Act (NGPA), the Interstate Commerce Act (ICA), and Parts II and III of the FPA itself. Those costs are recovered through the assessment of annual charges against gas and oil pipelines and public utilities pursuant to the mandate of section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA),[6] which requires the Commission to recover all of its costs for the fiscal year through annual charges and fees.[7] The annual charges assessed pursuant to OBRA are based on an estimate of the Commission's current-fiscal-year costs, with subsequent adjustments based on actual costs.[8] The proposed rule would conform the billing procedures for the annual charges to recover the costs of administering Part I of the FPA to the billing procedures that the Commission currently uses for the annual charges to recover (pursuant to OBRA) the costs of administering Parts II and III of the FPA, as well as the NGA, the NGPA, and the ICA.[9] These procedures have worked well, and we perceive no reason why they should not also pertain to the collection of the annual charges that arise under Part I of the FPA.

Under the proposed rule, the bills issued by the Commission in fiscal year 1993 would assess annual charges for the costs incurred by the Commission (in administering Part I of the FPA) in fiscal year 1993, the then-current year. The Commission also incurred costs in fiscal year 1992, which it will not be able to recover unless it also assesses charges for fiscal year 1992. The Commission recognizes that billing for the costs of both fiscal years 1992 and 1993 during one year could cause hardship for the hydropower industry. Therefore, the Commission invites comments as to whether the billing of the costs for both fiscal years 1992 and 1993 in one year would cause hardship for the hydropower industry, and if so, invites suggestions as to how to mitigate that hardship, consistent with law.[10]

One method under consideration is to bill fiscal year 1992 costs in three annual installments, starting in either fiscal year 1993 or 1994. This method would be consistent with the method used for phasing in U.S. lands charges in Order No. 469, issued May 8, 1987.[11]

In this regard, the Commission notes that in 1986 it began including in its assessments of annual charges to licensees, the costs incurred by other federal agencies in the performance of their own responsibilities to administer Part I of the FPA.[12] The Commission also notes that Congress recently enacted section 1701(a) of the Energy Policy Act of 1992,[13] which provides for the recovery through annual charges of "any reasonable costs incurred by fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under" Part I of the FPA. The Commission intends to address the implementation of section 1701(a) in a separate rulemaking. The Commission recognizes that the matter of recovery of costs incurred by other agencies is related to the issues addressed herein, but those issues are beyond the scope of this rulemaking and will be addressed in the follow-up rulemaking alluded to above.

Finally, the Commission proposes to add a new paragraph (c) to § 11.4, to indicate that the annual charges for the use of tribal land within an Indian reservation will be billed during the year in which the land is used. The Commission's past practice has been to issue bills for the preceding year's use of such land. The Commission believes that the reasoning applicable to current-year billing for administrative charges, as discussed above, is equally applicable to current-year billing for the use of tribal land. The Commission proposes to bill in fiscal year 1993 the charges for both the fiscal year 1992 and the fiscal year 1993 use of tribal land. Inasmuch as the charges for use of tribal

[5] The allocations are performed separately for municipal and non-municipal licensees. For municipal licensees, the allocation is based solely on the project's authorized horsepower. For non-municipal licensees, the allocation is based on a combination of the project's authorized horsepower and the power actually generated. *See* 18 CFR 11.1.

[6] Pub. L. No. 99-509, Title III, Subtitle E, section 3401 (1986) (codified as amended at 42 U.S.C. 7178). OBRA is implemented in Part 382 of the Commission's Regulations, 18 CFR Part 382.

[7] *See* Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 5300 (Conference Report), H.R. Rep. No. 1012, 99th Cong., 2d Sess. 238, *reprinted in* 1986 U.S.C.C.A.N. 3607, 3883.

[8] The procedures for estimating the costs and later adjusting the assessments are described in Order No. 472, 52 FR 18201 (May 14, 1987), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶30,746 at pp. 30,612 and 30,616–17 (1987).

[9] The annual charges billed pursuant to OBRA, even though they are based on the Commission's current-year costs, use prior-year company data to determine the current-year allocation of charges to the pipelines and utilities. The proposed rule would continue this practice for hydropower licensees as well.

[10] The following information may be of assistance to the industry in commenting on the above issues: From data available at this time, it appears that the Commission's FPA Part I administration costs increased about 25 percent between fiscal years 1991 and 1992, and are expected to increase about 6 to 10 percent between 1992 and 1993.

[11] FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶30,741 at p. 30,591.

[12] The background is described in the preamble to the above-referenced 1987 final rule on annual charges to recover hydroelectric administration costs and land use fees, FERC Stats. & Regs. ¶30,741 at pp. 30,591–92.

[13] P.L. 102–486, October 24, 1992.

land are comparatively small, the Commission perceives no need to bill the 1992 charges over a period of more than one year.

III. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[14] generally requires a description and analysis of proposed regulations that will have a significant economic impact on a substantial number of small entities.[15] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

Issuance of this notice of proposed rulemaking does not constitute a major federal action having a significant adverse impact on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act.[16] The regulations proposed herein are procedural in nature and therefore fall within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[17]

Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[18] However, the regulations proposed herein contain no information collection requirements and therefore are not subject to OMB approval.

VI. Public Comment Procedures

The Commission invites all interested persons to submit written comments on the matters discussed in this notice of proposed rulemaking. An original and 14 copies of the written comments must be filed with the Commission January 28, 1992. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, during regular business hours, and should refer to Docket No. RM93–5–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, Room 3104, 941 North Capitol Street, North East, Washington, DC 20426 during regular business hours.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 11 of chapter I, title 18, *Code of Federal Regulations*, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for Part 11 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In § 11.1, a new paragraph (g) is added, to read as follows:

§ 11.1 Cost of administration.

* * * * *

(g) With respect to costs incurred by the Commission, the assessment of annual charges will be based on an estimate of the costs of administration of part I of the Federal Power Act that will be incurred during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment will be recalculated based on the costs of administration that were actually incurred during that fiscal year; the actual costs will be compared to the estimated costs; and the difference between the actual and estimated costs will be carried over as an adjustment to the assessment for the subsequent fiscal year. The issuance of bills based on the administrative costs incurred by the Commission during the year in which the bill is issued will commence in 1993. The annual charge for the administrative costs that were incurred in fiscal year 1992 will be billed in three annual installments, which will be payable in fiscal years 1993, 1994, and 1995.

3. In § 11.4, a new paragraph (c) is added, to read as follows:

§ 11.4 Use of government dams for pumped storage projects, and use of tribal lands.

* * * * *

(c) Commencing in 1993, the annual charges for any project using tribal land within Indian reservations will be billed during the fiscal year in which the land is used, for the use of that land during that year.

[FR Doc. 92–31261 Filed 12–28–92; 8:45 am]

BILLING CODE 6717–01–M

[14] 5 U.S.C. 601–612

[15] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[16] *See* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[17] *See* 18 CFR 380.4(a)(1).

[18] 5 CFR Part 1320.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–19–92]

RIN 1545–AR15

Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the low-income housing credit of section 42 of the Internal Revenue Code. The proposed regulations provide guidance with respect to: (1) Eligibility for a carryover allocation; (2) procedures for electing an appropriate percentage month; (3) the general public use requirement; (4) utility allowances to be used in determining gross rent; and (5) the inclusion of the cost of certain services in gross rent. The proposed regulations incorporate and expand upon the guidance provided by Notice 89–1, 1989–1 C.B. 620, and Notice 89–6, 1989–1 C.B. 625. This information will assist State and local housing credit agencies and taxpayers in complying with the requirements of section 42. These regulations affect taxpayers that apply for or claim the low-income housing tax credit and State and local housing credit agencies.

DATES: Written comments must be received by January 26, 1993. Requests to appear at a public hearing scheduled for 10 a.m. on February 16, 1993, and outlines of oral comments must also be received by January 26, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (attn: CC:CORP:T:R (PS–19–92), room 5228), Washington, DC 20044. Alternatively, comments, requests to appear at the public hearing, and outlines may be hand delivered to: CC:CORP:T:R (PS–19–92), Internal Revenue Service, room 5228, 1111 Constitution Ave., NW., Washington, DC 20224. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue

Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Christopher J. Wilson (202) 622–3040 (not a toll-free call); concerning the hearing, contact Mike Slaughter, Regulations Unit, (202) 622–7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION: .

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information requirements should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirements in this proposed regulation are contained in § 1.42–6 (c), (d)(2), (d)(4); § 1.42–8 (a)(1), (a)(3), (a)(6), (b)(1), (b)(4); and § 1.42–10(b)(4)(ii)(B).

This information is required by the Internal Revenue Service to ensure that the requirements for a carryover allocation under section 42(h)(1) (E) or (F) of the Internal Revenue Code and the requirements for the appropriate percentage election are met. This information also is required to ensure that the proper utility allowances are being used.

The likely respondents/recordkeepers are individuals, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The following estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total reporting and/or recordkeeping burden: 4,008 hours. The estimated annual burden per State or local government respondent/recordkeeper varies from 18.6 hours to 51.63 hours, with an estimated average of 39.61 hours. The estimated annual burden for all other respondent/recordkeepers varies from 1.90 hours to 6.20 hours, with an estimated average of 4.50 hours. *Estimated number of State or local government respondents/recordkeepers:* 55. *Estimated number of all other respondents/recordkeepers:* 1,000. *Estimated annual frequency of State or local government responses (for reporting requirements only):* 1. *Estimated annual frequency of all other responses (for reporting requirements only):* one time.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986, as amended. These amendments are proposed to provide guidance on several requirements of the low-income housing tax credit. These amendments incorporate and expand upon the guidance provided by Notices 89–1 and 89–6.

Explanation of Provisions

Carryover Allocations

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from a state or local housing credit agency (Agency).

Under section 42(h)(1)(E), an allocation (carryover allocation) may be made to a qualified building that has not yet been placed in service, provided the building is placed in service not later than the close of this second calendar year following the calendar year of the allocation. Section 42(h)(1)(E)(ii) defines a qualified building as any building that is part of a project if the taxpayer's basis in the project (as of the close of the calendar year of the allocation) is more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation). The legislative history to section 42 provides that the taxpayer's basis in the project is "land and depreciable basis." See 2 H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. II–82 (1988), 1988–3 C.B. 82.

The proposed regulations provide guidance on the requirements that must be met for a carryover allocation, including guidance on ownership and which costs are includable in "carryover-allocation basis." Carryover-allocation basis is the basis used in determining whether the taxpayer has incurred more than 10 percent of its reasonably expected basis in the project for purposes of receiving an allocation of credit under section 42(h)(1)(E) (relating to carryover allocations for buildings) or (F) (relating to carryover allocations for multiple-building projects).

Generally, both the direct and indirect costs of acquiring, constructing, and rehabilitating property may be included in carryover-allocation basis, including certain costs incurred in acquiring a leasehold interest in property. On the date of the allocation a taxpayer's carryover-allocation basis need not be more than 10 percent of the reasonably expected basis in the project. However, the carryover allocation is not valid unless, as of the close of the calendar year of the allocation, the taxpayer has a carryover-allocation basis (land and depreciable basis) as of more than 10 percent of the reasonably expected basis in the project (land and depreciable basis) as of the close of the second following calendar year. Also, by the close of the calendar year of the allocation, the taxpayer must own land or depreciable real property that is expected to be part of the project.

The proposed regulations provide verification procedures an Agency must follow in ensuring that these requirements are met. The proposed regulations also provide rules for determining which costs are includable in carryover-allocation basis and the proper treatment of fees.

Election of Appropriate Percentage Month

Section 42(b)(2)(A) describes the amount of the low-income housing credit for any taxable year in the 10-year credit period. This amount is the applicable percentage of the qualified basis of each qualified low-income building. The applicable percentage for buildings placed in service after 1987 is normally the appropriate percentage prescribed by the Secretary for the month the building is placed in service.

Alternatively, the taxpayer may elect to use the appropriate percentage for the month in which the taxpayer and the Agency enter into an agreement for the building which is binding on the Agency, the taxpayer, and all successors in interest as to the housing credit dollar amount to be allocated to the building. In the case of a substantially bond-financed building, the taxpayer may elect to use the appropriate percentage for the month in which the tax-exempt obligations are issued. In either case, the election must be made no later than the 5th day after the close of the elected month.

The proposed regulations provide guidance on making this election. The proposed regulations also clarify that,

depending on the Agency's determination under section 42(m)(2 as to the housing credit dollar amount necessary for the financial feasibility of the building, the Agency may ultimately allocate more or less housing credit dollar amount than the amount specified in the binding agreement. The Agency may also specify an applicable percentage that is less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer.

Use by the general public

The legislative history of section 42 provides that residential rental units must be for use by the general public. The proposed regulations provide guidance on the circumstances when a residential rental unit is considered for use by the general public. Residential rental units are not for use by the general public, for example, if the units are provided only for members of a social organization or provided by an employer for its employees. In addition, the proposed regulations clarify Notice 89–6 by providing that only those residential rental units that are not for use by the general public, and not the entire building, are ineligible for the credit.

Utility allowances

A qualified low-income housing project is defined in section 42(g)(1) as any project for residential rental housing if the project meets one of the following tests elected by the taxpayer: (1) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (2) at least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. For a unit to qualify as "rent-restricted" within the meaning of section 42(g)(1), the gross rent for the unit must not exceed 30 percent of the income limitation applicable to the unit. If the cost of any utilities (other than telephone) is paid directly by a tenant, a utility allowance reflecting that cost is considered part of that tenant's gross rent. Utility allowances are prescribed by the Secretary taking into account utility allowance determinations made under section 8 of the United States Housing act of 1937.

The proposed regulations provide guidance on the utility allowances that must be included in gross rent. The regulations incorporate the guidance provided in Notice 89–6 except that the utility allowance for a low-income unit occupied by a HUD-assisted tenant only applies to that unit, and does not affect the utility allowances of low-income units that are not occupied by HUD-assisted tenants.

Provision of services

The cost to tenants of services other than housing may also be included in gross rent. Section 42(g)(2)(B)(iii) provides a specific exception for certain services. Under that section, gross rent does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant) by any governmental program of assistance (or by certain tax-exempt organizations described in section 501(c)(3)) if the program (or organization) provides rent assistance and the amount of rent assistance is not separable from the amount of assistance provided for supportive services. Costs to tenants of services, other than supportive services excepted by section 42(g)(2)(B)(iii), generally must be included in gross rent.

The proposed regulations provide that if the cost of any services provided to low-income tenants in connection with their occupancy of residential rental units is required to be paid by a tenant as a condition of occupancy, the cost generally must be included in gross rent. This section also incorporates: (1) The exception for fees paid for certain supportive services under section 42(g)(2)(B)(iii) which was enacted subsequent to the publication of Notice 89–6; and

(2) The practical alternative test in Rev. Rul. 91–38, 1991–2 C.B. 3, 12, of a qualified low-income building with a common dining facility.

Proposed Effective Date

These proposed regulations are proposed to be effective 60 days after date of publication of final regulations in the **Federal Register**. However, binding agreements, election statements, and carryover allocation documents made prior to the effective date of these regulations that conform to the requirements of Notice 89–1 need not be changed to conform to these regulations. Notice 89–1 and Notice 89–6 remain in effect for periods prior to the effective date of these regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Tuesday, February 16, 1993, at 10 a.m. in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply to the public hearing.

Persons who have submitted written comments by January 26, 1993, and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than January 26, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Christopher J. Wilson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.37–1 through 1.44A–4

Credits, Income taxes, Reporting and Recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding a citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Sections 1.42–6, 1.42–8, 1.42–9, 1.42–10, 1.42–11, and 1.42–12 also issued under 26 U.S.C. 42(n) * * *

Par. 2. Section 1.42–6 is added, § 1.42–7 is added and reserved, and § § 1.42–8 through 1.42–12 are added to read as follows:

§ 1.42–6 Buildings qualifying for carryover allocations.

(a) *Carryover allocations.* A "carryover allocation" is an allocation that meets the requirements of section 42(h)(1)(E). If a carryover allocation does not meet the requirements of section 42(h)(1)(E), for example because it is made with respect to a building that is not a qualified building (as defined in section 42(h)(1)(E)(ii)), it is not valid and is treated as if it had not been made.

(b) *Carryover-allocation basis*—(1) *In General.* Subject to the limitations of paragraph (b)(2) of this section, a taxpayer's basis in a project for purposes of section 42(h)(1)(E)(ii) (carryover-allocation basis) is the taxpayer's adjusted basis in land or depreciable real property that is expected to be part of the project, whether or not these amounts are includable in eligible basis under section 42(d). Thus, for example, if the project is to include property that is not residential rental property, such as commercial space, the basis attributable to the commercial space, although not includable in eligible basis, is includable in carryover-allocation basis. The adjusted basis of land and depreciable real property is determined under sections 1012 and 1016 of the Internal Revenue Code, and generally includes the direct and indirect costs of acquiring, constructing, and rehabilitating the property. Costs otherwise includable in carryover-allocation basis are not excluded by reason of having been incurred prior to the calendar year in which the carryover allocation is made.

(2) *Limitations*—For purposes of determining carryover-allocation basis under paragraph (b)(1) of this section, the following limitations apply.

(i) *Real property ownership.* A taxpayer does not have carryover-allocation basis in a project unless, by the close of the calendar year of allocation, the taxpayer is the owner, for federal income tax purposes, of land or depreciable real property that is expected to be part of the project. Accordingly, the lessee of land or depreciable real property that is expected to be part of a project has carryover-allocation basis in the leased property only if the lessee is treated, for federal income tax purposes, as the owner of the leased property. A taxpayer is not the owner of land or depreciable real property for federal income tax purposes by reason of owning an option to acquire the property, making a nonrefundable down payment with respect to the property, or entering into an agreement to acquire the property.

(ii) *Property not part of project.* Carryover-allocation basis does not include any portion of the adjusted basis of land of depreciable real property that is not reasonably expected to be part of the project for which the carryover allocation is made.

(iii) *High cost areas.* Any increase in eligible basis that may result under section 42(d)(5)(C) from the project's location in a qualified census tract or difficult development area is not taken into account in determining carryover-allocation basis or reasonably expected basis.

(iv) *Amounts not treated as paid or incurred.* An amount is not includable in carryover-allocation basis unless it is treated as paid or incurred under the method of accounting used by the taxpayer. For example, a cash method taxpayer cannot include construction costs in carryover-allocation basis unless the costs have been paid, and an accrual method taxpayer cannot include construction costs in carryover-allocation basis unless they have been properly accrued. See paragraph (b)(2)(vi) of this section for a special rule for fees paid to related persons.

(v) *Credit application and monitoring fees.* Low-income housing credit application or compliance monitoring fees paid by a taxpayer to a state or local housing credit agency (Agency) are not includable in carryover-allocation basis.

(vi) *Other fees.* A fee other than those described in paragraph (b)(2)(v) of this section is includable in carryover-allocation basis only to the extent the requirements of paragraph (b)(2)(iv) of this section are met and—

(A) The fee is reasonable;

(B) The taxpayer is legally obligated to pay the fee;

(C) The fee is capitalized as part of the taxpayer's basis in land or depreciable real property that is expected to be part of the project;

(D) The fee is not paid (or to be paid) by the taxpayer to itself; and

(E) If the fee is paid (or to be paid) by the taxpayer to a related person, and the taxpayer uses the cash method of accounting, the taxpayer could properly accrue the fee under the accrual method of accounting (including the rules of section 461(h)). A person is a related person if the person bears a relationship to the taxpayer specified in sections 267(b) or 707(b)(1), or the person and the taxpayer are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

(3) *Reasonably expected basis.* Rules similar to the rules of paragraphs (a) and (b) of this section apply in determining the taxpayer's reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year of the allocation.

(4) *Examples.* The following examples illustrate the rules of paragraphs (a) and (b) of this section.

Example 1. (i) *Facts.* C, an accrual-method taxpayer, receives a carryover allocation from Agency, the state housing credit agency, in May of 1993. As of that date, C has not begun construction of the low-income housing building C plans to build. However, C has owned the land on which C plans to build the building since 1985. C's basis in the land is $100,000. C reasonably expects that by the end of 1995, C's basis in the project of which the building is to be a part will be $2,000,000. C also expects that because the project is located in a qualified census tract, C will be able to increase its basis in the project to $2,600,000. Before the close of 1993, C incurs $150,000 of costs for architects' fees and site preparation. C properly accrues these costs under its method of accounting and capitalizes the costs.

(ii) *Determination of carryover-allocation basis.* C's $100,000 basis in the land is includable in carryover-allocation basis even though C has owned the land since 1985. The $150,000 of costs C has incurred for architects' fees and site preparation are also includable in carryover-allocation basis. The expected increase in basis due to the project's location in a qualified census tract is not taken into account in determining C's carryover-allocation basis. Accordingly, C's carryover-allocation basis in the project of which the building is a part is $250,000.

(iii) *Determination of whether building is qualified.* C's reasonably expected basis in the project at the close of the second calendar year following the calendar year of allocation is $2,000,000. The expected increase in basis due to the project's location in a qualified

census tract is not taken into account in determining this amount. Because C's carryover-allocation basis is more than 10 percent of C's reasonably expected basis in the project of which the building is a part, the building for which C received the carryover-allocation is a qualified building for purposes of section 42(h)(1)(E) and paragraph (a) of this section.

Example 2. (i) *Facts.* D, an accrual-method taxpayer, receives a carryover allocation from Agency, the state housing credit agency, in May of 1993. As of that date, D has not begun construction of the low-income housing building D plans to build and does not own the land on which D plans to build the building. In 1993, D incurs some costs related to the planned building, including architects' fees. At the close of 1993, D does not own the land on which the project is expected to be constructed or any depreciable real property that is expected to be part of the project.

(ii) *Determination of carryover-allocation basis.* Because D does not own the land on which the project is expected to be constructed or any depreciable real property that is expected to be part of the project, D has no carryover-allocation basis in the project of which the building is a part.

(iii) *Determination of whether building is qualified.* Because D's carryover-allocation basis is not more than 10 percent of D's reasonably expected basis in the project of which the building is a part, the building for which D received a carryover allocation is not a qualified building for purposes of section 42(h)(1)(E) and paragraph (a) of this section. The carryover allocation to D is not valid, and is treated as if it had not been made.

(c) *Verification of ownership and basis by Agency*—(1) *Verification requirement.* An agency that makes a carryover allocation to a taxpayer must verify that, as of the close of the calendar year of allocation, the taxpayer—

(i) Owns land or depreciable real property that is expected to be part of the project; and

(ii) Has incurred more than 10 percent of the reasonably expected basis in the project (land and depreciable basis).

(2) *Manner of verification*—(i) *Property ownership.* An Agency may verify ownership of land or depreciable real property by obtaining a certification from the taxpayer, in writing and under penalty of perjury, that the taxpayer is the owner of the land or depreciable real property. The certification must be accompanied by supporting documentation that the Agency must review. Supporting documentation may include, for example, a copy of the title records of the jurisdiction where the property is situated, a copy of the deed to the property, or a copy of a title insurance policy on the property that names the taxpayer as owner. Alternatively, an Agency may verify ownership by obtaining from the taxpayer the written legal opinion of an attorney, that based upon the attorney's title search or examination or other relevant documents, the taxpayer is, at the time of the search or examination, the owner of the land or depreciable real property.

(ii) *Basis.* An Agency may verify that a taxpayer has incurred more than 10 percent of its reasonably expected basis in a project by obtaining a certification from the taxpayer, in writing and under penalty of perjury, that the taxpayer has incurred by the close of the calendar year of the allocation more than 10 percent of the reasonably expected basis in the project. The certification must be accompanied by supporting documentation that the Agency must review. Supporting documentation may include, for example, copies of checks or other records of payments. Alternatively, an Agency may verify that the taxpayer has incurred adequate basis by obtaining from an attorney or certified public accountant a written certification to the Agency, that the attorney or accountant has examined all eligible costs incurred with respect to the project and that, based upon this examination, it is the attorney or accountant's belief that the taxpayer has incurred more than 10 percent of its reasonably expected basis in the project by the close of the calendar year of the allocation.

(3) *Time of verification.* An Agency may require that ownership and basis certifications be submitted to or received by the Agency prior to the close of the calendar year or within a reasonable time after the close of the calender year. The Agency will need to verify ownership and basis in order to accurately complete the Form 8610, Annual Low-Income Housing Credit Agencies Report, for the calendar year. If certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify that a carryover allocation is valid before the Form 8610 is filed, the allocation is treated as if it had not been made and the carryover allocation document should not be filed with the Form 8610.

(d) *Requirements for making carryover allocations*—(1) *In general.* Generally, an allocation is made when an Agency issues the Form 8609, Low-Income Housing Credit Allocation Certification, for a building. See § 1.42-1T(d)(8)(ii). An Agency does not issue the Form 8609 for a building until the building is placed in service. However, in cases where allocations of credit are made pursuant to section 42(h)(1)(E) (relating to carryover allocations for buildings) or section 42(h)(1)(F) (relating to carryover allocations for multiple-building projects), Form 8609 is not used as the allocating document because the buildings are not yet in service. When an allocation is made pursuant to section 42(h)(1) (E) or (F), the allocating document is the document meeting the requirements of paragraph (d)(2) of this section. In addition, when an allocation is made pursuant to section 42(h)(1)(F), the requirements of paragraph (d)(3) of this section must be met for the allocation to be valid. An allocation pursuant to section 42(h)(1) (E) or (F) reduces the state housing credit ceiling for the year in which the allocation is made, whether or not the Form 8609 is also issued in that year.

(2) *Requirements for allocation.* An allocation pursuant to section 42(h)(1) (E) or (F) is made when an allocation document containing the following information is completed, signed, and dated by an authorized official of the Agency:

(i) The address of each building in the project, or if none exists, a specific description of the location of each building;

(ii) The name, address, and taxpayer identification number of the taxpayer receiving the allocation;

(iii) The name and address of the Agency;

(iv) The taxpayer identification number of the Agency;

(v) The date of the allocation;

(vi) The housing credit dollar amount allocated to the building or project, as applicable;

(vii) The taxpayer's reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year in which the allocation is made;

(viii) The taxpayer's basis in the project (land and depreciable basis) as of the close of the calendar year in which the allocation is made and the percentage that basis bears to the reasonably expected basis in the project (land and depreciable basis) as of the close of the second following calendar year;

(ix) The date that each building in the project is expected to be placed in service; and

(x) The Building Identification Number (B.I.N.) to be assigned to each building in the project. The B.I.N. must reflect the year the allocation is made, regardless of the year that the building is placed in service. Rehabilitation

expenditures treated as a separate new building under section 42(e) should not have a separate B.I.N. if the building to which the rehabilitation expenditures are made has a B.I.N. In this case, the B.I.N. used for the rehabilitation expenditures shall be the B.I.N. previously assigned to the building.

(3) *Special rules for project-based allocations*—(i) *In general.* An allocation pursuant to section 42(h)(1)(F) (a project-based allocation) must meet the requirements of this section as well as the requirements of section 42(h)(1)(F).

(ii) *Requirement of section 42(h)(1)(F)(i)(III).* An allocation satisfies the requirement of section 42(h)(1)(F)(i)(III) if the Form 8609 that is issued for each building that is placed in service in the project states the portion of the project-based allocation that is applied to that building.

(4) *Recordkeeping requirements.*—(i) *Taxpayer.* When an allocation is made pursuant to section 42(h)(1) (E) or (F), the taxpayer must retain a copy of the allocation document and file an additional copy with the Form 8609 that is issued to the taxpayer for a building after the building is placed in service. The taxpayer need only file a copy of the allocation document with the Form 8609 for the building for the first year the credit is claimed. However, the Form 8609 must be filed for the first tax year in which the credit is claimed and for each tax year thereafter throughout the compliance period, whether or not a credit is claimed for the tax year.

(ii) *Agency.* The Agency must retain a copy of the allocation document and file the original with the Agency's Form 8610 that accounts for the year the allocation is made. The Agency must also retain a copy of the Form 8609 that is issued to the taxpayer and file the original with the Agency's Form 8610 that reflects the year the form is issued.

(5) *Separate procedure for election of appropriate percentage month.* If a taxpayer receives an allocation under section 42(h)(1) (E) or (F) and wishes to elect under section 42(b)(2)(A)(ii) to use the appropriate percentage for a month other than the month in which a building is placed in service, the requirements specified in § 1.42–8 must be met for the election to be effective.

(e) *Special rules.* The following rules apply for purposes of this section.

(1) *Treatment of partnerships and other flow-through entities.* With respect to taxpayers who own projects through partnerships or other flow-through entities (*e.g.*, S corporations, estates, or trusts), carryover-allocation basis is determined at the entity level using the rules provided by this section. In addition, the entity is responsible for providing to the Agency the certifications and documentation required under the verification provisions of this section.

(2) *Transferees.* If land or depreciable real property that is expected to be part of a project is transferred after a carryover allocation has been made for a building that is expected to be part of the project, but before the close of the calendar year of the allocation, the transferee's carryover-allocation basis is determined under the principles of this section, section 42(d)(7), and Rev. Rul. 91–38, 1991–2 C.B. 3 (see § 601.601(d)(2)(ii)(*b*) of this chapter). In addition, the transferee is treated as the taxpayer for purposes of the verification provisions of this section, and therefore is responsible for providing to the Agency the required certifications and documentation.

§ 1.42–7 Substantially bond-financed buildings. [Reserved]

§ 1.42–8 Election of appropriate percentage month.

(a) *Election under section 42(b)(2)(A)(ii)(I) to use the appropriate percentage for the month of a binding agreement*—(1) *In general.* For purposes of section 42(b)(2)(A)(ii)(I), an agreement between a taxpayer and an Agency as to the housing credit dollar amount to be allocated to a building is considered binding if it—

(i) Is in writing;

(ii) Is binding under state law on the Agency, the taxpayer, and all successors in interest;

(iii) Specifies the type(s) of building(s) to which the housing credit dollar amount applies (*i.e.*, a newly constructed or existing building, or substantial rehabilitation treated as a separate new building under section 42(e));

(iv) Specifies the housing credit dollar amount to be allocated to the building(s); and

(v) Is dated and signed by the taxpayer and the Agency during the month in which requirements of paragraphs (a)(1) (i) through (iv) of this section are met.

(2) *Effect on state housing credit ceiling.* Generally, a binding agreement described in paragraph (a)(1) of this section is an agreement by the Agency to allocate credit to the taxpayer at a future date. The binding agreement may include a reservation of credit or a binding commitment (under section 42(h)(1)(C)) to allocate credit in a future tax year. A reservation or a binding commitment to allocate credit in a future year has no effect on the state housing credit ceiling until the year the Agency actually makes an allocation. However, if the binding agreement is also a carryover allocation under section 42(h)(1) (E) or (F), the state housing credit ceiling is reduced by the amount allocated by the Agency to the taxpayer in the year the carryover allocation is made. For a binding agreement to be a valid carryover allocation, the requirements of paragraph (a)(1) of this section and § 1.42–6 must be met.

(3) *Time and manner of making election.* An election under section 42(b)(2)(A)(ii)(I) may be made either as part of the binding agreement under paragraph (a)(1) of this section to allocate a specific housing credit dollar amount or in a separate document that references the binding agreement. In either case, the election must—

(i) Be in writing;

(ii) Reference section 42(b)(2)(A)(ii)(I);

(III) Be signed by the taxpayer;

(iv) If it is in a separate document, reference the binding agreement that meets the requirements of paragraph (a)(1) of this section; and

(v) Be notarized by the 5th day following the end of the month in which the binding agreement was made.

(4) *Multiple agreements*—(i) *Rescinded agreements.* A taxpayer may not make an election under section 42(b)(2)(A)(ii)(I) for a building if an election has previously been made for the building for a different month. For example, assume a taxpayer entered into a binding agreement for allocation of a specific housing credit dollar amount to a building and made the election under section 42(b)(2)(A)(ii)(I) to apply the appropriate percentage for the month of the binding agreement. If the binding agreement subsequently is rescinded under state law, and the taxpayer enters into a new binding agreement for allocation of a specific housing credit dollar amount to the building, the taxpayer must apply to the building the appropriate percentage for the elected month of the rescinded binding agreement. However, if no prior election was made with respect to the rescinded binding agreement, the taxpayer may elect the appropriate percentage for the month of the binding agreement.

(ii) *Increases in credit.* The election under section 42(b)(2)(A)(ii)(I), once made, applies to any increase in the credit amount allocated for a building, whether the increase occurs in the same or a subsequent year. However, in the case of a binding agreement (or carryover allocation that is treated as a binding agreement) to allocate a credit amount under section 42(e)(1) for substantial rehabilitation treated as a separate new building, a taxpayer may

make the election under section 42(b)(2)(A)(ii)(I) notwithstanding that a prior election under section 42(b)(2)(A)(ii)(I) is in effect for a prior allocation of credit for substantial rehabilitation that was previously placed in service under section 42(e).

(5) *Amount allocated.* The housing credit dollar amount eventually allocated to a building may be more or less than the amount specified in the binding agreement. Depending on the Agency's determination pursuant to section 42(m)(2) as to the financial feasibility of the building (or project), the Agency may allocate a greater housing credit dollar amount to the building (provided that the Agency has additional housing credit dollar amounts available to allocate for the calendar year of the allocation) or the Agency may allocate a lesser housing credit dollar amount. Under section 42(h)(7)(D), in allocating a housing credit dollar amount, the Agency must specify the applicable percentage and maximum qualified basis of the building. The applicable percentage may be less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer under section 42(b)(2)(A)(ii)(I). Whether the appropriate percentage is the appropriate percentage for the 70 percent present value credit or the 30 percent present value credit is determined under section 42(i)(2) when the building is placed in service.

(6) *Procedures*—(i) *Taxpayer.* The taxpayer must give the original notarized election statement to the Agency before the close of the 5th calendar day following the end of the month in which the binding agreement is made. The taxpayer must retain a copy of the binding agreement and the election statement and must file an additional copy of each with the taxpayer's Form 8609, Low-Income Housing Credit Allocation Certification, for the first tax year in which credit is claimed for the building.

(ii) *Agency.* The Agency must file with the Internal Revenue Service the original of the binding agreement and the election statement with the Agency's Form 8610, Annual Low-Income Housing Credit Agencies Report, that accounts for the year the allocation is actually made. The Agency must also retain a copy of the binding agreement and the election statement.

(7) *Examples.* The following examples illustrate the provisions of this section. In each example, X is the taxpayer, Agency is the state housing credit agency, and the carryover allocations meet the requirements of § 1.42–6 and are otherwise valid.

Example 1. (i) In April 1993, X and Agency enter into an agreement that Agency will allocate $100,000 of housing credit dollar amount for the low-income housing building X is constructing. The agreement is binding and meets all the requirements of paragraph (a)(1) of this section. The agreement is a reservation of credit, not an allocation, and therefore has no effect on the state housing credit ceiling. Before May 5, 1993, X signs and has notarized a written election statement that meets the requirements of paragraph (a)(3) of this section. The applicable percentage for the building is the appropriate percentage for the month of April 1993.

(ii) Agency makes a carryover allocation of $100,000 of housing credit dollar amount for the building on October 2, 1993. The carryover allocation reduces Agency's state housing credit ceiling for 1993. Due to unexpectedly high construction costs, when X places the building in service in July 1994, the product of the building's qualified basis and the applicable percentage for the building (the appropriate percentage for the month of April 1993) is $150,000, rather than $100,000. Notwithstanding that only $100,000 of credit was allocated for the building in 1993, Agency may allocate an additional $50,000 of housing credit dollar amount for the building from its state housing credit ceiling for 1994. The appropriate percentage for the month of April 1993 is the applicable percentage for the building for the entire $150,000 of credit allocated for the building, even though separate allocations were made in 1993 and 1994. Because allocations were made for the building in two separate calendar years, Agency must issue two forms 8609 to X. One form 8609 must reflect the $100,000 allocation made in 1993, and the other Form 8609 must reflect the $50,000 allocation made in 1994.

(iii) X gives the original notarized statement to Agency before May 5, 1993, and retains a copy of the binding agreement, election statement, and carryover allocation document. X files a copy of the binding agreement, election statement, and carryover allocation document with X's Form 8609 for the first tax year in which X claims credit for the building.

(iv) Agency files the original of the binding agreement, election statement, and 1993 carryover allocation document with its 1993 Form 8610. Agency retains a copy of the binding agreement, election statement, and carryover allocation document. After the building is placed in service in 1994, Agency issues to X a copy of the Form 8609 reflecting the 1993 carryover allocation of $100,000 and files the original of that form with its 1994 Form 8610. Agency also files the original of the 1994 Form 8609 reflecting the $50,000 allocation with its 1994 Form 8610 and issues X a copy of the 1994 Form 8609. Agency retains copies of the Forms 8609 that are issued to X.

Example 2. (i) In July 1993, X and Agency enter into an agreement that Agency will allocate $70,000 of housing credit dollar amount for rehabilitation expenditures that X is incurring and that X will treat as a new low-income housing building under section 42(e)(1). The agreement is binding and meets all the requirements of paragraph (a)(1) of this section. The agreement is a reservation of credit, not an allocation, and therefore has no effect on Agency's state housing credit ceiling. Before August 5, 1993, X signs and has notarized a written election statement that meets the requirements of paragraph (a)(3) of this section. The applicable percentage for the building is the appropriate percentage for the month of July 1993. Agency makes a carryover allocation of $70,000 of housing credit dollar amount for the building on November 15, 1993. The carryover allocation reduces by $70,000 Agency's state housing credit ceiling for 1993.

(ii) In October 1994, X and Agency enter into another binding agreement meeting the requirements of paragraph (a)(1) of this section. Under the agreement, Agency will allocate $50,000 of housing credit dollar amount for additional rehabilitation expenditures by X that qualify as a second separate new building under section 42(e)(1). Before November 5, 1994, X signs and has notarized a written election statement meeting the requirements of paragraph (a)(3) of this section. On December 1, 1994, X receives a carryover allocation under section 42(h)(1)(E) for $50,000. The carryover allocation reduces by $50,000 Agency's state housing credit ceiling for 1994. The applicable percentage for the rehabilitation expenditures treated as the second separate new building is the appropriate percentage for the month of October 1994, not July 1993. The appropriate percentage for the month of July 1993 still applies to the allocation of $70,000 for the rehabilitation expenditures treated as first separate new building. Because allocations were made for the building in two separate calendar years, Agency must issue two Forms 8609 to X. One Form 8609 must reflect the $70,000 allocation made in 1993, and the other Form must reflect the $50,000 allocation made in 1994.

(iii) X gives the first original notarized statement to Agency before August 5, 1993, and retains a copy of the first binding agreement, election statement, and carryover allocation document issues in 1993. X gives the second original notarized statement to Agency before November 5, 1994, and retains a copy of the second binding agreement, election statement, and carryover allocation document issued in 1994. X files a copy of the binding agreements, election statements, and carryover allocation documents with X's Forms 8609 for the first tax year in which X claims credit for the buildings.

(iv) Agency retains a copy of the binding agreements, election statements, and carryover allocation documents, Agency files the original of the first binding agreement, election statement and 1993 carryover allocation document with its 1993 Form 8610. Agency files the original of the binding agreement, election statement, and 1994 carryover allocation document with its 1994 Form 8610. After X notifies Agency of the date each building is placed in service, the Agency will issue copies of the respective

Forms 8609 to X, and file the originals of those forms with the Agency's Form 8610 that reflects the year each form is issued. The Agency also retains copies of the Forms 8609.

(b) *Election under section 42(b)(2)(A)(ii)(II) to use the appropriate percentage for the month tax-exempt bonds are issued*—(1) *Time and manner of making election.* An election under section 42(b)(2)(A)(ii)(II) to use the appropriate percentage for the month tax-exempt bonds are issued must—

(i) Be in writing;

(ii) Reference section 42(b)(2)(A)(ii)(II);

(iii) Specify the percentage of the aggregate basis of the building and the land on which the building is located that is financed with the proceeds of obligations described in section 42(h)(4)(A) (tax-exempt bonds);

(iv) State the month in which the tax-exempt bonds are issued;

(v) State that the month in which the tax-exempt bonds are issued is the month elected for the appropriate percentage to be used for the building;

(vi) Be signed by the taxpayer; and

(vii) Be notarized by the 5th day following the end of the month in which the bonds are issued.

(2) *Bonds issued in more than one month.* If a building described in section 42(h)(4)(B) (substantially bond-financed building) is financed with tax-exempt bonds issued in more than one month, the taxpayer may elect the appropriate percentage for any month in which the bonds are issued. Once the election is made, the appropriate percentage elected applies for the building regardless if bonds are issued in a different month. The requirements of this paragraph (b), including the time limitation contained in paragraph (b)(1)(vii) of this section, must also be met.

(3) *Limitations on appropriate percentage.* Under section 42(m)(2)(D), the credit allowable for a substantially bond-financed building is limited to the amount necessary to assure the project's feasibility. Accordingly, in making the determination under section 42(m)(2), an Agency may use an applicable percentage that is less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer under section 42(b)(2)(A)(ii)(II).

(4) *Procedures*—(1) *Taxpayer.* The taxpayer must provide the original notarized election statement to the Agency before the close of the 5th calendar day following the end of the month in which the bonds are issued. If an authority other than the Agency issues the tax-exempt bonds, the taxpayer must also give the Agency a signed statement from the issuing authority that certifies the information described in paragraphs (b)(1) (iii) and (iv) of this section. The taxpayer must file a copy of the election statement with the taxpayer's Form 8609 for the first tax year in which credit is claimed for the building. The taxpayer must also retain a copy of the election statement.

(ii) *Agency.* The Agency must file with the Internal Revenue Service the original of the election statement and the corresponding Form 8609 for the building with the Agency's Form 8610 that reflects the year the form is issued. The Agency must also retain a copy of the election statement and the Form 8609.

§ 1.42–9 For use by the general public.

(a) *General rule.* If a residential rental unit in a building is not for use by the general public, the unit is not eligible for a section 42 credit. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing nondiscrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD). See HUD Handbook 4350.3 (or its successor).

(b) *Limitations.* Notwithstanding paragraph (a) of this section, if a unit is provided only for a member of a social organization or provided by an employer for its employees (except a resident manager unit that is a facility reasonably required by a project), the unit is not for use by the general public and the unit is not eligible for credit under section 42. In addition, any unit that is part of a hospital, nursing home, sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for credit under section 42.

(c) *Treatment of units not for use by the general public.* The costs attributable to a unit that is not for use by the general public are not excludable from eligible basis by reason of the unit's ineligibility for the credit under this section. However, in calculating the applicable fraction, the unit is treated as a residential rental unit that is not a low-income unit.

§ 1.42–10 Utility allowances.

(a) *Inclusion of utility allowances in gross rent.* If the cost of any utilities (other than telephone) for a residential rental unit are paid directly by the tenant(s), the gross rent for that unit includes the applicable utility allowance determined under this section. This section only applies for purposes of determining gross rent under section 42(g)(2)(B)(ii) as to rent-restricted units.

(b) *Applicable utility allowances*—(1) *FmHA-assisted buildings.* If a building receives assistance from the Farmers Home Administration (FmHA-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Farmers Home Administration (FmHA) for the building. For example, if a building receives assistance under FmHA's section 515 program (whether or not the building or tenants also receive other state or federal assistance), the applicable utility allowance for all rent-restricted units in the building is determined using the method of Exhibit A–5 of FmHA Instruction 1944–E (or a successor method of determining utility allowances).

(2) *Buildings with FmHA assisted tenants.* If any tenant in a building receives FmHA rental assistance payments (FmHA tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving HUD rental assistance payments) is the applicable FmHA utility allowance.

(3) *HUD-regulated buildings.* If neither a building nor any tenant in the building receives FmHA housing assistance, and the rents and utility allowances of the building are reviewed by the Department of Housing and Urban Development (HUD) on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

(4) *Other buildings.* If a building is neither an FmHA-assisted nor a HUD-regulated building, and no tenant in the building receives FmHA tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

(i) *Tenants receiving HUD rental assistance.* The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.

(ii) *Other tenants*—(A) *General rule.* If none of the rules of paragraphs (b) (1), (2), (3), and (4)(i) of this section apply to any rent-restricted units in a building, the appropriate utility allowance for the units is the applicable PHA utility allowance. However, if a local utility company estimate is obtained for any

unit in the building in accordance with paragraph (b)(4)(ii)(B) of this section, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. This local utility company estimate procedure is not available for and does not apply to units to which the rules of paragraph (b) (1), (2), (3), or (4)(i) apply.

(B) *Utility company estimate.* Any interested party (including a low-income tenant, a building owner, or an Agency) may obtain a local utility company estimate for a unit. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located. The local utility company estimate may be obtained by an interested party at any time during the building's extended use period (see section 42(h)(6)(D)) or, if the building does not have an extended use period, during the building's compliance period (see section 42(i)(1)). Unless the parties agree otherwise, costs incurred in obtaining the estimate are borne by the initiating party. The interested party that obtains the local utility company estimate (the initiating party) must retain the original of the utility company estimate and must furnish a copy of the local utility company estimate to the owner of the building (where the initiating party is not the owner), and the Agency that allocated credit to the building (where the initiating party is not the Agency). The owner of the building must make available copies of the utility company estimate to the tenants in the building.

(c) *Changes in applicable utility allowance.* If at any time during the building's extended use period (or, if the building does not have an extended use period, the building's compliance period), the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of rent-restricted units due 90 days after the change. For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due more than 90 days after the date of the local utility company estimate.

§ 1.42–11 Provisions of services.

(a) *General rule.* The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as residential rental property eligible for credit under section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of section 42(g).

(b) *Services that are optional*—(1) *General rule.* A service is optional if payment for the service is not required as a condition of occupancy. For example, for a qualified low-income building with a common dining facility, the cost of meals is not included in gross rent for purposes of section 42(g)(2)(A) if payment for the meals in the facility is not required as a condition of occupancy and a practical alternative exists for tenants to obtain meals other than from the dining facility.

(2) *Continual or frequent services.* If continual or frequent nursing, medical, or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, lifecare facility, or intermediate care facility for the mentally and physically handicapped. See also § 1.42–9(b).

(3) *Required services*—(i) *General rule.* The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by building owners.

(ii) *Exceptions*—(A) *Supportive services.* Section 42(g)(2)(B)(iii) provides an exception for certain fees paid for supportive services. For purposes of section 42(g)(2)(B)(iii), a supportive service is any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

(B) *Specific project exception.* Gross rent does not include the cost of mandatory meals in any federally-assisted project for the elderly and handicapped (in existence on or before January 9, 1989) that are authorized by 24 CFR part 278 to provide a mandatory meals program.

§ 1.42–12 Effective dates and transitional rules.

(a) *Effective date.* The rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12 are effective 60 days after publication of the final regulations in the **Federal Register**. However, binding agreements, election statements, and carryover allocation documents entered into before the effective date of these regulations that follow the guidance set forth in Notice 89–1, 1989–1 C.B. 620 (see § 601.601(d)(2)(ii)(*b*) of this chapter) need not be changed to conform to these regulations.

(b) *Prior periods.* Notice 89–1 1989–1C.B. 620 and Notice 89–6, 1989–1 C.B. 625 (see § 601.601(d)(2)(ii)(*b*) of this chapter) remain in effect for periods to the effective date of these regulations.

Shirley D. Peterson,

Commissioner of Internal Revenue.

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Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–775]

RIN No. 1218–AA65

Safety Standards for Steel and Other Metal and Non-Metal Erection

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Announcement of Intent To Establish Negotiated Rulemaking Committee; Request for Representation.

SUMMARY: The Occupational Safety and Health Administration is announcing its intent to establish a Steel Erection Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA). The Committee will negotiate issues associated with the development of a proposed revision of the existing safety provisions in its construction standards for steel erection (29 CFR part 1926, subpart R). The Committee will include representatives of identified parties who would be significantly affected by the final rule. OSHA solicits interested parties to nominate representatives for membership for representation on the Committee.

DATES: OSHA must receive written comments and requests for membership or representation by March 29, 1993.

ADDRESSES: All written comments should be sent, in quadruplicate, to the following address: Docket Office, Docket S–775, Room N–2625, 200 Constitution Ave., N.W., Washington, D.C., 20210; Telephone (202) 219–7894.

Nominations for membership or representation on the Committee should be sent, in quadruplicate, to the Docket Office, Docket S–775, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

Existing subpart R of part 1926 (§§1926.750 through 1926.752) contains the safety standards that apply specifically to steel erection activities. The subpart was adopted in 1971 as an OSHA standard under section 6(a) of the OSH Act, which authorized the Agency to adopt established Federal standards issued under other statutes, including the Construction Safety Act (40 U.S.C. 333). Since 1971, the steel erection standard has been amended several times. For example, in 1972, OSHA promulgated miscellaneous amendments and in 1974, the Agency revised the temporary flooring requirement.

Since 1974, OSHA has received several requests for clarification of various provisions of subpart R, especially regarding the fall protection requirements. In 1984, the Agency began drafting a proposed rule to update and clarify subpart R. On several occasions, in meetings with its Advisory Committee on Construction Safety and Health (ACCSH), OSHA presented draft regulatory language revising subpart R and sought the Committee's advice.

On November 25, 1986, OSHA issued a Notice of Proposed Rulemaking (NPRM) for subpart M (Fall Protection) at 51 FR 42718. In that document the Agency announced that it intended the proposed fall protection rule to apply to all walking/working surfaces found in construction, except for certain specific areas where other sections in the construction standards would continue to apply. With regard to steel erection activities, the Agency provided in proposed §1926.500(a)(2)(iv) that: "Requirements relating to fall protection for connectors performing steel erection and requirements for fall protection for workers on derrick and erection floors during steel erection are provided in 29 CFR 1926.750—1926.752 ([s]ubpart R)." Also, in proposed §1926.500(a)(3)(iii) the Agency provided that: "Specific requirements for safety railings used on derrick and erection floors during steel erection are provided in 29 CFR 1926.752 ([s]ubpart R)."

In the preamble to the fall protection rule, OSHA summarized the meaning of these exceptions by stating that "additional requirements to have fall protection for connectors and for workers on derrick and erection floors during steel erection would remain in [s]ubpart R—Steel Erection" (51 FR 42720, Nov. 25, 1986). This statement led to confusion in the steel erection industry. In response, OSHA extended the comment period for submissions on the issue and stated that it "intend(ed) that the proposed fall protection standards published on November 26, 1986, apply to all workers engaged in skeleton steel erection activities, except for connectors...making initial connections..." (52 FR 20616, June 2, 1987). Subsequently, OSHA announced (53 FR 2048, 2053, January 26, 1988) "that the consolidation of the fall protection provisions in subpart M [would] not apply to steel erection and that the current fall protection requirements of part 1926 [would] continue to cover steel erection until [a] steel erection rulemaking is completed."

OSHA continued to work on its subpart M rulemaking and to develop a draft proposed revision to subpart R. As part of that process, the Agency presented several draft proposed revisions of subpart R to the ACCSH and solicited the Committee's input. Overall, OSHA has received many recommendations from the ACCSH and affected employee and employer parties, several of which have requested that OSHA institute negotiated rulemaking to help develop a new subpart R proposal. OSHA initially denied the requests for negotiated rulemaking because it was about to issue a proposed revision of subpart R. However, in an effort to ensure that OSHA's proposal on subpart R would more fully address the concerns of the affected groups, OSHA asked an independent consultant to review the fall protection issues raised by the draft revisions of subpart R, render an independent opinion and to recommend a course of action. The consultant recommended that OSHA address the issue of fall protection as well as other potential revisions of subpart R by using the negotiated rulemaking process.

Based on the consultant's findings and the continued requests for negotiated rulemaking, OSHA has decided to use the negotiated rulemaking process to develop a proposed revision of subpart R that will cover fall protection for erectors as well as technical requirements for the assembly and installation of structures. To facilitate access to pertinent information, all transcripts and documents generated regarding subpart R and all relevant materials from the rulemaking records for the proposed revision to subparts L (S–205), M (S–206), and X (S–207) have been made part of the docket for this proceeding (S–775).

The negotiated rulemaking effort described in this Notice will be conducted in accordance with the Department of Labor's recently approved policy on negotiated rulemaking. For further detail about the Department's negotiated rulemaking policy, please consult the "Notice of Policy on Use of Negotiated Rulemaking Procedures by Agencies of the Department of Labor" being published in the Federal Register concurrently with this Notice.

A. The Concept of Negotiated Rulemaking

Usually, OSHA develops a proposed rule using staff and consultant resources. The concerns of affected parties are identified through various informal contacts, such as the circulation of a draft proposal to known affected parties for their informal comment, advance notices of proposed rulemaking (ANPR) published in the **Federal Register** or through formal consultation with an advisory committee such as the ACCSH. After a notice of proposed rulemaking is published for comment, affected parties, including the Agency, submit arguments and data supporting their positions. All communications from affected parties are directed to the agency and its docket office. In general, there is not much communication during the rulemaking among parties representing different interests, except during cross-examination conducted at a rulemaking hearing.

Many times, effective regulations have resulted from such a process. However, as Congress noted in the Negotiated Rulemaking Act (5 U.S.C. 561), current rulemaking procedures "may discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions..." (Sec. 2 (2)). Congress also stated that "(a)dversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical

abilities possessed by the affected parties." (Sec. 2 (3)).

Using negotiated rulemaking to actually develop a proposed rule is fundamentally different. Negotiated rulemaking is a process by which a proposed rule is developed by a committee composed of representatives of all the interests that will be significantly affected by the rule. Decisions are made by consensus, which generally requires concurrence among all of the interests represented.

The process is started by the Agency's careful identification of all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a document in the Federal Register such as this one, which identifies a preliminary list of interests and requests public comment on that list.

Following receipt of the comments, the Agency establishes an advisory committee representing these various interests to negotiate a consensus on the provisions of a proposed rule. Representation on the committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed to represent a specific sphere of interest. The Agency is a member of the committee representing the Federal government's own set of interests.

The negotiated rulemaking (reg/neg) advisory committee is chaired by a trained mediator who facilitates the negotiation process. The role of this mediator, also called a facilitator, is to apply proven consensus building techniques to the OSHA advisory committee setting. The many functions that he or she will perform are discussed below.

Once a reg/neg advisory committee reaches consensus on the provisions of a proposed rule, the Agency, consistent with its legal obligations, uses such consensus as the basis for its proposed rule, to be published in the Federal Register. This provides the required public notice and allows for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested) and judicial review. OSHA anticipates, however, that the pre-proposal consensus agreed upon by this Committee will effectively narrow the issues in the subsequent rulemaking to only those which truly remain in controversy.

B. Selecting subpart R as a Candidate for Negotiated Rulemaking

The NRA allows the Agency to establish a negotiated rulemaking committee if it is determined that the use of the negotiated rulemaking procedure is in the public interest. As discussed above (in the Background part of this document) OSHA has made such a determination.

OSHA bases this determination, not only on the independent consultant's recommendations as mentioned above, but also on its own prior experience with the negotiated rulemaking process. Even before the NRA was enacted, OSHA conducted negotiated rulemaking for its complex health standards for Methylenedianiline (MDA). This committee met seven times over a 10-month period (24 meeting days) and successfully negotiated standards for both general industry and construction. The final standards were ultimately based on the recommended proposed standards, and no litigation followed the standards' promulgation.

In addition, extensive discussions held between OSHA staff and many interested parties lends further evidence that the elements necessary for a successful negotiated rulemaking on steel erection exist. Moreover, the Agency believes that most of the selection criteria listed in the NRA (5 U.S.C. 563(a)) are met. There is a recognized need to revise subpart R to clarify fall protection requirements for structural erection workers and to update construction specifications and work practices. Interests which will be affected by a revised subpart R are known, are limited in number, and to a significant degree, are already organized in interest-based coalitions. Parties representing significant interests have requested that OSHA begin negotiated rulemaking on a revised subpart R. The Agency believes that reaching consensus on revised work practices and specifications for structural erection is highly promising. In addition, OSHA expects that all persons likely to be significantly affected by such a rule also will negotiate in good faith, on the fall protection provisions of a proposed standard. The need for clarification and revisions of current fall protection provisions is acknowledged by all known interests.

C. Agency Commitment

In initiating this negotiated rulemaking process, OSHA is making a commitment on behalf of the Department of Labor that the agency and all other participants within the Department will provide adequate resources to ensure timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials, and personnel of the Department who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process expressly terminated. Once the process has been initiated, all representatives, components, officials, and personnel of the Department shall be expected to act in accordance with this commitment.

As provider of administrative support, OSHA will take steps to ensure that the negotiated rulemaking committee has the dedicated resources it requires to complete its work in a timely fashion. These include the provision or procurement of such support services as: properly equipped space adequate for public meetings and caucuses; logistical support and timely payment of participant travel and expenses where necessary as provided for under the NRA; word processing, information dissemination, storage and other information handling services required by the committee; the services of a facilitator; and such additional statistical, economic, health, safety, legal, computing or other technical assistance as may be necessary.

OSHA, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the Committee as the basis for the rule proposed by the Agency for public notice and comment. The Agency believes that by clarifying and updating the existing standards, it can limit or reduce the number of deaths and injuries to employees engaged in structural erection who are exposed to a significant risk of injury and death because of the outdatedness and lack of clarity of certain current provisions in subpart R. The Agency, therefore, is committed to publishing a consensus proposal that is consistent with OSHA's legal mandates.

D. Negotiating Consensus

As discussed above, the negotiated rulemaking process is fundamentally different from the usual development process for OSHA proposed rules. Negotiation allows all the parties to discuss possible approaches to various issues rather than only asking them to respond to details of an OSHA proposal. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of such approaches. Each committee member participates in resolving the interests and concerns of

other members, rather than leaving it up to OSHA to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able to control or dominate the process. The NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all potential parties, including OSHA, to identify their real interests in the rule and so be able to reevaluate previously stated positions on issues involved in this rulemaking effort.

E. Some Key Issues for Negotiation

OSHA expects the key issues to be addressed as part of these negotiations will include:

1. *Scope and application:* Should the scope of subpart R be limited to the erection of steel or should it cover other materials as well? Should it be limited to the construction of single and multi-story buildings or apply as well to other types of structures such as bridges, metal tanks and non-power transmission towers?

2. *Construction specifications and work practices*: Which construction specifications and/or work practices provide adequate protection for employee safety for steel erection? What other specifications and practices should be included to provide protection for employee safety during the erection of non-steel structures? Would it be appropriate to limit the use of one-bolt connections? What rule is necessary regarding column stability? Should tandem ("christmas tree") loading and hoisting of structural members on the same (crane) hook be restricted? If so, how? What requirements should be set for double connections?

3. *Written construction safety erection plan*: Should OSHA require a written safety erection plan including construction specifications and safety provisions before the actual erection of the structures may start? What should be the required component parts of such a plan?

4. *Fall protection*: (a) To what extent should the fall protection provisions of proposed subpart M apply to steel, non-steel metal and non-metal erectors? Are there circumstances under which employees, who perform initial connections of structural components or other erection work, should be exempted from the requirements of subpart M? What are those circumstances? To what extent do alternative safeguards such as training and special designations adequately protect connectors or other erection workers from fall hazards? What are the advantages and disadvantages for employee safety of using fall protection devices and systems such as body belt systems, body harness systems and safety net systems?

(b) What costs are associated with providing fall protection to erectors? To what extent do employers who provide fall protection reduce their costs, such as through lower insurance and workers compensation premiums? How would productivity, for example, measured in terms of the time required to erect a completed structure, differ according to the fall protection strategy chosen?

(c) To what extent do non-steel structural erectors have concerns about the feasibility of compliance with the fall protection provisions of proposed subpart M? What fall protection requirements would provide appropriate protection for employees erecting non-metal structures? Should the same fall protection provisions apply to all structural erectors, including steel and non-metal structure erectors?

II. Proposed Negotiation Procedures

The following proposed procedures and guidelines may be augmented as a result of comments received in response to this document or during the negotiation process

A. Committee Formation

This negotiated rulemaking Committee will be formed and operated in full compliance with the requirements of the Federal Advisory Committee Act (FACA) in a manner consistent with the requirements of the Negotiated Rulemaking Act (NRA)

B. Interests Involved

The Agency intends to conduct negotiated rulemaking proceedings with particular attention to ensuring full and adequate representation of those interests that may be significantly affected by the proposed rule. Section 562 of the NRA defines the term "interest" as follows:

> (5) "interest" means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner

The following interests have been tentatively identified as "significantly affected" by the matters that may be included in the proposed rule:

--Architectural, design and engineering firms

--Developers, property owners and general contractors;

--Erection contractors using steel and erection contractors using materials other than steel;

--Fabricators of structural steel and non-steel metal products;

--Insurance organizations and public interest groups;

--Labor organizations representing employees who perform erection work.

--Manufacturers and suppliers of fall protection safety equipment;

--Manufacturers and suppliers of structural members and pre-engineered components; and

--Government entities.

One purpose of this document is to determine whether a standard regulating erection operations associated with steel and/or other metal and non-metal material members would significantly affect interests that are not listed above. OSHA invites comment and suggestions on this list of "significantly affected" interests

In this regard, the Department of Labor recognizes that the regulatory actions it takes under its programs may at times affect various segments of society in different ways, and that this may in some cases produce unique "interests" in a proposed rule based on income, gender, or other such factors. Particular attention will be given by the Department to ensure that any unique interests which have been identified in this regard, and which it is determined will be significantly affected by the proposed rule are fully represented.

C. Members

The negotiating group should not exceed 25 members, and 15 would be preferable The Agency believes that more than 15 members would make it difficult to conduct effective negotiations.

OSHA is aware that there are many more potential participants, whether they are listed here or not, than there are membership slots on the Committee. The Agency does not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations; nevertheless, each affected interest will hopefully be adequately represented. In order to have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. These coalitions, in order to provide adequate representation, must agree to support, both financially and technically, a

member to the Committee whom they will choose to represent their "interest."

It is very important to recognize that interested parties who are not selected to membership on the Committee can make valuable contributions to this negotiated rulemaking effort in any of several ways:

* The person could request to be placed on the Committee mailing list, making written comment, as appropriate;

* The person could attend the Committee meetings, which are open to the public, caucus with his or her interest's member on the Committee, or even address the Committee (usually allowed at the end of an issue's discussion or the end of the session, as time permits); and/or

* The person could assist in the work of a workgroup which might be established by the Committee.

Informal workgroups are usually established by an advisory committee to assist the Committee in "staffing" various technical matters e.g., researching or preparing summaries of the technical literature or comments on particular matters such as economic issues before the Committee so as to facilitate Committee deliberations. They might also assist in estimating costs and drafting regulatory text on issues associated with the analysis of the affordability and benefits addressed, and formulating drafts of the various provisions and their justifications previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

Because it recognizes the importance of this staffing work for the Committee, OSHA will provide appropriate technical expertise for such workgroups.

Requests for appointment to membership on the Committee are solicited. Members can be individuals or organizations. If the effort is to be fruitful, participants should be able to fully and adequately represent the viewpoints of their respective interests. Those who wish to be appointed as members of the Committee should submit a request to OSHA, in accordance with the Public Participation part of this document.

The following list includes those who have been tentatively identified by OSHA as being either a potential member of the Committee, or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests listed above:

Architectural, design, and engineering firms.

-Representatives of architects/ engineers, civil, mechanical, and structural design engineering firms; including engineering schools and universities;

--American Institute of Architects (AIA);

--American Society of Civil Engineers (ASCE); and

--American Society of Safety Engineers (ASSE).

Developers, property owners, and general contractors:

--Representatives of builders, developer-owners, and general contractors for construction projects of building structures; bridge structures of railroads, highways, rivers and waterways; power and chemical plants; oil companies; and general managers who hire erector contractors and sub-contractors to do structural erection work.

Builders and contractors associations:

--Associated General Contractors (AGC);

--Associated Builders and Contractors (ABC); and

--National Constructors Association (NCA).

Erection contractors using steel and erection contractors using metals other than steel:

--Representatives of erectors of steel and non-steel metal-framed structures; aluminum, stainless steel, and glass curtain-wall cladding contractors; contractor-erectors of railroad, highway, river and waterway bridge structures;

--National Erectors Association (NEA); and

--Representatives of the structural, ornamental, rigging and reinforcing steel industry.

Erection contractors using non-metal erection members:

--Representatives of erectors of precast concrete;

--Representatives of the Precast/ Prestressed Concrete Institute (PCI);

--Representatives of erectors of lumber, wood, plastic and other non-metal structures;

--National Association of Home Builders (NAHB).

Tower project owners, general contractors and erectors:

--Edison Electric Institute (EEI); and

--Electronic transmission tower erectors and other tower erector contractors.

Fabricators of structural steel and non-steel metal products:

--Representatives of fabricators of structural steel, non-steel metal products;

--American Iron and Steel Institute (AISI);

--American Institute of Steel Construction (AISC); and

--Southern Association of Steel Fabricators (SASF).

Insurance organizations and public interest groups:

--Representatives of insurance and public interest groups.

Labor organizations representing employees who perform erection work:

--International Association of Bridge, Structural and Ornamental Iron Workers Union;

--United Brotherhood of Carpenters and Joiners of America;

--International Brotherhood of Electrical Workers; and

--Laborers International Union of North America.

Manufacturers and suppliers of safety equipment:

--Representatives of the manufacturers and suppliers of fall protection equipment; and

--Industrial Safety Equipment Association (ISEA).

Manufacturers and suppliers of structural members and pre-engineered assemblies components:

--Representatives of manufacturers and suppliers of structural steel products;

--Representatives of manufacturers and suppliers of aluminum and non-ferrous structural metals;

--Representatives of manufacturers and suppliers of timber and wood structural products, plastic and plastic reinforced structural products; manufacturers of precast concrete structural products; and

--Steel Joist Institute (SJI).

Government entities:

--U.S. Department of Labor (DOL)/ Occupational Safety and Health Administration (OSHA);

--Occupational Safety and Health State Plan Association.

--National Institute for Occupational Safety and Health (NIOSH);

--National Aeronautics and Space Administration (NASA);

--Department of the Army, U.S. Army Corps of Engineers;

--Department of Energy (DOE) and Western Area Power Administration (WAPA); and

--Department of Transportation (DOT), including the Federal Railroad Administration (FRA), U.S. Coast Guard (USCG) and the Federal Highway Administration (FHWA).

This list of potential parties is not presented as a complete or exclusive list from which committee members will be selected, nor does inclusion on the list of potential parties mean that a party on the list has agreed or has been elected

to participate as a member of the committee or as a member of a coalition. The list merely indicates parties that OSHA has tentatively identified as representing significantly affected interests in the outcome of the subpart R negotiated rulemaking process, and suggests possible coalitions for interested parties to consider. This document gives notice of this process to other potential participants and affords them an opportunity to request representation in the negotiations. The procedure for requesting such representation is set out under the Public Participation part of this document, below. In addition, comments and suggestions on this tentative list are invited.

D. Good Faith Negotiation

Committee members should be willing to negotiate in good faith and have the authority to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members that must be sustained for up to a year. Other qualities that can be very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain considerations are central to negotiating in good faith. One is the willingness to bring all issues to the table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from the type of positions usually taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

E. Facilitator

This individual or organization will not be involved with the substantive development of the standard. Rather, the facilitator's role generally includes:

(1) Chairing the meetings of the committee in an impartial manner;

(2) Impartially assisting the members of the committee in conducting discussions and negotiations;

(3) Performing the duties of the Designated Federal Official under the FACA; and

(4) Acting as disclosure officer for committee records under the Freedom of Information Act (FOIA).

F. OSHA Representative

The OSHA representative will be a full and active participant in the consensus building negotiations. The representative will meet regularly with various senior OSHA officials, briefing them on the negotiations and receiving their suggestions and advice, in order to effectively represent their views regarding the issues before the Committee. OSHA's representative will also ensure that the entire spectrum of governmental interests affected by revisions of subpart R, including the Office of Management and Budget and other Departmental offices, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion. (OSHA notes that governmental agencies such as the Army Corps of Engineers, which are involved in the construction of steel-framed buildings and structures, have other identifiable interests and expertise that might be represented separately on the Committee.) OSHA's representative will also communicate with the ACCSH on a regular basis, informing it of the status and content of the negotiations.

In addition, the OSHA representative will present the negotiators with the accumulated record evidence gathered on an issue-by-issue basis for their consideration. (The Committee may also consult OSHA's representative with regard to the Agency's regulatory needs, appropriate boundaries of consideration, or technical information. Such information could include the areas of technological feasibility and economic concerns, including direct and indirect costs of compliance.) The OSHA representative, together with the Facilitator, will also be responsible for coordinating the administrative and committee support functions to be performed by OSHA's support team.

G. Committee Notice

After evaluating the comments on this announcement and the requests for representation, OSHA will issue a notice that will announce the establishment of the Committee and its membership, unless after reviewing the comments, it is determined that such an action is inappropriate. The negotiation process will begin once the Committee membership roster is published in the **Federal Register**.

H. Tentative Schedule

Included in the notice establishing the Committee will be a proposed schedule of the meetings. The first meeting will focus largely on procedural matters, including the proposed ground rules. These will also include agreement on dates, times, and locations of future meetings, and identification and determination of how best to address principal issues for resolution.

To prevent delays that might postpone timely issuance of the proposal, after consulting the committee, OSHA intends to terminate the Committee's activities if it does not reach consensus on a proposed rule within 12 months of the first meeting. The process may end earlier if the Facilitator or the committee itself so recommends.

I. Record of Meetings

In accordance with FACA's requirements, the Facilitator will keep minutes and a record of all committee meetings. This record will be placed in the public docket No. S–775 for this rulemaking. Committee meetings will be announced in the **Federal Register** and will generally be open to the public.

J. Agency Action

As noted above, the Agency intends to use the Committee's consensus as the basis for the NPRM. OSHA expects to issue the proposed rule developed by the Committee, unless the consensus is inconsistent with OSHA's statutory authority or is not appropriately justified. In that event, the Agency will explain the reason for its decision.

K. Committee Procedures

Under the general guidance and direction of the Facilitator and subject to any applicable legal requirements, appropriate detailed procedures for committee meetings will be established. Committee members will be presented with proposed ground rules and agendas prior to the first meeting.

III. Public Participation

Since this will be a negotiated rulemaking, there are many opportunities for an individual who is interested in the outcome of the rule to participate. As a first step in response to this notice of intent to negotiate, OSHA recommends that potential participants take a hard look at the two lists contained in this notice: the lists of significantly affected interests and the lists of potential participants. After analyzing for completeness or over or

under-inclusiveness, parties should examine the lists for the purpose of coalition building. Potential parties should try to identify others, whether on the lists or not, who share a similar viewpoint and who would be affected in a similar way by the rule. Communication with these parties of similar interest should follow, and the organization of coalitions to support the interest should begin. It is only after the formation of these coalitions and extensive intra-constituency discussion that decisions should be made as to which individuals should represent the interest and in which capacity. As indicated above, an interested party may participate in a variety of ways such as being a committee member, working within the coalition (promoting communication, providing expert support in a workgroup or otherwise, helping to develop internal ranges of acceptable alternatives, etc.), attending committee meetings in order to caucus with the interest's member or address the Committee at the appropriate times, or submitting written comments or materials.

Persons who will be significantly affected by the revision of subpart R, whether or not listed above in this document, may apply for or nominate another person for membership on the committee to represent such interests. Such requests should be submitted, in quadruplicate, to the Docket Office, Docket S–775, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210, no later than March 29, 1993. OSHA notes that the NRA addresses the concerns of potential members for whom the expenses of participation may not be affordable (See 5 U.S.C. 568(c)). Each application or nomination shall include:

(1) The name of the applicant or nominee and a description of the interest such person shall represent;

(2) Evidence that the applicant or nominee is authorized to represent parties having the shared interest the person proposes to represent; and

(3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration.

All other written comments, including comments on the appropriateness of using negotiated rulemaking to develop a proposed rule to revise the existing safety provisions in 29 CFR part 1926 subpart R, should be directed to Docket No. S–775, and sent in quadruplicate to the following address: OSHA Docket Office, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

IV. Authority

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*

Signed at Washington, D.C., this 21st day of December, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–31414 Filed 12–28–92; 8:45 am]

BILLING CODE 4510–26–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4549–2]

Notice of Public Meeting of the Hazardous Waste Manifest Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of two public meetings of the Hazardous Waste Manifest Rulemaking Committee. The meeting are open to the public without advance registration.

The purpose of the meetings is to continue work on revising the uniform national hazardous waste manifest form and rule.

The following workgroups will meet from 1 p.m.–6 p.m. on January 13: Rejected Loads, Container Residue, Waste Codes and Transfer Facilities. These workgroups will report to the Committee on January 14 in the public session.

DATES: The Committee meeting will be held on January 13, 1993 from 10 p.m. to 12 p.m. and January 14, 1993 from 8:30 a.m. to 4 p.m. The Committee will also meet on February 23 and 24, 1993.

ADDRESSES: Location of both the January and February meetings will be World Wildlife Fund, suite 500, 1250 Twenty-fourth St. NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Rick Westlund, Regulatory Management Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2745. Persons needing further information on procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environemntal Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5495, or Committee's facilitator, Suzanne Orenstein, Resolve, 1250 24th Street, NW., suite 500, Washington, DC 20037, (202) 778–9533

Dated: December 21, 1992.

Deborah Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program; Office of Regulatory Management and Evaluation.

[FR Doc. 92–31442 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Ch. I

[FRL–4549–5]

Open Meetings of the Disinfection By-products Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meetings.

SUMMARY: The Disinfection By-products Negotiated Rulemaking Advisory Committee will meet on January 13–14 and February 9–10 to continue to develop consensus that can be used as the basis of a proposed rule.

DATES: The meetings will take place on January 13–14 and February 9–10. On January 13 and February 9, the meeting will start at 9:30 a.m. and end at 5 p.m. On January 14 and February 10, it will start at 8:30 a.m. and end by 4 p.m.

ADDRESSES: The Committee will meet at "Resolve", 1250 24th Street NW., 5th floor, Washington, DC (202) 293–4800.

FOR FURTHER INFORMATION CONTACT: For further information on substantive aspects of the rule, call Stig Regli of EPA's Water Office at (202) 260–7379. For further information on the meeting, call Gail Bingham, the Committee Co-Chair, at (202) 293–4800.

Dated: December 22, 1992.

Chris Kirtz,

Director, Consensus and Dispute Program.

[FR Doc. 92–31443 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 85, 86 and 600

[AMS–FRL–4550–5]

Standards for Emissions From Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversion Hardware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: This notice announces the extension of the comment period for the Notice of Proposed Rulemaking (NPRM) entitled "Standards for Emissions from Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversion Hardware," which was published on November 5, 1992 (57 FR 52912). In that notice, EPA stated that the public comment period would remain open for 30 days following the December 3, 1992, hearing. However, in light of the scope of that NPRM, as well as the fact that the year end holidays fall at the end of the current comment period, the Agency is extending the comment period.

DATES: Comments on this proposal will be accepted until January 15, 1993.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–92–14 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. John Mueller, EVRB–12, U.S. Environmental Protection Agency, Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone (313) 668–4275.

SUPPLEMENTARY INFORMATION: For further information on this matter, please refer to EPA's November 5, 1992 Notice of Proposed Rulemaking at 57 FR 52912.

Dated: December 21, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–31566 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–60–M

40 CFR Part 300

[FRL–4548–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Woodbury Chemical Company site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region VIII announces its intent to delete the Woodbury Chemical Company Site (Site) from the National Priorities List (NPL) and requests public comment on this action. EPA and the State of Colorado (State) have determined that all appropriate response actions have been implemented at the Site and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the Site are protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Woodbury Site may be submitted to EPA during the thirty days following publication of this notice in the **Federal Register**.

ADDRESSES: Comments may be mailed to: Ms. Laura Williams (8HWM–SR), Remedial Project Manager, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Comprehensive information on this Site is available through the EPA, Region VIII public docket, which is located at EPA's Region VIII Administrative Records Center and is available for viewing from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. Requests for documents should be directed to the EPA, Region VIII Records Center.

The address for the Regional Records Center is: Administrative Records Center, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, 5th Floor, Denver, Colorado 80202–2466, (303) 293–1807.

Background information from the Regional public docket is also available for viewing at two Woodbury Site information respositories located at the:

Colorado Department of Health, Hazardous Materials and Waste, Management Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222 (303) 692–3300, Hours: 8 a.m. to 5 p.m., Monday through Friday.

and

Adams County Public Library, Commerce City Branch, 7185 Monaco Street, Commerce City, Colorado 80022 (303) 287–0063, Hours: 1 p.m to 8 p.m., Monday and Thursday; 10 a.m. to 5 p.m. Tuesday, Wednesday, Friday, and Saturday.

FOR FURTHER INFORMATION CONTACT:

Ms. Laura Williams (8HWM–SR), U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1531.

or

Mr. Barry Levene (8HWM–SR), Chief, ND/CO Section, U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1843.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region VIII announces its intent to delete the Woodbury Chemical Company Site (Site) located in Commerce City, Colorado from the National Priorities List (NPL) and requests comments on this deletion. The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), title 40 of the Code of Federal Regulations (40 CFR), as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund) Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

It is EPA's intent to delete the Woodbury Chemical Company Site from the NPL. EPA will accept comments on this proposed deletion for thirty days following publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Woodbury Site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations with regard to an individual site. The NPL is designed primarily for informational

purposes and to assist EPA management.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR § 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

For all Remedial Actions (RA) which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, it is EPA's policy that a review of such action be conducted no less than every five years after initiation of the selected RA. As stated under "Basis for Intended Deletion," the selected remedy for the Woodbury Site required the removal of the contaminated soils, rubble, and investigation-derived waste from the Site. There was no ground water component to the remedy since Site contaminants had not affected the ground water aquifer. As a result of implementing this remedy, hazardous substances, pollutants, and contaminants were removed from the Site and eliminated as potential sources of contamination, thereby allowing for unlimited use and unrestricted exposure. In accordance with 40 CFR 300.430(f)(4)(ii), a five-year review is, therefore, not required for this Site.

III. Deletion Procedures

EPA, Region VIII will accept and evaluate public comments before making a final decision to delete the Woodbury Site. The following procedures were used for the intended deletion of this Site:

1. EPA, Region VIII has recommended deletion of the Woodbury Site and has prepared the relevant documents.

2. The State of Colorado has concurred with EPA's recommendation for deletion.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties.

4. The Region has made all relevant documents available in the Regional Office and local site information repositories.

The comments received during the notice and comment period will be evaluated before making a final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

Subsequent to the public comment period, a deletion will occur after EPA publishes a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region VIII.

IV. Basis for Intended Site Deletion

The following summary provides EPA's rationale for recommending deletion of the Woodbury Chemical Company Superfund Site.

The Woodbury Chemical Company Superfund Site is located at 5400 Monroe Street in Commerce City, a northern suburb of Denver in Adams County, Colorado. The Woodbury Chemical Company operated a pesticide formulation facility from the late 1950's to 1971. On May 10, 1965, the main Woodbury Chemical Company building was destroyed by fire. Shortly thereafter, the Woodbury Chemical Company constructed a new building at the original building location. Contaminated rubble and debris from the fire were deposited in various locations at the Site, including a vacant 2.2-acre lot directly east of the Woodbury Chemical Company facility.

The Site was proposed for listing on the NPL on July 23, 1982, and listed on September 8, 1983. The primary concerns for potential harm to human health and the environment presented by the Site were exposure to contaminated soils and sediments, and potential ingestion of drinking water from the contaminated ground water aquifer below the Site. Chemicals of concern in the soils and sediments included pesticides, metals, and volatile organic compounds (VOCs).

Chemicals of concern in the ground water are primarily VOCs. However, it has been determined that the Woodbury Site is not the source of the existing contaminants within the ground water aquifer. This determination is based upon ground water sampling results which clearly indicated that the contaminated ground water originated upgradient to the Site in concentrations similar to those identified below and downgradient to the Site.

In February 1985, EPA, Region VIII completed a Remedial Investigation and Feasibility Study (RI/FS) for Operable Unit I (OUI), the area described above as a vacant 2.2-acre lot. High levels of pesticides (including aldrin, chlordane, DDT, and toxaphene) and elevated concentrations of metals were found in the rubble piles on the soil surface. Lower concentrations were found in the underlying contaminated soil areas. Ground water sampling indicated that the Woodbury Site was not the source of contaminants within the ground water aquifer. EPA issued a Record of Decision (ROD) in July 1985, which selected a complete cleanup remedy for contaminated soils at the 2.2-acre lot.

This Remedial Action (RA), however, was not immediately implemented. During pre-design studies, the EPA discovered significant additional contaminated soils west of the 2.2-acre lot. The area of additional contaminated soils included the original Woodbury Chemical Company property and vacant property located west and north of the Woodbury Chemical Company facility. The decision to expand the RI/FS to these additional areas (OUII) was formalized in the September 1986, ROD amendment.

Additionally, an engineer's cost estimate developed during pre-design studies exceeded the +50/−30 standard established by EPA guidance for cost estimates to implement RA. EPA determined that it would be more cost-effective to delay RA at OUI for simultaneous implementation with the RA at OUII.

The RI for OUII was completed in August 1989. In addition to contaminated soils, the RI identified a large amount of rubble which had been buried near the southern boundary of the Site. Additional ground water sampling further documented EPA's determination that the ground water contamination originated off-site and upgradient to the Woodbury Site. The FS was completed in September 1989.

A final ROD for the Site was signed by the Regional Administrator on September 29, 1989. The 1989 ROD document incorporates and builds upon the ROD issued for this Site in July 1985. Off-site incineration and off-site landfiling of soils which presented an excess carcinogenic health risk greater

than one in one million (1×10^{-6}) was selected as the remedy for the Site. Action levels corresponding to the cumulative 1×10^{-6} cleanup goal were established based upon maximum reasonable exposure to the chemicals of concern present at the Site. The remedy addressed environmental concerns presented by soils contaminated with pesticides, VOCs, and metals, and eliminated the principal threat of contaminated soil as a potential source of contamination to ground water, on-site workers, and the surrounding residents.

The major components of the remedy included:

- Excavation and treatment, via off-site incineration, of all contaminated soils and rubble exceeding the California List Halogenated Organic Compound (HOC) levels (1,000 parts per million total concentration) and of soil/debris containing the 2,3,7,8-isomer of polychlorinated dibenzo-p-dioxin (PCDD) above EPA action levels and disposal of the incinerated soil ash in an off-site Resource Conservation and Recovery Act (RCRA) subtitle C landfill;
- Excavation of contaminated soils and rubble with concentrations of chemicals of concern between EPA action levels and California List HOC levels, and transport to an off-site RCRA subtitle C landfill for disposal; and
- Regarding of on-site soils below EPA action levels, backfilling of excavated areas with clean soil, as necessary, and revegetation of the Site.

The RA activities at the Site began in May 1991, and were completed in June 1992. Approximately 900 tons of highly contaminated soils were excavated, transported off-site, and incinerated with subsequent disposal of the ash in an approved hazardous waste disposal facility. An additional 56,210 tons of lesser contaminated soils, rubble, and investigation-derived waste were excavated, transported off-site, and directly placed in an approved hazardous waste disposal facility. The Site was regarded, backfilled with 11,500 cubic yards of clean fill, and seeded with a mixture of grasses in May 1992.

A risk assessment based upon results of the validation sample analyses was performed to calculate the potential risk associated with the remaining concentrations of chemicals of concern in the soil. The cumulative risk calculations indicated that the health risk associated with the remaining concentrations of the constituents is less than one in one million (1×10^{-6}). All cleanup activities have been completed as planned. No equipment remains on-site.

The remedies completed at the Site were mandated by the ROD and based on the 1985 and 1989 RI/FS Reports. The remedies were comprehensive "one-time" restoration activities and did not include operation and/or maintenance requirements. There are no outstanding institutional controls or field activities remaining at the Site.

V. Community Relations

Since the September 1983 addition of the Site to the NPL, community interest has been minimal. During the 1985 public comment period for OUI, no comments or inquiries were received. The public comment period for the 1989 ROD resulted in marginal community participation as well. While there are several local community groups active in other Superfund activities, no specific concerns regarding the Woodbury Site were presented to EPA prior to initiation of RA.

Due to the close proximity of an economically disadvantaged residential area to the Site, EPA initiated a proactive approach to community relations during RA. This included a door-to-door outreach effort immediately before initiating RA. EPA also distributed five bi-monthly fact sheet updates to the local community over a one-year period during the most intense RA activities. EPA and the State coordinated with local health and environmental offices, including Tri-County Health, Denver Human Health and Hospitals, and the Colorado Division of Wildlife to address community concerns during RA. Local residents and community groups, including the Rocky Mountain Chapter of the Sierra Club, have since expressed their support and praise for the safe, expedient, and efficient cleanup of the Site and the related community relations activities.

VI. Summary

The completed remedies do not result in hazardous substances remaining on-site above levels which allow for unlimited and unrestricted access; therefore, there are no requirements for a five-year review or operation and maintenance. All completion requirements for the Woodbury Site have been achieved as outlined in OSWER Directive 9320.2–3A.

EPA, with the concurrence of the State of Colorado, has determined that all appropriate response actions required by CERCLA at the Woodbury Chemical Company Site have been completed, and that no further cleanup by responsible parties is appropriate.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: December 17, 1992.

Jack W. McGraw,

Acting Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 92–31440 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

[Docket No. 92–64; Notice 2]

RIM 2127–AE63

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments, extension of comment period.

SUMMARY: This notice extends the comment period on a request for comments concerning the American Automobile Labeling Act, pursuant to which the agency will soon be writing regulations. The agency is taking this action in response to petitions from the Motor Vehicle Manufacturers Association (now the American Automobile Manufacturers Association), the Japan Automobile Manufacturers Association, Inc., and the Association of International Automobile Manufacturers, Inc., which requested additional time to submit comments. The agency is extending the comment period for two weeks, until January 11, 1993.

DATES: Written comments on Docket 92–64, Notice 1, must be received on or before January 11, 1993.

ADDRESSES: Written comments on Docket 92–64, Notice 1, must refer to those docket and notice numbers and be submitted (preferably in 10 copies) to the Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (three copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street, SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, room 5313, 400 Seventh Street SW., Washington, DC 20590. (202) 366–4797.

SUPPLEMENTARY INFORMATION: On November 18, 1992, NHTSA published in the **Federal Register** (57 FR 54351) a request for comments in order to obtain information that will assist it in developing proposed regulations to implement the American Automobile Labeling Act. That Act amended Title II of the Motor Vehicle Information and Cost Savings Act to require that all new passenger cars (regardless of weight), and all multipurpose passenger vehicles and light duty trucks that are rated at 8,500 pounds gross vehicle weight or less, manufactured on or after October 1, 1994, bear labels providing information regarding the exent to which their parts are of domestic origin.

NHTSA requested comments by December 28, 1992. The November 1992 document also announced a public meeting to receive oral comments, which was held on December 17, 1992.

NHTSA received three petitions requesting that the comment period be extended by at least 30 days. The first petition was submitted by the Motor Vehicle Manufacturers Association (now the American Automobile Manufacturers Association, AAMA) on December 2, 1992. This organization, which represents Chrysler, Ford, and General Motors, stated that the combination of a short (45-day) comment period and the automobile industry's traditional use of December as a vacation month, did not leave sufficient time for its members to provide detailed responses to the request for comments. AAMA also stated that the original deadline provided its members insufficient time subsequent to the December 17, 1992 public meeting to review all testimony presented, and respond adequately. This petitioner requested an extension of the comment period until January 28, 1993.

Petitions from the Association of International Automobile Manufacturers, Inc. (which represents 21 European and Japanese manufacturers) and the Japan Automobile Manufacturers Association, submitted on December 7, and December 16, 1992, respectively, gave virtually identical reasons for requesting the extension of the comment period. One petitioner requested a 30-day extension, the other requested an extension until January 31, 1993.

After consideration of the three petitions, NHTSA has decided to extend the comment period by two weeks. While the agency initially believed that a 45-day comment period was sufficient, it agrees that additional time is warranted given the complex nature of the questions asked in the request for comments, the fact that the original closing date fell within a vacation period for the automobile industry, and the petitioners' desire to respond to arguments made at the December 17 public meeting. NHTSA also believes that the more detailed comments that interested persons will be able to provide as a result of the extension will be useful to the agency in developing proposed rules. The agency believes that a two-week extension, with a closing date of January 11, will provide sufficient time, past the holiday season, for all parties to prepare comments. Given the time constraints inherent in the rulemaking at issue, especially the need to have a final rule in place in sufficient time to enable manufacturers to comply with it by October 1, 1994, the agency has concluded that a longer extension would be inappropriate.

Issued on: December 21, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–31390 Filed 12–22–92; 3:34 pm]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC–43 (Sub-No. 20)]

Petition To Amend Lease and Interchange of Vehicles Regulations—Household Goods Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served November 9, 1992 (57 FR 53463, November 10, 1992), the Commission requested comments by December 10, 1992, on its proposal to amend written lease requirements by adding language explaining the intent of existing regulations applicable to household goods motor carriers. By petitions filed December 9, 11 and 17, 1992, respectively, the Institute for Injury Reduction (IIR), Dr. Salwa H. Hanna, M.D., and Congresswoman Pat Schroeder request extensions of the comment due date. IIR and Dr. Salwa request 60-day extensions, and Congresswoman Schroeder requests a 30-day extension. IIR states it needs additional time due to the press of its seasonal Toy Safety/Injury Prevention activities. Petitioners all state they have not had an opportunity to fully review the proposal and did not become aware of the rulemaking proposal until very recently.

By letter filed December 10, 1992, Senator Bob Graham filed a request on behalf of Donna Michaud-Berger. Ms. Michaud-Berger's comments were filed with the Commission on December 8, 1992. Accordingly, Senator Bob Graham's extension request is moot.

In view of the number of persons seeking an extension, and the Commission's interest in permitting all interesting persons to participate, a 60-day extension will be granted.

DATES: Comments are due on February 8, 1993.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. MC–43 (Sub-No. 20), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Jessie Hodge, (202) 927–5302 or Richard Felder, (202) 927–5610. [TDD for hearing-impaired: (202) 927–572.]

Decided: December 17, 1992.

By the Commission.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31554 Filed 12–28–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672, 675, and 676

[Docket No. 921114–2314]

RIN 0648–AD19

Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands; Limited Access Management of Fisheries off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This action corrects a proposed rule that appeared in the Federal Register on December 3, 1992 (57 FR 57130). The proposed rule would allocate fishing privileges for Pacific halibut in and off of Alaska, and would implement proposed Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering

Sea and Aleutian Islands (BSAI) Area and proposed Amendment 20 to the FMP for Groundfish of the Gulf of Alaska (GOA). This correction is necessary to inform the public of editorial errors made in the proposed rule, and to more accurately reflect the intent of the North Pacific Fishery Management Council (Council) in recommending this individual fishing quota (IFQ) management regime to the Secretary of Commerce.

DATES: Comments must be received at the following address no later than January 11, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel, or delivered to 9109 Mendenhall Road, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at (907) 586–7228.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the Federal Register on December 3, 1992 (57 FR 57130), that would allocate future total catch quotas of Pacific halibut and sablefish among individual fishermen. Each quota share (QS) would represent a transferable harvest privilege, within specified limitations, and could be converted annually into an IFQ. This correction is necessary to inform the public of editorial errors made in the proposed rule. These errors resulted primarily from oversight in drafting and reviewing proposed rule text as evidenced by comparison with the Council's motion to approve the IFQ program and the council's proposed FMP amendment language.

The published text under Vessel Categories on page 57134, second column, incorrectly indicates that QS would be assigned to only one vessel category. However, a person could qualify for QS in more than one vessel category in different areas. In addition, persons who owned or leased two or more vessels in different vessel categories during their most recent year of participation during the qualification years would have QS allocated in separate vessel categories in proportion to their catch history in those categories. This provision is clearly stated in the Council's motion, proposed FMP amendment text, and the proposed rule text at § 676.20(c)(6). The incorrect language was published due to drafting oversight (see paragraph 1 below).

The published text under Limits on IFQ Harvests by Vessels on page 57137, third column, incorrectly indicates one-half of one percent. The originally published text is not consistent with the language of the Council's motion which states one percent in area 2C. Hence, this correction is necessary to implement Council intent accurately and correct a drafting error (see paragraph 2 below). To be consistent with this noted correction, the second column on page 57150 should also refer to one percent in area 2C (see paragraph 6 below).

The incorrect figures of 50,000 pounds and 23 mt used in the example on page 57138, first column, resulted from calculations using the incorrect one-half of one percent noted in the paragraph above. The example weights should be recalculated to be 100,000 pounds and 45 mt (see paragraph 3 below).

The drafting error under the definition of Sablefish CDQ Reserve on page 57145, first column, resulted from confusing 12 percent, which is used in a different context relevant to the sablefish community development quota (CDQ), with 20 percent. The proposed FMP amendment text states that 20 percent of the sablefish fixed-gear total allowable catch (TAC) should be withheld for purposes of the CDQ. Of the CDQ amount, not more than 12 percent should be allocated to a single community. This correction will make the proposed definition consistent with Council intent and with related proposed rule and preamble text (see paragraph 4 below).

Under paragraph (c) Assignment of QS to vessel categories on page 57148, first column, 1985 is changed to read 1988. This is an editorial change that makes the proposed rule text internally consistent. If a person's most recent year of making fixed gear landings of groundfish or halibut was prior to 1988, then that person would not qualify for an allocation of QS and the assignment of QS to a vessel category would be moot (see paragraph 5 below).

In rule document 92–29193 beginning on page 57130 in the issue of Thursday, December 3, 1992, make the following corrections:

1. On page 57134, second column, under Vessel Categories, the first sentence should read: "Each person eligible to receive QS would have it assigned to one or more of four vessel categories."

2. On page 57137, third column, under Limits on IFQ Harvests by Vessels, second paragraph, the second sentence should read: "In regulatory area 2C, the vessel restriction would limit harvests to no more than one percent of the halibut catch limit for this area."

3. On page 57138, first column, the first sentence should read: "Therefore, the vessel catch limit under the proposed rule would have been 100,000 pounds (45 mt)."

§ 676.11 [Corrected]

4. On page 57145, first column, under the definition of Sablefish CDQ Reserves, the first sentence should read: "*Sablefish CDQ Reserve* means 20 percent of the sablefish fixed gear TAC for each subarea in the Bering Sea and Aleutian Islands management area for which a sablefish TAC is specified."

§ 676.20 [Corrected]

5. On page 57148, first column, under Assignment of QS to vessel categories, paragraph (c), the first sentence should read: "Each qualified person's QS will be assigned to a vessel category based on the length of vessel(s) in which that person made fixed gear landings of groundfish or halibut in the most recent calendar year during the period 1988 through September 25, 1991, and the product type landed."

676.22 [Corrected]

6. On page 57150, second column, under Vessel limitations, paragraph (h)(1), lines 4 and 5 should read: "* * * used to harvest more than one percent (0.01) of the halibut catch limit * * *"

Dated: December 22, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–31561 Filed 12–23–92; 12:18 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 250
Tuesday, December 29, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Compartment 26 Salvage Project From Appeal

AGENCY: USDA Forest Service, Northern Region.

ACTION: Notification that a timber salvage project to recover insect-killed timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic in the Tenmile Creek drainage (Compartment 26) on the Rexford Ranger District, Kootenai National Forest, has killed approximately 60 percent of the lodgepole pine within the drainage. The remaining lodgepole pine is dying or has a high risk of attack. In 1992, the Rexford District Ranger proposed a timber sale salvage project to recover dead and dying timber, construction of one-half mile of permanent road, and reforestation of harvested areas. The District Ranger has determined, through an environmental analysis documented in the Compartment 26 Salvage Project Environmental Assessment (EA), that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber, reduce the risk of catastrophic wildlife, and reduce the risk of mountain pine beetle infestation in adjacent healthy timber stands.

EFFECTIVE DATE: Effective on December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917.

SUPPLEMENTARY INFORMATION: A mountain pine beetle epidemic has occurred in the Tenmile Creek drainage (Compartment 26) on the Rexford Ranger District, Kootenai National Forest during the last several years. The Tenmile drainage is approximately 21 miles southwest of Eureka, Montana. The project area is located within Management Area 12 as designated by the Kootenai Forest Plan, September 1987, as suitable timberland with both big game summer habitat and timber management goals. Approximately 17 percent of the suitable timberland within Compartment 26 consists of lodgepole pine timber of which 60 percent has been killed by mountain pine beetles. The remaining 40 percent of lodgepole pine is dying or at high risk of being infested.

In January 1991, the Rexford District Ranger proposed timber harvest within the Tenmile area, but after site surveys decided to modify the proposal in 1992 to include only the salvage harvest of lodgepole pine stands killed by insects and stands that are dying or have a high risk of being attacked by mountain pine beetle. This proposal is designed to meet the following needs: (1) Improve long-term timber growth and productivity by reforesting the affected area with coniferous species less susceptible to insect damage; (2) contribute to a continuing supply of timber for industry by salvaging merchantable timber products before they deteriorate in value; (3) reduce the potential for future pine beetle infestations by implementing integrated pest management prescriptions; (4) reduce the risk of catastrophic wildfire in stands killed by the beetle infestation by reducing fuel loading; and (5) expediting the re-establishment of coniferous species to provide security for wildlife and watershed protection by harvesting, site preparation, and planting.

An interdisciplinary team was convened and scoping began in January 1991. Environmental issues were identified and served as the foundation for the environmental analysis disclosed in the EA. Five alternatives including the proposed action and "no action" were analyzed. Estimated salvage of commercial sawtimber ranges from no salvage or rehabilitation activities to salvage of 6.4 million board feet of timber and rehabilitation of 428 acres affected by the insect infestation.

The selected alternative includes three major actions: (1) Salvage of 6.4 million board feet of dead, dying, and high risk sawtimber on 428 acres; (2) planting 373 acres to mixed conifer species, and naturally regenerating 55 acres; and (3) construction of one-half mile of permanent road to provide access to stands being harvested, to facilitate removal of sawtimber, and for long-term stand tending needs to maintain forest health and productivity including access for fire suppression.

The Compartment 26 Salvage Project is designed to accomplish the objectives as quickly as possible to minimize risk of additional tree mortality from mountain pine beetles, reduce the potential for catastrophic wildfire, and to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal: Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Compartment 26 Salvage EA and the District Ranger's Decision notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 under CFR part 217.

Dated: December 7, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92–30956 Filed 12–28–92; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, January 12–13, 1993 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 12, 1993

9–11:30 am Rulemaking Work Group (closed meeting)
1–2 pm Technical Programs Committee
2:15–3:15 pm Planning and Budget Committee
3:30–4:30 pm Executive Committee

Wednesday, January 13, 1993

10–12 pm Board Meeting

ADDRESSES: The meetings will be held at: Holiday Inn Crowne Plaza, Metro Center, Salon B, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14

SUPPLEMENTARY INFORMATION: At its business meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the November 18, 1992 Board Meeting.
- Executive Director's Report.
- Report on Use of Extraordinary Work.
- Proposed Supplemental Standards of Ethical Conduct for Board Members and Employees.
- Directive on Financial Disclosure Reports.
- Complaint Status Report.
- Progress Report on Technical Program Projects and Technical Assistance and Research Contracts.
- Draft Statement of Work for Research on Detectable Warnings.
- Status Report on Fiscal Year 1993 Budget.
- Status Report on Fiscal Year 1994 Budget.
- Report on Technical Bulletins and Telecommunications Study.
- Status Report on State and Local Government Facilities NPRM; Detectable Warnings NPRM; and Automated Teller Machines Final Rule (closed).
- Recreation Access Advisory Committee Charter and Federal Register Notice (closed).
- Children's Environments ANPRM (closed).
- Letter from Chemical Specialties Manufacturers Association on Slip Resistant Surfaces (closed).
- ADA Rulemaking Agenda and Timeframes (closed).

Some meetings or items may be closed to the public as indicated above. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 92–31434 Filed 12–28–92; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with November anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, from interested parties as defined in §§ 353.2(k) and 355.2(i) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with November anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than November 30, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Japan:	
Bicycle Speedometers, A–588–038, Cateye Co., Ltd.	11/1/91–10/31/92
Light Scattering Instruments, A–588–813, Otsuka Electronics	11/1/91–10/31/92
Titanium Sponge, A–588–020, Showa Denko K.K.	11/1/91–10/31/92
Countervailing duty proceedings	
Argentina:	
Oil Country Tubular Goods, C–357–403	1/1/91–12/31/91

In addition, in accordance with § 353.25 of the Commerce Regulations, the following firm has requested revocation from the antidumping duty order.

Japan:
Titanium Sponge, A–588–020, Showa Denko K.K.

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: December 15, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 92–31459 Filed 12–28–92; 8:45 am]

BILLING CODE 3510–DJ–M

[A–588–035]

Cadmium From Japan; Determination not to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke the antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on cadmium from Japan.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an

antidumping duty order or finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation (19 CFR 353.25 (d)(4) (1992)). We had not received a request to conduct an administrative review of the antidumping finding on cadmium from Japan (37 FR 15700, August 4, 1972) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on August 3, 1992, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of the intent to revoke to each interested party on the Department's service list.

On August 27, 1992, and August 31, 1992, the Non-ferrous Metals Producers Committee (NFMPC), the legal successor to the Lead-Zinc Producers Committee, the original petitioner, and the Zinc Corporation of America, an interested party, objected to our intent to revoke this finding. On September 9, 1992 NFMPC confirmed that they are the legal successor to the original petitioner, the Lead-Zinc Producers Committee. On November 24, 1992, the Department requested that NFMPC and ZCA provide the certifications specified in 19 CFR 353.31(i). On December 2 and 3, NFMPC and ZCA, respectively provided these certifications. Therefore, because we received objections to the revocation, we no longer intend to revoke this finding.

Dated: December 18, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-31454 Filed 12-28-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-357-807]

Preliminary Determination of No Sales at Less Than Fair Value: Ferrosilicon From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-1776.

Preliminary Determination: We preliminarily determine that ferrosilicon from Argentina is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act).

Case History

Since the notice of initiation on June 11, 1992 (57 FR 27021, June 17, 1992), the following events have occurred.

On July 6, 1992, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On July 7, 1992, the U.S. Embassy in Buenos Aires notified the Department that there were no exports of ferrosilicon from Argentina during the "standard" period of investigation (POI) in this case. The embassy also indicated that only one company, Industrias Siderurgicas Grassi (Grassi), had exported to the United States during the year prior to the initiation of the investigation (one export in July 1991 and one in October 1991). Consequently, the Department designated Grassi as the respondent and decided to extend the POI back six months—to June 1991 through May 1992—in order to capture Grassi's last known exports. (See memorandum dated July 21, 1992, from Richard W. Moreland, Director, Office of Antidumping Investigations, to Francis J. Sailer, Deputy Assistant Secretary for Investigations (the "July 21 memorandum").)

On July 17, 1992, the Department presented its questionnaire to Grassi.

On July 27, 1992, counsel for Grassi informed the Department that the dates of sale for Grassi's July and October exports were in February and May 1991, respectively, placing both shipments outside the expanded POI.

On July 31, 1992, the Department decided that it was not appropriate to extend the POI in this investigation beyond one year. (See memorandum dated July 31, 1992, from David L. Binder, Director, Antidumping Division II, Office of Antidumping Investigations, to Richard W. Moreland, Acting Deputy Assistant Secretary for Investigations (the "July 31 memorandum").) For further discussion of this topic, see the "Period of Investigation" section of this notice.

On August 5, 1992, Grassi submitted a response to section A of the questionnaire in which it reported that had no sales to the United States during the POI. On August 12, 1992, the Department informed Grassi that it would not be required to file a section B or C response to the questionnaire.

On August 14, 1992, we issued a supplemental questionnaire to Grassi regarding its response to section A. We received the response to this questionnaire on August 21, 1992.

On October 5, 1992, petitioners requested that the Department postpone the preliminary determination in this investigation until not later than December 18, 1992. At this time, petitioners also requested that the Department extend the POI back beyond one year in order to capture sales made during prior months.

On October 9, 1992, we granted petitioners' postponement request. However, as petitioners did not present new and compelling reasons to extend the POI further, we did not change the already once-extended POI established for Grassi. For further discussion of the appropriate POI in this case, see the "Period of Investigation" section of this notice.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combing silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages, by weight, of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy

containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the *Harmonized Tariff Schedule of the United States* (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is June 1, 1991, through May 31, 1992.

Prior to issuing the questionnaire in this case, the Department received information from the U.S. Embassy in Buenos Aires that no Argentine company had exported ferrosilicon to the United States during the Department's "standard" six-month POI, and that only Grassi had exported during the year prior to the initiation of the investigation. Specifically, the embassy reported that Grassi had two exports to the United States, one in July 1991 and one in October 1991. Because these exports were made within a year of the date of the initiation of this investigation (June 11, 1992), the Department determined that they were sufficiently current to serve as a basis for a dumping investigation. (See the July 21 memorandum.)

However, on July 27, 1992, Grassi informed the Department that the dates of sale for its July and October exports were in February and May 1991, respectively, placing both shipments outside the expanded POI. Consequently, the Department had to decide whether the POI should be extended further, beyond one year.

In past cases, the Department has extended the POI under various circumstances indicating that the normal six-month period did not adequately reflect the sales practices of the firms subject to investigation. For example, the Department has extended the POI where it found that one of the following conditions existed: (1) Seasonality (*e.g., Final Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers from Colombia* (52 FR 6842, March 5, 1987)), (2) sales activity during the period which was not representative due to the existence of long-term contracts (*e.g., Final Determination of Sales at Less Than Fair Value; Certain Forged Steel Crankshafts from the United Kingdom* (52 FR 32951, September 1, 1987)), (3) sales activity which was unusually depressed (*e.g., Certain Iron Metal Castings from India; Antidumping: Final Determination of Sales at Less Than Fair Value* (46 FR 39869, August 5, 1981), where the depression in sales lasted for a short period within the normal POI), and (4) circumstances peculiar to the industry in question (*e.g., Offshore Platform Jackets and Piles from Japan: Final Determination of Sales at Less Than Fair Value* (51 FR 11788, April 7, 1986), where the typical sales were of special order or customized merchandise with extremely long production times).

In this case, Petitioners have not provided any evidence that the above-cited reasons for extending the POI exist. In addition, this case is similar to other cases where the Department has not extended the POI despite petitioner's request. For example, the Department made determinations of no sales at less than fair value, rather than expanding the POI to capture pre-period sales, in both *Electrolytic Manganese Dioxide from Ireland; Final Determination of No Sales at Less Than Fair Value* (54 FR 8776, March 2, 1989) (*EMD*) and *Notice of Preliminary Determination of Sales at Not Less Than Fair Value; High-Tenacity Rayon Filament from the Netherlands* (57 FR 6091, February 20, 1992). In both of those cases, the last entry into the United States was made more than 12 months prior to the filing of the petition.

In a recent decision, the U.S. Court of International Trade upheld the Department's decision not to extend the POI in the *EMD* case. *Kerr-McGee Chemical Corp.* v. *United States*, 739 F. Supp. 613, 622–24 (CIT 1990).

Given the Department's past practice on this issue, as well as the fact that the sales in question were made more than one year prior to the initiation of the investigation, we determined that there are no reasons on the record for this investigation that would justify extending the POI backward further. For further discussion, see the July 31, 1992 memorandum.

Fair Value Comparisons

In order to determine whether sales of subject merchandise to the United States by a respondent were made at less than fair value, the Department compares the United States prices to foreign market value. Grassi reported no sales of subject merchandise during the POI. Accordingly, there are no United States prices with which to compare to foreign market value and, thus, no dumping margins.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry before the later of 150 days after the date of this preliminary determination or 75 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38 (c) and (d), case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 1, 1993, and rebuttal briefs no later than February 7, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 11, 1993, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: December 18, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–31455 Filed 12–28–92; 8:45 am]

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[A-834-804, A-821-804, A-823-804]

Preliminary Determinations of Sales at Less than Fair Value: Ferrosilicon From Kazakhstan, the Russian Federation, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0371.

Preliminarily Determination: We preliminarily determine that ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the Act), as amended. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on June 11, 1992 (57 FR 27021, June 17, 1992), the following events have occurred.

On June 23, 1992, we issued an Antidumping Survey to the Government of Kazakhstan via the U.S. Embassy in Alma Ata, Kazakhstan, and the Embassies of the Russian Federation and Ukraine, in order to identify the appropriate exporters of ferrosilicon in these three countries.

On July 1, 1992, we received a letter from the Embassy of the Russian Federation returning the Antidumping Survey. The letter indicated that the Embassy of the Russian Federation would be unable to respond and that the most appropriate and effective channel of submission would be through the U.S. Embassy in Moscow. As such, on July 6, 1992, we forwarded the Antidumping Survey to the American Embassy in Moscow and requested that it be forwarded to the appropriate representatives of the Government of the Russian Federation.

We received a response to our Antidumping Survey, dated July 22, 1992, from the Embassy of Ukraine. The letter contained a translation of a latter sent to the Embassy of Ukraine by the Ministry of Foreign Economic Relations and Trade of Ukraine (MOFERT Ukraine). The letter provided volume data, a statement that the United States has not been a purchaser of, nor an export destination for, ferrosilicon exported from Ukraine, and a statement that Ukraine is not aware of further use or terms and prices, in cases of the resale, of Ukrainian origin ferrosilicon. The letter also stated that no shipments of ferrosilicon took place in 1992.

On July 6, 1992, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On July 8, 1992, we received a letter of appearance for Minerais U.S. Inc. and Societe Anonyme des Minerais (Minerais) in the investigation involving Kazakhstan. Minerais later stated that as an independent reseller of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine, it is the exporter whose U.S. sales are relevant to these investigations.

On July 8, 1992, we also received a cable from the American Embassy in Alma Ata stating that the Antidumping Survey was delivered to the Government of Kazakhstan.

On July 22, we received a cable from the American Embassy in Moscow stating that the Embassy would deliver the Antidumping Survey to the person designated by the Russian Ministry of Industry. On July 23, 1992, we received a cable from the American Embassy in Moscow proposing that the deadline for response to the Antidumping Survey be extended to take advantage of trade law seminars conducted by Department of Commerce personnel in Russia scheduled for August 1992.

On July 27, 1992, we issued a questionnaire to Minerais in the investigation involving Kazakhstan. On August 24, 1992, and September 8, 1992, we received responses to sections A, and B and C, respectively, to the Department's questionnaire. We issued deficiency letters on September 4 and September 22, 1992. We received the section A deficiency response on September 23 and the section B and C deficiency response on October 6, 1992. Minerais submitted a corrected section B and C deficiency response on October 7, 1992.

On July 29, August 5, and August 8, 1992, Department officials participating in the trade law seminars hand delivered Sections A, C, and D of the Department's questionnaire to appropriate representatives of the Governments of the Russian Federation, Kazakhstan, and Ukraine, respectively.

On August 18, 1992, we received a fax from Promsyrioimport, the primary exporter of the subject merchandise during the period of investigation from Kazakhstan, the Russian Federation, and Ukraine. The fax stated that Promsyrioimport sells its products to Minerais and, as such, that Minerais should respond to all matters in these investigations. Promsyrioimport also submitted volume and value data and sample contracts.

On September 4, 1992, we received a request from Promsyrioimport to extend the response deadline for the questionnaire in the investigation involving the Russian Federation. On September 8, 1992, we informed Promsyrioimport that the extension was granted and that the Russian questionnaire response was due on September 25, 1992. On September 17, 1992, we also extended until September 25, 1992, the deadline for the questionnaire responses in the Kazakh and Ukraine investigations. After numerous unsuccessful attempts at faxing the extension letter to the Government of Kazakhstan, we mailed the extension letter to the Government of Kazakhstan on September 18, 1992.

On September 25, 1992, Minerais submitted a letter of appearance in the investigation involving the Russian Federation. The letter indicated that because information was the same, Minerais' responses to section B of the Kazakh questionnaire was sufficient for the Russian investigation as well.

On September 25, 1992, Shearman and Sterling, counsel for Minerais, submitted a response to section A of the questionnaire and stated that this information was being submitted at the request of Promsyrioimport. Shearman and Sterling submitted this response to the official files of the Kazakh, Russian, and Ukraine investigations.

On September 25, 1992, Shearman and Sterling submitted another response to section A of the questionnaire and stated that this information was being submitted at the request of Ermak Ferro Alloys Works (Ermak), a Kazakh producer of ferrosilicon, the Government of Kazakhstan, and Promsyrioimport in the investigation involving Kazakhstan. This response lacked the certifications required by 19 CFR 353.31(i). Shearman and Sterling later informed us that they only represent Minerais, not the parties named in the questionnaire responses.

On October 1, 1992, we prepared letters informing the Governments of Kazakhstan and the Russian Federation that the questionnaire responses submitted were incomplete. We stated that complete, consolidated responses, including sections A, C, and D, were due by October 8, 1992, a then twice-extended deadline. As we were unable to fax the letters to either party, they were sent via the American Embassies in Alma Ata and Moscow.

On October 5, 1992, petitioners alleged that Minerais' third country sales of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine

were being sold at below the cost of production (COP). On October 28, 1992, we initiated a COP investigation of Minerais' sales of ferrosilicon to Japan. For details of analysis and parties' submissions, see analysis and recommendation memorandum dated October 28, 1992. (See also "COP" section of this notice.) On October 29, 1992, we served copies of the COP questionnaire on the Governments of Kazakhstan, via the American Embassy in Alma Ata, the Russian Federation, and Ukraine. We also requested that Minerais submit its profit and selling, general, and administrative costs for ferrosilicon purchased from each country.

On October 30, 1992, Minerais requested that we reconsider and rescind the COP investigation with regard to Kazakhstan. On November 6, 1992, Minerais again requested that we rescind the COP investigations with regard to Kazakhstan, the Russian Federation, and Ukraine. On November 16, 1992, petitioners submitted opposition to Minerais' November 6, 1992, submission. On November 18, 1992, Minerais submitted opposition to petitioners' November 16, 1992, comments.

On October 8, 1992, Minerais submitted a letter informing us that the Governments of Kazakhstan, the Russian Federation, and Ukraine would not respond to the Department's (original) questionnaire.

On October 8, 1992, Promsyrioimport informed us that the section A questionnaire response it submitted was complete. Promsyrioimport stated that because it has never sold to the United States, it is unable to submit a response to section C, and because Promsyrioimport is the trading organization, it is not aware of the information needed to respond to the request for factors of production information.

On October 16, 1992, we published a notice of postponement of the preliminary determinations in these investigations in the **Federal Register** (57 FR 47449) until not later than December 18, 1992.

On December 7, 1992, we received notification from the American Embassy in Alma Ata that they had just received the COP questionnaire (issued on October 29, 1992) and, therefore, had not yet passed it on to the Government of Kazakhstan.

On December 7, 1992, we received a letter from Promsyrioimport stating that, because it is a state trading export/import organization, its "response to section D is not appropriate".

Scope of Investigations

The product covered by these investigations is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of these investigations is dispositive.

Class or Kind Allegation

On October 2, 1992, Minerais requested that the Department identify two separate classes or kinds of merchandise: (1) Ferrosilicon with a silicon content of 55 percent silicon or less and (2) ferrosilicon containing more than 55 percent silicon. Minerais alleged that if two classes or kinds of merchandise were identified, petitioners would not have standing with respect to low silicon content ferrosilicon. On December 10, 1992, we received comments from petitioners in opposition to Minerais' request. Given that petitioners' comments were submitted only eight days before the deadline for the preliminary determinations, we have had insufficient time in which to consider this issue. We will, however, address this issue in the final determinations.

Period of Investigation

The period of investigation (POI) is December 1, 1991, through May 31, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise in these investigations. In deciding to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In these cases, as noted in the "Case History" section of this notice, exporters of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine did not adequately respond to the Department's requests for information.

Kazakhstan

As detailed in the "Case History" section of this notice, the Department made numerous attempts to obtain adequate questionnaire responses from the Government of Kazakhstan. However, the information which has been provided is inadequate. We have granted every possible extension of time to give the Government of Kazakhstan sufficient time to prepare the information requested. The section A questionnaire response we received is inadequate on its face in that it was not certified by Ermak (the producer), Promsyrioimport (the trading company) or the government of Kazakhstan. The response was sent to the Department by Shearman and Sterling, counsel for Minerais, apparently at Minerais' request.

Consequently, because the Government of Kazakhstan did not produce the information requested, we based our preliminary determination in this investigation on BIA. As BIA, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

The Russian Federation

As detailed in the "Case History" section of this notice, the Department made numerous attempts to obtain adequate questionnaire responses from the Government of the Russian Federation. However, we did not receive adequate information. We have granted every possible extension of time to give the Government of the Russian Federation sufficient time to produce the information requested. We solicited factors of production information both as part of the original questionnaire (section D) and in the COP questionnaire. We did not receive factors of production information from any party in the Russian Federation. The section A questionnaire response we received from Promsyrioimport does not represent a complete questionnaire response. We did not receive responses to sections C, D, or to the COP questionnaire. Moreover, in addition to the request as part of the original questionnaire, we made a specific request that the Government of the Russian Federation indicate whether the section A response submitted by Promsyrioimport represented a consolidated response. The Government of the Russian Federation did not respond to this request.

Consequently, because the Government of the Russian Federation did not produce the information requested, we based our preliminary determination in this investigation on BIA. As BIA, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Ukraine

As detailed in the "Case History" section of this notice, the Department made numerous attempts to obtain adequate questionnaire responses from the Government of Ukraine but were unable to obtain more than a response to the Antidumping Survey. The information which has been provided is inadequate. We have granted every possible extension of time to give the Government of Ukraine sufficient time to produce the information requested. We solicited factors of production information both as part of the original questionnaire (section D) and in the COP questionnaire. We did not receive factors of production information from any party in Ukraine. Nor did we receive a response to any section of the original questionnaire.

Consequently, because the Government of Ukraine did not produce the information requested, we based our preliminary determination in this investigation on BIA. As BIA, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Minerais

As noted in the "Case History" section of this notice, Minerais submitted timely questionnaire responses in the Kazakh investigation. Minerais entered the same responses onto the record of the Russian investigation at a later date. Minerais purchases ferrosilicon from Promsyrioimport, the primary exporter of the subject merchandise from Kazakhstan and the Russian Federation to the United States during the period of investigation, then exports the merchandise to its U.S. affiliate. Minerais claimed that because it acted as an independent reseller in an intermediate country, foreign market value (FMV) should be based on Minerais' sales in third-country markets, not on a factor of production analysis. Minerais claims that it should be treated as the respondent in the Kazakh and Russian investigations and that the failure of the governments of these countries to respond to requests for information should not affect the analysis of Minerais' sales.

In order for Minerais to be treated as an intermediate country reseller pursuant to section 773(f) of the Act, the five criteria listed in section 773(f) must be satisfied. In this case two of the five criteria have not been satisfied.

(1) Regarding section 773(f)(2) which states the "producer of the merchandise does not know (at the time of the sale to such reseller) the country to which such reseller intends to export the merchandise", we did not receive a complete response from the governments with which to determine this point. The Government of Kazakhstan did not provide factual certification or verifiable information that the government does not know to where the merchandise is being exported. The Government of the Russian Federation never certified Promsyrioimport's submissions as being on behalf of the Government of the Russian Federation as requested by the Department.

(2) Regarding section 773(f)(4) which states "the merchandise enters the commerce of such country but is not substantially transformed in such country", we have determined that the merchandise does not "enter the commerce" of the intermediate country, Finland. Minerais has stated that the merchandise enters a bonded warehouse in Finland. The Department has determined that entrance into a bonded warehouse is not entering the commerce of a country. The fact that some of this merchandise is subsequently resold in Finland does not demonstrate that the merchandise which is exported to the United States enters the commerce of Finland.

Cost of Production Investigations

We preliminarily determine that the COP investigations and comments thereon have become moot and need not be further addressed in these investigations. In a nonmarket economy situation involving sales from a country which qualifies as an intermediate country reseller, a COP allegation can be made against the sales which are the basis for FMV, in this case, Minerais' sales to Japan. Because the reseller does not produce the merchandise, we must determine the cost of production using the actual factors of production of the nonmarket economy producer to establish cost in accordance with section 773(b) of the Act. Minerais' acquisition price from the Kazakh producer is not the cost of production of the merchandise. However, since Minerais does not qualify for treatment as an intermediate country reseller its sales to Japan are irrelevant and a COP investigation is therefore unnecessary. The FMV for all of the sales during the POI must be based on factors of production in Kazakhstan, the Russian Federation, and Ukraine, pursuant to the nonmarket economy methodology in section 773(c) of the Act.

Standing Allegation

On October 1, 1992, we received a letter from Keokuk Ferro-Sil, Inc. (Keokuk), a ferroalloy plant in Iowa that produces 50 percent ferrosilicon, stating opposition to the antidumping investigations of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine. On October 7, 1992 we issued standing questionnaires to petitioners and Keokuk. We received responses on October 28 and October 29, 1992. We will conduct a thorough analysis of this information and consider written comments filed by all parties and comments made at a public hearing for the final determinations.

Fair Value Comparisons

To determine whether sales of ferrosilicon from Kazakhstan, the Russian Federation, the Ukraine were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on BIA, which was information supplied by petitioners. Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon from the former Union of Soviet Socialist Republics (U.S.S.R.) for the period of September 1991 to February 1992. The available import statistics did not differentiate U.S. imports of the subject merchandise from the former republics of the U.S.S.R.

Ferrosilicon is sold through the same centralized exporting company. All ferrosilicon exported from Kazakhstan, the Russian Federation, and Ukraine is priced for export by Promsyrioimport. Thus, the Customs value shown for imports from these countries reflects the prices actually paid for ferrosilicon sold for exportation. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Foreign Market Value

We based FMV on BIA, which was information provided by the petitioner. Petitioners contend that the FMV of Kazahk-Russian-, and Ukrainian-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy (NME) countries. In accordance with section 771(18)(c) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. This presumption covers the geographic area of the former U.S.S.R., each part of which retains the previous NME status of the former U.S.S.R. Therefore, Kazakhstan, the Russian Federation, and Ukraine will continue to be treated as NMEs until this presumption is overcome (see, Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan, 57 FR 23380 (June 3, 1992)). In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country).

Petitioners calculated FMV on the basis of the valuation of the factors of production for AIMCOR, a U.S. producer of ferrosilicon. In valuing the factors of production, petitioners used Mexico as a surrogate country. For purposes of the initiation, we accepted Mexico as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used AIMCOR's factors for raw material and processing material inputs, electricity, and labor. The raw material, energy and labor factors for producing ferrosilicon are based on AIMCOR's actual experience from October 1990 through September 1991. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by AIMCOR.

Petitioners based labor and electricity values on 1990 wage rates and 1991 energy rates in Mexico. Petitioners based the value of raw material costs for steel scrap, quartzite, coke, bituminous coal and charcoal on 1991 f.a.s. export values from the United States to Mexico. Petitioners added an amount for foreign inland freight expense to Mexico for these raw materials. Petitioners based the value of raw material costs of electrode paste on a delivered import price from Brazil to Mexico. Petitioners based raw material costs for diesel oil, woodchips, water and other processing materials on its own average costs from October 1990 through September 1991.

Pursuant to section 773(c) of the Act, petitioners added the statutory minima of 10 percent for general expenses and eight percent for profit, and an amount for shipment preparation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percent
All Manufacturers/producers/exporters	104.18

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If any of our final determinations are affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 5, 1992, and rebuttal briefs no later than February 12, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearings will be held on February 16, 1992, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673(f)) and 19 CFR 353.15(a)(4).

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–31456 Filed 12–28–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–307–807]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1776.

PRELIMINARY DETERMINATION: We preliminarily determine that ferrosilicon from Venezuela is being, or likely to be, sold in the United States at less than fair value, as provided in section 733 of the

Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on June 11 1992 (57 FR 27021, June 17, 1992), the following events have occurred.

On July 6, 1992, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On July 17, 1992, the Department presented its questionnaire to CVG-Venezolana de Ferrosilicio C.A. (CVG–FESILVEN), the Venezuelan producer who accounted for at least 60 percent of known sales to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b).

CVG–FESILVEN submitted a response to section A of the questionnaire on July 31, 1992, and a response to sections B and C of the questionnaire on August 21, 1992. On August 28 and September 24, 1992, we issued supplemental questionnaires to CVG–FESILVEN. We received the response to the first of these questionnaires on September 11, 1992, and the responses to the second on September 30 and October 2, 1992.

On October 5, 1992, petitioners requested a postponement of the preliminary determination. We granted this request, and on October 9, 1992, we postponed the preliminary determination until December 18, 1992.

On October 30, 1992, petitioners submitted a timely allegation that CVG–FESILVEN had made sales in the home market below the cost of production (COP). On November 19, 1992, we initiated a COP investigation of CVG–FESILVEN's home market sales and issued a COP questionnaire to CVG–FESILVEN.

On December 8, 1992, CVG–FESILVEN requested that the Department investigate whether certain of the petitioners in this investigation (AIMCOR; Alabama Silicon, Inc.; American Alloys, Inc.; Globe Metallurgical, Inc.; and Silicon Metaltech, Inc.) have standing to file the petition on "behalf of" the U.S. ferrosilicon industry. For further discussion of this topic, see the "Standing" section of this notice.

On December 18, 1992, we received the response to the COP questionnaire. Although this information was not received in time to use for purposes of the preliminary determination, we will consider it for the final determination.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Standing

On December 8, 1992, CVG–FESILVEN requested that the Department investigate whether certain of the petitioners in this investigation have standing to file the petition on "behalf of" the U.S. ferrosilicon industry. In this request, CVG–FESILVEN stated that one U.S. producer has affirmatively opposed this proceeding. However, this statement is incorrect. To date we have received a standing challenge from a domestic producer only in the companion antidumping investigations involving Kazakhstan, Russia and Ukraine and are investigating petitioners' standing in those cases. (See Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon From Kazakhstan, Russia and Ukraine, published elsewhere in this issue of the **Federal Register**.) We note that these investigations are separate and disinct from this proceeding. Nonetheless, because the petitioners in these cases are the same, our findings in the Kazakh, Russian and Ukrainian investigations may apply here as well.

Period of Investigation

The POI is December 1, 1991, through May 31, 1992.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. We made similar merchandise comparisons on the basis of: (1) Silicon content range, (2) grade, and (3) sieve size, as described in appendix V of the questionnaire.

In its response, respondent proposed matching products using that three characteristics noted above, plus a fourth characteristic: Exact silicon content. However, we had already considered comments by all parties on this matter and determined that matching using only the three characteristics in appendix V was the most appropriate method. Therefore, we matched according to appendix V.

In addition, respondent designated certain matches as "identical," based on the four criteria it used to determine the most similar comparisons. However, appendix V requires that identical matches involve products which are identical in all physical characteristics, not just those identified in the appendix. As respondent did not claim that the products compared were identical in any physical characteristics other than the four noted above, we treated these matches as "similar" and revised this portion of the product concordance using the criteria outlined in appendix V.

Finally, respondent requested that we make price-to-price comparisons based on the assay weight (*i.e.*, the weight of contained silicon) of the merchandise. However, respondent failed to demonstrate that the prices, selling expenses, and movement charges involved in sales of this merchandise are based strictly on assay weight. Moreover, the sales documentation submitted in the questionnaire response

does not appear to support respondent's request. Accordingly, we made price-to-price comparisons based on the gross weight per metric ton.

Fair Value Comparisons

To determine whether sales of ferrosilicon from Venezuela to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on packed F.O.B. prices to unrelated customers. We increased USP by the amount of a price addition claimed by respondent on certain transactions. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight and pier rental charges.

In accordance with section 772(d)(1)(B) of the Act, respondent requested an addition to USP for the amount of duty drawback claimed by respondent from the Venezuelan government. We disallowed this adjustment, because not only did respondent not show that it actually received drawback on the exports in question, but also it failed to demonstrate that it had a reasonable expectation of ever receiving the drawback amounts claimed.

Foreign Market Value

In order to determine whether there were sufficient sales of ferrosilicon in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of ferrosilicon to the volume of third country sales of the same product, in accordance with section 773(a)(1)(B) of the Act. CVG–FESILVEN had a viable home market with respect to sales of ferrosilicon during the POI.

We calculated FMV based on packed F.O.T. (free on truck) prices to unrelated customers in the home market. For purposes of this preliminary determination, we excluded sales to related customers, pursuant to 19 CFR 353.45, as respondent failed to demonstrate that the prices paid by those customers were comparable to the prices paid by unrelated customers.

Pursuant to 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges. Respondent calculated U.S. credit expenses based on the period between invoicing and payment by the customer. We recalculated U.S. credit expenses based on the period between shipment from the factory and payment.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Currency Conversion

Because certified exchange rates from the Federal Reserve were unavailable, we made currency conversions based on the official monthly exchange rates in effect on the dates of the U.S. sales as certified by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of ferrosilicon from Venezuela that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

[In percent]

Manufacturer/producer/exporter	Weighted-average margin percentage
CVG-Venezolana de Ferrosilicio C.A	1.49
All others	1.49

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments with at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 10, 1992, and rebuttal briefs no later than February 16, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 17, 1992, at 1 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: December 18, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–31457 Filed 12–28–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–813]

Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2778.

FINAL DETERMINATION: We determine that certain welded stainless steel butt-weld

pipe fittings from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination on October 21, 1992, (57 FR 48018, October 21, 1992) there has been no action taken by the Department, nor have any comments been submitted on the record from any party. Petitioner in this investigation is the Flowline Division of Markovitz Enterprises, Inc. Asia Bend Company, Ltd., the only respondent in this investigation, refused to respond to our questionnaire. For a discussion of the events leading up to the Department's preliminary determination and the use of best information available (BIA) see the notice cited above.

Scope of Investigation

The products subject to this investigation are certain welded stainless steel butt-weld pipe fittings ("pipe fittings"), whether finished or unfinished, under 14 inches inside diameter. Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system. Pipe fittings come in a variety of shapes, and the following five are the most basic: "elbows", "tees", "reducers", "stub ends", and "caps". The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from these investigations. The pipe fittings subject to this investigation are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Best Information Available

Our final determination is based on the use of best information available because we did not receive a response from Asia Bend Company, Ltd. during the course of this investigation. As best information, we have used the highest margin contained in the petition.

Critical Circumstances

Petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Korea. Pursuant to section 733(e)(1) of the Act, we determined in our preliminary determination that there was a reasonable basis to believe or suspect that critical circumstances existed for imports of pipe fittings from Korea. If a final determination is affirmative, section 735(a)(3) requires us also to make a finding as to whether:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 19 CFR 353.16(a)(1)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, *Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, 52 FR 24198, June 29, 1987 and *Final Determination of Sales at Less Than Fair Value; Extruded Rubber Thread from Malaysia*, 57 FR 38465, August 25, 1992). Since we received no responses from Asia Bend to our questionnaire, we are finding, as best information available, that its sales to the United States are exporters sales price transactions. Therefore, since the margin being assigned to Asia Bend Company, Ltd., which is based on the highest margin in the petition, is above 15 percent, we determine in accordance with our practice and section 735(a)(3) of the Act that the importer knew or should have known the exporter was dumping pipe fittings from Korea.

Because the Department did not receive a response to its questionnaire, we have also relied upon best information available for determining whether there have been massive imports of pipe fittings from Korea. Prior to our preliminary determination, although requested, we received no company-specific export statistics from Asia Bend. Therefore, absent any company-specific export statistics, we examined the Commerce Department's import statistics as one possible way to measure import levels of pipe fittings from Korea. The pipe fittings subject to this investigation are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). However, as stated in our notice of initiation, threaded, grooved, and bolted fittings are excluded from this investigation. Because we are unable to determine what percentage of the volume of imports under this HTSUS subcategory are made up of non-subject merchandise, we cannot rely on the Commerce Department's import statistics for this purpose.

Since respondents has refused to provide the Department with the requested shipment data, we have assumed, as best information available, that imports were massive over a relatively short period of time. Therefore, we find that imports of pipe fittings from Korea have been massive over a relatively short period of time.

Based on our analysis, we find, pursuant to section 735(a)(3) of the Act, that critical circumstances exist for imports of pipe fittings from Korea.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of certain welded stainless steel butt-weld pipe fittings from the Republic of Korea that are entered, or withdrawn from warehouse, for consumption on or after July 23, 1992, which is 90 days prior to the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to 21.2 percent on all entries of pipe fittings from Korea. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

[In percent]

Producer/manufacturer/exporter	Weighted-average margin percentage
The Asia Bend Co., Ltd.	21.2
All other entries from Korea	21.2

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: December 18, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–31458 Filed 12–28–92; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process of revoke Export Trade Certificate of Review No. 90–00011.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Strand International, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Strand International, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on October 9, 1990 to Strand International, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§§ 325.14 (a) and (b) of the regulations). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the regulations).

The Department of Commerce sent to Strand International, Inc. on September 29, 1992 a letter containing annual report questions with a reminder that its annual report was due on November 23, 1992. Additional reminders were sent on November 24, 1992, and on December 8, 1992. The Department has received no written response to any of these letters.

On December 22, 1992, and in accordance with § 325.10(c)[2] of the Regulations, a letter was sent by certified mail to notify Strand International, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter § 325.10(c)[2] of the regulations).

If the answer demonstrates that material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)[3] of the regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (§ 325.10(c)[4] of the regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§§ 325.10(c)[4] and 325.11 of the regulations).

Dated: December 21, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–31460 Filed 12–28–92; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Pacific Fishery management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team will hold a public meeting on January 6, 1993, beginning at 10 a.m. The meeting will be held in the small conference room at the California Department of Fish and Game, 330 Golden Shore, suite 50, Long Beach, CA.

The purpose of this meeting is to discuss the status of the coastal pelagic species fishery management plan.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Dated: December 22, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–31474 Filed 12–28–92; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Notice of Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a telephone conference on January 15, 1993, beginning at 10 a.m., Pacific Standard Time. The purpose of the telephone conference is to adopt a revised budget for fiscal year 1993 which began October 1, 1992. The final fund allocations to Regional Fishery Management Councils for fiscal year 1993 are yet to be determined by the National Marine Fisheries Service

(NMFS), but should be announced prior to January 15. At its November 1992 meeting, the Council decided that its primary concern was to maintain the four remaining council meetings and the salmon and groundfish management processes. The July 1993 meeting has already been canceled because of budget limitations.

Members of the public that wish to participate in this conference may do so at the following locations:

NMFS, Northwest Region, 7600 Sand Point Way, NE, Bldg. 1, Seattle, WA 98115–6300

California Department of Fish & Game, Ninth Street, room 1205, Sacramento, CA 95814–5560

NMFS, Southwest Region, 501 West Ocean Blvd., suite 4200, Long beach, CA 90802–4213

Pacific Fishery 1416, Management Council, 2000 S.W. First Avenue, suite 420, Portland, OR 97201

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: December 22, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–31475 Filed 12–28–92; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) will hold a joint public meeting of its Law Enforcement Committee and Advisory Panel on January 12–13, 1993, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone (803) 571–4366. The meeting will begin at 1:30 p.m. on January 12 and adjourn at 5 p.m., and at 10 a.m. on January 13 and adjourn at 5 p.m.

The planned law enforcement agenda items will include discussions on the enforceability of:

(1) Allowing fishermen to possess reef fish above the bag limit when using legal gear in other fisheries, for example, possessing hook and line gear while shrimp trawling;

(2) A possible rock shrimp season closure;

(3) Rock shrimping in the Oculina Coral Bank off Vero Beach, FL;

(4) Collecting commercial rock shrimp landings;

(5) Deep-water snapper-grouper closed areas;

(6) Marine fishery reserves;

(7) Allowing multi-gear trips in the North Carolina sink net fishery; and

(8) Management options in draft Amendment #6 to the Snapper-Grouper Fishery Management Plan.

For more information contact Carrie Knight, Public Information Officer: South Atlantic Fishery Management Council: One Southpark Circle, suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: December 22, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–31473 Filed 12–28–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement list; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 28, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Cover, Protective, Life preserver
4220–00–926–9477

Nonprofit Agency: BESB Industries West Hartford, Connecticut.

Towel, Paper
7920–00–543–6492
7920–00–682–8710
7920–00–721–8884

Nonprofit Agency: Duluth Lighthouse for the Blind Duluth, Minnesota.

Carrier, Water Canteen
8465–01–314–4286

Nonprofit Agency: Human Technologies Corporation Utica, New York.

Services

Administrative Services, Marine Corps Systems Command, Quantico, Virginia

Nonprofit Agency: Didlake, Inc. Manassas, Virginia.

Janitorial/Custodial Ozark Lake Park, Pool #13 and Lake Dardanelle Area, Ozark, Arkansas

Nonprofit Agency: Abilities Unlimited of Fort Smith, Inc., Fort Smith, Arkansas.

Mailroom Operation, U.S. Army Engineer District, Prytania Street and Leake Avenue, New Orleans, Louisiana

Nonprofit Agency: Goodwill Industries of Southeastern Louisiana, Inc., New Orleans, Louisiana.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92–31450 Filed 12–28–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 28, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 17, June 12, September 18 and October 23, 1992, the Committee for Purchase from People Who are Blind or Severely Disabled published notices (57 FR 2081, 25023, 43224 and 48359) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity or services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity or services.
3. The action will result in authorizing small entities to furnish the commodity or services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity or services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Cover, Water Canteen
8465–00–753–6490

Services

Commissary Shelf Stocking and Custodial, Fort McClellan, Alabama
Commissary Shelf Stocking and Custodial, Fort Campbell, Kentucky
Food Service Attendant, Scott Air Force Base, Illinois
Janitorial/Custodial, Federal Building (Floors 1 thru 7), 230 North First Avenue, Phoenix, Arizona
Janitorial/Custodial, Scott Air Force Base, Illinois

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 92–31451 Filed 12–28–92; 8:45 am]
BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Minneapolis Grain Exchange Proposed Option on the Oats Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The Minneapolis Grain Exchange (MGE or Exchange) has applied for designation as a contract market in options on the oats futures contract. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 28, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the MGE option on the oats futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Frederick Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the MGE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the MGE, should send such comments to Jean A. Webb, Secretary, Commmodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 21, 1992.

Gerald D. Gay,
Director.

[FR Doc. 92–31430 Filed 12–28–92; 8:45 am]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary of the Army; Record of Decision (ROD) for the Development of the Armed Forces Recreation Center (AFRC) at Fort DeRussy, Waikiki, HI

AGENCY: United States Army, Department of Defense.

ACTION: Notice of Availability.

SUMMARY: This Notice of Availability (NOA) is a corrected copy of the NOA published in the Notices Section of the **Federal Register**, Volume 57, No. 225, page 54775, on November 20, 1992. The Army proponent for the proposed action is the U.S. Army Community and Family Support Center, Alexandria, Virginia, which directs the operation of the Hale Koa Hotel at Fort DeRussy. Full authority and responsibility for overall

development of Fort DeRussy as an installation lies with U.S. Army Support Command, Hawaii.

In March 1988, at the direction of Congress, the Secretary of the Army prepared a Master Plan for the AFRC at Fort DeRussy. The plan recommended the relocation of some U.S. Army Reserve units to Fort Shafter and the construction of new hotel and recreation facilities at Fort DeRussy. Studies showed a large demand for hotel accommodations in addition to the existing Hale Koa Hotel. To enhance the moral and recreation needs of the active and retired military community and to maximize recreational open space for shared use by the military and civilian communities, the plan recommended a proposed action.

The Army published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) in the **Federal Register** on January 23, 1989. Scoping meetings were held for governmental agencies on February 16, 1989, and for the public on February 22, 1989. The NOA of the DEIS was published by the U.S. Environmental Protection Agency in the **Federal Register** on January 19, 1990. A public hearing was held on February 5, 1990. Comments at the public hearing and in letters commenting on the DEIS have been considered in preparing the Final Environmental Impact Statement (FEIS).

The NOA of the FEIS was published in the **Federal Register** on March 6, 1992, and in the Bulletin of the (Hawaii) Office of Environmental Quality Control on March 8, 1992. The public comment period ended on April 5, 1992; no adverse comments were received.

The Department of the Army announces the ROD for development of the AFRC, Fort DeRussy, Waikiki, Hawaii, is available.

Under the recommended action, the U.S. Army would construct a hotel tower with up to 400 rooms to augment the existing Hale Koa Hotel; construct a hotel parking structure of 1,300 stalls in two stories (three levels); relocate utilities; and provide extensive landscaping and recreational facilities. Kalia Road, which crosses the Army post, would be realigned; its present intersection with Saratoga Road would be retained, and it would remain a two-lane road. The present Saratoga parking lot would be retained, landscaped and its parking stalls re-striped to accommodate 540–570 vehicles.

To provide space for construction of the new hotel tower and other facilities, some buildings now used by U.S. Army Reserve units will be demolished. The impact of these buildings being demolished and the U.S. Army Reserve units leaving Fort DeRussy are addressed in the FEIS. Construction of new U.S. Army Reserve facilities at Fort Shafter has been addressed in a separate Environmental Assessment.

Under the traditional design-construction contracting process, supplemental National Environmental Policy Act documents may be prepared after contract award to address any significant changes from the recommended action or significant changes in environmental impacts.

A NOA of the ROD will also be published in The Bulletin of the (Hawaii) Office of Environmental Quality Control.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 92–31416 Filed 12–28–92; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Cooperative Agreement Revised Procedures

AGENCY: Defense Logistics Agency (DLA).

ACTION: Cooperative Agreements; Proposed Revised Procedures.

SUMMARY: This proposed revised procedure implements Chapter 142, Title 10, United States Code, as amended, which authorized the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements to support procurement technical assistance programs established by state and local governments, private nonprofit organizations, Tribal organizations, and Indian-owned economic enterprises. Subpart III of this issuance establishes the administrative procedures proposed to be implemented by DLA to enter into such agreements for this purpose.

DATES: Comments will be accepted until January 28, 1993. Proposed effective date: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Sim Mitchell, Program Manager, Office of Small and Disadvantaged Business Utilization (DLA–UM), Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, Telephone (703) 274–6471.

Sim C. Mitchell,

Program Manager, Office of Small and Disadvantaged Business Utilization.

I. Background Information

The Department of Defense's (DoD) efforts to increase competition in the private sector have been supplemented by many State and local governments and other entities which operate procurement technical assistance (PTA) programs. The DoD PTA Program increases DoD assistance to eligible entities providing PTA and assists in the payment of cost for and maintaining PTA programs. The PTA program is designed to expand the DoD industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security.

The PTA Cooperative Agreement Program was established by the Fiscal Year (FY) 1985 DoD Authorization Act, Public Law 98–525. The Public Law amended Title 10, United States Code (USC), by adding Chapter 142. Title 10, USC, as amended, continues to authorize the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements with state and local governments, other nonprofit entities, Tribal organizations and Indian economic enterprises (hereafter referred to as eligible entities as defined in Section 3 of this procedure) to establish and conduct PTA programs.

U.S. Congress authorized a total of $12 million to support the program during FY 93. Of this total, $600,000 is available for Indian programs only.

Limitations placed on these funds are:

(a) DoD's share of an eligible entity's net program cost (NPC) shall not exceed 50%, unless the eligible entity/recipient proposes to cover a distressed area. If the eligible entity/recipient proposes to cover a distressed area, the DoD share may be increased to an amount not to exceed 75%. In no event shall DoD's share of NPC exceed $150,000 for programs providing less than statewide coverage or $300,000 for programs providing statewide coverage.

(b) For the Indian Program, DoD share of NPC shall not exceed 75% or $150,000, whichever is less, for programs providing services on reservation(s) within one Bureau of Indian Affairs (BIA) service area. For programs providing services to 100% of the reservations within one BIA service area and at least 50% of the reservations of at least one additional BIA service area (multi-area coverage), DoD's share of NPC shall not exceed 75% or $300,000, whichever is less.

(c) Eligible entities cannot subcontract more than 10% of their total program costs (TPC) for private profit and/or nonprofit consulting services to support the program. Under the American Indian Program, eligible entities cannot subcontract more than 25% of their TPC

for private profit and/or nonprofit consulting services to support the program.

DoD presently provides PTA to business firms through its network of Small Business Specialists located in industrial centers around the country. To the extent resources are available, the Defense Contract Management Command International/Defense Contract Management District (for purposes of this document referred to as DCMD) Associate Directors of Small Business (hereafter referred to as Associate Director) or representative(s) located in these industrial centers, will be available to provide: (1) assistance as necessary to facilitate full understanding of the solicitation requirements; and (2) general guidance in preparing proposals.

The purpose of the proposed revised procedure is to make available to all eligible entities the prerequisites, policies and procedures which will govern the award of cooperative agreements by DLA. Also, this procedure establishes the guidelines which will govern the administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a DLA awarded cooperative agreement, DLA has determined that this procedure does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the nation's economy or large numbers of individuals or businesses. This determination is based on the fact that the proposed cooperative agreement procedure implements policies already published by the Office of Management and Budget pursuant to Chapter 63, Title 31, United States Code, Using Procurement Contracts and Grant and Cooperative Agreements. In addition, DLA cooperative agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts. Therefore, public hearings were not conducted.

II. Other Information

The language contained in the current cooperative agreement procedure limited the period of coverage to the FY 92 Program in that it addressed the FY 92 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. This proposed revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FY 93 program.

Comments are invited on the procedure. Comments should be submitted to the Defense Logistics Agency, ATTN: DLA-UM, Cameron Station, Alexandria, VA 22304–6100. Comments received after 28 January 1993 may not be considered in formulating revisions to the Procedure.

Cooperation Agreement Procedure

III. Proposed Revision to DLA Procedure—Cooperative Agreements

3–1 Policy.

A. Proposals for cooperative agreements are obtained through the issuance of a Defense Logistics Agency (DLA) solicitation for cooperative agreement proposals (hereafter referred to as a SCAP). The contents of this procedure shall be incorporated, in whole or in part, into the SCAP to establish administrative requirements to execute and administer DLA awarded cooperative agreements. The SCAP may include additional administrative requirements that are not included herein.

B. The SCAP is issued through the Defense Contract Management District, or Defense Contract Management Command International (for purposes of this document referred to as DCMD), Associate Director of Small Business (hereafter referred to as Associate Director). The names, addresses and state or geographic areas under the cognizance of the Associate Directors are at Enclosure 1.

C. Only one proposal will be accepted from a single eligible entity. In cases where the area being or to be serviced by the eligible entity encompasses more than one DCMD's area of geographic cognizance, eligible entities will submit their proposals to the DCMD hearing cognizance over the preponderant part of the area being or to be serviced.

D. Cooperative agreements will be awarded on a competitive basis as a result of the SCAP. It is DLA's policy to encourage fair and open competition when awarding cooperative agreements.

E. Letters of support and recommendation from members of Congress are not necessary and will not be considered in the evaluation and selection of proposals to receive cooperative agreement awards.

F. The SCAP shall be given the widest practical dissemination. It will be provided to all known eligible entities and to those that request copies after it's issuance. All eligible entities that have advised DCMD of their interest in submitting a proposal under the SCAP will be invited to participate in preproposal conferences. The preproposal conferences will be held, at locations designated in the SCAP, approximately 30 calendar days prior to the SCAP's closing date.

G. Proposals will not be accepted from applicants who apply as co-equal partners or co-equal joint ventures. Only one organization can take the lead and primary responsibility for the program.

H. Proposals will not be accepted from applicants who propose to provide less than county or equivalent (i.e. parish, borough) coverage (hereafter referred to as county or equivalent). For example, if an applicant proposes to service any part of a county or equivalent, the applicant must service the entire county or equivalent.

I. The SCAP shall not be considered to be an offer made by DoD. It will not obligate DoD to make any awards under this Program.

J. The applicant's offer binds the eligible entity to perform the services described in its offer if selected for an award. The applicant's proposal will be incorporated into the cooperative agreement award document.

K. DoD is not responsible for any monies expended or expenses incurred by applicants prior to the award of a cost sharing cooperative agreement. However, actual expenses incurred by FY 93 award recipients to participate in a preproposal and/or postaward conference may be reimbursed under the FY 93 cooperative agreement award subject to the provisions of the applicable cost principles.

L. The award of a cooperative agreement under this program shall not in any way obligate DoD to enter into a contract or give preference for the award of a contract to a concern or firm which is or becomes a client of a DLA cooperative agreement recipient.

M. Eligible entities will receive consideration in the evaluation of proposals for assistance provided to clients resulting in the client(s) receiving prime and/or subcontracts with DoD, other Federal agency(ies), state(s) and/or local governments.

N. The period of performance for cooperative agreement awards shall cover a twelve month period.

O. To assist DoD in achieving its socioeconomic goals, applicants and cooperative agreement recipients must give special emphasis to assisting small disadvantaged business (SDB) firms which are participating or will be participating in DoD prime and subcontracting opportunities. A concerted effort must be made by recipients to identify SDB firms and provide them with marketing and technical assistance by a DoD component.

P. Award recipients are not required to obtain or retain the services of private profit and/or nonprofit consultants. Any subcontract costs being proposed for consulting services shall not exceed 10% of TPC (25% TPC under the American Indian Program). Proposals containing subcontracting costs for consultant services in excess of 10% of TPC (25% of TPC under the American Indian Program), will cause the proposal to be rejected.

Q. Reasonable quantities of government publications, such as "Selling to the Military," may be furnished to award recipients at no cost, subject to availability. All requests for such publications must be submitted to the organization to which administration is assigned.

R. For the purpose of executing cooperative agreements, authority is delegated to the Headquarters (HQ), DLA Cooperative Agreement Program Manager (hereafter referred to as Program Manager) and the Associate Director.

S. Each cooperative agreement recipient's area of performance will be limited to the county(ies) or equivalent specified in its cooperative agreement. For the American Indian program, the recipient's area of performance will be limited to the reservation(s) specified in its cooperative agreement.

T. The applicant/recipient will support the Mentor-Protege Pilot program as required by Section 831 of Public Law 101–510, "The National Defense Authorization Act."

U. For the American Indian program, if a tribal organization proposes to perform services benefiting more than one Indian tribe, written approval must be obtained by the eligible entity from each Indian Tribe to be serviced. Approval will consist of a written statement (signed by a responsible official authorized to legally bind the Indian tribe) indicating that the Indian tribe approves and agrees to accept the services to be provided by the eligible entity.

3–2 Scope.

This procedure implements Chapter 142 of Title 10, United States Code, as amended, and establishes procedure and guidelines for the award and administration of cost sharing cooperative agreements entered into between DLA and eligible entities. Under these agreements, financial assistance provided by DoD to recipients will cover the DoD share of the cost of establishing new and/or maintaining existing PTA programs for furnishing PTA to business entities.

3–3 Definitions.

The following definitions apply for the purpose of this procedure.

A. Act. The enabling legislation that authorizes the establishment and continuation of the PTA Cooperative Agreement Program each FY.

B. Agency. A field office of one of the twelve service areas, as published by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior.

C. Civil jurisdiction. All cities with a population of at least 25,000 and all counties. Townships of 25,000 or more population are also considered as civil jurisdictions in four States (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

D. Client. A recognized business entity, including a corporation, partnership, or sole proprietary ship, organized for profit or nonprofit, which is small or other than small, that has the potential or is seeking to market its goods and/or services to DoD, other Federal agency(ies), state(s) and/or local governments.

E. Consultant services. Marketing and technical assistance offered directly to cooperative agreement recipients by private nonprofit and/or profit seeking individuals, organizations or otherwise qualified business entities.

F. Cooperative agreement. A binding legal instrument reflecting a relationship between DLA and a cooperative agreement recipient for the purpose of transferring money, property, services or anything of value to the recipient to accomplish the requirements described in the agreement. The requirement shall be authorized by Federal statute and substantial involvement is expected between DLA and the recipient during performance of the agreement.

G. Cooperative agreement offer/application/proposal. An eligible entity's response to the SCAP describing its existing or planned PTA program.

H. Cooperative agreement award recipient. An organization receiving financial assistance directly from DLA to carry out the PTA program. The organization is the entire legal entity even if only a particular component of the entity is designated in the cooperative agreement award document.

I. Cost matching or sharing. The value of third party in-kind contributions and the portion of costs of a federally assisted project or program not borne by the Federal government.

J. Direct cost. Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

K. Distressed area. The geographical area being or to be serviced by an eligible entity in providing PTA to business firms physically located within an area that:

(1) has a per capita income of 80% of less of the State average; or

(2) has an unemployment rate that is one percent greater than the national average for the most recent 24-month period for which statistics are available; or

(3) is a "Reservation" which includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

L. Duplicate coverage. A situation caused by two or more applicants offering to provide marketing and technical assistance to clients located in county(ies) or equivalent within the same geographical area.

M. Eligible entities. Organizations qualifying to submit a proposal under the PTA program, including:

(1) State government. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, exclusive of local governments. The term does not include any public and Indian housing agency under the U.S. Housing Act of 1937.

(2) Local government. A county, municipality, city, town, township, local public authority (including any public and Indian Housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity (such as regional planning agencies), or any agency or instrumentality of a local government. The term does not include institutions of higher education and hospitals.

(3) Private, nonprofit organizations. Any corporation, trust, foundation, or institution which is exempt or entitled to exemption under Section 501(c)(3)–(6) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure

to the benefit of any private shareholder or individual.

(4) Indian Economic enterprise. Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized, whether or not such economic enterprise is organized for profit or nonprofit purposes: Provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(5) Tribal organization. The recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

N. Follow-up counseling session. A documented counseling session (telephone call, correspondence, or personal discussion) held with a client, subsequent to the initial counseling session, where professional guidance is provided to assist the client in marketing its products and/or services to DoD, other Federal agency(ies), state(s) and/or local governments. This includes, but is not limited to providing advice and assistance regarding marketing opportunities or technical assistance in areas such as:

(1) matching the client's products and/or services with that being purchased by DoD, other Federal agency(ies), state(s) and/or local governments;

(2) assisting in understanding specifications;

(3) preparing requests to be placed on solicitation mailing lists;

(4) preparing offers; and

(5) providing postaward assistance in areas such as production, quality system requirements, finance, engineering and transportation.

The distribution of publications and specifications, or simply referring clients to another source for advice or assistance, is not considered to be a follow-up counseling session.

O. Existing program. Any PTA program that was the recipient of a cooperative agreement with DLA for any two or more years subsequent to FY88.

P. Federal funds authorized. The total amount of Federal funds obligated by the Federal government for use by the recipient.

Q. Indian. Any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the BIA and any "Native" as defined in the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

R. Indian organization. The governing body of any Indian tribe (as defined below) or entity established or recognized by such governing body.

S. Indian tribe. Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. Section 1601 et seq.] which is recognized by the Federal Government as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

T. Indirect cost. Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. An indirect cost is not subject to treatment as a direct cost.

U. Initial counseling session. The first documented session (telephone call, correspondence, or personal discussion) held with a client, where professional guidance is provided to assist the client in marketing its products and/or services to DoD, other Federal agency(ies), state(s) and/or local governments. This includes, but is not limited to providing advice and assistance regarding marketing opportunities or technical assistance in areas such as:

(1) matching the client's products and/or services with that being purchased by DoD, other Federal agency(ies), state(s) and/or local governments;

(2) assisting in understanding specifications;

(3) preparing requests to be placed on solicitation mailing lists;

(4) preparing offers; and

(5) providing postaward assistance in areas such as production, quality system requirements, finance, engineering and transportation.

The distribution of publications and specifications, or simply referring clients to another source for advice or assistance, is not considered to be an initial counseling session.

V. In-kind contributions/donations. The value of noncash contributions provided by the eligible entity and non-Federal parties to the PTA Program. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions/donations. In-kind contributions/donations may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

W. Multi-area coverage. A PTA program that proposes to service 100 percent of the reservations located within one BIA service area and at least 50 percent of the reservations located within another BIA service area. The list of areas administered as Indian Reservations, as compiled by the BIA, will be included in the SCAP to benefit American Indians.

X. Net program cost. The total program cost (TPC) (including all authorized sources) less any program income and/or other Federal funds not authorized to be shared.

Y. New start. An eligible entity that is not an existing program (see subparagraph O above for definition of an existing program).

Z. Other Federal funds. Federal funds such as those provided by the Job Training Partnership Act, and by Federal agencies other than DoD. When authorized by statute, Federal funds received from other sources, including grants, may be used as cost sharing and/or cost matching contributions.

AA. Per capita income. The estimated average amount per person of total money income received during a calendar year for all persons residing in a given political jurisdiction as published by the U.S. Department of Commerce, Bureau of the Census.

AB. Prior approval. Written approval by the authorized official evidencing prior consent, as required by the cooperative agreement award document.

AC. Procurement technical assistance (PTA). A program organized to generate employment and improve the general economy of a locality by assisting business firms in obtaining and performing under Federal, state and local government contracts.

AD. Program income. The gross income received by the recipient or subrecipient from cooperative agreement supported activities. It includes training fees received from other PTA centers and organizations. Such earnings exclude interest earned on advances. It may also include, but is not limited to, income from service fees, reimbursement for expenses incurred in conducting the program, sale of commodities, usage or initial fees, and royalties on patents and copyrights. It may be reported by the recipient on a cash or accrual basis, whichever is used for reporting outlays.

AE. Reservation. Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native

groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C., Section 1601 et seq.].

AF. Service area. Any of the twelve geographical regions, as published by the U.S. Department of the Interior, BIA, to include: Aberdeen, Albuquerque, Anardako, Billings, Eastern, Juneau, Minneapolis, Muskogee, Navajo, Phoenix, Portland and Sacramento.

AG. Solicitation for cooperative agreement proposals (SCAP). A document issued by DLA/DCMCs containing provisions and evaluation factors applicable to all applicants which apply for a PTA cooperative agreement.

AH. Statewide coverage. A PTA program which proposes to service at least 50% of a State's counties or equivalent and 75% of a State's labor force.

AI. Subrecipient. The legal entity to which a subagreement is awarded and which is accountable to the recipient of the cooperative agreement for the use of the PTA program funds for providing procurement technical assistance to business firms/clients.

AJ. Third party in-kind contributions. Property or services which benefit the PTA cooperative agreement program and which are contributed by non-Federal third parties without charge to the recipient.

AK. Total program cost (TPC). All allowable costs as set forth in OMB Circular Nos. A–21, A–87 and A–122, as applicable. All funds, and in-kind contributions/donations received from all sources, including third parties as a result of operating the program.

AL. Total quality management (TQM). Total quality is a philosophy of management which harnesses the creativity of employees, as well as management, in a structured approach to continuously improving the processes by which products or services are produced to meet customers' requirements and expectations. It is an integrated system of management with recognizable components which: acknowledges that the customer(s) define quality in product or service; focuses all of the efforts of the enterprise on understanding and meeting or exceeding customer needs; employs proven tools and techniques to map and measure processes so that variation can be reduced, defects can be prevented, and problems can be solved; and involves and values everyone.

3–4 Program Description.

A. The PTA Program assists eligible entities in providing marketing and technical assistance to business firms in selling their goods and services to Dod, other Federal agency(ies), State(s) and/or local governments. It also enhances the business climate and economies of the communities being served.

B. Program requirements will vary depending on location, the types of industries and business firms within the community, the level of economic activity in the community, and other factors.

C. A comprehensive PTA program should include, but not be limited to, the following:

(1) Personnel. Personnel qualified to counsel and advise business firms/clients regarding procurement policies and procedures as they apply to both prime contracts and subcontracts. The areas of consideration should relate to:

(a) Marketing techniques and strategies;
(b) Pricing policies and procedures;
(c) Preaward procedures;
(d) Postaward contract administration;
(e) Quality assurance;
(f) Production and manufacturing;
(g) Financing;
(h) Subcontracting requirements;
(i) Bid and proposal preparation; and
(j) Specialized acquisition requirements for such areas as construction, research and development, and data processing.

(2) Counseling tools. The publications which the eligible entity uses or plans to use for implementing its PTA program.

Some examples of what publications may be included follow:

(a) Commerce Business Daily;
(b) Federal Acquisitions Regulations (FAR);
(c) DoD FAR Supplement (DFARS);
(d) Commodity listings from Federal contracting activities; and
(e) Federal and military specifications and standards.

(3) Methods for providing PTA. The eligible entity's procedures and plans for activating and developing its outreach program, including networking throughout the area being serviced or which the applicant plans to service. Examples of networking include:

(a) locating assistance offices in areas of industrial concentration;
(b) establishing data links with other organizations; and
(c) creating data exchanges.

(5) Performance measurement. The program shall include a description of the methods, being used or to be used to periodically measure and verify the program's effectiveness. The program shall include time phased goals and techniques for measuring performance against proposed goals in the following areas:

(a) The total number of procurement outreach conferences sponsored/participated;

(b) The total number of initial and follow-up counseling sessions and types of business firms/clients to be assisted, including size of the business firms/clients (small businesses and other than small businesses) and socioeconomic status (small disadvantaged and women-owned businesses);

(c) The total number of applications submitted by clients for addition to solicitation (bidders) mailing list(s), which may include DoD, other Federal agency(ies), state(s) and/or local governments, as appropriate; and

(d) The total number and value of DoD prime contract and subcontract awards received by clients, including the client's size (small business and other than small business) and socioeconomic status (small disadvantaged and women-owned businesses) resulting from assistance received through the recipient's program.

(e) The total number and value of other Federal agencies' prime contract and subcontract awards received by clients, including the client's size (small business and other than small business) and socioeconomic status (small disadvantaged and women-owned businesses) resulting from assistance received through the recipient's program.

(f) The total number and value of state and/or local government agencies' prime contract and subcontract awards received by clients, resulting from assistance received through the recipient's program.

(g) Award recipients are required to have on file for their clients for each reported award, the following:

(1) prime contract number, dollar amount and date;

(2) subcontract number, dollar amount and date;

(3) a signed statement confirming that the contract award was obtained due to the assistance provided by the PTA center; and

(4) client's point of contact and telephone number.

(D) Fees and service charges. In the event the applicant charges or plans to charge clients a fee or service charge, details as to the amount and basis for the fee or service charge must be described. Also, recipients shall not charge a commission, percentage, brokerage or other fee that is contingent upon the success of the client securing a Government contract.

3–5 Procedures.

A. The Program Manager develops and prepares the SCAP.

B. The SCAP is approved by the Policy Committee and is issued by the Associate Director.

C. The Policy Committee is comprised of representatives from the HQ DLA Offices of General Counsel, Contracting Comptroller, Congressional Affairs and Small Business. The Staff Director, Small and Disadvantaged Business Utilization, serves as the Policy Committee Chairman.

D. The Policy Committee is responsible for reviewing the evaluations and recommendations of the Program Manager and the Evaluation Panel.

E. The Policy Committee is the final administrative appeal authority for disagreements between the Program Manager, and/or the Associate Director and the eligible entity and/or cooperative agreement recipient.

F. The evaluation of proposals submitted in response to the SCAP and the selection of award recipients shall be conducted as detailed below:

(1) Initial evaluation. The Associate Director will perform an evaluation of each proposal received to determine if the proposal:

(a) Provides county wide or equivalent coverage;

(b) Contains sufficient technical, cost and other information;

(c) Has been signed by a responsible official authorized to bind the eligible entity; and

(d) Generally meets all requirements of the SCAP.

If a proposal is removed from further consideration for an award by the Associate Director, the applicant will be promptly notified of the reason for removal. The applicant's proposal will be retained with other unsuccessful proposals by the Associate Director.

(2) Late proposals and revisions. Late or revised proposals will not be accepted from applicants after the deadline for receipt of proposals (to be specified in the SCAP) unless the revised proposal is determined acceptable based upon the following criteria:

(a) Acceptable evidence to support an otherwise late proposal or revised proposal received after the closing time and date shall consist of:

1. an original U.S. Post Office receipt for registered or certified mail showing date of mailing not later than the fifth calendar day before the date specified for receipt of proposals and revisions; or

2. when sent by U.S. Postal Service Express Mail Next Day Service Post Office to Addressee, the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. The postmark date must be two working days prior to the date specified for receipt of proposals. The term working days excludes weekends and Federal holidays. Applicants should request the postal clerk to place a legible hand cancellation "bull's-eye" postmark on the receipt and evelope or wrapper.

(b) If the proposal or revision is hand-delivered, the specific time and delivery date shall be supported by a receipt provided by the cognizant DCMD office.

(3) Minor informalities and mistakes. The Associate Director shall examine all proposals for mistakes.

(a) The Associate Director shall provide an eligible entity the opportunity to cure any deficiency resulting from a minor informality or irregularity contained in the offer or waive the deficiency, whichever is to the advantage of the Government. A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in an offer or variation of an offer from the exact requirements of the solicitation that can be corrected or waived without being prejudicial to other offerors. The defect or variation is immaterial when the effect on program quality is negligible when contrasted with the program's total cost. (Two examples of minor informalities include the failure of the eligible entity to: (1) return the required number of copies of its proposal; and (2) execute the certifications required by the SCAP clauses).

(b) In cases of apparent mistakes and in cases where the Associate Director has reason to believe that a mistake may have been made, the Associate Director shall request verification from the entity that the offer "should read as stated" calling attention to the suspected mistake. Any clerical mistake, apparent in the offer may be corrected by the Associate Director. (Examples of apparent mistakes are: (1) obvious misplacement of a decimal point; (2) incorrect transposition of numbers; and (3) obvious mistake in identifying the program type (existing versus new start)). The Associate Director shall obtain from the eligible entity a written verification of the offer intended.

(c) Correction of a mistake by the Associate Director shall be effected by attaching the verification to the original offer. The Associate Director shall not make corrections on the entity's proposal. Corrections shall be restated in the cooperative agreement award document, if the entity receives an award.

(d) If an eligible entity requests permission to correct a mistake, including those identified by the Associate Director during their review and clear and convincing evidence establishes the existence of the mistake, the Associate Director may make a determination permitting the eligible entity to correct the mistake. If this correction would result in displacing one or more eligible entities that would otherwise rank higher, such a determination shall not be made unless the existence of the mistake and the proposed information actually intended are ascertainable substantially from the proposal itself.

(4) The Associate Director will review and verify the accuracy of the applicant's program status stated on block 8, "Type of Application" of the SF 424. If the Associate Director considers the proposal status misclassified, the matter will be reviewed with the applicant. If there is disagreement, the Associate Director's decision regarding the program classification is final and is not subject to further review.

(5) If the Associate Director determines that supporting documentation does not substantiate the applicant's proposed distressed area status (where greater than 50% funding as the DoD share is requested), the application will be disqualified and not be given further consideration for an award. The proposal will be retained with other unsuccessful applicants by the Associate Director.

(6) The Associate Director will forward all accepted proposals along with their recommendations to the Program Manager at HQ DLA. Proposals which pass the initial evaluation phase are subjected to a comprehensive evaluation by the Evaluation Panel.

(7) Comprehensive evaluation. The comprehensive evaluation is performed by a specially constituted HQ DLA Evaluation Panel comprised of small business specialists, contract management specialist, and other personnel deemed appropriate by the Policy Committee. A member of the Office of General Counsel, HQ, DLA, will provide legal assistance to the Evaluation Panel, as needed.

The purpose of the comprehensive evaluation is to assess the merits of the proposals to determine which offer the greatest likelihood of achieving the stated program objectives considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. The Evaluation Panel

will conduct its evaluations in accordance with stated criteria.

(8) Upon completion of its review, the Evaluation Panel will submit its results and its recommendations to the Program Manager.

(9) Duplicate coverage. Proposals that include duplicate coverage will be processed by the Program Manager or designated representative(s) as follows:

(a) General program.

1. When two or more applicants submit proposals that provide duplicate coverage of the county(ies) or equivalent within the geographical area which the applicant plans to service, selection priority will be given to the proposal that is assigned the highest total points by the Evaluation Panel.

2. To be considered for an award, an applicant's proposal shall not duplicate more than 25% on an individual or cumulative basis any of the county(ies) or equivalent proposed by higher ranked applicant(s) as established by the Evaluation Panel.

3. Only one statewide program will be awarded in a state.

(b) American Indian program.

1. When two or more applicants submit proposals that provide duplicate coverage of the reservation(s) which the applicant plans to service, selection priority will be given to the proposal that is assigned the highest total points by the Evaluation Panel.

2. To be considered for an award, an applicant's proposal shall not duplicate more than 25% on an individual or cumulative basis any of the reservation(s) proposed by higher ranked applicant(s) as established by the Evaluation Panel.

(10) The Program Manager will submit his comments and the Evaluation Panel's recommendations to the Policy Committee for review.

(11) The Policy Committee will review the Evaluation Panel's award recommendations along with the Program Manager's comments. The results of the Policy Committee's review and its recommendations will be forwarded to the appropriate DCMD Commander for approval.

G. The award recommendations must be approved by the DCMD Commander and executed by the Associate Director.

3–6 Evaluation Factors.

A. The evaluation factors for new starts and existing programs, with their relative importance, will be specified in the SCAP.

B. The following evaluation factors (which may be subject to change) will be considered.

(1) Program development, and performance and effectiveness. (Existing Programs only.)

(2) Types and qualifications of personnel. (Existing Programs and New Starts.)

(3) Quality of the PTA Program. (New Starts only.)

(4) Potential number of business firms/clients in the county(ies) or equivalent being serviced and/or which the applicant plans to service. (Existing Program and New Starts). Under the American Indian program the potential number of business firms/clients on the reservation(s) being serviced and/or which the applicant plans to service will be evaluated.

(5) Amount and percentage of NPC to be shared by DoD. (Existing Programs and New Starts.)

(6) Level of unemployment in the area(s) being serviced and/or which the applicant plans to service. (Existing Programs and New Starts.)

(7) Subcontracting. (Existing Programs only.)

C. Certain of these evaluation factors will be evaluated based upon stated implementing policy for programs. For example, for the types and qualifications of personnel, applicants will be required to provide a list of professional personnel by name (or the qualification standard if a position is not occupied) along with salary and education information, previous experience (by technical discipline), and the percentage of time assigned or to be assigned to directly performing the program.

D. The amount of subcontracting for consultant services provided directly to cooperative agreement recipients by private nonprofit and/or profit seeking individuals, organizations or otherwise qualified business entities is limited to no more than 10% of TPC for both existing programs and new starts (25% of TPC under the American Indian Program). However, in evaluating this factor for existing programs, the smaller the amount of subcontracting for consultant services the greater the weight that will be given. In the case of new starts, subcontracting is not an evaluation factor. New starts are subject only to the 10% limitation (25% limitation under the American Indian Program).

3–7 DoD Funding.

A. Any funds authorized by Congress for the PTA program will be allocated equitably by the Program Manager among the DCMDs to cover the DoD share of NPC for existing and new starts programs.

B. The Program Manager is responsible for verifying that program limitations have not been exceeded.

C. If there is an insufficient number of satisfactory proposals in a DCMD to allow effective use of the funds allocated, the Program Manager will reallocate the funds among the DCMDs based upon the DCMD Commanders' approval of the award recommendations made by the Evaluation Panel and Policy Committee.

3–8 Cost Sharing Limitations.

A. The DoD share of NPC shall not exceed 50%, except in a case where an eligible entity meets the criteria for a distressed area. When the prerequisite conditions to qualify as a distressed area are met, the DoD share may be increased to an amount not to exceed 75%.

B. In no event shall the DoD share of NPC exceed $150,000 for programs providing less than statewide coverage or $300,000 for programs providing statewide coverage.

C. For the Indian Program, a request for DoD share shall not exceed 75% of NPC or $150,000 for programs providing service on reservation(s) within one BIA service area, or $300,000 for programs providing multi-area coverage.

D. The type and value of third-party in-kind contributions/donations is limited to no more than 25% of TPC.

E. The SCAP will provide that indirect costs are not to exceed 100% of direct costs. Indirect cost rates used in the proposal are subject to a downward revision only.

3–9 Cost Sharing Criteria.

A. Cost contributions may be either direct or indirect costs, provided such costs are otherwise allowable in accordance with the cost principles. Allowable costs which are absorbed by the applicant as its share of costs may not be charged directly or indirectly or may not have been charged in part or in whole to the Federal Government under other contracts, agreements, or grants.

B. The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, in-kind contributions/donations, any fees and service charges to be earned under the program, and any other Federal agency funding (including grants, loans, and cooperative agreements) authorized to be used for this program.

C. Program income or other Federal funds, that are not authorized for use by Federal statute, (excluding loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for use as the applicant's matching funds. Inclusion of other Federal funds in the program as part of TPC is subject to authorization by Federal statute and the terms of the

instrument containing such funds or written advice being obtained from the awarding Agency(s) authorizing such use. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

D. Where distressed area funding (greater than 50%) is requested and the civil jurisdiction(s) which the applicant services or plans to service includes both distressed areas and non-distressed areas, two budgets must be submitted based on the anticipated distribution of TPC between these two areas. In addition, the recipient's accounting system must segregate and accumulate costs in each of the two budget areas.

E. Recipients of PTA cooperative agreements are required to maintain records adequate to reflect the nature and extent of their costs and expenditures and to insure that the required cost participation is achieved. In addition, each state and local entity that receives Federal funding is required to have audits performed in accordance with the requirements of OMB Circular A–128. Nonprofit organizations and institutions of higher education are required to have audits performed in accordance with the requirements of OMB Circular A–133. Indian economic enterprises (for profit only) will also have an audit performed in accordance with the requirements of OMB Circular A–133. Recipients shall have the audit organization send a copy of all audit reports which pertain to the PTA cooperative agreement directly to the cognizant administration activity.

F. If the applicant charges or plans to charge a fee or service charge for PTA given to clients, or to receive any other income as a result of operating the PTA Program, the amount of such reimbursement must be added to TPC.

G. The recipient may add funds to its program after all program funds are properly expended. The reimbursable ratio will not be effected.

H. The following OMB Circulars (most recent issuance) will be used to determine allowable costs in performance of the program:

(1) OMB Circular No. A–21, Cost Principles for Educational Institutions;

(2) OMB Circular No. A–87, Cost Principles for State and Local Governments; and

(3) OMB Circular No. A–122, Cost Principles for Nonprofit Organizations. This circular will also be used by for-profit organizations.

3–10 Administration.

A. Cooperative Agreements will be assigned to the cognizant postaward administration activity listed in DLA Handbook 4105.4, DoD Directory of Contract Administration Service Components.

B. The organization having cognizance for postaward administration will be responsible for performing site reviews. The reviews will include:

(1) management control systems;

(2) financial management control systems;

(3) progress being made by the recipient in meeting its goals; and

(4) compliance with certifications, representations and other performance factors.

C. For eligible entities covered by OMB Circular No. A–102, Grants and Cooperative Agreements with State and Local Governments; or MB Circular No. A–110, Grants and Agreements with Institution of Higher Education, Hospitals and other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

ASSOCIATE DIRECTORS OF SMALL BUSINESS

State or area	DCMC/DCMD	Associate Director for Small Business
Alaska, Hawaii, Puerto Rico and all U.S. Territories and Possessions	DCMC International, c/o DCMAO Puerto Rico Small Business Office, 209 Chapel Drive, Navy Security Group Activity, Sabana Seca, PR 00952	Mr. Victor Irizarry, Telephone (809) 795–3202.
Delaware, District of Columbia, Kentucky, Maryland, Michigan (inclusive of Alcona, Arenac, Bay, Genesee, Hillsdale, Huron, Iosco, Jackson, Lapeer, Lenawee, Macomb, Midland, Monroe, Oakland, Ogemaw, Oscoda, Saginaw, St. Clair, Sanilac, Tuscola, Washtenaw, Gladwin and Wayne counties), New Jersey, Ohio, Pennsylvania, Virginia and West Virginia.	DCMC Mid-Atlantic, 2800 South 20th St., P.O. Box 7478, Philadelphia, PA 19101–7478. For courier service delivery: DCMD Mid-Atlantic (DCMDM–DU) Bldg. 6–2, Pole 47B, 2800 South 20th St., Philadelphia, PA 19145	Mr. Tom B. Corey, Telephone (215) 737–4006, Toll Free 1–800–258–9503.
Colorado, Illinois, Indiana, Iowa, Kansas, Michigan (except Alcona, Arenac, Bay, Genesee, Hillsdale, Huron, Oosco, Jackson, Lapeer, Lenawee, Macomb, Midland, Monroe, Oakland, Ogemaw, Oscoda, Saginaw, St. Clair, Sanilac, Tuscola, Washtenaw, Gladwin and Wayne counties), Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wisconsin and Wyoming.	DCMD North Central, O'Hare Int'l Airport, 10601 West Higgins Rd., P.O. Box 66926, Chicago, IL 60666–0926.	Mr. James L. Kleckner, Telephone (312) 828–6020, Toll Free 1–800–637–3848.
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.	DCMD Northeast, 495 Summer Street, 8th Floor, Boston, MA 02210–2184.	Mr. John McDonough, Telephone (617) 451–4317/8, Toll Free (MA) 1–800–348–1011, (Outside MA) 1–800–321–1861.
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas (except El Paso, Hudspeth, an Presidio counties and portions of Culberson, Jeff Davis, Brewster and Terrell counties or Zip codes 789xx and 799xx.	DCMD South, 805 Walker Street, Marietta, GA 30060–2789.	Mr. Howard Head, Jr., Telephone (404) 590–6195/6, Toll Free 1–800–331–6415, (GA Only) 1–800–551–7801.
California, Idaho, Montana, Nevada, New Mexico, Oregon, Texas (inclusive of El Paso, Udspeth and Presidio counties and portions of Culberson, Jeff Davis, Brewster and Terrell counties or counties in the 789xx or 799xx Zip Codes), and Washington.	DCMD West, 222 N. Sepulveda Blvd., El Segundo, CA 90245–4394.	Ms. E. Renee Deavens, Telephone (213) 335–3260, Toll Free (CA only) 1–800–233–6521, Toll Free (Others) 1–800–624–7373.

[FR Doc. 92–31549 Filed 12–28–92; 8:45 am]

BILLING CODE 3620–01–M

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement for Base Realignment, Naval Air Warfare Center, Aircraft Division, Patuxent River, MD

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for Base Realignment, Naval Air Warfare Center, Aircraft Division (NAWC AD), Patuxent River, Maryland.

The DEIS has been distributed to various Federal, State, and local agencies, elected officials, special interest groups, local libraries, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on January 21, 1993, at 7 p.m., in the Joseph E. Carter Office Building, St. Mary's County Governmental Center, State Route 245, Leonardtown, Maryland.

The public hearing will be conducted by the Navy. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study and will be given equal weight.

In the interest of available time, each speaker will be asked to limit his oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by February 1, 1993, to become part of the official record.

The Naval Air Warfare Center, Aircraft Division (NAWC AD), is relocating research and development operations from Warminster, Pennsylvania, and Trenton, New Jersey. This relocation will implement requirements stemming from the Defense Base Closure and Realignment Act of 1990. The relocation imposes total facilities requirements of approximately 1.1 million square feet which includes 852,000 square feet of new construction and 270,000 square feet of rehabilitated or remodeled space at NAWC AD. The action involves relocation of 2,700 personnel and their families (approximately 6,800 people), including Navy contractors, to the tri-county region of Calvert, Charles, and St. Mary's counties.

Additional information concerning this notice may be obtained by contacting Mr. Mike Bryan (Code 20N), Chesapeake Division, Naval Facilities Engineering Command, Building 212, Washington Navy Yard, Washington, DC 20374–2121, telephone (202) 325–3367.

Dated: December 22, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92–31466 Filed 12–28–92; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Wetland Involvement Notification for Irrigon Tower Restoration

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of wetland involvement of their facilities located at Irrigon, Morrow County, Oregon.

SUMMARY: BPA proposes to add fill around Tower 11/3 of the McNary-John Day No. 1 line and Tower 11/3 of the McNary-Dalred No. 1 line and reestablish access to these towers for maintenance purposes. These towers have encountered problems with standing water, which reduces the uplift capacity of the tower footings and increases the potential risk of a tower failure. Over the last 10 years, the area of ponded water has increased in size and has developed characteristics of a wetland. The addition of approximately 2900 cubic yards of fill to this 7 acre wetland (including adjacent open water) would reduce it in size by 0.7 acre.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR part 1022), BPA will prepare a wetland assessment on this proposed action and will perform this action in a manner so as to avoid or minimize potential harm to or within the affected wetland.

DATES: Any comments are due by January 5, 1993. Comments should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: John Taves, EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, (503) 230–4995.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This wetland is located in Section 31, Township 5 North, Range 27 East. There are no alternatives to this proposed action.

It must be completed to reduce the risk of tower failure. Although the tower site has been dry historically, the development of agriculture fields and the use of irrigation has caused the pond to form.

If the project can be categorically excluded from further National Environmental Policy Act review, the wetland assessment will be included in the file on the project. If the project requires an environmental assessment or an environmental impact statement, the wetland assessment will be included in the appropriate environmental document. BPA shall take no action prior to fifteen days after publication of this notice. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon on December 10, 1992.

Karen A. Hunt,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 92–31435 Filed 12–28–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. JD93–00981T South Dakota–1]

United States Department of Interior Bureau of Land Management; NGPA Amended Notice of Determination By Jurisdictional Agency Designating Tight Formation

December 21, 1992.

Take notice that on November 27, 1992, the Bureau of Land Management (BLM), Montana State Office, amended its notice of determination that was filed in the above-referenced proceedings on November 16, 1992, pursuant to section 271.703(c)(3) of the Commission's regulations. The November 16, 1992 notice determined that the Shannon Sandstone in the West Short Pine Hills Field, underlying certain lands in Harding County, South Dakota, qualifies

as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978.

The amended notice of determination reduces the geographical area recommended for tight formation designation. The amended area covers 19,442.82 acres of federal mineral lands and 40 acres of non-Federal mineral lands more fully described on the attached appendix.

The notice of determination also contains BLM's findings that the referenced portion of the Shannon Sandstone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271. On December 14, 1992, the State of South Dakota filed its concurrence to the amended notice of determination.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 10 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

JD93–00981T—South Dakota–1

Township 15 North, Range 2 East
Section 1: S/4W/4, W/2SE/4
Section 2: Lots 2–4, SW/4NE/4, S/2NW/4, S/2
Section 3: Lots 1–4, S/2N/2, S/2
Section 4: Lots 1–4, S/2N/2, S/2
Section 6: Lots 1–2, S/2NE4, SE/4SW/4, SE/4
Section 7: E/2, E/2W/2
Section 8: NE/4N/4, S/2NE/4, W/2, SE/4
Section 9: All
Section 10: N/2, SW/4, W/2SE/4
Section 11: N/2, E/2SW/4, SE/4
Section 12: W/2NE/4, W/2, W/2SE/4, SE/4SE/4
Section 13: All
Section 14: NE/4, S/2
Section 15: S/2N/2, S/2
Section 17: All
Section 18: Lots 3–4, E/2, NE/4NW/4, NE/4SW/4
Section 19: Lots 1–2, E/2W/2, E/2
Sections 20–29: All
Section 30: Lot 4, NE/4, NE/4SW/4, NE/4SE/4
Section 31: Lots 1–4
Sections 32–33: All
Section 34: N/2
Section 35: All
Township 16 North, Range 2 East
Section 29: SW/4
Section 30: NE/4SW/4, SE/4
Section 31: Lot 2, E/2, SE/4SW/4
Section 32: N/2, E/2SW/4, SE/4
Section 33: S/2 (includes NE/4SW/4, Fee Tract)

[FR Doc. 92–31491 Filed 12–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TF93–1–22–001; TM93–2–22–001]

CNG Transmission Corp.); Proposed Changes in FERC Gas Tariff

December 21, 1992.

Take notice that CNG Transmission Corporation ("CNG") on December 16, 1992, filed the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

To be effective December 1, 1992:

Sub Twenty-Fourth Revised Sheet No. 31
Sub Twentieth Revised Sheet No. 34

To be effective January 1, 1993:

Sub Twenty-Fifth Revised Sheet No. 31

CNG states that the purpose of its amendment is to correct an inadvertent error contained in its November 30, 1992, filing made in this proceeding. CNG states that it inadvertently excluded the reconciliation surcharge portion of the rate charged by Tennessee Gas Pipeline Company in calculating its Transportation Cost Rate Adjustment ("TCRA"). To properly set its demand rate beginning December 1, CNG seeks waiver of the Commission's regulations to allow the instant filing to become effective on December 1, 1992, and January 1, 1993, as proposed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 29, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31487 Filed 12–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–7–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 21, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 16, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the following proposed effective dates:

Effective December 17, 1992

Twenty-Ninth Revised Sheet No. 26
First Revised Substitute Twenty-First Revised Sheet No. 26.1

Effective January 1, 1993

Second Substitute Twenty-Second Revised Sheet No. 26.1

Columbia states that the aforementioned tariff sheets are being filed to increase the Gas Inventory Charge (GIC) pursuant to Section 28.6 of the General Terms and Conditions of Columbia's Tariff, from $0.3500 per Dth to $0.3702 per Dth.

Columbia states that copies of the filing is being mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before December 29, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31488 Filed 12–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–24–002]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

December 21, 1992.

Take notice that Equitrans, Inc. ("Equitrans"), on December 18, 1992, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following primary tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3, to become effective January 1, 1993.

Original Volume No. 1

Second Substitute Forty-Second Revised Sheet No. 10
Substitute Twelfth Revised Sheet No. 23

Substitute First Revised Sheet No. 178
Original Sheet No. 179A

Original Volume No. 3

Substitute Twelfth Revised Sheet No. 8

Equitrans states that the purpose of the primary tariff sheets is to implement the Gas Research Institute (GRI) surcharge pursuant to Opinion No. 378 in Docket No. RP92–133–001, issued November 16, 1992, where the Commission authorized pipeline companies to collect the GRI funding unit from their customers. The proposed primary tariff sheets are intended to implement that authorization subject to the provision that the demand surcharge will not be effective for Rate Schedule PLS, all as more fully described in the Statement of Nature, Reasons and Basis for the proposed change. Equitrans states that the primary tariff sheets are substituted for the tariff sheets filed by Equitrans on December 1 and December 2, 1992 in Docket Nos. TM93–2–24–000 and TM93–2–24–001.

Equitrans also submitted the following alternate tariff sheets:

Original Volume No. 1

Alternate Second Substitute Forty-Second Revised Sheet No. 10
Alternate Substitute Twelfth Revised Sheet No. 23
Alternate Substitute First Revised Sheet No. 178

Original Volume No. 3

Alternate Twelfth Revised Sheet No. 4
Alternate Substitute Twelfth Revised Sheet No. 8

Equitrans requests that the foregoing alternate sheets be accepted effective January 1, 1993, in the event the primary sheets filed are not accepted. These alternate sheets eliminate any GRI charges from Equitrans' FERC Gas Tariff.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waiver of notice necessary to permit the proposed tariff sheets to become effective January 1, 1993, and any other waivers of its regulations or policy that may be required.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31489 Filed 12–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–3–5–000]

Midwestern Gas Transmission Co.; Notice of Rate Filing

(December 21, 1992).

Take notice that on December 17, 1992, Midwestern Gas Transmission Company ("Midwestern"), P.O. Box 2511, Houston, Texas 77252, filed its Eighth Revised Sheet No. 7 for a proposed effective date of January 1, 1993, pursuant to Article I of the Stipulation and Agreement filed by Midwestern in Docket No. RP91–78 and accepted by the Commission on June 25, 1992. Midwestern states that this filing reflects revisions in the recovery of take-or-pay and contract reformation costs billed to Midwestern by its upstream supplier, Tennessee Gas Pipeline Company (Tennessee) pursuant to Section XXX of Tennessee's General Terms and Conditions.

Midwestern further states that the revised demand surcharge amount reflects an increase over the previously effective demand surcharge amount, which was filed on June 30, 1992 in the above-referenced docket, resulting in a new proposed effective demand surcharge amount of $323,441, including interest. The proposed new demand surcharge amount has been amortized over an eighteen month period. The volumetric charge will not change.

Midwestern requests a waiver of the thirty-day notice period to the extent necessary to enable the revised demand surcharge amount to go into effect on January 1, 1993. Midwestern states that its Order No. 636 compliance filing as well as the press of end-of-year business prevented it from making the instant filing before this time. Midwestern further submits that such a waiver will not cause significant harm to any of Midwestern's customers.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 29, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31490 Filed 12–28–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4549–6]

Notice of Withdrawal of the Information Collection Request for Activities Under Section 313 of the Emergency Planning and Community Right-to Know Act

On November 4, 1992, EPA informed OMB that it was withdrawing an Information Collection Request (ICR) entitled "Toxic Chemical Release Inventory Form R and Petitions" that was sent to them for review on September 8, 1992. This ICR was a renewal of the current ICR which was approved by OMB on May 19, 1992 (OMB #2070–0093) for activities under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6007 of the Pollution Prevention Act. OMB acknowledged the withdrawal in a letter received at EPA on November 30, 1992.

In order to prevent a lapse in reporting under EPCRA and the PPA, the Pollution Prevention Act Implementation provision of the 1993 Appropriations Act (Public Law 102–879, approved October 6, 1992) provided that the May 19, 1992, version of Form R will remain in effect until revisions are promulgated. EPA withdrew the ICR to avoid confusion caused by this new statutory provision, and to allay any concerns of the regulated community about having to use an interim form. This means that facilities subject to Form R reporting requirements will be required to submit their 1992 reports by July 1, 1993, using the version of Form R approved on May 19, 1992. EPA plans to distribute the complete 1992 Form R and instructions

in early 1993, and will publish a notice of availability of the form and instructions as soon as they are ready. EPA will be initiating public dialogues in the near future to consult with interested parties as part of EPA's assessment of the public's experience with the new reporting requirements, and development of Form R and instructions. Because the changes in response to that experience may be significant, EPA believes it is appropriate to develop comprehensive revisions, and then to submit one revised ICR to OMB for review under the Paperwork Reduction Act, rather than continue with interim changes.

For further information contact: Anning Smith at EPA (202) 260-1576.

Dated: December 21, 1992.

Paul Lapsley, Director,

Regulatory Management Division.

[FR Doc. 92-31444 Filed 12-28-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4550-1]

Agency Information Collection ActivitiesUnder OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 28, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Policy Planning and Evaluation

Title: Evaluations of Environmental Programs (EPA No. 1629.01).

Abstract: This ICR is a new collection in support of independent environmental program evaluations to be conducted by the Program Evaluation Division (PED) of the Office of Policy, Planning and Evaluation (OPPE). As described in the Office of Management and Budget (OMB) Circular A-11, program evaluations are formal assessments, through objective measurement and systematic analysis, of the manner and extent to which Federal programs achieve objectives. These evaluations will identify and assess the cost-effectiveness of innovative approaches taken by EPA programs delegated to State agencies and the extent to which EPA is meeting its State customers' needs for the implementation of these programs.

Following approval of this ICR, PED representatives will conduct voluntary telephone or mail surveys of State representatives of specific State-delegated environmental programs. The information collected in each study will vary depending on the program evaluation objectives. In general, PED will ask questions pertaining to: (1) the objectives and priorities of the State agencies' program, (2) the strategies used by the States to fulfill objectives, (3) the use of resources (including EPA grant funds) to accomplish these objectives, (4) the extent of coordination with other agencies, (5) the State programs' staffing levels and experience, and (6) the State programs' communication and coordination with EPA Regional Offices.

The information will be tabulated, analyzed, and compiled into reports which will be used by PED program representatives, relevant EPA program and regional offices, and State environmental program managers to strengthen the implementation of EPA State-delegated programs.

PED representatives will conduct an average of 5 surveys of State-delegated environmental programs each year. There are no additional recordkeeping activities required of States for this collection of information.

Burden Statement: Public reporting burden for this collection of information is estimated to average 3.1 hours per response including time for listening to instructions and responding to survey questions.

Respondents: Representatives of State environmental programs.

Estimated Number of Respondents: 250.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One time.

Estimated Total Annual Burden on Respondents: 780 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC, 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: December 23, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-31564 Filed 12-28-92; 8:45 am]

BILLING CODE 6560-50-F

[AD-FRL-4550-4]

Test Methods for Measurement of VOC Capture Efficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft revised test methods.

SUMMARY: Draft revised test methods for measuring capture efficiency (CE) at coating and printing facilities equipped with a volatile organic compound (VOC) capture system and control device are available for public review and comment. These methods were published as part of the ozone Federal implementation plan (FIP) for Chicago in 1990, and they have been revised by the Agency since that time. The comments received will be considered in preparing the test methods for proposal prior to publication of the final methods in title 40 of the Code of Federal Regulations. The EPA will provide the public an additional opportunity for comment when the test methods are proposed in the **Federal Register**.

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Candace Sorrell, Office of Air Quality Planning and Standards (MD-19), Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Draft test methods. Copies of the draft revised test methods may be obtained from David Cole, Office of Air Quality Planning and Standards (MD-15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5565.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell, Office of Air Quality Planning and Standards (MD-19), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1064.

SUPPLEMENTARY INFORMATION: On June 29, 1990, at 55 FR 26814, EPA published test protocols and procedures for measuring CE for VOC emissions at coating and printing facilities equipped with a VOC capture system and control device. These CE protocols and test procedures were presented in the

Chicago FIP at 40 CFR part 52.741(a)(4)(iii) and Appendix B, respectively. Subsequent to the promulgation of the FIP, EPA began to revise the CE test methods in anticipation of publishing them in Title 40 of the Code of Federal Regulations as recommended methods for States who are revising their ozone State implementation plan (SIP) rules for these source categories.

During this process, EPA received comments from several parties concerning the potentially excessive costs involved in using the recommended gas/gas and liquid/gas protocols that specify a temporary total enclosure (TTE) for measuring CE. In response to these comments, EPA has undertaken a 12-month study to develop and review possible alternatives and to assess their effect on VOC emission reduction efforts. These alternatives may include parameter monitoring correlated with emission results, as well as less expensive ways of using the current draft methods.

While the study is underway, EPA is allowing States to defer adoption of CE test requirements in the VOC rule corrections they are making in response to section 182(a)(2)(A) of the Clean Air Act, as amended in 1990. States that have already adopted EPA's recommended TTE methods (including the Chicago area covered by the FIP) may suspend the date for initial compliance certification until July 1, 1993, for sources subject to CE testing that involves the TTE method. A March 20, 1992, memorandum from the OAQPS director, John S. Seitz, entitled "Reanalysis of Capture Efficiency (CE) Guidance", discusses the 12-month study and provides interim guidance on the implementation of the CE protocols. This memorandum is available from the second contact shown in the **ADDRESSES** section of this notice.

As mentioned above, EPA has drafted revisions to the CE test procedures published as Appendix B of the Chicago FIP. The draft revisions to date are summarized below.

First, Appendix B, section 1.4, *Sampling requirements*, contained a requirement that the sampling time for each test run should be at least 8 hours, unless otherwise approved. This provision has been revised to specify that each run shall cover at least one complete production cycle, but must be at least 3 hours long. The sampling time for each run need not exceed 8 hours, even if the production cycle has not been complete. Alternative sampling times would be subject to EPA approval.

Second, a new section on audit sample procedures has been added to Procedure L, *VOC Input*.

Third, the directions for analysis audits have been expanded (newly added for Procedure L) to include information on audit sample availability and reporting directions for audit results.

Finally, a new method has been added for measuring liquid VOC input (called the distillation approach), as an alternative to Procedure L.

The EPA is soliciting comments on the draft revised CE test methods consisting of Appendix B of the Chicago FIP with the revisions discussed above. The Agency especially encourages comments on actual costs incurred where these or similar methods have been applied, on ways of reducing the cost of conducting the TTE test, and on the use of parameter monitoring. It is anticipated that EPA will find these comments helpful in completing the 1-year study. At the conclusion of this study, EPA intends to propose revised methods for CE in the **Federal Register**. A summary of the significant comments received, the Agency's response, and the conclusions of the study will be included in the proposal. At that time, the public will be given further opportunity to comment on the methods as proposed.

Dated: December 21, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–31565 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4550–6]

Announcement of the Board of Trustees for the National Environmental Education and Training Foundation, Inc.

The National Environmental Education and Training Foundation was created by Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expend the reach of environmental education and training programs beyond the traditional classroom. The Foundation will develop and support a grant program that promotes innovative environmental education and training programs; it will also develop partnerships with government and other organizations to administer projects that promote the development of an environmentally literate public.

The Administrator of the U.S. Environmental Protection Agency, per the terms of the Act, announces the following appointment to the National Environmental Education and Training Foundation, Inc. Board of Trustees. This appointee will join the current Board members, (see the **Federal Register**. October 21, 1991, May 7, 1992 and November 30, 1992) which include: Chairman Thomas H. Kean, President of Drew University; Vice Chairwoman Ellen Sulzberger Straus, President of Executive Service Strategies; Treasurer Francis Pandolfi, President and CEO of Times Mirror Magazines, Inc. and Chairman of the Board of The Sporting News Publishing Company; Ms. Rebecca Rimel, Executive Director of the Pew Charitable Trusts; Dr. James Crowfoot, Professor at the School of Natural Resources, University of Michigan; Mr. Edward Bass, Chairman of Space Biosphere Ventures and Chairman and CEO of FineLine Inc. and the Bass Company;

Mr. John Denver, Co-Founder and President of the Windstar Foundation; Mr. O. Mark De Michele, President and CEO of Arizona Public Service Company; Mr. Robert N. Wilson, Vice Chairman and member of the Board of Directors of Johnson & Johnson; Dr. Bonnie Guiton, now Dean of the McIntire School of Commerce at the University of Virginia and Michael J. Fuchs, Chairman and Chief Operating Officer of Home Box Office. Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board yet another point of view relating to environmental education and training. Terms of office for respective Board members will be determined and announced upon completion and announcement of the full complement of 13 Board members.

James R. Donnelley

Mr. James R. Donnelley has been the Vice Chairman of the Board of R.R. Donnelley & Sons since 1990 after holding positions as Group President of Corporate Development, Group President of Financial Services, Group Vice President of Financial Services, and Vice President as well as, Director of Financial and Legal Sales Division since 1972. R.R. Donnelley & Sons is the world's largest provider of printing and

printing-related services from data origination to final product distribution

Mr. Donnelley is a Trustee for Lake Forest College, WTTW Public Television, and the Associate Colleges of Illinois where he is also a member of the Executive Committee. Mr. Donnelley serves as a Director for the Barker Welfare Foundation, the John C. Griswold Foundation and The Donnelley Foundation, where he also serves as Vice President. Mr. Donnelley is also a Director for the Children's Memorial Hospital, Sierra Pacific Resources and Director and member of the Executive Committee of the National Merit Scholarship Corporation.

Mr. Donnelley is a member of The Conference Board, the University of Chicago Library Visiting Committee and the University of Chicago Council on the Graduate School of Business. He is also a member of the Commercial Club of Chicago and the Economic Clubs of Chicago and New York. Mr. Donnelley also serves on the Chicago Youth Centers Advisory Board.

Mr. Donnelley was born in Chicago on June 18, 1935 and currently resides in Chicago with his wife Nina. He received a B.A. from Dartmouth College in 1957 and an M.B.A. from the University of Chicago in 1962.

Mrr. Donnelley served in the U.S. Navy as a Lieutenant, qualified in Submarines, from 1957 through 1960.

For further information, please contact: Barbara Link, President, The National Environmental, Education and Training, Foundation, Inc., (202 628–8200.

William K. Reilly,

Administrator.

[FR Doc. 92–31567 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–60–M

[FRL–4549–1]

Wisconsin: Final Partial Program Determination of Adequacy of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final partial program determination of adequacy on Wisconsin's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive household hazardous waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. The EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility.

Wisconsin applied for a partial program determination of adequacy under section 4005 of RCRA. The EPA reviewed Wisconsin's application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised Federal MSWLF Criteria. After reviewing all comments received, the EPA today is granting final partial approval to Wisconsin's program.

EFFECTIVE DATE: The determination of adequacy for Wisconsin shall be effective on December 29, 1992.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the EPA promulgated revised Federal MSWLF Criteria (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal MSWLF Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to propose in the STIR to allow partial approval if; (1) the Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258. As provided in the revised Federal MSWLF Criteria, the EPA's national Subtitle D standards will take effect in October 1993. Consequently, any portions of the revised Federal MSWLF Criteria which are not included in an approved State/Tribal program by October 1993 would apply directly to owners/operators. The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR. Consequently, the EPA reviewed the program approved today and concluded that the State and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the revised Federal MSWLF Criteria's flexibility for those portions of the program which have been approved.

The EPA will review the State/Tribe's requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. The EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior

approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal MSWLF Criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Third, the EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

The EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. The EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The EPA expects State/Tribes to meet the STIR requirements for a MSWLF program before it gives full approval to a MSWLF program. The EPA is also requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. The EPA notes that it intends to propose making submissions of a schedule mandatory in the STIR.

B. State of Wisconsin

On July 27, 1992, Wisconsin submitted an application to obtain a partial program adequacy determination for the State's municipal solid waste landfill permit program. On September 25, 1992, the EPA published a tentative determination of adequacy for Wisconsin's program. Further background on the tentative partial program determination of adequacy appears at 57 FR 44377, September 25, 1992.

Along with the tentative determination, the EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held on November 17, 1992.

The EPA has reviewed Wisconsin's application and has determined that the following portions of the Wisconsin solid waste permit program will ensure compliance with the revised Federal MSWLF Criteria.

1. Location restrictions for airport safety, floodplains, and wetlands (40 CFR 258.10, 258.11, and 258.12);

2. Operating criteria for cover materials, disease vector control, access, surface water, and liquids restrictions (40 CFR 258.21, 258.22, 258.25, 258.27, and 258.28);

3. Groundwater monitoring and corrective action criteria for groundwater monitoring systems, groundwater sampling and analysis requirements, assessment of corrective measures, selection of remedy, and implementation of the corrective action program (40 CFR 258.51, 258.53, 258.56, 258.57, and 258.58);

4. Closure and post-closure care requirements (40 CFR 258.60 and 258.61); and

5. Financial assurance requirements and allowable mechanisms for closure, post-closure care, and corrective action (40 CFR 258.71, 258.72, 258.73, and 258.74).

Wisconsin's MSWLF permit program has the authority to issue permits that incorporate the requirements of the revised Federal MSWLF Criteria to all MSWLFs in the State, with the exception of those located on Tribal Lands. In addition, the EPA has determined that Wisconsin's permit program contains provisions for public participation, compliance monitoring, and enforcement. When a feasibility report for a proposed MSWLF has been deemed administratively complete by Wisconsin, a public notice is published to solicit public comment and requests for a public hearing. All information submitted to Wisconsin for the feasibility report is available for public review. All written or verbal comments received from the public are considered by Wisconsin before a feasibility determination is made. A public notice concerning the final feasibility determination is published as a matter of policy. All information submitted with regard to modifications involving corrective action remedies is contained in a facility file, which is available for public review. Any information submitted by the public either verbally or in writing, is responded to by Wisconsin, with the written responses by the State placed in the facility file. As a matter of policy, Wisconsin publishes a notice for corrective action modifications that are proposed to be taken by a responsible party.

The Wisconsin compliance monitoring program has the authority to obtain information from a MSWLF facility, as well as the authority to enter and inspect any MSWLF site or record pertaining to solid waste management, to determine compliance. Wisconsin has mechanisms to verify the accuracy of information submitted by a MSWLF facility, to verify the sampling methods used by a MSWLF facility, and to produce evidence admissible in an enforcement proceeding. Wisconsin has the authority to conduct monitoring or testing to ensure compliance. Wisconsin inspects MSWLFs to verify and document compliance with solid waste regulations, deter violations, and provide opportunities to inform and educate the regulated community.

Wisconsin has the authority to implement the following remedies for violation of program requirements:

1. Authority to restrain a person from conducting an activity that may endanger or cause damage of human health or the environment;

2. Authority to sue an individual who is violating provisions of any statutes, regulations, orders, or permits that have been issued by the State; and

3. Authority to administratively assess penalties for violating statutes, regulations, orders, or permits.

To ensure compliance with all of the revised Federal MSWLF Criteria, Wisconsin intends to revise the following aspects of its permit program.

1. Wisconsin will revise its regulations to incorporate the Federal location restrictions for fault areas, seismic impact zones, and unstable areas in 40 CFR 258.13, 258.14, and 258.15.

2. Wisconsin will revise its regulations to incorporate the Federal operating requirements for the exclusion of hazardous waste, explosive gases control, run-on/run-off control systems, and recordkeeping in 40 CFR 258.20, 258.23, 258.26, and 258.29. Wisconsin will also seek to amend a State statute to meet the Federal operating requirements for air criteria in 40 CFR 258.24.

3. Wisconsin will revise its regulations to include a minimum composite liner design which consists of a 60-mil high density polyethylene geomembrane over 4 feet of compacted clay, which is more stringent than the Federal design requirements in 40 CFR 258.40(a).

4. The Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Wisconsin requires samples to be filtered and preserved in the filed in accordance with standard published procedures. The Agency intends to revisit this issue during a proposed rulemaking. If the proposed rulemaking upholds the ban on field filtering, the State will be required to come into compliance with the provisions in 40 CFR 258.53(b). In the meantime, the State will not be given approval of this requirement.

5. Wisconsin will revise its regulations to incorporate detection and assessment groundwater monitoring

parameters that are consistent with the revised Federal Criteria, but take advantage of the flexibility provided in 40 CFR 258.54 and 258.55.

6. Wisconsin will seek to amend a State statute to fully meet the financial assurance requirements in 40 CFR 258.70(a).

The EPA received the following written public comments on its tentative determination of partial program adequacy for Wisconsin's MSWLF permit program.

One commenter expressed concern that certain definitions in the Wisconsin application did not completely correspond to the definitions in the revised Federal MSWLF Criteria. The EPA does not intend the adequacy review process to result in State/Tribal programs that are mirror images of the Federal program. Instead, the Agency will review the State/Tribal programs to determine whether the programs are adequate to ensure compliance with the revised Federal MSWLF Criteria. The EPA has reviewed the definitions in the Wisconsin program that correspond to the definitions in the revised Federal MSWLF Criteria, as well as State correspondence to owners/operators that was included in Wisconsin's application. The EPA believes the Wisconsin definitions and the State's implementation actions to date reflect the intent of the revised Federal MSWLF Criteria.

One commenter asserted that the EPA should not approve Wisconsin's daily cover material requirements because the State has the authority to grant an exemption from daily cover to MSWLFs serving a population equivalent of less than 2,500 people. The Wisconsin application acknowledged this exemption, but also indicated that the State does not anticipate any MSWLFs that meet this condition to remain open after October 9, 1993. In addition, the Wisconsin application indicated that the State has regulations to control disease vectors, blowing litter, and public access to minimize exposure of the public to potential hazards. The EPA has determined that this exemption will not pose a significant deviation from the revised Federal MSWLF Criteria.

One commenter asserted that Wisconsin's application indicated that the State's existing regulations concerning air criteria do not adequately address the requirements in the revised Federal MSWLF Criteria. Wisconsin acknowledged in its application that current State statute allows open burning at small MSWLF facilities. Wisconsin states that it intends to seek an amendment to this statute, to ban open burning at all MSWLF facilities. The State expects to be in compliance with the revised Federal MSWLF Criteria by October 9, 1995. The EPA agrees with this revision to the State program and the schedule for completion.

One commenter suggested that the EPA should reconsider granting Wisconsin approval of the liquid restrictions portion of its program because the State allows a small quantity exemption for the acceptance of liquid wastes (55-gallon maximum) on a one-time basis provided that the facility is in compliance. As Wisconsin explained in its application, this exemption has been granted less than a dozen times, and has concerned small quantities of liquids such as spoiled beer, ice cream, pudding, and rotten eggs that have been generated from local manufacturers. The EPA has determined that this exemption is a legitimate "safety valve" for local emergencies, and is not a significant deviation from the revised Federal MSWLF Criteria.

One commenter stated that it was unclear which portions of Wisconsin's groundwater monitoring program the EPA has approved. As the tentative determination in 57 FR 44378 indicated, the EPA tentatively approved the requirements in the State program that correspond to 40 CFR 258.51 (Groundwater Monitoring Systems), 40 CFR 258.53 (Groundwater Sampling and analysis), 40 CFR 258.56 (Assessment of Corrective Measures), 40 CFR 258.57 (selection of Corrective Action Remedy), and 40 CFR 258.58 (Implementation of the Corrective Action Program). As Wisconsin's application acknowledged, the State's detection and assessment groundwater monitoring programs must be revised. Wisconsin intends to modify its detection monitoring parameters to include a set of inorganic parameters, dissolved iron, and all the volatile organic compounds in Appendix I of the revised Federal MSWLF Criteria. In addition, the State intends to modify its assessment monitoring program to require all MSWLFs, where detection monitoring shows that a statistically significant release has occurred, to sample and analyze leachate for all the parameters in Appendix II of the revised Federal MSWLF Criteria, and then monitor the appropriate groundwater wells for all those substances found in the leachate. The EPA agrees with these revisions to the State program and the schedule for completion.

One commenter suggested that the EPA should grant partial approval to the groundwater sampling and analysis portion of Wisconsin's application because the State allows filtered groundwater samples. The revised Federal MSWLF Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Wisconsin requires samples to be filtered and preserved in the field in accordance with standard published procedures. The EPA intends to revisit this issue during a proposed rulemaking. The proposed rulemaking will defer the ban on field filtering while the EPA studies the issue of field filtering. If the EPA determines the ban should be upheld, Wisconsin will be required to come into compliance with the provisions of 40 CFR 258.53(b). In the meantime, the State will not be given approval of this requirement.

One commenter asserted that Wisconsin does not require a final cover that is as restrictive as the revised Federal MSWLF Criteria. As Wisconsin's application indicated, the State requires, at minimum, a 2-foot compacted earth infiltration layer. The State may require a specific soil type. It is State policy to require all MSWLFs closing after October 9, 1991, to place 2 feet of a fine-grained soil that has a maximum permeability of 1×10^{-5} cm/sec or that has a permeability less than or equal to any bottom liner system. In addition, the Wisconsin application indicated that it is State policy to require a composite cap when a facility has a composite liner. The State currently has the discretion to require a notation on the deed to a landfill. Wisconsin also maintains a list of all locations of known active and abandoned landfills. The EPA considers Wisconsin's closure requirements to be substantially equivalent to the revised Federal Criteria.

One commenter stated that it is unclear which portion of Wisconsin's financial assurance program were tentatively approved by the EPA. As the determination in 57 FR 44378 indicated, the EPA tentatively approved the requirements in the State program that correspond to 40 CFR 258.71 (Financial Assurance Requirements for Closure), 40 CFR 258.72 (Financial Assurance Requirements for Post-Closure Care), 40 CFR 258.73 (Financial Assurance Requirements for Corrective Action), and 40 CFR 258.74 (Allowable Mechanisms). As Wisconsin's application indicated, the State will seek to amend a statute to require all MSWLFs to maintain proof of financial responsibility. Wisconsin anticipates securing this amendment by October 9, 1995. The EPA agrees with this revision to the State program and the schedule for completion.

One commenter suggested that the EPA should condition approval of the Wisconsin application upon the State's

commitment that a general exemption process will not result in requirements for a facility that are less stringent than the revised Federal MSWLF Criteria. Discussions with the State have indicated that the situations in which the exemption has been used in the past would not pose a deviation from the revised Federal MSWLF Criteria. The general exemption process serves to foster innovative, but equivalent, methods of complying with Wisconsin requirements. Furthermore, the same commenter acknowledged that the State has acted responsibly in granting exemptions from the solid waste rules. The EPA is satisfied that the use of this general exemption does not undermine the effectiveness of Wisconsin's program.

One commenter suggested that the EPA should condition approval of the Wisconsin application upon the State's agreement that nonapproved facilities that fail to satisfy the revised Federal MSWLF Criteria by October 9, 1993, will be ordered to close immediately. In its application, Wisconsin outlined the manner in which existing facilities will be brought into compliance or closed. If an unapproved facility does not close by October 9, 1993, and intends to come into full compliance with the revised Federal MSWLF Criteria, the facility will be ordered to close if it is found to be causing groundwater contamination. If groundwater contamination is not found, Wisconsin will issue an order requiring the facility to submit a plan modification or a closure plan. The EPA is confident of the State's commitment to expeditiously close facilities not in compliance with the revised Federal MSWLF Criteria.

Wisconsin submitted a schedule indicating that it will be able to complete these revisions and amendments by October 9, 1995. As explained in the notice of tentative determination, the EPA reviewed the schedule and concluded that it was reasonable.

The EPA cautions Wisconsin that it currently plans to propose in the STIR that all partial approvals will expire in October 1995 for States/Tribes that have not received final approval for all provisions of 40 CFR part 258. Expiration of a partial approval would mean that the less flexible revised Federal Criteria would once again be effective in that State/Tribe. The EPA urges Wisconsin to work diligently to make all of the necessary revisions to those portions of its permit program that are not receiving approval today.

C. Decision

After reviewing the public comments submitted since the tentative decision, I conclude that Wisconsin's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA.

Accordingly, Wisconsin is granted a partial program determination of adequacy for the following areas of its municipal solid waste program.

1. Location restrictions for airport safety, floodplains, and wetlands (40 CFR 258.10, 258.11, and 258.12);

2. Operating criteria for cover materials, disease vector control, access, surface water, and liquids restrictions (40 CFR 258.21, 258.22, 258.25, 258.27, and 258.28);

3. Groundwater monitoring and corrective action criteria for groundwater monitoring systems, groundwater sampling and analysis requirements, assessment of corrective measures, selection of remedy, and implementation of the corrective action program (40 CFR 258.51, 258.53, 258.56, 258.57, and 258.58);

4. Closure and post-closure care requirements (40 CFR 258.60 and 258.61); and

5. Financial assurance requirements and allowable mechanisms for closure, post-closure care, and corrective action (40 CFR 258.71, 258.72, 258.73, and 258.74).

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal MSWLF Criteria in 40 CFR part 258 independent of any State enforcement program. As the EPA explained in the preamble to the revised Federal MSWLF Criteria, the EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the EPA should be considered to be in compliance with the revised Federal MSWLF Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. The EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. The EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by the EPA as Federal law. Consequently, the EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This Rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: December 17, 1992.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 92-31441 Filed 12-28-92; 8:45 am]

BILLING CODE 6560-60-M

[OPPT-59956; FRL-4181-7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 10 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93-23, December 15, 1992.

Y 93-24, December 23, 1992.

Y 93-25, December 15, 1992.

Y 93-26, 93-27, 93-28, 93-29, 93-30, 93-31, 93-32, December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW.,

Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93–23

Importer. UBE Industries (America), Inc.

Chemical. (G) Aromatic polymide.

Use/Import. (G) Base material for heat resistant or abrasion resistant mechanical parts. Import range: Confidential.

Y 93–24

Manufacturer. Confidential.

Chemical. (G) Fatty acids, polymer with pentaerythritol, isphthalic acid, trimethylolethylolethane and anhydrides.

Use/Import. (G) Coatings binder. Import range: Confidential.

Y 93–25

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Fiberglass reinforced plastics. Prod. range: Confidential.

Y 93–26

Importer. Peninsula Polymers.

Chemical. (G) Saturated polyester resin.

Use/Import. (S) Used as an ingredient in the manufacture of powder coating. Import range: 90,000–360,000 kg/yr.

Y 93–27

Importer. Peninsula Polymers.

Chemical. (G) Saturated polyester resin.

USE/IMPOR.(S) Used as an ingredient in the manufacture of powder coating. Import range: 90,000–380,000 kg/yr

Y 93–28

Importer. Peninsula Polymers.

Chemical. (G) Saturated polyester resin.

Use/Import. (S) Used as an ingredient in the manufacture of powder coating. Import range: 90,000–360,000 kg/yr.

Y 93–29

Importer. Peninsula Polymers.

Chemical. (G) Saturated polyester resin.

Use/Import. (S) Used as an ingredient in the manufactute of power coating. Import range: 90,000–360,000 kg/yr.

Y 93–30

Importer. Peninsula Polymers.

Chemical. (G) Saturated polyester resin.

Use/Import. (S) Used as an ingredient in the manufacture of powder coating. Import range: 90,000–360,000 kg/yr.

Y 93–31

Importer. Peninsula Polymers.

Chemical. (G) Saturated polyester resin.

Use/Import. (S) Used as an ingredient in the manufacture of powder coating. Import range: 90,000–360,000 kg/yr.

Y 93–32

Importer. Peninsula Polymers.

Chemical. (G) Saturated polyester resin.

Use/Import. (S) Used as an ingredient in the manufacture of powder coating. Import range: 90,000–360,000 kg/yr.

Dated: December 16, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxic Substances.

[FR Doc. 92–31446 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–60–F

[OPPTS–140204; FRL–4180–1]

Access to Confidential Business Information by Martin Marietta Technical Services, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Martin Marietta Technical Services, Incorporated (MAR), of Research Triangle Park, North Carolina, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than January 13, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W2–0025, contractor MAR, of 79 Alexander Drive, Research Triangle Park, NC, will assist the Office of Pollution Prevention and Toxics (OPPT) in maintaining and operating the EPA CBI computer facilities located in Research Triangle Park, NC.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W2–0025, MAR will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. MAR personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide MAR access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Research Triangle Park, NC facilities and EPA Headquarters only.

MAR will be authorized access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized for MAR, EPA will approve MAR's security certification statement.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1997.

MAR personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: December 17, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–31568 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–60–F

[OPPTS–140203; FRL–4179–9]

Access to Confidential Business Information by ABT Associates, Incorporated and Eastern Research Group, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ABT Associates, Incorporated (ABT), of Cambridge, Massachusetts, and its subcontractor Eastern Research Group, Incorporated (ERG) of Lexington, Massachusetts, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act

(TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than January 12, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D2–0175, contractor ABT, of 55 Wheeler St., Cambridge, MA, and 4800 Montgomery Lane, Bethesda, MD and its subcontractor ERG, of 110 Hartwell Ave., Lexington, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in performing economic and regulatory impact analyses of actual or potential EPA actions taken under TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D2–0175, ABT and ERG will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ABT and ERG personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ABT and ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, ABT's Cambridge, MA and Bethesda, MD facilities, and ERG's Lexington, MA facility only.

ABT and ERG will be authorized access to TSCA CBI at their facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized at ABT's and ERG's sites, EPA will approve their security certification statements, perform the required inspection of their facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, ABT and ERG will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

ABT and ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: December 17, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–31569 Filed 12–28–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–972–DR]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–972–DR), dated December 17, 1992, and related determinations.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 17, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Connecticut, resulting from a winter storm and coastal flooding on December 10–13, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the Implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard H. Strome of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared major disaster:

The counties of Fairfield, New Haven, and Middlesex, for Individual Assistance and the counties of Fairfield and New Haven for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92–31395 Filed 12–28–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–971–DR]

Republic of the Marshall Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Republic of the Marshall Islands (FEMA–971–DR), dated December 16, 1992, and related determinations.

EFFECTIVE DATE: December 16, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 16, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Republic of the Marshall Islands, resulting from Typhoon Gay on November 17–18, 1992, (Republic Time Zone) is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Republic of the Marshall Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds, available for these purposes, such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent for the first $10 per capita of the total eligible costs. Eligible costs beyond $10 per capita will be funded 90 percent by the Federal government. The law specifically prohibits a similar waiver for funds provided for the Individual and Family Grant Program. These funds will continue to be reimbursed at 75 percent of total eligible costs, as required by law.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. A. Roy Kite of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Republic of the Marshall Islands to have been affected adversely by this declared major disaster:

Ailuk, Aur, Bikini, Enewetak, Likiep, Utirik, Wotho, Wotje, Maloelap, and Ujelang Atolls and Mejit Island for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92–31396 Filed 12–28–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–973–DR]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–973–DR), dated December 18, 1992, and related determinations.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 18, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Jersey, resulting from a severe coastal storm, unusual high tides, heavy rain, and riverine flooding, beginning December 10, 1992 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Stephen Kempf, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the state of New Jersey to have been affected adversely by this declared major disaster:

The counties of Atlantic, Monmouth, and Ocean for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director

[FR Doc. 92–31397 Filed 12–28–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–975–DR]

Massachusetts; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–975–DR), dated December 21, 1992, and related determinations.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 21, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts, resulting from a winter storm and coastal storm on December 11–13, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be designated at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency management Agency under Executive Order 12148, I hereby appoint Richard H. Strome of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared major disaster: The counties of Barnstable, Essex, Plymouth, and Suffolk for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92–31538 Filed 12–28–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–974–DR]

New York; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–974–DR), dated December 21, 1992, and related determinations.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 21, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from a coastal storm, high tides, heavy rain, and riverine flooding on December 10, 1992, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Jose Bravo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster: Suffolk and Nassau Counties and New York City for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92–31539 Filed 12–28–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Seaspirit Cruise Line, Inc. and Seaspirit, Inc., 2800 University Avenue Southeast, Minneapolis, Minnesota 55414–3293. Vessel: Seaspirit.

Dated: December 21, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–31393 Filed 12–28–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0778]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; Extension of comment.

SUMMARY: On October 14, 1992, the Board requested comment on a proposal to change the opening time for the Fedwire funds transfer service from 8:30 am Eastern Time (ET) to 6:30 am ET, effective October 4, 1993. The Board also requested comment on whether the operating hours for the book-entry securities transfer service should be changed from 8:30 am ET to 6:30 am ET, should the earlier funds transfer opening time be implemented. The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period for 30 days.

DATES: Comments must be received by February 8, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0778, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; or may be delivered to the Board's mail room between 8:45 am and 5:15 pm. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 9 am and 5 pm.

FOR FURTHER INFORMATION CONTACT: For information regarding Fedwire funds and securities transfer operating hours, contact Gayle Brett, Manager (202/452-2394), or Lisa Hoskins, Senior Financial Services Analyst (202/452-3474), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For information regarding the market needs for extended Fedwire operating hours, contact Patrick M. Parkinson, Assistant Director (202/452-3526) or Patricia White, Senior Economist (202/452-2912), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board is extending the comment period for the proposed expansion of Fedwire funds transfer operating hours because discussions with several depository institution representatives suggest that a clarification of the Board's interest in receiving comments on the broader context of the proposal is needed. (57 FR 47080, October 14, 1992). The Board encourages comment on the proposed two hour extension in light of the possibility of the need for significantly longer operating hours (*i.e.*, the potential for 24 hour per business day operations) in the future to facilitate risk reduction associated with certain international financial transactions. A longer comment period is provided to allow commenters additional time to respond based on this clarification.

The Board requests comment on the proposed extension of the Fedwire service both for the specified two hour period and within the context of a longer-term strategic objective of

significantly expanded processing hours. Comments on longer hours for both the Fedwire funds and securities transfer services are sought. With regard to the longer-term, the Board seeks public comment on the potential implications of longer processing hours for reducing payment system risk in the settlement of foreign currency and other types of international transactions. In particular, how would Fedwire operating hours of 16, 18, or even 24 hours help to reduce settlement or other risks? What current or future business opportunities could be facilitated in Asia and in Europe, in the longer-term, if Fedwire payment processing capabilities were expanded? What potential impact could expanded hours have on operational needs and risks associated with international transactions? In the longer-term, could expanded processing hours facilitate the development of private-sector delivery-versus-payment mechanisms for settling foreign exchange transactions?

By order of the Board of Governors of the Federal Reserve System, December 21, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-31394 Filed 12-28-92; 8:45 am]

BILLING CODE 6210-01-F

Supplement to the FFIEC 002; "Call Report" for U.S. Branches and Agencies of Foreign Banks

AGENCY: Board of Governors of the Federal Reserve System, on behalf of the Federal Financial Institutions Examination Council.

ACTION: Final Notice of supplementary information collection.

SUMMARY: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file detailed schedules of their assets and liabilities in the form of a condition report and a variety of supporting schedules (FFIEC 002). This report is a uniform report established by the Federal Financial Institutions Examination Council ("FFIEC"), which is collected and processed by the Federal Reserve on behalf of all three federal banking regulatory agencies (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency).

On December 10, 1991, the FFIEC, on behalf of the Board of Governors of the Federal Reserve System, announced for public comment a proposal for the addition of a supplement to the FFIEC 002 report. After consideration of comments submitted, the FFIEC has adopted the supplement (FFIEC 002S) and the Office of Management and Budget has approved the supplementary information collection. The new supplement will collect information on assets and liabilities of any non-U.S. branch that is "managed or controlled" (as defined below) by a U.S. branch or agency of a foreign bank.

The supplement will be implemented as of March 1993. A separate supplement must be completed for each non-U.S. branch that is managed or controlled by a U.S. office of the foreign bank. The supplements must be filed quarterly along with the U.S. branch's or agency's FFIEC 002.

DATES: The supplementary information collection will be implemented as of March 1993.

FOR FURTHER INFORMATION CONTACT: Henry S. Terrell, Senior Economist (202–452–3785), Division of International Finance, and Martha C. Bethea, Deputy Associate Director (202–452–3181), Division of Research and Statistics, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: The FFIEC has approved the addition of a supplement to the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002: OMB No. 7100–0032) in order to collect information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of a foreign bank. This supplementary information collection is necessary because for a number of years foreign banks with U.S. branches or agencies have conducted a large banking business at branches domiciled in offshore centers, primarily in the Cayman Islands and the Bahamas. Foreign banks are able to use these offshore branches to conduct a banking business free of any U.S. reserve requirements, FDIC premiums, or statistical reporting requirements. While nominally domiciled in these offshore centers, these branches are often largely run out of the banks' U.S. agency or branch office, with a separate set of books but often with overlapping management responsibilities. The transactions of these offshore branches are often largely with U.S. residents. Therefore, the situation exists where a large amount of banking business is being conducted in the United States with U.S. residents for which no statistical reporting was previously available. The same statistical problem does not exist for offshore branches of U.S. banks because several statistical reports are collected covering their operations in these centers.

This situation, in which foreign bank activities, including large and potentially volatile transactions with U.S. residents, escaped statistical reporting, needed to be addressed. Better data are needed primarily to obtain improved data on U.S. credit and deposit flows and international indebtedness. The supplement also will be available to supervisory personnel.

Three comment letters concerning the proposed information collection were submitted—from (1) the Institute of International Bankers (the "Institute"), (2) Peat Marwick Management Consultants ("Peat Marwick"), and (3) the Honorable Donald W. Riegle, Jr., Chairman, Committee on Banking, Housing, and Urban Affairs, United States Senate. In response to these comments, the definition of "managed or controlled" and the extent to which the existing FFIEC 002 report will be used to develop the reporting panel have been refined and clarified. Also, as requested, an option has been added to permit reporting on the basis of either cash or accrual accounting. A few minor clarifications also have been made to the form and instructions. The report, as amended, will be implemented as of March 1993.

The supplement and instructions, as amended, are published in full below. Starting with the March 1993 "call report", the supplement and instructions will be distributed in the FFIEC 002 package.

Major issues raised by the commentators, as well as amendments to the supplement and instructions made in response thereto, are designed below.

Summary of Public Comments

The major thrust of the comments from the Institute and Peat Marwick concerned the definition of "managed or controlled" and the intended scope of the reporting panel for the new supplement. The Institute noted that it "does not oppose the FRB's proposal to gather data on offshore branches of international banks that are not staffed and operated at such locations ("non-free-standing branches") given their close relationship with U.S. offices that are subject to host country supervision." At the same time, the institute expressed concern that the proposed definition of "managed or controlled" also could require the submission of the supplement with respect to branches that are locally staffed and operated ("free-standing branches") "simply because those branches report to a senior executive officer of the bank based in the United States with ultimate responsibility for them or because

records used in providing data processing or other services to the non-U.S. branches are maintained in the United States." The Institute suggested that the "managed or controlled" test be modified so that a report is required only for non-free-standing branches. The Institute also noted that the supplement should not be required where the primary responsiblity for maintaining records with respect to assets and liabilities of a free-standing non-U.S. branch rests with such a branch or with the head office.

The Institute urged "careful consideration of any increased supervision of non-free-standing branches of international banks beyond the proposed report requirement because it could undermine the legal and regulatory separateness of such branches which are important to both U.S. and international banks to facilitate participation in the Eurocurrency markets." The Institute also requested that, because many international banks use the cash method of accounting, respondents should be given the option of reporting on either a cash or an accrual basis.

Peat Marwick commented that a strict construction of the proposed "managed or controlled" test would not capture many foreign branches. Peat Marwick noted that, although bankers may acknowledge that there may be value in the data collection, they may resist reporting because of concerns that reporting could compromise confidentiality and that reporting would establish a presumption that the branch, including its customer accounts, is subject to examination by Federal Reserve examiners. Peat Marwick suggested that, if the Federal Reserve wishes to achieve as complete a reporting panel as possible, the "managed or controlled" test should be dispensed with, and a policy statement should be issued stating that: (i) Filing the supplement does not establish a presumption that the offshore branch is managed or controlled by the U.S. office that files the supplement; and (ii) collection of data is for economic and monetary policy needs and not for supervisory analysis of individual branches or agencies.

Peat Marwick also noted the cost associated with completion of the supplement by reporting institutions and the issues raised by the supplement regarding extraterritoriality of U.S. supervision. Both Peat Marwick and the Institute questioned whether an entry by a U.S. branch or agency in the data cell on the FFIEC 002 for "due to" or "due from" related offshore branches should signal a need to complete the supplement.

Senator Riegle strongly supported the FFIEC's intention to collect balance sheet data on offshore offices of foreign banks where those offices are "managed or controlled" by U.S. branches and agencies of the foreign bank. However, Senator Riegle suggested that the scope of the supplement should be expanded to collect even more information for regulatory purposes. In particular, Senator Riegle recommended collecting information in order to determine whether such offshore branches are issuing deposits that would not be legal if issued by the U.S. branch or agency, and whether they are using these offshore branches to avoid relevant U.S. regulatory requirements, such as limits on loans to single borrowers.

In light of these comments, several revisions have been made to the proposed supplement and instructions in order to clarify and improve the information collection. The major topics raised in the comments, the agencies' responses thereto, and consequential revisions made to the supplement and instructions are discussed below.

Definition of "Managed or Controlled"; Scope of Supplementary Reporting Requirement

Following consideration of the comments of the Institute and Peat Marwick with regard to this topic, a number of clarifying changes have been made to the definition of "managed or controlled." Peat Marwick's suggestion to drop the "managed or controlled" test in favor of a general policy statement to encourage increased reporting was considered and rejected; in the agencies' view, it is this test, which limits the supplementary reporting requirements to those non-U.S. branches that are "managed or controlled" by U.S. branches, that negates any extraterritorial effect of the information collection.

In response to concerns expressed by the Institute, the definition has been revised to clarify that the supplement will be required only for those non-U.S. branches for which a U.S. branch or agency has substantial responsibility with regard to assets or liabilities or recordkeeping and that determinations regarding whether the supplemental should be completed will be made with regard to where substantive decision-making authority or responsibility lies. Examples of situations in which the supplement should be completed have been added and situations also are identified that, by themselves, generally would not give rise to a need to complete the supplement. In particular, the instructions have been revised to clarify that the fact that a foreign branch manager may report to a U.S. branch manager pursuant to reporting lines established by the foreign bank will not, by itself, necessitate completion of the supplement. The revised definition of "manages or controls" is set out below in the General Institutions.

Scope and Use of Information Collected

Peak Marwick suggested that a policy statement should be issued with regard to the supplement in order to clarify that information collected pursuant thereto will be for economic and monetary policy purposes and not for purposes of supervisory analysis of individual branches or agencies. Senator Riegle, however, was concerned that the scope of the information collected pursuant to the supplement may be too narrow. He suggested that the scope of the supplement should be expanded to collect even more information for supervisory purposes.

Having given careful consideration to these comments, no changes have been made to the original proposal regarding the scope and the use of the information to be collected in the supplement. As explained in the proposal, a primary purpose of the supplement is to obtain improved data on U.S. credit and deposit flows and international indebtedness. As is also clear from the proposal, however, the supplement will be made available to supervisory personnel, as is the case with all information contained in the call report. Such information may be of use in the assessment of the condition of the U.S. branches and agencies of foreign banks, and will help to focus attention on any activities that may require further supervisory review. The U.S. regulator, of course, would not depend on the new supplement to the call report in carrying out its examination responsibilities but, as noted, the supplement would be available to the regulator and may provide useful information.

Senator Riegle also expressed concern regarding whether the supplement would collect sufficient information to allow regulators to ascertain whether offshore branches were being used to evade limits on loans to single borrowers. The lending limits contained in the International Banking Act, however, apply only to the U.S. offices of foreign banks. Just as one U.S. bank may participate a loan to an affiliated bank, a U.S. office of a foreign bank may participate a loan or portion of a loan to another branch of the foreign bank without violating U.S. law.

Use of FFIEC 002 To Develop Reporting Panel

Both the Institute and Peat Marwick questioned whether an entry by a U.S. branch or agency in the data cell on the existing FFIEC 002 for "due to" or "due from" related offshore branches should automatically signal a need to complete the supplement. Determinations regarding whether the supplement should be completed will be made with reference to the "managed or controlled" test in the light of all relevant information. An entry in the "due to" or "due from" data cell will be considered to be relevant information in making the determination on whether an offshore branch is "managed or controlled" and therefore whether the supplement should be filed.

Accrual Versus Actual Method of Accounting

The Institute requested that, because many international banks use the cash method of accounting, respondents should be given the option of reporting the information on either a cash or an accrual basis. This option has been provided in the instructions. However, this may be reassessed by the agencies in the future.

Description of Information Collection

The supplement covers all of the foreign branch's assets and liabilities, regardless of the currency in which they are payable. The supplement also covers transactions with all entities, both related and nonrelated, regardless of location. All due from/due to relationships with related institutions, both depository and nondepository, would be reported on a gross basis—that is, without netting due-from and due-to items against each other. This reporting treatment of due to/due from transactions with related institutions parallels the treatment called for in Schedule M of the FFIEC 002, *Due From/Due to Related Institutions in the U.S. and in Foreign Countries.*

Both the assets and the liabilities sections of the proposed supplement call for detail by location and type of the other party to the transaction and by whether the transaction is denominated in U.S. or non-U.S. currency. In addition, for claims on U.S. addressees (other than related depository institutions) denominated in U.S. dollars, detail on the type of claim is required. In general, the definitions of the specific types of claims (that is, portfolio items) called for, and their reporting treatment, correspond to FFIEC 002 definitions of those items. Further detail on transactions with U.S addressees denominated in U.S. dollars also is called for in a Memoranda section.

All items would be reported in U.S. dollars. Transactions denominated in other currencies would be converted to U.S. dollars under currency translation procedures used for the FFIEC 002.

The supplement would be completed as of the close of business of the last calendar day of the quarter (March, June, September, and December) and submitted to the Federal Reserve Bank together with the managing U.S. branch or agency's FFIEC 002 under the filing schedule and procedures stipulated for that report. (The Federal Reserve serves as the collection agent for the FFIEC 002. The report is submitted to the Federal Reserve Bank in whose district the reporting U.S. branch or agency is located.)

Legal Status

This report is required by law (12 U.S.C. 3105(b)(2); 12 U.S.C. 1817(a); and 12 U.S.C. 3102(b)). The data will be treated as confidential information.

Board of Governors of the Federal Reserve System, December 22, 1992

William W. Wiles,

Secretary of the Board

The FFIEC regards the information reported in this supplement as confidential.

Supplement—Report of Assets and Liabilities of Non-U.S. Branch Licensed in _____ (country) That Is Managed or Controlled by _____(legal title of U.S. branch or agency) at close of business on _____ 19___

Please read instructions carefully

Assets

1. Claims on U.S.-domiciled offices of related depository institutions denominated in U.S. dollars
2. Claims on all other U.S. addressees (including related nondepository institutions) denominated in U.S. dollars:
   a. Balances due from nonrelated depository institutions:
      (1) With remaining maturities of one day or under continuing contract ("overnight")
      (2) All other maturities ("term")
   b. Securities
      (1) U.S. Treasury securities and U.S. Government agency and corporation obligations
      (2) All other securities
   c. Loans:
      (1) Loans secured by real estate
      (2) Loans to nonrelated depository institutions in the United States
      (3) Commercial and industrial loans
      (4) All other loans
      (5) Less: Any unearned income on loans reflected in items 2.c(1) through 2.c(4) above
      (6) Total loans, net of unearned income (sum of Items 2.c(1) through 2.c(4) minus Item 2.c(5))
   d. All other claims
   e. Total claims on U.S. addressees other than related depository institutions, denominated in U.S. dollars (sum of Items 2.a, 2.b, 2.c(6), and 2.d)
3. Claims on all U.S. addressees denominated in currencies other than U.S. dollars
4. Claims on home-country addressees denominated in any currency:
   a. Related depository institutions
   b. Nonrelated depository institutions
   c. Home-country government and official institutions (including home-country central bank)
   d. All other home-country addressees
5. Claims on all other non-U.S. addressees denominated in any currency
6. All other assets
7. Total assets (sum of Items 1, 2.e, 3, 4, 5, and 6)

Liabilities

8. Liabilities to U.S.-domiciled offices of related depository institutions denominated in U.S. dollars
9. Liabilities to all other U.S. addressees (including related nondepository institutions) denominated in U.S. dollars:
   a. Liabilities to nonrelated depository institutions in the U.S.:
      (1) With remaining maturities of one day or under continuing contract ("overnight")
      (2) All other maturities ("term")
   b. Liabilities to all other U.S. addressees denominated in U.S. dollars
      (1) With remaining maturities of one day or under continuing contract ("overnight")
      (2) All other maturities ("term")
10. Liabilities to all U.S. addressees denominated in currencies other than U.S. dollars
11. Liabilities to home-country addressees denominated in any currency:
   a. Related depository institutions
   b. Nonrelated depository institutions
   c. Home-country government and official institutions (including home-country central bank)
   d. All other home-country addressees
12. Liabilities to all other non-U.S. addressees denominated in any currency
13. All other liabilities
14. Total liabilities (sum of Items 8 through 13)

Memoranda—Transactions with U.S. addressees denominated in U.S. dollars

1. Amount included in Items 1 and 2.d above for U.S. Government securities purchased under agreements to resell:
   a. With original maturities of one day or under continuing contract ("overnight")
   b. All other maturities ("term")
2. Amount included in Items 8 and 9 above for U.S. Government securities sold under agreements to repurchase:
   a. With depository institutions in the U.S. (related and nonrelated) included in Items 8 and 9.a above):
      (1) With original maturities of one day or under continuing contract ("overnight")

(2) All other maturities ("term")
b. With all other U.S. addressees (included in item 9.b above):
(1) With original maturities of one day or under continuing contract ("overnight")
(2) All other maturities ("term")
3. Amount included in item 9.b above for negotiable certificates of deposit issued by the reporting foreign branch:
a. Held in custody by the reporting foreign branch or by the managing U.S. branch or agency
b. All other negotiable certificates of deposit
4. Amount included in item 9.b above for deposits that are guaranteed payable in the U.S. or for which the depositor is guaranteed payment by a U.S. office:
a. With original maturities of one day or under continuing contract ("overnight")
b. All other maturities ("term")

Supplement—Report of Assets and Liabilities of a Non-U.S. Branch That is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S)

I. General Instructions

Who Must Report

The Supplement must be completed by any U.S. branch or agency of a foreign (non-U.S.) bank that "manages or controls" a banking branch of its parent bank that is licensed outside the 50 states of the United States or the District of Columbia (hereafter referred to as a "foreign branch"). "Manages or controls" means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency.

Examples of a need to complete the Supplement would be if: (1) the branch manager for both the U.S. branch or agency and the foreign branch are the same person or there is other significant overlap in personnel; or (2) substantial responsibility for decisions regarding either assets or liabilities of the foreign branch reside with staff in the U.S. office; or (3) recordkeeping systems for either assets or liabilities of the foreign branch are maintained in the U.S. office. The supplement, however, generally need not be completed in respect of foreign branches that maintain full-service facilities, that is, foreign branches that are managed and controlled by staff located at the foreign branch or at locations other than in the United States. Further, the fact that a foreign branch manager may report to a U.S. branch manager pursuant to reporting lines established by the foreign bank will not, by itself, necessitate the completion of the supplement by the U.S. branch.

All U.S. branches and agencies should consider carefully whether the Supplement should be completed. If there are any questions regarding the need to complete form FFIEC 002S, the local Reserve Bank should be contacted. Determinations regarding which U.S. branches or agencies should complete form FFIEC 002S will be made by the Board of Governors of the Federal Reserve System, in consultation with the Office of the Comptroller of the Currency for federal branches and agencies and with the Federal Deposit Insurance Corporation for insured state-licensed branches. These determinations will be made with reference to whether substantive decision-making authority lies.

A separate Supplement must be completed for each applicable foreign branch. No consolidation of statements for multiple branches is permitted.

Supplements shall be filed with the U.S. branch or agency's FFIEC 002. Please refer to the FFIEC 002 General Instructions, *Where and When to Submit the Report.*

Scope of the Supplement

The Supplement covers *all of the foreign branch's assets and liabilities*, regardless of the currency in which they are payable. The Supplement also covers *transactions with all entities, both related and nonrelated*, regardless of their location.

All due from/due to relationships with *related institutions* (both depository and nondepository) are to be reported on a *gross* basis—i.e., without netting due-from and due-to items against each other. This reporting treatment of due to/due from transactions with related institutions parallels the treatment called for in Schedule M of the FFIEC 002, *Due From/Due to Related Institutions in the U.S. and in Foreign Countries.* That is, the gross due from and gross due to items to be reported will include all claims *between* the foreign branch and any related institutions (whether depository or nondepository) arising in connection with:

(1) Deposits of any kind.
(2) Loans and borrowings of any kind.
(3) Overdrafts, federal funds and repurchase and resale agreements.
(4) Claims resulting from clearing activities, foreign exchange transactions, bankers acceptance transactions, and other activities.
(5) Capital flows and contributions.
(6) Gross unremitted profits and any accounting or regulatory allocation entered on the books of the reporting foreign branch that ultimately affect unremitted profits such as statutory or regulatory capital requirements, reserve accounts, and allowance for possible loan losses.
(7) Any other transactions or entries resulting in claims between the reporting foreign branch and its head office and other related institutions.

Report Date

Reports are to be prepared as of the close of business on the last calendar day of the quarter (March, June, September, and December).

How to Report

Accounting Basis

The report may be prepared on either an accrual or a cash basis of accounting. The accounting basis used for an individual foreign branch should be consistent from quarter to quarter.

Currency Translation

For some line items, the report distinguishes between transactions denominated in U.S. dollars and transactions denominated in other currencies. However, *all items shall be reported in U.S. dollars.* Transactions or balances denominated in currencies other than the U.S. dollar shall be converted to U.S. dollar equivalents prior to their incorporation in the report.

If an asset or liability may be paid optionally in either U.S. dollars or in another currency, report that transaction as denominated in U.S. dollars.

Rounding

See the entry for "Rounding" in the *General Instructions for preparation of the FFIEC 002.*

Negative Entries

Negative entries are not permitted for any item.

Total Assets Must Equal Total Liabilities

In order to report on this form, exchange rates are used to convert non-U.S. currency values into equivalent U.S. dollar values. Changes in those exchange rates may create unrealized gains or unrealized losses. If such a gain or loss is not reflected in, for example, an equity or unremitted profit account on the foreign branch's own books, there will be a discrepancy between total assets and total liabilities on this report unless an adjustment is made. In such cases, the foreign branch's liabilities to its parent bank, which would be included in Item 11.a, should be increased to reflect unrealized gains and should be reduced to reflect unrealized losses.

General Definitions

Related and Nonrelated Institutions

In certain line items, the Supplement distinguishes between transactions of the reporting foreign branch with *related* and *nonrelated* depository institutions. For purposes of the Supplement, the definition of "related depository institution" corresponds to that used for the FFIEC 002 itself. Please refer to the entry for "Related Institutions" in the Glossary section of the FFIEC 002 instructions and to the reporting instructions for Schedule M of that report.

U.S. and Non-U.S. Addressees (Domicile)

The Supplement also distinguishes between transactions of the reporting foreign branch with U.S. addressees and non-U.S. addressees. For *related institutions* (whether depository or nondepository), the definitions of U.S. and non-U.S. addressees (domicile) correspond to those used for Schedule M of the FFIEC 002. That is, "U.S. addressees" encompasses offices domiciled in the 50 states of the United States and the District of Columbia. "*Non-U.S. addressees*" encompasses offices domiciled in a foreign country, in Puerto Rico, or in a U.S. territory or possession. For additional information, see the detailed instructions for preparation of Schedule M.

For *nonrelated parties*, the definitions of U.S. and non-U.S. addressees correspond to those used in the FFIEC 002 for determining the domicile of customers of the respondent.

That is, "*U.S. addressees*" encompasses residents of the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. "*Non-U.S. addressees*" encompasses residents of any foreign country. For additional information, see the entry for "Domicile" in the Glossary section of the FFIEC 002 instructions.

Transactions with International Banking Facilities (IBFs), whether related or nonrelated, are regarded as transactions with U.S. addressees.

Maturities

Several items call for a maturity breakdown between those transactions with maturities of one day or under continuing contract ("overnight") and those transactions with all other maturities ("term").

One-day transactions are those that are (1) made on one business day and maturing on the next business day, (2) made on Friday to mature on Monday, or (3) made on the last business day prior to a holiday (for either or both parties to the transaction) that mature on the first business day after the holiday.

A *continuing contract* is a contract or agreement that remains in effect for more than one business day but has no specified maturity and that does not require advance notice of either party to terminate. Such contracts may also be known as rollovers or as open-end agreements.

All other maturities. This maturity category encompasses transactions maturing in more than one business day that are not under continuing contract.

II. Line Item Instructions

Both the assets and liabilities sections of the Supplement call for detail by location and type of the other party to the transaction and by whether the transaction is denominated in U.S. or non-U.S. currency.

In addition, for claims on U.S. addressees (other than related depository-institutions) denominated in U.S. dollars, detail on type of claim is required. In general, the definitions of the specific types of claims (i.e., portfolio items) called for, and their reporting treatment, correspond to the FFIEC 002 definitions of those items. As appropriate, references to specific FFIEC 002 line items are provided.

Assets

Item Number and Captions and Instructions

1 *Claims on U.S.-domiciled offices of related depository institutions denominated in U.S. dollars.* Report, on a gross basis, all claims on U.S.-domiciled offices of related depository institutions (including their IBFs), as defined for Schedule M, Column A, Items 1.a and 1.b, that are denominated in U.S. dollars. Please refer to the instructions for Schedule M and to the entries in the *General Definitions* section of this Supplement for "Related and Nonrelated Institutions" and "U.S. and Non-U.S. Addressees." As noted, U.S.-domiciled offices of related depository institutions are those offices located in the 50 states of the U.S. and the District of Columbia.

2 *Claims on all other U.S. addressees (including related nondepository institutions denominated in U.S. dollars.* As noted in the *General Definitions* section above, for *related nondepository institutions*, "U.S. addressees" encompasses institutions domiciled in the 50 states of the United States and the District of Columbia. For *all nonrelated entities* (both depository and nondepository), "U.S. addressees" encompasses residents of the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions.

2.a *Balances due from nonrelated depository institutions in the U.S.* Report by *remaining* maturity in the appropriate category below all balances due from nonrelated depository institutions domiciled in the U.S., as defined for Schedule A, Item 3, that are denominated in U.S. dollars.

For definitions of the maturity categories called for below, see the entry for "Maturities" in the *General Definitions* section above.

2.a(1) *With remaining maturities of one day or under continuing contract ("overnight").*

2.a(2) *All other maturities ("term").*

2.b *Securities.* Include in this item all securities, as defined for Schedule RAL, Items 1.b and 1.c, that are issued by U.S. addressees and denominated in U.S. dollars. Please note that as stated in those definitions, securities purchased under agreements to resell are not reported as securities. For purposes of this Supplement, such transactions shall be included in Item 2.d below.

2.b(1) *U.S. Treasury securities and U.S. Government agency and corporation obligations.* Report those securities as defined for Schedule RAL, Items 1.b(1) and 1.b(2), that are denominated in U.S. dollars.

2.b(2) *All other securities.* Report all other bonds, notes, debentures, and corporate stock (including securities of state and local governments in the U.S.), as defined for Schedule RAL, Item 1.c, that are issued by U.S. addressees and denominated in U.S. dollars.

2.c *Loans.* Report in the appropriate subitem below the aggregate book value of all U.S. dollars-denominated loans (and leases) to U.S. addressees (other than related depository institutions), before deduction of any allowance for loan losses (which is to be reported in Item 4.a or 11.a) but net of any specific reserves. Each subitem should be reported net of (1) unearned income (to the extent possible) and (2) deposits accumulated for the payment of personal loans (hypothecated deposits). For additional general information on loans, please refer to the general instructions for FFIEC 002 Schedule C, *Loans.* References to specific line items in Schedule C are provided for each subitem below.

2.c(1) *Loans secured by real estate.* Report all loans secured by real estate, as defined for Schedule C, Item 1, that are made to U.S. addressees (other than related depository institutions) and denominated in U.S. dollars. (Also see the Glossary entry in the FFIEC 002 instructions for "Loans Secured by Real Estate.")

2.c(2) *Loans to nonrelated depository institutions in the U.S.* Report all loans to nonrelated depository institutions in the U.S., as defined for Schedule C, Items 2.a and 2.b, that are denominated in U.S. dollars.

2.c(3) *Commerical and industrial loans.* Report all commercial and industrial loans to U.S. addresses, as defined for Schedule C, Item 4.a., that are denominated in U.S. dollars.

2.c(4) *All other loans.* Report all other loans to U.S. addresses (other than related depository institutions) denominated in U.S. dollars that cannot properly be reported in one of the preceding loan items, including such loans that are called for in the following items on Schedule C of the FFIEC 002:

- Item 3, Loans to other financial institutions.
- Item 5.a, Acceptances of other U.S. banks.
- Item 7, Loans for purchasing of carrying securities (secured and unsecured).
- Item 8, All other loans (including obligations other than securities of state and local governments in the U.S.; loans

- to individuals; and lease financing receivables (net of unearned income)).

2.c(5) *Less: Any unearned income on loans reflected in Items 2.c(1)–2.c(4) above.* As noted earlier, to the extent possible, the preferred treatment is to report the specific loan categories net of unearned income. A reporting institution should enter here unearned income only to the extent that it is included in (i.e., *not* deducted from) the various loan items (Items 2.c(1) through 2.c(4)) above. If a respondent reports each loan item above net of unearned income, enter a zero or the word "none" for Item 2.c(5).

2.c(6) *Total loans, net of unearned income.* Report the sum of Items 2.c(1) through 2.c(4) minus Item 2.c(5).

2.d *Othem claims.* Report any remaining U.S. dollar-denominated claims on U.S. addressees (other than related depository institutions) that cannot properly be reported in Items 2.a through 2.c above, such as:

- Federal funds sold and securities purchased under agreements to resell, as defined for Schedule RAL, Item 1.d, that are transacted with U.S. addressees and denominated in U.S. dollars.
- Customers liability to the reporting foreign branch on acceptances outstanding—to U.S. addresses, as defined for Schedule RAL, Item 1.f(1), denominated in U.S. dollars.
- Any other claims, as defined for Schedule RAL, Item 1.g, on U.S. addressees denominated in U.S. dollars.

Exclude cash items in process of collection and unposted debits. All cash items in process of collection and unposted debits shall be reported in Item 6 below, *All other assets.*

2.e *Total claims on U.S. addressees other than related depository institutions, denominated in U.S. dollars.* Report the sum of Items 2.a, 2.b, 2.c(6), and 2.d above.

3 *Claims on all U.S. addressees denominated in currencies other than U.S. dollars.* Report, on a gross basis, all claims on all U.S. addressees (including U.S.—domiciled offices of all related institutions, both depository and nondepository) that are *not* denominated in U.S. dollars. Please refer to the entry for "Related Institutions" in the Glossary section of the FFIEC 002 instructions and to the entries in the *General Definitions* section of this Supplement for "Related and Nonrelated Institutions" and "U.S. and Non-U.S. Addressees." As noted, for related institutions (both depository and nondepository), U.S. addressees are those entities domiciled in the 50 states of the United States and the District of Columbia. For nonrelated entities, U.S. addressees are those parties domiciled in the 50 states of the United States, the District of Columbia, Puerto Rico; and U.S. territories and possessions.

4 *Claims on home-country addressees denominated in any currency.* Report in the appropriate subitem all claims (on a gross basis), regardless of the currency in which they are payable, on addressees of the home country of the reporting foreign branch's parent bank.

4.a *Related depository institutions.* Report all claims on related depository institutions, as defined for Schedule M, Items 2.a, 2.b, and 2.c, that are domiciled in the home country of the reporting foreign branch's parent bank.

4.b *Nonrelated depository institutions.* Report all claims on nonrelated depository institutions that are domiciled in the home country of the reporting foreign branch's parent bank.

4.c *Home-country government and official institutions (including home-country central bank).* Report all claims on those governments and official institutions, as defined in the entry for "Foreign Governments and Official Institutions" in the Glossary section of the FFIEC 002 instructions, that are domiciled in the home country of the reporting foreign branch's parent bank.

4.d *All other home-country addressees.* Report all claims on any remaining home-country addressees that cannot properly be reported in Items 4.a, 4.b, or 4.c above.

5 *Claims on all other non-U.S. addressees, denominated in any currency.* Report all claims on all other non-U.S. addressees (i.e., other than the home country of the foreign branch's parent bank), regardless of the currency in which they are payable.

6 *All other assets.* Report all other assets that cannot properly be reported in Items 1 through 5 above. Also include all cash items in process of collection and unposted debits, which are excluded from Items 1 through 5 above.

7 *Total assets (gross).* Report the sum of Items 1, 2.e, 3, 4, 5, and 6.

Liabilities

Item Number and Captions and Instructions

8 *Liabilities to U.S.-domiciled offices of related depository institutions denominated in U.S. dollars.* Report, on a gross basis, all liabilities to U.S.-domiciled offices of related depository institutions, as defined for Schedule M, Column B, Items 1.a and 1.b, that are denominated in U.S. dollars. Please refer to the instructions for Schedule M and to the entries in the *General Definitions* section of this supplement of "Related and Nonrelated Institutions" and U.S. and Non-U.S. Addressees." As noted, U.S.-domiciled offices of related depository institutions are those offices located in the 50 states of the United States and the District of Columbia.

9 *Liabilities to all other U.S. addressees (including related nondepository institutions) denominated in U.S. dollars.* As notes earlier, for *related nondepository institutions,* "U.S. addressees" encompasses institutions domiciled in the 50 states of the United States and the District of Columbia. For *all nonrelated entities* (both depository and nondepository), "U.S. addressees" encompasses residents of the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions.

9.a *Liabilities to nonrelated depository institutions in the U.S.* Report by *remaining* maturity in the appropriate category below all liabilities (gross) to nonrelated depository institutions in the U.S. that are denominated in U.S. dollars.

For definitions of the maturity categories called for below, see the entry for "Maturities" in the *General Definitions* section above.

9.a(1) *With remaining maturities of one day or under continuing contract ("overnight").*

9.a(2) *All other maturities ("term").*

9.b *Liabilities to all other U.S. addressees denominated in U.S. dollars.* Report by *remaining* maturity in the appropriate category below all liabilities (gross) to all other U.S. addressees (including related nondepository institutions), that the denominated in U.S. dollars.

For definitions of the maturity categories called for below, see the entry for "Maturities" in the *General Definitions* section above.

9.b(1) *With remaining maturities of one day or under continuing contract ("overnight").*

9.b(2) *All other maturities ("term").*

10 *Liabilities to all U.S. addressees denominated in currencies other than U.S. dollars.* Report, on a gross basis, all liabilities to all U.S. addressees (including U.S.-domiciled offices of all related institutions, both depository and nondepository) that are *not* denominated in U.S. dollars. Please refer to the entry for "Related Institutions" in the *Glossary* section of the FFIEC 002 instructions and to the entries in the *General Definitions* section of this Supplement for "Related and Nonrelated Institutions" and "U.S. and Non-U.S. addressees." As noted, for related institutions (both depository and nondepository), U.S. addressees are those entities domiciled in the 50 states of the United States and the District of Columbia. For nonrelated entities, U.S. addressees are those parties domiciled in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions.

11 *Liabilities to home-country addressees denominated in any currency.* Report in the appropriate subitem all liabilities (on a gross basis), regardless of the currency in which they are payable, to addressees of the home country of the reporting foreign branch's parent bank.

11.a *Related depository institutions.* Report all liabilities to related depository institutions, as defined for Schedule M, Items 2.a, 2.b, and 2.c, that are located in the home country of the reporting foreign branch's parent bank.

11.b *Nonrelated depository institutions.* Report all liabilities to nonrelated depository institutions that are domiciled in the home country of the reporting foreign branch's parent bank.

11.c *Home-country government and official institutions (including home-country central bank).* Report all liabilities to those governments and official institutions, as defined in the entry for "Foreign Governments and Official Institutions" in the Glossary section of the FFIEC 002 instructions, that are located in the home country of the reporting foreign branch's parent bank.

11.d *All other home-country addressees.* Report all liabilities to any remaining home-country addressees that cannot properly be reported in Items 11.a, 11.b, or 11.c above.

12 *Liabilities to all other non-U.S. addressees denominated in any currency.* Report all liabilities to all other non-U.S. addressees (i.e., other than the home country of the reporting foreign branch's parent bank), regardless of the currency in which they are payable.

13 *All other liabilities.* Report all other liabilities that cannot properly be reported in Items 8 through 12 above.

14 *Total liabilities.* Report the sum of Items 8 through 13 above.

Memoranda—Transactions With U.S. Addressees Denominated in U.S. Dollars

Item Number and Captions and Instructions

1, 2 Item 1 and 2 below call for information on resale and repurchase agreements on U.S. Government securities transacted with U.S. addressees and denominated in U.S. dollars, which are included in certain assets and liabilities items above. For additional information on security repurchases and resale agreements, see the entry for "Repurchase/Resale Agreements" in the Glossary section of the FFIEC 002 instructions.

U.S. Government securities include U.S. Treasury securities and U.S. Government agency and corporation obligations. For a partial listing of the U.S. Government agencies and corporations whose obligations are to be included, see the instructions for Schedule RAL, Item 1.b(2).

For definitions of the maturity categories called for under Items 1 and 2 below, see the entry for "Maturities" in the *General Definitions* section above.

1 *Amount included in Items 1 and 2.d above for U.S. Government securities purchased under agreements to resell.* Report by *original* maturity in the appropriate category below all resale agreements involving U.S. Government securities (including U.S. Treasury securities and obligations of U.S. Government agencies and corporations) transacted with U.S. addressees and denominated in U.S. dollars.

1.a *With original maturities of one business day or under continuing contract ("overnight").*

1.b *All other maturities ("term").*

2 *Amount included in Items 8 and 9 above for U.S. Government securities sold under agreements to repurchase.* Report by *original* maturity in the appropriate category below all repurchase agreements involving U.S. Government securities (including U.S. Treasury securities and obligations of U.S. Government agencies and corporations) denominated in U.S. dollars.

2.a *Transacted with depository institutions in the U.S. (related and nonrelated (included in Items 8 and 9.a above).*

2.a(1) *With original maturities of one day or under continuing contract ("overnight").*

2.a(2) *All other maturities ("term").*

2.b *Transacted with all other U.S. addressees (included in Item 9.b above).*

2.b(1) *With original maturities of one day or under continuing contract ("overnight").*

2.b(2) *All other maturities ("term").*

3 *Amount included in Item 9.b above for negotiable certificates of deposit issued by the reporting foreign branch.* Report in the appropriate subitem below all negotiable certificates of deposit denominated in U.S. dollars that were issued to U.S. addressees other than depository institutions (related or unrelated).

3.a *Held in custody by the reporting foreign branch or by the managing U.S. branch or agency.*

3.b *All other negotiable certificates of deposit.*

4 *Amount included in Item 9.b above for deposits that are guaranteed payable in the U.S. or for which the depositor is guaranteed payment by a U.S. office.* Report by *original* maturity in the appropriate category below all deposits, as defined for Schedule E, denominated in U.S. dollars that were issued to U.S. addressees other than depository institutions (related or nonrelated) and that are payable in the U.S. or for which the depositor is guaranteed payment by a U.S. office.

For definitions of the maturity categories called for below, see the entry for "Maturities" in the *General Definitions* section above.

4.a *With original maturities of one day or under continuing contract ("overnight").*

4.b *All other maturities.*

[FR Doc. 92–31550 Filed 12–28–92; 8:45 am]
BILLING CODE 6210–01–M

BB&T Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire Security Financial Holding Company, Durham, North Carolina, and thereby engage in operating a savings and loan association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31546 Filed 12-28-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Savannah River Site Dose Reconstruction Project: Public Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), and the Radiological Assessments Corporation (RAC) announce the following meeting:

Name: Savannah River Site Dose Reconstruction Project.

Time and Date: 7 p.m.–9 p.m., January 20, 1993.

Place: Radisson Riverfront Hotel, 2 Tenth Street, Augusta, Georgia 30901.

Status: Open to the public for observation and comment, limited only by space available. The meeting room accommodates approximately 50 people.

Purpose: Under a Memorandum of Understanding with the Department of Energy (DOE), the Department of Health and Human Services has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. This workshop, which represents the first of its kind for the Savannah River Site dose reconstruction, is to provide an overview of the document review process and findings to date on the quantity, types, and locations of potentially useful documents. Members of RAC will discuss the design and content of the document database that is to be developed during the study.

At the conclusion of the meeting all attendees will have an opportunity to provide oral and/or written comments for the record.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Paul Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: December 22, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–31545 Filed 12–28–92; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Final Funding Preference for Grants for Health Careers Opportunity Program

The Health Resources and Services Administration (HRSA) announces the final funding preference for fiscal year (1993) Health Careers Opportunity Grant Program authorized under section 740 (previously section 787) of the Public Health Service Act (the Act) as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. These amendments make the following revisions to the HCOP program. The former section 787 has been changed to section 740 of the Public Health Service Act and provides for the payment of stipends to students in student enhancement programs other than the regular course of study in an amount of $40 per day (notwithstanding any other provision of law regarding the amount of stipends), except that such a stipend may not be provided to an individual for more than 12 months, and requires the Secretary to ensure that services and activities under HCOP awards are equitably allocated among the various racial and ethnic populations.

Section 740 authorizes the Secretary to make grants and to enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools. The assistance authorized by the section may be used to: Identify, recruit, and select individuals from disadvantaged backgrounds for education and training in a health profession; facilitate the entry and retention of such individuals in health and allied health professions schools; providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; and to provide counseling and advice on financial aid to assist such individuals to complete successfully their education at such schools.

A proposed funding preference was published in the **Federal Register** dated August 5, 1992, at 57 FR 34572, for public comment. Two comments were received. Both comments related to the proposed funding preference.

One respondent recommended that the second criterion of the preference be changed to favor those programs that demonstrate consistent increasing enrollments over a specific period of time. It appears that this respondent interpreted the criterion to mean that the cohort of first-year disadvantaged students must exceed the prior year's number of 50 percent of total enrollment, instead of by a number equal to at least 50 percent of postbaccalaureate participants projected for enrollment in 1992.

Another respondent supported the proposed funding preference but felt that second criterion does not necessarily reflect whether an ongoing program is successful. An applicant who intends to qualify for this preference is required to meet the entire funding preference.

The purpose of this preference is to direct assistance to quality postbaccalaureate programs that have documented, sustained, or increased accomplishments under this program. The Department believes that emphasis on increases in enrollments is a valid indicator of accomplishment. Therefore, the proposed funding preference will be retained as follows:

A funding preference will be given to competing continuation applications for postbaccalaureate programs funded under the fiscal year 1990 HCOP Funding Preferences (as defined in the **Federal Register** notice of March 27, 1990, 55 FR 11264) which score in the upper 50th percentile of all

applications, and which can evidence the following:

1. Disadvantaged students were recruited into the postbaccalaureate program at a level at least equal to the number of students originally projected in FY 1990; and

2. The cohort of first-year disadvantaged students entering the health or allied health professions school in September 1992 first-year class in September 1991 by a number equal to at least 50 percent of the postbaccalaureate participants projected for enrollment in 1992.

Additional Information

If additional programmatic information in needed, please contact: Mr. Darl W. Stephens, Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8A–09, Parklawn Building, Rockville, Maryland 20857. Telephone: (301) 443–4493. FAX: (301) 443–5242.

This program is listed at 93.822 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: December 21, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–31433 Filed 12–28–92; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Title V of the Public Health Service Act; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authorities vested in the Secretary under title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended hereafter. This delegation excludes the authority to promulgate regulations, submit reports to the Congress or a congressional committee, establish advisory committees, and appoint members to advisory committees.

This delegation is effective upon the date of signature and supersedes the July 5, 1985, delegation of authority for title V of the PHS Act from the Secretary to the Assistant Secretary for Health. In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Health or other Public Health Service officials that involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: December 16, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–31399 Filed 12–28–92; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Policy and Guidelines for Recreational Technical Assistance in Hydropower Licensing

AGENCY: National Park Service.

ACTION: Publication of final policy and guidelines.

SUMMARY: The National Park Service is issuing a management policy and guidelines for its Recreation Technical Assistance in Hydropower Licensing Program. The policy and guidelines will give direction to National Park Service staff in providing technical assistance and assist the public in understanding this program. The policy and guidelines affect only the technical assistance conducted by the National Park Service prior to license filing. It is not part of, and does not affect, formal National Park Service environmental review procedures.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Tracy Miller, National Park Service, Recreation Resources Assistance Division, P.O. Box 37127, Washington, DC 20013, telephone: (202) 343–3780.

SUPPLEMENTARY INFORMATION:

Summary of Comments

On June 3, 1992, the National Park Service published in the **Federal Register** (57 FR 23425, June 3, 1992) draft policy and guidelines, with a comment period ending on July 6, 1992. The policy and guidelines were developed using input from a public workshop held in Washington, DC, on January 22, 1992 and from written comments. The National Park Service received a total of seven written comments on the draft. Of these, two were from government agencies, four from non-governmental organizations and one from an individual.

No commenters objected to the process used in developing the policy and guidelines. No one argued with the need for the policy and guidelines. Five commenters addressed the intent, wording or need for clarification of specific articles in the document.

Analysis of Public Comments

General Comments

One commenter stated that the National Park Service's activities should be performed within the processes identified by Federal Energy Regulatory Commission guidelines and relevant energy legislation. This is identified in the Guidelines Preface and has been added to the policy statement.

One commenter felt the National Park Service should have as its goal the protection and restoration of recreation values associated with undeveloped rivers, and that the National Park Service should have as its standard the conditions present before hydropower development. These comments went on to state that the National Park Service should try to achieve pre-licensing conditions to the greatest extent possible. For original licenses, the National Park Service considers recreational opportunities that could be lost if the project is constructed, and strives to protect undeveloped river resources from development where and when this is appropriate. In the case of relicensing, however, the Federal Energy Regulatory Commission considers existing conditions as the baseline (Hydroelectric Relicensing Regulations Under the Federal Power Act; 18 CFR parts 4 and 16). Therefore, the National Park Service focuses the majority of its effort on the enhancement of recreation and aesthetic resources at the project site.

It was also pointed out that the guidelines suggest that hydropower developers are as much a part of the program's constituency as the recreating public. The technical assistance program is available to developers, as resources permit, for advising on recreational plans. However, we do not see this as separate from representing the recreation needs of the public. The program is designed to advocate recreation, and ensure that present and future needs are met, through the cooperation and input of all involved parties. It is the result—enhanced recreation—that is important, not which party receives assistance.

Preface Comments

There was some confusion over the term "National Park Service mandates," with the comments suggesting that the technical assistance should be conducted outside of political influence. Mandates are those laws, rules, regulations and policies under which the National Park Service operates on a

daily basis and carries out its varied functions. Also, one commenter wanted those mandates and relationships clearly defined. This is beyond the purpose of this document and would be voluminous in nature; therefore, no action was taken.

Kayaking was asked to be specifically identified as a National Park Service considered activity. It should be emphasized that the list of mentioned recreation activities was to serve as examples, not be comprehensive. However, whitewater rafting has been changed to whitewater boating.

The point that the National Park Service should recognize all forms of recreation associated with a hydroelectric site was considered to be critical, and it was suggested that this be added as an article to the guidelines. We agree, and an article confirming this has been added under Program Scope.

The statement that the National Park Service represents the national interest with regard to recreation was asked to be clarified. The commenter noted that "[r]ecreation interests at hydro projects tend to be local and project-specific * * *." The guidelines make clear that the National Park Service is charged with considering how a project fits into recreational planning on a broader basis. The activities may be local in nature, but the planning is done on a broader scale.

The suggestion was also made that "national interest" should be "construed more broadly than the interests of the recreation community * * * and includes such factors as economically efficient energy generation and equitable consideration of recreation along with all other natural resources * * *." This is an important point, but it is one that is stated several times within the guidelines. No further changes are needed.

The phrase "hydropower-related recreation" also triggered another concern that "* * * the program will focus on recreational resources associated with, and perhaps dependent upon, developed hydropower projects." This was not our intent, but we can see how this could cause confusion. As the National Park Service represents all forms of recreation, the qualifier "hydropower-related" has been removed.

The U.S. Fish and Wildlife Service expressed the need to consider other resource values when comparing competing recreational needs at a project site. Maintaining environmental integrity is an important factor in National Park Service assistance. The preface has been amended to emphasize this fact.

Policy Comments

There was only one concern expressed with the policy statement. The comment was made that the policy implied that the National Park Service would only deal with hydropower projects that were approved and that the National Park Service would not oppose development. The policy statement has been amended to clarify that licensing refers to both original licenses and relicensing of existing projects. As stated in the general comments section, for original licenses, the National Park Service considers recreational opportunities that could be lost if the project is constructed, and strives to protect undeveloped river resources from development where and when this is appropriate.

Guidelines Comments

I. Program Scope

Extent: No comments.

Environmental Quality: One commenter felt this section was unclear but offered no suggestions for clarifying. The U.S. Fish and Wildlife Service indicated a need for coordination between the National Park Service and other resource agencies. The article was amended to reflect this intent.

Long-term Benefit: The suggestion that the National Park Service also assist in the planning to mitigate the impacts of recreation throughout the license was made. It is important that the National Park Service consider impacts of increased and changing recreation use to the environment, other users, and local communities, and this is an appropriate role for the National Park Service. The article has been changed to reflect this role.

Comprehensive Perspective: Comments suggested that the impacts of recreation should also be considered with a comprehensive perspective. The article is amended to reflect this for the reason cited above under Long-term Benefits.

It was emphasized that the National Park Service must balance all aspects of a project when providing technical assistance and that this should be reflected by adding "projects" to "resources considered." This was our intent and the change was made.

Coordination of Planning: The U.S. Forest Service expressed the desire that the National Park Service coordinate with their comprehensive planning processes where hydropower projects impact national forest land and that land management agencies be expressly identified. As this was the intent, this article and the mitigation article have been changed to expressly include land management agencies.

Communication: No comments

Conflict Resolution: It was noted that this is an appropriate role for the National Park Service, but that other elements of the guidelines gave the impression that we were playing an advocacy role for recreation. This is true to an extent. It is the role of the National Park Service to advocate for recreation and to seek out and represent recreation interests. However, this does not conflict with our mandate to also consider cultural, natural and economic factors in providing technical assistance. The appropriate and equitable advocacy of recreation is, and always has been, the role of the National Park Service.

Given that we consider all relevant factors in the licensing equation advocating for recreation does not diminish our role in bringing all interests together to try to reach an equitable agreement on licensing considerations. One of the key functions for National Park Service technical assistance is to act as a facilitator in those instances where none may otherwise exist. For these reasons, no changes are necessary.

Balance: One commenter was concerned that economic considerations would take precedence over less easily definable factors such as recreational experience. We agree it is often difficult to define recreation in monetary terms. However, the article already states that the National Park Service will consider all pertinent factors in its technical assistance role; therefore, no changes were necessary.

Other comments suggested that balance should include "* * * consideration of non-recreational competing resource needs. We suggest that this * * * be incorporated into the policy statements * * *." As it has been addressed several times throughout the guidelines that the technical assistance program will consider all relevant factors to the licensing, we believe no further clarification is necessary. However, this article did mention only three possible factors and has been amended to indicate its broad intent.

Timeliness: No comments.

II. Project Selection

One commenter felt that the selection guidelines were too vague but offered no clarification. Modifications were made only to those articles for which we received specific comments, and we hope this clarifies this section. This commenter also stated that the procedures for requesting technical

assistance should be outlined, if not in this document, then in subsequent guidance. This is a valid point; however, it is beyond the intent of these guidelines. Regional National Park Service Offices can provide direction on requesting technical assistance.

Resource Significance: No comments.

Potential for Positive Impact: One commenter felt this section meant that the National Park Service would only become involved in projects where it was politically feasible and where the Park Service knew it could influence the licensing outcome. The actual goal was to become involved in those projects where there was a high potential for recreational improvements. The article has been changed to reflect this meaning.

Variety of Recreational Opportunities: One commenter felt that the National Park Service should place an emphasis on enhancing in-stream boating activities as these activities are often heavily influenced by license conditions and hydroelectric generation. The National Park Service must remain objective in its evaluation of recreational opportunities and assistance to applicants, agencies, organizations and individuals. It is also the responsibility of the National Park Service to represent different forms of recreation as individual situations justify. With this as the guideline, no changes were made.

Concentration of Projects: No comments.

Assistance Requests: There was concern that giving priority to those interests with little or no access to professional planning resources ran counter to the goal of not recognizing one form of recreation over another and that the National Park Service should act independent of any single recreation interest. The program's intent is to represent all forms of recreation; however, it is easy to see how this article could be misinterpreted. The article has been amended to more clearly reflect its original intent.

It was also suggested that priority be given to "* * * projects that have a direct relationship to units of the National Park System and to recreation facilities that are directly related to the continued existence and operation of those facilities. The Service will provide special consideration to the continued operation and power supply needs of those projects when developing recommended recreation plans." This could be construed to mean several things. The answer to all connotations, however, is that the technical assistance program is not aimed at National Park Service lands, nor is special consideration given to one interest over another.

III. Information

Equitable Information: Comments suggested that recreation potential be added to the list of factors. As this was the intent, the change has been incorporated.

Eliminating the size of the project from consideration was proposed. However, project size is one of several factors that the National Park Service considers when requesting the generation of information; therefore, no changes are warranted.

Relevant Information: No comments.

Scope of Information: No comments.

Information Dissemination: No comments.

IV. Results

There was concern that the National Park Service would try to overlay comprehensive planning efforts in areas where it was not feasible due to differences in license terms, state requirements, water allocation, resources, project characteristics, etc. This is a valid point and was never the intent of either article. Both articles have been amended to correct this misinterpretation.

Mitigation: The U.S. Fish and Wildlife Service raised concerns that the National Park Service recommendations take into account the need to coordinate recreational mitigation with fish and wildlife resource mitigation. This coordination is very important to the National Park Service and was our intent. This section and the environmental quality article under Program Scope have been amended to reflect this.

Cooperative Comprehensive Planning: Amended as noted above.

Final Policy and Guidelines

Preface

Under the National Park Service Organic Act (39 Stat. 535), the Outdoor Recreation Act (Pub. Law 88–29), the Wild and Scenic Rivers Act (Pub. Law 90–542), Council on Environmental Quality guidelines (45 FR 59190–59191), and Federal Energy Regulatory Commission guidelines, the National Park Service is authorized to provide technical assistance for recreation planning in the licensing of hydropower facilities. This is but one element of the National Park Service's overall technical assistance role in the licensing process, and planning assistance is just one aspect of the National Park Service environmental review of Federal Energy Regulatory Commission applications.

The following policy and guidelines provide direction for recreational technical assistance activities concerning hydropower licensing. They are flexible enough to allow for creativity in addressing the individual recreation, conservation and hydropower objectives of each individual project. They are also designed so as not to conflict with other National Park Service mandates.

The National Park Service considers all forms of outdoor recreation in its hydropower activities, including, but not limited to, such activities as birdwatching, whitewater boating, canoeing, hiking and fishing. The National Park Service does not recognize one form of recreation over another, but instead weighs the merits of all activities and resource values in providing assistance. It is the responsibility of the National Park Service to represent the national interest regarding recreation and to assure an appropriate recognition of recreation interests.

Policy

It is the policy of the National Park Service to recognize the full potential that hydroelectric projects subject to original licensing and relicensing under the Federal Power Act may offer for: (1) Meeting present and future public outdoor recreation demands, and (2) the maintenance and enhancement of the quality of the environmental setting of these projects.

This policy is to be implemented by providing appropriate recreation planning assistance to applicants and licensees, the concerned agencies of federal, state and local governments, and the private sector in accordance with Federal Energy Regulatory Commission guidelines. The objectives stated in clauses 1 and 2 are also to be accomplished by providing to the Secretary of the Interior factual information, analyses and finding relating to recreation for incorporation in the Department's comments and recommendations to the Federal Energy Regulatory Commission.

Guidelines

I. Program Scope

The National Park Service will:

Extent: Consider the full range of land and water recreation opportunities and factors associated with hydropower projects. These opportunities and factors may include, but not limited to, land use, access, shorelands conservation, flow, facilities, aesthetics, reservoir levels and safety.

Opportunities: Consider and evaluate all forms of recreational activities

associated, or potentially associated, with a hydroelectric site. The National Park Service will avoid discrimination of one activity over another and, instead, evaluate differing uses from a broad perspective and consider the relative merits of each use.

Environmental Quality: Ensure that recreation programs are consistent with the preservation of environmental integrity. The National Park Service will coordinate with federal and state resource agencies to ensure that National Park Service recommendations are consistent with fish and wildlife needs to the extent possible.

Long-term Impact/Benefit: Assist in planning for recreation impacts and needs that could arise throughout the term of the license.

Comprehensive Perspective: Evaluate recreational needs, opportunities and impacts from a basin-wide or region-wide perspective as appropriate to the projects and resources considered.

Coordination of Planning: Encourage joint comprehensive planning with: (1) Other public and private river conservation, recreation and energy interests, and (2) all appropriate land management and resource agencies. The National Park Service will avoid duplication of the efforts of other planning agencies.

Communication: Provide a channel for recreation and conservation interests to participate in the licensing process with the applicants. The National Park Service will provide a channel for the applicants to identify and involve those interests.

Conflict Resolution: Provide a facilitation and conflict resolution role among the involved parties and provide a forum to actively seek input from, and facilitate dialog between, all interested parties.

Balance: Ensure that the importance and significance of the resources and opportunities will be fully considered in balancing such factors as competing recreation needs, power production, cultural needs, economics and all other pertinent considerations.

Timeliness: Become involved as early as possible in the licensing process to promote advance planning in an equitable manner.

II. Project Selection

Because of finite resources, the National Park Service technical assistance program can only become involved with a limited number of projects. In selecting these projects, the National Park Service will:

Resource Significance: Give priority to those projects located in areas with high natural, cultural and/or recreational resource values.

Potential for Positive Impact: Give priority to projects where there is significant opportunity to create or improve recreation opportunities.

Variety of Recreational Opportunities: Provide assistance on a diverse mix of recreation experiences, settings and geographical locations in the program portfolio.

Concentration of Projects: Provide special consideration to rivers, or river basins, with multiple projects, especially where a holistic approach will serve to advance public recreation opportunities more than a site-by-site approach.

Assistance Requests: Respond and provide technical assistance as resources allow to requests from public and private energy, conservation and recreation interests. The National Park Service will ensure that those interests that have little or no access to professional sources of planning assistance and analysis have equal consideration and opportunity to participate in the process.

III. Information

The National Park Service will:

Equitable Information: Use and request the generation of information appropriate to the size of the project, the project impacts, the recreation potential of the project, and its relationship to other projects.

Relevant Information: Encourage and participate in the generation of objective data necessary to evaluate recreation needs and opportunities, such as flow studies, recreation needs assessments, and carrying capacity studies.

Scope of Information: Where possible, use and request the generation of information that considers cumulative and basin-wide impacts and follows the intentions of board-scale planning.

Information Dissemination: Maintain a source of case studies and similar data generated by the technical assistance program and make this information available to public and private entities.

IV. Results

The National Park Service will:

Mitigation: Seek opportunities to increase the cumulative benefit to recreation and conservation through alternative ideas such as clustering of mitigation from several projects in one area, coordination of recreation flow releases along a river or throughout a region, providing access and portage from a river-wide perspective, or encouraging cooperative efforts by multiple applicants with projects on the same river where physically, socially and economically feasible. The National Park Service will coordinate these proposals with appropriate land management and resource agencies to ensure consistency and environmental integrity.

Cooperative Comprehensive Planning: Encourage an applicant with several projects to develop a comprehensive recreation plan for all projects or for multiple applicants in the same basin to prepare a joint comprehensive plan where physically, socially and economically feasible.

Dated: September 10, 1992.

James Ridenour,

Director, National Park Service.

[FR Doc. 92-31437 Filed 12-28-92; 8:45 a.m.]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 19, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 13, 1993.

Carol D. Shull,

Chief of Registration, National Register.

LOUISIANA

Orleans Parish

Congo Square, Jct. of Rampart and St. Peter Sts., New Orleans, 92001763

MISSISSIPPI

Alcorn County

Downtown Historic District, Roughly bounded by Wick, Jackson, Foote and Webster Sts., Corinth, 92001792

MONTANA

Carbon County

Baldwin Building (Fromberg MPS), Jct. of W. River St. and Harley Ave., Fromberg, 92001777

Benson, Dr. Theodore J., House (Fromberg MPS), 10 N. Montana, Fromberg, 92001780

Blewett, John, House (Fromberg MPS), 2411 E. River St., Fromberg, 92001789

Brooder, Frank, House (Fromberg MPS), 303 North St., Fromberg, 92001787

Fromberg Concrete Arch Bridge (Fromberg MPS), River St. over the Clarks Fork of the Yellowstone R., Fromberg, 92001790

Fromberg High School (Fromberg MPS), Kids Ct., Fromberg, 92001788

Fromberg Methodist—Episcopal Church (Fromberg MPS), jct. of N. Montana Ave and School St., Fromberg, 92001781
Fromberg Opera House (Fromberg MPS), jct. of Harley Ave. and C St., Fromberg, 92001779
Gibson, John, House (Fromberg MPS), 219 W. River St., Fromberg, 92001785
Greenbelt, Samuel, House (Fromberg MPS), 215 W. River St., Fromberg, 92001784
IOOF Hall and Fromberg Co-operative Mercantile Building (Fromberg MPS), 123 W. River St., Fromberg, 92001778
McCall, Tracy, House (Fromberg MPS), 110 N. Montana Ave., Fromberg, 92001782
Northern Pacific Railroad Depot—Fromberg (Fromberg MPS), jct. of US 310 and River St., Fromberg, 92001776
Rahrer, Francis, House (Fromberg MPS), 309 School St., Fromberg, 92001786
Suydam, Hester E., Boarding House (Fromberg MPS), 209 W. River St., Fromberg, 92001783

Fergus County

Anderson House (Stone Buildings in Lewistown MPS), 1015 W. Watson, Lewistown, 92001770
Big Springs Stone Quarry Historic District (Stone Buildings in Lewistown MPS), Along MT 238, Upper Spring Cr., S of Lewistown Junction, Lewistown vicinity, 92001775
Bright House (Stone Buildings in Lewistown MPS), 707 W. Boulevard, Lewistown, 92001766
Hopkins Brothers Grocery Warehouse (Stone Buildings in Lewistown MPS), 612—616 Fourth Ave. N., Lewistown, 92001772
House at 324 W. Corcoran (Stone Buildings in Lewistown MPS), 324 W. Corcoran, Lewistown, 92001773
House at 805 W. Watson (Stone Buildings in Lewistown MPS), 805 W. Watson, Lewistown, 92001767
House at 809 W. Watson (Stone Buildings in Lewistown MPS), 809 W. Watson, Lewistown, 92001768
House at 813 W. Watson (Stone Buildings in Lewistown MPS), 813 W. Watson, Lewistown, 92001769
Lewis House (Stone Buildings in Lewistown MPS), 702 W. Boulevard, Lewistown, 92001765
Lewistown Airport Hangar (Stone Buildings in Lewistown MPS), 1.5 mi. W of Lewistown off US 87, Lewistown vicinity, 92001774
Mill House (Stone Buildings in Lewistown MPS), MT 466 4.5 mi. SE of Lewistown, along Spring Cr., Lewistown vicinity, 92001764
Schroeder Hospital (Stone Buildings in Lewistown MPS), 502 Fifth Ave. S., Lewistown, 92001771

Judith Basin County

Wood Lawn Farm, 5 mi. W of Hobson on Utica Rd. No. 329, Hobson vicinity, 92001762

Lewis and Clark County

Porter Flats Apartments, 335 N. Ewing St., Helena, 92001761

NEW MEXICO

Hidalgo County

Alamo Hueco Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001800
Archeological Site No. LA 54021 (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001802
Archeological Site No. LA 54042 (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001811
Archeological Site No. LA 54049 (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001813
Archeological Site No. LA 54050 (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001814
Box Canyon Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001796
Brushy Creek Ruin (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001815
Clanton Draw Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001795
Cloverdale Park Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001808
Culberson Ruin (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001799
Double Adobe Creek Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001807
Fortress—Stewart Ranch Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001803
Hoskins Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001804
Joyce Well Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001798
Little Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001805
Lunch Box Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001801
Metate Ruin (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001812
Pendleton Ruin (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001794
Pigpen Creek Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001806
Saddle Bronc—Battleground Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001810
Sycamore Well Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001797
Timberlake Ruin—Walnut Creek Site (Animas Phase Sites in Hidalgo County MPS), Address Restricted, Animas vicinity, 92001809

NORTH CAROLINA

Sampson County

Patrick—Carr—Herring House, 226 McKoy St. Clinton, 92001791

(FR Doc. 92–31436 Filed 12–23–92; 8:45 am)
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–23 (Final) and 731–TA–566 and 568–570 (Final)]

Ferrosilicon From Kazakhstan, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission

ACTION: Institution and scheduling of final antidumping investigations and scheduling of the ongoing countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–566 and 568–570 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Kazakhstan, Russia, Ukraine, and Venezuela of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States. The Commission also gives notice of the schedule to be followed in these antidumping investigations and the ongoing countervailing duty investigation regarding imports of ferrosilicon from Venezuela (inv. No. 303–TA–23 (Final)), which the Commission instituted effective August 21, 1992 (57 FR 41777, September 11, 1992). The schedules for the subject investigations will be identical, pursuant to Commerce's alignment of its final subsidy and dumping determinations (57 FR 43222, September 18, 1992).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-

impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of ferrosilicon from Kazakhstan, Russia, Ukraine, and Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The Commission instituted the subject countervailing duty investigation on August 21, 1992 (57 FR 41777, September 11, 1992). The investigations were requested in a petition filed on May 22, 1992, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; United Autoworkers of America (locals 523 and 12646); United Steelworkers of America (locals 2528, 3081, and 5171); and Oil, Chemical & Atomic Workers (local 389).

Participation in the Investigations and Public Service List

Any person having already filed an entry of appearance in the countervailing duty investigation is considered a party in the antidumping investigation. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary of the Commission not later than seven (7) days after publication of this notice in the **Federal Register**. Section 201.11 of the Commission's rules is hereby waived. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

The Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. Section 207.7(a) of the Commission's rules is hereby waived. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on January 8, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on January 22, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 19, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 21, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any request to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 15, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is February 1, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before February 1, 1993. A supplemental brief addressing only the final antidumping determinations of the Department of Commerce is due on March 8, 1993. The brief may not exceed five (5) pages in length. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 22, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31498 Filed 12–23–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–540–541 (Final)]

Certain Welded Stainless Steel Pipes From the Republic of Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from the Republic of Korea and Taiwan of certain welded stainless steel pipes,[3] provided for in subheadings 7306.40.10 and 7306.40.50 of the Harmonized Tariff Schedule of the United States, that have

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Brunsdale and Crawford dissenting with respect to the investigation involving the Republic of Korea. Commissioner Brunsdale dissenting and Commissioner Crawford not participating with respect to the investigation involving Taiwan.

[3] The subject product is defined as welded austenitic stainless steel pipes that meet the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the investigations also includes welded austenitic stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective June 22, 1992, following a preliminary determination by the Department of Commerce that imports of certain welded stainless steel pipes from the Republic of Korea and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 29, 1992 (57 FR 33521). The hearing was held in Washington, DC, on November 10, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 18, 1992. The views of the Commission are contained in USITC Publication 2585 (December 1992), entitled "Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan: Determinations of the Commission in Investigations Nos. 731–TA–540–541 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: December 22, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31497 Filed 12–28–92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32180 (Sub-No. 1)]

Danbury Terminal Railroad Company and Maybrook Properties, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation

Danbury Terminal Railroad Company (DTR) and Maybrook Properties, Inc. (MPI), noncarriers, have modified their previously filed notice of exemption for MPI to acquire and DTR to operate approximately 157.15 miles of certain rail lines owned or operated by Consolidated Rail Corporation (Conrail) in the States of Connecticut and New York.[1] DTR will become a class III rail carrier.[2]

DTR will acquire from Conrail: (1) Operating rights in Danbury Yard (owned by State of Connecticut); (2) operating and freight rights over the Harlem Line between milepost 22.0 in White Plains, NY, and milepost 81.6 in Wassaic, NY (leased by metropolitan Transportation Authority and controlled by Metro North Commuter Railroad between milepost 22.0 and milepost 76.6, and owned by new York and Harlem Railroad and leased to Penn Central Corporation between milepost 76.6 and milepost 81.6); and (3) incidental trackage rights over the Waterbury Branch (owned by the State of Connecticut and controlled by Metro North Commuter Railroad) between milepost 0.0 in Devon, CT, and milepost 8.9 in Derby, CT.

MPI will acquire from Conrail and DTR will operate: (1) The Danbury Secondary Track (a) between milepost 0.0 in Beacon, NY, and milepost 12.8 in Hopewell Junction, NY, and (b) between milepost 42.9 in Hopewell Junction, and milepost 104.8 in Derby, CT; (2) The Stepney Branch in Botsford (Newtown), CT, between milepost 14.2 and milepost 14.6; and (3) The New Milford Secondary Track between milepost 0.0 in Berkshire Junction, CT, and milepost 13.65 in New Milford, CT. MPI will not conduct operations and will continue to be a noncarrier after its acquisition of the properties.

The proposed transaction will be consummated immediately after the effective date of this notice and after obtaining Commission approval or exemption for the related common control.

Any comments must be filed with the Commission and served on: Edward J. Rodriquez, P.O. Box 537, Old Saybrook, CT 06475.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] See Finance Docket No. 32180, Danbury Terminal Railroad Company and Maybrook Properties, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation (not printed), served and published in the **Federal Register** (55 FR 55570) on November 25, 1992.

[2] This proceeding is related to Finance Docket No. 32183, wherein DTR's corporate parent, Housatonic Transportation Company (HTC), has filed a petition for an exemption from the prior approval requirements of 49 U.S.C. 11343 to continue in control of DTR when DTR becomes a carrier upon consummation of the transaction described in this notice.

Decided: December 21, 1992

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31555 Filed 12–28–92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32216]

Gulf, Colorado & San Saba Railway Corporation—Acquisition and Operation Exemption—Atchison, Topeka and Santa Fe Railway Company

The Gulf, Colorado & San Saba Railway Corporation has filed a notice of exemption to acquire and operate approximately 67.5 miles of rail line owned by the Atchison, Topeka and Santa Fe Railway Company, which extends between milepost 0.00 at Lometa, TX, and milepost 67.5 at Brady, TX in Lampasas, Mills, San Saba and McCullouch Counties, TX. The proposed transaction is expected to be consummated on or after December 21, 1992.

Any comments must be filed with the Commission and served on: Thomas J. Kelly, Pedersen & Houpt, 180 North LaSalle Street, suite 3400, Chicago, IL 60601.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 21, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr,

Secretary.

[FR Doc. 92–31553 Filed 12–28–92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32205]

The Indiana Northeastern Railroad Company—Acquisition and Operation Exemption—Lines of the Hillsdale County Railway Company, Inc. in Steuben and De Kalb Counties, IN, and Williams County, OH

The Indiana Northeastern Railroad Company, a noncarrier, has filed a notice of exemption to acquire and operate two lines of railroad owned by the Hillsdale County Railway Company, Inc. The lines, which connect at Steubenville, extend 42.8 miles: (1) Between milepost 0.0, at Montpelier, OH, and milepost 24.0, at Hudson, IN;

and (2) between milepost 21.1, at Steubenville, IN, and milepost 39.9, at Ray, IN. The transaction is expected to be consummated after the effective date of this notice.

Any comments must be filed with the Commission and served on: Carl M. Miller, Miller, Harper & Rorick, 2270 Lake Avenue, suite 270, Fort Wayne, IN 46805.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 22, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31552 Filed 12–28–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Bossier City, and the State of Louisiana*, Civil action No. 91–0904, was lodged on December 15, 1992 with the United States District Court for the Western District of Louisiana, Shreveport Division. The Consent Decree resolves issues pertaining to the United States' allegations that the City of Bossier City, Louisiana violated the Clean Water Act, 33 U.S.C. 1251 *et seq.*, by failing adequately to administer its Pretreatment Program and by violating the terms of the National Pollutant Discharge Elimination System ("NPDES") permits for the Red River and Northeast Sewage Treatment Plants. Under the terms of the Consent Decree, the City will modify its existing Pretreatment Program, implement and effectively enforce the Program and any modifications to it, comply with effluent limits and monitoring requirements in the NPDES permits, pay a $200,000 civil penalty, and develop and implement a sludge management plan.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Bossier City, et al.*, DOJ Ref. #90–5–1–1–3640.

The proposed consent decree may be examined at the Office of the United States Attorney, 401 Edwards St., suite 2100, Louisiana Tower, Shreveport, LA; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, (202) 347–2072. A copy of the proposed consent decree may be attained in person or by mail from the Consent Decree Library, 601 Pennsylvania Ave, NW, Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $17.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–31401 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree in "United States v. Brandenburg Industrial Service Company"

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 9, 1992, a proposed Consent Decree in *United States* v. *Brandenburg Industrial Services* was lodged with the United States District Court for the Northern District of Illinois.

The Consent Decree resolves the United States' claims against Brandenburg Industrial Service Company for violating Section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c), and the Natural Emission Standards for Hazardous Air Pollutants for Asbestos, 40 CFR part 61, subpart M. The Consent Decree requires Brandenburg Industrial Service Company to: (a) Achieve and maintain full compliance with all requirements of the National Emission Standards for Hazardous Air Pollutants for Asbestos; (b) pay stipulated penalties for any violation of the National Emission Standards for Hazardous Air Pollutants for Asbestos; and (c) pay a $20,000 civil penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Frankin Station, Washington, DC 20044. All comments should refer to *United States* v. *Brandenburg Industrial Services*, DOJ Ref. No. 90–5–2–1–1260.

The proposed Consent Decree may be examined at the Region V Office of the U.S. Environment Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20044 ((202) 347–2072)). Any request for a copy of the Decree should be accompanied by a check in the amount of $3.25 (13 pages at 25 cents per page reproduction cost) payable to "Consent Decree Library."

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–31402 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(d)(2), and Departmental policy, 28 CFR 50.7, 38 FR 19029 (July 17, 1973), notice is hereby given that on December 16, 1992 a proposed Natural Resources Consent Decree in *United States of America* v. *French Limited, Inc., et al.*, Civil Action No. H–89–2544, was lodged with the United States District Court for the Southern District of Texas.

In 1989, a Complaint in this action was filed by the United States of America Against French Limited, Inc. and 84 other defendants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, in connection with a release or threatened release of hazardous substances from the French Limited Site in Crosby, Texas.

On March 7, 1990, the United States District Court for the Southern District of Texas entered a Consent Decree between the United States and the defendants named in the Complaint, which secured implementation of the remedy selected by the U.S. Environmental Protection Agency for cleanup on the Site and reimbursement of response costs incurred by the United States.

Under the terms of the proposed Natural Resources Consent Decree, the

defendants would implement the marsh restoration project developed by the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration of the Department of Commerce, and the State of Texas.

The Department of Justice will receive, for thirty (30) day from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *French Limited Inc. et al.*, D.O.J. Ref. No. 90–11–3–46A.

The proposed Natural Resources Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, U.S. Courthouse and Federal Building, 515 Rusk Avenue, Houston, Texas 77002; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $21.25 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–31405 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 17, 1992, a proposed Consent Decree in *United States* v. *Charles George Trucking Co., Inc.*, Civil Action Nos. 85–2463–WD and 85–2714–WD, was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree resolves a suit against certain parties brought by the United States and the Commonwealth of Massachusetts under section 107(a) of the Comprehensive Environmental Compensation, Recovery Act, 42 U.S.C. 9607(a), to recover response costs incurred in cleaning up the Charles George Reclamation Trust Landfill, located in Tyngsboro, Massachusetts. The United States and the Commonwealth are resolving their claims against the following defendants: Analog Devices, Inc., Borden, Inc., Browning-Ferris of Massachusetts, Clean Harbors of Braintree, Inc., Dennison Manufacturing, Domino Sugar Corporation, DYMEC, Inc., Eckel Industries, Inc., Federal Metal Finishing, Inc., The Gillette Company, Hussey Plastics, Inc., Jenike and Johanson, Inc., Lam Lighting Systems, Inc., Millipore Corporation, National Aluminum Corporation, Polaroid Corporation, PPG Industries, Inc., Pride Printers, Inc., Standex International Corporation, Stephan Company, and W.R. Grace & Company—Conn. Also taking part in the settlement are the following third party defendants: Analogic Corporation, Barry Wright Corporation, Bellofam Corporation, Boston Edison Company, Brewer Petroleum Service, Inc., Bull HN Information Systems, Inc., Chevron USA, Inc., Cooper Industries, Inc., Jet-Services, Inc., Jet-Line Services of Rhode Island, Inc., P&T Container Service Co., Inc., Reichhold Chemicals, Inc., Roche Brothers Barrell & Drum Co., Inc., Rochester Midland Corporation, Sherwin-Williams Co., Inc., Tech/Ops, Inc., Town of Bedford (Massachusetts), Town of Bridgewater (Massachusetts), Town of Burlington (Massachusetts), Town of Chelmsford (Massachusetts), Town of Groveland (Massachusetts), Town of Hanson (Massachusetts), Town of Milford (New Hampshire), Town of North Reading (Massachusetts), Town of Tyngsboro (Massachusetts), City of Malden (Massachusetts), City of Revere (Massachusetts), Refuse Energy Systems Co. (RESCO), and Turner Trucking and Salvage Company, Inc.

The Consent Decree will result in a total settlement of $34,188,000 for cost recovery and $1,378,350 for natural resource damages. Of this amount, the United States will receive $22,988,000 in response costs and $459,450 for natural resource damages. Included in the United States' share is $2,600,800 in cost recovery and $88,400 for natural resource damages to be paid on behalf of United States Coast Guard for claims asserted against the United States. The Commonwealth of Massachusetts will receive $11,200,000 for cost recovery and $918,900.05 for natural resource damages. Included in the Commonwealth's share is $459,540 for cost recovery and $15,000 for natural resource damages to be paid by the University of Massachusetts at Lowell for claims asserted against it.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Charles George Trucking Co. et. al.*, D.J. Ref. 90–11–3–91.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, McCormick Federal Building, Post Office Square, Boston, Massachusetts 02109, and at the Region I Office of the Environmental Protection Agency, Office of Regional Counsel, 10th Floor, 1 Congress Street, Boston, Massachusetts 02203. The proposed Consent Decree may also be examined at the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $33.25 (25 cents per page reproduction cost), payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–31403 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation, and Liability Act

In compliance with Departmental policy, 28 CFR 50.7, and consistent with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that on November 23, 1992, a proposed consent decree in *United States* v. *GNB, Inc./Chloride Western, Inc., et al*, No. 92–1473–RE was lodged with the United States District Court for the District of Oregon. The consent decree requires six settling Defendants to reimburse the United States in the sum of $980,103.00 for response costs incurred and to be incurred in connection with the soils operable unit ("Soils Unit") at the Gould Superfund Site in Portland, Oregon. The Gould Site has been placed on the National Priorities List. Each of the Defendants was responsible for sending batteries or lead scrap to the Site and has been determined by EPA to

be eligible for a *de minimis* settlement under section 122(g) of CERCLA.

The proposed consent decree requires each of the Defendants to pay a sum which is proportional to the percentage of waste sent to the Site by that party. In return, the United States will covenant not to take any civil or administrative action under CERCLA for further response costs or remedial action in connection with the Soils Unit of the Site, unless it is discovered after the settlement that a settling Defendant contributed a greater amount of wastes than originally calculated, such that the party can no longer be considered eligible for a *de minimis* settlement.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *GNB, Inc./Chloride Western, Inc.*, D.J. #90–11–3–397B.

The proposed consent decree may be examined at the Office of the Clerk of Court of the United States District Court for the District of Oregon, 531 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205–3090; at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $6.75 (25 centers per page reproduction costs), made payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–31404 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Kodiak Reduction, Inc.*, Civil Action No. 92–750, was lodged on December 10, 1992 with the United States District Court for the District of Alaska. The complaint in this case alleged that Kodiak Reduction, Inc. violated its National Pollutant Discharge Elimination System (NPDES) permit by discharging excess fish waste from its fish meal plant into waters off Kodiak Island. The consent decree provides for payment of a $90,000 civil penalty and injunctive relief to require construction of a new, larger fish meal plant with greater processing capacity that will eliminate the need to dispose of excess fish waste.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kodiak Reduction, Inc.*, DOJ Ref. #90–5–1–1–3620.

The proposed consent decree may be examined at the Office of the United States Attorney, 222 West Seventh Avenue, Anchorage, Alaska; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–31406 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d)(2), notice is hereby given that on October 26, 1992, a proposed Consent Decree in *United States* v. *Midwest Gas et al.*, Civil Action No. C92–1048, was lodged with the United States District Court for the Northern District of Iowa. The proposed Consent Decree resolves the liability of the Settling Defendants under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. 9606 and 9607, at the Peoples Natural Gas Superfund Site ("Site") in Dubuque, Iowa. Under the terms of the Consent Decree, the Settling Defendants have agreed to conduct a remedial action at the Site, to reimburse EPA for past costs of $136,735.31, plus interest of $22,010.00, and to reimburse the United States for all oversight and future costs incurred at the Site.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Midwest Gas, et al.*, D.J. Ref. No. 90–11–2–775.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Iowa, 425 2nd St., SE., suite 950, The Centre, Cedar Rapids, Iowa 52401, the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66106, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044, 202–347–2072. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $21.75 (25 cents per page reproduction charge) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–31407 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated November 5, 1992, and published in the Federal Register on November 13, 1992, (57 FR 53934), Hoffman-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Levorphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations

Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application for registration submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 21, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 92–31560 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 12, 1992, and published in the **Federal Register** on November 13, 1992, (57FR53935), Norac Company Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant, to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application for registration submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 21, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control; Drug Enforcement Administration.

[FR Doc. 92–31558 Filed 12–28–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Use of Negotiated Rulemaking Procedures by Agencies of the Department of Labor

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of policy.

SUMMARY: Public notice is provided of a policy adopted by the Department of Labor to facilitate the use of the negotiated rulemaking process in the development of regulations by Department of Labor components, and to ensure that such efforts are carried out in a manner consistent with the provisions of the Negotiated Rulemaking Act (5 U.S.C. 561 *et. seq.*) and the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix). This policy supplements more general statements about the use of negotiated rulemaking contained in an interim policy on the use by Department of Labor components of alternative dispute resolution techniques. In addition, notice is provided of the availability to the public of a Handbook on negotiated rulemaking in the Department of Labor, and a soon to be completed videotape about the negotiated rulemaking process.

FOR FURTHER INFORMATION CONTACT: Marshall J. Breger, Solicitor of Labor, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Telephone 202–219–7675.

SUPPLEMENTARY INFORMATION: This notice announces the adoption by the Department of Labor of a policy to facilitate the use of the negotiated rulemaking process in the development of regulations by Department of Labor components, and the availability of explanatory and training materials about the negotiated rulemaking process.

Negotiated rulemaking is a process that brings together those who would be significantly affected by a rule, including the Government, to reach consensus on some or all aspects thereof before the rule is formally proposed by the Government. The process is a voluntary one, and the participants establish their own rules of procedure. An impartial mediator is used to facilitate intensive discussions among the participants, who operate as a committee open to the public. Working groups are often used to study the issues involved: Including technical, feasibility and cost issues. Since the participants have come together voluntarily and in good faith to try and reach a consensus, each participant has a strong interest in helping to find a solution to the concerns of all the other parties. As a result, agreements which emerge from this process tend to be more technically accurate, clear and specific, and less likely to be challenged in litigation than are rules produced without such interaction.

The Department of Labor was one of the originators of the negotiated rulemaking process. A review of these early DOL efforts are reviewed in the Negotiated Rulemaking Sourcebook, Administrative Conference of the United States, 1990 (pp. 336–337, 563 et. seq., 605 et. seq., 661 et. seq.). The Department's most recent experience had involved an Occupational Safety and Health Administration rule on a carcinogen known as MDA (the final rule was published August 10, 1992, 57 FR 35630). Developing the final rule through the negotiated rulemaking process, including appropriate clearances, took a long time; but essentially full compliance was achieved even prior to issuance of the final rule (no enforcement required), and there was no litigation regarding the standard.

In 1990 the Congress enacted Public Law 101–648, the Negotiated Rulemaking Act, to encourage all agencies to consider use of this process in appropriate cases. The Negotiated Rulemaking Act was enacted to remove various legal uncertainties discouraging widespread use of this technique. The Congress noted its concern that traditional rule development procedures may discourage agreement among the potentially affected parties and the Federal government. Negotiated rulemaking, however, is a process explicitly designed to facilitate the search for potential agreement.

Despite the enactment of the new law, Federal agencies continue to face a number of practical internal problems that discourage use of negotiated rulemaking. First and foremost, many in the Federal Government remain unfamiliar with the process, and have a number of questions about how the provisions of the new law would fit within the framework of agency, Departmental and Executive branch rulemaking practices and requirements. The same is true for those outside the Federal Government, whose willingness to participate in the process in good faith is essential for success.

Moreover, use of a negotiated rulemaking process requires most agencies to change the way they normally coordinate their rule development activities. Closer than normal budgetary and priority coordination among involved offices of the Government is needed to ensure that the interests of the Government are fully and timely represented during the negotiations. In addition, negotiated rulemaking costs the agency more money at the front end. Operating a negotiated rulemaking advisory committee involves certain expenditures that would not be needed in normal rule development procedures: e.g. the costs of an impartial mediator to facilitate the discussion, room space for meetings, and in some cases travel and per diem for those essential parties who can otherwise not afford to participate.

Soon after the enactment of the Negotiated Rulemaking Act, the Department took its first step to encourage agencies to consider use of

the process. The Department amended its internal regulatory review procedures to require that Department of Labor agencies must consider using negotiated rulemaking to develop a rule when making an initial recommendation to proceed with rulemaking action.

Following an opportunity for public comment (see 56 FR 23599 and 56 FR 28177), the Department of Labor gave notice that it had established an interim policy on the use of alternative dispute resolution (ADR) and negotiated rulemaking procedures by Department of Labor agencies (57 FR 7292, February 28, 1992). The interim policy was issued pursuant to the provisions of the Administrative Dispute Resolution Act (5 U.S.C. 571 *et. seq.*), which lists rulemaking disputes as one type of dispute for which ADR procedures should be considered in appropriate cases.

The interim policy stated that the Department would encourage its component agencies to experiment with negotiated rulemaking wherever such a process has the potential to result in a rule which is more technically accurate, clear and specific, and less likely to be challenged in litigation by interested parties than a rule produced by traditional rule development procedures. The interim policy stated that the Department would only initiate negotiated rulemaking efforts where the time and resource investment by public and private parties is expected to be prudent and efficient. Moreover, the interim ADR policy explicitly stated that a more articulated policy on the use of negotiated rulemaking would be issued at a later date.

Following issuance of the interim policy, the Office of the Solicitor initiated a series of almost a dozen seminars to study specific aspects of the negotiated rulemaking process. Experienced DOL regulatory staff from throughout the Department engaged in an active discussion with experts on the process and those who had participated in negotiated rulemaking activities. Particular consideration was devoted to features of the new Act and how its guidance could be integrated with prior experience in negotiated rulemaking, with individual agency rulemaking problems and practices, and with the requirements of the Federal Advisory Committee Act. The Department's own administrative law experts were joined in these seminars by experts from the Environmental Protection Agency, the Administrative Conference of the United States, the General Services Administration, the Department of Health and Human Services, academia and the private sector. This effort helped to educate a number of key Departmental personnel about the negotiated rulemaking process. It also helped provide answers to a number of questions about maximizing the chances for the process to operate successfully.

As a result of these efforts, the Department of Labor is able to refine the general guidance provided in the interim policy by adopting a fully articulated policy on the use of negotiated rulemaking. The Department's policy explicitly states, among other things, that negotiated rulemaking is to be conducted:

- In accordance with the guidance set forth in the provisions of the Negotiated Rulemaking Act, absent explicit public notification to the contrary in a particular case;
- In full compliance with the requirements of the Federal Advisory Committee Act in a manner consistent with the requirements of the Negotiated Rulemaking Act;
- With particular attention to ensuring full and adequate representation of interests that may be significantly affected by the proposed rule; and
- In good faith by the agency, in each of the roles it has in any such effort: As initiator of the process; as provider of administrative support for the process; as a participant in the negotiations; and in the agency's capacity as rulemaker. The policy provides more specific guidance on what good faith by an agency means in each of these capacities.

The Department is convinced that adhering to the policy's criteria will set a positive tone and encourage a positive result in negotiated rulemaking efforts, thus increasing the confidence of potential participants who must make a significant commitment of time and resources for the process to succeed. The continued success of this process in producing rules that are more technically accurate, clear and specific, and less likely to be challenged in litigation, or to at least significantly narrow the issues which are not so resolved, should lead to increased interest in use of the process.

A second product of the Department's study of the negotiated rulemaking process is a detailed user handbook. The Handbook provides a much more complete explanation of the negotiated rulemaking process and how it differs from traditional rule development approaches used in the Department. It also contains important definitions, explains the implications of various provisions of the Department's policy, and provides detailed information on how to carry out each step in the negotiated rulemaking process. The Handbook is designed to serve as a working tool for those who are considering or actually using the process, providing answers to myriad questions that will arise in any negotiated rulemaking effort and thus reducing the need to delay the process from time to time in order to obtain legal opinions on particular procedural questions.

The Department is in the process of completing an educational videotape, in VHS format, about the negotiated rulemaking process. The tape was complied primarily from one of the seminars arranged by the Office of the Solicitor in which participants who represented labor and management in OSHA's MDA negotiated rulemaking effort discuss why they decided to participate, how the process differed from traditional rulemaking practices, how the committee functioned, how they kept in touch with those whom they represented, and other practical issues. A third member of the panel from academia provides insights and recommends factors that should be considered by potential participants. The tape provides an excellent introduction to the negotiated rulemaking process and to the rationale behind the Department's policy.

The policy, handbook and videotape all emphasize that they are not intended to limit the flexibility of agencies and negotiated rulemaking committees to carry out their activities in innovative ways. The Negotiated Rulemaking Act itself involves both specificity and flexibility. On the one hand, the NRA sets forth a detailed set of instructions on how to conduct the process; and on the other hand, it explicitly provides that: "Nothing in this subchapter should be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process of with other innovative rulemaking procedures otherwise authorized by law." 5 U.S.C. 561. Until they gain familiarity with the concepts of negotiated rulemaking, agencies and negotiated rulemaking committees of the Department may derive comfort from following the "safe harbor" guidance in the Act, the policy and the Handbook. Moreover, following a consistent approach can help other interested parts of the Government, other parties and the public understand and have confidence in negotiated rulemaking efforts undertaken by *all* DOL agencies and negotiated rulemaking committees—particularly during the initial years of operation under the new law.

The Department has established an ADR Steering Committee to facilitate guidance on how to utilize ADR techniques in the activities of the Department. The negotiated rulemaking policy states that the Solicitor shall take the lead and chair these Steering Committee efforts.

A copy of the negotiated rulemaking policy adopted by the Department of Labor is published with this public notice. Copies of the Department's Negotiated Rulemaking Handbook, and, when it is completed, the educational videotape on the negotiated rulemaking process, can be obtained by contacting: Peter Galvin, Co-Counsel for Administrative Law, Office of the Solicitor, room N–2428, U.S. Department of Labor, Washington, DC 20210.

Signed at Washington DC, this 21st day of December 1992.

Lynn Martin,

Secretary of Labor.

Negotiated Rulemaking Policy of the United States Department of Labor

Background and Purpose

Negotiated (or mediated) rulemaking is a process in which a proposed rule is developed by a committee composed of representatives of all those interests that will be significantly affected by the rule, including those interests represented by the Federal government. Decisions are made by consensus, which generally requires unanimous concurrence among the interests represented.

The Congress has found that negotiated rulemaking can result in rules that are technically more accurate, clear and specific, and less likely to be challenged in litigation than are rules developed without such interaction. The Negotiated Rulemaking Act accordingly encourages all Federal Agencies to utilize this approach in appropriate cases.

The purpose of this policy is to provide guidance to Federal personnel and to the public on the negotiated rulemaking principles that will be followed by agencies of the Department of Labor. The Department of Labor was an early pioneer in the use of negotiated rulemaking. The Department is convinced that the process is applicable in a wide range or regulatory activities for which the Department is responsible, and is committed to its use in appropriate cases. Establishment of this policy, and education of Federal personnel and the public about how it is to be implemented, are the building blocks upon which the Department's commitment can be fulfilled.

This policy is one of the steps being taken by the Department of Labor to establish regulatory development and implementation approaches that promote improved communications between the Federal government and the public. The Department expects that the experience gained by the Federal personnel and the public through the use of negotiated rulemaking will provide valuable lessons that can improve all of the Department's regulatory activities.

Consideration of Negotiated Rulemaking Approach

Negotiated rulemaking shall be actively considered for use by all Department of Labor agencies exploring the possibility of rulemaking. Consistent with Departmental regulatory review procedures, such consideration shall begin early in the rulemaking conceptualization process, and the results reported to the Department. The consideration shall involve an assessment of the benefits, drawbacks and appropriateness of using the process in a particular situation, in comparison to alternative ways of proceeding. In addition, agencies should continue to reassess the suitability of the process as further information is developed.

Agencies are encouraged to use the services of impartial third parties (commonly known as conveners) to assist them in this assessment and reassessment process.

Applicability of the Negotiated Rulemaking Act

The Department shall undertake all future negotiated rulemaking activities in accordance with the provisions of the Negotiated Rulemaking Act absent explicit public notification to the contrary in a particular case.

The procedural steps set forth in the Act are based on prior agency experience with the negotiated rulemaking process. The provisions of the Act, and those of this policy, are designed to be flexible enough to meet the needs of all programs administered by the Department and the particularities of diverse rulemaking situations. Each agency has its own pattern of doing business, and the Act of this policy permit each negotiated rulemaking to be structured by the participants to suit the needs of the situation. Nevertheless, the specific procedural steps set forth in the Act, while sometimes appearing mundane, are important enough to merit attention by all agencies engaged in negotiated rulemaking activity. Moreover, the provisions of the Act provide a legal "safe harbor" for agency action. Accordingly, although the procedural steps set forth in the Act do not have to be followed as a matter of law, agencies in the Department are expected to follow those steps until they and their legal counsel gain sufficient experience with the negotiated rulemaking process to warrant a decision to the contrary.

Agencies of the Department are encouraged to consider other innovative rulemaking procedures otherwise authorized by law, and nothing in this policy should be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process or other innovative rulemaking procedures.

Applicability of the Federal Advisory Committee Act

All negotiated rulemaking committees shall be formed and operated in full compliance with the requirements of the Federal Advisory Committee Act (FACA) in a manner consistent with the requirements of the Negotiated Rulemaking Act. In addition, agencies of the Department shall make efforts to ensure that interested members of the public have opportunities to keep abreast of, and contribute to, the deliberation of negotiated rulemaking committees. Agencies considering negotiated rulemaking activities will be expected to seek early and regular advice on FACA compliance procedures and requirements from legal counsel, so that this guidance can be taken into account: in considering whether negotiated rulemaking is appropriate; and in the development and implementation of plans for negotiated rulemaking activity.

Commitment to Full Representation of Significantly Affected Interests

It shall be the policy of the Department of Labor to conduct negotiated rulemaking proceedings with particular attention to ensuring full and adequate representation of those interests that may be significantly affected by the proposed rule.

In this regard, the Department of Labor recognizes that the regulatory actions it takes under its programs affect various segments of society in different ways; accordingly, particular attention shall be given to this fact in ensuring full and adequate representation of significantly affected interests.

Commitment of Good Faith Effort by the Department's Representatives, Components, Officials and Personnel

The Department and its agencies are committed to acting in good faith in undertaking negotiated rulemaking

efforts in each of the roles it has in any such effort: as initiator; as provider of administrative support; as a participant in the negotiations; and in its capacity as rulemaker.

In initiating a negotiated rulemaking process, an agency head is making a commitment by the Department of Labor that the agency and all the other parts of the Department that will have to participate in the process will provide adequate resources to ensure timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials and personnel of the Department who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process expressly terminated. Once the process has been initiated, all representatives, components, officials and personnel of the Department will be expected to act in accordance with this commitment.

As provider of administrative support, the Department and its agencies will take steps to ensure that negotiated rulemaking committees have the dedicated resources they require to complete their work in a timely fashion. These include the provision or procurement of such support services as: Properly equipped space adequate for public meetings and caucuses; logistical support and timely payment of participant travel and expenses where necessary as provided for under the Act; word processing, information dissemination, storage and other information handling services required by negotiated rulemaking committees; qualified conveners and facilitators; and the provision of statistical, economic, health, legal, computing or other highly technical skills that may be required by a negotiated rulemaking committee.

As a participant in the negotiations, any agency member of a negotiated rulemaking committee shall be empowered by the agency head to represent the full range of significantly affected interests of the agency, and such member shall take the necessary steps to fully and fairly represent the full range of interests of the Department and the Federal government. The interests of the Federal government that must be represented include those arising out of its obligations under any statute or Executive Order. Participation in a negotiated rulemaking effort does not eliminate any requirements of statute or Executive Order with respect to any proposed rule, and early and regular coordination within the government is essential if the consensus of the negotiated rulemaking committee is to be acceptable to all significantly affected interests.

In its capacity as rulemaker, the agency shall, to the maximum extent possible consistent with its legal obligations, use the consensus of the committee as the basis for the agency's rulemaking actions. Under the Negotiated Rulemaking Act, Federal officials retain their full statutory and constitutional responsibility to make all administrative determinations on regulatory matters; under the Appointments Clause of the Constitution, governmental authority may be exercised only by officers of the United States. The Negotiated Rulemaking Act does, however, provide that agencies are to consider whether they can make a commitment to act on the consensus of a negotiated rulemaking committee prior to deciding whether to establish such a committee. Accordingly, if a decision is made to establish a committee, potential participants have a right to expect that the Department will follow through on the commitment inherent in that decision and base its rulemaking actions on the committee consensus. Moreover, since other parties also retain their legal rights not to accept the committee consensus, the Department's good faith willingness to abide by its commitments is intended to set an example for all to follow.

Assistance by the Department

To help facilitate the Department's commitment to utilize this process in appropriate cases, the Department is taking additional actions to assist in implementation of this policy.

The Department will arrange for the provision to requesting agencies, with full reimbursement by program agencies for services actually utilized, of certain additional administrative support services which may be difficult for agencies to provide on their own: Including room space adequate and conducive for extended public meetings and for related negotiation activities; dedicated clerical support required by negotiated rulemaking committees; the services of qualified mediators and other expert personnel to assist the process; and training.

The Department's Steering Committee on Alternative Dispute Resolution shall provide agencies with guidance, advice and training in the use of the negotiated rulemaking process, and encourage and facilitate use of the process in cases the Department deems appropriate. The Steering Committee shall develop and maintain a handbook and other materials to facilitate implementation of this policy, which shall be made available to the public. In addition, following consultations with program agency heads, the Steering Committee shall recommend to the Secretary any changes that may be appropriate to this policy, and shall recommend any further initiatives that could facilitate use of this process by agencies of the Department. The Office of the Solicitor shall take the lead and chair these Steering Committee efforts.

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Pension and Welfare Benefits Administration

[Application No. D-9222, et al.]

Proposed Exemptions; Gilead Sciences 401(k) Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of

Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons.

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Gilead Sciences 401(k) Plan (the Plan) Located in Foster City, California

[Application No. D–9222]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed extension of credit (the Loan) to the Plan by Gilead Sciences, Inc. (the Employer), the sponsor of the Plan, with respect to two guaranteed investment certificates (the GICs) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Loan (the Repayments) by the Plan; provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Plan;

(C) The Repayments shall not exceed the amount of the Loan;

(D) The Repayments shall not exceed the amounts actually received by the Plan from Mutual Benefit, any state guaranty fund, and other responsible third party payors with respect to the GICs; and

(E) The Repayment of the Loan shall be waived to the extent that the amount of the Loan exceeds the total GIC Proceeds.

Summary of Facts and Representations

1. The Plan is a defined contribution retirement plan which includes a cash or deferred compensation arrangement under section 401(k) of the Code and provides for employer matching contributions and additional employer discretionary contributions. As of June 30, 1992, the Plan had approximately 43 participants and total assets of approximately $346,966.23. The Employer is a Delaware privately-held corporation with its principal offices in Foster City, California. The assets of the Plan are held and invested under the Gilead Sciences 401(k) Plan Trust (the Original Trust). Since the Plan's inception, the trustees of the Original Trust have been Michael L. Riordan and Michael F. Bigham (the Original Trustees), each of whom is an executive officer of the Employer. The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of the Accounts among investment options offered by the Original Trustees.

2. Prior to October 1, 1992, the Original Trustees had contracted for the investment and management of Plan assets by Mutual Benefit, under an agreement effective August 1, 1989 (the MB Contract). The MB Contract is a master group annuity contract under which a total of six different investment choices were offered to Plan participants for the investment of their Accounts. These investment choices included a guaranteed certificate fund (the GC Fund), which invested in guaranteed investment certificates, issued by Mutual Benefit, featuring interest guarantees over stated periods. The sole remaining assets in the GC Fund are the GICs. Each GIC is a "window" contract which provides that principal deposits over a stated window period will earn interest at rates designated by its terms (the Contract Rates). Withdrawals from the GICs may be made to enable the GC Fund to effect, in accordance with the terms of the Plan, benefit distributions, in-service withdrawals, participant loans, and participant-directed transfers of Account balances to other investment options offered by the Plan (collectively, the Withdrawal Events). In addition to withdrawals for the Withdrawal Events, each GIC requires Mutual Benefit to make a final payment to the GC Fund, upon a maturity date defined by each GIC, in the amount of the GIC's accumulated book value, representing total principal deposits plus interest earnings at the Contract Rates, less previous withdrawals. As of June 30, 1992, the GICs had a total accumulated book value of $174,994.61, representing total principal deposits plus interest at the Contract Rates less previous withdrawals, and constituting approximately 50 percent of the Plan's assets. The GICs are the only certificates held by the GC Fund. The GICs are further identified as follows:

Certificate No. 0001: Effective August 1, 1989, with a deposit period of August 1, 1989 through July 31, 1990, a Contract Rate of 9.10 percent per annum, and a maturity date of July 31, 1992.

Certificate No. 0002: Effective August 1, 1990, with a deposit period of August 1, 1990 through July 31, 1991, a Contract Rate of 9.10 percent per annum until July 31, 1991 and thereafter of 8.65 percent per annum, and a maturity date of July 31, 1995.

3. Effective October 1, 1992, the Plan was amended and restated by the Employer in the form of a prototype plan (the New Plan) under a document provided by Fidelity Management and Research Company (Fidelity). The terms of the New Plan provide for the establishment of a new trust (the New Trust), of which the trustee will be Fidelity Management Trust Company (the New Trustee). All Employer contributions due under the Plan with respect to participants' compensation earned on or after October 1, 1992 are deposited in the New Trust. Assets of the Plan which are transferred from the Original Trust to the New Trust, and all assets of the New Plan, are invested at the direction of participants in various investment options offered by Fidelity. The Original Trustees continue to act as

trustees of the Original Trust, which continues to exist as a separate trust under the Plan until it no longer hold any Plan assets.

4. On July 15, 1991, the Original Trustees notified Mutual Benefit that the Employer's contributions under the MB Contract would be discontinued immediately, and they directed Mutual Benefit to transfer all Original Trust assets to a successor investment manager. By an order entered July 16, 1991 in the Superior Court of New Jersey, Mutual Benefit was placed into receivership and rehabilitation by the New Jersey Commissioner of Insurance (the Receivership).[1] Since the commencement of the Receivership, payments on all Mutual Benefit guaranteed investment certificates, including the GICs, have been suspended.[2] Consequently, the Original Trustees' have been unable to effect a transfer to Fidelity of all Plan assets which are under Mutual Benefit's management (the Asset Transfer), the Withdrawal Events are not being funded by the GC Fund, and the maturity payment which was due June 30, 1992, under Certificate No. 0001, has not been made.

The Employer represents that under prevailing circumstances it is likely that Plan assets invested in the GICs will be subject to restrictions for an extended period of time, and potentially subject to loss of interest and principal. In order to resume the funding of Withdrawal Events, to prevent loss of guaranteed principal and interest under the GICs by the Plan, and to enable the completion of the transfer of all Plan assets to Fidelity management, the Employer proposes to make the Loan to the Plan. The Employer is requesting an exemption to permit the Loan, and its potential Repayment by the Plan, under the terms and conditions described herein.

4. The terms of the Loan and the Repayments are set forth in a written agreement (the Agreement) between the Employer and the Original Trustees. Under the Agreement the Employer is obligated to make the Loan in a lump sum in the amount of the total accumulated book values of the GICs on the date of the Loan, representing total principal deposits under each GIC plus interest accrued at the Contract Rates less previous withdrawals. With respect to Certificate No. 0001, which matured July 31, 1992, the Loan amount will include interest on the maturity value from the maturity date through the date of the Loan at the highest rate permitted by the Internal Revenue Service (the Service) under a closing agreement with the Employer, up to a maximum of 9.10 percent per annum. The Agreement provides for the Loan to be made no earlier than January 29, 1993, and only after the Employer has secured the requested exemption and a closing agreement with the Service regarding the Loan. The Employer will receive no interest or fees for the Loan.

In return for the Loan, the Original Trustees agree to make the Repayments of the Loan as specified in the Agreement. The Agreement provides that the Repayments will be made only from the proceeds received by the Plan with respect to the GICs from Mutual Benefit or other responsible third parties making payment with respect to the GICs (collectively, the GIC Proceeds). No other Plan assets may be used to repay the Loan. Pursuant to the Agreement, whenever the Original Trustees receive GIC Proceeds, they will pay such amounts to the Employer until the Loan principal is repaid in full. The Agreement provides that if the total amount of GIC Proceeds is less than the Loan amount, then the Employer will forgive repayment of the deficiency.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reason: (1) The Plan will be relieved of any further risk of loss of principal or interest with respect to the GICs; (2) The Loan will allow the Original Trustees to complete the transfer of all Plan assets to Fidelity management; (3) The Plan will receive its full investment in the GICs as of the date of the Loan, represented by the GICs' accumulated book values, which consist of total principal deposits plus accrued interest at the Contract Rates, less previous withdrawals; (4) The Plan will pay no interest or expenses for the Loan; (5) The Repayments will be restricted to the GIC Proceeds; and (6) The Repayments will be waived to the extent the Loan exceeds the GIC Proceeds.

[1] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GICs.

[2] The Employer represents that Plan assets other than the GICs are not affected by the suspension of payments on Mutual Benefit's guaranteed investment certificates, and have been withdrawn from Mutual Benefit's custody, because such assets were invested in funds considered to be "separate accounts" to which the court-ordered withdrawal and transfer restrictions do not apply. The Employer states that the terms of the Receivership imposed by the Superior Court specifically allow payment from and withdrawal of funds invested in Mutual Benefit separate accounts.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Ultronix, Inc. Employee Defined Contribution Profit Sharing Plan (the Plan) Located in Grand Junction, Colorado

[Application No. D–9185]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of its interest in a Guaranteed Investment Contract (the GIC) of Pacific Standard Life Insurance Company (PSL) to Ultronix, Inc. (Ultronix), a party in interest with respect to the Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GIC at the time of the transaction; (3) the Plan's actuary, Robert W. Jones, Jr., acting as independent fiduciary for the Plan, has determined that the proposed sales price is not less than the current fair market value of the GIC; and (4) Mr. Jones has determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. Ultronix is a company which manufactures and markets resistors and other electronic components. The Plan is a qualified defined contribution plan which currently has approximately 79 active participants, 19 of whom have amounts invested in the GIC. Additionally, there are three former Plan participants who have retired or terminated their employment with Ultronix with amounts invested in the GIC. The Plan had assets of approximately $192,000 as of June 30, 1992.

2. The Plan was originally established effective January 1, 1987. At that time, the Plan's then trustees had total investment discretion unless they were directed otherwise by Ultronix. All Plan assets were invested either in a series of insurance contracts, including the GIC,

or in a mutual fund. Effective January 1, 1991, Manufacturers Bank, N.A. (the Bank) became a custodian of the Plan. The Plan's participants were then given a choice of three investment funds, including a GIC Fund. All Plan assets, with the exception of the GIC, were held by the Bank after January 1, 1991. The GIC remained with the Plan's trustees.

3. The GIC is a flexible premium deferred annuity, policy number 20L0208347, issued on March 17, 1989. The GIC's maturity date is March 16, 2016. The original rate of interest paid on the GIC was 9.0%, but the rate has changed every several months as the market has changed. PSL represents that the changing interest rates were determined based upon a variety of factors, including pricing assumptions for the GIC, competition, investment rate of return and current prevailing rates of interest in financial markets. On December 11, 1989, the California Superior Court issued an order of conservation and appointed the California Insurance Commissioner as conservator of PSL. The Conservator imposed a six month moratorium on all payments under the GIC. The moratorium was extended for an additional 90 days on May 21, 1990. However, under the extended order, the Plan was permitted to receive an annual distribution of 10% of the "gross account value" (defined as the value of the GIC including accumulated interest), and it received such distributions, in the amount of $4,932.81 on April 29, 1991 and $4,148.60 on March 27, 1992. In May, 1992, a new moratorium of indefinite duration was imposed on all payments from the GIC, including the 10% annual distributions, and the rate at which interest is credited on amounts held under the GIC was reduced to 4.5 %.[3] The total accumulated value of the GIC (deposits plus accrued interest less distributions) was $37,825 as of June 30, 1992, which represented approximately 19.7% of the Plan's assets as of that date.

4. Due to the uncertainty of payment under the GIC, Ultronix proposes to eliminate the financial risk to the Plan's participants and to protect their benefits by purchasing the GIC from the Plan at its accumulated value. The GIC's accumulated value will be re-determined by PSL as of the purchase date. PSL will base its valuation on the interest rates credited on the GIC since its purchase, beginning with a 9.0% rate for the period from March 17, 1989 to September 30, 1989, and falling to its current rate of 4.5% from May 1, 1992 until the present. PSL represents that future rates are not predictable. The amount paid by Ultronix will be allocated to the accounts of the affected participants in the Plan's trust with the Bank and invested in accordance with their investment directions in one of the Plan's investment funds.

5. Ultronix represents that it has not filed a request for a closing agreement with the Internal Revenue Service under Revenue Procedure 92–16.[4] Ultronix represents that it has read Revenue Procedure 92–16 and is aware of the potential tax consequences, but still wishes to proceed with the proposed transaction.

6. Mr. Robert W. Jones, Jr., the Plan's actuary, acting as the Plan's independent fiduciary with respect to this transaction, has reviewed the proposed transaction on behalf of the Plan. Mr. Jones represents that he has determined that the proposed purchase price for the GIC is at least equal to the GIC's current fair market value. In addition, Mr. Jones has represented that he has determined that the proposed transaction is appropriate for the Plan and in the best interest of its participants and beneficiaries.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The Plan will receive cash for the GIC in the amount of the accumulated value of the GIC, as of the sale date, which Mr. Jones has determined to be equal to or in excess of the fair market value of the GIC; (2) the transaction will enable the Plan to avoid any risk associated with continued holding of the GIC and to redirect assets to safer investments; (3) the Plan will not incur any expenses related to the transaction; and 4) Mr. Jones has determined that the proposed sale of the GIC by the Plan to Ultronix at the proposed price is in the best interests of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[3] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[4] Revenue Procedure 92–16 (I.R.B. 1992–7, February 18, 1992) provides for a temporary closing agreement program to settle certain tax liabilities that arise out of transactions between an employer-sponsor and the trust of a qualified defined contribution plan. This temporary closing agreement program applies to transactions in which the employer makes conditional payments to the plan on account of plan assets that are invested in contracts issued by a life insurance company that has been placed in state insurer delinquency proceedings.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. Retirement Program Master Trust (the Trust) Located in Boston, Massachusetts

[Application Nos. D–9138 through D–9141]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective December 5, 1991, to (1) the past extension of credit (the Loan) to the Trust by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (the Employer), the sponsor of employee benefit plans participating in the Trust, with respect to the Trust's proportionate interest in guaranteed investment contract number CG 0128203A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the potential repayment of the Loan (the Repayments) by the Trust; provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Trust than those which the Trust could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Trust;

(C) The Repayments shall not exceed the principal amount of the Loan;

(D) The Repayments shall not exceed the proceeds actually received by the Trust from Executive Life and any other responsible payors with respect to the GIC (the GIC Proceeds); and

(E) Repayment of the Loan shall be waived to the extent that the principal amount of the Loan exceeds the GIC Proceeds.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 5, 1991.

Summary of Facts and Representations

1. The Trust is a master trust which holds the assets of four employee benefit plans (the Plans) sponsored by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (the Employer). The Employer is a law firm organized as a Massachusetts and District of Columbia professional corporation. The Plans are identified and described as follows:

(a) The Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. Retirement Plan, a defined benefit pension plan covering non-lawyer employees of the Employer;

(b) The Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. Target Benefit Plan for Members, a defined contribution target benefit plan covering lawyer members of the Employer;

(c) The Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. Staff Savings Plan for Members and Staff, a defined contribution 401(k) savings plan covering employees other than those classified as associates of the Employer; and

(d) The Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. Savings Plan for Associates, a defined contribution 401(k) savings plan covering employees classified as associates of the Employer.

As of September 30, 1991, there were approximately 918 participants in the Plans, and the Trust held total assets of approximately $18,519,423, representing all the assets of the Plans. The trustees of the Trust are Francis X. Meaney and Charles D. Ferris (the Trustees), each of whom is a director of the Employer.

2. Contributions to the Trust, on behalf of participants in the three defined contribution plans, are maintained in individual participant accounts (the Accounts). The Accounts are invested according to participant directions among four investment options (the Investment Funds) which included, prior to November 1991, a guaranteed investment contract fund (the GIC Fund) managed by State Street Bank and Trust Company (State Street). Among the assets in the GIC Fund is an undivided interest in the GIC, a benefit-responsive guaranteed investment contract issued by Executive Life on February 3, 1988. State Street purchased the GIC on behalf of the Trust and one other State Street client (the Co-Investor). The proportions of the Trust's and the Co-Investor's interests in the GIC are determined by the amounts of principal deposited by each under the GIC. The terms of the GIC provide for a deposit period of six months, from January 1 to June 30, 1988, and interest on principal at the rate of 9.04 percent per annum (the Contract Rate) over five years and six months. The GIC requires Executive Life to make annual interest payments to the Trust on December 31 of each year and a final maturity payment on December 31, 1993.

In January and February, 1991, the Employer issued a written advisory to the Plans' participants warning of the possible financial risks of continued investments in the GIC Fund, due to the risk of insurer insolvency. At this time, the Employer offered the Plans' participants a special investment election (the Special Election) enabling participants to direct changes in the investment of their Account balances among the Investment Funds. The Employer represents that the Special Election resulted in a transfer of approximately 84 percent of the total GIC Fund to other Investment Funds then available for Account investments.

3. On April 12, 1991, Executive Life was placed in conservatorship by the Commissioner of Insurance of the State of California (the Conservatorship).[5] Since that date, Executive Life's contracts, including the GIC, have been frozen and payments on such contracts have been suspended. The Employer represents that under the prevailing circumstances, it is questionable whether Executive Life will be able to honor fully its obligations to the Trust under the terms of the GIC. State Street represents that as of April 30, 1991, the Trust's interest in the GIC had an accumulated book value of $85,514.48, representing the Trust's total principal deposits plus interest at the Contract Rate less previous withdrawals. Since April 30, 1991, State Street has continued to value the GIC at $85,514.48 (the Frozen GIC Value) for recordkeeping purposes and Account statements.

During 1991, the Employer determined that a change in the Trust's investment approach was needed in order to enhance the choices and flexibility available to participants for Account investments, and to increase the efficiency of the administration of Account investments. After conducting a study, the Employer decided to replace the Investment Funds with a choice of mutual funds (the New Funds) under common management. Under the new approach, each Plan participant may direct the investment of his or her Account in any of approximately 20 of the New Funds having different investment policies and objectives and offering different levels of risk and potential return.

The Trust's new investment approach, utilizing the New Funds, became effective on November 1, 1991, with the bulk of the assets in the Investment Funds transferred to the New Funds on that date, although the Employer represents that some of the Investment Fund assets were transferred during the subsequent weeks as they were made available. Effective January 1, 1992, Plan participants may direct the investments of their Accounts among the New Funds on a daily basis.

4. Because of the Conservatorship and the related freeze on withdrawals from Executive Life guaranteed investment contracts, the Employer represents that it was not possible to redeem the Trust's interest in the GIC in order to transfer that asset's proceeds to the New Funds. The Employer states that in order to enable participants, whose Accounts were totally or partially invested in the GIC Fund, to participate in the New Funds program, and to protect such participants from any adverse effects of the Executive Life conservatorship, the Employer made the Loan to the Trust on December 5, 1991, in an amount representing the Frozen GIC Value. The Employer is requesting an exemption for the Loan and its potential repayment by the Trust under the terms and conditions described herein.

5. The terms of the Loan were reduced to writing commensurate with the making of the Loan, in a promissory note dated December 5, 1991 (the Note) evidencing an agreement between the Employer and the Trustees, under which the Employer made the Loan in a lump-sum amount of $85,514.48 (the Loan Amount). The Note provides that the Loan Amount does not bear interest. The Employer represents that the Loan Amount was equal to the Frozen Book Value, constituting total Trust deposits under the GIC plus accrued interest at the Contract Rate less previous withdrawals through April 30, 1991. State Street represents that the Loan Amount was not less than the fair market value of the GIC as of the date of the Loan.

The Employer represents that its objective in making the Loan was to enable the Plans' participants to participate in the New Funds program with the Account balances which were invested in the GIC and unavailable due to the Conservatorship. The Employer maintains that in order to accomplish this objective, it was appropriate to make the Loan in the amount of the Frozen GIC Value, rather than the GIC's accumulated book value as of the date of the Loan, because the Employer, based on State Street's determinations, concluded that the GIC's actual fair market value as of the Loan date was below the Frozen GIC Value. Additionally, the Employer represents that the Loan Amount was established appropriately for the following reasons: (a) Earlier in 1991, the Plans' participants had been advised by the

[5] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC.

Employer of risks inherent in continued investment in guaranteed investment contracts and had been offered the Special Election as an opportunity to remove their Account balances from the GIC; (b) The Employer determined, and has subsequently confirmed, that it is highly unlikely that any holders of Executive Life contracts, including the Trust, will recover any amounts in excess of the accumulated book values of such contracts as of the commencement of the Conservatorship; and (c) In the unlikely event that the Trust recovers, from Executive Life, its conservator, or any other third party, any amounts in excess of the GIC's Frozen GIC Value, such excess amounts will be retained by the Plans in accordance with the Repayment provisions of the Note, described below.

6. In return for the Loan, the Trustees agree to make the Repayments as specified on the Note. Under the terms of the Note, the Repayments may be made only from proceeds received by the Trust with respect to the GIC (the GIC Proceeds), and other assets of the Trust will not be available to make the Repayments. The GIC Proceeds, from which the Repayments are to be made, are any proceeds received by the Trust with respect to the GIC from Executive Life, its successors or assigns, any conservator, trustee or other person performing similar functions with respect to Executive Life, any state guaranty or similar fund, any person or entity (other than the Employer) acting as surety or insurer, with respect to Executive Life, and any other responsible third party with respect to Executive Life. In the event the Loan exceeds the total amount of GIC Proceeds received by the Trust, the Repayment of such excess will be waived, and the Trust will have no Repayment obligation with respect to any such excess. The Note provides that whenever the Trustees receive any GIC Proceeds, the Trustees shall pay such amounts to the Employer, but not in excess of the Loan Amount. Accordingly, any GIC Proceeds received by the Trust in excess of the principal Loan Amount will be retained by the Plan.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Loan enabled the Trust to complete the transfer of the Plans' assets into the New Funds and commence the new investment approach selected by the Trustees; (2) The Loan relieves the Trust of any further risk or uncertainty with respect to payments due from Executive Life under the GIC; (3) The Accounts which were invested in the GIC received the full Frozen GIC Value, representing total principal deposits under the GIC plus accrued interest at the Contract Rate, less previous withdrawals, as of April 30, 1991, the end of the month in which the Conservatorship commenced; (4) The Trust will incur no interest or expenses for the Loan; (5) The Repayments will be restricted to the GIC Proceeds, and no other Trust assets may be used for repayment; (6) The Plan will retain any amounts of GIC Proceeds received which are in excess of the Loan Amount; and (7) The Repayments will be waived to the extent the Loan exceeds the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 23rd day of December, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–31572 Filed 12–28–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Evaluation of Arts Plus Initiative

AGENCY: National Endowment for the Arts; NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified organization or individual to support an evaluation of the effectiveness of the intent and procedural structure of the Arts Plus Initiative. The recipient of the Cooperative Agreement will examine the use of three-year funding support as a means to ensure sufficient time to develop and sustain committed partnerships between arts organizations and schools; the needs of various artistic fields for this type of funding category; the intra-agency collaboration between the Arts in Education Program and other Endowment discipline programs; and the administrative structure and processes by which Arts Plus has been implemented. Those interested in receiving the Solicitation package should reference Program Solicitation PS 93–03 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 93–03 is scheduled for release approximately January 4, 1993 with proposals due on February 4, 1993.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100

Pennsylvania Ave., NW. Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92–31409 Filed 12–28–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by January 26, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1993 National Survey of Recent College Graduates.

Affected Public: Individuals.

Respondents/Reporting Burden: 11,500 respondents; 30 minutes per response.

Abstract: The data collected in this survey will enable the NSF to partially fulfill the requirement to serve as a clearinghouse for information on the scientific and technical population of the U.S. That information allows for policy and planning activities by officials of government, private industry, and academic institutions.

Dated: December 22, 1993.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 92–31412 Filed 12–28–92; 8:45 am]

BILLING CODE 7555–01–M

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by January 26, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1993 Survey of Doctorate Recipients.

Affected Public: Individuals.

Respondents/Reporting Burden: 23,500 respondents: 23 minutes per response.

Abstract: This survey will collect demographic and laborforce data on Ph.D scientists, engineers, and humanists. This information will be used in policy and planning activities by government agencies, educational institutions and private industry.

Dated: December 22, 1993.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 92–31413 Filed 12–28–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric Company, et al.; Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

In the matter of the City of Eugene, OR and Pacific Power and Light Company.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one time schedular exemption from the requirements of 10 CFR 50, appendix E, (IV)(F)(2) to Portland General Electric Company, et al., (the licensee), for Facility Operating License No. NPF–1, for operation of the Trojan Nuclear Plant located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one time schedular exemption from the requirement of 10 CFR 50, appendix E, (IV)(F)(2) to annually exercise its emergency plan. By letter dated December 11, 1992, the licensee requested an exemption from 10 CFR 50, appendix E, (IV)(F)(2) which would defer conducting its annual emergency plan exercise scheduled for December 15, 1992, until the first quarter of 1993.

The Need for the Proposed Action

Title 10 of the Code of Federal Regulations, part 50, appendix E, paragraph IV, section F, item 2 requires that each licensee annually exercise its emergency plan. The 1992 annual exercise for Trojan Nuclear Plant was initially scheduled for November 17, 1992. The licensee had completed necessary preparation for this exercise. However, the Trojan Nuclear Plant experienced a steam generator tube leak that resulted in a plant shutdown November 9, 1992. The licensee does not expect the plant to startup until after January 1, 1993. As a result of the steam generator tube leak and subsequent plant shutdown, the initial scheduled date of November 17, 1992, was deferred until December 15, 1992. The licensee undertook the necessary preparatory actions to conduct the annual exercise on this date. However, as a result of the continued forced outage, the annual exercise could not be practicably performed on December 15, 1992. The current forced outage for steam generator eddy current inspection requires the reactor coolant system to be operated in a reduced inventory condition. Due to the potential impact on plant personnel and the outage duration, the licensee considers it prudent to conduct emergency plan exercises at times other than while the plant is in reduced inventory. The combination of added workload on the remaining plant staff and the economic impact from the potential outage extension, make the performance of the 1992 annual exercise on its scheduled date of December 15, 1992, an undue hardship. The one time exemption from the annual requirement will allow the licensee to defer the exercise until the first quarter of 1993.

Environmental Impact of the Proposed Action

The proposed exemption affects only the licensee's required date for conducting the annual emergency plan exercise. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Trojan Nuclear Plant, dated August 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for amendment dated December 11, 1992, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room at the Branford Price Millar Library, Portland State University, 934 SW. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 18th day of December 1992.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Project III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-31391 Filed 12-28-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528, 50-529, and 50-530]

Arizona Public Service Co., et al.; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) is announcing the withdrawal of an application dated March 20, 1992, for amendments to Facility Operating License Nos. NPF-41, NPF-51, and NPF-74, issued to Arizona Public Service Company, *et al.* (the licensee), for operation of Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, located in Maricopa County, Arizona. Notice of consideration of issuance of the amendments was published in the **Federal Register** on May 13, 1992 (57 FR 20508).

The amendment request proposed a change to the surveillance requirements for the containment purge valve isolation system to provide an alternate surveillance requirement to be applied when the system is not operable.

By letter dated October 15, 1992, the NRC staff explained to the licensee why the proposed change was not necessary and that the NRC staff considered the proposed change to be withdrawn unless it was advised otherwise within 10 days. No subsequent notice was received from the licensee. Thus, the application for amendments is considered to be withdrawn.

For further details with respect to this action, see the application for amendments dated March 20, 1992, and the NRC staff's letters to the licensee dated October 15 and December 22, 1992.

These documents are available at the Commission's Public Document Room located in the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room in the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland this 22nd day of December, 1992.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-31590 Filed 12-28-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382]

Entergy Operations, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Energy Operations, Inc. (the licensee), to withdraw the November 3, 1989, application for proposed amendment to Facility Operating License No. NFP-38 for the Waterford Steam Electric Station, Unit No. 3, located in St. Charles Parish, Louisiana.

The proposed amendment would have revised the operability requirements for the main feedwater isolation valves, main feedwater control valves, and feedwater regulating bypass valves.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 21, 1990 (55 FR 6107). However, by letter dated December 9, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 3, 1989, and the licensee's letter dated December 9, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland this 17th day of December 1992.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV-1, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-31392 Filed 12-28-92; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of OMB Approval for Information Collection: Certain Reporting and Notification Requirements

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested an extension of approval by the Office of Management and Budget of a collection of information from plan administrators when a reportable event occurs. The information collection is prescribed by sections 4043 and 4065 of the Employee Retirement Income Security Act of 1974 and is contained in subpart A of the PBGC's regulation on Certain Reporting and Notification Requirements, 29 CFR part 2615. There is no change in the substance of the information to be collected or in the method of collection. This notice advises the public of the PBGC's request for extension of this previously approved collection of information.

ADDRESSES: Written comments (at least three copies) should be addressed to the Office of Management and Budget, Paperwork Reduction Project (1212–0013), Washington, DC 20503, with a copy to the Pension Benefit Guaranty Corporation, Office of the General Counsel, Code 22000, 2020 K Street, NW., Washington, DC 20006. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget ("OMB") with regulatory responsibility over these burdens; OMB has promulgated rules on the clearance of collections of information by Federal agencies. Pursuant to those rules, the PBGC has requested an extension of OMB approval of its collection of information concerning certain reportable events, which is contained in subpart A of 29 CFR part 2615, entitled "Certain Reporting and Notification Requirements."

Section 4043(b) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1301 *et seq.* ("ERISA"), sets forth ten events that pension plan administrators must report to the PBGC after the event occurs. The statute also gives the PBGC authority to add additional reportable events, to waive reporting of any event, and to require that a waived event be reported on the plan's annual report (IRS/DOL/PBGC Form 5500 Series). Section 4065 of ERISA provides that these reportable events be included in the plan's annual report except to the extent waived by the PBGC. In its regulation on reportable events, the PBGC added three additional events to be reported, modified four of the events to narrow the reporting requirements, waived reporting of six of the events, and waived the requirement that any of the reportable events be included on the plan's annual report.

This information collection was previously approved by OMB under control number 1212–0013, and the PBGC is requesting that the approval be extended. There is no change in the substance or in the method of collection of information.

An event that must be reported to the PBGC under subpart A of the regulation occurs only upon the occasion of an infrequent or nonrecurring event and, based on its experience, the PBGC expects to receive 80 reports annually. The public reporting burden for this collection of information is estimated to average one-half hour per report, including time for reviewing the statutory and regulatory provisions and preparing a letter or memorandum about the established event using existing data.

Issued at Washington, DC this 22nd day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–31597 Filed 12–28–92; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

[Docket No. SS93–2]

Recycled Mail Incentives; Notice

December 23, 1992.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc, III; H. Edward Quick, Jr.

In a letter to the Commission dated December 7, 1992, Representative Charles Hayes, Chairman of the Subcommittee on Postal Personnel and Modernization of the House Committee on Post Office and Civil Service, Representative Nancy Pelosi, and Representative Richard Durbin, requested the Commission to "conduct an inquiry into the feasibility of reduced rates or other financial incentives for mailers who use recycled paper." This request is an outgrowth of a provision in the fiscal 1992 appropriations bill for Treasury, Postal Service, and General Government (H.R. 2622, 102 Cong. 1st Sess., Cong. Rec. H7298–7312, 7302) that encouraged the Commission to "explore the establishment of a preferred rate category for mailings which use recycled paper." A copy of this letter is Attachment A to this notice.

The Postal Rate Commission is establishing Docket No. SS93–2 to conduct a public inquiry in response to the Representatives' request. The Commission understands that the primary purpose of the requested inquiry is to compile the views of those with expertise in the economics of the paper industry, the direct mail industry, consumer affairs, and environmental affairs, to assist Congress in its consideration of this issue. Accordingly, the Commission invites submissions from interested parties that address the following or related questions.

Is postal ratemaking an appropriate forum for assessing the social costs of mail, as well as its social benefits?

Are there special environmental problems associated with mail, or should these problems be considered the same as those presented by the paper industry generally?

Are the ratemaking provisions of the Postal Reorganization Act broad enough to authorize rate incentives for recycled mail, or is further authority from Congress needed?

What are the environmental costs of mail, and to what extent can the use of recycled paper ameliorate them?

If financial incentives are appropriate, should they be based on the recycled content of mailstock, its subsequent recyclability, or some other characteristic?

To what extent is the mailing industry currently using recycled or recyclable paper, or otherwise minimizing the impact of mail on the environment, on a voluntary basis?

Should recycled content be defined as including preconsumer, as well as post-consumer waste, and what minimum level should be chosen?

Is it technically and economically feasible to make various kinds of mailstock with a substantial percentage of post-consumer waste?

How might reduced rates or other financial incentives for mailers who use recycled paper be designed?

Is it administratively feasible to identify mail with the requisite recycled content, or recyclability characteristics?

Submissions that address these or related questions should be filed with the Postal Rate Commission, Office of the Secretary, 1333 H Street, NW., Washington, DC 20268–0001, on or before May 1, 1993. After reviewing these submissions, the Commission will determine whether it would be useful to conduct a legislative style hearing on these issues.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Attachment A

Congress of the United States, Washington, DC 20515

December 7, 1992.

Honorable George Haley, Chairman,
Postal Rate Commission, 1333 H Street, NW., Washington, DC 20268–0001.

Dear Mr. Chairman: Pursuant to our letter of July 23, 1992, and the Treasury-Postal Service-General Government law (P.L. 102–141), we would like the Postal Rate Commission to conduct an inquiry into the feasibility of reduced rates or other financial incentives for mailers who use recycled paper.

We look forward to your response on this matter.

Sincerely,

Richard Durbin,
Member of Congress.
Charles A. Hayes,
Member of Congress.
Nancy Pelosi,
Member of Congress.

[FR Doc. 92–31557 Filed 12–28–92; 8:45 am]
BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31624 File No. SR–PHLX–92–11]

Self-Regulatory Organizations, Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to the Creation of an Options Floor Procedure Advice Dealing With Priority and Parity Rules for Foreign Currency Options

December 21, 1992.

On April 20, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Options Floor Procedure Advice ("OFPA") B–7 that restates the Exchange's existing priority and parity rules applicable for foreign currency options orders and includes a fine schedule for violations of these rules in accordance with the Exchange's Minor Infraction Rule Plan.

The proposed rule change was published in Securities Exchange Act Release No. 30693 (May 12, 1992), 57 FR 21436. No comments were received on the proposed rule change.

In 1991, the Commission approved an amendment to PHLX Rule 1014 that amended the parity and priority rules for foreign currency options orders.[3] In general, the Exchange's parity and priority rules for foreign currency options orders provide that, except for customer orders for less than 100 contracts and as otherwise specified,[4] all bids and offers for foreign currency options, regardless of account type (*i.e.*, registered options trader ("ROT"), member, or customer) or size or whether representing an "opening" or "closing" transaction, shall be treated the same for purposes of determining time priority pursuant to PHLX Rule 119. In order to facilitate small customer orders, however, PHLX Rule 1014 provides that all foreign currency options orders on behalf of customer accounts for under 100 contracts shall have time priority over all other bids and offers regardless of account type (except specialists). Moreover, PHLX Rule 1014 provides that any bid or offer for the account of a member that relies on the exemption under section 11(a)(1)(G) of the Act must yield time priority to any bid or offer for the account of a customer. The PHLX now proposes to put into OFPA B–7 the same identical language from PHLX Rule 1014 that sets forth the method for determining parity and priority for foreign currency options orders.

In accordance with the Exchange's Minor Infraction Rule Plan, the PHLX also proposes to include in OFPA B–7 a fine schedule in order to address minor instances of non-compliance with the Exchange's parity and priority rules for foreign currency options orders. Specifically, the proposed monetary penalties for first and second minor instances of non-compliance with these rules are $100.00 and $250.00, respectively. The sanction for the third and subsequent infractions of the PHLX's priority and parity rules pursuant to the Minor Infraction Rule Plan will be determined within the discretion of the PHLX's Business Conduct Committee ("BCC") up to an amount of $2,500.[5] The BCC does have the authority to impose fines greater than $2,500 for violations of the rules, however, such fines will not be imposed pursuant to the Minor Infraction Rule Plan, meaning, among other things, that notice of the disciplinary action must be filed promptly with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6[6] and the rules and regulations thereunder. Specifically, the Commission finds that establishing an OFPA that incorporates the Exchange's existing parity and priority rules for foreign currency options orders will enable participants in the foreign currency options trading crowds to have ready access to the applicable Exchange rules regarding the priority and parity of orders and, thereby, facilitate compliance with these Exchange rules.

Moreover, the Commission also believes that it is appropriate for the Exchange to establish a fine schedule consistent with its Minor Infraction Rule Plan for minor infractions of its foreign currency options parity and priority rules.[7] Specifically, the Commission believes that the use of the fine schedule will enable Exchange officials to impose sanctions for minor infractions of the foreign currency options parity and priority rules in a timely manner. The Commission also believes that this streamlined disciplinary process will help the Exchange to ensure that members of the foreign currency options trading crowds abide by the Exchange's rules for determining the parity and priority of foreign currency options orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–92–11) hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,
Secretary.

[FR Doc. 92–31484 Filed 12–28–92; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–31622; International Series No. 512; File No. SR–PHLX–92–40]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Trading Hours for Foreign Currency Options During the Period December 20–31, 1992

December 18, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 14, 1992,

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] *See* Securities Exchange Act Release No. 28934 (March 4, 1991), 56 FR 10005 ("Approval Order").

[4] For additional information regarding the PHLX's parity and priority rules for foreign currency options orders, see Approval Order, *supra* note 3.

[5] *See also supra* note 7.

[6] 15 U.S.C. 78f (1982).

[7] Even though the Exchange has proposed that violations of the parity and priority rules for foreign currency options be sanctioned according to the PHLX's Minor Infraction Rule Plan, violations of the parity and priority rules do not necessarily have to be subject to the Minor Infraction Rule Plan. For instance, for egregious violations, the Commission would expect that these matters will be handled directly by the Exchange's BCC.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1989).

the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX hereby submits, pursuant to Rule 19b–4 under the Act, a proposal to change its foreign currency options ("FCO") trading hours for the period December 20–31, 1992. Specifically, the Exchange does not intend to open FCOs for trading between the hours of 6 p.m. and 3 a.m. during this period.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX's trading hours for FCOs generally commence at 6 p.m. Eastern Time each Sunday through Thursday and terminate at 2:30 p.m. Eastern Time each Monday through Friday. Historically, the Christmas and New Year's holiday period, which occurs on and between December 20 and December 31, 1992 this year, is marked by reduced trading interest and liquidity, particularly during the trading hours between 6 p.m. and 3 a.m. ("6 to 3 segment"). While the "6 to 3 segment" generally corresponds with the primary business hours of the Far East, this segment has recently received very limited trading volume. In this regard, the PHLX believes that the anticipated limited trading interest that would be reflected in the "6 to 3 segment" can be adequately handled and executed during the 3 a.m. to 2:30 p.m. trading session during the holiday period. The modified trading hours during this period also will ease the staffing burden on current FCO specialist units at a time when key employees traditionally take holiday vacations.

Accordingly, the PHLX proposes to institute revised trading hours during the holiday period and will resume normal FCO trading hours starting Sunday, January 3, 1993.

The PHLX believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden and Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b) (5).[1]

The Commission believes that the Exchange's proposal to amend the trading hours for FCOs during the holiday period likely will ease market liquidity concerns and help to reduce operational burdens during this season. In particular, the Commission believes that the PHLX's decision to suspend the "6–3 segment" during the period December 20–31, 1992, is within the Exchange's business judgement given the realities of the global foreign currency market, which, according to the Exchange, historically is marked by reduced or declining liquidity during the holiday season.[2] In addition, as noted above, the PHLX FCO market will remain open during the 3 a.m. to 2:30 p.m. trading session so that investors will have the ability to access the PHLX FCO market. Moreover, the Commission notes that the PHLX has issued circulars to its membership advising them of these changes, thereby avoiding any possible investor confusion. Based on the above, the Commission finds that the PHLX's proposal to change the FCO trading hours is consistent with just and equitable principles of trade and the protection of investors.[3]

The Commission finds good cause for approving the proposed change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes the PHLX's proposal presents no new regulatory issues and that it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can commence implementing the revised trading hours for FCOs during the holiday season period from December 20–31, 1992. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with sections 6 and 19 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory

[1] 15 U.S.C. 78f(b)(5) (1982).

[2] The Commission notes that in the future the Exchange must submit a section 19(b)(2) filing if the PHLX intends to terminate an entire FCO trading session.

[3] The Commission recognizes that the regular business hours for the Far East market occurs during the "6–3 segment." Nevertheless, because the PHLX has represented that the trading volume is extremely limited, we believe given the staff limitations at the Exchange due to the holiday season, it is permissible and within the PHLX's business judgment to alter its trading hours as proposed.

organization. All submissions should refer to the file number in the caption above and should be submitted by January 19, 1993.

It is therefore ordered, pursuant to section 19(b) (2) of the Act,[4] that the proposed rule change (SR–PHLX–92–40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31985 Filed 12–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31621; File No. SR–PHLX–92–21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Fines for Infractions of Position/Exercise Limits and Hedge Exemptions

December 18, 1992

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change, as amended on December 18, 1992,[1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules by adopting Options Floor Procedure Advice ("OFPA") F–15, entitled "Minor Infractions of Position/Exercise Limits and Hedge Exemptions." Paragraph (a) of proposed OFPA F–15 establishes a fine schedule for minor violations of the Exchange's position and exercise limits. Specifically, for minor[2] position and exercise limit infractions amounting to less than 5% of the applicable limit, the OFPA provides a fine of $500 for the first occurrence, $1000 for the second occurrence, $2000 for the third occurrence, and a sanction discretionary with the Exchange's Business Conduct Committee ("BCC") for subsequent infractions. The fines established under paragraph (a) also apply to position and exercise limit infractions resulting from lapsed hedged position limit exemptions. Paragraph (b) of the proposed OFPA exempts from the position and exercise limit aggregation count each option of a stock option position that is hedged by 100 shares of the underlying stock or securities convertible into the stock.[3] The exemption is limited to an amount of option contracts no greater than twice the standard limit of the option, and is available for the following permissible hedges: (i) long stock-short call; (ii) long stock-long put; (iii) short stock-long call; (iv) short stock-short put. Failures to provide the Exchange with the requisite hedge exemption form are subject to fines of $100 for the first occurrence, $250 for the second occurrence, $500 for the third occurrence, and a sanction discretionary with the BCC for subsequent infractions. Failure to reduce the respective option position following a decrease in the stock position may result in a fine of $500 for the first occurrence, $2000 for the second occurrence, and a sanction discretionary with the BCC for subsequent infractions, in the case of options positions that exceed the applicable limit by less than 5%. Options positions that exceed the applicable limit by more than 5% are subject to review by the BCC.[4] The text of the proposal is available at the Office of the Secretary, PHLX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend its rules by adopting OFPA–15, entitled "Minor Infractions of Position/Exercise Limits and Hedge Exemptions." Paragraph (a) of proposed OFPA F–15 establishes a fine schedule for minor violations of the Exchange's position and exercise limits. Specifically, for minor position and exercise limit infractions amounting to less than 5% of the applicable limit, the OFPA provides a fine of $500 for the first occurrence, $1000 for the second occurrence, $2000 for the third occurrence, and a sanction discretionary with the Exchange's BCC for subsequent infractions. The fines established under paragraph (a) also apply to position and exercise limit infractions resulting from lapsed hedged position limit exemptions.

Paragraph (b)(i) of the proposed OFPA exempts from the position and exercise limit aggregation count each option of a stock option position that is hedged by 100 shares of the underlying stock or securities convertible into the underlying stock. The exemption is limited to an amount of option contracts no greater than twice the standard position limit for the option, and is available for the following permissible hedges: (i) long stock-short call; (ii) long stock-long put; (iii) short stock-long call; and (iv) short stock-short put. A party utilizing the exemption must report his position to the Exchange's Market Surveillance Department in a manner prescribed by the Exchange no later than the close of the business day following the day the exemption is availed upon. When the stock side to a hedge exemption is decreased, the appropriate number of options must be liquidated prior to or simultaneously with the stock decrease to continue to maintain the automatic hedge

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[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30–3(a)(12) (1991).

[1] *See* letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated December 18, 1992 ("Amendment No. 1").

[2] On November 4, 1992, the PHLX amended its proposal to clarify that the OFPA applies to "minor" rather than "inadvertent" infractions. Telephone conversation between William W. Uchimoto, General Counsel, PHLX, and Yvonne Fraticelli, Staff Attorne r, Division, Commission, on November 4, 1992.

[3] Paragraph (b) of the proposed OFPA corresponds to the hedge exemption provided currently in Exchange Rule 1001, Commentary .07. Commentary .07 establishes an exemption from position limits for stock options "hedged" by 100 shares of stock for the following hedge positions: (i) long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock. *See also* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201. Under Commentary .07, a member or member organization who utilizes the automatic hedge exemption must file a form with the Exchange's Market Surveillance Department no later than the close of the business day following the day the exemption is utilized.

[4] *See* Amendment No. 1, *supra* note 1.

exemption. Failures to provide the Exchange with the requisite hedge exemption form are subject to fines of $100 for the first occurrence, $250 for the second occurrence, $500 for the third occurrence, and a sanction discretionary with the BCC for subsequent infractions. Paragraph (b)(ii) of the proposed OFPA provides that the failure to reduce the respective option position following a decrease in the stock position may result in a fine of $500 for the first occurrence, $2000 for the second occurrence, and a sanction discretionary with the BCC for subsequent infractions, in the case of options positions that exceed the applicable limit by less than 5%. Options positions that exceed the applicable limit by more than 5% are subject to review by the BCC.

The purpose of the proposed rule change is to create separate fine schedules for (1) minor position/exercise limit violations; and (2) failure to give prompt notice when utilizing an automatic hedge exemption.

Paragraph (a) of the proposed OFPA specifies that any position or exercise limit violation which does not exceed 5% of the established limit, or is caused by the failure to request a renewal of an expiring exemption, may be subject to the preset fine schedule provided in the OFPA. Any violation which exceeds the 5% threshold, however, is subject to review by the BCC for formal disciplinary action.

Paragraph (b) of the proposed OFPA refers to the requirement under PHLX Rule 1001, Commentary .07[5] that hedge exemption forms be submitted promptly in connection with any hedged position limit exemption. Specifically, the OFPA restates the requirement that hedge exemptions must be reported to the Exchange's Market Surveillance Department no later than the close of the business day following the day the exemption is availed upon.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to securities. In addition, the PHLX believes that the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and the national market system and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 19, 1993.

[5] *See* footnote 1, *supra*.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31579 Filed 12–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19168; 811–4352]

Allegro Growth Fund, Inc.; Application for Deregistration

December 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Allegro Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC'S Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Post Office Box 74450, Cedar Rapids, Iowa 52407–4450.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company incorporated under the laws of Maryland. On July 15, 1985, applicant

registered under the Act by filing a Notification of Registration pursuant to section 8(a). On this same date, applicant filed a registration statement on Form N–1A, pursuant to section 8(b) of the Act, and registered an indefinite number of shares under the Securities Act of 1933. Applicant's registration statement was declared effective, and its initial public offering commenced, on October 31, 1985.

2. On August 31, 1992, applicant's board of directors approved an Agreement and Plan of Reorganization (the "Reorganization") between the applicant and the SteinRoe Prime Equities portfolio (the "SteinRoe Portfolio") of the SteinRoe Investment Trust, a Massachusetts business trust. On or about September 11, 1992, proxy materials relating to the Reorganization were distributed to applicant's shareholders. At a special meeting held on September 28, 1992, the holders of a majority of applicant's outstanding shares approved the reorganization.

3. On September 30, 1992 (the "Closing Date"), applicant transferred substantially all of its assets to the SteinRoe Portfolio. In exchange for its shares, applicant received shares of the SteinRoe Portfolio having an aggregate value equal to the value of the assets transferred by applicant. Applicant distributed the SteinRoe Portfolio shares it received to its shareholders *pro rata* in complete liquidation of the applicant.

4. On the Closing Date, applicant had shares outstanding with an aggregate net asset value of $1,919,707, and a net asset value per share of $12.16.

5. Applicant paid all expenses related to the Reorganization. Such expenses, consisting of accounting, printing, administrative, legal, and other miscellaneous expenses, totaled approximately $22,000.

6. Applicant intends to dissolve its corporate existence in accordance with the provisions of the Maryland General Corporation Law.

7. At the time of filing of the application, applicant had no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceedings. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31584 Filed 12–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19167; 812–8136]

American Capital Bond Fund, Inc. et al.; Application December 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: American Capital Bond Fund, Inc., American Capital Comstock Fund, Inc., American Capital Convertible Securities, Inc., American Capital Corporate Bond Fund, Inc., American Capital Emerging Growth Fund, Inc., American Capital Enterprise Fund, Inc., American Capital Equity Income Fund, Inc., American Capital Exchange Fund, American Capital Federal Mortgage Trust, American Capital Government Securities, Inc., American Capital Government Target Series ("Target"), American Capital Growth and Income Fund, Inc., American Capital Harbor Fund, Inc., American Capital High Yield Investments, Inc., American Capital Income Trust, American Capital Life Investment Trust, American Capital Municipal Bond Fund, Inc., American Capital Pace Fund, Inc., American Capital Reserve Fund, Inc., American Capital Small Capitalization Fund, Inc., American Capital Tax-Exempt Trust, American Capital Texas Municipal Securities, Inc., American Capital U.S. Government Trust for Income, American Capital World Portfolio Series, Inc., American General Equity Accumulation Fund, Inc., American General Fixed-Income Accumulation Fund, Inc., American General Money Market Accumulation Fund, Inc., Common Sense Trust, each portfolio of the foregoing, and future funds or future portfolios of existing funds advised or subadvised by American Capital Asset Management, Inc. (the "Adviser") or a subsidiary or affiliate thereof, except Mosher, Inc. (all of the above except Target being referred to collectively, in whole or in part, as the context requires, as the "Funds"), and the Adviser.

RELEVANT ACT SECTION: Exemption requested under section 6(c) from section 17(d) and Rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permits the applicants thereunder to operate a joint trading account in repurchase agreements by adding additional Funds as applicants.

FILING DATE: The application was filed, on October 30, 1992 and amended on December 7, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 12, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2800 Post Oak Blvd., Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representation

1. On May 9, 1991, the Commission issued an order under section 17(d) of the Act and rule 17d–1 thereunder (Investment Company Act Release No. 18142) (the "Prior Order"), that permits Applicants, other than Target, to operate a joint trading account in repurchase agreements. Target is a Massachusetts business trust registered as an open-end diversified management investment company under the Act. Target and the other applicants are seeking to amend the Prior Order to permit Target to participate in the joint trading account. Target and the Funds are either advised or subadvised by the Adviser. Target has consented to the procedures required by the Prior Order and agrees to be bound by its terms and provisions to the same extent as the Funds.

2. In addition to Target, the following investment companies were not listed as applicants in the prior application but are in this application: American Capital Small Capitalization Fund, Inc., American Capital Texas Municipal Securities, Inc., American Capital U.S. Government Trust for Income, and American Capital World Portfolio Series, Inc. The previous application included as applicants thereunder

"future funds and future series of existing funds advised or subadvised by American Capital Asset Management, Inc." American Capital Small Capitalization Fund, Inc., American Capital Texas Municipal Securities, Inc., American Capital U.S. Government Trust for Income, and American Capital World Portfolio Series, Inc. would fall within this general category; however, did not exist at the time of filing the previous original application. Because they are now existing funds, they also are included as applicants in this application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-31583 Filed 12-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19172; 812-7990]

Declaration Fund, et al.; Application

December 21, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the InvestmentCompany Act of 1940 ("Act").

APPLICANTS: Declaration Fund (the "Fund"), Declaration Service Company, and Consistent Asset Management Company, Inc.

RELEVANT ACT SECTIONS: Application pursuant to section 6(c) of the Act for an order granting an exemption from the provisions of sections 18(f), 18(g), and 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting certain series of the Fund to issue two classes of shares representing interests in the same investment portfolio. The two classes will be identical in all respects except for differences relating to class designations, the allocation of certain expenses, voting rights, and exchange privileges.

FILING DATE: The application was filed on July 15, 1992, and amended on November 13, 1992. By supplemental letter dated December 17, 1992, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain changes. This notices reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons that wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Declaration Fund and Declaration Service Company, Suite 6160, 555 North Lane, Conshohocken, PA 19428. Consistent Asset Management Company, Inc., 116 Commons Court, Chadds Ford, PA 19317.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representation:

1. The Fund is an open-end, diversified, management investment company of the series type. The Fund currently has four series of shares for sale to the public, Declaration Cash Account series,[1] CAMCO 100% U.S. Treasury-Short Term Fund series, CAMCO 100% U.S. Treasury-Intermediate Term Fund series and CAMCO 100% U.S. Treasury-Total Return Fund series. The United States Treasury securities series are collectively referred to as the "CAMCO Funds."

2. Consistent Asset Management Company, Inc. ("Consistent"), serves as investment adviser for each of the CAMCO Funds. Declaration Service Company provides administrative services, as well as transfer agency, dividend disbursing, and plan agent services to the shareholders of the CAMCO Funds.

3. Shares of the CAMCO Funds are sold at their current per share net asset value without a sales charge. The shares are not subject to a redemption fee or a contingent deferred sales charge upon redemption.

[1] The Fund's Declaration Cash Account series is not included in the Fund's request for relief.

4. The Fund acts as distributor of the shares of each of the CAMCO Funds in accordance with the terms of each CAMCO Fund's rule 12b-1 distribution plan (the "Plan"). The Plans currently provide for the following services: (a) advertising, (b) compensation of persons engaged in sales support services, (c) the preparation, printing, and mailing of prospectuses and other reports, (d) the printing and mailing of sales literature, and (e) the distribution of the CAMCO Fund shares and the servicing of the CAMCO Fund shareholders' accounts.

5. The Fund requests an exemption from the provisions of section 18(f), 18(g), and 18(i) to permit it to divide the shares of each CAMCO Fund into two classes: Class A and Class B.[2] The Class A shares of each CAMCO Fund will be offered and sold to investors that deal directly with the Fund. Class B shares will be offered and sold only to individual investors through registered broker-dealers and other qualified distributors. Any CAMCO Fund shares issued prior to the requested exemptive order will become Class A shares once the order is granted.

6. Upon the creation of the separate share classes, the individual Plans will be amended to provide for the payment of the costs of distributing the Class A and Class B shares. Plan payments will consist of two segments: a basic fee and a distributors' fee.

7. The basic fee, which will be paid by both the Class A shares and the Class B shares, will be used for the following purposes: (1) to pay advertising costs; (2) to pay the costs of distribution of materials and information concerning the CAMCO Funds and their shares including the prospectus, statement of additional information, shareholder updates and sales literature, and the costs incurred in the preparation, printing, and mailing of such materials and information; and (3) to pay the costs incurred in presentations and promotions made by affiliates of Consistent to corporations, trusts companies, educational, religious, and charitable organizations, banks, retirement plans, insurance companies, and other institutional type investors.

[2] In addition, the Fund requests that any relief granted also apply to any future series of the Fund, (a) the investment adviser of which is Declaration Investment Advisers, Inc. or Consistent Asset Management Company, Inc.; (b) the shares of which are distributed by the Fund; (c) that holds itself out to investors as being related for purposes of investment or investor services; and (d) the shares of which are divided into two classes and the rate of distribution fees, exchange privileges, and differences in voting rights are substantially identical to those applicable to the Class A shares and the Class B shares of the CAMCO Funds. Any such future series will be subject to each of the conditions found in the application.

8. The distributors' fee, which will be paid only with respect to the Class B shares, will be paid to broker-dealers and other qualified persons engaged in the sale and distribution of the Class B shares of each CAMCO Fund and/or who administer Class B shareholder accounts.

9. Shares purchased through the reinvestment of dividends and other distributions will be of the same class as the shares on which the dividends and distributions are paid.

10. Shares of each CAMCO Fund may be exchanged for shares of any other CAMCO Fund of the same class at the per share net asset value next determined. Any exchange will be conducted in compliance with rule 11a-3 under the Act.

11. The net asset value will be computed separately for each class of shares of a CAMCO Fund by first allocating gross income and expenses (other than rule 12b-1 fees and any other incremental expenses properly attributable to one class which the Commission will approve by an amended order) to each class of shares based on the net assets attributable to each such class at the beginning of the day and then by separately applying the differing 12b-1 fees and other incremental expenses to the appropriate class. The net asset value attributable to each share of each class will then be calculated by dividing the net assets calculated for each class by the number of shares outstanding in that class. Because of the higher ongoing distribution fees paid by the holders of Class B shares, the net income attributable to and the dividends payable on Class B shares will be lower than the net income attributable to and the dividends payable on Class A shares. To the extent that a Fund has undistributed net income, the net asset value of the Class A shares will be higher than the net asset value of the Class B shares.

Applicants' Legal Conclusions

1. Applicants seek an exemption from sections 18(g), 18(f), and 18(i) of the Act to the extent that the proposed classification of the CAMCO Fund shares ("Classification System") may result in the creation of a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f), and to the extent the allocation of voting rights may violate the provisions of section 18(i).

2. Applicants believe that the Classification System will result in a more equitable allocation of the distribution expenses in that it will permit those investors that do not require the services of a broker or other professional distributor to avoid the distribution costs attributable to such services. In addition, owners of both classes of shares may be relieved of a portion of the fixed costs normally associated with open-end management investment companies since such costs, applicants believe, will be spread over a greater number of shares than would otherwise be the case.

3. The proposed Classification System will not create the potential for the abuses that section 18 was designed to redress. The proposed Classification System will not increase the speculative character of the shares of the Fund, and will not involve borrowings. Both Class A and Class B shares of the CAMCO Funds will participate *pro rata* in the Fund's income and expenses (which relate solely to the CAMCO Funds), except for different rule 12b-1 distribution expenses and such additional transfer agency sots, as there may be, if any. Each class of shares will be redeemable at all times, and no class will have any distribution or liquidation preference with respect to particular assets or any right or require that lapsed dividends be paid before dividends are declared on the other class, and no class will be protected by any reserve or other account. Moreover, the proposed allocation of expenses and voting rights relating to the Fund's Plans relating to the CAMCO Fund share is equitable and will not discriminate against any group of shareholders. Finally, applicants believe that the Fund's capital structure under the proposed arrangements and the procedures devised will not enable insiders to manipulate expenses among the classes of shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Class A Shares and Class B Shares of each CAMCO Fund will represent interests in the same portfolio of investments and be identical in all respects, except as set forth below. The only difference between Class A Shares and Class B Shares of a CAMCO Fund will relate solely to (a) the impact of the disproportionate Plan payments allocated to the holders of Class B Shares of a Fund, the incremental transfer agency costs, if any, attributable to the Class B Shares of a CAMCO Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class of shares which allocation will be approved by the SEC; (b) the fact that each class of shares will vote separately as a class with respect to a CAMCO Fund's Plan; (c) the fact that the designation of each class of shares of the several CAMCO Funds will differ; and (d) the different exchange privileges of the classes.

2. The trustees of the Fund, including a majority of the trustees who are not interested persons of the Fund within the meaning of section 2(a)(10) of the Act (the "independent trustees") will approve the Classification System. The minutes of the meeting of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the Classification System will reflect in detail the reasons for the trustees' determination that the proposed Classification System is in the best interests of both the Fund and its shareholders and such minutes will be available for inspection by the SEC's staff.

3. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the classes of shares. The trustees, including a majority of the independent trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. Consistent will be responsible for reporting any potential or existing conflicts of which it may be aware, to the trustees. If a conflict arises, Consistent, at its cost, will remedy such conflict up to and including establishing a new registered investment company.

4. The trustees will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the trustees to justify the distribution fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

5. Dividends paid with respect to Class A Shares and Class B Shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution fee payments relating to

each respective class of shares will be borne exclusively by that class and any incremental transfer agency costs relating to Class A or Class B Shares will be borne exclusively by that class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of each CAMCO Fund and the proper allocation of expenses between the two classes were reviewed by the expert who rendered a report to the applicants, which report was provided to the staff of the SEC that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner subject to the conditions and limitations in that report. On an ongoing basis, the expert, or an appropriate substitute expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report that the calculations and allocations are being made properly. The reports of the expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate and Assistant Administrators. The initial report of the expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS NO. 44 of the AICPA, as it may be amended, from time to time, or in similar auditing standards as may be adopted by AICPA, from time to time.

7. The Fund has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares, and this representation has been concurred with by the expert in the initial report referred to in condition six above and will be concurred with by the expert, or an appropriate substitute expert, on an ongoing basis at least annually in the ongoing reports referred to in condition six above. The Fund will take immediate corrective measures if this representation is not concurred in by the expert or appropriate substitute expert.

8. The prospectus of the Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

9. The conditions pursuant to which any exemptive order is granted and the duties and responsibilities of the trustees with respect to the Classification System will be set forth in guidelines which will be furnished to the trustees.

10. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, and fees applicable to each class of shares of each CAMCO Fund in every CAMCO Fund prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any classes of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

11. Applicants acknowledge that the grant of any exemptive order requested by the Application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its Plans in reliance on the exemptive order.

12. The Fund will adopt compliance standards as to when Class A and Class B Shares may appropriately be issued to particular investors. Applicants will require all persons selling shares of any of the CAMCO Funds to agree to conform to those standards.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-31582 Filed 12-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19165; 812-7823]

Dreyfus A Bonds Plus, Inc., et al.; Notice of Application

December 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Dreyfus A Bonds Plus, Inc., Dreyfus Adjustable Rate Securities Fund, Inc., Dreyfus Appreciation Fund, Dreyfus Balanced Fund, Inc., Dreyfus BASIC Money Market Fund, Inc., Dreyfus BASIC U.S. Government Money Market Fund, Dreyfus California Intermediate Municipal Bond Fund, Dreyfus California Tax Exempt Bond Fund, Inc., Dreyfus California Tax Exempt Money Market Fund, Dreyfus Capital Value Fund, Inc., Dreyfus Cash Management, Dreyfus Cash Management Plus, Inc., Dreyfus Connecticut Intermediate Municipal Bond Fund, Dreyfus Connecticut Municipal Money Market Fund, Inc., The Dreyfus Convertible Securities Fund, Inc., Dreyfus Edison Electric Index Fund, Inc., Dreyfus Florida Intermediate Municipal Bond Fund, The Dreyfus Fund Incorporated, Dreyfus Global Investing, Inc., Dreyfus GNMA Fund, Inc., Dreyfus Government Cash Management, Dreyfus Growth and Income Fund, Inc., Dreyfus Growth Opportunity Fund, Inc., Dreyfus Index Fund, Dreyfus Institutional Money Market Fund, Dreyfus Insured Municipal Bond Fund, Inc., Dreyfus Intermediate Municipal Bond Fund, Inc., Dreyfus Investors GNMA Fund, L.P., Dreyfus Investors Municipal Money Market Fund, Inc., The Dreyfus Leverage Fund, Inc., Dreyfus Life and Annuity Index Fund, Inc., Dreyfus Liquid Assets, Inc., Dreyfus Massachusetts Intermediate Municipal Bond Fund, Dreyfus Massachusetts Municipal Money Market Fund, Dreyfus Massachusetts Tax Exempt Bond Fund, Dreyfus Michigan Municipal Money Market Fund, Inc., Dreyfus Money Market Instruments, Inc., Dreyfus Municipal Cash Management Plus, Dreyfus Municipal Money Market Fund, Inc., Dreyfus New Jersey Intermediate Municipal Bond Fund, Dreyfus New Jersey Municipal Bond Fund, Inc., Dreyfus New Jersey Municipal Money Market Fund, Inc., Dreyfus New Leaders Fund, Inc., Dreyfus New York Insured Tax Exempt Bond Fund, Dreyfus New York Municipal Cash Management, Dreyfus New York Tax Exempt Bond Fund, Inc., Dreyfus New York Tax Exempt Intermediate Bond Fund,

Dreyfus New York Tax Exempt Money Market Fund, Dreyfus Ohio Municipal Money Market Fund, Inc., Dreyfus 100% U.S. Treasury Intermediate Term Fund, L.P., Dreyfus 100% U.S. Treasury Long Term Fund, L.P., Dreyfus 100% U.S. Treasury Money Market Fund, L.P., Dreyfus 100% U.S. Treasury Short Term Fund, L.P., Dreyfus Pennsylvania Municipal Money Market Fund, Dreyfus Short-Intermediate Government Fund, Dreyfus Short-Intermediate Tax Exempt Bond Fund, Dreyfus Short-Term Fund, Inc., Dreyfus Short-Term Income Fund, Inc., The Dreyfus Socially Responsible Growth Fund, Inc., Dreyfus Strategic Aggressive Investing, L.P., Dreyfus Strategic Income, Dreyfus Strategic Investing, Dreyfus Strategic World Investing, L.P., Dreyfus Tax Exempt Bond Fund, Inc., Dreyfus Tax Exempt Cash Management, The Dreyfus Third Century Fund, Inc., Dreyfus Treasury Cash Management, Dreyfus Treasury Prime Cash Management, Dreyfus U.S. Government Income Fund, Dreyfus Variable Investment Fund, Dreyfus-Wilshire Target Funds, Inc., Dreyfus Worldwide Dollar Money Market Fund, Inc., Comstock Partners Strategy Fund, Inc., First Prairie Cash Management, First Prairie Diversified Asset Fund, First Prairie Equity/Income Fund, First Prairie Growth Equity Fund, First Prairie International Fund, First Prairie Money Market Fund, First Prairie Municipal Income Fund, First Prairie Quality Income Fund, First Prairie Special Equity Fund, First Prairie Tax Exempt Bond Fund, Inc., First Prairie Tax Exempt Money Market Fund, First Prairie U.S. Government Income Fund, First Prairie U.S. Treasury Securities Cash Management, FN Network Tax Free Money Market Fund, Inc., General Aggressive Growth Fund, Inc., General California Municipal Bond Fund, Inc., General California Municipal Money Market Fund, General Government Securities Money Market Fund, Inc., General Money Market Fund, Inc., General Municipal Bond Fund, Inc., General Municipal Money Market Fund, Inc., General New York Municipal Bond Fund, Inc., General New York Municipal Money Market Fund, McDonald Money Market Fund, Inc., McDonald Tax Exempt Money Market Fund, Inc., McDonald U.S. Government Money Market Fund, Inc., Pacific American Fund, Peoples Index Fund, Inc., Peoples S&P MidCap Index Fund, Inc., Premier California Municipal Bond Fund, Premier GNMA Fund, Premier Municipal Bond Fund, Premier New York Municipal Bond Fund, and Premier State Municipal Bond Fund (collectively, the "Funds"); The Dreyfus Corporation (the "Adviser"); Dreyfus Service Corporation (the "Distributor"); and such other registered, open-end management investment companies for which the Adviser (or any entity controlling, controlled by, or under common control with the Adviser) hereafter may serve as investment adviser, sub-investment adviser, or administrator, or for which the Distributor (or any entity controlling, controlled by, or under common control with the Distributor) hereafter may serve as distributor of such investment company's shares.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f)(1), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds (a) to issue and sell separate classes of shares representing interests in the same investment portfolio, which classes would be identical in all respects except for class designation, voting rights, exchange privileges, conversion features, and the allocation of certain expenses, and (b) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of the shares of one of the classes, and to waive the CDSC under certain circumstances.

FILING DATE: The application was filed on November 15, 1991, and amended and restated on February 13, 1992, February 28, 1992, March 9, 1992, September 17, 1992, November 2, 1992, and December 17, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, The Dreyfus Corporation, 200 Park Avenue, New York, NY 10166, Attention: Secretary.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Several of the Funds consist of multiple series, each of which has separate investment objectives and policies and segregated assets. The term "Portfolio" will be used herein to mean a single series Fund or a particular series of a multiple series Fund.

2. The Adviser acts as investment adviser, sub-investment adviser, or administrator to each Fund. The Distributor, a wholly-owned subsidiary of the Adviser, acts as the distributor for each Fund's shares.

3. Except for Comstock Partners Strategy Fund, Inc. ("Comstock Fund"), each Fund currently is authorized to issue only one class of shares.[1] Applicants propose to establish a multiple class distribution system ("Distribution System") to enable each of the Funds to offer investors the option of purchasing shares that are offered in conjunction with a distribution plan pursuant to rule 12b–1 under the Act ("12b–1 Plan"), with a non-rule 12b–1 "Shareholder Services Plan," with neither type of plan, or with combinations of these or similar arrangements. The 12b–1 Plans and Shareholder Services Plans are collectively referred to as the "Plans."

4. Under existing 12b–1 Plans, certain Portfolios have entered into agreements with certain financial institutions, securities dealers, and other industry professionals (collectively, "Service Agents") providing for the performance of certain services, some of which could be construed as distribution assistance. These services may include: answering client inquiries regarding the Portfolio; assisting clients in changing dividend options, account designations and addresses; performing sub-accounting; establishing and maintaining shareholder accounts and records; processing purchase and redemption transactions; investing client cash

[1] The Comstock Fund currently offers more than one class of shares pursuant to exemptive relief granted by the Commission. Investment Company Act Release Nos. 18761 (June 5, 1992) (notice) and 18828 (July 1, 1992) (order).

account balances automatically in Portfolio shares; providing periodic statements showing a client's account balance and integrating such statements with those of other transactions and balances in the client's other accounts serviced by the Service Agent; arranging for bank wires; and such other services as a Portfolio may request, to the extent the Service Agent is permitted by applicable statute, rule, or regulation. Under existing 12b–1 Plans, a Portfolio typically pays the Distributor or Service Agent for such services at an annual rate of approximately .25% of the Portfolio's average daily net assets.

5. After implementation of the proposed Distribution System, a Portfolio or its distributor may enter into agreements with Service Agents for services pursuant to a 12b–1 Plan ("12b–1 Plan Agreements") or pursuant to a Shareholder Services Plan ("Shareholder Services Plan Agreements"). Shareholder Services Agreements and 12b–1 Plan Agreements are referred to collectively as "Plan Agreements." Services to be provided under a 12b–1 Plan Agreement include advertising, marketing, and distributing a particular class of Fund shares. Services to be provided under a Shareholder Services Agreement relate to servicing shareholder accounts, such as answering shareholder inquiries regarding the Portfolio and providing reports and other information.

6. The provision of distribution assistance and support services by the Service Agents under a Portfolio's Plan Agreement(s) will augment (and not be duplicative of) the services that otherwise would have been provided to the Portfolio by its adviser, distributor, transfer agent, and custodian.

7. The expense of payments made pursuant to a 12b–1 Plan Agreement ("12b–1 Plan Payments") or a Shareholder Services Plan Agreement ("Shareholder Services Plan Payments") will be borne entirely by the beneficial owners of the class to which the particular Plan Agreement relates. Shareholder Services Plan Payments and 12b–1 Plan Payments are referred to collectively as "Plan Payments." The rate of 12b–1 Plan Payments will be determined by the directors of a Fund in compliance with rule 12b–1 and Article III, Section 26 of the NASD Rules of Fair Practice.

8. Certain Portfolios in the future may offer a class of share ("Benefit Plan Class") only to qualified or non-qualified employees benefit plans or programs where (a) each employer maintaining a plan or program has a minimum of 250 employees eligible for participation, or such plan's or program's aggregate initial investment in the Dreyfus family of funds or certain other products made available by the Distributor to such plans or programs exceeds one million dollars, and (b) the participants in such plan or program are not permitted to direct the investment of their accounts. Investors eligible to purchase shares of the Benefit Plan Class will not be permitted to purchase shares of any other classes offered by the Portfolio and investors eligible to purchase shares of other classes of the Benefit Plan Class.

9. It is anticipated that a class of shares ("Trust Class") in one or more of the First Prairie Funds will be sold only to clients of the Personal Investments Department of The First National Bank of Chicago ("FNBC") for their qualified trust, custody, and/or agency accounts, and to clients of affiliates of FNBC for their similar accounts maintained at such affiliates. The Trust Class is not expected to bear 12b–1 Plan Payments. It is anticipated that another class of shares ("Retail Class") in the First Prairie Funds will be offered generally on a retail basis, including to the same clients of FNBC for their non-fiduciary accounts. The Retail Class is expected to bear 12b–1 Plan Payments.

10. Each Portfolio seeks the ability to offer investors the option of purchasing shares that either are subject to a conventional front-end sales load ("Front-End Option") or subject to a CDSC ("Deferred Option"). Shares offered pursuant to either such option could be offered in conjunction with a 12b–1 Plan or Shareholder Services Plan, and thus be subject to Plan Payments. In a Portfolio offering classes with both Front-End and Deferred Options, Plan Payments will be higher for shares issued under the Deferred Option. Although the CDSC is discussed as part of the multiple class distribution arrangement, applicants intend that Portfolios with only a single class be permitted to sell their shares with a CDSC.

11. A Portfolio's gross income will be allocated *pro rata* to each class on the basis of the net assets of each class. Expenses incurred by a Fund not attributable to a particular Portfolio of the fund or to a particular class of a Portfolio ("Fund Expenses"), and expenses incurred by a particular Portfolio of a Fund not attributable to any particular class of the Portfolio ("Series Expenses") will be allocated to each class on the basis of net assets. Expenses specifically attributable to a particular class of a Portfolio's shares ("Class Expenses") will be allocated directly to such class. Class Expenses will consists only of those expenses specified in condition 1 below.[2]

12. Under the proposed Distribution System, each Portfolio's shares, regardless of class, will represent a *pro rata* interest in its portfolio securities and will have identical voting, dividend, liquidation, and other rights, preferences, powers, restrictions, limitations, qualifications, designations, terms, and conditions, except that: (a) each class will have a different designation; (b) each class will bear its own Plan Payments and Class Expenses; (c) only shareholders of the affected classes will be entitled to vote on matters pertaining to the 12b–1 Plan and 12b–1 Plan Agreements relating to such class; (d) each class will have different exchange privileges, as described below; and (e) only the class of shares issues in connection with the Deferred Option will have a conversion feature.

13. Dividends paid to all shareholders of a Portfolio, regardless of class, will be declared and paid at the same times and at the same dividend rate. However, because of the Plan Payments and Class Expenses that will be borne by a class of shares, the net income of (and dividends payable to) such class will be somewhat lower than the net income of a different class of shares in the same Portfolio that is not making such Plan Payments or bearing such Class Expenses. As a result, for a Portfolio that does not declare dividends daily (such as a non-money market fund), the net asset value per share attributable to different classes will differ between dividend dates.

14. Each class of shares may be exchanged only for shares of the same class in another Portfolio. Portfolios that have not issued multiple classes and have not adopted a CDSC are deemed to be the same class as any Portfolio or class that is not sold with a CDSC. In all events, the exchange privileges will operate in accordance with rule 11a–3 under the Act.

15. Investors choosing the Deferred Option will purchase shares at net asset value, without the imposition of a sales load at the time of purchase, but subject to a CDSC that decreases over time. A CDSC will not be imposed on redemptions of Deferred Option shares purchased more than a specified period (the "CDSC Period")—typically six years—prior to the redemption, or

[2] In the case of the Comstock Fund, the expenses specified in condition 1 as Class Expenses are deemed to be Fund Expenses. Only expenses incurred pursuant to 12b–1 Plan or Shareholder Services Plan related to a particular class will be allocated directly to such class, consistent with exemptive relief granted to the Comstock Fund. *See* footnote 1 above.

shares derived from reinvestment of dividends and distributions. No CDSC will be imposed on any amount that represents an increase in the value of the Deferred Options shares, resulting from capital appreciation, above the amount paid for such shares. Deferred Option shares will be redeemed in an order that will result in the lowest possible charge.

16. At the end of the CDSC Period, Deferred Option shares of a Portfolio will automatically convert (subject to condition 17) to Front-End Option shares of such Portfolio at the relative net asset values of the two classes, and will thereafter be subject to the Plan Payments, if any, applicable to the Front-End Option shares.

17. Applicants seek the ability to waive the CDSC (a) on redemptions made within one year following a shareholder's death or disability; (b) otherwise payable by employees participating in qualified or non-qualified employee benefit plans or other programs where the employers or affiliated employers maintaining such plans or programs have a minimum of 250 employees eligible for participation in such plans or programs, or such plan's or program's aggregate initial investment in the Dreyfus family or funds or other products made available through the Distributor exceeds one million dollars; (c) in connection with redemptions as a result of a combination of any investment company with a Fund by merger, acquisition of assets, or otherwise; and (d) in connection with a distribution following retirement under a tax-deferred retirement plan or attaining age 70½ in the case of an IRA or Keogh plan or custodial account pursuant to section 403(b) of the Code.

18. If a Fund's directors determine to discontinue one or more waiver categories applicable to a particular Portfolio, any Portfolio shares subject to a CDSC that were purchased prior to the termination of such waiver categories will have the CDSC waived as provided in such Portfolio's prospectus at the time of purchase of such shares.

Applicants' Legal Analysis

1. Applicants are requesting an order pursuant to section 6(c) of the Act to the extent the proposed issuance and sale of multiple classes of shares by a Portfolio might be deemed (a) to result in a "senior security" within the meaning of section 18(g), the sale and issuance of which is prohibited by section 18(f)(1); or (b) to violate the equal voting provisions of section 18(i).

2. The Distribution System does not create the potential for the abuses that section 18 was designed to redress. It does not involve borrowing and does not affect the Portfolios' assets or reserves. It will not increase the speculative character of the Portfolios' shares. No class of shares will have a distribution or liquidation preference with respect to particular assets of a Portfolio and no class will be protected by any reserve or other account. The concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value their shares are not present under the proposed Distribution System. The Portfolios' capital structures will not enable insiders to manipulate the expenses and profits among the different classes of shares.

3. Applicants believe that the Distribution System will better enable them to meet the competitive demands of today's financial services industry. By creating multiple classes of shares, the Portfolios will save the organizational and other continuing costs that would be incurred if they were required to establish a separate investment portfolio for each class of shares. To the extent a Portfolio is able, through the Distribution System, to obtain and expand its shareholder base, all investors, irrespective of class, will benefit, since the Portfolio's *pro rata* operating expenses will be lower than they would have been otherwise.

4. Applicants assert that the proposed allocation of expenses and voting rights in the manner proposed herein is equitable and will not discriminate against any group of shareholders. Investors purchasing shares offered in connection with the Rule 12b–1 Plans and Shareholder Services Plans and receiving services provided under those Plans will bear the costs associated with such services and will also enjoy exclusive shareholder voting rights (if any) with respect to matters affecting their respective Plans. Investors purchasing shares that are not covered by such Plans will not be burdened with such expenses and will not possess such voting rights.

5. Applicants also are requesting an exemption pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to the extent necessary to permit the Portfolios to assess a CDSC on certain redemptions of Deferred Option shares and to waive the CDSC with respect to certain types of redemptions.

6. Applicants believe that the imposition of the CDSC is fair and in the best interests of shareholders. Because they pay no sales load up front, Deferred Option shareholders have the advantage of greater investment dollars working for them from the time of their purchase. Moreover, such shareholders, depending on how long they hold their shares, may pay only a reduced sales charge or no sales charge at all. Finally, applicants believe that it is fair to impose on the Deferred Option shares being redeemed a lump sum reasonably reflecting the expenses incurred by the Distributor or Service Agents that have not been recovered through payments by the Portfolio.

7. The waiver of the CDSC under the circumstances set forth above will not adversely affect a Portfolio's remaining shareholders. Waiver of the CDSC will not result in the loss of any revenue to a Portfolio since proceeds from the CDSC will be paid to the Distributor.

Applicants' Conditions

Applicants agree that the order granting the requested exemptions shall be subject to the following conditions:

1. The classes will each represent interests in the same portfolio of investments of a Portfolio, and be identical in all respects, except for certain differences relating to:

(i) the method of financing certain Class Expenses, which are limited to: (a) transfer agent fees identified by the transfer agent as being attributable to a specific class; (b) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class; (c) blue sky registration fees incurred by a class of shares; (d) SEC registration fees incurred by a class of shares; (e) the expense of administrative personnel and services required to support the shareholders of a specific class; (f) litigation or other legal expenses relating solely to one class of shares; and (g) directors' fees incurred as a result of issues relating to one class of shares;

(ii) expenses assessed to a class pursuant to a 12b–1 Plan or Shareholder Services Plan;

(iii) voting rights as to matters exclusively affecting one class of shares;

(iv) the requirement that only certain Deferred Option shares will have a conversion feature providing for automatic conversion to Front-End Option shares a stated number of years after issuance;

(v) exchange privileges; and

(vi) class designation.

Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocable to one class of shares shall not be so allocated until approved by the SEC

pursuant to an amended order or other relief from the SEC.

2. A Fund's directors, including a majority of the non-interested directors, will approve the offering of different classes of shares of a Portfolio prior to the implementation of the Distribution System. The minutes of the directors' meetings regarding their deliberations with respect to the approvals necessary to implement the Distribution System will reflect in detail the reasons for the directors' determination that the proposed Distribution System is in the best interests of both a Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the relevant Fund's directors, including a majority of the non-interested directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Portfolio to meet Class Expenses shall provide to the directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, a Fund's directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the classes of shares. The directors, including a majority of the non-interested directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment adviser, sub-investment adviser (if any), administrator (if separate) and distributor of the Fund will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, such entities at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. Each Portfolio's investment adviser or distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling Portfolio shares to agree to conform to such standards. Such compliance standards will require all investors eligible to purchase Benefit Plan Class shares of a Portfolio offering such shares to invest in Benefit Plan Class shares, rather than any other class of shares offered by the Portfolio.

6. Any Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1. In evaluating a Shareholder Services Plan, the directors will specifically consider whether: (a) the Shareholder Services Plan is in the best interest of the applicable classes and their respective shareholders; (b) the services to be performed pursuant to the Shareholder Services Plan are required for the operation of the applicable classes; (c) the Service Agents can provide services at least equal in nature and quality to those provided by others, including the Portfolio, providing similar services; and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

7. Each Shareholder Services Plan Agreement entered into pursuant to a Shareholder Services Plan will contain a representation by the Service Agent that any compensation payable to the Service Agent in connection with the investment of its customers' assets in a Portfolio: (a) will be disclosed by it to its customers; (b) will be authorized by its customers; and (c) will not result in an excessive fee to the Service Agent.

8. Each shareholder Services Plan Agreement entered into pursuant to a Shareholder Services Plan will provide that, in the event an issue pertaining to the Shareholder Services Plan is submitted for shareholder approval, the Service Agent will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

9. Each fund's directors will receive quarterly and annual statements concerning 12b–1 Plan and Shareholder Services Plan expenditures complying with rule 12b–1(b)(3)(ii), as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class will be used to justify any fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee charged to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested directors in the exercise of their fiduciary duties.

10. Dividends paid by a Portfolio with respect to a class of shares will be calculated in the same manner, at the same time, on the same day, and will be paid at the same dividend rate as dividends paid by the Portfolio with respect to each other class of shares of the same Portfolio, except that Class Expenses and payments made pursuant to a 12b–1 Plan or Shareholder Services Plan will be borne exclusively by the affected class.

11. The methodology and procedures for calculating the net asset value and dividend distributions of the various classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to each Fund that the calculations and allocations are being made properly. The Expert's reports shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The Expert's work papers with respect to such reports, following request by any Fund (which each such Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert will be a "Special Purpose" report on the "Design of a System" and ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

12. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes and the proper allocation of expenses among the classes and this representation has been concurred with by the Expert in the initial report referred to in condition 11 above and will be concurred with by the Expert or an appropriate substitute

Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

13. Each prospectus will contain a statement to the effect that any person entitled to receive compensation for selling or servicing Portfolio shares may receive different levels of compensation with respect to one particular class of shares over another in the Portfolio.

14. The conditions pursuant to which the exemptive order requested by the application is granted and the duties and responsibilities of the directors with respect to the multi-class Distribution System described in the application will be set forth in guidelines which will be furnished to the directors.

15. Each Portfolio will disclose in each of its prospectuses the respective expenses, performance data, distribution arrangements, services, fees, initial sales loads, CDSCs, conversion features and exchange privileges applicable to each class of shares other than the Benefit Plan Class, regardless of whether all such classes of shares are offered through such prospectus. A Portfolio's Benefit Plan Class will be offered solely pursuant to a separate prospectus and the prospectus for such Portfolio's other classes will disclose the existence of the Fund's Benefit Plan Class and will identify the entities eligible to purchase shares of such class, and the Benefit Plan Class prospectus will disclose the existence of the Portfolio's other classes Each Portfolio will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report pertaining to such Portfolio. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Portfolio, it will also disclose the expenses and/or performance data applicable to all classes of shares of such Portfolio, except the Benefit Plan Class. Advertising materials reflecting the expenses or performance data for a Portfolio's Benefit Plan Class will be available only to those persons eligible to purchase shares of the Benefit Plan Class. The information provided by applicants for publication in any newspaper or similar listing of a Portfolio's net asset value and public offering price will present each class of shares, except the Benefit Plan Class, separately.

16. Deferred Option shares will convert to Front-End Option shares on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee or other charge.

17. With regard to those Portfolios that offer Deferred Option shares that automatically convert to Front-End Option shares, if a Portfolio implements any amendment to its 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a Shareholder Services Plan) that would increase materially the amount that may be borne by the Front-End Option shares under the plan, existing Deferred Option shares will stop converting into Front-End Option shares unless the Deferred Option Shareholders, voting separately as a class, approve the proposal. The Directors shall take such action as is necessary to ensure that existing Deferred Option shares are exchanged or converted into a new class of shares ("New Front-End Option"), identical in all material respects to the Front-End Option class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Front-End Option shares. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing Deferred Option shares for a new class of shares ("New Deferred Option"), identical to existing Deferred Option shares in all material respects except that New Deferred Option shares will convert into New Front-End Option shares. A New Front-End Option class or New Deferred Option class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors reasonably believe will not be subject to Federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange or conversion of New Front-End Option shares or New Deferred Option shares shall be borne solely by the Adviser and the Distributor. Deferred Option shares sold after the implementation of the proposal may convert into Front-End Option shares subject to the higher maximum payment, provided that the material features of the Front-End Option plan and the relationship of such plan to the Deferred Option shares are disclosed in an effective registration statement.

18. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that a Portfolio may make pursuant to 12b–1 Plans or Shareholder Services Plans in reliance on the exemptive order.

19. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31585 Filed 12–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19169; File No. 812–8188]

December 21, 1992.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 (the "Act").

Applicants: General American Life Insurance Company ("General American"), General American Separate Accounts Twenty-Eight and Twenty-Nine (the "Separate Accounts"), and G.T. Global Financial Services, Inc. ("GT Global"), (collectively, "Applicants").

Relevant 1940 Act Section: Order requested pursuant to Section 6(c) of the Investment Company Act of 1940 exempting proposed transactions from the provisions of Sections 26(a)(2) and 27(c)(2) of the Act.

Summary of Application: Applicants seek an order permitting the assessment of a charge for mortality and expense risks in connection with the offering of certain flexible premium variable deferred annuity contracts (the "Contracts") through the Separate Accounts.

Filing Date: The application was filed on November 19, 1992.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with copies of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on January 15, 1993, and should be accompanied by proof of service on the Applicant in the form of an affidavit, or, for lawyers, by certificate of service. Hearing requests should state the nature

of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Matthew P. McCauley, Esq., Associate General Counsel, General American Life Insurance Company, 700 Market Street, St. Louis, Missouri 63101; Peter R. Guarino, Esq., G.T. Global Financial Services, Inc., 50 California Street, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Staff Accountant or Wendell M. Faria, Deputy Chief at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. General American is a mutual life insurance company chartered in 1933 under the laws of Missouri. It is principally engaged in the sale of life insurance, annuities, and health and accident insurance. General American is licensed to do business in forty-nine states, The District of Columbia, Puerto Rico, and is also registered and licensed to do business in several Canadian provinces.

2. The Separate Accounts were established by General American under the laws of the State of Missouri on May 28, 1992. The Separate Accounts have been registered under the Act as unit investment trusts.

3. Each Separate Account is subdivided into several investment Divisions ("Divisions"). Each of the Divisions will invest solely in the shares of G.T. Global Variable Investment Series ("G.T. Series") or G.T. Global Variable Investment Trust ("G.T. Global Trust"). Separate Account Twenty-Eight currently has three Divisions and Separate Account Twenty-Nine currently has eleven Divisions.

4. G.T. Series and G.T. Trust are both Massachusetts business trusts organized in 1992. Each is registered with the Commission as an open-end management investment company under the Act.

5. G.T. Global will serve as the distributor and principal underwriter of the Contracts. G.T. Global is registered under the Securities Exchange Act of 1934 (the "1934 Act") as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

6. The Contract is a combination fixed and variable flexible premium annuity contract designed for use as a non-qualified retirement vehicle and as an Individual Retirement Annuity ("IRA") or for use as a retirement vehicle in connection with retirement plans receiving favorable tax treatment under sections 401, 403, 408 or 457 of the Internal Revenue Code of 1986. The Contract may be purchased with a minimum initial purchase payment of $2,000. Subsequent purchase payments must be at least $500 for non-qualified contracts and $100 for qualified contracts.

7. The Contract Owner may allocate purchase payments among one or more Divisions of the Separate Accounts, and/or one or more Fixed Account options (*i.e.*, fixed interest allocations in General American's general account). The Fixed Account options are called "Guaranteed Interest Options" and are available for certain pre-established periods of time (never shorter than one year) over which fixed rates of interest will be credited. Transfers of accumulated values under the Contracts also may be made among the Divisions and Guaranteed Interest Options.

8. The Contract provides for a series of annuity payments beginning on a date selected by the Contract Owner (the "annuity date"). The Contract Owner may select from four annuity payment options which are available on a fixed or variable basis or a combination of both.

9. The Contract Owner may elect to surrender the Contract or withdraw a portion of the accumulated value prior to the annuity date. Partial withdrawals may be from the Divisions or the Guaranteed Interest Options within the Fixed Account. All partial withdrawals and full surrenders may be subject to contingent deferred sales charges and full surrenders also may be subject to the deduction of an administrative charge. In addition, partial withdrawals and full surrenders from Guaranteed Interest Options may also be subject to an interest change adjustment. There is currently no limit on the frequency or timing of surrenders and withdrawals, but a partial withdrawal must be in a minimum amount of at least $500 or, if less, the entire balance in a Division or Guaranteed Interest Option.

10. General American will deduct an annual account administration fee (the "account fee") on accumulated values of $20,000 or less. Revenues from the account fee will partially compensate General American for the cost of providing administrative services relating to the issue and maintenance of the Contract and the Contract Owner's records. In contract years ending prior to December 31, 1999, the account fee is the lesser of $30 or 2% of the Accumulated Value. Thereafter, the account fee may be changed annually but will not exceed an amount that reflects the change in the Consumer Price Index since December 31, 1992 or $50.00. Applicants represent that this charge will be deducted in reliance on Rule 26a–1 under the Act and that the fee applicable during contract years ending prior to December 31, 1999 represents reimbursement only for administrative costs expected to be incurred over these contract years and the fee applicable in any contract year thereafter represents reimbursement only for administrative costs expected to be incurred over that year.

11. General American also will deduct a daily administration fee when calculating the net investment factor for each Division at the end of each valuation period. The fee is deducted both before and after the annuity date. The fee, at an effective annual rate of .15% of the average daily net assets of each Division, is designed to reimburse General American for those administrative expenses attributable to the Contracts, Contract Owner Accounts and Records, and the Separate Accounts which exceed the revenues received from the account fee. The administration fee is guaranteed not to increase for the life of the Contracts. Applicants represent that the fee will be deducted in reliance upon Rule 26a–1 under the Act and that the fee has been set at such a level that it and the account fee will recover no more than the actual costs associated with administering the Contracts over the life of the Contracts.

12. A contingent deferred sales charge ("Surrender Charge") may be assessed by General American if any part of a Contract Owner's accumulated value is withdrawn or if the Contract is surrendered. This Surrender Charge, calculated as a percentage of any net purchase payments, will apply to net purchase payments for six years from the date the net purchase payment is received. Net purchase payments received more than six years prior to the date of withdrawal and accumulated value in excess of accumulated net purchase payments may be withdrawn without incurring a Surrender Charge. The Surrender Charge ranges from 6% to 1% of a net purchase payment. Notwithstanding the Surrender Charge, an amount equal to 10% of a Contract's accumulated value may be withdrawn each year (calculated as of the date of

the first such withdrawal in that year) without incurring the Surrender Charge.

The Surrender Charge schedule is as follows:

Years Since Receipt of Payment	Surrender Charge as Percentage of Each Purchase Payment
0	6
1	5
2	4
3	3
4	2
5	1
6+	0

General American does not currently anticipate that the Surrender Charges will generate sufficient funds to pay the cost of distributing the Contracts. If the revenues from Surrender Charges are insufficient to cover the expenses, the deficiency will be met from General American's general account, which may include amounts derived from the charge for mortality and expense risks. Conversely, in the event that revenues from Surrender Charges exceed such expenses, General American will retain the excess.

13. General American imposes a daily charge during both the accumulation period and the annuity period to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge will be at an annual rate of 1.25% of the average daily net assets in the Separate Accounts. Of that amount, approximately 1.00% is attributable to mortality risks, and approximately 0.25% is attributable to expense risks. General American guarantees that this charge will never exceed 1.25%. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on General American. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to General American.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions set forth below in connection with General American's assessment of the daily charge for mortality and expense risks. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company, or a depositor or underwriter for such company, from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act.

2. Applicants submit that General American is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. As described above, in return for this amount General American guarantees certain annuity rates and assumes certain risks under the Contracts. The mortality and expense risk charge is a reasonable charge to compensate General American for the risk that Annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that the Accumulated Value under a Contract, less any otherwise applicable charges, will be less than the death benefit; and for the risk that administrative expenses will be greater than amounts derived from the account fee, daily administration fee and other administrative charges. General American represents that the 1.25% charge for mortality and expense risks assumed by General American is within the range of industry practice with respect to comparable annuity products. This representation is based upon General American's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. General American will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

3. Applicants acknowledge that the proceeds from the Surrender Charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by revenues from the Surrender Charge. General American has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by General American at its home office and will be available to the Commission.

4. General American also represents that the Separate Accounts will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31581 Filed 12–28–92; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration; (Nu Horizons Electronics Corp., Common Stock, $.01 Par Value) File No. 1–8798

December 22, 1992.

Nu Horizons Electronics Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on December 1, 1992, to withdraw the Company's

Common Stock from listing on the American Stock Exchange ("Amex") and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than that presently available on the Amex and less volatility in quoted prices per share when trading volume is slight. On NASDAQ/NMS the Company will have an opportunity to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(3) The Company believes that firms making a market in the Company's Common Stock will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before January 14, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-31483 Filed 12-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25711]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 18, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 11, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

West Penn Power Company (70-6505)

West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, an electric public-utility subsidiary company of Allegheny Power System, Inc., a registered holding company has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By orders dated February 9, 1983 (HCAR No. 22849) and March 28, 1983 (HCAR No. 22894), West Penn was authorized, among other things, to issue long-term promissory notes in connection with the issuance of pollution control revenue bonds series B and series C ("Series B Bonds" and "Series C Bonds") by the Washington County Development Authority ("County") in the aggregate principal amount of $30 million and $31.5 million, respectively.

Due to changes in interest rates, the County proposes to refund the Series B Bonds and the Series C Bonds by issuing a new series of pollution control revenue bonds ("Series F Bonds") at a lower interest rate. The County proposes to issue $61.5 million aggregate principal amount of Series F Bonds maturing on the corresponding day in the year 2003 that they are issued in 1993. The proceeds from the sale of the Series F Bonds will be used to refund Series B Bonds and Series C Bonds. The Series F Bonds will be issued under a supplemental trust indenture with a corporate trustee ("Trustee"), approved by West Penn, and will be sold at such time, interest rate and price as approved by West Penn pursuant to market conditions.

West Penn proposes to issue concurrently with the issuance of the Series F Bonds, its non-negotiable Pollution Control Note ("Note"), at any time on or before December 31, 1994, under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5), with terms and conditions corresponding to the Series F Bonds in respect to principal amount, interest rates and redemption provisions and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. Market conditions prevailing at the time of the offering may warrant the issuance of the Series F Bonds with floating interest rates during all or a portion of the stated life of the Series F Bonds based on a specified index as well as provisions permitting the bondholders to require the redemption or repurchase of the Series F Bonds at stated intervals. West Penn will file an appropriate amendment if it is determined to include such terms in the Note and Series F Bonds.

The Note will be secured by a second lien on the equipment and facilities at West Penn's Mitchell Power Station in Washington County ("Facilities") and certain other properties, pursuant to the Mortgage and Security Agreement delivered by West Penn to the Trustee creating a mortgage security interest in the Facilities and certain other property Payment on the Note will be made to the Trustee under an indenture and applied by the Trustee to pay the maturing principal and redemption price of and interest and other costs on the Series F Bonds as they become due. West Penn proposes to pay any Trustees' fees or other expenses incurred by the County.

West Penn will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on the new issue of comparable securities and on the

securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rater used shall be the estimated after tax interest rate on the Series F Bonds to be issued.

Central and South West Corporation (70–8087)

Central and South West Corporations ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75266–0164, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

CSW currently has in a place a Dividend Reinvestment and Stock Purchase Plan ("Old Plan") pursuant to which shares of CSW's common stock, $3.50 par value per share ("Common Stock"), are purchased in the open market with reinvested dividends and optional cash payments made by holders of Common Stock who are participants in the Old Plan.

CSW now proposes to terminate the Old Plan and create a new Dividend Reinvestment and Stock Purchase Plan ("New Plan"). Shareholders who are currently enrolled in the Old Plan will be automatically enrolled in the New Plan. Pursuant to the New Plan, CSW proposes to issue and sell from time to time, through December 31, 1996, up to 5 million shares of Common Stock ("Additional Common Stock") to and on behalf of participants in the New Plan ("Participants").

The New Plan will be open to registered shareholders of CSW, employees and retirees of CSW and its subsidiary companies, and non-shareholders of legal age who are residents of the States of Arkansas, Louisiana, Oklahoma and Texas ("Four-state Area"), the states in which the service territories of CSW's public-utility subsidiary companies are located. Eligible residents of the Four-state Area include but are not limited to retail electric customers of CSW's public-utility subsidiary companies.

The New Plan will include full, partial or no reinvestment of dividends and the ability to make optional cash purchases of at least $25 per investment and not more than $150,000 annually. There is an initial purchase requirement of $100 in order to enroll in the New Plan. Employees and retirees will be able to participate in the New Plan through payroll/pension deductions with a $10 minimum per pay period.

Pursuant to the New Plan, the shares of Additional Common Stock purchased with the initial cash investments, optional cash purchase payments and reinvested dividends, if any, may be, in the discretion of CSW, authorized but previously unissued Common Stock or shares of Common Stock purchased on the open market by the independent agent of the New Plan ("Independent Agent"). To the extent that shares are purchased in the open market by the Independent Agent, CSW will not receive any proceeds. CSW proposes to use the proceeds from the sale of the newly issued shares of Additional Common Stock, if any, for repayment of long term or short-term indebtedness, for working capital or for other general corporate purposes. Purchases will be made twice a month on the first business day and the 16th of each month. The exact timing and manner of purchases and sales on the open market will be determined solely by the Independent Agent. The price of newly issued Additional Common Stock will be the average of the daily high and low prices of the Common Stock on the New York Stock Exchange on the applicable investment date. The price of the shares of Additional Common Stock purchased on the open market by the Independent Agent with respect to any investment period will be the average price of all such shares of Common Stock purchased during such investment period.

By order dated December 23, 1991 (HCAR No. 25440), the Commission authorized CSW, among other things, to repurchase from time to time in open market and/or negotiated transactions through December 31, 1993 up to 8,713,651 shares of Common Stock. CSW requests authority, in the event it should implement such a repurchase program, to purchase shares submitted by Participants through the New Plan. In such event, CSW would not offer to purchase or solicit offers to sell shares of Common Stock, but would simply purchase and retire shares submitted for sale in the ordinary course by Participants. The sale price for such shares would be the average of the daily high and low sale prices of the Common Stock on the New York Stock Exchange on the applicable investment date.

A Participant may sell or withdraw all or a portion of his/her shares at any time. Sales will be made weekly by the Independent Agent and the price will be the weighted average cost of shares sold.

CSW's Shareholder Services Department will share the administration of the New Plan with the Independent Agent. The Independent Agent will make open market purchases and sales under the New Plan and CSW will handle the other elements of the New Plan administration. Participants will receive quarterly statements of activity in their account.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31586 Filed 12–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19170; 812–8074]

Schwartz Investment Trust, et al.; Notice of Application

December 21, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Schwartz Investment Trust (the "Trust"); RCM Partners Limited Partnership (the "Partnership"); Schwartz Investment Counsel, Inc. (the "Adviser"); and Schwartz Management Company (the "General Partner").

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to permit an exchange of shares of The RCM Fund, a series of the Trust, for portfolio securities of the Partnership.

FILING DATE: The application was filed on September 1, 1992, and was amended on November 30, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 3707 West Maple Road, Bloomfield Hills, Michigan 48301.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust is an Ohio business trust registered under the Act as an open-end diversified management investment company. A Notification of Registration under the Act on Form N–8A and a Registration Statement under the Act and the Securities Act of 1933 (the "1933 Act") on Form N–1A were filed on behalf of the Trust on August 31, 1992. The Form N–1A Registration Statement is not yet effective, and no offering of shares has commenced. The Trust initially will offer one series of shares, the RCM Fund.

2. The Partnership is a limited partnership organized under the law of Michigan. The Partnership is not registered under the Act in reliance on section 3(c)(1) of the Act. The General Partner is the sole general partner of the Partnership. The General Partner has maintained an investment in the Partnership equal to not less than 1% of the net assets of the Partnership and is allocated net income, gains, and losses of the Partnership in proportion to its investment.

3. The Adviser acts as investment adviser to the Partnership, and will serve as investment adviser of the RCM Fund. The investment objective of both the Partnership and The RCM Fund is long-term capital appreciation.

4. Applicants propose that The RCM Fund would exchange shares of beneficial interest in The RCM Fund (the "Shares") for portfolio securities of the Partnership prior to the offering of Shares to the public. The Shares would be issued at an offering price equal to net asset value. Thereafter, the Partnership would dissolve and distribute Shares received by it *pro rata* to its partners (including the General Partner), along with cash received from the sale of portfolio securities, if any, of the Partnership not acquired by The RCM Fund. Following the exchange transaction (the "Exchange"), the Partnership's partners, including the General Partner, will constitute all of the holders of Shares, except for Shares representing seed capital contributed to The RCM Fund by the Adviser or one of its affiliates pursuant to section 14(a) of the Act.

5. The Exchange will be effected pursuant to an agreement and plan of reorganization (the "Plan") to be approved by the limited partners of the Partnership (the "Limited Partners"), in accordance with Michigan law and the terms of the limited partnership agreement. Solicitation of Limited Partner approval of the Plan will be made by means of a prospectus/information statement that forms part of the Trust's Registration Statement under the 1933 Act on Form N–14, and which will describe the nature of and reasons for the Exchange, the tax and other consequences to the partners of the Partnership, and other relevant matters, including comparisons of The RCM Fund and the Partnership in terms of their investment objectives and policies, fee structures, management structures, and other aspects of their operations.

6. The Exchange will not be effected unless and until each of the following has occurred: (a) the Trust's Registration Statement on Form N–1A and its Registration Statement on Form N–14 have been declared effective: (b) the Plan has been approved by the Limited Partners; (c) the Commission has issued an order relating to the application; (d) the Trust has received an opinion of counsel that the Exchange will have certain specified tax consequences to the Limited Partners; and (e) the Trust's Board of Trustees (the "Board") has approved the Exchange.

7. If the conditions set forth above are satisfied, the Exchange would be effected in accordance with the following terms: (a) securities of the Partnership would be acquired and valued by The RCM Fund at the time of acquisition in accordance with the pricing mechanism adopted by the Board and set forth in the Registration Statement on Form N–1A, which is equivalent to the independent "current market price" of the securities as defined in rule 17a–7 under the Act; (b) The RCM Fund would not acquire portfolio securities from the Partnership if, in the opinion of the Adviser, the acquisition of the securities would result in a violation of The RCM Fund's investment objective, policies or restrictions; and (c) the General Partner would assume all costs of the Exchange, including the cost of transferring the Partnership's portfolio securities to the account of The RCM Fund and the cost of issuing Shares in the Exchange, as well as the legal fees and expenses relating to the application and to requests for rulings on certain tax matters from the Internal Revenue Service. In addition, The RCM Fund will have the authority to pay proceeds of a redemption of the Shares of a former partner of the Partnership in-kind, rather than in cash, in order to avoid the incurrence of excessive brokerage costs by The RCM Fund after the Exchange. The General Partner does not expect to pay proceeds of a redemption of Shares in-kind to any former partners who are affiliated persons of the Trust, the Adviser, or the General Partner.

8. The Exchange has been proposed primarily for two reasons. First, the Exchange will permit Limited Partners to pursue as shareholders of The RCM Fund substantially the same investment objective and policies in a larger fund, without being subject to the limitation on the number of shareholders applicable to the Partnership. Second, operation as a registered investment company would eliminate certain administrative burdens and filing requirements currently faced by the Partnership.

9. The General Partner has considered the desirability of the Exchange from the point of view of the Partnership, and has concluded that (a) the Exchange is in the best interest of the Partnership and the Limited Partners; and (b) the Exchange will not dilute the financial interests of the partners when their Partnership interests are converted to shares of The RCM Fund.

10. The Board will consider the desirability of the Exchange from the point of view of both The RCM Fund and the Partnership prior to the solicitation of the approval of the Plan by the Limited Partners. The Plan will not be submitted to the Limited Partners unless a majority of the Board, including a majority of the non-interested members, conclude that (a) the Exchange is in the best interests of The RCM Fund, the Partnership, and the Limited Partners; (b) The Exchange will not dilute the financial interests of The RCM Fund's sole shareholder or of the partners of the Partnership when their interests are converted to shares of The RCM Fund; and (c) the terms of the Exchange, as reflected in the Plan, have been designed to meet the criteria contained in section 17(b), *i.e.*, that the Exchange be reasonable and fair, not involve overreaching, and be consistent with the policies of The RCM Fund.

Applicants' Legal Analysis

1. Applicants seek an exemption from the provisions of section 17(a) to the extent necessary to permit the Exchange. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company any security or other property. Applicants state that under section 2(a)(3) of the Act, the Partnership, the Adviser, the General Partner, and certain Limited Partners any be affiliated persons of the Trust, or

affiliated persons of an affiliated person of the Trust. Thus, unless the requested relief is granted, the proposed Exchange may be deemed to be prohibited under section 17(a) if the Exchange is viewed either as principal transactions (a) between the Trust and the partners of the Partnership, or (b) between the Trust and the Partnership.

2. Section 17(b) provides that the Commission may exempt any person from the provisions of section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and (b) the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

3. Applicants submit that, because the investment objective and policies of The RCM Fund and the Partnership are substantially similar, it is consistent with the policies of The RCM Fund to acquire securities that the Adviser has previously purchased on the basis of substantially similar objectives and policies. Further, the Exchange would provide The RCM Fund with the opportunity to purchase the portfolio securities of the Partnership at the current market price and with lower transaction costs than would have been possible purchasing such securities in the open market.

4. Applicants assert that the proposed Exchange does not give rise to the abuses that section 17(a) was designed to prevent. Applicants state that a primary purpose underlying section 17(a) was to prevent a person with a pecuniary interest as a seller of securities from using his position with a registered investment company to benefit himself to the detriment of the company's shareholders. Applicants state that The RCM Fund will not have commenced operations prior to the Exchange and will have no assets to dissipate or shareholders to dilute. After the Exchange, Limited Partners will hold substantially the same assets as shareholders of The RCM Fund as they had previously held as Limited Partners. In this sense, applicants assert that the Exchange can be viewed as a change in the form in which assets are held, rather than as a disposition giving rise to section 17(a) concerns.

5. Finally, applicants assert that the terms of the Exchange are reasonable and fair to The RCM Fund, the Limited Partners, and future shareholders of The RCM Fund, and do not involve overreaching on the part of any applicant.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-31580 Filed 12-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19166; 812-8120]

WNC California Housing Tax Credits III, L.P., et al.

December 18, 1992

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: WNC California Housing Tax Credits III, L.P., a California limited partnership (the "Partnership") and its general partner, WNC California Tax Credit Partners III, L.P., a California limited partnership (the "General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order exempting the Partnership from all provisions of the Act and the rules thereunder to permit the Partnership to invest in other limited partnerships that in turn will engage in the ownership and operation of housing for low and moderate income persons.

FILING DATE: The application was filed on October 15, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 12, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, D.C. 20549. Applicants, c/o WNC California Tax Credit Partners III, L.P., 3158 Redhill Avenue, suite 120, Costa Mesa, California 92626-3416.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504-2920, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations:

1. The Partnership was formed under the California Revised Limited Partnership Act on October 5, 1992. The Partnership will operate as a "two-tier" entity, *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships") that in turn will engage in the development, rehabilitation, ownership, and operation of apartment complexes in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The ownership of such apartment complexes is expected to generate certain credits allowable under the Internal Revenue Code of 1986 for investments in low-income housing projects. Ownership of certain of the apartment complexes also will be expected to qualify for the low-income housing tax credit allowable under the California Revenue and Taxation Code.

2. The Partnership's investment objectives are (a) to provide current tax benefits in the form of tax credits which qualified investors, as defined in the Partnership's prospectus (the "Prospectus"), may use to offset their Federal and California income tax liabilities, (b) to preserve and protect the Partnership's capital, and (c) to provide cash distributions from sale or refinancing transactions.

3. On October 14, 1992, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer publicly 30,000 Units of limited partnership interest ("Units") at $1,000 per Unit, with a minimum investment of $5,000 per investor. Purchasers of units will become limited partners ("Limited Partners") of the Partnership.

4. The Partnership will not accept any subscriptions for Units uhtil the exemptive order requested is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the Act. Any subscriptions for Units must be approved by the General Partner, which approval shall be conditioned upon representations as to suitability of the investment for each subscriber. Such investor suitability standards provide,

among other things, that investment in that Partnership is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings and automobiles) of at least $65,000 and an annual gross income of at least $50,000 or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings and automobiles) of at least $200,000 or is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (a) or such net worth as set forth in clause (b). Units will be sold only to investors who meet such suitability standards. Transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed upon the transferor Limited Partner.

5. Although the Partnership's direct control over the management of each apartment complex will be limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, the tantamount to direct ownership of the apartment complexes themselves. The Partnership will normally acquire at least a 90% interest in the profits, losses and tax credits of the Local Limited Partnerships. However, in certain cases, at the discretion of the General Partner, the Partnership may acquire a lesser interest. In such cases, the Partnership will normally acquire at least a 50% interest in the profits, losses, and tax credits of the Local Limited Partnership. The local general partners or their affiliates generally will receive as management fees and/or participations a portion of the cash flow from operations of an apartment complex and reimbursements payable from cash flow. The Local Limited Partnership agreement normally will provide that distributions of proceeds from a sale or refinancing of the apartment complex will be paid entirely to the Partnership until it has received a full return of that portion of the net proceeds invested in the Local Limited Partnership (which may be reduced by any cash flow distributions previously received) as well as providing the Partnership with a share of any remaining sale or refinancing proceeds, which share may range from 10% to 90%.

6. Each Local Limited Partnership agreement will provide the Partnership with certain voting rights, including the right to replace the local general partner on the basis of performance and discharge the local general partner's obligations, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Partnership's investment.

7. The Partnership will be controlled by the General Partner, pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement therefor, and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

8. The Partnership Agreement and Prospectus contain numerous provisions designed to ensure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and Prospectus and no compensation will be payable to the General Partner or any of its affiliates unless so specified. The fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length; however, all such compensation is believed to be fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the State of California and in states that adhere to the guidelines comprising the statement of policy adopted by the North American Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a nonaccountable expense reimbursement equal to 2% of capital contributions and also will be reimbursed by the Partnership for the actual amount of expenses incurred in connection with organizing the Partnership and conducting the offering. However, the General Partner has agreed to pay any organizational and offering expenses of the Partnership (including selling commissions and the nonaccountable expense reimbursement) in excess of 15% of capital contributions.

10. During the acquisition phase, the Partnership shall pay the General Partner or its affiliates a selection fee for analyzing and evaluating potential investments in Local Limited Partnerships, negotiating terms of the Partnership's investment in Local Limited Partnerships and related matters, such fee not to exceed 9% of capital contributions. The General Partner and its affiliates will be reimbursed by the Partnership for the actual amount of any partnership acquisition expenses advanced by them, provided that acquisition expenses shall not exceed 2% of the first $3 million of capital contributions and 1.5% of any additional capital contributions. During the operating phase, the General Partner will receive 1% of any cash available for distribution and the Partnership will or may pay certain fees and reimbursements to the General Partner or its affiliates. In addition to the foregoing fees and interests, the General Partner and its affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes and tax credits.

11. All proceeds of the public offering of Units initially will be placed in an escrow account with National Bank of Southern California, Newport Beach, California ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in accordance with instructions from the General Partner in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Unless at least $1.2 million of capital contributions are received within one year from the registration date, no Units will be sold and funds paid by subscribers will be returned promptly, together with a *pro rata* share of any interest earned thereon. Upon receipt of a prescribed minimum amount of capital contributions, funds in escrow will be released to the Partnership and held by it pending investment in Local Limited Partnerships.

Applicants' Legal Analysis

1. Applicants seek an exemption under section 6(c) exempting the Partnership from all provisions of the Act. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public

interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert, among other things, that the exemption requested is both necessary and appropriate in the public interest because investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

3. The Partnership will operate in accordance with the purposes and criteria set forth in Release No. 8456. The release lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for such an exemption: (a) "interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable . . ."; and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company."

4. Applicants assert that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units comparable to that provided by the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-31587 Filed 12-28-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Public Law 92-463, 5 U.S.C., appendix I) notice is hereby given for the RTCA Technical Management Committee meeting to be held January 14, 1993, at the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036 commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Approve summary of December 16 meeting; (2) Consider/approve Change 1 to DO 181A; (3) Consider/approve radome MOPS; (4) Review Special Committee status; (5) Consider/approve Special Committee action on runway stop bar sensors and standards for software used control airport lighting and signage; (6) Status report on revising Special Committee policies and procedures; (7) Other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 21, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-31422 Filed 12-28-92; 8:45 am]

BILLING CODE 4910-13-M

Revised Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Chicago Midway Airport, Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised noise exposure map submitted by the City of Chicago for Chicago Midway Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Chicago Midway Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 14, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is December 16, 1992. The public comment period ends February 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry Mork, Federal Aviation Administration, Chicago Airports District Office, CHI-ADO, 2300 East Devon Avenue, room 268, Des Plaines, Illinois 60018, (312) 694-7522.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised noise exposure map submitted for Chicago Midway Airport is in compliance with applicable requirements of part 150, effective December 16, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 14, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Chicago submitted to the FAA on November 5, 1992, noise exposure maps, descriptions and other documentation which were produced during the Airport Noise Compatibility Planning (Part 150) Study at Chicago Midway Airport from September 1988 to November 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the revised noise exposure map and related descriptions submitted by the City of Chicago. The specific map under consideration is Exhibit 3, Future (1995)

Noise Compatibility Plan Noise Exposure Map. It is found on page xix of the Part 150 Study submission, along with supporting documentation. It replaces the Forecast (1995) Noise Exposure Map, page 6 in the 1990 Part 150 submission, accepted by FAA on March 22, 1991. The FAA has determined that the revised map for Chicago Midway Airport is in compliance with applicable requirements. This determination is effective on December 16, 1992. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished. The FAA has formally received the noise compatibility program for Chicago Midway Airport, also effective on December 16, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 14, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 268, Des Plaines, Illinois 60018

Illinois Department of Transportation, Division of Aeronautics, Capital Airport, Springfield, Illinois 62706

Department of Aviation, City of Chicago, 20 North Clark Street, suite 3000, Chicago, Illinois 60602

Department of Aviation, City of Chicago, Midway Airport, 5700 South Cicero Avenue, Chicago, Illinois 60638

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, on December 16, 1993.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 92-31424 Filed 12-28-92; 8:45 am]

BILLING CODE 4910-13-M

Revised Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Detroit Metropolitan Wayne County Airport, Detroit, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised noise exposure maps submitted by Wayne County for Detroit Metropolitan Wayne County Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Detroit Metropolitan Wayne County Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 14, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 16, 1992. The public comment period ends February 15, 1993.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office. DET-ADO, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487-7280.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised noise exposure maps submitted for Detroit Metropolitan Wayne County Airport are in compliance with applicable requirements of part 150, effective December 16, 1992. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 14, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150,

promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Wayne County submitted to the FAA on December 14, 1992, noise exposure maps, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (Part 150) Study at Detroit Metropolitan Wayne County Airport from February 1987 to December 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Wayne County. The specific maps under consideration are Noise Exposure Maps: Exhibit 1, Existing (1992) Noise Exposure Map, and Exhibit 4, Future (1997) Noise Compatibility Plan Noise Exposure Map. They are found on pages xxvii and xxx of the Part 150 Study submission, along with supporting documentation. They replace the Noise Exposure Maps: Existing (1988) Noise Exposure Map, page 7, and Forecast (1993) Noise Exposure Map, page 8 (both showing unabated contours in the 1989 Part 150 submission, accepted by the FAA on July 24, 1989). The FAA has determined that the revised maps for Detroit Metropolitan Wayne County Airport are in compliance with applicable requirements. This determination is effective on December 16, 1992. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute an approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Detroit Metropolitan Wayne County Airport, also effective on December 16, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 14, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interest persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Wayne County Department of Public Services, Division of Airports, Detroit Metropolitan Wayne County Airport, L.C. Smith Terminal, Mezzanine, Detroit, Michigan 48242.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, December 16, 1992.

Dean C. Nitz,

Acting Manager, Detroit Airports Districts Office, Great Lakes Region.

[FR Doc. 92-31423 Filed 12-28-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

Joint Environmental Impact Report/ Environmental Impact Statement; the 2002 Airport Development Program, Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a joint Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) will be prepared and considered for an airport development program including: terminal expansion, landside access, the Airport Roadway Project (cross-airport roadway), airline and airfield support, air cargo relocation/facility development, airfield improvements, and wetland restoration at Metropolitan Oakland International Airport, Oakland, California.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Federal Aviation Administration, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010-1303, Telephone: (415) 876-2805.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Port of Oakland will prepare a joint EIR/EIS for development scheduled to occur at Metropolitan Oakland International Airport over the next 10 years. The U.S. Army Corps of Engineers will serve as a cooperating agency, with responsibilities limited to participating in the National Environmental Policy Act of 1969 (NEPA) process;

participating in the scoping process; and, review and comment on the Draft and Final EIR/EIS. The FAA is the lead federal agency. The primary components of the proposed action, described as "The 2002 Airport Development Program," consist of the following items: Terminal expansion (12 gates), the Airport Roadway Project (including construction and improvements from I–880 to Harbor Bay Parkway), airline and airfield support (including airline maintenance facility expansion), air cargo relocation/facility development, airfield improvements (including extension to Runway 11/29, remote aircraft parking, hold pad expansion and angled taxiway exit for Runway 11), and wetland restoration. Although the extension to runway 11/29 is contained in the 2002 Program, planning is not currently of sufficient detail to support an environmental finding.

The purpose of the wetland restoration project is to resolve an issue regarding fill placed at the Airport in 1986 under U.S. Army Corps of Engineers' section 404 Permit number 14003E78B. This permit and the associated wetland mitigation was rescinded in 1988 by court order. The wetland restoration project is to mitigate impacts caused by the placement of 33 acres of fill in 1986.

On April 15, 1992, the Port of Oakland issued a Notice of Preparation of a joint EIR/EIS for "The 2002 Airport Development Program" in accordance with section 15222 of the California Environmental Quality Act. The FAA intends to cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable state and local requirements. When the State document is complete, the FAA intends to jointly consult and coordinate with federal, state, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed projects.

Scoping for the processing of a joint EIR/EIS is anticipated to include both an agency scoping meeting and a public scoping meeting concerning the range of actions, alternatives, and impacts to be considered. They will be held in a workshop format to facilitate maximum input.

The scoping meeting for Federal, State and local agencies is scheduled to be held on January 27, 1993, between 1 p.m. and 3 p.m. at the Port of Oakland, 2nd Floor Board Room, 530 Water Street, Oakland, California 94607.

A scoping meeting for the general public will also be held on January 27, 1993, between 7 p.m. and 9 p.m. at the Clarion Hotel, Main Ballroom, 455 Hegenberger Road, Oakland, California 94621. The location is adjacent to the Airport and Interstate 880.

The FAA invites interested parties to submit written comments to the FAA contact listed above.

Issued in Hawthorne, California, on December 7, 1992.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92–31536 Filed 12–23–92; 2:40 pm]

BILLING CODE 4910–13–M

[Summary Notice No. PE–92–38]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 19, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 900 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on December 21, 1992.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27018
Petitioner: Arnautical, Inc.
Sections of the FAR Affected: 14 CFR 61.45(a)
Description of Relief Sought: To allow Arnautical, Inc., to allow its applicants for a flight instructor certificate and flight instructor ratings for airplane single-engine, airplane multiengine, and instrument airplane to use a flight simulator instead of an airplane for the practical test specified in § 61.183(e).

Docket No.: 27029
Petitioner: Northern Crossings Aviation
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow Mr. Tiberio DeSousa, pilot for Northern Crossings Aviation, to remove and reinstall passenger seats of company aircraft used in Part 135 operations.

Docket No.: 27037
Petitioner: Mr. Randy H. Avery
Sections of the FAR Affected: 14 CFR 65.91(c)(2)
Description of Relief Sought: To allow Mr. Avery to qualify for an Inspection Authorization without having met the minimum eligibility requirements for maintenance of civil aircraft.

Dispositions of Petitions

Docket No.: 25974
Petitioner: Air Transport Association
Sections of the FAR Affected: 14 CFR 47.49 and 91.27
Description of Relief Sought/Disposition: To amend Condition 6 of Exemption No. 5318 to include aircraft that are operated totally within the State of Hawaii.
GRANT, December 9, 1992, Exemption No. 5318B

Docket No.: 26255
Petitioner: Air Transport International, Inc.
Sections of the FAR Affected: 14 CFR 121.613, 121.623, and 121.625
Description of Relief Sought/Disposition: To allow Air Transport International, Inc., (ATI) to release its domestic flights operating under instrument flight rules (IFR) to airports

at which the weather forecasts include an "occasionally," a "briefly," an "intermittently," or a "chance of" condition that does not meet the flight release requirements of the regulations. Relief is sought to also permit ATI to release a flight in which either or both the destination airport and the alternate airport are subject to the described weather forecast conditions.

DENIAL, October 26, 1992, Exemption No. 5540

Docket No.: 26590
Petitioner: Simcom Training Centers
Sections of the FAR Affected: 14 CFR 61.56(b)(1)
Description of Relief Sought/ Disposition: To allow Simcom Training Centers to use a training device to meet certain training and testing requirements.

DENIAL, December 3, 1992, Exemption No. 5561

Docket No.: 26914
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.583(a)
Description of Relief Sought/ Disposition: To allow air traffic controllers and technical representatives to be added to the list of persons authorized to ride in the cockpit observer's seat of all-cargo aircraft operating under part 121 without complying with the passenger carrying requirements of part 121.

GRANT, November 30, 1992, Exemption No. 5562

Docket No.: 26992
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and Appendix A of Part 61.
Description of Relief Sought/ Disposition: To allow Continental Airlines, Inc., to use FAA-approved simulators to meet certain training and testing requirements of 14 CFR 61.

GRANT, December 3, 1992, Exemption 5557

Docket No.: 27011
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and Appendix A of Part 61.
Description of Relief Sought/ Disposition: To allow United Airlines, Inc., to use FAA-approved simulators to meet certain training and testing requirements of 14 CFR 61.

GRANT, December 10, 1992, Exemption 5572

Docket No.: 27040
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.310(f)(3)(iii)
Description of Relief Sought/ Disposition: To allow Delta Air Lines, Inc., to operate until January 15, 1993, airplanes having Type III exits that have not been shown to comply with the placarding requirements of § 25.813(c)(3).

GRANT, December 3, 1992, Exemption No. 5569

Docket No: 27041
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.310(f)(3)(iii)
Description of Relief Sought/ Disposition: To allow Continental Airlines, Inc., to operate until January 29, 1993, airplanes having Type III exits that have not been shown to comply with the placarding requirements of § 25.813(c)(3).

PARTIAL GRANT, December 3, 1992, Exemption No. 5570

Docket No: 27071
Petitioner: American Trans Air
Sections of the FAR Affected: 14 CFR 121.310(f)(3)(iii)
Description of Relief Sought/ Disposition: To allow American Trans Air to operate until December 29, 1992, airplanes having Type III exits that have not been shown to comply with the placarding requirements of § 25.813(c)(3).

PARTIAL GRANT, December 3, 1992, Exemption No. 5567

Docket No: 27072
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.310(f)(3)(iii)
Description of Relief Sought/ Disposition: To allow Trans World Airlines, Inc., to operate until February 1, 1993, airplanes having Type III exits that have not been shown to comply with the placarding requirements of § 25.813(c)(3).

PARTIAL GRANT, December 3, 1992, Exemption No. 5568

Docket No: 109CE
Petitioner: Fairchild Aircraft Corporation
Sections of the FAR Affected: 14 CFR 23.201(e), (f)(4), and (f)(5); 23.203(c)(4) and (c)(5); and 23.1545(b)(5) and (b)(6)
Description of Relief Sought/ Disposition: To allow type certification of the SA227–CC, SA227–DC, and all subsequent commuter category airplanes approved on type certificate A18SW, with certain stall characteristics and airspeed indicator markings that are appropriate to this category of aircraft.

GRANT, December 2, 1992, Exemption No. 5573

Good Cause

Docket No.: 25617
Petitioner: Japan Airlines Company, Ltd.
Sections of the FAR Affected: 14 CFR 91.203(c), 91.417(c) and (d), 45.11, and Part 43 Appendix B(a) and (d)
Description of Relief Sought: To extend the termination date of Exemption No. 5006, which expires December 31, 1992, and which allows Japan Airlines Company, Ltd. (JAL) to operate its U.S.-registered aircraft that have been modified by installation of fuel tanks in the passenger or baggage compartment without keeping an FAA Form 337 on board the aircraft. Exemption 5006 also allows JAL to operate its U.S.-registered aircraft without having an identification plate secured to the fuselage exterior, and, with respect to JAL's U.S.-registered aircraft manufactured before March 7, 1988, this exemption allows operation without displaying the aircraft model designation and builder's serial number on the aircraft exterior.

Docket No.: 25653
Petitioner: Singapore Airlines, Ltd.
Sections of the FAR Affected: 14 CFR 91.203(c), 91.417(c) and (d), 45.11, and Part 43 Appendix B(a) and (d)
Description of Relief Sought: To extend the termination date of Exemption No. 5008, which expires December 31, 1992, and which allows Singapore Airlines, Ltd. (SIA) to operate its U.S.-registered aircraft that have been modified by installation of fuel tanks in the passenger or baggage compartment without keeping an FAA Form 337 on board the aircraft. Exemption 5008 also allows SIA to operate its U.S.-registered aircraft without having an identification plate secured to the fuselage exterior, and, with respect to SIA's U.S.-registered aircraft manufactured before March 7, 1988, this exemption allows operation without displaying the aircraft model designation and builder's serial number on the aircraft exterior.

[FR Doc. 92–31537 Filed 12–28–92; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Fort Wayne International Airport, Fort Wayne, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Fort Wayne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 28, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lester P. Coffman, Jr., Executive Director of Airports, of the Fort Wayne-Allen County Airport Authority at the following address: Fort Wayne-Allen County Airport Authority, Lt. Paul Baer Terminal Building, suite 209, Fort Wayne, Indiana 46809.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Fort Wayne-Allen County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018, (312) 694–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fort Wayne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 15, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Fort Wayne-Allen County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 3, 1993.

The following is a brief overview of the application. Level of the proposed PFC: $3.00; Proposed charge effective date: January 1, 1993; proposed charge expiration date: December 31, 2014; Total estimated PFC revenue: $26,563,457; Brief description of proposed project(s):

a. Terminal Expansion and Renovation;

b. Loop Access Roadway and Parking Improvements Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators that (1) by Federal regulation are not required to report passenger statistics to the Federal Government and (2) enplane fewer than 1,000 passengers annually.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Fort Wayne-Allen County Airport Authority.

Issued in Des Plaines, Illinois on December 21, 1992.

W. Robert Billingsley,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 92–31535 Filed 12–28–92; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that Manufacturers and Traders Trust Company, with offices at One M&T Plaza, Buffalo, New York 14203–2399, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: December 22, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92–31419 Filed 12–28–92; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 22, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internanl Revenue Service

OMB Number: New.

Form Number: IRS Form 8835(FY).

Type of Review: New collection.

Title: Renewable Electricity Production Credit.

Description: Filers claiming the general business credit electricity produced from certain renewable resources under code sections 38 and 45 must file Form 8835(FY).

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 20.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping, 7 hours, 39 minutes.

Learning about the law or the form, 6 minutes.

Preparing and sending the form to the IRS, 14 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 160 hours.

Clearance Officer

Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer

Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–31621 Filed 12–28–92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 22, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0024.
Form Number: Treasury International Capital Forms CQ–1 and CQ–2.
Type of Review: Extension.
Title: Financial and Commercial Liabilities to, and Claims on, Foreigners.
Description: These reports are required by law and are designed to collect timely and accurate information on international capital movements, including data on financial and commercial liabilities to, and claims on, unaffiliated foreigners held by U.S. nonbanking enterprises.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 600
Estimated Burden Hours Per Response: 4 hours
Frequency of Response: Quarterly
Estimated Total Reporting Burden: 9,600 hours
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 92–31563 Filed 12–28–92; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 23, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0059.
Form Number: ATF F 5120.29.
Type of Review: Extension.
Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.
Description: ATF F 5120.29 is completed by proprietors of bonded wineries who intend to produce wine, to ensure that the formulas and processes used in the production of the wine are in accordance with the regulations of the Federal Alcohol Administration Act and the Internal Revenue Code.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,200 hours.
OMB Number: 1512–0078.
Form Number: ATF F 1533 (5000.18).
Type of Review: Extension.
Title: Consent of Surety.
Description: A consent of surety is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover the specific liabilities on the revenue produced from untaxpaid commodities. The consent of surety is filed with ATF and a copy is retained by ATF as long as it remains current and in force.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,000 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer
[FR Doc. 92–31622 Filed 12–28–92; 8:45 am]
BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

December 21, 1992

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0070.
Form Number: PD F 5192.
Type of Review: Reinstatement.
Title: Stop Payment/Replacement Check Request.
Description: This form is used by the payee or the representative of the payee (attorney-in-fact, executors, etc.) to report a lost, stolen, destroyed or not received fiscal agency check and request a replacement check. The checks are issued in connection with the payment of proceeds due on Treasury securities under the TREASURY DIRECT Book-entry Securities System.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 500 hours.
Clearance Officer: Vicki S. Ott, (304) 420–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–31426 Filed 12–28–92; 8:45 am]
BILLING CODE 4810–40–M

[Directive Number 16–34]

Sureties and Surety Bonds

December 21, 1992

1. *Delegation.* By virtue of the authority vested in the Secretary under 31 U.S.C. 321(b), and by virtue of the authority delegated to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, the authority of the Secretary of the Treasury under Chapter 93 of Title 31, United States Code (31 U.S.C. 9301 *et seq.*), "Sureties and Surety Bonds," is hereby delegated to the Commissioner, Financial Management Service, together with the authority to issue regulations to carry out those responsibilities. Any regulations shall be issued in accordance with the procedures set forth in Treasury Directive (TD) 28–01, "Preparation and Review of Regulations."

2. *Reference.* 31 CFR parts 223, 224, and 225.

3. *Authority.* TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

4. *Cancellation.* TD 16–34, "Sureties and Surety Bonds," dated September 22, 1986, is superseded.

5. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–31477 Filed 12–28–92; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Napoleon" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the City of Memphis', Memphis International Cultural Series Grand Exhibition Hall from on or about April 22, 1993 to on or about September 22, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: December 22, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92–31562 Filed 12–28–92; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 250
Tuesday, December 29, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: 2:00 P.M. (Eastern Time) Tuesday, January 12, 1993.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC. 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. New Local FEPA Funding.
3. Proposal to Cancel the EEO–6 Reporting Requirements.
4. Waiver of 1992 EEO–3 Reporting Requirements.
5. Washington Field Office Reorganization.

Closed Session

1. Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663–7100 (voice) and (202) 663–4494 (TTD) at any time for information on these meetings. Contact Person for More Information: Frances M. Hart, Executive Officer on (202) 663–7100.

Dated: December 23, 1992

Frances M. Hart

Executive Officer, Executive Secretariat.

[FR Doc. 92–31620 Filed 12–23–92; 4:15 pm]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM

First Linden Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 22, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Linden Bancshares, Inc., Linden, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Linden, Linden, Alabama, a *de novo* bank.

Board of Governors of the Federal Reserve System, December 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31547 Filed 12-28-92; 8:45 am]

BILLING CODE 6210-01-F

William P. Stafford; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 19, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. William P. Stafford, Princeton, West Virginia; to acquire an additional 0.18 percent, for a total of 14.2 percent, of the voting shares of FCFT, Inc., Princeton, West Virginia, and thereby indirectly acquire First Community Bank, Inc., Princeton, West Virginia, The Flat Top National Bank of Bluefield, Bluefield, West Virginia, and Peoples Bank of Bluewell, Bluewell, West Virginia.

Board of Governors of the Federal Reserve System, December 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31548 Filed 12-28-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 4, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Open Session

Dated: December 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–31681 Filed 1–4–93; 11:00 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 57, No. 250
Tuesday, December 29, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 921074–2274]

RIN 0693–AB11

Two Proposed Federal Information Processing Standards; Integration Definition for Function Modeling; Integration Definition Information Modeling

Correction

In notice document 92–30312 beginning on page 59081 in the issue of Monday, December 14, 1992, on page 59082, in the first column, under **DATES**, in the third line, "March 15, 1992" should read "March 15, 1993".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0486]

Pfizer Pharmaceuticals Inc., et al.; Withdrawal of Approval of 45 Abbreviated Antibiotic Drug Applications

Correction

In notice document 92–30491 beginning on page 59840 in the issue of Wednesday, December 16, 1992, make the following corrections:

1. On page 59840, in the third column, the **EFFECTIVE DATE** should read "January 15, 1993".

2. On page 59841, in the first column, in the last line of the paragraph, "January 15, 1992" should read "January 15, 1993".

BILLING CODE 1505–01–D

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 826

Equal Access to Justice Act Fees

Correction

In proposed rule document 92–30940 beginning on page 60785 in the issue of Tuesday, December 22, 1992, in the first column, under **DATES**, the comment date should read "January 21, 1993".

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Alabama

Correction

In notice document 92–26627 beginning on page 49725 in the issue of Tuesday, November 3, 1992, make the following corrections:

1. On page 49726, in the second column, in the second full paragraph, in the sixth line "Development" should read "Department".

2. On page 49727, in the first column, in the first partial paragraph, in the eighth line "poser" should read "power".

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

RIN 3206–AE22

Pay Rates and Systems (General); Special Salary Rate Schedules for Recruitment and Retention

Correction

In rule document 92–30414 beginning on page 59275 in the issue of Tuesday, December 15, 1992, make the following corrections:

1. On page 59275, in the second column, under **EFFECTIVE DATE**, "January 14, 1992" should read "January 14, 1993".

2. On page 59276, in the first column, in the next to last line of the incomplete paragraph, "agencies again" should read "agencies gain".

BILLING CODE 1505–01–D

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federal register

Tuesday
December 29, 1992

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4534–3]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Regulations governing compliance extensions for early reductions of hazardous air pollutants (HAP's) were proposed in the **Federal Register** on June 13, 1991. This action promulgates these regulations and implements the provisions of section 112(i)(5) of the Clean Air Act (CAA) (as amended in 1990). This rule establishes requirements and procedures for source owners or operators to obtain compliance extensions from section 112(d) standards and for reviewing agencies to follow in evaluating requests for extensions.

DATES: *Effective Date.* December 29, 1992.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "National Emissions Standards for Hazardous Air Pollutants: Compliance Extensions for Early Reductions—Background Information for Promulgated Standards" (EPA–450/3–92–006b). The BID contains (1) a summary of all the public comments made on the proposed standards and EPA's responses to the comments; and (2) a summary of the changes made to the standards since proposal. Also available from the EPA Library are three additional supporting documents. These documents are:

(a) "Enabling Document for Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants" (EPA–450/3–91–013, July 1991);

(b) "Questions and Answers about the Early Reductions Program" (EPA–450/3–92–005, January 1992); and

(c) "Procedures for Establishing Emissions for Early Reduction Compliance Extensions" (EPA–450/3–91–012a, February 1992).

Docket. Docket No. A–90–47, containing supporting information used in developing the promulgated standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room M–1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the Early Reductions Program regulations, contact Mr. David Beck, telephone (919) 541–5421, or Mr. Richard Colyer, telephone (919) 541–5262. The address for both is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711. For information concerning Method 301, contact Mr. Tony Wayne, telephone (919) 541–3576, Emission Measurement Branch, Technical Support Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Requirements
II. Summary of Changes and Impacts of the Final Rule
III. Supporting Documents
IV. Public Participation
V. Significant Comments and Changes to the Proposed Rule
  A. Definition of Source
  B. Base Year Emissions
  C. Enforceable Commitments
  D. Allowable Emission Reductions
  E. Demonstration of Early Reductions
  F. High-Risk Pollutants
  G. State Authority
  H. Interface With Title V Permits
  I. Interface With Section 112(g) Modifications
  J. Interface With Title I Provisions
  K. Test Methods and Procedures
  L. Other Changes to the Proposed Regulation
VI. Administrative Requirements
  A. Docket
  B. Paperwork Reductions Act
  C. Executive Order 12291
  D. Regulatory Flexibility Act

I. General Requirements

Today's rule applies to any existing source that seeks a 6-year compliance extension from an applicable section 112(d) standard by achieving early emission reductions of HAP's. The compliance extension would be obtained and authorized in accordance with section 112(i)(5) of the CAA.

Section 112(i)(5) allows an existing source to be granted a 6-year extension of compliance with otherwise applicable section 112(d) standards upon demonstration by the owner or operator of the source that a 90 percent reduction in HAP's (95 percent or more in the case of particulates) has been achieved. An enforceable alternative emission limitation reflecting the reduction will be established for the source by a permit issued under Title V of the CAA.

The 90 (95) percent emission reduction must be achieved before proposal of an applicable section 112(d) standard in most cases. However, a source achieving the reduction after proposal of a standard but before January 1, 1994, may qualify for a compliance extension from section 112(d) standards by making an enforceable commitment before proposal of the standard to achieve such a reduction.

State or local air pollution control agencies with Title V permitting authority will review Title V operating permit applications for compliance extensions. They will issue permits containing alternative emission limitations applicable to sources achieving early reductions in lieu of section 112(d) standards in accordance with approved permit programs under Title V of the CAA. The EPA Regional Offices will review permit applications and issue Title V permits for sources located in States that do not have approved Title V permit programs. States will assume the review and permitting activities upon approval of their Title V permit programs, or may be granted delegation of the Early Reductions Program prior to approval of their Title V permit program.

II. Summary of Changes and Impacts of the Final Rule

Based on comments received during the comment period on the proposed rule, few significant changes have been made to the regulation. The significant changes are listed below.

The most significant change to the rule has been to the high-risk list of pollutants. Seventeen pollutants have been added to the list and five pollutants have been deleted. Weighting factors for seven pollutants have been adjusted. A provision was added to ensure that there are no increases in radionuclides as a result of the emission reduction demonstration. Another

provision was added that would "grandfather" sources that already had approved enforceable commitments or alternative emission limits specified by permit from having to revise their post-reduction demonstration if a new pollutant is added to the high-risk list.

Part of the proposed definition of source, which allowed a combination of sources to be considered an Early Reductions source (§ 63.73(a)(4)) has been removed.

The rule has been revised to restrict the combined percent reduction method in demonstrations involving sources with both gaseous and particulate HAP emissions. This provision now only applies to emission points that emit both gases and particulates; emission points that emit only gaseous HAP or only particulate HAP cannot be used in a combined percent reduction demonstration.

Another change to the rule allows the use of EPA average emission factors for equipment leaks to determine base year emissions only if no reductions in equipment leak emissions are claimed as part of the reduction demonstration. The equipment leak source in appendix B has been clarified to be specific to the individual process equipment component types.

There have also been several less significant changes. The definition of "actual emissions" has been clarified to exclude startup and shutdown emissions due to malfunctions. Requiring evidence that curtailments or shutdowns are permanent for the post-reduction demonstration has been removed; evidence is unnecessary, as such reductions will become permit conditions. The suggested statement of commitment in the enforceable commitment has been revised to be consistent with wording in the demonstration requirements section of the regulation. The length of time allowed to provide source test results to support the post-reduction demonstration has been increased to 120 days from 90 after the permit submittal deadline. The term "post-control" has been changed to "post-reduction" throughout the rule to recognize that reductions can be achieved through means other than control technology. Corrections and changes have been made to Method 301, including a broadening of applicability of the method to other media.

The Early Reductions Program is a voluntary program. The primary goal of the Program is to provide a positive impact to the environment by encouraging early reductions of HAP's prior to mandatory regulatory action. As discussed in the proposal preamble, significant environmental benefits can be achieved through early reduction of emissions (56 FR 27338). The environmental benefits accrue because over time the total emission reductions achieved by participants exceed those emission reductions which would be achieved by section 112(d) standards imposed at a later date even if the later standards are more stringent.

There are also potential benefits to companies participating in the Program. The compliance extension will give a company an opportunity to design cost-effective emission reduction approaches for their sources and may reduce the cost of compliance over the long term. The Program allows flexible compliance options and encourages pollution prevention solutions. Companies achieving early reductions of HAP's may also be viewed more favorably by the affected public.

III. Supporting Documents

In addition to the background information document, information pertaining to the development and implementation of the Early Reductions Program can be found in other publications developed by EPA. The preamble to the proposed rule (56 FR 27338) includes a detailed discussion of all the provisions of the rule and presents EPA's decision-making process in developing the Program.

The EPA has published three additional documents to assist industries interested in participating in the Program and also to assist regulatory agencies responsible for implementing the Program. The first document, entitled "Enabling Document for Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants" (EPA–450/3–91–013, July 1991), presents a more detailed description of the Early Reductions Rule. The enabling document includes information useful in both preparing and reviewing Early Reductions submittals.

The second document is titled "Questions and Answers About the Early Reductions Program" (EPA–450/3–92–005, January 1992), and is a compendium of questions dealing primarily with implementation of the Program. The questions were generated by industry, State and local regulatory agencies, trade associations, and other interested parties.

Finally, EPA has produced a procedures document for establishing base year and post-reduction emissions. This document is titled "Procedures for Establishing Emissions for Early Reduction Compliance Extensions" (EPA–450/3–91–012a, February 1992) and provides guidance for establishing emissions from specific source categories for which section 112(d) standards will be developed. Source categories included in this document are: The synthetic organic chemical manufacturing industry, ethylene oxide sterilizers, and chrome electroplaters.

IV. Public Participation

In developing the Early Reductions rule, EPA solicited input from representatives of industry, environmental groups, and State and local air pollution control agencies. Options for the rule's major provisions were presented and discussed with these and other interested parties at a meeting of the National Air Pollution Control Techniques Advisory Committee on January 29, 1991, and at four "roundtable" discussions held in January, February, and March 1991.

In addition, EPA solicited public comments on the proposed rule that was published in the **Federal Register** on June 13, 1991 (56 FR 27338). Sixty-seven comment letters were received, with most of the letters containing multiple comments. The EPA's responses to these comments can be found in the Background Information Document referenced in the "**ADDRESSES**" listing above. The major comments received by EPA and the responses thereto are also addressed in this preamble.

The EPA is strongly committed to the success of the Early Reductions Program. Accordingly, EPA has been actively promoting the Program and been disseminating information to public and private organizations. Since proposal of the rule, EPA has conducted a number of workshops to inform interested parties about the Program. In addition, EPA has met with industries and individual companies interested in participating in the Program and with regulatory agencies who will be involved with the implementation of the rule. These workshops and meetings have served as a forum for EPA to field questions on the proposed rule and to better understand the comments and issues of potentially affected parties.

V. Significant Comments and Changes to the Proposed Rule

Individual companies, trade associations, State and local regulatory agencies, and citizens groups all commented on the proposed rule. The most significant comments and EPA's responses to those comments are discussed below. These comments are grouped under the following headings: Definition of Source, Base Year Emissions, Enforceable Commitments,

Allowable Emission Reductions, Demonstration of Early Reduction, High-Risk Pollutants, State Authority, Interface with Title V Permits, Interface with Section 112(g) Modifications, Interface with Title I Provisions, Test Methods and Procedures, and Other Changes to the Proposed Regulations.

A. Definition of Source

Many comments addressed the source definition. Several commenters contended that the proposed definition was far too broad. They argued that the sources receiving a compliance extension under the Early Reductions Program should be the same sources for which section 112(d) standards are developed.

The commenters' conclusion that EPA should change the definition of source to match that of a section 112(d) source proceeds from an incorrect assumption. The commenter assumes that at the time an owner or operator undertakes to make an early reduction, or enters into an enforceable commitment to do so, he can determine the "source" for purposes of "the otherwise applicable section 112(d) standard."

However, in most instances this will not be possible because of the structure of section 112(i)(5). The Early Reductions provision requires a source owner or operator to make the reductions prior to proposal of a section 112(d) standard, or enter into an enforceable commitment to do so before proposal provided the reductions are demonstrated before January 1, 1994. If the otherwise applicable section 112(d) standard has not yet been proposed and "source" defined for that standard, it would be impossible for an owner or operator to know whether the necessary reductions had been made or could be made to achieve the 90 (95) percent reduction. The only exception is for the equipment leak portion of the upcoming section 112(d) standards for synthetic organic chemical manufacturing plants, discussed below.

As recognized by Senator Durenberger and others, EPA will have broad discretion in defining source for any particular section 112(d) standard. In some cases, a source will be a process unit, in others it will be an entire plant. See 126 Cong. Rec. S16927 (3rd col. daily ed. Oct. 27, 1990). Congress could not have meant to so restrict participation in the Early Reductions Program to those companies who owned or operated emission points that EPA had clearly defined as a source before proposal of a particular section 112(d) standard. Moreover, because it would be impossible at this time to identify all possible sources that may be subject to section 112(d) standards, it is impossible for EPA to list each and every type of source for the Early Reductions Program. The EPA's definition of "source" recognizes the flexibility set forth in the statute. The EPA, or the State authority if operating under a delegated program, must review the applicant's Early Reductions submittal to ensure that it is consistent with one of the regulatory definitions under the Early Reductions Program. Given the limitation described above, EPA developed a definition of source for this provisions designed to encompass the broad definition of source contained in section 112(a), which incorporates the broad definition of section 111(a).

One commenter contended that EPA's definition of source in § 63.73(a)(1) proceeds from an error in equating "source" and "source category", and interprets sources listed in appendix B as "source categories."

The commenter fundamentally misunderstands EPA's definition of source and how it relates to the "source category." As the commenter suggests, EPA is to identify source categories which emit HAP's. The EPA is not saying, however, that it must know each category before it can make the linkage to section 112(i)(5). A "source category" for the purpose of defining industry types to be regulated and the "source" to which a standard specifically applies may be quite different (e.g., in the new source performance standard for electric utilities the applicable "source" is the steam boiler).

The single "source" listed in appendix B also exemplifies this distinction; this source, equipment leaks, is contained within a source category—the synthetic organic chemical manufacturing industry. Furthermore, equipment leaks are a special situation that EPA believes should be addressed separately, as equipment leak emissions arise from the nearly ubiquitous pumps, valves, connectors, and other equipment integrally associated with more traditional "sources", i.e., building, structure, facility or installation. The outcome of a regulatory negotiation involving equipment leaks published by EPA designated equipment leaks as a separate source (56 FR 9318; March 6, 1991). The EPA indicated that it would propose the rule as part of the hazardous organic NESHAP (HON) which will be promulgated under section 112(d). While this standard has not yet been proposed, the publication of the outcome of the regulatory negotiation sufficiently identifies equipment leaks as a distinct source to separate them for the purposes of Early Reductions. The EPA will determine the definition of source for the HON in that rule.

The EPA is allowing the option of including equipment leaks as part of a designated source, leaving the equipment leaks out of the source, or identifying equipment leaks solely as the source.

Indeed, once EPA defines a source category, the issue of the source definition may still remain. In some instances, individual facilities within a source category may constitute an entire source, in other instances each "source" subject to a section 112(d) standard may only constitute a portion of the facility within a source category. Thus, it is the regulated "source" that it is important for purposes of determining otherwise applicable section 112(d) standards, not the source category. Because EPA has not defined source for particular section 112(d) standards (except in one instance), EPA's definition reflects the range of possibilities contemplated by the definition of source in the statute.

Several commenters objected to proposed § 63.73(a)(2) and one argued that a plantwide definition of source was expressly prohibited, citing a floor statement by Senator Durenberger.

Section 111(a)(1) (incorporated into the definition of "existing source" in section 112) defines a "stationary source" as "any building, structure, facility, or installation which emits or may emit any hazardous air pollutant." This term is obviously broad enough to encompass an entire plant or facility. In some instances, a section 112(d) standard may encompass an entire "facility," which certainly includes the concept of a plantwide source.

Moreover, the definition of major source, which covers an entire contiguous area under common ownership or control, may consist of a single stationary source. "Major source" is defined as "* * * any stationary source or group of stationary sources * * *" See CAA section 112(a)(1). Thus, contrary to the commenters assertions, the definition of source under section 112 expressly encompasses a plantwide definition of source, among other configurations. The proposed and final regulations reflect the statutory language.

One commenter also cites a floor statement of Senator Durenberger's as the authoritative basis for the conclusion that a source cannot include an entire plant. However, closer reading of the complete referenced statement also expressly confirms that the source to which a section 112(d) standard might apply could be a specific portion of a facility or encompass an entire

contiguous facility. See 126 Cong. Rec. S 16927 (3rd. col.). If EPA has the discretion to establish a section 112(d) standard for a source that encompasses an entire contiguous facility, then it follows that an entire contiguous facility may be a source under section 112(i)(5).

One commenter objected to the proposed § 63.73(a)(3) because it allows an applicant to define a grouping of points that constitutes a building, structure, facility, or installation as a source. The commenter cites proposal preamble language that explains that emission points having a functional geographical relationship could be defined as a source under this part of the definition and concludes that there is no statutory basis for this type of grouping.

Subparagraph 63.73(a)(3) also directly follows the definition of source in the statute. As noted, a "stationary source" is any "building, structure, facility or installation which emits, or may emit, any hazardous air pollutant." See CAA section 111(a)(3). The phrase "functional or geographical relationship" merely gives meaning to the statutory terms. For example, a "building" suggests a geographical grouping of emission points (it may also have a functional relationship). Likewise, an "installation" suggests some type of unit that undertakes a particular function, such as a wastewater treatment system. As EPA develops section 112(d) standards, it will define "source" for particular standards considering these types of logical groupings of emission points. However, because EPA has not yet defined what will constitute a "source" for any particular section 112(d) standard (with the single exception noted earlier), the language of this rule reflects the range of options available within the statutory definition.

Several commenters contended that subparagraphs (a)(4) and (a)(5) of the proposed definition are contrary to the statute because they allow "bubbling" across two or more separate sources. One commenter noted that previous guidance from EPA precluded the use of "bubbling" to avoid section 112(d) standards.

As discussed in the proposed rule, EPA believes that the provisions of § 63.73(a) (4) and (5) are consistent with the statute and the underlying purposes of the Early Reductions provisions. However, EPA is deleting subparagraph (a)(4) because (a)(4) is redundant with the provisions of (a)(5) as any combination of emission points that would meet the requirement of proposed paragraph (a)(4) would also fit with the language of (a)(5).

The EPA has concluded that unrelated emission points may be considered as a single "source" for purposes of the Early Reductions Program, provided that the emission points are all under common ownership or control, are located "within a contiguous area," such as a common plant site, and constitute a significant level of emissions. The individual emission points to be aggregated do not have to be located next to one another or be functionally related in order to be grouped as a source provided that they are all located within the same contiguous facility.

The conclusion that aggregating unrelated emission points is permissible for purposes of the Early Reductions Program is confirmed not only by the statutory language and case law discussed above, but also by the statutory policies and legislative history of the Early Reductions Program. In section 112(i)(5)(E), Congress authorized a form of emissions trading, i.e., by allowing offsetting reductions of one HAP against reductions of other HAP's for purposes of the Early Reductions Program. Aggregation of emission points is merely another form of emissions trading.[1]

Nevertheless, the rule is not inconsistent with the general emissions trading policy referenced by the commenter (51 FR 43814; December 4, 1986), i.e., that "bubbling" may not be used to avoid a section 112(d) standard. The Early Reductions provision does not provide a mechanism for a source to avoid applicability of a section 112(d) standard. Rather, it provides for a compliance extension in the form of an alternative emission limit for the source for a period of six years in exchange for the source having achieved a certain emissions reduction level by a specified date (either by January 1, 1994 or before proposal of an otherwise applicable section 112(d) standard). The source must meet the section 112(d) standards when the compliance extension has expired.

Moreover, the legislative history indicates that Congress wanted EPA to encourage participation in the Program. See H.R. Rep. No. 101–490, 101st. Cong., 2d Sess. 332 (May 17, 1990) ("In the administration of this provision EPA thus should strive to encourage companies to take advantage of this incentive to reduce emissions early.") In addition, the significance threshold (i.e., 10 tons per year, or 5 tons per year at a contiguous plant site less than or equal to 25 tons per year) is designed to ensure that substantial real reductions are achieved and that the Program is not trivialized. The flexibility afforded through aggregating emission points offers greater incentive to participate in the Early Reductions Program. Greater overall participation in the Program combined with the minimum threshold for early reductions achieved will help ensure that the reductions achieved under the Program are both real and substantial and the concomitant environmental benefits maximized.

The commenter argues further that the random pooling approach that allows for credits undertaken in the past demonstrates that subparagraph (a)(5) is inconsistent with the purposes of the statute. The commenter argues that the justification for random pooling—to encourage greater participation in the Program and thereby reduce air toxics emissions—is not present if a source can include past reductions in the pool. The commenter concludes that any pollution reduction measure undertaken prior to the enactment of the law cannot have been dependent on the incentive of pooling. The commenter acknowledges that past reductions can be credited, but that they should not be pooled with unrelated, uncontrolled emission points to demonstrate an early reduction.

The statute affords a six year extension for those sources that achieve a 90 (95) percent reduction in emissions by a specified time. Those emission reductions may have occurred at any time back to 1987, and in limited instances 1985 or 1986. The commenter assumes that the only time applicants will use the grouping of emissions points under proposed paragraphs (a)(4) and (a)(5) is to get credit for past actions, make no additional reductions, and obtain a 6-year extension for remaining uncontrolled emission points within the Early Reductions source. This will not be the case. The EPA has discussed tentative Early Reduction plans with many companies and has received several enforceable commitments which indicate that the flexible definition of source is encouraging prospective emission reduction projects. In many instances, EPA expects that an applicant will group some recently well-controlled emission points with others, some or all of which may have controls installed on them. The ability to apply credits in excess of 90 (95) percent reduction from

[1] This conclusion is limited to the context of the Early Reductions Program for several reasons. In particular, Congress specifically contemplated netting one hazardous pollutant against another for purposes of this program. Congress indicated in the legislative history that it wishes EPA to encourage participation in this program to obtain early reductions (see discussions below); and the statutory requirement for 90 percent reductions raises quite different factual and policy issues than might be applicable elsewhere.

one point to a point unable to achieve 90 (95) percent by itself, provides an incentive to control the second point enough to cover the shortfall where it would not have otherwise.

For example, suppose the applicant previously controlled a 100 ton emission point "A" to a 98 percent control level, i.e., it now emits 2 tons of HAP's. The applicant also has a second 100 ton uncontrolled emission point "B." Existing control measures for point B indicate that MACT will likely require at least 90 percent reduction. However, a much less expensive technology can reduce those emissions from point B by 85 percent, i.e., to 15 tons. Furthermore, the owner has determined that he would realize a net savings if he could implement 85 percent control now and 10 years later implement MACT, compared with meeting MACT in four years. The extra time gained from a compliance extension would also allow development of process modifications that would completely eliminate HAP emissions from his source. Without proposed paragraph (a)(5), the applicant will have no incentive to install any controls on point B prior to a section 112(d) standard because that point by itself will not be reduced by 90 (95) percent, short of installing MACT controls anyway. However, if it can "credit" an additional five tons from emission point A, it will have an incentive to participate in the Program for both points A and B, and thereby substantially reduce overall air toxics emissions from that source. Without the option of proposed paragraph (a)(5), the source would not seek a compliance extension for point B and would have no incentive to enter the Program, and the emissions from the two points will be 102 tons; by entering both points in the Program using proposed paragraph (a)(5), the source's emissions will be 17 tons, which is greater than a 90 (95) percent reduction from the original 200 tons being emitted by the two points. Moreover, there is no basis in the law for penalizing those that made reductions between 1987 and the passage of the CAA Amendments in defining a source.

The same commenter also objects to pooling emissions that would have occurred anyway, especially shutdowns, to shield points that otherwise would have had to comply with a section 112(d) standard.

There is no basis to require, as the commenter urges, that an applicant certify that any reductions (in particular any shutdowns) would not have occurred but for the Early Reductions provisions of the law. This comment and others are addressed more fully in the section entitled "Allowable Emission Reductions" below.

A number of commenters felt the definition of source should be consistent with the source definition proposed in Title V of the CAA, and therefore be consistent with other sections of the CAA.

The definition of source for purposes of section 112(i)(5) is consistent with the definition of source under section 112 of the CAA. Nothing precludes different definitions or interpretations of the term "source" in other parts of the CAA. The Title V permitting authority will be required to establish permit limits for a facility during the permit process required by the Title V permit program. It may well be that one permit for a contiguous facility may contain permit limits for multiple section 112(d) sources. Whether part of the Early Reductions Program or not, many industrial facilities will be subject to more than one section 112(d) standard and thus may have more than one section 112(d) "source" as part of its permit.

One commenter suggested that the source definition be expanded to cover all sources for which EPA is currently developing standards. Similarly, a second commenter requested that the source definition be revised so that it is linked to the list of categories and subcategories for which section 112(d) standards will be developed.

As noted earlier, EPA has not yet determined what groups of emission points will constitute a source for any particular section 112(d) standard.

The definition of source is set forth in a manner consistent with the broad statutory definition. Section 112 will establish standards for hundreds of different types of industrial processes and other sources that emit HAP's. It is impossible to determine at this time how "source" might be defined for any particular source category to be regulated by a section 112(d) standard. As noted above, the list of potential source categories to be subject to regulation does not necessarily aid in the definition of source. In some instances, an industrial source category (e.g., a particular type of manufacturing process) may have one "source" for purposes of a section 112(d) emission limit. In other instances, multiple sources may be included within any source category, e.g., tanks in a process could be one source and wastewater emissions from the same process may constitute another source within the same source category. The EPA has not yet developed any specific definitions of source to all of the categories listed in 56 FR 28548 (preliminary source category listing).

Included in the source definition is a significance threshold (discussed above) to ensure that application of the flexible source definition results in meaningful reductions of emissions. A number of comments were received regarding the significance threshold.

One commenter believed that § 63.74(b) of the regulation that defines significant emissions unnecessarily restricts participation in the Program by smaller stationary sources. Another commenter agreed that the Early Reductions Program should focus only on major emitters (i.e., 10 tons/yr or 5 tons/yr at less than 25 tons/yr facilities). Another commenter felt that the definition of significant should include only 10 ton/year sources; allowing smaller sources to participate would waste resources on such small sources.

The EPA's definition of source is designed to provide broad flexibility in defining source for purposes of the Early Reduction provisions. The goal is to encourage widespread participation in this Program to achieve early reductions of air toxics emissions. The significance threshold included in 63.73(b) is designed to ensure that significant reductions occur. It is important to point out, however, that the 5/10-ton threshold of significant emissions applies to only subparagraph (a)(4) (formerly (a)(5) in the proposed rule; proposed paragraph (a)(4) has been deleted in the final rule). Thus, any process unit or other entity that meets any definition in (a)(1) through (a)(3) is eligible for an Early Reduction extension, even if it emits less than the 5- or 10-ton threshold. Thus, EPA anticipates that in most instances, even smaller facilities will be able to participate in the Program.

While EPA could have considered other thresholds, such as 3 tons/25 tons per year or 20 percent of any plant's emissions, as suggested by some commenters, the levels chosen are a reasonable attempt to balance the various factors involved, including allowing participation and assuring significant reductions.

One commenter requested clarification of the source definition as it relates to a source that services more than one production unit, such as a wastewater system.

Under § 63.73(a)(3), it is possible to define a unit such as a wastewater treatment system, that serves multiple parts of an entire plant, as a single source.

Given the flexibility of the source definition, one commenter wanted assurance that the source defined for

early reductions would remain constant throughout the compliance extension, regardless of how an applicable section 112(d) standard defined a source. The commenter questioned what would happen if the source defined by an applicable section 112(d) standard is different from the source defined under the Early Reductions Program.

Once an individual source is defined and accepted by EPA as part of the Early Reductions Program, the Early Reduction source will not change as a result of a section 112(d) standard. Any particular section 112(d) standard may apply to the entire Early Reduction source or to a subset of emission points within that source. All emission points included in the defined Early Reduction source are entitled to a 6-year extension from all otherwise applicable section 112(d) standards. At the end of the 6-year period, emission points affected by the earliest applicable section 112(d) standard must meet those standards. Emission points not affected by the earliest section 112(d) standard must continue to meet the alternative emission limitation until 6 years after the compliance date of any section 112(d) standard applicable to the emission point. Any emission points not included in the Early Reduction source definition, but included in the source definition for a section 112(d) standard must achieve reductions according to the compliance schedule in the applicable standard.

Another commenter felt that owners or operators should have the flexibility to redefine sources if significant process changes or production increases were made during the extension period, or if portions of a plant which were shut down restarted.

Once an individual source is defined and accepted by EPA as part of the Early Reductions Program and the source has been granted a 6-year extension by permit, the source cannot be redefined. If a portion of the original source restarts or expands, those emissions must be accounted for in the post-reduction emissions. If part of a source shuts down or curtails production and production capacity is increased at another unit or is replaced by a new unit at the plant site not included as part of the original source, the HAP emissions from the increased production outside of the Early Reduction source must be accounted for as well. This is to ensure that emissions from the source are not simply moved elsewhere in the plant. Owners or operators must give careful consideration to the designation of "source" when applying for the Early Reductions Program in light of potential future expansions.

If a source anticipates increased production in certain areas of its facility, the owner or operator has several options. The flexibility of the source definition allows the applicant to define a source that does not include the portion of the facility that may expand. The applicant may also reduce emissions from the base year by greater than 90 (95) percent, thereby allowing for subsequent increases in emissions that would still meet the required reduction. If owners or operators can anticipate what changes will be made to the source, they may coordinate with the State in determining the most appropriate type of alternative emission limitation (i.e., a numerical emissions limitation for each emission point or other requirement) that may allow more flexibility for expanding one portion of the source. The EPA recognizes that process changes are necessary, but to participate in this Program, overall source emissions must remain at a level that is 90 (95) percent of the base year emissions. The permitting authority may revise or adjust alternative emission limits through permit modifications as appropriate, provided that the overall 90 (95) percent reduction for the source is maintained during the extension.

Finally, one commenter asked for clarification regarding a situation in which a defined source adds a new line identical to that already included in the source definition.

In most cases, new emission points will not be able to participate in the Early Reductions Program. The CAA specifies that a compliance extension may be granted only to an existing source, e.g., those emission points existing in the selected base year. New emission points (those built after the base year) would thus be outside the scope of the previously defined Early Reduction source, and therefore would be subject to section 112(d) standards, if previously proposed.

The only exception occurs when the entire plant site or an entire enclosed building is defined as the source by the applicant and a "new" process unit is constructed within the plant site or building, respectively, and emits less than 10 tons/yr of a single HAP and 25 tons/yr of total HAP's. The new unit must then be included as part of the Early Reduction source and the source must maintain the original 90 (95) percent emission reduction from base year emissions. Emissions from the existing points in the original source must therefore be reduced to compensate for the additional emissions from the new points. If, however, emissions from the new unit exceed 10 tons/yr of a single HAP or 25 tons/yr of total HAP's, the new unit is considered, for the purposes of Early Reductions only, a source by itself and thus would not be part of the original Early Reduction source, regardless of the source definition. The EPA will distinguish between existing sources and new sources in other rules. However, early reductions occur before proposal of section 112(d) standards and before other rules that will distinguish between existing and new sources are finalized. Furthermore, the Early Reductions Program applies only to existing sources. Therefore, EPA had to make an administrative determination for the purposes of Early Reductions that new units emitting greater than 10 tons/yr of a single HAP and 25 tons/yr of total HAP's are new sources. The EPA may distinguish between new sources and existing sources differently in other rulemakings.

B. Base Year Emissions

Two commenters suggested that the base year be different than 1987. One commenter wanted 1984 to be an acceptable base year if data had been submitted to EPA during that year. Another commenter suggested that 1990 would be a more relevant base year since 1990 would be consistent with Title I requirements.

The CAA specifically states that the base year not be earlier than 1987 except that the source may choose 1985 or 1986 as the base year only if the source owner or operator can demonstrate that supporting data pursuant to an information request under section 114 of the CAA were received by EPA prior to November 15, 1990. To provide maximum flexibility to sources, EPA is allowing any base year after 1986 that the owner or operator chooses. However, emission data developed during years other than the base year, including years prior to 1985, can be used for determining base year emissions if the data are representative of operating conditions in the base year. Owners or operators will have to demonstrate the applicability of these data to base year conditions.

Two commenters suggested allowing base year emissions that are substantially greater than previous years as long as the emissions were within permit levels.

The CAA specifically states that base year emissions cannot be "artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures." Permit levels are simply a maximum acceptable

emission limit and may not reflect "actual and verifiable" emission levels as required by the CAA. Therefore, comparison of base year emissions to permit levels does not determine the relationship of base year emissions to emissions in other years. Even emissions well within permit levels, but substantially greater than other years would not be allowable. For example, a permit may be written to allow 100 tons per year, but if the source were emitting 30 tons per year in years other than the base year, base year emissions of 60 tons from the source would not be allowable. It is clearly the intent of the CAA to avoid the use of unusually high emission levels to count toward the base year, which would lead to overstating reductions achieved and minimize the benefits to the environment achieved by the Early Reductions Program.

One commenter requested that the term "substantially greater" be clarified.

The determination of "substantially greater" is necessarily subjective. "Substantially greater" will be determined in large part by historical emissions variations of the source and the reasons for the variations. If an application is denied because base year emissions are found to be "substantially greater" than other surrounding years, the reviewer will provide rationale for this determination. Each base year review will be judged on a case-by-case basis. The enabling document ("Enabling Document for Regulations Governing Compliance for Early Reductions of Hazardous Air Pollutants," EPA–450/3–91–013, July 1991) provides guidance to reviewers and submitters to better understand what is "substantially greater." To avoid later problems with this issue, it is recommended that the applicant request a preapplication conference to discuss the specific details surrounding its base year emissions. The preapplication meeting should be held with the appropriate EPA Regional Office and State.

One commenter questioned EPA's requirements for establishing base year emissions. Specifically, the commenter felt applicants should not be required to submit evidence that base year emissions are not artificially high or that emissions reductions due to lower production rates or shutdowns are permanent. The commenter contended that the seriousness of violating section 114 requirements and the threat of enforcement would make it unnecessary to show this type of evidence.

Early reduction applicants will be required to submit evidence demonstrating that base year emissions are not artificially high. Submission of this information provides reasonable assurance desired by the applicant that base year emissions will be acceptable for an Early Reductions demonstration, except in the case of error or submittal of fraudulent information. Prior approval of base year emissions facilitates the Title V review process, where the actual reduction demonstration is made.

The regulation has been changed with regard to providing evidence of lower production rates and shutdowns. Sources will not be required to show evidence that lower production rates or shutdowns are permanent for the extension duration. This will be accomplished by making the shutdown or lower production rate conditions of the Title V permit.

Two commenters also requested guidance in assessing the presence of trace quantities of HAP's. They suggested that there should be a minimum quantity of HAP's present before having to account for these emissions in the base year.

Trace pollutants and impurities will be handled on a case-by-case basis. General policy would be difficult to develop for all pollutants. For example, small quantities of dioxin may be considered significant while the same quantity of another non high-risk pollutant would be considered an inconsequential trace amount. Based on process and product knowledge, owners or operators should be aware of the possible presence of HAP's in their emissions. If trace quantities of HAP's are expected or known to be emitted, owners or operators should account for their presence.

The actual determination of the quantity of emissions may be similar to the determination of small, insignificant emission points. Generally, testing will not be required. The source owner or operator may make conservative assumptions in his calculations to determine the quantity that may be emitted. If trace HAP's are neither expected nor known to be present, then there is no need to make an assessment. The EPA expects participants in the Program to quantify all HAP's reasonably expected to be present.

A number of commenters requested that Toxics Release Inventory (TRI) data be acceptable for base year emissions.

The TRI data alone are not sufficient to support base year emissions. The Early Reductions Program requires more rigorous support for emissions data than is required by the TRI. If the supporting information for the TRI data meets all the requirements of the Early Reductions Program, then that information will be acceptable. Supporting documentation for the Early Reductions Program must stand on its own merit.

Various commenters representing industry asked that EPA allow the use of average emission factors when estimating base year emissions from equipment leaks.

Average EPA equipment leak emission factors generally may not be used in establishing base year emissions. Use of EPA average emission factors for base year emissions would artificially inflate the base year estimate. Subsequent use of a more source-specific method for the post-reduction demonstration would result in lower estimated emissions, but in fact would only be a "paper" reduction. As mentioned in the preamble to the proposed regulation, source owners or operators can establish emission levels for equipment leaks using any procedure except for average emission factors established in the document entitled "Protocols for Generating Unit Specific Emission Estimates for Equipment Leaks of VOC and VHAP," EPA–450/3–88–010, October 1988.

The EPA has reconsidered disallowing use of average emission factors to establish equipment leak emissions only in the case where no equipment leak emission reduction will be claimed; i.e., equipment leak emissions are the same in the base year and the post-reduction year.

The EPA is allowing this exception because it will result in greater actual emission reductions from the source. The source will have to control non-equipment leak emission points to a greater extent to compensate for the over-estimate of the post-reduction equipment leak emissions. In addition, it is noted that equipment leaks must be less than 10 percent of base year source emissions, or the source could not achieve a 90 percent overall reduction.

Appendix B has also been clarified to better describe the equipment leak "source." The negotiated regulation for equipment leaks (56 FR 9315, March 6, 1991) will require that certain equipment in HAP service within a process unit to which the equipment leak standards are applicable must be viewed as a whole. This is the case for valves, pumps, and connectors within a process unit, which must be considered together, as the regulation is written in terms of percent leaking components across a process unit. That is, valves, pumps, and connectors cannot be split up such that some of the valves in a process unit have an Early Reduction alternative emission limitation and the rest meet the section 112(d) standard. For example, it must be that either all

valves within a process unit are in the Early Reduction Program or none are.

The logic for requiring inclusion of all the valves, pumps, or connectors from a process unit, does not extend to the other equipment covered by the equipment leak rule, such as pressure relief devices or product accumulator vessels, which will be subject to individual standards applicable to each device or vessel, and not all devices or vessels as a group. Equipment subject to such "piece-specific" standards could individually be assigned alternative emission limits as part of an Early Reductions source or meet the section 112(d) standard, and are not constrained by the process unit coverage.

Two commenters were concerned that the review process would result in delays and suggested that base year emissions by accepted if EPA did not complete the review in a specified time frame.

It is EPA's goal to review all enforceable commitments and submittals within the times identified in the rule. However, EPA intends to adequately review all submittals, and will take whatever time is necessary to ensure that the applications are complete and verifiable. The EPA will not automatically accept base year emissions that have not been reviewed due to time constraints. The purpose of reviewing base year emissions early is to provide some assurance to the submitter that the base year emissions for Early Reductions will be approved at permit review.

Finally, a number of commenters suggested that once base year emissions are accepted by EPA, there should be no further review or auditing of the data.

Acceptance of base year emissions data does not provide an absolute shield against revision should the data later be found incorrect. Reviewers and commenters are urged to present any criticisms during the early review period regarding base year data. Applicants can make appropriate modifications at that point and proceed with reasonable confidence that their emissions are acceptable. Base year emissions that have been reviewed and approved are still subject to additional review if errors or fraud are discovered at a later date. Discovery of incorrect or fraudulent information in the emission data or supporting materials after initial approval could potentially invalidate the base year and/or require the applicant to make revisions.

C. Enforceable Commitments

Two commenters suggested that there be no penalty for failure to meet an enforceable commitment. They proposed that sources failing to meet the commitment simply be allowed to revert back to the requirements of an applicable section 112(d) standard.

Sources that make an enforceable commitment to achieve early reductions can revoke the commitment without penalty up to December 1, 1993. These sources would thus be subject only to the applicable section 112(d) standard. This allows the source a considerable amount of time to attempt to achieve the promised reductions. But, if the source is unable to achieve those reductions, they may terminate their participation in the Early Reductions Program without sanction, provided they do so by the required deadline. Other participants in the discussions leading up to proposal of this rule expressed the concern that Congress intended that commitments are to be kept, and that once made, they could never be revoked. To give any meaning to the "enforceable" part of enforceable commitment, there must be something that is enforceable. The EPA believes that if after given every opportunity to revoke the commitment if necessary, the unrevoked commitment is enforceable. The EPA feels that the suggested compromise between the competing positions is reasonable.

If those who achieve the committed reductions prior to January 1, 1994 subsequently increase emissions in violation of their Title V permit conditions (or in violation of the enforceable commitment if the permit has not yet been issued), they would not have to revert to meeting the section 112(d) standard. They would be subject to an appropriate penalty, but would continue to maintain the considerable benefits of continuing in the Early Reductions Program. Likewise, those who indicate that they are continuing in the Program by not revoking their commitment prior to December 1, 1993, but who fail in their performance by not achieving the reductions committed to prior to January 1, 1994, will likewise be subject to an appropriate penalty. The EPA will use enforcement discretion to determine the severity of penalties, based on the efforts made to achieve the reductions.

One commenter recommended that a grace period be allowed for sources that cannot make their enforceable commitments on time due to external forces such as delays in test results.

The CAA requires that the reductions specified in the commitment must be achieved by January 1, 1994 to receive a section 112(d) compliance extension. The Early Reductions regulation allows test data to be received as late as March 31, 1994 to demonstrate that the reductions have been achieved. The reductions, however, must have been achieved by the date specified by the CAA. If a source cannot achieve the reductions required by the enforceable commitment, the applicant may rescind the commitment as late as December 1, 1993 without penalty. Therefore, the applicant should have adequate time to assess whether or not the source can achieve the reductions and to take whatever action he deems appropriate.

Another commenter suggested that the rule should assure that companies that make good faith efforts to comply with the requirements of the Early Reductions Program not be subject to enforcement action if errors or mistakes are discovered in the enforceable commitment either by EPA or the company.

The EPA will use its enforcement discretion for cases where companies make an honest mistake in their estimation of the base year emission data or supporting materials. In such instances, companies may be required to revise their base year and make additional reductions in order to achieve 90 (95) percent emission reductions. Alternatively, they may rescind their commitment without penalty prior to December 1, 1993. Sources found submitting false or fraudulent information in their commitment for early reductions, even after initial approval of their base year submission, shall be subject to enforcement action under section 113 of the CAA or other Federal statutes.

One commenter questioned the authority of the reviewing agency to challenge the control plan proposed as part of an enforceable commitment.

The control plan outlined in the enforceable commitment is a general, nonbinding strategy that the source will implement to reduce emissions and is not enforceable. The owner or operator develops the plan with the goal of reducing emissions by 90 (95) percent. As the owner or operator implements the plan, however, he may discover that the emission reduction can be better met with another control strategy. The control plan presented in the enforceable commitment must, therefore, remain somewhat flexible. The general plan is required to assure the reviewing authority that the reductions can be achieved and that the source owner has given serious consideration to achieving early reductions. The control plan will not likely be questioned or the cause for denial unless it indicates that the required reductions will not be met or the plan does not appear reasonable. The ultimate test will not be whether or

not the described control plan will be followed, but a demonstration that the reductions have actually occurred.

One commenter requested clarification of the time limit given for submitting revised data for an enforceable commitment.

Within 90 days of receiving comments indicating deficiencies in a submittal, a source owner or operator must either revise and resubmit the submittal or notify the permitting authority that a revised submittal eventually will be sent; otherwise the submittal will be considered by EPA to be withdrawn. This allows the reviewing agency to recognize in a timely fashion which commitments will be revised and which will be rescinded. Because of the large number of applications expected to be received by EPA, a deadline for resubmittal or notification of intent to continue in the program is necessary to expedite the review process and to identify those sources that do not wish to pursue their reduction demonstration. A withdrawal alerts the reviewing agency not to pursue penalties after January 1, 1994 if the source fails to meet the required reductions. Base year emissions that are submitted for early review and not as part of an enforceable commitment do not have a deadline for resubmittal. The regulation has been clarified to distinguish the difference between resubmittal schedules.

D. Allowable Emission Reductions

Several regulatory agencies and citizens groups felt that only voluntary reductions should be credited toward demonstration of early reductions.

It is clearly the intent of the CAA to credit sources for emissions reductions accomplished by any means, as long as the emission reductions are actual and verifiable and made prior to proposal of an applicable standard or, in the case of an enforceable commitment, by January 1, 1994. According to the legislative history of the CAA, the Early Reductions Program initially was limited to voluntary reductions. Some commenters on the draft legislation suggested that limiting qualified reductions was unfair. For example, facilities located in States with extensive air toxics programs would not be able to benefit from early reductions. After considering this and other comments there was a deliberate change to the CAA Amendments to allow any reductions in emissions after the base year. The EPA interprets this change as the intent of Congress to expand the Program to allow all early reductions, regardless of how they are achieved.

One commenter felt that HAP emission reductions resulting from State or Federal regulatory programs designed to control VOC (such as New Source Performance Standards or PSD) should not be credited towards Early Reduction demonstrations. The commenter suggested that only reductions achieved to control air toxics should be used for this Program, not reductions achieved to reduce non-toxic VOC. Another commenter asked for clarification as to whether offsets used in New Source Review are creditable for the Early Reductions Program.

The statute provides that the Administrator shall issue a permit to a source that achieves a 90 (95) percent reduction in emissions of HAP's that allows the source to meet an alternative emission limit reflecting the 90 (95) percent reduction in lieu of the otherwise applicable standard issued under section 112(d) if the reduction is made before the proposal of a section 112(d) standard or if the source enters into an enforceable commitment before proposal of the standard and makes such reductions before January 1, 1994. The statute further provides the reduction will be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987. There is no limitation in the statute as to the reasons those reductions were made.

There were also comments pertaining to the definition of "malfunction," particularly with regard to how startups and shutdowns will be credited towards base year emissions.

Scheduled startups and shutdowns are considered routine. Emissions created by these routine operations can be counted toward base year emissions. However, startups and shutdowns associated with malfunctions are not routine and cannot be included with base year emissions. "Actual emissions" as defined in the proposed rule do not include excess emissions from a malfunction. Likewise, other emissions from startups and shutdowns directly attributed to the malfunction should not be included. In order to clarify this exclusion, the definition of actual emissions in the Early Reduction regulation has been modified to read "* * * does not include excess emissions from a malfunction or any startups and shutdowns associated with a malfunction."

Another commenter contended that the definition of malfunction would allow sources to earn credit for poor maintenance. Since the definition states that failures caused by poor maintenance shall not be considered malfunctions, the commenter felt sources could inflate base year emissions and also obtain reductions by performing maintenance on neglected process units.

Sources will not be allowed to credit emission reductions if the base year emissions were in violation of emission standards. However, emissions that result from poor maintenance, careless operation, or any other preventable upset conditions or preventable equipment breakdown that are not in violation of any emission standard are not considered malfunctions and can be credited toward base year emissions. Thus, the Early Reductions Program provides an incentive for sources to improve their maintenance and operation practices (which would not otherwise be required), resulting in a net benefit to the environment.

E. Demonstration of Early Reductions

Sources will be granted compliance extensions if they demonstrate reductions of HAP's of 90 (95) percent. A number of comments were received on how that demonstration should be made.

One commenter suggested that sources be granted compliance extensions if they achieve 90 (95) percent reduction of one or more specific HAP's.

The CAA specifies that 90 (95) percent reduction of all HAP's from the defined source must be achieved. Selective HAP reduction is not allowed. The Early Reductions Program allows flexibility in defining the source, but that flexibility cannot be extended to specific pollutants within the source, with the exclusion of others.

Two commenters recommended that emissions be expressed as emissions/pound of product rather than a specific quantity per year. They felt that this would overcome problems with fluctuating production rates, particularly when establishing the base year emission level.

The statute requires 90 (95) percent reduction from base year emissions. Thus, the Early Reductions Program is concerned with absolute reductions from base year emissions, not a percent reduction from what current emissions would have been. The alternative emission limit will reflect a specific emission level that is 90 (95) percent less than base year. Sources with fluctuating production must consider future increases in emissions, and make adjustments accordingly.

Several commenters urged EPA to require particulates to be controlled to 95 percent, and not allow averaging with gaseous pollutants. Other commenters supported the weighted

average approach for gaseous and particulate mixtures.

At proposal EPA recognized that there may be sources that have already achieved 95 to 99 percent reduction in particulates through control measures employed prior to the earliest allowable base year, but that have significant potential reductions from relatively uncontrolled gaseous HAP emissions. If, for an Early Reductions demonstration, such sources were required to reduce gaseous HAP's by 90 percent as well as reduce the remaining particulate emissions by another 95 percent, the source may find it impossible to reduce particulate emissions further or find that further reductions likely would exceed requirements of an applicable section 112(d) standard for the particulate emissions. In either case the source would not seek a compliance extension and thus would not make early reductions of the gaseous HAP's.

A telephone query from a potential applicant exemplified this problem. This source coats metal parts and has vents that release both gases and particulates. In this case particulates are very tightly controlled (prior to the earliest possible base year) but gases are not. The source was interested in making early reductions by reducing the gases by 90 percent, but if it also had to achieve an additional 95 percent reduction in the already tightly controlled particulates, it would not be able to enter the Program.

The EPA recognized that it would be beneficial from an environmental standpoint to allow a reduction in the gases without requiring an additional 95 percent for the particulates; i.e., without some allowance for this situation, the source would not enter the Program and no reductions would be achieved in the gaseous HAP's until required by a section 112(d) standard. The EPA therefore proposed to allow a source to average the required reductions for gases and particulates; particulates could be reduced by less than 95 percent as long as compensating reductions were achieved in gaseous HAP's. The overall target reduction to be achieved would be between 90 and 95 percent and would be determined by the relative amounts of gases and particulates emitted from the source in the base year. This averaging method still would require the same amount of overall HAP emission reduction as would the separate 90 and 95 percent requirements.

The proposed averaging method could have been used at any source, whether the gases and particulates were emitted from different emission points or the same emission point. However, based on commenters' concerns, EPA has reconsidered the applicability of the averaging method, and has narrowed the scope.

The statutory language, in section 112(i)(5), explicitly requires 95 percent reduction of particulate HAP's and 90 percent of gaseous HAP's. The EPA, however, feels that Congress did not consider or was not aware of emission points that emitted both gases and particulates and that different controls are required for each, and therefore did not provide for this situation. Furthermore, EPA believes that it would be beneficial to allow a weighted average for gases and particulates, when emitted from the same points, especially where only small quantities of one are emitted with respect to the other, in light of the alternative of no early emission reduction.

Therefore, the final rule allows the use of averaging at sources in which the gases and particulates are emitted from the same points. For example, if 3 emission points at the source emit both gases and particulates, these emission points could be aggregated to establish a combined percent reduction between 90 and 95 percent, e.g., the 3 points could achieve 94 percent reduction overall. The combined percent reduction would depend on the relative amounts of gases and particulates emitted by the points. By restricting the use of averaging gaseous and particulate emission reductions, EPA notes that some sources emitting either gases or particulates from different vents may now be unable to achieve the required early reduction if averaging were not allowed. In these cases, because emissions are emitted from different points, the source should be defined to exclude those points that create the difficulty in emission reduction. However, the source must still conform to one of the allowable definitions in the regulation.

One commenter stated that EPA should not expect emissions testing as the basis for demonstrating post-reduction emissions.

Sources will be required to adequately document post-reduction emissions before being granted an alternative emission limit. The EPA requires the best available data to demonstrate emissions. Direct measurement of emissions is the presumed best demonstration for many cases. However, test data will not be required to demonstrate all emissions. Calculations based on engineering principles, emission factors, or material balances may be acceptable if the applicant demonstrates to the satisfaction of the permitting authority that: (1) No test method exists; (2) it is not technologically or economically feasible to perform source tests; (3) it can be demonstrated that the accuracy of a calculated estimate is comparable to source testing; or (4) emissions from one or more set of points are insignificantly small compared to total source emissions. The EPA agrees that in some situations (e.g., storage tank emissions or batch operations using solvent HAP's) calculations or mass balances generally will be acceptable and may be the preferred method of establishing emissions.

Another commenter opposed any efforts by EPA to require continuous emissions monitoring to document early reductions.

Continuous emission monitoring (CEM) is not a general requirement of the Early Reductions Program to document that the source has achieved sufficient reductions. General monitoring requirements for permit provisions, including, but not specifically, alternative emission limitations established for the Early Reductions Program, will be established according to the requirements of Title V of the CAA. Section 504 of Title V states that continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Therefore, if other acceptable means for determining compliance are available, CEM will not be required. Nothing in the CAA, however, prevents the requirement of CEM for the Early Reductions Program and if no other acceptable methods are available, CEM may be required.

Two commenters requested clarification of the term "sufficiently variable" used in § 63.78(b)(4) as the basis for denial. The commenters were concerned that batch processes would not be able to qualify for compliance extensions because of the inherent variability of batch systems.

The term "sufficiently variable" has been removed from the language of the regulation. The EPA recognizes that batch processes are inherently variable, and that variability alone should not be a reason for denial. The reason for denial will now read: "The emission of hazardous air pollutants or the performance of emission control measures is unreliable so as to preclude determination that the required reductions have been achieved or will continue to be achieved during the extension period."

F. High-Risk Pollutants

1. Summary

Section 112(i)(5)(E) specifies that with respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities, the Administrator shall limit the use of offsetting reductions in emissions of other HAP's from the source as counting towards the 90 (95) percent reduction in such high-risk pollutants. In the final rule, the number of pollutants on the high-risk list is 47, rather than 35 as proposed. The additional pollutants are listed in Table 1.

TABLE 1. LIST OF POLLUTANTS ADDED TO HIGH-RISK LIST

CAS No.	Chemical	Weighting factor
53963	2-Acetylaminofluorene	100
532274	2-Chloroacetophenone	100
334883	Diazomethane	10
96128	1,2-Dibromo-3-chloropropane	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
151564	Ethylene imine (Aziridine)	100
77474	Hexachlorocyclopentadiene	10
0	Manganese compounds	10
60344	Methyl hydrazine	10
0	Nickel compounds	10
684935	N-Nitroso-N-methylurea	1000
62759	N-Nitrosodimethylamine	100
56382	Parathion	10
7803512	Phosphine	10
7723140	Phosphorus	10
8001352	Toxaphene	100

These pollutants have been added to the list since proposal for a number of reasons including changes to the methodology EPA used to select the pollutants and updated health effects information. Five pollutants which were proposed for the high-risk list have been deleted. These are benzotrichloride; chloroprene; 1,1,2,2-tetrachloroethane; 2,4-toluene diisocyanate; and vinylidene chloride. The final list of high-risk pollutants and their weighting factors are shown in Table 2.

TABLE 2. LIST OF HIGH-RISK POLLUTANTS

CAS No.	Chemical	Weighting factor
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
79107	Acrylic acid	10
107131	Acrylonitrile	10
0	Arsenic compounds	100
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
0	Beryllium compounds	10
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
0	Cadmium compounds	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
0	Chromium compounds	100
107302	Chloromethyl methyl ether.	10
0	Coke oven emissions	10
334883	Diazomethane	10
132649	Dibenzofuran	10
96128	1,2-Dibromo-3-chloropropane.	10
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether).	10
79447	Dimethylcarbamoyl chloride.	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100
77474	Hexachlorocyclopentadiene.	10
302012	Hydrazine	100
0	Manganese compounds	10
0	Mercury compounds	100
101688	Methylene diphenyl diisocyanate (MDI).	10
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
0	Nickel compounds	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin.	100,000
8001352	Toxaphene (chlorinated camphene).	100
75014	Vinyl chloride	10

The specific changes made to the methodology and the rationale for specific pollutants being added to or deleted from the list are described below.

2. Methodology for Selecting Pollutants for the High-Risk List

The methodology used to formulate the list of high-risk pollutants, the list itself, and the weighted offsetting scheme are a direct response to the mandate in section 112(i)(5)(E) of the Act. The high-risk list and the weighted offsetting scheme may not be applicable to, or appropriate for, other sections in Title III of the Act. Other provisions of section 112, such as establishing lesser quantity emission rates under section 112(a) and identifying the relative hazards to human health from emissions of each of the listed hazardous air pollutants under 112(g) may also require the ranking of pollutants. The approach for identifying the high-risk pollutants may or may not be found to be appropriate for these or other provisions. The selection of today's approach for the purposes of section 112(i)(5)(E) is not intended to establish a precedent for other provisions or preclude the consideration of other alternative methodologies.

As presented in the preamble to the proposed rule, EPA used a number of criteria for selecting pollutants for the high-risk list. First, as specified by the CAA, chlorinated dioxins and furans (as listed in section 112(b)) were included on the high-risk list. Second, pollutants classified by EPA as Group A carcinogens (known human carcinogens) were judged to be of sufficient concern to be listed as high-risk. Third, as a way to systematically screen the remaining HAP's listed in section 112(b), EPA employed a three-tiered screening analysis for selecting high-risk pollutants.

In the first tier, health effects data were examined to rank pollutants based solely on health effects. The health

endpoints considered were carcinogenicity, reproductive and developmental toxicity, acute lethality, and systemic effects other than acute lethality (e.g., neurologic disorders). Consideration of health effects alone, however, was judged insufficient to address section 112(i)(5)(E) which describes high-risk pollutants as those for which high risks of adverse public health effects may be associated with exposure to small quantities. Accordingly, tier 2 of the analysis was exposure modeling using EPA's Human Exposure Model (HEM). The HEM provided an estimate of the ambient concentration 500 meters from a source emitting 10 tons per year at an average height of 10 meters under median meteorological conditions. As described in the preamble to the proposed rule, the ambient concentration predicted by the HEM was compared to selected risk levels to screen for pollutants likely to have an adverse effect at the exposure level that was modeled. For carcinogens, the modeled ambient concentration was compared to the concentration of each carcinogen that would result in an increase in cancer risk of one in ten thousand to the most exposed individual. For noncarcinogens, the modeled ambient concentration was compared to either (1) a level one order of magnitude greater than a verified inhalation reference concentration or oral reference dose, (2) a lowest observed effect level (LOEL) divided by an uncertainty factor of 100, or (3) the dose or concentration of a chemical that causes death in 50 percent of the exposed population (LD_{50} or LC_{50}) divided by an uncertainty factor of 1000.

Tier 3, which considered actual pollutant emissions as reported to the TRI, was intended to determine whether the pollutants were actually emitted at levels that could reasonably be expected to adversely affect public health. Pollutants with a low exposure potential were consequently eliminated from the high-risk list.

Several commenters stated that it was inappropriate to eliminate pollutants from the high-risk list based on emissions data. The commenters contended that use of the TRI is inappropriate because not all pollutants are reported, only large facilities in the manufacturing sector report to the inventory, and not all types of source categories are covered. The commenters felt that EPA should not eliminate substances because they are not currently in common use and that the tier 3 screen should be dropped from the analysis.

The EPA agrees with the commenters' concerns regarding use of the TRI and has consequently dropped tier 3 from the analysis. The EPA also agrees that chemicals not currently in common use should still be listed as high risk in case production of that chemical is resumed at a later date. The EPA now believes that tiers 1 and 2 adequately identify those pollutants that could reasonably be expected to adversely affect public health and thus limited the offsetting of these pollutants in the Early Reductions Program. The impact of dropping tier 3 is that the following pollutants have been added to the high-risk list: 2-acetylaminofluorene; 1,2 diphenyl hydrazine; toxaphene; nickel compounds; N-nitrosodimethylamine; ethylene imine (aziridine); dimethylcarbamoyl chloride; phosphorus and diazomethane.

Many commenters recommended changes to the parameters chosen for the tier 2 exposure analysis. Several commenters felt that the exposure assumptions were not conservative for several reasons including the meteorological data, the stack parameters, and the limitations of the HEM. One commenter stated that one year of meteorological data is not representative and that downwash was not considered. Two commenters suggested a shorter stack height of 3.5 meters and a 20 meter distance to the nearest residence. Another commenter recommended that the modeling use more realistic assumptions about the pollutants and emission sources. One commenter contended that the HEM is too simplistic because it does not consider actual exposure, short-term exposures or population activity patterns. Other commenters made suggestions which would make the analysis less conservative. Two commenters felt that the 500 meter distance to the nearest residence was too close. One of these commenters suggested a distance of 3000 meters and a 10-year population residence time (rather than the 70 year lifetime exposure associated with the cancer potency factor).

The second tier of the screening analysis to select the high-risk pollutants was a generic exposure modeling exercise. The EPA intended that the modeling results be used to determine which pollutants merited further analysis based on exposure potential. The EPA did not use the modeling results to estimate actual risk levels, but did use the modeling results to differentiate between pollutants. The EPA still considers the use of generic modeling parameters appropriate for this analysis because a wide range of emission release and exposure scenarios across many varied source categories are anticipated under the Early Reductions Program.

The HEM was used to estimate a theoretical downwind concentration of a typical HAP. Because the pollutants are released from various types of sources with variable stack parameters (stack height, emission velocity, distance to nearest residence, etc.) there was no attempt made to model site-specific conditions. Meteorological data used were representative of between 2 and 10 years of data from the selected meteorological station. A 10 meter stack height was chosen to represent a chemical plant. For the proposed rule, the modeling parameters also assumed a 70-year continuous exposure and a 500 meter distance to the nearest residence. Upon re-evaluation, EPA has made changes to these two parameters.

First, the assumption that exposure to a pollutant occurs continuously over a 70-year period has been changed to 33 years for the purposes of this rulemaking. Thirty-three years is a duration representative of the 95th percentile for the number of years an individual would remain at the same residence, based on data on population mobility and mortality. The 33-year duration was selected for use in this analysis as representative of a reasonable worst case approach to assessing exposure duration. Second, EPA reconsidered the choice of 500 meters to the nearest residence and has revised the analysis using a 200 meter distance. The 200 meter distance to the nearest residence is the distance that has been most often used by EPA for analyses estimating exposure to emissions from point sources. This distance represents a reasonable worst case for point source and is judged to represent a reasonable worst case for facilities that are anticipated to participate in the Early Reductions Program. The net impact of these changes was the addition of hexachlorocyclopentadiene, phosphine, parathion, and manganese compounds to the list.

Four commenters disagreed with the one in ten thousand presumptive risk benchmark for carcinogens, stating that it was not conservative enough. One commenter recommended that EPA include every carcinogen with a potency factor greater than 1.35×10^{-6} $(\mu g/m^3)^{-1}$ based on modeling a 3.5 meter stack. Another commenter argued that Congress intended that sources with risk levels of one in one million be controlled. In contrast, one commenter recommended the benchmark be lowered to one in one thousand. This

commenter believes that the one in ten thousand risk benchmark is inconsistent with the "Savings Provision" in section 112(q)(1), where standards promulgated under section 112 in effect prior to the 1990 amendments are to remain in force unless revised by EPA.

The exposure modeling exercise conducted as part of tier 2 of the screening analysis was used as a tool to identify pollutants that could potentially cause a high risk to public health (under the exposure scenario that was modeled). The EPA has decided that for carcinogens a one in ten thousand presumptive risk level is appropriate for this analysis. This decision is based primarily on guidance concerning acceptable risk discussed in the benzene NESHAP promulgated on September 14, 1989 (54 FR 38044). In the preamble to the benzene decision, the use of the one in ten thousand benchmark is described—"EPA will consider the extent of the estimated risk were an individual exposed to the maximum level of pollutant for a lifetime. The EPA will generally presume that if the risk to that individual is no higher than approximately one in ten thousand, that risk level is considered acceptable and EPA then considers the other health and risk factors to complete an overall judgment on acceptability. The presumptive level provides a benchmark for judging the acceptability of maximum individual risk, but does not constitute a rigid line for making that determination." In the case of the screening analysis for high-risk pollutants under the Early Reductions provisions, EPA believes the one in ten thousand presumptive risk level has been used appropriately. The commenters are reminded that the generic exposure analysis was not meant to estimate the actual risk from any one type of source category, but rather was used to differentiate between pollutants based on relative toxicities.

The EPA recognizes that other modeling assumptions could have been used that would have resulted in either more or fewer pollutants exceeding the presumptive risk level. However, EPA does not agree with the commenter's suggestion that every carcinogen with a potency factor greater than 1.35×10^{-5} $(\mu g/m^3)^{-1}$ should be considered high risk.

With respect to the comment that Congress intended that sources posing risks of one in one million be controlled, the commenter is referring to section 112(f)(A), the so-called "residual risk" provisions. In this provision it is stipulated that additional emission standards must be promulgated if a source's emissions pose a risk greater than one in one million after application of control technology (as stipulated in section 112(d)). The commenter is reminded that the Early Reductions Program provides an extension of the compliance time for applying control technology that is stipulated by standards promulgated under section 112(d). After the compliance time extension, facilities participating in the Early Reductions Program must still apply the required technology if their emissions exceed specified levels. In addition, facilities that participate in the Early Reductions Program are not exempted from a residual risk test under section 112(f), so the commenter's concern that the intent of Congress is not being fulfilled is unwarranted.

With respect to the Savings Provision of section 112(q)(1) the commenter is reminded that today's rule is not an emission standard, but procedures for obtaining an Early Reductions compliance extension. The use of the presumptive risk benchmark of one in ten thousand in the screening analysis for selecting high-risk pollutants has no bearing on NESHAP that have already been promulgated.

Two commenters questioned the benchmarks chosen for health effects other than cancer. These commenters felt that neither the LOEL divided by a safety factor of 100 nor the LD_{50} divided by a safety factor of 1000 were conservative enough. The commenters also thought that using a value one order of magnitude above the reference concentration was not conservative enough.

As stated in the preamble to the proposed rule, uncertainty factors were applied to the health effects benchmarks since the LOEL and LD_{50} values represent levels at which health effects are known to occur. These uncertainty factors were meant to account for variables such as interspecies variations and sensitive subpopulations, but do not incorporate all the factors typically used in developing reference concentrations. The uncertainty factors used to develop an inhalation reference concentration are typically applied to a lowest observed adverse effect level (LOAEL) or no observed adverse effects level (NOAEL). The resulting reference concentration represents a level at which the potential for adverse public health effects is considered to be negligible. However, the purpose of this analysis was to identify pollutants whose emissions could potentially present a high risk, not a de minimis risk. Therefore, the uncertainty factors used in this analysis were not meant to account for all the factors typically used in developing an inhalation reference concentration. For this analysis, EPA made a judgment that if a source's emissions were such that a LOEL or LD_{50} could potentially be exceeded (after application of the uncertainty factors and under the modeling scenario used) then the pollutant could be considered high risk. In this application, EPA believes uncertainty factors of 100 and 1000 to be appropriate. Similarly, with respect to using a value one order of magnitude above the reference concentration, EPA believes this to be an appropriate estimate of a level at which health effects could potentially be significant enough to be regarded as high risk.

Two commenters strongly urged EPA to confine the selection of carcinogens for the high-risk list to consideration of carcinogenic potency and not make use of the weight-of-evidence classification. Three commenters objected to the addition of four Group A carcinogens to the list after the pollutants had been excluded by the 3-tiered process. On the other hand, two other commenters recommended that EPA prioritize the high-risk list using a qualitative rather than quantitative approach (i.e., use weight-of-evidence reviews for identifying substances rather than potency factors).

The EPA believes it appropriate for identification of high-risk pollutants to consider both the weight of evidence and carcinogenic potency of a pollutant. The EPA stands by the decision to list Group A carcinogens as high risk based on the fact that these are known human carcinogens. The EPA judged that emissions of known human carcinogens are of sufficient concern that use of offsetting reductions in other less hazardous pollutants under an Early Reduction demonstration should be limited. Three of the pollutants (benzidine, bis(chloromethyl)ether, and chloromethyl methyl ether) are extremely potent carcinogens and were excluded from the 3-tiered process at tier 3. This means that, according to the 1989 TRI, these pollutants were not emitted by any reporting facility in quantities sufficient to exceed the risk benchmark level proposed by EPA. In spite of this, EPA felt it prudent to list them as high risk in case a source's emissions changed in the future. As discussed above, since proposal of the high-risk list, EPA has decided to eliminate tier 3 from the screening analysis. As a result, even if EPA had decided not to use weight of evidence as a criterion, these carcinogens would still be listed as high-risk pollutants. Benzene was also included on the list even though the risk benchmark level

was not exceeded when a 10 tons per year emission rate was modeled. The rationale for this decision was that in addition to being a known human carcinogen, benzene is a very high volume chemical and emissions in excess of 10 tons per year are not uncommon. The EPA believes that offsetting emissions of this known human carcinogen with less hazardous pollutants should also be limited.

Two commenters suggested that EPA revise the selection criteria to include only known human carcinogens (Group A), probable human carcinogens (Group B1), and noncarcinogens for which chronic human health effects can be expected to occur at extremely low levels of exposure.

In selecting pollutants for the high-risk list, EPA considered weight-of-evidence, potency and exposure potential of the pollutant. As described above, a weight-of-evidence classification of Group A (known human carcinogen) was deemed sufficient to list a pollutant as high-risk. The EPA does not agree with the commenters suggestion that Group B2 and Group C carcinogens should not be considered for or included on the high-risk list. In order to be listed, however, carcinogens other than Group A had to pass tier 2 of the analysis which considered potency and exposure potential.

The EPA also disagrees with the commenters suggestion that only chronic human health effects should be considered. Section 112(b) of the CAA describes HAP's as those pollutants which present, or may present, a threat of adverse human health effects including substances which are carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic. Thus, EPA believed it appropriate to assess (and include on the high-risk list, where appropriate) pollutants that are acutely as well as chronically toxic.

3. Weighted Index for High-Risk Pollutants

In the proposed rule, EPA described an indexed offsetting system based on the toxicity of the high-risk pollutants relative to each other.

Several commenters believe that the weighted index system conflicts with the CAA because it allows offsetting of high-risk pollutants with non-high risk pollutants. The commenters state that high-risk pollutants should not be allowed to be offset by non-high risk pollutants, or only be allowed when high-risk pollutants are emitted in trace amounts. Other commenters agreed with the weighting factor concept and the ability to offset high-risk pollutants.

In the final rule, a number of weighting factors have been adjusted as described below, but the weighting factor system as a whole is essentially unchanged. Contrary to several commenters contentions, the high-risk pollutant strategy does not conflict with section 112(i)(5)(E). That provision requires the Administrator to limit, by regulation, the use of offsetting reductions of other HAP's in counting towards the 90 (95) per cent reduction of high-risk pollutants. The statute does not say or even imply that the regulation must prohibit such offsetting reductions.

In response to the comment that these offsets should only be allowed when these pollutants are emitted in trace amounts, EPA notes that the weighting system effectively restricts the offsetting of emissions of the high-risk pollutants. Such a large reduction of a non-high risk pollutant is needed to offset a high-risk pollutant (up to 100,000 to 1) that only relatively trace amounts could be traded. Even in situations where the pollutant concentrations are relatively large (i.e., not trace amounts), it is appropriate to allow offsetting as long as the weighting factor system is followed. If one ton of a HAP with a weighting factor of 100 is offset with a 10 ton reduction in a pollutant with a weighting factor of 10, the offset generally should provide a similar degree of risk reduction. Consequently, EPA believes such offsets should not be prohibited. Note that these relative trades deal with decreases in the high-risk pollutants. It is not envisioned that any successful Early Reduction submittal will include any increase in high-risk pollutants other than incidental trace amounts.

Several commenters stated that trading among pollutants with different types of health effects is inappropriate. The commenters recommend using critical health effects and toxic potency information to place the listed pollutants into categories, with trading allowed within a category. Trading across categories would be allowed only for categories based on similar health effects. Weighting factors based on relative potencies would be used in such tradeoffs.

The development of the weighting system and the decision to allow trading between carcinogens and noncarcinogens is intended to provide flexibility to the participating facilities in achieving their emission reduction goals. As such, it is a policy decision and not one based purely on scientific grounds. If trading between pollutants with different health endpoints was restricted, this could potentially exclude some facilities from participating in the Early Reductions Program. The EPA feels that such restrictions would not benefit the goals of the Program as a whole.

Several comment letters made reference to the development of weighting factors for the high-risk pollutants. One commenter recommended the weighting factors be based on weight of evidence classification. On the other hand, three commenters recommended the weighting factors be based only on potency as described by the cancer potency factor. Another commenter further suggested that the cancer potency factor be multiplied by one million to arrive at the weighting factor. Finally, one commenter suggested a combination approach where both weight-of-evidence and potency would be considered. In this approach, pollutants with the same weight-of-evidence classification and having potency factors within an order of magnitude would be grouped together.

The weighting factor system has been revised slightly since the high-risk list was proposed. In the final rule, carcinogens, with a Group C classification (possible human carcinogens) have been assigned a lower weight. Greater uncertainty exists regarding the evidence for a Group C classification than that existing for chemicals classified as Group A (known human carcinogen) or B (probably carcinogenic to humans). A Group C classification is defined by positive carcinogenicity in a single experiment, a tumor response of marginal statistical significance, or finding benign tumors only. A Group B classification, whereas, is defined by carcinogenicity in two or more animal species, strains, or experiments, either with or without limited human evidence. Group A is reserved for known human carcinogens. The greater uncertainty regarding a Group C classification is reflected in a lower weighting factor. As a result, two Group C carcinogens (1,1,2,2-tetrachloroethane and vinylidene chloride) have been assigned weighting factors of 1 rather than 10 as proposed. The EPA does not feel, however, that chemicals classified in Group B should necessarily be weighted lower than those classified as Group A. With respect to Group B chemicals, a sound foundation exists regarding carcinogenicity in animals, but the human data are either inconclusive or of limited value, most likely reflecting the difficulty of obtaining quality epidemiologic data. For this weighting

system then, chemicals classified as Group A or B are combined and ranked by potency.

For carcinogens, the actual weighting factors are based on the potency of the high-risk carcinogens relative to carcinogens not on the high-risk list. This approach is the same as was proposed. Multiplying the potency factors by one million as one commenter suggested to calculate weighting factors would result in the same relative ranking of the pollutants, but higher weighting factors. The EPA believes that basing the weighting factors on the differences between the potency of the high-risk carcinogens and the geometric mean potency of the group of carcinogens not on the high-risk list is more justifiable.

Three commenters questioned EPA's policy decision concerning the weighting factors for noncarcinogens. The commenters believe that EPA must assess many additional factors when ranking the hazards of noncarcinogens. These factors include the severity of effect, its reversibility, and chemical properties such as the half-life of volatile compounds in air, vapor pressure, persistence, and bioaccumulation potential.

In assigning weighting factors to the high-risk pollutants, EPA attempted to base the factors on the relative toxicity of the compounds. For the carcinogens, the cancer potency factor is a straightforward measure of relative toxicity and was used in conjunction with the weight of evidence classification to develop the weighting factors. For the noncarcinogens, however, there is not a comparable measure of toxicity that can be used consistently for pollutants with different health effects. In the absence of such a measure, EPA proposed to assign a weighting factor of 10 to the noncarcinogens on the high-risk list. Many of the carcinogens were also assigned a weighting factor of 10. The EPA chose a weighting factor of 10 for the noncarcinongens in recognition that noncancer health effects can be as seriously debilitating as cancer. Another alternative would have been to assign these pollutants a weighting factor of 1 because other indices were not available. The EPA rejected this option because only by assigning a weighting factor greater than 1 is offsetting limited between these noncarcinogens and other pollutants not on the high-risk list. In the final rule, three noncarcinogens were assigned weighting factors greater than 10. The rationale for increasing the weighting factor from 10 to 100 for mercury is based on consideration of persistence in the environment and bioaccumulation, as discussed below. After a review of the scientific data, two other noncarcinogens (acrolein and 2-chloroacetophenone) have been assigned weighting factors of 100 rather than 10 in the final rule to provide an adequate margin of safety from adverse health effects. This decision is explained fully in a memorandum to the docket entitled "Need for Additional Weighting of Two Chemicals".

Four commenters believe EPA should establish more weighting factor categories to reflect more accurately the different toxicity levels of the various pollutants. On the other hand, two commenters believe more pollutants should be grouped together so that there is not such a wide range in weighting factors.

The EPA has reviewed the weighting factor categories and still finds four separate categories to be appropriate. As described in the comment above concerning weighting factors there were some adjustments made to the placement of certain pollutants. However, the general categories with weighting factors of 100,000; 1000; 100; and 10 are still believed to be appropriate. The difference between the most toxic carcinogen and the least toxic carcinogen with a weighting factor of 10 is about a factor of 35 (with the exception of one pollutant). Given the uncertainties inherent in the health data, EPA does not feel that this is enough of a difference to warrant another weighting factor category.

Another commenter suggested that the weighting factor could be customized for each facility by relating the weighting factor to the degree to which a reference concentration is exceeded. The commenter believed that this approach would emphasize reductions in cases where reference concentrations may be exceeded and assigns less weight to high-risk pollutants in cases where the reference concentrations are not likely to be exceeded.

There are several reasons why EPA prefers that weighting factors not be customized for each participating facility. The primary reason is that the weighting factors reflect the differences in the toxicity of the pollutants regardless of emission rates. For example, if facility X emits 50 tons of benzidine, a 1000 to 1 trade is necessary with a HAP not on the high-risk list. If facility Y emits 1 ton of benzidine, a 1000 to 1 offset is also required. The EPA believes this will emphasize reductions in the high-risk pollutants even if these emissions are small. In addition, participation in the Early Reductions Program is available to all facilities throughout the Nation. The EPA prefers that for consistency in program implementation the weighting factors for the high-risk pollutants not be customized for each participating facility. In addition, such customizing can greatly complicate the application preparation and review process; facilities and reviewing agencies may not have the expertise or resources to either perform or review site-specific modeling analyses and determine appropriate weighting factors.

Four commenters discussed pollutants that persist in the environment and/or bioaccumulate. These commenters recommended that any pollutants identified as persistent or bioaccumulative be added to the list. The commenters further suggested that an additional weighting factor of 10 be applied to these pollutants. After consideration of public comments, EPA has decided to adjust the weighting factors for chlordane, heptachlor, hexachlorobenzene, mercury compounds, and toxaphene from 10 to 100 based on persistence in the environment and bioaccumulation. The weighting factors for these particular pollutants were increased based on persistence and bioaccumulation data compiled for EPA in support of the CAA Great Waters Study.

4. Additions/Deletions to the High-Risk List

In addition to the changes to the high-risk list described above, EPA added four pollutants to the list and deleted three pollutants on the basis of health effects data. Methyl hydrazine, 2-chloroacetophenone, and 1,2-dibromo-3-chloropropane were added based on newly available or revised RfCs. N-nitroso-N-methlyurea was added because a unit risk estimate is available in a health assessment document. Benzotrichloride was deleted from the list because an inhalation potency factor was unavailable. Further review of the studies supporting the listing of chloroprene led to the determination that the primary study was not acceptable and, therefore, chloroprene was removed from the list. The RfC for 2,4-toluene diisocyanate is undergoing review based on new data and, therefore, 2,4-toluene diisocyanate was removed from the list.

Two commenters stated that when pollutants are added to the list, a source should not be exempt from further reducing those pollutants, but the source should be given up to three years to adjust its emissions to continue to qualify for the Early Reduction extension or else comply with the emissions standard under section

112(d). Other commenters believe the changes to the high-risk pollutant list should not affect the status of a previously submitted commitment or application.

The EPA has decided that sources with an approved enforceable commitment, or an approved permit specifying an alternative emission limit, will not be affected when a HAP is either added to the list in section 112(b), or is newly designated as a high-risk pollutant. The EPA expects to update the list of high-risk pollutants as the science requires. It is conceivable that a source would have to revise a post-reduction demonstration with each revision of the list. This requirement could add significantly to administrative burden for both the source and the reviewing agency. Given that the source will be in full compliance with the emission standards under section 112(d) at the end of the six year extension, EPA feels this additional administrative burden is unnecessary.

5. Comments on Specific High-Risk Pollutants

The EPA received one comment asking why lead was not listed as a high-risk pollutant.

Airborne lead emissions are currently regulated by a National Ambient Air Quality Standard (NAAQS). The EPA is currently reviewing the data the NAAQS is based on and expects to make a decision on revising the standard in the near future. Given this, and other policy considerations regarding identifying a criteria pollutant as high risk, at this time EPA believes it is appropriate to leave lead compounds off the high-risk list.

One commenter urged EPA to add radionuclides to the high-risk list.

The EPA did not add radionuclides to the high-risk list because radionuclide emissions are measured in terms of activity rather than mass and it would be extremely difficult to equate the two for the purpose of offsetting. The EPA recognizes however, that radionuclides could potentially be present in trace amounts from some combustion sources. To account for this, language has been added to the final rule that stipulates that if a radionuclide source is included in the emissions pool, EPA will not allow increases in radionuclide emissions under any post-reduction scenario.

Numerous commenters requested that specific pollutants be removed from the high-risk list. Most of the commenters took issue with the scientific basis of EPA potency factors or other specifics of the scientific studies that document the health effects. As stated above, three chemicals were deleted from the list because of health effects data and two were assigned weighting factors of one because of their Group C cancer classification. All other requests to delete pollutants from the list were denied. The rationale supporting the specific determinations are addressed in the BID.

G. State Authority

A number of commenters recommended that States be delegated authority for implementing the Early Reductions Program even before States are given permitting authority under title V of the CAA.

The EPA specifically solicited comment on whether this Program should be delegated to the States. Based on the comments received, EPA is proceeding to establish the criteria for delegating the Early Reductions Program to those States that seek delegation in advance of having a title V operating permit program. Section 112(l) of the CAA authorizes the Administrator to approve a State program for the implementation and enforcement of the emission standards and other requirements of the section, including partial delegation of the Program. That is, EPA anticipates that it will, if a state so desires, delegate to a State the authority to develop and implement the Early Reductions Program. The EPA anticipates that it will publish delegation guidance in the near future that will be useful to the States in developing programs for submittal.

Of course, until such time as a State has an approved State program under title V, it cannot issue a title V permit. See CAA section 112(1)(9). Therefore, the Administrator cannot delegate his authority to issue a permit establishing an alternative emission limit under section 112(i)(5) until such time as the state has an approved title V permit program.

Various comments were received pertaining to a State's authority to impose stricter requirements for compliance extensions than those specified in the rule.

The CAA states in section 112(i)(5)(A) that "Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension * * *. Although not specifically stated, it is implied that the excess reductions can only be required as a condition of the State granting the extension. The CAA, therefore, implies that when the State is the permitting authority, the State may require greater than 90 (95) percent reduction as a condition for granting the extension. As long as EPA (administered through the Region) remains the permitting authority, the CAA specifies 90 (95) percent reduction.

Finally, two commenters contended that States should have the option of not allowing facilities in their States to participate in the Program or denying alternative emission limits.

The Early Reductions Program is a national program mandated by Congress through the CAA and as such, States do not have the authority to disallow participation. However, States do have the power to impose additional or stricter State standards or require greater than 90 (95) percent reduction as a condition of granting an Early Reductions compliance extension under their title V State permitting program.

H. Interface With Title V Permits

One commenter was concerned that the Early Reductions rule required compliance extensions to be in the form of a title V permit. Since there is a chance that the regulations for operating permits will not be finalized until after the first set of section 112(d) standards are proposed, the commenter believed that it may be too late to apply for a compliance extension for all sources covered by the section 112(d) standards.

The regulation allows sources covered by standards proposed prior to January 1, 1994, to submit an enforceable commitment prior to proposal of the standard. The source is then allowed until January 1, 1994, to achieve the reductions and may submit a permit application as late as December 1, 1993. Sources which have already achieved the required reduction prior to proposal of an applicable section 112(d) standard must submit a permit application containing the reduction demonstration prior to such proposal; or if a Federal or State permitting program is not yet in place, the permit application for the Early Reductions source may be submitted up to 120 days after the permitting authority has established a permitting program under title V. In the latter situation, even though the permit application would have to be submitted after proposal, the source owner or operator must still document that the required early reductions were achieved prior to proposal of the applicable section 112(d) standard. In the event that such documentation cannot be provided, the source's Early Reductions demonstration would be disallowed and the source would have to meet the section 112(d) standard.

It has become apparent recently that no comprehensive title V permitting mechanism, either a federal rule for

issuing title V permits or an approved State program, will be available in time to process permit applications for enforceable commitments which are due by December 1, 1993. In addition, it may be some time before any source achieving reductions prior to proposal of an early section 112(d) standard could submit a permit application. In both cases the owner or operator may not know if he would be granted a compliance extension in time enough to meet the section 112(d) standard if his Early Reductions demonstration were disapproved. Therefore, EPA is considering options to deal with this developing problem.

One option is for EPA to promulgate quickly a rule for interim federal issuance of title V specialty permits. The rule would apply only to Early Reductions permit applications that could not be processed due to lack of an applicable comprehensive title V program. Permits issued under the specialty program would encompass only the Early Reductions source at a facility and only the hazardous air pollutant emissions from that source. All other Act requirements applicable to the Early Reductions source would be handled through the comprehensive title V permitting process as it becomes available. A future **Federal Register** notice will describe EPA's proposed action on this matter.

Another commenter noted that there may be a gap between the time a permit application is approved and when a title V permit is issued. They suggested that alternative emission limitations be enforceable once permit applications are approved.

Permits do not have separate approval and issuance dates. When the proposed permit completes review, including federal oversight, the permit is considered valid at that time. Therefore, the date of approval and date of issuance are the same and there is no time gap.

One commenter suggested that EPA establish a policy for applications under review during the time that States receive final approval of a State title V program. The commenter felt that the reviewing agency should remain the same throughout the review and issuance of a permit.

The EPA generally agrees with the commenter that title V permit applications undergoing review by EPA for an Early Reductions demonstration and alternative emission limits should not have to be processed twice—once by EPA and then by the State. In most cases, this should not occur. However, there may be some situations where a State has received approval of its comprehensive title V permitting program during the time that EPA is reviewing a permit application submitted by a source to EPA for an Early Reductions demonstration. The EPA will address this situation in the upcoming **Federal Register** proposal described above to deal with the permit mechanism for Early Reductions demonstrations.

Briefly, the EPA does not believe that permit issuance should be substantially delayed as a result of the transition to State responsibility for permitting. Owners or operators must know in a timely fashion whether their sources will be granted a compliance extension. If an extension denial occurs, the source will have to meet the applicable section 112(d) standard on schedule, and if substantial delays occur, it will mean less time for the source to prepare to meet the 112(d) standard.

The anticipated Early Reductions specialty permit rule will address when EPA will retain permit issuance even after a State receives approval for its comprehensive title V permit program, as well as when such review and specialty permit issuance will be transferred to the State after submittal to EPA by the source owner or operator. It is envisioned that in the event of such transfer, the State will adhere as closely as possible to the original review timetable established by EPA.

Several commenters expressed additional concerns with the timing of State title V programs. Commenters wanted assurances that any Early Reduction permit application approved by EPA (vs. the State) would be included in any future State title V operating permit without further negotiation.

Alternative emission limitations for Early Reductions sources remain in effect for the duration of the 6-year compliance extension. Because permits must be renewed after 5 years, the State would be the reviewing agency at that point. However, the alternative emission limitations, once granted, continue to be permit conditions until the compliance extension expires, in which case, applicable section 112(d) standards then take effect.

One commenter suggested that base-year review should be eliminated because it could potentially stress the reviewing capabilities of EPA and the States. In the opinion of the commenter, permit issuance was more important since the permit would enforce the early reductions.

Base year review will expedite the permit review and assist industry in making "acceptable" reductions. Early review of base year emissions is essential before a source commits the resources to reduce emissions. This review will provide assurance of acceptable base year emissions prior to major expenditures.

Finally, one commenter felt that Early Reduction permits should not be revoked for any reason prior to the end of the 6-year extension, even pursuant to section 112(f) of the CAA.

Permits issued during the 6-year compliance extension may be revoked only in those circumstances that warrant permit revocation under the title V permit regulations. If the compliance extension were revoked, then the source would have to achieve timely compliance with any applicable section 112 standard. Section 112(i)(5) does not shield a source from standards issued under section 112(f).

I. Interface With Section 112(g) Modifications

One commenter requested clarification of the netting provisions of section 112(g) of the CAA, and how these provisions will be impacted by the Early Reductions Program.

The EPA recognizes that the availability of Early Reduction credits for use as offsets for emission increases under section 112(g) is an important issue. The EPA is currently developing regulations to implement section 112(g) of the CAA. The issue of offsetting emission increases with Early Reductions credits has not been resolved and will be addressed in the upcoming regulations governing section 112(g) modifications. However, EPA recognizes that there are disadvantages of allowing Early Reduction credits to be used to offset section 112(g) emission increases.

Section 112(i)(5) was designed to bring about a substantial reduction in air toxic emissions from sources prior to the actual issuance of standards governing such sources. In exchange, those sources would receive a limited compliance extension from the emission limitations established pursuant to section 112(d) of the CAA. Section 112(g) is a mechanism to allow owners or operators of facilities to make physical or operational changes to their facilities without triggering MACT requirements. A "major source" is considered not to have undergone a modification if any increase (greater than a de minimis increase) as a result of physical or operational changes is offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous. The EPA believes that the intent of section 112(i)(5) would be

undermined by allowing the Early Reduction credits to be used under section 112(g).

This is best illustrated by example. If Company A submits an enforceable commitment to reduce its emissions by 90 percent at one-half of its facility (and that portion of the facility meets the definition of source in § 63.73) it will achieve those reductions (for example, from 100 tons/yr to 10 tons/yr) in exchange for an alternative emission limit for the first six years beyond the otherwise applicable compliance date. Later the company wants to undertake a physical change at the other half of the facility which would result in an increase in emissions of 90 tons/yr of a HAP. If, under section 112(g), the owner or operator is allowed to use as an offset credit those 90 tons/yr of reductions from the Early Reductions Program, the major source overall will emit the exact same level of HAP's as it did prior to making early reductions (i.e., 100 tons/yr), MACT requirements will be avoided on one half the facility, and the other half of the facility will have received a six year extension from an otherwise applicable section 112(d) standard.

J. Interface With Title I Provisions

One commenter suggested that facilities that reduce emissions for purposes of the Early Reductions Program should be able to use those reductions for offsetting and netting.

Most of the HAP's emitted by sources participating in the Early Reductions Program also are either volatile organic compounds (VOC) or particulate matter and, may therefore, be subject to other requirements under the CAA. For such situations, questions have surfaced over the interaction between the Early Reductions Program and the other CAA requirements. Specifically, a frequent question from interested companies concerns whether reductions made under the Early Reductions Program can be considered creditable reductions for purposes of New Source Review (NSR) permitting under parts C and D of title I of the CAA. The preamble to the proposed Early Reductions rule described the way Early Reductions would be treated in situations involving "offsets" under part D NSR requirements but did not discuss "netting" transactions. Today's preamble reiterates the proposal preamble discussion regarding use of Early Reductions as offsets and adds EPA's policy regarding netting transactions.

a. Offsets. Emission reductions of HAP's for the purpose of obtaining an alternative emission limitation under section 112(i)(5) of the CAA are not creditable for the purpose of meeting an offset requirement under section 173(a)(1) of the CAA. A source in a nonattainment area (an area where a national ambient air quality standard is exceeded) or an ozone transport region may need to obtain offsets for emission increases from planned new construction or modification of existing facilities. The HAP reductions are not allowed as offsets in this instance because section 173(c)(2) of the CAA states that emission reductions otherwise required by this Act shall not be creditable as emissions reductions for purposes of any such offset requirement. A source successfully participating in the Early Reductions Program will be granted an alternative emissions limitation (for the duration of the compliance extension period) in lieu of a section 112(d) emission standard. Therefore, the reduction of HAP emissions under the Early Reductions Program is a substitute for the reduction of HAP emissions that would otherwise be required of the source under section 112(d).

However, a source owner or operator may use as offsets any reductions in HAP emissions in excess of those required to qualify for an extension under the Early Reductions Program or reductions in non-HAP emissions which are coincidentally obtained through use of the HAP reduction measures, if such reductions are not required by any other provision of the CAA and meet any other requirements for offsets under NSR rules. These reductions are allowed as offsets pursuant to section 173(c)(2) of the CAA which further states that incidental emission reductions which are not otherwise required by the Act shall be creditable as emission reductions for such purposes.

b. Netting. In general, an owner or operator considering a physical or operational change at a major stationary source (as defined in the NSR rules) will be subject to (1) the requirements of section 173(a) (e.g., offsets, application of LAER) in nonattainment areas or ozone transport regions or (2) the requirements for Prevention of Significant Deterioration (PSD) (e.g., application of BACT) in attainment or unclassifiable areas, unless the changes will not cause a "significant net emissions increase" in pollutants subject to NSR. To determine the net emissions increase for NSR purposes, the owner or operator is allowed to sum the emissions increase from the proposed change with any creditable increases and decreases elsewhere at the plant.

The New Source Review rules and EPA's "Emissions Trading Policy Statement (ETPS)" (51 FR 43823, December 4, 1986) limit the creditability of some decreases in emissions for this "netting" procedure. For example, the NSR rules for nonattainment areas state that a decrease in emissions is creditable only to the extent that "* * * the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51 subpart I or the State has not relied on it in demonstrating attainment or reasonable further progress; * * *" (40 CFR 51.165(a)(1)(vi)(E)). The PSD rules contain similar language. Essentially what this restriction does is prevent sources from obtaining two credits for one reduction, where the credits are related to the same air quality objective (which in this case is the attainment/maintenance of national ambient air quality standards). Thus, as an example, a source cannot use an emissions reduction to meet reasonable further progress requirements and as a reduction credit in netting calculations.

However, under the ETPS, HAP decreases credited under the Early Reductions Program also may be credited for purposes of determining the net emissions increase for a plant change proposed at a later time for new source review purposes, provided of course that the reduced HAP's also are pollutants subject to the NSR rules and that the decreases meet all other requirements for netting. In such situations, the HAP decreases produce benefits for two different air quality objectives and one credit can be given toward each; the HAP credit is associated with the air toxics reduction objectives of section 112 of the CAA and the NSR credit is associated with the attainment/maintenance of national ambient air quality standards and PSD. However, the amount of the HAP reduction creditable in these situations will be limited if the netting calculations involve HAP emissions increases. Specifically, the creditable HAP reductions from the Early Reductions Program will be reduced by the amount of any increase in HAP emissions involved in the netting calculations. If no HAP increases are involved, the entire HAP reduction is creditable.

The principle behind this policy limitation is similar to that behind the netting restriction in the NSR rule mentioned above, namely that a reduction should not receive two benefits or credits (double counting) for the same air pollution control objective. The objective of the Early Reductions Program under section 112 of the CAA is to achieve significant reductions of

HAP's at existing facilities. Sources that achieve such HAP reductions in accordance with the rules promulgated today receive credit for the reductions in the form of a six-year compliance extension from applicable section 112(d) standards. If the reductions also were allowed to be used as netting reduction credits for physical or operational changes involving increases in HAP's, then the reductions in effect would be promoting HAP increases elsewhere at the plant site by helping such facilities net out of NSR control requirements. Under such a scenario, an owner or operator could receive a six-year compliance extension to section 112(d) standards for some portion of the plant, net out of NSR control requirements, and have overall HAP emissions equal to preexisting levels. Clearly this is not a result consistent with the objectives of the CAA.

To illustrate the effect of this policy, consider a plant site in which a portion of the facility (e.g., a process unit) participates in the Early Reductions Program and achieves a 50 tons per year reduction of HAP's, which also are particulate matter. Later, the owner or operator proposes a physical or operational change at another section of the plant which would increase particulate emissions by 75 tons per year, and none of the emissions increase would be HAP's. In this case, the owner or operator can use all of the HAP reductions from the Early Reductions Program to net against the particulate emissions increase because no HAP increases are involved. However, if 30 tons per year of the proposed 75 ton increase are HAP's, then only 20 tons per year of the HAP reductions under the Early Reductions Program could be used as reduction credits in any netting calculations (20 tons per year is the amount by which the HAP reduction exceeds the proposed HAP increase). Finally, if 50 or more tons per year of the proposed 75 ton increase would be HAP emissions, then none of the HAP reductions from the Early Reductions Program could be used to net against the particulate emissions increase (because the HAP increase from the proposed modification is equal to or greater than the HAP reductions from the Early Reductions Program).

It should be noted that this netting policy for HAP reductions is applicable only for NSR programs. Under section 112(g) of the CAA, EPA must promulgate separate requirements for modification of HAP sources. The provisions to implement section 112(g) are under development but will not become effective in a State until the State has obtained approval of a Title V permitting program.

Another commenter felt that a source that achieves a 90 (95) percent reduction from base year should be granted the same 6-year extension from complying with reasonably available control technology (RACT) requirements under Title I as received from section 112(d) standards under Title III.

Section 112(i)(5) of the CAA authorizes the Administrator (or a State operating pursuant to an authorized Title V permit program) to grant a 6-year extension from compliance with an emission standard promulgated under section 112(d) that would otherwise be applicable to that source, provided the source satisfies certain conditions. Nothing in section 112(i)(5) or any other provision of the CAA authorizes the Administrator to grant extension of any RACT requirement that might be required under other sections of the CAA. As a practical matter however, EPA anticipates that many of the methods or technologies adopted to reduce a source's HAP's by 90 (95) percent for purposes of obtaining a compliance extension from a section 112(d) standard may also constitute compliance with RACT requirements under other provisions of the CAA.

Although sources successfully participating in the Early Reductions Program will be granted an alternative emission limitation in lieu of meeting an applicable section 112(d) standard, the source still is responsible for complying with other applicable requirements of the CAA. For example, sources located in areas designated nonattainment for the criteria pollutant ozone are subject to other emission reduction requirements. State implementation plans (SIP's) for these nonattainment areas (plans for attaining the criteria pollutant ambient air quality standards) must contain requirements for application of RACT requirements for stationary sources of volatile organic compounds (VOC). The RACT is required for sources: (a) For which EPA has published, or will publish, a control techniques guideline document; and (b) that are "major" as defined in the CAA.

State implementation plans also must provide for other emission reductions sufficient to demonstrate attainment by specified deadlines and meet interim reasonable further progress requirements. States may obtain reductions from any VOC emission sources in the inventory, which means that they may eventually require additional emission reductions from sources participating in the Early Reductions Program. (It should be noted that VOC emission reductions resulting from compliance with HAP rules, including those under the Early Reductions Program, are creditable toward the Program requirements to the extent that they were not required prior to enactment of the CAA Amendments of 1990 and are consistent with creditability requirements under the CAA.)

The interaction between the Early Reductions Program and other requirements for the attainment of national ambient air quality standards causes concern in that the prospect of later application of additional requirements to sources that make early reductions would effectively limit the attractiveness of, and therefore participation in, the Program. Therefore, with respect to the percentage reduction requirements, reasonable further progress and attainment demonstration requirements, EPA has established a policy to reduce the amount of uncertainty for sources that choose to participate in the Early Reductions Program. This guidance should further encourage possible applicants to participate in the Early Reductions Program. Briefly, the policy regarding RACT and reasonable further progress requirements for sources making early reductions provides that:

(1) The source must meet any applicable existing RACT requirements (including RACT which is required but has not been adopted by the State, i.e., RACT fixups);

(2) EPA encourages States to favorably consider the reductions made under the Early Reductions Program in its analysis of any future RACT requirements for the source; and

(3) EPA encourages States to seek any additional reductions (beyond those under the Early Reductions Program) needed to make reasonable further progress first from sources not participating in the Early Reductions Program.

The intent of the policy is to require compliance with existing RACT requirements, but potentially give sources some breathing room with respect to future RACT or reasonable further progress requirements, in recognition of the fact that substantial 90 (95) percent reductions already have been made at the source. This policy is appropriate because, in most cases, a 90 (95) percent reduction of HAP's from the sources will produce comparable reductions in criteria pollutants or criteria pollutant precursors (i.e., VOC). For example, nearly all HAP's emitted as gases also are VOC's.

However, it is possible that an Early Reduction demonstration will not produce a criteria pollutant reduction. A

creditable HAP emission reduction may be achieved by substituting a non-HAP compound for the HAP. If, for example, both compounds are VOC, then there is no VOC reduction although the HAP has been eliminated. In such cases it would not be appropriate to apply this policy.

K. Test Methods and Procedures

A variety of comments were received regarding Method 301. One commenter suggested that Method 301 should be made applicable to other waste media in addition to gaseous measurements (the language in the proposal package contained references to sampling trains, sampling probes, etc., specific to measurement of gases). The EPA concurs with this comment; an intent of the method and the rule is its applicability to all types of sources. Thus the language in Method 301 has been modified to be more generic as to source media. This modification does not change the requirements of the method nor does it affect the stringency or applicability of the method.

Three commenters suggested that EPA establish a de minimis concentration for all HAP's for Method 301. The de minimis concentration would be the lowest concentration for which the test methods would have to be validated.

It is beyond the scope of Method 301 to specify de minimis levels. Method 301 does provide specific procedure for the determination of the limit of quantitation. In addition, Method 301 requires that the data and the proposed method be validated for the concentration(s) of HAP's in the waste stream(s).

One commenter recommended that Method 301 contain a procedure for calculating the concentration range for which a method would be considered validated.

Method 301 advocates that the proposed test methodology be validated over the range of expected HAP concentrations, in the field or through laboratory testing utilizing the ruggedness test procedures. In addition, a procedure is offered for determining the limit of quantitation. Such procedures would establish the concentration range.

One commenter noted that Method 301 does not specify the process conditions under which the validation testing should be conducted.

The choice of operating conditions depends upon the end use(s) of the data. Considerations in structuring the validation test should include: Sample matrix complexity in regard to future applicability of the proposed method, sample analyte concentration(s) in the sample waste stream and of the applicable emission standard, and representativeness of the process conditions in regard to establishing actual annual emissions.

Two commenters noted that the validation protocol in Method 301 will increase the cost of testing and the time required to test. In order to minimize the costs, they suggest that EPA not require pre-review of the validation report before the test method can be used.

The EPA agrees that the validation of data obtained by the proposed method can be conducted concurrently with other testing in order to combine the validation step with the source test. This is encouraged, where appropriate, and was an intent of Method 301. Note that the source owner or operator incurs some risk that the proposed method may not meet the Method 301 validation criteria and the emissions data may not be applicable for compliance determination. Well-substantiated validation reporting should keep this risk to a minimum.

Another commenter suggested that Method 301 should provide a less rigorous validation procedure for the early stages of method development so that these methods may be used to provide a data base for screening, ranking, and regional planning without the expectation of a high degree of knowledge about accuracy and precision.

The EPA agrees that an overall test method development program will be more extensive than a single application of Method 301. Method 301 is specifically a field validation protocol. Responsible method development and evaluation should provide an indication that the proposed method has a sufficient probability of performing within the criteria of Method 301 during field validating testing.

One commenter was concerned that Method 301 would adversely affect State toxic screening programs which have incorporated less precise emission measurement techniques.

Method 301 is applicable to source owners or operators wishing to comply with a Federal requirement using a test method which has not yet been validated. Because a source emission screening and ranking process for use in the development of a State toxics strategy is not subject to specific Federal requirements, Method 301 should not affect this type of program.

One commenter noted that Method 301 does not address the direct interface or dilution interface sampling options of Method 18.

Method 301 may be applied to the direct and dilution interface sampling options of Method 18. However, the validation cannot be conducted without quadruplicate sampling and analytical systems, which EPA considered excessively burdensome. For the other sampling options of Method 18, such as container and absorption tube sampling, validation field testing should be conducted using Method 301.

One commenter felt that Method 301 requires an excessive number of samples for determining bias and precision. They suggested that reducing the number of test runs by half would only result in a difference of the t-statistic at an 80 percent confidence level by less than 11 percent, but cut the time, effort, and cost in half.

The decision level specified in the comment is incorrect and should be 0.05. The difference in the t-statistic resulting from reducing the number of samples by 50 percent is 17 rather than 11 percent. This difference is not acceptable to EPA.

One commenter raised questions about section 6.1.5 of the proposed method. The commenter noted that this section does not indicate the acceptance criteria for the correction factor calculated in Equation 301–5, and also contended that this correction factor may be inappropriate for methods which employ isotopic spiking (e.g., EPA Method 23 surrogate standards) where values are not corrected as long as the recovery is within 30 percent.

The acceptance criteria for the correction factor calculated in Equation 301–5 is specified in section 1.2.1 of the Method. Isotopic spiking with surrogate standards as specified in Method 23 is conducted as a quality assurance check of breakthrough of the analytes on the sorbent. The isotopic spiking specified in Method 301 is used to assess method bias. The two are not mutually exclusive. Where a significant bias is identified (section 6.1.4) using the spike, the correction factor (section 6.1.5) is calculated. The correction factor is evaluated by the criteria in section 1.2.1 and the data are either corrected or the data and procedure to obtain the data are rejected.

One commenter expressed concerns about the reasonableness of requiring reference materials at concentrations below a proposed method's detection limit or in concentrations in multiple ranges representative of several emission points at the same facility.

Validation of a proposed method requires that the method be capable of measuring in the applicable range of emission concentrations. A method with a detection limit above the emission concentration at a particular emission source could not be validated for that

source. Method 301 does provide for ruggedness testing which allows a proposed method to be validated for testing at multiple concentrations without requiring multiple field validation tests. Whether ruggedness testing or field validation is used to validate the method for the appropriate concentrations, it will be necessary to obtain reference materials in the applicable ranges.

One commenter was concerned that the limit for precision specified in Method 301 of 50 percent relative standard deviation was too high, even though 9 sampling runs are needed to show compliance. The commenter suggested that the relative standard deviation be reduced to 15 percent or less so that only three sampling periods are needed to show compliance.

The method criteria for precision and followup testing provide maximum flexibility in method development and application while achieving high quality results. They also serve indirectly as an incentive in method development; that is, the better the method precision, the less effort is required during followup testing using the validated method.

One commenter recommended that more explicit terminology be used in sections 6.2.1.3 and 6.2.2.3 of the rule pertaining to the F-test which tests the significance of the proposed method variance to that of the validated method.

The intent of the sections is to perform a comparison of the variances of the two methods. Method 301 has been revised to include both the F-test and simple comparison of variances, demonstrating that the variance of the proposed method is less than or equal to that of the validated method, as suggested by the commenter.

One commenter suggested that a hierarchy be established for identifying which validation procedures to use.

The EPA agrees that such guidance would be appropriate in Method 301 and has reworded sections 5.1 through 5.3 to define this hierarchy.

One commenter suggested that "documented" methods (section 12.1.2 of Method 301) such as National Institute of Occupational Safety and Health, American Society for Testing and Materials, and Occupational Safety and Health Administration methods should be considered validated methods.

The application for a waiver under section 12.2 should demonstrate the applicability of the "documented" method to the particular source to be measured. The validation procedure and documentation for that particular source would be reviewed with respect to Method 301 requirements.

Another commenter felt the Method 301 requirements in section 12.1.1 for extending applicability of a method to "similar" sources were burdensome. They suggested there be a more reasonable requirement than conducting a ruggedness test and applying to EPA for a waiver.

Section 12.1.1 states applicability to other sources may be demonstrated by conducting ruggedness testing. The EPA agrees with the commenter that ruggedness testing is not always necessary depending upon the similarity of the sample matrices. In addition, validation of the proposed method on a complex sample matrix may be sufficient to demonstrate that the method is applicable to a similar source with an emission matrix of less complexity. In every case, the requester must apply for a waiver to extend the applicability.

One commenter noted that Method 301 does not specify acceptable deviations in method procedures after validation.

Once validation of a method has been completed and the data used to meet a Federal or State requirement, modifications to the method can not be made without approval of the responsible agency or validation through application of Method 301. Any modification must be fully explained and documented with supporting data such as that from a ruggedness test. The primary consideration in acceptance of a modification will be its effect upon the results obtained by the previously validated method.

Finally, one State was concerned that the validation method at one source would be inappropriately interpreted as a validation for all applications.

The field validation procedure of Method 301 is appropriate for validating emissions data from the source and at the levels only for which the method was validated. Optional procedures are provided and must be applied to extend applicability of the methodology beyond the specific emission source and concentration levels at which the validation was conducted.

Various comments were received pertaining to other topics related to test methods and procedures. One commenter recommended that Method 25A be accepted for determining base year and post-reduction emissions. The commenter provided an example of where this method would be appropriate: When the gas stream is principally comprised of one HAP and the HAP contribution to the total hydrocarbon concentration can be documented. The commenter further suggested that continuous measurements would be more appropriate for batch processes.

The EPA believes that application of Method 25A to a single HAP in a sample matrix containing no other hydrocarbons would prove acceptable, assuming the detector is calibrated using that HAP. Total emissions of the HAP would then be determined using the emission value integrated for the entire test run. Application of Method 25A to more complex gas streams would need to be examined on a case-by-case basis. Use of continuous mass spectrometric techniques where the HAP could be speciated may be more likely to succeed. Method 301 addresses composite sampling techniques and EPA believes that procedures similar to those specified for a composite sampling test method could be applied to the measurement of emissions from a batch process.

One commenter requested that the final rule include a definition of "particulate."

The definition of particulate matter is dependent upon the test method involved. The requirements of the applicable regulation, SIP, or Federal regulation should be reviewed first for applicable definition(s). The problem exists for emissions that can be in either a particulate or gaseous phase. If there is a question, the applicant should consult with EPA to arrive at a resolution.

One commenter raised an important consideration in preparing a field validation involving comparison of the proposed method against a validated method described in section 5.2 of appendix A of the proposed rule. The commenter stated that if emission concentrations are highly variable over time such as in the case with a batch process like coking operations, the method precision calculated using Equation 301–7 would be disproportionately influenced by large absolute differences.

If paired, rather than quadruplet samples are used for procedures under section 56.2, each test run of the validation testing should be conducted over the entire process cycle.

One commenter felt that the bias criterion for validation of the data obtained by a proposal method compared to a validated method is too restrictive.

For pollutants and sources for which validated method(s) are available, Method 301 requires alternative methods to have a similar precision and a reasonable bias (±10) compared to the validated method(s). The EPA believes that these criteria are not too restrictive

and allow for innovative method development.

The EPA has made some minor changes to the proposed rule as a result of comments pertaining to test methods and procedures. One commenter suggested that revisions should be made in sections 6.1.2.4 and 6.2.2.4 to calculate the "standard deviation of the differences" rather than the "standard deviation of the mean of the differences." The EPA agrees with this suggestion and has made the appropriate changes in the rule.

Another commenter noted that section 6.3.2 did not specify calculation of the relative standard deviation for the spiked samples as was specified for the unspiked samples in section 6.3.6. It was not clear to the commenter which relative standard deviation is needed to meet the plus or minus 50 percent criterion in section 1.2.2.

Section 6.3.2 has been revised to parallel section 6.3.6. The method has also been revised to specify the 50 percent relative standard deviation criterion for both the spiked and unspiked samples.

One commenter suggested that section 8.2.4 specify that half the samples analyzed at the minimum and maximum storage times be from the validated method and half from the proposed method. It should also address procedures for samples which require extraction or digestion.

As a result of this comment, several wording changes have been made. Section 8.2.4 has been revised to specify that equal numbers of samples from the proposed and validated methods be analyzed. The procedures for samples requiring extraction or digestion parallel those described in section 8.2.2.

Finally, one commenter urged EPA to publish a guidance document outlining source testing methods.

The EPA has prepared an initial list of validated methods. This list may be obtained from the Emission Measurement Technical Information Center (EMTIC), U.S. Environmental Protection Agency (MD–19), Research Triangle Park, North Carolina 27711. Updates to the list of validated methods will be made available on a periodic basis. The EMTIC may be contacted at any time to review the current list at (919) 541–0200.

L. Other Changes to the Proposed Regulation

A number of commenters noted inconsistencies or ambiguities in the language used in the proposed regulation. Where appropriate, EPA has made changes to address or clarify these comments. One commenter suggested that in § 63.72, the words "permitting authority" be used instead of "state acting pursuant to a permitting * * *." The wording in the proposed regulation implied that only the State had permitting authority.

The regulation has been changed to incorporate this comment. Section 63.72 of the regulation describes the general provisions of the Early Reductions Program. During the course of the Program, the authority to review and issue permits will shift from EPA to the States. The wording in the proposed regulation limited the provisions to States. The term "permitting authority" refers to States or EPA and is, therefore, the more appropriate term in this context.

Another commenter noted that the deadlines for submittal of late test data were different in §§ 63.75(d) and 63.77(f). They requested clarification of this inconsistency.

The test data referred to under § 63.75(d) supports base year data for enforceable commitments. Sources making enforceable commitments may need to act quickly to submit the commitment prior to the proposal of a section 112(d) standard. In this instance, sources will have very little time to obtain accurate test data. Therefore, EPA has granted a reasonable time period of 180 days after proposal of an applicable section 112(d) standard for sources to conduct necessary testing to support enforceable commitments.

The test data referred to under § 63.77(f) (now § 63.77(e)) supports post-reduction emissions for permit applications. In this case, EPA proposed allowing only 90 days for submission of test data. Since sources planning to submit a permit application will have sufficient lead time before applying, less additional time is needed than for submittal of supporting data for the enforceable commitment to produce necessary test data.

The EPA has modified the Early Reduction regulation to make consistent the deadlines for post-reduction emissions test data to support the reduction demonstration for enforceable commitments and permit applications. Section 63.77(f) of the proposed rule allowed sources with enforceable commitments 120 days (i.e., from December 1, 1993, until March 31, 1994) after the permit application deadline to submit test data but required other permit applicants to submit the same type data within 90 days. The 90-day deadline has now been changed to require test data within 120 days after the deadline for submittal of the permit application.

Two commenters noted that the proposed regulation used the term "post-control" when discussing emission reductions.

The EPA recognizes that there are many methods to reduce emissions other than applying a control device. Any emphasis on using a control device versus other methods of emission reduction was unintentional and, in fact, EPA encourages pollution prevention and recycling methods in preference to add-on controls. All references in the proposed regulation to "post-control" emissions have been replaced with "post-reduction" emissions.

The wording in the suggested commitment language in § 63.75(b) has been revised to be consistent with the requirement in § 63.75(a)(ii); that the base year emissions "* * * constitute the best available data for base year emissions * * * and are correct * * *." Language has also been added to clarify that the source owner or operator has not included in the base year emissions that exceed allowable emission levels specified by law, regulation or permit.

The wording in § 63.74(k) has been clarified to be consistent with the intent as described in the proposal preamble. Emissions in excess of allowable levels cannot be used to establish emissions, not "emission points." Emission points in violation of any rule, regulation, or law can be included in the source, but only allowable emissions from those points can be used to establish emissions.

The addresses in §§ 63.75 and 63.76 in the final rule to which enforceable commitments and base year reviews are sent has been revised by replacing the Office of General Counsel (LE–132A) with the Stationary Source Compliance Division (EN–341W).

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials,

will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0222. Public reporting burden for this collection of information is estimated to average 213 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12291

Under Executive Order 12291, OMB is required to judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The criteria set forth in Section 1 of the Order for determining whether a regulation is a major rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more;

(2) Is likely to cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governments; or

(3) Is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The EPA has determined that this regulation would result in none of the adverse economic effect set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." This is a voluntary program, open to sources that seek an alternative to meeting a section 112(d) standard. The program is attractive to sources because of the potential savings that can be realized in obtaining a compliance extension. Although EPA believes that significant savings will be realized by industries that participate in this Program, it is not likely that savings will have an impact on the economy of $100 million per year. The EPA estimates that 50 to 100 sources per year may participate in the Program, and thus each source would have to save over $1 million to affect the economy by $100 million per year. Based on the enforceable commitments received so far from the chemical industry, this does not seem to be the case. However, further quantification of the economic impact of this regulation is impossible without knowing what sources and how many will apply, how they will actually achieve the 90 (95) percent reductions, and what the otherwise applicable section 122(d) standards will be. Consequently, the EPA has concluded that this regulation is not a "major rule" under Executive Order 12291. The final rule was submitted to OMB for review as required by the Order.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The CAA specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 29, 1992.

William K. Reilly,

Administrator.

Part 63 of 40 CFR chapter I is added to read as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

Subpart A—General Provisions [Reserved]

Subpart B—[Reserved]

Subpart C—List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List [Reserved]

Subpart D—Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

Sec.
63.70 Applicability.
63.71 Definitions.
63.72 General provisions for compliance extensions.
63.73 Source.
63.74 Demonstration of early reduction.
63.75 Enforceable commitments.
63.76 Review of base year emissions.
63.77 Application procedures.
63.78 Early reduction demonstration evaluation.
63.79 Approval of applications.
63.80 Enforcement.
63.81 Rule for special situations.

Appendix A to Part 63—Test Methods

Appendix B to Part 63—Sources Defined for Early Reduction Provisions

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions [Reserved]

Subpart B—[Reserved]

Subpart C—List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List [Reserved]

Subpart D—Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

§ 63.70 Applicability.

The provisions of this subpart apply to an owner or operator of an existing source who wishes to obtain a compliance extension from a standard issued under section 112(d) of the Act. The provisions of this subpart also apply to a State or local agency acting pursuant to a permit program approved under Title V of the Act. The Administrator will carry out the provisions of this subpart for any State that does not have an approved permit program.

§ 63.71 Definitions.

All terms used in this subpart not defined in this section are given the same meaning as in the Act.

Act means the Clean Air Act as amended.

Actual emissions means the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.

Artificially or substantially greater emissions means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

EPA conditional method means any method of sampling and analyzing for air pollutants that has been validated by the Administrator but that has not been published as an EPA Reference Method.

EPA reference method means any method of sampling and analyzing for an air pollutant as described in appendix A of part 60 of this chapter, appendix B of part 61 of this chapter, or appendix A of part 63.

Equipment leaks means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

Existing source means any source as defined in § 63.72, the construction or reconstruction of which commenced prior to proposal of an applicable section 112(d) standard.

Hazardous air pollutant (HAP) means any air pollutant listed pursuant to section 112(b) of the Act.

High-risk pollutant means a hazardous air pollutant listed in Table 1 of § 63.74.

Malfunction means any sudden failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

Not feasible to prescribe or enforce a numerical emission limitation means a situation in which the Administrator or a State determines that a pollutant (or stream of pollutants) listed pursuant to section 112(b) of the Act cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal law; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.

Permitting authority means either a State agency with an approved permitting program under Title V of the Act or the Administrator in cases where the State does not have an approved permitting program.

Responsible official means one of the following:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority.

(2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency, either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

Reviewing agency means a State agency with an approved permitting program under Title V of the Act. An EPA Regional Office is the reviewing agency where the State does not have such an approved permitting program.

State means a State or local air pollution control agency.

§ 63.72 General provisions for compliance extensions

(a) Except as provided in paragraph (f) of this section, a permitting authority acting pursuant to a permitting program approved under Title V of the Act shall by permit allow an existing source to meet an alternative emission limitation in lieu of an emission limitation promulgated under section 112(d) of the Act for a period of 6 years from the compliance date of the otherwise applicable standard provided the source owner or operator demonstrates:

(1) According to the requirements of § 63.74 that the source has achieved a reduction of 90 percent (95 percent or more in the case of hazardous air pollutants which are particulates) in emissions of:

(i) Total hazardous air pollutants from the source;

(ii) Total hazardous air pollutants from the source as adjusted for high-risk pollutant weighting factors, if applicable.

(2) That such reduction was achieved before proposal of an applicable standard or, for sources eligible to qualify for an alternative emission limitation as specified in paragraph (c) of this section, before January 1, 1994.

(b) A source granted an alternative emission limitation shall comply with an applicable standard issued under section 112(d) of the Act immediately upon expiration of the six year compliance extension period specified in paragraph (a) of this section.

(c) An existing source that achieves the reduction specified in paragraph (a)(1) of this section after proposal of an applicable section 112(d) standard but before January 1, 1994, may qualify for an alternative emission limitation under paragraph (a) of this section if the source makes an enforceable commitment, prior to proposal of the applicable standard, to achieve such reduction. The enforceable commitment shall be made according to the procedures and requirements of § 63.75.

(d) For each permit issued to a source under paragraph (a) of this section, there shall be established as part of the permit an enforceable alternative emission limitation for hazardous air pollutants reflecting the reduction which qualified the source for the alternative emission limitation.

(e) An alternative emission limitation shall not be available with respect to standards or requirements promulgated to provide an ample margin of safety to protect public health pursuant to section 112(f) of the Act, and the Administrator will, for the purpose of determining whether a standard under section 112(f) of the Act is necessary, review emissions from sources granted an alternative emission limitation under this subpart at the same time that other sources in the category or subcategory are reviewed.

(f) Nothing in this subpart shall preclude a State from requiring hazardous air pollutant reductions in excess of 90 percent (95 percent in the case of particulate hazardous air pollutants) as a condition of such State granting an alternative emission limitation authorized in paragraph (a) of this section.

§ 63.73 Source.

(a) An alternative emission limitation may be granted under this subpart to an existing source. For the purposes of this subpart only, a source is defined as follows:

(1) A building structure, facility, or installation identified as a source by the EPA in appendix B of this part;

(2) All portions of an entire contiguous plant site under common ownership or control that emit hazardous air pollutants;

(3) Any portion of an entire contiguous plant site under common ownership or control that emits hazardous air pollutants and can be identified as a facility, building, structure, or installation for the purposes of establishing standards under section 112(d) of the Act; or

(4) Any individual emission point or combination of emission points within a contiguous plant site under common control, provided that emission reduction from such point or aggregation of points constitutes a significant reduction of hazardous air pollutant emissions of the entire contiguous plant site.

(b) For purposes of paragraph (a)(4) of this section, emissions reductions are considered significant if they are made from base year emissions of not less than:

(1) A total of 10 tons per year of hazardous air pollutants where the total emissions of hazardous air pollutants in the base year from the entire contiguous plant site is greater than 25 tons per; or

(2) A total of 5 tons per year of hazardous air pollutants where the total emissions of hazardous air pollutants in the base year from the entire contiguous plant site is less than or equal to 25 tons per year.

§ 63.74 Demonstration of early reduction.

(a) An owner or operator applying for an alternative emission limitation shall demonstrate achieving early reductions as required by § 63.72(a)(1) by following the procedures in this section.

(b) An owner or operator shall establish the source for the purposes of this subpart by documenting the following information:

(1) A description of the source including: a site plan of the entire contiguous plant site under common control which contains the source, markings on the site plan locating the parts of the site that constitute the source, and the activity at the source which causes hazardous air pollutant emissions;

(2) A complete list of all emission points of hazardous air pollutants in the source, including identification numbers and short descriptive titles; and

(3) A statement showing that the source conforms to one of the allowable definition options from § 63.73. For a source conforming to the option in § 63.73(a)(4), the total base year emissions from the source, as determined pursuant to this section, shall be demonstrated to be at least:

(i) 5 tons per year, for cases in which total hazardous air pollutant emissions from the entire contiguous plant site under common control are 25 tons per year or less as calculated under paragraph (1) of this section; or

(ii) 10 tons per year in all other cases.

(c) An owner or operator shall establish base year emissions for the source by providing the following information:

(1) The base year chosen, where the base year shall be 1987 or later except that the base year may be 1985 or 1986 if the owner or operator of the source can demonstrate that emission data for the source for 1985 or 1986 was submitted to the Administrator pursuant to an information request issued under section 114 of the Act and was received by the Administrator prior to November 15, 1990;

(2) The best available data accounting for actual emissions, during the base year, of all hazardous air pollutants from each emission point listed in the source in paragraph (b)(2) of this section;

(3) The supporting basis for each emission number provided in paragraph (c)(2) of this section including:

(i) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, and a discussion of the validity of the method for measuring the subject emissions; and

(ii) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used and their bases, and a brief rationale for the validity of the calculation method used; and

(4) Evidence that the emissions provided under paragraph (c)(2) of this section are not artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.

(d) An owner or operator shall establish post-reduction emissions by providing the following information:

(1) For the emission points listed in the source in paragraph (b)(2) of this section, a description of all control measures employed to achieve the emission reduction required by § 63.72(a)(1);

(2) The best available data on an annual basis accounting for actual emissions, after the base year and following employment of emission reduction measures, of all hazardous air pollutants from each emission point in the source listed in paragraph (b)(2) of this section;

(3) The supporting basis for each emission number provided in paragraph (d)(2) of this section including:

(i) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, and a discussion of the validity of the method for measuring the subject emissions; and

(ii) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used and their bases, and a brief rationale for the validity of the calculation method used;

(4) Evidence that all emission reductions used for the early reductions demonstration were achieved prior to proposal of an applicable standard issued under section 112(d) of the Act or, for sources subject to enforceable commitments, prior to January 1, 1994; and

(5) Evidence that there was no increase in radionuclide emissions from the source.

(e)(1) An owner or operator shall demonstrate that both total base year emissions and total base year emissions adjusted for high-risk pollutants, as applicable, have been reduced by at least 90 percent for gaseous hazardous air pollutants emitted and 95 percent for particulate hazardous air pollutants emitted by determining the following for gaseous and particulate emissions separately:

(i) Total base year emissions, calculated by summing all base year emission data from paragraph (c)(2) of this section;

(ii) Total post-reduction emissions, calculated by summing all post-reduction emission data from paragraph (d)(2) of this section;

(iii) (If applicable) Total base year emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from paragraph (c)(2) of this section by the appropriate weighting factor for the pollutant from Table 1 in paragraph (f) of this section and then summing all weighted emission data;

(iv) (If applicable) Total post-reduction emissions adjusted for high-risk pollutants, calculated by

multiplying each emission number for a pollutant from paragraph (d)(2) of this section by the appropriate weighting factor for the pollutant from Table 1 and then summing all weighted emission data; and

(v) Percent reductions, calculated by dividing the difference between base year and post-reduction emissions by the base year emissions. Separate demonstrations are required for total gaseous and particulate emissions, and total gaseous and particulate emissions adjusted for high-risk pollutants.

(2) If any points in the source emit both particulate and gaseous pollutants, as an alternative to the demonstration required in paragraph (e)(1) of this section, an owner or operator may demonstrate:

(i) A weighted average percent reduction for all points emitting both particulate and gaseous pollutants where the weighted average percent reduction is determined by

$$\%_w = \frac{0.9(\sum M_g) + 0.95(\sum M_p)}{\sum M_g + \sum M_p} X\ 100$$

where $\%_w$=the required weighted percent reduction

ΣM_g=the total mass rate (e.g., kg/yr) of all gaseous emissions

ΣM_p=the total mass rate of all particulate emissions and,

(ii) The reductions required in paragraph (e)(1) of this section for all other points in the source.

(f) If lower rates or hours are used to achieve all or part of the emission reduction, any hazardous air pollutant emissions that occur from a compensating increase in rates or hours from the same activity elsewhere within the plant site which contains the source shall be counted in the post-reduction emissions from the source. If emission reductions are achieved by shutting down process equipment and the shutdown equipment is restarted or replaced anywhere within the plant site, any hazardous air pollutant emissions from the restarted or replacement equipment shall be counted in the post-reduction emissions for the source.

TABLE 1. LIST OF HIGH-RISK POLLUTANTS

CAS No.	Chemical	Weighting factor
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
79107	Acrylic acid	10
107131	Acrylonitrile	10
0	Arsenic compounds	100
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000

TABLE 1. LIST OF HIGH-RISK POLLUTANTS—Continued

CAS No.	Chemical	Weighting factor
0	Beryllium compounds	10
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
0	Cadmium compounds	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
0	Chromium compounds	100
107302	Chloromethyl methyl ether.	10
0	Coke oven emissions	10
334883	Diazomethane	10
132649	Dibenzofuran	10
96128	1,2-Dibromo-3-chloropropane.	10
111444	Dichloroethyl ether (Bis(2-chloroethyl) ether).	10
79447	Dimethylcarbamoyl chloride.	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100
77474	Hexachlorocyclopentadiene.	100
302012	Hydrazine	100
0	Manganese compounds	10
0	Mercury compounds	100
101688	Methylene diphenyl diisocyanate (MDI).	10
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
0	Nickel compounds	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin.	100,000
8001352	Toxaphene (chlorinated camphene).	100
75014	Vinyl chloride	10

(g) The best available data representing actual emissions for the purpose of establishing base year or post-reduction emissions under this section shall consist of documented results from source tests using an EPA Reference Method, EPA Conditional Method, or the owner's or operator's source test method which has been validated pursuant to Method 301 of appendix A of this part. However, if one of the following conditions exists, an owner or operator may submit, in lieu of results from source tests, calculations based on engineering principles, emission factors, or material balance data as actual emission data for establishing base year or post-reduction emissions:

(1) No applicable EPA Reference Method, EPA Conditional Method, or other source test method exists;

(2) It is not technologically or economically feasible to perform source tests;

(3) It can be demonstrated to the satisfaction of the reviewing agency that the calculations will provide emission estimates of accuracy comparable to that of any applicable source test method;

(4) For base year emission estimates only, the base year conditions no longer exist at an emission point in the source and emission data could not be produced for such an emission point, by performing source tests under currently existing conditions and converting the test results to reflect base year conditions, that is more accurate than an estimate produced by using engineering principles, emission factors, or a material balance; or

(5) The emissions from one or a set of emission points in the source are small compared to total source emissions and potential errors in establishing emissions from such points will not have a significant effect on the accuracy of total emissions established for the source.

(h) For base year or post-reduction emissions established under this section that are not supported by source test data, the source owner or operator shall include the reason source testing was not performed.

(i) In cases where emission control measures have been employed less than a year prior to demonstrating emission reductions under this section, an owner or operator shall extrapolate post-reduction emission rate data to an annual basis and shall describe the extrapolation method as part of the supporting basis required under paragraph (d) of this section.

(j) The EPA average emission factors for equipment leaks cannot be used under this subpart to establish base year emissions for equipment leak sources, unless the base year emission number calculated using the EPA average emission factors for equipment leaks also is used as the post-reduction emission number for equipment leaks from the source.

(k) A source owner or operator shall not establish base year or post-reduction emissions that include any emissions from the source exceeding allowable emission levels specified in any applicable law, regulation, or permit condition.

(l) For sources subject to paragraph (b)(3)(i) of this section, an owner or operator shall document total base year emissions from an entire contiguous plant site under common control by providing the information required pursuant to paragraphs (b)(2), (c)(2), and (e)(1)(i) of this section for all hazardous

air pollutants from all emission points in the contiguous plant site under common control.

(m) If a new pollutant is added to the list of hazardous air pollutants or high-risk pollutants, any source emitting such pollutant will not be required to revise an early reduction demonstration pursuant to this section if:

(1) Alternative emission limits have previously been specified by permit for the source as provided for in § 63.72(a); or

(2) The base year emissions submitted in an enforceable commitment have previously been approved by the reviewing agency.

§ 63.75 Enforceable commitments.

(a) To make an enforceable commitment an owner or operator shall submit a commitment to achieve the early reductions required under § 63.72(a)(1) to the appropriate EPA Regional Office and a copy of the commitment to the appropriate State, except that the commitment shall be submitted to the State and a copy to the EPA Regional Office if the State has an approved permitting program under Title V of the Act. A copy shall also be submitted to both the EPA Stationary Source Compliance Division (EN–341W), 401 M Street, SW., Washington, DC 20460 and the EPA Emission Standards Division (MD–13), Research Triangle Park, NC 27711; attention both to the Early Reductions Officer. The commitment shall contain:

(1) The name and address of the source;

(2) The name and telephone number of the source owner or operator or other responsible official who can be contacted concerning the commitment;

(3) An alternative mailing address if correspondence is to be directed to a location other than that given in paragraph (a)(1) of this section;

(4) All information specified in § 63.74(b), (c) and (e)(1)(i), which defines and describes the source and establishes the base year hazardous air pollutant emissions from the source;

(5) The general plan for achieving the required hazardous air pollutant emissions reductions at the source including descriptions of emission control equipment to be employed, process changes or modifications to be made, and any other emission reduction measures to be used; and

(6) A statement of commitment, signed by a responsible official of the source, containing the following:

(i) A statement providing the post-reduction emission levels for total hazardous air pollutants and high-risk pollutants, as applicable, from the source on an annual basis which reflect a 90 percent (95 percent for particulate pollutants) reduction from base year emissions;

(ii) A statement certifying that the base year emission data submitted as part of the enforceable commitment constitute the best available data for base year emissions from the source, are correct to the best of the responsible official's knowledge, and are within allowable levels specified in any applicable law, regulation, or permit;

(iii) A statement that it is understood by the source owner or operator that submission of base year emissions constitutes a response to an EPA request under the authority of section 114 of the Act and that the commitment is subject to enforcement according to § 63.80; and

(iv) A statement committing the source owner or operator to achieving the emission levels, listed in paragraph (a)(6), (i) of this section, at the source before January 1, 1994.

(b) The following language may be used to satisfy the requirements of paragraphs (a)(6)(ii) through (a)(6)(iv) of this section:

> I certify to the best of my knowledge that the base year emissions given above are correct and constitute the best available data for base year emissions from the source, and acknowledge that these estimates are being submitted in response to an EPA request under section 114 of the Act. I further certify that the base year emissions provided for all emission points in the source do not exceed allowable emission levels specified in any applicable law, regulation, or permit condition. I commit to achieve before January 1, 1994, the stated post-reduction emission level(s) at the source, which will provide the 90 (95) percent reduction required to qualify for the compliance extension, and acknowledge that this commitment is enforceable as specified in title 40, part 63, subpart D, of the Code of Federal Regulations.

(c) A commitment for a source shall be submitted prior to proposal of an applicable standard issued under section 112(d) of the Act. Commitments received after the proposal date shall be void.

(d) If test results for one or more emission points in a source are required to support base year emissions in an enforceable commitment but are not available prior to proposal of an applicable standard issued under section 112(d) of the Act, the test results may be submitted after the enforceable commitment is made but no later than 180 days after proposal of an applicable standard. In such cases, the enforceable commitment shall contain the best substitute emission data for the points in the source for which test results will be submitted later.

(e) An owner or operator may rescind such a commitment prior to December 1, 1993 without penalty and forfeit the opportunity to obtain a six year compliance extension under this subpart.

(Approved by the Office of Management and Budget under control number 2060–0222)

§ 63.76 Review of base year emissions.

(a) Pursuant to the procedures of this section, the appropriate reviewing agency shall review and approve or disapprove base year emission data submitted in an enforceable commitment under § 63.75 or in a request letter from an applicant that wishes to participate in the early reduction program but who is not required to submit an enforceable commitment. For review requests submitted to a State agency as the appropriate reviewing agency, a copy of the request also shall be submitted to the applicable EPA Regional Office. For review requests submitted to the EPA Regional Office as the appropriate reviewing agency, a copy of the request also shall be sent to the applicable State agency. Copies also shall be submitted to the EPA Stationary Source Compliance Division (EN–341W), 401 M Street, SW., Washington, DC 20460 and the EPA Emission Standards Division (MD–13), Research Triangle Park, NC 27711; to the attention of the Early Reductions Officer.

(b) Within 30 days of receipt of an enforceable commitment or base year emission data, the reviewing agency shall advise the applicant that:

(1) The base year emission data are complete as submitted; or

(2) The base year emission data are not complete and include a list of deficiencies that must be corrected before review can proceed.

(c) EPA will publish a notice in the **Federal Register** which contains a list, accumulated for the previous month, of the sources for which complete base year emission data have been submitted and which are undergoing review either in the EPA Regional Office or a State agency within the EPA region. The notice will contain the name and location of each source and a contract in the EPA Regional Office for additional information.

(d) Within 60 days of a determination that a base year emission data submission is complete, the reviewing agency shall evaluate the adequacy of the submission with respect to the requirements of § 63.74 (b) and (c) and either:

(1) Determine to approve the submission and publish a notice in a newspaper of general circulation in the

area where the source is located or in a State publication designed to give general public notice, providing the aggregate base year emission data for the source and the rationale for the proposed approval, noting the availability of the nonconfidential information contained in the submission for public inspection in at least one location in the community in which the source is located, providing for a public hearing upon request by an interested party, and establishing a 30 day public comment period that can be extended to 60 days upon request by an interested party; or

(2) Determine to disapprove the base year emission data and give notice to the applicant of the reasons for the disapproval. An applicant may correct disapproved base year data and submit revised data for review in accordance with this subsection, except that the review of a revision shall be accomplished within 30 days.

(e) If no adverse public comments are received by the reviewing agency on proposed base year data for a source, the data shall be considered approved at the close of the public comment period and a notice of the approval shall be sent to the applicant and published by the reviewing agency by advertisement in the area affected.

(f) If adverse comments are received and the reviewing agency agrees that corrections are needed, the reviewing agency shall give notice to the applicant of the disapproval and reasons for the disapproval. An applicant may correct disapproved base year emission data and submit revised emission data. If a revision is submitted by the applicant that, to the satisfaction of the reviewing agency, takes into account the adverse comments, the reviewing agency will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and send notice of the approval to the applicant.

(g) If adverse comments are received and the reviewing agency determines that the comments do not warrant changes to the base year emission data, the reviewing agency will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and the reasons for not accepting the adverse comments. A notice of the approval also shall be sent to the applicant.

(h) If an applicant submits revised emission data under paragraph (d)(2) or (f) of this section for a source subject to an enforceable commitment, the applicant also shall submit an amended enforceable commitment which takes into account the revised base year emissions.

(i) If revised base year emission data are not submitted or notice of intent to submit revised data is not provided to the permitting authority by an applicant within 90 days of receiving adverse comments or a notice of disapproved base year emission data for a source that is subject to an enforceable commitment, the enforceable commitment shall be considered withdrawn and a notice to that effect shall be sent by the reviewing agency to the applicant.

§ 63.77 Application procedures.

(a) To apply for an alternative emission limitation under § 63.72, an owner or operator of the source shall file a permit application with the appropriate permitting authority.

(b) The permit application shall contain a demonstration of early reduction for the source as prescribed in § 63.74 and the additional information required for a complete permit application as specified by the State's permitting program approved under title V of the Act.

(c) Permit applications under this section for sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(1) The date of proposal of an otherwise applicable standard issued under section 112(d) of the Act; or

(2) 120 days after approval of a State permit program under title V of the Act.

(d) Permit applications for sources subject to enforceable commitments pursuant to § 63.75 shall be submitted no later than December 1, 1993.

(e) If a source test is the supporting basis for establishing post-reduction emissions for one or more emission points in the source but the test results are not available by the deadline for submittal of a permit application according to paragraph (c) of this section, the owner or operator shall provide the supporting basis no later than 120 days after the applicable deadline for submittal of the permit application or no later than March 31, 1994 for sources subject to an enforceable commitment.

(f) Review and disposition of permit applications submitted under this section will be accomplished according to regulations in 40 CFR part 70.

§ 63.78 Early reduction demonstration evaluation.

(a) The permitting authority will evaluate an early reduction demonstration submitted by the source owner or operator in a permit application with respect to the requirements of § 63.74.

(b) An application for a compliance extension may be denied if, in the judgement of the permitting authority, the owner or operator has failed to demonstrate that the requirements of § 63.74 have been met. Specific reasons for denial include, but are not limited to:

(1) The information supplied by the owner or operator is incomplete;

(2) The required 90 percent reduction (95 percent in cases where the hazardous air pollutant is particulate matter) has not been demonstrated;

(3) The base year or post-reduction emissions are incorrect, based on methods or assumptions that are not valid, or not sufficiently reliable or well documented to determine with reasonable certainty that required reductions have been achieved; or

(4) The emission of hazardous air pollutants or the performance of emission control measures is unreliable so as to preclude determination that the required reductions have been achieved or will continue to be achieved during the extension period.

§ 63.79 Approval of applications.

(a) If an early reduction demonstration is approved and other requirements for a complete permit application are met, the permitting authority shall establish by a permit issued pursuant to title V of the Act enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the extension. However, if it is not feasible to prescribe a numerical emissions limitation for one or more emission points in the source, the permitting authority shall establish such other requirements, reflecting the reduction which qualified the source for an extension, in order to assure the source achieves the 90 percent or 95 percent reduction, as applicable.

(b) An alternative emissions limitation or other requirement prescribed pursuant to paragraph (a) of this section shall be effective and enforceable immediately upon issuance of the permit for the source and shall expire exactly six years after the compliance date of an otherwise applicable standard issued pursuant to section 112(d) of the Act.

§ 63.80 Enforcement.

(a) All base year or post-reduction emissions information described in § 63.74 and required to be submitted as part of a permit application under § 63.77 or an enforceable commitment under § 63.75 shall be considered to

have been requested by the Administrator under the authority of section 114 of the Act.

(b) Fraudulent statements contained in any base year or post-reduction emissions submitted to a State or EPA Regional Office under this subpart shall be considered violations of section 114 of the Act and of this subpart and, thus, actionable under section 113 of the Act and can be considered, in appropriate cases, violations of 18 U.S.C. 1001, the general false swearing provision of the United States Code.

(c) If a source subject to an enforceable commitment fails to achieve reductions before January 1, 1994, sufficient to qualify the source for an extension under this subpart, the source shall be considered to be in violation of the commitment and shall be subject to enforcement action under section 113 of the Act.

(d) If an early reduction demonstration in a permit application filed under § 63.77 is disapproved for a source not subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard.

(e) If an early reduction demonstration in a permit application filed under § 63.77 is disapproved for a source that is subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard and will be subject to enforcement action under section 113 of the Act.

(f) A violation of an alternative emission limitation or other requirement established by permit under § 63.79 (a) or (b) for the source is enforceable pursuant to the authority of section 113 of the Act notwithstanding any demonstration of continuing 90 percent (95 percent for hazardous air pollutants which are particulates) emission reduction over the entire source.

§ 63.81 Rules for special situations.

(a) If more than one standard issued under section 112(d) of the Act would be applicable to a source as defined under § 63.73, then the date of proposal referred to in § § 63.72(a)(2), 63.72(c), 63.74(d)(4), 63.75(c), and 63.77(c) is the date the first applicable standard is proposed.

(b) Sources emitting radionuclides are not required to reduce radionuclides by 90 (95) percent. Radionuclides may not be increased from the source as a result of the early reductions demonstration.

Appendix A to Part 63—Test Methods

Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media

1. Applicability and principle

1.1 *Applicability.* This method, as specified in the applicable subpart, is to be used whenever a source owner or operator (hereafter referred to as an "analyst") proposes a test method to meet a U.S. Environmental Protection Agency (EPA) requirement in the absence of a validated method. This Method includes procedures for determining and documenting the quality, i.e., systematic error (bias) and random error (precision), of the measured concentrations from an effected source. This method is applicable to various waste media (i.e., exhaust gas, wastewater, sludge, etc.).

1.1.1 If EPA currently recognizes an appropriate test method or considers the analyst's test method to be satisfactory for a particular source, the Administrator may waive the use of this protocol or may specify a less rigorous validation procedure. A list of validated methods may be obtained by contacting the Emission Measurement Technical Information Center (EMTIC), Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–0200. Procedures for obtaining a waiver are in Section 12.0.

1.1.2 This method includes optional procedures that may be used to expand the applicability of the proposed method. Section 7.0 involves ruggedness testing (Laboratory Evaluation), which demonstrates the sensitivity of the method to various parameters. Section 8.0 involves a procedure for including sample stability in bias and precision for assessing sample recovery and analysis times; Section 9.0 involves a procedure for the determination of the practical limit of quantitation for determining the lower limit of the method. These optional procedures are required for the waiver consideration outlined in Section 12.0.

1.2 *Principle.* The purpose of these procedures is to determine bias and precision of a test method at the level of the applicable standard. The procedures involve (a) introducing known concentrations of an analyte or comparing the test method against a validated test method to determine the method's bias and (b) collecting multiple or collocated simultaneous samples to determine the method's precision.

1.2.1 *Bias.* Bias is established by comparing the method's results against a reference value and may be eliminated by employing a correction factor established from the data obtained during the validation test. An offset bias may be handled accordingly. Methods that have bias correction factors outside 0.7 to 1.3 are unacceptable. Validated method to proposed method comparisons, section 6.2, requires a more restrictive test of central tendency and a lower correction factor allowance of 0.90 to 1.10.

1.2.2 *Precision.* At the minimum, paired sampling systems shall be used to establish precision. The precision of the method at the level of the standard shall not be greater than 50 percent relative standard deviation. For a validated method to proposed method equivalency comparisons, section 6.2, the analyst must demonstrate that the precision of the proposed test method is as precise as the validated method for acceptance.

2. Definitions

2.1 *Negative bias.* Bias resulting when the measured result is less than the "true" value.

2.2 *Paired sampling system.* A sampling system capable of obtaining two replicate samples that were collected as closely as possible in sampling time and sampling location.

2.3 *Positive bias.* Bias resulting when the measured result is greater than the "true" value.

2.4 *Proposed method.* The sampling and analytical methodology selected for field validation using the method described herein.

2.5 *Quadruplet sampling system.* A sampling system capable of obtaining four replicate samples that were collected as closely as possible in sampling time and sampling location.

2.6 *Surrogate compound.* A compound that serves as a model for the types of compounds being analyzed (i.e., similar chemical structure, properties, behavior). The model can be distinguished by the method from the compounds being analyzed.

3. Reference Material

The reference materials shall be obtained or prepared at the level of the standard. Additional runs with higher and lower reference material concentrations may be made to expand the applicable range of the method, in accordance with the ruggedness test procedures.

3.1 *Exhaust Gas Tests.* The analyst shall obtain a known concentration of the reference material (i.e., analyte of concern) from an independent source such as a specialty gas manufacturer, specialty chemical company, or commercial laboratory. A list of vendors may be obtained from EMTIC (see Section 1.1.1). The analyst should obtain the manufacturer's stability data of the analyte concentration and recommendations for recertification.

3.2 *Other Waste Media Tests.* The analyst shall obtain pure liquid components of the reference materials (i.e., analytes of concern) from an independent manufacturer and dilute them in the same type matrix as the source waste. The pure reference materials shall be certified by the manufacturer as to purity and shelf life. The accuracy of all diluted reference material concentrations shall be verified by comparing their response to independently-prepared materials (independently prepared in this case means prepared from pure components by a different analyst).

3.3 *Surrogate Reference Materials.* The analyst may use surrogate compounds, e.g., for highly toxic or reactive organic compounds, provided the analyst can demonstrate to the Administrator's satisfaction that the surrogate compound behaves as the analyte. A surrogate may be an isotope or one that contains a unique element (e.g., chlorine) that is not present in the source or a derivation of the toxic or reactive compound, if the derivative formation is part of the method's procedure.

Laboratory experiments or literature data may be used to show behavioral acceptability.

3.4 *Isotopically Labeled Materials.* Isotope mixtures may contain the isotope and the natural analyte. For best results, the isotope labeled analyte concentration should be more than five times the natural concentration of the analyte.

4. EPA Performance Audit Material

4.1 To assess the method bias independently, the analyst shall use (in addition to the reference material) an EPA performance audit material, if it is available. The analyst may contact EMTIC (see section 1.1.1) to receive a list of currently available EPA audit materials. If the analyte is listed, the analyst should request the audit material at least 30 days before the validation test. If an EPA audit material is not available, request documentation from the validation report reviewing authority that the audit material is currently not available from EPA. Include this documentation with the field validation report.

4.2 The analyst shall sample and analyze the performance audit sample three times according to the instructions provided with the audit sample. The analyst shall submit the three results with the field validation report. Although no acceptance criteria are set for these performance audit results, the analyst and reviewing authority may use them to assess the relative error of sample recovery, sample preparation, and analytical procedures and then consider the relative error in evaluating the measured emissions.

5. Procedure for Determination of Bias and Precision in the Field

The analyst shall select one of the sampling approaches below to determine the bias and precision of the data. After analyzing the samples, the analyst shall calculate the bias and precision according to the procedure described in section 6.0. When sampling a stationary source, follow the probe placement procedures in section 5.4.

5.1 *Isotopic Spiking.* This approach shall be used only for methods that require mass spectrometry (MS) analysis. Bias and precision are calculated by procedures described in section 6.1.

5.1.1 *Number of Samples and Sampling Runs.* Collect a total of 12 replicate samples by either obtaining six sets of paired samples or three sets of quadruplet samples.

5.1.2 *Spiking Procedure.* Spike all 12 samples with the reference material at the level of the standard. Follow the appropriate spiking procedures listed below for the applicable waste medium.

5.1.2.1 *Exhaust Gas Testing.* The spike shall be introduced as close to the tip of the sampling probe as possible.

5.1.2.1.1 *Gaseous Reference Material with Sorbent or Impinger Sampling Trains.* Sample the reference material (in the laboratory or in the field) at a concentration which is close to the allowable concentration standard for the time required by the method, and then sample the gas stream for an equal amount of time. The time for sampling both the reference material and gas stream should be equal; however, the time should be adjusted to avoid sorbent breakthrough.

5.1.2.1.2 *Gaseous Reference Material with Sample Container (Bag or Canister).* Spike the sample containers after completion of each test run with an amount equal to the allowable concentration standard of the emission point. The final concentration of the reference material shall approximate the level of the emission concentration in the stack. The volume amount of reference material shall be less than 10 percent of the sample volume.

5.1.2.1.3 *Liquid and Solid Reference Material with Sorbent or Impinger Trains.* Spike the trains with an amount equal to the allowable concentration standard before sampling the stack gas. The spiking should be done in the field; however, it may be done in the laboratory.

5.1.2.1.4 *Liquid and Solid Reference Material with Sample Container (Bag or Canister).* Spike the containers at the completion of each test run with an amount equal to the level of the emission standard.

5.1.2.2 *Other Waste Media.* Spike the 12 replicate samples with the reference material either before or directly after sampling in the field.

5.2 *Comparison Against a Validated Test Method.* Bias and precision are calculated using the procedures described in section 6.2. This approach shall be used when a validated method is available and an alternative method is being proposed.

5.2.1 *Number of Samples and Sampling Runs.* Collect nine sets of replicate samples using a paired sampling system (a total of 18 samples) or four sets of replicate samples using a quadruplet sampling system (a total of 16 samples). In each sample set, the validated test method shall be used to collect and analyze half of the samples.

5.2.2 *Performance Audit Exception.* Conduct the performance audit as required in section 4.0 for the validated test method. Conducting a performance audit on the test method being evaluated is recommended.

5.3 *Analyte Spiking.* This approach shall be used when sections 5.1 and 5.2 are not applicable. Bias and precision are calculated using the procedures described in Section 6.3.

5.3.1 *Number of Samples and Sampling Runs.* Collect a total of 24 samples using the quadruplet sampling system (a total of 6 sets of replicate samples).

5.3.2 In each quadruplet set, spike half of the samples (two out of the four) with the reference material according to the applicable procedure in section 5.1.2.1 or 5.1.2.2.

5.4 *Probe Placement and Arrangement for Stationary Source Stack or Duct Sampling.* The probes shall be placed in the same horizontal plane. For paired sample probes the arrangement should be that the probe tip is 2.5 cm from the outside edge of the other with a pitot tube on the outside of each probe. Other paired arrangements for the pitot tube may be acceptable. For quadruplet sampling probes, the tips should be in a 6.0 cm × 6.0 cm square area measured from the center line of the opening of the probe tip with a single pitot tube in the center or two pitot tubes with their location on either side of the probe tip configuration. An alternative arrangement should be proposed whenever the cross-sectional area of the probe tip configuration is approximately 5 percent of the stack or duct cross-sectional area.

6 Calculations

Data resulting from the procedures specified in section 5.0 shall be treated as follows to determine bias, correction factors, relative standard deviations, precision, and data acceptance.

6.1 *Isotopic Spiking.* Analyze the data for isotopic spiking tests as outlined in sections 6.1.1 through 6.1.6.

6.1.1 Calculate the numerical value of the bias using the results from the analysis of the isotopically spiked field samples and the calculated value of the isotopically labeled spike:

$$B = CS - S_m \qquad \text{Eq. 301-1}$$

where:

B=Bias at the spike level.
S_m=Mean of the measured values of the isotopically spiked samples.
CS=Calculated value of the isotopically labeled spike.

6.1.2 Calculate the standard deviation of the S_i values as follows:

$$SD = \sqrt{\frac{\sum (S_i - S_m)^2}{(n-1)}}$$

Eq. 301-2

where:

S_i=Measured value of the isotopically labeled analyte in the ith field sample,
n=Number of isotopically spiked samples, 12.

6.1.3. Calculate the standard deviation of the mean (SDM) as follows:

$$SDM = \frac{SD}{\sqrt{n}}$$

Eq. 301-3

$$t = \frac{|B|}{SDM}$$

6.1.4 Test the bias for statistical significance by calculating the t-statistic, Eq. 301-4

and compare it with the critical value of the two-sided t-distribution at the 95-percent confidence level and n-1 degrees of freedom. This critical value is 2.201 for the eleven degrees of freedom when the procedure specified in section 5.1.2 is followed. If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.1.5 *Calculation of a Correction Factor.* If the t-test does not show that the bias is statistically significant, use all analytical results without correction and proceed to the precision evaluation. If the method's bias is

statistically significant, calculate the correction factor, CF, using the following equation:

$$CF = \frac{1}{1 + \frac{B}{CS}}$$

Eq. 301–5

If the CF is outside the range of 0.70 to 1.30, the data and method are considered unacceptable. For correction factors within the range, multiply all analytical results by the CF to obtain the final values.

6.1.6 *Calculation of the Relative Standard Deviation (Precision).* Calculate the relative standard deviation as follows:

$$RSD = \left(\frac{SD}{S_m}\right) \times 100$$

Eq. 301–6

where S_m is the measured mean of the isotopically labeled spiked samples.

6.2 *Comparison with Validated Method.* Analyze the data for comparison with a validated method as outlined in sections 6.2.1 or 6.2.2, as appropriate. Conduct these procedures in order to determine if a proposed method produces results equivalent to a validated method. Make all necessary bias corrections for the validated method, as appropriate. If the proposed method fails either test, the method results are unacceptable, and conclude that the proposed method is not as precise or accurate as the validated method. For highly variable sources, additional precision checks may be necessary. The analyst should consult with the Administrator if a highly variable source is suspected.

6.2.1 *Paired Sampling Systems.*

6.2.1.1. *Precision.* Determine the acceptance of the proposed method's variance with respect to the variability of the validated method results. If a significant difference is determined, the proposed method and the results are rejected. Proposed methods demonstrating F-values equal to or less than the critical value have acceptable precision.

6.2.1.2 Calculate the variance of the proposed method, S_p^2, and the variance of the validated method, S_v^2, using the following equation:

$S_{(p \text{ or } v)}^2 = SD^2$ Eq. 301–7

where:

SD_v=Standard deviation provided with the validated method,

SD_p=Standard deviation of the proposed method calculated using Equation 301–9a.

6.2.1.3 *The F-test.* Determine if the variance of the proposed method is significantly different from that of the validated method by calculating the F-value using the following equation:

$$F = \frac{S_p^2}{S_v^2}$$

Eq. 301–8

Compare the experimental F value with the critical value of F. The critical value is 1.0 when the procedure specified in section 5.2.1 for paired trains is followed. If the calculated F is greater than the critical value, the difference in precision is significant and the data and proposed method are unacceptable.

6.2.1.4 *Bias Analysis.* Test the bias for statistical significance by calculating the t-statistic and determine if the mean of the differences between the proposed method and the validated method is significant at the 80-percent confidence level. This procedure requires the standard deviation of the validated method, SD_v, to be known. Employ the value furnished with the method. If the standard deviation of the validated method is not available, the paired replicate sampling procedure may not be used. Determine the mean of the paired sample differences, d_m, and the standard deviation, SD_d, of the differences, d_i's, using Equation 301–2 where: d_i replaces S_i, d_m replaces S_m. Calculate the standard deviation of the proposed method, SD_p, as follows:

$SD_p = SD_d - SD_v$ Eq. 301–9a

(If $SD_v > SD_d$, let $SD = SD_d/1.414$).

Calculate the value of the t-statistic using the following equation:

$$t = \frac{d_m}{\left(\frac{SD_p}{\sqrt{n}}\right)}$$

Eq. 301–9

where n is the total number of paired samples. For the procedure in section 5.2.1, n equals nine. Compare the calculated t-statistic with the corresponding value from the table of the t-statistic. When nine runs are conducted, as specified in section 5.2.1, the critical value of the t-statistic is 1.397 for eight degrees of freedom. If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.2.1.5 *Calculation of a Correction Factor.* If the statistical test cited above does not show a significant bias with respect to the reference method, assume that the proposed method is unbiased and use all analytical results without correction. If the method's bias is statistically significant, calculate the correction factor, CF, as follows:

$$CF = \frac{1}{1 + \frac{d_m}{V_m}}$$

Eq. 301–10

where V_m is the mean of the validated method's values.

Multiply all analytical results by CF to obtain the final values. The method results, and the method, are unacceptable if the correction factor is outside the range of 0.9 to 1.10.

6.2.2 *Quadruplet Replicate Sampling Systems.*

6.2.2.1 *Precision.* Determine the acceptance of the proposed method's variance with respect to the variability of the validated method results. If a significant difference is determined the proposed method and the results are rejected.

6.2.2.2 Calculate the variance of the proposed method, S_p^2, using the following equation:

$$S^2 = \frac{\sum d_i^2}{2n}$$

Eq. 301–11

where the d_i's are the differences between the validated method values and the proposed method values.

6.2.2.3 *The F-test.* Determine if the variance of the proposed method is more variable than that of the validated method by calculating the F-value using Equation 301–8. Compare the experimental F value with the critical value of F. The critical value is 1.0 when the procedure specified in section 5.2.2 for quadruplet trains is followed. The calculated F should be less than or equal to the critical value. If the difference in precision is significant the results and the proposed method are unacceptable.

6.2.2.4 *Bias Analysis.* Test the bias for statistical significance at the 80 percent confidence level by calculating the t-statistic. Determine the bias (mean of the differences between the proposed method and the validated method, d_m) and the standard deviation, SD_d, of the differences. Calculate the standard deviation of the differences, SD_d, using Equation 301–2 and substituting d_i for S_i. The following equation is used to calculate d_i:

$$d_i = \frac{(V_{1_i} + V_{2_i})}{2} - \frac{(P_{1_i} + P_{2_i})}{2}$$

Eq. 301–12

and: V_{1i}=First measured value of the validated method in the ith test sample.

P_{1i}=First measured value of the proposed method in the ith test sample.

Calculate the t-statistic using Equation 301–9 where n is the total number of test sample differences (d_i). For the procedure in section 5.2.2, n equals four. Compare the

calculated t-statistic with the corresponding value from the table of the t-statistic and determine if the mean is significant at the 80-percent confidence level. When four runs are conducted, as specified in section 5.2.2, the critical value of the t-statistic is 1.638 for three degrees of freedom. If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.2.2.5 *Correction Factor Calculation.* If the method's bias is statistically significant, calculate the correction factor, CF, using Equation 301–10. Multiply all analytical results by CF to obtain the final values. The method results, and the method, are unacceptable if the correction factor is outside the range of 0.9 to 1.10.

6.3 *Analyte Spiking.* Analyze the data for analyte spike testing as outlined in Sections 6.3.1 through 6.3.3.

6.3.1 *Precision.*

6.3.1.1 *Spiked Samples.* Calculate the difference, d_i, between the pairs of the spiked proposed method measurements for each replicate sample set. Determine the standard deviation (SD_s) of the spiked values using the following equation:

$$SD_s = \sqrt{\frac{\sum d_i^2}{2n}}$$

Eq. 301–13

where: n = Number of runs.

Calculate the relative standard deviation of the proposed spiked method using Equation 301–6 where S_m is the measured mean of the analyte spiked samples. The proposed method is unacceptable if the RSD is greater than 50 percent.

6.3.1.2 *Unspiked Samples.* Calculate the standard deviation of the unspiked values using Equation 301–13 and the relative standard deviation of the proposed unspiked method using Equation 301–6 where S_m is the measured mean of the analyte spiked samples. The RSD must be less than 50 percent.

6.3.2 *Bias.* Calculate the numerical value of the bias using the results from the analysis of the spiked field samples, the unspiked field samples, and the calculated value of the spike:

$$B = S_m - M_m - CS$$

Eq. 301–14

where: B = Bias at the spike level.
S_m = Mean of the spiked samples.
M_m = Mean of the unspiked samples.
CS = Calculated value of the spiked level.

6.3.2.1 Calculate the standard deviation of the mean using the following equation where SD_s and SD_u are the standard deviations of the spiked and unspiked sample values respectively as calculated using Equation 301–13.

$$SD = \sqrt{SD_s^2 + SD_u^2}$$

Eq. 301–15

6.3.2.2 Test the bias for statistical significance by calculating the t-statistic using Equation 301–4 and comparing it with the critical value of the two-sided t-distribution at the 95-percent confidence level and n-1 degrees of freedom. This critical value is 2.201 for the eleven degrees of freedom.

6.3.3 *Calculation of a Correction Factor.* If the t-test shows that the bias is not statistically significant, use all analytical results without correction. If the method's bias is statistically significant, calculate the correction factor using Equation 301–5. Multiply all analytical results by CF to obtain the final values.

7. Ruggedness Testing (Optional)

7.1 *Laboratory Evaluation.*

7.1.1 Ruggedness testing is a useful and cost-effective laboratory study to determine the sensitivity of a method to certain parameters such as sample collection rate, interferant concentration, collecting medium temperature, or sample recovery temperature. This Section generally discusses the principle of the ruggedness test. A more detailed description is presented in citation 10 of Section 13.0.

7.1.2 In a ruggedness test, several variables are changed simultaneously rather than one variable at a time. This reduces the number of experiments required to evaluate the effect of a variable. For example, the effect of seven variables can be determined in eight experiments rather than 128 (W.J. Youden, Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36).

7.1.3 Data from ruggedness tests are helpful in extending the applicability of a test method to different source concentrations or source categories.

8. Procedure for Including Sample Stability in Bias and Precision Evaluations

8.1 *Sample Stability.*

8.1.1 The test method being evaluated must include procedures for sample storage and the time within which the collected samples shall be analyzed.

8.1.2 This section identifies the procedures for including the effect of storage time in bias and precision evaluations. The evaluation may be deleted if the test method specifies a time for sample storage.

8.2 *Stability Test Design.* The following procedures shall be conducted to identify the effect of storage times on analyte samples. Store the samples according to the procedure specified in the test method. When using the analyte spiking procedures (section 5.3), the study should include equal numbers of spiked and unspiked samples.

8.2.1 Stack Emission Testing.

8.2.1.1 For sample container (bag or canister) and impinger sampling systems, sections 5.1 and 5.3, analyze six of the samples at the minimum storage time. Then analyze the same six samples at the maximum storage time.

8.2.1.2 For sorbent and impinger sampling systems, sections 5.1 and 5.3, that require extraction or digestion, extract or digest six of the samples at the minimum storage time and extract or digest six other samples at the maximum storage time. Analyze an aliquot of the first six extracts (digestates) at both the minimum and maximum storage times. This will provide some freedom to analyze extract storage impacts.

8.2.1.3 For sorbent sampling systems, sections 5.1 and 5.3, that require thermal desorption, analyze six samples at the minimum storage time. Analyze another set of six samples at the maximum storage time.

8.2.1.4 For systems set up in accordance with section 5.2, the number of samples analyzed at the minimum and maximum storage times shall be half those collected (8 or 9). The procedures for samples requiring extraction or digestion should parallel those in section 8.2.1.

8.2.2 *Other Waste Media Testing.* Analyze half of the replicate samples at the minimum storage time and the other half at the maximum storage time in order to identify the effect of storage times on analyte samples.

9. Procedure for Determination of Practical Limit of Quantitation (Optional)

9.1 *Practical Limit of Quantitation.*

9.1.1 The practical limit of quantitation (PLQ) is the lowest level above which quantitative results may be obtained with an acceptable degree of confidence. For this protocol, the PLQ is defined as 10 times the standard deviation, s_o, at the blank level. This PLQ corresponds to an uncertainty of ±30 percent at the 99-percent confidence level.

9.1.2 The PLQ will be used to establish the lower limit of the test method.

9.2 *Procedure I for Estimating s_o.* This procedure is acceptable if the estimated PLQ is no more than twice the calculated PLQ. If the PLQ is greater than twice the calculated PLQ use Procedure II.

9.2.1 Estimate the PLQ and prepare a test standard at this level. The test standard could consist of a dilution of the reference material described in section 3.0.

9.2.2 Using the normal sampling and analytical procedures for the method, sample and analyze this standard at least seven times in the laboratory.

9.2.3 Calculate the standard deviation, s_o, of the measured values.

9.2.4 Calculate the PLQ as 10 times s_o.

9.3 *Procedure II for Estimating s_o.* This procedure is to be used if the estimated PLQ is more than twice the calculated PLQ.

9.3.1 Prepare two additional standards at concentration levels lower than the standard used in Procedure I.

9.3.2 Sample and analyze each of these standards at least seven times.

9.3.3 Calculate the standard deviation for each concentration level.

9.3.4 Plot the standard deviations of the three test standards as a function of the standard concentrations.

9.3.5 Draw a best-fit straight line through the data points and extrapolate to zero concentration. The standard deviation at zero concentration is S_o.

9.3.6 Calculate the PLQ as 10 times S_o.

10.0 Field Validation Report Requirements

The field validation report shall include a discussion of the regulatory objectives for the

testing which describe the reasons for the test, applicable emission limits, and a description of the source. In addition, validation results shall include:

10.1 Summary of the results and calculations shown in section 6.0.

10.2 Reference material certification and value(s).

10.3 Performance audit results or letter from the reviewing authority stating the audit material is currently not available.

10.4 Laboratory demonstration of the quality of the spiking system.

10.5 Discussion of laboratory evaluations.

10.6 Discussion of field sampling.

10.7 Discussion of sample preparations and analysis.

10.8 Storage times of samples (and extracts, if applicable).

10.9 Reasons for eliminating any results.

11. Followup Testing

The correction factor calculated in section 6.0 shall be used to adjust the sample concentrations in all followup tests conducted at the same source. These tests shall consist of at least three replicate samples, and the average shall be used to determine the pollutant concentration. The number of samples to be collected and analyzed shall be as follows, depending on the validated method precision level:

11.1 Validated relative standard deviation (RSD) ≤ ±15 Percent. Three replicate samples.

11.2 Validated RSD ≤ ±30 Percent. Six replicate samples.

11.3 Validated RSD ≤ ±50 Percent. Nine replicate samples.

11.4 Equivalent method. Three replicate samples.

12. Procedure for Obtaining a Waiver

12.1 *Waivers.* These procedures may be waived or a less rigorous protocol may be granted for site-specific applications. The following are three example situations for which a waiver may be considered.

12.1.1 *"Similar" Sources.* If the test method has been validated previously at a "similar" source, the procedures may be waived provided the requester can demonstrate to the satisfaction of the Administrator that the sources are "similar." The methods's applicability to the "similar" source may be demonstrated by conducting a ruggedness test as described in section 6.0.

12.1.2 *"Documented" Methods.* In some cases, bias and precision may have been documented through laboratory tests or protocols different from this method. If the analyst can demonstrate to the satisfaction of the Administrator that the bias and precision apply to a particular application, the Administrator may waive these procedures or parts of the procedures.

12.1.3 *"Conditional" Test Methods.* When the method has been demonstrated to be valid at several sources, the analyst may seek a "conditional" method designation from the Administrator. "Conditional" method status provides an automatic waiver from the procedures provided the test method is used within the stated applicability.

12.2 *Application for Waiver.* In general, the requester shall provide a thorough description of the test method, the intended application, and results of any validation or other supporting documents. Because of the many potential situations in which the Administrator may grant a waiver, it is neither possible nor desirable to prescribe the exact criteria for a waiver. At a minimum, the requester is responsible for providing the following.

12.2.1 A clearly written test method, preferably in the format of 40 CFR part 60, appendix A Test Methods. The method must include an applicability statement, concentration range, precision, bias (accuracy), and time in which samples must be analyzed.

12.2.2.2 Summaries (see section 10.0) of previous validation tests or other supporting documents. If a different procedure from that described in this method was used, the requester shall provide appropriate documents substantiating (to the satisfaction of the Administrator) the bias and precision values.

12.2.2.3 Results of testing conducted with respect to sections 7.0, 8.0, and 9.0.

12.2.3 Discussion of the applicability statement and arguments for approval of the waiver. This discussion should address as applicable the following: Applicable regulation, emission standards, effluent characteristics, and process operations.

12.3 *Requests for Waiver.* Each request shall be in writing and signed by the analyst. Submit requests to the Director, OAQPS, Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

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APPENDIX B TO PART 63—SOURCES DEFINED FOR EARLY REDUCTION PROVISIONS

Source	Location of definition
1. Organic Process Equipment in Volatile Hazardous Air Pollutant Service at Chemical Plants and Other Designated Facilities.	56 FR 9315, March 6, 1991, Announcement of Negotiated Rulemaking
a. All valves in gas or light liquid service within a process unit	
b. All pumps in light liquid service within a process unit	
c. All connectors in gas or light liquid service within a process unit	
d. Each compressor	
e. Each product accumulator vessel	
f. Each agitator	
g. Each pressure relief device	
Each open-ended valve or line	
i. Each sampling connection system	
j. Each instrumentation system	
k. Each pump, valve, or connector in heavy liquid service	
l. Each closed vent system and control device	

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Part III

Department of Labor

Employment and Training Administration

20 CFR Part 626, et al.
Job Training Partnership Act; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, 630, 631, 637

RIN 1205—AA–95

Job Training Partnership Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor amends the Job Training Partnership Act (JTPA) regulations to implement the Job Training Reform Amendments of 1992. As a result of these interim final regulations, the Department intends for the direction and focus of the JTPA training and employment programs to be on improving the targeting of JTPA services to those facing serious barriers to employment, enhancing the quality of services provided and program outcomes, strengthening fiscal and program accountability and the linkage between the services provided and local labor market needs, and fostering a comprehensive and coherent system of human resource services.

EFFECTIVE DATES: The effective date for this interim final rule is December 18, 1992 through June 1, 1993. The Department will issue a final rule on or before the last effective date of this interim rule and after it has reviewed public comments.

Comments: Written comments are invited on this interim final rule. Such comments will be considered at any time up to the publication of the final rule. Whenever possible, commenters are requested to specifically identify the topic or section(s) of the rule that are subject to comment. To be most useful in the development of the final rule, however, comments in response to this notice should be received on or before February 12, 1993.

ADDRESSES: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Department of Labor, room N–4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs. Commenters wishing acknowledgment of receipt of their comments shall submit them by certified mail, return receipt requested.

Comments received will be available for public inspection during normal business hours at the Office of Employment and Training Programs, U.S. Department of Labor, 200 Constitution Avenue NW., room N–4469, Washington, DC 20210. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment, call (202) 219–6825 (VOICE) or (202) 326–2577 (TDD).

Copies of this notice of interim final rulemaking are available in the following formats: Electronic file on computer disk; and audio tape. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs. Telephone: (202) 219–5580 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The JTPA was enacted in 1982 principally to establish a new program and delivery system for training and related assistance for economically disadvantaged youth and adults leading to permanent, private sector employment. Since the original enactment, the essential structure and design of programs and activities under titles I and II of JTPA have remained substantially the same. These programs have an impressive record of placing participants in jobs.

Over the past few years, the JTPA program has been the subject of extensive review and discussions. This process was largely initiated with an examination of the JTPA and its future by a JTPA Advisory Committee to the Secretary of Labor, has included a multi-year national impact study, and extensive deliberations by the Congress. Throughout this review process there have been constructive comments and suggestions from a wide variety of parties, including business leaders, States, service delivery areas (SDA's), labor organizations, community-based organizations (CBO's), the Department of Labor Office of the Inspector General (OIG), the General Accounting Office, and others with an interest in improving JTPA. Important topics of interest included how to identify and to enroll those most in need of JTPA services, an emphasis on ways in which the program can maximize the delivery and effectiveness of training resources, and the broad areas of program administration improvements and program and fiscal integrity.

The culmination of this activity was the enactment of the Job Training Reform Amendments of 1992 on September 7, 1992, Public Law 102–367 (hereinafter the "Job Training Amendments of 1992", or the "Amendments"). Through these changes, the direction of JTPA will be focused on the provision of quality training and assistance to the most needy by a well-administered and fiscally sound program. With cooperation among the Federal, State, and local government levels, the partners in the private sector, education, labor, and community agencies, the JTPA system will be better able to respond to the nation's changing workforce needs.

Background

On October 13, 1982, the President signed into law the Job Training Partnership Act, Public Law 97–300 (JTPA or the Act).

The stated purpose of the Act was to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment.

Title I of the Act sets forth general requirements for programs, as well as some requirements for State and local operation of programs. Title II provides requirements for State and local operation of adult and youth programs for the economically disadvantaged. Title III of the Act provides for operation of State and substate programs of employment and training assistance for dislocated workers. Title IV provides requirements for special programs for targeted groups, such as Native Americans, migrant and seasonal farmworkers and veterans, as well as for the Job Corps and other specialized programs. Title V provides incentives to States to reduce welfare dependency and increase self sufficiency for absent parents of children receiving aid to families with dependent children and blind or disabled individuals receiving supplemental security income under Title XVI of the Social Security Act.

Prior Actions

The Department is conducting the development of the final rule in an open and public manner. Since the enactment of the Amendments, Department officials have responded to numerous invitations to discuss the Amendments with organizations interested in the Amendments and proposed regulatory action. Additionally, a group of technical experts has offered suggestions to the Department on the proposed areas for regulatory action.

On September 10, 1992, the Department published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** inviting

comments from interested parties regarding proposed or recommended regulatory actions to be taken by the Department.

A total of 162 letters were received by the end of the ANPR comment period. A total of 277 have been received to date and the Department continues to receive comments. In general, the comments received after the official comment period are consistent with those discussed in the text below. Sources were as follows: State JTPA Liaisons and officials (48); private contractors (44); service delivery areas (27); private industry councils (30); public interest groups (20); community-based organizations (13); State education agencies (10); Federal agencies (4); State job training coordinating councils (2); unions (3); service providers (3); private citizens (8); Congress (4); and others (3). Additionally, 54 comments were received from JTPA Section 401 and 402 organizations (Indians and Native Americans and migrant and seasonal farmworkers).

The Department fully considered these comments and addresses the issues they raised in the following discussion.

Approach to Rulemaking

It is the Department's intent in developing these regulations to continue to provide substantial responsibility and discretion to States and local areas in developing policy and in implementing procedures for JTPA programs. This State responsibility is key to the overall success of JTPA. Thus, in many instances in these interim final regulations, responsibility for certain decisions is vested in the State, and through the State, in the SDA's. For example, where definitions of terms are not included, it is intended that the State or SDA administrative entity will define such terms. The Department intends to limit regulations only to those areas in which they are specifically required by the Act or identified by the Department or the public as necessary to provide guidance and clarification, or essential to further the purposes of the Act. Additionally, the Department fully intends to provide strong oversight and monitoring of JTPA programs, in conjunction with strengthened State and local oversight and monitoring. It is through the monitoring of the implementation of the Amendments and these regulations, rather than through promulgation of prescriptive regulations, that the Department, working with the States and service delivery and substate areas, will ensure effective program operations.

The Department has sought to strike a balance in these interim final regulations in terms of depth and breadth. Of all consultations and comments the Department has received, about half express interest in having the Department be more detailed in the regulations, and the other half prefer that the Department provide minimal guidance. The Department intends that the regulations be sufficiently clear so that all parties with an interest in JTPA understand both the requirements and the areas of flexibility provided under in the program.

This interim final rule is not a stand-alone document; the companion document is the JTPA, as amended. In several instances, however, portions of the Act are repeated to make the interim final rule user-friendly and to facilitate its use as a reference tool.

In addition to the 1992 JTPA Amendments, Section 4467 of the National Defense Authorization Act for Fiscal Year 1993 (Defense Authorization Act) amends certain provisions of title III of JTPA. The interim final regulations in 20 CFR part 631 provide for limited modifications to existing title III regulations as required by these amendments.

It is the Department's plan to separately issue reporting instructions and instructions for establishing and adjusting title II performance standards. Both sets of instructions will be published as notices for comment in the **Federal Register**. Copies will be made available to States by issuance of Training and Employment Information Notices (TEINS).

The Department also plans to separately issue proposed revisions to the regulations for title IV, part A, the Employment and Training Programs for Native Americans and Migrant and Seasonal Farmworkers, and for title IV, part B, the Job Corps. When it does, the contents of the regulations as reflected herein may change.

The Department plans to issue Solicitations for Grant Applications (SGAs) for the Youth Fair Chance, Replication, and MicroEnterprise grants authorized by the Amendments at title IV, parts D, H, and I, respectively. The SGAs will elaborate on the requirements of these programs.

The Department of Labor is issuing interim final regulations with a request for comments to implement provisions of the Job Training Reform Amendments of 1992, which amends portions of the Job Training Partnership Act (JTPA). These interim final regulations comply with the statutory provision that final regulations be issued not later than December 18, 1992. At the same time they provide the opportunity for comment. Modification of the JTPA regulations is necessary to incorporate the revisions contained in the amended legislation. It is clearly the intent of Congress that these amendments be implemented with the JTPA Program Year that begins on July 1, 1993. Planning and implementation actions which must be undertaken prior to the publication of final regulations shall be consistent with these interim final regulations which provide a legal basis for such actions.

The Department understands that States and SDA's must begin planning as soon as possible to meet the statutory effective date of July 1, 1993, and expects that these interim final regulations will be used for planning. In drafting these interim final regulations, the Department has carefully considered the ANPR comments and has extensively consulted both within and outside of the Department. The Department is providing a full and open comment process on these interim final regulations and will respond to comments and make revisions, as appropriate, in the final rule.

The Department intends to fully consider any comments received on this interim final rule and to issue a final rule in a timely fashion on or before June 1, 1993, the effective date for this interim final rule.

Framework for Implementation of the Amendments

As discussed in the ANPR, the Department believes that certain principles are central to the JTPA and to the implementation of the Amendments. The following principles are central to the Department's efforts to oversee and guide the implementation process, including the development of these interim final and subsequent final regulations.

- An enhanced role for the private sector is key to an effective JTPA program. Building on their significant contributions to date, the Department wants to ensure that private sector leaders participate in JTPA private industry councils (PIC's)—particularly in the design and operation of JTPA programs. This includes participation in setting high standards for the content and acquisition of skills through training and linking training with job opportunities in the local and national labor market. The Department also wishes to ensure that the PIC's are full partners in the JTPA public-private planning and delivery system.
- Training services provided by JTPA should be of the highest quality and responsive to the needs of the

individual participants and the labor market. This is a cornerstone of the Amendments, and is consistent with the findings and recommendations of the JTPA Advisory Committee, the Secretary's Commission on Achieving Necessary Skills (SCANS), and the concepts embodied in the President's Job Training 2000 proposal. In issuing regulations, the Department wants to establish a framework under which the processes used to assess the skill levels and service needs of individuals and under which participants are assigned to and receive training services—especially services required by the Act—will be most effective and efficient. At the same time, the Department recognizes that the JTPA system, within the framework of the Act and regulations, must be flexible and able to design and to deliver programs to meet local job training needs.

- The JTPA performance standards based on program outcomes will be the basic measure of the accomplishments of the JTPA system. In setting performance standards, the Department will encourage interventions, program strategies, and arrangements that provide appropriate services to participants, enhance opportunities for long-term employment, and increase participant earnings potential. The Department will also pursue cost-effective reporting methods that quantify the results of these efforts.
- JTPA programs must meet the highest possible standards for the use of public funds. Substantial attention was given in the Amendments to strengthening program management, procurement, and fiscal and accountability standards for the JTPA system. The Department intends to advance fully these goals and to ensure the implementation of the requirements contained in the Amendments relating to these areas.
- JTPA and other human resource programs must have a workable system of relationships to jointly serve their participants. There are a number of educational and training programs that provide services to disadvantaged individuals in addition to the JTPA program. It is unlikely that any single program will have the capacity to meet all the training, educational, and service needs of a participant. The Department is proposing regulations that foster the development of joint relationships among programs in order to provide high quality comprehensive services to individuals and to increase the capability to JTPA programs in conjunction with other human resource programs to maximize quality services to individuals.

Format of these Interim Final Regulations

The structure, organization, and numbering of the JTPA regulations have been revised to accommodate the Amendments. Throughout this document, JTPA or the Act refers to the Job Training Partnership Act, as amended (29 U.S.C. 1501 *et seq.*); Department or DOL refers to the U.S. Department of Labor; and Secretary refers to the Secretary of the U.S. Department of Labor or the Secretary's designated representative(s). As used in these interim final regulations, the term "title" refers to titles of the Job Training Partnership Act unless the text specifically refers to another statute. The terms "section", "part", and "subpart" refer to sections, parts, and subparts of these interim final regulations unless the text specifically refers to another document.

Program Coordination

Several States have urged ETA to consider whether certain regulatory provisions would inhibit coordination, and whether the Secretary should establish a process to waive such regulatory provisions. The Department believes it must adhere to certain criteria in establishing regulatory provisions, including adhering to the statute, promoting coordination, targeting JTPA services to the hard to serve, and promoting basic and occupational skills training. The Department requests comments to identify particular provisions of the rules which might discourage coordination and actions the Department might take in this regard including the establishment of a waiver procedure.

As specified at Part 626—Introduction to the Regulations Under the Job Training Partnership Act, part 627 applies to all programs under titles I, II, and III of the Act, except where noted, and part 628 generally applies to title II programs. Parts 629 and 630 are reserved for future use. Part 631 continues to apply to title III programs and part 637 has been revised for the Title V Jobs for Employable Dependent Individuals (JEDI) program. Therefore, various sections that previously appeared in parts 627, 628, 629, and 630 have been shifted to parts 627 and 628.

A new § 626.3 has been added to specify the purpose of these interim final regulations and to identify the entities to which these regulations apply.

Definitions

Comments on the ANPR regarding definition of terms were directed to clarifying ambiguities and the need for common definitions applying across JTPA titles and other Federal programs.

In response to these comments, and in addition to new and revised definitions contained in section 4 of the Act, § 626.5 contains definitions of terms used in these regulations as well as the Act. Definitions have been provided for terms such as: Accrued expenditures, awarding agency, capacity building, commercial organizations, commercially available off-the-shelf training package, contractor, family, family income, funding period, Governor, grant, grantee, individual service strategy, obligations, program year, recipient, service provider, State, stand-in costs, subgrant, subgrantee, subrecipient, technical assistance, and vendor.

Commenters requested that the Department clarify what "appropriate grade level" means for purposes of the requirement of section 263(b). The Department has chosen not to define this term because it is properly a matter for the Governor to determine as part of State and local educational policy.

The definition of offender is found in the Act, and is broader than the definition used for reporting. For reporting purposes, offender has been redefined to exclude those arrested or convicted of misdemeanors in order to better represent a true "barrier to employment" for purposes of defining a hard-to-serve group and adjusting performance standards. This is intended to reflect a concern that, for performance standard adjustment purposes, the term connotes a more serious barrier to labor market participation. The Department has chosen to retain the statutory definition for the purpose of identifying hard-to-serve individuals. This is being done in order to include individuals who may not meet the reporting definition such as youthful offenders who may, for instance, be in a pre-trial intervention program and therefore are not felons. The Department seeks comments on whether this approach will cause a problem in the administration and operation of JTPA programs and alternative approaches that may be adopted.

Prior to the JTPA Amendments of 1992, the term "family" was not defined in the statute. The definition of "family" has been the subject of much recent discussion, in particular as that term related to establishing "family-of-one" criteria for the purposes of income eligibility determinations for receipt of JTPA services. The Department issued a policy interpretation on the matter to all Governors via Training and Employment Guidance Letter (TEGL)

No. 5–89 (April 5, 1989) and TEGL No. 5–89, Change 1 (September 5, 1990). The Department's interpretation established a "basic" definition of the term "family", while maintaining the considerable latitude of the Governor to interpret "family" consistent with the "basic" definition, under the provisions of § 627.1. In light of the Department's interpretation, the various States reviewed their policies and, where necessary, revised their policies to conform to the Department's interpretation. With the inclusion of a statutory definition of "family" in the JTPA Amendments of 1992, the Department reviewed its guidance to the States in the development of the interim final rule. We believe that the Department's interpretation is not inconsistent with the statutory definition. With minor exceptions, we do not anticipate that the statutory definition will require any significant revision of current State policies. The interim final rule indicates that the Governor may make interpretations in the context of the definition of "family" concerning how "dependent children" are defined for JTPA programs. The interim final rule also defines the term "living in a single residence" with other family members to differentiate between temporary, voluntary residence elsewhere (which is included), and as opposed to involuntary, temporary residence elsewhere (which is excluded).

In specifying that these regulations flow through to JTPA subrecipients, and in redefining the term "subrecipient" in § 626.5, among other things it is the Department's intent to make clear that the term "subrecipient" as used in these regulations does not apply to entities such as vendors or individuals enrolled in JTPA programs. The Department intends to apply the standard Federal Government-wide distinctions between subrecipients and vendors that already exist in the audit requirements of Office of Management and Budget (OMB) Circulars A–128 and A–133, as well as the distinctions and definitions of the OMB Circular A–102 Common Rule and other Federal Government-wide requirements applicable to grant programs (see 29 CFR parts 93, 96, 97 and 98). Requirements applicable to vendors are those requirements and conditions contained in the individual contract, purchase order, or other payment arrangements.

In a May, 1992 document titled "Questions and Answers on OMB Circular A–133," developed by the President's Council on Integrity and Efficiency and distributed by the Employment and Training Administration (ETA) to State JTPA Liaisons on July 27, 1992, as an attachment to Training and Employment Information Notice No. 2–92, the distinction between subrecipients and vendors is described. That document provides, in part, the following:

A subrecipient is an entity that receives Federal assistance passed through from a prime recipient or another subrecipient to carry out or administer a program. Distinguishing characteristics of a subrecipient include items such as:

—Determining eligibility for assistance;
—Performance measured against meeting the objectives of the program;
—Responsibility for programmatic decisionmaking;
—Responsibility for applicable program compliance requirements; and
—Use of the funds passed through to carry out a program of the subentity as compared to providing goods or services for a program of the prime recipient.

A vendor is an entity responsible for providing generally required goods or services related to the administrative support of the Federal award. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. Distinguishing characteristics of a vendor include items such as:

—Providing the goods and services within normal business operations;
—Providing similar goods or services to many different purchasers;
—Operating in a competitive environment; and
—Program compliance requirements do not pertain to the goods or services provided.

Similar guidance was also published by OMB in the **Federal Register** on November 13, 1987, "Questions and Answers on OMB Circular A–128," questions 21 and 22.

In making this distinction between a subrecipient and a vendor, the Department has a concern that some JTPA entities may attempt to use the "vendor" label inappropriately to avoid certain JTPA requirements including audits, cost classification, procurement and cost limitations. States, SDA's, and substate grantees (SSG's) are encouraged to review carefully these distinctions, to ensure that such distinctions are clear from an operational standpoint, and ensure the proper application of these terms.

The major changes in Part 627—General Provisions Governing Programs Under the Act are as follows.

Governor/Secretary Agreement

Language has been included in § 627.200 to require the publication of rules, guidelines, interpretations, and definitions adopted by the Governor.

Public Service Employment Prohibition

Section 627.205 remains unchanged except for extending the prohibition to include title II–C funds.

Nondiscrimination and Equal Opportunity

The Job Training Amendments of 1992 amended section 167 of the Act to require the Secretary to issue final regulations which would clarify the application of the nondiscrimination and equal opportunity provisions of the JTPA and provide uniform procedures for implementing these provisions. On October 19, 1992, the Directorate of Civil Rights, the DOL agency responsible for enforcing the various Federal nondiscrimination and equal opportunity statutes applicable to federally assisted programs, issued a notice of proposed rulemaking to implement the nondiscrimination and equal opportunity requirements of the JTPA (29 CFR part 34). Throughout these interim final JTPA regulations, all of the Department's nondiscrimination and equal opportunity regulations (29 CFR parts 31, 32, and proposed 34) are cited since they are all applicable to JTPA federally assisted programs. In order to eliminate the burden of complying with overlapping regulatory requirements, the proposed 29 CFR part 34 would provide that compliance by JTPA recipients with part 34 would constitute compliance with the Department's title VI regulations (29 CFR part 31) and with specified portions of the Department's section 504 federally assisted program regulations. (29 CFR part 32, subparts A, C, and E).

Relocation

Section 141(c) of the Act was substantially revised to prohibit the use of JTPA funds to induce or to encourage the relocation of a company when such relocation results in the loss of employment of any employee of the company at the original site. This subsection also prohibits certain assistance to any relocating company for the first 120 days after the company commences operations at the new or expanded location, if the relocation results in an employee's job loss at the original site. If the Secretary finds that the State, SDA, or SSG has violated either provision, fines are to be levied equal to double the amount expended. If the violator demonstrates that it neither knew nor reasonably could have

known (after an inquiry undertaken with due diligence) that funds it provided were expended in violation of these provisions, only the amount expended is to be repaid.

The comments received on these provisions expressed concern in several areas, including how SDA's may be certain whether a company is relocating. One scenario was cited where a company opens in a new area under a different name with plans to close the original facility after a year, when the second location is fully operational. Another situation was raised where a company is expanding a location at the expense of another.

Section 627.215(d) sets forth a requirement to document a pre-award review which is intended to address the concerns discussed above. The review is to be conducted and documented by the SDA or SSG jointly with the establishment seeking JTPA assistance. This review should include information such as the company official providing the information, other company names, and whether the company is relocating, or expanding, from another area with a resulting loss in employment. In addition, the SDA or SSG should include contract provisions specifically reflecting the statutory prohibition. Although other commenters requested that the terms "encourage" and "induce" be clarified so as not to impact on job development activities, the Department believes that these terms are addressed sufficiently under the prohibition on economic development activities at § 627.225(a), and that the use of pre-award review questions will assist in establishing whether a company's plans to relocate will mean a loss of employment at another location.

Guidance on the Issue of Duplicate and Overlapping Payments Among Federal, State, and Local Programs, Including Pell Grants

Section 627.220 clarifies the interpretation of sections 141(b) and 107(b) of the Act. This section also provides guidance for coordination with title IV of the Higher Education Act, and with the new coordination provisions at sections 205 and 265 of the Act, as amended, which require SDA's to coordinate with other programs to enhance the provision of services.

Several commenters noted that the purpose of the linkages and coordination requirements was to preclude duplicate or overlapping payments among Federal, State, and local programs to participants and training institutions and to ensure that the best mix of programs and funds is available to the JTPA participant.

In response to these comments, § 627.220 assigns responsibility to the SDA's to establish coordination procedures, including provisions for the school's financial aid officer to share information on financial resources for participants with the SDA's, and contractual safeguards to prevent duplication or overlap of services and funding among the programs. The SDA is also to provide to an educational institution's financial aid officer the names of JTPA participants who are to attend the educational institution and for whom JTPA payments will be made.

JTPA program operators should be aware that the use of certain contracting methods, particularly contracts for classroom sized projects and fixed unit performance-based contracts, affect how educational institutions are permitted to calculate the Cost of Attendance (COA) for Pell Grants. An institution can include a tuition and fee charge for calculating the Pell Grant COA only when contracts or agreements specify the tuition and fees which the SDA will pay for each student (*i.e.*, individual referrals). Agreements which do not allow tuition and fees to be included in the Pell COA are:

(A) Blanket agreements which do not specify an individual amount to be paid by the SDA for tuition and fees but may include a number of students to be trained and an amount of compensation to be paid to the school.

(B) Performance-based contracts in which some portion of the tuition payment is contingent upon criteria such as the student's completion of the training, placement in a job, or retention in a job.

Section 627.220 also describes the importance of a coordinated approach in developing the Individual Service Strategy (ISS) so that the financial needs and resources of the participant are adequately addressed. The participant's ISS should ensure the optimum mix and coordination of Federal, State, and local programs and funding resources for the participant. The SDA's assessment of the participant's financial capability for participating in a program, as well as coordination and effective use of information and services among programs, is essential to effective program administration and prudent use of funds.

For purposes of coordinating financial resources, it is suggested, where appropriate, that Pell Grant eligibility be established during the objective assessment process, to the extent practicable, rather than after obligation of JTPA funds. These interim final regulations do not specify the portion of the participant's Pell Grant that should defray tuition costs as opposed to other educational expenses.

Employment Generating, Economic Development, and Other Activities

Section 141(q) of the Act, as amended, prohibits employment generating activities (EGA) with JTPA funds (including both grants and program income). Included in the prohibition are economic development activities, revolving loan funds, capitalization of businesses, contract bidding resource centers, and similar activities. However, as several commenters pointed out, JTPA's role in assisting participants is intimately tied to economic development, including economic development agency representation on the PIC. JTPA programs provide trained workers to new and expanding businesses and, in this capacity, a partnership with local economic development efforts is helpful.

Section 627.225(b) indicates that SDA staff may work with economic development agencies and participate on economic development boards and commissions to provide information about JTPA. Such participation may also assist SDA staff make informed decisions about community job training needs and the future direction of local JTPA training. In addition, the prohibition on EGA should not be taken to prohibit ordinary employer outreach and job development activities.

Displacement

The provisions in the regulations have not been substantially changed from the prior § 629.4 and closely reflect the provisions of section 143(b) of the Act.

On-the-Job Training (OJT)

Over 30 comments were received on OJT. Comments focused on extraordinary costs, reverse referrals, and temporary employment. (Youth OJT is discussed in part 628.)

Section 141(g) of the Act was amended to add new requirements for the provisions of on-the-job training (OJT) under the Act. These new regulations are applicable to all programs conducted under JTPA.

OJT is an important training activity in JTPA. Employers provide necessary training for regular jobs through a "hire first, train later" strategy, with participants who successfully complete OJT retained in permanent employment.

Several issues and questions arising from DOL (ETA and the OIG) and the GAO oversight activities are addressed, including practices such as reverse

referrals, temporary employment, and extraordinary training costs.

Each OJT contract is to specify the type and duration of training to be developed and other services to be provided in order to ensure that proposed costs are reasonable.

OJT is a training option meant to be conducted in the highest skill occupations appropriate for the eligible participant. It is not subsidized employment for low-skill occupations which need very little training time. OJT is only appropriate for the length of time necessary to be trained in the specific job. The regulations limit the use of JTPA funds for OJT to not more than 6 months. However, the period of reimbursement may be longer than 6 months for participants with special needs, provided the total training hours reimbursed are less than 500 hours.

Each training opportunity should be structured to meet the specific training needs of a participant. The duration should reflect both training needs that must be met for the job and the experience and the background of the participant. OJT agreements are to specify training content.

Employers who exhibit a pattern of failing to provide participants with continued long-term employment (minimum of 6 months), or who provide wages and benefits not at the same level as other employees similarly employed, both during the OJT period and upon completion, will be ineligible for additional OJT contracts. For example, an employer which has entered into 2 OJT contracts, trains 8 participants under the first and 4 under the second, and then terminates, without cause, 5 at the conclusion of the first contract and another 2 at the conclusion of the second, may be determined to exhibit a pattern of failing to provide continued long-term employment. In addition, an employer which is an OJT contractor and has entered into 3 OJT contracts and trained 15 participants at a starting wage of $6.50 an hour and, subsequent to the conclusion of the OJT contracts, reduces, without cause, the salaries of the all but 3 of the former JTPA participants to $5.50 an hour, may be determined to exhibit a pattern of failing to provide continued employment with wages at the same level as similarly situated employees. Again, these cases are only intended as examples, and not intended to set a standard. The Governor will be expected to set standards.

The Department is developing a technical assistance guide to provide additional guidance on OJT, including such areas as appropriate occupational skill levels for OJT agreements, occupations, ratio of trainees to total staff and to supervisory staff. Guidance will also be provided on how to use available reference materials including, but not limited to, the "Dictionary of Occupational Titles" (DOT) codes and participant histories in determining training lengths.

It is expected that the amended legislation, these interim final regulations, technical assistance, and Department of Labor monitoring will help to eliminate the problems that were identified in OJT during the recent oversight and monitoring activities.

The term "reverse referrals" describes situations where employers refer individuals whom they have already decided to hire to the SDA. The SDA, in turn, refers the individuals back to the employers to receive OJT with the employers receiving payments from JTPA.

"Temporary employment" occurs when the OJT participant is actually employed by a temporary agency and not the worksite employer where on-site training is received. Some worksite employers use the temporary agency for all new employees for a probationary or try-out period.

"Extraordinary training costs" are those costs incurred by the employer as a result of hiring OJT participants which are over and above the costs normally incurred in hiring and training employees without the assistance of JTPA. Extraordinary costs represent the additional burden borne by employers in training JTPA participants, and the lower initial productivity of such participants.

The major comments were on the following areas:

Length of training. Some commenters requested clarification on the 6-month and 499-hour limitations on OJT. Some recommended that the Specific Vocational Preparation (SVP) be used instead of DOT codes. One mentioned that OJT duration for high-tech occupations cannot be limited to 6 months.

Section 627.240(b)(2) encourages OJT for higher-skill occupations requiring long-term training as appropriate for the participant, but clarifies that JTPA funds may only be used to reimburse employers for 6 months. However, the period of reimbursement may be longer than 6 months for participants with special needs (such as the disabled) who participate on a less-than-full-time basis, provided the total OJT training hours reimbursed are less than 500 hours. When other training, such as classroom training, is linked with OJT, the time in such related training is not included within the 6-month limitation unless the participant receives a wage from the employer for such time and the employer is reimbursed a portion of that wage as OJT. Further, the use of allowable recognized reference materials to determine the length of training for an occupation is not limited to DOT codes. The SVP and other recognized sources are acceptable.

Over-regulation/extraordinary costs. The preponderance of comments on OJT urged DOL not to provide excessive regulations or documentation requirements on OJT. They stated that over-regulation would discourage employer participation in JTPA, thereby diminishing OJT as a training option. A few mentioned that this was particularly true for small employers. Many of the above comments on over-regulation were specific to concerns about excessive recordkeeping requirements on employers in tracking extraordinary costs.

The interim final regulations at § 627.240(c)(2) clarify that extraordinary costs do not have to be separately documented. However, it should be noted that, consistent with § 627.240(d), OJT contracts are to include documentation of the type and duration of training services that will be provided. Further, employers are required to maintain acceptable time and attendance, payroll, and other records to support amounts reimbursed under OJT contracts.

Reverse referrals. Several commenters stated that reverse referrals were good for outreach, certification, recruitment, and short-term supportive services where necessary.

Section 627.240(f) requires that referrals from employers may be accepted for OJT only if the participant's assessment and ISS document such OJT as an appropriate training activity. The participant must be a part of the JTPA system before receiving OJT, classroom training, supportive services or any other authorized activity or service based on the ISS.

Temporary employment. For the most part, commenters felt that temporary employment was a positive program aspect; only one said to disallow it.

Since OJT is designed to provide long-term, permanent employment, the interim final regulations at § 627.240(i) only allow temporary employment agencies to serve as the employer of record for purposes of providing OJT to participants when the participants are treated as all other agency employees. The employer providing the on-site training is required to have a contractual relationship with the JTPA program. A "temporary employer" as an

intermediary runs counter to the goal of OJT resulting in long-term, permanent employment with the employer providing the training.

Work Experience

Three commenters called for regulatory guidance on the use of work experience. One commenter asked that work experience be defined and two requested that the conditions under which work experience is suitable be specified. One also requested that limits be set on the length of work experience participation. Section 627.245 generally limits participation in adult work experience activities to no longer than 6 months or 499 hours, if working part time. This activity is to be justified in the ISS, based on the participant's needs. Section 627.245 also defines work experience and provides guidance on individuals for whom work experience is suitable.

Needs-Based Payments

The Amendments emphasize targeting services to the hard to serve. Further, the Amendments recognize the need to provide appropriate supportive services to allow participants to stay in a JTPA program longer. The Amendments also provide for several types of payments, all of which are to be charged to the training-related and supportive services category. Commenters requested that clarification be provided on the requirements and the mechanisms for payments to participants.

Section 627.305 provides clarification on the use of needs-based payments, which are allowable under title II. A commenter suggested allowing needs-based payments to be determined based upon a group characteristic, such as welfare recipient. This, however, would be inconsistent with the section 204(c)(3) of the Act which uses the language "necessary for participation," which can only be determined at the local level by evaluating the needs and circumstances of individual participants. This determination should be based upon the results of the objective assessment and documented in the ISS.

Incentive payments and bonuses to participants based on attendance and performance in a program are allowable only in the year-round youth program. The formula or procedure for such a payment is to be included in the SDA job training plan. Payments are to be reasonable and commensurate with the behavior being rewarded. One commenter requested that payments be viewed as training and, as such, be charged to training. However, consistent with the treatment of other payments, incentive payments are to be charged to the training-related and supportive services category.

To allow for longer term participation, § 627.305(d) provides for wages to be paid for certain title II activities, such as work experience and limited internships. Section 627.305(e) provides for the payment of such wages for participation in other activities, such as classroom training, if the concurrent wage earning activity is for more than 50 percent of the training time.

The Department wants to encourage JTPA programs which provide a combination of work and learning. The statute provides that the work experience activity may not be conducted on a stand-alone basis so it will be conducted in conjunction with some other training activity. Combining a wage-equivalent payment with classroom training is intended to create an incentive for completion of the classroom training activity. The regulation requires that work experience and classroom training be linked as contextual learning as a condition to making such wage payments for adults.

Supportive Services

Supportive services are often critical for serving those most in need. The use of supportive services is encouraged to enable the hard-to-serve population to participate in longer-term interventions. The provision of supportive services must be determined on an individual basis. Comments were received on the need to have supportive services available to eligible applicants. The Department agrees that limited supportive services may be provided to eligible applicants, before they are enrolled as participants, to permit participation in assessment activities.

Section 627.310(a) sets forth the parameters for the provision of supportive services. Section 627.310(a)(3) provides that supportive services may include limited financial assistance. This activity allows for a payment to cover a financial need of a participant that, if unmet, would prevent that participant from attending his or her JTPA training. Financial assistance is to be provided to pay for specific, necessary services at the SDA's discretion, upon description in the Job Training Plan of the procedures for providing such assistance and approval by the Governor. The amount provided to meet a particular need may be predetermined by a formula or procedure; however, any determination of need for the financial assistance must be made by evaluating the needs and circumstances of the individual participant as part of the objective assessment, and development of the ISS.

Grant Agreement and Funding

Section 627.405 establishes a new annual grant agreement process to facilitate the obligation, accounting, and closeout of JTPA funds by year of appropriation.

Reallotment and Reallocation

Section 627.410 has been established to implement the new section 109 of the Act, which requires the Governor to reallocate, among SDA's in the State, unobligated funds in excess of 15 percent of any SDA's program year title II allocation. Section 109(b) of the Act provides that the Secretary is to reallot, to the eligible States, unobligated funds in excess of 15 percent of any State's program year allocation.

Several comments were received on reallotment/reallocation. Most frequently, commenters requested that the term obligated be clearly defined and that the circumstances under which reallotment/reallocation can occur be identified. Two commenters asked that the Governor be allowed to be more restrictive, for example, basing reallocation(s) on expenditures, not obligations. One commenter requested the opposite, i.e., that the regulations clearly omit the use of expenditures for reallocation purposes.

Section 627.410 reflects the mandate of section 109 of the Act. It does not establish additional requirements beyond those established in the Act. The term "obligations" is defined in § 626.5, using the standard Federal grant definition of the term. It should be understood that the Secretary will reallot funds under title II based on the State's obligation of funds and the Governor will reallocate funds based on each SDA's obligation of funds.

Several commenters also questioned whether the Department was going to provide further interpretation of section 109(a)(3) of the Act concerning SDA's that have the highest rates of unemployment for an extended period of time and the highest poverty rates. Comments were split on whether the Department should expand on this criterion or leave it to each Governor. The Department elects not to elaborate further and will leave the interpretation of this section to each Governor, provided such interpretations are objective and applied consistently.

Insurance

Section 627.415 provides a cross reference to the property management section (§ 627.465) and does not provide cost classification guidance, since such

guidance is contained in the cost classification section (§ 627.440).

Procurement

Section 164 of the Act requires the Secretary to establish minimum procurement requirements in regulations, which are to be followed by Governors in prescribing and implementing procurement standards. These standards are to maximize competition, ensure fiscal accountability, and prevent fraud and abuse in JTPA programs. The Amendments require the Secretary to consult with the Inspector General of the Department of Labor and take into consideration relevant aspects of the OMB Circulars in establishing minimum procurement requirements. In response to this mandate, all but 1 of the 9 procurement requirements in the Amendments have been amplified, based on OMB Circular language. (The one exception is the requirement that State or local government transactions be conducted on a cost reimbursable basis.) To facilitate the reader's use of these regulations, parts of these Circulars have been paraphrased extensively within these interim final regulations. In accordance with § 627.420(a), the Governor/State is required to establish specific standards and implementing procedures based on the minimum requirements set forth in the regulation.

Procurements are to be conducted in a manner providing full and open competition, and the use of sole source procurements is to be minimized to the extent practicable. In support of these two requirements, § 627.420(d), based on the OMB Circulars, details the methods of procurement that subrecipients are to use. It is noted that OJT can be sole sourced. JTPA procurements are not to permit either excess program income or excess profit. If profit or program income is included in the price, States and subrecipients are to negotiate the profit or program income as a separate element of the price for each contract in which there is no price competition. The regulations list the conditions that are to be taken into consideration in establishing a fair and reasonable profit or program income. The OIG has recommended that certain clauses be include in JTPA procurements. As a result, requirements have been established for the inclusion of specific clauses in State and subrecipient procurements. The clauses listed are based on OIG recommendations and the OMB Circulars. JTPA contracts are to include a clause that establishes payment conditions and delivery terms. States and subrecipients are encouraged to establish payment conditions that call for the withholding of final payment until all delivery conditions are met. For example, in the case of an OJT contract, it would be reasonable to withhold the final OJT payment until the participant has been retained on the job for a specified period of time after the completion of training. Other requirements are that States and subrecipients establish dispute/protest procedures and retain records of procurements for prescribed periods.

A total of 39 comments were received on procurement issues. Fifteen commenters requested that the regulations not be overly prescriptive. Three requested that the regulations not require separate State systems. Two asked that the OMB Circulars not be adopted in their entirety.

In response to comments, the interim final regulations allow the Governor to establish policies that identify specific types of entities, such as school systems, to which subrecipients may make sole source awards. These regulations will not require separate State JTPA procurement systems to be implemented. Many States are operating their procurement systems in accordance with the OMB Circulars. Although the interim final regulations are based only on portions of the OMB Circulars, these requirements are with most existing State systems.

Section 627.420(c) specifies restrictions on conflict of interest and specifically addresses PIC conflict of interest at paragraph (c)(4). The Act and these regulations very specifically address conflict of interest, including conflict of interest for PIC members; but, these restrictions do not preclude representatives of businesses in the community from being members of the PIC or from employing JTPA participants. The Act requires that business representatives be included on PIC's and anticipates that they be actively involved in the program. That same principle applies to representatives from other organizations involved in job training in the community. Similarly, community based organizations, education agencies, or other service deliverers are expected to be represented on the PIC, and this representation does not disqualify these organizations from participating in the JTPA program as long as appropriate disclosure and recusal rules are followed.

Selection of SDA Grant Recipients and Service Providers

A total of 47 comments were received on this issue. The majority of these comments concerned the desire that competition and an "even playing field" govern the selection of service providers. Nine commenters requested guidance on determining demonstrated effectiveness. Some commenters were concerned that as a result of the Amendments more SDA's/SSG's would be providing JTPA services in-house, rather than contracting out for them. These commenters, for the most part, requested that an SDA/SSG not be permitted to select itself as a service provider unless it meets the Act's procurement requirements applicable to other service providers. Section 627.422 reflects the requirement at section 107 of the Act that the Secretary establish guidelines on the selection of service providers, based on demonstrated performance. Some of the "demonstrated performance" measures contained in the Act and listed in the interim final regulation include: Likelihood of meeting performance goals, cost, quality of training, and characteristics of participants. The Department of Education is currently developing standards under the Higher Education Act (HEA) which will consider the effectiveness of educational institutions participating under the HEA. The process is not sufficiently developed to be of immediate assistance to the JTPA system at this time, but the Department of Labor may consider use of such standards at a later date in connection with the selection of service providers.

Additionally, the selection of service providers is to: be made to the extent practicable on a competitive basis; include a determination of the ability of the service provider to meet program design specifications; and include documentation of compliance with procurement standards established by the Governor. Several of these listed measures are similar to the responsibility measures contained in the "Federal Acquisition Regulation" (FAR). This section is applicable to both the selection of contractors and grantees. This new section is based on the Act and the FAR.

Section 627.422(a), implementing section 107(e)(2) of the Act, requires the Governor to establish standards in making determinations of demonstrated performance, in accordance with the requirements of §§ 627.420 (Procurement) and 627.422 of the regulations and section 164(a)(3) of the Act. Section 627.422(b), implementing section 107(e) of the Act requires States and subrecipients to select service providers on a competitive basis, which addresses commenters' concerns over selecting service providers

competitively. The determinations of demonstrated performance required by this section take various issues and sources into consideration. Of the matters listed in § 627.422(d), four have a basis in the FAR. These are: The requirement of having adequate financial resources; the requirement to be able to meet program design specification at a reasonable cost (also based on section 107 of the Act); the requirement of having the necessary organization, experience, accounting and operational controls (also based on section 104 of the Act); and the requirement of having the technical skills to perform the work. The remainder of this new section lists other service provider requirements that are found throughout the Act.

Regarding selection of CBO's as service providers, the interim final regulations require that consideration is to be given to CBO's that are recognized in the community in which they are to provide services. The Act and the regulations require that appropriate education agencies are to be provided the opportunity to provide educational services, unless it is demonstrated that alternative agencies of organizations would be more effective. Regarding the selection of institutions/organizations to provide training, States and subrecipients are to take into consideration such performance measures as retention in training, training completion, and job placement. Regarding the impact on new CBO's and other new organizations, the requirements for demonstrated past performance do not require that this past performance be JTPA-specific. CBO's and organizations with experience in other training or education venues exclusively should not be eliminated from consideration. Regardless of the types of organizations that are being considered for selection as service providers, the Department expects the selection process to be accomplished in an unbiased manner, and in compliance with the Act and the regulations. All organizations under consideration are to be afforded a "level playing field" in the selection process.

Another issue related to service provider selection concerned SDA's/SSG's providing services themselves. Section 627.422(c) requires SDA's/SSG's to apply to themselves the same criteria which are applied to other service providers, and to document this process in writing.

Funding Restrictions for "High-risk" Recipients and Subrecipients

Section 627.423 establishes the authority and the opportunity for any entity that makes awards or subawards to impose certain funding restrictions on recipients or subrecipients that are responsible entities but have a history of performance problems or system deficiencies. Such funding restrictions are not viewed by the Department of Labor as sanctions but rather as a mechanism to improve performance and/or increase accountability and fiscal integrity, without unduly interrupting the flow of funds.

Prohibition of Subawards to Debarred and Suspended Parties

Section 627.424 applies the Federal government-wide requirements on awards to debarred or suspended parties contained in Executive Orders 12549 and 12689 and implemented for all Department of Labor grant programs in regulations codified at 29 CFR part 98. These requirements were previously issued to JTPA Liaisons in a Grant Officer Notice dated April 30, 1992. As provided in 29 CFR part 98, certifications are not required for the State "pass-through" of JTPA funds to SDA's/SSG's since these are considered "mandatory awards" and are, therefore, exempt from the 29 CFR part 98 requirements. However, any other subaward (contract or subgrant) over $25,000, such as an SDA contract or subgrant with a service provider, must meet the "lower-tier" certification. These "lower-tier" certifications are to remain with the respective awarding agency.

Standards for Financial Management and Participant Data Systems

Section 164(a)(1) of the Act requires that all financial transactions be conducted and records maintained in accordance with generally accepted accounting principles applicable in each State.

Generally accepted accounting principles (GAAP) are accounting rules and procedures established by authoritative bodies or conventions that have evolved through custom and common usage. The application of GAAP results in uniform standards and guidelines for financial accounting and reporting; however, the principles vary depending on the type of entity, e.g., State or local government, not-for-profit entity, or educational institution. Some of the additional requirements necessary for a financial management system to be in compliance with GAAP that may affect JTPA recipients and subrecipients include accrual or modified accrual accounting, financial statement presentation, full financial disclosure, budgetary control and reporting, and accounting for and/or reporting of contingencies, fixed assets, pension funds, and long-term liabilities.

The Department does not view the inclusion of the GAAP requirement as a new JTPA requirement for most of the entities that have previously administered JTPA or other Federal grant funds. The audit requirements that have previously been applicable to JTPA funds, and continue to be applicable, have required, as specified in the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" (GAO Yellow Book), a determination of "whether the financial statements of an audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles" as part of the audit scope.

Section 627.425 is a redesignation of § 629.35 in the present regulations. Section 627.425(a)(2) has been added to clearly specify the right of a higher tier organization to monitor the financial management systems of an entity awarded a JTPA grant, subgrant, or contract. This right also extends to Department of Labor monitoring activities.

Section 627.425(b) has been revised to reflect the statutory GAAP provision and was further revised to clarify that responsibility for the adequacy of financial management systems of JTPA subrecipients is the responsibility of each subrecipient as well as the responsibility of the State. Additionally, this section specifies that JTPA-related funds, including program income and potential stand-in costs, must also be traceable in the recipient's or subrecipient's financial system.

Section 627.425(c) has been revised to include a requirement that titles II–A, II–C and III records be maintained of applicants for whom an eligibility determination has been made, as well as records of participants.

Finally, the provisions regarding retention of records that previously appeared in paragraphs (e) through (g) of § 629.35 have been redesignated as a new § 627.460 (Retention and access requirements for records) for clarity.

Any additional requirements to be issued by the Department which are covered by the Paperwork Reduction Act (PRA) will not be issued without appropriate notice and comment pursuant to PRA.

Grant Payments

Section 162 of the Act contains a new subsection (f) that provides that when contracting with nonprofit organizations of demonstrated effectiveness, the Secretary, States, SDA's, and SSG's may

advance payments provided that such payments are based on the financial need of such organization and are not in excess of 20 percent of the total contract amount.

Section 627.430 has been expanded, both due to changes necessitated by the Cash Management Improvement Act (CMIA) and its implementing regulations promulgated by the Department of the Treasury and to improve the fiscal integrity of the JTPA program by establishing additional requirements on JTPA cash management.

This section sets standards as to when advances to subrecipients and contractors are appropriate and when the reimbursement method is appropriate. It also makes provision for using the working capital advance payment method and permits such working capital advances of up to 20 percent, consistent with section 162(f) of the Act. This section also requires that cash on hand attributable to JTPA be disbursed before requesting additional cash payments.

While § 627.430 requires compliance with the Treasury Department CMIA regulations at 31 CFR part 205, including effective cash management, this section authorizes an exception to the Treasury Department regulations as they pertain to interest earned by JTPA subrecipients on advances of Federal funds. As provided at section 141(m) of the Act, interest earned on JTPA funds is program income and may be used for program purposes.

For States, as defined at 31 CFR 205.3, the Treasury Department CMIA regulations require selection of either a funding technique that results in no interest earnings on Federal funds or a funding technique that results in an interest liability to the Federal Government. States, including subrecipients that are State entities, that select the latter may use interest earned on JTPA funds to offset any interest liability of the State.

This section also encourages the use of minority-owned banks.

Cost Principles and Allowable Costs

Section 164(a)(2) of the Act, as amended, requires the Secretary to prescribe regulations establishing uniform cost principles substantially equivalent to those generally applicable to recipients of Federal grant funds. In addition, sections 164(a)(1) and 165(f)(1) of the Act require application of GAAP in the accounting and reporting of JTPA costs.

Most commenters discussed the degree to which the OMB Circulars containing cost principles should be adopted as opposed to leaving flexibility with the States to establish requirements in this area. Practically all commenters indicated that uniform cost standards were required to some extent.

Section 627.435(a) has been revised to require that costs to be charged to the JTPA program be consistent with GAAP rather than the previous consistency standard of "like circumstances in nonfederally sponsored activities".

Paragraphs (a) through (h) of § 627.435 establish JTPA cost principles and provide guidance on the allowability and nonallowability of certain items of cost. New guidance is provided on applicable credits, lobbying costs, back pay, clarification of legal expenses, and new prohibitions on contingency reserves and bad debts expense as allowable JTPA costs.

Paragraph (i) contains a listing of selected items of costs for which the Governor will be required to prescribe treatment. This approach contains two significant differences with the Federal cost principles: (1) There is no requirement for recipients to submit Indirect Cost Rate Proposals to the cognizant Federal agency and obtain Federal approval, and (2) Attachment B of A–87 details specific treatment for selected items of cost while the interim final regulation lists items of cost and requires the Governor to determine specific treatment for each item. The Department believes this approach, along with the other provisions in this section discussed above, is consistent with the requirement at section 164(a)(2) of the Act to establish uniform cost principles substantially equivalent to the principles generally applicable to recipients of Federal grant funds, while also maintaining the role and responsibility of the Governor in the administration of JTPA programs. This approach assures that the same items of costs will be treated by all States, while permitting some flexibility for individual State discretion and decisions on individual items, tailored in part, to the JTPA program.

Classification of Costs

Section 108 of the Act requires that funds expended under the Act be charged to the appropriate cost category. The exceptions to this requirement are commercially available training packages purchased competitively for off-the-shelf prices and tuition costs. Section 108(b) also revises the three cost categories from those previously used by JTPA and requires the Secretary to define the cost categories.

Numerous comments were received on this subject, including comments on the potential for community-based and other organizations to incur higher administrative costs as a result of the extensive time and resources required to serve people with "multiple barriers" to employment and on the possible inability of private-for-profit (commercial) entities to continue to play a role in JTPA because of cost allocation constraints. Specific cost items that received the most comments were indirect or overhead costs; classification of profits or fees; cost of initial intake, eligibility determination, or pre-enrollment assessment; and costs of management information system (MIS) functions. Several commenters encouraged the application of charges by function rather than position, particularly in charging the costs of positions such as a project director who is also directly involved in the delivery of services to participants. Other commenters requested definition of the phrase "commercially available training packages purchased competitively for off-the-shelf prices." Comments were also received on fixed-unit price, performance-based contracts and whether they could continue to be charged 100 percent to the direct training category; continuation of administrative cost pooling; and the need for broad definitions of training and training-related costs coupled with a narrow definition of administrative costs.

Most commenters requested as much delineation as possible regarding what items are to be charged to each cost category. All commenters cautioned against defining administrative costs in a manner that would cause effective service providers to leave the JTPA system.

Section 627.440 has been substantially revised to conform to the requirement, at section 108(b)(3) of the Act, that the Secretary define the three title II cost categories of administration, training-related and supportive services, and direct training services. The Secretary's definitions of these categories are contained in § 627.440(d). In addition, § 627.440 (b) and (c) specify all of the title II cost categories (or cost objectives) applicable to the JTPA program.

Section 627.440(a) requires costs to be charged to the benefitting cost category (or objective) to the extent that benefits are received by such cost category or objective.

Provisions covering JTPA administrative cost pools have been moved from the cost limitation section to § 627.440(f) as it is principally a cost classification subject, rather that a cost limitation subject. The language has been changed to state that, for JTPA

reporting purposes, costs must be allocated to the benefitting programs based on the benefits received by each program. The Department recognizes that this language represents a departure from previously established policy on the manner in which pooled administrative costs are to be reported. Commenters are requested to identify the impact, if any, of the revised requirement to allocate pooled administrative costs solely on the basis of "benefits received".

Four commenters raised the question of consolidating the II–A and II–C adult and youth State setasides, for ease of accounting and reporting. Section 627.440(b) provides that these funds may be combined.

Several commenters raised questions about the applicability of cost categories and cost limitations to incentive funds received by an SDA. Section 627.440(c)(2) specifies that the cost categories and cost limitations are not applicable to such funds. Incentive funds must, of course, be used for JTPA title II–A or II–C purposes.

In defining the cost categories in paragraph (d), it is impossible to specify treatment of every conceivable item of cost. The Department has attempted to provide specificity for most items of cost and to apply a basic principle of cost being charged to a cost category in accordance with the benefits received by that category. Within the direct training services category, the Department's definition is linked to the concept of benefits received by or directly benefitting program participants. Major highlights of these definitions are as follows:

—Numerous commenters requested that the classification of costs be tied to functions rather than positions. The Department's definitions are principally written against the items of cost and the function of various positions. Paragraph (e)(1) also provides that the cost of positions or other costs involving multiple functions may be allocated to the benefitting cost categories. It is expected that actual time distribution will be the basis for such allocations of staff costs.

—Numerous commenters raised questions about both costs of tuition and commercially available, off-the-shelf training packages, since both of these items are specified in section 141(d) of the Act. The Department's definition of a commercially available, off-the-shelf training package is included in § 626.5. The Department is not further delineating the term tuition, since it is specifically defined in the Act. However, it is expected that both of these cost items will frequently be for the purchase of such items from vendors and, therefore, are 100 percent chargeable to the category benefitted. The inclusion of tuition and off-the-shelf training packages in the statute makes it clear that subrecipients, as part of the procurement process, cannot require such vendors to break out the individual cost components of their services. In addition, the term "instructional materials * * * used by or for participants" has also been included in the list of cost items within the direct training services category.

—In those instances in which the terms of a subrecipient's award are for the delivery of an off-the-shelf training package consistent with the provisions of paragraph (e)(3). The Department is specifically interested in comments on this approach.

—Many comments were received on the classification of the costs of outreach, intake, eligibility determination and related activities. Paragraph (d)(3) specifically includes these costs in the training-related and supportive services category. The intent of this provision is to allow costs incurred on behalf of an individual prior to becoming (or not becoming) a participant to be charged to the training-related and supportive services category. The costs of objective assessment and related functions, after an applicant becomes a participant, are to be charged to the direct training services cost category.

—In response to comments concerning indirect or overhead costs, this subject is addressed in paragraph (e)(2). It provides that indirect or overhead costs normally are to be charged to administration, except where costs can be identified directly with another cost category. This approach is narrower than that requested by most commenters, but the Department believes that the test of benefits received directly by participants should be met for costs to be charged to direct training services.

—Finally, in response to numerous comments on the classification of profits and fees, paragraph (e)(4) provides that, to the extent allowable in accordance with the Governor's allowable cost guidelines, they may be allocated to all three cost categories based on the proportionate share of actual costs attributable to each category. Such earnings by subrecipients other than commercial organizations become program income, as provided by section 141(m) of the Act.

Limitations on Certain Costs

Section 108 of the Act requires that at least 50 percent of the funds received by an SDA under title II–A and C must be expended for direct training services and establishes a revised limit of 20 percent of funds that may be expended for administration. The third cost category has been revised to include the cost of training-related services as well as supportive services.

In response to a large number of comments received on this subject, paragraph (d) of this section recognizes the provisions made in section 141(d)(3) for excluding administrative costs incurred by community-based organizations and private non-profit service providers from the SDA's administrative cost limitation under certain criteria and conditions specified in the Amendments. Paragraph (d) provides clarity to those criteria and conditions and provides an example of their application. Specifically, 627.445(d) of the regulations addresses provisions in section 141(d)(3)(C) of the Act which provide for certain situations under which funds expended by a CBO or non-profit organization for the costs of administration may be the basis for increasing the administration cost limit applicable to the SDA from 20 percent to up to a maximum of 25 percent. Those situations require that such funds be expended under an agreement under which not less than 90 percent of the funds provided to the service provider are to be expended for the cost or direct training and training-related and supportive services. Further, the expenditures are to be charged to the appropriate cost category, and the SDA is to be in compliance with the direct training cost limitation requirement of 50% under section 108(b)(4)(B) of the Act for the program year, as adjusted consistent with section 141(d)(3) of the Act. These provisions are limited to situations in which the SDA provides funds to a CBO or other non-profit organization, therefore, the administrative entity of an SDA may not include itself under these provisions.

Most of the comments discussed above under cost classification were also applicable to cost limitations as well. Comments were also received on the time period and process for determining compliance with the cost limitations.

Section 627.445 describes cost limitations contained in various sections of the Amendments and clarifies cost limitations applicable to State-administered activities. Paragraph (a) specifies that, for State-administered activities, cost limitations are applicable to (1) II–A funds allotted for section 204(d) activities (older individuals), and (2) the combined total of II–A and II–C funds allotted to carry out activities pursuant to section 123(d)(2)(B) of the Act education services (80 percent of the 8 percent). For cost limitations applicable to funds allocated to SDA's, paragraph (b) provides that the total funds allocated to an SDA include or exclude, as applicable, any transfers of funds made in accordance with sections 206, 256, or 266 of the Act, and funds reallocated by the Governor under the authority of section 109(a) of the Act.

Paragraph (c)(2) provides that States and SDA's have the 3-year period of fund availability, specified at section 161(b) of the Act, to comply with the cost limitations. This provision, coupled with the statutory changes on cost limitations, replaces the policy guidance issued by ETA in 1984 and 1985 on the subject of cost limitations. In addition, while this provision provides that compliance is not finally determined until the end of the third year of availability, States are required to review compliance on a regular basis and implement corrective action before the time limitation expires.

Program Income

Section 141(m) of the Act provides new treatment for the use of program income as well as a description of what constitutes program income, including interest earned on funds received under the Act.

Most comments were directed at the need for the establishment of clear requirements concerning the use and treatment of program income, including the applicability of the cost categories and the cost limitations.

Section 627.450 has significantly expanded the current 20 CFR 629.32, both to implement the new provisions of section 141(m) of the Act and to improve the fiscal integrity of the JTPA program. The section now contains a definition of what is and what is not program income for JTPA purposes, establishes requirements for its use that are consistent with section 141(m) of the Act, and establishes timeframes for the treatment and use of program income. It also provides for the State to determine the disposition of program income not used in accordance with this section or remit it to the Department. Section 627.450(c) specifies that the cost categories and the administrative cost limitations are applicable to program income.

Reports Required

Section 165(f) of the Act requires financial reporting on a quarterly basis and costs to be reported by year of appropriation. Section 627.455 has been revised to include these requirements. In addition, this section now also specifies that:

(1) States may impose different reporting requirements on subrecipients as long as the State can meet the Secretary's reporting requirements;

(2) The Secretary may provide computer printouts to recipients to expedite or contribute to the accuracy of reporting;

(3) The Secretary may accept required information from States in electronically reported format or computer printouts instead of prescribed forms;

(4) States will report program expenditures on an accrual basis; and

(5) A final financial report is required 90 days after the expiration of a funding period.

Retention and Access Requirements for Records

Section 165(e) of the Act requires each Governor to ensure that requirements are established for retention of all records pertinent to all grants awarded, and all contracts and agreements entered into under the Act, for 2 years following the date on which the annual expenditure report containing the final expenditures charged to a program year's allotment is submitted to the Secretary. Records for nonexpendable property are to be retained for a period of 3 years after final disposition of the property.

Section 627.460(a) provides that the State, in establishing record retention requirements for records of subrecipients, may set a starting date for record retention of either the date of (1) the State's submission to the Secretary of the final expenditure report for a program year's allotment, or (2) the subrecipient's submission of a similar final report to the subrecipient's awarding agency. If the former is used, the retention period is 2 years after the report submission. If the latter is used, the retention period is 3 years after submission. It is expected that either approach will result in most JTPA records being maintained for the same total period of time. The latter approach will enable subrecipients to control the starting date of the retention period for their own records, and to maintain and to dispose of JTPA records in the same timeframes that apply to other records of the subrecipient covered by applicable OMB Circulars.

Property Management Standards

Section 141(r) of the Act provides that the Federal requirements governing the title, use, and disposition of real property, equipment, and supplies purchased with JTPA funds will be the Federal requirements generally applicable to Federal grants to States and local governments.

Seventeen comments discussed the provisions of the OMB Circulars in this area, the need for rules to address property that becomes obsolete, depreciation and replacement of property (trade-in), and questions of prior approval.

Section 627.465 reflects the new requirements of section 141(r) of the Act. The Federal requirements generally applicable to Federal grants to States and local governments are codified for Department of Labor grant programs at 29 CFR part 97. Therefore, the provisions of those regulations applicable to property requirements have been incorporated into this section for governmental recipients and subrecipients.

Since the Federal requirements generally applicable to Federal grants to States and local governments provide that subrecipients that are institutions of higher education, hospitals, and other nonprofit organizations will follow the Federal agency regulations that implement OMB Circular A–110, those requirements are incorporated into this section. It is anticipated that this approach will provide administrative relief for such subrecipients since it will prevent an organization administering other Federal grants or subgrants from having to follow two different sets of requirements. In addition, the Federal requirements applicable to intangible personal property have been incorporated into this section.

There are no Federal requirements generally applicable to commercial subrecipients; therefore, § 627.465 provides specific JTPA requirements for these organizations.

It is recognized that these statutory changes in property requirements for the JTPA program may cause some transition issues. To avoid future questions about property acquired prior to the effective date of these changes, the regulations specifically provide that the new rules would apply only to property acquired after July 1, 1993.

In response to comments concerning prior approval requirements, the Department is not imposing any specific prior approval requirements other than on subrecipients that are commercial

organizations. However, in § 627.435, Cost Principles and Allowable Costs, Governors are required to treat this issue in the State's allowable cost guidelines. For commercial subrecipients, the prior approval of the entity that will hold title to the property is required, since this will enable the governmental or non-profit entity that will hold title to be a part of the decision-making process to acquire the property.

Performance Standards

Section 627.470 provides for the establishment of performance standards for older worker programs under section 204(d) of the Act, in addition to adult and youth programs under title II–A and II–C and dislocated workers under title III. These standards for both adults and youth may include standards for employment competencies which are to be based on such factors as entry-level skills and other hiring requirements. The interim final regulations make clear that the Governor is responsible for establishing an incentive awards policy that rewards performance in title II programs, with the exception of the older worker program, and for providing technical assistance to SDA's which fail to meet, as specified by the Secretary, performance standards for a given program year. The regulation also incorporates the requirement in section 106(j) of the Act, for the imposition of a reorganization plan on SDA's failing for 2 consecutive years to meet more than half of the performance standards, with the exception of the older worker programs. The Governor is to notify the Secretary and the SDA of the continued failure and impose a reorganization plan within 90 days of the end of the second program year. If the reorganization plan is not imposed within the 90 days, then the Secretary will develop and impose it. The Secretary will give the Governor and the SDA 30 days in which to comment to the Secretary on the proposed reorganization plan prior to its imposition Further, the Secretary will recapture or withhold up to one-fifth of the State's administration set-aside to provide technical assistance to an SDA where the Secretary has imposed the reorganization plan or where the Governor has not provided appropriate technical assistance.

Oversight and Monitoring

The Department believes that effective monitoring and oversight of JTPA program operators at the Federal, State, and local levels is essential, not only to the maintenance of program integrity, but also to ongoing program evaluation and planning. The Department intends that there be expanded oversight and monitoring activities to ensure the requirements of the Amendments and these regulations are accomplished. Section 627.475 summarizes the roles of each administrative level in a comprehensive monitoring and oversight system.

The Governor is to develop a State monitoring plan which requires that each SDA and SSG be monitored at least once a year. The plan must also require the collection and the review of sufficient information to enable the Governor to determine whether substate entities have demonstrated substantial compliance with the oversight requirement to permit a waiver of the imposition of sanctions authorized under section 164(e) of the Act, or if a job training plan should be disapproved pursuant to section 105 of the Act.

Based on instructions issued by the Governor, the SDA's/SSG's will be required to develop a substate monitoring plan which is to be part of the job training plan. At a minimum, the Governor's instructions are to address the scope and frequency of the monitoring as well as any policy guidance and emphasis provided by the Secretary.

In addition, the Governor is to establish general standards for PIC oversight responsibilities in relation to SDA/SSG performance. These standards are to be included in the GCSSP. Section 103(b)(2) of the Act authorizes the PIC to provide oversight of programs conducted under the job training plan. In strengthening the role of the PIC as the local decisionmaking body, it is important that it gather sufficient information to evaluate and to review the results of its decisions and their implementation.

As a consequence of this additional emphasis on the Federal, State, PIC, and SDA/SSG monitoring role, each administrative level will be expected to take a greater measure of accountability for program operations through appropriate followup action. The outcomes of the monitoring at any level could result in the provision of additional guidance and technical assistance, recommendations regarding continuance of particular training or service strategies or programs, more effective future program planning, and the identification of models of exemplary performance for replication or areas of concern requiring more intensive monitoring attention.

Audits

With the exception of paragraph (a)(3), the changes in § 627.480 from the present regulations are not substantive, but are intended solely to more clearly delineate existing requirements.

Paragraph (a) of § 627.480 reflects the audit requirements that apply to the different types of entities which operate JTPA programs. To ensure appropriate coverage of JTPA programs that are operated by subrecipients which are commercial organizations, § 627.480(a)(3) has been added, specifying audit requirements for such organizations.

Audit Resolution

Section 627.481 sets forth the actual procedures followed by the ETA Grant Officer to resolve audits with recipients. This section differentiates between audits of direct recipients and those procedures applicable to audits of subrecipients. This section addresses the requests of several commenters that the Department more clearly describe its audit resolution process.

Closeout

Sections 627.485, 627.490, and 627.495 replace the previous closeout section that was reserved at § 629.45. Section 627.485 establishes a requirement and a process to close each annual grant award after the 3-year time limitation for expenditure of JTPA has expired. It also establishes a deadline for the State's submission of any revised expenditure reports and a provision for the Secretary to extend the deadline based on a written request from a State, with justification. Sections 627.490 and 627.495 establish post-closeout rights and responsibilities of the Secretary and the State.

Grievances and Sanctions

The regulatory provisions formerly found at 20 CFR part 629, Subpart D—"Grievances, Investigations, and Hearings" have been revised, redesignated, and reordered in these interim final regulations in a new part 627, subparts E, F, G, and H. The interim final regulations more clearly define the various JTPA grievance procedures which are required to be established by section 144 of the Act. The procedures which apply to a particular grievance process level have been consolidated into discrete subparts. In addition, the "Sanctions for violations of the Act" provisions formerly at 20 CFR 629.44 of the regulations have been moved into this part as a separate subpart.

The proposed provisions of the new part 627, subpart E set forth the grievance procedures required at the State and local levels, including State review, that were generally found at 20 CFR 629.52.

The proposed new part 627, subpart F sets forth the provisions which apply to the handling of administrative and civil complaints at the Federal level that were generally set forth at 20 CFR 629.52(d) and 629.54. In addition, § 627.603 of the interim final regulations implements the provisions of section 144 of the Act relating to the Federal handling of labor standards violations under section 143 of the Act. Section 627.604 sets forth the provisions which apply to the alternative procedure (binding arbitration) for handling section 143 labor standards violations provided for at section 144 of the Act.

The proposed new part 627, subpart G consolidates the sanction provisions for violations of the Act into a more logical order, with separate sections addressing: sanctions and corrective actions (§ 627.702), the process for waiver of State liability (§ 627.704), the approval process for contemplated corrective actions (§ 627.706), and the provisions applicable to the use of "offset" for debts established against the State (§ 627.708).

The proposed new part 627, subpart H sets forth the provisions that apply to hearings before the Office of Administrative Law Judges (OALJ) formerly at 20 CFR 629.57 and includes the alternative dispute resolution provisions that appeared at 20 CFR 629.56. The jurisdiction of the OALJ has been expanded, by a conforming amendment to section 166(a) of the Act, to include labor standard violations under section 143 of the Act, and violations of the relocation provisions at section 141(c) of the Act.

Timeframes Regarding Grievances, Complaints and Appeals

There are a number of provisions concerning Federal, State and local timeframes for grievances, complaints, appeals and other matters. There are only a few instances where the timeframes are statutory. The Department has set timeframes, but we would like commenters to provide input on any areas of concern in meeting the timeframes provided in the regulations.

Transition Provisions

In order to assure an orderly transition from the existing JTPA programs to the program requirements mandated by the Amendments, the Department requested comments on "transition" in ANPR. Fifteen comments were received, generally falling into 1 or more of 5 topics.

Several commenters expressed concern about program operation. These issues include a need to "grandparent" participants and current allocated funds in order to achieve an orderly transition to the requirements of the Amendments. Guidance on eligibility, in-school/out-of-school ratios, the reallotment process, tracking of transferred funds, current fixed-unit priced contracts, and the operation of the 1993 Summer Youth Employment and Training Program (SYETP) under current regulations were other issues included in the comments.

The Department agrees that participants enrolled in, and funds obligated for, the title II–A program on or before June 30, 1993, may continue to be used under the provisions of the Act that were in place prior to the enactment of the Amendments. Participants enrolled and funds obligated on or after July 1, 1993, will be administered pursuant to the provisions of the Amendments. The Department intends that the 1993 SYETP be operated under the current regulations. Specific guidance on titles II and III program operations will be issued in field issuances concurrent with the publication of the final rule for the Amendments or as soon thereafter as possible.

Several comments focused on the need to enhance existing data collection systems in order to tract the program experience of participants, as required by the Amendments. The Department agrees and intends that currently available 6 percent funds allotted for Program Year (PY) 1992 and prior years be used for this transitional purpose. States and SDAs may use available 6 percent funds in connection with updating their MIS systems during the period of fund availability.

Another topic addressed by commenters was the need for guidance regarding for the transfer of funds between titles II–A and II–C, and from title II–B to title II–C programs. The Department intends that this transfer be accomplished as specified in sections 206, 256 and 266 of the Act. Reporting requirements and instructions are being developed which will be published in field issuances at a future date.

Commenters indicated that guidance is needed on the PY 1993 planning process. Of specific concern are the Department's expectations regarding modifications to the GCSSP and job training plans. The Department will provide specific guidance for the PY 1993 planning process through field issuances published in January 1993.

Finally, commenters requested one or more transition periods to implement changes in phases beyond July 1, 1993. The Department expects that the requirements of the Amendments and these regulations will be fully implemented by July 1, 1993, except as otherwise provided for in the Amendments. The Department is aware that some difficulties may arise in the initial period related to the appropriate implementation of certain requirements related to program design. Therefore, in determining compliance with the program design requirements of these regulations during PY 1993, the Department will take into consideration whether the States and SDA's have made a good faith effort to properly implement these new regulatory requirements.

PART 628—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

Nontraditional Employment for Women (NEW) Act (Pub. L. 102–235)

NEW's purposes are to provide a wider range of training opportunities for women under existing JTPA programs; to provide incentives for the establishment of programs that train, place, and retain women in nontraditional fields; and to facilitate coordination of JTPA and vocational education resources available for training and placing women in nontraditional employment. Further, the NEW Act is consistent with the overall goal of JTPA programs to increase participants' employment, earnings, educational and occupational skills.

"Nontraditional employment" is defined as occupations or fields or work where women comprise less than 25 percent of the individuals employed in such occupation or field of work. Although nontraditional occupations are usually thought of only as construction or skilled trades, these occupations encompass a much broader spectrum of jobs in technical and other fields.

Nontraditional occupations have the potential for greatly improving the economic status of women, particularly when they are growth occupations with increased wage potential. Nontraditional training for women also provides benefits for the States and the SDA's. The Department believes that this kind of training expands the occupational mix available to all clients, and can enhance coordination with other education and training programs as well as with labor and apprenticeship programs. It helps advance efforts by the States and/or SDA's to be a valuable source of trained individuals for employers and unions. Through the implementation of NEW, it is the Department's intent that changes will occur throughout the job training system so that training in nontraditional

occupations becomes institutionalized in each State.

The GCSSP and the job training plan prepared by each SDA were required to include goals, actions, and accomplishments for the training and placement of women in nontraditional employment for the 2-year period beginning July 1, 1992 and beyond. NEW does not establish specific numerical goals by SDA or State. However, since the number of women currently trained in nontraditional occupations nationwide is estimated at 9 percent, States and SDA's may wish to use this figure as a baseline until they can collect data specific to that State.

The Department expects that the GCSSP and the SDA's plan will reflect specific measurable activities to train and to place women in nontraditional employment and apprenticeships, as required by the statute. As mentioned earlier, SDA's may wish to consider using the national figure of 9 percent as a baseline until geographic-specific data becomes available. Sections 104(b) (6) and (13), 121(b)(3) and 122(b)(5)–(7) of the Act require the States and SDA's to set goals and report on program accomplishments. The Department intends to look closely at these activities to ensure compliance with requirements of NEW.

Further, the Department expects that each State's and SDA's plans and activities will reflect the development of outreach and promotional materials and/or activities aimed at making women aware of the programs and the services available through JTPA, particularly of nontraditional training and placement opportunities. Examples of outreach materials include, but are not limited to, nontraditional career information modules, video and print materials on nontraditional career options (for counselors), recruitment brochures targeted at both the client and the employer, and dissemination of preexisting resource materials and/or model curricula. States may also wish to undertake statewide public education campaigns, similar to those conducted for literacy programs, on nontraditional training and employment opportunities.

The Department expects statewide dissemination of model programs/approaches to serve as a method of encouraging the replication and institutionalization of nontraditional training in the State. The Department encourages the States to disseminate to SDA's and service providers the SJTCC's summary report on promising programs funded by JTPA or the Carl Perkins Vocational Education and Applied Technology Act.

Specific changes in Part 628—Programs under Title II of the Job Training Partnership Act are as follows.

State Planning

Minor changes have been made in § 628.200, which addresses the GCSSP. This section now outlines, in broad terms, the areas which are to be addressed in the plan, and provides the Secretary with 45 days to review the plan.

State Human Resource Investment Council

Section 628.215 provides for the voluntary establishment of a State Human Resource Investment Council (HRIC). The HRIC is responsible for advising the Governor on: Coordination of Federal human resource programs; ways to meet the human investment needs in the State while maximizing the use of Federal funds and avoiding duplication of services; and development and implementation of State and local standards and performance measures. States have the option of constituting the HRIC to carry out the duties and functions of existing State Councils established under applicable Federal law, such as the State Job Training Coordinating Council (SJTCC) and State Council on Vocational Education (SCOVE). If States exercise this option, one Council is to be established, replacing all other State Councils. The HRIC may utilize funds available for other State Councils and administrative funds otherwise available under applicable Federal human resource programs. To achieve the economy and efficiency of the single Council contemplated by these provisions, however, States must conform the HRIC to meet all of the new requirements, assuming all duties and responsibilities of the former Councils.

The interim final regulations emphasize the following areas of concern that were raised by commenters: The HRIC must carry out the responsibilities of the Councils it replaces; the Governor, the head of each agency, and the SCOVE must approve the establishment of the HRIC; and the HRIC and its staff must reflect the necessary expertise to carry out the responsibilities of each of the former Councils.

Education Coordination and Grants

Section 628.315 clarifies the Governor's responsibilities in the selection of the State education agency to be the recipient of funds under section 123 of the Act. The section makes clear that the organizational entity operating JTPA at the State level may not be considered as an education agency for the purpose of receiving section 123 funding, nor can agencies which do not have education as a primary purpose, such as corrections departments.

Allowable activities under this section are specifically directed to support school-to-work programs, literacy and lifelong learning opportunities, and statewide coordinated education and training services to train, place and retain women in nontraditional employment. The intent is that these broad categories will accommodate a wide variety of coordinated education programs, and may include youth apprenticeship programs.

Not less than 80 percent of the funds provided under this section must be used to carry out projects in these areas. Not more than 20 percent of the funds may be used either to facilitate coordination of education and training services for those projects, or to support activities of a State Council that meet one of two criteria. One criteria is that the State council is a HRIC, constituted under title VII of the Act, which includes all seven of the applicable programs listed in section 701(b)(2). The other criteria is that the State Council carries out functions similar to a HRIC and was established prior to July 1, 1992.

Section 628.315 clarifies the circumstances under which the Governor may administer programs pursuant to section 123(e) of the Act. The section also provides guidance on the plan jointly developed by the Governor and the education agency(ies), and the agreements which must be entered into, pursuant to section 123(b) of the Act, to administer the projects through which section 123 funds are expended.

The section clarifies allowable activities and expenditure requirements. It also specifies that federal funds other than those appropriated under JTPA may be used for the match requirement. Undertaking to meet the matching fund requirements through using services provided under other federal job training sources may provide opportunities for constructive coordination arrangements.

Capacity Building and Technical Assistance

The JTPA has been amended to include capacity building and technical assistance as priorities at the national, State and local levels. Section 453 of the Act calls for the creation of a national Capacity Building and Information and Dissemination Network and a

Replication Grant Program. State and local priorities are established through sections 202(c)(3)(A) and 262(c)(3)(A) of the Act which make available up to 33 percent of the 5 percent incentive funds for capacity building and technical assistance activities. Section 121(a)(3) of the Act, as amended, requires that capacity building and technical assistance plans be included in the GCSSP. Greater emphasis is placed on general technical assistance activities for the development and training of State, SDA, and service provider staff.

The Department received comments supporting the use of incentive funds reserved for capacity building for development of computer-based information networks. Commenters also requested that capacity building be given a comprehensive definition, be made a priority in the JTPA system, and that regulations preserve State flexibility in designing and implementing capacity building and technical assistance strategies. Other comments stressed the importance of ensuring that activities using capacity building funds reach and be developed in consultation with SDA's, CBO's, and local service providers. Some commenters expressed concern that the nonduplication provision in section 202(c)(3)(B) could seriously hamper State and local flexibility in developing products and delivering training.

In response to these comments and earlier recommendations from the JTPA Advisory Committee and JTPA system representatives, the Department has developed interim final regulations that emphasize the need for State and local capacity building efforts, provide guidance on the Governor's responsibility concerning use of the funds, and encourage the coordination of capacity building and technical assistance efforts throughout the entire JTPA system. While the State's prerogative to establish priorities is retained, Governors are strongly encouraged to use funds for the development of staff capabilities at all levels, and particularly for front-line staff, through a comprehensive capacity building and technical assistance strategy.

State and local capacity building efforts are to be coordinated and integrated with the national Capacity Building Information Dissemination Network, pursuant to sections 202(c)(3)(B) and 262(c)(3)(B) of the Act. In order to maximize funds available, the Network will build, to the extent possible, on what already exists in the system. Through its clearinghouse, it will make information accessible to the JTPA system on current and planned Network products so that duplication of effort may be avoided as States and SDAs plan their capacity building agendas. States and SDAs are to retain the flexibility to tailor Network products to their own needs and/or to produce and train on similar or related products when local circumstances so dictate.

Section 626.5 provides definitions of capacity building and technical assistance. The definition of capacity building is applicable at the Federal, State, and local levels. Section 628.325(c) establishes State responsibilities and provides for the use of up to 33 percent of the 5 percent incentive funds for capacity building and technical assistance. This section also provides guidance on the use of funds, cost sharing approaches, and SDA use of awarded incentive grants. Section 628.325(c)(2)(iii) provides for the purchase of hardware and/or software if directly related to capacity building and technical assistance activities of the national Capacity Building and Information and Dissemination Network.

Section 628.205 sets forth requirements that capacity building and technical assistance plans be included in the GCSSP. The interim final regulations recognize that a "customer-driven" approach offers the best opportunity for a meaningful capacity building effort. Accordingly, Governors are encouraged to share capacity building and technical assistance plans in advance with SDA's and to include SDA's and local service providers in the development of such plans.

Guidance concerning SDA capacity building responsibilities can be found in § 628.420, the job training plan.

SDA Designation Process

Section 628.405 clarifies the SDA designation process. SDA designations are to occur every 2 years, consistent with the preparation of the 2-year GCSSP and the SDA job training plan.

In section 101(a)(4)(A) of the Act, Congress established the population threshold of 200,000 for determining the minimum area of a mandatory SDA, which is required to be designated by the Governor. The Department believes that normally this threshold is the minimum necessary to constitute an SDA that can adequately implement the administrative and management requirements set forth for in the Amendments and these regulations.

In past decisions, the Department has deferred to the Governor in the designation of SDA's, particularly with respect to the criteria for what constitutes a substantial part of a labor market, as long as the Governor's criteria were consistently applied and were not inconsistent with the Act. The regulations clarify that when there are competing requests for designation under section 101(a)(4)(A) of the Act the Governor is to designate the entity which has a population closest to 200,000, unless such designation would bring the population of the competing entity to less than 200,000 in which case the Governor has the discretion to choose which request to honor.

At present, the number of SDA's has risen to over 640 and almost one-third of the SDA's have been designated on a discretionary basis by the Governor under the provisions of section 101(a)(4)(B) of the Act and serve populations of less than 200,000. In order to promote the designation of the most effective delivery system, the regulations require the Governor to establish standards by which to evaluate a proposed discretionary SDA prior to granting designation status which, at a minimum, is to include the criteria set forth in § 628.405. It is the Department's intent that the Governor apply these standards to determine whether to waive the 200,000 population criterion for an SDA. Finally, the regulations require, for SDA's designated pursuant to sections 101(a)(4)(A)(ii) or (B) of the Act, that the Governor is to define "substantial part" and "substantial portion", but that these may not be less than 10 percent of a labor market area.

Some commenters requested that DOL not regulate any further in this area. It appears that these comments were addressing unknown actions that the Department might take, and whether these actions would affect existing designations. The interim final regulation closely tracks the law with regard to SDA designation. The regulation requires the Governor to establish policies which, in most cases, will already exist. The transition provisions clarify the Governor's discretion to not apply the new regulatory provisions to the Governor's current discretionary SDA designations made prior to July 1, 1992.

Representation of Private Industry Councils

Many commenters addressed the statutory provision at section 102(a)(2) of the Act requiring that representatives from organized labor and CBO's constitute no less than 15 percent of the PIC membership. One commenter suggested that the regulations establish minimum requirements for the solicitation and appointment of labor representatives by requiring that the local elected official contact the principal officer of the local AFL–CIO

central body in his/her jurisdiction in writing to solicit nominations providing a period of 60 days for response. The commenter also suggested that, where the local AFL–CIO body is unable to nominate a sufficient number of labor representatives, the chief elected official be required to contact the principal officer of the State AFL–CIO in writing to solicit nominations with a 60 day period for response. As provided in the Act, the Department intends that chief elected officials access local and State labor federations to provide nominations for the appointment of the labor representatives to the PIC. For this reason, a description of the nomination process is specifically included in the PIC certification by the Governor. One commenter suggested that regulations should provide that individual workers can be appointed only in cases where the local and State AFL–CIO bodies fail to provide a "sufficient number" of individuals to meet the labor representation requirements. The regulations reflect the statutory provisions in this area.

In developing and nominating that 15 percent component of the PIC, local elected officials may wish to consider the diversity of the population being served. If there is to be systemic change in the job training delivery system, sensitivity to the diverse populations being served should be exhibited by the PIC in its composition. Such changes would provide greater public awareness of the PIC and its role in the delivery of services in the community.

Role of the Private Industry Council

A number of comments were received concerning the need for strengthened PIC capacity and role. These comments were about equally divided between those who recommended giving more direction to PIC's and those who considered the existing law and regulations to provide sufficient guidance. Several comments were received from CBO's and labor unions, which urged increased representation and responsibilities on the PIC's for their constituencies. There were several commenters who recommended the periodic revalidation of the agreement between the PIC and the local elected official(s).

Section 628.410 describes the role of the PIC and establishes ongoing procedures to further the public-private partnership by providing for strengthened PIC capacity. To this end, the Department reviewed the findings of its study of exemplary PIC's and identified several key features that have been incorporated in these interim final regulations to foster more effective PIC's and establish some minimum standards for review of PIC's. These key features included an effective well-planned organizational structure; a membership of high-ranking individuals from businesses and other community agencies who represent a balance among important interests in the community; a positive, harmonious relationship with the chief elected official that is formalized with an agreement; and an active role in monitoring or directly operating programs.

The regulations establish that the PIC is to be recertified biennially 1 year prior to the submittal of the job training plan. This certification by the Governor is to encompass three areas—certification of the membership, review and validation of the PIC/chief elected official agreement, and approval of an organizational plan that describes how the PIC governs itself. The organizational plan is to include a mission statement, committee structure, staffing, budget, policies such as meetings schedule, policies governing conflict of interest, and nomination procedures. The biennial certification schedule being set at the midpoint of the 2-year operational period ensures adequate time for the Governor to address any certification concerns without interrupting the development of the job training plan. In addition, § 628.410 lists the roles assigned to the PIC by statute. It is not intended that this listing limit the role of the PIC but rather that it emphasizes the major role to be played in the program from initial program planning and direction to monitoring and evaluating the implementation of that plan.

The Governor is expected to issue procedures and guidelines for this recertification process. This process affords the Governor a continuing role in ensuring an effective local policy decisionmaking body. The Amendments revise the nominations and recommendations processes for selecting PIC members to represent education and labor. In the recertification instructions, the Governor may require assurance that the nomination and recommendation processes have been duly followed. The Governor shall also monitor compliance with this assurance. In addition, the Governor is expected to provide a procedure for modification of the PIC operating plan.

Conflict of interest restrictions for PIC members is discussed in § 627.420, Procurement.

Job Training Plan

Section 628.420 includes not only the specific items which are statutorily required in the plan, but also to provide guidance on program emphases in accordance with instructions or policies issued by the Secretary. This ensures that the job training plan will address at the local level other national and State concerns important to the program that are not specifically in the statute. The Governor's role is strengthened by language requiring issuance of instructions to the SDA's for use in preparation of the job training plan. The SDA shall be monitored by the Governor on the basis of its implementation of this plan.

Linkages

Sections 205 and 265 of the Act require that SDA's operating adult and year-round youth programs establish appropriate linkages with other Federal human resource programs. Other linkages may also be established with appropriate State and local educational, social service, and public housing agencies, and with CBO's, business and labor organizations, volunteer groups and others to avoid duplication and to enhance the delivery of services. In addition, youth programs are required to establish linkages with appropriate educational agencies which include formal agreements for procedures for referring and serving in-school youth, methods of assessment, notification when students drop out of school, and arrangements with educational agencies for services for in-school and out-of-school youth. These provisions are reflected in § 628.545.

General Program Design Requirements

The Amendments mandate significant changes in the front-end operations for most SDA's. The statute will cause major alterations in the intake structure and will necessitate revisions in the appraisal of each participant's capabilities, needs, and occupational goals. In these interim final regulations, the Department has provided necessary direction based on the Amendments and has clarified and highlighted significant changes from the present statute.

Eligibility Determination and Intake

Two major criteria must be considered in the process of determining which applicants are eligible for JTPA program services. As set forth in § 628.505, the first criterion is age. The second is economic disadvantage. The standard for determining economic disadvantage will be the annual Department of Health and Human Services poverty guidelines. The use of these guidelines provides a standardized income determination across federally funded programs. It

should be noted that these guidelines do include Social Security and Supplemental Security Income in the determination.

The Congressional intent in this area and the approach in the regulations was to minimize the amount of documentation necessary to establish an individual's eligibility for services, while maintaining the necessary safeguards to prevent misuse of program funds.

Fifteen comments were received on eligibility and targeting issues. Most encouraged a streamlining of the eligibility documentation process, including self-attestation. Several questioned what documentation would be required for barriers and requested guidance. Several indicated concern over burdensome paperwork requirements for referral of applicants to other than title II programs. The Secretary intends to issue an eligibility documentation TAG to be used by SDA's in the eligibility determination process. The procedures set forth in this TAG, if followed by the SDA's, will protect them from audit exceptions based on inadequate documentation. The Department solicits comments on whether the provisions of the regulations should be expanded in the area of eligibility and whether the issuance of the TAG on eligibility documentation without additional regulatory guidance is adequate. In addition, the Department will welcome comments on the contents of the TAG when it is issued.

Section 628.510 describes the changes surrounding targeting and referral requirements. During the intake process, personal data on individuals are collected and a preliminary determination regarding suitability for title II services is made. In order to focus program services on harder to serve individuals, not less than 65 percent of participants must have one or more barriers to employment as specified at the amended section 203(b) of the Act. The States and/or SDA's will establish procedures to ensure compliance with the targeting requirements and determining actions to address noncompliance with the requirements.

Objective Assessment

It is the Department's intention that the objective assessment be a smooth, client-centered and flexible process.

Fourteen comments were received on the assessment process. All supported the concept and the intent for individualized program services. Three indicated concern over the presumed lack of testing and evaluation credentials possessed by existing JTPA staff who would be administering the objective assessment. Two indicated that the content of assessment and the development of service strategies should be left to local discretion: However, as many requested guidance in the development of assessment and service strategies. While the Department expects that States and SDAs will retain authority for program design, technical assistance will be provided on assessment and development of the ISS. Most of the specific comments on assessment addressed concern over the determination of how much assessment could be provided at the intake/eligibility stage prior to enrollment of an eligible applicant and to which cost category this would be charged. Costs incurred on behalf of an applicant, including intake, eligibility determination, and assessment necessary to facilitate the eligibility determination, should be charged to the training-related services cost category. Once an applicant is determined to be eligible and the decision made to enroll the applicant, (making the applicant a participant), the objective assessment can be administered and is to be charged to the direct training services category. While the regulations afford an opportunity to charge preliminary assessment functions to the training-related cost category, the Department expects that the entire process to be sensitive to the client and not be unduly disjointed as a result of charging assessment functions to two cost categories.

One commenter requested that the Department define "Generally accepted standardized test". The Department believes that the criteria for what constitutes an acceptable test can be found in the testing measurements literature and is most appropriately disseminated through technical assistance rather than regulations.

Section 628.515 sets forth the requirements of the objective assessment. The objective assessment is to be a client-centered, diagnostic approach to evaluation of the needs of participants without regard to services or training programs already available in an SDA. The phrase "without regard to" is intended to expand the scope of the assessment and services to the participant beyond those only available through the SDA. It is an independent, comprehensive evaluation of an individual designed to identify information vital to the design of a service strategy culminating in gainful employment. The objective assessment is an ongoing process and should not be viewed as a one-time event. It should be a multi-faceted approach which includes a full array of options including items such as structured interviews, paper and pencil tests, performance tests, behavioral observations, interest inventories, career guidance instruments, aptitude tests, and basic skills tests. From these options, and others, assessment staff may select the most appropriate tools for each participant to measure skills, abilities, aptitudes, and interests, and to counsel participants on how their assessment results relate to local labor market demands. SDA's are strongly encouraged to select appropriate measures prudently and to select only those tools which will provide necessary information for the reasonable development of a service strategy leading to a realistic employment goal. The objective assessment and process should be sensitive to the testing and evaluation environment and the comfort and confidence level of the participant. The temptation to over-test or over-evaluate, providing excess information for which there is no immediate application, does not serve the client's best interest, is detrimental to the client-counselor relationship, and costly to the SDA.

The objective assessment, as an ongoing process, is to be revisited regularly and amended, as appropriate, when additional needs are identified or goals achieved.

Assessments recently conducted by other human service programs or schools are viewed as viable options and may be used, where appropriate, rather than requiring the client to undergo additional assessments and duplicating information already obtained.

Individual Service Strategy

Seven comments were received on the development of the ISS. All requested clarification on the specific level of services that SDA's would be required to provide to participants as identified by the objective assessment and documented in the ISS. Each expressed concern not only over the expense of the requirement to provide all services indicated by the assessment, but also over the concern that many services are simply not available in some communities, at any cost.

Section 628.520 establishes the requirements of the ISS, or employability development plan. The ISS is an individual plan that is developed based on information provided by the objective assessment. It is to outline the appropriate mix and sequence of services and justify the decisions for each; indicate any need for supportive services; and develop the

individual continuum of services that will lead to an employment goal. Decisions made in this document are to be made in partnership with the participant and are to be determined in conformance with applicable Civil Rights provisions.

The ISS, to be effective, must be regularly reviewed and adjusted to reflect the progress and to meet the continuing needs of each participant. The ISS will serve as the basis for the entire case management strategy. Case management is an allowable direct training activity and the Department encourages its use as an effective strategy for providing quality services for the participant.

Section 628.520(d) recognizes that every SDA will not be able to provide the full array of services indicated by the objective assessment and documented in the ISS. In arranging for the mix and sequence of appropriate services, it is fully expected that SDA's will refer participants to other programs for certain specified activities. In those cases where services required are indicated on the ISS and not available from any source in the SDA, such information is to be documented in the ISS and an alternative plan developed which may include referral to another program. SDA's are expected to make every reasonable effort to make the recommended training or services available to each participant; however, consistent with § 628.525, it is understood that the ISS does not give legal or entitlement rights to participants for services. JTPA is not an entitlement program and available resources are limited. In some cases, such as cases when an applicant would require excessive supportive service costs for medical and mental health needs, there might be reasons for which an SDA might elect not to enroll an otherwise eligible applicant. The Department does not intend this limitation to relieve the SDA from otherwise providing necessary supportive services such as child care.

Consistent with § 628.520(e), service providers and contractors may conduct objective assessment and develop the ISS; however, SDA's must recognize that the amendments anticipate longer term interventions for participants who are the hardest to serve and, therefore, must ensure that the development of the ISS and the services provided are client-focused, reflecting the most appropriate mix and sequence of services culminating with a realistic employment goal.

The ISS is the framework to record and document decisions about and for individual participants. It is the instrument to justify decisions concerning the appropriate mix and sequence of services, including referral to other programs, development of work experience or OJT assignments, or referral out of title II.

Referrals of Participants to Other Programs

The regulations at § 628.530 specify the requirements for referral of eligible applicants for whom available title II services are not deemed suitable to appropriate human service programs in the community. A significant change in this section allows the SDA to assess eligible applicants before they are enrolled as participants. The purpose of this pre-participation assessment is to enable SDA's to make more precise judgments as to the suitability of the applicant for participation in JTPA and/or additional services. In these cases, the assessment activities may be charged to the training-related activities cost category.

The responsibility of the SDA at this point in the intake process is to assure that eligible applicants not suitable for title II participation are "provided information on the full array of applicable or appropriate services that are available * * *" (section 204(a)(2)(A) of the Act) and make necessary arrangements for individuals to make contact with those services.

In the case of service providers who discover that an eligible individual does not meet program enrollment requirements, § 628.510(e) requires that service providers refer such individuals back to the SDA for further assessment and referral.

Job Search Limitations

Section 628.535 of the interim final regulations codifies the languages contained in the Act at section 204(c)(2)(B) of the Act, as amended, which limits the provision of stand-alone job search assistance, job search skills training, and job club activities to participants. As part of the Amendment's focus to provide more long-term and higher quality services, such activities are allowable using title II funding only when the job search activities are combined with additional services designed to increase the educational level or occupational skills of participants.

Title II funding of job search training without the additional services described above is permissible only when the following two conditions are *both* fulfilled:

(1) The objective assessment and ISS of a participant do not indicate the need for additional services, *and*

(2) There are no job search assistance activities, including job search skills training, and job clubs, available or accessible to the participant through the Employment Service or other public agencies. These interim final regulations deem the services normally available and provided by the Employment Service within the commuting area to meet the job search availability criteria. Therefore, the SDA must document the lack of availability of job search assistance, job search skills training, or job clubs before funds are expended for those purposes. The Department may revisit this approach when performance standards for the employment service are issued.

Title II–A—The Adult Program

Most of the general requirements of title II–A appear in subpart E of the interim final regulations. There are a few specific requirements of title II–A which appear in subpart F. These include sections on eligibility; requirements to assist hard-to-serve individuals; types of training services, counseling and supportive services; and linkages and coordination.

Services to Older Individuals

The State setaside program for older workers was incorporated into section 204(d) of the Amendments. Requirements for the older workers program are set forth in § 628.320 of the regulations. The Governor continues to be responsible for carrying out these programs pursuant to agreements with public agencies, PICs, SDAs, non-profits or private businesses. The Amendments add requirement that, in entering into these agreements, the Governor is to give priority to agencies and organizations which have a record of demonstrated effectiveness in serving older individuals. The Governor is also responsible for ensuring that the program provides services throughout the State on an equitable basis, taking into account the relative share of the eligible older individuals residing in each SDA and their participation in the labor force.

The Amendments also revise the eligibility criteria by allowing up to 10% of the participants to be older individuals who are not economically disadvantaged if such individuals face serious barriers to employment and meet the income eligibility requirements under title V of the Older Americans Act of 1965. Finally, the Amendments provide that, with limited exceptions, the general title II–A requirements are to apply to the older worker program, including requirements for the objective assessment, ISS, the conditions on

services, the cost limitations, and performance standards. The exceptions include the provisions relating to referrals, targeting, reallotment, the job training plan, and performance standards incentive payments and sanctions.

Summer Youth Employment and Training Program

Eleven commenters raised issues related to the SYETP authorized under title II–B. Commenters requested flexibility in the scope of the objective assessment required for summer program participants; requested guidance pertaining to the determination and documentation of eligibility under the National School Lunch Act; cited the 15-percent limitation on administrative costs as the basis for requesting that summer program activities be defined as direct training to the maximum extent possible; asked for a transition provision allowing the 1993 summer program to operate under current requirements; and raised questions concerning the option to transfer 10 percent of summer program funding to the year-round youth program authorized under title II, part C of the Act. An additional commenter viewed separate eligibility requirements for title II parts B and C as being at cross purposes with the statutory provision authorizing concurrent enrollment in the two programs.

Subpart G sets forth the basic requirements for the SDA's operation of the SYETP. While subpart G references the objective assessment and service strategy requirements included in subpart E of the interim final regulations, it is recognized that the achievement objectives and resulting service strategies for youth differ from what might be expected in the adult program and that the corresponding assessment processes would vary accordingly. The interim final regulations clarify that SDA's are not responsible for verifying eligibility determinations made under the National School Lunch Act beyond establishing that such determinations have been made by duly authorized persons. With regard to the 15-percent limitation on administrative costs, that limitation is statutory; further, the classification of administrative and non-administrative costs for the summer youth program must be consistent with the cost classification provisions of part 627. Finally, issues pertaining to concurrent enrollment will be addressed in guidance to be provided by the Secretary as required by the Act.

Year Round Youth Program

The new title II–C program authorizes a variety of activities that may be used to address the needs of in-school and out-of-school youth. This program was developed in response to concerns about the lack of workforce skills in today's youth, both in- and out-of-school. A priority has been placed on youth currently out of any formalized school system, including dropouts. These youth are considered the most disadvantaged and the most difficult to reach and to serve.

Section 628.800 sets forth the program's primary objective of increasing the long-term employability of eligible youth. The regulations establish program design elements, such as objective assessment and other requirements for the SDA's.

At § 628.803 the eligibility criteria are set forth. These include requirements for out-of-school youth and in-school youth. Eligibility may be verified through the local education agency or an assurance that the student is eligible to participate in the free lunch program. The interim final regulations require that at least 65 percent of the in-school and the out-of-school youth are to have at least one additional barrier to employment listed in sections 263(b) and (d) of the Act, respectively. The SDA may identify one additional barrier not listed in the Act. These interim final regulations also require that non-economically disadvantaged individuals (up to 10 percent) served by the title II–C program still must face one or more barriers to employment. Further, non-disadvantaged students may participate if they are enrolled in a schoolwide project for low income schools.

There are two factors the SDA's must consider for the purposes of title II–C eligibility. The first is that at least 50 percent of the total title II–C participants in each SDA are to be out-of-school. The second is that in-school participants who are served under a schoolwide project are *not* to be counted in determining the ratio of in-school to out-of-school youth.

Section 628.804 sets forth authorized services in title II–C. It should be noted that the OJT requirements are in addition to those in part 627, subpart E. Among these is a provision mandating that the participant's wage equals or exceeds the average wage at placement in the preceding program year in the SDA for participants under title II-A. A school dropout under the age of 18 is required to attend a school, course or program. The provision of preemployment and work maturity skills training is to be accompanied by either work experience or other additional services designed to increase the basic skills of the participant. Activities including work experience, job search assistance and job club activities must be accompanied by additional services designed to increase the basic skills of the youth. There are also provisions for the year-round operation of the program, and coordination with local educational agencies, service providers, and other programs. Schools operating on a 9-month schedule are not prohibited from providing title II–C program services.

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

In addition to the Job Training Amendments of 1992, amendments to title III were included in the Defense Authorization Act for Fiscal Year 1993. The proposed modifications to the regulations for part 631, Programs under Title III of the Job Training Partnership Act, are being driven by the changes to the legislative provisions made in the amendments. The significant modifications to the current regulations for the title III program are:

(1) The regulations at § 631.2 add an additional definition for "substantial layoff (for rapid response assistance)" which establishes a minimum threshold for the provision of rapid response assistance, as required by section 314(b)(4). This minimum threshold cannot be waived, but a new provision at § 631.30(b)(6) provides the Governor with alternatives for complying with the threshold and providing rapid response assistance in exceptional circumstances.

(2) Broader eligibility criteria are established in § 631.3(b) for the receipt of selected readjustment and retraining services in instances where an employer makes a public announcement of a plant closure, pursuant to section 314(h). The statutory provision that funding for these basic readjustment services, to the extent practicable, is to come from the Governor's reserve funds is reflected at § 631.41(g).

(3) Section 314(f)(2) of the Act defines the eligibility of individuals participating in title III programs to receive unemployment compensation benefits consistent with State policies under the Approved Training Rule to be "participating in training (except on-the-job training)." The language in the regulations at § 631.4 has been revised from participation in " any of the programs" to "any retraining activity, except on-the-job training." Because title III participants who are otherwise eligible for unemployment

compensation benefits and are not in training are generally seeking and available for work, this change is not expected to have a significant impact.

(4) The basis for computing the cost limitations which apply to expenditures of title III funds has been changed from annual expenditures to program year allocation (for substates), or reserved by the Governor from the program year allotment (for States). This change in § 631.14 reflects the amendments to section 315, and recognizes that grantees are permitted to have up to three years in which to spend allotted funds, subject to minimum annual expenditure rates.

(5) A provision has been added to § 631.14(i) to clarify that funds allocated to a substate grantee from the Governor's reserve funds to provide additional basic readjustment or retraining assistance shall be included in the substate grantee's formula allocation for purposes of applying the cost limits, reflecting the provision in section 302(c)(1)(E).

(6) A new provision has been added at § 631.14(h) to allow neighboring substate grantees to combine funds to serve dislocated workers from two or more substate areas, as authorized in section 315(d). To qualify for this provision, consistent with the congressional intent that this provision apply to neighboring substate grantees, the substate grantees must be contiguous or be part of the same labor market area.

(7) A new provision is added at § 631.15 requiring the State to provide a breakout of all administrative expenditures by the dislocated worker unit (DWU), pursuant to section 311(b)(11).

(8) A new provision is added at § 631.17 clarifying the Secretary's authority to oversee the State's provision of rapid response assistance and require corrective action as necessary, as provided for in section 314(b)(3).

(9) An amended provision in section 314(e)(1) regarding eligibility for needs-related payments requires that a participant be unemployed, and this has been incorporated in § 631.20(c).

(10) A provision at § 631.30(a)(8) requires the State to immediately notify the substate grantee of current or projected layoffs and closures in the local area for the purpose of continuing and expanding upon the services initiated by the rapid response team, as required in section 311(b)(3)(D).

(11) Section 311(b)(12) stipulates that accountability for rapid response assistance resides in the DWU, although the DWU may contract with other entities for the provision of these services. This is reflected in the provisions at § 631.30(b).

(12) A provision has been added to § 631.32(b)(2) to clarify that Governors must give consideration to each of the substate allocation formula factors required by section 302(d) of the Act unless the factor is not relevant to economic dislocation conditions in the State.

(13) Pursuant to section 315, § 631.62 stipulates that the cost limitations under part A of title III will apply to projects operated under part B of title III, except when waived or altered by the application guidelines, or by the Grant Officer in the terms of the grant.

(14) A provision is added at § 631.63 enumerating the Federal Reporting requirements for recipients of title III discretionary grants, consistent with section 322(a)(4).

(15) A provision is added at § 631.64 clarifying the administrative requirements under title I of the Act which apply for grantees other than States, including procedures for grievances and procurement.

(16) A new subpart I, to be administered as part of the title III National Reserve Grants program, provides for Disaster Relief Employment Assistance, as authorized by amendments to title IV of the Act.

In addition, technical changes have been made so that the regulations in this part conform to related provisions in the other parts.

Promulgation of rules for the Clean Air Employment Transition Assistance (CAETA) program, and for the Defense Conversion Adjustment (DCA) program are being deferred until finalization of these regulations. Commenters may want to provide comments through this review process on the impact of these regulations on the regulation or operation of the CAETA and DCA programs. See **Federal Register** at 57 FR 4808 (February 7, 1992) for the Clean Air Employment Transition Assistance program; and 57 FR 30536 (July 9, 1992) for the Defense Conversion Adjustment program.

PART 637—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS (JEDI)

The Incentive Bonus Program established under title V by the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 on November 7, 1988, was substantially changed with the enactment of the Amendments. As a result, the regulations at part 637 have been revised. Among the significant changes in the Program, which are reflected in the revised regulations, are the new target groups, which are absent parents of children receiving AFDC and recipients of supplementary security income, the simplified eligibility criteria for receipt of bonuses, the simplified application requirements, the simplified review and approval process for applications, the reduction in the administrative monies available to States, the elimination of startup grants, and the elimination of the trigger for the appropriation of funds.

Two States commented on the revised JEDI program. One State requested that recordkeeping requirements be kept to a minimum and the other commenter requested guidance on how to implement this Program without any funds being appropriated by Congress. Regarding the first comment, the Amendments provide that the States are required to have documentation sufficient to support their applications for incentive bonuses. The regulations do not prescribe additional recordkeeping requirements. Regarding the implementation of the Program, there is currently no appropriation for title V and no funds are assured for future fiscal years. Each State will have to make a determination as to whether or not to begin tracking the data necessary for incentive bonus applications without having title V funds to offset these additional costs.

Regulatory Impact

The interim final rule implements Public Law 102–367, 106 Stat. 1021 (September 7, 1992) and the Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, makes technical changes, and clarifies existing regulations to reflect continuing policies. While the programs are modified pursuant to the statutory amendments, the delivery system for the JTPA programs under the interim final rule remains essentially the same as in existing regulations. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127, 5 U.S.C. 601 note.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that, pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), the interim final rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed on such entities by the interim final rule.

As discussed above, the Job Training Reform Amendments of 1992 mandate

that these regulations be in effect by December 18, 1992. Modification of the JTPA regulations is necessary to incorporate the statutory amendments. It is clearly the intent of Congress that the statutory and regulatory amendments be implemented for the JTPA Program Year beginning on July 1, 1993. Planning and implementation actions must be undertaken as soon as these regulations are published, to adequately implement the programs on a timely basis. Therefore, the Department of Labor has found good cause, pursuant to 5 U.S.C. 553(b)(B), to publish the interim final regulations without a prior proposed rule, since such a proposed rule is impracticable and contrary to the public interest. For similar grounds, the Department has found that good cause exists, pursuant to 5 U.S.C. 553(d)(3), to make these interim final regulations effective on the date mandated by statute, December 18, 1992. Comments are requested and the final rule is expected to be published on or before June 1, 1993, the expiration date of this interim final rule.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, information collection requirements which would be imposed as a result of the interim final rule are being submitted separately to the Office of Management and Budget.

Catalog of Federal Domestic Assistance Number

These programs are listed in the Catalog of Federal Domestic Assistance at No. 17–246, "Employment and Training Assistance—Dislocated Workers" (JTPA Title III Programs); and No. 17–250, "Job Training Partnership Act (JTPA)" (JTPA titles I, II, and V Programs).

List of Subjects in 20 CFR Parts 626 through 631 and 637

Grant programs, Labor, Manpower training programs, Dislocated worker programs.

Interim Final Rule

Accordingly, chapter V of title 20, Code of Federal Regulations, is amended, as follows:

1. Part 626 is revised to read as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

626.1 Scope and purpose of the Job Training Partnership Act.
626.2 Format of the Job Training Partnership Act regulations.
626.3 Purpose, scope, and applicability of the Job Training Partnership Act regulations.
626.4 Table of contents for the Job Training Partnership Act regulations.
626.5 Definitions.

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107; 29 U.S.C. 179i(e).

§ 626.1 Scope and purpose of the Job Training Partnership Act.

It is the purpose of the Job Training Partnership Act (JTPA or the Act) to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation (section 2).

§ 626.2 Format of the Job Training Partnership Act regulations.

(a) Regulations promulgated by the Department of Labor to implement the provisions of the Act are set forth in parts 626 through 638 of title 20, chapter V, of the Code of Federal Regulations, with the exception of the veterans' employment program's chapter IX regulations of the Office of the Assistant Secretary for Veterans' Employment and Training, which are set forth at part 1005 of title 20.

(b) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the provisions of 29 CFR parts 31, 32 and 34 and will be administered by the Department of Labor (Department or DOL) Directorate of Civil Rights.

(c) General authority for the JTPA regulations is found at section 169 of the Act. Specific statutory authorities other than section 169 are noted throughout the JTPA regulations.

§ 626.3 Purpose, scope, and applicability of the Job Training Partnership Act regulations.

(a) Parts 626 through 638 of this chapter and part 1005 of chapter IX (Veterans' employment programs under title IV, part C of the Job Training Partnership Act) establish the Federal programmatic and administrative requirements for JTPA grants awarded by the Department of Labor to eligible grant recipients.

(b) Parts 626 through 638 of this chapter and part 1005 of chapter IX apply to recipients and subrecipients of JTPA funds.

§ 626.4 Table of contents for the Job Training Partnership Act regulations.

The table of contents for the regulations under the Job Training Partnership Act, 20 CFR parts 626–638 and 1005, is as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

626.1 Scope and purpose of the Job Training Partnership Act.
626.2 Format of the Job Training Partnership Act regulations.
626.3 Purpose, scope and applicability of the Job Training Partnership Act regulations
626.4 Table of contents for the Job Training Partnership Act regulations.
626.5 Definitions.

PART 627—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER THE ACT

Subpart A—Scope and Purpose

627.100 Scope and Purpose of Part 627.

Subpart B—Program Requirements

627.200 Governor/Secretary agreement.
627.205 Public service employment prohibition.
627.210 Nondiscrimination and nonsectarian activities.
627.215 Relocation.
627.220 Coordination with programs under title IV of the Higher Education Act including the Pell grant program.
627.225 Employment generating activities.
627.230 Displacement.
627.235 General program requirements.
627.240 On-the-job training.
627.245 Work experience.
627.250 Interstate agreements.

Subpart C—Payments, Benefits and Working Conditions

627.300 Scope and purpose.
627.305 Payments.
627.310 Benefits and working conditions.

Subpart D—Administrative Standards

627.400 Scope and purpose.
627.405 Grant agreement and funding.
627.410 Reallotment and reallocation.
627.415 Insurance.
627.420 Procurement.
627.422 Selection of service providers.
627.423 Funding restrictions for "high-risk" recipients and subrecipients.
627.424 Prohibition of subawards to debarred and suspended parties.
627.425 Standards for financial management and participant data systems.
627.430 Grant payments.
627.435 Cost principles and allowable costs.
627.440 Classification of costs.
627.445 Limitations on certain costs.
627.450 Program income.
627.455 Reports required.
627.460 Requirements for records.

627.463 Public access to records.
627.465 Property management standards.
627.470 Performance standards.
627.471 Reorganization plan appeals.
627.475 Oversight and monitoring.
627.480 Audits.
627.481 Audit resolution.
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Subpart E—Grievances Procedures at the State and Local Level

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Subpart F—Federal Handling of Non-criminal Complaints and Other Allegations

627.600 Scope and purpose.
627.601 Complaints and allegations at the Federal Level.
627.602 Resolution of investigative findings.
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627.604 Alternative procedure for handling labor standards violations under section 143—Binding arbitration.
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Subpart G—Sanctions for Violations of the Act

627.700 Scope and purpose.
627.702 Sanctions and corrective actions.
627.703 Failure to comply with procurement provisions.
627.704 Process for waiver of State liability.
627.706 Process for advance approval of a recipient's contemplated corrective actions.
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Subpart H—Hearings by the Office of Administrative Law Judges

627.800 Scope and purpose.
627.801 Procedures for filing request for hearing.
627.802 Rules of procedure.
627.803 Relief.
627.804 Timing of decisions.
627.805 Alternative dispute resolution.
627.806 Other authority.

Subpart I—Transition Provisions

627.900 Scope and purpose.
627.901 Transition period.
627.902 Governor's actions.
627.903 Actions which are at the discretion of the Governor.
627.904 Transition and implementation.
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627.906 Determinations on State and SDA implementation.

PART 628—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Scope and Purpose

628.100 Scope and purpose of part 628.

Subpart B—State Planning

628.200 Scope and purpose.
628.205 Governor's coordination and special services plan.
628.210 State Job Training Coordinating Council.
628.215 State Human Resource Investment Council.

Subpart C—State Programs

628.300 Scope and purpose.
628.305 State distribution of funds.
628.310 Administration.
628.315 Education coordination and grants.
628.320 Services for older individuals.
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Subpart D—Local Service Delivery System

628.400 Scope and purpose.
628.405 Service delivery areas.
628.410 Private Industry Council.
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628.510 Intake, referrals, and targeting.
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628.540 Volunteer program.
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Subpart F—The Adult Program

628.600 Scope and purpose.
628.605 Eligibility.
628.610 Authorized services.

Subpart G—The Summer Youth Employment and Training Program

628.700 Scope and purpose.
628.701 Program goals and objectives.
628.702 Eligibility.
628.705 SYETP authorized services.
628.710 Period of program operation.

Subpart H—Youth Training Program

628.800 Scope and purpose.
628.803 Eligibility.
628.804 Authorized services.

PART 629—[RESERVED]

PART 630—[RESERVED]

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

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631.18 Federal by-pass authority.
631.19 Appeals.

Subpart C—Needs-Related Payments

631.20 Needs-related payments.

Subpart D—State Administration

631.30 Designation or creation and functions of a State dislocated worker unit or office and rapid response assistance.
631.31 Monitoring and oversight.
631.32 Allocation of funds by the Governor.
631.33 State procedures for identifying funds subject to mandatory federal reallotment.
631.34 Designation of substate areas.
631.35 Designation of substate grantees.
631.36 Biennial State plan.
631.37 Coordination activities.
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Subpart E—State Programs

631.40 State program operational plan.
631.41 Allowable State activities.

Subpart F—Substate Programs

631.50 Substate plan.
631.51 Allowable substate program activities.
631.52 Selection of service providers.
631.53 Certificate of continuing eligibility.

Subpart G—Federal Delivery of Dislocated Worker Services

631.60 General.
631.61 Application for funding and selection criteria.

Subpart H—Transition Provisions

631.70 Special provisions for program startup.

PART 632—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

Subpart A—Introduction

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Subpart B—Designation Procedures for the Native American Grantees

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Subpart E—Program Design and Management

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632.85 Participant limitations.
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Subpart F—Prevention of Fraud and Program Abuse

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§ 626.5 Definitions.

In addition to the definitions contained in section 4 of the Act, the following definitions of terms used in the Act or parts 626–631 of this chapter apply as appropriate to programs under titles I, II, and III of the Act:

Accrued expenditures means charges made to the JTPA program. Expenditures are the sum of actual cash disbursements, the amount of indirect expense incurred, and the net increase (or decrease) in the amounts owed by the recipient for the goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required; such as annuities, insurance claims, and other benefit payments.

Act means the Job Training Partnership Act.

ALJ means an administrative law judge in the Office of Administrative Law Judges of the U.S. Department of Labor.

Awarding agency means:

(1) With respect to a grant, the Department of Labor; and

(2) With respect to a subgrant or contract, the party that awarded the subgrant or contract.

Capacity building means the systematic improvement of job functions, skills, knowledge, and expertise of the personnel who staff employment and training and other closely related human service systems. Capacity building is designed to enhance the effectiveness, to strengthen the caliber of client services provided under the Act and other Federal, State, and local employment and training programs, and improve coordination among them. Capacity building includes curricula development, appropriate training, technical assistance, staff development, and other related activities.

Chief elected official (CEO) means the official or officials, or their representatives, or the jurisdiction or jurisdictions which requested designation by the Governor as a service delivery area.

Commercial organizations means private for-profit entities.

Commercially available or off-the-shelf training package means a training package sold or traded unmodified, in substantial quantities to the general public in the course of normal business operations, at prices based on established catalog or market prices. To be considered as "sold to the general public", the package must be regularly sold in sufficient quantities to constitute a real commercial market, to buyers which may include JTPA programs but must include other than JTPA programs. The package must include performance criteria.

Contractor means the organization, entity, or individual that is awarded a procurement contract under the recipient's or subrecipient's procurement standards and procedures.

Cost means accrued expenditure.

Department means the U.S. Department of Labor.

DOL means the U.S. Department of Labor.

ETA means the Employment and Training Administration of the U.S. Department of Labor.

Family is defined at section 4(34) of the Act. An "individual with a disability" may, for the purposes of income eligibility determination, be considered to be an unrelated individual who is a family unit of one. The Governor may provide interpretations of the term "family" related to how "dependent children" are defined for programs within a State, consistent with the Act, and all applicable rules and regulations, and State or local law. Such interpretations by the Governor may address the treatment of certain individuals who may need to be viewed discretely in the income eligibility determination process, such as runaways, emancipated youth, and court adjudicated youth separated from the family.

The phrase "living in a single residence" with other family members includes temporary, voluntary residence elsewhere (*e.g.* attending school or college, or visiting relatives). It does not include involuntary temporary residence elsewhere (*e.g.* incarceration, or placement as a result of a court order).

Family income means "income" as defined by the Department of Health and Human Services in connection with the annual poverty guidelines. Such income shall not include unemployment compensation, child support and public assistance, as provided for at section 4(8) of the Act.

Funding period means the period of time when JTPA funds are available for expenditure. Unless a shorter period of time is specified in a title III discretionary award, the JTPA funding period is the 3-year period specified in JTPA section 161(b); the program year in which Federal funds are obligated to the recipient, and the two succeeding program years.

Governor means, in addition to the definition at section 4(9) of the Act, the recipient of JTPA funds awarded to the State under titles I through III.

Grant means an award of JTPA financial assistance by the U.S. Department of Labor to an eligible JTPA recipient. (Also, see §§ 627.405 and 627.430 of these regulations).

Grantee means the recipient.

Individual service strategy (ISS) is defined in § 628.520 of these regulations.

Job search assistance (also including *job search skills training* and *job club activities*) means the provision of instruction and support to a participant to give the participant skills in acquiring full-time employment. The services provided may include, but are not limited to, resume writing, interviewing skills, labor market guidance, telephone techniques, information on job openings, and job acquisition strategies, as well as the provision of office space and supplies for the job search.

Job Training Partnership Act means Public Law (Pub. L.) 97–300, as amended, 29 U.S.C. 1501 et seq.

JTPA means the Job Training Partnership Act.

Nontraditional employment, as applied to women, means occupations or fields of work where women comprise less than 25 percent of the individuals employed in such occupation or field of work. (Pub. L. 102–235, Nontraditional Employment for Women Act).

OALJ means the Office of Administrative Law Judges of the U.S. Department of Labor.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or a future period.

OIG means the Office of the Inspector General of the U.S. Department of Labor.

PIC means a private industry council.

Participant is defined in section 4(37) of the Act.

Program year means the 12-month period beginning July 1 of the indicated year.

Recipient means the entity to which a JTPA grant is awarded directly from the Department of Labor to carry out the JTPA program. The recipient is the entire legal entity that received the award and is legally responsible for carrying out the JTPA program, even if only a particular component of the entity is designated in the grant award document. For JTPA grants under titles I, II and III, except for certain discretionary grants awarded under title III, part B, the State is the recipient.

SDA means a service delivery area designated by the Governor pursuant to section 101(a)(4) of the Act. As used in these regulations, SDA may also refer to the entity which administers the JTPA program within the designated area.

SDA grant recipient means the entity that receives JTPA funds for a service delivery area directly from the recipient.

Secretary means the Secretary of Labor.

Section, as used in this chapter, means a section of the Act unless the text specifically indicates otherwise.

Service provider means any subrecipient, including a service delivery area or substate grantee, that is responsible for the delivery of training and/or supportive services directly to JTPA participants. Awards to service providers may be made by subgrant, contract, subcontract, or other legal agreement.

Stand-in costs means costs paid from non-Federal sources which a recipient proposes to substitute for Federal costs which have been disallowed as a result of an audit or other review. In order to be considered as valid substitutions, the costs (1) must have been reported by the grantee as uncharged program costs under the same title and in the same year in which the disallowed costs were incurred and (2) must have been incurred in compliance with laws, regulations, and contractual provisions governing JTPA.

State is defined at section 4(22) of the Act. For cash payment purposes, the definition of "State" contained in the Department of Treasury regulations at 31 CFR 205.3 shall apply to JTPA programs.

State council means the State Job Training Coordinating Council (SJTCC) or, in a State with a Human Resource Investment Council (SHRIC) pursuant to § 628.315 of the chapter, the SHRIC.

Subgrant means an award of JTPA financial assistance in the form of money, or property in lieu of money, made under a grant by a recipient to an eligible subrecipient. It also means a subgrant award of JTPA financial assistance by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement purchases from vendors nor does it include any

form of assistance received by program participants.

Subgrantee mean a subrecipient.

Subrecipient means the legal entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided. For JTPA purposes, distinguishing characteristics of a subrecipient include items such as determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decisionmaking, responsibility for compliance with program requirements, and use of the funds awarded to carry out a JTPA program or project, as compared to providing goods or services for a JTPA program or project (vendor). Depending on local circumstances, the PIC, local elected official, or administrative entity may be a subrecipient. SDA grant recipients and JTPA title III substate grantees are particular types of subrecipients.

Substate grantee (SSG) means that agency or organization selected to administer programs pursuant to section 312(b) of the Act. The substate grantee is the entity that receives JTPA title III funds for a substate area directly from the Governor.

Technical assistance is a facet of capacity building which includes information sharing, dissemination and training on program models and job functions; peer-to-peer networking and problem solving; guides; and interactive communication technologies.

Title, as used in this chapter, means a title of the Act, unless the text of the regulation specifically indicates otherwise.

Vendor means an entity responsible for providing generally required goods or services to be used in the JTPA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. Distinguishing characteristics of a vendor include items such as: Providing the goods and services within normal business operations; providing similar goods or services to many different purchasers, including purchasers outside the JTPA program; and operating in a competitive environment. A vendor is not a subrecipient and does not exhibit the distinguishing characteristics attributable to a subrecipient as defined above. Any entity directly involved in the delivery of program services not available to the general public, with the exception of an employer providing on-the-job-training, shall be considered a subrecipient rather than a vendor.

Wagner-Peyser Act means 29 U.S.C. 49 et seq.

2. Part 627 is revised to read as follows:

PART 627—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, AND III OF THE ACT

Subpart A—Scope and purpose

627.100 Scope and Purpose of Part 627.

Subpart B—Program Requirements

627.200 Governor/Secretary agreement.
627.205 Public service employment prohibition.
627.210 Nondiscrimination and nonsectarian activities.
627.215 Relocation.
627.220 Coordination with programs under title IV of the Higher Education Act including the Pell grant program.
627.225 Employment generating activities.
627.230 Displacement.
627.235 General program requirements.
627.240 On-the-job training.
627.245 Work experience.
627.250 Interstate agreements.

Subpart C—Payments, Benefits and Working Conditions

627.300 Scope and purpose.
627.305 Payments.
627.310 Benefits and working conditions.

Subpart D—Administrative Standards

627.400 Scope and purpose.
627.405 Grant agreement and funding.
627.410 Reallotment and reallocation.
627.415 Insurance.
627.420 Procurement.
627.422 Selection of service providers.
627.423 Funding restrictions for "high-risk" recipients and subrecipients.
627.424 Prohibition of subawards to debarred and suspended parties.
627.425 Standards for financial management and participant data systems.
627.430 Grant payments.
627.435 Cost principles and allowable costs.
627.440 Classification of costs.
627.445 Limitations on certain costs.
627.450 Program income.
627.455 Reports required.
627.460 Requirements for records.
627.463 Public access to records.
627.465 Property management standards.
627.470 Performance standards.
627.471 Reorganization plan appeals.
627.475 Oversight and monitoring.
627.480 Audits.
627.481 Audit resolution.
627.485 Closeout.
627.490 Later disallowances and adjustments after closeout.
627.495 Collection of amounts due.

Subpart E—Grievances Procedures at the State and Local Level

627.500 Scope and purpose.
627.501 State grievance and hearing procedures for non-criminal complaints at the recipient level.
627.502 Grievance and hearing procedures for non-criminal complaints at the SDA and SSG levels.
627.503 Recipient-level review.
627.504 Non-criminal grievance procedure at employer level.

Subpart F—Federal Handling of Non-criminal Complaints and Other Allegations

627.600 Scope and purpose.
627.601 Complaints and allegations at the Federal level.
627.602 Resolution of investigative findings.
627.603 Special handling of labor standards violations under section 143 of the Act.
627.604 Alternative procedure for handling labor standards violations under section 143—Binding arbitration.
627.605 Special Federal review of SDA- and SSG-level complaints without decision.
627.606 Grant officer resolution.

Subpart G—Sanctions for Violations of the Act

627.700 Scope and purpose.
627.702 Sanctions and corrective actions.
627.703 Failure to comply with procurement provisions.
627.704 Process for waiver of State liability.
627.706 Process for advance approval of a recipient's contemplated corrective actions.
627.708 Offset process.

Subpart H—Hearings by the Office of Administrative Law Judges

627.800 Scope and purpose.
627.801 Procedures for filing request for hearing.
627.802 Rules of procedure.
627.803 Relief.
627.804 Timing of decisions.
627.805 Alternative dispute resolution.
627.806 Other authority.

Subpart I—Transition Provisions

627.900 Scope and purpose.
627.901 Transition period.
627.902 Governor's actions.
627.903 Actions which are at the discretion of the Governor.
627.904 Transition and implementation.
627.905 Guidance on contracts and other agreements.
627.906 Determinations on state and SDA implementation.

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

Subpart A—Scope and Purpose

§ 627.100 Scope and purpose of part 627

(a) This part sets forth requirements for implementation of programs under titles I, II, and III of the Job Training Partnership Act.

(b) Subpart B provides general program requirements which apply to all programs under the titles I, II, and III of the Act, except as provided elsewhere in the Act or this chapter. These requirements include the Governor/Secretary agreement, the

nondiscrimination and nonsectarian activity provisions, coordination provisions with Higher Education Act programs, and the prohibitions on public service employment, relocation assistance, displacement, and employment generating activities. This subpart also sets forth comprehensive rules for on-the-job training for JTPA participants as well as for work experience.

(c) Subpart C sets forth requirements for allowable payments to JTPA participants.

(d) Subpart D establishes the administrative and financial standards and requirements that apply to funds received under the Act.

(e) Subpart E establishes the procedures which apply to the handling of non-criminal complaints under the Act at the Governor, the SDA, and title III SSG levels.

(f) Subpart F establishes the procedures which apply to the filing, handling, and review of complaints at the Federal level.

(g) Subpart G sets forth the provisions which apply to the sanctions and corrective actions that may be imposed by the Secretary for violations of the Act, regulations, or grant terms and conditions.

(h) Subpart H sets forth procedures which apply to hearing by the Office of the Administrative Law Judges.

Subpart B—Progam Requirements

§ 627.200 Governor/Secretary agreement.

(a)(1) To establish a continuing relationship under the Act, the Governor and the Secretary shall enter into a Governor/Secretary agreement. The agreement shall consist of a statement assuring that the State shall comply with (i) the Job Training Partnership Act and all applicable rules and regulations and (ii) the Wagner-Peyser Act and all applicable rules and regulations. The agreement shall specify that guidelines, interpretations, and definitions adopted and published by the Governor shall, to the extent that they are consistent with the Act and applicable rules and regulations, be accepted by the Secretary.

(2) Either the Governor or the Secretary may seek a modification, revision, or termination of the agreement at any time, to be effective at the end of a program year.

(b) Except as provided at part B of title III of the Act and part 631, subpart G, of this chapter, the State shall be the grant recipient of JTPA funds awarded under titles I, II, and III.

§ 627.205 Public service employment prohibition.

No funds available under titles I, II–A, II–C, or III–A of the Act may be used for public service employment (sections 141(p) and 314(d)(2)).

§ 627.210 Nondiscrimination and nonsectarian activities.

(a)(1) Recipients, SDA grant recipients, title III substate grantees, and other subrecipients shall comply with the nondiscrimination provisions of section 167 of the Act.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the provisions of 29 CFR parts 31, 32, and 34 and are administered and enforced by the DOL Directorate of Civil Rights.

(3) Funds may be used to meet a recipient's or subrecipient's obligation to provide physical and programmatic accessibility and reasonable accommodation as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

(b) The employment or training of participants in sectarian activities is prohibited.

§ 627.215 Relocation.

(a) No funds provided under the Act shall be used, or proposed for use, to encourage or to induce the relocation of an establishment, or part thereof, that results in the loss of employment for any employee of such establishment at the original location.

(b) For 120 days after the commencement or the expansion of commercial operations of a relocating establishment, no funds provided under this Act shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any relocating establishment or part thereof at a new, or expanded location, if the relocation of such establishment or part thereof results in a loss of employment for any employee of such establishment at the original location.

(c) For the purposes of this section, *relocating establishment* means a business entity, including a successor in interest, which is moving any operations from a facility in one labor market area within the United States and its territories to a new or expanding facility in another labor market area.

(d) Pre-award review. To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, a standardized pre-award review shall be completed and documented jointly by the service delivery area or substate grantee with the establishment as a prerequisite to JTPA assistance.

(e) Violations and sanctions. The Secretary will promptly review and take appropriate action with regard to alleged violations of the provisions of paragraphs (a) and (b) of this section. Procedures for the investigation and resolution of violations are provided for under subpart F of this part. Sanctions and remedies are provided for under subpart G of this part.

§ 627.220 Coordination with programs under Title IV of the Higher Education Act including the Pell grant program.

(a) When financial assistance programs under title IV of the Higher Education Act (HEA) (the Pell Grant program, the Supplemental Education Opportunity Grant program, the Work-study program, the Perkins loan program, the Family Education Loan program—including Stafford, PLUS and Supplemental Loans for Students programs—and the Direct Loan Demonstration program), which provide student financial aid programs for postsecondary education, are available to JTPA participants, SDA's and title III SSG's shall establish coordination procedures and contractual safeguards to ensure that JTPA funds are in addition to funds otherwise available in the area (sections 141(b), 107(b), 205(b), and 265(b)).

(b)(1) To avoid the possibility of doubling billing and duplication of Federal funds, contracts with title IV-eligible educational institutions shall clearly identify available JTPA and HEA title IV funds, and stipulate that the educational institution's financial aid officer shall inform the SDA's/SSG's of the amounts and disposition of HEA title IV awards and other types of financial aid to each JTPA participant (section 141(b)).

(2) The participant awarded a Pell Grant shall be party to an agreement with the SDA/SSG and the educational institution which indicates the portion of the HEA grant to be applied to the cost of tuition, fees and books. This information shall be verified in program monitoring procedures.

(3) For JTPA contracts where Pell Grants are involved, SDA's/SSG's shall document in the ISS its determination with the educational institution of the participant's training-related financial assistance needs and the proper mix of JTPA and Pell Grant funds, since a Pell Grant may be used for applicable living expenses as well as for tuition, fees, and books. The SDA shall provide to the educational institution's financial aid

officer the names of JTPA participants who are to attend such institution and for whom JTPA payments will be made (sections 141(b) and 107(b)).

(c) In completing the objective assessment and developing the Individual Service Strategy for a title II participant, the SDA shall ensure, to the extent practicable, that available Federal, State, and local resources are coordinated sufficiently to meet the training and education-related costs of services, so that the participant can afford to complete the agreed-upon program successfully (sections 141(b), 107(b), 205(b), and 265(b)).

§ 627.225 Employment generating activities.

(a) No funds available under the Act shall be used for employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, or similar activities. No funds under titles I, II or III of the Act shall be used for foreign travel.

(b) JTPA funds may be used for normal employer outreach and job development activities including, but not limited to: contacts with potential employers for the purpose of placement of JTPA participants; participation in business associations (such as chambers of commerce); JTPA staff participation on economic development boards and commissions, and work with economic development agencies, to provide information about JTPA and to assist in making informed decisions about community job training needs; subscriptions to relevant publications; general dissemination of information on JTPA programs and activities; labor market surveys; and development of on-the-job training (OJT), as defined in § 627.240; and other allowable JTPA activities in the private sector.

§ 627.230 Displacement.

(a) No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits).

(b) No participant shall be employed or job opening filled:

(1) When any other individual is on layoff from the same or any substantially equivalent job, or

(2) When the employer has terminated any regular employee without cause or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under the Act.

(c) Violations and sanctions. The Secretary will promptly review and take appropriate action with regard to alleged violations of the provisions of paragraphs (a) and (b) of this section. Procedures for the investigation and resolution of violations are provided for under subpart F of this part. Sanctions and remedies are provided for under subpart G of this part.

§ 627.235 General program requirements.

(a) The requirements set forth in sections 141, 142 and 143 of the Act apply to all programs under titles I, II, and III of the Act, except as provided elsewhere in the Act.

(b) Recipients shall ensure that an individual enrolled in a JTPA program meets the requirements of section 167(a)(5) of the Act, section 3 of the Military Selective Service Act (50 U.S.C. app. 453) and other requirements applicable to programs funded under the specific section or title of the Act under which the participant is enrolling (section 604).

(c) Recipients shall ensure that individuals are enrolled within 45 days of the date of application or a new application shall be taken, except that eligible summer program applicants under title II–B may be enrolled within 45 days into a summer youth enrollee pool, and no subsequent application need be taken prior to participation during the period of that summer program. In addition, the 45-day enrollment requirement shall not apply for individuals who have a valid certificate of continuing eligibility under the title III program, as described in § 631.3 and § 631.53 of this chapter.

(d) Programs operated under titles I, II, and III of the Act are not subject to the provisions of 29 CFR part 97, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", except as otherwise explicitly provided in this chapter.

(e) If a recipient or SDA imposes a requirement relating to the administration and operation of programs funded by the Act, the recipient or SDA shall identify the requirement as a State- or SDA-imposed requirement (section 124).

§ 627.240 On-the-job training.

(a) General. "On-the-job training (OJT)" means training in the private or public sector given to a participant who, after objective assessment, has been referred to and hired by the employer. OJT which occurs while the participant is engaged in productive work which provides knowledge and skills essential to the full and adequate performance of the job. This does not preclude a participant who has been trained by one employer from ultimately being placed in a comparable, training-related position with another employer. OJT may be sequenced with or accompanied by other types of training such as classroom training or literacy training.

(b) Duration of OJT. (1) OJT authorized for a participant shall be limited to a period not in excess of that generally required for the acquisition of skills needed for the position within a particular occupation, but in no event may reimbursement exceed the later of 6 months or 499 hours, including time spent in related classroom training during which wages are paid by the employer. In determining the period generally needed for the acquisition of necessary skills, consideration shall be given to recognized reference materials, including, but not limited to the "Dictionary of Occupational Titles", employer training plans and content, and the participant's education, prior work experience, and ISS.

(2) OJT is encouraged in higher skill occupations appropriate to the participant's needs and occupational interests and training plans may be developed which reflect the customary duration of training specified in recognized reference materials; but the maximum period for which JTPA funds may be used to reimburse an employer for OJT shall be as specified in paragraph (b)(1) of this section.

(3) Recipients and SDA's/SSG's shall develop policies and procedures for determining training duration. These policies and procedures shall specify the guidelines and reference materials to be used and shall indicate how the specific training content, the participant's prior work experience, and the participant's ISS will be factored into the determination of training length.

(4) The ISS developed for each OJT participant shall document how the training length was determined and shall include a justification in each case where the length of training exceeds that provided for in a recognized reference material adopted by the recipient.

(c) Employer payments. (1) Payments for OJT shall not exceed the average of 50 percent of the total wages paid by the employer to each participant during the period of training.

(2) Payments to employers for OJT are deemed to be in compensation for the extraordinary cost associated with training participants and in compensation for the costs associated with the lower productivity of such participants. Employers are not required to maintain separate records to

document the extraordinary costs actually incurred.

(d) OJT contracts. (1) OJT contracts shall specify the types and duration of OJT and other services to be provided in sufficient detail, as specified in paragraph (d)(2) of this section, to allow for a fair analysis of the reasonableness of proposed costs and otherwise to comply with the applicable requirements of section 164 of the Act.

(2) Each contract with an OJT employer, at a minimum, shall specify the number of participants to be trained, participant wage rates, and the method and maximum amount of reimbursement; and shall provide a job description and brief training outline, including training hours by skill area or task. OJT employers shall maintain adequate time and attendance, payroll and other records to support amounts reimbursed under OJT contracts.

(3) Each contract with an OJT employer that is written by a brokering contractor (not written directly by the SDA/SSG or recipient) shall specify and clearly differentiate the services to be provided by the brokering contractor, the OJT employer, and other agencies and subcontractors, if any, including services provided with or without cost.

(4) OJT employers may also be reimbursed for the actual costs incurred in providing classroom training and training-related and supportive services to JTPA participants, including reimbursement for the cost of participant wages paid by the employer for time spent in such activities during working hours. Any such additional reimbursements shall be only for training and for support over and above that provided to regular employees, and must be documented by the employer.

(e) Labor standards. OJT participants shall be compensated by the employer at the same rates, including periodic increases not related to individual performance, as similarly situated employees or trainees, but in no event less than the highest of the minimum wage prescribed under the Fair Labor Standards Act of 1938, as amended, or applicable State or local minimum wage laws.

(f) Suitability of participants. (1) Only those participants who have been assessed and for whom OJT has been documented as an appropriate activity in the participant's ISS shall be referred to an employer for participation in OJT.

(2) An individual referred to the JTPA program by an employer may be enrolled in an OJT program with such employer only upon completion of an objective assessment and individual service strategy in which OJT with such employer has been determined to be an appropriate activity and the employer has not already hired such individual.

(3) Employment of an OJT participant with the participant's previous employer in the same, a similar, or an upgraded job is not permitted.

(g) Employer eligibility. (1) An OJT contract shall not be entered into with an employer who had two or more previous OJT contracts and exhibited a pattern of failing to provide OJT participants continued long-term employment as regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees.

(2) Governors shall issue procedures and criteria to implement the requirement in paragraph (g)(1) of this section, and which shall specify the duration of the period of loss of eligibility. Such procedures may provide that situations in which OJT participants quit voluntarily or are terminated for cause or are released due to unforeseeable changes in business conditions will not necessarily result in termination of employer eligibility.

(h) Youth training program. OJT conducted under title II–C shall meet the requirements of subpart H of part 628 of this chapter (§ 628.804), as well as the requirements of this section. Where OJT is provided to youth concurrently enrolled under titles II–B and II–C, the source of funding for the OJT shall determine which requirements apply.

(i) A temporary employment agency may serve as the employer of record for purposes of providing OJT to a participant in employment only when such participants are treated as all other agency employees and not when such agency provides probationary seasonal, temporary, or intermittent employment.

(j) Monitoring. (1) Each contract with an OJT employer, whether awarded by the recipient, subrecipient, brokering contractor, or subcontractor, shall be periodically monitored on-site sufficiently to assure the validity and propriety of amounts claimed for reimbursement, that they are substantiated by payroll and time and attendance records, and that training is being provided as specified in the contract.

(2)(i) Brokering contractors shall conduct on-site monitoring of the OJT employers and other subcontractors to verify compliance with subcontract terms before making payments.

(ii) Nothing in this paragraph (j) shall relieve recipients and SDA's from responsibility for monitoring expenditures under the Act.

§ 627.245 Work experience.

(a) General. "Work experience" means a short-term or part-time work assignment with a public or private nonprofit employing agency for a participant who needs assistance in becoming accustomed to basic work requirements. It is prohibited in the private for-profit sector except for limited internships and entry employment experience programs, as provided in section 264(c)(1) (F) and (H).

(b) Suitability. Work experience is designed to promote the development of good work habits and basic work skills for individuals who have never worked or who have been out of the labor force for an extended period of time including, but not limited to, students, summer youth, school dropouts, individuals with disabilities, and older workers.

(c) Duration of work experience. Participation in work experience shall be for a reasonable length of time, based on the needs of the participant, which shall be documented in the participant's ISS. Generally, work experience for adults may not exceed the later of 6 months or 499 hours if working part time. The ISS shall include a justification in each case where work experience is authorized in excess of these limits for adults.

(d) Combination with other services. Work experience conducted under titles II–A and II–C shall be accompanied, either concurrently or sequentially, by other services designed to increase the basic education and/or occupational skills of the participant, as documented in the ISS.

(e) Work experience is not an allowable activity under title III of the Act.

§ 627.250 Interstate agreements.

The Secretary hereby grants authority to the several States to enter into interstate agreements and compacts in accordance with section 127 of the Act and, as specified in § 627.420(g), Procurement, of these regulations.

Subpart C—Payments, Benefits, and Working Conditions

§ 627.300 Scope and purpose.

This subpart sets forth requirements for allowable payments to JTPA participants. These include needs-based payments under title II, incentive and bonus payments, wages, wages for combined activities, and needs-related payments under title III. This subpart also sets forth rules for benefits and working conditions for JTPA participants. These include

requirements for supportive services, workers' compensation coverage or medical and accident insurance where there is no State workers' compensation law, working conditions which are detrimental to the participant's health and safety, and child labor laws.

§ 627.305 Payments.

(a)(1) General. Allowable types of payments to participants are needs-based payments for participants in programs under titles I and II as described in this section, incentive and bonus payments for participants in title II-C programs, wages, wages for combined activities in title II programs, and needs-related payments for participants in title III programs as described in section 631 of this chapter. These payments may be made in accordance with paragraphs (b) through (f) of this section.

(2) A participant shall receive no payments for training activities in which the participant fails to participate without good cause (section 142 (a)(1)).

(b) Needs-based payments. (1) In accordance with a locally developed formula or procedure, needs-based payments may be provided to individual participants where such payments are necessary to enable the individual to participate in training programs under this part. Such formula or procedure shall be included in the job training plan.

(2) Documentation supporting the locally developed formula or procedure shall be maintained in accordance with instructions from the Governor.

(3) The formula or procedure shall provide for the maintenance of an individual record of the determination of the need for, and the amount of, each participant's needs-based payments.

(4) An SDA shall be able to demonstrate that the formula or procedure has been utilized on an individual basis to determine the amount of needs-based payments approved for each participant.

(5) The individual determination of a participant's needs-based payment and the amount of such payment shall be based upon the results of the objective assessment and recorded in the ISS.

(c) Incentive and bonus payments. (1) Participants in programs funded under title II–C may receive incentive and bonus payments based on attendance and/or performance and in accordance with a locally developed formula or procedure. The formula or procedure shall include a specification of the requirements for the receipt of such payments and the level of payments and shall be described in the job training plan approved by the Governor.

(2) Documentation supporting the locally developed formula or procedure shall be maintained in accordance with instructions from the Governor.

(3) The formula or procedure shall provide for the maintenance of an individual record of the determination of the need for, and the amount of, any participant's incentive and bonus payments.

(4) SDA's must be able to demonstrate that the described formula or procedure has been applied on an individual basis to determine the bonus or incentive payment.

(d) Wages. Individuals participating in programs under title II of the Act in work experience, in limited internships in the private sector, in entry employment experience programs or in other activities which would result in an employee-employer relationship if wages were paid by the employer, may be paid wages. Any wage payments shall be at the same rates as similarly situated employees or trainees, but in no event less than the higher of the minimum wage prescribed under the Fair Labor Standards Act of 1938, as amended, or applicable State or local minimum wage laws. The SDA is responsible for meeting applicable Internal Revenue Service requirements.

(e) Wages for combined activities. (1) For title II programs, participants in one of the activities described in paragraph (d) of this section for which wages are payable for more than 50 percent of the participant's scheduled time including classroom training, may also be paid wages for hours of participation in classroom training.

(2) In order to pay wages in combined activities for adults as described in paragraph (e)(1) of this section, the classroom training must have a work-based context and be linked to any occupational skills training provided in the work experience component.

(f) Summer payments. Summer participants may receive wages or wage equivalent payments for participation in activities under title II–B.

(g) Needs-related payments. The requirements pertaining to needs-related payments provided for under section 315(b) of the Act, are described in part 631 of this chapter.

§ 627.310 Benefits and working conditions.

(a) Supportive services. (1) Supportive services may be provided in-kind, through cash assistance, or by arrangement with another human service agency when necessary to enable an individual eligible for training under a JTPA–assisted program, but who cannot afford to pay for such services, to participate in such JTPA-assisted program (section 4).

(2) Necessary supportive services shall be specified in a participant's ISS under title II, or a participant's individual readjustment plan under title III.

(3) Financial assistance shall only be used to pay for specific necessary services and shall be limited to discrete payments which are necessary for participation in a program funded under this Act.

(i) Provision of such financial assistance shall be based on an SDA/SSG procedure which shall be described in the job training plan.

(ii) Documentation supporting the procedure shall be maintained in accordance with instructions from the Governor.

(iii) The individual determination of financial assistance and the amount of such assistance shall be based upon the results of the objective assessment and documented in the participant's ISS.

(b) Where a participant is not covered under a State's workers' compensation law, the participant shall be provided with adequate on-site medical and accident insurance for work-related activities. For work-related activities, income maintenance coverage is not required for the participant (section 143(a)(3)).

(c) Where a participant is engaged in activities not covered under the Occupational Safety and Health Act of 1970, as amended, the participant shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the participant's health or safety. A participant employed or trained for inherently dangerous occupations, *e.g.*, fire or police jobs, shall be assigned to work in accordance with reasonable safety practices (section 143(a)(2)).

(d) In the development and conduct of programs funded under the Act, SDA's and SSG's shall ensure compliance with applicable child labor laws. (29 CFR part 570)

Subpart D—Administrative Standards

§ 627.400 Scope and purpose.

This subpart establishes the administrative and financial standards and requirements that apply to funds received under the Act.

§ 627.405 Grant agreement and funding.

(a)(1) Pursuant to § 627.200 of this part and the Governor/Secretary agreement, each program year there will be executed a grant agreement signed by

the Governor or the Governor's designated representative and the Secretary or the Secretary's designated representative (Grant Officer).

(2) The grant agreement described in paragraph (a)(1) of this section shall be the basis for Federal obligation of funds for the program year for programs authorized by titles I, II, and III, including any title III discretionary projects awarded to the State, and such other funds as the Secretary may award under the grant.

(b) Funding. The Secretary shall allot funds to the States in accordance with sections 162, 202, 252, 262, and 302 of the Act. The Secretary shall obligate such allotments through Notices of Obligation.

(c) Pursuant to instructions issued by the Secretary, additional funds may be awarded to States for the purpose of carrying out the administrative activities described in section 202(c)(1)(A) when a State receives an amount under such section that is less than $500,000 (section 453(d)).

(d) Termination. Each grant shall terminate when the period of availability for expenditure (funding period), as specified in section 161(b) of the Act, has expired and shall be closed in accordance with § 627.485, of this part, Closeout.

§ 627.410 Reallotment and reallocation.

(a) The Governor shall reallocate title II–A and II–C funds among service delivery areas within the State in accordance with the provisions of section 109(a) of the Act. The amounts to be reallocated, if any, shall be based on SDA obligations of the funds allocated separately to each SDA for title II–A or II–C programs.

(b) The Secretary shall reallot title II–A and II–C funds among the States in accordance with the provisions of section 109(b) of the Act. The amounts to be reallotted, if any, shall be based on State obligations of the funds allotted separately to each State for title II–A or II–C programs, excluding funds allotted under section 202(c)(1)(D) and the State's obligation of such funds.

(c) Title III funds shall be reallotted by the Secretary in accordance with section 303 of the Act.

§ 627.415 Insurance.

(a) General. Each recipient and subrecipient shall follow its normal insurance procedures except as otherwise indicated in this section and § 627.465 of this part, Property Management Standards.

(b) DOL assumes no liability with respect to bodily injury, illness, or any other damages or losses, or with respect to any claims arising out of any activity under a JTPA grant or agreement whether concerning persons or property in the recipient's or any subrecipient's organization or any third party.

(c) Consistent with § 627.310(b) of this part, Benefits and working conditions, recipients and subrecipients shall secure insurance coverage for injuries suffered by participants who are not covered by existing workers' compensation. Contributions to a reserve for a self-insurance program, to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks, are allowable (section 143(a)(3)).

§ 627.420 Procurement.

(a) General. (1) The Governor, in accordance with the minimum requirements established in this section, shall prescribe and implement procurement standards to ensure fiscal accountability and prevent waste, fraud, and abuse in programs administered under this Act.

(2) When procuring property and services, a State shall follow the same policies and procedures it uses for procurements from its non-Federal funds, provided that the State's procurement procedures also comply with the minimum requirements of this section.

(3) Each subrecipient shall use its own procurement procedures which reflect applicable State and local laws and regulations, provided that the subrecipient's procurement procedures also comply with the requirements of this section and the standards established by the Governor, pursuant to paragraph (a)(1) of this section.

(4) States and subrecipients shall not use funds provided under JTPA to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless it is demonstrated that the JTPA-funded alternative services or facilities would be more effective or more likely to achieve performance goals (sections 107(b) and 141(h)).

(b) Competition. (1) Each State and subrecipient shall conduct procurements in a manner which provides full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

(i) Placing unreasonable requirements on firms or organizations in order for them to qualify to do business;

(ii) Requiring unnecessary experience and excessive bonding;

(iii) Noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations;

(iv) Noncompetitive awards to consultants that are on retainer contracts;

(v) Organizational conflicts of interest;

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement;

(vii) Overly restrictive specifications; and

(viii) Any arbitrary action in the procurement process.

(2) Each State and subrecipient shall have written procedures for procurement transactions. These procedures shall ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(3) Each State and subrecipient shall ensure that all prequalified lists of persons, firms, or other organizations which are used in acquiring goods and services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

(c) Conflict of interest. (1) Each recipient and subrecipient shall maintain a written code of standards of conduct governing the performance of persons engaged in the award and administration of JTPA contracts and subgrants.

(2) Each recipient and subrecipient shall ensure that no individual in a decisionmaking capacity including PIC members (whether compensated or not) shall engage in any activity, including participation in the selection, award, or administration of a subgrant or contract supported by JTPA funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The individual,

(ii) Any member of the individual's immediate family,

(iii) The individual's partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm or organization selected for award.

(3) The officers, employees, or agents of the agency making the award will

neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. States and subrecipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(4) PIC conflict of interest: (i) A PIC member shall not cast a vote on, nor participate in, any decisionmaking capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member.

(ii) Neither membership on the PIC nor the receipt of JTPA funds to provide training and related services shall be construed, by themselves, to violate provisions of section 141(f) of the Act or § 627.420 of this chapter.

(5) To the extent permitted by State or local law or regulation, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the awarding agency's officers, employees, or agents, or by contractors or their agents.

(d) Methods of procurement. Each State and subrecipient shall use one of the following methods of procurement, as appropriate for each procurement action: (1) *Small purchase procedures*—simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. The Governor shall establish standards for small purchase procedures which insure that price or rate quotations will be documented from an adequate number of qualified sources.

(2) *Sealed bids (formal advertising)*—bids are publicly solicited procurement for which a firm-fixed-price contract (lump sum or unit price) or other fixed-price arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The Governor shall establish standards for sealed bids which include a requirement that invitations for bids be publicly advertised, and bids shall be solicited from an adequate number of organizations.

(3) *Competitive proposals*—normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. The Governor shall establish standards for competitive proposals which include requirements for the establishment of a documented methodology for technical evaluations and award to responsible offeror whose proposals are most advantageous to the program with price, technical, and other factors considered.

(4) *Noncompetitive proposals (sole source)*—procurement through solicitation of a proposal from only one source, the funding of an unsolicited proposal, or, after solicitation of a number of sources, when competition is determined inadequate. Each State and subrecipient shall minimize the use of sole source procurements to the extent practicable, but in every case, the use of sole source procurements shall be justified and documented. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

(i) The item or service is available only from a single source;

(ii) The public exigency or emergency need for the item or service does not permit a delay resulting from competitive solicitation;

(iii) The awarding agency authorizes noncompetitive proposals;

(iv) After solicitation of a number of sources, competition is determined inadequate;

(v) On-the-job training (OJT) contracts, except OJT brokering contracts which shall be selected competitively; or

(vi) Enrollment of individual participants in classroom training.

(e) Cost or price analysis. (1) Each recipient, in accordance with the minimum requirements established in this section, shall establish standards on the performance of cost or price analysis.

(2) Each recipient and subrecipient shall perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation, but at a minimum, the awarding agency shall make independent estimates before receiving bids or proposals. A cost analysis is necessary when the offeror is required to submit the elements of the estimated cost, when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. The offeror shall certify that to the best of its knowledge and belief, the cost data are accurate, complete, and current at the time of agreement on price. Contracts or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude any significant sum by which the price was increased because the contractor had submitted data that were not accurate, complete, or current as certified. A price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price.

(3) JTPA procurements shall not permit excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities). If profit or program income is included in the price, the awarding agency shall negotiate profit or program income as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit or program income, consideration shall be given to:

(i) The complexity of the work to be performed;

(ii) The risk borne by the contractor;

(iii) The contractor's investment;

(iv) The amount of subcontracting;

(v) The quality of the contractor's record of past performance;

(vi) Industry profit rates in the surrounding geographical area for similar work; and

(vii) Market conditions in the surrounding geographical area.

(4) Each recipient and subrecipient may charge to the grant or subgrant only those contractor costs which are consistent with the allowable cost provisions of § 627.435 of this part, including the guidelines issued by the Governor, as required at § 627.435(c) of this part.

(5) The cost plus a percentage of cost method of contracting shall not be used.

(f) Oversight. (1) Each recipient and subrecipient shall conduct and document oversight to ensure compliance with the procurement standards, in accordance with the requirements of § 627.475 of this part, Oversight and monitoring.

(2) Each recipient and subrecipient shall maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(g) Transactions between units of government. Procurement transactions between units of State or local governments, and any other entities organized principally as the administrative entity for service

delivery areas or substate areas, shall be conducted on a cost reimbursable basis.

(h) Contract provisions. Each recipient and subrecipient procurement shall:

(1) Clearly specify deliverables and the basis for payment; and

(2) Contain clauses that provide for:

(i) Compliance with the JTPA regulations (subrecipient contracts only);

(ii) For contracts other than small purchases, administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, which shall provide for such sanctions and penalties as may be appropriate;

(iii) Notice of JTPA requirements pertaining to patent rights;

(iv) Notice of JTPA requirements pertaining to copyrights and rights in data;

(v) For all contracts in excess of $10,000, termination for cause and for convenience by the awarding agency, including the manner by which the termination will be effected and the basis for settlement;

(vi) Access by the recipient, the subrecipient, the Department of Labor, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the contractor or subcontractor which are directly pertinent to charges to the program, in order to conduct audits and examinations, and make excerpts, transcripts, and photocopies; this right also includes timely and reasonable access to contractor's and subcontractor's personnel for the purpose of interviews and discussions related to such documents (vendor contracts);

(vii) Notice of awarding agency requirements and regulations pertaining to reporting;

(viii) Audit rights and requirements;

(ix) Payment conditions and delivery terms;

(x) Process and authority for contract changes; and

(xi) Provision against assignment.

(xii) The assurance of nondiscrimination and equal opportunity as found in 29 CFR 34.20, Assurance required; duration of obligation; covenants.

(3) The Governor may establish additional clauses, as deemed appropriate, for State and subrecipient procurements.

(i) Disputes. (1) The Governor shall insure that the recipient and each subrecipient have protest procedures to handle and resolve disputes relating to their procurements. A protester shall exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level.

(2) Violations of law will be referred to the Department of Labor Office of the Inspector General and other appropriate local and State authorities having proper jurisdiction.

(j) Each recipient and subrecipient shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, the following: Rationale for the method of procurement, the selection of contract type, contractor selection or rejection, and the basis for the contract type.

§ 627.422 Selection of service providers.

(a) Service providers selected under titles I, II, and III of the Act shall be selected in accordance with the provisions of section 107 of the Act, except that section 107(d) shall not apply to training under title III.

(b) Consistent with the requirements of this section, the Governor shall establish standards to be followed by in making determinations of demonstrated performance, prior to the award of all subgrants, contracts, and subcontracts under titles I, II, and III of the Act. These standards shall comply with the requirements of this section, § 627.420, of this part, Procurement, and section 164(a)(3) of the Act. The standards shall require that determinations of demonstrated performance will be in writing, and completed prior to the award of a grant, subgrant, contract or subcontract.

(c) Each recipient and subrecipient, to the extent practicable, shall select service providers on a competitive basis, in accordance with the standards established in § 627.420(b) of this part, Procurement. When a State, SDA, SSG, or administrative entity determines that services will be provided by its own staff, a determination shall be made of the demonstrated performance of the staff to operate the program. This determination shall be in writing and take into consideration the matters listed in paragraph (d) of this section.

(d) Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. Such determinations shall be in writing, and take into consideration such matters as whether the organization has:

(1) Adequate financial resources or the ability to obtain them;

(2) The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals;

(3) A satisfactory record of past performance (in job training, basic skills training, or related activities), including demonstrated quality of training; reasonable drop-out rates from past programs; the ability to provide or arrange for appropriate supportive services as specified in the ISS, including child care; retention in employment; and earning rates of participants;

(4) For title II programs, the ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies;

(5) A satisfactory record of integrity, business ethics, and fiscal accountability;

(6) The necessary organization, experience, accounting and operational controls; and

(7) The technical skills to perform the work.

(e) In selecting service providers to deliver services in an SDA, proper consideration shall be given to community-based organizations (section 107(a)). These community-based organizations shall be organizations, including women's organizations with knowledge about or experience in nontraditional training for women, which are recognized in the community in which they are to provide services.

(f) Appropriate education agencies in the service delivery area/substate area shall be provided the opportunity to provide educational services, unless the administrative entity demonstrates that alternative agency(ies) or organization(s) would be more effective or would have greater potential to enhance the participants' continued educational and career growth. (section 107(c)).

(g) In determining demonstrated performance of institutions/organizations which provide training, such performance measures as retention in training, training completion, job placement, and rates of licensure shall be taken into consideration.

(h) Amounts for service providers. Each SDA/SSG shall ensure that, for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement shall include appropriate amounts necessary for administration and supportive services. (section 108(b)(5)).

(i) Service providers under agreements to conduct projects under section 123(a)(2) shall be selected in

accordance with the requirements of this section.

(j) The requirements of section 204(d)(2)(B) shall be followed in entering into agreements to provide services for older individuals funded under title II, part A.

(k) Additional requirements for selection of service providers by substate grantees are described at section 313(b)(6) of the Act and § 631.52 of this chapter.

§ 627.423 Funding restrictions for "high-risk" recipients and subrecipients.

(a) A recipient or subrecipient may be considered "high-risk" if an awarding agency determines that the recipient or subrecipient is otherwise responsible but:

(1) Has a history of unsatisfactory performance;

(2) Is not financially stable;

(3) Has a management system which does not meet the management standards set forth in this part; or

(4) Has not conformed to terms and conditions of a previously awarded grant or subgrant.

(b) If the awarding agency determines that a grant or subgrant will be made to a "high-risk" recipient or subrecipient, then special funding restrictions that address the "high-risk" status may be included in the grant or subgrant. Funding restrictions may include but are not limited to:

(1) Payment on a reimbursement basis;

(2) Requiring additional and/or more detailed financial or performance reports;

(3) Additional monitoring;

(4) Requiring the recipient or subrecipient to obtain specific technical or management assistance; and/or

(5) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such funding restrictions, the awarding official will notify the recipient or subrecipient as early as possible, in writing, of:

(1) The nature of the funding restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the restrictions imposed.

§ 627.424 Prohibition of subawards to debarred and suspended parties.

(a) No recipient or subrecipient shall make any subgrants or permit any contract or subcontract at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs in accordance with the Department of Labor regulations at 29 CFR part 98.

(b) Recipients and subrecipients shall comply with the applicable requirements of the Department of Labor regulations at 29 CFR part 98.

§ 627.425 Standards for financial management and participant data systems.

(a)(1) *General.* The financial management system and the participant data system of each recipient and subrecipient shall provide federally required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit, program management, and evaluation purposes (sections 165(a) (1) and (2), and 182).

(2) An awarding agency may review the adequacy of the financial management system and participant data system of any recipient/subrecipient as part of a preaward review or at any time subsequent to award.

(b) *Financial systems.* Recipients and subrecipients shall ensure that their own financial systems as well as those of their subrecipients provide fiscal control and accounting procedures that are:

(1) In accordance with generally accepted accounting principles, financial systems shall include:

(i) Information pertaining to subgrant and contract awards, obligations, unobligated balances, assets, expenditures, and income;

(ii) Effective internal controls to safeguard assets and assure their proper use;

(iii) A comparison of actual expenditures with budgeted amounts for each subgrant and contract;

(iv) Source documentation to support accounting records; and

(v) Proper charging of costs and cost allocation; and

(2) Be sufficient to:

(i) Permit preparation of required reports;

(ii) Permit the tracing of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds;

(iii) As required by section 165(g), permit the tracing of program income, potential stand-in costs and other funds that are allowable except for funding limitations as defined in § 627.480(g) of this part, Audits; and

(iv) Demonstrate compliance with the matching requirement of section 123(b)(2).

(c) *Applicant and participant data systems.* Each recipient and subrecipient shall ensure that records are maintained:

(1) Of each applicant for whom an application has been completed and a formal determination of eligibility or ineligibility made;

(2) Of each participant's enrollment in a JTPA-funded program in sufficient detail to demonstrate compliance with the relevant eligibility criteria attending a particular activity and with the restrictions on the provision and duration of services and specific activities imposed by the Act; and

(3) Of such participant information as may be necessary to develop and measure the achievement of performance standards established by the Secretary.

§ 627.430 Grant payments.

(a) Except as provided in paragraph (h)(2) of this section, JTPA grant payments shall be made to the Governor in accordance with the Cash Management Improvement Act of 1990 (31 U.S.C. 6501 et seq.), Department of Treasury regulations at 31 CFR part 205, and the State Agreement entered into with the Department of the Treasury.

(b) *Basic standards.* (1) Except as provided in paragraphs (d) and (e) of this section, each recipient and subrecipient shall be paid in advance, provided it maintains or demonstrates the willingness and ability to maintain procedures that are in accordance with Department of Treasury regulations at 31 CFR part 205.

(2) For payments to contractors under a grant or subgrant, reimbursement is the preferred method. However, the awarding agency may provide advances to contractors after determining that:

(i) Reimbursement is not feasible because the contractor lacks sufficient working capital;

(ii) The contractor meets the standards of this section and 31 CFR part 205 governing advances to subrecipients; and

(iii) Advance payment is in the best interest of the awarding agency.

(c) *Advance Payments.* To the maximum extent feasible, each subrecipient shall be provided advance payments via electronic funds transfer, following the procedures of the awarding agency.

(d) *Reimbursement.* (1) Reimbursement is the preferred method when the requirements in paragraph (b)(1) of this section are not met.

(i) Each recipient shall submit requests for reimbursement in

accordance with the provisions at 31 CFR part 205.

(ii) Each subrecipient shall submit requests for reimbursement as authorized by the awarding agency.

(2) Each subrecipient shall be paid as promptly as possible after receipt of a proper request for reimbursement.

(e) *Working capital advance payments.* If a subrecipient or contractor cannot meet the criteria for advance payments described in paragraph (b)(1) of this section, and the awarding agency has determined that reimbursement is not feasible because the subrecipient or contractor lacks sufficient working capital, the awarding agency may provide cash on a working capital advance payment basis. Under this procedure, the awarding agency shall advance cash to the subrecipient or contractor to cover its estimated disbursement needs for an initial period, generally geared to the subrecipient's or contractor's disbursing cycle and in no event may such an advance exceed 20 percent of the award amount. Thereafter, the awarding agency shall reimburse the subrecipient or contractor for its actual cash disbursements. The working capital advance method of payment shall not be used by recipients or subrecipients if the reason for using such method is the unwillingness or inability of the recipient or subrecipient to provide timely advances to the subrecipient to meet the subrecipient's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* Each recipient and subrecipient shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(g) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, each recipient and subrecipient is encouraged to use minority-owned banks (a bank which is owned at least 50 percent by minority group members). Additional information may be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A recipient or subrecipient shall not be required to maintain a separate bank account but shall separately account for Federal funds on deposit.

(h) *Interest earned on advances.* (1) An interest liability shall accrue on advance payments between Federal agencies and State governments as provided by the Cash Management Improvement Act (31 U.S.C. 6501 et seq.) and implementing regulations at 31 CFR part 205.

(2) Each subrecipient other than a State entity shall account for interest earned on advances of Federal funds as program income, as provided at § 627.450 of this part, Program income.

§ 627.435 Cost principles and allowable costs.

(a) General: To be allowable, a cost shall be necessary and reasonable for the proper and efficient administration of the program, be allocable to the program, and, except as provided herein, not be a general expense required to carry out the overall responsibilities of the Governor or a governmental subrecipient. Costs charged to the program shall be accorded consistent treatment through application of generally accepted accounting principles appropriate to the JTPA program, as determined by the Governor.

(b) Whether a cost is charged as a direct cost or as an indirect cost shall be determined in accordance with the descriptions of direct and indirect costs contained in the OMB Circulars identified in DOL's regulations at 29 CFR 97.22(b).

(c) Costs of another Federal grant, JTPA program, or cost category may not be shifted to a JTPA grant, subgrant, program, or cost category to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

(d) Applicable credits such as rebates, discounts, refunds, and overpayment adjustments, as well as interest earned on any of them, shall be credited as a reduction of costs if received during the same funding period that the cost was initially charged. Credits received after the funding period shall be returned to the Department as provided for at § 627.490(b).

(e) The following costs are not allowable charges to the JTPA program:

(1) Costs of fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws and regulations;

(2) Back pay, unless it represents additional pay for JTPA services performed for which the individual was underpaid;

(3) Entertainment costs;

(4) Bad debts expense;

(5) Insurance policies offering protection against debts established by the Federal Government;

(6) Contributions to a contingency reserve or any similar provision for unforseen events;

(7) Costs prohibited by 29 CFR part 93 (Lobbying Restrictions) or costs of any salaries or expenses related to any activity designed to influence legislatio or appropriations pending before the Congress of the United States; and

(8) Costs of activities prohibited in § 627.205, Public service employment prohibition; § 627.210, Nondiscrimination and nonsectarian activities; § 627.215, Relocation; § 627.225, Employment generating activities; and § 627.230, Displacement, of this part.

(f)(1) The cost of legal expenses required in the administration of grant programs is allowable. Legal expenses includes the expenses incurred by the JTPA system in the establishment and maintenance of a grievance system, including the costs of hearings and appeals, and related expenses such as lawyers' fees. Legal expenses do not include costs resulting from, and after, the grievance process such as fines and penalties, which are not allowable, and settlement costs, which may or may not be allowable.

(2) Legal services furnished by the chief legal officer of a State or local government or staff solely for the purpose of discharging general responsibilities as a legal officer are unallowable.

(3) Legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

(g) Costs of travel and incidental expenses incurred by volunteers are allowable provided such costs are incurred for activities that are generally consistent with section 204(c)(6) of the Act.

(h) Construction costs are not allowable costs except for funds used to:

(1) Purchase equipment, materials, and supplies for use by participants while on the job and for use in the training of such participants (examples of such equipment, materials, and supplies are handtools, workclothes, and other low cost items); and

(2) Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and needs-based payments, or other financial assistance to participants.

(i) The Governor shall prescribe and implement guidelines on allowable costs for SDA, SSG, and statewide programs that are consistent with the cost principles and allowable costs provisions of paragraphs (a) through (h) of this section and that include, at a minimum, provisions that specify the extent to which the following cost items are allowable or unallowable JTPA costs and, if allowable, guidelines on

conditions and amounts, documentation requirements, and any prior approval requirements applicable to such cost items:

(1) Compensation for personal services of staff, including wages, salaries, supplementary compensation, and fringe benefits;

(2) Costs incurred by the SJTCC, HRIC, PIC's, and other advisory councils or committees;

(3) Advertising costs;

(4) Depreciation and/or use allowances;

(5) Printing and reproduction costs;

(6) Interest expense;

(7) Expenditures for transportation and travel;

(8) Payments to OJT employers, training institutions, and other vendors;

(9) Fees or profits;

(10) Insurance costs, including insurance coverage for injuries suffered by participants who are not covered by existing workers' compensation, and personal liability insurance for PIC members;

(11) Participant supportive services including needs-based payments and, for youth enrolled in title II–C, cash incentives and bonuses, except that needs-based payments shall be determined in accordance with a locally developed formula or procedure;

(12) Acquisitions of capital assets;

(13) Building space costs, including rent, repairs, and alterations;

(14) Pre-agreement costs;

(15) Fund-raising activities;

(16) Professional services, including organizational management studies conducted by outside individuals or firms; and

(17) Taxes.

§ 627.440 Classification of costs.

(a) Allowable costs for programs under title II and title III shall be charged (allocated) to a particular cost objective/category to the extent that benefits are received by such cost objective/category. The classification of costs for programs under title III of the Act are set forth at § 631.13 of this chapter, Classification of costs at State and substate levels.

(b) For State-administered programs under Title II, the State is required to plan, control, and charge expenditures against the following cost objectives/categories:

(1) Titles II–A and II–C (combined)—capacity building technical assistance (sections 202(c)(1)(B) and 262(c)(1)(B) of the Act to carry out activities pursuant to sections 202(c)(3)(A) and 262(c)(3)(A) of the Act);

(2) Titles II–A and II–C (combined)—8 percent coordination (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(A) of the Act);

(3) Titles II–A and II–C (combined)—8 percent services/direct training (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act);

(4) Titles II–A and II–C (combined)—8 percent services/training-related and supportive services (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)2)(B) of the Act);

(5) Titles II–A and II–C (combined)—8 percent services/administration (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act);

(6) Titles II–A and II–C (combined)—8 percent services to disadvantaged (section 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(C) of the Act);

(7) Title II–A—older individuals/direct training (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act);

(8) Title II–A—older individuals/training-related and supportive services (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act);

(9) Title II–A—older individuals/administration (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act); and

(10) Titles II–A and II–C (combined)—administration (sections 202(c)(1)(A) and 262(c)(1)(A) of the Act).

(c)(1) SDA grant recipients and their subrecipients shall plan, control, and charge expenditures, excluding incentive funds received pursuant to sections 202(c)(1)(B) and 262(c)(1)(B) of the Act, against the following cost objectives/categories:

(i) Title II–A direct training services;

(ii) Title II–C direct training services;

(iii) Title II–A training-related and supportive services;

(iv) Title II–C training-related and supportive services;

(v) Title II–B training and supportive services;

(vi) Title II–A administration;

(vii) Title II–B administration; and

(viii) Title II–C administration.

(2) Incentive funds received pursuant to sections 202(c)(1)(B) and 262(c)(1)(B) of the Act, may be combined and accounted for in total, without regard to cost categories or cost limitations.

(d) States and subrecipients shall use the following definitions in assigning costs to the cost categories contained in paragraphs (b) and (c) of this section:

(1) *Direct training services—title II–A.* Costs for direct training services that may be charged to the title II–A program are:

(i) The personnel and non-personnel costs directly related to providing those services to participants specified in section 204(b)(1) of the Act and which can be specifically identified with one or more of those services. Generally, such costs are limited to:

(A) Salaries, fringe benefits, equipment, supplies, space, staff training, transportation, and other related costs of personnel directly engaged in providing training; and

(B) Salaries, fringe benefits, and related non-personnel costs of program component supervisors and/or coordinators as well as clerical staff, provided such staff work exclusively on activities or functions specified in section 204(b)(1) of the Act or actual allocations of time and related costs are made;

(ii) Books, instructional materials, and other teaching aids used by or for participants;

(iii) Equipment and materials used in providing training to participants;

(iv) Classroom space and utility costs;

(v) Costs of insurance coverage of participants as specified at § 627.415 of this part, Insurance; and

(vi) Payments to vendors for goods or services procured for the use of benefit of program participants for direct training services, including:

(A) Payments for commercially available training packages purchased competitively pursuant to section 141(d)(3) of the Act;

(B) Tuition charges and entrance fees of an educational institution, as specified at section 141(d)(3)(B) of the Act, when such tuition charges or entrance fees are not more than the educational institution's catalogue price, necessary to receive specific training, charged to the general public to receive the same training, and are for training of participants; and

(C) Payments to OJT employers, but not brokering contractors. Costs incurred under brokering arrangements shall be allocated to all of the benefitting cost categories.

(2) *Direct training services—title II–C.* Costs for direct training services that may be charged to the title II–C program are the costs identified in paragraph (d)(1) of this section as well as costs directly related to providing those services to participants specified in section 264(c)(1) of the Act and which can be specifically identified with one or more of those services.

(3) *Training-related and supportive services—title II–A.* Costs for training-related and supportive services that may be charged to the title II–A program are:

(i) The personnel and non-personnel costs directly related to providing outreach, intake, and eligibility determination as well as those services to participants specified in section 204(b)(2) of the Act and which can be specifically identified with one or more of those services. Generally, such costs are limited to:

(A) Salaries, fringe benefits, equipment, supplies, space, staff training, transportation, and other related costs of personnel directly engaged in providing training-related and/or supportive services; and

(B) Salaries, fringe benefits, and related non-personnel costs of program component supervisors and/or coordinators as well as clerical staff, provided such staff work exclusively on activities or functions specified in section 204(b)(2) of the Act or actual allocations of time and related costs are made.

(ii) Needs-based payments and other financial assistance to eligible applicants and participants.

(4) *Training-related and supportive services—title II–C.* Costs for training-related and supportive services that may be charged to the title II–C program are the costs identified in paragraph (d)(3) of this section as well as costs directly related to providing those services to participants specified in section 264(c)(2) of the Act and which can be specifically identified with one or more of those services.

(5) *Administration.* The costs of administration are that portion of necessary and allowable costs associated with the overall management and administration of the JTPA program and which are not directly related to the provision of services to participants or otherwise allocable to the program cost objectives/categories in paragraphs (b)(1)–(8) or (c)(1)–(5) of this section. These costs can be both personnel and non-personnel and both direct and indirect. Costs of administration shall include:

(i) Except as provided in paragraph (e)(1) of this section, costs of salaries, wages, and related costs of the recipient's or subrecipient's staff or PIC staff engaged in:

(A) Overall program management, program coordination, and general administrative functions, including the salaries and related costs of the executive director, JTPA director, project director, personnel officer, fiscal officer/bookkeeper, purchasing officer, secretary, payroll/insurance/property clerk and other costs associated with carrying out administrative functions;

(B) Preparing program plans, budgets, schedules, and amendments thereto;

(C) Monitoring of programs, projects, subrecipients, and related systems and processes;

(D) Procurement activities, including the award of specific subgrants, contracts, and purchase orders;

(E) Providing State or local officials and the general public with information about the program (public relations);

(F) Developing systems and procedures, including management information systems, for assuring compliance with program requirements;

(G) Preparing reports and other documents related to the program requirements;

(H) Coordinating the resolution of audit findings;

(I) Evaluating program results against stated objectives; and

(J) Performing administrative services including such services as general legal services, accounting services, audit services; and managing purchasing, property, payroll, and personnel;

(ii) Costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, postage, and rental and maintenance of office space;

(iii) The costs of organization-wide management functions; and

(iv) Travel costs incurred for official business in carrying out program management or administrative activities, including travel costs incurred by PIC members.

(e) *Other cost classification guidance.* (1) Personnel and related non-personnel costs of the recipient's or subrecipient's staff, including project directors, that perform services or activities that benefit two or more of the cost objectives/categories identified in this section may be allocated to the benefitting cost objectives/categories based on documented distributions of actual time worked and related costs.

(2) Indirect or overhead costs normally shall be charged to administration, except that specific costs charged to an overhead or indirect cost pool that can be identified directly with a JTPA cost objective/category other than administration may be charged to the JTPA cost objective/category directly benefitted. Documentation of such charges shall be maintained.

(3) Where an award to a subrecipient is for a "commercially available or off-the-shelf training package", as defined at § 626.5 of this chapter, the subrecipient may charge all costs of such package to the direct training services cost category.

(4) Profits, fees, and other revenues earned by a subrecipient that are in excess of actual costs incurred, to the extent allowable and consistent with the guidelines on allowable costs prescribed by the Governor in accordance with § 627.435(i), Cost principles and allowable costs, may be allocated to all three cost categories based on the proportionate share of actual costs incurred attributable to each category.

(f) *Administrative cost pool.* Joint JTPA administrative costs that are charged initially to an administrative cost pool must be allocated, for JTPA Federal reporting purposes, to the benefitting JTPA programs based on the benefits received by each program.

§ 627.445 Limitations on certain costs.

(a) *State-administered programs—(1) Services for older individuals.* Of the funds allocated for any program year for section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act—

(i) Not less than 50 percent shall be expended for the cost of direct training services; and

(ii) Not more than 20 percent shall be expended for the cost of administration.

(2) *State education services.* Of the funds allocated for any program year for sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act—

(i) Not less than 50 percent shall be expended for the cost of direct training services; and

(ii) Not more than 20 percent shall be expended for the cost of administration.

(3) The limitations specified in paragraph (a)(2) of this section shall apply to the combined total of funds allocated for sections 202(c)(1)(C) and for section 262(c)(1)(C) of the Act.

(b) *SDA allocations.* (1) In applying the title II–A and II–C cost limitations specified in section 108(b)(4) of the Act, the funds allocated to a service delivery area shall be net of any:

(i) Transfers made in accordance with sections 206, 256, and 266 of the Act; and

(ii) Reallocations made by the Governor in accordance with section 109(a) of the Act.

(2) The limitations specified in paragraph (b)(1) of this section shall apply separately to the funds allocated for title II–A and title II–C programs.

(3) The title II–B administrative cost limitation of 15 percent shall be 15 percent of the funds allocated for any program year to a service delivery area, excluding any funds transferred to title II–C in accordance with section 256 of the Act. (section 253(a)(3)).

(c)(1) The State shall establish a system to regularly assess compliance

with the cost limitations including periodic review and corrective action, as necessary.

(2) States and service delivery areas shall have the 3-year period of fund availability to comply with the cost limitations in section 108 of the Act and paragraphs (a) and (b) of this section. (section 161(b)).

(d) Administrative costs incurred by a community-based organization or private non-profit service provider shall not be included in the limitation described in section 108(b)(4)(A) of the Act if:

(1) Such costs are incurred under an agreement that meets the requirements of section 141(d)(3)(C) (i) and (ii) of the Act;

(2) The total administrative expenditures of the service delivery area, including the administrative expenditures of such community-based organizations and private non-profit service providers, do not exceed 25 percent of the funds allocated to the service delivery area for the program year of allocation; and

(3) The total direct training expenditures of the service delivery area, including the direct training expenditures of such community-based organizations and private non-profit service providers, is equal to or exceeds 50 percent of the funds allocated to the service delivery area for the program year less one-half of the percentage by which the total administrative expenditures of the service delivery area exceeds 20 percent; for example, if the total administrative expenditures of the service delivery area is 24 percent then the total direct training expenditures of the service delivery area must be at least 48 percent.

(e) The provisions of this section do not apply to any title III programs.

(f) The provisions of this section do not apply to any designated SDA which served as a concentrated employment program grantee for a rural area under the Comprehensive Employment and Training Act (section 108(d)).

§ 627.450 Program income.

(a) *Definition of program income.* (1) Program income means income received by the recipient or subrecipient directly generated by a grant or subgrant supported activity, or earned only as a result of the grant or subgrant. Program income includes:

(i) Income from fees for services performed and from conferences;

(ii) Income from the use or rental of real or personal property acquired with grant or subgrant funds;

(iii) Income from the sale of commodities or items fabricated under a grant or subgrant;

(iv) Revenues earned by a governmental or private non-profit service provider under either a fixed-price or reimbursable award that are in excess of the actual costs incurred in providing the services; and

(v) Except for States, as defined in the Department of Treasury's Cash Management Improvement Act regulation at 31 CFR 205.3, interest income earned on advances of subgrant funds.

(2) Program income does not include:

(i) Rebates, credits, discounts, refunds, etc., or interest earned on any of them, which shall be credited in accordance with § 627.435(d), Cost principles and allowable costs;

(ii) Taxes, special assessments, levies, fines, and other such governmental revenues raised by a recipient or subrecipient; or

(iii) Income from royalties and license fees for copyrighted material, patents, patent applications, trademarks, and inventions developed by a recipient or subrecipient.

(3) *Property.* Proceeds from the sale of property shall be handled in accordance with the requirements of § 627.465, of this part, Property management standards.

(b) *Cost of generating program income.* Costs incidental to the generation of program income may be deducted, if not already charged to the grant, from gross income to determine program income.

(c) *Use of program income.* (1) A recipient or subrecipient may retain any program income earned by the recipient or subrecipient only if such income is added to the funds committed to the particular JTPA grant or subgrant under which it was earned and such income is used for JTPA purposes and under the terms and conditions applicable to the use of the grant funds. The classification of costs in § 627.440 and the administrative cost limitation in § 627.445 shall apply to such funds.

(2) Program income generated under title II may also be used to satisfy the matching requirement of section 123(b) of the Act.

(3) Program income shall be used prior to the submission of the final report for the funding period of the program year to which the earnings are attributable.

(4) If the subrecipient that earned program income cannot use such income for JTPA purposes, the recipient may permit another entity to use the program income for JTPA purposes.

(5) Program income not used in accordance with the requirements of this section shall be returned to the Department of Labor.

(d) *Program and other income after the funding period.* Rental income and user fees on real and personal property acquired with JTPA funds shall continue to be JTPA program income in subsequent funding periods. There are no Federal requirements governing the disposition of all other income that is earned after the end of the funding period.

§ 627.455 Reports required.

(a) General: The Governor shall report to the Secretary pursuant to instructions issued by the Secretary. Reports shall be submitted no more frequently than quarterly in accordance with section 165(f) of the Act, and within 45 calendar days after the end of the report period. Additional reporting requirements for title III are set forth at § 631.15 of this chapter.

(b) A recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients, however, the recipient is required to meet the reporting requirements imposed on it by the Secretary.

(c) The Secretary may provide computer outputs to recipients to expedite or contribute to the accuracy of reporting. The Secretary may accept the required information from recipients in electronically reported format or computer printouts instead of prescribed forms.

(d) Financial reports: (1) Financial reports for programs under titles I, II, and III shall be submitted to the Secretary by each State quarterly and by program year of appropriation.

(2) Each recipient shall report program outlays on an accrual basis. If the recipient's accounting records are not normally kept on the accrual basis, the recipient shall develop such accrual information through an analysis of the documentation on hand.

(3) A final financial report is required 90 days after the expiration of a funding period (see § 627.485 of this part, Closeout).

§ 627.460 Requirements for records.

(a) Records, including the records identified in section 165(g) of the Act, shall be retained in accordance with section 165(e) of the Act. In establishing the time period of record retention requirements for records of subrecipients, the State may either:

(1) Impose the time limitation requirement of section 165(e) of the Act; or

(2) Require that subrecipient records for each funding period be retained for 3 years after the subrecipient submits to the awarding agency its final expenditure report for that funding period.

(b) The Governor shall ensure that the records under this section shall be retained beyond the prescribed period, if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the Governor shall ensure that the records shall be retained until the litigation, audit, or claim has been finally resolved.

(c) In the event of the termination of the relationship with a subrecipient, the Governor or SDA grant recipient or title III SSG shall be responsible for the maintenance and retention of the records of any subrecipient unable to retain them.

(d) Substitution of microfilm: Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Federal and awarding agencies' access to records—(1) *Records of recipients and subrecipients.* The awarding agency, the Department of Labor (including the Department of Labor's Office of the Inspector General), and the Comptroller General of the United States, or any of their authorized representatives, have the right of timely and reasonable access to any books, documents, papers, computer records, or other records of recipients and subrecipients that are pertinent to the grant, in order to conduct audits and examinations, and to make excerpts, transcripts, and photocopies of such documents. This right also includes timely and reasonable access to recipient and subrecipient personnel for the purpose of interview and discussion related to such documents.

(2) *Expiration of right of access.* The right of access in this section is not limited to the required retention period but shall last as long as the records are retained.

§ 627.463 Public access to records.

(a) *Access*—(1) *Public access.* Except as provided in paragraph (b) of this section, records maintained by recipients or subrecipients pursuant to section 165(a) of the Act shall be made available to the public upon request, notwithstanding the provisions of State or local law.

(2) *Freedom of Information Act (FOIA).* Records maintained by recipients or subrecipients are not subject to the Freedom of Information Act (5 U.S.C. 552).

(b) *Exceptions.* A record maintained by a recipient or subrecipient pursuant to section 165(a) of the Act shall not be made available to the public, notwithstanding the provisions of State or local law, where such record is:

(1) Information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) A trade secret, or commercial or financial information, obtained from a person and privileged or confidential.

(c) *Fees.* For processing of a request for a record under paragraph (a)(1) of this section, a recipient or subrecipient may charge a fee to the extent sufficient to recover the cost applicable to processing such request. (section 165(a)(4)).

§ 627.465 Property management standards.

(a) *States and governmental subrecipients.* Real property, equipment, supplies, and intangible property acquired or produced after July 1, 1993, by States and governmental subrecipients with JTPA funds shall be governed by the definitions and property requirements in the DOL regulations at 29 CFR part 97.

(b) *Nongovernmental subrecipients.* Except as provided in paragraph (c) of this section, real and personal property, including intangible property, acquired or produced after July 1, 1993, by nongovernmental subrecipients with JTPA funds shall be governed by the definitions and property management standards of OMB Circular A–110, as codified by administrative regulations of the Department of Labor.

(c) *Special provisions for property acquired under subgrants to commercial organizations*—(1) *Scope.* This paragraph (c) applies to real and personal property other than supplies that are acquired or produced after July 1, 1993, under a JTPA subgrant to a commercial organization.

(2) *Property acquired by commercial subrecipients.* Title to property acquired or produced by a subrecipient that is a commercial organization shall vest in the awarding agency, provided such agency is a governmental entity or nongovernmental organization that is not a commercial organization. Property so acquired or produced shall be considered to be acquired or produced by the awarding agency and paragraph (a) or (b) of this section, as appropriate shall apply to that property. If the awarding agency is also a commercial organization, title shall vest in the higher level, non commercial awarding agency that made the subaward to the commercial subrecipient.

(3) *Approval for acquisition.* A subrecipient that is a commercial organization shall not acquire property subject to this section without the prior approval of the awarding agency.

(d) *Notification to the Secretary of real property acquisitions.* Recipients shall notify the Secretary immediately upon acquisition of real property with JTPA funds, including acquisitions by subrecipients. Such notification shall include the location of the real property and the Federal share percentage.

§ 627.470 Performance standards.

(a) General: The Secretary shall prescribe performance standards for adult programs under title II–A, for youth programs under title II–C, for dislocated worker programs under title III, and for older worker programs under section 204(d) of the Act. Any performance standards developed for employment competencies shall be based on such factors as entry level skills and other hiring requirements.

(b) Pursuant to instructions and timelines issued by the Secretary, the Governor shall:

(1) Collect the data necessary to set performance standards pursuant to section 106 of the Act; and

(2) Maintain records and submit reports required by sections 106(j)(3), 165(a)(3), (c)(1), and (d) and 121(b)(6) of the Act.

(c) Title II performance standards: (1) The Governor shall establish SDA performance standards for title II within the parameters set by the Secretary pursuant to sections 106(b) and (d) of the Act and apply the standards in accordance with section 202(c)(1)(E) of the Act.

(2) The Governor shall establish incentive award policies pursuant to section 106(b)(7) of the Act, except for programs operated under section 204(d) of the Act.

(3) The Governor shall provide technical assistance to SDA's failing to meet performance standards established by the Secretary for a given program year. (section 106a(j)(2)).

(4)(i) If an SDA fails to meet a prescribed number of the Secretary's performance standards for 2 consecutive years, the Governor shall notify the Secretary and the service delivery area of the continued failure, and impose a reorganization plan (section 106(j)(4)).

(ii) The number of standards deemed to constitute failure shall be specified by the Secretary biennially and shall be based on an appropriate proportion of the total number of standards established by the Secretary for that performance cycle.

(iii) A reorganization plan shall not be imposed for a failure to meet performance standards other than those established by the Secretary.

(e)(1) If the Governor does not impose a required reorganization plan, required by paragraph (c)(4) of this section, within 90 days of the end of the second program year in which an SDA has failed to meet its performance standards, the Secretary shall develop and impose such a plan (section 106(j)(5)).

(2) Before imposing a reorganization plan, the Secretary shall notify the Governor and SDA in writing of the intent to impose the plan and provide both parties the opportunity to submit comments within 30 days of receipt of the Secretary's notice.

(d) An SDA subject to a reorganization plan under paragraph (c)(4) or (d) of this section may, within 30 days of receiving notice of such action, appeal to the Secretary to revise or rescind the reorganization plan under the procedures set forth at § 627.471 of this subpart, Reorganization plan appeals (section 106(j)(6)(A)).

(f) Secretarial action to recapture or withhold funds: (1) The Secretary shall recapture or withhold an amount not to exceed one-fifth of the State administration set-aside allocated under sections 202(c)(1)(A) and 262(c)(1)(A) of the Act when:

(i) the Governor has failed to impose a reorganization plan under paragraph (c)(4) of this section, for the purposes of providing technical assistance under a reorganization plan imposed by the Secretary (section 106(j)(5)(B)); or

(ii) the Secretary determines in an appeal provided for at paragraph (e) of this section, and set forth at §627.471 of this subpart, that the Governor has not provided appropriate technical assistance as required at section 106(j)(2), for the purposes of providing such assistance (section 106(j)(6)(B)).

(2)(i) A Governor of a State that is subject to recapture or withholding under paragraph (f)(1) of this section may, within 30 days of receipt of such notice, appeal such recapture or withholding to the Secretary.

(ii) The Secretary may consider any comments submitted by the Governor, and shall make a decision within 45 days after the appeal is received.

(g) Title III performance standards: (1) The Governor shall establish SSG performance standards for programs under title III within the parameters set annually by the Secretary pursuant to section 106(c) and (d) of the Act.

(2) Any performance standard for programs under title III shall make appropriate allowances for the difference in cost resulting from serving workers receiving needs-related payments authorized under § 631.20 of this chapter (section 106(c)(2)).

(3) The Secretary annually shall certify compliance, if the program is in compliance, with the title III performance standards established pursuant to paragraph (a) of section 322(a)(4).

(4) The Governor shall not establish standards for the operation of programs under title III that are inconsistent with the performance standards established by the Secretary under provisions of section 106(c) of the Act (Section 311(b)(8)).

(5) When an SSG fails to meet performance standards for 2 consecutive years, the Governor may institute procedures pursuant to the Governor's by-pass authority in accordance with § 631.38(b) of this chapter or require redesignation of the substate grantee in accordance with § 631.35 of this chapter, as appropriate.

§ 627.471 Reorganization plan appeals.

(a) A reorganization plan imposed by the Governor, as provided for at § 627.470(c)(4) of this part, or by the Secretary, as provided for at § 627.470(d) of this part, may be appealed directly to the Secretary without prior exhaustion of local remedies.

(b)(1) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal shall be provided simultaneously to the Governor.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification from the Governor or the Secretary.

(3) The appealing party shall explain why it believes the decision to impose the reorganization plan is contrary to the provisions of section 106 of the Act.

(4) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the decision to impose the reorganization plan is inconsistent with section 106 of the Act. The Secretary may consider any comments submitted by the Governor or the SDA, as appropriate. The Secretary shall make a final decision within 60 days after this appeal is received. (section 106(j)).

§ 627.475 Oversight and monitoring.

(a) The Secretary may monitor all recipients and subrecipients of financial assistance pursuant to section 163 of the Act.

(b) The Governor is responsible for oversight of all SDA and SSG activities and State-supported programs. The Governor shall develop and make available for review a State monitoring plan. The plan shall specify the mechanism which:

(1) Ensures that established policies to achieve program quality and outcomes meet the objectives of the Act and regulations promulgated thereunder;

(2) Enables the Governor to determine if SDA's and SSG's have demonstrated substantial compliance with the requirements for oversight;

(3) Determines that a Job Training Plan shall be disapproved if the plan does not meet the criteria contained in section 105(b)(1) of the Act;

(4) Regularly examines expenditures against the cost categories and cost limitations specified in the Act and these regulations;

(5) Ensures that SDA's and SSG's are monitored onsite regularly, but not less than once annually; and

(6) Provides for corrective action to be imposed if items in paragraphs (b) (1)–(4) of this section are not met.

(c) The Governor shall issue instructions to SDA's and title III SSG's on the development of a substate monitoring plan. The instructions for development of the monitoring plan, at a minimum, shall address the monitoring scope and frequency, and the Secretary's emphasis and direction. The substate monitoring plan shall be part of the job training plan.

(d) The Governor shall establish general standards for PIC oversight responsibilities. The required PIC standards shall be included in the Governor's Coordination and Special Services Plan (GCSSP).

(e)(1) The PIC, pursuant to standards established by the Governor, shall establish specific policies for monitoring and oversight of SDA performance which shall be described in the job training plan.

(2) The PIC may exercise independent oversight over activities under the job training plan which shall not be circumscribed by agreements with the appropriate chief elected official(s) of the SDA.

(f) The PIC and chief elected official(s) may conduct such oversight as they, individually or jointly, deem necessary or delegate oversight responsibilities to an appropriate entity pursuant to their mutual agreement.

§ 627.480 Audits.

(a) *Non-Federal Audits*—(1) *Governments.* Each recipient and governmental subrecipient is responsible for complying with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and 29 CFR part 96, the

Department of Labor regulations which implement Office of Management and Budget (OMB) Circular A–128, "Audits of State and Local Governments".

(2) *Non-governmental subrecipients.* Each non-governmental subrecipient shall comply with OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions", as implemented by the Department of Labor regulations at 29 CFR part 96. The provisions of this paragraph (a)(2) do not apply to any non-governmental subrecipient that is:

(i) A commercial organization; or

(ii) A hospital or an institution of higher education for which State or local governments choose to apply OMB Circular A–128.

(3) *Commercial organizations.* A commercial organization which is a subrecipient and which receives $25,000 or more a year in Federal financial assistance to operate a JTPA program shall have either:

(i) A program specific annual independent financial and compliance audit conducted and prepared in accordance with generally accepted government auditing standards; or

(ii) An organization-wide audit that includes coverage of the JTPA program within its scope.

(b) *Federal audits.* The notice of audits conducted or arranged by the Office of Inspector General or the Comptroller General shall be provided in advance as required by section 165(b) of the Act.

(c) *Audit reports.* (1) Audit reports of recipient-level entities and other organizations which receive JTPA funds directly from the U.S. Department of Labor shall be submitted to the Office of the Inspector General.

(2) Audit reports of other organizations than those described in paragraph (c)(1) of this section shall be submitted to the entity which provided the JTPA funds.

(d) Each entity that receives JTPA program funds and awards a portion of those funds to one or more subrecipients shall:

(1) Ensure that each subrecipient complies with the applicable audit requirements;

(2) Resolve all audit findings that impact the JTPA program with its subrecipient and ensure that corrective action for all such findings (including debt collection action for disallowed costs) is instituted within 6 months after receipt of the audit report; and

(3) Maintain an audit resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings; the ETA Grant Officer may request that an audit resolution report, as specified in paragraph (e)(2) of this section, be submitted for such audits or may have the audit resolution reviewed through the compliance review process.

(e)(1) Audits of recipient-level entities and other organizations which receive JTPA funds directly from DOL and all audits conducted by or under contract for the Office of Inspector General shall be issued by the OIG to the Employment and Training Administration after acceptance by OIG.

(2) After receipt of the audit report, the ETA Grant Officer shall request that the State submit an audit resolution report documenting the disposition of the reported questioned costs, i.e., whether allowed or disallowed, the basis for allowing questioned costs, the method of repayment planned or required, and corrective actions, including debt collection efforts, taken or planned.

(f) If the recipient intends to request a waiver of liability under section 164(e)(2) of the Act for misexpenditures by a subrecipient, such requests shall be accompanied by the audit resolution report along with supporting documentation.

(g) If the recipient intends to propose the use of "stand-in" costs as substitutes for otherwise unallowable costs, the proposal shall be included with the audit resolution report. To be considered, the proposed "stand-in" costs shall have been reported as uncharged JTPA program costs, included within the scope of the audit, and accounted for in the auditee's financial system as required by § 627.425, of this part, Standards for financial management and participant data systems. To be accepted, stand-in costs shall be from the same title, cost category, and funding period as the costs which they are proposed to replace.

(h) After receiving the audit resolution report, the ETA Grant Officer shall review the report, the recipient's disposition, and any liability waiver request. If the Grant Officer agrees with all aspects of the recipient's disposition of the audit, the Grant Officer shall so notify the recipient. If the Grant Officer disagrees with the recipient's conclusion on specific points in the audit, the Grant Officer shall resolve the audit through the initial and final determination process described in § 627.606 of this part.

§ 627.481 Audit resolution.

(a) *Federal audit resolution.* When the OIG issues an audit report to the Employment and Training Administration for resolution, the ETA Grant Officer shall provide a copy of the report to the recipient (if it does not already have the report), along with a request that the recipient submit its audit resolution report as specified in § 627.480(e)(2), of this part, unless the Grant Officer chooses to proceed directly against the recipient pursuant to § 627.601.

(1) For audits of recipient-level entities and other organizations which receive JTPA funds directly from DOL, the Grant Officer shall request that the audit resolution report be submitted within 60 days from the date that the audit report is issued by the OIG.

(2) For audits of subrecipient organizations, the Grant Officer shall provide the recipient with a 180-day period within which to resolve the audit with its subrecipient(s), and shall request that the audit resolution report be submitted at the end of that 180-day period.

(b) After receiving the audit resolution report, the ETA Grant Officer shall review the report, the recipient's disposition, any liability waiver request, and any proposed "stand-in" costs. If the Grant Officer agrees with all aspects of the recipient's disposition of the audit, the Grant Officer shall so notify the recipient, constituting final agency action on the audit. If the Grant Officer disagrees with the recipient's conclusion on specific points in the audit, or if the recipient fails to submit its audit resolution report, the Grant Officer shall resolve the audit through the initial and final determination process described in § 627.606 of this part. Normally, the Grant Officer's notification of agreement (a concurrence letter) or disagreement (an initial determination) with the recipient's audit resolution report will be provided within 180 days of the Grant Officer's receipt of the report.

(c) *Non-Federal audit resolution.* (1) To ensure timely and appropriate resolution for audits of all subrecipients, including SDA grant recipients and title III SSG's, and to ensure recipient-wide consistency, the Governor shall prescribe standards for audit resolution and debt collection policies and procedures that shall be included in each job training plan in accordance with section 104(b)(12) of the Act.

(2) The Governor shall prescribe an appeals procedure for audit resolution disputes which, at a minimum, provides for:

(i) The period of time, not less than 15 days nor more than 30 days, after the issuance of the final determination in which an appeal may be filed;

(ii) The rules of procedure;

(iii) Timely submission of evidence;

(iv) The timing of decisions; and
(v) Further appeal rights, if any.

§ 627.485 Closeout.

(a) *General.* The Grant Officer shall close out each annual JTPA grant agreement within a timely period after the funding period covered by the award has expired.

(b) Revisions to the reported expenditures for a program year of funds may be made until 90 days after the time limitation for expenditure of JTPA funds, as set forth in section 161(b) of the Act, has expired. The Grant Officer may extend this deadline if the recipient submits a written request with justification. After that time, the Grant Officer shall consider all reports received as final and no additional revisions may be made.

(c) When closing out a JTPA grant, the Grant Officer shall notify the recipient, by certified mail, that, since the time limitation for expenditure of funds covered by the grant award has expired, it is the Department of Labor's intent to close the annual grant as follows:

(1) *Cost adjustment.* Based on receipt of reports in paragraph (b) of this section, the Grant Officer shall make upward or downward adjustments to the allowable costs; and

(2) *Cash adjustment.* DOL shall make prompt payment to the recipient for allowable reimbursable costs; the recipient shall promptly refund to DOL any balance of cash advanced that is in excess of allowable costs for the grant award being closed.

(d) The recipient shall have an additional 60 days after the date of the notice described in paragraph (c) of this section in which to provide the Grant Officer with information as to the reason(s) why closeout should not occur.

(e) At the end of the 60-day period described in paragraph (d) of this section, the Grant Officer shall notify the recipient that closeout has occurred, unless information provided by the recipient, pursuant to paragraph (d) of this section, indicates otherwise.

§ 627.490 Later disallowances and adjustments after closeout.

The closeout of a grant does not affect:

(a) The Grant Officer's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The recipient's obligation to return any funds due as a result of later refunds, corrections, subrecipient audit disallowances, or other transactions;

(c) Records retention requirements in § 627.460 of this part, Requirements for records, and § 627.463 of this part, Public access to records;

(d) Property management requirements in § 627.465 of this part, Property management standards; and

(e) Audit and audit resolution requirements in § 627.480 of this part, Audits and § 627.481 of this part, Audit resolution.

§ 627.495 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms of the grant constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Secretary may take any actions permitted by law to recover the funds.

(b) The Secretary shall charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR ch. II).

Subpart E—Grievances Procedures at the State and Local Level

§ 627.500 Scope and purpose.

(a) *General.* This subpart establishes the procedures which apply to the handling of non-criminal complaints under the Act at the Governor, the SDA, and the SSG levels. Nothing contained in this subpart shall be deemed to prejudice the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act. Complaints of discrimination pursuant to section 167(a) of the Act shall be handled under 29 CFR parts 31, 32 and 34.

(b) *Handling of criminal complaints and reports of fraud, waste, and abuse.* All information and complaints involving fraud, waste, abuse or criminal activity shall be reported directly and immediately to the DOL Office of the Inspector General.

(c) *Non-JTPA remedies.* Whenever any person, organization, or agency believes that a recipient, an SDA, an SSG, or other subrecipient has engaged in conduct that violates the Act and that such conduct also violates a Federal statute other than JTPA, or a State or local law, that person, organization, or agency may, with respect to the non-JTPA cause of action, institute a civil action or pursue other remedies authorized under other Federal, State or local law against the recipient, the SDA, the SSG, or other subrecipient, without first exhausting the remedies in this subpart. Nothing in the Act or this chapter shall:

(1) Allow any person or organization to file a suit which alleges a violation of JTPA or regulations promulgated thereunder without first exhausting the administrative remedies described in this subpart; or

(2) Be construed to create a private right of action with respect to alleged violations of JTPA or the regulations promulgated thereunder.

§ 627.501 State grievance and hearing procedures for non-criminal complaints at the recipient level.

(a)(1) Each recipient shall maintain a recipient-level grievance procedure and shall ensure the establishment of procedures at the SDA level and the SSG level for resolving any complaint alleging a violation of the Act, regulations promulgated thereunder, grants, or other agreements under the Act. The procedures shall include procedures for the handling of complaints and grievances arising in connection with JTPA programs operated by each SDA, SSG, and subrecipient under the Act (section 144(a)).

(2) The procedures described in paragraph (a)(1) of this section shall also provide for resolution of complaints arising from actions taken by the recipient with respect to investigations or monitoring reports.

(b) The recipient's grievance hearing procedure shall require written notice to interested parties of the date, time, and place of the hearing; an opportunity to present evidence; and a written decision. For matters under paragraph (a)(2) of this section, the notice of hearing shall indicate the nature of the violation(s) which the hearing covers.

§ 627.502 Grievance and hearing procedures for non-criminal complaints at the SDA and SSG levels.

(a) Each SDA and SSG, pursuant to guidelines established by the recipient, shall establish procedures for resolving complaints and grievances arising in connection with JTPA programs operated by the SDA, the SSG, and other subrecipients under the Act. The procedures also shall provide for resolution of complaints arising from actions taken by the SDA or the SSG with respect to investigations or monitoring reports of their subgrantees, contractors, and other subrecipients. (section 144(a)).

(b) Each SDA and SSG grievance hearing procedure shall include written notice of the date, time, and place of the hearing; an opportunity to present evidence; a written decision; and a notice of appeal rights.

(c) The SDA and SSG procedures shall provide for a decision within 60 days of the filing of the complaint.

§ 627.503 Recipient-level review.

(a) If a complainant does not receive a decision at the SDA or the SSG level within 60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant shall have the right to request a review of the complaint by the recipient. The recipient shall issue a decision within 30 days of receipt of the complaint.

(b) The recipient shall also provide for an independent review of a complaint initially filed at the recipient level on which a decision was not issued within 60 days of receipt of a complaint or on which the complainant has received an adverse decision. A decision shall be made within 30 days of receipt by the recipient.

(c) A request for review under the provisions of paragraph (a) or (b) of this section shall be filed within 10 days of receipt of the adverse decision or, if no timely decision is rendered, within 15 days from the date on which the complainant should have received a timely decision.

(d) With the exception of complaints alleging violations of the labor standards at section 143 of the Act, the recipient's decision is final unless the Secretary exercises the authority for Federal-level review in accordance with the provisions at § 627.601, of this part, Complaints and grievances at the Federal level. Complaints alleging violations of section 143 of the Act shall be handled under the procedures set forth at § 627.603, of this part, Special handling of labor standards violations under section 143.

§ 627.504 Non-criminal grievance procedure at employer level.

(a) Recipients, SDA's, SSG's, and other subrecipients shall assure that other employers, including private-for-profit employers of participants under the Act, have a grievance procedure relating to the terms and conditions of employment available to their participants (section 144(b)).

(b) Employers under paragraph (a) of this section may operate their own grievance system or may utilize the grievance system established by the recipient, the SDA, or the SSG under this subpart. Employers shall inform participants of the grievance procedures they are to follow when the participant begins employment.

(c) An employer grievance system shall provide for, upon request by the complainant, a review of an employer's decision by the SDA, or the SSG and the recipient if necessary, in accordance with § 627.501 and § 627.502 of this part.

Subpart F—Federal handling of non-criminal complaints and other allegations.

§ 627.600 Scope and purpose.

This subpart establishes the procedures which apply to the filing, handling, and reviewing of complaints at the Federal level. Nothing in the Act or this chapter shall allow any person or organization to join or sue the Secretary with respect to the Secretary's responsibilities under JTPA except after exhausting the remedies in subpart E of this part and this subpart F. Complaints of discrimination pursuant to section 167(a) of the Act shall be handled under 29 CFR parts 31, 32 and 34.

§ 627.601 Complaints and allegations at the Federal level.

(a) The types of complaints and allegations that may be received at the Federal level for review include:

(1) Complaints for which the recipient has failed to issue a timely decision as required by § 627.503 of this part;

(2) Alleged violations of the Act and/or the regulations promulgated thereunder resulting from Federal, State, and/or SDA and SSG monitoring and oversight reviews;

(3) Alleged violations of the labor standards provisions at section 143 of the Act;

(4) Alleged violations of the relocation provisions in section 141(c) of the Act; and

(5) Other allegations of violations of the Act or the regulations promulgated thereunder.

(b) Upon receipt of a complaint or allegation alleging any of the violations listed in paragraph (a) of this section, the Secretary may:

(1) Direct the recipient to handle a complaint through local grievance procedures established under § 627.502 of this part; or

(2) Investigate and determine whether the recipient or subrecipient(s) are in compliance with the Act and regulations promulgated thereunder (section 163 (b) and (c)).

(3) Allegations of violations of sections 141(c) or 143 of the Act and § 627.503 of this part shall be handled under paragraph (b)(2) of this section.

§ 627.602 Resolution of investigative findings.

(a)(1) As a result of an investigation or monitoring by the Department, or of the actions specified in paragraph (c) of § 627.601 of this part, the Grant Officer shall notify the recipient of the findings of the investigation and shall give the recipient a period of time, not to exceed 60 days, depending on the nature of the findings, to comment and to take appropriate corrective actions.

(2) The Grant Officer shall review the complete file of the investigation and the recipient's actions. The Grant Officer's review shall take into account the sanction provisions of subpart G of this part. If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer shall so notify the recipient. This notification shall constitute final agency action.

(3) If the Grant Officer disagrees with the recipient's handling of the matter, the Grant Officer shall proceed pursuant to § 627.606 of this part, Grant Officer resolution.

(b) [Reserved].

§ 627.603 Special handling of labor standards violations under Section 143 of the Act.

(a) A complaint alleging JTPA section 143 violations may be submitted to the Secretary by either party to the complaint when:

(1) The complainant has exhausted the grievance procedures set forth at subpart E of this part, or

(2) The 60-day time period specified for reaching a decision under a procedure set for at subpart E of this part has elapsed without a decision. (section 144 (a) and (d)(1)).

(b)(1) The Secretary shall investigate the allegations contained in a complaint alleging violations of JTPA section 143, make a determination whether a violation has occurred, and issue a decision within 120 days of receipt by the Secretary of the complaint. (section 144 (c) and (d)).

(2) If the results of the Secretary's investigation indicate that a decision by a recipient under a procedure set forth at subpart E of this part requires modification or reversal, or that the 60-day time period for decision under section 144(a) has elapsed, the Secretary shall modify, reverse, or issue such decision.

(3) If the Secretary modifies or reverses a decision made under a procedure set forth at subpart E of this part, or issues a decision where the 60-day time period has elapsed without a decision, the Secretary shall offer an opportunity for a hearing, in accordance with the procedures under section 166 of the Act and subpart H of this part (sections 144(d)(2) and 166(a)).

(4) If the Secretary upholds a recipient's decision, the determination is the final decision of the Secretary. (section 144(d)(3)). This decision is not appealable to the Office of Administrative Law Judges.

(c) Except as provided in paragraph (d) of this section, remedies available

under this section to a grievant for violations of section 143 of the Act shall be limited to:

(1) Suspension or termination of payments under the Act;

(2) Prohibition of placement of a participant, for an appropriate period of time, in a program under the Act with an employer that has violated section 143 of the Act, as determined under section 144 (d) or (e) of the Act; and/or

(3) Appropriate equitable relief (other than back pay). (section 144(f)(1)).

(d) Available remedies for violations of sections 143 (a)(4), (b)(1), (b)(3), and (d) of the Act include the remedies listed in subsection (c) of this section, and may include the following:

(1) Reinstatement of the grievant to the position held prior to displacement;

(2) Payment of lost wages and benefits; and/or

(3) Reestablishment of other relevant terms, conditions, and privileges of employment.

(e) Nothing in this section shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for a violation of section 143 of the Act. (section 144(g)).

§ 627.604 Alternative procedure for handling labor standards violations under section 143 of the Act—binding arbitration.

(a) A person alleging a violation of section 143 of the Act, as an alternative to processing the grievance under a procedure described at section 144 of the Act, may submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides (section 144(e)(1)).

(b) A person electing to have her/his complaint on JTPA section 143 labor standard violations processed under binding arbitration provisions—

(1) Shall choose binding arbitration before, and in lieu of, initiating a complaint under other grievance procedure established pursuant to section 144 of the Act, and

(2) May not elect binding arbitration for a complaint that previously has been or is subject to any other grievance procedure established under the Act.

(c) Binding arbitration decisions under the provisions of section 144(e) of the Act are not reviewable by the Secretary.

(d) The remedies available to a grievant under binding arbitration are limited to those set forth at section 144(f)(1)(C) and (f)(2) of the Act (section 144(e)(2)).

(e) Nothing in this section shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for a violation of section 143 of the Act (section 144(g)).

§ 627.605 Special Federal review of SDA- and SSG-level complaints without decision.

(a) Should the recipient fail to provide a decision as required in § 627.503 of this part, the complainant may then request from the Secretary a determination whether reasonable cause exists to believe that the Act or regulations promulgated thereunder have been violated.

(b) The Secretary shall act within 90 days of receipt of a request made pursuant to paragraph (a) of this section. Where there is reasonable cause to believe the Act or regulations promulgated thereunder have been violated, the Secretary shall direct the recipient to issue a decision adjudicating the dispute pursuant to recipient and local procedures. The Secretary's action does not constitute final agency action and is not appealable under the Act (sections 166(a) and 144(c)). If the recipient does not comply with the Secretary's order within 60 days, the Secretary may impose a sanction upon the recipient for failing to issue a decision.

(c) A request pursuant to paragraph (a) of this section shall be filed no later than 15 days from the date on which the complainant should have received a decision as required in § 627.503 of this part. The complaint shall contain the following:

(1) The full name, telephone number (if any), and address (if any) of the person making the complaint;

(2) The full name and address of the respondent against whom the complaint is made;

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

(4) The provisions of the Act, regulations promulgated thereunder, grant, or other agreement under the Act believed to have been violated;

(5) A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State, or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority, and the style of the case; and

(6) A statement of the date the complaint was filed with the recipient, the date on which the recipient should have issued a decision, and an attestation that no decision was issued.

(d)(1) A request pursuant to paragraph (a) of this section will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the recipient, the SDA, or the SSG.

(2) When an imprecise request is received within the 15-day period prescribed in paragraph (a) of this section, the Secretary may extend the period for submission.

§ 627.606 Grant Officer resolution.

(a) When the Grant Officer is dissatisfied with the State's disposition of an audit, as specified in § 627.481 of this part, or other resolution of violations (including those arising out of incident reports or compliance reviews), with the recipient's response to findings resulting from investigations pursuant to § 627.503 of this part, or if the recipient fails to comply with the Secretary's decision pursuant to § 627.605(b) of this part, the initial and final determination process shall be used to resolve the matter.

(b) Initial determination. The Grant Officer shall make an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. Such initial determination shall be based upon the requirements of the Act, regulations promulgated thereunder, grants, contracts, or other agreements under the Act.

(c) Information resolution. The Grant Officer shall not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the initial determination. The initial determination shall provide for an informal resolution period which shall be at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer shall issue a final determination pursuant to paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) Grant Officer's final determination. (1) If the matter is not fully resolved informally, the Grant Officer shall provide each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive JTPA funds directly from DOL, ordinarily the final determination will be issued not later than 180 days from the date that the OIG issues the final approved audit

report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination will be issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) shall:

(i) Indicate that efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination;

(iv) Establish a debt, if appropriate;

(v) Require corrective action when needed;

(vi) Determine liability, method of restitution of funds and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with subpart G of this part.

(3) Unless a hearing is requested, a final determination under this paragraph (d) constitutes final agency action and is not subject to further review.

(d) Nothing in this section shall preclude the Grant Officer from issuing an initial determination and/or final determination directly to a subrecipient, in accordance with section 164(e)(3) of the Act. In such a case, the Grant Officer shall inform the recipient of such action.

Subpart G—Sanctions for Violations of the Act.

§ 627.700 Purpose and scope.

This subpart describes the sanctions and appropriate corrective actions that may be imposed by the Secretary for violations of the Act, regulations promulgated thereunder, or grant terms and conditions. (Sections 106(j)(5), 164 (b), (d), (e), (f), (g), and (h)).

§ 627.702 Sanctions and corrective actions.

(a) Except for actions under sections 106(j), 164 (b) and (f), and 167 of the Act and the funding restrictions specified at § 627.423 of this part, Funding restrictions for "high-risk" recipients and subrecipients, the Grant Officer shall utilize initial and final determination procedures outlined in § 627.606, Grant Officer resolution, of this part to impose a sanction or corrective action.

(b) To impose a sanction or corrective action regarding a violation of section 167 of the Act, the Department shall utilize the procedures of 29 CFR part 31, 32 and 34.

(c) To impose a sanction or corrective action for failure to meet performance standards, where the recipient has not acted as required at section 106(j)(4), the Grant Officer shall utilize the procedures set forth at section 106(j)(5) of the Act.

(d) To impose a sanction or corrective action for non-compliance with the procurement standards provisions set forth at section 164(a) of the Act and § 627.420 of this part, where the recipient has not acted, the Grant Officer may utilize the procedures set forth at section 164(b) of the Act.

(e) The recipient shall be held responsible for all funds under the grant(s) to the recipient. The recipient shall hold subrecipients, including SDA's and SSG's, responsible for JTPA funds received through the grant, and may ultimately hold the units of local government which constitute the SDA or the SSG responsible for such funds.

(f) Nothing in this section shall preclude the Grant Officer from imposing a sanction directly against a subrecipient, as authorized in section 164(e)(3) of the Act. In such a case, the Grant Officer shall inform the recipient of such action.

§ 627.703 Failure to comply with procurement provisions.

(a) If, as part of the recipient's annual on-site monitoring of its SDA's/SSG's, the recipient determines that an SDA/SSG is not in compliance with the procurement requirements established in accordance with the provisions at section 164(a)(3) of the Act and § 627.420 of this part, Procurement, and § 627.422 of this part, Selection of service providers, the recipient shall:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for under the provisions at section 164(b) if the recipient finds that the SDA/SSG has failed to take timely corrective action under paragraph (a)(1) of this section (section 164(a) (4) and (5)).

(b) An action by the recipient to impose a sanction against either an SDA or SSG, in accordance with this section, may be appealed to the Secretary under the same terms and conditions as the disapproval of the respective plan, or plan modification, as set forth at § 628.425(e), Review and approval (section 164(b)(2)).

(c) If, upon a determination under paragraph (a)(2) of this section to impose a sanction under section 164(b) of the Act, the recipient fails to promptly take the actions required under paragraph (a)(2) of this section, the Secretary shall take such actions against the recipient or the SDA/SSG as appropriate (section 164(b)(3)).

§ 627.704 Process for waiver of State liability.

(a) A recipient may request a waiver of liability as described in section 164(e)(2) of the Act. Any such request shall be made no later than the informal resolution period described in § 627.606(b) of this part.

(b) A waiver of the recipient's liability can only be considered by the Grant Officer when:

(1) The misexpenditure was not a violation of section 164(e)(1) of the Act, or did not constitute fraud;

(2) The misexpenditure of JTPA funds occurred at a subrecipient level;

(3) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(4) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 164(e)(2) (A), (B), (C), and (D) of the Act.

(c) The recipient shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipient, would be inappropriate or would prove futile.

§ 627.706 Process for advance approval of a recipient's contemplated corrective actions.

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request shall include a description and assessment of all actions taken by the subrecipient to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain collection actions against a subrecipient where:

(1) The subrecipient was not at fault with respect to the liability criteria set forth in section 164(e)(2) (A), (B), (C), and (D) of the Act;

(2) The misexpenditure of funds was not made by that subrecipient but by an entity that received JTPA funds from that subrecipient;

(3) A final determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level;

(4) Final action within the recipient's appeal system has been completed; and

(5) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

§ 627.708 Offset process.

(a) In accordance with section 164(d) of the Act, the primary sanction for misexpenditure of JTPA funds is repayment.

(b) A recipient may request that a debt, or a portion thereof, be offset against amounts chargeable by the recipient as administrative costs under the current or a future JTPA entitlement.

(1) For title II grants, any offset shall be applied against the recipient-level 5 percent administrative cost set-aside only and may not be distributed by the recipient among its subrecipients.

(2) For title III grants, any such offset must be applied against that portion of funds reserved by the recipient for recipient-level administration only and may not be distributed by the recipient among it subrecipients.

(c) The Grant Officer may approve an offset request, under section 164(d) of the Act, if the misexpenditures were not in violation of section 164(e)(1) of the Act.

(d) If offset is granted, the debt shall not be fully satisfied until the Grant Officer reduces amounts allotted to the State by the amount of the misexpenditure.

(e) The recipient shall not have the authority to reduce allocations to an SDA or SSG for misexpenditure of JTPA funds under section 164(d) of the Act.

Subpart H—Hearings by the Office of Administrative Law Judges

§ 627.800 Scope and purpose.

(a) The jurisdiction of the Office of the Administrative Law Judges (OALJ) extends only to those complainants identified in sections 141(c), 144(d), 164(f), and 166(a) of the Act.

(b) Actions arising under section 167 of the Act shall be handled under 29 CFR part 34.

(c) All other disputes arising under the Act shall be adjudicated under the appropriate recipient or subrecipient grievance procedures or other applicable law.

§ 627.801 Procedures for filing request for hearing.

(a) Within 21 days of receipt of a final determination imposing a sanction or corrective action, or denying financial assistance, the applicant, the recipient, the SDA, the SSG, or other subrecipient of funds against which the Grant Officer has imposed a sanction or corrective action may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., suite 400, Washington, DC 20001, with one copy to the departmental official who issued the determination.

(b) The 21-day filing requirement in paragraph (a) of this section is jurisdictional. Failure to timely request a hearing acts as a waiver of the right to hearing.

(c) A request for a hearing under this section shall state specifically those issues of the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations promulgated thereunder, grant or other agreement under the Act fairly raised in the determination, and the request for hearing are subject to review.

(d) The procedures in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in § 627.805 of this part within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the final determination upon which review is requested, the complainant shall include a copy of any Stipulation of Facts and a brief summary of proceedings.

§ 627.802 Rules of procedure.

(a) The rules of practice and procedure promulgated by the OALJ at subpart A of 29 CFR part 18, shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required. Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination, shall apply.

(b) Prehearing procedures. In all cases, the ALJ should encourage the use of prehearing procedures to simplify and to clarify facts and issues.

(c) Subpoenas. Subpoenas necessary to secure the attendance of witnesses and the production of documents or things at hearings shall be obtained from the ALJ and shall be issued pursuant to the authority contained in section 163(b) of the Act, incorporating 15 U.S.C. 49.

(d) Timely submission of evidence. The ALJ shall not permit the introduction at the hearing of any documentation if such documentation has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) Burden of production. The Grant Officer shall have the burden of production to support her or his decision. To this end, the Grant Officer shall prepare and file an administrative file in support of the decision which shall be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision shall have the burden of persuasion.

§ 627.803 Relief.

In ordering relief, the ALJ shall have the full authority of the Secretary under section 164 of the Act.

§ 627.804 Timing of decisions.

The ALJ should render a written decision not later than 90 days after the closing of the record.

§ 627.805 Alternative dispute resolution.

(a) Parties to a complaint under § 627.801 of this part, Procedures for filing a request for hearing, may choose to waive their rights to an administrative hearing before the OALJ by choosing to transfer the settlement of their dispute to an individual acceptable to all parties for the purpose of conducting an informal review of the stipulated facts and rendering a decision in accordance with applicable law. A written decision will be issued within 60 days after the matter is submitted for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided paragraph (a) of this section.

(c) The decision rendered under this informal review process shall be treated as a final decision of an Administrative Law Judge pursuant to section 166(b) of the Act.

§ 627.806 Other authority.

Nothing contained in this subpart shall be deemed to prejudice the separate exercise of other legal rights in pursuant to remedies and sanctions available outside the Act.

Subpart I—Transition Provisions

§ 627.900 Scope and purchase.

In order to provide for the orderly transition to and implementation of the provisions of this chapter, the following conditions apply to the use of JTPA title II and title III funds allotted by formula to the State. These regulations identify issues which require action by the Governor, and those which are operational during the transition period.

§ 627.901 Transition period.

The transition period will be through program year PY 1992 ending June 30, 1993 unless otherwise stated. The intent of the transition period is to complete, to the extent possible, activity begun on or before June 30, 1993 under current policy and regulations and to ensure that all requirements mandated by the 1992 JTPA amendments have been implemented.

§ 627.902 Governor's actions.

The following are actions that must be accomplished by the Governor prior to June 30, 1993:

(a) Review current policies, practices, procedures, and delivery systems to ensure that they conform to the requirements of the amendments;

(b) Modify the Governor's coordination and special services plan in accordance with instructions issued by the Secretary;

(c) Modify job training plans as necessary;

(d) Execute a new Governor/Secretary agreement and a new grant agreement;

(e) Issue procurement standards that comply with the Act and these regulations as described in § 627.420 of this part, Procurement;

(f) Issue instructions necessary to implement program year 1993 cost categories pursuant to § 627.440 of this part, Classification of costs;

(g) Issue instructions necessary for SDAs to report program expenditures by year of appropriation pursuant to § 627.455 of this part, Reports required;

(h) Certify private industry councils pursuant to § 628.410 of this chapter, Private Industry Council;

(i) Resolve outstanding grievances, investigations, and hearings in effect on June 30, 1993 under the regulations published September 22, 1989 at 20 CFR 629.51;

(j) Issue instructions necessary for service delivery areas to operate the 1993 summer program in accordance with regulations found at subpart G of part 628 of this chapter, The Summer Youth Employment and Training Program.

§ 627.903 Actions which are at the discretion of the Governor.

(a) Establish a State Human Resource Investment Council (SHRIC);

(b) Issue instructions to "grandparent" participants in JTPA programs as of June 30, 1993 for purposes of completing training;

(c) Issue instructions for use of current 6 percent performance standards incentive funds to further develop and implement data collection and management information systems to track the program experience of participants. PY 1993 and subsequent performance standards incentive funds may not be used for this purpose;

(d) Of the title II and title III unobligated balance of funds available as of June 30, 1993, any amount may be reprogrammed into PY 1993 activity. The Department believes these amounts will be minimal and not represent a significant proportion of the funds available. Such reprogrammed funds will be subject to requirements contained in JTPA regulations effective July 1, 1993.

§ 627.904 Transition and implementation.

(a) *Review.* The Governor shall conduct a comprehensive review of the current policies, procedures, and delivery systems relating to programs authorized under the Job Training Partnership Act for the purpose of ensuring the effective implementation of the amendments. Such a review shall include consideration of the appropriateness of current SDA designations, the representation on current State and local councils, the adequacy of current administrative systems, the effectiveness of current outreach, service delivery, and coordination activities, and other relevant matters.

(b) *Governor's Coordination and Special Services Plan (GCSSP).* The GCSSP will require modification to assure conformance to the requirements of the amendments. The plan is to be modified pursuant to instructions issued by the Secretary and shall be submitted to the Secretary for review by May 15, 1993.

(c) *Job training plans.* Service delivery area job training plans will require modification to comply with § 628.420 of this chapter, Job training plan.

(d) *Governor/Secretary agreement and grant agreement.* A new Governor/Secretary agreement is required to assure that the State shall comply with JTPA as amended, and the applicable rules and regulations; the Wagner-Peyser Act, as amended, and the applicable rules and regulations. A new grant agreement is needed to provide the basis for Federal obligation of funds for programs authorized by titles I, II and III, and such other funds as the Secretary may award under the grant.

(e) *Procurement standards.* In order to ensure fiscal accountability and prevent waste, fraud, and abuse in programs administered under JTPA, as amended, the Governor shall prescribe and implement procurement standards according to § 627.420 of this part, Procurement. All procurements initiated on or after July 1, 1993 shall be governed by and follow the requirements in § 627.420 of this part.

(f) *Participants.* In order to have the least possible disruption to program participants, during PY 1993, Governors have the flexibility to "grandparent" participants already enrolled in JTPA programs up to an including June 30, 1993 under existing rules and regulations, but not to beyond June 30, 1994. All participants in programs on June 30, 1993, will be eligible for transfer to programs operated under the new provisions at any time beginning on July 1, 1993. "Hard to serve" barriers to participation, assessment and Individual Service Strategy provisions of the amendments will not apply to participants enrolled prior to July 1, 1993.

(g) *Cost categories.* Cost categories and limitations applicable to PY 1992 and earlier funds will be subject to existing regulations either until the funds have been exhausted or program activity has been completed. Any prior year carry over funds reprogrammed into PY 1993 will be subject to the reporting requirements and cost limitations associated with PY 1993 funds.

(h) *Financial reporting.* Notwithstanding reprogramming, expenditures must be recorded separately by year of appropriation.

(i) *Private Industry Council.* The private industry councils shall be certified pursuant to § 627.410 of this part, Private Industry Council.

(j) *Grievances, Investigations, and Hearings.* Generally, all grievances, investigations and hearings pending on or before June 30, 1993 should be resolved and settled under then-existing rules and procedures. The Department believes the interests of all parties are best served by adhering to the current regulation at 20 CFR part 629 subpart D. Grievances, investigations, and hearings occurring on or after July 1, 1993 will be governed by the procedures described in subparts E, F, and H of this part.

(k) *Summer Program.* The Title II–B Summer Youth Employment Program for 1993 shall be governed by the Act

and regulations in effect prior to the Amendments (prior to September 7, 1992).

(l) *SDA designation.* At the Governor's discretion, SDA's designated prior to July 1, 1992 need not be subject to the provisions of § 628.405, Service delivery areas.

§ 627.905 Guidance on contracts and other agreements.

The Department does not intend for contracts, agreements, inter-agency agreements, retainers, and other like arrangements to be negotiated and/or entered into for the sole purpose of applying existing rules and regulations. The 1992 JTPA amendments are effective July 1, 1993. The Department intends that contracts, awards and agreements entered into on or before June 30, 1993 are to be used to serve and/or train participants enrolled on or before June 30, 1993, unless the contracts and agreements are modified to comply with the new amendments and regulations.

§ 627.906 Determinations on State and SDA implementation.

(a) The Department expects that the States and SDA's will fully implement the provisions of the Act and these regulations, especially those regarding procurement, the cost principles, categories, and limitations and participant service requirements and eligibility beginning July 1, 1993.

(b) The Department expects that the implementation by the States and SDA's of the program design features in these regulations, particularly objective assessment and development of the ISS, may require additional time beyond July 1, 1992 to fully implement.

(c) In deciding to allow or disallow questioned costs related to the implementation of the provisions described in paragraph (b) of this section, the Grant Officer will consider the extent to which the State's and SDA's have made good faith efforts in properly implementing such provisions in the period July 1, 1993 through June 30, 1994.

2. Part 628 is revised to read as follows:

PART 628—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Scope and Purpose

Sec.

628.100 Scope and purpose of part 628.

Subpart B—State Planning

628.200 Scope and purpose.
628.205 Governor's coordination and special services plan.
628.210 State Job Training Coordinating Council.
628.215 State Human Resource Investment Council.

Subpart C—State Programs

628.300 Scope and purpose.
628.305 State distribution of funds.
628.310 Administration.
628.315 Education coordination and grants.
628.320 Services for older individuals.
628.325 Incentive grants, capacity building and technical assistance.

Subpart D—Local Service Delivery System

628.400 Scope and purpose.
628.405 Service delivery areas.
628.410 Private Industry Council.
628.415 Selection of SDA grant recipient and administrative entity.
628.420 Job training plan.
628.425 Review and approval.
628.426 Disapproval of the plan.
628.430 State SDA submission.

Subpart E—Program Design Requirements for Programs Under Title II of the Job Training Partnership Act

628.500 Scope and Purpose.
628.505 Eligibility.
628.510 Intake, referrals, and targeting.
628.515 Objective assessment.
628.520 Individual service strategy.
628.525 Limitations.
628.530 Referrals of participants to non-title II programs.
628.535 Limitations on job search assistance.
628.540 Volunteer program.
628.545 Linkages and coordination.
628.550 Transfer of funds.

Subpart F—The Adult Program

628.600 Scope and purpose.
628.605 Eligibility.
628.610 Authorized services.

Subpart G—The Summer Youth Employment and Training Program

628.700 Scope and purpose.
628.701 Program goals and objectives.
628.702 Eligibility.
628.705 SYETP authorized services.
628.710 Period of program operation.

Subpart H—Youth Training Program

628.800 Scope and purpose.
628.803 Eligibility.
628.804 Authorized services.

Authority: 29 U.S.C. 1579(a).

Subpart A—Scope and Purpose

§ 628.100 Scope and purpose of part 628.

(a) This part sets forth requirements for implementation of programs under title II of the Job Training Partnership Act. In this part, the provisions generally pertaining to title II are covered in subparts B, C, D and E of this part. Matters specific to titles II–A, II–B, or II–C are addressed in subparts F, G or H of this part respectively.

(b) Title II–A Adult Training programs are to prepare adults for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased occupational and educational skills, reduced welfare dependency, and result in improved long-term employability.

(c) Title II–B Summer Youth Employment and Training programs are to provide eligible youth with exposure to the world of work, enhance the basic education skills of youth, to encourage school completion or enrollment in supplemental or alternative school programs and to enhance the citizenship skills of youth.

(d) Title II–C Youth Training programs are to improve the long-term employability of youth; enhance the educational, occupational and citizenship skills of youth; encourage school completion or enrollment in alternative school programs; increase the employment and earnings of youth; reduce welfare dependency; and to assist youth in addressing problems that impair their ability to make successful transition from school to work, to apprenticeship, to the military or to postsecondary education and training.

Subpart B—State Planning

§ 628.200 Scope and purpose.

This subpart provides requirements for the submission of the Governor's Coordination and Special Services Plan, as well as the procedures for plan review. This subpart also contains requirements for the composition and responsibilities of the State Job Training Coordinating Council and the State Human Resource Investment Council.

§ 628.205 Governor's coordination and special services plan.

(a)(1) *Submittal.* By a date established by the Secretary, each State seeking financial assistance under the Act shall submit to the Secretary biennially the Governor's Coordination and Special Services Plan (GCSSP) encompassing two program years (section 121(a)).

(2) The GCSSP shall address the requirements of section 121(b) including a description of the Governor's coordination criteria, the measures taken by the State to ensure coordination and prevent duplication with the Job Opportunities and Basic Skills program, the certification of the implementation of the procurement system as required at section 164(a)(6), the technical assistance and training plan, goals, and the efforts to accomplish such goals. for the training and placement of women in nontraditional employment and apprenticeship, the projected use of

resources, including oversight of program performance, program administration, program financial management and audit resolution procedures, capacity building, priorities and criteria for State incentive grants, and performance goals for State supported programs (section 121(b)).

(b) *GCSSP review.* The Secretary shall review the GCSSP for overall compliance with the provisions of the Act. If the GCSSP is disapproved, the Secretary shall notify the Governor in writing within 45 days of submission of the reasons for disapproval so that the Governor may modify the plan to bring it into compliance with the Act (section 121(d)).

(c) *Information to SDA's.* Prior to December 31 of the year preceding the program years for which the plan is developed, the State shall make available to the service delivery areas in the State information on its plans to undertake State activities in program areas including education coordination grants, services to older workers, and capacity building.

§ 628.210 State Job Training Coordinating Council.

(a) The Governor shall appoint a State Job Training Coordinating Council (SJTCC) pursuant to section 122 of the Act. In lieu of a SJTCC, the Governor may establish and utilize a State Human Resource Investment Council pursuant to section 701 of the Act and in accordance with § 628.215 of this part.

(b) Consistent with section 122(a)(3) of the Act, the SJTCC shall be composed as follows: 30 percent, business and industry representatives; 30 percent, State and local government and local education agency representatives; 30 percent, organized labor and community-based organization representatives; and 10 percent, representatives from the general public. The SJTCC shall have the specific functions and responsibilities outlined in sections 122, 317, and 501 of the Act.

(c) Funding for the SJTCC shall be provided pursuant to sections 202(c)(1)(A) and 262(c)(1)(A) of the Act.

§ 628.215 State Human Resource Investment Council

(a) *Establishment and responsibilities.* The State may, in accordance with sections 701, 702, and 703, establish a State Human Resource Investment Council (HRIC). The HRIC's responsibilities are described at section 701(a) of the Act. The HRIC shall carry out the following responsibilities:

(1) Review the provision of services and the use of funds and resources under applicable Federal human resource programs and advise the Governor on methods of coordinating such provision of services and use of funds and resources consistent with the laws and regulations governing such programs;

(2) Advise the Governor on the development and implementation of State and local standards and measures relating to applicable Federal human resource programs and coordination of such standards and measures; and

(3) Carry out the duties and functions prescribed for existing State councils described under the laws relating to the applicable Federal human resource programs.

(4) Perform other functions as specified by the Governor (section 701).

(b) *Applicable Programs.* For the purposes of this section, the programs included are those listed at section 701(b)(2) of the Act. A program shall be included only if the Governor and the head of the State agency responsible for the administration of the program jointly agree to include such program. In addition, programs under the Carl Perkins Vocational and Applied Technology Act shall require the agreement of the State council on vocational education (section 701(b)(1)(B)).

(c) *Composition.* The Governor shall establish procedures to ensure appropriate representation on the HRIC from among the categories of representation specified in section 702 of the Act.

(d) *Funding.* (1) Funding to carry out the functions of the HRIC shall be available pursuant to section 703(a) of the Act.

(i) Each State agency participating in a HRIC under title II is encouraged to provide funds to support such council in a manner consistent with its representation on the HRIC (section 703(d)).

(ii) The costs associated with the operation of the HRIC shall be allocated among the funding sources on the basis of benefits received.

(2) A HRIC which meets the requirements of title VII and includes each of the programs listed at section 701(b)(2)(A) of the Act shall be authorized to use JTPA State Education and Coordination Grant funds (section 123(a)(2)(D)(ii)).

(e) *Replacement of other councils.* A HRIC meeting the requirements of title VII shall replace the councils of the participating agencies listed at section 701(b)(2)(A) of the Act.

(f) *Expertise.* The Governor shall ensure that in the composition of the HRIC and the staff of the HRIC there exists the proper expertise to carry out the functions of the HRIC and the council(s) it replaces (sections 702(c)(2) and 703(b)).

(g) *Certification.* Each State shall certify to the Secretary the establishment and membership of the HRIC at least 90 days before the beginning of each period of 2 program years for which a job training plan is submitted under the Act (section 703(c)).

Subpart C—State Programs

§ 628.300 Scope and purpose.

This subpart provides requirements for the State-operated programs including the education coordination and grants, services to older workers, and incentive grants to SDA's and grants to SDA's for capacity building and technical assistance.

§ 628.305 State distribution of funds.

(a) The funds made available to the Governor under sections 202(c) and 262(c) shall be used to carry out activities and services under this subpart.

§ 628.310 Administration.

Funds provided to the Governor under sections 202(c)(1)(A) and 262(c)(1)(A) of the Act may be used for overall administration, management, oversight of program performance; technical assistance to SDA's failing to meet performance standards as described in section 106(j)(1); auditing; and activities under sections 121 and 122.

§ 628.315 Education coordination and grants.

(a) *Governor's responsibilities.* The Governor shall allocate funds to any State education agency, or agencies. For the purposes of this section, "State education agency" shall not include the State agency which administers the JTPA program within the State or other agencies which do not have education as a primary function, such as correctional agencies, although this limitation shall not preclude such an agency from being an ultimate subrecipient of funds (section 123(a)(1)).

(b) *Agreements.* (1) Each State education agency to be allocated funds under section 123(a)(1) of the Act shall participate in joint planning activities with the Governor in order to develop a plan which shall be submitted in the GCSSP (section 123(c)).

(2) The Governor and the State education agency(ies) shall jointly agree on the plan required in paragraph (b)(1) of this section, which shall include a description of the agreements described

in paragraph (b)(3) of this section (section 123(c)).

(3) Projects to undertake the activities set forth in section 123(a)(2) shall be conducted in accordance with agreements between the State education agency(ies) and administrative entities in service delivery areas in the State. The agreements may include other entities such as State agencies, local education agencies and alternative service providers (section 123(b)(1)(B)).

(4)(i) When there is a failure by the State education agency and the Governor in development of the joint plan described in paragraph (b)(2) of this section, the Governor shall not allocate funds under section 123(a)(1) to such education agency, nor shall such funds be available for expenditure by the Governor (section 123(c)).

(ii) When any State education agency declines the allocation of funds under section 123(a)(1), or when there is a failure to reach the agreement(s) specified in paragraph (b)(3) of this section, the funds may be used by the Governor for the education and coordination activities described in section 123(a)(2) (A), (B), and (C) of the Act (section 123(e)).

(c) *Allowable activities.* (1) Funds made available for education coordination and grants under section 123 of the Act shall be used to pay the Federal share of education coordination and grants projects (section 123(a)(2)).

(2) Projects conducted for eligible individuals found at section 123(a)(2) (A), (B) and (C) including those which:

(i) Provide school-to-work services of demonstrated effectiveness, including youth apprenticeship programs;

(ii) Provide literacy and lifelong learning opportunities and services of demonstrated effectiveness, including basic education and occupational skills training, and

(iii) Provide statewide coordinated approaches to education and training services, including model programs, designated to train, place, and retain women in nontraditional employment. (section 123(a)).

(3) Projects for coordination of education and training which may include support activities pertaining to the HRIC which meets the requirements of title VII.

(d) *Expenditure requirements.* (1)(i) At least 80 percent of the funds allocated under section 202(c)(1)(C) of the Act shall be expended to pay for the Federal share of projects described in paragraph (c)(2) of this section (section 123(d)(2)(B)).

(ii) The Governor shall assure that not less than 75 percent of the funds expended for such projects are expended for eligible economically disadvantaged participants each of whom shall be an individual experiencing barriers to employment (section 123(d)(2)(C)).

(iii) Priority for funds not expended on noneconomically disadvantaged participants shall be given to individuals determined eligible for title III programs and persons experiencing barriers to employment.

(iv) The Governor may assure compliance with the requirements to serve participants with barriers to employment by targeting of projects to particular barrier groups (*e.g.* school dropouts).

(2) Not more than 20 percent of funds allocated under section 202(c)(1)(C) of the Act may be expended to:

(i) Facilitate coordination of education and training services for participants in the projects described in section 123(a)(2) (A), (B) and (C), or

(ii) (A) Support activities pertaining to a HRIC that meets the requirements of § 628.215 of this part, or

(B) Support activities pertaining to a State council which carries out functions similar to those of a HRIC if such council was established prior to July 1, 1992.

(e) *Matching.* The Governor shall define and assure the provision of adequate resources by the State (including funds available to the State from State and federal sources, as appropriate) to meet the matching requirement of section 123(b) of the Act.

(f) Eligible youth, age 14 through 15, may be served in the program under this section to the extent set forth in the agreements under paragraph (b)(3) of this section.

§ 628.320 Services for older individuals.

(a) Consultation. (1) The Governor shall consult with the appropriate PIC's and chief elected official(s) prior to entering into agreements to provide services under section 204(d) and to assure that services provided to participants under section 204(d) are consistent with the programs and activities provided in the SDA to eligible older participants.

(2) The GCSSP shall specify the process for accomplishing the consultation required by paragraph (a)(2) of this section.

(b) Funds available under section 204(d) shall be used by the Governor to provide services on an equitable basis throughout the State, taking into account the relative share of the population of eligible older individuals residing in each SDA and the participation of such older individuals in the labor force.

(c) Delivery of services. (1) Services to participants eligible under section 204(d) shall be delivered through agreements with SDA's private industry councils, public agencies, private nonprofit organizations (including veterans organizations) and private-for-profit organizations.

(2) Priority for delivery of services under this section shall be given to agencies and organizations which have a demonstrated effectiveness in providing training and employment services to such older individuals.

(d) Eligibility. Individuals provided services under section 204(d) shall be economically disadvantaged, based on criteria applicable in the SDA in which they reside, and shall be individuals age 55 or older, except that each program year not more than 10 percent of participants enrolled under section 204(d) may be individuals who are not economically disadvantaged but have serious barriers to employment as identified by the Governor and have been determined within the last 12 months to meet the income eligibility requirements for title V of the Older Americans Act of 1965 (section 204(d)(5)(B)(i)).

(e) Applicable requirements. Except as provided in the Act, the provisions of title II–A shall apply to programs conducted under section 204(d) (section 204(d)(6)).

(f) The Governor shall make efforts to coordinate the delivery of services under section 204(d) with the delivery of services under title V of the Older Americans Act of 1965. Such coordination may include coenrollment, coordination of a continuum of services between this section and title V of the Older Americans Act and other appropriate linkages.

(g) The Governor shall give consideration to assisting programs involving training for jobs in growth industries and jobs reflecting the use of new technological skills (section 204(d)(3)).

§ 628.325 Incentive grants, capacity building and technical assistance.

(a) Funds available to the Governor under sections 202(c)(1)(B) and 262(c)(1)(B) shall be used to provide incentive grants to SDA's and for capacity building and technical assistance.

(b) Incentive grants. (1) Not less than 67 percent of the funds available under sections 202(c)(1)(B) and 262(c)(1)(B) shall be used by the Governor to provide incentive grants for programs, except programs under section 204(d), exceeding title II performance standards. (section 106(b)(7)).

(2) Incentive grant funds under this section shall be distributed by the Governor among SDA's within the State pursuant to section 106(b)(7).

(3) In addition to other activities, SDA's may use incentive grant funds for capacity building and technical assistance activities

(4) The Governor shall, as part of the annual statement of goals and objectives required by section 121(a)(1) of the Act, provide SDA's with the specific policies and procedures to implement section 106(b)(7) of the Act.

(5) In a State which is the service delivery area, incentive grant funds shall be distributed in a manner determined by the Governor and as described in the GCSSP. The Governor shall give consideration to recognizing the performance of service providers within the State.

(6) Incentive grant funds may be used to conduct allowable title II activities for either eligible youth, eligible adults, or both at the discretion of the SDA.

(c) Capacity building and technical assistance.

(1) Up to 33 percent of the funds available under section 202(c)(1)(B) may be used by the Governor to provide capacity building and technical assistance efforts aimed at improving the competencies of the personnel who staff JTPA and other related human service systems that serve JTPA participants.

(2) In providing capacity building and technical assistance activities, the Governor shall:

(i) Consult with SDA's concerning capacity building and technical assistance activities consistent with the process specified in the GCSSP;

(ii) Ensure that the use of funds will assist staff providing services to participants by directing resources to SDA and service provider staff for capacity building efforts, building a statewide capacity building strategy based on an assessment of local capacity building needs developed in cooperation with the SDA's, and delivering training and technical assistance directly to the local level;

(iii) Ensure that expenditures for the purchase of hardware/software to develop Statewide communications and training mechanisms involving computer-based communication technologies directly facilitate interaction with the National Capacity Building and Information Dissemination Network (National Network) described in section 453 of the Act and facilitate the use of computer-based training techniques;

(iv) Ensure that technical assistance materials developed with funds under this section are made available to be shared with other States and SDA's in coordination with the National Network; and

(v) Technical assistance is provided to service delivery areas failing to meet performance standards pursuant to section 106(j)(2) of the Act.

(d) Cost sharing. (1) Cost sharing approaches are encouraged among States, SDA's and/or among other Federal, State, and local human service programs in developing electronic communications, training mechanisms and/or contributing to the National Network.

(2) All shared costs shall be allocated among the contributing funding sources on the basis of benefits received.

Subpart D—Local Service Delivery System

§ 628.400 Scope and purpose.

This subpart sets forth requirements for the selection of service delivery areas, the establishment and responsibilities of the private industry council, and the selection of the SDA grant recipient and administrative entity. This subpart also contains the requirements for the local job training plan as well as the procedures for its review and approval by the State.

§ 628.405 Service delivery areas.

(a)(1) The Governor, after receiving recommendations from the SJTCC, shall designate SDA's within the State in accordance with the provisions of section 101 of the Act.

(2) Each request for designation as an SDA shall be submitted in a form and by a date established by the Governor, but not more frequently than once every two years to coincide with the development of the GCSSP and local job training plans.

(3) The Governor shall provide instructions on whether existing SDA's are required to request SDA designation in accordance with paragraph (a)(2) of this section.

(b)(1) The Governor shall approve SDA designation requests from entities with a population of 200,000 or more that satisfy the criteria specified in section 101(a)(4)(A) of the Act.

(2) When there are competing applications under paragraph (b)(1) of this section for the same geographic area, the Governor shall designate the entity with the population closest to 200,000, if the remaining reduced area also continues to satisfy the criteria specified in section 101(a)(4)(A) of the Act. The Governor shall offer to designate the remaining reduced area as an SDA as well.

(3) When there are competing applications under paragraph (b)(1) of this section for the same geographic area and the designation of the entity with the population closest to 200,000 would have the effect of reducing the population of the competing entity to below a population of 200,000, the Governor has the discretion to determine which request to honor.

(d) The Governor may, in accordance with section 101(a)(4)(B) of the Act, approve a request to be a SDA from any unit, or contiguous units, of general local government, without regard to population, which serves a substantial portion of a labor market area. In making such designations, the Governor shall evaluate the degree to which a proposed service delivery area meets criteria established by the Governor which, at a minimum, shall include:

(1) The capability to effectively deliver job training services;

(2) The capacity to administer the job training program in accordance with the Act, applicable rules and regulations and State standards; and

(3) The portion of a labor market served.

(e) For the purposes of SDA designations under sections 101(a)(4)(A) and (B), the term "substantial part" and "substantial portion" of a labor market area shall be defined by the Governor, but shall not be less than 10% of the population of a labor market area.

(f) All areas within the State shall be covered by designated SDA's. After honoring all requests for designation from eligible entities under section 101(a)(4)(A) of the Act, and making any qualified discretionary designations under section 101(a)(4)(B), the Governor shall include uncovered areas in the State within other designated SDA's willing to accept them or within another new SDA within the State.

(g) Appeals. (1) Only an entity which meets the requirements of section 101(a)(4)(A) of the Act for designation as a service delivery area, but which has had its request to be an SDA denied, may appeal the Governor's denial of service delivery area designation to the Secretary of Labor.

(2) Appeals made pursuant to paragraph (g)(1) of this section shall be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(3) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification of the denial from the Governor.

(4) The appealing party shall explain why it believes the denial is contrary to the provisions of section 101 of the Act.

(5) The Secretary shall accept the appeal and make a decision only with regard to whether or not the denial is inconsistent with section 101 of the Act. The Secretary may consider any comments submitted by the Governor. The Secretary shall make a final decision within 30 days after the appeal is received. (Section 101(a)(4)(C)).

(6) The Secretary shall notify the Governor and the appellant in writing of the Secretary's decision.

§ 628.410 Private Industry Council.

(a) Certification of the PIC. (1) The chief elected official(s) of the SDA shall establish and the Governor shall certify the private industry council (PIC) pursuant to section 102 of the Act.

(2) The Governor shall recertify the PIC biennially, one year prior to the date for submittal of the 2-year SDA job training plan to the Governor.

(3) The Governor shall issue a schedule and instructions for the submission of materials needed to certify the PIC; the instructions shall at a minimum, require the submission of:

(i) A written statement of the PIC composition which shall be consistent with section 102 (a), (b), (c), and (d), of the Act and shall include the names of individuals nominated and their qualifications;

(ii) A description of the nomination process;

(iii) The written agreement(s) among the appropriate chief elected official(s) and the PIC, including procedures for the development of the SDA job training plan and the selection of the grant recipient and administrative entity; and

(iv) A description of the basic organizational structure and operational framework through which the PIC intends to carry out its role under the Act.

(b) Responsibilities of the PIC. Pursuant to section 103 of the Act, the PIC shall:

(1) Provide policy and program guidance for all activities under the job training plan for the SDA;

(2) In accordance with agreements negotiated with the appropriate chief elected official(s), determine the procedures for development of the job training plan and select the grant recipient and administrative entity for the SDA;

(3) As specified in subpart D of part 627 of this chapter, exercise independent oversight over programs and activities under the job training plan, which oversight shall not be circumscribed by agreements with the appropriate chief elected official(s) of the SDA;

(4) Be a party to the designation of substate grantees under title III, as set forth in § 631.35 of this chapter;

(5) Establish guidelines for the level of skills to be provided in occupational skills training programs funded by the administrative entity;

(6) Consult with the Governor on agreements to provide services for older individuals under section 204(d) of the Act;

(7) Establish youth and adult competency levels consistent with performance standards established by the Secretary, based on such factors as entry level skills and other hiring requirements, in consultation with educational agencies and, where appropriate, with representatives of business, organized labor and community-based organizations pursuant to section 106(b)(5) and 107(d); and

(8) Identify occupations for which there is a demand in the area served.

(c) Substate plan. The PIC shall be provided the opportunity to review and comment on a substate grantee plan under title III of the Act prior to the submission of such plan to the Governor (section 313(a)).

(d) The State Employment Service agency shall develop jointly with each appropriate PIC and chief elected official(s) for the SDA those components of the plans required under the Wagner-Peyser Act, which are applicable to the SDA. (See part 652 of this chapter.)

(e) Single SDA States. (1) In any case in which the service delivery area is a State, the SJTCC may be reconstituted as a PIC when the PIC meets the requirements of section 102(a).

(2) When the service delivery area is a State and the functions of the SJTCC are embodied in the HRIC, the HRIC may be reconstituted as a PIC if the requirements for private sector business representation at section 102(a)(1) are met (section 102(h)).

§ 628.415 Selection of SDA grant recipient and administrative entity.

(a) *Selection of SDA grant recipient.* (1) The SDA grant recipient and the entity to administer the SDA's job training plan for title II, developed pursuant to section 104 of the Act, shall be selected by agreement of the PIC and chief elected official(s) of the SDA. These may be the same or different entities.

(2) The specific functions and responsibilities of the entities described in paragraph (a)(1) of this section shall be spelled out in the agreement between the PIC and the chief elected official(s), and shall specifically address the provisions of section 141(i) of the Act. (Section 103(b)(1).)

(b) *Subrecipient requirements.* (1) The Governor may establish requirements pertaining to subrecipient, including SDA grant recipient, responsibility for JTPA funds.

(2) The requirements described in paragraph (b)(1) of this section shall not preclude the selection of any entity identified in section 103(b) as SDA grant recipient.

§ 628.420 Job training plan.

(a) The Governor shall issue instructions and schedules to assure that job training plans and plan modifications for SDA's within the State conform to all requirements of the Act.

(b) The Governor's instructions for development of the SDA's job training plan shall require that the plan contain the following information:

(1) A complete and detailed discussion of the elements found in section 104(b) of the Act;

(2) A discussion of the SDA's compliance with the Secretary's program goals, as outlined in the planning guidance provided to the Governor; and

(3) An oversight plan for the SDA which includes: (i) A description of the oversight activities of the PIC and the chief elected official(s), and (ii) the SDA administrative entity's monitoring plan which includes the Governor's monitoring requirements for service providers.

(c) The Governor may also require that the SDA job training plan contain a capacity building and technical assistance strategy that includes plans for designating capacity building as a staff function, assessing local capacity building needs, and developing and participating in computerized communication mechanisms.

(d) The SDA job training plan shall be submitted to the Governor jointly by the PIC and the chief elected official(s) (section 103(d)).

(e) Modifications. Modifications to the SDA job training plan shall be submitted jointly by the PIC and chief elected official(s) of the SDA to the Governor for approval.

§ 628.425 Review and approval.

(a) *Standards and procedures.* (1) The Governor shall establish standards and procedures for the review and approval or disapproval of the SDA job training plan and plan modifications that shall be provided to the SDA's at the same time as the instructions and schedules for preparation of the plans are provided.

(2) The procedures and standards described in paragraph (a)(1) of this section shall provide for approval or disapproval of the SDA job training plan.

(b) *Plan approval.* Except when the Governor makes a finding under the provisions of section 105(b)(1) of the Act, the Governor shall approve the SDA job training plan or plan modification. The notice of approval shall be provided to the chief elected official(s) and to the private industry council.

§ 628.428 Disapproval of the plan.

(a) If the Governor disapproves the SDA job training plan or plan modification for any reason, the Governor shall notify the PIC and chief elected official(s) for the SDA in writing as provided in section 105(b)(2) of the Act.

(b) If the Governor disapproves the SDA job training plan or plan modification, the Governor shall provide the PIC and the chief elected official(s) for the SDA 20 days to correct the deficiencies and resubmit the plan or plan modification. Within 15 days after the plan or plan modification is resubmitted, the Governor shall make a final decision and shall notify the PIC and the appropriate chief elected official(s) of the SDA of the final disapproval or approval.

(c) Governor mediation. If the PIC and the appropriate chief elected official(s) of an SDA are unable to reach an agreement under the provisions of section 103(b)(1) or (d) of the Act, any such party may request the Governor to mediate such agreements.

(d) Failure to reach agreement. If the PIC and the chief elected official(s) fail to reach the required agreements in sections 103(b)(1) or (d) of the Act, funds may not be made available to an SDA under section 104 of the Act and the Governor shall merge the affected area into one or more other existing service delivery areas (section 105(c)(1)).

(e) Appeals. (1) In accordance with section 105(b)(2) of the Act, any final disapproval by the Governor of the SDA job training plan or modification may be appealed by the PIC or chief elected official(s) of the SDA to the Secretary.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt by the PIC and chief elected official(s) of the final disapproval of the SDA job training plan or modification from the Governor.

(3) The Secretary shall accept an appeal under this paragraph (e) and shall determine only whether or not the disapproval is clearly erroneous under section 105(b)(1) of the Act. The Secretary may consider any comments submitted by the Governor. In accordance with section 105(b)(2) of the Act, the Secretary shall make a final decision within 45 days after the appeal is received by the Secretary.

(4) The Secretary shall notify the Governor and the appellant in writing of the Secretary's decision.

(f) Appeals of plan revocations. Pursuant to section 164(b)(1) of the Act, a notice of intent to revoke approval of all or part of a plan may be appealed to the Secretary. Such appeals shall be treated as a disapproval under paragraphs (c) and (e) of this section, except that the revocation shall not become effective until the later of:

(1) The time for appeal under paragraph (e) of this section has expired; or

(2) The date on which the Secretary issues a decision affirming the revocation.

(f) In the event that a plan is disapproved and the Governor's decision is upheld upon appeal, the Governor shall merge the affected area into other designated SDA's willing to accept it or include it in another SDA within the State.

§ 628.430 State SDA submission.

(a) Pursuant to section 105(d) of the Act, when the SDA is the State, the Governor, not less than 60 days before the beginning of the first of the two program years covered by the job training plan and in accordance with instructions issued by the Secretary, shall submit to the Secretary a SDA job training plan covering two-program-years. When the SDA is the State, modifications to the plan shall be submitted to the Secretary for approval.

(b) When a State submits an SDA job training plan or plan modification pursuant to paragraph (a) of this section, the Secretary shall review the plan or plan modification for overall compliance with the provisions of the Act. The State's plan shall be considered approved unless, within 45 days of receipt of the submission described in paragraph (a) of this section, the Secretary notifies the Governor in writing of inconsistencies between the submission and requirements of specific provisions of the Act. If the plan or plan modification is disapproved, the Governor may appeal the decision by requesting a hearing before an administrative law judge pursuant to subpart H of part 627 of this chapter.

Subpart E—Program Design Requirements for Programs Under Title II of the Job Training Partnership Act

§ 628.500 Scope and purpose.

This subpart contains the regulations pertaining to the program design requirements common to all programs conducted under title II of the Act. Regulations specifically pertaining to the Adult Program can be found in subpart F of this part. Regulations pertaining to the Summer Youth Employment and Training Program can be found in subpart G of this part. Regulations pertaining to the Youth Training Program can be found in subpart H of this part.

§ 628.505 Eligibility.

(a) *Eligibility Criteria.* (1) Individuals who apply to participate in a program under title II shall be evaluated for eligibility based on age and economic disadvantage. Specific eligibility criteria for programs under title II, parts A, B, and C are described in this part.

(2) Individuals served under title II shall be residents of the SDA, as determined by local government policy, except for the limited exceptions described in the job training plan, including joint programs operated by SDA's (section 141(e)).

(b) *Eligibility documentation.* (1) In order to promote the uniform and standard application of eligibility criteria for participation in the JTPA program, the Department shall issue guidance on eligibility documentation requirements.

(2) SDA utilization of eligibility guidance. The Grant Officer shall give consideration to the extent that the State and the SDA adopt and follow the guidance described in paragraph (b)(1) of this section in deciding to allow or disallow questioned costs related to the required documentation concerning an individual's eligibility.

§ 628.510 Intake, referrals and targeting.

(a) Collection of personal data. In addition to determining an applicant's eligibility, the intake process shall include a preliminary review of information relating to whether an applicant is included in one or more of the categories listed in section 203(b) of the Act.

(b) Information on services. Upon application, an eligible individual shall be provided information by the SDA or its service providers on the full array of services available through the SDA and its service providers, including information for women about the

opportunities for nontraditional training and employment.

(c) Assessment during intake. At the discretion of the service provider, some assessment activities may be conducted during the intake process in order to determine an eligible applicant's suitability for title II program services.

(d) Referral of applicants. During the intake process, determinations may be made prior to enrollment to refer an eligible applicant to another human service, training or education program deemed more suitable for the individual.

(e) Referrals from service providers to service delivery areas for additional assessment. (1) Each service provider shall ensure that an eligible applicant who cannot be served by its particular program shall be referred to the SDA for further assessment, as necessary, and suitable referral to other appropriate programs.

(2) Each SDA shall take the appropriate steps (*e.g.*, contract provisions, local administrative issuances, and/or PIC policies, etc.) to ensure that its service providers adhere to the provisions of this section, and that they maintain documentation of referrals.

(3) Each SDA shall develop an appropriate mechanism to assess applicants referred by service providers and describe such mechanism in its SDA job training plan.

(f) "Most in need." SDA's that satisfy the requirements of sections 203(b) and 263(b) pertaining to hard to serve individuals shall be deemed to meet the "most in need" criteria at section 141(a) of the Act.

(g) The SDA's method of meeting the requirements of sections 203(b) and 263(b) pertaining to hard to serve individuals shall be implemented consistent with the equal opportunity provisions of 29 CFR parts 31, 32, and 34.

§ 628.515 Objective assessment.

(a) *General.* The requirements of this section shall apply to programs conducted under title I and title II, parts A, B and C.

(b) *Definition.* (1) For purposes of this part, an *objective assessment* means an examination of the capabilities, needs, and vocational potential of a participant and is to be used to develop a service strategy and employment goal. Such assessment is to be client-centered and a diagnostic evaluation of a participant's employment barriers taking into account the participant's family situation, work history, education, occupational skills, interest, aptitudes (including interests and aptitudes for nontraditional occupations), attitude towards work, motivation, behavior patterns affecting employment potential, financial resources and needs, supportive service needs, and personal employment information as it relates to the local labor market.

(2) For the program under title II–B, the objective assessment shall include an examination of the basic skills and supportive service needs of each participant and may include the other areas listed in paragraph (b)(1) of this section (Sections 204(a)(1)(A), 253(c)(1) and 264(b)(1)(A)).

(c) *Methods of objective assessment.* (1) The SDA shall choose the most appropriate means to measure skills, abilities, attitudes, and interests of the participants. The methods used in conducting the objective assessment may include but are not limited to structured interviews, paper and pencil tests, performance tests (*e.g.* skills, and/or work samples, including those that measure interest and capability to train in nontraditional employment), behavioral observations, interest and/or attitude inventories, career guidance instruments, aptitude tests, and basic skills tests.

(2) Instruments used for objective assessment may be developed at the local level; however, any formalized instruments nationally available should be used only for the specific populations for which they are normed.

(d) *Updating of assessments.* Objective assessment should be treated as an ongoing process. As additional relevant information relating to a participant becomes available, it should be reviewed and considered, as appropriate.

(e) *Other sources of objective assessment.* Other non-JTPA assessments (*e.g.* through the Job Opportunities and Basic Skills (JOBS) program under title IV of the Social Security Act, or through schools) which have been completed within one year of application for services, and which meet the requirements of this section, may be used to comply with the requirement to assess each participant.

§ 628.520 Individual service strategy.

(a) *General.* The requirements of this section shall apply to programs conducted under title I and title II, parts A, B and C.

(b) *Definition.* (1) *Individual service strategy (ISS)* means an individual plan for a participant, which plan shall include an employment goal (including, for women, consideration of nontraditional employment), appropriate achievement objectives, and the appropriate combination of services for the participant based on the objective assessments conducted pursuant to § 628.515 of this part, Objective assessment. In developing the ISS, the participant shall be counseled regarding required loan repayments if enrollment in an education program requires the participant's personal indebtedness. The participant shall also be apprised of the requirements for self sufficiency and the occupational demands within the labor market.

(2) Decisions concerning appropriate services shall be client-centered, and ensure that the participant is not excluded from training or career options consistent with the provisions of 29 CFR parts 31, 32 and 34 concerning nondiscrimination and equal opportunity.

(3) For the program under title II–B, the ISS may include the components specified in paragraph (b)(1) of this section. (sections 204(a)(1)(B), 253(c)(2) and 264(b)(1)(B)).

(c) *Joint Development of ISS.* The ISS shall be developed in partnership with the participant and reflect the needs indicated by the objective assessment and the expressed interests and desires of the participant.

(d) *Review of ISS.* The ISS shall be reviewed periodically to evaluate the progress of each participant in meeting the objectives of the service strategy including an evaluation of the participant's progress in acquiring basic skills and occupational skills as appropriate, and the adequacy of the supportive services provided.

(e) *Provision of services.* If JTPA resources are not sufficient to provide the full range of training or support services which might be identified in the ISS, the SDA shall make every reasonable effort to arrange for, through other community resources, basic and occupational skills training and supportive services identified as needed in the ISS for participants under titles II–A and II–C and, in addition, preemployment and work maturity skills training and work experience combined with skills training for participants under title II–C (sections 204(a)(1)(D) and 264(b)(1)(D).

(f) *SDA review of objective assessment and ISS.* (1) The objective assessment and development of the ISS may be conducted by service providers.

(2) The SDA administrative entity shall ensure that development of the ISS and the services provided, respond to the individual needs of the participant and that the combination of services to the participant is indicated by the results of the objective assessment.

(g) *ISS and documentation of decisions.* The ISS shall be used as the

basic instrument for the SDA to document the appropriateness of the decisions made about the mix and combination of services for the participant, including referrals to other programs for specified activities.

§ 628.525 Limitations.

Participation in a JTPA program does not create an entitlement to services, and nothing in the Act or this part shall be construed to establish a private right of action for a participant to obtain services described in the objective assessment or ISS.

§ 628.530 Referrals of participants to non-title II programs.

(a) When a participant is determined, through the objective assessment and the ISS, to be better served by a program other than one under title II (*e.g.* Job Corps, Vocational Rehabilitation, State or local education, substance abuse treatment center, and/or dislocated worker programs), the participant shall be referred to the appropriate program. Such referral shall be documented in the ISS.

(b) In cases where there will be a continuing relationship with an individual, a referral to another program(s) for specific services will be part of the participant's title II program participation and documented in the ISS.

(c) In cases when there will not be a continuing relationship with an individual as the result of a referral to a program other than title II, only an assessment has been provided and no ISS has been developed, the individual shall not be counted for purposes of calculating performance against the SDA's performance standards.

§ 628.535 Limitations on job search assistance.

(a) *General.* Job search assistance is designed to give a participant skills in acquiring full-time employment. See § 626.5 of this chapter, Definitions.

(b) *Conditions.* Job Search activities may be conducted only:

(1) For participants when specified as appropriate in the ISS; and

(2) When delivered in conjunction with other training or educational services designed to increase the participant's ability to acquire employment. Examples include completion of a classroom training course combined with a job search assistance class; a work experience activity followed by job search training; a pre-apprenticeship training program combined with a job search club; or office skills development training combined with job search training.

(c) *Exceptions.* Job search assistance activities including job search skills training and job clubs may be provided without the accompanying services specified in paragraph (b) of this section only when:

(1) The objective assessment and the ISS indicate that the additional services are not appropriate; and

(2) The activities are not available or accessible through other public agencies, including Employment Service as determined by the SDA.

(d) *Determination of job search availability.* For purposes of this section, job search assistance activity will normally be considered to be available from a local employment service office within the commuting area.

§ 628.540 Volunteer program.

(a) Requirement. Pursuant to sections 204(c)(6) and 264(d)(7) of the Act, the SDA shall make opportunities available for individuals who have successfully participated in programs under this part to volunteer assistance, in the form of mentoring, tutoring, and other activities.

(1) The SDA should develop local goals and objectives regarding their efforts to engage the volunteer assistance of former participants.

(2) The SDA shall maintain documentation of its efforts to implement the locally established volunteer program.

(b) [Reserved]

§ 628.545 Linkages and coordination.

(a) *General requirements.* In the conduct of programs under this part, the SDA shall establish appropriate linkages and coordination procedures with other federal programs and with appropriate education and training agencies which shall be described in the SDA job training plan. (Sections 104(b) (3) and (4), 205 (a) and (b) and 265).

(b) *Requirements for youth.* For the youth programs under this part, formal agreements shall be established with local educational agencies, which, at a minimum, shall specify:

(1) The procedures for referring and serving in-school youth;

(2) The methods of assessment of in-school youth; and

(3) Procedures for notifying the SDA when a youth drops out of the school system.

(c) *Schoolwide projects.* (1) In conducting a schoolwide project for low income individuals under sections 263(g) and 275(d) the SDA shall establish a cooperative agreement with the appropriate local educational agency.

(2) In addition to the requirements listed in paragraphs (a) and (b) of this section, the cooperative agreement shall include:

(i) A description of the ways in which the JTPA schoolwide project will supplement the educational program of the school;

(ii) Identification of measurable goals to be achieved by the schoolwide project and a provision for assessing the extent to which such goals are met;

(iii) A description of the ways in which the program will use available JTPA and other education program resources;

(iv) A description of the number of individuals to be served by the schoolwide project; and

(v) Assurances that JTPA resources shall be used to supplement and not supplant existing sources of funds.

(3) In areas where there is more than one local educational agency, cooperative agreements for schoolwide projects are required only with those local education agencies that will participate in programs under schoolwide projects (section 263(g)).

§ 628.550 Transfer of funds.

If described in the job training plan and approved by the Governor:

(a) An amount up to 10 percent of the funds allocated to the SDA under section 202(b) of the Act for title II–A may be transferred to the program under title II–C of the Act;

(b) An amount up to 10 percent of the funds allocated to the SDA under section 252(b) of the Act for title II–B may be transferred to the program under title II–C of the Act; and

(c) An amount up to 10 percent of the funds allocated to the SDA under section 262(b) of the Act for title II–C may be transferred to the program under title II–A of the Act.

Subpart F—The Adult Program

§ 628.600 Scope and purpose.

This subpart contains the regulations specifically pertaining to programs conducted under title II–A, the Adult Program.

§ 628.605 Eligibility.

(a) *Age and economic disadvantage.* Except as provided in paragraph (b), an individual shall be eligible to participate under this part only if he or she is economically disadvantaged and 22 years of age or older.

(b) *Non-economically disadvantaged individuals.* Up to 10 percent of the individuals served under this subpart in each SDA may be individuals who are not economically disadvantaged, if such individuals face serious barriers to

employment in accordance with section 203(c) of the Act.

(c) *Requirement to assist hard-to-serve individuals.* Not less than 65 percent of individuals served under this subpart shall have one or more of the additional barriers to employment as described in section 203(b) of the Act.

(d) *Addition of barrier.* An SDA may identify and add one additional serious barrier to employment to the categories listed at sections 203(b) of the Act in accordance with the specific procedures and requirements in section 203(d).

(e) *Criteria for older workers under joint programs.* (1) The SDA may establish written financial or non-financial agreements with sponsors of programs under title V of the Older Americans Act to carry out joint programs.

(2) Joint programs under this paragraph (e) may include referrals between programs, co-enrollment and provision of services.

(3) Under agreements pursuant to this paragraph (e), individuals eligible under title V of the Older Americans Act individuals shall be deemed to satisfy the requirements of section 203(d)(5)(A) of the Act. (Older Americans Act, Pub. L. 102–375, section 510.)

§ 628.610 Authorized services.

(a) The services that may be provided under this subpart are those described at section 204(b) of the Act.

(b) Counseling and supportive services: Counseling and supportive services provided under this subpart may be provided to a participant for a period of up to 1 year after the date on which the participant completes the program.

Subpart G—The Summer Youth Employment and Training Program

§ 628.700 Scope and purpose.

This subpart contains the regulations for the Summer Youth Employment and Training Program (SYETP) under part B of title II of the Act. The regulations in part 627 of this chapter and subpart E of this part apply to the SYETP to the extent that they do not conflict with the provisions of this subpart.

§ 628.701 Program goals and objectives.

(a) Each SDA shall establish written goals and objectives that shall be used in evaluating the effectiveness of its SYETP activities. Such goals and objectives may include improvement in school retention, academic performance (including mathematics and reading comprehension) and employability skills, and demonstrated coordination with other appropriate community organizations.

(b) The SDA shall ensure that the activities and services offered under the SYETP are consistent with and will contribute to the achievement of the goals and objectives developed pursuant to paragraph (a) of this section.

§ 628.702 Eligibility.

(a) *Age and economic disadvantage.* An individual is eligible to participate in programs funded under title II–B of the Act, if such individual is

(1) Age 14 through 21; and

(2)(i) Economically disadvantaged; or

(ii) Has been determined to meet the eligibility requirements for free meals under the National School Lunch Act during the most recent school year (see paragraph (b) of this section). "Most recent school year" means the current school year unless the eligibility determination is made during an interim period between school terms, in which case the term means the preceding school year.

(b) *Eligibility determination verification.* The SDA may accept the same documentation utilized by the local educational agency for approving free lunch meals or an assurance by school officials concerning the students' participation in the free school lunch program under the National School Lunch Act.

§ 628.705 SYETP Authorized services.

(a) The services that may be provided under this subpart are those described at section 253 of the Act.

(b) Basic and remedial education. The SDA shall ensure the availability of basic or remedial education for SYETP participants pursuant to the assessment process described in § 628.515 of this part from funds available to the SDA or by other education and training programs, including but not limited to the Job Corps, the JOBS program, youth corps programs or alternative or secondary schools.

(c) *Work Experience.* Work experience shall be conducted consistent with the provisions of § 627.245.

(d) *Concurrent Enrollment.* Youth being served under the SYETP or the Youth Training Program authorized under title II, part C, of the Act (see subpart H of this part) are not required to be terminated from participation in one program to enroll in the other. The SDA may enroll such youth concurrently in programs under this subpart and subpart H of this part, pursuant to guidance to be issued by the Secretary, in order to promote continuity and coordination of services.

§ 628.710 Period of program operation.

(a) Except as provided under paragraph (b) of this section, the SYETP shall be conducted during the school vacation period occurring during the summer months.

(b) An SDA operating within the jurisdiction of one or more local educational agencies that operate schools on a year-round full-time basis may offer SYETP activities to participants in such a jurisdiction during the school vacation period(s) treated as the period(s) equivalent to a school summer vacation.

Subpart H—Youth Training Program

§ 628.800 Scope and purpose.

(a) This subpart implements title II–C of the Act. Title II–C programs and activities have as their primary objective to increase the long-term employability of eligible youth. The Youth Training Program provides for year-round youth programs to address the employment needs and skill deficiencies of in-school and out-of-school youth.

(b) This subpart establishes program design (*e.g.*, objective assessment, and development of the participant ISS) elements and additional requirements that must be followed by the SDA's and service providers. The youth services authorized by this subpart are intended to be comprehensive. Coordination of Youth Training Program activities with other community and youth service opportunities is strongly encouraged.

§ 628.803 Eligibility.

(a) *Out-of-school youth.* An out-of-school youth shall be eligible to participate in programs under this subpart, if such individual is:

(1) Age 16 through 21; and

(2) Economically disadvantaged.

(b) *In-school youth.* An in-school youth shall be eligible to participate in programs under this subpart, if such individual is:

(1)(i) Age 16 through 21; or

(ii) If provided in the job training plan, age 14 through 21 inclusive; and

(2)(i) Economically disadvantaged;

(ii) Participating in a compensatory education program under Chapter I of title I of the Elementary and Secondary Education Act of 1965; or

(iii) Has been determined to meet the eligibility requirements for free meals under the National School Lunch Act during the most recent school year. *Most recent school year* means the current school year unless the eligibility determination is made during an interim period between school terms, in which case the term means the preceding school year.

(c) *Eligibility determination verification.* The SDA may accept the same documentation utilized by the

local educational agency for approving free lunch meals or an assurance by school officials concerning the students' participation in the free school lunch program under the National School Lunch Act.

(d) *Requirement to serve hard-to-serve individuals.* (1) Not less than 65 percent of the in-school youth who participate in an SDA's program under this subpart shall have one or more additional barriers to employment, as described in section 263(b) of the Act.

(2) Not less than 65 percent of the out-of-school youth who participate in an SDA's program under this subpart shall have one or more barriers to employment, as described in section 263(d) of the Act, in addition to any criterion listed in paragraph (b)(2) of this section.

(e) *Addition of barrier.* An SDA may identify and add one additional serious barrier to employment to the categories listed at sections 263 (b) and (d) of the Act in accordance with the specific procedures and requirements in section 263(h) of the Act.

(f) *Services to non-economically disadvantaged individuals.* Up to 10 percent of the youth served by an SDA under this subpart may be individuals who are not economically disadvantaged, but such individuals shall face one or more serious barriers to employment in accordance with section 263(e) of the Act.

(g) *Eligibility based on schoolwide project participation.* (1) In addition to the individuals who meet the conditions described in § 628.803 of this part, individuals who are not economically disadvantaged may participate in programs under this subpart if they are enrolled in accordance with a schoolwide project pursuant to section 263(g) of the Act.

(2) For purposes of this section, the term "school" means an individual building, facility, campus or a portion of the school such as the 11th or 12th grade.

(h)(1) *Out-of-school ratio.* Not less than 50 percent of the total title II–C participants in each SDA shall be out-of-school individuals, in accordance with section 263(f)(1) of the Act.

(2) *Schoolwide project ratios.* Those in-school participants who are served under a schoolwide project shall not be counted in determining the ratio of in-school to out-of-school youth in paragraph (h)(1) of this section.

§ 628.804 Authorized services.

(a) The SDA and the PIC shall take into consideration exemplary program strategies and services, including those selected for replication pursuant to section 453(c) of the Act concerning capacity building, in the development of services for programs under this subpart.

(b) Except as provided in paragraph (c) of this section, in order to participate in programs under this part an individual who is under the age of 18 and a school dropout shall enroll in and attend a school, course or programs described in sections 264(d)(2)(B) (ii) and (iii).

(c) An individual who is a school dropout and under the age of 18 may participate in programs under this part without meeting the requirements of paragraph (b) of this section for a limited interim period which may be during the summer months, during periods between school terms, or when a course of study is not immediately available.

(d) The provision of preemployment and work maturity skills training shall be accompanied either by work experience or by other additional services which are designed to increase the basic education or occupational skills of the participant (section 264(d)(3)(A)).

(e) The provision of work experience, job search assistance, job search skills training, and job club activities under programs conducted under this subpart shall be accompanied by other additional services which are designed to increase the basic education or occupational skills of the participant (section 264(d)(3)(B)).

(f) The additional services offered pursuant to paragraphs (d) and (e) of this section may be provided concurrently or sequentially with services provided under other education and training programs (*e.g.*, Job Opportunities and Basic Skills programs under title IV of the Social Security Act, Job Corps (see part 638 of this chapter), schools, etc.).

(g) Schoolwide projects for low-income schools shall meet the conditions in sections 263(g) (1) and (2) of the Act.

(h) Entry employment experiences in public or private non-profit agencies under this subpart shall not exceed 500 hours, and shall increase or develop the long-term employability of eligible in-school and out-of-school youth. Entry employment experiences may include:

(1) Work experience as described in § 627.245 of this chapter;

(2) Cooperative education programs that coordinate educational programs with work in the private sector; and

(i)(1) Limited internships in the private sector under this subpart which shall involve assignments in the private for-profit sector, not to exceed 500 hours and shall be designed to enhance the long-term employability of youth.

(2) The limited internship shall provide on-site private sector exposure to work and the requirements for successful job retention.

(3) A limited internship may be combined with classroom instruction relating to a particular position, occupation, industry or on the basic skills and abilities to successfully compete in the local labor market.

(j)(1) On-the-job (OJT) training activities approved under this subpart shall be consistent with the provisions of subpart B of part 627 of this chapter and shall:

(i) Be for positions that pay the participant a wage that equals or exceeds the average wage at placement in the preceding program year in the SDA for participants under title II–A;

(ii) Be for positions that have career advancement potential; and

(iii) Include a formal, written program of structured job training that will provide the participant with an orderly combination of instruction in work maturity skills, general employment competencies, and occupational specific skills.

(2) In those cases where the OJT participant is a school dropout, the participant shall participate in a program in accordance with the provisions of paragraph (b) of this section.

(k) Counseling and supportive services provided under this subpart may be provided to a participant for a period of up to 1 year after the date on which the participant completes the program.

(l) Year-Round Operations. Programs for youth under this subpart shall:

(1) Provide for a year-round education and training program that is coordinated with the appropriate local educational agencies, service providers, and other programs; and

(2) As appropriate, ensure services for youth are available on a multiyear basis, consistent with the determined needs and goals of the youth served.

(3) The year-round program delivery requirement of this paragraph does not prohibit schools on a 9-month operations schedule, from providing services for programs under this part.

PART 629—[REMOVED AND RESERVED]

4. Part 629 is removed and reserved.

PART 630—[REMOVED AND RESERVED]

5. Part 630 is removed and reserved.

6. Part 631 is revised to read as follows:

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.
631.1 Scope and purpose.
631.2 Definitions.
631.3 Participant eligibility.
631.4 Approved training rule.

Subpart B—Additional Title III Administrative Standards and Procedures

631.11 Allotment and obligation of funds by the Secretary.
631.12 Reallotment of funds by the Secretary.
631.13 Classification of costs at State and substate levels.
631.14 Limitations on certain costs.
631.15 Federal reporting requirements.
631.16 Complaints, investigations, and penalties.
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631.18 Federal bypass authority.
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Subpart C—Needs-Related Payments

631.20 Needs-related payments.

Subpart D—State Administration

631.30 Designation or creation and functions of a State dislocated worker unit or office and rapid response assistance.
631.31 Monitoring and oversight.
631.32 Allocation of funds by the Governor.
631.33 State procedures for identifying funds subject to mandatory Federal reallotment.
631.34 Designation of substate areas.
631.35 Designation of substate grantees.
631.36 Biennial State plan.
631.37 Coordination activities.
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Subpart E—State Programs

631.40 State program operational plan.
631.41 Allowable State activities.

Subpart F—Substate Programs

631.50 Substate plan.
631.51 Allowable substate program activities.
631.52 Selection of service providers.
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Subpart G—Federal Delivery of Dislocated Worker Services Through National Reserve Account Funds

631.60 General.
631.61 Application for funding and selection criteria.
631.62 Cost limitations.
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Subpart H—[Reserved]

Subpart I—Disaster Relief Employment Assistance

631.80 Scope and purpose.
631.81 Availability of funds.
631.82 Substate allocation.
631.83 Coordination.
631.84 Allowable projects.
631.85 Participant eligibility.
631.86 Limitations on disaster relief employment.
631.87 Definitions.

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107; § 631.30(d)(7) also issued under 29 U.S.C. 2107(a); § 631.37(e) also issued under sec. 402, Pub. L. 100–689, 102 Stat. 4178–4179 (29 U.S.C. 1751 note).

Subpart A—General Provisions

§ 631.1 Scope and purpose.

This part implements title III of the Act. Title III programs seek to establish an early readjustment capacity for workers and firms in each State; to provide comprehensive coverage to workers regardless of the cause of dislocation; to provide early referral from the unemployment insurance system to adjustment services as an integral part of the adjustment process; to foster labor, management and community partnerships with government in addressing worker dislocation; to emphasize retraining and reemployment services rather than income support; to create an on-going substate capacity to deliver adjustment services; to tailor services to meet the needs of individuals; to improve accountability by establishing a system of mandated performance standards; to improve financial management by monitoring expenditures and reallotting available funds; and to provide the flexibility to target funds to the most critical dislocation problems.

§ 631.2 Definitions.

In addition to the definitions contained in sections 4, 301, and 303(e) of the Act and part 626 of this chapter, the following definitions apply to programs under title III of the Act and this part:

Substantial layoff (for participant eligibility) means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30 day period for:

(a)(1) At least 33 percent of the employees (excluding employees regularly working less than 20 hours per week); and

(2) At least 50 employees (excluding employees regularly working less than 20 hours per week); or

(b) At least 500 employees (excluding employees regularly working less than 20 hours per week).

Substantial layoff (for rapid response assistance) means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30 day period for at least 50 employees (excluding employees regularly working less than 20 hours per week) (section 314(b)(4)).

§ 631.3 Participant eligibility.

(a) Eligible dislocated workers, as defined in section 301 of the Act, are eligible to participate in programs under this part. For the purposes of determining eligibility under the provisions of section 301(a)(1)(A) of the Act, the term "eligible for" unemployment compensation includes any individual whose wages from employment would be considered in determining eligibility for unemployment compensation under Federal or State unemployment compensation laws.

(b)(1) Except as provided in paragraph (b)(3) of this section, workers who have not received an individual notice of termination but who are employed at a facility for which the employer has made a public announcement of planned closure shall be considered eligible dislocated workers with respect to the provision of basic readjustment services specifically identified in section 314(c) of the Act with the exception of supportive services and relocation assistance.

(2) Such individuals identified in (b)(1) of this section shall be eligible to receive all services authorized in sections 314 of the Act after a date which is 180 days prior to the scheduled closure date of the facility, subject to the provisions of § 631.20 of this part and other applicable provisions regarding receipt of supportive services.

(3) Paragraphs (b)(1) and (b)(2) of this section shall not apply to individuals who are likely to remain employed with the employer or to retire instead of seeking new employment.

(4) For the purposes of paragraph (b)(1) of this section, the Governor shall establish criteria for defining "public announcement". Such criteria shall include provisions that the public announcement shall be made by the employer and shall indicate a planned closure date for the facility. (Section 314(h)).

(c) Eligible dislocated workers include individuals who were self-employed (including farmers and ranchers) and are unemployed:

(1) Because of natural disasters, subject to the provisions of paragraph (e) of this section; or

(2) As a result of general economic conditions in the community in which they reside.

(d) For the purposes of paragraph (c) of this section, categories of economic conditions resulting in the dislocation

of a self-employed individual may include, but are not limited to:

(1) Failure of one or more businesses to which the self-employed individual supplied a substantial proportion of products or services;

(2) Failure of one or more businesses from which the self-employed individual obtained a substantial proportion of products or services;

(3) Substantial layoff(s) from, or permanent closure(s) of, one or more plants or facilities that support a significant portion of the State or local economy.

(e) The Governor is authorized to establish procedures to determine the eligibility to participate in programs under this part of the following categories of individuals:

(1) Self-employed farmers, ranchers, professionals, independent tradespeople and other business persons formerly self-employed but presently unemployed.

(2) Self-employed individuals designated in paragraph (d)(1) of this section who are in the process of going out of business, if the Governor determines that the farm, ranch, or business operations are likely to terminate.

(3) Family members and farm or ranch hands of individuals identified under paragraphs (d)(1) and (2) of this section, to the extent that their contribution to the farm, ranch, or business meets minimum requirements as established by the Governor.

(f) The Governor is authorized to establish procedures to identify individuals permanently dislocated from their occupations or fields of work, including self-employment, because of natural disasters. For the purposes of this paragraph (f), categories of natural disasters include, but are not limited to, any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, or explosion.

(g) The State may provide services to displaced homemakers (as defined in section 4 of the Act) under this part only if the Governor determines that such services may be provided without adversely affecting the delivery of such services to eligible dislocated workers. (Section 311(b)(4).)

(h) An eligible dislocated worker issued a certificate of continuing eligibility as provided in § 631.53 of this part shall remain eligible for assistance under this part for the period specified in the certificate not to exceed 104 weeks. The 45-day enrollment provisions described in subpart B of part 627 of this chapter shall be waived for eligible individuals who possess a valid certificate under this paragraph and it is not required that a new application be taken prior to participation.

(i) An eligible dislocated worker who does not possess a valid certificate shall remain eligible if such individual:

(1) Remains unemployed, or

(2) Accepts temporary employment for the purpose of income maintenance prior to, and/or during participation in a training program under this part with the intention of ending such temporary employment at the completion of the training and entry into permanent unsubsidized employment as a result of the training. Such temporary employment must be with an employer other than that from which the individual was dislocated. This provision applies to eligible individuals both prior to and subsequent to enrollment.

§ 631.4 Approved training rule.

An eligible dislocated worker who is participating in any retraining activity, except on-the-job training, under Title III of the Act or this part shall be deemed to be in training with the approval of the State agency for purposes of section 3304(a)(8) of the Internal Revenue Code of 1986. Participation in the approved training shall not disqualify the individual from receipt of unemployment benefits to which the individual is otherwise entitled. (Section 314(f)(2).)

Subpart B—Additional Title III Administrative Standards and Procedures

§ 631.11 Allotment and obligation of funds by the Secretary.

(a) Funds shall be allotted among the various States in accordance with section 302(b)(1) of the Act, subject to paragraph (b) of this section.

(b) Funds shall be allotted among the various States in accordance with section 302(b)(2)(A) and (B) of the Act as soon as satisfactory data are available under section 462(e) of the Act.

(c) Allotments for the Commonwealth of the Northern Mariana Islands and other territories and possessions of the United States shall be made by the Secretary in accordance with the provisions of section 302(e) of the Act.

§ 631.12 Reallotment of funds by the Secretary.

(a) Based upon reports submitted by States pursuant to § 631.15 of this part, the Secretary shall make determinations regarding total expenditures of funds within the State with reference to the amount required to be reallotted pursuant to section 303(b) of the Act. For purposes of this paragraph (a)—

(1) The funds to be reallotted will be an amount equal to the sum of:

(i) Unexpended funds in excess of 20 percent of the prior program year's formula allotment to the State, and

(ii) All unexpended funds from the formula allotment for the program year preceding the prior program year.

(2)(i) The current program year is the year in which the determination is made; and

(ii) The prior program year is the year immediately preceding the current program year.

(3) Unexpended funds shall mean the remainder of the total funds made available by formula that were available to the State for the prior program year minus total accrued expenditures at the end of the prior program year.

(4) Reallotted funds will be made available from current year allotments made available by formula.

(b) Based upon the most current and satisfactory data available, the Secretary shall identify eligible States, pursuant to the definitions in section 303(e) of the Act.

(c) The Secretary shall recapture funds from States identified in paragraph (a) of this section and reallot and reobligate such funds by a Notice of Obligation (NOO) adjustment to current year funds to eligible States as identified in paragraph (b) of this section, as set forth in section 303 (a), (b), and (c) of the Act.

(d) Reallotted funds shall be subject to allocation pursuant to § 631.32 of this part, and to the cost limitations at § 631.14 of this part.

§ 631.13 Classification of costs at State and substate levels.

(a)(1) Allowable costs under title III shall be planned, controlled, and charged by either the State or the substate grantee against the following cost categories: rapid response services, basic readjustment services, retraining services, needs-related payments and supportive services, and administration. Costs shall be reported to the Secretary of Labor in accordance with the reporting requirements established pursuant to § 631.15 of this part.

(2) Except for administrative cost pools described in subpart D of part 627 of this chapter, all costs shall be allocable to a particular cost category to the extent that benefits are received by such category; and no costs shall be chargeable to a cost category except to the extent that benefits are received by such category.

(b) Rapid response services shall include the cost of rapid response

activities identified at section 314(b) of the Act.

(1) Staff salary and benefit costs are chargeable to the rapid response services cost category only for that portion of staff time actually spent on rapid response activities.

(2) All other costs are chargeable to the rapid response services cost category only to the extent that they are for response purposes.

(c) Basic readjustment services shall include the cost of basic readjustment services identified at section 314(c) of the Act, except that the cost of supportive services under section 314(c)(15) of the Act shall be charged to the needs-related payments and supportive services cost category, as provided in paragraph (e) of this section.

(d) Retraining services shall include the cost of retraining services identified at section 314(d) of the Act.

(e) Needs-related payments and supportive services shall include the cost of needs-related payments identified in section 314(e) of the Act, and supportive services identified in section 4(24) of the Act and provided for in section 314(c)(15) of the Act.

(f)(1) Administration shall include the costs incurred by recipients and subrecipients in the administration of programs under title III of the Act, and shall be that portion of necessary and allowable costs which is not directly related to the provision of services and otherwise allocable to the cost categories in paragraphs (b) through (e) of this section. The description of administrative costs in subpart D of part 627 shall be used by States and substate grantees as guidance in charging administration costs to title III programs.

(2) Administration does not include the costs of activities under section 314(b) of the Act and which are provided for in paragraph (b) of this section.

(3) Administration shall include title III funds used for coordination of worker adjustment programs with the Federal-State unemployment compensation system and with chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) and part 617 of this chapter. (sections 311(b)(10) and 314(f)).

§ 631.14 Limitations on certain costs.

(a) Rotraining Services. Of the funds allocated to a substate grantee under part A of title III for any program year, not less than 50 percent shall be expended for retraining services specified under section 314(d) of the Act, unless a waiver of this requirement is granted by the Governor. The Governor shall prescribe criteria that will allow substate grantees to apply in advance for a waiver of this requirement, pursuant to section 315(a)(2) of the Act. The Governor shall prescribe the time and form for the submission of an application for such a waiver, as provided for at section 315(a)(3) of the Act. The Governor shall not grant a waiver that allows less than 30 percent of the funds expended by a substate grantee to be expended for retraining activities.

(b) Needs-Related Payments and Supportive Services. Of the funds allocated to the Governor, or allocated to any substate grantee, under part A of title III for any program year, not more than 25 percent may be expended to provide needs-related payments and other supportive services.

(c) Administrative cost. Of the funds allocated to the Governor, or allocated to any substate grantee, under part A of title III for any program year, not more than 15 percent may be expended to cover the administrative cost of programs.

(d) Reallotted funds are subject to the limitations on certain costs contained in paragraphs (a), (b) and (c) of this section.

(e) Funds allocated (or distributed) to substate areas under the provisions of section 302(c)(1)(E) of the Act shall be considered funds allocated to a substate grantee for the program year of the funds' initial allotment to the State, and included the cost limitations defined in paragraphs (a), (b) and (c) of this section.

(f) Funds reserved by the Governor under the provisions of section 302(c)(1) of the Act, other than funds distributed to substate grantees under the provisions of JTPA section 302(c)(1)(E), shall be considered funds allocated to the Governor for the program year of the funds' initial allotment to the State and included in the cost limitations applicable to the Governor.

(g) States and substate grantees have the full period of time that the funds are available to them to comply with the cost limitations described in JTPA section 315 and paragraphs (a), (b), and (c) of this section.

(h) Combination of Funds. (1) Substate grantees within a State may combine funds allocated under part A of title III for provision of services to eligible dislocated workers from two or more substate areas. Funds contributed by the substate grantees under this section remain subject to the cost limitations which apply to each substate grantee's total allocation (section 315(d)).

(2) To combine funds under this provision, substate grantees must be in contiguous substate areas or part of the same labor market area.

(i) For the purposes of this section:

(1) *Allotment to the State* means allotted by the formula described in section 302(b) of the Act, as adjusted by reallotments among the States, in accordance with section 303 of the Act. For purposes of determining availability and of applying cost limitations, funds will retain the identity of the program year in which they were initially allotted to a State, irrespective of subsequent reallotments.

(2) *Allocated to the substate grantee* means allocated by the formula prescribed by the Governor under section 302(b) of the Act, and allocated (or distributed) under the provisions of section 302(c)(1)(E), as adjusted by within State reallocations implemented by the Governor through procedures established pursuant to section 303(d) of the Act. For purposes of determining availability and of applying cost limitations, funds will retain the identity of the program year in which they were initially allotted to the State.

(3) *Allocated to the Governor* refers to funds reserved by the Governor for use in accordance with the provisions of section 302(c)(1) of the Act, exclusive of any such funds which are distributed or allocated to substate grantees pursuant to section 302(c)(1)(E).

(j) The cost limitations described in this section do not apply to any designated substate grantee which served as a concentrated employment program grantee for a rural area under the Comprehensive Employment and Training Act. (Section 108(d).)

§ 631.15 Federal reporting requirements.

Notwithstanding the requirements described in subpart D of part 627 of this chapter, the Governor shall report to the Secretary pursuant to instructions issued by the Secretary for programs and activities funded under this part. Such reports shall include a cost breakdown of all funds made available under this part used by the State Dislocated Worker Unit for administrative expenditures, in accordance with instructions issued by the Secretary. Reports shall be provided to the Secretary within 45 calendar days after the end of the report period. (Sections 165(a)(2) and 311(b)(11).)

§ 631.16 Complaints, investigations, and penalties.

The provisions of this section apply in addition to the sanctions provided in subpart G of part 627 of this chapter.

(a) The Secretary shall investigate a complaint or report received from an aggrieved party or a public official which alleges that a state is not complying with the provisions of the State plan required under section 311(a) of the Act. (Section 311(e)(1).)

(b) Where the Secretary determines that a State has failed to comply with its State plan, and that other remedies under the Act and part 627 of this chapter are not available or are not adequate to achieve compliance, the Secretary may withhold an amount not to exceed 10 percent of the allotment to the State for the program year in which the determination is made for each such violation. (Section 311(e)(2)(A).)

(c) The Secretary will not impose the penalty provided for under paragraph (b) of this section until all other remedies under the Act and part 627 of this chapter for achieving compliance have been exhausted or are determined to be unavailable or inadequate to achieve State compliance with the terms of the State plan.

(d) The Secretary will make no determination under this section until the affected State has been afforded adequate written notice and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of subpart H of part 627 of this chapter. (Section 311(e)(2)(B).)

§ 631.17 Federal monitoring and oversight.

The Secretary shall conduct oversight of State administration of programs under this part, including the administration by each State of the rapid response assistance services provided in such State. The Secretary may review and determine the effectiveness, efficiency and timeliness of service conducted by the State in accordance with § 631.30(b) of this part, and may specify any corrective actions deemed appropriate and necessary (section 314(b)(3)).

§ 631.18 Federal by-pass authority.

(a) In the event that a State fails to submit a biennial State plan that is approved under § 631.36 of this part, the Secretary shall make arrangements to use the amount that would be allotted to the State for the delivery in that State of the programs, activities, and services authorized under title III of the Act and this part.

(b) No determination may be made by the Secretary under this section until the affected State is afforded written notification of the Secretary's intent to exercise by-pass authority and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of subpart H of part 627 of this chapter.

(c) The Secretary will exercise by-pass authority only until such time as the effected State has an approved plan under the provisions of § 631.36 of this part. (Section 321(b).)

§ 631.19 Appeals.

Except as provided in this part, disputes arising in programs under this part shall be adjudicated under the appropriate State or local grievance procedures required by subpart E of part 627 of this chapter or other applicable law. Complaints alleging violations of the Act or this part may be filed with the Secretary, pursuant to subpart F of part 627 of this chapter. Paragraphs (a) through (e) of this section refer to appeal rights set forth in this part.

(a) Subpart D of part 628 of this chapter (appeals of denial of SDA designation) shall apply to denial of substate area designations under § 631.34(c) (1) and (3) of this part.

(b) Subpart D of part 628 of this chapter (appeals of final disapproval of SDA job training plans or modifications) shall apply to final disapproval of substate plans under § 631.50(f) of this part.

(c) Subpart D of part 628 of this chapter (appeals of a Governor's notice of intent to revoke approval of all or part of a plan) shall apply to a Governor's notice of intent to exercise by-pass authority under § 631.38 of this part.

(d) Subpart D of part 628 of this chapter (appeals of the Secretary's disapproval of a plan when the SDA is the State) shall apply to plan disapproval when the substate area is the State, as set forth in § 631.50 (g) and (h) of this part.

(e) Decisions pertaining to designations of substate grantees under § 631.35 of this part are not appealable to the Secretary.

Subpart C—Needs-related payments

§ 631.20 Needs-related payments.

(a) Title III funds available to States and substate grantees may be used to provide needs-related payments to participants in accordance with the approved State or substate plan, as appropriate.

(b) In accordance with the approved substate plan, needs-related payments shall be provided to an eligible dislocated worker only in order to enable such worker to participate in training or education programs under this part. To be eligible for needs-related payments:

(1) An eligible worker who has ceased to qualify for unemployment compensation must have been enrolled in a training or education program by the end of the thirteenth week of the worker's initial unemployment compensation benefit period, or, if later, by the end of the eighth week after an employee is informed that a short-term layoff will in fact exceed 6 months.

(2) For purposes of paragraph (b)(1) of this section, the term *enrolled in a training or education program* means that the worker's application for training has been approved and the training institution has furnished written notice that the worker has been accepted in the approved training program beginning within 30 calendar days.

(3) An eligible worker who does not qualify for unemployment compensation must be participating in a training or education program. (Section 314(e)(1).)

(c) Needs-related payments shall not be provided to any participant for the period that such individual is employed, enrolled in or receiving on-the-job training, out-of-area job search, or basic readjustment services in programs under the Act, nor to any participant receiving trade readjustment allowances, on-the-job training, out-of-area job search allowances, or relocation allowances under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) or part 617 of this chapter. (Section 314(e)(1)).

(d) The level of needs-related payments to an eligible dislocated worker in programs under this part shall not exceed the higher of:

(1) The applicable level of unemployment compensation; or

(2) The poverty level (as by the published by the Secretary of Health and Human Services). (Section 314(e)(2).)

Subpart D—State Administration

§ 631.30 Designation or creation and functions of a State dislocated worker unit or office, and rapid response assistance.

(a) *Designation or creation of State dislocated worker unit or office.* The State shall designate or create an identifiable State dislocated worker unit or office with the capabilities and functions identified in paragraph (b) of this section. Such unit or office may be an existing organization or new organization formed for this purpose. (Section 311(b)(2).) The State dislocated worker unit or office shall.

(1) Make appropriate retraining and basic adjustment services available to eligible dislocated workers through substate grantees, and in statewide, regional or industrywide projects;

(2) Work with employers and labor organizations in promotion labor-

management cooperation to achieve the goals of this part;

(3) Operate a monitoring, reporting, and management system to provide adequate information for effective program management, review, and evaluation;

(4) Provide technical assistance and advice to substate grantees;

(5) Exchange information and coordinate programs with the appropriate economic development agency, State education and training and social services programs;

(6) Coordinate with the unemployment insurance system, the Federal-State Employment Service system, the Trade Adjustment Assistance program and other programs under this chapter;

(7) Receive advance notice of plant closings and mass layoffs as provided at section 3(a)(2) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102(a)(2)) and part 639 of this chapter;

(8) Immediately notify (within 48 hours) the appropriate substate grantees following receipt of an employer notice of layoff or plant closing or of any other information that indicates a projected layoff or plant closing by an employer in the grantee's substate area, in order to continue and expand the services initiated by the rapid response team (section 311(b)(3)(D));

(9) Fully consult with labor organizations where substantial numbers of their members are to be served; and

(10) Disseminate throughout the State information on the availability of services and activities under title III of the Act and this part.

(b) *Rapid response capability.* The dislocated worker unit shall have one or more rapid response specialists, and the capability to provide rapid response assistance, on-site, for dislocation events such as permanent closures and substantial layoffs throughout the State. The State will not transfer the responsibility for the rapid response assistance functions of the State dislocated worker unit to another entity, but the State may contract with another entity to perform rapid response assistance services. Nothing in this paragraph shall remove or diminish the dislocated worker unit's accountability for ensuring the effective delivery of rapid response assistance services throughout the State. Section 311(b)(12)).

(1) State rapid response specialists should be knowledgeable about the resources available through programs under this part and all other appropriate resources available through public and private sources to assist dislocated workers. The expertise required by this part includes knowledge of the Federal, State, and local training and employment systems; labor-management relations and collective bargaining activities; private industry and labor market trends; programs and services available to veterans; and other fields necessary to carry out the rapid response requirements of the Act.

(2) The rapid response specialists should have:

(i) The ability to organize a broad-based response to a dislocation event, including the ability to coordinate services provided under this part with other State-administered programs available to assist dislocated workers, and the ability to involve the substate grantee and local service providers in the assistance effort;

(ii) The authority to provide limited amounts of immediate financial assistance for rapid response activities, including, where appropriate, financial assistance to labor-management committees formed under paragraph (c)(2) of this section;

(iii) Credibility among employers and in the employer community in order to effectively work with employers in difficult situations; and

(iv) Credibility among employee groups and in the labor community, including organized labor, in order to effectively work with employees in difficult situations.

(3) The dissemination of information on the State dislocated worker unit's services and activities should include efforts to ensure that major employers, organized labor, and groups of employees not represented by organized labor, are aware of the availability of rapid response assistance. The State dislocated worker unit should make equal effort in responding to dislocation events without regard to whether the affected workers are represented by a union.

(4) In a situation involving an impending permanent closure or substantial layoff, a State may provide funds, where other public or private resources are not expeditiously available, for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation.

(5) Rapid response specialists may use funds available under this part:

(i) To establish on-site contact with employer and employee representatives within a short period of time (preferably 48 hours or less) after becoming aware of a current or projected permanent closure or substantial layoff in order to—

(A) Provide information on and facilitate access to available public programs and services; and

(B) Provide emergency assistance adapted to the particular permanent closure or substantial layoff; such emergency assistance may include financial assistance for appropriate rapid response activities, such as arranging for the provision of early intervention services and other appropriate forms of immediate assistance in response to the dislocation event;

(ii) To promote the formation of labor-management committees as provided for in paragraph (c) of this section, by providing—

(A) Immediate assistance in the establishment of the labor-management committee, including providing immediate financial assistance to cover the start-up costs of the committee;

(B) A list of individuals from which the chairperson of the committee may be selected;

(C) Technical advice as well as information on sources of assistance, and liaison with other public and private services and programs; and

(D) Assistance in the selection of worker representatives in the event no union is present;

(iii) To provide ongoing assistance to labor-management committees described in paragraph (c) of this section by—

(A) Maintaining ongoing contact with such committees, either directly or through the committee chairperson;

(B) Attending meetings of such committees on an *ex officio* basis; and

(C) Ensuring ongoing liaison between the committee and locally available resources for addressing the dislocation, including the establishment of linkages with the substate grantee or with the service provider designated by the substate grantee to act in such capacity;

(iv) To collect information related to—

(A) Economic dislocation (including potential closings or layoffs); and

(B) All available resources within the State for serving displaced workers, which information shall be made available on a regular basis to the Governor and the State Council to assist in providing an adequate information base for effective program management, review, and evaluation;

(v) To provide or obtain appropriate financial and technical advice and liaison with economic development agencies and other organizations to assist in efforts to avert worker dislocations;

(vi) To disseminate information throughout the State on the availability of services and activities carried out by the dislocated worker unit or office; and

(vii) To assist the local community in developing its own coordinated response and in obtaining access to State economic development assistance.

(6) Notwithstanding the definition of "substantial layoff (for rapid response assistance)" at § 631.2 of this part, the Governor may, under exceptional circumstances, authorize rapid response assistance provided by a State dislocated worker unit when the layoff of 50 or more individuals is not at a single site of employment or is not during a single 30 day period. For purposes of this provision, "exceptional circumstances" include those situations in which layoffs or permanent closures would have a major impact upon the community(ies) in which they occur. (Section 314(b)).

(c) *Labor-management committees.* As provided for in sections 301(b)(1) and 314(b)(1)(B) of the Act, labor-management committees are a form of rapid response assistance which may be voluntarily established to respond to actual or prospective worker dislocation.

(1) Labor management committees ordinarily include (but are not limited to) the following—

(i) Shared and equal participation by workers and management, with members often selected in an informal fashion;

(ii) Shared financial participation between the company and the State, using funds provided under Title III of the Act, in paying for the operating expenses of the committee; in some instances, labor union funds may help to pay committee expenses;

(iii) A chairperson, to oversee and guide the activities of the committee who—

(A) Shall be jointly selected by the labor and management members of the committee;

(B) Is not employed by or under contract with labor or management at the site; and

(C) Shall provide advice and leadership to the committee and prepare a report on its activities;

(iv) The ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

(v) A formal agreement, terminable at will by the workers or the company management, and terminable for cause by the Governor; and

(vi) Local job identification activities by the chairperson and members of the committee on behalf of the affected workers.

(2) Because they include employee representatives, labor-management committees typically provide a channel whereby the needs of eligible dislocated workers can be assessed, and programs of assistance developed and implemented, in an atmosphere supportive to each affected worker. As such, committees must be perceived to be representative and fair in order to be most effective.

§ 631.31 Monitoring and oversight.

The Governor is responsible for monitoring and oversight of all State and substate grantee activities under this part. In such monitoring and oversight of substate grantees, the Governor shall ensure that expenditures and activities are in accordance with the substate plan or modification thereof, and with the cost limitations described in § 631.14 of this part.

§ 631.32 Allocation of funds by the Governor.

Of the funds allotted to the Governor by the Secretary under §§ 631.11 and 631.12 of this part.

(a) The Governor shall issue allocations to substate grantees, the sum of which shall be no less than 50 percent of the State's allotment. (Section 302(d)).

(b)(1) The Governor shall prescribe the formula to be used in issuing substate allocations required under paragraph (a) of this section to substate grantees.

(2) The formula prescribed pursuant to paragraph (b)(1) of this section shall utilize the most appropriate information available to the Governor. In prescribing the formula, the Governor shall include (but need not be limited to) the following information:

(i) Insured unemployment data;

(ii) Unemployment concentrations;

(iii) Plant closing and mass layoff data;

(iv) Declining industries data;

(v) Farmer-rancher economic hardship data; and

(vi) Long-term unemployment data.

(3) The Governor may allow for an appropriate weight for each of the formula factors set forth in paragraph (b)(2) of this section. A weight of zero for any of the factors required in section 302(d) of the Act and identified in paragraph (b)(2) of this section shall only be made when a review of available data indicates that the factor is not relevant to determining the incidence of need for worker dislocation assistance within the State. The formula may be amended no more frequently than once each program year. (Section 302(d).)

(c) The Governor may reserve an amount equal to not more than 40 percent of the funds allotted to the State under § 631.11 and § 631.12 of this part for State activities and for discretionary allocations to substate grantees. (Section 302(c)(1).)

(d) The Governor may reserve an additional amount equal to not more than 10 percent of the funds allotted to the State under § 631.11 of this part. The Governor shall allocate such funds, subject to the SJTCC or HRIC review and comment, during the first three quarters of the program year among substate grantees on the basis of need. Such funds shall be allocated to substate grantees and shall not be used for statewide activities. Such funds shall be included in each substate grantee's allocation for purposes of cost limitations, as described in § 631.14 of this part. (Sections 302(c)(2) and 317(1)(B).)

§ 631.33 State procedures for identifying funds subject to mandatory Federal reallotment.

The Governor shall establish procedures to assure the equitable identification of funds required to be reallotted pursuant to section 303(b) of the Act. Funds so identified may be funds reserved by the State pursuant to section 302(c)(1)(A) through (D) of the Act and/or allocated to substate grantees pursuant to section 302(c)(1)(E), (c)(2) and/or (d) of the Act. (Section 303(d).) Such procedures may not exempt either State or substate funds from reallotment.

§ 631.34 Designation of substate areas.

(a) The Governor, after receiving recommendations from the SJTCC or HRIC, shall designate substate areas for the State. (Section 312(a).)

(b) In designating substate areas, the Governor shall:

(1) Ensure that each service delivery area within the State is included within a substate area and that no SDA is divided among two or more substate areas; and

(2) Consider the availability of services throughout the State, the capability to coordinate the delivery of services with other human services and economic development programs, and the geographic boundaries of labor market areas within the State.

(c) Subject to paragraph (b) of this section, the Governor shall designate as a substate area:

(1) Any single SDA that has a population of 200,000 or more;

(2) Any two or more contiguous SDA's that:

(i) In the aggregate have a population of 200,000 or more; and

(ii) Request such designation; and

(3) Any concentrated employment program grantee for a rural area as described in section 101(a)(4)(A)(iii) of the Act.

(d) In addition to the entities identified in paragraph (c) of this section, the Governor may, without regard to the 200,000 population requirement, designate SDAs with smaller populations as substate areas.

(e) The Governor may deny a request for substate area designation from a consortium of two or more SDAs that meets the requirements of paragraph (c)(2) of this section only upon a determination that the request is not consistent with the effective delivery of services to eligible dislocated workers in the relevant labor market area, or would not otherwise be appropriate to carry out the purposes of title III. The Governor will give good faith consideration to all such requests by a consortium of SDAs to be a substate area. In denying a consortium's request for substate area designation, the Governor shall set forth the basis and rationale for the denial. (Section 312(a)(5).)

(f) In the case where the service delivery area is the State, the entire State shall be designated as a single substate area.

(g)(1) Entities described in paragraphs (c)(1) and (3) of this section may appeal the Governor's denial of substate area designation to the Secretary of Labor. The procedures that apply to such appeals shall be those set forth at subpart D of part 628 for appeals of the Governor's denial of SDA designation.

(2) An entity described in paragraph (c)(2) of this section that has been denied substate area designation may utilize the State-level grievance procedures required by section 144(a) of the Act and subpart E of part 627 of this chapter for the resolution of disputes arising from such a denial.

(h) Designation of substate areas shall not be revised more than once each two years. All such designations must be completed no later than four months prior to the beginning of any program year. (Section 312(a)(6).)

§ 631.35 Designation of substate grantees.

The Governor may establish procedures for the designation of substate grantees.

(a) Designation of the substate grantee for each substate area shall be made on a biennial basis.

(b) Entities eligible for designation as substate grantees include:

(1) Private industry councils in the substate area;

(2) Service delivery area grant recipients or administrative entities designated under Title II of the Act;

(3) Private non-profit organizations;

(4) Units of general local government in the substate area, or agencies thereof;

(5) Local offices of State agencies; and

(6) Other public agencies, such as community colleges and area vocational schools.

(c) Substate grantees shall be designated in accordance with an agreement among the Governor, the local elected official or officials of such area, and the private industry council or councils of such area. Whenever a substate area is represented by more than one such official or council, the respective officials and councils shall each designate representatives, in accordance with procedures established by the Governor (after consultation with the SJTCC or HRIC), to negotiate such agreement.

(d) The agreement specified in paragraph (c) of this section shall set forth the conditions, considerations, and other factors related to the selection of substate grantees in accordance with section 312(b) of the Act.

(e) The Governor shall negotiate in good faith with the parties identified in paragraph (c) of this section and shall make a good faith effort to reach agreement. In the event agreement cannot be reached on the selection of a substate grantee, the Governor shall select the substate grantee.

(f) Decisions under paragraphs (c), (d), and (e) of this section are not appealable to the Secretary. (Section 312 (b) and (c)).

§ 631.36 Biennial State plan.

(a) In order to receive an allotment of funds under § 631.11 and § 631.12 of this part, the State shall submit to the Secretary, in accordance with instructions issued by the Secretary, on a biennial basis, a biennial State plan. (Section 311). Such plan shall include:

(1) Assurances that—

(i) The State will comply with the requirements of Title III of the Act and this part;

(ii) Services will be provided only to eligible displaced workers, except as provided in paragraph (a)(2) of this section;

(iii) Services will not be denied on the basis of State of residence to eligible dislocated workers displaced by a permanent closure or substantial layoff within the State; and may be provided to other eligible dislocated workers regardless of the State of residence of such workers;

(2) Provision that the State will provide services under this part to displaced homemakers only if the Governor determines that the services may be provided to such workers without adversely affecting the delivery of services to eligible dislocated workers;

(3) A description of the substate allotment and reallotment procedures and assurance that they meet the requirements of the Act and this part;

(4) A description of the State procurement system and procedures to be used under title III of the Act and this part which are consistent with the provisions in subpart D of part 627 of this chapter; and

(5) Assurance that the State will not prescribe any performance standard which is inconsistent with subpart D of part 627 of this chapter.

(b) The State biennial plan shall be submitted to the Secretary on or before the May 1 immediately preceding the first of the two program years for which the funds are to be made available.

(c) Any plan submitted under paragraph (a) of this section may be modified to describe changes in or additions to the programs and activities set forth in the plan. No plan modification shall be effective unless reviewed pursuant to paragraph (d) of this section and approved pursuant to paragraph (e) of this section.

(d) The Secretary shall review State biennial plans and plan modifications, including any comments thereon submitted by the SJTCC or HRIC, for overall compliance with the provisions of the Act, this part, and the instructions issued by the Secretary.

(e) A State biennial plan or plan modification is submitted on the date of its receipt by the Secretary. The Secretary shall approve a plan or plan modification within 45 days of submission unless, within 30 days of submission, the Secretary notifies the Governor in writing of any deficiencies in such plan or plan modification.

(f) The Secretary shall not finally disapprove the State biennial plan or plan modification of any State except after written notice and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of subpart H of part 627 of this chapter.

§ 631.37 Coordination activities.

(a) Services under this part shall be integrated or coordinated with services

and payments made available under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) and part 617 of this chapter and programs provided by any State or local agencies designated under section 239 of the Trade Act of 1974 (19 U.S.C. 2311) or part 617 of this chapter. (Section 311 (b)(10).) Such coordination shall be effected under provisions of an interagency agreement when the State agency responsible for administering programs under this part is different from the State agency administering Trade Act programs.

(b) States may use funds allotted under §§ 631.11 and 631.12 of this part for coordination of worker readjustment programs, (*i.e.*, programs under this part and trade adjustment assistance under part 617 of this chapter) and the unemployment compensation system consistent with the limitation on administrative expenses (see § 631.14(a)(1) of this part). Each State shall be responsible for coordinating the unemployment compensation system and worker readjustment programs. (Section 314(f).)

(c) Services under this part shall be coordinated with dislocated worker services under title III of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2351 *et seq.*). (Section 311(b)(5).)

(d) In promoting labor management cooperation, including the formation of labor-management committees under this part, the dislocated worker unit shall consider cooperation and coordination with labor-management committees established under other authorities. (Section 311(b)(3)(B).)

(e) In accordance with section 402 of the Veterans' Benefits and Programs Improvement Act of 1988, 29 U.S.C. 1751 note, services under this part shall be coordinated with programs administered by the Department of Veterans Affairs and with other veterans' programs such as the Veterans' Job Training Act (29 U.S.C. 1721 note), title IV–C of the Job Training Partnership Act (29 U.S.C. 1721 *et seq.*), part 635 of this chapter, and the Transition Assistance Program.

§ 631.38 State by-pass authority.

(a)(1) In the event that a substate grantee fails to submit a plan, or submits a plan which is not approved by the Governor (see § 631.50(f) of this part), the Governor may direct the expenditure of funds allocated to the substate area.

(2) The Governor's authority under this paragraph (a) to direct the expenditure of funds remains in effect only until such time as a plan is submitted and approved, or a new substate grantee is designated. (Section 313(c).)

(3) The Governor shall not direct the expenditure of funds under this paragraph (a) until after the affected substate grantee has been afforded advance written notice of the Governor's intent to exercise such authority and an opportunity to appeal to the Secretary pursuant to the provisions of subpart D of part 628 of this chapter.

(b)(1) If a substate grantee fails to expend funds allocated to it in accordance with its plan, the Governor, subject to appropriate notice and opportunity for comment in the manner required by section 105(b)(1), (2), and (3) of the Act, may direct the expenditure of funds only in accordance with the substate plan.

(2) The Governor's authority under this paragraph (b) to direct the expenditure of funds remain in effect only until:

(i) The substate grantee corrects the failure;

(ii) The substate grantee submits an acceptable modification; or

(iii) A new substate grantee is designated. (Sections 313 (a) and (d).)

(3) The Governor shall not direct the expenditure of funds under this paragraph (b) until after the affected substate grantee has been afforded advance written notice of the Governor's intent to exercise such authority, and an opportunity to appeal to the Secretary pursuant to the provisions of § 628.5(c) of this chapter.

(c) When the substate area is the State, the Secretary shall have the same authority as the Governor under paragraphs (a) and (b) of this section.

Subpart E—State Programs

§ 631.40 State program operational plan.

(a) The Governor shall submit to the Secretary biennially, in accordance with instructions issued by the Secretary, a State program operational plan describing the specific activities, programs and projects to be undertaken with the funds reserved by the Governor under § 631.32(c) of this part.

(b) The State program operational plan shall include a description of the mechanisms established between the Federal-State Unemployment Compensation System, the Trade Adjustment Assistance Program, the State Employment service and programs authorized under title III of the Act and this part to coordinate the identification and referral of dislocated workers and the exchange of information.

§ 631.41 Allowable State activities.

(a) States may use funds reserved under § 631.32(c) of this part, subject to the provisions of the State biennial and program operational plans, for:

(1) Rapid response assistance;

(2) Basic readjustment services when undertaken in Statewide, regional or industrywide projects, or, initially, as part of rapid response assistance;

(3) Retraining services, including (but not limited to) those in section 314(d) of the Act when undertaken in Statewide, industrywide and regional programs;

(4) Coordination with the unemployment compensation system, in accordance with § 631.37(b) of this part;

(5) Discretionary allocation for basic readjustment and retraining services to provide additional assistance to substate areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or a modification thereof;

(6) Incentives to provide training of greater duration for those who require it; and

(7) Needs-related payments in accordance with section 315(b) of the Act.

(b) Activities will be coordinated with other programs serving dislocated workers, including training under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) and part 617 of this chapter.

(c) Where appropriate, State-level activities should be coordinated with activities and services provided by substate grantees.

(d) Retraining services provided to individuals with funds available to a State should be limited to those individuals who can most benefit from and are in need of such services.

(e) Other than basic and remedial education, literacy and English for non-English speakers training, retraining services provided with funds available to a State shall be limited to those for occupations in demand in the area or another area to which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

(f) Services provided to displaced homemakers should be part of ongoing programs and activities under title III and this part and not separate and discrete programs.

(g) Basic readjustment services described in § 631.3(b)(1), provided to individuals who have not received a specific notice of termination or layoff and work at a facility at which the employer has made a public announcement that such facility will close, shall to the extent practicable be funded by the State with funds reserved under § 631.32(c). (Section 314(h).)

(h) The provisions of section 107(a), (b) and (e) of the Act (but not subsections (c) and (d) of section 107) and subpart D of part 627 of this chapter apply to State selection of service providers for funded activities authorized in § 631.32(c) of this part.

Subpart F—Substate Programs

§ 631.50 Substate plan.

(a) In order to receive an allocation of funds under § 631.32 of this part, the substate grantee shall submit to the Governor a substate plan, in accordance with instructions issued by the Governor. Such plan shall meet the requirements of this section and shall be approved by the Governor prior to funds being allocated to a substate grantee.

(b) The Governor shall issue instructions and schedules that assure that substate plans and plan modifications conform to all requirements of the Act and this part and contain the statement required by section 313(b) of the Act.

(c) Substate plans shall provide for compliance with the cost limitation provisions of § 631.14 of this part.

(d) The SJTCC or HRIC shall review and submit to the Governor written comments on substate plans.

(e) Prior to the submission of the substate plan to the Governor, the substate grantee shall submit the plan to the parties to the agreement described in § 631.35(c) of this part for review and comment. (Section 313(a).)

(f) The Governor's review and approval (or disapproval) of a substate plan or plan modification, and appeals to the Secretary from disapprovals thereof, shall be conducted according to the provisions of section 105 of the Act and subpart D of part 628 of this chapter. (Section 313(c).)

(g) If a substate grantee fails to meet the provisions for plan submission and approval found in this section, the Governor may exercise the by-pass authority set forth at § 631.38 of this part.

(h) When the substate area is the State, the substate plan (and plan modification(s)) shall be submitted by the Governor to the Secretary. The dates for submission and consideration and the Secretary's review and approval (or disapproval) of the plan or plan modification, and appeals to administrative law judges from disapproval thereof, shall be conducted according to the provisions of subpart D of part 628 of this chapter.

§ 631.51 Allowable substate program activities

(a) The substate grantee may use JTPA section 302(c)(1), (c)(2), and (d) funds allocated by the Governor under § 631.32 of this part for basic readjustment services, retraining services, supportive services and needs-related payments.

(b) The provisions of subpart D of part 627 of this chapter (procurement, cost principles and allowable costs) apply to funds allocated to substate grantees under this part unless otherwise specifically provided for.

(c) Other than basic and remedial education, literacy and English for non-English speakers training, retraining services provided with funds available to a substate area shall be limited to those for occupations in demand in the area or another area to which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

(d) Retraining services provided to individuals with funds available to a substate area should be limited to those individuals who can most benefit from and are in need of such services. (Sections 312(e) and 141(a).)

§ 631.52 Selection of service providers.

(a) The substate grantee shall provide authorized JTPA title III services within the substate area, pursuant to an agreement with the Governor and in accordance with the approved State plan and substate plan, including the selection of service providers.

(b) The substate grantee may provide authorized JTPA Title III services directly or through contract, grant, or agreement with service providers. (Section 312(d).)

(c) Services provided to displaced homemakers should be part of ongoing programs and activities under title III of the Act and this part and not separate and discrete programs.

(d) The provisions of section 107 (a), (b), (c) and (e) of the Act and subpart D of part 627 of this chapter apply to substate grantee selection of service providers as specified in this section.

§ 631.53 Certificates of continuing eligibility.

(a) A substate grantee may issue to any eligible dislocated worker who has applied for the program authorized in this part a certificate of continuing eligibility. Such a certificate of continuing eligibility:

(1) May be effective for periods not to exceed 104 weeks,

(2) Shall not include any reference to any specific amount of funds,

(3) Shall state that it is subject to the availability of funds at the time any such training services are to be provided, and

(4) Shall be non-transferable.

(b) Acceptance of a certificate of continuing eligibility shall not be deemed to be enrollment in training.

(c) Certificates of continuing eligibility may be used, subject to the conditions included on the face of the certificate, in two distinct ways:

(1) To defer the beginning of retraining: Any individual to whom a certificate of continuing eligibility has been issued under paragraph (a) of this section shall remain eligible for retraining and education services authorized under this part for the period specified in the certificate, notwithstanding the definition of "eligible dislocated worker" in section 301(a) of the Act or the participant eligibility provisions in § 631.3 of this part, and may use the certificate in order to receive retraining services, subject to the limitations contained in the certificate; or

(2) To permit eligible dislocated workers to seek out and arrange their own retraining with service providers approved by the substate grantee; retraining provided pursuant to the certificate shall be in accord with requirements and procedures established by the substate grantee and shall be conducted under a grant, contract, or other arrangement between the substate grantee and the service provider.

(d) Substate grantees shall ensure that records are maintained showing to whom such certificates of continuing eligibility have been issued, the dates of issuance, and the number redeemed by the substate grantees.

Subpart G—Federal Delivery of Dislocated Worker Services Through National Reserve Account Funds

§ 631.60 General.

Of the funds appropriated for title III of the Act, 20 percent (less those amounts allotted in accordance with section 302(e) of the Act) shall be used for Federal responsibilities, described in section 323 of the Act. Subject to the provisions of section 324 of the Act, the Secretary may reserve funds under this part for awards to entities submitting applications for such funds based upon selection criteria published by the Secretary. The Secretary may utilize reserve funds to provide additional assistance to States to assist the States in carrying out programs under this part.

§ 631.61 Application for funding and selection criteria.

To qualify for consideration for funds reserved by the Secretary for activities

under section 323 of the Act, applications shall be submitted to the Secretary pursuant to instructions issued by the Secretary specifying application procedures, selection criteria, and approval process. Separate instructions will be issued for each category of grant awards, as determined by the Secretary.

§ 631.62 Cost limitations.

The expenditure of funds provided to grantees under this subpart shall be consistent with the cost limitations specified in section 315 of the Act and described in paragraphs (a), (b) and (c) of § 631.14 of this part, except as provided in the instructions under § 631.61.

§ 631.63 Reporting.

(a) Grantees under part B of title III of the Act shall submit reports as prescribed by the Secretary.

(b) Significant developments: Grantees shall notify the Secretary of developments that have a significant impact on the grant or subgrant supported activities, including problems, delays, or adverse conditions which may materially impair the ability to meet the objectives of the project. This notification shall include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

§ 631.64 General administrative requirements.

(a) Activities under this subpart may be carried out and funding provided directly to grantees other than States.

(b) All grantees and subgrantees under this subpart which are States or substate grantees are subject to the provisions in part 627 of this chapter.

(c) For grantees other than States and substate grantees, the following provisions shall apply to grants under this subpart.

(1) *Grievance procedures.* (i) Each grantee shall establish and maintain a grievance procedure for grievances or complaints about its programs and activities from participants, subgrantees, subcontractors, and other interested persons. Hearings on any grievance shall be conducted within 30 days of filing of a grievance and decisions shall be made not later than 60 days after the filing of a grievance. Except for complaints alleging fraud or criminal activity, complaints shall be made within one year of the alleged occurrence.

(ii) Grantees shall be subject to the provisions of section 144 of the Act, 29 CFR part 97 and 41 CFR part 29–70.

(iii) If the grantee is already subject to the grievance procedure process and requirements established by the Governor (*i.e.*, through another JTPA grant, subgrant, or contract), its adherence to that procedure shall meet the requirements of this paragraph (c)(1).

(2) *Uniform Administrative Standards.* Grantees shall be subject to the standards and requirements described in 29 CFR Part 97 or 41 CFR parts 29–70 (1984 ed.), as appropriate, as well as any additional standards prescribed in grant documents or Secretarial guidelines. If the grantee/subgrantee is already subject to additional standards established by the Governor (*i.e.*, through another JTPA grant, subgrant, or contract), its adherence to those standards shall meet the requirements of this paragraph (c)(2).

Subpart H—[Reserved]

Subpart I—Disaster Relief Employment Assistance

§ 631.80 Scope and purpose.

This subpart establishes a Disaster Relief Employment Assistance program under title IV, part J of JTPA which shall be administered in conjunction with the title III National Reserve Grants Programs.

§ 631.81 Availability of funds.

Funds appropriated to carry out this part may be made available by grant to the Governor of any State within which is located an area that has suffered an emergency or a major disaster as defined in paragraphs (1) and (2), respectively, of section 102 of the Disaster Relief Act of 1974 (42 U.S.C. 5122 (1) and (2)) (referred to in this subpart as the "disaster area"). The Secretary shall prescribe procedures for applying for funds.

§ 631.82 Substate allocation.

(a) Not less than 80 percent of the grant funds available to any Governor under § 631.81 of this part shall be allocated by the Governor to units of general local government located, in whole or in part, within such disaster areas. The remainder of such funds may be reserved by the Governor for use, in concert with State agencies, in cleanup, rescue, repair, renovation, and rebuilding activities associated with such major disaster.

(b) The JTPA title III program SSG for the disaster area shall be designated local entity for administration of the grant funds under this subpart.

§ 631.83 Coordination.

Funds made available under this subpart to Governors and units of general local government shall be expended in consultation with—

(a) Agencies administering programs for disaster relief provided under the Disaster Relief Act of 1974; and

(b) The JTPA title II administrative entity and the private industry council in each service delivery area within which disaster employment programs will be conducted under this subpart.

§ 631.84 Allowable projects.

Funds made available under this subpart to any unit of general local government in a disaster area—

(a) Shall be used exclusively to provide employment on projects to provide food, clothing, shelter and other humanitarian assistance for disaster victims; and on projects regarding demolition, cleanup, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area; and

(b) May be expended through public and private non-profit agencies and organizations engaged in such projects.

§ 631.85 Participant eligibility.

An individual shall be eligible to be offered disaster employment under this subpart if such individual is—

(a)(1) Eligible to participate, enroll, or is a participant or enrolled, in a program under title III of the Act, other than an individual who is actively engaged in a training program; or

(2) Eligible to participate in programs or activities through the Native American and Migrant programs; or

(3) Unemployment as a consequence of the disaster.

(b) [Reserved]

§ 631.86 Limitations on disaster relief employment.

No individual shall be employed under this subpart for more than 6 months for work related to recovery from a single natural disaster (described in § 631.3(f) of this part.

§ 631.87 Definitions.

As used in this subpart, the term "unit of general local government" includes:

(a) In the case of a community conducting a project in an Indian reservation or Alaska Native village, the grantee designated under the JTPA Section 401 Indian and Native American Program (see part 632 of this chapter), or a consortium of such grantees and the State; and

(b) In the case of a community conducting a project in a migrant or seasonal farmworker community, the grantee designated under the JTPA Section 402 Migrant and Seasonal

Farmworker Program (see part 633 of this chapter), or a consortium of such grantees and the State.

7. Part 637 is revised to read as follows:

PART 637—PROGRAMS UNDER TITLE V OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.
637.100 Scope and purpose.
637.105 Definitions.

Subpart B—Program Planning and Operation

637.200 Allotments to States.
637.205 Notice of intent to participate.
637.210 Incentive bonus program applications.
637.215 Review and approval of applications for incentive bonus payments.
637.220 Eligibility criteria for individuals to be counted in determining incentive bonuses.
637.225 Determination of incentive bonus.
637.230 Use of incentive bonuses.

Subpart C—Additional Title V Administrative Standards and Procedures

637.300 Management systems, reporting and recordkeeping.
637.305 Federal monitoring and oversight.
637.310 Audits.

Subpart D—Data Collection [Reserved]

Authority: 29 U.S.C 1579(a); 29 U.S.C. 1791i(e).

Subpart A—General Provisions

§ 637.100 Scope and purpose.

(a) This part implements title V of the Act which creates a program to provide incentive bonuses to States for providing certain employable dependent individuals with job training to reduce welfare dependency, to promote self-sufficiency, to increase child support payments, and to increase employment and earnings (section 501).

(b) This part applies to programs operated with funds under title V of the Job Training Partnership Act.

§ 637.105 Definitions.

In addition to the definitions contained in sections 4, 301, 303(e), and in § 626.4 of this chapter, the following definitions apply to the administration of title V of the Act and this part:

Absent parent means an individual who is continuously absent from the household and who is a non-custodial parent of a dependent child receiving aid to families with dependent children (AFDC) under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).

Disability assistance means benefits offered pursuant to title XVI of the Social Security Act, relating to the supplemental security income program.

Federal contribution means the amount of the Federal component of cash payments to individuals within the participating State under welfare and/or disability assistance programs, including part A of title IV of the Social Security Act.

Subpart B—Program Planning and Operation

§ 637.200 Allotments to States.

(a) For each program year for which funds are appropriated to carry out programs under this part, the Secretary shall pay to each participating State the amount the State is eligible to receive in accordance with this part. No payments shall be made for any years for which funds are not appropriated and/or not available (section 502(a)).

(b) If the appropriation is not sufficient to pay to each State the amount it is eligible to receive in accordance with this part, the State shall receive a percentage of the total available funds equal to the percentage of its bonus compared to the national total of bonuses (section 502(b)).

(c) If an additional amount is made available after the application of paragraph (b) of this section, such additional amount shall be allocated among the States by increasing payment in the same manner as was used to reduce payment, except that no State shall be paid an amount which exceeds the amount to which it is eligible (section 502(c)).

§ 637.205 Notice of intent to participate.

(a) Any State seeking to participate in the incentive bonus program shall notify the Secretary of its intent to do so no later than 30 days before the beginning of its first program year of participation (i.e., June 1) (section 505(a)).

(b) Pursuant to instructions issued by the Secretary, the notification referenced in paragraph (a) of this section shall be in the form of a letter from the Governor to the Secretary advising the Secretary of the State's intention to apply for, receive and expend bonuses under this program in a manner consistent with this part (section 505(b)).

(c) After the State's submission of a notice of intent to participate, incentive bonuses may be claimed by a State for any individual who:

(1)(i) Was an absent parent of any child receiving AFDC at the time such individual was determined to be eligible for participation in programs under the Act;

(ii) Has participated in education, training, or other activities (including the Job Corps) funded under the Act; and

(iii) Pays child support for a child specified in paragraph (c)(1) of this section following termination from activities funded under the Act; or

(i) Is blind or disabled;

(ii) Was receiving disability assistance at the time such individual was determined to be eligible for participation in programs under the Act;

(iii) Has participated in education, training, or other activities (including the Job Corps) funded under the Act; and

(iv) Earns from employment a wage or an income (section 506).

(d) A Governor may withdraw the State's participation in the incentive bonus program in any program year by submitting a written notice of withdrawal.

§ 637.210 Incentive bonus program applications.

(a) Any State seeking to receive an incentive bonus under this title shall submit an Incentive Bonus Program application pursuant to instructions issued by the Secretary that will contain the criteria for approval of such application. Each application shall contain, at a minimum, the following information:

(1) A list of eligible individuals who met the requirements of § 637.14 of this part during the program year;

(2) The amount of the incentive bonus attributable to each eligible individual who is claimed by the State; and

(3) A statement certifying the availability of documentation to verify the eligibility of participants and the amount of the incentive bonus claimed by the State (section 505(b)).

(b) Such application for any program year shall be submitted by the State to the Secretary no later than August 31 following the end of the program year for which the bonus is being claimed. A copy of such application shall also be submitted at the same time to the appropriate DOL Employment and Training Administration Regional Office.

§ 637.215 Review and approval of applications for incentive bonus payments.

(a) The Secretary shall review all applications for overall compliance with JTPA, the requirements of this part, and the instructions issued by the Secretary.

(b) The Secretary shall inform a State within 30 days after receipt of the application as to whether or not its application has been approved.

(c) If the application is not approved, the Department shall issue an initial notice of denial of payment indicating

the reasons for such denial. The Governor will then have 30 days to respond to the reasons for the denial before a final decision is made.

(d) If the Department determines that the additional information provided does not adequately respond to the questions raised in the initial review process, a final denial of payment shall be issued. The Governor may then appeal the decision in accordance with the procedures at subpart H of part 627 of this chapter (sections 504(c) and 505(c)).

§ 637.220 Eligibility criteria for individuals to be counted in determining incentive bonuses.

An individual shall be eligible to be counted as part of the State's request for an incentive bonus payment under this part if the individual:

(a)(1) Was an absent parent of any child receiving AFDC at the time such individual was determined to be eligible for participation in programs under the Act;

(2) Has participated in education, training, or other activities (including the Job Corps) funded under the Act; and

(3) Pays child support for a child specified in paragraph (a)(1) of this section following termination from activities funded under the Act; or

(b)(1) Is blind or disabled;

(2) Was receiving disability assistance at the time such individual was determined to be eligible for participation in programs under the Act;

(3) Has participated in education, training, or other activities (including the Job Corps) funded under the Act; and

(4) Earns from employment a wage or an income (section 506).

§ 637.15 Determination of incentive bonus.

The amount of the incentive bonus to be paid to each State shall be the total of the incentive bonuses claimed for each eligible individual within the State. The amount of the incentive bonus to be paid each State shall be determined by the sum of

(a) An amount equal to the total of the amounts of child support paid by each individual who is eligible under § 637.14(a) of this part, for up to 2 years after such individual's termination from JTPA; and,

(b) An amount equal to the total reduction in the Federal contribution to the amounts received under title XVI of the Social Security Act (42 U.S.C. 1381 *et seq.*) by each individual who is eligible under § 637.14(b) of this part, for up to 2 years after such individual's termination from JTPA (section 503).

§ 637.230 Use of incentive bonuses.

(a) During any program year, the Governor may use an amount not to exceed 5 percent of the State's total bonus payment for the administrative costs incurred under this program, including data and information collection and compilation, recordkeeping, or the preparation of applications for incentive bonuses (section 504(a)(1)(A)).

(b) The remainder, not less than 95 percent of the incentive bonuses received, shall be distributed to SDAs and Job Corps Centers within the State in a manner consistent with an agreement between the Governor and these SDAs and centers. This agreement shall reflect an equitable method of distribution which is based on the degree to which the effort of the SDA and/or Center contributed to the State's qualification for incentive bonus funds under title V (section 504(a)(1)(B)).

(c) Not more than 10 percent of the incentive bonus received in any program year by each SDA and/or Job Corps Center may be used for the administrative costs of establishing and maintaining systems necessary for operation of programs under title V, including the costs of providing incentive payments described in paragraph (d) of this section, technical assistance, data and information collection and compilation, management information systems, post-program followup activities, and research and evaluation activities (section 504(a)(2)).

(d) Each SDA and/or Job Corps Center may make incentive payments to service providers, including participating State and local agencies, and community-based organizations, that demonstrate effectiveness in delivering employment and training systems to eligible individuals under this title (section 504(b)).

(e) All remaining funds received by each SDA shall be used for activities described in sections 204 and 264 of JTPA and shall be subject to regulations governing the operation of programs under titles II–A and II–C of JTPA. All remaining funds received by each Job Corps Center shall be used for activities authorized under part B of title IV (section 504(a)(2)).

Subpart C—Additional Title V Administrative Standards and Procedures

§ 637.300 Management systems, reporting and recordkeeping.

(a) The Governor shall ensure that the State's financial management system and recordkeeping system comply with subpart D of part 627 of this chapter.

(b) Notwithstanding the provisions of § 629.36 of this chapter, the Governor shall report to the Secretary pursuant to instructions issued by the Secretary regarding activities funded under this part. Reports shall be required semi-annually and annually. Reports shall be provided to the Secretary within 45 calendar days after the end of the report period.

(c) The Governor shall assure that appropriate and adequate records are maintained for the required time period to support all incentive bonus payment applications. Such records shall include documentation to support individuals' eligibility under this part.

§ 637.305 Federal monitoring and oversight.

The Secretary shall conduct oversight of the programs and activities conducted in accordance with this part.

§ 637.310 Audits.

The Governor shall ensure that the State complies with the audit provisions at § 629.42 of this chapter.

Subpart D—Data Collection [Reserved]

Signed at Washington, DC, this 17th day of December 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–31075 Filed 12–28–92; 8:45 am]

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 316
Orphan Drug Regulations: Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 316

[Docket No. 85N-0483]

RIN 0905-AB55

Orphan Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations to implement section 2 of the Orphan Drug Act, which consists of four sections added to the Federal Food, Drug, and Cosmetic Act (the act). In the Federal Register of January 29, 1991 (56 FR 3338), the agency proposed regulations to implement this section of the Orphan Drug Act. The Orphan Drug Act directs FDA to provide written recommendations on studies required for approval of a marketing application for an orphan drug. It also provides for the designation of drugs, including antibiotics and biological products, as orphan drugs when certain conditions are met, and it provides conditions under which a sponsor of an approved orphan drug enjoys exclusive approval for that drug for the orphan indication for 7 years following the date of the drug's marketing approval. Finally, section 2 of the Orphan Drug Act encourages sponsors to make orphan drugs available for treatment on an "open protocol" basis before the drug has been approved for general marketing. This action will benefit consumers by encouraging manufacturers to develop and make available to patients drugs for diseases and conditions that are rare in the United States.

EFFECTIVE DATE: January 28, 1993.

FOR FURTHER INFORMATION CONTACT: Emery J. Sturniolo, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4718.

SUPPLEMENTARY INFORMATION:

I. Background

In enacting the Orphan Drug Act (Pub. L. 97-414), Congress required FDA to issue regulations for the implementation of sections 525 and 526 (21 U.S.C. 360aa-360bb) that the Orphan Drug Act added to the act. These sections relate to written FDA recommendations on studies required for approval of marketing applications for orphan drugs and for the designation of eligible drugs as orphan drugs. Accordingly, in the Federal Register of January 29, 1991 (56 FR 3338), FDA issued a notice of proposed rulemaking entitled "Orphan Drug Regulations" for the implementation of these sections as well as for the implementation of sections 527 and 528 of the act (21 U.S.C. 360cc-360dd), which relate to exclusive marketing for orphan drugs and the encouragement of sponsors to make orphan drugs available for treatment on an "open protocol" basis before the drug has been approved for general marketing. This notice of proposed rulemaking will hereinafter be referred to as the "NPRM."

FDA announced that the proposed regulations codified existing administrative practices implementing the Orphan Drug Act as amended. The agency noted that the proposed regulations would, where possible, attempt to ensure that the act's incentives were available only when they would further the purposes of the Orphan Drug Act and that the act should never be used to block significant improvements in the treatment of rare diseases.

II. Summary of and Response to Comments

In response to FDA's NPRM, the agency received 40 public comments. Most comments came from either companies or trade associations of companies that are marketing or hope to market orphan drugs and from two associations representing patients with rare diseases or conditions. FDA has responded to all comments that were received and filed in FDA's Dockets Management Branch. Most comments are considered in the numerical order of the proposed sections to which they are related.

A. General Comments on the Preamble

1. One comment addressed the following statement in the Preamble: "FDA proposes that this regulation, when final, will apply only prospectively. Therefore, FDA does not plan to reconsider any prior actions under the Orphan Drug Act, or change any orphan-drug status, to conform to the final regulation." (See NPRM, section II.B., paragraph 18). The comment expressed the fear that the prospective-only application of the regulation might mean that FDA would be unable to approve a clinically superior subsequent drug otherwise identical to a pioneer that had been approved and obtained orphan drug exclusive marketing prior to the effective date of this rule.

FDA advises that the fear expressed in the comment is groundless. FDA meant only to rule out reconsideration of previous drug designation and approval decisions. FDA did not mean that it would refuse to approve a clinically superior drug that might not have been approvable prior to promulgation of this rule.

2. Another comment objected to the use of the proposed rule as operational policy prior to issuance of final regulations. The comment argued that the final rule should not apply retrospectively to drugs that held orphan designation prior to the effective date of the final rule.

FDA has not relied on the proposed rule to dictate operational policy during the interim period between the publication of the NPRM and the publication of this final rule. However, FDA decision's during this period have as a matter of fact been consistent with the provisions of the proposed rule. As to retrospective application of the proposed rule, FDA does not regard the application of these regulations to already designated drugs as a retrospective application as long as FDA does not reconsider previous decisions concerning these drugs.

3. One comment stated that designated orphan drugs should be exempt from all investigational new drug application (IND), new drug application (NDA), product license application (PLA), and Establishment License Application (ELA) user fees, as user fees for review of these drugs would be inconsistent with the intent of the Orphan Drug Act.

FDA advises that the question of user fees is outside the purview of this regulation. However, in the future, when and if user fees are considered, designated orphan drugs will be considered for exemption from them.

4. Several comments urged that marketing applications for drugs whose approvals are temporarily barred by the exclusive marketing provisions of the Orphan Drug Act nevertheless be completely reviewed so that they may be quickly approved upon the expiration of the 7 years' exclusive marketing period.

FDA advises that, once the agency determines that approval of a drug would be temporarily barred by the exclusive marketing provisions of the Orphan Drug Act, the timing of the review will be decided on a case-by-case basis by the appropriate division of the Center for Biologics Evaluation and Research or the Center for Drug Evaluation and Research. Such decisions will be based on time and resource considerations as well as on

the complexity of information to be considered.

5. Some comments argued that the proposed regulations go too far in protecting exclusive marketing rights, while other comments argued that they do not go far enough.

On the whole, based on the legislative history of the Orphan Drug Act and FDA's understanding of its purposes, the agency came to its conclusions by seeking as much as possible to protect the incentives of the Orphan Drug Act without allowing their abuse. FDA believes the final rule achieves the best balance possible between protecting exclusive marketing rights and fostering competition.

B. Sameness Versus Difference

6. One comment suggested that proposed § 316.3(b)(3)(ii) be amended to include a reference to "severe" adverse reactions in addition to "frequent" adverse reactions. Another comment suggested substituting the word "meaningful" for "substantial" in the same paragraph and substituting the phrase, "clinically significant adverse effects" for "relatively frequent effects."

FDA has carefully considered the suggested changes and concludes that it will not amend the final rule as requested because the proposed changes would not add to the clarity of the regulation. The use of the words, "frequent," "meaningful," and "relatively frequent adverse effects" are intended as examples of considerations that might be relevant in determining clinical superiority and are not intended as the only routes to demonstrating greater safety of a drug. FDA's decision not to use the suggested words and phrases does not mean that FDA would not consider less severe adverse reactions in a meaningful portion of the target population or a diminution of clinically significant adverse effects as being evidence of greater safety.

7. One comment pointed out that § 316.3(b)(13)(i) and (b)(13)(ii) should both use the phrase, "intended for the same use," which was used in proposed § 316.3(b)(13)(i) but was omitted from paragraph (b)(13)(ii).

FDA agrees, and the phrase, "intended for the same use," which was inadvertently omitted, has been added to § 316.3(b)(13)(ii).

8. Another comment stated that § 316.3(b)(3)(i) refers to "the same kind of evidence to support a comparative effectiveness claim for two different drugs." The comment asked that FDA make clear that the standard in the NPRM will be consistent with FDA's prescription drug advertising standard, which requires a showing of clinical significance of the claim.

FDA believes that it is more accurate to draw a comparison between the clinical superiority standard in this rule with FDA's standards for use of such claims in prescription drug labeling found in 21 CFR 201.57(c)(3)(v) (as distinguished from drug standards for advertising).

9. Several comments asked that examples be provided and the difference between "minor" and "major" convenience be clarified as stated in the NPRM preamble statement (section II.E. (56 FR 3341 at 3343)) "This third basis for finding a subsequent drug to be clinically superior is intended to constitute a narrow category, and its proposed use is not intended to open the flood gates to FDA approval for every drug for which a minor convenience over and above that attributed to an already approved orphan drug can be demonstrated."

FDA does not believe that it can anticipate all or even most possible bases for categorizing some contributions as major and others as minor. Each will vary with the facts. Hence, examples could be as misleading as they could be helpful.

10. Another comment proposed that the concept of "active moiety" be applied to macromolecular products as well as to micromolecular products and that differences in active moieties by themselves be used as the sole criterion for establishing product differences.

FDA disagrees, because it does not believe that the concept of active moiety, as used for small molecules, is useful for macromolecular entities. For micromolecular products, the active moiety is the whole covalently bound part of the molecule that is active. This means that it generally consists of all of the molecule except added parts that make it a salt or ester. Essentially, any change in covalent structure creates a new active moiety whose properties may well differ from the old active moiety. With macromolecules, it would be trivially easy to make minor covalent changes that would leave the activity of the drug unaltered, but would create a "different drug" if the micromolecular definition of active moiety were to be used. This would render exclusive marketing of macromolecular drugs meaningless and would decrease incentives to develop orphan drugs. When such a change is meaningful, of course, it deserves, and under the rule would gain, exclusive marketing.

11. A comment suggested that FDA should assume that macromolecular drugs made by different manufacturers are by definition different.

FDA strongly disagrees, because this would result in a de facto exclusion of all biological products from eligibility for exclusive marketing rights, the major incentive of the Orphan Drug Act. Regardless of how similar they were to each other, each sponsor's drug would be entitled to exclusive marketing, or, put another way, would not be kept from marketing by the exclusive marketing status of the prior drug, rendering such status meaningless for these drugs. Because macromolecules, and particularly recombinant products, offer great promise for the diagnosis and treatment of rare diseases and conditions, and because FDA does not believe that Congress intended to eliminate them from the operation of the Orphan Drug Act's exclusive marketing incentive, FDA will not consider every drug manufactured by a different manufacturer to be different for purposes of the act. This matter was fully discussed in the preamble to the NPRM (56 FR 3341 through 3343.)

12. Another comment suggested that the rule should define the term, "arbitrary," (as used in the NPRM, section II.B (56 FR 3339)) and provide examples for greater ease in determining what is "salami slicing" or artificial and medically implausible subsets.

FDA believes that the term "arbitrary" needs no further explanation. The NPRM by implication defines the term "arbitrary" as "medically implausible." Setting forth examples could mislead as easily as it could assist because every FDA decision on arbitrariness would necessarily be highly fact dependent.

13. A comment proposed that:

> * * * closely related, complex partly definable drugs with similar therapeutic intent be considered the same if they are derived from the same source and manufactured by a similar process, such as two live viral vaccines for the same indication, would be considered the same drug unless the subsequent drug were shown to possess different quantitive in vitro biologic activity or to be clinically superior.

FDA disagrees. Whereas a difference in in vitro quantitative biologic activity may constitute part of the evidence needed to support a claim of clinical superiority, it will not normally suffice for that purpose. Because such differences do not all correlate with clinical superiority, if no such correlation is independently proven with respect to an orphan drug, no meaningful difference for purposes of the Orphan Drug Act will have been shown. In addition, FDA sees no significance for purposes of the Orphan Drug Act with regard to the source from which the drugs are derived and the processes by which they are

manufactured, unless such factors lead to clinical superiority.

14. Another comment suggested that the NPRM preamble could be read to indicate that glycosylation is not a post-translational modification.

FDA certainly did not intend such a meaning and takes this opportunity to make clear that it views glycosylation as a post-translational modification.

15. The comment addressed in the previous paragraph also stated the view that, under the proposed rule, clinical superiority will always lead to approval of a subsequent drug.

FDA agrees with the comment's viewpoint. Assuming that a subsequent drug's marketing application is otherwise approvable, FDA will not interpret the Orphan Drug Act to block approval of any drug proved to be clinically superior to a drug with currently effective exclusive marketing rights.

16. One comment noted a disparity between: (1) FDA's firmness in requiring comparative clinical trials to demonstrate greater efficacy, and (2) FDA's stated intent to enforce such a requirement only "in some cases" to demonstrate safety.

FDA agrees that reliable information on safety differences may require comparative trials. Valid safety information may, however, come from other sources as well; the agency believes that the requirements for approving a drug because it is safer than an approved orphan drug may not always need to include the conduct of comparative clinical trials.

17. Two comments questioned why FDA treats micromolecular drugs and macromolecular drugs differently.

As discussed in comment 10, and in detail in the NPRM, FDA does not believe that the concept of active moiety, which has been useful when applied to micromolecular drugs, is adequate to deal with the different situation that obtains with macromolecular drugs.

18. Two comments challenged the use of the concept of clinical superiority, contending that the criteria for demonstrating it are insufficiently clear. Also, the comments noted that, to a sick patient, removing even a minor adverse reaction can result in clinical superiority.

FDA agrees that a small demonstrated improvement in efficacy or diminution in adverse reactions may be sufficient to allow a finding of clinical superiority. Despite the agency's inability to define "clinical superiority" as precisely as some would like, the agency believes that it is a useful concept.

FDA also believes that it constitutes the best tool for giving effect to the intent of Congress to provide incentives for potential sponsors to develop safer and more effective orphan drugs.

19. A comment suggested that, as proof of clinical superiority, FDA should always require a demonstration of it in rigorous double-blind, head-to-head comparative clinical trials such as those required to support other comparative safety and efficacy claims. Such studies, according to the comment, should be done using the licensed product and the subsequent product formulated with the same biologically active units and the same excipients.

While randomized double-blind, concurrently controlled clinical trials are usually the most reliable sources of evidence, other kinds of studies can be considered adequate and well-controlled studies within the meaning of (21 CFR 314.126) to support a finding of clinical superiority. This final rule should not preclude that possibility even if concurrently controlled trials will usually be needed. As stated, the kinds of data needed to demonstrate clinical superiority for purposes of the Orphan Drug Act will be the same as the kinds of data required to allow label claims of superiority.

20. Two comments suggested that, for drugs indicated for acquired immunodeficiency syndrome (AIDS) and other similar serious diseases, a lower does with little or no loss of effectiveness should qualify the drug as clinically superior.

FDA believes that a lower dose per se, without diminution of side effects or enhanced patient convenience should not constitute clinical superiority for purposes of this rule.

21. One comment argued that a subsequent drug should not be approved unless the subsequent drug is shown to be both "materially different" and clinically superior. Specifically, the comment stated, peptides which mimic the active sites of a protein drug should not be considered different from the protein drug.

FDA advises that, under "criterion 3," which states that "two drugs would be considered the same drug if the principal, but not necessarily all, structural features of the two drugs were the same, unless the subsequent drug were shown to be clinically superior" (NPRM, section II.E. (56 FR 3341 through 3342)), which the agency is adopting, either differences in active moiety or clinical superiority will be sufficient to make two micromolecular drugs different. With regard to macromolecular drugs, clinical superiority by itself will render a subsequent drug different. However, even if clinical superiority cannot be proven, macromolecular drugs may be different because of major differences in molecular structure apart from post-translational events. In other words, FDA believes that there are certain major differences in the chemical composition of drugs that make them different for purposes of the Orphan Drug Act regardless of whether they produce different clinical responses.

As to the peptide example, in order for a peptide that resembles a portion of a protein product to be considered a different drug, FDA will require a clear demonstration that the peptide is clinically superior to the entire protein.

22. One comment suggested that the final rule must state how much superiority would represent a major contribution to patient care.

There is no way to quantify such superiority in a general way. The amount and kind of superiority needed would vary depending on many factors, including the nature and severity of the disease or condition, the quality of the evidence presented, and diverse other factors.

23. Another comment argued that the concept of clinical superiority is neither supported by the act nor appropriately defined. Further, the comment argued that direct comparative clinical trials usually needed to demonstrate clinical superiority would be difficult because subjects would be scarce, the time to perform the trials would exceed the period of exclusive marketing, and the cost would be prohibitive.

Congress left it to FDA to define "such drug" as used in 21 U.S.C. 360cc and provided no guidance on the meaning of this term. Thus, it is within FDA's authority to define what is the "same" and what is a "different" drug. "Clinical superiority" is a rational and permissible means of making this distinction. FDA understands the difficulties inherent in proving clinical superiority but believes the requirement is necessary in order to protect the value of the primary incentive that Congress created in the Orphan Drug Act. If FDA allows exclusive marketing rights to be eliminated without evidence of clinical superiority or based on shoddy evidence, the incentive will be worthless.

24. Several comments argued that FDA must recognize the effect of price on access to patient care and urged that cost considerations must be used in determining whether a subsequent drug makes a major contribution to patient care. On the other hand, several other comments stated that cost should not be a factor in decisions about whether a

drug represents a major contribution to patient care.

FDA agrees with the latter comments. Although FDA understands that costs can indeed have a major impact on access to a drug, FDA has no authority over drug pricing or any authority to consider it in drug approval. Further, considering price as a factor in whether or not a drug makes a major contribution to patient care is problematic. If FDA could approve a drug because its relatively low cost were deemed to constitute a major contribution to patient care, there would be no effective tool that FDA could use to prevent the sponsor of the subsequent drug from quickly raising its price to the level of its competitor's price after approval.

25. Several comments suggested that FDA should liberally construe the concept, "major contribution to patient care." These comments advanced the following examples of factors that the comments would have the agency consider: convenient treatment location; duration of treatment; patient comfort; improvements in drug efficiency; advances in the ease and comfort of drug administration; longer periods between doses; and potential for self administration.

FDA agrees that these factors, when applicable to severe or life-threatening diseases, might sometimes be legitimately considered to bear on whether a drug makes a major contribution to patient care. However, this determination will have to be made on a case-by-case basis.

26. In contrast to the previous comments, three comments argued that the concept of "major contribution to patient care" should be narrowly construed so that only truly important differences could result in a finding of a "major contribution" if greater safety and/or effectiveness are not involved. The comments urged that minor improvements in patient convenience, such as a change that allows for home use of a drug for the first time, or "political considerations" should not qualify and that, in any case, head-to-head comparative clinical trials should be required.

Home use or improved patient access may or may not constitute a major contribution to patient care, depending on the drug and the nature of the disease, among other things. While comparative trials are, of course, preferred and will usually be required, it is possible that, in some circumstances, a demonstration of a major contribution to patient care can be made without such trials.

27. Several comments argued that a subsequent drug should be deemed to be clinically superior to the first approved drug if its delivery system results in enhanced compliance among patients who would otherwise experience compliance difficulties. Examples provided for variations in drug delivery warranting such a finding included: novel inhalation therapy; oral, intranasal, inhalational, transdermal vehicles of administration where intravenous means were once all that was available; innovative time-release delivery mechanisms; the availability of an improved delivery system that eliminates the risk of hemophilia B; and a new parenteral administration that permits once-a-day administration rather than four-times-a-day injections or infusions.

FDA agrees that a change in drug delivery systems might in some cases constitute a major contribution to patient care, but this can only be decided on a case-by-case basis, considering the nature of the disease or condition, the nature of the drug, the nature of the mode of administration, and other factors.

28. Three comments stated that investigational drugs that are significantly purer than approved drugs should be considered clinically superior without comparative clinical trials. An example provided was investigational factor IX products, which are 90 percent factor IX as compared to currently marketed factor IX products, which are only 10 percent factor IX.

If sponsors provide evidence to demonstrate that an improvement in purity will cause a drug to meet one or more of the criteria for clinical superiority, FDA will consider such evidence, which should normally include comparative clinical trials.

29. A comment argued that the NPRM ignores the precedent set in *Genentech* v. *Bowen and Young*, 676 F. Supp. 301 (D.D.C. 1987), in which the court allegedly held that one amino acid difference made a different drug. The comment argued that the final rule should reflect this alleged holding in order to allow FDA to fend off future legal challenges.

FDA disagrees with the comment's characterization of the *Genentech* v. *Bowen and Young* holding. In that case, the court held only the orphan-drug designation of a subsequent drug during the pioneer's period of exclusive marketing was lawful because the subsequent drug was of synthetic origin and did not present the danger of contamination with disease that the pioneer, which was manufactured from human cadavers, did. Although in that case it was argued that one amino acid difference made a different drug, the court never so held. For reasons described above (see comment 10) and in the NPRM, FDA has not adopted this principle in the final rule.

30. One comment suggested that differences in those parts of macromolecules demonstrated to be important for function should form the basis for determining whether two given molecules are different.

Although some changes in critical parts of the molecule, e.g., in the primary structure at the active site, would alter the function of the macromolecule, FDA does not agree that any change in the part of a molecule important for function should be considered a basis for defining a drug as different. Many changes, even in those parts of the molecule, would be of no significance. The agency believes that the changes that are of significance can be evaluated in preclinical laboratory and animal studies and in clinical trials, and, if they show promise of causing a chemically significant difference, the sponsor can develop the drug and demonstrate the difference. A showing of such a difference would represent a basis for approving the drug as a different drug.

31. Another comment urged FDA to develop a guidance document describing differences in amino acid sequence of a protein which would be considered "minor."

FDA declines to set forth hypothetical situations of the kind asked for, as such determinations will be highly fact-dependent.

32. One comment urged that function should play some role in defining when drugs composed of protein are the same. When drugs show similar qualitative activity that appears related to their effectiveness, in vivo or in vitro, the comment said, and the amino acid sequence of the subsequent product is coincident with that of the pioneer, the drug should be considered the same drug.

FDA agrees with the comment generally. Under the criterion 3 proposed for adoption in the NPRM (see comment 21), drugs with similar qualitative activity and similar amino acid sequence would not be considered different from the pioneer unless some clinical superiority could be demonstrated.

33. One comment urged that FDA should deem a drug different from the pioneer if FDA would require a full NDA with original supporting data before approving the subsequent drug. The comment found this approach preferable to "FDA's proposed mixture

of sometimes relying on physical structure, sometimes relying on functional effect, sometimes refusing to consider functional effect, and making presumptions about whether particular physical structures are likely to have a functional effect * * *."

In developing the NPRM, FDA considered deeming drugs to be different if the agency would normally require a full NDA or PLA with original supporting data before approving the subsequent drug. However, such a rule would make it too easy to break exclusive marketing by making small modifications in molecular structure or in the drug's indications, changes that would usually trigger a requirement for a full NDA. Indeed, for many complex macromolecular products, there is no degree of similarity that would lead to approval of an application without a full NDA or PLA. This would mean that most macromolecules would be ineligible for exclusive marketing rights, an outcome that, for reasons described above, does not seem compatible with the purpose of the Orphan Drug Act.

34. One comment requested that FDA make available the report of the Institute of Medicine, National Academy of Sciences (IOM) concerning issues discussed in section II.E. of the NPRM, i.e., reasonable criteria for identifying drugs as different for purposes of determining orphan-drug exclusive marketing rights.

The report of this workshop, held on November 19, 1990, is available from National Academy Press (Report of a Workshop, "Microheterogeneity of Biological Macromolecules," Forum on Drug Development, 1991. Division of Health Science Policy, Institute of Medicine, National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418).

As was mentioned in the preamble to the proposed rule (56 FR 3338 at 3343), FDA's choice of the third criterion (NPRM, section II.E. (56 FR 3338 at 3341 through 3342)) in the NPRM and in this final rule is consistent with the discussions at the IOM's "Workshop on Microheterogeneity of Biological Macromolecules."

C. Written Recommendations for Investigations of Orphan Drugs

35. One comment expressed a view that information on the current regulatory and marketing status and history of the drug product that the sponsor is required to submit under proposed § 316.10(b)(7) should be specific only to the sponsor's regulatory and marketing activities.

In order to provide useful recommendations on the studies necessary to support marketing approval of a drug, FDA needs whatever information is known or accessible to the sponsor concerning approved indications, recalls, adverse experience, other uses, abuse potential, etc., on the drug. This would include both the sponsor's regulatory and marketing activities and those of others about which the sponsor knows or could reasonably find out about.

36. Two comments requested that FDA inform sponsors, as soon as possible, when the agency no longer believes that its (previously given) recommendations are adequate to obtain marketing approval and give the reason for its change of opinion along with the scientific rationale.

FDA does not have the resources to monitor all factors affecting continued validity of all guidance previously given. Therefore, FDA must place the burden on the sponsor periodically to seek confirmation that the recommendations it received from FDA still apply. This is not difficult if the sponsor is in frequent touch with FDA's review divisions and if the sponsor diligently reviews literature on relevant subjects. FDA will undertake to respond to specific inquiries by a sponsor concerning any change of FDA's position or previous advice.

37. Another comment suggested that FDA should, on request, provide recommendations concerning how to prove clinical superiority of a drug in order to show that it is "different" within the meaning of proposed § 316.3.

FDA advises that, if asked such a question, FDA will ordinarily recommend head-to-head clinical trails between the drugs, as this will normally be what is necessary to demonstrate clinical superiority to FDA's satisfaction. In addition, FDA may suggest endpoints for such studies.

38. Another comment requested that FDA develop a mechanism to notify sponsors early in the development process whether their drugs are the same as one being developed by another sponsor and whether either drug is considered a macromolecular drug or a micromolecular drug.

FDA advises that information on the existence of investigational products generally is confidential and may not be disclosed. In addition, FDA would normally not be able to determine whether drugs are the same or different until all data for marketing applications for both drugs are submitted. Hence, FDA declines to provide the requested early information and advice.

39. Another comment expressed concern that small firms are disadvantaged compared to multinational corporations with respect to their ability to learn about parallel research of another firm on the same drug. To investigate this possible bias against small firms, the comment proposed a full-scale economic assessment of this rule.

FDA does not agree that small firms are at a unique information disadvantage when developing orphan drugs. Imperfect knowledge about competitors' research is an expected risk factor in any research program, and, while small firms are inherently less able to tolerate excessive financial risk-taking, imperfect knowledge about competitor research is probably a less important risk factor for orphan drugs than for other pharmaceuticals. Orphan product development has been extensively publicized, both in the trade press and in sponsors' and investigators' efforts to locate test subjects, so that subsequent researchers in product areas where high research costs are likely almost always to have considerable information about competitors' efforts. Even if small firms had such a disadvantage, FDA cannot make confidential commercial information available. Therefore, FDA believes that a full-scale economic assessment of this aspect of the rule would be pointless.

40. Several comments suggested that FDA adopt time limits for response to requests for written recommendations as well as responses to requests on all matters associated with administration of the Orphan Drug Act.

Due to resource limitations, FDA cannot now impose time limits on itself for response to applications and requests pursuant to the Orphan Drug Act. However, the agency will respond to requests as expeditiously as its resources will allow.

41. One comment asked that the rule include the address for submitting requests for FDA action under this rule.

FDA agrees and has added the address of the Office of Orphan Products Development to the final rule in new § 316.4.

D. Designation of Orphan Drugs Based on Prevalence

42. Another comment recommended the removal of the requirement that a drug be designated as an orphan drug in order for the sponsor to be entitled to apply for orphan-product grants. The comment expressed a need for grants to support clinical studies on orphan devices and medical foods.

FDA advises that the Orphan Drug Amendments of 1988 (Pub. L. 100–290) provided that medical foods and medical devices for rare disease or conditions are eligible for grants and

contracts to support clinical studies of safety and effectiveness. The preamble to the NPRM was in error to the extent that it implied the contrary. FDA solicits grant applications for clinical studies on medical devices and medical foods as well as on drugs and biologicals intended for rare diseases or conditions.

43. One comment suggested that there should be a process for designating medical foods and medical devices for rare diseases or conditions in light of the fact that the act now recognizes these and provides for grants and contracts to support clinical studies on these products.

FDA does not agree that a process for designating medical foods and medical devices for rare diseases or conditions is necessary. Although eligible for grants and contracts, sponsors of orphan medical devices and medical foods are not eligible for exclusive marketing rights. Hence, the main purpose for designation does not exist so far as these products are concerned. Further, with respect to grants and contracts, FDA's experience to date shows that a designation process would be unnecessary in order to establish eligibility for grants and contracts.

44. On its own initiative, FDA is adding to § 316.20(b)(4) a requirement that a description of the product for which orphan-drug designation is requested be submitted with the application for designation. This obviously important requirement clearly was within the scope of the NPRM and its omission was an oversight.

45. A comment requested that FDA make clear that the agency can grant orphan-drug designation to new versions of currently marketed orphan drugs if they are clinically superior to the original.

Orphan-drug designation can be granted to new sponsors of drugs currently protected by orphan-drug exclusive marketing if such sponsors provide a plausible scientific rationale in an application submitted pursuant to § 316.20 that studies to be conducted on the drug may result in a finding of clinical superiority over the marketed drug.

46. Another comment stated that authoritative information required to establish prevalence of a disease or condition and/or cost recovery estimates may not be available and the final rule should require only the best information available or all available references known to the sponsor.

FDA expects that applicants for orphan-drug designation will make every effort to survey the literature and obtain all information available on the prevalence of the indicated disease or condition and cost and marketing information, where required. Obviously, if information is not available, it cannot be submitted, but FDA expects sponsors to make a diligent search.

47. A comment expressed a fear that basing the prevalence criterion on the number of diagnosed patients who could benefit from the treatment makes possible orphan designation for a drug with a huge patient class.

FDA acknowledges that improved methods of diagnosis, better screening, or altered attitudes towards the need for therapy may produce a large increase in the number of patients who are diagnosed with a disease and could benefit from a drug. Prior to the development of such new diagnostic methods, better screening or new attitudes, however, FDA has no way of determining the likely treatment population other than by relying on current diagnostic methods and treatment attitudes.

48. A comment stated that it is unclear how FDA intends to handle investigational orphan drugs that are also being studied for common indications.

FDA advises that when a drug is being studied for a common as well as a rare disease, the rare disease indication will be handled just as it would be for a drug being studied only for a rare disease.

49. A comment requested that the agency provide substantive guidance, clarification, or definition on how an applicant can demonstrate that a subset of patients is "medically plausible."

FDA declines to provide examples of medical plausibility or to further develop the definition of this term. Application of the concept is a matter of judgment based on the specific facts of each case. Also, any hypothetical examples FDA might provide could well be misleading.

50. One comment argued that the proposed requirement that sponsors show the actual number of diagnosed cases in order to obtain orphan drug designation would be burdensome. For many diseases, the comment argued, there is little epidemiological data giving the actual number of affected patients. It suggested that the appropriate number for determining prevalence of a disease is one which reflects both diagnosed and undiagnosed people.

FDA has already stated its strong preference for counting only diagnosed symptomatic patients in determining prevalence as the best approach to fulfill the purposes of the Orphan Drug Act. There is a lack of existing data and of precise methods for identifying the number of undiagnosed and asymptomatic patients who have a given disease. To impose such a requirement would add considerably to the cost of submitting requests for orphan drug designation without significant improvement of the factual bases for such requests.

51. Another comment agreed with the requirement that sponsors demonstrate that the actual number of diagnosed cases does not exceed 200,000 persons in the United States as of the date of application of designation. However, the comment requested that the agency go further and include the requirement in the final regulation itself rather than just in the preamble.

FDA agrees and is amending § 316.21(b) in the final rule accordingly.

52. Two comments argued that the requirement in proposed § 316.21(b)(2) that a sponsor show estimated prevalence of any other disease or condition for which the drug has been approved or is being developed is immaterial and burdensome.

The agency has reconsidered the proposed requirement and decided that such information would only be necessary in special circumstances, and will not be routinely required to make a decision on applications for designation. The regulation has been revised to require the information only upon request by FDA.

53. One comment suggested that FDA should divulge its sources and the processes whereby it verifies that the sponsor's prevalence data are correct.

FDA will on request provide a list of its sources used for verification of its conclusion as to the prevalence of a disease or condition. In the process, FDA will not provide any materials which it is obligated to treat as trade secret or confidential.

54. A comment suggested that in the case of vaccines, disease prevalence should be calculated based on an average annual target population over the prior 7 years rather than on the target population at the time of submission of the application for orphan designation. This, the comment argued, would provide greater predictability to the prospective sponsor of an orphan vaccine.

Under the terms of 21 U.S.C. 360bb, determinations "shall be made on the basis of the facts and circumstances as of the date such drug is designated * * *." FDA has interpreted this language to require that estimates of target population should reflect numbers of persons who would receive the vaccine as of the date of designation. The agency does not believe that the law contemplates the use of predictive models for growth or decline of disease populations.

55. Another comment stated that, because data on the side effects of cancer or its treatment are limited or nonexistent, sponsors requesting designation of drugs for patients refractory to primary cancer therapies or other cancer subgroups should be able to rely on references to published incidence data, mortality tables, and expert medical testimony.

FDA advises that, where data are limited, sponsors should provide the best data available. Where published incidence data, mortality tables, and expert medical testimony are all that is available, this will normally be sufficient.

The comment further recommended that the final rule provide guidance including references to methods for deriving estimated prevalence data by using published incidence data.

FDA declines to provide such guidance as part of this published final rule but will provide data on methods of extrapolation when asked about this by potential sponsors regarding specific diseases.

56. One comment argued that FDA should provide for denial of designation if it is obvious that the drug will be used for nonorphan diseases or conditions with prevalence in excess of 200,000.

FDA will deny an orphan-drug designation application if it finds that the proposed orphan indication is a counterfeit, i.e., an artificial subset of the total population of potential users of the drug. However, the agency will continue to grant orphan drug designations for drugs that are being investigated for or are already approved for common diseases and conditions when there is also a rare disease for which the drug may be useful and is being studied, if the drug meets the orphan-drug criteria. The incentives of the Orphan Drug Act are needed to encourage testing and development of drugs for rare diseases or conditions even when a drug in question is being tested or approved for a more common indication. Otherwise, sponsors may be deterred by the lack of potential profit from testing drugs for rare diseases.

57. One comment suggested that § 316.26, which deals with amendments to orphan-drug designation, be broadened to allow such amendments when there are changes in medical technology or where diagnostic capabilities for a disease are improved.

FDA agrees that such changes are warranted, but only when the advances concerned are unanticipated. FDA has amended the final rule to this effect.

58. Several comments suggested that orphan-drug designation and exclusive marketing should be revoked when FDA determines that a drug that it has designated is later proved to have commercial potential or when the prevalence of the indicated rare disease or condition later exceeds 200,000 people in the United States.

FDA advises that legislation that would have authorized FDA to take such actions was vetoed by the President in 1990.

59. One comment argued that FDA had not sufficiently considered when and on what terms it will suspend (as distinguished from revoke) an orphan drug designation under § 316.29. The comment inquired as to when and under what terms FDA would restore a suspended designation.

After considering this comment, the agency concludes that it should not suspend an orphan drug designation on the grounds stated in § 316.29 but should only revoke it. The possibility of suspension raises troublesome questions about bases for and conditions of reinstatement of designation and the rights of subsequent sponsors. Hence, FDA has decided that, when the conditions set forth in § 316.29 occur (untrue statement of material fact, or omission of material information, or ineligibility of the drug at the time of designation), the appropriate remedy is permanent revocation of designation and suspension or withdrawal of exclusive marketing rights, with no eligibility for reinstatement of such rights. FDA has amended § 316.29 to reflect this conclusion.

E. Designation of Orphan Drugs Based on Nonrecovery of Cost

60. One comment concerning § 316.21 suggested a different approach for verifying data estimates and their justifications. The comment suggested that the sponsor be required to obtain an independent certified public accountant (CPA) report on certain agreed-upon procedures with respect to data, estimates and justification provided. Next, FDA, the sponsor, and the CPA would agree on procedures tailored to address matters of specific interest to the agency. Then, the independent CPA would report on the results of applying these procedures in a summary of findings—negative, assurance, or both. Lastly, the level of assurance provided in the independent CPA's report on how the agreed upon procedures would be applied would depend on the nature and scope of the procedures.

The comment suggested the following specific change in the text of § 316.21(c)(8):

(8) the sponsor shall submit a report of an independent Certified Public Accountant in accordance with Statement on Standards for Attestation established by the American Institute of Certified Public Accountants on agreed upon procedures performed with respect to the data, estimates, and justifications submitted pursuant to this section. Cost data shall be determined in accordance with generally accepted accounting principles.

FDA agrees that the suggested change is appropriate and has added the quoted passage to the final rule.

61. A comment stated that FDA has seriously underestimated the impact on multi-national corporations of demonstrating a lack of profitability in light of the fact that multi-national corporations will find it very difficult to collect information on the costs of orphan drug development and to separate those costs from costs of other research and development activities. According to the comment, the requirement of collection and separation will discourage use of orphan-drug incentives by multi-national corporations.

FDA believes that, although multi-national corporations may face problems that others do not, the potential benefits of orphan drug exclusive marketing would seem to outweigh the burden of separating costs between profitable ventures and orphan drug research and development projects.

62. Another comment correctly noted a typographical error in § 316.24(a): A reference to § 316.26, should have been a reference to § 316.25.

The error is being corrected in the final rule.

63. A comment suggested that orphan-drug designation should be denied for drugs that are likely to have commercial and competitive viability, even in small populations. The comment expressed concern that the exclusive marketing provisions of the act will limit the competition that has existed among manufacturers of blood clotting factor in the past. Alleging that this competition has kept prices down.

Existing provisions of the act do not provide a "commercial viability" basis for denial of requests for orphan drug designation when such drugs are for populations of 200,000 or less. Indeed, upon enacting an amendment to the Orphan Drug Act in 1984, Congress expressed its determination to accept the possibility that a designated orphan drug might be commercially viable with or without orphan drug exclusive marketing. (See 130 Congressional Record, S.14254 Floor Debates, October 11, 1984).

F. FDA Procedures

64. On its own initiative, FDA has added new § 316.30, requiring sponsors

of designated orphan drugs to submit annual reports detailing progress made in the development of their orphan drugs in the past year. The agency believes that this provision is within the scope of the NPRM and will allow FDA to follow the development of orphan drugs and to identify and help to remove roadblocks to drug development and marketing.

65. A comment concerning § 316.27 argued that submission to FDA of copies of agreements embodying transfers of ownership of orphan-drug designation rights should be voluntary and not mandatory.

FDA agrees, and § 316.27(a)(2)(iii) has been changed in the final rule to make clear that either a list of rights assigned and reserved or copies of relevant agreements will meet the requirement of this paragraph.

66. Several comments argued that FDA should establish a process whereby the agency routinely informs sponsors when they are investigating drugs whose approval is likely to be barred by the Orphan Drug Act.

FDA believes that it is now adequately making this information available. The agency provides a list (updated monthly) of all designated orphan drugs to all sponsors who file a request for orphan-drug designation. Additionally, this list is available upon request from the National Information Center for Orphan Drugs and Rare Diseases (NICODARD), P.O. Box 1133, Washington, DC 20013–1133 (phone 1–800–456–3505). Hence, no new procedure is necessary.

66a. On its own initiative, FDA is revising proposed § 316.28 to reflect current practice of making available monthly an updated list of all designated orphan drugs and making available annually a cumulative updated list of all designated orphan drugs. In the past, the agency published an annual list in the **Federal Register**; however, it has found that its current practice is a more effective means of making the information available in a timely manner. The lists are on display at the FDA Dockets Management Branch and are available from NICODARD (see comment 66).

67. Several comments by holders of orphan-drug exclusive approval requested that such holders be accorded notice and an opportunity for a hearing when faced with the imminent approval of a similar drug that FDA considers to be a different drug for purposes of the act.

On March 4, 1987, in response to a citizen petition filed by Genentech, Inc., FDA declined to establish such a challenge procedure, citing the following grounds: (1) There is no property right to exclusive approval under the Orphan Drug Act; and (2) procedures are already in place that accord a holder of exclusive approval all the process that would be due under these circumstances. These procedures include the citizen petition procedure (21 CFR 10.30) and a right of subsequent judicial review in the courts.

In the NPRM (section II.I. (56 FR 3344)), FDA cited the following reasons for declining to create such procedures: (1) Neither the Constitution, nor the Administrative Procedure Act, nor the Orphan Drug Act requires a hearing of this kind; (2) hearings are time consuming and resource intensive; and (3) the citizen petition procedure is available to a holder of exclusive approval. Furthermore, in the NPRM, FDA refused to propose creation of a less formal nonhearing administrative challenge procedure because: (1) There is no requirement for it under the Constitution or any statute; (2) postdecisional judicial review is preferable to an administrative challenge procedure because a predecisional challenge procedure would be time consuming and could be used for purposes of delay; (3) it would be difficult to determine who should have the right to challenge an incipient approval and who would be entitled to what notice of what anticipated agency action; and, finally, (4) a predecisional administrative challenge procedure would present difficulty due to the nondisclosability of relevant information under FDA's public information regulations.

Despite a careful reconsideration of its position on the question of establishing predecisional challenge procedures, the agency declines to adopt such procedures. The other reasons given in the NPRM for declining to do so are still valid and even if a reviewing court were to hold that orphan drug exclusivity is a constitutionally protected property right, such a holding would not automatically require that a firm whose drug has been granted exclusivity be accorded a predecisional hearing. *Matthews* v. *Eldridge*, 424 U.S. 319 (1976); *Mackey* v. *Montrym*, 443 U.S. 1 (1979); *Barry* v. *Barchi*, 443 U.S. 1 (1979). Under these and other cases, the "property" right to exclusive marketing, if it exists, does not always require that a hearing take place before approval of what FDA concludes is a similar but different drug.

FDA is still persuaded that its current regulations satisfy any applicable requirement of due process. Insofar as notice is concerned, in FDA's view, a holder of exclusive approval would learn that a potential competitor drug has been designated, as FDA is required to publish all such designations. See 21 U.S.C. 360bb(c) and § 316.52(d), the latter of which is codified by this notice. As to a procedure for challenging an approval, either impending or after the fact, the citizen petition procedure provides such a procedure, and the holder of the earlier designation has a right to seek judicial review of an adverse decision. This procedure is sufficient under *Barry* v. *Barchi*, *supra*.

In addition, FDA is still concerned about the potential for holders of exclusive approval to delay the marketing of competitors' approvable subsequent drugs by use of any challenge procedure. The fact that all challenge procedures, particularly hearings, are time consuming and expensive, adds to FDA's reluctance to create such procedures.

For the above reasons, FDA has, after careful consideration, decided that the final rule should not include an opportunity for a hearing or other challenge procedures for holders of exclusive approval to challenge subsequent drug approvals.

68. One comment argued that FDA should notify sponsors of marketing applications for orphan drugs when another sponsor of the same drug for the same use has attained orphan drug exclusive marketing status. The comment suggested that the sponsor barred from marketing approval by orphan drug exclusive marketing should be informed, within 30 days, of the approval of the drug receiving exclusive approval.

FDA disagrees. As stated previously, FDA usually does not know that approval of a marketing application is barred by the Orphan Drug Act until the review of that application shows that the subsequent drug is the same as the pioneer. Hence, FDA cannot set a time limit on notification of subsequent sponsors. In addition, FDA routinely publicizes all marketing application approvals. Therefore, it is reasonable to expect that subsequent sponsors can, with minimal effort, learn of these approvals.

G. Orphan-Drug Exclusive Approval

69. A comment suggested that § 316.30 be reworded to allow more than one company to share exclusive marketing rights if the first company to obtain FDA approval agrees.

FDA advises that § 316.30(a)(3) provides that a holder of exclusive approval may give consent for other marketing applications to gain approval. This provision enables the holder to share exclusive marketing rights with

any number of other sponsors. The agency believes that the current wording of this paragraph need not be changed in order to achieve the objective of the comment.

70. A comment requested that the high cost of an orphan drug be considered evidence that "sufficient quantities" of the drug are not available "to meet the needs of persons with the disease or condition for which the drug was designated." Such a finding would then allow for the approval of subsequent identical drugs.

FDA does not have the authority under existing law to equate high cost with lack of sufficient quantities, even though cost may affect access to a drug. As Congress used the term, "sufficient quantities" refers only the presence of enough drug and the means of its administration to meet the needs of all in the United States with the disease or condition for which the drug was designated.

71. Two comments urged that § 316.36 clearly set forth the criteria and procedure for a determination of whether "sufficient quantities" are available. One comment suggested that the lack of sufficient quantities must be "long-term" or "deliberate." Alternatively, the comment suggested that a finding of a lack of commitment on the part of the exclusive marketing holder should be necessary to break exclusive marketing. A third comment suggested as a standard for agency action the inability to provide the drug for 1 year. Two comments requested that FDA make allowances for temporary production difficulties, disruptions caused by natural disasters, interruptions in supplies and component parts, economic crises, or other causes beyond the holder's control. One comment suggested that the sponsor should be given adequate time to restore supplies and that the revocation should not occur unless another sponsor can supply at least 75 percent of the market at least 12 months earlier than the first-approved sponsor. This comment urged a right of appeal by the pioneer.

FDA advises that it will act quickly to approve another marketing application when there are insufficient supplies of the drug or insufficient means of its administration for any reason. In granting FDA authority to revoke exclusive marketing because of insufficient quantities, Congress did not refer in any way to the behavior or attitude of the initial holder, and revocation is in no sense a punishment. The provision exists solely in order to get drugs quickly to the people who need them. Accordingly, in determining whether there are "sufficient quantities" of a drug, FDA will always make the needs of patients its primary concern. For the same reason, the agency declines to create an administrative appeals process for reviewing decisions under § 316.36.

72. Another comment proposed that FDA impose, as a condition of maintaining exclusive marketing rights, a requirement that holders of such rights must sell whatever quantities are necessary to subsequent sponsors in order to conduct required comparative studies. If the holder refused, it would be given 60 days to comply or lose exclusive marketing rights.

FDA believes that most subsequent sponsors will have access to the holder's product. However, if that is not the case, FDA would be without authority to impose the condition described. Congress has set forth only two situations in which exclusive marketing rights can be removed. The situation described above is not one of them.

73. Another comment, which agreed with FDA's decision to rule out cost considerations in determining the existence of sufficient quantities of orphan drugs, suggested that the agency amend the final rule to specify that no authority to do so exists.

FDA believes that statements in the preambles to the NPRM and to this final rule are sufficient notification that the agency believes it lacks authority to consider costs of drugs in rendering decisions under § 316.36. Hence, no change in the rule is necessary.

H. Open Protocols

74. One comment argued that FDA should make clear that the final rule will require parallel controlled studies in order to obtain marketing approval. The comment noted that open protocols may be a threat to encouraging placebo-controlled studies for marketing approval.

FDA understands that the existence of open protocols may increase the difficulty of recruiting subjects for placebo-controlled studies. However, Congress has mandated that FDA encourage open protocols, and this final rule will do so. This does not mean that FDA is relaxing its standards for the approval of drugs. The requirements for demonstrating safety and effectiveness are not any less for orphan drugs than for any other drugs.

I. Availability of Information

75. One comment suggested that § 316.52 should be amended to provide that notice in the **Federal Register** be published concurrently with each orphan-drug designation decision.

FDA disagrees with this suggestion. A current list of drugs designated as orphan drugs is freely available from NICODARD (see comment 66 for address and telephone number). Publishing each orphan-drug designation in the **Federal Register** would be an unduly burdensome task.

76. A comment suggested that as much information as possible regarding details about designated orphan drugs and applications for designation should be made available because of the public's "right to know."

FDA advises that the agency releases as much information as it can consistent with the Freedom of Information Act, FDA's regulations, and long-standing policies concerning the protection of trade secret data and confidential commercial information.

77. Two comments suggested that FDA inform a holder of exclusive marketing rights when a subsequent sponsor has applied for designation for the same drug for the same indication and that a decision concerning the sameness or difference of the products should be made prior to the decision to designate the second drug.

FDA disagrees. As previously stated, current information on all designated orphan drugs is available from NICODARD (see comment 66). FDA is treating the filing of applications for designation as a submission of confidential information which will not be disclosed until and unless designation is granted. In addition, for reasons stated previously, FDA cannot make preliminary decisions as to the sameness or difference of any two drugs. Also, as stated in the NPRM preamble, FDA will designate a structurally identical subsequent drug as an orphan drug, even in the face of a holder's exclusive marketing rights, if the subsequent sponsor advances a plausible basis on which to conclude that its product may be proven "clinically superior." This is because FDA does not want to stifle research and development of potentially better drugs.

78. One comment stated that the impact of the regulation would be "major" for purposes of Executive Order 12291, which requires extensive regulatory impact and flexibility analyses prior to promulgation of regulations having a "major" impact on small businesses. The comment added an opinion that such an analysis would demonstrate that the agency's "original test" (the comment's meaning for this term is unclear) for determining sameness/difference presented a more cost-effective alternative without the adverse effect on competition, unlike the proposed policy.

FDA disagrees with the premise that analyses under Executive Order 12291 are the appropriate means for evaluating the relative usefulness of methods for determining sameness/differences. FDA has consulted with the IOM in developing the adopted approach and will evaluate and propose revisions to the approach if necessary in the interests and needs of people with rare diseases and conditions.

79. One comment stated that FDA should be required to prepare an economic impact statement under the Regulatory Flexibility Act on grounds that the proposed rule adversely affects a significant number of small entities.

FDA disagrees because the overall impact of the Orphan Drug Act benefits small businesses, many of which would otherwise be unable to bear the substantial cost of new product development. Moreover, the economic effects of the proposed rule, and the final rule, are simply those contemplated by Congress in its enactment of the Orphan Drug Act. (See the discussion below in section III.)

III. Economic Impact

The agency has examined the economic impact of the final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354) and concludes that this is not a major rule as defined by Executive Order 12291 and will not have a significant impact on a substantial number of small entities.

It is clear that the Orphan Drug Act, as implemented by existing administrative practices, has significantly increased the rate at which new orphan drugs are marketed. While two or three drugs that might be eligible as orphan drugs were approved annually prior to the Orphan Drug Act, an average of eight designated orphan drugs have been approved per year and marketed since 1984. Moreover, orphan-drug designation has been granted to an average of 41 drugs per year since 1984. Thus, the Orphan Drug Act, as implemented since 1983, has provided an effective stimulus for the development and marketing of drugs for diseases or conditions that are rare in the United States. In debating the need for orphan drug exclusive marketing, Congress weighed the potential dangers of granting orphan drug exclusive marketing, which would limit competition, against the benefits to be gained by encouraging sponsors to develop drugs of marginal commercial value. In passing the law, Congress determined that the benefits exceeded the dangers. Any form of exclusive marketing may have negative consequences, such as noncompetitive pricing. To date, however, there has been insufficient experience with the implementation of the statute to judge whether an optimal benefit-cost balance has been attained. It is clear, nonetheless, that these incentives have been highly successful in contributing to the development and approval of orphan drugs that would not otherwise have been developed. Thus, in FDA's view, the essential benefit-cost considerations of Executive Order 12291 have been satisfied in favor of the rule as here published.

The agency also recognizes that changes in the statutory incentive structure would theoretically produce corresponding changes in the level of benefits, i.e., the number of orphan drugs developed. FDA, however, concludes that further incremental analysis of the statutory provisions would be highly conjectural and beyond the availability of meaningful data from experience to date.

The Regulatory Flexibility Act requires that the agency consider the impact of the regulation on small entities. FDA believes that these rules benefit, rather than disadvantage, most affected small businesses. Prior to enactment of the Orphan Drug Act, few small businesses could afford to devote resources to the discovery of new treatments for rate diseases, because the small market for such products severely limited the profitability of this research. Subsequent to enactment, the combined stimulus of research grants, tax credits, and exclusive marketing influenced many small firms to develop new products for formerly inaccessible markets. FDA finds therefore that, in general, the incentives provided under the act will serve to enhance the viability and competitiveness of small entities.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1980

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The information collections will not be effective until OMB approval is obtained. The title, description, and identification of those who will respond to the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Orphan Drug Regulations.

Description: These final regulations specify the procedures for sponsors of orphan drugs to use in availing themselves of the incentive provided for in the Orphan Drug Act and set forth the procedures FDA would use in administering it.

Description of Respondents: Businesses or other for-profit organizations.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden hours per response	Annual burden hours
316.2 and 316.10 ..	3	1	125	375
316.20	90	1.78	125	20,025
316.22	5	1	2	10
316.27	5	1	4	20
316.30	450	1	2	900
316.36	0.2	3	15	9
Total .	.....	.....	.....	21,339

List of Subjects in 21 CFR Part 316

Administrative practice and procedures, drugs, Orphan drugs, Reporting and recordkeeping requirement.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 316 is added as follows:

PART 316—ORPHAN DRUGS

Subpart A—General Provisions

Sec.

316.1 Scope of this part.
316.2 Purpose.
316.3 Definitions.
316.4 Address for submissions.

Subpart B—Written Recommendations for Investigations of Orphan Drugs

316.10 Content and format of a request for written recommendations.
316.12 Providing written recommendations.
316.14 Refusal to provide written recommendations.

Subpart C—Designation of an Orphan Drug

316.20 Content and format of a request for orphan-drug designation.
316.21 Verification of orphan-drug status.
316.22 Permanent-resident agent for foreign sponsor.

316.23 Timing of requests for orphan-drug designation; designation of already approved drugs.
316.24 Granting orphan-drug designation.
316.25 Refusal to grant orphan-drug designation.
316.26 Amendment to orphan-drug designation.
316.27 Change in ownership of orphan-drug designation.
316.28 Publication of orphan-drug designations.
316.29 Revocation of orphan-drug designation.
316.30 Annual reports of holder of orphan-drug designation.

Subpart D—Orphan-drug Exclusive Approval

316.31 Scope of orphan-drug exclusive approval.
316.34 FDA recognition of exclusive approval.
316.36 Insufficient quantities of orphan drugs.

Subpart E—Open Protocols for Investigations

316.40 Treatment use of a designated orphan drug.

Subpart F—Availability of Information

316.50 Guidelines.
316.52 Availability for public disclosure of data and information in requests and applications.

Authority: Secs. 525, 526, 527, 528, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aa, 360bb, 360cc, 360dd, 371).

Subpart A—General Provisions

§ 316.1 Scope of this part.

(a) This part implements sections 525, 526, 527, and 528 of the act and provides procedures to encourage and facilitate the development of drugs for rare diseases or conditions, including biological products and antibiotics. This part sets forth the procedures and requirements for:

(1) Submissions to FDA of:

(i) Requests for recommendations for investigations of drugs for rare diseases or conditions;

(ii) Requests for designation of a drug for a rare disease or condition; and

(iii) Requests for gaining exclusive approval for a drug product for a rare disease or condition.

(2) Allowing a sponsor to provide an investigational drug product under a treatment protocol to patients who need the drug for treatment of a rare disease or condition.

(b) This part does not apply to food, medical devices, or drugs for veterinary use.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 316.2 Purpose.

The purpose of this part is to establish standards and procedures for determining eligibility for the benefits provided for in section 2 of the Orphan Drug Act, including written recommendations for investigations of orphan drugs, a 7-year period of exclusive marketing, and treatment use of investigational orphan drugs. This part is also intended to satisfy Congress' requirements that FDA promulgate procedures for the implementation of sections 525(a) and 526(a) of the act.

§ 316.3 Definitions.

(a) The definitions and interpretations contained in section 201 of the act apply to those terms when used in this part.

(b) The following definitions of terms apply to this part:

(1) *Act* means the Federal Food, Drug, and Cosmetic Act as amended by section 2 of the Orphan Drug Act (sections 525–528 (21 U.S.C. 360aa–360dd)).

(2) *Active moiety* means the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.

(3) *Clinically superior* means that a drug is shown to provide a significant therapeutic advantage over and above that provided by an approved orphan drug (that is otherwise the same drug) in one or more of the following ways:

(i) Greater effectiveness than an approved orphan drug (as assessed by effect on a clinically meaningful endpoint in adequate and well controlled clinical trials). Generally, this would represent the same kind of evidence needed to support a comparative effectiveness claim for two different drugs; in most cases, direct comparative clinical trials would be necessary; or

(ii) Greater safety in a substantial portion of the target populations, for example, by the elimination of an ingredient or contaminant that is associated with relatively frequent adverse effects. In some cases, direct comparative clinical trials will be necessary; or

(iii) In unusual cases, where neither greater safety nor greater effectiveness has been shown, a demonstration that the drug otherwise makes a major contribution to patient care.

(4) *Director* means the Director of FDA's Office of Orphan Products Development.

(5) *FDA* means the Food and Drug Administration.

(6) *Holder* means the sponsor in whose name an orphan drug is designated and approved.

(7) *IND* means an investigational new drug application under part 312 of this chapter.

(8) *Manufacturer* means any person or agency engaged in the manufacture of a drug that is subject to investigation and approval under the act or the biologics provisions of the Public Health Service Act (42 U.S.C. 262–263).

(9) *Marketing application* means an application for approval of a new drug filed under section 505(b) of the act, a request for certification of an antibiotic under section 507 of the act, or an application for a biological product/establishment license submitted under section 351 of the Public Health Service Act (42 U.S.C. 262).

(10) *Orphan drug* means a drug intended for use in a rare disease or condition as defined in section 526 of the act.

(11) *Orphan-drug designation* means FDA's act of granting a request for designation under section 526 of the act.

(12) *Orphan-drug exclusive approval* or *exclusive approval* means that, effective on the date of FDA approval as stated in the approval letter of a marketing application for a sponsor of a designated orphan drug, no approval will be given to a subsequent sponsor of the same drug product for the same indication for 7 years, except as otherwise provided by law or in this part.

(13) *Same drug* means:

(i) If it is a drug composed of small molecules, a drug that contains the same active moiety as a previously approved drug and is intended for the same use as the previously approved drug, even if the particular ester or salt (including a salt with hydrogen or coordination bonds) or other noncovalent derivative such as a complex, chelate or clathrate has not been previously approved, except that if the subsequent drug can be shown to be clinically superior to the first drug, it will not be considered to be the same drug.

(ii) If it is a drug composed of large molecules (macromolecules), a drug that contains the same principal molecular structural features (but not necessarily all of the same structural features) and is intended for the same use as a previously approved drug, except that, if the subsequent drug can be shown to be clinically superior, it will not be considered to be the same drug. This criterion will be applied as follows to different kinds of macromolecules:

(A) Two protein drugs would be considered the same if the only differences in structure between them were due to post-translational events or infidelity of translation or transcription or were minor differences in amino acid sequence; other potentially important differences, such as different glycosylation patterns or different tertiary structures, would not cause the drugs to be considered different unless the differences were shown to be clinically superior.

(B) Two polysaccharide drugs would be considered the same if they had identical saccharide repeating units, even if the number of units were to vary and even if there were postpolymerization modifications, unless the subsequent drug could be shown to be clinically superior.

(C) Two polynucleotide drugs consisting of two or more distinct nucleotides would be considered the same if they had an identical sequence of purine and pyrimidine bases (or their derivatives) bound to an identical sugar backbone (ribose, deoxyribose, or modifications of these sugars), unless the subsequent drug were shown to be clinically superior.

(D) Closely related, complex partly definable drugs with similar therapeutic intent, such as two live viral vaccines for the same indication, would be considered the same unless the subsequent drug was shown to be clinically superior.

(14) *Sponsor* means the entity that assumes responsibility for a clinical or nonclinical investigation of a drug, including the responsibility for compliance with applicable provisions of the act and regulations. A sponsor may be an individual, partnership, corporation, or Government agency and may be a manufacturer, scientific institution, or an investigator regularly and lawfully engaged in the investigation of drugs. For purposes of the Orphan Drug Act, FDA considers the real party or parties in interest to be a sponsor.

§ 316.4 Address for submissions.

All correspondence and requests for FDA action pursuant to the provisions of this rule should be addressed as follows: Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Subpart B—Written Recommendations for Investigations of Orphan Drugs

§ 316.10 Content and format of a request for written recommendations.

(a) A sponsor's request for written recommendations from FDA concerning the nonclinical and clinical investigations necessary for approval of a marketing application shall be submitted in the form and contain the information required in this section. FDA may require the sponsor to submit information in addition to that specified in paragraph (b) of this section if FDA determines that the sponsor's initial request does not contain adequate information on which to base recommendations.

(b) A sponsor shall submit two copies of a completed, dated, and signed request for written recommendations that contains the following:

(1) The sponsor's name and address.

(2) A statement that the sponsor is requesting written recommendations on orphan-drug development under section 525 of the act.

(3) The name of the sponsor's primary contact person and/or resident agent, and the person's title, address, and telephone number.

(4) The generic name and trade name, if any, of the drug and a list of the drug product's components or description of the drug product's formulation, and chemical and physical properties.

(5) The proposed dosage form and route of administration.

(6) A description of the disease or condition for which the drug is proposed to be investigated and the proposed indication or indications for use for such disease or condition.

(7) Current regulatory and marketing status and history of the drug product, including:

(i) Whether the product is the subject of an IND or a marketing application (if the product is the subject of an IND or a marketing application, the IND or marketing application numbers should be stated and the investigational or approved indication or indications for use specified);

(ii) Known marketing experience or investigational status outside the United States;

(iii) So far as is known or can be determined, all indications previously or currently under investigation anywhere;

(iv) All adverse regulatory actions taken by the United States or foreign authorities.

(8) The basis for concluding that the drug is for a disease or condition that is rare in the United States, including the following:

(i) The size and other known demographic characteristics of the patient population affected and the source of this information.

(ii) For drugs intended for diseases or conditions affecting 200,000 or more people in the United States, or for a vaccine, diagnostic drug, or preventive drug that would be given to 200,000 or more persons per year, a summary of the sponsor's basis for believing that the disease or condition described in paragraph (b)(6) of this section occurs so infrequently that there is no reasonable expectation that the costs of drug development and marketing will be recovered in future sales of the drug in the United States. The estimated costs and sales data should be submitted as provided for in § 316.21(c).

(9) A summary and analysis of available data on the pharmacologic effects of the drug.

(10) A summary and analysis of available nonclinical and clinical data pertinent to the drug and the disease to be studied including copies of pertinent published reports. When a drug proposed for orphan drug designation is intended to treat a lift-threatening or severely debilitating illness, especially where no satisfactory alternative therapy exists, the sponsor may wish voluntarily to provide this information. A sponsor of such a drug may be entitled to expeditious development, evaluation, and marketing under 21 CFR part 312, subpart E.

(11) An explanation of how the data summarized and analyzed under paragraphs (b)(9) and (b)(10) of this section support the rationale for use of the drug in the rare disease or condition.

(12) A definition of the population from which subjects will be identified for clinical trials, if known.

(13) A detailed outline of any protocols under which the drug has been or is being studied for the rare disease or condition and a summary and analysis of any available data from such studies.

(14) The sponsor's proposal as to the scope of nonclinical and clinical investigations needed to establish the safety and effectiveness of the drug.

(15) Detailed protocols for each proposed United States or foreign clinical investigation, if available.

(16) Specific questions to be addressed by FDA in its recommendations for nonclinical laboratory studies and clinical investigations.

§ 316.12 Providing written recommendations.

(a) FDA will provide the sponsor with written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of a marketing application if none of the reasons described in § 316.14 for refusing to do so applies.

(b) When a sponsor seeks written recommendations at a stage of drug

development at which advice on any clinical investigations, or on particular investigations would be premature, FDA's response may be limited to written recommendations concerning only nonclinical laboratory studies, or only certain of the clinical studies (e.g., Phase 1 studies as described in § 312.21 of this chapter). Prior to providing written recommendations for the clinical investigations required to achieve marketing approval, FDA may require that the results of the nonclinical laboratory studies or completed early clinical studies be submitted to FDA for agency review.

§ 316.14 Refusal to provide written recommendations.

(a) FDA may refuse to provide written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of a marketing application for any of the following reasons:

(1) The information required to be submitted by § 316.10(b) has not been submitted, or the information submitted is incomplete.

(2) There is insufficient information about:

(i) The drug to identify the active moiety and its physical and chemical properties, if these characteristics can be determined; or

(ii) The disease or condition to determine that the disease or condition is rare in the United States; or

(iii) The reasons for believing that the drug may be useful for treating the rare disease or condition with that drug; or

(iv) The regulatory and marketing history of the drug to determine the scope and type of investigations that have already been conducted on the drug for the rare disease or condition; or

(v) The plan of study for establishing the safety and effectiveness of the drug for treatment of the rare disease or condition.

(3) The specific questions for which the sponsor seeks the advice of the agency are unclear or are not sufficiently specific.

(4) On the basis of the information submitted and on other information available to the agency, FDA determines that the disease or condition for which the drug is intended is not rare in the United States.

(5) On the basis of the information submitted and on other information available to the agency, FDA determines that there is an inadequate basis for permitting investigational use of the drug under part 312 of this chapter for the rare disease or condition.

(6) The request for information contains an untrue statement of material fact.

(b) A refusal to provide written recommendations will be in writing and will include a statement of the reason for FDA's refusal. Where practicable, FDA will describe the information or material it requires or the conditions the sponsor must meet for FDA to provide recommendations.

(c) Within 90 days after the date of a letter from FDA requesting additional information or material or setting forth the conditions that the sponsor is asked to meet, the sponsor shall either:

(1) Provide the information or material or amend the request for written recommendations to meet the conditions sought by FDA; or

(2) Withdraw the request for written recommendations. FDA will consider a sponsor's failure to respond within 90 days to an FDA letter requesting information or material or setting forth conditions to be met to be a withdrawal of the request for written recommendations.

Subpart C—Designation of an Orphan Drug

§ 316.20 Content and format of a request for orphan-drug designation.

(a) A sponsor that submits a request for orphan-drug designation of a drug for a specified rare disease or condition shall submit each request in the form and containing the information required in paragraph (b) of this section. A sponsor may request orphan-drug designation of a previously unapproved drug, or of a new orphan indication for an already marketed drug. In addition, a sponsor of a drug that is otherwise the same drug as an already approved orphan drug may seek and obtain orphan-drug designation for the subsequent drug for the same rare disease or condition if it can present a plausible hypothesis that its drug may be clinically superior to the first drug. More than one sponsor may receive orphan-drug designation of the same drug for the same rare disease or condition, but each sponsor seeking orphan-drug designation must file a complete request for designation as provided in paragraph (b) of this section.

(b) A sponsor shall submit two copies of a completed, dated, and signed request for designation that contains the following:

(1) A statement that the sponsor requests orphan-drug designation for a rare disease or condition, which shall be identified with specificity.

(2) The name and address of the sponsor; the name of the sponsor's primary contact person and/or resident agent including title, address, and telephone number; the generic and trade name, if any, of the drug or drug product; and the name and address of the source of the drug if it is not manufactured by the sponsor.

(3) A description of the rare disease or condition for which the drug is being or will be investigated, the proposed indication or indications for use of the drug, and the reasons why such therapy is needed.

(4) A description of the drug and a discussion of the scientific rationale for the use of the drug for the rare disease or condition, including all data from nonclinical laboratory studies, clinical investigations, and other relevant data that are available to the sponsor, whether positive, negative, or inconclusive. Copies of pertinent unpublished and published papers are also required.

(5) Where the sponsor of a drug that is otherwise the same drug as an already-approved orphan drug seeks orphan-drug designation for the subsequent drug for the same rare disease or condition, an explanation of why the proposed variation may be clinically superior to the first drug.

(6) Where a drug is under development for only a subset of persons with a particular disease or condition, a demonstration that the subset is medically plausible.

(7) A summary of the regulatory status and marketing history of the drug in the United States and in foreign countries, e.g., IND and marketing application status and dispositions, what uses are under investigation and in what countries; for what indication is the drug approved in foreign countries; what adverse regulatory actions have been taken against the drug in any country.

(8) Documentation, with appended authoritative references, to demonstrate that:

(i) The disease or condition for which the drug is intended affects fewer than 200,000 people in the United States or, if the drug is a vaccine, diagnostic drug, or preventive drug, the persons to whom the drug will be administered in the United States are fewer than 200,000 per year as specified in § 316.21(b), or

(ii) For a drug intended for diseases or conditions affecting 200,000 or more people, or for a vaccine, diagnostic drug, or preventive drug to be administered to 200,000 or more persons per year in the United States, there is no reasonable expectation that costs of research and development of the drug for the indication can be recovered by sales of the drug in the United States as specified in § 316.21(c).

(9) A statement as to whether the sponsor submitting the request is the real party in interest of the development and the intended or actual production and sales of the product.

(c) Any of the information previously provided by the sponsor to FDA under Subpart B of this part may be referenced by specific page or location if it duplicates information required elsewhere in this section.

§ 316.21 Verification of orphan-drug status.

(a) So that FDA can determine whether a drug qualifies for orphan-drug designation under section 526(a) of the act, the sponsor shall include in its request to FDA for orphan-drug designation under § 316.20 either:

(1) Documentation as described in paragraph (b) of this section that the number of people affected by the disease or condition for which the drug product is indicated is fewer than 200,000 persons; or

(2) Documentation as described in paragraph (c) of this section that demonstrates that there is no reasonable expectation that the sales of the drug will be sufficient to offset the costs of developing the drug for the U.S. market and the costs of making the drug available in the United States.

(b) For the purpose of documenting that the number of people affected by the disease or condition for which the drug product is indicated is less than 200,000 persons, "prevalence" is defined as the number of persons in the United States who have been diagnosed as having the disease or condition at the time of the submission of the request for orphan-drug designation. To document the number of persons in the United States who have the disease or condition for which the drug is to be indicated, the sponsor shall submit to FDA evidence showing:

(1) The estimated prevalence of the disease or condition for which the drug is being developed, together with a list of the sources (including dates of information provided and literature citations) for the estimate;

(2) Upon request by FDA, the estimated prevalence of any other disease or condition for which the drug has already been approved or for which the drug is currently being developed, together with an explanation of the bases of these estimates; and

(3) The estimated number of people to whom the drug will be administered annually if the drug is a vaccine or is a drug intended for diagnosis or prevention of a rare disease or condition, together with an explanation of the bases of these estimates (including dates of information provided and literature citations).

(c) When submitting documentation that there is no reasonable expectation that costs of research and development of the drug for the disease or condition can be recovered by sales of the drug in the United States, the sponsor shall submit to FDA:

(1) Data on all costs that the sponsor has incurred in the course of developing the drug for the U.S. market. These costs shall include, but are not limited to, nonclinical laboratory studies, clinical studies, dosage form development, record and report maintenance, meetings with FDA, determination of patentability, preparation of designation request, IND/marketing application preparation, distribution of the drug under a "treatment" protocol, licensing costs, liability insurance, and overhead and depreciation. Furthermore, the sponsor shall demonstrate the reasonableness of the cost data. For example, if the sponsor has incurred costs for clinical investigations, the sponsor shall provide information on the number of investigations, the years in which they took place, and on the scope, duration, and number of patients that were involved in each investigation.

(2) If the drug was developed wholly or in part outside the United States, in addition to the documentation listed in paragraph (c)(1) of this section:

(i) Data on and justification for all costs that the sponsor has incurred outside of the United States in the course of developing the drug for the U.S. market. The justification, in addition to demonstrating the reasonableness of the cost data, must also explain the method that was used to determine which portion of the foreign development costs should be applied to the U.S. market, and what percent these costs are of total worldwide development costs. Any data submitted to foreign government authorities to support drug pricing determinations must be included with this information.

(ii) Data that show which foreign development costs were recovered through cost recovery procedures that are allowed during drug development in some foreign countries. For example, if the sponsor charged patients for the drug during clinical investigations, the revenues collected by the sponsor must be reported to FDA.

(3) In cases where the drug has already been approved for marketing for any indication or in cases where the drug is currently under investigation for one or more other indications (in addition to the indication for which orphan-drug designation is being sought), a clear explanation of and justification for the method that is used to apportion the development costs among the various indications.

(4) A statement of and justification for any development costs that the sponsor expects to incur after the submission of the designation request. In cases where the extent of these future development costs are not clear, the sponsor should request FDA's advice and assistance in estimating the scope of nonclinical laboratory studies and clinical investigations and other data that are needed to support marketing approval. Based on these recommendations, a cost estimate should be prepared.

(5) A statement of and justification for production and marketing costs that the sponsor has incurred in the past and expects to incur during the first 7 years that the drug is marketed.

(6) An estimate of and justification for the expected revenues from sales of the drug in the United States during its first 7 years of marketing. The justification should assume that the total market for the drug is equal to the prevalence of the disease or condition that the drug will be used to treat. The justification should include:

(i) An estimate of the expected market share of the drug in each of the first 7 years that it is marketed, together with an explanation of the basis for that estimate;

(ii) A projection of and justification for the price at which the drug will be sold; and

(iii) Comparisons with sales of similarly situated drugs, where available.

(7) The name of each country where the drug has already been approved for marketing for any indication, the dates of approval, the indication for which the drug is approved, and the annual sales and number of prescriptions in each country since the first approval date.

(8) A report of an independent certified public accountant in accordance with Statement on Standards for Attestation established by the American Institute of Certified Public Accountants on agreed upon procedures performed with respect to the data estimates and justifications submitted pursuant to this section. Cost data shall be determined in accordance with generally accepted accounting principles.

(d) A sponsor that is requesting orphan-drug designation for a drug designed to treat a disease or condition that affects 200,000 or more persons shall, at FDA's request, allow FDA or FDA-designated personnel to examine at reasonable times and in a reasonable

manner all relevant financial records and sales data of the sponsor and manufacturer.

§ 316.22 Permanent-resident agent for foreign sponsor.

Every foreign sponsor that seeks orphan-drug designation shall name a permanent resident of the United States as the sponsor's agent upon whom service of all processes, notices, orders, decisions, requirements, and other communications may be made on behalf of the sponsor. Notifications of changes in such agents or changes of address of agents should preferably be provided in advance, but not later than 60 days after the effective date of such changes. The permanent-resident agent may be an individual, firm, or domestic corporation and may represent any number of sponsors. The name of the permanent-resident agent shall be provided to: Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

§ 316.23 Timing of requests for orphan-drug designation; designation of already approved drugs.

(a) A sponsor may request orphan-drug designation at any time in the drug development process prior to the submission of a marketing application for the drug product for the orphan indication.

(b) A sponsor may request orphan-drug designation of an already approved drug product for an unapproved use without regard to whether the prior marketing approval was for an orphan-drug indication.

§ 316.24 Granting orphan-drug designation.

(a) FDA will grant the request for orphan-drug designation if none of the reasons described in § 316.25 for requiring or permitting refusal to grant such a request applies.

(b) When a request for orphan-drug designation is granted, FDA will notify the sponsor in writing and will publicize the orphan-drug designation in accordance with § 316.28.

§ 316.25 Refusal to grant orphan-drug designation.

(a) FDA will refuse to grant a request for orphan-drug designation if any of the following reasons apply:

(1) The drug is not intended for a rare disease or condition because:

(i) There is insufficient evidence to support the estimate that the drug is intended for treatment of a disease or condition in fewer than 200,000 people in the United States, or that the drug is intended for use in prevention or in diagnosis in fewer than 200,000 people annually in the United States; or

(ii) Where the drug is intended for prevention, diagnosis, or treatment of a disease or condition affecting 200,000 or more people in the United States, the sponsor has failed to demonstrate that there is no reasonable expectation that development and production costs will be recovered from sales of the drug for the orphan indication in the United States. A sponsor's failure to comply with § 316.21 shall constitute a failure to make the demonstration required in this paragraph.

(2) There is insufficient information about the drug, or the disease or condition for which it is intended, to establish a medically plausible basis for expecting the drug to be effective in the prevention, diagnosis, or treatment of that disease or condition.

(3) A drug that is otherwise the same drug as one that already has orphan-drug exclusive approval for the same rare disease or condition and the sponsor has not submitted a medically plausible hypothesis for the possible clinical superiority of the subsequent drug.

(b) FDA may refuse to grant a request for orphan-drug designation if the request for designation contains an untrue statement of material fact or omits material information.

§ 316.26 Amendment to orphan-drug designation.

(a) At any time prior to approval of a marketing application for a designated orphan drug, the sponsor holding designation may apply for an amendment to the indication stated in the orphan-drug designation if the proposed change is due to new and unexpected findings in research on the drugs, information arising from FDA recommendations, or unforeseen developments in treatment or diagnosis of the disease or condition.

(b) FDA will grant the amendment if it finds that the initial designation request was made in good faith and that the amendment is intended to conform the orphan-drug designation indication to the results of unanticipated research findings, to unforeseen developments in the treatment or diagnosis of the disease or condition, or to changes based on FDA recommendations, and that, as of the date of the submission of the amendment request, the amendment would not result in exceeding the prevalence or cost recovery thresholds in § 316.21 (a)(1) or (a)(2) upon which the drug was originally designated.

§ 316.27 Change in ownership of orphan-drug designation.

(a) A sponsor may transfer ownership of or any beneficial interest in the orphan-drug designation of a drug to a new sponsor. At the time of the transfer, the new and former owners are required to submit the following information to FDA:

(1) The former owner or assignor of rights shall submit a letter or other document that states that all or some rights to the orphan-drug designation of the drug have been transferred to the new owner or assignee and that a complete copy of the request for orphan-drug designation, including any amendments to the request, supplements to the granted request, and correspondence relevant to the orphan-drug designation, has been provided to the new owner or assignee.

(2) The new owner or assignee of rights shall submit a statement accepting orphan-drug designation and a letter or other document containing the following:

(i) The date that the change in ownership or assignment of rights is effective;

(ii) A statement that the new owner has a compete copy of the request for orphan-drug designation including any amendments to the request, supplements to the granted request, and correspondence relevant to the orphan-drug designation; and

(iii) A specific description of the rights that have been assigned and those that have been reserved. This may be satisfied by the submission of either a list of rights assigned and reserved or copies of all relevant agreements between assignors and assignees; and

(iv) The name and address of a new primary contact person or resident agent.

(b) No sponsor may relieve itself of responsibilities under the Orphan Drug Act or under this part by assigning rights to another person without:

(1) Assuring that the sponsor or the assignee will carry out such responsibilities; or

(2) Obtaining prior permission from FDA.

§ 316.28 Publication of orphan-drug designations.

Each month FDA will update a publically available list of drugs designated as orphan drugs. A cumulative, updated list of all designated drugs will be provided annually. These will be placed on file at the FDA Dockets Management Branch, and will contain the following information:

(a) The name and address of the manufacturer and sponsor;

(b) The generic name and trade name, if any, of the drug and the date of the granting of orphan-drug designation;

(c) The rare disease or condition for which orphan-drug designation was granted; and

(d) The proposed indication for use of the drug.

§ 316.29 Revocation of orphan-drug designation.

(a) FDA may revoke orphan-drug designation for any drug if the agency finds that:

(1) The request for designation contained an untrue statement of material fact; or

(2) The request for designation omitted material information required by this part; or

(3) FDA subsequently finds that the drug in fact had not been eligible for orphan-drug designation at the time of submission of the request therefor.

(b) For an approved drug, revocation of orphan-drug designation also suspends or withdraws the sponsor's exclusive marketing rights for the drug but not the approval of the drug's marketing application.

(c) Where a drug has been designated as an orphan drug because the prevalence of a disease or condition (or, in the case of vaccines, diagnostic drugs, or preventive drugs, the target population) is under 200,000 in the United States at the time of designation, its designation will not be revoked on the ground that the prevalence of the disease or condition (or the target population) becomes more than 200,000 persons.

§ 316.30 Annual reports of holder of orphan-drug designation.

Within 14 months after the date on which a drug was designated as an orphan drug and annually thereafter until marketing approval, the sponsor of a designated drug shall submit a brief progress report to the FDA Office of Orphan Products Development on the drug that includes:

(a) A short account of the progress of drug development including a review of preclinical and clinical studies initiated, ongoing, and completed and a short summary of the status or results of such studies.

(b) A description of the investigational plan for the coming year, as well as any anticipated difficulties in development, testing, and marketing; and

(c) A brief discussion of any changes that may affect the orphan-drug status of the product. For example, for products nearing the end of the approval process, sponsors should discuss any disparity between the probable marketing indication and the designated indication as related to the need for an amendment to the orphan-drug designation pursuant to § 316.26.

Subpart D—Orphan-drug Exclusive Approval

§ 316.31 Scope of orphan-drug exclusive approval.

(a) After approval of a sponsor's marketing application for a designated orphan-drug product for treatment of the rare disease or condition concerning which orphan-drug designation was granted, FDA will not approve another sponsor's marketing application for the same drug before the expiration of 7 years from the date of such approval as stated in the approval letter from FDA, except that such a marketing application can be approved sooner if, and such time as, any of the following occurs:

(1) Withdrawal of exclusive approval or revocation of orphan-drug designation by FDA under any provision of this part; or

(2) Withdrawal for any reason of the marketing application for the drug in question; or

(3) Consent by the holder of exclusive approval to permit another marketing application to gain approval; or

(4) Failure of the holder of exclusive approval to assure a sufficient quantity of the drug under section 527 of the act and § 316.36.

(b) If a sponsor's marketing application for a drug product is determined not to be approvable because approval is barred under section 527 of the act until the expiration of the period of exclusive marketing of another drug product, FDA will so notify the sponsor in writing.

§ 316.34 FDA recognition of exclusive approval.

(a) FDA will send the sponsor (or, the permanent-resident agent, if applicable) timely written notice recognizing exclusive approval once the marketing application for a designated orphan-drug product has been approved. The written notice will inform the sponsor of the requirements for maintaining orphan-drug exclusive approval for the full 7-year term of exclusive approval.

(b) When a marketing application is approved for a designated orphan drug that qualifies for exclusive approval, FDA will publish in its publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" information identifying the sponsor, the drug, and the date of termination of the orphan-drug exclusive approval. A subscription to this publication and its monthly cumulative supplements is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325.

§ 316.36 Insufficient quantities of orphan drugs.

(a) Under section 527 of the act, whenever the Director has reason to believe that the holder of exclusive approval cannot assure the availability of sufficient quantities of an orphan drug to meet the needs of patients with the disease or condition for which the drug was designated, the Director will so notify the holder of this possible insufficiency and will offer the holder one of the following options, which must be exercised by a time that the Director specifies:

(1) Provide the Director in writing, or orally, or both, at the Director's discretion, views and data as to how the holder can assure the availability of sufficient quantities of the orphan drug within a reasonable time to meet the needs of patients with the disease or condition for which the drug was designated; or

(2) Provide the Director in writing the holder's consent for the approval of other marketing applications for the same drug before the expiration of the 7-year period of exclusive approval.

(b) If, within the time that the Director specifies, the holder fails to consent to the approval of other marketing applications and if the Director finds that the holder has not shown that it can assure the availability of sufficient quantities of the orphan drug to meet the needs of patients with the disease or condition for which the drug was designated, the Director will issue a written order withdrawing the drug product's exclusive approval. This order will embody the Director's findings and conclusions and will constitute final agency action. An order withdrawing the sponsor's exclusive marketing rights may issue whether or not there are other sponsors that can assure the availability of alternative sources of supply. Once withdrawn under this section, exclusive approval may not be reinstated for that drug.

Subpart E—Open Protocols for Investigations

§ 316.40 Treatment use of a designated orphan drug.

Prospective investigators seeking to obtain treatment use of designated orphan drugs may do so as provided in § 312.34 of this chapter.

Subpart F—Availability of Information

§ 316.50 Guidelines.

FDA's Office of Orphan Products Development will maintain and make publicly available a list of guidelines that apply to the regulations in this part. The list states how a person can obtain a copy of each guideline. A request for a copy of the list or for any guideline should be directed to the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

§ 316.52 Availability for public disclosure of data and information in requests and applications.

(a) FDA will not publicly disclose the existence of a request for orphan-drug designation under section 526 of the act prior to final FDA action on the request unless the existence of the request has been previously publicly disclosed or acknowledged.

(b) Whether or not the existence of a pending request for designation has been publicly disclosed or acknowledged, no data or information in the request are available for public disclosure prior to final FDA action on the request.

(c) Upon final FDA action on a request for designation, FDA will determine the public availability of data and information in the request in accordance with part 20 and § 314.430 of this chapter and other applicable statutes and regulations.

(d) In accordance with § 316.28, FDA will make a cumulative list of all orphan drug designations available to the public and update such list monthly.

(e) FDA will not publicly disclose the existence of a pending marketing application for a designated orphan drug for the use for which the drug was designated unless the existence of the application has been previously publicly disclosed or acknowledged.

(f) FDA will determine the public availability of data and information contained in pending and approved marketing applications for a designated orphan drug for the use for which the drug was designated in accordance with part 20 and § 314.430 of this chapter and other applicable statutes and regulations.

Dated: May 21, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

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Part V

Department of Education

34 CFR Part 316 et. al.
Training Personnel for the Education of Individuals With Disabilities; Final Regulations and Notice

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DEPARTMENT OF EDUCATION

34 CFR Parts 316, 318, and 319

RIN 1820–AA95

Training Personnel for the Education of Individuals With Disabilities in the Matter of Grants for Personnel Training, Parent Training and Information Centers, and Grants to State Educational Agencies and Institutions of Higher Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Training Personnel for the Education of Individuals With Disabilities program authority as reauthorized in the Individuals With Disabilities Education Act Amendments of 1991 (1991 Amendments), Public Law 102–119. The regulations conform existing regulations to statutory provisions enacted in the 1991 Amendments; add additional priorities, including priorities pertaining to AMERICA 2000 (the President's strategy for moving the Nation toward the National Education Goals); and include modifications to certain existing regulations. The Training Personnel for the Education of Individuals With Disabilities program furthers AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to enable parents to more fully and effectively meet the educational needs of their children with disabilities and to enhance the quality and quantity of personnel available to serve these children. National Education Goal 1 calls for all children to start school ready to learn, and National Education Goal 3 calls for all American students to demonstrate competency in challenging subject matter and to learn to use their minds well.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Max Mueller, U.S. Department of Education, 400 Maryland Avenue, SW., room 3072, Switzer Building, Washington, DC 20202–2651. Telephone: (202) 205–9554. Deaf and hearing impaired individuals may call (202) 205–9999 for TDD services.

SUPPLEMENTARY INFORMATION: The major purposes of the proposed regulations are: (1) To incorporate requirements and new program authorities set forth in the 1991 Amendments; (2) to add new priorities; and (3) to make a number of changes to modify the existing regulations and conform them to the 1991 Amendments. On August 5, 1992, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (57 FR 34620–34638).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, eight parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Issues are discussed under the part of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Part 316

Comments: Three commenters expressed concern that the proposed regulations required experimental rural centers to serve a large, sparsely settled area (§ 316.10(b)(2)), whereas the regulations appeared, through the use of the word "may", to give greater flexibility to urban centers (§ 316.10(b)(1)). Commenters supported the flexibility provided for experimental urban centers, but expressed concern regarding the more restrictive nature of the focus for experimental rural centers. Commenters indicated that maximum flexibility should be provided for both rural and urban experimental centers to reach difficult-to-serve populations, and that the distinction between "may" and "must" was inconsistent and contradictory.

Discussion: The Secretary agrees that all the experimental centers should have the greatest possible flexibility to meet the needs of special populations who may not be adequately served by other centers. However, the regulations must follow the dictates of the law that require rural centers to "serve large numbers of parents of children with disabilities located in rural areas."

Changes: Language has been changed to emphasize the flexibility of the experimental rural centers by making it clear that rural centers can also meet the statutory mandate by serving sparsely populated areas that contain large numbers of parents given the expanse of the geographic area.

Part 318

Comments: One commenter felt that the proposed regulations (§ 318.10(a) (4) and (5)) provided too little information on the new authority for professional development partnerships and the provision of technical assistance to those partnerships.

Discussion: The Secretary believes that the content of these activities is appropriately elaborated in the priorities (§ 318.11(a) (6) and (7)).

Changes: None.

Comments: Three commenters suggested that serious emotional disturbance (SED), while it is not a low incidence disability, is still so critical as to merit separate attention (§ 318.11(a)(10)). These commenters were concerned about the effect of deletion of SED from this priority.

Discussion: The Secretary agrees that the shortage of personnel to provide services to children with serious emotional disturbance is among the most critical personnel issues in the field. However, the addition of authority to reserve funds for specific disability groups (§ 318.11(b)) permits the Secretary to continue to focus resources on this group without confusing the issue of low incidence disabilities, or placing SED professional preparation programs in direct competition with programs preparing personnel for true low incidence populations.

Changes: None.

Comments: One commenter viewed the priority on preparing personnel to meet the National Education Goals (§ 318.11(a)(17)) as being premature because the relationship of the goals to services for children with disabilities is not established enough to permit intelligent implementation of this priority.

Discussion: This priority is intended to contribute to identifying the relationships between the National Education Goals and programs and services for children with disabilities. The Secretary believes that the National Education Goals have been firmly established and that programs to address these goals are developing rapidly. It is critical that these programs include sufficient consideration of the needs of children with disabilities in school reform initiatives. This priority will support efforts to ensure consideration of children with disabilities in school reform initiatives at least in terms of professional preparation.

Changes: None.

Comments: One commenter suggested that the inclusion of a separate priority for students with attention deficit

disorder (ADD) (§ 318.11(a)(19)) was inappropriate.

Discussion: While ADD is not currently identified as a specific category of disability under the Individuals With Disabilities Education Act (IDEA), the Secretary believes that the needs of these children are critical. The importance of meeting the needs of these children has been recognized by the Congress in the reports accompanying the past two appropriation acts, which directed funds toward training activities related to ADD. This priority is intended to implement this objective.

Changes: None.

Comments: Three commenters expressed concern that the authority given to the Secretary to direct resources to specific disabilities or geographic areas (§ 318.11(b)) needs further clarification. More specifically, the commenters felt that the regulations should include procedures and criteria for identifying specific needs.

Discussion: The principal sources of data relating to the identification of particularly critical needs are the States' comprehensive systems of personnel development. However, other data could also be brought to bear on decisions to reserve funds for specific disability groups or geographic areas. For example, it is clear that shortages of teachers for children with visual impairments, other health impairments, and serious emotional disturbance are especially severe, independent of any State-by-State analyses. It is also clear that several largely rural States face particular problems in recruiting sufficient fully qualified personnel.

Changes: The section has been changed by adding a brief description of sources of data for making these decisions.

Comments: One commenter suggested that all of the application requirements under § 318.20 should apply to all professional personnel projects authorized in part 318.

Discussion: The Secretary agrees that these requirements are generally desirable for most training activities. However, they are not appropriate for some of the training activities under the program. For example, the requirement in § 318.20(a) to train personnel based on the personnel needs of a State or States employing program graduates may not be appropriate for a special project developing curricula for broad distribution.

Changes: None.

Part 319

Comments: Three comments related to the competitive projects under the State educational agency grants program (§ 319.3(b)). The commenters suggested that the section should be deleted or modified. The principal concern expressed by commenters was that awarding projects on a competitive basis was inconsistent with the general purpose of IDEA section 632, which is to assist States in meeting their most critical personnel needs (priorities).

Discussion: The competitive grant portion of this program is authorized by the statute and must be reflected in the regulations. The Secretary agrees that State priorities must be considered. Section 319.1 specifies that all programs, including those funded competitively, "must be consistent with the personnel needs identified in the States' comprehensive systems of personnel development" under IDEA sections 613 and 676(b)(8).

Changes: The description has been modified to clarify that the priorities referred to in this section are State priorities.

Comments: Two commenters recommended limiting technical assistance awards (§ 319.2(c)) to nonprofit institutions, organizations, and agencies. The commenters argued that there was no evidence that a sufficient pool of technical assistance expertise was not available in the nonprofit community, and that limiting this program to nonprofit organizations would make the requirements of these technical assistance activities more consistent with other technical assistance programs under IDEA.

Discussion: The Secretary does not disagree that a sufficient pool of technical assistance expertise may be available in the nonprofit community. However, the Secretary believes that technical assistance should be provided by the best available source if the authorizing legislation is silent on the issue.

Changes: None.

Comments: Three respondents commented on the proposed changes in the method for determining State awards (§ 319.21(a)). Two supported the proposed change, while the third suggested that large States would suffer a reduction in funds. This commenter suggested an alternative that would permit a higher base award for smaller States but maintain the existing formula for determining the bonus amount.

Discussion: The Secretary recognizes that the proposed change in regulations may result in significant one-time reductions in funding for the largest States. However, it is important that regulations reflect an equitable balance between the needs of the small States and the large ones, and provide grants of sufficient size and scope to all States. In addition, the proposed regulations also better account for fluctuating appropriation levels than the current formula. For example, in 1992 a program budget increase of almost $2 million was shared by only the eleven largest States. The revised formula will allow equitable distribution of funds to all States in situations of either significant increases or reductions in overall funds.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 316

Act, Children with disabilities, Parent organizations, Parents, Reporting and recordkeeping requirements.

34 CFR Part 318

Education, Education of individuals with disabilities, Education—training, Grant programs—education, Reporting and recordkeeping requirements, Student aid, Teachers.

34 CFR Part 319

Education, Education of individuals with disabilities, Education—training, Grant programs—education, Student aid, Teachers.

Dated: December 1, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.029—Training Personnel for the Education of Individuals With Disabilities)

The Secretary amends title 34 of the Code of Federal Regulations by revising parts 316, 318, and 319 to read as follows:

PART 316—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—PARENT TRAINING AND INFORMATION CENTERS

Subpart A—General

Sec.

316.1 What is the Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers program?
316.2 Who is eligible for an award?
316.3 What kinds of projects may the Secretary fund?
316.4 What regulations apply to this program?
316.5 What definitions apply to this program?

Subpart B—What Activities Does the Secretary Assist Under This Program?

316.10 What activities may the Secretary fund?

Subpart C—How Does the Secretary Make an Award?

316.20 What are the requirements for applicants?
316.21 How does the Secretary evaluate an application?
316.22 What selection criteria does the Secretary use to evaluate applications for parent centers and experimental centers?
316.23 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?
316.24 What additional factors does the Secretary consider?

Subpart D—What Conditions Must a Grantee Meet?

316.30 What types of services are required?
316.31 What are the duties of the board of directors or special governing committee of a parent organization?
316.32 What are the reporting requirements under this program?
316.33 What other conditions must be met by grantees under this program?

Authority: 20 U.S.C. 1431(d) and 1434, unless otherwise noted.

Subpart A—General

§ 316.1 What is the Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers program?

(a) This program provides training and information to parents of children (infants, toddlers, children, and youth) with disabilities, and to persons who work with parents to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children with disabilities.

(b) Parent training and information programs may, at a grantee's discretion, include participation of State or local educational agency personnel if that participation will further an objective of the program assisted by the grant.

(Authority: 20 U.S.C. 1431(d))

§ 316.2 Who is eligible for an award?

Only parent organizations are eligible to receive awards under this program.

(Authority: 20 U.S.C. 1431(d))

§ 316.3 What kinds of projects may the Secretary fund?

The Secretary funds three kinds of projects under this program:

(a) Parent training and information centers.

(b) Experimental urban and rural parent training and information centers.

(c) Technical assistance for establishing, developing, and coordinating parent training and information programs.

(Authority: 20 U.S.C. 1431(d))

§ 316.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions That Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 81 (General Education Provisions Act—Enforcement).

(6) Part 82 (New Restrictions on Lobbying).

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)).

(b) The regulations in this part 316.

(Authority: 20 U.S.C. 1431(d); 3474(a))

§ 316.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Local educational agency
Nonprofit
Private
Project
Secretary
State
State educational agency

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300:

Individualized education program
Parent
Related services
Special education

(c) *Other definitions specific to 34 CFR part 316.* The following terms used in this part are defined as follows:

Act means the Individuals With Disabilities Education Act (IDEA).

Parent organization means a private nonprofit organization that is governed by a board of directors of which a majority of the members are parents of children with disabilities—particularly minority parents—and that includes members who are professionals—especially minority professionals—in the fields of special education, early intervention, and related services, and individuals with disabilities. If the private nonprofit organization does not have such a board, the organization must have a membership that represents the interests of individuals with disabilities, and must establish a special governing committee of which a majority of the members are parents of children with disabilities—particularly parents of minority children—and that includes members who are professionals—especially minority professionals—in the fields of special education, early intervention, and related services. Parent and professional membership of these boards or special governing committees must be broadly representative of minority and other individuals and groups having an interest in special education, early intervention, and related services.

(Authority: 20 U.S.C. 1431(d))

Subpart B—What Activities Does the Secretary Assist Under This Program?

§ 316.10 What activities may the Secretary fund?

(a) P rent training and information centers assisted under § 316.3(a) must assist parents to—

(1) Better understand the nature and needs of the disabling conditions of their children with disabilities;

(2) Provide follow-up support for the educational programs of their children with disabilities;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decisionmaking processes, including the development of the individualized education program, for a child with a disability;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities and their families; and

(6) Understand the provisions for educating children with disabilities under the Act.

(b) Experimental urban centers under § 316.3(b) must serve large numbers of parents of children with disabilities located in high density areas, and experimental rural centers under § 316.3(b) must serve large numbers of parents of children with disabilities located in rural areas. The centers may focus on particular aspects of parent training and information services, including but not limited to those activities required under § 316.10(a). Experimental projects may include a planning and development phase.

(1) Experimental urban centers may concentrate on neighborhoods within a city or focus on specific unserved groups. They may serve an entire city or concentrate on a specific area or ethnic group within a city.

(2) Experimental rural centers may serve a large, sparsely populated area. Projects may identify specific methods, including use of technology and telecommunications, to reach these parents.

(c) The technical assistance to parent programs under § 316.3(c) includes technical assistance for establishing, developing, and coordinating parent training and information programs. Activities must include, but are not limited to, the following:

(1) Determining national needs and identifying unserved regions and populations.

(2) Identifying the specific technical assistance needs of individual centers.

(3) Developing programs in unserved areas.

(4) Conducting annual meetings at national and regional levels.

(5) Identifying and coordinating national activities to serve parents of children with disabilities. This may include conferences, publications, and maintenance of documents and data relevant to parent programs.

(6) Dissemination of information through media, newsletters, computers, and written documentation.

(7) Cooperative activities with other projects and organizations on common goals.

(8) Evaluation, including determination of the impact of technical assistance activities, and evaluation assistance to centers.

(9) Management assistance to centers.

(10) Involvement of parent programs and the Department in identifying one or more substantive specialization areas.

(11) Acting as a resource to parent training programs in identified specialization areas such as transition, supported employment, early childhood, integration, and technology.

(Authority: 20 U.S.C. 1431(d))

Subpart C—How Does the Secretary Make an Award?

§ 316.20 What are the requirements for applicants?

(a) Applicants for awards for parent centers and experimental centers under § 316.3 (a) and (b) shall demonstrate the capacity and expertise to conduct the authorized training and information activities effectively, and to network with clearinghouses, including those authorized under section 633 of the Act, other organizations and agencies, and other established national, State, and local parent groups representing the full range of parents of children with disabilities—especially parents of minority children.

(b) In order to assure that awards for parent centers under § 316.3(a) serve parents of minority children with disabilities (including parents served pursuant to § 316.33) representative to the proportion of the minority population in the areas being served, applicants for awards shall identify with specificity the special efforts that will be undertaken to involve those parents, including efforts to work with community-based and cultural organizations and the specification of supplementary aids, services, and supports that will be made available. Applicants shall also specify budgetary items earmarked to accomplish these efforts.

(c) Applicants for awards for experimental urban centers shall provide a rationale for their project and demonstrate a capability to serve the parents they have identified and targeted for services.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§ 316.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 316.22 and 316.23.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§ 316.22 What selection criteria does the Secretary use to evaluate applications for parent centers and experimental centers?

The Secretary uses the following criteria to evaluate applications for parent centers and experimental centers:

(a) *Extent of present and projected need.* (15 points) The Secretary reviews each application to determine the extent to which the project makes an impact on parent training and information needs, consistent with the purposes of the Act, including consideration of the impact on—

(1) The present and projected needs in the applicant's geographic area for trained parents;

(2) The present and projected training and information needs for personnel to work with parents of children with disabilities; and

(3) Parents of minority infants, toddlers, children, and youth with disabilities.

(b) *Anticipated project results.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist parents to—

(1) Better understand the nature and needs of the disabling conditions of their children with disabilities;

(2) Provide follow-up support for the educational programs of their children with disabilities;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decision-making processes, including the development of the individualized educational program, for a child with a disability;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities and their families; and

(6) Understand the provisions for educating children with disabilities under the Act.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective management plan that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) How the applicant addresses the needs of parents of minority infants, toddlers, children, and youth with disabilities.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable (See 34 CFR 75.590, Evaluation by the grantee.); and

(3) Provide the data required for the annual report to Congress. (See 20 U.S.C. 1434 (a)(3) and (b))

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used on the project;

(3) The time each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the applicant's past experience in the fields relating to the objectives of the project.

(f) *Budget and cost-effectiveness.* (10 points) the Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§ 316.23 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities:

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Project content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the project—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to assist parents of infants, toddlers, children, and youth with disabilities; and

(3) The extent to which project philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by the project;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information; and

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the key personnel's past experience and training in fields related to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§ 316.24 What additional factors does the Secretary consider?

In addition to the criteria in § 316.22, the Secretary considers the following factors in making an award:

(a) *Geographic distribution.* In selecting projects for awards for parent centers under § 316.3(a), the Secretary ensures that, to the greatest extent possible, awards are distributed geographically, on a State or regional basis, throughout all the States and serve parents of children with disabilities in both urban and rural areas.

(b) *Unserved areas.* In selecting projects for parent centers under § 316.3(a) and experimental centers under § 316.3(b), the Secretary gives priority to applications that propose to serve unserved areas.

(Authority: 20 U.S.C. 1431(d))

Subpart D—What Conditions Must a Grantee Meet?

§ 316.30 What types of services are required?

(a) Parent centers and experimental centers must be designed to meet the unique training and information needs of parents of children with disabilities who live in the areas to be served by the project, particularly those who are members of groups that have been traditionally underrepresented.

(b) Parent centers and experimental centers must consult and network with appropriate national, State, regional, and local agencies and organizations that serve or assist children with disabilities and their families in the geographic areas served by the project.

(Authority: 20 U.S.C. 1431(d))

§ 316.31 What are the duties of the board of directors or special governing committee of a parent organization?

A recipient's board of directors or special governing committee as described in § 316.5 must meet at least once in each calendar quarter to review the parent training and information activities under the award. Whenever a private nonprofit organization requests a renewal of an award under this part, the board of directors or special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§ 316.32 What are the reporting requirements under this program?

(a) Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of these procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Reserve Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(b) The recipient shall provide data for every year of the project on—

(1) The number of parents provided information and training by disability category of their children;

(2) The types and modes of information or training provided;

(3) Strategies used to reach and serve parents of minority children with disabilities;

(4) The number of parents served as a result of activities described under paragraph (b)(3) of this section;

(5) Activities to network with other information clearinghouses and parent groups as required by § 316.20(a);

(6) The number of agencies and organizations consulted with at the national, State, regional, and local levels; and

(7) The number of parents served who are parents of children with disabilities birth through age five.

(Approved by the Office of Management and Budget under control number 1820–0530)

(Authority: 20 U.S.C. 1409(g); 1434(a)(3))

§ 316.33 What other conditions must be met by grantees under this program?

(a) In the case of a grant for parent centers under § 316.3(a) and experimental centers under § 316.3(b) to a private nonprofit organization for fiscal year 1993 or 1994, the organization, in expending the amounts described in paragraph (b) of this section, shall give priority to providing services to parents of children with disabilities birth through age five.

(b) With respect to a grant for a parent center or an experimental center to a private nonprofit organization for fiscal year 1993 or 1994, the amounts referred to in paragraph (a) of this section are any amounts provided in the grant in excess of the amount of any grant under this program provided to the organization for fiscal year 1992.

(c) Recipients of awards for parent centers and experimental centers shall serve parents of children representing the full range of disabling conditions.

(Authority: 20 U.S.C. 1431(d))

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

Subpart A—General

Sec.

318.1 What is the purpose of the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program?
318.2 Who is eligible for an award?
318.3 What regulations apply to this program?
318.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

318.10 What activities may the Secretary fund?
318.11 What priorities may the Secretary establish?

Subpart C—How Does the Secretary Make an Award?

318.20 What are the requirements for applicants?
318.21 How does the Secretary evaluate an application?
318.22 What selection criteria does the Secretary use to evaluate applications for preservice training, leadership training, and professional development programs?
318.23 What selection criteria does the Secretary use to evaluate applications for special projects?
318.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?
318.25 What additional factors does the Secretary consider?

Subpart D—What Conditions Must a Grantee Meet?

318.30 What are the priorities for award of student fellowships and traineeships?
318.31 Is student financial assistance authorized?
318.32 What are the student financial assistance criteria?
318.33 May the grantee use funds if a financially assisted student withdraws or is dismissed?
318.34 What are the reporting requirements under this program?

Authority: 20 U.S.C. 1431(a)–(c) and 1434, unless otherwise noted.

Subpart A—General

§ 318.1 What is the purpose of the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program?

This program serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.2 Who is eligible for an award?

The following are eligible for assistance under this part:

(a) Institutions of higher education and appropriate nonprofit agencies are eligible under § 318.10(a) (1) and (2).

(b) Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible under § 318.10(a)(3).

(c) States or other entities are eligible under § 318.10(a) (4) and (5). An entity may not receive financial assistance for a professional development partnership project and a technical assistance project during the same period.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions that Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 318.

(Authority: 20 U.S.C. 1431(a)–(c); 3474(a))

§ 318.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300:

Deafness
Deaf-blindness
Other health impairments
Related services
Special education

(c) *Definitions specific to 34 CFR part 318.* The following terms used in this part are defined as follows:

Act means the Individuals with Disabilities Education Act (IDEA).

Infants and toddlers with disabilities. (1) The term means individuals from birth through age two who need early intervention services because they—

(i) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Cognitive development, physical development, including vision and hearing, language and speech development, psychosocial development, or self-help skills; or

(ii) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(2) The term also includes children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

National Education Goals means the following goals to be achieved by the year 2000:

(1) All children will start school ready to learn.

(2) The high school graduation rate will increase to at least 90 percent.

(3) Students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter, including English, mathematics, science, history, and geography, and every school will ensure that all students learn to use their minds well, so that they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

(4) Students will be first in the world in science and mathematics achievement.

(5) Every adult will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

(6) Every school will be free of drugs and violence and will offer a disciplined environment conducive to learning.

(Authority: 20 U.S.C. 1401; 1431(a)–(c); 1472)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 318.10 What activities may the Secretary fund?

(a) The Secretary supports training programs in the following five areas:

(1) Preservice training of personnel for careers in special education, related services, and early intervention, including careers in—

(i) Special education teaching, including speech-language pathology, audiology, adapted physical education, and instructional and assistive technology;

(ii) Related services for children with disabilities in educational and other settings; and

(iii) Early intervention and preschool services.

(2) Leadership training, including—

(i) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(ii) Research; and

(iii) Personnel preparation at the doctoral and post-doctoral levels.

(3) Special projects designed to include—

(i) Development, evaluation, and distribution of innovative approaches, curricula, and materials for personnel development; and

(ii) Other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(4) The formation of professional development programs consisting of consortia or partnerships of public and private entities.

(5) Technical assistance to the entities in paragraph (a)(4) of this section.

(b) Projects for preservice training, leadership training, and professional development programs must—

(1) Develop new programs to establish expanded capacity for quality preservice training; or

(2) Improve existing programs designed to increase the capacity and quality of preservice training.

(c) Projects supported under this program may provide training for degree, nondegree, certified, and noncertified personnel at associate degree through post-doctoral levels of preparation.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.11 What priorities may the Secretary establish?

(a) The Secretary may, through a notice published in the Federal

Register, select annually one or more of the following priority areas for funding:

(1) *Preparation of personnel for careers in special education.* This priority supports preservice preparation of personnel for careers in special education. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training at the baccalaureate, masters, or specialist level is appropriate. Under this priority, "personnel" includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists.

(2) *Preparation of related services personnel.* This priority supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists, occupational therapists, school psychologists, counselors (including rehabilitation counselors), interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, physicians, and other related services personnel.

(i) Projects to train personnel identified as special education personnel in the regulations in this part are not appropriate, even if those personnel may be considered related services personnel in other settings.

(ii) This priority is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy (OT) might support a special component on pediatric or juvenile psychiatric OT, support those students whose career goal is OT in the schools, or provide for practica and internships in school settings.

(3) *Training early intervention and preschool personnel.* This priority supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth through five, and must include consideration of family involvement in early intervention and preschool services. Training programs under this priority must have a significant interdisciplinary focus.

(4) *Preparation of leadership personnel.* This priority supports projects that are designed to provide preservice professional preparation of leadership personnel in special education, related services, and early intervention. Leadership training is considered to be preparation in—

(i) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(ii) Research; and

(iii) Personnel preparation at the doctoral and post-doctoral levels.

(5) *Special projects.* This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(i) Appropriate areas of interest include—

(A) Preservice training programs to prepare regular educators to work with children and youth with disabilities and their families;

(B) Training teachers to work in community and school settings with children and youth with disabilities and their families;

(C) Inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families;

(D) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities, and their families;

(E) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(F) Recruitment and retention of special education, related services, and early intervention personnel.

(ii) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators.

(6) *Professional development partnerships.* This priority, listed in § 318.10(a)(4), supports the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement or competency-based training, including but not limited to certificate- or degree-granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children, and youth with disabilities. Activities authorized under this priority include, but are not limited to, the following:

(i) Establishing a program with colleges and universities to develop creative new programs and coursework options or to expand existing programs in the field of special education, related services, or early intervention. Funds may be used to provide release time for faculty and staff for curriculum development, instructional costs, and modest start-up and other program development costs.

(ii) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, county, and voluntary sector workers who have demonstrated a commitment to working in these fields and who are enrolled in higher education institution programs relating to these fields.

(iii) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in these fields.

(iv) Identifying existing public agency, private agency, and labor union personnel policies and benefit programs that may facilitate the ability of workers to take advantage of higher education opportunities such as leave time and tuition reimbursement.

(7) *Technical assistance to professional development partnerships.* This priority, listed in § 318.10(a)(5), supports technical assistance to States or entities receiving awards under professional development partnership projects. Activities must include, but are not limited to, the following:

(i) Identifying the specific technical assistance needs of individual projects.

(ii) Conducting annual meetings at the national level.

(iii) Identifying other projects under the Act related to professional development for the purpose of coordinating professional development projects. Coordination activities may include conferences, publications, and maintenance of documents and data relevant to the activities of the professional development projects.

(iv) Cooperating with other projects and organizations on common goals.

(v) Disseminating information through media, newsletters, computers, and written documentation.

(vi) Evaluating center activities, including impact determination, and evaluation assistance to centers.

(8) *Utilizing innovative recruitment and retention strategies.* This priority supports projects to develop emerging and creative sources of supply of personnel with degrees and certification in appropriate disciplines, and innovative strategies related to recruitment and retention of personnel.

(9) *Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities.* This priority supports projects designed specifically to train personnel who are working with less than full certification or outside their field of specialization, to assist them in becoming fully qualified. The following are appropriate under this priority: student incentives; extension, summer, and evening programs; internships; alternative certification plans; and other innovative practices.

(10) *Training personnel to serve low incidence disabilities.* This priority supports projects to train teachers of children with visual impairments including blindness, hearing impairments including deafness, orthopedic impairments, other health impairments, autism, traumatic brain injury, and severe and multiple disabilities.

(11) *Training personnel to work in rural areas.* This priority supports projects to train personnel to serve infants, toddlers, children, and youth with disabilities in rural areas. Projects, including curricula, procedures, practica, and innovative use of technology, must be designed to provide training to assist personnel to work with parents, teachers, and administrators in these special environments. Special strategies must be designed to recruit personnel from rural areas who will most likely return to those areas.

(12) *Training personnel to provide transition assistance from school to adult roles.* This priority supports projects for preparation of personnel who assist youth with disabilities in their transition from school to adult roles. Personnel may be prepared to provide short-term transition services, long-term structured employment services, or instruction in community and school settings with secondary school students. It is especially important that preparation of transition personnel include training in instructional and assistive technology.

(13) *Preparation of paraprofessionals.* This priority supports projects for the preparation of paraprofessionals. This includes programs to train teacher aids, job coaches, interpreters, therapy assistants, and other personnel who provide support to professional staff in delivery of services to infants, toddlers, children, and youth with disabilities.

(14) *Improving services for minorities.* This priority supports projects to prepare personnel to serve infants, toddlers, children, and youth with disabilities who, because of minority status, require that personnel obtain professional competencies in addition to those needed to teach other children with similar disabilities. Projects funded under this priority must focus on specific minority populations, determine the additional competencies that are needed by professionals serving those populations, and develop those competencies.

(15) *Training minorities and individuals with disabilities.* This priority supports projects to recruit and prepare minority individuals and individuals with disabilities for careers in special education, related services, and early intervention.

(16) *Minority institutions.* This priority supports awards to Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent. Awards may provide training of personnel in all areas noted in § 318.10(a) (1) and (2), and must be designed to increase the capabilities of the institution in appropriate training areas.

(17) *Preparing personnel to meet the National Education Goals.* This priority supports projects that develop or expand innovative preservice and inservice training programs that are designed to provide personnel serving children with disabilities with skills that are needed to help schools meet the National Education Goals. These programs must promote the following:

(i) Increased collaboration among providers of special education, regular education, bilingual education, migrant education, and vocational education, and among public and private agencies and institutions.

(ii) Improved coordination of services among health and social services agencies and within communities regarding services for children with disabilities and their families.

(iii) Increased systematic parental involvement in the education of their children with disabilities.

(iv) Inclusion of children with disabilities in all aspects of education and society.

(v) Training that is designed to enable special education teachers to teach, as appropriate, to world class standards (such as those developed by the National Council on Teachers of Mathematics) as those standards are developed.

(18) *Interpreter training.* This priority supports projects to train educational interpreters. Support is limited to projects that demonstrate recruitment strategies, specifically adapted curricula, and incentives designed to increase the probability that program graduates will function productively as interpreters in instructional settings. These projects must be concentrated on student support, rather than on basic institutional support.

(19) *Attention deficit disorders.* This priority supports projects to devise new inservice and preservice training strategies for special education and regular classroom teachers and administrators to address the needs of children with attention deficit disorders (ADD). The purpose is not to develop distinct categorical programs for training personnel to teach children with ADD, but rather to enhance the skills of general and special education teachers and administrators to better serve this population of students. These strategies must be infused into personnel preparation programs of national organizations serving regular and special education personnel.

(b) Under paragraph (a) of this section, the Secretary may identify an amount of funds to be set aside for projects to address the needs of children with particular disabilities and in particular States or geographic areas. Decisions to implement this paragraph would be based on review of each State's comprehensive systems of personnel development, special studies, and other information.

(Authority: 20 U.S.C. 1431(a)–(c))

Subpart C—How Does the Secretary Make an Award?

§ 318.20 What are the requirements for applicants?

(a) An applicant under § 318.10(a) (1) or (2) shall demonstrate that the proposed project is consistent with the needs for personnel, including personnel to provide special education services to children with limited English proficiency, identified by the comprehensive systems of personnel development of the State or States typically employing program graduates.

(b) A project under § 318.10(a) (1) or (2) must include—

(1) Training techniques and procedures designed to foster collaboration among special education teachers, regular teachers,

administrators, related service personnel, early intervention personnel, and parents;

(2) Training techniques, procedures, and practica designed to demonstrate the delivery of services in an array of regular, special education, and community settings; and

(3) Interdisciplinary preparation of trainees.

(c) An applicant shall demonstrate how it will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

(d) An applicant under § 318.10(a) (1) or (2) shall present a detailed description of strategies for recruitment and training of members of minority groups and persons with disabilities.

(e) For technical assistance under § 318.10(a)(5), to professional development partnership projects, an applicant shall demonstrate capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancements.

(f) An applicant under § 318.10(a) (1) or (2) shall demonstrate that it meets State and professionally recognized standards for the training of personnel, as evidenced by appropriate State and professional accreditation, unless the award is for the purpose of assisting the applicant to meet those standards.

(Approved by the Office of Management and Budget under control number 1820-0028)

(Authority: 20 U.S.C. 1410; 1431(a)–(c))

§ 318.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 318.22, 318.23, and 318.24.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.22 What selection criteria does the Secretary use to evaluate applications for preservice training, leadership training, and professional development programs?

The Secretary uses the following criteria to evaluate all applications for preservice training under § 318.10(a)(1), leadership training under § 318.10(a)(2) and professional development projects under § 318.10(a)(4).

(a) *Impact on critical present and projected needs.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical present and projected State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with disabilities. The Secretary considers—

(1) The significance of the personnel needs to be addressed to the provisions of special education, related services, and early intervention. Significance of needs identified by the applicant may be shown by—

(i) Evidence of critical shortages of personnel to serve infants, toddlers, children, and youth with disabilities, including those with limited English proficiency, in targeted specialty or geographic areas, as demonstrated by data from the State comprehensive systems of personnel development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with disabilities; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(ii) Evidence showing significant need for improvement in the quality of personnel providing special education, related services, and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted speciality or geographic areas; and

(2) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(i) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(ii) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, and the professional contributions of those graduates; and

(iii) For new programs, the extent to which program features address the projected needs, the applicant's plan for helping graduates locate appropriate employment in the area of need, and the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(b) *Capacity of the applicant.* (25 points) The Secretary reviews each application to determine the capacity of the applicant to train qualified personnel, including consideration of—

(1) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(2) The amount of time each key person plans to commit to the project;

(3) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability;

(4) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(5) The quality of the practicum training settings, including evidence that they are sufficiently available; apply state-of-the-art services and model teaching practices, materials, and technology; provide adequate supervision to trainees; offer opportunities for trainees to teach; and foster interaction between students with disabilities and their nondisabled peers;

(6) The capacity of the applicant to recruit well-qualified students;

(7) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(8) The extent to which the applicant cooperates with the State educational agency, the State-designated lead agency under part H of the Act, other institutions of higher education, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(c) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(6) The extent to which substantive content and organization of the program—

(i) Are appropriate for the students' attainment of professional knowledge

and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with disabilities; and

(7) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired; and;

(3) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant presents appropriate plans for the institutionalization of federally supported activities into basic program operations.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.23 What selection criteria does the Secretary use to evaluate applications for special projects?

The Secretary uses the following criteria to evaluate special projects under § 318.10(a)(3):

(a) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under parts B and H of the Act in special education, related services, or early intervention services personnel development.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the project—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the key personnel's past experience and training in fields related to the objectives of the project.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities under § 318.10(a)(5):

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan to operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and

instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by this program;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information;

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations; and

(6) Capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancements.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project; and

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.25 What additional factors does the Secretary consider?

To the extent feasible, the Secretary ensures that projects for professional development partnerships under § 318.10(a)(4) are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1431(a)–(c))

Subpart D—What Conditions Must a Grantee Meet?

§ 318.30 What are the priorities for award of student fellowships and traineeships?

A grantee shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.31 Is student financial assistance authorized?

The sum of the assistance provided to a student under this part and any other assistance provided the student may not exceed the student's cost of attendance as follows:

(a) *Cost of attendance* means—

(1) Tuition and fees normally assessed a student carrying the same academic workload (as determined by the institution) including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) An allowance (as determined by the institution) for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis;

(3) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(i) Is not less than $1,500 for students without dependents residing at home with parents;

(ii) Is the standard amount that the institution normally assesses its residents for room and board for students without dependents residing in institutionally owned or operated housing; and

(iii) Is based for all other students on the expenses reasonably incurred for room and board outside the institution, except that the amount may not be less than $2,500;

(4) For less than half-time students (as determined by the institution), tuition and fees and an allowance for books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (a)(7) of this section);

(5) For a student engaged in a program of study by correspondence, only tuition and fees; and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study as determined by the institution;

(7) For a student with one or more dependents, an allowance, as determined by the institution, based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance, as determined by the institution, for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction may be made with respect to the mode of instruction in determining costs, but this paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1087*ll*)

§ 318.32 What are the student financial assistance criteria?

Direct financial assistance may only be paid to a student in a preservice program, and only if the student—

(a) Is qualified for admission to the program of study;

(b) Maintains satisfactory progress in a course of study as defined in 34 CFR 668.7; and

(c)(1) Is a citizen or national of the United States;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Has a permanent or lasting—as distinguished from temporary—principal, actual dwelling place in fact, without regard to intent, in Palau or the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1091)

§ 318.33 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other eligible students during the grant period.

(Authority: 20 U.S.C. 1087*ll*)

§ 318.34 What are the reporting requirements under this program?

Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under control number 1820–0530)

(Authority: 20 U.S.C. 1409(g))

PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.

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319.2 Who is eligible for an award?
319.3 What activities may the Secretary fund?
319.4 What regulations apply to this program?
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319.10 What are the application requirements under this program?

Subpart C—How Does the Secretary Make an Award?

319.20 How does the Secretary evaluate an application?
319.21 How does the Secretary determine the amount of a basic State award?
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Subpart D—What Conditions Must Be Met After an Award?

319.30 Is student financial assistance authorized?
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319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?
319.33 What are the reporting requirements under this program?

Authority: 20 U.S.C. 1432, unless otherwise noted.

Subpart A—General

§ 319.1 What is the Training Personnel for the Education of Individuals with Disabilities—Grants to State Educational Agencies and Institutions of Higher Education program?

This program assists States in establishing and maintaining preservice and inservice programs to prepare special and regular education, related services, and early intervention personnel and their supervisors to meet the needs of infants, toddlers, children, and youth with disabilities. These programs must be consistent with the personnel needs identified in the State's comprehensive systems of personnel development under sections 613 and 676(b)(8) of the Individuals With Disabilities Education Act (IDEA). The program also assists States in developing and maintaining their comprehensive systems of personnel development, including conducting recruitment and retention activities.

(Authority: 20 U.S.C. 1432)

§ 319.2 Who is eligible for an award?

(a) Each State educational agency (SEA) is eligible to receive an award under the basic State award program described in § 319.3(a). If an SEA does not apply for an award, institutions of higher education (IHEs) within the State may apply for the award for that State. If an SEA chooses not to apply for basic State award, the SEA shall notify all IHEs within the State at least 30 days prior to the Department's closing date for applications.

(b) Only State educational agencies are eligible for a competitive award described in § 319.3(b).

(c) Profit and nonprofit organizations and agencies are eligible for technical assistance awards described in § 319.3(c).

(Authority: 20 U.S.C. 1432)

§ 319.3 What activities may the Secretary fund?

The Secretary fund basic State awards and may fund competitive grant awards and provide technical assistance to States in developing and maintaining their comprehensive systems of personnel development and in recruitment and retention strategies.

(a) *Basic State awards.* The Secretary makes an award to each State for the purposes described in § 319.1.

(b) *Competitive award program.* The Secretary may make competitive awards for the purposes described in § 319.1. These awards must address particularly high priority issues in a State that also have high potential for generalizability to needs in other States.

(c) *Technical assistance.* (1) The Secretary may provide technical assistance to State educational agencies on matters pertaining to the effective implementation of section 613(a)(3) of the IDEA.

(2) This activity includes, but is not limited to, technical assistance to the States relating to the following—

(i) Monitoring personnel needs in the State including identification of alternative approaches for determining current and projected needs;

(ii) Analyzing strategies to determine needs for professional preparation to meet the needs of children with disabilities;

(iii) Identifying, designing, adapting, testing, and disseminating new professional preparation strategies; and

(iv) Providing technical assistance in the personnel development, recruitment, and retention areas.

(3) Operational activities must include, but are not limited to, the following:

(i) Determining national needs and identifying unserved regions and populations.

(ii) Identifying the specific technical assistance needs of individual States related to professional preparation.

(iii) Conducting annual meetings at national and regional levels.

(iv) Dissemination of information through media, newsletters, computers, and written documentation.

(v) Cooperative activities with other personnel development projects and organizations on common goals.

(vi) Evaluation, including impact determination, and evaluation assistance to personnel development projects funded under section 632 of the IDEA as well as evaluation of comprehensive system of personnel development activities.

(Authority: 20 U.S.C. 1432)

§ 319.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions that Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 319.

(Authority: 20 U.S.C. 1432; 3474(a))

§ 319.5 What definitions apply to this program?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Preschool
Project
Public
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1432)

Subpart B—How Does One Apply for an Award?

§ 319.10 What are the application requirements under this program?

An institution of higher education that applies for an award under § 319.3(a) shall demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless—as indicated in a published priority of the Secretary—the award is for the purpose of assisting the applicant to meet those standards.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1432)

Subpart C—How Does the Secretary Make an Award?

§ 319.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 319.23 and 319.24.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1432)

§ 319.21 How does the Secretary determine the amount of a basic State award?

The Secretary determines the amount of an award under § 319.3(a) as follows:

(a) The Secretary distributes no less than 80 percent of the funds available for these awards as follows:

(1) Each State receives a base amount to be determined by the Secretary, but not less than $85,000.

(2) From the funds remaining, the Secretary provides an additional amount to each State based on the State's proportion of the national child count provided under part B of the IDEA and subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended.

(b) After determining a State's award under paragraph (a) of this section, the Secretary determines annually the additional amount of funds to be awarded for the quality of the application based on the criteria set forth in § 319.23.

(Authority: 20 U.S.C. 1432)

§ 319.22 How does the Secretary determine the amount available for the competitive award program?

In any fiscal year, the Secretary may not expend for the competitive program under § 319.3(b) an amount more than 10 percent of the amount expended under section 632 of the IDEA in the preceding fiscal year.

(Authority: 20 U.S.C. 1432)

§ 319.23 What selection criteria does the Secretary use in the basic State award and competitive award programs?

The Secretary uses the following criteria to evaluate an application for a basic State award (SEA or IHE applicant) and for a competitive award:

(a) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine—

(1) The extent to which the project identifies and selects priority needs from the range of personnel needs identified in the State comprehensive systems of personnel development;

(2) The extent to which the project addresses the personnel needs selected by the applicant under paragraph (a)(1) of this section; and

(3) If appropriate, how the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required under section 618 of the IDEA.

(b) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) Competencies that will be acquired by each trainee and how the competencies will be evaluated are identified;

(2) Substantive content of the training to be provided is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational or early intervention services to infants, toddlers, children, and youth with disabilities;

(3) Benefits to be gained by the number of trainees expected to be graduated or otherwise to complete training and employed over the next five years are described;

(4) Appropriate methods, procedures, techniques, and instructional media or materials will be used in the preparation of trainees who serve infants, toddlers, children, and youth with disabilities;

(5) If relevant, appropriate practicum facilities are accessible to the applicant agency and trainees and will be used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised

experiences of adequate scope and length;

(6) If relevant, practicum facilities for model programs will provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment; and

(7) Program philosophy, program objectives, and activities to be implemented to attain program objectives are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired, and the number of trainees who complete short-term in-service or pre-service training programs. (See 34 CFR 75.590, Evaluation by the grantee).

(e) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Experience and training in fields related to the objectives of the project.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1432)

§ 319.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities:

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by this program;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information; and

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project; and

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1432)

Subpart D—What Conditions Must Be Met After an Award?

§ 319.30 Is student financial assistance authorized?

A grantee may use grant funds under § 319.2 (a) and (b) to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student may not exceed the student's cost of attendance as follows:

(a) *Cost of attendance* means—

(1) Tuition and fees normally assessed a student carrying the same academic workload (as determined by the institution) including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) An allowance (as determined by the institution) for books, supplies, transportation, miscellaneous and personal expenses for a student attending the institution on at least a half-time basis;

(3) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(i) Is not less than $1,500 for students without dependents residing at home with parents;

(ii) Is the standard amount that the institution normally assesses its residents for room and board for students without dependents residing in institutionally owned or operated housing; and

(iii) Is based for all other students on the expenses reasonably incurred for room and board outside the institution, except that the amount may not be less than $2,500;

(4) For less than half-time students (as determined by the institution), tuition and fees and an allowance for books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (a)(7) of this section);

(5) For a student engaged in a program of study by correspondence, only tuition and fees; and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study as determined by the institution;

(7) For a student with one or more dependents, an allowance, as determined by the institution, based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance, as determined by the institution, for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) For a student receiving all or part of his or her instruction by means of telecommunication technology, no distinction may be made with respect to the mode of instruction in determining costs. This paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1087ll)

§ 319.31 What are the student financial assistance criteria?

Direct financial assistance under § 319.2 (a) and (b) may only be paid to students in preservice programs and only if the student—

(a) Is qualified for admission to the program of study;

(b) Maintains satisfactory progress in a course of study as provided in 34 CFR 668.16(e); and

(c)(1) Is a citizen or national of the United States;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Has a permanent or lasting—as distinguished from temporary—principal, actual dwelling place in fact, without regard to intent, in Palau or the Commonwealth of the Northern Mariana Inslands.

(Authority: 20 U.S.C. 1091)

§ 319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other eligible students during the grant period.

(Authority: 20 U.S.C. 1087ll)

§ 319.33 What are the reporting requirements under this program?

Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the IDEA, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate, parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under control number 1820–0530)

(Authority: 20 U.S.C. 1409(g))

[FR Doc. 92–31163 Filed 12–28–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Training Personnel for the Education of Individuals With Disabilities

[CFDA No.: 84.029]

Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

The Training Personnel for the Education of Individuals with Disabilities program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals. National Education Goal 1 calls for all children to start school ready to learn, and National Education Goal 3 calls for American students to demonstrate competency in challenging subject matter and to learn to use their minds well.

Eligible applicants: The following are eligible for assistance under this notice:

Institutions of higher education and appropriate nonprofit agencies are eligible under Preparation of Personnel for Careers in Special Education (Serious Emotional Disturbance) (84.029N), Training Personnel to Serve Low Incidence Disabilities (84.029A), Interpreter Training (84.029L), and Minority Institutions (84.029E) (34 CFR part 318).

States or other entities are eligible under Technical Assistance to Professional Development Partnerships (84.029C), but an entity may not receive financial assistance for a professional development partnership project and a technical assistance project during the same period (34 CFR part 318).

Profit and nonprofit organizations and agencies are eligible under Technical Assistance to State Educational Agencies (84.029V) (34 CFR part 319).

Note: The Department is not bound by any of the estimates in this notice.

Applications Available: January 13, 1993.

TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES

[Application Notice for Fiscal Year 1993]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards (per year)	Estimated size of awards (per year)	Estimated number of awards	Project period in months
Preparation of Personnel for Careers in Special Education (Serious Emotional Disturbance) (84.029N).	2/26/93	4/27/93	[1]$500,000	$80,000–120,000	$100,000	5	Up to 60.
Training Personnel to Serve Low Incidence Disabilities (84.029A).	2/26/93	4/27/93	3,000,000	80,000–120,000	100,000	30	Up to 60.
Interpreter Training (84.029L)	2/26/93	4/27/93	500,000	80,000–120,000	100,000	5	Up to 60.
Minority Institutions (84.029E)	2/26/93	4/27/93	2,000,000	80,000–120,000	100,000	20	Up to 60.
Technical Assistance to State Educational Agencies (84.029V).	2/26/93	4/27/93	300,000	300,000	300,000	1	Up to 60.
Technical Assistance to Professional Development Partnerships (84.029C).	2/26/93	4/27/93	500,000	500,000	500,000	1	Up to 36.

[1] Under the authority in §318.11(b), the Secretary reserves the funds under this priority for training personnel to serve children with serious emotional disturbance.

Applicable Regulations: (a) The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and (b) The regulations for this program in 34 CFR parts 318 and 319 as published elsewhere in this issue of the **Federal Register.**

Priorities: The priorities in the notice of final regulations for this program, as published elsewhere in this issue of the **Federal Register,** apply to these competitions.

For Applications or Information Contact: Max Mueller, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 205–9554. Deaf and hearing impaired individuals may call (202) 205–9999 for TDD services.

Program Authority: 20 U.S.C. 1431 and 1432.

Dated: December 18, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–31164 Filed 12–28–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
December 29, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

List of Rejected Statute of Limitations Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

List of Rejected Statue of Limitations Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rejected claims.

SUMMARY: This notice lists certain potential pre-1966 Indian damage claims which have been rejected for litigation by the Secretary of the Interior pursuant to the Indian Claims Limitation Act of 1982. This notice also contains a list of claims which the Bureau of Indian Affairs considers resolved.

DATE: To file an action in court, on any claim contained on the list of rejected claims, tribes, groups, and individual Indians must file such action no later than December 29, 1993.

FOR FURTHER INFORMATION CONTACT:

Aberdeen Area Director, Bureau of Indian Affairs, 115 4th Avenue, SE., Aberdeen, South Dakota 57401–4382, Telephone (605) 226–7343;

Albuquerque Area Director, Bureau of Indian Affairs, 615 1st Street, NW., Box 26567, Albuquerque, New Mexico 87125–6567, Telephone (505) 766–3170;

Anadarko Area Director, Bureau of Indian Affairs, WCD Office Complex, Box 368, Anadarko, Oklahoma 73005–0368, Telephone (405) 247–6673;

Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101–1397, Telephone (406) 657–6315;

Eastern Area Director, Bureau of Indian Affairs, 3701 N. Fairfax Drive, Suite 260/ Mailroom, Arlington, VA 22203 Telephone (703) 235–2571;

Juneau Area Director, Bureau of Indian Affairs, Federal Building, P.O. Box 3–8000, Juneau, Alaska 99802–1219, Telephone (907) 586–7177;

Minneapolis Area Director, Bureau of Indian Affairs, 15 South 5th Street—10th Floor, Minneapolis, Minnesota 55401–1020, Telephone (612) 349–3631;

Muskogee Area Director, Bureau of Indian Affairs, 5th & West Okmulgee, Muskogee, OK 74401–4898, Telephone (918) 687–2296;

Navajo Area Director, Bureau of Indian Affairs, P.O. Box M, Window Rock, Arizona 86515–0714, Telephone (505) 863–9501;

Phoenix Area Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001–0010, Telephone (602) 241–2305;

Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Ave., Portland, OR 97232–4169, Telephone (503) 231–6702;

Sacramento Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825–1884, Telephone (916) 978–4691.

SUPPLEMENTARY INFORMATION: The Indian Claims Limitation Act of 1982, Public Law 97–394 (96 Stat. 1966, 1976) extends the statute of limitations governing pre-1966 Indian damage claims (28 U.S.C. 2415) which was due to expire on December 31, 1982. A claim subject to the statute of limitations is an Indian claim for money damages which arose prior to July 18, 1966. Claims against the United States are not governed by this law, only money damage claims against persons, corporations, states, or any other entities except the Federal Government. Claims for title to land are also not governed by this statute of limitations. This notice is required by section 5(c) of the Act.

Pursuant to sections 3 and 4 of the Indian Claims Limitation Act of 1982, lists of all potential Indian damage claims, which had at any time been identified by or submitted to the Bureau of Indian Affairs under the Department of the Interior's Statute of Limitations Program, were published in the **Federal Register** at 48 FR 13698, on March 31, 1983, amended at 48 FR 15008, on April 6, 1983; and at 48 FR 51204, on November 7, 1983, amended at 49 FR 518, on January 4, 1984. Excluded from these lists were claims which were erroneously identified as claims and those which had no legal merit whatsoever.

When rejecting any claim or category of claims included on the published lists, the Secretary must send a report to the appropriate tribe whose rights or the rights of whose members could be affected by the rejection. The report must identify each separate claim being rejected, list the names of potential plaintiffs and defendants, if known or reasonably ascertainable, and briefly set forth the reason or reasons for rejection. A written notice of rejection must be sent to individual Indian claimants if their identities and addresses are known or reasonably ascertainable from Bureau of Indian Affairs, records. After a report has been forwarded to a tribe, the Secretary must publish a notice in the **Federal Register** identifying the claims covered in the report. By the terms of the Indian Claims Limitation Act of 1982, any right of action on any claim appearing on the following list of claims, which have been rejected and reported accordingly by the Secretary, shall be barred unless a complaint is filed in accordance with date established in the "**DATES**" section of this notice. A list of claims which the Bureau of Indian Affairs considers resolved follows the list of rejected claims.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary Indian Affairs by 209 DM 8.

Eddie F. Brown,

Assistant Secretary–Indian Affairs.

BILLING CODE 4310-02-C

ABERDEEN AREA REJECTED CLAIMS:

A01-340-0001	A01-340-0011	A01-340-0017	A01-340-0023	A01-340-0025
A01-340-0029	A01-340-0030	A01-340-0031	A01-340-0034	A01-340-0036
A01-340-0039	A01-340-0042	A01-340-0045	A01-340-0057	A01-340-0058
A01-340-0063	A01-340-0068	A01-340-0070	A01-340-0072	A01-340-0076
A01-340-0079	A01-340-0081	A01-340-0082	A01-340-0086	A01-340-0090
A01-340-0095	A01-340-0101	A01-340-0102	A01-340-0103	A01-340-0106
A01-340-0107	A01-340-0109	A01-340-0117	A01-340-0137	A01-340-0139
A01-340-0144	A01-340-0145	A01-340-0147	A01-340-0148	A01-340-0176
A01-340-0179				

BILLINGS AREA REJECTED CLAIMS:

C52-201-0749	C52-201-0750	C52-201-0751	C52-201-0752	C52-201-0753
C52-201-0754	C52-201-0755	C52-201-0756	C52-201-0757	C52-201-0758
C52-201-0759	C52-201-0760	C52-201-0761	C52-201-0762	C52-201-0763
C52-201-0764	C52-201-0765	C52-201-0766	C52-201-0767	C52-201-0768
C52-201-0769	C52-201-0770	C52-201-0771	C52-201-0772	C52-201-0773
C52-201-0774	C52-201-0775	C52-201-0776		

MUSKOGEE AREA REJECTED CLAIMS:

G09-907-0003A	G09-907-0003B	G09-907-0003C	G09-907-0007A	G09-907-0027
G09-907-0027A	G09-907-0065A	G09-907-0070A	G09-907-0071A	

ALBUQUERQUE AREA REJECTED CLAIMS:

M20-704-0017	M20-707-0004	M20-707-0009	M20-707-0017	M20-707-0018
M20-707-0019	M20-707-0031	M20-707-0041	M20-707-0042	M20-707-0043
M20-707-0044	M20-707-0046	M20-707-0048	M20-711-0002	M20-711-0003
M20-711-0008	M20-711-0012	M20-711-0013	M20-711-0018	M20-711-0020
M20-711-0025	M20-711-0044	M20-711-0055	M20-711-0075	M20-711-0097
M20-711-0104	M20-715-0004	M20-715-0006	M20-715-0007	M20-715-0008
M20-715-0011	M20-715-0030	M20-715-0045	M20-715-0046	M20-715-0050
M20-715-0051				

PORTLAND AREA REJECTED CLAIMS:

P03-101-0313	P05-181-0009U	P06-120-0005	P07-143-0026	P10-000-0097
P10-107-0004	P10-111-0009	P10-111-0014	P10-111-0026	P10-122-0009

ANADARKO AREA RESOLVED CLAIMS:
B04-861-0150

BILLINGS AREA RESOLVED CLAIMS:

C51-201-1440	C51-201-1472	C55-204-0039	C55-204-0055	C55-204-0058
C55-204-0059	C55-204-0060	C55-204-0062	C55-204-0067	C55-204-0069
C55-204-0080	C55-204-0086	C55-204-0088	C55-204-0089	C55-204-0091
C55-204-0093	C55-204-0096	C55-204-0097	C55-204-0098	C55-204-0099
C55-204-0100	C55-204-0101	C55-204-0102	C55-204-0104	C55-204-0105
C55-204-0117	C55-204-0118	C55-204-0122	C56-206-0051	C56-206-0064
C57-207-0040	C57-207-0044	C57-207-0045	C57-207-0049	C57-207-0050
C57-207-0051	C57-207-0052	C57-207-0053	C57-207-0060	C57-207-0062
C57-207-0065	C57-207-0067	C57-207-0068	C57-207-0072	C57-207-0073
C57-207-0074	C57-207-0076	C57-207-0079	C57-207-0083	C57-207-0084
C57-207-0086	C57-207-0088	C57-207-0092	C57-207-0095	C57-207-0098
C57-207-0099	C57-207-0108	C57-207-0109	C57-207-0110	C57-207-0113
C57-207-0116	C57-207-0117	C57-207-0118	C57-207-0119	C57-207-0120
C57-207-0129	C57-207-0131	C57-207-0132	C57-207-0134	C57-207-0135
C57-207-0136	C57-207-0137	C57-207-0138	C57-207-0141	C57-207-0142
C57-207-0143	C57-207-0144	C57-207-0146		

MINNEAPOLIS AREA RESOLVED CLAIMS:

F55-432-0016	F55-432-0031	F55-432-0033	F55-432-0048	F55-432-0061
F55-439-0067	F55-439-0069	F55-439-0077	F55-439-0111	F60-470-0003

ALBUQUERQUE AREA RESOLVED CLAIMS:

M20-711-0110	M20-715-0017	M20-715-0018	M20-715-0020	M20-715-0028
M20-715-0038	M25-716-0027	M25-716-0028	M25-716-0029	M25-716-0030
M25-716-0031	M25-716-0032	M25-716-0033	M25-716-0034	M25-716-0035
M25-716-0036	M25-716-0037	M25-716-0038	M25-716-0039	M25-716-0040
M25-716-0041	M25-716-0042	M25-716-0145	M25-716-0147	M25-716-0148
M25-716-0149	M25-716-0150	M25-716-0151	M25-716-0152	M25-716-0153
M25-716-0154	M25-716-0155	M25-716-0156	M25-716-0157	M25-716-0158

PORTLAND AREA RESOLVED CLAIMS:

P03-101-0307	P04-180-0033	P04-180-0034	P04-180-0036	P06-117-0029
P11-124-0042	P11-124-0049	P11-124-0055	P12-102-0016	

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federal register

Tuesday
December 29, 1992

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, Reclamation Fee, Basis for Coal Weight Determination; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029-AB68

Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, Reclamation Fee, Basis for Coal Weight Determination

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to amend its regulations governing how the weight of each ton of coal produced is determined for reclamation fee purposes. This action will make the weight determination consistent with the normal business practice between a coal operator and a person operating a coal preparation plant when run-of-mine coal is purchased on an estimated clean coal basis and cleaned prior to resale or use. The revised regulations would define the records required to be maintained by a coal operator and a person operating a coal preparation plant to document the basis of coal sales and purchases.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on March 1, 1993.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC on a date and at a time that would be subsequently announced. Upon request, OSM will also hold public hearings in the States of Kentucky and Virginia at times and dates to be announced prior to any requested hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on January 28, 1993. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660–NC, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public Hearings: The addresses for any hearings scheduled in the District of Columbia and the States of Kentucky and Virginia will be announced prior to the hearings.

Request for public hearings: Submit request orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Jane E. Robinson, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, room 635–NC, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone (202) 343–2826.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rules
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "DATES") or delivered to addresses other that those listed above (see "ADDRESSES"), may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates, and addresses for all hearings will be announced in the **Federal Register** at least 7 days prior to any hearings which are to be held.

Any person interested in participating at a hearing at a particular location should inform Ms. Robinson (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5 p.m. Eastern time on January 28, 1993. If no one has contacted Ms. Robinson to express an interest in participating in a hearing at a given location by that date the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

Section 402(a) of the Surface Mining Control and Reclamation Act (SMCRA) requires all operators of coal mining operations subject to its provisions to pay a reclamation fee on each ton of coal produced. In December 1977 OSM first promulgated regulations to implement this provision 42 FR 62714 (Dec. 13, 1977). Briefly, the regulations require that the AML fees must be paid on the actual gross weight of the coal, at the time of the first transaction (sale, transfer of ownership, or use) involving the coal. This regulation has been in effect basically unchanged since 1977. In 1982, OSM revised the regulatory language to clarify the point in time of fee determination and to stress that the actual gross weight of the coal must be used for fee calculation. At that time OSM also specifically noted that no fees were owed on impurities physically removed before the sale, transfer of possession or use. In 1988 OSM once again reminded operators that the general rule, which required all impurities not removed before the first transaction to be included in the gross weight for AML fee computation purposes, was not changed by the regulatory revision allowing a calculated weight reduction for excess moisture.

In order to apply this regulation OSM determines: (a) When the first transaction occurs; (b) the gross weight at the time, which includes impurities not physically removed before the transaction occurs; and (c) the actual not estimated or calculated, gross weight at the time (or as near to the time as possible) of the transaction.

OSM generally considers the first transaction to occur when physical possession of the coal, or such other indications of ownership as title and risk of loss, transfer to a purchaser. The time that payment is computed or made is not controlling. This approach is in accord with the Uniform Commercial Code (UCC), which has been adopted in all fifty states.

Section 2–401(2) of the UCC provides that:

> Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods * * *

Under UCC section 2–401(2), when a coal operator delivers run-of-mine coal to a buyer's preparation plant for

cleaning, the transaction upon which OSM calculates the AML fees under 30 CFR 870.12(b)(1) generally occurs upon delivery. In such a case, the AML fee is based on the run-of-mine tonnage which was delivered, including any impurities.

The fact that a coal operator is paid on some basis other than tons of actual run-of-mine coal shipped is immaterial to the critical issue—that is, the transfer of title. In many cases, when coal is delivered to a preparation plant by a coal operator, the transaction is not for cleaning and redelivery of the coal to the operator, but for the physical transfer of ownership of the coal to the preparation plant. The purchaser, in this instance, has total control of the goods and exercises all the indicia and rights of ownership, i.e., right to commingle, to alter shape and form, and to sell. In most instances the person operating a coal preparation plant does not keep an individual operator's coal separate from other sellers, nor maintain any documents of the actual weight of the coal recovered from the cleaning process, as opposed to the estimated weight of the clean coal purchased from each individual coal operator.

OSM collects AML fees based on the premise that the agreement a purchaser has with a coal operator for the purpose of determining the amount owed, is only the basis for payment and does not alter the fact that when the coal operator loads its coal on trucks or other means of transportation and delivers the coal to the preparation plant or other purchaser, title passes upon the physical delivery of the goods. Quite simply the coal operator in many instances is not shipping the coal for cleaning but for the purpose of selling the coal. The purchaser owns all the coal including the impurities. Accordingly, under 30 CFR 870.12 the actual gross weight includes the "impurities that have not been removed prior to the time of initial bona fide sale."

There is a perception that the AML fee rules may be unfair to the small independent coal operator who must sell his coal to a preparation plant that cleans and resells the coal. In such circumstances, the small operator is generally paid by the person operating the coal preparation plant on the estimated weight of the clean coal tonnage, even though methods typically used to estimate the clean coal yield may vary and may not be verifiable. Under these circumstances some small coal operators have objected to OSM's requirement for payment of reclamation fees on run-of-mine tonnage when the operator is paid on clean coal tons.

OSM published a notice of inquiry in the **Federal Register** (56 FR 10404) seeking comments, information, and recommendations from all interested parties to assist the agency in assessing the effectiveness of the current reclamation fee payment regulations in situations where the coal is cleaned by the purchaser. Specific attention was requested regarding the timing of the reclamation fee assessment, and whether OSM should allow operators whose coal is cleaned by another party, to pay on estimated clean coal tonnage rather than on actual weight. The comment period was from March 12, 1991 through June 25, 1991. Comments were received from coal companies, the Joint National Coal Association/ American Mining Congress Committee on Surface Mining Regulations, coal operator associations, and a law firm that commented on behalf of a group of independent operators.

None of the commenters supported OSM's current policy requiring coal operators to pay reclamation fees on run-of-mine coal tonnage when sold to a preparation plant and payment is received on the basis of clean coal tonnage. In addition, commenters claimed that OSM's policy is unfair to small and medium-sized independent operators, who cannot market their coal unless it is cleaned, and who are paid on an estimated or calculated clean coal basis.

OSM has considered several alternatives to its current policy, including those offered by the commenters. The alternatives that were evaluated included:

(A) Allowing an independent coal operator who sells run-of-mine coal to a customer for cleaning, or to an end user, to pay reclamation fees based on the estimated clean coal tonnage determined by the customer;

(B) Requiring operators of coal preparation plants and loading facilities to pay reclamation fees on all coal shipped from their plants or facilities;

(C) Requiring all coal operators to pay reclamation fees FOB mine, i.e. on run-of-mine tonnage; and

(D) Using an average reject factor that is established by the person operating a coal preparation plant or the end user, or adoption of a standard reject factor and/or testing method that is established by OSM.

After careful consideration, however, none of the above alternatives were considered viable by OSM for a variety of reasons and the responses to the notice of inquiry did not provide OSM with a sense of the scope of the run-of-mine coal versus clean coal issue. Also, the existing regulations that require reclamation fee payments on the amount of actual tonnage sold, transferred or used, do not allow OSM sufficient latitude to recognize industry's practice of coal preparation plant owners paying coal operators on the basis of estimated clean coal tonnage. Based on the limited amount of information available on independent preparation plants, OSM does not know how many of them are in operation or the volume of coal that is purchased by those preparation plants.

However, based on the experience OSM has gained during the past fifteen years on the implementation of the existing rules, coupled with the information received in response to the notice of inquiry, OSM is proposing a two-part revision to the current reclamation fee payment regulations as a solution. The first part would allow independent coal operators, many of whom do not have the ability to process their own coal, to pay a reclamation fee on the basis of the purchaser's estimate of the amount of clean coal contained in the run-of-mine tonnage delivered by the operator. OSM would allow payment of reclamation fees by the operator on the same basis as the actual coal transaction.

The second part of the proposed rule includes a requirement that preparation plants which purchase coal on an estimated clean coal basis actually clean the coal and a recapture provision to ensure reclamation fees are paid on any coal sold by a person operating a coal preparation plant when the quantity of coal sold is greater than estimated clean coal purchased. In this case, a person operating a coal preparation plant would be deemed an operator producing coal with regard to payment of reclamation fees on the coal sold, transferred or used in excess of coal purchased. The coal sold, transferred or used by the coal preparation plant in excess of coal purchased from such operators would therefore be deemed coal produced by the person operating the coal preparation plant. This recapture provision is important, since it would ensure that reclamation fees are paid on each ton of coal sold, transferred or used by the person operating a coal preparation plant. Market forces should limit discrepancies between estimated clean tonnages and actual clean tonnages because no seller would willingly be shortchanged in a transaction with a person operating a coal preparation plant merely to avoid the payment of reclamation fees. However, OSM recognizes that in some instances, small operators may have no alternative but to sell their coal to a regional preparation

plant, and therefore are at some disadvantage in ensuring that the estimated tonnage figures used by the preparation plant are fair and reliable. OSM has knowledge of instances where preparation plants actually sell more clean coal than the estimated clean coal purchased. In those cases, the person operating the coal preparation plant could properly be considered a producer of coal, since the plant has produced coal tonnage which has never been recorded and on which no reclamation fees have been paid. Since 1978 OSM has interpreted the term "operator" as used in section 402 of SMCRA, broadly.

The Act provides that all operators of coal mining operations subject to the provisions of the Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee. (30 U.S.C. 1232, in relevant part.)

OSM believes it has authority under section 402 to assess AML fees on preparation plant sales of such excess coal tonnage. OSM has indicated that "We believe that Congress intended the burden of fee payment to fall upon the person who stands to benefit directly from the sale, transfer, or use of the coal. This intent will guide the Office in making decisions as to who is liable for the fee. The identification of operators will be made in light of the realities of the business world and will not turn solely on a literal interpretation of the word "removes". 42 FR 62713 (December 13, 1977). OSM believes that if a preparation plant sells coal in excess of the amount the plant purchased as estimated clean coal, then the person operating the coal preparation plant may be considered to produce coal and to be a surface coal mining operation for purposes of reclamation fee payment, for reasons similar to the grounds for requiring an operation that reclaims coal from coal refuse to pay AML fees on the refuse coal produced. See 47 FR 28577 (1982).

Section 413 of SMCRA provides the Secretary with the general authority to require a person operating a coal preparation plant to keep records and pay reclamation fees. The proposed rule would implement this authority by requiring that both the coal operator and the person operating a coal preparation plant keep specific records to document the basis of a coal sale. All of the provisions of this rule are so interrelated that they must be considered nonseverable. The comments in response to the notice of inquiry on this rulemaking indicated a perception that the existing rule has inequitable consequences for small coal operators However, to address any such inequities, OSM regards as vital the provision providing for payment of fees by coal preparation plant owners on the excess of actual coal sold over estimated clean coal purchased. This provision would ensure that reclamation fees are assessed on any difference in such tonnages as appropriate, and that the fees will not be lost to the Government. Without this "recapture" provision, the use of estimated tonnage as the basis for fee payment could result in a significant loss to the AML fund. That would undermine the effectiveness of the AML program. To guard against such undermining, which could result if a court overturned part of the regulations, OSM intends to reinstate the current regulation (fee payment based on actual tonnage, and not on estimated tonnage) if any part of the final rule should be invalidated.

III. Discussion of the Proposed Rules

The proposed rules would allow a coal operator who sells run-of-mine coal to a person operating a coal preparation plant, as defined by 30 CFR 701.5, to pay reclamation fees on an estimated clean coal weight basis, if that is the basis upon which the coal operator is paid. Records to be kept that support the clean coal transaction are specified. Also, a person operating a coal preparation plant, as defined by 30 CFR 701.5, would be required to clean the coal and pay reclamation fees on the weight of any coal sold that is in excess of tonnage purchased from operators on an estimated clean coal basis.

Requirements for reclamation fee payment would recognize actual business practices between a coal operator and a preparation plant which cleans or processes the coal before it is sold or used. Payment of fees on estimated clean coal weight would apply only when the coal operator is actually paid by the person operating a preparation plan on the basis of estimated clean coal tonnage and all requirements for recordkeeping are met. Coal operators who sell run-of-mine tonnage to a coal preparation plant or end user on a raw coal basis would continue to be required to pay the reclamation fees on the actual run-of-mine tonnage delivered by the coal operator. Likewise, if a coal operator sells run-of-mine coal to a person operating a coal preparation plant on an estimated clean coal basis and the preparation plant fails to clean the coal, and to meet the specific recordkeeping requirements as proposed, the person operating the coal preparation plant would be liable for reclamation fee payment on the weight of the actual run-of-mine tonnage delivered by the coal operator, in excess of the tonnage for which available records document that reclamation fees have been properly paid. Where the person operating a coal preparation plant is also an active coal operator, OSM would continue to assess fees, on all shipped or used tonnage in excess of the estimated clean tonnage purchased from independent coal operators.

A coal operator who sells coal on an actual clean coal tonnage basis would pay reclamation fees on that basis, provided records are maintained to adequately document the actual clean coal weight. However, this proposed rule would not be applicable to coal operators who do not sell their coal to preparation plants or tipples that clean the coal before it is either resold, transferred or used by the entity operating the cleaning facility. For sales to entities other than preparation plants and tipples, OSM would be unable to verify tonnages sold or to recapture for reclamation fee purposes the fees attributable to under-estimates by buyers.

Use of actual weights, in the current rule, provides less opportunity for abuse or avoidance of fee payment. In order to address expressed perceptions that the current rule causes some inequities in the burden of fee payment for small coal operators, OSM is proposing a process for allowing fees to be paid on the basis of estimated clean weight. The proposed process includes a "recapture" provision in order to minimize collusion or significant inaccuracy in clean weight estimation.

Section 870.12(b)(3) of the proposed rule would be retroactive to October 1, 1990, the date OSM began its review of this issue and suspended debt identified by audit that related to estimated clean tonnage. The other provisions of the proposed rule would be prospective in application.

A. Section 870.11—Applicability

The proposed rule would amend existing § 870.11 to expand the abandoned mine reclamation fund fee collection and reporting requirements to include all coal preparation plants as defined in 30 CFR 701.5.

B. Section 870.12—Reclamation Fee

OSM proposes to revise existing § 870.12(b)(3) which requires that reclamation fees be based on the actual gross weight of the coal. The revised rule would allow a coal operator to pay reclamation fees on an estimated weight basis when that is the basis on which the coal operator is compensated for run-of-mine coal sold to a person operating a coal preparation plant.

Subparagraph § 870.12(b)(3)(iii) is revised and renumbered as § 870.12(b)(3)(iv). A new § 870.12(b)(3)(iii) is added to provide the conditions under which the estimated clean weight of the coal may be used as a basis of reclamation fee payment. Fee payment may be based on an estimated weight when title to the coal has transferred from the coal operator who sold the coal to the person operating a coal preparation plant who purchased the coal, and the person operating a coal preparation plant pays the coal operator on an estimated clean coal basis. The person operating the coal preparation plant must actually clean the coal and reconcile the estimated clean coal purchases to actual preparation plant sales tonnages and pay reclamation fees on any coal sold that exceeds tonnage purchased from operators on an estimated clean coal basis.

A new subparagraph § 870.12(d)(3) would require that a person operating a coal preparation plant who fails to clean the coal or to maintain records of coal purchases and sales, as specified in § 870.16, must pay reclamation fees based on run-of-mine tonnage purchased from operators, in excess of the tonnage for which available records document that fees have been properly paid.

A new paragraph (d) would be added at § 870.12 that will require a person who operates a coal preparation plant to pay reclamation fees on any actual coal tonnage sold that exceeds the weight of the estimated clean coal purchased from coal operators. In these circumstances the person operating the coal preparation plant will be deemed to be an operator for purposes of title IV reclamation fee payment, and will be required to pay fees on the economic benefit derived from this sale. A new subparagraph § 870.12(d)(1) is added to set forth the requirement that the formula a person operating a coal preparation plant uses to compute reclamation fee payment must be based on quarterly sales and purchases. When a preparation plant overestimates the amount of clean coal purchased during a quarter and a loss results, that loss can be used as a carryover and used to offset any gains in the next quarter, if applicable. The example provided below illustrates a method that could be used by a person operating a coal preparation plant to determine reclamation fee liability.

COAL PURCHASES AND SALES

Quarter	Estimated clean purchases	Actual clean	(Gain) Loss	Sales
923	180,000	178,000	2,000	182,800
924	212,000	202,000	10,000	213,700
931	194,00	203,700	(9,700)	205,200
932	181,000	190,000	(9,000)	170,540

CALCULATION OF (GAIN)/LOSS=BI–EI+P–S**

Quarter	Beginning inventory	Ending inventory	Purchase	Sales	(Gain) Loss
923	64,000	59,200	180,000	182,800	2,000
924	59,200	47,500	212,000	213,700	10,000
931	47,500	46,000	194,000	205,200	(9,700)
932	46,000	65,460	181,000	170,540	(9,000)

**Plant (gain/loss.
Beginning inventory–ending inventory+purchases–sales.
Result: Both gain and losses flow from the calculation.

CALCULATION OF FEE LIABILITY

Quarter	(Gain) Loss	Beginning carryover allowance	Ending carryover allowance	Fee liability
923	2,000	.....	2,000	.....
924	10,000	2,000	12,000	.....
931	(9,700)	12,000	2,300	.....
932	(9,000)	2,300	.....	*1,005

*Based on the AML fee for underground coal ($.15 per ton).

A new subparagraph § 870.12(3)(d)(2) would be added to provide that the date the fee payment responsibility would begin for a person operating a coal preparation plant is the first day of the first complete calendar quarter after the effective date of the final rule.

C. Section 870.13—Fee computations

A new § 870.13(e) is added to require a person operating a coal preparation plant who purchases run-of-mine coal to keep separate records of surface mined coal, underground mined coal, and/or coal that is exempt from reclamation fee payment under § 870.11, to maintain records that can be used to allocate coal sales to the source of the coal purchases. In the absence of records that identify the source of the purchased coal as underground coal or exempt coal, reclamation fees owed would be assessed at the surface mined rate on all tonnage for which available records do not properly document the source of the coal. The example provided below illustrates a method that could be used to document allocation of purchased tonnages to sales.

ABC PREPARATION PLANT SUMMARY OF EST. CLEAN COAL PURCHASES

[July 1 through September 30, 1992]

Seller	Tons				Percent allocated fee		
	Surface	Underground	Exempt	Total	Total (percent)	Tons	Liability
A COAL CO	15,678.45			15,678.45	8.7103	783.93	$274.38
B COAL CO		18,256.56		18,256.56	10.1425	912.83	136.92
C COAL CO		22,789.45		22,789.45	12.6608	1,139.47	170.92
D COAL CO	35,690.55			35,690.55	19.828	1,784.53	624.59
E COAL CO		1,234.91		1,234.91	0.6861	61.75	9.26
F COAL CO	67,984.11			67,984.11	37.7690	3,399.21	1,189 72
G CONST CO	9,987.06			9,987.06	5.5484	499.36	174.78
H COAL CO	4,512.12			4,512.12	2.5067	225.60	78.96
K CONST CO			1,247.65	1,247.65	0.6931	62.38	0.00
I COAL CO		287.39		287.39	0.1597	14.37	2.16
J COAL CO		2,331 75		2,331.75	1.29454	116.59	17 49
	133,852.29	44,900.06	1,247.65	180,000.00	100.0001	9,000.02 (Total tons to be allocated)	2,679.18
Percent of total			74.36		24.94	0.69	
Allocated tons			6,692.62		$2,245.01	$62.38	
			X.35		X.15	X.0	
			$2,342.42		$336.75	$0.00	
Total liability							$2,679 17

D. Section 870.15—Reclamation fee payment

In § 870.15, paragraph (a) is revised to require a person operating a coal preparation plant to pay reclamation fees owed on calendar quarter tonnage not later than 30 days after the end of the calendar quarter in which it is owed. This schedule for fee payment would implement the requirements of section 402(b) of SMCRA. Paragraph § 870.15(b) is amended to require a person operating a coal preparation plant to submit a form OSM–1 each quarter and to report tonnages sold, transferred or used in excess of tonnage purchased during the calendar quarter. Subparagraph § 870.15(c) is amended to add the requirement that a person operating a coal preparation plant must submit an OSM–1 form together with any payment due not later than 30 days after the calendar quarter in which the fee was owed, and to provide that late submissions will be subject to interest requirements in section 402(e) of SMCRA. Paragraph § 870.15(d) is amended to require a person operating a coal preparation plant who owes total quarterly reclamation fees of $100,000 or more to use the Treasury Financial Communications System to forward its payments electronically. The requirement for electronic transfer of funds of $100,000 or more would be consistent with the existing requirements for payments by operators.

E. Section 870.16—Production records

The proposed rule would amend § 870.16(a) to add recordkeeping requirements for a person operating a coal preparation plant. Both a coal operator and person operating a coal preparation plant would be required to maintain specific records to document the basis of coal purchases, transfers and sales. These documents would include the maintenance of invoices, remittance advices, canceled checks and receipts that are commonly used in coal transactions (see illustration I).

Section 870.16(a)(2) would be renumbered as § 870.16(a)(1) and amended to require a person operating a coal preparation plant to document the quantity of coal used and the date it is consumed. This requirement would ensure that a person operating a coal preparation plant maintains a complete record of all coal that moves through its operation. Section 870.16(a)(1) would be renumbered as § 870.16(a)(2) and revised to specify the records of coal transactions that must be maintained by a coal operator or a person operating a coal preparation plant. A new requirement is added to provide for specifying the permit number under which the coal was produced which will help to ensure the accuracy of the Applicant Violator System. Section 870.16(a)(3) is renumbered as § 870.16(a)(2)(i) to clarify that records of stockpiled or inventoried tonnage that is not classified as sold must be maintained by the operator. A person operating a coal preparation plant is not required to maintain records of stockpile or inventory tonnage.

A new § 870.16(a)(3) is added to incorporate specific recordkeeping and maintenance requirements to be met by a person operating a coal preparation plant, including records of coal tonnage delivered and purchased, the amount paid for each ton, the name and address of the person or entity from whom the coal was purchased or delivered, and the person or entity to whom the coal was sold, shipped or delivered, as appropriate, and the date of each purchase, delivery, or shipment; exempt coal purchases, purchases of run-of-mine coal, and clean coal that is sold, transferred or used. Section 870.16(b) is amended to state the authority of OSM's fee compliance officers to audit a coal preparation plant. Section 870.16(c) is amended to require a person operating a coal preparation plant to allow OSM fee compliance officers to inspect and copy books and records that document the basis for reclamation fee payments. Section 870.16(d) is revised to add a six year recordkeeping requirement for persons operating a coal preparation plant.

Illustration I

The example below illustrates documentation of coal purchases to be maintained by a person operating a coal preparation plant to meet the requirements of § 870.16(a).

ABC PREPARATION PLANT

Remittance Advice

TO: A COAL Company
Some Street
Some City, TN 37754

Tonnage adjustment for sales from July 1, 1992 through September 30, 1992:

783.93 clean tons × $25.50=$19,990.22

signed

Person Operating ABC
Preparation Plant

enclosure: check no. 176899 for $19,990.22

Section 870.16(e)(2) is revised and renumbered as § 870.16(e)(3). A new § 870.16(e)(2) is added to require a person operating a coal preparation plant to pay reclamation fees on the weight of run-of-mine tonnage as delivered to the coal preparation plant, in excess of the tonnage for which available records document that reclamation fees have been properly paid. This provision would apply when a person operating a coal preparation plant fails to maintain records to support the basis for estimated clean coal transactions.

Section 870.16(e)(3) is amended to allow a person operating a coal preparation plant to request a revision to an OSM estimate when that person provides documentation demonstrating the amount of a run-of-mine tonnage estimate to be incorrect.

IV. Procedural Matters

Federal Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 16.4 minutes per response, including the time for reviewing instructions, searching existing data sources, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Ave., rm 640 N.C., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0063), Washington, DC 20503.

Executive Order 12778, Civil Justice Reform Certification

This rule has been reviewed under the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of Section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule will have no preemptive effect. It provides for AML reclamation fee liability of the party that receives economic benefit from the first sale, transfer, or use of coal; and provides fairness to small coal operators by providing for payment of federal reclamation fees on a basis consistent with the coal industry's business practices. It also establishes recordkeeping requirements necessary to support the reclamation fee provisions. The fees in question are provided for by section 402 of SMCRA and do not affect or preempt any state reclamation fee provisions.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal Regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of topics covered and the mandates of SMCRA. As noted above, the rule will promote fairness to the small coal operators through the application of a reclamation fee payment requirement that is harmonious with the coal industry's long established business practices. The rule will afford these small coal operators the opportunity to pay reclamation fees on the same estimated weight basis for which they are compensated for their coal. The rule also establishes a reclamation fee reporting and payment liability for persons operating a coal preparation plant when they sell more coal than they purchased through the estimated weight process. The rule is not expected to be burdensome to persons operating a coal preparation plant, since initial estimation of tonnage is under the preparation plant owner's control, and reasonably accurate estimation of clean coal tonnages should minimize the need for adjustment of tonnages upon resale by the preparation plant owner.

D. What is the retroactive effect, if any, to be given to the regulation?

Section 870.12(b)(3) of this rule would have a retroactive effective date of October 1, 1990. This retroactivity would have no adverse retroactive effect on the coal industry since it would allow coal operators to begin calculating their reclamation fee liability based on estimated clean coal weight as of that 1990 date, and to request a refund from OSM for any overpayment of reclamation fees that may have been paid subsequent to October 1, 1990. That date was established to coincide with the date OSM began reviewing the coal weight determination issue. This date is also the date OSM began suspending any debt relating to this issue that was identified through audit. Reclamation fee calculations and payments for any period prior to October 1, 1990 must be based on the then-current regulations, and any debts established through audit, including applicable interest and penalties, will be pursued by OSM.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a). Similarly, no administrative proceedings are required before filing suit to challenge enforcement of this rule.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are already defined in 30 CFR 701.5, and OSM's policy on the interpretation of those terms is set forth in previous rulemakings, as described in the preceding discussion of this rule. No new key terms are used.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of December 29, 1992 the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility

Act, 5 U.S.C. *et seq.* The rules would mandate that a person operating a coal preparation plant pay reclamation fees on all clean coal tons sold, transferred or used in excess of coal purchased as estimated clean coal tonnage. The rules would specify records to be maintained by operators and a person operating a coal preparation plant to document clean coal sales and purchases. The rules recognize industry practice and allow an operator who is paid for run-of-mine coal on an estimated clean coal basis to pay reclamation fees on the same basis.

The economic effects of the proposed rule are not estimated to be significant because the cost of fee payment would be assumed by the person operating an independent preparation plant who would realize an economic benefit from the sale of a greater quantity of clean coal than the amount of its estimated purchases. Consequently, it is expected that the total cost to industry would be substantially less than the threshold criteria for determining when a rule is major. The rule does not distinguish between small and large entities. However, the cost for a small entity should be less than the average because of its less complex business structure.

National Environmental Policy Act

OSM has prepared a draft environmental assessment [EA] of this proposed rule and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of No Significant Impact (FONSI) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this proposed rule is Jane E. Robinson, Program Analyst, Division of Compliance Management, Directorate of Finance and Accounting, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240. Inquiries with respect to the proposed rule should be directed to Ms. Robinson at the address and telephone specified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 30 CFR Part 870

Reclamation fee, Fee computations, Determination of percentage-based fees, Reclamation fee payment, Production records, Compliance authority, Excess moisture content allowance.

Accordingly, it is proposed to amend 30 CFR part 870 as set forth below:

Dated: October 29, 1992.

Richard Roldan,

Deputy Assistant Secretary, Land and Minerals Management.

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING, RECLAMATION FEE, BASIS FOR COAL WEIGHT DETERMINATION

1. The authority citation for part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Public Law 100–34.

1a. The title of part 870 is revised to read as set forth above.

2. In § 870.11 the introductory text is revised to read as follows:

§ 870.11 Applicability.

The regulations in this part apply to all surface and underground coal mining operations, and all coal preparation plants except—

* * * * *

3. Section 870.12 is amended by revising paragraph b(3) introductory text and (b)(3)(iii); and adding new paragraphs (b)(3)(iv) and (d) to read as follows:

§ 870.12 Reclamation Fee.

* * * * *

(b) * * *

(3) The weight of each ton shall be determined by the actual gross weight or the estimated clean weight of the coal for which the operator is paid.

* * * * *

(iii) The estimated clean weight of the coal may be used by the operator as the basis for fee payment when the following conditions are met: The title to the coal has transferred from the operator who sold the coal to the person operating a coal preparation plant who bought the coal; the operator was paid on an estimated clean coal basis; and the person operating the coal preparation plant actually cleans the coal.

(iv) Failure to maintain the necessary records as specified in § 870.16 shall subject the operator to fees based on run-of-mine tonnage data.

(c) * * *

(d) A person operating a coal preparation plant which purchases coal for resale on the basis of clean coal tonnage, shall pay reclamation fees on the actual weight of all processed coal sold, transferred or used by the coal preparation plant in excess of the estimated clean coal purchased from other operators.

(1) The formula used to compute tonnage subject to reclamation fee payment shall be based on quarterly purchases and sales.

(2) A person operating a coal preparation plant shall pay reclamation fees pursuant to paragraph (d) of this section, effective [THE FIRST DAY OF THE FIRST COMPLETE CALENDAR QUARTER AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(3) Failure to maintain the necessary records as specified in § 870.16 shall subject the person operating the preparation plant to fees based on run-of-mine tonnage purchased.

4. In § 870.13 paragraph (e) is added to read as follows:

§ 870.13 Fee computation.

* * * * *

(e) *Coal preparation plant allocation.* A person operating a coal preparation plant that combines surface mined coal, including reclaimed coal, with underground coal, and/or coal that is exempt under § 870.11, prior to final sale, transfer or use shall pay a reclamation fee at the higher rate for each ton of coal sold or shipped in each quarter in which the tonnage of coal sold, transferred or used exceeds the purchased tonnage, unless records are kept as a basis for the allocation of coal sales to purchases and deliveries by source and all tonnage sold or delivered are allocated to the initial purchase or delivery.

5. Section 870.15 is amended by revising paragraphs (a), (b), (c) and the first sentence of paragraph (d) to read as follows:

§ 870.15 Reclamation fee payment.

(a) Each operator and person operating a coal preparation plant shall pay the reclamation fee based on calendar quarter tonnage no later than thirty days after the end of each calendar quarter.

(b) Each operator and person operating a coal preparation plant shall use mine report form OSM–1 (or OSM–1A approved by OSM) to report tonnage of coal sold, used, or ownership transferred during the applicable calendar quarter, or in the case of a person operating a coal preparation plant, shall report the tonnage sold, transferred or used in excess of the tonnage purchased. A person operating a coal preparation plant may carry over

from previous calendar quarters the net difference between estimated clean coal tonnage purchased and the actual tonnage sold, to the extent cumulative tonnage purchased exceeds cumulative tonnage sold, transferred or used.

(c) As of April 1, 1983, delinquent reclamation fee payments are subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Fiscal Requirements Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the Notices section of the **Federal Register**. Interest on unpaid reclamation fees shall begin to accrue on the 31st day following the end of the calendar quarter for which the fee payment is owed and will run until the date of payment. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All operators or persons operating a coal preparation plant who receive a Coal Reclamation Fee Report (Form OSM–1 or OSM–1A), including those with zero production, must submit a completed Form OSM–1, as well as any fee payment due. Fee payments postmarked later than thirty days after the calendar quarter for which the fee was owed will be subject to interest.

(d) An operator or person operating a coal preparation plant who owes total quarterly reclamation fees of $100,000 or more for one or more mines must use the Treasury Financial Communications System, forward its payments by electronic transfer, and use OSM's approved form(s) to report production to the Denver address below. * * *

* * * * *

6. Section 870.16 is revised to read as follows:

§ 870.16 Production Records.

(a) Any person engaging in or conducting a surface coal mining operation or operating a coal preparation plant shall maintain, on a current basis, records such as invoices, remittance advices, canceled checks and receipts that contain at least the following information as specified below:

(1) Tons of coal used by the operator or person operating a coal preparation plant and date of consumption.

(2) Tons of coal produced, bought, sold, transferred, or shipped, amount received or paid per ton, name and address of the person from whom or to whom sold or purchased, transferred or shipped, the date of each sale or purchase, shipment or transfer, and the permit number from which the coal was produced.

(3) Tons of coal stockpiled or inventoried by the operator which are not classified as sold for fee computation purposes under 0870.12.

(4) A person operating a coal preparation plant must meet the applicable requirements in § 870.16(a)(1), (2) and (3) and must also maintain records of exempt coal purchases, purchases of run-of-mine coal, and tons of clean coal sold, transferred, shipped, or used.

(5) For in situ coal mining operations, total BTU value of gas produced, the BTU value of a ton of coal in place certified at least semiannually by an independent laboratory, and the amount received for gas sold, transferred, or used.

(b) OSM fee compliance officers and other authorized representatives shall have access to records of any surface coal mining operation or coal preparation plant for the purpose of determining compliance of that or any other such operation with this part.

(c) Any person engaging in or conducting a surface coal mining operation or operating a coal preparation plant shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments at reasonable times for inspection and copying by OSM fee compliance officers. If the fee is paid at the maximum rate, the fee compliance officers shall not copy information relative to price. All copied information shall be protected to the extent authorized or required by the Privacy Act and the Freedom of Information Act (5 U.S.C. 552(a), (b)).

(d) Any person engaging in or conducting a surface coal mining operation or operating a coal preparation plant shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) (1) If an operator of a surface coal mining operation fails to maintain or make available the records as required in this section, OSM shall make an estimate of fee liability under this part through use of average production figures based upon the nature and acreage of the coal mining operation in question, then assess the fee at the amount estimated to be due, plus a 20 percent upward adjustment for possible error.

(2) If a person operating a coal preparation plant fails to maintain or make available the records that support the basis for an estimated clean coal transaction, as required in this section, a reclamation fee will be assessed on the weight of the raw tonnage delivered to the coal preparation plant, in excess of the tonnage for which available records document that reclamation fees have been properly paid.

(3) Following an OSM action, as specified in paragraph (e) (1) or (2) of this section, as applicable, an operator or person operating a coal preparation plant may request OSM to revise the estimate, or raw tonnage amounts based upon information provided by the operator or person operating a coal preparation plant. The operator or person operating a coal preparation plant has the burden of demonstrating that the estimate or amount of raw tonnage is incorrect by providing documentation acceptable to OSM, and comparable to information required in § 870.16(a).

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December 29, 1992

Part VIII

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for November 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-53161; FRL-4181-1]

Premanufacture Notices; Monthly Status Report for November 1992

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for November 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office, NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPPT-53161)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC 20460 (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during November; (b) PMNs received previously and still under review at the end of November; (c) PMNs for which the notice review period has ended during November; (d) chemical substances for which EPA has received a notice of commencement to manufacture during November; and (e) PMNs for which the review period has been suspended. Therefore, the November 1992 PMN Status Report is being published.

Dated: December 16, 1992

Frank V Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics

Premanufacture Notice Monthly Status Report for NOVEMBER 1992.

I. 124 Premanufacture notices and exemption requests received during the month

PMN No

P 93-0096 P 93-0097 P 93-0098 P 93-0099 P 93-0100 P 93-0101 P 93-0102 P 93-0103 P 93-0104 P 93-0105 P 93-0106 P 93-0107 P 93-0108 P 93-0109 P 93-0110 P 93-0111 P 93-0112 P 93-0113 P 93-0114 P 93-0115 P 93-0116 P 93-0117 P 93-0118 P 93-0119 P 93-0120 P 93-0121 P 93-0122 P 93-0123 P 93-0124 P 93-0125 P 93-0126 P 93-0127 P 93-0128 P 93-0129 P 93-0130 P 93-0131 P 93-0132 P 93-0133 P 93-0134 P 93-0135 P 93-0136 P 93-0137 P 93-0138 P 93-0139 P 93-0140 P 93-0141 P 93-0142 P 93-0143 P 93-0144 P 93-0145 P 93-0146 P 93-0147 P 93-0148 P 93-0149 P 93-0150 P 93-0151 P 93-0152 P 93-0153 P 93-0154 P 93-0156 P 93-0157 P 93-0158 P 93-0159 P 93-0160 P 93-0161 P 93-0162 P 93-0163 P 93-0164 P 93-0165 P 93-0166 P 93-0167 P 93-0168 P 93-0169 P 93-0170 P 93-0171 P 93-0172 P 93-0173 P 93-0174 P 93-0175 P 93-0176 P 93-0177 P 93-0178 P 93-0179 P 93-0180 P 93-0181 P 93-0182 P 93-0183 P 93-0184 P 93-0185 P 93-0186 P 93-0187 P 93-0188 P 93-0189 P 93-0190 P 93-0191 P 93-0192 P 93-0193 P 93-0194 P 93-0195 P 93-0196 P 93-0197 P 93-0198 P 93-0199 P 93-0200 P 93-0201 P 93-0202 P 93-0203 P 93-0204 P 93-0205 Y 93-0010 Y 93-0011 Y 93-0012 Y 93-0013 Y 93-0014 Y 93-0015 Y 93-0016 Y 93-0017 Y 93-0018 Y 93-0019 Y 93-0020 Y 93-0021 Y 93-0022 Y 93-0023 Y 93-0025

II. 283 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84-0660 P 84-0704 P 84-1145 P 85-0619 P 85-1331 P 86-0066 P 86-1315 P 86-1489 P 86-1662 P 87-0323 P 88-0998 P 88-0999 P 88-1272 P 88-1460 P 88-1616 P 88-1937 P 88-1938 P 88-1980 P 88-1982 P 88-1984 P 88-1985 P 88-1999 P 88-2000 P 88-2001 P 88-2212 P 88-2213 P 88-2228 P 88-2229 P 88-2230 P 88-2236 P 88-2484 P 88-2518 P 88-2529 P 88-2540 P 89-0321 P 89-0396 P 89-0632 P 89-0721 P 89-0769 P 89-0775 P 89-0836 P 89-0837 P 89-0867 P 89-0957 P 89-0958 P 89-0959 P 89-1038 P 89-1058 P 89-1093 P 90-0009 P 90-0158 P 90-0211 P 90-0261 P 90-0262 P 90-0263 P 90-0372 P 90-0441 P 90-0550 P 90-0564 P 90-0581 P 90-0608 P 90-1280 P 90-1318 P 90-1319 P 90-1320 P 90-1321 P 90-1322 P 90-1358 P 90-1422 P 90-1527 P 90-1564 P 90-1592 P 90-1687 P 90-1731 P 90-1732 P 90-1745 P 90-1893 P 91-0043 P 91-0051 P 91-0107 P 91-0108 P 91-0109 P 91-0110 P 91-0111 P 91-0112 P 91-0113 P 91-0228 P 91-0242 P 91-0243 P 91-0244 P 91-0245 P 91-0246 P 91-0247 P 91-0248 P 91-0503 P 91-0548 P 91-0572 P 91-0619 P 91-0659 P 91-0689 P 91-0701 P 91-0818 P 91-0826 P 91-0914 P 91-0915 P 91-0939 P 91-0940 P 91-0941 P 91-1000 P 91-1009 P 91-1010 P 91-1011 P 91-1012 P 91-1013 P 91-1014 P 91-1015 P 91-1116 P 91-1117 P 91-1118 P 91-1131 P 91-1163 P 91-1190 P 91-1191 P 91-1206 P 91-1210 P 91-1297 P 91-1298 P 91-1299 P 91-1321 P 91-1324 P 91-1367 P 91-1368 P 91-1369 P 91-1371 P 91-1386 P 91-1394 P 91-1409 P 92-0003 P 92-0031 P 92-0032 P 92-0033 P 92-0044 P 92-0048 P 92-0066 P 92-0067 P 92-0068 P 92-0129 P 92-0168 P 92-0177 P 92-0217 P 92-0244 P 92-0245 P 92-0246 P 92-0247 P 92-0248 P 92-0249 P 92-0250 P 92-0251 P 92-0314 P 92-0343 P 92-0344 P 92-0396 P 92-0412 P 92-0471 P 92-0477 P 92-0478 P 92-0545 P 92-0546 P 92-0547 P 92-0548 P 92-0549 P 92-0550 P 92-0551 P 92-0552 P 92-0595 P 92-0599 P 92-0606 P 92-0624 P 92-0625 P 92-0649 P 92-0652 P 92-0660 P 92-0688 P 92-0714 P 92-0755 P 92-0776 P 92-0777 P 92-0787 P 92-0804 P 92-0813 P 92-0918 P 92-0919 P 92-0998 P 92-0999 P 92-1003 P 92-1009 P 92-1029 P 92-1048 P 92-1055 P 92-1079 P 92-1086 P 92-1102 P 92-1112 P 92-1113 P 92-1116 P 92-1117 P 92-1118 P 92-1119 P 92-1125 P 92-1136 P 92-1222 P 92-1255 P 92-1294 P 92-1295 P 92-1296 P 92-1298 P 92-1303 P 92-1304 P 92-1305 P 92-1306 P 92-1307 P 92-1308 P 92-1313 P 92-1316 P 92-1324 P 92-1337 P 92-1345 P 92-1352 P 92-1357 P 92-1364 P 92-1369 P 92-1377 P 92-1378 P 92-1394 P 92-1398 P 92-1399 P 92-1413 P 92-1447 P 92-1449 P 92-1454 P 92-1455 P 92-1456 P 92-1457 P 92-1467 P 92-1468 P 92-1472 P 92-1474 P 92-1485 P 92-1488 P 92-1489 P 92-1503 P 92-1504 P 92-1505 P 92-1506 P 93-0002 P 93-0014 P 93-0015 P 93-0017 P 93-0020 P 93-0021 P 93-0022 P 93-0023 P 93-0024 P 93-0025 P 93-0026 P 93-0035 P 93-0036 P 93-0037 P 93-0038 P 93-0040 P 93-0048 P 93-0050 P 93-0065 P 93-0066 P 93-0067 P 93-0068 P 93-0072 P 93-0073 P 93-0075 P 93-0076 P 93-0083 P 93-0094 P 93-0095

III. 151 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 88-2212 P 88-2213 P 88-2228 P 88-2229 P 88-2230 P 88-2236 P 88-2518 P 88-2529 P 89-0721 P 90-1745 P 90-

840 P 91-0689 P 91-1210 P 91-1374 P 92-0044 P 92-0048 P 92-0168 P 92-0599 P 92-0655 P 92-0656 P 92-0657 P 92-0658 P 92-0714 P 92-1086 P 92-1091 P 92-1134 P 92-1188 P 92-1192 P 92-1193 P 92-1282 P 92-1283 P 92-1284 P 92-1285 P 92-1286 P 92-1287 P 92-1288 P 92-1289 P 92-1290 P 92-1291 P 92-1292 P 92-1293 P 92-1297 P 92-1299 P 92-1300 P 92-1301 P 92-1303 P 92-1304 P 92-1305 P 92-1306 P 92-1309 P 92-1310 P 92-1311 P 92-1312 P 92-1314 P 92-1315 P 92-1316 P 92-1317 P 92-1318 P 92-1319 P 92-1320 P 92-1321 P 92-1322 P 92-1323 P 92-1325 P 92-1326 P 92-1327 P 92-1328 P 92-1329 P 92-1330 P 92-1331 P 92-1332 P 92-1333 P 92-1334 P 92-1335 P 92-1336 P 92-1338 P 92-1339 P 92-1340 P 92-1341 P 92-1342 P 92-1343 P 92-1344 P 92-1346 P 92-1347 P 92-1348 P 92-1349 P 92-1350 P 92-1351 P 92-1352 P 92-1353 P 92-1354 P 92-1355 P 92-1356 P 92-1358 P 92-1359 P 92-1360 P 92-1361 P 92-1362 P 92-1363 P 92-1364 P 92-1365 P 92-1366 P 92-1367 P 92-1368 P 92-1370 P 92-1371 P 92-1372 P 92-1373 P 92-1374 P 92-1375 P 92-1376 P 92-1379 P 92-1380 P 92-1381 P 92-1382 P 92-1383 P 92-1384 P 92-1385 P 92-1386 P 92-1387 P 92-1388 P 92-1389 P 92-1390 P 92-1391 P 92-1392 P 92-1393 P 92-1395 P 92-1396 P 92-1397 P 92-1398 P 92-1399 P 92-1400 P 92-1401 P 92-1402 P 92-1403 P 92-1404 P 92-1405 P 92-1406 P 92-1407 P 92-1408 P 92-1409 P 92-1410 Y 93-0004 Y 93-0005 Y 93-0006 Y 93-0007 Y 93-0008 Y 93-0009 Y 93-0010 Y 93-0011 Y 93-0012

IV. 76 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 88-0389	G Metal alkyl	October 13, 1992.
P 88-0652	G Hexol polyol	October 29, 1992.
P 88-0998	G Fluorene-containing diaromatic amine	March 3, 1992.
P 88-1753	G Bis(substituted)carbomonocyclic azo)-carbomonocyclicol	February 14, 1990.
P 88-1977	G *N*-Substituted amino naphthalene sulfonic acid, potassium salt	October 28, 1992
P 88-1978	G *N*-Substituted amino naphthalene sulfonic acid, ammonium salt	October 28, 1992.
P 89-0460	Mixed esters of 1,6-hexanedioic acid, isodecyl alcohol and alkenes, C'-C' products high boiling	November 5, 1992
P 89-1072	G Acrylic acid ester	January 7, 1991.
P 89-1093	G Halogenated alkane	November 20, 1990.
P 90-0002	G Disubstituted dihateropolycle, metal salt	September 19, 1990.
P 90-0260	G Fatty alcohol,alkoxylated	October 26, 1992.
P 90-0558	G (4-(1-Methylbutoxy)phenyl)hydrazine monohydrochloride	October 17, 1991.
P 91-0375	G Amphoteric polydimethylsiloxane	September 21, 1992.
P 91-0389	Zirconium IV 2,2 (Bis-2-TI-Propenolato-Methyl) butanolato, Tris 2-Propenoato-0	October 7, 1992.
P 91-0481	G Ester of maleic modified, hydrocarbon rosin, fatty acid copolymer	November 9, 1992.
P 91-0765	G Polyfulfide polymer	September 29, 1992.
P 91-0819	G Polymethacrylate derivative with reactive blue 2	October 5, 1992.
P 91-0820	G Polymethacrylate derivative with reactive red 120	September 29, 1992.
P 91-0831	G Halogenated alkane	October 15, 1992.
P 91-1102	G Glycol borate	October 30, 1992.
P 91-1217	1,2-Cyclohexanedicarboxylic acid, mon(2-((2-methyl-1-oxo- 2-propanyl)oxy)ethyl)oxy)ethyl)ester	October 15, 1992.
P 91-1228	G Dihydroheterpolycycle	October 21, 1992.
P 91-1321	G Methyl polychloro aliphatic ketone	August 29, 1992.
P 91-1322	G Dimethyl-3-substituted heteromonocycle	August 29, 1992.
P 91-1323	G Dimethyl substituted heteromonocycle amine	August 29, 1992.
P 91-1416	G Tall oil functions, vegetable oil, dibasic acids modified amide reaction product with a polyhydric alocohol	November 4, 1992.
P 92-0001	Fatty acids, C_{6-18} and C_{18} unsat., methyl esters, reaction products with *N,N*-dimethyl amino propyl amine	October 14, 1992.
P 92-0002	1-Propanaminum, 3-amino-*N*-(carboxy methyl)-*N,N*-dimethyl-, *N*-(C_{6-18} and C_{18} unsat.) acyl, chlorides, inner salts	October 15, 1992.
P 92-0022	G Substituted guaiacol	October 12, 1992.
P 92-0028	G Phosphorothioic acid ester btranched amine salts	October 18, 1992.
P 92-0435	G Substituted naphthalene disulfonic acid	November 3, 1992.
P 92-0505	G Nitroaromatic ether	October 6, 1992.
P 92-0644	G Perrylene diimide	October 29, 1992.
P 92-0651	G Rosin, fumerated, polymer with pentaerythritol, a polyol and a polymer	October 18, 1992.
P 92-0671	2-Methylpropanoic acid, sodium salt	November 5, 1992.
P 92-0675	G Alkyd resin	October 6, 1992.
P 92-0688	G Quaternary ammonium salt of fluorinated alkyl-aryl amide	September 6, 1992.
P 92-0689	G Aliphatic d-ester	October 19, 1992
P 92-0693	G Acrylic resin	July 14, 1992.
P 92-0778	G Acrylic polymer	October 6, 1992.
P 92-0785	G Alkylarylethoxylate derivative	September 28, 1992.
P 92-0794	G Water dispersible aliphatic isocyanate	September 30, 1992.
P 92-0856	G Modified styrene polymer	October 9, 1992.
P 92-0870	G Methamylic acid copolymer salt	October 20, 1992
P 92-0871	G Methacrylic acid copolymer salt	October 13, 1992
P 92-0920	G Substituted phenyl azo phenyl dye	October 23, 1992.
P 92-0980	G Acrylated urethane	October 9, 1992.
P 92-0986	2-Propenoic acid,2-ethylhexyl ester, polymer with ethenylbenzene and 2-methyl-2-((-oxo-2-propenyl)amino)-1-propanesulfonic acid, 2,2'-azobis(2-methylbutanenitrile)-initiated	October 9, 1992.
P 92-1000	G Acrylic terpolymer	October 15, 1992
P 92-1022	G Modified acrylate polymer	October 1, 1992.
P 92-1028	G Acid functional polyurethane polyester	October 9, 1992.
P 92-1049	G Alkoxy terminated polyethylene glycol, aromatic and aliphate acid polyester	October 26, 1992
P 92-1057	G Unsaturated polyester resin	October 14, 1992
P 92-1058	G Isoindolone	October 5, 1992.

IV. 76 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 92-1080	G Vinyltoluene methacrylate resin	October 31, 1992.
P 92-1090	G Perfluoroalkylethylacrylate copolymer	October 14, 1992.
P 92-1097	G Poly(acrylonitrile-co-styrene)	October 1, 1992.
P 92-1099	G Rubber modified polyamide	October 3, 1992.
P 92-1128	G Substituted azo triazine	October 14, 1992.
P 92-1130	G Acrylic resin	October 14, 1992.
P 92-1144	G Organic silicon polymer	November 9, 1992.
P 92-1150	G Acrylic copolymers	October 14, 1992.
P 92-1157	G Trisubstituted naphthalene sulfonic acid	October 20, 1992.
P 92-1165	G Trisubstituted naphthalene disulfonic acid	October 20, 1992.
P 92-1166	G Trisubstituted naphthalene disulfonic acid	October 20, 1992.
P 92-1167	G Trisubstituted naphthalene disulfonic acid	October 20, 1992.
P 92-1191	G Biphenol A polyether terephthalate	November 7, 1992.
P 92-1202	G Amino-functional alkoxysilane	October 21, 1992.
P 92-1207	Silsequioxanes, (3-(2-aminoethyl)amino)propyl Me, methoxy-terminated	October 29, 1992.
Y 91-0086	G Aromatic polyester polyether urethane	October 26, 1992.
Y 91-0188	G Aliphatic-aromatic polyurethane	October 9, 1992.
Y 92-0140	G Styrene-acrylic copolymer	October 29, 1992.
Y 92-0176	G Polymethacrylic acid-fish oil sulfonated sodium salt copolymer	October 7, 1992.
Y 92-0177	G Alkyd resin	October 19, 1992.
Y 92-0181	G 1Aliphatic polyester	October 22, 1992.
Y 92-0194	G Polyester polymer	October 8, 1992.
Y 92-0200	G Styreneacrylic copolymer, sodium salt	

V. 14 Premanufacture notices for which the period has been suspended.

PMN No.

P 89-1038 P 92-1055 P 92-1307 P 92-1308 P 92-1316 P 92-1324 P 92-1337 P 92-1345 P 92-1357 P 92-1369 P 92-1377 P 92-1378 P 92-1394 P 93-0083

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Tuesday
December 29, 1992

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing
Federal Housing Commissioner

Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program; Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3534; FR-3356-N-01]

Section 8 Assistance under the Loan Management Set-Aside (LMSA) Program; Fund Availability

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for fiscal year 1993.

SUMMARY: This Notice of Fund Availability (NOFA) announces the availability of up to $202 million in section 8 funds for Loan Management Set-Aside (LMSA) assistance. In the body of this document is information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, available LMSA assistance, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: Applications for consideration under the General LMSA Funding procedures are due on or before February 12, 1993. If submitted on the application deadline date, the completed application package must be received by 4 p.m. (local time) in the HUD Field Office having jurisdiction over the applicant project. The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline, except for applications made under Emergency procedures described below. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. It is not sufficient for the application to bear a postage date with the submission time period. Applications must be submitted in an envelope, package, or binding which includes all parts of the application in their entirety as they are described in the Application Checklist Section of this NOFA. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The Loan Management Branch in the local HUD Field Office having jurisdiction over the project(s) in question for application materials and project-specific guidance. Policy questions of a general nature may be referred to William Schick, Chief, Program Support Branch, Office of Multifamily Housing Management, Department of Housing and Urban Development, room 6164, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–2654. TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The Office of Management and Budget has approved the Loan Management Set-Aside Program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and has assigned it OMB control number 2502–0407.

I. Purpose and Substantive Description

(a) Authority

The Loan Management Set-Aside ("LMSA") program provides special allocations of Housing Assistance Payments ("HAP") under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. Title 24 of the Code of Federal Regulations, part 886, subpart A sets forth rules for administration of the LMSA program. Matters addressed in the LMSA regulation include: (1) Application contents (§ 886.105), (2) requirements for HUD approval of applications (§ 886.107), (3) owner responsibilities under the program (§ 886.119), and (4) rules governing Federal preferences in the selection of tenants (§ 886.132).

(b) Purpose

The primary purpose of the LMSA program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with presently or potentially serious financial difficulties. First priority is given to insured projects with presently or potentially serious financial problems which are likely to result in a claim on the insurance fund in the near future. To the extent that resources remain available, assistance also may be provided to HUD-Held and 202 projects with present or potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing within approximately the next five years either a claim on the insurance fund or a lost of direct loan investment in the case of a 202 loan.

(c) Allocation Amounts

This Notice of Funding Availability (NOFA) announces availability of up to $202 million from Fiscal Year 1993 section 8 LMSA program funds for purposes of avoiding claims on the Department's insurance fund. Pursuant to this Notice, HUD is accepting applications for assistance under the LMSA program from owners of FHA-insured or Secretary-held multifamily projects with presently or potentially serious financial difficulties. All LMSA assistance awarded from these Fiscal Year 1993 program funds will have a term of five years, with no contractual provision for renewal of the contract at the end of the five-year term. This NOFA does not govern noncompetitive assistance awards under the section 8 LMSA program pursuant to specific regulatory authority (e.g., LMSA assistance as a prepayment plan of action incentive under § 248.231(e) or such assistance under § 219.325(b)(4) to alleviate the effect of rent increases resulting from debt service on capital improvement loans).

(d) Eligibility.

Projects eligible for LMSA assistance include: (1) any existing subsidized or unsubsidized multifamily residential project subject to a mortgage insured under any section of the National Housing Act; (2) any such project subject to a mortgage that has been assigned to the Secretary; (3) any such mortgage acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; and (4) a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR part 885). References to HUD-Held or Secretary-Held projects throughout this Notice include any project which meets one of the descriptions in (2)–(4) above.

Owners meeting these criteria who applied for assistance in a prior year but did not receive the desired number of units are eligible to reapply under this NOFA. The FY 1993 application must contain current information and conform to all requirements outlined in this notice.

(e) Selection Criteria/Ranking Factors

(1) *Application Review:* Each application for assistance under the LMSA program will be reviewed by the HUD Field Office having jurisdiction over the project in question. Within 10 days of receipt of each application involving more than 12 units, the HUD Field Office must notify the chief executive of the unit of general local

government in which the project is located and provide the opportunity for non-binding comments on the application (see 24 CFR 886.106 and 24 CFR part 791). These comments will be considered by the Field Office in determining whether the application meets regulatory approval requirements in § 886.107 and described in detail in HUD Handbook 4350.2 REV–1. The Field Office's review of the application will be based on the following determinations:

(i.) HUD's Fair Housing requirements (24 CFR 886.107(a) and 886.114) are met;

(ii.) The HUD-approved unit rents are approvable within the limitations described in § 886.110, which are based on HUD's Fair Market Rents;

(iii.) The residential units meet the housing quality standards set forth in § 886.113, except for such variations as HUD may approve;

(iv.) A significant number of residents, or potential residents in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of section 8 assistance;

(v.) The proposed section 8 assistance would not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are substantial move-outs from nearby HUD-related multifamily housing, or substantial diversion of prospective applicants from such projects to the subject project;

(vi.) The project has serious current financial problems, which are likely to result in a claim on the insurance fund in the near future, or the project has potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years;

(vii.) The proposed section 8 assistance for the project would solve an identifiable problem and provide a reasonable assurance of long-term project viability. A determination of long-term viability must be based on the following findings:

(A) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership;

(B) The owner is in substantial compliance with the Regulatory Agreement. Owners have not or are not diverting project funds for personal use. No dividends have been paid during any period of financial difficulty;

(C) The current management agent has been approved by HUD and is in substantial compliance with the management agreement. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources;

(D) The project's problems are primarily the result of factors beyond the control of the present ownership and management;

(E) The major problems are traceable to an inadequate cash flow;

(F) The proposed section 8 assistance would solve the cash flow problem by: (1) Making it possible to grant needed rent increases; and (2) reducing turnover, vacancies and collection losses;

(G) The owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable; there is positive evidence that the owner will carry out the plan. Examples of such evidence are the owner's past performance in correcting problems and, in the case of profit-motivated owners, any cash contributions made to correct project problems.

(viii.) For projects with a history of financial default, financial difficulties or deferred maintenance, any plan for remedying defaulted or deferred obligations submitted pursuant to § 886.105(d) must be adequate in HUD's determination.

In its review of an application, the HUD Field Office will consider recent physical inspections, management reviews, and tenant complaints and comments. If there is no report of a detailed HUD physical inspection conducted by either the mortgagee, HUD, or a third-party contractor of HUD dated within one year of the date an application for LMSA assistance is received in the reviewing office and containing a description and estimated cost of required repairs, the HUD Field Office will schedule a physical inspection and Housing Quality Standards (HQS) inspection in conjunction with its review and approval of the application for LMSA assistance. Execution of a subsidy contract in such case will be contingent upon satisfactory modification of the owner's plan to include solutions for all additional problems discovered in the scheduled review(s).

After HUD Field and Regional Offices, as appropriate, have determined which applications meet LMSA program requirements, the projects which are both eligible for, and in need of, new or additional LMSA assistance shall be reported to HUD Headquarters for further consideration under the competitive selection procedures outlined in this Notice. Projects awarded subsidy from Fiscal Year 1993 LMSA program funds shall be selected in accordance with "general" or "emergency" procedures as described below. If an application can be approved only on certain conditions, the HUD Field Office will notify the owner of the conditions and specify a time limit by which those conditions must be met. A project recommended for a conditional approval may be reported to Headquarters by the HUD Field Office for further processing under procedures set forth below; however, execution of an LMSA contract for any units which may be allocated to the project in the Headquarters process, will be contingent upon the owner's compliance with the approval conditions. If the HUD Field Office concludes that an application will not meet LMSA program requirements, processing of the application is discontinued, and the applicant will be notified by the Field Office as soon as possible of the reasons for disapproval.

(2) *General LMSA Funding Round:*

(i.) Annual needs survey:

Fiscal Year 1993 general funding awards will be made from projects recommended by HUD Field Offices to HUD Headquarters in response to the Fiscal Year 1993 annual needs survey. The Field Offices' needs survey responses will be forwarded to HUD Headquarters after the due date announced in this Notice for program applications. HUD Field Office staff shall determine and report to Headquarters the minimum number of LMSA units needed to cure each project's vacancy and cash flow problems, subject to limitations as described below.

(ii.) Limitations on Units:

(A) An allocation may not exceed the difference between total units in the project and the number of units already assisted under project-based tenant subsidy contracts (project-based section 8 subprograms, Rent Supplement and Rental Assistance Payments).

(B) For both subsidized and unsubsidized projects, if the Field Office's recommendation exceeds the sum of vacant units plus the number of tenants paying more than 40 percent of income for rent, the respective HUD Regional Office must review and concur in the number of LMSA units recommended.

(C) Total project-based section 8 assistance for projects with unsubsidized mortgages is limited to 40 percent of total units in the project. If

the respective HUD Field Office determines that a project with an unsubsidized mortgage needs section 8 assistance above the 40 percent level, or if the project was developed as a retirement service center, a recommendation by the Field Office will be subject to further review by the Regional Office and the Headquarters Desk Officer in a process similar to the review of applications submitted under the emergency procedures described in paragraph (3) below. In all such cases, the Field Office's justification for LMSA units must document that project management has an aggressive and workable plan in place for leasing the market rate units in the project. A project is considered unsubsidized for the purpose of LMSA funding selections if the HUD mortgage is unsubsidized. The definition of subsidized project for purposes of section 203 of the Housing and Community Development Amendments of 1978, which includes projects with over 50 percent of total units assisted under certain section 8 subprograms, pertains to management and disposition of projects which have been acquired by HUD and is not applicable to projects eligible for LMSA assistance.

(iii.) Determination of Priority Category:

HUD Field Offices will include in their needs survey reports, data needed by HUD Headquarters to classify approved projects into six priority categories and to establish a funding score for each project.

Fiscal Year 1993 LMSA funds will be allocated in the following order of priority:

(A) Insured projects with presently serious financial problems likely to result in a mortgage insurance claim in the near future;

(B) Insured projects with potentially serious financial problems which appear to have a high probability of producing a mortgage insurance claim within approximately the next five years;

(C) HUD-held and section 202 projects with presently serious financial problems; and

(D) HUD-held and section 202 projects with potentially serious financial problems.

The Department of Housing and Urban Development never intended to provide relief in the form of Loan Management Set Aside Assistance for Retirement Service Centers (RESC) or formerly coinsured projects. However, it is recognized that if LMSA assistance could be made available for those types of projects some additional claims on the FHA Fund might be avoided. Accordingly, the following priority categories of eligible projects are included in FY 1993.

(E) Insured Retirement Service Centers and insured formerly coinsured projects (i.e., projects whose mortgages have been converted from coinsurance to full insurance), with presently serious financial problems likely to result in a mortgage insurance claim in the near future.

(F) HUD-held Retirement Service Centers and HUD-held formerly coinsured projects with presently serious financial problems.

(iv.) Determining the "presently serious" classification:

For purposes of determining classification, HUD will consider a project to have "presently serious financial problems" if both of the following two financial ratios are less than zero:

Income/Expense Ratio, defined as follows:
(Net Income or Loss Before Depreciation LESS Annual Debt Service and Reserve Payments) Times 100
Divided by:
Total Annual Cost of Operating the Project

and,

Ratio of Surplus Cash (or Deficiency) to Monthly Mortgage Payment, defined as follows:
Total Cash LESS Total Current Obligations
Divided by:
Total Monthly Mortgage Payment

A negative income/expense ratio occurs when there was a net loss during the period or when net income before deprecation was less than annual debt service plus reserve payments. The project did not generate sufficient cash flow from operations in the previous year to cover its cash requirements, suggesting cash flow difficulties which were possibly severe and, if left unresolved, are likely to result in financial problems in the current year. Comparison to the total cost of operating the project provides an indication of the seriousness of any negative cash flow, since the size of the problem generally varies directly with the absolute value of the ratio.

The second ratio approximates the project's Mortgage Payment Coverage Ratio and is negative when there is a cash deficiency, i.e., the surplus cash calculation is less than zero. A cash deficiency means that cash available to the project at the end of the period, including any subsidy vouchers due for the period, is less than the amount needed to cover current obligations. A cash deficiency points to a severe liquidity problem since the project cannot even meet its past obligations without some form of relief. Calculation of the ratio of surplus cash (deficiency) to the total mortgage payment provides an indication of the project's ability to make the next mortgage payment after past obligations are met, without depending upon the next month's rent collections.

The two ratios defined above will be calculated using financial data contained in the project's annual audited financial statement for calendar year 1992, except for projects with fiscal year end dates later than December 31, 1992 where the most recent annual audited financial statement for a fiscal year period ending in 1991 or later will be used.

A result of zero or less on the two ratios suggests that the project has a present financial problem. These ratios were selected because they provide a straightforward means of identifying projects with cash flow difficulties. Projects with either ratio in the positive range may be added to Category A for insured projects or Category C for HUD-held projects based on written justifications by HUD Field Offices documenting appropriate circumstances. For example, a substantial increase in vacancies in recent months may warrant elevating the project's priority category. The justifications will be reviewed by Headquarters staff in the Office of Multifamily Housing Management, who will resolve any issues with the respective HUD Regional and Field Offices and approve, or disapprove, the change in priority.

(v.) Determination of Ranking Within Priority Category:

The number of projects which can be funded from Fiscal Year 1993 resources will depend upon the units and budget authority designated in Field Office recommendations. If LMSA program funds are available to fund some, but not all of the projects in a given priority category (after funding all projects in higher priority categories), any project selections from the given category will follow from a ranking of projects within that category using a funding score. A maximum score of 115 points (110 points for HUD-held projects) may be accumulated on the basis of the following project characteristics and maximum point potentials:

(A) Occupancy—25 points.
Calculation: No. of occupied units Divided by Total units in the project. Lower values yield higher points.

(B) Owner advances or contributions since October 1, 1990—25 points.
Calculation: Total of owner advances or contributions during the period Divided

by Total Units in the project. Larger values yield higher points.

(C) Tenants paying in excess of 40 percent of their income for rent—15 points. Calculation: No. of units occupied by tenants paying over 40 percent of their income for rent Divided by Total units in the project. Larger values yield higher points.

(D) Income/Expense Ratio—15 points. Calculation: As defined above. Smaller values yield higher points.

(E) Ratio of Surplus Cash (Deficiency) to Total Monthly Mortgage Payment—15 points. Calculation: As defined above. Smaller values yield higher points.

(F) For HUD-insured projects only, Mortgage balance per dollar of additional subsidy—5 points. Calculation: Mortgage principal balance Divided By Proposed LMSA annual contract authority. Larger values yield higher points.

(G) Resident Initiatives—15 points.

Evidence in the form of a contract, or other written commitment, to transfer title to the property to a resident organization, cooperative association, non-profit entity, public body including an instrumentality thereof, public housing agency or Indian Housing Authority, for the purpose of resident ownership of the project.

(vi.) LMSA/Flexible Subsidy Program Coordination

Pursuant to section 405(f) of the Housing and Community Development Act of 1992 (Pub. L. 102–550), assistance under this NOFA will be coordinated with assistance made available under the forthcoming NOFA for the Flexible Subsidy Program.

(vii.) Funding for Selected Projects:

If Headquarters confirms that all program requirements have been met and selects the project for funding, the number of additional section 8 units allocated will be equal to the number of LMSA units recommended by the HUD Field Office in accordance with limitations previously set forth in paragraph (2)(ii).

If approved, notification of a general funding award will be made through the HUD Field Office. If an application can be approved only on certain conditions, HUD will notify the owner of the conditions and specify a time limit by which those conditions must be met. Disapproved applicants will also be notified with a statement of the grounds for disapproval.

(3) *Emergency LMSA Funding:* Up to five percent of the LMSA funds announced in this Notice may be made available to fund projects recommended to HUD Headquarters by the respective HUD Field Office subsequent to the Annual Needs Survey reporting deadline for the general funding round. After this deadline, only emergency requests will be accepted. In all cases governed by these emergency procedures, consideration will be given to the extent that sufficient resources are available.

To qualify for emergency LMSA assistance, the project must be insured with presently serious financial problems (as described in paragraph (2)(iii) above), and must meet one of the conditions listed below:

(i.) The applications (or corrections to the applications) were received too late by the Field Office to be included in the Annual Needs Survey.

(ii.) Projects which were recommended by the Field Office during this general funding round, but were not approved in Headquarters or did not score a sufficient number of points in the ranking process.

All application and Field Office review procedures pertaining to the LMSA program will be followed for emergency recommendations. In addition, an emergency recommendation must have written concurrence from the Director of Housing in the appropriate HUD Regional Office. HUD Field Offices are required to demonstrate that provision of the proposed LMSA units is likely to avert a mortgage default or assignment in the near future, and the request to HUD Headquarters will explain why funds are needed on an emergency basis. Headquarters will not consider any emergency funding request which does not have written Regional Office concurrence.

HUD Headquarters will review Field Office justifications and will determine whether provision of LMSA units is an appropriate response to the circumstances documented by HUD Field staff. If an emergency request is approved, notification of the subsidy award will be made through the HUD Field Office.

II. Application Process

(a) Completed applications must be submitted to the HUD Field Office having jurisdiction over the multifamily property for which assistance is requested. Application kits containing copies of required HUD forms and Notices are available from HUD Field Offices.

(b) For consideration under the General LMSA Funding procedures set forth previously in this Notice, a completed LMSA application must be submitted within 45 days from the date of publication of this Notice. If submitted on the application deadline date, the completed application package must be received by the deadline cited previously in this NOFA.

Applications received after the due date and time specified in this NOFA will be considered for LMSA assistance only if the Secretary determines that such assistance is needed immediately in response to emergency circumstances and only to the extent that sufficient Fiscal Year 1993 LMSA budget authority remains to satisfy the subsidy requirement.

III. Checklist of Application Submission Requirements

(a) LMSA applications must meet the requirements set forth in § 886.105 of the LMSA regulations and HUD Handbook 4350.2 REV–1 (6/92). All requirements have been incorporated into form HUD–52530, Application for Loan Management Set-Aside, Section 8 Program, and the ancillary forms cited therein. The application form is reproduced in this NOFA. Regulatory requirements are cited below.

(1) Information on gross income, family size and amount of rent paid to the project by families currently in residence;

(2) Information on vacancies and turnover;

(3) Total number of units by unit size (by bedroom count) for which section 8 assistance is requested;

(4) Affirmative Fair Housing Marketing Plan on Form HUD–935.2.

(5) Estimate of effect of the availability of the requested section 8 LMSA assistance on marketability of units in the project;

(6) For projects having a history of financial default, financial difficulties or deferred maintenance, a plan and a schedule for remedying such defaulted or deferred obligations. To be credible, the owner must clearly state each problem being addressed and enumerate proposed actions for curing each problem. Proposed actions must be presented in trackable form, with the specific dates that each action would begin and end if the requested LMSA subsidy were awarded.

(7) A Statement of the Sources and Uses of all financial resources needed to complete the plan, including any cash contributions from the owner.

(8) Since HUD's approval must be based in part on evidence that the plan will be carried out, the owner must certify that the plan will be executed as presented and that sources of funds identified in the plan, other than the LMSA assistance applied for, will be available by the scheduled dates (any

conditions must be stated, e.g. "subject to HUD approval of Flexible Subsidy").

(9) The owner must also certify that every effort has been made to secure funding from all possible funding sources; supporting documentation of those efforts must be attached.

(10) The owner must agree to modify the plan, prior to execution of an LMSA contract, for the purpose of including any changes which the HUD Field Office determines are necessary to address problems not identified or inadequately addressed in the plan, as indicated by recent HUD physical inspections, management reviews or records of tenant complaints and comments, or by HUD physical inspections and/or management reviews which may be scheduled in conjunction with review of the LMSA application. Changes required by HUD may also include requirements for carrying out Resident Initiatives activities where it is determined that it could be beneficial to the management of the project.

(11) All documentation required by HUD Notice 90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and by the Notice of administrative guidelines to be applied to assistance programs of the Office of Housing published on April 9, 1991 (56 FR 14436). Requirements may be affected by section 911 of the Housing and Community Development Act of 1992, Pub. L. 102–550. The local HUD Field Office should be contacted for the latest documentation requirements.

(12) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

(13) Disclosures and verification requirements for Social Security and Employer Identification Numbers, as required by 24 CFR part 750.

(14) Certification and disclosure according to HUD Notice H–90–27 entitled "OMB's Guidance on New Government-wide Restrictions on Lobbying" issued April 13, 1990.

(15) Form HUD–2530, Previous Participation Certificate(s) for all principals requiring clearance under those procedures.

(16) A certification stating that the owner will comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, as well as with all regulations issued pursuant to these authorities.

(17) Certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), implementing regulations at 49 CFR Part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

IV. Corrections to Deficient Applications

(a) After the submission date for applications, no owner—initiated changes to application documents will be accepted, except for correction of technical deficiencies which do not alter the substance of the application materials. Examples include a missing certification or missing signature, and clarification of details included in the application as requested by HUD as a part of its review. (Reasonable changes to the owner's corrective plan resulting from negotiations with the HUD Field Office during the application review period are not governed by this section.)

(b) HUD will notify an applicant in writing, shortly after the application response deadline, of any technical deficiencies in the application. The applicant must submit corrections to the Field Office within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. The applicant must submit the corrected document(s) with a separate written summary of all changes from the original submission.

V. Other Matters

(a) National Environmental Policy Act of 1969

HUD regulations in 24 CFR part 50, implementing Section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the activities set forth in this Notice are within the exclusion set forth in § 50.20(d), no environmental assessment is required, and no environmental finding has been prepared.

(b) Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

(c) Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA does not have potential significant impact on family, formation, maintenance, and general well-being.

(d) Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(e) HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their

inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) Applicant/Recipient Disclosures; Subsidy-Layering: HUD Reform Act

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Subsidy-layering determinations. 24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking account of other government assistance. HUD will make the decision with respect to each certification available to the public free of charge, for a three-year period. (See the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on requesting these decisions.) Additional information about applications, HUD certifications, and assistance adjustments, both before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

Authority: Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

Dated: December 3, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

BILLING CODE 4210-27-C

Application for Loan Management Set-Aside
Section 8 Program

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No 2502-0407 (exp 11/30/94)

Public Reporting Burden for this collection of information is estimated to average 20 hours per response including the time for reviewing instructions searching existing data sources gathering and maintaining the data needed, and completing and reviewing the collection of information Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer - Office of Information Policies and Systems U S Department of Housing and Urban Development, Washington D C 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0407) Washington, D.C 20503. Do not send this completed form to either of these addressees

Privacy Act Notice: The Department of Housing and Urban Development (HUD) is authorized to collect this information by Section 104(d) of the Housing and Community Development Act of 1974 as amended The Housing and Community Development Act of 1987 42 U S C. 3543 authorizes HUD to collect the Social Security Number (SSN) The information you provide will enable HUD to use SSN's to help decrease the incidence of fraud, waste and abuse in specific HUD programs HUD may disclose certain information to Federal, State, and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions It will not be otherwise disclosed or released outside of HUD except as required and permitted by law. Failure to provide this information, including the SSN, will result in denial of further consideration of the application for benefits

Attach the following to this application:

- ☐ **Affirmative Fair Housing Marketing Plan**, form HUD 935.2
- ☐ **Budget Worksheet, Income & Expenses Projections,** form HUD 92547A or HUD-approved equivalent (Section I of this application)
- ☐ **Funding Sources Documentation** (Section J of this application)
- ☐ **Applicant/Recipient Disclosure/Update Report**, form HUD-2880 HUD considers the aggregate assistance from the Department and all other sources that are necessary to ensure the feasibility of the assistance.
- ☐ **Previous Participation Certification,** form HUD 2530 The past performance of all principals associated with the project for which application for Section 8 Loan Management Set-Aside is being made is reviewed to determine whether participation in additional activity should be allowed.
- ☐ **"Certification for Contracts, Grants, Loans, and Cooperative Agreements"** All applicants for assistance greater than $100,000 must attach this certification. Recipients of Section 8 Loan Management Set-Aside assistance are prohibited by Section 319 of 31 USC 1352 — the "Byrd Amendment" — and 24CFR 87 from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government.
- ☐ **Disclosure of Lobbying Activities, Standard Form LLL** if non-appropriated funds are utilized

Owner(s) Name and Full Address	Social Security Number(s)
	Employer Identification Number
Management Agent Name and Address	Project Name
	Project Number

Owner Certifications

I agree to comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, as well as with all regulations issued pursuant to these authorities.

I agree to comply with the governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended (49 CFR 24).

I agree to carry out the plan described in this application and any modifications thereto as required by the HUD Field Office.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Owner Signature (or authorized agent). Date

X

Note: If additional space is needed on any section, attach separate page.

A. Project Description (check one)

- ☐ Existing subsidized or unsubsidized multifamily residential project subject to a mortgage insured under any section of the National Housing Act.
- ☐ Any such project subject to a mortgage that has been assigned to the Secretary.
- ☐ Any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage.
- ☐ A project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR part 885).

B. Family Income and Size Per Unit for the Project

Provide the information below for all units in the project. For vacant units, enter "vacant" under the column marked "Family Size." For subsidized tenants, obtain monthly family income from last certification. For unsubsidized tenants, use income reported at move-in unless more recent information is available. **A typewritten or computer-generated equivalent is acceptable for this section.**

Unit Number	Unit Size	Gross Monthly Family Income	Family Size	Unit Rent	Total Monthly Tenant Payment

C. Summary of Gross Family Income Provide the number of eligible individuals or families whose monthly rent is:

30—39 percent of gross monthly income _____

40—49 percent of gross monthly income _____

50 percent or more of gross monthly income _____

D. Unit Marketing

1. Is there a project waiting list for very low-income residents eligible for Section 8 assistance? If so, provide the number of eligible individuals or families on the waiting list by requested unit size. If not, explain how the units will be marketed.

2. For unsubsidized projects requesting LMSA for vacant units, describe past efforts to lease market rate units.

3. How many tenants use vouchers / certificates?

E. Information on Vacancies and Turnover

Provide move-in, move-out and end-of-month vacancy information for the past 24 months.

	Month/Yr	Number of Move-in's	Number of Move-out's	Number of Vacancies
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				

	Month/Yr	Number of Move-in's	Number of Move-out's	Number of Vacancies
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				

F. Units Requested for Section 8 Assistance

Unit rent should reflect any planned rent increases.

Bedroom Size	Number of Units Requested	Unit Rent
0 bedroom		
1 bedroom		
2 bedroom		
3 bedroom		
4 bedroom		
Other (specify)		

G. Project's Problem Statement and Proposed Action to Cure the Problem

State the type of problems the project is experiencing (e.g. financial difficulties, deferred maintenance, high vacancy rate) and proposed actions for curing the problem.

H. Tracking of Management Improvement Plan

Provide below each management goal necessary to correct the problems of the project (e.g. reduce vacancies to less than 5 percent). Indicate a target date when each goal will be completed.

Goal No.	Description of Management Goal	Target Date

I. Proposed Budget With the Use of LMSA Funds An operating budget must be submitted with this application. Attach Budget Worksheet, Income & Expense Projections, form HUD 92547A, or other HUD-approved owner-generated form. Include in account 5121 the contract rent potential for any LMSA units under contract plus units for which application is made. Also indicate the use of these funds under the expense categories.

J. Statement of Sources and Uses Describe the financial resources that will be available to complete the plan. Identify the uses planned for the resources. Specify any conditions to receipt of identified resources.

Sources	Amount	Date Available	Conditions to Receipt of Identified Resources
Owner Contributions			
Requested LMSA			
Low Income Housing Tax Credit Proceeds (LIHTC)*			
Bank Financing			
Other Types of Funding (state source; be specific)			
Total Sources			
Uses			
Physical Improvements to Project			
Cure Financial Difficulties			
Other Uses (state type)			
Total Uses			

* If LIHTC's are involved the Sources and Uses format may be different. Requirements are under revision as a result of the Housing & Community Development Act of 1992. Contact the HUD Field Office for the latest instructions.

K. Describe efforts to secure funding from all possible sources. Attach any supporting documentation such as correspondence or similar records.

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Part X

Department of Housing and Urban Development

24 CFR Part 2003
Privacy Act of 1974; Implementation; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Inspector General

24 CFR Part 2003

[Docket No. R-92-1611; FR-3259-F-02]

RIN 2508-AA07

Implementation of the Privacy Act of 1974

AGENCY: Office of the Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the requirements of the Privacy Act of 1974 in the Office of the Inspector General by creating a new part 2003 to 24 CFR chapter XII. It supplements the Department's existing Privacy Act regulations at 24 CFR part 16.

DATES: Effective date: January 28, 1993.

FOR FURTHER INFORMATION CONTACT: Philip A. Kesaris, Deputy Assistant General Counsel, Inspector General and Administrative Proceedings Division, Office of General Counsel, room 10251, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (202) 708-2350. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Background

The Inspector General Act of 1978 (5 U.S.C. App.) was enacted to create independent and objective units to perform various investigative and monitoring functions in several Executive agencies of the Federal Government, including the Department of Housing and Urban Development (HUD). This Act confers broad authority upon the Inspector General to conduct independent investigations and audits. Consistent with its statutory independence, the Inspector General of HUD has adopted separate regulations at 24 CFR chapter XII which are applicable only to the Office of Inspector General (OIG). Currently, Chapter XII concerns such OIG matters as organization, functions, and delegations of authority (part 2000), availability of information to the public (part 2002), and production in response to subpoenas or demands of courts or other authorities (part 2004). See 57 FR 2225, January 21, 1992.

On August 27, 1992 (57 FR 38804), the Department published a proposed rule to implement, at 24 CFR part 2003, the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) in the OIG. Interested parties were given 60 days, until October 26, 1992, to comment on the proposed rule. No comments were received on the proposed rule, and the text of this final rule is the same as that of the proposed rule.

This new part 2003 to chapter XII of title 24 generally incorporates the Department's existing Privacy Act regulations (24 CFR part 16) with some modifications of a mostly technical nature.

However, §§ 2003.8 (General Exemptions) and 2003.9 (Specific Exemptions) of this rule constitute a significant revision to the OIG's exemption regulations found at 24 CFR 16.14 and 16.15. Sections 2003.8 and 2003.9 clarify the scope of the exemptions applicable to the OIG system of records entitled "Investigative Files of the Office of Inspector General" by providing reasons for exemptions from particular subsections of the Privacy Act that are more detailed than those found at 24 CFR 16.14 and 16.15. In addition, §§ 2003.8 and 2003.9 set forth the exemptions that are applicable to two new OIG systems of records, "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General."

Other Matters

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

Impact on Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because there are no anti-competitive discriminatory aspects of the rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Regulatory Agenda

This rule appeared as Item 1491 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR part 2003

Privacy.

Accordingly, 24 CFR chapter XII is amended by adding a new part 2003, to read as follows:

PART 2003—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

2003.1 Scope of the part and applicability of other HUD regulations.
2003.2 Definitions.
2003.3 Requests for records.
2003.4 Officials to receive requests and inquiries.
2003.5 Initial denial of access to records.
2003.6 Disclosure of a record to a person other than the individual to whom it pertains.
2003.7 Authority to make law enforcement-related requests for records maintained by other agencies.
2003.8 General Exemptions.
2003.9 Specific Exemptions.

Authority: 5 U.S.C. 552a; 5 U.S.C. App. (Inspector General Act of 1978); 42 U.S.C. 3535(d).

§ 2003.1 Scope of the part and applicability of other HUD regulations.

(a) *General.* This part contains the regulations of the Office of Inspector General ("OIG") implementing the Privacy Act of 1974 (5 U.S.C. 552a). The regulations inform the public that the Inspector General has the responsibility for carrying out the requirements of the Privacy Act and for issuing internal OIG orders and directives in connection with the Privacy Act. These regulations apply to all records that are contained in systems of records maintained by the OIG and that are retrieved by an individuals's name or personal identifier.

(b) *Applicability of part 16.* In addition to these regulations, the provisions of 24 CFR part 16 apply to the OIG, except that appendix A to part 16 is not applicable. The provisions of this part shall govern in the event of any conflict with the provisions of part 16.

§ 2003.2 Definitions.

Certain terms used in 24 CFR part 16 have the following meanings for purposes of this part:

Department. The term "Department," as used in 24 CFR part 16, means the OIG for purposes of this part, except that, as used in §§ 16.1(d), 16.11(b) (1), (3), and (4) and 16.12(e), the term means the Department of Housing and Urban Development.

Privacy Act Officer. The term "Privacy Act Officer," as used in 24 CFR part 16, means the Assistant Inspectors General described in § 2000.5 of this chapter.

Privacy Appeals Officer. The term "Privacy Appeals Officer," as used in 24 CFR part 16, means the Inspector General for purposes of this part. The Secretary of HUD has delegated to the Inspector General the authority to act as the Privacy Appeals Officer for denials of requests for records maintained by the OIG.

§ 2003.3 Requests for records.

(a) A request from an individual for an OIG record about that individual which is not contained in an OIG system of records will be considered to be a Freedom of Information Act (FOIA) request and will be processed under 24 CFR part 2002.

(b) A request from an individual for an OIG record about that individual which is contained in an OIG system of records will be processed under both the Privacy Act and the FOIA in order to ensure maximum access under both statutes. This practice will be undertaken regardless of how an individual characterizes the request.

(1) The procedures for inquiries and requirements for access to records under the Privacy Act are more specifically set forth in 24 CFR part 16, except that appendix A to part 16 does not apply to the OIG.

(2) An individual will not be required to state a reason or otherwise justify his or her request for access to a record.

§ 2003.4 Officials to receive requests and inquiries.

Officials to receive requests and inquiries for access to, or correction of, records in OIG systems of records are the Privacy Act Officers described in § 2003.2 of this part. Written requests may be addressed to the appropriate Privacy Act Officer at: Office of Inspector General, Department of Housing and Urban Development, Washington, DC 20410, or to a particular Regional Office listed in § 2000.6(d) of this chapter, for referral to the appropriate Privacy Act Officer.

§ 2003.5 Initial denial of access to records.

(a) Access by an individual to a record about that individual which is contained in an OIG system of records will be denied only upon a determination by the Privacy Act Officer that:

(1) The record was compiled in reasonable anticipation of a civil action or proceeding; or the record is subject to a Privacy Act exemption under §§ 2003.8 or 2003.9 of this part; and

(2) The record is also subject to a FOIA exemption under § 2002.21(b) of this chapter.

(b) If a request is partially denied, any portions of the responsive record that can be reasonably segregated will be provided to the individual after deletion of those portions determined to be exempt.

(c) The provisions of 24 CFR 16.6(b) and 16.7, concerning notification of an initial denial of access and administrative review of the initial denial, apply to the OIG, except that:

(1) The final determination of the Inspector General, as Privacy Appeals Officer for the OIG, will be in writing and will constitute final action of the Department on a request for access to a record in an OIG system of records; and

(2) If the denial of the request is in whole or in part upheld, the final determination of the Inspector General will include notice of the right to judicial review.

§ 2003.6 Disclosure of a record to a person other than the individual to whom it pertains.

(a) The OIG may disclose an individual's record to a person other than the individual to whom the record pertains in the following instances:

(1) Upon written request by the individual, including authorization under 24 CFR 16.5(e);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian of the individual under 5 U.S.C. 552a(h); or

(4) When permitted by the provisions of 5 U.S.C. 552a(b) (1) through (12).

(b) [Reserved].

§ 2003.7 Authority to make law enforcement-related requests for records maintained by other agencies.

(a) The Inspector General is authorized by written delegation from the Secretary of HUD and under the Inspector General Act to make written requests under 5 U.S.C. 552a(b)(7) for transfer of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity under the Inspector General Act.

(b) The Inspector General delegates the authority under paragraph (a) of this section to the following OIG officials:

(1) Deputy Inspector General;

(2) Assistant Inspector General for Audit;

(3) Assistant Inspector General for Investigation; and

(4) Assistant Inspector General for Management and Policy.

(c) The officials listed in paragraph (b) of this section may not redelegate the authority described in paragraph (a) of this section.

§ 2003.8 General exemptions.

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," and "Name Indices System of the Office of Inspector General" consist, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in these systems falls within the scope of Exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of

evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(b) [Reserved].

§ 2003.9 Specific exemptions.

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General" consist, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(b) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General" consist in part of investigatory material compiled by the OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of Exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are exempt from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: December 11, 1992.

John J. Connors,

Deputy Inspector General.

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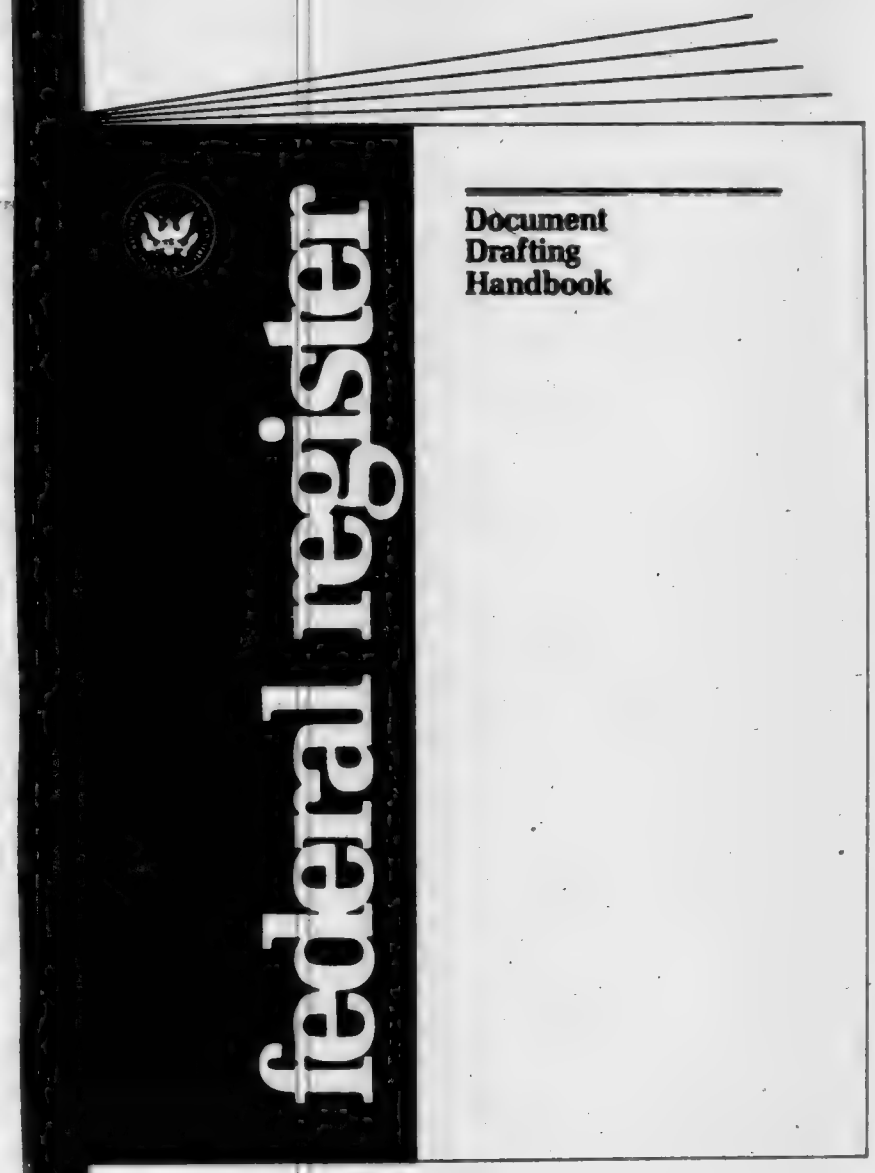

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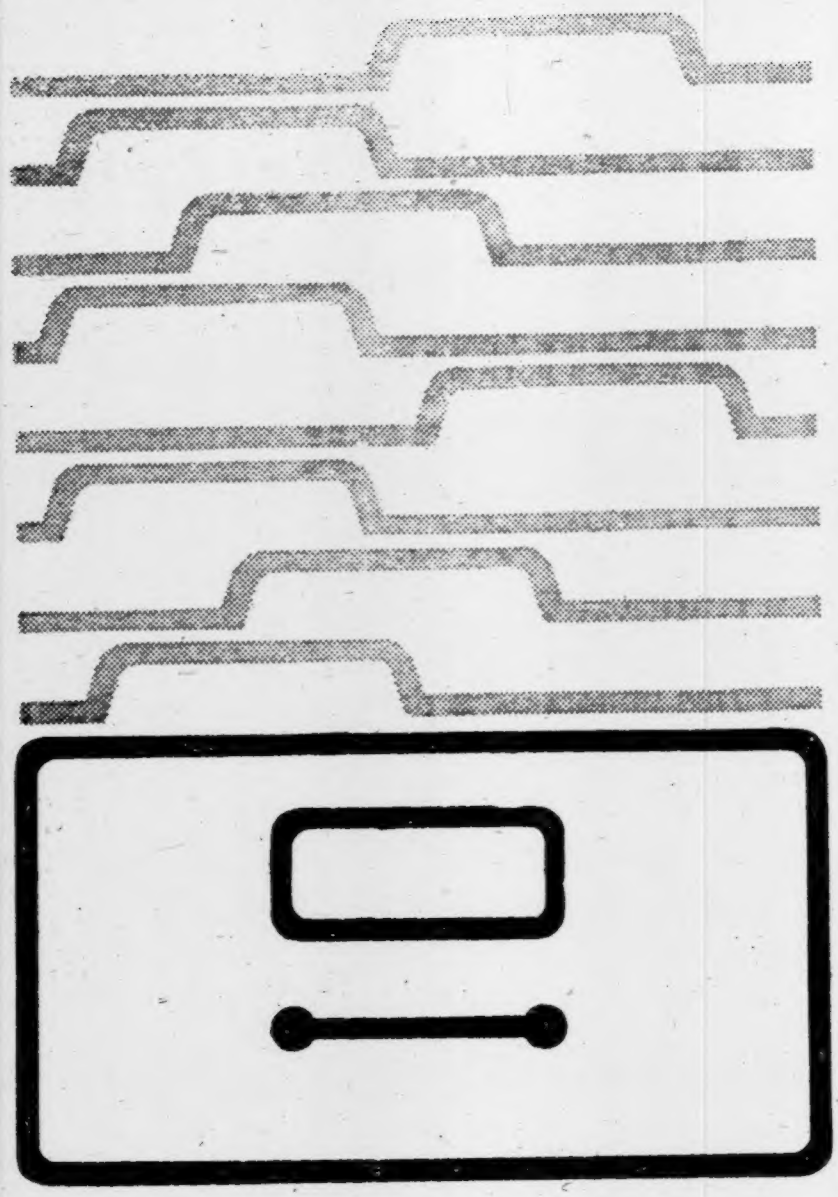

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

The GUIDE to record retention is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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